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**REAL ESTATE CONTRACTUAL FORMS ADVISORY COUNCIL**  
**Room 121B, 1400 East Washington Avenue, Madison**  
**Contact: Brittany Lewin (608) 266-2112**  
**May 18, 2016**

*The following agenda describes the issues that the Board plans to consider at the meeting. At the time of the meeting, items may be removed from the agenda. Please consult the meeting minutes for a record of the actions and deliberations of the Board.*

**AGENDA**

**9:30 A.M.**

**OPEN SESSION – CALL TO ORDER – ROLL CALL**

- A. Adoption of Agenda (1)**
- B. Approval of Minutes from April 13, 2016 (2)**
- C. Administrative Updates**
  - 1) Staff updates
- D. Review of Real Estate Contractual Forms for Revision:**
  - 1) **WB-36 Buyer Agency/Tenant Representation Agreement (3-33)**
  - 2) **WB-1 Residential Listing Contract - Exclusive Right to Sell (34-45)**
  - 3) **WB-42 Amendment to Listing Contract**
- E. Public Comments**

**ADJOURNMENT**

The Next Scheduled Meeting is July 7, 2016.

**REAL ESTATE CONTRACTUAL FORMS ADVISORY COUNCIL  
MEETING MINUTES  
APRIL 13, 2016**

**PRESENT:** Stephen Beers, Casey Clickner, Debra Conrad, Michael Gordon, Cori Lamont (*excused from the meeting at 12:42 p.m.*), Kim Moermond, Gary Tritz, Thomas Weber, Pamela Widen

**EXCUSED:** John Drzewiecki, Scott Minter, Richard Petershack, Michael Sewell, Jonathan Sayas

**STAFF:** Brittany Lewin, Executive Director; Nilajah Hardin, Bureau Assistant

**CALL TO ORDER**

Stephen Beers, Chair, called the meeting to order at 9:34 a.m. A quorum of nine (9) members was confirmed.

**ADOPTION OF AGENDA**

**MOTION:** Debra Conrad moved, seconded by Michael Gordon, to adopt the agenda as published. Motion carried unanimously.

**APPROVAL OF MINUTES**

**MOTION:** Thomas Weber moved, seconded by Gary Tritz, to approve the minutes of February 25, 2016 as published. Motion carried unanimously.

*Cori Lamont was excused from the meeting at 12:42 p.m.*

**ADJOURNMENT**

**MOTION:** Gary Tritz moved, seconded by Michael Gordon, to adjourn the meeting. Motion carried unanimously.

The meeting adjourned at 1:56 p.m.

**WB-36 BUYER AGENCY/TENANT REPRESENTATION AGREEMENT**

DRAFT 1 – from April 13 DSPS mtg.

~~■ BROKER THE SOLE EXCLUSIVE AUTHORITY TO ACT FOR BUYER AS A BUYER'S AGENT:~~ Buyer (see lines 154-155xxx-xxx) gives ~~Broker the Firm and its Agents~~ the exclusive right to act as Buyer's agent to locate an interest in property and to negotiate the procurement of the Acquisition of an interest in property for Buyer, except as excluded under lines 11-20xx-xx. ~~Except for excluded properties described in lines 11-20xx-xx,~~ Buyer agrees that during the term of this Agreement, Buyer will not enter into any other agreements to retain any other buyer's agent(s), except for the excluded properties described in lines xx-xx

If Buyer works with owner or agents of owner in locating and/or negotiating the Acquisition of an Interest in Property and Buyer's contact with owners or other agents results in the Firm not collecting full compensation under this Agreement from owner or owner's agent, Buyer shall be responsible to pay any uncollected amount.

■ PURCHASE PRICE RANGE: \_\_\_\_\_

■ EXCLUDED PROPERTIES: PROPERTY TYPES NOT INCLUDED:

~~■ Types of Excluded Properties: Identify types of properties excluded from this Agreement (e.g. geographic limitations, or limitations on property type included under this Agreement) including geographic, size, capacity, or age of property limitations, or limitations on property type:~~

~~Insert additional addresses or descriptions, if any, at lines xxx-xxx or attach as an addendum per lines xxx-xxx.~~

■ Specific EXCLUDED PROPERTIES: ~~All properties protected under a prior buyer agency agreement are excluded from this Agreement to the extent of the prior firm's legal rights, unless otherwise agreed to in writing. NOTE: If Buyer fails to identify properties below, Buyer may be liable to the Firm for full compensation.~~

The following other properties

\_\_\_\_\_ are excluded from this Agreement until \_\_\_\_\_ [INSERT DATE].

The following specific properties are excluded from this Agreement Indicate if the exclusion is not for the duration of the Agreement and expires upon a certain date, until \_\_\_\_\_ [INSERT DATE]

~~Insert additional addresses or descriptions, if any, at lines xxx-xxx or attach as an addendum per lines xxx-xxx.~~

**COMPENSATION** ■ ~~COMPENSATION:~~ Broker's-The Firm's compensation shall be: **CHECK ONE OR BOTH AS**

**APPLICABLE** [Check "SUCCESS FEE", "OTHER COMPENSATION", OR BOTH, as applicable]

SUCCESS FEE: \_\_\_\_\_ % of the purchase price or \_\_\_\_\_ whichever is greater.

OTHER COMPENSATION: \_\_\_\_\_

~~INSERT AMOUNTS AND TYPES OF FEES, E.G. RETAINER FEE, ADVANCE FEE, HOURLY FEE, ETC. AND INDICATE WHEN DUE~~

~~INSERT THE AMOUNT AND TYPE OF OTHER FEE, E.G. RETAINER FEE, OR HOURLY FEE~~

If this Agreement calls for a success fee, it is agreed that ~~Broker the Firm~~ has earned the success fee if, during the term of this Agreement (or any extension of it), Buyer or any person Acting on Behalf of Buyer acquires an interest in property or enters into an enforceable written contract between owner and Buyer to acquire an interest in property, at any terms and price acceptable to owner and Buyer. ~~Broker's-The Firm's~~ compensation remains due and payable if an enforceable written contract entered into by Buyer per lines 26-29xx-xx fails to close. Once earned, ~~Broker's-the Firm's~~ compensation is due and payable at the earlier of closing or the date set for closing, even if the transaction does not close, unless otherwise agreed in writing.

~~Broker-Buyer shall pay the Firm's compensation, reduced by any amounts the Firm receives from owner or owner's agent.~~

55 The Firm (may) (may not) ~~STRIKE ONE~~ ("may" if neither is stricken) accept compensation from owner or owner's agent.  
56 ~~(Broker may accept compensation from owner or owner's agent if neither is struck.) Broker's compensation from Buyer will~~  
57 ~~be reduced by any amounts received from owner or owner's agent.~~

58 **NOTE: Prior written consent from all parties to the transaction is required if the Firm will be compensated by a**  
59 **party other than Buyer.**

60 **BROKER LIEN NOTICE: Broker has the authority under section 779.32 of the Wisconsin Statutes to file a broker**  
61 **lien for commissions or compensation earned but not paid when due against the commercial real estate, or the**  
62 **interest in the commercial real estate, if any, that is the subject of this Agreement. "Commercial real estate"**  
63 **includes all real estate except (a) real property containing 8 or fewer dwelling units, (b) real property that is**  
64 **zoned for residential purposes and that does not contain any buildings or structures, and (c) real property that**  
65 **is zoned for agricultural purposes.**

66 **DELIVERY OF DOCUMENTS AND WRITTEN NOTICES** Unless otherwise stated in this Agreement ~~Offer~~, delivery of  
67 documents and written notices to a Party shall be effective only when accomplished by one of the methods specified at  
68 lines xx-xx.

69 (1) Personal Delivery: giving the document or written notice personally to the Party, or the Party's recipient for delivery if  
70 named at line xx or xx.

71 Buyer's recipient for delivery (optional): \_\_\_\_\_

72 Firm's recipient for delivery (optional): \_\_\_\_\_

73  (2) Fax: fax transmission of the document or written notice to the following telephone number:

74 Buyer: ( \_\_\_\_\_ ) Firm: ( \_\_\_\_\_ )

75  (3) Commercial Delivery: depositing the document or written notice fees prepaid or charged to an account with a  
76 commercial delivery service, addressed either to the Party, or to the Party's recipient for delivery if named at line xx or xx,  
77 for delivery to the Party's delivery address at line xx or xx.

78  (4) U.S. Mail: depositing the document or written notice postage prepaid in the U.S. Mail, addressed either to the  
79 Party, or to the Party's recipient for delivery if named at line xx or xx, for delivery to the Party's delivery address at line xx  
80 or xx.

81 Delivery address for Buyer: \_\_\_\_\_

82 Delivery address for Firm: \_\_\_\_\_

83  (5) E-Mail: electronically transmitting the document or written notice to the Party's e-mail address, if given below at  
84 line xx or xx. If this is a consumer transaction where the property being purchased or the sale proceeds are used  
85 primarily for personal, family or household purposes, each consumer providing an e-mail address below has first  
86 consented electronically as required by federal law.

87 E-Mail address for Buyer: \_\_\_\_\_

88 E-Mail address for Firm: \_\_\_\_\_

89 **FIRM'S DUTIES** ■ ~~BROKER'S DUTIES:~~ In consideration for Buyer's agreements, ~~Broker the Firm~~ and its Agents  
90 agrees to use professional knowledge and skills, and reasonable efforts, in accordance with applicable law, to:

91 1) ~~locate~~ Locate an interest in Property, unless ~~Broker the Firm~~ is being retained solely to Negotiate the  
92 Acquisition/procurement of an interest in a specific Property, and

93 2) Negotiate the procurement-Acquisition of an interest in Property, as required, ~~by giving advice to Buyer within the~~  
94 ~~scope of Broker's license, facilitating or participating in the discussions of the terms of a potential contract, completing~~  
95 ~~appropriate contractual forms, presenting either party's contractual proposal with an explanation of the proposal's~~  
96 ~~advantages and disadvantages and other efforts including but not limited to the following:~~  
97 \_\_\_\_\_, unless ~~Broker the Firm~~ is retained solely to Locate an interest in  
98 Property.

99 **EARNEST MONEY** ■ ~~EARNEST MONEY:~~ If ~~Broker the Firm~~ holds trust funds in connection with the transaction, they shall  
100 be retained by ~~Broker the Firm~~ in ~~Broker's the Firm's~~ trust account. ~~Broker The Firm~~ may refuse to hold earnest money or other  
101 trust funds. Should ~~Broker the Firm~~ hold the earnest money, the Firm shall hold and disburse earnest money funds in  
102 accordance with Wis. Stat. Ch. 452 and Wis. Admin. Code Ch. REEB 18. Buyer authorizes Broker to disburse the earnest  
103 money as directed in a written earnest money disbursement agreement signed by all parties having an interest in the trust  
104 funds. If the transaction fails to close and the earnest money is disbursed to Buyer, then upon disbursement to Buyer the  
105 earnest money shall be paid first to reimburse ~~Broker the Firm~~ for cash advances made by ~~Broker the Firm~~ on behalf of Buyer.  
106 This payment to the Firm shall not terminate this Agreement. Remove this line 106?!

107 **NON DISCRIMINATION** ■ ~~NON DISCRIMINATION:~~ Buyer and ~~Broker the Firm~~ and its Agents agree that they will not  
108 discriminate based on race, color, sex, sexual orientation as defined in Wisconsin Statutes § 111.32(13m), disability,  
109 religion, national origin, marital status, lawful source of income, age, ancestry, family~~ial~~ status, status as a victim of  
110 domestic abuse, sexual assault, or stalking, or in any other unlawful manner.

111 **DISCLOSURE TO CLIENTS** ■ ~~BROKER DISCLOSURE TO CLIENTS:~~  
112 Under Wisconsin law, a brokerage firm (hereinafter Firm) and its brokers and salespersons (hereinafter Agents) owe  
113 certain duties to all parties to a transaction.

- 114 (a) The duty to provide brokerage services to you fairly and honestly.  
115 (b) The duty to exercise reasonable skill and care in providing brokerage services to you.  
116 (c) The duty to provide you with accurate information about market conditions within a reasonable time if you request it,  
117 unless disclosure of the information is prohibited by law.  
118 (d) The duty to disclose to you in writing certain Material Adverse Facts about a property, unless disclosure of the  
119 information is prohibited by law. (see lines xxx-xxx)  
120 (e) The duty to protect your confidentiality. Unless the law requires it, the Firm and its Agents will not disclose your  
121 confidential information or the confidential information of other parties. (see lines xxx-xxx)  
122 (f) The duty to safeguard trust funds and other property the Firm or its Agents holds.  
123 (g) The duty, when negotiating, to present contract proposals in an objective and unbiased manner and disclose the  
124 advantages and disadvantages of the proposals.

125 **BECAUSE YOU HAVE ENTERED INTO AN AGENCY AGREEMENT WITH A FIRM, YOU ARE THE FIRM'S CLIENT.**  
126 **A FIRM OWES ADDITIONAL DUTIES TO YOU AS A CLIENT OF THE FIRM:**

- 127 (a) The Firm or one of its Agents will provide, at your request, information and advice on real estate matters that affect  
128 your transaction, unless you release the Firm from this duty.  
129 (b) The Firm or one of its Agents must provide you with all material facts affecting the transaction, not just Adverse  
130 Facts.  
131 (c) The Firm and its Agents will fulfill the Firm's obligations under the agency agreement and fulfill your lawful requests  
132 that are within the scope of the agency agreement.  
133 (d) The Firm and its Agents will negotiate for you, unless you release them from this duty.  
134 (e) The Firm and its Agents will not place their interests ahead of your interests. The Firm and its Agents will not, unless  
135 required by law, give information or advice to other parties who are not the Firm's clients, if giving the information or advice is  
136 contrary to your interests.  
137 If you become involved in a transaction in which another party is also the Firm's client (a "multiple representation  
138 relationship"), different duties may apply.

139 **MULTIPLE REPRESENTATION RELATIONSHIPS AND DESIGNATED AGENCY**

- 140 ■ A multiple representation relationship exists if a firm has an agency agreement with more than one client who is a party  
141 in the same transaction. If you and the firm's other clients in the transaction consent, the firm may provide services  
142 through designated agency, which is one type of multiple representation relationship.  
143 ■ Designated agency means that different agents with the firm will negotiate on behalf of you and the other client or  
144 clients in the transaction, and the firm's duties to you as a client will remain the same. Each agent will provide  
145 information, opinions, and advice to the client for whom the agent is negotiating, to assist the client in the negotiations.  
146 Each client will be able to receive information, opinions, and advice that will assist the client, even if the information,  
147 opinions, or advice gives the client advantages in the negotiations over the firm's other clients. An agent will not reveal  
148 any of your confidential information to another party unless required to do so by law.  
149 ■ If a designated agency relationship is not authorized by you or other clients in the transaction you may still authorize or  
150 reject a different type of multiple representation relationship in which the firm may provide brokerage services to more  
151 than one client in a transaction but neither the firm nor any of its agents may assist any client with information, opinions,  
152 and advice which may favor the interests of one client over any other client. Under this neutral approach, the same agent  
153 may represent more than one client in a transaction.  
154 ■ If you do not consent to a multiple representation relationship the firm will not be allowed to provide brokerage services  
155 to more than one client in the transaction.

156 **CHECK ONLY ONE OF THE THREE BELOW:**

- 157  The same firm may represent me and the other party as long as the same agent is not  
158 representing us both (multiple representation relationship with designated agency).  
159  The same firm may represent me and the other party, but the firm must remain neutral regardless  
160 if one or more different agents are involved (multiple representation relationship without  
161 designated agency).  
162  The same firm cannot represent both me and the other party in the same transaction (I reject  
163 multiple representation relationships).

164 **NOTE: All clients who are parties to this agency agreement consent to the selection checked above. You may**  
165 **modify this selection by written notice to the firm at any time. Your firm is required to disclose to you in your**  
166 **agency agreement the commission or fees that you may owe to your firm. If you have any questions about the**  
167 **commission or fees that you may owe based upon the type of agency relationship you select with your firm, you**  
168 **should ask your firm before signing the agency agreement.**

169 **SUBAGENCY**

170 Your firm may, with your authorization in the agency agreement, engage other firms (subagent firms) to assist your firm by  
171 providing brokerage services for your benefit. A subagent firm and the agents with the subagent firm will not put their own  
172 interests ahead of your interests. A subagent firm will not, unless required by law, provide advice or opinions to other parties  
173 if doing so is contrary to your interests.

174 **PLEASE REVIEW THIS INFORMATION CAREFULLY. An agent can answer your questions about brokerage**  
175 **services, but if you need legal advice, tax advice, or a professional home inspection, contact an attorney, tax**  
176 **advisor, or home inspector.**

177 This disclosure is required by section 452.135 of the Wisconsin statutes and is for information only. It is a plain language  
178 summary of the duties owed to you under section 452.133(2) of the Wisconsin statutes.

179 ■ **CONFIDENTIALITY NOTICE TO CLIENTS:** ~~Broker~~The Firm and its agents will keep confidential any information  
180 given to ~~Broker~~the Firm or its agents in confidence, or any information obtained by ~~Broker~~the Firm and its agents that  
181 ~~he or she~~knows a reasonable person would want to be kept confidential, unless the information must be disclosed by  
182 law or you authorize ~~Broker~~the Firm to disclose particular information. ~~Broker~~The Firm and its agents shall continue to  
183 keep the information confidential after ~~Broker~~the Firm is no longer providing brokerage services to you.

184 The following information is required to be disclosed by law:

- 185 1. Material ~~A~~adverse ~~F~~facts, as defined in ~~section~~Wis. Stat. § 452.01(5g) of the Wisconsin statutes (~~s~~See lines 170-  
186 173xxx-xxx).
- 187 2. Any facts known by the ~~broker~~Firm and its Agents that contradict any information included in a written inspection  
188 report on the property or real estate that is the subject of the transaction.

189 To ensure that the ~~broker~~Firm and its Agents ~~is~~are aware of what specific information you consider confidential, you  
190 may list that information below (~~s~~See lines 119-120xxx-xxx). At a later time, you may also provide the ~~broker~~Firm with  
191 other information you consider to be confidential.

192 **CONFIDENTIAL INFORMATION:** \_\_\_\_\_

193 \_\_\_\_\_

194 \_\_\_\_\_

195 **NON-CONFIDENTIAL INFORMATION** (The following may be disclosed by ~~Broker~~the Firm and its Agents): \_\_\_\_\_

196 \_\_\_\_\_

197 \_\_\_\_\_

198 **WAIVER OF CONFIDENTIALITY** ■ ~~WAIVER OF CONFIDENTIALITY:~~ Buyer may wish to authorize ~~Broker~~the Firm and its  
199 Agents to disclose information which might otherwise be considered confidential. An example of this type of information might  
200 be financial qualification information which may be disclosed to strengthen Buyer's offer to purchase/~~lease proposal~~ in the eyes  
201 of prospective sellers/~~landlords~~. ~~Broker's~~Buyer's authorization to disclose may be indicated at lines 121-122xxx-xxx. Unless  
202 otherwise provided at lines 119-120xxx-xxx, ~~the Firm and its Agents~~ ~~Broker~~has/~~have~~ permission to disclose Buyer's identity to  
203 ~~an~~ owner, owner's agents and other third parties without prior consent from Buyer. Buyer acknowledges that pursuant to  
204 ~~Wisconsin~~Wis. Statute ~~Stat. §~~section 706.03(1)(b)(1m) a conveyance, such as an offer to purchase, is not binding if it is signed  
205 by a representative properly authorized by Buyer (e.g., with a power of attorney) until such time as Buyer is identified in the  
206 conveyance.

207 **NON-EXCLUSIVE RELATIONSHIP** ■ ~~NON-EXCLUSIVE RELATIONSHIP:~~ Buyer acknowledges and agrees that ~~Broker~~  
208 the Firm and its Agents may act for other buyers in connection with the location of properties and may negotiate on behalf of  
209 such buyers with the owner or owner's agent. In the event that ~~Broker~~the Firm or its Agents undertakes to represent and act for  
210 other buyers, ~~Broker~~the Firm and its Agents shall not disclose to Buyer, or any other buyer, any confidential information of any  
211 buyer, unless required by law.

212 **COOPERATION** ■ ~~COOPERATION:~~ Buyer agrees to cooperate with ~~Broker~~the Firm and its Agents and to provide  
213 ~~Broker~~them accurate copies of all relevant records, documents and other materials in Buyer's possession or control which  
214 are required in connection with the purchase, option, ~~or~~ exchange ~~or~~lease of property. Buyer agrees to be reasonably  
215 available for showings of properties. Buyer authorizes ~~Broker~~the Firm and its Agents to do those acts reasonably necessary  
216 to fulfill ~~Broker's~~the Firm's responsibilities under this Agreement including retaining subagents. Buyer shall promptly notify  
217 ~~Broker~~the Firm in writing of the description of any property Buyer locates. Buyer shall also notify ~~Broker~~the Firm of the  
218 identity of all persons making inquiries concerning Buyer's objectives stated in this Agreement.

219 **PROPERTY DIMENSIONS** ■ ~~PROPERTY DIMENSIONS:~~ Buyer acknowledges that property dimensions, total square  
220 footage and total acreage information provided to Buyer may be approximate due to rounding and may vary due to  
221 different formulas which can be used to calculate these figures. Unless otherwise indicated, property dimension figures  
222 have not been verified by survey.

223 **CAUTION: Buyer should verify any property dimension or total square footage/acreage calculation which is**  
224 **material to Buyer.**

225 **DEFINITIONS** ■ ~~DEFINITIONS:~~

- 226 ■ **ADVERSE FACT:** An "~~A~~adverse ~~F~~fact" means any of the following:
- 227 (a) A condition or occurrence that is generally recognized by a competent licensee as doing any of the following:
- 228 1) Significantly and adversely affecting the value of the property;
- 229 2) Significantly reducing the structural integrity of improvements to real estate; or
- 230 3) Presenting a significant health risk to occupants of the property.
- 231 (b) Information that indicates that a party to a transaction is not able to or does not intend to meet his or her obligations  
232 under a contract or agreement made concerning the transaction.
- 233 ■ **BUYER:** "Buyer", as used in this Agreement, is the party executing this Agreement and seeking to acquire an interest  
234 in real estate or a business opportunity by purchase, ~~lease,~~ option, exchange or any other manner.

235 ■ **DEADLINES-DAYS:** Deadlines expressed as a number of "days" from an event, such as acceptance, are calculated  
236 by excluding the day the event occurred and by counting subsequent calendar days.

237 ~~**DELIVERY:** Delivery of documents or written notices related to this Agreement may only be accomplished by:~~

- 238 1) ~~giving the document or written notice personally to the party;~~
- 239 2) ~~depositing the document or written notice postage or fees prepaid or charged to an account in the U.S. Mail or a~~  
240 ~~commercial delivery system, addressed to the party, at the party's address (See lines 220, 226 and 232);~~
- 241 3) ~~electronically transmitting the document or written notice to the party's fax number (See lines 222, 228 and 234); and~~
- 242 4) ~~as otherwise agreed in additional provisions on lines 182-190 or in an addendum to this Agreement.~~

243 ■ **FIRM:** "Firm" means a licensed sole proprietor broker or a licensed broker business entity.

244 ■ **INTEREST IN PROPERTY:** ~~The "Interest in Pproperty" to be obtained by Buyer~~ includes a purchase, leasehold, option,  
245 exchange agreement or any other procured interest in real property unless restricted at lines 11-2xx-xx0, in additional provisions  
246 (lines 182-190xxx-xxx) or elsewhere in this Agreement. This does not include any rental or leasehold interests.

247 ■ **LOCATE AN INTEREST IN PROPERTY:** "Locate an Interest in Pproperty" shall mean, ~~as used in this Agreement,~~ to  
248 identify, evaluate according to the standards set by Buyer, and determine the availability of the Interest in Property  
249 sought by Buyer in a property.

250 ■ **MATERIAL ADVERSE FACT:** A "Material Adverse Fact" means an Adverse Fact that a party indicates is of such  
251 significance, or that is generally recognized by a competent licensee as being of such significance to a reasonable party,  
252 that it affects or would affect the party's decision to enter into a contract or agreement concerning a transaction or affects  
253 or would affect the party's decision about the terms of such a contract or agreement.

254 ■ ~~**NEGOTIATE THE PROCUREMENT OF THE ACQUISITION OF AN INTEREST IN PROPERTY:** "Negotiate the~~  
255 ~~procurement of the Acquisition of an Interest in Pproperty" shall mean, as used in this Agreement,~~ to contact the owner  
256 of the property or the owner's agent to ascertain the terms and conditions upon which ~~the an Interest in Property~~ may be  
257 ~~obtained-acquired, and to provide the Buyer assistance within the scope of the knowledge, skills, and training required~~  
258 ~~under chapter 452 of the statutes in developing a proposal or agreement relating to a transaction, including: (a) acting as~~  
259 ~~an intermediary by facilitating or participating in communications between parties related to the parties' interests in a~~  
260 ~~transaction (providing advice or opinions on matters that are material to a transaction in which a person is engaged or~~  
261 ~~intends to engage or showing a party real estate does not, in and of itself, constitute acting as an intermediary by~~  
262 ~~facilitating or participating in communications between parties); (b) completing, when requested by Buyer, appropriate~~  
263 ~~board-approved forms or other writings to document the Buyer's proposal consistent with the Buyer's instructions;~~  
264 ~~(c) presenting to Buyer the proposals of other parties to the transaction and giving Buyer a general explanation of the~~  
265 ~~provisions of the proposal; and (d) and to otherwise assisting Buyer in reaching an agreement to procure-acquire the~~  
266 ~~Interest in Property sought by Buyer in the property as may be specified in this Agreement.~~

267 ■ **PERSON ACTING ON BEHALF OF BUYER:** ~~"Person Acting on Behalf of Buyer"~~ In this Agreement "Person acting on  
268 ~~behalf of Buyer"~~ shall mean any person joined in interest with Buyer, or otherwise acting on behalf of Buyer, including but not  
269 limited to Buyer's immediate family, agents, ~~servants,~~ employees, directors, managers, members, officers, owners, partners,  
270 incorporators and organizers, as well as any and all corporations, partnerships, limited liability companies, trusts or other  
271 entities controlled by, affiliated with or owned by Buyer in whole or in part whether created before or after expiration of this  
272 Agreement (?).

273 **ADDITIONAL PROVISIONS** ■ ~~ADDITIONAL PROVISIONS:~~ \_\_\_\_\_

274 \_\_\_\_\_

275 \_\_\_\_\_

276 \_\_\_\_\_

277 \_\_\_\_\_

278 \_\_\_\_\_

279 \_\_\_\_\_

280 \_\_\_\_\_

281 \_\_\_\_\_

282 **ADDENDA** The attached ~~Addenda~~ \_\_\_\_\_

283 \_\_\_\_\_ is/are made a part of this Agreement.

284 **TERM OF THE AGREEMENT** ■ ~~TERM OF THE AGREEMENT:~~ From the \_\_\_\_\_ day of  
285 \_\_\_\_\_, \_\_\_\_\_ up to and including midnight of the \_\_\_\_\_ day of  
286 \_\_\_\_\_, \_\_\_\_\_. Notwithstanding lines 193-194xxx-xxx, ~~Broker the Firm~~ and Buyer agree  
287 that this Agreement (shall)/(shall not) **STRIKE ONE** ~~{STRIKE ONE}~~ end (~~"shall"~~ if neither ~~struck, this Agreement shall~~  
288 ~~end/is stricken~~) when Buyer ~~procures-acquires~~ an Interest in Pproperty.

289 **TERMINATION OF AGREEMENT** ■ ~~TERMINATION OF AGREEMENT:~~ Neither Buyer nor ~~Broker the Firm~~ has the legal  
290 right to unilaterally terminate this Agreement absent a material breach of contract by the other party. Buyer understands that the  
291 parties to this Agreement are Buyer and the ~~Broker F(firm).~~ Agents (~~salespersons~~) for ~~Broker the F(firm)~~ do not have the  
292 authority to terminate this Agreement, amend the compensation terms or shorten the term of this Agreement, without the written  
293 consent of the Agent(s)' supervising broker. Buyer and ~~Broker the Firm~~ agree that any termination of this Agreement by  
294 either party before the date stated on lines 194-xxx-xxx shall be effective by Buyer only if stated in writing and delivered  
295 to the Firm in accordance with lines xx-xx and effective by the Firm only if stated in writing by the supervising broker and  
296 delivered to Buyer in accordance with lines xx-xx indicated to the other party in writing and shall not be effective until  
297 delivered to the other party in accordance with lines 158-163.

298 **CAUTION:** Early termination of this Agreement may be a breach of contract, causing the terminating party to

299 potentially be liable for damages.

300 **EXTENSION OF AGREEMENT TERM** ~~■ EXTENSION OF AGREEMENT TERM~~: The Agreement term is extended for  
301 a period of one year as to any property which during the term of this Agreement was: 1) located or negotiated for by  
302 ~~Broker, Broker's agent~~ **the Firm or its Agents**, Buyer or any person acting on behalf of Buyer, or 2) which was the subject  
303 of a written ~~offer to purchase proposal~~ submitted by Buyer or any ~~P~~ **person** ~~A~~ **acting on B** behalf of Buyer. If this extension is  
304 based on ~~the Firm's or the Firm's Agent(s)' Broker's or Broker's agent's~~ **Location of an Interest in Property** or  
305 ~~N~~ **negotiation of the Acquisition an Interest in Property**, this extension shall only be effective if a written description of the  
306 property is delivered to Buyer no later than three days after ~~termination or~~ expiration of this Agreement.

307 **NOTICE ABOUT SEX OFFENDER REGISTRY** You may obtain information about the sex offender registry and  
308 persons registered with that registry by contacting the Wisconsin Department of Corrections on the Internet at  
309 ~~http://www.doc.wi.gov~~ <http://www.wisecoffenders.org> or by telephone at (608)240-5830.

310 ■ **READING/RECEIPT**: BY SIGNING BELOW, BUYER ACKNOWLEDGES RECEIPT OF A COPY OF THIS  
311 AGREEMENT AND THAT HE/SHE HAS READ ALL **FIVE**        PAGES AS WELL AS ANY ADDENDA AND ANY  
312 OTHER DOCUMENTS INCORPORATED INTO THIS AGREEMENT.

313 Dated this \_\_\_\_\_ day of \_\_\_\_\_,

314 (x) \_\_\_\_\_  
315 Buyer's Signature ▲ Print Name Here: ▲ Date ▲

316 \_\_\_\_\_  
317 Buyer's Signature ▲ Print Name Here: ▲ Date ▲  
318 Buyer's Address ▲ Buyer's Phone # ▲

319 \_\_\_\_\_  
320 Buyer's Signature ▲ Print Name Here: ▲ Date ▲  
321 Buyer's Fax # ▲ Buyer's E-Mail Address ▲

322 (x) \_\_\_\_\_  
323 Buyer's Signature ▲ Print Name Here: ▲ Date ▲

324 Buyer Entity Name (if any): \_\_\_\_\_  
325 \_\_\_\_\_ Print Name Here: ▲

326 \_\_\_\_\_  
327 Buyer's Address ▲ Buyer's Phone # ▲

328 (x) \_\_\_\_\_  
329 Authorized Signature ▲ Print Name & Title Here ► Date ▲

330 \_\_\_\_\_  
331 Buyer's Fax # ▲ Buyer's E-Mail Address ▲

332 (x) \_\_\_\_\_  
333 Agent for ~~Broker/Firm~~ ▲ Print Name Here: ▲ ~~Broker/Firm~~ Name ▲ Date ▲

334 \_\_\_\_\_  
335 ~~Broker/Firm~~ Address ▲ ~~Broker/Firm~~ Phone # ▲

336 \_\_\_\_\_  
337 ~~Broker/Firm~~ Fax # ▲ ~~Broker/Firm~~ E-Mail Address ▲

**WB-36 BUYER AGENCY AGREEMENT**

**DRAFT 2**

1 ■ **EXCLUSIVE AUTHORITY TO ACT AS BUYER’S AGENT:** Buyer (see lines xxx-xxx) gives the Firm and its Agents the  
2 exclusive right to act as Buyer’s Agent to Locate an Interest in Property and to Negotiate the Acquisition an Interest in  
3 Property for Buyer, except as excluded under lines xx-xx. Buyer agrees that during the term of this Agreement, Buyer will not  
4 enter into any other agreements to retain any other buyer’s agent(s), except for the excluded properties described in lines  
5 xx-xx.

6  
7  
8  
9

**If Buyer works with owner or agents of owner in locating and/or negotiating the Acquisition of an Interest in Property and Buyer’s contact with owners or other agents results in the Firm not collecting full compensation under this Agreement from owner or owner’s agent, Buyer shall be responsible to pay any uncollected amount.**

10 ■ **PURCHASE PRICE RANGE:** \_\_\_\_\_

11 ■ **SCOPE OF AGREEMENT:** This Agreement applies to all property within the state of Wisconsin except for Excluded  
12 Properties on lines xx-xx, regardless of property type or the initial Search Request on lines xx-xx.

13 ■ **INITIAL SEARCH REQUEST:** Buyer is looking for the following property (give indication of property type, function,  
14 location, etc., as applicable): \_\_\_\_\_  
15 \_\_\_\_\_

16 ■ **PROPERTY TYPES NOT INCLUDED:** Identify types of properties excluded from this Agreement (e.g. geographic  
17 limitations, or limitations on property type included under this Agreement): \_\_\_\_\_  
18 \_\_\_\_\_

19 ■ **EXCLUDED PROPERTIES:** If Buyer acquires an interest in any properties protected under a prior buyer agency  
20 agreement, Buyer may owe commission to both the prior firm and this Firm, unless those protected properties are  
21 excluded from this Agreement, unless otherwise agreed to in writing. Buyer excludes the following: \_\_\_\_\_  
22 \_\_\_\_\_

23 \_\_\_\_\_  
24 \_\_\_\_\_

25 The following other properties \_\_\_\_\_  
26 \_\_\_\_\_  
27 \_\_\_\_\_ are excluded from this Agreement until \_\_\_\_\_ [INSERT DATE].

28 Insert additional addresses or descriptions of Excluded Properties, if any, at lines xxx-xxx or attach as an addendum per  
29 lines xxx-xxx.

30 **COMPENSATION** The Firm’s compensation shall be: **COMPLETE AS APPLICABLE**

31 **COMMISSION:** \_\_\_\_\_  
32 \_\_\_\_\_

33 **OTHER COMPENSATION:** \_\_\_\_\_  
34 \_\_\_\_\_

35 **INSERT AMOUNTS AND TYPES OF FEES, E.G. RETAINER FEE, ADVANCE FEE, HOURLY FEE, ETC. AND INDICATE WHEN DUE**

36 ■ **COMMISSION EARNED:** The Firm has earned the Firm’s commission ~~if~~, **regardless of the Purchase Price Range, Initial**  
37 **Search Request or excluded property types above, if** during the term of this Agreement (or any extension of it), Buyer or any  
38 Person Acting on Behalf of Buyer acquires an Interest in Property or enters into an enforceable written contract to acquire an  
39 Interest in Property, at any terms and price acceptable to owner and Buyer. The Firm’s commission remains due and  
40 payable if an enforceable written contract entered into by Buyer per lines xx-xx fails to close.

41 ■ **COMMISSION DUE AND PAYABLE:** Once earned, the Firm’s commission is due and payable at the earlier of closing or  
42 the date set for closing, even if the transaction does not close, unless otherwise agreed in writing.

43 ■ **PAYMENT BY OWNER OR OWNER’S AGENT:** The Firm is hereby authorized to seek payment of commission from the  
44 owner (e.g., seller) or the owner’s agent (e.g., listing firm) provided that all parties to the transaction give prior written  
45 consent. Buyer shall pay the Firm’s compensation, reduced by any amounts the Firm receives from the owner or owner’s  
46 agent. **If the amount paid is more than the commission on line xx, Buyer authorizes the Firm to receive and retain the entire**  
47 **commission.**

48 **BROKER-LIEN NOTICE: ~~Broker-The Firm~~ has the authority under section 779.32 of the Wisconsin Statutes to file**  
49 **a ~~broker~~-lien for commissions or compensation earned but not paid when due against the commercial real**  
50 **estate, or the interest in the commercial real estate, if any, that is the subject of this Agreement. “Commercial**  
51 **real estate” includes all real estate except (a) real property containing 8 or fewer dwelling units, (b) real property**

52 that is zoned for residential purposes and that does not contain any buildings or structures, and (c) real  
53 property that is zoned for agricultural purposes.

54 **DELIVERY OF DOCUMENTS AND WRITTEN NOTICES** Unless otherwise stated in this Agreement, delivery of  
55 documents and written notices to a Party shall be effective only when accomplished by one of the methods specified at  
56 lines xx-xx.

57 (1) Personal Delivery: giving the document or written notice personally to the Party, or the Party's recipient for delivery if  
58 named at line xx or xx.

59 Buyer's recipient for delivery (optional): \_\_\_\_\_

60 Firm's recipient for delivery (optional): \_\_\_\_\_

61  (2) Fax: fax transmission of the document or written notice to the following telephone number:

62 Buyer: (\_\_\_\_\_) \_\_\_\_\_ Firm: (\_\_\_\_\_) \_\_\_\_\_

63  (3) Commercial Delivery: depositing the document or written notice fees prepaid or charged to an account with a  
64 commercial delivery service, addressed either to the Party, or to the Party's recipient for delivery if named at line xx or xx,  
65 for delivery to the Party's delivery address at line xx or xx.

66  (4) U.S. Mail: depositing the document or written notice postage prepaid in the U.S. Mail, addressed either to the  
67 Party, or to the Party's recipient for delivery if named at line xx or xx, for delivery to the Party's delivery address at line xx  
68 or xx.

69 Delivery address for Buyer: \_\_\_\_\_

70 Delivery address for Firm: \_\_\_\_\_

71  (5) E-Mail: electronically transmitting the document or written notice to the Party's e-mail address, if given below at  
72 line xx or xx. If this is a consumer transaction where the property being purchased or the sale proceeds are used  
73 primarily for personal, family or household purposes, each consumer providing an e-mail address below has first  
74 consented electronically as required by federal law.

75 E-Mail address for Buyer: \_\_\_\_\_

76 E-Mail address for Firm: \_\_\_\_\_

77 **FIRM'S DUTIES** In consideration for Buyer's agreements, the Firm and its Agents agree to use professional knowledge  
78 and skills, in accordance with applicable law, to:

79 A. Assist Buyer to Locate an Interest in Property and Negotiate the Acquisition of an Interest in Property, as  
80 applicable.

81 B. Comply with other provisions of this Agreement and the duties stated herein.

82 **BUYER'S DUTIES** In consideration for the agreements of the Firm and its Agents, Buyer agrees as follows:

83 A. Signs or Advertisements for Property: If Buyer sees any signs or advertisements for property being offered for sale,  
84 Buyer will not contact the owner or the owner's agent but will first contact the Firm or its Agents who will provide  
85 information about the property and make arrangements for Buyer to see them.

86 B. Public Open Houses: In the event Buyer elects to visit an open house without the Firm or its Agents, Buyer agrees  
87 to notify the party representing the owner of this Agreement.

88 C. New Home Builders and Open Houses: In order to avoid the possibility of confusion over the agency relationship  
89 and misunderstandings about liability for compensation, Buyer agrees not to make a first visit to any new home  
90 builder's model nor contact any agents representing the owner or builder without being accompanied by the Firm  
91 or its Agents.

92 D. Advise Others of Buyer Agency Relationship: Buyer will inform other firms, agents, sellers, property owners, etc.  
93 that the Firm represents Buyer as buyer's agent for the purpose of acquiring property and refer all such persons to  
94 the Firm.

95 **COOPERATION** Buyer agrees to cooperate with the firm and its agents and to provide them accurate copies of all  
96 relevant records, documents and other materials in Buyer's possession or control which are required in connection with the  
97 purchase, option, or exchange of property. Buyer agrees to be reasonably available for showings of properties. Buyer  
98 authorizes the Firm and its agents to do those acts reasonably necessary to fulfill the Firm's responsibilities under this  
99 Agreement including retaining subagents. Buyer shall promptly notify the Firm in writing of the description of any property  
100 Buyer locates. Buyer shall also notify the Firm of the identity of all persons making inquiries concerning Buyer's objectives  
101 stated in this Agreement.

102 **EARNEST MONEY** If the Firm holds trust funds in connection with the transaction, they shall be retained by the Firm in the  
103 Firm's trust account. The Firm may refuse to hold earnest money or other trust funds. Should the Firm hold the earnest money,  
104 the Firm shall hold and disburse earnest money funds in accordance with Wis. Stat. Ch. 452 and Wis. Admin. Code Ch. REEB  
105 18. If the transaction fails to close and the earnest money is disbursed to Buyer, then upon disbursement to Buyer the earnest  
106 money shall be paid first to reimburse the Firm for cash advances made by the Firm on behalf of Buyer.

107 **NON DISCRIMINATION** Buyer and the Firm and its Agents agree that they will not discriminate based on race, color,  
108 sex, sexual orientation as defined in Wisconsin Statutes § 111.32(13m), disability, religion, national origin, marital status,

109 lawful source of income, age, ancestry, family status, status as a victim of domestic abuse, sexual assault, or stalking,  
110 or in any other unlawful manner.

111 **DISPUTE RESOLUTION** The Parties understand that if there is a dispute about this Agreement or an alleged breach,  
112 and the parties cannot resolve the dispute by mutual agreement, the parties may consider judicial resolution in court or  
113 may consider alternative dispute resolution. Alternative dispute resolution may include mediation and binding arbitration.  
114 Should the parties desire to submit any potential dispute to alternative dispute resolution it is recommended that the  
115 parties add such in Additional Provisions or in an Addendum.

116 **DISCLOSURE TO CLIENTS**

117 Under Wisconsin law, a brokerage firm (hereinafter Firm) and its brokers and salespersons (hereinafter Agents) owe  
118 certain duties to all parties to a transaction:

119 (a) The duty to provide brokerage services to you fairly and honestly.

120 (b) The duty to exercise reasonable skill and care in providing brokerage services to you.

121 (c) The duty to provide you with accurate information about market conditions within a reasonable time if you request it,  
122 unless disclosure of the information is prohibited by law.

123 (d) The duty to disclose to you in writing certain Material Adverse Facts about a property, unless disclosure of the  
124 information is prohibited by law. (see lines xxx-xxx)

125 (e) The duty to protect your confidentiality. Unless the law requires it, the Firm and its Agents will not disclose your  
126 confidential information or the confidential information of other parties. (see lines xxx-xxx)

127 (f) The duty to safeguard trust funds and other property the Firm or its Agents holds.

128 (g) The duty, when negotiating, to present contract proposals in an objective and unbiased manner and disclose the  
129 advantages and disadvantages of the proposals.

130 **BECAUSE YOU HAVE ENTERED INTO AN AGENCY AGREEMENT WITH A FIRM, YOU ARE THE FIRM'S CLIENT.**

131 **A FIRM OWES ADDITIONAL DUTIES TO YOU AS A CLIENT OF THE FIRM:**

132 (a) The Firm or one of its Agents will provide, at your request, information and advice on real estate matters that affect  
133 your transaction, unless you release the Firm from this duty.

134 (b) The Firm or one of its Agents must provide you with all material facts affecting the transaction, not just Adverse  
135 Facts.

136 (c) The Firm and its Agents will fulfill the Firm's obligations under the agency agreement and fulfill your lawful requests  
137 that are within the scope of the agency agreement.

138 (d) The Firm and its Agents will negotiate for you, unless you release [them](#) from this duty.

139 (e) The Firm and its Agents will not place their interests ahead of your interests. The Firm and its Agents will not, unless  
140 required by law, give information or advice to other parties who are not the Firm's clients, if giving the information or advice is  
141 contrary to your interests.

142 If you become involved in a transaction in which another party is also the Firm's client (a "multiple representation  
143 relationship"), different duties may apply.

144 **MULTIPLE REPRESENTATION RELATIONSHIPS AND DESIGNATED AGENCY**

145 ■ A multiple representation relationship exists if a firm has an agency agreement with more than one client who is a party  
146 in the same transaction. If you and the firm's other clients in the transaction consent, the firm may provide services  
147 through designated agency, which is one type of multiple representation relationship.

148 ■ Designated agency means that different agents with the firm will negotiate on behalf of you and the other client or  
149 clients in the transaction, and the firm's duties to you as a client will remain the same. Each agent will provide  
150 information, opinions, and advice to the client for whom the agent is negotiating, to assist the client in the negotiations.  
151 Each client will be able to receive information, opinions, and advice that will assist the client, even if the information,  
152 opinions, or advice gives the client advantages in the negotiations over the firm's other clients. An agent will not reveal  
153 any of your confidential information to another party unless required to do so by law.

154 ■ If a designated agency relationship is not authorized by you or other clients in the transaction you may still authorize or  
155 reject a different type of multiple representation relationship in which the firm may provide brokerage services to more  
156 than one client in a transaction but neither the firm nor any of its agents may assist any client with information, opinions,  
157 and advice which may favor the interests of one client over any other client. Under this neutral approach, the same agent  
158 may represent more than one client in a transaction.

159 ■ If you do not consent to a multiple representation relationship the firm will not be allowed to provide brokerage services  
160 to more than one client in the transaction.

161 **CHECK ONLY ONE OF THE THREE BELOW:**

162  The same firm may represent me and the other party as long as the same agent is not  
163 representing us both (multiple representation relationship with designated agency).

164  The same firm may represent me and the other party, but the firm must remain neutral regardless  
165 if one or more different agents are involved (multiple representation relationship without  
166 designated agency).

167  The same firm cannot represent both me and the other party in the same transaction (I reject  
168 multiple representation relationships).

169 **NOTE: All clients who are parties to this agency agreement consent to the selection checked above. You may**  
170 **modify this selection by written notice to the firm at any time. Your firm is required to disclose to you in your**

171 agency agreement the commission or fees that you may owe to your firm. If you have any questions about the  
172 commission or fees that you may owe based upon the type of agency relationship you select with your firm, you  
173 should ask your firm before signing the agency agreement.

174 **SUBAGENCY**

175 Your firm may, with your authorization in the agency agreement, engage other firms (subagent firms) to assist your firm by  
176 providing brokerage services for your benefit. A subagent firm and the agents with the subagent firm will not put their own  
177 interests ahead of your interests. A subagent firm will not, unless required by law, provide advice or opinions to other parties  
178 if doing so is contrary to your interests.

179 **PLEASE REVIEW THIS INFORMATION CAREFULLY. An agent can answer your questions about brokerage**  
180 **services, but if you need legal advice, tax advice, or a professional home inspection, contact an attorney, tax**  
181 **advisor, or home inspector.**

182 This disclosure is required by section 452.135 of the Wisconsin statutes and is for information only. It is a plain language  
183 summary of the duties owed to you under section 452.133(2) of the Wisconsin statutes.

184 ■ **CONFIDENTIALITY NOTICE TO CLIENTS:** The Firm and its agents will keep confidential any information given to the  
185 Firm or its agents in confidence, or any information obtained by the Firm and its agents that a reasonable person would  
186 want to be kept confidential, unless the information must be disclosed by law or you authorize the Firm to disclose  
187 particular information. The Firm and its agents shall continue to keep the information confidential after the Firm is no  
188 longer providing brokerage services to you.

189 The following information is required to be disclosed by law:

190 1. Material Adverse Facts, as defined in Wis. Stat. § 452.01(5g) (see lines xxx-xxx).

191 2. Any facts known by the Firm and its Agents that contradict any information included in a written inspection report on  
192 the property or real estate that is the subject of the transaction.

193 To ensure that the Firm and its Agents are aware of what specific information you consider confidential, you may list that  
194 information below (see lines xxx-xxx). At a later time, you may also provide the Firm with other information you consider  
195 to be confidential.

196 **CONFIDENTIAL INFORMATION:** \_\_\_\_\_

197 \_\_\_\_\_

198 \_\_\_\_\_

199 **NON-CONFIDENTIAL INFORMATION** (The following may be disclosed by the Firm and its Agents): \_\_\_\_\_

200 \_\_\_\_\_

201 \_\_\_\_\_

202 **WAIVER OF CONFIDENTIALITY** Buyer may wish to authorize the Firm and its Agents to disclose information which might  
203 otherwise be considered confidential. An example of this type of information might be financial qualification information which  
204 may be disclosed to strengthen Buyer's offer to purchase in the eyes of prospective sellers. Buyer's authorization to disclose  
205 may be indicated at lines xxx-xxx. Unless otherwise provided at lines xxx-xxx, the Firm and its Agents have permission to  
206 disclose Buyer's identity to an owner, owner's agents and other third parties without prior consent from Buyer. Buyer  
207 acknowledges that pursuant to Wis. Stat. §706.03(1)(b)(1m) a conveyance, such as an offer to purchase, is not binding if it  
208 signed by a representative properly authorized by Buyer (e.g., with a power of attorney) until such time as Buyer is identified in  
209 the conveyance.

210 **NON-EXCLUSIVE RELATIONSHIP** Buyer acknowledges and agrees that the Firm and its Agents may act for other buyers  
211 in connection with the location of properties and may negotiate on behalf of such buyers with the owner or owner's agent. In the  
212 event that the Firm or its Agents undertake to represent and act for other buyers, the Firm and its Agents shall not disclose to  
213 Buyer, or any other buyer, any confidential information of any buyer, unless required by law.

214 **PROPERTY DIMENSIONS** Buyer acknowledges that property dimensions, total square footage and total acreage  
215 information provided to Buyer may be approximate due to rounding and may vary due to different formulas which can be  
216 used to calculate these figures. Unless otherwise indicated, property dimension figures have not been verified by survey.

217 **CAUTION: Buyer should verify any property dimension or total square footage/acreage calculation which is**  
218 **material to Buyer.**

219 **DEFINITIONS**

220 ■ **ADVERSE FACT:** An "Adverse Fact" means any of the following:

221 (a) A condition or occurrence that is generally recognized by a competent licensee as doing any of the following:

- 222 1) Significantly and adversely affecting the value of the property;
- 223 2) Significantly reducing the structural integrity of improvements to real estate; or
- 224 3) Presenting a significant health risk to occupants of the property.

225 (b) Information that indicates that a party to a transaction is not able to or does not intend to meet his or her obligations  
226 under a contract or agreement made concerning the transaction.

227 ■ **BUYER:** "Buyer", as used in this Agreement, is the party executing this Agreement and seeking to acquire an interest  
228 in real estate or a business opportunity by purchase, option, exchange or any other manner.

229 ■ **DEADLINES-DAYS:** Deadlines expressed as a number of "days" from an event, such as acceptance, are calculated  
230 by excluding the day the event occurred and by counting subsequent calendar days.

231 ■ **FIRM:** "Firm" means a licensed sole proprietor broker or a licensed broker business entity.

232 ■ **INTEREST IN PROPERTY:** "Interest in Property" includes a purchase, option, exchange or any other interest in any real  
233 property-property within the state of Wisconsin unless ~~restricted-specifically excluded~~ at lines xx-xx, in additional provisions  
234 (lines xxx-xxx) or elsewhere in this Agreement. This does not include any rental or leasehold interests.

235 ■ **LOCATE AN INTEREST IN PROPERTY:** "Locate an Interest in Property" shall mean to identify, evaluate according to  
236 the standards set by Buyer, and determine the availability of the Interest in Property sought by Buyer.

237 ■ **MATERIAL ADVERSE FACT:** A "Material Adverse Fact" means an Adverse Fact that a party indicates is of such  
238 significance, or that is generally recognized by a competent licensee as being of such significance to a reasonable party,  
239 that it affects or would affect the party's decision to enter into a contract or agreement concerning a transaction or affects  
240 or would affect the party's decision about the terms of such a contract or agreement.

241 ■ **NEGOTIATE THE ACQUISITION OF AN INTEREST IN PROPERTY:** "Negotiate the Acquisition of an Interest in  
242 Property" shall mean to contact the owner of the property or the owner's agent to ascertain the terms and conditions  
243 upon which an Interest in Property may be acquired, and to provide the Buyer assistance within the scope of the  
244 knowledge, skills, and training required under chapter 452 of the statutes in developing a proposal or agreement relating  
245 to a transaction, including: (a) acting as an intermediary by facilitating or participating in communications between parties  
246 related to the parties' interests in a transaction (providing advice or opinions on matters that are material to a transaction  
247 in which a person is engaged or intends to engage or showing a party real estate does not, in and of itself, constitute  
248 acting as an intermediary by facilitating or participating in communications between parties); (b) completing, when  
249 requested by Buyer, appropriate board-approved forms or other writings to document the Buyer's proposal consistent  
250 with the Buyer's instructions; (c) presenting to Buyer the proposals of other parties to the transaction and giving Buyer a  
251 general explanation of the provisions of the proposal; and (d) otherwise assisting Buyer in reaching an agreement to  
252 acquire the Interest in Property sought by Buyer.

253 ■ **PERSON ACTING ON BEHALF OF BUYER:** "Person Acting on Behalf of Buyer" shall mean any person joined in  
254 interest with Buyer, or otherwise acting on behalf of Buyer, including but not limited to Buyer's immediate family, agents,  
255 employees, directors, managers, members, officers, owners, partners, incorporators and organizers, as well as any and all  
256 corporations, partnerships, limited liability companies, trusts or other entities controlled by, affiliated with or owned by Buyer  
257 in whole or in part whether created before or after expiration of this Agreement (?).

258 **ADDITIONAL PROVISIONS** \_\_\_\_\_  
259 \_\_\_\_\_  
260 \_\_\_\_\_  
261 \_\_\_\_\_  
262 \_\_\_\_\_  
263 \_\_\_\_\_  
264 \_\_\_\_\_  
265 \_\_\_\_\_  
266 \_\_\_\_\_

267 **ADDENDA** The attached \_\_\_\_\_  
268 \_\_\_\_\_ is/are made a part of this Agreement.

269 **NOTICE ABOUT SEX OFFENDER REGISTRY** You may obtain information about the sex offender registry and  
270 persons registered with that registry by contacting the Wisconsin Department of Corrections on the Internet at  
271 <http://www.doc.wi.gov> or by telephone at (608)240-5830.

272 **TERMINATION OF AGREEMENT** Neither Buyer nor the Firm has the legal right to unilaterally terminate this Agreement  
273 absent a material breach of contract by the other party. Buyer understands that the parties to this Agreement are Buyer and the  
274 Firm. Agents for the Firm do not have the authority to terminate this Agreement, amend the compensation terms or shorten the  
275 term of this Agreement, without the written consent of the Agent(s)' supervising broker. Buyer and the Firm agree that any  
276 termination of this Agreement by either party before the date stated on lines xxx-xxx shall be effective by Buyer only if  
277 stated in writing and delivered to the Firm in accordance with lines xx-xx and effective by the Firm only if stated in writing  
278 by the supervising broker and delivered to Buyer in accordance with lines xx-xx.

279 **CAUTION: Early termination of this Agreement may be a breach of contract, causing the terminating party to**  
280 **potentially be liable for damages.**

281 **EXTENSION OF AGREEMENT TERM** The Agreement term is extended for a period of one year as to any property  
282 which during the term of this Agreement was: 1) located or negotiated for by the Firm or its Agents, Buyer or any person  
283 acting on behalf of Buyer, or 2) which was the subject of a written proposal submitted by Buyer or any Person Acting on  
284 Behalf of Buyer. If this extension is based on the Firm's or the Firm's Agent(s)' Location of an Interest in Property or  
285 Negotiation of the Acquisition an Interest in Property, this extension shall only be effective if a written description of the  
286 property is delivered to Buyer no later than three days after termination or expiration of this Agreement.

287 **TERM OF THE AGREEMENT** From the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ up  
288 to and including midnight of the \_\_\_\_\_ day of \_\_\_\_\_.  
289 Notwithstanding lines xxx-xxx, the Firm and Buyer agree that this Agreement (shall)(shall not) **STRIKE ONE** end ("shall" if  
290 neither is stricken) when Buyer acquires an Interest in Property.

291 ■ BY SIGNING BELOW, BUYER ACKNOWLEDGES RECEIPT OF A COPY OF THIS AGREEMENT AND THAT  
292 HE/SHE HAS READ ALL \_\_\_\_\_ PAGES AS WELL AS ANY ADDENDA AND ANY OTHER DOCUMENTS  
293 INCORPORATED INTO THIS AGREEMENT.

294 (x) \_\_\_\_\_  
295 Buyer's Signature ▲ Print Name Here: ► Date ▲

296 (x) \_\_\_\_\_  
297 Buyer's Signature ▲ Print Name Here: ► Date ▲

298 (x) \_\_\_\_\_  
299 Buyer's Signature ▲ Print Name Here: ► Date ▲

300 (x) \_\_\_\_\_  
301 Buyer's Signature ▲ Print Name Here: ► Date ▲

302 Buyer Entity Name (if any): \_\_\_\_\_  
303 Print Name Here: ▲

304 (x) \_\_\_\_\_  
305 Authorized Signature ▲ Print Name & Title Here ► Date ▲

306 Firm Name: \_\_\_\_\_  
307 Print Name Here: ▲

308 (x) \_\_\_\_\_  
309 Agent's Signature ▲ Print Name Here: ► Date ▲

## WB-36 REVISIONS

To: DSPS Real Estate Contractual Forms Advisory Committee  
From: WRA Forms Committee  
Date: May 13, 2016  
RE: **WB-36 Buyer Agency Agreement**

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The following are possible revisions to the WB-36 Buyer Agency Agreement (mandatory use date 7-1-08). The line numbers in this memo refer to either DRAFT 1 or DRAFT 2, as stated. Draft 1, file 20160413 WB-36 Draft1, is the draft as it was left after the last meeting of this Committee. Draft 2, file wb-36 DRAFT2\_May2016, labeled DRAFT 2, was created to show language adopted by this Committee without the tracking as well as some either some possible alternative language under discussion or shown for consideration – an idea board, if you will. Draft 1 more closely resembles the current WB-36 and is in tracking.

**DISCUSSION ITEMS:** At present the WB-36 is used for buyers, both residential and commercial and everything in between, as well as for both residential and commercial tenants. The question is whether having one approved form for this is sufficient. If there were to be more than one form, would there be one just for tenants and one just for buyers, or one just for commercial and one for residential?

**The WRA Forms Committee favors leaving the WB-36 for purchases and creating a separate approved form for tenant representation designed primarily for commercial situations but also capable of being used in residential situations. The DSPS Real Estate Contractual Forms Advisory Committee has agreed to create a second form for tenant representation.** They noted that the WB-36 revisions and the new tenant representation agreement would need to be released at the same time since the two agreements would be replacing the functions of the current WB-36. A few commercial brokers say the WB-36 cannot be used for commercial tenants (which technically is not true), but it is easy to see why a business looking for commercial rental space would decline to enter into the WB-36 because the majority of the form is focused on buyers. In addition, using the WB-36 for tenant representation may be problematic in the Compensation section because the WB-36 is not structured to readily describe commission based upon a lease rather than a sale.

The WRA Forms Committee will soon begin work on a tenant representation. WRA staff is putting together a group of tenant representation practitioners who will contribute their insight, expertise and experience to help this Committee develop a draft of a tenant representation agreement. If anyone has any suggested provisions or tenant representation forms that have some good items in them, please forward them to [dconrad@wra.org](mailto:dconrad@wra.org)

**Note:** In beginning to reach out to commercial practitioners, a couple of them have responded that they use the WB-36 and modify it to make it work, using additional provisions and addenda. They write in a general description of what the client is looking for under the belief that the client wants to know what the broker is being hired to do. One uses exclusions to exclude market areas. They modify items like the term of the agreement, add email delivery, lengthen the time to provide protected property and do extensive modification of the commission provisions. They fill out the WB-36 to provide for both leases and purchases because a client may need a particular type of space or facility and intend that it would be

leased but sometimes it turns out that a purchase works out better. These brokers are about providing service to the client and finding whatever works best for the client.

As the WB-36 is worked on, please keep in mind that the form needs to comply with **Wis. Stat. § 240.10(1)**:

“Every contract to pay a commission to a real estate agent or broker or to any other person for selling or buying real estate shall be void unless such contract or note or memorandum thereof describes that real estate; expresses the price for which the same may be sold or purchased, the commission to be paid and the period during which the agent or broker shall procure a buyer or seller; is in writing; and is subscribed by the person agreeing to pay such commission, except that a contract to pay a commission to a person for locating a type of property need not describe the property.”

Similarly, the tenant representation agreement will need to comply with **Wis. Stat. § 240.10(2)**:

“Every contract to pay a commission to any real estate agent or broker or to any person for leasing real estate for a term exceeding 3 years shall be void unless such contract, note or memorandum thereof describes that real estate; expresses the rent to be paid or a method to determine the same, the length of the lease, the commission to be paid, and the period during which said person shall procure a tenant; is in writing; and is subscribed by the person agreeing to pay such commission, except that a contract to pay a commission to a person for locating a type of property need not describe the property.”

**Wis. Admin. Code § REEB 24.02 definitions:**

(2) “Agency agreement” means a written agreement between a broker and a client in which the client authorizes the broker to provide brokerage services to the client.

(3) “Brokerage service” means any service described under s. 452.01 (2), Stats., provided by a broker to another person.

(5) “Buyer’s ~~broker~~firm” means a ~~licensee~~-firm who has an agency agreement with a buyer.

(6) “Client” means a party to a transaction who has an agency agreement with a broker for brokerage services.

## **WB-36 Buyer Agency Agreement**

◆ Update the top of the form to say Approved by the Wisconsin Real Estate Examining Board.

◆ **Chapter 452 Terminology.** The terminology throughout this form is modified in anticipation of the Wis. Stat. chapter 452 revisions wherein the proposed terminology would refer to a Firm to mean either a broker entity or a sole proprietor broker. Those revisions additionally refer to salespersons, licensed individual brokers, and licensed broker entities, but here the choice was to refer to the Firm and the agents of the Firm. A definition of “Firm” was added to the draft.

◆ **First caption (line 1) and Agency Authorization on lines 1-5, Draft 2:** The paragraph heading was simplified: ~~BROKER THE SOLE-EXCLUSIVE AUTHORITY TO ACT FOR BUYER AS A BUYER’S AGENT~~. There also is some new terminology in the section at lines 1-5.

**WRA Forms Committee seemed to be satisfied with these modifications. The DSPS Real Estate Contractual Forms Advisory Committee agreed but made a slight modification – see lines 4-5 of Draft 2 or lines 5-6 of Draft 1.**

Should this refer to “buyer’s broker” because that is a defined term (see above) or are we accustomed to saying “buyer’s agent?” **WRA Forms Committee said no, leave it as buyer’s agent –DSPS agreed.**

**RECAP -- AUTHORIZATION**

In the broadest sense, what is needed is an authorization from Buyer to the Firm to provide brokerage services. Additional considerations are whether this is exclusive –and what properties are being looked for – what is fair game?

**★MAJOR FUNDAMENTAL ISSUE: Should the WB-36 Continue with the Firm Serving as the Exclusive Buyer’s Agent and the Buyer Being Able to Work with Owners or Other Firms?**

The WRA Forms Committee was in favor of continuing with the exclusive buyer’s agent model, rather than changing to an exclusive agent to locate and negotiate the acquisition of an interest in property. The latter would be the 24/7 model where the buyer client would need to always work with the buyer’s agent and not with any owners, other agents or attorneys (depending upon how this was expressed). The existing model is not an exclusive right to locate and negotiate arrangement – the buyer is not prohibited from personally contacting sellers or seller's agents regarding properties he or she may be interested in. The buyer is not prohibited from working with his or her attorney to assist with negotiations and is not prohibited from getting business strategies and acquisition advice from his or her cousin Henry, the real estate tycoon. The only prohibition regarding the people the buyer may work with is that the buyer cannot hire another buyer’s agent with respect to the properties subject to the WB-36. Note that this was qualified a touch on line of the DRAFTS to acknowledge there may be prior buyer agency agreements with protected properties in play.

In the current WB-36 the Firm’s tasks are broken down into locating properties and negotiating for properties. The drafters can modify this by lining out language within lines 1-5. Should this be made more apparent, for example, separate lines or check boxes for location and for negotiation?

- ★ If the buyer client is not selecting/waiving negotiation, then the documentation of a waiver of duties would be needed per Wis. Stat. § 452.133(6): “... a waiver under this subsection is not effective unless the Firm or licensees associated with the Firm provide to the client a written disclosure containing all of the following: **(a)** A copy of the text of sub. (2)(d) and § 452.01(5m), and, and a statement that, as a consequence of the client's waiver, the Firm or licensees associated with the Firm will have no legal duty to perform the duty imposed by sub.(2)(d). **(b)** A statement that as a consequence of the client's waiver, the client may require the assistance of an attorney or another service provider to fulfill the client's goals and contractual duties in the transaction.”
- ★ If the buyer client is not seeking services to locate a property and the Firm will negotiate to acquire an interest in property, there is also a concern that simply writing the offer without providing any other brokerage services would violate license law and leave the broker in the position of engaging in the unauthorized practice of law per Wis. Admin. Code § REEB 16.05(3), § REEB 16.04(1) and § REEB 16.05(3). Taken all together a licensee may not enter into an agency agreement like a WB-36 just to draft the agreement between the parties because it would be considered the unlicensed practice of law. The drafting must be incidental to the practice of real estate and involve other real estate brokerage tasks such as inspections, disclosures, notices, amendments, assisting with appropriate contingencies, etc. If the parties to the transaction have come to an agreement about the terms of the purchase of real property (but this is rarely actually the case because there will be several issues they have not contemplated), perhaps it would be better if they were referred to legal counsel to draft their contract.

Is it safer to leave the language as it is now given these concerns that are seemingly highlighted when broken out? **WRA Forms Committee found it was better to retain the style of the existing section – no check boxes. The DSPS Committee agreed.**

**Are there better ways to express the authorization that are clearer for the buyer client and all involved? Some ideas from other agreements:**

Looking at some other buyer agency forms, other ways to say this: “Buyer grants the Firm the exclusive right to act as [buyer’s] agent for Buyer for the purpose of acquiring property in the market area.” This type of language would tend to disallow the others from acting as agent for the buyer unless modified to say “buyer’s agent”, but the key would be for the buyer to understand that. The agreement goes on to define the market area by describing the perimeters of the area and defines property as any interest in real estate.

**-OR-**

“The Firm is hereby granted the right to represent Buyer in the purchase of property” and the agreement later broadly defines this as residential or commercial property within broad areas – a state or metropolitan area -- for the WB-36, it would be within Wisconsin, etc. using check boxes.

**WRA Forms Committee found it was better to retain the language and style of the existing sections – no check boxes. The language (with some terminology changes) is in tracking in Draft 1 and regular text in Draft 2.**

◆ **Note (Lines 6-9 in Draft 2, lines 8-11 in Draft 2):** The DSPS Committee reworked and reformatted the Note taking different passages and phrases from various suggestions that had been made after the WRA Forms Committee’s last meeting.

**NOTE above on page 2 of this memo that the REEB is going to change the term “buyer’s broker” to “buyer’s firm.” Should that give reason to change additional terminology within the WB-36?**

**Lines 1-6 of Draft 1:**

■ **EXCLUSIVE AUTHORITY TO ACT AS BUYER’S AGENT:** Buyer (see lines xxx-xxx) gives the Firm and its Agents the exclusive right to act as **Buyer’s Firm (hereinafter referred to as Buyer’s Agent)** to Locate an Interest in Property and to Negotiate the Acquisition an Interest in Property for Buyer, except as excluded under lines xx-xx. Buyer agrees that during the term of this Agreement, Buyer will not enter into any other agreements to retain any other buyer’s agent(s), except for the excluded properties described in lines xx-xx.

⇒ **Is this acceptable or are there additional changes?**

## **PRICE**

◆ **Purchase Price Range (Line 10 of Draft 2, line 13 of Draft 1):** This item is necessary to meet the requirements of Wis. Stat. § 240.10(1) for an enforceable real estate contract that supports actions for the payment of fees or commissions: “Every contract to pay a commission to a real estate agent or broker or to any other person for selling or buying real estate shall be void unless such contract or note or memorandum thereof **describes that real estate; expresses the price for which the same may be sold or purchased**, the commission to be paid and the period during which the agent or broker shall procure a buyer or seller; is in writing; and is subscribed by the person agreeing to pay such commission, **except that a contract to pay a commission to a person for locating a type of property need not describe the property.**” **WRA Forms Committee found this to be acceptable the way it is. The DSPS Committee agreed.**

## **TYPE OF PROPERTIES/SEARCH PARAMETERS**

◆ **Property Types Not Included/Excluded Properties (Draft 1, Lines 14-39; Draft 2 lines 16-29):** In the current form this section attempts to perform numerous functions all in one relatively small section. The language begins in a manner similar to the listing contract language where a seller excludes certain buyers from the listing, up until a certain date. These may be properties seen by the buyer already with another buyer’s broker (protected property), properties seen with listing or subagents (to avoid procuring cause disputes), or properties under contract with an option or offer.

It also describes the type of properties the buyer’s agent is authorized to look for -- by identifying those types or specific properties the buyer’s agent is not authorized to search for or negotiate for. Note above that § 240.10(1) refers to the **type of property** the buyer’s agent is trying to locate, so that arguably (all

legal minds are not in concurrence on this point) needs to be indicated (unless there is a specific property identified) if the buyer’s agent wants to have an enforceable contract for commission or fees.

**CURRENT WB-36:**

■ **EXCLUDED PROPERTIES:** The following properties are excluded from this Agreement until \_\_\_\_\_  
[INSERT DATE] Note: Identify any specific excluded properties or limitations on the scope of this Agreement including geographic limitations, or limitations on property type included under this Agreement. \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Many residential brokers seem to find the current structure with its backwards logic workable, perhaps because they have simply learned to work with it and have become used to it. One way they work with it is to exclude few properties or none at all and then have a conversation to identify what the buyer is looking for. Sometimes the buyer will look online and come to the agent when they have a list of a few properties they are interested in. In other cases the WB-36 is not executed until the offer is written. In previous years there was a concern that agents would enter into a WB-36 and draft the offer without providing other brokerage services: would this practice raise these issues?

**Even though this Committee at its last meeting decided upon the following, there continues to be discussion and varying opinions:**

■ **PROPERTY TYPES NOT INCLUDED:** Identify types of properties excluded from this Agreement (e.g. geographic limitations, or limitations on property type included under this Agreement): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_.

■ **EXCLUDED PROPERTIES:** All properties protected under a prior buyer agency agreement are excluded from this Agreement to the extent of the prior firm’s legal rights, unless otherwise agreed to in writing.

**NOTE: If Buyer fails to identify properties below, Buyer may be liable to the Firm for full compensation.**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

The following other properties \_\_\_\_\_

\_\_\_\_\_ are excluded from this Agreement until \_\_\_\_\_ [INSERT DATE].

Insert additional addresses or descriptions, if any, at lines xxx-xxx or attach as an addendum per lines xxx-xxx.

- 1) There is objection to automatically excluding protected properties because the buyer will know what properties he or she is still interested in, if any. The buyer should not be restricted in choosing whatever agent the buyer wishes to work with including with regard to properties already seen with another agent. A second buyer’s agent should be allowed to provide services upon request.
  - a) This does make a certain amount of sense, but what if the buyer later changes his or her mind?
  - b) Wouldn’t that same logic apply to a seller who doesn’t want to work with the first listing broker? The listing contract protects the seller from paying double commission automatically so the question is why would the buyer agency agreement not extend the same protection to buyers?

- c) Standard of Practice 16-14 says that, “REALTORS® are free to enter into contractual relationships or to negotiate with sellers/landlords, buyers/tenants or others who are not subject to an exclusive agreement but shall not knowingly obligate them to pay more than one commission except with their informed consent. (Amended 1/98)” If the buyer may choose whether to exclude protected properties is that a knowing decision made with information about the possible double commission? Or is that not a concern because at least one of the buyer’s agents presumably will be paid in the transaction leaving the buyer client to pay the other – only pay out of pocket once?
- d) Unless protected properties are identified how would the second buyer’s agent know what properties those are so that the agent does not waste time duplicating prior efforts? Does it not happen sometimes that the buyer might shop around and then decide that a property the buyer already looked at is the best after all? For example, maybe the price is dropped. Does the second buyer’s agent have to work on faith that the buyer is going to tell him or her if they circle around and come back to a property protected under another WB-36?

2) Some still want this section to remain substantially as it is. One suggestion made:

■ **EXCLUDED PROPERTIES:** The following properties are excluded from this Agreement until \_\_\_\_\_ [INSERT DATE] Note: Identify any specific excluded properties or limitations on the scope of this Agreement including geographic limitations, or limitations on property type included under this Agreement.

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**CAUTION: If Buyer does not want this Agreement to apply to a property that may be “protected” under a prior buyer agency agreement, Buyer should identify such property or properties at lines xxx, to be excluded only to the extent of the prior broker’s/Firm’s legal rights, unless otherwise stated.**

The reasoning given is “If it ain’t broke, don’t fix it” and because we’ve noticed no problems. The whole Excluded property discussion and drafts are becoming too complicated and the currently drafted proposal seems to invite or prompt that something to be written in each of the blanks, whereas previously it did not.

3) We heard from one commercial broker on the WRA Forms Committee during the meeting and from a couple outside of the meeting (still reaching out for input from some others) and they want the WB-36 to indicate what the client looking for in an affirmative statement, perhaps a functional statement, such as a home, or a retail property to operate as a grocery store, etc. There also is concern that the client should have a statement of what it is the broker is hired to do. Suggestion (which also appears in Draft 2, lines 11-29) that takes into account comments heard from others but not yet reviewed by either committee (yellow highlighted language is new). This version does not automatically exclude protected properties but warns buyers in more overt language of the risks if they do not exclude such properties.

■ **SCOPE OF AGREEMENT:** This Agreement applies to all property within the state of Wisconsin except for Excluded Properties on lines xx-xx, regardless of property type or the initial Search Request on lines xx-xx.

■ **INITIAL SEARCH REQUEST:** Buyer is looking for the following property (give indication of property type, function, location, etc., as applicable): \_\_\_\_\_

■ **PROPERTY TYPES NOT INCLUDED:** Identify types of properties excluded from this Agreement (e.g. geographic limitations, or limitations on property type included under this Agreement): \_\_\_\_\_

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■ **EXCLUDED PROPERTIES:** If Buyer acquires an interest in any properties protected under a prior buyer agency agreement, Buyer may owe commission to both the prior firm and this Firm, unless those protected properties are excluded from this Agreement, unless otherwise agreed to in writing. Buyer excludes the following: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

The following other properties \_\_\_\_\_

\_\_\_\_\_ are excluded from this Agreement until \_\_\_\_\_ [INSERT DATE].

Insert additional addresses or descriptions of Excluded Properties, if any, at lines xxx-xxx or attach as an addendum per lines xxx-xxx.

**Regrettably there is no consensus with regard to section of the WB-36.**

⇒ **Is this acceptable or are there additional changes?**

**There also was language submitted for Search Parameters (after the last WRA Forms Committee meeting):**

Search Parameters: Purchase Price Range provides the initial Search Parameters. Buyer agrees to inform Broker of the property type, property characteristics, and any other material features or terms sought by Buyer, to allow Broker to search more efficiently. Buyer agrees to inform Broker in writing of all properties of interest to Buyer which may be outside the original Search Parameters, and Buyer agrees that the Purchase Price Range of this Agreement is amended upon such notification to include those properties.

This language seems to suggest a separate document used as a supplement to the Buyer Agency Agreement but not as an incorporated addendum, yet the written notice of properties of interest apparently outside of the price range is said to amend the price range. In other words it suggests a separate procedure for search parameter feedback and modifications outside of the WB-36 that need not be in writing unless there are properties outside of the price range. Would this mean that a buyer could forward property listings from the MLS or Zillow that they might be interested in and that this would be considered an amendment to the price range should the listed property's price fall outside the range?

Care must be taken to make sure enough is in the Excluded Properties section to establish a property type as required for an enforceable contract and payment of commission under Wis. Stat. § 240.10 and to withstand any challenge by a buyer hoping to not pay the buyer's broker's fee. Whether this would be defensible may be dependent upon what is written in as excluded and if it says "none" would a judge be likely to agree that a property type has been established?

⇒ **Should this language or something like it be added? Also see the Initial Search Request above.**

**FOOD FOR THOUGHT:**

The Search Parameters proposal above apparently is premised on the belief that a property acquired must be within the purchase price range in the WB-36 in order to be paid compensation.

When we look at Wis. Stat. § 240.10(1) it may be helpful to consider how this works for the listing contracts and then look at how it should apply for the WB-36. In particular, § 240.10 must be complied with to have an enforceable listing contract or buyer agency agreement, but what must be done to earn the commission?

Wis. Stat. § 240.10(1): “Every contract to pay a commission to a real estate agent or broker or to any other person for selling or buying real estate shall be void unless such contract or note or memorandum thereof describes that real estate; expresses the price for which the same may be sold or purchased, the commission to be paid and the period during which the agent or broker shall procure a buyer or seller; is in writing; and is subscribed by the person agreeing to pay such commission, except that a contract to pay a commission to a person for locating a type of property need not describe the property.”

**The listing contract** describes the property because that is the property for sale and that is usually the property that is sold – or part thereof. It gives a list price which is used in marketing, but that may not be the sales price – getting paid the commission in the listing contracts is not dependent upon price. The commission expressed applies if the property is sold and time frame also applies. The contract is in writing and is signed.

With a **buyer agency agreement**, there usually is not a property description, but to have a contract to pay commission “for locating a type of property,” that begs the question: a type of property arguably needs to be indicated. The WB-36 expresses a price range, but is receiving a commission dependent upon the buyer purchasing a property within that price range? The same is not true with the listing contract (the property does not need to be sold at the list price), so why would it be true here? Admittedly it has been said before nine years ago when the WB-36 was last revised that earning the broker’s success fee required that a property be purchased within the price range, but is it true and why would that be? What is there within the law or the contract that makes that so? The commission expressed applies if the property is sold and time frame also applies. The contract is in writing and is signed.

**Note:** that in the current WB-36 the type of property/excluded properties is a limitation upon the property purchased to earn the success fee because of the definition of “interest in property,” and because all exclusions are lumped together, but the success fee language says the property may be purchased at any terms and price acceptable to the buyer and the owner. So how and why would the price the buyer pays have to be tied to the price range?

If the following provisions are used in the WB-36 (see lines 11-12 and 232-234 of Draft 2) does that take away that concern if the only properties excluded from the ability to earn commission are the specific properties excluded, not property types?

■ **SCOPE OF AGREEMENT:** This Agreement applies to all property within the state of Wisconsin except for Excluded Properties on lines xx-xx, regardless of property type or the initial Search Request on lines xx-xx.

■ **INTEREST IN PROPERTY:** "Interest in Property" includes a purchase, option, exchange or any other interest in any real property within the state of Wisconsin unless restricted specifically excluded at lines xx-xx, in additional provisions (lines xxx-xxx) or elsewhere in this Agreement. This does not include any rental or leasehold interests.

## COMMISSION

◆ **Compensation (Draft 1, Lines 40-59):** In Draft 1 the formatting and terminology is modified slightly. Line 54 was added to make it clear that the buyer owes the compensation unless paid by the owner or another broker. A note was added at lines 58-59 regarding the need to have prior written consent from all parties to the transaction in the offer or other contract, as required under Wis. Admin. Code § REEB 24.05(1), before the Firm may receive compensation from the owner/seller or listing broker. A friendly reminder that you may or may not like – just an idea. **The WRA Forms Committee was not in favor of this addition.**

In Draft 1 the Buyer and the Firm must choose whether the Firm may be paid by the owner or owner's agent with a default that yes they can.

**COMPENSATION** ■ ~~COMPENSATION: Broker's-The Firm's~~ compensation shall be: **CHECK ONE OR BOTH AS APPLICABLE** ~~Check "SUCCESS FEE", "OTHER COMPENSATION", OR BOTH, as applicable~~  
 **SUCCESS FEE:** \_\_\_\_\_ % of the purchase price or \_\_\_\_\_  
whichever is greater.  
 **OTHER COMPENSATION:** \_\_\_\_\_

**INSERT AMOUNTS AND TYPES OF FEES, E.G. RETAINER FEE, ADVANCE FEE, HOURLY FEE, ETC. AND INDICATE WHEN DUE**

~~INSERT THE AMOUNT AND TYPE OF OTHER FEE, E.G. RETAINER FEE, OR HOURLY FEE~~

If this Agreement calls for a success fee, it is agreed that ~~Broker-the Firm~~ has earned the success fee if, during the term of this Agreement (or any extension of it), Buyer or any ~~P~~person ~~A~~acting on ~~B~~behalf of Buyer acquires an ~~i~~interest in ~~P~~property or enters into an enforceable written contract between owner and Buyer to acquire an ~~i~~interest in ~~P~~property, at any terms and price acceptable to owner and Buyer. ~~Broker's The Firm's~~ compensation remains due and payable if an enforceable written contract entered into by Buyer per lines ~~26-29xx-xx~~ fails to close. Once earned, ~~Broker's-the Firm's~~ compensation is due and payable at the earlier of closing or the date set for closing, even if the transaction does not close, unless otherwise agreed in writing.

~~Broker Buyer shall pay the Firm's compensation, reduced by any amounts the Firm receives from owner or owner's agent.~~

~~The Firm (may) (may not) STRIKE ONE ("may" if neither is stricken) accept compensation from owner or owner's agent. (Broker may accept compensation from owner or owner's agent if neither is struck.) Broker's compensation from Buyer will be reduced by any amounts received from owner or owner's agent.~~

Draft 2 was modified in response to comments made in the WRA Forms Committee discussion although it is not clear that there is consensus there either. It assumes the Firm may be paid by the owner or owner's agent and provides that buyer would have to pay only if the amount received from the owner or owner's agent is not enough and buyer must pay the balance.

Draft 2 in lines 30-47 clarifies the payment of compensation, and is structured along the lines of the WB-1 to facilitate understanding and transparency. This draft seeks to try to avoid any possible challenges along the lines of those raised in the *Ash Park* case. It is believed there has not been any litigation with regard to the WB-36 at the appellate levels. This variation drops the use of the term "Success Fee" and instead refers to commission, adding an additional blank line to assist commercial brokers. It eliminates the check boxes. It addresses what should happen if the commission received, for instance, from the listing broker, is less than or more than the designated commission (attempting to create transparency and better understanding by all). It also attempts to emphasize that Purchase Price Range, Initial Search Request and excluded property types do not impact the ability to receive commission.

**COMPENSATION** The Firm's compensation shall be: **COMPLETE AS APPLICABLE**

COMMISSION: \_\_\_\_\_

OTHER COMPENSATION: \_\_\_\_\_

**INSERT AMOUNTS AND TYPES OF FEES, E.G. RETAINER FEE, ADVANCE FEE, HOURLY FEE, ETC. AND INDICATE WHEN DUE**

■ **COMMISSION EARNED:** The Firm has earned the Firm's commission, regardless of the Purchase Price Range, Initial Search Request or excluded property types above, if during the term of this Agreement (or any extension of it), Buyer or any Person Acting on Behalf of Buyer acquires an Interest in Property or enters into an enforceable written contract to acquire an Interest in Property, at any terms and price

acceptable to owner and Buyer. The Firm's commission remains due and payable if an enforceable written contract entered into by Buyer per lines xx-xx fails to close.

■ **COMMISSION DUE AND PAYABLE:** Once earned, the Firm's commission is due and payable at the earlier of closing or the date set for closing, even if the transaction does not close, unless otherwise agreed in writing.

■ **PAYMENT BY OWNER OR OWNER'S AGENT:** The Firm is hereby authorized to seek payment of commission from the owner (e.g., seller) or the owner's agent (e.g., listing firm) provided that all parties to the transaction give prior written consent. Buyer shall pay the Firm's compensation, reduced by any amounts the Firm receives from the owner or owner's agent. **If the amount paid is more than the commission on line xx, Buyer authorizes the Firm to receive and retain such excess the entire commission.**

Not sure if the last sentence above highlighted in yellow was desired.

⇒ **What Compensation language is preferred?**

❖ **With regard to both drafts, neither gives much detail about what has to be done to receive OTHER COMPENSATION. When is it due? Any associated performance standards or precondition to receiving this?**

◆ **Broker Lien Notice (Draft 1, Lines 60-65; Draft 2, lines 48-53):** The language needed as foundation for any claim for a commission lien has been added so as to preserve the broker's ability to complete the process in Wis. Stat. § 779.32 and have a lien for unpaid commission filed and preserved. The question was asked if the terminology in this notice should be changed to make it consistent with the new changes in Wis. Stat. chapter 452.

Wis. Stat. § 779.32(2m) states,

“NOTICE OF LIEN RIGHTS. (a) To claim a lien under sub. (2), the broker shall notify the person who owes the commission or compensation described in sub. (2) (a), (b), or (c) in writing of the right to claim a lien under this section. A broker shall include the notice required under this subsection in the commercial real estate listing contract, commercial real estate buyer agreement, tenant representation agreement, or written agreement for the lease or management of commercial real estate.

(b) The notice required under this subsection **shall be in substantially the following form:**

NOTICE: A broker has the authority under section 779.32 of the Wisconsin Statutes to file a broker lien for commissions or compensation earned but not paid when due against the commercial real estate, or the interest in the commercial real estate, that is the subject of this agreement.” (emphasis added)

It would seem the language could be modified as follows (shown in Draft 2):

**~~BROKER~~-LIEN NOTICE: ~~Broker~~The Firm has the authority under section 779.32 of the Wisconsin Statutes to file a ~~broker~~-lien for commissions or compensation earned but not paid when due against the commercial real estate, or the interest in the commercial real estate, if any, that is the subject of this Agreement. “Commercial real estate” includes all real estate except (a) real property containing 8 or fewer dwelling units, (b) real property that is zoned for residential purposes and that does not contain any buildings or structures, and (c) real property that is zoned for agricultural purposes.**

⇒ **Is this acceptable or are there additional changes?**

◆ **Delivery (Draft 1, Lines 66-88; Draft 2, lines 54-76):** Added in the Delivery of Documents and Written Notices from the WB-1 draft with terminology modifications. Deleted the Delivery definition from Definitions section.

⇒ **Is this acceptable or are there additional changes?**

◆ **Firm's Duties (Draft 1, Lines 89-98):** Do we want or need the long description of what negotiate means? The language used is based on the statutes, but the Disclosure to Clients section covers much of this and lists the Firm's duties. Also see the proposed definition of "Negotiate the Acquisition an Interest in Property" at lines 241-252 of Draft 2 which incorporates the statutory definition of negotiate. It is believed that this section is included to help establish what performance is required by the Firm in order to establish adequate performance justifying the commission. There is no similar section in the WB-1.

**FIRM'S DUTIES** ■ ~~BROKER'S DUTIES:~~ In consideration for Buyer's agreements, ~~Broker the Firm and its Agents agrees~~ to use professional knowledge and skills, and reasonable efforts, in accordance with applicable law, to:

1) ~~locate~~ Locate an interest in Property, unless ~~Broker the Firm~~ is being retained solely to Negotiate the Acquisition~~procurement~~ of an interest in a specific Property, and  
2) Negotiate the procurement~~Acquisition~~ of an interest in Property, as required, ~~by giving advice to Buyer within the scope of Broker's license, facilitating or participating in the discussions of the terms of a potential contract, completing appropriate contractual forms, presenting either party's contractual proposal with an explanation of the proposal's advantages and disadvantages and other efforts including but not limited to the following:~~ \_\_\_\_\_, unless ~~Broker the Firm~~ is retained solely to Locate an interest in Property.

Draft 2: May be more than what is needed but it includes the full definition of negotiate.

■ **NEGOTIATE THE ACQUISITION OF AN INTEREST IN PROPERTY:** "Negotiate the Acquisition of an Interest in Property" shall mean to contact the owner of the property or the owner's agent to ascertain the terms and conditions upon which an Interest in Property may be acquired, and to provide the Buyer assistance within the scope of the knowledge, skills, and training required under chapter 452 of the statutes in developing a proposal or agreement relating to a transaction, including: (a) acting as an intermediary by facilitating or participating in communications between parties related to the parties' interests in a transaction (providing advice or opinions on matters that are material to a transaction in which a person is engaged or intends to engage or showing a party real estate does not, in and of itself, constitute acting as an intermediary by facilitating or participating in communications between parties); (b) completing, when requested by Buyer, appropriate board-approved forms or other writings to document the Buyer's proposal consistent with the Buyer's instructions; (c) presenting to Buyer the proposals of other parties to the transaction and giving Buyer a general explanation of the provisions of the proposal; and (d) otherwise assisting Buyer in reaching an agreement to acquire the Interest in Property sought by Buyer.

Another possible variation:

■ **NEGOTIATE THE ACQUISITION OF AN INTEREST IN PROPERTY:** "Negotiate the Acquisition of an Interest in Property" shall mean to *assist in ascertaining terms and conditions upon which an Interest in Property may be acquired* and to provide the Buyer assistance within the scope of the knowledge, skills, and training required under chapter 452 of the statutes in developing a proposal or agreement relating to a transaction, including: (a) acting as an intermediary by facilitating or participating in communications between parties related to the parties' interests in a transaction (providing advice or opinions on matters that are material to a transaction in which a person is engaged or intends to engage or showing a party real estate does not, in and of itself, constitute acting as an intermediary by facilitating or participating in communications between parties); (b) completing, when requested by Buyer, appropriate board-approved forms or other writings to document the Buyer's proposal consistent with the Buyer's instructions; (c) presenting to Buyer the proposals of other parties to the transaction and giving Buyer a general explanation of the provisions of the proposal; and (d) otherwise assisting Buyer in reaching an agreement to acquire the Interest in Property sought by Buyer.

If you strip out any details of what the definition of negotiate is – and move any such detail to the definitions section, you would be left with something more like the following description of the Firm's duties, which is in Draft 2.

**FIRM'S DUTIES** In consideration for Buyer's agreements, the Firm and its Agents agree to use professional knowledge and skills, in accordance with applicable law, to:

- A. Assist Buyer to Locate an Interest in Property and Negotiate the Acquisition of an Interest in Property, as applicable.
  - B. Comply with other provisions of this Agreement and the duties stated herein.
- ⇒ **Should the Firm's duties section be retained?**
- ⇒ **Is the definition of "Negotiate the Acquisition an Interest in Property" a better place to enumerate what is involved in negotiation – or should that be included at all?**
- ⇒ **Is the language in either draft acceptable or are there additional changes?**

## BUYER RESPONSIBILITIES

When looking at other buyer agency agreements, there is a basic short section for the broker's duties and a section of the buyer's duties which seemingly addresses some of the concerns expressed at times about the lack of understanding on the part of the buyer and the exclusive nature of the relationship. This is a section that includes specific examples emphasizing where the buyer should not stray and work with others. A couple of examples:

### BUYER'S RESPONSIBILITIES:

- A. Exclusive Relationship with Firm: Buyer will work exclusively with the Firm and its Agents during the term of this Agreement. (exclusive agent 24/7 – not what we currently have in the WB-36). Could be modified to say, "Buyer will work with the Firms and its agents as the buyer's exclusive buyer's agent and with no other Firm in the capacity of buyer's agent."
- B. Financial Information: Buyer will furnish the Firm with necessary financial and personal information to reasonably establish Buyer's ability to purchase property.
- C. Signs or Advertisements for Property: If Buyer sees any signs or advertisements for Property being offered for sale, Buyer will not contact the owner or the owner's agent but will first contact the Agent named herein who will provide information about the property and make arrangements to see them.
- D. Public Open Houses: In the event buyer elects to visit an open house without the Agent named herein, Buyer agrees to notify the party representing the owner of this signed buyer agency agreement.
- E. New Home Builders and Open Houses: In order to avoid the possibility of confusion over the agency relationship and misunderstandings about liability for compensation, Buyer agrees not to make a first visit to any new home builder's model nor contact any agents representing the owner or builder without being accompanied by the Agent.

Another option for

BUYER'S RESPONSIBILITIES. Buyer will:

- F. Work exclusively through the Firm when acquiring property in the market area and negotiate acquisition of the property in the market area only through the Firm (exclusive agent 24/7 – not what we currently have in the WB-36) – modify to say "will work with the Firm and no other buyer's broker and negotiate acquisition of property through no other buyer's broker"
- G. Inform other firms, agents, sellers, property owners, etc. that the Firm exclusively represents Buyer for the purpose of acquiring property in the market area and refer all such persons to the Firm and
- H. Comply with all provisions of this agreement

⇒ **See Draft 2 at lines 82-94 which uses some of these provisions**

**BUYER'S DUTIES** In consideration for the agreements of the Firm and its Agents, Buyer agrees as follows:

- A. Signs or Advertisements for Property: If Buyer sees any signs or advertisements for Property being offered for sale, Buyer will not contact the owner or the owner's agent but will first contact the Firm or its Agents who will provide information about the property and make arrangements for Buyer to see them.
- B. Public Open Houses: In the event Buyer elects to visit an open house without the Firm or its Agents, Buyer agrees to notify the party representing the owner of this Agreement.
- C. New Home Builders and Open Houses: In order to avoid the possibility of confusion over the agency relationship and misunderstandings about liability for compensation, Buyer agrees not to make a first visit to any new home builder's model nor contact any agents representing the owner or builder without being accompanied by the Firm or its Agents
- D. Advise Others of Buyer Agency Relationship: Buyer will inform other firms, agents, sellers, property owners, etc. that the Firm represents Buyer as buyer's agent for the purpose of acquiring property and refer all such persons to the Firm.

Another suggestion which has similarities to Draft 2 (terminology needs modification if this is used):

**Buyer will submit all showing requests and property inquiries through Buyer's Agent. If Buyer contacts, or is contacted by, other real estate agents or private owners, or attends "Open Houses," Buyer must explain that Buyer is under a Buyer Agency agreement with the Firm, and that Buyer will be working with the Firm in the purchase of any real estate (including scheduling showings, negotiations, and information requests). Buyer understands that to do otherwise, or to accept brokerage services from other agents, including showings, open houses, and information requests, or involving other real estate agents or brokers in the process, could create an obligation to another broker, or a "procuring cause" issue, such that the Firm does not receive compensation from the owner or owner's agent, in which event, any commission not collected from owner or owner's agent will be paid by Buyer.**

- ⇒ **Should there be a buyer's duties section and if so, what language or combination of provisions would be best? Are there additional changes?**
- ⇒ **Should duties and the Cooperation section be merged or combined in some manner?**

◆ **Cooperation (Draft 1, Lines 212-218; Draft 2, moved to lines 95-101)**: This is somewhat of a parallel counterpart to the similar section in the WB-1. Should there be modifications to the last sentence which reads, "Buyer shall also notify the Firm of the identity of all persons making inquiries concerning Buyer's objectives stated in this Agreement." Should the buyer be notifying the Firm or referring the persons to the Firm? This may not be necessary should a section of Buyer's Duties be included – or maybe the suggestions for that type of section should be combined with this Cooperation section? Combine the Firm's duties as well?

**COOPERATION** Buyer agrees to cooperate with the firm and its agents and to provide them accurate copies of all relevant records, documents and other materials in Buyer's possession or control which are required in connection with the purchase, option, or exchange of property. Buyer agrees to be reasonably available for showings of properties. Buyer authorizes the Firm and its agents to do those acts reasonably necessary to fulfill the Firm's responsibilities under this Agreement including retaining subagents. Buyer shall promptly notify the Firm in writing of the description of any property Buyer locates. Buyer shall also notify the Firm of the identity of all persons making inquiries concerning Buyer's objectives stated in this Agreement.

- ⇒ **Is this acceptable or are there additional changes?**
- ⇒ **Below are two preliminary combination of the duties sections and the Cooperation section, one includes lists while the other is all in one paragraph. Are any of these – or a modification thereof – desirable?**

**COOPERATION** In consideration of their mutual agreements, Buyer and the Firm and its Agents agree as follows:

**Buyer's Responsibilities:**

- A. Signs or Advertisements for Property: If Buyer sees any signs or advertisements for property being offered for sale, Buyer will not contact the owner or the owner's agent but will first contact the Firm or its Agents who will provide information about the property and make arrangements for Buyer to see it. Buyer agrees to be reasonably available for showings of properties.
- B. Public Open Houses: In the event Buyer elects to visit an open house without the Firm or its Agents, Buyer agrees to notify the party representing the owner of this Agreement.
- C. New Home Builders and Open Houses: In order to avoid the possibility of confusion over the agency relationship and misunderstandings about liability for compensation, Buyer agrees not to make a first visit to any new home builder's model nor contact any agents representing the owner or builder without being accompanied by the Firm or its Agents
- D. Advise Others of Buyer Agency Relationship: Buyer will inform other firms, agents, sellers, property owners, etc. that the Firm represents Buyer as buyer's agent for the purpose of acquiring property and refer all such persons to the Firm. Buyer shall also notify the Firm of the identity of all persons making inquiries concerning Buyer's objectives stated in this Agreement.
- E. Accurate Copies of Records: Buyer agrees to cooperate with the firm and its agents and to provide them accurate copies of all relevant records, documents and other materials in Buyer's possession or control which are required in connection with the purchase, option, or exchange of property.

**Firm's Duties:**

- A. To do those acts reasonably necessary to fulfill the Firm's responsibilities under this Agreement including retaining subagents
- B. To use professional knowledge and skills, in accordance with applicable law, to:
  - a. To assist Buyer to Locate an Interest in Property and Negotiate the Acquisition of an Interest in Property, as applicable.
  - b. To comply with other provisions of this Agreement and the duties stated herein.

-OR-

**COOPERATION** Buyer agrees to cooperate with the firm and its agents and to provide them accurate copies of all relevant records, documents and other materials in Buyer's possession or control which are required in connection with the purchase, option, or exchange of property. If Buyer sees any signs or advertisements for property being offered for sale, Buyer will not contact the owner or the owner's agent but will first contact the Firm or its Agents who will provide information about the property and make arrangements for Buyer to see them. Buyer agrees to be reasonably available for showings of properties. In the event Buyer elects to visit an open house without the Firm or its Agents, Buyer agrees to notify the party representing the owner of this Agreement. In order to avoid the possibility of confusion over the agency relationship and misunderstandings about liability for compensation, Buyer agrees not to make a first visit to any new home builder's model nor contact any agents representing the owner or builder without being accompanied by the Firm or its Agents. Buyer shall promptly notify the Firm in writing of the description of any property Buyer locates. Buyer shall also notify the Firm of the identity of all persons making inquiries concerning Buyer's objectives stated in this Agreement. Buyer will inform other firms, agents, sellers, property owners, etc. that the Firm represents Buyer as buyer's agent for the purpose of acquiring property and refer all such persons to the Firm. Buyer authorizes the Firm and its agents to do those acts reasonably necessary to fulfill the Firm's responsibilities under this Agreement including retaining subagents. the Firm and its Agents agree to use professional knowledge and skills, in accordance with applicable law, to assist Buyer to Locate an Interest in Property and Negotiate the Acquisition of an Interest in Property, as applicable; and will comply with other provisions of this Agreement and the duties stated herein.

⇒ **Combining any of these?**

◆ **Earnest Money (Draft 1, Lines 99-106; Draft 2, lines 102-107)**: The terminology was changed and the provision was made to mirror part of the Earnest Money provision in the WB-1 residential listing contract so that disbursement may be authorized in accordance with the law, especially Wis. Admin. Code § REEB 18.09(1), and not limited to a disbursement agreement. Line 106 in Draft 1 is in error and should be removed.

**EARNEST MONEY** If the Firm holds trust funds in connection with the transaction, they shall be retained by the Firm in the Firm's trust account. The Firm may refuse to hold earnest money or other trust funds. Should the Firm hold the earnest money, the Firm shall hold and disburse earnest money funds in accordance with Wis. Stat. Ch. 452 and Wis. Admin. Code Ch. REEB 18. If the transaction fails to close and the earnest money is disbursed to Buyer, then upon disbursement to Buyer the earnest money shall be paid first to reimburse the Firm for cash advances made by the Firm on behalf of Buyer.

⇒ **Is this acceptable or are there additional changes? The WRA Forms Committee found this acceptable.**

◆ **Non Discrimination (Draft 1, Lines 107-110; Draft 2, lines 107-110)**: This was made to read the same as the provision in the WB-1 with regard to terminology and adding the additional protected class for status as a victim.

**NON DISCRIMINATION** Buyer and the Firm and its Agents agree that they will not discriminate based on race, color, sex, sexual orientation as defined in Wisconsin Statutes § 111.32(13m), disability, religion, national origin, marital status, lawful source of income, age, ancestry, family status, status as a victim of domestic abuse, sexual assault, or stalking, or in any other unlawful manner.

⇒ **Is this acceptable or are there additional changes? The WRA Forms Committee found this acceptable.**

◆ **Dispute Resolution (Draft 2, lines 111-115)**: This is the provision from the WB-1 with adjustments to terminology. It is not in Draft 1.

⇒ **Is this acceptable and should it be added to Draft 1/the WB-36?**

◆ **Disclosure to Clients (Draft 1, Lines 111-197; Draft 2, lines 116-201)**:

This section now shows in tracking the new language from the statutes that goes into effect on July 1, 2016. It is the same as the same section in the WB-1 draft. We will make any changes or typo corrections so that it is the same as in the final WB-1 to maintain consistency.

⇒ **Is this acceptable or are there additional changes? Questions? The WRA Forms Committee found this acceptable.**

◆ **Waiver of Confidentiality (Draft 1, Lines 198-206; Draft 2, lines 202-209)**: This information is nice but not sure whether it is helpful or essential. Terminology and formatting changes were made in the drafts.

**WAIVER OF CONFIDENTIALITY** Buyer may wish to authorize the Firm and its Agents to disclose information which might otherwise be considered confidential. An example of this type of information might be financial qualification information which may be disclosed to strengthen Buyer's offer to purchase in the eyes of prospective sellers. Buyer's authorization to disclose may be indicated at lines xxx-xxx. Unless otherwise provided at lines xxx-xxx, the Firm and its Agents have permission to disclose Buyer's identity to an owner, owner's agents and other third parties without prior consent from Buyer. Buyer acknowledges that pursuant to Wis. Stat. §706.03(1)(b)(1m) a conveyance, such as an offer to purchase, is not binding if it is signed by a representative properly authorized by Buyer (e.g., with a power of attorney) until such time as Buyer is identified in the conveyance.

**Another variation:**

**WAIVER OF CONFIDENTIALITY** Certain information may otherwise be considered confidential, but it is agreed for purposes of negotiation of a potential acquisition of Property, that unless expressly declined at lines xxx, the Firm and its Agents may disclose to prospective sellers all information reasonably calculated to facilitate acquisition of an interest in property, including but not limited to disclosing Buyer's identity to an owner, owner's agents and other third parties (Buyer acknowledges that pursuant to Wis. Stat. §706.03(1)(b)(1m) a conveyance, such as an offer to purchase, is not binding if it is signed by a representative properly authorized by Buyer (e.g., with a power of attorney) until such time as Buyer is identified in the conveyance), and Buyer's profession and financial qualification information.

If the idea is to suggest that financial information might be shared, that could be mentioned in the parentheses for Non-Confidential Information. The identity of the buyer is not really confidential unless that specific request is made. When using a power-of-attorney, that is not really a matter of confidentiality but rather of having another sign documents for the buyer. It is not clear if it should be rewritten or eliminated or restructured – is it better as instructions for the completion of the confidential information and non-confidential information lines?

- ⇒ **Should this section be retained?**
- ⇒ **Is this acceptable or are there additional changes?**

\*\*\*\*\*AS FAR AS THE WRA COMMITTEE WENT\*\*\*\*\*

◆ **Non-Exclusive Relationship (Draft 1, Lines 207-211; Draft 2, lines 210-213):**

This information is nice but not sure whether it is helpful or essential. Terminology changes made.

**NON-EXCLUSIVE RELATIONSHIP** Buyer acknowledges and agrees that the **Firm and its Agents** may act for other buyers in connection with the location of properties and may negotiate on behalf of such buyers with the owner or owner's agent. In the event that the **Firm or its Agents** undertake to represent and act for other buyers, the Firm and its Agents shall not disclose to Buyer, or any other buyer, any confidential information of any buyer, unless required by law.

- ⇒ **Should this section be retained?**
- ⇒ **Is this acceptable or are there additional changes?**

◆ **Property Dimensions (Draft 1, Lines 219-224; Draft 2, lines 214-218):** Not sure if this is necessary or helpful, but it does no harm.

**PROPERTY DIMENSIONS** Buyer acknowledges that property dimensions, total square footage and total acreage information provided to Buyer may be approximate due to rounding and may vary due to different formulas which can be used to calculate these figures. Unless otherwise indicated, property dimension figures have not been verified by survey.

**CAUTION: Buyer should verify any property dimension or total square footage/acreage calculation which is material to Buyer.**

- ⇒ **Should this section be retained?**
- ⇒ **Is this acceptable or are there additional changes?**

◆ **Definition of Adverse Fact (Draft 1, Lines 226-232; Draft 2, lines 220-226):**

This is the same as before and the same as the definition in the WB-1.

- ⇒ **Is this acceptable or are there additional changes?**

◆ **Definition of Buyer (Draft 1, Lines 233-234; Draft 2, lines 227-228):** This is the same as before except that the word “lease” was removed since there is going to be a separate tenant representation agreement.

- ⇒ **Is this acceptable or are there additional changes?**

◆ **Definition of Deadlines-Days (DRAFT 1, Lines 235-236; DRAFT 2, lines 230-231):**

This is the same as before and the same as the definition in the WB-1.

⇒ **Is this acceptable or are there additional changes?**

◆ **Definition of Firm (DRAFT 1, Line 243; DRAFT 2, line 232):** This was added and is the same as the definition in the WB-1.

⇒ **Is this acceptable or are there additional changes?**

◆ **Definition of Interest in Property (DRAFT 1, Lines 244-246; DRAFT 2, lines 233-235):**

This is the same as before except that the word “leasehold” was deleted and a sentence indicating this is not referring to rentals and leaseholds was added. Note that this definition is how the excluded properties factor into many provisions

■ **INTEREST IN PROPERTY:** ~~The “Interest in Pproperty” to be obtained by Buyer~~ includes a purchase, leasehold, option, exchange agreement or any other procured interest in real property unless restricted at lines 44-2xx-xx0, in additional provisions (lines 482-490xxx-xxx) or elsewhere in this Agreement. This does not include any rental or leasehold interests.

⇒ **Is this acceptable or are there additional changes?**

◆ **Definition of Locate an Interest in Property (DRAFT 1, Lines 247-249; DRAFT 2, lines 247-249):** This is mostly the same as before.

■ **LOCATE AN INTEREST IN PROPERTY:** “Locate an Interest in Pproperty” shall mean, ~~as used in this Agreement,~~ to identify, evaluate according to the standards set by Buyer, and determine the availability of the Interest in Property sought by Buyer ~~in a property.~~

⇒ **Is this acceptable or are there additional changes?**

◆ **Definition of Material Adverse Fact (DRAFT 1, Lines 250-253; DRAFT 2, lines 250-253):** This is the same as before and the same as the definition in the WB-1.

⇒ **Is this acceptable or are there additional changes?**

◆ **Definition of Negotiate the Acquisition of an Interest in Property (DRAFT 1, Lines 254-266; DRAFT 2, lines):**

The term was changed to substitute the word acquisition because that is the term used in other buyer and tenant agency agreements. Also the definition was modified to add the details of the definition of “negotiation” from the statutes as opposed to having it in the Firm’s Duties section. The parenthetical within (a) from the definition might be eliminated or this could be rephrased a bit to make it shorter and more user friendly.

■ **NEGOTIATE THE ACQUISITION OF AN INTEREST IN PROPERTY:** “Negotiate ~~the procurement of the Acquisition of~~ an Interest in Pproperty” shall mean, ~~as used in this Agreement,~~ to contact the owner of the property or the owner’s agent to ascertain the terms and conditions upon which ~~the an Interest in Property~~ may be ~~obtained-acquired, and to provide the Buyer assistance within the scope of the knowledge, skills, and training required under chapter 452 of the statutes in developing a proposal or agreement relating to a transaction, including: (a) acting as an intermediary by facilitating or participating in communications between parties related to the parties’ interests in a transaction (providing advice or opinions on matters that are material to a transaction in which a person is engaged or intends to engage or showing a party real estate does not, in and of itself, constitute acting as an intermediary by facilitating or participating in communications between parties); (b) completing, when requested by Buyer, appropriate board-approved forms or other writings to document the Buyer’s proposal consistent with the Buyer’s instructions; (c) presenting to Buyer the proposals of other parties to the transaction and giving Buyer a general explanation of the provisions of the proposal;~~

and (d) and to otherwise assisting Buyer in reaching an agreement to ~~procure-acquire~~ the interest in Property sought by Buyer ~~in the property as may be specified in this Agreement.~~

⇒ **Is this acceptable or are there additional changes?**

◆ **Definition of Person Acting on Behalf of Buyer (DRAFT 1, Lines 267-272; DRAFT 2, lines 254-258):** This is the same as before with additions made that come from the WB-6 and the WB-1. Is the last phrase on lines 250-251 needed in the WB-36?

■ **PERSON ACTING ON BEHALF OF BUYER:** ~~"Person Acting on Behalf of Buyer"~~"Person acting on behalf of Buyer" shall mean any person joined in interest with Buyer, or otherwise acting on behalf of Buyer, including but not limited to Buyer's immediate family, agents, ~~servants,~~ employees, ~~directors, managers, members, officers, owners, partners, incorporators and organizers,~~ as well as any and all corporations, partnerships, limited liability companies, trusts or other entities controlled by, affiliated with or owned by Buyer in whole or in part whether created before or after expiration of this Agreement (?).

⇒ **Is this acceptable or are there additional changes?**

◆ **Term of the Agreement (DRAFT 1, Lines 284-288; DRAFT 2, lines 288-291):** This is the same as before with some formatting changes.

⇒ **Is this acceptable or are there additional changes?**

◆ **Termination of Agreement (DRAFT 1, Lines 289-299; DRAFT 2, lines 273-281):** This has been modified to make it like the similar provision in the WB-1.

**TERMINATION OF AGREEMENT** ■ ~~TERMINATION OF AGREEMENT:~~ Neither Buyer nor ~~Broker- the Firm~~ has the legal right to unilaterally terminate this Agreement absent a material breach of contract by the other party. Buyer understands that the parties to this Agreement are Buyer and the ~~Broker-F(firm)~~. Agents ~~(salespersons)- for Broker- the F(firm)~~ do not have the authority to terminate this Agreement, amend the compensation terms or shorten the term of this Agreement, without the written consent of the ~~A~~agent(s)' supervising broker. Buyer and ~~Broker- the Firm~~ agree that any termination of this Agreement by either party before the date stated on lines ~~494-xxx-xxx~~ shall be effective by Buyer only if stated in writing and delivered to the Firm in accordance with lines xx-xx and effective by the Firm only if stated in writing by the supervising broker and delivered to Buyer in accordance with lines xx-xx indicated to the other party in writing and shall not be effective until delivered to the other party in accordance with lines 158-163.

⇒ **Is this acceptable or are there additional changes?**

⇒ **Would it be advisable to revise the WB-47 Amendment to Buyer Agency/Tenant Representation Agreement since there will be two separate contracts and to make modifications as were done in the WB-42 Amendment to Listing Contract to facilitate a termination by the Firm under the signature of the supervising broker?**

◆ **Extension of Agreement Term (DRAFT 1, Lines 300-306; DRAFT 2, lines 300-306):** This is the "property protection" provision and it is same as before with additions made that come from the WB-6 and the WB-1.

**EXTENSION OF AGREEMENT TERM** ■ ~~EXTENSION OF AGREEMENT TERM:~~ The Agreement term is extended for a period of one year as to any property which during the term of this Agreement was: 1) located or negotiated for by ~~Broker, Broker's agent~~ the Firm or its Agents, Buyer or any person acting on behalf of Buyer, or 2) which was the subject of a written ~~offer to purchase proposal~~ submitted by Buyer or any ~~P~~person Aacting on Bbehalf of Buyer. If this extension is based on the Firm's or the Firm's Agent(s) Broker's or Broker's agent's- Llocation of an Interest in Property or Negotiation of the Acquisition an Interest in Property, this extension shall only be effective if a written description of the property is delivered to Buyer no later than three days after termination or expiration of this Agreement.

⇒ **Is this acceptable or are there additional changes?**

◆ **Notice about Sex Offender Registry (DRAFT 1, Lines 307-309; DRAFT 2, lines 270-272):** This is the same as before with additions made that come from the WB-6 and the WB-1.

⇒ **Is this acceptable or are there additional changes?**

◆ **Signature section and lines (DRAFT 1, Lines 310-333; DRAFT 2, lines 292-310):** This was modified similarly to the WB-1.

⇒ **Is this acceptable or are there additional changes?**

**New Construction Issue:** there is an issue in those situations when the buyer purchases a vacant lot and enters into a building/construction contract with a builder with the contract attached to the vacant land offer. Should the broker be paid based on the lot price or the total package price? Brokers have no authority to negotiate a construction contract which raises the question of why they should be paid based on a price that includes the construction price. Brokers can enter into a referral agreement with a builder and receive a referral fee outside of the WB-36, but some brokers assert they should be paid a success fee based upon the total price. One observation: when the contract is attached should be only as an attachment but not included in the total price for compensation? Any way to address this issue in the WB-36?

WB36RevisionDSPS5-18-16

**WB-1 RESIDENTIAL LISTING CONTRACT - EXCLUSIVE RIGHT TO SELL**

**1 SELLER GIVES THE FIRM THE EXCLUSIVE RIGHT TO SELL THE PROPERTY ON THE FOLLOWING TERMS:**

**2 ■ PROPERTY DESCRIPTION:** Street address is: \_\_\_\_\_  
3 \_\_\_\_\_

4 in the \_\_\_\_\_ of \_\_\_\_\_, County of \_\_\_\_\_,  
5 Wisconsin. Insert additional description, if any, at lines 303-308 or attach as an addendum per lines 309-310.

**6 ■ INCLUDED IN LIST PRICE:** Seller is including in the list price the Property, all Fixtures not excluded on lines 12-14,  
7 and the following items: \_\_\_\_\_  
8 \_\_\_\_\_  
9 \_\_\_\_\_

10 \_\_\_\_\_  
11 \_\_\_\_\_

**12 ■ NOT INCLUDED IN LIST PRICE:** \_\_\_\_\_  
13 \_\_\_\_\_  
14 \_\_\_\_\_

**15 CAUTION: Identify Fixtures to be excluded by Seller or which are rented and will continue to be owned by the  
16 lessor. (See lines 181-194).**

**17 ■ LIST PRICE:** \_\_\_\_\_ Dollars (\$ \_\_\_\_\_).

**18 [MARKETING]** Seller authorizes and the Firm and its agents agree to use reasonable efforts to market the Property.  
19 Seller agrees that the Firm and its agents may market Seller's personal property identified on lines 7-11 during the term  
20 of this Listing. The Firm's marketing may include: \_\_\_\_\_  
21 \_\_\_\_\_

22 The Firm and its agents may advertise the following special financing and incentives offered by Seller: \_\_\_\_\_  
23 \_\_\_\_\_

24 Seller has a duty to cooperate with the marketing efforts of the Firm and its agents. See lines 246-252 regarding the  
25 Firm's role as marketing agent and Seller's duty to notify the Firm of any potential buyer known to Seller. Seller agrees  
26 that the Firm and its agents may market other properties during the term of this Listing.

**27 [COMMISSION]** The Firm's commission shall be \_\_\_\_\_  
28 \_\_\_\_\_

- 29 ■ EARNED:** Seller shall pay the Firm's commission, which shall be earned, if, during the term of this Listing:  
30 1) Seller sells or accepts an offer which creates an enforceable contract for the sale of all or any part of the Property;  
31 2) Seller grants an option to purchase all or any part of the Property which is subsequently exercised;  
32 3) Seller exchanges or enters into a binding exchange agreement on all or any part of the Property;  
33 4) A transaction occurs which causes an effective change in ownership or control of all or any part of the Property; or  
34 5) A ready, willing and able buyer submits a bona fide written offer to Seller or Firm for the Property at, or above, the list  
35 price and on substantially the same terms set forth in this Listing and the current WB-11 Residential Offer to Purchase,  
36 even if Seller does not accept the buyer's offer. A buyer is ready, willing and able when the buyer submitting the  
37 written offer has the ability to complete the buyer's obligations under the written offer.

38 The Firm's commission shall be earned if, during the term of the Listing, one seller of the Property sells, conveys,  
39 exchanges or options, as described above, an interest in all or any part of the Property to another owner, except by divorce  
40 judgment.

**41 ■ DUE AND PAYABLE:** Once earned, the Firm's commission is due and payable in full at the earlier of closing or the date  
42 set for closing, even if the transaction does not close, unless otherwise agreed in writing.

- 43 ■ CALCULATION:** A percentage commission shall be calculated based on the following, if earned above:  
44 • Under 1) or 2) the total consideration between the parties in the transaction.  
45 • Under 3) or 4) the list price if the entire Property is involved.  
46 • Under 3) if the exchange involves less than the entire Property or under 4) if the effective change in ownership or  
47 control involves less than the entire Property, the fair market value of the portion of the Property exchanged or for  
48 which there was an effective change in ownership or control.  
49 • Under 5) the total offered purchase price.

**50 NOTE: If a commission is earned for a portion of the Property it does not terminate the Listing as to any remaining  
51 Property.**

**52 [COMPENSATION TO OTHERS]** The Firm offers the following commission to cooperating firms: \_\_\_\_\_  
53 \_\_\_\_\_ (Exceptions if any): \_\_\_\_\_

**54 [BUYER FINANCIAL CAPABILITY]** The Firm and its agents are not responsible under Wisconsin statutes or regulations to  
55 qualify a buyer's financial capability. If Seller wishes to confirm a buyer's financial capability, Seller may negotiate inclusion of  
56 a contingency for financing, proof of funds, qualification from a lender, sale of buyer's property, or other confirmation in any  
57 offer to purchase or contract.

58 **DISPUTE RESOLUTION** The Parties understand that if there is a dispute about this Listing or an alleged breach, and  
 59 the parties cannot resolve the dispute by mutual agreement, the parties may consider judicial resolution in court or may  
 60 consider alternative dispute resolution. Alternative dispute resolution may include mediation and binding  
 61 arbitration. Should the parties desire to submit any potential dispute to alternative dispute resolution, it is recommended  
 62 that the parties add such in Additional Provisions or in an Addendum.

63 **FAIR HOUSING** Seller and the Firm and its agents agree that they will not discriminate against any  
 64 prospective buyer on account of race, color, sex, sexual orientation as defined in Wisconsin Statutes, Section  
 65 111.32(13m), disability, religion, national origin, marital status, lawful source of income, age, ancestry, family  
 66 status, status as a victim of domestic abuse, sexual assault, or stalking, or in any other unlawful manner.

67 **DISCLOSURE TO CLIENTS**

68 Under Wisconsin law, a brokerage firm (hereinafter firm) and its brokers and salespersons (hereinafter agents) owe  
 69 certain duties to all parties to a transaction:

- 70 (a) The duty to provide brokerage services to you fairly and honestly.
- 71 (b) The duty to exercise reasonable skill and care in providing brokerage services to you.
- 72 (c) The duty to provide you with accurate information about market conditions within a reasonable time if you request  
 73 it, unless disclosure of the information is prohibited by law.
- 74 (d) The duty to disclose to you in writing certain Material Adverse Facts about a property, unless disclosure of the  
 75 information is prohibited by law. (See lines 195-198.)
- 76 (e) The duty to protect your confidentiality. Unless the law requires it, the firm and its agents will not disclose your  
 77 confidential information or the confidential information of other parties. (See lines 135-150.)
- 78 (f) The duty to safeguard trust funds and other property the firm or its agents holds.
- 79 (g) The duty, when negotiating, to present contract proposals in an objective and unbiased manner and disclose the  
 80 advantages and disadvantages of the proposals.

81 **BECAUSE YOU HAVE ENTERED INTO AN AGENCY AGREEMENT WITH A FIRM, YOU ARE THE FIRM'S CLIENT.**  
 82 **A FIRM OWES ADDITIONAL DUTIES TO YOU AS A CLIENT OF THE FIRM:**

- 83 (a) The firm or one of its agents will provide, at your request, information and advice on real estate matters that affect  
 84 your transaction, unless you release the firm from this duty.
  - 85 (b) The firm or one of its agents must provide you with all material facts affecting the transaction, not just Adverse  
 86 Facts.
  - 87 (c) The firm and its agents will fulfill the firm's obligations under the agency agreement and fulfill your lawful requests  
 88 that are within the scope of the agency agreement.
  - 89 (d) The firm and its agents will negotiate for you, unless you release them from this duty.
  - 90 (e) The firm and its agents will not place their interests ahead of your interests. The firm and its agents will not, unless  
 91 required by law, give information or advice to other parties who are not the firm's clients, if giving the information or  
 92 advice is contrary to your interests.
- 93 If you become involved in a transaction in which another party is also the firm's client (a "multiple representation  
 94 relationship"), different duties may apply.

95 **MULTIPLE REPRESENTATION RELATIONSHIPS AND DESIGNATED AGENCY**

- 96 ■ A multiple representation relationship exists if a firm has an agency agreement with more than one client who is a  
 97 party in the same transaction. If you and the firm's other clients in the transaction consent, the firm may provide  
 98 services through designated agency, which is one type of multiple representation relationship.
- 99 ■ Designated agency means that different agents with the firm will negotiate on behalf of you and the other client or  
 100 clients in the transaction, and the firm's duties to you as a client will remain the same. Each agent will provide  
 101 information, opinions, and advice to the client for whom the agent is negotiating, to assist the client in the negotiations.  
 102 Each client will be able to receive information, opinions, and advice that will assist the client, even if the information,  
 103 opinions, or advice gives the client advantages in the negotiations over the firm's other clients. An agent will not reveal  
 104 any of your confidential information to another party unless required to do so by law.
- 105 ■ If a designated agency relationship is not authorized by you or other clients in the transaction you may still authorize  
 106 or reject a different type of multiple representation relationship in which the firm may provide brokerage services to  
 107 more than one client in a transaction but neither the firm nor any of its agents may assist any client with information,  
 108 opinions, and advice which may favor the interests of one client over any other client. Under this neutral approach, the  
 109 same agent may represent more than one client in a transaction.
- 110 ■ If you do not consent to a multiple representation relationship the firm will not be allowed to provide brokerage  
 111 services to more than one client in the transaction.

**CHECK ONLY ONE OF THE THREE BELOW:**

112

113  The same firm may represent me and the other party as long as the same agent is not  
114 representing us both (multiple representation relationship with designated agency).

115  The same firm may represent me and the other party, but the firm must remain neutral  
116 regardless if one or more different agents are involved (multiple representation relationship  
117 without designated agency).

118  The same firm cannot represent both me and the other party in the same transaction (I reject  
119 multiple representation relationships).

120 **NOTE: All clients who are parties to this agency agreement consent to the selection checked above. You may**  
121 **modify this selection by written notice to the firm at any time. Your firm is required to disclose to you in your**  
122 **agency agreement the commission or fees that you may owe to your firm. If you have any questions about the**  
123 **commission or fees that you may owe based upon the type of agency relationship you select with your firm,**  
124 **you should ask your firm before signing the agency agreement.**

**SUBAGENCY**

125

126 Your firm may, with your authorization in the agency agreement, engage other firms (subagent firms) to assist your firm by  
127 providing brokerage services for your benefit. A subagent firm and the agents **associated** with the subagent firm will not put  
128 their own interests ahead of your interests. A subagent firm will not, unless required by law, provide advice or opinions to  
129 other parties if doing so is contrary to your interests.

130 **PLEASE REVIEW THIS INFORMATION CAREFULLY. An agent can answer your questions about brokerage**  
131 **services, but if you need legal advice, tax advice, or a professional home inspection, contact an attorney, tax**  
132 **advisor, or home inspector.**

133 This disclosure is required by section 452.135 of the Wisconsin statutes and is for information only. It is a plain language  
134 summary of the duties owed to you under section 452.133 (2) of the Wisconsin statutes.

135 **■ CONFIDENTIALITY NOTICE TO CLIENTS:** The Firm and its agents will keep confidential any information given to  
136 the Firm or its agents in confidence, or any information obtained by the Firm and its agents that a reasonable person  
137 would want to be kept confidential, unless the information must be disclosed by law or you authorize the Firm to  
138 disclose particular information. The Firm and its agents shall continue to keep the information confidential after the Firm  
139 is no longer providing brokerage services to you.

140 The following information is required to be disclosed by law:

- 141 1) Material Adverse Facts, as defined in section 452.01 (5g) of the Wisconsin statutes (see **lines 195-198**).
- 142 2) Any facts known by the Firm and its agents that contradict any information included in a written inspection report on  
143 the property or real estate that is the subject of the transaction.

144 To ensure that the Firm and its agents are aware of what specific information you consider confidential, you may list  
145 that information below (see lines **147-148**). At a later time, you may also provide the Firm with other information you  
146 consider to be confidential.

147 **CONFIDENTIAL INFORMATION:** \_\_\_\_\_

148 \_\_\_\_\_

149 **NON-CONFIDENTIAL INFORMATION** (The following may be disclosed by the Firm and its agents): \_\_\_\_\_

150 \_\_\_\_\_

151 **COOPERATION, ACCESS TO PROPERTY OR OFFER PRESENTATION** The parties agree that the Firm and its  
152 agents will work and cooperate with other firms and agents in marketing the Property, including firms acting as  
153 subagents (other firms engaged by the Firm - see **lines 125-129**) and firms representing buyers. Cooperation includes  
154 providing access to the Property for showing purposes and presenting offers and other proposals from these firms to  
155 Seller. Note any firms with whom the Firm shall not cooperate, any firms or agents or buyers who shall not be allowed  
156 to attend showings, and the specific terms of offers which should not be submitted to Seller: \_\_\_\_\_

157 \_\_\_\_\_

158 **CAUTION: Limiting the Firm's cooperation with other firms may reduce the marketability of the Property.**

159 **EXCLUSIONS** All persons who may acquire an interest in the Property who are Protected Buyers under a prior listing  
160 contract are excluded from this Listing to the extent of the prior firm's legal rights, unless otherwise agreed to in writing.  
161 Within seven days of the date of this Listing, Seller agrees to deliver to the Firm a written list of all such Protected Buyers.

162 **NOTE: If Seller fails to timely deliver this list to the Firm, Seller may be liable to the Firm for damages and costs.**

163 The following other buyers \_\_\_\_\_  
164 \_\_\_\_\_ are excluded from this Listing until \_\_\_\_\_ [INSERT DATE].

165 These other buyers are no longer excluded from this Listing after the specified date unless, on or before the specified date,  
166 Seller has either accepted a written offer from the buyer or sold the Property to the buyer.

167 **DEFINITIONS**

168 ■ **ADVERSE FACT:** An "Adverse Fact" means any of the following:

169 (a) A condition or occurrence that is generally recognized by a competent licensee as doing any of the following:

170 1) Significantly and adversely affecting the value of the Property;

171 2) Significantly reducing the structural integrity of improvements to real estate; or

172 3) Presenting a significant health risk to occupants of the Property.

173 (b) Information that indicates that a party to a transaction is not able to or does not intend to meet his or her  
174 obligations under a contract or agreement made concerning the transaction.

175 ■ **DEADLINES – DAYS:** Deadlines expressed as a number of "days" from an event are calculated by excluding the day the  
176 event occurred and by counting subsequent calendar days.

177 ■ **DEFECT:** "Defect" means a condition that would have a significant adverse effect on the value of the Property; that  
178 would significantly impair the health or safety of future occupants of the Property; or that if not repaired, removed or  
179 replaced would significantly shorten or adversely affect the expected normal life of the premises.

180 ■ **FIRM:** "Firm" means a licensed sole proprietor broker or a licensed broker business entity.

181 ■ **FIXTURES:** A "Fixture" is an item of property which is physically attached to or so closely associated with land or  
182 buildings so as to be treated as part of the real estate, including, without limitation, physically attached items not easily  
183 removable without damage to the premises, items specifically adapted to the premises, and items customarily treated  
184 as fixtures, including, but not limited to, all: garden bulbs; plants; shrubs and trees; screen and storm doors and  
185 windows; electric lighting fixtures; window shades; curtain and traverse rods; blinds and shutters; central heating and  
186 cooling units and attached equipment; water heaters, water softeners and treatment systems; sump pumps; attached or  
187 fitted floor coverings; awnings; attached antennas and satellite dishes, audio/visual wall mounting brackets (but not the  
188 audio/visual equipment), garage door openers and remote controls; installed security systems; central vacuum systems  
189 and accessories; in-ground sprinkler systems and component parts; built-in appliances; ceiling fans; fences; in-ground  
190 pet containment systems (but not the collars); storage buildings on permanent foundations and docks/piers on  
191 permanent foundations.

192 **CAUTION: Exclude any Fixtures to be retained by Seller or which are rented (e.g., water softener or other water  
193 treatment systems, home entertainment and satellite dish components, L.P. tanks, etc.) on lines 12-14 and in  
194 the offer to purchase.**

195 ■ **MATERIAL ADVERSE FACT:** A "Material Adverse Fact" means an Adverse Fact that a party indicates is of such  
196 significance, or that is generally recognized by a competent licensee as being of such significance to a reasonable  
197 party, that it affects or would affect the party's decision to enter into a contract or agreement concerning a transaction or  
198 affects or would affect the party's decision about the terms of such a contract or agreement.

199 ■ **PERSON ACTING ON BEHALF OF BUYER:** "Person Acting on Behalf of Buyer" shall mean any person joined in interest  
200 with buyer, or otherwise acting on behalf of buyer, including but not limited to buyer's immediate family, agents, employees,  
201 directors, managers, members, officers, owners, partners, incorporators and organizers, as well as any and all corporations,  
202 partnerships, limited liability companies, trusts or other entities created or controlled by, affiliated with or owned by buyer, in  
203 whole or in part whether created before or after expiration of this Listing.

204 ■ **PROPERTY:** Unless otherwise stated, "Property", means all property included in the list price as described on lines 2-5

205 ■ **PROTECTED BUYER:** Means a buyer who personally, or through any Person Acting on Behalf of Buyer, during the term  
206 of this Listing:

207 1) Delivers to Seller or the Firm or its agents a written offer to purchase, exchange or option on the Property;

208 2) Views the Property with Seller or negotiates directly with Seller by communicating with Seller regarding any potential  
209 terms upon which the buyer might acquire an interest in the Property; or

210 3) Attends an individual showing of the Property or communicates with agents of the Firm or cooperating firms regarding  
211 any potential terms upon which the buyer might acquire an interest in the Property, but only if the Firm or its agents  
212 deliver the buyer's name to Seller, in writing, no later than three days after the earlier of expiration or termination (lines  
213 263-271) of the Listing. The requirement in 3), to deliver the buyer's name to Seller in writing, may be fulfilled as follows:

214 a) If the Listing is effective only as to certain individuals who are identified in the Listing, by the identification of the  
215 individuals in the Listing; or,

216 b) If a buyer has requested that the buyer's identity remain confidential, by delivery of a written notice identifying the firm  
217 or agents with whom the buyer negotiated and the date(s) of any individual showings or other negotiations.

218 A Protected Buyer also includes any Person Acting on Behalf of Buyer joined in interest with or otherwise acting on behalf of  
219 a Protected Buyer, who acquires an interest in the Property during the extension of listing period as noted on lines 220-224.

220 **EXTENSION OF LISTING** The Listing term is extended for a period of one year as to any Protected Buyer. Upon  
221 receipt of a written request from Seller or a firm that has listed the Property, the Firm agrees to promptly deliver to  
222 Seller a written list of those buyers known by the Firm and its agents to whom the extension period applies. Should this  
223 Listing be terminated by Seller prior to the expiration of the term stated in this Listing, this Listing shall be extended for  
224 Protected Buyers, on the same terms, for one year after the Listing is terminated (lines 263-271).

225 **OCCUPANCY** Unless otherwise provided, Seller agrees to give the buyer occupancy of the Property at time of closing  
 226 and to have the Property in broom swept condition and free of all debris and personal property except for personal  
 227 property belonging to current tenants, sold to the buyer or left with the buyer's consent.

228 **LEASED PROPERTY** If Property is currently leased and lease(s) will extend beyond closing, Seller shall assign Seller's  
 229 rights under the lease(s) and transfer all security deposits and prepaid rents (subject to agreed upon prorations) thereunder  
 230 to buyer at closing. Seller acknowledges that Seller remains liable under the lease(s) unless released by tenants.  
 231 **CAUTION: Seller should consider obtaining an indemnification agreement from buyer for liabilities under the**  
 232 **lease(s) unless released by tenants.**

233 **NOTICE ABOUT SEX OFFENDER REGISTRY** You may obtain information about the sex offender registry and  
 234 persons registered with the registry by contacting the Wisconsin Department of Corrections on the Internet at  
 235 <http://www.doc.wi.gov> or by telephone at (608)240-5830.

236 **REAL ESTATE CONDITION REPORT** Seller agrees to complete the real estate condition report provided by the Firm  
 237 to the best of Seller's knowledge. Seller agrees to amend the report should Seller learn of any Defect(s) after completion  
 238 of the report but before acceptance of a buyer's offer to purchase. Seller authorizes the Firm and its agents to distribute  
 239 the report to all interested parties and agents inquiring about the Property. Seller acknowledges that the Firm and its  
 240 agents have a duty to disclose all Material Adverse Facts as required by law.

241 **SELLER REPRESENTATIONS REGARDING DEFECTS** Seller represents to the Firm that as of the date of this  
 242 Listing, Seller has no notice or knowledge of any Defects affecting the Property other than those noted on the real estate  
 243 condition report.  
 244 **WARNING: IF SELLER REPRESENTATIONS ARE INCORRECT OR INCOMPLETE, SELLER MAY BE LIABLE FOR**  
 245 **DAMAGES AND COSTS.**

246 **SELLER COOPERATION WITH MARKETING EFFORTS** Seller agrees to cooperate with the Firm in the Firm's  
 247 marketing efforts and to provide the Firm with all records, documents and other material in Seller's possession or  
 248 control which are required in connection with the sale. Seller authorizes the Firm and its agents to do those acts  
 249 reasonably necessary to effect a sale and Seller agrees to cooperate fully with these efforts which may include use of a  
 250 multiple listing service, Internet advertising or a lockbox system on Property. Seller shall promptly refer all persons  
 251 making inquiries concerning the Property to the Firm and notify the Firm in writing of any potential buyers with whom Seller  
 252 negotiates or who view the Property with Seller during the term of this Listing.

253 **OPEN HOUSE AND SHOWING RESPONSIBILITIES** Seller is aware that there is a potential risk of injury, damage  
 254 and/or theft involving persons attending an "individual showing" or an "open house." Seller accepts responsibility for  
 255 preparing the Property to minimize the likelihood of injury, damage and/or loss of personal property. Seller agrees to  
 256 hold the Firm and its agents harmless for any losses or liability resulting from personal injury, property damage, or theft  
 257 occurring during "individual showings" or "open houses" other than those caused by the negligence or intentional  
 258 wrongdoing of the Firm or its agents. Seller acknowledges that individual showings and open houses may be  
 259 conducted by licensees other than agents of the Firm, that appraisers and inspectors may conduct appraisals and  
 260 inspections without being accompanied by agents of the Firm or other licensees, and that buyers or licensees may be  
 261 present at all inspections and testing and may photograph or videotape Property unless otherwise provided for in  
 262 additional provisions at lines 303-308 or in an addendum per lines 309-310.

263 **TERMINATION OF LISTING** Neither Seller nor the Firm has the legal right to unilaterally terminate this Listing absent a  
 264 material breach of contract by the other party. Seller understands that the parties to the Listing are Seller and the Firm.  
 265 Agents for the Firm do not have the authority to enter into a mutual agreement to terminate the Listing, amend the  
 266 commission amount or shorten the term of this Listing, without the written consent of the agent(s)' supervising broker. Seller  
 267 and the Firm agree that any termination of this Listing by either party before the date stated on line 312 shall be  
 268 effective by the Seller only if stated in writing and delivered to the Firm in accordance with lines 280-302 and effective  
 269 by the Firm only if stated in writing by the supervising broker and delivered to Seller in accordance with lines 280-302.  
 270 **CAUTION: Early termination of this Listing may be a breach of contract, causing the terminating party to**  
 271 **potentially be liable for damages.**

272 **EARNEST MONEY** If the Firm holds trust funds in connection with the transaction, they shall be retained by the Firm in the  
 273 Firm's trust account. The Firm may refuse to hold earnest money or other trust funds. Should the Firm hold the earnest money,  
 274 the Firm shall hold and disburse earnest money funds in accordance with Wis. Stat. Ch. 452 and Wis. Admin. Code Ch. REEB  
 275 18. If the transaction fails to close and the Seller requests and receives the earnest money as the total liquidated damages,  
 276 then upon disbursement to Seller, the earnest money shall be paid first to reimburse the Firm for cash advances made by the  
 277 Firm on behalf of Seller and one half of the balance, but not in excess of the agreed commission, shall be paid to the Firm as  
 278 full commission in connection with said purchase transaction and the balance shall belong to Seller. This payment to the Firm  
 279 shall not terminate this Listing.

280 **DELIVERY OF DOCUMENTS AND WRITTEN NOTICES** Unless otherwise stated in this Listing, delivery of  
281 documents and written notices to a Party shall be effective only when accomplished by one of the methods specified at  
282 lines 283-302.

283 (1) **Personal Delivery**: giving the document or written notice personally to the Party, or the Party's recipient for delivery  
284 if named at line 285 or 286.

285 Seller's recipient for delivery (optional): \_\_\_\_\_

286 Firm's recipient for delivery (optional): \_\_\_\_\_

287  (2) **Fax**: fax transmission of the document or written notice to the following telephone number:

288 Seller: (\_\_\_\_\_) Firm: (\_\_\_\_\_) \_\_\_\_\_

289  (3) **Commercial Delivery**: depositing the document or written notice fees prepaid or charged to an account with a  
290 commercial delivery service, addressed either to the Party, or to the Party's recipient for delivery if named at line 285 or  
291 286, for delivery to the Party's delivery address at line 295 or 296.

292  (4) **U.S. Mail**: depositing the document or written notice postage prepaid in the U.S. Mail, addressed either to the  
293 Party, or to the Party's recipient for delivery if named at line 285 or 286, for delivery to the Party's delivery address at  
294 line 295 or 296.

295 Delivery address for Seller: \_\_\_\_\_

296 Delivery address for Firm: \_\_\_\_\_

297  (5) **E-Mail**: electronically transmitting the document or written notice to the Party's e-mail address, if given below at  
298 line 301 or 302. If this is a consumer transaction where the property being purchased or the sale proceeds are used  
299 primarily for personal, family or household purposes, each consumer providing an e-mail address below has first  
300 consented electronically as required by federal law.

301 E-Mail address for Seller: \_\_\_\_\_

302 E-Mail address for Firm: \_\_\_\_\_

303 **ADDITIONAL PROVISIONS** \_\_\_\_\_

304 \_\_\_\_\_

305 \_\_\_\_\_

306 \_\_\_\_\_

307 \_\_\_\_\_

308 \_\_\_\_\_

309 **ADDENDA** The attached addenda \_\_\_\_\_

310 \_\_\_\_\_ is/are made part of this Listing.

311 **TERM OF THE CONTRACT** From the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, up  
312 to the earlier of midnight of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, or the  
313 conveyance of the entire Property.

314 **BY SIGNING BELOW, SELLER ACKNOWLEDGES RECEIPT OF A COPY OF THIS LISTING CONTRACT AND**  
315 **THAT HE/SHE HAS READ ALL 6 PAGES AS WELL AS ANY ADDENDA AND ANY OTHER DOCUMENTS**  
316 **INCORPORATED INTO THE LISTING.**

317 (x) \_\_\_\_\_

318 Seller's Signature ▲ \_\_\_\_\_ Print Name Here ▲ \_\_\_\_\_ Date ▲ \_\_\_\_\_

319 (x) \_\_\_\_\_

320 Seller's Signature ▲ \_\_\_\_\_ Print Name Here ▲ \_\_\_\_\_ Date ▲ \_\_\_\_\_

321 (x) \_\_\_\_\_

322 Seller's Signature ▲ \_\_\_\_\_ Print Name Here ▲ \_\_\_\_\_ Date ▲ \_\_\_\_\_

323 (x) \_\_\_\_\_

324 Seller's Signature ▲ \_\_\_\_\_ Print Name Here ▲ \_\_\_\_\_ Date ▲ \_\_\_\_\_

325 Seller Entity Name (if any): \_\_\_\_\_

326 \_\_\_\_\_ Print Name Here ▲ \_\_\_\_\_

327 (x) \_\_\_\_\_

328 Authorized Signature ▲ Print Name & Title Here ► \_\_\_\_\_ Date ▲ \_\_\_\_\_

329 (x) \_\_\_\_\_

330 Agent for Firm ▲ \_\_\_\_\_ Print Name Here ▲ \_\_\_\_\_ Firm Name ▲ \_\_\_\_\_ Date ▲ \_\_\_\_\_

**WB-1 RESIDENTIAL LISTING CONTRACT - EXCLUSIVE RIGHT TO SELL**

**1 SELLER GIVES THE FIRM THE EXCLUSIVE RIGHT TO SELL THE PROPERTY ON THE FOLLOWING TERMS:**

**2 ■ PROPERTY DESCRIPTION:** Street address is: \_\_\_\_\_  
3 \_\_\_\_\_

4 in the \_\_\_\_\_ of \_\_\_\_\_, County of \_\_\_\_\_,  
5 Wisconsin. Insert additional description, if any, at lines 301-306 or attach as an addendum per lines 307-308.

**6 ■ INCLUDED IN LIST PRICE:** Seller is including in the list price the Property, all Fixtures not excluded on lines 12-14,  
7 and the following items: \_\_\_\_\_  
8 \_\_\_\_\_  
9 \_\_\_\_\_

10 \_\_\_\_\_  
11 \_\_\_\_\_

**12 ■ NOT INCLUDED IN LIST PRICE:** \_\_\_\_\_  
13 \_\_\_\_\_  
14 \_\_\_\_\_

15 \_\_\_\_\_

**15 CAUTION: Identify Fixtures to be excluded by Seller or which are rented and will continue to be owned by the  
16 lessor. (See lines 181-194).**

**17 ■ LIST PRICE:** \_\_\_\_\_ Dollars (\$ \_\_\_\_\_).

**18 [MARKETING]** Seller authorizes and the Firm and its agents agree to use reasonable efforts to market the Property.  
19 Seller agrees that the Firm and its agents may market Seller's personal property identified on lines 7-11 during the term  
20 of this Listing. The Firm's marketing may include: \_\_\_\_\_  
21 \_\_\_\_\_

22 The Firm and its agents may advertise the following special financing and incentives offered by Seller: \_\_\_\_\_  
23 \_\_\_\_\_

24 Seller has a duty to cooperate with the marketing efforts of the Firm and its agents. See lines 244-250 regarding the  
25 Firm's role as marketing agent and Seller's duty to notify the Firm of any potential buyer known to Seller. Seller agrees  
26 that the Firm and its agents may market other properties during the term of this Listing.

**27 [COMMISSION]** The Firm's commission shall be \_\_\_\_\_  
28 \_\_\_\_\_

29 **■ EARNED:** Seller shall pay the Firm's commission, which shall be earned, if, during the term of this Listing:

- 30 1) Seller sells or accepts an offer which creates an enforceable contract for the sale of all or any part of the Property;
- 31 2) Seller grants an option to purchase all or any part of the Property which is subsequently exercised;
- 32 3) Seller exchanges or enters into a binding exchange agreement on all or any part of the Property;
- 33 4) A transaction occurs which causes an effective change in ownership or control of all or any part of the Property; or
- 34 5) A ready, willing and able buyer submits a bona fide written offer to Seller or Firm for the Property at, or above, the list  
35 price and on substantially the same terms set forth in this Listing and the current WB-11 Residential Offer to Purchase,  
36 even if Seller does not accept the buyer's offer. A buyer is ready, willing and able when the buyer submitting the  
37 written offer has the ability to complete the buyer's obligations under the written offer.

38 The Firm's commission shall be earned if, during the term of the Listing, one seller of the Property sells, conveys,  
39 exchanges or options, as described above, an interest in all or any part of the Property to another owner, except by divorce  
40 judgment.

**41 ■ DUE AND PAYABLE:** Once earned, the Firm's commission is due and payable in full at the earlier of closing or the date  
42 set for closing, even if the transaction does not close, unless otherwise agreed in writing.

**43 ■ CALCULATION:** A percentage commission shall be calculated based on the following, if earned above:

- 44 • Under 1) or 2) the total consideration between the parties in the transaction.
- 45 • Under 3) or 4) the list price if the entire Property is involved.
- 46 • Under 3) if the exchange involves less than the entire Property or under 4) if the effective change in ownership or  
47 control involves less than the entire Property, the fair market value of the portion of the Property exchanged or for  
48 which there was an effective change in ownership or control.
- 49 • Under 5) the total offered purchase price.

50 **NOTE: If a commission is earned for a portion of the Property it does not terminate the Listing as to any remaining  
51 Property.**

**52 [COMPENSATION TO OTHERS]** The Firm offers the following commission to cooperating firms: \_\_\_\_\_  
53 \_\_\_\_\_ (Exceptions if any): \_\_\_\_\_

**54 [BUYER FINANCIAL CAPABILITY]** The Firm and its agents are not responsible under Wisconsin statutes or regulations to  
55 qualify a buyer's financial capability. If Seller wishes to confirm a buyer's financial capability, Seller may negotiate inclusion of  
56 a contingency for financing, proof of funds, qualification from a lender, sale of buyer's property, or other confirmation in any  
57 offer to purchase or contract.

58 **DISPUTE RESOLUTION** The Parties understand that if there is a dispute about this Listing or an alleged breach, and  
 59 the parties cannot resolve the dispute by mutual agreement, the parties may consider judicial resolution in court or may  
 60 consider alternative dispute resolution. Alternative dispute resolution may include mediation and binding  
 61 arbitration. Should the parties desire to submit any potential dispute to alternative dispute resolution, it is recommended  
 62 that the parties add such in Additional Provisions or in an Addendum.

63 **FAIR HOUSING** Seller and the Firm and its agents agree that they will not discriminate against any  
 64 prospective buyer on account of race, color, sex, sexual orientation as defined in Wisconsin Statutes, Section  
 65 111.32(13m), disability, religion, national origin, marital status, lawful source of income, age, ancestry, family  
 66 status, status as a victim of domestic abuse, sexual assault, or stalking, or in any other unlawful manner.

67 **DISCLOSURE TO CLIENTS**

68 Under Wisconsin law, a brokerage firm (hereinafter firm) and its brokers and salespersons (hereinafter agents) owe  
 69 certain duties to all parties to a transaction:

- 70 (a) The duty to provide brokerage services to you fairly and honestly.
- 71 (b) The duty to exercise reasonable skill and care in providing brokerage services to you.
- 72 (c) The duty to provide you with accurate information about market conditions within a reasonable time if you request  
 73 it, unless disclosure of the information is prohibited by law.
- 74 (d) The duty to disclose to you in writing certain Material Adverse Facts about a property, unless disclosure of the  
 75 information is prohibited by law. (See lines 195-198.)
- 76 (e) The duty to protect your confidentiality. Unless the law requires it, the firm and its agents will not disclose your  
 77 confidential information or the confidential information of other parties. (See lines 135-150.)
- 78 (f) The duty to safeguard trust funds and other property the firm or its agents holds.
- 79 (g) The duty, when negotiating, to present contract proposals in an objective and unbiased manner and disclose the  
 80 advantages and disadvantages of the proposals.

81 **BECAUSE YOU HAVE ENTERED INTO AN AGENCY AGREEMENT WITH A FIRM, YOU ARE THE FIRM'S CLIENT.**  
 82 **A FIRM OWES ADDITIONAL DUTIES TO YOU AS A CLIENT OF THE FIRM:**

- 83 (a) The firm or one of its agents will provide, at your request, information and advice on real estate matters that affect  
 84 your transaction, unless you release the firm from this duty.
- 85 (b) The firm or one of its agents must provide you with all material facts affecting the transaction, not just Adverse  
 86 Facts.
- 87 (c) The firm and its agents will fulfill the firm's obligations under the agency agreement and fulfill your lawful requests  
 88 that are within the scope of the agency agreement.
- 89 (d) The firm and its agents will negotiate for you, unless you release them from this duty.
- 90 (e) The firm and its agents will not place their interests ahead of your interests. The firm and its agents will not, unless  
 91 required by law, give information or advice to other parties who are not the firm's clients, if giving the information or  
 92 advice is contrary to your interests.

93 If you become involved in a transaction in which another party is also the firm's client (a "multiple representation  
 94 relationship"), different duties may apply.

95 **MULTIPLE REPRESENTATION RELATIONSHIPS AND DESIGNATED AGENCY**

- 96 ■ A multiple representation relationship exists if a firm has an agency agreement with more than one client who is a  
 97 party in the same transaction. If you and the firm's other clients in the transaction consent, the firm may provide  
 98 services through designated agency, which is one type of multiple representation relationship.
- 99 ■ Designated agency means that different agents with the firm will negotiate on behalf of you and the other client or  
 100 clients in the transaction, and the firm's duties to you as a client will remain the same. Each agent will provide  
 101 information, opinions, and advice to the client for whom the agent is negotiating, to assist the client in the negotiations.  
 102 Each client will be able to receive information, opinions, and advice that will assist the client, even if the information,  
 103 opinions, or advice gives the client advantages in the negotiations over the firm's other clients. An agent will not reveal  
 104 any of your confidential information to another party unless required to do so by law.
- 105 ■ If a designated agency relationship is not authorized by you or other clients in the transaction you may still authorize  
 106 or reject a different type of multiple representation relationship in which the firm may provide brokerage services to  
 107 more than one client in a transaction but neither the firm nor any of its agents may assist any client with information,  
 108 opinions, and advice which may favor the interests of one client over any other client. Under this neutral approach, the  
 109 same agent may represent more than one client in a transaction.
- 110 ■ If you do not consent to a multiple representation relationship the firm will not be allowed to provide brokerage  
 111 services to more than one client in the transaction.

112 **CHECK ONLY ONE OF THE THREE BELOW:**

113  The same firm may represent me and the other party as long as the same agent is not  
 114 representing us both (multiple representation relationship with designated agency).

115  The same firm may represent me and the other party, but the firm must remain neutral  
 116 regardless if one or more different agents are involved (multiple representation relationship  
 117 without designated agency).

118  The same firm cannot represent both me and the other party in the same transaction (I reject  
 119 multiple representation relationships).

120 **NOTE: All clients who are parties to this agency agreement consent to the selection checked above. You may**  
 121 **modify this selection by written notice to the firm at any time. Your firm is required to disclose to you in your**  
 122 **agency agreement the commission or fees that you may owe to your firm. If you have any questions about the**  
 123 **commission or fees that you may owe based upon the type of agency relationship you select with your firm,**  
 124 **you should ask your firm before signing the agency agreement.**

125 **SUBAGENCY**

126 Your firm may, with your authorization in the agency agreement, engage other firms (subagent firms) to assist your firm by  
 127 providing brokerage services for your benefit. A subagent firm and the agents **associated** with the subagent firm will not put  
 128 their own interests ahead of your interests. A subagent firm will not, unless required by law, provide advice or opinions to  
 129 other parties if doing so is contrary to your interests.

130 **PLEASE REVIEW THIS INFORMATION CAREFULLY. An agent can answer your questions about brokerage**  
 131 **services, but if you need legal advice, tax advice, or a professional home inspection, contact an attorney, tax**  
 132 **advisor, or home inspector.**

133 This disclosure is required by section 452.135 of the Wisconsin statutes and is for information only. It is a plain language  
 134 summary of the duties owed to you under section 452.133 (2) of the Wisconsin statutes.

135 **■ CONFIDENTIALITY NOTICE TO CLIENTS:** The Firm and its agents will keep confidential any information given to  
 136 the Firm or its agents in confidence, or any information obtained by the Firm and its agents that a reasonable person  
 137 would want to be kept confidential, unless the information must be disclosed by law or you authorize the Firm to  
 138 disclose particular information. The Firm and its agents shall continue to keep the information confidential after the Firm  
 139 is no longer providing brokerage services to you.

140 The following information is required to be disclosed by law:

141 1) Material Adverse Facts, as defined in section 452.01 (5g) of the Wisconsin statutes (see **lines 195-198**).

142 2) Any facts known by the Firm and its agents that contradict any information included in a written inspection report on  
 143 the property or real estate that is the subject of the transaction.

144 To ensure that the Firm and its agents are aware of what specific information you consider confidential, you may list  
 145 that information below (see lines **147-148**). At a later time, you may also provide the Firm with other information you  
 146 consider to be confidential.

147 **CONFIDENTIAL INFORMATION:** \_\_\_\_\_

148 \_\_\_\_\_

149 **NON-CONFIDENTIAL INFORMATION** (The following may be disclosed by the Firm and its agents): \_\_\_\_\_

150 \_\_\_\_\_

151 **COOPERATION, ACCESS TO PROPERTY OR OFFER PRESENTATION** The parties agree that the Firm and its  
 152 agents will work and cooperate with other firms and agents in marketing the Property, including firms acting as  
 153 subagents (other firms engaged by the Firm - see **lines 125-129**) and firms representing buyers. Cooperation includes  
 154 providing access to the Property for showing purposes and presenting offers and other proposals from these firms to  
 155 Seller. Note any firms with whom the Firm shall not cooperate, any firms or agents or buyers who shall not be allowed  
 156 to attend showings, and the specific terms of offers which should not be submitted to Seller: \_\_\_\_\_

157 \_\_\_\_\_

158 **CAUTION: Limiting the Firm's cooperation with other firms may reduce the marketability of the Property.**

159 **EXCLUSIONS** All persons who may acquire an interest in the Property who are Protected Buyers under a prior listing  
 160 contract are excluded from this Listing to the extent of the prior firm's legal rights, unless otherwise agreed to in writing.  
 161 Within seven days of the date of this Listing, Seller agrees to deliver to the Firm a written list of all such Protected Buyers.

162 **NOTE: If Seller fails to timely deliver this list to the Firm, Seller may be liable to the Firm for damages and costs.**

163 The following other buyers \_\_\_\_\_

164 \_\_\_\_\_ are excluded from this Listing until \_\_\_\_\_ [INSERT DATE].

165 These other buyers are no longer excluded from this Listing after the specified date unless, on or before the specified date,  
 166 Seller has either accepted a written offer from the buyer or sold the Property to the buyer.

167 **DEFINITIONS**

168 ■ **ADVERSE FACT:** An "Adverse Fact" means any of the following:

169 (a) A condition or occurrence that is generally recognized by a competent licensee as doing any of the following:

170 1) Significantly and adversely affecting the value of the Property;

171 2) Significantly reducing the structural integrity of improvements to real estate; or

172 3) Presenting a significant health risk to occupants of the Property.

173 (b) Information that indicates that a party to a transaction is not able to or does not intend to meet his or her  
174 obligations under a contract or agreement made concerning the transaction.

175 ■ **DEADLINES – DAYS:** Deadlines expressed as a number of "days" from an event are calculated by excluding the day the  
176 event occurred and by counting subsequent calendar days.

177 ■ **DEFECT:** "Defect" means a condition that would have a significant adverse effect on the value of the Property; that  
178 would significantly impair the health or safety of future occupants of the Property; or that if not repaired, removed or  
179 replaced would significantly shorten or adversely affect the expected normal life of the premises.

180 ■ **FIRM:** "Firm" means a licensed sole proprietor broker or a licensed broker business entity.

181 ■ **FIXTURES:** A "Fixture" is an item of property which is physically attached to or so closely associated with land or  
182 buildings so as to be treated as part of the real estate, including, without limitation, physically attached items not easily  
183 removable without damage to the premises, items specifically adapted to the premises, and items customarily treated  
184 as fixtures, including, but not limited to, all: garden bulbs; plants; shrubs and trees; screen and storm doors and  
185 windows; electric lighting fixtures; window shades; curtain and traverse rods; blinds and shutters; central heating and  
186 cooling units and attached equipment; water heaters, water softeners and treatment systems; sump pumps; attached or  
187 fitted floor coverings; awnings; attached antennas and satellite dishes, audio/visual wall mounting brackets (but not the  
188 audio/visual equipment), garage door openers and remote controls; installed security systems; central vacuum systems  
189 and accessories; in-ground sprinkler systems and component parts; built-in appliances; ceiling fans; fences; in-ground  
190 pet containment systems (but not the collars); storage buildings on permanent foundations and docks/piers on  
191 permanent foundations.

192 **CAUTION: Exclude any Fixtures to be retained by Seller or which are rented (e.g., water softener or other water  
193 treatment systems, home entertainment and satellite dish components, L.P. tanks, etc.) on lines 12-14 and in  
194 the offer to purchase.**

195 ■ **MATERIAL ADVERSE FACT:** A "Material Adverse Fact" means an Adverse Fact that a party indicates is of such  
196 significance, or that is generally recognized by a competent licensee as being of such significance to a reasonable  
197 party, that it affects or would affect the party's decision to enter into a contract or agreement concerning a transaction or  
198 affects or would affect the party's decision about the terms of such a contract or agreement.

199 ■ **PERSON ACTING ON BEHALF OF BUYER:** "Person Acting on Behalf of Buyer" shall mean any person joined in interest  
200 with buyer, or otherwise acting on behalf of buyer, including but not limited to buyer's immediate family, agents, employees,  
201 directors, managers, members, officers, owners, partners, incorporators and organizers, as well as any and all corporations,  
202 partnerships, limited liability companies, trusts or other entities created or controlled by, affiliated with or owned by buyer, in  
203 whole or in part whether created before or after expiration of this Listing.

204 ■ **PROPERTY:** Unless otherwise stated, "Property", means all property included in the list price as described on lines 2-5

205 ■ **PROTECTED BUYER:** Means a buyer who personally, or through any Person Acting on Behalf of Buyer, during the term  
206 of this Listing: 1) delivers to Seller or the Firm or its agents a written offer to purchase, exchange or option on the Property; 2)  
207 views the Property with Seller or negotiates directly with Seller by communicating with Seller regarding any potential terms  
208 upon which the buyer might acquire an interest in the Property; or 3) attends an individual showing of the Property or  
209 communicates with agents of the Firm or cooperating firms regarding any the potential terms upon which the buyer might  
210 acquire an interest in the Property, but only if the Firm or its agents deliver the buyer's name to Seller, in writing, no later than  
211 three days after the earlier of expiration or termination (lines 261-269) of the Listing. The requirement in 3), to deliver the  
212 buyer's name to Seller in writing, may be fulfilled as follows: a) If the Listing is effective only as to certain individuals who are  
213 identified in the Listing, by the identification of the individuals in the Listing; or, b) if a buyer has requested that the buyer's  
214 identity remain confidential, by delivery of a written notice identifying the firm or agents with whom the buyer negotiated and  
215 the date(s) of any individual showings or other negotiations. A Protected Buyer also includes any Person Acting on Behalf of  
216 Buyer joined in interest with or otherwise acting on behalf of a Protected Buyer, who acquires an interest in the Property  
217 during the extension of listing period as noted on lines 218-222.

218 **EXTENSION OF LISTING** The Listing term is extended for a period of one year as to any Protected Buyer. Upon  
219 receipt of a written request from Seller or a firm that has listed the Property, the Firm agrees to promptly deliver to  
220 Seller a written list of those buyers known by the Firm and its agents to whom the extension period applies. Should this  
221 Listing be terminated by Seller prior to the expiration of the term stated in this Listing, this Listing shall be extended for  
222 Protected Buyers, on the same terms, for one year after the Listing is terminated (lines 261-269).

223 **OCCUPANCY** Unless otherwise provided, Seller agrees to give the buyer occupancy of the Property at time of closing  
 224 and to have the Property in broom swept condition and free of all debris and personal property except for personal  
 225 property belonging to current tenants, sold to the buyer or left with the buyer's consent.

226 **LEASED PROPERTY** If Property is currently leased and lease(s) will extend beyond closing, Seller shall assign Seller's  
 227 rights under the lease(s) and transfer all security deposits and prepaid rents (subject to agreed upon prorations) thereunder  
 228 to buyer at closing. Seller acknowledges that Seller remains liable under the lease(s) unless released by tenants.  
 229 **CAUTION: Seller should consider obtaining an indemnification agreement from buyer for liabilities under the**  
 230 **lease(s) unless released by tenants.**

231 **NOTICE ABOUT SEX OFFENDER REGISTRY** You may obtain information about the sex offender registry and  
 232 persons registered with the registry by contacting the Wisconsin Department of Corrections on the Internet at  
 233 <http://www.doc.wi.gov> or by telephone at (608)240-5830.

234 **REAL ESTATE CONDITION REPORT** Seller agrees to complete the real estate condition report provided by the Firm  
 235 to the best of Seller's knowledge. Seller agrees to amend the report should Seller learn of any Defect(s) after completion  
 236 of the report but before acceptance of a buyer's offer to purchase. Seller authorizes the Firm and its agents to distribute  
 237 the report to all interested parties and agents inquiring about the Property. Seller acknowledges that the Firm and its  
 238 agents have a duty to disclose all Material Adverse Facts as required by law.

239 **SELLER REPRESENTATIONS REGARDING DEFECTS** Seller represents to the Firm that as of the date of this  
 240 Listing, Seller has no notice or knowledge of any Defects affecting the Property other than those noted on the real estate  
 241 condition report.

242 **WARNING: IF SELLER REPRESENTATIONS ARE INCORRECT OR INCOMPLETE, SELLER MAY BE LIABLE FOR**  
 243 **DAMAGES AND COSTS.**

244 **SELLER COOPERATION WITH MARKETING EFFORTS** Seller agrees to cooperate with the Firm in the Firm's  
 245 marketing efforts and to provide the Firm with all records, documents and other material in Seller's possession or  
 246 control which are required in connection with the sale. Seller authorizes the Firm and its agents to do those acts  
 247 reasonably necessary to effect a sale and Seller agrees to cooperate fully with these efforts which may include use of a  
 248 multiple listing service, Internet advertising or a lockbox system on Property. Seller shall promptly refer all persons  
 249 making inquiries concerning the Property to the Firm and notify the Firm in writing of any potential buyers with whom Seller  
 250 negotiates or who view the Property with Seller during the term of this Listing.

251 **OPEN HOUSE AND SHOWING RESPONSIBILITIES** Seller is aware that there is a potential risk of injury, damage  
 252 and/or theft involving persons attending an "individual showing" or an "open house." Seller accepts responsibility for  
 253 preparing the Property to minimize the likelihood of injury, damage and/or loss of personal property. Seller agrees to  
 254 hold the Firm and its agents harmless for any losses or liability resulting from personal injury, property damage, or theft  
 255 occurring during "individual showings" or "open houses" other than those caused by the negligence or intentional  
 256 wrongdoing of the Firm or its agents. Seller acknowledges that individual showings and open houses may be  
 257 conducted by licensees other than agents of the Firm, that appraisers and inspectors may conduct appraisals and  
 258 inspections without being accompanied by agents of the Firm or other licensees, and that buyers or licensees may be  
 259 present at all inspections and testing and may photograph or videotape Property unless otherwise provided for in  
 260 additional provisions at lines 301-306 or in an addendum per lines 307-308.

261 **TERMINATION OF LISTING** Neither Seller nor the Firm has the legal right to unilaterally terminate this Listing absent a  
 262 material breach of contract by the other party. Seller understands that the parties to the Listing are Seller and the Firm.  
 263 Agents for the Firm do not have the authority to enter into a mutual agreement to terminate the Listing, amend the  
 264 commission amount or shorten the term of this Listing, without the written consent of the agent(s)' supervising broker. Seller  
 265 and the Firm agree that any termination of this Listing by either party before the date stated on line 310 shall be  
 266 effective by the Seller only if stated in writing and delivered to the Firm in accordance with lines 278-300 and effective  
 267 by the Firm only if stated in writing by the supervising broker and delivered to Seller in accordance with lines 278-300.

268 **CAUTION: Early termination of this Listing may be a breach of contract, causing the terminating party to**  
 269 **potentially be liable for damages.**

270 **EARNEST MONEY** If the Firm holds trust funds in connection with the transaction, they shall be retained by the Firm in the  
 271 Firm's trust account. The Firm may refuse to hold earnest money or other trust funds. Should the Firm hold the earnest money,  
 272 the Firm shall hold and disburse earnest money funds in accordance with Wis. Stat. Ch. 452 and Wis. Admin. Code Ch. REEB  
 273 18. If the transaction fails to close and the Seller requests and receives the earnest money as the total liquidated damages,  
 274 then upon disbursement to Seller, the earnest money shall be paid first to reimburse the Firm for cash advances made by the  
 275 Firm on behalf of Seller and one half of the balance, but not in excess of the agreed commission, shall be paid to the Firm as  
 276 full commission in connection with said purchase transaction and the balance shall belong to Seller. This payment to the Firm  
 277 shall not terminate this Listing.

278 **DELIVERY OF DOCUMENTS AND WRITTEN NOTICES** Unless otherwise stated in this Listing, delivery of  
279 documents and written notices to a Party shall be effective only when accomplished by one of the methods specified at  
280 lines 281-300.

281 (1) **Personal Delivery**: giving the document or written notice personally to the Party, or the Party's recipient for delivery  
282 if named at line 283 or 284.

283 Seller's recipient for delivery (optional): \_\_\_\_\_

284 Firm's recipient for delivery (optional): \_\_\_\_\_

285  (2) **Fax**: fax transmission of the document or written notice to the following telephone number:

286 Seller: (\_\_\_\_\_) Firm: (\_\_\_\_\_) \_\_\_\_\_

287  (3) **Commercial Delivery**: depositing the document or written notice fees prepaid or charged to an account with a  
288 commercial delivery service, addressed either to the Party, or to the Party's recipient for delivery if named at line 283 or  
289 284, for delivery to the Party's delivery address at line 293 or 294.

290  (4) **U.S. Mail**: depositing the document or written notice postage prepaid in the U.S. Mail, addressed either to the  
291 Party, or to the Party's recipient for delivery if named at line 283 or 284, for delivery to the Party's delivery address at  
292 line 293 or 294.

293 Delivery address for Seller: \_\_\_\_\_

294 Delivery address for Firm: \_\_\_\_\_

295  (5) **E-Mail**: electronically transmitting the document or written notice to the Party's e-mail address, if given below at  
296 line 299 or 300. If this is a consumer transaction where the property being purchased or the sale proceeds are used  
297 primarily for personal, family or household purposes, each consumer providing an e-mail address below has first  
298 consented electronically as required by federal law.

299 E-Mail address for Seller: \_\_\_\_\_

300 E-Mail address for Firm: \_\_\_\_\_

301 **ADDITIONAL PROVISIONS** \_\_\_\_\_  
302 \_\_\_\_\_  
303 \_\_\_\_\_  
304 \_\_\_\_\_  
305 \_\_\_\_\_  
306 \_\_\_\_\_

307 **ADDENDA** The attached addenda \_\_\_\_\_  
308 \_\_\_\_\_ is/are made part of this Listing.

309 **TERM OF THE CONTRACT** From the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, up  
310 to the earlier of midnight of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, or the  
311 conveyance of the entire Property.

312 **BY SIGNING BELOW, SELLER ACKNOWLEDGES RECEIPT OF A COPY OF THIS LISTING CONTRACT AND**  
313 **THAT HE/SHE HAS READ ALL 6 PAGES AS WELL AS ANY ADDENDA AND ANY OTHER DOCUMENTS**  
314 **INCORPORATED INTO THE LISTING.**

315 (x) \_\_\_\_\_  
316 Seller's Signature ▲ \_\_\_\_\_ Print Name Here ▲ \_\_\_\_\_ Date ▲ \_\_\_\_\_

317 (x) \_\_\_\_\_  
318 Seller's Signature ▲ \_\_\_\_\_ Print Name Here ▲ \_\_\_\_\_ Date ▲ \_\_\_\_\_

319 (x) \_\_\_\_\_  
320 Seller's Signature ▲ \_\_\_\_\_ Print Name Here ▲ \_\_\_\_\_ Date ▲ \_\_\_\_\_

321 (x) \_\_\_\_\_  
322 Seller's Signature ▲ \_\_\_\_\_ Print Name Here ▲ \_\_\_\_\_ Date ▲ \_\_\_\_\_

323 Seller Entity Name (if any): \_\_\_\_\_  
324 \_\_\_\_\_ Print Name Here ▲ \_\_\_\_\_

325 (x) \_\_\_\_\_  
326 Authorized Signature ▲ Print Name & Title Here ► \_\_\_\_\_ Date ▲ \_\_\_\_\_

327 (x) \_\_\_\_\_  
328 Agent for Firm ▲ \_\_\_\_\_ Print Name Here ▲ \_\_\_\_\_ Firm Name ▲ \_\_\_\_\_ Date ▲ \_\_\_\_\_