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**REAL ESTATE CONTRACTUAL FORMS ADVISORY COMMITTEE**

**Room 121A, 1400 East Washington Avenue, Madison**

**Contact: Brittany Lewin (608) 266-2112**

**May 27, 2015**

*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 March 19, 2015 (2-3)**

**C. Administrative Updates**

- 1) Staff updates
- 2) New Member Pam Widen

**D. Legislative and Administrative Rule Matters**

**E. Review of Real Estate Contractual Forms for Revision:**

- 1) **Review of WRA Forms Committee Memo with Proposed Revisions to WB-40, WB-41, WB-45, WB-44, and WB-42 (4-8)**
  - a) WB-40 Amendment to Offer to Purchase
    1. Original Document **(9)**
  - b) WB-41 Notice Relating to Offer to Purchase
    1. Original Document **(10-11)**
  - c) WB-45 Cancellation Agreement & Mutual Release
    1. Original Document **(12-13)**
  - d) WB-44 Counter-Offer
    1. Original Document **(14)**
  - e) WB-42 Amendment to Listing Contract
    1. Original Document **(15)**
- 2) **WB-1 Residential Listing Contract – Exclusive Right to Sell**
  - a) Original Document **(16-22)**
  - b) Wisconsin Realtors Association (WRA) Staff - Memo with Proposed Revisions **(23-28)**

**F. WB-28 Cooperative Agreement Update**

**G. Public Comments**

**ADJOURNMENT**

**REAL ESTATE CONTRACTUAL FORMS ADVISORY COMMITTEE  
MEETING MINUTES  
March 19, 2015**

**PRESENT:** Stephen Beers, Casey Clickner, Debra Conrad, John Drzewiecki, Michael Gordon, Cori Lamont (*via GoToMeeting, left the meeting at 11:45a.m.*), Kim Moermond, Jonathan Sayas, Michael Sewell, Gary Tritz, Thomas Weber

**EXCUSED:** Scott Minter, Richard Petershack, Peter Sveum

**STAFF:** Brittany Lewin, Executive Director; Taylor Thompson, Bureau Assistant

**CALL TO ORDER**

Stephen Beers, Chair, called the meeting to order at 9:37 a.m. A quorum of eleven (11) 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:** Michael Gordon moved, seconded by Gary Tritz, to approve the minutes of November 20, 2014 as published. Motion carried unanimously.

**REEB 13 RELATING TO OUT OF STATE BROKER COOPERATIVE AGREEMENTS**

**MOTION:** Michael Gordon moved, seconded by Jack Drzewiecki, to recommend the Real Estate Examining Board adopt the form created regarding REEB 13 – Cooperative Agreement and delegate authority to Stephen Beers to make any modifications and to report the revisions and recommendations to the Real Estate Examining Board. Motion carried unanimously.

**WB-35**

**MOTION:** Debra Conrad moved, seconded by Gary Tritz, to recommend the Real Estate Examining Board adopt WB-35 and delegate authority to Stephen Beers to make any modifications and to report the revisions and recommendations to the Real Estate Examining Board. Motion carried unanimously.

## **ADJOURNMENT**

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

The meeting adjourned at 1:29 p.m.

DRAFT

## FORM REVISIONS

To: DSPS Real Estate Contractual Forms Advisory Committee  
From: WRA Forms Committee  
Date: May 15, 2015  
RE: **WB-40 Amendment to Offer to Purchase**  
**WB-41 Notice Relating to Offer to Offer to Purchase**  
**WB-44 Counter-Offer**  
**WB-45 Cancellation Agreement & Mutual Release**

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This memo relates to proposed changes to some of the “one-pagers.”

### ◆ Signature Lines

One Committee member wanted to ensure that we have plenty of room in all of these forms for an entity name, signatory name, and title in all areas where there are party signatures. Two different lines were proposed, plus more spacing for longer LLC names, longer individual names, and titles.

Example:

XYZ Company LLC

John Johnson, Managing Member

The WRA Forms Committee, however, was opposed to any measure that would make these forms become longer than the current one page, and pointed to the WRA Signatures Page (Signature Block Addendum) available electronically on zipForm as a way to handle this, and said that they thought it was manageable as is. Using smaller fonts was suggested in order to help make longer names fit.

### WB-40 Amendment to Offer to Purchase

Possible areas of concern include lines 30-35 (drafted by, delivered by, presented by in the existing WB-40) and possibly 42-43 (rejection). After much discussion and review of several configurations, the WRA Committee was of a mind to simplify.

It was proposed to remove the delivered by item on lines 32-33. The sequence would then be that the amendment is drafted by the agent working with the Party offering the amendment and the drafter identified, the WB-40 then is presumably sent to the other party and is presented to the other party by the licensee identified in the presented by item. If the amendment is accepted, it is delivered back but those details are not documented because at that point the form has been completed and in other forms, such as the offer, there is no documentation of the delivery – that is established independently as needed. Also, once the party accepting the amendment has signed, it may be difficult to fill in further information in the electronic platforms used by many agents.

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

### ◆ Rejection (Lines 42-43):

The Committee looked at whether there should be a prompt for a signature or initials here or is just having the party’s name filled in, presumably by an agent, sufficient to confirm the amendment proposed was rejected? The Committee favored providing a place for initials.

Example based on the offer language:

This Amendment was rejected: \_\_\_\_\_  
Party Initials ▲ Date ▲ Party Initials ▲ Date ▲

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

◆ **Closing Date (Line 4):**

Other changes suggested during the meeting were to modify the closing date language on line 4 so that it was the same as the language in the offers. If a licensee wants to name a specific date they may line out this added language but the group seemed to want it to be the same as the offers.

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

◆ **Attached Addenda (Line 8):**

On line 8 of the attached draft of the WB-40 amendment there is a check box item for adding addenda, attachments, signature pages, etc.

⇒ **Is this acceptable?**

⇒ **Any other proposals for the WB-40 Amendment?**

**WB-41 Notice Relating to Offer to Purchase**

◆ **Contracts in Addition to Offer?**

One issue concerning the WB-41 is whether it should be more global: should the notice be available different contracts and agreements and not just offers? For instance, see the beginning of the CAMR. For example, should lines 1-3 read?

This Notice ~~by (Seller)(Buyer) [STRIKE ONE]~~ relates to the \_\_\_\_\_  
[insert type of contract] (Contract) Offer to Purchase dated \_\_\_\_\_, \_\_\_\_\_ and accepted  
\_\_\_\_\_, \_\_\_\_\_ for the ~~purchase and sale of real estate~~Property located at  
\_\_\_\_\_  
Wisconsin.

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

◆ **Disposition Lines:**

Similar to the issues on the Amendment, lines 37-38 (delivered by) and 41-42 (presented by) were reviewed to see if they might benefit with some clarification, but after discussion and examination of different provisions the WRA Forms Committee decided they would propose that no change be made to these lines.

This Notice was delivered by \_\_\_\_\_  
\_\_\_\_\_ on \_\_\_\_\_ at \_\_\_\_\_ a.m./p.m.[STRIKE ONE]  
Licensee and Firm ▲ Date ▲

using the following method of delivery:  U.S. Mail  commercial delivery  e-mail  fax  
 personal delivery  other: \_\_\_\_\_ [CHECK AND COMPLETE  
AS APPLICABLE]

This Notice was presented by \_\_\_\_\_ on \_\_\_\_\_  
Licensee and Firm ▲ Date ▲

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

◆ **Actual Receipt?**

Should there be an area where a party could sign or initial to conform that the party has actually received a notice? This would not be something that could be accomplished in every situation but could be done if the party was being handed a copy of the notice and was asked to sign to demonstrate the date and time of actual receipt.

CAUTION: the following optional provision may be completed if the Contract requires Actual Receipt. Actual Receipt (physical possession) occurred

\_\_\_\_\_  
Party Signature ▲

\_\_\_\_\_  
Broker Signature ▲

\_\_\_\_\_  
Date ▲

⇒ **Is this a good idea? Additional changes?**

◆ **Eliminate the Check Boxes**

Part way through the discussion the light bulb went on and the Committee decided that the check boxes appearing before various items, both existing and new, if the language is phrased appropriately. Hence there are no check boxes before any of the preprinted items, relying instead on the concept that if something is written in then the item is in play.

⇒ **Is this acceptable/ a good idea?**

◆ **Protected Buyers/Properties?**

Another possible modification would be to add provisions within the blank lines section on lines 4-29 on the existing WB-41 and create language for giving notice of protected buyers under a listing contract or protected properties under a buyer agency agreement. These modifications would be relevant only if the scope of the WB-41 is expanded beyond just offers. One possible adverse consequence of including this on the WB-41 is that licensees may come to believe that lists of protected buyers cannot be delivered in other formats and by different means which could lead to fatal delays when they are trying at the 11<sup>th</sup> hour to send the seller the protected buyer list. See lines 27-32 of the attached draft of the WB-41 for one way to state this.

The following are Protected Buyers under the terms of the Contract: \_\_\_\_\_

The following properties are subject to the Extension of Agreement Provisions (property protection) under the terms of the Contract: \_\_\_\_\_

⇒ **Is this acceptable/ a good idea?**

◆ **Loan Commitment Delivery Authorization**

See lines 31-32 for possible loan commitment delivery language. What do you think?

⇒ **Is this acceptable/ a good idea?**

On line 33 of the attached draft of the WB-41 Notice there is a check box item for adding addenda, attachments, loan commitments, signature pages, etc.

⇒ **Is this acceptable/ a good idea?**

⇒ **Any other proposals for the WB-41 Notice?**

## **WB-45 Cancellation Agreement & Mutual Release**

### **◆ Introductory Language/Identification of Contract:**

Continuing on the journey towards simplification, the WRA Forms Committee proposes that lines 1-5 be modified/formatted as shown in the WB-45 draft and below:

The undersigned Parties agree that the \_\_\_\_\_ [insert type of contract, e.g., offer to purchase, lease, option, listing contract, buyer agency agreement, etc.] (Contract) \_\_\_\_\_ (Agreement) [INSERT TYPE OF AGREEMENT e.g. CONTRACT OF SALE, LEASE, OPTION, etc.] dated \_\_\_\_\_, for the property located at \_\_\_\_\_, in the \_\_\_\_\_ of \_\_\_\_\_, State of \_\_\_\_\_, Wisconsin, be canceled and the Parties hereby release all of their right, title, and interest in and to the ~~Agreement~~Contract, and any and all claims arising out of the transaction.

⇒ **Is this acceptable/ a good idea?**

If this change was adopted “Agreement” would be changed to “Contract” throughout.

### **◆ Earnest Money Disbursement Liability Release Language (Lines 6-11)**

On lines 6-11 of the existing WB-45 (disbursement of trust funds) there has been confusion due mostly to the spacing within the WB-45 layout: the last line (line 11) is interpreted to relate only to the immediately preceding lines 9-10 instead of inclusively to lines 6-10. One possible way to fix this is to repeat line 11 directly following line 8. It may also be remedied with different spacing, formatting and/or punctuation. See the proposal within the sample draft of the WB-45.

⇒ **Is this acceptable/ a good idea?**

### **◆ Withdrawal Note**

Another proposal would be to add a Note similar to the one in the WB-44 Counter-Offer reminding the parties that the CAMR may be withdrawn prior to acceptance and delivery back to the party proposing the CAMR. Something to the effect of:

NOTE: the Party proposing this Cancellation Agreement and Mutual Release may withdraw this Cancellation Agreement and Mutual Release prior to signature and delivery as provided on lines 12-16.

See lines 21-22 of the draft WB-45.

⇒ **Is this acceptable/ a good idea?**

### **◆ Drafting Line**

Another possibility would be to include a drafted by line at the end of the WB-45 or delivery lines. These ideas were not favored by the WRA Forms Committee at the last meeting. Some Committee members favored this because a CAMR is similar to an amendment in that it has a delivery deadline and needs to be presented and delivered, but the WRA group as a whole was not warm to that idea.

⇒ **What do you think?**

⇒ **Any other proposals for the WB-45 Cancellation Agreement & Mutual Release?**

**WB-44 Counter-Offer**

The WRA Forms Committee rejected the notion of making the WB-44 more generic to relate to “counter-proposals” relating to all variety of bilateral contracts negotiated by licensees, and believed that the Counter-Offer is such a term of art that it should be left alone. They also didn’t believe that there should be another separate “counter-proposals” form that could be used for leases, amendments, options, CAMRs, etc.

Other suggestions for your consideration:

- ◆ **Attachment Line:** The WRA Forms Committee decided there should be an attachment line added at line 29, something like the following?  
 The attached \_\_\_\_\_ is/are made part of this Counter-Offer.

⇒ **Is this acceptable?**

- ◆ **Disposition and Delivery Lines (Lines 37-46):**

Changes to the existing lines near the end of the form were rejected, the Committee believing the Counter-Offer basically worked well as it now is.

The other change that was suggested is to make the order that the signature blocks appear on the WB-44 in the same manner as on other REEB forms. The signature blocks for one party should be stacked vertically and not appear horizontally as they do in the existing WB-44. See the accompanying draft WB-44. The spacing was modified and more blank lines were added.

⇒ **Is this a good idea?**

⇒ **Any other changes for the WB-44?**

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**THIS WAS AS FAR AS THE WRA FORMS COMMITTEE WENT ON MAY 7, 2015**

**WB-42 Amendment to Listing Contract**

The changes shown on the accompanying draft of the WB-42 are proposed so that it may be used to amend the WB-37 Residential Listing Contract – Exclusive Right to Rent and commercial lease listings. Line 2 is changed to refer to the “sale/rental/lease” instead of just “sale.”

The signature block spacing was shifted/reformatted a bit and lines were added for the printed names, but the most significant change was that instead of referring to sellers only, the signature blocks are for sellers and owners.

⇒ **Are these good ideas?**

⇒ **Any other changes for the WB-42?**

⇒ **Any other of the one-page WB forms that should be looked at?**

### WB-40 AMENDMENT TO OFFER TO PURCHASE

**Caution: Use A WB-40 Amendment If Both Parties Will Be Agreeing To Modify The Terms Of The Offer.  
Use A WB-41 Notice If A Party Is Giving A Notice Which Does Not Require The Other Party's Agreement.**

1 Buyer and Seller agree to amend the Offer dated \_\_\_\_\_, \_\_\_\_\_, and accepted \_\_\_\_\_, \_\_\_\_\_, for  
2 the purchase and sale of real estate at \_\_\_\_\_  
3 \_\_\_\_\_ as follows:

- 4  Closing date is changed from \_\_\_\_\_, \_\_\_\_\_, to no later than \_\_\_\_\_, \_\_\_\_\_.
- 5  Purchase price is changed from \$ \_\_\_\_\_ to \$ \_\_\_\_\_.
- 6  Occupancy date is changed from \_\_\_\_\_, \_\_\_\_\_ to \_\_\_\_\_, \_\_\_\_\_.
- 7  Occupancy charge is changed from \$ \_\_\_\_\_ to \$ \_\_\_\_\_.
- 8  The attached \_\_\_\_\_ is/are made part of this Amendment.
- 9  Other: \_\_\_\_\_
- 10 \_\_\_\_\_
- 11 \_\_\_\_\_
- 12 \_\_\_\_\_
- 13 \_\_\_\_\_
- 14 \_\_\_\_\_
- 15 \_\_\_\_\_
- 16 \_\_\_\_\_
- 17 \_\_\_\_\_
- 18 \_\_\_\_\_
- 19 \_\_\_\_\_
- 20 \_\_\_\_\_

21 ALL OTHER TERMS OF THE OFFER TO PURCHASE AND ANY PRIOR AMENDMENTS REMAIN THE SAME.  
22 This Amendment is binding upon Seller and Buyer only if a copy of the accepted Amendment is delivered to the Party  
23 offering the Amendment on or before \_\_\_\_\_ (Time is of the Essence). Delivery  
24 of the accepted Amendment may be made in any manner specified in the Offer to Purchase, unless otherwise provided  
25 in this Amendment.

26 **NOTE: The Party offering this Amendment may withdraw the offered Amendment prior to acceptance and**  
27 **delivery as provided at lines 24-27.**

28 This Amendment was drafted by \_\_\_\_\_ on \_\_\_\_\_  
29 Licensee and Firm ▲ Date ▲

30 This Amendment was delivered by \_\_\_\_\_ on \_\_\_\_\_  
31 Licensee and Firm ▲ Date ▲

32 This Amendment was presented by \_\_\_\_\_ on \_\_\_\_\_  
33 Licensee and Firm ▲ Date ▲

34 (x) _____	(x) _____
35 Buyer's Signature ▲ Date ▲	Seller's Signature ▲ Date ▲
36 Print name ►	Print name ►

37 (x) _____	(x) _____
38 Buyer's Signature ▲ Date ▲	Seller's Signature ▲ Date ▲
39 Print name ►	Print name ►

40 This Amendment was rejected: \_\_\_\_\_  
41 Party Initials ▲ Date ▲ Party Initials ▲ Date ▲

42 This Amendment was rejected by \_\_\_\_\_ on \_\_\_\_\_  
43 Party Name ▲ Date ▲

**WB-41 NOTICE RELATING TO OFFER TO PURCHASE THE CONTRACT**

**Caution: Use A WB-41 Notice If A Party Is Giving A Notice Which Does Not Require The Other Party's Agreement. Use A WB-40 Amendment If Both Parties Will Be Agreeing To Modify The Terms Of The OfferContract.**

This Notice relates to the \_\_\_\_\_ [insert type of contract] (Contract) Offer to Purchase for the purchase and sale of real estate Property located This Notice by (Seller)(Buyer) [STRIKE ONE] relates to the Offer to Purchase dated \_\_\_\_\_, \_\_\_\_\_ and accepted \_\_\_\_\_, \_\_\_\_\_, for the purchase and sale of real estate at \_\_\_\_\_, Wisconsin.

The following are no longer contingencies or conditions of the Offer to Purchase Contract (Note: Attach supporting documents, if required, per line 33 below): \_\_\_\_\_

Notice is given that: \_\_\_\_\_

The following are Protected Buyers under the terms of the Contract: \_\_\_\_\_

The following properties are subject to the Extension of Agreement Provisions (property protection) under the terms of the Contract: \_\_\_\_\_

If a loan commitment is attached/accompanies this Notice (see line 33), Buyer has reviewed the loan commitment and hereby directs that the loan commitment be delivered to Seller.

The attached \_\_\_\_\_ is/are made part of this Notice.

This Notice was drafted by \_\_\_\_\_ on \_\_\_\_\_  
Licensee and Firm ▲ Date ▲

**Withdrawal Warning: Once delivered, a Notice cannot be withdrawn by the Party delivering the Notice without the consent of the Party receiving the Notice.**

(x) \_\_\_\_\_ (x) \_\_\_\_\_  
Signature of Party Giving Notice ▲ Date ▲ Signature of Party Giving Notice ▲ Date ▲  
Print name ► Print name ►

This Notice was delivered by \_\_\_\_\_ on \_\_\_\_\_  
Licensee and Firm ▲ Date ▲  
at \_\_\_\_\_ a.m./p.m. [STRIKE ONE] using the following method of delivery:  U.S. Mail,  commercial delivery,  e-mail,  fax,  personal delivery,  other \_\_\_\_\_ [CHECK AS APPLICABLE] .

This Notice was presented by \_\_\_\_\_ on \_\_\_\_\_  
Licensee and Firm ▲ Date ▲

47 | **CAUTION:** the following optional provision may be completed if the Contract requires Actual Receipt.  
48 | Actual Receipt (physical possession) occurred

49 | \_\_\_\_\_  
50 | Party Signature ▲                      Broker Signature ▲—                      Date ▲

## WB-45 Cancellation Agreement & Mutual Release

1 The UNDERSIGNED Parties agree that the \_\_\_\_\_  
2 { \_\_\_\_\_ [insert type of contract, e.g., offer to purchase, lease, option, listing  
3 contract, buyer agency agreement, etc.] Agreement) (Contract)  
4 ~~[[INSERT TYPE OF AGREEMENT e.g. CONTRACT OF SALE, LEASE, OPTION, etc.]~~ dated \_\_\_\_\_, for  
5 the property located at \_\_\_\_\_, in the \_\_\_\_\_  
6 of \_\_\_\_\_, State of \_\_\_\_\_, Wisconsin, be canceled and the Parties hereby  
7 release all of their right, title, and interest in and to the ~~Agreement~~Contract, and any and all claims arising out of the  
8 transaction.

9 The Parties hereby release the broker(s) from any and all liability for disbursing the trust funds as directed Parties and  
10 hereby authorize and direct the broker(s) to disburse the trust funds held on behalf of the Parties as follows:

11 \$ \_\_\_\_\_ shall be disbursed to \_\_\_\_\_ at  
12 the following address \_\_\_\_\_,

13 \$ \_\_\_\_\_ shall be disbursed to \_\_\_\_\_ at  
14 the following address \_\_\_\_\_.  
15 ~~and the Parties hereby release the broker(s) from any and all liability for disbursing the trust funds as directed.~~

16 This Cancellation Agreement and Mutual Release (CAMR) shall be effective only if all Parties to the Agreement  
17 Contract have signed an identical copy of this Cancellation Agreement and Mutual Release CAMR (including signatures  
18 on separate but identical copies of the ~~Cancellation Agreement and Mutual Release~~CAMR), and if the fully-executed  
19 ~~Cancellation Agreement and Mutual Release~~CAMR has been delivered to the Party proposing the Cancellation  
20 Agreement and Mutual Release CAMR on or before \_\_\_\_\_. Delivery may be  
21 made in any manner authorized in the AgreementContract.

22 **NOTE: The Party making this CAMR may withdraw the CAMR prior to acceptance and delivery as provided at**  
23 **lines xx-xx.**

24 (X) \_\_\_\_\_  
25 Party's Signature ▲ Print Name Here ► Date ▲

26 (X) \_\_\_\_\_  
27 Party's Signature ▲ Print Name Here ► Date ▲

28 (X) \_\_\_\_\_  
29 Party's Signature ▲ Print Name Here ► Date ▲

30 (X) \_\_\_\_\_  
31 Party's Signature ▲ Print Name Here ► Date ▲

32 (X) \_\_\_\_\_  
33 Party's Signature ▲ Print Name Here ► Date ▲

34 (X) \_\_\_\_\_  
35 Party's Signature ▲ Print Name Here ► Date ▲

36 (X) \_\_\_\_\_



### WB-44 COUNTER-OFFER

Counter-Offer No. \_\_\_\_\_ by (Buyer/Seller) **STRIKE ONE**

1 The Offer to Purchase dated \_\_\_\_\_ and signed by Buyer \_\_\_\_\_  
2 for purchase of real estate at \_\_\_\_\_  
3 is rejected and the following Counter-Offer is hereby made. **All terms and conditions remain the same as stated in the**  
4 **Offer to Purchase except the following: [CAUTION: This Counter-Offer does not include the terms or conditions**  
5 **in any other Counter-Offer unless incorporated by reference.]**

6 \_\_\_\_\_  
7 \_\_\_\_\_  
8 \_\_\_\_\_  
9 \_\_\_\_\_  
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25 \_\_\_\_\_  
26 \_\_\_\_\_  
27 \_\_\_\_\_  
28 \_\_\_\_\_

29  The attached \_\_\_\_\_ is/are made part of this Counter Offer.  
30 Any warranties, covenants and representations made in this Counter-Offer survive the closing of this transaction.  
31 This Counter-Offer is binding upon Seller and Buyer only if a copy of the accepted Counter-Offer is delivered to the Party  
32 making the Counter-Offer on or before \_\_\_\_\_ (Time is of the  
33 Essence). Delivery of the accepted Counter-Offer may be made in any manner specified in the Offer to Purchase, unless  
34 otherwise provided in this Counter-Offer.  
35 **NOTE: The Party making this Counter-Offer may withdraw the Counter-Offer prior to acceptance and delivery as**  
36 **provided at lines 31 to 34.**

37 This Counter-Offer was drafted by \_\_\_\_\_ on \_\_\_\_\_  
38 Licensee and Firm ▲ Date ▲

39 \_\_\_\_\_  
40 Signature of Party Making Counter-Offer ▲ Date ▲ Signature of Party Making-Accepting Counter-Offer ▲ Date ▲  
41 Print name ► Print name ►

42 \_\_\_\_\_  
43 Signature of Party Accepting-Making Counter-Offer ▲ Date ▲ Signature of Party Accepting Counter-Offer ▲ Date ▲  
44 Print name ► Print name ►

45 This Counter-Offer was presented by \_\_\_\_\_ on \_\_\_\_\_  
46 Licensee and Firm ▲ Date ▲

47 This Counter-Offer is **(rejected) (countered)** STRIKE ONE (Party's Initials) \_\_\_\_\_ (Party's Initials) \_\_\_\_\_  
48 **NOTE: Provisions from a previous Counter-Offer may be included by reproduction of the entire provision or**  
49 **incorporation by reference. Provisions incorporated by reference may be indicated in the subsequent Counter-**  
50 **Offer by specifying the number of the provision or the lines containing the provision. In transactions involving**  
51 **more than one Counter-Offer, the Counter-Offer referred to should be clearly specified.**  
52 **NOTE: Number this Counter-Offer sequentially, e.g. Counter-Offer No. 1 by Seller, Counter-Offer No. 2 by Buyer, etc.**

**WB-42 AMENDMENT TO LISTING CONTRACT**

1 It is agreed that the Listing Contract dated \_\_\_\_\_, \_\_\_\_\_, between the undersigned,  
2 for sale/rental/lease of the property known as (Street Address/Description) \_\_\_\_\_  
3 \_\_\_\_\_ in the \_\_\_\_\_ of  
4 \_\_\_\_\_, County of \_\_\_\_\_, Wisconsin, is amended as follows:

5  The list price is changed from \$ \_\_\_\_\_ to \$ \_\_\_\_\_.

6  The expiration date of the contract is changed from midnight \_\_\_\_\_, \_\_\_\_\_ to  
7 midnight \_\_\_\_\_, \_\_\_\_\_.

8  The following items are (added to)(deleted from) **STRIKE ONE** the list of property to be included in the list  
9 price: \_\_\_\_\_.

10 \_\_\_\_\_  
11  Other: \_\_\_\_\_

12 \_\_\_\_\_  
13 \_\_\_\_\_  
14 \_\_\_\_\_  
15 \_\_\_\_\_  
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28 \_\_\_\_\_  
29 \_\_\_\_\_  
30 \_\_\_\_\_

31 ALL OTHER TERMS OF THIS CONTRACT AND ANY PRIOR AMENDMENTS REMAIN UNCHANGED.

32 **CAUTION: Agents (salespersons) for Broker (firm) do not have the authority to enter into a mutual**  
33 **agreement to terminate a listing contract, amend the commission amount or shorten the term of a**  
34 **listing contract, without the written consent of the Agent(s)' supervising broker.**

35 \_\_\_\_\_ (x) \_\_\_\_\_  
36 Broker/Firm ▲▲ Date ▲▲ Seller's/Owner's Signature ▲▲ Date ▲▲  
37 Print name ▶▶ \_\_\_\_\_

38 (x) \_\_\_\_\_ (x) \_\_\_\_\_  
39 By ▲▲ Date ▲▲ Seller's/Owner's Signature ▲▲ Date ▲▲  
40 Print name ▶▶ \_\_\_\_\_

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

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

2 ■ **PROPERTY DESCRIPTION:** Street address is: \_\_\_\_\_  
3 \_\_\_\_\_ in the \_\_\_\_\_ of \_\_\_\_\_, County of \_\_\_\_\_,  
4 Wisconsin. Insert additional description, if any, at lines 242-250 or attach as an addendum per lines 251-254.

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

6 ■ **INCLUDED IN LIST PRICE:** Seller is including in the list price the Property real estate described on lines 2-4, all  
7 Fixtures not excluded on lines 11-14, and the following items: \_\_\_\_\_  
8 \_\_\_\_\_  
9 \_\_\_\_\_.

10 ■ **NOT INCLUDED IN LIST PRICE:** CAUTION: Identify Fixtures to be excluded by Seller or which are rented and will  
11 continue to be owned by the lessor. (See lines 199-210): \_\_\_\_\_  
12 \_\_\_\_\_  
13 \_\_\_\_\_  
14 \_\_\_\_\_.

15 ■ **MARKETING:** Seller authorizes and Broker agrees to use reasonable efforts to Procure a buyer for the Property.  
16 Seller agrees that Broker may market Seller's personal property identified on lines 7-9 during the term of this Listing.  
17 Broker's marketing may include: \_\_\_\_\_  
18 \_\_\_\_\_.

19 Broker may advertise the following special financing and incentives offered by Seller: \_\_\_\_\_  
20 \_\_\_\_\_.  
21 Seller has a duty to cooperate with Broker's marketing efforts.  
22 See lines 74-80 regarding Broker's role as marketing agent and Seller's duty to notify Broker of any potential buyer known  
23 to Seller. Seller agrees that Broker may market other properties during the term of this Listing.

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

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

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

28 Broker's recipient for delivery (optional): \_\_\_\_\_

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

30 Seller: ( \_\_\_\_\_ ) Broker: ( \_\_\_\_\_ )

31  (3) Commercial Delivery: depositing the document or written notice fees prepaid or charged to an account with a  
32 commercial delivery service, addressed either to the Party, or to the Party's recipient for delivery if named at line 38 or 39,  
33 for delivery to the Party's delivery address at line xx or xx.

34  (4) U.S. Mail: depositing the document or written notice postage prepaid in the U.S. Mail, addressed either to the  
35 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  
36 or xx.

37 Delivery address for Seller: \_\_\_\_\_

38 Delivery address for Broker: \_\_\_\_\_

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

43 E-Mail address for Seller (optional): \_\_\_\_\_

44 E-Mail address for Broker (optional): \_\_\_\_\_

45 ■ **DELIVERY/ACTUAL RECEIPT** Delivery to, or Actual Receipt by, any named Broker or Seller constitutes delivery to, or  
46 Actual Receipt by, all Brokers or Sellers.

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

50 ■ **COOPERATION, ACCESS TO PROPERTY OR OFFER PRESENTATION:** The parties agree that Broker will work  
51 and cooperate with other brokers in marketing the Property, including brokers from other firms acting as subagents  
52 (agents from other companies engaged by Broker - See lines 138-141) and brokers representing buyers. Cooperation  
53 includes providing access to the Property for showing purposes and presenting offers and other proposals from these  
54 brokers to Seller. Note any brokers with whom Broker shall not cooperate, any brokers or buyers who shall not be allowed  
55 to attend showings, and the specific terms of offers which should not be submitted to Seller: \_\_\_\_\_  
56 \_\_\_\_\_.

57 CAUTION: Limiting Broker's cooperation with other brokers may reduce the marketability of the Property.

58 ■ **EXCLUSIONS:** All persons who may acquire an interest in the Property as a Protected Buyer under a prior listing contract

59 are excluded from this Listing to the extent of the prior broker's legal rights, unless otherwise agreed to in writing. Within  
60 seven days of the date of this Listing, Seller agrees to deliver to Broker a written list of all such prospective buyers. **NOTE: If**  
61 **Seller fails to deliver this list to Broker, then no Protected Buyers are excluded from this Listing and Seller may potentially face**  
62 **paying commission to two listing brokers.** The following other buyers are excluded from this Listing until \_\_\_\_\_  
63 [INSERT DATE]: \_\_\_\_\_. These other buyers are no longer excluded from this Listing after  
64 the specified date unless, on or before the specified date, Seller has either accepted an written offer from the buyer or sold the  
65 Property to the buyer.

66 ■ **COMMISSION:** Broker's commission shall be \_\_\_\_\_ % or \_\_\_\_\_,  
67 whichever is greater. Seller shall pay Broker's commission, which shall be earned, if, during the term of this Listing:

- 68 1) Seller sells or accepts an offer which creates an enforceable contract for the sale of all or any part of the Property;
- 69 2) Seller grants an option to purchase all or any part of the Property which is subsequently exercised;
- 70 3) Seller exchanges or enters into a binding exchange agreement on all or any part of the Property;
- 71 4) A transaction occurs which causes an effective change in ownership or control of all or any part of the Property; or
- 72 5) A buyer is Procured for the Property by Broker, by Seller, or by any other person, at no less than the price and on  
73 substantially the same terms set forth in this Listing and in the standard provisions of the current WB-11  
74 RESIDENTIAL OFFER TO PURCHASE, even if Seller does not accept this buyer's offer. (See lines 215-218  
75 regarding Procurement.)

76 A percentage commission, if applicable, shall be calculated based on the purchase price if commission is earned under 1) or 2)  
77 above, or calculated based on the list price under 3), 4) or 5). "Purchase price" shall include "all consideration received by Seller and  
78 other third parties including, but not limited to, buyer assumptions of debt and any Seller provided financing." A percentage  
79 commission shall be calculated on the fair market value of the Property exchanged under 3) if the exchange involves less than the  
80 entire Property or on the fair market value of the Property to which an effective change in ownership or control takes place, under 4)  
81 if the transaction involves less than the entire Property. Once earned, Broker's commission is due and payable in full at the earlier of  
82 closing or the date set for closing, unless otherwise agreed in writing. Broker's commission shall be earned if, during the term of the  
83 Listing, one owner of the Property sells, conveys, exchanges or options an interest in all or any part of the Property to another owner,  
84 except by divorce judgment.

85 NOTE: A sale, option, exchange or Procurement of a buyer for a portion of the Property does not terminate the Listing as to any  
86 remaining Property.

87 ■ **COMPENSATION TO OTHERS:** Broker offers the following commission to cooperating brokers: \_\_\_\_\_  
88 \_\_\_\_\_ . (Exceptions if any): \_\_\_\_\_ .

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89 ■ **EXTENSION OF LISTING:** The Listing term is extended for a period of one year as to any Protected Buyer. Upon  
90 receipt of a written request from Seller or a broker who has listed the Property, Broker agrees to promptly deliver to Seller  
91 a written list of those buyers known by Broker to whom the extension period applies. Should this Listing be terminated by  
92 Seller prior to the expiration of the term stated in this Listing, this Listing shall be extended for Protected Buyers, on the  
93 same terms, for one year after the Listing is terminated.

94 ■ **TERMINATION OF LISTING:** Neither Seller nor Broker has the legal right to unilaterally terminate this Listing absent a  
95 material breach of contract by the other party. Seller understands that the parties to the Listing are Seller and the Broker  
96 (firm). Agents (salespersons) for Broker (firm) do not have the authority to enter into a mutual agreement to terminate the  
97 Listing, amend the commission amount or shorten the term of this Listing, without the written consent of the agent(s)'  
98 supervising broker. Seller and Broker agree that any termination of this Listing by either party before the date stated on  
99 line 259 shall be indicated to the other party in writing and shall not be effective until delivered to the other Party in  
100 accordance with lines 193-198. CAUTION: Early termination of this Listing may be a breach of contract, causing the  
101 terminating party to potentially be liable for damages.

102 ■ **SELLER COOPERATION WITH MARKETING EFFORTS:** Seller agrees to cooperate with Broker in Broker's  
103 marketing efforts and to provide Broker with all records, documents and other material in Seller's possession or control  
104 which are required in connection with the sale. Seller authorizes Broker to do those acts reasonably necessary to effect  
105 a sale and Seller agrees to cooperate fully with these efforts which may include use of a multiple listing service, Internet  
106 advertising or a lockbox system on Property. Seller shall promptly notify Broker in writing of any potential buyers with  
107 whom who contact Seller negotiates during the term of this Listing and shall promptly refer all persons making inquiries  
108 concerning the Property to Broker.

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

114 ■ **BROKER DISCLOSURE TO CLIENTS:**

115 **UNDER WISCONSIN LAW, A BROKER OWES CERTAIN DUTIES TO ALL PARTIES TO A TRANSACTION:**

- 116 (a) The duty to provide brokerage services to you fairly and honestly.
- 117 (b) The duty to exercise reasonable skill and care in providing brokerage services to you.
- 118 (c) The duty to provide you with accurate information about market conditions within a reasonable time if you request  
119 it, unless disclosure of the information is prohibited by law.
- 120 (d) The duty to disclose to you in writing certain Material Adverse Fact Adverse Facts about a property, unless  
121 disclosure of the information is prohibited by law. (See Lines 211-214)
- 122 (e) The duty to protect your confidentiality. Unless the law requires it, the broker will not disclose your confidential  
123 information or the confidential information of other parties. (See Lines 147-163)
- 124 (f) The duty to safeguard trust funds and other property the broker holds.
- 125 (g) The duty, when negotiating, to present contract proposals in an objective and unbiased manner and disclose the  
126 advantages and disadvantages of the proposals.

- 127 ■ **BECAUSE YOU HAVE ENTERED INTO AN AGENCY AGREEMENT WITH A BROKER, YOU ARE THE**  
128 **BROKER'S CLIENT. A BROKER OWES ADDITIONAL DUTIES TO A CLIENT:**
- 129 (a) The broker will provide, at your request, information and advice on real estate matters that affect your transaction, unless  
130 you release the broker from this duty.
- 131 (b) The broker must provide you with all material facts affecting the transaction, not just **A**adverse **F**acts.
- 132 (c) The broker will fulfill the broker's obligations under the agency agreement and fulfill your lawful requests that are within  
133 the scope of the agency agreement.
- 134 (d) The broker will negotiate for you, unless you release the broker from this duty.
- 135 (e) The broker will not place the broker's interests ahead of your interests. The broker will not, unless required by law, give  
136 information or advice to other parties who are not the broker's clients, if giving the information or advice is contrary to your  
137 interests.
- 138 (f) If you become involved in a transaction in which another party is also the broker's client (a "multiple representation  
139 relationship"), different duties may apply.
- 140 ■ **MULTIPLE REPRESENTATION RELATIONSHIPS AND DESIGNATED AGENCY:**
- 141 ■ A multiple representation relationship exists if a broker has an agency agreement with more than one client who is a  
142 party in the same transaction. In a multiple representation relationship, if all of the broker's clients in the transaction  
143 consent, the broker may provide services to the clients through designated agency.
- 144 ■ Designated agency means that different salespersons employed by the broker will negotiate on behalf of you and the  
145 other client or clients in the transaction, and the broker's duties will remain the same. Each salesperson will provide

146 information, opinions, and advice to the client for whom the salesperson is negotiating, to assist the client in the  
147 negotiations. Each client will be able to receive information, opinions, and advice that will assist the client, even if the  
148 information, opinions, or advice gives the client advantages in the negotiations over the broker's other clients. A  
149 salesperson will not reveal any of your confidential information to another party unless required to do so by law.  
150 ■ If a designated agency relationship is not in effect you may authorize or reject a multiple representation relationship. If  
151 you authorize a multiple representation relationship the broker may provide brokerage services to more than one client  
152 in a transaction but neither the broker nor any of the broker's salespersons may assist any client with information,  
153 opinions, and advice which may favor the interests of one client over any other client. If you do not consent to a multiple  
154 representation relationship the broker will not be allowed to provide brokerage services to more than one client in the  
155 transaction.

156 **INITIAL ONLY ONE OF THE THREE LINES BELOW:**

- 157 \_\_\_\_\_ I consent to designated agency.
- 158 \_\_\_\_\_ I consent to multiple representation relationships, but I do not consent to designated agency.
- 159 \_\_\_\_\_ I reject multiple representation relationships.

160 **NOTE: YOU MAY WITHDRAW YOUR CONSENT TO DESIGNATED AGENCY OR TO MULTIPLE**  
161 **REPRESENTATION RELATIONSHIPS BY WRITTEN NOTICE TO THE BROKER AT ANY TIME. YOUR BROKER IS**  
162 **REQUIRED TO DISCLOSE TO YOU IN YOUR AGENCY AGREEMENT THE COMMISSION OR FEES THAT YOU**  
163 **MAY OWE TO YOUR BROKER. IF YOU HAVE ANY QUESTIONS ABOUT THE COMMISSION OR FEES THAT YOU**  
164 **MAY OWE BASED UPON THE TYPE OF AGENCY RELATIONSHIP YOU SELECT WITH YOUR BROKER YOU**  
165 **SHOULD ASK YOUR BROKER BEFORE SIGNING THE AGENCY AGREEMENT.**

166 ■ **SUBAGENCY:** The broker may, with your authorization in the agency agreement, engage other brokers who assist your  
167 broker by providing brokerage services for your benefit. A subagent will not put the subagent's own interests ahead of your  
168 interests. A subagent will not, unless required by law, provide advice or opinions to other parties if doing so is contrary to  
169 your interests.

170 **PLEASE REVIEW THIS INFORMATION CAREFULLY. A broker or salesperson can answer your questions about**  
171 **brokerage services, but if you need legal advice, tax advice, or a professional home inspection, contact an**  
172 **attorney, tax advisor, or home inspector. This disclosure is required by section 452.135 of the Wisconsin statutes**  
173 **and is for information only. It is a plain language summary of a broker's duties to you under section 452.133 (2) of**  
174 **the Wisconsin statutes.**

175 ■ **CONFIDENTIALITY NOTICE TO CLIENTS:** Broker will keep confidential any information given to Broker in confidence,  
176 or any information obtained by Broker that he or she knows a reasonable person would want to be kept confidential, unless  
177 the information must be disclosed by law or you authorize Broker to disclose particular information. Broker shall continue to  
178 keep the information confidential after Broker is no longer providing brokerage services to you.

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

- 180 1) Material **A**adverse **F**acts, as defined in section 452.01 (5g) of the Wisconsin statutes (lines 211-214).
- 181 2) Any facts known by the Broker that contradict any information included in a written inspection report on the property  
182 or real estate that is the subject of the transaction.

183 To ensure that the Broker is aware of what specific information you consider confidential, you may list that information  
184 below (see lines 158-160). At a later time, you may also provide the Broker with other information you consider to be  
185 confidential.

186 **CONFIDENTIAL INFORMATION:** \_\_\_\_\_  
187 \_\_\_\_\_  
188 \_\_\_\_\_

189 **NON-CONFIDENTIAL INFORMATION** (The following may be disclosed by Broker): \_\_\_\_\_  
190 \_\_\_\_\_  
191 \_\_\_\_\_

192 ■ **REAL ESTATE CONDITION REPORT:** Seller agrees to complete the real estate condition report provided by Broker  
193 to the best of Seller's knowledge. Seller agrees to amend the report should Seller learn of any **D**efect(s) after  
194 completion of the report but before acceptance of a buyer's offer to purchase. Seller authorizes Broker to distribute the  
195 report to all interested parties and agents inquiring about the Property. Seller acknowledges that Broker has a duty to  
196 disclose all **M**aterial **A**adverse **F**acts as required by law.

197 ■ **SELLER REPRESENTATIONS REGARDING DEFECTS:** Seller represents to Broker that as of the date of this  
198 Listing, Seller has no notice or knowledge of any **D**efects affecting the Property other than those noted on the real estate  
199 condition report.

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

202 ■ **OPEN HOUSE AND SHOWING RESPONSIBILITIES:** Seller is aware that there is a potential risk of injury, damage  
203 and/or theft involving persons attending an "individual showing" or an "open house." Seller accepts responsibility for  
204 preparing the Property to minimize the likelihood of injury, damage and/or loss of personal property. Seller agrees to  
205 hold Broker harmless for any losses or liability resulting from personal injury, property damage, or theft occurring during  
206 "individual showings" or "open houses" other than those caused by Broker's negligence or intentional wrongdoing.  
207 Seller acknowledges that individual showings and open houses may be conducted by licensees other than Broker, that  
208 appraisers and inspectors may conduct appraisals and inspections without being accompanied by Broker or other  
209 licensees, and that buyers or licensees may be present at all inspections and testing and may photograph or videotape  
210 Property unless otherwise provided for in additional provisions at lines 242-250 or in an addendum per lines 251-254.

211 ■ **DEFINITIONS:**212 **ADVERSE FACT:** An "Adverse Fact" means any of the following:

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

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

215 2) significantly reducing the structural integrity of improvements to real estate; or

216 3) presenting a significant health risk to occupants of the Property.

217 (b) Information that indicates that a party to a transaction is not able to or does not intend to meet his or her

218 obligations under a contract or agreement made concerning the transaction.

219 **DEADLINES – DAYS:** Deadlines expressed as a number of "days" from an event are calculated by excluding the day the

220 event occurred and by counting subsequent calendar days.

221 ~~**DELIVERY:**—Delivery of documents or written notices related to this Listing may only be accomplished by:~~222 ~~1)—giving the document or written notice personally to the party;~~223 ~~2)—depositing the document or written notice postage or fees prepaid or charged to an account in the U.S. Mail or a~~224 ~~commercial delivery system, addressed to the party, at the party's address (See lines 265, 271 and 277.);~~225 ~~3)—electronically transmitting the document or written notice to the party's fax number (See lines 267, 273 and 279.); and,~~226 ~~4)—as otherwise agreed in additional provisions on lines 242-250 or in an addendum to this Listing.~~227 **DEFECT:** "Defect" means a condition that would have a significant adverse effect on the value of the Property; that

228 would significantly impair the health or safety of future occupants of the Property; or that if not repaired, removed or

229 replaced would significantly shorten or adversely affect the expected normal life of the premises.

230 **FIXTURES:** A "Fixture" is an item of property which is physically attached to or so closely associated with land or

231 buildings so as to be treated as part of the real estate, including, without limitation, physically attached items not easily

232 removable without damage to the premises, items specifically adapted to the premises, and items customarily treated

233 as fixtures, including, but not limited to, all: garden bulbs; plants; shrubs and trees; screen and storm doors and

234 windows; electric lighting fixtures; window shades; curtain and traverse rods; blinds and shutters; central heating and

235 cooling units and attached equipment; water heaters and treatment systems; sump pumps; attached or fitted floor

236 coverings; awnings; attached antennas, garage door openers and remote controls; installed security systems; central

237 vacuum systems and accessories; in-ground sprinkler systems and component parts; built-in appliances; ceiling fans;

238 fences; storage buildings on permanent foundations and docks/piers on permanent foundations.

239 **CAUTION: Exclude any Fixtures to be retained by Seller or which are rented (e.g., water softener or other water**240 **conditioning systems, home entertainment and satellite dish components, L.P. tanks, etc.) on lines 11-14 and**241 **in the offer to purchase.**242 **MATERIAL ADVERSE FACT:** A "Material Adverse Fact" means an Aadverse Ffact that a party indicates is of such

243 significance, or that is generally recognized by a competent licensee as being of such significance to a reasonable

244 party, that it affects or would affect the party's decision to enter into a contract or agreement concerning a transaction or

245 affects or would affect the party's decision about the terms of such a contract or agreement.

246 **PERSON ACTING ON BEHALF OF BUYER:** "Person Acting on Behalf of Buyer" shall mean any person joined in interest247 with buyer, or otherwise acting on behalf of buyer, including but not limited to buyer's immediate family, agents, servants,248 employees, directors, managers, members, officers, owners, partners, incorporators and organizers, as well as any and all249 corporations, partnerships, limited liability companies, trusts or other entities created or controlled by, affiliated with or250 owned by buyer, in whole or in part whether created before or after expiration of this Listing.251 **PROCURE:** A buyer is Proquired when, during the term of the Listing, an enforceable contract of sale is entered into252 between the Seller and the buyer or when a ready, willing and able buyer submits to the Seller or the Listing Broker a written

253 offer at the price and on substantially the terms specified in this Listing. A buyer is ready, willing and able when the buyer

254 submitting the written offer at that time has the ability to complete the buyer's obligations under the written offer. (See lines255 46xx-49xx)256 **PROPERTY:** Unless otherwise stated, "Property", means all property included in the list price as described on lines 2-14~~the~~257 real estate described at lines 2-4.258 **PROTECTED BUYER:** Means a buyer who personally, or through any Person A-acting on Behalf of for such Buyer,259 during the term of this Listing: 1) delivers to Seller or Broker a written offer to purchase, exchange or option on the Property260 during the term of this Listing; 2) sees the Property with the Seller or negotiates directly with Seller by discussing with Seller

261 the potential terms upon which buyer might acquire an interest in the Property; or 3) attends an individual showing of the

262 Property or discusses with Broker or cooperating brokers the potential terms upon which buyer might acquire an interest in

263 the Property, but only if Broker delivers the buyer's name to Seller, in writing, no later than three days after the expiration of

264 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

265 is effective only as to certain individuals who are identified in the Listing, by the identification of the individuals in the Listing;

266 or, b) if a buyer has requested that the buyer's identity remain confidential, by delivery of a written notice identifying the

267 broker with whom the buyer negotiated and the date(s) of any showings or other negotiations. A Protected Buyer also268 includes any Person Acting on Behalf of Buyer joined in interest with or otherwise acting on behalf of a Protected Buyer, who269 acquires an interest in the Property during the extension of listing period as noted on lines xxx-xxx.270 ■ **FAIR HOUSING:** Seller and Broker agree that they will not discriminate against any prospective buyer on

271 account of race, color, sex, sexual orientation as defined in Wisconsin Statutes, Section 111.32 (13m),

272 disability, religion, national origin, marital status, lawful source of income, age, ancestry, familial status, or in

273 any other unlawful manner.

274 ■ **EARNEST MONEY:** If Broker holds trust funds in connection with the transaction, they shall be retained by Broker in

275 Broker's trust account. Broker may refuse to hold earnest money or other trust funds. Should Broker hold the earnest money,

276 Broker shall hold and disburse earnest money funds in accordance with Wis. Stat. Ch. 452 and Wis. Admin. Code Ch. REEB277 18. Seller authorizes Broker to disburse the earnest money as directed in a written earnest money disbursement agreement

~~278 signed by or on behalf of all parties having an interest in the trust funds. If the transaction fails to close and the earnest money  
279 is disbursed to Seller, then upon disbursement to Seller the earnest money shall be paid first to reimburse Broker for cash  
280 advances made by Broker on behalf of Seller and one half of the balance, but not in excess of the agreed commission, shall  
281 be paid to Broker as Broker's full commission in connection with said purchase transaction and the balance shall belong to  
282 Seller. This payment to Broker shall not terminate this Listing.~~

283 ■ **ADDITIONAL PROVISIONS:** \_\_\_\_\_  
284 \_\_\_\_\_  
285 \_\_\_\_\_  
286 \_\_\_\_\_  
287 \_\_\_\_\_  
288 \_\_\_\_\_  
289 \_\_\_\_\_  
290 \_\_\_\_\_  
291 \_\_\_\_\_

292 ■ **ADDENDA:** The attached addenda \_\_\_\_\_  
293 \_\_\_\_\_  
294 \_\_\_\_\_  
295 \_\_\_\_\_ is/are made part of this Listing.

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

299 ■ **TERM OF THE CONTRACT:** From the \_\_\_\_\_ day of \_\_\_\_\_,  
300 up to and including midnight of the \_\_\_\_\_ day of \_\_\_\_\_.

301 ■ **READING/RECEIPT: BY SIGNING BELOW, SELLER ACKNOWLEDGES RECEIPT OF A COPY OF THIS**  
302 **LISTING CONTRACT AND THAT HE/SHE HAS READ ALL FIVE PAGES AS WELL AS ANY ADDENDA AND ANY**  
303 **OTHER DOCUMENTS INCORPORATED INTO THE LISTING.**

304 (x) \_\_\_\_\_  
305 Seller's Signature ▲ \_\_\_\_\_ Print Name Here: ▲ \_\_\_\_\_ Date ▲ \_\_\_\_\_

306 \_\_\_\_\_  
307 Seller's Address ▲ \_\_\_\_\_ Seller's Phone # ▲ \_\_\_\_\_

308 \_\_\_\_\_  
309 Seller's Fax # ▲ \_\_\_\_\_ Seller's E-Mail Address ▲ \_\_\_\_\_

310 (x) \_\_\_\_\_  
311 Seller's Signature ▲ \_\_\_\_\_ Print Name Here: ▲ \_\_\_\_\_ Date ▲ \_\_\_\_\_

312 \_\_\_\_\_  
313 Seller's Address ▲ \_\_\_\_\_ Seller's Phone # ▲ \_\_\_\_\_

314 \_\_\_\_\_  
315 Seller's Fax # ▲ \_\_\_\_\_ Seller's E-Mail Address ▲ \_\_\_\_\_

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

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

321 \_\_\_\_\_

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

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

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

326 (x) \_\_\_\_\_  
327 Agent for Broker ▲ \_\_\_\_\_ Print Name Here: ▲ \_\_\_\_\_ Broker/Firm Name ▲ \_\_\_\_\_ Date ▲ \_\_\_\_\_

328 \_\_\_\_\_  
329 Broker/Firm Address ▲ \_\_\_\_\_ Broker/Firm Phone # ▲ \_\_\_\_\_

330 \_\_\_\_\_  
331 Broker/Firm Fax # ▲ \_\_\_\_\_ Broker/Firm E-Mail Address ▲ \_\_\_\_\_

**WB-1 REVISIONS**

To: DSPS Real Estate Contractual Forms Advisory Committee

From: WRA Forms Committee

Date: May 18, 2015

RE: **WB-1 Residential Listing Contract – Exclusive Right to Sell**

The following are possible revisions to the WB-1 Residential Listing Contract – Exclusive Right to Sell (mandatory use date 7-1-08). The WRA Forms Committee did not yet review this memo in Committee or discuss these items. The line numbers in this memo refer to the line numbers in the accompanying draft of proposed WB-1 modifications.

- ◆ Update the top of the form to say Approved by the Wisconsin Real Estate Examining Board
- ◆ **Delivery (lines 23-46):** Add in the Delivery of Documents and Written Notices from the WB-6 Business Listing Contract and the Personal Delivery/Actual Receipt provision from the WB-11 Residential Offer to Purchase with the word “personal” deleted. Delete the Delivery definition from lines 221-226. Also delete “Actual” receipt as that term is not used in the listing contract as it now stands. As shown in tracking, one line was removed from the e-mail subsection of the Delivery provisions to simplify the provision and make it more generic without removing the meaning and required action item.

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

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

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

Broker's recipient for delivery (optional): \_\_\_\_\_

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

Seller: (\_\_\_\_\_) \_\_\_\_\_ Broker: (\_\_\_\_\_) \_\_\_\_\_

(3) Commercial Delivery: depositing the document or written notice fees prepaid or charged to an account with a commercial delivery service, addressed either to the Party, or to the Party's recipient for delivery if named at line 38 or 39, for delivery to the Party's delivery address at line xx or xx.

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

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

Delivery address for Broker: \_\_\_\_\_

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

E-Mail address for Seller (optional): \_\_\_\_\_

E-Mail address for Broker (optional): \_\_\_\_\_

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

~~DELIVERY/ACTUAL RECEIPT~~ Delivery to, or ~~Actual-R~~ Receipt by, any named Broker or Seller constitutes delivery to, or ~~Actual-R~~ Receipt by, all Brokers or Sellers.

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

◆ **Property Definition (Lines 2-14 & 256-257):**

If we want to have commission computed upon the total sales price we may wish to make it clear that all property – real and personal – is included in the purchase price.

**NOTE:** We also need to proof the WB-1 to make sure that all defined terms have initial caps, as has become the custom of this Committee.

**INCLUDED IN LIST PRICE:** Seller is including in the list price the ~~Property~~ real estate described on lines 2-4, all ~~F~~ fixtures not excluded on lines 11-14, and the following items:

■ **PROPERTY:** Unless otherwise stated, “Property” means ~~the real estate described at lines 4-7~~ all property included in the list price as described on lines 2-14.

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

◆ **Modifications to Exclusions section (Lines 58-65):**

Think about whether there should be some teeth in play if the seller does not deliver a list of protected buyers to the second listing broker. Should the seller be alerted that they may have to pay a double commission if they cannot complete this task?

■ **EXCLUSIONS:** All persons who may acquire an interest in the Property as a Protected Buyer under a prior listing contract are excluded from this Listing to the extent of the prior broker's legal rights, unless otherwise agreed to in writing. Within seven days of the date of this Listing, Seller agrees to deliver to Broker a written list of all such prospective buyers. NOTE: If Seller fails to deliver this list to Broker, then no Protected Buyers are excluded from this Listing and Seller may potentially face paying commission to two listing brokers. The following other buyers are excluded from this Listing until \_\_\_\_\_ [INSERT DATE]: \_\_\_\_\_. These other buyers are no longer excluded from this Listing after the specified date unless, on or before the specified date, Seller has either accepted a written offer from the buyer or sold the Property to the buyer.

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

◆ **Commissions (Lines 66-86)**

Should we adopt the commission language from the WB-6 prompting that thought be given to whether there should be a minimum dollar amount yet retaining the ability to be flexible?

[COMMISSION] Broker’s commission shall be \_\_\_\_\_ % or \_\_\_\_\_  
\_\_\_\_\_ whichever is greater.

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

Would we want to include the definition of purchase price from the WB-6?

“Purchase price” shall include “all consideration received by Seller and other third parties including, but not limited to, buyer assumptions of debt and any Seller provided financing.”

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

Depending upon the outcome of the Ash Park commission case now before the Wisconsin Supreme Court (<http://wscca.wicourts.gov/caseDetails.do?caseNo=2013AP001532&cacheId=E7BF2D043B40618DA7807331F9127B58&recordCount=1&offset=0>) there may be adjustments to make to the language regarding the earning of commission. Based on the dialog during oral arguments, there were some justices who appeared to believe that commission should not be payable unless the transaction closes, especially when it comes to residential transactions and consumers (in *Ash Park* where the parties were sophisticated).

Anything else from the WB-6?

◆ **Modifications to Seller Cooperation section (Lines 102-108):**

Should sellers have to tell brokers about all prospects they talk to about the property for sale without the conversation having to meet the standards for “negotiation?”

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

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

◆ **Broker Disclosure to Clients (Lines 114-174):**

There will be statutory changes coming to this language to make it more user friendly and understandable for the property owners, especially in lines 156-159. We will have to wait first for the bill draft (in process) and then monitor the progression of the bill and adjust for any modifications made by the legislature.

◆ **Definitions (Lines 211-269):**

Since the term “defects” is mentioned in lines 192-199, should the definition of “Defects” from the offer be included in the WB-1?

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

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

Should we add the definition of Person Acting on Behalf of buyer and the modified definition of Protected Buyer from the WB-6? As you may recall, those changes were made to try to ward off protected buyers who create an LLC and then purchase the property, claiming that the LLC is not a protected buyer.

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

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

Another thought about the Protected Buyer definition: shouldn't the buyer be considered protected if the seller shows the property to the buyer, for instance, the buyer who drives by and sees the sign and stops in when no broker is around. It would be easier to prove that the buyer saw the house with the seller than it is to establish that they had a conversation meeting the criteria for "negotiation." If this idea is favored we may need more eloquent language!

■ **PROTECTED BUYER:** "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 Broker a written offer to purchase, exchange or option on the Property; 2) sees the Property with the Seller or negotiates directly with Seller by discussing with Seller the potential terms upon which buyer might acquire an interest in the Property; or 3) attends an individual showing of the Property or discusses with Broker or cooperating brokers the potential terms upon which buyer might acquire an interest in the Property, but only if Broker delivers the buyer's name to Seller, in writing, no later than three days after the expiration 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 broker with whom the buyer negotiated and the date(s) of any 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 xxx-xxx.

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

The deleted language below in the definition of Procure is redundant with line 68. See lines 72-75 where the term "procure" is used. The added language speaks to the point that brokers should not be responsible to ensure a buyer's financial capability into the future.

■ **PROCURE:** A buyer is procured ~~when, during the term of the Listing, an enforceable contract of sale is entered into between the Seller and the buyer or~~ when a ready, willing and able buyer submits to the Seller or the Listing Broker a written offer at the price and on substantially the terms specified in this Listing. A buyer is ready, willing and able when the buyer submitting the written offer at that time has the ability to complete the buyer's obligations under the written offer. (See lines xx-xx)

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

- ◆ **Earnest Money (Lines 234-241):** This is from the WB-6. The inserted language is broader and refers to license law standards rather than making it sound as if the only way the broker can disburse is with a written earnest money disbursement agreement – there are several safe harbors for disbursement in Wis. Admin. Code § REEB 18.09(1). Also should the other provisions shown as lined out be retained? Are they desirable and do they serve a purpose that benefits any one? Are they often used?

■ **EARNEST MONEY** If Broker holds trust funds in connection with the transaction, they shall be retained by Broker in Broker's trust account. Broker may refuse to hold earnest money or other trust funds. Should Broker hold the earnest money, Broker 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 Seller, then upon disbursement to Seller the earnest money shall be paid first to reimburse Broker for cash advances made by Broker on behalf of Seller and one half of the balance, but not in excess of the agreed commission, shall be paid to Broker as Broker's full commission~~



Agent for Broker ▲

Print Name Here ▲

Broker/Firm Name ▲

Date ▲

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Broker/Firm Address ▲

Broker/Firm Phone # ▲

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Broker/Firm Fax # ▲

Broker/Firm E-Mail Address ▲

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

- ◆ **Attorney Fees Provision?** There used to be attorney's fees provisions in many of the Department listings years ago. That provision was removed from the other listing contracts when they were updated in 2008-2009. Should an attorney's fees provision be added again, such as "In the event either party hereto shall commence legal proceedings against the other to enforce the terms hereof, or to declare rights hereunder, as a result of a breach of any covenant or condition of this Contract, the prevailing party in any such proceeding shall be entitled to recover from the losing party its costs of suit, including reasonable attorney's fees, as may be fixed by the court." The prior provision in the 1999 listing said: "ATTORNEY FEES: SHOULD LITIGATION ARISE BETWEEN THE PARTIES IN CONNECTION WITH THIS LISTING, THE PREVAILING PARTY SHALL HAVE THE RIGHT TO RECOVER REASONABLE ATTORNEY FEES." **NOTE:** We should keep attuned to the legislature because there is a bill that would effectively remove the ability to make the seller responsible to pay the broker's attorney's fees. See 2015 Senate Bill 61, proposed § 134.495(2)(b) at <http://docs.legis.wisconsin.gov/2015/related/proposals/sb61>

What other changes should be made to the WB-1?

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