

2009

# Angela Johnson v. Scott Wilson, Tiffany Wilson : Brief of Appellee

Utah Court of Appeals

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**IN THE UTAH COURT OF APPEALS**

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ANGELA JOHNSON, an individual,  
Defendant/Appellants,

v.

SCOTT WILSON, an individual; and  
TIFFANY WILSON, an individual,

Plaintiffs/Appellees.

Case No. 20090193

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On appeal from a judgment of the Fifth District Court for Washington County  
The Honorable James L. Shumate

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**BRIEF FOR APPELLEES SCOTT WILSON AND TIFFANY WILSON**

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## **JURISDICTION**

This Court has jurisdiction pursuant to Utah Code section 78A-4-103(2)(j).

## **ISSUES AND STANDARDS OF REVIEW**

Johnson appeals from the trial court's (1) grant of Wilsons' Motion for Partial Summary Judgment; and (2) grant of Wilsons' Motion for Summary Judgment.

**Issue No. 1:** Did the trial court properly conclude that as a result of Johnson's signature to Addendum No. 3, her acceptance of Addendum No. 3, and her transmission of that acceptance to Wilsons, Johnson agreed to the terms of the Real Estate Purchase Agreement and all addenda and counteroffers, including the Seller Financing Addendum, that were not modified by the terms of Addendum No. 3?

**Standard of Review:** "An appellate court reviews a trial court's legal conclusions and ultimate grant or denial of summary judgment for correctness." Orvis v. Johnson, 2008 UT 2, ¶6, 177 P.3d 600 (citation omitted).

**Issue No. 2:** Did the trial court properly hold that Wilsons fully performed their obligations pursuant to their agreement with Johnson?

**Standard of Review:** "An appellate court reviews a trial court's legal conclusions and ultimate grant or denial of summary judgment for correctness." Orvis v. Johnson, 2008 UT 2, ¶6, 177 P.3d 600 (citation omitted).

## **DETERMINATIVE PROVISIONS**

To the extent necessary for this Court to fully review Johnson's claims, Utah Code sections 25-5-1 and 25-5-3 may be implicated. These sections are set forth in Johnson's Addendum A and Addendum B.

## STATEMENT OF THE CASE

### **I. NATURE OF THE CASE, COURSE OF PROCEEDINGS, AND DISPOSITION BELOW**

Scott Wilson and Tiffany Wilson (“Wilsons”) commenced this action against Angela Johnson (“Johnson”) on March 19, 2007. Among other things, Wilsons asked the trial court to declare that the purchase agreement between Wilsons and Johnson was valid and enforceable and to grant Wilsons an award of damages as a result of Johnson’s failure to fully perform under that agreement. On May 18, 2007, Johnson counterclaimed against Wilsons asking for a judgment declaring the purchase agreement to be unenforceable, or, in the alternative, asserting a breach of contract claim against Wilsons.

On June 27, 2007 Wilsons filed a motion for partial summary judgment with respect to the validity of the purchase agreement, specifically on the issue of whether Johnson was bound by the terms of a certain seller-financing addendum. In response, Johnson filed her own motion for partial summary judgment on both her declaratory judgment and breach of contract causes of action. In finding for Wilsons, the trial court held that Johnson was bound by the terms of the seller-financing addendum and that Wilsons were not in breach of the agreement. Thereafter Wilsons filed a motion for summary judgment on their breach of contract claim, which the trial court granted.

Johnson now appeals both the trial court’s final order granting summary judgment and its interim order granting partial summary judgment.

### **II. STATEMENT OF FACTS**

Johhnsn is the owner of property located at 704 South Anasazi Circle,

Washington, Utah – the property at issue in this case (“Residence”). (R. 584.) Johnson listed the Residence for sale on or about December 1, 2006, advertising the fact that she was willing to seller-finance the transaction at 4.9% per annum. (R. 584.) On or about January 6, 2007 Wilsons offered to purchase the Residence from Johnson, offering to pay \$1,100,000 with Wilsons paying \$20,000 in earnest money and \$90,000 at closing, for a total of \$110,000 down and Johnson seller-financing \$990,000. (R. 584.) Wilsons’ offer was made on a standard Real Estate Purchase Contract (“REPC”) form approved by the State of Utah, Division of Real Estate. (R. 584.) The initial offer specified that the purchase price would be paid through seller financing and contained the following language:

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.  
 Addendum No. 1  Seller Financing Addendum   
FHA/VA Loan Addendum  Assumption Addendum   
Lead-Based Paint Disclosure & Acknowledgement (in some transactions this disclosure is required by law)  Lead-Based Paint Addendum (in some transactions this addendum is required by law)  Other (specify) Notice of Interest Addendum.

(R. 584.)

Along with the initial offer, and to specify the terms of the seller financing, Wilsons included a seller financing addendum (“Seller Financing Addendum”) that specified that Johnson would provide seller financing for the Residence in the principal amount of \$990,000 at 4.9% per annum for 360 months, with the first payment to begin May 1, 2007. (R. 584.) On or about January 8, 2007, Johnson executed a counteroffer, listed as Addendum No. 2, agreeing to accept \$1,200,000 for the purchase of the

Residence and “requiring a 72 hour time clause/option to keep the house on the market.”

(R. 585.) Addendum No. 2 specifically states:

to the extent the terms of this ADDENDUM modify or conflict with any provision 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.

(R. 585.) Defendant’s counteroffer made no mention of the Seller Financing Addendum and made no changes to any terms of the original offer, other than those noted above. (R. 585.)

On that same date, Wilsons executed Addendum No. 3, counter-offering the following: (a) purchase price of \$1,150,000; (b) in lieu of 72 hour clause, settlement to be 2-23-07; (c) earnest money of \$20,000 to be non-refundable and released to seller on 2-10-07; and (d) all other terms and conditions to remain the same. (R. 585.) On the same date, Johnson signed both the REPC and Addendum No. 3, but did not sign the Seller Financing Addendum. (R. 585.) In spite of the changes in the ultimate price from Wilsons’ initial offer to the final agreement, the parties did not change the language of the REPC or the Seller Financing Addendum, which stated that Johnson would finance \$990,000 as the seller and that Wilsons would pay a total of \$110,000 as a down payment. (R. 585.)

The parties agreed to close on the sale of the Residence by February 23, 2007. (R. 585.) On or about February 10, 2007, Johnson received the \$20,000 earnest money deposit check and negotiated it. (R. 586.) Wilsons closed their end of the transaction on

February 23, 2007 by signing, among other documents, an All-Inclusive Trust Deed in the amount of \$1,035,000.00 and bringing \$98,625.42 to the closing officer. (R. 586.)

At closing on February 23, 2007, Johnson did not sign the HUD-1 Settlement Statement because she did not agree with the terms of the Seller Financing Addendum. (R. 586.)

The transaction did not close on February 23, 2007. (R. 586.)

### **SUMMARY OF ARGUMENT**

The District Court correctly concluded that as a result of Johnson's signature to Addendum No. 3, her acceptance of Addendum No. 3, and her transmission of her acceptance to Wilsons, Johnson agreed to the terms of the REPC and all addenda and counteroffers that were not changed by the terms of Addendum No. 3, including the terms of the Seller Financing Addendum. Johnson was not required to sign the Seller Financing Addendum in order to be bound by its terms because the Seller Financing Addendum was specifically incorporated and made part of the REPC, which she signed, and because Addendum No. 3, which she also signed, clearly stated that all other terms of the REPC, addenda, and counteroffers that were not modified by the addendum would remain the same.

In addition, the District Court also correctly concluded that Wilsons fully performed in accordance with the contract documents. Specifically, Wilsons' conduct with respect to the funding and documents provided at closing was entirely consistent with the intentions of Wilsons and Johnson with respect to the amount to be financed by each party. When Johnson demanded a higher purchase price, the amount each party would finance increased proportionately, which increase was reflected in the funds and

documents provided by Wilsons. Thus, Wilsons fully performed under the agreement.

## ARGUMENT

### **I. THE TRIAL COURT CORRECTLY RULED THAT JOHNSON WAS BOUND BY THE TERMS OF THE SELLER FINANCING ADDENDUM.**

Johnson claims that because she never signed the Seller Financing Addendum, she was never bound by its terms. Contrary to Johnson's arguments, however, the Seller Financing Addendum did not need to be signed to become binding because both the REPC and Addendum No. 3, which she did sign, incorporated the Seller Financing Addendum into their terms. Thus, in signing the REPC and Addendum No. 3, Johnson (1) accepted the terms of the Seller Financing Addendum as required, (2) fulfilled any signature requirements under the Statute of Frauds, and (3) bound herself to the seller financing terms. In addition, Wilsons' conduct with respect to the agreement was entirely in line with the terms and intent of the Seller Financing Addendum and thus demonstrated that they understood that the parties had agreed to the Seller Financing Addendum.<sup>1</sup>

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<sup>1</sup> Johnson asserts that Wilsons knew that the Seller Financing Addendum was not binding because they conveyed a second seller financing addendum to her. The second addendum, however, was only drawn up upon Johnson's agent asking for a new document that specified the amounts of principle, tax, and insurance in escrow. (R. 338, 350). The new seller financing addendum had essentially the same terms as the first, but broken down as requested. (R. 350.) At no time did Johnson or her agent give any indication that she had not agreed to the terms of the original Seller Financing Addendum. (R. 350.) In sum, Wilsons did not deliver the second seller financing addendum to Johnson under the assumption that they had not agreed, but to provide her with further supplemental information that she had requested. In addition, as further explained below, Wilsons' conduct with respect to the funds and documents delivered at closing was entirely consistent with the intent and terms of the Seller Financing Addendum.

A. **Johnson Accepted the Terms of the Seller Financing Addendum as Required.**

Johnson first argues that the Seller Financing Addendum was not binding because she did not accept it as required by its express terms. Johnson, however, did not need to “accept” the Seller Financing Addendum for the seller financing terms to become binding. Since the terms of the Seller Financing Addendum were specifically incorporated into the REPC, Johnson never had to accept the Seller Financing Addendum at all. Merely signing the REPC accepted the seller financing terms. To the extent that it is relevant, however, Johnson points out that the Seller Financing Addendum stated that it had to be accepted “in accordance with Section 23 of the REPC,” which required Johnson to (1) sign the offer or counteroffer where noted and (2) communicate her acceptance to the other party. By signing the REPC, Addendum No. 2, and Addendum No. 3, and communicating her acceptance of all the terms included in the REPC and any accompanying addenda that were not modified by subsequent counteroffers, Johnson clearly accepted the Seller Financing Addendum as required.

In general, a written contract may consist of several writings. See Sacramento Baseball Club v. Great N. Baseball Co., 748 P.2d. 1058, 1060 (Utah 1987) (“An agreement may be a single contract even though it consists of several writings that the parties have never physically attached to each other.”). Indeed, the Utah Supreme Court has stated that a “contract may be contained in several instruments, which, if made at the same time, between the same parties, and in relation to the same subject, will be held to constitute one contract.” Sharp v. Clark, 45 P. 566, 568 (Utah 1896); see also Kansas

Power & Light Co. v. Burlington N. R.R. Co., 740 F.2d 780, 790 (10th Cir. 1984)

(stating that a contract “may consist of several writings if one of the writings is signed and the writings in the circumstances clearly indicate that they relate to the same transaction”) (citation omitted). In addition, a contract “may consist of several separate documents, even though not all of them are signed.” Kansas Power & Light Co., 740 F.2d at 790 (holding that the statute of frauds had been satisfied) (citation omitted).

Indeed, as American Jurisprudence explains:

A memorandum may consist of a writing signed by the party to be charged and another writing or writings referred to in the signed writing expressly or, according to the prevailing opinion, impliedly, by reason of the connection between the papers in the subject matter, *notwithstanding that the other writing or writings are not signed by him.*

72 AM. JUR. 2D, Statute of Frauds §286 (emphasis added). In other words, though a contract consists of multiple pages, not every page needs be signed to be included in the ultimate agreement. So long as there is no substantial inconsistency between a signed document and a document that is incorporated by reference or relied upon to establish the material terms of the contract, the incorporated document, even if not signed, should be included as part of the agreement. See id.

In the instant case, the REPC and the Seller Financing Addendum are clearly one contract. First, the REPC specifically references any attached Seller Financing Addenda and states in Section 9 that “the terms of the following addenda are incorporated into this Contract by this reference,” after which the box for Seller Financing Addendum is clearly marked. Second, in specifically looking at the Seller Financing Addendum, it is clear

that the terms of that writing are entirely dependent upon the terms of the REPC. Indeed, the Seller Financing Addendum simply explains the terms of the seller financing, as specified in the REPC itself. Third, the Seller Financing Addendum specifically states that it was made part of the REPC and that the terms of the Seller Financing Addendum were incorporated as part of the REPC. Fourth, when Johnson accepted the REPC by signing it and offering her counteroffer (“Addendum No. 2”) before the acceptance deadline, she specifically stated that “[a]ll other terms of the REPC, including all prior addenda and counteroffers, not modified by this ADDENDUM shall remain the same.” Thus, in signing that counteroffer, and communicating it to Wilsons by the deadline, Johnson accepted all of the terms included in the REPC and the Seller Financing Addendum, as required by Section 23, with the exception of those terms modified by the counteroffer. When both parties signed Addendum No. 3, the agreement became final, which agreement incorporated, pursuant to the language of Addendum No. 3, all terms in the REPC and all prior addenda that had not been changed. In short, the Seller Financing Addendum did not need to be signed; the counteroffers simply needed to be signed, and they were. As a result, based upon a review of the documents, the Seller Financing Addendum was clearly part of the REPC and Johnson was bound by it.

**B. The Seller Financing Addendum Is Not a Separate Agreement, Nor a Modification to the Original Agreement, and Therefore, Does Not Need to Be Separately Signed.**

Johnson next argues that enforcement of the Seller Financing Addendum would violate the Statute of Frauds. Johnson’s argument only works, however, if the Seller Financing Addendum is considered a separate agreement, requiring separate

consideration, or a modification of the original agreement. As argued above, however, neither is applicable in this case. First, the Seller Financing Addendum cannot stand alone, but is totally dependent upon and serves only as an explanation of the terms of the REPC, which clearly states that the deal would be seller financed. Second, the Seller Financing Addendum is not a modification of the original agreement as none of the terms in the Seller Financing Addendum in any way contradict or change the terms of the REPC. Indeed, although Johnson argues that each addendum to the REPC, including the Seller Financing Addendum, represented a subsequent modification of the REPC, the Seller Financing Addendum was actually the only addendum that did not change any of the terms of the REPC, and thus clearly was not a modification. In addition, the counteroffers extended never stated anything concerning the Seller Financing Addendum, but clearly stated that, unless the terms of the counteroffers stated otherwise, the terms of all previous offers, including addenda, remained the same. By signing these counteroffers, specifically Addendum No. 3, Johnson clearly accepted the terms of all previous offers, including the Seller Financing Addendum, that did not contradict the terms of the counteroffers.

Johnson argues that, unless all addenda are signed, the parties would be “uncertain as to which addenda were binding and which were not.” This is simply not the case. The documents clearly state that prior addenda, unless modified, remain part of the deal. The documents were dated, and therefore, it is easy to determine which portions of the agreement were unchanged by counteroffers and incorporated by reference and which were not. The law does not require that all of the pages of an agreement be signed, but

simply that the writings expressly or implicitly reference one another. See 72 AM. JUR. 2D, Statute of Frauds §286. In other words, Johnson did not need to sign every page of the REPC and Seller Financing Addendum; her signature on the REPC and subsequent counteroffers was sufficient to bind her to all of the contract's terms, including the Seller Financing Addendum that was incorporated by reference.

Johnson uses the case of Williams v. Singleton in an attempt to show that her failure to sign the Seller Financing Addendum would “play havoc” with the laws of offer and acceptance. See 723 P.2d 421, 424 (Utah 1986). It is difficult to see how this case applies. In Williams, the issue involved whether a joint tenant selling property could accept an offer after the offer had lapsed. See id. In this case, Johnson has never argued that there was no agreement, but simply that she had not agreed to the seller financing terms. To follow this argument, one must believe that the REPC and the Seller Financing Addendum were two separate independent agreements within one large agreement. Such a conclusion leads to absurd results and fails to follow standard real estate purchase practices in Utah.

In short, there is no dispute that the REPC incorporated the Seller Financing Addendum by reference and that Johnson's signature on the REPC and Addendum No. 3 manifested her assent to the terms of the Seller Financing Addendum. Thus, the District Court was correct in finding that the Seller Financing Addendum was binding on Johnson.

**II. THE TRIAL COURT CORRECTLY CONCLUDED THAT WILSONS WERE NOT IN BREACH OF THE AGREEMENT.**

Johnson argues that Wilsons breached the contract by executing a promissory note and trust deed in an amount higher than the amount specified in the REPC and the Seller Financing Addendum. Since Johnson demanded a higher purchase price in her counteroffer, however, it is only sensible to assume that the intent would be for the amount of the promissory note and trust deed to increase as well. Indeed, a review of the REPC shows that Wilsons and Johnson had agreed that Wilsons would pay 10% down and that Johnson would finance the rest. It is undisputed that (1) the parties intended that the transaction would be seller-financed; (2) the original offer included a down payment equal to 10% of the purchase price with 90% to be seller-financed; and (3) the ultimate purchase price of \$1,150,000 was \$50,000 higher than the original offer of \$1,100,000, which had to be paid by someone. When viewing these facts in harmony with one another, the District Court was correct in concluding that when the parties agreed to change the ultimate purchase price by executing Addendum No. 3, they also agreed to change the amounts each party would bring to the table. To hold otherwise would lead to an unreasonable result.

**A. The Parties Clearly Intended to Proportionately Increase Wilsons' Down Payment and the Amount Johnson Would Seller Finance Based upon the Increase in Price.**

With respect to this issue, some rules of contract interpretation are instructive.

First,

[W]hen a literal interpretation of the language [of a contract] would result in an unreasonable and absurd result, and in

injustice, the court will consider the entire contract in the light of the circumstances under which it was made, and in the view of the interests and motives which ordinarily control human actions, and give to its language a reasonable construction.

Johnson v. Schenk, 50 P. 921, 923 (Utah 1897). Second, the court determines this result from the documents' own four corners, unless determined to be ambiguous. See Bakowski v. Mountain States Steel, Inc., 2002 UT 62, ¶16, 52 P.3d 1179. Third, these terms may be enforced "even though some contract terms may be missing or left to be agreed upon." Nielsen v. Gold's Gym, 2003 UT 37, ¶12, 78 P.3d 600. In addition, Utah courts have the authority to fill any such gaps. See Evans v. Bd. of County Comm'rs, 2005 UT 74, ¶16, 123 P.3d 432. That is, where the parties have clearly intended to be bound by an agreement, the court should not frustrate that purpose if it is possible to come up with a fair and just result, "even though this requires a choice among conflicting meanings and the filling of some gaps that the parties have left." Id. (citing CORBIN ON CONTRACTS, §4.1). Fourth, when interpreting a contract, if one interpretation renders an agreement invalid, where the other renders it valid, the Court should adopt the latter. See Coulter & Smith, Ltd. v. Russell, 966 P.2d 852, 858 (Utah 1998). Finally, where an agreement contains an objective method or formula for determining a price, the Court may use that method or formula from the document and enforce the agreement based upon plugging in those numbers. See Clifford R. Gray, Inc. v. Le Chase Constr. Servs., LLC, 31 A.D. 3d 983, 986 (N.Y.S. 2006); Weiner v. Hazer, 430 N.W. 2d 269, 271 (Neb. 1988) (inferring that, where there is a formula that would determine price to "a reasonable certainty," the contract would be enforceable).

In this matter, the Court is faced with two specific interpretations of the parties' agreement. Under Wilsons' explanation, when the ultimate price increased by \$50,000, the amounts each party would bring to the table increased in proportion to the amounts specified in the original offer, which proportions were 10% by Wilsons, 90% by Johnson. Such an interpretation, which takes into account the language of the contract documents, simply makes sense. Johnson, on the other hand, interprets the language of the documents to read that she was obligated to finance only \$990,000 because that is the amount the REPC says she would finance. She claims that Wilsons were required to bring the additional \$50,000 to closing, and because they did not, they breached the contract first, excusing Johnson from performing.

This interpretation, however, ignores the fact that the REPC also states that Wilsons were only required to pay \$1,100,000. Under this logic, Wilsons have a compelling argument that Johnson was required to finance the entire additional \$50,000, particularly where the additional price was for her benefit. It is also conceivable under this logic that no one would pay the additional \$50,000, leaving a gaping hole. Such an interpretation simply does not make sense. It leaves the parties with essentially no agreement, which clearly was not their intent.

Johnson attempts to bolster her argument by referencing Reed v. Alvey, 610 P.2d 1374 (Utah 1980). In Reed, the Utah Supreme Court found that where payment of \$70,000 was to be upon "terms to be arranged," the buyer was obligated to tender full payment. Id. at 1378-79. In citing this case, however, Johnson ignores the fact that unlike Reed, in the instant case there were specific terms of payment specified in the

agreement. Indeed, the parties intended to proportionately increase Wilsons' down payment and the amount Johnson would seller finance based upon the increase in price. By paying the funds and presenting the documents required according to the proportions set forth in the REPC, Wilsons clearly acted in accordance with the agreement.<sup>2</sup> Thus, this Court should uphold the District Court's conclusion that Wilsons did not breach the REPC and Seller Financing Addendum.

### **III. WILSONS ARE ENTITLED TO ATTORNEY FEES INCURRED ON APPEAL.**

Pursuant to Rule 24(a)(9) of the Utah Rules of Appellate Procedure, Wilsons hereby request an award of all attorney fees and costs incurred in connection with this appeal. In general, additional attorney's fees will be allowed for successful defense against an appeal where the prevailing party below was awarded attorney fees based upon a contractual stipulation. See R.T. Nielson Co. v. Cook, 2002 UT 11, ¶27, 40 P.3d 1119. In the instant case, the REPC specifically allows for the prevailing party to receive an award of attorney fees (R. 604). Thus, the District Court awarded Wilsons attorney fees and costs based upon that contract (R. 605). Therefore, by prevailing on appeal, Wilsons should be awarded the attorney fees and costs incurred on appeal based upon that contractual stipulation.

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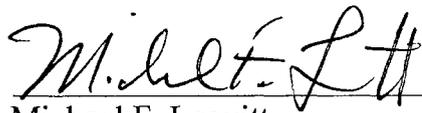
<sup>2</sup> In fact, it is noteworthy that the record is devoid of any evidence that Johnson was concerned about the amount Wilsons provided as a down payment at closing at that time, but rather shows that she was only concerned about the terms of the seller financing addendum.

**CONCLUSION**

Based on the foregoing, Wilsons respectfully request that this Court affirm the trial court's order granting partial summary judgment, its final order and judgment, and its amended order entered on March 6, 2009; award attorney fees incurred on appeal; and provide such additional and further relief as it deems appropriate.

DATED this 17<sup>th</sup> day of November, 2009.

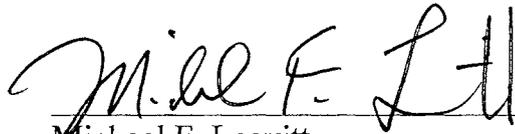
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Scott Wilson and Tiffany Wilson

**CERTIFICATE OF SERVICE**

I hereby certify that on this 17<sup>th</sup> day of November, 2009, I caused two copies of the foregoing **APPELLEE'S BRIEF** to be mailed to the following:

Sean A. Monson  
Andrew V. Collins  
**BENNETT TUELLER JOHNSON & DEERE**  
Millrock Park West Building  
3165 East Millrock Drive, Suite 500  
Salt Lake City, Utah 84121

  
\_\_\_\_\_  
Michael F. Leavitt

# Tab A

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 Jan 6, 2007, including all prior addenda and counteroffers, between Scott & Tiffany Wilson as Buyer, and Angela Johnson as Seller, regarding the Property located at 704 S Anasazi Circle, Washington, Ut. The following terms are hereby incorporated as part of the REPC:

- 1. The Price will be \$1,200,000.00
- 2. Seller requires a 72 hour time clause/option to keep house on the market.

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 Jan 9, 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.

Angela Johnson 1/8/07 12pm  
 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.

Scott Wilson 1/5/07 2:45pm Angela Johnson 1/8/07 7:45pm  
(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 6, 2003. IT REPLACES AND SUPERSEDES ALL PREVIOUSLY APPROVED VERSIONS OF THIS FORM.

Tab B

ADDENDUM NO. 3 TO REAL ESTATE PURCHASE CONTRACT

THIS IS AN [ ] ADDENDUM [X] COUNTEROFFER to that REAL ESTATE PURCHASE CONTRACT (the "REPC") with an Offer Reference Date of January 6th, 2007 including all prior addenda and counteroffers, between Scott & Tiffany Wilson as Buyer, and Angela Johnson as Seller, regarding the Property located at 104 S. Anasazi Circle. The following terms are hereby incorporated as part of the REPC:

- 1. Purchase price to be 1,150,000.00
2. In lieu of 72 hour clause, settlement to be 2-29-07.
3. Earnest money to be non-refundable and release to seller on 2-10-07.
4. All other terms and conditions to remain the same.

BUYER AND SELLER AGREE THAT THE CONTRACT DEADLINES REFERENCED IN SECTION 24 OF THE REPC (CHECK APPLICABLE BOX): [ ] REMAIN UNCHANGED [X] 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. [X] Seller [ ] Buyer shall have until 5:00 PM Mountain Time on January 8th, 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 set forth in this ADDENDUM shall lapse.

Handwritten signatures and dates for Buyer and Seller.

ACCEPTANCE/COUNTEROFFER/REJECTION

CHECK ONE: [X] ACCEPTANCE: [X] Seller [ ] Buyer hereby accepts the terms of this ADDENDUM.

[ ] COUNTEROFFER: [ ] Seller [ ] Buyer presents as a counteroffer the terms of attached ADDENDUM NO. ... Handwritten signature and date for counteroffer.

[ ] REJECTION: [ ] Seller [ ] Buyer rejects the foregoing ADDENDUM.

Signature and Date lines for rejection.

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.