

1-18-2012

# Buku Properties v. Clark Appellant's Reply Brief Dckt. 38561

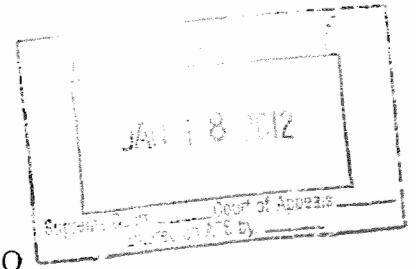
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IN THE SUPREME COURT OF THE STATE OF IDAHO

BUKU PROPERTIES, LLC, )  
 )  
 Plaintiff/Respondent, )  
 )  
 vs. )  
 )  
 RAOEL H CLARK and JANET C. )  
 CLARK; ANGUS JERRY PETERSON )  
 and BETTY JEAN PETERSON, )  
 )  
 Defendants/Appellants. )  
 \_\_\_\_\_ )

Docket No. 38561-2011  
 Jefferson County Case: CV-2008-941

APPELLANTS' REPLY BRIEF

Appeal from the District Court of the Seventh Judicial District for Jefferson County  
 Honorable Dane H. Watkins, District Judge, Presiding

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## ADDITIONAL ISSUES ON APPEAL

1. The Appellants are entitled to fees and costs at trial; or alternatively, after a determination by the fact-finder of the liability of either parties.
2. The Appellants are entitled to fees and costs on appeal.

## ARGUMENT

### 1. SUMMARY

The Appellants rely upon their initial “Statement of the Case” including factual and legal events. However, the Appellants disagree with Respondent’s “Factual Background and Procedural History” as these statements are mainly the repeated statements of the Decision of Judge Watkins contained in his grant of summary judgment. These very statements of Judge Watkins are those being challenged as inaccurate in the opening brief and this reply brief.

The legal events surround the questions of ambiguous vs. unambiguous as contained in the decisions of the district court interpreting the contracts between Respondent and Appellants.

Appellants believe they were entitled to summary judgment; and, worst case scenario, were entitled to a jury trial. It is obvious that factual issues surround these contracts before this court. The application of those facts to the contracts is being challenged by the Appellants.

2. INTRODUCTION.

Appellants respectfully submit herein the following argument in summary of the issues on appeal in this matter:

A. That the court erred in its ruling that the terms of the purchase agreements were unambiguous:

i. That the court erred in its discussion and findings that the alleged zoning issues are “interests and concerns,” as the court, by necessity, had to go outside the four corners of the agreements in its effort to determine said terms;

B. That numerous genuine issues of material fact exist with respect to (a) defining the terms “interests and concerns,” (*e.g.*, zoning) (b) whether Respondent could have appropriately abandoned the purchase agreements; and (c) whether Respondent was entitled to return of the earnest monies;

C. Respondent is misplaced in its claim that the court correctly granted summary judgment:

i. Genuine issues of material fact exist with respect to whether Respondent did or did not breach the purchase agreement(s);

ii. The issue of whether the pending zoning issues were resolved encompasses genuine issues of material fact which must be heard by the trier-of-fact.

D. That Appellants’ claims on appeal related to specific performance are not moot.

E. The question of attorney fees relates both to the lower court and to this court

on appeal.

3. THE DISTRICT COURT ERRED IN ITS FINDING THAT THE AGREEMENTS WERE UNAMBIGUOUS.

A. The Term “interests and concerns” is Ambiguous.

In its Respondent’s Brief, Buku claims that “The District Court Correctly Determined that the Purchase and Sale Agreements Were Unambiguous and the District Court Did Not Consider Extrinsic Evidence.” (Respondent’s Brief, p. 11). Further, Respondent’s Brief argues the following: “The District Court carefully examined the language of the Agreements and correctly ruled that they were not ambiguous and excluded any extrinsic evidence. In both the Memorandum Decision dated January 28, 2010, and the Memorandum Decision Re: Summary Judgment dated February 3, 2011, the District Court found that the Agreements at issue in this matter were clear and unambiguous. (R. Vol. I, p. 203-205; Vol. II, p. 401-402).” (Respondent’s Brief, pp. 11-12).

Appellants respectfully state, as in their previous Brief, that both Memorandum Decisions were in error in their respective findings that the contracts were unambiguous. Respondent errs in urging this Court to affirm the finding of “unambiguous terms” for the reasons discussed *infra*.

B. The Court Must Look to the First Memorandum Decision on Summary Judgment to Review Whether or Not the Purchase Agreements are Ambiguous.

The Memorandum Decision on Respondent’s Second Motion for Summary Judgment relied solely on the findings of Judge Moeller’s Memorandum Decision on the

first Motion for Summary Judgment (hereinafter “Moeller Memorandum”) regarding the ambiguous terms issue. The Memorandum Decision on the Second Motion for Summary Judgment (hereinafter “Watkins Memorandum”) states as follows:

The Moeller Memorandum stated the following in reference to paragraph 3:

‘The Court finds that the wording above is not ambiguous and not so indefinite as to make the contract illusory.’

Having reviewed Idaho authority and the Agreements, like the previous Court, this Court concludes the language in paragraph 3 of the Agreements is unambiguous and enforceable.’ (R. Vol. II, p. 402).

Because the Watkins Memorandum makes no findings on how it determined that the Agreements were unambiguous, other than stating that “Neither party asserts the Agreements are unambiguous” (R. Vol. II, p. 401), which Appellants respectfully submit is contradicted by the record, the Court must look to the Moeller Memorandum in its review of the issue of whether the Agreements are ambiguous/non-ambiguous.

C. The Moeller Memorandum Outlines the Ambiguous Term(s)

- i. The Moeller Memorandum had to utilize facts outside the four corners of the Agreement in its determination that no ambiguity exists.

The Moeller Memorandum made findings that neither a patent ambiguity existed in the two Agreements:

To determine whether a contract is patently ambiguous, a court reads the contract’s words or phrases given their established definitions in common use or settled legal meanings. For a contract term to be ambiguous, there must be at least two different reasonable interpretations of the term, or it must be nonsensical. (R Vol I, p. 204)(internal citations omitted)...

The Contracts are not patently ambiguous. The language at issue—‘[Buku] will have four months to perform the due diligence inspections to satisfy Buyer’s concerns regarding the purchase’—is straightforward and clear. That



Buku's 'interests and concerns' could potentially be quite broad is true (Emphasis Supplied), but Defendants do not claim the terms have 'at least two different reasonable interpretations.'... The Court finds no patent ambiguity. (R. Vol I, pp. 204-205).

Appellants, by contrast, did meet the patent ambiguity test, as stated in the Moeller Memorandum: "According to Defendants, Buku's 'interests and concerns' could be so broad as to include anything." (R. Vol. I, p. 203). Appellants thus met its burden of "at least two different interpretations of the term" (See *Swanson v. Beco Constr. Co., Inc.*, 145 Idaho 59, 62, 175 P.3d 748, 751 (2007)) by its assertion that (1) "interests and concerns" is so vague that it could mean virtually anything, and, more importantly, (2) nowhere in the Agreements is "zoning" outlined, defined or discussed.

The Moeller Memorandum, by necessity, thus had to go outside the four corners of the Agreement to find that zoning issues are an appropriate "interest and concerns" given the plain language of the entire Agreement.

The Moeller Memorandum further found that no latent ambiguity exists. Appellants respectfully submit that this is also incorrect, given that the Moeller Court, by necessity, had to go outside the four corners of the document in its analysis of the presence of a latent ambiguity.

The Moeller Memorandum utilized disputed facts in its analysis of latent ambiguity. "When applying the Agreements 'to the facts as they exist,' the Court finds the Agreements unambiguous." (R. Vol I, p. 205).

Part of the "facts as they exist" include that the Agreements are silent on zoning issues. Further, part of the "facts as they exist" also include that the facts are in dispute as

to the circumstances regarding the parties' knowledge and activities regarding any zoning issue(s). As the Moeller Memorandum found in its decision to decline summary judgment in relevant part: "Additionally, the Petersons' affidavit states that there were ongoing negotiations between the parties throughout 2008 on matters concerning the sale of the property and zoning issues." (R. Vol I, p. 206).

Finally, an important part of the "facts as they exist," from the record in this case, is that at no time, either before the Agreements, during the pendency of the four-month due-diligence period, or after the granting of Summary Judgment in the Watkins Memorandum has the zoning changed.

Appellants further respectfully assert that error occurred when the court found the following: "Potential zoning changes and their impact on financing are precisely the type of issues typically dealt with during the due diligence phase of a real estate transaction." (R. Vol I, p. 205). This conclusion is more appropriately analyzed by the trier-of-fact in its proper determination of what "interest and concern" means.

In summary, the Moeller (and thus Watkins) Memorandum are incorrect in their findings that no (patent nor latent) ambiguity existed, and it was thus error for the Watkins Court to grant summary judgment to Respondents because he relied upon the Moeller reasoning.

As stated herein, the Moeller Court utilized only facts in dispute to define "zoning" as an "interest and concern." Thus, the reasoning of the Watkins's Court is flawed because the Moeller Court never granted summary judgment on the contract itself.

D. The District Court Erred In Its Granting Of Summary Judgment To Buku.

- i. The Moeller Court Recognized that Genuine Issues of Material Fact Exist in the Case at Bar.

Appellants agree with the denial of summary judgment by the Moeller Decision but disagree in the method of arriving at the end result.

The Moeller Memorandum, in its denial of summary judgment, found as follows:

Buku seeks summary judgment in its favor and return of earnest money it paid to the Clarks and the Petersons. According to Buku, there are no issues of fact as to the terms of the Clark and Peterson agreements or Buku's entitlement to recover under the agreements. The Court agrees with Buku that the terms of the Agreements are unambiguous; however, the Court finds that there are issues of fact regarding Buku's entitlement to recover under the contracts. First the Court will address the language of the contracts. (R. Vol. I, p. 203).

Further, the Moeller decision on Summary Judgment further found:

However, despite the Court's finding that the written contract is unambiguous, the court cannot grant summary judgment in Buku's favor at this time. As will be explained below, there are issues of fact in the record, when construed in a light most favorable to defendants, that suggest Buku may not be entitled to recover under the unambiguous contracts." (R. Vol. 1, p. 205).

E. The Record Reflects Numerous Genuine Issues of Material Fact.

The Moeller Memorandum clearly outlines a myriad of genuine issues of material fact that the trier-of-fact must hear. They include, but are not limited to, the following:

- i. Issues of fact remain as to Buku's entitlement of the earnest money under the contracts. The behavior of the parties after the December 2007 closing date persuades the Court that the internal "Agreement" between the parties may not have ended after the closing date. (R. Vol. 1, pp. 205-206).

ii. The Clark and Peterson Affidavits explain that Buku was involved in farming the property throughout 2008 ... All of these statements suggest that an agreement exists between Buku and the Clarks subsequent to the December 2007 closing date. Before the Court decides Buku's entitlement to earnest money under the Clark agreement, the court must understand the entire arrangement between the parties. (R. Vol. 1, p. 206).

iii. Summary judgment is similarly premature on the Peterson agreement. Peterson's affidavit alleges that Buku's real estate agent listed the Peterson property, posted signs on the property, and had a lock box on the home as late as November, 2008. Additionally, the Petersons affidavit states there were ongoing negotiations between the parties throughout 2008 on matters concerning the sale of the property and zoning issues. Certainly some kind of arrangement existed between Buku and the Petersons after December, 2007. (R. Vol. 1, p. 206-207.)

Most importantly, the Moeller Memorandum, in denying summary judgment for Buku, found:

Even if the earlier agreements are unambiguous, there is a genuine issue of material fact as to what the parties intended while Buku possessed the property from December 30, 2007 until November, 2008. (R. Vol. 1, p. 207).

Finally, and perhaps most importantly, the trier-of-fact must be given the opportunity to determine whether (1) "zoning" is an appropriate "interest and concern," and (2) whether the facts (to be properly presented at trial) result in Respondent's right to abandon the Agreements.

The major point not addressed by either court was the Peterson's reliance to buy a retirement townhome with the earnest money. Had the Petersons not been authorized by Buku to proceed with the purchase, the Petersons would have held the earnest money. Since the townhome was purchased with consent of Buku, a material issue of fact should be

presented to the trier-of-fact (jury).

4. THE RECORD CONTAINS SEVERAL RULINGS THAT ARE PREMATURE

Respondent incorrectly asserts that the Watkins Court 1) “correctly determined that Buku did not breach its Agreement when it Failed to Close and was entitled to a return of its earnest Monies” (Respondent’s Brief, p. 15); 2) that the Watkins Court “correctly excluded extrinsic evidence that would alter or revise the earnest money provisions in the Peterson agreement (Respondent’s Brief, p. 170) and 3) that the Watkins Court “correctly found that Jefferson County did not resolve the zoning concerns identified during Buku’s Due Diligence Period until March, 2008” (Respondent’s Brief, p. 20).

In addition, Respondent’s Brief claims that Appellants are not entitled to equitable relief, or relief based on part performance; and that it [Respondent] is entitled to attorney’s fees (See Respondent’s Brief, pp. 21-34).

Appellants respectfully submit that the Watkins finding that Buku did not breach is premature, because summary judgment was granted in error. In fact, Respondent’s Brief outlines many of the genuine issues of material fact that exist, and which the trier-of-fact must consider: (See Respondent’s Brief, p. 15).<sup>1</sup>

Interestingly, Respondent relies on the Moeller Memorandum in support of its “breach” argument, and the Moeller Memorandum denied summary judgment.

---

<sup>1</sup> Because the purchase price for the properties was based upon the value of the properties as being zoned R-1, this potential change created serious problems for Buku. (R. Vol. I, p. 84; 85). More specifically, the bank providing Buku with financing for the purchase informed Buku that the zoning had to remain R-1 in order for the Bank of Commerce to fund the loan (R. Vol. I, p. 85; 102).

(Respondent's Brief, p. 16-17). Thus, Respondent is inconsistent in its argument.

Respondent cannot argue matters outside the four corners of the contracts.

Additionally, Respondent's assertion that the Watkins Court correctly ruled regarding the earnest monies issue is premature, given that the first issue to be determined is whether an appropriate cancellation or a breach occurred.

The counter-claims cannot be dismissed. Any ruling on equitable remedies, part performance, and attorney's fees should be viable given the fact of the incorrect rulings of the District Court. If the contracts are not ambiguous, then no evidence may be permitted outside of the four corners of the contract. The Court could not consider zoning or any other factual matters contained in affidavit form.

If the contracts are ambiguous, then extrinsic evidence should be considered. The Respondent has never argued any reason to terminate the contract except zoning. Additionally, the Respondent has not disputed that the zoning was R1 at the time of entering into the contracts, that the properties in question were still zoned R1 at the time scheduled for closing. And even more important, the properties continued to be zoned R1 subsequent to the closing and were "grandfathered" as such. Factually, there was no reason for the Respondent to breach the Agreements of the parties.

The Appellants were entitled to summary judgment because there was no reason to terminate the Agreements pursuant to the due diligence clause in the Agreements. No reason, whatsoever, was given except the issue of zoning. Zoning was a non-factor and, thus, the Respondent breached the contracts and was liable to the Appellants / Defendants.

5. APPELLANTS' CLAIMS ON APPEAL RELATED TO SPECIFIC PERFORMANCE ARE NOT MOOT.

Respondent has not filed any appeal or cross appeal in this matter pursuant to I.A.R., Rule 15. Respondent is requesting affirmative relief barring the counter-claim of specific performance. Respondent's argument fails because such issue is not properly before the Court. The Respondent argues to this Court that specific performance is moot because the real property in question was transferred to a limited liability company out of necessity. Yet, at the District Court level, the Respondent has subsequently filed an action to rescind the transfer as a "fraudulent conveyance". (See attached Exhibit A to this brief of the repository and of the pleadings on file.) The Respondent cannot argue both ways. If the real property conveyance is set aside at the District Court level, the specific performance request would still be viable.

Appellants had to act since this matter has taken over four years (and continuing) of litigation. Thus, the estate planning and the transfer of the subject property by these elderly couples were necessary. If specific performance is found to be moot at this appellate level, then the action at the District Court level should be dismissed. If specific performance is not moot and this Court accepts the Appellants' argument to re-instate the counter-claims and proceed to trial, the District Court action filed by Respondent to set aside the transfer should proceed forward. This Appellate Court should not render a decision inconsistent with the proceedings filed below. The Respondent is arguing an inconsistent position.

6. ADDITIONAL ISSUES ON APPEAL: FEES AND COSTS

The Appellants have addressed these issues in the original briefing.

CONCLUSION

Either way this Appellate Court views the contracts in question, the Appellants must prevail. If the contracts/agreements were not ambiguous, then extrinsic evidence is excluded and no legitimate reason is given for the breach by the Respondent. The Appellants are then entitled to summary judgment on the breach by the Respondent.

If the contracts/agreements were ambiguous, extrinsic evidence can be included and the zoning issue is a non-issue because the zoning always remained R1. The Respondent does not dispute the zoning was always R1. Thus, summary judgment should still be granted to the Appellants because no disputed facts exist on the zoning issue.

The last scenario is to remand for trial to determine the facts relating to zoning; on the issues of earnest money and purchase of the townhome; to remand on the use of the property and other facts in dispute as set forth above.

If remand is ordered, the trier-of-fact should have the opportunity to, as outlined in the Moeller Memorandum, hear all evidence regarding (1) defining “interests and concerns,” (2) whether zoning is a legitimate “interest and concern,” (3) all issues of fact regarding the parties’ activities and conduct during the entirety of the Agreements and post-breach (or cancellation) and (4) to determine on remand whether or not it was appropriate for Buku to breach the Agreements and request return of its earnest monies. As stated *supra*, all of these factors constitute genuine issues of material fact or inappropriate

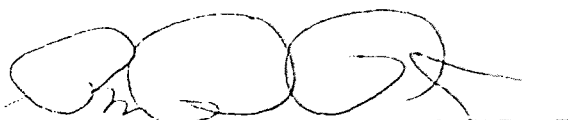


conclusions, and include, in part:

- A. The denial of the lower court in its failure to grant summary judgment to the Appellants for Respondent's breach;
- B. Buku's exercise of dominion and control of the property, including, but not limited to, the activities of Buku during the several month period between the first and second Motions for Summary Judgment;
- C. The Clarks and Petersons reliance, particularly the Petersons, in taking the earnest money and purchasing other real property (townhouse);
- D. The lack of zoning issues, and whether or not zoning had actually ever changed from R1 to R5 (which it never did).

The District Court was in error in granting summary judgment to the Plaintiff/Respondent, Buku. The district Court should have granted summary judgment to the Appellants.

DATED this 12<sup>th</sup> day of January, 2012.



Robin D. Dunn, Esq.  
DUNN LAW OFFICES, PLLC  
ATTORNEY FOR APPELLANTS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 12<sup>th</sup> day of January, 2012 true and correct copies of the foregoing were delivered to the following persons(s) by:

Hand Delivery

xx Postage-prepaid mail

Facsimile Transmission



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Robin D. Dunn, Esq.  
DUNN LAW OFFICES, PLLC  
ATTORNEY FOR APPELLANTS

DeAnne Casperson, Esq.  
Attorney for Respondents  
P.O. Box 50130  
Idaho Falls, ID 83405

# EXHIBIT “A”

## Case History

Bonneville

1 Cases Found.

Register Date of actions:	
	<b>Buku Properties, LLC, vs. Angus Jerry Peterson, etal.</b>
Case: <b>CV-2011-0006793</b>	District Filed: 11/03/2011 Subtype: Other Claims Judge: <b>Jon J. Shindurling</b> Status: Pending
	Defendants: <b>JBP Holdings, LLC, Peterson, Angus Jerry Peterson, Betty Jean</b>
	Plaintiffs: <b>Buku Properties, LLC,</b>
11/03/2011	Summons Issued
11/03/2011	New Case Filed-Other Claims
11/03/2011	Plaintiff: Buku Properties, LLC, Notice Of Appearance DeAnne Casperson
11/03/2011	Filing: A - All initial civil case filings of any type not listed in categories B-H, or the other A listings below Paid by: Casperson, DeAnne (attorney for Buku Properties, LLC,) Receipt number: 0050712 Dated: 11/3/2011 Amount: \$88.00 (Check) For: Buku Properties, LLC, (plaintiff)
11/03/2011	Complaint Filed
12/05/2011	Affidavit of Service - 12-1-11 Angus Jerry Peterson
12/05/2011	Affidavit of Service - 12-1-11 Betty Jean Peterson
12/05/2011	Affidavit of Service - 12-1-11 JBP Holdings, LLC by serving Betty Jean Peterson
12/19/2011	Defendant: Peterson, Angus Jerry Notice Of Appearance Steven J Wright
12/19/2011	Defendant: Peterson, Betty Jean Notice Of Appearance Steven J Wright
12/19/2011	Defendant: JBP Holdings, LLC, Notice Of Appearance Roger B Wright
12/19/2011	Filing: I1 - Initial Appearance by persons other than the plaintiff or petitioner Paid by: Wright, Steven J (attorney for Peterson, Angus Jerry) Receipt number: 0057851 Dated: 12/20/2011 Amount: \$58.00 (Check) For: JBP Holdings, LLC, (defendant), Peterson, Angus Jerry (defendant) and Peterson, Betty Jean (defendant)

Connection: Public

JUDGE JON J. SHINDURLING  
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Attorneys for Plaintiff

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

BUKU PROPERTIES, LLC, an Idaho  
limited liability company,

Plaintiff,

v.

ANGUS JERRY PETERSON and  
BETTY JEAN PETERSON, husband and  
wife; JBP HOLDINGS, LLC, an Idaho  
limited liability company,

Defendants.

Case No. CV- 11-0793

**VERIFIED COMPLAINT**

Plaintiff Buku Properties, LLC ("Buku"), by and through its counsel of record,  
Holden, Kidwell, Hahn & Crapo, P.L.L.C., as and for a cause of action against the above-  
named Defendants alleges and states as follows:

**I.**

**PARTIES, JURISDICTION AND VENUE**

1. Plaintiff Buku ("Plaintiff") is an Idaho limited liability company with its principal  
place of business located in Jefferson County, Idaho.

COPY

2. Angus Jerry Peterson and Betty Jean Peterson, husband and wife (hereinafter “Petersons”) are residents of the State of Idaho who previously owned property in Jefferson County, Idaho and Bonneville County, Idaho, and who reside in Bonneville County, Idaho.
3. JBP Holdings, LLC, (“JBP”) is an Idaho limited liability company. A true and correct copy of the Certificate of Organization for JBP is attached hereto as Exhibit A.
4. The members of JBP are the Petersons’ three children.
5. Pursuant to Idaho Code § 5-514(c), the State of Idaho has jurisdiction over the Defendants on the basis that they live in and/or own real property in the State of Idaho.
6. Based upon the amount in controversy, jurisdiction is properly before the District Court of the Seventh Judicial District in and for Bonneville County.
7. Pursuant to Idaho Code § 5-401 and § 5-404, venue is proper in Bonneville County, Idaho, because a portion of the real property that is the subject of this action is located in Bonneville County.

**II.**  
**GENERAL ALLEGATIONS**

8. Plaintiff Buku realleges and incorporates by reference the allegations in paragraphs 1 through 7 as though fully set forth herein and further alleges as follows:

9. Plaintiff and Petersons are currently involved in litigation regarding a Purchase and Sale Agreement entered into by the parties pending before the District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Jefferson, Case No. CV-08-941 (the "Litigation"). Plaintiff initiated the Litigation on November 6, 2008.
10. On or about February 3, 2011, the Court granted summary judgment in Plaintiff's favor.
11. Plaintiff obtained a judgment in the Litigation ("Judgment") against Petersons in the amount of \$444,355.94 on or about April 29, 2011 (dated April 25, 2011, *nunc pro tunc*). A true and correct copy of the Final Judgment is attached hereto as Exhibit B.
12. Plaintiff recorded an Abstract of Judgment regarding the Judgment against Petersons in Jefferson County on or about May 25, 2011, and Bonneville County on or about May 27, 2011. A true and correct copy of such Abstract of Judgment is attached hereto as Exhibit C.
13. Petersons have appealed the district court's grant of summary judgment. However, to date, Petersons have failed to post a bond.
14. In preparing to execute on the judgment, Plaintiff discovered that Petersons transferred all of their interest in any and all real property owned by them to JBP, other a life estate, shortly before Plaintiff's hearing on the summary judgment motion.

**II.**  
**COUNT ONE**  
**TRANSFER IN FRAUD OF CREDITORS**

(I.C. § 55-913 - Transfers fraudulent as to present and future creditors)

15. Plaintiff realleges and incorporates by reference the allegations of paragraphs 1 through 14 as though fully set forth herein and further alleges as follows:
16. During the course of the Litigation, Petersons transferred all of their real property located in Jefferson County and Bonneville County to JBP. True and correct copies of the quitclaim deeds transferring the real property assets from Petersons to JBP are attached hereto as Exhibit D.
17. Such transfer of real property assets by Petersons was done with intent to delay and/or defraud Plaintiff from executing on the judgment it holds against Petersons.
18. Petersons transferred their real property assets to an "insider", i.e., to JBP, a limited liability company whose only members are their three children. Betty Jean Peterson is the manager of JBP.
19. Petersons have retained possession and/or control of the real property transferred after the transfer.
20. Petersons have retained a life estate in the real property located in Bonneville County.
21. The transfer was substantially all of Petersons' assets.
22. Petersons received no consideration for the transfer of the real property assets to JBP.



23. The transfer occurred shortly before summary judgment was entered against Petersons in the Litigation.
24. Petersons' counsel in the Litigation assisted them in preparing and executing the documents transferring Petersons' real property assets to JBP.
25. Petersons transferred their real property assets in fraud of creditor/Plaintiff.
26. As a result of fraudulent transfer, Plaintiff is entitled to avoidance of the transfers and/or any and all other remedies pursuant to Idaho Code § 55-916.

**III.**  
**COUNT TWO**  
**TRANSFER IN FRAUD OF CREDITORS**  
**(I.C. § 55-914 - Transfers fraudulent as to present creditors)**

27. Plaintiff realleges and incorporates by reference the allegations of paragraphs 1 through 26 as though fully set forth herein and further alleges as follows:
28. Plaintiff's claim against Petersons arose before Petersons transferred the real property to JBP.
29. Petersons did not receive a reasonably equivalent value from JBP in exchange for the transfer.
30. Petersons became insolvent as a result of the transfer.
31. Petersons transferred their real property assets in fraud of creditor/Plaintiff.
32. As a result of fraudulent transfer, Plaintiff is entitled to avoidance of the transfers and/or any and all other remedies pursuant to Idaho Code § 55-916.

### ATTORNEYS' FEES AND COSTS

33. Plaintiff Buku realleges and incorporates by reference the allegations in paragraphs 1 through 32 as though fully set forth herein and further alleges as follows:
34. Due to Petersons' and JBP's actions in this matter, Plaintiff has been required to retain the services of Holden, Kidwell, Hahn & Crapo, P.L.L.C., to obtain relief regarding the transfer of Petersons' real property assets.
35. Pursuant to the Purchase and Sale Agreement entered into between the parties, Plaintiff is entitled to its reasonable attorneys' fees and costs. If this matter is concluded by default, the amount of \$4,000.00 represents reasonable attorneys fees, and a greater amount if this matter is not concluded by default.
36. Pursuant to Idaho Code and the Idaho Rules of Civil Procedure §§ 12-120(3) and (5) and 12-121, Plaintiff is entitled to an award of its attorneys' fees in this matter at an amount to be determined upon judgment. If this matter is concluded by default, the amount of \$4,000.00 represents reasonable attorneys' fees, and a greater amount if this matter is not concluded by default.

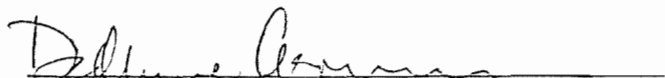
### PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for Judgment against the above-named Defendants as follows:

- a. For an order from the Court that Plaintiff may avoid the transfer of the real property assets from Petersons to JBP to the extent necessary to satisfy Plaintiff's judgment against Petersons;

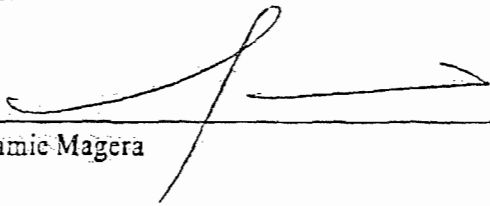
- b. For an order from the Court that Plaintiff's judgment against Petersons may attach against the real property assets;
- c. For an injunction against further disposition by Petersons and/or JBP of the real property assets;
- d. For an order from the Court permitting Plaintiff to levy execution on the real property assets;
- e. For an award of reasonable attorneys' fees in the amount of \$4,000.00 if this matter is concluded by default, and a greater amount should be awarded if this matter is contested;
- f. For an award of costs incurred in the prosecution of this matter; and
- g. For such other and further relief as the Court deems just and equitable in the premises.

Dated this 3<sup>rd</sup> day of November, 2011.

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

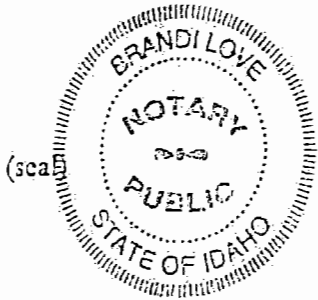
STATE OF IDAHO        )  
                                  )ss.  
County of Bonneville    )

Jaramic Magera, manager and registered agent for Plaintiff Buku Properties, LLC, being first duly sworn, deposes and says: he is the manager and registered agent for Plaintiff in the above-entitled action; that he has read the above and foregoing VERIFIED COMPLAINT, knows the contents thereof and that he believes the facts therein stated to be true.

  
\_\_\_\_\_  
Jaramic Magera

Dated: 11-3-11

SUBSCRIBED and sworn to before me this 3<sup>rd</sup> day of November, 2011.



Brandi Love  
\_\_\_\_\_  
Notary Public for Idaho  
Residing at: Idaho Falls ID  
Commission Expires: 4-12-2014

G:\WPDATA\CARLI\918 Buku\Fraudulent Transfer Action\Pleadings\Complaint.wpd.bcl



# 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:

JBZ 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

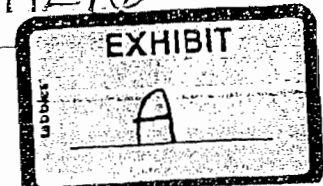
Typed Name: A. Jerry Peterson

Secretary of State use only

IDAHO SECRETARY OF STATE  
01/03/2011 05:00  
CK: 7363 CT: 23363 PH: 1253253  
1 @ 135.00 = 135.00 ORGAN LLC # 2

cert\_0010 Rev. 07/03/10

W99276



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

FILED IN CHAMBERS  
at Idaho Falls  
Bonneville County  
Honorable Judge Watkins  
Date April 29, 2011  
Time 1:05 pm  
Deputy Clerk JM

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,

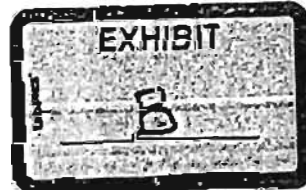
v.

BUKU PROPERTIES, LLC, an Idaho  
limited liability company,

Counter-Defendants.

Case No. CV-08-941

FINAL JUDGMENT



On February 3, 2011, the Court issued a Memorandum Decision Re: Motions for Summary Judgment ("Memorandum") and a Judgment Re: Motions for Summary Judgment ("Judgment"). The Memorandum and Judgment granted Plaintiff Buku Properties, LLC's ("Buku") Second Motion for Summary Judgment and disposed of all remaining issues in the case in favor of Buku. Pursuant to the Memorandum and Judgment, Buku is entitled to the return of earnest money in the amount of \$317,000.00 from Defendants Angus Jerry Peterson and Betty Jean Peterson ("Petersons") and \$25,000.00 from Defendants Rael H. Clark and Janet C. Clark ("Clarks"), plus prejudgment interest at the legal rate of interest of 12% per annum from December 19, 2007 through the date of entry of this Judgment, and post-judgment interest at the rate of judgment interest of 5.625% from and after the date of entry of this Final Judgment until such sums are satisfied.

THE COURT HEREBY ENTERS FINAL JUDGMENT IN THIS CASE as follows:

1. Judgment is entered on behalf of Buku against Petersons, jointly and severally, in the amount of \$444,355.94, consisting of \$317,000.00 in principal plus prejudgment interest accrued to April 25, 2011, in the amount of \$127,355.94. Such judgment amount of \$444,355.94 shall accrue interest from and after the date of entry of this Judgment at a rate of 5.625% per annum or \$68.48 per day until such Judgment is satisfied.

2. Judgment is entered on behalf of Buku against Clarks, jointly and severally, in the amount of \$35,043.94, consisting of \$25,000.00 in principal plus prejudgment interest accrued to April 25, 2011, in the amount of \$10,043.94. Such judgment amount of \$35,043.94 shall accrue interest from and after the date of entry of this Judgment at a rate of 5.625% per annum or \$5.40 per day until such Judgment is satisfied.

3. Petersons' and Clarks' counterclaims against Buku are DISMISSED WITH PREJUDICE.

DATED this 25 day of April, 2011.

*Non Pro tunc*

A handwritten signature in black ink, appearing to read "Dane H. Watkins, Jr.", written over a horizontal line.

Dane H. Watkins, Jr.  
District Judge



CLERK'S CERTIFICATE OF SERVICE

I hereby certify that on this 29 day of April, 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: FINAL JUDGMENT

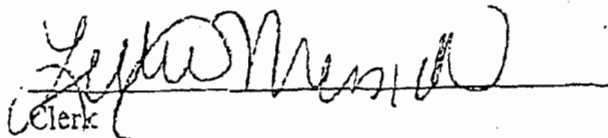
ATTORNEYS SERVED:

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

- (  ) First Class Mail
- (  ) Hand Delivery
- (  ) Facsimile
- (  ) Overnight Mail
- (  ) Courthouse Box

DeAnne Casperson  
Holden, Kidwell, Hahn & Crapo,  
P.L.L.C.  
1000 Riverwalk Drive, Suite 200  
P.O. Box 50130  
Idaho Falls, Idaho 83405-0130

- (  ) First Class Mail
- (  ) Hand Delivery
- (  ) Facsimile
- (  ) Overnight Mail
- (  ) Courthouse Box

  
Clerk

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1. Judgement 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.

*Christene Boulters*

\_\_\_\_\_  
Clerk of District Court

By: *na*  
Deputy



G:\WF\DATA\CAR\14918\PI2\of Abstract\JCMT.upd.ab

**QUITCLAIM DEED**

THIS INDENTURE, made this 18<sup>th</sup> 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,

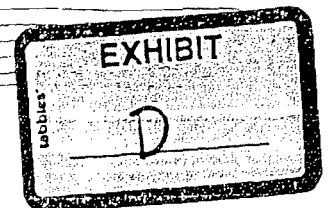
WITNESSETH, that the party of the first part, for good and valuable consideration, to the party of the first part in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, does by these presents remise, release and forever QUITCLAIM, unto the said party of the second part, 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 )  
  )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.



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

QUITCLAIM DEED

THIS INDENTURE, made this 16 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

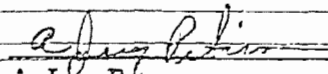
to-wit:

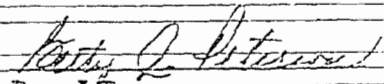
SEE ATTACHED EXHIBIT A

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 )

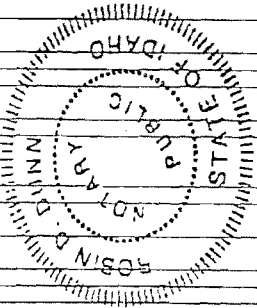
:59

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)



*[Handwritten Signature]*  
Notary Public for Idaho  
Residing In: R1684, 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 518.45 feet; (2) thence S80°07'57"W 79.42 feet; thence  
S89°34'02"W 29.83 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.

EXIST <sup>A</sup>



Re-Recorded to Correct Deed #389452  
**QUITCLAIM DEED**

THIS INDENTURE, made this 16<sup>th</sup> 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,

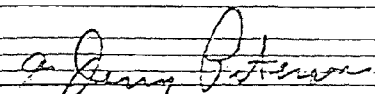
WITNESSETH, that the party of the first part, for good and valuable consideration, to the party of the first part in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, does by these presents remise, release and forever QUITCLAIM, unto the said party of the second part, 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:

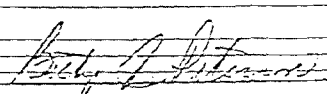
SEE ATTACHED EXHIBIT A

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

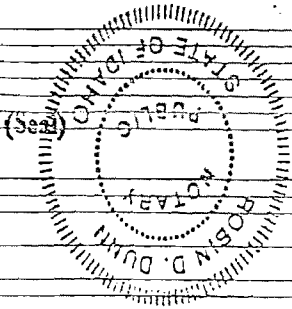
STATE OF IDAHO )

:39

County of Jefferson )

On this 16<sup>th</sup> 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: RUBY IDAHO  
Commission Expires: 10/7/16

**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. 29.83 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.**

**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.

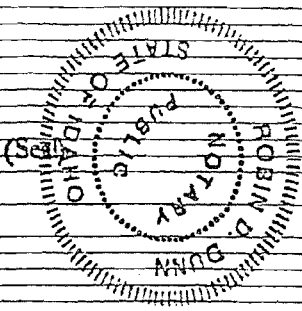
A. Jerry Peterson  
A. Jerry Peterson

Betty J. Peterson  
Betty J. Peterson

STATE OF IDAHO )  
County of Jefferson )<sup>55</sup>

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: R1624, ID  
Commission Expires: 10/7/16

Re-Recorded to Correct Deed #389451

QUITCLAIM DEED

THIS INDENTURE, made this 16<sup>th</sup> 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,

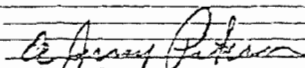
WITNESSETH, that the party of the first part, for good and valuable consideration, to the party of the first part in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, does by these presents remise, release and forever QUIT CLAIM, unto the said party of the second 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:

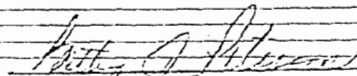
SEE ATTACHED EXHIBIT A

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

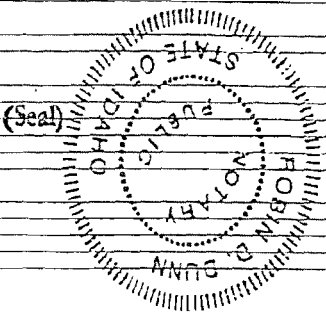
STATE OF IDAHO )

:88

County of Jefferson )

On this 16<sup>th</sup> 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.



*[Handwritten Signature]*

Notary Public for Idaho  
Residing In: RICELY, 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 $\frac{1}{4}$ 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.