

When Recorded Mail to:
West Star Limited Partnership
1752 Combe Rd
So. Ogden, UT 84403 12-046-0007

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BK 4333 PG 1592

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RICHARD T. MAUGHAN
DAVIS COUNTY, UTAH RECORDER
07/27/2007 04:13 PM
FEE \$41.00 Pgs: 15
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Tax IDs:
12-046-0016
0089

PROPERTY DEVELOPMENT AND EASEMENT AGREEMENT

THIS PROPERTY DEVELOPMENT AND EASEMENT AGREEMENT ("Agreement") is made and entered into effective this 27 day of July, 2007, by and between JOHN W. DIAMOND III AND MARILYN S. DIAMOND, whose address is 3269 West 1800 North, Clinton, Utah (hereinafter "Diamond") and WEST STAR LIMITED PARTNERSHIP, whose business address is 1752 Combe Road, South Ogden, Utah 84403 (hereinafter "West Star").

RECITALS

WHEREAS, Diamond is the owner of certain real property located in Davis County, Utah which they use for agricultural purposes including a cow calf operation, a livestock feed operation, and commercial hunting area defined by the State of Utah as an Agricultural Protection Area (the "Diamond Property") and as described in Exhibit "A" attached hereto; and

WHEREAS, the Diamond Property is irrigated with water diverted from the McDonald Slough; and

WHEREAS, West Star is the owner of real property located directly east and adjacent to the Diamond Property which West Star intends to subdivide and develop for residential housing units known as the Point West Estates ("West Star Property") as described in Exhibit "B" attached hereto; and

WHEREAS, in developing the West Star Property, West Star shall create a Homeowners Association and adopt certain covenants and restrictions that shall be binding upon the individual purchasers of the lots in the subdivided West Star Property. West Star shall convey certain common areas associated with the development of the West Star Property, including the facilities set forth in this Agreement, to the Homeowners Association. The Homeowners Association shall thereafter be responsible for the upkeep and maintenance of said facilities. The terms of this Agreement shall be binding on the Homeowners Association as the successor-in-interest to West Star; and

WHEREAS, the parties acknowledge that the Diamond Property will continue to be used for agricultural and agribusiness purposes including the concentrated feeding of livestock and commercial hunting; and

WHEREAS, the predecessors in interest to Diamond (the "Simpsons") and West Star (the "Paynes") entered into a "Conveyance of Easement for Irrigation Canal – Reservation of Right to Take Water – Reverter for Nonuse" dated December 13, 1966, and recorded with the Davis County Recorder on December 14, 1966, as entry No. 304666 in Book 357 at Page 159, a copy of which is attached hereto as Exhibit "C" (hereinafter "1966 Easement"); and

WHEREAS, pursuant to the terms of the 1966 Easement, Paynes conveyed a right of way for a canal to the Simpsons on the West Star Property and the Paynes had the right to discharge irrigation water onto the Diamond Property; and

WHEREAS, the parties now desire to vacate portions of the 1966 Easement and enter into a new agreement to facilitate the development of the West Star Property while cooperatively protecting the agricultural nature of the Diamond Property;

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. **Release of Drainage Easement:** Subject to the terms and provisions of this Agreement, West Star shall execute and deliver to Diamond a document vacating and releasing its existing easement for drainage to and across the Diamond Property. Diamond shall retain the right of way across the West Star Property for a canal to convey irrigation water to the Diamond Property as described in the 1966 Easement attached as Exhibit "C" hereto.

2. **Grant of New Drainage Easement:** Diamond shall execute and deliver to West Star an easement, as set forth in Exhibit "D" hereto, conveying a right of way across the Diamond Property for a pipeline to transport stormwater runoff from the retention pond located on the West Star Property to the McDonald Slough, which the parties acknowledge serves as a Davis County stormwater runoff facility. Diamond shall retain the right to move the location of the easement within the boundaries of the Diamond Property so long as the easement continues to function in the manner set forth above.

3. **Piping Remaining Easement:** As set forth in paragraph 1 herein, Diamond retains the existing right of way across the West Star Property for a canal to convey irrigation water to the Diamond Property. Currently, the irrigation water is conveyed across the West Star Property in an open cement canal. West Star may change the irrigation conveyance mechanism from the open cement canal to a buried pipeline at its own expense. However, the pipeline to be installed shall be Class III Reinforced Concrete Pipe and shall meet the requirements of any relevant governmental authority. Prior to changing the conveyance to a buried pipeline, RKT must provide the specifications and/or plans for the pipeline to Diamond for approval, which approval shall not be unreasonably withheld. Diamond shall have fifteen (15) days from the time the plans are submitted by West Star to review the plans. If the proposed plans do not meet Diamond's reasonable requirements within the fifteen (15) days provided for review, Diamond shall deliver a written statement of requested changes to West Star. Following receipt of Diamond's written statement, West Star shall have seven (7) days to revise the proposed plans in order to meet Diamond's reasonable requirements. If the changes requested by Diamond are deemed unreasonable by West Star, the requested changes shall be submitted to a licensed engineer for review and determination of the reasonableness of the requested changes. West Star and Diamond agree to be bound by the decision of the engineer. To avoid any interference with Diamond's irrigation, the pipeline may only

be installed during the non-irrigation season as defined by the Utah State Engineer. Any project to pipe Diamond's irrigation canal must be completed, including clean-up, between October 16 and April 14 of the following year.

4. **Field Drain:** To avoid additional drainage of water from the West Star Property onto the Diamond Property, and specifically to prevent the discharge of surface or groundwater associated with the proposed subdivision of the West Star Property onto the Diamond Property, West Star shall install a field drain, as set forth in Exhibit "E" hereto, across the South and West boundaries of its property which shall collect water and discharge it into the water detention pond located on the West Star Property. The field drain shall be Perforated High-Density Corrugated Polyethylene Smooth Interior Pipe, ASTM D3350 and shall otherwise meet the requirements of any relevant governmental authority. The Field drain shall be installed contemporaneously with the initial infrastructure required for the development of the West Star Property and shall be completed before West Star seeks building permits for any permanent structures on the West Star Property.

5. **Discharge to McDonald Slough:** To protect the integrity of the McDonald Slough, West Star shall install an erosion control structure at the point it discharges the stormwater runoff to the McDonald Slough. West Star shall also install rip rap along the slough as necessary to protect its banks from erosion. West Star, as the entity discharging stormwater runoff water to the McDonald Slough, shall be solely responsible for meeting any and all water quality standards for the discharge as set forth by any city, state, or federal agency. West Star shall be responsible for obtaining any and all permits necessary to discharge stormwater runoff water to the McDonald Slough or to make alterations to the channel of the McDonald Slough. Following construction of stormwater discharge piping West Star shall be responsible to restore and regrade to their original condition all disturbed roadways and pasture and replant vegetation on the Diamond Property.

6. **Property Buffer:** The parties acknowledge the inherent conflict of building residential units immediately adjacent to a livestock feed lot and commercial hunting area. To benefit both the West Star Property and the integrity of the Diamond operations, the parties agree to establish a buffer zone between the properties at West Star's expense in the form of a landscape berm along the South and West boundaries of its property. The berm shall be located entirely on the West Star Property. The berm shall be a minimum of six (6) feet tall, after compaction, and fifteen (15) feet wide measured at the base of the berm. The berm shall be planted with fast growing trees and other natural vegetation suitable to the conditions. West Star shall install a solid residential fence on the east side of the berm. The fence shall be located at the toe of the berm on the West Star Property. West Star and its successors in interest shall be responsible for the maintenance of the solid residential fence and the vegetation planted on the berm. West Star shall install a barbed wire fence on the west and south sides of the berm. The fence shall be located at the toe of the berm along the Diamond Property line. Diamond and their successors in interest shall be responsible for the maintenance of the barbed wire fence. Subject to governmental approval, West Star shall record on its plat that the berm will supplement the existing six hundred (600) foot Commercial Hunting Unit (CHU) buffer. The Property Buffer shall be installed contemporaneously with the initial infrastructure required for the development of the West Star Property and shall be completed before West Star seeks building permits for any permanent structures on the West Star Property.

7. **Approval/Inspection:** Diamond shall have the right to review and approve West Star's plans for the buffer berm, the berm vegetation, and the fencing which approval will not be unreasonably withheld. West Star shall provide plans for the buffer berm, the berm vegetation, and the fencing to Diamond for inspection and approval no less than twenty-one (21) days before the commencement of construction. Diamond shall have fifteen (15) days from the time the plans are submitted by West Star to review the plans. If the proposed plans do not meet Diamond's reasonable

requirements, within the fifteen (15) days provided for review, Diamond shall deliver a written statement of requested changes to West Star. Following receipt of Diamond's written statement, West Star shall have seven (7) days to revise the proposed plans in order to meet Diamond's reasonable requirements.

8. **Diamond Irrigation Pipeline:** The parties acknowledge that Diamond is the owner of an irrigation pipeline located adjacent to 1200 South Street. The parties further acknowledge that the construction of access roads to the West Star Property may require the construction of a road across the Diamond irrigation pipeline, and that the pipeline is not constructed to the standards necessary to support an overlying road. Should any road built to accommodate the West Star Property cross the Diamond irrigation pipeline, West Star shall be responsible for the removal of the existing pipeline and for the replacement of the pipeline with one constructed to meet all city, state, or federal requirements necessary to accommodate the overlying road. In such event, West Star shall replace the line in such a manner that it shall be fully operational throughout the irrigation season as defined by the Utah State Engineer. If, as a result of the replacement of the pipeline, Diamond is not able to irrigate from the pipeline during the irrigation season, West Star shall reimburse Diamond for any damage to or loss of Diamond's crops. If any portion of the existing Diamond irrigation pipeline is removed, it shall be done in such a manner that the existing pipe is not damaged and Diamond shall have the right to salvage and retain the physical pipe following its removal.

9. **Diamond Gateway/Entrance:** The parties acknowledge that the construction of the proposed subdivision of the West Star Property may require 1200 South Street to become a public roadway. If 1200 South Street becomes a public roadway, the road will have to be widened to meet city, county, and/or state specifications. This will necessitate the removal of the existing gateway entrance to the Diamond Property. In such event, West Star shall be responsible for relocating Diamond's gateway entrance to a location reasonably necessary to accommodate the widening of 1200 South Street.

10. **Additional Provisions:**

A. **Notices.** Any and all notices, demands, or other communications required or desired to be given hereunder shall be in writing and shall be validly given or made if served personally or if deposited in the United States mail, certified or registered, postage prepaid, return receipt requested. If such notice, demand or other communication be served personally, service shall be conclusively deemed at the time of such personal service. If such notice, demand or other communication be served by mail, such notice shall be conclusively deemed given two business days after the deposit thereof in the United States mail addressed to the party to whom such notice, demand or other communication is to be given as hereinafter set forth:

To Diamond:

3269 West 1800 North
Clinton, Utah 84015

To West Star:

1752 Combe Road
South Ogden, Utah 84403

Any party may change its address for the purpose of receiving notices, demands and other communications by a written notice given in the manner aforesaid.

B. **Further Assurances.** Each of the parties hereto shall execute and deliver any and all additional papers, documents, and other assurances, and shall do any and all acts and things reasonably necessary in connection with the performance of their obligations hereunder and to carry out the intent of the parties hereto.

C. **Attorneys' Fees.** In the event any action or negotiation shall be instituted by a party to enforce any of the terms and provisions contained herein, the prevailing party in such action or negotiation shall be entitled to reasonable attorneys' fees, costs and expenses.

D. Modification or Amendments. No amendment, change or modification of this Agreement shall be valid unless in writing and signed by the parties hereto.

E. Exhibits. All exhibits attached hereto and referred herein are hereby incorporated as though set forth at length.

F. Captions. The captions appearing at the commencement of the paragraphs are descriptive only and for convenience in reference. Should there be any conflict between any such caption and the section at the head of which it appears, the section and not the caption shall control and govern in the construction of this Agreement.

G. Integration. This Agreement and the attachments hereto constitute the entire understanding and agreement of the parties and any and all prior agreements, understandings or representations are hereby terminated and canceled in their entirety and are of no force and effect.

H. No Obligation to the Third Parties. The execution and delivery of this Agreement shall not be deemed to confer any rights upon, nor obligate either of the parties hereto, to any person or entity other than each other.

I. Number and Gender. In this Agreement, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and vice versa, and the singular number includes the plural.

J. Waiver. The waiver by any party to this Agreement of a breach of any provision of this Agreement shall not be deemed a continuing waiver or waiver of any subsequent breach whether of the same or another provision of this Agreement.

K. Applicable Law and Severability. This Agreement shall, in all respects, be governed by the laws of the State of Utah. Nothing contained herein shall be construed so as to require the commission of any act contrary to law, and wherever there is any conflict between any provision contained herein and any present or future statute, law, ordinance or regulation, the latter

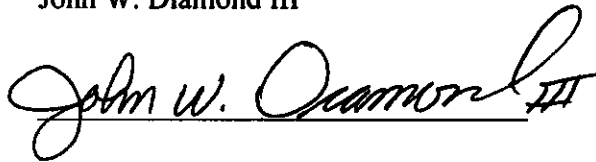
shall prevail and the provision of this document which is affected shall be curtailed and limited to the extent necessary to bring it within the requirements of the law.

L. Performance of Acts on Business Days. In the event that the performance of any act hereunder falls on a Saturday, Sunday or holiday, such act may be performed on the next succeeding business day.

M. Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto, to the Homeowners Association as the designated successor-in-interest to West Star, and to the respective heirs, personal representatives, administrators, executors, successors and assigns of the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

John W. Diamond III

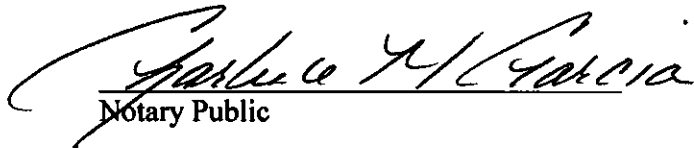
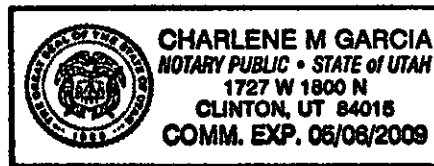


State of Utah)

: ss

County of Davis)

The foregoing instrument was acknowledged before me this 27 day of July, 2007, by JOHN W. DIAMOND III.

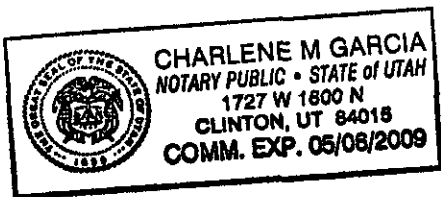

Notary Public

Marilyn S. Diamond

Marilyn S. Diamond

State of Utah)
County of Davis) : ss

The foregoing instrument was acknowledged before me this 27 day of July, 2007, by MARILYN S. DIAMOND.



Charlene M Garcia
Notary Public

WEST STAR LIMITED PARTNERSHIP

By: West Star Investment Company, LLC
Its: General Partner

By: *[Signature]*
Kip Cashmore, Manager

State of Utah)
County of Davis) : ss

The foregoing instrument was acknowledged before me this 27th day of July, 2007, by Kip Cashmore in his capacity as Manager of West Star Investment Company, LLC, General Partner of West Star Limited Partnership.



Cristie A Cottrhan
Notary Public

EXHIBIT "A"

Legal Description of the Diamond Parcel

THE E 1100.00 FT OF LOT 5, SEC 1-T4N-R3W, SLM, CONT. 33.31 ACRES. ALSO: BEG ON THE N LN OF A STR. AT A PT N 89°50'18" W 1331.10 FT ALG THE SEC LN & N 1°14'23" W 33.00 FT & N 329.58 FT FR THE S 1/4 COR OF SEC 7-T4N-R2W, SLM; & RUN TH S 44°50'54" W 235.52 FT; TH N 45°30'39" W 222.93 FT; TH N 10°50'25" W 671.09 FT; TH N 80°03'47" E 241.27 FT; TH N 79°25'09" E 76.28 FT; TH N 79°44'16" E 114.53 FT; TH N 79°49'34" E 31.38 FT; TH N 2847.67 FT; TH W 1907.00 FT, M/L; TO THE MEANDER LN OF THE GREAT SALT LAKE; TH S 28° E ALG SD MEANDER LN TO A PT OF INTER WITH THE W LN OF SEC 7-T4N-R2W, SLM; TH S 32° E 19 CHS ALG SD MEANDER LN; TH S 15° W 17 CHS ALG SD MEANDER LN; TH S 16° E 11.5 CHS M/L; ALG SD MEANDER LN TO A PT ON THE N LN OF A STR; TH E ALG SD STR TO THE POB, CONT 87.34 ACRES. TOGETHER WITH & SUBJ TO A DESC EASEMENT. ALSO: ALL OF LOT 1, SEC 12-T4N-R3W, SLM, LESS TO 1424-627 CONT. 21.98 ACRES. TOTAL ACREAGE 142.63 ACRES. (NOTE: THIS REMAINING LEGAL WAS WRITTEN IN THE DAVIS COUNTY RECORDER'S OFFICE FOR I.D. PURPOSES. IT DOES NOT REFLECT A SURVEY OF THE PROPERTY.)

12-046-0089 pt

EXHIBIT "B"

Legal Description of the West Star Parcel

BOUNDARY DESCRIPTION

BEGINNING AT THE CENTER OF SECTION 7, TOWNSHIP 4 NORTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN, DAVIS COUNTY, UTAH AND RUNNING THENCE SOUTH 90°00'00" WEST 716.82 FEET ALONG THE SOUTH BOUNDARY OF WEST POINT CITY; THENCE NORTH 00°01'09" EAST 247.53 FEET; THENCE SOUTH 89°59'34" WEST 243.27 FEET TO A NON TANGENT CURVE TO THE LEFT; THENCE NORTHWESTERLY ALONG SAID CURVE 57.97 FEET (R=180.00, DELTA=18°27'04", TANGENT=29.24, CH=57.72, CHB=NORTH 08°13'32" WEST) TO A TANGENT CURVE TO THE RIGHT; THENCE NORTHWESTERLY ALONG SAID CURVE 38.64 FEET (R=120.00, DELTA=18°27'04", TANGENT=19.49, CH=38.48, CHB=NORTH 09°13'32" WEST) TO A TANGENT LINE; THENCE NORTH 00°00'00" WEST 8.11 FEET; THENCE SOUTH 90°00'00" WEST 191.73 FEET; THENCE NORTH 00°00'00" WEST 300.00 FEET; THENCE NORTH 90°00'00" EAST 171.18 FEET; THENCE NORTH 12°57'31" WEST 46.98 FEET TO A TANGENT CURVE TO THE LEFT; THENCE NORTHWESTERLY ALONG SAID CURVE 32.00 FEET (R=226.18, DELTA=12°57'31", TANGENT=25.69, CH=51.05, CHB=NORTH 06°28'46" WEST) TO A TANGENT LINE; THENCE NORTH 12°57'31" WEST 118.17 FEET, TO A TANGENT CURVE TO THE LEFT; THENCE NORTHWESTERLY ALONG SAID CURVE 13.52 FEET (R=120.00, DELTA=6°27'22", TANGENT=6.77, CH=13.51, CHB=SOUTH 09°43'50" EAST) TO A TANGENT LINE; THENCE NORTH 08°30'10" WEST 21.54 FEET; THENCE SOUTH 89°59'47" EAST 1,014.41 FEET; THENCE SOUTH 00°15'05" WEST 483.50 FEET; THENCE SOUTH 90°00'00" WEST 233.00 FEET THENCE SOUTH 00°00'35" EAST 199.50 FEET; THENCE NORTH 90°00'00" EAST 232.11 FEET; THENCE SOUTH 00°14'47" WEST 48.00 FEET ALONG SAID LINE TO THE POINT OF BEGINNING, CONTAINING 15.23 ACRES.

12-046-0016

— RECORDER'S MEMO —
 LEGIBILITY OF TYPING OR PRINTING
 UNSATISFACTORY IN THE DOCUMENT
 WHEN RECEIVED

Recorded at request of Joseph N. Simpson Fee Paid \$ 3.00
Date DEC 14 1956 at 10:30 A.M. EMILY T. ELDREDGE Recorder Davis County
By Margaret A. Brown 3.57 Page 159
Mar 4 - 7-41-24

304666

EXHIBIT "C"

CONVEYANCE OF EASEMENT FOR IRRIGATION CANAL -- RESERVATION OF RIGHT TO TAKE WATER---REVERTER FOR NONUSE

There is hereby conveyed by the grantors, EARL S. PAYNE and DELLA P. PAYNE to the grantees JOSEPH G. SIMPSON and LOUISE SIMPSON for a consideration of TEN DOLLARS and other good and valuable consideration a right of way five feet wide for a canal for irrigating land, such a canal to run from the northeast corner to the northwest corner in a westerly direction and not to stray from the northernmost boundary between said northeast corner and said northwest corner more than ten feet on the following tract in Davis County, State of Utah, to-wit:

- Abstracted
- Indexed
- Entered
- Plotted
- Compared

Commencing at southeast corner of the northwest quarter of Section 7, Township 4 North, Range 2 west, Salt Lake Meridian; running thence west 20 chains; thence north 18.39 chains; thence northeasterly 3.87 chains; thence south 6⁰ 20", east 7.65 chains; thence east 15.41 chains; thence south 11.10 chains to the place of beginning, containing 24.65 acres.

The grantors herein do reserve and retain the right at all times hereafter to take water from the canal at any place, and at any time, when the same can be obtained by gravity flow from the canal for the purpose of watering and supplying the lands of the grantors herein, wherever such canal may serve such purpose usefully.

By this instrument neither the grantors herein, nor their heirs nor assigns shall be bound to maintain or do anything for the upkeep or operation of the canal or of the right-of-way herein granted to the grantees; the grantors reserve the right to construct bridges or passageways over the canal at such places as may be convenient or necessary for the use and operation of their own land.

The grantees have the rights to said easement forever, except that in the event that the same is not used as an irrigation canal for a period of five successive years, the full title to said easement shall revert to the grantors, their heirs and assigns forever.

Dec 14 1956 0471 Simpson

160

The grantees further agree that, in consideration for this grant, they will provide drainage facilities for the grantors' property as follows;


Beginning at the northwest corner in a southerly direction along the western boundary approximately one hundred yards is a drainage area to which the grantees hereby agree to provide adequate and reasonable drainage to and across said grantees' property.

Joseph G. Simpson
Louise C. Simpson
Earl S. Payne
Bella P. Payne

STATE OF UTAH

COUNTY OF Sevier) ss

On the 13th day of December, 1968, personally appeared before me EARL S. PAYNE and BELLA P. PAYNE, and JOSEPH G. SIMPSON and LOUISE SIMPSON, the signers of the within instrument who duly acknowledged to me that they executed the same.

Earl S. Payne


My Commission expires 26 June 1969. My residence is Wendover, Utah

EXHIBIT "D"

**Point West Subdivision
10-foot Storm Drain Drainage Easement**

Beginning at a point which is North 1404.47 feet and West 1325.29 feet and South 50.00 feet along the grantor's East boundary from the center of Section 7, Township 4 North, Range 2 West, Salt Lake Base and Meridian and running thence North 90°00'00" West 30.20 feet; thence North 11°18'36" West 89.64 feet more or less to the bank of a drainage creek; thence North 87°26'45" East 10.12 feet along said creek; thence South 11°18'36" East 79.90 feet; thence North 90°00'00" East 22.00 feet to the grantor's East line; thence South 0°00'00" West 10.00 feet along grantor's East line to the point of beginning.

12-046-0077

ACCOMMODATION RECORDING ONLY
HERITAGE WEST TITLE MAKES NO
REPRESENTATION AS TO CONDITION OF
TITLE, NOR DOES IT ASSUME ANY
RESPONSIBILITY FOR VALIDITY,
SUFFICIENCY OR AFFECT OF DOCUMENT