



REAL ESTATE CONTRACTUAL FORMS ADVISORY COUNCIL
Room 121A, 1400 East Washington Avenue, Madison
Contact: Brittany Lewin (608) 266-2112
January 11, 2017

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 December 7, 2016 (2)**
- C. Administrative Updates**
 - 1) Staff and Member Updates
- D. Review of Real Estate Contractual Forms for Revision:**
 - 1) WB-36 Buyer Agency/Tenant Representation Agreement**
 - a) Review of WRA Forms Committee Memo with Proposed Revisions to WB-36
 - 1. Residential **(3-17)**
 - 2. Commercial **(18-24)**
 - b) Original Document
 - 1. Residential **(25-31)**
 - 2. Commercial **(32-37)**
 - 2) WB-47 Amendment to Buyer Agency/Tenant Representation Agreement (38)**
- E. Public Comments**

ADJOURNMENT

The Next Scheduled Meeting is February 22, 2017.

**REAL ESTATE CONTRACTUAL FORMS ADVISORY COUNCIL
MEETING MINUTES
DECEMBER 7, 2016**

PRESENT: Casey Clickner (*was excused from the meeting at 1:51 p.m.*), Debra Conrad; John Drzewiecki, Richard Marino, Kim Moermond, Jonathan Sayas, Michael Sewell, Gary Tritz, Thomas Weber, Pamela Widen

EXCUSED: Joseph Busch, Michael Gordon, Kitty Jedwabny, Cori Lamont, Richard Petershack

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

CALL TO ORDER

Gary Tritz called the meeting to order at 9:40 a.m. A quorum of ten (10) members was confirmed.

ADOPTION OF AGENDA

MOTION: Debra Conrad moved, seconded by Casey Clickner, to adopt the agenda as published. Motion carried unanimously.

APPROVAL OF MINUTES

MOTION: John Drzewiecki moved, seconded by Thomas Weber, to approve the minutes of September 15, 2016 as published. Motion carried unanimously.

Casey Clickner was excused from the meeting at 1:51 p.m.

ADJOURNMENT

MOTION: John Drzewiecki moved, seconded by Thomas Weber, to adjourn the meeting. Motion carried unanimously.

The meeting adjourned at 2:56 p.m.

RESIDENTIAL WB-36 REVISIONS

To: DSPS Real Estate Contractual Forms Advisory Committee
From: WRA Forms Committee
Date: January 3, 2017
RE: **WB-36 Residential Buyer Agency/Tenant Representation Agreement – Draft 5**

A CHANGE IN DIRECTION: After much reflection and listening to input from the brokers who wish to use the WB-36 primarily for residential transactions as well as commercial practitioners, the DSPS Real Estate Contractual Forms Advisory Committee agreed to make one buyer agency/tenant representation agreement that is primarily residential and a second buyer agency/tenant representation agreement that is designed for the commercial/business brokers. This memo addresses the residential version.

The following recaps the modifications and suggestions of the DSPS Real Estate Contractual Forms Advisory Committee at its last meeting on December 7 as well as possible revisions to the WB-36 Residential Buyer Agency/Tenant Representation Agreement suggested by the WRA Forms Committee on December 15 and practitioners who work with tenant representation for residential rentals. The attached draft 20161207 WB-36clear2 represents where the DSPS left off with the tracking removed. The tracking that is shown relates to the suggestions of the WRA Forms Committee on December 15. Unfortunately the DSPS committee made little headway and wrestled a great deal with the provisions separating the sections into Purchase Provisions, General Provisions and Rental Provisions, highlighted in yellow on Draft 5 clear2.

Note: We have split out this memo into two parts since it was becoming very long. Philosophical and legal discussions and reference materials, as well as the sequences showing/documenting the evolution and historical discussions of some of the WB-36 provisions, have been shifted into a separate memo. The material is there for your reference if needed. This memo, as a result, hopefully is shorter and easier to work with.

WB-36 Residential Buyer Agency/Tenant Representation 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 to match the Wis. Stat. chapter 452 revisions wherein the proposed terminology refers 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.

This form has a separate section pertaining to just buyer agency – beginning on the first page – and a separate section pertaining to tenant representation – on pages 5-6. In addition there is a section of general provisions believed to apply in either or both instances in the middle of the form as well as a short second section of general provisions at the very end, including signature blocks.

In this proposed draft, the party entering into the agency agreement is called the “Client” in the opening and the general provisions sections, but is called the Buyer in the purchase/buyer agency

section and is called the Tenant in the rental/tenant representation section. The Firm is representing the Client as Buyer's Agent, Tenant Representative or both, depending upon how the agreement is completed.

◆ **First caption (line 1) and Agency Authorization on lines 1-7, Draft 5:** The paragraph heading was changed: ~~BROKER THE SOLE EXCLUSIVE AUTHORITY TO ACT FOR BUYER AS A BUYER'S AGENT AND/OR TENANT'S REPRESENTATIVE~~. This has been modified to indicate that the agreement can be used to authorize a firm to act as a buyer's agent or a tenant representative or both. The yellow-highlighted change is a correction noticed by the WRA Forms Committee and is shown in tracking on the clear draft at line 3.

■ **EXCLUSIVE AUTHORITY TO ACT AS BUYER'S AGENT AND/OR TENANT'S REPRESENTATIVE:** ~~Buyer-Client (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) and/or Tenant's Firm (hereinafter referred to as Tenant's Agent) 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-Client, except as excluded under lines xx-xx or xx-xx. Buyer Client agrees that during the term of this Agreement, Buyer-Client will not enter into any other agreements to retain any other buyer's or tenant's agent(s), except for the excluded properties described in lines xx-xx or xx-xx.~~

◆ **Applicability, Draft 5 [DELETED BY THE DSPS COMMITTEE]:** This is new and indicates that the Agreement can be used for any type of property.

This section then attempts to explain that there is a separate section for buyer agency provisions at the beginning. This assumes that the most frequent use will be for buyer agency. There is also a separate section for tenant representation that comes near the end. There are also two sections of general provision that would apply in either case, the largest such section in the middle of the form. There are blank lines before the different sections and a line at the beginning of each section explaining briefly what follows. See lines 16, 60 and 288. The party is referred to as Client at the beginning and in the general provision sections, but referred to as Buyer in the buyer agency/purchase provisions section and as Tenant in the tenant representation/rental provisions section. Client, Buyer and Tenant are now defined in the definitions section.

■ **APPLICABILITY:** ~~This Agreement authorizes the Firm to represent the Client in transactions relating to various types of property including, but not limited to, residential, condominium, vacant land, and farm properties. If the Client is purchasing property, complete the purchase provisions at lines 16- 59. If the Client is renting property, complete the rental provisions at lines 287-335. The general provisions on lines xx -xxx and xxx-xxx apply when the Client is a Buyer and/or a Tenant.~~

⇒ **DELETED BY DSPS COMMITTEE**

◆ **Note in Box (Lines 7-10 in Draft 5):**

★ ~~This is the same as it was before. It refers to "Client"~~

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

◆ **Purchase Provisions – NEW! (Lines 11-12 of Draft 5):** This is the introduction to the section of provisions in this draft relating only to buyer agency/purchase transactions. The introduction now says:

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PURCHASE PROVISIONS: The provisions on lines xx-xx apply when the Firm represents Buyer as a Buyer's Agent.

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- ⇒ Should there be a check box for the Purchase Provisions and the Rental Provisions (line 285)? Or do the parties just fill in what applies to them – that is the way it is handled in Draft 5?
- ⇒ Is there a better way to create separate sections? This approach was used here with the thought that it was similar to what WB-36 users are used to seeing and it tries to maintain the flow as much as possible since this will likely be used most often for buyer agency.
- ⇒ The DSPS Real Estate Contractual Forms Advisory Committee changed this provision to create a STRIKE ONE feature as to whether tenant representation will also be included and a default that assumes that it will – which then would seem to say that the tenant representation section should be filled in:

PURCHASE PROVISIONS:

The Firm will represent Buyer as a Buyer's Agent to locate or negotiate a purchase interest in a property (xx-xx). This agreement (will) (will not) STRIKE ONE ("will" if none is stricken) apply to tenant representation. See lines xxx-xxx if it will.

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- ⇒ Should this be clarified further? What does/should the first (xx-xx) pertain to? The purchase only provisions? Yes. What should happen if this “will not” include tenant representation – should lines xxx-xxx be deleted in that case so that the drafter knows they do not have to complete the tenant rep section?

The WRA Forms Committee suggests that the default should be “will not” and that this language should be rounded out as follows:

PURCHASE PROVISIONS:

The Firm will represent Buyer as a Buyer's Agent to locate or negotiate a purchase interest in a property (see xx-xx). This Agreement (will) (will not) STRIKE ONE ("will not" if none-neither is stricken) apply to tenant representation. See-Complete lines xxx-xxx if it will. If this Agreement will not apply to tenant representation, lines xxx-xxx are deleted.

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The purchase section encompasses lines 11-52. For the most part this is all as it was left by the DSPS Real Estate Contractual Forms Advisory Committee, except that the terminology was modified and it now says “Buyer” as appropriate to emphasize this is the purchase/buyer area of the form.

PRICE – same!

- ◆ **Purchase Price Range (Line 13 of Draft 5):** 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/EXCLUDED PROPERTIES/SEARCH PARAMETERS

◆ **Property Types Not Included/Excluded Properties (Draft 5, Lines 13-27):** This is much the same as the final language selection arrived at by the DSPS Real Estate Contractual Forms Advisory Committee except it once again refers to “Buyer” not to “Client” and the SCOPE OF AGREEMENT was removed by the DSPS on December 7 such that the content of that section directly follows the PURCHASE PRICE RANGE:

■ **PURCHASE PRICE RANGE:**

■ **SCOPE OF AGREEMENT:** The purchase price range provides initial search parameters, but the Firm’s authority under this Agreement extends to all property within the state of Wisconsin except for those properties excluded as Excluded Properties on lines xx-xx, and applies to any properties under Limited Excluded Properties after the applicable time for the exclusion has ended.

■ **EXCLUDED PROPERTIES:** Identify any specific properties or limitations on the scope of this Agreement, including geographic limitations or limitations on types of properties included under this Agreement. The following are excluded from this Agreement:

■ **LIMITED EXCLUSION PROPERTIES:** The following properties are excluded from this Agreement until _____ [Insert Date]. If any Property listed below is a Protected Property the exclusion period shall run until the expiration of the prior firm’s legal rights. _____

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

CAUTION: Buyer’s failure to exclude a Protected Property from a prior buyer agency agreement may result in Buyer owing commissions under each buyer agency agreement. Buyer should consult the prior firm or Buyer’s legal counsel regarding their obligations under any buyer agency agreement.

⇒ Under EXCLUDED PROPERTIES should the instructions be made clearer because the heading is for excluded properties but the language may be seen as confusing when the last words are “types of properties included under this Agreement?” does it need to say more definitively that what goes on the line is excluded? “The following are excluded from this Agreement: _____”?

■ **EXCLUDED PROPERTIES:** Identify any specific properties or limitations on the scope of this Agreement, including geographic limitations or limitations on types of properties included under this Agreement, by excluding the following from this Agreement: _____

⇒ The WRA Forms Committee agreed there is a disconnect here and more explicit directions are needed. Is this acceptable? You may have better language but this should communicate the concern!

COMMISSION

◆ **Compensation (Draft 5, Lines 28-47):**

The proposed changes shown in tracking are new. The lined out sentence below is redundant as the same information is stated in the Commission Due and Payable area. Lining out the sentence makes this section more closely track with the similar provisions in the WB-1. The same is true for the addition of the Commission Calculation language

COMPENSATION The Firm’s compensation for purchase, option, exchange or an effective change in ownership or control shall be: **COMPLETE AS APPLICABLE**

COMMISSION: _____

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■ **COMMISSION EARNED:** The Firm has earned the Firm's commission 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, regardless of the purchase price range. ~~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.

■ **COMMISSION CALCULATION:** A percentage commission shall be calculated based on the following if earned above: (i) for a purchase or option, the Buyer's total consideration in the transaction for a purchase or option, or (ii) for an exchange or an effective change in ownership or control, the fair market value of the Property in the transaction. ~~if an exchange or an effective change in ownership or control occurs.~~

■ **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.

■ **OTHER COMPENSATION:** _____

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

⇒ **Different formatting or labeling?**

⇒ **The WRA Forms Committee was in agreement with these changes. Is this acceptable?**

◆ **Earnest Money (Draft 5, Lines 48-52):** 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.

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.

⇒ **This provision was moved up into the buyer agency section – should this be in the general provisions? In other words does it have applicability in tenant representation scenarios?**

⇒ **Is this acceptable?**

◆ **General Provisions (Draft 5, Line 53):** The language here marks a division – this starts a long section of provisions that were thought to have applicability to both buyer agency and tenant representation. The language says:

GENERAL PROVISIONS: The provisions on lines xx –xxx and xxx-xxx apply when the Client is a Buyer or a Tenant or both.

⇒ **Is this acceptable? Other suggestions for language and ways to mark the separation of the sections?**

◆ **Lien Notice - same (Draft 5, Lines 54-59):** The language needed as foundation for any claim for a commission lien has been added so as to preserve the firm’s ability to complete the process in Wis. Stat. § 779.32 and have a lien for unpaid commission filed and preserved.

LIEN NOTICE: The Firm has the authority under section 779.32 of the Wisconsin Statutes to file a 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.

⇒ This change was adopted by the DSPS Real Estate Contractual Forms Advisory Committee and WRA Forms Committee concurred. **It should be moved down further in formatting so that it is not the first general provision a client sees!**

◆ **Firm’s Duties (Draft 5, Lines 60-62):** Modified language:

In consideration for Buyer’s-Client’s agreements, the Firm and its agents agree to use professional knowledge and skills, and reasonable efforts, within the scope of Wis. Stat. Chapter 452 and in accordance with applicable law, to assist Buyer-Client to Locate an Interest in Property and Negotiate the Acquisition of an Interest in Property, as applicable.

⇒ This change was adopted by the DSPS Real Estate Contractual Forms Advisory Committee and the WRA Forms Committee.

BUYER RESPONSIBILITIES –

✓ Rejected by the DSPS Real Estate Contractual Forms Advisory Committee and WRA Forms Committee concurred.

◆ **Cooperation (Draft 5, Lines 63-71):** This is somewhat of a parallel counterpart to the similar section in the WB-1. Below the Cooperation section is shown with the terminology changes made – you can see this in tracking below. The yellow highlighted changes in tracking are new for this Draft 4.

COOPERATION Buyer-Client 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-Client’s possession or control which are required in connection with the purchase, option, or exchange of Pproperty. Buyer-Client agrees to be reasonably available for showings of properties. Buyer-Client 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-Client shall promptly notify the Firm in writing of the description of any Pproperty Buyer-Client locates, and shall inform other firms, agents, sellers, property owners, etc., with whom Client comes in contact that the Firm represents Client as Buyer’s and/or Tenant’s Agent for the purpose of acquiring an Interest in Property and refer all such persons to the Firm. Buyer-Client shall also notify the Firm of the identity of all persons making inquiries concerning Buyer’s-Client’s objectives stated in this Agreement.

⇒ This change was adopted by the DSPS Real Estate Contractual Forms Advisory Committee and the WRA Forms Committee.

◆ **Non Discrimination (Draft 5, Lines 72-75):** 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-Client 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

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victim of domestic abuse, sexual assault, or stalking, or in any other unlawful manner.

⇒ This change was adopted by the DSPS Real Estate Contractual Forms Advisory Committee and the WRA Forms Committee.

◆ **Dispute Resolution (Draft 5, lines 76-80):** This is the provision from the WB-1.

⇒ This change was adopted by the DSPS Real Estate Contractual Forms Advisory Committee and the WRA Forms Committee.

◆ **Disclosure to Clients (Draft 5, Lines 81-170):**

This section now shows the new language from the statutes that went into effect on July 1, 2016.

⇒ This change was adopted by the DSPS Real Estate Contractual Forms Advisory Committee and the WRA Forms Committee.

◆ **Non-Confidential Information at lines 171-167 of Draft 5:** The Non-Confidential Information section appears at the end of the Disclosure to Clients section as follows:

NON-CONFIDENTIAL INFORMATION: The Firm and its agents have permission to disclose ~~Buyer's-Client's~~ identity and financial qualification information to an owner, owner's agents and other third parties without prior consent from ~~Buyer-Client~~, unless otherwise provided on lines xx-xx. The Firm and its agents may also disclose the following:

Under this provision, it is assumed that the Firm and its agents may disclose the **Client's identity and financial qualification information** unless otherwise noted on lines 168-170 in the Confidential Information section. The Client may additionally indicate other information that the Firm is free to disclose that might otherwise be thought to be of a confidential nature.

⇒ This change was adopted by the DSPS Real Estate Contractual Forms Advisory Committee and the WRA Forms Committee.

◆ **Non-Exclusive Relationship (Draft 5, Lines 168-172):**

The WRA Forms Committee discussed whether it should say that the firm may represent different buyers with respect to the same property, but the Committee believed it was best to leave it as it is because it will trigger that conversation when reviewed with the buyer.

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

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⇒ This was adopted by the DSPS Real Estate Contractual Forms Advisory Committee and the WRA Forms Committee.

◆ **Property Dimensions (Draft 5, Lines 173-177):** The WRA Forms Committee believed it was good information for the buyer to think about despite the fact that it also appears in the offers.

PROPERTY DIMENSIONS ~~Buyer-Client~~ acknowledges that real property dimensions, total square footage and total acreage information provided to ~~Buyer-Client~~ 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-Client~~ should verify any property dimension or total square footage/acreage calculation which is material to ~~Buyer~~Client.

⇒ **This was adopted by the DSPS Real Estate Contractual Forms Advisory Committee and the WRA Forms Committee.**

◆ **Definitions – Draft 5, line 178:** Note the newly proposed introductory language that eliminates any need to repeat “as used in this Agreement” within various individual definitions:

As used in this Agreement, the following definitions apply:

⇒ **Other better language? The WRA Forms Committee approved. Is this acceptable?**

◆ **Definition of Adverse Fact (Draft 5, Lines 179-185):**

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

⇒ **This was adopted by the DSPS Real Estate Contractual Forms Advisory Committee and the WRA Forms Committee.**

◆ **Definition of Buyer – New! (Draft 5, Lines 186-187):**

■ BUYER: "Buyer" means the party executing this Agreement in the context where the party is seeking to acquire an interest in real estate by purchase, option, exchange or any other manner other than by Rental Agreement.

⇒ **The WRA Forms Committee approved. Is this acceptable?**

◆ **Definition of Client (Draft 5, Lines 188-189) – NEW!**

This was thought to be a good neutral term to encompass both clients who are buyers and clients who are tenants. Having such a broad term allows the general provisions to use just one name instead of having to say “buyer or tenant” every time.

■ CLIENT: "Client" means the party executing this Agreement and seeking to acquire an interest in real estate by purchase, lease, rental, option, exchange or any other manner.

⇒ **The WRA Forms Committee approved. Is this acceptable?**

◆ **Definition of Deadlines-Days (Draft 5, Lines 190-191):**

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

⇒ **This was adopted by the DSPS Real Estate Contractual Forms Advisory Committee and the WRA Forms Committee.**

◆ **Definition of Firm (Draft 5, 192):** This was added and is the same as the definition in the WB-1.

⇒ **This was adopted by the DSPS Real Estate Contractual Forms Advisory Committee and the WRA Forms Committee.**

◆ **Definition of Interest in Property (Draft 5, Lines 193-195):**

This version was adopted by the WRA Forms Committee on August 4 and was modified by the DSPS Committee September 15, now that this WB-36 will address residential buyer agency and residential tenant representation, as follows:

■ INTEREST IN PROPERTY: "Interest in Property" ~~includes-means~~ a purchase, lease, rental, option, exchange or any other interest in acquisition of Property unless specifically excluded at lines xx-xx or xxx-xxx, in additional provisions (lines xxx-xxx) or elsewhere in this Agreement.

⇒ This was adopted by the DSPS Real Estate Contractual Forms Advisory Committee and the WRA Forms Committee.

◆ **Definition of Locate an Interest in Property (Draft 5, Lines 196-197):** This is mostly the same as before, with a few changes as follows:

■ LOCATE AN INTEREST IN PROPERTY: "Locate an Interest in Property" shall mean to, with the cooperation of Client, identify, evaluate, and determine, ~~with the cooperation of Buyer~~, the availability of the Interest in Property sought by BuyerClient.

⇒ This was adopted by the DSPS Real Estate Contractual Forms Advisory Committee and the WRA Forms Committee.

◆ **Definition of Material Adverse Fact (Draft 5, Lines 198-201):** This is the same as before and the same as the definition in the WB-1.

⇒ This was adopted by the DSPS Real Estate Contractual Forms Advisory Committee and the WRA Forms Committee.

◆ **Definition of Negotiate the Acquisition of an Interest in Property (Draft 5, Lines 202-207):**
The term was changed to substitute the word acquisition because that is the term used in other buyer agency agreements. Also the definition was modified to add the details of the definition of "negotiation" from the statutes.

■ NEGOTIATE THE ACQUISITION OF AN INTEREST IN PROPERTY: "Negotiate the Acquisition of an Interest in Property" shall mean to assist a BuyerClient, within the scope of this Agreement, ~~in to~~ ascertain~~ing~~ terms and conditions upon which an Interest In Property may be acquired, which may include facilitat~~ing~~ing or participat~~ing~~ing in the discussions of the terms of a potential contract, complet~~ing~~ing appropriate contractual forms, present~~ing~~ing either party's contractual proposal with an explanation of the proposal's advantages and disadvantages, and/or otherwise assist~~ing~~ing ~~Buyer-Client~~ BuyerClient in reaching an agreement to acquire the Interest in Property sought by BuyerClient.

⇒ This was adopted by the DSPS Real Estate Contractual Forms Advisory Committee and the WRA Forms Committee.

◆ **Definition of Person Acting on Behalf of Buyer (Draft 5, Lines 208-212):** This is the same as before with additions made that come from the WB-6 and the WB-1. The last phrase "whether created before or after expiration of this Agreement" is not needed in the WB-36!

■ PERSON ACTING ON BEHALF OF BUYER: "In this Agreement "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 (?).~~

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Based on use the last phrase "whether created before or after expiration of this Agreement" may not be needed in the WB-36. The term Person Acting on Behalf of Buyer is used in the Commission Earned subsection and in the Extension of Agreement Term section. An entity like an LLC could not be involved on behalf of the buyer in acquiring a property interest such as to earn the firm's commission and be created after the expiration of the WB-36. Likewise an entity like an LLC could not be involved on behalf of the buyer in creating protected properties and be created after the expiration of the WB-36.

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

◆ **Definition of Person Acting on Behalf of Tenant (New!) (Draft 5, Lines 213-217):** This was added because of the separate section for rental provisions which uses the term “Tenant” not Client or Buyer. This definition thus has been reconfigured to incorporate the use of the word “Tenant” in place of “Buyer.”

■ **PERSON ACTING ON BEHALF OF BUYER/TENANT:** ~~“Person Acting on Behalf of Tenant”~~~~In this Agreement “Person acting on behalf of Buyer”~~ shall mean any person joined in interest with ~~Buyer/Tenant~~, or otherwise acting on behalf of ~~Buyer/Tenant~~, including but not limited to ~~Buyer’s-Tenant’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-Tenant~~ in whole or in part. ~~whether created before or after expiration of this Agreement (?).~~

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

◆ **Definition of Property (Draft 5, line 218):**

■ **PROPERTY:** “Property” ~~as used in this Agreement, refers to~~means real property ~~or Assets~~ located within the state of Wisconsin.

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

◆ **Definition of Protected Property (Draft 5, lines 219-229):**

This definition would prove helpful considering that the WB-36 refers to protected properties from prior buyer agency and tenant representation agreements and also has a provision whereby protected properties under the subject WB-36 are established. The definition is set up to be more general instead of specific.

The DSPS Real Estate Contractual Forms Advisory Committee reformatted and modified this definition as follows, and it has additionally been modified to reflect both protected purchase and rental properties. This definition refers to “Buyer or Tenant” and not Client because there are definitions for Person Acting on Behalf of Buyer and Person Acting on Behalf of Tenant but Person Acting on Behalf of Client. Either that definition may need to be added or the terminology in the following will have to be accepted, at least until and unless someone can find a better way without having to create another group of additional definitions!

■ **PROTECTED PROPERTY:** ~~“Protected Property”~~ means any ~~P~~property ~~which, that~~ during the term of a buyer agency ~~or/ tenant representation agreement was:~~

- 1) ~~the subject of a written proposal by Buyer or Tenant, or any Pperson Aacting on Bbehalf of Buyer or Tenant, submitted to the Property owner or the owner’s agent;~~
- 2) ~~located was personally viewed by or directly negotiated for by Buyer or Tenant, or any Person Acting on Behalf of Buyer or Tenant, by Direct negotiation means communicating with the owner or owner’s agent regarding any potential terms on which Buyer or Tenant might acquire an iinterest in the Property; or~~
- 3) ~~was located or negotiated for by the Buyer’s or Tenant’s firm or its agents, the Buyer or Tenant or any Person Acting on Behalf of Buyer or Tenant, but only if the Firm or its agents deliver the description of the Pproperty to Buyer or Tenant, in writing, no later than three days after the earlier of expiration or termination (lines xxx-xxx) of thise aAgreement, except no written notice shall be required of the firm or its agents showed the property to the Buyer or Tenant.~~

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- **If the client submits an offer/proposal that makes the property protected – should that also apply if the offer/proposal comes from a person acting on behalf of the client? Item 1 in the definition in Draft 5 is stated that way.**
- **What if the client views the property or directly negotiates with the owner as stated in item 2 in the draft? Does the property description need to be delivered? Should persons acting on behalf of the client be included here to, if they view the property or directly negotiate with**

the owner? Does this need to be qualified to say “viewed with the owner?” WRA Forms Committee said “personally viewed.”

- Should there be specific mention of attending a showing? Or would that be covered by “viewed by” under item 2? WRA Forms Committee said “personally viewed.”
- In item 3 in the definition it calls for delivery of the property description by the Firm to the client if the property was located by or negotiated for by the Firm and its agents. See the modification made.

The WRA Forms Committee was in favor of item 2 referring to properties “personally viewed.” They noted that the Cooperation section says the client is to notify the firm if the client locates property so no written notice is needed with regard to item 2. They suggested that item 3 does not need a notice if the property was showed to the Buyer or Tenant. The concern was raised about how to stop an agent from sending a list of 20 properties from the MLS and claiming they are protected even if there was nothing more happening. It was also noted this doesn’t specifically address open houses.

At its core, what activities will automatically protect properties, and what activities will protect properties if the property description is delivered? The idea is for the Firm to put the client on notice that these properties will be considered protected if you, the client, go back to them.

For reference, the protected buyers definition from the WB-1 Residential Listing Contract is:

■ **PROTECTED BUYER:** Means a buyer who personally, or through any Person Acting on Behalf of Buyer, during the term 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) Views the Property with Seller or negotiates directly with Seller by communicating with Seller regarding any potential terms upon which the buyer might acquire an interest in the Property; or
- 3) Attends an individual showing of the Property or communicates with agents of the Firm or cooperating firms regarding any potential terms upon which the buyer might 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 three days after the earlier of expiration or termination (lines 263-271) of the Listing. The requirement in 3), to deliver the 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 identified in the Listing, by the identification of the individuals in the Listing; or,
 - b) If a buyer has requested that the buyer’s identity remain confidential, by delivery of a written notice identifying the firm or agents with whom the buyer negotiated and the date(s) of any individual showings or other negotiations.

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

◆ **Definition of Rental Agreement – New! (Draft 5, Lines 230-232):**

Because of the new section for rental provisions and because it was thought best to just use the terms “rental” and “rental agreement” rather than getting into “lease” terminology since rental agreement is the broader term, this proposed definition was added to Draft 5. It is based on the definition in the landlord-tenant statutes in Chapter 704.

■ **RENTAL AGREEMENT:** "Rental Agreement" means an oral or written agreement between a landlord and tenant, for the rental or lease of a specific dwelling unit or premises, in which the landlord and tenant agree on the essential terms of the tenancy, such as rent; it includes a lease, but not an agreement to enter into a rental agreement in the future.

⇒ The WRA Forms Committee approved. Is this acceptable?

◆ **Definition of Tenant (Draft 5, Lines 233-234) – NEW!**

Because of the new section for rental provisions it was thought best to add this definition:

■ **TENANT:** "Tenant" means the party executing this Agreement in the context where the party is seeking to acquire an interest in real estate by ~~lease or~~ rental agreement.

⇒ The WRA Forms Committee approved. Is this acceptable?

◆ **Notice about Sex Offender Registry (Draft 5, Lines 235-237):** This is the same as before with additions made that come from the WB-6 and the WB-1.

⇒ This was adopted by the DSPS Real Estate Contractual Forms Advisory Committee and the WRA Forms Committee.

◆ **Termination of Agreement (Draft 5, 238-246):** This has been modified to make it like the similar provision in the WB-1 and to include the "client" terminology:

TERMINATION OF AGREEMENT Neither ~~Buyer-Client~~ nor the Firm has the legal right to unilaterally terminate this Agreement absent a material breach of contract by the other party. ~~Buyer-Client~~ understands that the parties to this Agreement are ~~Buyer-Client~~ and the Firm. Agents for the 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 agent(s)' supervising broker. ~~Buyer-Client~~ and the Firm agree that any termination of this Agreement by either party before the date stated on lines xxx-xxx shall be effective by ~~Buyer-Client~~ 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-Client~~ in accordance with lines xx-xx.

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

⇒ This was adopted by the DSPS Real Estate Contractual Forms Advisory Committee and the WRA Forms Committee.

⇒ It would it be advisable to revise the WB-47 Amendment to Buyer Agency/Tenant Representation Agreement to make the same 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. See the WB-47 draft with a couple of tweaks to the terminology. The WRA Forms Committee approved.

◆ **Extension of Agreement Term (Draft 5, lines 247-253):** 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. The term "Protected Property" was also inserted parenthetically after the language describing that concept. Again the "Client" terminology has been added.

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 the Firm or its agents, ~~Buyer-Client~~ or any Person Acting on Behalf of ~~Buyer-Client~~, or 2) which was the subject of a written proposal submitted by ~~Buyer-Client~~ or any Person Acting on Behalf of ~~Buyer-Client~~ (Protected Property). If this extension is based on the Firm's or the Firm's agent(s)' Location 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-Client~~ no later than three days after termination or expiration of this Agreement.

⇒ This was adopted by the DSPS Real Estate Contractual Forms Advisory Committee and the WRA Forms Committee.

◆ **Delivery (Draft 5, Lines 254-276):** Added in the Delivery of Documents and Written Notices from the WB-1 draft with terminology modifications. Deleted the Delivery definition from Definitions section. Moved the section to page 5 of the form.

⇒ **This change was adopted by the DSPS Real Estate Contractual Forms Advisory Committee and WRA Forms Committee concurred (except for the “Client” terminology).**

◆ **Rental Provisions – NEW! (Lines 277-278 of Draft 5):** This is the introduction to the section of provisions in this draft relating only to tenant representation/rental transactions. The introduction that was developed by the DSPS Committee is shown here and in the draft. The idea was that you can check a box to create an agreement that is only for tenant representation. If you don’t check the box then you fill in the rental provisions. To exclude the rental provisions you would indicate “will not” at line 12, or you might be able to line out the section or write into additional provisions that lines 277-321 are removed and not a part of the agreement.

RENTAL PROVISIONS:

LIMITATION TO TENANT REPRESENTATION ONLY: If this box is checked, lines xx-xx pertaining to purchase provisions are deleted. This agreement shall be limited to the Firm locating or negotiating an interest in rental property.

⇒ **The WRA Forms Committee approved. Is this acceptable?**

⇒ **Rent Range (Draft 5, Line 279) Brand new!** This is new to this form and provides a line where the Client may indicate or describe the rent that is desired, which may be a range.

⇒ **The WRA Forms Committee approved. Is this acceptable?**

◆ **Tenant Representation Scope of Agreement (Draft 5, Lines 280-283) Brand new!:** This says that the rent range is an initial search parameter, otherwise this reads like the scope for buyer agency/purchase, and says this section applies to all Wisconsin real estate, except excluded properties.

⇒ **Should the “scope of agreement” label be removed as was done at the beginning for purchases at lines 13-16? See tracking in draft.**

⇒ **Is this acceptable?**

◆ **Tenant Representation Excluded Properties and Limited Excluded Properties (Draft 5, Lines 284-294) Brand new!:** This is new to this form and it is the same as the subsections of the same name appearing at the beginning of the form with regard to buyer agency. It was thought best to maintain the same format versus making it shorter. In Excluded Properties the prospective tenant can name specific properties that they do not wish to consider as well as geographic and other limitations. In other words the tenant indicates what they may be interested in by excluding what they are not interested in. In the Limited Exclusion Properties subsection any properties that are the subject of another tenant representation or similar agency agreement can be indicated, along with any timeframe relevant to the exclusion. The exclusions in this area will presumably be different in terms of properties and properties to exclude. For example, no high rises, nothing in Milwaukee, not the rental looked at before and not the one owned by my ex!

⇒ **Is this acceptable?**

Tenant Representation Compensation (Draft 5, Line 395) Brand new! This is new to this form and states:

The Firm’s rental compensation shall be:

⇒ Is this acceptable?

◆ **Tenant Representation Commission (Draft 5, Lines 296-297) Brand new!** This is new to this form and provides blank lines to state the commission.

⇒ Is this acceptable?

◆ **Tenant Representation Commission Earned (Draft 5, Lines 298-301) Brand new!** This is new to this form and is similar to the provision on the first page pertaining to the earning of commission under buyer agency.

Without the tracking the section in Draft 5 says:

■ **COMMISSION EARNED:** The Firm has earned the Firm's commission if during the term of this Agreement (or any extension of it). Tenant or any Person Acting on Behalf of Tenant acquires an Interest in Property or enters into an enforceable Rental Agreement, at any terms and rent acceptable to owner and Tenant, regardless of the rent range.

⇒ Should this refer just to rental agreements or should it also mention “acquiring in Interest in Property”?

⇒ Is this acceptable?

◆ **Tenant Representation Commission Due and Payable (Draft 5, Lines 301-312) Brand new!** This is new to this form and indicates commission is due and payable upon execution of the rental agreement, or at the commencement of the rental agreement term even if the Tenant does not take occupancy, or one half upon execution and one-half upon occupancy, or something else. Should some of this be removed to simplify this? Are there other points that should be added?

Without the tracking the section in Draft 5 says:

■ **COMMISSION DUE AND PAYABLE:** Once earned, the Firm's commission is due and payable CHECK AND COMPLETE AS APPLICABLE:

- Upon execution of the Rental Agreement; (NOTE: THIS CHOICE APPLIES IF NO BOX IS CHECKED)
- At the commencement of the Rental Agreement term, even if the Tenant does not take occupancy, unless otherwise agreed in writing;
- One-half upon execution of the Rental Agreement and one-half upon occupancy; or
- _____

■ **COMMISSION CALCULATION:** Any percentage commission shall be calculated based on CHECK AND COMPLETE AS APPLICABLE:

- Total rent for the Rental Agreement term, or
- _____

⇒ Comments? Other better ways to say or configure these points?

⇒ Should there be a heading for COMMISSION CALCULATION at line 309, similar to the one at lines 38-40 in the purchase section?

⇒ Is this acceptable?

◆ **Tenant Representation Payment by Owner or Owner's Agent (Draft 5, Lines 313-316) Brand new!** This is new to this form and provides that the Firm is authorized and should look for its commission

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from the owner/landlord or the owner's agent (lease listing broker or property manager) first. The tenant pays any amount not paid by them.

⇒ **Is this acceptable?**

◆ **Tenant Representation Other Compensation (Draft 5, Lines 317-319) Brand new!** This is new to this form and similar to the provision for buyer agency on the first page only this is for tenant representation.

⇒ **Is this acceptable?**

◆ **Tenant Qualifications (Draft 5, Lines 320-321) Brand new!** This is new to this form and states: Client agrees to pay any credit report fees or background check fees charged by the owner or the owner's agent.

⇒ **Is this acceptable?**

◆ **Additional Provisions, Addenda (Draft 5, Lines 322-327):** The language here marks a division – this starts the short ending section of provisions that have applicability to both buyer agency and tenant representation. This includes the Additional Provisions, Addenda, etc.

⇒ **Is this acceptable? Other suggestions for language and ways to mark the separation of the sections? These lines, as well as everything else until the end, would be referenced as general on line 53.**

◆ **Term of the Agreement (Draft 5, Lines 328-331):** This is the same as before with some formatting changes.

⇒ **This change was adopted by the DSPS Real Estate Contractual Forms Advisory Committee and WRA Forms Committee concurred.**

◆ **Signature section and lines (Draft 5, Lines 335-350):** This was modified similarly to the WB-1, but the terminology was changed to say “Client” instead of Buyer.

⇒ **This change was adopted by the DSPS Real Estate Contractual Forms Advisory Committee and WRA Forms Committee concurred.**

WB36RevisionDSPS1-11-17Dr5

COMMERCIAL WB-36 REVISIONS

To: DSPS Real Estate Contractual Forms Advisory Committee
From: WRA Forms Committee
Date: January 3, 2017
RE: **WB-XX Commercial Buyer Agency/Tenant Representation Agreement**

A CHANGE IN DIRECTION: After much reflection and listening to input from the brokers who wish to use the WB-36 primarily for residential transactions as well as commercial practitioners, the DSPS Real Estate Contractual Forms Advisory Committee agreed to make one buyer agency/tenant representation agreement that is primarily residential and a second buyer agency/tenant representation agreement that is designed for the commercial/business brokers. This memo addresses the commercial version.

The following reviews the proposed draft for commercial buyer agency/tenant representation agreement, based on input from commercial practitioners from the WRA Forms Committee, from the Commercial Association of REALTORS® and from various market areas such as South Central and Northeast. The line numbers in this memo refer to the Dec 2016 DRAFT, file Commercialwb-36 DRAFT_Dec2016d.

This memo will overview the draft and will not discuss any provisions in depth that are the same or substantially similar to the WB-36 Residential Buyer Agency/Tenant Representation Agreement.

WB-XX Commercial Buyer Agency/Tenant Representation Agreement

◆ **Chapter 452 Terminology.** The terminology throughout this form is modified to match the Wis. Stat. chapter 452 revisions wherein the proposed terminology refers 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.

This form does not have separate sections because commercial clients tend to shift from purchasing to leasing and back quite readily and practitioners feel it is best to not tie the client to one choice or the other. In this proposed draft, the party entering into the agency agreement is called the “Client”.

- ◆ **First caption (line 1) and Agency Authorization on lines 1-6:** Same as residential WB-36.
- ◆ **Note in Box (Lines 7-10):** Same as residential WB-36.
- ◆ **Purchase Price Range (Line 11):** 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.**”

◆ **Rent Range (Line 12):** This item is necessary to meet the requirements of Wis. Stat. § 240.10(1) for an enforceable real estate contract with regards to a potential leasing of the desired space/property.

◆ **Scope of Agreement and Client's Search Request(Lines 13-20):** While the scope is similar with regard to properties (in Wisconsin as long as not excluded) the Client's Search Request is different in that it allows an affirmative statement of the type of property the client is looking for, as requested by commercial practitioners. The search request provides direction for the firm in its property search, but does not limit or bind the firm's authority or pool of properties, nor does the price or rent range.

■ **SCOPE OF AGREEMENT:** The Firm's authority under this Agreement applies to Property except for Excluded Properties on lines xx-xx, regardless of property type or the Search Request on lines xx-xx.

■ **CLIENT'S SEARCH REQUEST:** Client is looking for the following property (property type, function, location, approximate size, etc., as applicable): _____

_____. The parties understand that Client's wishes may change during the search for properties and this information, as well as the Purchase Price Range and the Rent Range, serve to guide the Firm's initial efforts only.

◆ **Property Types Not Included/Excluded Properties (Lines 21-30):** This provides the opportunity to more globally exclude property types or locations, and to exclude specific properties. There is only one section to exclude specific properties so it will include Protected Properties as well as other particular properties not subject to the Agreement.

■ **PROPERTY TYPES NOT INCLUDED:** Identify types of properties excluded from this Agreement (e.g. geographic, limitations on property type, etc.): _____

■ **EXCLUDED PROPERTIES:** Client excludes the following properties (indicate if there is a date when the exclusion terminates): _____

If Client Acquires an Interest in any Properties Protected under a prior buyer agency or tenant representation agreement, Client may owe commission to both the prior firm and this Firm, unless those Protected Properties are excluded from this Agreement or unless otherwise agreed to in writing. Insert additional addresses or descriptions of Excluded Properties, if any, at lines xxx-xxx or attach as an addendum per lines xxx-xxx.

COMMISSION

◆ **Compensation/Payment of Commission by Owner or Owner's Agent (Lines 31-35):** These lines introduce the commission section and establish the Firm's authority to seek payment of commission from the owner or owner's agent, with the client responsible to pay the balance.

◆ **Purchase Commission (Earned, Due and Payable, Calculation) (Lines 36-50):** These lines set the commission and indicate how a commission for a purchase, option, exchange, etc. is earned, when it is due and payable and how it is calculated. This is substantially the same as in the residential WB-36.

PURCHASE COMMISSION (for purchase, option, exchange or an effective change in ownership or control): _____

■ **PURCHASE COMMISSION EARNED:** The Firm has earned the Firm's purchase commission if during the term of this Agreement (or any extension of it), Client or any Person Acting on Behalf of Client 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 Client, regardless of the purchase price range or Client's Search Request.

■ **PURCHASE COMMISSION DUE AND PAYABLE:** Once earned, the Firm's purchase 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.

■ **COMMISSION CALCULATION:** A percentage commission shall be calculated based on the following if earned above: (i) for a purchase or option, the total consideration in the transaction, or (ii) for an exchange or an effective change in ownership or control, the fair market value of the Property in the transaction.

OTHER PURCHASE COMPENSATION:

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

◆ **Lease Commission (Earned, Due and Payable, Calculation) (Lines 51-72):** These lines set the commission and indicate how a lease commission is earned, a series of check boxes for when it is due and payable and how it is calculated. Commission is due and payable upon execution of the lease, upon completion of leasehold improvements, one half upon execution and one-half upon occupancy, or something else written on the blank line provided. Should some of this be removed to simplify this? Are there other points that should be added?

LEASE COMMISSION: _____

■ **LEASE COMMISSION EARNED:** The Firm has earned the Firm's lease commission if during the term of this Agreement (or any extension of it), Client or any Person Acting on Behalf of Client acquires an Interest in Property, for example, by executing and consummating a lease at terms and rent acceptable to owner and Client, regardless of the rent range.

■ **LEASE COMMISSION DUE AND PAYABLE:** Once earned, the Firm's commission is due and payable

CHECK AND COMPLETE AS APPLICABLE:

- | | |
|--------------------------|--|
| <input type="checkbox"/> | Upon execution of the lease; |
| <input type="checkbox"/> | Upon completion of leasehold improvements; |
| <input type="checkbox"/> | One-half upon execution of the lease and one-half upon occupancy; |
| <input type="checkbox"/> | Upon renewal of optional extended terms negotiated in the original lease; or |
| <input type="checkbox"/> | |

Any percentage commission shall be calculated based on **CHECK AND COMPLETE AS APPLICABLE:**

- | | |
|--------------------------|---------------------------|
| <input type="checkbox"/> | Total annual net rent; or |
| <input type="checkbox"/> | |

OTHER LEASING COMPENSATION:

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

- ◆ **Lien Notice (Lines 73-78):** Same as residential WB-36.
- ◆ **Delivery (Lines 79-101):** Same as residential WB-36.
- ◆ **Firm's Duties (Lines 102-104):** Same as residential WB-36.
- ◆ **Cooperation (Lines 105-112):** Same as residential WB-36.
- ◆ **Earnest Money (Lines 113-117):** Same as residential WB-36.

- ◆ **Non Discrimination (Lines 118-121)**: Same as residential WB-36.
- ◆ **Dispute Resolution (Lines 122-126)**: Same as residential WB-36.
- ◆ **Disclosure to Clients (Lines 127-208)**: Same as residential WB-36.
- ◆ **Non-Confidential Information at lines 209-213**: Same as residential WB-36.
- ◆ **Non-Exclusive Relationship (Lines 214-218)**: Same as residential WB-36.
- ◆ **Indemnification (Lines 219-227)**: This is new and it attempts to extend a hold harmless/indemnification agreement both ways between the Firm and the Client. **There is undoubtedly better language that might be used – would love your suggestions!** One alternative might be:

The Firm shall indemnify and hold harmless the Client, its officers and employees from and against damages, liabilities, losses, costs, and expenses, but only to the extent caused by the negligent acts, errors or omissions of the Firm, or of those for whom the Firm is legally liable, which arise out of the Firm's performance of its services under this Agreement. Client agrees to indemnify the Firm against all damages, liabilities, losses, costs, and expenses, but only to the extent caused by the Client's negligent acts. Neither the Client nor the Firm shall be obligated to indemnify the other party in any manner whatsoever for the other party's negligence.

⇒ **Other better language? Is the provision in the draft or the provision above acceptable?**

- ◆ **Property Dimensions (Lines 228-232)**: Same as residential WB-36.
- ◆ **Definitions –Line 233**: Note the introductory language that eliminates any need to repeat “as used in this Agreement” within various individual definitions:

As used in this Agreement, the following definitions apply:

⇒ **Is this acceptable?**

- ◆ **Definition of Adverse Fact (Lines 234-240)**: Same as residential WB-36.
- ◆ **Definition of Assets (Lines 241-242)**: This was based on the business forms and is a general description of business assets. This term appears in the definition of Property.

■ ASSETS: "Assets" means fixtures, goodwill, stock-in-trade, trade fixtures, accounts receivable and any other personal property.

⇒ **Is this acceptable?**

- ◆ **Definition of Client (Lines 243-244)**: This was thought to be a good neutral term to encompass both clients who are buyers and clients who are tenants.

■ CLIENT: "Client" means the party executing this Agreement and seeking to acquire an interest in real estate or a business by purchase, lease, rental, option, exchange or any other manner.

⇒ **Is this acceptable?**

- ◆ **Definition of Deadlines-Days (Lines 245-246)**: Same as residential WB-36.

- ◆ **Definition of Firm (247):** Same as residential WB-36.
- ◆ **Definition of Interest in Property (Lines 248-249):** Same as residential WB-36.
- ◆ **Definition of Locate an Interest in Property (Lines 250-251):** Same as residential WB-36.
- ◆ **Definition of Material Adverse Fact (Lines 252-255):** Same as residential WB-36.
- ◆ **Definition of Negotiate the Acquisition of an Interest in Property (Lines 256-261):** Same as residential WB-36.
- ◆ **Definition of Person Acting on Behalf of Client (Lines 262-266):** This is similar to the definitions in the residential WB-36 for Person Acting on Behalf of Buyer and Person Acting on Behalf of Tenant, but in this agreement there is one unified term, primarily because there are not two separate sections for buyers and tenants.

■ **PERSON ACTING ON BEHALF OF CLIENT:** “Person Acting on Behalf of Client” means any person joined in interest with Client, or otherwise acting on behalf of Client, including but not limited to Client’s immediate family, agents, 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 Client in whole or in part.

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

- ◆ **Definition of Property (line 267):**

■ **PROPERTY:** “Property” means real property located within the state of Wisconsin and Assets.

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

- ◆ **Definition of Protected Property (Draft 5, lines 268-278):** Same as residential WB-36 – same questions and discussion and challenges!

■ **PROTECTED PROPERTY:** “Protected Property” means any Property that during the term of a buyer agency or tenant representation agreement was:

- 1) the subject of a written proposal by Client, or any Person Acting on Behalf of Client, submitted to the Property owner or the owner’s agent;
- 2) was personally viewed by or directly negotiated for by Client, or any Person Acting on Behalf of Client. Direct negotiation means communicating with the owner or owner’s agent regarding any potential terms on which Client might acquire an Interest in the Property; or
- 3) located or negotiated for by the Client’s firm or its agents, but only if the Firm or its agents deliver the description of the Property to Client, in writing, no later than three days after the earlier of expiration or termination (lines xxx-xxx) of the agreement except no written notice is required if the firm or its agents showed the property to the Client.

- **Is this acceptable or are there additional changes?** If the client submits an offer/proposal that makes the property protected – should that also apply if the offer/proposal comes from a person acting on behalf of the client? Item 1 in the definition in Draft 5 is stated that way.
- **Is this acceptable or are there additional changes?** What if the client views the property or directly negotiates with the owner as stated in item 2 in the draft? Does the property description need to be delivered? Should persons acting on behalf of the client be included here to, if they view the property or directly negotiate with the owner? Does this need to be qualified to say “viewed with the owner?” WRA Forms Committee said “personally viewed.”

- Should there be specific mention of attending a showing? Or would that be covered by “viewed by” under item 2? WRA Forms Committee said “personally viewed.”
- In item 3 in the definition it calls for delivery of the property description by the Firm to the client if the property was located by or negotiated for by the Firm and its agents. See the modification made.

The WRA Forms Committee (when reviewing the same provision in the residential WB-36) was in favor of item 2 referring to properties “personally viewed.” They noted that the Cooperation section says the client is to notify the firm if the client locates property so no written notice is needed with regard to item 2. They suggested that item 3 does not need a notice if the property was showed to the Buyer or Tenant. The concern was raised about how to stop an agent from sending a list of 20 properties from the MLS and claiming they are protected even if there was nothing more happening. It was also noted this doesn’t specifically address open houses.

At its core, what activities will automatically protect properties, and what activities will protect properties if the property description is delivered? The idea is for the Firm to put the client on notice that these properties will be considered protected if you, the client, go back to them. Other than in a written proposal will the client know the description/address of properties they see, or should they be expected to?

For reference, the protected buyers definition from the WB-1 Residential Listing Contract is:

■ **PROTECTED BUYER:** Means a buyer who personally, or through any Person Acting on Behalf of Buyer, during the term 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) Views the Property with Seller or negotiates directly with Seller by communicating with Seller regarding any potential terms upon which the buyer might acquire an interest in the Property; or
- 3) Attends an individual showing of the Property or communicates with agents of the Firm or cooperating firms regarding any potential terms upon which the buyer might 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 three days after the earlier of expiration or termination (lines 263-271) of the Listing. The requirement in 3), to deliver the 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 identified in the Listing, by the identification of the individuals in the Listing; or,
 - b) If a buyer has requested that the buyer’s identity remain confidential, by delivery of a written notice identifying the firm or agents with whom the buyer negotiated and the date(s) of any individual showings or other negotiations.

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

◆ **Additional Provisions, Addenda (Lines 279-288):** Same as residential WB-36.

◆ **Notice about Sex Offender Registry (Lines 289-291):** Same as residential WB-36.

◆ **Termination of Agreement (Lines 292-300):** Same as residential WB-36.

⇒ **It would it be advisable to revise the WB-47 Amendment to Buyer Agency/Tenant Representation Agreement to make the same 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. See the WB-47 draft with a couple of tweaks to the terminology.**

◆ **Extension of Agreement Term (Lines 301-307):** Same as residential WB-36.

◆ **Term of the Agreement (Lines 308-311):** Same as residential WB-36.

- ◆ **Signature section and lines (Lines 315-334)**: Similar to the residential WB-36, but has two entity signature blocks that appear before the lines individual client signatures.

WB36RevisionDSPA1-11-17Commercial

WB-36 RESIDENTIAL BUYER AGENCY/TENANT REPRESENTATION AGREEMENT

DRAFT 5 (Clear)2

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

7 **If Client has contact, or has had previous contact with an owner, firm or its agents in locating and/or**
8 **negotiating the Acquisition of an Interest in Property and Client's contact with those parties results in**
9 **the Firm not collecting full compensation under this Agreement from owner or owner's agent, Client**
10 **shall be responsible to pay any uncollected amount.**

PURCHASE PROVISIONS:

11 The Firm will represent Buyer as a Buyer's Agent to locate or negotiate a purchase interest in a property (see xx-xx). This
12 Agreement (will) (will not) ~~STRIKE ONE~~ ("will not" if none is stricken) apply to tenant representation. See Complete lines
13 xxx-xxx if it will. ~~If this Agreement will not apply to tenant representation, lines xxx-xxx are deleted.~~

14 ■ **PURCHASE PRICE RANGE:**

15 The purchase price range provides initial search parameters, but the Firm's authority under this Agreement extends to all
16 property within the state of Wisconsin except for those properties excluded as Excluded Properties on lines xx-xx, and
17 applies to any properties under Limited Excluded Properties after the applicable time for the exclusion has ended.

18 ■ **EXCLUDED PROPERTIES:** Identify any specific properties or limitations on the scope of this Agreement, including
19 geographic limitations or limitations on types of properties included under this Agreement, by excluding the following from
20 this Agreement:- _____

21 _____
22 ■ **LIMITED EXCLUSION PROPERTIES:** The following properties are excluded from this Agreement until _____
23 [Insert Date]. If any Property listed below is a Protected Property the exclusion period shall run until the expiration of the
24 prior firm's legal rights. _____

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

27 **CAUTION: Buyer's failure to exclude a Protected Property from prior buyer agency agreement(s) may result in**
28 **Buyer owing commissions under each buyer agency agreement. Buyer should consult prior firm(s) or Buyer's**
29 **legal counsel regarding obligations under any buyer agency agreement.**

30 **COMPENSATION** The Firm's compensation for purchase, option, exchange or an effective change in ownership or
31 control shall be: COMPLETE AS APPLICABLE

32 **COMMISSION:** _____
33 _____

34 ■ **COMMISSION EARNED:** The Firm has earned the Firm's commission if during the term of this Agreement (or any
35 extension of it), Buyer or any Person Acting on Behalf of Buyer acquires an Interest in Property or enters into an enforceable
36 written contract to acquire an Interest in Property, at any terms and price acceptable to owner and Buyer, regardless of the
37 purchase price range.

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

40 ■ **COMMISSION CALCULATION:** A percentage commission shall be calculated based on the following if earned above:
41 (i) for a purchase or option, the total consideration in the transaction, or (ii) for an exchange or an effective change in
42 ownership or control, the fair market value of the Property in the transaction.

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.

47 ■ **OTHER COMPENSATION:** _____
48 _____

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

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

GENERAL PROVISIONS:

55 The provisions on lines xx-xxx and xxx-xxx apply when the Client is a Buyer or a Tenant or both.

56 **LIEN NOTICE:** The Firm has the authority under section 779.32 of the Wisconsin Statutes to file a lien for com-
57 missions or compensation earned but not paid when due against the commercial real estate, or the interest in
58 the commercial real estate, if any, that is the subject of this Agreement. "Commercial real estate" includes all
59 real estate except (a) real property containing 8 or fewer dwelling units, (b) real property that is zoned for
60 residential purposes and that does not contain any buildings or structures, and (c) real property that is zoned
61 for agricultural purposes. move further down when formatting

62 **FIRM'S DUTIES** In consideration for Client's agreements, the Firm and its agents agree to use professional knowledge
63 and skills, and reasonable efforts, within the scope of Wis. Stat. Chapter 452 and in accordance with applicable law, to
64 assist Client to Locate an Interest in Property and Negotiate the Acquisition of an Interest in Property, as applicable.

65 **COOPERATION** Client agrees to cooperate with the Firm and its agents and to provide them accurate copies of all
66 relevant records, documents and other materials in Client's possession or control which are required in connection with the
67 purchase, option, or exchange of Property. Client agrees to be reasonably available for showings of properties. Client
68 authorizes the Firm and its agents to do those acts reasonably necessary to fulfill the Firm's responsibilities under this
69 Agreement including retaining subagents. Client shall promptly notify the Firm in writing of the description of any Property
70 Client locates and shall inform other firms, agents, sellers, property owners, etc., with whom Client comes into contact that
71 the Firm represents Client as Buyer's and/or Tenant's Agent for the purpose of acquiring an interest in Property and refer all
72 such persons to the Firm. Client shall also notify the Firm of the identity of all persons making inquiries concerning Client's
73 objectives stated in this Agreement.

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

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

83 **DISCLOSURE TO CLIENTS**

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

- 86 (a) The duty to provide brokerage services to you fairly and honestly.
- 87 (b) The duty to exercise reasonable skill and care in providing brokerage services to you.
- 88 (c) The duty to provide you with accurate information about market conditions within a reasonable time if you request it,
89 unless disclosure of the information is prohibited by law.
- 90 (d) The duty to disclose to you in writing certain Material Adverse Facts about a property, unless disclosure of the
91 information is prohibited by law. (See lines xxx-xxx.)
- 92 (e) The duty to protect your confidentiality. Unless the law requires it, the firm and its agents will not disclose your
93 confidential information or the confidential information of other parties. (See lines xxx-xxx.)
- 94 (f) The duty to safeguard trust funds and other property the firm or its agents holds.
- 95 (g) The duty, when negotiating, to present contract proposals in an objective and unbiased manner and disclose the
96 advantages and disadvantages of the proposals.

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

- 99 (a) The firm or one of its agents will provide, at your request, information and advice on real estate matters that affect
100 your transaction, unless you release the firm from this duty.
- 101 (b) The firm or one of its agents must provide you with all material facts affecting the transaction, not just Adverse Facts.
- 102 (c) The firm and its agents will fulfill the firm's obligations under the agency agreement and fulfill your lawful requests
103 that are within the scope of the agency agreement.
- 104 (d) The firm and its agents will negotiate for you, unless you release them from this duty.
- 105 (e) The firm and its agents will not place their interests ahead of your interests. The firm and its agents will not, unless

106 required by law, give information or advice to other parties who are not the firm's clients, if giving the information or
107 advice is contrary to your interests.
108 If you become involved in a transaction in which another party is also the firm's client (a "multiple representation
109 relationship"), different duties may apply.

110 **MULTIPLE REPRESENTATION RELATIONSHIPS AND DESIGNATED AGENCY**

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

114 ■ Designated agency means that different agents with the firm will negotiate on behalf of you and the other client or
115 clients in the transaction, and the firm's duties to you as a client will remain the same. Each agent will provide
116 information, opinions, and advice to the client for whom the agent is negotiating, to assist the client in the negotiations.

117 Each client will be able to receive information, opinions, and advice that will assist the client, even if the information,
118 opinions, or advice gives the client advantages in the negotiations over the firm's other clients. An agent will not reveal
119 any of your confidential information to another party unless required to do so by law.

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

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

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

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

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

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

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

140 **SUBAGENCY**

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

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

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

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

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

156 1) Material Adverse Facts, as defined in § 452.01 (5g) of the Wisconsin statutes (see lines xxx-xxx).

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

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

162 **CONFIDENTIAL INFORMATION:** _____
163 _____
164 _____
165 **NON-CONFIDENTIAL INFORMATION:** The Firm and its agents have permission to disclose Client's identity and financial
166 qualification information to an owner, owner's agents and other third parties without prior consent from Client, unless otherwise
167 provided on lines xx-xx. The Firm and its agents may also disclose the following: _____
168 _____
169 _____

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

175 **PROPERTY DIMENSIONS** Client acknowledges that real property dimensions, total square footage and total acreage
176 information provided to Client may be approximate due to rounding and may vary due to different formulas which can be
177 used to calculate these figures. Unless otherwise indicated, property dimension figures have not been verified by survey.
178 **CAUTION: Client should verify any property dimension or total square footage/acreage calculation which is**
179 **material to Client.**

180 **DEFINITIONS** As used in this Agreement, the following definitions **pertain/apply:**

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

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

- 183 1) Significantly and adversely affecting the value of the Property;
- 184 2) Significantly reducing the structural integrity of improvements to real estate; or
- 185 3) Presenting a significant health risk to occupants of the Property.

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

188 ■ **BUYER:** "Buyer" means the party executing this Agreement in the context where the party is seeking to acquire an
189 interest in real estate by purchase, option, exchange or any other manner **other than by Rental Agreement.**

190 ■ **CLIENT:** "Client" means the party executing this Agreement and seeking to acquire an interest in real estate by
191 purchase, lease, rental, option, exchange or any other manner.

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

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

195 ■ **INTEREST IN PROPERTY:** "Interest in Property" means a purchase, lease, rental, option, exchange or other acquisition of
196 Property unless specifically excluded at lines xx-xx or xxx-xxx, in additional provisions (lines xxx-xxx) or elsewhere in this
197 Agreement.

198 ■ **LOCATE AN INTEREST IN PROPERTY:** "Locate an Interest in Property" means to, with the cooperation of Client,
199 identify, evaluate, and determine the availability of the Interest in Property sought by Client.

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

204 ■ **NEGOTIATE THE ACQUISITION OF AN INTEREST IN PROPERTY:** "Negotiate the Acquisition of an Interest in
205 Property" means to assist a Client, within the scope of this Agreement, to ascertain terms and conditions upon which an
206 Interest In Property may be acquired, which may include facilitating or participating in the discussions of the terms of a
207 potential contract, completing appropriate contractual forms, presenting either party's contractual proposal with an
208 explanation of the proposal's advantages and disadvantages, or otherwise assisting Client in reaching an agreement to
209 acquire the Interest in Property sought by Client.

210 ■ **PERSON ACTING ON BEHALF OF BUYER:** "Person Acting on Behalf of Buyer" means any person joined in interest
211 with Buyer, or otherwise acting on behalf of Buyer, including but not limited to Buyer's immediate family, agents, employees,
212 directors, managers, members, officers, owners, partners, incorporators and organizers, as well as any and all corporations,
213 partnerships, limited liability companies, trusts or other entities controlled by, affiliated with or owned by Buyer in whole or in
214 part.

215 ■ **PERSON ACTING ON BEHALF OF TENANT:** "Person Acting on Behalf of Tenant" means any person joined in interest
216 with Tenant, or otherwise acting on behalf of Tenant, including but not limited to Tenant's immediate family, agents,
217 employees, directors, managers, members, officers, owners, partners, incorporators and organizers, as well as any and all
218 corporations, partnerships, limited liability companies, trusts or other entities controlled by, affiliated with or owned by Tenant
219 in whole or in part.

220 ■ **PROPERTY:** "Property", means real property located within the state of Wisconsin.

221 ■ **PROTECTED PROPERTY:** "Protected Property" means any Property that during the term of a buyer agency or tenant
222 representation agreement was:

223 1) the subject of a written proposal by Buyer or Tenant, or any Person Acting on Behalf of Buyer or Tenant submitted
224 to the Property owner or owner's agent.
225 2) was personally viewed by or directly negotiated for by Buyer or Tenant, or any Person Acting on Behalf of Buyer or
226 Tenant. Direct negotiation means communicating with the owner or owner's agent regarding any potential terms on
227 which Buyer or Tenant might acquire an Interest in the Property; or
228 3) located or negotiated for by the Buyer's or Tenant's firm or its agents, the Buyer or Tenant or any Person Acting on
229 Behalf of Buyer or Tenant, but only if the Firm or its agents deliver the description of the Property to Buyer or
230 Tenant, in writing, no later than three days after the earlier of expiration or termination (lines xxx-xxx) of the
231 agreement, except no written notice is required if the firm or its agents showed the property to the Buyer or Tenant.

232 ■ **RENTAL AGREEMENT:** "Rental Agreement" means an oral or written agreement between a landlord and tenant, for
233 the rental or lease of a specific dwelling unit or premises, in which the landlord and tenant agree on the essential terms of
234 the tenancy, such as rent; it includes a lease, but not an agreement to enter into a rental agreement in the future.

235 ■ **TENANT:** "Tenant" means the party executing this Agreement in the context where the party is seeking to acquire an
236 interest in real estate by lease or rental agreement.

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

240 **TERMINATION OF AGREEMENT** Neither Client nor the Firm has the legal right to unilaterally terminate this Agreement
241 absent a material breach of contract by the other party. Client understands that the parties to this Agreement are Client and the
242 Firm. Agents for the Firm do not have the authority to terminate this Agreement, amend the compensation terms or shorten the
243 term of this Agreement, without the written consent of the agent(s)' supervising broker. Client and the Firm agrees that any
244 termination of this Agreement by either party before the date stated on lines xxx-xxx shall be effective by Client only if
245 stated in writing and delivered to the Firm in accordance with lines xx-xx and effective by the Firm only if stated in writing
246 by the supervising broker and delivered to Client in accordance with lines xx-xx.

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

249 **EXTENSION OF AGREEMENT TERM** The Agreement term is extended for a period of one year as to any Property
250 which during the term of this Agreement was: 1) located or negotiated for by the Firm or its agents, Client or any Person
251 Acting on Behalf of Client, or 2) which was the subject of a written proposal submitted by Client or any Person Acting on
252 Behalf of Client (Protected Property). If this extension is based on the Firm's or the Firm's agent(s)' Location of an
253 Interest in Property or Negotiation of the Acquisition an Interest in Property, this extension shall only be effective if a
254 written description of the Property is delivered to Client no later than three days after termination or expiration of this
255 Agreement.

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

259 (1) **Personal Delivery:** giving the document or written notice personally to the party, or the party's recipient for delivery if
260 named at line xx or xx.

261 Client's recipient for delivery (optional): _____

262 Firm's recipient for delivery (optional): _____

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

264 Client: (_____) _____ Firm: (_____) _____

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

268 (4) **U.S. Mail:** depositing the document or written notice postage prepaid in the U.S. Mail, addressed either to the
269 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
270 or xx.

271 Delivery address for Client: _____

272 Delivery address for Firm: _____

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

277 E-Mail address for Client: _____

278 E-Mail address for Firm: _____

RENTAL PROVISIONS:

279 **LIMITATION TO TENANT REPRESENTATION ONLY:** If this box is checked, lines xx-xx pertaining to purchase
280 provisions are deleted. This agreement shall be limited to the Firm locating or negotiating an interest in rental property.

281 ■ **RENT RANGE:** _____

282 ~~■ SCOPE OF AGREEMENT:~~ The rent range provides initial search parameters, but the Firm's authority under this
283 Agreement extends to all property within the state of Wisconsin except for those properties excluded as Excluded
284 Properties on lines xx-xx, and applies to any properties under Limited Excluded Properties after the applicable time for
285 the exclusion has ended.

286 ■ EXCLUDED PROPERTIES: Identify any specific properties or limitations on the scope of this Agreement, including
287 geographic limitations or limitations on types of properties included under this Agreement. _____
288 _____

289 ■ LIMITED EXCLUSION PROPERTIES: The following properties are excluded from this Agreement until _____
290 [Insert Date]. If any Property listed below is a Protected Property the exclusion period shall run until the expiration of the
291 prior firm's legal rights. _____
292 _____

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

294 CAUTION: Tenant's failure to exclude a Protected Property from prior agreement(s) may result in owing
295 commissions under each agency agreement. Tenant should consult prior firm(s) or Tenant's legal counsel
296 regarding obligations under any tenant representation or similar agency agreement.

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

298 COMMISSION: _____
299 _____

300 ■ COMMISSION EARNED: The Firm has earned the Firm's commission if during the term of this Agreement (or any
301 extension of it), Tenant or any Person Acting on Behalf of Tenant acquires an Interest in Property or enters into an
302 enforceable Rental Agreement, at any terms and rent acceptable to owner and Tenant, regardless of the rent range.

303 ■ COMMISSION DUE AND PAYABLE: Once earned, the Firm's commission is due and payable CHECK AND COMPLETE
304 AS APPLICABLE:

305 Upon execution of the Rental Agreement; (NOTE: THIS CHOICE APPLIES IF NO BOX IS CHECKED)
306 At the commencement of the Rental Agreement term, even if the Tenant does not take occupancy, unless otherwise
307 agreed in writing;

308 One-half upon execution of the Rental Agreement and one-half upon occupancy; or
309 _____
310 _____

311 ■ COMMISSION CALCULATION: Any percentage commission shall be calculated based on CHECK AND COMPLETE AS
312 APPLICABLE:

313 Total rent for the Rental Agreement term, or
314 _____
315 _____

316 ■ PAYMENT BY OWNER OR OWNER'S AGENT: The Firm is hereby authorized to seek payment of commission from the
317 owner (e.g., lessor or landlord) or the owner's agent (e.g., listing firm) provided that all parties to the transaction give prior
318 written consent. If the owner or the owner's agent does not pay the full amount due, Tenant agrees to pay any remaining
319 balance due to the Firm.

320 ■ OTHER COMPENSATION: _____
321 _____

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

323 ■ TENANT QUALIFICATIONS: Tenant agrees to pay any credit report fees or background check fees charged by the
324 owner or the owner's agent.

325 **ADDITIONAL PROVISIONS** _____
326 _____
327 _____
328 _____

329 **ADDENDA** The attached _____
330 _____ is/are made a part of this Agreement.

331 **TERM OF THE AGREEMENT** From the _____ day of _____, _____ up
332 to and including midnight of the _____ day of _____,
333 Notwithstanding lines xxx-xxx, the Firm and Client agree that this Agreement (shall)(shall not) STRIKE ONE end ("shall" if
334 neither is stricken) when Client acquires an Interest in Property.

335 ■ BY SIGNING BELOW, CLIENT ACKNOWLEDGES RECEIPT OF A COPY OF THIS AGREEMENT AND HAS READ
336 ALL _____ PAGES AS WELL AS ANY ADDENDA AND ANY OTHER DOCUMENTS INCORPORATED INTO THIS
337 AGREEMENT.

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338 (x) _____
339 Client's Signature ▲ Print Name Here: ► Date ▲

340 (x) _____
341 Client's Signature ▲ Print Name Here: ► Date ▲

342 (x) _____
343 Client's Signature ▲ Print Name Here: ► Date ▲

344 (x) _____
345 Client's Signature ▲ Print Name Here: ► Date ▲

346 Client Entity Name (if any): _____
347 Print Name Here: ▲

348 (x) _____
349 Authorized Signature ▲ Print Name & Title Here ► Date ▲

350 Firm Name: _____
351 Print Name Here: ▲

352 (x) _____
353 Agent's Signature ▲ Print Name Here: ► Date ▲

WB-XX COMMERCIAL BUYER AGENCY/TENANT REPRESENTATION AGREEMENT

DRAFT Dec 2016

1 ■ **EXCLUSIVE AUTHORITY TO ACT AS BUYER'S AGENT/TENANT'S REPRESENTATIVE:** Client (see lines xxx-xxx)
2 gives the Firm and its agents the exclusive right to act as Buyer's Firm (hereinafter referred to as Buyer's Agent) and/or
3 Tenant's Firm (hereinafter referred to as Tenant's Agent) to Locate an Interest in Property and to Negotiate the Acquisition
4 of an Interest in Property for Client, except as excluded under lines xx-xx. Client agrees that during the term of this
5 Agreement, Client will not enter into any other agreements to retain any other buyer's or tenant's agent(s), except relative to
6 any properties excluded on lines xx-xx.

7 **If Client has contact, or has had previous contact with an owner, firm or its agents in locating and/or**
8 **negotiating the Acquisition of an Interest in Property and Client's contact with those parties results in**
9 **the Firm not collecting full compensation under this Agreement from owner or owner's agent, Client**
10 **shall be responsible to pay any uncollected amount.**

11 ■ **PURCHASE PRICE RANGE:** _____

12 ■ **RENT RANGE:** _____

13 ■ **SCOPE OF AGREEMENT:** The Firm's authority under this Agreement applies to Property except for Excluded
14 Properties on lines xx-xx, regardless of property type or the Search Request on lines xx-xx.

15 ■ **CLIENT'S SEARCH REQUEST:** Client is looking for the following property (property type, function, location,
16 approximate size, etc., as applicable): _____

17 _____
18 _____ . The parties understand that Client's
19 wishes may change during the search for properties and this information, as well as the Purchase Price Range and the
20 Rent Range, serve to guide the Firm's initial efforts only.

21 ■ **PROPERTY TYPES NOT INCLUDED:** Identify types of properties excluded from this Agreement (e.g. geographic,
22 limitations on property type, etc.): _____

23 _____
24 ■ **EXCLUDED PROPERTIES:** Client excludes the following properties (indicate if there is a date when the exclusion
25 terminates): _____

26 _____
27 If Client Acquires an Interest in any Properties Protected under a prior buyer agency or tenant representation agreement,
28 Client may owe commission to both the prior firm and this Firm, unless those Protected Properties are excluded from this
29 Agreement or unless otherwise agreed to in writing. Insert additional addresses or descriptions of Excluded Properties, if
30 any, at lines xxx-xxx or attach as an addendum per lines xxx-xxx.

31 **COMPENSATION** The Firm's compensation shall be as follows:

32 ■ **PAYMENT OF COMMISSION BY OWNER OR OWNER'S AGENT:** The Firm is hereby authorized to seek payment of
33 commission from the owner (e.g., seller or lessor) or the owner's agent (e.g., listing firm) provided that all parties to the
34 transaction give prior written consent. Client shall pay the Firm's compensation, reduced by any amounts the Firm receives
35 from the owner or owner's agent.

36 **PURCHASE COMMISSION** (for purchase, option, exchange or an effective change in ownership or control): _____
37 _____

38 _____
39 ■ **PURCHASE COMMISSION EARNED:** The Firm has earned the Firm's purchase commission if during the term of this
40 Agreement (or any extension of it), Client or any Person Acting on Behalf of Client acquires an Interest in Property or enters
41 into an enforceable written contract to acquire an Interest in Property, at any terms and price acceptable to owner and Client,
42 regardless of the purchase price range or Client's Search Request.

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

45 ■ **COMMISSION CALCULATION:** A percentage commission shall be calculated based on the following if earned above:
46 (i) for a purchase or option, the total consideration in the transaction, or (ii) for an exchange or an effective change in
47 ownership or control, the fair market value of the Property in the transaction.

48 **OTHER PURCHASE COMPENSATION:** _____
49 _____

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

51 **LEASE COMMISSION:** _____

52 _____

53

54

55 ■ **LEASE COMMISSION EARNED:** The Firm has earned the Firm's lease commission if during the term of this Agreement
56 (or any extension of it), Client or any Person Acting on Behalf of Client acquires an Interest in Property, for example, by
57 executing and consummating a lease at terms and rent acceptable to owner and Client, regardless of the rent range.

58 ■ **LEASE COMMISSION DUE AND PAYABLE:** Once earned, the Firm's commission is due and payable **CHECK AND**
59 **COMPLETE AS APPLICABLE:**

- 60 Upon execution of the lease;
- 61 Upon completion of leasehold improvements;
- 62 One-half upon execution of the lease and one-half upon occupancy;
- 63 Upon renewal of optional extended terms negotiated in the original lease; or
- 64 _____

65

66 ■ **COMMISSION CALCULATION:** Any percentage commission shall be calculated based on **CHECK AND COMPLETE AS**
67 **APPLICABLE:**

- 68 Total annual net rent **for the full lease term;** or
- 69 _____

70

71 **OTHER LEASING COMPENSATION:** _____

72

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

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

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

83 (1) **Personal Delivery:** giving the document or written notice personally to the party, or the party's recipient for delivery if
84 named at line xx or xx.

85 Client's recipient for delivery (optional): _____

86 Firm's recipient for delivery (optional): _____

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

88 Client: (_____) _____ Firm: (_____) _____

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

92 (4) **U.S. Mail:** depositing the document or written notice postage prepaid in the U.S. Mail, addressed either to the
93 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
94 or xx.

95 Delivery address for Client: _____

96 Delivery address for Firm: _____

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

101 E-Mail address for Client: _____

102 E-Mail address for Firm: _____

103 **FIRM'S DUTIES** In consideration for Client's agreements, the Firm and its agents agree to use professional knowledge
104 and skills, and reasonable efforts, within the scope of Wis. Stat. Chapter 452 and in accordance with applicable law, to
105 assist Client to Locate an Interest in Property and Negotiate the Acquisition of an Interest in Property, as applicable.

106 **COOPERATION** Client agrees to cooperate with the Firm and its agents and to provide them accurate copies of all
107 relevant records, documents and other materials in Client's possession or control which are required in connection with the
108 purchase, option, or exchange of Property. Client agrees to be reasonably available for showings of properties. Client
109 authorizes the Firm and its agents to do those acts reasonably necessary to fulfill the Firm's responsibilities under this
110 Agreement including retaining subagents. Client shall promptly notify the Firm in writing of the description of any Property

111 Client locates. Client will inform other firms, agents, sellers, property owners, etc., that the Firm represents Client as Buyer's
112 and/or Tenant's Agent for the purpose of acquiring Property and refer all such persons to the Firm. Client shall also notify the
113 Firm of the identity of all persons making inquiries concerning Client's objectives stated in this Agreement.

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

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

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

128 **DISCLOSURE TO CLIENTS**
129 Under Wisconsin law, a brokerage firm (hereinafter firm) and its brokers and salespersons (hereinafter agents) owe
130 certain duties to all parties to a transaction:

- 131 (a) The duty to provide brokerage services to you fairly and honestly.
- 132 (b) The duty to exercise reasonable skill and care in providing brokerage services to you.
- 133 (c) The duty to provide you with accurate information about market conditions within a reasonable time if you request it,
134 unless disclosure of the information is prohibited by law.
- 135 (d) The duty to disclose to you in writing certain Material Adverse Facts about a property, unless disclosure of the
136 information is prohibited by law. (See lines xxx-xxx.)
- 137 (e) The duty to protect your confidentiality. Unless the law requires it, the firm and its agents will not disclose your
138 confidential information or the confidential information of other parties. (See lines xxx-xxx.)
- 139 (f) The duty to safeguard trust funds and other property the firm or its agents holds.
- 140 (g) The duty, when negotiating, to present contract proposals in an objective and unbiased manner and disclose the
141 advantages and disadvantages of the proposals.

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

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

155 **MULTIPLE REPRESENTATION RELATIONSHIPS AND DESIGNATED AGENCY**

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

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

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

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

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

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

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

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

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

185 **SUBAGENCY**

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

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

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

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

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

201 1) Material Adverse Facts, as defined in § 452.01 (5g) of the Wisconsin statutes (see lines xxx-xxx).

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

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

207 **CONFIDENTIAL INFORMATION:** _____

208 _____

209 _____

210 **NON-CONFIDENTIAL INFORMATION:** The Firm and its agents have permission to disclose Client's identity and
211 financial qualification information to an owner, owner's agents and other third parties without prior consent from Client,
212 unless otherwise provided on lines xxx-xxx. The Firm and its agents may also disclose the following: _____

213 _____

214 _____

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

220 **INDEMNIFICATION** Client agrees to indemnify the Firm and its agents and to hold the Firm and its agents harmless on
221 account of any and all loss, damage, cost or expense, including attorneys' fees incurred by the Firm or its agents, arising
222 out of this Agreement, or the collection of fees or commissions due the Firm pursuant to the terms and conditions of this
223 Agreement, provided the loss, damage, cost, expense or attorneys' fees do not result because of the negligence,
224 misrepresentation or misconduct of the Firm or its agents relative to the lawful performance of this Agreement.

225 The Firm agrees to indemnify the Client and hold the Client harmless on account of any and all loss, damage, cost or
226 expense, including attorneys' fees incurred by the Client arising out of this Agreement, provided the loss, damage, cost,
227 expense or attorneys' fees do not result because of the negligence, misrepresentation or misconduct of the Client
228 relative to the lawful performance of this Agreement.

229 **PROPERTY DIMENSIONS** Client acknowledges that real property dimensions, total square footage and total acreage
230 information provided to Client may be approximate due to rounding and may vary due to different formulas which can be
231 used to calculate these figures. Unless otherwise indicated, property dimension figures have not been verified by survey.
232 **CAUTION: Client should verify any property dimension or total square footage/acreage calculation which is**
233 **material to Client.**

234 **DEFINITIONS** As used in this Agreement, the following definitions ~~pertain~~ apply:

- 235 ■ **ADVERSE FACT:** An "Adverse Fact" means any of the following:
 - 236 (a) A condition or occurrence that is generally recognized by a competent licensee as doing any of the following:
 - 237 1) Significantly and adversely affecting the value of the Property;
 - 238 2) Significantly reducing the structural integrity of improvements to real estate; or
 - 239 3) Presenting a significant health risk to occupants of the Property.
 - 240 (b) Information that indicates that a party to a transaction is not able to or does not intend to meet his or her obligations
241 under a contract or agreement made concerning the transaction.
- 242 ■ **ASSETS:** "Assets" means fixtures, goodwill, stock-in-trade, trade fixtures, accounts receivable and any other personal
243 property.
- 244 ■ **CLIENT:** "Client" means the party executing this Agreement and seeking to acquire an interest in real estate or a
245 business by purchase, lease, rental, option, exchange or any other manner.
- 246 ■ **DEADLINES-DAYS:** Deadlines expressed as a number of "days" from an event, such as acceptance, are calculated
247 by excluding the day the event occurred and by counting subsequent calendar days.
- 248 ■ **FIRM:** "Firm" means a licensed sole proprietor broker or a licensed broker business entity.
- 249 ■ **INTEREST IN PROPERTY:** "Interest in Property" means a purchase, leasehold, option, exchange or other acquisition of
250 Property unless specifically excluded at lines xx-xx, in additional provisions (lines xxx-xxx) or elsewhere in this Agreement.
- 251 ■ **LOCATE AN INTEREST IN PROPERTY:** "Locate an Interest in Property" means to, with the cooperation of Client,
252 identify, evaluate, and determine the availability of the Interest in Property sought by Client.
- 253 ■ **MATERIAL ADVERSE FACT:** A "Material Adverse Fact" means an Adverse Fact that a party indicates is of such
254 significance, or that is generally recognized by a competent licensee as being of such significance to a reasonable party,
255 that it affects or would affect the party's decision to enter into a contract or agreement concerning a transaction or affects
256 or would affect the party's decision about the terms of such a contract or agreement.
- 257 ■ **NEGOTIATE THE ACQUISITION OF AN INTEREST IN PROPERTY:** "Negotiate the Acquisition of an Interest in
258 Property" means to assist a Client, within the scope of this Agreement, to ascertain terms and conditions upon which an
259 Interest In Property may be acquired, facilitate or participate in the discussions of the terms of a potential contract,
260 complete appropriate contractual forms, present either party's contractual proposal with an explanation of the proposal's
261 advantages and disadvantages, and/or otherwise assist Client in reaching an agreement to acquire the Interest in
262 Property sought by Client.
- 263 ■ **PERSON ACTING ON BEHALF OF CLIENT:** "Person Acting on Behalf of Client" means any person joined in interest
264 with Client, or otherwise acting on behalf of Client, including but not limited to Client's immediate family, agents, employees,
265 directors, managers, members, officers, owners, partners, incorporators and organizers, as well as any and all corporations,
266 partnerships, limited liability companies, trusts or other entities controlled by, affiliated with or owned by Client in whole or in
267 part.
- 268 ■ **PROPERTY:** "Property" means real property located within the state of Wisconsin and Assets.
- 269 ■ **PROTECTED PROPERTY:** "Protected Property" means any Pproperty which, that during the term of a buyer agency
270 or/ tenant representation agreement was:
 - 271 1) the subject of a written proposal by Client, or any Pperson Aacting on Bbehalf of Client, submitted to the Property
272 owner or the owner's agent;:
 - 273 2) located was personally viewed by or directly negotiated for by Client, or any Person Acting on Behalf of Client,
274 by Direct negotiation means communicating with the owner or owner's agent regarding any potential terms on
275 which Client might acquire an iinterest in the Property; or
 - 276 3) was located or negotiated for by the Client's firm or its agents, but only if the Firm or its agents deliver the
277 description of the Pproperty to Client, in writing, no later than three days after the earlier of expiration or termination
278 (lines xxx-xxx) of these aAgreement except no written notice is required if the firm or its agents showed the property
279 to the Client.

280 **ADDITIONAL PROVISIONS** _____
281 _____
282 _____
283 _____
284 _____
285 _____
286 _____
287 _____

288 **ADDENDA** The attached _____
289 _____ is/are made a part of this Agreement.

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

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

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

302 **EXTENSION OF AGREEMENT TERM** The Agreement term is extended for a period of one year as to any Property
303 which during the term of this Agreement was: 1) located or negotiated for by the Firm or its agents, Client or any Person
304 Acting on Behalf of Client, or 2) which was the subject of a written proposal submitted by Client or any Person Acting on
305 Behalf of Client (Protected Property). If this extension is based on the Firm's or the Firm's agent(s)' Location of an
306 Interest in Property or Negotiation of the Acquisition an Interest in Property, this extension shall only be effective if a
307 written description of the Property is delivered to Client no later than three days after termination or expiration of this
308 Agreement.

309 **TERM OF THE AGREEMENT** From the _____ day of _____, _____ up
310 to and including midnight of the _____ day of _____.
311 Notwithstanding lines xxx-xxx, the Firm and Client agree that this Agreement (shall)(shall not) **STRIKE ONE** end ("shall" if
312 neither is stricken) when Client acquires an Interest in Property.

313 **■ BY SIGNING BELOW, CLIENT ACKNOWLEDGES RECEIPT OF A COPY OF THIS AGREEMENT AND THAT**
314 **HE/SHE HAS READ ALL _____ PAGES AS WELL AS ANY ADDENDA AND ANY OTHER DOCUMENTS**
315 **INCORPORATED INTO THIS AGREEMENT.**

316 Client Entity Name (if any): _____
317 _____ Print Name Here: ▲

318 (x) _____
319 Authorized Signature ▲ Print Name & Title Here ► _____ Date ▲

320 Client Entity Name (if any): _____
321 _____ Print Name Here: ▲

322 (x) _____
323 Authorized Signature ▲ Print Name & Title Here ► _____ Date ▲

324 (x) _____
325 Client's Signature ▲ Print Name Here: ► _____ Date ▲

326 (x) _____
327 Client's Signature ▲ Print Name Here: ► _____ Date ▲

328 (x) _____
329 Client's Signature ▲ Print Name Here: ► _____ Date ▲

330 (x) _____
331 Client's Signature ▲ Print Name Here: ► _____ Date ▲

332 Firm Name: _____
333 _____ Print Name Here: ▲

334 (x) _____
335 Agent's Signature ▲ Print Name Here: ► _____ Date ▲

WB-47 AMENDMENT TO BUYER AGENCY ~~OR~~ TENANT REPRESENTATION AGREEMENT

1 It is agreed that the Buyer Agency ~~or~~ Tenant Representation Agreement dated _____, _____,
 2 (hereinafter Agreement) between the undersigned is amended as follows:
 3 The expiration date of the Agreement is changed from _____, _____ to midnight _____, _____.
 4 Other: _____
 5 _____
 6 _____
 7 _____
 8 _____
 9 _____
 10 _____
 11 _____
 12 _____
 13 _____
 14 _____
 15 _____
 16 _____
 17 _____
 18 _____
 19 _____
 20 _____
 21 _____
 22 _____
 23 _____
 24 _____
 25 _____
 26 _____
 27 _____
 28 _____

29 ALL OTHER TERMS OF THE AGREEMENT AND ANY PRIOR AMENDMENTS REMAIN UNCHANGED.

30 _____ (x) _____
 31 Firm Name ▲ Buyer's/~~Lessee's-Tenant's~~ Signature ▲ Date ▲
 32 Print name ►

33 (x) _____ (x) _____
 34 By Agent for Firm ▲ Date ▲ Buyer's/~~Lessee's-Tenant's~~ Signature ▲ Date ▲
 35 Print name ► Print name ►

36 **CAUTION: This Agreement belongs to the Firm. Agents for the Firm do not have the authority to enter**
 37 **into a mutual agreement to terminate the Agreement, amend the compensation terms or shorten the term**
 38 **of the Agreement without the written consent of the Agent(s)' supervising broker.**

39
40 This written consent may be obtained with the supervising broker's signature below or a separate consent.

41 (x) _____
 42 Supervising Broker's Signature ▲ Print name ► Date ▲