WB-3 VACANT LAND LISTING CONTRACT - EXCLUSIVE RIGHT TO SELL

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

■ **PROPERTY DESCRIPTION:** Street address is: 901 Airport Road in Section _____ in the City of Menasha, County of Winnebago, Wisconsin. Insert additional description, if any, at lines 254-261 or attach as an addendum per lines 262-264.

■ **LIST PRICE:** One Hundred Twelve Thousand Dollars ($ 112,000.00).

■ **INCLUDED IN LIST PRICE:** Seller is including in the list price the Property, all Fixtures not excluded on lines 10-11, and the following items: None.

■ **NOT INCLUDED IN LIST PRICE:** CAUTION: Identify Fixtures to be excluded by Seller or which are rented and will continue to be owned by the lessor. (See lines 212-217): None.

■ **GOVERNMENTAL AND CONSERVATION PROGRAMS:** Seller represents that all or some of the Property is enrolled in the following governmental conservation, farmland, environmental, land use or use restricting programs, agreements or conservation easements, (county, state or federal): N/A.

■ **USE VALUE ASSESSMENT:** Seller represents that ~~(all or some of the Property)~~ (none of the Property) STRIKE ONE has been assessed as agricultural property under use value law.

■ **SPECIAL ASSESSMENTS:** Seller represents that the Property is subject to the following special assessments: None.

■ **SPECIAL ZONING, LAND USE OR DEVELOPMENT RESTRICTIONS:** Seller represents that the Property is subject to the following special zoning, land use, development restrictions or other conditions affecting the Property: N/A.

■ **MARKETING:** Seller authorizes and Broker agrees to use reasonable efforts to procure a buyer for the Property. Seller agrees that Broker may market Seller's personal property identified on lines 7-8 during the term of this Listing. Broker's marketing may include: Signs, LoopNet, websites, direct or e-mailings, broker networking.

Broker may advertise the following special financing and incentives offered by Seller: N/A. Seller has a duty to cooperate with Broker's marketing efforts. See lines 84-90 regarding Broker's role as marketing agent and Seller's duty to notify Broker of any potential buyer known to Seller. Seller agrees that Broker may market other properties during the term of this Listing.

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

■ **COOPERATION, ACCESS TO PROPERTY OR OFFER PRESENTATION:** The parties agree that Broker will work and cooperate with other brokers in marketing the Property, including brokers from other firms acting as subagents (agents from other companies engaged by Broker - See lines 148-151) and brokers representing buyers. Cooperation includes providing access to the Property for showing purposes and presenting offers and other proposals from these brokers to Seller. Note any brokers with whom Broker shall not cooperate, any brokers or buyers who shall not be allowed to attend showings, and the specific terms of offers which should not be submitted to Seller: N/A.

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

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

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

■ **COMPENSATION TO OTHERS:** Broker offers the following commission to cooperating brokers: 4% to other brokers. (Exceptions if any): _____.

■ **COMMISSION:** Broker's commission shall be See Line 254.

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

1) Seller sells or accepts an offer which creates an enforceable contract for the sale of all or any part of the Property;
2) Seller grants an option to purchase all or any part of the Property which is subsequently exercised;
3) Seller exchanges or enters into a binding exchange agreement on all or any part of the Property;
4) A transaction occurs which causes an effective change in ownership or control of all or any part of the Property; or

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 substantially the same terms set forth in this Listing and in the standard provisions of the current WB-13 VACANT LAND OFFER TO PURCHASE, even if Seller does not accept this buyer's offer. (See lines 222-225 regarding procurement.)

A percentage commission, if applicable, shall be calculated based on the purchase price if commission is earned under 1) or 2) above, or calculated based on the list price under 3), 4) or 5). A percentage commission shall be calculated on the fair market value of the Property exchanged under 3) if the exchange involves less than the entire Property or on the fair market value of the Property to which an effective change in ownership or control takes place, under 4) if the transaction involves less than the entire Property. Once earned, Broker's commission is due and payable in full at the earlier of closing or the date set for closing, unless otherwise agreed in writing. Broker's commission shall be earned if, during the term of the Listing, one owner of the Property sells, conveys, exchanges or options an interest in all or any part of the Property to another owner, except by divorce judgment.

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

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

■ **TERMINATION OF LISTING:** Neither Seller nor Broker has the legal right to unilaterally terminate this Listing absent a material breach of contract by the other party. Seller understands that the parties to the Listing are Seller and the Broker (firm). Agents (salespersons) for Broker (firm) do not have the authority to enter into a mutual agreement to terminate the Listing, amend the commission amount or shorten the term of this Listing, without the written consent of the agent(s)' supervising broker. Seller and Broker agree that any termination of this Listing by either party before the date stated on line 269 shall be indicated to the other party in writing and shall not be effective until delivered to the other Party in accordance with lines 206-211. CAUTION: Early termination of this Listing may be a breach of contract, causing the terminating party to potentially be liable for damages.

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

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

■ **BROKER DISCLOSURE TO CLIENTS:**

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

(a) The duty to provide brokerage services to you fairly and honestly.
(b) The duty to exercise reasonable skill and care in providing brokerage services to you.
(c) The duty to provide you with accurate information about market conditions within a reasonable time if you request it, unless disclosure of the information is prohibited by law.
(d) The duty to disclose to you in writing certain material adverse facts about a property, unless disclosure of the information is prohibited by law. (See Lines 218-221)
(e) The duty to protect your confidentiality. Unless the law requires it, the broker will not disclose your confidential information or the confidential information of other parties. (See Lines 157-173)
(f) The duty to safeguard trust funds and other property the broker holds.
(g) The duty, when negotiating, to present contract proposals in an objective and unbiased manner and disclose the advantages and disadvantages of the proposals.

■ **BECAUSE YOU HAVE ENTERED INTO AN AGENCY AGREEMENT WITH A BROKER, YOU ARE THE BROKER'S CLIENT. A BROKER OWES ADDITIONAL DUTIES TO A CLIENT:**

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

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

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

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

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

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

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

INITIAL ONLY ONE OF THE THREE LINES BELOW:

_____ I consent to designated agency.

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

_____ I reject multiple representation relationships.

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

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

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

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

1) Material adverse facts, as defined in section 452.01 (5g) of the Wisconsin statutes (lines 218-221).
2) Any facts known by the Broker that contradict any information included in a written inspection report on the property or real estate that is the subject of the transaction.

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

CONFIDENTIAL INFORMATION: None

NON-CONFIDENTIAL INFORMATION (The following may be disclosed by Broker): None

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

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

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

■ **OPEN HOUSE AND SHOWING RESPONSIBILITIES:** Seller is aware that there is a potential risk of injury, damage and/or theft involving persons attending an "individual showing" or an "open house." Seller accepts responsibility for preparing the Property to minimize the likelihood of injury, damage and/or loss of personal property. Seller agrees to hold Broker harmless for any losses or liability resulting from personal injury, property damage, or theft occurring during "individual showings" or "open houses" other than those caused by Broker's negligence or intentional wrongdoing. Seller acknowledges that individual showings and open houses may be conducted by licensees other than Broker, that appraisers and inspectors may conduct appraisals and inspections without being accompanied by Broker or other licensees, and that buyers or licensees may be present at all inspections and testing and may photograph or videotape Property unless otherwise provided for in additional provisions at lines 254-261 or in an addendum per lines 262-264.

■ **DEFINITIONS:**

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

(a) A condition or occurrence that is generally recognized by a competent licensee as doing any of the following:
   1) Significantly and adversely affecting the value of the Property;
   2) significantly reducing the structural integrity of improvements to real estate; or
   3) presenting a significant health risk to occupants of the Property.

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

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

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

1) giving the document or written notice personally to the party;
2) depositing the document or written notice postage or fees prepaid or charged to an account in the U.S. Mail or a commercial delivery system, addressed to the party, at the party's address (See lines 275, 281 and 287.);
3) electronically transmitting the document or written notice to the party's fax number (See lines 277, 283 and 289.); or,
4) as otherwise agreed in additional provisions on lines 254-261 or in an addendum to this Listing.

FIXTURES: A "fixture" is an item of property which is physically attached to or so closely associated with land so as to be treated as part of the real estate, including, without limitation, physically attached items not easily removable without damage to the premises, items specifically adapted to the premises, and items customarily treated as fixtures, including, but not limited to, all: perennial crops; garden bulbs; plants; shrubs and trees; and fences; storage buildings on permanent foundations and docks/piers on permanent foundations.

CAUTION: Annual crops are not part of the purchase price unless otherwise agreed.

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

PROCURE: A buyer is procured when, during the term of the Listing, an enforceable contract of sale is entered into between the Seller and the buyer or when a ready, willing and able buyer submits to the Seller or the Listing Broker a written offer at the price and on substantially the terms specified in this Listing. A buyer is ready, willing and able when the buyer submitting the written offer has the ability to complete the buyer's obligations under the written offer. (See lines 57-60)

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

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

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

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

■ **UTILITY AVAILABILITY:** Seller represents that the following utility connections are located as follows: (e.g. at the lot line, on the property, across the street, unknown, etc.): electricity to the site ; gas to the site ; municipal sewer to the site ; municipal water to the site ; telephone to the site ; other none ; STRIKE AND COMPLETE AS APPLICABLE

■ **ZONING:** Seller represents that the property is zoned: C-1 General Commercial .

■ **ADDITIONAL PROVISIONS:** 1. Mike Pfefferle will not be charging a commission to list. Also, Pfefferle Companies Brokers will not be paid a commission. Outside Brokers will be paid 4%. A Phase 1 Environmental assessments shall be made available to all purchasures.

2. See attached addendum

■ **ADDENDA:** The attached addenda None

is/are made part of this Listing.

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

■ **TERM OF THE CONTRACT:** From the 25th day of March , 2013 , up to and including midnight of the 25th day of March , 2014 .

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

(x) _____ City of Menasha _____
Seller's Signature ▲ Print Name Here: ▲ Date ▲

140 Main St.
Menasha, WI 54952 (920) 967-3600
Seller's Address ▲ Seller's Phone # ▲

_____ gkeil@ci.menasha.wi.us
Seller's Fax # ▲ Seller's E-Mail Address ▲

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

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

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

(x) Richard J. Knight, EVP, Secy Grubb & Ellis | Pfefferle 3-28-13
Agent for Broker ▲ Print Name Here: ▲ Broker/Firm Name ▲ Date ▲

200 E. Washington St.
Appleton, WI 54911 (920) 968-4700
Broker/Firm Address ▲ Broker/Firm Phone # ▲

(920) 968-4300 mikep@gepwi.com
Broker/Firm Fax # ▲ Broker/Firm E-Mail Address ▲

Addendum A

901 Airport Road
Menasha, WI

Property is being sold subject to the following conditions:

Within 18 months of closing, purchaser must begin construction of a building or structure in compliance with city ordinances and other applicable laws and for a permitted purposed under city ordinances. Construction must be completed with 1 year after construction begins.