
Bob Dubke Realty and Bearden Stevens Realty Corp

Terms of Use Agreement

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This Terms of Use Agreement (“agreement”) is a legally binding contract between you and the owners of this site, *Bob Dubke Realty and Bearden Stevens Realty Corp* (“RCB”).

RCB seeks to provide, and you wish to receive, real estate brokerage services by means of this web site (“www.RochesterCommercialBrokers.com”). The Licensed Site includes factual information and creative content relating to real estate listings and real estate brokers, salespeople, and licensees (“Licensed Content”). RCB wishes to grant you access to the Licensed Site and a license to use portions of the Licensed Content, subject at all times to the terms of this agreement.

In consideration of the mutual covenants contained herein, you and RCB hereby agree as follows:

1. **Registration.** You warrant you are 18 years of age or older.
2. **Access permitted.** RCB will provide you online access via the World-Wide-Web to the Licensed Content and the Licensed Site for the duration of this agreement. You acknowledge that you may be required to agree to a new agreement upon your next visit to the Licensed Site. You will not attempt to access the Licensed Site after the termination of this agreement.
3. **Acknowledgements and Representations.** You make the following acknowledgements and representations:
 - a. You are entering into a lawful consumer-broker relationship with Licensor as defined under state law.
 - b. You have a bona fide interest in the purchase, sale, or lease of real estate of the type being offered at this Licensed Site in the geographic areas where RCB is licensed.
 - c. You are not a party to an exclusive brokerage services agreement with any other real estate broker or firm or to any agreement that would prevent you from working with RCB as your agent or representative.
 - d. You will immediately notify RCB in the event you enter into an exclusive agreement with another broker.
 - e. You will limit your online search to properties within your anticipated purchase ability or price range and to the properties that meet your criteria.
 - f. You will not contact the owner or seller of any property from information gained through the Licensed Site. You will not attempt to enter the property or speak with an owner or seller without an appointment set by RCB.
 - g. You will (i) provide true, accurate, and current information; and (ii) maintain and update this information and ensure that it remains true, accurate, and current.
 - h. You consent to receiving unsolicited personalized emails, telephone calls or faxes from RCB for a period of 18 months from the latest of: (i) the last day you access your RCB account pursuant to this agreement; (ii) the day any listing agreement, buyer’s agency agreement, or transaction brokerage agreement between you and RCB terminates; (3) the day you abandon any specific RCB licensee’s services to acquire real property; and (4) the closing of any sale or purchase of property in which you received brokerage services from RCB. Unsolicited

communications may take place by email at the email address you provided for registration with the Licensed Site or at any alternative email address you provide to RCB in the future.

i. You are not a real estate licensee.

4. **Compliance.** In spite of any other contrary provision in this agreement, multiple listing services in which RCB participates, other broker/agent participants and subscribers of those MLSs, and their authorized contractors and agents, may access the Licensed Site solely for purposes of ascertaining RCB's compliance with applicable MLS rules.

5. **Acknowledgement of Title.** You acknowledge that all right, title, and interest in the copyrights and other intellectual property rights in the Licensed Site and the Licensed Content reside at all times in RCB and RCB's licensors and suppliers.

The trademarks, logos and service marks (collectively the "Marks" or "Mark") appearing on the Licensed Site are registered and unregistered Marks of RCB and others. The Licensed Site and the information contained therein in no way grant you any license or right to use any Mark displayed on it.

6. **License.** RCB hereby grants you a revocable, limited, nonexclusive license during the term of this agreement to duplicate, distribute and display the Licensed Content and the Licensed Site, solely for your personal, non-commercial use, and subject to the limitations set forth in this agreement. RCB grants nonexclusive licenses and not exclusive licenses or assignments. All rights not expressly granted in this agreement are reserved.

7. **Limited Use.** You will not:

- (a) Use the Licensed Site, Licensed Content, or both for any purpose other than a personal, non-commercial one;
- (b) Disclose, copy, distribute, or retransmit any of the Licensed Content, including factual content, to any third party except in connection with your consideration of the purchase, lease, or sale of an individual property, and then only to the extent necessary;
- (c) Gather, or attempt to gather, by any automated means, including but not limited to "screen scraping," "database scraping," "spidering," or "robots," factual content or any other portion of the Licensed Content from the Licensed Site; or
- (d) Employ the Licensed Content, the Licensed Site, or both for any unlawful purpose.

8. **Website Content Submission.** You warrant that you are the author and owner of the intellectual property rights to content, opinions, or evaluations that you submit to be posted on the Licensed Site, if any. You grant RCB a worldwide, perpetual, irrevocable, royalty-free, transferable right and license to use, copy, modify, delete in its entirety, adapt, publish, translate, create derivative works from or sell or distribute such materials or incorporate such materials into any form, medium or technology without compensation to you. RCB, its agents, subsidiaries, affiliates, co-brand partners or other partners and their respective directors, officers and employees shall not be under any obligation to maintain the confidence of materials use submit to be posted on the Licensed Site. RCB reserves the right to change, condense or delete any content on the Licensed Site that RCB deems, in its sole discretion, to violate the content guidelines or any other provision of this Agreement.

9. **Website Submission Restrictions.** You agree that you shall not post any information to the Licensed Site:

- a. known by you to be false, inaccurate or misleading;

- b. that infringes any third party's copyright, patent, trademark, trade secret or other proprietary rights or rights of publicity or privacy;
- c. that violates any law, statute, ordinance or regulation (including, but not limited to, those governing export control, consumer protection, unfair competition, anti-discrimination, fair housing or false advertising);
- d. that may reasonably be considered to be, defamatory, libelous, hateful, racially or religiously biased or offensive, unlawfully threatening or unlawfully harassing to any individual, partnership or corporation;
- e. for which you were compensated or granted any consideration by any third party;
- f. that includes any information referencing addresses, email addresses, contact information or phone numbers; or
- g. that contains any computer viruses, worms or other potentially damaging computer programs or files.

10. **Compliance with Site Rules.** You agree to comply with Licensed Site rules, if any; they are deemed incorporated into this agreement.

11. **Ownership of Submitted Content.** You retain all ownership rights to information, text, graphics, or other materials you publish on the Licensed Site except to the extent that this agreement provides rights to RCB. However, RCB can reproduce, publish and distribute all or teaser portions of your content online and offline and permit others to do the same.

12. **Cooperation.** You will use your best efforts to cooperate with RCB on reasonable terms and conditions in the event RCB deems it necessary to seek to enjoin or otherwise prohibit the unauthorized use of the Licensed Content by a third party whose use may have resulted from your access to the Licensed Site.

13. **License revoked.** Your license to use the Licensed Content and the Licensed Site is immediately revoked, without notice from RCB, in the event that you breach any provision of this agreement.

14. **General terms.**

- (a) **Term and termination.** Any party may terminate this agreement upon notice to the other. In the event of termination, all licenses hereunder immediately terminate, and you will discontinue accessing and attempting to access the Licensed Site. The terms of sections 5, 7, 8, 11, and 14 of this agreement shall survive its termination.
- (b) **Amendment.** RCB may amend this agreement from time to time by providing notice to the email address with which you register(ed) on the Licensed Site.
- (c) **Disclaimer of warranties.** RCB PROVIDES THE LICENSED SITE AND LICENSED CONTENT ON AN "AS IS," "AS AVAILABLE" BASIS. RCB MAKES NO WARRANTY AS TO THE ACCURACY, COMPLETENESS, CURRENCY, OR RELIABILITY OF THE LICENSED CONTENT. YOU ARE ADVISED THAT FACTUAL MATERIAL IN THE LICENSED CONTENT MAY CONTAIN ERRORS AND IS SUBJECT TO REVISION AT ALL TIMES. YOU ARE ADVISED TO CONFIRM ALL FACTUAL MATERIAL UPON WHICH YOU INTEND TO RELY IN ANY TRANSACTION. RCB EXPRESSLY DISCLAIMS ALL WARRANTIES WITH RESPECT TO THE LICENSED SITE AND THE LICENSED CONTENT, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
- (d) **Limitations and exclusions of liability.** UNDER NO CIRCUMSTANCES SHALL RCB BE LIABLE TO YOU OR ANYONE ELSE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES THAT RESULT FROM THE USE OF, OR INABILITY TO USE, THE LICENSED SITE, THE LICENSED CONTENT, OR

BOTH. IN NO EVENT SHALL THE MAXIMUM AGGREGATE LIABILITY OF RCB FOR DAMAGES AND COSTS ARISING OUT OF THIS AGREEMENT EXCEED \$50.

- (e) The disclaimer of warranties in section 10(c) and limitations and exclusions of liability in section 10(d) are effective only to the extent permitted by real estate license laws; they must be read to be consistent with the requirements those laws place upon RCB and its brokers and salespeople.
- (f) **Indemnification.** You will defend, indemnify and hold RCB harmless from and against any and all liability, damages, loss or expense (including reasonable fees of attorneys and other professionals) in any claim, demand, action or proceeding initiated by any third-party against RCB arising from your breach of this agreement or violation of any law.
- (g) **Assignment.** You may not assign or delegate this agreement or any obligations, rights, or duties hereunder. Any purported assignment or delegation in contravention of this section is null and void.
- (h) **Integration and severability.** This agreement contains the entire understanding of the parties and supersedes all previous oral and written agreements on the subject matter hereof. Each provision of this agreement is severable from the whole, and if one provision is declared invalid, the other provisions shall remain in full force and effect.
- (i) **Governing law.** This agreement shall be governed by, and construed in accordance with, the laws of the State of Minnesota applicable to contacts made and performed in Minnesota, but without regard to the choice of law provisions thereof. Any dispute under this agreement shall have its forum in the state court of Minnesota sitting in [Venue], Minnesota, or the federal court sitting in [Venue], Minnesota, in the United States of America, and the parties hereby consent to personal jurisdiction therein and expressly waive any defenses to personal jurisdiction, including *forum non conveniens*.