

WB-5 COMMERCIAL LISTING CONTRACT - EXCLUSIVE RIGHT TO SELL

SAMPLE

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

2 ■ **PROPERTY DESCRIPTION:** Street address is _____
3 _____ in the _____ of _____, County of _____,
4 Wisconsin. Insert additional description, if any, at lines 258-270 or attach as an addendum per lines 271-277.

5 ■ **LIST PRICE:** _____ Dollars (\$ _____).
6 ■ **INCLUDED IN LIST PRICE:** Seller is including in the list price the Property, all Fixtures not excluded on lines 11-14,
7 and the following items: _____
8 _____
9 _____

10 ■ **NOT INCLUDED IN LIST PRICE:** CAUTION: Identify Fixtures to be excluded by Seller or which are rented and will
11 continue to be owned by the lessor. (See lines 194-204): _____
12 _____
13 _____
14 _____

15 ■ Seller shall convey the personal property by Bill of Sale, free and clear of all liens and encumbrances except:
16 _____
17 _____

18 ■ **SELLER AUTHORITY TO SELL:** Seller represents that Seller has authority to convey the Property. If the
19 Property's owner is an entity, Seller agrees, within ten days of the execution of this Listing, to provide Broker with a
20 copy of documents evidencing that the sale of the Property has been properly authorized.

21 ■ **ZONING:** Seller represents that the Property is zoned: _____

22 ■ **ZONING VARIANCES, NONCONFORMING USE OR DEVELOPMENT RESTRICTIONS:** Seller represents that the
23 Property is subject to the following special zoning, land use, development restrictions, zoning variances, nonconforming
24 uses or other conditions affecting the Property: _____
25 _____

26 ■ **MARKETING:** Seller authorizes and Broker agrees to use reasonable efforts to procure a buyer for the Property.
27 Seller agrees that Broker may market Seller's personal property identified on lines 7-9 during the term of this Listing.
28 Broker's marketing may include: _____
29 Broker may advertise the following special financing and incentives offered by Seller: _____
30 _____

31 Seller has a duty to cooperate with Broker's marketing efforts. See lines 87-93 regarding Broker's role as marketing
32 agent and Seller's duty to notify Broker of any potential buyer known to Seller. Seller agrees that Broker may market
33 other properties during the term of this Listing.

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

37 ■ **COOPERATION, ACCESS TO PROPERTY OR OFFER PRESENTATION:** The parties agree that Broker will work
38 and cooperate with other brokers in marketing the Property, including brokers from other firms acting as subagents
39 (agents from other companies engaged by Broker - See lines 151-154) and brokers representing buyers. Cooperation
40 includes providing access to the Property for showing purposes and presenting offers and other proposals from these
41 brokers to Seller. Note any brokers with whom Broker shall not cooperate, any brokers or buyers who shall not be
42 allowed to attend showings, and the specific terms of offers which should not be submitted to Seller: _____
43 _____

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

45 ■ **EXCLUSIONS:** All persons who may acquire an interest in the Property as a Protected Buyer under a prior listing
46 contract are excluded from this Listing to the extent of the prior broker's legal rights, unless otherwise agreed to in writing.
47 Within seven days of the date of this Listing, Seller agrees to deliver to Broker a written list of all such prospective buyers.
48 The following other buyers are excluded from this Listing until _____ [INSERT DATE] :
49 _____

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

52 ■ **COMPENSATION TO OTHERS:** Broker offers the following commission to cooperating brokers: _____
53 _____ . (Exceptions if any): _____

54 ■ **COMMISSION:** Broker's commission shall be _____

SAMPLE

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

- 56 1) Seller sells or accepts an offer which creates an enforceable contract for the sale of all or any part of the Property;
- 57 2) Seller grants an option to purchase all or any part of the Property which is subsequently exercised;
- 58 3) Seller exchanges or enters into a binding exchange agreement on all or any part of the Property;
- 59 4) A transaction occurs which causes an effective change in ownership or control of all or any part of the Property; or
- 60 5) A buyer is procured for the Property by Broker, by Seller, or by any other person, at no less than the price and on
- 61 substantially the same terms set forth in this Listing and in the standard provisions of the current WB-15
- 62 COMMERCIAL OFFER TO PURCHASE, even if Seller does not accept this buyer's offer. (See lines 209-212
- 63 regarding procurement.)

64 A percentage commission, if applicable, shall be calculated based on the purchase price if commission is earned under 1)

65 or 2) above, or calculated based on the list price under 3), 4) or 5). A percentage commission shall be calculated on the

66 fair market value of the Property exchanged under 3) if the exchange involves less than the entire Property or on the fair

67 market value of the Property to which an effective change in ownership or control takes place, under 4) if the transaction

68 involves less than the entire Property. Once earned, Broker's commission is due and payable in full at the earlier of closing

69 or the date set for closing, unless otherwise agreed in writing. Broker's commission shall be earned if, during the term of

70 the Listing, one owner of the Property sells, conveys, exchanges or options an interest in all or any part of the Property to

71 another owner, except by divorce judgment.

72 NOTE: A sale, option, exchange or procurement of a buyer for a portion of the Property does not terminate the Listing as to

73 any remaining Property.

74 ■ **EXTENSION OF LISTING:** The Listing term is extended for a period of one year as to any Protected Buyer. Upon

75 receipt of a written request from Seller or a broker who has listed the Property, Broker agrees to promptly deliver to

76 Seller a written list of those buyers known by Broker to whom the extension period applies. Should this Listing be

77 terminated by Seller prior to the expiration of the term stated in this Listing, this Listing shall be extended for Protected

78 Buyers, on the same terms, for one year after the Listing is terminated.

79 ■ **TERMINATION OF LISTING:** Neither Seller nor Broker has the legal right to unilaterally terminate this Listing absent a

80 material breach of contract by the other party. Seller understands that the parties to the Listing are Seller and the Broker

81 (firm). Agents (salespersons) for Broker (firm) do not have the authority to enter into a mutual agreement to terminate the

82 Listing, amend the commission amount or shorten the term of this Listing, without the written consent of the agent(s)'

83 supervising broker. Seller and Broker agree that any termination of this Listing by either party before the date stated on

84 line 282 shall be indicated to the other party in writing and shall not be effective until delivered to the other Party in

85 accordance with lines 188-193. CAUTION: Early termination of this Listing may be a breach of contract, causing the

86 terminating party to potentially be liable for damages.

87 ■ **SELLER COOPERATION WITH MARKETING EFFORTS:** Seller agrees to cooperate with Broker in Broker's

88 marketing efforts and to provide Broker with all records, documents and other material in Seller's possession or control

89 which are required in connection with the sale. Seller authorizes Broker to do those acts reasonably necessary to

90 effect a sale and Seller agrees to cooperate fully with these efforts which may include use of a multiple listing service,

91 Internet advertising or a lockbox system on Property. Seller shall promptly notify Broker in writing of any potential buyers

92 with whom Seller negotiates during the term of this Listing and shall promptly refer all persons making inquiries

93 concerning the Property to Broker.

94 ■ **LEASED PROPERTY:** If Property is currently leased and lease(s) will extend beyond closing, Seller shall assign

95 Seller's rights under the lease(s) and transfer all security deposits and prepaid rents (subject to agreed upon proration)

96 thereunder to buyer at closing. Seller acknowledges that Seller remains liable under the lease(s) unless released by

97 tenant(s). CAUTION: Seller should consider obtaining an indemnification agreement from buyer for liabilities under the

98 lease(s) unless released by tenants.

99 ■ **BROKER DISCLOSURE TO CLIENTS:**

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

- 101 (a) The duty to provide brokerage services to you fairly and honestly.
- 102 (b) The duty to exercise reasonable skill and care in providing brokerage services to you.
- 103 (c) The duty to provide you with accurate information about market conditions within a reasonable time if you request
- 104 it, unless disclosure of the information is prohibited by law.
- 105 (d) The duty to disclose to you in writing certain material adverse facts about a property, unless disclosure of the
- 106 information is prohibited by law. (See Lines 205-208)
- 107 (e) The duty to protect your confidentiality. Unless the law requires it, the broker will not disclose your confidential
- 108 information or the confidential information of other parties. (See Lines 159-177)
- 109 (f) The duty to safeguard trust funds and other property the broker holds.
- 110 (g) The duty, when negotiating, to present contract proposals in an objective and unbiased manner and disclose the
- 111 advantages and disadvantages of the proposals.

112 ■ **BECAUSE YOU HAVE ENTERED INTO AN AGENCY AGREEMENT WITH A BROKER, YOU ARE THE**

113 **BROKER'S CLIENT. A BROKER OWES ADDITIONAL DUTIES TO A CLIENT:**

- 114 (a) The broker will provide, at your request, information and advice on real estate matters that affect your transaction,
- 115 unless you release the broker from this duty.
- 116 (b) The broker must provide you with all material facts affecting the transaction, not just adverse facts.
- 117 (c) The broker will fulfill the broker's obligations under the agency agreement and fulfill your lawful requests that are
- 118 within the scope of the agency agreement.
- 119 (d) The broker will negotiate for you, unless you release the broker from this duty.
- 120 (e) The broker will not place the broker's interests ahead of your interests. The broker will not, unless required by law, give

121 information or advice to other parties who are not the broker's clients, if giving the information or advice is contrary to
122 your interests.

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

125 **MULTIPLE REPRESENTATION RELATIONSHIPS AND DESIGNATED AGENCY:**

126 ■ A multiple representation relationship exists if a broker has an agency agreement with more than one client who is a
127 party in the same transaction. In a multiple representation relationship, if all of the broker's clients in the transaction
128 consent, the broker may provide services to the clients through designated agency.

129 ■ Designated agency means that different salespersons employed by the broker will negotiate on behalf of you and the
130 other client or clients in the transaction, and the broker's duties will remain the same. Each salesperson will provide
131 information, opinions, and advice to the client for whom the salesperson is negotiating, to assist the client in the
132 negotiations. Each client will be able to receive information, opinions, and advice that will assist the client, even if the
133 information, opinions, or advice gives the client advantages in the negotiations over the broker's other clients. A
134 salesperson will not reveal any of your confidential information to another party unless required to do so by law.

135 ■ If a designated agency relationship is not in effect you may authorize or reject a multiple representation relationship.
136 If you authorize a multiple representation relationship the broker may provide brokerage services to more than one
137 client in a transaction but neither the broker nor any of the broker's salespersons may assist any client with
138 information, opinions, and advice which may favor the interests of one client over any other client. If you do not
139 consent to a multiple representation relationship the broker will not be allowed to provide brokerage services to more
140 than one client in the transaction.

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

142 _____ I consent to designated agency.

143 _____ I consent to multiple representation relationships, but I do not consent to designated agency.

144 _____ I reject multiple representation relationships.

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

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

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

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

- 164 1) Material adverse facts, as defined in section 452.01 (5g) of the Wisconsin statutes (lines 205-208).
- 165 2) Any facts known by the Broker that contradict any information included in a written inspection report on the
166 property or real estate that is the subject of the transaction.

167 To ensure that the Broker is aware of what specific information you consider confidential, you may list that information
168 below (see lines 170-173). At a later time, you may also provide the Broker with other information you consider to be
169 confidential.

170 **CONFIDENTIAL INFORMATION:** _____

171 _____

172 _____

173 _____

174 **NON-CONFIDENTIAL INFORMATION** (The following may be disclosed by Broker): _____

175 _____

176 _____

177 _____

178 ■ **DEFINITIONS:**

179 **ADVERSE FACT:** An "adverse fact" means any of the following:

- 180 (a) A condition or occurrence that is generally recognized by a competent licensee as doing any of the following:
 - 181 1) Significantly and adversely affecting the value of the Property;
 - 182 2) significantly reducing the structural integrity of improvements to real estate; or
 - 183 3) presenting a significant health risk to occupants of the Property.
- 184 (b) Information that indicates that a party to a transaction is not able to or does not intend to meet his or her
185 obligations under a contract or agreement made concerning the transaction.

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SAMPLE

186 **DEADLINES - DAYS:** Deadlines expressed as a number of "days" from an event are calculated by excluding the day the
 187 event occurred and by counting subsequent calendar days.

188 **DELIVERY:** Delivery of documents or written notices related to this Listing may only be accomplished by:

- 189 1) giving the document or written notice personally to the party;
- 190 2) depositing the document or written notice postage or fees prepaid or charged to an account in the U.S. Mail or a
 191 commercial delivery system, addressed to the party, at the party's address (See lines 288, 294 and 300.);
- 192 3) electronically transmitting the document or written notice to the party's fax number (See lines 290, 296 and 302.); or,
- 193 4) as otherwise agreed in additional provisions on lines 258-270 or in an addendum to this Listing.

194 **FIXTURES:** A "fixture" is an item of property which is physically attached to or so closely associated with land or
 195 buildings so as to be treated as part of the real estate, including, without limitation, physically attached items not easily
 196 removable without damage to the premises, items specifically adapted to the premises, and items customarily treated
 197 as fixtures, including, but not limited to, all: garden bulbs, plants; shrubs and trees; screen and storm doors and
 198 windows; electric lighting fixtures; window shades; curtain and traverse rods, blinds and shutters; central heating and
 199 cooling units and attached equipment; water heaters and treatment systems; sump pumps, attached or fitted floor
 200 coverings; awnings; attached antennas, garage door openers and remote controls; installed security systems; central
 201 vacuum systems and accessories; in-ground sprinkler systems and component parts; built-in appliances, ceiling fans;
 202 fences; storage buildings on permanent foundations and docks/piers on permanent foundations. A "fixture" does not
 203 include trade fixtures owned by tenants of the Property. **CAUTION: Exclude fixtures not owned by Seller such as**
 204 **rented fixtures and tenant's trade fixtures.**

205 **MATERIAL ADVERSE FACT:** A "material adverse fact" means an adverse fact that a party indicates is of such
 206 significance, or that is generally recognized by a competent licensee as being of such significance to a reasonable
 207 party, that it affects or would affect the party's decision to enter into a contract or agreement concerning a transaction
 208 or affects or would affect the party's decision about the terms of such a contract or agreement.

209 **PROCURE:** A buyer is procured when, during the term of the Listing, an enforceable contract of sale is entered into
 210 between the Seller and the buyer or when a ready, willing and able buyer submits to the Seller or the Listing Broker a written
 211 offer at the price and on substantially the terms specified in this Listing. A buyer is ready, willing and able when the buyer
 212 submitting the written offer has the ability to complete the buyer's obligations under the written offer. (See lines 60-63)

213 **PROPERTY:** Unless otherwise stated, "Property" means the real estate described at lines 2-4.

214 **PROTECTED BUYER:** Means a buyer who personally, or through any person acting for such buyer: 1) delivers to Seller or
 215 Broker a written offer to purchase, exchange or option on the Property during the term of this Listing; 2) negotiates directly
 216 with Seller by discussing with Seller the potential terms upon which buyer might acquire an interest in the Property; or 3)
 217 attends an individual showing of the Property or discusses with Broker or cooperating brokers the potential terms upon
 218 which buyer might acquire an interest in the Property, but only if Broker delivers the buyer's name to Seller, in writing, no
 219 later than three days after the expiration of the Listing. The requirement in 3), to deliver the buyer's name to Seller in writing,
 220 may be fulfilled as follows: a) If the Listing is effective only as to certain individuals who are identified in the Listing, by the
 221 identification of the individuals in the Listing; or, b) if a buyer has requested that the buyer's identity remain confidential, by
 222 delivery of a written notice identifying the broker with whom the buyer negotiated and the date(s) of any showings or other
 223 negotiations.

224 ■ **NON-DISCRIMINATION:** Seller and Broker agree that they will not discriminate against any prospective
 225 buyer on account of race, color, sex, sexual orientation as defined in Wisconsin Statutes, Section 111.32
 226 (13m), disability, religion, national origin, marital status, lawful source of income, age, ancestry, familial
 227 status, or in any other unlawful manner.

228 ■ **EARNEST MONEY:** If Broker holds trust funds in connection with the transaction, they shall be retained by Broker in
 229 Broker's trust account. Broker may refuse to hold earnest money or other trust funds. Should Broker hold the earnest money,
 230 Seller authorizes Broker to disburse the earnest money as directed in a written earnest money disbursement agreement
 231 signed by or on behalf of all parties having an interest in the trust funds. If the transaction fails to close and the earnest
 232 money is disbursed to Seller, then upon disbursement to Seller the earnest money shall be paid first to reimburse Broker for
 233 cash advances made by Broker on behalf of Seller and one half of the balance, but not in excess of the agreed commission,
 234 shall be paid to Broker as Broker's full commission in connection with said purchase transaction and the balance shall belong
 235 to Seller. This payment to Broker shall not terminate this Listing.

236 ■ **SELLER'S DISCLOSURE REPORT:** Wisconsin Administrative Code Chapter R. 24 requires listing brokers to
 237 make inquiries of the Seller on the condition of the Property and to request that Seller provide a written response to
 238 Broker's inquiry. Seller agrees to complete a seller's disclosure report to the best of Seller's knowledge. Seller agrees
 239 to amend the report should Seller learn of any defect(s) after completion of the report but before acceptance of a buyer's
 240 offer to purchase. Seller authorizes Broker to distribute the report to all interested parties and their agents, inquiring
 241 about the Property and acknowledges that Broker has a duty to disclose all material adverse facts as required by law.

242 ■ **SELLER REPRESENTATIONS REGARDING DEFECTS:** Seller represents to Broker that as of the date of this
 243 Listing, if a seller's disclosure report or other form of written response to Broker's inquiry regarding the condition of the
 244 Property has been made by the Seller, the Seller has no notice or knowledge of any defects affecting the Property other
 245 than those noted on Seller's disclosure report or written response.

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

248 ■ **OPEN HOUSE AND SHOWING RESPONSIBILITIES:** Seller is aware that there is a potential risk of injury, damage
 249 and/or theft involving persons attending an "individual showing" or an "open house." Seller accepts responsibility for
 250 preparing the Property to minimize the likelihood of injury, damage and/or loss of personal property. Seller agrees to
 251 hold Broker harmless for any losses of liability resulting from personal injury, property damage, or theft occurring
 252 during "individual showings" or "open houses" other than those caused by Broker's negligence or intentional
 253 wrongdoing. Seller acknowledges that individual showings and open houses may be conducted by licensees other

254 than Broker, that appraisers and inspectors may conduct appraisals and inspections without being accompanied by
255 Broker or other licensees, and that buyers or licensees may be present at all inspections and testing and may
256 photograph or videotape Property unless otherwise provided for in additional provisions at lines 258-270 or in an
257 addendum per lines 271-277.

258 ■ **ADDITIONAL PROVISIONS:**

SAMPLE

SAMPLE

271 ■ **ADDENDA:** The attached addenda _____

277 _____ is/are made part of this Listing.

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

281 ■ **TERM OF THE CONTRACT:** From the _____ day of _____ , _____ ,
282 up to and including midnight of the _____ day of _____ .

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

286 (x) _____
287 Seller's Signature ▲ _____ Print Name Here: ▲ _____ Date ▲ _____

288 _____
289 Seller's Address ▲ _____ Seller's Phone # ▲ _____

290 _____
291 Seller's Fax # ▲ _____ Seller's E-Mail Address ▲ _____

292 (x) _____
293 Seller's Signature ▲ _____ Print Name Here: ▲ _____ Date ▲ _____

294 _____
295 Seller's Address ▲ _____ Seller's Phone # ▲ _____

296 _____
297 Seller's Fax # ▲ _____ Seller's E-Mail Address ▲ _____

SAMPLE

298 (x) _____
299 Agent for Broker ▲ _____ Print Name Here: ▲ _____ Broker/Firm Name ▲ _____ Date ▲ _____

300 _____
301 Broker/Firm Address ▲ _____ Broker/Firm Phone # ▲ _____

302 _____
303 Broker/Firm Fax # ▲ _____ Broker/Firm E-Mail Address ▲ _____

SAMPLE