

# LEGL 3000 – Business Law

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Woodbury School of Business  
Utah Valley University

## **CASE STUDY PROJECT**

The attached packet includes a contract fact scenario and a copy of a written contract and addenda related to the fact pattern.

Using the case study description and materials (REPC, etc.) provided, provide detailed responses to the questions below.

You must work alone, but may use your books. The work product of any students who work in groups will be considered plagiarism.

Answers should be submitted in essay form and should be uploaded to Canvas in MS Word or .pdf format by the due date and time in your Syllabus. Please direct any questions to your professor.

**Please note** that there are discrepancies, inconsistencies and other problems in the case description and other materials. This is intentional. Nearly all real cases have internal inconsistencies and other factual problems. Your job is to decide whether those problems are material to the legal questions raised and, if so, how they impact your decision-making. You may decide that if the facts are resolved one way over another, then the legal conclusions may be different. In your answers, you will want to explore and detail out these alternative possibilities.

In presenting your answers, you should be as thorough and detailed as possible, “showing your work,” as it were, in how you arrived at your conclusions.

See word document for the eight questions and points assigned to each question.

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### Case Study Scenario:

Jon D'Man grew up in a small town in eastern Oregon. Jon played sports and was good enough to earn a scholarship in baseball to his favorite university in Utah. Marsha Mello grew up in New York City, as a Manhattanite. Although growing up in New York had its advantages, she longed to see the wide open spaces of the western United States, and she applied to the same university in Utah that Jon was attending. Marsha was a big fan of baseball and loved attending games to support her school. She fell in love with the star player, Jon.

One fateful game Jon was sliding into third and caught a spike and tore the ligaments in his knee and ankle. This accident ended his professional dreams at the young age of 17. Jon and Marsha decided they would get married in four (4) years when they graduated. Jon had a settlement from his injury and a good-paying, part-time job. Marsha had a large inheritance from her grandmother, to be used only for educational related expenses. They decided to buy a home together even though Jon was only 17 and Marsha was 21. But they wondered what they needed to do to buy a home.

Jon and Marsha were both accounting students and were taking a wonderful Business Law class together from a wonderful professor-the same one you now have. They had a limited knowledge of contracts, but they knew they should employ a Real Estate Agent to facilitate their purchase. They called a local hot-shot realtor to help them find the perfect property to start their life together. After much searching, they found a 3 bedroom 2 bath home on a nice cul-de-sac in a quiet, newer neighborhood on the outskirts of town.

They sat down with their Agent to fill out their offer to purchase on a Utah Real Estate Purchase Contract (REPC). They discussed the home and its amenities. They loved the fact that the home had an outdoor, portable hot tub under the stars. It could be easily moved under cover into the carport in bad weather. They also loved the appliances that were in the kitchen. They particularly loved the 6-burner, Maytag gas range. They decided to ask for them to be included in the purchase price. The home was listed on the Multiple Listing Service (MLS) for which seemed to be a little high for the neighborhood. Jon and Marsha decided to offer \$207,000 with the seller

paying 3% towards closing costs and for title insurance and for property taxes and for needed repairs.

Jon signed the REPC on the line for the Buyer (see Page. 6). In paragraph 25 of the REPC, Jon put the time for acceptance as 12 PM, 25 February 2011.

The REPC said on P.1 that the BUYER had included a post-dated check for \$5,000. The broker marked the box “delivered” even though Marsha did not have her check book with her. She promised the agent that she would bring it to him ASAP.

Buyer’s Broker delivered the REPC to Seller's Broker, through a sales agent on the day after the REPC was completed by Jon and Marsha.

Jon and Marsha had specifically marked the applicable boxes on page #1, Paragraph 1.2 for the washer; the dryer; the frig; the water softener; and the security system. They also marked the required boxes throughout the REPC.

#### NOTE #1 TO STUDENTS

You will want to read the REPC and the two addenda and ask questions as the different sections of the REPC are covered in the related chapters of the text book.

Seller received the offer on the 21 February 2011.

Seller marked, I accept with the following conditions. Buyers' will have one (2) day to accept terms contained in Addendum #1.

See ADDENDUM #1:

Seller returned REPC with Addendum #1 to Buyer's Broker.

Jon marked, I accept on Addendum #1 with the following conditions.

See ADDENDUM #2

Jon had his acceptance notarized the next day and gave it to his Broker, who gave it to the Seller's Broker. Seller's Broker got busy and distracted, and he forgot to give it to the Seller until 10 AM. Broker reminded Seller that she only had until 12 AM to respond. Seller said that was ok, because she would put it in the mail by 11 PM, and that would be the time of acceptance.

(She knew the mailbox rule) She mailed the acceptance at 10:15 PM. She immediately had seller's remorse and changed her mind. She called the Buyer at 12:30 AM and said on her answering machine, "I reject your offer. The deal is off. I will not sell my home at any price." The BUYERS had not yet received SELLER'S acceptance. (What about the inconsistent dispatch rule. Does it apply here?)

Right after Buyers had mailed their last offer to Seller, but before seller had mailed an acceptance (see addendum #2), UB Flash announced it was building just down the road from Seller's house. Because of this announcement, the value of the Seller's house jumped \$100 K. Marsha heard about UB Flash's plans and quickly called Seiler's Broker on the phone and told him that she would like to accepted seller's offer on seller's terms (see Addendum #1). She told Seller's Broker she could close by 15 April 2011. Seller's Broker was way excited to make a sale. And without contacting seller, Seller's Broker told Buyer, "I accept your offer. You have just bought yourselves a house." Marsha said, "Fantastic. I've got all the money for the house in a trust."

That same day, Buyer #2 who is an undisclosed agent for UB Flash, offers the Seiler over the phone \$300K cash with no conditions, as is, close in 10 days. Buyer #2 promises a \$20,000 non-refundable earnest money with the oral offer. Seller does not know of her Agents actions with Marsha; therefore, she, the Seller, promises to sign the REPC as soon as buyer #2 mails it to her. She tells buyer #2, "I accept with no reservations or conditions."

Jon learns of seller's intent to sell to Buyer #2 and sues to enforce his rights under his REPC.

# REAL ESTATE PURCHASE CONTRACT

This is a legally binding Real Estate Purchase Contract ("REPC"). Utah law requires real estate licensees to use this form. Buyer and Seller, however, may agree to alter or delete its provisions or to use a different form. If you desire legal or tax advice, consult your attorney or tax advisor.

## OFFER TO PURCHASE AND EARNEST MONEY DEPOSIT

On this 20 day of FEB, 2011 ("Offer Reference Date") JOY & MARSHA ("Buyer") offers to purchase from BORIS T. DEAL ("Seller") the Property described below and [ ] delivers to the Buyer's Brokerage with this offer, or [ ] agrees to deliver no later than four (4) calendar days after Acceptance (as defined in Section 23), Earnest Money in the amount of \$5000 in the form of PERSONAL CHECK. After Acceptance of the REPC by Buyer and Seller, and receipt of the Earnest Money by the Brokerage, the Brokerage shall have four (4) calendar days in which to deposit the Earnest Money into the Brokerage Real Estate Trust Account.

Buyer's Brokerage SURE SHOOTER Phone: \_\_\_\_\_

Received by: Hot Shot on 20 FEB 2011 (Date)  
(Signature above acknowledges receipt of Earnest Money)

### OTHER PROVISIONS

1. PROPERTY: 1234 CUL-DE-SAC LANE

also described as: \_\_\_\_\_

City of OREM, County of UT, State of Utah, Zip 84009 (the "Property").

Any reference below to the term "Property" shall include the Property described above, together with the Included Items and water rights/water shares, if any, referenced in Sections 1.1, 1.2 and 1.4.

1.1 **Included Items.** Unless excluded herein, this sale includes the following items if presently owned and in place on the Property: plumbing, heating, air conditioning fixtures and equipment; ovens, ranges and hoods; cook tops; dishwashers; ceiling fans; water heaters; light fixtures and bulbs; bathroom fixtures and bathroom mirrors; curtains, draperies, rods, window blinds and shutters; window and door screens; storm doors and windows; awnings; satellite dishes; affixed carpets; automatic garage door openers and accompanying transmitters; security system; fencing and any landscaping.

1.2 **Other Included Items.** The following items that are presently owned and in place on the Property have been left for the convenience of the parties and are also included in this sale (check applicable box):  washers  dryers  refrigerators  water softeners  microwave ovens  other (specify) SECURITY SYSTEM

The above checked items shall be conveyed to Buyer under separate bill of sale with warranties as to title.

1.3 **Excluded Items.** The following items are excluded from this sale: \_\_\_\_\_

1.4 **Water Service.** The Purchase Price for the Property shall include all water rights/water shares, if any, that are the legal source for Seller's current culinary water service and irrigation water service, if any, to the Property. The water rights/water shares will be conveyed or otherwise transferred to Buyer at Closing by applicable deed or legal instruments. The following water rights/water shares, if applicable, are specifically excluded from this sale: \_\_\_\_\_

2. **PURCHASE PRICE.** The Purchase Price for the Property is \$ 207,000. Except as provided in this Section, the Purchase Price shall be paid as provided in Sections 2(a) through 2(d) below. Any amounts shown in 2(b) and 2(d) may be adjusted as deemed necessary by Buyer and the Lender.

\$ 5,000 (a) **Earnest Money Deposit.** Under certain conditions described in the REPC, this deposit may become totally non refundable.

\$ \_\_\_\_\_ (b) **New Loan.** Buyer may apply for mortgage loan financing (the "Loan") on terms acceptable to Buyer: If an FHAVA loan applies, see attached FHAVA Loan Addendum.

\$ \_\_\_\_\_ (c) **Seller Financing** (see attached Seller Financing Addendum)

\$ \_\_\_\_\_ (d) **Balance of Purchase Price in Cash at Settlement**

\$ 207,000 **PURCHASE PRICE.** Total of lines (a) through (d)

**3. SETTLEMENT AND CLOSING.**

**3.1 Settlement.** Settlement shall take place no later than the Settlement Deadline referenced in Section 24(d), or as otherwise mutually agreed by Buyer and Seller 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 the REPC, by the Lender, by the title insurance and escrow/closing offices, by written escrow instructions (including any split closing instructions, if applicable), or by applicable law; (b) any monies required to be paid by Buyer or Seller under these documents (except for the proceeds of any new loan) have been delivered by Buyer or Seller to the other party, or to the escrow/closing office, in the form of cash, wire transfer, cashier's check, or other form acceptable to the escrow/closing office.

**3.2 Prorations.** All prorations, including, but not limited to, homeowner's association dues, property taxes for the current year, rents, and interest on assumed obligations, if any, shall be made as of the Settlement Deadline referenced in Section 24(d), unless otherwise agreed to in writing by the parties. Such writing could include the settlement statement. The provisions of this Section 3.2 shall survive Closing.

**3.3 Special Assessments.** Any assessments for capital improvements as approved by the HOA (pursuant to HOA governing documents) or as assessed by a municipality or special improvement district, prior to the Settlement Deadline shall be paid for by:  Seller  Buyer  Split Equally Between Buyer and Seller  Other (explain) \_\_\_\_\_  
The provisions of this Section 3.3 shall survive

Closing.

**3.4 Fees/Costs/Payment Obligations.** Unless otherwise agreed to in writing, Seller and Buyer shall each pay one-half (1/2) of the fee charged by the escrow/closing office for its services in the settlement/closing process. Tenant deposits (including, but not limited to, security deposits, cleaning deposits and prepaid rents) shall be paid or credited by Seller to Buyer at Settlement. Buyer agrees to be responsible for homeowners' association and private and public utility service transfer fees, if any, and all utilities and other services provided to the Property after the Settlement Deadline. The escrow/closing office is authorized and directed to withhold from Seller's proceeds at Closing, sufficient funds to pay off on Seller's behalf all mortgages, trust deeds, judgments, mechanic's liens, tax liens and warrants. The provisions of this Section 3.4 shall survive Closing.

**3.5 Closing.** For purposes of the REPC, "Closing" means that: (a) Settlement has been completed; (b) the proceeds of any new loan have been delivered by the Lender to Seller or to the escrow/closing office; and (c) the applicable Closing documents have been recorded in the office of the county recorder. The actions described in 3.5 (b) and (c) shall be completed within four calendar days after Settlement.

**4. POSSESSION.** Seller shall deliver physical possession of the Property to Buyer as follows:  Upon Closing;  \_\_\_ Hours after Closing;  \_\_\_ Calendar Days after Closing. Any contracted rental of the Property prior to or after Closing, between Buyer and Seller, shall be by separate written agreement. Seller and Buyer shall each be responsible for any insurance coverage each party deems necessary for the Property including any personal property and belongings. Seller agrees to deliver the Property to Buyer in broom-clean condition and free of debris and personal belongings. Any Seller or tenant moving-related damage to the Property shall be repaired at Seller's expense. The provisions of this Section 4 shall survive Closing.

**5. CONFIRMATION OF AGENCY DISCLOSURE.** Buyer and Seller acknowledge prior written receipt of agency disclosure provided by their respective agent that has disclosed the agency relationships confirmed below. At the signing of the REPC:

Seller's Agent SELLER, represents  Seller  both Buyer and Seller as a Limited Agent;

Seller's Brokerage \_\_\_\_\_, represents  Seller  both Buyer and Seller as a Limited Agent;

Buyer's Agent HOT SHOT, represents  Buyer  both Buyer and Seller as a Limited Agent;

Buyer's Brokerage \_\_\_\_\_, represents  Buyer  both Buyer and Seller as a Limited Agent.

**6. TITLE & TITLE INSURANCE.**

**6.1 Title to Property.** Seller represents that Seller has fee title to the Property and will convey marketable title to the Property to Buyer at Closing by general warranty deed. Buyer does agree to accept title to the Property subject to the contents of the Commitment for Title Insurance (the "Commitment") provided by Seller under Section 7, and as reviewed and approved by Buyer under Section 8. Buyer also agrees to accept title to the Property subject to any existing leases, rental and property management agreements affecting the Property not expiring prior to Closing which were provided to Buyer pursuant to Section 7(e). The provisions of this Section 6.1 shall survive Closing.

**6.2 Title Insurance.** At Settlement, Seller agrees to pay for and cause to be issued in favor of Buyer, through the title insurance agency that issued the Commitment (the "Issuing Agent"), the most current version of the ALTA Homeowner's Policy of Title Insurance (the "Homeowner's Policy"). If the Homeowner's Policy is not available through the Issuing Agent, Buyer and Seller further agree as follows: (a) Seller agrees to pay for the Homeowner's Policy if available

through any other title insurance agency selected by Buyer; (b) if the *Homeowner's Policy* is not available either through the Issuing Agent or any other title insurance agency, then Seller agrees to pay for, and Buyer agrees to accept, the most current available version of an *ALTA Owner's Policy of Title Insurance* ("Standard Coverage Owner's Policy") available through the Issuing Agent.

**7. SELLER DISCLOSURES.** No later than the Seller Disclosure Deadline referenced in Section 24(a), Seller shall provide to Buyer the following documents in hard copy or electronic format which are collectively referred to as the "Seller Disclosures":

- (a) a written Seller property condition disclosure for the Property, completed, signed and dated by Seller as provided in Section 10.3;
- (b) a Commitment for Title Insurance as referenced in Section 6;
- (c) a copy of any restrictive covenants (CC&R's), rules and regulations affecting the Property;
- (d) a copy of the most recent minutes, budget and financial statement for the homeowners' association, if any;
- (e) a copy of any lease, rental, and property management agreements affecting the Property not expiring prior to Closing;
- (f) evidence of any water rights and/or water shares referenced in Section 1.4;
- (g) written notice of any claims and/or conditions known to Seller relating to environmental problems and building or zoning code violations; and
- (h) Other (specify) \_\_\_\_\_

**8. BUYER'S CONDITIONS OF PURCHASE.**

**8.1 DUE DILIGENCE CONDITION.** Buyer's obligation to purchase the Property:  IS  IS NOT conditioned upon Buyer's Due Diligence as defined in this Section 8.1(a) below. This condition is referred to as the "Due Diligence Condition." If checked in the affirmative, Sections 8.1(a) through 8.1(c) apply; otherwise they do not.

**(a) Due Diligence Items.** Buyer's Due Diligence shall consist of Buyer's review and approval of the contents of the Seller Disclosures referenced in Section 7, and any other tests, evaluations and verifications of the Property deemed necessary or appropriate by Buyer, such as: the physical condition of the Property; the existence of any hazardous substances, environmental issues or geologic conditions; the square footage or acreage of the land and/or improvements; the condition of the roof, walls, and foundation; the condition of the plumbing, electrical, mechanical, heating and air conditioning systems and fixtures; the condition of all appliances; the costs and availability of homeowners' insurance and flood insurance, if applicable; water source, availability and quality; the location of property lines; regulatory use restrictions or violations; fees for services such as HOA dues, municipal services, and utility costs; convicted sex offenders residing in proximity to the Property; and any other matters deemed material to Buyer in making a decision to purchase the Property. Unless otherwise provided in the REPC, all of 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. Buyer agrees to pay for any damage to the Property resulting from any such inspections or tests during the Due Diligence.

**(b) Buyer's Right to Cancel or Resolve Objections.** If Buyer determines, in Buyer's sole discretion, that the results of the Due Diligence are unacceptable, Buyer may either: (i) no later than the Due Diligence Deadline referenced in Section 24(b), cancel the REPC by providing written notice to Seller, whereupon the Earnest Money Deposit shall be released to Buyer without the requirement of further written authorization from Seller; or (ii) no later than the Due Diligence Deadline referenced in Section 24(b), resolve in writing with Seller any objections Buyer has arising from Buyer's Due Diligence.

**(c) Failure to Cancel or Resolve Objections.** If Buyer fails to cancel the REPC or fails to resolve in writing any objections Buyer has arising from Buyer's Due Diligence, as provided in Section 8.1(b), Buyer shall be deemed to have waived the Due Diligence Condition.

**8.2 APPRAISAL CONDITION.** Buyer's obligation to purchase the Property:  IS  IS NOT conditioned upon the Property appraising for not less than the Purchase Price. This condition is referred to as the "Appraisal Condition." If checked in the affirmative, Sections 8.2(a) and 8.2(b) apply; otherwise they do not.

**(a) Buyer's Right to Cancel.** If after completion of an appraisal by a licensed appraiser, Buyer receives written notice from the Lender or the appraiser that the Property has appraised for less than the Purchase Price (a "Notice of Appraised Value"), Buyer may cancel the REPC by providing written notice to Seller (with a copy of the Notice of Appraised Value) no later than the Financing & Appraisal Deadline referenced in Section 24(c); whereupon the Earnest Money Deposit shall be released to Buyer without the requirement of further written authorization from Seller.

**(b) Failure to Cancel.** If the REPC is not cancelled as provided in this section 8.2, Buyer shall be deemed to have waived the Appraisal Condition.

**8.3 FINANCING CONDITION.** Buyer's obligation to purchase the property:  IS  IS NOT conditioned upon Buyer obtaining the Loan referenced in Section 2(b). This condition is referred to as the "Financing Condition." If checked in the affirmative, Sections 8.3(a) and 8.3(b) apply; otherwise they do not. If the Financing Condition applies, Buyer agrees to work diligently and in good faith to obtain the Loan.

(a) **Buyer's Right to Cancel Before the Financing & Appraisal Deadline.** If Buyer, in Buyer's sole discretion, is not satisfied with the terms and conditions of the Loan, Buyer may cancel the REPC by providing written notice to Seller no later than the Financing & Appraisal Deadline referenced in Section 24(c); whereupon the Earnest Money Deposit shall be released to Buyer without the requirement of further written authorization from Seller.

(b) **Buyer's Right to Cancel After the Financing & Appraisal Deadline.** If after expiration of the Financing & Appraisal Deadline referenced in Section 24(c), Buyer fails to obtain the Loan, meaning that the proceeds of the Loan have not been delivered by the Lender to Seller or to the escrow/closing office as required under Section 3.5 of the REPC, then Buyer or Seller may cancel the REPC by providing written notice to the other party; whereupon the Earnest Money Deposit, or Deposits, if applicable (see Section 8.4 below), shall be released to Seller without the requirement of further written authorization from Buyer. In the event of such cancellation, Seller agrees to accept as Seller's exclusive remedy, the Earnest Money Deposit, or Deposits, if applicable, as liquidated damages. Buyer and Seller agree that liquidated damages would be difficult and impractical to calculate, and the Earnest Money Deposit, or Deposits, if applicable, is a fair and reasonable estimate of Seller's damages in the event Buyer fails to obtain the Loan.

**8.4 ADDITIONAL EARNEST MONEY DEPOSIT.** If the REPC has not been previously canceled by Buyer as provided in Sections 8.1, 8.2 or 8.3(a), then no later than the Due Diligence Deadline referenced in Section 24(b), or the Financing & Appraisal Deadline referenced in Section 24(c), whichever is later, Buyer:  WILL  WILL NOT deliver to the Buyer's Brokerage, an Additional Earnest Money Deposit in the amount of \$~~0~~\_\_\_\_\_. The Earnest Money Deposit and the Additional Earnest Money Deposit, if applicable, are sometimes referred to herein as the "Deposits". The Earnest Money Deposit, or Deposits, if applicable, shall be credited toward the Purchase Price at Closing.

**9. ADDENDA.** There  ARE  ARE NOT addenda to the REPC containing additional terms. If there are, the terms of the following addenda are incorporated into the REPC by this reference:  Addendum No. \_\_\_\_\_  Seller Financing Addendum  FHA/VA Loan Addendum  Lead-Based Paint Disclosure & Acknowledgement (in some transactions this disclosure is required by law)  Other (specify) \_\_\_\_\_

**10. HOME WARRANTY PLAN / AS-IS CONDITION OF PROPERTY.**

**10.1 Home Warranty Plan.** A one-year Home Warranty Plan  WILL  WILL NOT be included in this transaction. If included, the Home Warranty Plan shall be ordered by  Buyer  Seller and shall be issued by a company selected by  Buyer  Seller. The cost of the Home Warranty Plan shall not exceed \$\_\_\_\_\_ and shall be paid for at Settlement by  Buyer  Seller.

**10.2 Condition of Property/Buyer Acknowledgements.** Buyer acknowledges and agrees that in reference to the physical condition of the Property: (a) Buyer is purchasing the Property in its "As-Is" condition without expressed or implied warranties of any kind; (b) Buyer shall have, during Buyer's Due Diligence as referenced in Section 8.1, an opportunity to completely inspect and evaluate the condition of the Property; and (c) if based on the Buyer's Due Diligence, Buyer elects to proceed with the purchase of the Property, Buyer is relying wholly on Buyer's own judgment and that of any contractors or inspectors engaged by Buyer to review, evaluate and inspect the Property.

**10.3 Condition of Property/Seller Acknowledgements.** Seller acknowledges and agrees that in reference to the physical condition of the Property, Seller agrees to: (a) disclose in writing to Buyer defects in the Property known to Seller that materially affect the value of the Property that cannot be discovered by a reasonable inspection by an ordinary prudent Buyer; (b) carefully review, complete, and provide to Buyer a written Seller property condition disclosure as stated in section 7(a); and (c) deliver the Property to Buyer in substantially the same general condition as it was on the date of Acceptance, as defined in Section 23, ordinary wear and tear excepted. The provisions of Sections 10.2 and 10.3 shall survive Closing.

**11. FINAL PRE-SETTLEMENT WALK-THROUGH INSPECTION.**

**11.1 Walk-Through Inspection.** No earlier than seven (7) calendar days prior to Settlement, and upon reasonable notice and at a reasonable time, Buyer may conduct a final pre-Settlement walk-through inspection of the Property to determine only that the Property is "as represented," meaning that the items referenced in Sections 1.1, 1.2 and 8.1(b)(ii) ("the items") are respectively present, repaired or corrected as agreed. The failure to conduct a walk-through inspection or to claim that an item is not as represented shall not constitute a waiver by Buyer of the right to receive, on the date of possession, the items as represented. If the items are not as represented, Seller agrees to cause all applicable items to be corrected, repaired or replaced (the "Work") prior to the Settlement Deadline referenced in Section 24(d).

**11.2 Escrow to Complete the Work.** If, as of Settlement, the Work has not been completed, then Buyer and Seller agree to withhold in escrow at Settlement a reasonable amount agreed to by Seller, Buyer (and Lender, if applicable), sufficient to pay for completion of the Work. If the Work is not completed within thirty (30) calendar days after the Settlement Deadline, the amount so escrowed may, subject to Lender's approval, be released to Buyer as liquidated damages for failure to complete the Work. The provisions of this Section 11.2 shall survive Closing.

**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 leases, rental or property



management agreements shall be made; (b) no new lease, rental or property management agreements shall be entered into; (c) no substantial alterations or improvements to the Property shall be made or undertaken; (d) no further financial encumbrances to the Property shall be made, and (e) no changes in the legal title to 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 signing the REPC on its behalf warrants his or her authority to do so and to bind Buyer and Seller.

**14. COMPLETE CONTRACT.** The REPC together with its addenda, any attached exhibits, and Seller Disclosures (collectively referred to as the "REPC"), constitutes the entire contract between the parties and supersedes and replaces any and all prior negotiations, representations, warranties, understandings or contracts between the parties whether verbal or otherwise. The REPC cannot be changed except by written agreement of the parties.

**15. MEDIATION.** Any dispute relating to the REPC arising prior to or after Closing:  **SHALL** [ ] **MAY AT THE OPTION OF THE PARTIES** first be submitted to mediation. Mediation is a process in which the parties meet with an impartial person who helps to resolve the dispute informally and confidentially. Mediators cannot impose binding decisions. The parties to the dispute must agree before any settlement is binding. The parties will jointly appoint an acceptable mediator and share equally in the cost of such mediation. If mediation fails, the other procedures and remedies available under the REPC shall apply. Nothing in this Section 15 prohibits any party from seeking emergency legal or equitable relief, pending mediation. The provisions of this Section 15 shall survive Closing.

**16. DEFAULT.**

**16.1 Buyer Default.** If Buyer defaults, Seller may elect one of the following remedies: (a) cancel the REPC and retain the Earnest Money Deposit, or Deposits, if applicable, as liquidated damages; (b) maintain the Earnest Money Deposit, or Deposits, if applicable, in trust and sue Buyer to specifically enforce the REPC; or (c) return the Earnest Money Deposit, or Deposits, if applicable, to Buyer and pursue any other remedies available at law.

**16.2 Seller Default.** If Seller defaults, Buyer may elect one of the following remedies: (a) cancel the REPC, and in addition to the return of the Earnest Money Deposit, or Deposits, if applicable, Buyer may elect to accept from Seller, as liquidated damages, a sum equal to the Earnest Money Deposit, or Deposits, if applicable; or (b) maintain the Earnest Money Deposit, or Deposits, if applicable, in trust and sue Seller to specifically enforce the REPC; or (c) accept a return of the Earnest Money Deposit, or Deposits, if applicable, and pursue any 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/GOVERNING LAW.** In the event of litigation or binding arbitration to enforce the REPC, 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. This contract shall be governed by and construed in accordance with the laws of the State of Utah. The provisions of this Section 17 shall survive Closing.

**18. NOTICES.** Except as provided in Section 23, all notices required under the REPC must be: (a) in writing; (b) signed by the Buyer or Seller giving notice; and (c) received by the Buyer or the Seller, or their respective agent, or by the brokerage firm representing the Buyer or Seller, no later than the applicable date referenced in the REPC.

**19. NO ASSIGNMENT.** The REPC and the rights and obligations of Buyer hereunder, are personal to Buyer. The REPC may not be assigned by Buyer without the prior written consent of Seller. Provided, however, the transfer of Buyer's interest in the REPC to any business entity in which Buyer holds a legal interest, including, but not limited to, a family partnership, family trust, limited liability company, partnership, or corporation (collectively referred to as a "Permissible Transfer"), shall not be treated as an assignment by Buyer that requires Seller's prior written consent. Furthermore, the inclusion of "and/or assigns" or similar language on the line identifying Buyer on the first page of the REPC shall constitute Seller's written consent only to a Permissible Transfer.

**20. INSURANCE & RISK OF LOSS.**

**20.1 Insurance Coverage.** As of Closing, Buyer shall be responsible to obtain casualty and liability insurance coverage on the Property in amounts acceptable to Buyer and Buyer's Lender, if applicable.

**20.2 Risk of Loss.** If prior to Closing, any part of the Property is damaged or destroyed by fire, vandalism, flood, earthquake, or act of God, the risk of such loss or damage shall be borne by Seller; provided however, that if the cost of repairing such loss or damage would exceed ten percent (10%) of the Purchase Price referenced in Section 2, either Seller or Buyer may elect to cancel the REPC by providing written notice to the other party, in which instance the Earnest Money Deposit, or Deposits, if applicable, shall be returned to Buyer.

**21. TIME IS OF THE ESSENCE.** Time is of the essence regarding the dates set forth in the REPC. Extensions must be agreed to in writing by all parties. Unless otherwise explicitly stated in the REPC: (a) performance under each Section of the REPC which references a date shall absolutely be required by 5:00 PM Mountain Time on the stated date; and (b) the term "days" and "calendar days" shall mean calendar days and shall be counted beginning on the day following the event which triggers the timing requirement (e.g. Acceptance). Performance dates and times referenced herein shall not be

binding upon title companies, lenders, appraisers and others not parties to the REPC, except as otherwise agreed to in writing by such non-party.

**22. ELECTRONIC TRANSMISSION AND COUNTERPARTS.** Electronic transmission (including email and fax) of a signed copy of the REPC, any addenda and counteroffers, and the retransmission of any signed electronic transmission shall be the same as delivery of an original. The REPC and any addenda and counteroffers may be executed in counterparts.

**23. ACCEPTANCE.** "Acceptance" occurs **only** when all of the following have occurred: (a) Seller or Buyer has signed the offer or counteroffer where noted to indicate acceptance; and (b) Seller or Buyer or their agent has communicated 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 the REPC:

- (a) Seller Disclosure Deadline \_\_\_\_\_ (Date)
- (b) Due Diligence Deadline \_\_\_\_\_ (Date)
- (c) Financing & Appraisal Deadline \_\_\_\_\_ (Date)
- (d) Settlement Deadline \_\_\_\_\_ (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: \_\_\_\_\_ [ ] AM [ ] PM Mountain Time on \_\_\_\_\_ (Date), this offer shall lapse; and the Brokerage shall return any Earnest Money Deposit to Buyer.

Jon D Mann \_\_\_\_\_ (Buyer's Signature)      \_\_\_\_\_ (Offer Date)      Jon D Mann \_\_\_\_\_ (Buyer's Signature)      20 Feb 2011 (Offer Date)

MARSHA MELLOW \_\_\_\_\_ (Buyer's Names) (PLEASE PRINT)      \_\_\_\_\_ (Notice Address)      \_\_\_\_\_ (Zip Code)      \_\_\_\_\_ (Phone)

\_\_\_\_\_  
 (Buyer's Names) (PLEASE PRINT)      (Notice Address)      (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. \_\_\_\_\_.
- REJECTION:** Seller rejects the foregoing offer.

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

\_\_\_\_\_  
 (Seller's Names) (PLEASE PRINT)      (Notice Address)      (Zip Code)      (Phone)

\_\_\_\_\_  
 (Seller's Names) (PLEASE PRINT)      (Notice Address)      (Zip Code)      (Phone)

THIS FORM APPROVED BY THE UTAH REAL ESTATE COMMISSION AND THE OFFICE OF THE UTAH ATTORNEY GENERAL, EFFECTIVE AUGUST 27, 2008. AS OF JANUARY 1, 2009, IT WILL REPLACE AND SUPERSEDE THE PREVIOUSLY APPROVED VERSION OF THIS FORM.

BUYER'S

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 20 FEB 2011, including all prior addenda and counteroffers, between JON & MARSHA as Buyer, and BOREN T. DEAL as Seller, regarding the Property located at \_\_\_\_\_. The following terms are hereby incorporated as part of the REPC:

- 1. PRICE IS \$212,000
- 2. SELLER WILL PAY UP TO \$5000 IN CONCESSIONS
- 3. ALL CONDITIONS ARE EXPRESSLY RELEASED!  
BUYER WILL BUY "AS IS."
- 4. IF SELLER DOES NOT EXPRESSLY REJECT THIS OFFER BY 12 AM TODAY, BUYER MAY CONSIDER THIS COUNTEROFFER ACCEPTED AND HOUSE WILL CLOSE WITHIN 30 DAYS FOR CASH.

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 12  AM  PM Mountain Time on \_\_\_\_\_ (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.

MARSHA MELLOW 23 FEB 9AM  
[ ] 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. \_\_\_\_.

Boren T. Deal 23 Feb 10:15 PM  
(Signature) (Date) (Time) (Signature) (Date) (Time)

REJECTION:  Seller  Buyer rejects the foregoing ADDENDUM.

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

SELLER'S  
ADDENDUM NO. 1

TO  
REAL ESTATE PURCHASE CONTRACT

THIS IS AN  ADDENDUM  COUNTEROFFER to that REAL ESTATE PURCHASE CONTRACT (the "REPC") with an Offer Reference Date of 20 FEB 2011, including all prior addenda and counteroffers, between \_\_\_\_\_ as Buyer, and \_\_\_\_\_ as Seller, regarding the Property located at \_\_\_\_\_. The following terms are hereby incorporated as part of the REPC:

- 1. THE PRICE SHOULD BE \$220,000
- 2. WATER SOFTNER & SECURITY SYSTEMS ARE RENTED
- 3. ~~THE~~ A RANGE WILL BE INCLUDED
- 4. MEDIATION MAY BE MANDATORY
- 5. SELLER WILL PAY A MAX OF \$3000 IN CONCESSIONS
- 6. HOUSE WILL BE SOLD "AS IS" -- NO WARRANTIES AT ALL

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  AM  PM Mountain Time on 23 Feb 2011 (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.

Boren T. Deal 22 Feb 2 PM  
 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. \_\_\_\_.

John Da Mann 23 Feb 8 AM  
(Signature) (Date) (Time) (Signature) (Date) (Time)

REJECTION:  Seller  Buyer rejects the foregoing ADDENDUM.

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