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**REAL ESTATE CONTRACTUAL FORMS ADVISORY COUNCIL**  
**Room 121A, 1400 East Washington Avenue, Madison**  
**Contact: Brittany Lewin (608) 266-2112**  
**September 15, 2016**

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

**AGENDA**

**9:30 A.M.**

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

**A. Adoption of Agenda (1)**

**B. Approval of Minutes from July 7, 2016 (2)**

**C. Administrative Updates**

- 1) Staff updates
- 2) Council Member Introductions
- 3) Discussion of Form Update Schedule

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

**1) WB-36 Buyer Agency Agreement**

- a) WB-36 Buyer Agency Agreement Background **(3-17)**
- b) Review of WRA Forms Committee Memo with Proposed Revisions to WB-36 **(18-29)**
- c) Original Document
  1. Draft 1 **(30-35)**
  2. Draft 2 **(36-41)**

**E. Public Comments**

**ADJOURNMENT**

The Next Scheduled Meeting is December 7, 2016.

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

**PRESENT:** Stephen Beers, Joseph Busch, Debra Conrad, John Drzewiecki (*joined the meeting at 9:35 a.m.*), Michael Gordon, Cori Lamont, Kim Moermond (*joined the meeting at 9:37 a.m.*), Jonathan Sayas, Michael Sewell, Gary Tritz (*joined the meeting at 9:37 a.m.*), Thomas Weber, Pamela Widen (*joined the meeting at 10:12 a.m.*)

**EXCUSED:** Casey Clickner, Richard Petershack

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

**CALL TO ORDER**

Stephen Beers, Chair, called the meeting to order at 9:34 a.m. A quorum of eight (8) members was confirmed.

**ADOPTION OF AGENDA**

*John Drzewiecki joined the meeting at 9:35 a.m.*

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

**APPROVAL OF MINUTES**

**MOTION:** Cori Lamont moved, seconded by Michael Sewell, to approve the minutes of May 18, 2016 as published. Motion carried unanimously.

*Kim Moermond and Gary Tritz joined the meeting at 9:37 a.m.*

*Pamela Widen joined the meeting at 10:12 a.m.*

**ADJOURNMENT**

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

The meeting adjourned at 1:37 p.m.

## WB-36 BUYER AGENCY AGREEMENT BACKGROUND

Last Updated: August 5, 2016

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

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

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

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

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

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

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

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

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

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

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

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

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

**RECAP -- AUTHORIZATION**

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

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

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

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

- ★ If the buyer client is not selecting/waiving negotiation, then the documentation of a waiver of duties would be needed per Wis. Stat. § 452.133(6): “... a waiver under this subsection is not effective unless the Firm or licensees associated with the Firm provide to the client a written disclosure containing all of the following: (a) A copy of the text of sub. (2)(d) and § 452.01(5m), and, and a statement that, as a consequence of the client's waiver, the Firm or licensees associated with the Firm will have no legal duty to perform the duty imposed by sub.(2)(d). (b) A statement that as a consequence of the client's waiver, the client may require the assistance of an attorney or another service provider to fulfill the client's goals and contractual duties in the transaction.”
- ★ If the buyer client is not seeking services to locate a property and the Firm will negotiate to acquire an interest in property, there is also a concern that simply writing the offer without

providing any other brokerage services would violate license law and leave the broker in the position of engaging in the unauthorized practice of law per Wis. Admin. Code § REEB 16.05(3), § REEB 16.04(1) and § REEB 16.05(3). Taken all together a licensee may not enter into an agency agreement like a WB-36 just to draft the agreement between the parties because it would be considered the unlicensed practice of law. The drafting must be incidental to the practice of real estate and involve other real estate brokerage tasks such as inspections, disclosures, notices, amendments, assisting with appropriate contingencies, etc. If the parties to the transaction have come to an agreement about the terms of the purchase of real property (but this is rarely actually the case because there will be several issues they have not contemplated), perhaps it would be better if they were referred to legal counsel to draft their contract.

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

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

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

**-OR-**

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

**WRA Forms Committee found it was better to retain the language and style of the existing sections. The language (with some terminology changes) is in tracking in Draft 1 and regular text in Draft 2.**

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

**Property Types Not Included/Excluded Properties (Draft 1, Lines 14-29; Draft 2 lines 11-25):** In the current form this section attempts to perform numerous functions all in one relatively small section. The language begins in a manner similar to the listing contract language where a seller excludes certain buyers from the listing, up until a certain date. These may be properties seen by the buyer already with another buyer’s broker (protected property), properties seen with listing or subagents (to avoid procuring cause disputes), or properties under contract with an option or offer.

It also describes the type of properties the buyer’s agent is authorized to look for -- by identifying those types or specific properties the buyer’s agent is not authorized to search for or negotiate for. Note above that § 240.10(1) refers to the **type of property** the buyer’s agent is trying to locate, so that arguably (all legal minds are not in concurrence on this point) needs to be indicated (unless there is a specific property identified) if the buyer’s agent wants to have an enforceable contract for commission or fees.

#### **FOOD FOR THOUGHT:**

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

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

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

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

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

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

If the following provisions are used in the WB-36 does that take away that concern if the only properties excluded from the ability to earn commission are the specific properties excluded, not property types?

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

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

The following ideas have been under consideration in the search to describe what is the firm’s authority to act and what will earn commission.

### **1. CURRENT WB-36:**

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

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

**2. DSPS – April 13**

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

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

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

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

\_\_\_\_\_ are excluded from this Agreement until \_\_\_\_\_ [INSERT DATE].  
Insert additional addresses or descriptions, if any, at lines xxx-xxx or attach as an addendum per lines xxx-xxx.

**Feedback:**

- 1) There is objection to automatically excluding protected properties because the buyer will know what properties he or she is still interested in, if any. The buyer should not be restricted in choosing whatever agent the buyer wishes to work with including with regard to properties already seen with another agent. A second buyer's agent should be allowed to provide services upon request.
  - a) This does make a certain amount of sense, but what if the buyer later changes his or her mind?
  - b) Wouldn't that same logic apply to a seller who doesn't want to work with the first listing broker? The listing contract protects the seller from paying double commission automatically so the question is why would the buyer agency agreement not extend the same protection to buyers?
  - c) Standard of Practice 16-14 says that, "REALTORS® are free to enter into contractual relationships or to negotiate with sellers/landlords, buyers/tenants or others who are not subject to an exclusive agreement but shall not knowingly obligate them to pay more than one commission except with their informed consent. (Amended 1/98)" If the buyer may choose whether to exclude protected properties is that a knowing decision made with information about the possible double commission? Or is that not a concern because at least one of the buyer's agents presumably will be paid in the transaction leaving the buyer client to pay the other – only pay out of pocket once?
  - d) Unless protected properties are identified how would the second buyer's agent know what properties those are so that the agent does not waste time duplicating prior efforts? Does it not happen sometimes that the buyer might shop around and then decide that a property the buyer already looked at is the best after all? For example, maybe the price is dropped. Does the second buyer's agent have to work on faith that the buyer is going to tell him or her if they circle around and come back to a property protected under another WB-36?

### 3. Protected Buyer Caution:

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

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

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

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

### 4. Affirmative Statements (REJECTED): (modified with further thoughts)

We heard from one commercial broker on the WRA Forms Committee during the meeting and from a couple outside of the meeting (still reaching out for input from some others) and they want the WB-36 to indicate what the client looking for in an affirmative statement, perhaps a functional statement, such as a home, or a retail property to operate as a grocery store, etc. There also is concern that the client should have a statement of what it is the broker is hired to do. But there seems to be substantial concern by residential brokers that if the buyer says he is looking for a home and buys a vacation property as well that the broker will lose out on the vacation home commission.

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

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

The parties understand that buyer’s wishes may change during the search for properties and this information serves to guide the Firm’s initial efforts only.

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

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

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

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

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

### 5. DSPS May 18 – see Drafts 1 and 2 – this was adopted by the Real Estate Contractual Forms Advisory Committee:

■ **PROPERTIES NOT INCLUDED:** Identify properties not included by type, geographic location, or other limitation: \_\_\_\_\_

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

**NOTE: If Buyer fails to identify Protected Properties below, Buyer may owe commission to both the prior firm and this Firm.**

\_\_\_\_\_  
\_\_\_\_\_  
■ **LIMITED TERM EXCLUDED PROPERTIES:** The following properties are excluded from this Agreement until \_\_\_\_\_ [INSERT DATE]: \_\_\_\_\_

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

## 6. Proposal discussed by WRA Forms Committee June 2, 2016

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

■ **SCOPE OF AGREEMENT:** The purchase price range provides initial search parameters, but 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. \_\_\_\_\_

■ **LIMITED EXCLUSION PROPERTIES:** The following properties are excluded from this Agreement until \_\_\_\_\_ [Insert Date] or until the expiration of any applicable protection period, if a prior "protected" property is identified here. \_\_\_\_\_

**CAUTION: Prior "Protected" Properties: If Buyer does not want this Agreement to apply to a property or properties that may be "protected" under a prior buyer agency agreement, Buyer should identify such property or properties under Excluded Properties at lines xxx, or under the Limited Exclusion Properties, to be excluded to the extent of the prior broker's/Firm's legal rights, unless otherwise stated. The Firm and its agents cannot provide advice about what, if anything, a Buyer might owe under a prior Buyer Agency.**

## 7. Discussed modifications (may not be exact, no language was crafted during meeting)(shown in Draft 2)

■ **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. \_\_\_\_\_

■ **LIMITED EXCLUSION PROPERTIES:** The following properties are excluded from this Agreement until \_\_\_\_\_ [Insert Date] ~~or until the expiration of any applicable protection period, if a prior "protected" property is identified here.~~ \_\_\_\_\_

**CAUTION: Prior "Protected" Properties:** If Buyer does not want this Agreement to apply to **a property or one or more** properties that may be "**P**rotected" under a prior buyer agency agreement, Buyer should **identify exclude** such **property or** properties **under Excluded Properties** at lines **xx-xx**, **or under the Limited Exclusion Properties**, to be excluded to the extent of the prior **broker's/Firm's** legal rights, unless otherwise stated. **If Buyer acquires an interest in any properties protected under a prior buyer agency agreement, Buyer may owe commission to both the prior firm and this Firm, unless those Protected Properties are excluded from this Agreement.**  
 The Firm and its agents cannot provide advice about what, if anything, **a** Buyer might owe under a prior **b** Buyer **a** Agency **agreement, or the terms or timeframes thereof.**

In this version -- for discussion -- the line references for excluded properties would be the lines for EXCLUDED PROPERTIES and LIMITED EXCLUDED PROPERTIES and the fact that the LIMITED EXCLUDED PROPERTIES have an end date would be allowed to speak for itself without repeating it numerous times. Under LIMITED EXCLUDED PROPERTIES the language about the expiration of any protection time period was removed because it is not clear how the firm and the buyer would know what that is. If they knew the time period they would write that in. This version assumes that Protected Properties will be a defined term (once we get there). The statement at the end about no advice was added to because the Buyer might ask for interpretation or time limits.

If there is authority for all properties, then why can there not be affirmatively stated initial search parameters? Why not have basic general parameters for type, geography, etc. be initial search parameters but not have such described property categories excluded from the scope of authority? The idea of the scope of authority may be a good one because some practitioners seem to be uncomfortable with properties/items that are not within the buyer's agent's authority or that would not then earn commission if the property was acquired. If the authority – and the ability to earn commission are broad, can there then not be initial search instructions with price and basic exclusions by type, location, etc. that are for searching but do not limit the agent's authority?

**COMMISSION**

◆ Compensation (Draft 1, Lines 31-50, Draft 2, Lines 26-43):

The DSPS Real Estate Contractual Forms Advisory Committee adopted a version of the Compensation section that is a combination of the following two proposals:

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

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

\_\_\_\_\_  
 [INSERT AMOUNTS AND TYPES OF FEES, E.G. RETAINER FEE, ADVANCE FEE, HOURLY FEE, ETC. AND INDICATE WHEN DUE]  
 [INSERT THE AMOUNT AND TYPE OF OTHER FEE, E.G. RETAINER FEE, OR HOURLY FEE]

If this Agreement calls for a success fee, it is agreed that ~~Broker~~ ~~the Firm~~ has earned the success fee if, during the term of this Agreement (or any extension of it), Buyer or any ~~P~~erson ~~A~~cting on ~~B~~ehalf of Buyer acquires an ~~i~~nterest in ~~P~~roperty or enters into an enforceable written contract between owner and Buyer to acquire an ~~i~~nterest in ~~P~~roperty, at any terms and price acceptable to owner and Buyer. ~~Broker's~~ ~~The Firm's~~ compensation remains due and payable if an enforceable written contract entered into by Buyer per lines ~~26-29~~ ~~xx-xx~~ fails to close. Once earned, ~~Broker's~~ ~~the Firm's~~ compensation is due and payable at

the earlier of closing or the date set for closing, even if the transaction does not close, unless otherwise agreed in writing.

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

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

Option 2 assumes the Firm may be paid by the owner or owner's agent and provides that buyer would have to pay only if the amount received from the owner or owner's agent is not enough and buyer must pay the balance. Option 2 clarifies the payment of compensation, and is structured along the lines of the WB-1 to facilitate understanding and transparency. This draft seeks to try to avoid any possible challenges along the lines of those raised in the *Ash Park* case. It is believed there has not been any litigation with regard to the WB-36 at the appellate levels. Option 2 drops the use of the term "Success Fee" and instead refers to commission, adding an additional blank line to assist commercial brokers. It eliminates the check boxes. It addresses what should happen if the commission received, for instance, from the listing broker, is less than or more than the designated commission (attempting to create transparency and better understanding by all).

It also attempts to emphasize that Purchase Price Range, Initial Search Request and excluded property types do not impact the ability to receive commission. **UNRESOLVED ISSUE/LANGUAGE**

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

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

OTHER COMPENSATION: \_\_\_\_\_ . **INSERT AMOUNTS**

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

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

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

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

**The DSPS Real Estate Contractual Forms Advisory Committee went with the following:**

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

COMMISSION: \_\_\_\_\_ % of the purchase price

■ **COMMISSION EARNED:** The Firm has earned the Firm's commission ~~if~~, regardless of the Purchase Price Range, Initial Search Request or excluded property types above, if during the term of this Agreement (or any extension of it), Buyer or any Person Acting on Behalf of Buyer acquires an Interest in Property or

enters into an enforceable written contract to acquire an Interest in Property, at any terms and price acceptable to owner and Buyer. The Firm's commission remains due and payable if an enforceable written contract entered into by Buyer per lines xx-xx fails to close.

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

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

■ **OTHER COMPENSATION:** \_\_\_\_\_

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

The Committee moved the Other Compensation subsection to the end of the Commission section so that those amounts would not be confused with commission. Note that if a fee is not due at closing that should be specified, for example, "\$500 retainer fee due upon signing of this Agreement."

Rather than placing just blank lines for Commission, there was concern if just a percentage was written in there is no Calculation subsection as there is in the WB-1 – no direction to what the percentage applies to. On the other hand, by making the commission expressed as a percentage of the purchase price, what happens if there is an option, an exchange or some other arrangement? That may have to be written in and it is unlikely the buyer and the firm would be aware of that possibility or likelihood at the outset.

**The WRA Forms Committee discussed this version (may not be exact, no language was crafted during meeting) (shown in Draft 2):**

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

COMMISSION: \_\_\_\_\_% of the purchase price \_\_\_\_\_

■ **COMMISSION EARNED:** The Firm has earned the Firm's commission ~~if~~ **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 and excluded property types.** 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. **A percentage commission shall be calculated based on the total consideration paid by Buyer for a purchase or option, or the list price if an exchange or an effective change in ownership or control.**

■ **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**

This would mean that commission may be earned despite the price range or the excluded property types – the only restriction would be the specific excluded properties. That also could be modified as well. The definition of Interest in Property currently excludes the specific excluded properties which would make

sense because if they are excluded to protect against double commissions (protected properties, etc., it would not seem to be helpful to put them back in.

◆ **Lien Notice (Draft 1, Lines 51-56; Draft 2, lines 45-50):** The language needed as foundation for any claim for a commission lien has been added so as to preserve the broker's ability to complete the process in Wis. Stat. § 779.32 and have a lien for unpaid commission filed and preserved. The question was asked if the terminology in this notice should be changed to make it consistent with the new changes in Wis. Stat. chapter 452.

Wis. Stat. § 779.32(2m) states,

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

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

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

◆ **Firm's Duties (Draft 1, Lines 80-84; Draft 2, lines 74-77):** Do we want or need the long description of what negotiate means included in the Firm's Duties description as is the case in the current WB-36? The language used is based on the statutes, but the Disclosure to Clients section covers much of this and lists the Firm's duties. Also see two variations of a proposed definition of “Negotiate the Acquisition an Interest in Property” which incorporate the statutory definition of negotiate. It is believed that this section is included to help establish what performance is required by the Firm in order to establish adequate performance justifying the commission. There is no similar section in the WB-1.

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

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

⇒ **Is the definition of “Negotiate the Acquisition an Interest in Property” a better place to enumerate what is involved in negotiation – or should that be included at all? DSPS Real Estate Contractual Forms Advisory Committee thought yes**

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

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

A. Assist Buyer to Locate an Interest in Property and Negotiate the Acquisition of an Interest in

- Property, as applicable.
- B. Comply with other provisions of this Agreement and the duties stated herein.

**Another proposal not seen by either Committee:**

FIRM'S DUTIES: In consideration for Buyer's agreements, Broker agrees to use professional knowledge and skills, and reasonable efforts within the scope of licensure duties to assist Buyer to Locate an Interest in Property and Negotiate the Acquisition of an Interest in Property, as applicable.

**The following change was adopted by the DSPS Real Estate Contractual Forms Advisory Committee, although it is formatted below a touch differently than what is shown in Draft 1 – it is shown in Draft 2:**

**FIRM'S DUTIES**

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

**BUYER RESPONSIBILITIES – rejected by the DSPS Real Estate Contractual Forms Advisory Committee and WRA Forms Committee concurred**

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

**BUYER'S RESPONSIBILITIES:**

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

Another option for

BUYER'S RESPONSIBILITIES. Buyer will:

- F. Work exclusively through the Firm when acquiring property in the market area and negotiate acquisition of the property in the market area only through the Firm (exclusive agent 24/7 – not

what we currently have in the WB-36) – modify to say “will work with the Firm and no other buyer’s broker and negotiate acquisition of property through no other buyer’s broker”

- G. Inform other firms, agents, sellers, property owners, etc. that the Firm exclusively represents Buyer for the purpose of acquiring property in the market area and refer all such persons to the Firm and
- H. Comply with all provisions of this agreement

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

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

**These were all rejected by the DSPS Real Estate Contractual Forms Advisory Committee and WRA Forms Committee concurred.**

Another suggestion which has similarities:

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

⇒ Should there be a buyer’s duties section and if so, what language or combination of provisions would be best? **The DSPS Real Estate Contractual Forms Advisory Committee was not in favor of that idea and WRA Forms Committee concurred.**

⇒ See the paragraph at the bottom of the next page -- is there anything in **yellow** there that should be added to the Cooperation section? How about this one: **Buyer will inform other firms, agents, sellers, property owners, etc., that the Firm represents Buyer as buyer’s agent for the purpose of acquiring property and refer all such persons to the Firm. WRA Forms Committee favored this addition.**

**Another possible addition (see italics) similar to what is in **yellow**:**

Buyer shall also notify the Firm of the identity of all persons making inquiries concerning Buyer's objectives stated in this Agreement *and Buyer shall inform any such persons, whether agents or potential sellers, of the applicability of this Agreement.*

⇒ **Should this be moved to appear after the Firm's duties section or left where it is now? (not addressed) (shown that way in Draft 2).**

Below are two preliminary combination of the duties sections and the Cooperation section, one includes lists while the other is all in one paragraph. Are any of these – or a modification thereof – desirable? **The DSPS Real Estate Contractual Forms Advisory Committee rejected this idea and WRA Forms Committee concurred.**

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

**Buyer's Responsibilities:**

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

**Firm's Duties:**

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

**-OR-**

**COOPERATION** Buyer agrees to cooperate with the firm and its agents and to provide them accurate copies of all relevant records, documents and other materials in Buyer's possession or control which are required in connection with the purchase, option, or exchange of property. **If Buyer sees any signs or advertisements for property being offered for sale, Buyer will not contact the owner or the owner's agent but will first contact the Firm or its agents who will provide information about the property and make arrangements for Buyer to see them.** Buyer agrees to be reasonably available for showings of properties. In the event Buyer elects to visit an open house without the Firm or its agents, Buyer agrees to notify the party representing the owner of this Agreement. In order to avoid the possibility of confusion over the agency relationship and misunderstandings about liability for compensation, Buyer agrees not to make a first visit to any new home builder's model nor contact any agents representing the owner or builder without being accompanied by the Firm or its agents. Buyer shall promptly notify the Firm in writing of the description of any property Buyer locates. Buyer shall also notify the Firm of the identity of all persons making inquiries concerning Buyer's objectives stated in this Agreement. **Buyer will inform other firms, agents, sellers, property**

owners, etc., that the Firm represents Buyer as buyer's agent for the purpose of acquiring property and refer all such persons to the Firm. Buyer authorizes the Firm and its agents to do those acts reasonably necessary to fulfill the Firm's responsibilities under this Agreement including retaining subagents. The Firm and its agents agree to use professional knowledge and skills, in accordance with applicable law, to assist Buyer to Locate an Interest in Property and Negotiate the Acquisition of an Interest in Property, as applicable; and will comply with other provisions of this Agreement and the duties stated herein.

**Excerpt from WB-6 commission section:**

Seller shall pay Broker's commission, which shall be earned if, during the term of this Listing:

- 1) Seller sells or accepts an offer which creates an enforceable contract for the sale of all or any part of the Assets;
- 2) Seller grants an option to purchase all or any part of the Assets which is subsequently exercised;
- 3) Seller exchanges or enters into a binding exchange agreement on all or any part of the Assets;
- 4) A transaction occurs which causes an effective change of ownership, management or control of all or any part of the Assets from Seller to a third party, other than in the ordinary course of business;
- 5) A transfer or sale of any stock, shares, membership or partnership interest of the Business Entity occurs which results in an effective change of ownership, management or control of the Business;
- 6) A buyer is Procured for the Assets by Broker, by Seller, or by any other person, at no less than the price and on substantially the same terms set forth in this Listing and the standard provisions of the current WB-16 OFFER TO PURCHASE - BUSINESS WITH REAL ESTATE (if real property is included in the list price) or WB-17 OFFER TO PURCHASE - BUSINESS WITHOUT REAL ESTATE, even if Seller does not accept this buyer's offer;
- 7) Seller enters into a management contract involving all or any part of the Assets during the term of this Listing;
- 8) Seller enters into lease(s) involving all or any part of the Assets during the term of this Listing, other than in the ordinary course of business.

NOTE: Each item on lines 192-204 is a commissionable event and the commission due shall be the aggregate of the amounts earned for all commissionable events. This may require allocation of list price or fair market value among Assets.

A percentage commission, if applicable, shall be calculated based on the purchase price if commission is earned under 1) or 2) above, or calculated based on the list price under 3) (if an exchange of all Assets), 4), 5), 6), 7) or 8). A percentage commission shall be calculated on the fair market value of the Assets exchanged under 3) if the exchange does not involve all Assets. "Purchase price" shall include all consideration received by Seller including, but not limited to, buyer assumptions of debt, any Seller provided financing and all consideration received by other selling or transferring parties, as the case may be.

**Note that purchase price refers to all consideration and is the basis for the commission calculation for a purchase or option. List price is used for exchanges, effective change in or ownership or control, and other transactions.**

## WB-36 REVISIONS

To: DSPS Real Estate Contractual Forms Advisory Committee  
From: WRA Forms Committee  
Date: August 5, 2016  
RE: **WB-36 Buyer Agency Agreement**

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The following are possible revisions to the WB-36 Buyer Agency Agreement (mandatory use date 7-1-08). The line numbers in this memo refer to either Draft 1 or Draft 2, as stated. Draft 1, file 20160707 WB-36 Draft1, is the WB-36 draft as it was left after the last meeting of the DSPS Real Estate Contractual Forms Advisory Committee on July 7. Draft 2, file wb-36 DRAFT2\_Aug2016d, labeled DRAFT 2, was created to show language adopted by the DSPS Real Estate Contractual Forms Advisory Committee without the tracking and it also shows some alternate proposals made by the WRA Forms Committee and language under discussion or consideration– an idea board, if you will. Draft 1 more closely resembles the current WB-36 and is in tracking.

We have split out memo into two parts since it is 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 Buyer Agency Agreement

- ◆ Update the top of the form to say Approved by the Wisconsin Real Estate Examining Board.
- ◆ **Chapter 452 Terminology.** The terminology throughout this form is modified in anticipation of the Wis. Stat. chapter 452 revisions wherein the proposed terminology would refer to a Firm to mean either a broker entity or a sole proprietor broker. Those revisions additionally refer to salespersons, licensed individual brokers, and licensed broker entities, but here the choice was to refer to the Firm and the agents of the Firm. A definition of “Firm” was added to the draft.
- ◆ **First caption (line 1) and Agency Authorization on lines 1-5, Draft 2; lines 1-6, Draft 1:** The paragraph heading was simplified: ~~BROKER-THE SOLE EXCLUSIVE AUTHORITY TO ACT FOR BUYER-AS-A BUYER’S AGENT~~. There also is some new terminology in the section at lines 1-5.

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

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

★**[This was agreed to by the DSPS Real Estate Contractual Forms Advisory Committee but it was not reflected in Draft 1 – see Draft 2 which shows this modification in tracking]**

★ **NOTE: this was pointed out at the last DSPS meeting but the change was not successfully made:**

Draft 1 in lines 1-6 says:

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

Please modify it so it says (like in Draft 2 lines 1-5):

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

◆ Note (Lines 6-9 in Draft 2, lines 8-11 in Draft 1):

★ The DSPS Real Estate Contractual Forms Advisory Committee engaged in a conversation about procuring cause concerns and as a result ended up modifying the language in the box, as reflected in Draft 1 – Draft 2 shows this modification in tracking:

If Buyer ~~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 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 shall be responsible to pay any uncollected amount.

## PRICE

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

✓ WRA Forms Committee found this to be acceptable the way it is. The DSPS Committee agreed.

## TYPE OF PROPERTIES/EXCLUDED PROPERTIES/SEARCH PARAMETERS

◆ **Property Types Not Included/Excluded Properties (Draft 1, Lines 14-29; Draft 2 lines 11-25:**

### **8. DSPS July 7 – see Drafts 1 and 2 – this was adopted by the Real Estate Contractual Forms Advisory Committee**

■ **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. \_\_\_\_\_

■ **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 or until the expiration of any applicable protection period, if a prior "protected" property is identified

here 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: Prior "Protected" Properties: If Buyer does not want this Agreement to apply to a property or properties that may be "protected" under Buyer's failure to exclude a Protected Property from a prior previous buyer agency agreement, may result in Buyer should identify such property or properties under Excluded Properties at lines xxx, or under the Limited Exclusion Properties, to be excluded to the extent of the prior broker's/Firm's legal rights, unless otherwise stated. The Firm and its agents cannot provide advice about what, if anything, a Buyer might owe under a prior Buyer Agency 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.**

**The WRA Forms Committee discussed a few small modification proposals:**

■ **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 previous prior buyer agency agreement(s) may result in Buyer owing commissions under each buyer agency agreement. Buyer should consult the any prior firm(s) or Buyer's legal counsel regarding their his or her obligations under any buyer agency agreement.**

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

## COMMISSION

◆ **Compensation (Draft 1, Lines 31-50, Draft 2, Lines 26-43):**

**The DSPS Real Estate Contractual Forms Advisory Committee went with the following on July 7:**

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

COMMISSION: \_\_\_\_\_ % of the purchase price \_\_\_\_\_

■ **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. A percentage commission shall be calculated based on the Buyer's total consideration for a purchase or option, or the fair market value of the property and assets 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**

For the yellow highlighted language the issue is to make sure that business assets would be included.

Under the WB-6, “Assets” includes “all goodwill, stock-in-trade, trade fixtures, accounts receivable, Business Personal Property, the interest in Real Estate (if included on lines 22-31), Fixtures (if interest in Real Estate is included), and the following additional property \_\_\_\_.”

1. **It seems that total consideration for a purchase or an option would be good.**
2. **Should the commission be based upon fair market value or list price for exchange or an effective change in ownership or control?** Can the buyer and the firm determine the list price readily or is the issue that from the buyer’s perspective that the value is a better measure? It was discussed whether there should be some guidance or a procedure for establishing fair market value, but since fair market value is mentioned in the WB-1 Commission section and there is no such information there, it was decided it was best to use fair market value as stated in the draft.
3. **Should a definition of “Assets” be added to the WB-36?** See below.

[If this is adopted there may be a need to review the WB-36 to see where else the Assets should be mentioned so that the WB-36 is clearly an agreement pertaining to the acquisition of real estate and businesses and business assets, not just residential properties.]

**Should there be a definition for Property? Would there be Assets (not including real estate) and real estate and together that is Property? Should there be a Property definition (and/or modify the definition of Interest in Property) that brings together real estate interests and business assets?**

The WRA Forms Committee worked on the following proposed definitions that are shown in Draft 2:

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

■ **PROPERTY:** "Property", as used in this Agreement, means real property located within the state of Wisconsin and Assets.

**There is definitely more than one way this can be done, but the bottom line is to make the agreement friendly to business assets and businesses along with real estate.**

**Note:** in Draft 2 a few changes were made in tracking with respect to the term “property” to include an initial cap or modify it with the word “real” as seemed to be appropriate.

⇒ **Other suggestions? Is this acceptable or are there additional suggestions or ideas?**

◆ **Lien Notice (Draft 1, Lines 51-56; Draft 2, lines 45-50):** The language needed as foundation for any claim for a commission lien has been added so as to preserve the broker’s ability to complete the process in Wis. Stat. § 779.32 and have a lien for unpaid commission filed and preserved. The question was asked if the terminology in this notice should be changed to make it consistent with the new changes in Wis. Stat. chapter 452.

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

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

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

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

◆ **Delivery (Draft 1, Lines 57-79; Draft 2, lines 51-73):** Added in the Delivery of Documents and Written Notices from the WB-1 draft with terminology modifications. Deleted the Delivery definition from Definitions section.

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

◆ **Firm's Duties (Draft 1, Lines 80-84; Draft 2, lines 74-80):** Do we want or need the long description of what negotiate means included in the Firm's Duties description as is the case in the current WB-36?

### **CURRENT WB-36:**

■ **BROKER'S DUTIES:** In consideration for Buyer's agreements, Broker agrees to use professional knowledge and skills, and reasonable efforts, to: 1) locate an interest in property, unless Broker is being retained solely to negotiate the procurement of an interest in a specific property, and 2) negotiate the procurement of an interest in property, as required, by giving advice to Buyer within the scope of Broker's license, facilitating or participating in the discussions of the terms of a potential contract, completing appropriate contractual forms, presenting either party's contractual proposal with an explanation of the proposal's advantages and disadvantages and other efforts including but not limited to the following:

---

unless Broker is retained solely to locate an interest in property.

★ **The following change was adopted by the DSPS Real Estate Contractual Forms Advisory Committee – the thought was to remove the numbering/outline format and condense it into one paragraph:**

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

The DSPS Committee seemed to be agreeable to the paragraph format but was unhappy with the way the paragraph reads as far as grammar and language – they thought it read better when it was configured as a list!

### Alternative language suggestion:

In consideration for Buyer'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 to Locate an Interest in Property and Negotiate the Acquisition of an Interest in Property, as applicable.

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

\*\*\*\*\*THIS IS AS FAR AS THE DSPS FORMS COMMITTEE WENT JULY 7 \*\*\*\*\*

### **BUYER RESPONSIBILITIES –**

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

◆ **Cooperation (Draft 1, Lines 197-203; Draft 2, moved to lines 81-88):** 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 in Draft 1. Should there be modifications to the last sentence which reads, “Buyer shall also notify the Firm of the identity of all persons making inquiries concerning Buyer's objectives stated in this Agreement.” Should the buyer be notifying the Firm or referring the persons to the Firm?

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

**Proposal discussed by WRA Forms Committee June 2, 2016 Discussed modifications (may not be exact, no language was crafted during meeting)**

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

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

◆ **Earnest Money (Draft 1, Lines 85-92; Draft 2, lines 89-93):** The terminology was changed and the provision was made to mirror part of the Earnest Money provision in the WB-1 residential listing contract so that disbursement may be authorized in accordance with the law, especially Wis. Admin. Code § REEB 18.09(1), and not limited to a disbursement agreement. **Line 104 in Draft 1 is in error and should be removed.**

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

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

◆ **Non Discrimination (Draft 1, Lines 93-96; Draft 2, lines 94-97):** This was made to read the same as the provision in the WB-1 with regard to terminology and adding the additional protected class for status as a victim.

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

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

◆ **Dispute Resolution (Draft 2, lines 98-102):** This is the provision from the WB-1. It is not in Draft 1.

⇒ **Is this acceptable and should it be added to Draft 1/the WB-36? The WRA Forms Committee found this acceptable.**

◆ **Disclosure to Clients (Draft 1, Lines 97-182; Draft 2, lines 103-187):**

This section now shows in tracking the new language from the statutes that goes into effect on July 1, 2016. This section in Draft 2 has been tweaked to make it the same as the same section in the WB-1 draft, including formatting, capitalization, etc. (**would recommend copying this section from Draft 2 into the working draft**).

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

◆ **Waiver of Confidentiality (Draft 1, Lines 183-191; Draft 2, lines 188-196) – also possible new section for Power of Attorney (Draft 2, Lines 197-199):** This information is nice but not sure whether it is helpful or essential. Terminology and formatting changes were made in the drafts.

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

**The WRA Forms Committee arrived at this configuration on August 4:**

**WAIVER OF CONFIDENTIALITY** Buyer may wish to authorize the Firm and its agents to disclose information which might otherwise be considered confidential. ~~Certain information may otherwise be considered confidential, but it~~ is agreed for purposes of negotiation of a potential Acquisition of Property, that unless expressly declined at lines xx-xx, the Firm and its agents may disclose to prospective sellers, owner's agents and other third parties all information reasonably calculated to facilitate Acquisition of an Interest in Property including, but not limited to, Buyer's identity, profession and financial qualification information.

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

The group want to retain this sentence but wasn't certain where or how. One suggestion may be:

**POWER OF ATTORNEY** Buyer acknowledges that pursuant to Wis. Stat. § 706.03(1)(b)(1m) a conveyance, such as an offer to purchase, is not binding if signed by an authorized representative of Buyer (e.g., with a power of attorney) unless Buyer is identified in the conveyance.

This could directly follow Waiver of Confidentiality or placed elsewhere. The identity of the buyer is not really confidential unless that specific request is made. When using a power-of-attorney, that is not really a matter of confidentiality but rather of having another person sign documents for the buyer. It is not clear if it should be rewritten or eliminated or restructured – is it better as instructions for the completion of the confidential information and non-confidential information lines?

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

◆ **Non-Exclusive Relationship (Draft 1, Lines 192-196; Draft 2, lines 200-203):**

This information is nice but not sure whether it is helpful or essential. Terminology changes made. 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 acknowledges and agrees that the Firm and its agents may act for other buyers in connection with the location of properties and may negotiate on behalf of such buyers with the owner or owner's agent. In the event that the Firm or its agents undertake to represent and act for other buyers, the Firm and its agents shall not disclose to Buyer, or any other buyer, any confidential information of any buyer, unless required by law.

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

◆ **Property Dimensions (Draft 1, Lines 204-209; Draft 2, lines 204-208):** Not sure if this is necessary or helpful, but it does no harm. 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 acknowledges that real property dimensions, total square footage and total acreage information provided to Buyer may be approximate due to rounding and may vary due to different formulas which can be used to calculate these figures. Unless otherwise indicated, property dimension figures have not been verified by survey.

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

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

◆ **Definition of Adverse Fact (Draft 1, Lines 211-217; Draft 2, lines 210-216):**

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

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

◆ **Definition of Assets (Draft 2, lines 217-218):**

This would prove helpful considering that the WB-36 pertains to the acquisition of business assets and not solely real estate.

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

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

◆ **Definition of Buyer (Draft 1, Lines 218-219; Draft 2, lines 219-220):** This is the same as before except that the word "lease" was removed since there is going to be a separate tenant representation agreement. Also the word "opportunity" was removed because that word now appears only once in Chapter 452.

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

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

◆ **Definition of Deadlines-Days (Draft 1, Lines 220-221; Draft 2, lines 221-222):**

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

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

◆ **Definition of Firm (Draft 1, Line 228; Draft 2, line 223):** This was added and is the same as the definition in the WB-1.

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

◆ **Definition of Interest in Property (Draft 1, Lines 229-231; Draft 2, lines 224-226):**

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

■ **INTEREST IN PROPERTY:** ~~The “interest in Pproperty” to be obtained by Buyer~~ includes a purchase, ~~leasehold~~, option, exchange ~~agreement~~ or any other ~~procured~~ interest in real property unless restricted at lines ~~11-2xx-xx0~~, in additional provisions (lines ~~482-490xxx-xxx~~) or elsewhere in this Agreement. This does not include any rental or leasehold interests.

This version was adopted by the WRA Forms Committee on August 4 and includes Property as a defined term, with Property meaning real estate or business assets:

■ **INTEREST IN PROPERTY:** “Interest in Property” ~~includes means~~ a purchase, option, exchange or ~~any~~ other ~~interest in acquisition of~~ Property unless specifically excluded at lines xx-xx, in additional provisions (lines xxx-xxx) or elsewhere in this Agreement. This does not include any rental or leasehold interests.

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

◆ **Definition of Locate an Interest in Property (Draft 1, Lines 232-234; Draft 2, lines 227-229):**

This is mostly the same as before.

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

**The WRA forms Committee adopted this change August 4:**

■ **LOCATE AN INTEREST IN PROPERTY:** “Locate an Interest in Property” ~~shall means~~ to, with the cooperation of Buyer, identify, evaluate, and determine, ~~with the cooperation of Buyer~~, the availability of the Interest in Property sought by Buyer.

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

◆ **Definition of Material Adverse Fact (Draft 1, Lines 235-238; Draft 2, lines 230-233):** This is the same as before and the same as the definition in the WB-1.

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

◆ **Definition of Negotiate the Acquisition of an Interest in Property (Draft 1, Lines 239-251; Draft 2, lines 234-239):**

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 as opposed to having it in the Firm's Duties section. The parenthetical within (a) in the first definition might be eliminated or this could be rephrased a bit to make it shorter and more user friendly.

**CURRENT WB-36:**

**NEGOTIATE THE PROCUREMENT OF AN INTEREST IN PROPERTY:** "Negotiate the procurement of an interest in property" shall mean, as used in this Agreement, to contact the owner of the property or the owner's agent to ascertain the terms and conditions upon which the interest may be obtained and to otherwise assist Buyer in reaching an agreement to procure the interest sought by Buyer in the property as may be specified in this Agreement.

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

■ **NEGOTIATE THE ACQUISITION OF AN INTEREST IN PROPERTY:** "Negotiate the Acquisition of an Interest in Property" shall mean to provide the Buyer assistance within the scope of the knowledge, skills, and training required under chapter 452 of the statutes in developing a proposal or agreement relating to a transaction, including: (a) acting as an intermediary by facilitating or participating in communications between parties related to the parties' interests in a transaction; (b) completing, when requested by Buyer, appropriate board-approved forms or other writings to document the Buyer's proposal consistent with the Buyer's instructions; (c) presenting to Buyer the proposals of other parties to the transaction and giving Buyer a general explanation of the provisions of the proposal; and (d) otherwise assisting Buyer in reaching an agreement to acquire the Interest in Property sought by Buyer.

**Another proposal:**

■ **NEGOTIATE THE ACQUISITION OF AN INTEREST IN PROPERTY:** "Negotiate the Acquisition of an Interest in Property" shall mean to assist a Buyer within the scope of this Agreement in ascertaining terms and conditions upon which an Interest In Property may be acquired, facilitate or participate in the discussions of the terms of a potential contract, complete appropriate contractual forms, present either party's contractual proposal with an explanation of the proposal's advantages and disadvantages, and otherwise assist Buyer in reaching an agreement to acquire the Interest in Property sought by Buyer, and other efforts including but not limited to the following: \_\_\_\_\_.

This one is unusual because there normally are not blank lines in the definitions section of a form

**The WRA Forms Committee adopted this concept although final wording was not settled on August 4:**

■ **NEGOTIATE THE ACQUISITION OF AN INTEREST IN PROPERTY:** "Negotiate the Acquisition of an Interest in Property" shall mean<sub>s</sub> to assist a Buyer<sub>1</sub> within the scope of this Agreement<sub>1</sub> in-to ascertain<sub>ing</sub> terms and conditions upon which an Interest In Property may be acquired, facilitate or participate in the discussions of the terms of a potential contract, complete appropriate contractual forms, present either party's contractual proposal with an explanation of the proposal's advantages and disadvantages, and/or otherwise assist Buyer in reaching an agreement to acquire the Interest in Property sought by Buyer<sub>3</sub>.

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

◆ **Definition of Person Acting on Behalf of Buyer (Draft 1, Lines 252-257; Draft 2, lines 240-244):**

This is the same as before with additions made that come from the WB-6 and the WB-1. Is the last phrase “whether created before or after expiration of this Agreement” needed in the WB-36?

■ PERSON ACTING ON BEHALF OF BUYER: ~~“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 (?)~~.

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 propertyed properties and be created after the expiration of the WB-36.

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

◆ **Definition of Property (Draft 2, lines 245-246):**

This would prove helpful considering that the WB-36 pertains to the acquisition of business assets and not solely real estate.

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

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

◆ **Definition of Protected Property (Draft 2, lines 247-250):**

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

■ PROTECTED PROPERTY: ~~“Protected Property”~~, as used in this Agreement, ~~refers to means~~ any property which during the term of a buyer agency agreement was: 1) located or negotiated for by the buyer’s firm or its agents, the buyer or Person Acting on Behalf of that Buyer, or 2) which was the subject of a written proposal submitted by the buyer or any person acting on behalf of that buyer.

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

◆ **Term of the Agreement (Draft 1, Lines 269-273; Draft 2, lines 281-284):** This is the same as before with some formatting changes.

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

◆ **Termination of Agreement (Draft 1, 274-284; Draft 2, lines 265-273):** This has been modified to make it like the similar provision in the WB-1.

**TERMINATION OF AGREEMENT** ■ ~~TERMINATION OF AGREEMENT:~~ Neither Buyer nor ~~Broker the Firm~~ has the legal right to unilaterally terminate this Agreement absent a material breach of contract by the other party. Buyer understands that the parties to this Agreement are Buyer and the ~~Broker F(firm)~~. Agents ~~(salespersons)~~ for ~~Broker the F(firm)~~ do not have the authority to terminate this Agreement, amend the

compensation terms or shorten the term of this Agreement, without the written consent of the agent(s) supervising broker. Buyer and ~~Broker~~ the Firm agree that any termination of this Agreement by either party before the date stated on lines ~~494-xxx-xxx~~ shall be effective by Buyer only if stated in writing and delivered to the Firm in accordance with lines xx-xx and effective by the Firm only if stated in writing by the supervising broker and delivered to Buyer in accordance with lines xx-xx. ~~indicated to the other party in writing and shall not be effective until delivered to the other party in accordance with lines 158-163.~~

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

⇒ **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 copy showing the changes in tracking.**

◆ **Extension of Agreement Term (Draft 1, Lines 285-291; Draft 2, lines 273-279):** 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, which language is substantially the same as the wording used in the proposed definition of “Protected Property”.

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

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

◆ **Notice about Sex Offender Registry (Draft 1, Lines 292-294; Draft 2, lines 262-265):** This is the same as before with additions made that come from the WB-6 and the WB-1.

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

◆ **Signature section and lines (Draft 1, Lines 295-318; Draft 2, lines 285-303):** This was modified similarly to the WB-1.

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

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

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

**DRAFT 1** – from July 7 DSPS mtg.

1 ■ ~~**BROKER THE SOLE EXCLUSIVE AUTHORITY TO ACT FOR BUYER AS A BUYER'S AGENT:**~~ Buyer (see lines  
2 154-155xxx-xxx) gives ~~Broker the Firm and its Agents~~ (hereinafter referred to as Buyer's Agent) ~~the exclusive right to act as~~  
3 ~~Buyer's agent to~~ locate an interest in property and to ~~negotiate the procurement of the Acquisition of an~~ interest in  
4 ~~property for Buyer~~, except as excluded under lines 11-20xx-xx. ~~Except for excluded properties described in lines 11-~~  
5 ~~20xx-xx~~, Buyer agrees that during the term of this Agreement, Buyer will not enter into any other agreements to retain  
6 any other buyer's agent(s), ~~except for the excluded properties described in lines xx-xx~~

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

7  
8  
9  
10  
11  
12  
13 ■ **PURCHASE PRICE RANGE:** \_\_\_\_\_  
14 ■ **SCOPE OF AGREEMENT:** The purchase price range provides initial search parameters, but the Firm's authority under  
15 this Agreement extends to all property within the state of Wisconsin except for those properties excluded as Excluded  
16 Properties on lines xx-xx, and applies to any properties under Limited Excluded Properties after the applicable time for  
17 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.  
20 \_\_\_\_\_  
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 \_\_\_\_\_

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 a previous buyer agency agreement may result**  
28 **in the bBuyer owing commissions under each buyer agency agreement. Buyer should consult the prior firm or**  
29 **Buyer's legal counsel regarding their obligations under any buyer agency agreement.**  
30 ~~Insert additional addresses or descriptions, if any, at lines xxx-xxx or attach as an addendum per lines xxx-xxx.~~

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

32 **COMMISSION:** \_\_\_\_\_  
33 \_\_\_\_\_  
34 \_\_\_\_\_

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

40 ■ **COMMISSION DUE AND PAYABLE:** Once earned, the Firm's commission is due and payable at the earlier of closing or  
41 **the date set for closing, even if the transaction does not close, unless otherwise agreed in writing. A percentage**  
42 **commission shall be calculated based on the Buyer's total consideration for a purchase or option, or the fair market value**  
43 **of the property and assets in the transaction if an exchange or an effective change in ownership or control occurs.**

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

48 ■ **OTHER COMPENSATION:** \_\_\_\_\_  
49 \_\_\_\_\_

50 **INSERT AMOUNTS AND TYPES OF FEES, E.G. RETAINER, ADVANCE, HOURLY, ETC. AND INDICATE WHEN DUE AND PAYABLE**  
51 **BROKER LIEN NOTICE: Broker-The Firm has the authority under section 779.32 of the Wisconsin Statutes to file**  
52 **a broker lien for commissions or compensation earned but not paid when due against the commercial real**  
53 **estate, or the interest in the commercial real estate, if any, that is the subject of this Agreement. "Commercial**  
54 **real estate" includes all real estate except (a) real property containing 8 or fewer dwelling units, (b) real property**

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

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

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

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

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

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

65 Buyer: ( \_\_\_\_\_ ) Firm: ( \_\_\_\_\_ )

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

69  (4) U.S. Mail: depositing the document or written notice postage prepaid in the U.S. Mail, addressed either to the  
70 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  
71 or xx.

72 Delivery address for Buyer: \_\_\_\_\_

73 Delivery address for Firm: \_\_\_\_\_

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

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

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

80 **FIRM'S DUTIES** To do those acts reasonably necessary to fulfill the Firm's responsibilities under this  
81 Agreement, including retaining subagents, to use professional knowledge and skills, and reasonable efforts,  
82 in accordance with applicable law, to assist Buyer to Locate an Interest in Property and Negotiate the  
83 Acquisition of an Interest in Property, as applicable, and to comply with other provisions of this Agreement  
84 and the duties stated herein.

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

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

97 **DISCLOSURE TO CLIENTS** ■ ~~BROKER DISCLOSURE TO CLIENTS~~:  
98 Under Wisconsin law, a brokerage firm (hereinafter firm) and its brokers and salespersons (hereinafter agents) owe  
99 certain duties to all parties to a transaction:

- 100 (a) The duty to provide brokerage services to you fairly and honestly.
- 101 (b) The duty to exercise reasonable skill and care in providing brokerage services to you.
- 102 (c) The duty to provide you with accurate information about market conditions within a reasonable time if you request it,  
103 unless disclosure of the information is prohibited by law.
- 104 (d) The duty to disclose to you in writing certain Material Adverse Facts about a property, unless disclosure of the  
105 information is prohibited by law. (see lines xxx-xxx)
- 106 (e) The duty to protect your confidentiality. Unless the law requires it, the firm and its agents will not disclose your  
107 confidential information or the confidential information of other parties. (see lines xxx-xxx)
- 108 (f) The duty to safeguard trust funds and other property the firm or its agents holds.
- 109 (g) The duty, when negotiating, to present contract proposals in an objective and unbiased manner and disclose the  
110 advantages and disadvantages of the proposals.

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

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

#### 124 **MULTIPLE REPRESENTATION RELATIONSHIPS AND DESIGNATED AGENCY**

- 125 ■ A multiple representation relationship exists if a firm has an agency agreement with more than one client who is a party  
126 in the same transaction. If you and the firm's other clients in the transaction consent, the firm may provide services  
127 through designated agency, which is one type of multiple representation relationship.
- 128 ■ Designated agency means that different agents with the firm will negotiate on behalf of you and the other client or  
129 clients in the transaction, and the firm's duties to you as a client will remain the same. Each agent will provide  
130 information, opinions, and advice to the client for whom the agent is negotiating, to assist the client in the negotiations.  
131 Each client will be able to receive information, opinions, and advice that will assist the client, even if the information,  
132 opinions, or advice gives the client advantages in the negotiations over the firm's other clients. An agent will not reveal  
133 any of your confidential information to another party unless required to do so by law.
- 134 ■ If a designated agency relationship is not authorized by you or other clients in the transaction you may still authorize or  
135 reject a different type of multiple representation relationship in which the firm may provide brokerage services to more  
136 than one client in a transaction but neither the firm nor any of its agents may assist any client with information, opinions,  
137 and advice which may favor the interests of one client over any other client. Under this neutral approach, the same agent  
138 may represent more than one client in a transaction.
- 139 ■ If you do not consent to a multiple representation relationship the firm will not be allowed to provide brokerage services  
140 to more than one client in the transaction.

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

- 142  The same firm may represent me and the other party as long as the same agent is not  
143 representing us both (multiple representation relationship with designated agency).
- 144  The same firm may represent me and the other party, but the firm must remain neutral regardless  
145 if one or more different agents are involved (multiple representation relationship without  
146 designated agency).
- 147  The same firm cannot represent both me and the other party in the same transaction (I reject  
148 multiple representation relationships).

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

#### 154 **SUBAGENCY**

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

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

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

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

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

- 170 1. Material ~~A~~adverse ~~F~~facts, as defined in ~~section Wis. Stat. § 452.01(5g) of the Wisconsin statutes (See lines 170-~~  
171 ~~173xxx-xxx)~~.
- 172 2. Any facts known by the ~~broker-Firm and its Agents~~ that contradict any information included in a written inspection  
173 report on the property or real estate that is the subject of the transaction.

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

177 **CONFIDENTIAL INFORMATION:** \_\_\_\_\_

178 \_\_\_\_\_

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

181 \_\_\_\_\_

182 \_\_\_\_\_

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

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

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

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

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

210 **~~DEFINITIONS~~ ■ ~~DEFINITIONS:-~~**

211 ■ **ADVERSE FACT:** An "~~A~~adverse ~~F~~fact" means any of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

292 **NOTICE ABOUT SEX OFFENDER REGISTRY** You may obtain information about the sex offender registry and  
293 persons registered with that registry by contacting the Wisconsin Department of Corrections on the Internet at  
294 <http://www.doc.wi.gov> <http://www.widocoffenders.org> or by telephone at (608)240-5830.  
295 ■ **READING/RECEIPT:** BY SIGNING BELOW, BUYER ACKNOWLEDGES RECEIPT OF A COPY OF THIS  
296 AGREEMENT AND THAT HE/SHE HAS READ ALL **FIVE** PAGES AS WELL AS ANY ADDENDA AND ANY  
297 OTHER DOCUMENTS INCORPORATED INTO THIS AGREEMENT.

298 Dated this \_\_\_\_\_ day of \_\_\_\_\_,

299 (x) \_\_\_\_\_  
300 Buyer's Signature ▲ Print Name Here: ▲ Date ▲  
301 \_\_\_\_\_  
302 Buyer's Signature ▲ Print Name Here: ▲ Date ▲  
303 Buyer's Address ▲ Buyer's Phone # ▲  
304 \_\_\_\_\_  
305 Buyer's Signature ▲ Print Name Here: ▲ Date ▲  
306 Buyer's Fax # ▲ Buyer's E-Mail Address ▲

307 (x) \_\_\_\_\_  
308 Buyer's Signature ▲ Print Name Here: ▲ Date ▲  
309 Buyer Entity Name (if any): \_\_\_\_\_  
310 \_\_\_\_\_ Print Name Here: ▲  
311 \_\_\_\_\_  
312 Buyer's Address ▲ Buyer's Phone # ▲

313 (x) \_\_\_\_\_  
314 Authorized Signature ▲ Print Name & Title Here ► Date ▲  
315 \_\_\_\_\_  
316 Buyer's Fax # ▲ Buyer's E-Mail Address ▲

317 (x) \_\_\_\_\_  
318 Agent for Broker/Firm ▲ Print Name Here: ▲ Broker/Firm Name ▲ Date ▲  
319 \_\_\_\_\_  
320 Broker/Firm Address ▲ Broker/Firm Phone # ▲  
321 \_\_\_\_\_  
322 Broker/Firm Fax # ▲ Broker/Firm E-Mail Address ▲

**WB-36 BUYER AGENCY AGREEMENT**

**DRAFT 2: what DSPS decided to line 73; WRA proposals in tracking and general ideas thereafter**

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

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

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

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

15 ■ **EXCLUDED PROPERTIES:** Identify any specific properties or limitations on the scope of this Agreement, including  
16 geographic limitations or limitations on types of properties included under this Agreement. \_\_\_\_\_  
17 \_\_\_\_\_

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

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

23 **CAUTION: Buyer's failure to exclude a Protected Property from a previous prior buyer agency agreement(s) may**  
24 **result in Buyer owing commissions under each buyer agency agreement. Buyer should consult the any prior**  
25 **firm(s) or Buyer's legal counsel regarding their-his or her obligations under any buyer agency agreement.**

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

27 **COMMISSION:** \_\_\_\_\_

28  
29 ■ **COMMISSION EARNED:** The Firm has earned the Firm's commission if during the term of this Agreement (or any  
30 extension of it), Buyer or any Person Acting on Behalf of Buyer acquires an Interest in Property or enters into an enforceable  
31 written contract to acquire an Interest in Property, at any terms and price acceptable to owner and Buyer, regardless of the  
32 purchase price range. The Firm's commission remains due and payable if an enforceable written contract entered into by  
33 Buyer per lines xx-xx fails to close.

34 ■ **COMMISSION DUE AND PAYABLE:** Once earned, the Firm's commission is due and payable at the earlier of closing or  
35 the date set for closing, even if the transaction does not close, unless otherwise agreed in writing. **A percentage commission**  
36 **shall be calculated based on the Buyer's total consideration for a purchase or option, or the fair market value of the**  
37 **property and Assets-Property in the transaction if an exchange or an effective change in ownership or control occurs.**

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

42 ■ **OTHER COMPENSATION:** \_\_\_\_\_

43  
44 **INSERT AMOUNTS AND TYPES OF FEES, E.G. RETAINER, ADVANCE, HOURLY, ETC. AND INDICATE WHEN DUE AND PAYABLE**

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

51 **DELIVERY OF DOCUMENTS AND WRITTEN NOTICES** Unless otherwise stated in this Agreement, delivery of

52 documents and written notices to a party shall be effective only when accomplished by one of the methods specified at  
53 lines xx-xx.

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

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

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

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

59 Buyer: (\_\_\_\_\_) \_\_\_\_\_ Firm: (\_\_\_\_\_) \_\_\_\_\_

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

63  (4) U.S. Mail: depositing the document or written notice postage prepaid in the U.S. Mail, addressed either to the  
64 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  
65 or xx.

66 Delivery address for Buyer: \_\_\_\_\_

67 Delivery address for Firm: \_\_\_\_\_

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

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

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

74 **FIRM'S DUTIES** In consideration for Buyer's agreements, the Firm and its agents agree to use professional knowledge  
75 and skills, and reasonable efforts, within the scope of Wis. Stat. Chapter 452 and in accordance with applicable law, to  
76 assist Buyer to Locate an Interest in Property and Negotiate the Acquisition of an Interest in Property, as applicable.  
77 ~~To do those acts reasonably necessary to fulfill the Firm's responsibilities under this Agreement including retaining~~  
78 ~~subagents; to use professional knowledge and skills, and reasonable efforts, in accordance with applicable law, to assist~~  
79 ~~Buyer to Locate an Interest in Property and Negotiate the Acquisition of an Interest in Property, as applicable, and to~~  
80 ~~comply with other provisions of this Agreement and the duties stated herein.~~

81 **COOPERATION** Buyer agrees to cooperate with the Firm and its agents and to provide them accurate copies of all  
82 relevant records, documents and other materials in Buyer's possession or control which are required in connection with the  
83 purchase, option, or exchange of Property. Buyer agrees to be reasonably available for showings of properties. Buyer  
84 authorizes the Firm and its agents to do those acts reasonably necessary to fulfill the Firm's responsibilities under this  
85 Agreement including retaining subagents. Buyer shall promptly notify the Firm in writing of the description of any Property  
86 Buyer locates. Buyer will inform other firms, agents, sellers, property owners, etc., that the Firm represents Buyer as buyer's  
87 agent for the purpose of acquiring Property and refer all such persons to the Firm. Buyer shall also notify the Firm of the  
88 identity of all persons making inquiries concerning Buyer's objectives stated in this Agreement.

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

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

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

103 **DISCLOSURE TO CLIENTS**

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

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

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

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

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

- 112 (e) The duty to protect your confidentiality. Unless the law requires it, the firm and its agents will not disclose your  
113 confidential information or the confidential information of other parties. (See lines xxx-xxx.)  
114 (f) The duty to safeguard trust funds and other property the firm or its agents holds.  
115 (g) The duty, when negotiating, to present contract proposals in an objective and unbiased manner and disclose the  
116 advantages and disadvantages of the proposals.

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

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

130 **MULTIPLE REPRESENTATION RELATIONSHIPS AND DESIGNATED AGENCY**

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

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

- 148  The same firm may represent me and the other party as long as the same agent is not  
149 representing us both (multiple representation relationship with designated agency).  
150  The same firm may represent me and the other party, but the firm must remain neutral regardless  
151 if one or more different agents are involved (multiple representation relationship without  
152 designated agency).  
153  The same firm cannot represent both me and the other party in the same transaction (I reject  
154 multiple representation relationships).

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

160 **SUBAGENCY**

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

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

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

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

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

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

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

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

182 **CONFIDENTIAL INFORMATION:** \_\_\_\_\_

183 \_\_\_\_\_

184 \_\_\_\_\_

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

186 \_\_\_\_\_

187 \_\_\_\_\_

188 **WAIVER OF CONFIDENTIALITY** Buyer may wish to authorize the Firm and its agents to disclose information which might  
189 otherwise be considered confidential. ~~lit is agreed for purposes of negotiation of a potential Acquisition of Property, that unless~~  
190 ~~expressly declined at lines xx-xx, the Firm and its agents may disclose to prospective sellers, owner's agents and other third~~  
191 ~~parties all information reasonably calculated to facilitate Acquisition of an Interest in Property including, but not limited to, Buyer's~~  
192 ~~identity, profession and financial qualification information. An example of this type of information might be financial qualification~~  
193 ~~information which may be disclosed to strengthen Buyer's offer to purchase in the eyes of prospective sellers. Buyer's~~  
194 ~~authorization to disclose may be indicated at lines xxx-xxx. Unless otherwise provided at lines xxx-xxx, the Firm and its agents~~  
195 ~~have permission to disclose Buyer's identity to an owner, owner's agents and other third parties without prior consent from~~  
196 ~~Buyer.~~

197 **POWER OF ATTORNEY** Buyer acknowledges that pursuant to Wis. Stat. §706.03(1)(b)(1m) a conveyance, such as an offer  
198 to purchase, is not binding if it is signed by a representative properly authorized by Buyer (e.g., with a power of attorney) until  
199 such time as Buyer is identified in the conveyance.

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

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

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

## 209 **DEFINITIONS**

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

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

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

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

217 ■ **ASSETS:** "Assets", as used in this Agreement, means fixtures, goodwill, stock-in-trade, trade fixtures, accounts  
218 receivable and any other personal property.

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

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

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

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

227 ■ LOCATE AN INTEREST IN PROPERTY: "Locate an Interest in Property" shall mean to, with the cooperation of  
228 Buyer, identify, evaluate, according to the standards set by Buyer, and determine the availability of the Interest in  
229 Property sought by Buyer.

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

234 ■ NEGOTIATE THE ACQUISITION OF AN INTEREST IN PROPERTY: "Negotiate the Acquisition of an Interest in  
235 Property" shall mean to assist a Buyer, within the scope of this Agreement, in to ascertaining terms and conditions upon  
236 which an Interest In Property may be acquired, facilitate or participate in the discussions of the terms of a potential  
237 contract, complete appropriate contractual forms, present either party's contractual proposal with an explanation of the  
238 proposal's advantages and disadvantages, and/or otherwise assist Buyer in reaching an agreement to acquire the  
239 Interest in Property sought by Buyer.

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

245 ■ PROPERTY: "Property", as used in this Agreement, means real property located within the state of Wisconsin and  
246 Assets.

247 ■ PROTECTED PROPERTY: "Protected Property", as used in this Agreement, refers to means any Pproperty which  
248 during the term of a buyer agency agreement was: 1) located or negotiated for by the buyer's firm or its agents, the buyer  
249 or any Person Acting on Behalf of that Buyer, or 2) which was the subject of a written proposal submitted by the buyer or  
250 any person acting on behalf of that buyer.

251 **ADDITIONAL PROVISIONS**

252 \_\_\_\_\_  
253 \_\_\_\_\_  
254 \_\_\_\_\_  
255 \_\_\_\_\_  
256 \_\_\_\_\_  
257 \_\_\_\_\_  
258 \_\_\_\_\_  
259 \_\_\_\_\_

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

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

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

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

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

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

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

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

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

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

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

296 Buyer Entity Name (if any): \_\_\_\_\_  
297 Print Name Here: ▲

298 (x) \_\_\_\_\_  
299 Authorized Signature ▲ Print Name & Title Here ► Date ▲

300 Firm Name: \_\_\_\_\_  
301 Print Name Here: ▲

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