

11-2-2011

Buku Properties v. Clark Augmentation Record Dckt. 38561

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In the Supreme Court of the State of Idaho

BUKU PROPERTIES, LLC, an Idaho limited liability company,)

Plaintiff-Respondent,)

v.)

RAOEL H. CLARK and JANET C. CLARK, husband and wife; ANGUS JERRY PETERSON and BETTY JEAN PETERSON, husband and wife,)

Defendants-Appellants,)

LAW CLERK

ORDER GRANTING MOTION TO AUGMENT THE RECORD

Supreme Court Docket No. 38561-2011
Jefferson County Docket No. 2008-941

A MOTION TO AUGMENT THE RECORD was filed by counsel for Respondent on October 28, 2011. Therefore, good cause appearing,

IT HEREBY IS ORDERED that Respondent's MOTION TO AUGMENT THE RECORD be, and hereby is, GRANTED and the augmentation record shall include the documents listed below, file stamped copies of which accompanied this Motion:

1. Affidavit of DeAnne Casperson in Support of Motion for Leave to Take Depositions Duces Tecum of Jerry Peterson and Betty Jean Peterson Pursuant to Idaho R. Civ. P. 27(b), with attachments, file-stamped June 3, 2011;
2. Memorandum in Support of Motion for Leave to Take Depositions Duces Tecum of Jerry Peterson and Betty Jean Peterson Pursuant to Idaho R. Civ. P. 27(b), file-stamped June 3, 2011;
3. Motion for Leave to Take Depositions Duces Tecum of Jerry Peterson and Betty Jean Peterson Pursuant to Idaho R. Civ. P. 27(b), file-stamped June 3, 2011; and
4. Minute Entry Motion for Leave to Take Depositions, file-stamped June 15, 2011.

DATED this 20th day of November, 2011.

For the Supreme Court

AUGMENTATION RECORD

cc: Counsel of Record


Stephen W. Kenyon, Clerk

ORDER GRANTING MOTION TO AUGMENT THE RECORD – Docket No. 38561-2011

In the Supreme Court of the State of Idaho

BUKU PROPERTIES, LLC, an Idaho limited liability company,
Plaintiff-Respondent,
v.
RAOEL H. CLARK and JANET C. CLARK, husband and wife; ANGUS JERRY PETERSON and BETTY JEAN PETERSON, husband and wife,
Defendants-Appellants,

ORDER GRANTING MOTION TO AUGMENT THE RECORD

Supreme Court Docket No. 38561-2011
Jefferson County Docket No. 2008-941

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IT HEREBY IS ORDERED that Respondent's MOTION TO AUGMENT THE RECORD be, and hereby is, GRANTED and the augmentation record shall include the documents listed below, file stamped copies of which accompanied this Motion:

1. Affidavit of DeAnne Casperson in Support of Motion for Leave to Take Depositions Duces Tecum of Jerry Peterson and Betty Jean Peterson Pursuant to Idaho R. Civ. P. 27(b), with attachments, file-stamped June 3, 2011;
2. Memorandum in Support of Motion for Leave to Take Depositions Duces Tecum of Jerry Peterson and Betty Jean Peterson Pursuant to Idaho R. Civ. P. 27(b), file-stamped June 3, 2011;
3. Motion for Leave to Take Depositions Duces Tecum of Jerry Peterson and Betty Jean Peterson Pursuant to Idaho R. Civ. P. 27(b), file-stamped June 3, 2011; and
4. Minute Entry Motion for Leave to Take Depositions, file-stamped June 15, 2011.

DATED this 20th day of November, 2011.

For the Supreme Court


Stephen W. Kenyon, Clerk

cc: Counsel of Record

2011 JUN -3 PM 4:27
DISTRICT COURT
JEFFERSON COUNTY IDAHO

Charles A. Homer, Esq. (ISB No. 1630)
DeAnne Casperson, Esq. (ISB No. 6698)
HOLDEN KIDWELL HAHN & CRAPO, P.L.L.C.
P.O. Box 50130
1000 Riverwalk Drive, Suite 200
Idaho Falls, ID 83405
Telephone: (208) 523-0620
Facsimile: (208) 523-9518

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEFFERSON

BUKU PROPERTIES, LLC, an Idaho
limited liability company,

Plaintiff,

v.

RAOEL H. CLARK and JANET C.
CLARK, husband and wife; ANGUS
JERRY PETERSON and BETTY JEAN
PETERSON, husband and wife,

Defendants.

RAOEL H. CLARK and JANET C.
CLARK, husband and wife; ANGUS
JERRY PETERSON and BETTY JEAN
PETERSON, husband and wife,

Counter-Plaintiffs,

v.

BUKU PROPERTIES, LLC, an Idaho
limited liability company,

Case No. CV-08-941

**AFFIDAVIT OF DEANNE
CASPERSON IN SUPPORT OF
MOTION FOR LEAVE TO TAKE
DEPOSITIONS DUCES TECUM OF
JERRY PETERSON AND BETTY
JEAN PETERSON PURSUANT TO
IDAHO R. CIV. P. 27(b)**

1- MEMORANDUM IN SUPPORT OF MOTION FOR LEAVE TO TAKE DEPOSITIONS DUCES
TECUM OF JERRY PETERSON AND BETTY JEAN PETERSON PURSUANT TO IDAHO R. CIV. P.
27(b)

COPY

STATE OF IDAHO)
)ss.
County of Bonneville)

DeAnne Casperson, being first duly sworn on oath, deposes and states as follows:

1. I am an attorney with the firm of Holden, Kidwell, Hahn & Crapo, P.L.L.C., and an attorney of record on behalf of Plaintiff Buku Properties, LLC ("Plaintiff"). I submit this Affidavit based upon my own personal knowledge unless otherwise stated, and in support of the Motion for Leave to Take Depositions Duces Tecum of Jerry Peterson and Betty Jean Peterson Pursuant to Idaho R. Civ. P. 27(b).
 2. On November 16, 2010, Plaintiff filed its second motion for summary judgment, arguing that Defendants should be required to return Plaintiff's earnest monies.

The hearing on the motion was set for December 13, 2010.
 3. Although the case was previously assigned to the Honorable Judge Moeller, the case had been reassigned to the Honorable Judge St. Clair. At the hearing, counsel for Defendants argued that the case should be reassigned to Judge Moeller and was likely mistakenly assigned to Judge St. Clair. The Court agreed to reset the hearing to inquire as to the status. The hearing was re-scheduled for January 24, 2011, and the case was again reassigned to the Honorable Judge Watkins, who heard the motion on that day.
 4. Defendants filed a Notice of Appeal on February 16, 2011, in this matter after the Court entered its Memorandum Decision Re: Motion for Summary Judgment on
- 2 AFFIDAVIT OF DEANNE CASPERSON IN SUPPORT OF MOTION FOR LEAVE TO TAKE DEPOSITIONS OF JERRY PETERSON AND BETTY JEAN PETERSON DUCES TECUM PURSUANT TO IDAHO R. CIV. P. 27(b)

February 3, 2011. That appeal was stayed by the Idaho Supreme Court until a final judgment was entered.

5. On April 29, 2011, this Court entered a Final Judgment with regard to this pending matter. The stay imposed by the Idaho Supreme Court is no longer in effect pursuant to its order of March 2, 2011.
6. To my knowledge Defendants have failed to post a bond for the appeal.
7. On or about May 20, 2011, Plaintiff obtained an Abstract of Judgment as against Defendants Angus Jerry Peterson and Betty Jean Peterson. Plaintiff subsequently recorded the Abstract of Judgment in both Bonneville and Jefferson Counties. Attached hereto as Exhibit A are true and correct copies of such recorded Abstract of Judgment.
8. Attached hereto as Exhibit B is a true and correct copy of the deed transferring ownership of real property described as Lot 5 Block 11, the Meadows, Division No. 7, to the City of Idaho Falls, County of Bonneville, State of Idaho, according to the recorded plat thereof (the "Condo Property"), from Glenn Marks to A. Jerry Peterson and Betty J. Peterson, husband and wife.
9. On or about January 3, 2011, Defendants Angus Jerry Peterson and Betty Jean Peterson filed a Certificate of Organization for JBP Holdings, LLC, with the Idaho Secretary of State. Attached hereto as Exhibit C is a true and correct copy of such Certificate of Organization.

10. Attached hereto as Exhibit D is a true and correct copy of the quitclaim deed, dated January 18, 2011, purporting to transfer ownership of the Condo Property from A. Jerry Peterson and Betty J. Peterson to JBP Holdings, LLC.
11. Attached hereto as Exhibit E is a true and correct copy of the quitclaim deed, dated January 18, 2011, purporting to transfer property described as Township 4 North, Range 39 East of the Boise Meridian, Jefferson County, Idaho, Section 22: The Northwest Quarter of the Southwest Quarter (the "Bareground Property") from A. Jerry Peterson and Betty J. Peterson, to JBP Holdings, LLC.
12. Attached hereto as Exhibit F is a true and correct copy of the quitclaim deed, dated January 18, 2011, purporting to transfer real property as described in Exhibit A to Exhibit F (the "House Property"), from A. Jerry Peterson and Betty J. Peterson to JBP Holdings, LLC.
13. Exhibits E and F hereto describe the property that is at issue in this action.
14. Attached hereto as Exhibit G is a true and correct copy of the quitclaim deed, dated February 16, 2011, purporting to correct deed #389451 (the deed purporting to transfer ownership of the Bareground Property from A. Jerry Peterson and Betty J. Peterson to JBP Holdings, LLC).
15. Attached hereto as Exhibit H is a true and correct copy of the quitclaim deed, dated February 16, 2011, purporting to correct deed #389452 (the deed purporting to

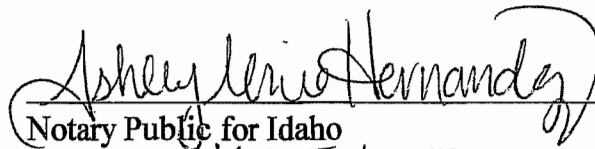
transfer ownership of the House Property from A. Jerry Peterson and Betty J. Peterson to JBP Holdings, LLC).

Dated this 3rd day of June, 2011.


DeAnne Casperson

SUBSCRIBED AND SWORN to before me this 3rd day of June, 2011.




Notary Public for Idaho
Residing at: Idaho Falls, ID
My commission expires: 10/22/14

CERTIFICATE OF SERVICE

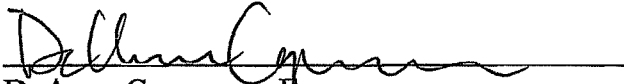
I hereby certify that on this 3rd day of June, 2011, I served a copy of the following described pleading or document on the attorneys listed below by hand delivering, by mailing or by facsimile, with the correct postage thereon, a true and correct copy thereof.

DOCUMENT SERVED: **AFFIDAVIT OF DEANNE CASPERSON IN SUPPORT OF MOTION FOR LEAVE TO TAKE DEPOSITIONS DUCES TECUM OF JERRY PETERSON AND BETTY JEAN PETERSON PURSUANT TO IDAHO R. CIV. P. 27(b)**

ATTORNEYS SERVED:

Robin D. Dunn
477 Pleasant Country Lane
P.O. Box 277
Rigby, ID 83442

- () *First Class Mail*
- () *Hand Delivery*
- () *Facsimile*
- () *Overnight Mail*


DeAnne Casperson, Esq.

Charles A. Homer, Esq. (ISB No. 1630)
DeAnne Casperson, Esq. (ISB No. 6698)
HOLDEN KIDWELL HAHN & CRAPO, P.L.L.C.
P.O. Box 50130
1000 Riverwalk Drive, Suite 200
Idaho Falls, ID 83405
Telephone: (208) 523-0620
Facsimile: (208) 523-9518

Attorneys for Plaintiff

Instrument # 391757

RIGBY, JEFFERSON, IDAHO
5-25-2011 02:00:00 No. of Pages: 2
Recorded for : HOLDEN KIDWELL HAHN & CRAPO
CHRISTINE BOULTER Fee: 13.00
Ex-Officio Recorder Deputy *JW*
Index to: ABSTRACT OF JUDGEMENT

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEFFERSON

BUKU PROPERTIES, LLC, an Idaho
limited liability company,

Plaintiff,

v.

RAOEL H. CLARK and JANET C.
CLARK, husband and wife; ANGUS
JERRY PETERSON and BETTY JEAN
PETERSON, husband and wife,

Defendants.

RAOEL H. CLARK and JANET C.
CLARK, husband and wife; ANGUS
JERRY PETERSON and BETTY JEAN
PETERSON, husband and wife,

Counter-Plaintiffs,

v.

BUKU PROPERTIES, LLC, an Idaho
limited liability company,

Counter-Defendants.

Case No. CV-08-941

ABSTRACT OF JUDGMENT

Instrument # 1392085

IDAHO FALLS, BONNEVILLE, IDAHO
5-27-2011 01:21:44 No. of Pages: 2
Recorded for : HOLDEN KIDWELL
RONALD LONGMORE Fee: 13.00
Ex-Officio Recorder Deputy *MLM*
Index to: JUDGMENT, ABSTRACT OF

1. Judgment creditor: Buku Properties, LLC
2. Judgment debtors: Angus Jerry Peterson and Betty Jean Peterson, jointly and severally
3. Date Entered: April 25, 2011, nunc pro tunc
4. Amount of judgment: \$444,355.94

WITNESS my hand and the seal of said District Court

Dated this 20 day of May, 2011.

Christine Boultier

Clerk of District Court

By: _____
Deputy



G:\WF\DATA\ACAH\14918\Wfdgs\Abstract.JGMT.wpd\ah



CERTIFICATE OF ORGANIZATION LIMITED LIABILITY COMPANY

(Instructions on back of application)

11 JAN -3 AM 8:51
SECRETARY OF STATE
STATE OF IDAHO

1. The name of the limited liability company is:

JBP HOLDINGS, LLC

2. The complete street and mailing addresses of the initial designated/principal office:

937 Oxbow Lane Idaho Falls ID 83404

(Street Address)

(Mailing Address, if different than street address)

3. The name and complete street address of the registered agent:

Betty Peterson

(Name)

937 Oxbow Lane, Idaho Falls, ID 83404

(Street Address)

4. The name and address of at least one member or manager of the limited liability company:

Name

Address

Betty Peterson

937 Oxbow Lane, Idaho Falls, ID 83404

A. Jerry Peterson

937 Oxbow Lane, Idaho Falls, ID 83404

5. Mailing address for future correspondence (annual report notices):

937 Oxbow Lane, Idaho Falls, ID 83404

6. Future effective date of filing (optional):

Signature of a manager, member or authorized person.

Signature Betty Peterson
Typed Name: Betty Peterson

Signature A. Jerry Peterson
Typed Name: A. Jerry Peterson

Secretary of State use only

IDAHO SECRETARY OF STATE
01/03/2011 05:00
CR: 7360 CT: 23363 BH: 1253253
1 @ 100.00 = 100.00 ORGAN LLC # 2

W99276

Instrument # 1383032
IDAHO FALLS, BONNEVILLE, IDAHO
1-20-2011 12:19:13 No. of Pages: 2
Recorded for : DUNN LAW OFFICES
RONALD LONGMORE Fee: 13.00
Ex-Officio Recorder Deputy
Index to: DEED, QUIT-CLAIM

QUITCLAIM DEED

THIS INDENTURE, made this 18th day of January, 2011, between A. JERRY PETERSON and BETTY J. PETERSON, husband and wife, of 937 Oxbow Lane, Idaho Falls, Idaho 83404, the party of the first part and JBP HOLDINGS, LLC, a limited liability company, of 937 Oxbow Lane, Idaho Falls, Idaho 83404, the party of the second part,

WITNESSETH, that the party of the first part, for good and valuable consideration, to the party of the first part in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, does by these presents remise, release and forever QUITCLAIM, unto the said party of the second part, and to party of the second part's heirs and assigns, forever, all the following described real estate, situated in Bonneville County, State of Idaho to-wit:

Lot 5 Block 11, the Meadows, Division No. 7, to the City of Idaho Falls, County of Bonneville, State of Idaho, according to the recorded plat thereof.

Subject to a Life Estate in A. Jerry Peterson and Betty J. Peterson, husband and wife

TOGETHER, with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, and rents, issues and profits thereof;

TO HAVE AND TO HOLD, all and singular, the said premises, together with the appurtenances, unto the said party of the second part, and to party of second part's heirs and assigns forever.

IN WITNESS WHEREOF, the said party of the first part has hereunto set his hand and seal the day and year first above written.

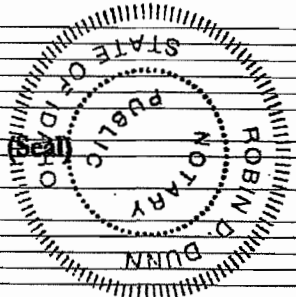
A. Jerry Peterson
A. Jerry Peterson

Betty J. Peterson
Betty J. Peterson

STATE OF IDAHO)
County of *Jefferson*)
:88

On this *18* day of January, 2011, before me, a Notary Public in and for said State, personally appeared A. JERRY PETERSON and BETTY J. PETERSON, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



Robin D. Dunn
Notary Public for Idaho
Residing In: *Rigby, ID*
Commission Expires: *10/7/16*

Instrument # 389451

RIGBY, JEFFERSON, ID

1-21-2011 03:25:00 No. of Pages: 2

Recorded for : BUNN LAW OFFICES

CHRISTINE BOULTER Fee: 13.00

Ex-Officio Recorder Deputy

INDEXED: QUIT CLAIM DEED

QUITCLAIM DEED

THIS INDENTURE, made this 18 day of January, 2011, between A. JERRY

PETERSON and BETTY J. PETERSON, husband and wife, of 937 Oxbow Lane, Idaho

Falls, Idaho 83404, the party of the first part and JBP HOLDINGS, LLC, a limited liability

company, of 937 Oxbow Lane, Idaho Falls, Idaho 83404, the party of the second part,

WITNESSETH, that the party of the first part, for good and valuable consideration,

to the party of the first part in hand paid by the party of the second part, the receipt whereof

is hereby acknowledged, does by these presents remise, release and forever QUITCLAIM,

unto the said party of the second part, and to party of the second part's heirs and assigns,

forever, all the following described real estate, situated in Jefferson County, State of Idaho

to-wit:

**Township 4 North, Range 39 East of the Boise Meridian, Jefferson County,
Idaho. Section 22: The Northwest Quarter of the Southwest Quarter.**

**SUBJECT TO all easements for highways, roads, ditches, canals, pole, power
and transmission lines as they exist.**

TOGETHER, with all and singular the tenements, hereditaments and

appurtenances thereunto belonging or in anywise appertaining, and the reversion and

reversions, remainder and remainders, and rents, issues and profits thereof,

TO HAVE AND TO HOLD, all and singular, the said premises, together with the

appurtenances, unto the said party of the second part, and to party of second part's heirs

and assigns forever.

IN WITNESS WHEREOF, the said party of the first part has hereunto set his hand and seal the day and year first above written.

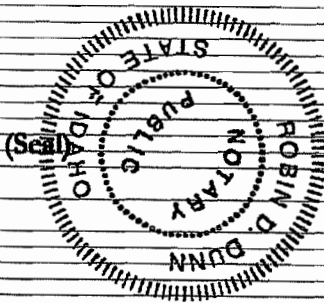
A. Jerry Peterson
A. Jerry Peterson

Betty J. Peterson
Betty J. Peterson

STATE OF IDAHO)
County of Jefferson)
:SS

On this 18 day of January, 2011, before me, a Notary Public in and for said State, personally appeared A. JERRY PETERSON and BETTY J. PETERSON, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



[Signature]
Notary Public for Idaho
Residing In: RIGBY, ID
Commission Expires: 10/7/16

QUITCLAIM DEED

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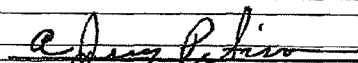
WITNESSETH, that the party of the first part, for good and valuable consideration, to the party of the first part in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, does by these presents remise, release and forever QUITCLAIM, unto the said party of the second part, and to party of the second part's heirs and assigns, forever, all the following described real estate, situated in Jefferson County, State of Idaho to-wit:

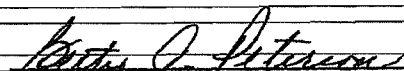
SEE ATTACHED EXHIBIT A

TOGETHER, with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, and rents, issues and profits thereof;

TO HAVE AND TO HOLD, all and singular, the said premises, together with the appurtenances, unto the said party of the second part, and to party of second part's heirs and assigns forever.

IN WITNESS WHEREOF, the said party of the first part has hereunto set his hand and seal the day and year first above written.


A. Jerry Peterson

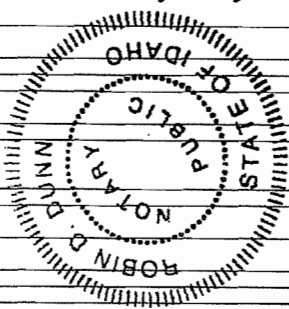

Betty J. Peterson

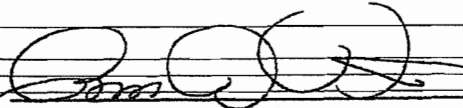
STATE OF IDAHO)
)
) :ss
County of Jefferson)

On this 18 day of January, 2011, before me, a Notary Public in and for said State,
personally appeared A. JERRY PETERSON and BETTY J. PETERSON, known to me to
be the persons whose names are subscribed to the within instrument, and acknowledged to
me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed
my official seal the day and year first above written.

(Seal)




Notary Public for Idaho
Residing In: RIGBY, ID
Commission Expires: 10/7/16

Part of the NW¼ of the SW¼ of Section 22, Township 4 North, Range 39
East of the Boise Meridian, records of JEFFERSON COUNTY, IDAHO.

Beginning at a point that is South 313.31 feet along the section line
from the W¼ Corner of said Section 22 and running thence N89°34'00"E
565.19 feet to a point on the West bank of the South Rigby Canal;
thence along said West bank the following two (2) courses: (1)
S58°04'57"W 538.45 feet; (2) thence S80°07'57"W 79.42 feet; thence
S89°34'02"W 29.88 feet to the West line of said Section 22; thence
N00°00'00"E 294.24 feet along the Section line to the POINT OF
BEGINNING.

EXCEPTING THEREFROM: County road right of way along the West side of
said property.

EXHIBIT A

Instrument # 390013

RIGBY, JEFFERSON, IDAHO

2-16-2011 03:00:00 No. of Pages: 3

Recorded for: DUNN LAW OFFICES

CHRISTINE BOULTER Fee: 16.00

Ex-Officio Recorder Deputy

Index to: RE-RECORDED DEED

Re-Recorded to Correct Deed #389451

QUITCLAIM DEED

THIS INDENTURE, made this 16th day of February, 2011, between A. JERRY

PETERSON and BETTY J. PETERSON, husband and wife, of 937 Oxbow Lane, Idaho

Falls, Idaho 83404, the party of the first part and JBP HOLDINGS, LLC, a limited liability

company, of 937 Oxbow Lane, Idaho Falls, Idaho 83404, the party of the second part,

WITNESSETH, that the party of the first part, for good and valuable consideration,

to the party of the first part in hand paid by the party of the second part, the receipt whereof

is hereby acknowledged, does by these presents remise, release and forever **QUITCLAIM**,

unto the said party of the second part, and to party of the second part's heirs and assigns,

forever, all the following described real estate, situated in Jefferson County, State of Idaho

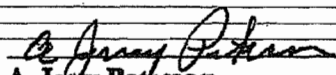
to-wit:

SEE ATTACHED EXHIBIT A

TOGETHER, with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, and rents, issues and profits thereof;

TO HAVE AND TO HOLD, all and singular, the said premises, together with the appurtenances, unto the said party of the second part, and to party of second part's heirs and assigns forever.

IN WITNESS WHEREOF, the said party of the first part has hereunto set his hand and seal the day and year first above written.


A. Jerry Peterson


Betty J. Peterson

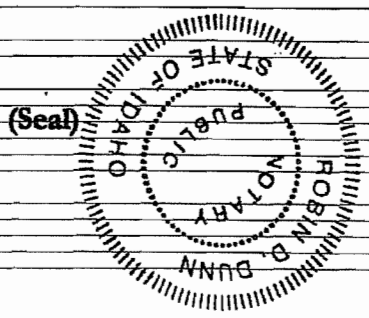
Exhibit "G"

STATE OF IDAHO)

County of Jefferson)

On this 16th day of February, 2011, before me, a Notary Public in and for said State, personally appeared A. JERRY PETERSON and BETTY J. PETERSON, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



[Signature]
Notary Public for Idaho
Residing In: RIGBY, IDAHO
Commission Expires: 10/7/16

EXHIBIT 'A'

LEGAL DESCRIPTION:

TRACT 1:

COMMENCING AT THE NE CORNER OF THE SE $\frac{1}{4}$ OF SECTION 21, TOWNSHIP 4 NORTH, RANGE 39 E.B.M., JEFFERSON COUNTY, IDAHO, AND RUNNING THENCE WEST 160 RODS; THENCE SOUTH 37 $\frac{1}{2}$ RODS; THENCE EAST 160 RODS; THENCE NORTH 37 $\frac{1}{2}$ RODS TO THE POINT OF BEGINNING.

TRACT 2:

THE SOUTH 42.5 RODS OF THE N $\frac{1}{2}$ SE $\frac{1}{4}$ OF SECTION 21, TOWNSHIP 4 NORTH, RANGE 39 E.B.M., JEFFERSON COUNTY, IDAHO,

EXCEPTING THEREFROM: BEGINNING AT THE SE CORNER OF THE N $\frac{1}{2}$ SE $\frac{1}{4}$ OF SAID SECTION 21; THENCE RUNNING THENCE WEST 470 FEET, MORE OR LESS TO THE POINT OF INTERSECTION OF THE EAST BANK OF THE SOUTH RIGBY CANAL; THENCE IN A NORTHERLY DIRECTION ALONG THE EAST BANK OF SAID CANAL TO A POINT 300 FEET WEST AND 42 $\frac{1}{2}$ RODS NORTH OF THE POINT OF BEGINNING; THENCE EAST 300 FEET; THENCE SOUTH 42 $\frac{1}{2}$ RODS TO THE POINT OF BEGINNING.

TOGETHER WITH A RIGHT OF WAY FOR INGRESS AND EGRESS OVER AND ACROSS THE FOLLOWING DESCRIBED PROPERTY:

BEGINNING AT A POINT THAT IS NORTH 42.5 RODS FROM THE SE CORNER OF THE N $\frac{1}{2}$ SE $\frac{1}{4}$ OF SECTION 21, TOWNSHIP 4 NORTH, RANGE 39 E.B.M., JEFFERSON COUNTY, IDAHO, THENCE WEST TO THE POINT OF INTERSECTION WITH THE WEST BANK OF THE SOUTH RIGBY CANAL, SAID POINT BEING THE TRUE POINT OF BEGINNING; THENCE NORTHEASTERLY FOLLOWING THE MEANDERINGS OF SAID WEST BANK OF SAID CANAL TO THE POINT OF INTERSECTION WITH THE EAST LINE OF SAID SECTION 21; THENCE NORTH 20 FEET; THENCE SOUTHWESTERLY 20 FEET DISTANCE FROM AND PARALLELING THE MEANDERINGS OF SAID WEST BANK OF SAID CANAL TO A POINT THAT IS 20 FEET WEST OF THE POINT OF BEGINNING; THENCE EAST 20 FEET TO THE POINT OF BEGINNING.

Instrument # 39001

RIGBY, JEFFERSON, IDAHO

2-16-2011 03:04:00 No. of Pages: 3

Recorded for : DUNN LAW OFFICES

CHRISTINE BOULTER Fee: 16.00

Ex-Officio Recorder Deputy

Index to: RE-RECORDED DEED

Re-Recorded to Correct Deed #389452
QUITCLAIM DEED

THIS INDENTURE, made this 16th day of February, 2011, between A. JERRY PETERSON and BETTY J. PETERSON, husband and wife, of 937 Oxbow Lane, Idaho Falls, Idaho 83404, the party of the first part and JBP HOLDINGS, LLC, a limited liability company, of 937 Oxbow Lane, Idaho Falls, Idaho 83404, the party of the second part,

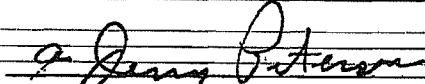
WITNESSETH, that the party of the first part, for good and valuable consideration, to the party of the first part in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, does by these presents remise, release and forever QUITCLAIM, unto the said party of the second part, and to party of the second part's heirs and assigns, forever, all the following described real estate, situated in Jefferson County, State of Idaho to-wit:

SEE ATTACHED EXHIBIT A

TOGETHER, with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, and rents, issues and profits thereof;

TO HAVE AND TO HOLD, all and singular, the said premises, together with the appurtenances, unto the said party of the second part, and to party of second part's heirs and assigns forever.

IN WITNESS WHEREOF, the said party of the first part has hereunto set his hand and seal the day and year first above written.


A. Jerry Peterson

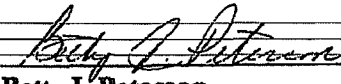
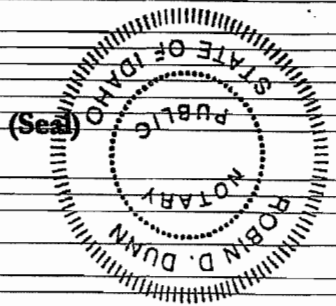

Betty J. Peterson

Exhibit "H"

STATE OF IDAHO)
)
) :ss
County of Jefferson)

On this 16th day of February, 2011, before me, a Notary Public in and for said State,
personally appeared A. JERRY PETERSON and BETTY J. PETERSON, known to me to
be the persons whose names are subscribed to the within instrument, and acknowledged to
me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed
my official seal the day and year first above written.



Notary Public for Idaho
Residing In: RIGBY IDAHO
Commission Expires: 10/1/16

EXHIBIT A

TRACT 3:

**TOWNSHIP 4 NORTH, RANGE 39 E.B.M., JEFFERSON COUNTY, IDAHO
SECTION 22: NW¼SW¼.**

EXCEPTING:

**A PARCEL OF LAND SITUATED IN SECTION 22, TOWNSHIP 4 NORTH, RANGE 39 E.B.M.,
JEFFERSON COUNTY, IDAHO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:**

**BEGINNING AT THE W¼ CORNER OF SECTION 22; THENCE S. 00°00'00" W. FOR A
DISTANCE OF 47.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE N. 89°11'00" E. FOR
A DISTANCE OF 1008.72 FEET; THENCE S. 58°03'44" W. FOR A DISTANCE OF 522.54 FEET;
THENCE S. 89°34'00" W. FOR A DISTANCE OF 565.19 FEET; THENCE N. 00°00'00" E. FOR A
DISTANCE OF 266.32 FEET TO THE TRUE POINT OF BEGINNING.**

ALSO EXCEPTING:

**PART OF THE NW¼SW¼ OF SECTION 22, TOWNSHIP 4 NORTH, RANGE 39 E.B.M.,
JEFFERSON COUNTY, IDAHO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:**

**BEGINNING AT A POINT THAT IS SOUTH 313.31 FEET ALONG THE SECTION LINE FROM THE
W¼ CORNER OF SAID SECTION 22 AND RUNNING THENCE N. 89°34'00" E. 565.19 FEET TO
A POINT ON THE WEST BANK OF THE SOUTH RIGBY CANAL; THENCE ALONG SAID WEST
BANK THE FOLLOWING TWO (2) COURSES; (1) S. 58°04'57" W. 538.45 FEET; (2) THENCE S.
80°07'57" W. 79.42 FEET; THENCE S. 89°34'02" W. 29.88 FEET TO THE WEST LINE OF SAID
SECTION 22; THENCE N. 00°00'00" E. 294.24 FEET ALONG THE SECTION LINE TO THE POINT
OF BEGINNING.**

Charles A. Homer, Esq. (ISB No. 1630)
DeAnne Casperson, Esq. (ISB No. 6698)
HOLDEN KIDWELL HAHN & CRAPO, P.L.L.C.
P.O. Box 50130
1000 Riverwalk Drive, Suite 200
Idaho Falls, ID 83405
Telephone: (208) 523-0620
Facsimile: (208) 523-9518

2011 JUN -3 PM 4:27
DISTRICT COURT
JEFFERSON COUNTY, IDAHO

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEFFERSON

BUKU PROPERTIES, LLC, an Idaho
limited liability company,

Plaintiff,

v.

RAOEL H. CLARK and JANET C.
CLARK, husband and wife; ANGUS
JERRY PETERSON and BETTY JEAN
PETERSON, husband and wife,

Defendants.

RAOEL H. CLARK and JANET C.
CLARK, husband and wife; ANGUS
JERRY PETERSON and BETTY JEAN
PETERSON, husband and wife,

Counter-Plaintiffs,

v.

BUKU PROPERTIES, LLC, an Idaho
limited liability company,

Counter-Defendants.

Case No. CV-08-941

**MEMORANDUM IN SUPPORT OF
MOTION FOR LEAVE TO TAKE
DEPOSITIONS DUCES TECUM OF
JERRY PETERSON AND BETTY
JEAN PETERSON PURSUANT TO
IDAHO R. CIV. P. 27(b)**

COPY

COMES NOW Plaintiff Buku Properties, LLC ("Plaintiff"), by and through its counsel of record, Holden, Kidwell, Hahn & Crapo, P.L.L.C., and moves this Court to grant Plaintiff Leave to Take the Depositions Duces Tecum of Jerry and Betty Jean Peterson, pursuant to Idaho R. Civ. P. 27(b). This Motion is supported by Plaintiff's Memorandum in Support of Motion for Leave to Take Depositions Duces Tecum of Jerry Peterson and Betty Jean Peterson Pursuant to Idaho R. Civ. P. 27(b), and the Affidavit of DeAnne Casperson in Support of Motion for Leave to Take Depositions Duces Tecum of Jerry Peterson and Betty Jean Peterson, filed simultaneous herewith.

I. FACTS

On November 16, 2010, Plaintiff filed its second motion for summary judgment, arguing that Defendants should be required to return Plaintiff's earnest monies. (Casperson Aff., ¶ 2). The hearing on the motion was set for December 13, 2010. Although the case was previously assigned to the Honorable Judge Moeller, the case had been reassigned to the Honorable Judge St. Clair. (Casperson Aff., ¶ 3). At the hearing, counsel for Defendants argued that the case should be reassigned to Judge Moeller and was likely mistakenly assigned to Judge St. Clair. (Casperson Aff., ¶ 3). The Court agreed to reset the hearing to inquire as to the status. The hearing was re-scheduled for January 24, 2011, and the case was again reassigned to the Honorable Judge Watkins, who heard the motion on that day. (Casperson Aff., ¶ 3).

Unbeknownst to Plaintiff, on January 18, 2011, just six days before the hearing Defendants Angus Jerry and Betty Jean Peterson ("Defendants Peterson") purported to

transfer by quit claim deeds both their home in Bonneville County and the Jefferson County property at issue in the litigation to an entity named JBP Holdings, LLC (“JBP Holdings”). (Casperson Aff., ¶ 9-15). The Certificate of Organization for JBP Holdings was filed on January 3, 2011. (Casperson Aff., ¶ 9, Ex. C). The quit claim deeds purportedly transferring ownership of Defendants Petersons’ real property to JBP Holdings were executed on January 18, 2011. (Casperson Aff., ¶ 10-15, Ex. D, F). On February 16, 2011, additional quit claim deeds were executed, allegedly to correct an error in the deed’s legal description. (Casperson Aff., ¶¶ 14-15, Ex. G; ¶ 13, Ex. H). Defendants Peterson counsel, Robin Dunn, notarized the quit claim deeds transferring Defendant Petersons real property to JBP Holdings and arranged for their recording. (See Casperson Aff., Ex. D, E, F, G & H). On February 3, 2011, the Court issued its opinion, granting Plaintiff’s summary judgment motion.

Defendants filed a Notice of Appeal in this matter on February 16, 2011. That appeal was stayed by the Idaho Supreme Court until a final judgment was entered. This Court entered a Final Judgment on April 25, 2011, nunc pro tunc with regard to this matter. Consequently, the stay imposed by the Idaho Supreme Court is no longer in effect pursuant to its order of March 2, 2011. To date, Defendants have failed to post a bond for the appeal. (Casperson Aff., ¶ 6).

On or about May 20, 2011, Plaintiff obtained an Abstract of Judgment as against Defendants Peterson. Plaintiff subsequently had the abstract recorded in both Bonneville and Jefferson Counties. (Casperson Aff., ¶ 7, Ex. A). While attempting to proceed with

the execution of its judgment against Defendants Peterson, Plaintiff learned of Defendants Peterson's attempt to transfer their real property to avoid execution. Plaintiff seeks an order to depose Defendants Peterson so that it can protect its judgment and justice can be served.

II. ARGUMENT

Plaintiff is entitled to conduct depositions pending appeal as a result of Defendants Peterson's actions which intentionally interfere with and prevent Plaintiff from executing on the Final Judgment. Although this case is currently on appeal to the Idaho Supreme Court, Appellate Rule 13 allows the district court to exercise certain powers during pendency of appeal. Pursuant to Appellate Rule 13(b), the Court retains power and authority to enter a number of orders, including the following:

- (8) Enter a stay of execution or enforcement of any injunction or mandatory order entered by the court upon such conditions and upon the posting of such security as the court determines in its discretion.
...
- (10) Make any order regarding the use, preservation or possession of any property which is the subject of the action on appeal.
...
- (13) Take any action or enter any order required for the enforcement of any judgment or order.
...
- (20) Rule upon any motion pertaining to the taking of depositions pursuant to rule 27(b), Idaho R. Civ. P.

Idaho App. R. 13. The deposition of Jerry & Betty Peterson are necessary to enforce the judgment and to perpetuate testimony regarding the transfer Plaintiff believes is a fraudulent conveyance.

Idaho Rule of Civil Procedure 27(b) specifically allows for depositions during an appeal as follows:

If an appeal has been taken from a judgment of a district court or before the taking of an appeal if the time therefor has not expired, the district court in which the judgment was rendered may allow the taking of the depositions of witnesses to perpetuate their testimony for use in the event of further proceedings in the district court. In such case the party who desires to perpetuate the testimony may make a motion in the district court for leave to take the depositions, upon the same notice and service thereof as if the action was pending in the district court. In such case the party who desires to perpetuate the testimony may make a motion in the district court for leave to take the depositions, upon the same notice and service thereof as if the action was pending in the district court. The motion shall show (1) the names and addresses of persons to be examined and the substance of the testimony which the party expects to elicit from each; (2) the reasons for perpetuating their testimony. If the court finds that the perpetuation of the testimony is proper to avoid a failure or delay of justice, it may make an order allowing the depositions to be taken and may make orders of the character provided for by Rules 34 and 35, and thereupon the depositions may be taken and used in the same manner and under the same conditions as are prescribed in these rules for depositions taken in actions pending in the district court.

Idaho R. Civ. P. 27(b).

In this case, Plaintiff needs the depositions in order to prevent a failure or delay of justice. Defendants have attempted to transfer the property to avoid possessing the necessary resources to satisfy the judgment. Further, Defendants Peterson have failed to post a bond to secure the judgment with no fear of execution due to the fraudulent

transfer. Plaintiff needs the depositions of Jerry and Betty Jean Peterson to perpetuate their testimony regarding the transfer, its purpose, what consideration was given for transfer, and determine whether further action is needed by this Court to obtain an injunction against Defendants Peterson to prevent further disposition of the property and/or to appoint a receiver to take charge of the properties pending the appeal.

Defendants Peterson have taken no action to stay the execution of the judgment during the pendency of the appeal. If Defendants Peterson did indeed receive compensation for the transfer of the property to JBP Holdings, they could easily submit the funds to be deposited with the Court in lieu of a bond. Plaintiff is entitled to discover the purpose of the transfer and to protect its judgment. Further, Defendants Petersons' actions are a clear attempt to avoid or delay justice in this matter.

Plaintiff was able to find only one Idaho Supreme Court case that has applied Idaho Rule of Civil Procedure of 27(b). In *Obendorf v. Terra Hug Bray Company, Inc.*, the district court allowed one of the defendants to conduct post trial discovery pursuant to Rule 27(b) in order to obtain evidence for purposes of their motion for a new trial. In upholding the decision, the Supreme Court stated, “[w]e view the trial Court’s decision as an exercise of its broad discretion in control of discovery. I.R.C.P. 30(f)(4)(B) specifically recognizes that depositions may be utilized in connection with post trial motions.” 145 Idaho 892-902, 844, 188 P. 3d. 834, 844 (2008). As a result, the Idaho Supreme Court determined that the district court did not abuse its discretion when it permitted post trial depositions. *See id.*

Plaintiff needs the information it will obtain from Jerry and Betty Jean Peterson's depositions to determine whether it should seek an injunction to prevent Defendants from rendering the judgment ineffectual or whether there has been fraudulent conveyance of the property. Idaho Rule of Civil Procedure 65(e) states that a preliminary injunction can be entered as follows:

- (3) When it appears during litigation that the Defendant is doing, or threatens or is about to do, or is procuring or suffering to be done, some act of violation of the Plaintiff's rights, respecting the subject of the action, and tending to render the judgment ineffectual.
- (4) When it appears, by affidavit, that the Defendant during the pendency during the action, threatens, or is about to remove, or to dispose of the Defendant's property with intent to defraud the Plaintiff, an injunction order may be granted to restrain the removal or disposition."

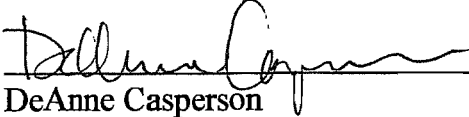
Idaho R. Civ. P. 65(c)(3)&(4). Further, Appellate Rule 13 would allow this Court to order injunctive relief if Plaintiff obtain sufficient evidence of Defendants Peterson's attempt to avoid execution of the judgment. In addition, the uniform fraudulent transfer act allows the entry of an injunction or the appointment of a receiver in cases of fraudulent property transfer. *See* Idaho Code § 55-916(1)(c). Plaintiff seeks to preserve the testimony of Defendants Peterson and protect its judgment as necessary during the appeal. Plaintiff is entitled to learn the basis for the transfer and the consideration paid to Defendants Peterson for the transfer.

III. CONCLUSION

Based on the foregoing, Plaintiff respectfully requests that it be granted leave to take the depositions duces tecum of Jerry and Betty Jean Peterson in order to prevent

Defendants Peterson from fraudulently conveying the property to avoid execution of the judgment in this action.

DATED: 6/3/2011


DeAnne Casperson
HOLDEN, KIDWELL, HAHN & CRAPO,
P.L.L.C.

CERTIFICATE OF SERVICE

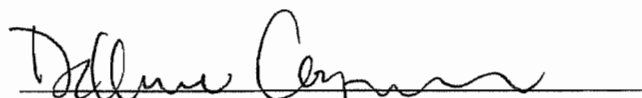
I hereby certify that on this 7th day of June 2011, I served a copy of the following described pleading or document on the attorneys listed below by hand delivering, by mailing or by facsimile, with the correct postage thereon, a true and correct copy thereof.

DOCUMENT SERVED: **MEMORANDUM IN SUPPORT OF MOTION FOR LEAVE TO TAKE DEPOSITIONS DUCES TECUM OF JERRY PETERSON AND BETTY JEAN PETERSON PURSUANT TO IDAHO R. CIV. P. 27(b)**

ATTORNEYS SERVED:

Robin D. Dunn
477 Pleasant Country Lane
P.O. Box 277
Rigby, ID 83442

- () *First Class Mail*
- () *Hand Delivery*
- () *Facsimile*
- () *Via Overnight Mail*


DeAnne Casperson, Esq.

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Charles A. Homer, Esq. (ISB No. 1630)
DeAnne Casperson, Esq. (ISB No. 6698)
HOLDEN KIDWELL HAHN & CRAPO, P.L.L.C.
P.O. Box 50130
1000 Riverwalk Drive, Suite 200
Idaho Falls, ID 83405
Telephone: (208) 523-0620
Facsimile: (208) 523-9518

2011 JUN -3 PM 4: 27
DISTRICT COURT
JEFFERSON COUNTY, IDAHO

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEFFERSON

BUKU PROPERTIES, LLC, an Idaho
limited liability company,

Plaintiff,

v.

RAOEL H. CLARK and JANET C.
CLARK, husband and wife; ANGUS
JERRY PETERSON and BETTY JEAN
PETERSON, husband and wife,

Defendants.

RAOEL H. CLARK and JANET C.
CLARK, husband and wife; ANGUS
JERRY PETERSON and BETTY JEAN
PETERSON, husband and wife,

Counter-Plaintiffs,

v.

BUKU PROPERTIES, LLC, an Idaho
limited liability company,

Counter-Defendants.

Case No. CV-08-941

**MOTION FOR LEAVE TO TAKE
DEPOSITIONS DUCES TECUM OF
JERRY PETERSON AND BETTY
JEAN PETERSON PURSUANT TO
IDAHO R. CIV. P. 27(b)**

COPY

COMES NOW Plaintiff Buku Properties, LLC, ("Plaintiff") and moves this Court for leave to take the depositions of the following individuals for the following reasons, pursuant to Idaho Rule of Civil Procedure 27(b):

(1) Names and Addresses of Persons to Be Examined and Anticipated Testimony

(a) Defendant Jerry Peterson
c/o Robin Dunn
477 Pleasant Country Lane
Rigby, Idaho 83442

(b) Defendant Betty Jean Peterson
c/o Robin Dunn
477 Pleasant County Lane
Rigby, Idaho 83442

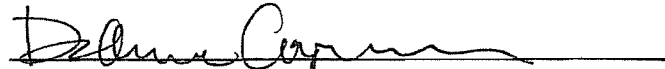
Plaintiff expects to elicit information from the above named persons pertaining to the transfer of real property owned by Defendants Jerry and Betty Jean Peterson to JBP Holdings, LLC, during the pendency of this action. In addition, Plaintiff would require the deponents to bring documentation regarding the transfer.

(2) Reasons for Perpetuating Testimony

Plaintiff needs the above testimony in order to determine whether injunctive relief or other forms of relief against Defendants Jerry and Betty Jean Peterson are necessary to protect Plaintiff's judgment against such Defendants. Further explanation is provided in the Memorandum in Support of Motion for Leave to Take Depositions Duces Tecum of Jerry and Betty Jean Peterson Pursuant to Idaho R. Civ. P. 27(b), and the Affidavit of

DeAnne Casperson in Support of Motion for Leave to Take Depositions Duces Tecum of
Jerry Peterson and Betty Jean Peterson submitted herewith.

Dated this 3rd day of June, 2011.


DeAnne Casperson, Esq.
Holden, Kidwell, Hahn & Crapo, P.L.L.C.

CERTIFICATE OF SERVICE

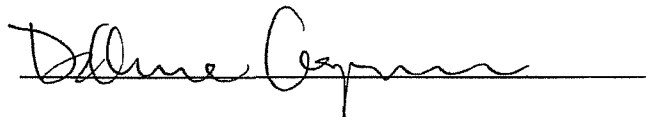
I hereby certify that on this 3rd day of June 2011, I served a copy of the following described pleading or document on the attorneys listed below by hand delivering, by mailing or by facsimile, with the correct postage thereon, a true and correct copy thereof.

**DOCUMENT SERVED: MOTION FOR LEAVE TO TAKE DEPOSITIONS
 DUCES TECUM OF JERRY PETERSON AND
 BETTY JEAN PETERSON PURSUANT TO
 IDAHO R. CIV. P. 27(b)**

ATTORNEYS SERVED:

Robin D. Dunn
477 Pleasant Country Lane
P.O. Box 277
Rigby, ID 83442

() *First Class Mail*
() *Hand Delivery*
() *Facsimile*
() *Via Overnight Mail*



DeAnne Casperson, Esq.

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2011 JUN 15 PM 1:31
DISTRICT COURT
JEFFERSON COUNTY, IDAHO

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF

STATE OF IDAHO, IN AND FOR THE COUNTY OF JEFFERSON

BUKU PROPERTIES, LLC,

Plaintiffs,

-vs.-

RAOEL CLARK, ETAL,

Defendants.

Case No. CV-2008-941

MINUTE ENTRY
MOTION FOR
LEAVE TO TAKE
DEPOSITIONS

June 16, 2011, at 2:41 P.M., this motion for leave to take deposition came on for hearing before the Honorable Dane H Watkins, Jr., District Judge, sitting in open court at Rigby, Idaho.

Ms. Rainey Stockton, Court Reporter, and Ms. Denise Criddle, Deputy Court Clerk, were present.

Ms. Deanne Casperson appeared on behalf of the plaintiff.

Mr. Robin Dunn appeared on behalf of the defendants.


Ms. Casperson presented argument in support of her motion.

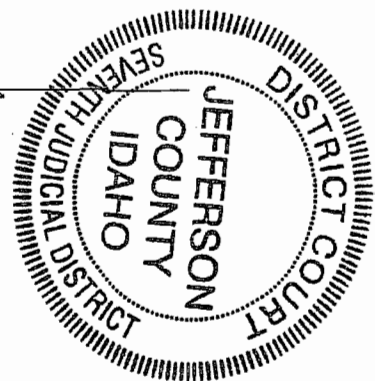
Mr. Dunn presented argument in objection.

Ms. Casperson responded.

After discussion between court and counsel the Court ordered that the deposition to take place by July 15, 2011.

Court was thus adjourned.


DANE H. WATKINS, JR.
District Judge



c: Deanne Casperson, Esq.
Robin Dunn, Esq.