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(VOLUME III)
IN THE
SUPREME COURT
OF THE
STATE OF IDAHO

LAW CLERK

**JON WAKELUM, an individual; and MIKE
RESSLER, an individual doing business as
M&M RE Holdings,**

Plaintiffs-Appellants,

-vs- SEE AUGMENTATION RECORD

THOMAS A. HAGOOD, an unmarried man,

**Defendant-Third Party Plaintiff-
Respondent,**

And

**BULLOCK AND COMPANY REALTORS
LLC., an Idaho limited liability company,
SCOTT BULLOCK, an individual, BILL
DOWNS AUCTION SERVICE INC., an Idaho
corporation, and LARRY DOWNS,
an individual,**

**Defendants-Third Party Defendants-
Respondents.**

Appealed from the District of the Third Judicial District
for the State of Idaho, in and for Canyon County

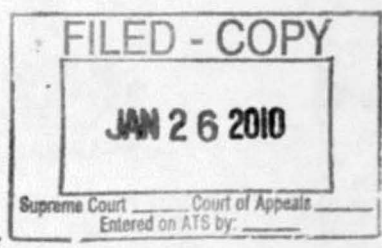
Honorable RENAE J. HOFF, District Judge

Thomas E. Dvorak & Angela M. Reed
GIVENS PURSLEY LLP
P. O. Box 2720
Boise, Idaho 83701-2720

Attorneys for Appellants

Jay Gustavsen & Alex P. McLaughlin
DAVISON COPPLE COPPLE & COPPLE
P. O. Box 1583
Boise, Idaho 83701

Attorneys for Respondent (Hagood)



36940

IN THE SUPREME COURT OF THE
STATE OF IDAHO

JON WAKELUM, an individual; and MIKE)
RESSLER, an individual doing business as)
M&M RE Holdings,)

Plaintiffs-Appellants,)

-vs-)

THOMAS A. HAGOOD, an unmarried man,)

Defendant-Third Party Plaintiff-)
Respondent,)

And)

BULLOCK AND COMPANY REALTORS LLC.,)
an Idaho limited liability company, SCOTT)
BULLOCK, an individual, BILL DOWNS)
AUCTION SERVICE INC., an Idaho)
corporation, and LARRY DOWNS, an)
individual,)

Defendants-Third Party Defendants-)
Respondents.)

Supreme Court No. 36940

Appeal from the Third Judicial District, Canyon County, Idaho.

HONORABLE RENAE J. HOFF, Presiding

Thomas E. Dvorak and Angela M. Reed, GIVENS PURSLEY LLP.,
P. O. Box 2720, Boise, Idaho 83701-2720

Attorneys for Appellants

Jay Gustavsen and Alex P. McLaughlin, DAVISON COPPLE COPPLE & COPPLE,
P. O. Box 1583, Boise, Idaho 83701

Attorneys for Respondent (Hagood)

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MAY 15 2009

CANYON COUNTY CLERK
J HEIDEMAN, DEPUTY

Thomas E. Dvorak (ID State Bar ID# 5043)
Angela M. Reed (ID State Bar ID# 7221)
GIVENS PURSLEY LLP
601 West Bannock Street
Post Office Box 2720
Boise, Idaho 83701-2720
Telephone: 208-388-1200
Facsimile: 208-388-1300

Attorneys for John Wakelum and Mike Ressler

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT FOR THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

JON WAKELUM, an individual; and MIKE
RESSLER, an individual doing business as
"M&M RE Holdings",

Plaintiffs

v.

THOMAS A. HAGOOD, an unmarried man,

Defendant.

Case No. CV 08-8465

**PLAINTIFFS' SUPPLEMENTAL
MEMORANDUM IN RESPONSE TO
DEFENDANT HAGOOD'S
SUPPLEMENTAL MEMORANDUM**

THOMAS A. HAGOOD, an unmarried man,

Third Party Plaintiff,

v.

BULLOCK AND COMPANY REALTORS
L.L.C., an Idaho limited liability company,
SCOTT BULLOCK, an individual, BILL
DOWNS AUCTION SERVICE INC., an Idaho
corporation, and Scott Bullock, an individual
and LARRY DOWNS, an individual,

Third Party Defendants.

I. INTRODUCTION

Plaintiffs Jon Wakelum ("Wakelum") and Mike Ressler ("Ressler"), by and through their attorneys of record, Givens Pursley LLP, submit this Supplemental Memorandum in Response to Defendant Thomas Hagood's ("Hagood") Supplemental Memorandum. In his Supplemental

Memorandum, Hagood advances several purportedly clarifying arguments as to why the statute of frauds should apply in this case. For the reasons set forth herein and in Plaintiffs' prior summary judgment memoranda, Hagood's arguments lack factual and legal support and should, therefore, be rejected.

II. DISCUSSION

A. The Statute of Frauds Does Not Apply In This Case Because The Facts Do Not Align With The Policies Underlying the Statute.

While his argument is rather difficult to track through, Hagood appears to contend that the policies underlying the statute of frauds are satisfied in this case, in part, because the zip code listed for the properties in the Representation Agreement is incomplete. Hagood, in essence, appears to be arguing that the incomplete zip code creates a risk that the contract will be attacked and this risk somehow aligns with the statute's purpose of preventing false or fraudulent contract claims. Notably, however, Hagood does not argue that the legal descriptions attached to the Representation Agreement are inaccurate. In other words, no one in this case is disputing the description of the properties or the accuracy of the legal descriptions. In fact, in his Answer, Hagood admitted that the legal descriptions for Parcel 1, Parcel 2, and Parcel 3 attached as Exhibit A to Plaintiffs' Complaint, which are the same legal descriptions attached to the Representation Agreement, described the three parcels of property that are the subject of this lawsuit. (See Complaint ¶¶ 5-6 and Answer ¶ 4).

Moreover, an argument similar to Hagood's property description vs. legal description argument was rejected by the Idaho Supreme Court in *Russell v. Russell*, 578 Idaho P.2d 1082 (Idaho 1978). In *Russell*, the plaintiff-seller brought an action against the defendant-purchaser to enforce an earnest money agreement that was executed between the parties. *Id.* at 1083. The earnest money described the property as "Full legal attached of Howard Russell Property located on Beacon Road, Emmett, Idaho, consisting of approx. 200 acres." A full legal description of

the property was placed in the broker's file with the earnest money agreement. *Id.* The trial court found, *inter alia*, that the earnest money agreement was invalid because the legal description was on a separate sheet of paper that also contained a description of some other land not involved in the transaction. *Id.* at 1084. In reversing the trial court, the Supreme Court held:

In *Murphy v. Livesay*, 34 Idaho 793, 796, 197 P. 536 (1921), this Court said: "(I)n order to comply with the requirements of the statute the contract must state the essential terms thereof, one of which is the description of the property involved"

However, this is not to say the statute of frauds invalidates all contracts with imperfect legal descriptions. "The statute is not pressed 'to the extreme of a literal and rigid logic.'"

The earnest money agreement referred to the property involved as: "Howard Russell property located on Beacon Road, Emmett, Idaho consisting of approx. 200 acres." Further, it provided a "Full legal" description was attached. **An accurate legal description accompanied the earnest money agreement, albeit on a separate sheet of paper which was not stapled or otherwise physically attached.**

It is not contended that buyer was in any way confused as to the boundaries or location of the farm. In fact buyer had been shown the farm several times. **Buyer's only reason for raising a question about the legal description was an attempt to absolve himself of a contract he had signed.**

"The statute of frauds is intended to protect against fraud; it is not intended as an escape route for persons seeking to avoid obligations undertaken by or imposed upon them."

Id. at 1084-1085 (internal citations omitted) (emphasis added).

Hagood also contends the policies underlying the statute of frauds are at issue in this case because the facts surrounding Hagood's decision to put his property up for auction raise "suspicions" of fraud. This argument likewise lacks merit. As thoroughly addressed in Plaintiffs' Supplemental Memorandum, the purpose behind the statute of frauds is to prevent fraudulent contract claims caused by the capricious memories of interested witnesses regarding the terms of the contract. Apart from the purchase price, Hagood has not disputed the terms of the oral contracts. Moreover, Hagood indisputably admitted during his deposition that he understood, by selling his property via absolute auction, that the property would be sold to the

highest bidder. Hagood's allegations that he was assured by his real estate agent and/or the auctioneer that that the sale of his property would garner \$2,000,000.00 at a minimum and that he was unaware that he allegedly possessed the ability to stop the auction at any time, may support recovery against the agent and/or auctioneer. Those allegations, however, as between Plaintiffs and Hagood, do not raise any issue of fraud in connection with the oral contracts formed between Plaintiffs and Hagood where Hagood merely disputes the purchase price and has admitted he understood the meaning of an absolute auction.

B. The Statute of Frauds Is Satisfied Because The Writings, When Construed Together, Satisfy the Statute of Frauds

Hagood also asserts that the writings exchanged between the parties do not satisfy the statute of frauds because the writings do not satisfy the "express reference" rule announced in *Hoffman v. S V Company, Inc.*, 628 P.2d 218, 221 (Idaho 1981). The Representation Agreement that Hagood signed contains legal descriptions for all of the parcels, identifies the purchase price for the parcels by stating that the parcels will be sold via absolute auction, and specifies the financing terms as being 20% down with the balance payable at 8% interest with interest only payments and the balance due in full two years from the sale. The only material term missing from the Representation Agreement is the identification of the buyers. Identification of the buyers in the Representation Agreement, of course, would have been impossible because the buyers' names were unknown at that time. Furthermore, while the Representation Agreement does not expressly reference a purchase and sale agreement, which identifies the buyers, it is implicit that a purchase and sale agreement would be executed to consummate an auction sale of real property. Moreover, the Purchase and Sale Agreements contain the same terms identified in the Representation Agreement. Lastly, there is no dispute that Plaintiffs were the highest bidders at the auction, and therefore, as the highest bidders, they were identified by reference in the

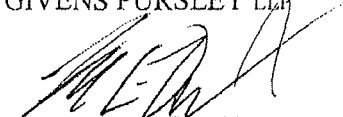
Representation Agreement, which states more than once that the property is to be sold via absolute auction, meaning to the highest bidder.

III. CONCLUSION

The most legally significant undisputed fact in this case is that Hagood understood, by putting his property up for sale via absolute auction, that the property would be sold to the highest bidder with no minimum price. The second undisputed controlling fact that is clear from Hagood's deposition testimony is that the only contract term Hagood is dissatisfied with is the purchase price. Hagood, having admitted that his property would be sold to the highest bidder regardless of the amount of the bid, should not be able to absolve himself from his obligation to convey the property to Plaintiffs. Each of the arguments Hagood has made in this case are attempts by Hagood to avoid his obligation to convey the property and escape what Hagood appears to consider an unfortunate contract. Such a result would be inconsistent with the numerous persuasive authorities from other jurisdictions and the policies underlying Idaho's statute of frauds. Accordingly, Plaintiffs respectfully request that the Court grant Plaintiffs' Motion for Summary Judgment, deny Defendant Hagood's Motion for Summary Judgment, and order Hagood to convey the Parcels to the Plaintiffs, upon the terms identified in the purchase and sale agreements.

DATED this 14TH day of May, 2009.

GIVENS PURSLEY LLP



Thomas E. Dvorak
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 14TH day of May, 2009, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Jay Gustavsen
Davison, Copple, Copple & Cox
Washington Mutual Capitol Plaza, Suite 600
199 North Capitol Blvd.
P.O. Box 1583
Boise, Idaho 83701

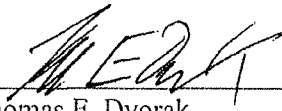
U.S. Mail
 Overnight Mail
 Hand Delivery
 Fax

Phillip J. Collaer
Anderson, Julian & Hull, LLP
P.O. Box 7426
Boise, ID 83707-7426

U.S. Mail
 Overnight Mail
 Hand Delivery
 Fax

Terry Michaelson
Hamilton Michaelson & Hilty, LLP
1303 12th Avenue Road
P.O. Box 65
Nampa, ID 83653-0065

U.S. Mail
 Overnight Mail
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Thomas E. Dvorak

Mr. Thomas Hagood did not appear in Court, but was represented by counsel, Mr. Alex McLaughlin and Mr. Jay Gustavsen.

The Court called the case noted the parties present and reviewed prior proceedings. The Court further noted that there had been prior discussions with counsel regarding the cross motions for summary judgment and based on those, counsel had provided additional briefing to the Court including case law and argument. The Court advised that it had reviewed all filings and was ready to hear argument on the motions.

Ms. Reed presented argument to the Court in support of the plaintiff's motion for summary judgment.

Mr. McLaughlin presented rebuttal argument and argument in support of the defendant's motion for summary judgment.

Ms. Reed presented further argument to the Court.

The Court addressed counsel and noted that the facts in this case are compelling and further noted that it had previously discussed possible resolution of the matter through mediation. However, mediation turned out not to be an option. Therefore the Court was called upon this date to make a decision on these cross motions.

The Court indicated it would make a factual summary to begin with and indicated that the defendant owned three parcels in Canyon County and had retained Bullock and Company to hold an absolute land auction of the parcels. Mr. Hagood signed the exclusive seller agreement in June of 2008 providing that he would sell the property for

a total price at auction without reserve, in terms of sales to the highest bidder to reserve. At that point the advertisements were prepared by Downs Auction and have been discussed in the briefing and it was clearly contained that it was an "absolute auction, with sells to the highest bidder, no reserve". Mr. Hagood was present at the auction and never stopped the auction. The Court noted that the plaintiff, Wakelum was the highest bidder regarding Parcel 3 and the plaintiff, Ressler was the highest bidder on Parcels 1 and 2. Documentation was prepared, signed and tendered. Then however Mr. Hagood declined to sign any further documentation and has taken the position that there was no contract.

The Court advised counsel that this is a perfect scenario for a Rule 56 motion as to each side. The Court noted it would cite Rule 56 in support of the cross motions for summary judgment and particularly cited *Gilmore v Bonner Co* 132 Idaho 257 a 1999 case and reviewed the findings in that case regarding genuine issues of material fact. The Court advised that it was cautioned, based on that case, to examine the cross motions separately and resolve reasonable inferences. The Court addressed the parties regarding the involvement in real estate auctions and noted that Idaho did have the provision under Rule 28-2-32(a) of Commercial Code for Sale by Auction. This case is distinguishable in that it governs real estate, not goods. Further, the Court indicated it had been provided in prior briefings, cases from other jurisdictions that were persuasive authorities. Further, the Court had talked about a descent, quoted in the plaintiff's briefs in the *Del Rio v Hammett* case out of California. The Court referred to other persuasive authorities from other jurisdictions. However, the Court noted that those cases are not

Idaho authorities and so it had looked additionally at briefings, reconsidered the matter and noted that the matter was really before the Court on the Statues of Frauds, Idaho Code 9-505. The Court noted that statue is a legislative directory and reviewed the same for the record citing McCune v. Hathaway. Further, the Court noted the purpose of the statute is to prevent false or fraudulent contract claims by forbidding disputed assertions of certain types of contracts without any written memorandum of the agreement. The Court further addressed and reviewed other cases as cited by counsel during argument. Specifically the Court noted the citing of Hemenway vs. Gruner, 186 Idaho 422 which was a 1984 Court of Appeals case discussing the three (3) doctrines concerning Idaho coming down as a strict constructionist. Idaho follows the doctrine that an unsigned writing may be considered part of the memo only where express referenced is made to it in a signed writing. The Court noted that it agreed with defense counsel that this matter is not a case of part performance as was the situation in the Roundy case, but the case does constitute specific sufficient performance that there must be actual possession which was permanent and valuable improvements or both combined. The Court indicated that was not the case here. The Court cited Kelly vs. Hodges, noting that case was instructional on the fraud issue and has been helpful in resolving the Court's questions on the fraud statute, and reviewed the same. The Court noted that this is not a mutual acknowledgment case as was the situation in the Kelly vs. Hodges case. The Court noted that the bottom line that the plaintiff has argued, that the written sale is enforceable even though the written contract to sell was not signed by Mr. Hagood; and further the other documents he did sign could be made up and

incorporated and that would provide for an exception. The plaintiff had also argued that the contract was mutually acknowledged or partly performed. This Court finds that was not the case here. Also both sides had made arguments on the purpose of the Statutes of Frauds and the most compelling one in Idaho is the Kelly vs. Hodges case on prevention of potential fraud. The Court noted that the defendant has argued that there are no exceptions to the statute of fraud in this case and that the cases cited from other jurisdictions are not persuasive here. Therefore this Court concludes that the plaintiffs have not demonstrated that an exception to the Statue of Frauds has been shown in this matter. The Court indicated that the statute was enacted to prevent potential fraud and the plaintiffs have not shown a signed writing as required under ICS 9-505.

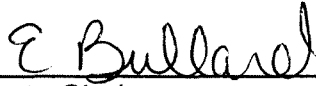
The Court noted that being said, this is a frustrating case as previously indicated to counsel in chambers. The Court briefly reviewed the facts in that there were two (2) plaintiffs preparing to go to this auction, two (2) plaintiffs looking at property and two (2) plaintiffs setting up so that they could bid. Further, they had funds available and went to bid. Then Mr. Hagood indicated he was not going through with the process. The Court noted the facts are frustrating and it is unfortunate that the plaintiff's are not entitled to specific performance for land in which they bid and were the highest bidders. Therefore this Court concludes that the law in Idaho at the current time would prevent this Court from granting specific performance in their case. Idaho has strictly construed the statute of frauds to date and there is no genuine issue of material fact and accordingly summary judgment is granted in favor of the defendant.

The Court indicated the defendant will be required to prepare an Order. The Court advised counsel that the Court's comments, rulings and findings will stand on the record for appeal pursuant to transcript.

The Court noted that this ruling would not dispose of the law suit as there are other parties involved as well as the plaintiff's Motion to Amend Complaint, to which the defendant's have objected and have cited Haskin vs. Glass. The Court addressed counsel regarding its views on the Motion to Amend Complaint, noting that the plaintiff has argued that the complaint should be amended to add a claim under the Idaho Consumer Protection Act against all the defendants. The defendant's have argued that Haskins holds that if there is no contract there can be no claim under the Idaho Consumer Protection Act. Further, in the Haskins case there was no contract and it appears to this Court that if it allows the Complaint to be amended the issue of summary judgment may be re-visited. Therefore this Court is directed to freely grant the motion when justice requires. Therefore the Court will grant the motion and allow the Complaint to be amended. The Court noted that it assumed that eventually the matter will move to a higher court. The Court directed Mr. McLaughlin to add the ruling regarding the plaintiff's Motion to Amend Complaint, to the proposed Order. The Court reviewed for the record that the proposed Order should include the denial of the Plaintiff's Motion for Summary Judgment, the granting of Defendant's Motion for Summary Judgment and the granting of the Plaintiff's Motion to Amend Complaint.

In answer to the Court's inquiry, each of counsel indicated they understood and had nothing further to present to the Court at this time.

The Court thanked counsel and court adjourned.


Deputy Clerk

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JUN 01 2009
CANYON COUNTY CLERK
K CANNON, DEPUTY

JAY GUSTAVSEN (ISB No. 5293)
ALEX P. MCLAUGHLIN (ISB No. 7977)
DAVISON, COPPLE, COPPLE & COPPLE
Attorneys at Law
Washington Mutual Capitol Plaza
199 North Capitol Boulevard
Suite 600
Post Office Box 1583
Boise, Idaho 83701
Telephone: (208) 342-3658
Facsimile: (208) 386-9428

Attorneys for Defendant
Thomas A. Hagood

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

JON WAKELUM, an individual; and MIKE
RESSLER, an individual doing business as
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vs.

THOMAS A. HAGOOD, an unmarried man,

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Case No. CV 08-8465

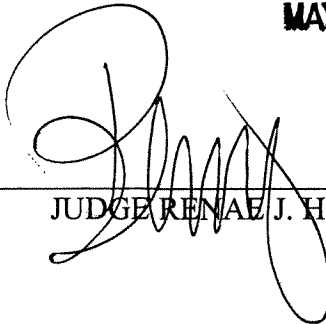
**PARTIAL SUMMARY
JUDGMENT**

THIS MATTER having come regularly before the Court for hearing on Defendant's Motion For Partial Summary Judgment on Thursday, the 21st day of May, 2009, at 1:30 o'clock p.m., with the Plaintiffs appearing by and through their attorney of record, Angela M. Reed of the firm Givens Pursley, LLP, and the Defendant appearing by and through his attorneys of record, Jay Gustavsen and Alex P. McLaughlin of the firm Davison, Copple, Copple & Copple, LLP, and the Court having considered the briefs, affidavits and oral argument of counsel and the Court having announced its decision in open court and entered its Order granting Summary Judgment and cause appearing therefor, and based upon there being no genuine issues as to any material facts, and Defendant being entitled to the entry of Summary Judgment as a matter of law;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendant's Motion for Partial Summary Judgment is hereby granted and that Plaintiffs' claims for Declaratory Judgment, Specific Performance, and Breach of Contract are barred by the Statute of Frauds, to wit, I.C. § 9-505, and are hereby dismissed with prejudice.

DATED this ____ day of May, 2009.

MAY 29 2009



JUDGE RENAE J. HOFF

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 1st day of ~~May~~ ^{June}, 2009, I served a true and accurate copy of the foregoing instrument by placing the same in the United States Mail, postage prepaid, first class mail, to the following:

Tom Dvorack
Givens Pursley, LLP
601 W. Bannock St.
P.O. Box 2720
Boise, Idaho 83701

U.S. MAIL
 Hand Delivery
 Facsimile Transmission

Phillip J. Collaer
Anderson, Julian & Hull, LLP
PO Box 7426.
Boise, Idaho 83707

U.S. MAIL
 Hand Delivery
 Facsimile Transmission

Terry Michaelson
Hamilton, Michaelson & Hilty, LLP
1303 12th Avenue Road
PO Box 65
Nampa, ID 83653-0065

U.S. MAIL
 Hand Delivery
 Facsimile Transmission

Jay Gustavsen
Alex P. McLaughlin
Davison, Copple, Copple & Copple
P.O. Box 1583
Boise, Idaho 83701

U.S. MAIL
 Hand Delivery
 Facsimile Transmission

WILLIAM H HURST



Clerk

JAY GUSTAVSEN (ISB No. 5293)
 ALEX P. MCLAUGHLIN (ISB No. 7977)
 DAVISON, COPPLE, COPPLE & COPPLE
 Attorneys at Law
 Washington Mutual Capitol Plaza
 199 North Capitol Boulevard
 Suite 600
 Post Office Box 1583
 Boise, Idaho 83701
 Telephone: (208) 342-3658
 Facsimile: (208) 386-9428

Attorneys for Defendant
 Thomas A. Hagood

F I L E D
 A.M. 10:50 P.M.

JUN 10 2009

CANYON COUNTY CLERK
 T. CRAWFORD, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

JON WAKELUM, an individual; and MIKE)
 RESSLER, an individual doing business as)
 "M&M RE Holdings",)
)
 Plaintiffs,)
 vs.)
)
 THOMAS A. HAGOOD, an unmarried man,)
)
 Defendant.)
)
)
)
)
)
)

Case No. CV 08-8465

**ORDER GRANTING
 DEFENDANT'S MOTION
 FOR PARTIAL SUMMARY
 JUDGMENT AND GRANTING
 PLAINTIFFS' MOTION TO
 AMEND COMPLAINT**

THIS MATTER having come regularly before the Court for hearing on Defendant's Motion For Partial Summary Judgment on Thursday, the 21st day of May, 2009, at 1:30 o'clock p.m., with the Plaintiffs appearing by and through their attorney of record, Angela M. Reed of the firm Givens Pursley, LLP, and the Defendant appearing by and through his attorneys of record, Jay Gustavsen and Alex P. McLaughlin of the firm Davison, Copple, Copple & Copple, LLP, and the Court having considered the briefs, affidavits and oral argument of counsel and the Court having announced its decision in open court and good cause appearing therefore;

IT IS HEREBY ORDERED that based upon there being no genuine issues as to any material facts, Defendant Thomas A. Hagood's Motion for Partial Summary Judgment is granted and thus Plaintiffs' claims for Declaratory Judgment, Specific Performance, and Breach of Contract are barred by the Statute of Frauds, to wit, I.C. § 9-505, and are hereby dismissed with prejudice.

IT IS HEREBY FURTHER ORDERED that Plaintiffs' Motion To Amend Complaint is also granted. Plaintiffs' counsel is hereby ordered to file its Amended Complaint within ten (10) days of receipt of this Order.

JUN 10 2009

DATED this ____ day of _____, 2009.



JUDGE RENAE J. HOFF

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 10 day of June, 2009, I served a true and accurate copy of the foregoing instrument by placing the same in the United States Mail, postage prepaid, first class mail, to the following:

Tom Dvorack
Givens Pursley, LLP
601 W. Bannock St.
P.O. Box 2720
Boise, Idaho 83701

U.S. MAIL
 Hand Delivery
 Facsimile Transmission

Phillip J. Collaer
Anderson, Julian & Hull, LLP
PO Box 7426.
Boise, Idaho 83707

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Terry Michaelson
Hamilton, Michaelson & Hilty, LLP
1303 12th Avenue Road
PO Box 65
Nampa, ID 83653-0065

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 Hand Delivery
 Facsimile Transmission

Jay Gustavsen
Alex P. McLaughlin
Davison, Copple, Copple & Copple
P.O. Box 1583
Boise, Idaho 83701

U.S. MAIL
 Hand Delivery
 Facsimile Transmission



Clerk

ORIGINAL

Thomas E. Dvorak (ID State Bar ID# 5043)
GIVENS PURSLEY LLP
601 West Bannock Street
Post Office Box 2720
Boise, Idaho 83701-2720
Telephone: 208-388-1200
Facsimile: 208-388-1300
125421_2

F I L E D
A.M. *[Signature]* P.M.
JUN 15 2009 ✓
CANYON COUNTY CLERK
D. BUTLER, DEPUTY

Attorneys for John Wakelum and Mike Ressler

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT FOR THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

JON WAKELUM, an individual; and MIKE
RESSLER, an individual doing business as
“M&M RE Holdings”,

Plaintiffs

v.

THOMAS A. HAGOOD, an unmarried man,
BULLOCK AND COMPANY REALTORS,
L.L.C., an Idaho limited liability company,
SCOTT BULLOCK, an individual, BILL
DOWNS AUCTION SERVICE, INC., an
Idaho corporation, and LARRY DOWNS, an
Individual,

Defendants.

THOMAS A. HAGOOD, an unmarried man,
Third Party Plaintiff,

v.

BULLOCK AND COMPANY REALTORS
L.L.C., an Idaho limited liability company,
SCOTT BULLOCK, an individual, BILL
DOWNS AUCTION SERVICE INC., an
Idaho corporation, and Scott Bullock, an
individual and LARRY DOWNS, an
individual,

Third Party
Defendants.

Case No. CV 08-8465

**AMENDED COMPLAINT FOR
DECLARATORY JUDGMENT,
SPECIFIC PERFORMANCE AND
BREACH OF CONTRACT AND
BREACH OF CONSUMER
PROTECTION ACT**

COME NOW, Plaintiffs, Jon Wakelum (“Wakelum”) and Mike Ressler (“Ressler”), by and through their attorneys of record, Givens Pursley LLP, who for causes of action against Defendant, allege and complain as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff Ressler is an individual who resides in Canyon County, Idaho, who has done business as “M&M RE Holdings.”
2. Plaintiff Wakelum is an individual who resides in Canyon County, Idaho.
3. Defendant Thomas A. Hagood (“Hagood”) is the owner of certain real property located within Canyon County, Idaho, which is the subject of this dispute, and it is believed that he resides at 3649 Oxbow, Nampa, Canyon County, Idaho, 83687.
4. Jurisdiction and venue are proper pursuant to Idaho Code Sections 5-401, 5-514, 1-701, 1-705 and other Idaho law.

GENERAL ALLEGATIONS

5. Defendant Hagood is the owner of record of three (3) parcels of real property located in Canyon County, Idaho. These are hereinafter referred to as “Parcel 1,” “Parcel 2” and “Parcel 3.”
6. A true and correct copy of the legal description for Parcel 1, Parcel 2 and Parcel 3 is attached hereto as Exhibit “A”; provided, however, any of the property rights included in the Judgment and Decree of Condemnation in favor of the City of Nampa entered on December 7, 2007, in the case of *City of Nampa v. Jeff Hagood, et. al.*, CV-05-4595, and recorded as Instrument No. 2007080423 in the real property records of the Canyon County Recorder on December 12, 2007, is encompassed within and, is hereby specifically excluded from, Parcel 1, Parcel 2 and Parcel 3.

7. Defendant Hagood did retain Bullock and Company Realtors, LLC, an Idaho limited liability company ("Bullock and Company"), to hold an "absolute land auction" of Parcels 1, 2 and 3 on August 6, 2008, at 1:00 p.m.

8. Bullock and Company did advertise said sale and make arrangements to conduct said sale.

9. A true and correct copy of one such advertisement is attached hereto as Exhibit "B."

10. Said advertisements of sale did include words to the effect "ABSOLUTE AUCTION (SELLS TO THE HIGHEST BIDDER – NO RESERVE)."

11. Plaintiffs did attend said auction sale.

12. Plaintiff Wakelum was the highest bidder at said sale on Parcel 3, his bid was accepted by Bullock and Company, and he was awarded said parcel by Bullock and Company, the auctioneer.

13. Plaintiff Ressler was the highest bidder on Parcels 1 and 2, his bid was accepted by Bullock and Company, and he was awarded said parcels by Bullock and Company, the auctioneer.

14. Defendant Hagood did attend said sale and did witness the bidding and the acceptance of the high bids by the auctioneer and the awards of the high bids by Bullock and Company, the auctioneer.

15. At the conclusion of the auction, Bullock and Company did take two standard RE-
23 COMMERCIAL/INVESTMENT REAL ESTATE PURCHASE AND SALE
AGREEMENTS, and the Auctioneer did fill in the blanks on each form in a manner consistent with the advertised terms of the auction, and

- a. did present for signature to Ressler and did in fact secure Ressler's signature upon the RE-23 AGREEMENT with an ID# of LT100 for Parcel 1 and Parcel 2, a true and correct copy of which is attached as Exhibit "C."; and
- b. did present for signature to Wakelum and did in fact secure Wakelum's signature upon the RE-23 AGREEMENT with an ID# of LT 300 for Parcel 3, a true and correct copy of which is attached as Exhibit "D."

16. After the acceptance of the high bids and the preparation and completion of the RE-23 Purchase and Sale Agreements described above, Defendant Hagood did refuse, and continues to refuse, to go through with and enter the sale contracts contemplated and promised by the terms of the absolute auction and to sign the documents necessary to effectuate said sales on the advertised terms.

17. Plaintiffs have properly tendered the earnest money called for in the terms of sale and RE-23 Agreements.

18. Plaintiffs are ready, willing and able to effectuate the sales of the Parcels to them on the terms, have been willing to do so at all times relevant hereto, and remain willing to do so.

19. If the property in question is sold to another buyer or buyers, Plaintiffs will suffer irreparable harm because of the unique nature of the real property involved.

20. Plaintiffs are without an adequate remedy at law because of the unique nature of the real property involved.

COUNT 1

Declaratory Judgment

21. Plaintiffs reallege and incorporate by reference all previous allegations.
22. Counts I through II are plead only against Defendant Thomas A. Hagood.
23. Plaintiffs are persons whose rights, status or other legal relations are affected by a contract for auction and are entitled to have a question of the construction or validity arising

under the contract and to obtain a declaration of rights, status or other legal relations thereunder by declaration of the Court.

24. As a result of Defendant's actions, Plaintiffs are entitled to declaratory judgment pursuant to Idaho Code Section 10-1201, *et seq.*, against the Defendant, including findings that:

- a. the auction in question was advertised and held without reserve and was absolute;
- b. Defendant Hagood made an offer or offers to sell when the auction sale was advertised;
- c. each plaintiff accepted the offer on their respective parcels described above by making the highest bid on each such parcel;
- d. each such bid was a legitimately submitted bid;
- e. that no later than upon the entry of each such bid with no other higher bids, and otherwise in accordance with the terms of the auction and the acceptance of said bids by the auctioneer, that defendant Hagood became absolutely committed to the sales to Plaintiffs;
- f. Defendant Hagood was not entitled to withdraw the property from the sale simply because he was not pleased with the bids or otherwise;
- g. Defendant Hagood's conduct amounts to a breach of his obligation pursuant to the auction contract or contracts for auction;
- h. Defendant Hagood is obligated to enter into appropriate agreements in the form attached hereto to convey the parcels to each of the respective Plaintiffs and to convey the parcels at the time called for by said agreements;
- i. the purchase price for each of the respective parcels be reduced and offset by any damages awarded by the Court in this action; and
- j. the purchase price for each of the respective parcels be reduced and offset by any reasonable attorneys' fees and costs awarded by the Court to the Plaintiff's in this action;

COUNT 2

Specific Performance

25. Plaintiffs reallege and incorporate by reference all previous allegations.
26. Plaintiffs are entitled to a judgment requiring, ordering and enjoining Defendant Hagood to specifically perform and enter into appropriate contracts to convey to each Plaintiff that property to which he is entitled under the auction contract or contracts.
27. Plaintiffs are entitled to a judgment requiring, ordering and declaring that,
 - a. Defendant Hagood is bound as if he had entered into contracts in the form attached hereto to convey said parcels to the Plaintiffs in accordance with the terms of the advertised auction;
 - b. In accordance with I.R.C.P. 70, if the Defendant will not sign said instruments to convey the parcels at the appropriate time, the Clerk of the Court or the Court itself, at the expense of Defendant, will be empowered and authorized to sign the instruments of conveyance in place of Defendant or to enter a suitable judgment or order suitable for recording in the real property records decreeing the such conveyance has been made.

COUNT 3

Breach of Contract/Monetary Damages

28. Plaintiffs reallege and incorporate by reference all previous allegations.
29. Plaintiffs are entitled to a judgment for monetary damages against the Defendant, in an amount to be proven at trial with respect to each Plaintiff, which said amount will exceed \$10,000.
30. Said damages to include, without limitation, any and all reasonable foreseeable

damages flowing from and resulting from Defendant's breach of the auction contract or contracts.

COUNT 4

Violation of the Consumer Protection Act

31. Plaintiffs reallege and incorporate by reference all previous allegations.
32. Count 4 is plead in the alternative to Counts 1 through 3 and only in the event that the Court finds on the basis of the Statute of Frauds or similar basis that no enforceable contract for the sale of real property exists justifying specific performance or damages against Defendant Thomas A. Hagood under Counts 1 through 3.
33. Count 4 is pled as against all Defendants.
34. The aforementioned auction sale constituted trade and commerce as defined under Idaho Code Section 48-602(2).
35. The sale of real property falls within the definition of "goods" under Idaho Code section 48-602(6) and/or "services" under Idaho Code Section 48-602.
36. To the extent the Statute of Frauds or similar law prohibits or renders void or voidable a sale of real property at "absolute auction", Defendants conduct in advertising, conducting and otherwise representing that an absolute auction of the real property at issue in this case without full disclosure of such prohibition or potential for a void result violated the Idaho Consumer Protection Act, Idaho Code Section 48-601, *et. seq.*, and applicable rules promulgated by the Idaho Attorney General, I.D.A.P.A. Rule 04.02.01.01, *et. seq.*, in that it:
 - a. Represented that goods or services had characteristics or qualities that they did not have;
 - b. Constituted an act or practice that is misleading, false or deceptive to the

consumer;

- c. Constituted an initial offer to sell goods or services with material contingencies, conditions, or qualifications attendant to the offer without clearly and conspicuously disclosing such contingencies, conditions or qualifications (I.D.A.P.A. Rule 40);
- d. Constituted a direct or implied representation that goods or services could be purchased for a specified price, when that was not the case (Rule 60)

37. Plaintiffs are entitled to recover their actual damages or \$1,000.00 per violation of the Consumer Protection Act in accordance with Idaho Code Section 48-608, whichever is greater, and a reasonable attorney fee pursuant to Idaho Code Section 48-608.

ATTORNEYS' FEES AND COSTS

Plaintiffs have been required to retain the services of Givens Pursley LLP to prosecute this matter. Plaintiffs have incurred and will continue to incur attorneys' fees and costs in connection with this lawsuit pursuant to contract, and Idaho Code Sections 12-120(3), and 12-121 and 48-608; and I.R.C.P. 54. Plaintiffs are entitled to their reasonable attorneys' fees and costs in the amount of \$3,000.00 in the event of a default judgment, or in such other and further amount as may be awarded by the Court at the appropriate time in the proceedings.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment in their favor and against the Defendant, both jointly and severally, for:

1. On Count 1,
2. On Count 2,
3. On Count 3, a monetary judgment in favor of Plaintiffs and against Defendant

Hagood in an amount to be proven at trial with damages with respect to each Plaintiff;

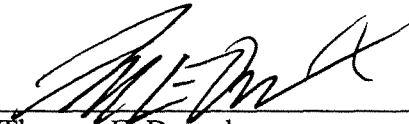
4. On Count 4, in the alternative to the relief sought in Counts 1 through 3, and only in the event the Court determines that no enforceable contract existed under the Statute of Frauds or similar law, then for an award of damages in an amount to be proven at trial against all Defendants, jointly and severally.

5. On all Counts, a judgment and order requiring Defendant to pay to Plaintiffs, pursuant to the Idaho Code sections cited herein, their reasonable attorneys' fees and costs incurred in connection with this lawsuit; and

6. For such other and further relief as this Court deems just and appropriate in the premises.

DATED this 12th day of June, 2009.

GIVENS PURSLEY LLP



Thomas E. Dvorak
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of June, 2009, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Jay Gustavsen
Davison, Cople, Cople & Cox
Washington Mutual Capitol Plaza, Suite 600
199 North Capitol Blvd.
P.O. Box 1583
Boise, Idaho 83701

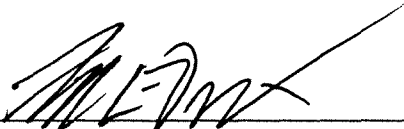
U.S. Mail
 Overnight Mail
 Hand Delivery
 Fax

Phillip J. Collaer
Anderson, Julian & Hull, LLP
P.O. Box 7426
Boise, ID 83707-7426

U.S. Mail
 Overnight Mail
 Hand Delivery
 Fax

Terry Michaelson
Hamilton Michaelson & Hilty, LLP
1303 12th Avenue Road
P.O. Box 65
Nampa, ID 83653-0065

U.S. Mail
 Overnight Mail
 Hand Delivery
 Fax



Thomas E. Dvorak
Attorneys for Plaintiffs

EXHIBIT "A"

Legal Descriptions Parcel 1

COMMENCING at the Northwest corner of the South Half of the Southeast Quarter of Section 13, Township 3 North, Range 2 West, Boise Meridian, Canyon County, Idaho, and running

East a distance of 279.1 feet along the North boundary line of the aforesaid South Half of the Southeast Quarter of Section 13 to the POINT OF BEGINNING; thence South a distance of 322 feet, more or less, to the center of the Dewey Irrigation Lateral; thence South 75° 30' East a distance of 355.6 feet to the intersection of the centerline of the State Highway; thence North 56° 8' East a distance of 74.3 feet along the centerline of the State Highway; thence North 44° 19' West a distance of 481.4 feet to the intersection of the North boundary line of the South Half of the Southeast Quarter of the aforesaid Section 13; thence West a distance of 71.8 feet to the POINT OF BEGINNING.

Legal Description for Parcel 2

A part of the South One-Half of the Southeast Quarter of Section 13, Township 3 North, Range 2 West of the Boise Meridian, Canyon County, Idaho, more particularly described as follows:

BEGINNING at the Northwest corner of the South One-Half of the Southeast Quarter of Section 13, Township 3 North, Range 2 West of the Boise Meridian, and running South 312.7 feet along the North and South center line of the aforesaid described Section 13; thence South 89° 12' East 233.0 feet along the center of the Dewey Irrigation Lateral; thence South 78° 30' East 44.4 feet; thence North 322.0 feet, more or less, to the intersection of the North boundary line of the South One-Half of the Southeast Quarter of the above described Section 13; thence West 279.1 feet to the point of beginning.

Legal Description for Parcel 3

The North 300 feet of the Southeast Quarter of the Southwest Quarter and a portion of the South One-Half of the Northeast Quarter of the Southwest Quarter, Section 13, Township 3 North, Range 2 West of the Boise Meridian, Canyon County, Idaho, all more particularly described as follows:

Commencing at the Southeast corner of the Northeast Quarter of the Southwest Quarter, Section 13, Township 3 North, Range 2 West of the Boise Meridian, Canyon County, Idaho and running

South 0° 33' 54" West 300.00 feet along the Easterly boundary of the said Southeast Quarter of the Southwest Quarter, Section 13 to a point

North 89° 21' 11" West 1,309.37 feet along a line parallel with and 300.00 feet Southerly from the Northerly boundary of the said Southeast Quarter of the Southwest Quarter, Section 13 to a point; thence

North 0° 18' 47" East 300.00 feet along the Westerly boundary of the said Southeast Quarter of the Southwest Quarter, Section 13 more or less to the Northwest corner thereof; thence continuing

North 0° 18' 47" East 221.27 feet along the Westerly boundary of the Northeast Quarter of the Southwest Quarter, Section 13; thence

South 89° 41' 13" East 200.00 feet to a point; thence

South 68° 38' 40" East 63.86 feet to a point; thence

South 89° 21' 36" East 801.58 feet along a line parallel with and 202.00 feet Southerly from the South boundary of East Newby Street as shown on the plat of Nampa Industrial Corporation Fifth Addition Phase No. 1, Nampa, Canyon County, Idaho, according to the plat filed in Book 27 of Plats at Page 47, records of said County, more or less to the Westerly boundary of Block 2 of said Plat; thence

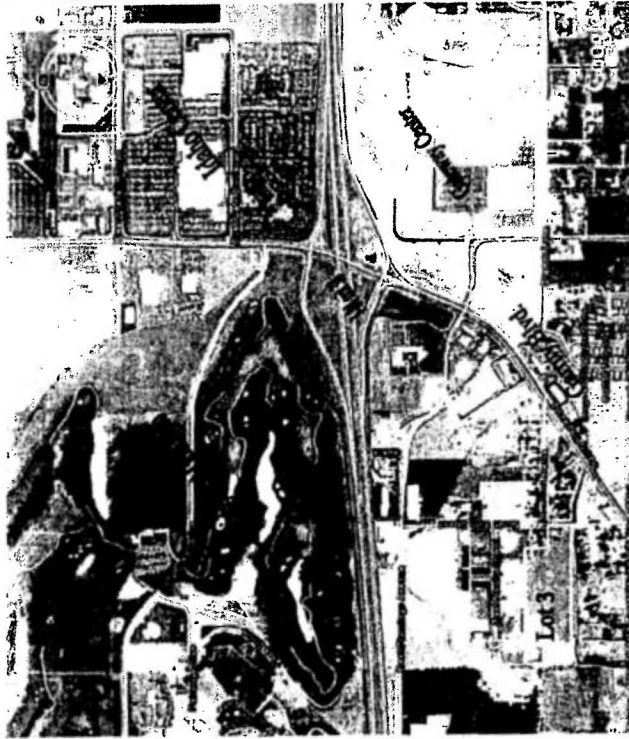
South 0° 33' 54" West 200.99 feet along said Westerly boundary of said Block 2 and its Southerly extension, more or less to a point on the South boundary of the Northeast Quarter of the Southwest Quarter, Section 13; thence

South 89° 21' 11" East 250.00 feet along said Southerly boundary of the Northeast Quarter of the Southwest Quarter, Section 13 to the POINT OF BEGINNING.

EXHIBIT "B"

Auction Advertisement

ABSOLUTE LAND AUCTION
NAMPA, IDAHO
18 INDUSTRIAL/COMMERCIAL ACRES
WED. AUG. 6, 2008, 1:00 PM



LOCATION: Located in the Nampa ID. Industrial Park east of the south of Highway 16, the property is located in the heart of the growing industrial area of Nampa, ID. The property is currently zoned for industrial use. The property is currently vacant and is being offered for sale. The property is located in the heart of the growing industrial area of Nampa, ID. The property is currently vacant and is being offered for sale. The property is located in the heart of the growing industrial area of Nampa, ID. The property is currently vacant and is being offered for sale.



DOWNSAULTI.COM

Bullock & Company Realtors, Nampa, ID., 466-1010 ~ Greg Bullock 208-941-1076 ~ Larry Downs 208-941-1075

EXHIBIT "C"

JULY 2008 EDITION

Page 1 of 8



RE-23 COMMERCIAL/INVESTMENT REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS IS A LEGALLY BINDING CONTRACT, READ THE ENTIRE DOCUMENT, INCLUDING ANY ATTACHMENTS. IF YOU HAVE ANY QUESTIONS, CONSULT YOUR ATTORNEY AND/OR ACCOUNTANT BEFORE SIGNING.



ID# LT 100 DATE 8-6-08

LISTING AGENCY BANKER Co. Office Phone # 466-1010 Fax # 466-1006

Listing Agent LARRY DOWNS E-Mail _____ Phone # 941-1025

SELLING AGENCY Treasure Valley Properties Office Phone # 898-1400 Fax # 898-1444

Selling Agent Hebe Johnson E-Mail hebe@treasurevalleyproperties.com Phone # 623-8411

1. BUYER: M & R Holdings and or Signs
(Hereinafter called "BUYER") agrees to purchase, and the undersigned SELLER agrees to sell the following described real estate hereinafter referred to as "PROPERTY" COMMONLY KNOWN AS Map 2 Area 2 BARRY ROAD
Maple City Barry County, ID, Zip _____ legally described as: See ATTACHED

OR Legal Description Attached as addendum # 1 (Addendums must accompany original offer.)

2. \$ 270,250.00 PURCHASE PRICE: Two Hundred Seventy Thousand and Zero/100 DOLLARS, payable upon the following TERMS AND CONDITIONS (not including closing costs):

3. FINANCIAL TERMS: Note: A+C+D must add up to total purchase price.

(A). \$ 25,000.00 EARNEST MONEY: BUYER hereby deposits Twenty Five Thousand and Zero/100 DOLLARS as Earnest Money evidenced by: cash personal check cashier's check note (due date): _____
 other _____ and a receipt is hereby acknowledged. Earnest Money to be deposited in trust account upon receipt, or upon acceptance by all parties and shall be held by: Listing Broker Selling Broker _____ for the benefit of the parties hereto.

(B). ALL CASH OFFER: NO YES IF CASH OFFER, BUYER'S OBLIGATION TO CLOSE SHALL NOT BE SUBJECT TO ANY FINANCIAL CONTINGENCY. BUYER agrees to provide SELLER within _____ business days from the date of acceptance of this agreement by all parties, evidence of sufficient funds and/or proceeds necessary to close transaction. Acceptable documentation includes, but is not limited to, a copy of a recent bank or financial statement or contract(s) for the sale of BUYER'S current residence or other property to be sold.

(C). \$ _____ FINANCING:
 Additional financial terms are specified under the heading "OTHER TERMS AND/OR CONDITIONS" (Section 5 below).
 Additional financial terms are contained in a financing addendum of same date, attached hereto, signed by both parties.

(D). \$ 0.00 APPROXIMATE FUNDS DUE FROM BUYERS AT CLOSING: (Not including closing costs) Cash at closing to be paid by BUYER at closing in GOOD FUNDS, includes: cash, electronic transfer funds, certified check or cashier's check.

4. SECTION 1031 TAX DEFERRED EXCHANGE: By checking either or both of the boxes that follow, it is hereby acknowledged by the parties that the Buyer, Seller intends to use the purchase and sale of the PROPERTY as an integral part of a tax deferred like-kind exchange as allowed under Section 1031 of the Internal Revenue Code (the "Exchange"). For purposes of this paragraph, the party participating in the Exchange shall be identified as the "Exchanger." If either box above is checked, then the parties recognize that a material part of the Exchanger's consideration for entering into the agreement for the purchase and sale of the PROPERTY is the successful completion of the exchange. The parties agree to assist each other in the completion of such exchange by cooperating with each other by signing any and all relevant documents provided that the party not doing the Exchange shall not incur any liabilities, costs, fees, or taxes in excess of those which that party would have incurred had this transaction not been an Exchange.

5. OTHER TERMS AND/OR CONDITIONS: This Agreement is made subject to the following special terms, considerations and/or contingencies which must be satisfied prior to closing: 1. SELLER TO GRANT BUYER A 45 DAY RIGHT TO REScind. E. MARNER RESCINDS NON-RE-FOUNDABLE ON THE 45th DAY. TO BE DELIVERED TO SELLER ON THE 46th DAY. Applied to PURCHASE PRICE AT CLOSING
2. SELLER INCLUDED PORTABLE HOUSE AND BATH BUILDING

6. ITEMS INCLUDED & EXCLUDED IN THIS SALE: All existing fixtures and fittings that are attached to the PROPERTY are INCLUDED IN THE PURCHASE PRICE (unless excluded below), and shall be transferred free of liens. These include, but are not limited to, all seller-owned attached floor coverings, attached television antennae, satellite dish, attached plumbing, bathroom and lighting fixtures, window screens, screen doors, storm doors, storm windows, window coverings, garage door opener(s) and transmitter(s), exterior trees, plants or shrubbery, water heating apparatus and fixtures, attached fireplace equipment, awnings, ventilating, cooling and heating systems, all ranges, ovens, built-in dishwashers, fuel tanks and irrigation fixtures and equipment, that are now on or used in connection with the PROPERTY and shall be included in the sale unless otherwise provided herein. BUYER should satisfy himself that the condition of the included items is acceptable.

(A). ADDITIONAL ITEMS SPECIFICALLY INCLUDED IN THIS SALE: n/a

BUYER'S Initials (_____) (_____) Date 8-6-08 SELLER'S Initials (_____) (_____) Date _____

PROPERTY ADDRESS: App. 2 Bldg Community Blvd (DN) LT 100

69 (B) ITEMS SPECIFICALLY EXCLUDED IN THIS SALE; _____
70 _____
71 _____
72 _____
73 _____

74 7. TITLE CONVEYANCE: Title of SELLER is to be conveyed by warranty deed special warranty deed or _____ deed, and is to be
75 marketable and insurable except for rights reserved in federal patents, state or railroad deeds, building or use restrictions, building and zoning regulations
76 and ordinances of any governmental unit, and rights of way and easements established or of record. Liens, encumbrances or defects to be discharged by
77 SELLER may be paid out of purchase money at date of closing. No liens, encumbrances or defects which are to be discharged or assumed by BUYER or to
78 which title is taken subject to, exist unless otherwise specified in this Agreement.
79

80 8. TITLE INSURANCE: There may be types of title insurance coverages available other than those listed below and parties to this agreement
81 are advised to talk to a title company about any other coverages available that will give the buyer additional coverage.
82

83 (A). PRELIMINARY TITLE COMMITMENT: Prior to closing the transaction SELLER or BUYER shall furnish to BUYER a preliminary commitment of a
84 title insurance policy showing the condition of the title to said PROPERTY. BUYER shall have _____ business day(s) from receipt of the preliminary
85 commitment or not fewer than twenty-four (24) hours prior to closing, within which to object in writing to the condition of the title as set forth in the preliminary
86 commitment. If BUYER does not so object, BUYER shall be deemed to have accepted the conditions of the title. It is agreed that if the title of said
87 PROPERTY is not marketable, or cannot be made so within _____ business day(s) after notice containing a written statement of defect is delivered to
88 SELLER, BUYER'S Earnest Money deposit will be returned to BUYER and SELLER shall pay for the cost of title insurance cancellation fee, escrow and
89 legal fees, if any.
90

91 (B). TITLE COMPANY: The parties agree that Title One Title Company
92 located at Harvey shall provide the title policy and preliminary report of commitment.
93

94 (C). STANDARD COVERAGE OWNER'S POLICY: SELLER shall within a reasonable time after closing furnish to BUYER a title insurance policy in the
95 amount of the purchase price of the PROPERTY showing marketable and insurable title subject to the liens, encumbrances and defects elsewhere set out in
96 this Agreement to be discharged or assumed by BUYER unless otherwise provided herein. The risk assumed by the title company in the standard
97 coverage policy is limited to matters of public record. BUYER shall receive a ILLINOIS Owner's Policy of Title Insurance. A title company, at BUYER'S
98 request, can provide information about the availability, desirability, coverage and cost of various title insurance coverages and endorsements, if BUYER
99 desires title coverage other than that required by this paragraph, BUYER shall instruct closing agency in writing and pay any increase in cost unless
100 otherwise provided herein.
101

102 (D). EXTENDED COVERAGE LENDER'S POLICY (Mortgagee policy): The lender may require that BUYER (Borrower) furnish an Extended Coverage
103 Lender's Policy. This extended coverage lender's policy considers matters of public record and additionally insures against certain matters not shown in the
104 public record. This extended coverage lender's policy is solely for the benefit of the lender and only protects the lender.
105

106 9. INSPECTION/DUE DILIGENCE:
107 (A). BUYER shall have the right to conduct due diligence inspections, investigations, tests, surveys and other studies at BUYER'S expense unless
108 otherwise indicated below or agreed upon in writing by the parties. BUYER chooses to have inspection(s) not to have inspection(s). If BUYER chooses
109 not to have inspection skip the remainder of this Section 9. BUYER shall, within _____ business day(s) of acceptance, complete these inspections and give
110 to SELLER written notice of disapproved items. BUYER is strongly advised to exercise these rights and to make BUYER'S own selection of professionals
111 with appropriate qualifications to conduct inspections of the entire PROPERTY. The closing of this transaction is conditioned upon BUYER'S satisfaction or
112 waiver of the following contingencies.

INSPECTION ITEM; COSTS PAID BY	BUYER	SELLER	SHARED EQUALLY	N/A	INSPECTION ITEM; COSTS PAID BY	BUYER	SELLER	SHARED EQUALLY	N/A
Environmental Inspection (Phase I)	<input checked="" type="checkbox"/>				Hazardous Waste report(s)	<input checked="" type="checkbox"/>			
Environmental Inspection (Phase II)	<input checked="" type="checkbox"/>				Other substances hazardous to human health (e.g. mold, radon, asbestos, etc.)	<input checked="" type="checkbox"/>			
Environmental Inspection (Phase III)	<input checked="" type="checkbox"/>				Review of seller's relevant business documents	<input checked="" type="checkbox"/>			
Survey	<input checked="" type="checkbox"/>				Utilities and Zoning Studies	<input checked="" type="checkbox"/>			
Water Rights	<input checked="" type="checkbox"/>				Peat, dry rot & structural inspection(s)	<input checked="" type="checkbox"/>			
Flood Zone Hazard	<input checked="" type="checkbox"/>				Compliance with American With Disability Act	<input checked="" type="checkbox"/>			
Soil(s) and Perculation Test(s)	<input checked="" type="checkbox"/>				Well/Septic	<input checked="" type="checkbox"/>			

113 The following documents and materials shall be provided by the SELLER to the BUYER as part of the BUYER'S inspection/due diligence: _____
114 N/A
115 _____
116 _____
117 _____
118 _____
119 _____
120 _____

BUYER'S Initials (MD) Date 8/6/08 SELLER'S Initials (_____) Date _____

PROPERTY ADDRESS: App. 2 Area Community BLDG ID#: LT100

- 119 (B) SATISFACTION/REMOVAL OF INSPECTION DUE DILIGENCE CONTINGENCIES:
- 120 1). If BUYER does not within the strict time period specified give to SELLER written notice of disapproved items, BUYER shall conclusively be
- 121 deemed to have: (a) completed all inspections, investigations, review of applicable documents and disclosures; (b) elected to proceed with the
- 122 transaction and (c) assumed all liability, responsibility and expense for repairs or corrections other than for items which SELLER has otherwise
- 123 agreed in writing to repair or correct.
- 124
- 125 2). If BUYER does within the strict time period specified give to SELLER written notice of disapproved items, BUYER shall provide to SELLER
- 126 pertinent section(s) of written inspection reports. SELLER shall have _____ business day(s) in which to respond in writing. The SELLER, at
- 127 their option, may correct the items as specified by the BUYER in their letter or may elect not to do so. If the SELLER agrees to correct the items
- 128 asked for in the BUYER'S letter, then both parties agree that they will continue with the transaction and proceed to closing. This will remove the
- 129 BUYER'S inspection contingency.
- 130
- 131 3). If SELLER elects not to correct the disapproved items, or does not respond in writing within the strict time period specified, then the BUYER(S)
- 132 have the option of either continuing the transaction without the SELLER being responsible for correcting these deficiencies or giving the SELLER
- 133 written notice within _____ business days that they will not continue with the transaction and demand the return of their Earnest Money.
- 134
- 135 4). If BUYER does not give such written notice of cancellation within the strict time periods specified, BUYER shall conclusively be deemed to have
- 136 elected to proceed with the transaction without repairs or corrections other than for items with SELLER has otherwise agreed in writing to repair or
- 137 correct. SELLER shall make the PROPERTY available for all inspections. BUYER shall keep the PROPERTY free and clear of liens; indemnify and
- 138 hold SELLER harmless from all liability, claims, demands, damages and costs; and repair any damages arising from the inspections. No inspections
- 139 may be made by any governmental building or zoning inspector or government employee without the prior consent of SELLER unless required by
- 140 local law.
- 141
- 142 10. MINERAL RIGHTS: Any and all mineral rights appurtenant to the property are included in and are part of the sale of this property unless otherwise
- 143 agreed to by the parties in writing.
- 144
- 145 11. WATER RIGHTS: Any and all water rights including but not limited to water systems, wells, springs, lakes, streams, ponds, rivers, ditches, ditch
- 146 rights, and the like, if any, appurtenant to the property are included in and are a part of the sale of this property unless otherwise agreed to by the parties in
- 147 writing.
- 148
- 149 12. ADDITIONAL COSTS: Costs in addition to those listed below may be incurred by BUYER and SELLER unless otherwise agreed herein, or provided
- 150 by law or required by lender, or otherwise stated herein. The below costs will be paid as indicated. Some costs are subject to loan program requirements.
- 151 SELLER agrees to pay up to \$ _____ of lender required repair costs only. BUYER or SELLER has the option to pay any lender
- 152 required repair costs in excess of this amount.

COSTS	COSTS				COSTS	COSTS			
	BUYER	SELLER	SHARED EQUALLY	N/A		BUYER	SELLER	SHARED EQUALLY	N/A
Appraisal fee				X	Flood certification / tracking fee				X
Long term Escrow fees			X		Title Ins. Standard Coverage owners policy		X		
Closing fee			X		Lenders Extended Policy				X
Additional Title Ins.				X	Attorney contract preparation and/or review fee				X
Water Rights				X					

- 153
- 154 13. ESCROW/COLLECTION: If a long-term escrow/collection is involved, then the escrow/collection holder shall be Title Ins.
- 155 Each party agrees to pay one-half of escrow/collection fees and escrow setup fees.
- 156
- 157 14. RESIDENTIAL PROPERTY CONDITION DISCLOSURE: Idaho Code § 55-2501 et seq. requires that any person intending to transfer "residential
- 158 real property" deliver to the transferee or his agent, within ten (10) days of the acceptance of an offer to purchase, a SELLER PROPERTY CONDITION
- 159 DISCLOSURE FORM. "Residential real property" means real property that is improved by a building or other structure that has one (1) to four (4) dwelling
- 160 units or an individually owned unit in a structure of any size. This also applies to real property which has a combined residential and commercial use.
- 161 The property is not subject to the Property Condition Disclosure Act.
- 162
- 163 15. LEAD-BASED PAINT DISCLOSURE: Properties that meet the criteria of "target housing" require certain disclosures regarding lead-based paint
- 164 hazards. The term lead-based paint hazard is intended to identify lead-based paint and all residential lead-containing dusts and soils regardless of the
- 165 source of the lead. Pursuant to 42 USCA § 4851 et seq., "target housing" means any housing constructed prior to 1978, except housing for the elderly or
- 166 persons with disabilities (unless any child who is less than six (6) years of age resides or is expected to reside in such housing for the elderly or persons with
- 167 disabilities) or any zero-bedroom dwelling. A "residential dwelling" means a single-family dwelling, including attached structures such as porches and stoops;
- 168 or a single-family dwelling unit in a structure that contains more than one (1) separate residential dwelling unit, and in which each such unit is used or
- 169 occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one (1) or more persons. "Residential real property" means
- 170 real property on which there is situated one (1) or more residential dwellings used or occupied, or intended to be used or occupied, in whole or in part, as the
- 171 home or residence of one (1) or more persons.

BUYER'S Initials (ML) (_____) Date 8-6-08 SELLER'S Initials (_____) (_____) Date _____

PROPERTY ADDRESS: App 2 Grace Community Blvd ID#: LOT 1126

172 The subject property is is not defined as "Target Housing" regarding lead-based paint or lead-based paint hazards. If yes, BUYER hereby
173 acknowledges the following: (a) BUYER has been provided an EPA approved lead-based paint hazard information pamphlet, "Protect Your Family From
174 Lead in Your Home," (b) receipt of the Seller's Disclosure of Information and Acknowledgment Form and have been provided with all records, test reports or
175 other information, if any, related to the presence of lead-based paint hazards on said property, (c) that this contract is contingent upon BUYER's right to have
176 the property tested for lead-based paint hazards to be completed no later than 1/28 or the contingency will terminate, (d) that BUYER
177 hereby waives does not waive this right, (e) that if test results show unacceptable amounts of lead-based paint on the property, BUYER has the right to
178 cancel the contract subject to the option of the SELLER (to be given in writing) to elect to remove the lead-based paint and correct the problem which must
179 be accomplished before closing, (f) that if the contract is cancelled under this clause, BUYER's earnest money deposit will be returned to BUYER.

181 16. SQUARE FOOTAGE VERIFICATION: BUYER IS AWARE THAT ANY REFERENCE TO THE SQUARE FOOTAGE OF THE REAL PROPERTY
182 OR IMPROVEMENTS IS APPROXIMATE. IF SQUARE FOOTAGE IS MATERIAL TO THE BUYER, IT MUST BE VERIFIED DURING THE INSPECTION
183 PERIOD.

185 17. COVENANTS, CONDITIONS AND RESTRICTIONS (CC&R): As part of the BUYER'S inspection of the PROPERTY as set forth above in
186 Section 9, BUYER is responsible for obtaining and reviewing a copy of any CC&R's which may affect the PROPERTY. BUYER shall have days (but in
187 no event shall such time period exceed that time period set forth for inspections in Section 9) to review and approve of any such CC&R's that may affect the
188 PROPERTY. Unless BUYER delivers to SELLER a written and signed objection to the terms of any applicable CC&R's with particularity describing BUYER'S
189 reasonable objections within such time period as set forth above, BUYER shall be deemed to have conclusively waived any objection to the terms of any
190 CC&R's affecting the PROPERTY.

192 18. RISK OF LOSS: Prior to the closing of this sale, all risk of loss shall remain with SELLER. In addition, should the PROPERTY be materially
193 damaged by fire or other destructive cause prior to closing, this agreement shall be voidable at the option of the BUYER.

195 19. CONDITION OF PROPERTY AT CLOSING: Upon expiration of the inspection/Due Diligence period and thereafter, BUYER agrees to purchase
196 the PROPERTY in as-is-condition, where is, with all faults and with no further repairs required unless otherwise agreed upon by the parties in writing.
197 BUYER will assume all obligations with respect to the PROPERTY. SELLER shall maintain the PROPERTY until the closing in its present condition, ordinary
198 wear and tear excepted.

200 20. CLOSING AGENCY: The Closing Agency for this transaction shall be Title One
201 located at Harrold

203 21. CLOSING DATE: On or before the closing date, BUYER and SELLER shall deposit with the Closing Agency all funds and instruments necessary to
204 complete the sale. The closing date shall be no later than July 20 2008 "Closing Date" means the date on which all
205 documents are either recorded or accepted by an escrow/collateralization agency and the sale proceeds are available to SELLER.

207 22. POSSESSION/PRORATION: BUYER shall be entitled to possession UPON CLOSING or DATE
208 TIME AM PM. Taxes and water assessments (using the last available assessment as a basis), rents, insurance premiums, interest
209 and reserve on liens, encumbrances or obligations assumed and utilities shall be prorated as of the day of closing or
210 Any tenant deposits held by SELLER shall be credited to BUYER at closing.

212 23. "NOT APPLICABLE" DEFINED: The letters "n/a," "N/A," "n.s.," and "N.A." as used herein are abbreviations of the term "not applicable." Where
213 this agreement uses the term "not applicable" or an abbreviation thereof, it shall be evidence that the parties have contemplated certain facts or conditions
214 and have determined that such facts or conditions do not apply to the agreement or transaction herein.

216 24. FACSIMILE TRANSMISSION: Facsimile or electronic transmission of any signed original document, and retransmission of any signed facsimile or
217 electronic transmission shall be the same as delivery of an original. At the request of either the BUYER or SELLER, or the LENDER, or the Closing Agency,
218 the BUYER and SELLER will confirm facsimile or electronic transmitted signatures by signing an original document.

220 25. BUSINESS DAYS & HOURS: A business day is herein defined as Monday through Friday, 8:00 A.M. to 8:00 P.M. in the local time zone where the
221 subject real property is physically located. A business day shall not include any Saturday or Sunday, nor shall a business day include any legal holiday
222 recognized by the state of Idaho as found in Idaho Code §73-108. The time in which any act required under this agreement is to be performed shall be
223 computed by excluding the date of execution and including the last day. The first day shall be the day after the date of execution. If the last day is a legal
224 holiday, then the time for performance shall be the next subsequent business day.

226 26. DEFAULT: If BUYER defaults in the performance of this Agreement, SELLER has the option of: (1) accepting the Earnest Money as liquidated
227 damages or (2) pursuing any other lawful right or remedy to which SELLER may be entitled. If SELLER elects to proceed under (1), SELLER shall make
228 demand upon the holder of the Earnest Money, upon which demand said holder shall pay from the Earnest Money the costs incurred by SELLER's Broker
229 on behalf of SELLER and BUYER related to the transaction, including, without limitation, the costs of title insurance, escrow fees, credit report fees,
230 inspection fees and attorney's fees; and said holder shall pay any balance of the Earnest Money, one-half to SELLER and one-half to SELLER's Broker,
231 provided that the amount to be paid to SELLER's Broker shall not exceed the Broker's agreed to commission. SELLER and BUYER specifically
232 acknowledge and agree that if SELLER elects to accept the Earnest Money as liquidated damages, such shall be SELLER's sole and exclusive remedy, and
233 such shall not be considered a penalty or forfeiture. If SELLER elects to proceed under (2), the holder of the Earnest Money shall be entitled to pay the costs
234 incurred by SELLER's Broker on behalf of SELLER and BUYER related to the transaction, including, without limitation, the costs of Brokerage fee, title
235 insurance, escrow fees, credit report fees, inspection fees and attorney's fees, with any balance of the Earnest Money to be held pending resolution of the
236 matter. If SELLER defaults, having approved said sale and fails to consummate the same as herein agreed, BUYER'S Earnest Money deposit shall be
237 returned to him/her and SELLER shall pay for the costs of title insurance, escrow fees, credit report fees, inspection fees, Brokerage fees and attorney's
238 fees, if any. This shall not be considered as a waiver by BUYER of any other lawful right or remedy to which BUYER may be entitled.

BUYER'S Initials (ML) () Date 8/4/08 SELLER'S Initials () () Date

AMENDED COMPLAINT FOR DECLARATORY JUDGMENT, SPECIFIC PERFORMANCE AND BREACH OF CONTRACT AND BREACH OF CONSUMER PROTECTION-17

000230

PROPERTY ADDRESS: App. 2 Adams Community Blvd ID#: LT 100

228 27. ATTORNEY'S FEES: If either party initiates or defends any arbitration or legal action or proceedings which are in any way connected with this
246 Agreement, the prevailing party shall be entitled to recover from the non-prevailing party reasonable costs and attorney's fees, including such costs and fees
241 on appeal.

244 28. EARNEST MONEY DISPUTE / INTERPLEADER: Notwithstanding any termination of this contract, BUYER and SELLER agree that in the event
245 of any controversy regarding the Earnest Money and things of value held by Broker or closing agency, unless mutual written instructions are received by the
244 holder of the Earnest Money and things of value, Broker or closing agency shall not be required to take any action but may await any proceeding, or at
247 Broker's or closing agency's option and sole discretion, may interplead all parties and deposit any moneys or things of value into a court of competent
248 jurisdiction and shall recover court costs and reasonable attorney's fees.

251 29. THE RESPONSIBLE BROKER SHALL BE Jamie Cilly

254 30. SEVERABILITY: In the case that any one or more of the provisions contained in this Agreement, or any application thereof, shall be invalid, illegal or
255 unenforceable in any respect, the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

258 31. COUNTERPARTS: This Agreement may be executed in counterparts. Executing an agreement in counterparts shall mean the signature of two
259 identical copies of the same agreement. Each identical copy of an agreement signed in counterparts is deemed to be an original, and all identical copies
260 shall together constitute one and the same instrument.

263 32. SALES PRICE INFORMATION: Pursuant to Idaho Code §64-2082(b)(4), a "sold" price of real property is not confidential client information.

267 33. REPRESENTATION CONFIRMATION: Check one (1) box in Section 1 and one (1) box in Section 2 below to confirm that in this transaction, the
268 brokerage(s) involved had the following relationship(s) with the BUYER(S) and SELLER(S).

Section 1:

- A. The brokerage working with the BUYER(S) is acting as an AGENT for the BUYER(S).
- B. The brokerage working with the BUYER(S) is acting as a LIMITED DUAL AGENT for the BUYER(S), without an ASSIGNED AGENT.
- C. The brokerage working with the BUYER(S) is acting as a LIMITED DUAL AGENT for the BUYER(S) and has an ASSIGNED AGENT acting solely on behalf of the BUYER(S).
- D. The brokerage working with the BUYER(S) is acting as a NONAGENT for the BUYER(S).

Section 2:

- A. The brokerage working with the SELLER(S) is acting as an AGENT for the SELLER(S).
- B. The brokerage working with the SELLER(S) is acting as a LIMITED DUAL AGENT for the SELLER(S), without an ASSIGNED AGENT.
- C. The brokerage working with the SELLER(S) is acting as a LIMITED DUAL AGENT for the SELLER(S) and has an ASSIGNED AGENT acting solely on behalf of the SELLER(S).
- D. The brokerage working with the SELLER(S) is acting as a NONAGENT for the SELLER(S).

283 Each party signing this document confirms that he has received, read and understood the Agency Disclosure Brochure adopted or approved by the Idaho
284 real estate commission and has consented to the relationship confirmed above. In addition, each party confirms that the brokerage's agency office policy
285 was made available for inspection and review. EACH PARTY UNDERSTANDS THAT HE IS A "CUSTOMER" AND IS NOT REPRESENTED BY A
286 BROKERAGE UNLESS THERE IS A SIGNED WRITTEN AGREEMENT FOR AGENCY REPRESENTATION.

290 34. AUTHORITY OF SIGNATORY: If BUYER or SELLER is a corporation, partnership, trust, estate, or other entity, the person executing this
291 agreement on its behalf warrants his or her authority to do so and to bind BUYER or SELLER.

294 35. ENTIRE AGREEMENT: This Agreement, including any Addendums or exhibits, constitutes the entire Agreement between the parties and no
295 warranties, including any warranty of habitability or representations have been made or shall be binding upon either party unless herein set forth.

297 36. TIME IS OF THE ESSENCE IN THIS AGREEMENT.

300 37. ACCEPTANCE: This offer is made subject to the acceptance of SELLER and BUYER on or before (Date) Aug. 6, 2008 at (Local
301 Time in which PROPERTY is located) 5:00 A.M. P.M. If acceptance of this Agreement is not received within the time specified, the offer is
302 withdrawn and the entire Earnest Money, if any, shall be refunded to BUYER on demand.

BUYER'S Initials (JK) () Date 8/6/08 SELLER'S Initials () () Date _____

PROPERTY ADDRESS: 444 Adams County Blvd ID#: 201102

36. BUYER'S SIGNATURES:

SEE ATTACHED BUYER'S ADDENDUM(S) _____ (Specify number of BUYER addendum(s) attached.)

307 BUYER Signature [Signature] BUYER (Print Name) _____
 308 Date 8/1/08 Time 2:13 A.M. P.M. Phone # _____ Cell # _____
 309 Address _____ City _____ State _____ Zip _____
 310 E-Mail _____ Fax # _____

317 BUYER Signature _____ BUYER (Print Name) _____
 318 Date _____ Time _____ A.M. P.M. Phone # _____ Cell # _____
 319 Address _____ City _____ State _____ Zip _____
 320 E-Mail _____ Fax # _____

37. SELLER'S SIGNATURES:

On this date, I/We hereby approve and accept the transaction set forth in the above Agreement and agree to carry out all the terms thereof on the part of the SELLER.

SIGNATURE(S) SUBJECT TO ATTACHED COUNTER OFFER
 SIGNATURE(S) SUBJECT TO ATTACHED ADDENDUM(S) # _____

339 SELLER Signature _____ SELLER (Print Name) _____
 340 Date _____ Time _____ A.M. P.M. Phone # _____ Cell # _____
 341 Address _____ City _____ State _____ Zip _____
 342 E-Mail _____ Fax # _____

348 SELLER Signature _____ SELLER (Print Name) _____
 349 Date _____ Time _____ A.M. P.M. Phone # _____ Cell # _____
 350 Address _____ City _____ State _____ Zip _____
 351 E-Mail _____ Fax # _____

359 CONTRACTOR REGISTRATION # (if applicable) _____

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RE-23 COMMERCIAL/INVESTMENT REAL ESTATE PURCHASE AND SALE AGREEMENT



THIS IS A LEGALLY BINDING CONTRACT. READ THE ENTIRE DOCUMENT, INCLUDING ANY ATTACHMENTS. IF YOU HAVE ANY QUESTIONS, CONSULT YOUR ATTORNEY AND/OR ACCOUNTANT BEFORE SIGNING.

ID# LT 200 DATE 8-6-08
LISTING AGENCY Bulluck Co Office Phone # 466-1000 Fax # 466-1006
Listing Agent Lizzy Dennis E-Mail _____ Phone # 244-1075
SELLING AGENCY Treasure Valley Properties Office Phone # _____ Fax # 325-1444
Selling Agent John Peterson E-Mail john.peterson@treasurevalley.com Phone # 325-1400

1. BUYER: M & M RE Holdings
(Hereinafter called "BUYER") agrees to purchase, and the undersigned SELLER agrees to sell the following described real estate hereinafter referred to as "PROPERTY" COMMONLY KNOWN AS App 2 acres A, 39th
Alanya City, Clayton County, ID, Zip _____ legally described as: See Attached

OR Legal Description Attached as addendum # 1 (Addendum must accompany original offer.)

2. \$ 241,500 PURCHASE PRICE: Two Hundred Forty One Thousand Five Hundred DOLLARS, payable upon the following TERMS AND CONDITIONS (not including closing costs):

3. FINANCIAL TERMS: Note: A+C+D must add up to total purchase price.

(A) \$ 25,000 EARNEST MONEY: BUYER hereby deposits Twenty Five Thousand DOLLARS as Earnest Money evidenced by: cash personal check cashier's check note (due date): _____ and a receipt is hereby acknowledged. Earnest Money to be deposited in trust account upon receipt, or upon acceptance by all parties and shall be held by: Listing Broker Selling Broker for the benefit of the parties hereto.

(B) ALL CASH OFFER: NO YES IF CASH OFFER, BUYER'S OBLIGATION TO CLOSE SHALL NOT BE SUBJECT TO ANY FINANCIAL CONTINGENCY. BUYER agrees to provide SELLER within _____ business days from the date of acceptance of this agreement by all parties, evidence of sufficient funds and/or proceeds necessary to close transaction. Acceptable documentation includes, but is not limited to, a copy of a recent bank or financial statement or contract(s) for the sale of BUYER'S current residence or other property to be sold.

(C) \$ _____ FINANCING:
 Additional financial terms are specified under the heading "OTHER TERMS AND/OR CONDITIONS" (Section 6 below).
 Additional financial terms are contained in a financing addendum of same date, attached hereto, signed by both parties.

(D) \$ 0.00 APPROXIMATE FUNDS DUE FROM BUYERS AT CLOSING: (Not including closing costs) Cash at closing to be paid by BUYER at closing in GOOD FUNDS, includes: cash, electronic transfer funds, certified check or cashier's check.

4. SECTION 1031 TAX DEFERRED EXCHANGE: By checking either or both of the boxes that follow, it is hereby acknowledged by the parties that the Buyer, Seller intends to use the purchase and sale of the PROPERTY as an integral part of a tax deferred like-kind exchange as allowed under Section 1031 of the Internal Revenue Code (the "Exchange"). For purposes of this paragraph, the party participating in the Exchange shall be identified as the "Exchanger." If either box above is checked, then the parties recognize that a material part of the Exchanger's consideration for entering into the agreement for the purchase and sale of the PROPERTY is the successful completion of the exchange. The parties agree to assist each other in the completion of such exchange by cooperating with each other by signing any and all relevant documents provided that the party not doing the Exchange shall not incur any liabilities, costs, fees, or taxes in excess of those which that party would have incurred had this transaction not been an Exchange.

5. OTHER TERMS AND/OR CONDITIONS: This Agreement is made subject to the following special terms, considerations and/or contingencies which must be satisfied prior to closing:
to seller to clear all back taxes by all agencies
2. If the 4th of closing the earnest money remains non-refundable
and subject to the seller, applied to purchase price at closing

6. ITEMS INCLUDED & EXCLUDED IN THIS SALE: All existing fixtures and fittings that are attached to the PROPERTY are INCLUDED IN THE PURCHASE PRICE (unless excluded below), and shall be transferred free of liens. These include, but are not limited to, all seller-owned attached floor coverings, attached television antenna, satellite dish, attached plumbing, bathroom and lighting fixtures, window screens, screen doors, storm doors, storm windows, window coverings, garage door opener(s) and transmitter(s), exterior trees, plants or shrubbery, water heating apparatus and fixtures, attached fireplace equipment, awnings, ventilating, cooling and heating systems, all ranges, ovens, built-in dishwashers, fuel tanks and irrigation fixtures and equipment, that are now on or used in connection with the PROPERTY and shall be included in the sale unless otherwise provided herein. BUYER should satisfy himself that the condition of the included items is acceptable.

(A) ADDITIONAL ITEMS SPECIFICALLY INCLUDED IN THIS SALE: Sale includes residential home
on the property

BUYER'S Initials (mm) Date 8/6/08 SELLER'S Initials (_____) Date _____

PROPERTY ADDRESS: App. 2 Ames on N. 39 E ID: LT 200

69 (B). ITEMS SPECIFICALLY EXCLUDED IN THIS SALE: N/A
70
71

72
73 7. TITLE CONVEYANCE: Title of SELLER is to be conveyed by warranty deed special warranty deed or deed, and is to be
74 marketable and insurable except for rights reserved in federal patents, state or railroad deeds, building or use restrictions, building and zoning regulations
75 and ordinances of any governmental unit, and rights of way and easements established or of record. Liens, encumbrances or defects to be discharged by
76 SELLER may be paid out of purchase money at date of closing. No liens, encumbrances or defects which are to be discharged or assumed by BUYER or to
77 which title is taken subject to, exist unless otherwise specified in this Agreement.
78

79 8. TITLE INSURANCE: There may be types of title insurance coverages available other than those listed below and parties to this agreement
80 are advised to talk to a title company about any other coverages available that will give the buyer additional coverage.
81

82 (A). PRELIMINARY TITLE COMMITMENT: Prior to closing the transaction, SELLER or BUYER shall furnish to BUYER a preliminary commitment of a
83 title insurance policy showing the condition of the title to said PROPERTY. BUYER shall have 5 business day(s) from receipt of the preliminary
84 commitment or not fewer than twenty-four (24) hours prior to closing, within which to object in writing to the condition of the title as set forth in the preliminary
85 commitment. If BUYER does not so object, BUYER shall be deemed to have accepted the conditions of the title. It is agreed that if the title of said
86 PROPERTY is not marketable, or cannot be made so within 5 business day(s) after notice containing a written statement of defect is delivered to
87 SELLER, BUYER'S Earnest Money deposit will be returned to BUYER and SELLER shall pay for the cost of title insurance cancellation fee, escrow and
88 legal fees, if any.
89

90 (B). TITLE COMPANY: The parties agree that Title one Remps Title Company
91 located at _____ shall provide the title policy and preliminary report of commitment.
92

93 (C). STANDARD COVERAGE OWNER'S POLICY: SELLER shall within a reasonable time after closing furnish to BUYER a title insurance policy in the
94 amount of the purchase price of the PROPERTY showing marketable and insurable title subject to the liens, encumbrances and defects elsewhere set out in
95 this Agreement to be discharged or assumed by BUYER unless otherwise provided herein. The risk assumed by the title company in the standard
96 coverage policy is limited to matters of public record. BUYER shall receive a ILTA/ALTA Owner's Policy of Title Insurance. A title company, at BUYER'S
97 request, can provide information about the availability, desirability, coverage and cost of various title insurance coverages and endorsements. If BUYER
98 desires title coverage other than that required by this paragraph, BUYER shall instruct closing agency in writing and pay any increase in cost unless
99 otherwise provided herein.
100

101 (D). EXTENDED COVERAGE LENDER'S POLICY (Mortgagee policy): The lender may require that BUYER (Borrower) furnish an Extended Coverage
102 Lender's Policy. This extended coverage lender's policy considers matters of public record and additionally insures against certain matters not shown in the
103 public record. This extended coverage lender's policy is solely for the benefit of the lender and only protects the lender.
104

105 9. INSPECTION/DUE DILIGENCE:
106 (A). BUYER shall have the right to conduct due diligence inspections, investigations, tests, surveys and other studies at BUYER'S expense unless
107 otherwise indicated below or agreed upon in writing by the parties. BUYER chooses to have inspection(s) not to have inspection(s). If BUYER chooses
108 not to have inspection(s) the remainder of this Section 9. BUYER shall, within 11/2 business day(s) of acceptance, complete these inspections and give
109 to SELLER written notice of disapproved items. BUYER is strongly advised to exercise these rights and to make BUYER'S own selection of professionals
110 with appropriate qualifications to conduct inspections of the entire PROPERTY. The closing of this transaction is conditioned upon BUYER'S satisfaction or
111 waiver of the following contingencies.

INSPECTION ITEM; COSTS PAID BY	COSTS PAID BY				INSPECTION ITEM; COSTS PAID BY	COSTS PAID BY			
	BUYER	SELLER	SHARED EQUALLY	N/A		BUYER	SELLER	SHARED EQUALLY	N/A
Environmental Inspection (Phase I)	X				Hazardous Waste report(s)	X			
Environmental Inspection (Phase II)	✓				Other substances hazardous to human health (e.g. mold, radon, asbestos, etc.)	X			
Environmental Inspection (Phase III)	✓				Review of seller's relevant business documents	✓			
Survey	✓				Utilities and Zoning Studies	✓			
Water Rights	✓				Pest, dry rot & structural inspection(s)	X			
Flood Zone Hazard	X				Compliance with American With Disabilities Act	X			
Soil(s) and Percolation Test(s)	✓				Well/Septic	X			

113 The following documents and materials shall be provided by the SELLER to the BUYER as part of the BUYER'S inspection/due diligence: N/A
114
115

116
117
118

BUYER'S Initials (YMS) (_____) Date 8/1/09 SELLER'S Initials (_____) (_____) Date _____

PROPERTY ADDRESS: Agua 2 Avens A. 39th ID#: 107200

119 (B). SATISFACTION/REMOVAL OF INSPECTION DUE DILIGENCE CONTINGENCIES:

120 1. If BUYER does not within the strict time period specified give to SELLER written notice of disapproved items, BUYER shall conclusively be

121 deemed to have: (a) completed all inspections, investigations, review of applicable documents and disclosures; (b) elected to proceed with the

122 transaction and (c) assumed all liability, responsibility and expense for repairs or corrections other than for items which SELLER has otherwise

123 agreed in writing to repair or correct.

124

125 2. If BUYER does within the strict time period specified give to SELLER written notice of disapproved items, BUYER shall provide to SELLER

126 pertinent section(s) of written inspection reports. SELLER shall have 14 business day(s) in which to respond in writing. The SELLER, at

127 their option, may correct the items as specified by the BUYERS in their letter or may elect not to do so. If the SELLER agrees to correct the items

128 asked for in the BUYERS letter, then both parties agree that they will continue with the transaction and proceed to closing. This will remove the

129 BUYER'S inspection contingency.

130

131 3. If SELLER elects not to correct the disapproved items, or does not respond in writing within the strict time period specified, then the BUYER(S)

132 have the option of either continuing the transaction without the SELLER being responsible for correcting these deficiencies or giving the SELLER

133 written notice within 14 business days that they will not continue with the transaction and demand the return of their Earnest Money.

134

135 4. If BUYER does not give such written notice of cancellation within the strict time periods specified, BUYER shall conclusively be deemed to have

136 elected to proceed with the transaction without repairs or corrections other than for items with SELLER has otherwise agreed in writing to repair or

137 correct. SELLER shall make the PROPERTY available for all inspections. BUYER shall keep the PROPERTY free and clear of liens, indemnify and

138 hold SELLER harmless from all liability, claims, demands, damages and costs; and repair any damages arising from the inspections. No inspections

139 may be made by any governmental building or zoning inspector or government employee without the prior consent of SELLER unless required by

140 local law.

141

142 10. MINERAL RIGHTS: Any and all mineral rights appurtenant to the property are included in and are part of the sale of this property unless otherwise

143 agreed to by the parties in writing.

144

145 11. WATER RIGHTS: Any and all water rights including but not limited to water systems, wells, springs, lakes, streams, ponds, rivers, ditches, ditch

146 rights, and the like, if any, appurtenant to the property are included in and are a part of the sale of this property unless otherwise agreed to by the parties in

147 writing.

148

149 12. ADDITIONAL COSTS: Costs in addition to those listed below may be incurred by BUYER and SELLER unless otherwise agreed herein, or provided

150 by law or required by lender, or otherwise stated herein. The below costs will be paid as indicated. Some costs are subject to loan program requirements.

151 SELLER agrees to pay up to \$ _____ of lender required repair costs only. BUYER or SELLER has the option to pay any lender

152 required repair costs in excess of this amount.

COSTS	BUYER		SELLER		SHARED EQUALLY		N/A		COSTS	BUYER		SELLER		SHARED EQUALLY		N/A		
Appraisal fee									Flood certification / backing fee									
Long term Escrow/fee									Title Ins. Standard Coverage owners policy									
Closing fee									Lenders Extended Policy									
Additional Title Ins.									Arbitray contract preparation and/or review fee									
Water Rights																		

153

154 13. ESCROW/COLLECTION: If a long-term escrow/collection is involved, then the escrow/collection holder shall be _____

155 Each party agrees to pay one-half of escrow/collection fees and escrow setup fees.

156

157 14. RESIDENTIAL PROPERTY CONDITION DISCLOSURE: Idaho Code § 65-2501 et seq. requires that any person intending to transfer "residential

158 real property" deliver to the transferee or his agent, within ten (10) days of the acceptance of an offer to purchase, a SELLER PROPERTY CONDITION

159 DISCLOSURE FORM. "Residential real property" means real property that is improved by a building or other structure that has one (1) to four (4) dwelling

160 units or an individually owned unit in a structure of any size. This also applies to real property which has a combined residential and commercial use.

161 The property is not subject to the Property Condition Disclosure Act.

162

163 15. LEAD-BASED PAINT DISCLOSURE: Properties that meet the criteria of "target housing" require certain disclosures regarding lead-based paint

164 hazards. The term lead-based paint hazard is intended to identify lead-based paint and all residential lead-containing dusts and soils regardless of the

165 source of the lead. Pursuant to 42 USCA § 4831 et seq., "target housing" means any housing constructed prior to 1978, except housing for the elderly or

166 persons with disabilities (unless any child who is less than six (6) years of age resides or is expected to reside in such housing for the elderly or persons with

167 disabilities) or any zero-bedroom dwelling. A "residential dwelling" means a single-family dwelling, including attached structures such as porches and stoops;

168 or a single-family dwelling unit in a structure that contains more than one (1) separate residential dwelling unit, and in which each such unit is used or

169 occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one (1) or more persons. "Residential real property" means

170 real property on which there is situated one (1) or more residential dwellings used or occupied, or intended to be used or occupied, in whole or in part, as the

171 home or residence of one (1) or more persons.

BUYER'S Initials (YMC) (_____) Date 8/6/08 SELLER'S Initials (_____) (_____) Date _____

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172 The subject property is is not defined as "Target Housing" regarding lead-based paint or lead-based paint hazards. If yes, BUYER hereby
173 acknowledges the following: (a) BUYER has been provided an EPA approved lead-based paint hazard information pamphlet, "Protect Your Family From
174 Lead in Your Home," (b) receipt of the Seller's Disclosure of Information and Acknowledgment Form and have been provided with all (a)(c)(d), test reports or
175 other information, if any, related to the presence of lead-based paint hazards on said property, (c) that this contract is contingent upon BUYER'S right to have
176 the property tested for lead-based paint hazards to be completed no later than 11/18 or the contingency will terminate, (d) that BUYER
177 hereby waives does not waive this right, (e) that if test results show unacceptable amounts of lead-based paint on the property, BUYER has the right to
178 cancel the contract subject to the option of the SELLER (to be given in writing) to elect to remove the lead-based paint and correct the problem which must
179 be accomplished before closing, (f) that if the contract is cancelled under this clause, BUYER'S earnest money deposit will be returned to BUYER.
180

181 **16. SQUARE FOOTAGE VERIFICATION:** BUYER IS AWARE THAT ANY REFERENCE TO THE SQUARE FOOTAGE OF THE REAL PROPERTY
182 OR IMPROVEMENTS IS APPROXIMATE. IF SQUARE FOOTAGE IS MATERIAL TO THE BUYER, IT MUST BE VERIFIED DURING THE INSPECTION
183 PERIOD.
184

185 **17. COVENANTS, CONDITIONS AND RESTRICTIONS (CC&Rs):** As part of the BUYER'S inspection of the PROPERTY as set forth above in
186 Section 9, BUYER is responsible for obtaining and reviewing a copy of any CC&R's which may affect the PROPERTY. BUYER shall have 7 days (but in
187 no event shall such time period exceed that time period set forth for inspections in Section 9) to review and approve of any such CC&Rs that may affect the
188 PROPERTY. Unless BUYER delivers to SELLER a written and signed objection to the terms of any applicable CC&Rs with particularity describing BUYER'S
189 reasonable objections within such time period as set forth above, BUYER shall be deemed to have conclusively waived any objection to the terms of any
190 CC&Rs affecting the PROPERTY.
191

192 **18. RISK OF LOSS:** Prior to the closing of this sale, all risk of loss shall remain with SELLER. In addition, should the PROPERTY be materially
193 damaged by fire or other destructive causes prior to closing, this agreement shall be voidable at the option of the BUYER.
194

195 **19. CONDITION OF PROPERTY AT CLOSING:** Upon expiration of the Inspection/Due Diligence period and thereafter, BUYER agrees to purchase
196 the PROPERTY in as-is condition, where is, with all faults and with no further repairs required unless otherwise agreed upon by the parties in writing.
197 BUYER will assume all obligations with respect to the PROPERTY. SELLER shall maintain the PROPERTY until the closing in its present condition, ordinary
198 wear and tear excepted.
199

200 **20. CLOSING AGENCY:** The Closing Agency for this transaction shall be Tollie One
201 located at 12 N. Idaho Center
202

203 **21. CLOSING DATE:** On or before the closing date, BUYER and SELLER shall deposit with the Closing Agency all funds and instruments necessary to
204 complete the sale. The closing date shall be no later than 07-20-2008. "Closing Date" means the date on which all
205 documents are either recorded or accepted by an escrow/collection agency and the sale proceeds are available to SELLER.
206

207 **22. POSSESSION/PRORATION:** BUYER shall be entitled to possession UPON CLOSING or DATE
208 TIME AM PM. Taxes and water assessments (using the last available assessment as a basis), rent, insurance premiums, interest
209 and reserve on liens, encumbrances or obligations assumed and utilities shall be prorated as of the day of closing or 6
210 Any tenant deposits held by SELLER shall be credited to BUYER at closing.
211

212 **23. "NOT APPLICABLE" DEFINED:** The letters "n/a," "NA," "n.a.," and "N.A." as used herein are abbreviations of the term "not applicable." Where
213 this agreement uses the term "not applicable" or an abbreviation thereof, it shall be evidence that the parties have contemplated certain facts or conditions
214 and have determined that such facts or conditions do not apply to this agreement or transaction herein.
215

216 **24. FACSIMILE TRANSMISSION:** Facsimile or electronic transmission of any signed original document, and retransmission of any signed facsimile or
217 electronic transmission shall be the same as delivery of an original. At the request of either the BUYER or SELLER, or the LENDER, or the Closing Agency,
218 the BUYER and SELLER will confirm facsimile or electronic transmitted signatures by signing an original document.
219

220 **25. BUSINESS DAYS & HOURS:** A business day is herein defined as Monday through Friday, 8:00 A.M. to 5:00 P.M. in the local time zone where the
221 subject real property is physically located. A business day shall not include any Saturday or Sunday, nor shall a business day include any legal holiday
222 recognized by the state of Idaho as found in Idaho Code §73-108. The time in which any act required under this agreement is to be performed shall be
223 computed by excluding the date of execution and including the last day. The first day shall be the day after the date of execution. If the last day is a legal
224 holiday, then the time for performance shall be the next subsequent business day.
225

226 **26. DEFAULT:** If BUYER defaults in the performance of this Agreement, SELLER has the option of: (1) accepting the Earnest Money as liquidated
227 damages or (2) pursuing any other lawful right or remedy to which SELLER may be entitled. If SELLER elects to proceed under (1), SELLER shall make
228 demand upon the holder of the Earnest Money, upon which demand said holder shall pay from the Earnest Money the costs incurred by SELLER'S Broker
229 on behalf of SELLER and BUYER related to the transaction, including, without limitation, the costs of title insurance, escrow fees, credit report fees,
230 inspection fees and attorney's fees; and said holder shall pay any balance of the Earnest Money, one-half to SELLER and one-half to SELLER'S Broker,
231 provided that the amount to be paid to SELLER'S Broker shall not exceed the Broker's agreed to commission. SELLER and BUYER specifically
232 acknowledge and agree that if SELLER elects to accept the Earnest Money as liquidated damages, such shall be SELLER'S sole and exclusive remedy, and
233 such shall not be considered a penalty or forfeiture. If SELLER elects to proceed under (2), the holder of the Earnest Money shall be entitled to pay the costs
234 incurred by SELLER'S Broker on behalf of SELLER and BUYER related to the transaction, including, without limitation, the costs of Brokerage fee, title
235 insurance, escrow fees, credit report fees, inspection fees and attorney's fees, with any balance of the Earnest Money to be held pending resolution of the
236 matter. If SELLER defaults, having approved said sale and fails to consummate the same as herein agreed, BUYER'S Earnest Money deposit shall be
237 returned to him/her and SELLER shall pay for the costs of title insurance, escrow fees, credit report fees, inspection fees, Brokerage fees and attorney's
238 fees, if any. This shall not be considered as a waiver by BUYER of any other lawful right or remedy to which BUYER may be entitled.
239

BUYER'S Initials (mc) () Date 8/4/08 SELLER'S Initials () () Date _____

PROPERTY ADDRESS: App 2 Acres A. 39E ID#: LT 200

239 27. ATTORNEY'S FEES: If either party initiates or defends any arbitration or legal action or proceedings which are in any way connected with this
240 Agreement, the prevailing party shall be entitled to recover from the non-prevailing party reasonable costs and attorney's fees, including such costs and fees
241 on appeal.
242
243

244 28. EARNEST MONEY DISPUTE / INTERPLEADER: Notwithstanding any termination of this contract, BUYER and SELLER agree that in the event
245 of any controversy regarding the Earnest Money and things of value held by Broker or closing agency, unless mutual written instructions are received by the
246 holder of the Earnest Money and things of value, Broker or closing agency shall not be required to take any action but may await any proceeding, or at
247 Broker's or closing agency's option and sole discretion, may interplead all parties and deposit any moneys or things of value into a court of competent
248 jurisdiction and shall recover court costs and reasonable attorney's fees.
249
250

251 29. THE RESPONSIBLE BROKER SHALL BE Jamie Silly
252
253

254 30. SEVERABILITY: In the case that any one or more of the provisions contained in this Agreement, or any application thereof, shall be invalid, illegal or
255 unenforceable in any respect, the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impacted thereby.
256
257

258 31. COUNTERPARTS: This Agreement may be executed in counterparts. Executing an agreement in counterparts shall mean the signature of two
259 identical copies of the same agreement. Each identical copy of an agreement signed in counterparts is deemed to be an original, and all identical copies
260 shall together constitute one and the same instrument.
261
262

263 32. SALES PRICE INFORMATION: Pursuant to Idaho Code §54-2083(5)(d), a "sold" price of real property is not confidential client information.
264
265

266 33. REPRESENTATION CONFIRMATION: Check one (1) box in Section 1 and one (1) box in Section 2 below to confirm that in this transaction, the
267 brokerage(s) involved had the following relationship(s) with the BUYER(S) and SELLER(S).
268
269

Section 1:

- 270 A. The brokerage working with the BUYER(S) is acting as an AGENT for the BUYER(S).
- 271 B. The brokerage working with the BUYER(S) is acting as a LIMITED DUAL AGENT for the BUYER(S), without an ASSIGNED AGENT.
- 272 C. The brokerage working with the BUYER(S) is acting as a LIMITED DUAL AGENT for the BUYER(S) and has an ASSIGNED AGENT
273 acting solely on behalf of the BUYER(S).
- 274 D. The brokerage working with the BUYER(S) is acting as a NONAGENT for the BUYER(S).

Section 2:

- 275 A. The brokerage working with the SELLER(S) is acting as an AGENT for the SELLER(S).
- 276 B. The brokerage working with the SELLER(S) is acting as a LIMITED DUAL AGENT for the SELLER(S), without an ASSIGNED AGENT.
- 277 C. The brokerage working with the SELLER(S) is acting as a LIMITED DUAL AGENT for the SELLER(S) and has an ASSIGNED AGENT
278 acting solely on behalf of the SELLER(S).
- 279 D. The brokerage working with the SELLER(S) is acting as a NONAGENT for the SELLER(S).

280 Each party signing this document confirms that he has received, read and understood the Agency Disclosure Brochure adopted or approved by the Idaho
281 real estate commission and has consented to the relationship confirmed above. In addition, each party confirms that the brokerage's agency office policy
282 was made available for inspection and review. EACH PARTY UNDERSTANDS THAT HE IS A "CUSTOMER" AND IS NOT REPRESENTED BY A
283 BROKERAGE UNLESS THERE IS A SIGNED WRITTEN AGREEMENT FOR AGENCY REPRESENTATION.
284
285

286 34. AUTHORITY OF SIGNATORY: If BUYER or SELLER is a corporation, partnership, trust, estate, or other entity, the person executing this
287 agreement on its behalf warrants his or her authority to do so and to bind BUYER or SELLER.
288
289

290 35. ENTIRE AGREEMENT: This Agreement, including any Addendums or exhibits, constitutes the entire Agreement between the parties and no
291 warranties, including any warranty of habitability or representations have been made or shall be binding upon either party unless herein set forth.
292
293

294 36. TIME IS OF THE ESSENCE IN THIS AGREEMENT.
295
296

297 37. ACCEPTANCE: This offer is made subject to the acceptance of SELLER and BUYER on or before (Date) Aug 6, 2008 at (Local
298 Time in which PROPERTY is located) 5:00 A.M. P.M. If acceptance of this Agreement is not received within the time specified, the offer is
299 withdrawn and the entire Earnest Money, if any, shall be refunded to BUYER on demand.
300
301
302

BUYER'S Initials (ma) () Date 8/1/08 SELLER'S Initials () () Date _____

PROPERTY ADDRESS: App 2 Phase A 39th ID#: 17200

300 36. BUYER'S SIGNATURES:

306 SEE ATTACHED BUYER'S ADDENDUM(S): _____ (Specify number of BUYER addendum(s) attached.)

307 BUYER Signature [Signature] BUYER (Print Name) _____

308 Date 8/4/08 Time 2:14 A.M. P.M. Phone # _____ Cell # _____

311 Address _____ City _____ State _____ Zip _____

312 E-Mail _____ Fax # _____

316 BUYER Signature _____ BUYER (Print Name) _____

318 Date _____ Time _____ A.M. P.M. Phone # _____ Cell # _____

321 Address _____ City _____ State _____ Zip _____

323 E-Mail _____ Fax # _____

329 37. SELLER'S SIGNATURES:

331 On this date, I/We hereby approve and accept the transaction set forth in the above Agreement and agree to carry out all the terms thereof on the part of the SELLER.

334 SIGNATURE(S) SUBJECT TO ATTACHED COUNTER OFFER

335 SIGNATURE(S) SUBJECT TO ATTACHED ADDENDUM(S) # _____

339 SELLER Signature _____ SELLER (Print Name) _____

340 Date _____ Time _____ A.M. P.M. Phone # _____ Cell # _____

342 Address _____ City _____ State _____ Zip _____

343 E-Mail _____ Fax # _____

349 SELLER Signature _____ SELLER (Print Name) _____

351 Date _____ Time _____ A.M. P.M. Phone # _____ Cell # _____

353 Address _____ City _____ State _____ Zip _____

355 E-Mail _____ Fax # _____

356 CONTRACTOR REGISTRATION # (if applicable) _____

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EXHIBIT "D"

JULY 2008 EDITION

Page 1 of 6



RE-23 COMMERCIAL/INVESTMENT REAL ESTATE PURCHASE AND SALE AGREEMENT



THIS IS A LEGALLY BINDING CONTRACT. READ THE ENTIRE DOCUMENT, INCLUDING ANY ATTACHMENTS. IF YOU HAVE ANY QUESTIONS, CONSULT YOUR ATTORNEY AND/OR ACCOUNTANT BEFORE SIGNING.

ID# LT-300 DATE 8-6-08

LISTING AGENCY Burbeck & Co. Office Phone # 466-1010 Fax # 466-1006

Listing Agent Larry Downis E-Mail _____ Phone # 941-1075

SELLING AGENCY Burbeck & Co. Office Phone # 466-1010 Fax # 466-1006

Selling Agent Larry Downis / Greg Bullock E-Mail _____ Phone # 941-1076

1. BUYER: Jan Winkelman
(Hereinafter called "BUYER") agrees to purchase, and the undersigned SELLER agrees to sell the following described real estate hereinafter referred to as "PROPERTY" COMMONLY KNOWN AS App. 14 Acres N 89 E
Map 5 City Alpina County, ID, Zip _____ legally described as: See attached

OR Legal Description Attached as addendum # _____ (Addendum must accompany original offer.)

2. \$ 453,285.00 PURCHASE PRICE: Four Hundred Fifty Three Thousand and Zero/100 DOLLARS, payable upon the following TERMS AND CONDITIONS (not including closing costs):

3. FINANCIAL TERMS: Note: A+C+D must add up to total purchase price.

(A). \$ 50,000 EARNEST MONEY: BUYER hereby deposits Fifty thousand and Zero/100 DOLLARS as Earnest Money evidenced by: cash personal check cashier's check note (due date): _____
 other _____ and a receipt is hereby acknowledged. Earnest Money to be deposited in trust account
 upon receipt, or upon acceptance by all parties and shall be held by: Listing Broker Selling Broker
 other _____ for the benefit of the parties hereto.

(B). ALL CASH OFFER: NO YES IF CASH OFFER, BUYER'S OBLIGATION TO CLOSE SHALL NOT BE SUBJECT TO ANY FINANCIAL CONTINGENCY. BUYER agrees to provide SELLER within _____ business days from the date of acceptance of this agreement by all parties, evidence of sufficient funds and/or proceeds necessary to close transaction. Acceptable documentation includes, but is not limited to, a copy of a recent bank or financial statement or contract(s) for the sale of BUYER'S current residence or other property to be sold.

(C). \$ 0 FINANCING:
 Additional financial terms are specified under the heading "OTHER TERMS AND/OR CONDITIONS" (Section 5 below).
 Additional financial terms are contained in a financing addendum of same date, attached hereto, signed by both parties.

(D). \$ 0.00 APPROXIMATE FUNDS DUE FROM BUYERS AT CLOSING: (Not including closing costs) Cash at closing to be paid by BUYER at closing in GOOD FUNDS, includes: cash, electronic transfer funds, certified check or cashier's check.

4. SECTION 1031 TAX DEFERRED EXCHANGE: By checking either or both of the boxes that follow, it is hereby acknowledged by the parties that the Buyer, Seller intends to use the purchase and sale of the PROPERTY as an integral part of a tax deferred like-kind exchange as allowed under Section 1031 of the Internal Revenue Code (the "Exchange"). For purposes of this paragraph, the party participating in the Exchange shall be identified as the "Exchanger." If either box above is checked, then the parties recognize that a material part of the Exchanger's consideration for entering into the agreement for the purchase and sale of the PROPERTY is the successful completion of the exchange. The parties agree to assist each other in the completion of such exchange by cooperating with each other by signing any and all relevant documents provided that the party not doing the Exchange shall not incur any liabilities, costs, fees, or taxes in excess of those which that party would have incurred had this transaction not been an Exchange.

5. OTHER TERMS AND/OR CONDITIONS: This Agreement is made subject to the following special terms, considerations and/or contingencies which must be satisfied prior to closing
1. SELLER TO GRANT BUYER A 45 DAY DUE DILIGENCE PERIOD
2. UPON THE 45 DAY EARNEST MONEY TO BE COME BACK REFUND
HAD FORWARD TO THE SELLER

6. ITEMS INCLUDED & EXCLUDED IN THIS SALE: All existing fixtures and fittings that are attached to the PROPERTY are INCLUDED IN THE PURCHASE PRICE (unless excluded below), and shall be transferred free of liens. These include, but are not limited to, all seller-owned attached floor coverings, attached television antennae, satellite dish, attached plumbing, bathroom and lighting fixtures, window screens, screen doors, storm doors, storm windows, window coverings, garage door opener(s) and transmitter(s), exterior trees, plants or shrubbery, water heating apparatus and fixtures, attached fireplace equipment, awnings, ventilating, cooling and heating systems, all ranges, ovens, built-in dishwashers, fuel tanks and irrigation fixtures and equipment, that are now on or used in connection with the PROPERTY and shall be included in the sale unless otherwise provided herein. BUYER should satisfy himself/herself that the condition of the included items is acceptable.

(A). ADDITIONAL ITEMS SPECIFICALLY INCLUDED IN THIS SALE: Residential Home

BUYER'S Initials (JD) (_____) Date 8/6/08 SELLER'S Initials (_____) (_____) Date _____

PROPERTY ADDRESS: App. 14 Ave S N. 39th ID#: LT 300

69 (B) ITEMS SPECIFICALLY EXCLUDED IN THIS SALE: N/A
70
71
72
73

74 7. TITLE CONVEYANCE: Title of SELLER is to be conveyed by warranty deed special warranty deed or deed, and is to be
75 marketable and insurable except for rights reserved in federal patents, state or railroad deeds, building or use restrictions, building and zoning regulations
76 and ordinances of any governmental unit, and rights of way and easements established or of record. Liens, encumbrances or defects to be discharged by
77 SELLER may be paid out of purchase money at date of closing. No liens, encumbrances or defects which are to be discharged or assumed by BUYER or to
78 which title is taken subject to, exist unless otherwise specified in this Agreement.
79

80 8. TITLE INSURANCE: There may be types of title insurance coverages available other than those listed below and parties to this agreement
81 are advised to talk to a title company about any other coverages available that will give the buyer additional coverage.
82

83 (A). PRELIMINARY TITLE COMMITMENT: Prior to closing the transaction SELLER or BUYER shall furnish to BUYER a preliminary commitment of a
84 title insurance policy showing the condition of the title to said PROPERTY. BUYER shall have 5 business day(s) from receipt of the preliminary
85 commitment or not fewer than twenty-four (24) hours prior to closing, within which to object in writing to the condition of the title as set forth in the preliminary
86 commitment. If BUYER does not so object, BUYER shall be deemed to have accepted the conditions of the title. It is agreed that if the title of said
87 PROPERTY is not marketable, or cannot be made so within 5 business day(s) after notice containing a written statement of defect is delivered to
88 SELLER, BUYER'S Earnest Money deposit will be returned to BUYER and SELLER shall pay for the cost of title insurance cancellation fee, escrow and
89 legal fees, if any.
90

91 (B). TITLE COMPANY: The parties agree that Pioneer Title Title Company
92 located at 10th Ave shall provide the title policy and preliminary report of commitment.
93

94 (C). STANDARD COVERAGE OWNER'S POLICY: SELLER shall within a reasonable time after closing furnish to BUYER a title insurance policy in the
95 amount of the purchase price of the PROPERTY showing marketable and insurable title subject to the liens, encumbrances and defects elsewhere set out in
96 this Agreement to be discharged or assumed by BUYER unless otherwise provided herein. The risk assumed by the title company in the standard
97 coverage policy is limited to matters of public record. BUYER shall receive a ILTA/ALTA Owner's Policy of Title Insurance. A title company, at BUYER's
98 request, can provide information about the availability, desirability, coverage and cost of various title insurance coverages and endorsements. If BUYER
99 desires title coverage other than that required by this paragraph, BUYER shall instruct closing agency in writing and pay any increase in cost unless
100 otherwise provided herein.
101

102 (D). EXTENDED COVERAGE LENDER'S POLICY (Mortgagee policy): The lender may require that BUYER (Borrower) furnish an Extended Coverage
103 Lender's Policy. This extended coverage lender's policy considers matters of public record and additionally insures against certain matters not shown in the
104 public record. This extended coverage lender's policy is solely for the benefit of the lender and only protects the lender.
105

106 9. INSPECTION/DUE DILIGENCE:

107 (A). BUYER shall have the right to conduct due diligence inspections, investigations, tests, surveys and other studies at BUYER'S expense unless
108 otherwise indicated below or agreed upon in writing by the parties. BUYER chooses to have inspection(s) not to have inspection(s). If BUYER chooses
109 not to have inspection skip the remainder of this Section 9. BUYER shall, within _____ business day(s) of acceptance, complete these inspections and give
110 to SELLER written notice of disapproved items. BUYER is strongly advised to exercise these rights and to make BUYER's own selection of professionals
111 with appropriate qualifications to conduct inspections of the entire PROPERTY. The closing of this transaction is conditioned upon BUYER's satisfaction or
112 waiver of the following contingencies.

INSPECTION ITEM; COSTS PAID BY	BUYER	SELLER	SHARED EQUALLY	N/A	INSPECTION ITEM; COSTS PAID BY	BUYER	SELLER	SHARED EQUALLY	N/A
Environmental inspection (Phase I)	X				Hazardous Waste report(s)	X			
Environmental inspection (Phase II)	X				Other substances hazardous to human health (e.g. mold, radon, asbestos, etc.)	X			
Environmental inspection (Phase III)	X				Review of seller's relevant business documents	X			
Survey	X				Utilities and Zoning Studies	X			
Water Rights	X				Pest, dry rot & structural inspection(s)	X			
Flood Zone Hazard	X				Compliance with American With Disabilities Act	X			
Soil(s) and Percolation Test(s)	X				Well/Septic				

113 The following documents and materials shall be provided by the SELLER to the BUYER as part of the BUYER'S inspection/due diligence:
114 N/A
115
116
117
118

BUYER'S Initials (JW) (_____) Date 8/6/08 SELLER'S Initials (_____) (_____) Date _____

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PROPERTY ADDRESS: App 14 Hours A 39 E ID#: L-7300

- 119 (B). SATISFACTION/REMOVAL OF INSPECTION DUE DILIGENCE CONTINGENCIES:
- 120 1). If BUYER does not within the strict time period specified give to SELLER written notice of disapproved items, BUYER shall conclusively be
- 121 deemed to have: (a) completed all inspections, investigations, review of applicable documents and disclosures; (b) elected to proceed with the
- 122 transaction and (c) assumed all liability, responsibility and expense for repairs or corrections other than for items which SELLER has otherwise
- 123 agreed in writing to repair or correct.
- 124
- 125 2). If BUYER does within the strict time period specified give to SELLER written notice of disapproved items, BUYER shall provide to SELLER
- 126 pertinent section(s) of written inspection reports. SELLER shall have _____ business day(s) in which to respond in writing. The SELLER, at
- 127 their option, may correct the items as specified by the BUYERS in their letter or may elect not to do so. If the SELLER agrees to correct the items
- 128 asked for in the BUYERS letter, then both parties agree that they will continue with the transaction and proceed to closing. This will remove the
- 129 BUYER'S inspection contingency.
- 130
- 131 3). If SELLER elects not to correct the disapproved items, or does not respond in writing within the strict time period specified, then the BUYER(S)
- 132 have the option of either continuing the transaction without the SELLER being responsible for correcting these deficiencies or giving the SELLER
- 133 written notice within _____ business days that they will not continue with the transaction and demand the return of their Earnest Money.
- 134
- 135 4). If BUYER does not give such written notice of cancellation within the strict time periods specified, BUYER shall conclusively be deemed to have
- 136 elected to proceed with the transaction without repairs or corrections other than for items with SELLER has otherwise agreed in writing to repair or
- 137 correct. SELLER shall make the PROPERTY available for all inspections. BUYER shall keep the PROPERTY free and clear of liens; indemnify and
- 138 hold SELLER harmless from all liability, claims, demands, damages and costs; and repair any damages arising from the inspections. No inspections
- 139 may be made by any governmental building or zoning inspector or government employee without the prior consent of SELLER unless required by
- 140 local law.
- 141
- 142 10. MINERAL RIGHTS: Any and all mineral rights appurtenant to the property are included in and are part of the sale of this property unless otherwise
- 143 agreed to by the parties in writing.
- 144
- 145 11. WATER RIGHTS: Any and all water rights including but not limited to water systems, wells, springs, lakes, streams, ponds, rivers, ditches, ditch
- 146 rights, and the like, if any, appurtenant to the property are included in and are a part of the sale of this property unless otherwise agreed to by the parties in
- 147 writing.
- 148
- 149 12. ADDITIONAL COSTS: Costs in addition to those listed below may be incurred by BUYER and SELLER unless otherwise agreed herein, or provided
- 150 by law or required by lender, or otherwise stated herein. The below costs will be paid as indicated. Some costs are subject to loan program requirements.
- 151 SELLER agrees to pay up to \$ _____ of lender required repair costs only. BUYER or SELLER has the option to pay any lender
- 152 required repair costs in excess of this amount.

COSTS	COSTS				COSTS	COSTS			
	BUYER	SELLER	SHARED EQUALLY	N/A		BUYER	SELLER	SHARED EQUALLY	N/A
Appraisal fee				X	Flood certification / tracking fee				X
Long term Escrow fees			X		Title Ins. Standard Coverage owners policy		X		
Closing fee			X		Lenders Extended Policy				X
Additional Title Ins.				X	Attorney contract preparation and/or review fee				X
Water Rights				X					

- 153 13. ESCROW/COLLECTION: If a long-term escrow/collection is involved, then the escrow/collection holder shall be _____
- 154 Each party agrees to pay one-half of escrow/collection fees and escrow setup fees.
- 155
- 156
- 157 14. RESIDENTIAL PROPERTY CONDITION DISCLOSURE: Idaho Code § 55-2501 et seq. requires that any person intending to transfer "residential
- 158 real property" deliver to the transferee or his agent, within ten (10) days of the acceptance of an offer to purchase, a SELLER PROPERTY CONDITION
- 159 DISCLOSURE FORM. "Residential real property" means real property that is improved by a building or other structure that has one (1) to four (4) dwelling
- 160 units or an individually owned unit in a structure of any size. This also applies to real property which has a combined residential and commercial use.
- 161 The property is not subject to the Property Condition Disclosure Act.
- 162
- 163 15. LEAD-BASED PAINT DISCLOSURE: Properties that meet the criteria of "target housing" require certain disclosures regarding lead-based paint
- 164 hazards. The term lead-based paint hazard is intended to identify lead-based paint and all residential lead-containing dusts and soils regardless of the
- 165 source of the lead. Pursuant to 42 USCA § 4851 et seq., "target housing" means any housing constructed prior to 1978, except housing for the elderly or
- 166 persons with disabilities (unless any child who is less than six (6) years of age resides or is expected to reside in such housing for the elderly or persons with
- 167 disabilities) or any zero-bedroom dwelling. A "residential dwelling" means a single-family dwelling, including attached structures such as porches and stoops;
- 168 or a single-family dwelling unit in a structure that contains more than one (1) separate residential dwelling unit, and in which each such unit is used or
- 169 occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one (1) or more persons. "Residential real property" means
- 170 real property on which there is situated one (1) or more residential dwellings used or occupied, or intended to be used or occupied, in whole or in part, as the
- 171 home or residence of one (1) or more persons.

BUYER'S Initials (JW) (_____) Date 8/6/08 SELLER'S Initials (_____) (_____) Date _____

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172 The subject property is is not defined as "Target Housing" regarding lead-based paint or lead-based paint hazards. If yes, BUYER hereby
173 acknowledges the following: (a) BUYER has been provided an EPA approved lead-based paint hazard information pamphlet, "Protect Your Family From
174 Lead in Your Home," (b) receipt of the Seller's Disclosure of Information and Acknowledgment Form and have been provided with all records, test reports or
175 other information, if any, related to the presence of lead-based paint hazards on said property, (c) that this contract is contingent upon BUYER'S right to have
176 the property tested for lead-based paint hazards to be completed no later than 1/15/08 or the contingency will terminate, (d) that BUYER
177 hereby waives does not waive this right, (e) that if test results show unacceptable amounts of lead-based paint on the property, BUYER has the right to
178 cancel the contract subject to the option of the SELLER (to be given in writing) to elect to remove the lead-based paint and correct the problem which must
179 be accomplished before closing, (f) that if the contract is cancelled under this clause, BUYER's earnest money deposit will be returned to BUYER.
180

181 **16. SQUARE FOOTAGE VERIFICATION:** BUYER IS AWARE THAT ANY REFERENCE TO THE SQUARE FOOTAGE OF THE REAL PROPERTY
182 OR IMPROVEMENTS IS APPROXIMATE. IF SQUARE FOOTAGE IS MATERIAL TO THE BUYER, IT MUST BE VERIFIED DURING THE INSPECTION
183 PERIOD.
184

185 **17. COVENANTS, CONDITIONS AND RESTRICTIONS (CC&Rs):** As part of the BUYER'S inspection of the PROPERTY as set forth above in
186 Section 9, BUYER is responsible for obtaining and reviewing a copy of any CC&R's which may affect the PROPERTY. BUYER shall have days (but in
187 no event shall such time period exceed that time period set forth for inspections in Section 9) to review and approve of any such CC&Rs that may affect the
188 PROPERTY. Unless BUYER delivers to SELLER a written and signed objection to the terms of any applicable CC&Rs with particularity describing BUYER'S
189 reasonable objections within such time period as set forth above, BUYER shall be deemed to have conclusively waived any objection to the terms of any
190 CC&Rs affecting the PROPERTY.
191

192 **18. RISK OF LOSS:** Prior to the closing of this sale, all risk of loss shall remain with SELLER. In addition, should the PROPERTY be materially
193 damaged by fire or other destructive cause prior to closing, this agreement shall be voidable at the option of the BUYER.
194

195 **19. CONDITION OF PROPERTY AT CLOSING:** Upon expiration of the inspection/Due Diligence period and thereafter, BUYER agrees to purchase
196 the PROPERTY in as-is-condition, where is, with all faults and with no further repairs required unless otherwise agreed upon by the parties in writing.
197 BUYER will assume all obligations with respect to the PROPERTY. SELLER shall maintain the PROPERTY until the closing in its present condition, ordinary
198 wear and tear excepted.
199

200 **20. CLOSING AGENCY:** The Closing Agency for this transaction shall be Princeton Title
201 located at 167 Nampa
202

203 **21. CLOSING DATE:** On or before the closing date, BUYER and SELLER shall deposit with the Closing Agency all funds and instruments necessary to
204 complete the sale. The closing date shall be no later than 1/15/08. "Closing Date" means the date on which all
205 documents are either recorded or accepted by an escrow/collection agency and the sale proceeds are available to SELLER.
206

207 **22. POSSESSION/PRORATION:** BUYER shall be entitled to possession UPON CLOSING or DATE
208 TIME AM PM. Taxes and water assessments (using the last available assessment as a basis), rents, insurance premiums, interest
209 and reserve on liens, encumbrances or obligations assumed and utilities shall be prorated as of the day of closing or
210 Any tenant deposits held by SELLER shall be credited to BUYER at closing.
211

212 **23. "NOT APPLICABLE" DEFINED:** The letters "n/a," "NA," "n.a.," and "N.A." as used herein are abbreviations of the term "not applicable." Where
213 this agreement uses the term "not applicable" or an abbreviation thereof, it shall be evidence that the parties have contemplated certain facts or conditions
214 and have determined that such facts or conditions do not apply to the agreement or transaction herein.
215

216 **24. FACSIMILE TRANSMISSION:** Facsimile or electronic transmission of any signed original document, and retransmission of any signed facsimile or
217 electronic transmission shall be the same as delivery of an original. At the request of either the BUYER or SELLER, or the LENDER, or the Closing Agency,
218 the BUYER and SELLER will confirm facsimile or electronic transmitted signatures by signing an original document.
219

220 **25. BUSINESS DAYS & HOURS:** A business day is herein defined as Monday through Friday, 8:00 A.M. to 5:00 P.M. in the local time zone where the
221 subject real property is physically located. A business day shall not include any Saturday or Sunday, nor shall a business day include any legal holiday
222 recognized by the state of Idaho as found in Idaho Code §73-108. The time in which any act required under this agreement is to be performed shall be
223 computed by excluding the date of execution and including the last day. The first day shall be the day after the date of execution. If the last day is a legal
224 holiday, then the time for performance shall be the next subsequent business day.
225

226 **26. DEFAULT: if BUYER defaults** in the performance of this Agreement, SELLER has the option of: (1) accepting the Earnest Money as liquidated
227 damages or (2) pursuing any other lawful right or remedy to which SELLER may be entitled. If SELLER elects to proceed under (1), SELLER shall make
228 demand upon the holder of the Earnest Money, upon which demand said holder shall pay from the Earnest Money the costs incurred by SELLER's Broker
229 on behalf of SELLER and BUYER related to the transaction, including, without limitation, the costs of title insurance, escrow fees, credit report fees,
230 inspection fees and attorney's fees; and said holder shall pay any balance of the Earnest Money, one-half to SELLER and one-half to SELLER's Broker,
231 provided that the amount to be paid to SELLER's Broker shall not exceed the Broker's agreed to commission. SELLER and BUYER specifically
232 acknowledge and agree that if SELLER elects to accept the Earnest Money as liquidated damages, such shall be SELLER's sole and exclusive remedy, and
233 such shall not be considered a penalty or forfeiture. If SELLER elects to proceed under (2), the holder of the Earnest Money shall be entitled to pay the costs
234 incurred by SELLER's Broker on behalf of SELLER and BUYER related to the transaction, including, without limitation, the costs of Brokerage fee, title
235 insurance, escrow fees, credit report fees, inspection fees and attorney's fees, with any balance of the Earnest Money to be held pending resolution of the
236 matter. **if SELLER defaults**, having approved said sale and falls to consummate the same as herein agreed, BUYER'S Earnest Money deposit shall be
237 returned to him/her and SELLER shall pay for the costs of title insurance, escrow fees, credit report fees, inspection fees, Brokerage fees and attorney's
238 fees, if any. This shall not be considered as a waiver by BUYER of any other lawful right or remedy to which BUYER may be entitled.

BUYER'S Initials (lu) () Date 1/15/08 SELLER'S Initials () () Date

PROPERTY ADDRESS: App 14 Davis st 397 ID#: LT 300

239 27. ATTORNEY'S FEES: If either party initiates or defends any arbitration or legal action or proceedings which are in any way connected with this
240 Agreement, the prevailing party shall be entitled to recover from the non-prevailing party reasonable costs and attorney's fees, including such costs and fees
241 on appeal.

244 28. EARNEST MONEY DISPUTE / INTERPLEADER: Notwithstanding any termination of this contract, BUYER and SELLER agree that in the event
245 of any controversy regarding the Earnest Money and things of value held by Broker or closing agency, unless mutual written instructions are received by the
246 holder of the Earnest Money and things of value, Broker or closing agency shall not be required to take any action but may await any proceeding, or at
247 Broker's or closing agency's option and sole discretion, may interplead all parties and deposit any moneys or things of value into a court of competent
248 jurisdiction and shall recover court costs and reasonable attorney's fees.

251 29. THE RESPONSIBLE BROKER SHALL BE Scott Bulluck / Bulluck & Co. Realtors

254 30. SEVERABILITY: In the case that any one or more of the provisions contained in this Agreement, or any application thereof, shall be invalid, illegal or
255 unenforceable in any respect, the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

258 31. COUNTERPARTS: This Agreement may be executed in counterparts. Executing an agreement in counterparts shall mean the signature of two
259 identical copies of the same agreement. Each identical copy of an agreement signed in counterparts is deemed to be an original, and all identical copies
260 shall together constitute one and the same instrument.

263 32. SALES PRICE INFORMATION: Pursuant to Idaho Code §54-2083(6)(d), a "sold" price of real property is not confidential client information.

266 33. REPRESENTATION CONFIRMATION: Check one (1) box in Section 1 and one (1) box in Section 2 below to confirm that in this transaction, the
267 brokerage(s) involved had the following relationship(s) with the BUYER(S) and SELLER(S).

- Section 1:
- A. The brokerage working with the BUYER(S) is acting as an AGENT for the BUYER(S).
 - B. The brokerage working with the BUYER(S) is acting as a LIMITED DUAL AGENT for the BUYER(S), without an ASSIGNED AGENT.
 - C. The brokerage working with the BUYER(S) is acting as a LIMITED DUAL AGENT for the BUYER(S) and has an ASSIGNED AGENT acting solely on behalf of the BUYER(S).
 - D. The brokerage working with the BUYER(S) is acting as a NONAGENT for the BUYER(S).
- Section 2:
- A. The brokerage working with the SELLER(S) is acting as an AGENT for the SELLER(S).
 - B. The brokerage working with the SELLER(S) is acting as a LIMITED DUAL AGENT for the SELLER(S), without an ASSIGNED AGENT.
 - C. The brokerage working with the SELLER(S) is acting as a LIMITED DUAL AGENT for the SELLER(S) and has an ASSIGNED AGENT acting solely on behalf of the SELLER(S).
 - D. The brokerage working with the SELLER(S) is acting as a NONAGENT for the SELLER(S).

283 Each party signing this document confirms that he has received, read and understood the Agency Disclosure Brochure adopted or approved by the Idaho
284 real estate commission and has consented to the relationship confirmed above. In addition, each party confirms that the brokerage's agency office policy
285 was made available for inspection and review. EACH PARTY UNDERSTANDS THAT HE IS A "CUSTOMER" AND IS NOT REPRESENTED BY A
286 BROKERAGE UNLESS THERE IS A SIGNED WRITTEN AGREEMENT FOR AGENCY REPRESENTATION.

289 34. AUTHORITY OF SIGNATORY: If BUYER or SELLER is a corporation, partnership, trust, estate, or other entity, the person executing this
290 agreement on its behalf warrants his or her authority to do so and to bind BUYER or SELLER.

293 35. ENTIRE AGREEMENT: This Agreement, including any Addendums or exhibits, constitutes the entire Agreement between the parties and no
294 warranties, including any warranty of habitability or representations have been made or shall be binding upon either party unless herein set forth.

297 36. TIME IS OF THE ESSENCE IN THIS AGREEMENT.

300 37. ACCEPTANCE: This offer is made subject to the acceptance of SELLER and BUYER on or before (Date) Aug 6 ~~Aug 6~~ 2008 at (Local
301 Time in which PROPERTY is located) 5:00 A.M. P.M. If acceptance of this Agreement is not received within the time specified, the offer is
302 withdrawn and the entire Earnest Money, if any, shall be refunded to BUYER on demand.

BUYER'S Initials (JL) () Date 8/6/08 SELLER'S Initials () () Date _____

PROPERTY ADDRESS: Agua 14 Acres N. 39th ID#: LT-300

303 36. BUYER'S SIGNATURES:

304 SEE ATTACHED BUYER'S ADDENDUM(S); _____ (Specify number of BUYER addendum(s) attached.)

306 BUYER Signature [Signature]

BUYER (Print Name) Jon Wabelaw

308 Date 8/6/08 Time 2:20 A.M. P.M.

Phone # 880 1516 Cell # 462 6175

310 Address _____

City Nampa State Id Zip _____

312 E-Mail _____

Fax # _____

317 BUYER Signature _____

BUYER (Print Name) _____

319 Date _____ Time _____ A.M. P.M.

Phone # _____ Cell # _____

321 Address _____

City _____ State _____ Zip _____

323 E-Mail _____

Fax # _____

328 37. SELLER'S SIGNATURES:

329 On this date, I/We hereby approve and accept the transaction set forth in the above Agreement and agree to carry out all the terms thereof on the part of the SELLER.

333 SIGNATURE(S) SUBJECT TO ATTACHED COUNTER OFFER

334 SIGNATURE(S) SUBJECT TO ATTACHED ADDENDUM(S) # _____

338 SELLER Signature _____

SELLER (Print Name) _____

340 Date _____ Time _____ A.M. P.M.

Phone # _____ Cell # _____

342 Address _____

City _____ State _____ Zip _____

344 E-Mail _____

Fax # _____

348 SELLER Signature _____

SELLER (Print Name) _____

350 Date _____ Time _____ A.M. P.M.

Phone # _____ Cell # _____

352 Address _____

City _____ State _____ Zip _____

354 E-Mail _____

Fax # _____

356 CONTRACTOR REGISTRATION # (if applicable) _____

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JAY GUSTAVSEN (ISB No. 5293)
 ALEX P. MCLAUGHLIN (ISB No. 7977)
 DAVISON, COPPLE, COPPLE & COPPLE
 Washington Mutual Capitol Plaza
 199 North Capitol Boulevard
 Suite 600
 Post Office Box 1583
 Boise, Idaho 83701
 Telephone: (208) 342-3658
 Facsimile: (208) 386-9428

F I L E D
 11:40 A.M. P.M.
JUN 16 2009

Attorneys for Defendant
 Thomas A. Hagood

**CANYON COUNTY CLERK
 D. BUTLER, DEPUTY**

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

JON WAKELUM, an individual; and MIKE
 RESSLER, an individual doing business as
 "M&M RE Holdings",
 Plaintiffs,
 vs.
 THOMAS A. HAGOOD, an unmarried man,
 Defendant.

Case No. CV 08-8465

**DEFENDANT'S MOTION
 FOR SUMMARY JUDGMENT**

COMES NOW, Defendant Thomas A. Hagood, by and through his attorneys of record, Jay Gustavsen and Alex P. McLaughlin, of the firm Davison, Copple, Copple & Copple of Boise, Idaho, and hereby moves the Court pursuant to Rule 56 of the Idaho Rules of Civil Procedure for summary judgment on the grounds that that there are no disputed facts in this case and as a matter of law that Plaintiffs' claim against the Defendant Thomas A. Hagood for alleged violations of the Idaho Consumer Protection Act (*hereinafter* referred to as "ICPA) is barred as a

ORIGINAL

000251

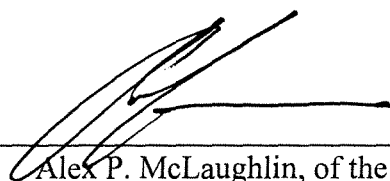
matter of law in light of the Court's prior ruling barring Plaintiffs' claims for Declaratory Judgment, Specific Performance, and Breach of Contract.

This Motion is made and based on the records and files herein. Oral argument is requested on this Motion.

DATED this 15th of June, 2009

DAVISON, COPPLE, COPPLE & COPPLE, LLP

By: _____



Alex P. McLaughlin, of the firm
Attorneys for Defendant

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 15th day of June, 2009, I served a true and accurate copy of the foregoing instrument by placing the same in the United States Mail, postage prepaid, first class mail, to the following:

Tom Dvorack
Givens Pursley, LLP
601 W. Bannock St.
P.O. Box 2720
Boise, Idaho 83701

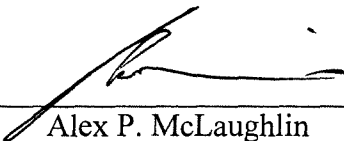
U.S. MAIL
 Hand Delivery
 Facsimile Transmission

Phillip J. Collaer
Anderson, Julian & Hull, LLP
PO Box 7426.
Boise, Idaho 83707

U.S. MAIL
 Hand Delivery
 Facsimile Transmission

Terry Michaelson
Hamilton, Michaelson & Hilty, LLP
1303 12th Avenue Road
PO Box 65
Nampa, ID 83653-0065

U.S. MAIL
 Hand Delivery
 Facsimile Transmission



Alex P. McLaughlin

JAY GUSTAVSEN (ISB No. 5293)
 ALEX P. MCLAUGHLIN (ISB No. 7977)
 DAVISON, COPPLE, COPPLE & COPPLE
 Washington Mutual Capitol Plaza
 199 North Capitol Boulevard
 Suite 600
 Post Office Box 1583
 Boise, Idaho 83701
 Telephone: (208) 342-3658
 Facsimile: (208) 386-9428

F I L E D
 11:40 A.M. P.M.

JUN 16 2009

Attorneys for Defendant
 Thomas A. Hagood

**CANYON COUNTY CLERK
 D. BUTLER, DEPUTY**

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

JON WAKELUM, an individual; and MIKE)
 RESSLER, an individual doing business as)
 "M&M RE Holdings",)
)
 Plaintiffs,)
 vs.)
)
 THOMAS A. HAGOOD, an unmarried man,)
)
 Defendant.)
 _____)

Case No. CV 08-8465

**DEFENDANT'S
 MEMORANDUM IN SUPPORT
 OF MOTION FOR SUMMARY
 JUDGMENT**

COMES NOW the Defendant Thomas A. Hagood, by and through his attorneys of record, Jay Gustavsen and Alex P. McLaughlin, of the firm Davison, Copple, Copple & Copple of Boise, Idaho and hereby submits this Memorandum in Support of Defendant's Motion for Summary Judgment.

I. INTRODUCTION

This memorandum addresses the sole question of whether Plaintiffs are barred from recovering damages against the Defendant Hagood under the Idaho Consumer Protection Act (*hereinafter* referred to as “ICPA”) since the Court has already ruled that the alleged promise and/or contract on which Plaintiffs’ entire suit was based is barred as a matter of law under the Statute of Frauds. In other words, this brief addresses the issue of whether the Plaintiffs may recover in tort for that which they cannot recover in contract.

II. STATEMENT OF FACTS AND PROCEDURAL HISTORY

Plaintiffs’ initial Complaint against the Defendant Hagood alleged claims for: Declaratory Judgment, Specific Performance, and Breach of Contract. Plaintiffs and Defendant then filed cross-motions with the latter moving the Court for Judgment that Plaintiffs’ claims were barred by the Statute of Frauds. Plaintiffs then moved the Court to Amend its Complaint so as to add a claim against all of the Defendants under the ICPA for violations thereof.

Significantly, Plaintiffs’ Motion to Amend was plead in the alternative and submitted only after Defendant’s Motion for Summary Judgment was filed. Thus, the additional cause of action alleged therein was strictly contingent on whether the Court would find that Plaintiffs’ prior claims against the Defendant were barred as a matter of law. Had the Court denied Defendant’s Motion, Plaintiffs’ Motion to Amend would have been moot. Were the Court to grant Defendant’s Motion, Plaintiffs’ Motion to Amend would have been averred.

In light of the foregoing, it was abundantly clear from the outset that Plaintiffs’ Motion to Amend was an attempt to retain some medium by which to protect their recovery under Counts 1-3 should the Court apply and enforce the Statute of Frauds. *See also Plaintiffs’ Memorandum in Support of Motion to Amend*, P.2 (“Purely out of an abundance of caution ... the Plaintiffs

desire to protect their right a [sic] recovery and therefore seek to amend their claim to add a claim under the Idaho Consumer Protection Act”) (emphasis added); *See also Plaintiffs’ Amended Complaint* (“Count 4 is plead in the alternative to Counts 1 through 3 and only in the event that the Court finds on the basis of the Statute of Frauds or similar basis that no enforceable contract for the sale of real property exists justifying specific performance or damages against Defendant Thomas A. Hagood under Counts 1 through 3”) (emphasis added).

On May 21, 2009, this Court granted Defendant’s Motion for Partial Summary Judgment, thus barring all of the Plaintiffs’ prior claims. The Court did, however, grant Plaintiffs’ Motion to Amend. Thereafter, Plaintiffs amended their Complaint and asserted a claim under the ICPA against all of the Defendants involved in the instant matter.

III. ARGUMENT

Because the Court has already ruled that Plaintiffs’ claims for Declaratory Judgment, Specific Performance, and Breach of Contract are barred under the Statute of Frauds, Plaintiffs’ claim for violations of the ICPA against the Defendant Hagood is also barred as a matter of law as the latter claim is an indirect attempt to recover for breach of an alleged promise that this Court has already ruled is unenforceable.

IV. ANALYSIS

The ICPA is codified under Title Forty-Eight (48), Chapter Six (6) of the Idaho Code. In essence, it forbids “unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce.” *See* I.C. 48-603. Thus, if a person purchases goods or services and thereby suffers any ascertainable loss of money or property as a result of the use or employment of an unfair method of competition and unfair or deceptive acts or practices, that individual may bring an action to recover actual damages. *See* I.C. 48-608.

Notwithstanding the foregoing, under I.C. 9-505 an oral contract for the purchase and sale of real property is unenforceable unless that contract is evidenced by a signed memorandum. This provision is commonly known as the Statute of Frauds.

In the instant matter, the provisions referenced above have converged thereby creating an issue as to the appropriateness of recovery under the ICPA where the agreement that constitutes the crux of the claim is barred from enforcement under the Statute of Frauds.

While Idaho Courts have yet to broach the foregoing issue, authority from other jurisdictions have squarely addressed the matter and have ruled that where a claim under a State Consumer Protection Act is merely a guise in order to maneuver around an otherwise barred contract claim, the claim under the State Consumer Protection Act is likewise barred as a matter of law.

Keriotis v. Lombardo Rental Trust, 607S.W.2d 44 (Ct. Civ. App. Texas 1980), *Canell v. Arcola Housing Corp. et al.*, 65 So.2d 849 (S.Ct. Florida 1953), and *Zager v. Brown*, 242 Ga.App. 427 (Ct. App. 2000) are directly on point.

In *Keriotis*, Plaintiff brought an action under the Deceptive Trade Practices-Consumer Protection Act (*hereinafter* referred to as "DTPA") for damages arising out of an alleged oral misrepresentation that the Defendant would sell a parcel of real estate to the Plaintiff for \$75,000.00. *Id.* at 45. Plaintiff had previously contacted the Defendant regarding the purchase of the building in which the Defendant was a tenant. *Id.* Defendant then wrote back to the Plaintiff and stated that the purchase price of \$75,000.00 would be acceptable. *Id.* Days later, Defendant sold the same piece of property to a third party for \$105,000.00. *Id.*

Plaintiff brought suit against the Defendant under the DTPA. *Id.* The Defendant responded by stating that regardless of the terms in which Plaintiff's claim was couched (tort v.

contract), the action amounted to a suit for damages for failure to perform an oral contract for the sale of land and was thus unenforceable under the Statute of Frauds. The trial court sided with the Defendant's position and barred Plaintiff's claim under the contract and under the DTPA.

On appeal, the Court affirmed the decision of the trial court, offering the following rationale in support thereof:

“Even if it be conceded that an action in tort for (misrepresentation) is unaffected by the provisions of the statute of frauds, the judicial disregard of the statute should be limited to situations in which the essence of the action truly sounds in tort.... Since plaintiff is here seeking to recover what he would have gained had the promise been performed, it is apparent that his action, while cast in language sounding in tort is an indirect attempt to recover for the breach of the unenforceable promise and is, therefore, barred by the statute of frauds.”

Id (emphasis added); *See also Papanikolas v. Sampson*, 73 Utah, 274 P. 856 (1929) (Refusal to perform an oral promise is not of itself a fraud for which an action will lie since in such a case the promisor has not in a legal sense, made a contract, and hence has the right, both in law and equity to refuse to perform).

The Court also quoted with approval the following excerpt from a related case:

“We fail to see how there could be any recovery for fraud involving the breach of an unenforceable contract. To hold otherwise would be to create an anomaly, and allow one to do indirectly what he could not by law do directly.” *Keriotis, supra*, at 46 (citations omitted).

In *Canell, supra*, the Court reached the same conclusion as the Court in *Keriotis*. In *Canell*, Defendant sold to each Plaintiff a lot located in a subdivision in Dade County, Florida. *Id.* at 850. Before the purchase was made, Defendant represented that “there would be installed, provided, and constructed in the said subdivision, certain bathing beach facilities.” *Id.* Plaintiffs claimed that the Defendant made these representations without any intent of performance and with the intent of fraudulently inducing the Plaintiffs to purchase the lots. *Id.*

The initial complaint in *Canell* did not contain any allegation of fraud and was thus premised solely on breach of contract. Plaintiffs then moved to amend their complaint to add a claim for fraud in the inducement with the factual basis thereof as delineated above. *Id.* The trial court denied Plaintiffs' motion.

On appeal, the Court affirmed the lower court's ruling on the basis that the complaint misjoined separate and independent causes of action. *Id.* The Court bolstered its decision to dismiss the claim for fraud by referencing the fact that the contract claim on which the alleged fraud was based was barred by the Statute of Frauds. *Id.* ("Aside from this, the complaint contained a greater infirmity which required its dismissal. The complaint shows on its face that the plaintiffs' claims, whatever they may be, are predicated upon an alleged breach of an oral promise ...").

Thereafter, the Court elaborated on its reasoning, stating:

"While it is contended by plaintiffs that they are suing for damages for fraud and deceit, such an action under the circumstances of this case is simply an attempt in an indirect manner to obtain damages for breach of contract. Since the provision in the statute prohibiting any action to be brought on an oral contract within the statute includes actions based indirectly on the contract, an action for damages cannot be maintained on the ground of fraud in refusing to perform the contract, even though the defendant at the time of the making of the oral contract may have had no intention of performing it." *Id.* at 851 (citations omitted).

In support of its ruling, the Court also cited *Dung v. Parker*, 52 N.Y. 494, wherein the Court stated:

"A contract void by the statute of frauds is void for all purposes. It confers no right, and creates no obligation, as between the parties to it, and no claim can be founded upon it as against third persons. It cannot be enforced directly or indirectly ... He cannot say he was defrauded, and make that the substantive ground for his recovery, because he had no right to rely upon a contract, which when made, the law declared to be void. If he incurred expenses on the faith of the promise, or relying upon the express assurance of the defendant that the corporation would sanction the contract, it is his misfortune; but it furnishes no ground of action."

In *Zager, supra*, Plaintiff alleged that the Defendant breached a written employment contract. *Id.* at 427. Plaintiff also alleged fraud against the Defendant. The trial court dismissed the first count on the basis that the alleged employment contract did not satisfy the statute of frauds and that no exceptions thereto, to wit, part performance, applied. *Id.* at 430.

On appeal, the Court affirmed the decision of the lower court and thus dismissed the breach of contract claim; the Court thereafter also dismissed the claim for fraud. Particularly pertinent for present purposes was the Court's rationale for dismissal of the claim for fraud:

“Additionally, fraud cannot be predicated on a promise which is unenforceable at the time it is made. And this is controlling in the instant case because the promises upon which the plaintiff relies for establishing fraud are unenforceable even absent any fraud at the time of their utterance.”

Id.; See also *Ikeyima v. Shibamoto America*, 213 Ga.App. 271, 272 (1994).

In the present case, the Defendant's claim under the ICPA is barred against the Defendant Hagood because the Court has already ruled that the alleged oral contract between Plaintiffs and the Defendant Hagood is unenforceable under the Statute of Frauds. The following reasons substantiate this contention.

First, the claim by the Plaintiffs under the ICPA is a substitute cause of action - a guise to procure the contract damages to which Plaintiffs are not entitled since the Court ruled that the contract from which said damages arose is unenforceable under the Statute of Frauds. Plaintiffs themselves admit as much in their Memorandum in Support of their Motion to Amend Complaint and their Amended Complaint.

In Plaintiffs' Memorandum, they explicitly state: “Purely out of an abundance of caution ... the Plaintiffs desire to protect their right a [sic] recovery and therefore seek to amend their claim to add a claim under the Idaho Consumer Protection Act.” By asserting that they are

merely protecting their right of recovery and not alleging a new cause of action to procure compensation for new and/or different damages, Plaintiffs admit that they are merely protecting their previous right to damages under Counts 1-3. As their Motion merely seeks to preserve their claim for the foregoing damages, Plaintiffs are thus not truly seeking damages different from or in addition to those previously alleged and for which the Court has effectively ruled they are precluded from recovering. Plaintiffs are simply attempting to circumvent the Statute of Frauds.

In their Amended Complaint, Plaintiffs do not simply add a cause of action under the ICPA; rather, Plaintiffs plead the additional cause of action "in the alternative." On page seven (7) of their Amended Complaint, it states: "Count 4 is plead in the alternative to Counts 1 through 3 and only in the event that the Court finds on the basis of the Statute of Frauds or similar basis that no enforceable contract for the sale of real property exists justifying specific performance or damages against Defendant Thomas A. Hagood under Counts 1 through 3."

In light of the law cited above, the issue at bar, and the form in which Plaintiffs' Amended Complaint is presented, it peaks one's interest as to why Plaintiffs would plead Count 4 only in the alternative and only after the Defendant submitted his Motion for Summary Judgment based on the Statute of Frauds. It certainly cannot be because Plaintiffs have sustained damages in addition to those suffered from the alleged breach of contract. Otherwise, Plaintiffs would be acting against their own interest, asserting damages for breach of contract under Counts 1-3 while failing to do so for violation of the ICPA. If there were different damages, i.e., contract damages vs. tort damages, pleading in the alternative would be irrational as Plaintiffs would not be pleading an amount of recovery in order to be made whole. Thus, the only true way that pleading in the alternative would make sense would be if the damages sought in Count 4 were actually the very same contract damages alleged in Count 3. In light of this fact and

because the Court did in fact bar Counts 1 through 3, Count 4 now stands alone as “an indirect attempt to recover for the breach of [an] unenforceable promise.” *Keriotis, supra*, at 45. This is again an attempt to circumvent the Statute of Frauds and is the precise conduct that the Courts in the above-referenced cases unequivocally reject.

Second, if the Court were to allow Count 4 to stand, the Statute of Frauds would be rendered a dead letter. Where a contract falls under the Statute of Frauds and is thereby rendered unenforceable, damages stemming from the breached contract are not recoverable. The reasoning is clear – one cannot recover damages for the breach of an unenforceable contract. However, let us assume that in the same transaction there was a misrepresentation which rose to the level of constituting a violation of the ICPA. Now if there are damages stemming from the ICPA violation that are independent of the unenforceable contract, those damages would be recoverable because they are independent of the unenforceable agreement. However, to the extent that there really are no damages stemming from the misrepresentation, but just those stemming from the breach, the Court should bar not only the claim for breach of contract, but also the claim for violation of the ICPA. To rule otherwise would allow a litigant to recover damages under the ICPA which would be unrecoverable under the Statute of Frauds. In essence, it would provide a litigant a path to recover the exact damages for which the Statute of Frauds forbids recovery. Certainly, a litigant is entitled to tort damages if indeed their cause of action truly sounds in tort. However, where the tort is simply a way to recover contract damages on an unenforceable contract, it is subterfuge and should not receive sanction by the Court. In light of the contents of the Memorandum in Support of Plaintiffs’ Motion to Amend their Complaint and Plaintiffs’ Amended Complaint, Plaintiffs are engaging in the foregoing subterfuge and should be barred as a matter of law from doing so against the Defendant Hagood.

Third, the facts in *Keriotis*, *Canell*, and *Zager* are extraordinarily similar to those in the instant matter. In each case: 1.) There was an oral contract for the purchase of real property; 2.) There was also an allegation of some sort of fraud or deceit; 3.) The oral contract was rendered unenforceable under the Statute of Frauds; and 4.) The Courts barred actions for fraud (or refused to allow amendment of complaint therefor) on the basis that to rule otherwise would be to allow the litigant to do indirectly what he or she could not by law do directly. Although the authorities cited are not Idaho cases, their reasoning is sound and persuasive.

In light of the above, Plaintiffs' claim for violation of the ICPA against the Defendant Hagood is barred as a matter of law as it constitutes an indirect attempt to recover for the breach of an alleged promise that this Court has ruled is unenforceable.

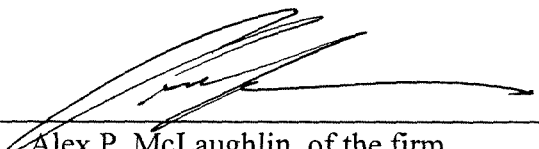
V. CONCLUSION

Defendant respectfully requests that this Court grant his Motion for Summary Judgment, filed concurrently herewith, and dismiss Plaintiffs' claim against the Defendant Hagood for violation of the Idaho Consumer Protection Act.

DATED this 5th of June, 2009

DAVISON, COPPLE, COPPLE & COPPLE, LLP

By: _____


Alex P. McLaughlin, of the firm
Attorneys for Defendant

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 24th day of June, 2009, I served a true and accurate copy of the foregoing instrument by placing the same in the United States Mail, postage prepaid, first class mail, to the following:

Tom Dvorack
Givens Pursley, LLP
601 W. Bannock St.
P.O. Box 2720
Boise, Idaho 83701

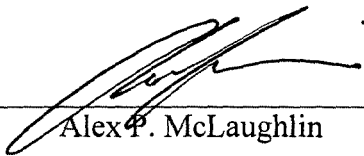
U.S. MAIL
 Hand Delivery
 Facsimile Transmission

Phillip J. Collaer
Anderson, Julian & Hull, LLP
PO Box 7426.
Boise, Idaho 83707

U.S. MAIL
 Hand Delivery
 Facsimile Transmission

Terry Michaelson
Hamilton, Michaelson & Hilty, LLP
1303 12th Avenue Road
PO Box 65
Nampa, ID 83653-0065

U.S. MAIL
 Hand Delivery
 Facsimile Transmission



Alex P. McLaughlin

Thomas E. Dvorak (ID State Bar ID# 5043)
Angela M. Reed (ID State Bar ID# 7221)
GIVENS PURSLEY LLP
601 West Bannock Street
Post Office Box 2720
Boise, Idaho 83701-2720
Telephone: 208-388-1200
Facsimile: 208-388-1300
S:\CLIENTS\10292\1\Motion to Amend Complaint.DOC

FILED
A.M. 4:32 P.M.

JUL 09 2009

CANYON COUNTY CLERK
J DRAKE, DEPUTY

Attorneys for John Wakelum and Mike Ressler

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT FOR THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

JON WAKELUM, an individual; and MIKE
RESSLER, an individual doing business as
"M&M RE Holdings",

Plaintiffs

v.

THOMAS A. HAGOOD, an unmarried man,

Defendant.

THOMAS A. HAGOOD, an unmarried man,

Third Party Plaintiff,

v.

BULLOCK AND COMPANY REALTORS
L.L.C., an Idaho limited liability company,
SCOTT BULLOCK, an individual, BILL
DOWNS AUCTION SERVICE INC., an Idaho
corporation, and Scott Bullock, an individual
and LARRY DOWNS, an individual,

Third Party Defendants.

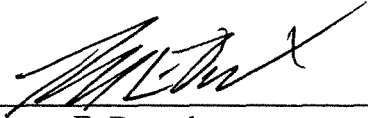
Case No. CV 08-8465

**SECOND MOTION TO AMEND
COMPLAINT**

COMES NOW, Plaintiffs, Jon Wakelum and Mike Ressler, by and through their attorneys of record, Givens Pursley LLP, hereby moves this Court for an order allowing amendment of this complaint to the form attached hereto (changes from Previous Amended Complaint indicated by redlining). This Motion is made and based upon Rules 15(a) of the Idaho Rules of Civil Procedure and the interests of justice and the Memorandum in Support of the Second Motion to Amend, which is filed contemporaneously herewith.

DATED this 9th day of July, 2009.

GIVENS PURSLEY LLP



Thomas E. Dvorak
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of July, 2009, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Jay Gustavsen
Davison, Copple, Copple & Cox
Washington Mutual Capitol Plaza, Suite 600
199 North Capitol Blvd.
P.O. Box 1583
Boise, Idaho 83701


U.S. Mail
 Overnight Mail
 Hand Delivery
 Fax

Phillip J. Collaer
Anderson, Julian & Hull, LLP
P.O. Box 7426
Boise, ID 83707-7426

U.S. Mail
 Overnight Mail
 Hand Delivery
 Fax

Terry Michaelson
Hamilton Michaelson & Hilty, LLP
1303 12th Avenue Road
P.O. Box 65
Nampa, ID 83653-0065

U.S. Mail
 Overnight Mail
 Hand Delivery
 Fax



Thomas E. Dvorak

Thomas E. Dvorak (ID State Bar ID# 5043)
GIVENS PURSLEY LLP
601 West Bannock Street
Post Office Box 2720
Boise, Idaho 83701-2720
Telephone: 208-388-1200
Facsimile: 208-388-1300
125421_2

Attorneys for John Wakelum and Mike Ressler

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT FOR THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

JON WAKELUM, an individual; and MIKE
RESSLER, an individual doing business as
"M&M RE Holdings",

Plaintiffs

v.

THOMAS A. HAGOOD, an unmarried man,
BULLOCK AND COMPANY REALTORS,
L.L.C., an Idaho limited liability company,
SCOTT BULLOCK, an individual, BILL
DOWNS AUCTION SERVICE, INC., an
Idaho corporation, and LARRY DOWNS, an
Individual,

Defendants.

THOMAS A. HAGOOD, an unmarried man,
Third Party Plaintiff,

v.

BULLOCK AND COMPANY REALTORS
L.L.C., an Idaho limited liability company,
SCOTT BULLOCK, an individual, BILL
DOWNS AUCTION SERVICE INC., an
Idaho corporation, and Scott Bullock, an
individual and LARRY DOWNS, an
individual,

Third Party
Defendants.

Case No. CV 08-8465

**SECOND AMENDED COMPLAINT
FOR DECLARATORY JUDGMENT,
SPECIFIC PERFORMANCE AND
BREACH OF CONTRACT AND
BREACH OF CONSUMER
PROTECTION ACT**

COME NOW, Plaintiffs, Jon Wakelum (“Wakelum”) and Mike Ressler (“Ressler”), by and through their attorneys of record, Givens Pursley LLP, who for causes of action against Defendant, allege and complain as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff Ressler is an individual who resides in Canyon County, Idaho, who has done business as “M&M RE Holdings.”
2. Plaintiff Wakelum is an individual who resides in Canyon County, Idaho.
3. Defendant Thomas A. Hagood (“Hagood”) is the owner of certain real property located within Canyon County, Idaho, which is the subject of this dispute, and it is believed that he resides at 3649 Oxbow, Nampa, Canyon County, Idaho, 83687.
4. Jurisdiction and venue are proper pursuant to Idaho Code Sections 5-401, 5-514, 1-701, 1-705 and other Idaho law.

GENERAL ALLEGATIONS

5. Defendant Hagood is the owner of record of three (3) parcels of real property located in Canyon County, Idaho. These are hereinafter referred to as “Parcel 1,” “Parcel 2” and “Parcel 3.”
6. A true and correct copy of the legal description for Parcel 1, Parcel 2 and Parcel 3 is attached hereto as Exhibit “A”; provided, however, any of the property rights included in the Judgment and Decree of Condemnation in favor of the City of Nampa entered on December 7, 2007, in the case of *City of Nampa v. Jeff Hagood, et. al.*, CV-05-4595, and recorded as Instrument No. 2007080423 in the real property records of the Canyon County Recorder on December 12, 2007, is encompassed within and, is hereby specifically excluded from, Parcel 1, Parcel 2 and Parcel 3.

7. Defendant Hagood did retain Bullock and Company Realtors, LLC, an Idaho limited liability company ("Bullock and Company"), to hold an "absolute land auction" of Parcels 1, 2 and 3 on August 6, 2008, at 1:00 p.m.

8. Bullock and Company did advertise said sale and make arrangements to conduct said sale.

9. A true and correct copy of one such advertisement is attached hereto as Exhibit "B."

10. Said advertisements of sale did include words to the effect "ABSOLUTE AUCTION (SELLS TO THE HIGHEST BIDDER – NO RESERVE)."

11. Plaintiffs did attend said auction sale.

12. Plaintiff Wakelum was the highest bidder at said sale on Parcel 3, his bid was accepted by Bullock and Company, and he was awarded said parcel by Bullock and Company, the auctioneer.

13. Plaintiff Ressler was the highest bidder on Parcels 1 and 2, his bid was accepted by Bullock and Company, and he was awarded said parcels by Bullock and Company, the auctioneer.

14. Defendant Hagood did attend said sale and did witness the bidding and the acceptance of the high bids by the auctioneer and the awards of the high bids by Bullock and Company, the auctioneer.

15. At the conclusion of the auction, Bullock and Company did take ~~three~~ standard RE-23 COMMERCIAL/INVESTMENT REAL ESTATE PURCHASE AND SALE AGREEMENTS, and the Auctioneer did fill in the blanks on each form in a manner consistent with the advertised terms of the auction, and

- a. did present for signature to Ressler and did in fact secure Ressler's signatures upon the RE-23 AGREEMENTS with an ID# of LT100 for Parcel 1 and ID# LT200 for Parcel 2, a true and correct cop~~iesy~~ of which ~~are~~is attached as Exhibit "C."; and
- b. did present for signature to Wakelum and did in fact secure Wakelum's signature upon the RE-23 AGREEMENT with an ID# of LT 300 for Parcel 3, a true and correct copy of which is attached as Exhibit "D."

16. After the acceptance of the high bids and the preparation and completion of the RE-23 Purchase and Sale Agreements described above, Defendant Hagood did refuse, and continues to refuse, to go through with and enter the sale contracts contemplated and promised by the terms of the absolute auction and to sign the documents necessary to effectuate said sales on the advertised terms.

17. Plaintiffs have properly tendered the earnest money called for in the terms of sale and RE-23 Agreements.

18. Plaintiffs are ready, willing and able to effectuate the sales of the Parcels to them on the terms, have been willing to do so at all times relevant hereto, and remain willing to do so.

19. If the property in question is sold to another buyer or buyers, Plaintiffs will suffer irreparable harm because of the unique nature of the real property involved.

20. Plaintiffs are without an adequate remedy at law because of the unique nature of the real property involved.

COUNT 1

Declaratory Judgment

21. Plaintiffs reallege and incorporate by reference all previous allegations.

22. Counts I through II are plead only against Defendant Thomas A. Hagood.

23. Plaintiffs are persons whose rights, status or other legal relations are affected by a contract for auction and are entitled to have a question of the construction or validity arising

under the contract and to obtain a declaration of rights, status or other legal relations thereunder by declaration of the Court.

24. As a result of Defendant's actions, Plaintiffs are entitled to declaratory judgment pursuant to Idaho Code Section 10-1201, *et seq.*, against the Defendant, including findings that:

- a. the auction in question was advertised and held without reserve and was absolute;
- b. Defendant Hagood made an offer or offers to sell when the auction sale was advertised;
- c. each plaintiff accepted the offer on their respective parcels described above by making the highest bid on each such parcel;
- d. each such bid was a legitimately submitted bid;
- e. that no later than upon the entry of each such bid with no other higher bids, and otherwise in accordance with the terms of the auction and the acceptance of said bids by the auctioneer, that defendant Hagood became absolutely committed to the sales to Plaintiffs;
- f. Defendant Hagood was not entitled to withdraw the property from the sale simply because he was not pleased with the bids or otherwise;
- g. Defendant Hagood's conduct amounts to a breach of his obligation pursuant to the auction contract or contracts for auction;
- h. Defendant Hagood is obligated to enter into appropriate agreements in the form attached hereto to convey the parcels to each of the respective Plaintiffs and to convey the parcels at the time called for by said agreements;
- i. the purchase price for each of the respective parcels be reduced and offset by any damages awarded by the Court in this action; and
- j. the purchase price for each of the respective parcels be reduced and offset by any reasonable attorneys' fees and costs awarded by the Court to the Plaintiff's in this action;

COUNT 2

Specific Performance

25. Plaintiffs reallege and incorporate by reference all previous allegations.
26. Plaintiffs are entitled to a judgment requiring, ordering and enjoining Defendant Hagood to specifically perform and enter into appropriate contracts to convey to each Plaintiff that property to which he is entitled under the auction contract or contracts.
27. Plaintiffs are entitled to a judgment requiring, ordering and declaring that,
 - a. Defendant Hagood is bound as if he had entered into contracts in the form attached hereto to convey said parcels to the Plaintiffs in accordance with the terms of the advertised auction;
 - b. In accordance with I.R.C.P. 70, if the Defendant will not sign said instruments to convey the parcels at the appropriate time, the Clerk of the Court or the Court itself, at the expense of Defendant, will be empowered and authorized to sign the instruments of conveyance in place of Defendant or to enter a suitable judgment or order suitable for recording in the real property records decreeing the such conveyance has been made.

COUNT 3

Breach of Contract/Monetary Damages

28. Plaintiffs reallege and incorporate by reference all previous allegations.
29. Plaintiffs are entitled to a judgment for monetary damages against the Defendant, in an amount to be proven at trial with respect to each Plaintiff, which said amount will exceed \$10,000.
30. Said damages to include, without limitation, any and all reasonable foreseeable

damages flowing from and resulting from Defendant's breach of the auction contract or contracts.

COUNT 4

Violation of the Consumer Protection Act

31. Plaintiffs reallege and incorporate by reference all previous allegations.

32. Count 4 is plead in the alternative to Counts 1 through 3 and only in the event that the Court finds on the basis of the Statute of Frauds or similar basis that no enforceable contract for the sale of real property exists justifying specific performance or damages against Defendant Thomas A. Hagood under Counts 1 through 3.

33. Count 4 is pled as against all Defendants.

34. The aforementioned auction sale constituted trade and commerce as defined under Idaho Code Section 48-602(2).

35. The sale of real property falls within the definition of "goods" under Idaho Code section 48-602(6) and/or "services" under Idaho Code Section 48-602.

36. To the extent the Statute of Frauds or similar law prohibits or renders void or voidable a sale of real property at "absolute auction", Defendants conduct in advertising, conducting and otherwise representing that an absolute auction of the real property at issue in this case without full disclosure of such prohibition or potential for a void result violated the Idaho Consumer Protection Act, Idaho Code Section 48-601, *et. seq.*, and applicable rules promulgated by the Idaho Attorney General, I.D.A.P.A. Rule 04.02.01.01, *et. seq.*, in that it:

- a. Represented that goods or services had characteristics or qualities that they did not have;
- b. Constituted an act or practice that is misleading, false or deceptive to the

consumer;

- c. Constituted an initial offer to sell goods or services with material contingencies, conditions, or qualifications attendant to the offer without clearly and conspicuously disclosing such contingencies, conditions or qualifications (I.D.A.P.A. Rule 40);
- d. Constituted a direct or implied representation that goods or services could be purchased for a specified price, when that was not the case (Rule 60)

37. Plaintiffs are entitled to recover their actual damages or \$1,000.00 per violation of the Consumer Protection Act in accordance with Idaho Code Section 48-608, whichever is greater, and a reasonable attorney fee pursuant to Idaho Code Section 48-608.

COUNT 5

Declaratory Judgment: Duty of Auctioneers

38. Plaintiffs reallege and incorporate by reference all previous allegations.

39. Count 5 is plead as against as against all Defendants.

40. That Bullock and Company Realtors, L.L.C., Scott Bullock, Bill Downs Auction Service, Inc, and Larry Downs (the "Auctioneer Defendants") worked together jointly to hold the absolute auction that is the subject of this lawsuit and were jointly and severally responsible as auctioneer for that auction.

41. Plaintiffs are entitled to an declaratory judgment and order of this Court in accordance with Idaho Code Section 10-1205, as said judgment and order would have the effect of terminating a controversy or removing an uncertainty.

42. Specifically, Plaintiffs are entitled to a declaratory judgment declaring and decreeing that:

a. Said Auctioneer Defendants were duly authorized and empowered to make and execute a duly sufficient memorandum of sale on behalf of Defendant Hagood for purposes of the statute of frauds;

b. That the three standard RE-23 COMMERCIAL/INVESTMENT REAL ESTATE PURCHASE AND SALE AGREEMENTS prepared in this case would have been sufficient memorandums for purposes of the statute of frauds had the same been executed by any of the Auctioneer Defendants; and

c. That the Auctioneer Defendants, as a matter of equity, still have the power and ability to execute said RE-23 COMMERCIAL/INVESTMENT REAL ESTATE PURCHASE AND SALE AGREEMENTS and that Defendant Hagood is estopped from denying said authority,

43. In accordance with Idaho Code Section 10-1208, Plaintiffs are entitled (a) to any reformation of said RE-23 COMMERCIAL/INVESTMENT REAL ESTATE PURCHASE AND SALE AGREEMENTS so as may be necessary to make them current, and (b) to an order and judgment compelling and requiring the Auctioneer Defendants to execute said reformed RE-23 COMMERCIAL/INVESTMENT REAL ESTATE PURCHASE AND SALE AGREEMENTS and authorizing the Clerk of the Court or the court itself to execute in the Auctioneer Defendants stead in accordance with I.R.C.P. 70.

COUNT 6

Negligence

44. Plaintiffs reallege and incorporate by reference all previous allegations.

45. Count 4 is plead in the event that the Court finds pursuant to Count 5 that the

Auctioneer Defendants no longer have authority to execute Purchase and Sale Agreements on behalf of Plaintiff Hagood.

46. Count 6 is pled as against Defendants Bullock and Company Realtors, L.L.C., Scott Bullock, Bill Downs Auction Service, Inc, and Larry Downs.

47. The Auctioneer Defendants owed a duty to the Plaintiffs timely execute a sufficient memorandum of sale for the absolute auction in order to satisfy the statute of frauds.

48. The Auctioneer Defendants failed to perform this duty.

49. The failure to perform said duty amounted to negligence on the part of the Auctioneer Defendants

50. Plaintiffs have been damaged by the Auctioneer Defendants failure to perform said duties in an amount to be proven at trial.

37.

ATTORNEYS' FEES AND COSTS

Plaintiffs have been required to retain the services of Givens Pursley LLP to prosecute this matter. Plaintiffs have incurred and will continue to incur attorneys' fees and costs in connection with this lawsuit pursuant to contract, and Idaho Code Sections 12-120(3), and 12-121 and 48-608; and I.R.C.P. 54. Plaintiffs are entitled to their reasonable attorneys' fees and costs in the amount of \$3,000.00 in the event of a default judgment, or in such other and further amount as may be awarded by the Court at the appropriate time in the proceedings.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment in their favor and against the Defendant, both jointly and severally, for:

1. On Count 1,

2. On Count 2,

3. On Count 3, a monetary judgment in favor of Plaintiffs and against Defendant Hagood in an amount to be proven at trial with damages with respect to each Plaintiff;

4. On Count 4, in the alternative to the relief sought in Counts 1 through 3, and only in the event the Court determines that no enforceable contract existed under the Statute of Frauds or similar law, then for an award of damages in an amount to be proven at trial against all Defendants, jointly and severally.

5. On Counts 5 and 6, for the relief sought in each said count.

5.6. On all Counts, a judgment and order requiring Defendants to pay to Plaintiffs, pursuant to the Idaho Code sections cited herein, their reasonable attorneys' fees and costs incurred in connection with this lawsuit; and

6.7. For such other and further relief as this Court deems just and appropriate in the premises.

DATED this _____ day of June, 2009.

GIVENS PURSLEY LLP

Thomas E. Dvorak
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of June, 2009, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Jay Gustavsen
Davison, Copple, Copple & Cox
Washington Mutual Capitol Plaza, Suite 600
199 North Capitol Blvd.
P.O. Box 1583
Boise, Idaho 83701

____ U.S. Mail
____ Overnight Mail
____ Hand Delivery
____ Fax

Phillip J. Collaer
Anderson, Julian & Hull, LLP
P.O. Box 7426
Boise, ID 83707-7426

____ U.S. Mail
____ Overnight Mail
____ Hand Delivery
____ Fax

Terry Michaelson
Hamilton Michaelson & Hilty, LLP
1303 12th Avenue Road
P.O. Box 65
Nampa, ID 83653-0065

____ U.S. Mail
____ Overnight Mail
____ Hand Delivery
____ Fax

Thomas E. Dvorak
Attorneys for Plaintiffs

EXHIBIT "A"

Legal Descriptions Parcel 1

COMMENCING at the Northwest corner of the South Half of the Southeast Quarter of Section 13, Township 3 North, Range 2 West, Boise Meridian, Canyon County, Idaho, and running

East a distance of 276.1 feet along the North boundary line of the aforesaid South Half of the Southeast Quarter of Section 13 to the POINT OF BEGINNING; thence
South a distance of 322 feet, more or less, to the center of the Dewey Irrigation Lateral; thence
South 75° 30' East a distance of 355.6 feet to the intersection of the centerline of the State Highway; thence
North 58° 8' East a distance of 74.3 feet along the centerline of the State Highway; thence
North 44° 19' West a distance of 481.4 feet to the intersection of the North boundary line of the South Half of the Southeast Quarter of the aforesaid Section 13; thence
West a distance of 71.8 feet to the POINT OF BEGINNING.

Legal Description for Parcel 2

A part of the South One-Half of the Southeast Quarter of Section 13, Township 3 North, Range 2 West of the Boise Meridian, Canyon County, Idaho, more particularly described as follows:

BEGINNING at the Northwest corner of the South One-Half of the Southeast Quarter of Section 13, Township 3 North, Range 2 West of the Boise Meridian, and running South 312.7 feet along the North and South center line of the aforesaid described Section 13; thence
South 88° 12' East 233.0 feet along the center of the Dewey Irrigation Lateral; thence
South 78° 30' East 44.4 feet; thence
North 322.0 feet, more or less, to the intersection of the North boundary line of the South One-Half of the Southeast Quarter of the above described Section 13; thence
West 276.1 feet to the point of beginning.

Legal Description for Parcel 3

The North 300 feet of the Southeast Quarter of the Southwest Quarter and a portion of the South One-Half of the Northeast Quarter of the Southwest Quarter, Section 13, Township 3 North, Range 2 West of the Boise Meridian, Canyon County, Idaho, all more particularly described as follows:

Commencing at the Southeast corner of the Northeast Quarter of the Southwest Quarter, Section 13, Township 3 North, Range 2 West of the Boise Meridian, Canyon County, Idaho and running

South 0° 33' 54" West 300.00 feet along the Easterly boundary of the said Southeast Quarter of the Southwest Quarter, Section 13 to a point

North 89° 21' 11" West 1,309.37 feet along a line parallel with and 300.00 feet Southerly from the Northerly boundary of the said Southeast Quarter of the Southwest Quarter, Section 13 to a point; thence

North 0° 18' 47" East 300.00 feet along the Westerly boundary of the said Southeast Quarter of the Southwest Quarter, Section 13 more or less to the Northwest corner thereof; thence continuing

North 0° 18' 47" East 221.27 feet along the Westerly boundary of the Northeast Quarter of the Southwest Quarter, Section 13; thence

South 89° 41' 13" East 200.00 feet to a point; thence

South 89° 38' 40" East 83.86 feet to a point; thence

South 89° 21' 36" East 801.58 feet along a line parallel with and 202.00 feet Southerly from the South boundary of East Newby Street as shown on the plat of Nampa Industrial Corporation Fifth Addition Phase No. 1, Nampa, Canyon County, Idaho, according to the plat filed in Book 27 of Plats at Page 47, records of said County, more or less to the Westerly boundary of Block 2 of said Plat; thence

South 0° 33' 54" West 200.99 feet along said Westerly boundary of said Block 2 and its Southerly extension, more or less to a point on the South boundary of the Northeast Quarter of the Southwest Quarter, Section 13; thence

South 89° 21' 11" East 250.00 feet along said Southerly boundary of the Northeast Quarter of the Southwest Quarter, Section 13 to the POINT OF BEGINNING.

EXHIBIT "C"

JULY 2008 EDITION

Page 1 of 8



RE-23 COMMERCIAL/INVESTMENT REAL ESTATE PURCHASE AND SALE AGREEMENT



THIS IS A LEGALLY BINDING CONTRACT, READ THE ENTIRE DOCUMENT, INCLUDING ANY ATTACHMENTS. IF YOU HAVE ANY QUESTIONS, CONSULT YOUR ATTORNEY AND/OR ACCOUNTANT BEFORE SIGNING.

1 ID# LT100 DATE 8-6-08
2 LISTING AGENCY Bulluck Co. Office Phone # 446-1010 Fax # 466-1006
3 Listing Agent LARRY DOWNS E-Mail _____ Phone # 941-1075
4 SELLING AGENCY Treasure Valley Properties Office Phone # 878-1400 Fax # 878-1444
5 Selling Agent Alise Peterson E-Mail alise@treasurevalleyproperties.com Phone # 503-241
6 1. BUYER: M & M RE Holdings and or ASIONS
7 (Hereinafter called "BUYER") agrees to purchase, and the undersigned SELLER agrees to sell the following described real estate hereinafter referred to
8 as "PROPERTY" COMMONLY KNOWN AS Prop 2 Bldgs 66677 Blvd
9 Navya City Beaverton County, ID, Zip _____ legally described as: See ATTACHED
10 OR Legal Description Attached as addendum # 1 (Addendum must accompany original offer.)
11 2. \$ 277,250.00 PURCHASE PRICE: Two Hundred Seventy Seven Thousand Two Hundred Fifty DOLLARS,
12 payable upon the following TERMS AND CONDITIONS (not including closing costs):
13 3. FINANCIAL TERMS: Note: A+C+D must add up to total purchase price.
14 (A) \$ 25,000 EARNEST MONEY: BUYER hereby deposits Twenty Five Thousand and Zero/100
15 DOLLARS as Earnest Money evidenced by: cash personal check cashier's check note (due date):
16 other _____ and a receipt is hereby acknowledged. Earnest Money to be deposited in trust account
17 upon receipt, or upon acceptance by all parties and shall be held by: Listing Broker Selling Broker
18 other _____ for the benefit of the parties hereto.
19 (B) ALL CASH OFFER: NO YES IF CASH OFFER, BUYER'S OBLIGATION TO CLOSE SHALL NOT BE SUBJECT TO ANY FINANCIAL
20 CONTINGENCY. BUYER agrees to provide SELLER within _____ business days from the date of acceptance of this agreement by all parties,
21 evidence of sufficient funds and/or proceeds necessary to close transaction. Acceptable documentation includes, but is not limited to, a copy of a recent
22 bank or financial statement or contract(s) for the sale of BUYER'S current residence or other property to be sold.
23 (C) \$ _____ FINANCING:
24 Additional financial terms are specified under the heading "OTHER TERMS AND/OR CONDITIONS" (Section 5 below).
25 Additional financial terms are contained in a financing addendum of same date, attached hereto, signed by both parties.
26 (D) \$ 0.00 APPROXIMATE FUNDS DUE FROM BUYERS AT CLOSING: (Not including closing costs) Cash at closing to be paid
27 by BUYER at closing in GOOD FUNDS, includes: cash, electronic transfer funds, certified check or cashier's check.
28 4. SECTION 1031 TAX DEFERRED EXCHANGE: By checking either or both of the boxes that follow, it is hereby acknowledged by the parties that
29 the Buyer, Seller intends to use the purchase and sale of the PROPERTY as an integral part of a tax deferred like-kind exchange as allowed under
30 Section 1031 of the Internal Revenue Code (the "Exchange"). For purposes of this paragraph, the party participating in the Exchange shall be identified as
31 the "Exchanger." If either box above is checked, then the parties recognize that a material part of the Exchanger's consideration for entering into the
32 agreement for the purchase and sale of the PROPERTY is the successful completion of the exchange. The parties agree to assist each other in the
33 completion of such exchange by cooperating with each other by signing any and all relevant documents provided that the party not doing the Exchange shall
34 not incur any liabilities, costs, fees, or taxes in excess of those which that party would have incurred had this transaction not been an Exchange.
35 5. OTHER TERMS AND/OR CONDITIONS: This Agreement is made subject to the following special terms, considerations and/or contingencies which
36 must be satisfied prior to closing 1. Seller to submit Buyer by 4:30 day before
37 with a sale to KANEY, address non-refundable on the 4th
38 day prior to be placed in Seller on the 4th day 1 applied to
39 purchase price at closing
40 2. Seller included kitchen, house and out building
41 6. ITEMS INCLUDED & EXCLUDED IN THIS SALE; All existing fixtures and fittings that are attached to the PROPERTY are INCLUDED IN THE
42 PURCHASE PRICE (unless excluded below), and shall be transferred free of liens. These include, but are not limited to, all seller-owned attached floor
43 coverings, attached television antennae, satellite dish, attached plumbing, bathroom and lighting fixtures, window screens, screen doors, storm doors, storm
44 windows, window coverings, garage door opener(s) and transmitter(s), exterior trees, plants or shrubbery, water heating apparatus and fixtures, attached
45 fireplace equipment, awnings, ventilating, cooling and heating systems, all ranges, ovens, built-in dishwashers, fuel tanks and irrigation fixtures and
46 equipment, that are now on or used in connection with the PROPERTY and shall be included in the sale unless otherwise provided herein. BUYER should
47 satisfy himself/herself that the condition of the included items is acceptable.
48 (A) ADDITIONAL ITEMS SPECIFICALLY INCLUDED IN THIS SALE: N/A

BUYER'S Initials (MP) Date 8.6.08 SELLER'S Initials (AL) Date _____
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PROPERTY ADDRESS: App. 2 Pines Community Blvd (DN) LT 100

69 (B) ITEMS SPECIFICALLY EXCLUDED IN THIS SALE: _____
70 _____
71 _____
72 _____
73 _____

74 7. TITLE CONVEYANCE: Title of SELLER is to be conveyed by warranty deed special warranty deed or deed, and is to be
75 marketable and insurable except for rights reserved in federal patents, state or railroad deeds, building or use restrictions, building and zoning regulations
76 and ordinances of any governmental unit, and rights of way and easements established or of record. Liens, encumbrances or defects to be discharged by
77 SELLER may be paid out of purchase money at date of closing. No liens, encumbrances or defects which are to be discharged or assumed by BUYER or to
78 which title is taken subject to, exist unless otherwise specified in this Agreement.

80 8. TITLE INSURANCE: There may be types of title insurance coverages available other than those listed below and parties to this agreement
81 are advised to talk to a title company about any other coverages available that will give the buyer additional coverage.

82 (A). PRELIMINARY TITLE COMMITMENT: Prior to closing the transaction SELLER or BUYER shall furnish to BUYER a preliminary commitment of a
83 title insurance policy showing the condition of the title to said PROPERTY. BUYER shall have _____ business day(s) from receipt of the preliminary
84 commitment or not fewer than twenty-four (24) hours prior to closing, within which to object in writing to the condition of the title as set forth in the preliminary
85 commitment. If BUYER does not so object, BUYER shall be deemed to have accepted the conditions of the title. It is agreed that if the title of said
86 PROPERTY is not marketable, or cannot be made so within _____ business day(s) after notice containing a written statement of defect is delivered to
87 SELLER, BUYER'S Earnest Money deposit will be returned to BUYER and SELLER shall pay for the cost of title insurance cancellation fee, escrow and
88 legal fees, if any.

91 (B). TITLE COMPANY: The parties agree that Title One Title Company
92 located at _____ shall provide the title policy and preliminary report of commitment.

93 (C). STANDARD COVERAGE OWNER'S POLICY: SELLER shall within a reasonable time after closing furnish to BUYER a title insurance policy in the
94 amount of the purchase price of the PROPERTY showing marketable and insurable title subject to the liens, encumbrances and defects elsewhere set out in
95 this Agreement to be discharged or assumed by BUYER unless otherwise provided herein. The risk assumed by the title company in the standard
96 coverage policy is limited to matters of public record. BUYER shall receive a ILL/ALTA Owner's Policy of Title Insurance. A title company, at BUYER's
97 request, can provide information about the availability, desirability, coverage and cost of various title insurance coverages and endorsements, if BUYER
98 desires title coverage other than that required by this paragraph, BUYER shall instruct closing agency in writing and pay any increase in cost unless
99 otherwise provided herein.

102 (D). EXTENDED COVERAGE LENDER'S POLICY (Mortgagee policy): The lender may require that BUYER (Borrower) furnish an Extended Coverage
103 Lender's Policy. This extended coverage lender's policy considers matters of public record and additionally insures against certain matters not shown in the
104 public record. This extended coverage lender's policy is solely for the benefit of the lender and only protects the lender.

105 9. INSPECTION/DUE DILIGENCE:

106 (A). BUYER shall have the right to conduct due diligence inspections, investigations, tests, surveys and other studies at BUYER'S expense unless
107 otherwise indicated below or agreed upon in writing by the parties. BUYER chooses to have inspection(s) not to have inspection(s). If BUYER chooses
108 not to have inspection skip the remainder of this Section 9. BUYER shall, within 14 business day(s) of acceptance, complete these inspections and give
109 to SELLER written notice of disapproved items. BUYER is strongly advised to exercise these rights and to make BUYER'S own selection of professionals
110 with appropriate qualifications to conduct inspections of the entire PROPERTY. The closing of this transaction is conditioned upon BUYER'S satisfaction or
111 waiver of the following contingencies.

INSPECTION ITEM; COSTS PAID BY	BUYER	SELLER	SHARED EQUALLY	N/A	INSPECTION ITEM; COSTS PAID BY	BUYER	SELLER	SHARED EQUALLY	N/A
Environmental Inspection (Phase I)	<input checked="" type="checkbox"/>				Hazardous Waste report(s)	<input checked="" type="checkbox"/>			
Environmental Inspection (Phase II)	<input checked="" type="checkbox"/>				Other substances hazardous to human health (e.g. mold, radon, asbestos, etc.)	<input checked="" type="checkbox"/>			
Environmental Inspection (Phase III)	<input checked="" type="checkbox"/>				Review of seller's relevant business documents	<input checked="" type="checkbox"/>			
Survey	<input checked="" type="checkbox"/>				Utilities and Zoning Studies	<input checked="" type="checkbox"/>			
Water Rights	<input checked="" type="checkbox"/>				Paint, dry rot & structural inspection(s)	<input checked="" type="checkbox"/>			
Flood Zone Hazard	<input checked="" type="checkbox"/>				Compliance with American With Disabilities Act	<input checked="" type="checkbox"/>			
Soil(s) and Percolation Test(s)	<input checked="" type="checkbox"/>				Well/Septic	<input checked="" type="checkbox"/>			

113 The following documents and materials shall be provided by the SELLER to the BUYER as part of the BUYER'S inspection/due diligence: _____
114 _____

115 _____
116 _____
117 _____
118 _____

BUYER'S Initials (ma) (_____) Date 8/6/08 SELLER'S Initials (_____) (_____) Date _____

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110 (B). SATISFACTION/REMOVAL OF INSPECTION DUE DILIGENCE CONTINGENCIES;
 120 1). If BUYER does not within the strict time period specified give to SELLER written notice of disapproved items, BUYER shall conclusively be
 121 deemed to have: (a) completed all inspections, investigations, review of applicable documents and disclosures; (b) elected to proceed with the
 122 transaction and (c) assumed all liability, responsibility and expense for repairs or corrections other than for items which SELLER has otherwise
 123 agreed in writing to repair or correct.
 124
 125 2). If BUYER does within the strict time period specified give to SELLER written notice of disapproved items, BUYER shall provide to SELLER
 126 pertinent section(s) of written inspection reports. SELLER shall have _____ business day(s) in which to respond in writing. The SELLER, at
 127 their option, may correct the items as specified by the BUYERS in their letter or may elect not to do so. If the SELLER agrees to correct the items
 128 asked for in the BUYERS letter, then both parties agree that they will continue with the transaction and proceed to closing. This will remove the
 129 BUYER'S inspection contingency.
 130
 131 3). If SELLER elects not to correct the disapproved items, or does not respond in writing within the strict time period specified, then the BUYER(S)
 132 have the option of either continuing the transaction without the SELLER being responsible for correcting these deficiencies or giving the SELLER
 133 written notice within _____ business days that they will not continue with the transaction and demand the return of their Earnest Money.
 134
 135 4). If BUYER does not give such written notice of cancellation within the strict time periods specified, BUYER shall conclusively be deemed to have
 136 elected to proceed with the transaction without repairs or corrections other than for items with SELLER has otherwise agreed in writing to repair or
 137 correct. SELLER shall make the PROPERTY available for all inspections. BUYER shall keep the PROPERTY free and clear of items; indemnify and
 138 hold SELLER harmless from all liability, claims, demands, damages and costs; and repair any damages arising from the inspections. No inspections
 139 may be made by any governmental building or zoning inspector or government employee without the prior consent of SELLER unless required by
 140 local law.

141 10. MINERAL RIGHTS: Any and all mineral rights appurtenant to the property are included in and are part of the sale of this property unless otherwise
 142 agreed to by the parties in writing.

143 11. WATER RIGHTS: Any and all water rights including but not limited to water systems, wells, springs, lakes, streams, ponds, rivers, ditches, ditch
 144 rights, and the like, if any, appurtenant to the property are included in and are a part of the sale of this property unless otherwise agreed to by the parties in
 145 writing.

146 12. ADDITIONAL COSTS: Costs in addition to those listed below may be incurred by BUYER and SELLER unless otherwise agreed herein, or provided
 147 by law or required by lender, or otherwise stated herein. The below costs will be paid as indicated. Some costs are subject to loan program requirements.
 148 SELLER agrees to pay up to \$ _____ of lender required repair costs only. BUYER or SELLER has the option to pay any lender
 149 required repair costs in excess of this amount.

COSTS	COSTS				COSTS	COSTS			
	BUYER	SELLER	SHARED EQUALLY	N/A		BUYER	SELLER	SHARED EQUALLY	N/A
Appraisal fee				X	Flood certification / tracking fee				X
Long term Escrow fees			X		Title Ins. Standard Coverage owners policy		X		
Closing fee			X		Lenders Extended Policy				X
Additional Title Ins.				X	Attorney contract preparation and/or review fee				X
Water Rights				X					

150 13. ESCROW/COLLECTION: If a long-term escrow/collection is involved, then the escrow/collection holder shall be Tilla Blum
 151 Each party agrees to pay one-half of escrow/collection fees and escrow setup fees.

152 14. RESIDENTIAL PROPERTY CONDITION DISCLOSURE: Idaho Code § 65-2801 et seq. requires that any person intending to transfer "residential
 153 real property" deliver to the transferee or his agent, within ten (10) days of the acceptance of an offer to purchase, a SELLER PROPERTY CONDITION
 154 DISCLOSURE FORM. "Residential real property" means real property that is improved by a building or other structure that has one (1) to four (4) dwelling
 155 units or an individually owned unit in a structure of any size. This also applies to real property which has a combined residential and commercial use.
 156 The property is not subject to the Property Condition Disclosure Act.

157 15. LEAD-BASED PAINT DISCLOSURE: Properties that meet the criteria of "target housing" require certain disclosures regarding lead-based paint
 158 hazards. The term lead-based paint hazard is intended to identify lead-based paint and all residential lead-containing dusts and soils regardless of the
 159 source of the lead. Pursuant to 42 USC § 4851 et seq., "target housing" means any housing constructed prior to 1978, except housing for the elderly or
 160 persons with disabilities (unless any child who is less than six (6) years of age resides or is expected to reside in such housing for the elderly or persons with
 161 disabilities) or any zero-bedroom dwelling. A "residential dwelling" means a single-family dwelling, including attached structures such as porches and stoops;
 162 or a single-family dwelling unit in a structure that contains more than one (1) separate residential dwelling unit, and in which each such unit is used or
 163 occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one (1) or more persons. "Residential real property" means
 164 real property on which there is situated one (1) or more residential dwellings used or occupied, or intended to be used or occupied, in whole or in part, as the
 165 home or residence of one (1) or more persons.

BUYER'S Initials (ML) Date 8-6-08 SELLER'S Initials (_____) Date _____

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172 The subject property is is not defined as "Target Housing" regarding lead-based paint or lead-based paint hazards. If yes, BUYER hereby
173 acknowledges the following: (a) BUYER has been provided an EPA approved lead-based paint hazard information pamphlet, "Protect Your Family From
174 Lead in Your Home," (b) receipt of the Seller's Disclosure of Information and Acknowledgment Form and have been provided with all records, test reports or
175 other information, if any, related to the presence of lead-based paint hazards on said property, (c) that this contract is contingent upon BUYER's right to have
176 the property tested for lead-based paint hazards to be completed no later than 1/28/08 or the contingency will terminate, (d) that BUYER
177 hereby waives does not waive this right, (e) that if test results show unacceptable amounts of lead-based paint on the property, BUYER has the right to
178 cancel the contract subject to the option of the SELLER (to be given in writing) to elect to remove the lead-based paint and correct the problem which must
179 be accomplished before closing, (f) that if the contract is cancelled under this clause, BUYER's earnest money deposit will be returned to BUYER.
180

181 16. SQUARE FOOTAGE VERIFICATION: BUYER IS AWARE THAT ANY REFERENCE TO THE SQUARE FOOTAGE OF THE REAL PROPERTY
182 OR IMPROVEMENTS IS APPROXIMATE. IF SQUARE FOOTAGE IS MATERIAL TO THE BUYER, IT MUST BE VERIFIED DURING THE INSPECTION
183 PERIOD.
184

185 17. COVENANTS, CONDITIONS AND RESTRICTIONS (CC&Rs): As part of the BUYER'S inspection of the PROPERTY as set forth above in
186 Section 9, BUYER is responsible for obtaining and reviewing a copy of any CC&Rs which may affect the PROPERTY. BUYER shall have days (but in
187 no event shall such time period exceed that time period set forth for inspections in Section 9) to review and approve of any such CC&Rs that may affect the
188 PROPERTY. Unless BUYER delivers to SELLER a written and signed objection to the terms of any applicable CC&Rs with particularity describing BUYER'S
189 reasonable objections within such time period as set forth above, BUYER shall be deemed to have conclusively waived any objection to the terms of any
190 CC&Rs affecting the PROPERTY.
191

192 18. RISK OF LOSS: Prior to the closing of this sale, all risk of loss shall remain with SELLER. In addition, should the PROPERTY be materially
193 damaged by fire or other destructive cause prior to closing, this agreement shall be voidable at the option of the BUYER.
194

195 19. CONDITION OF PROPERTY AT CLOSING: Upon expiration of the inspection/Due Diligence period and thereafter, BUYER agrees to purchase
196 the PROPERTY in as-is condition, where is, with all faults and with no further repairs required unless otherwise agreed upon by the parties in writing.
197 BUYER will assume all obligations with respect to the PROPERTY. SELLER shall maintain the PROPERTY until the closing in its present condition, ordinary
198 wear and tear excepted.
199

200 20. CLOSING AGENCY: The Closing Agency for this transaction shall be Title One
201 located at Haaspa
202

203 21. CLOSING DATE: On or before the closing date, BUYER and SELLER shall deposit with the Closing Agency all funds and instruments necessary to
204 complete the sale. The closing date shall be no later than 1/28/08 "Closing Date" means the date on which all
205 documents are either recorded or accepted by an escrow/collection agency and the sale proceeds are available to SELLER.
206

207 22. POSSESSION/PRORATION: BUYER shall be entitled to possession UPON CLOSING or DATE
208 TIME AM PM. Taxes and water assessments (using the last available assessment as a basis), rent, insurance premiums, interest
209 and reserve on liens, encumbrances or obligations assumed and utilities shall be prorated as of the day of closing or
210 Any tenant deposits held by SELLER shall be credited to BUYER at closing.
211

212 23. "NOT APPLICABLE" DEFINED: The letters "n/a," "N/A," "n.s.," and "N.A." as used herein are abbreviations of the term "not applicable." Where
213 this agreement uses the term "not applicable" or an abbreviation thereof, it shall be evidence that the parties have contemplated certain facts or conditions
214 and have determined that such facts or conditions do not apply to the agreement or transaction herein.
215

216 24. FACSIMILE TRANSMISSION: Facsimile or electronic transmission of any signed original document, and retransmission of any signed facsimile or
217 electronic transmission shall be the same as delivery of an original. At the request of either the BUYER or SELLER, or the LENDER, or the Closing Agency,
218 the BUYER and SELLER will confirm facsimile or electronic transmitted signatures by signing an original document.
219

220 25. BUSINESS DAYS & HOURS: A business day is herein defined as Monday through Friday, 8:00 A.M. to 5:00 P.M. in the local time zone where the
221 subject real property is physically located. A business day shall not include any Saturday or Sunday, nor shall a business day include any legal holiday
222 recognized by the state of Idaho as found in Idaho Code §73-108. The time in which any act required under this agreement is to be performed shall be
223 computed by excluding the date of execution and including the last day. The first day shall be the day after the date of execution. If the last day is a legal
224 holiday, then the time for performance shall be the next subsequent business day.
225

226 26. DEFAULT: If BUYER defaults in the performance of this Agreement, SELLER has the option of: (1) accepting the Earnest Money as liquidated
227 damages or (2) pursuing any other lawful right or remedy to which SELLER may be entitled. If SELLER elects to proceed under (1), SELLER shall make
228 demand upon the holder of the Earnest Money, upon which demand said holder shall pay from the Earnest Money the costs incurred by SELLER's Broker
229 on behalf of SELLER and BUYER related to the transaction, including, without limitation, the costs of title insurance, escrow fees, credit report fees,
230 inspection fees and attorney's fees; and said holder shall pay any balance of the Earnest Money, one-half to SELLER and one-half to SELLER's Broker,
231 provided that the amount to be paid to SELLER's Broker shall not exceed the Broker's agreed to commission. SELLER and BUYER specifically
232 acknowledge and agree that if SELLER elects to accept the Earnest Money as liquidated damages, such shall be SELLER's sole and exclusive remedy, and
233 such shall not be considered a penalty or forfeiture. If SELLER elects to proceed under (2), the holder of the Earnest Money shall be entitled to pay the costs
234 incurred by SELLER's Broker on behalf of SELLER and BUYER related to the transaction, including, without limitation, the costs of Brokerage fee, title
235 insurance, escrow fees, credit report fees, inspection fees and attorney's fees, with any balance of the Earnest Money to be held pending resolution of the
236 matter. If SELLER defaults, having approved said sale and fails to consummate the same as herein agreed, BUYER'S Earnest Money deposit shall be
237 returned to him/her and SELLER shall pay for the costs of title insurance, escrow fees, credit report fees, inspection fees, Brokerage fees and attorney's
238 fees, if any. This shall not be considered as a waiver by BUYER of any other lawful right or remedy to which BUYER may be entitled.
239

BUYER'S Initials (MR) () Date 8/6/08 SELLER'S Initials () () Date _____

PROPERTY ADDRESS: App 2 Amer Community Blvd ID#: LT 100

238 27. ATTORNEY'S FEES: If either party initiates or defends any arbitration or legal action or proceedings which are in any way connected with this
240 Agreement, the prevailing party shall be entitled to recover from the non-prevailing party reasonable costs and attorney's fees, including such costs and fees
241 on appeal.
242
243

244 28. EARNEST MONEY DISPUTE / INTERPLEADER: Notwithstanding any termination of this contract, BUYER and SELLER agree that in the event
245 of any controversy regarding the Earnest Money and things of value held by Broker or closing agency, unless mutual written instructions are received by the
246 holder of the Earnest Money and things of value, Broker or closing agency shall not be required to take any action but may await any proceeding, or at
247 Broker's or closing agency's option and sole discretion, may interplead all parties and deposit any moneys or things of value into a court of competent
248 jurisdiction and shall recover court costs and reasonable attorney's fees.
249
250

251 29. THE RESPONSIBLE BROKER SHALL BE Jamie Cilly
252
253

254 30. SEVERABILITY: In the case that any one or more of the provisions contained in this Agreement, or any application thereof, shall be invalid, illegal or
255 unenforceable in any respect, the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
256
257

258 31. COUNTERPARTS: This Agreement may be executed in counterparts. Executing an agreement in counterparts shall mean the signature of two
259 identical copies of the same agreement. Each identical copy of an agreement signed in counterparts is deemed to be an original, and all identical copies
260 shall together constitute one and the same instrument.
261
262

263 32. SALES PRICE INFORMATION: Pursuant to Idaho Code §64-2092(9)(g), a "sold" price of real property is not confidential client information.
264
265

266 33. REPRESENTATION CONFIRMATION: Check one (1) box in Section 1 and one (1) box in Section 2 below to confirm that in this transaction, the
267 brokerage(s) involved had the following relationship(s) with the BUYER(S) and SELLER(S).
268
269

Section 1:

- A. The brokerage working with the BUYER(S) is acting as an AGENT for the BUYER(S).
- B. The brokerage working with the BUYER(S) is acting as a LIMITED DUAL AGENT for the BUYER(S), without an ASSIGNED AGENT.
- C. The brokerage working with the BUYER(S) is acting as a LIMITED DUAL AGENT for the BUYER(S) and has an ASSIGNED AGENT acting solely on behalf of the BUYER(S).
- D. The brokerage working with the BUYER(S) is acting as a NONAGENT for the BUYER(S).

Section 2:

- A. The brokerage working with the SELLER(S) is acting as an AGENT for the SELLER(S).
- B. The brokerage working with the SELLER(S) is acting as a LIMITED DUAL AGENT for the SELLER(S), without an ASSIGNED AGENT.
- C. The brokerage working with the SELLER(S) is acting as a LIMITED DUAL AGENT for the SELLER(S) and has an ASSIGNED AGENT acting solely on behalf of the SELLER(S).
- D. The brokerage working with the SELLER(S) is acting as a NONAGENT for the SELLER(S).

276 Each party signing this document confirms that he has received, read and understood the Agency Disclosure Brochure adopted or approved by the Idaho
277 real estate commission and has consented to the relationship confirmed above. In addition, each party confirms that the brokerage's agency office policy
278 was made available for inspection and review. EACH PARTY UNDERSTANDS THAT HE IS A "CUSTOMER" AND IS NOT REPRESENTED BY A
279 BROKERAGE UNLESS THERE IS A SIGNED WRITTEN AGREEMENT FOR AGENCY REPRESENTATION.
280
281

282 34. AUTHORITY OF SIGNATORY: If BUYER or SELLER is a corporation, partnership, trust, estate, or other entity, the person executing this
283 agreement on its behalf warrants his or her authority to do so and to bind BUYER or SELLER.
284
285

286 35. ENTIRE AGREEMENT: This Agreement, including any Addendums or exhibits, constitutes the entire Agreement between the parties and no
287 warranties, including any warranty of habitability or representations have been made or shall be binding upon either party unless herein set forth.
288
289

290 36. TIME IS OF THE ESSENCE IN THIS AGREEMENT.
291
292

293 37. ACCEPTANCE: This offer is made subject to the acceptance of SELLER and BUYER on or before (Date) Aug 6 2008 at (Local
294 Time in which PROPERTY is located) 5:00 A.M. P.M. If acceptance of this Agreement is not received within the time specified, the offer is
295 withdrawn and the entire Earnest Money, if any, shall be refunded to BUYER on demand.
296

BUYER'S Initials (mc) (_____) Date 8/6/08 SELLER'S Initials (_____) (_____) Date _____

PROPERTY ADDRESS: App 2000s County Blvd ID#: 611072

305 36. BUYER'S SIGNATURES:

306 SEE ATTACHED BUYER'S ADDENDUM(S); _____ (Specify number of BUYER addendum(s) attached.)

307
 308 BUYER Signature [Signature] BUYER (Print Name) _____
 309
 310 Date 8/1/08 Time 2:13 A.M. P.M. Phone # _____ Cell # _____
 311 Address _____ City _____ State _____ Zip _____
 312
 313 E-Mail _____ Fax # _____
 314
 315
 316

317
 318 BUYER Signature _____ BUYER (Print Name) _____
 319
 320 Date _____ Time _____ A.M. P.M. Phone # _____ Cell # _____
 321 Address _____ City _____ State _____ Zip _____
 322
 323 E-Mail _____ Fax # _____
 324
 325
 326

329 37. SELLER'S SIGNATURES:

330 On this date, I/We hereby approve and accept the transaction set forth in the above Agreement and agree to carry out all the terms thereof on the part of the
331 SELLER.
332

333 SIGNATURE(S) SUBJECT TO ATTACHED COUNTER OFFER
 334
 335 SIGNATURE(S) SUBJECT TO ATTACHED ADDENDUM(S) # _____
 336
 337

338 SELLER Signature _____ SELLER (Print Name) _____
 339
 340 Date _____ Time _____ A.M. P.M. Phone # _____ Cell # _____
 341 Address _____ City _____ State _____ Zip _____
 342
 343 E-Mail _____ Fax # _____
 344
 345
 346

347
 348 SELLER Signature _____ SELLER (Print Name) _____
 349
 350 Date _____ Time _____ A.M. P.M. Phone # _____ Cell # _____
 351 Address _____ City _____ State _____ Zip _____
 352
 353 E-Mail _____ Fax # _____
 354
 355
 356

357 CONTRACTOR REGISTRATION # (if applicable) _____
358

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RE-23 COMMERCIAL/INVESTMENT REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS IS A LEGALLY BINDING CONTRACT. READ THE ENTIRE DOCUMENT, INCLUDING ANY ATTACHMENTS. IF YOU HAVE ANY QUESTIONS, CONSULT YOUR ATTORNEY AND/OR ACCOUNTANT BEFORE SIGNING.



1 ID# LT 200 DATE 8-6-08
2 LISTING AGENCY Bullitt Co Office Phone # 466 2010 Fax # 466-1006
3 Listing Agent Lizzy Dames E-Mail Phone # 944-1075
4
5 SELLING AGENCY Treasure Valley Properties Office Phone # Fax # 325-1444
6 Selling Agent John Peterson E-Mail john.peterson@treasurevalleyproperties.com Phone # 878-1400
7
8 1. BUYER: M&R RE Holdings
9 (Hereinafter called "BUYER") agrees to purchase, and the undersigned SELLER agrees to sell the following described real estate hereinafter referred to
10 as "PROPERTY" COMMONLY KNOWN AS Prop 2 acres N 39 E
11 Alampa City Camden County, ID, Zip 83618 legally described as: See Attached

12 OR Legal Description Attached as addendum # 1 (Addendum must accompany original offer.)
13
14 2. \$ 241,500 PURCHASE PRICE: Two Hundred Forty One Thousand Five Hundred DOLLARS,
15 payable upon the following TERMS AND CONDITIONS (not including closing costs):

16 3. FINANCIAL TERMS: Note: A+C+D must add up to total purchase price.
17 (A) \$ 25,000 EARNEST MONEY: BUYER hereby deposits Twenty Five Thousand
18 DOLLARS as Earnest Money evidenced by: cash personal check cashier's check note (due date):
19 other and a receipt is hereby acknowledged. Earnest Money to be deposited in trust account
20 upon receipt, or upon acceptance by all parties and shall be held by: Listing Broker Selling Broker
21 for the benefit of the parties hereto.
22 (B) ALL CASH OFFER: NO YES IF CASH OFFER, BUYER'S OBLIGATION TO CLOSE SHALL NOT BE SUBJECT TO ANY FINANCIAL
23 CONTINGENCY. BUYER agrees to provide SELLER within business days from the date of acceptance of this agreement by all parties,
24 evidence of sufficient funds and/or proceeds necessary to close transaction. Acceptable documentation includes, but is not limited to, a copy of a recent
25 bank or financial statement or contract(s) for the sale of BUYER'S current residence or other property to be sold.

26 (C) \$ FINANCING:
27 Additional financial terms are specified under the heading "OTHER TERMS AND/OR CONDITIONS" (Section 6 below),
28 Additional financial terms are contained in a financing addendum of same date, attached hereto, signed by both parties.
29 (D) \$ 0.00 APPROXIMATE FUNDS DUE FROM BUYERS AT CLOSING: (Not including closing costs) Cash at closing to be paid
30 by BUYER at closing in GOOD FUNDS, includes: cash, electronic transfer funds, certified check or cashier's check.

31 4. SECTION 1031 TAX DEFERRED EXCHANGE: By checking either or both of the boxes that follow, it is hereby acknowledged by the parties that
32 the Buyer, Seller intends to use the purchase and sale of the PROPERTY as an integral part of a tax deferred like-kind exchange as allowed under
33 Section 1031 of the Internal Revenue Code (the "Exchange"). For purposes of this paragraph, the party participating in the Exchange shall be identified as
34 the "Exchanger." If either box above is checked, then the parties recognize that a material part of the Exchanger's consideration for entering into the
35 agreement for the purchase and sale of the PROPERTY is the successful completion of the exchange. The parties agree to assist each other in the
36 completion of such exchange by cooperating with each other by signing any and all relevant documents provided that the party not doing the Exchange shall
37 not incur any liabilities, costs, fees, or taxes in excess of those which that party would have incurred had this transaction not been an Exchange.

38 5. OTHER TERMS AND/OR CONDITIONS: This Agreement is made subject to the following special terms, considerations and/or contingencies which
39 must be satisfied prior to closing:
40 1. SELLER TO CREDIT BUYER A 4.5 DAY ALL DAY
41 2. ON THE 4th DAY AFTER THE EARNEST MONEY RECEIVED FROM BUYER
42 And returned to the seller, applied to purchase a price at closing
43
44
45
46
47
48

49 6. ITEMS INCLUDED & EXCLUDED IN THIS SALE: All existing fixtures and fittings that are attached to the PROPERTY are INCLUDED IN THE
50 PURCHASE PRICE (unless excluded below), and shall be transferred free of liens. These include, but are not limited to, all seller-owned attached floor
51 coverings, attached television antenna, satellite dish, attached plumbing, bathroom and lighting fixtures, window screens, screen doors, storm doors, storm
52 windows, window coverings, garage door opener(s) and transmitter(s), exterior trees, plants or shrubbery, water heating apparatus and fixtures, attached
53 fireplace equipments, awnings, ventilating, cooling and heating systems, all ranges, ovens, built-in dishwashers, fuel tanks and irrigation fixtures and
54 equipment, that are now on or used in connection with the PROPERTY and shall be included in the sale unless otherwise provided herein. BUYER should
55 satisfy himself/herself that the condition of the included items is acceptable.
56 (A) ADDITIONAL ITEMS SPECIFICALLY INCLUDED IN THIS SALE: Sale includes residential home
57 on the property

58 BUYER'S Initials () Date 9/6/08 SELLER'S Initials () Date
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60 National Association of REALTORS®. USE BY ANY OTHER PERSON IS PROHIBITED. © Copyright Idaho Association of REALTORS®, Inc. All rights reserved.

PROPERTY ADDRESS: App. 2 Avenue N. 39th ID#: LT 200

69 (B). ITEMS SPECIFICALLY EXCLUDED IN THIS SALE: N/A

74 7. TITLE CONVEYANCE: Title of SELLER is to be conveyed by warranty deed special warranty deed or deed, and is to be marketable and insurable except for rights reserved in federal patents, state or railroad deeds, building or use restrictions, building and zoning regulations and ordinances of any governmental unit, and rights of way and easements established or of record. Liens, encumbrances or defects to be discharged by SELLER may be paid out of purchase money at date of closing. No liens, encumbrances or defects which are to be discharged or assumed by BUYER or to which title is taken subject to, exist unless otherwise specified in this Agreement.

80 8. TITLE INSURANCE: There may be types of title insurance coverages available other than those listed below and parties to this agreement are advised to talk to a title company about any other coverages available that will give the buyer additional coverage.

83 (A). PRELIMINARY TITLE COMMITMENT: Prior to closing the transaction, SELLER or BUYER shall furnish to BUYER a preliminary commitment of a title insurance policy showing the condition of the title to said PROPERTY. BUYER shall have 5 business day(s) from receipt of the preliminary commitment or not fewer than twenty-four (24) hours prior to closing, within which to object in writing to the condition of the title as set forth in the preliminary commitment. If BUYER does not so object, BUYER shall be deemed to have accepted the conditions of the title. It is agreed that if the title of said PROPERTY is not marketable, or cannot be made so within 5 business day(s) after notice containing a written statement of defect is delivered to SELLER, BUYER'S Earnest Money deposit will be returned to BUYER and SELLER shall pay for the cost of title insurance cancellation fee, escrow and legal fees, if any.

90 (B). TITLE COMPANY: The parties agree that Titla one Remps Title Company located at _____ shall provide the title policy and preliminary report of commitment.

94 (C). STANDARD COVERAGE OWNER'S POLICY: SELLER shall within a reasonable time after closing furnish to BUYER a title insurance policy in the amount of the purchase price of the PROPERTY showing marketable and insurable title subject to the liens, encumbrances and defects elsewhere set out in this Agreement to be discharged or assumed by BUYER unless otherwise provided herein. The risk assumed by the title company in the standard coverage policy is limited to matters of public record. BUYER shall receive a FLORIDA Owner's Policy of Title Insurance. A title company, at BUYER'S request, can provide information about the availability, desirability, coverage and cost of various title insurance coverages and endorsements. If BUYER desires title coverage other than that required by this paragraph, BUYER shall instruct closing agency in writing and pay any increase in cost unless otherwise provided herein.

102 (D). EXTENDED COVERAGE LENDER'S POLICY (Mortgagee policy): The lender may require that BUYER (Borrower) furnish an Extended Coverage Lender's Policy. The extended coverage lender's policy considers matters of public record and additionally insures against certain matters not shown in the public record. This extended coverage lender's policy is solely for the benefit of the lender and only protects the lender.

9. INSPECTION/DUE DILIGENCE:

107 (A). BUYER shall have the right to conduct due diligence inspections, investigations, tests, surveys and other studies at BUYER'S expense unless otherwise indicated below or agreed upon in writing by the parties. BUYER chooses to have inspection(s) not to have inspection(s). If BUYER chooses not to have inspection and the remainder of this Section 9, BUYER shall, within N/A business day(s) of acceptance, complete these inspections and give to SELLER written notice of disapproved items. BUYER is strongly advised to exercise these rights and to make BUYER'S own selection of professionals with appropriate qualifications to conduct inspections of the entire PROPERTY. The closing of this transaction is conditioned upon BUYER'S satisfaction or waiver of the following contingencies.

INSPECTION ITEM; COSTS PAID BY	COSTS PAID BY				INSPECTION ITEM; COSTS PAID BY	COSTS PAID BY			
	BUYER	SELLER	SHARED EQUALLY	N/A		BUYER	SELLER	SHARED EQUALLY	N/A
Environmental inspection (Phase I)	X				Hazardous Waste report(s)	X			
Environmental inspection (Phase II)	✓				Other substances hazardous to human health (e.g. mold, radon, asbestos, etc.)	X			
Environmental inspection (Phase III)	✓				Review of seller's relevant business documents	✓			
Survey	✓				Utilities and Zoning Studies	✓			
Water Rights	✓				Peel, dry rot & structural inspection(s)	X			
Flood Zone Hazard	X				Compliance with American With Disabilities Act	X			
Soil(s) and Percolation Test(s)	✓				Well/Septic	X			

113 The following documents and materials shall be provided by the SELLER to the BUYER as part of the BUYER'S inspection/due diligence: N/A

BUYER'S Initials (JMC) () Date 2/4/09 SELLER'S Initials () () Date _____

PROPERTY ADDRESS: App. 2 Acres N. 39th ID#: LT 200

119 (B). SATISFACTION/REMOVAL OF INSPECTION DUE DILIGENCE CONTINGENCIES:

120 1) If BUYER does not within the strict time period specified give to SELLER written notice of disapproved items, BUYER shall conclusively be
121 deemed to have; (a) completed all inspections, investigations, review of applicable documents and disclosures; (b) elected to proceed with the
122 transaction and (c) assumed all liability, responsibility and expense for repairs or corrections other than for items which SELLER has otherwise
123 agreed in writing to repair or correct.

124 2) If BUYER does within the strict time period specified give to SELLER written notice of disapproved items, BUYER shall provide to SELLER
125 pertinent section(s) of written inspection reports. SELLER shall have 10 business day(s) in which to respond in writing. The SELLER, at
126 their option, may correct the items as specified by the BUYERS in their letter or may elect not to do so. If the SELLER agrees to correct the items
127 asked for in the BUYERS letter, then both parties agree that they will continue with the transaction and proceed to closing. This will remove the
128 BUYER'S inspection contingency.

129 3) If SELLER elects not to correct the disapproved items, or does not respond in writing within the strict time period specified, then the BUYER(S)
130 have the option of either continuing the transaction without the SELLER being responsible for correcting these deficiencies or giving the SELLER
131 written notice within 10 business days that they will not continue with the transaction and demand the return of their Earnest Money.

132 4) If BUYER does not give such written notice of cancellation within the strict time periods specified, BUYER shall conclusively be deemed to have
133 elected to proceed with the transaction without repairs or corrections other than for items with SELLER has otherwise agreed in writing to repair or
134 correct. SELLER shall make the PROPERTY available for all inspections. BUYER shall keep the PROPERTY free and clear of liens; indemnify and
135 hold SELLER harmless from all liability, claims, demands, damages and costs; and repair any damages arising from the inspections. No inspections
136 may be made by any governmental building or zoning inspector or government employee without the prior consent of SELLER unless required by
137 local law.

138 10. MINERAL RIGHTS: Any and all mineral rights appurtenant to the property are included in and are a part of the sale of this property unless otherwise
139 agreed to by the parties in writing.

140 11. WATER RIGHTS: Any and all water rights including but not limited to water systems, wells, springs, lakes, streams, ponds, rivers, ditches, ditch
141 rights, and the like, if any, appurtenant to the property are included in and are a part of the sale of this property unless otherwise agreed to by the parties in
142 writing.

143 12. ADDITIONAL COSTS: Costs in addition to those listed below may be incurred by BUYER and SELLER unless otherwise agreed herein, or provided
144 by law or required by lender, or otherwise stated herein. The below costs will be paid as indicated. Some costs are subject to loan program requirements.
145 SELLER agrees to pay up to \$ _____ of lender required repair costs only. BUYER or SELLER has the option to pay any lender
146 required repair costs in excess of this amount.

COSTS	BUYER	SELLER	SHARED EQUALLY	N/A	COSTS	BUYER	SELLER	SHARED EQUALLY	N/A
Appraisal fee					Flood certification / backing fee				
Long term Escrow fees			✓		Title Ins. Standard Coverage owners policy		✓		
Closing fee			✓		Lenders Extended Policy				✓
Additional Title Ins.				✓	Arbitary contract preparation and/or review fee				✓
Water Rights				✓					

153 13. ESCROW/COLLECTION: If a long-term escrow/collection is involved, then the escrow/collection holder shall be _____
154 Each party agrees to pay one-half of escrow/collection fees and escrow setup fees.

155 14. RESIDENTIAL PROPERTY CONDITION DISCLOSURE: Idaho Code § 95-2501 et seq. requires that any person intending to transfer "residential
156 real property" deliver to the transferee or his agent, within ten (10) days of the acceptance of an offer to purchase, a SELLER PROPERTY CONDITION
157 DISCLOSURE FORM. "Residential real property" means real property that is improved by a building or other structure that has one (1) to four (4) dwelling
158 units or an individual owned unit in a structure of any size. This also applies to real property which has a combined residential and commercial Use.
159 The property is is not subject to the Property Condition Disclosure Act.

160 16. LEAD-BASED PAINT DISCLOSURE: Properties that meet the criteria of "target housing" require certain disclosures regarding lead-based paint
161 hazards. The term lead-based paint hazard is intended to identify lead-based paint and all residential lead-containing dusts and soils regardless of the
162 source of the lead. Pursuant to 42 USC § 4851 et seq., "target housing" means any housing constructed prior to 1978, except housing for the elderly or
163 persons with disabilities (unless any child who is less than six (6) years of age resides or is expected to reside in such housing for the elderly or persons with
164 disabilities) or any zero-bedroom dwelling. A "residential dwelling" means a single-family dwelling, including attached structures such as porches and stoops;
165 or a single-family dwelling unit in a structure that contains more than one (1) separate residential dwelling unit, and in which each such unit is used or
166 occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one (1) or more persons. "Residential real property" means
167 real property on which there is situated one (1) or more residential dwellings used or occupied, or intended to be used or occupied, in whole or in part, as the
168 home or residence of one (1) or more persons.

BUYER'S initials (YMC) Date 8/4/08 SELLER'S initials (_____) Date _____

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PROPERTY ADDRESS: Agua 2 Avenue N 39E ID#: 21200

172 The subject property is is not defined as "Target Housing" regarding lead-based paint or lead-based paint hazards. If yes, BUYER hereby
173 acknowledges the following: (a) BUYER has been provided an EPA approved lead-based paint hazard information pamphlet, "Protect Your Family From
174 Lead in Your Home," (b) receipt of the Seller's Disclosure of Information and Acknowledgment Form and have been provided with all records, test reports or
175 other information, if any, related to the presence of lead-based paint hazards on said property, (c) that this contract is contingent upon BUYER's right to have
176 the property tested for lead-based paint hazards to be completed no later than 11/18 or the contingency will terminate, (d) that BUYER
177 hereby waives does not waive this right, (e) that if test results show unacceptable amounts of lead-based paint on the property, BUYER has the right to
178 cancel the contract subject to the option of the SELLER (to be given in writing) to elect to remove the lead-based paint and correct the problem which must
179 be accomplished before closing, (f) that if the contract is cancelled under this clause, BUYER's earnest money deposit will be returned to BUYER.

180
181
182 **16. SQUARE FOOTAGE VERIFICATION:** BUYER IS AWARE THAT ANY REFERENCE TO THE SQUARE FOOTAGE OF THE REAL PROPERTY
183 OR IMPROVEMENTS IS APPROXIMATE. IF SQUARE FOOTAGE IS MATERIAL TO THE BUYER, IT MUST BE VERIFIED DURING THE INSPECTION
184 PERIOD.

185
186 **17. COVENANTS, CONDITIONS AND RESTRICTIONS (CC&Rs):** As part of the BUYER'S inspection of the PROPERTY as set forth above in
187 Section 9, BUYER is responsible for obtaining and reviewing a copy of any CC&Rs which may affect the PROPERTY. BUYER shall have 0 days (but in
188 no event shall such time period exceed that time period set forth for inspections in Section 9) to review and approve of any such CC&Rs that may affect the
189 PROPERTY. Unless BUYER delivers to SELLER a written and signed objection to the terms of any applicable CC&Rs with particularity describing BUYER's
190 reasonable objections within such time period as set forth above, BUYER shall be deemed to have conclusively waived any objection to the terms of any
191 CC&Rs affecting the PROPERTY.

192
193 **18. RISK OF LOSS:** Prior to the closing of this sale, all risk of loss shall remain with SELLER. In addition, should the PROPERTY be materially
194 damaged by fire or other destructive cause prior to closing, this agreement shall be voidable at the option of the BUYER.

195
196 **19. CONDITION OF PROPERTY AT CLOSING:** Upon expiration of the Inspection/Due Diligence period and thereafter, BUYER agrees to purchase
197 the PROPERTY in as-is condition, where is, with all faults and with no further repairs required unless otherwise agreed upon by the parties in writing.
198 BUYER will assume all obligations with respect to the PROPERTY. SELLER shall maintain the PROPERTY until the closing in its present condition, ordinary
199 wear and tear excepted.

200
201 **20. CLOSING AGENCY:** The Closing Agency for this transaction shall be The One
202 located at 12th & Idaho Center

203
204 **21. CLOSING DATE:** On or before the closing date, BUYER and SELLER shall deposit with the Closing Agency all funds and instruments necessary to
205 complete the sale. The closing date shall be no later than Oct 20 2008. "Closing Date" means the date on which all
206 documents are either recorded or accepted by an escrow/collection agency and the sale proceeds are available to SELLER.

207
208 **22. POSSESSION/PRORATION:** BUYER shall be entitled to possession UPON CLOSING or DATE
209 TIME AM PM. Taxes and water assessments (using the last available assessment as a basis), rents, insurance premiums, interest
210 and reserve on liens, encumbrances or obligations assumed and utilities shall be prorated as of the day of closing or 10/20/08
211 Any tenant deposits held by SELLER shall be credited to BUYER at closing.

212
213 **23. "NOT APPLICABLE" DEFINED:** The letters "n/a," "N/A," "n.a.," and "N.A." as used herein are abbreviations of the term "not applicable." Where
214 this agreement uses the term "not applicable" or an abbreviation thereof, it shall be evidence that the parties have contemplated certain facts or conditions
215 and have determined that such facts or conditions do not apply to this agreement or transaction herein.

216
217 **24. FACSIMILE TRANSMISSION:** Facsimile or electronic transmission of any signed original document, and retransmission of any signed facsimile or
218 electronic transmission shall be the same as delivery of an original. At the request of either the BUYER or SELLER, or the LENDER, or the Closing Agency,
219 the BUYER and SELLER will confirm facsimile or electronic transmitted signatures by signing an original document.

220
221 **25. BUSINESS DAYS & HOURS:** A business day is herein defined as Monday through Friday, 8:00 A.M. to 6:00 P.M. in the local time zone where the
222 subject real property is physically located. A business day shall not include any Saturday or Sunday, nor shall a business day include any legal holiday
223 recognized by the state of Idaho as found in Idaho Code §73-108. The time in which any act required under this agreement is to be performed shall be
224 computed by excluding the date of execution and including the last day. The first day shall be the day after the date of execution. If the last day is a legal
225 holiday, then the time for performance shall be the next subsequent business day.

226
227 **26. DEFAULT:** If BUYER defaults in the performance of this Agreement, SELLER has the option of: (1) accepting the Earnest Money as liquidated
228 damages or (2) pursuing any other lawful right or remedy to which SELLER may be entitled. If SELLER elects to proceed under (1), SELLER shall make
229 demand upon the holder of the Earnest Money, upon which demand said holder shall pay from the Earnest Money the costs incurred by SELLER's Broker
230 on behalf of SELLER and BUYER related to the transaction, including, without limitation, the costs of title insurance, escrow fees, credit report fees,
231 inspection fees and attorney's fees; and said holder shall pay any balance of the Earnest Money, one-half to SELLER and one-half to SELLER's Broker,
232 provided that the amount to be paid to SELLER's Broker shall not exceed the Broker's agreed to commission. SELLER and BUYER specifically
233 acknowledge and agree that if SELLER elects to accept the Earnest Money as liquidated damages, such shall be SELLER's sole and exclusive remedy, and
234 such shall not be considered a penalty or forfeiture. If SELLER elects to proceed under (2), the holder of the Earnest Money shall be entitled to pay the costs
235 incurred by SELLER's Broker on behalf of SELLER and BUYER related to the transaction, including, without limitation, the costs of Brokerage fee, title
236 insurance, escrow fees, credit report fees, inspection fees and attorney's fees, with any balance of the Earnest Money to be held pending resolution of the
237 matter. If SELLER defaults, having approved said sale and fails to consummate the same as herein agreed, BUYER'S Earnest Money deposit shall be
238 returned to him/her and SELLER shall pay for the costs of title insurance, escrow fees, credit report fees, inspection fees, Brokerage fees and attorney's
239 fees, if any. This shall not be considered as a waiver by BUYER of any other lawful right or remedy to which BUYER may be entitled.

BUYER'S initials (ma) (_____) Date 8/6/08 SELLER'S initials (_____) (_____) Date _____

PROPERTY ADDRESS: App 2 Room A 39E ID#: LT 200

239 27. ATTORNEY'S FEES: If either party initiates or defends any arbitration or legal action or proceedings which are in any way connected with this
240 Agreement, the prevailing party shall be entitled to recover from the non-prevailing party reasonable costs and attorney's fees, including such costs and fees
241 on appeal.
242
243

244 28. EARNEST MONEY DISPUTE / INTERPLEADER: Notwithstanding any termination of this contract, BUYER and SELLER agree that in the event
245 of any controversy regarding the Earnest Money and things of value held by Broker or closing agency, unless mutual written instructions are received by the
246 holder of the Earnest Money and things of value, Broker or closing agency shall not be required to take any action but may await any proceeding, or at
247 Broker's or closing agency's option and sole discretion, may interplead all parties and deposit any moneys or things of value into a court of competent
248 jurisdiction and shall recover court costs and reasonable attorney's fees.
249

251 29. THE RESPONSIBLE BROKER SHALL BE: Jamie Silly

254 30. SEVERABILITY: In the case that any one or more of the provisions contained in this Agreement, or any application thereof, shall be invalid, illegal or
255 unenforceable in any respect, the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
256
257

258 31. COUNTERPARTS: This Agreement may be executed in counterparts. Executing an agreement in counterparts shall mean the signature of two
259 identical copies of the same agreement. Each identical copy of an agreement signed in counterparts is deemed to be an original, and all identical copies
260 shall together constitute one and the same instrument.
261

262 32. SALES PRICE INFORMATION: Pursuant to Idaho Code §54-2063(5)(d), a "sold" price of real property is not confidential client information.
263
264

265 33. REPRESENTATION CONFIRMATION: Check one (1) box in Section 1 and one (1) box in Section 2 below to confirm that in this transaction, the
266 brokerage(s) involved had the following relationship(s) with the BUYER(S) and SELLER(S).
267

Section 1:

- 269 A. The brokerage working with the BUYER(S) is acting as an AGENT for the BUYER(S).
- 271 B. The brokerage working with the BUYER(S) is acting as a LIMITED DUAL AGENT for the BUYER(S), without an ASSIGNED AGENT.
- 272 C. The brokerage working with the BUYER(S) is acting as a LIMITED DUAL AGENT for the BUYER(S) and has an ASSIGNED AGENT
273 acting solely on behalf of the BUYER(S).
- 274 D. The brokerage working with the BUYER(S) is acting as a NONAGENT for the BUYER(S).

Section 2:

- 275 A. The brokerage working with the SELLER(S) is acting as an AGENT for the SELLER(S).
- 276 B. The brokerage working with the SELLER(S) is acting as a LIMITED DUAL AGENT for the SELLER(S), without an ASSIGNED AGENT.
- 277 C. The brokerage working with the SELLER(S) is acting as a LIMITED DUAL AGENT for the SELLER(S) and has an ASSIGNED AGENT
278 acting solely on behalf of the SELLER(S).
- 279 D. The brokerage working with the SELLER(S) is acting as a NONAGENT for the SELLER(S).

281 Each party signing this document confirms that he has received, read and understood the Agency Disclosure Brochure adopted or approved by the Idaho
282 real estate commission and has consented to the relationship confirmed above. In addition, each party confirms that the brokerage's agency office policy
283 was made available for inspection and review. EACH PARTY UNDERSTANDS THAT HE IS A "CUSTOMER" AND IS NOT REPRESENTED BY A
284 BROKERAGE UNLESS THERE IS A SIGNED WRITTEN AGREEMENT FOR AGENCY REPRESENTATION.
285
286

287 34. AUTHORITY OF SIGNATORY: If BUYER or SELLER is a corporation, partnership, trust, estate, or other entity, the person executing this
288 agreement on its behalf warrants his or her authority to do so and to bind BUYER or SELLER.
289
290

291 35. ENTIRE AGREEMENT: This Agreement, including any Addendums or exhibits, constitutes the entire Agreement between the parties and no
292 warranties, including any warranty of habitability or representations have been made or shall be binding upon either party unless herein set forth.
293
294

295 36. TIME IS OF THE ESSENCE IN THIS AGREEMENT.
296
297

298 37. ACCEPTANCE: This offer is made subject to the acceptance of SELLER and BUYER on or before (Date) Aug 6, 2008 at (Local
299 Time in which PROPERTY is located) 5:00 A.M. P.M. If acceptance of this Agreement is not received within the time specified, the offer is
300 withdrawn and the entire Earnest Money, if any, shall be refunded to BUYER on demand.
301
302

BUYER'S Initials (mc) () Date 8/6/08 SELLER'S Initials () () Date _____

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PROPERTY ADDRESS: App 2 Area A 39th ID#: 17200

36. BUYER'S SIGNATURES:

SEE ATTACHED BUYER'S ADDENDUM(S): _____ (Specify number of BUYER addendum(s) attached.)

307 BUYER Signature [Signature] BUYER (Print Name) _____
 308 Date 8/1/08 Time 5:14 A.M. P.M. Phone # _____ Cell # _____
 311 Address _____ City _____ State _____ Zip _____
 314 E-Mail _____ Fax # _____

318 BUYER Signature _____ BUYER (Print Name) _____
 319 Date _____ Time _____ A.M. P.M. Phone # _____ Cell # _____
 321 Address _____ City _____ State _____ Zip _____
 324 E-Mail _____ Fax # _____

37. SELLER'S SIGNATURES:

On this date, I/We hereby approve and accept the transaction set forth in the above Agreement and agree to carry out all the terms thereof on the part of the SELLER.

SIGNATURE(S) SUBJECT TO ATTACHED COUNTER OFFER
 SIGNATURE(S) SUBJECT TO ATTACHED ADDENDUM(S) # _____

339 SELLER Signature _____ SELLER (Print Name) _____
 340 Date _____ Time _____ A.M. P.M. Phone # _____ Cell # _____
 342 Address _____ City _____ State _____ Zip _____
 344 E-Mail _____ Fax # _____

348 SELLER Signature _____ SELLER (Print Name) _____
 349 Date _____ Time _____ A.M. P.M. Phone # _____ Cell # _____
 351 Address _____ City _____ State _____ Zip _____
 353 E-Mail _____ Fax # _____

356 CONTRACTOR REGISTRATION # (if applicable) _____

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EXHIBIT "D"

JULY 2008 EDITION

Page 1 of 6



RE-23 COMMERCIAL/INVESTMENT REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS IS A LEGALLY BINDING CONTRACT, READ THE ENTIRE DOCUMENT, INCLUDING ANY ATTACHMENTS. IF YOU HAVE ANY QUESTIONS, CONSULT YOUR ATTORNEY AND/OR ACCOUNTANT BEFORE SIGNING.



ID# LT-300 DATE 8-6-08
LISTING AGENCY Bullock & Co. Office Phone # 466-1010 Fax # 466-1006
Listing Agent Larry Daniels E-Mail Phone # 941-1075
SELLING AGENCY Bullock & Co. Office Phone # 466-1010 Fax # 466-1006
Selling Agent Larry Daniels E-Mail Phone # 941-1076

1. BUYER: Jan Winkelman
(Hereinafter called "BUYER") agrees to purchase, and the undersigned SELLER agrees to sell the following described real estate hereinafter referred to as "PROPERTY" COMMONLY KNOWN AS App. 14 Acres N. 33 E. 1/4 Sec. 14, T. 33 N., R. 33 E., S. 14, County, ID, Zip legally described as: See attached

OR Legal Description Attached as addendum # (Addendum must accompany original offer.)
2. \$ 453,285.00 PURCHASE PRICE: Four Hundred Fifty Three Thousand Two Hundred Eighty Five and Zero/100 DOLLARS, payable upon the following TERMS AND CONDITIONS (not including closing costs):

3. FINANCIAL TERMS: Note: A+C+D must add up to total purchase price.
(A). \$ 50,000 EARNEST MONEY: BUYER hereby deposits Fifty Thousand and Zero/100 DOLLARS as Earnest Money evidenced by: [] cash [X] personal check [] cashier's check [] note (due date): upon receipt, or [X] upon acceptance by all parties and shall be held by: [] Listing Broker [X] Selling Broker for the benefit of the parties hereto.

(B). ALL CASH OFFER: [] NO [X] YES IF CASH OFFER, BUYER'S OBLIGATION TO CLOSE SHALL NOT BE SUBJECT TO ANY FINANCIAL CONTINGENCY. BUYER agrees to provide SELLER within business days from the date of acceptance of this agreement by all parties, evidence of sufficient funds and/or proceeds necessary to close transaction. Acceptable documentation includes, but is not limited to, a copy of a recent bank or financial statement or contract(s) for the sale of BUYER'S current residence or other property to be sold.

(C). \$ FINANCING:
[] Additional financial terms are specified under the heading "OTHER TERMS AND/OR CONDITIONS" (Section 5 below).
[] Additional financial terms are contained in a financing addendum of same date, attached hereto, signed by both parties.

(D). \$ 0.00 APPROXIMATE FUNDS DUE FROM BUYERS AT CLOSING: (Not including closing costs) Cash at closing to be paid by BUYER at closing in GOOD FUNDS, includes: cash, electronic transfer funds, certified check or cashier's check.

4. SECTION 1031 TAX DEFERRED EXCHANGE: By checking either or both of the boxes that follow, it is hereby acknowledged by the parties that the [] Buyer, [] Seller intends to use the purchase and sale of the PROPERTY as an integral part of a tax deferred like-kind exchange as allowed under Section 1031 of the Internal Revenue Code (the "Exchange"). For purposes of this paragraph, the party participating in the Exchange shall be identified as the "Exchanger." If either box above is checked, then the parties recognize that a material part of the Exchanger's consideration for entering into the agreement for the purchase and sale of the PROPERTY is the successful completion of the exchange. The parties agree to assist each other in the completion of such exchange by cooperating with each other by signing any and all relevant documents provided that the party not doing the Exchange shall not incur any liabilities, costs, fees, or taxes in excess of those which that party would have incurred had this transaction not been an Exchange.

5. OTHER TERMS AND/OR CONDITIONS: This Agreement is made subject to the following special terms, considerations and/or contingencies which must be satisfied prior to closing:
1. SELLER TO GRANT BUYER A 45 DAY DUE DILIGENCE PERIOD
2. 45% OF THE 45 DAY EARNEST MONEY TO BE COME FROM SELLER AND REVERSE TO THE SELLER

6. ITEMS INCLUDED & EXCLUDED IN THIS SALE: All existing fixtures and fittings that are attached to the PROPERTY are INCLUDED IN THE PURCHASE PRICE (unless excluded below), and shall be transferred free of liens. These include, but are not limited to, all seller-owned attached floor coverings, attached television antennae, satellite dish, attached plumbing, bathroom and lighting fixtures, window screens, screen doors, storm doors, storm windows, window coverings, garage door opener(s) and transmitter(s), exterior trees, plants or shrubbery, water heating apparatus and fixtures, attached fireplace equipment, awnings, ventilating, cooling and heating systems, all ranges, ovens, built-in dishwashers, fuel tanks and irrigation fixtures and equipment, that are now on or used in connection with the PROPERTY and shall be included in the sale unless otherwise provided herein. BUYER should satisfy himself/herself that the condition of the included items is acceptable.

(A). ADDITIONAL ITEMS SPECIFICALLY INCLUDED IN THIS SALE: Residential Home

BUYER'S Initials () () Date 8/6/08 SELLER'S Initials () () Date

PROPERTY ADDRESS: Appt. 14 Annex N. 397th ID#: LT 300

69 (B). ITEMS SPECIFICALLY EXCLUDED IN THIS SALE: N/A
70
71
72

73
74 7. TITLE CONVEYANCE: Title of SELLER is to be conveyed by warranty deed special warranty deed or deed, and is to be
75 marketable and insurable except for rights reserved in federal patents, state or railroad deeds, building or use restrictions, building and zoning regulations
76 and ordinances of any governmental unit, and rights of way and easements established or of record. Liens, encumbrances or defects to be discharged by
77 SELLER may be paid out of purchase money at date of closing. No liens, encumbrances or defects which are to be discharged or assumed by BUYER or to
78 which title is taken subject to, exist unless otherwise specified in this Agreement.
79

80 8. TITLE INSURANCE: There may be types of title insurance coverages available other than those listed below and parties to this agreement
81 are advised to talk to a title company about any other coverages available that will give the buyer additional coverage.
82

83 (A). PRELIMINARY TITLE COMMITMENT: Prior to closing the transaction SELLER or BUYER shall furnish to BUYER a preliminary commitment of a
84 title insurance policy showing the condition of the title to said PROPERTY. BUYER shall have 5 business day(s) from receipt of the preliminary
85 commitment or not fewer than twenty-four (24) hours prior to closing, within which to object in writing to the condition of the title as set forth in the preliminary
86 commitment. If BUYER does not so object, BUYER shall be deemed to have accepted the conditions of the title. It is agreed that if the title of said
87 PROPERTY is not marketable, or cannot be made so within 5 business day(s) after notice containing a written statement of defect is delivered to
88 SELLER, BUYER'S Earnest Money deposit will be returned to BUYER and SELLER shall pay for the cost of title insurance cancellation fee, escrow and
89 legal fees, if any.
90

91 (B). TITLE COMPANY: The parties agree that Plumtree Title Title Company
92 located at 10th Ave shall provide the title policy and preliminary report of commitment.
93

94 (C). STANDARD COVERAGE OWNER'S POLICY: SELLER shall within a reasonable time after closing furnish to BUYER a title insurance policy in the
95 amount of the purchase price of the PROPERTY showing marketable and insurable title subject to the liens, encumbrances and defects elsewhere set out in
96 this Agreement to be discharged or assumed by BUYER unless otherwise provided herein. The risk assumed by the title company in the standard
97 coverage policy is limited to matters of public record. BUYER shall receive a ILTA/ALTA Owner's Policy of Title Insurance. A title company, at BUYER'S
98 request, can provide information about the availability, desirability, coverage and cost of various title insurance coverages and endorsements. If BUYER
99 desires title coverage other than that required by this paragraph, BUYER shall instruct closing agency in writing and pay any increase in cost unless
100 otherwise provided herein.
101

102 (D). EXTENDED COVERAGE LENDER'S POLICY (Mortgagee policy): The lender may require that BUYER (Borrower) furnish an Extended Coverage
103 Lender's Policy. This extended coverage lender's policy considers matters of public record and additionally insures against certain matters not shown in the
104 public record. This extended coverage lender's policy is solely for the benefit of the lender and only protects the lender.
105

106 9. INSPECTION/DUE DILIGENCE:
107 (A). BUYER shall have the right to conduct due diligence inspections, investigations, tests, surveys and other studies at BUYER'S expense unless
108 otherwise indicated below or agreed upon in writing by the parties. BUYER chooses to have inspection(s) not to have inspection(s). If BUYER chooses
109 not to have inspection skip the remainder of this Section 9. BUYER shall, within _____ business day(s) of acceptance, complete these inspections and give
110 to SELLER written notice of disapproved items. BUYER is strongly advised to exercise these rights and to make BUYER'S own selection of professionals
111 with appropriate qualifications to conduct inspections of the entire PROPERTY. The closing of this transaction is conditioned upon BUYER'S satisfaction or
112 waiver of the following contingencies.

INSPECTION ITEM; COSTS PAID BY	BUYER	SELLER	SHARED EQUALLY	N/A	INSPECTION ITEM; COSTS PAID BY	BUYER	SELLER	SHARED EQUALLY	N/A
Environmental inspection (Phase I)	X				Hazardous Waste report(s)	X			
Environmental inspection (Phase II)	X				Other substances hazardous to human health (e.g. mold, radon, asbestos, etc.)	X			
Environmental inspection (Phase III)	X				Review of seller's relevant business documents	X			
Survey	X				Utilities and Zoning Studies	X			
Water Rights	X				Pest, dry rot & structural inspection(s)	X			
Flood Zone Hazard	X				Compliance with American With Disabilities Act	X			
Soil(s) and Percolation Test(s)	X				Well/Septic	X			

113 The following documents and materials shall be provided by the SELLER to the BUYER as part of the BUYER'S inspection/due diligence:
114 N/A
115
116
117
118

BUYER'S Initials (JW) (_____) Date 8/26/08 SELLER'S Initials (_____) (_____) Date _____

PROPERTY ADDRESS: App. 14 Hours A. 39th ID#: 27360

119 (B). SATISFACTION/REMOVAL OF INSPECTION DUE DILIGENCE CONTINGENCIES:

120 1) If BUYER does not within the strict time period specified give to SELLER written notice of disapproved items, BUYER shall conclusively be
121 deemed to have: (a) completed all inspections, investigations, review of applicable documents and disclosures; (b) elected to proceed with the
122 transaction and (c) assumed all liability, responsibility and expense for repairs or corrections other than for items which SELLER has otherwise
123 agreed in writing to repair or correct.

124
125 2). If BUYER does within the strict time period specified give to SELLER written notice of disapproved items, BUYER shall provide to SELLER
126 pertinent section(s) of written inspection reports. SELLER shall have 7 business day(s) in which to respond in writing. The SELLER, at
127 their option, may correct the items as specified by the BUYERS in their letter or may elect not to do so. If the SELLER agrees to correct the items
128 asked for in the BUYERS letter, then both parties agree that they will continue with the transaction and proceed to closing. This will remove the
129 BUYER'S inspection contingency.

130
131 3). If SELLER elects not to correct the disapproved items, or does not respond in writing within the strict time period specified, then the BUYER(S)
132 have the option of either continuing the transaction without the SELLER being responsible for correcting these deficiencies or giving the SELLER
133 written notice within 7 business days that they will not continue with the transaction and demand the return of their Earnest Money.

134
135 4). If BUYER does not give such written notice of cancellation within the strict time periods specified, BUYER shall conclusively be deemed to have
136 elected to proceed with the transaction without repairs or corrections other than for items with SELLER has otherwise agreed in writing to repair or
137 correct. SELLER shall make the PROPERTY available for all inspections. BUYER shall keep the PROPERTY free and clear of liens; indemnify and
138 hold SELLER harmless from all liability, claims, demands, damages and costs; and repair any damages arising from the inspections. No inspections
139 may be made by any governmental building or zoning inspector or government employee without the prior consent of SELLER unless required by
140 local law.

141
142 10. MINERAL RIGHTS: Any and all mineral rights appurtenant to the property are included in and are part of the sale of this property unless otherwise
143 agreed to by the parties in writing.

144
145 11. WATER RIGHTS: Any and all water rights including but not limited to water systems, wells, springs, lakes, streams, ponds, rivers, ditches, ditch
146 rights, and the like, if any, appurtenant to the property are included in and are a part of the sale of this property unless otherwise agreed to by the parties in
147 writing.

148
149 12. ADDITIONAL COSTS: Costs in addition to those listed below may be incurred by BUYER and SELLER unless otherwise agreed herein, or provided
150 by law or required by lender, or otherwise stated herein. The below costs will be paid as indicated. Some costs are subject to loan program requirements.
151 SELLER agrees to pay up to \$ _____ of lender required repair costs only. BUYER or SELLER has the option to pay any lender
152 required repair costs in excess of this amount.

COSTS	BUYER	SELLER	SHARED EQUALLY	N/A	COSTS	BUYER	SELLER	SHARED EQUALLY	N/A
Appraisal fee				X	Flood certification / tracking fee				X
Long term Escrow fees			X		Title Ins. Standard Coverage owners policy		X		
Closing fee			X		Lenders Extended Policy				X
Additional Title Ins.				X	Attorney contract preparation and/or review fee				X
Water Rights				X					

153
154 13. ESCROW/COLLECTION: If a long-term escrow/collection is involved, then the escrow/collection holder shall be _____
155 Each party agrees to pay one-half of escrow/collection fees and escrow setup fees.

156
157 14. RESIDENTIAL PROPERTY CONDITION DISCLOSURE: Idaho Code §55-2501 et seq. requires that any person intending to transfer "residential
158 real property" deliver to the transferee or his agent, within ten (10) days of the acceptance of an offer to purchase, a SELLER PROPERTY CONDITION
159 DISCLOSURE FORM. "Residential real property" means real property that is improved by a building or other structure that has one (1) to four (4) dwelling
160 units or an individually owned unit in a structure of any size. This also applies to real property which has a combined residential and commercial use.
161 The property is not subject to the Property Condition Disclosure Act.

162
163 15. LEAD-BASED PAINT DISCLOSURE: Properties that meet the criteria of "target housing" require certain disclosures regarding lead-based paint
164 hazards. The term lead-based paint hazard is intended to identify lead-based paint and all residential lead-containing dusts and soils regardless of the
165 source of the lead. Pursuant to 42 USCA § 4851 et seq., "target housing" means any housing constructed prior to 1978, except housing for the elderly or
166 persons with disabilities (unless any child who is less than six (6) years of age resides or is expected to reside in such housing for the elderly or persons with
167 disabilities) or any zero-bdroom dwelling. A "residential dwelling" means a single-family dwelling, including attached structures such as porches and stoops;
168 or a single-family dwelling unit in a structure that contains more than one (1) separate residential dwelling unit, and in which each such unit is used or
169 occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one (1) or more persons. "Residential real property" means
170 real property on which there is situated one (1) or more residential dwellings used or occupied, or intended to be used or occupied, in whole or in part, as the
171 home or residence of one (1) or more persons.

BUYER'S Initials (Ju) (_____) Date 8/6/08 SELLER'S Initials (_____) (_____) Date _____

PROPERTY ADDRESS: Agg 14 Ave N. 39th ID#: LT300

172 The subject property is is not defined as "Target Housing" regarding lead-based paint or lead-based paint hazards. If yes, BUYER hereby
173 acknowledges the following: (a) BUYER has been provided an EPA approved lead-based paint hazard information pamphlet, "Protect Your Family From
174 Lead in Your Home," (b) receipt of the Seller's Disclosure of Information and Acknowledgment Form and have been provided with all records, test reports or
175 other information, if any, related to the presence of lead-based paint hazards on said property, (c) that this contract is contingent upon BUYER'S right to have
176 the property tested for lead-based paint hazards to be completed no later than 1/18 or the contingency will terminate, (d) that BUYER
177 hereby waives does not waive this right, (e) that if test results show unacceptable amounts of lead-based paint on the property, BUYER has the right to
178 cancel the contract subject to the option of the SELLER (to be given in writing) to elect to remove the lead-based paint and correct the problem which must
179 be accomplished before closing, (f) that if the contract is cancelled under this clause, BUYER's earnest money deposit will be returned to BUYER.

180
181 **16. SQUARE FOOTAGE VERIFICATION:** BUYER IS AWARE THAT ANY REFERENCE TO THE SQUARE FOOTAGE OF THE REAL PROPERTY
182 OR IMPROVEMENTS IS APPROXIMATE. IF SQUARE FOOTAGE IS MATERIAL TO THE BUYER, IT MUST BE VERIFIED DURING THE INSPECTION
183 PERIOD.

184
185 **17. COVENANTS, CONDITIONS AND RESTRICTIONS (CC&Rs):** As part of the BUYER'S inspection of the PROPERTY as set forth above in
186 Section 9, BUYER is responsible for obtaining and reviewing a copy of any CC&Rs which may affect the PROPERTY. BUYER shall have days (but in
187 no event shall such time period exceed that time period set forth for inspections in Section 9) to review and approve of any such CC&Rs that may affect the
188 PROPERTY. Unless BUYER delivers to SELLER a written and signed objection to the terms of any applicable CC&Rs with particularity describing BUYER'S
189 reasonable objections within such time period as set forth above, BUYER shall be deemed to have conclusively waived any objection to the terms of any
190 CC&Rs affecting the PROPERTY.

191
192 **18. RISK OF LOSS:** Prior to the closing of this sale, all risk of loss shall remain with SELLER. In addition, should the PROPERTY be materially
193 damaged by fire or other destructive cause prior to closing, this agreement shall be voidable at the option of the BUYER.

194
195 **19. CONDITION OF PROPERTY AT CLOSING:** Upon expiration of the Inspection/Due Diligence period and thereafter, BUYER agrees to purchase
196 the PROPERTY in as-is-condition, where is, with all faults and with no further repairs required unless otherwise agreed upon by the parties in writing.
197 BUYER will assume all obligations with respect to the PROPERTY. SELLER shall maintain the PROPERTY until the closing in its present condition, ordinary
198 wear and tear excepted.

199
200 **20. CLOSING AGENCY:** The Closing Agency for this transaction shall be Plummer Title
201 located at 167 Nampa

202
203 **21. CLOSING DATE:** On or before the closing date, BUYER and SELLER shall deposit with the Closing Agency all funds and instruments necessary to
204 complete the sale. The closing date shall be no later than 1/17/20 "Closing Date" means the date on which all
205 documents are either recorded or accepted by an escrow/collection agency and the sale proceeds are available to SELLER.

206
207 **22. POSSESSION/PRORATION:** BUYER shall be entitled to possession UPON CLOSING or DATE
208 TIME AM PM. Taxes and water assessments (using the last available assessment as a basis), rents, insurance premiums, interest
209 and reserve on liens, encumbrances or obligations assumed and utilities shall be prorated as of the day of closing or
210 Any tenant deposits held by SELLER shall be credited to BUYER at closing.

211
212 **23. "NOT APPLICABLE" DEFINED:** The letters "n/a," "N/A," "n.a.," and "N.A." as used herein are abbreviations of the term "not applicable." Where
213 this agreement uses the term "not applicable" or an abbreviation thereof, it shall be evidence that the parties have contemplated certain facts or conditions
214 and have determined that such facts or conditions do not apply to the agreement or transaction herein.

215
216 **24. FACSIMILE TRANSMISSION:** Facsimile or electronic transmission of any signed original document, and retransmission of any signed facsimile or
217 electronic transmission shall be the same as delivery of an original. At the request of either the BUYER or SELLER, or the LENDER, or the Closing Agency,
218 the BUYER and SELLER will confirm facsimile or electronic transmitted signatures by signing an original document.

219
220 **25. BUSINESS DAYS & HOURS:** A business day is herein defined as Monday through Friday, 8:00 A.M. to 5:00 P.M. in the local time zone where the
221 subject real property is physically located. A business day shall not include any Saturday or Sunday, nor shall a business day include any legal holiday
222 recognized by the state of Idaho as found in Idaho Code §73-108. The time in which any act required under this agreement is to be performed shall be
223 computed by excluding the date of execution and including the last day. The first day shall be the day after the date of execution. If the last day is a legal
224 holiday, then the time for performance shall be the next subsequent business day.

225
226 **26. DEFAULT:** If BUYER defaults in the performance of this Agreement, SELLER has the option of: (1) accepting the Earnest Money as liquidated
227 damages or (2) pursuing any other lawful right or remedy to which SELLER may be entitled. If SELLER elects to proceed under (1), SELLER shall make
228 demand upon the holder of the Earnest Money, upon which demand said holder shall pay from the Earnest Money the costs incurred by SELLER's Broker
229 on behalf of SELLER and BUYER related to the transaction, including, without limitation, the costs of title insurance, escrow fees, credit report fees,
230 inspection fees and attorney's fees; and said holder shall pay any balance of the Earnest Money, one-half to SELLER and one-half to SELLER's Broker,
231 provided that the amount to be paid to SELLER's Broker shall not exceed the Broker's agreed to commission. SELLER and BUYER specifically
232 acknowledge and agree that if SELLER elects to accept the Earnest Money as liquidated damages, such shall be SELLER's sole and exclusive remedy, and
233 such shall not be considered a penalty or forfeiture. If SELLER elects to proceed under (2), the holder of the Earnest Money shall be entitled to pay the costs
234 incurred by SELLER's Broker on behalf of SELLER and BUYER related to the transaction, including, without limitation, the costs of Brokerage fee, title
235 insurance, escrow fees, credit report fees, inspection fees and attorney's fees, with any balance of the Earnest Money to be held pending resolution of the
236 matter. If SELLER defaults, having approved said sale and fails to consummate the same as herein agreed, BUYER'S Earnest Money deposit shall be
237 returned to him/her and SELLER shall pay for the costs of title insurance, escrow fees, credit report fees, inspection fees, Brokerage fees and attorney's
238 fees, if any. This shall not be considered as a waiver by BUYER of any other lawful right or remedy to which BUYER may be entitled.

BUYER'S Initials () () Date 1/16/20 SELLER'S Initials () () Date

PROPERTY ADDRESS: App 14 Davis St, 397 ID#: LT-300

239 27. ATTORNEY'S FEES: If either party initiates or defends any arbitration or legal action or proceedings which are in any way connected with this
240 Agreement, the prevailing party shall be entitled to recover from the non-prevailing party reasonable costs and attorney's fees, including such costs and fees
241 on appeal.
242
243

244 28. EARNEST MONEY DISPUTE / INTERPLEADER: Notwithstanding any termination of this contract, BUYER and SELLER agree that in the event
245 of any controversy regarding the Earnest Money and things of value held by Broker or closing agency, unless mutual written instructions are received by the
246 holder of the Earnest Money and things of value, Broker or closing agency shall not be required to take any action but may await any proceeding, or at
247 Broker's or closing agency's option and sole discretion, may interplead all parties and deposit any moneys or things of value into a court of competent
248 jurisdiction and shall recover court costs and reasonable attorney's fees.
249

250
251 29. THE RESPONSIBLE BROKER SHALL BE Scott Bullock / Bullock & Co. Realtors
252
253

254 30. SEVERABILITY: In the case that any one or more of the provisions contained in this Agreement, or any application thereof, shall be invalid, illegal or
255 unenforceable in any respect, the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
256
257

258 31. COUNTERPARTS: This Agreement may be executed in counterparts. Executing an agreement in counterparts shall mean the signature of two
259 identical copies of the same agreement. Each identical copy of an agreement signed in counterparts is deemed to be an original, and all identical copies
260 shall together constitute one and the same instrument.
261

262 32. SALES PRICE INFORMATION: Pursuant to Idaho Code §54-2083(6)(d), a "sold" price of real property is not confidential client information.
263
264

265 33. REPRESENTATION CONFIRMATION: Check one (1) box in Section 1 and one (1) box in Section 2 below to confirm that in this transaction, the
266 brokerage(s) involved had the following relationship(s) with the BUYER(S) and SELLER(S).
267

- 268 Section 1:
- 269 A. The brokerage working with the BUYER(S) is acting as an AGENT for the BUYER(S).
 - 270 B. The brokerage working with the BUYER(S) is acting as a LIMITED DUAL AGENT for the BUYER(S), without an ASSIGNED AGENT.
 - 271 C. The brokerage working with the BUYER(S) is acting as a LIMITED DUAL AGENT for the BUYER(S) and has an ASSIGNED AGENT
 - 272 D. The brokerage working with the BUYER(S) is acting as a NONAGENT for the BUYER(S).
- 273 Section 2:
- 274 A. The brokerage working with the SELLER(S) is acting as an AGENT for the SELLER(S).
 - 275 B. The brokerage working with the SELLER(S) is acting as a LIMITED DUAL AGENT for the SELLER(S), without an ASSIGNED AGENT.
 - 276 C. The brokerage working with the SELLER(S) is acting as a LIMITED DUAL AGENT for the SELLER(S) and has an ASSIGNED AGENT
 - 277 D. The brokerage working with the SELLER(S) is acting as a NONAGENT for the SELLER(S).

278 Each party signing this document confirms that he has received, read and understood the Agency Disclosure Brochure adopted or approved by the Idaho
279 real estate commission and has consented to the relationship confirmed above. In addition, each party confirms that the brokerage's agency office policy
280 was made available for inspection and review. EACH PARTY UNDERSTANDS THAT HE IS A "CUSTOMER" AND IS NOT REPRESENTED BY A
281 BROKERAGE UNLESS THERE IS A SIGNED WRITTEN AGREEMENT FOR AGENCY REPRESENTATION.
282

283 34. AUTHORITY OF SIGNATORY: If BUYER or SELLER is a corporation, partnership, trust, estate, or other entity, the person executing this
284 agreement on its behalf warrants his or her authority to do so and to bind BUYER or SELLER.
285
286

287 35. ENTIRE AGREEMENT: This Agreement, including any Addendums or exhibits, constitutes the entire Agreement between the parties and no
288 warranties, including any warranty of habitability or representations have been made or shall be binding upon either party unless herein set forth.
289

290 36. TIME IS OF THE ESSENCE IN THIS AGREEMENT.
291
292

293 37. ACCEPTANCE: This offer is made subject to the acceptance of SELLER and BUYER on or before (Date) Aug 6 ~~Aug 6~~ 2008 at (Local
294 Time in which PROPERTY is located) 5:00 A.M. P.M. If acceptance of this Agreement is not received within the time specified, the offer is
295 withdrawn and the entire Earnest Money, if any, shall be refunded to BUYER on demand.
296

BUYER'S Initials [Signature] () Date 8/6/08 SELLER'S Initials () () Date _____

PROPERTY ADDRESS: App 14 Acres N. 39th ID#: LT 300

303 36. BUYER'S SIGNATURES:

304 SEE ATTACHED BUYER'S ADDENDUM(S); _____ (Specify number of BUYER addendum(s) attached.)

306
307 BUYER Signature [Signature] BUYER (Print Name) Jon Wabelaw
308
309 Date 8/6/08 Time 2:20 A.M. P.M. Phone # 880 1516 Cell # 467 6175
310
311 Address _____ City Nampa State Id Zip _____
312
313 E-Mail _____ Fax # _____
314
315

316 -----
317 BUYER Signature _____ BUYER (Print Name) _____
318
319 Date _____ Time _____ A.M. P.M. Phone # _____ Cell # _____
320
321 Address _____ City _____ State _____ Zip _____
322
323 E-Mail _____ Fax # _____
324
325
326
327

328 37. SELLER'S SIGNATURES:

329 On this date, I/We hereby approve and accept the transaction set forth in the above Agreement and agree to carry out all the terms thereof on the part of the SELLER.

330 SIGNATURE(S) SUBJECT TO ATTACHED COUNTER OFFER
331
332 SIGNATURE(S) SUBJECT TO ATTACHED ADDENDUM(S) # _____
333

334 SELLER Signature _____ SELLER (Print Name) _____
335
336 Date _____ Time _____ A.M. P.M. Phone # _____ Cell # _____
337
338 Address _____ City _____ State _____ Zip _____
339
340 E-Mail _____ Fax # _____
341
342

343 -----
344 SELLER Signature _____ SELLER (Print Name) _____
345
346 Date _____ Time _____ A.M. P.M. Phone # _____ Cell # _____
347
348 Address _____ City _____ State _____ Zip _____
349
350 E-Mail _____ Fax # _____
351
352
353
354
355
356

357 CONTRACTOR REGISTRATION # (if applicable) _____
358

Thomas E. Dvorak (ID State Bar ID# 5043)
Angela M. Reed (ID State Bar ID# 7221)
GIVENS PURSLEY LLP
601 West Bannock Street
Post Office Box 2720
Boise, Idaho 83701-2720
Telephone: 208-388-1200
Facsimile: 208-388-1300
S:\CLIENTS\10292\1\Memo in Support of Mtn to Amend.DOC

JUL 09 2009

CANYON COUNTY CLERK
J DRAKE, DEPUTY

Attorneys for John Wakelum and Mike Ressler

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT FOR THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

JON WAKELUM, an individual; and MIKE
RESSLER, an individual doing business as
"M&M RE Holdings",

Plaintiffs

v.

THOMAS A. HAGOOD, an unmarried man,

Defendant.

Case No. CV 08-8465

**MEMORANDUM IN SUPPORT OF
SECOND MOTION TO AMEND
COMPLAINT**

THOMAS A. HAGOOD, an unmarried man,

Third Party Plaintiff,

v.

BULLOCK AND COMPANY REALTORS
L.L.C., an Idaho limited liability company,
SCOTT BULLOCK, an individual, BILL
DOWNS AUCTION SERVICE INC., an Idaho
corporation, and Scott Bullock, an individual
and LARRY DOWNS, an individual,


Third Party Defendants.

COMES NOW, Plaintiffs, Jon Wakelum and Mike Ressler, by and through their attorneys of record, Givens Pursley LLP, and submit this Memorandum in Support of Second Motion to Amend Complaint. This case arises out of an absolute auction sale, which was held by Defendant Hagood through his agents, the other defendants. At the conclusion of the sale, Defendant Hagood refused to proceed forward and sign a Memorandum of Sale. The Court has ruled that the Statute of Frauds bars enforcement of the contracts of sale due to the lack of a signed memorandum sufficient to satisfy the statute. Authority exists to the effect that the auctioneer conducting the sale becomes a dual agent for seller and buyer and does have authority to execute a sufficient memorandum to bind the seller. *See e.g. Rohlfing v. Tommorrow Realty & Auction Co., Inc.*, 528 So.2d 463 (Fla.App. 5 Dist. 1988)(“[T]he law of agency peculiarly applies to an auctioneer, who, while primarily the agent of the seller in making a sale, is for some purposes the agent of both parties. His authority may be express or by implication or ratification. It has been held that the auctioneer may satisfy the statute of frauds by himself or his clerk unilaterally signing, as is apparently customary, a memorandum of the oral sale as agent for both parties); *Sims v. Broughton*, 589 N.E.2d 1056 (Ill.App. 5 Dist. 1992)(Citing prior case for proposition that “auctioneer is considered an agent for both the seller and the purchaser, and thus, a document signed by the auctioneer on behalf of the purchaser, if it contains the necessary information, binds the purchaser to the contract.”).

In the present case, the amendment seeks to declare this law as the law of the state of Idaho and compel the auctioneer to sign a sufficient memorandum for the statute of frauds. In the event it is now too late for the auctioneer to sign a sufficient memorandum, an alternative count is plead for the auctioneer’s negligence in failing to earlier execute such a document. Accordingly, leave to amend the complaint to plead such a claim is appropriate.

DATED this 17th day of July, 2009.

GIVENS PURSLEY LLP



Thomas E. Dvorak
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of July, 2009, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Jay Gustavsen
Davison, Copple, Copple & Cox
Washington Mutual Capitol Plaza, Suite 600
199 North Capitol Blvd.
P.O. Box 1583
Boise, Idaho 83701


U.S. Mail
 Overnight Mail
 Hand Delivery
 Fax

Phillip J. Collaer
Anderson, Julian & Hull, LLP
P.O. Box 7426
Boise, ID 83707-7426

U.S. Mail
 Overnight Mail
 Hand Delivery
 Fax

Terry Michaelson
Hamilton Michaelson & Hilty, LLP
1303 12th Avenue Road
P.O. Box 65
Nampa, ID 83653-0065

U.S. Mail
 Overnight Mail
 Hand Delivery
 Fax



Thomas E. Dvorak

JAY GUSTAVSEN (ISB No. 5293)
 ALEX P. MCLAUGHLIN (ISB No. 7977)
 DAVISON, COPPLE, COPPLE & COPPLE
 Washington Mutual Capitol Plaza
 199 North Capitol Boulevard
 Suite 600
 Post Office Box 1583
 Boise, Idaho 83701
 Telephone: (208) 342-3658
 Facsimile: (208) 386-9428

7-23 HWH
FILED
 A.M. 4:05 P.M.

JUL 15 2009

**CANYON COUNTY CLERK
 T. CRAWFORD, DEPUTY**

Attorneys for Defendant
 Thomas A. Hagood

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

JON WAKELUM, an individual; and MIKE)
 RESSLER, an individual doing business as)
 "M&M RE Holdings",)
)
 Plaintiffs,)
 vs.)
)
 THOMAS A. HAGOOD, an unmarried man,)
)
 Defendant.)
 _____)

Case No. CV 08-8465

DEFENDANT'S REPLY
 MEMORANDUM IN SUPPORT
 OF MOTION FOR SUMMARY
 JUDGMENT

COMES NOW the Defendant Thomas A. Hagood, by and through his attorneys of record, Jay Gustavsen and Alex P. McLaughlin, of the firm Davison, Copple, Copple & Copple of Boise, Idaho and hereby submits this Reply Memorandum in Support of Motion for Summary Judgment.

I. INTRODUCTION

The memorandum at bar is a reply to Plaintiffs' memorandum addressing the issue of whether Plaintiffs' cause of action under the Idaho Consumer Protection Act ("ICPA") is barred by the Statute of Frauds. In their brief, Plaintiffs contend that their ICPA claim should not be dismissed because: 1.) The rationale for barring Consumer Protection claims on unenforceable promises does not support dismissing Plaintiffs' ICPA claim; 2.) The representations at issue are factual and non-promissory; 3.) The foregoing representations are collateral to and thus separate from the unenforceable promise; and 4.) Plaintiffs do not seek contract damages, but rather actual damages or \$1,000.00 under I.C. § 48-608.

As will be discussed below, all of the foregoing claims are without merit.

II. ARGUMENT

Defendant's position is four-fold:

1. Plaintiffs' ICPA claim should be dismissed because it is logically untenable.
2. Plaintiffs' ICPA claim should be dismissed because Plaintiffs have failed to allege that they have suffered an "ascertainable loss."
3. Plaintiffs' ICPA claim should be dismissed because the rationale for barring Consumer Protection claims on unenforceable promises finds near perfect application to the facts of the instant matter.
4. Plaintiffs' ICPA claim should be dismissed because the assertions upon which their claim is predicated are promissory and not factual and are not collateral to the unenforceable promise.

III. ANALYSIS

1. Plaintiffs' ICPA claim should be dismissed because it is logically untenable.

Plaintiffs claim that Defendant's prior conduct in allegedly creating an advertisement for the auction was deceptive under I.C. § 48-608. Plaintiffs' claim should be dismissed because it

is both illogical and in discord with the policy of I.C. § 9-505. The following reasons substantiate this contention.

First, because there was no deception before the Court ruled that the alleged promise at issue was unenforceable, there can be no deception after the fact. If the alleged promise to convey Defendant's real property would have been deemed enforceable, Plaintiffs would have no claim under the ICPA. This, of course, makes perfect sense – if the auction went as planned and there was an actual conveyance of Defendant's property, the advertisement could not possibly have been fraudulent as there would have been a conveyance of property in precise accordance with said advertisement. Of course, the auction did not proceed as planned as the promise derived therefrom was later deemed by this Court to be unenforceable. Plaintiffs thus brought suit under the ICPA on the basis that the advertisement was deceptive. However, the nature of Defendant's conduct did not somehow make an *ex ante* change based on the Court's ruling. The advertisement at issue said what it said at the time it was said. The only difference in the status quo has been the Court's ruling. However, if the Defendant's conduct would not have been fraudulent if the promise was enforced, but became allegedly fraudulent only because the Court did not enforce the promise, there cannot have been any fraud or deception by the Defendant since the lynchpin therefor would be the Court's substantive decision and not the Defendant's actual conduct. The Court's later decision to render a promise unenforceable does not render fraudulent a representation relating to that promise if there was no fraud before the Court made its decision as to the later promise. In effect, this would classify conduct as fraudulent or not irrespective of the actual conduct of the fraud-feasor - that would make no sense. Whether conduct is fraudulent must depend on the conduct of the actor in question at the

time of the purported malfeasance; after the fact decisions of the Court do not render fraudulent conduct that was not fraudulent before the decision was made.

Second, if the Court were to rule that Plaintiffs have a claim under the ICPA, the Court would render every commercial oriented promise over which the Statute of Frauds applies potentially deceptive. Merely because a promise is ultimately unenforceable does not mean that the promise was predicated on fraud. The intent of the drafters of I.C. § 9-505 was to root out potential fraud, not give every disgruntled promisee a claim under the Consumer Protection Act. *Kelly v. Hodges*, 119 Idaho 872, 874, 811 P.2d 48, 50 (Ct. App. 1991). Likewise, the intent of the drafters of I.C. § 48-601 was to protect “consumers and businesses against unfair methods of competition and unfair or deceptive acts and practices ...”, not to give solace to every litigant whose promise failed to satisfy I.C. § 9-505.

In the present case, Plaintiffs’ claim is illogical as a matter of fact and spurious as a matter of policy. Accordingly, Plaintiffs’ claim under the ICPA should be dismissed.¹

2. Plaintiffs’ ICPA claim should be dismissed because Plaintiffs have failed to allege that they have suffered an “ascertainable loss.”

It is a basic rule of statutory construction that, unless the result is palpably absurd, Courts must assume that the legislature means what is clearly stated in the statute. *Miller v. State*, 110 Idaho 298, 715 P.2d 968 (1986); *See also State Dep't of Law Enforcement v. One 1955 Willys Jeep*, 100 Idaho 150, 158, 595 P.2d 299, 302 (1979); *See also Worley Highway Dist. v. Kootenai County*, 98 Idaho 925, 928, 576 P.2d 206, 209 (1978). Accordingly, in construing a statute the words of the statute must be given their plain, usual, and ordinary meaning. *Walker v. Hensley*

¹ Defendant’s position is analogous to that taken by the litigants in *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986). In *Celotex*, the United States Supreme Court ruled that a Defendant may move for summary judgment without filing affidavits on the narrow basis that even if all of the facts alleged by Plaintiff are proven, they are insufficient to make out the cause of action alleged.

Trucking, 107 Idaho 572, 691 P.2d 1187 (1984); *See also State v. Moore*, 111 Idaho 854, 727 P.2d 1282 (Ct.App.1986); *See also Sherwood v. Carter*, 119 Idaho 246, 254, 805 P.2d 452, 460 (1991) (Clear expressed intent of legislature must be given effect and there is no occasion for construction where language of statute is unambiguous).

Idaho Code § 48-608 provides that “any person who purchases ... goods ... and thereby suffers any ascertainable loss ... as a result ... of a method, act or practice declared unlawful by this act ... may bring an action to recover actual damages or one thousand dollars (\$1,000), whichever is greater.” I.C. § 48-608(1) (emphasis added).

In the present case, Plaintiffs’ Amended Complaint fails to allege that they have satisfied the above prerequisites to recover under I.C. § 48-608. The following reasons substantiate this contention.

First, I.C. § 48-608 requires that three prerequisites must be satisfied in order to be able to recover actual damages or \$1,000.00:

- 1.) The person must first purchase the good in question;
- 2.) The person must suffer an ascertainable loss; and
- 3.) Such loss must be the result of the “use or employment by another person of a method, act, or practice declared unlawful by this act.” I.C. § 48-608.

A plain reading of I.C. § 48-608 bears out the foregoing interpretation. Plaintiffs, however, have put the cart in front of the horse, stating that they are entitled to recover at least \$1,000.00 under I.C. § 48-608 because Defendant employed a method, act, or practice declared unlawful under Title Forty-Eight (48). The statute does not state that a litigant may recover actual damages or at least \$1,000.00 if they have merely been affected by the employment of a

deceptive device. Rather, the litigant must suffer an ascertainable loss first and then is entitled to recover actual damages or at least \$1,000.00.

Second, Plaintiffs have failed to plead that they have suffered an ascertainable loss. Not one sentence in Plaintiffs' Amended Complaint alleges that they have suffered a loss because of the purported malfeasance, a dubious contention in light of the fact that Plaintiffs never even purchased the property at issue and therefore never suffered a change in status quo. Plaintiffs allege only that because of the purported malfeasance, they are entitled to at least \$1,000.00. This is in contradiction to the requirements of I.C. § 48-608.

In light of the above, Plaintiffs' ICPA claim should be dismissed because Plaintiffs have failed to allege that they have suffered an "ascertainable loss."

3. Plaintiffs' ICPA claim should be dismissed because the rationale for barring Consumer Protection claims on unenforceable promises finds near perfect application to the facts of the instant matter.

Plaintiffs cite the case of *McLure v. Duggan*, 674 F.Supp. 211, 221 (N.D. Tex. 1987) with approval. The *McLure* opinion contains an instructive discussion concerning the policy implications of the issue at bar, to wit, the rule that where a party is attempting to assert a Consumer Protection Act action in order to circumvent the Statute of Frauds, the Consumer Protection claim cannot stand:

"The judicial disregard of the statute [of frauds] should be limited to situations in which the essence of the action truly sounds in tort. Where plaintiff, although casting his complaint in the form of a cause of action for fraud, is attempting to recover damages for the breach of the promise, it is clear that he is, in effect, attempting to enforce the oral agreement."

Id (emphasis not added).²

² No doubt the reason for the heightened inquiry is because of the fact that in allowing a fraud claim to move forward which also relates to an unenforceable contract, the risk is that the Court may be allowing the litigant to obviate the Statute of Frauds and thus circumvent a directive from the legislature. Thus, it is incumbent on the Court to take a good look at the litigants' claim and determine whether it truly sounds in tort.

In light of the foregoing, the question before this Court is thus not whether Plaintiffs' claim under the ICPA sounds in tort. *McLure* requires a more exhaustive inquiry and in light of the tenor of Idaho Courts in enforcing the Statute of Frauds, there is no reason to believe that Idaho would deviate from the *McLure* analysis. Under *McLure* and its antecedent cases, the crucial issue for this Court to address is whether the "essence" of Plaintiffs' ICPA claim "truly" sounds in tort.

Fortunately for the Defendant and the Court, Plaintiffs have made it a point to include their motivation for filing the amendment at bar in their Memorandum in Support of Motion to Amend and their Amended Complaint. The advantage of such inclusion cannot be emphasized enough. This Court is now in a position to ascertain from the actual representations of the Plaintiffs whether the "essence" of their ICPA claim "truly" sounds in tort.

In the present case, the essence of Plaintiffs' ICPA claim does not truly sound in tort. Accordingly, Plaintiffs' claim under the ICPA should be barred. The following reasons substantiate this contention.

First, Plaintiffs' Memorandum in Support of Motion to Amend states that the reason for amendment was merely to "protect their right a [sic] recovery." *Plaintiffs' Memorandum in Support of Motion to Amend*, P.2 ("Purely out of an abundance of caution, and in the event the court determines that Hagood's position is correct, the Plaintiffs desire to protect their right a [sic] recovery and therefore seek to amend their claim to add a claim under the Idaho Consumer Protection Act") (emphasis added).

The foregoing excerpt is significant because of what is not said. While Plaintiffs state that they are asserting their amended claim only to preserve recovery, they do not state nor even imply that the impetus of amendment is because they have actually suffered additional tort

damages. Of course, a litigant need not assert their motivations for amending a complaint. However, if they do assert their motivations, it is incumbent that the Court analyze the impetus therefor. In this case, Plaintiffs have offered some degree of detail regarding why they have added their ICPA claim; omitted from their remarks is mention that they have suffered tort damages in addition to contract damages.

Second, Plaintiffs plead their Motion to Amend in the alternative. *Plaintiffs' Amended Complaint* ("Count 4 is plead in the alternative to Counts 1 through 3 and only in the event that the Court finds on the basis of the Statute of Frauds or similar basis that no enforceable contract for the sale of real property exists justifying specific performance or damages against Defendant Thomas A. Hagood under Counts 1 through 3") (emphasis added).

The fact that Plaintiffs plead their motion in the alternative is significant. For one, it highlights the issue raised above as to whether or not Plaintiffs truly suffered tort damages. If Plaintiffs did suffer tort and contract damages, pleading in the alternative would be irrational and would actually mean that Plaintiffs plead their damages in a manner that would fail to make Plaintiffs whole. However, the more instructive inquiry per the discussion at bar is to examine what would have happened if the Plaintiffs had prevailed on the Statute of Frauds issue. The answer is that Plaintiffs' Motion to Amend would have been withdrawn and there would have been no claim put forward to this Court under the ICPA. In light of this fact, Defendant requests that this Court ask itself the following: Can it be said that the essence of Plaintiffs' ICPA claim truly sounds in tort (*See McLure, supra*) where if Plaintiffs had prevailed on the Statute of Frauds issue, their claim under the ICPA never would have been submitted to the Court?

In light of the above, the essence of Plaintiffs' ICPA claim does not truly sound in tort. Accordingly, under *McLure* (a case that Plaintiffs cite with approval) Plaintiffs' ICPA claim should be barred.

4. Plaintiffs' ICPA claim should be dismissed because the assertions upon which their claim is predicated are promissory and not factual and are not collateral to the unenforceable promise.

Plaintiffs assert that their ICPA claim is not barred by the Statute of Frauds because the malfeasance in question was a factual assertion which was collateral to the unenforceable promise. Plaintiffs' claim is without merit. The following reasons substantiate this contention.

First, the advertisement upon which Plaintiffs' entire ICPA claim is predicated is not a factual assertion. The advertisement in question was created by Downs Auction (not Defendant Thomas A. Hagood³) and related to an auction to occur in the future and thus a potential sale to occur in the future. Moreover, the advertisement contains statements of future promise. Conspicuously stated thereon is the following: "TERMS: We will offer at ABSOLUTE AUCTION ... we will offer lots 1, 2, 3 individual and then as a whole." See Exhibit "B" to *Plaintiffs' Amended Complaint* (emphasis added). Thus, the language on the advertisement relating to the future auction was likewise promissory in nature. Accordingly, it cannot be said that the advertisement was purely factual. Moreover, inasmuch as the advertisement contained representations of offer, the advertisement itself contained the very same promise that this Court has already deemed unenforceable.

Second, in light of the fact that the advertisement contains the promise which this Court has already barred, it cannot be said that the assertions thereon are collateral to the unenforceable

³ See I.C. § 54-2093 (A client ... whether buyer or seller, shall not be liable for a wrongful act, error, omission or misrepresentation of his broker, his broker's licensees, or subagents unless the client had actual knowledge of or reasonably should have known of the wrongful act, error, omission or misrepresentation").

promise. The assertions at issue appear on the very same document on which the unenforceable promise is also present.

Third, the above facts render this case distinguishable from all of the cases cited by Plaintiffs. In none of the cases cited by Plaintiffs do the facts state that the litigants plead their consumer protection claim purely out of caution, just to preserve recovery, in the alternative to contract damages, and only in the event that they do not prevail on the contract claims. Moreover, in none of the cases cited by Plaintiffs are there the same statements implicating future events and future promises. Each case pertained to present factual assertions unrelated to the later promise. Accordingly, none of the cases cited by Plaintiffs control the disposition of the instant matter.

In light of the above and the arguments contained in Defendant's prior memoranda, Plaintiffs' ICPA claim should be barred.

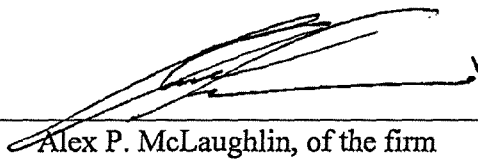
IV. CONCLUSION

Defendant respectfully requests that this Court grant his Motion for Summary Judgment, filed previously, and dismiss Plaintiffs' claim against the Defendant Hagood for violation of the ICPA.

DATED this 15th of July, 2009

DAVISON, COPPLE, COPPLE & COPPLE, LLP

By: _____


Alex P. McLaughlin, of the firm
Attorneys for the Defendant

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 15th day of July, 2009, I served a true and accurate copy of the foregoing instrument by placing the same in the United States Mail, postage prepaid, first class mail, to the following:

Tom Dvorack
Givens Pursley, LLP
601 W. Bannock St.
P.O. Box 2720
Boise, Idaho 83701


U.S. MAIL
 Hand Delivery
 Facsimile Transmission

Phillip J. Collaer
Anderson, Julian & Hull, LLP
PO Box 7426.
Boise, Idaho 83707

U.S. MAIL
 Hand Delivery
 Facsimile Transmission

Terry Michaelson
Hamilton, Michaelson & Hilty, LLP
1303 12th Avenue Road
PO Box 65
Nampa, ID 83653-0065

U.S. MAIL
 Hand Delivery
 Facsimile Transmission



Alex P. McLaughlin

7-23 Hoff
FILED
1025 A.M. P.M.

JAY GUSTAVSEN (ISB No. 5293)
ALEX P. MCLAUGHLIN (ISB No. 7977)
DAVISON, COPPLE, COPPLE & COPPLE
Washington Mutual Capitol Plaza
199 North Capitol Boulevard
Suite 600
Post Office Box 1583
Boise, Idaho 83701
Telephone: (208) 342-3658
Facsimile: (208) 386-9428

JUL 21 2009

CANYON COUNTY CLERK
J HEIDEMAN, DEPUTY

Attorneys for Defendant
Thomas A. Hagood

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

JON WAKELUM, an individual; and MIKE)
RESSLER, an individual doing business as)
"M&M RE Holdings",)
)
Plaintiffs,)
vs.)
)
THOMAS A. HAGOOD, an unmarried man,)
)
Defendant.)
_____)

Case No. CV 08-8465

OBJECTION TO PLAINTIFFS'
SECOND MOTION TO AMEND
COMPLAINT

COMES NOW the Defendant Thomas A. Hagood, by and through his attorneys of record, Jay Gustavsen and Alex P. McLaughlin, of the firm Davison, Copple, Copple & Copple of Boise, Idaho and hereby submits this Objection to Plaintiffs' Second Motion to Amend Complaint.

ORIGINAL

I. INTRODUCTION

The memorandum at bar is an Objection to Plaintiffs' Second Motion to Amend Complaint. While Idaho Rule of Civil Procedure ("I.R.C.P") 15(a) states that Courts should favor liberal grants of leave to amend complaints, the Court may deny such leave where the amendment fails to "raise a valid claim recognized in Idaho." See *Stonewall Surplus Lines Insurance Company v. Farmers Insurance Company of Idaho*, 132 Idaho 318, 325, 971 P.2d 1145, 1149 (1999) (citation omitted). In the instant matter, Plaintiffs are attempting to both add a claim that is not recognized in Idaho and have this Court declare new law in Idaho. Accordingly, Defendant requests that this Court DENY, in part, Plaintiffs' Second Motion to Amend Complaint.¹

II. ARGUMENT

Because Plaintiffs do not raise a valid claim recognized in Idaho, the Court should deny Plaintiffs' Second Motion to Amend Complaint.

III. ANALYSIS

I.R.C.P 15(a) provides that "[a] party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served." *Id.* If a responsive pleading has been served, then "a party may amend a pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires." *Id.*

The decision to grant or deny a motion for leave to amend a complaint is within the sound discretion of the trial court. *Hines v. Hines*, 129 Idaho 847, 853, 934 P.2d 20, 26 (1997). The Idaho Supreme Court has recognized that in the interest of justice, courts should favor liberal grants of leave to amend. *Id.*; *Wickstrom v. North Idaho College*, 111 Idaho 450, 453,

¹ The second claim sought to be added by amendment does not implicate the Defendant Thomas A. Hagood. Therefore, Defendant Hagood only seeks denial pertaining to Count five (5).

725 P.2d 155, 158. The Court has also recognized, however, that a trial court has not abused its discretion in denying a request for leave to amend a complaint if the new claims proposed to be inserted fail to state a valid claim. *Black Canyon Racquetball Club, Inc. v. Idaho First Nat'l Bank, N.A.*, 119 Idaho 171, 175, 804 P.2d 900, 904 (1991); *See also Bissett v. State*, 111 Idaho 865, 869, 727 P.2d 1293, 1296 (Ct. App. 1986).

In the present case, Plaintiffs' Second Motion to Amend Complaint should be denied. The following reasons substantiate this contention.

First, the claim proffered in Count five (5) of Plaintiffs' Second Amended Complaint does not appear to be recognized in Idaho. Plaintiffs' Memorandum in Support of Second Motion to Amend Complaint contains no reference to statute or common law, whether in Idaho or other jurisdictions, which actually states that the relief sought is permissible. In fact, the cases cited by Plaintiffs do not even involve the quasi-mandamus/injunctive relief which Plaintiffs seek. Plaintiffs' Memorandum is thus a perplexing patchwork of inapplicable out-of-state cases and one provision of the Idaho Code, incorporated together to somehow reach the conclusion that Plaintiffs are entitled to equitable relief, i.e., an order compelling the auctioneer to sign the Purchase and Sale memoranda that this Court has already ruled is unenforceable under the Statute of Frauds. As is sometimes said of "quasi-estoppel," Count five (5) of Plaintiffs' Second Amended Complaint appears, at best, to be a "last-gasp theory." *See Thomas v. Arkoosh Produce, Inc.*, 137 Idaho 352, 357, 48 P.3d 1241, 1246 (2002).²

Second, in urging amendment, Plaintiffs openly request that this Court invade the province of the legislature. On page two (2) of Plaintiffs' Memorandum in Support of Second

² It should also be noted that Count five (5) is inapposite to the Court's prior ruling. This Court previously dismissed Plaintiffs' claims for breach of contract and specific performance because the alleged contract at issue was unenforceable under the Statute of Frauds. Plaintiffs are simply attempting to circumvent the Court's Judgment. This Court has ruled on this issue. The alleged contract is unenforceable.

Motion to Amend Complaint, Plaintiffs state: "[T]he amendment seeks to declare this law as the law of the state of Idaho." Under the Declaratory Judgment Act, a Court may declare rights and legal relations between and among parties. However, it is well outside the scope of I.C. § 10-1205 and the power of the judiciary to declare what is or is not the law of Idaho. *See Electrical Wholesale Supply Co. Inc., v. Nielson*, 136 Idaho 814, 41 P.3d 242 (2002) ("The power invested to this Court is limited to interpretation of the constitution and laws ... The power to make law and declare public policy is vested with the legislature. This Court will not intrude upon the province of the legislature").

In light of the above, Plaintiffs' Second Motion to Amend Complaint should be denied.

IV. CONCLUSION

Defendant respectfully requests that this Court DENY Plaintiffs' Second Motion to Amend Complaint.

DATED this 21st of July, 2009

DAVISON, COPPLE, COPPLE & COPPLE, LLP

By: _____

Alex P. McLaughlin, of the firm
Attorneys for the Defendant

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 21st day of July, 2009, I served a true and accurate copy of the foregoing instrument by placing the same in the United States Mail, postage prepaid, first class mail, to the following:

Tom Dvorack
Givens Pursley, LLP
601 W. Bannock St.
P.O. Box 2720
Boise, Idaho 83701

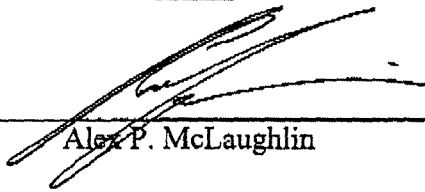
U.S. MAIL
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Phillip J. Collaer
Anderson, Julian & Hull, LLP
PO Box 7426.
Boise, Idaho 83707

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Terry Michaelson
Hamilton, Michaelson & Hilty, LLP
1303 12th Avenue Road
PO Box 65
Nampa, ID 83653-0065

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Alex P. McLaughlin

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

PRESIDING: **RENAE J. HOFF** DATE: July 23, 2009

JON WAKELUM, an individual; and MIKE
RESSLER, an individual doing business as
"M&M RE Holdings",

Plaintiffs,

vs.

THOMAS A. HAGOOD, an unmarried man,

Defendants.

THOMAS A. HAGOOD, an unmarried man,

Third Party Plaintiff,

vs.

BULLOCK AND COMPANY REALTORS
L.L.C., an Idaho limited liability company,
SCOTT BULLOCK, an individual, BILL
DOWNS AUCTION SERVICE INC., an Idaho
corporation, and Scott Bullock, an individual
and LARRY DOWNS, an individual,

Third Party Defendants.

) COURT MINUTE

) CASE NO: CV2008-8465*C

) REPORTED BY: Carole Bull

) TIME: 9:00 A.M.

) DCRT3 (10:40-11:15)

This having been the time heretofore set for **motion for summary judgment**
and motion to amend complaint in the above entitled matter, the plaintiffs were not

personally present in court, but were represented by counsel, Mr. Thomas E. Dvorak, the third party defendant Bill Downs Auction Service was represented by counsel, Mr. Aaron Seable and the defendant Hagood was not personally present, but was represented by counsel Mr. Alex P. McLaughlin.

The Court noted the motion for summary judgment brought by the defendant and the plaintiff's were seeking to amend the Complaint to have the auctioneer sign a memorandum sufficient for the statute of frauds, or to be held responsible for damages to the plaintiff.

Mr. McLaughlin advised the Court that there were two issues before the Court. The first being the Idaho Consumer Protection Act claim and whether it should be dismissed and the second was the motion to amend which they were objecting to on the basis of claim 5 not claim 6. Mr. McLaughlin presented argument to the Court in support of the ICPA claim and in opposition to the motion to amend with respect to claim 5.

Mr. Dvorak advised the Court that with regards to the motion to amend, he did not receive the reply brief until yesterday afternoon, objected to that as an untimely response and to the Court considering it.

The Court so noted.

Mr. Dvorak presented argument to the Court in support of the motion to amend and in opposition to the motion for summary judgment.

Mr. McLaughlin responded with further argument in support of the motion for summary judgment and in opposition to the motion to amend.

Mr. Dvorak responded with further argument.

The Court announced Findings of Fact and Conclusions of Law. The Court concluded there would not have been a deceptive practice if the defendant would have signed the sale agreement, therefore, it appeared under the Consumer Protection Act in Idaho that the claim and the breach of contract claim were the same. There was no evidence that Mr. Hagood or the auctioneers set up this transaction with the intent that they would never go through with the actual sale. Once the sale was over, then Mr. Hagood refused to sign the documents, so the Court concluded that the matter was unenforceable under the statute of frauds. It was the opinion of the Court that there was a question as to whether there was the suffering of an actual ascertainable loss. The Court determined it was precluded from entertaining the new amendment to the Complaint and the Court had authority to deny the amendment. The Court further concluded that summary judgment should once again be granted in favor of the defendant, Mr. Hagood, and the motion to amend the Complaint was denied.

The Court instructed Mr. McLaughlin to prepare an order for the Court's signature and noted the Court's comments would stand for the record.

Mr. Dvorak advised the Court with respect to the denial of the motion to amend the Complaint, the opposition was directed just to Count 5 and requested clarification if the Court's ruling was with regards to Counts 5 and 6.

Mr. McLaughlin advised the Court that he was only addressing Count 5.

The Court noted that clarified that issue and the amendment would be allowed as to Count 6.

Mr. Dvorak further inquired if the Court's ruling applied to the other defendant's as well.

The Court indicated they did not make the argument so the Court still saw this case as pending.

Mr. Dvorak noted the other defendant's did not join in the motion for summary judgment.

The Court agreed.

Mr. Seable advised the Court for the record that he had nothing to add to the arguments.

The Court so noted.

J. Maund

Deputy Clerk

JAY GUSTAVSEN (ISB No. 5293)
 ALEX P. MCLAUGHLIN (ISB No. 7977)
 DAVISON, COPPLE, COPPLE & COPPLE
 Attorneys at Law
 Washington Mutual Capitol Plaza
 199 North Capitol Boulevard
 Suite 600
 Post Office Box 1583
 Boise, Idaho 83701
 Telephone: (208) 342-3658
 Facsimile: (208) 386-9428

F I L E D
 A.M. 10 P.M.
 AUG 06 2009
 CANYON COUNTY CLERK
 T. CRAWFORD, DEPUTY

Attorneys for Defendant
 Thomas A. Hagood

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

JON WAKELUM, an individual; and MIKE)
 RESSLER, an individual doing business as)
 "M&M RE Holdings",)
)
 Plaintiffs,)
 vs.)
)
 THOMAS A. HAGOOD, an unmarried man,)
)
 Defendant.)
)
)

Case No. CV 08-8465

**ORDER GRANTING
 DEFENDANT'S MOTION
 SUMMARY JUDGMENT
 AND DENYING
 PLAINTIFFS' SECOND
 MOTION TO AMEND
 COMPLAINT**

THIS MATTER having come regularly before the Court for hearing on Defendant's Motion For Summary Judgment regarding Plaintiffs' claims under the Idaho Consumer Protection Act, on Thursday, the 23rd day of July, 2009, at 9:00 o'clock a.m., with the Plaintiffs appearing by and through their attorney of record, Tom Dvorak of the firm Givens Pursley, LLP, and the Defendant appearing by and through his attorney of record, Alex P. McLaughlin of the firm Davison, Copple, Copple & Copple, LLP, and the Court having considered the briefs, affidavits and oral argument of counsel and the Court having announced its decision in open court and good cause appearing therefore;

IT IS HEREBY ORDERED that based upon there being no genuine issues as to any material facts, Defendant Thomas A. Hagood's Motion for Summary Judgment is granted and thus all of Plaintiffs' claims against the Defendants under the Idaho Consumer Protection Act are hereby dismissed with prejudice.

IT IS HEREBY FURTHER ORDERED that Plaintiffs' Second Motion to Amend Complaint is denied as to Count five (5) thereof and granted as to Count six (6).

DATED this ____ day of _____, 2009.

AUG 3 2009



JUDGE RENAE J. HOFF

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 13th day of Aug, 2009, I served a true and accurate copy of the foregoing instrument by placing the same in the United States Mail, postage prepaid, first class mail, to the following:

Tom Dvorack
Givens Pursley, LLP
601 W. Bannock St.
P.O. Box 2720
Boise, Idaho 83701

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Phillip J. Collaer
Anderson, Julian & Hull, LLP
PO Box 7426.
Boise, Idaho 83707

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Jay Gustavsen
Alex P. McLaughlin
Davison, Copple, Copple & Copple
P.O. Box 1583
Boise, Idaho 83701

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 Facsimile Transmission



Clerk

FILED
A.M. 10 P.M.

JAY GUSTAVSEN (ISB No. 5293)
ALEX P. MCLAUGHLIN (ISB No. 7977)
DAVISON, COPPLE, COPPLE & COPPLE
Attorneys at Law
Washington Mutual Capitol Plaza
199 North Capitol Boulevard
Suite 600
Post Office Box 1583
Boise, Idaho 83701
Telephone: (208) 342-3658
Facsimile: (208) 386-9428

AUG 06 2009
CANYON COUNTY CLERK
T. CRAWFORD, DEPUTY

Attorneys for Defendant
Thomas A. Hagood

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

JON WAKELUM, an individual; and MIKE
RESSLER, an individual doing business as
"M&M RE Holdings",
Plaintiffs,
vs.
THOMAS A. HAGOOD, an unmarried man,
Defendant.

Case No. CV 08-8465

SUMMARY JUDGMENT

THIS MATTER having come regularly before the Court for hearing on Defendant's Motion For Summary Judgment regarding Plaintiffs' claims under the Idaho Consumer Protection Act, on Thursday, the 23rd day of July, 2009, at 9:00 o'clock a.m., with the Plaintiffs appearing by and through their attorney of record, Tom Dvorak of the firm Givens Pursley, LLP, and the Defendant appearing by and through his attorney of record, Alex P. McLaughlin of the firm Davison, Copple, Copple & Copple, LLP, and the Court having considered the briefs, affidavits and oral argument of counsel and the Court having announced its decision in open court and entered its Order granting Summary Judgment and cause appearing therefor, and based upon there being no genuine issues as to any material facts, and Defendant being entitled to the entry of Summary Judgment as a matter of law;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendant Thomas A. Hagood's Motion for Summary Judgment is granted and thus all of Plaintiffs' claims against the Defendants under the Idaho Consumer Protection Act are hereby dismissed with prejudice.

DATED this ____ day of July, 2009.

AUG 5 2009



JUDGE RENAE J. HOFF

F I L E D
A.M. 10 P.M.

AUG 20 2009

**CANYON COUNTY CLERK
T. CRAWFORD, DEPUTY**

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above Judgment, it is hereby CERTIFIED, in accordance with Rule 54(b) of the Idaho Rules of Civil Procedure, that the Court has determined that there is no just reason for delay of the entry of judgment as to the claims filed against the Defendant Thomas A. Hagood and that the Court has and does hereby direct that the above Judgment shall be a final judgment upon which an appeal be taken as provided by the Idaho Appellate Rules.

DATED this ____ day of July, 2009.

AUG 18 2009



JUDGE RENAE J. HOFF

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 20 day of July, 2009, I served a true and accurate copy of the foregoing instrument by placing the same in the United States Mail, postage prepaid, first class mail, to the following:

Tom Dvorack
Givens Pursley, LLP
601 W. Bannock St.
P.O. Box 2720
Boise, Idaho 83701

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Alex P. McLaughlin
Davison, Copple, Copple & Copple
P.O. Box 1583
Boise, Idaho 83701

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Clerk

Thomas E. Dvorak (ID State Bar ID# 5043)
Angela M. Reed (ID State Bar ID# 7221)
GIVENS PURSLEY LLP
601 West Bannock Street
Post Office Box 2720
Boise, Idaho 83701-2720
Telephone: 208-388-1200
Facsimile: 208-388-1300
658870_1

FILED
A.M. 4:50 P.M.

SEP 16 2009

CANYON COUNTY CLERK
T. CRAWFORD, DEPUTY

Attorneys for John Wakelum and Mike Ressler

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT FOR THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

JON WAKELUM, an individual; and MIKE
RESSLER, an individual doing business as
"M&M RE Holdings",

Plaintiffs

v.

THOMAS A. HAGOOD, an unmarried man,

Defendant.

THOMAS A. HAGOOD, an unmarried man,

Third Party Plaintiff,

v.

BULLOCK AND COMPANY REALTORS
L.L.C., an Idaho limited liability company,
SCOTT BULLOCK, an individual, BILL
DOWNS AUCTION SERVICE INC., an Idaho
corporation, and Scott Bullock, an individual
and LARRY DOWNS, an individual,

Third Party Defendants.

Case No. CV 08-8465

NOTICE OF APPEAL

**TO: DEFENDANT THOMAS A. HAGOOD AND THIRD PARTY DEFENDANTS,
BULLOCK AND COMPANY REALTORS L.L.C., SCOTT BULLOCK, BILL
DOWNS AUCTION SERVICE INC., LARRY DOWNS AND THEIR
ATTORNEYS OF RECORD, AND THE CLERK OF THE ABOVE-ENTITLED
COURT:**

NOTICE IS HEREBY GIVEN THAT:

1. Pursuant to Idaho Appellate Rule 17, the above named Plaintiffs Jon Wakelum, an individual; and Mike Ressler, an individual doing business as "M&M RE Holdings" (hereinafter "Wakelum and Ressler") appeal to the Idaho Supreme Court from the final Judgment entered in the above-entitled action on the 6th day of August, 2009 (and certified as a final judgment by the Court on the 18th day of August 2009 by the Honorable Renae J. Hoff, presiding). This Notice of Appeal, pursuant to Idaho Appellate Rule 17(e)(1), shall be deemed to include and present on appeal all interlocutory judgments, orders and decrees entered prior to the foregoing named Judgment (including without limitation that certain Order Granting Defendant's Motion for Partial Summary Judgment and Granting Plaintiff's Motion to Amend Complaint entered on June 10, 2009); all judgments, orders and decrees entered prior to the judgment, order or decree appealed from for which the time for appeal has not expired and all interlocutory or final judgments, orders and decrees entered after the foregoing named Judgment.

2. Wakelum and Ressler have the right to appeal to the Idaho Supreme Court and the judgments and orders described or incorporated herein pursuant to Idaho Appellate Rule 11(a)(1).

3. **PRELIMINARY STATEMENT OF ISSUES ON APPEAL:**

The following includes a non-exhaustive list of preliminarily identified issues on appeal, and Wakelum and Ressler reserve the right to present additional issues on appeal:

- A. Whether the District Court erred in determining that the Statute of Frauds ("SOF") prohibits an enforceable "absolute" or "no reserve" auction of real estate in the State of Idaho;

- B. Whether the District Court erred in determining that the alleged contracts were unenforceable under the Statute of Frauds;
- C. Whether the District Court erred in disregarding evidence that should satisfy any requirement imposed by the SOF or exception to the SOF, including the seller's signature on a Representation Agreement describing and consenting to the absolute auction in question;
- D. Whether the District Court erred in not determining that Hagood should be barred as a matter of equity (including principles of part performance, estoppel, and unclean hands) from using the SOF to withdraw his property from sale;
- E. Whether the District Court erred in failing to determine that equity should regard this case as being removed from the operation of the SOF;
- F. Whether the District Court erred in determining that the Plaintiffs were not third party beneficiaries of the absolute auction described in the Seller's Representation Agreement;
- G. Whether the District Court erred in determining that the Plaintiffs' Idaho Consumer Protection Act ("I.C.P.A.") for, *inter alia*, deceptive advertising of an absolute auction without reserve, should be dismissed;
- H. Whether the District Court erred in determining that the pre-auction deceptive representations regarding the nature of the auction were not separate from the contract held to be unenforceable based on the SOF; and
- I. Whether the District Court erred in denying in part Plaintiffs' Second Motion to Amend, including without limitation, by denying the requested

amended to add a Count 5 seeking a declaratory judgment to the effect that the auctioneers were agents of the Defendant Hagood and still have the authority to sign the sales contracts on his behalf.

4. **REPORTER'S TRANSCRIPT.** Wakelum and Ressler request transcripts of the entirety of the following proceedings:

- A. Transcript of hearing on Plaintiffs' Motion for Leave to File Amended Complaint and other pending matters in case held on 7/23/2009;
- B. Transcript of hearing on Cross Motions for Summary Judgment and other pending matters in case held on 5/21/2009;
- C. Transcript of Telephonic Conference held on 4/02/2009;
- D. Transcript of hearing on Cross Motions for Summary Judgment and other pending matters in case held on 3/26/2009.; and
- E. Transcripts of all other hearings not specifically listed above held by the District Court in this matter.

5. **CLERK'S RECORD:** Wakelum and Ressler request that in addition to all documents automatically included in the record pursuant to Rule 28, I.A.R., that the Court include the following additional documents in the record (identified below as they are in the Court's):

	<u>Date</u>	<u>Document</u>
1	08/14/2008	Lis Pendens
2	10/20/2008	Plaintiffs' Motion for Summary Judgment
3	10/20/2008	Affidavit of Mike Ressler in Support of Plaintiffs' Motion for Summary Judgment

- 4 10/20/2008 Affidavit of Angela M Reed in Support of Plaintiffs' Motion for Summary Judgment
- 5 10/20/2008 Memorandum in Support of Plaintiffs' Motion for Summary Judgment
- 6 11/12/2008 Defendant's Opposition to Plaintiffs' Motion for Summary Judgment
- 7 11/12/2008 Affidavit of Thomas Hagood
- 8 11/12/2008 Defendant's Motion for Partial Summary Judgment
- 9 03/12/2009 Affidavit of Mike Ressler in Opposition to Defendant Hagood's Motion for Partial Summary Judgment and in Reply to Hagood's Opposition to Plaintiffs' Motion for Summary Judgment
- 10 03/12/2009 Affidavit of Angela M. Reed in Opposition to Defendant Hagood's Motion for Partial Summary Judgment and in Reply to Hagood's Opposition to Plaintiffs' Motion for Summary Judgment
- 11 03/12/2009 Affidavit of Kevin Seward in Support of Plaintiffs' Motion for Summary Judgment
- 12 03/12/2009 Affidavit of Jon Wakelum in Opposition to Defendant Hagood's Motion for Partial Summary Judgment and in Reply to Hagood's Opposition to Plaintiffs' Motion for Summary Judgment
- 13 03/12/2009 Plaintiffs' Memorandum in Opposition to Defendant Hagood's Motion for Partial Summary Judgment and in Reply to Hagood's Opposition to Plaintiffs' Motion for Summary Judgment
- 14 03/12/2009 Reply Memorandum in Support of Plaintiffs' Motion to Amend Complaint
- 15 03/20/2009 Reply to Plaintiffs' Memorandum in Opposition to Defendant's Motion for Partial Summary Judgment
- 16 05/07/2009 Supplemental Memorandum in Support of Defendant's Motion for Partial Summary Judgment
- 17 05/08/2009 Plaintiffs' Supplemental Memorandum in Support of Plaintiffs' Motion for Summary Judgment and in Opposition to Defendant Hagood's Motion for Partial Summary Judgment
- 18 05/15/2009 Defendant's Response to Plaintiffs' Supplemental Memorandum
- 19 05/15/2009 Plaintiffs' Supplemental Memorandum Response to Defendant Hagood's Supplemental Memorandum
- 20 05/21/2009 Hearing result for Motion Hearing held on 5/21/09 01:30 PM: District Court Hearing Held Court Reporter: Carole Bull Number of Transcript Pages for this hearing estimated: less than 100 pages-cross motions for summary

judgment/motion to amend

- 21 05/21/2009 Hearing result for Motion Hearing held on 5/21/09 01:30 PM: In
- 22 06/01/2009 Partial Summary Judgment
- 23 06/10/2009 Order Granting Defendant's Motion for Partial Summary Judgment and Granting Plaintiffs' Motion to Amend Complaint
- 24 06/16/2009 Defendant's Motion for Summary Judgment
- 25 06/16/2009 Memorandum in Support of Motion
- 26 07/09/2009 2nd Motion to Amend Complaint
- 27 07/09/2009 Memorandum in Support of 2nd Motion to Amend Complaint
- 28 07/15/2009 Defendant's Reply Memorandum in Support of Motion for Summary Judgment
- 29 07/21/2009 Objection to Plaintiffs' Second Motion to Amend Complaint
- 30 07/23/2009 Motion Granted Defendant's Summary Judgment Granted-Motion to Amend Complaint denied as to Count 5 only
- 31 07/23/2009 Hearing result for Motion Hearing held on 7/23/09 09:00 AM: District Court Hearing Held Court Reporter: Carole Bull Number of Transcript Pages for this hearing estimated: less than 100 pages
- 32 08/06/2009 Order Granting Defendant's Motion Summary Judgment and Denying Plaintiffs' Second Motion to Amend Complaint
- 33 08/06/2009 Summary Judgment (Claims against Defendant Hagood dismissed with Prejudice)(certified as 54(b) final judgment on 8/18/2009).

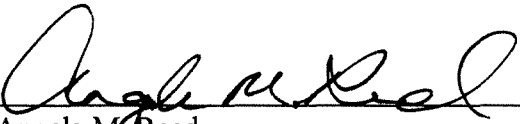
6. **I CERTIFY:**

- (a). That a copy of this notice of appeal has been served on the reporter.
- (b). That the clerk of the district court has been paid \$200.00, the estimated fee for preparation of the reporter's transcript.

- (c). That the estimated fee of \$100.00, for preparation of the clerk's record has been paid.
- (d). That the appellate filing fee of \$101.00 has been paid.
- (e). That service has been made upon all parties required to be served pursuant to Rule 20.

DATED this 16th day of September, 2009.

GIVENS PURSLEY, LLP

By: 
Angela M. Reed

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of September, 2009, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Jay Gustavsen
Davison, Copple, Copple & Copple
Washington Mutual Capitol Plaza, Suite 600
199 North Capitol Blvd.
P.O. Box 1583
Boise, Idaho 83701


U.S. Mail
 Overnight Mail
 Hand Delivery
 Fax

Phillip J. Collaer
Anderson, Julian & Hull, LLP
P.O. Box 7426
Boise, ID 83707-7426

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Hamilton Michaelson & Hilty, LLP
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P.O. Box 65
Nampa, ID 83653-0065

U.S. Mail
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Angela M. Reed

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

JON WAKELUM, an individual; and MIKE
RESSLER, an individual doing business as
M & M RE Holdings,

Plaintiffs-Appellants,

-vs-

THOMAS A. HAGOOD, an unmarried man,

Defendant-Third Party Plaintiff-
Respondent,

And

BULLOCK AND COMPANY REALTORS, LLC.,
an Idaho limited liability company, SCOTT
BULLOCK, an individual, BILL DOWNS
AUCTION SERVICE, INC., an Idaho
corporation, and LARRY DOWN, an
individual,

Case No. CV-08-08465*C

CERTIFICATE OF EXHIBIT

I, WILLIAM H. HURST, Clerk of the District Court of the Third Judicial District of
the State of Idaho, in and for the County of Canyon, do hereby certify that the following is
being sent as an exhibit:

NONE

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of
the said Court at Caldwell, Idaho this 11 day of December, 2009.

WILLIAM H. HURST, Clerk of the District
Court of the Third Judicial
District of the State of Idaho,
in and for the County of Canyon.

By: *J. Radell* Deputy

CERTIFICATE OF EXHIBIT

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

JON WAKELUM, an individual; and MIKE)
RESSLER, an individual doing business as)
M & M RE Holdings,)

Plaintiffs-Appellants,)

-vs-)

THOMAS A. HAGOOD, an unmarried man,)

Defendant-Third Party Plaintiff-)
Respondent,)

And)

BULLOCK AND COMPANY REALTORS, LLC.,)
an Idaho limited liability company, SCOTT)
BULLOCK, an individual, BILL DOWNS)
AUCTION SERVICE, INC., an Idaho)
corporation, and LARRY DOWN, an)
individual,)

Case No. CV-08-08465*C

CERTIFICATE OF CLERK

I, WILLIAM H. HURST, Clerk of the District Court of the Third Judicial District of
the State of Idaho, in and for the County of Canyon, do hereby certify that the above and
foregoing Record in the above entitled cause was compiled and bound under my
direction as, and is a true, full correct Record of the pleadings and documents under
Rule 28 of the Idaho Appellate Rules, including specific documents as requested.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of
the said Court at Caldwell, Idaho this 11 day of December, 2009.

WILLIAM H. HURST, Clerk of the District
Court of the Third Judicial
District of the State of Idaho,
in and for the County of Canyon.

By: J. Randall Deputy

CERTIFICATE OF CLERK

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

JON WAKELUM, an individual; and MIKE)
RESSLER, an individual doing business as)
M & M RE Holdings,)

Plaintiffs-Appellants,)

-vs-)

THOMAS A. HAGOOD, an unmarried man,)

Defendant-Third Party Plaintiff-)
Respondent,)

And)

BULLOCK AND COMPANY REALTORS, LLC.,)
an Idaho limited liability company, SCOTT)
BULLOCK, an individual, BILL DOWNS)
AUCTION SERVICE, INC., an Idaho)
corporation, and LARRY DOWNS, an)
individual,)

Defendants-Third Party Defendants-)
Respondents.)

Supreme Court No. 36940

CERTIFICATE OF SERVICE

I, WILLIAM H. HURST, Clerk of the District Court of the Third Judicial District of
the State of Idaho, in and for the County of Canyon, do hereby certify that I have
personally served or had delivered by United State’s mail, postage prepaid, one copy
of the Reporter’s transcript and one copy of the Clerk’s Record to the attorney of record:

Thomas E. Dvorak and Angela M. Reed, GIVENS PURSLEY LLP.,
P. O. Box 2720, Boise, Idaho 83701-2720

Jay Gustavsen and Alex P. McLaughlin, DAVISON COPPLE & COPPLE,
P. O. Box 1583, Boise, Idaho 83701

CERTIFICATE OF SERVICE

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of
the said Court at Caldwell, Idaho this 11 day of December, 2009.

WILLIAM H. HURST, Clerk of the District
Court of the Third Judicial
District of the State of Idaho,
in and for the County of Canyon.

By: J. Randall Deputy

CERTIFICATE OF SERVICE

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