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**REAL ESTATE CONTRACTUAL FORMS ADVISORY COUNCIL**  
**Room 121A, 1400 East Washington Avenue, Madison**  
**Contact: Brittany Lewin (608) 266-2112**  
**December 7, 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 September 15, 2016 (2)**
- C. Administrative Updates**
  - 1) Staff and Member Updates
  - 2) Discussion of Form Update Schedule
- D. Review of Real Estate Contractual Forms for Revision:**
  - 1) WB-36 Buyer Agency/Tenant Representation Agreement**
    - a) Review of WRA Forms Committee Memo with Proposed Revisions to WB-36
      - 1. Commercial **(3-8)**
      - 2. Residential **(9-22)**
    - b) Original Document
      - 1. Commercial **(23-28)**
      - 2. Residential **(29-35)**
  - 2) WB-47 Amendment to Buyer Agency/Tenant Representation Agreement (36)**
- E. Public Comments**

**ADJOURNMENT**

The Next Scheduled Meeting is January 11, 2017.

**REAL ESTATE CONTRACTUAL FORMS ADVISORY COUNCIL  
MEETING MINUTES  
SEPTEMBER 15, 2016**

**PRESENT:** Joseph Busch (*joined the meeting at 9:40 a.m.*), Casey Clickner, John Drzewiecki, Michael Gordon, Kitty Jedwabny (*via GoToMeeting*), Cori Lamont, Kim Moermond, Jonathan Sayas, Michael Sewell, Gary Tritz, Thomas Weber (*was excused from the meeting at 12:55 p.m.*), Pamela Widen

**EXCUSED:** Debra Conrad, Richard Marino, Richard Petershack

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

**CALL TO ORDER**

Kitty Jedwabny, Chair, called the meeting to order at 9:30 a.m. A quorum of eleven (11) members was confirmed.

**ADOPTION OF AGENDA**

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

**APPROVAL OF MINUTES**

**MOTION:** John Drzewiecki moved, seconded by Cori Lamont, to approve the minutes of July 7, 2016 as published. Motion carried unanimously.

*Joseph Busch joined the meeting at 9:40 a.m.*

*Thomas Weber was excused from the meeting at 12:55 p.m.*

**ADJOURNMENT**

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

The meeting adjourned at 1:42 p.m.

## COMMERCIAL WB-36 REVISIONS

To: DSPS Real Estate Contractual Forms Advisory Committee  
From: WRA Forms Committee and WRA Staff  
Date: December 1, 2016  
RE: **WB-XX Commercial Buyer Agency/Tenant Representation Agreement**

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

The following reviews the proposed draft for commercial buyer agency/tenant representation agreement, based on input from commercial practitioners from the WRA Forms Committee, from the Commercial Association of REALTORS® and from various market areas such as South Central and Northeast. The line numbers in this memo refer to the Nov 2016 DRAFT, file Commercialwb-36 DRAFT\_Nov2016d.

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

### **WB-XX Commercial Buyer Agency/Tenant Representation Agreement**

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

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

- ◆ **First caption (line 1) and Agency Authorization on lines 1-6:** Same as residential WB-36.
- ◆ **Note in Box (Lines 7-10):** Same as residential WB-36.
- ◆ **Purchase Price Range (Line 11):** This item is necessary to meet the requirements of Wis. Stat. § 240.10(1) for an enforceable real estate contract that supports actions for the payment of fees or commissions: “Every contract to pay a commission to a real estate agent or broker or to any other person for selling or buying real estate shall be void unless such contract or note or memorandum thereof **describes that real estate; expresses the price for which the same may be sold or purchased,** the commission to be paid and the period during which the agent or broker shall procure a buyer or seller; is in writing; and is subscribed by the person agreeing to pay such commission, **except that a contract to pay a commission to a person for locating a type of property need not describe the property.**”

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

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

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

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

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

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

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

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

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

## COMMISSION

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

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

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

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

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

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

**OTHER PURCHASE COMPENSATION:**

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

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

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

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

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

**CHECK AND COMPLETE AS APPLICABLE:**

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

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

- |                          |   |
|--------------------------|---|
| <input type="checkbox"/> | Total annual net rent for the full lease term; or |
| <input type="checkbox"/> |   |

**OTHER LEASING COMPENSATION:**

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

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

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

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

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

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

As used in this Agreement, the following definitions pertain:

⇒ **Is this acceptable?**

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

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

⇒ **Is this acceptable?**

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

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

⇒ **Is this acceptable?**

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

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

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

⇒ Is this acceptable or are there additional changes?

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

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

⇒ Is this acceptable or are there additional changes?

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

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

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

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

- **Should there be specific mention of attending a showing? Or would that be covered by “viewed by” under item 2?**
- **In item 3 in the definition it calls for delivery of the property description by the Firm to the client if the property was located by or negotiated for by the Firm and its agents, the client or any person acting on behalf of the client. There seems to be a bit of an overlap – should item 3 say “except as stated in item 2/on lines xxx-xxx?”**

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

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

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

- 1) Delivers to Seller or the Firm or its agents a written offer to purchase, exchange or option on the Property;
- 2) Views the Property with Seller or negotiates directly with Seller by communicating with Seller regarding any potential terms upon which the buyer might acquire an interest in the Property; or
- 3) Attends an individual showing of the Property or communicates with agents of the Firm or cooperating firms regarding any potential terms upon which the buyer might acquire an interest in the Property, but only if the Firm or its agents deliver the buyer's name to Seller, in writing, no later than three days after the earlier of expiration or termination (lines 263-271) of the Listing. The requirement in 3), to deliver the buyer's name to Seller in writing, may be fulfilled as follows:
  - a) If the Listing is effective only as to certain individuals who are identified in the Listing, by the identification of the individuals in the Listing; or,
  - b) If a buyer has requested that the buyer's identity remain confidential, by delivery of a written notice identifying the firm or agents with whom the buyer negotiated and the date(s) of any individual showings or other negotiations.

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

- ◆ **Additional Provisions, Addenda (Lines 279-288):** Same as residential WB-36.
- ◆ **Notice about Sex Offender Registry (Lines 289-291):** Same as residential WB-36.
- ◆ **Termination of Agreement (Lines 292-300):** Same as residential WB-36.  
 ⇒ **It would it be advisable to revise the WB-47 Amendment to Buyer Agency/Tenant Representation Agreement to make the same modifications as were done in the WB-42 Amendment to Listing Contract to facilitate a termination by the Firm under the signature of the supervising broker. See the WB-47 draft with a couple of tweaks to the terminology.**
- ◆ **Extension of Agreement Term (Lines 301-307):** Same as residential WB-36.
- ◆ **Term of the Agreement (Lines 308-311):** Same as residential WB-36.
- ◆ **Signature section and lines (Lines 315-334):** Similar to the residential WB-36, but has two entity signature blocks that appear before the lines individual client signatures.

## RESIDENTIAL WB-36 REVISIONS

To: DSPS Real Estate Contractual Forms Advisory Committee  
From: WRA Forms Committee  
Date: November 29, 2016  
RE: **WB-36 Residential Buyer Agency/Tenant Representation Agreement – Drafts 4 & 5**

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

The following recaps the modifications and suggestions of the WRA Forms Committee at its last meeting on October 6 as well as possible revisions to the WB-36 Residential Buyer Agency/Tenant Representation Agreement suggested by practitioners who work with tenant representation for residential rentals. The WRA Forms Committee worked with Draft 4, file WB-36 Draft4\_09.30.16, labeled DRAFT 4 which shows where the WB-36 stood after the DSPS September 15 meeting– without the tracking. The line numbers in this memo refer to Draft 5, file WB-36 Draft5\_Nov2016, labeled DRAFT 5. Draft 5 shows possible language potentially implementing the concepts discussed by the WRA Forms Committee and the rental practitioners in tracking or yellow highlighting.

★ You may find it easiest to follow along on Draft 5 for this discussion.

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

### **WB-36 Residential Buyer Agency/Tenant Representation Agreement**

- ◆ Update the top of the form to say Approved by the Wisconsin Real Estate Examining Board.
- ◆ **Chapter 452 Terminology. The terminology throughout this form is modified to match the Wis. Stat. chapter 452 revisions wherein the proposed terminology refers to a Firm to mean either a broker entity or a sole proprietor broker. Those revisions additionally refer to salespersons, licensed individual brokers, and licensed broker entities, but here the choice was to refer to the Firm and the agents of the Firm. A definition of “Firm” was added to the draft.**

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

In this proposed draft, the party entering into the agency agreement is called the “Client” in the opening and the general provisions sections, but is called the Buyer in the purchase/buyer agency section and is called the Tenant in the rental/tenant representation section. The Firm is representing the Client as Buyer’s Agent, Tenant Representative or both, depending upon how the agreement is completed.

◆ **First caption (line 1) and Agency Authorization on lines 1-7, Draft 5:** The paragraph heading was changed: ~~BROKER THE SOLE EXCLUSIVE AUTHORITY TO ACT FOR BUYER AS A BUYER’S AGENT AND/OR TENANT’S REPRESENTATIVE~~. This has been modified to indicate that the agreement can be used to authorize a firm to act as a buyer’s agent or a tenant representative or both.

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

◆ **Applicability on lines 8-11, Draft 5:** This is new and indicates that the Agreement can be used for any type of property on lines 8-9.

⇒ **Should include a reference to commercial property when there will be a separate buyer agency/tenant representation agreement for commercial and business property?**

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

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

⇒ **Different terminology, formatting or labeling? Better way to create a division/separation between the sections?**

⇒ **Is this acceptable?**

◆ **Note in Box (Lines 12-15 in Draft 5):**

★ This is the same as it was before. It refers to “Client”

If ~~Buyer-Client works-has contact, or has had previous contact~~ with ~~an~~ owner, ~~firm~~ or ~~its~~ agents ~~of owner~~ in locating and/or negotiating the Acquisition of an Interest in Property and ~~Buyer’s-Client’s~~ contact with ~~owners or other agents-those parties~~ results in the Firm not collecting full compensation under this

Agreement from owner or owner's agent, Buyer-Client shall be responsible to pay any uncollected amount.

◆ **Purchase Provisions – NEW! (Line 16 of Draft 5):** This is the introduction to the section of provisions in this draft relating only to buyer agency/purchase transactions. The introduction now says: **PURCHASE PROVISIONS: The provisions on lines xx –xx apply when the Firm represents Buyer as a Buyer's Agent.**

- ⇒ **Should there be a check box for the Purchase Provisions and the Rental Provisions (line 285)? Or do the parties just fill in what applies to them – that is the way it is handled in Draft 5?**
- ⇒ **Is there a better way to create separate sections? This approach was used here with the thought that it was similar to what WB-36 users are used to seeing and it tries to maintain the flow as much as possible since this will likely be used most often for buyer agency.**

The purchase section encompasses lines 16-59. For the most part this is all as it was left by the DSPS Real Estate Contractual Forms Advisory Committee, except that the terminology was modified and it now says "Buyer" as appropriate to emphasize this is the purchase/buyer area of the form.

#### **PRICE – same!**

◆ **Purchase Price Range (Line 17 of Draft 5):** This item is necessary to meet the requirements of Wis. Stat. § 240.10(1) for an enforceable real estate contract that supports actions for the payment of fees or commissions: "Every contract to pay a commission to a real estate agent or broker or to any other person for selling or buying real estate shall be void unless such contract or note or memorandum thereof **describes that real estate; expresses the price for which the same may be sold or purchased,** the commission to be paid and the period during which the agent or broker shall procure a buyer or seller; is in writing; and is subscribed by the person agreeing to pay such commission, **except that a contract to pay a commission to a person for locating a type of property need not describe the property.**"  
✓ **WRA Forms Committee found this to be acceptable the way it is. The DSPS Committee agreed.**

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

◆ **Property Types Not Included/Excluded Properties (Draft 5, Lines 18-32):** This is the same as the final language selection arrived at by the DSPS Real Estate Contractual Forms Advisory Committee except it once again refers to "Buyer" not to "Client:"

■ **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 until the expiration of the prior firm's legal rights. \_\_\_\_\_

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

**CAUTION: Buyer's failure to exclude a Protected Property from a prior buyer agency agreement may result in Buyer owing commissions under each buyer agency agreement. Buyer should**

consult the prior firm or Buyer's legal counsel regarding their obligations under any buyer agency agreement.

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

⇒ Is this acceptable?

## COMMISSION

### ◆ **Compensation (Draft 5, Lines 33-54):**

The proposed changes shown in tracking are new. The lined out sentence on lines 40-41 is redundant as the same information is stated in lines 42-43. Lining out the sentence makes this section more closely track with the similar provisions in the WB-1. The same is true for the addition of the Commission Calculation language

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

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

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

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

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

■ **OTHER COMPENSATION:** \_\_\_\_\_

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

⇒ **Different formatting or labeling?**

⇒ **Is this acceptable?**

◆ **Earnest Money (Draft 5, Lines 55-59):** The terminology was changed and the provision was made to mirror part of the Earnest Money provision in the WB-1 residential listing contract so that disbursement may be authorized in accordance with the law, especially Wis. Admin. Code § REEB 18.09(1), and not limited to a disbursement agreement.

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

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

⇒ **Is this acceptable?**

◆ **General Provisions (Draft 5, Line 60):** The language here marks a division – this starts a long section of provisions that were thought to have applicability to both buyer agency and tenant representation. The language says:

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

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

◆ **Lien Notice - same (Draft 5, Lines 61-66):** The language needed as foundation for any claim for a commission lien has been added so as to preserve the firm's ability to complete the process in Wis. Stat. § 779.32 and have a lien for unpaid commission filed and preserved.

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

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

◆ **Firm's Duties (Draft 5, Lines 67-70): Modified language:**

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

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

**BUYER RESPONSIBILITIES –**

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

◆ **Cooperation (Draft 5, Lines 71-79):** This is somewhat of a parallel counterpart to the similar section in the WB-1. Below the Cooperation section is shown with the terminology changes made – you can see this in tracking below. The yellow highlighted changes in tracking are new for this Draft 4.

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

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

◆ **Non Discrimination (Draft 5, Lines 80-83):** This was made to read the same as the provision in the WB-1 with regard to terminology and adding the additional protected class for status as a victim.

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

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

◆ **Dispute Resolution (Draft 5, lines 84-88):** This is the provision from the WB-1.

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

◆ **Disclosure to Clients (Draft 5, Lines 89-170):**

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

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

◆ **Non-Confidential Information at lines 171-175 of Draft 5:** The Non-Confidential Information section appears at the end of the Disclosure to Clients section as follows:

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

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

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

◆ **Non-Exclusive Relationship (Draft 5, Lines 176-180):**

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

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

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

◆ **Property Dimensions (Draft 5, Lines 181-186):** The WRA Forms Committee believed it was good information for the buyer to think about despite the fact that it also appears in the offers.

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

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

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

◆ **Definitions – Draft 5, line 187:** Note the newly proposed introductory language that eliminates any need to repeat “as used in this Agreement” within various individual definitions:

As used in this Agreement, the following definitions pertain:

⇒ **Other better language? Is this acceptable?**

◆ **Definition of Adverse Fact (Draft 5, Lines 188-194):**

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

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

◆ **Definition of Buyer – New! (Draft 5, Lines 195-196):**

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

⇒ **Is this acceptable?**

◆ **Definition of Client (Draft 5, Lines 197-198) – NEW!**

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

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

⇒ **Is this acceptable?**

◆ **Definition of Deadlines-Days (Draft 5, Lines 199-200):**

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

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

◆ **Definition of Firm (Draft 5, 201):** This was added and is the same as the definition in the WB-1.

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

◆ **Definition of Interest in Property (Draft 5, Lines 202-204):**

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

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

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

◆ **Definition of Locate an Interest in Property (Draft 5, Lines 205-207):** This is mostly the same as

before, with a few changes as follows:

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

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

◆ **Definition of Material Adverse Fact (Draft 5, Lines 208-211):** This is the same as before and the same as the definition in the WB-1.

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

◆ **Definition of Negotiate the Acquisition of an Interest in Property (Draft 5, Lines 212-217):**

The term was changed to substitute the word acquisition because that is the term used in other buyer agency agreements. Also the definition was modified to add the details of the definition of "negotiation" from the statutes.

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

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

◆ **Definition of Person Acting on Behalf of Buyer (Draft 5, Lines 218-222):** This is the same as before with additions made that come from the WB-6 and the WB-1. The last phrase “whether created before or after expiration of this Agreement” is not needed in the WB-36!

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

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

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

◆ **Definition of Person Acting on Behalf of Tenant (New!) (Draft 5, Lines 223-227):** This was added because of the separate section for rental provisions which uses the term “Tenant” not Client or Buyer. This definition thus has been reconfigured to incorporate the use of the word “Tenant” in place of “Buyer.”

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

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

◆ **Definition of Property (Draft 5, line 228):**

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

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

◆ **Definition of Protected Property (Draft 5, lines 229-239):**

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

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

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

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

- **If the client submits an offer/proposal that makes the property protected – should that also apply if the offer/proposal comes from a person acting on behalf of the client? Item 1 in the definition in Draft 5 is stated that way.**
- **What if the client views the property or directly negotiates with the owner as stated in item 2 in the draft? Does the property description need to be delivered? Should persons acting on behalf of the client be included here to, if they view the property or directly negotiate with the owner? Does this need to be qualified to say “viewed with the owner?”**
- **Should there be specific mention of attending a showing? Or would that be covered by “viewed by” under item 2?**
- **In item 3 in the definition it calls for delivery of the property description by the Firm to the client if the property was located by or negotiated for by the Firm and its agents, the client or any person acting on behalf of the client. There seems to be a bit of an overlap – should item 3 say “except as stated in item 2/on lines xxx-xxx?”**

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

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

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

- 1) Delivers to Seller or the Firm or its agents a written offer to purchase, exchange or option on the Property;
- 2) Views the Property with Seller or negotiates directly with Seller by communicating with Seller regarding any potential terms upon which the buyer might acquire an interest in the Property; or
- 3) Attends an individual showing of the Property or communicates with agents of the Firm or cooperating firms regarding any potential terms upon which the buyer might acquire an interest in the Property, but only if the Firm or its agents deliver the buyer’s name to Seller, in writing, no later than three days after the earlier of expiration or termination (lines 263-271) of the Listing. The requirement in 3), to deliver the buyer’s name to Seller in writing, may be fulfilled as follows:
  - a) If the Listing is effective only as to certain individuals who are identified in the Listing, by the identification of the individuals in the Listing; or,
  - b) If a buyer has requested that the buyer’s identity remain confidential, by delivery of a written notice identifying the firm or agents with whom the buyer negotiated and the date(s) of any individual showings or other negotiations.

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

◆ **Definition of Rental Agreement – New! (Draft 5, Lines 240-242):**

Because of the new section for rental provisions and because it was thought best to just use the terms “rental” and “rental agreement” rather than getting into “lease” terminology since rental agreement is the

broader term, this proposed definition was added to Draft 5. It is based on the definition in the landlord-tenant statutes in Chapter 704.

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

⇒ **Is this acceptable?**

◆ **Definition of Tenant (Draft 5, Lines 243-244) – NEW!**

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

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

⇒ **Is this acceptable?**

◆ **Notice about Sex Offender Registry (Draft 5, Lines 245-247):** This is the same as before with additions made that come from the WB-6 and the WB-1.

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

◆ **Termination of Agreement (Draft 5, 248-257):** This has been modified to make it like the similar provision in the WB-1 and to include the “client” terminology:

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

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

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

⇒ **It would it be advisable to revise the WB-47 Amendment to Buyer Agency/Tenant Representation Agreement to make the same modifications as were done in the WB-42 Amendment to Listing Contract to facilitate a termination by the Firm under the signature of the supervising broker. See the WB-47 draft with a couple of tweaks to the terminology.**

◆ **Extension of Agreement Term (Draft 5, lines 258-264):** This is the “property protection” provision and it is same as before with additions made that come from the WB-6 and the WB-1. The term “Protected Property” was also inserted parenthetically after the language describing that concept. Again the “Client” terminology has been added.

**EXTENSION OF AGREEMENT TERM** The Agreement term is extended for a period of one year as to any property which during the term of this Agreement was: 1) located or negotiated for by the Firm or its agents, Buyer-Client or any Person Acting on Behalf of Buyer-Client, or 2) which was the subject of a

written proposal submitted by Buyer-Client or any Person Acting on Behalf of Buyer-Client (Protected Property). If this extension is based on the Firm's or the Firm's agent(s)' Location of an Interest in Property or Negotiation of the Acquisition an Interest in Property, this extension shall only be effective if a written description of the property is delivered to Buyer-Client no later than three days after termination or expiration of this Agreement.

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

◆ **Delivery (Draft 5, Lines 265-287):** Added in the Delivery of Documents and Written Notices from the WB-1 draft with terminology modifications. Deleted the Delivery definition from Definitions section. Moved the section to page 5 of the form.

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

◆ **Rental Provisions – NEW! (Lines 288-336 of Draft 5):** This is the introduction to the section of provisions in this draft thought to relate only tenant representation/rental transactions. The introduction says:

RENTAL PROVISIONS: The provisions on lines xxx –xxx apply when the Firm represents Tenant as a Tenant's Agent.

⇒ **Is this acceptable?**

⇒ **Rent Range (Draft 5, Line 289) Brand new!** This is new to this form and provides a line where the Client may indicate or describe the rent that is desired, which may be a range.

⇒ **Is this acceptable?**

◆ **Tenant Representation Scope of Agreement (Draft 5, Lines 290-293) Brand new!** This says that the rent range is an initial search parameter, otherwise this reads like the scope for buyer agency/purchase, and says this section applies to all Wisconsin real estate, except excluded properties.

⇒ **Is this acceptable?**

◆ **Tenant Representation Excluded Properties and Limited Excluded Properties (Draft 5, Lines 294-304) Brand new!** This is new to this form and it is the same as the subsections of the same name appearing at the beginning of the form with regard to buyer agency. In Excluded Properties the prospective tenant can name specific properties that they do not wish to consider as well as geographic and other limitations. In other words the tenant indicates what they may be interested in by excluding what they are not interested in. In the Limited Exclusion Properties subsection any properties that are the subject of another tenant representation or similar agency agreement can be indicated, along with any timeframe relevant to the exclusion. Again this is like the subsection at the beginning of the form with regard to buyer agency.

⇒ **Is this acceptable?**

**Tenant Representation Compensation (Draft 5, Line 305) Brand new!** This is new to this form and states:

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

⇒ **Is this acceptable?**

◆ **Tenant Representation Commission (Draft 5, Lines 306-307) Brand new!** This is new to this form and provides blank lines to state the commission.

⇒ Is this acceptable?

◆ **Tenant Representation Commission Earned (Draft 5, Lines 308-312) Brand new!** This is new to this form and is similar to the provision on the first page pertaining to the earning of commission under buyer agency.

Without the tracking the section in Draft 5 says:

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

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

⇒ Is this acceptable?

◆ **Tenant Representation Commission Due and Payable (Draft 4, Lines 313-326) Brand new!** This is new to this form and indicates commission is due and payable upon execution of the rental agreement, or at the commencement of the rental agreement term even if the Tenant does not take occupancy, or one half upon execution and one-half upon occupancy, or something else. Should some of this be removed to simplify this? Are there other points that should be added?

Without the tracking the section in Draft 5 says:

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

Upon execution of the Rental Agreement; (NOTE: THIS CHOICE APPLIES IF NO BOX IS CHECKED)

At the commencement of the Rental Agreement term, even if the Tenant does not take occupancy, unless otherwise agreed in writing;

One-half upon execution of the Rental Agreement and one-half upon occupancy; or

\_\_\_\_\_

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

Total rent for the Rental Agreement term, or

—

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

⇒ Is this acceptable?

◆ **Tenant Representation Payment by Owner or Owner's Agent (Draft 5, Lines 327-331) Brand new!** This is new to this form and provides that the Firm is authorized and should look for its commission from the owner/landlord or the owner's agent (lease listing broker or property manager) first. The tenant pays any amount not paid by them.

⇒ **Is this acceptable?**

◆ **Tenant Representation Other Compensation (Draft 5, Lines 332-334) Brand new!** This is new to this form and similar to the provision for buyer agency on the first page only this is for tenant representation.

⇒ **Is this acceptable?**

◆ **Tenant Qualifications (Draft 5, Lines 335-336) Brand new!** This is new to this form and states: Client agrees to pay any credit report fees or background check fees charged by the owner or the owner's agent.

⇒ **Is this acceptable?**

◆ **Additional Provisions, Addenda (Draft 5, Lines 337-342)**: The language here marks a division – this starts the short ending section of provisions that have applicability to both buyer agency and tenant representation. This includes the Additional Provisions, Addenda, etc.

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

◆ **Term of the Agreement (Draft 5, Lines 343-346)**: This is the same as before with some formatting changes.

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

◆ **Signature section and lines (Draft 5, Lines 347-365)**: This was modified similarly to the WB-1, but the terminology was changed to say “Client” instead of Buyer.

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

WB36RevisionDSPS12-7-16

**WB-XX COMMERCIAL BUYER AGENCY/TENANT REPRESENTATION AGREEMENT**

**DRAFT Nov 2016**

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

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

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

12 ■ **RENT RANGE:** \_\_\_\_\_

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

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

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

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

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

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

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

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

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

37 \_\_\_\_\_  
38 \_\_\_\_\_

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

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

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

48 **OTHER PURCHASE COMPENSATION:** \_\_\_\_\_

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

51 **LEASE COMMISSION:** \_\_\_\_\_

52 \_\_\_\_\_

53

54

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

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

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

65  
66 Any percentage commission shall be calculated based on **CHECK AND COMPLETE AS APPLICABLE:**

67  Total annual net rent for the full lease term; or

68  \_\_\_\_\_

69  
70 **OTHER LEASING COMPENSATION:** \_\_\_\_\_

71  
72 \_\_\_\_\_ **INSERT AMOUNTS AND TYPES OF FEES, E.G. RETAINER, ADVANCE, HOURLY, ETC. AND INDICATE WHEN DUE AND PAYABLE**

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

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

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

84 Client's recipient for delivery (optional): \_\_\_\_\_

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

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

87 Client: (\_\_\_\_\_) \_\_\_\_\_ Firm: (\_\_\_\_\_) \_\_\_\_\_

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

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

94 Delivery address for Client: \_\_\_\_\_

95 Delivery address for Firm: \_\_\_\_\_

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

100 E-Mail address for Client: \_\_\_\_\_

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

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

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

111 and/or Tenant's Agent for the purpose of acquiring Property and refer all such persons to the Firm. Client shall also notify the  
112 Firm of the identity of all persons making inquiries concerning Client's objectives stated in this Agreement.

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

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

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

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

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

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

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

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

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

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

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

169 ■ If you do not consent to a multiple representation relationship the firm will not be allowed to provide brokerage services

170 to more than one client in the transaction.

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

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

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

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

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

184 **SUBAGENCY**

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

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

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

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

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

- 200 1) Material Adverse Facts, as defined in § 452.01 (5g) of the Wisconsin statutes (see lines xxx-xxx).
- 201 2) Any facts known by the Firm and its agents that contradict any information included in a written inspection report on  
202 the property or real estate that is the subject of the transaction.

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

206 **CONFIDENTIAL INFORMATION:** \_\_\_\_\_  
207 \_\_\_\_\_  
208 \_\_\_\_\_

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

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

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

224 The Firm agrees to indemnify the Client and hold the Client harmless on account of any and all loss, damage, cost or  
225 expense, including attorneys' fees incurred by the Client arising out of this Agreement, provided the loss, damage, cost,

226 expense or attorneys' fees do not result because of the negligence, misrepresentation or misconduct of the Client  
227 relative to the lawful performance of this Agreement.

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

233 **DEFINITIONS** As used in this Agreement, the following definitions pertain:

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

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

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

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

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

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

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

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

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

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

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

256 ■ **NEGOTIATE THE ACQUISITION OF AN INTEREST IN PROPERTY:** "Negotiate the Acquisition of an Interest in  
257 Property" means to assist a Client, within the scope of this Agreement, to ascertain terms and conditions upon which an  
258 Interest In Property may be acquired, facilitate or participate in the discussions of the terms of a potential contract,  
259 complete appropriate contractual forms, present either party's contractual proposal with an explanation of the proposal's  
260 advantages and disadvantages, and/or otherwise assist Client in reaching an agreement to acquire the Interest in  
261 Property sought by Client.

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

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

268 ■ **PROTECTED PROPERTY:** "Protected Property" means any Pproperty which,that during the term of a buyer agency  
269 or/ tenant representation agreement was:

270 1) the subject of a written proposal by Buyer or Tenant, or any Pperson Aacting on Bbehalf of Buyer or Tenant,  
271 submitted to the Property owner.;

272 2) locatedwas viewed by or directly negotiated for by Buyer or Tenant, or any Person Acting on Behalf of Buyer or  
273 Tenant. byDirect negotiation means communicating with the owner regarding any potential terms on which Buyer  
274 or Tenant might acquire an iinterest in the Property; or

275 3) was-located or negotiated for by the Buyer's or Tenant's firm or its agents, the Buyer or Tenant or any Person  
276 Acting on Behalf of Buyer or Tenant, but only if the Firm or its agents deliver the description of the Pproperty to  
277 Buyer or Tenant, in writing, no later than three days after the earlier of expiration or termination (lines xxx-xxx) of  
278 this aAgreement.

279 **ADDITIONAL PROVISIONS**

280 \_\_\_\_\_  
281 \_\_\_\_\_  
282 \_\_\_\_\_  
283 \_\_\_\_\_  
284 \_\_\_\_\_  
285 \_\_\_\_\_  
286 \_\_\_\_\_

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

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

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

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

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

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

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

315 Client Entity Name (if any): \_\_\_\_\_  
316 Print Name Here: ▲

317 (x) \_\_\_\_\_  
318 Authorized Signature ▲ Print Name & Title Here ► Date ▲

319 Client Entity Name (if any): \_\_\_\_\_  
320 Print Name Here: ▲

321 (x) \_\_\_\_\_  
322 Authorized Signature ▲ Print Name & Title Here ► Date ▲

323 (x) \_\_\_\_\_  
324 Client's Signature ▲ Print Name Here: ► Date ▲

325 (x) \_\_\_\_\_  
326 Client's Signature ▲ Print Name Here: ► Date ▲

327 (x) \_\_\_\_\_  
328 Client's Signature ▲ Print Name Here: ► Date ▲

329 (x) \_\_\_\_\_  
330 Client's Signature ▲ Print Name Here: ► Date ▲

331 Firm Name: \_\_\_\_\_  
332 Print Name Here: ▲

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

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

**DRAFT 5 (DPC)**

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

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

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

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

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

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

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

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

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

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

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

35 COMMISSION: \_\_\_\_\_  
36 \_\_\_\_\_

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

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

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

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

52 ■ **OTHER COMPENSATION:** \_\_\_\_\_

53

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

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

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

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

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

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

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

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

#### 89 **DISCLOSURE TO CLIENTS**

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

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

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

- 105 (a) The firm or one of its agents will provide, at your request, information and advice on real estate matters that affect  
106 your transaction, unless you release the firm from this duty.
- 107 (b) The firm or one of its agents must provide you with all material facts affecting the transaction, not just Adverse Facts.
- 108 (c) The firm and its agents will fulfill the firm's obligations under the agency agreement and fulfill your lawful requests  
109 that are within the scope of the agency agreement.

110 (d) The firm and its agents will negotiate for you, unless you release them from this duty.  
111 (e) The firm and its agents will not place their interests ahead of your interests. The firm and its agents will not, unless  
112 required by law, give information or advice to other parties who are not the firm's clients, if giving the information or  
113 advice is contrary to your interests.  
114 If you become involved in a transaction in which another party is also the firm's client (a "multiple representation  
115 relationship"), different duties may apply.

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

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

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

- 134  The same firm may represent me and the other party as long as the same agent is not  
135 representing us both (multiple representation relationship with designated agency).
- 136  The same firm may represent me and the other party, but the firm must remain neutral regardless  
137 if one or more different agents are involved (multiple representation relationship without  
138 designated agency).
- 139  The same firm cannot represent both me and the other party in the same transaction (I reject  
140 multiple representation relationships).

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

#### 146 **SUBAGENCY**

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

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

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

156 ■ **CONFIDENTIALITY NOTICE TO CLIENTS:** The Firm and its agents will keep confidential any information given to the  
157 Firm or its agents in confidence, or any information obtained by the Firm and its agents that a reasonable person would  
158 want to be kept confidential, unless the information must be disclosed by law or you authorize the Firm to disclose  
159 particular information. The Firm and its agents shall continue to keep the information confidential after the Firm is no  
160 longer providing brokerage services to you.  
161 The following information is required to be disclosed by law:  
162 1) Material Adverse Facts, as defined in § 452.01 (5g) of the Wisconsin statutes (see lines xxx-xxx).  
163 2) Any facts known by the Firm and its agents that contradict any information included in a written inspection report on  
164 the property or real estate that is the subject of the transaction.

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

168 **CONFIDENTIAL INFORMATION:** \_\_\_\_\_  
169 \_\_\_\_\_  
170 \_\_\_\_\_.

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

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

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

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

187 **DEFINITIONS** As used in this Agreement, the following definitions pertain:

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

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

- 190 1) Significantly and adversely affecting the value of the Pproperty;  
191 2) Significantly reducing the structural integrity of improvements to real estate; or  
192 3) Presenting a significant health risk to occupants of the Pproperty.

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

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

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

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

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

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

205 ■ **LOCATE AN INTEREST IN PROPERTY:** "Locate an Interest in Property" ~~shall means~~ to, with the cooperation of  
206 Client, identify, evaluate, ~~according to the standards set by Buyer,~~ and determine the availability of the Interest in  
207 Property sought by BuyerClient.

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

212 ■ **NEGOTIATE THE ACQUISITION OF AN INTEREST IN PROPERTY:** "Negotiate the Acquisition of an Interest in  
213 Property" ~~shall means~~ to assist a BuyerClient, within the scope of this Agreement, ~~in to~~ ascertaining terms and conditions  
214 upon which an Interest In Property may be acquired, which may include facilitating or participating in the discussions of  
215 the terms of a potential contract, completing appropriate contractual forms, presenting either party's contractual proposal  
216 with an explanation of the proposal's advantages and disadvantages, and/or otherwise assisting Buyer-Client in reaching  
217 an agreement to acquire the Interest in Property sought by BuyerClient.

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

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

227 in whole or in part.

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

229 ■ **PROTECTED PROPERTY:** "Protected Property" means any Property which, that during the term of a buyer agency

230 or/ tenant representation agreement was:

231 1) the subject of a written proposal submitted by Buyer or Tenant, or any Person Acting on Behalf of Buyer or

232 Tenant submitted to the Property owner.

233 2) located or was viewed by or directly negotiated for by Buyer or Tenant, or any Person Acting on Behalf of Buyer

234 or Tenant. Direct negotiation means by communicating with the owner regarding any potential terms on which

235 Buyer or Tenant might acquire an Interest in the Property; or

236 3) was located or negotiated for by the Buyer's or Tenant's firm or its agents, the Buyer or Tenant or any Person

237 Acting on Behalf of Buyer or Tenant, but only if the Firm or its agents deliver the description of the Property to

238 Buyer or Tenant, in writing, no later than three days after the earlier of expiration or termination (lines xxx-xxx) of

239 this Agreement.

240 ■ **RENTAL AGREEMENT:** "Rental Agreement" means an oral or written agreement between a landlord and tenant, for

241 the rental or lease of a specific dwelling unit or premises, in which the landlord and tenant agree on the essential terms of

242 the tenancy, such as rent; it includes a lease, but not an agreement to enter into a rental agreement in the future.

243 ■ **TENANT:** "Tenant" means the party executing this Agreement in the context where the party is seeking to acquire an

244 interest in real estate by lease or rental agreement.

245 **NOTICE ABOUT SEX OFFENDER REGISTRY** You Clients may obtain information about the sex offender registry and

246 persons registered with that registry by contacting the Wisconsin Department of Corrections on the Internet at

247 <http://www.doc.wi.gov> or by telephone at (608)240-5830.

248 **TERMINATION OF AGREEMENT** Neither Buyer-Client nor the Firm has the legal right to unilaterally terminate this

249 Agreement absent a material breach of contract by the other party. Buyer-Client understands that the parties to this Agreement

250 are Buyer-Client and the Firm. Agents for the Firm do not have the authority to terminate this Agreement, amend the

251 compensation terms or shorten the term of this Agreement, without the written consent of the agent(s)' supervising broker.

252 Buyer-Client and the Firm agrees that any termination of this Agreement by either party before the date stated on lines

253 xxx-xxx shall be effective by Buyer-Client only if stated in writing and delivered to the Firm in accordance with lines xx-xx

254 and effective by the Firm only if stated in writing by the supervising broker and delivered to Buyer-Client in accordance

255 with lines xx-xx.

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

257 **potentially be liable for damages.**

258 **EXTENSION OF AGREEMENT TERM** The Agreement term is extended for a period of one year as to any Property

259 which during the term of this Agreement was: 1) located or negotiated for by the Firm or its agents, Buyer-Client or any

260 Person Acting on Behalf of Buyer-Client, or 2) which was the subject of a written proposal submitted by Buyer-Client

261 or any Person Acting on Behalf of Buyer-Client (Protected Property). If this extension is based on the Firm's or the Firm's

262 agent(s)' Location of an Interest in Property or Negotiation of the Acquisition of an Interest in Property, this extension shall

263 only be effective if a written description of the Property is delivered to Buyer-Client no later than three days after

264 termination or expiration of this Agreement.

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

266 documents and written notices to a party shall be effective only when accomplished by one of the methods specified at

267 lines xx-xx.

268 (1) **Personal Delivery:** giving the document or written notice personally to the party, or the party's recipient for delivery if

269 named at line xx or xx.

270 Buyer's-Client's recipient for delivery (optional): \_\_\_\_\_

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

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

273 Buyer-Client: (\_\_\_\_\_) \_\_\_\_\_ Firm: (\_\_\_\_\_) \_\_\_\_\_

274  (3) **Commercial Delivery:** depositing the document or written notice fees prepaid or charged to an account with a

275 commercial delivery service, addressed either to the party, or to the party's recipient for delivery if named at line xx or xx,

276 for delivery to the party's delivery address at line xx or xx.

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

278 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

279 or xx.

280 Delivery address for Buyer-Client: \_\_\_\_\_

281 Delivery address for Firm: \_\_\_\_\_

282  (5) **E-Mail:** electronically transmitting the document or written notice to the party's e-mail address, if given below at

283 line xx or xx. If this is a consumer transaction where the property being purchased or the sale proceeds are used

284 primarily for personal, family or household purposes, each consumer providing an e-mail address below has first

285 consented electronically as required by federal law.

286 E-Mail address for Buyer-Client: \_\_\_\_\_

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

288 **RENTAL PROVISIONS:** The provisions on lines xxx –xxx apply when the Firm represents Tenant as a Tenant's Agent.

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

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

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

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

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

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

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

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

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

315  Upon the earlier of closing consummation execution of the lease Rental Agreement; or (NOTE: THIS CHOICE  
316 APPLIES IF NO BOX IS CHECKED)

317  At the date set for closing consummation commencement of the Rental Agreement term the lease, even if the  
318 transaction does not close Tenant does not take occupancy, unless otherwise agreed in writing;

319  One-half upon execution of the Rental Agreement and one-half upon occupancy; or

320  \_\_\_\_\_  
321 \_\_\_\_\_

322 Any percentage commission shall be calculated based on the Buyer's total consideration **CHECK AND COMPLETE AS**  
323 **APPLICABLE:**

324  Total rent for a the purchase or option lease Rental Agreement term, or

325  \_\_\_\_\_  
326 \_\_\_\_\_

327 ■ **PAYMENT BY OWNER OR OWNER'S AGENT:** The Firm is hereby authorized to seek payment of commission from the  
328 owner (e.g., lessor or landlord) (e.g., seller) or the owner's agent (e.g., listing firm) provided that all parties to the transaction  
329 give prior written consent. Buyer Tenant shall pay the Firm's compensation, reduced by any amounts the Firm receives from  
330 the owner or owner's agent. If the owner or the owner's agent does not pay the full amount due, Tenant agrees to pay any  
331 remaining balance due to the Firm.

332 ■ **OTHER COMPENSATION:** \_\_\_\_\_  
333 \_\_\_\_\_

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

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

337 **ADDITIONAL PROVISIONS** \_\_\_\_\_  
338 \_\_\_\_\_

339 \_\_\_\_\_  
340 \_\_\_\_\_

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

343 **TERM OF THE AGREEMENT** From the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ up  
344 to and including midnight of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

345 Notwithstanding lines xxx-xxx, the Firm and Buyer-Client agree that this Agreement (shall)(shall not) ~~STRIKE ONE~~ end  
346 ("shall" if neither is stricken) when Buyer-Client acquires an Interest in Property.

347 ■ **BY SIGNING BELOW, BUYER-CLIENT ACKNOWLEDGES RECEIPT OF A COPY OF THIS AGREEMENT AND**  
348 **HAS READ ALL \_\_\_\_\_ PAGES AS WELL AS ANY ADDENDA AND ANY OTHER DOCUMENTS INCORPORATED**  
349 **INTO THIS AGREEMENT.**

350 (x) \_\_\_\_\_  
351 Buyer's-Client's Signature ▲ Print Name Here: ► \_\_\_\_\_ Date ▲ \_\_\_\_\_

352 (x) \_\_\_\_\_  
353 Buyer's-Client's Signature ▲ Print Name Here: ► \_\_\_\_\_ Date ▲ \_\_\_\_\_

354 (x) \_\_\_\_\_  
355 Buyer's-Client's Signature ▲ Print Name Here: ► \_\_\_\_\_ Date ▲ \_\_\_\_\_

356 (x) \_\_\_\_\_  
357 Buyer's-Client's Signature ▲ Print Name Here: ► \_\_\_\_\_ Date ▲ \_\_\_\_\_

358 Buyer-Client Entity Name (if any): \_\_\_\_\_  
359 \_\_\_\_\_ Print Name Here: ▲

360 (x) \_\_\_\_\_  
361 Authorized Signature ▲ Print Name & Title Here ► \_\_\_\_\_ Date ▲ \_\_\_\_\_

362 Firm Name: \_\_\_\_\_  
363 \_\_\_\_\_ Print Name Here: ▲

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

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

1 It is agreed that the Buyer Agency ~~or~~ Tenant Representation Agreement dated \_\_\_\_\_, \_\_\_\_\_,  
 2 (hereinafter Agreement) between the undersigned is amended as follows:  
 3 The expiration date of the Agreement is changed from \_\_\_\_\_, \_\_\_\_\_ to midnight \_\_\_\_\_, \_\_\_\_\_.  
 4 Other: \_\_\_\_\_  
 5 \_\_\_\_\_  
 6 \_\_\_\_\_  
 7 \_\_\_\_\_  
 8 \_\_\_\_\_  
 9 \_\_\_\_\_  
 10 \_\_\_\_\_  
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 24 \_\_\_\_\_  
 25 \_\_\_\_\_  
 26 \_\_\_\_\_  
 27 \_\_\_\_\_  
 28 \_\_\_\_\_

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

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

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

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

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

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