

2008

Maurine J. Lloyd v. Cynthia M. Lloyd, Dennis S. Lloyd, and all other persons unknown claiming other persons unknown claiming any right, title, or interest and/or lien upon the real property described in this pleading adverse to the plaintiff's ownership or clouding title thereto : Brief of Appellee

Utah Court of Appeals

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Billie Crocker; Attorney for plaintiff Maurine J. Lloyd; Susan L. Martinez; Richard D. Martinez. Russell A. Cline; Attorneys for Defendants Cynthia M. Lloyd and Dennis S. Lloyd.

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Maurine J. Lloyd,
Plaintiff,

:

v.

Cynthia M. Lloyd, Dennis S. Lloyd,
and all other persons unknown claiming
other persons unknown claiming any right, :
title, or interest and/or lien upon the real
property described in this pleading adverse
to the plaintiff's ownership or clouding
title thereto,

Appellate Case No. 20081050

(Trial Court No. 030922233)

Defendants.

:

BRIEF OF APPELLEE

APPEAL FROM ORDER ENTERED DECEMBER 4, 2008
BY THE HONORABLE LEON A. DEVER
THIRD DISTRICT COURT, SALT LAKE COUNTY

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Lloyd and for Susan L. and
Richard Martinez

UTAH COURT OF APPEALS

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Plaintiff,

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Lloyd and for Susan L. and
Richard Martinez

LIST OF ALL PARTIES:

Maureen J. Lloyd
Cynthia M. Lloyd
Dennis S. Lloyd
Susan L. Martinez*
Richard D. Martinez*

*Counsel for the Plaintiff, Billie Crocker, also represents these parties for the purposes of supporting the Appellee's position in this appeal

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JURISDICTION

This Court has jurisdiction over this matter pursuant to Utah Code Annotated §78A-4-103(2)(j).

STATEMENT OF THE CASE

This case involves a Stipulation and Agreement for Court Supervised Sale of Real Property (the “Stipulation”) that provided for the sale of certain real property (the “Subject Property”). Although the Subject Property was listed indefinitely with Ralph Reidel of Coldwell Banker (see Addendum A, Exclusive Listing Agreement) and the Subject Property was under contract for sale (see Addendum B, Real Estate Purchase Contract), the defendants consistently interfered with the marketing and sale of the Subject Property resulting in the cancellation of the REPC and Mr. Reidel’s withdrawal as the listing agent.

Counsel for the defendants was unavailable from October 2007 to April 2008. R. 435-437 and R. 733. As soon as Russell Cline appeared as counsel for the defendants, requests were made for the defendants to cooperate actively with the marketing and sale of the Subject Property in accordance with Paragraph 3 of the Stipulation and Agreement for Court Supervised Sale of Real Property. Information regarding Equity Real Estate and the plaintiff’s proposed listing agent was supplied to the defendants and although the defendant now object to using this real estate company, they never made any attempt to suggest another realtor. The defendants refused to actively market the Subject Property

in violation of the Stipulation. Pursuant to Paragraphs 3, 5 and 7 of said Stipulation, the plaintiff requested that the trial court extend the sale period. On August 26, 2008 this request was granted although no particular real estate company was named in that Order. R. 588-589. The defendants were provided with a listing packet for Equity Real Estate and did not propose another realtor for the listing. Counsel for the defendants consistently led the Equity Real Estate realtor, Dovey Roah, to believe that his clients would be signing a listing agreement with her (See Addendum C, email of 9/23/2008 from Dovey Roah, regarding her impression that Mr. Cline and his clients were agreeable to the listing.

The defendants filed an Objection to the Form of the August 26, 2008 Order on August 28, 2008 which was heard on October 28, 2008. At this time the trial court was again persuaded that the sale period for Subject Property should be extended and specifically ordered that the sale period could not begin until all parties had signed a listing agreement with Equity Real Estate. The minimum sale price agreed to in the Stipulation and Agreement for Court Supervised Sale of Real Property was not altered and the trial court merely reiterated Paragraph 5 of the Stipulation and Agreement for Court Supervised Sale of Real Property by making it clear that if the parties could not agree on offers or if any party continued to act as an impediment to the sale, offers would be presented to the trial court for review.

STATEMENT OF ISSUES

1. Was the trial court authorized under the terms of the Stipulation to order an extension of the sale period when presented with evidence that the Subject Property had previously been under contract, that the defendants had interfered with the initial six month sale period, that another realtor was interested in listing the Subject Property and that the summer would present an optimum opportunity to attract new offers for a sale?
2. Did the trial court have the power to replace the real estate listing agent when the agent hired by the parties withdrew his services and the parties could not agree on a replacement?
3. Did the Stipulation expire by the lapse of time even though a valid Listing Agreement actively marketing the Subject Property was not in place?
4. Is the plaintiff entitled to attorney's fees on this appeal?

ISSUES PRESERVED IN TRIAL COURT

The plaintiff agrees that the foregoing issues were preserved in the trial court at both the May 19, 2008 and October 28, 2008 hearings.

STANDARD OF REVIEW

Under the terms of the Stipulation (Paragraph 5 and 7), the trial court had authority to extend the sales period if it was "persuaded" that such an extension would

likely result in the sale of the Subject Property and to order that offers to purchase be presented to the court for consideration if the parties cannot agree upon acceptance. R. 402. Enforcement of the Stipulation is reviewed for abuse of discretion and the trial court should not be reversed unless its decision exceeds the limits of reasonability Brighton Corp. v. Ward, 31 p.3d 594 (Ut App. 2001).

As to the issue of whether or not the trial court acted properly in appointing a new realtor, it is not clear that this decision should be reviewed under the standard suggested by the defendants. While legal conclusions are reviewed for correctness, findings of fact are given deferential review and appellate review is strictly limited. Grayson v. Finlinson, 782 P.2d 467, 470 (Utah 1989) and Craig v. Weihing, 746 P.2d 279, 282, 283 (Utah 1987). Here the Stipulation is ambiguous with respect to the rights and duties of the parties if the realtor selected by them resigns. Accordingly, the trial court made findings of fact and concluded that the intent of the stipulation could not be completed without the appointment of a new realtor. This decision was consistent with the intent of the Stipulation (to sell the Subject Property) and should not be set aside unless clearly erroneous. The appellate courts do not lightly disturb such findings. Saunders v. Sharp, 806 P.2d 198, 200 (Utah 1991).

Even if the appointment of another realtor is reviewed for abuse of discretion, this Court has held that enforcing a settlement agreement and even setting deadlines for

completion of improvements (where none previously existed in the settlement) was not an abuse of discretion. Mascaro v. Davis, 741 P.2d 938, 945 (Utah 1987).

STATEMENT OF FACTS

1. The Plaintiff, Maureen J. Lloyd, did NOT quit-claim any property to the Defendants on September 30, 1997 – she believes the transfer was fraudulent. Indeed, the purpose of this lawsuit is to invalidate the alleged conveyance and quiet title to the property to the plaintiff.

2. While it is true that the parties' entered into a Stipulation and Agreement for Court Supervised Sale of Real Property on June 12, 2007, the defendants have misrepresented the provisions of the Stipulation and its practical application to other local laws and regulations, for example, it is a violation of the code of ethics for a realtor to actively market a property without first obtaining a Listing Agreement signed by all parties. Therefore, the Subject Property could not be listed or marketed for sale until all parties executed a Listing Agreement with a licensed real estate agent.

3. Counsel for the defendants was unavailable from October 2007 to April 2008. R. 435-437 and R. 733. The defendants have consistently refused to sign any such Agreement thus sabotaging the Stipulation and any potential marketing or sale of the Property in direct violation of Paragraph 3 of said Stipulation which requires all parties to “actively market in good faith the Subject Property”. R. 401.

4. On May 19, 2008 the plaintiff made a motion pursuant to Paragraph 7 of the Stipulation to extend the sale period for the Subject Property. Susan L. Martinez and Richard Martinez, parties to the Stipulation, were aware of this hearing date and agreed with the plaintiff's motion to extend. The defendants fail to include in their statement of facts the plaintiff's motion to extend the sale period included a proffer that the original listing agent, Ralph Reidel, had withdrawn as the listing agent due to the defendants' failure to cooperate with the first listing and Real Estate Purchase Contract. The defendants have never disputed the allegation that they have failed to cooperate with the marketing of the Subject Property. The plaintiff also proffered that the marketing and sale period should be extended as the property had previously been under contract and that with summer approaching this would be the best time of year to list the Subject Property for sale and get it back under contract. R 726-727. Pursuant to Paragraphs 5 and 7 of the Stipulation, Judge Dever was persuaded by these facts that an additional six month sale period would likely result in the sale of the Subject Property and on August 5, 2008 he ordered an extension of the sale period. This Order was signed on August 26, 2008 and did not alter the listing price or the ultimate sale price.

5. Although not made part of the record, the defendants were given a listing packet prepared by Dovey Roah, Equity Real Estate and dated April 23, 2008. Until now, the defendants have never objected to hiring Dovey Roah, Equity Real Estate, as the listing agent. In fact, conversations with the defendants' counsel on or about September

23, 2008 led Ms. Roah to believe that the Petitioners were in agreement to list the property with her firm. See Addendum C email dated September 23, 2008.

6. The defendants filed a Motion to Dismiss on August 18, 2008 (in violation of Paragraph 2 of the Stipulation) and an Objection to the Proposed Order on August 28, 2008. The Objection was heard on October 28, 2008. At that hearing, the defendants' failure to cooperate and the requirement that the parties sign a listing agreement was discussed. R. 726-729, 736, 738 The defendants were specifically ordered to execute the listing agreement as a prerequisite to beginning the additional sale period. The defendants did not obey this order and have still not signed a listing agreement nor have they made any attempts to cooperate with the marketing or sale of the Subject Property.

7. The defendants' Statement of Facts would lead this Court to believe that the contemplated sale MUST be for no less than \$9.50 per square foot. This is not true as Paragraph 5 of the Agreement clearly states that the parties will "list and market" the Subject Property for sale for no less than \$9.50 per square foot. This Paragraph 5 also gives the trial court discretion to entertain all offers and to order the sale of the Property if the parties cannot agree or if either party fails to cooperate in the sale. R. 401. The listing agreement proposed by Equity Real Estate was that the Subject Property be marketed for \$10.00 per square foot. (Addendum D, page 2) This is in compliance with the terms of the Stipulation.

8. The defendants have inaccurately quoted the Stipulation and have inserted the requirement that the Property sell for “not less than \$9.50 per square/foot [sic]” when Paragraph 7 of the Stipulation authorizing the District Court to extend the sales period contains no such restriction. Furthermore, although the minutes of the hearing on October 28, 2008 state that “the price of the home may change”, the lower court did not order a reduction in the list price. See Minute Entry of 10/28/08 and the December 4, 2008 Order. R. 645 and R. 649-651. No reduction in the asking price has ever been ordered by the trial court.

9. Despite the trial court’s explicit Orders (in August 2008 and again in December 2008) to immediately list the property, the defendants have delayed signing the listing agreement and have brought motions and petitions designed to avoid marketing the Subject Property. The realtor has attempted to obtain signatures for the Listing Agreement by contacting the defendants’ attorney and by trying to contact the defendants directly. The defendants have impeded the marketing of the Subject Property for the last ten months in violation of Paragraph 3 of the Stipulation (to actively market in good faith) and Paragraph 8 of the Agreement to Sell Real Property dated 6-12-2007 (to cooperate fully and promptly with each other and the Listing Agent). R. 395-434.

SUMMARY OF ARGUMENT

The trial court was persuaded that an extension of the sale period would likely result in a sale of the Subject Property and correctly granted the requested extension as

authorized by the Stipulation (Paragraph 7). Likewise, the trial court did not abuse its discretion by reminding the parties in its order of December 4, 2008 that the court was authorized by Paragraph 5 of the Stipulation to review offers to purchase if the parties could not agree upon acceptance. The trial court's decision to enforce the terms of the Stipulation should not be reversed unless it was an abuse of discretion. Mascaro v. Davis, 741 P.2d 938, 942 (Utah 1987).

The defendants have inaccurately marshaled the evidence and claim that there are no facts supporting the trial court's decision. The trial court considered the following: 1) that the Subject Property had previously been under contract 2) that the contract for purchase had failed and that the listing agent had withdrawn his services, 3) that the defendants were not cooperating with the listing or sale of the Subject Property, 4) that opportunities for a sale of the Subject Property still existed and 5) that the summer market was approaching and would be a good time to get the Subject Property back on the market. In light of these facts, the trial court did not abuse its discretion when it reasonably concluded that an additional six month sale period would likely result in the sale of the Subject Property.

The court did not err in appointing a listing agent since the realtor chosen by the parties had withdrawn, the parties could not agree on a replacement, and the appointment was required in order to accomplish the stated goals of the Stipulation. Courts possess

inherent powers to make decisions that ensure the pursuit of a just process and result. Burke v. Lewis, 122 P.3d 533, 538 (Utah 2005).

The Stipulation has not expired because the Subject Property could not be “actively marketed” as required by the Stipulation unless a Listing Agreement was signed by all parties and in full force and effect. The defendants admit that the realtor resigned, that counsel was unavailable and that they would not sign a new Listing Agreement. Therefore, the extended sale period has never started.

ARGUMENT

I. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION BY ENFORCING THE TERMS OF THE STIPULATION AND EXTENDING THE SALE PERIOD

The law favors settlement of disputes and enforcement of settlements between the parties litigant should be encouraged. Mascaro v. Davis, 741 P.2d 938, 942, 946-947 (Utah 1987). In this matter, the Stipulation clearly provides that “the sale period may be extended for an additional six (6) months, by Court order, provided that the Court is persuaded that an additional six (6) month sale period will likely result in the sale of the Subject Property”. R. 403. This provision says nothing about list price or sale price although the defendants have consistently inserted an additional requirement in Paragraph 7 that the extension would likely result in the sale of the Subject Property “for not less than \$9.50 per square foot”. See Appellant’s Brief at pages 4 and 6, 10, 14. If the defendants wanted Paragraph 7 to read exactly this way, then they should have written

the document as they now read it as they were the drafters. The clear language of the Stipulation, however, only requires that the Court be persuaded that that an extension would likely result in a sale.

In extending the sale period, the trial court considered the following: 1) that the Subject Property had previously been under contract 2) that the contract for purchase had failed and that the listing agent had withdrawn his services, 3) that the defendants were not cooperating with the listing or sale of the Subject Property, 4) that the defendants were not represented by counsel for an extended period of time, 5) that opportunities for a sale of the Subject Property still existed and 6) that the summer market was approaching and would be a good time to get the Subject Property back on the market. Factual findings serving as a predicate for the trial court's actions will be disturbed only if they are clearly erroneous. Grayson v. Finlinson, 782 P.2d 467, 470 (Utah 1989) In light of these facts, the trial court did not abuse its discretion when it reasonably concluded that an additional six month sale period would likely result in the sale of the Subject Property.

In addition to the facts noted above, the trial court was also presented with information that a new realtor was willing to list the property. The defendants claim that the Listing Packet prepared by Equity Real Estate is a fact that should not be considered as the Packet is not reflected in the record. The Packet clearly exists and was presented to the defendants. See Addendum D. This Court in Mascaro v. Davis, 741 P.2d 938, 943 (Utah 1987). held that when crucial matters are not in the record, the missing

portions are presumed to support the trial judge. Therefore, the existence and information contained in the Listing Packet is presumed to be additional evidence available to the trial judge in support of his decision.

Courts have the power to summarily enforce settlement agreements and it would have been an abuse of discretion for the trial court not to have extended the sale period as there appears to be no reason for the defendants' noncompliance. See In Re Adoption of E.H., 103 P.3d 177, 185 (Utah App. 2004). The defendants interfered with the first sale, were uncooperative with the listing agent, their counsel was unavailable for months and they failed to execute a second listing agreement.

Considering all evidence presented by the plaintiff and the non-existence of any evidence that the Subject Property would not sell, the trial court's decision to extend the sale period was predicated on an overwhelming amount of facts any of which could have persuaded the court that an extension was reasonable and likely to result in a sale. The extension was authorized by the Stipulation (Paragraph 7) and should not be overturned.

II. THE TRIAL COURT IS AUTHORIZED BY THE STIPULATION TO REVIEW OFFERS TO PURCHASE IF THE PARTIES CANNOT AGREE AGREE UPON ACCEPTANCE

The defendants claim that the trial court abused its discretion by ordering that "Offers to purchase shall be presented to the court for consideration if the parties cannot agree upon acceptance". This Order is authorized by Paragraph 5 of the Stipulation which provides for judicial review of proffered offers if any party "fails, refuses to

cooperate, fails to perform in accordance with the terms of the Agreement to Sell Real Property or otherwise acts as an impediment to the sale of the Subject Property”. In light of the defendants’ failures to cooperate and obvious avoidance of the new realtor, Judge Dever was merely anticipating resolution of future disagreements between the parties by reminding the parties that the court had the power to review and order a sale if the parties did not cooperate when offers were received.

The defendants also claim that the Order eliminated the requirement that the property be marketed for no less than \$9.50 per square foot. This is not true. The Order made no decision to summarily accept any offer presented regardless of price and the Listing Agreement proposed suggests that the property be marketed for \$10.00 per square foot, an amount exceeding the minimum required by the Stipulation. The defendants’ argument that the Order somehow affected the list price or the ultimate selling price has no merit.

III. THE TRIAL COURT HAS INHERENT AUTHORITY TO APPOINT A NEW REALTOR WERE THE STIPULATION IS AMBIGUOUS AND THE APPOINTMENT IS NEEDED TO ENSURE THE PURSUIT OF A JUST PROCESS AND RESULT

Courts of general jurisdiction have the inherent power to make and enforce all necessary rules and orders calculated to enforce the orderly conduct of their business and secure justices between parties litigant. Peterson v. Evans, 55 Utah 505, 188 P. 152, 153 (Utah 1920). Courts possess inherent powers to ensure the pursuit of a just process and result. Burke Lewis, 122 P.3d 533, 538 (Utah 2005).

In this case, the Stipulation is ambiguous with respect to the rights and duties of the parties if the realtor selected by them withdraws. In such an instance it is proper for the trial court to take evidence necessary to establish the terms of the agreement and appellate review is “strictly limited”. Craig v. Weihing, 746 P.2d 279, 282, 283 (Utah 1987). The appellate courts do not lightly disturb such findings. Saunders v. Sharp, 806 P.2d 198, 200 (Utah 1991). The trial court considered the facts (R. 725, 726, 737-739) and appointed a new realtor in order to accomplish the goals of the Stipulation. A “just process and result” could not be ensured and the intent of the stipulation could not be completed without appointment of a new realtor. This is consistent with the intent of the parties and local industry standards and state regulations that require a property marketed for sale to be formally listed for sale with a licensed realtor.

IV. THE STIPULATION HAS NOT EXPIRED AS THE SECOND SALE PERIOD HAS YET TO BEGIN

The trial court rejected the defendants argument that the mere passage of time exceeding two consecutive six month periods was enough to satisfy the marketing periods contemplated by the Stipulation. The trial court specifically noted that it made no sense to count this time against the plaintiff when the defendants were actively filing motions and refusing to list the property. R. 734-735.

At the time that the listing agent, Ralph Reidel, withdrew his representation, the defendants’ counsel had filed a Notice of Unavailability and their current counsel admits that he did not appear until April 2008. R. 435-437 and R. 733. The motion to extend

the sale was made in May 2008. The plaintiffs were certainly not responsible for any delay in marketing and should not lose the opportunity to extend the sale period as clearly authorized by Paragraph 7 of their Stipulation.

The trial court considered these facts and reasonably concluded that the goals of the Stipulation to “actively market” the Subject Property (See Paragraph 3 of the Stipulation, R. 401) could not be accomplished unless the property was properly listed and marketed for sale by a licensed realtor. The trial court did not abuse its discretion by ruling that the extended sale period could not begin until a valid Listing Agreement is signed.

**V. THE PLAINTIFF IS ENTITLED TO AN AWARD OF HER ATTORNEYS
FEES INCURRED IN THIS APPEAL**

Paragraph 11, Section E of the Stipulation (R. 404) provides that the prevailing party is entitled to recover attorneys’ fees, court costs and other expenses on appeal in the event of any controversy relating to or arising from the Stipulation. In the event that the appellee is the prevailing party on appeal, this Court should award appellees her attorneys’ fees incurred on appeal.

CONCLUSION

The trial court did not abuse its discretion in extending the sale period as it was presented with sufficient information to persuade the court that an extension would likely result in the sale of the Property. Judge Dever’s Order of December 4, 2008 did not alter the terms of the Stipulation, affect the rights of the parties or materially affect the final

decision of the case as the Order merely served to implement the terms of the parties' Stipulation and made no other decisions regarding sale of the Property. The Order does not alter the listing price but merely restates Paragraph 5 of the Stipulation which provides for judicial review of proffered offers if an offer is presented and the parties cannot agree upon its acceptance. Nowhere in the Order is the sale price or listing price reduced. In light of the Petitioners failure to cooperate, Judge Dever was merely anticipating resolution of future disagreements between the parties by clarifying the Stipulation and the need to execute a listing agreement in order to begin the extended sale period. There has been no abuse of discretion and the trial court's enforcement of the Stipulation and extension of the sale period should be upheld.

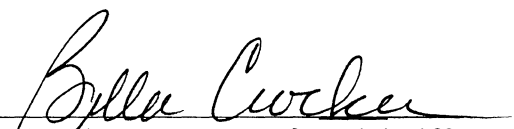
The Order of December 4, 2008 simply clarifies the Stipulation and makes it clear to the parties that the Property cannot be considered to have been actively marketed until all parties sign a listing agreement. It makes no sense to argue that the sale period has already elapsed simply because time has passed because the Property cannot be actively marketed for sale without a valid Listing Agreement executed by all parties and property owners. In the first sale period, the Petitioners selected the listing agent and all parties signed the listing agreement clearly starting a sale period. The listing ended when the realtor withdrew his continued representation because he found the Petitioners to be uncooperative and not truly interested in selling the Property. The parties failed to agree

upon a new listing agent or upon an extension of the sale period thereby prompting the plaintiff's motions.

The court did not err in appointing a listing agent as it had inherent powers to make rulings needed to ensure a just process and result. The Stipulation is ambiguous with respect to the rights and duties of the parties if the realtor selected by them withdraws. Accordingly the trial court was justified in taking evidence to establish the terms of the agreement and to appoint a new realtor in order to accomplish the goals of the Stipulation.

The interests of justice will be better served if the Stipulation is enforced and the Property actively marketed in an attempt to avoid the expense of additional litigation. The trial court's Order should be upheld.

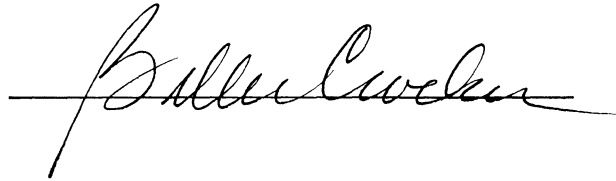
DATED THIS 7 DAY of April, 2009.

BY: 
Billie Crocker, Attorney for Plaintiff, Maureen
J. Lloyd, Susan L. Martinez and Richard
Martinez

MAILING CERTIFICATE

A copy of the foregoing Appellee's Brief was mailed on the 8th day of April, 2009, postage prepaid to the following:

Russell A. Cline
10 West 100 South, Suite 425
Salt Lake City, UT 84101

A handwritten signature in black ink, appearing to read "Russell Cline", written over a horizontal line.

ADDENDUM A



NRT

EXCLUSIVE SALES LISTING AGREEMENT

June 20, 2007

1 In consideration of the listing for sale of the real property hereinafter described ("the Property") by Coldwell Banker Commercial NRT, (Broker"), and Broker's agreement to use its best efforts to effect a sale of the same, the undersigned ("Owner") hereby grants to Broker the exclusive right to sell the Property for a period commencing March 8, 2007, and continuing indefinitely, however, either party may cancel with 30 days prior written notice, ("the Term"), at a price of \$10.00 per square foot or Eight Hundred Thirty Thousand Dollars (\$830,000.00) upon the following terms Acceptable to Owner. The Property is situated in the City of Draper County of Salt Lake, State of Utah, and is further described as 13409-13413 South Minuteman Drive (Parcel #'s 34-06-101-001, 34-06-101-003, 34-06-101-004, 34-06-101-005, 34-06-101-020, 34-06-101-021.

2 Owner agrees to pay Broker a sales commission equal to six percent (6 %) of the gross selling price. This commission shall be earned and paid for services rendered if, during the Term: (a) A purchaser is procured (by Broker, Owner, or anyone else) who is ready, willing and able to purchase the Property at the price and on the terms above stated, or on any other price and terms agreeable to Owner, (b) Any contract for the sale of the Property is entered into by Owner, (c) Owner contributes or conveys the Property, or any interest therein, to a partnership, joint venture, or other business entity, or transfers an interest in an entity which has an ownership interest in the Property in lieu of a sale of the Property.

3 As used in this Agreement the term "sale" shall include an exchange of the Property, and also the granting of an option to purchase the Property. Owner agrees that in the event such an option is granted, Owner shall pay Broker a sales commission in accordance with the Schedule on the price paid for the option and for any extensions thereof. This commission shall be paid upon receipt by Owner of any such payment(s). In the event such an option is exercised, whether during the Term or thereafter, Owner shall also pay Broker a sales commission on the gross sales price of the Property in accordance with the Schedule. Notwithstanding the foregoing, to the extent that all or part of the price paid for the option or any extension thereof is applied to the sales price of the Property, then any commission previously paid by Owner to Broker on account of such option payments shall be credited against the commission payable to Broker on account of the exercise of the option.

4 Owner further agrees that Owner shall pay broker the aforementioned commission if, within 120 days after the expiration of the Term: (a) the Property is sold, (b) Owner enters into a contract of sale for the Property, or (c) negotiations commence and thereafter continue leading to the sale of the Property to any person or entity to whom Broker has submitted the Property prior to the expiration of the Term in an effort to effect a sale of the Property. Broker agrees to submit a list of such persons or entities to Owner no later than 15 days following the expiration of the Term, provided, however, if Broker has submitted a written offer then it shall not be necessary to include the offeror's name on the list.

5. Unless otherwise provided herein, the terms of sale shall be, at the option of the purchaser, either cash or cash to any existing loan. Unless otherwise mutually agreed between Owner and the purchaser, the time limit for closing shall not exceed 90 days, and any offer may contain normal and customary contingencies such as purchaser's approval within 10 days of receipt thereof of title report, soils test and existing leases.

6. It is understood that it is illegal for either Owner or Broker to refuse to display or sell the Property to any person because of race, color, religion, national origin, sex, marital status or physical disability.

7 Owner agrees to cooperate with Broker in bringing about a sale of the Property and to immediately refer to Broker all inquiries of anyone interested in the Property. All negotiations are to be through Broker. Broker is authorized to accept a deposit from any prospective purchaser. Broker is further authorized to advertise the Property and to place a "For Sale" sign or signs on the Property if, in Broker's opinion, such would facilitate the sale of the Property.

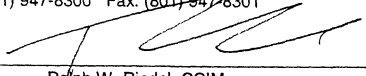
8. Owner agrees to hold Broker harmless from all claims, disputes, litigation or judgments arising from any incorrect information supplied by Owner, or from any material fact known by Owner concerning the property, which Owner fails to disclose. In any action arising out of this Agreement, the prevailing party shall be entitled to costs and reasonable attorney's fees. Owner represents that it is the owner of the Property.

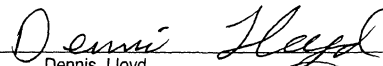
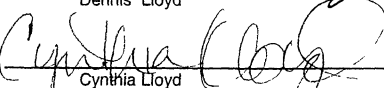
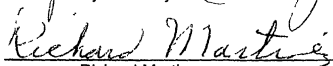
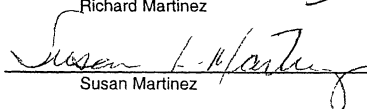
9. This Agreement constitutes the entire agreement between Owner and Broker and supersedes all prior discussions, negotiations and agreements, whether oral or written. No amendment, alteration or withdrawal of this Agreement shall be valid or binding unless made in writing and signed by both Owner and Broker. This Agreement shall be binding upon the heirs, successors and assignees of the parties.

The undersigned Owner hereby acknowledges receipt of a copy of this Agreement.

Accepted:

Coldwell Banker Commercial NRT
6550 South Millrock Drive #200
Salt Lake City, UT 84121
(801) 947-8300 Fax: (801) 947-8301

By 
Ralph W. Riedel, CCIM


Dennis Lloyd

Cynthia Lloyd

Richard Martinez

Susan Martinez

By: _____
Title: _____
By: _____
Title: _____
Address: _____
Telephone: _____

ADDENDUM B



Utah Association
of REALTORS®

REAL ESTATE PURCHASE CONTRACT FOR LAND



This is a legally binding contract. If you desire legal or tax advice, consult your attorney or tax advisor.

EARNEST MONEY RECEIPT

Buyer BANDON PEHRSON and/or ASSIGNS offers to purchase the Property described below and hereby delivers to the Brokerage, as Earnest Money, the amount of \$10,000 in the form of Personal Check which, upon Acceptance of this offer by all parties (as defined in Section 23), shall be deposited in accordance with state law.

Received by: _____ on _____ (Date)
(Signature of agent/broker acknowledges receipt of Earnest Money)

Brokerage: RealtiCorp Phone Number: 801-281-4800

OFFER TO PURCHASE

1. **PROPERTY:** Six parcels located from 13409 S - 13413 S Minuteman Dr., also described as: Parcel Numbers 34-06-101-001, -003, -004, -005, -020, and -021 City of Draper County of Salt Lake State of Utah, ZIP 84020 (the "Property").

1.1 Included Items. (specify) _____

1.2 **Water Rights/Water Shares.** The following water rights and/or water shares are included in the Purchase Price.

[] _____ Shares of Stock in the _____ (Name of Water Company)

[X] Other (specify) Any and all that run with the property

2. **PURCHASE PRICE** The purchase price for the Property is \$830,000

The purchase price will be paid as follows:

\$10,000 (a) **Earnest Money Deposit.** Under certain conditions described in this Contract THIS DEPOSIT MAY BECOME TOTALLY NON-REFUNDABLE.

\$none (b) **New Loan.** Buyer agrees to apply for one or more of the following loans:

[] CONVENTIONAL [] OTHER (specify) _____

If the loan is to include any particular terms, then check below and give details:

[] SPECIFIC LOAN TERMS _____

\$0/a (c) **Seller Financing.** (see attached Seller Financing Addendum, if applicable)

\$none (d) Other (specify) _____

\$820,000 (e) **Balance of Purchase Price in Cash at Settlement.**

\$830,000 **PURCHASE PRICE. Total of lines (a) through (e)**

3. **SETTLEMENT AND CLOSING.** Settlement shall take place on the Settlement Deadline referenced in Section 24(c), or on a date upon which Buyer and Seller agree in writing. "Settlement" shall occur only when all of the following have been completed: (a) Buyer and Seller have signed and delivered to each other or to the escrow/closing office all documents required by this Contract, by the Lender, by written escrow instructions or by applicable law; (b) any monies required to be paid by Buyer under these documents (except for the proceeds of any new loan) have been delivered by Buyer to Seller or to the escrow/closing office in the form of collected or cleared funds; and (c) any monies required to be paid by Seller under these documents have been delivered by Seller to Buyer or to the escrow/closing office in the form of collected or cleared funds. Seller and Buyer shall each pay one-half (½) of the fee charged by the escrow/closing office for its services in the settlement/closing process. Taxes and assessments for the current year, rents, and interest on assumed obligations shall be prorated at Settlement as set forth in this Section. Prorations set forth in this Section shall be made as of the Settlement Deadline date referenced in Section 24(c), unless otherwise agreed to in writing by the parties. Such writing could include the settlement statement. The transaction will be considered closed when Settlement has been completed, and when all of the following have been completed: (i) the proceeds of any new loan have been delivered by the Lender to Seller or to the escrow/closing office; and (ii) the applicable Closing documents have been recorded in the office of the county recorder. The actions described in parts (i) and (ii) of the preceding sentence shall be completed within four calendar days of Settlement.

4. **POSSESSION.** Seller shall deliver physical possession to Buyer within: [] Upon Closing [X] Other (specify) Upon funding

Page 1 of 5 pages Seller's Initials _____ Date _____ Buyer's Initials BP Date 07/17/07

5. CONFIRMATION OF AGENCY DISCLOSURE. At the signing of this contract:[] Seller's Initials [RP] Buyer's InitialsListing Agent Ralph Riedel, represents [X] Seller [] Buyer [] both Buyer and Seller

as a Limited Agent;

Listing Broker for Coldwell Banker Commercial NBT, represents [X] Seller [] Buyer [] both Buyer and Seller
(Company Name)

as a Limited Agent;

Buyer's Agent R. Brent Parks, represents [] Seller [X] Buyer [] both Buyer and Seller

as a Limited Agent;

Buyer's Broker for RealtiCorp, represents [] Seller [X] Buyer [] both Buyer and Seller
(Company Name)

as a Limited Agent;

6. TITLE INSURANCE. At Settlement, Seller agrees to pay for a standard-coverage owner's policy of title insurance insuring Buyer in the amount of the Purchase Price. Any additional title insurance coverage shall be at Buyer's expense.**7. SELLER DISCLOSURES.** No later than the Seller Disclosure Deadline referenced in Section 24(a), Seller shall provide to Buyer the following documents which are collectively referred to as the "Seller Disclosures":

- (a) a Seller property condition disclosure for the Property, signed and dated by Seller;
- (b) a commitment for the policy of title insurance;
- (c) a copy of any leases affecting the Property not expiring prior to Closing;
- (d) written notice of any claims and/or conditions known to Seller relating to environmental problems;
- (e) evidence of any water rights and/or water shares referenced in Section 1.2 above; and
- (f) Other (specify) _____

8. BUYER'S RIGHT TO CANCEL BASED ON BUYER'S DUE DILIGENCE. Buyer's obligation to purchase under this Contract (check applicable boxes):

(a) [X] IS [] IS NOT conditioned upon Buyer's approval of the content of all the Seller Disclosures referenced in Section 7:

(b) [X] IS [] IS NOT conditioned upon Buyer's approval of a physical condition inspection of the Property;

(c) [] IS [X] IS NOT conditioned upon Buyer's approval of a survey of the Property by a licensed surveyor;

(d) [X] IS [] IS NOT conditioned upon Buyer's approval of applicable federal, state and local governmental laws, ordinances and regulations affecting the Property; and any applicable deed restrictions and/or CC&R's (covenants, conditions and restrictions) affecting the Property;

(e) [] IS [X] IS NOT conditioned upon the Property appraising for not less than the Purchase Price;

(f) [X] IS [] IS NOT conditioned upon Buyer's approval of the terms and conditions of any mortgage financing referenced in Section 2 above;

(g) [X] IS [] IS NOT conditioned upon Buyer's approval of the following tests and evaluations of the Property: (specify)

Any and all the buyer deems necessary.

If any of Items 8(a) through 8(g) are checked in the affirmative, then Sections 8.1, 8.2, 8.3 and 8.4 apply; otherwise, they do not apply. The items checked in the affirmative above are collectively referred to as Buyer's "Due Diligence." Unless otherwise provided in this Contract, Buyer's Due Diligence shall be paid for by Buyer and shall be conducted by individuals or entities of Buyer's choice. Seller agrees to cooperate with Buyer's Due Diligence and with a final pre-closing inspection under Section 11.

8.1 Due Diligence Deadline. No later than the Due Diligence Deadline referenced in Section 24(b) Buyer shall: (a) complete all of Buyer's Due Diligence; and (b) determine if the results of Buyer's Due Diligence are acceptable to Buyer.**8.2 Right to Cancel or Object.** If Buyer determines that the results of Buyer's Due Diligence are unacceptable, Buyer may, no later than the Due Diligence Deadline, either: (a) cancel this Contract by providing written notice to Seller, whereupon the Earnest Money Deposit shall be released to Buyer; or (b) provide Seller with written notice of objections.**8.3 Failure to Respond.** If by the expiration of the Due Diligence Deadline, Buyer does not: (a) cancel this Contract as provided in Section 8.2; or (b) deliver a written objection to Seller regarding the Buyer's Due Diligence, The Buyer's Due Diligence shall be deemed approved by Buyer; and the contingencies referenced in Sections 8(a) through 8(g), including but not limited to, any financing contingency, shall be deemed waived by Buyer.**8.4 Response by Seller.** If Buyer provides written objections to Seller, Buyer and Seller shall have seven calendar days after Seller's receipt of Buyer's objections (the "Response Period") in which to agree in writing upon the manner of resolving Buyer's objections. Except as provided in Section 10.2, Seller may, but shall not be required to, resolve Buyer's objections. If Buyer and Seller have not agreed in writing upon the manner of resolving Buyer's objections, Buyer mayPage 2 of 5 pages Seller's Initials _____ Date _____ Buyer's Initials RP Date 07/17/07

cancel this Contract by providing written notice to Seller no later than three calendar days after expiration of the Response Period; whereupon the Earnest Money Deposit shall be released to Buyer. If this Contract is not canceled by Buyer under this Section 8.4, Buyer's objections shall be deemed waived by Buyer. This waiver shall not affect those items warranted in Section 10.

9. ADDITIONAL TERMS. There ☒ ARE ☐ ARE NOT addenda to this Contract containing additional terms. If there are, the terms of the following addenda are incorporated into this Contract by this reference: ☐ Addenda No.'s _____ ☐ Seller Financing Addendum ☐ Other (specify) _____

10. SELLER WARRANTIES AND REPRESENTATIONS.

10.1 Condition of Title. Seller represents that Seller has fee title to the Property and will convey good and marketable title to Buyer at Closing by general warranty deed. Buyer agrees, however, to accept title to the Property subject to the following matters of record: easements, deed restrictions, CC&R's (meaning covenants, conditions and restrictions), and rights-of-way; and subject to the contents of the Commitment for Title Insurance as agreed to by Buyer under Section 8. Buyer also agrees to take the Property subject to existing leases affecting the Property and not expiring prior to Closing. Buyer agrees to be responsible for taxes, assessments, homeowners association dues, utilities, and other services provided to the Property after Closing. Seller will cause to be paid off by Closing all mortgages, trust deeds, judgments, mechanic's liens, tax liens and warrants. Seller will cause to be paid current by Closing all assessments and homeowners association dues.

IF ANY PORTION OF THE PROPERTY IS PRESENTLY ASSESSED AS "GREENBELT" (CHECK APPLICABLE BOX):

☒ SELLER ☐ BUYER SHALL BE RESPONSIBLE FOR PAYMENT OF ANY ROLL-BACK TAXES ASSESSED AGAINST THE PROPERTY.

10.2 Condition of Property. Seller warrants that the Property will be in the following condition **ON THE DATE SELLER DELIVERS PHYSICAL POSSESSION TO BUYER:**

- (a) the Property shall be free of debris and personal property;
- (b) the Property will be in the same general condition as it was on the date of Acceptance.

11. FINAL PRE-CLOSING INSPECTION. Before Settlement, Buyer may, upon reasonable notice and at a reasonable time, conduct a final pre-closing inspection of the Property to determine only that the Property is "as represented," meaning that the Property has been repaired/corrected as agreed to in Section 8.4, and is in the condition warranted in Section 10.2. If the Property is not as represented, Seller will, prior to Settlement, repair/correct the Property, and place the Property in the warranted condition or with the consent of Buyer (and Lender if applicable), escrow an amount at Settlement sufficient to provide for the same. The failure to conduct a final pre-closing inspection or to claim that the Property is not as represented, shall not constitute a waiver by Buyer of the right to receive, on the date of possession, the Property as represented.

12. CHANGES DURING TRANSACTION. Seller agrees that from the date of Acceptance until the date of Closing, none of the following shall occur without the prior written consent of Buyer: (a) no changes in any existing leases shall be made; (b) no new leases shall be entered into; (c) no substantial alterations or improvements to the Property shall be made or undertaken; and (d) no further financial encumbrances affecting the Property shall be made.

13. AUTHORITY OF SIGNERS. If Buyer or Seller is a corporation, partnership, trust, estate, limited liability company or other entity, the person executing this Contract on its behalf warrants his or her authority to do so and to bind Buyer and Seller.

14. COMPLETE CONTRACT. This Contract together with its addenda, any attached exhibits, and Seller Disclosures, constitutes the entire Contract between the parties and supersedes and replaces any and all prior negotiations, representations, warranties, understandings or contracts between the parties. This Contract cannot be changed except by written agreement of the parties.

15. DISPUTE RESOLUTION. The parties agree that any dispute, arising prior to or after Closing, related to this Contract (check applicable box)

☒ SHALL

☐ MAY AT THE OPTION OF THE PARTIES

first be submitted to mediation. If the parties agree to mediation, the dispute shall be submitted to mediation through a mediation provider mutually agreed upon by the parties. Each party agrees to bear its own costs of mediation. If mediation fails, the other procedures and remedies available under this Contract shall apply. Nothing in this Section 15 shall prohibit any party from seeking emergency equitable relief pending mediation.

16. DEFAULT. If Buyer defaults, Seller may elect either to retain the Earnest Money Deposit as liquidated damages, or to return it and sue Buyer to specifically enforce this Contract or pursue other remedies available at law. If Seller defaults, in addition to return of the Earnest Money Deposit, Buyer may elect either to accept from Seller a sum equal to the Earnest

Page 3 of 5 pages Seller's Initials _____ Date _____ Buyer's Initials BP Date 07/17/07

Money Deposit as liquidated damages, or may sue Seller to specifically enforce this Contract or pursue other remedies available at law. If Buyer elects to accept liquidated damages, Seller agrees to pay the liquidated damages to Buyer upon demand.

17. ATTORNEY FEES AND COSTS. In the event of litigation or binding arbitration to enforce this Contract, the prevailing party shall be entitled to costs and reasonable attorney fees. However, attorney fees shall not be awarded for participation in mediation under Section 15.

18. NOTICES. Except as provided in Section 23, all notices required under this Contract must be: (a) in writing; (b) signed by the party giving notice; and (c) received by the other party or the other party's agent no later than the applicable date referenced in this Contract.

19. ABROGATION. Except for the provisions of Sections 10.1, 10.2, 15 and 17 and express warranties made in this Contract, the provisions of this Contract shall not apply after Closing.

20. RISK OF LOSS. All risk of loss to the Property, including physical damage or destruction to the Property or its improvements due to any cause except ordinary wear and tear and loss caused by a taking in eminent domain, shall be borne by Seller until the transaction is closed.

21. TIME IS OF THE ESSENCE. Time is of the essence regarding the dates set forth in this Contract. Extensions must be agreed to in writing by all parties. Unless otherwise explicitly stated in this Contract: (a) performance under each Section of this Contract which references a date shall absolutely be required by 5:00 PM Mountain Time on the stated date; and (b) the term "days" shall mean calendar days and shall be counted beginning on the day following the event which triggers the timing requirement (i.e., Acceptance, etc.). Performance dates and times referenced herein shall not be binding upon title companies, lenders, appraisers and others not parties to this Contract, except as otherwise agreed to in writing by such non-party.

22. FAX TRANSMISSION AND COUNTERPARTS. Facsimile (fax) transmission of a signed copy of this Contract, any addenda and counteroffers, and the retransmission of any signed fax shall be the same as delivery of an original. This Contract and any addenda and counteroffers may be executed in counterparts.

23. ACCEPTANCE. "Acceptance" occurs when Seller or Buyer, responding to an offer or counteroffer of the other: (a) signs the offer or counteroffer where noted to indicate acceptance; and (b) communicates to the other party or to the other party's agent that the offer or counteroffer has been signed as required.

24. CONTRACT DEADLINES. Buyer and Seller agree that the following deadlines shall apply to this Contract:

(a) Seller Disclosure Deadline July 25, 2007 (Date)

(b) Due Diligence Deadline September 18, 2007 (Date)

(c) Settlement Deadline October 19, 2007 (Date)

25. OFFER AND TIME FOR ACCEPTANCE. Buyer offers to purchase the Property on the above terms and conditions. If Seller does not accept this offer by: 4:00 [] AM [X] PM Mountain Time on July 20, 2007 (Date), this offer shall lapse; and the Brokerage shall return the Earnest Money Deposit to Buyer.

[Signature] 07/17/07
(Buyer's Signature) (Offer Date) (Buyer's Signature) (Offer Date)

The later of the above Offer Dates shall be referred to as the "Offer Reference Date"

BANDON PEHRSON and/or
ASSIGNS
(Buyers' Names) (PLEASE PRINT)

441 E. 3900 South, Suite 200, Salt
Lake City
(Notice Address)

84107 281-4800
(Zip Code) (Phone)

ACCEPTANCE/COUNTEROFFER/REJECTION

CHECK ONE:

☐ **ACCEPTANCE OF OFFER TO PURCHASE:** Seller Accepts the foregoing offer on the terms and conditions specified above.

☐ **COUNTEROFFER.** Seller presents for Buyer's Acceptance the terms of Buyer's offer subject to the exceptions or modifications as specified in the attached ADDENDUM NO. _____

 (Seller's Signature) (Date) (Time) (Seller's Signature) (Date) (Time)

 (Sellers' Names) (PLEASE PRINT) (Notice Address) (Zip Code) (Phone)

☐ **REJECTION:** Seller rejects the foregoing offer.

 (Seller's Signature) (Date) (Time) (Seller's Signature) (Date) (Time)

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UAR FORM 19

Page 5 of 5 pages Seller's Initials _____ Date _____ Buyer's Initials BP Date 07/17/07



**ADDENDUM NO. 1
TO
REAL ESTATE PURCHASE CONTRACT**

Page 1 of 1



THIS IS AN ☒ **ADDENDUM** ☐ **COUNTEROFFER** to that REAL ESTATE PURCHASE CONTRACT (the "REPC") with an Offer Reference Date of July 17, 2007 including all prior addenda and counteroffers, between **BRANDON PEHRSON** and/or **ASSIGNS** as Buyer, and _____ as Seller, regarding the Property located at 13409 S. Minuteman Dr. The following terms are hereby incorporated as part of the REPC:

1. Due Diligence and Evaluation Inspections Deadlines are considered one in the same.
2. Seller agrees to sign all required application and/or other documents needed by the city / county / other governing entities.
3. Sellers are aware that the buyer of these properties is a Licensed Real Estate Agent in Utah.

BUYER AND SELLER AGREE THAT THE CONTRACT DEADLINES REFERENCED IN SECTION 24 OF THE REPC (CHECK APPLICABLE BOX): ☐ **REMAIN UNCHANGED** ☐ **ARE CHANGED AS FOLLOWS:** _____

To the extent the terms of this ADDENDUM modify or conflict with any provisions of the REPC, including all prior addenda and counteroffers, these terms shall control. All other terms of the REPC, including all prior addenda and counteroffers, not modified by this ADDENDUM shall remain the same. ☒ **Seller** ☐ **Buyer** shall have until 4:00 ☐ **AM** ☒ **PM** Mountain Time on July 20, 2007 (Date), to accept the terms of this ADDENDUM in accordance with the provisions of Section 23 of the REPC. Unless so accepted, the offer as set forth in this ADDENDUM shall lapse.

Brandon Pehrson 07/17/07
☒ Buyer ☐ Seller Signature (Date) (Time) ☐ Buyer ☐ Seller Signature (Date) (Time)

ACCEPTANCE/COUNTEROFFER/REJECTION

CHECK ONE:

☐ **ACCEPTANCE:** ☐ **Seller** ☐ **Buyer** hereby accepts the terms of this ADDENDUM.

☐ **COUNTEROFFER:** ☐ **Seller** ☐ **Buyer** presents as a counteroffer the terms of attached ADDENDUM NO. _____

(Signature) (Date) (Time) (Signature) (Date) (Time)

☐ **REJECTION:** ☐ **Seller** ☐ **Buyer** rejects the foregoing ADDENDUM.

(Signature) (Date) (Time) (Signature) (Date) (Time)

THIS FORM APPROVED BY THE UTAH REAL ESTATE COMMISSION AND THE OFFICE OF THE UTAH ATTORNEY GENERAL,
EFFECTIVE AUGUST 5, 2003. IT REPLACES AND SUPERSEDES ALL PREVIOUSLY APPROVED VERSIONS OF THIS FORM.



ADDENDUM NO. 2 TO REAL ESTATE PURCHASE CONTRACT



THIS IS AN ☒ ADDENDUM ☐ COUNTEROFFER to that REAL ESTATE PURCHASE CONTRACT (the "REPC") with an Offer Reference Date of July 17, 2007 including all prior addenda and counteroffers, between BRANDON PEHRSON and/or ASSIGNS as Buyer, and _____ as Seller, regarding the Property located at 13409 S. Minuteman Dr. The following terms are hereby incorporated as part of the REPC:

1. All parties agree to extend the response deadline for the Real Estate Purchase Contract and Addendum No. 1 from July 20, 2007 until Friday, August 3rd, 2007.

2. CONTRACT DEADLINES. To be extended to the following dates:

(a) Seller Disclosure Deadline _____ August 10, 2007

(b) Due Diligence/Inspections Deadline _____ October 5, 2007

(c) Settlement Deadline _____ November 7, 2007

BUYER AND SELLER AGREE THAT THE CONTRACT DEADLINES REFERENCED IN SECTION 24 OF THE REPC (CHECK APPLICABLE BOX): ☐ REMAIN UNCHANGED ☒ ARE CHANGED AS FOLLOWS: See Above.

To the extent the terms of this ADDENDUM modify or conflict with any provisions of the REPC, including all prior addenda and counteroffers, these terms shall control. All other terms of the REPC, including all prior addenda and counteroffers, not modified by this ADDENDUM shall remain the same. ☒ Seller ☐ Buyer shall have until 4:00 ☐ AM ☒ PM Mountain Time on August 3, 2007 (Date), to accept the terms of this ADDENDUM in accordance with the provisions of Section 24 of the REPC. Unless so accepted, the offer as set forth in this ADDENDUM shall lapse.

Brandon Pehrson 07/31/07
[X] Buyer [] Seller Signature (Date) (Time) [] Buyer [] Seller Signature (Date) (Time)

ACCEPTANCE/COUNTEROFFER/REJECTION

CHECK ONE:

☐ ACCEPTANCE: ☐ Seller ☐ Buyer hereby accepts the terms of this ADDENDUM.

☒ COUNTEROFFER: ☒ Seller ☐ Buyer presents as a counteroffer the terms of attached ADDENDUM NO. 3

(Signature) (Date) (Time) (Signature) (Date) (Time)

☐ REJECTION: ☐ Seller ☐ Buyer rejects the foregoing ADDENDUM.

(Signature) (Date) (Time) (Signature) (Date) (Time)

THIS FORM APPROVED BY THE UTAH REAL ESTATE COMMISSION AND THE OFFICE OF THE UTAH ATTORNEY GENERAL,
EFFECTIVE AUGUST 5, 2003. IT REPLACES AND SUPERSEDES ALL PREVIOUSLY APPROVED VERSIONS OF THIS FORM.

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p. 000

**ADDENDUM NO. 3
TO
REAL ESTATE PURCHASE CONTRACT**

THIS IS AN ☒ ADDENDUM ☐ COUNTEROFFER to that REAL ESTATE PURCHASE CONTRACT (the "REPC") with an Offer Reference Date of July 17, 2007, including all prior addenda and counteroffers, between Brandon Pehrson and/or Assigns as Buyer, and _____ as Seller, regarding the Property located at 13409 S. Minuteman Drive. The following terms are hereby incorporated as part of the REPC.

1. All parties agree to extend the response deadline for the Real Estate Purchase Contract and Addendum No. 1 from July 20, 2007 until Friday, August 15, 2007.

2. **CONTRACT DEADLINES.** To be extended to the following dates:

(a) Seller Disclosure Deadline : August 15, 2007

(b) Due Diligence/Inspection's Deadline: October 1, 2007

(c) Settlement Deadline: October 30, 2007

3. The Seller shall have the right, within twelve (12) months of closing, to a thirty (30) day salvage period wherein Seller shall have the right to remove real property prior to demolition of property. Buyer must give Sellers thirty (30) days prior written notice and allow Seller a thirty (30) day period to remove real property.

BUYER AND SELLER AGREE THAT THE CONTRACT DEADLINES REFERENCED IN SECTION 24 OF THE REPC (CHECK APPLICABLE BOX): ☐ REMAIN UNCHANGED ☐ ARE CHANGED AS FOLLOWS: _____

To the extent the terms of this ADDENDUM modify or conflict with any provisions of the REPC, including all prior addenda and counteroffers, these terms shall control. All other terms of the REPC, including all prior addenda and counteroffers, not modified by this ADDENDUM shall remain the same. ☐ Seller ☒ Buyer shall have until 5:00 ☐ AM ☒ PM Mountain Time on August 15, 2007 (Date), to accept the terms of this ADDENDUM in accordance with the provisions of Section 23 of the REPC. Unless so accepted, the offer as set forth in this ADDENDUM shall lapse.

Dennis Head Susan S. McIntyre
[] Buyer ☒ Seller Signature (Date) (Time) [] Buyer ☒ Seller Signature (Date) (Time) 8-13-07

ACCEPTANCE/COUNTEROFFER/REJECTION

CHECK ONE:

☐ **ACCEPTANCE:** ☐ Seller ☐ Buyer hereby accepts the terms of this ADDENDUM.

☐ **COUNTEROFFER:** ☐ Seller ☐ Buyer presents as a counteroffer the terms of attached ADDENDUM NO. ____

(Signature) (Date) (Time) (Signature) (Date) (Time)

☐ **REJECTION:** ☐ Seller ☐ Buyer rejects the foregoing ADDENDUM.

(Signature) (Date) (Time) (Signature) (Date) (Time)

THIS FORM APPROVED BY THE UTAH REAL ESTATE COMMISSION AND THE OFFICE OF THE UTAH ATTORNEY GENERAL, EFFECTIVE AUGUST 5, 2003. IT REPLACES AND SUPERSEDES ALL PREVIOUSLY APPROVED VERSIONS OF THIS FORM.

Oct 02 07 04:33p

p. 2

Page 1 of 1



ADDENDUM NO. 4 TO REAL ESTATE PURCHASE CONTRACT



THIS IS AN ☒ ADDENDUM ☐ COUNTEROFFER to that REAL ESTATE PURCHASE CONTRACT (the "REPC") with an Offer Reference Date of July 17, 2007 including all prior addenda and counteroffers, between Brandon Pentson and or assigns as Buyer, and _____ as Seller, regarding the Property located at 13409 S. Minuteman Drive. The following terms are hereby incorporated as part of the REPC:

1. Due Diligence Deadline to be extended to Oct 26, 2007 And Settlement Deadline extended to Nov 23, 2007.

2. In the event the seller will not accept the extend the due Diligence & Settlement the buyer is here by giving notice of cancellation to this contract and the seller is instructing Meridian Title to release all earnest moneys to the Buyer

BUYER AND SELLER AGREE THAT THE CONTRACT DEADLINES REFERENCED IN SECTION 24 OF THE REPC (CHECK APPLICABLE BOX): ☐ REMAIN UNCHANGED ☐ ARE CHANGED AS FOLLOWS: _____

RPm
X 01
X 11

To the extent the terms of this ADDENDUM modify or conflict with any provisions of the REPC, including all prior addenda and counteroffers, these terms shall control. All other terms of the REPC, including all prior addenda and counteroffers, not modified by this ADDENDUM shall remain the same. ☒ Seller ☐ Buyer shall have until 5:00 ☐ AM ☒ PM Mountain Time on October 3, 2007 (Date), to accept the terms of this ADDENDUM in accordance with the provisions of Section 23 of the REPC. Unless so accepted, the offer as set forth in this ADDENDUM shall lapse.

Brandon Pentson Sept 29/07 10:00pm
☒ Buyer ☐ Seller Signature (Date) (Time) ☐ Buyer ☐ Seller Signature (Date) (Time)

ACCEPTANCE/COUNTEROFFER/REJECTION

CHECK ONE:

☒ ACCEPTANCE: ☒ Seller ☐ Buyer hereby accepts the terms of this ADDENDUM. AS AMENDED

☐ COUNTEROFFER: ☐ Seller ☐ Buyer presents as a counteroffer the terms of attached ADDENDUM NO. _____

Dennis Sept 10-2007 4:25pm Richard D. Marting 10-2007 10:25pm
(Signature) (Date) (Time) (Signature) (Date) (Time)

☐ REJECTION: ☐ Seller ☐ Buyer rejects the foregoing ADDENDUM.

(Signature) (Date) (Time) (Signature) (Date) (Time)

THIS FORM APPROVED BY THE UTAH REAL ESTATE COMMISSION AND THE OFFICE OF THE UTAH ATTORNEY GENERAL, EFFECTIVE AUGUST 3, 2002. IT REPLACES AND SUPERSEDES ALL PREVIOUSLY APPROVED VERSIONS OF THIS FORM.

→ Richard D. Marting 10-3-07

Susan Marting 10 3.07

RPm

BP

ADDENDUM C

To: "Billy \(\bb@crockerlaw.net\)\" <bc@crockerlaw.net>
Subject: Martinez/Lloyd Parcels - Draper Utah

Hi Billie,

I have been in contact with the Lloyds attorney and met with the Martinez's. The Lloyds attorney seems ready to move ahead as well. We are ready to get this sold, could you please send me a copy of the stipulation to make sure that my listing is in agreement.

Thank you so much,

Call if you have any concerns or questions,

Dovey

801-471-7281

Equity Real Estate

Dovey Roach

Washburn & Smith LLC

Development Consultant

801-995-2930

No virus found in this incoming message.

Checked by AVG.

Version: 7.5.524 / Virus Database: 270.7.1/1686 - Release Date: 9/23/2008 7:38 AM

ADDENDUM D

7090 Union Park Center
Ste c50 Midvale UT 84047
Phone 801 785 9995
Fax 801 339 2145
www.equityutah.com

EQUITY REAL ESTATE

Listing Packet

Prepared For:
Billy Crocker

On behalf of clients:
Cynthia Lloyd, Susan and
Richard Martinez

Equity
REAL ESTATE

April 24, 2008

Billie Crocker
CROCKER LAW OFFICE, PC
1106 East 4500 South
Salt Lake City, UT 84117

RE: Property Located Approx. 133000 South Minuteman Dr.

Dear Billy,

It was nice talking to you. Thank you for the opportunity to help sell this property. I have gathered some information that I hope will help when making your decision.

I have been involved with the property to the south for the past 2 years. During this time we have worked with the city on planning and zoning issues. The property, including the property we will be selling was rezoned to high-density multi-family. This is the highest density that Draper allows. It is 12 units per acre. There are many uses in this zone. Having worked so closely with the property, I have a good feel for what type of project would work and which ones would be more challenging.

I spend some of my time each day consulting with builders and developers. I help them understand the market, principles of highest and best use of the property and help them negotiate through the city processes. We have a broad reach in the market and I will use that experience to sell the property.

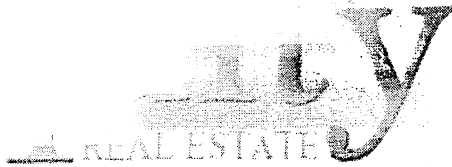
For consulting I work for Washburn & Smith. They have been in the consulting business for over 15 years. We are a team and draw from each other to help every client.

My Real Estate license is with Equity Real Estate. It is a great fit because of the support, resources and philosophy.

At Equity Real Estate, we are Real Estate Consultants. We are not salespeople. What this means is that we build fiduciary relationships with our clients. A fiduciary is someone who represents your best interests. We are a profit sharing company where associates are in partnership relationships with the owners; this means that everyone at Equity Real Estate wants the property to sell because everyone benefits. The Equity culture is based upon a belief system that is summed up by the definition of the word "Equity" Equity: the state, the quality, or ideal of being just and fair."

Here is a profile of the property according to what I have. Please review it and then let's talk.

Equity
REAL ESTATE



Listing Property Profile:

I see 5 parcels as follows:

Martinez, Susan & Richard Parcel #101021 .29 acres
Lloyd Dennis & Cynthia Parcel #101005 .42 acres
Lloyd Dennis & Cynthia Parcel #101004 .12 acres
Lloyd Dennis & Cynthia Parcel #101003 .20 acres
Lloyd Dennis & Cynthia Parcel #101001 .80 acres

Total 1.83 Acres

Does this confirm with your records?

Marketing:

Internet including MLS and Commercial MLS sites, client contacts, signage, flyers, most importantly networking. Person to person in this market is one of the most effective means of Marketing.

Listing fee is 6%.

If a purchase is secured by an unrepresented buyer or one of my clients, then commission will be reduced to 3%.

Pricing: I would price this property at \$10.00 per square foot, understanding that it will probably will sell between \$8.50 and \$9.00 per square foot.
This is due to the market cycle.

As your agent, you can be assured that I offer you an agent who is: Experienced, has an in depth knowledge of Real Estate laws and Marketing principles. I will always act with professionalism, integrity and the client's best interest.

I would love to discuss this further to understand the clients need, concerns and objective. All these factors greatly affect price and marketing.

Looking forward to meeting,

Sincerely,

Dovey Roah
Equity Real Estate
801-471-0281

