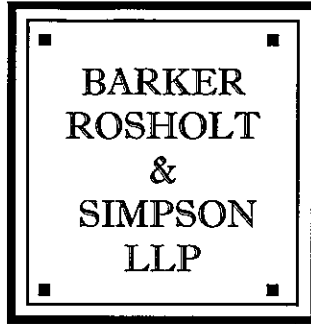


John A. Rosholt
Albert P. Barker
John K. Simpson
Travis L. Thompson
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August 20, 2009

VIA HAND DELIVERY

Mr. Jeff Peppersack
IDWR – State Office
322 E. Front St.
Boise, Idaho 83702-0098

RECEIVED

AUG 20 2009

Department of Water Resources

Re: Dry Lot LLC Amended Applications (Permit #37-22252 / Transfer #74449)

Dear Jeff:

Please find enclosed the *Second Amendment to Agreement for Purchase and Sale of Water Rights* in reference to the above filed applications.

Please contact me at 733-0700 if you have any questions or need any additional information. Thank you for your attention to this matter.

Sincerely,

BARKER ROSHOLT & SIMPSON LLP

Travis L. Thompson

cc: Woody Friedlander
Jim Speck

**SECOND AMENDMENT TO
AGREEMENT FOR PURCHASE AND SALE
OF
WATER RIGHTS**

RECEIVED

AUG 20 2009

Department of Water Resources

THIS SECOND AMENDMENT is made and entered into as of the date of the last signature hereto by and between OLD CUTTERS, INC., an Idaho corporation, whose address is P.O. Box 4944, Ketchum, Idaho, 83340 (hereinafter "Seller") and DRY LOT, LLC, an Idaho limited liability company, whose address is c/o Bernard I. Friedlander, 116 Valley Club Dr., Hailey, Idaho 83333 (hereinafter "Buyer").

RECITALS

A. Seller is the owner and holder of Water Rights Nos. 37-21130, 37-21137 and 37-21139 as decreed on January 21, 2009 in *In Re the General Adjudication of Rights to the Use of Water from the Snake River Basin Water System*, Twin Falls County District Court Civil No. 39576 (the "SRBA"), which entitle Seller to irrigate sixty-six (66) acres of land on Seller's property within the City of Hailey known as the Old Cutters Subdivision (the "Subdivision") with 4.0 cubic feet per second ("cfs") of water from the Big Wood River via the Hiawatha Canal, with a priority date of March 24, 1883 (the "Seller Water Rights").

B. Buyer is an Idaho limited liability company whose members own real property situated in Blaine County, Idaho, located in the following subdivision:

Lots 1 through 99 of The Valley Club, a planned unit development created by the Official Plat filed as Instrument No. 36515 in the records of Blaine County, Idaho on May 5, 1994.

(the "VCPUD").

C. On May 11, 2007, Buyer and Seller entered into an *Agreement for Purchase and Sale of Water Rights* (the "Initial Agreement") and on February 14, 2008 Buyer and Seller entered into an *Addendum to Agreement for Purchase and Sale of Water Rights* (the "Addendum"). The Initial Agreement and Addendum provided for the sale by Seller and the purchase by Buyer of a portion of the Seller's Water Rights used to irrigate sixty (60) acres of the Subdivision at a purchase price of _____ per acre.

D. The parties subsequently amended the Initial Agreement and Addendum by that certain *First Amendment to Agreement for Purchase and Sale of Water Rights* dated April 3, 2008 (the "First Amendment") to reduce the portion of Seller's Water Rights to be purchased by the Buyer to that used to irrigate fifty-eight and one-half (58.5) acres of the Subdivision. The Initial Agreement, Addendum and First Amendment are hereinafter collectively referred to as the "Original Agreement".

E. Buyer has, pursuant to the Original Agreement, deposited into escrow at Sun Valley Title in Ketchum, Idaho (the "Escrow Holder") the total sum of [_____] and has paid outside of escrow directly to Seller the sum of [_____] (collectively the "Buyer Payments").

F. Buyer, pursuant to the Original Agreement, filed with the Idaho Department of Water Resources (hereinafter referred to as the "Department") Application For Permit 37-22252

to divert ground water from the two (2) wells which are part of its public water supply system to irrigate 39.6 acres of the VCPUD and Application for Transfer 74449 to change the nature of use of at least 39.6 acres of the Seller's Water Rights from irrigation to recharge (the "Applications"). Buyer filed an amendment to the Applications on July 20, 2009 to reduce the irrigated acreage to 27.5 acres.

G. Big Wood Canal Company ("BWCC"), which had previously filed Objections to the Seller's Water Rights in the SRBA, and the Indian Creek Ranch Owners Association ("ICROA") filed protests against the approval by the Department of the Applications as originally filed by Buyer.

H. BWCC and Buyer subsequently entered into a Water Rights Use Agreement effective September 5, 2008 which resulted in BWCC withdrawing with prejudice its Objections to the Seller's Water Rights in the SRBA and its protests to the Applications. BWCC and Buyer entered into an Amended Water Rights Use Agreement on June 11, 2009 which supersedes the prior agreement.

I. ICROA alleged, as one basis for its protests to the Applications, that Idaho Code Section 67-6537 (the "Statute") prohibits the transfer of any of the Seller's Water Rights off of the Subdivision. To resolve this issue, Buyer and Seller have entered into this Second Amendment, to, among other things, acknowledge that Seller has conveyed to the City that portion of the Seller's Water Rights required for the irrigation of those portions of the Subdivision not irrigated by the portion of Seller's Water Rights retained by Seller for use in the Subdivision, and to enter into this Second Amendment for the sale by Seller and purchase by Buyer of the remaining portion of the Seller's Water Rights (as defined by Section 2 hereof). As of the date of this Agreement the ICROA protests to the Applications nonetheless remain pending.

J. The Parties desire to amend the Original Agreement accordingly.

NOW, THEREFORE, the Original Agreement is hereby amended and superseded in its entirety to read as follows:

TERMS AND CONDITIONS

1. **INCORPORATION OF RECITALS.** The Recitals set forth above are an integral part of this Agreement and are fully incorporated herein by this reference.

2. **SALE.** The Seller, for and in consideration of the payments to be made and the covenants and conditions to be kept and performed by the Buyer, as hereinafter set forth, does hereby contract and agree to sell and convey to Buyer, and the Buyer does hereby agree to buy from the Seller, the following portion of the Seller's Water Rights: 0.17 cfs of Water Right No. 37-21130, 1.33 cfs of Water Right No. 37-21137, and 0.16 cfs of Water Right No. 37-21139 used to irrigate twenty-seven and one-half (27.5) acres of the Seller's Property in the NESE and SESE, Section 4, Township 2 North, Range 18 East, Blaine County, Idaho (the "Water Rights").

3. **PURCHASE PRICE AND TERMS OF PAYMENT.** The total purchase price of the Water Rights shall be [REDACTED]. The purchase price shall be paid as follows:

a. Earnest Money. The sum of [] has been deposited into an interest bearing escrow account with Sun Valley Title Company (the "Closing Agent") to be held as earnest money and applied to the purchase price at the Closing. Upon execution of this Second Amendment Seller shall deposit Three Thousand Dollars (\$3,000) into the escrow account for Buyer's benefit. Pursuant to the *Addendum to Water Rights Purchase and Sale Agreement Providing for Earnest Money Held In Trust: To Be Deposited Into an Interest-Bearing Account*, interest that has accrued for the benefit of the Buyer through December 31, 2008 shall be applied to the purchase price at the Closing. The remaining portion of the Buyer's Payments in the sum of []), plus any interest accruing on the earnest money since January 1, 2009, shall be retained by the Seller with no further right in or claim to such sum by the Buyer.

b. Cash Payment. The balance of the purchase price shall be delivered to the Closing Agent in immediately available funds not less than one (1) business day prior to the Closing.

4. WATER RIGHTS CONVEYED TO HAILEY. As provided in the Second Amendment to Annexation Services and Development Agreement between Seller and the City of Hailey (the "City"), recorded May 13, 2009 in the records of Blaine County, Idaho as Instrument No. 567326, Seller has conveyed to the City by the Grant Deed for Water Rights recorded May 13, 2009 in the records of Blaine County, Idaho as Instrument No. 567328 that portion of the Seller's Water Rights used to irrigate thirty-one (31) acres of the Seller's Property (the "City Water Rights") to satisfy the requirements of the Statute for the Subdivision. In the event Seller receives from the City, in return for the City Water Rights, consideration in the form of payments, credits or otherwise in excess of [] fifty percent (50%) of that excess amount shall be credited to the purchase price for the Water Rights for the Buyer's benefit. If Closing occurs prior to the time the Seller receives the credit from the City then Seller shall pay Buyer fifty percent (50%) of that excess amount directly to Buyer within three (3) business days from receipt of the credit from the City.

5. CONDITIONS TO BUYER'S PURCHASE OF WATER RIGHTS. Buyer's obligation to purchase the Water Rights pursuant to this Agreement shall be subject to and conditioned upon the following:

a. The approval by the Department of the Applications as amended consistent with this Agreement to transfer 27.5 acres of the Seller Water Rights and to change the nature of use to recharge and to provide Dry Lot with a new groundwater right for irrigation purposes at the VCPUD. The Department's approval, including any conditions, must be satisfactory to and accepted by Buyer.

The following provisions shall apply with respect to the protests to the Applications filed by ICROA:

b. In the event condition a. above is not satisfied or waived in writing by Buyer, the earnest money described in paragraph 3.a., above, shall be returned to Buyer upon written demand by Buyer, the interest accrued thereon through December 31, 2008 shall be paid to Buyer, this Agreement shall become null and void and neither party shall have any right or claim against the other party pursuant to or arising out of this Agreement.

c. In the event ICROA withdraws its protests to the Applications with prejudice, then the Buyer shall proceed to deposit the balance of the Purchase Price with the Closing Agent within five (5) business days of the date ICROA files with the Department its written withdrawal of its protests to the Applications with prejudice. All of the sales proceeds due Seller, including the earnest money, shall then be held in the interest bearing escrow account with the Closing Agent until condition a. described above, is satisfied or waived in writing by Buyer at which time all monies in the escrow account, shall be paid to Seller. Interest accruing from the time the balance of the Purchase Price is deposited with the Closing Agent until the time of Closing shall be paid to the Seller and not credited against the purchase price.

d. In the event ICROA does not withdraw its protests to the Applications, but condition a. above is satisfied, then the Buyer shall proceed to deposit the balance of the Purchase Price with the Closing Agent within five (5) business days of the date the Applications are approved by the Department. All of the sales proceeds due Seller, including the earnest money, shall then be held in the interest bearing escrow account with the Closing Agent until the Department's order approving the Applications becomes final or any appeals of such final order are successfully defended by Buyer, at which time all monies held in the escrow account shall be paid to Seller.

e. In the event (i) ICROA prevails on an appeal of the Department's approval of the Applications, or (ii) the Department denies the Applications, or (iii) the Department approves the Applications with conditions unacceptable to Buyer, then all monies deposited into escrow, including interest accrued thereon, shall be returned to Buyer, this Second Amendment shall become null and void and neither party shall have any right or claim against the other party pursuant to or arising out of this Second Amendment.

6. COOPERATION WITH APPLICATIONS EFFORTS. Seller hereby affirms that Buyer has permission to make the Applications and agrees to sign any documentation to that effect required by the Department pertaining to the Applications. At Buyer's request, Seller shall cooperate with Buyer in Buyer's pursuit of the Applications. Seller agrees to cooperate with Buyer in Buyer's defense of any challenge to the Applications alleging a violation of Idaho Code § 67-6537, or any violations of law concerning action or inaction by the City in connection with the transfer of the Water Rights off the Subdivision. Seller agrees to defend the validity of the Annexation Agreement, as amended, entered into between Seller and the City. At Buyer's request, Seller shall further provide Buyer with any information that Seller has concerning the Water Rights that Buyer may reasonably request in pursuit of the approval of the Applications, including historical water use records.

7. TITLE; DEED FOR WATER RIGHT. Seller shall transfer all of its right, title and interest in and to the Water Rights to Buyer by deed (the "Deed") in the form attached hereto as "Exhibit A". Buyer may submit to the Department as a part of its Application a copy of this Second Amendment with the purchase price redacted.

8. CLOSING. The closing of this transaction and the delivery of the executed Deed to Buyer and the entire purchase price to Sellers shall take place at the offices of the Closing Agent, within five (5) days of the date the final order(s) by the Department approving the Applications (with conditions acceptable to Buyer) becomes non-appealable (the "Closing Date").

9. POSSESSION; PRORATIONS. The Buyer shall be given possession and use of the Water Rights on the Closing Date. Taxes and assessments, if any, on the Water Rights shall be prorated as of the Closing Date. The Sellers shall pay all such taxes and assessments which have accrued prior to the Closing Date and the Buyer shall pay for all subsequent taxes and assessments upon the Water Rights.

10. PROTECTION OF WATER RIGHTS FOR NON-USE. Until Buyer receives its satisfactory approval of the Applications by the Department, Seller may continue to use the Water Rights on the authorized place of use for irrigation purposes during the 2009 irrigation season and any subsequent irrigation seasons or portions thereof throughout the pendency of the Applications before the Department. If Seller decides to use the Water Rights for irrigation purposes for the 2009 irrigation season, through lease or otherwise, and the Department finally approves Buyer's Applications during the 2009 irrigation season or at any time thereafter and Buyer accepts such final approval, Seller (and/or its lessee) shall immediately comply with all conditions of the Department's approval, including ceasing to divert and use the Water Rights for irrigation purposes at that time. Seller shall include such terms in a proposed lease of the Water Rights to the Idaho State Water Supply Bank.

11. SELLER'S REPRESENTATIONS AND WARRANTIES. Seller hereby represents and warrants to Buyer, as of the Closing for the Water Rights, as follows:

a. Authority. Seller owns the Water Rights in fee simple. Seller and Seller's representative executing this Second Amendment on behalf of Seller has the full legal right, power and authority to enter into and perform this Second Amendment and already has obtained any necessary consents and approvals to do so.

b. Good Title. Seller has good and marketable title to the Water Rights, and Seller shall remove, or cause to be removed, all liens, claims, or encumbrances, whether of record or not, upon or affecting the Water Rights on or before Closing.

c. Appurtenance. The Water Rights are appurtenant to and have been beneficially used as the sole water source to irrigate the authorized place of use on Seller's property.

d. Not Forfeited. To the best of Seller's knowledge, the Water Rights have not been forfeited or abandoned in whole or in part, have been placed to continual beneficial use on the Seller's property, and have never been subject to a continuous five-year period of non-use except as such non-use occurred while the Water Rights were in an appropriate water bank, were claimed in the Snake River Basin Adjudication, or the appurtenant place of use was enrolled in a government annual grain base or long-term crop land set-aside program, or except as such non-use occurred by reason of any other applicable defense set forth in Idaho Code § 42-223 that protected the Water Rights from forfeiture.

12. SELLER'S REPRESENTATIONS AND WARRANTIES SURVIVE CLOSING. Seller agrees that the above representations and warranties in Paragraph 11 will survive Closing.

13. BUYER'S REPRESENTATIONS AND WARRANTIES. Buyer hereby represents and warrants to Seller that Buyer has the legal power, right and authority to enter into this Second Amendment and to perform Buyer's obligations hereunder and has not engaged any broker or finder in connection with the purchase of the Water Rights. Buyer agrees that the

representations and warranties in this Paragraph 13 will survive Closing.

14. NO COMMISSIONS. The parties agree that no real estate broker's or other commission shall be paid to anyone as a result of the transfer and sale of the Water Rights from Seller to Buyer pursuant to this Second Amendment, other than a consulting fee to be paid by the Seller to Matthew Luck.

15. GENERAL PROVISIONS.

a. Severance and Validity. In the event any provision of this Second Amendment or any part thereof shall be determined by any court of competent jurisdiction to be invalid, void, or otherwise unenforceable, the remaining provisions hereunder, or party thereof, shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated thereby, it being agreed that such remaining provision shall be construed in a manner most closely approximating the intention of the parties with respect to the invalid, void, or unenforceable provision or part thereof.

b. Attorney Fees. In the event of any suit or proceeding by either party herein against the other party, in any way arising out of this Second Amendment, or attempting to enforce any right herein granted, the losing party, in such suit or proceeding shall pay to the prevailing party such sum or sums as the court shall adjudge reasonable, in such suit or proceeding, for attorney's fees, including such fees on appeal, for such prevailing party.

c. Governing Law. The validity, meaning and effect of this Second Amendment shall be determined in accordance with the laws of the State of Idaho applicable to contracts made and performed in that state.

d. Captions to Paragraphs. The captions to the paragraphs of this Second Amendment are for convenience only and shall not be deemed to enlarge, diminish, explain or in any manner affect the meaning of such paragraphs.

e. Binding Contract. This Second Amendment shall be binding upon and inure to the benefit of the heirs, personal representative, administrators, successors, and assigns of the parties hereto.

f. Notices. All notices and communications under this Second Amendment shall be in writing, sent to the parties and their respective legal counsel, and shall be (i) delivered in person or (ii) mailed, postage prepaid, either by registered or certified mail, return receipt requested, or by overnight express carrier, or (iii) sent by facsimile with the original to follow by mail in the manner described above. The physical and mailing addresses and facsimile numbers for the purposes of this paragraph are as follows:

<u>Recipient</u>	<u>Physical Address</u>	<u>Mailing Address</u>	<u>Facsimile</u>
Seller:	Old Cutters, Inc. 313 S. Main Street Hailey, ID 83333	Old Cutters, Inc. P.O. Box 4944 Ketchum, ID 83340	208-578-7682
Seller's Counsel:	James P. Speck Speck & Aanestad A Professional Corporation	James P. Speck Speck & Aanestad A Professional Corporation	208-726-0752

120 East Avenue
Ketchum, ID 83340

P.O. Box 987
Ketchum, ID 83340

Buyer: Dry Lot, LLC
c/o Woody Friedlander
116 Valley Club Dr.
Hailey, ID 83333

Dry Lot, LLC
c/o Woody Friedlander
116 Valley Club Dr.
Hailey, ID 83333
208-578-2196

Buyer's Counsel: Travis L. Thompson
Barker, Rosholt & Simpson, LLP
113 Main Ave., Suite 303
Twin Falls, ID 83303-0485

Travis L. Thompson
Barker, Rosholt & Simpson,
LLP
P.O. Box 485
Twin Falls, ID 83303-0485
208-735-2444

It is provided, however, that any party may change its respective address for purposes of receipt of any such communication by giving ten (10) days prior written notice of such change to the other party hereto in the manner provided above. All notices sent pursuant to the terms of this paragraph shall be deemed received (x) if sent by overnight, express carrier, on the next business day immediately following the day sent, (y) if sent by registered or certified mail, on the third business day following the day sent or (z) if sent by facsimile on the date so sent.

IN WITNESS WHEREOF, the parties have caused their names to be subscribed on the dates set forth below.

"SELLER"

OLD CUTTERS, INC.

DATE: 8/5/09

By: [Signature]
John Campbell, President

"BUYER"

DRY LOT, LLC

DATE: Aug 3, 2009

By: [Signature]
Bernard I. Friedlander, Manager

Exhibit A

DEED FOR WATER RIGHTS

FOR VALUE RECEIVED, Old Cutters, Inc., an Idaho corporation ("Grantor"), whose address is P.O. Box 4944, Ketchum, Idaho 83340, does hereby grant, bargain, sell, convey and assign unto Dry Lot LLC, an Idaho limited liability company ("Grantee"), whose address is c/o Woody Friedlander, 116 Valley Club Dr., Hailey, Idaho 83333, the following described portions of Water Right Nos. 37-21130, 37-21137 and 37-21139 (hereinafter these portions are referred to as the "Water Rights"):

0.17 cfs of Water Right No. 37-21130, 1.33 cfs of Water Right No. 37-21137 and 0.16 cfs of Water Right 37-21139, for the irrigation of 27.5 acres located in the NESE and SESE of Section 4, Township 2 North, Range 18 East, Blaine County, Idaho, pursuant to the partial decrees for such water rights issued January 21, 2009 in *In Re SRBA*, Twin Falls District Court Case No. 39576, copies of which are attached hereto as Exhibits A, B and C, respectively.

TO HAVE AND TO HOLD, the above-described portions of Water Right Nos. 37-21130 unto the Grantee and to the successors and assigns of Grantee forever.

IN WITNESS WHEREOF, the Grantor has executed this Deed this ____ day of _____, 20__.

OLD CUTTERS, INC.

By: John Campbell, President

STATE OF IDAHO)
) ss.
County of Blaine)

On this _____ day of _____, 2009, before me, a Notary Public for said County and State, personally appeared John Campbell, known or identified to me to be the president of Old Cutters, Inc., and the person who executed the foregoing instrument on behalf of said company and acknowledged to me he executed the same on behalf of said company.

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

NOTARY PUBLIC FOR IDAHO
Residing at: _____
My commission expires: _____