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ATTORNEYS AT LAW

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** Registered Patent Attorney*

RECEIVED

AUG 05 2010

Department of Water Resources
Eastern Region

August 3, 2010

Department of Water Resources, Eastern Region
900 N. Skyline Dr. Suite A,
Idaho Falls, ID 83402

RE:	Change Application 75916.
Water Rights:	17-7063 and 17-7065
Applicant:	Western Heritage Homes, Inc.; Curtis Baum
Protestor:	Blue Hills Land & Livestock, LLC.

To Whom it may concern:

This office represents Blue Hills Land & Livestock, LLC ("Blue Hills"). On October 2, 2009 our office, under direction of our client, filed a formal protest to Change Application 75916 which seeks to change point of diversion and place of use for water rights 17-7063 and 17-7065. A pre-hearing conference was held in this matter on March 18, 2010.

Since this hearing the Sixth Judicial District Court of Oneida County has issued a *Partial Default Judgment* and a "rescission of the water rights transfer" for water rights 17-7063 as referenced above. A copy of this *Partial Default Judgment* has been enclosed for your files. See 3 and 4 of the Judgment for information regarding the water rights in question.

If you have any questions, or would like to discuss this matter further, please do not hesitate to contact me at 435-787-9700.

Yours truly,

BEARNSON & PECK, L.C.

A handwritten signature in black ink, appearing to read 'Brandon J. Baxter'.
Brandon J. Baxter

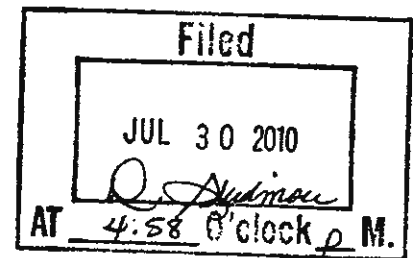
BJB/kl
enclosures
cc: clients.

RECEIVED

AUG 05 2010

Department: ~~Water~~ Resources
Eastern Region

COPY



Marty E. Moore (ISB # 7329)
Brandon J. Baxter (USB # 2199)
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mmoore@cachelaw.com
bbaxter@bplaw.biz
Attorneys for Plaintiffs

State of Idaho } ss
County of Oneida

I hereby certify that the foregoing is a full, true and correct copy of the original in the above entitled matter.

Witness my hand and affix the seal of said court.
This 30th day of July

Clerk of The District Court

Diane S. Anderson
Clerk

IN THE SIXTH JUDICIAL DISTRICT COURT
COUNTY OF ONEIDA, STATE OF IDAHO

BLUE HILLS LAND and LIVESTOCK,
LLC, A Utah Limited Liability Company;
CHANSHARE INC, A Utah Corporation
Company; RANDALL MARBLE, an
individual; and REED STANLEY an
Individual

Plaintiffs,

v.

WESTERN HERITAGE HOMES, INC.;
CURTIS BAUM, an individual; and
BURTINE BAUM an individual.

Defendants.

**PARTIAL DEFAULT
JUDGMENT**

Case no: CV-2009-100
Judge: Robert C. Naftz

This matter came before the Court upon Plaintiffs' *Motion for Entry of Partial Default Judgment*. The default of each of the Defendants having been previously entered by the Court, the Court hereby enters the following judgment in favor of the Plaintiffs and against the

Defendants, WESTERN HERITAGE HOMES, INC.; CURTIS BAUM, an individual; and BURTINE BAUM an individual.

IT IS HEREBY ORDERED AND ADJUDGED THAT:

Correction of property description

1. As described in paragraphs 78-82 of the *Complaint*, the November 17, 2008 deed which conveyed the parcel of property identified as Oneida County Tax ID# T-5503 and Oneida County Parcel ID # RP0115706 was mistaken¹; did not reflect the intent of the parties to the transaction; and created circumstances which destroyed the value and use of the parties' real property.

2. In light of the foregoing, real property description of the parcel of identified by Tax ID# T-5503 is hereby reformed and amended to read:

A parcel of land located in Section 25, Township 14 South, Range 32 East, Boise Meridian, Oneida County, Idaho and further described as follows:

Beginning at the East quarter corner of said Section 25, from which the Northeast corner of Section 25 bears North 00° 11' 04" East 2635.96 feet; Thence South 89° 47' 14" West 1316.17 feet along the latitudinal centerline of said Section 25 to a 5/8" rebar with cap set on the Southwest corner of the Southeast quarter of the Northeast quarter of said Section 25, the True Point of Beginning; Thence South 00° 22' 34" West 230.85 feet along the west line of the Northeast quarter of the Southeast quarter of said Section 25 to a 5/8" rebar with cap labeled, "A.A. Hudson, PLS 13173; Thence South 89° 47' 14" West 438.78 feet to the beginning of a 1387.65 foot radius curve concave to the Southwest; Thence Northwesterly along said curve through a

¹A copy of the mistaken deed is attached here as Exhibit A.

central angle of 03° 05' 03" a distance of 74.69 feet (chord = North 50° 29' 57" West 74.68 feet); Thence North 00° 22' 34" East 183.13 feet to a 5/8" rebar with cap set on the latitudinal centerline of said Section 25; Thence North 89° 47' 14" East 496.72 feet along said centerline to the True Point of Beginning. Containing 2.6 acres of land.

Rescission of water rights transfer

3. As described in paragraphs 83-88 of the *Complaint*, Plaintiff Blue Hills Land and Livestock, ("Blue Hills") did not transfer any water rights to any of the Defendants.

4. This Court affirms and declares Plaintiff Blue Hills Land and Livestock, ("Blue Hills") as the sole owner of water rights 17-2052 and 17-7063.

5. In light of the foregoing, the Idaho State Department of Water Resources and all other affected agencies of the State of Idaho are hereby ordered to rescind and reverse any actions taken on behalf of any of or at the request of the Defendants to divide water rights 17-2052 and/or 17-7063 in order to create water rights 17-7164 and 17-7165 titled in the name of the Defendants.

6. The Idaho State Department of Water Resources and all other affected agencies of the State of Idaho are also ordered to rescind, reverse, and/or deny any actions taken on behalf of or at the request of any of the Defendants to assign ownership interest in water rights 17-2052, 17-7063, and/or divided water rights 17-7164 and 17-7165 to any party.

7. The Idaho State Department of Water Resources and all other affected agencies of the State of Idaho are further ordered to rescind, reverse, and/or deny any actions or requests to transfer ownership or otherwise alter the point of diversion, point of application of water rights

17-2052, 17-7063, and/or divided water rights 17-7164 and 17-7165 taken on behalf of or at the request of any of the Defendants.

Fraud, Breach of Contract, Breach of Covenant of Good Faith and Fair Dealing

8. As described in paragraphs 68-73 of the *Complaint*, Defendants Western Heritage Homes, Inc and Curtis Baum are adjudged to have committed fraud against Blue Hills and have caused damages to Blue Hills as a result of that fraud.

9. As described in paragraphs 62-67 of the *Complaint*, Defendants Western Heritage Homes, Inc. and Curtis Baum are adjudged to be in breach of the September 2008 Real Estate Purchase Contract and have caused damages to Blue Hills as a result of that breach.

10. As described in paragraphs 74-77 of the *Complaint*, Defendants Western Heritage Homes, Inc and Curtis Baum are adjudged to have breached the covenant of good faith and fair dealing and have caused damages against Blue Hills as a result of that breach.

Monetary Damages

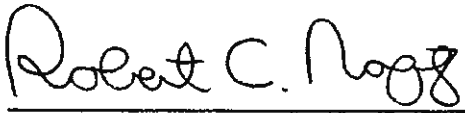
11. As alleged particularly in the *Complaint* and generally in the prayer to the *Complaint*, Plaintiffs are adjudged to be entitled to recover various damages from the Defendants, including but not limited to:

- compensatory damages
- consequential damages
- attorneys fees
- costs
- prejudgment and post judgment interest.

12. Plaintiffs will establish the precise amount of these damages at a later date, either through affidavit or hearing, as required and approved of by the Court. At that point, the Court

will enter a supplemental judgment, as appropriate, against Defendants and in favor of Plaintiffs for the appropriate amount of damages.

DATED this 30 day of July 2010.



Judge Robert C. Naftz

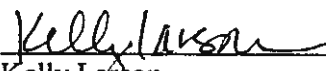
CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of July 2010, a true and correct copy of the foregoing **PARTIAL DEFAULT JUDGMENT** was served by mailing the same via U.S. Post to:

Lynn Baum
21316 W Id Highway 37
Holbrook, ID 83243-5100

Curtis Baum
2627 Jefferson Ave
Ogden, Utah 84401-3617

Burtine Baum
7526 South 2400 East
Spanish Fork, Utah 84660



Kelly Larson
Legal Assistant

EXHIBIT A

NTO-2471
WESTERN HERITAGE HOMES, INC
1200 OVERLAND AVE
BURLEY, ID 83318

143655
18 November 2008
11:30
Natalie Murphy
6:00
Notary Public
Notary Title Co.

WARRANTY DEED

BLUE HILLS LAND & LIVESTOCK, L.L.C., Grantor(s) of TREMONTON, County of BOX ELDER, State of UTAH, hereby **CONVEY AND WARRANT** to WESTERN HERITAGE HOMES, INC, Grantee(s) of HOLBROOK, County of ONEIDA, State of IDAHO, for the sum of TEN DOLLARS AND OTHER GOOD AND VALUABLE CONSIDERATION, the following described tract of land in ONEIDA County, State of Idaho:

SEE ATTACHED "EXHIBIT A"

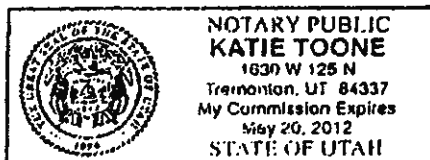
Subject to easements, restrictions and rights of way of record, and taxes for the year 2008 and thereafter.

Witness, the hand(s) of said Grantor(s), this NOVEMBER 17th, 2008 .

Randall B. Marble
BLUE HILLS LAND AND LIVESTOCK, L.L.C.
By: RANDALL B. MARBLE
MANAGER

State of Utah)
County of Box Elder)

On November 17, 2008, personally appeared before me RANDALL B. MARBLE, who, being by me duly sworn, did say that he is the Manager of BLUE HILLS LAND AND LIVESTOCK, L.L.C., and that the said instrument was signed in behalf of said Limited Liability Company by the authority of its Articles of Organization and Operating Agreement, and the aforesaid individual acknowledged to me that said Company executed the same.



Katie Toone
Notary Public
Residing: 1620 W. 125 N. Tremonton, UT 84337
Expires: May 20, 2012

"EXHIBIT A"

BEGINNING AT A POINT 1320 FEET WEST AND 180 FEET SOUTH OF THE EAST QUARTER CORNER OF SECTION 25, TOWNSHIP 14 SOUTH, RANGE 32 EAST, BOISE MERIDIAN, ONEIDA COUNTY, IDAHO, AND RUNNING THENCE WEST 450 FEET; THENCE SOUTH 250 FEET; THENCE EAST 450 FEET; THENCE NORTH 250 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH AN EASEMENT FOR INGRESS AND EGRESS LYING 60 FEET WEST OF THE FOLLOWING:

BEGINNING AT A POINT 1320 FEET WEST AND 180 FEET SOUTH OF THE EAST QUARTER CORNER OF SECTION 25, TOWNSHIP 14 SOUTH, RANGE 32 EAST, BOISE MERIDIAN, ONEIDA COUNTY, IDAHO, AND RUNNING IN A LINE THENCE 240 FEET NORTH, MORE OR LESS, TO THE SOUTH LINE OF THE STATE HIGHWAY.

T14S R32E Sec 25

25



Title:		Date: 08-06-2010
Scale: 1 inch = 800 feet	File:	
Tract 1: 2.601 Acres: 113279 Sq Feet: Closure = n54.0334w 0.00 Feet: Precision = 1/695842: Perimeter = 1424 Feet		
001=/se,ne,25,14s,32e	004=s89.4714w 438.78	007=n89.4714e 496.72
002=/s89.4714w 1316.17	005=n50.2959w 74.68 ?	
003=s00.2234w 230.85	006=n00.2234e 183.13	

Deed plotter representation of the amended real property description
Set forth in the July 30, 2010 Partial Default Judgment.