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Attorneys for Raymond C. Barker, Jr.
Charles J. Kritz, Jr. and Diane B. Kritz

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR TWIN FALLS COUNTY**

In Re SRBA

Case No. 39576

)
) Subcase No. 2-2318A
)

) **AFFIDAVIT OF DIANE KRITZ IN**
) **OPPOSITION TO MOTION FOR**
) **SUMMARY JUDGMENT**
)

STATE OF CALIFORNIA

COUNTY OF SAN LUIS OBISPO

)
) ss.
)

COMES NOW, Diane Kritz, being first duly sworn upon oath,

1. I am over the age of 18 years, competent to testify and make this affidavit based upon
personal information.

**AFFIDAVIT OF DIANE KRITZ IN OPPOSITION TO MOTION FOR SUMMARY
JUDGMENT -Page 1**

RECEIVED
JUN 25 2010
DEPARTMENT OF
WATER RESOURCES

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JUN 25 2010
DEPARTMENT OF
WATER RESOURCES

2. I am one of the owners of the real property consisting of approximately 37 acres along the Snake River near Homedale, Idaho, as more particularly described in the warranty deed attached hereto as Exhibit A (the "Riverfront Parcel").

3. I, along with my husband, Charles Kritz, and brother, Raymond Barker, purchased the Riverfront Parcel to operate the Snake River RV Park, and potentially, long-term, to develop residential homesites on the Riverfront Parcel. The Riverfront Parcel is located along the Snake River, and is marketed on our website as a relaxing, quiet place to enjoy the wildlife and outdoors recreation in the area. Accordingly, before we completed the purchase, it was crucial to us to understand if there were any easements, licenses or other interests that were not recorded against the Riverfront Parcel that might disturb the quiet enjoyment of the property.

4. Shortly before completing the purchase, we visited the Riverfront Parcel with Dean Benton and his mother Bonnie Benton, the then current owners, and saw what I believed to be an old, overgrown weir or that appeared obviously unmaintained and abandoned many years ago. I asked the Bentons about the weir, and they stated that no one had ever used it throughout the Benton Family's entire ownership of about four years.

5. While finalizing the Loan to purchase the Park around the time of the purchase, during the signing of the documents; we again asked Pioneer Title Company, the Bentons and Wells Fargo Bank to double check that absolutely no easements or similar issues existed as to the title to the Riverfront Parcel, other than as might relate to the old abandoned Railroad right of way. Again, we were informed that no easements or other problems were known.

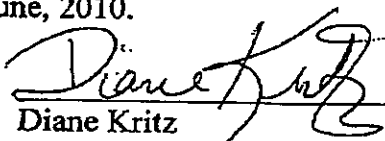
6. On the dock used to irrigate the Riverfront Parcel from the Snake River, at the time of purchase in 2003, there was only one pump and one dock for the irrigation works, which only serviced our property. It was not until about Spring, 2006 that Mr. Wilkerson attempted to access

our property to assert some type of interest in an easement or water right across our property for his 13 acre parcel across the old railroad right of way.

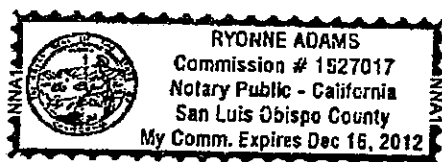
7. Mr. Wilkerson's several efforts in about 2006-2008 to enter our property in unauthorized, threatening and annoying actions, which have included attempts to enter with the Owyhee County Sheriff and on busy holidays, have been disruptive to our manager, our guests and enjoyment of the Riverfront Parcel. Our property is posted with "No Trespassing" signs in accordance with Idaho law. Had we known before completing the purchase of our property in October, 2003 that we would experience trespass, disruptive activities and claimed interests from an adjacent property owner, we would not have completed the purchase and expended the substantial amount of funds necessary to purchase the Riverfront Parcel.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 24th day of June, 2010.


Diane Kritz

SUBSCRIBED AND SWORN to before me this 24 day of June, 2010.



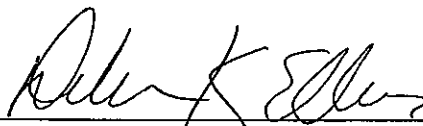

Notary Public in and for the State of California
Residing at: 179 N. Main St., California
My Commission Expires: Dec 16, 2012

CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of June, 2010, I caused to be served copies of the foregoing **Affidavit of Diane Kritz in Opposition to Motion for Summary Judgment** by the method(s) indicated below:

IDWR Director
P. O. Box 83720
Boise, Idaho 83720-0098
☒ U.S. Mail ☐ Fed Ex ☐ Hand ☐ Fax

Jon Gould *Facsimile No. (208) 342-4657*
Ringert Law
P.O. Box 2773
Boise, ID 83701-2773
☐ U.S. Mail ☐ Fed Ex ☒ Hand ☐ Fax



Debra K. Ellers

4056.2/9350

WARRANTY DEED

FOR VALUE RECEIVED BONNIE MARIE BENTON, TRUSTEE OF THE FLOYD WAYNE AND BONNIE MARIE BENTON REVOCABLE TRUST

the Grantor, does hereby grant, bargain, sell and convey unto RAYMOND C. BARKER, JR. a married man as his sole and separate property, 50% INTEREST and CHARLES J. KRITZ, JR. and DIANE B. KRITZ, husband and wife, 50% INTEREST

the Grantees, whose address is 415 Volpi Ysabel Road, Paso Robles, CA 93446

the following described premises, to-wit:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF BY THIS REFERENCE:

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantees, their heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantees, that she is the owner in fee simple of said premises; that said premises are free from all encumbrances; except for general taxes and assessments for the year 2003 and subsequent years, covenants, conditions, restrictions and easements of record; and that she will warrant and defend the same from all lawful claims whatsoever.

DATED: October 8, 2003

THE FLOYD WAYNE AND BONNIE MARIE BENTON REVOCABLE TRUST

BY: Bonnie Marie Benton
TRUSTEE

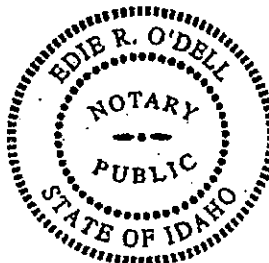
STATE OF IDAHO
COUNTY OF CANYON

On this 8th day of OCTOBER, 2003, before me, a notary public, personally appeared BONNIE MARIE BENTON, known to me to be the person(s) whose name(s) is/are subscribed to the within instrument as TRUSTEE of THE FLOYD WAYNE AND BONNIE MARIE BENTON REVOCABLE TRUST and acknowledged to me that they executed the same as such TRUSTEE.

Edie R. O'Dell
Notary Public
Residing at Nampa, Idaho
My commission expires: 4/17/2009

Instrument # 245356

MURPHY, OWYHEE, IDAHO
2003-10-09 04:18:40 No. of Pages: 5
Recorded for: PIONEER TITLE
CHARLOTTE SHERBURN Fee: 15.00
Ex-Officio Recorder Deputy Jamie Wolfe
Index to: DEED, WARRANTY



PIONEER TITLE COMPANY
OF CANYON COUNTY

100 10TH AVE SOUTH
NAMPA, IDAHO 83651

423 SOUTH KIMBALL
CALDWELL, ID 83605

EXHIBIT

A

PO5582

PARCEL I:

Township 3 North, Range 5 West, Boise Meridian, Owyhee County, Idaho, Section 14: That portion of Government Lots 5 and 6 lying Northeasterly of the right of way of the Union Pacific Railroad (formerly Oregon Shortline Railroad) as described in Book 16 of Deeds at Pages 333, 335 and 365, Owyhee County Records.

EXCEPTING THEREFROM the following 2 parcels:

BEGINNING at a point 1,855 feet North of the Southwest corner of Lot 6, Section 14, Township 3 North, Range 5 West, Boise Meridian, being the **REAL POINT OF BEGINNING**; thence

South 52° 37' East along the South boundary of the Union Pacific (Oregon Shortline) Railroad right of way 1187 feet; thence

North 30° 25' East to the North line of Lot 6; thence

In a Northwesterly direction along the North line of Lot 6 to the Northwest corner of Lot 6; thence

South along the West line of Lot 6 to the **REAL POINT OF BEGINNING**.

AND

A part of Lot 6 and 5, Section 14, Township 3 North, Range 5 West, Boise Meridian; more particularly described as follows:

COMMENCING at the Southwest corner of said Lot 6 (West Quarter corner); thence

North 0° 20' 00" West 1916.86 feet (formerly recorded as 1917 feet) along the West boundary of said Lot 6; thence

South 52° 38' 00" East (formerly recorded as South 52° 37' East) 1220.00 feet along the center line of the Marsing Branch of the Oregon Shortline Railroad; thence

North 30° 24' 00" East (formerly recorded as North 30° 25' East) 166.37 feet to the **POINT OF BEGINNING**; thence continuing

North 30° 24' 00" East 194.50 feet to a point of record as being on the Southwesterly bank of the Snake River; thence

South 53° 08' 20" East 107.64 feet along the approximate High Water line of the Snake River; thence

North 82° 09' 14" East 166.58 feet along the approximate High Water line of the Snake River; thence

South 30° 24' 00" West 260.95 feet; thence

North 65° 29' 40" West 239.04 feet to the **POINT OF BEGINNING**.

PARCEL II:

A part of Lot 6 and 5, Section 14, Township 3 North, Range 5 West, Boise Meridian; more particularly described as follows:

COMMENCING at the Southwest corner of said Lot 6 (West Quarter corner); thence

North 0° 20' 00" West 1916.86 feet (formerly recorded as 1917 feet) along the West boundary of said Lot 6; thence

South 52° 38' 00" East (formerly recorded as South 52° 37' East) 1220.00 feet along the center line of the Marsing Branch of the Oregon Shortline Railroad; thence

North 30° 24' 00" East (formerly recorded as North 30° 25' East) 166.37 feet to the **POINT OF BEGINNING**; thence continuing

North 30° 24' 00" East 194.50 feet to a point of record as being on the Southwesterly bank of the Snake River; thence
South 53° 08' 20" East 107.64 feet along the approximate High Water line of the Snake River; thence
North 82° 09' 14" East 166.58 feet along the approximate High Water line of the Snake River; thence
South 30° 24' 00" West 260.95 feet; thence
North 65° 29' 40" West 239.04 feet to the POINT OF BEGINNING.

PARCEL III:

A part of Lot 6 and 5, Section 14, Township 3 North, Range 5 West, Boise Meridian; more particularly described as follows:

COMMENCING at the Southwest corner of said Lot 6 (West Quarter corner); thence

North 0° 20' 00" West 1916.86 feet (formerly recorded as 1917 feet) along the West boundary of said Lot 6; thence

South 52° 38' 00" East (formerly recorded as South 52° 37' East) 1220.00 feet along the center line of the Marsing Branch of the Oregon Shortline Railroad; thence

North 30° 25' 00" East (formerly recorded as North 30° 25' East) 50.37 feet to the POINT OF BEGINNING; thence continuing

North 30° 25' 00" East 240.50 feet (formerly 310.5 feet) to a point of record as being on the Southwesterly bank of the Snake River; thence

North 66° 27' 24" West along the top of the bank of the Snake River 142.64 feet to a point; thence

South 0° 20' 00" East 252.58 feet to a point on the Northeasterly boundary of the said railroad right of way; thence

South 52° 37' 26" East 32.56 feet along said railroad right of way to the POINT OF BEGINNING.

EXCEPTING THEREFROM a parcel of land located in Lot 6 of Section 14, Township 3 North, Range 5 West, Boise Meridian, Owyhee County, Idaho, more particularly described as follows:

BEGINNING at an iron pin marking the West Quarter corner of said Section 14; thence

North 0° 20' 00" West, a distance of 1916.83 feet (formerly 1917.00 feet) along the Westerly Section line of said Section 14 to an iron pin located at the Intersection of said Westerly Section line of Section 14 and the centerline of the Union Pacific Railroad; thence

South 52° 37' 26" East, a distance of 1220.00 feet along the centerline of the Union Pacific Railroad to a point; thence

North 0° 20' 00" West, a distance of 157.90 feet to an iron pin located on an existing board fence, said point being the TRUE POINT OF BEGINNING; thence continuing

North 0° 20' 00" West, a distance of 157.88 feet to an iron pin located at the top of the bank of the Snake River; thence

South 66° 27' 24" East, a distance of 20.00 feet along the top of the bank of the Snake River to an iron pin located at the intersection of the top of the bank of the Snake River and an existing board fence; thence

South 6° 27' 38" West, a distance of 150.89 feet along an existing board fence to the TRUE POINT OF BEGINNING.

PARCEL IV:

A parcel of land located in Lot 6 of Section 14, Township 3 North, Range 5 West, Boise Meridian, Owyhee County, Idaho, and is more particularly described as follows:

BEGINNING at an iron pin marking the West Quarter corner of said Section 14; thence North 0° 20' 00" West, a distance of 1916.83 feet (formerly 1917.00 feet) along the Westerly Section line of said Section 14 to an iron pin located at the intersection of said Westerly Section line of Section 14 and the centerline of the Union Pacific Railroad; thence

South 52° 37' 26" East, a distance of 1220.00 feet along the centerline of the Union Pacific Railroad to a point; thence

North 0° 20' 00" West, a distance of 63.20 feet to an iron pin located on the Northerly right of way line of the Union Pacific Railroad, said point being the **TRUE POINT OF BEGINNING**; thence

North 52° 37' 26" West, a distance of 14.00 feet to an iron pin located at an angle point in an existing board fence; thence

North 6° 59' 36" East, a distance of 86.87 feet along the existing board fence to an iron pin; thence

South 0° 20' 00" East, a distance of 94.70 feet to the **TRUE POINT OF BEGINNING**.

Parcel V:

A tract of land in Owyhee County, Idaho, being a portion of the right of way of the **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation (successor in interest by merger to **UNION PACIFIC RAILROAD COMPANY**, a Utah corporation; and to the **OREGON SHORT LINE RAILROAD COMPANY**), being that same tract of land heretofore acquired by the said **OREGON SHORT LINE RAILROAD COMPANY** by virtue of (i) that certain Quitclaim Deed dated July 13, 1922, from Owyhee County, a municipal corporation of the State of Idaho, the said instrument having been filed for record in the said Owyhee County on October 24, 1922, at Page 365 of Book 16 of Deeds, (ii) that certain Bargain and Sale Deed dated June 15, 1922, from **GEM IRRIGATION DISTRICT**, a municipal corporation of the State of Idaho, the said instrument having been filed for record in the said Owyhee County on October 5, 1922, at Page 333 of Book 16 of Deeds; and (iii) that certain Quitclaim Deed dated May 29, 1922, from **CYRUS E. JOHNSON**, a widower, the said instrument having been filed for record in the said Owyhee County on October 5, 1922, at Page 335 of Book 16 of Deeds; the said tract of land being more particularly described therein as follows:

"A strip of land one hundred (100) feet wide, being fifty (50) feet on each side of the center line of main track of the Homedale Branch Extension of the **OREGON SHORT LINE RAILROAD** as the same is now located over and across Lots 5 and 6, of Section 14, Township 3 North, Range 5 West, Boise Meridian, Owyhee County, Idaho. The location of said center line of main track being more particularly described as follows:

BEGINNING at a point in the West line of said Section 14, 1,885.1 feet, North of the West Quarter section corner thereof; thence

South 52° 50' East, 3,081 feet, to a point in the East and West center line of said Section 14, 228 feet, more or less, West of the center of said Section 14.

EXCEPTING THEREFROM:

A portion of Government Lot 6 of Section 14, Township 3 North, Range 5 West, Boise Meridian, Owyhee County, Idaho, and is more particularly described as follows:

COMMENCING at the Southwest corner of said Government Lot 6; thence
North 0° 32'36" West along the West boundary of said Government Lot 6 a distance
of 1977.98 feet to a point on the Northeasterly right of way of railroad; thence
South 52° 55'22" East along said Northerly right of way a distance of 68.00 feet to
the TRUE POINT OF BEGINNING; thence continuing
South 52° 55'22" East along said Northerly right of way a distance of 1104.98 feet;
thence
South 82° 04'38" West a distance of 71.06 feet to a point on the centerline of
railroad; thence
North 52° 55'22" West along said centerline a distance of 957.22 feet; thence
North 25° 39'23" West a distance of 109.70 feet to the TRUE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM

All mineral rights, including oil and gas as excepted and reserved to Union Pacific Railroad Company, a Delaware corporation in the Quitclaim Deed recorded May 16, 2000 as Instrument No. 232360, Owyhee County Records.

Parcel VI:

A tract of land in Owyhee County, Idaho, being a portion of the right of way of the UNION PACIFIC RAILROAD COMPANY, a Delaware corporation (successor in interest by merger to UNION PACIFIC RAILROAD COMPANY, a Utah corporation, and to the OREGON SHORT LINE RAILROAD COMPANY), being that same tract of land heretofore acquired by the said OREGON SHORT LINE RAILROAD COMPANY by virtue of that certain Warranty Deed dated July 25, 1922, from OLIVER ALBERTSON, a bachelor, the said instrument having been filed for record in the said Owyhee County on October 5, 1922, at Page 331 of Book 16 of Deeds, the said tract of land being more particularly described therein as follows:

"A strip of land one hundred (100) feet wide, being fifty (50) feet on each side of the center line of main track of the Homedale Branch Extension of the OREGON SHORT LINE RAILROAD as the same is now located over and across the Northeast Quarter of the Southwest Quarter of Section 14, Township 3 North, Range 5 West, Boise Meridian, Owyhee County, Idaho. The location of said center line of main track being more particularly described as follows:

BEGINNING at a point in the East and West center line of said Section 14, 228 feet, more or less, West of the center of said Section; thence

South 52° 50' East, 298.5 feet to a point in the North and South center line of said Section 14, 175 feet, more or less, South of the center of said section.

EXCEPTING THEREFROM:

All mineral rights, including oil and gas as excepted and reserved to Union Pacific Railroad Company, a Delaware Company, in the Quitclaim Deed recorded May 16, 2000 as Instrument No. 232360, Owyhee County Records.