

FILED

MAY 14 2010

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON

No. 284352

**IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION III**

JAMES R. SWEETSER and DELORES G. SWEETSER,
husband and wife,

Respondents/Cross-Appellants,

v.

**BLACK COMMERCIAL, INC. d/b/a NAI Black, f/k/a TOMLINSON
BLACK COMMERCIAL, INC.,** a Washington Corporation; **DAVID R.
BLACK**, its designated broker and chief executive officer, an unmarried
person; **JEFF K. JOHNSON**, its managing associate broker, **JANE DOE
JOHNSON**, and their marital community; **EARL ENGLE**, its agent;
JANE DOE ENGLE, and their marital community; **ANNE BETOW**, its
agent, **JOHN DOE BETOW**, and their marital community; **MARK
McLEES**, its agent, **JANE DOE McLEES**, and their marital community;
JEFF McGOUGAN, its agent, **JANE DOE McGOUGAN**, and their
marital community,

Appellants/Cross-Respondents.

Brief of Appellants

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I. INTRODUCTION

This appeal arises out of the marketing and sale of a commercial building located on N. Washington Street in Spokane ("Property"). Respondents, James R. Sweetser and Delores G. Sweeter, husband and wife ("Sweetsers") unsuccessfully attempted to purchase the Property. Appellants, Black Commercial, Inc., d/b/a NAI Black, f/k/a Tomlinson Black Commercial, Inc., a Washington corporation; David R. Black, Jeff K. Johnson, Jane Doe Johnson, Earl Engle, Jane Doe Engle, Anne Betow, John Doe Betow, Mark McLees, Jane Doe McLees, Jeff McGougan and Jane Doe McGougan (collectively the "Agents") provided the listing side and selling side real estate brokerage services in connection with the Property. Sweetsers brought suit, alleging the Agents engaged in wrongful conduct in performing their services, as a proximate result of which Sweetsers sustained damages. The case was tried to a jury and the Agents prevailed.

Following trial, the Agents requested reasonable attorney fees contending the parties entered a contract, the contract included a provision for an award of reasonable attorney fees to the prevailing party, and the litigation came within the attorney fee provision.

At the hearing on the Agents' motion for reasonable attorney fees, Sweetsers claimed there was no contract between the parties because: (a) the multiple Purchase and Sale Agreements ("PSAs") prepared by the Agents and signed by Mr. Sweetser (and on one occasion by both Sweetsers) were not accepted by the Property's seller, Sebco, Inc. ("Sebco"); (b) none of Sweetsers' claims were stated as contract claims; and (c) Sweetsers' inclusion of Consumer Protection Act ("CPA") claims precluded application of any contractual attorney fee provision. The trial court accepted Sweetsers' first argument and denied the Agents' request for reasonable attorney fees.

The Agents request that this Court reverse the trial court's decision, determine that the Agents are entitled to reasonable attorney fees, and remand this matter to the trial court to exercise discretion in determining the amount of attorney fees to award the Agents for trial. The Agents further request that this Court award them reasonable attorney fees in this appeal and in connection with Sweetsers' cross-appeal.

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II. ASSIGNMENTS OF ERROR

The Agents make the following assignments of error:

1. The trial court erred in determining there was no contract between Sweetsers and the Agents.

2. The trial court erred in refusing to award reasonable attorney fees to the Agents based on the parties' contract.

Issues related to assignment of error:

1. The standard of review.

2. Whether there was a contract between Sweetsers and the Agents.

3. Whether the parties' contract included an attorney fee provision.

4. Whether the issues in this case came within the attorney fee provision.

5. Whether the attorney fee provision is enforceable.

6. Whether the trial court had discretion to deny the Agents' request for reasonable attorney fees.

7. Whether this Court should award the Agents reasonable attorney fees for this appeal and Sweetsers' cross-appeal.

III. STATEMENT OF THE CASE

The facts underlying this case and Sweetser's allegations are, for the most part, stated in Sweetser's amended complaint ("Complaint") (CP 94-155). In their Complaint, Sweetser alleged that Mr. Sweetser had been searching for a commercial office building for over three years and had received commercial listing information from Respondent Anne Betow during that time. (CP 98). Mr. Sweetser used Ms. Betow's services to write an offer on another property, but was unsuccessful in purchasing that property. (CP 98-99) He recognized "the seller could sell to whomever he chose, including business partners with an interest in the property" (CP 102).

In October 2006, Black Commercial agent Carlo Jensen (not a party) became aware Sebco was interested in selling two commercial buildings in Spokane area; Mr. Jensen had worked with Sebco on other commercial properties since 1999 (CP 104). On October 19, 2006, Sebco listed the Property for sale at \$475,000.00, with Mr. Jensen and Respondent Earl Engle as listing agents (CP 105).

On October 19, 2006, Ms. Betow sent Mr. Sweetser an email advising him of the listing, informed Mr. Engle of Mr. Sweetser's interest and sent Mr. Sweetser additional information regarding the Property (CP

106). Mr. Sweetser sent Ms. Betow an email stating he was interested in the Property at that price (CP 108). On the same day, Mr. Sweetser met Ms. Betow at the Property and they wrote a Purchase and Sale Agreement (PSA) that included a full price offer (CP 110). Ms. Betow presented Mr. Sweetser's PSA (CP 111). Within a day's time, two more PSAs were submitted by other prospective purchasers (CP 112-114).

On the afternoon of October 20, Mr. Sweetser sent Ms. Betow several email messages requesting information on his offer; and Ms. Betow responded by advising that the listing agent, Mr. Engle, had told her the seller was making a counteroffer to another offeror and excluding Mr. Sweetser from an opportunity to purchase the Property (CP 115). Mr. Sweetser promptly wrote a second PSA increasing his offer from \$475,000.00 to \$505,000.00 and faxed it to Ms. Betow for presentation (CP 115). On that day, Ms. Betow advised Mr. Sweetser his second PSA was rejected (CP 116).

Late on the afternoon of October 20, 2006, at Mr. Sweetser's direction, Ms. Betow prepared and faxed a third PSA to Mr. Sweetser (CP 119). Mr. Sweetser signed and faxed that PSA back to Ms. Betow for presentation (CP 120).

The next morning, Mr. Sweetser phoned Ms. Betow and advised that he wanted to write yet another PSA, and both Sweetser's met with Ms. Betow to prepare another written "backup offer" (CP 120). On Tuesday of the following week, Mr. Sweetser was advised that the seller had rejected his fourth PSA but that, if the other accepted PSA failed to close, Mr. Sweetser would be given a five day right to negotiate. (CP 120-21).

Mr. Sweetser then exchanged communications with Respondent David Black, identified by Mr. Sweetser as Chief Executive Officer and Broker for Respondent Black Commercial, Inc. (CP 121). The communications dealt with Mr. Sweetser's suspicions of wrongful conduct in connection with the transaction (CP 122-124). Ultimately, Mr. Black requested that Mr. Sweetser communicate through the Agents' legal counsel (CP 124). After additional investigation, Mr. Sweetser considered "how broker Defendant DAVID R. BLACK and Defendant JEFF K. JOHNSON had not protected his interest to insure fair competition on price" and "developed suspicion they were moving quickly to close and ... would do nothing to investigate [Mr. Sweetser's concerns]." (CP 126). On October 31, 2006, Mr. Sweetser wrote a fifth PSA that was rejected the same day (CP 41-42). On November 6, 2006, Sweetser filed suit in this matter (CP 131).

In their Amended Complaint, Sweetsers alleged that Respondents Mr. Black and Mr. Johnson were dual agents and brokers and owners of Respondent Black Commercial, Inc. (CP 142). Sweetsers contended Mr. Black and Mr. Johnson were vicariously responsible for various alleged improper actions by agents affiliated with Black Commercial, Inc., including the remaining individual agent Respondents (CP 143).

In all of the PSAs, Respondent Black Commercial, Inc. (formerly Tomlinson Black Commercial) was disclosed as the broker representing both Sweetsers and Sebco; Ms. Betow was disclosed as the selling agent representing Sweetsers; and Respondent Earl Engle and Mr. Jensen were identified as the listing agents representing Sebco.

Every PSA included the same Section 14(f) that states: "**ATTORNEYS' FEES:** If Purchaser, Seller or any Agent or Broker involved in this transaction is involved in any dispute relating to any aspect of this transaction or this Agreement, any prevailing party shall recover their reasonable attorneys' fees and costs." (CP 288-89, 55-56, 63-64, 69-70 and 87-88). Copies of the PSAs are attached at Appendix A for ease of reference.

The matter proceeded to trial, the Agents prevailed and judgment was entered August 14, 2009 in their favor (CP 409-416). The trial judge

recognized the Agents were prevailing parties and awarded them statutory costs. (RP 1289; CP 417-418).

On August 14, 2009, the Agents' motion requesting reasonable attorney fees was also argued. During that hearing, Sweetsers' counsel characterized the nature of Sweetsers' claims, stating

... What the [Sweetsers] have been arguing is that when you make offers for me, as my agent, there are duties for you to follow under the standard of care, common law, and the statutes, 18.86 as well as Consumer Protection Act. And you violated those duties in handling these offers.

(RP 1267, lines 4-9).

In characterizing the litigation, Sweetsers' counsel acknowledged at length that the focus of Sweetsers' litigation was the alleged wrongful handling of the PSAs and alleged improper disclosure of information in the PSAs. (RP 1270, lines 5-25; 1271, lines 1-4).

While Sweetsers argued in the post-trial motions that there was no contract created between Sweetsers and the Agents, Sweetsers acknowledged the PSAs were relevant to the action. In fact, when comparing this case to a hypothetical situation involving a lawyer, Sweetsers' counsel stated the PSAs were central in the sense that they were mentioned, were part of the case and were talked about. (RP 1266, lines 21-25; 1267 lines 1-25; 1268 lines 1-3).

IV. LEGAL ARGUMENT

1. Standard for review - - the issues are to be determined as a matter of law and reviewed de novo.

In Washington, interpretation of contract provisions, including those authorizing an award of attorney fees, represent questions of law an appellate court reviews de novo. *Fisher Props., Inc. v. Arden-Mayfair, Inc.*, 106 Wn.2d 826, 849-50, 726 P.2d 8 (1986); *Deep Water Brewing, L.L.C. v. Fairway Resources, Ltd.*, 152 Wn.App 229, 215 P.3d 1990 (2009); *Review denied* _____ P.3d _____, 2010 WL 1248235 (2010).

2. There was a contract between Sweetsers and Black Commercial.

While the trial court agreed that an arrangement whereby the Agents undertook provision of real estate services on behalf of Sweetsers constituted an oral contract, she nonetheless ruled there was no contract for purposes of awarding reasonable attorney fees. (CP 1279, line 12 through 1281, line 12). The trial court's ruling on this issue was incorrect.

There should be no dispute that the parties entered a contract. As noted by the Court of Appeals in *Jackowski v. Borchelt*, 151 Wn.App 1,

14, 209 P.3d 514 (2009), *Review granted* 168 Wn.2d 1001, " ... where a client hires a [real estate] professional... [the client] establishes privity of contract with that professional."

The above conclusion is not a novel or new concept under Washington law. In *Cultum v. Heritage House Realtors, Inc.*, 103 Wn.2d 623, 633-34, 694 P.2d 630 (1985), the Supreme Court implicitly recognized that the relationship between a disappointed purchaser under a PSA and the purchaser's real estate licensee is a contractual relationship and that an earnest money agreement drafted by the licensee might provide a basis for awarding contractual attorney fees. The Court in *Cultum* remanded to the trial court to determine whether reasonable attorney fees should be awarded under the PSA's contract provision.

That concept was also embraced and applied in *Edmonds v. John L. Scott Real Estate*, 87 Wn.App 834, 855-56, 942 P.2d 1072 (1977), *Review denied* 134 Wn.2d 1027, in which the Court of Appeals held preparation of a PSA by a real estate licensee on behalf of a prospective purchaser made the attorney fee provision in that PSA part of the parties' contractual relationship. The Court recognized at page 856 "... the terms of the earnest money agreement and the contractual relationship created by

the agreement are central to these claims, rendering them claims, 'on a contract.' "

All of the elements of a contract were present. Sweetsers asked the Agents to provide brokerage services and the Agents agreed to provide and undertook provision of brokerage services. Each entered the arrangement with the hope of receiving benefit from the other's commitment. See gen. Stark v. McCaw, 8 Wn.App 378, 506 P.2d 863 (1973) *Review denied* 82 Wn.2d 1008.

3. The parties' contract included an attorney fee provision.

There is no question whether the various PSAs Mr. Sweetser signed included a broadly worded attorney fee provision as Section 14.(f). The provision states that it applies to any dispute involving "Purchaser, Seller or any Agent or Broker involved in this transaction ..." related to the PSA or the transaction. (See Appendix "A"). Sweetsers contend, however, that none of the provisions in any of the PSAs Mr. Sweetser signed became part of any contract between Sweetsers and the Agents because none of the PSAs were accepted by Sebco.

Nothing in any of the PSAs states or suggests that applicability of the attorney fee provision as between Sweetser and the Agents depended

on Sebco's acceptance of any of Sweetser's offers. Sweetser and the Agents had a contract that was part oral and part written. When the Agents prepared the various PSAs and Mr. Sweetser signed them and delivered them for presentation, the contract between Sweetser and the Agents was expanded to include a written contractual attorney fee provision.

If language in a contract is clear and unambiguous, a court must enforce the contract as written and is not at liberty to modify or create ambiguity when none exists. *Lehrer v. State, Dept. of Social and Health Services*, 101 Wn.App 509, 5 P.3d 722 *Review denied* 142 Wn.2d 1014. In interpreting a contract, a court is to give words their ordinary meaning and the court should not make an other or different contract for the parties under the guise of construction. *Universal/Land Const. Co. v. City of Spokane*, 49 Wn.App 634, 745 P.2d 53 (1987). When construing contracts, courts do not give effect to interpretations that would render contractual obligations illusory if possible. *Public Utility Dist. No. 1 of Lewis County v. Washington Public Power System*, 104 Wn.2d 353, 705 P.2d 1195 (1985) *Reconsideration denied*, modified 713 P.2d 1109. A party who voluntarily signs a contract is bound by its provisions regardless of whether the party chose to read the contract or was ignorant of its

contents. *Michak v. Transnation Title Ins. Co.*, 148 Wn.2d 788, 64 P.3d 22 (2003). In Washington, we hold parties to their contracts. *Berschauer/Phillips Const. Co. v. Seattle School Dist.*, 124 Wn.2d 816, 826, 881 P.2d 986 (1994).

Each of the PSAs modified the parties' contract and became active as an agreement that included enforceable provisions the moment Mr. Sweetser signed it and delivered it for presentation. No language in any of the PSAs suggested that Sebco's acceptance was a condition to having Section 14's attorney fee provision become effective as between Sweetser and the Agents.

The ninth line of text in the introductory paragraph in each PSA made it clear that the term "Agreement" was a defined term referring to the PSA itself, the document Mr. Sweetser signed. The last line in section 12 specified that "If Seller does not accept this Agreement within the time specified, Selling Broker shall refund the Earnest Money upon demand." This provision and the rest of each PSA also make it clear that each "Agreement" existed from and after the time Mr. Sweetser signed and submitted it. Each PSA Mr. Sweetser signed was an "Agreement" regardless of whether Sweetser and Sebco ever reached mutual acceptance.

Likewise, the "transaction" came into existence prior to and regardless of whether Sebco accepted any of Sweetser's offers. Section 10 in each PSA specifies in the last sentence "Each Party confirms that prior oral and/or written disclosure of agency was provided to them in this transaction and that each has received copy of the pamphlet entitled "The Law of Real Estate Agency." The Law of Real Estate Agency refers to RCW Chapter 18.86. Pursuant to RCW 18.86.010(12), a transaction "means an actual or prospective transaction involving a purchase, sale, ... of any interest in real property ... For purposes of this chapter, a prospective transaction does not exist until a written offer has been signed by at least one of the parties." Under the statute, there was a "transaction" once Sweetser signed and submitted a PSA. This was true even though Sebco did not accept any of those PSAs.

Taking the provisions in the PSAs and the statutory definitions together, it is clear each of the PSAs came into existence as "Agreements" and "transactions" when Mr. Sweetser signed and submitted them. Nothing in any PSA, including the attorney fee provision in Section 14(f), suggested that Seller acceptance was a condition or requirement for the attorney fee provision to become effective. By its terms, the contractual

attorney fee clause applied to any dispute or relating to any aspect of the "transaction" or the "Agreement."

The language is not ambiguous and Sweetsers are bound by the provisions in the PSAs Mr. Sweetser signed. There is no basis for Sweetsers to claim they did not intend for the PSAs to become operative for any purpose or be part of the contractual relationship they entered with the Agents. Nothing in the PSAs, including the attorney fee provision, permits such a construction of the parties' contract.

Notwithstanding the clear language in each of the PSAs, Sweetsers also argued below that the attorney fee clause should not apply because Sweetsers did not assert contract claims. (RP 1263). Sweetsers did not argue in their briefing or at oral argument that their subjective intent or belief regarding the contract would be determinative and cited no authority for that proposition.

To the extent Mr. Sweetser's understanding and intent is relevant, it should be examined at the time of the transactions, not at the later date when he decided how to articulate his claims in his complaint. See, e.g. *Carpenter v. Remtech, Inc.*, 154 Wn.App 619, 624, 226 P.3d 159 (2010) (the context rule provides a framework for interpreting contracting parties' intentions when they signed their agreement). In that regard, Sweetsers'

counsel acknowledged in oral argument in the attorney fee hearing "... prior to filing a lawsuit, Mr. Sweetser was making the allegation that there was some kind of contract. ... He's trying to argue there's a contract between the buyer and seller at the time before any legal action" (RP 1263, lines 9-17).

Sweetsers would have this Court revise their contract to engraft an additional condition on the attorney fee clause in the PSAs to the effect that the clause would only apply if the PSA was mutually accepted between Sebco and the Sweetsers and if the Sweetsers had alleged breach of contract claims. Courts will not, under the guise of construction, modify contracts by adding requirements that the parties did not include. Sweetsers are bound by the contract they signed, not some other and different contract provisions and conditions they now wish they had included.

4. The issues in this case came within the attorney fee provision.

In interpreting a party's contract, a court is to give effect to the parties' intentions based on the provisions within the agreement. The attorney fee provision in each of the PSAs involved in this case was very

broad. It mandated an award of reasonable attorney fees in "any action relating to any aspect of" the "transaction" or the "Agreement." Since the attorney fee provision is very broad , it covers more than just contract claims and more than claims asserting a breach of some provision within the contract. This broad scope should be given effect.

For example, in *Bloor v. Fritz*, 143 Wn.App 718, 746-47, 180 P.3d 805 (2008), the court interpreted an attorneys' fee provision which stated "if Buyer or Seller institutes suit against the other concerning this Agreement, the prevailing party is entitled to reasonable attorneys' fees and expenses." (The term "expenses" was determined to be broader than the term "costs"). The court in *Bloor* noted with regard to interpretation of this contract provision "our primary goal in interpreting a contract is to ascertain the parties' intent," citing *Paradise Orchards Gen. P'ship v. Fearing*, 122 Wn.App 507, 516, 94 P.3d 755 (2004), *Review denied* 153 Wn.2d 1027. The trial court's finding that expenses would include costs other than statutory costs supported an interpretation of the contract that all expenses should be awarded, based on the broadly stated contract provision. Implicit in this analysis is recognition that the scope of the language in the attorney fee clause itself determines the breadth and nature of the claims that come within its provisions. Here, in ascertaining the

parties' intent, the broad nature of the attorney fee provision should be interpreted and enforced in that light as the agreement of the parties.

Washington Courts consistently recognize that it is not the nature of the claims articulated by a plaintiff that determines whether an attorney fee provision applies. Rather, it is the scope of the provision and the nature of the litigation that will control. Even in a narrowly drawn attorney fee provision requiring that the litigation be one to "enforce the provisions of this contract," claims other than contract claims will support an award if the action is "on the contract." For this purpose, the issues are whether (a) the action arose out of the contract and (b) whether the contract was central to the dispute. *Hill v. Cox*, 110 Wn.App 394, 411-12, 41 P.3d 495 (2002), *Review denied* 147 Wn.2d 1024 (plaintiff's claims for timber trespass were encompassed within a narrowly drawn attorney fee clause since the contract included a prohibition that trees not be cut within 100 feet of an existing cabin and, but for the contract, there would have been no tort claim for timber trespass).

When the attorney fee provision is broader in scope, the scope of claims coming within it is likewise broadened. For example, in *Brown v. Johnson*, 109 Wn.App 56, 34 P.3d 1233 (2001), the court recognized "if an action in tort is based on a contract containing an attorney fee

provision, the prevailing party is entitled to attorney fees." That case involved a broadly stated PSA provision reciting "if Buyer, Seller, Listing Agent or Selling Licensee institutes suit concerning this Agreement, including, but not limited to claims brought pursuant to the Washington Consumer Protection Act, the prevailing party is entitled to court costs and a reasonable attorney's fee." Based on that language, misrepresentation claims that did not constitute a breach of provisions stated in a PSA were considered to have arisen out of the parties' agreement to transfer ownership of the home. The broadly stated attorney fee clause was held to cover those claims.

In *Deep Water Brewing, LLC v. Fairway Resources Ltd.*, 152 Wn.App 229, 278, 215 P.3d 990 (2009), the court recognized that a recorded right-of-way agreement providing "in the event of any controversy, claim, or dispute relating to this Agreement or the prior Agreement, or their breach, the prevailing party shall be entitled to recover reasonable expenses, costs, and attorneys fees." *Deep Water* at 277. At least some of the parties against whom reasonable attorney fee awards were assessed in that case were not alleged to have breached any contractual obligations. Rather, they were found to have tortiously interfered with recorded instruments that were enforceable as running

covenants. Under the language of the attorney fee clause at issue, the court determined that an award of attorney fees was appropriate in connection with the tortious interference.

In yet another example, in *Hudson v. Condon*, 101 Wn.App 866, 6 P.3d 615 (2000), *Review denied*, 143 Wn.2d 1006, the Court enforced a broadly stated attorney fee provision to permit recovery of fees incurred in defending claims for breach of fiduciary duty and constructive fraud in connection with a partnership agreement, even though the claims did not allege breach of any terms within the agreement. In that case, an attorney fee clause in the parties' partnership agreement provided for an award of attorneys fees "[i]n the event of litigation between the partners related to this Partnership[.]" (punctuation as in original). *Hudson* at 877. The Court concluded that fraud claims "related" to the partnership, thereby coming within the terms and provisions of the broadly stated attorney fee agreement. This was true even though the allegedly fraudulent conduct that did not constitute a breach of any term in the partnership agreement.

Applying the above principals to this case, the Agents contend an award of reasonable attorney fees is appropriate because of the broad nature of the attorney fee clause, and the undisputed recognition and agreement that Sweetsers' claims arose out of the allegedly improper

handling of the PSAs and disclosure of the information in them. These claims certainly related to aspects of the "transactions" and the "Agreements."

5. The contractual attorney fee provision is enforceable.

Sweetsers have also contended that because Sweetsers brought CPA claims, along with claims for breach of statutory duties and common law duties, the attorney fee provisions in the PSAs should be declared unenforceable. Sweetsers contended that CPA claims are analogous to a wage claim brought by an employee against an employer, relying on *Walters v. AAA Waterproofing, Inc.*, 151 Wn.App 316, 211 P.3d 454 (2009); *Review denied* 167 Wn.2d 1019. (CP 373; RP 1272, lines 7 through 1273, line 20).

Sweetsers have misconstrued the significance of *Walters*. In that case, the court analyzed the relative bargaining of power between an employer and an employee, and a contract that purported to compel an employee to arbitrate wage claims and pay half the arbitration costs. The unequal bargaining power of the parties, the financial obligations imposed on the employee, and undisputed statements regarding the employee's relative lack of ability to pay those costs, led the court to conclude at page

329 "Under the circumstances, shown by the record in this case, Walters has established that for him, the cost of participating in an arbitration conducted in Denver is prohibitive." Based on the factual record developed, the Court found the employer's arbitration clause unconscionable.

In this case, Sweetsers have made no showing whatever that a bilateral attorney fee provision in the PSAs Mr. Sweetser voluntarily signed were unfair or unconscionable. At most, Sweetsers argued that the bilateral attorney fee provisions were part of a preprinted contract. As noted in Section 3 above, such contract provisions have been enforced bilaterally in numerous decisions arising out of PSAs. The fact that a provision appears in a standard form contract, by itself, is not sufficient to establish either substantive unconscionability or procedural unconscionability. *Satomi Owners Ass'n v. Satomi, LLC*, 167 Wn.2d 781, 813-816, 225 P.3d 213 (2009). As in *Owners Ass'n*, Sweetsers failed to carry their burden of proving that the attorney fee provision in the PSAs was either procedurally or substantively unconscionable.

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6. The trial court was required to award reasonable attorney fees.

The trial court did not have discretion whether to award reasonable attorney fees to the Agents. Since the PSAs provided for an award of reasonable attorney fees to the prevailing party in this case, the trial court was required to make the award. The trial court's failure to do so constitutes reversible error. *Boules v. Gull Industries*, 133 Wn.App 85, 134 P.3d 1195 (2006).

7. Reasonable attorney fees should be awarded on appeal.

As noted above, each of the PSAs Mr. Sweetser signed provided for an award of reasonable attorney fees in any action related to the transactions or PSAs involving the Sweetsers and any brokers or agents involved in the transaction. The Sweetsers brought claims that were undeniably related to the PSAs and the transaction at issue. Those contract provisions and the nature of this litigation also apply to entitle the Agents to an award of reasonable attorney fees on appeal. *Bloor v. Fritz*, 143 Wn.App 718, 753, 180 P.3d 805 (2008); *Standing Rock Homeowners v. Misich*, 106 Wn.App 231, 23 P.3d 520 (2001), *Review denied* 145 Wn.2d 1008.

The Agents request an award of reasonable attorney fees for their appeal as well as the cross-appeal filed by Sweetsers. The Agents will comply with the requirements of RAP 18.1(d) if this Court's decision awards them a right to receive reasonable attorney fees.

V. CONCLUSION

For the reasons stated above, the Agents request that the decision of the trial court to deny them reasonable attorney fees be reversed and that this matter be remanded so the trial court can determine the amount of reasonable attorney fees for the trial. The Agents further request that this Court award them reasonable attorney fees for this appeal and Sweetsers' cross-appeal.

RESPECTFULLY SUBMITTED this 14th day of May 2010.

LAYMAN, LAYMAN & ROBINSON, PLLP

By: 

Brian C. Balch, WSBA #12290
601 South Division Street
Spokane, WA 99202-1335
(509) 455-8883
Attorney for Appellants

APPENDIX "A"

EXHIBIT "A"

REAL ESTATE PURCHASE & SALE AGREEMENT (With EARNEST MONEY PROVISION) Spokane Association OF REALTORS 7/87

TOMLINSON BLACK COMMERCIAL, INC. THIS CONTRACT CONTROLS THE TERMS OF SALE OF REAL PROPERTY. READ CAREFULLY BEFORE SIGNING. Form SCI-4116 REV. 4/87

SPOKANE Washington, 10-19 2006

RECEIVED FROM: JAMES A SWEETSER AND DELORES G SWEETSER H&W AND/OR ASSIGNEE (Purchaser) FIVE THOUSAND DOLLARS (\$ 5,000 -)

In the form of a check for \$ 5,000 - , which shall be deposited in the Selling Broker's Trust Account as Earnest Money within two (2) business days after mutual acceptance; cash for \$ _____, to be deposited with the Selling Broker within one (1) business day of receipt as Earnest Money; or attached Earnest Money Note for \$ _____ with Note due _____ Earnest Money to be credited to Purchaser at closing. If the amount of the Earnest Money deposit exceeds \$10,000.00, Purchaser has elected to have the Earnest Money placed in the Selling Brokers pooled trust account or placed in a separate interest bearing trust account in Selling Broker's name, with interest to be credited to Purchaser at closing or paid to Purchaser if this sale fails to close (Purchasers Tax ID No. _____). This Agreement (this "Agreement") covers the following described real estate (the "Property") in the City of

SPOKANE County of _____ Washington; commonly known as 1020 N WASHINGTON and legally described as follows:

KEYSTONE 51 FT L7; ALL L8 TOLL BI & VAC STRIP W OF & ADJ

(If the legal description of the Property is omitted, incomplete or inaccurate at the time of signing, this Agreement shall not be invalidated and Selling or Listing Broker is authorized to insert or attach the correct legal description.)

THE TOTAL PURCHASE PRICE IS FOUR HUNDRED AND SEVENTY FIVE THOUSAND DOLLARS (\$ 475,000 -) (the "Purchase Price"), payable as follows:

\$ 5,000 ABOVE EARNEST MONEY PAYABLE UPON ACCEPTANCE \$ 470,000 BALANCE IN CASH AT CLOSING

THIS OFFER IS CONTINGENT UPON THE FOLLOWING: A. PURCHASER OBTAINING FINANCING WITHIN 60 DAYS OF MUTUAL ACCEPTANCE B. PURCHASER INSPECTION OF SUBJECT PROPERTY WITHIN 25 DAYS OF ACCEPTANCE FINANCING TERMS AND INSPECTION RESULTS TO BE AT PURCHASER'S SOLE SATISFACTION

1. ADDENDUMS: Additional provisions, if any, are attached by Addendum ("Addendum"). If Addendum(s) are included, check here. and identify Addendum(s)

2. TITLE: Seller's title to the Property shall be marketable at closing with the following exceptions: Those specific items identified by the Purchaser within five (5) business days of deliverance to Purchaser of a Preliminary Title Report. However, Purchaser agrees that rights reserved in federal patents, state deeds, building and use restrictions general to the area, existing easements not inconsistent with Purchaser's intended use, building and zoning regulations and references made in order to comply with the Truth in Lending Legislation shall not be considered to render Seller's title unmarketable.

3. MONETARY ENCUMBRANCES: Monetary encumbrances to be discharged by Seller shall be paid no later than closing. Monetary encumbrances which are not to be paid at closing shall be current at closing and not in default. Balance(s) on monetary encumbrance(s) not paid at closing, which differ from estimated balance(s) to be assumed or taken "subject to" at closing shall cause any new financing balance to be paid to Seller following closing to be adjusted accordingly, or, if none, then an appropriate adjustment shall be made at closing in cash.

4. TITLE INSURANCE: Seller shall furnish to Purchaser standard form owners or purchaser's policy of title insurance and copies of all existing monetary encumbrances which are not to be fully paid at closing, leases, easements, covenants, restrictions and other written documents affecting the Property, and as soon as practical prior to closing preliminary commitment therefore issued by

FIRST AMERICAN TITLE INSURANCE COMPANY, and Seller authorizes Selling Broker to apply at once for such title insurance. The title policy shall contain no exceptions other than those provided in said standard form and those not inconsistent with this Agreement. Delivery of such policy or title report to Closing Agent named herein shall constitute delivery to Purchaser. If title is not so insurable and cannot be made so insurable by Termination Date set forth in Paragraph 8, the Earnest Money shall be refunded and all rights of purchase terminated, provided that Purchaser may waive defects and elect to purchase. Neither Broker nor their Agents shall be responsible for delivery of title.

5. INCLUDED ITEMS: This sale includes, at no additional cost to Purchaser, not only those items which the law of the State of Washington provides are part of the Property, but also includes the following items, if any, owned by Seller and presently located on the Property: attached floor coverings; screens and storm windows and doors; built-in appliances and "drop-in ranges"; window treatments; plumbing, lighting, heating, ventilating and cooling systems, apparatus and fixtures (including light bulbs and filters); landscaping and attached irrigation equipment; and air lines and conduits.

6. FINANCING: Purchaser represents that it is not relying on any contingent source of funds for this purchase except as expressly stated in this Agreement. If financing is required, Purchaser agrees to make formal or written application for the same within 5 business days after the date of delivery to Purchaser of this accepted Agreement. Purchaser further agrees to sign necessary papers, pay required costs and exert best efforts to procure such financing.

7. CONVEYANCE: a) If this Agreement provides for conveying fee title, title shall be conveyed by statutory warranty deed free of encumbrances and defects except those permitted under this Agreement. b) If this Agreement provides for sale by real estate contract, Seller and Purchaser ("the Parties") agree to execute real estate contract on Real Estate Contract Form LPB-45. Said contract shall provide that title be conveyed by statutory warranty deed free of encumbrances and defects except those permitted under this Agreement. c) If the Property is subject to an existing contract, mortgage, deed of trust or other encumbrance which either Party is to continue to pay, then the obligated Party agrees to pay the same in accordance with its terms and conditions and upon default, the other Party shall have the right to make any payments necessary to cure said default, and the payments so made, together with interest at the legal rate, shall be immediately due and owing the Party making the same. d) If this Agreement provides for the sale and transfer of vendee's interest under an existing real estate contract, Seller agrees to execute Form LPB-14. e) If the portion of the Purchase Price is to be evidenced by a note and secured by deed of trust, Purchaser agrees to execute deed of trust on Master Form Deed of Trust recorded on July 25, 1988, in the official records of Spokane County, Washington under Auditor's File No. 378267C, and promissory note on LPB Form 25. The terms of said forms named in this paragraph are herein incorporated by reference and copies may be obtained from Closing Agent.

8. CLOSING: The sale shall be closed in the office of FIRST AMERICAN ("Closing Agent"). Closing shall occur within 10 days after the last to occur of: (a) delivery of all title insurance commitment meeting the requirements of Paragraph 4 (b) removal of contingencies; and (c) obtaining financing, if required. In any event, closing shall occur no later than 1/15/2007 ("Termination Date"). The Parties shall each pay one-half of the Closing Agent's Fee. Seller agrees to pay the real estate excise tax and other customary selling costs. Purchaser agrees to pay customary purchasing costs. Property taxes for the current year, rents, interest, mortgage reserves, water and other utilities constituting liens shall be prorated as of the date of closing. Security and/or damage deposits, if any, shall be delivered to Purchaser at closing. The Parties will, on demand, deposit in escrow with Closing Agent all instruments and the monies necessary to complete the purchase in accordance with this "Agreement." If the documents are then to be escrowed, the escrow shall be placed with N/A with fees shared equally. Closing Agent will prepare and file I.R.S. Forms 1099B and W-9 if filing is required by I.R.S. regulation.

9. SELLER'S WARRANTIES: Seller hereby covenants, warrants and represents as hereinafter set forth: (a) Seller, including the person(s) signing on behalf of Seller, owns, is buying, and/or has the full right and authority to sell, transfer or convey the Property, and to carry out Seller's obligations according to this Agreement. (b) This sale will not result in an acceleration or default under any monetary encumbrance which is not to be fully paid at closing. (c) Subject to Paragraph 14 (f), until closing, Seller shall use its best efforts to maintain the Property in its present condition, ordinary wear and tear excepted. (d) Seller has no knowledge of any order or directive of the applicable department of building and safety, health department or any other city, county, state or federal authority that requires that any work of repair, maintenance or improvement be performed on the Property. (e) All of the documents, information and records provided in accordance with Paragraph 4 shall contain true, accurate and complete information except as otherwise noted to Purchaser in writing. No party to any document is in breach or has left uncured any breach of any term therein.

(f) There are no hazardous wastes, toxic substances or related materials, including, but not limited to, substances defined as "hazardous substances" or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 USC section 9601, et seq., Hazardous Material Transportation Act, 49 USC section 1802, et seq., and Resource Conservation Recovery Act, 42 section 6901, et seq., and those substances defined as "extremely hazardous wastes" and "dangerous wastes" or "hazardous wastes" in the Hazardous Waste Disposal Act, RCW 70.105 and in the regulations adopted in publications promulgated pursuant to such laws, contained in the soil or ground water of the Property, and Seller has received no notice and has no knowledge of any violation or inspection relating to, and there is no violation by Seller under, any such governmental requirement. The Property, including improvements, soil and ground water, complies with all federal, state and local laws, regulations and ordinances regulating the environment or hazardous materials or wastes, toxic substances, asbestos or urea formaldehyde, insulation or other pollutants.

10. AGENCY DISCLOSURE: The Parties consent to the following representation: ANNE BETOW ("Selling Agent"), who is affiliated with TOMLINSON BLACK CO. ("Selling Broker", represented (check one) Seller Purchaser dual agent neither Seller nor Purchaser. EARL ENGLE & CARLO JENSEN ("Listing Agent"), who is affiliated with TOMLINSON BLACK CO. ("Listing Broker", represented (check one) Seller dual agent. If Selling and Listing Agents are affiliated with Listing Broker, and both Parties are being represented (including by dual agents), then Listing Broker is dual agent. Each Party confirms that prior oral and/or written disclosure of agency was provided to them in this transaction and that each has received copy of the pamphlet entitled "The Law of Real Estate Agency".

11. RESPONSIBILITY FOR INFORMATION: The Parties agree and warrant that: subject to Paragraphs 9 (c) and 14 (f), Purchaser is purchasing the Property in its present condition, "as-is". All representations and information regarding the Property, including any information regarding sizes and boundaries of the Property and improvements provided in marketing the Property, are either approximations to be independently verified by Purchaser or are made solely by Seller, and not by any of the Brokers, Agents or employees. Seller shall indemnify and hold all Brokers and Agents harmless in the event any of Seller's statements or representations are false. No Broker or Agent is responsible for assuring that either Purchaser or Seller performs their obligations under this Agreement. No Broker or Agent has agreed to independently investigate or confirm any matter or item related to the Property or this transaction except as specifically stated in this Agreement, or in separate writing signed by such Broker or Agent. Purchaser shall have 5 working days from the date of delivery to Purchaser of this accepted Agreement, with all utility services on and reasonable access to the Property, to inspect the conditions, to the extent applicable and present at the Property, of the plumbing, heating, ventilating, air conditioning, and electrical systems, including appliances; the structural integrity of the building(s) and improvements, roof and/or apron/sprinkler system. If Purchaser provides written notice to Seller within said time period detailing those items which Purchaser has determined, in Purchaser's sole discretion, are not in good working order, or acceptable condition, then Seller shall have the option of correcting such conditions or terminating this Agreement. If Seller or Selling Broker or Agent do not receive any written notice within such time period, the inspection or absence of inspection shall be conclusively deemed to have been satisfactory, and Purchaser shall have waived any right to further inspection and agrees that Purchaser shall accept the Property in its "as-is" condition as of the date of delivery to Purchaser of this accepted Agreement.

12. TIME FOR ACCEPTANCE: Seller shall have until midnight 5PM 10/20/06 2006 to accept Purchaser's offer. In consideration of Selling Broker submitting this offer to Seller, Purchaser shall not withdraw this offer during said time period, unless notice of Seller's rejection is received earlier. Purchaser agrees that written notice of acceptance given to Selling Broker by Seller shall be notice to Purchaser. If Seller does not accept this Agreement within the time specified, Selling Broker shall refund the Earnest Money upon demand.

13. DEFAULT: If either Party defaults hereunder, the other Party may seek specific performance of this Agreement, damages or rescission. If Purchaser defaults, Seller shall have the right to elect to receive the Earnest Money and retain it as liquidated damages, thereby terminating this Agreement. In the event the Earnest Money is forfeited, Seller shall reimburse Broker(s) for all expenditures made in this proposed transaction, and any remaining Earnest Money shall be apportioned equally to Seller and Broker(s), provided the forfeited Earnest Money remitted to Broker(s) shall not exceed the agreed commission.

14. GENERAL PROVISIONS: (a) FAXES AND COUNTERPARTS: Facsimile transmission of any signed original document, and retransmission of any signed facsimile transmission shall be the same as delivery of an original. At the request of either party, or Closing Agent, the Parties will confirm facsimile transmitted signatures by signing an original document. This Agreement may be signed in counterparts. (b) INTEGRATION: This Agreement supersedes all prior understandings, negotiations and agreements of the Parties and there are no verbal agreements or understandings which modify this Agreement. This Agreement constitutes the full understanding between the Parties. (c) PARTIAL INVALIDITY: If any provision in this Agreement is invalid, the remainder of this Agreement shall remain in effect unless an essential purpose for which this Agreement has been entered would be defeated. (d) TIME IS OF THE ESSENCE: Time is of the essence as to all terms and conditions of this Agreement. (e) BACKUP OFFERS: Regardless of agency representation, Listing Broker and its agents may continue to market the Property and Seller may continue to accept backup offers. (f) ATTORNEYS' FEES: If Purchaser, Seller, or any Agent or Broker involved in this transaction is involved in any dispute relating to any aspect of this transaction or this Agreement, any prevailing party shall recover their reasonable attorneys' fees and costs. (g) RECEIPT: The Parties each acknowledge receipt of a copy of this Agreement. (h) POSSESSION: Purchaser shall be entitled to possession of the Property following closing. (i) RISK OF LOSS: The risk of loss prior to closing shall remain in Seller and if, prior to date of closing, improvements on the Property shall be destroyed or materially damaged by fire or other casualty, this Agreement, at the option of Purchaser, shall become null and void. (j) ACCURACY AND SURVIVAL OF PROVISIONS: All covenants, warranties and representations in this Agreement, including those in Paragraph 9, shall be true and correct as of closing, and all obligations and provisions which may apply following closing, including those in Paragraphs 7 (c) and (d), 8, 11 and 14 (f), shall not merge into any deed and shall survive closing and continue in full force and effect.

SELLING BROKER TOMLINSON BLACK CO. Phone _____ PURCHASER James R Sweetley
By ANNE BETOW Fax _____ PURCHASER _____
Purchaser's Phone: Bus 328-0678 Res 891-4908 Fax _____ Mobile _____
PURCHASER'S ADDRESS 11420 E 36th, Spokane WA 99206

The undersigned Seller, on this _____ day of _____, 2006 hereby accepts and approves the above Agreement and agrees to carry out all of its terms. Seller further agrees to pay forthwith to TOMLINSON BLACK CO. and _____ as Listing and Selling Broker, a commission in the amount stated in the last agreement to pay a commission to the Listing Broker or in the absence of any agreement, \$ _____

Seller hereby authorizes and directs Closing Agent to pay Listing and Selling Broker said commission from the sale proceeds. Upon closing or specific enforcement of this transaction, Seller irrevocably assigns a portion of Seller's proceeds to the Broker(s), including the Earnest Money sufficient to satisfy the commission obligation. The commission shall be apportioned _____ % to Selling Broker and the remainder to Listing Broker.

Seller's counter offer ("Counter Offer") made herein or attached hereto, is made a part of this Agreement by reference. Purchaser shall have until midnight on _____ 2006 to accept same. If Counter Offer is not accepted by that time, the Earnest Money will be refunded to Purchaser. Seller agrees that written notice of acceptance given to Listing Broker by Purchaser shall be notice to Seller.

SELLER'S ADDRESS _____ SELLER _____
Phone _____ Fax _____ Mobile _____ SELLER _____

Purchaser acknowledges receipt of a copy of the foregoing Agreement bearing its signature and that of Seller. The date below shall be considered as the date of delivery to Purchaser of this accepted Agreement.
Date: _____ 2006. PURCHASER _____

THIS AGREEMENT HAS BEEN PREPARED FOR SUBMISSION TO YOUR ATTORNEY AND/OR TAX COUNSEL FOR THEIR APPROVAL. NO REPRESENTATION OR RECOMMENDATION IS MADE BY ANY BROKER, AGENT OR EMPLOYEE AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS AGREEMENT OR THE TRANSACTION RELATING HERETO. (IF YOU DO NOT UNDERSTAND THE EFFECT OF ANY PART OF THIS AGREEMENT, CONSULT YOUR ATTORNEY BEFORE SIGNING. NO BROKER, AGENT OR EMPLOYEE CAN GIVE YOU LEGAL ADVICE.)

REAL ESTATE PURCHASE & SALE AGREEMENT (With EARNEST MONEY PROVISION) SpoKane Association OF REALTORS 7/87
TOMLINSON BLACK COMMERCIAL, INC. Form SCI-4115 REV. 4/97

THIS CONTRACT CONTROLS THE TERMS OF SALE OF REAL PROPERTY. READ CAREFULLY BEFORE SIGNING.

SPOKANE Washington, 10-19 2006

EVELE FROM: JAMES A SWEEZER AND DELORES G SWEEZER H&W AND/OR ASSIGNS (Purchaser)
FIVE THOUSAND DOLLARS (\$ 5,000 -)

form of a check for \$ 5,000 - , which shall be deposited in the Selling Broker's Trust Account as Earnest Money within two (2) business days after mutual acceptance; cash for \$ _____, to be deposited with the Selling Broker within one (1) business day of receipt as Earnest Money; or attached Earnest Money Note for \$ _____ with Note due _____. Earnest Money to be credited to Purchaser at closing. If the amount of the Earnest money deposit exceeds \$10,000.00, Purchaser has elected to have the Earnest Money placed in the Selling Brokers pooled trust account or placed in a separate interest bearing trust account in Selling Broker's name, with interest to be credited to Purchaser at closing or paid to Purchaser if this sale

is to close (Purchasers Tax ID No. _____). This Agreement (this "Agreement") covers the following described real estate (the "Property") in the City of

SPOKANE County of _____ Washington; commonly known as 1020 N WASHINGTON and

legally described as follows:

KEYSTONE S1 FT L7; ALL BTOLL B1 & VAC STR W OF & ADJ

If the legal description of the Property is omitted, incomplete or inaccurate at the time of signing, this Agreement shall not be invalidated and Selling or Listing Broker is authorized to insert or attach the correct legal description.)

THE TOTAL PURCHASE PRICE IS Five hundred five thousand and 00/100 DOLLARS
~~\$ 495,000~~ 500,000 (the "Purchase Price"), payable as follows:
10-20-06 2:25pm

\$ 5,000 ABOVE EARNEST MONEY PAYABLE UPON ACCEPTANCE
X 495,000 BALANCE IN CASH AT CLOSING
500,000

THIS OFFER IS CONTINGENT UPON THE FOLLOWING:
A. PURCHASER OBTAINING FINANCING WITHIN 60 DAYS OF MUTUAL ACCEPTANCE
B. PURCHASER INSPECTION OF SUBJECT PROPERTY WITHIN 25 DAYS OF ACCEPTANCE

FINANCING TERMS AND INSPECTION RESULTS TO BE AT PURCHASER'S SOLE SATISFACTION

MONETARY ENCUMBRANCES: Monetary encumbrances to be discharged by Seller shall be paid no later than closing. Monetary encumbrances which are not to be paid at closing shall be current and not in default. Balance(s) on monetary encumbrance(s) not paid at closing which differ from estimated balance(s) to be assumed or taken "subject to" at closing shall cause any new closing balance to be paid to Seller following closing to be adjusted accordingly, or, if none, then an appropriate adjustment shall be made at closing in cash.

TITLE INSURANCE: Seller shall furnish to Purchaser standard form owners or purchaser's policy of title insurance and copies of all existing monetary encumbrances which are not to be fully paid including, leases, easements, covenants, restrictions and other written documents affecting the Property, and as soon as practical prior to closing preliminary commitment therefore issued by

FIRST AMERICAN

TITLE INSURANCE COMPANY, and Seller authorizes Selling Broker to apply at once for such title

The title policy shall contain no exceptions other than those provided in said standard form and those not inconsistent with this Agreement. Delivery of such policy or title report to Closing Agent herein shall constitute delivery to Purchaser. If title is not so insurable and cannot be made so insurable by Termination Date set forth in Paragraph 8, the Earnest Money shall be forfeited and all rights of purchase terminated, provided that Purchaser may waive defect and elect to purchase. Neither Broker nor their Agents shall be responsible for delivery of title.

INCLUDED ITEMS: This sale includes, at no additional cost to Purchaser, not only those items which the law of the State of Washington provides are part of the Property, but also includes the following items, if any, owned by Seller and presently located on the Property: attached floor coverings; screen and storm windows and doors; built-in appliances and "drop-in" ranges; window treatments; plumbing, lighting, heating, ventilating and cooling systems, apparatus and fixtures (including light bulbs and fillers); landscaping and attached irrigation equipment; and air lines and ducts.

FINANCING: Purchaser represents that it is not relying on any contingent source of funds for this purchase except as expressly stated in this Agreement. If financing is required, Purchaser agrees to submit a formal or written application for the same within 5 business days after the date of delivery to Purchaser of this accepted Agreement. Purchaser further agrees to sign necessary papers, pay all costs and exert best efforts to procure such financing.

CONVEYANCE: a) If this Agreement provides for conveying fee title, title shall be conveyed by statutory warranty deed free of encumbrances and defects except those permitted under this Agreement. b) If this Agreement provides for sale by real estate contract, Seller and Purchaser ("the Parties") agree to execute real estate contract on Real Estate Contract Form LPB-45. Said contract shall provide that title be conveyed by statutory warranty deed free of encumbrances and defects except those permitted under this Agreement. c) If the Property is subject to an existing mortgage, deed of trust or other encumbrance which either Party is to continue to pay, then the obligated Party agrees to pay the same in accordance with its terms and conditions and upon the date the other Party shall have the right to make any payments necessary to cure said default, and the payments so made, together with interest at the legal rate, shall be immediately due and owing to the lender making the same. d) If this Agreement provides for the sale and transfer of vendee's interest under an existing real estate contract, Seller agrees to execute Form LPB-14. e) If portion of the purchase price is to be evidenced by a note and secured by deed of trust, Purchaser agrees to execute deed of trust on Master Form Deed of Trust recorded on July 25, 1988, in the official records of Skane County, Washington under Auditor's File No. 378287C, and promissory note on LPB Form 25. The terms of said forms named in this paragraph are herein incorporated by reference and may be obtained from Closing Agent.

CLOSING: The sale shall be closed in the office of FIRST AMERICAN ("Closing Agent"). Closing shall occur within 10 days after the last to deliver of a title insurance commitment meeting the requirements of Paragraph 4 (b) removal of contingencies; and (c) obtaining financing, if required. In any event, closing shall occur no later than 1/15/2007 ("Termination Date"). The Parties shall each pay one-half of the Closing Agent's Fee. Seller agrees to pay the real estate excise tax and other necessary selling costs. Purchaser agrees to pay customary purchasing costs. Property taxes for the current year, rents, interest, mortgage reserves, water and other utilities constituting liens shall be paid as of the date of closing. Security and/or damage deposits, if any, shall be delivered to Purchaser at closing. The Parties will, on demand, deposit in escrow with Closing Agent all instruments and monies necessary to complete the purchase in accordance with this "Agreement." If the documents are then to be escrowed, the escrow shall be placed

N/A with fees shared equally. Closing Agent will prepare and file I.R.S. Forms 1099B and W-9 if filing is required by I.R.S. regulation. **Seller's Warranties:** Seller hereby covenants, warrants and represents as hereinafter set forth: (a) Seller, including the person(s) signing on behalf of Seller, owns, is buying, and/or has the right and authority to sell, transfer or convey the Property, and to carry out Seller's obligations according to this Agreement. (b) This sale will not result in an acceleration or default under any other monetary encumbrance which is not to be fully paid at closing. (c) Subject to Paragraph 14 (f), until closing, Seller shall use its best efforts to maintain the Property in its present condition, ordinary wear and tear excepted. (d) Seller has no knowledge of any order or directive of the applicable department of building and safety, health department or any other city, county, state or federal authority which requires that any work of repair, maintenance or improvement be performed on the Property. (e) All of the documents, information and records provided in accordance with Paragraph 4 shall be true, accurate and complete information except as otherwise noted to Purchaser in writing. No party to any document is in breach or has left uncured any breach of any term therein.

There are no hazardous wastes, toxic substances or related materials, including, but not limited to, substances defined as "hazardous substances" or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 USC section 9601, et seq., Hazardous Material Transportation Act, 49 USC section 1802, et seq., and Resource Conservation and Recovery Act, 42 USC section 6901, et seq., and those substances defined as "extremely hazardous wastes" and "dangerous wastes" or "hazardous wastes" in the Hazardous Waste Manifest Act, RCW 70.105 and in the regulations adopted in publications promulgated pursuant to such laws, contained in the soil or ground water of the Property, and Seller has received no notice and no knowledge of any violation or inspection relating to, and there is no violation by Seller under, any such governmental requirement. The Property, including Improvements, soil and ground water, complies with all federal, state and local laws, regulations and ordinances regulating the environment or hazardous materials or wastes, toxic substances, asbestos or urea formaldehyde, insulation or pollutants.

AGENCY DISCLOSURE: The Parties consent to the following representation: ANNE BETOW ("Selling Agent"), who is affiliated with MILINSON BLACK CO. ("Selling Broker", represented (check one) Seller Purchaser dual agent neither Seller nor Purchaser.

W. ENGLE & CARLO JENSEN ("Listing Agent"), who is affiliated with MILINSON BLACK CO. ("Listing Broker", represented (check one) Seller dual agent. If Selling and Listing Agents are affiliated with Listing Broker, and both Parties are being represented (including by dual agents), Listing Broker is dual agent. Each Party confirms that prior oral and/or written disclosure of agency was provided to them in this transaction and that each has received copy of the pamphlet titled "The Law of Real Estate Agency".

RESPONSIBILITY FOR INFORMATION: The Parties agree and warrant that: subject to Paragraphs 9 (c) and 14 (f), Purchaser is purchasing the Property in its present condition, "as-is". All representations and information regarding the Property, including any information regarding sizes and boundaries of the Property and Improvements provided in marketing the Property, are either representations to be independently verified by Purchaser or are made solely by Seller, and not by any of the Brokers, Agents or employees. Seller shall indemnify and hold all Brokers and Agents harmless in the event any of Seller's statements or representations are false. No Broker or Agent is responsible for assuring that either Purchaser or Seller performs their obligations under this Agreement. No Broker or Agent has agreed to independently investigate or confirm any matter or item related to the Property or this transaction except as specifically stated in this Agreement, or in any writing signed by such Broker or Agent. Purchaser shall have 5 working days from the date of delivery to Purchaser of this accepted Agreement, with all utility services on and reasonable access to the Property, to inspect the conditions, to the extent applicable and present at the Property, of the plumbing, heating, ventilating, air conditioning, and electrical systems, included appliances-structural integrity of the building(s) and improvements, roof and/or sprinkler system. If Purchaser provides written notice to Seller within said time period detailing those items which Purchaser has inspected, in Purchaser's sole discretion, are not in good working order, or acceptable condition, then Seller shall have the option of correcting such conditions or terminating this Agreement. If Seller or Listing Broker or Agent do not receive any written notice within such time period, the inspection or absence of inspection shall be conclusively deemed to have been satisfactory, and Purchaser shall have no right to further inspection and agrees that Purchaser shall accept the Property in its "as-is" condition as of the date of delivery to Purchaser of this accepted Agreement.

OFFER FOR ACCEPTANCE: Seller shall have until 2:00 PM 10/10/06 2006 to accept Purchaser's offer. In consideration of Selling Broker submitting this offer to Purchaser, Seller shall not withdraw this offer during said time period, unless notice of Seller's rejection is received earlier. Purchaser agrees that written notice of acceptance given to Selling Broker shall be notice to Purchaser. If Seller does not accept this Agreement within the time specified, Selling Broker shall refund the Earnest Money upon demand.

DEFAULT: If either Party defaults hereunder, the other Party may seek specific performance of this Agreement, damages or rescission. If Purchaser defaults, Seller shall have the right to elect to receive the Earnest Money and retain it as liquidated damages, thereby terminating this Agreement. In the event the Earnest Money is forfeited, Seller shall reimburse Broker(s) for all expenditures in this proposed transaction, and any remaining Earnest Money shall be apportioned equally to Seller and Broker(s), provided the forfeited Earnest Money remitted to Broker(s) shall not exceed the agreed commission.

GENERAL PROVISIONS: (a) FAXES AND COUNTERPARTS: Facsimile transmission of any signed original document, and retransmission of any signed facsimile transmission shall be the same as that of an original. At the request of either party, or Closing Agent, the Parties will execute counterparts to this Agreement, and the counterparts, when taken together, shall constitute one and the same agreement.

REAL ESTATE PURCHASE & SALE AGREEMENT (WITH EARNEST MONEY PROVISION) Spokane Association OF REALTORS 7/87 Form SCI-4115 REV.4/97

TOMLINSON BLACK COMMERCIAL, INC.

THIS CONTRACT CONTROLS THE TERMS OF SALE OF REAL PROPERTY. READ CAREFULLY BEFORE SIGNING.

SPOKANE Washington, 10-20 2008

WED FROM: JAMES A SWEETSER AND DELORAE S SWEETSER NOW ASST AND PURCHASER FIVE THOUSAND DOLLARS (\$5,000)

in the form of a check for \$ 5,000.00, which shall be deposited in the Selling Broker's Trust Account as Earnest Money within two (2) business days after mutual acceptance; cash for \$ to be deposited with the Selling Broker within one (1) business day of receipt as Earnest Money; or attached Earnest Money Note for \$ with Note due. Earnest Money to be credited to Purchaser at closing. If the amount of the Earnest Money deposit exceeds \$10,000.00, Purchaser has elected to have the Earnest Money placed in the Selling Brokers pooled trust account or placed in a separate interest bearing trust account in Selling Broker's name, with interest to be credited to Purchaser at closing or paid to Purchaser if this sale fails to close (Purchasers Tax ID No.). This Agreement (this "Agreement") covers the following described real estate (the "Property") in the City of

SPOKANE County of Washington; commonly known as 1020 N WASHINGTON and legally described as follows:

KEYSTONE S1 FT # L7; ALL L 8 TO 11 BI AND VAC STRIP OF L ADJ

(If the legal description of the Property is omitted, incomplete or inaccurate at the time of signing, this Agreement shall not be invalidated and Selling or Listing Broker is authorized to insert or attach the correct legal description.)

THE TOTAL PURCHASE PRICE IS FIVE HUNDRED AND FIVE THOUSAND DOLLARS (\$ 505,000.00) (the "Purchase Price"), payable as follows:

\$ 5000 ABOVE EARNEST MONEY PAYABLE UPON ACCEPTANCE & 500,000 BALANCE IN CASH AT CLOSING

THIS OFFER IS CONTINGENT UPON AN INSPECTION OF SUBJECT PROPERTY TO BE RELEASED WITHIN FIFTEEN DAYS AFTER MUTUAL ACCEPTANCE. THE RESULTS OF THIS INSPECTION SHALL BE AT PURCHASER'S SOLE SATISFACTION

* THE ABOVE PRICE SHALL BE INCREASED TO MATCH PLUS \$ 1,000. THE EXISTING OFFER CURRENTLY IN SELLER'S POSSESSION. CLOSING DATE TO BE THE SAME AS CURRENT OTHER OFFER

* Buyer would engage in a bidding process with all other purchase offers to pay the most amount of money to the seller.

1. ADDENDUMS: Additional provisions, if any, are attached by Addendum ("Addendum"). If Addendum(s) are included, check here. and identify Addendum(s)

NOTE: Seller's title to the Property shall be marketable at closing with the following exceptions: Those specific items identified by the Purchaser in five (5) business days of deliverance to Purchaser of a Preliminary Title Report. However, Purchaser agrees that rights reserved in federal patents, state deeds, building and use restrictions general to the area, existing easements not inconsistent with Purchaser's intended use, building and zoning regulations and references made in order to comply with the Truth in Lending Legislation shall not be considered to render Seller's title unmarketable.

3. MONETARY ENCUMBRANCES: Monetary encumbrances to be discharged by Seller shall be paid no later than closing. Monetary encumbrances which are not to be paid at closing shall be current at closing and not in default. Balance(s) on monetary encumbrance(s) not paid at closing which differ from estimated balance(s) to be assumed or taken "subject to" at closing shall cause any new financing balance to be paid to Seller following closing to be adjusted accordingly, or, if none, then an appropriate adjustment shall be made at closing in cash.

4. TITLE INSURANCE: Seller shall furnish to Purchaser standard form owners or purchaser's policy of title insurance and copies of all existing monetary encumbrances which are not to be fully paid at closing. Seller shall also furnish to Purchaser preliminary commitment therefore issued by title insurance company.

5. INCLUDED ITEMS: This sale includes, at no additional cost to Purchaser, not only those items which the law of the State of Washington provides are part of the Property, but also includes the following items, if any, owned by Seller and presently located on the Property: attached floor coverings; screen and storm windows and doors; built-in appliances and "drop-in" ranges; window treatments; plumbing, lighting, heating, ventilating and cooling systems, apparatus and fixtures (including light bulbs and filters); landscaping and attached irrigation equipment; and air lines and conduits.

6. FINANCING: Purchaser represents that it is not relying on any contingent source of funds for this purchase except as expressly stated in this Agreement. If financing is required, Purchaser agrees to make formal or written application for the same within 5 business days after the date of delivery to Purchaser of this accepted Agreement. Purchaser further agrees to sign necessary papers, pay required costs and exert best efforts to procure such financing.

7. CONVEYANCE: a) If this Agreement provides for conveying fee title, title shall be conveyed by statutory warranty deed free of encumbrances and defects except those permitted under this Agreement. b) If this Agreement provides for sale by real estate contract, Seller and Purchaser ("the Parties") agree to execute real estate contract on Real Estate Contract Form LPB-45. Said contract shall provide that title to be conveyed by statutory warranty deed free of encumbrances and defects except those permitted under this Agreement. c) If the Property is subject to an existing contract, mortgage, deed of trust or other encumbrance which either Party agrees to pay, then the obligated Party agrees to pay the same in accordance with its terms and conditions and upon default, the other Party shall have the right to make any payments necessary to cure said default, and the payments to made, together with interest at the legal rate, shall be immediately due and owing to the Party making the same. d) If this Agreement provides for the sale and transfer of vendee's interest under an existing real estate contract, Seller agrees to execute Form LPB-14. e) If portion of the Purchase Price is to be evidenced by a note and secured by deed of trust, Purchaser agrees to execute deed of trust on Master Form Deed of Trust recorded on July 25, 1968, in the official records of Spokane County, Washington under Auditor's File No. 376267C, and promissory note on LPB Form 25. The terms of said forms named in this paragraph are herein incorporated by reference and copies may be obtained from Closing Agent.

8. CLOSING: The sale shall be closed in the office of FIRST AMERICAN ("Closing Agent"). Closing shall occur within 10 days after the last to occur of: (a) delivery of a title insurance commitment meeting the requirements of Paragraph 4 (b) removal of contingencies; and (c) obtaining financing. If required, in any event, closing shall occur no later than 10/20/06 ("Termination Date"). The Parties shall each pay one-half of the Closing Agent's Fee. Seller agrees to pay the real estate excise tax and other customary selling costs. Purchaser agrees to pay customary purchasing costs. Property taxes for the current year, rent, interest, mortgage reserves, water and other utilities constituting liens shall be prorated as of the date of closing. Security and/or damage deposits, if any, shall be delivered to Purchaser at closing. The Parties will, on demand, deposit in escrow with Closing Agent all instruments and the monies necessary to complete the purchase in accordance with this "Agreement." If the documents are then to be escrowed, the escrow shall be placed with N/A with fees shared equally. Closing Agent will prepare and file L.R.S. Forms 1099B and W-9 if filing is required by L.R.S. regulation.

9. SELLER'S WARRANTIES: Seller hereby covenants, warrants and represents as hereinafter set forth: (a) Seller, including the person(s) signing on behalf of Seller, owns, is buying, and/or has the full right and authority to sell, transfer or convey the Property, and to carry out Seller's obligations according to this Agreement. (b) This sale will not result in an acceleration or default under any monetary encumbrance which is not to be fully paid at closing. (c) Subject to Paragraph 14 (f), until closing, Seller shall use its best efforts to maintain the Property in its present condition, ordinary wear and tear accepted. (d) Seller has no knowledge of any order or directive of the applicable department of building and safety, health department or any other city, county, state or federal authority that requires that any work of repair, maintenance or improvement be performed on the Property. (e) All of the documents, information and records provided in accordance with Paragraph 4 shall contain true, accurate and complete information except as otherwise noted to Purchaser in writing. No party to any document is in breach or has left uncured any breach of any term therein. (f) There are no hazardous wastes, toxic substances or related materials, including, but not limited to, substances defined as "hazardous substances" or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 USC section 9601, et seq., Hazardous Material Transportation Act, 49 USC section 1802, et seq., and Resource Conservation Recovery Act, 42-section 6901, et seq., and those substances defined as "extremely hazardous wastes" and "dangerous wastes" or "hazardous wastes" in the Hazardous Waste Disposal Act, RCW 70.105 and in the regulations adopted in publications promulgated pursuant to such laws, contained in the soil or ground water of the Property, and Seller has received no notice and has no knowledge of any violation or infraction relating to, and there is no violation by Seller under, any such governmental requirement. The Property, including improvements, soil and ground water, complies with all federal, state and local laws, regulations and ordinances regulating the environment or hazardous materials or wastes, toxic substances, asbestos or urea formaldehyde, insulation or other pollutants.

10. AGENCY DISCLOSURE: The Parties consent to the following representation: ANNE BETOW ("Selling Agent"), who is affiliated with TOMLINSON BLACK COM ("Selling Broker", represented (check one) Seller dual agent neither Seller nor Purchaser. EARL ENGLE AND CARL HENSEN ("Listing Agent"), who is affiliated with TOMLINSON BLACK COM ("Listing Broker", represented (check one) Seller dual agent. If Selling and Listing Agents are affiliated with Listing Broker, and both Parties are being represented (including by dual agents), then Listing Broker is dual agent. Each Party confirms that prior oral and/or written disclosure of agency was provided to them in this transaction and that each has received copy of the pamphlet entitled "The Law of Real Estate Agency".

11. RESPONSIBILITY FOR INFORMATION: The Parties agree and warrant that: subject to Paragraphs 9 (c) and 14 (f), Purchaser is purchasing the Property in its present condition, "as-is". All representations and information regarding the Property, including any information regarding sizes and boundaries of the Property and improvements provided in marketing the Property, are either approximations to be independently verified by Purchaser or are made solely by Seller, and not by any of the Brokers, Agents or employees. Seller shall indemnify and hold all Brokers and Agents harmless in the event any of Seller's statements or representations are false. No Broker or Agent is responsible for assuring that either Purchaser or Seller performs their obligations under this Agreement. No Broker or Agent has agreed to independently investigate or confirm any matter or item related to the Property or this transaction except as specifically stated in this Agreement, or in writing signed by such Broker or Agent. Purchaser shall have 5 working days from the date of delivery to Purchaser of this accepted Agreement, with all utility services on and reasonable access to the Property, to inspect the conditions, to the extent applicable and present at the Property, of the plumbing, heating, ventilating, air conditioning, and electrical systems, included appliances, structural integrity of the building(s) and improvements, roof and/or sprinkler system. If Purchaser provides written notice to Seller within said time period detailing those items which Purchaser has determined, in Purchaser's sole discretion, are not in good working order, or acceptable condition, then Seller shall have the option of correcting such conditions or terminating this Agreement. If Seller or Selling Broker or Agent do not receive any written notice within such time period, the inspection or absence of inspection shall be conclusively deemed to have been satisfactory, and Purchaser shall have waived any right to further inspection and agrees that Purchaser shall accept the Property in its "as-is" condition as of the date of delivery to Purchaser of this accepted Agreement.

12. TIME FOR ACCEPTANCE: Seller shall have until 10/20/06 to accept Purchaser's offer. In consideration of Selling Broker submitting this offer to Seller, Purchaser shall not withdraw this offer during said time period, unless notice of Seller's rejection is received earlier. Purchaser agrees that written notice of acceptance given to Selling Broker by Seller shall be notice to Purchaser. If Seller does not accept this Agreement within the time specified, Selling Broker shall refund the Earnest Money upon demand.

13. DEFAULT: If either Party defaults hereunder, the other Party may seek specific performance of this Agreement, damages or rescission. If Purchaser defaults, Seller shall have the right to elect to receive the Earnest Money and retain it as liquidated damages, thereby terminating this Agreement. In the event the Earnest Money is forfeited, Seller shall reimburse Broker(s) for all expenditures made in this proposed transaction, and any remaining Earnest Money shall be apportioned equally to Seller and Broker(s), provided the forfeited Earnest Money remitted to Broker(s) shall not exceed the agreed commission.

14. GENERAL PROVISIONS: (a) FAXES AND COUNTERPARTS: Facsimile transmission of any signed original document, and retransmission of any signed facsimile transmission shall be the same as delivery of an original. At the request of either party, or Closing Agent, the Parties will confirm facsimile transmitted signatures by signing an original document. This Agreement may be signed in counterparts. (b) INTEGRATION: This Agreement supersedes all prior understandings, negotiations and agreements of the Parties and there are no verbal agreements or understandings which modify this Agreement. This Agreement constitutes the full understanding between the Parties. (c) PARTIAL INVALIDITY: If any provision in this Agreement is invalid, the remainder of this Agreement shall remain in effect unless an essential purpose for which this Agreement has been entered would be defeated. (d) TIME IS OF THE ESSENCE: Time is of the essence as to all terms and conditions of this Agreement. (e) BACKUP OFFERS: Regardless of agency representation, Listing Broker and its agents may continue to market the Property and Seller may continue to accept backup offers. (f) ATTORNEYS' FEES: If Purchaser, Seller, or any Agent or Broker involved in this transaction is involved in any dispute relating to any aspect of this Agreement, any prevailing party shall recover their reasonable attorneys' fees and costs. (g) RECEIPT: The Parties each acknowledge receipt of a copy of this Agreement. (h) POSSESSION: Purchaser shall be entitled to possession of the Property following closing. (i) RISK OF LOSS: The risk of loss prior to closing shall remain in Seller and, if prior to date of closing, improvements on the Property shall be destroyed or materially damaged by fire or other casualty, this Agreement, at the option of Purchaser, shall become null and void. (j) ACCURACY AND SURVIVAL OF PROVISIONS: All covenants, warranties and representations in this Agreement, including those in Paragraph 9, shall be true and correct as of closing, and all obligations and provisions which may apply following closing, including those in Paragraphs 7.(c) and (d), 9, 11 and 14.(f), shall not merge into any deed and shall survive closing and continue in full force and effect.

SELLING BROKER TOMLINSON BLACK COM Phone _____ PURCHASER James R Sweeten
By ANNE BETOW Fax _____ PURCHASER _____
Purchaser's Phone: Bus 328-0676 Res _____ Fax _____ Mobile _____
PURCHASER'S ADDRESS 11420 E 36th Spokane, WA 99206

The undersigned Seller, on this _____ day of _____, 2006 hereby accepts and approves the above Agreement and agrees to carry out all of its terms. Seller further agrees to pay forthwith to TOMLINSON BLACK COM and _____ as Listing and Selling Broker, a commission in the amount stated in the last agreement to pay a commission to the Listing Broker or in the absence of any agreement, _____

Seller hereby authorizes and directs Closing Agent to pay Listing and Selling Broker said commission from the sale proceeds. Upon closing or specific enforcement of this transaction, Seller irrevocably assigns a portion of Seller's proceeds to the Broker(s), including the Earnest Money sufficient to satisfy the commission obligation. The commission shall be apportioned 50 % to Selling Broker and the remainder to Listing Broker.

Seller's counter offer ("Counter Offer") made herein or attached hereto, is made a part of this Agreement by reference. Purchaser shall have until midnight on _____ 2006 to accept same. If Counter Offer is not accepted by that time, the Earnest Money will be refunded to Purchaser. Seller agrees that written notice of acceptance given to Listing Broker by Purchaser shall be notice to Seller.

SELLER'S ADDRESS _____ SELLER _____
Phone _____ Fax _____ Mobile _____ SELLER _____

I, _____, acknowledge receipt of a copy of the foregoing Agreement bearing its signature and that of Seller. The date below shall be considered as the date of delivery to Purchaser of this accepted Date _____ 2006 PURCHASER _____

THIS AGREEMENT HAS BEEN PREPARED FOR SUBMISSION TO YOUR ATTORNEY AND/OR TAX COUNSEL FOR THEIR APPROVAL. NO REPRESENTATION OR RECOMMENDATION IS MADE BY ANY BROKER, AGENT OR EMPLOYEE AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS AGREEMENT OR THE TRANSACTION RELATING HERETO. (IF YOU DO NOT UNDERSTAND THE EFFECT OF ANY PART OF THIS AGREEMENT, CONSULT YOUR ATTORNEY BEFORE SIGNING. NO BROKER, AGENT OR EMPLOYEE CAN GIVE YOU LEGAL ADVICE.)

REAL ESTATE PURCHASE & SALE AGREEMENT (With EARNEST MONEY PROVISION) Spokane Association

TOMLINSON BLACK COMMERCIAL, INC.

OF REALTORS 7/87

THIS CONTRACT CONTROLS THE TERMS OF SALE OF REAL PROPERTY. READ CAREFULLY BEFORE SIGNING. Form SCI-4115 REV. 4/97

SPOKANE

Washington, 10-21

2006

BOUGHT FROM: JAMES A SWEETZER AND DELORES G SWEETZER H&W AND/OR ASSIGNS (Purchaser)
FIVE THOUSAND DOLLARS (\$ 5,000.00)

In the form of a check for \$ 5,000.00, which shall be deposited in the Selling Broker's Trust Account as Earnest Money within two (2) business days after mutual acceptance; cash for \$ _____, to be deposited with the Selling Broker within one (1) business day of receipt as Earnest Money; or attached Earnest Money Note for \$ _____ with Note due _____. Earnest Money to be credited to Purchaser at closing. If the amount of the Earnest Money deposit exceeds \$10,000.00, Purchaser has elected to have the Earnest Money placed in the Selling Brokers pooled trust account or placed in a separate interest bearing trust account in Selling Broker's name, with interest to be credited to Purchaser at closing or paid to Purchaser if this sale

is to close (Purchaser's Tax ID No. _____). This Agreement (this "Agreement") covers the following described real estate (the "Property") in the City of

SPOKANE County of _____ Washington; commonly known as 1020 N WASHINGTON and

legally described as follows:

KEYSTONE S1 FT LOT 7 ; ALL L8 TO 11 B1 AND W/2 S1/4 N OF 2 ADJ

If the legal description of the Property is omitted, incomplete or inaccurate at the time of signing, this Agreement shall not be invalidated and Selling or Listing Broker is authorized to insert or attach the correct legal description.)

THE TOTAL PURCHASE PRICE IS SIX HUNDRED THOUSAND DOLLARS

(\$ 600,000.00) (the "Purchase Price"), payable as follows:

\$ 5,000 EARNEST MONEY PAYABLE UPON ACCEPTANCE
\$ 595,000 BALANCE IN CASH AT CLOSING

THIS OFFER IS CONTINGENT UPON AN INSPECTION OF SUBJECT ~~THE~~ SUBJECT PROPERTY TO BE RELEASED WITHIN FIFTEEN DAYS OF MUTUAL ACCEPTANCE. THE RESULTS OF THIS INSPECTION SHALL BE AT PURCHASER'S SOLE SATISFACTION

CLOSING SHALL BE WITHIN 15 DAYS OF RELEASE OF INSPECTION CONTINGENTLY OR JAN 2nd 2007, AT SELLER'S DISCRETION

ADDENDUMS: Additional provisions, if any, are attached by Addendum ("Addendum"). If Addendum(s) are included, check here. and identify Addendum(s)

NOTE: Seller's title to the Property shall be marketable at closing with the following exceptions: Those specific items identified by the Purchaser in five (5) business days of deliverance to Purchaser of a Preliminary Title Report. However, Purchaser agrees that rights reserved in general patents, state deeds, building and use restrictions general to the area, existing easements not inconsistent with Purchaser's intended use, building and zoning regulations and references made in order to comply with the Truth in Lending Legislation shall not be considered to render Seller's title unmarketable.

3. MONETARY ENCUMBRANCES: Monetary encumbrances to be discharged by Seller shall be paid no later than closing. Monetary encumbrances which are not to be paid at closing shall be current at closing and not in default. Balance(s) on monetary encumbrance(s) not paid at closing which differ from estimated balance(s) to be assumed or taken "subject to" at closing shall cause any new financing balance to be paid to Seller following closing to be adjusted accordingly, or, if none, then an appropriate adjustment shall be made at closing in cash.

4. TITLE INSURANCE: Seller shall furnish to Purchaser standard form owners or purchaser's policy of title insurance and copies of all existing monetary encumbrances which are not to be fully paid at closing, leases, easements, covenants, restrictions and other written documents affecting the Property, and as soon as practical prior to closing preliminary commitment therefore issued by FIRST AMERICAN TITLE INSURANCE COMPANY, and Seller authorizes Selling Broker to apply at once for such title insurance. The title policy shall contain no exceptions other than those provided in said standard form and those not inconsistent with this Agreement. Delivery of such policy or title report to Closing Agent named herein shall constitute delivery to Purchaser. If title is not so insurable and cannot be made so insurable by Termination Date set forth in Paragraph 8, the Earnest Money shall be voided and all rights of purchase terminated, provided that Purchaser may waive defects and elect to purchase. Neither Broker nor their Agents shall be responsible for delivery of title.

INCLUDED ITEMS: This sale includes, at no additional cost to Purchaser, not only those items which the law of the State of Washington provides are part of the Property, but also includes the following items, if any, owned by Seller and presently located on the Property: attached floor coverings; screen and storm windows and doors; built-in appliances and "drop-in ranges"; window treatments; plumbing, lighting, heating, ventilating and cooling systems, apparatus and fixtures (including light bulbs and filters); landscaping and attached irrigation equipment; and air lines and conduits.

5. FINANCING: Purchaser represents that it is not relying on any contingent source of funds for this purchase except as expressly stated in this Agreement. If financing is required, Purchaser agrees to make formal or written application for the same within 5 business days after the date of delivery to Purchaser of this accepted Agreement. Purchaser further agrees to sign necessary papers, pay required costs and exert best efforts to procure such financing.

6. CONVEYANCE: a) If this Agreement provides for conveying fee title, title shall be conveyed by statutory warranty deed free of encumbrances and defects except those permitted under this Agreement. b) If this Agreement provides for sale by real estate contract, Seller and Purchaser ("the Parties") agree to execute real estate contract on Real Estate Contract Form LPB-45. Said contract shall provide that title be conveyed by statutory warranty deed free of encumbrances and defects except those permitted under this Agreement. c) If the Property is subject to an existing contract, mortgage, deed of trust or other encumbrance which either Party is to continue to pay, then the obligated Party agrees to pay the same in accordance with its terms and conditions and upon default, the other Party shall have the right to make any payments necessary to cure said default, and the payments so made, together with interest at the legal rate, shall be immediately due and owing to the Party making the same. d) If this Agreement provides for the sale and transfer of vendee's interest under an existing real estate contract, Seller agrees to execute Form LPB-14. e) If portion of the purchase price is to be evidenced by a note and secured by deed of trust, Purchaser agrees to execute deed of trust on Master Form Deed of Trust recorded on July 25, 1968, in the official records of Spokane County, Washington under Auditor's File No. 376267C, and promissory note on LPB Form 25. The terms of said forms named in this paragraph are herein incorporated by reference and copies may be obtained from Closing Agent.

7. CLOSING: The sale shall be closed in the office of FIRST AMERICAN ("Closing Agent"). Closing shall occur within 10 days after the last to occur of: (a) delivery of a title insurance commitment meeting the requirements of Paragraph 4 (b) removal of contingencies; and (c) obtaining financing, if required. In any event, closing shall occur no later than SEE FRONT ("Termination Date"). The Parties shall each pay one-half of the Closing Agent's Fee. Seller agrees to pay the real estate excise tax and other customary selling costs. Purchaser agrees to pay customary purchasing costs. Property taxes for the current year, rents, interest, mortgage reserves, water and other utilities constituting liens shall be prorated as of the date of closing. Security and/or damage deposits, if any, shall be delivered to Purchaser at closing. The Parties will, on demand, deposit in escrow with Closing Agent all instruments and the monies necessary to complete the purchase in accordance with this "Agreement." If the documents are then to be escrowed, the escrow shall be placed with N/A with fees shared equally. Closing Agent will prepare and file I.R.S. Forms 1099B and W-9 if filing is required by I.R.S. regulation.

8. SELLER'S WARRANTIES: Seller hereby covenants, warrants and represents as hereinafter set forth: (a) Seller, including the person(s) signing on behalf of Seller, owns, is buying, and/or has the full right and authority to sell, transfer or convey the Property, and to carry out Seller's obligations according to this Agreement. (b) This sale will not result in an acceleration or default under any monetary encumbrance which is not to be fully paid at closing. (c) Subject to Paragraph 14 (f), until closing, Seller shall use its best efforts to maintain the Property in its present condition, ordinary wear and tear excepted. (d) Seller has no knowledge of any order or directive of the applicable department of building and safety, health department or any other city, county, state or federal authority that requires that any work of repair, maintenance or improvement be performed on the Property. (e) All of the documents, information and records provided in accordance with Paragraph 4 shall contain true, accurate and complete information except as otherwise noted to Purchaser in writing. No party to any document is in breach or has left uncured any breach of any term therein. There are no hazardous wastes, toxic substances or related materials, including, but not limited to, substances defined as "hazardous substances" or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 USC section 9601, et seq., Hazardous Material Transportation Act, 49 USC section 1802, et seq., and Resource Conservation Recovery Act, 42 section 6901, et seq., and those substances defined as "extremely hazardous wastes" and "dangerous wastes" or "hazardous wastes" in the Hazardous Waste Spill Act, RCW 70.105 and in the regulations adopted in publications promulgated pursuant to such laws, contained in the soil or ground water of the Property, and Seller has received no notice and has no knowledge of any violation or inspection relating to, and there is no violation by Seller under, any such governmental requirement. The Property, including improvements, soil and ground water, complies with all federal, state and local laws, regulations and ordinances regulating the environment or hazardous materials or wastes, toxic substances, asbestos or urea formaldehyde, insulation or air pollutants.

9. AGENCY DISCLOSURE: The Parties consent to the following representation: ANNE BETOW ("Selling Agent"), who is affiliated with TOMLINSON BLACK CO. ("Selling Broker"), represented (check one) Seller Purchaser dual agent neither Seller nor Purchaser. ENGINE & CARLO SEANSEN ("Listing Agent"), who is affiliated with TOMLINSON BLACK CO. ("Listing Broker"), represented (check one) Seller dual agent. If Selling and Listing Agents are affiliated with Listing Broker, and both Parties are being represented (including by dual agents), Listing Broker is dual agent. Each Party confirms that prior oral and/or written disclosure of agency was provided to them in this transaction and that each has received copy of the pamphlet titled "The Law of Real Estate Agency".

10. RESPONSIBILITY FOR INFORMATION: The Parties agree and warrant that, subject to Paragraphs 9 (c) and 14 (f), Purchaser is purchasing the Property in its present condition, "as-is". All representations and information regarding the Property, including any information regarding sizes and boundaries of the Property and improvements provided in marketing the Property, are either representations to be independently verified by Purchaser or are made solely by Seller, and not by any of the Brokers, Agents or employees. Seller shall indemnify and hold all Brokers and Agents harmless in the event any of Seller's statements or representations are false. No Broker or Agent is responsible for assuring that either Purchaser or Seller performs their obligations under this Agreement. No Broker or Agent has agreed to independently investigate or confirm any matter or item related to the Property or this transaction except as specifically stated in this Agreement, or in a separate writing signed by such Broker or Agent. Purchaser shall have 5 working days from the date of delivery to Purchaser of this accepted Agreement, with all utility services on and reasonable access to the Property, to inspect the conditions, to the extent applicable and present at the Property, of the plumbing, heating, ventilating, air conditioning, and electrical systems, included appliances-structural integrity of the buildings(s) and improvements, roof and/or sprinkler system. If Purchaser provides written notice to Seller within said time period detailing those items which Purchaser has examined, in Purchaser's sole discretion, are not in good working order, or acceptable condition, then Seller shall have the option of correcting such conditions or terminating this Agreement. If Seller, Listing Broker or Agent do not receive any written notice within such time period, the inspection or absence of inspection shall be conclusively deemed to have been satisfactory, and Purchaser shall have waived any right to further inspection and agrees that Purchaser shall accept the Property in its "as-is" condition as of the date of delivery to Purchaser of this accepted Agreement.

11. TIME FOR ACCEPTANCE: Seller shall have until NOON 10-23 2006 to accept Purchaser's offer. In consideration of Selling Broker submitting this offer to Purchaser, Seller shall not withdraw this offer during said time period, unless notice of Seller's rejection is received earlier. Purchaser agrees that written notice of acceptance given to Selling Broker shall be notice to Purchaser. If Seller does not accept this Agreement within the time specified, Selling Broker shall refund the Earnest Money upon demand.

12. DEFAULT: If either Party defaults hereunder, the other Party may seek specific performance of this Agreement, damages or rescission. If Purchaser defaults, Seller shall have the right to elect to receive the Earnest Money and retain it as liquidated damages, thereby terminating this Agreement. In the event the Earnest Money is forfeited, Seller shall reimburse Broker(s) for all expenditures in this proposed transaction, and any remaining Earnest Money shall be apportioned equally to Seller and Broker(s), provided the forfeited Earnest Money remitted to Broker(s) shall not exceed agreed commission.

13. GENERAL PROVISIONS: (a) FAXES AND COUNTERPARTS: Facsimile transmission of any signed original document, and retransmission of any signed facsimile transmission shall be the same as delivery of an original. At the request of either party, or Closing Agent, the Parties will confirm facsimile transmitted signatures by signing an original document. This Agreement may be signed in parts. (b) INTEGRATION: This Agreement supersedes all prior understandings, negotiations and agreements of the Parties and there are no verbal agreements or understandings which modify this Agreement. This Agreement constitutes the full understanding between the Parties. (c) PARTIAL INVALIDITY: If any provision in this Agreement is invalid, the remainder of this Agreement shall remain in effect unless an essential purpose for which this Agreement has been entered would be defeated. (d) TIME IS OF THE ESSENCE: Time is of the essence as to all terms and conditions of this Agreement. (e) BACKUP OFFERS: Regardless of agency representation, Listing Broker and its agents may continue to market the Property and Seller may continue to accept backup offers. (f) AGENCIES' FEES: If Purchaser, Seller, or any Agent or Broker involved in this transaction is involved in any dispute relating to any aspect of this transaction or this Agreement, any prevailing party shall recover their reasonable attorneys' fees and costs. (g) RECEIPT: The Parties each acknowledge receipt of a copy of this Agreement. (h) POSSESSION: Purchaser shall be entitled to possession of the Property following closing. (i) RISK OF LOSS: The risk of loss prior to closing shall remain in Seller and, if, prior to date of closing, improvements on the Property shall be destroyed, partially damaged by fire or other casualty, this Agreement, at the option of Purchaser, shall become null and void. (j) ACCURACY AND SURVIVAL OF PROVISIONS: All covenants, warranties and representations in this Agreement, including those in Paragraph 9, shall be true and correct as of closing, and all obligations and provisions which may apply following closing, including those in Paragraphs 7 (c) and (d), 9, 11 and 14 (f), shall not merge into any deed and shall survive closing and continue in full force and effect.

14. LISTING BROKER TOMLINSON BLACK CO. Phone 623 1000 PURCHASER James R. Sweetser
ANNE BETOW Fax 622 3599 PURCHASER James R. Sweetser
Seller's Phone: Bus 378-0678 Res 891-4908 Fax 325-8486 Mobile 998-0671

15. PURCHASER'S ADDRESS _____

I, the undersigned Seller, on this _____ day of _____, 2006 hereby accepts and approves the above Agreement and agrees to carry out all of its terms. Seller further agrees to pay to Listing Broker, a commission in the amount stated in the last agreement to pay a commission to the Listing Broker or in the absence of any agreement, Seller hereby authorizes and directs Closing Agent to pay Listing and Selling Broker said commission from the sale proceeds. Seller hereby authorizes and directs Closing Agent to pay Listing and Selling Broker said commission from the sale proceeds. Seller hereby authorizes and directs Closing Agent to pay Listing and Selling Broker said commission from the sale proceeds. The commission shall be apportioned 50 % to Selling Broker and the remainder to Listing Broker. Seller's counter offer ("Counter Offer") made herein or attached hereto, is made a part of this Agreement by reference. Purchaser shall have until midnight on _____ to accept same. If Counter Offer is not accepted by that time, the Earnest Money will be refunded to Purchaser. Seller agrees that written notice of acceptance given to Listing Broker by Seller shall be notice to Seller.

16. SELLER'S ADDRESS _____ SELLER
Fax _____ Mobile _____ SELLER

17. I hereby acknowledge receipt of a copy of the foregoing Agreement bearing its signature and that of Seller. The date below shall be considered as the date of delivery to Purchaser of this accepted Agreement.
_____, 2006 PURCHASER

THIS AGREEMENT HAS BEEN PREPARED FOR SUBMISSION TO YOUR ATTORNEY AND/OR TAX COUNSEL FOR THEIR APPROVAL. NO REPRESENTATION OR RECOMMENDATION IS MADE BY ANY BROKER, AGENT OR EMPLOYEE AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR CONSEQUENCES OF THIS AGREEMENT OR THE TRANSACTION RELATING HERETO. (IF YOU DO NOT UNDERSTAND THE EFFECT OF ANY PART OF THIS AGREEMENT, CONSULT YOUR ATTORNEY BEFORE SIGNING. NO BROKER, AGENT OR EMPLOYEE CAN GIVE YOU LEGAL ADVICE.)

REAL ESTATE PURCHASE & SALE AGREEMENT (With EARNEST MONEY PROVISION) Spokane Association of REALTORS; Form SCI-4115 REV. 4
TOMLINSON BLACK COMMERCIAL, INC.

THIS CONTRACT CONTROLS THE TERMS OF SALE OF REAL PROPERTY. READ CAREFULLY BEFORE SIGNING.

RECEIVED FROM: JAMES R SWEETZER AND DELORES G SWEETZER H&W AND/OR (Purchaser)
FIVE THOUSAND SPOKANE Washington, 10-31 2006
DOLLARS \$ 5,000.-

in the form of a check for \$ 5,000.-, which shall be deposited in the Selling Broker's Trust Account as Earnest Money within two (2) business days after mu acceptance; cash for \$ _____, to be deposited with the Selling Broker within one (1) business day of receipt as Earnest Money; or attached Earnest Money Note for \$ _____ with Note due _____. Earnest Money to be credited to Purchaser at closing. If the amount of the Earnest Money deposit exceeds \$10,000.00, Purchaser has elected to have the Earnest Money placed in the Selling Brokers pooled trust account placed in a separate interest bearing trust account in Selling Broker's name, with interest to be credited to Purchaser at closing or paid to Purchaser if this s fails to close (Purchasers Tax ID No. _____). This Agreement (this "Agreement") covers the following described real estate (the "Property") in the City SPOKANE County of _____ Washington; commonly known as 1020 N WASHINGTON and legally described as follows:

KEystone 51 FT LOT 7; ALL L&T 11 B1 AND VAC STRIP N OF L&D

(If the legal description of the Property is omitted, incomplete or inaccurate at the time of signing, this Agreement shall not be invalidated and Selling or Listing Broker is authorized to insert or attach the correct legal description.)

THE TOTAL PURCHASE PRICE IS SEE BELOW DOLLARS

(SEE BELOW) (the "Purchase Price"), payable as follows:

\$5,000.- EARNEST MONEY PAYABLE UPON ACCEPTANCE
TOTAL PRICE SHALL BE \$10,000.- ABOVE CURRENTLY ACCEPTED
OFFER FROM COPELAND (BUYER)
BALANCE IS PAYABLE IN CASH AT CLOSING (NO FINANCING
CONTINGENCY)

THIS OFFER IS A BACKUP OFFER TO THE COPELAND OFFER
AND SHALL BE CLOSED WITHIN THE SAME NUMBER OF
DAYS AS THE COPELAND OFFER AFTER RELEASE OF THE
INSPECTION CONTINGENCY

THIS OFFER IS CONTINGENT UPON AN INSPECTION OF SUBJECT
PROPERTY TO BE RELEASED WITHIN FIFTEEN DAYS OF THIS
BACKUP OFFER BECOMING A PRIMARY OFFER IN FIRST POSIT
THE RESULTS OF THIS INSPECTION SHALL BE AT PURCHASER'S
SOLE SATISFACTION

ATTACHED FINANCIALS ARE FOR SELLER'S REVIEW.

BY THIS OFFER THE PURCHASER'S INTENT IS TO MEET
ALL TERMS OF SELLER'S COUNTEROFFER TO COPELAND ON
OCTOBER 20, 2006 AND TO INCREASE THE SALE PRICE BY
\$10,000.-

1. ADDENDUMS: Additional provisions, if any, are attached by Addendum ("Addendum"). If Addendum(s) are included, check here and identify Addendum

2. TITLE: Seller's title to the Property shall be marketable at closing with the following exceptions: Those specific items identified by the Purchas
within five (5) business days of deliverance to Purchaser of a Preliminary Title Report. However, Purchaser agrees that rights reserved federal patents, state deeds, building and use restrictions general to the area, existing easements not inconsistent with Purchaser's intended use, building zoning regulations and references made in order to comply with the Truth in Lending Legislation shall not be considered to render Seller's title unmarketat

MONETARY ENCUMBRANCES: Monetary encumbrances to be discharged by Seller shall be paid no later than closing. Monetary encumbrances which are not to be paid at closing shall be current and not in default. Balance(s) on monetary encumbrance(s) not paid at closing, which differ from estimated balance(s) to be assumed or taken "subject to" at closing shall cause any pending balance to be paid to Seller following closing to be adjusted accordingly, or, if none, then an appropriate adjustment shall be made at closing in cash.

TITLE INSURANCE: Seller shall furnish to Purchaser standard form owners or purchaser's policy of title insurance and copies of all existing monetary encumbrances which are not to be fully paid closing, leases, easements, covenants, restrictions and other written documents affecting the Property, and as soon as practical prior to closing preliminary commitment therefore issued by

FIRST AMERICAN TITLE INSURANCE COMPANY, and Seller authorizes Selling Broker to apply at once for such title insurance policy which shall contain no exceptions other than those provided in said standard form and those not inconsistent with this Agreement. Delivery of such policy or title report to Closing Agent shall constitute delivery to Purchaser. If title is not so insurable and cannot be made so insurable by Termination Date set forth in Paragraph 8, the Earnest Money shall be returned and all rights of purchase terminated, provided that Purchaser may waive defects and elect to purchase. Neither Broker nor their Agents shall be responsible for delivery of title.

INCLUDED ITEMS: This sale includes, at no additional cost to Purchaser, not only those items which the law of the State of Washington provides are part of the Property, but also includes the following items, if any, owned by Seller and presently located on the Property: attached floor coverings; screen and storm windows and doors; built-in appliances and "drop-in ranges"; window treatments; plumbing, lighting, heating, ventilating and cooling systems, apparatus and fixtures (including light bulbs and filters); landscaping and attached irrigation equipment; and air lines and ducts.

FINANCING: Purchaser represents that it is not relying on any contingent source of funds for this purchase except as expressly stated in this Agreement. If financing is required, Purchaser agrees to complete and submit application for the same within 5 business days after the date of delivery to Purchaser of this accepted Agreement. Purchaser further agrees to sign necessary papers, pay closing costs and exert best efforts to procure such financing.

CONVEYANCE: a) If this Agreement provides for conveying fee title, title shall be conveyed by statutory warranty deed free of encumbrances and defects except those permitted under this Agreement. b) If this Agreement provides for sale by real estate contract, Seller and Purchaser ("the Parties") agree to execute real estate contract on Real Estate Contract Form LPB-45. Said contract shall provide that title be conveyed by statutory warranty deed free of encumbrances and defects except those permitted under this Agreement. c) If the Property is subject to an existing tract, mortgage, deed of trust or other encumbrance which either Party is to continue to pay, then the obligated Party agrees to pay the same in accordance with its terms and conditions and upon default, the other Party shall have the right to make any payments necessary to cure said default, and the payments so made, together with interest at the legal rate, shall be immediately due and owing to the Party making the same. d) If this Agreement provides for the sale and transfer of vendee's interest under an existing real estate contract, Seller agrees to execute Form LPB-14. e) If portion of the purchase price is to be evidenced by a note and secured by deed of trust, Purchaser agrees to execute deed of trust on Master Form Deed of Trust recorded on July 25, 1968, in the official records of Spokane County, Washington under Auditor's File No. 376267C, and promissory note on LPB Form 25. The terms of said forms named in this paragraph are herein incorporated by reference and may be obtained from Closing Agent.

CLOSING: The sale shall be closed in the office of FIRST AMERICAN ("Closing Agent"). Closing shall occur within 10 days after the last to be delivered of a title insurance commitment meeting the requirements of Paragraph 4 (b) removal of contingencies; and (c) obtaining financing, if required. In any event, closing shall occur no later than SEE FRONT ("Termination Date"). The Parties shall each pay one-half of the Closing Agent's Fee. Seller agrees to pay the real estate excise tax and other customary selling costs. Purchaser agrees to pay customary purchasing costs. Property taxes for the current year, rents, interest, mortgage reserves, water and other utilities constituting liens shall be paid as of the date of closing. Security and/or damage deposits, if any, shall be delivered to Purchaser at closing. The Parties will, on demand, deposit in escrow with Closing Agent all instruments of title necessary to complete the purchase in accordance with this "Agreement." If the documents are then to be escrowed, the escrow shall be placed with N/A with fees shared equally. Closing Agent will prepare and file I.R.S. Forms 1099B and W-9 if filing is required by I.R.S. regulation.

SELLER'S WARRANTIES: Seller hereby covenants, warrants and represents as hereinafter set forth: (a) Seller, including the person(s) signing on behalf of Seller, owns, is buying, and/or has the right and authority to sell, transfer or convey the Property, and to carry out Seller's obligations according to this Agreement. (b) This sale will not result in an acceleration or default under any other encumbrance which is not to be fully paid at closing. (c) Subject to Paragraph 14 (f), until closing, Seller shall use its best efforts to maintain the Property in its present condition, ordinary wear and tear excepted. (d) Seller has no knowledge of any order or directive of the applicable department of building and safety, health department or any other city, county, state or federal authority which requires that any work of repair, maintenance or improvement be performed on the Property. (e) All of the documents, information and records provided in accordance with Paragraph 4 shall be true, accurate and complete information except as otherwise noted to Purchaser in writing. No party to any document is in breach or has left uncured any breach of any term thereof.

There are no hazardous wastes, toxic substances or related materials, including, but not limited to, substances defined as "hazardous substances" or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 USC section 9601, et seq., Hazardous Material Transportation Act, 49 USC section 1802, et seq., and Resource Conservation and Recovery Act, 42 USC section 6901, et seq., and those substances defined as "extremely hazardous wastes" and "dangerous wastes" in the Hazardous Waste Manifest Act, RCW 70.105 and in the regulations adopted in publications promulgated pursuant to such laws, contained in the soil or ground water of the Property, and Seller has received no notice and no knowledge of any violation or inspection relating to, and there is no violation by Seller under, any such governmental requirement. The Property, including improvements, soil and ground water, complies with all federal, state and local laws, regulations and ordinances regulating the environment or hazardous materials or wastes, toxic substances, asbestos or urea formaldehyde, insulation or pollutants.

AGENCY DISCLOSURE: The Parties consent to the following representation: ANNE BETOW ("Selling Agent"), who is affiliated with JOMLINSON BLACK COM ("Selling Broker"), represented (check one) Seller Purchaser dual agent neither Seller nor Purchaser. ALLEN & CARLO JENSEN ("Listing Agent"), who is affiliated with JOMLINSON BLACK COM ("Listing Broker"), represented (check one) Seller dual agent. If Selling and Listing Agents are affiliated with Listing Broker, and both Parties are being represented (including by dual agents), Listing Broker is dual agent. Each Party confirms that prior oral and/or written disclosure of agency was provided to them in this transaction and that each has received copy of the pamphlet titled "The Law of Real Estate Agency".

RESPONSIBILITY FOR INFORMATION: The Parties agree and warrant that: subject to Paragraphs 9 (c) and 14 (f), Purchaser is purchasing the Property in its present condition, "as-is". All representations and information regarding the Property, including any information regarding sizes and boundaries of the Property and improvements provided in marketing the Property, are either representations to be independently verified by Purchaser or are made solely by Seller, and not by any of the Brokers, Agents or employees. Seller shall indemnify and hold all Brokers and Agents harmless in the event any of Seller's statements or representations are false. No Broker or Agent is responsible for assuring that either Purchaser or Seller performs their obligations under this Agreement. Seller or Agent has agreed to independently investigate and confirm any matter or item related to the Property or this transaction except as specifically stated in this Agreement, or in any instrument signed by such Broker or Agent. Purchaser shall have 5 working days from the date of delivery to Purchaser of this accepted Agreement, with all utility services on and reasonable access to the Property, to inspect the conditions, to the extent applicable and present at the Property, of the plumbing, heating, ventilating, air conditioning, and electrical systems, included appliances-structural integrity of the building(s) and improvements, roof and/or sprinkler system. If Purchaser provides written notice to Seller within said time period detailing those items which Purchaser has examined, in Purchaser's sole discretion, are not in good working order, or acceptable condition, then Seller shall have the option of correcting such conditions or terminating this Agreement. If Seller or Listing Broker or Agent do not receive any written notice within such time period, the inspection or absence of inspection shall be conclusively deemed to have been satisfactory, and Purchaser shall be deemed to have waived any right to further inspection and agrees that Purchaser shall accept the Property in its "as-is" condition as of the date of delivery to Purchaser of this accepted Agreement.

TIME FOR ACCEPTANCE: Seller shall have until midnight 10:30 - 2:00 2006 to accept Purchaser's offer. In consideration of Seller Broker submitting this offer to Seller, Purchaser shall not withdraw this offer during said time period, unless notice of Seller's rejection is received earlier. Purchaser agrees that written notice of acceptance given to Selling Broker shall be notice to Purchaser. If Seller does not accept this Agreement within the time specified, Selling Broker shall refund the Earnest Money upon demand.

DEFAULT: If either Party defaults hereunder, the other Party may seek specific performance of this Agreement, damages or rescission. If Purchaser defaults, Seller shall have the right to elect to receive the Earnest Money and retain it as liquidated damages, thereby terminating this Agreement. In the event the Earnest Money is forfeited, Seller shall reimburse Broker(s) for all expenditures made in this proposed transaction, and any remaining Earnest Money shall be apportioned equally to Seller and Broker(s), provided the forfeited Earnest Money remitted to Broker(s) shall not exceed agreed commission.

GENERAL PROVISIONS: (a) FAXES AND COUNTERPARTS: Facsimile transmission of any signed original document, and retransmission of any signed facsimile transmission shall be the same as delivery of an original. At the request of either party, or Closing Agent, the Parties will confirm facsimile transmitted signatures by signing an original document. This Agreement may be signed in counterparts. (b) INTEGRATION: This Agreement supersedes all prior understandings, negotiations and agreements of the Parties and there are no verbal agreements or understandings which modify this Agreement. This Agreement constitutes the full understanding between the Parties. (c) PARTIAL INVALIDITY: If any provision in this Agreement is invalid, the remainder of this Agreement shall remain in effect unless an essential purpose for which this Agreement has been entered would be defeated. (d) TIME IS OF THE ESSENCE: Time is of the essence as to all terms and conditions of this Agreement. (e) BACKUP OFFERS: Regardless of agency representation, Listing Broker and its agents may continue to market the Property and Seller may continue to accept backup offers. (f) AGENT'S FEES: If Purchaser, Seller, or any Agent or Broker involved in this transaction is involved in any dispute relating to any aspect of this transaction or this Agreement, any prevailing party shall recover their reasonable attorneys' fees and costs. (g) RECEIPT: The Parties each acknowledge receipt of a copy of this Agreement. (h) POSSESSION: Purchaser shall be entitled to possession of the Property following closing. (i) RISK OF LOSS: The risk of loss prior to closing shall remain in Seller and, if, prior to date of closing, improvements on the Property shall be destroyed, materially damaged by fire or other casualty, this Agreement, at the option of Purchaser, shall become null and void. (j) ACCURACY AND SURVIVAL OF PROVISIONS: All covenants, warranties and representations in this Agreement, including those in Paragraph 9, shall be true and correct as of closing, and all obligations and provisions which may apply following closing, including those in Paragraphs 7, (c) and (d), 9, 11 and 14, (f), shall not merge into any deed and shall survive closing and continue in full force and effect.

LISTING BROKER JOMLINSON BLACK COM Phone 623 1000 PURCHASER Jamal R Sweetser
ANNE BETOW Fax 622 3599 PURCHASER
Purchaser's Phone: Bus 328-0678 Res 891-4908 Fax 325-8486 Mobile 998-0671

PURCHASER'S ADDRESS 11420 E 36th, Spokane, WA 99206

I, undersigned Seller, on this _____ day of _____ 2006 hereby accepts and approves the above Agreement and agrees to carry out all of its terms. Seller further agrees to pay with to JOMLINSON BLACK COM and _____ as Listing Agent or Selling Broker, a commission in the amount stated in the last agreement to pay a commission to the Listing Broker or in the absence of any agreement,

_____ Seller hereby authorizes and directs Closing Agent to pay Listing and Selling Broker said commission from the sale proceeds. Seller irrevocably assigns a portion of Seller's proceeds to the Broker(s), including the Earnest Money sufficient to satisfy the commission obligation. The commission shall be apportioned _____ % to Selling Broker and the remainder to Listing Broker.

Seller's counter offer ("Counter Offer") made herein or attached hereto, is made a part of this Agreement by reference. Purchaser shall have until midnight on _____ 2006 to accept same. If Counter Offer is not accepted by that time, the Earnest Money will be refunded to Purchaser. Seller agrees that written notice of acceptance given to Listing Broker by Seller shall be notice to Seller.

SELLER'S ADDRESS _____ SELLER
Phone _____ Fax _____ Mobile _____ SELLER

I hereby acknowledge receipt of a copy of the foregoing Agreement bearing its signature and that of Seller. The date below shall be considered as the date of delivery to Purchaser of this accepted Agreement.
_____ 2006 PURCHASER

THIS AGREEMENT HAS BEEN PREPARED FOR SUBMISSION TO YOUR ATTORNEY AND/OR TAX COUNSEL FOR THEIR APPROVAL. NO REPRESENTATION OR RECOMMENDATION IS MADE BY ANY BROKER, AGENT OR EMPLOYEE AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, TAX CONSEQUENCES OF THIS AGREEMENT OR THE TRANSACTION RELATING HERETO. (IF YOU DO NOT UNDERSTAND THE EFFECT OF ANY PART OF THIS AGREEMENT, CONSULT YOUR ATTORNEY BEFORE SIGNING. NO BROKER, AGENT OR EMPLOYEE CAN GIVE YOU LEGAL ADVICE.)