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Attorneys at Law

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October 2, 2009

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

VIA COURIER

RECEIVED

OCT 05 2009

Department of Water Resources  
Eastern Region

## PROTEST OF CHANGE APPLICATION

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"). This letter constitutes my client's 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. This protest is filed pursuant to Idaho Code § 42-222. Please find enclosed Check # 12389 for \$25.00 for the required protest fee. As indicated below, a copy of this protest has been mailed to Western Heritage Homes, Inc. at the address listed in the application.

Please forward all correspondence and materials regarding this protest and the subject change application to this office at the address listed above. Phone number, fax number, e-mail and other contact information is listed above, as well.

### Acknowledgment

Blue Hills acknowledges that if it or its designated representative fails to appear at any regularly scheduled conference or hearing in the matter of which Blue Hills has been notified at

Receipt  
#2035386

the address above, the department may issue a notice of proposed default against Blue Hills in this matter for failure to appear.

### **Standing for Protest**

Blue Hills owns approximately 385 acres of agricultural ground in Holbrook, Oneida County which is immediately adjacent to the proposed place of use. Blue Hills leases this ground to Chanshare, Inc. for agri-business enterprises including raising and selling sod for residential uses and commercial applications such as schools and park.

The value of Blue Hills' agricultural ground and the efficacy of the associated sod operations will be directly affected by the changes proposed by this application.

Blue Hills is also the owner of water right 17-7164 which will be affected by the proposed change. Furthermore Blue Hills is the owner of water right 17-2052 which is the parent water right to 17-7165, which is the subject of the subject change application.

### **Nature of Protest: Ongoing litigation**

The water rights and the property which are the subject of this change application are currently the subject of litigation in Idaho Sixth Judicial Court for the County of Oneida, Case No. CV-2009-100. A copy of the Complaint which has been filed in that action has been attached here as Exhibit A.

The Complaint alleges that Western Heritage and its principal Mr. Baum obtained the real property which is involved in this change application through fraud and breach of contract. The Complaint further claims that Western Heritage has no ownership rights in the water rights which it is attempting to transfer with the present application. The water rights were not part of a contractual transfer. Furthermore, the water rights are not appurtenant to the property, in that the property was never irrigated. As a result of these claims, Blue Hills and the other parties to the action have asked that the trial court declare that Western Heritage has no ownership rights in these water rights. Blue Hills has also asked the Court to order the State of Idaho Department of Water Resources to rescind any transfer of water rights to Western Heritage made at the request of Western Heritage.

The Complaint was filed September 8, 2009. Litigation very well may be protracted, especially if the matter moves toward trial without prior settlement by the parties.

**Nature of Protest: diminishing groundwater resources**

Of further concern to Blue Hills is the diminishing groundwater resources in the area affected by the proposed changes. Over the past decade agents and employees of Blue Hills have noted a marked decrease in ground water levels. Only 7-8 years ago, on Blue Hills property immediately adjacent to the subject property, groundwater was readily apparent at only 12 feet down. However, more recently, the depth at which ground water can be found has increased significantly. Ground water used to be readily visible in the gravel quarry adjacent to the subject property. However, these sources have dried up and disappeared recently.

The historical reality of this diminishing resource is clear to long -time residents of Holbrook, Oneida County. For example, Dallen Nalder of 1250 South 21000 West, Holbrook, Oneida County has been irrigating in the neighborhood of the proposed changes since the early 1960s. Mr. Nalder has watched as an irrigation well that was able to run five wheel-line sprinkler systems in the 1960s has been reduced to where today, the well will only run two wheel-line systems during certain times of the irrigation season.

Mr. Nalder has noticed much of the drop-off in ground water levels in the 1990s—after new wells were drilled and put into use in the 1980s. Because of the drop-off in ground water levels, Mr. Nalder's farming operation has been forced to buy in other sprinkler systems which are operable with the decreasing water levels. However, even with these investments, Mr. Nalder still finds that water pressure levels are inadequate to properly and fully operate his irrigation systems.

Further loss of groundwater for irrigation purposes will significantly decrease the value of Blue Hill's agricultural property as well as the values of other agricultural properties in the area.

**Nature of Protest: this real property has not historically been irrigated**

The property to which Western Heritage proposes moving irrigation water has historically been used as dryland pasture. These parcels of property have not been under irrigation at anytime in the recent past. To Blue Hill's knowledge, there are no irrigation ditches on the property. Historically, there has not been sprinkler irrigation used on the property.

In sum, Western Heritage's change application proposes a new irrigation application which threatens historical irrigation rights on surrounding properties which are senior to this application. Pulling from the diminishing groundwater aquifer for new irrigation applications is poor management of this valuable and limited resource.

**Relief being sought**

In light of the noticeable decrease in ground water availability documented by water users in this neighborhood, the Division should deny the change application outright. To do otherwise threatens existing groundwater sources, rights, and uses.

In any event, in light of the ongoing litigation, the Division should deny any action on this application until the Oneida County lawsuit regarding these water rights and this property is

resolved, or until there are further orders or directions from the Oneida County Court to proceed otherwise.

**Conclusion**

Blue Hills respectfully requests that the Division accept this protest and deny Change Application 75916, filed by Western Heritage. Please direct any questions or correspondence regarding this protest to my attention.

Very truly yours,

BEARNSON & PECK, L.C.

A handwritten signature in black ink, appearing to read "Brandon J. Baxter", is written over the printed name.

Brandon J. Baxter

BJB/mlf

cc: Clients

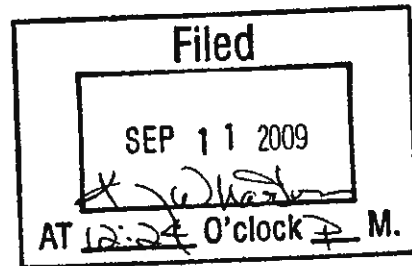
WESTERN HERITAGE HOMES INC

21316 WEST OLD HWY 37

HOLBROOK ID 83423

# COPY

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*Attorneys for Plaintiffs*



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

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BLUE HILLS LAND and LIVESTOCK,  
LLC, A Utah Limited Liability Company;  
CHANSARE 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.

**COMPLAINT**

Civil No. CV-2009-100  
Judge: David C. Nye

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Plaintiffs Blue Hills Land and Livestock, LLC, Chanshare Inc, Randall Marble, and Reed Stanley, through their counsel, hereby file this complaint against Defendants Western Heritage Homes, Inc, Curtis Baum, and Burtine Baum as follows:

### **PARTIES, JURISDICTION AND VENUE**

1. Blue Hills Land and Livestock, LLC (“Blue Hills”) is a Utah LLC which owns property in Oneida County, Idaho.
2. Chanshare Inc (“Chanshare”) is a Utah corporation which operates a sod/turf farm in Oneida County, Idaho.
3. Randall Marble is a Utah resident and a principal and employee of both Blue Hills and Chanshare.
4. Reed Stanley is an Idaho resident and an employee of Chanshare.
5. Upon information and belief, Curtis Baum (“Mr. Baum”) is a resident of Idaho and/or Utah.
6. Upon information and belief, Burtine Baum (“Mrs. Baum”) is a resident of Idaho and/or Utah and is the titled owner of certain real property in Oneida County, Idaho. Also upon information and belief, Mrs. Baum is the mother of Curtis Baum.
7. Upon information and belief, Western Heritage Homes, Inc (“Western Heritage”) is a Utah corporation and is the titled owner of certain real property in Oneida County, Idaho.
8. The real property which this dispute regards is located in Oneida County.
9. Jurisdiction and venue are proper in this Court under Idaho Code §§ 1-705, 5-404, and 5-401.

## **FACTUAL BACKGROUND**

### **The Holbrook Farm.**

10. Blue Hills is the owner of the Holbrook Farm in Oneida County. The Holbrook Farm consists of approximately 385 acres of agricultural ground. Additionally, there is a modular home located on the Farm.

11. Blue Hills also owns certain water rights associated with the Holbrook Farm. These water rights arise from and are associated with certain irrigation wells located on certain locations on the Holbrook Farm.

12. Historically, Blue Hills has leased the Holbrook Farm and all associated water rights to Chanshare, an agri-business enterprise which is engaged in raising and selling sod for residential use and commercial applications such as schools and parks.

13. Historically and currently, Chanshare uses a variety of sprinkler systems to apply irrigation waters to the sod which it grows on the Holbrook Farm. Among the systems are large “pivot” sprinkler systems which consist of mechanized towers which carry sprinkler piping to irrigate a large circular field which surrounds the center “pivot” of the system.

14. Irrigation water is delivered to the pivot systems and other irrigation systems on the Holbrook Farm via “mainline” pipe which runs from large electrical pumps which are located at the wells which are associated with Blue Hills’s water rights.

**The September 2008 REPC.**

15. During 2008, Blue Hills listed the Holbrook Farm for sale.

16. While the property was being marketed, Chanshare continued to lease and operate the Holbrook Farm as part of its sod operations.

17. In September 2008, Mr. Baum approached Blue Hills with an offer to purchase the Holbrook Farm on behalf of Western Heritage for One Million Five Hundred Fifty Thousand Dollars (\$1,550,000).

18. Mr. Baum, who identified himself as a real estate agent and broker, prepared the real estate purchase contract (the "September REPC")<sup>1</sup> and the associated transaction documents.

19. Mr. Baum signed the September REPC on behalf of Western Heritage on September 9, 2008. Blue Hills's Manager, Randall Marble, signed the September REPC on September 29, 2008.

20. Though not a signatory to the September REPC, Mr. Baum was a party to the September REPC in his individual capacity in that he was to personally receive a 10% commission associated with the real estate sale transaction.

21. Under the terms of the September REPC, Western Heritage was to purchase all real estate associated with the Holbrook Farm, the modular home, and certain farming equipment.

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<sup>1</sup>Exhibit A.

22. The September REPC represented that Western Heritage would “purchase the property outright from the proceeds of a Section 1031 Tax Deferred Exchange.”

23. Notwithstanding the commitment to purchase the property with 1031 funds, the September REPC also made Western Heritage’s offer contingent on Western Heritage obtaining a loan.

24. The parties contemplated that the \$1.55 million dollar deal would close on or before March 1, 2009.

25. During the winter of 2008 and 2009, Mr. Baum repeatedly assured Blue Hills that he and Western Heritage would be able to close on the September REPC on or before the scheduled date outlined in the contract.

**The Fall 2008 Transfers.**

26. After the September REPC had been signed and while waiting to close on the transaction, Mr. Baum approached Blue Hills and proposed that it break off a parcel from the Holbrook Farm and transfer this smaller parcel to Western Heritage while waiting to close on the larger transaction.

27. Specifically, Mr. Baum requested that Blue Hills transfer to Western Heritage certain real property referred to in this complaint as Parcel A.

28. To accommodate Mr. Baum, and with the assurances that the larger transaction would still close in March 2009, Blue Hills granted Mr. Baum’s request.

29. In formalizing this partial transfer of property, Mr. Baum did not prepare an additional REPC. Rather, Mr. Baum, individually or with the assistance of his agents and title company prepared a legal description and a deed to transfer the property.

30. On October 7, 2008, Blue Hills signed the deed prepared by Mr. Baum for the transfer of Parcel A.<sup>2</sup>

31. Later that same fall, Mr. Baum again approached Blue Hills and asked that additional real property referred to in this complaint as Parcel B be subdivided from the Holbrook Farm and transferred to Western Heritage prior to the final closing.

32. Again, to accommodate Mr. Baum and with the assurances that the larger transaction was sure to close in March 2009, Blue Hills granted Mr. Baum's request.

33. As with the earlier transfer, Mr. Baum did not prepare an additional REPC but he did prepare the necessary legal descriptions and a transfer deed.

34. On November 17, 2008, Blue Hills signed the deed prepared by Mr. Baum for the transfer of Parcel B.<sup>3</sup> Western Heritage paid Blue Hills \$50,000 for purchase of Parcels A and B.

35. Upon belief and information, at sometime late-2008 or early-2009, Mr. Baum and Western Heritage transferred Parcel B to Burtine Baum who Plaintiffs believe to be the mother of Mr. Baum.

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<sup>2</sup>Exhibit B.

<sup>3</sup>Exhibit C.

**Failure of the September 2008 REPC.**

36. During the closing months of 2008 and the beginning of 2009, Mr. Baum repeatedly assured Blue Hills that matters were smoothly moving toward a final closing of the September REPC in March 2009.

37. However, in mid-February 2009, Mr. Baum informed Blue Hills that Western Heritage did not plan to close on the September REPC on March 1, 2009 as outlined in the contract.

38. In anticipation of the March 2009 closing, Blue Hills and Chanshare had made business and financial plans which relied upon Mr. Baum and Western Heritage fulfilling their obligations under the September REPC.

39. As a result of the Defendants failure to close on the September REPC and Plaintiffs' reliance on the contract, Plaintiffs have suffered economic and consequential damages.

**Problems with the 2008 Deeds.**

40. After learning that Mr. Baum and Western Heritage did not plan to close on the September REPC, the Plaintiffs then discovered that there were problems with the Fall 2008 transactions for Parcels A and B.

41. Prior to preparing the legal descriptions used in the deeds for the Fall 2008 transactions, Mr. Baum and Western Heritage did not obtain a survey. For its part, Blue Hills relied on the legal descriptions as prepared and presented by Mr. Baum. However, as revealed

by a survey obtained by Plaintiffs in July 2009, it turns out these legal descriptions are fraught with many problems.<sup>4</sup>

42. For example, the transfer of one of the parcels was to include a transfer of the modular home. The survey, however, shows that the new property line runs directly through the center of the modular home.

43. In a similar fashion, the current property line also runs directly through the center of a gravel pit, leaving half of the pit in the name of one party and the other half in the name of the other party.

44. The survey also shows that a corner of one of the smaller parcels extends into a Blue Hills/Chanshare sod field that is serviced by a pivot sprinkler system. The outer-most track of the pivot sprinkler runs over the corner of the parcel.

45. The survey also shows that the two parcels transferred in Fall 2008 are not adjacent, but are instead interrupted by a peninsula of ground that remains in the name of Blue Hills.

46. In transferring Parcels A and B, Blue Hills did not intend to create boundaries as described in the deeds or create the obvious problems associated with the described boundaries.

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<sup>4</sup>Exhibit D

**Mr. Baum's actions and threats during Summer 2009.**

47. During these proceedings, Mr. Baum has acted erratically and in a manner intended to cause damages to Plaintiffs.

48. Sometime during the spring of 2009, Mr. Baum, Western Heritage, and/or their agents connected a water line to a water line owned by Blue Hills, supplied by a Blue Hills well, and leased by Chanshare.

49. In June 2009, upon their discovery of Mr. Baum's trespass and actions in connecting the water line, Chanshare and Blue Hills representatives directed their employees to disconnect the Baum line. The disconnection activities took place on Blue Hills property and without causing damage to the Baum line.

50. From the time that Defendants determined not to close on the September REPC, Mr. Baum has repeatedly made defamatory statements regarding Blue Hills, Chanshare, Mr. Marble, and Mr. Stanley.

51. Additionally, Mr. Baum has repeatedly threatened physical violence against Mr. Marble, Mr. Stanley, Chanshare employees, as well as individuals who associate with the Plaintiffs.

52. Specifically, Mr. Baum has contacted and made threats to "shoot" local ecclesiastical leaders who are associated with Plaintiff Reed Stanley.

53. Mr. Baum has also alleged to law enforcement as well as others that he purchased certain farm equipment from Chanshare and Blue Hills.

54. While the September REPC contemplated a transfer of certain farm equipment, when Mr. Baum and Western Heritage failed to close on that contract, no such transfer of equipment or other personal property has taken place.

55. Neither Mr. Baum nor Western Heritage gave to the Plaintiffs any consideration for the transfer of any farm equipment. There is no bill of sale or other contract to evidence such a transfer of farm equipment.

56. The Fall 2008 transfers of Parcels A and B did not contemplate a transfer of water rights from Blue Hills to Mr. Baum or Western Heritage. There was no contract outlining the transfer of such rights. There was no separate deed outlining the transfer of any water rights from Blue Hills to Mr. Baum. The parties did not intend that any water rights would transfer in conjunction with the Fall 2008 transfers.

57. Notwithstanding these facts, after completing the Fall 2008 real property transfers, Mr. Baum applied to the State of Idaho to transfer certain Blue Hills water rights to himself.

58. Beginning in July 2009, Mr. Baum began parking a tractor on the outermost pivot track in a manner intended to directly interfere with the passage of the Chanshare sprinkler pivot.

59. The first time Mr. Baum parked a tractor on the pivot track was shortly before the pivot tower was to pass over the area. Notwithstanding the impending passage of the pivot tower, Mr. Baum parked the tractor on the track in an obvious attempt to sabotage the pivot system.

60. But for the efforts of Chanshare employees who noticed the obstruction and “reversed” the pivot in time, the pivot would have crashed into Mr. Baum’s tractor causing thousands of dollars of damage to the pivot system and interrupting irrigation to and damaging the turf crop previously irrigated by the pivot.

61. Mr. Baum continues to interrupt the passage of the pivot system to date by continuing to park his tractor or other equipment on the outer most pivot track. This despite agreements between the parties that the pivot track be left unobstructed. This action risks damaging the pivot sprinkler system and otherwise continues to interfere with sod production activities.

**FIRST CAUSE OF ACTION**  
**Breach of Contract**  
**(Defendants Curtis Baum and Western Heritage)**

62. Plaintiffs re-allege and incorporate paragraphs 1- 62 herein by reference.

63. Defendants Western Heritage and/or Mr. Baum promised and were obliged to perform under the September REPC.

64. In reliance on Western Heritage’s and/or Mr. Baum’s promise and obligation to perform under the September REPC, Blue Hills and Chanshare made business decisions and conducted other business planning.

65. In reliance on Western Heritage’s and/or Mr. Baum’s promise and obligation to perform under the September REPC, Blue Hills removed the Holbrook Farm from the real estate market and turned away other possibilities to market and/or sell the Holbrook Farm.

66. Defendants Western Heritage and/or Mr. Baum breached their promises and obligations to perform under the September REPC.

67. As a result of Western Heritage's and/or Mr. Baum's breach of and failure to perform under the September REPC, Blue Hills and Chanshare have suffered damages, including compensatory and consequential damages, to be proven more specifically at trial.

### **SECOND CAUSE OF ACTION**

#### **Fraud**

**(Defendants Curtis Baum and Western Heritage)**

68. Plaintiffs re-allege and incorporate paragraphs 1-68 herein by reference.

69. Plaintiffs relied upon the representation of Western Heritage and Mr. Baum with respect to their ability to close on the September REPC, which reliance was reasonable under the circumstances.

70. Upon information and belief, Plaintiffs allege that the time these representations were made regarding their ability to close on the September REPC, Western Heritage and Mr. Baum knew that these representations were false and/or misleading, and that Western Heritage and Mr. Baum did not intend to follow through on their representations, or take action to make their representations not misleading.

71. Western Heritage's and Mr. Baum's false and/or misleading representations were of material facts in that they involved substantial assets and sums of money. Those representations were a primary purpose underlying Blue Hill's decision to sign the September REPC, to pull the

Holbrook Farm off of the real estate market, to forgo obtaining other offers for the Holbrook Farm, and to make the Fall 2008 transfers.

72. Western Heritage and Mr. Baum intended that Blue Hills and Chanshare would rely upon Western Heritage's and Mr. Baum's false and misleading representations.

73. Western Heritage's and Mr. Baum's false representations were wilful and malicious and/or in reckless disregard of the rights of Blue Hills and Chanshare, entitling Blue Hills and Chanshare an award of damages, as well as, attorneys' fees and punitive damages.

**THIRD CAUSE OF ACTION**  
**Breach of Covenant of Good Faith and Fair Dealing**  
**(Defendants Curtis Baum and Western Heritage)**

74. Plaintiffs re-allege and incorporate paragraphs 1-74 herein by reference.

75. Curtis Baum and Western Heritage owed Blue Hills and Chanshare a duty of good faith and fair dealing implicit in the agreements between the parties.

76. Curtis Baum and Western Heritage breached their duty to Blue Hills and Chanshare to deal with Blue Hills and Chanshare fairly and in good faith. Curtis Baum's and Western Heritage's deliberate, bad faith actions constitute a breach of the implied covenant of good faith and fair dealing inherent in the parties' agreement.

77. As a result of Curtis Baum's and Western Heritage's breach of the implied covenant of good faith and fair dealing, Curtis Baum and Western Heritage are obligated to Blue Hills and Chanshare for compensatory and consequential damages arising from this bad faith, including attorney's fees and costs.

**FOURTH CAUSE OF ACTION**

**Quiet Title/Reformation of Deed**

**(Defendants Curtis Baum, Western Heritage, and Bertine Baum )**

78. Plaintiffs re-allege and incorporate paragraphs 1- 78 herein by reference.

79. The deeds which conveyed the property associated with the Fall 2008 transfers do not express the intent of the parties.

80. The deeds which conveyed the property associated with the Fall 2008 transfers are mistaken.

81. The deeds which conveyed the property associated with the Fall 2008 transfers create circumstances that destroy the value and use of the parcels.

82. This Court should reform these deeds in a manner that reflects the real intentions of the parties and which restores reasonable value and reasonable use to the parcels.

**FIFTH CAUSE OF ACTION**

**Declaratory Judgment**

**(Defendants Curtis Baum, Western Heritage, and Bertine Baum )**

83. Plaintiffs re-allege and incorporate paragraphs 1- 83 herein by reference.

84. As described above, Blue Hills did not transfer any water rights to Defendants at the time that Parcels A and B were transferred.

85. Notwithstanding that fact, Defendants Western Heritage and/or Curtis Baum have applied with the State of Idaho asserting an interest in water rights that historically have belonged to Blue Hills.

86. Accordingly, this Court should declare that Blue Hills did not transfer any water rights at the time that it transferred Parcels A and B.

87. Furthermore, this Court should order that the State of Idaho rescind any transfer of water rights from Blue Hills to any of the Defendants currently recorded by its offices.

88. Finally, this Court should order that the State of Idaho clarify its water rights records in a manner which shows that Blue Hills is the sole owner of the water rights in question.

**SIXTH CAUSE OF ACTION**  
**Trespass**  
**(Defendants Curtis Baum and Western Heritage)**

89. Plaintiffs re-allege and incorporate paragraphs 1- 89 herein by reference.

90. Mr. Baum did not have permission and was not otherwise authorized to connect his water line to the Blue Hills water line.

91. Mr. Baum's actions in connecting his water line with the Blue Hills water line constitutes a trespass.

92. As a result of Mr. Baum's trespass as described above, Blue Hills suffered damages which will be proven more specifically at trial.

93. To the extent that Mr. Baum was acting in his capacity as an officer, employee, or representative of Western Heritage and was acting on behalf Western Heritage or within the scope of his authority for Western Heritage when he connected the water line, Western Heritage is vicariously liable for the damages attributed to Mr. Baum.

**SEVENTH CAUSE OF ACTION**  
**Defamation**  
**(Defendants Curtis Baum and Western Heritage)**

94. Plaintiffs re-allege and incorporate paragraphs 1- 94 herein by reference.

95. As outlined above, Mr. Baum has communicated defamatory information to others concerning the Plaintiffs.

96. Plaintiffs are not public officials or figures. And the topics of Mr. Baum's communications were not of public concern.

97. Plaintiffs have suffered damages as a result of Mr. Baum's defamatory communications.

98. To the extent that Mr. Baum was acting in his capacity as an officer, employee, or representative of Western Heritage and was acting on behalf Western Heritage or within the scope of his authority for Western Heritage when he made these communications, Western Heritage is vicariously liable for the damages attributed to Mr. Baum.

**EIGHTH CAUSE OF ACTION**  
**Preliminary Injunction**  
**(All Parties)**

99. Plaintiffs re-allege and incorporate paragraphs 1- 99 herein by reference.

100. If Mr. Baum and the other Defendants continue in the pattern and course of conduct which they have exhibited during Summer 2009, the Plaintiffs may suffer immediate, irreparable harm. This includes:

1. Physical harm to the individual Plaintiffs;
2. Harm to the reputation to all Plaintiffs;
3. Harm to the farm's sprinkler equipment;
4. Continued interruption of the sod growing operation, including associated economic damages.

101. Therefore, during the pendency of these proceedings, until this Court rules on the various claims of the parties, or until the Court order's otherwise, the parties, Plaintiffs and Defendants, including their agents, servants, employees, contractors, and other persons acting in concert with them, should be restrained and enjoined from:

- A. Threatening physical violence against the other parties;
- B. Carrying out any physical violence against the other parties or any individual associated with this action;
- C. Interfering with the historical course of the pivot sprinkler system;
- D. Trespassing onto real property owned by an opposing party and as described in the current deeds, unless specifically ordered and directed by the Courts;
- E. Otherwise interfering with an opposing parties legal use of that party's own property.

**WHEREFORE Plaintiffs prays for the following relief:**

1. That this Court quiet title and reform the current deeds for Parcels A and B to resolve the obvious problems created by the current legal descriptions and in a manner which more clearly reflects the parties' intents;

2. Declaratory judgment that Blue Hills did not transfer any water rights or portions or water rights to Defendants as a result of the transfer of Parcels A and B.

3. An Order rescinding any transfer of water rights to the Defendants and restoring all relevant water rights to Blue Hills.

4. An award against Defendants, as appropriate, for damages including, exemplary, compensatory, and consequential damages, suffered by Plaintiffs;

5. For all costs of this action;

6. For reasonable attorney's fees associated with this dispute and action;

7. For prejudgment and post judgment interest on the judgment principal, computed at the applicable legal rate;

8. For the issuance of a Preliminary Injunction, ordering that, until these claims or resolved or until otherwise ordered by the Court that all parties, including their agents, servants, employees, contractors, and other persons acting in concert with them, should be restrained and enjoined from:

- A. Threatening physical violence against the other parties;
- B. Carrying out any physical violence against the other parties;
- C. Interfering with the historical course of the pivot sprinkler system;
- D. Trespassing onto real property owned by an opposing party and as described in the current deeds, unless specifically ordered and directed by the Courts.
- E. Otherwise interfering with an opposing parties legal use of that party's own property.

DATED this 8<sup>th</sup> day of September 2009.

BEARNSON & PECK, LC



Marty E. Moore (ISB # 7329)  
Attorneys for Plaintiffs

**Defendants' Address:**

|                                                                               |                                                             |                                                                  |
|-------------------------------------------------------------------------------|-------------------------------------------------------------|------------------------------------------------------------------|
| Western Heritage Homes,<br>Inc.,<br>21316 W. Old Hwy 37<br>Holbrook, ID 83432 | Curtis Baum<br>2627 Jefferson Ave<br>Ogden, Utah 84401-3617 | Burtine Baum<br>7526 South 2400 East<br>Spanish Fork, Utah 84660 |
|-------------------------------------------------------------------------------|-------------------------------------------------------------|------------------------------------------------------------------|

**Plaintiffs' Address:**

|                                                                                                                                     |                                                                                                                 |
|-------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------|
| Blue Hills Land and Livestock, LLC<br>c/o Brandon J. Baxter<br>Bearnson & Peck, L.C.,<br>399 North Main Street<br>Logan, Utah 84321 | Randall Marble<br>c/o Brandon J. Baxter<br>Bearnson & Peck, L.C.,<br>399 North Main Street<br>Logan, Utah 84321 |
| Chanshare Inc.<br>c/o Brandon J. Baxter<br>Bearnson & Peck, L.C.,<br>399 North Main Street<br>Logan, Utah 84321                     | Reed Stanley<br>c/o Brandon J. Baxter<br>Bearnson & Peck, L.C.,<br>399 North Main Street<br>Logan, Utah 84321   |

# EXHIBIT A

## OFFER TO PURCHASE REAL ESTATE

To: Pioneer Title, 235 North Arthur, Pocatello, Idaho 83211

Western Heritage Homes, Inc., referred to herein as BUYER, offers to purchase the following described real estate from ~~Chencharo, Inc.~~ referred to herein as SELLER, upon the terms and conditions stated herein. *Blue Hills Land and Livestock LLC*

This offer shall expire unless accepted by 5:00 p.m. on September 12, 2008. SELLER shall signify acceptance by executing the attached form of acceptance.

The gross purchase price shall be **\$1,550,000.00** (One Million Five Hundred Fifty Thousand & no/100 dollars). The legal description of the property is:

### Legal Description

The east half of the southeast quarter of Section 26; the west half of the southwest quarter of section 25, the east half of the southwest quarter of section 25 and the east half of the southeast quarter of section 25 and the southwest quarter of the northeast quarter of section 25 and that portion of the southeast quarter of the northeast quarter of section 25 situated west of Idaho State Route 37 all in T14 S Range 32 East Boise Meridian. Together with all irrigation rights and equipment presently being used on the property.

The cited property is referenced by assessor numbers T-4136 and T 5503 located in Oneida County, State of Idaho near Holbrook.

To be paid upon the following terms:

**\$1,550,000.00**(One Million Five Hundred Fifty Thousand & no/100 Dollars), to be paid at closing.

The buyer shall assume no existing mortgages but will purchase the property outright from the proceeds of a Section 1031 Tax Deferred Exchange. In the event the underlying mortgage (private party) is not assumable or has a due on sale clause, it is the intention of the parties not to incur any liability for prepayment or additional taxes and names Security Title as Accommodator for the exchange.

At least 30 days prior to closing of this purchase, SELLER shall provide to BUYER estoppel letters providing the balance, and current good standing of the above stated mortgage(s).

The BUYER shall execute a new purchase money mortgage to SELLER, in the principal amount of \$ -0- ( \_\_\_\_\_ none \_\_\_\_\_ & \_\_\_\_/100 dollars) payable as follows:

Interest at the rate of: \_\_\_\_ percent Payment schedule: \_\_\_\_\_

Said mortgage shall have the following priority:  
Not applicable

This offer is conditioned upon BUYER obtaining loan approval at least 5 days prior to closing of this transaction, of a mortgage loan as follows:

Principal amount: not to exceed \$1,162,500.00 (One Million One Hundred Twenty-five Thousand and no/100 dollars) or 75% of the portion not obtained from the proceeds of a Tax Deferred Exchange.

Loan term: 20 years

Maximum interest rate as APR under regulation Z: 7 percent

Maximum points to be paid by BUYER: 0

Maximum application fee: \$0

BUYER shall make a mortgage loan application within 15 working days of the acceptance of this offer, and should the BUYER's loan application be denied, the BUYER shall have the option, within 10 business days to rescind this transaction. If BUYER elects to rescind the transaction, BUYER shall receive any deposits made from SELLER.

PURCHASER shall have the option of purchasing portions of the property prior to closing date by releasing funds to SELLER as they accrue from the sale of other properties. In such event, the non irrigated property shall be first released, followed by the property irrigated by wheel lines and last by the property which is irrigated by pivots.

The closing will be held on or before March 1, 2009, but in no event in less than 30 days from the receipt of estoppel letters, leases, etc. as required. The SELLER shall convey to the owner by warranty deed the property herein, and the title thereto shall be merchantable. Within 30 days of acceptance, the SELLER shall provide a binder for title insurance in the principal amount of the purchase price. The title shall be free and clear of any encumbrances other than those, if any, to be assumed by the BUYER at closing. Should any defects in the title, the SELLER shall have 60 days to clear the same. If the SELLER is unable to do so, BUYER shall have the option of closing or rescinding this contract. Should BUYER rescind the contract, then the SELLER shall refund as liquidated damages, and not a penalty, the funds paid for the option to BUYER.

The BUYER may at its expense obtain a current survey of the property. Should the survey indicate encroachments, then the SELLER shall remedy the same within 60 days. Should SELLER fail to clear such encroachments, then the BUYER shall have the option of closing or rescinding this contract. Should BUYER rescind the contract, then the SELLER shall refund as liquidated damages, and not a penalty, the funds paid for the option to BUYER.

The SELLER shall maintain the property and all improvements in the same condition as that which exists on the date of acceptance of this agreement, and shall deliver the same to the BUYER in the same condition, ordinary wear and tear excepted. Specifically, any sod removed during the 2008 season shall be prepared for the 2009 season to insure a full crop.

At closing, SELLER shall provide a report from a licensed entomologist certifying the absence of termites and other wood destroying organisms.

The report shall be limited to the modular home on the property and is not required for the old home or farm buildings.

Should the report show the active presence of any wood destroying organisms, and the BUYER shall have the following options:

- a) if the damage and cost of treatment is less than 10% of the purchase price, the BUYER may withhold this sum and close, and the same shall be a credit on the sums due at closing;
- b) if the damage exceeds 10% the BUYER may agree to an extension of closing for 90 days to allow SELLER to repair the same at its expense, or, the BUYER may refuse to close, and shall have the sums paid for the option fully refunded by SELLER.

During the period between exercise of the option by the buyer and the closing the premises shall be adequately insured for fire and other perils.

The following closing costs will be paid by SELLER:

All Allowable Closing Costs, including but not limited to appraisal, loan discount points, origination fees, title insurance and escrow fees as allowed by law. Plus one half of the escrow.

The following closing costs will be paid by BUYER:

credit report fee, loan application fee, survey, and one half of escrow fee

The parties hereto acknowledge that Curtis Baum, a licensed real estate broker/salesman was the procuring broker herein. A real estate commission of 10% shall be paid concurrent with each release of property for the proportionate share of the commission.

Should the premises or any portion thereof be leased, SELLER shall provide to the BUYER either a copy of and any all leases in effect, or, should there be any tenants in possession without current written leases, the SELLER shall provide estoppel letters at least 5 days prior to closing stating that there is no lease and the duration of any verbal lease, and the terms of the verbal lease.

All taxes for the current year, escrows on mortgages assumed by the BUYER, prepaid insurance on policies assumed by BUYER, homeowners association dues, shall be prorated between the parties as of the date of closing.

At the time of closing SELLER shall provide an affidavit to BUYER that either:

- a) there have been no improvements made which would subject the property to the filing of mechanic's, materialman, labor or other such liens; or
- b) that there were improvements made to the subject property and all persons having the right under law to lien the property were paid or lien waivers obtained.

#### **Additional Terms:**

Any and all repairs necessary to the 4 bedroom home presently located on the premises are to be completed by purchaser. ~~and a reimbursement will be paid at closing from the sellers proceeds.~~ The contemplated repairs include replacement/repair of the bath

ch

surround and plumbing in the master bath; interior paint, exterior trim paint, replace electrical plates, replace/repair exterior doors, and install stairs at all entrances of the home.

\* 1) See below

The SELLER represents to the BUYER that the present use of the property is lawful and complies with all zoning, governmental regulations and restrictive covenants and other similar contracts in effect.

Dated: September 9, 2008

Western Heritage Homes, Inc.

by [Signature]  
Western Heritage Homes, Inc.  
By: Phil Baum, Vice President  
Airt

#### ACCEPTANCE OF OFFER

I hereby accept the offer set forth above.

Dated: 9/29/2008

[Signature]  
Chanshare, Inc. Blue Hills Land and Livestock LLC  
By Randall B. Marble President (CEO) Manager

- ① seller agrees to accept payments in advance of ~~January 1, 2009~~  
March 1, 2009 and to release title to portions  
of the property based on the attached "Hilbrook  
Summary." It is expressly agreed that  
seller may elect to accept no monies prior  
to January 1, 2009. It is further expressly  
agreed that the modular home and the 2.66  
acres on which it sits will be released first,  
followed by all dry land, then the wheel line's  
then Pivots and last, equipment. The equipment  
is Jacobsen lawn mower, TV-140 tractor and all  
attachments.

# Addendum A

## Holbrook Summary

| Item                | Quantity | Description  | Unit     | Price       | Amount         |
|---------------------|----------|--------------|----------|-------------|----------------|
| 1                   | 260      | Pivot        | Acre     | \$4,000.00  | \$1,040,000.00 |
| 2                   | 40       | Wheel Lines  | Acre     | \$3,500.00  | \$140,000.00   |
| 3                   | 85       | Dryland Farm | Acre     | \$1,500.00  | \$127,500.00   |
| 4                   | 1        | Modular Home | Each     | \$30,000.00 | \$30,000.00    |
| 5                   | 1        | Equipment    | Lump Sum |             | \$62,500.00    |
|                     |          |              |          |             | \$1,400,000.00 |
| With 10% Commission |          |              |          |             | \$1,555,555.56 |

## EXHIBIT B

WESTERN HERITAGE HOMES, INC.  
CURTIS BAUM  
1200 OVERLAND AVE.  
BURLEY, ID 83318

Microfilm No 143884  
23 Day January 2008  
At 1.05 Golden P  
Golden Golden  
Fee \$ 3.00 Golden  
Recorded at Request of  
Western Title Company

## 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 BURLEY, County of CASSIA, 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:

ALL PARCEL OF LAND LYING WEST OF HIGHWAY 37 IN THE EAST HALF OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 25, TOWNSHIP 14 SOUTH, RANGE 32 EAST, BOISE MERIDIAN, ONEIDA COUNTY, IDAHO,

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 OCTOBER 7<sup>th</sup>, 2008 .

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

State of Utah )  
County of Box Elder )

On October - 7<sup>th</sup>, 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 & 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.



Phillip Wheatley  
Notary Public:  
Residing: Garland  
Expires: 2/21/2009

# EXHIBIT C

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

143655  
18 Nov 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"

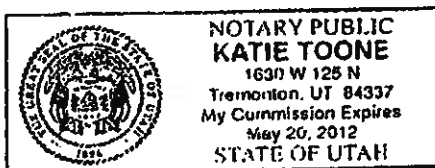
Subject to easements, restrictions and rights of way of record, and taxes for the year 2008 and thereafter.

Witness, the hand(s) of said Grantor(s), this NOVEMBER 17<sup>th</sup>, 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. 126 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.

# EXHIBIT D

