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# Union Bank, N.A. v. North Idaho Resorts Clerk's Record v. 16 Dckt. 42467

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IN THE SUPREME COURT OF THE STATE OF IDAHO  
SUPREME COURT NO. 42467-2014  
BONNER COUNTY CV2011-0135

UNION BANK, N.A., a national banking association,  
Plaintiff-Respondent,

v.

NORTH IDAHO RESORTS, LLC, an Idaho limited liability company  
Defendant-Appellant,

and

PEND OREILLE BONNER DEVELOPMENT, LLC, a Nevada limited liability company, JV, L.L.C. an Idaho limited liability company, DAN JACOBSON, an individual, SAGE HOLDINGS LLC, an Idaho limited liability company, TIMBERLINE INVESTMENTS, LLC, an Idaho limited liability company, STEVEN G. LAZAR, an individual, AMY KORENGUT, an individual, HLT REAL ESTATE LLC, PANHANDLE STATE BANK, an Idaho corporation, R.E. LOANS, LLC, a California limited liability company, WELLS FARGO CAPITAL FINANCE, LLC, a Delaware limited liability company, PEND OREILLE BONNER DEVELOPMENT HOLDINGS, INC., a Nevada corporation, PENSCO TRUST CO. custodian f/b/a Barney Ng, a California corporation, B-K LIGHTING, INC., a California corporation, FREDERICK J. GRANT, an individual, CHRISTINE GRANT, an individual, RUSS CAPITAL GROUP, LLC, an Arizona Limited liability company, JOSEPH DUSSICH, an individual, MOUNTAIN WEST BANK, an Idaho corporation, STATE OF IDAHO, DEPARTMENT OF REVENUE AND TAXATION, MONTAHENO INVESTMENTS, LLC, a Nevada limited liability company, TOYON INVESTMENTS, LLC, a Nevada limited liability company, CHARLES W. REEVES and ANNE B. REEVES, husband and wife, ACI NORTHWEST, INC., an Idaho corporation, and DOES 1 through 20, inclusive,  
Defendants.

Appealed from the First Judicial District, Bonner County, Idaho

HONORABLE MICHAEL J. GRIFFIN, presiding  
District Judge

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Susan P. Weeks, 1626 Lincoln Way, Coeur d'Alene, ID 83814 - Attorney for Appellant / North Idaho Resort

Gary A. Finney, 120 E. Lake St., Ste 317, Sandpoint, ID 83864 - Attorney for Appellant / JV LLC

John E. Miller, 1424 E. Sherman Ave., Ste. 500, Coeur d'Alene, ID 83814 - Attorney for Respondent

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Date	Code	User	Judge
1/28/2011	NCOC	BOWERS	New Case Filed - Other Claims
	APER	BOWERS	Plaintiff: Pacific Capital Bank, N.A. Appearance John E. Miller
		BOWERS	Filing: A - All initial civil case filings of any type not listed in categories B-H, or the other A listings below Paid by: Miller, John E. (attorney for Pacific Capital Bank, N.A.) Receipt number: 0450827 Dated: 1/28/2011 Amount: \$88.00 (Check) For: Pacific Capital Bank, N.A. (plaintiff)
	COMP	PHILLIPS	Complaint Filed - Complaint for Mortgage Foreclosure
	SMIS	PHILLIPS	Summons Issued - 27
2/2/2011		PHILLIPS	Filing: I1 - Initial Appearance by persons other than the plaintiff or petitioner Paid by: Finney et al Receipt number: 0451039 Dated: 2/2/2011 Amount: \$58.00 (Check) For: JV L.L.C. (defendant)
	MOTN	OPPELT	Exparte Motion for Order Allowing Out of State Service
	AFFD	OPPELT	Affidavit in Support of Exparte Motion for Order Allowing Out of State Service
	NOAP	OPPELT	Notice Of Appearance for JV L.L.C.
	APER	OPPELT	Defendant: JV L.L.C. Appearance Gary A. Finney
2/7/2011		PHILLIPS	Filing: I1 - Initial Appearance by persons other than the plaintiff or petitioner Paid by: Finney et al Receipt number: 0451310 Dated: 2/7/2011 Amount: \$58.00 (Check) For: ACI Northwest Inc, an Idaho corporation (defendant)
	NOAP	OPPELT	Notice Of Appearance
	APER	OPPELT	Defendant: ACI Northwest Inc, an Idaho corporation Appearance John A Finney
2/8/2011	AFFD	PHILLIPS	Affidavit Re Verification of Complaint for Mortgage Foreclosure
2/9/2011	ORDR	PHILLIPS	Order Allowing Out of State Service of Summons
2/23/2011		PHILLIPS	Filing: I1 - Initial Appearance by persons other than the plaintiff or petitioner Paid by: Wetzel Wetzel & Holt Receipt number: 0452255 Dated: 2/23/2011 Amount: \$58.00 (Check) For: North Idaho Resorts LLC, an Idaho limited liability (defendant)
	APER	PHILLIPS	Defendant: North Idaho Resorts LLC, an Idaho limited liability Appearance Steven C. Wetzel
	NOAP	PHILLIPS	Notice Of Appearance
	NOTC	OPPELT	Notice of Intent to Take Default

Date	Code	User	Judge
2/24/2011		PHILLIPS	Filing: I1 - Initial Appearance by persons other than the plaintiff or petitioner Paid by: Layman Layman & Robinson PLLC Receipt number: 0452451 Dated: 2/25/2011 Amount: \$58.00 (Check) For: Montaheno Investments LLC, a Nevada limited liabil (defendant), Pend Oreille Bonner Development Holdings, Inc. (defendant), Pend Oreille Bonner Development, LLC (defendant) and Toyon Investments LLC (defendant)
	APER	PHILLIPS	Defendant: Pend Oreille Bonner Development, LLC Appearance John R Layman and Patti Jo Foster
	APER	PHILLIPS	Defendant: Pend Oreille Bonner Development Holdings, Inc. Appearance John R Layman and Patti Jo Foster
	APER	PHILLIPS	Defendant: Montaheno Investments LLC, a Nevada limited liabil Appearance John R Layman and Patti Jo Foster
	APER	PHILLIPS	Defendant: Toyon Investments LLC Appearance John R Layman and Patti Jo Foster
	NOAP	PHILLIPS	Notice Of Appearance - Layman and Foster
	MISC	PHILLIPS	no envelope enclosed for mailing copy of appearance to Layman
3/3/2011		PHILLIPS	Filing: I1 - Initial Appearance by persons other than the plaintiff or petitioner Paid by: Lukins & Annis, PS Receipt number: 0453080 Dated: 3/8/2011 Amount: \$58.00 (Check) For: Mountain West Bank (defendant)
	APER	PHILLIPS	Defendant: Mountain West Bank Appearance Richard Wayne Sweney
	NOTC	PHILLIPS	Notice of Appearance
3/8/2011	REQU	PHILLIPS	Request for Entry of Default
3/10/2011	AFFD	PHILLIPS	Affidavit of John E Miller in Support of Request for Entry of Default
3/14/2011	ORDR	PHILLIPS	Order for Entry of Default
	CDIS	PHILLIPS	Civil Disposition entered for: Montaheno Investments LLC, a Nevada limited liabil, Defendant; Pend Oreille Bonner Development Holdings, Inc., Defendant; Pend Oreille Bonner Development, LLC, Defendant; Reeves, Ann B, Defendant; Reeves, Charles W, Defendant; Toyon Investments LLC, Defendant; Pacific Capital Bank, N.A., Plaintiff. Filing date: 3/14/2011
3/16/2011	MISC	OPPELT	Disclaimer

Date	Code	User	Judge
3/21/2011		PHILLIPS	Filing: I1 - Initial Appearance by persons other than the plaintiff or petitioner Paid by: Ramsden & Lyons LLP Receipt number: 0453868 Dated: 3/22/2011 Amount: \$58.00 (Check) For: B-K Lighting Inc (defendant)
	APER	PHILLIPS	Defendant: B-K Lighting Inc Appearance Douglas S. Marfice
	NOAP	PHILLIPS	Notice Of Appearance
		PHILLIPS	Filing: I1 - Initial Appearance by persons other than the plaintiff or petitioner Paid by: Elsaesser Jarzabek et al Receipt number: 0453878 Dated: 3/22/2011 Amount: \$58.00 (Check) For: Jacobson, Dan S (defendant), Lazar, Steven G (defendant) and Sage Holdings LLC (defendant)
	APER	PHILLIPS	Defendant: Jacobson, Dan S Appearance Bruce Anderson
	APER	PHILLIPS	Defendant: Sage Holdings LLC Appearance Bruce Anderson
	APER	PHILLIPS	Defendant: Lazar, Steven G Appearance Bruce Anderson
	NOAP	PHILLIPS	Notice Of Appearance
5/17/2011	SMRT	PHILLIPS	Summons Returned
	SMIS	PHILLIPS	Summons Issued - First Amended Complaint
	AMCO	PHILLIPS	First Amended Complaint Filed for: 1. Reformation of Legal Description Contained in Mortgage (Scrivener's Error); and 2. Mortgage Foreclosure
5/18/2011	NOTC	PHILLIPS	Amended Notice of Appearance for JV LLC
5/26/2011	MISC	PHILLIPS	Amended Disclaimer - Idaho State Tax Commission
5/27/2011	SUBC	PHILLIPS	Substitution Of Counsel - Steven Wetzel of Wetzel, Wetzel & Holt out; Steven Wetzel of James Vernon & Weeks in for North Idaho Resorts
7/11/2011	NODF	PHILLIPS	Notice Of Intent To Take Default
7/14/2011	REQU	PHILLIPS	Request for Entry of Default
	AFFD	PHILLIPS	Affidavit of John E Miller in Support of Request for Entry of Default
7/20/2011	REQU	PHILLIPS	Request for Dismissal Without Prejudice of Defendant Amy Korengut Only
7/21/2011	ORDR	PHILLIPS	Order for Entry of Default (re First Amended Complaint against certain defendants)

Date	Code	User	Judge
7/21/2011	CDIS	PHILLIPS	Civil Disposition entered for: Pacific Capital Bank, N.A., Plaintiff; Pend Oreille Bonner Development Holdings, Inc., Defendant; Montaheno Investments LLC, a Nevada limited liability, Defendant; Toyon Investments LLC, Defendant; Reeves, Ann B, Defendant; Reeves, Charles W, Defendant. Filing date: 7/21/2011
	MISC	PHILLIPS	no copies or envelopes provided for mailing of Order of Default to other parties
7/26/2011	ORDR	PHILLIPS	Order Re Dismissal Without Prejudice of Defendant Amy Korengut Only
	MISC	PHILLIPS	no copies or envelopes provided for mailing of above dismissal
	CDIS	PHILLIPS	Civil Disposition entered for: Korengut, Amy, Defendant; Pacific Capital Bank, N.A., Plaintiff. Filing date: 7/26/2011
8/17/2011	NODF	PHILLIPS	Notice Of Intent To Take Default
	AFSV	PHILLIPS	Affidavit Of Service of First Amended Complaint
8/29/2011		KELSO	Filing: K4 - Cross Claim (defendant v defendant or plaintiff v. plaintiff) This fee is in addition to any fee filed as a plaintiff to initiate the case or as a defendant appearing in the case Paid by: Finney, Finney, Finney, P.A. Receipt number: 0462151 Dated: 8/29/2011 Amount: \$14.00 (Check) For: JV L.L.C. (defendant)
	EXMN	PHILLIPS	Ex-parte Motion for Order Allowing Service of Summons by Publication
	AFFD	PHILLIPS	Affidavit in Support of Ex Parte Motion for Order Allowing Service of Summons by Publication
	ANSW	PHILLIPS	JV, LLC Answer to First Amended Complaint, Counterclaim and Cross Claim
9/2/2011	ORDR	PHILLIPS	Order Allowing Service of Summons by Publication
9/9/2011	AFMA	ADLER	Affidavit Of Mailing pursuant to order for publication of summons
	AFSV	PHILLIPS	Affidavit Of Service - Curt Hecker, Registered Agent, served for Panhandle State Bank 6/27/11
	AFSV	PHILLIPS	Affidavit Of Service - Robert Myers, agent for Timberline Investments LLC served 6/27/11
	AFSV	PHILLIPS	Affidavit Of Service - Corporations Services, Registered Agent, served for Wells Fargo Capital finance LLC on 6/23/11
	AFSV	PHILLIPS	Affidavit Of Service - Chelsea Stephens, authorized person, served for Bailey Law Group for HLT Real Estate LLC on 6/22/11
	AFSV	PHILLIPS	Affidavit Of Service - Statutory Agent served for Russ Capital Group, LLC on 6/29/11

Date	Code	User	Judge
9/9/2011	NOSV	PHILLIPS	- Certificate of Service - Philip Dimatteo served for Russ Capital 6/28/11 ; no longer statutory agent
	PROO	PHILLIPS	Proof Of Service - Selena Thai of Accoutning served for Mortgage Fund '08 LLC on 6/22/11
9/14/2011	ANSW	PHILLIPS	ACI Northwest, Inc's Answer to First Amended Complaint
	REQU	PHILLIPS	Request for Entry of Default
	AFFD	PHILLIPS	Affidavit in Support of Request for Entry of Default (re Panhandle State Bank, Timberline Investments, Wells Fargo Capital Finance, HLT Real Estate, Russ Capital Group and mortgage Fund '08)
	AFFD	PHILLIPS	Affidavit of John E Miller in Support of Request for Entry of Default
	EXMN	PHILLIPS	Ex-parte Motion for Order Allowing Service of Summons by Publication
	AFFD	PHILLIPS	Affidavit in Support of Ex Parte Motion for Order Allowing Service of Summons by Publication
9/19/2011	REQU	PHILLIPS	Request for Entry of Default (re B-K Lighting)
	AFFD	PHILLIPS	Affidavit of John E Miller in Support of Request for Entry of Default
	MISC	HENDRICKSO	*****END OF FILE 1*****BEGIN FILE 2*****
9/22/2011	ORDR	PHILLIPS	Order for Entry of Default (re B-K Lighting, Inc)
	CDIS	PHILLIPS	Civil Disposition entered for: B-K Lighting Inc, Defendant; Pacific Capital Bank, N.A., Plaintiff. Filing date: 9/22/2011
	ORDR	PHILLIPS	Order for Entry of Default against Panhandle State Bank, Timberline Investments LLC, Wells Fargo Capital Finance, LLC, HLT Real Estate LLC, Russ Capital Group, LLC, and Mortgage Fund '08, LLC
	CDIS	PHILLIPS	Civil Disposition entered for: HLT Real Estate LLC, Defendant; Mortgage Fund '08 LLC, Defendant; Panhandle State Bank, an Idaho corporation, Defendant; Russ Capital Group LLC, Defendant; Timberline Investments, LLC, an Idaho limited liab, Defendant; Wells Fargo Capital Finance LLC a Delaware LL Co., Defendant; Pacific Capital Bank, N.A., Plaintiff. Filing date: 9/22/2011
	ORDR	PHILLIPS	Order Allowing Service of Summons by Publication
9/26/2011	AFFD	PHILLIPS	Affidavit of Dana L Rayborn Wetzel Re Automatic Stay
9/27/2011	ORDR	OPPELT	Administrative Order B11-DW.1

Date	Code	User	Judge
9/27/2011	CHJG	OPPELT	Change Assigned Judge Jeff Brudie
9/28/2011	ORDR	PHILLIPS	Stay Order (re Mortgage Fund '08, LLC) Steve Verby
	ORDR	PHILLIPS	Stay Order (re R.E. Loans, LLC) Steve Verby
	CDIS	PHILLIPS	Civil Disposition entered for: Mortgage Fund '08 LLC, Defendant; R.E. Loans LLC, a California Limited Liability Co, Defendant; Pacific Capital Bank, N.A., Plaintiff. Filing date: 9/28/2011 Jeff Brudie
9/29/2011	CINF	PHILLIPS	Clerk Information - file being returned to Sylvia Jeff Brudie
9/30/2011	ORDR	OPPELT	Order of Reassignment Jeff Brudie
	CHJG	OPPELT	Change Assigned Judge John Stegner
10/4/2011	NOTC	OPPELT	Notice John Stegner
10/7/2011	MODQ	PHILLIPS	Motion To Disqualify (re Judge Stegner) John Stegner
11/3/2011	ORDR	OPPELT	Order Granting Motion to Disqualify (Judge Stegner) John Stegner
	DISA	OPPELT	Disqualification Of Judge - Automatic - Judge Stegner John Stegner
	CHJG	OPPELT	Change Assigned Judge District Court Clerks
11/15/2011	ORDR	OPPELT	Order of Reassignment Jeff Brudie
	CHJG	OPPELT	Change Assigned Judge Michael J Griffin
11/16/2011		BOWERS	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Smith Research Receipt number: 0465690 Dated: 11/16/2011 Amount: \$73.00 (Check) District Court Clerks
11/21/2011	MISC	OPPELT	Copy of Entire File and ROA's Sent to Judge Griffin. (Except Affidavit in Support of Request for Entry of Default (re Panhandle State Bank, Timberline Investments, Wells Fargo Capital Finance, HLT Real Estate, Russ Capital Group and mortgage Fund '08) - Filed on 09-14-11 Unable to Locate Michael J Griffin
3/5/2012		HENDRICKSO	Filing: I1 - Initial Appearance by persons other than the plaintiff or petitioner Paid by: Meuleman Mollerup Receipt number: 0470791 Dated: 3/13/2012 Amount: \$58.00 (Check) For: R.E. Loans LLC, a California Limited Liability Co (defendant) Michael J Griffin
	APER	HENDRICKSO	Defendant: R.E. Loans LLC, a California Limited Liability Co Appearance Richard L Stacey Michael J Griffin
3/6/2012	MISC	DRIVER	Request for copy of entire file from Stephanie Wright of Idaho Transportation Department Michael J Griffin
3/12/2012	NOTC	HENDRICKSO	Notice of Status and Entry of an Order for Relief from Automatic Stay Northern District of Texas Michael J Griffin
3/15/2012	MISC	HENDRICKSO	Notice of Status faxed to Judge Griffin 3-15-12 422pm Michael J Griffin



Date	Code	User	Judge
3/16/2012		DRIVER	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: State Controller's Warrant Ron G. Crane Receipt number: 0470993 Dated: 3/16/2012 Amount: \$348.00 (Check)
	MISC	DRIVER	Letter from Stephanie Wright with check for copy of entire file. Copy of entire file mailed.
5/2/2012	NOTC	OPPELT	Notice of Status; Entry of an Order for Relief from Automatic Stay Northern District of California; and Request to Lift the Stay Order of September 28, 2011
5/3/2012	CINF	OPPELT	Faxed to Judge Griffin - "Notice of Status; Entry of an Order for Relief from Automatic Stay Northern District of California; and Request to Lift the Stay Order of September 28, 2011"
5/14/2012	MOTN	HENDRICKSO	R.E. Loans, LLC's Motion for Telephonic Appearance
	NOHG	HENDRICKSO	Notice of Hearing re: Plaintiff's Request to Lift the Stay Order of September 28, 2011
	HRSC	HENDRICKSO	Hearing Scheduled (Hearing Scheduled 05/31/2012 10:00 AM) Idaho County Court
5/15/2012	MISC	HENDRICKSO	No Objection to Lifting Stay
5/16/2012	CINF	OPPELT	Faxed to Judge Griffin - "No Objection to Lifting Stay"
5/23/2012	ORDR	OPPELT	Order Granting R.E. Loans, LLC's Motion for Telephonic Appearance
	MISC	OPPELT	R.E. Loans, LLC's Conditional Objection to Pacific Capital Bank, N.A.'s Request to Lift the Stay Order
5/25/2012	MOTN	HENDRICKSO	Pend Oreille Bonner Development, LLC's Motion for Telephonic Appearance
	MISC	HENDRICKSO	Fax cover: documents faxed to Judge Griffin
	ORDR	HENDRICKSO	Order Granting Pend Oreille Bonner Development, LLC's Motion For Telephonic Appearance
5/29/2012	NOTC	OPPELT	North Idaho Resorts' Notice of Intent to Participate by Telephone at Hearing on May 31, 2012
5/30/2012	OBJC	OPPELT	Objection to the Requested Appearance by Pend Oreille Bonner Development, LLC
5/31/2012	CTLG	OPPELT	Court Log- - From Idaho County - No CD

Date	Code	User	Judge	
5/31/2012	DCHH	OPPELT	Hearing result for Hearing Scheduled scheduled on 05/31/2012 10:00 AM: District Court Hearing Held Court Reporter: Keith Evans Number of Transcript Pages for this hearing estimated: Idaho County Court Richard L. Stacey/Anna E. Eberlin/John Layman, and Steven Wetzel Appearing Telephonically - Less Than 100 Pages	Michael J Griffin
6/7/2012	ORDR	CMOORE	Order Lifting Stay	Michael J Griffin
6/11/2012	MISC	HENDRICKSO	JV's Demand for Jury Trial	Michael J Griffin
6/15/2012		HENDRICKSO	Filing: K4 - Cross Claim (defendant v defendant or plaintiff v. plaintiff) This fee is in addition to any fee filed as a plaintiff to initiate the case or as a defendant appearing in the case Paid by: James Vernon & Weeks Receipt number: 0475330 Dated: 6/19/2012 Amount: \$14.00 (Check) For: North Idaho Resorts LLC, an Idaho limited liability (defendant)	Michael J Griffin
	ANSW	HENDRICKSO	North Idaho Resorts, LLC's Answer to First Pacific Capital Bank, N.A.'s Amended Complaint, Counter Claim and Cross Claim	Michael J Griffin
7/2/2012	MISC	OPPELT	Defendant JV LLC's Response to Plaintiff's Request for Admissions of Fact and Genuineness of Documents	Michael J Griffin
7/6/2012	MISC	OPPELT	Pacific Capital Bank, N.A.'s Reply to Counter Claim by North Idaho Resorts, LLC	Michael J Griffin
7/9/2012	NOTC	HENDRICKSO	Notice of Name Change	Michael J Griffin
	REPL	HENDRICKSO	Pacific Capital Bank, N.A.'s Reply to Counter Claim by JV, LLC	Michael J Griffin
7/20/2012	MISC	HENDRICKSO	Faxed copies of Notice of Name Change to Judge Griffin for review	Michael J Griffin
7/25/2012	NOSV	OPPELT	Notice Of Service	Michael J Griffin
	MISC	HENDRICKSO	*****END OF FILE #2*** BEGIN FILE #3*****	Michael J Griffin
8/9/2012	STIP	HENDRICKSO	Stipulation re: Priorities Between Pacific Capital Bank N.A. and R.E. Loans, LLC	Michael J Griffin
	APER	HENDRICKSO	Defendant: Grant, Frederick J Appearance John E. Miller	Michael J Griffin
	APER	HENDRICKSO	Defendant: Grant, Christine Appearance John E. Miller	Michael J Griffin
		HENDRICKSO	Filing: I1 - Initial Appearance by persons other than the plaintiff or petitioner Paid by: The Law Office of John E Miller Receipt number: 0478034 Dated: 8/14/2012 Amount: \$66.00 (Check) For: Grant, Christine (defendant) and Grant, Frederick J (defendant)	Michael J Griffin
	MISC	HENDRICKSO	Disclaimer	Michael J Griffin

Date	Code	User		Judge
8/9/2012	CESV	HENDRICKSO	Certificate Of Service of Disclaimer by Grants	Michael J Griffin
8/10/2012	MISC	HENDRICKSO	Document faxed to Judge Griffin	Michael J Griffin
8/15/2012	AFSV	HENDRICKSO	Affidavit Of Service - Joseph Hussich on 06-28-2012	Michael J Griffin
	REQU	HENDRICKSO	Request for Entry of Default	Michael J Griffin
	AFFD	HENDRICKSO	Affidaviti of John E. Miller in Support of Request for Entry of Default	Michael J Griffin
8/16/2012	REQU	HENDRICKSO	Request for Entry of Default	Michael J Griffin
	AFFD	HENDRICKSO	Affidavit of John E. Miller in Support of Request for Entry of Default	Michael J Griffin
	AFPB	HENDRICKSO	Affidavit Of Publication Pensco Trust Co. custodian f/b/a Barney Ng	Michael J Griffin
8/22/2012	MISC	HENDRICKSO	Fax cover - documents faxed to Judge for review	Michael J Griffin
	CINF	HENDRICKSO	paperwork is at Jo's desk in pending	Michael J Griffin
	MISC	HENDRICKSO	Documents faxed to Judge for review	Michael J Griffin
8/27/2012	STIP	HENDRICKSO	Stipulation re: Priorities Between Pacific Capital Bank N.A. and Dan S. Jacobson, Sage Holdings, LLC and Steven G. Lazar	Michael J Griffin
	STIP	HENDRICKSO	Stipulation re: Priorities Between Pacific Capital Bank, N.A. and Mountain West Bank	Michael J Griffin
	ORDR	HENDRICKSO	Order for Entry of Default (Dussich Joseph ONLY)	Michael J Griffin
	ORDR	HENDRICKSO	Order for Entry of Default	Michael J Griffin
8/29/2012	NOHG	HENDRICKSO	Notice of Heaing re: Plaintiff's Motion to Amend Caption and Reference to Plaintiff	Michael J Griffin
	HRSC	HENDRICKSO	Hearing Scheduled (Motion 09/20/2012 04:00 PM) Idaho County Court Attorney J. Miller by telephone	Michael J Griffin
	NOWD	HENDRICKSO	Notice of Withdrawal and Substitution	Michael J Griffin
	APER	HENDRICKSO	Defendant: Reeves, Ann B Appearance John R Layman	Michael J Griffin
	APER	HENDRICKSO	Defendant: Reeves, Ann B Appearance Bradley C Crockett	Michael J Griffin
	APER	HENDRICKSO	Defendant: Reeves, Charles W Appearance John R Layman	Michael J Griffin
	APER	HENDRICKSO	Defendant: Reeves, Charles W Appearance Bradley C Crockett	Michael J Griffin
	APER	HENDRICKSO	Defendant: Toyon Investments LLC Appearance Bradley C Crockett	Michael J Griffin
	APER	HENDRICKSO	Defendant: Montaheno Investments LLC, a Nevada limited liabil Appearance Bradley C Crockett	Michael J Griffin
	APER	HENDRICKSO	Defendant: Pend Oreille Bonner Development Holdings, Inc. Appearance Bradley C Crockett	Michael J Griffin

Date	Code	User	Judge
8/29/2012	APER	HENDRICKSO	Defendant: Pend Oreille Bonner Development, LLC Appearance Bradley C Crockett
	MOTN	HENDRICKSO	Plaintiff's Motion to Amend the Caption and Reference to Plaintiff in the First Amended Complaint by Virtue of Name Change
	AFFD	HENDRICKSO	Affidavit of Counsel in Support of Plaintiff's Motion to Amend The Caption and Reference to Plaintiff in the First Amended Complaint by Virtue of Name Change
	NOHG	HENDRICKSO	Notice of Hearing re: Plaintiff's Motion To Amend Caption and Reference to Plaintiff
	HRSC	HENDRICKSO	Hearing Scheduled (Motion 09/20/2012 04:00 PM) Plaintiff's Motion to Amend Caption and Reference to Plaintiff
	MOTN	HENDRICKSO	Plaintiff's Motion To Allow the Parties to Appear Telephonically at Plaintiff's Motion Calendared for Hearing on September 20, 2012 4:00 pm
8/30/2012	ORDR	HENDRICKSO	Order Granting Plaintiffs Motion To Appear Telephonically at its Motions Calendared for Hearing on September 20, 2012 at 4:00 pm
	MOTN	HENDRICKSO	Plaintiff's Motin To Strike Demand for Jury Trial by Counterclaimant, JV. LLC
	MEMO	HENDRICKSO	Memorandum in Support of Plaintiff;s Motion To Strike Demand for Jury Trial By Counterclaimant, JV LLC
	NOHG	HENDRICKSO	Notice of Hearing re: Plaintiff's Motion to Strike Demand For Jury Trial
	HRSC	HENDRICKSO	Hearing Scheduled (Motion 09/20/2012 04:00 PM) Plaintiff's Motin to Strike Demand for Jury Trial
9/5/2012	NOTC	HENDRICKSO	North Idaho Resorts' Notice of Intent to Participate by Telephone in Hearing on September 20, 2012
9/12/2012	MISC	HENDRICKSO	Notice of Intent to Participate by phone faxed to Judge Griffin
9/13/2012	NOSV	OPPELT	Notice Of Service of Plaintiff's Response to North Idaho Resorts, LLC's First Set of Requests for Admissions
9/17/2012	HRVC	HENDRICKSO	Hearing result for Motion scheduled on 10/04/2012 08:30 AM: Hearing Vacated Plaintiff's Motin to Strike Demand for Jury Trial - by telephone
9/18/2012	NOHG	HENDRICKSO	Amended Notice of Hearing - (Changing from September 9, 2012) and JV, LLC's Consent to Plaintiff's Motions and JV, LLC's Withdrawal of Demand for Jury

Date	Code	User	Judge
9/18/2012	HRSC	HENDRICKSO	Hearing Scheduled (Motion 10/04/2012 08:30 AM) Plaintiff's Motin to Strike Demand for Jury Trial - by telephone
	HRSC	HENDRICKSO	Hearing Scheduled (Motion 10/04/2012 08:30 AM) Plaintiff's MotiOn to Strike Demand for Jury Trial - by telephone
	HRVC	HENDRICKSO	Hearing result for Motion scheduled on 09/20/2012 04:00 PM: Hearing Vacated Plaintiff's Motion to Amend Caption and Reference to Plaintiff
	HRSC	HENDRICKSO	Hearing Scheduled (Motion 10/04/2012 08:30 AM) Plaintiff's Motion to Amend Caption and Reference to Plaintiff
	HRVC	HENDRICKSO	Hearing result for Motion scheduled on 09/20/2012 04:00 PM: Hearing Vacated Idaho County Court Attorney J. Miller by telephone Attorney S. Wetzel by telephone
	HRSC	HENDRICKSO	Hearing Scheduled (Motion 10/04/2012 08:30 AM) Idaho County Court Attorney J. Miller by telephone Attorney S. Wetzel by telephone
9/19/2012	HRVC	HENDRICKSO	Hearing result for Motion scheduled on 09/20/2012 04:00 PM: Hearing Vacated Plaintiff's Motin to Strike Demand for Jury Trial
	NOTC	HENDRICKSO	Defendants Dan S. Jacobson, Sage HOldings, LLC and Steven G. Lazar's Notice of Non-Opposition re: October 4, 2012
	NOTC	HENDRICKSO	R.E. Loans, LLC's Notice of Non-Opposition [re: October 4, 2012, Hearings]
10/4/2012	WDRW	HENDRICKSO	Hearing result for Motion scheduled on 10/04/2012 08:30 AM: Withdrawn Plaintiff's Motion to Strike Demand for Jury Trial - by telephone
	GRNT	HENDRICKSO	Hearing result for Motion scheduled on 10/04/2012 08:30 AM: Motion Granted Plaintiff's Motion to Amend Caption and Reference to Plaintiff
	GRNT	HENDRICKSO	Hearing result for Motion scheduled on 10/04/2012 08:30 AM: Motion Granted Idaho County Court Attorney J. Miller by telephone Attorney S. Wetzel by telephone
10/10/2012	ORDR	OPPELT	Order Granting Motion to Strike Demand for Jury
10/17/2012	ORDR	OPPELT	Order Granting Motion to Amend the Caption and Reference to Plaintiff in the First Amended Complaint by Virtue of Name Change

Date	Code	User	Judge	
10/19/2012	DCHH	HENDRICKSO	Hearing result for Motion scheduled on 10/04/2012 08:30 AM: District Court Hearing Held - By Phone Grangeville Idaho Court Reporter: K. Evans Number of Transcript Pages for this hearing estimated: Plaintiff's Motion to Amend Caption and Reference to Plaintiff	Michael J Griffin
10/31/2012	REQU	JACKSON	Request from Judge's clerk for copy of 8-27-12 stipulation	Michael J Griffin
	CINF	JACKSON	Clerk Information - Copy of Stipulation sent to Judge's Clerk per request	Michael J Griffin
1/4/2013	ORDR	HENDRICKSO	Order Granting Second Motion to Amend the Caption and Reference to Plaintiff in the First Amended Complaint by Virtue of Name Change	Michael J Griffin
1/14/2013	MOTN	HENDRICKSO	Plaintiffs Motion to Allow the Parties to Appear Telephonically at Plaintiff's Motion Calendared for Hearing on January 31, 2013 at 10:30am	Michael J Griffin
	NOHG	HENDRICKSO	Notice of Hearing re: Plaintiff's Second Motion to Amend Caption and Reference to Plaintiff; and Notice of Trial Setting and Scheduling Conference	Michael J Griffin
	HRSC	HENDRICKSO	Hearing Scheduled (Motion 01/31/2013 10:30 PM) By telephone Second Motion to Amend Caption and Reference to Plaintiff	Michael J Griffin
	MOTN	HENDRICKSO	Plaintiff's Motion to Amend the Caption and Reference to Plaintiff in the First Amended Complaint by Virtue of Name Change	Michael J Griffin
	AFFD	HENDRICKSO	Affidavit of Counsel in Support of Plaintiff's Second Motion to Amend the Caption and Reference to Plaintiff in The First Amended Complaint by Virtue of Name Change	Michael J Griffin
1/16/2013	ORDR	HENDRICKSO	Order Granting Plaintiffs Motion to Appear Telephonically at its Motion s Calendared for Hearing on January 31, 2013 at 10:30am	Michael J Griffin
	NOTC	HENDRICKSO	R.E. Loans, LLC's Notice of Intenet to Appear by Telephone [January 31st, 2013 Hearings]	Michael J Griffin
1/23/2013	NOTC	HENDRICKSO	Defendants Dan S, Jacobson, Sage Holdings, LLC and Steven G. Lazar's Notice of Non0Opposition and Intent to Appear by Telephone - re: January 31, 2013 Hearing	Michael J Griffin
1/28/2013	RSPN	HENDRICKSO	Defendant North Idaho Resorts, LLC Response to Plaintiff's Motion to Amend the Caption and Reference to Plaintiff in the First Amended Complaint by Virtue of Name Change	Michael J Griffin
1/29/2013	MISC	HENDRICKSO	R.E. Loans, LLC's Notice of Non-Opposition [RE: January 31, 2013 Hearing]	Michael J Griffin

Date	Code	User		Judge
1/29/2013	NOTC	HENDRICKSO	Defendant North Idaho Resorts, LLC's Notice of Intent to Appear Telephonically	Michael J Griffin
1/31/2013	CTLG	OPPELT	Court Log- From Grangeville, Idaho	Michael J Griffin
	DCHH	OPPELT	Hearing result for Motion scheduled on 01/31/2013 10:30 PM: District Court Hearing Held Court Reporter: Keith Evans Number of Transcript Pages for this hearing estimated: Attorney J. Miller and Plaintiff's By telephone / Defendant Attorney Weeks by telephone - Less Than 100 Pages Second Motion to Amend Caption and Reference to Plaintiff	Michael J Griffin
2/4/2013	ORDR	OPPELT	Order Scheduling Case for Trial	Michael J Griffin
	HRSC	OPPELT	Hearing Scheduled (Court Trial - 3 Days 10/30/2013 09:00 AM) In Bonner County	Michael J Griffin
	HRSC	OPPELT	Hearing Scheduled (Pretrial Conference 10/08/2013 09:00 AM) In Idaho County	Michael J Griffin
2/12/2013	NOTC	HENDRICKSO	Notice of Change of Address - Attorney Anderson	Michael J Griffin
3/18/2013	APED	BOWERS	Application For Entry Of Default Judgment as to Defendant Pend Oreille Bonner Development, LLC	Michael J Griffin
	AFFD	BOWERS	Affidavit of Kim Von Disterlo in Support of Request for Entry of Default Judgment as to Defendant Pend Oreille Bonner Development, LLC	Michael J Griffin
3/20/2013	NOHG	HENDRICKSO	Notice of Hearing re: Plaintiff's Motion for Partial Summary Judgments as to Defendants North Idaho Resorts, LLC and JV, LLC: RE Priority	Michael J Griffin
	HRSC	HENDRICKSO	Hearing Scheduled (Motion for Partial Summary Judgment 04/19/2013 11:00 AM)	Michael J Griffin
	MOTN	HENDRICKSO	Motion for Judgment on the Pleadings (IRCP 12(c)) by Defendant JV, LLC and Notice of Hearing	Michael J Griffin
	HRSC	HENDRICKSO	Hearing Scheduled (Motion 04/19/2013 11:00 AM) Bonner County	Michael J Griffin
	MEMO	HENDRICKSO	JV, LLC's Memorandum - In Support of its Motion for Judgment on the Pleadings (IRCP 12(c))	Michael J Griffin
3/21/2013	NOWD	BOWERS	Notice Of Withdrawal of Hearing Re Plaintiff's Motions for Partial Summary Judgments as to Defendants North Idaho Resorts, LLC and JV, LLC: Re Priority	Michael J Griffin
3/22/2013	NOFH	BOWERS	Notice Of Hearing Re Plaintiff's Motions for Partial Summary Judgments as to Defendants North Idaho Resorts, LLC and JV, LLC: Re Priority	Michael J Griffin

Date	Code	User	Judge
3/22/2013	HRSC	BOWERS	Hearing Scheduled (Motion for Partial Summary Judgment 04/19/2013 11:00 AM) Plaintiff's Motions for Partial Summary Judgments as to Defendants North Idaho Resorts, LLC and JV, LLC Re: Priority
	HRVC	BOWERS	Hearing result for Motion for Partial Summary Judgment scheduled on 04/19/2013 11:00 AM: Hearing Vacated Plaintiff's Motions for Partial Summary Judgments as to Defendants North Idaho Resorts, LLC and JV, LLC Re: Priority
4/1/2013	ORDR	JACKSON	Order for Default Judgment and Decree of Foreclosure as to Defendant Pend Oreille Bonner Development, LLC
4/3/2013	MISC	JACKSON	Notice of Compliance / Disclosure of Plaintiff's Expert Witnesses
4/4/2013	MEMO	JACKSON	JV, LLC'S Supplemental Memorandum - In Support of Its Motion for Judgment on the Pleadings and Correction to Paragraph VII, 5 and Waiver of Oral Argument
	MISC	JACKSON	Supplemental Plaintiff's Expert Witness Disclosure
4/8/2013	MEMO	BOWERS	Memorandum in Support of Plaintiff's Opposition to Motion for Judgment on the Pleadings by JV, LLC
	AFFD	BOWERS	Affidavit of John E. Miller in Support of Opposition to JV, LLC's Motion for Judgment on the Pleadings
	MOTN	BOWERS	Plaintiff's Motion to Allow the Parties to Appear Telephonically at JV, LLC's Motions Calendared for Hearing on April 19, 2013 at 11:00 AM
4/9/2013	CDIS	BOWERS	Civil Disposition entered for: Pend Oreille Bonner Development, LLC, Defendant; Lazar, Steven G, Defendant; Union Bank, National Association, Plaintiff. Filing date: 4/9/2013
	NOTC	JACKSON	North Idaho Resort's Notice of Intent to Participate by Telephone in Hearings on April 19, 2013
4/10/2013	NOTC	BOWERS	Defendants Dan S. Jacobson, Sage Holdings, LLC, and Steven G. Lazar's Notice of Intent to Appear by Telephone Re: April 19, 2013 Hearing
4/12/2013	AFFD	JACKSON	Affidavit of Terrilyn S. Baron in Support of Opposition to JV, LLC's Motion for Judgment on the Pleadings (hrg 4-19)
	MISC	JACKSON	FAX sheet
4/15/2013	MISC	JACKSON	FAX sheet - fax'd Order Granting Plaintiff's Motion re hearing
	MISC	HENDRICKSO	R.E. Loans, LLC's Notice of Intent to Appear by Telephone



Date	Code	User	Judge	
4/16/2013	ORDR	HENDRICKSO	Order Granting Plaintiffs Motion to Appear Telephonically at JV,LLV's Motion Calendared for Hearing on April 19th, 2012 at 11:00 am	Michael J Griffin
4/18/2013	REPL	HENDRICKSO	JV, LLC's Reply to Plaintiff's Memorandum in Support of Plaintiff's Opposition to Motion for Judgment on the Pleadings by JV, LLC and.....	Michael J Griffin
	MOTN	HENDRICKSO	JV, LLC's Motion to Strike Bank's Memorandum and the Supporting Affidavit of Terrilyn S. Baron	Michael J Griffin
	MISC	HENDRICKSO	****END OF FILE #3****BEGIN FILE #4*****	Michael J Griffin
4/19/2013	CTLG	OPPELT	Court Log- From Idaho County - No CD Received	Michael J Griffin
	DCHH	OPPELT	Hearing result for Motion scheduled on 04/19/2013 11:00 AM: District Court Hearing Held Court Reporter: Keith Evans Number of Transcript Pages for this hearing estimated: Less Than 100 Pages	Michael J Griffin
	DCHH	OPPELT	Hearing result for Motion for Partial Summary Judgment scheduled on 04/19/2013 11:00 AM: District Court Hearing Held Court Reporter: Keith Evans Number of Transcript Pages for this hearing estimated: Attorney Miller by phone - Less Than 100 Pages	Michael J Griffin
4/26/2013	ANSW	HENDRICKSO	R.E. Loans, LLC's Answer to JV LLC's Cross-Claim	Michael J Griffin
4/29/2013		HENDRICKSO	Filing: K4 - Cross Claim (defendant v defendant or plaintiff v. plaintiff) This fee is in addition to any fee filed as a plaintiff to initiate the case or as a defendant appearing in the case Paid by: Meuleman Mollerup Receipt number: 0489878 Dated: 5/2/2013 Amount: \$14.00 (Check) For: R.E. Loans LLC, a California Limited Liability Co (defendant)	Michael J Griffin
	ANSW	HENDRICKSO	R.E. Loans, LLC's Answer to North Idaho Resorts, LLC's Cross-Claim and Cross-Claim Against North Idaho Resorts, LLC	Michael J Griffin
5/1/2013	ORDR	HUMRICH	Order Denying Motion for Judgment on the Pleadings	Michael J Griffin
5/2/2013	APPL	HENDRICKSO	Application for Entry of Default Judgment as to the Defaulted Defendants	Michael J Griffin
5/7/2013	NOSV	HENDRICKSO	Notice of Service of Discovery	Michael J Griffin
5/9/2013	ORDR	HENDRICKSO	Order for Default Judgment and Decree of Foreclosure as to Other Defeaulted Defendants (6 pgs)	Michael J Griffin
5/14/2013	WITN	HENDRICKSO	R.E. Loans, LLC's Expert Witness Disclosure	Michael J Griffin
5/15/2013	NOSV	HENDRICKSO	Notice Of Service of Discovery	Michael J Griffin

Date	Code	User	Judge
5/17/2013	WITN	HENDRICKSO	North Idaho Resport's Expert Witness Disclosure Michael J Griffin
5/28/2013	STIP	HENDRICKSO	Stipulation re: Priorities Between Union Bank, N.A. and ACI Northwest, Inc Michael J Griffin
5/30/2013	NOTC	HENDRICKSO	Notice of Change of Address - Attorney J. E. Miller Michael J Griffin
6/6/2013	NOHG	HENDRICKSO	Notice of Hearing re: Plaintiff's Motion for Partial Summary Judgments as to Defendants North Idaho Resorts, LLC and JV, LLC: RE Priority Michael J Griffin
	HRSC	HENDRICKSO	Hearing Scheduled (Motion for Partial Summary Judgment 07/08/2013 09:00 AM) Attorney J. Miller by phone Michael J Griffin
6/11/2013	NOHG	HENDRICKSO	Amended Notice of Hearing re: Plaintiff's Motion for Partial Summary Judgments as to Defendants North Idaho Resorts, LLC and JV, LLC: Re: Priority Michael J Griffin
	CONT	HENDRICKSO	Continued (Motion for Partial Summary Judgment 07/29/2013 09:30 AM) Attorney J. Miller by phone Michael J Griffin
6/17/2013	NOTC	HENDRICKSO	JV, LLC's Notice of Serving Answers to R.E. Loans, LLC's First Set of Discovery Requests to JV, LLC Michael J Griffin
6/24/2013	NOSV	HENDRICKSO	Notice of Service Defendant North Idaho Resorts, LLC's Answer and Responses to R.E. Loans, LLC's First Set of Discovery Request to North Idaho Resorts, LLC Michael J Griffin
	MISC	HENDRICKSO	*****END OF FILE #4*****BEGIN FILE #5**** EXPANDO #2 Michael J Griffin
7/1/2013	MOTN	OPPELT	Plaintiff's Motions for Partial Summary Judgments as to Defendants North Idaho Resorts, LLC and JV, LLC: Re Reformation and Priority Michael J Griffin
	MEMO	OPPELT	Plaintiff's Memorandum in Support of Motions for Partial Summary Judgments as to Defendants North Idaho Resorts, LLC and JV, LLC: Re Reformation and Priority Michael J Griffin
	AFFD	OPPELT	Affidavit of John E. Miller in Support of Motions for Partial Summary Judgment Re Reformation and Priority Michael J Griffin
	AFFD	OPPELT	Affidavit of Terrilyn S. Baron in Support of Motions for Partial Summary Judgments as to Defendants North Idaho Resorts, LLC and JV, LLC: Re Reformation and Priority Michael J Griffin
	AFFD	OPPELT	Affidavit of Rick Lynskey in Support of Motions for Partial Summary Judgments as to Defendants North Idaho Resorts, LLC and JV, LLC: Re Reformation and Priority Michael J Griffin
	AFFD	OPPELT	Supplemental Affidavit of Rick Lynskey in Support of Motions for Partial Summary Judgments as to Defendants North Idaho Resorts, LLC and JV, LLC: Re Reformation and Priority Michael J Griffin

Date	Code	User		Judge
7/1/2013	REQU	OPPELT	Request for Judicial Notice (Idaho Rules of Evidence, Rule 201(b)(d))	Michael J Griffin
	MOTN	OPPELT	Plaintiffs Motion to Allow the Parties to Appear Telephonically at Plaintiff's Motions for Partial Summary Judgment Calendared for Hearing on July 29, 2013 at 9:30 AM	Michael J Griffin
7/2/2013	MOTN	OPPELT	Corrected Plaintiffs Motion to Allow the Parties to Appear Telephonically at Plaintiff's Motions for Partial Summary Judgment Calendared for Hearing on July 29, 2013 at 9:30 AM	Michael J Griffin
	ORDR	OPPELT	Order Granting Plaintiffs Motion to Appear Telephonically at Plaintiff's Motions for Partial Summary Judgment Calendared for Hearing on July 29, 2013 at 9:30 AM	Michael J Griffin
7/15/2013	MISC	HENDRICKSO	R.E. Loans, LLC's Amended Cross-Claim Against North Idaho Resorts, LLC	Michael J Griffin
	MOTN	HENDRICKSO	Defendant North Idaho Resport, LLC's Motion for Enlargement of Time	Michael J Griffin
	AFFD	HENDRICKSO	JV, LLC's Affidavit of James W. Berry in Opposition to Plaintiff's Motion for Partial Summary Judgment	Michael J Griffin
	MEMO	HENDRICKSO	JV, LLC's Memorandum in Opposition to Plaintiff's Motion for Partial Summary Judgment	Michael J Griffin
	MEMO	HENDRICKSO	Defendant North Idaho Resort, LLC's Memorandum in Opposition to Plaintiff's Motion for Summary Judgment	Michael J Griffin
	AFFD	HENDRICKSO	Affidavit of Weeks in Opposition to Plaintiff's Motion for Summary Judgment	Michael J Griffin
	MISC	HENDRICKSO	*****END OF FILE #5*****BEGIN FILE #6*****	Michael J Griffin
7/16/2013	AFFD	HENDRICKSO	Affidavit of Richard Vilelli in Opposition to Plaintiff's Motion for Summary Judgment	Michael J Griffin
7/18/2013	MOTN	OPPELT	R.E. Loans, LLC's Motion for Partial Summary Judgment Against North Idaho Resorts, LLC	Michael J Griffin
	MEMO	OPPELT	R.E. Loans, LLC's Memorandum in Support of Motion for Partial Summary Judgment	Michael J Griffin
	AFFD	OPPELT	Affidavit of Chad M. Nicholson in Support of R.E. Loans, LLC's Motion for Partial Summary Judgment Against North Idaho Resorts, LLC	Michael J Griffin
	NOTC	OPPELT	R.E. Loans, LLC's Request for Judicial Notice Pursuant to I.R.E. 201(b)	Michael J Griffin
	NOFH	OPPELT	Notice Of Telephonic Hearing on R.E. Loans, LLC's Motion for Partial Summary Judgment Against North Idaho Resorts, LLC	Michael J Griffin
	HRSC	OPPELT	Hearing Scheduled (Motion for Partial Summary Judgment 08/26/2013 03:00 PM) In Idaho County - Telephonic	Michael J Griffin

Date	Code	User	Judge
7/19/2013	NOTC	BOWERS	Defendants Dan S. Jacobson, Sage Holdings, LLC, and Steven G. Lazar's Notice of Intent to Appear by Telephone
7/23/2013	REPL	BOWERS	Plaintiff's Reply Memorandum to Defendant JV, LLC's Opposition to Plaintiff's Motion for Partial Summary Judgment
7/24/2013	REPL	BOWERS	Plaintiff's Reply Memorandum to Defendant North Idaho Resorts, LLC's Opposition to Plaintiff's Motion for Partial Summary Judgment
	NOTC	BOWERS	R.E. Loans, LLC's Notice of Intent to Appear Telephonically
7/25/2013	NOTC	OPPELT	Defendant's North Idaho Resort. LLC's Notice of Intent to Appear by Phone
	MISC	HENDRICKSO	*****END OF FILE #6***BEGIN FILE #7*****
7/29/2013	DCHH	HENDRICKSO	Hearing result for Motion for Partial Summary Judgment scheduled on 07/29/2013 09:30 AM: District Court Hearing Held Court Reporter: Keith Evans Number of Transcript Pages for this hearing estimated: (To be heard in Idaho County) - Susan Weeks telephonic
8/7/2013	NOSV	HENDRICKSO	Notice of Service of Plaintiff's First Set of Interrogatories and Requests for Production to North Idaho Resorts
8/12/2013	CERT	HENDRICKSO	Amended Certificate of Service re: Defendant North Idaho Resort, LLC's Memorandum in Opposition to RE Loans Motion for Partial Summary Judgment
	NOSV	HENDRICKSO	Notice of Service of Plaintiff's First Set of Interrogatories and Requests for Production to JV, LLC
	AFFD	HENDRICKSO	James W. Berry's Affidavit in Opposition to R.E. Loans's Motion for Partial Summary Judgment
	MEMO	HENDRICKSO	Defendant North Idaho Resort, LLC's Memorandum in Opposition to R.E. Loan's Motion for Partial Summary Judgment
8/13/2013	NOSV	HENDRICKSO	Notice of Service of Plaintiff's Second Set of Interrogatories and Requests for Production to JV, LLC
8/20/2013	NOTC	HENDRICKSO	Notice Vacating Hearing on R.E. Loans, LLC's Motion for Partial Summary Judgment Against North Idaho Resorts, LLC
	STIP	HENDRICKSO	Stipulation as to Claims of North Idaho Resorts, LLC Against R.E. Loans, LLC
	MISC	HENDRICKSO	R.E. Loans, LLC Disclaimer of Interest In Trestle Creek

Date	Code	User	Judge
8/22/2013	HRVC	HENDRICKSO	Hearing result for Motion for Partial Summary Judgment scheduled on 08/26/2013 03:00 PM: Hearing Vacated In Idaho County - Telephonic
	HRVC	HENDRICKSO	Hearing result for Motion for Partial Summary Judgment scheduled on 08/26/2013 03:00 PM: Hearing Vacated In Idaho County - Telephonic - Per Judge Griffin by phone 8-22-2013 / 924am
8/28/2013	MEMO	HENDRICKSO	Memorandum on Partial Summary Judgment RE JV, LLC
	ORDR	HENDRICKSO	Order Granting Partial Summary Judgment RE JV, LLC
	MEMO	HENDRICKSO	Memorandum on Partial Summary Judgment RE NIR
	ORDR	HENDRICKSO	Order Granting Partial Summary Judgment RE NIR in Part
	REQU	HENDRICKSO	JV, LLC's Request to Charles Reeves - For Docuemtns re: His Deposition of August 19, 13
9/3/2013	MISC	HENDRICKSO	M&M Court Reporting Service, Inc re: Deponent: James W. Berry
	MISC	HENDRICKSO	M&M Court Reporting Service, Inc re: Deponent: Gary A. Finney, Esq.
9/5/2013	MISC	HENDRICKSO	M&M Court Reporting Service, Inc re: Deponent: Charles Reeves
9/11/2013	STIP	HENDRICKSO	Stipulation as to Claims of JV, LLC Against R.E. Loans, LLC
	MISC	HENDRICKSO	M&M Court Reporting Service, Inc re: Deponent Richard A. Villelli
9/16/2013		BRACKETT	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: North Idaho Title Receipt number: 0496919 Dated: 9/16/2013 Amount: \$22.00 (Check)
		BRACKETT	Miscellaneous Payment: For Certifying The Same Additional Fee For Certificate And Seal Paid by: North Idaho Title Receipt number: 0496919 Dated: 9/16/2013 Amount: \$6.00 (Check)
9/18/2013		BOWERS	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Bonner Comm Golf & Recreation Receipt number: 0497073 Dated: 9/18/2013 Amount: \$10.00 (Check)
9/19/2013	REQU	HENDRICKSO	R.E. Loans, LLC's Request for Documents form Deponent Clarkes Reeves [Re: August 19, 2013 Deposition]
	MOTN	HENDRICKSO	JV, LLC's Motion to Alter and Amend Order Granting Partial Summary Judgment RE: JV, LLC, and Motion to Reconsider
9/27/2013	STIP	HENDRICKSO	Stipulation to Continue Trial

Date	Code	User	Judge	
9/30/2013	ORDR	HENDRICKSO	Order to Continue Trial - Granted	Michael J Griffin
	CONT	HENDRICKSO	Hearing result for Court Trial - 3 Days scheduled on 10/30/2013 09:00 AM: Continued In Bonner County - By Stipulated Order	Michael J Griffin
	MISC	HENDRICKSO	Plaintiff's Preliminary Opposition to Motion to Alter and Amend Order Granting Partial Summary Judgment and Motio to Reconsider by JV, LLC	Michael J Griffin
	CINF	HENDRICKSO	At the time the above Plaintiff's Preliminary Opposition was file, no notice of hearing filed. waiting for dec court calendar. email to Jane (Judge Griffin's clerk) to advise. I will contact her again on Monday 10-7	Michael J Griffin
10/1/2013	HRVC	HENDRICKSO	Hearing result for Pretrial Conference scheduled on 10/08/2013 09:00 AM: Hearing Vacated In Idaho County - Per Judge Griffin	Michael J Griffin
10/9/2013	HRSC	HENDRICKSO	Hearing Scheduled (Motion 12/20/2013 10:30 AM) Re: JV, LLC's Motion to Alter/Reconsider	Michael J Griffin
10/16/2013	NOSV	HENDRICKSO	Notice of Service of Defendant North Idaho Resorts, LLC's Answer and Responses to Plaintiff's First Set of Interrogatoeis and Requests for Production of Documents to North Idaho Resports, LLC	Michael J Griffin
	RSPN	HENDRICKSO	Plaintiff's Response to Defendant's Objection and Reply in Support of Motion for Leave to Amend Complaint and Add Defendant's	Michael J Griffin
10/25/2013	NOSV	HENDRICKSO	JV, LLC's Notice of Serving Answers to Union Bank's First and Second Set of Discovery Requests to JV, LLC	Michael J Griffin
11/4/2013	MISC	HENDRICKSO	M&M Court Reporting Service, Inc Deponent: Charles Reeves	Michael J Griffin
	MISC	HENDRICKSO	M&M Coursrt Reporting Service, Inc Deponent: Richard A. Villelli	Michael J Griffin
11/21/2013	RQTS	HENDRICKSO	Request For Trial Setting	Michael J Griffin
11/27/2013	NOHG	HENDRICKSO	Second Amended Notice of Hearing on Motion to Enter Judgment	Michael J Griffin
12/2/2013	HRSC	HENDRICKSO	Hearing Scheduled (Hearing Scheduled 12/06/2013 11:00 AM) Telephone Conference	Michael J Griffin
		HENDRICKSO	Notice Of Hearing	Michael J Griffin
	RQTS	HENDRICKSO	R.E. Loans, LLC's Response to Request for Trial Setting	Michael J Griffin
12/4/2013	CONT	HENDRICKSO	Continued (Hearing Scheduled 12/06/2013 01:00 PM) Telephone Conference - Attorney's to contact court	Michael J Griffin
		HENDRICKSO	Amended Notice Of Hearing	Michael J Griffin

Date	Code	User	Judge
12/6/2013	DCHH	HENDRICKSO	Michael J Griffin
			Hearing result for Hearing Scheduled scheduled on 12/06/2013 01:00 PM: District Court Hearing Held Court Reporter: Keith Evans Number of Transcript Pages for this hearing estimated: Telephone Conference - Attorney's to contact court
12/9/2013	ORDR	HENDRICKSO	Michael J Griffin
			Order for Hearing re: Trial Setting
	ORDR	HENDRICKSO	Michael J Griffin
			Order for Hearing re: JV, LLC's Motion to Alter/Reconsider
	HRSC	HENDRICKSO	Michael J Griffin
			Hearing Scheduled (Hearing Scheduled 12/09/2013 10:30 AM) re: Trial Setting
	CONT	OPPELT	Michael J Griffin
			Hearing result for Hearing Scheduled scheduled on 12/09/2013 10:30 AM: Continued re: Trial Setting - To 12-20-13
12/12/2013	MISC	HENDRICKSO	Michael J Griffin
			Acknowledgment Pursuant to Rule 16(k)(7) IRCP Regarding Case Status/Mediation - Mediation did not result in a resolution of the case
12/13/2013	NOTC	HENDRICKSO	Michael J Griffin
			R.E. Loans, LLC's Notice re: Order for Hearing re: JV, LLC's Motion to Alter/Reconsider
12/16/2013	OBJC	HENDRICKSO	Michael J Griffin
			Plaintiff's Written Objections to Presented Evidence by JV, LLC
	MEMO	HENDRICKSO	Michael J Griffin
			Plaintiff's Memorandum in Opposition to Motin to Alter and Amend Order Granting Partial Summary Judgment and Motion to Reconsider by JV, LLC
12/20/2013	CMIN	RASOR	Michael J Griffin
			Court Minutes Hearing type: Motion Hearing date: 12/20/2013 Time: 10:17 am Courtroom: Court reporter: Minutes Clerk: Sandra Rasor Tape Number: 1
	DCHH	OPPELT	Michael J Griffin
			Hearing result for Motion scheduled on 12/20/2013 10:30 AM: District Court Hearing Held Court Reporter: None Number of Transcript Pages for this hearing estimated: Re: JV, LLC's Motion to Alter/Reconsider - More Than 100 Pages
1/3/2014	FFCL	HENDRICKSO	Michael J Griffin
			Amended Finding and Conclusions
	ORDR	HENDRICKSO	Michael J Griffin
			Order Affirming Partial Summary Judgment Re: JV, LLC
1/14/2014	HRSC	OPPELT	Michael J Griffin
			Hearing Scheduled (Court Trial - 5 Days 05/12/2014 09:00 AM) In Bonner County
		OPPELT	Michael J Griffin
			Amended Notice Of Trial
1/21/2014	NSSC	HENDRICKSO	Michael J Griffin
			Notice of Substitution of Handling Attorney

Date	Code	User		Judge
1/21/2014	APER	HENDRICKSO	Defendant: North Idaho Resorts LLC, an Idaho limited liability Appearance Susan P. Weeks	Michael J Griffin
1/23/2014	MOTN	HENDRICKSO	Plaintiff's Motion for Enlargement of Time for Filing of Affidavit in Support of Memorandum of Attorney's Fees and Costs as to Defendant JV, LLC	Michael J Griffin
	MEMO	HENDRICKSO	Plaintiff's Memorandum of Attorney's Fees and Costs as to Defendant JV, LLC	Michael J Griffin
1/24/2014	CINF	HENDRICKSO	Documents faxed to Judge Griffin	Michael J Griffin
1/30/2014	MOTN	HENDRICKSO	JV, LLC's Motion to Deny Plaintiff's Motion for Enlargement of Time, and JV, LLC's Objection and Motion to Disallow Plaintiff's Memorandum of Attorney's Fees and Costs as Related to JV, LLC	Michael J Griffin
2/7/2014	MEMO	HENDRICKSO	Plaintiff's Supplemental Memorandum of Attorney's Fees and Costs as to Defendant JV, LLC; and Reply to Opposition Submitted by JV, LLC	Michael J Griffin
	AFFD	HENDRICKSO	Affidavit of John E. Miller in Support of Plaintiff's Memorandum of Attorney's Fees and Costs as to Defendant JV, LLC	Michael J Griffin
2/18/2014	MOTN	OPPELT	JV, LLC's Motion to Deny Plaintiff's Supplemental Memorandum of Attorney's Fees and Costs as to Defendant, JV, LLC, and JV, LLC's Objection and Motion to Disallow Plaintiff's Supplemental Memorandum of Attorney's Fees and Costs as Related to JV, LLC	Michael J Griffin
2/20/2014	REPL	OPPELT	Plaintiff's Reply to Motion and Objection Submitted by JV, LLC on February 18, 2014 Request for Telephonic Hearing	Michael J Griffin
3/6/2014	NOFH	OPPELT	Notice Of Hearing	Michael J Griffin
	HRSC	OPPELT	Hearing Scheduled (Motion for Attorney fees and Costs 03/26/2014 09:00 AM) (Pacific Standard Time) - To be held in Idaho County	Michael J Griffin
3/7/2014	LETT	OPPELT	Letter From John E. Miller	Michael J Griffin
3/18/2014		KRAMES	Miscellaneous Payment: Tape/copy Time Fee Paid by: Finney, Finney & Finney Receipt number: 0004457 Dated: 3/18/2014 Amount: \$5.00 (Check)	Michael J Griffin
		KRAMES	Miscellaneous Payment: Court Tape Fee Paid by: Finney, Finney & Finney Receipt number: 0004457 Dated: 3/18/2014 Amount: \$1.25 (Check)	Michael J Griffin
		KRAMES	Miscellaneous Payment: Court Tape Sales Tax Paid by: Finney, Finney & Finney Receipt number: 0004457 Dated: 3/18/2014 Amount: \$.08 (Check)	Michael J Griffin



Date	Code	User	Judge
3/19/2014		HUMRICH	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Finney, Finney & Finney Receipt number: 0004569 Dated: 3/19/2014 Amount: \$3.00 (Check)
	MOTN	HENDRICKSO	JV, LLC's Motion to Compel the Union Bank Plaintiff to Produce Docuemtns, Motion to Vacate and Continue Trial, and Request for Expedited Telephone Hearing
3/20/2014	MOTN	HENDRICKSO	JV, LLC's Supplement to Motion to Compel the Union Bank Plaintiff to Produce Documents (The Court Record of the Hearing 12-20-2013)
3/26/2014	DCHH	HENDRICKSO	Hearing result for Motion for Attorney fees and Costs scheduled on 03/26/2014 09:00 AM: District Court Hearing Held Court Reporter: Keith Evans Number of Transcript Pages for this hearing estimated: (Pacific Standard Time) - To be held in Idaho County
3/27/2014	MEMO	HENDRICKSO	Plaintiff's Memorandum in Opposition to Motion to Compel and to Vacate and Continue Trial by JV, LLC; and Motion for Proitective Order
	AFFD	HENDRICKSO	Affidavit of John E. Miller in Support of Opposition to JV, LLC's Motion to Compel and Continue Trial; and in Support of Motion For Protection Order
	MISC	HENDRICKSO	Errata Attachment to Affidavit of John E. Miller in Support of Opposition to JV, LLC's Moton to Compel and Continue Trial; and in Support of Motion for Protective Order
4/3/2014	REQU	HENDRICKSO	Plaintiff's Request for Pretrial Conference
	WITN	HENDRICKSO	Supplemental Plaintiff's Expert Witness Disclosure
	CINF	HENDRICKSO	Plaintiff's Request for Pretrial Conference faxed to Judge for review
4/7/2014	NOTC	HENDRICKSO	IRCP 30(b)(6) Notice of Taking Deposition Duces Tecum of Union Bank
4/8/2014	OBJC	HENDRICKSO	Plaintiff's Objection to North Idaho Resorts, LLC's Notice of Taking Deposition Duces Tecum of Union Bank
4/9/2014	ANSW	HENDRICKSO	Defendants Dan S. Jacobson, Sage Holdings, LLC, and Steven G. Lazar's Answer to North Idaho Resorts, LLC's Cross-Claim
4/17/2014	ORDR	HENDRICKSO	Order re: Discovery

Date	Code	User	Judge
4/22/2014	DCHH	HENDRICKSO	District Court Hearing Held Court Reporter: Christy Gering Number of Transcript Pages for this hearing estimated:
	CTLG	HENDRICKSO	Court Log- Telephonic Final Pretrial Conference
4/28/2014	CERT	HENDRICKSO	Amended Certificate of Service re: Defendant North Idaho Resort, LLC's Witness List and Exhibits List
	EXHB	HENDRICKSO	Exhibit List (Defendant North Idaho Resort, LLC)
	WITN	HENDRICKSO	Witness List (Defendant North Idaho Resort, LLC)
4/29/2014	MEMO	HENDRICKSO	JV, LLC's Pre-Trial Memorandum Witnesses and Exhibits
4/30/2014	EXHB	HENDRICKSO	JV, LLC's Amended Exhibit List
	WITN	HENDRICKSO	Defendants Dan S. Jacobson, Sage Holdings, LLC and Steven G. Lazar's Designation of Witnesses and Exhibits
	MISC	OPPELT	*****Begin File No. 8*****
5/1/2014	MOTN	OPPELT	Plaintiff's Motion in Limine for Evidence Exclusion Order
	HRSC	OPPELT	Hearing Scheduled (Motion in Limine 05/12/2014 09:00 AM)
	EXHB	HENDRICKSO	Amendment to Mailing of JV, LLC's Exhibits
	LETT	HENDRICKSO	Letter from Court to all Parties
5/5/2014	MOTN	HENDRICKSO	Motion Approving Stipulation
	CINF	HENDRICKSO	Docuemnts sent to Judge Griffin re: Motion Approving Stipulation Order Approving Stipulation Order in jo's pending no sase Original Motion to file
		HUMRICH	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Featherston Law Firm, CHTD. Receipt number: 0007265 Dated: 5/5/2014 Amount: \$41.00 (Check)
5/6/2014	ORDR	HENDRICKSO	Order Approving Stipulation
5/7/2014	MISC	HENDRICKSO	Original deposition transcript for the depositions of Richard Vilelli of North Idaho Resors, LLC
	EXHB	HENDRICKSO	Plaintiff's Exhibit List
	NOTC	HENDRICKSO	IRCP 30(b)(6) Notice of Taking deposition DUCes Tecum of Union Bank

Date	Code	User	Judge
5/8/2014		HUMRICH	Filing: 11 - Initial Appearance by persons other than the plaintiff or petitioner Paid by: Featherston Law Firm, CHTD Receipt number: 0007549 Dated: 5/8/2014 Amount: \$66.00 (Check) For: Pensco Trust Co. (defendant)
	APER	HENDRICKSO	Defendant: Pensco Trust Co. Appearance Brent Featherston
	APER	HENDRICKSO	Special Appearance on Behalf of Defendant Pensco Trust Co., CUstodian FBO Barney NG
	MOTN	HENDRICKSO	Motion to Set Aside Default, Motion to Shorten Time and Notice of Hearing
	AFFD	HENDRICKSO	Affidavit of Counsel
	HRSC	HENDRICKSO	Hearing Scheduled (Motion to Set Aside Default 05/12/2014 09:00 AM) Defendant Pensco Trusts' Motion
	ANSW	HENDRICKSO	JV L.L.C. 'S Answer to North Idaho Resorts, LLC's Cross-Claim
	AFFD	HENDRICKSO	Affidavit of Barney NG
5/9/2014	OBJC	HENDRICKSO	JV LLC's Objection and Motionj to Set Aside the Court's Letter to Counsel, Dated April 30, 2014 and Motion to Reconsider
	REQU	HENDRICKSO	Request for Judicial Notice
5/12/2014	SUBP	HENDRICKSO	Trial Subpoena Duces Tecum - Rick Lynskey
	AFSV	HENDRICKSO	Affidavit Of Service - re: Trial Subpoena Duces Tecum served upon Rick Lynskey 5-08-2014
	REQU	HENDRICKSO	JV L.L.C. 'S Request for Clerk's Recording and Reporter's Typed Transcript of the District Court's Remarks and Rulings in Open Court on May 12, 2014 Prior to Actual Trial Commencement
	CMIN	AYERLE	Court Minutes Hearing type: Court Trial - Day 1 and Mtn Set Aside Default Hearing date: 5/12/2014 Time: 9:05 am Courtroom: Court reporter: Keith Evans Minutes Clerk: Susan Ayerle Tape Number: 1 PI Union Bank by Terrilyn Baron with John Miller Def North Idaho Resorts by Richard Villelli with Susan Weeks Brent Featherston for Def Pensco Trust

Date	Code	User	Judge	
5/12/2014	DCHH	OPPELT	Hearing result for Motion to Set Aside Default scheduled on 05/12/2014 09:00 AM: District Court Hearing Held Court Reporter: Keith Evans Number of Transcript Pages for this hearing estimated: Defendant Pensco Trusts' Motion - 375 Pages	Michael J Griffin
	DENY	OPPELT	Hearing result for Motion to Set Aside Default scheduled on 05/12/2014 09:00 AM: Motion Denied	Michael J Griffin
	HRVC	OPPELT	Hearing result for Motion in Limine scheduled on 05/12/2014 09:00 AM: Hearing Vacated - Not Addressed	Michael J Griffin
	CTST	OPPELT	Hearing result for Court Trial - 5 Days scheduled on 05/12/2014 09:00 AM: Court Trial Started (in Bonner County) Day 1	Michael J Griffin
	EXHB	OPPELT	Exhibit List - Norith Idaho Resort LLC's	Michael J Griffin
	EXHB	OPPELT	Exhibit List - Union Bank, N.A.	Michael J Griffin
	EXHB	OPPELT	Exhibit List - JV, LLC	Michael J Griffin
5/13/2014	CMIN	AYERLE	Court Minutes Hearing type: Court Trial - Day 2 Hearing date: 5/13/2014 Time: 9:01 am Courtroom: Court reporter: Keith Evans Minutes Clerk: Susan Ayerle Tape Number: 1 PI Union Bank by Terrilyn Baron with John Miller Def North Idaho Resorts by Richard Vilelli with Susan Weeks	Michael J Griffin
	DCHH	OPPELT	Hearing result for Court Trial (Day 2) scheduled on 05/13/2014 09:00 AM: District Court Hearing Held Court Reporter: Keith Evans Number of Transcript Pages for this hearing estimated: Day 2 - 375 Pages	Michael J Griffin
5/14/2014	CINF	HUMRICH	Clerk Information - Spoke w/ Tiffany @ Finney's regarding request for District Court transcript request. They have to go through court reporter	Michael J Griffin
6/3/2014	LETT	HENDRICKSO	Letter from Court to Parties	Michael J Griffin
	MISC	HENDRICKSO	Findings	Michael J Griffin
6/5/2014	RUDM	HENDRICKSO	Returned/undeliverable Mail - sent to correct address / (Findings) sent to Attorney J. Miller	Michael J Griffin

Date	Code	User	Judge
6/17/2014		HUMRICH	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Sandpoint Title Insurance Receipt number: 0009962 Dated: 6/17/2014 Amount: \$5.00 (Cash)
6/19/2014	NOTC	KRAMES	Notice Of Change Of Address (John E. Miller)
6/25/2014	JDMT	CMOORE	Judgment and Decree of Foreclosure as to all Defendants (8 pages)
7/15/2014	MINE	OPPELT	Minute Entry - Regarding Clock in Date of Judgment
	ORDN	HENDRICKSO	Order Denying Attorney Fee
7/16/2014	MOTN	HENDRICKSO	Plaintiff's Motion for Enlargement of Time for Filing of Affidavit in Support of Memorandum of Attorney's Fees and Costs as to Defendant North Idaho Resorts, LLC
	MEMO	HENDRICKSO	Plaintiff's Memorandum of Attorney's Fees and Costs as to Defendant North Idaho Resorts, LLC
7/17/2014	MEMO	HENDRICKSO	Plaintiff's Supplemental Memorandum of Attorney's Fees and Costs as to Defendant North Idaho Resorts, LLC
	AFFD	HENDRICKSO	Affidavit of John E. Miller in Support of Plaintiff's Memorandum of Attorney's Fees and Costs as to Defendant North Idaho Resorts, LLC
7/18/2014	NOTC	HENDRICKSO	Notice of Change of Firm Affiliation
7/21/2014	RUDM	HENDRICKSO	Returned/undeliverable Mail - Conformed copy for Attorney J. Miller - re sent to correct address
7/23/2014	CINF	HENDRICKSO	Plaintiff's Motion for Enlargement of Time, Memorand of Attorney's Fees and Order emailed to Judge Griffin conforming copies in JO's pending. Doc's to file
	ORDG	HENDRICKSO	Order for Enlargement of Time for Filing of Affidavit in Support of Memorandum of Attorney's Fees and Costs as to Defendant North Idaho Resorts, LLC
7/30/2014	MOTN	HENDRICKSO	Defendant North Idaho Resort, LLC's Motion for Enlargement of Time
	OBJC	HENDRICKSO	Objection to Memrandum of Attorney's Fees and Costs Requested By Union Bank Against North Idaho Resorts, LLC and Motion for Enlargement of Time
	MEMO	HENDRICKSO	Memorandum Supporting Objection to Memorandum of Attorney's Fees and Costs Requested by Union Bank Against North Idaho Resorts, LLC and Motion for Enlargement of Time

## ROA Report

Case: CV-2011-0000135 Current Judge: Idaho Supreme Court

MUFG Union Bank N.A. vs. Pend Oreille Bonner Development, LLC, et al.

Date	Code	User		Judge
8/5/2014	REPL	HENDRICKSO	Plaintiff's Reply to Objection Submitted by North Idaho Resorts, LLC to Plaintiff's Memorandum of Fees/Costs	Idaho Supreme Court
8/6/2014		HUMRICH	Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Weeks, Susan P. (attorney for North Idaho Resorts LLC, an Idaho limited liability) Receipt number: 0012834 Dated: 8/6/2014 Amount: \$129.00 (Check) For: North Idaho Resorts LLC, an Idaho limited liability (defendant)	Michael J Griffin
	BNDC	HUMRICH	Bond Posted - Cash (Receipt 12835 Dated 8/6/2014 for 100.00)	Michael J Griffin
	BNDC	HUMRICH	Bond Posted - Cash (Receipt 12836 Dated 8/6/2014 for 200.00)	Michael J Griffin
	APSC	HUMRICH	Appealed To The Supreme Court	Michael J Griffin
	NOTA	HUMRICH	NOTICE OF APPEAL (North Idaho Resort)	Michael J Griffin
	CHJG	HUMRICH	Change Assigned Judge	Idaho Supreme Court
8/8/2014		HUMRICH	Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Finney, Finney & Finney, PA Receipt number: 0012981 Dated: 8/8/2014 Amount: \$129.00 (Check) For: JV L.L.C. (defendant)	Michael J Griffin
	BNDC	HUMRICH	Bond Posted - Cash (Receipt 12982 Dated 8/8/2014 for 100.00)	Michael J Griffin
	BNDC	HUMRICH	Bond Posted - Cash (Receipt 12984 Dated 8/8/2014 for 200.00)	Michael J Griffin
	NOTA	HUMRICH	NOTICE OF APPEAL - (JV LLC)	Idaho Supreme Court
8/13/2014	NOHG	HENDRICKSO	Notice Of Hearing re: Plaintiff's Motion for Attorney Fees and Costs as to Defendant North Idaho Resorts, LLC and all Objection to be heard telephonically on September 8, 2014 08:30am	Idaho Supreme Court
	HRSC	HENDRICKSO	Hearing Scheduled (Motion for Attorney fees and Costs 09/08/2014 08:30 AM) Plaintiff's Motion for Attorney Fees and Costs as to Defendant North Idaho Resorts, LLC and all objections will be heard telephonically	Michael J Griffin
8/26/2014	NOTA	HUMRICH	First Amended Notice of Appeal - North Idaho Resorts, Inc.	Idaho Supreme Court
8/27/2014	STIP	HENDRICKSO	Stipulation to Continue Hearing	Idaho Supreme Court
9/5/2014	ORDR	BOWERS	Order to Continue Plaintiff's Motion for Attorney's Fees and Costs as to Defendant North Idaho Resorts, LLC	Michael J Griffin

Date	Code	User		Judge
9/5/2014	CONT	BOWERS	Hearing result for Motion for Attorney fees and Costs scheduled on 09/08/2014 08:30 AM: Continued Plaintiff's Motion for Attorney Fees and Costs as to Defendant North Idaho Resorts, LLC and all objections will be heard telephonically	Michael J Griffin
9/8/2014	CCOA	HUMRICH	Clerk's Certificate Of Appeal	Idaho Supreme Court
9/9/2014	MOTN	HENDRICKSO	Plaintiff's Third Motion to Amend the Caption and Reference to Plaintiff in the First Amended Complaint by Virtue of Name	Idaho Supreme Court
	AFFD	HENDRICKSO	Affidavit of Counsel in Support of Plaintiff's Third Motion to Amend the Caption and Reference to Plaintiff in The First Amended Complaint and Subsequent Judgment by Virtue of Name Change	Idaho Supreme Court
	NOHG	HENDRICKSO	Notice of Hearing re: Plaintiff's Third Motion to Amend Caption and Reference to Plaintiff	Idaho Supreme Court
	HRSC	HENDRICKSO	Hearing Scheduled (Motion 09/29/2014 02:30 PM) Plaintiff's Thrid Motion to Amend Caption and Reference to Plaintiff	Michael J Griffin
	NOHG	HENDRICKSO	Corrected Notice of Hearing re: Plaintiff's Third Motion to Amend Caption and Reference to Plaintiff	Idaho Supreme Court
9/10/2014	ORDG	HENDRICKSO	Order Granting Plaintiffs Request for All Interested Parties to Appear Telephonically at its Motion Calendared for Hearing on September 29, 2014 230pm	Idaho Supreme Court
	RUDM	HENDRICKSO	Returned/undeliverable Mail - Order dated 9-10-14 for Attorney Anderson - resent to the correct address	Idaho Supreme Court
9/12/2014	NOTC	HENDRICKSO	Defendant North Idaho Resort's Notice of No Objection to Plaintiff's Third Motion to Amend the Caption and Reference to Plaintiff in the First Amended Complaint by Virtue of Name Change	Idaho Supreme Court
9/16/2014	MISC	HENDRICKSO	Fax cover sheet from Attorney Miller to all parties re: Hearing set for Septmeber 29, 2014	Idaho Supreme Court
9/17/2014	SCDF	HUMRICH	Supreme Court Document Filed- "ORDER CONDITIONALLY DISMISSING APPEAL"; rec'd via email from ISC	Idaho Supreme Court
9/19/2014	JDMT	HENDRICKSO	Summary Judgment as to JV, LLC Rule 54(b) Certificate	Idaho Supreme Court
	JDMT	HENDRICKSO	Judgment and Decree of Foreclosure as to North Idaho Resorts, LLC Rule 54(b) Certificate	Idaho Supreme Court
9/23/2014	OBJC	BOWERS	JV L.L.C.'s Objection to PIAintiff's Third Motion to Amend Caption and Reference To Plaintiff Based on District Court Lack of Jurisdiction	Idaho Supreme Court
9/29/2014	STMT	HENDRICKSO	Statement of No Objection	Idaho Supreme Court

Date	Code	User	Judge
9/29/2014	DCHH	HENDRICKSO	Hearing result for Motion scheduled on 09/29/2014 02:30 PM: District Court Hearing Held Court Reporter: Keith Evans Number of Transcript Pages for this hearing estimated: Parties to Appear Telephonically Plaintiff's Thrid Motion to Amend Caption and Reference to Plaintiff
	GRNT	HENDRICKSO	Hearing result for Motion scheduled on 09/29/2014 02:30 PM: Motion Granted Parties to Appear Telephonically Plaintiff's Thrid Motion to Amend Caption and Reference to Plaintiff
10/3/2014	NOFH	OPPELT	Notice Of Hearing
	HRSC	OPPELT	Hearing Scheduled (Motion for Attorney fees and Costs 10/20/2014 09:45 AM) Telephonic in Idaho County.
10/20/2014	DCHH	HENDRICKSO	Hearing result for Motion for Attorney fees and Costs scheduled on 10/20/2014 09:45 AM: District Court Hearing Held Court Reporter: none Number of Transcript Pages for this hearing estimated: Telephonic in Idaho County.
10/24/2014	ORDR	OPPELT	Order Denying Attorney Fees
	MISC	OPPELT	Findings
10/27/2014	SCDF	HUMRICH	Supreme Court Document Filed- "SECOND ORDER CONDITIONALLY DISMISSING APPEAL"
	JDMT	HENDRICKSO	Final Judgment as to JV, LLC Rule 54(b) Certificate
	CDIS	HENDRICKSO	Civil Disposition entered for: JV L.L.C., Defendant; Union Bank, National Association, Plaintiff. Filing date: 10/27/2014
10/31/2014	RUDM	OPPELT	Returned/undeliverable Mail - Findings and Order Denying Attorney Fees Sent to John Miller - Resent to Corrected Address on 11-4-14
11/3/2014		HUMRICH	Miscellaneous Payment: For Comparing And Conforming A Prepared Record, Per Page Paid by: Finney & Finney Receipt number: 0017476 Dated: 11/3/2014 Amount: \$2.00 (Check)
		HUMRICH	Miscellaneous Payment: For Certifying The Same Additional Fee For Certificate And Seal Paid by: Finney & Finney Receipt number: 0017476 Dated: 11/3/2014 Amount: \$1.00 (Check)
11/5/2014	NOTC	HENDRICKSO	JV's Notice of Obtaining Final Judgment from the District Court
11/10/2014	SCDF	HUMRICH	Supreme Court Document Filed- "JV's Notice of Obtaining Final Judgment from the District Court"; rec'd via email



Date	Code	User	Judge
11/10/2014	MISC	HUMRICH	Docket #42479-2014 - Clerk's Records due 1/12/2015
	MISC	HUMRICH	*****Begin File No. 9*****
11/17/2014	NOTA	HUMRICH	AMENDED NOTICE OF APPEAL
12/3/2014	ORDG	HENDRICKSO	Order Granting Third Motion to Amend the Caption and Reference to Plaintiff in the First Amended Complaint and Judgment by Virtue of Name Change
12/4/2014	JDMT	HENDRICKSO	Final Judgment as to Pend Oreille Bonner Development, LLC Rule 54(b) Certificate
12/5/2014	REQU	HENDRICKSO	Plaintiff's Request for Issuance of Rule 54(b) Certificate
12/8/2014	RUDM	HENDRICKSO	Returned/undeliverable Mail - re-sent to the correct address
12/11/2014	SCDF	HUMRICH	Supreme Court Document Filed- Amended Notice of Appeal (Due date remains for 1/12/2015)
12/19/2014	APPL	HENDRICKSO	Application and Affidavit for Writ of Execution -
	WRIT	HENDRICKSO	Writ of Execution - Mortgage Foreclosure - copy to file
12/24/2014		HENDRICKSO	Miscellaneous Payment: Writs Of Execution Paid by: The Law Office of John E Miller Receipt number: 0019877 Dated: 12/24/2014 Amount: \$2.00 (Check)
12/29/2014	SCDF	HUMRICH	Supreme Court Document Filed- (Docket #42467) ORDER GRANTING COURT REPORTER'S MOTION FOR EXTENSION OF TIME FOR TRANSCRIPT OVER 500 PAGES - RESET DUE DATES, DUE 2/24/2015
	SCDF	HUMRICH	Supreme Court Document Filed (Docket #42479) - ORDER GRANTING COURT REPORTER'S MOTION FOR EXTENSION OF TIME FOR TRANSCRIPT OVER 500 PAGES - RESET DUE DATES, DUE 2/24/2015
12/30/2014	SCDF	HUMRICH	Supreme Court Document Filed- Order Consolidating Appeals for Clerk's Record & Reporter's Transcript ONLY
1/5/2015	SCDF	HUMRICH	Supreme Court Document Filed- Court Reporter's Motion for time to File a Transcript Estimated to be over 500 Pages
1/8/2015	SCDF	HUMRICH	Supreme Court Document Filed- Notice of Appearance
	APER	HUMRICH	Notice of Appearance - Christopher Pooser for Union Bank, in appeal Docket #42467
	APER	HUMRICH	Plaintiff: MUFG Union Bank N.A. Appearance W Christopher Pooser

## ROA Report

Case: CV-2011-0000135 Current Judge: Idaho Supreme Court

MUGB Union Bank N.A. vs. Pend Oreille Bonner Development, LLC, etal.

Date	Code	User	Judge
1/8/2015	APER	HUMRICH	Idaho Supreme Court
	SCDF	HUMRICH	Idaho Supreme Court
1/15/2015	SCDF	HUMRICH	Idaho Supreme Court
2/3/2015		ROSS	Idaho Supreme Court
	WRRT	HENDRICKSO	Idaho Supreme Court
	WRIT	HENDRICKSO	Idaho Supreme Court
3/3/2015	NOTC	HUMRICH	Idaho Supreme Court
	MISC	HUMRICH	Idaho Supreme Court
	TRAN	HUMRICH	Idaho Supreme Court
	CINF	HUMRICH	Idaho Supreme Court
3/4/2015	MISC	HUMRICH	Idaho Supreme Court
3/13/2015	MISC	HUMRICH	Idaho Supreme Court
3/16/2015	LETT	HUMRICH	Idaho Supreme Court
	LETT	HUMRICH	Idaho Supreme Court
3/24/2015	BNDC	ROSS	Idaho Supreme Court
3/26/2015	BNDC	HUMRICH	Idaho Supreme Court
	BNDV	HUMRICH	Idaho Supreme Court
	BNDV	HUMRICH	Idaho Supreme Court
	BNDV	HUMRICH	Idaho Supreme Court

Date	Code	User		Judge
3/26/2015	BNDV	HUMRICH	Bond Converted (Transaction number 426 dated 3/26/2015 amount 265.00)	Idaho Supreme Court
4/28/2015	MOTN	HUMRICH	Motion for Extension of Time by Clerk of District Court or Administrative Agency	Idaho Supreme Court

COUNTY BONNER  
FIRST JUDICIAL DIST.

2013 JUL 15 AM 11 58

CLERK DISTRICT COURT

DEPUTY

Susan P. Weeks, ISB #4255  
JAMES, VERNON & WEEKS, PA  
1626 Lincoln Way  
Coeur d'Alene, Idaho 83814  
Telephone: (208) 667-0683  
Facsimile: (208) 664-1684  
sweeks@jvwlaw.net

Attorneys for Defendant NORTH IDAHO RESORTS, LLC.

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

UNION BANK, N.A., a national banking  
association,

Plaintiff,

vs.

PEND OREILLE BONNER  
DEVELOPMENT, LLC,

Defendants.

Case No. CV-2011-0135

DEFENDANT NORTH IDAHO RESORT,  
LLC'S MOTION FOR ENLARGEMENT OF  
TIME


**AND ASSOCIATED COUNTERCLAIMS,  
CROSS-CLAIMS, AND THIRD-PARTY  
COMPLAINTS.**

COMES NOW Defendant, North Idaho Resorts, LLC., by and through its attorney of record Susan P. Weeks of the firm James, Vernon & Weeks, P.A. and hereby moves this Court, pursuant to Idaho Rules of Civil Procedure 6(b), for a 2 day enlargement of time to July 17, 2013 within which to respond to Plaintiff's Motion for Partial Summary Judgment. This motion is made by and for the reason that counsel's case load is significant at this time and counsel has just concluded a two week trial.

Concurrent to the enlargement of time for Defendant to respond, Defendant requests an enlargement of time of 2 days for the Plaintiff to reply as to alleviate any prejudice to Plaintiff.

DATED this 15<sup>th</sup> day of July 2013

JAMES, VERNON & WEEKS, PA

By:   
 Susan P. Weeks  
 Attorneys for Defendant NORTH IDAHO  
 RESORTS, LLC.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served on the following persons in the manner indicated this 15<sup>th</sup> day of July 2013.

U.S. Mail, Postage Prepaid  
 Hand Delivered  
 Facsimile: 208-665-9176  
[jmillerlaw@cda.twcbc.com](mailto:jmillerlaw@cda.twcbc.com)

John E. Miller  
 The Law Office of John E. Miller  
 206 Indiana Avenue, Suite 200  
 Coeur d'Alene, ID 83814

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Gary A. Finney  
 FINNEY FINEY & FINNEY, PA  
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 Patti Jo Foster  
 Layman Layman & Robinson, PLLP  
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 Elsaesser Jarzabek Anderson Marks Elliott &  
 McHugh, Chtd.  
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 Facsimile: 208-336-9712  
 [Stacey@lawidaho.com](mailto:Stacey@lawidaho.com)

Richard L. Stacey  
 Anna E. Eberlin  
 MEULEMAN MOLLERUP LLP  
 755 W Front Street, Suite 200  
 Boise, Idaho 83702

*Christine Clouse* \_\_\_\_\_

GARY A. FINNEY  
 FINNEY FINNEY & FINNEY, P.A.  
 Attorneys at Law  
 Old Power House Building  
 120 East Lake Street, Suite 317  
 Sandpoint, Idaho 83864  
 Phone: (208) 263-7712  
 Fax: (208) 263-8211  
 ISB No. 1356

STATE OF IDAHO  
 COUNTY OF BONNER  
 FIRST JUDICIAL DIST.

2013 JUL 15 PM 4 24

CLERK DISTRICT COURT

*[Handwritten signature]*  
 DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
 STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

UNION BANK, N.A., a national	)	Case No. CV-2011-00135
banking association,	)	
	)	JV, LLC'S AFFIDAVIT OF
Plaintiff,	)	JAMES W. BERRY IN
	)	OPPOSITION TO PLAINTIFF'S
vs.	)	MOTION FOR PARTIAL SUMMARY
	)	JUDGMENT
PEND OREILLE BONNER DEVELOPMENT,	)	
LLC, a Nevada limited liability	)	
company, et al,	)	
	)	
Defendants.	)	
_____	)	

STATE OF IDAHO )  
 : ss.  
 County of Bonner )

COMES NOW JAMES W. BERRY, being first duly sworn on oath  
 and states to the Court based on my personal knowledge on  
 matters which I am competent to testify, as follows:

1. I am a manager and member of JV, LLC.

2. JV is the owner and holder of a promissory note secured by Mortgage on the Trestle Creek real estate that is the subject of this action.

3. JV's Mortgage is the first priority Mortgage, recorded June 19, 2006. The Bank's Mortgage (a subsequent mortgage for a 2007 loan) was recorded March 25, 2008.

4. JV is still owed \$1,476,450.35 principal as of September 18, 2008 plus 12% interest until paid.

5. The Plaintiff Bank's Mortgage is recorded subsequent to JV's mortgage and the Bank gave no consideration for the 2008 Mortgage. The 2008 Mortgage to the Bank is nothing more than to secure its 2007 loan by getting a Mortgage on Trestle Creek.

6. At no time involving this action, or otherwise, have JV, me, or anyone for JV had any discussion, agreement, or contact with the Bank concerning the so-called Subordination Agreement, recorded August 6, 2008 Instrument No. 756403.

7. The Subordination Agreement was never presented to JV by the Bank, and the Bank did not ever execute and acknowledge the Subordination Agreement. JV did not enter into the Subordination Agreement with the Bank.

8. At or about the time of the Subordination Agreement, shortly prior to August 1, 2008, I was contacted by Charles Reeves of POBD. Mr. Reeves told me that POBD had arranged to borrow \$5.0 million from a bank, the funds to be used to finish



planning the real estate at Trestle Creek and to build improvements, Condominiums and Townhouses on the real estate.

9. Mr. Reeves told me that in order to receive the \$5.0 million for these purposes, JV as first mortgage holder would need to agree to subordinate its Mortgage to a new mortgage. At no time was it ever disclosed that POBD had already, in 2007, obtained the loan money of \$5.0 million from the Bank, nor that POBD received the money at that time, nor that the money had been already been spent. Mr. Reeves did not disclose that there would actually be no money coming to POBD on the loan for planning and construction use on the Trestle Creek real estate.

10. In fact, Mr. Reeves told me the \$5.0 loan from the Bank would be spent on the Trestle Creek real estate for improvements and construction that would enhance the value of the real estate securing JV's Mortgage by at least \$5.0 million.

11. Further, Mr. Reeves promised the new Bank loan money would be used to build Condominiums on the Trestle Creek real estate to be sold. As the Condominiums, or Townhouses, were sold POBD would pay JV for partial releases of JV's Mortgage.

12. \$5.0 loan to POBD from the Bank would increase the value of JV's Mortgage security and increase monetary payments to JV by the partial releases as Condominiums and Townhouses were sold.

13. JV did not know that the \$5.0 million loan from the Bank to POBD already occurred in 2007.

14. JV received nothing, no consideration for the Subordination Agreement. The Subordination Agreement was obtained from and signed by JV based on the fraudulent misrepresentations of Mr. Reeves on behalf of POBD.

15. The Subordination Agreement would have subordinated JV's first priority 2006 mortgage to a 2008 Mortgage to the Bank, with no consideration to JV.

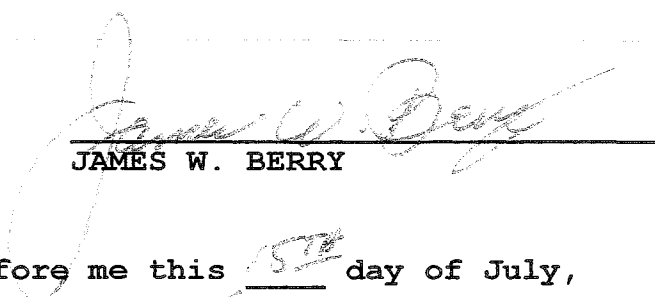
16. The unenforceable Subordination Agreement, para 1, page 1, recognizes that JV, Creditor, had a Third Amendment with POBD. This Third Amendment included an agreement by POBD and JV for the release agreements.

17. The representation by Mr. Reeves to JV was that 83 Condo Units and 13 Townhouses would be built on the Trestle Creek property using the \$5.0 million to be borrowed from the Bank. As POBD sold these Condos and Townhouses, it agreed to pay JV, in addition to the regular monthly payments for partial releases of JV's Mortgage at \$20,000.00 per Condo Unit and \$20,000.00 per Townhouse. A color copy of the drawings from Mr. Reeves for the Condominiums and Boat storage to be built at Trestle Creek is attached hereto (2 pages).

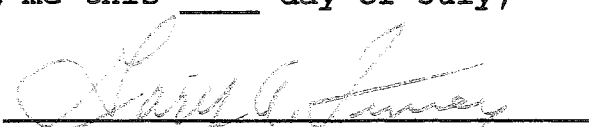
18. From about the time of the Subordination Agreement, August 1, 2008, POBD made no more payments to JV on its note and

Mortgage and there were never any condominiums or townhouses built. In short, POBD went into default on any payments or performance to JV to date.

19. If JV had known the truth and facts that POBD was not going to receive \$5.0 million dollars on a new 2008 loan, JV would not have executed the Subordination Agreement at all.

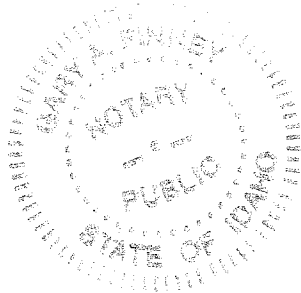
  
\_\_\_\_\_  
JAMES W. BERRY

SUBSCRIBED AND SWORN TO before me this 5<sup>th</sup> day of July, 2013.

  
\_\_\_\_\_  
Notary Public-State of Idaho

Residing at: Hambrecht

My commission expires: Oct 19 2017



CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by facsimile transmission, or as otherwise indicated, this 15<sup>th</sup> day of July, 2013, and addressed as follows:

John E. Miller  
Attorney at Law  
206 Indiana Avenue, Suite 200  
Coeur d'Alene, ID 83814  
Fax No. 1-208-665-9176  
(Attorney for Union Bank)

Douglas S. Marfice  
RAMSDEN & LYONS  
P.O. Box 1336  
Coeur d'Alene, ID 83816-1336  
Fax No. 1-208-664-5884  
(Attorney for B-K Lighting, Inc.)

Bruce Anderson  
ELSAESSER JARZABEK ANDERSON  
ELLIOTT & MACDONALD, CHTD  
320 E. Neider Ave, Suite 102  
Coeur d'Alene, ID 83815  
Fax No. 1-208-667-2150  
(Attorney for Dan S. Jacobson,  
Sage Holding, LLC, and Steve G.  
Lazor)

Honorable Michael J. Griffin  
Second District Court  
320 W. Main Street  
Grangeville, ID 83530  
Fax No. 1-208-983-2376  
(Out of County Judge)  
Honorable Michael J. Griffin  
Second District Court  
PO Box 8068  
Moscow, ID 83843  
Fax No. 1-208-883-5719  
(Out of County Judge)  
(Via Judge Stegner's Chambers)

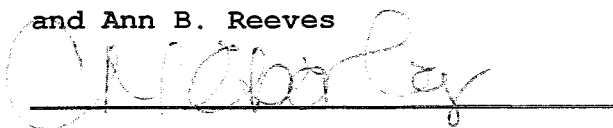
R. Wayne Sweney  
Jonathon D. Hallin  
LUKINS & ANNIS, P.S.  
601 E. Front Ave., Suite 502  
Coeur d'Alene, ID 83814  
Fax No. 1-208-664-4125  
(Attorney for Mountain West Bank)

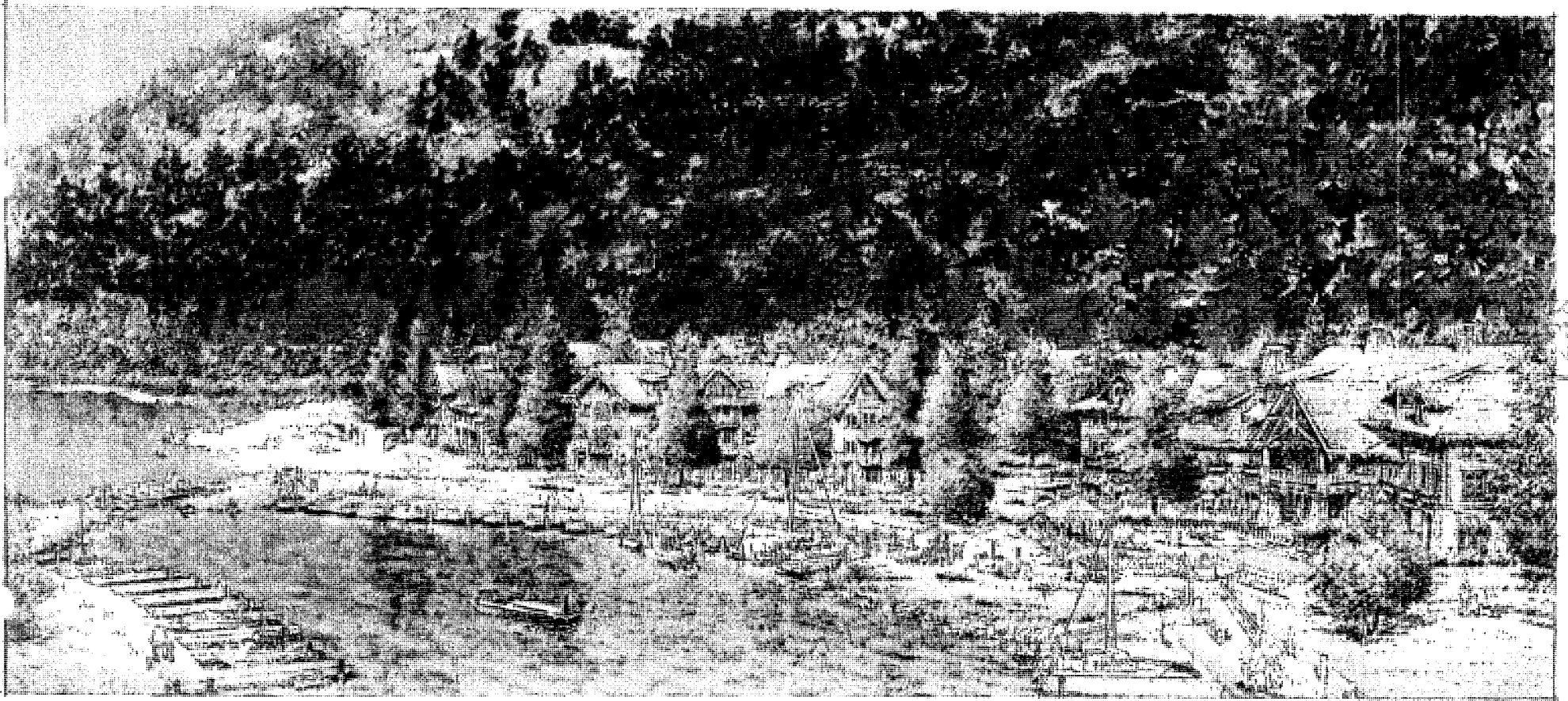
Steven C. Wetzel  
James, Vernon & Weeks, P.A.  
1626 Lincoln Way  
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Fax No. 1-208-664-1684  
(Attorney for North Idaho Resorts)

John A. Finney  
Finney Finney & Finney, P.A.  
120 East Lake St., Suite 317  
Sandpoint, ID 83864-1366  
(Attorney for ACI Northwest, Inc.)  
(Via Hand Delivery)

Richard L. Stacey  
Anna E. Eberlin  
MEULMAN MOLLERUP, LLP  
755 W. Front St., Ste 200  
Boise, ID 83702  
Fax No. 1-208-336-9712  
(Attorney for R.E. Loans, LLC)

John G. Layman  
Patti Jo Foster  
LAYMAN, LAYMAN & ROBINSON, PLLP  
601 South Division Street  
Spokane, WA 99202  
Fax No. 1-509-624-2902  
(Attorney for Pend Oreille Bonner  
Development, LLC, Pend Oreille  
Bonner Development Holdings, Inc.,  
Montaheno Investments, LLC, Toyon  
Investments, LLC, Charles Reeves,  
and Ann B. Reeves)

  
\_\_\_\_\_



HART HOWERTON  
PLANNERS • ARCHITECTS  
LANDSCAPE ARCHITECTS  
INTERIOR DESIGNERS

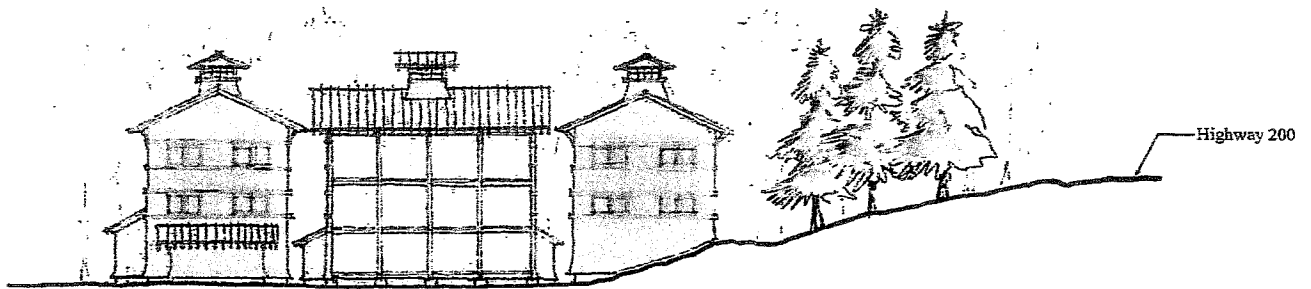
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The Idaho Club  
Sandpoint, Idaho

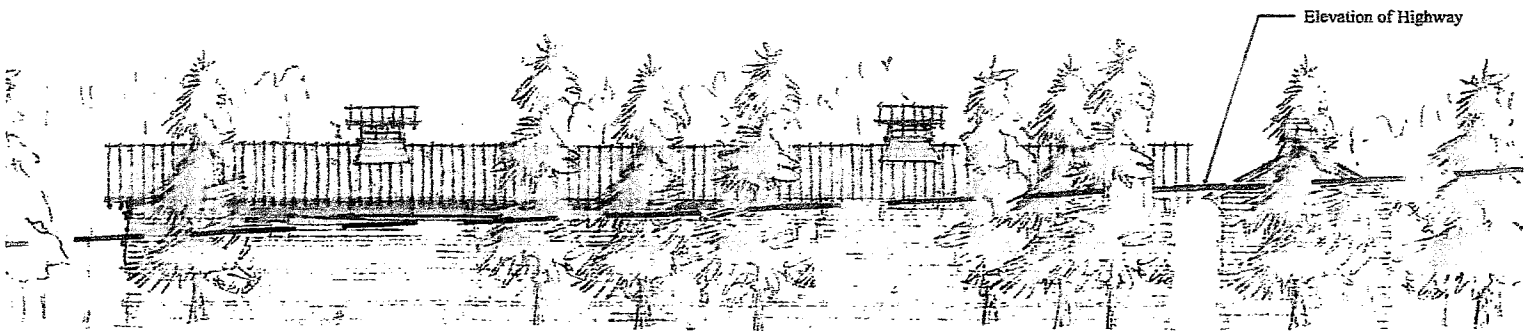
NORTH WATERFRONT PARCEL  
July 2007



Condominium Building C3 - East Elevation



Boat Storage Buildings - South Elevation



Boat Storage Buildings - East Elevation



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STATE OF IDAHO  
 COUNTY OF BONNER  
 FIRST JUDICIAL DIST.

2013 JUL 15 PM 4 24

DISTRICT COURT

CLERK

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
 STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

UNION BANK, N.A., a national	)	Case No. CV-2011-00135
banking association,	)	
	)	JV, LLC'S MEMORANDUM IN
Plaintiff,	)	OPPOSITION TO PLAINTIFF'S
	)	MOTION FOR PARTIAL SUMMARY
vs.	)	JUDGMENT
	)	
PEND OREILLE BONNER DEVELOPMENT,	)	
LLC, a Nevada limited liability	)	
company, et al,	)	
	)	
Defendants.	)	
	)	

COMES NOW JV, LLC, a defendant in this action and files  
 this Memorandum in Opposition to Plaintiff's Motion for Partial  
 Summary Judgment and moves the Court to deny the Plaintiff's  
 Motion, based on the following:

I. Plaintiff's Motion

The Plaintiff, hereinafter referred to as Bank, moves  
 the Court in its Conclusion to enter judgment that the Bank

holds the senior Mortgage as to the interests of both defendants, NI Resorts and JV, LLC.

II. JV'S Opposition - Recording Dates

JV, LLC holds the first priority recorded Mortgage on the Real Estate, hereinafter Trestle Creek, which is pled by the Bank and also by JV.

It is undisputed that JV's Real Estate Mortgage was recorded June 19, 2006, Instrument No. 706470. The Bank's "Mortgage" was not recorded until March 25, 2008, Instrument Nos. 748379 and 748380. The Bank's basis for priority is a Subordination Agreement, recorded August 6, 2008, Instrument No. 756403. JV disputes the validity of the Subordination Agreement as hereinafter set forth.

III. The Subordination Agreement is not an enforceable "Agreement".

The Subordination Agreement is attached to the Affidavit of Attorney John Miller as recorded August 6, 2008 as Instrument No. 756403 is not an "Agreement" at all between the Bank and JV. The Bank's predecessor bank is Pacific Capital Bank doing business as First National Bank, "FNB". The Court is directed to the first paragraph of the so called Subordination Agreement which states "this Agreement" is entered into between JV and FNB. These are the only two (2) parties entering into "the Agreement". An examination of the Agreement, page 3, shows



that the party Pacific Capital Bank, (FNB) did not ever execute (sign) and acknowledge at all. The signature, page 3, for Pacific Capital Bank, By: \_\_\_\_\_ Niroj Marharaj, Senior Relationship Manager, is (blank). The Agreement is five (5) pages in length, with the legal descriptions attached as pages 6, 7, and 8. There is no acknowledgment form or notary signature for the bank, Pacific Bank. The "Agreement" is not entitled to be recorded. Idaho law, Idaho Code §55-805 requires execution and acknowledgment before such a document is entitled to be recorded. The "agreement" page 1, second paragraph, states that the Borrower, Pend Oreille Bonner Development, LLC as Creditor agrees with FNB as follows, Page 3 of the "Agreement" states that the Borrower and agrees to be bound by the terms, provisions, and conditions - "POBD" page 5, signed by Charles W. Reeves, President, and his signature is acknowledged by a notary public. However, "POBD" is not a defined party "by and between" the Bank and JV. The Bank did not enter into or execute the agreement.

The Agreement is not enforceable by the Bank as the Bank is not in privity of the Agreement as a contract. JV is not bound to the Bank, pursuant to the Bank's unexecuted Agreement! In simple words, the Bank did not ever enter into the Agreement.

#### IV. The Bank's LITIGATION GUARANTEE.

The Litigation Guarantee is not evidence of the Bank's so called priority. The Litigation Guarantee, attached to the Affidavits of both Terrilyn S. Barron for the Bank and Rick Lynskey of First American Title, also for the Bank. The Litigation Guarantee is dated December 27, 2010, (Order No. 365504-S) which is years after the recording of JV's mortgage. The Bank may have a Title Insurance claim against First American Title, but that does not create priority in the Bank.

A Litigation Guarantee is opinion, not fact, of what a title company sets forth. An examination of the Litigation Guarantee shows there is no loan insurance, as such, as on Schedule "A", paragraph 3, it states:

"Paragraph 3. This Litigation Guarantee is furnished solely for the purpose of facilitating the filing of an action to foreclose Mortgage recorded March 25, 2008 a Instrument No. 748379/748380". An examination of Part II: in paragraphs 23 and 24 are the recording dates of the Bank's Mortgage (23) and of JV's Mortgage (24). Clearly, JV's Mortgage is recorded in 2006 and the Bank's Mortgage is recorded in 2008. As to JV's Mortgage, paragraph 24 of the Litigation Guarantee, states that as to JV's mortgage it has been subordinated to the lien of the mortgage in paragraph 23 (Bank's) by instrument recorded August 6, 2008, 756403. The instrument referred to is the so called Subordination Agreement, which was never entered into "by and

between" the Bank and JV. This Subordination Agreement is never executed or acknowledged by the Bank, and it was not entitled to be recorded. Evidently, First American Title missed this fact and did not report it on the Litigation Guarantee, but this does not give or create any priority in the Bank!

V. The Bank's loan - Mortgage of March 25, 2008 actually gave no money to POBC, and the Bank gave no consideration for that Mortgage.

The Bank is suing on a March 25, 2008 Mortgage, but the actual loan (\$5.0 million) was made in 2007 and was not secured by a Mortgage recorded in 2007. This fact is supported in the Bank's loan documents. JV & NI Resorts have a copy of all of the Bank's documents, furnished by the Bank in response NI Resorts' discovery. The documents tell a different story than that sued upon by the Bank.

The Affidavit of Terrilyn S. Barron, for the Bank, disclosed that her knowledge is actually knowledge she gained by reviewing the files and records that Union Bank obtained from its predecessor bank. Attached to her Affidavit is a Credit Authorization (CA 1), dated October 18, 2007, with POBD as the Borrower and Niroj Marharaj as the Bank contact. The loan Amount of this Request (para C) is \$5,000,000.00. This is the \$5.0 million at issue in this action. Actually, this \$5.0 million, in part, was to be used to pay-off JV's Mortgage.

Reading the Credit Authorization, Summary Purposes, last sentence states:

"Portion of the proceeds will payoff a \$2,000m on private seller carry back note originating from the purchase of the subject property in June 2006". Obviously, JV's Mortgage recorded June 19, 2006 is the matter for the "pay-off". In fact, POBD, did not pay-off JV. The Trestle Creek real estate is the Facility 2 referred on the documents attached by the Credit Authorization. The 3<sup>rd</sup> page attached to the Credit Authorization, entitled Detail Purpose & Comments for this Approval: states in the second sentence that,

"a portion of the proceeds shall be used to retire a \$2,000m private seller carry back note originating from the purchase of the subject property in June of 2006."

This refers to retiring JV's 2006 Mortgage. This same Credit Authorization shows a deduction of the loan funds, so that the net to POBD is only 2.5 million.

VI. The 2008 Mortgage to the Bank was to secure a pre-existing loan to the Bank. The Bank had no Mortgage on Trestle Creek until the 2008 Mortgage. (See, Affidavit of Terrilyn S. Barron, paragraph 3, page 3).

VII. The Bank title insurance "Loan Policy", attached to the Supplemental Affidavit of Rick Lynskey also shows JV's Mortgage as first recorded.

Rick Lynskey made a Supplemental Affidavit, attaching to it a Loan Policy, for 5.0 million (policy no. 229121-S) insuring the Bank's Mortgage recorded on 3/25/2008, Instrument No. 748379/748380 on Trestle Creek real estate. The Policy date is 3/25/2008. Clearly, the Loan Policy, Schedule B, Excepting From Coverage, Part II, Exception 26 discloses the first priority recorded Mortgage dated June 16, 2006, to secure \$2.56 million, recorded June 19, 2006, Instrument No. 706470, Mortgagor: "POBD" and Mortgagee: JV, LLC.

In summary, the Loan Policy to the Bank insures its 2008 Mortgage subject to EXCEPTION FROM COVERAGE, Part II, paragraph 26, the 2006 Mortgage to JV. JV has priority under the Loan Policy. There is no mention of the so called Subordination Agreement, probably because it never existed at that time.

IV. The Bank's Discovery Response Documents show the Bank's actual loan was supposed to be and is a subsequent priority to JV's Mortgage.

The Bank's Document Discovery Response is voluminous and among other things it discloses that the \$5.0 million dollar loan to POBD was actually a 2007 transaction. This was the only money that the Bank loaned to POBD. The Bank's Loan Documents filed do not disclose a Mortgage on Trestle Creek, nor was there one recorded. Plaintiff's Motion for Partial Summary Judgment does not disclose these facts to the Court. The actual October

29, 2007 Loan Agreement (Loan No. 101760163) between POBD, Borrower, and the Bank, for the \$5,000,000.00 is furnished to the Court attached hereto. All counsel already has copies of all of the Bank's document discovery responses.

Gary A. Finney, Attorney for JV hereby certifies that the Bank's discovery response documents furnished to the Court are true and actual copies of those furnished by the Bank.

The Bank \$5.0 million dollar loan, after withholding \$500,000 as prepaid interest resulted in the remaining \$4.5 million being wired by the Bank to the POBD account at Mountain West Bank, a copy of the Wire furnished by the Bank dated 10/29/07 is also furnished, attached as emailed to the Court. This \$5.0 million had no real estate security.

The 2008 loan and Mortgage from the Bank to POBD is nothing more than new loan documents for the pre-existing 2007 loan and a first time ever Mortgage (2008) for the exact original transaction. As part of the Documents furnished by the Bank's response to request for documents, the Bank furnished is Disbursement Authorization, dated 3/7/2008, showing an "Internal Loan Payoff #101760163 signed by Charles W. Reeves for POBD. It is for the amount due on the 2007 loan plus accrued interest, a Title Report, and recording fee, totaling \$4,655,691.00 plus \$344,308.90 as the balance of the loan as original held by the Bank. This totals the exact \$5.0 million loan obtained in 2007.

X. JV's Affidavit in Opposition to Plaintiff's Motion For Partial Summary Judgment.

Accompanying this memorandum in opposition is JV's Affidavit by James W. Berry. He is a manager and member of JV, LLC. His affidavit is that,

a) As already stated in JV's Response to Plaintiff's Request for Admissions of Fact and Genuineness of Documents, signed by the same James Berry, dated 2 July 2012, Response No. 1: The Subordination Agreement is unenforceable, the Bank gave no consideration, made no loan of new money, nor value given, and did not extend money for improvements of the Trestle Creek property as promised in exchange for the Subordination Agreement.

b) Further, the Bank never had any communication of any kind with JV about a Subordination Agreement. The Bank did not execute or acknowledge the Subordination Agreement.

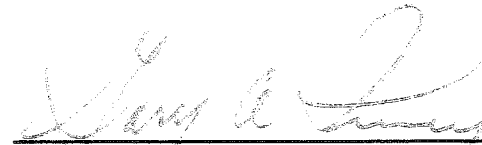
c) Charles Reeves of POBD stated and represented to JV (Berry) that the (2008) Subordination Agreement from JV was needed for the Bank to loan an actual \$5.0 million in money at that time to POBC, for development and construction of Condos and Townhouses on the Trestle Creek property. This was false, the \$5.0 million had been loaned in 2007 and was spent elsewhere by POBD.

See JV's Affidavit for additional Facts.

Attachments Furnished along with this Opposition

1. "Wire" outgoing Bank to POBD Account at Mountain West Bank 10/27/07 - 1 page
2. Loan Agreement, October 29, 2007, POBD and the Bank for \$5 million, and the Schedule A, Unlimited Guaranty, (for the 2007 loan) - 52 pages
3. Universal Loan Payment, 3/26/2008 - 1 page
4. "Disbursement Authorization" interest loan pay-off dated 3-7-08 - 1 page

DATED this 15<sup>th</sup> day of July, 2013.

  
\_\_\_\_\_  
GARY A. FINNEY  
Attorney for Defendant JV, LLC



CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by facsimile transmission, or as otherwise indicated, this 15<sup>th</sup> day of July, 2013, and addressed as follows:

John E. Miller  
Attorney at Law  
206 Indiana Avenue, Suite 200  
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(Attorney for Union Bank)

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Bruce Anderson  
ELSAESSER JARZABEK ANDERSON  
ELLIOTT & MACDONALD, CHTD  
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Coeur d'Alene, ID 83815  
Fax No. 1-208-667-2150  
(Attorney for Dan S. Jacobson,  
Sage Holding, LLC, and Steve G.  
Lazor)

John A. Finney  
Finney Finney & Finney, P.A.  
120 East Lake St., Suite 317  
Sandpoint, ID 83864-1366  
(Attorney for ACI Northwest, Inc.)  
(Via Hand Delivery)

Honorable Michael J. Griffin  
Second District Court  
320 W. Main Street  
Grangeville, ID 83530  
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(Out of County Judge)  
Honorable Michael J. Griffin  
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John G. Layman  
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LAYMAN, LAYMAN & ROBINSON, PLLP  
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(Attorney for Pend Oreille Bonner  
Development, LLC, Pend Oreille  
Bonner Development Holdings, Inc.,  
Montaheno Investments, LLC, Toyon  
Investments, LLC, Charles Reeves,  
and Ann B. Reeves)

  
\_\_\_\_\_

CBG Monterey  
BRANCH NAME

Wire 61  
ACCOUNT TITLE

10/29/07  
DATE

1030  
BR. NO.

22015000  
ACCOUNT NUMBER

4,500,000<sup>00</sup>  
DOLLARS CENTS

COMPLETE DESCRIPTION:

Loan # 101760163 Advance for outgoing wire to Mountain West Bank for Pen Oreille Banner Development, LLC. Loan Draw.

GENERAL LEDGER  
39-0200 (3/04)

CREDIT

Prepared by: [Signature] CBG Monterey  
ORIGINATING BRANCH  
APPROVED BY: N. KHARAJI

Loan # 101760163  
OFFSET BY

103022015000# 775

BBG - MONTEREY  
BRANCH NAME

LOANS IN PROCESS  
ACCOUNT TITLE

10/29/07  
ORIG. DATE

CLEARING DATE

02015  
BR. NO.

13830000  
ACCOUNT NUMBER

0000280167  
SERIAL NUMBER

4,500,000<sup>00</sup>  
DOLLARS CENTS

COMPLETE DESCRIPTION:

Loan # 101760163 Pen Oreille Banner Development, LLC  
Outgoing wire to Mountain West Bank for Pen Oreille Banner Development, LLC

39-1400SP

GENERAL LEDGER

DEBIT

Prepared by: [Signature] CBG Monterey  
ORIGINATING BRANCH  
APPROVED BY: N. KHARAJI

Loan # 101760163  
OFFSET BY

0000280167#

103022015000# 775

8

(2007 Loan)

✓  
Tues

closed 10/7/60/63



Loan No. 101760163

## LOAN AGREEMENT

This LOAN AGREEMENT (this "Agreement") is entered into as of **October 29, 2007**, between **Pend Oreille Bonner Development, LLC, a Nevada limited liability company**, with its chief executive office located at **6900 S. McCarran Blvd., #1010, Reno, Nevada 89509** (the "Borrower") and Pacific Capital Bank, N.A., a national banking association, doing business as First National Bank of Central California, with an address of c/o Loan Services, PO Box 60654, Santa Barbara, California 93160-0654 (the "Bank").

FOR VALUE RECEIVED, and in consideration of the granting by the Bank of financial accommodations to or for the benefit of the Borrower, including without limitation respecting the Obligations (as hereinafter defined), the Borrower represents and agrees with the Bank, as of the date hereof and as of the date of each loan, credit and/or other financial accommodation, as follows:

### 1. THE LOAN

1.1 **Revolving Loans.** Bank agrees, in its sole discretion, to make revolving loans (the "Revolving Loans") to or for the account of Borrower, upon Borrower's request therefor, in an aggregate amount of up to **Five Million Dollars and Zero Cents (\$5,000,000.00)** (the "Revolving Loan Amount"), provided there is no continuing uncured Event of Default (as hereinafter defined) and subject to the terms and conditions set forth herein. The Revolving Loans shall be evidenced by that certain Revolving Term Note, of even date herewith (the "Revolving Note"), by Pend Oreille Bonner Development, LLC in favor of the Bank in the face amount of the Revolving Loan Amount. The Bank's agreement to make any advances pursuant to this Agreement and evidenced by the Revolving Note shall expire on **January 29, 2008**. This Agreement, the Revolving Note, and any and all other documents, amendments or renewals executed and delivered in connection with any of the foregoing are collectively hereinafter referred to as the "Loan Documents".

1.2 **Revolving Loan Account.** An account shall be opened on the books of Bank in which account a record will be kept of all Revolving Loans, and all payments thereon and other appropriate debits and credits as provided by this Agreement.

1.3 **Interest.** Interest respecting the Revolving Loans will be charged to Borrower on the principal amount from time to time outstanding at the interest rate specified in the Revolving Note in accordance with the terms of the Revolving Note. If not specified in the Revolving Note, interest will be charged at the highest rate per annum charged by Bank to Borrower on any other Obligation based on a 360-day year and the actual number of days elapsed.

1.4 **Repayment.** All loans and advances made respecting the Revolving Loans shall be payable to Bank on or before the maturity date of the Revolving Note.

1.5 **Overadvances.** Any Revolving Loans that may be made, at the Bank's sole discretion, in excess of the Revolving Loan Amount shall not limit the obligations of Borrower or any of the Bank's rights or remedies hereunder or under the Loan Documents or otherwise; all such Revolving Loans shall be due and payable to the Bank in accordance with the terms of the Revolving Note, and shall bear interest at the rate set forth in the Revolving Note.

1.6 Authorized Persons; Advances. Any person duly authorized in writing by the Borrower, or in the absence of such a writing, the manager or managing member of the Borrower, or any person otherwise authorized in this paragraph, may request discretionary loans hereunder, either orally or otherwise, but the Bank at its option may require that all requests for loans hereunder shall be in writing. The Bank shall incur no liability to Borrower in acting upon any request referred to herein which the Bank believes in good faith to have been made by an authorized person or persons. Each loan hereunder may be credited by Bank to any deposit account of Borrower with Bank or with any other Bank with which Borrower maintains a deposit account, or may be paid to Borrower (or as Borrower instructs) or may be applied to any Obligations, as Bank may in each instance elect. The following persons currently are authorized to request advances and authorize payments respecting Revolving Loans until the Bank receives from Borrower, at the Bank's address, written notice of revocation of their authority: **Sherry A. Wagner and Tama Bistran.**

1.7 Monthly Statement. At the option of the Bank, after the end of each month, Bank will render to Borrower a statement of the Revolving Loan account, showing all applicable credits and debits. Each statement shall be considered correct and to have been accepted by Borrower and shall be conclusively binding upon Borrower in respect of all charges, debits and credits of whatsoever nature contained therein respecting the Revolving Loans, and the closing balance shown therein, unless Borrower notifies Bank in writing of any discrepancy within twenty (20) days from the mailing by Bank to Borrower of any such monthly statement.

1.8 Definitions. The following definitions shall apply:

- (a) "Code" shall mean the Uniform Commercial Code of California as amended from time to time.
- (b) "Obligation(s)" shall mean, without limitation, all loans, advances, indebtedness, notes, liabilities, rate swap transactions, basis swaps, forward rate transactions, commodity swaps, commodity options, equity or equity index swaps, equity or equity index options, bond options, interest rate options, foreign exchange transactions, cap transactions, floor transactions, collar transactions, forward transactions, currency swap transactions, cross-currency rate swap transactions, currency options and amounts, liquidated or unliquidated, owing by the Borrower to the Bank at any time, of each and every kind, nature and description, whether arising under this Agreement or otherwise, and whether secured or unsecured, direct or indirect (that is, whether the same are due directly by the Borrower to the Bank; or are due indirectly by the Borrower to the Bank as endorser, guarantor or other surety, or as borrower of obligations due third persons which have been endorsed or assigned to the Bank, or otherwise), absolute or contingent, due or to become due, now existing or hereafter arising or contracted, including, without limitation, payment when due of all amounts outstanding respecting any of the Loan Documents. Said term shall also include all interest and other charges chargeable to the Borrower or due from the Borrower to the Bank from time to time and all costs and expenses referred to in this Agreement.
- (c) "Person" or "party" shall mean individuals, partnerships, corporations; limited liability companies and all other entities.

All words and terms used in this Agreement other than those specifically defined herein shall have the meanings accorded to them in the Code.

## 2. REPRESENTATIONS AND WARRANTIES

2.1 Organization and Qualification. Borrower is a duly organized and validly existing limited liability company under the laws of the State of its formation, with the exact legal name set forth in the first paragraph of this Agreement. Borrower is in good standing under the laws of said State, has the power to own its property and conduct its business as now conducted and as currently proposed to be conducted,

and is duly qualified to do business under the laws of each state where the nature of the business done or property owned requires such qualification.

2.2 Related Parties. Borrower has no interest in any entities other than as previously specifically consented to in writing by the Bank, if any, and the Borrower has never consolidated, merged or acquired substantially all of the assets of any other entity or person other than as previously specifically consented to in writing by the Bank, if any.

2.3 Limited Liability Company Records. Borrower's certificate of organization, articles of organization or other charter document and all amendments thereto have been duly filed and are in proper order. All members of the Borrower are properly reflected on all books and records of the Borrower, including but not limited to its operating agreement, minute books, bylaws and books of account, all of which are accurate and up to date and will be so maintained.

2.4 Title to Properties: Absence of Liens. Borrower has good and clear record and marketable title to all of its properties and assets, and all of its properties and assets are free and clear of all mortgages, liens, pledges, charges, encumbrances and setoffs, except those mortgages, deeds of trust, leases of personal property and security interests previously specifically consented to in writing by the Bank.

2.5 Places of Business. Borrower's chief executive office is correctly stated in the preamble to this Agreement, and Borrower shall, during the term of this Agreement, keep the Bank currently and accurately informed in writing of each of its other places of business, and shall not change the location of such chief executive office or open or close, move or change any existing or new place of business without giving the Bank at least thirty (30) days prior written notice thereof.

2.6 Valid Obligations. The execution, delivery and performance of the Loan Documents have been duly authorized by all necessary action and each represents a legal, valid and binding obligation of Borrower and is fully enforceable according to its terms, except as limited by equity or laws relating to the enforcement of creditors' rights.

2.7 Conflicts. There is no provision in Borrower's organizational or charter documents, if any, or in any indenture, contract or agreement to which Borrower is a party which prohibits, limits or restricts the execution, delivery or performance of the Loan Documents.

2.8 Governmental Approvals. The execution, delivery and performance of the Loan Documents does not require any approval of or filing with any governmental agency or authority.

2.9 Litigation, etc. There are no actions, claims or proceedings pending or to the knowledge of Borrower threatened against Borrower which might materially adversely affect the ability of Borrower to conduct its business or to pay or perform the Obligations.

2.10 Taxes. The Borrower has filed all Federal, state and other tax returns required to be filed (except for such returns for which current and valid extensions have been filed), and all taxes, assessments and other governmental charges due from the Borrower have been fully paid. The Borrower has established on its books reserves adequate for the payment of all Federal, state and other tax liabilities (if any).

2.11 Use of Proceeds. No portion of any loan is to be used for (i) the purpose of purchasing or carrying any "margin security" or "margin stock" as such terms are used in Regulations U and X of the Board of Governors of the Federal Reserve System, 12 C.F.R. 221 and 224 or (ii) primarily personal, family or household purposes.

2.12 Environmental. As of the date hereof neither the Borrower nor any of Borrower's agents, employees or independent contractors (1) have caused or are aware of a release or threat of release of

Hazardous Materials (as defined herein) on any of the premises or personal property owned or controlled by Borrower ("Controlled Property") or any property abutting Controlled Property ("Abutting Property"), which could give rise to liability under any Environmental Law (as defined herein) or any other Federal, state or local law, rule or regulation; (2) have arranged for the transport of or transported any Hazardous Materials in a manner as to violate, or result in potential liabilities under, any Environmental Law; (3) have received any notice, order or demand from the Environmental Protection Agency or any other Federal, state or local agency under any Environmental Law; (4) have incurred any liability under any Environmental Law in connection with the mismanagement, improper disposal or release of Hazardous Materials; or (5) are aware of any inspection or investigation of any Controlled Property or Abutting Property by any Federal, state or local agency for possible violations of any Environmental Law.

To the best of Borrower's knowledge, neither Borrower, nor any prior owner or tenant of any Controlled Property, committed or omitted any act which caused the release of Hazardous Materials on such Controlled Property which could give rise to a lien thereon by any Federal, state or local government. No notice or statement of claim or lien affecting any Controlled Property has been recorded or filed in any public records by any Federal, state or local government for costs, penalties, fines or other charges as to such property. All notices, permits, licenses or similar authorizations, if any, required to be obtained or filed in connection with the ownership, operation, or use of the Controlled Property, including without limitation, the past or present generation, treatment, storage, disposal or release of any Hazardous Materials into the environment, have been duly obtained or filed.

Borrower agrees to indemnify and hold the Bank harmless from all liability, loss, cost, damage and expense, including attorney fees and costs of litigation, arising from any and all of its violations of any Environmental Law (including those arising from any lien by any Federal, state or local government arising from the presence of Hazardous Materials) or from the presence of Hazardous Materials located on or emanating from any Controlled Property or Abutting Property whether existing or not existing and whether known or unknown at the time of the execution hereof and regardless of whether or not caused by, or within the control of Borrower. Borrower further agrees to reimburse Bank upon demand for any costs incurred by Bank in connection with the foregoing. Borrower agrees that its obligations hereunder shall be continuous and shall survive the repayment of all debts to Bank and shall continue so long as a valid claim may be lawfully asserted against the Bank.

The term "Hazardous Materials" includes but is not limited to any and all substances (whether solid, liquid or gas) defined, listed, or otherwise classified as pollutants, hazardous wastes, hazardous substances, hazardous materials, extremely hazardous wastes, or words of similar meaning or regulatory effect under any present or future Environmental Law or that may have a negative impact on human health or the environment, including but not limited to petroleum and petroleum products, asbestos and asbestos-containing materials, polychlorinated biphenyls, lead, radon, radioactive materials, flammables and explosives.

The term "Environmental Law" means any present and future Federal, state and local laws, statutes, ordinances, rules, regulations and the like, as well as common law, relating to protection of human health or the environment, relating to Hazardous Materials, relating to liability for or costs of remediation or prevention of releases of Hazardous Materials or relating to liability for or costs of other actual or threatened danger to human health or the environment. The term "Environmental Law" includes, but is not limited to, the following statutes, as amended, any successor thereto, and any regulations promulgated pursuant thereto, and any state or local statutes, ordinances, rules, regulations and the like addressing similar issues: the Comprehensive Environmental Response, Compensation and Liability Act; the Emergency Planning and Community Right-to-Know Act; the Hazardous Materials Transportation Act; the Resource Conservation and Recovery Act (including but not limited to Subtitle I relating to underground storage tanks); the Solid Waste Disposal Act; the Clean Water Act; the Clean Air Act; the Toxic Substances Control Act; the Safe Drinking Water Act; the Occupational Safety and Health Act; the Federal Water Pollution Control Act; the Federal Insecticide, Fungicide and Rodenticide Act; the Endangered Species Act; the National Environmental Policy Act; and the River and Harbors Appropriation Act.

### 3. AFFIRMATIVE COVENANTS

3.1 Payments and Performance. Borrower will duly and punctually pay all Obligations becoming due to the Bank and will duly and punctually perform all Obligations on its part to be done or performed under this Agreement.

3.2 Books and Records: Inspection. Borrower will at all times keep proper books of account in which full, true and correct entries will be made of its transactions in accordance with generally accepted accounting principles, consistently applied and which are, in the opinion of a Certified Public Accountant acceptable to Bank, adequate to determine fairly the financial condition and the results of operations of Borrower. Borrower will at all reasonable times make its books and records available in its offices for inspection, examination and duplication by the Bank and the Bank's representatives and will permit inspection of all of its properties by the Bank and the Bank's representatives. Borrower will from time to time furnish the Bank with such information and statements as the Bank may request in its sole discretion with respect to the Obligations.

3.3 Financial Statements. Borrower will furnish to Bank:

- (a) as soon as available to Borrower, but in any event within 60 days after the close of each quarterly period of its fiscal year, a full and complete signed copy of financial statements, which shall include a balance sheet of the Borrower, as at the end of such quarter, and statement of profit and loss of the Borrower reflecting the results of its operations during such quarter and shall be prepared by the Borrower and certified by Borrower's chief financial officer as to correctness in accordance with generally accepted accounting principles, consistently applied, subject to year-end adjustments;
- (b) from time to time, such financial data and information about Borrower as Bank may reasonably request; and
- (c) any financial data and information about any guarantors of the Obligations as Bank may reasonably request.



3.4 Financial Statements of Monterey Development Group. Borrower will cause Monterey Development Group to furnish to Bank:

- (a) summary of financial data by venture due within 60 days of each quarter end;
- (b) CPA reviewed financial statements for any entities for which there was material homebuilding or development activity during that year due within 120 days of the close of each fiscal year end, **December 31<sup>st</sup>**;
- (c) from time to time, such financial data and information about Monterey Development Group as Bank may reasonably request.



3.5 Financial Statements of Chip L. Bowby. Borrower will cause Chip L. Bowby to furnish to Bank:

- (a) as soon as available to Chip L. Bowby, but in any event due by **June 30<sup>th</sup>** in any year and upon request therefor, with personal financial statements addressed to the Bank in form satisfactory to the Bank;



Chip L. Bowby's filed Federal tax returns, including all schedules thereto and K-1's, for the prior year by **October 31<sup>st</sup>** each year or copy of extension within **20 days of April 15<sup>th</sup>** each such year or by such other date approved by the Bank; and



- (c) from time to time, such financial data and information about Chip L. Bowlby as Bank may reasonably request.

3.6 Financial Statements of Thomas J. Merschel. Borrower will cause Thomas J. Merschel to furnish to Bank:

- (a) as soon as available to Thomas J. Merschel, but in any event due by **June 30th** in any year and upon request therefor, with personal financial statements addressed to the Bank in form satisfactory to the Bank;
- (b) Thomas J. Merschel's filed Federal tax returns, including all schedules thereto and K-1's, for the prior year by **October 31<sup>st</sup>** each year or copy of extension within **20 days of April 15th** each such year or by such other date approved by the Bank; and
- (c) from time to time, such financial data and information about Thomas J. Merschel as Bank may reasonably request.



3.7 Other Covenants. The Borrower will be in compliance at all times with all of the covenants in this section.

- (a) The Borrower and guarantors must maintain minimum combined liquidity of \$6,000,000.00 with the Bank, verified at the end of each quarter.

3.8 Conduct of Business. The Borrower will maintain its existence in good standing and comply with all laws and regulations of the United States and of any state or states thereof and of any political subdivision thereof, and of any governmental authority which may be applicable to it or to its business; provided that this covenant shall not apply to any tax, assessment or charge which is being contested in good faith and with respect to which reserves have been established and are being maintained.

3.9 Taxes. Borrower will promptly pay all real and personal property taxes, assessments and charges and all franchise, income, unemployment, retirement benefits, withholding, sales and other taxes assessed against it or payable by it before delinquent; provided that this covenant shall not apply to any tax assessment or charge which is being contested in good faith and with respect to which reserves have been established and are being maintained.

3.10 Maintenance. Borrower will keep and maintain its properties, if any, in good repair, working order and condition. Borrower will immediately notify the Bank of any loss or damage to or any occurrence which would adversely affect the value of any such property.

3.11 Insurance. Borrower will maintain in force property and casualty insurance on any property of the Borrower, if any, against risks customarily insured against by companies engaged in businesses similar to that of the Borrower containing such terms and written by such companies as may be satisfactory to the Bank, such insurance to be payable to the Bank as its interest may appear in the event of loss and to name the Bank as insured pursuant to a standard loss payee clause; no loss shall be adjusted thereunder without the Bank's approval; and all such policies shall provide that they may not be canceled without first giving at least Thirty (30) days written notice of cancellation to the Bank. In the event that the Borrower fails to provide evidence of such insurance, the Bank may, at its option, secure such insurance and charge the cost thereof to the Borrower. At the option of the Bank, all insurance proceeds received from any loss or damage to any property shall be applied either to the replacement or repair thereof or as a payment on account of the Obligations. From and after the occurrence of an Event of Default, the Bank is authorized to cancel any insurance maintained hereunder and apply any returned or unearned premiums, all of which are hereby assigned to the Bank, as a payment on account of the Obligations.

3.12 Notification of Default. Immediately upon becoming aware of the existence of any condition or event which constitutes an Event of Default, or any condition or event which would upon notice or lapse of time, or both, constitute an Event of Default, Borrower shall promptly give Bank written notice thereof specifying the nature and duration thereof and the action being or proposed to be taken with respect thereto.

3.13 Notification of Material Litigation. Borrower will immediately notify the Bank in writing of any litigation or of any investigative proceedings of a governmental agency or authority commenced or threatened against it which would or might be materially adverse to the financial condition of Borrower or any guarantor of the Obligations.

3.14 Pension Plans. With respect to any pension or benefit plan maintained by Borrower, or to which Borrower contributes ("Plan"), the benefits under which are guaranteed, in whole or in part, by the Pension Benefit Guaranty Corporation created by the Employee Retirement Income Security Act of 1974, P.L. 93-406, as amended ("ERISA") or any governmental authority succeeding to any or all of the functions of the Pension Benefit Guaranty Corporation ("Pension Benefit Guaranty Corporation"), Borrower will (a) fund each Plan as required by the provisions of Section 412 of the Internal Revenue Code of 1986, as amended; (b) cause each Plan to pay all benefits when due; (c) furnish Bank (i) promptly with a copy of any notice of each Plan's termination sent to the Pension Benefit Guaranty Corporation (ii) no later than the date of submission to the Department of Labor or to the Internal Revenue Service, as the case may be, a copy of any request for waiver from the funding standards or extension of the amortization periods required by Section 412 of the Internal Revenue Code of 1986, as amended and (iii) notice of any Reportable Event as such term is defined in ERISA; and (d) subscribe to any contingent liability insurance provided by the Pension Benefit Guaranty Corporation to protect against employer liability upon termination of a guaranteed pension plan, if available to Borrower.

#### 4. NEGATIVE COVENANTS

4.1 Limitations on Indebtedness. Borrower shall not issue any evidence of indebtedness or create, assume, guarantee, become contingently liable for, or suffer to exist indebtedness in addition to indebtedness to the Bank, except indebtedness or liabilities of Borrower, other than for money borrowed, incurred or arising in the ordinary course of business.

4.2 Sale of Interest. There shall not be any sale or transfer of ownership of any interest in the Borrower without the Bank's prior written consent unless such transfer shall not result in change in control of Borrower.

4.3 Loans or Advances. Borrower shall not make any loans or advances to any individual, partnership, corporation, limited liability company, trust, or other organization or person, including without limitation its officers and employees; provided, however, that Borrower may make advances to its employees, including its members, officers, with respect to expenses incurred or to be incurred by such employees in the ordinary course of business which expenses are reimbursable by Borrower; and provided further, however, that Borrower may extend credit in the ordinary course of business in accordance with customary trade practices.

4.4 Distributions. Borrower shall not, without prior written permission of the Bank, make any distribution to any of Borrower's members or managers in cash or in property or redeem, purchase or otherwise acquire, directly or indirectly, any interests, provided, so long as Borrower is not in default hereunder; distributions to the members of Borrower in such amounts as are necessary to pay the tax liability of such members due as a result of such members interest in the Borrower.

4.5 Investments. The Borrower shall not make investments in, or advances to, any individual, partnership, corporation, limited liability company, trust or other organization or person. The Borrower will not purchase or otherwise invest in or hold securities, nonoperating real estate or other nonoperating assets or purchase all or substantially all the assets of any entity.

4.6 Merger. Borrower shall not merge or consolidate or be merged or consolidated with or into any other entity.

4.7 Capital Expenditures. The Borrower shall not, directly or indirectly, make or commit to make capital expenditures by lease, purchase, or otherwise, except in the ordinary and usual course of business for the purpose of replacing machinery, equipment or other personal property which, as a consequence of wear, duplication or obsolescence, is no longer used or necessary in the Borrower's business.

4.8 Sale of Assets. Borrower shall not sell, lease or otherwise dispose of any of its assets, except in the ordinary and usual course of business and except for the purpose of replacing machinery, equipment or other personal property which, as a consequence of wear, duplication or obsolescence, is no longer used or necessary in the Borrower's business, provided that fair consideration is received therefor; provided, however, in no event shall the Borrower sell, lease or otherwise dispose of any equipment purchased with the proceeds of any loans made by the Bank.

4.9 Restriction on Liens. Borrower shall not grant any security interest in, or mortgage of, any of its properties or assets. Borrower shall not enter into any agreement with any person other than the Bank that prohibits the Borrower from granting any security interest in, or mortgage of, any of its properties or assets.

4.10 Other Business. Borrower shall not engage in any business other than the business in which it is currently engaged or a business reasonably allied thereto.

4.11 Change of Name, etc. Borrower shall not change its legal name or the State or the type of its formation, without giving the Bank at least 30 days prior written notice thereof.

## 5. DEFAULT

5.1 Default. "Event of Default" shall mean the occurrence of one or more of any of the following events:

- (a) default of any liability, obligation, covenant or undertaking of the Borrower or any guarantor of the Obligations to the Bank, hereunder or otherwise, including, without limitation, failure to pay in full and when due any installment of principal or interest or default of the Borrower or any guarantor of the Obligations under any other Loan Document or any other agreement with the Bank continuing for 10 days with respect to the payment of money or continuing for 30 days with respect to any other default;
- (b) failure of the Borrower or any guarantor of the Obligations to maintain aggregate collateral security value satisfactory to the Bank continuing for 30 days;
- (c) default of any material liability, obligation or undertaking of the Borrower or any guarantor of the Obligations to any other party continuing for 30 days;
- (d) if any statement, representation or warranty heretofore, now or hereafter made by the Borrower or any guarantor of the Obligations in connection with this Agreement or in any supporting financial statement of the Borrower or any guarantor of the Obligations shall be determined by the Bank to have been false or misleading in any material respect when made;
- (e) if the Borrower or any guarantor of the Obligations is a corporation, trust, partnership or limited liability company, the liquidation, termination or dissolution of any such organization, or the merger or consolidation of such organization into another entity, or its ceasing to carry on actively its present business or the appointment of a receiver for its property;

- (f) the death of the Borrower or any guarantor of the Obligations and, if the Borrower or any guarantor of the Obligations is a partnership or limited liability company, the death of any partner or member;
- (g) the institution by or against the Borrower or any guarantor of the Obligations of any proceedings under the Bankruptcy Code 11 USC §101 *et seq.* or any other law in which the Borrower or any guarantor of the Obligations is alleged to be insolvent or unable to pay its debts as they mature, or the making by the Borrower or any guarantor of the Obligations of an assignment for the benefit of creditors or the granting by the Borrower or any guarantor of the Obligations of a trust mortgage for the benefit of creditors;
- (h) the service upon the Bank of a writ in which the Bank is named as trustee of the Borrower or any guarantor of the Obligations;
- (i) a judgment or judgments for the payment of money shall be rendered against the Borrower or any guarantor of the Obligations, and any such judgment shall remain unsatisfied and in effect for any period of thirty (30) consecutive days without a stay of execution;
- (j) any levy, lien (including mechanics lien), seizure, attachment, execution or similar process shall be issued or levied on any of the property of the Borrower or any guarantor of the Obligations;
- (k) Borrower shall fail or neglect to perform, keep or observe any financial covenant set forth in this Agreement;
- (l) Borrower shall fail or neglect to perform, keep or observe any financial reporting requirement set forth in this Agreement and the breach is not cured to Bank's satisfaction within 30 days;
- (m) the termination or revocation of any guaranty of the Obligations; or
- (n) the occurrence of such a change in the condition or affairs (financial or otherwise) of the Borrower or any guarantor of the Obligations, or the occurrence of any other event or circumstance, such that the Bank, in its sole discretion, deems that it is insecure or that the prospects for timely or full payment or performance of any obligation of the Borrower or any guarantor of the Obligations to the Bank has been or may be impaired.

5.2 Acceleration. If an Event of Default shall occur, at the election of the Bank, all Obligations shall become immediately due and payable without notice or demand, except with respect to Obligations payable on DEMAND, which shall be due and payable on DEMAND, whether or not an Event of Default has occurred.

5.3 Nonexclusive Remedies. All of the Bank's rights and remedies not only under the provisions of this Agreement but also under any other agreement or transaction shall be cumulative and not alternative or exclusive, and may be exercised by the Bank at such time or times and in such order of preference as the Bank in its sole discretion may determine.

## 6. MISCELLANEOUS

6.1 Waivers. The Borrower waives notice of intent to accelerate, notice of acceleration, notice of nonpayment, demand, presentment, protest or notice of protest of the Obligations, and all other notices, consents to any renewals or extensions of time of payment thereof, and generally waives any and all suretyship defenses and defenses in the nature thereof.

6.2 Severability. If any provision of this Agreement or portion of such provision or the application thereof to any person or circumstance shall to any extent be held invalid or unenforceable, the remainder

of this Agreement (or the remainder of such provision) and the application thereof to other persons or circumstances shall not be affected thereby.

6.3 Deposit Collateral. The Borrower hereby grants to the Bank a continuing lien and security interest in any and all deposits or other sums at any time credited by or due from the Bank to the Borrower and any cash, securities, instruments or other property of the Borrower in the possession of the Bank, whether for safekeeping or otherwise, or in transit to or from the Bank (regardless of the reason the Bank had received the same or whether the Bank has conditionally released the same) as security for the full and punctual payment and performance of all of the liabilities and obligations of the Borrower to the Bank and such deposits and other sums may be applied against such liabilities and obligations of the Borrower to the Bank at any time, whether or not such are then due, whether or not demand has been made and whether or not other collateral is then available to the Bank.

6.4 Indemnification. The Borrower shall indemnify, defend and hold the Bank and its directors, officers, employees, agents and attorneys (each an "Indemnitee") harmless of and from any claim brought or threatened against any Indemnitee by the Borrower, any guarantor or endorser of the Obligations, or any other person (as well as from reasonable attorneys' fees and expenses in connection therewith) on account of the Bank's relationship with the Borrower, or any guarantor or endorser of the Obligations (each of which may be defended, compromised, settled or pursued by the Bank with counsel of the Bank's election, but at the expense of the Borrower); except for any claim arising out of the gross negligence or willful misconduct of the Bank. The within indemnification shall survive payment of the Obligations, and/or any termination, release or discharge executed by the Bank in favor of the Borrower.

6.5 Costs and Expenses. The Borrower shall pay to the Bank on demand any and all costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements, court costs, litigation and other expenses) incurred or paid by the Bank in establishing, maintaining, protecting or enforcing any of the Bank's rights or the Obligations, including, without limitation, any and all such costs and expenses incurred or paid by the Bank in defending the Bank's security interest in, title or right to any collateral or in collecting or attempting to collect or enforcing or attempting to enforce payment of any Obligation.

6.6 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be an original, but all of which shall constitute but one agreement.

6.7 Complete Agreement. This Agreement and the other Loan Documents constitute the entire agreement and understanding between and among the parties hereto relating to the subject matter hereof, and supersedes all prior proposals, negotiations, agreements and understandings among the parties hereto with respect to such subject matter.

6.8 Binding Effect of Agreement. This Agreement shall be binding upon and inure to the benefit of the respective heirs, executors, administrators, legal representatives, successors and assigns of the parties hereto, and shall remain in full force and effect (and the Bank shall be entitled to rely thereon) until released in writing by the Bank. The Bank may transfer and assign this Agreement and deliver it to the assignee, who shall thereupon have all of the rights of the Bank; and the Bank shall then be relieved and discharged of any responsibility or liability with respect to this Agreement. The Borrower may not assign or transfer any of its rights or obligations under this Agreement. Except as expressly provided herein or in the other Loan Documents, nothing, expressed or implied, is intended to confer upon any party, other than the parties hereto, any rights, remedies, obligations or liabilities under or by reason of this Agreement or the other Loan Documents.

6.9 Further Assurances. Borrower will from time to time execute and deliver to Bank such documents, and take or cause to be taken, all such other or further action, as Bank may request in order to effect and confirm or vest more securely in Bank all rights contemplated by this Agreement and the other Loan Documents (including, without limitation, to correct clerical errors) or to comply with applicable statute or law.

6.10 Amendments and Waivers. This Agreement may be amended and Borrower may take any action herein prohibited, or omit to perform any act herein required to be performed by it, if Borrower shall obtain the Bank's prior written consent to each such amendment, action or omission to act. No course of dealing and no delay or omission on the part of Bank in exercising any right hereunder shall operate as a waiver of such right or any other right and waiver on any one or more occasions shall not be construed as a bar to or waiver of any right or remedy of Bank on any future occasion.

6.11 Terms of Agreement. This Agreement shall continue in full force and effect so long as any Obligations or obligation of Borrower to Bank shall be outstanding, or the Bank shall have any obligation to extend any financial accommodation hereunder, and is supplementary to each and every other agreement between Borrower and Bank and shall not be so construed as to limit or otherwise derogate from any of the rights or remedies of Bank or any of the liabilities, obligations or undertakings of Borrower under any such agreement, nor shall any contemporaneous or subsequent agreement between Borrower and the Bank be construed to limit or otherwise derogate from any of the rights or remedies of Bank or any of the liabilities, obligations or undertakings of Borrower hereunder, unless such other agreement specifically refers to this Agreement and expressly so provides.

6.12 Notices. Any notice under or pursuant to this Agreement shall be a signed writing or other authenticated record (within the meaning of Article 9 of the Code). Any notices under or pursuant to this Agreement shall be deemed duly received and effective if delivered in hand to any officer or agent of the Borrower or Bank, or if mailed by registered or certified mail, return receipt requested, addressed to the Borrower or Bank at the address set forth in this Agreement or as any party may from time to time designate by written notice to the other party.

6.13 Governing Law. This Agreement has been executed or completed and/or is to be performed in California, and it and all transactions thereunder or pursuant thereto shall be governed as to interpretation, validity, effect, rights, duties and remedies of the parties thereunder and in all other respects by the laws of California.

6.14 Reproductions. This Agreement and all documents which have been or may be hereinafter furnished by Borrower to the Bank may be reproduced by the Bank by any photographic, photostatic, microfilm, xerographic or similar process, and any such reproduction shall be admissible in evidence as the original itself in any judicial or administrative proceeding (whether or not the original is in existence and whether or not such reproduction was made in the regular course of business).

6.15 Jurisdiction and Venue. Borrower irrevocably submits to the nonexclusive jurisdiction of any Federal or state court sitting in California, over any suit, action or proceeding arising out of or relating to this Agreement. Borrower irrevocably waives, to the fullest extent it may effectively do so under applicable law, any objection it may now or hereafter have to the laying of the venue of any such suit, action or proceeding brought in any such court and any claim that the same has been brought in an inconvenient forum. Borrower hereby consents to any and all process which may be served in any such suit, action or proceeding, (i) by mailing a copy thereof by registered and certified mail, postage prepaid, return receipt requested, to the Borrower's address shown in this Agreement or as notified to the Bank and (ii) by serving the same upon the Borrower in any other manner otherwise permitted by law, and agrees that such service shall in every respect be deemed effective service upon Borrower.

6.16 Civil Code Section 2822. In the event that at any time, a surety is liable upon only a portion of Borrower's obligations under the Loan Documents and Borrower provides partial satisfaction of any such obligation(s), Borrower hereby waives any right it would otherwise have, under Section 2822 of the California Civil Code, to designate the portion of the obligations to be satisfied. The designation of the portion of the obligation to be satisfied shall, to the extent not expressly made by the terms of the Loan Documents, be made by the Bank rather than Borrower.

6.17 Arbitration. THE PARTIES AGREE TO ATTEMPT IN GOOD FAITH TO RESOLVE ANY DISPUTES WHICH MAY ARISE AMONG THEM IN CONNECTION WITH THE INTERPRETATION OR

ENFORCEMENT OF THE PROVISIONS OF THIS AGREEMENT, OR THE APPLICATION OR VALIDITY THEREOF. IN THE EVENT THAT ANY DISPUTE CANNOT BE SO RESOLVED, AND UNLESS THE RELIEF SOUGHT REQUIRES THE EXERCISE OF THE EQUITY POWERS OF A COURT OF COMPETENT JURISDICTION, SUCH DISPUTE SHALL BE SUBMITTED TO ARBITRATION. SUCH ARBITRATION PROCEEDINGS SHALL BE HELD IN THE COUNTY OF SANTA BARBARA, CALIFORNIA, IN ACCORDANCE WITH THE ARBITRATION PROVISIONS OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. THIS AGREEMENT TO ARBITRATE SHALL BE SPECIFICALLY ENFORCEABLE. ANY AWARD RENDERED IN ANY SUCH ARBITRATION PROCEEDINGS SHALL BE FINAL AND BINDING ON EACH OF THE PARTIES HERETO, AND JUDGEMENT MAY BE ENTERED THEREON IN ANY COURT OF COMPETENT JURISDICTION. THE FOREGOING AGREEMENT TO ARBITRATE DOES NOT LIMIT THE RIGHT OF ANY PARTY TO (I) FORECLOSE AGAINST REAL OR PERSONAL PROPERTY COLLATERAL; (II) EXERCISE SELF-HELP REMEDIES RELATING TO COLLATERAL OR PROCEEDS OF COLLATERAL SUCH AS SETOFF OR REPOSSESSION; OR (III) OBTAIN PROVISIONAL OR ANCILLARY REMEDIES SUCH AS REPLEVIN, INJUNCTIVE RELIEF, ATTACHMENT OR THE APPOINTMENT OF A RECEIVER, BEFORE DURING OR AFTER THE PENDENCY OF ANY ARBITRATION PROCEEDING. THIS EXCLUSION DOES NOT CONSTITUTE A WAIVER OF THE RIGHT OR OBLIGATION OF ANY PARTY TO SUBMIT ANY DISPUTE TO ARBITRATION HEREUNDER, INCLUDING THOSE ARISING FROM THE EXERCISE OF THE ACTIONS DETAILED IN THE FOREGOING CLAUSES (I), (II) AND (III).

Executed as of October 29, 2007.

Borrower:

Pend Oreille Bonner Development, LLC

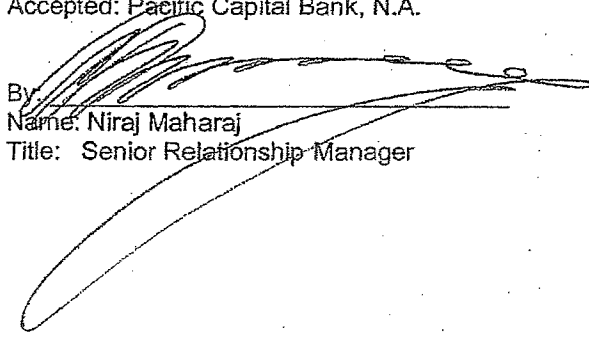
By: Pend Oreille Bonner Development Holdings, Inc.,  
Manager

By:

  
Charles W. Reeves, President

Accepted: Pacific Capital Bank, N.A.

By:

  
Name: Niraj Maharaj

Title: Senior Relationship Manager



### UNLIMITED GUARANTY

TO: Pacific Capital Bank, N.A., a national banking association, doing business as First National Bank of Central California (the "Bank")

RE: **Pend Oreille Bonner Development, LLC, a Nevada limited liability company** (the "Borrower")

To induce the Bank to make or continue to make loans, advances, or grant other financial accommodations to the Borrower, in consideration thereof and for loans, advances or financial accommodations heretofore or hereafter granted by the Bank to or for the account of the Borrower, the undersigned **Thomas J. Merschel** (the "Guarantor") absolutely and unconditionally guarantees the full and punctual payment to the Bank of all sums which may be presently due and owing and of all sums which shall in the future become due and owing to the Bank from the Borrower, whether direct or indirect, whether as a borrower, guarantor, surety or otherwise, including, without limitation, interest, attorneys' fees and other amounts accruing after the filing of a petition in bankruptcy by or against Borrower, notwithstanding the discharge of Borrower from such obligations, together with all costs and expenses incurred by the Bank in connection with such obligations, this Unlimited Guaranty (this "Guaranty") and the enforcement thereof, and also guarantees the due performance by the Borrower of all its obligations under all other present and future contracts and agreements with the Bank, including, without limitation, all rate swap transactions, basis swaps, forward rate transactions, commodity swaps, commodity options, equity or equity index swaps, equity or equity index options, bond options, interest rate options, foreign exchange transactions, cap transactions, floor transactions, collar transactions, forward transactions, currency swap transactions, cross-currency rate swap transactions and currency options. This is a guaranty of payment and not collection.

Guarantor also agrees:

- (1) to indemnify and hold the Bank and its directors, officers, employees, agents and attorneys harmless from and against all claims, obligations, demands and liabilities, by whomsoever asserted, and against all losses in any way suffered, incurred or paid as a result of or in any way arising out of or following or consequential to transactions with the Borrower, except for any claim arising out of the gross negligence or willful misconduct of the Bank. Without limiting the generality of the foregoing, Guarantor hereby expressly waives any and all benefits or defenses which otherwise might be available to Guarantor under California Civil Code Sections 2799, 2808, 2809, 2810, 2815, 2819, 2820, 2821, 2822, 2838, 2839, 2845, 2849, 2850, 2899 and 3433. Guarantor further waives all rights and defenses Guarantor may have because the obligations guaranteed hereby are secured by real property. This means, among other things that the Bank may collect from Guarantor without first foreclosing on any real or personal property collateral pledged by the Borrower and if the Bank forecloses on any real property collateral, (i) the amount of the obligations guaranteed hereby may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price and (ii) the Bank may collect from Guarantor even if the Bank, by foreclosing on the real property collateral, have destroyed any right Guarantor may have to collect from the Borrower. This is an unconditional and irrevocable waiver of any rights and defenses Guarantor may have because the obligations guaranteed hereby are secured by real property. These rights and defenses include, but are not limited to, any rights or defenses based upon Sections 580a, 580b, 580d or 726 of the California Code of Civil Procedure. Guarantor further waives all rights and defenses arising out of an election of remedies by the Bank, even though that election of remedies, such as a non-judicial foreclosure with respect to security for a guaranteed obligation, has destroyed Guarantor's rights of subrogation and reimbursement against the Borrower by the operation of Section 580d of the California Code of Civil Procedure or otherwise;



- (2) that this Guaranty shall not be impaired by any modification, supplement, extension, renewal or amendment of any contract or agreement to which the parties thereto may hereafter agree, nor by any modification, increase, release or other alteration of any of the obligations hereby guaranteed or of any security therefor, nor by any agreements or arrangements whatsoever with the Borrower or anyone else, all of which may be done without notice to or consent by the Guarantor;
- (3) that the liability of the Guarantor hereunder is direct and unconditional and due immediately upon default of the Borrower without demand or notice and without requiring the Bank first to resort to any other right, remedy or security;
- (4) that Guarantor waives its rights of subrogation, reimbursement, indemnification and contribution, any right of recourse to security for the debts and obligations of the Borrower to the Bank and any other rights and defenses that are or may become available to Guarantor, including without limitation, under California Civil Code Sections 2787 to 2855, inclusive, and California Code of Civil Procedure Sections 580a, 580b, 580d, or 726, and any successor Sections; and acknowledges that such a waiver is intended by Guarantor to be effective to the maximum extent permitted by California Civil Code Section 2856 and other applicable law;
- (5) that the liability of the Guarantor is unlimited and shall be joint and several with the liabilities of any other guarantors;
- (6) that if the Borrower or the Guarantor or any other guarantor should at any time become insolvent or make a general assignment, or if a petition in bankruptcy or any insolvency or reorganization proceedings shall be filed or commenced by, against or in respect of the Borrower or the Guarantor, or any other guarantor of the obligations guaranteed hereby, any and all obligations of the Guarantor shall be immediately due and payable without notice;
- (7) that the Bank's books and records showing the account between the Bank and the Borrower shall be admissible in any action or proceeding, shall be binding upon the Guarantor for the purpose of establishing the items therein set forth and shall constitute conclusive proof thereof;
- (8) that this Guaranty is, as to the Guarantor, a continuing Guaranty that shall remain effective under successive transactions until expressly terminated as hereinafter provided;
- (9) that this Guaranty may be terminated as to the Guarantor only by giving the Bank Sixty(60) days' prior written notice by registered or certified mail, and thereupon this Guaranty shall terminate with respect to Guarantor only at the expiration of said Sixty(60) day period, which shall then be the effective date of termination, and that such termination shall be applicable only to transactions having their inception after the effective date of termination and shall not affect rights and obligations arising out of transactions or indebtedness or extensions or renewals thereof having their inception prior to such date, including renewals, extensions, modifications and refinancings of such prior transactions, or arising out of extensions of credit made pursuant to a commitment previously made by the Bank;
- (10) that the death of Guarantor shall not effect the termination of this Guaranty as to Guarantor providing, that in any event within Sixty (60) days after the death of the Guarantor, Borrower or any surviving guarantor shall provide to the Bank evidence that the estate of the Guarantor confirms its obligations to the Bank under this Guaranty;
- (11) that termination, release or limitation of any guaranty of the obligations guaranteed hereby by any other guarantor shall not affect the continuing liability hereunder of the Guarantor;

- (12) that nothing shall discharge or satisfy the liability of the Guarantor hereunder except the full indefeasible payment and performance of all of the Borrower's debts and obligations to the Bank with interest and costs of collection;
- (13) that this Guaranty shall not be affected by the illegality, invalidity or unenforceability of the obligations guaranteed, by any fraudulent, illegal or improper act by the Borrower, the legal incapacity or any other defense of the Borrower, the Guarantor or any other person obligated to the Bank consequential to transactions with the Borrower nor by the invalidation, by operation of law or otherwise, of all or any part of the obligations guaranteed hereby, including but not limited to any interest accruable on the obligations guaranteed hereby during the pendency of any bankruptcy or receivership proceeding of the Borrower nor any mere personal disability of the Borrower though the disability be such as to make the contract void against the Borrower;
- (14) that any and all present and future debts and obligations of the Borrower to Guarantor are hereby waived and postponed in favor of and subordinated to the full indefeasible payment and performance of all present and future debts and obligations of the Borrower to the Bank;
- (15) the Guarantor hereby grants to the Bank a continuing lien and security interest in all deposits or other sums at any time credited by or due from the Bank to the Guarantor and any property of the Guarantor at any time in the possession of the Bank whether for safekeeping or otherwise, or in transit to or from the Bank (regardless of the reason the Bank had received the same or whether the Bank has conditionally released the same) as security for the full and punctual payment and performance of all of the obligations guaranteed hereby, and such deposits and other sums may be applied or set off against such obligations at any time, whether or not such are then due, whether or not demand has been made and whether or not other collateral is then available to the Bank;
- (16) that if at any time payment of all or any part of the obligations guaranteed hereunder is rescinded or otherwise must be restored by the Bank to the Borrower or to the creditors of the Borrower or any representative of the Borrower or representative of the Borrower's creditors as a voidable preference or fraudulent transfer or conveyance upon the insolvency, bankruptcy or reorganization of the Borrower or the Guarantor, or to the creditors of the Guarantor or any representative of the Guarantor or representative of the creditors of Guarantor upon the insolvency, bankruptcy or reorganization of the Guarantor or otherwise, this Guaranty shall continue to be effective or be reinstated, as the case may be, as though such payments had not been made, and shall survive as an obligation of the Guarantor, and shall not be discharged or satisfied by said payment or payments, notwithstanding the return of the original of this Guaranty to the Guarantor or to the Borrower, or any other apparent termination of Guarantor's obligations hereunder;
- (17) that any rights and remedies available to the Bank under this Guaranty are cumulative, and not exclusive of any rights and remedies otherwise available to the Bank at law or in equity;
- (18) that the Bank's delay or omission in exercising any of the Bank's rights and remedies shall not constitute a waiver of these rights and remedies, nor shall the Bank's waiver of any right or remedy operate as a waiver of any other right or remedy available to the Bank. The Bank's waiver of any right or remedy on any one occasion shall not be considered a waiver of same on any subsequent occasion, nor shall this be considered to be a continuing waiver;
- (19) that this Guaranty incorporates all discussions and negotiations between the Bank and the Guarantor concerning the guaranty and indemnification provided by the undersigned hereby, and that no such discussions or negotiations shall limit, modify, or otherwise affect the provisions hereof, there are no preconditions to the effectiveness of this Guaranty and that no provision hereof may be altered, amended, waived, canceled or modified, except by a written instrument executed and acknowledged by the Bank's duly authorized officer;

- (20) that this Guaranty and all documents which have been or may be hereinafter furnished by the Guarantor to the Bank may be reproduced by the Bank by any photographic, photostatic, microfilm, xerographic or similar process, and that any such reproduction shall be admissible in evidence as the original itself in any judicial or administrative proceeding (whether or not the original is in existence and whether or not such reproduction was made in the regular course of business); and
- (21) that the Guarantor shall deliver to the Bank simultaneously herewith and by **June 30th** in any year and upon request therefor, personal financial statements addressed to the Bank in form satisfactory to the Bank, and the Guarantor represents and warrants the accuracy of any information contained therein and that so long as this Guaranty remains in effect, Guarantor shall provide the Bank with copies of Guarantor's filed Federal tax returns including all schedules and K-1's for the prior year by **October 31<sup>st</sup>** or copy of extension within **20** days of **April 15th** each such year or such other date approved by the Bank.

Guarantor waives: notice of acceptance hereof, presentment and protest of any instrument and notice thereof, notice of default and all other notices to which the Guarantor might otherwise be entitled; and any and all defenses, including without limitation, any and all defenses which the Borrower or any other party may have to the fullest extent permitted by law, any defense to this Guaranty based on impairment of collateral or on suretyship defenses of every type; any right to exoneration or marshaling.

To the extent that it lawfully may, Guarantor hereby further agrees not to invoke any law relating to the marshaling of collateral which might cause delay in or impede the enforcement of the Bank's rights under this Guaranty or otherwise respecting the guaranteed obligations, and to the extent that it lawfully may do so, the Guarantor hereby irrevocably waives the benefits of all such laws. Except as otherwise provided by applicable law, the Bank shall have no duty as to the collection or protection of any collateral, if any, securing the guaranteed obligations beyond the safe custody thereof.

Guarantor will from time to time execute and deliver to the Bank, and take or cause to be taken, all such other further action as the Bank may request in order to effect and confirm or vest more securely in the Bank all the rights contemplated in this Guaranty (including, without limitation, to correct clerical errors) or respecting any of the obligations guaranteed hereby or to comply with applicable statute or law.

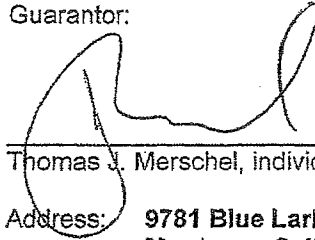
This Guaranty, all acts and transactions hereunder, and the rights and obligations of the parties hereto shall be governed, construed and interpreted according to the laws of the State of California, shall be binding upon the heirs, executors, administrators, successors and assigns of the Guarantor and shall inure to the benefit of the Bank's successors and assigns.

If any provision of this Guaranty is found to be invalid, illegal or unenforceable, the validity of the remainder of the Guaranty shall not be affected.

Guarantor irrevocably submits to the nonexclusive jurisdiction of any Federal or state court sitting in California, over any suit, action or proceeding arising out of or relating to this Guaranty. Guarantor irrevocably waives, to the fullest extent it may effectively do so under applicable law, any objection it may now or hereafter have to the laying of the venue of any such suit, action or proceeding brought in any such court and any claim that the same has been brought in an inconvenient forum. Guarantor hereby consents to any and all process which may be served in any such suit, action or proceeding, (i) by mailing a copy thereof by registered and certified mail, postage prepaid, return receipt requested, to the Guarantor's address shown below or as notified to the Bank and (ii) by serving the same upon the Guarantor in any other manner otherwise permitted by law, and agrees that such service shall in every respect be deemed effective service upon the Guarantor.

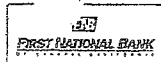
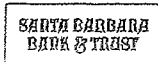
Executed and dated **October 29, 2007**.

Guarantor:



Thomas J. Merschel, individually

Address: **9781 Blue Larkspur Lane  
Monterey, California  
93940**



Loan No. 101760163

## PLEDGE AGREEMENT

This AGREEMENT is entered into as of **October 29, 2007**, between **Thomas J. Merschel, an individual**, with an address of **9781 Blue Larkspur Lane, Monterey, California 93940** (the "Pledgor") and Pacific Capital Bank, N.A., a national banking association, doing business as First National Bank of Central California with an address of c/o Loan Services, PO Box 60654, Santa Barbara, California 93160-0654 (the "Bank").

1. **Pledge.** In consideration of the Bank's extending credit and other financial accommodations to or for the benefit of the Pledgor, whether evidenced by notes or not, the Pledgor hereby grants to the Bank a security interest in, a lien on and pledge and assignment of the Collateral (as hereinafter defined). The security interest granted by this Agreement is given to and shall be held by the Bank as security for the payment and performance of all Obligations (as hereinafter defined), including without limitation, all obligations of the Pledgor to the Bank respecting that certain **Unlimited Guaranty**, dated **October 29, 2007** by **Thomas J. Merschel** in favor of the Bank pursuant to which **Thomas J. Merschel** guaranteed all of the obligations of **Pend Oreille Bonner Development, LLC** to the Bank (the "Guaranty"; and collectively, along with all other agreements, documents, certificates and instruments delivered in connection therewith, the "Loan Documents"), including without limitation, respecting that certain **Revolving Term Note**, dated **October 29, 2007**, by **Pend Oreille Bonner Development, LLC** in favor of the Bank in the original principal amount of **\$5,000,000.00**, and any substitutions, modifications, extensions or amendments to any of the Loan Documents. The Bank shall have the unrestricted right from time to time to apply (or to change any application already made of) the proceeds of any of the Collateral to any of the Obligations, as the Bank in its sole discretion may determine.

2. **Definitions.** The following definitions shall apply:

- (a) "Code" shall mean the Uniform Commercial Code in effect in California, as amended from time to time.
- (b) "Collateral" shall mean all the Pledgor's present and future right, title and interest in and to any and all of the property listed on Schedule A attached hereto, any additional property which may at any time and from time to time be delivered by or on behalf of the Pledgor to the Bank to be held pursuant to this Agreement, all books, records, and papers relating to the foregoing, and all proceeds of the foregoing, including, without limitation, all deposit accounts and all cash, securities, instruments, promissory notes or other property at any time and from time to time receivable or otherwise distributed in respect of or in exchange for any of or all of the foregoing.
- (c) "Event of Default" shall mean the occurrence of any one or more of the following events:
  - (i) default of any liability, obligation, covenant or undertaking of the Pledgor or any guarantor of the Obligations to the Bank, hereunder or otherwise, including, without limitation, failure to pay in full and when due any installment of principal or interest or default of the Pledgor or any guarantor of the Obligations under any other Loan Document or any other agreement with the Bank continuing for 10 days with respect to the payment of money or continuing for 30 days with respect to any other default;
  - (ii) failure of the Pledgor or any guarantor of the Obligations to maintain aggregate collateral security value satisfactory to the Bank continuing for 30 days;
  - (iii) default of any material liability, obligation or undertaking of the Pledgor or any guarantor of the Obligations to any other party continuing for 30 days;

(iv) if any statement, representation or warranty heretofore, now or hereafter made by the Pledgor or any guarantor of the Obligations in connection with this Agreement or in any supporting financial statement of the Pledgor or any guarantor of the Obligations shall be determined by the Bank to have been false or misleading in any material respect when made;

(v) if the Pledgor or any guarantor of the Obligations is a corporation, trust, partnership or limited liability company, the liquidation, termination or dissolution of any such organization, or the merger or consolidation of such organization into another entity, or its ceasing to carry on actively its present business or the appointment of a receiver for its property;

(vi) the death of the Pledgor or any guarantor of the Obligations and, if the Pledgor or any guarantor of the Obligations is a partnership or limited liability company, the death of any partner or member;

(vii) the institution by or against the Pledgor or any guarantor of the Obligations of any proceedings under the Bankruptcy Code 11 USC §101 *et seq.* or any other law in which the Pledgor or any guarantor of the Obligations is alleged to be insolvent or unable to pay its debts as they mature, or the making by the Pledgor or any guarantor of the Obligations of an assignment for the benefit of creditors or the granting by the Pledgor or any guarantor of the Obligations of a trust mortgage for the benefit of creditors;

(viii) the service upon the Bank of a writ in which the Bank is named as trustee of the Pledgor or any guarantor of the Obligations;

(ix) a judgment or judgments for the payment of money shall be rendered against the Pledgor or any guarantor of the Obligations, and any such judgment shall remain unsatisfied and in effect for any period of thirty (30) consecutive days without a stay of execution;

(x) any levy, lien (including mechanics lien), seizure, attachment, execution or similar process shall be issued or levied on any of the property of the Pledgor or any guarantor of the Obligations;

(xi) the termination or revocation of any guaranty of the Obligations; or

(xii) the occurrence of such a change in the condition or affairs (financial or otherwise) of the Pledgor or any guarantor of the Obligations, or the occurrence of any other event or circumstance, such that the Bank, in its sole discretion, deems that it is insecure or that the prospects for timely or full payment or performance of any obligation of the Pledgor or any guarantor of the Obligations to the Bank has been or may be impaired.

(d) "Loan Documents" shall mean this Agreement and all other agreements between the Bank and the Pledgor.

(e) "Obligation(s)" shall include without limitation all loans, advances, indebtedness, notes, liabilities, rate swap transactions, basis swaps, forward rate transactions, commodity swaps, commodity options, equity or equity index swaps, equity or equity index options, bond options, interest rate options, foreign exchange transactions, cap transactions, floor transactions, collar transactions, forward transactions, currency swap transactions, cross-currency rate swap transactions, currency options and amounts, liquidated or unliquidated, owing by the Pledgor to the Bank at any time, of each and every kind, nature and description, whether arising under this Agreement, any of the Loan Documents or otherwise, and whether secured or unsecured, direct or indirect (that is, whether the same are due directly by the Pledgor to the Bank; or are due indirectly by the

Pledgor to the Bank as endorser, guarantor or other surety, or as obligor of obligations due third persons which have been endorsed or assigned to the Bank, or otherwise), absolute or contingent, due or to become due, now existing or hereafter contracted, including, without limitation, payment when due of all amounts outstanding respecting any of the Loan Documents. Said term shall also include all interest and other charges chargeable to the Pledgor or due from the Pledgor to the Bank from time to time and all costs and expenses referred to in this Agreement.

- (f) "Person" or "party" shall include individuals, partnerships, corporations, limited liability companies and all other entities.

All words and terms used in this Agreement other than those specifically defined herein shall have the meanings accorded to them in the Code.

3. Costs and Expenses. The Pledgor shall pay to the Bank on demand any and all costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements, court costs, litigation and other expenses) incurred or paid by the Bank in establishing, maintaining, protecting or enforcing any of the Bank's rights or the Obligations, including, without limitation, any and all such costs and expenses incurred or paid by the Bank in defending the Bank's security interest in, title or right to the Collateral or in collecting or attempting to collect or enforcing or attempting to enforce payment of the Obligations.

4. Representations, Warranties and Covenants. The Pledgor represents, warrants and covenants that

- (a) the Pledgor shall at the Pledgor's cost and expense execute all such instruments, documents and papers, and will do all such acts as the Bank may request from time to time to carry into effect the provisions and intent of this Agreement, including, without limitation, as applicable, the execution of stock transfer orders and stock powers, endorsement of promissory notes, certificates of deposit, passbooks and instruments, notifications to obligors on the Collateral, and all such other acts as the Bank may request with respect to the perfection and protection of the security interest granted herein and the assignment effected hereby and the Pledgor hereby authorizes the Bank to take any of the foregoing actions without notice and without further approval of any kind;
- (b) the Pledgor has good and marketable title to the Collateral free and clear of any lien other than the security interest granted herein and the Pledgor shall keep the Collateral free and clear of all liens, encumbrances, attachments, security interests, pledges and charges, and it shall not sell, lease, assign or otherwise dispose of, transfer or grant options with respect to, any Collateral;
- (c) the Pledgor shall deliver to the Bank when received by the Pledgor, any item representing or constituting any of the Collateral, including, without limitation, all cash dividends, all stock certificates whether now existing or hereafter received as a result of any stock dividends, stock splits or otherwise, and all promissory notes, certificates of deposit, passbooks and instruments, in each case in suitable form for transfer by delivery or accompanied by duly executed instruments of transfer or assignment in blank. Any and all Collateral and cash, promissory notes, certificates of deposit, passbooks and instruments, securities and other distributions of property which are received by the Pledgor contrary to the provisions of this Agreement, shall be held by the Pledgor in trust for the benefit of the Bank and shall be immediately delivered to the Bank in the form so received (with any necessary endorsement or instrument of transfer or assignment);
- (d) the Pledgor, if a corporation or other entity, shall not change its name, state of organization and/or registration or the location of its chief executive office or principal place of business, and if an individual, his or her primary residence, except in each case upon not less than 30 days prior written notice to Bank;

- (e) the Pledgor has not performed and will not perform any acts which might prevent the Bank from enforcing any of the terms of this Agreement or which would limit the Bank in any such enforcement and the Pledgor shall not exercise any right with respect to the Collateral which would dilute or adversely affect the Bank's rights in the Collateral. Other than financing statements or other similar or equivalent documents or instruments with respect to the security interests granted hereunder in favor of the Bank, no financing statement, mortgage, security agreement or similar or equivalent document or instrument covering all or any part of the Collateral is on file or of record in any jurisdiction in which such filing or recording would be effective to perfect a lien on such Collateral. No Collateral is in the possession of any person asserting any claim thereto or security interest therein other than the Bank or its designee unless such person has entered into a control agreement satisfactory to the Bank;
- (f) the security interests granted hereunder constitute, under the Code, valid security interests in all Collateral, securing the Obligations and (i) upon the delivery of any of the Collateral to the Bank in accordance herewith, the security interest in such Collateral will be perfected, subject to no prior lien and the Bank will have "control" (as defined in the Code) thereof, (ii) with respect to Collateral, if any, in the possession of a third party, the Bank will have a perfected, first priority security interest in such Collateral upon execution by such third party of a control agreement in form and substance satisfactory to the Bank and (iii) when UCC financing statements in the appropriate form are filed in the appropriate offices, the security interest granted hereunder will constitute a perfected security interest to the extent that a security interest may be perfected by filing pursuant to the Code, prior to all liens and rights of others;
- (g) the Pledgor has full power and authority to enter into this Agreement and to pledge the Collateral hereunder and except for the filing of UCC financing statements, no registration, recordation or filing with any governmental body, agency or official is required in connection with the execution or delivery hereof or is necessary for the validity or enforceability thereof or for the perfection or due recordation of the security interest granted hereunder or for the enforcement thereof;
- (h) as to Collateral, if any, comprised of deposit accounts, the Pledgor has delivered to the Bank every certificate of deposit included in the Collateral, duly endorsed to the Bank and every passbook or other document or instrument evidencing or comprising the Collateral; and
- (i) as to Collateral, if any, comprised of securities:
- (i) the Pledgor shall, upon the request of the Bank, cause the issuer of any uncertificated securities to issue certificates with respect thereto;
  - (ii) the Pledgor shall, upon the request of the Bank, cause any certificated securities to be issued in the name of the Bank, as pledgee;
  - (iii) the Pledgor shall not cause or permit any certificated securities to be converted to uncertificated securities;
  - (iv) the Pledgor shall not, without the Bank's prior written consent, file any affidavit for replacement of lost stock certificates or bonds; and
  - (v) the Pledgor shall not vote the Collateral in favor of or consent to any resolution which might impose any restrictions upon the sale, transfer or disposition of the Collateral; result in the issuance of any additional shares of stock of any class; vest additional powers, privileges, preferences or priorities to any other class of stock; or adversely affect the rights of the Bank hereunder;
  - (vi) all shares of capital stock identified in any Schedule to this Agreement are beneficially owned by the Pledgor, have been duly authorized and validly issued, are fully



paid and non-assessable, and are subject to no option to purchase or similar right of any person. The Pledgor is not and will not become a party to or otherwise bound by any agreement (including without limitation any voting agreement), other than the Loan Documents, which restricts in any manner the rights of any present or future holder of any Collateral with respect thereto.

5. Power of Attorney. The Pledgor hereby irrevocably constitutes and appoints the Bank as the Pledgor's true and lawful attorney, with full power of substitution at the sole cost and expense of the Pledgor but for the sole benefit of the Bank, to endorse in favor of the Bank any of the Collateral; execute and deliver instruments of assignment and/or orders for withdrawal; cause the transfer of any of the Collateral in such name as the Bank may, from time to time, determine; cause the issuance of certificates for book entry and/or uncertificated securities; provide notification in connection with book entry securities or general intangibles and/or provide instructions to the issuers of uncertificated securities or securities intermediaries, as necessary; to renew, extend or roll over any Collateral; and make demand and initiate actions to enforce any of the Obligations. The Bank may take such action with respect to the Collateral as the Bank may reasonably determine to be necessary to protect and preserve its interests in the Collateral. The Bank shall also have and may exercise at any time all rights, remedies, powers, privileges and discretion of the Pledgor with respect to and under the Collateral, provided, however, the Bank shall have no right until an Event of Default has occurred to exercise any voting rights available to the Pledgor at any time the Collateral is held by the Bank solely as pledgee hereunder. Except as limited above, all the rights, remedies, powers, privileges and discretion included in this paragraph may be exercised by the Bank whether or not any of the Obligations are then due and whether or not an Event of Default has occurred. All powers conferred upon Bank by this Agreement, being coupled with an interest, shall be irrevocable until this Agreement terminates in accordance with its terms, all Obligations are irrevocably paid in full and the Collateral is released. The power of attorney shall not be affected by subsequent disability or incapacity of the Pledgor. The Bank shall not be liable for any act or omission to act pursuant to this Paragraph except for any act or omission to act which is caused by the Bank's gross negligence or willful misconduct.

6. Further Assurances. The Pledgor will from time to time execute and deliver to the Bank such documents, and take or cause to be taken, all such other further action, as the Bank may request in order to effect and confirm or vest more securely in the Bank all rights contemplated by this Agreement (including, without limitation, to correct clerical errors) or to vest more fully in, or assure to the Bank the security interest in, the Collateral or to comply with applicable statute or law. To the extent permitted by applicable law, the Pledgor authorizes the Bank to file financing statements, continuation statements or amendments, and any such financing statements, continuation statements or amendments may be filed at any time in any jurisdiction. The Bank may at any time and from time to time file financing statements, continuation statements and amendments thereto which contain any information required by Article 9 of the Code for the sufficiency or filing office acceptance of any financing statement, continuation statement or amendment, including whether the Pledgor is an organization, the type of organization and any organization identification number issued to the Pledgor. The Pledgor agrees to furnish any such information to the Bank promptly upon request. In addition, the Pledgor shall at any time and from time to time take such steps as the Bank may reasonably request for the Bank (i) to obtain an acknowledgment, in form and substance satisfactory to the Bank, of any bailee having possession of any of the Collateral that the bailee holds such Collateral for the Bank, (ii) to obtain "control" of any Collateral comprised of investment property or deposit accounts (as such terms are defined in the Code), with any agreements establishing control to be in form and substance satisfactory to the Bank, and (iii) otherwise to insure the continued perfection and priority of the Bank's security interest in any of the Collateral and the preservation of its rights therein. The Pledgor hereby constitutes the Bank its attorney-in-fact to execute and file all filings required or so requested for the foregoing purposes, all acts of such attorney being hereby ratified and confirmed; and such power, being coupled with an interest, shall be irrevocable until this Agreement terminates in accordance with its terms, all Obligations are irrevocably paid in full and the Collateral is released.

7. Default. If an Event of Default shall occur, at the election of the Bank, all Obligations shall become immediately due and payable without notice or demand, except with respect to Obligations

payable on demand, which shall be due and payable on demand, whether or not an Event of Default has occurred.

The Bank is hereby authorized, at its election, after an Event of Default or after demand, without any further demand or notice except to such extent as notice may be required by applicable law, to sell or otherwise dispose of all or any of the Collateral at public or private sale and/or enforce and collect the Collateral (including, without limitation, the liquidation of deposit accounts, debt instruments or securities and the exercise of conversion rights with respect to convertible securities, whether or not such instruments or securities have matured and whether or not any penalties or other charges are imposed on account of such action); and the Bank may also exercise any and all other rights and remedies of a secured party under the Code or which are otherwise accorded to it by applicable law, all as the Bank may determine. If notice of a sale or other action by the Bank is required by applicable law, the Pledgor agrees that ten (10) days' written notice to the Pledgor, or the shortest period of written notice permitted by law, whichever is smaller, shall be sufficient notice; and that to the extent permitted by law, the Bank, its officers, attorneys and agents may bid and become purchasers at any such sale, if public, and may purchase at any private sale any of the Collateral that is of a type customarily sold on a recognized market or which is the subject of widely distributed standard price quotations. Any sale (public or private) shall be free from any right of redemption, which the Pledgor hereby waives and releases. No purchaser at any sale (public or private) shall be responsible for the application of the purchase money. Any balance of the net proceeds of sale remaining after paying all Obligations of the Pledgor to the Bank shall be returned to the Pledgor or to such other party as may be legally entitled thereto; and if there is a deficiency, the Pledgor shall be responsible for the same, with interest. The Pledgor acknowledges that any exercise by the Bank of the Bank's rights upon default may be subject to compliance by the Bank with any statute, regulation, ordinance, directive or order of any Federal, state, municipal or other governmental authority, and may impose, without limitation, any of the foregoing restricting the sale of securities. The Bank, in its sole discretion at any such sale, may restrict the prospective bidders or purchasers as to their number, nature of business and investment intentions, and may impose, without limitation, a requirement that the persons making such purchases represent and agree, to the satisfaction of the Bank, that they are purchasing the Collateral for their own account, for investment, and not with a view to the distribution or resale thereof. The proceeds of any collection or of any sale or disposition of the Collateral held pursuant to this Agreement shall be applied towards the Obligations in such order and manner as the Bank determines in its sole discretion, any statute, custom or usage to the contrary notwithstanding.

8. Safe Custody and Exclusivity. The Bank shall have no duty as to the Collateral or protection of the Collateral or any income or distribution thereon, beyond the safe custody of such of the Collateral as may come into the possession of the Bank, and shall have no duty as to the preservation of rights against prior parties or any other rights pertaining thereto. The Bank's Rights and Remedies (as defined herein) may be exercised without resort or regard to any other source of satisfaction of the Obligations.

9. Indemnification. The Pledgor shall indemnify, defend and hold the Bank and its directors, officers, employees, agents and attorneys (each an "Indemnitee") harmless of and from any claim brought or threatened against any Indemnitee by the Pledgor, any guarantor or endorser of the Obligations, or any other person (as well as from attorneys' reasonable fees and expenses in connection therewith) on account of the Bank's relationship with the Pledgor, or any guarantor or endorser of the Obligations (each of which may be defended, compromised, settled or pursued by the Bank with counsel of the Bank's election, but at the expense of the Pledgor), except for any claim arising out of the gross negligence or willful misconduct of the Bank. The within indemnification shall survive payment of the Obligations, and/or any termination, release or discharge executed by the Bank in favor of the Pledgor.

10. Waivers. The Pledgor waives notice of intent to accelerate, notice of acceleration, notice of nonpayment, demand, presentment, protest or notice of protest of the Obligations, and all other notices, consents to any renewals or extensions of time of payment thereof, and generally waives any and all suretyship defenses and defenses in the nature thereof. No course of dealing and no delay or omission of the Bank in exercising or enforcing any of its rights, powers, privileges, remedies, immunities or discretion (all of which are hereinafter collectively referred to as the "Bank's Rights and Remedies")

hereunder or under applicable law shall constitute a waiver thereof, and no waiver by the Bank of any default of the Pledgor hereunder or of any demand hereunder shall operate as a waiver of any other default hereunder or any other demand hereunder. No term or provision hereof shall be waived, altered or modified except with the prior written consent of the Bank, which consent makes explicit reference to this Agreement. Except as provided in the preceding sentence, no other agreement or transaction, of whatsoever nature, entered into between the Bank and the Pledgor at any time (whether before, during or after the effective date or term of this Agreement) shall be construed in any particular way as a waiver, modification or limitation of any of the Bank's Rights and Remedies under this Agreement (nor shall anything in this Agreement be construed as a waiver, modification or limitation of any of the Bank's Rights and Remedies under any such other agreement or transaction) but all the Bank's Rights and Remedies not only under the provisions of this Agreement but also under any such other agreement or transaction shall be cumulative and not alternative or exclusive, and may be exercised by the Bank at such time or times and in such order of preference as the Bank in its sole discretion may determine. The Pledgor further waives any and all rights and defenses that the Pledgor may have because the underlying debt is secured by real property: this means, among other things, that: (1) Bank may collect from the Pledgor without first foreclosing on any real or personal property collateral pledged by the underlying debtor: (2) if Bank forecloses on any real property collateral pledged by the underlying debtor, then (A) the amount of the debt may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price, and (B) Bank may collect from the Pledgor even if Bank, by foreclosing on the real property collateral, has destroyed any right the Pledgor may have to collect from the underlying debtor. The foregoing sentence is an unconditional and irrevocable waiver of any rights and defenses the Pledgor may have because the underlying debt is secured by real property. These rights and defenses being waived by the Pledgor include, but are not limited to, any rights or defenses based upon Section 580a, 580b, 580d or 726 of the California Code of Civil Procedure. Without limiting the generality of the foregoing or any other provision hereof, the Pledgor further expressly waives to the extent permitted by law any and all rights and defenses, including without limitation any rights of subrogation, reimbursement, indemnification, and contribution, which might otherwise be available to Pledgor under California Civil Code Sections 2822, 2787 to 2855, inclusive, 2899 and 3433, or under California Code of Civil Procedure Sections 580a, 580b, 580d and 726, or any such section.

11. Severability. If any provision of this Agreement or portion of such provision or the application thereof to any person or circumstance shall to any extent be held invalid or unenforceable, the remainder of this Agreement (or the remainder of such provision) and the application thereof to other persons or circumstances shall not be affected thereby.

12. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be an original, but all of which shall constitute but one agreement.

13. Complete Agreement. This Agreement and the other Loan Documents constitute the entire agreement and understanding between and among the parties hereto relating to the subject matter hereof, and supersedes, all prior proposals, negotiations, agreements and understandings among the parties hereto with respect to such subject matter.

14. Binding Effect of Agreement. This Agreement shall be binding upon and inure to the benefit of the respective heirs, executors, administrators, legal representatives, successors and assigns of the parties hereto, and shall remain in full force and effect (and the Bank shall be entitled to rely thereon) until released in writing by the Bank. The Bank may transfer and assign this Agreement and deliver the Collateral to the assignee, who shall thereupon have all of the Bank's Rights and Remedies; and the Bank shall then be relieved and discharged of any responsibility or liability with respect to this Agreement and the Collateral. Except as expressly provided herein or in the other Loan Documents, nothing, expressed or implied, is intended to confer upon any party, other than the parties hereto, any rights, remedies, obligations or liabilities under or by reason of this Agreement or the other Loan Documents.

15. Notices. Any notices under or pursuant to this Agreement shall be deemed duly received and effective if delivered in hand to any officer or agent of the Pledgor or Bank, or if mailed by registered or certified mail, return receipt requested, addressed to the Pledgor or Bank at the address set forth in this

Agreement or as any party may from time to time designate by written notice to the other party.

16. Reproductions. This Agreement and all documents which have been or may be hereinafter furnished by Pledgor to the Bank may be reproduced by the Bank by any photographic, photostatic, microfilm, xerographic or similar process, and any such reproduction shall be admissible in evidence as the original itself in any judicial or administrative proceeding (whether or not the original is in existence and whether or not such reproduction was made in the regular course of business).

17. Governing Law. This Agreement is intended to take effect and has been executed or completed and/or is to be performed in California, and it and all transactions thereunder or pursuant thereto shall be governed as to interpretation, validity, effect, rights, duties and remedies of the parties thereunder and in all other respects by the laws of California.

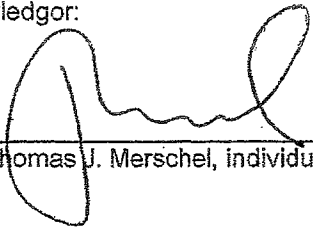
18. Civil Code Section 2822. In the event that at any time, a surety is liable upon only a portion of the Pledgor's obligations under the Loan Documents and the Pledgor provides partial satisfaction of any such obligation(s), the Pledgor hereby waives any right it would otherwise have, under Section 2822 of the California Civil Code, to designate the portion of the obligations to be satisfied. The designation of the portion of the obligation to be satisfied shall, to the extent not expressly made by the terms of the Loan Documents, be made by the Bank rather than the Pledgor.

19. Jurisdiction and Venue. The Pledgor irrevocably submits to the nonexclusive jurisdiction of any Federal or state court sitting in California, over any suit, action or proceeding arising out of or relating to this Agreement. The Pledgor irrevocably waives, to the fullest extent it may effectively do so under applicable law, any objection it may now or hereafter have to the laying of the venue of any such suit, action or proceeding brought in any such court and any claim that the same has been brought in an inconvenient forum. The Pledgor hereby consents to process being served in any such suit, action or proceeding (i) by the mailing of a copy thereof by registered or certified mail, postage prepaid, return receipt requested, to the Pledgor's address set forth herein or such other address as has been provided in writing to the Bank and (ii) in any other manner permitted by law, and agrees that such service shall in every respect be deemed effective service upon the Pledgor.

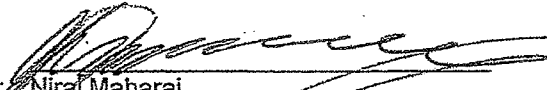
20. Arbitration. THE PARTIES AGREE TO ATTEMPT IN GOOD FAITH TO RESOLVE ANY DISPUTES WHICH MAY ARISE AMONG THEM IN CONNECTION WITH THE INTERPRETATION OR ENFORCEMENT OF THE PROVISIONS OF THIS AGREEMENT, OR THE APPLICATION OR VALIDITY THEREOF. IN THE EVENT THAT ANY DISPUTE CANNOT BE SO RESOLVED, AND UNLESS THE RELIEF SOUGHT REQUIRES THE EXERCISE OF THE EQUITY POWERS OF A COURT OF COMPETENT JURISDICTION, SUCH DISPUTE SHALL BE SUBMITTED TO ARBITRATION. SUCH ARBITRATION PROCEEDINGS SHALL BE HELD IN THE COUNTY OF SANTA BARBARA, CALIFORNIA, IN ACCORDANCE WITH THE ARBITRATION PROVISIONS OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. THIS AGREEMENT TO ARBITRATE SHALL BE SPECIFICALLY ENFORCEABLE. ANY AWARD RENDERED IN ANY SUCH ARBITRATION PROCEEDINGS SHALL BE FINAL AND BINDING ON EACH OF THE PARTIES HERETO, AND JUDGEMENT MAY BE ENTERED THEREON IN ANY COURT OF COMPETENT JURISDICTION. THE FOREGOING AGREEMENT TO ARBITRATE DOES NOT LIMIT THE RIGHT OF ANY PARTY TO (I) FORECLOSE AGAINST REAL OR PERSONAL PROPERTY COLLATERAL; (II) EXERCISE SELF-HELP REMEDIES RELATING TO COLLATERAL OR PROCEEDS OF COLLATERAL SUCH AS SETOFF OR REPOSSESSION; OR (III) OBTAIN PROVISIONAL OR ANCILLARY REMEDIES SUCH AS REPLEVIN, INJUNCTIVE RELIEF, ATTACHMENT OR THE APPOINTMENT OF A RECEIVER, BEFORE DURING OR AFTER THE PENDENCY OF ANY ARBITRATION PROCEEDING. THIS EXCLUSION DOES NOT CONSTITUTE A WAIVER OF THE RIGHT OR OBLIGATION OF ANY PARTY TO SUBMIT ANY DISPUTE TO ARBITRATION HEREUNDER, INCLUDING THOSE ARISING FROM THE EXERCISE OF THE ACTIONS DETAILED IN THE FOREGOING CLAUSES (I), (II) AND (III).

Executed and dated **October 29, 2007**.

Pledgor:

  
Thomas J. Merschel, individually

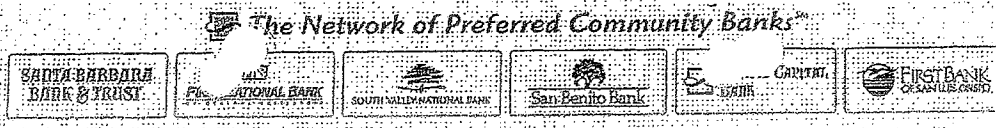
Accepted: Pacific Capital Bank, N.A.

By:   
Name: Niraj Maharaj  
Title: Senior Relationship Manager

**SCHEDULE A**

**Pledged Collateral**

1. Deposit Account No. 101435493 with the Bank limited to \$2,500,000.00 plus all interest which accrues thereon.



**UNLIMITED GUARANTY**

TO: Pacific Capital Bank, N.A., a national banking association, doing business as First National Bank of Central California (the "Bank")

RE: Pend Oreille Bonner Development, LLC, a Nevada limited liability company (the "Borrower")

To induce the Bank to make or continue to make loans, advances, or grant other financial accommodations to the Borrower, in consideration thereof and for loans, advances or financial accommodations heretofore or hereafter granted by the Bank to or for the account of the Borrower, the undersigned **Chip L. Bowlby** (the "Guarantor") absolutely and unconditionally guarantees the full and punctual payment to the Bank of all sums which may be presently due and owing and of all sums which shall in the future become due and owing to the Bank from the Borrower, whether direct or indirect, whether as a borrower, guarantor, surety or otherwise, including, without limitation, interest, attorneys' fees and other amounts accruing after the filing of a petition in bankruptcy by or against Borrower, notwithstanding the discharge of Borrower from such obligations, together with all costs and expenses incurred by the Bank in connection with such obligations, this Unlimited Guaranty (this "Guaranty") and the enforcement thereof, and also guarantees the due performance by the Borrower of all its obligations under all other present and future contracts and agreements with the Bank, including, without limitation, all rate swap transactions, basis swaps, forward rate transactions, commodity swaps, commodity options, equity or equity index swaps, equity or equity index options, bond options, interest rate options, foreign exchange transactions, cap transactions, floor transactions, collar transactions, forward transactions, currency swap transactions, cross-currency rate swap transactions and currency options. This is a guaranty of payment and not collection.

Guarantor also agrees:

- (1) to indemnify and hold the Bank and its directors, officers, employees, agents and attorneys harmless from and against all claims, obligations, demands and liabilities, by whomsoever asserted, and against all losses in any way suffered, incurred or paid as a result of or in any way arising out of or following or consequential to transactions with the Borrower, except for any claim arising out of the gross negligence or willful misconduct of the Bank. Without limiting the generality of the foregoing, Guarantor hereby expressly waives any and all benefits or defenses which otherwise might be available to Guarantor under California Civil Code Sections 2799, 2808, 2809, 2810, 2815, 2819, 2820, 2821, 2822, 2838, 2839, 2845, 2849, 2850, 2899 and 3433. Guarantor further waives all rights and defenses Guarantor may have because the obligations guaranteed hereby are secured by real property. This means, among other things that the Bank may collect from Guarantor without first foreclosing on any real or personal property collateral pledged by the Borrower and if the Bank forecloses on any real property collateral, (i) the amount of the obligations guaranteed hereby may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price and (ii) the Bank may collect from Guarantor even if the Bank, by foreclosing on the real property collateral, have destroyed any right Guarantor may have to collect from the Borrower. This is an unconditional and irrevocable waiver of any rights and defenses Guarantor may have because the obligations guaranteed hereby are secured by real property. These rights and defenses include, but are not limited to, any rights or defenses based upon Sections 580a, 580b, 580d or 726 of the California Code of Civil Procedure. Guarantor further waives all rights and defenses arising out of an election of remedies by the Bank, even though that election of remedies, such as a non-judicial foreclosure with respect to security for a guaranteed obligation, has destroyed Guarantor's rights of subrogation and reimbursement against the Borrower by the operation of Section 580d of the California Code of Civil Procedure or otherwise;

- (2) that this Guaranty shall not be impaired by any modification, supplement, extension, renewal or amendment of any contract or agreement to which the parties thereto may hereafter agree, nor by any modification, increase, release or other alteration of any of the obligations hereby guaranteed or of any security therefor, nor by any agreements or arrangements whatsoever with the Borrower or anyone else, all of which may be done without notice to or consent by the Guarantor;
- (3) that the liability of the Guarantor hereunder is direct and unconditional and due immediately upon default of the Borrower without demand or notice and without requiring the Bank first to resort to any other right, remedy or security;
- (4) that Guarantor waives its rights of subrogation, reimbursement, indemnification and contribution, any right of recourse to security for the debts and obligations of the Borrower to the Bank and any other rights and defenses that are or may become available to Guarantor, including without limitation, under California Civil Code Sections 2787 to 2855, inclusive, and California Code of Civil Procedure Sections 580a, 580b, 580d, or 726, and any successor Sections; and acknowledges that such a waiver is intended by Guarantor to be effective to the maximum extent permitted by California Civil Code Section 2856 and other applicable law;
- (5) that the liability of the Guarantor is unlimited and shall be joint and several with the liabilities of any other guarantors;
- (6) that if the Borrower or the Guarantor or any other guarantor should at any time become insolvent or make a general assignment, or if a petition in bankruptcy or any insolvency or reorganization proceedings shall be filed or commenced by, against or in respect of the Borrower or the Guarantor, or any other guarantor of the obligations guaranteed hereby, any and all obligations of the Guarantor shall be immediately due and payable without notice;
- (7) that the Bank's books and records showing the account between the Bank and the Borrower shall be admissible in any action or proceeding, shall be binding upon the Guarantor for the purpose of establishing the items therein set forth and shall constitute conclusive proof thereof;
- (8) that this Guaranty is, as to the Guarantor, a continuing Guaranty that shall remain effective under successive transactions until expressly terminated as hereinafter provided;
- (9) that this Guaranty may be terminated as to the Guarantor only by giving the Bank Sixty(60) days' prior written notice by registered or certified mail, and thereupon this Guaranty shall terminate with respect to Guarantor only at the expiration of said Sixty(60) day period, which shall then be the effective date of termination, and that such termination shall be applicable only to transactions having their inception after the effective date of termination and shall not affect rights and obligations arising out of transactions or indebtedness or extensions or renewals thereof having their inception prior to such date, including renewals, extensions, modifications and refinancings of such prior transactions, or arising out of extensions of credit made pursuant to a commitment previously made by the Bank;
- (10) that the death of Guarantor shall not effect the termination of this Guaranty as to Guarantor providing, that in any event within Sixty (60) days after the death of the Guarantor, Borrower or any surviving guarantor shall provide to the Bank evidence that the estate of the Guarantor confirms its obligations to the Bank under this Guaranty;
- (11) that termination, release or limitation of any guaranty of the obligations guaranteed hereby by any other guarantor shall not affect the continuing liability hereunder of the Guarantor;



- (12) that nothing shall discharge or satisfy the liability of the Guarantor hereunder except the full indefeasible payment and performance of all of the Borrower's debts and obligations to the Bank with interest and costs of collection;
- (13) that this Guaranty shall not be affected by the illegality, invalidity or unenforceability of the obligations guaranteed, by any fraudulent, illegal or improper act by the Borrower, the legal incapacity or any other defense of the Borrower, the Guarantor or any other person obligated to the Bank consequential to transactions with the Borrower nor by the invalidation, by operation of law or otherwise, of all or any part of the obligations guaranteed hereby, including but not limited to any interest accruable on the obligations guaranteed hereby during the pendency of any bankruptcy or receivership proceeding of the Borrower nor any mere personal disability of the Borrower though the disability be such as to make the contract void against the Borrower;
- (14) that any and all present and future debts and obligations of the Borrower to Guarantor are hereby waived and postponed in favor of and subordinated to the full indefeasible payment and performance of all present and future debts and obligations of the Borrower to the Bank;
- (15) the Guarantor hereby grants to the Bank a continuing lien and security interest in all deposits or other sums at any time credited by or due from the Bank to the Guarantor and any property of the Guarantor at any time in the possession of the Bank whether for safekeeping or otherwise, or in transit to or from the Bank (regardless of the reason the Bank had received the same or whether the Bank has conditionally released the same) as security for the full and punctual payment and performance of all of the obligations guaranteed hereby, and such deposits and other sums may be applied or set off against such obligations at any time, whether or not such are then due, whether or not demand has been made and whether or not other collateral is then available to the Bank;
- (16) that if at any time payment of all or any part of the obligations guaranteed hereunder is rescinded or otherwise must be restored by the Bank to the Borrower or to the creditors of the Borrower or any representative of the Borrower or representative of the Borrower's creditors as a voidable preference or fraudulent transfer or conveyance upon the insolvency, bankruptcy or reorganization of the Borrower or the Guarantor, or to the creditors of the Guarantor or any representative of the Guarantor or representative of the creditors of Guarantor upon the insolvency, bankruptcy or reorganization of the Guarantor or otherwise, this Guaranty shall continue to be effective or be reinstated, as the case may be, as though such payments had not been made, and shall survive as an obligation of the Guarantor, and shall not be discharged or satisfied by said payment or payments, notwithstanding the return of the original of this Guaranty to the Guarantor or to the Borrower, or any other apparent termination of Guarantor's obligations hereunder;
- (17) that any rights and remedies available to the Bank under this Guaranty are cumulative, and not exclusive of any rights and remedies otherwise available to the Bank at law or in equity;
- (18) that the Bank's delay or omission in exercising any of the Bank's rights and remedies shall not constitute a waiver of these rights and remedies, nor shall the Bank's waiver of any right or remedy operate as a waiver of any other right or remedy available to the Bank. The Bank's waiver of any right or remedy on any one occasion shall not be considered a waiver of same on any subsequent occasion, nor shall this be considered to be a continuing waiver;
- (19) that this Guaranty incorporates all discussions and negotiations between the Bank and the Guarantor concerning the guaranty and indemnification provided by the undersigned hereby, and that no such discussions or negotiations shall limit, modify, or otherwise affect the provisions hereof, there are no preconditions to the effectiveness of this Guaranty and that no provision hereof may be altered, amended, waived, canceled or modified, except by a written instrument executed and acknowledged by the Bank's duly authorized officer;

- (20) that this Guaranty and all documents which have been or may be hereinafter furnished by the Guarantor to the Bank may be reproduced by the Bank by any photographic, photostatic, microfilm, xerographic or similar process; and that any such reproduction shall be admissible in evidence as the original itself in any judicial or administrative proceeding (whether or not the original is in existence and whether or not such reproduction was made in the regular course of business); and
- (21) that the Guarantor shall deliver to the Bank simultaneously herewith and by **June 30th** in any year and upon request therefor, personal financial statements addressed to the Bank in form satisfactory to the Bank, and the Guarantor represents and warrants the accuracy of any information contained therein and that so long as this Guaranty remains in effect, Guarantor shall provide the Bank with copies of Guarantor's filed Federal tax returns including all schedules and K-1's for the prior year by **October 31<sup>st</sup>** or copy of extension within **20 days of April 15th** each such year or such other date approved by the Bank.

Guarantor waives: notice of acceptance hereof, presentment and protest of any instrument and notice thereof, notice of default and all other notices to which the Guarantor might otherwise be entitled; and any and all defenses, including without limitation, any and all defenses which the Borrower or any other party may have to the fullest extent permitted by law, any defense to this Guaranty based on impairment of collateral or on suretyship defenses of every type; any right to exoneration or marshaling.

To the extent that it lawfully may, Guarantor hereby further agrees not to invoke any law relating to the marshaling of collateral which might cause delay in or impede the enforcement of the Bank's rights under this Guaranty or otherwise respecting the guaranteed obligations, and to the extent that it lawfully may do so, the Guarantor hereby irrevocably waives the benefits of all such laws. Except as otherwise provided by applicable law, the Bank shall have no duty as to the collection or protection of any collateral, if any, securing the guaranteed obligations beyond the safe custody thereof.

Guarantor will from time to time execute and deliver to the Bank, and take or cause to be taken, all such other further action as the Bank may request in order to effect and confirm or vest more securely in the Bank all the rights contemplated in this Guaranty (including, without limitation, to correct clerical errors) or respecting any of the obligations guaranteed hereby or to comply with applicable statute or law.

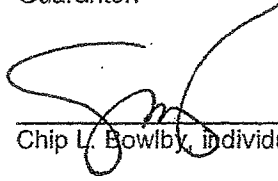
This Guaranty, all acts and transactions hereunder, and the rights and obligations of the parties hereto shall be governed, construed and interpreted according to the laws of the State of California, shall be binding upon the heirs, executors, administrators, successors and assigns of the Guarantor and shall inure to the benefit of the Bank's successors and assigns.

If any provision of this Guaranty is found to be invalid, illegal or unenforceable, the validity of the remainder of the Guaranty shall not be affected.

Guarantor irrevocably submits to the nonexclusive jurisdiction of any Federal or state court sitting in California, over any suit, action or proceeding arising out of or relating to this Guaranty. Guarantor irrevocably waives, to the fullest extent it may effectively do so under applicable law, any objection it may now or hereafter have to the laying of the venue of any such suit, action or proceeding brought in any such court and any claim that the same has been brought in an inconvenient forum. Guarantor hereby consents to any and all process which may be served in any such suit, action or proceeding, (i) by mailing a copy thereof by registered and certified mail, postage prepaid, return receipt requested, to the Guarantor's address shown below or as notified to the Bank and (ii) by serving the same upon the Guarantor in any other manner otherwise permitted by law, and agrees that such service shall in every respect be deemed effective service upon the Guarantor.

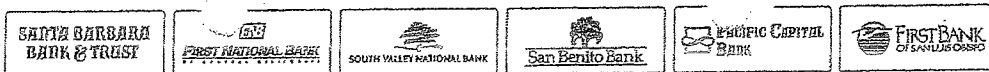
Executed and dated **October 29, 2007**.

Guarantor:



Chip L. Bowlby, individually

Address: **6900 S. McCarran Blvd, #1010  
Reno, Nevada  
89509**



Loan No. 101760163

**PLEDGE AGREEMENT**

This AGREEMENT is entered into as of October 29, 2007, between **Chip L. Bowlby, an individual**, with an address of **6900 S. McCarran Blvd. #1010, Reno, NV 89509** (the "Pledgor") and Pacific Capital Bank, N.A., a national banking association, doing business as First National Bank of Central California with an address of c/o Loan Services, PO Box 60654, Santa Barbara, California 93160-0654 (the "Bank").

1. **Pledge.** In consideration of the Bank's extending credit and other financial accommodations to or for the benefit of the Pledgor, whether evidenced by notes or not, the Pledgor hereby grants to the Bank a security interest in, a lien on and pledge and assignment of the Collateral (as hereinafter defined). The security interest granted by this Agreement is given to and shall be held by the Bank as security for the payment and performance of all Obligations (as hereinafter defined), including without limitation, all obligations of the Pledgor to the Bank respecting that certain **Unlimited Guaranty, dated October 29, 2007 by Chip L. Bowlby** in favor of the Bank pursuant to which **Chip L. Bowlby** guaranteed all of the obligations of **Pend Oreille Bonner Development, LLC** to the Bank (the "Guaranty"; and collectively, along with all other agreements, documents, certificates and instruments delivered in connection therewith, the "Loan Documents"), including without limitation, respecting that certain **Revolving Term Note, dated October 29, 2007, by Pend Oreille Bonner Development, LLC** in favor of the Bank in the original principal amount of **\$5,000,000.00**, and any substitutions, modifications, extensions or amendments to any of the Loan Documents. The Bank shall have the unrestricted right from time to time to apply (or to change any application already made of) the proceeds of any of the Collateral to any of the Obligations, as the Bank in its sole discretion may determine.

2. **Definitions.** The following definitions shall apply:

- (a) "Code" shall mean the Uniform Commercial Code in effect in California, as amended from time to time.
- (b) "Collateral" shall mean all the Pledgor's present and future right, title and interest in and to any and all of the property listed on Schedule A attached hereto, any additional property which may at any time and from time to time be delivered by or on behalf of the Pledgor to the Bank to be held pursuant to this Agreement, all books, records, and papers relating to the foregoing, and all proceeds of the foregoing, including, without limitation, all deposit accounts and all cash, securities, instruments, promissory notes or other property at any time and from time to time receivable or otherwise distributed in respect of or in exchange for any of or all of the foregoing.
- (c) "Event of Default" shall mean the occurrence of any one or more of the following events:
  - (i) default of any liability, obligation, covenant or undertaking of the Pledgor or any guarantor of the Obligations to the Bank, hereunder or otherwise, including, without limitation, failure to pay in full and when due any installment of principal or interest or default of the Pledgor or any guarantor of the Obligations under any other Loan Document or any other agreement with the Bank continuing for 10 days with respect to the payment of money or continuing for 30 days with respect to any other default;
  - (ii) failure of the Pledgor or any guarantor of the Obligations to maintain aggregate collateral security value satisfactory to the Bank continuing for 30 days;
  - (iii) default of any material liability, obligation or undertaking of the Pledgor or any guarantor of the Obligations to any other party continuing for 30 days;

(iv) if any statement, representation or warranty heretofore, now or hereafter made by the Pledgor or any guarantor of the Obligations in connection with this Agreement or in any supporting financial statement of the Pledgor or any guarantor of the Obligations shall be determined by the Bank to have been false or misleading in any material respect when made;

(v) if the Pledgor or any guarantor of the Obligations is a corporation, trust, partnership or limited liability company, the liquidation, termination or dissolution of any such organization, or the merger or consolidation of such organization into another entity, or its ceasing to carry on actively its present business or the appointment of a receiver for its property;

(vi) the death of the Pledgor or any guarantor of the Obligations and, if the Pledgor or any guarantor of the Obligations is a partnership or limited liability company, the death of any partner or member;

(vii) the institution by or against the Pledgor or any guarantor of the Obligations of any proceedings under the Bankruptcy Code 11 USC §101 *et seq.* or any other law in which the Pledgor or any guarantor of the Obligations is alleged to be insolvent or unable to pay its debts as they mature, or the making by the Pledgor or any guarantor of the Obligations of an assignment for the benefit of creditors or the granting by the Pledgor or any guarantor of the Obligations of a trust mortgage for the benefit of creditors;

(viii) the service upon the Bank of a writ in which the Bank is named as trustee of the Pledgor or any guarantor of the Obligations;

(ix) a judgment or judgments for the payment of money shall be rendered against the Pledgor or any guarantor of the Obligations, and any such judgment shall remain unsatisfied and in effect for any period of thirty (30) consecutive days without a stay of execution;

(x) any levy, lien (including mechanics lien), seizure, attachment, execution or similar process shall be issued or levied on any of the property of the Pledgor or any guarantor of the Obligations;

(xi) the termination or revocation of any guaranty of the Obligations; or

(xii) the occurrence of such a change in the condition or affairs (financial or otherwise) of the Pledgor or any guarantor of the Obligations, or the occurrence of any other event or circumstance, such that the Bank, in its sole discretion, deems that it is insecure or that the prospects for timely or full payment or performance of any obligation of the Pledgor or any guarantor of the Obligations to the Bank has been or may be impaired.

(d) "Loan Documents" shall mean this Agreement and all other agreements between the Bank and the Pledgor.

(e) "Obligation(s)" shall include without limitation all loans, advances, indebtedness, notes, liabilities, rate swap transactions, basis swaps, forward rate transactions, commodity swaps, commodity options, equity or equity index swaps, equity or equity index options, bond options, interest rate options, foreign exchange transactions, cap transactions, floor transactions, collar transactions, forward transactions, currency swap transactions, cross-currency rate swap transactions, currency options and amounts, liquidated or unliquidated, owing by the Pledgor to the Bank at any time, of each and every kind, nature and description, whether arising under this Agreement, any of the Loan Documents or otherwise, and whether secured or unsecured, direct or indirect (that is, whether the same are due directly by the Pledgor to the Bank, or are due indirectly by the

Pledgor to the Bank as endorser, guarantor or other surety, or as obligor of obligations due third persons which have been endorsed or assigned to the Bank, or otherwise), absolute or contingent, due or to become due, now existing or hereafter contracted, including, without limitation, payment when due of all amounts outstanding respecting any of the Loan Documents. Said term shall also include all interest and other charges chargeable to the Pledgor or due from the Pledgor to the Bank from time to time and all costs and expenses referred to in this Agreement.

- (f) "Person" or "party" shall include individuals, partnerships, corporations, limited liability companies and all other entities.

All words and terms used in this Agreement other than those specifically defined herein shall have the meanings accorded to them in the Code.

3. Costs and Expenses. The Pledgor shall pay to the Bank on demand any and all costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements, court costs, litigation and other expenses) incurred or paid by the Bank in establishing, maintaining, protecting or enforcing any of the Bank's rights or the Obligations, including, without limitation, any and all such costs and expenses incurred or paid by the Bank in defending the Bank's security interest in, title or right to the Collateral or in collecting or attempting to collect or enforcing or attempting to enforce payment of the Obligations.

4. Representations, Warranties and Covenants. The Pledgor represents, warrants and covenants that:

- (a) the Pledgor shall at the Pledgor's cost and expense execute all such instruments, documents and papers, and will do all such acts as the Bank may request from time to time to carry into effect the provisions and intent of this Agreement, including, without limitation, as applicable, the execution of stock transfer orders and stock powers, endorsement of promissory notes, certificates of deposit, passbooks and instruments, notifications to obligors on the Collateral, and all such other acts as the Bank may request with respect to the perfection and protection of the security interest granted herein and the assignment effected hereby and the Pledgor hereby authorizes the Bank to take any of the foregoing actions without notice and without further approval of any kind;
- (b) the Pledgor has good and marketable title to the Collateral free and clear of any lien other than the security interest granted herein and the Pledgor shall keep the Collateral free and clear of all liens, encumbrances, attachments, security interests, pledges and charges, and it shall not sell, lease, assign or otherwise dispose of, transfer or grant options with respect to, any Collateral;
- (c) the Pledgor shall deliver to the Bank when received by the Pledgor, any item representing or constituting any of the Collateral, including, without limitation, all cash dividends, all stock certificates whether now existing or hereafter received as a result of any stock dividends, stock splits or otherwise, and all promissory notes, certificates of deposit, passbooks and instruments, in each case in suitable form for transfer by delivery or accompanied by duly executed instruments of transfer or assignment in blank. Any and all Collateral and cash, promissory notes, certificates of deposit, passbooks and instruments, securities and other distributions of property which are received by the Pledgor contrary to the provisions of this Agreement, shall be held by the Pledgor in trust for the benefit of the Bank and shall be immediately delivered to the Bank in the form so received (with any necessary endorsement or instrument of transfer or assignment);
- (d) the Pledgor, if a corporation or other entity, shall not change its name, state of organization and/or registration or the location of its chief executive office or principal place of business, and if an individual, his or her primary residence, except in each case upon not less than 30 days prior written notice to Bank;

- (e) the Pledgor has not performed and will not perform any acts which might prevent the Bank from enforcing any of the terms of this Agreement or which would limit the Bank in any such enforcement and the Pledgor shall not exercise any right with respect to the Collateral which would dilute or adversely affect the Bank's rights in the Collateral. Other than financing statements or other similar or equivalent documents or instruments with respect to the security interests granted hereunder in favor of the Bank, no financing statement, mortgage, security agreement or similar or equivalent document or instrument covering all or any part of the Collateral is on file or of record in any jurisdiction in which such filing or recording would be effective to perfect a lien on such Collateral. No Collateral is in the possession of any person asserting any claim thereto or security interest therein other than the Bank or its designee unless such person has entered into a control agreement satisfactory to the Bank;
- (f) the security interests granted hereunder constitute, under the Code, valid security interests in all Collateral, securing the Obligations and (i) upon the delivery of any of the Collateral to the Bank in accordance herewith, the security interest in such Collateral will be perfected, subject to no prior lien and the Bank will have "control" (as defined in the Code) thereof, (ii) with respect to Collateral, if any, in the possession of a third party, the Bank will have a perfected, first priority security interest in such Collateral upon execution by such third party of a control agreement in form and substance satisfactory to the Bank and (iii) when UCC financing statements in the appropriate form are filed in the appropriate offices, the security interest granted hereunder will constitute a perfected security interest to the extent that a security interest may be perfected by filing pursuant to the Code, prior to all liens and rights of others;
- (g) the Pledgor has full power and authority to enter into this Agreement and to pledge the Collateral hereunder and except for the filing of UCC financing statements, no registration, recordation or filing with any governmental body, agency or official is required in connection with the execution or delivery hereof or is necessary for the validity or enforceability thereof or for the perfection or due recordation of the security interest granted hereunder or for the enforcement thereof;
- (h) as to Collateral, if any, comprised of deposit accounts, the Pledgor has delivered to the Bank every certificate of deposit included in the Collateral, duly endorsed to the Bank and every passbook or other document or instrument evidencing or comprising the Collateral; and
- (i) as to Collateral, if any, comprised of securities:
  - (i) the Pledgor shall, upon the request of the Bank, cause the issuer of any uncertificated securities to issue certificates with respect thereto;
  - (ii) the Pledgor shall, upon the request of the Bank, cause any certificated securities to be issued in the name of the Bank, as pledgee;
  - (iii) the Pledgor shall not cause or permit any certificated securities to be converted to uncertificated securities;
  - (iv) the Pledgor shall not, without the Bank's prior written consent, file any affidavit for replacement of lost stock certificates or bonds; and
  - (v) the Pledgor shall not vote the Collateral in favor of or consent to any resolution which might impose any restrictions upon the sale, transfer or disposition of the Collateral; result in the issuance of any additional shares of stock of any class; vest additional powers, privileges, preferences or priorities to any other class of stock; or adversely affect the rights of the Bank hereunder;
  - (vi) all shares of capital stock identified in any Schedule to this Agreement are beneficially owned by the Pledgor, have been duly authorized and validly issued, are fully

paid and non-assessable, and are subject to no option to purchase or similar right of any person. The Pledgor is not and will not become a party to or otherwise bound by any agreement (including without limitation any voting agreement), other than the Loan Documents, which restricts in any manner the rights of any present or future holder of any Collateral with respect thereto.

5. Power of Attorney. The Pledgor hereby irrevocably constitutes and appoints the Bank as the Pledgor's true and lawful attorney, with full power of substitution at the sole cost and expense of the Pledgor but for the sole benefit of the Bank, to endorse in favor of the Bank any of the Collateral; execute and deliver instruments of assignment and/or orders for withdrawal; cause the transfer of any of the Collateral in such name as the Bank may, from time to time, determine; cause the issuance of certificates for book entry and/or uncertificated securities; provide notification in connection with book entry securities or general intangibles and/or provide instructions to the issuers of uncertificated securities or securities intermediaries, as necessary; to renew, extend or roll over any Collateral; and make demand and initiate actions to enforce any of the Obligations. The Bank may take such action with respect to the Collateral as the Bank may reasonably determine to be necessary to protect and preserve its interests in the Collateral. The Bank shall also have and may exercise at any time all rights, remedies, powers, privileges and discretion of the Pledgor with respect to and under the Collateral, provided, however, the Bank shall have no right until an Event of Default has occurred to exercise any voting rights available to the Pledgor at any time the Collateral is held by the Bank solely as pledgee hereunder. Except as limited above, all the rights, remedies, powers, privileges and discretion included in this paragraph may be exercised by the Bank whether or not any of the Obligations are then due and whether or not an Event of Default has occurred. All powers conferred upon Bank by this Agreement, being coupled with an interest, shall be irrevocable until this Agreement terminates in accordance with its terms, all Obligations are irrevocably paid in full and the Collateral is released. The power of attorney shall not be affected by subsequent disability or incapacity of the Pledgor. The Bank shall not be liable for any act or omission to act pursuant to this Paragraph except for any act or omission to act which is caused by the Bank's gross negligence or willful misconduct.

6. Further Assurances. The Pledgor will from time to time execute and deliver to the Bank such documents, and take or cause to be taken, all such other further action, as the Bank may request in order to effect and confirm or vest more securely in the Bank all rights contemplated by this Agreement (including, without limitation, to correct clerical errors) or to vest more fully in, or assure to the Bank the security interest in, the Collateral or to comply with applicable statute or law. To the extent permitted by applicable law, the Pledgor authorizes the Bank to file financing statements, continuation statements or amendments, and any such financing statements, continuation statements or amendments may be filed at any time in any jurisdiction. The Bank may at any time and from time to time file financing statements, continuation statements and amendments thereto which contain any information required by Article 9 of the Code for the sufficiency or filing office acceptance of any financing statement, continuation statement or amendment, including whether the Pledgor is an organization, the type of organization and any organization identification number issued to the Pledgor. The Pledgor agrees to furnish any such information to the Bank promptly upon request. In addition, the Pledgor shall at any time and from time to time take such steps as the Bank may reasonably request for the Bank (i) to obtain an acknowledgment, in form and substance satisfactory to the Bank, of any bailee having possession of any of the Collateral that the bailee holds such Collateral for the Bank, (ii) to obtain "control" of any Collateral comprised of investment property or deposit accounts (as such terms are defined in the Code), with any agreements establishing control to be in form and substance satisfactory to the Bank, and (iii) otherwise to insure the continued perfection and priority of the Bank's security interest in any of the Collateral and the preservation of its rights therein. The Pledgor hereby constitutes the Bank its attorney-in-fact to execute and file all filings required or so requested for the foregoing purposes, all acts of such attorney being hereby ratified and confirmed; and such power, being coupled with an interest, shall be irrevocable until this Agreement terminates in accordance with its terms, all Obligations are irrevocably paid in full and the Collateral is released.

7. Default. If an Event of Default shall occur, at the election of the Bank, all Obligations shall become immediately due and payable without notice or demand, except with respect to Obligations



payable on demand, which shall be due and payable on demand, whether or not an Event of Default has occurred.

The Bank is hereby authorized, at its election, after an Event of Default or after demand, without any further demand or notice except to such extent as notice may be required by applicable law, to sell or otherwise dispose of all or any of the Collateral at public or private sale and/or enforce and collect the Collateral (including, without limitation, the liquidation of deposit accounts, debt instruments or securities and the exercise of conversion rights with respect to convertible securities, whether or not such instruments or securities have matured and whether or not any penalties or other charges are imposed on account of such action); and the Bank may also exercise any and all other rights and remedies of a secured party under the Code or which are otherwise accorded to it by applicable law, all as the Bank may determine. If notice of a sale or other action by the Bank is required by applicable law, the Pledgor agrees that ten (10) days' written notice to the Pledgor, or the shortest period of written notice permitted by law, whichever is smaller, shall be sufficient notice; and that to the extent permitted by law, the Bank, its officers, attorneys and agents may bid and become purchasers at any such sale, if public, and may purchase at any private sale any of the Collateral that is of a type customarily sold on a recognized market or which is the subject of widely distributed standard price quotations. Any sale (public or private) shall be free from any right of redemption, which the Pledgor hereby waives and releases. No purchaser at any sale (public or private) shall be responsible for the application of the purchase money. Any balance of the net proceeds of sale remaining after paying all Obligations of the Pledgor to the Bank shall be returned to the Pledgor or to such other party as may be legally entitled thereto; and if there is a deficiency, the Pledgor shall be responsible for the same, with interest. The Pledgor acknowledges that any exercise by the Bank of the Bank's rights upon default may be subject to compliance by the Bank with any statute, regulation, ordinance, directive or order of any Federal, state, municipal or other governmental authority, and may impose, without limitation, any of the foregoing restricting the sale of securities. The Bank, in its sole discretion at any such sale, may restrict the prospective bidders or purchasers as to their number, nature of business and investment intentions, and may impose, without limitation, a requirement that the persons making such purchases represent and agree, to the satisfaction of the Bank, that they are purchasing the Collateral for their own account, for investment, and not with a view to the distribution or resale thereof. The proceeds of any collection or of any sale or disposition of the Collateral held pursuant to this Agreement shall be applied towards the Obligations in such order and manner as the Bank determines in its sole discretion, any statute, custom or usage to the contrary notwithstanding.

8. Safe Custody and Exclusivity. The Bank shall have no duty as to the Collateral or protection of the Collateral or any income or distribution thereon, beyond the safe custody of such of the Collateral as may come into the possession of the Bank, and shall have no duty as to the preservation of rights against prior parties or any other rights pertaining thereto. The Bank's Rights and Remedies (as defined herein) may be exercised without resort or regard to any other source of satisfaction of the Obligations.

9. Indemnification. The Pledgor shall indemnify, defend and hold the Bank and its directors, officers, employees, agents and attorneys (each an "Indemnitee") harmless of and from any claim brought or threatened against any Indemnitee by the Pledgor, any guarantor or endorser of the Obligations, or any other person (as well as from attorneys' reasonable fees and expenses in connection therewith) on account of the Bank's relationship with the Pledgor, or any guarantor or endorser of the Obligations (each of which may be defended, compromised, settled or pursued by the Bank with counsel of the Bank's election, but at the expense of the Pledgor), except for any claim arising out of the gross negligence or willful misconduct of the Bank. The within indemnification shall survive payment of the Obligations, and/or any termination, release or discharge executed by the Bank in favor of the Pledgor.

10. Waivers. The Pledgor waives notice of intent to accelerate, notice of acceleration, notice of nonpayment, demand, presentment, protest or notice of protest of the Obligations, and all other notices, consents to any renewals or extensions of time of payment thereof, and generally waives any and all suretyship defenses and defenses in the nature thereof. No course of dealing and no delay or omission of the Bank in exercising or enforcing any of its rights, powers, privileges, remedies, immunities or discretion (all of which are hereinafter collectively referred to as the "Bank's Rights and Remedies")

hereunder or under applicable law shall constitute a waiver thereof; and no waiver by the Bank of any default of the Pledgor hereunder or of any demand hereunder shall operate as a waiver of any other default hereunder or any other demand hereunder. No term or provision hereof shall be waived, altered or modified except with the prior written consent of the Bank, which consent makes explicit reference to this Agreement. Except as provided in the preceding sentence, no other agreement or transaction, of whatsoever nature, entered into between the Bank and the Pledgor at any time (whether before, during or after the effective date or term of this Agreement) shall be construed in any particular way as a waiver, modification or limitation of any of the Bank's Rights and Remedies under this Agreement (nor shall anything in this Agreement be construed as a waiver, modification or limitation of any of the Bank's Rights and Remedies under any such other agreement or transaction) but all the Bank's Rights and Remedies not only under the provisions of this Agreement but also under any such other agreement or transaction shall be cumulative and not alternative or exclusive, and may be exercised by the Bank at such time or times and in such order of preference as the Bank in its sole discretion may determine. The Pledgor further waives any and all rights and defenses that the Pledgor may have because the underlying debt is secured by real property: this means, among other things, that (1) Bank may collect from the Pledgor without first foreclosing on any real or personal property collateral pledged by the underlying debtor: (2) if Bank forecloses on any real property collateral pledged by the underlying debtor, then (A) the amount of the debt may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price, and (B) Bank may collect from the Pledgor even if Bank, by foreclosing on the real property collateral, has destroyed any right the Pledgor may have to collect from the underlying debtor. The foregoing sentence is an unconditional and irrevocable waiver of any rights and defenses the Pledgor may have because the underlying debt is secured by real property. These rights and defenses being waived by the Pledgor include, but are not limited to, any rights or defenses based upon Section 580a, 580b, 580d or 726 of the California Code of Civil Procedure. Without limiting the generality of the foregoing or any other provision hereof, the Pledgor further expressly waives to the extent permitted by law any and all rights and defenses, including without limitation any rights of subrogation, reimbursement, indemnification, and contribution, which might otherwise be available to Pledgor under California Civil Code Sections 2822, 2787 to 2855, inclusive, 2899 and 3433, or under California Code of Civil Procedure Sections 580a, 580b, 580d and 726, or any such section.

11. Severability. If any provision of this Agreement or portion of such provision or the application thereof to any person or circumstance shall to any extent be held invalid or unenforceable, the remainder of this Agreement (or the remainder of such provision) and the application thereof to other persons or circumstances shall not be affected thereby.

12. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be an original, but all of which shall constitute but one agreement.

13. Complete Agreement. This Agreement and the other Loan Documents constitute the entire agreement and understanding between and among the parties hereto relating to the subject matter hereof, and supersedes, all prior proposals, negotiations, agreements and understandings among the parties hereto with respect to such subject matter.

14. Binding Effect of Agreement. This Agreement shall be binding upon and inure to the benefit of the respective heirs, executors, administrators, legal representatives, successors and assigns of the parties hereto, and shall remain in full force and effect (and the Bank shall be entitled to rely thereon) until released in writing by the Bank. The Bank may transfer and assign this Agreement and deliver the Collateral to the assignee, who shall thereupon have all of the Bank's Rights and Remedies; and the Bank shall then be relieved and discharged of any responsibility or liability with respect to this Agreement and the Collateral. Except as expressly provided herein or in the other Loan Documents, nothing, expressed or implied, is intended to confer upon any party, other than the parties hereto, any rights, remedies, obligations or liabilities under or by reason of this Agreement or the other Loan Documents.

15. Notices. Any notices under or pursuant to this Agreement shall be deemed duly received and effective if delivered in hand to any officer or agent of the Pledgor or Bank, or if mailed by registered or certified mail, return receipt requested, addressed to the Pledgor or Bank at the address set forth in this

Agreement or as any party may from time to time designate by written notice to the other party.

16. Reproductions. This Agreement and all documents which have been or may be hereinafter furnished by Pledgor to the Bank may be reproduced by the Bank by any photographic, photostatic, microfilm, xerographic or similar process, and any such reproduction shall be admissible in evidence as the original itself in any judicial or administrative proceeding (whether or not the original is in existence and whether or not such reproduction was made in the regular course of business).

17. Governing Law. This Agreement is intended to take effect and has been executed or completed and/or is to be performed in California, and it and all transactions thereunder or pursuant thereto shall be governed as to interpretation, validity, effect, rights, duties and remedies of the parties thereunder and in all other respects by the laws of California.

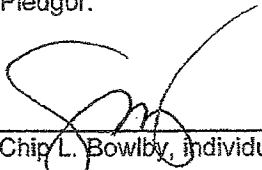
18. Civil Code Section 2822. In the event that at any time, a surety is liable upon only a portion of the Pledgor's obligations under the Loan Documents and the Pledgor provides partial satisfaction of any such obligation(s), the Pledgor hereby waives any right it would otherwise have, under Section 2822 of the California Civil Code, to designate the portion of the obligations to be satisfied. The designation of the portion of the obligation to be satisfied shall, to the extent not expressly made by the terms of the Loan Documents, be made by the Bank rather than the Pledgor.

19. Jurisdiction and Venue. The Pledgor irrevocably submits to the nonexclusive jurisdiction of any Federal or state court sitting in California, over any suit, action or proceeding arising out of or relating to this Agreement. The Pledgor irrevocably waives, to the fullest extent it may effectively do so under applicable law, any objection it may now or hereafter have to the laying of the venue of any such suit, action or proceeding brought in any such court and any claim that the same has been brought in an inconvenient forum. The Pledgor hereby consents to process being served in any such suit, action or proceeding (i) by the mailing of a copy thereof by registered or certified mail, postage prepaid, return receipt requested, to the Pledgor's address set forth herein or such other address as has been provided in writing to the Bank and (ii) in any other manner permitted by law, and agrees that such service shall in every respect be deemed effective service upon the Pledgor.

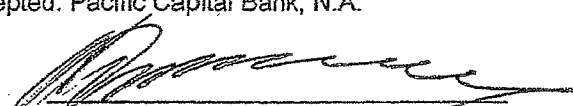
20. Arbitration. THE PARTIES AGREE TO ATTEMPT IN GOOD FAITH TO RESOLVE ANY DISPUTES WHICH MAY ARISE AMONG THEM IN CONNECTION WITH THE INTERPRETATION OR ENFORCEMENT OF THE PROVISIONS OF THIS AGREEMENT, OR THE APPLICATION OR VALIDITY THEREOF. IN THE EVENT THAT ANY DISPUTE CANNOT BE SO RESOLVED, AND UNLESS THE RELIEF SOUGHT REQUIRES THE EXERCISE OF THE EQUITY POWERS OF A COURT OF COMPETENT JURISDICTION, SUCH DISPUTE SHALL BE SUBMITTED TO ARBITRATION. SUCH ARBITRATION PROCEEDINGS SHALL BE HELD IN THE COUNTY OF SANTA BARBARA, CALIFORNIA, IN ACCORDANCE WITH THE ARBITRATION PROVISIONS OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. THIS AGREEMENT TO ARBITRATE SHALL BE SPECIFICALLY ENFORCEABLE. ANY AWARD RENDERED IN ANY SUCH ARBITRATION PROCEEDINGS SHALL BE FINAL AND BINDING ON EACH OF THE PARTIES HERETO, AND JUDGEMENT MAY BE ENTERED THEREON IN ANY COURT OF COMPETENT JURISDICTION. THE FOREGOING AGREEMENT TO ARBITRATE DOES NOT LIMIT THE RIGHT OF ANY PARTY TO (I) FORECLOSE AGAINST REAL OR PERSONAL PROPERTY COLLATERAL; (II) EXERCISE SELF-HELP REMEDIES RELATING TO COLLATERAL OR PROCEEDS OF COLLATERAL SUCH AS SETOFF OR REPOSSESSION; OR (III) OBTAIN PROVISIONAL OR ANCILLARY REMEDIES SUCH AS REPLEVIN, INJUNCTIVE RELIEF, ATTACHMENT OR THE APPOINTMENT OF A RECEIVER, BEFORE DURING OR AFTER THE PENDENCY OF ANY ARBITRATION PROCEEDING. THIS EXCLUSION DOES NOT CONSTITUTE A WAIVER OF THE RIGHT OR OBLIGATION OF ANY PARTY TO SUBMIT ANY DISPUTE TO ARBITRATION HEREUNDER, INCLUDING THOSE ARISING FROM THE EXERCISE OF THE ACTIONS DETAILED IN THE FOREGOING CLAUSES (I), (II) AND (III).

Executed and dated **October 29, 2007**.

Pledgor:

  
\_\_\_\_\_  
Chip L. Bowlby, individually

Accepted: Pacific Capital Bank, N.A.

By:   
\_\_\_\_\_  
Name: Niraj Maharaj  
Title: Senior Relationship Manager

**SCHEDULE A**

**Pledged Collateral**

1. Deposit Account No. 100065580 with the Bank limited to \$2,500,000.00 plus all interest which accrues thereon.

SECRETARY'S CERTIFICATE

The undersigned, Secretary of **Pend Oreille Bonner Development Holdings, inc.**, a Nevada corporation (the "Corporation"), hereby certifies that at a duly called meeting of the Board of Directors of the Corporation held on June 30, 2007 at which meeting a quorum of the Directors of the Corporation were present and voting throughout, the following resolution was adopted:

"Resolved: That the Corporation be, and on behalf of the Corporation, the **President** is authorized and empowered:

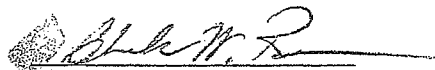
To cause **Pend Oreille Bonner Development, LLC** to borrow, from time to time, from Pacific Capital Bank, N.A. ("Bank"), such sum or sums of money as said officer(s) may deem necessary or advisable for the purpose of **Pend Oreille Bonner Development, LLC**, including without limitation, **\$5,000,000.00**;

To cause **Pend Oreille Bonner Development, LLC** to mortgage, pledge, hypothecate, sell, assign and transfer to Bank and to grant to Bank security interests in, as security for money borrowed and for all other obligations of **Pend Oreille Bonner Development, LLC** to Bank, all property of **Pend Oreille Bonner Development, LLC**, whether real, personal, or of whatever kind or nature and wherever situated, and whether now owned or hereafter acquired or arising;


To cause **Pend Oreille Bonner Development, LLC** to make, execute, seal, acknowledge and deliver, in the name of **Pend Oreille Bonner Development, LLC**, promissory notes, loan agreements, credit agreements, construction loan agreements, financing agreements, security agreements, mortgages, deeds of trust, deeds to secure debt, guaranties, and all other instruments, documents and agreements required by Bank (collectively, the "Loan Documents") in connection with, or to give effect to, the foregoing resolutions or any of the powers and authority therein granted and to continue, extend, modify or amend the same from time to time, all such Loan Documents to be in such form and on such terms and conditions as any of the said officer(s) shall, by his, her or their execution and delivery thereof, deem satisfactory; hereby ratifying, approving and confirming all that any of the said officer(s) has done or may do respecting any of the foregoing; and that the Board of Directors may, from time to time, delegate the authority hereinbefore granted to such additional officer(s) or agents of this Corporation as the Board of Directors may determine; and

That all resolutions relative to the authority of any officer or other agent to act on behalf of the Corporation in any dealing or transaction with the Bank shall remain in full force and effect until written notice of modification thereof shall be received by Bank and that the Bank may conclusively rely on the signatures of the officers or agents designated in such resolutions until notified in writing by the **Secretary** of the Corporation of any change in such officers or agents and thereafter the Bank may conclusively rely on the signatures of the successors in office."

I further certify that the foregoing resolutions have not been altered, amended or rescinded but remain in full force and effect and that the persons currently authorized and empowered to act thereunder and their specimen signatures are as follows:

  
 Charles W. Reeves, President

WITNESS my hand and the seal of the Corporation this **October 29, 2007**.

  
 \_\_\_\_\_, Secretary

**CERTIFICATE OF AUTHORITY**

The undersigned being the only "Manager" of **Pend Oreille Bonner Development, LLC** (the "Limited Liability Company") does hereby certify that:

1. Attached hereto as Exhibit A is a true and correct copy of the Articles of Organization of the Limited Liability Company (as amended) effective as of June 20<sup>th</sup>, 07 and the same remains in full force and effect as of the date hereof.
2. The following are all of the Managers of the Limited Liability Company:  

**Pend Oreille Bonner Development Holdings, Inc.**
3. The members of the Limited Liability Company have authorized the actions to be taken by the Manager as set forth herein, to the fullest extent required by law and by the terms of the Operating Agreement.
4. The above named Manager acting on behalf of the Limited Liability Company is authorized and empowered:  

To borrow, from time to time, from Pacific Capital Bank, N.A. ("Bank"), such sum or sums of money as said Managers may deem necessary or advisable for the purpose of this Limited Liability Company, including without limitation, **\$5,000,000.00**;

To mortgage, pledge, hypothecate, sell, assign and transfer to Bank and to grant to Bank security interests in, as security for money borrowed and for all other obligations of this Limited Liability Company to Bank, all property of this Limited Liability Company, whether real, personal, or of whatever kind or nature and wherever situated, and whether now owned or hereafter acquired or arising; and

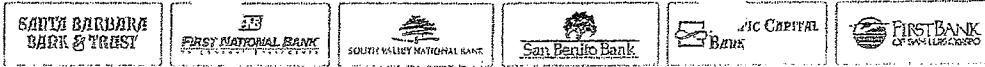
To make, execute, seal, acknowledge and deliver, in the name of this Limited Liability Company, promissory notes, loan agreements, credit agreements, construction loan agreements, financing agreements, security agreements, mortgages, deeds of trust, deeds to secure debt, guaranties, and all other instruments, documents and agreements required by Bank (collectively, the "Loan Documents") in connection with, or to give effect to, or any of the powers and authority therein granted and to continue, extend, modify or amend the same from time to time, all such Loan Documents to be in such form and on such terms and conditions as any of the said Managers shall, by his, her or their execution and delivery thereof, deem satisfactory; hereby ratifying, approving and confirming all that any of the said Managers has done or may do respecting any of the foregoing.
5. That all certifications, representations and assertions by the Manager relative to the authority of the Manager to act on behalf of the Limited Liability Company in any dealing or transaction with the Bank shall remain in full force and effect until notice of modification thereof shall be received by Bank and that the Bank may conclusively rely on the signature of such Manager or its authorized representative until notified in writing by the Manager or members of the Limited Liability Company of any change in such Manager.

WITNESS my hand and seal this **October 29, 2007**.

Manager:

**Pend Oreille Bonner Development Holdings, Inc.**

By:   
**Charles W. Reeves, President**



Loan No. 101760163

**DISBURSEMENT AUTHORIZATION**

**DATE:** October 29, 2007

**BORROWER:** Pend Oreille Bonner Development, LLC  
6900 S. McCarran Blvd., #1010  
Reno, Nevada  
89509

**Bank:** Pacific Capital Bank, N.A.  
c/o Loan Services, PO Box 60654  
Santa Barbara, California  
93160-0654

**LOAN:** \$5,000,000.00 Revolving Line of Credit (the "Loan")

The undersigned hereby authorizes and directs the Bank, in its discretion pursuant to the terms of the loan documents (the "Loan Documents") between the Bank and the undersigned respecting the Loan, to disburse \$25,000.00 of the loan proceeds available respecting the Loan as set forth below.

Disbursement	Amount
1. Loan Fee	\$ 25,000.00
2.	\$
3.	\$
4.	\$
<b>Total</b>	<b>\$ 25,000.00</b>

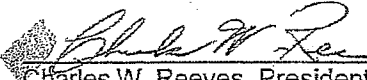
The undersigned represents and warrants to the Bank that there has been no material adverse change in the undersigned's financial condition since the date of the latest financial statements delivered by the undersigned to the Bank. In addition, the undersigned affirms that the representations and warranties contained in the Loan Documents are true and correct as of the date hereof.

The balance of the loan proceeds of \$4,975,000.00 shall be held by the Bank pending further instruction from the undersigned pursuant to the terms of the Loan Documents.

By your signature below, you agree to the terms and acknowledge receipt of a copy of this Disbursement Authorization.

Pend Oreille Bonner Development, LLC

By: Pend Oreille Bonner Development Holdings, Inc.,  
Manager

By:   
Charles W. Reeves, President





Loan No. 101760163

### REVOLVING TERM NOTE

October 29, 2007

\$5,000,000.00

For value received, the undersigned **Pend Oreille Bonner Development, LLC**, a Nevada limited liability company, with an address of **6900 S. McCarran Blvd., #1010, Reno, Nevada 89509** (the "Borrower"), promises to pay to the order of Pacific Capital Bank, N.A., a national banking association, doing business as First National Bank of Central California with an address of c/o Loan Services, PO Box 60654, Santa Barbara, California 93160-0654 (together with its successors and assigns, the "Bank"), the principal amount of **Five Million Dollars and Zero Cents (\$5,000,000.00)**, or, if less, such amount as may be the aggregate unpaid principal amount of all loans or advances made by the Bank to the Borrower pursuant hereto, on or before **January 29, 2008**, (the "Maturity Date"), together with interest from the date hereof on the unpaid principal balance from time to time outstanding until paid in full. The aggregate principal balance outstanding shall bear interest thereon at a per annum rate equal to the Wall Street Journal Prime Rate (as hereinafter defined). All accrued and unpaid interest shall be payable monthly in arrears on the **29th** day of each month (or the last day of any month not having 29 days), commencing on **November 29, 2007**.

Notwithstanding anything to the contrary in this Note, the interest rate on this Note is limited by a floor as follows: the minimum interest rate (i.e. floor) is **6.00%** per annum.

Wall Street Journal Prime Rate means the rate published from time to time by the Wall Street Journal as the U.S. Prime Rate, or, in the event the Wall Street Journal ceases publication of Prime Rates, the base, reference or other rate then designated by the Bank, in its sole discretion, for general commercial loan reference purposes, it being understood that such rate is a reference rate, not necessarily the lowest, established from time to time, which serves as the basis upon which effective interest rates are calculated for loans making reference thereto.

The effective interest rate applicable to the Borrower's loans evidenced hereby shall change on the date of each change in the Wall Street Journal Prime Rate.

Principal and interest shall be payable at the Bank's main office or at such other place as the Bank may designate in writing in immediately available funds in lawful money of the United States of America without set-off, deduction or counterclaim. Interest shall be calculated on the basis of actual number of days elapsed and a 360-day year.

Borrower authorizes the Bank to place **\$500,000.00** of the Principal Amount as an interest reserve, which is an estimate of the interest due on the Note ("Interest Reserve"). All interest payments shall be paid from the Interest Reserve. The Bank may automatically deduct accrued unpaid interest from the Interest Reserve. Interest will accrue, as described in this Note, on amounts deducted from the Interest Reserve. In the event the interest due under this Note exceeds the Interest Reserve, Borrower will pay the accrued unpaid interest when due according to the terms of this Note. Upon maturity, the Bank will not advance or disburse the remaining Interest Reserve, if any, to Borrower. The principal due upon maturity will not include any remaining Interest Reserve.

This Note is a revolving note and, subject to the foregoing and in accordance with the provisions hereof and of any and all other agreements between the Borrower and the Bank related hereto, the Borrower may, at its option, borrow, pay, prepay and reborrow hereunder at any time prior to the Maturity Date or such earlier date as the obligations of the Borrower to the Bank under this Note, and any other agreements between the Bank and the Borrower related hereto, shall become due and payable, or the obligation of the Bank to extend financial accommodations to the Borrower shall terminate; provided,

however, that in any event the principal balance outstanding hereunder shall at no time exceed the face amount of this Note. This Note shall continue in full force and effect until all obligations and liabilities evidenced by this Note are paid in full and the Bank is no longer obligated to extend financial accommodations to the Borrower, even if, from time to time, there are no amounts outstanding respecting this Note.

At the option of the Bank, this Note shall become immediately due and payable without notice or demand upon the occurrence at any time of any of the following events of default (each, an "Event of Default"): (1) default of any liability, obligation, covenant or undertaking of the Borrower or any guarantor hereof to the Bank, hereunder or otherwise, including, without limitation, failure to pay in full and when due any installment of principal or interest or default of the Borrower or any guarantor hereof under any other loan document delivered by the Borrower or any guarantor, or in connection with the loan evidenced by this Note or any other agreement by the Borrower or any guarantor with the Bank continuing for 10 days with respect to the payment of money or continuing for 30 days with respect to any other default; (2) failure of the Borrower or any guarantor hereof to maintain aggregate collateral security value satisfactory to the Bank continuing for 30 days; (3) default of any material liability, obligation or undertaking of the Borrower or any guarantor hereof to any other party continuing for 30 days; (4) if any statement, representation or warranty heretofore, now or hereafter made by the Borrower or any guarantor hereof in connection with the loan evidenced by this Note or in any supporting financial statement of the Borrower or any guarantor hereof shall be determined by the Bank to have been false or misleading in any material respect when made; (5) if the Borrower or any guarantor hereof is a corporation, trust, partnership or limited liability company, the liquidation, termination or dissolution of any such organization, or the merger or consolidation of such organization into another entity, or its ceasing to carry on actively its present business or the appointment of a receiver for its property; (6) the death of the Borrower or any guarantor hereof and, if the Borrower or any guarantor hereof is a partnership or limited liability company, the death of any partner or member; (7) the institution by or against the Borrower or any guarantor hereof of any proceedings under the Bankruptcy Code 11 USC §101 *et seq.* or any other law in which the Borrower or any guarantor hereof is alleged to be insolvent or unable to pay its debts as they mature, or the making by the Borrower or any guarantor hereof of an assignment for the benefit of creditors or the granting by the Borrower or any guarantor hereof of a trust mortgage for the benefit of creditors; (8) the service upon the Bank of a writ in which the Bank is named as trustee of the Borrower or any guarantor hereof; (9) a judgment or judgments for the payment of money shall be rendered against the Borrower or any guarantor hereof, and any such judgment shall remain unsatisfied and in effect for any period of thirty (30) consecutive days without a stay of execution; (10) any levy, lien (including mechanics lien) except as permitted under any of the other loan documents between the Bank and the Borrower, seizure, attachment, execution or similar process shall be issued or levied on any of the property of the Borrower or any guarantor hereof; (11) the termination or revocation of any guaranty hereof; or (12) the occurrence of such a change in the condition or affairs (financial or otherwise) of the Borrower or any guarantor hereof, or the occurrence of any other event or circumstance, such that the Bank, in its sole discretion, deems that it is insecure or that the prospects for timely or full payment or performance of any obligation of the Borrower or any guarantor hereof to the Bank has been or may be impaired.

Any payments received by the Bank on account of this Note shall, at the Bank's option, be applied first, to accrued and unpaid interest; second, to the unpaid principal balance hereof; third to any costs, expenses or charges then owed to the Bank by the Borrower; and the balance to escrows, if any. Notwithstanding the foregoing, any payments received after the occurrence and during the continuance of an Event of Default shall be applied in such manner as the Bank may determine. The Borrower hereby authorizes the Bank to charge any deposit account which the Borrower may maintain with the Bank for any payment required hereunder without prior notice to the Borrower.

If pursuant to the terms of this Note, the Borrower is at any time obligated to pay interest on the principal balance at a rate in excess of the maximum interest rate permitted by applicable law for the loan evidenced by this Note, the applicable interest rate shall be immediately reduced to such maximum rate and all previous payments in excess of the maximum rate shall be deemed to have been payments in reduction of principal and not on account of the interest due hereunder. More specifically, if from any circumstances whatsoever, fulfillment of any provision of this Note or any other loan document excused and

delivered in connection with this Note, at the time performance of such provision becomes due, would exceed the limit on interest then permitted by any applicable usury statute or any other applicable law, the Bank may, at its option (a) reduce the obligations to be fulfilled to such limit on interest, or (b) apply the amount in excess of such limit on interest to the reduction of the outstanding principal balance of the obligations, and not to the payment of interest, with the same force and effect as though Borrower had specifically designated such sums to be so applied to principal and Bank had agreed to accept such extra payments(s) as a premium-free prepayment, so that in no event shall any exaction be possible under this Note or any other loan document that is in excess of the applicable limit on interest. It is the intention of Borrower and Bank that the total liability for payments in the nature of interest shall not exceed the limits imposed by any applicable state or federal interest rate laws. The provisions of this paragraph shall control every other provision of this Note, and any provision of any other loan document in conflict with this paragraph.

**The Borrower represents to the Bank that the proceeds of this Note will not be used for personal, family or household purposes or for the purpose of purchasing or carrying margin stock or margin securities within the meaning of Regulations U and X of the Board of Governors of the Federal Reserve System, 12 C.F.R. Parts 221 and 224.**

The Borrower and each guarantor hereof grant to the Bank a continuing lien on and security interest in any and all deposits or other sums at any time credited by or due from the Bank to the Borrower and/or each guarantor hereof and any cash, securities, instruments or other property of the Borrower and each guarantor hereof in the possession of the Bank, whether for safekeeping or otherwise, or in transit to or from the Bank (regardless of the reason the Bank had received the same or whether the Bank has conditionally released the same) as security for the full and punctual payment and performance of all of the liabilities and obligations of the Borrower and/or any guarantor hereof to the Bank and such deposits and other sums may be applied or set off against such liabilities and obligations of the Borrower or any guarantor hereof to the Bank at any time, whether or not such are then due, whether or not demand has been made and whether or not other collateral is then available to the Bank.

No delay or omission on the part of the Bank in exercising any right hereunder shall operate as a waiver of such right or of any other right of the Bank, nor shall any delay, omission or waiver on any one occasion be deemed a bar to or waiver of the same or any other right on any future occasion. The Borrower and every guarantor of this Note, regardless of the time, order or place of signing, waives presentment, demand, protest, notice of intent to accelerate, notice of acceleration and all other notices of every kind in connection with the delivery, acceptance, performance or enforcement of this Note and assents to any extension or postponement of the time of payment or any other indulgence, to any substitution, exchange or release of collateral, and to the addition or release of any other party or person primarily or secondarily liable and waives all recourse to suretyship and guarantor defenses generally, including any defense based on impairment of collateral.

The Borrower and each guarantor of this Note shall indemnify, defend and hold the Bank and its directors, officers, employees, agents and attorneys (each an "Indemnitee") harmless against any claim brought or threatened against any Indemnitee by the Borrower, by any guarantor, or by any other person (as well as from attorneys' reasonable fees and expenses in connection therewith) on account of the Bank's relationship with the Borrower or any guarantor hereof (each of which may be defended, compromised, settled or pursued by the Bank with counsel of the Bank's selection, but at the expense of the Borrower and any guarantor), except for any claim arising out of the gross negligence or willful misconduct of the Bank.

The Borrower and each guarantor of this Note agree to pay, upon demand, costs of collection of all amounts under this Note including, without limitation, principal and interest, or in connection with the enforcement of, or realization on, any security for this Note, including, without limitation, to the extent permitted by applicable law, reasonable attorneys' fees and expenses. Upon the occurrence and during the continuance of an Event of Default, interest shall accrue at a rate per annum equal to the aggregate of 3.0% plus the rate provided for herein. If any payment due under this Note is unpaid for 15 days or more, the Borrower shall pay, in addition to any other sums due under this Note (and without limiting the

Bank's other remedies on account thereof), a late charge equal to the greater of \$10.00 or 10.0% of such unpaid amount.

This Note shall be binding upon the Borrower and each guarantor hereof and upon their respective heirs, successors, assigns and legal representatives, and shall inure to the benefit of the Bank and its successors, endorsees and assigns.

The Borrower and each guarantor, if any, hereby waive presentment, demand, protest, notice of dishonor, notice of protest and all other notices and demands of every kind, and all suretyship defenses of any kind, in each case that would otherwise be available in connection with this Note including, without limitation, any right (whether now or hereafter existing) to require the holder hereof to first proceed against the Borrower, or any guarantor, for any security.

The Borrower and each guarantor, if any, further waive to the extent permitted by law any and all rights and defenses that each may have because the debt evidenced by this Note is secured by real property: this means, among other things, that: (1) the Bank may collect from the Borrower and any guarantor, without first foreclosing on any real or personal property, collateral pledged by the Borrower and any guarantor; and (2) if the Bank forecloses on any real property collateral pledged by the Borrower or any guarantor, then (A) the amount of the debt may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price, and (B) the Bank may collect from the Borrower even if the Bank, by foreclosing on the real property collateral, has destroyed any right the Borrower may have to collect from the underlying debtor. The foregoing sentence is an unconditional and irrevocable waiver of any rights and defenses the Borrower may have because the underlying debt is secured by real property. These rights and defenses being waived by the Borrower include, but are not limited to, any rights or defenses based upon Sections 580a, 580b, 580d or 726 of the California Code of Civil Procedure. Without limiting the generality of the foregoing or any other provision hereof, the Borrower further expressly waives to the extent permitted by law any and all rights and defenses, including without limitation any rights of subrogation, reimbursement, indemnification and contribution, which might otherwise be available to the Borrower under California Civil Code Sections 2822, 2787 to 2855, inclusive, 2899 and 3433, or under California Code of Civil Procedure Sections 580a, 580b, 580d and 726, or any such section.

In the event that at any time, a surety is liable upon only a portion of the Borrower's or any guarantor's obligations under this Note and the Borrower provides partial satisfaction of any such obligation(s), each of the Borrower and each guarantor hereof, if any, hereby waives any right it would otherwise have, under Section 2822 of the California Civil Code, to designate the portion of the obligations to be satisfied. The designation of the portion of the obligation to be satisfied shall, to the extent not expressly made by the terms of this Note, be made by the Bank rather than Borrower.

The liabilities of the Borrower and any guarantor of this Note are joint and several; provided, however, the release by the Bank of the Borrower or any one or more guarantors shall not release any other person obligated on account of this Note. Any and all present and future debts of the Borrower to any guarantor of this Note are subordinated to the full payment and performance of all present and future debts and obligations of the Borrower to the Bank. Each reference in this Note to the Borrower, and any guarantor, is to such person individually and also to all such persons jointly. No person obligated on account of this Note may seek contribution from any other person also obligated, unless and until all liabilities, obligations and indebtedness to the Bank of the person from whom contribution is sought have been irrevocably satisfied in full. The release or compromise by the Bank of any collateral shall not release any person obligated on account of this Note.

The Borrower and each guarantor hereof each authorizes the Bank to complete this Note if delivered incomplete in any respect. A photographic or other reproduction of this Note may be made by the Bank, and any such reproduction shall be admissible in evidence with the same effect as the original itself in any judicial or administrative proceeding, whether or not the original is in existence.

The Borrower will from time to time execute and deliver to the Bank such documents, and take or

cause to be taken, all such other further action, as the Bank may request in order to effect and confirm or vest more securely in the Bank all rights contemplated by this Note or any other loan documents related thereto (including, without limitation, to correct clerical errors) or to vest more fully in or assure to the Bank the security interest in any collateral securing this Note or to comply with applicable statute or law.

This Note is delivered to the Bank at one of its offices in California and shall be governed by the laws of the State of California.

Any notices under or pursuant to this Note shall be deemed duly received and effective if delivered in hand to any officer or agent of the Borrower or Bank, or if mailed by registered or certified mail, return receipt requested, addressed to the Borrower or Bank at the address set forth in this Note or as any party may from time to time designate by written notice to the other party.

The Borrower and each guarantor of this Note acknowledges that the Bank is entitled to a minimum interest charge of \$75.00.

The Borrower and each guarantor of this Note each irrevocably submits to the nonexclusive jurisdiction of any Federal or state court sitting in California, over any suit, action or proceeding arising out of or relating to this Note. Each of the Borrower and each guarantor irrevocably waives, to the fullest extent it may effectively do so under applicable law, any objection it may now or hereafter have to the laying of the venue of any such suit, action or proceeding brought in any such court and any claim that the same has been brought in an inconvenient forum. Each of the Borrower and each guarantor hereby consents to any and all process which may be served in any such suit, action or proceeding, (i) by mailing a copy thereof by registered and certified mail, postage prepaid, return receipt requested, to the Borrower's or guarantor's address shown below or as notified to the Bank and (ii) by serving the same upon the Borrower(s) or guarantor(s) in any other manner otherwise permitted by law, and agrees that such service shall in every respect be deemed effective service upon the Borrower or such guarantor.

THE PARTIES AGREE TO ATTEMPT IN GOOD FAITH TO RESOLVE ANY DISPUTES WHICH MAY ARISE AMONG THEM IN CONNECTION WITH THE INTERPRETATION OR ENFORCEMENT OF THE PROVISIONS OF THIS AGREEMENT, OR THE APPLICATION OR VALIDITY THEREOF. IN THE EVENT THAT ANY DISPUTE CANNOT BE SO RESOLVED, AND UNLESS THE RELIEF SOUGHT REQUIRES THE EXERCISE OF THE EQUITY POWERS OF A COURT OF COMPETENT JURISDICTION, SUCH DISPUTE SHALL BE SUBMITTED TO ARBITRATION. SUCH ARBITRATION PROCEEDINGS SHALL BE HELD IN THE COUNTY OF SANTA BARBARA, CALIFORNIA, IN ACCORDANCE WITH THE ARBITRATION PROVISIONS OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. THIS AGREEMENT TO ARBITRATE SHALL BE SPECIFICALLY ENFORCEABLE. ANY AWARD RENDERED IN ANY SUCH ARBITRATION PROCEEDINGS SHALL BE FINAL AND BINDING ON EACH OF THE PARTIES HERETO, AND JUDGEMENT MAY BE ENTERED THEREON IN ANY COURT OF COMPETENT JURISDICTION. THE FOREGOING AGREEMENT TO ARBITRATE DOES NOT LIMIT THE RIGHT OF ANY PARTY TO (I) FORECLOSE AGAINST REAL OR PERSONAL PROPERTY COLLATERAL; (II) EXERCISE SELF-HELP REMEDIES RELATING TO COLLATERAL OR PROCEEDS OF COLLATERAL SUCH AS SETOFF OR REPOSSESSION; OR (III) OBTAIN PROVISIONAL OR ANCILLARY REMEDIES SUCH AS REPLEVIN, INJUNCTIVE RELIEF, ATTACHMENT OR THE APPOINTMENT OF A RECEIVER, BEFORE DURING OR AFTER THE PENDENCY OF ANY ARBITRATION PROCEEDING. THIS EXCLUSION DOES NOT CONSTITUTE A WAIVER OF THE RIGHT OR OBLIGATION OF ANY PARTY TO SUBMIT ANY DISPUTE TO ARBITRATION HEREUNDER, INCLUDING THOSE ARISING FROM THE EXERCISE OF THE ACTIONS DETAILED IN THE FOREGOING CLAUSES (I), (II) AND (III).

Executed as of **October 29, 2007.**

Borrower:

Pend Oreille Bonner Development, LLC

By: Pend Oreille Bonner Development Holdings, Inc.,  
Manager

By:   
Charles W. Reeves, President

6900 S. McCarran Blvd., #1010  
Reno, Nevada  
89509

## UNIVERSAL LOAN PAYMENT COUPON

PCB-ULPC-0001

DATE: 3/26/08

CUSTOMER NAME: Pend Oreille Banner Development      PREPARER: \* PCL

ADDITIONAL INFORMATION: Loan # 101760163 Payoff

**Selector Codes - Credits**      RC

- 650 Scheduled Payment
- 652 Matured Loan (Interest)
- 661 Principal Reduction
- 691 Payoff & Close - Not Secured by Real Property
- 999 Payoff & Close - Secured by Real Property

LOAN NUMBER      SEL CODE      AMOUNT

\* 0101760163      \* 691      \$ 4664722.23

⑈5071⑈2059⑈      0101760163⑈ 691⑈ ⑈0466472223⑈

Account:101760163 Serial:0 Amount:\$4,664,722.23 Date:03-26-2008

The Network of Preferred Community Banks™

BG - MONTEREY      LOANS IN PROCESS      3/26/08      CLEARING DATE

BRANCH NAME      ACCOUNT TITLE      ORIG DATE      CENTS

02015      13830000      0000280196      4,676,429.23

BR. NO.      ACCOUNT NUMBER      SERIAL NUMBER      DOLLARS      CENTS

COMPLETE DESCRIPTION: New loan proceeds Pend Oreille Banner Loan # 101760163

Loan # 101760163 Payoff \$ 4,664,722.23.

First American Title \$ 10,853.<sup>00</sup>, Flood Insurance \$ 834.<sup>00</sup>

39-1400SP

GENERAL LEDGER      DEBIT      PREPARED BY: [Signature]      ORIGINATING BRANCH: CBG Monterey      APPROVED BY: N. MAHARAJ      OFFSET BY: Various

⑈0000280196⑈      9201538304⑈      ⑈0467642923⑈

Account:9201538304 Serial:280196 Amount:\$4,676,429.23 Date:03-26-2008



Loan No. 101764389

**DISBURSEMENT AUTHORIZATION**

**DATE:** March 7, 2008

**BORROWER:** Pend Oreille Bonner Development, LLC  
6900 S. McCarran Blvd., #1010  
Reno, Nevada  
89509

**Bank:** Pacific Capital Bank, N.A.  
c/o Loan Services, PO Box 60654  
Santa Barbara, California  
93160-0654

**LOAN:** \$5,000,000.00 Revolving Line of Credit (the "Loan")

The undersigned hereby authorizes and directs the Bank, in its discretion pursuant to the terms of the loan documents (the "Loan Documents") between the Bank and the undersigned respecting the Loan, to disburse \$4,655,691.10 of the loan proceeds available respecting the Loan as set forth below.

Disbursement	Amounts Paid by Customer at Closing	Amount Paid from Loan Proceeds
1. Internal Loan Payoff #101760163	\$	\$ 4,644,611.10
2. Interest due to 03/12/08 for Internal Loan Payoff #101760163	\$ 9,273.70	\$
3. Title Report Fee:	\$	\$ 10,780.00
4. Recording Fee:	\$	\$ 300.00
5.	\$	\$
6.	\$	\$
7.	\$	\$
8.	\$	\$
<b>Total</b>	<b>\$ 9,273.70</b>	<b>\$ 4,655,691.10</b>

The undersigned represents and warrants to the Bank that there has been no material adverse change in the undersigned's financial condition since the date of the latest financial statements delivered by the undersigned to the Bank. In addition, the undersigned affirms that the representations and warranties contained in the Loan Documents are true and correct as of the date hereof.

The balance of the loan proceeds of \$344,308.90 shall be held by the Bank pending further instruction from the undersigned pursuant to the terms of the Loan Documents.

By your signature below, you agree to the terms and acknowledge receipt of a copy of this Disbursement Authorization.

Pend Oreille Bonner Development, LLC

By: Pend Oreille Bonner Development Holdings, Inc.,  
Manager

By:   
Charles W. Reeves, President



ORIGINAL

STATE OF IDAHO  
COUNTY OF BONNER  
FIRST JUDICIAL DIST.

2013 JUL 18 AM 11 03

CLERK DISTRICT COURT

DEPUTY

Richard L. Stacey, ISB #6800  
Chad M. Nicholson, ISB #7506  
MEULEMAN MOLLERUP LLP  
755 W. Front Street, Suite 200  
Boise, Idaho 83702  
(208) 342-6066 Telephone  
(208) 336-9712 Fax  
stacey@lawidaho.com

*Attorneys for R.E. Loans, LLC*

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

UNION BANK, a national association,

Plaintiff,

v.

PEND OREILLE BONNER  
DEVELOPMENT, LLC, et al.

Defendants.

Case No. CV-2011-0135

**R.E. LOANS, LLC'S MOTION FOR  
PARTIAL SUMMARY JUDGMENT  
AGAINST NORTH IDAHO RESORTS,  
LLC**

**AND ASSOCIATED COUNTERCLAIMS,  
CROSS-CLAIMS, AND THIRD-PARTY  
COMPLAINTS.**

**COMES NOW**, Defendant R.E. Loans, LLC ("RE Loans") by and through its attorneys of record, Meuleman Mollerup LLP, and moves the Court, pursuant to Rule 56(a) of the Idaho Rules of Civil Procedure, for an order granting partial summary judgment against Defendant North Idaho Resorts, LLC ("NIR") on Counts 1, 4, 5 and 7 of NIR's Cross-Claim and on the First and Second Causes of Action of RE Loans' Amended Cross-Claim Against North Idaho Resorts, LLC, on the grounds and for the reasons that the pleadings show that there is no genuine


issue of material fact precluding judgment as a matter of law. R.E. Loans seeks entry of Judgment as follows:

1. RE Loans' interest in the real property subject to this suit is prior in right, title and interest and superior to any interest claimed by NIR in such property, and
2. That NIR has breached the terms of the Subordination Agreement by asserting that its interest in certain real property is prior in right, title and interest and superior to the interest of RE Loans.

This motion is made and based upon papers and pleadings on file herein, the Memorandum in Support of R.E. Loans' Motion for Partial Summary Judgment, the Affidavit of Chad M. Nicholson in Support of Motion for Partial Summary Judgment, R.E. Loans, LLC's Request for Judicial Notice Pursuant to I.R.E. 201(b) and all other and further evidence and arguments presented at the hearing of this matter.

DATED this 10<sup>th</sup> day of July 2013.

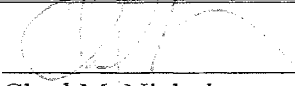
MEULEMAN MOLLERUP LLP

  
By: Chad M. Nicholson  
Attorneys for RE Loans, LLC

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 14<sup>th</sup> day of July 2013, a true and correct copy of the foregoing document was served by the method indicated below to the following parties:

<p>John E. Miller The Law Office of John E. Miller 1424 Sherman Ave., Ste. 500 Coeur d'Alene, ID 83814 Telephone: 208/665-9464 Facsimile: 208/665-9176 <i>Counsel for Plaintiff</i> <input type="checkbox"/> Mail <input type="checkbox"/> Fax <input type="checkbox"/> Overnight <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Email</p>	<p>Gary A. Finney Finney Finney &amp; Finney, P.A. 120 E. Lake Street, Ste 317 Sandpoint, Idaho 83864 Fax: 208/263-8211 <i>Counsel for J.V., LLC</i> <input checked="" type="checkbox"/> Mail <input type="checkbox"/> Fax <input type="checkbox"/> Overnight <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Email</p>
<p>John Finney Finney Finney &amp; Finney, P.A. 120 E. Lake Street, Ste 317 Sandpoint, Idaho 83864 Fax: 208/263-8211 <i>Counsel for ACI Northwest, Inc.</i> <input type="checkbox"/> Mail <input type="checkbox"/> Fax <input type="checkbox"/> Overnight <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Email</p>	<p>Steven C. Wetzel James, Vernon &amp; Weeks, PA 1626 Lincoln Way Coeur d'Alene, ID 83814 Fax: 208/664-1684 <i>Counsel for North Idaho Resorts, LLC</i> <input type="checkbox"/> Mail <input type="checkbox"/> Fax <input checked="" type="checkbox"/> Overnight <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Email</p>
<p>John R. Layman Bradley C. Crockett Layman Law Firm, PLLP 601 South Division Street Spokane, WA 99202 Fax: 509/624-2902 <i>Counsel for Pend Oreille Bonner Development, LLC, Pend Oreille Bonner Development Holdings, Inc., Montaheno Investments, LLC, Toyon Investments, LLC, Charles Reeves, and Ann B. Reeves</i> <input type="checkbox"/> Mail <input type="checkbox"/> Fax <input type="checkbox"/> Overnight <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Email</p>	<p>Richard W. Sweney Lukins &amp; Annis PS 601 E. Front Ave., Ste. 502 Coeur d'Alene, ID 83814 Fax: 208/664-4125 <i>Counsel for Mountain West Bank</i> <input type="checkbox"/> Mail <input type="checkbox"/> Fax <input type="checkbox"/> Overnight <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Email</p>
<p>Douglas S. Marfice Ramsden &amp; Lyons, LLP P.O. Box 1336 Coeur d'Alene, ID 83816-1336 Fax: 208/664-5884 <i>Counsel for B-K Lighting, Inc.</i> <input type="checkbox"/> Mail <input type="checkbox"/> Fax <input type="checkbox"/> Overnight <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Email</p>	<p>Bruce A. Anderson Elsaesser Jarzabek Anderson Elliott &amp; MacDonald, Chtd. 320 East Neider Ave., Suite 102 Coeur d' Alene, ID 83815 Fax: 208/667-2150 <i>Counsel for Dan S. Jacobson, Steven G. Lazar, and Sage Holdings, LLC</i> <input type="checkbox"/> Mail <input type="checkbox"/> Fax <input type="checkbox"/> Overnight <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Email</p>

  
Chad M. Nicholson

ORIGINAL

STATE OF IDAHO  
COUNTY OF BONNER  
FIRST JUDICIAL DIST.

2013 JUL 18 PM 11 03

CLERK DISTRICT COURT

DEPUTY

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*Attorneys for RE Loans, LLC*

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

UNION BANK, a national association,

Plaintiff,

v.

PEND OREILLE BONNER  
DEVELOPMENT, LLC, et al.

Defendants.

Case No. CV-2011-0135

**R.E. LOANS, LLC'S REQUEST FOR  
JUDICIAL NOTICE PURSUANT TO I.R.E.  
201(b)**

**AND ASSOCIATED COUNTERCLAIMS,  
CROSS-CLAIMS, AND THIRD-PARTY  
COMPLAINTS.**

**COMES NOW**, Defendant/Cross-Defendant/Cross-Claimant R.E. Loans, LLC (R.E. Loans") by and through its attorneys of record, Meuleman Mollerup LLP and requests that the Court take judicial notice of the following public records of the Bonner County Recorder's Office:

1. The Memorandum of Real Property Purchase and Sale Agreement, recorded on July 19, 2006 as Instrument No. 706475 by the Bonner County Recorder's Office ("Sale

Memo”). A true and correct copy of the Sale Memo is attached as Exhibit A to the Affidavit of Chad M. Nicholson in Support of R.E. Loans, LLC’s Motion for Partial Summary Judgment Against North Idaho Resorts, LLC (“*Nicholson Affid.*”), filed concurrently herewith.

2. The Mortgage Assignment of Rents, Security Agreement, and Fixture Filing, recorded on March 15, 2007 as Instrument No. 724829 by the Bonner County Recorder’s Office (“RE Loans Mortgage”). A true and correct copy of the RE Loans Mortgage is attached as Exhibit B to the *Nicholson Affid.*

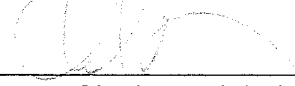
3. The Subordination Agreement, recorded on March 15, 2007 as Instrument No. 724832 by the Bonner County Recorder’s Office (“Subordination Agreement”). A true and correct copy of the Subordination Agreement is attached as Exhibit C to the *Nicholson Affid.*

4. The Partial Termination of Real Property Purchase and Sale Agreement and Partial Termination of Memorandum of Real Property Purchase and Sale Agreement, recorded on March 15, 2007 as Instrument No. 724831 by the Bonner County Recorder’s Office (“2007 Partial Termination”). A true and correct copy of the 2007 Partial Termination is attached as Exhibit D to the *Nicholson Affid.*

5. The Partial Termination of Real Property Purchase and Sale Agreement and Partial Termination of Memorandum of Real Property Purchase and Sale Agreement, recorded on March 11, 2009 as Instrument No. 768269 by the Bonner County Recorder’s Office (“2009 Partial Termination”). A true and correct copy of the 2009 Partial Termination is attached as Exhibit E to the *Nicholson Affid.*

DATED this 17<sup>th</sup> day of July 2013.

MEULEMAN MOLLERUP LLP

  
By: Chad M. Nicholson  
Attorneys for R.E. Loans, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 17 day of July 2013, a true and correct copy of the foregoing document was served by the method indicated below to the following parties:

<p>John E. Miller The Law Office of John E. Miller 1424 Sherman Ave., Ste. 500 Coeur d'Alene, ID 83814 Telephone: 208/665-9464 Facsimile: 208/665-9176 <i>Counsel for Plaintiff</i> <input checked="" type="checkbox"/> <b>Mail</b> <input type="checkbox"/> <b>Fax</b> <input type="checkbox"/> <b>Overnight</b> <input type="checkbox"/> <b>Hand Delivery</b> <input type="checkbox"/> <b>Email</b></p>	<p>Gary A. Finney Finney Finney &amp; Finney, P.A. 120 E. Lake Street, Ste 317 Sandpoint, Idaho 83864 Fax: 208/263-8211 <i>Counsel for J.V., LLC</i> <input checked="" type="checkbox"/> <b>Mail</b> <input type="checkbox"/> <b>Fax</b> <input type="checkbox"/> <b>Overnight</b> <input type="checkbox"/> <b>Hand Delivery</b> <input type="checkbox"/> <b>Email</b></p>
<p>John Finney Finney Finney &amp; Finney, P.A. 120 E. Lake Street, Ste 317 Sandpoint, Idaho 83864 Fax: 208/263-8211 <i>Counsel for ACI Northwest, Inc.</i> <input checked="" type="checkbox"/> <b>Mail</b> <input type="checkbox"/> <b>Fax</b> <input type="checkbox"/> <b>Overnight</b> <input type="checkbox"/> <b>Hand Delivery</b> <input type="checkbox"/> <b>Email</b></p>	<p>Steven C. Wetzel James, Vernon &amp; Weeks, PA 1626 Lincoln Way Coeur d'Alene, ID 83814 Fax: 208/664-1684 <i>Counsel for North Idaho Resorts, LLC</i> <input type="checkbox"/> <b>Mail</b> <input type="checkbox"/> <b>Fax</b> <input type="checkbox"/> <b>Overnight</b> <input type="checkbox"/> <b>Hand Delivery</b> <input type="checkbox"/> <b>Email</b></p>
<p>John R. Layman Bradley C. Crockett Layman Law Firm, PLLP 601 South Division Street Spokane, WA 99202 Fax: 509/624-2902 <i>Counsel for Pend Oreille Bonner Development, LLC, Pend Oreille Bonner Development Holdings, Inc., Montaheno Investments, LLC, Toyon Investments, LLC, Charles Reeves, and Ann B. Reeves</i> <input checked="" type="checkbox"/> <b>Mail</b> <input type="checkbox"/> <b>Fax</b> <input type="checkbox"/> <b>Overnight</b> <input type="checkbox"/> <b>Hand Delivery</b> <input type="checkbox"/> <b>Email</b></p>	<p>Richard W. Sweney Lukins &amp; Annis PS 601 E. Front Ave., Ste. 502 Coeur d'Alene, ID 83814 Fax: 208/664-4125 <i>Counsel for Mountain West Bank</i> <input checked="" type="checkbox"/> <b>Mail</b> <input type="checkbox"/> <b>Fax</b> <input type="checkbox"/> <b>Overnight</b> <input type="checkbox"/> <b>Hand Delivery</b> <input type="checkbox"/> <b>Email</b></p>
<p>Douglas S. Marfice Ramsden &amp; Lyons, LLP P.O. Box 1336 Coeur d'Alene, ID 83816-1336 Fax: 208/664-5884 <i>Counsel for B-K Lighting, Inc.</i> <input checked="" type="checkbox"/> <b>Mail</b> <input type="checkbox"/> <b>Fax</b> <input type="checkbox"/> <b>Overnight</b> <input type="checkbox"/> <b>Hand Delivery</b> <input type="checkbox"/> <b>Email</b></p>	<p>Bruce A. Anderson Elsaesser Jarzabek Anderson Elliott &amp; MacDonald, Chtd. 320 East Neider Ave., Suite 102 Coeur d' Alene, ID 83815 Fax: 208/667-2150 <i>Counsel for Dan S. Jacobson, Steven G. Lazar, and Sage Holdings, LLC</i> <input checked="" type="checkbox"/> <b>Mail</b> <input type="checkbox"/> <b>Fax</b> <input type="checkbox"/> <b>Overnight</b> <input type="checkbox"/> <b>Hand Delivery</b> <input type="checkbox"/> <b>Email</b></p>

\_\_\_\_\_  
Chad M. Nicholson

STATE OF IDAHO  
COUNTY OF BONNER  
FIRST JUDICIAL DIST.

2013 JUL 23 AM 9 43

CLERK DISTRICT COURT  
710  
DEPUTY

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Attorney for Plaintiff

DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT

STATE OF IDAHO, COUNTY OF BONNER

UNION BANK, N.A.,	)	<b>CASE NO. CV 2011-0135</b>
	)	
Plaintiff,	)	PLAINTIFF’S REPLY MEMORANDUM
	)	TO DEFENDANT JV, LLC’S
vs.	)	OPPOSITION TO PLAINTIFF’S MOTION
	)	FOR PARTIAL SUMMARY JUDGMENT.
PEND OREILLE BONNER DEVELOPMENT,	)	
LLC, a Nevada limited liability company, et al	)	DATE: July 29, 2013
	)	TIME: 9:30 am
Defendants.	)	PLACE: JUDGE MICHAEL GRIFFIN’S
	)	ASSIGNED COURTROOM
	)	

COMES NOW, the Plaintiff, UNION BANK, N.A. (herein the “Bank” or “plaintiff”), by and through its attorney of record, John E. Miller of **The Law Office of John E. Miller, A Professional Corporation**, and hereby submit its REPLY MEMORANDUM TO DEFENDANT JV, LLC’S (herein “JV”) OPPOSITION TO PLAINTIFF’S MOTION FOR PARTIAL SUMMARY JUDGMENT.

PLAINTIFF’S REPLY MEMORANDUM TO DEFENDANT JV, LLC’S OPPOSITION TO PLAINTIFF’S MOTION FOR PARTIAL SUMMARY JUDGMENT

## INTRODUCTION

Reformation of the legal description contained within the subject mortgage is not disputed by JV. JV's opposition, its claim of priority, is based upon an inaccurate recitation of the law of contracts both in argument and in legal conclusions contained in JV's supporting affidavit and further upon a plethora of inadmissible parol evidence.

JV bases its claim of priority over the plaintiff's mortgage on the unenforceability a Subordination Agreement given by JV – AT THE REQUEST OF PEND OREILLE BONNER DEVELOPMENT, LLC (herein "POBD"). The reader is directed to the supporting JV Affidavit of James W. Berry for clarity wherein he acknowledges, paragraphs 6 and 7, that JV had no direct discussions with the Bank related to the Subordination. From his affidavit it is clear that POBD, Mr. Reeves, discussed with Mr. Berry the need and reasons for the Subordination, presented it, and circulated it for signature. It should also be noted that Mr. Reeves also signed and caused recordation of the Addendum, Instrument 756411, Item 4 Request for Judicial Notice – ON THE SAME DATE OF EXECUTION AND RECORDATION of the Subordination. Careful reading of its terms evidences the promise of POBD not to further increase the lending from the Bank that was secured by the Trestle Creek real property. This language, precluding any increases in principal to the Bank's \$5M loan to POBD, is the only language within the Subordination Agreement that charged the Bank with any contractual duty; a duty that was subsumed by POBD in the Addendum, Instrument 756411, Item 4 Request for Judicial Notice. It was these parties, JV and POBD, who prepared, reviewed, circulated, signed and recorded the Subordination, a subordination demanded of POBD by the Bank as part of its RENEWAL \$5M loan that provided an additional two years for payment of what was a short term (90 day) loan. Apparently POBD and JV did not feel the need to circulate the Subordination to the Bank for signature because of the promise contained in the



Addendum. The Bank acknowledges that it did not have an officer sign the Subordination as it was not presented to the Bank to do so.

It should be reiterated that JV has admitted the existence and execution by its members of the Subordination Agreement. JV now argues, additionally, that because the Subordination Agreement was not signed by the Bank – that no “agreement” was consummated.

### **SUBORDINATION AGREEMENT – JV’S CLAIMS**

As anticipated, JV argues unenforceability of the Subordination Agreement. JV previously has averred that: 1. Its mortgage was recorded **June 19, 2006**, first in time first in priority, as related to the plaintiff’s mortgage recorded **March 25, 2008**, a timing fact that is not in dispute. 2. Plaintiff gave no consideration and JV received no consideration for the March 2008 renewal note and the Subordination. 3. JV now argues, additionally, that because the Subordination Agreement was not signed by the Bank – that no “agreement” was consummated and therefore the Bank has no enforceable right against JV. JV is wrong as to the undisputed facts and the law governing points 2 and 3.

The self-serving comments of Mr. Berry’s Affidavit, paragraphs 13 through 17, related to what he was told by POBD (Mr. Reeves) while perhaps true are in direct contradiction to the very terms of the Subordination. The clear and unambiguous terms of the Subordination Agreement in regards to Mr. Berry’s understandings as asserted in his Affidavit are worth repeating as follows in pertinent part now highlighted in yellow for the Court:

3. Creditor hereby subordinates the lien of Creditor’s Deed of Trust, but only as said lien encumbers and pertains to property described on Exhibit A hereto, to the lien of the mortgage dated March 7, 2008 and recorded March 25, 2008 as Instrument No. 748379 and 748380 (the “FNB Mortgage”) to secure a loan (the “FNB Loan”) which FNB has heretofore made to Borrower which FNB amount of Five Million Dollars (\$5,000,000), the proceeds of which Borrower has used

to pay off the existing indebtedness of Borrower and/or Holdings, Inc. and/or to pay for the improvement and development of property encumbered by Creditor's Deed of Trust, including the property described on Exhibit A and/or interest, fees, and charges payable to FNB on account of the FNB Loan.<sup>1</sup>

And:

9. This Agreement constitutes the entire agreement and understanding between and among the parties hereto relating to the subject matter hereof, and supersedes, all prior proposals, negotiations, agreements and understandings among the parties hereto with respect to such subject matter.

Clearly the Subordination states that there was a preceding loan by the Bank ("which FNB has heretofore made") to POBD of \$5M –AND – that the proceeds of that loan were used to pay off existing debts of POBD or its parent company "Holdings, Inc." and/or to pay for development of property encumbered by JV's Deed of Trust –which property is not only the Trestle Creek real property but also other Idaho Club realty – as well as other charges on the Bank's loan to POBD. The Bank's November 2007 loan of \$5M was of short duration, given in two "facilities" the second anticipated to be exactly what transpired here – the Bank would grant an additional two years to POBD to repay the loan at the conclusion of the 90 day November 2007 loan so long as it would put the Bank in a secured first position vis-à-vis the Trestle Creek Property. One can only assume that the original 90 day short term loan was granted to allow POBD to negotiate with its investor/lenders like JV to obtain the demanded first

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<sup>1</sup> The reference to "FNB" is a dba description of Pacific Capital Bank. The reference to "Creditor" is to JV.

position status to the Bank – a task that took until August 2008 to actually come to fruition. To now claim, in total disregard to the clear and unambiguous language of the Subordination, that JV thought a new \$5M loan was being made and was to be used solely to build condos on the Trestle Creek real property is just not AS A MATTER OF LAW something that the Court can consider.

#### PAROL EVIDENCE

The common law rule has been stated: "If a written contract is complete upon its face and unambiguous, no fraud or mistake being alleged, extrinsic evidence of prior or contemporaneous negotiations or conversations is not admissible to contradict, vary, alter, add to, or detract from the terms of the contract." *Howard v. Perry*, 141 Idaho 139 (2005). See also *Valley Bank v. Christensen*, 119 Idaho 496, 498, (1991).

The Supreme Court reiterated in *Howard* that under the common law rule, the presence of a merger clause in a written contract conclusively establishes that the agreement is integrated and therefore subject to the parol evidence rule.

Under the parol evidence rule, when a contract has been reduced to a writing that the parties intend to be a final statement of their agreement, evidence of any prior or contemporaneous agreements or understandings which relate to the same subject matter is not admissible to vary, contradict, or enlarge the terms of the written contract. *Simons v. Simons*, 134 Idaho 824, 828, 11 P.3d 20, 24 (2000). An integrated writing proves the terms of the contract; it does not "establish fictitious events." Restatement (Second) of Contracts § 218 cmt. a.

The Subordination Agreement given and recorded by or with the cooperation of JV on August 6, 2008 as Instrument No. 756403, in favor of the plaintiff's mortgage IS A FULLY INTEGRATED CONTRACT, paragraph 9 see above. Further, the Subordination recites the consideration given, i.e., the extension of credit by the plaintiff to POBD in the sum of \$5,000,000, a loan that has been admitted by POBD. Any argument about what JV thought or believed or understood about the \$5,000,000 loan and its use by POBD that conflicts with the clear and unambiguous language of the Subordination Agreement is nothing more than inadmissible parol evidence.

The arguments of JV of lack of consideration and that JV had different understandings as to the generation of the loan and its use as both specious as a matter of law.

#### JV'S CONTRACT CONTENTIONS<sup>2</sup>

JV makes no allegation in its counter complaint, nor in opposition to the instant motion for partial summary judgment, that the Bank either loaned more than the principal sum of \$5M or that the Bank accepted partial principal payments of the \$5M loan and then relent such principal payments. Such actions could have been construed as a breach of conditions of the Subordination by JV. In fact no such actions were done; there has been no breach of the only condition imposed upon the Bank by the Subordination.

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<sup>2</sup> It should be noted that much California law and case citation follows. The Subordination Agreement, paragraph 10, provides a "choice of law" provision with California as the governing law for construction and interpretation.

Subordination is an issue of contract law. The objective of a subordination agreement is to alter the priority of interests affecting a parcel of real property contrary to the usual rules of priority that "first in time is first in right," except for the rights of a subsequent bona fide purchaser or encumbrancer. Subordination is accomplished by a contract, which may be express or implied, whereby the senior lienor (here JV) agrees to change the priority of interests and to accept a junior lien position when he or she would have a senior lien under the rules of priority. The obligations of the parties under such an agreement are an issue of contract law. *Brown v Boren*, 74 Cal.App.4<sup>th</sup> 1303, 1315 (2d Dist. 1999).

A subordination agreement is subject to the general rules of contract interpretation to enforce the intention of the parties. *Bratcher v Buckner*, 90 Cal.App.4<sup>th</sup> 1177, 1186 (4<sup>th</sup> Dist 2001). The terms of the subordination agreement are construed in accordance with their ordinary meaning unless the parties use them in a technical sense or where a special meaning is attributed to them by usage. *Cal. Civil Code*, Section 1644. The third-party lender who relies on the subordination agreement to achieve a prior lien is a third-party beneficiary to the contract between the buyer and seller that provides for subordination who may enforce the agreement by complying with its terms. *Brown v Boren*, 74 Cal.App.4<sup>th</sup> 1303, 1315 (2d Dist. 1999).

As an issue of contract law, the alteration of priorities requires compliance with the terms and conditions of the subordination agreement. When the conditions of subordination are not satisfied, there is a breach of contract and no alteration of priority; the seller's lien remains as a senior lien

upon a failure of the conditions of subordination. See *California Real Estate 3D*, Recording and Priorities, Section 11:211 – 213. JV makes no claim that the Bank has breached a condition, only that it did not sign the document. The third-party lender (here the Bank) is a third-party beneficiary to the Subordination Agreement and is able to enforce the subordination by compliance with the conditions of subordination. *Brown v Boren*, 74 Cal.App.4<sup>th</sup> 1303, 1315 (2d Dist. 1999).

JV claims that since the Bank did not sign the Subordination Agreement it is not enforceable. That is simply a misinterpretation of the law of contracts. A contract, or note or memorandum thereof, (just read this as the Subordination) must be subscribed by the party to be charged or by his or her agent. (Cal.CivilCode 1624(a); see U.C.C. 2201(1), ["signed by the party against whom enforcement is sought or by his authorized agent or broker"]; Rest.2d, Contracts §§131, 134, 135; 4·Corbin "(Rev. ed.), §23.5 et seq.; 10 Williston 4th, §29:38-et seq; 72 Am.Jur.2d(2001 ed.), Statute of Frauds §272 et seq.; 46-A.L.R.3d 619[validity of lease or sublease subscribed by only one party].)

This means the party to be charged in court with the performance of the obligation, i.e., the *defendant* (here JV) in the action brought to enforce the contract. (Harper v. Goldschmidt (1909) 156C. 245, 246; see Rest.2d, Contracts '§135:). Hence, where two parties contract for the sale of real property, and the vendor signs, the fact that the purchaser has not signed is immaterial if the purchaser brings the action, for the vendor is in such case the party to be charged. *Steel v Duntley* (1931) 115 C.A. 451, 452; *West's Key Number Digest*, Frauds, Statute of, 115.

PLAINTIFF'S REPLY MEMORANDUM TO DEFENDANT  
JV, LLC'S OPPOSITION TO PLAINTIFF'S MOTION FOR  
PARTIAL SUMMARY JUDGMENT

## JV'S CLAIMED LACK OF CONSIDERATION

GOOD CONSIDERATION, WHAT. Any benefit conferred, or agreed to be conferred, upon the promisor, by any other person, to which the promisor is not lawfully entitled, or any prejudice suffered, or agreed to be suffered, by such person, other than such as he is at the time of consent lawfully bound to suffer, as an inducement to the promisor, is a good consideration for a promise.

West's Ann.Cal.Civ.Code § 1605

The law will not weigh the quantum of consideration, and so long as it is something of real value in the eye of the law it is sufficient, and inadequacy of consideration is for parties to consider at time of making agreement, and not for court when agreement is sought to be enforced. *Rice v. Brown* (App. 1953) 120 Cal.App.2d 578.

The law does not weigh the amount of the consideration in determining whether it constitutes good consideration for a contract. *Brawley v. Crosby Research Foundation* (App. 2 Dist. 1946) 73 Cal.App.2d 103.

In determining sufficiency of consideration, the law does not weigh the quantum of detriment suffered by promisee or the quantum of benefit received by promisor. *Taylor v. Taylor* (App. 2 Dist. 1944) 66 Cal.App.2d 390.

*West's Key Number Digest, Contracts 53.*

"A *written instrument* is presumptive evidence of a consideration." (C.C. 1614.) Hence, where a pleading alleges that a contract is in writing, it is unnecessary to allege consideration, and lack of consideration must be specially pleaded as a defense. (*Henke v. Eureka Endowment Assn.* (1893) 100 C. 429, 432; *Fierce v. Reed* (1930) 106 C.A. 673, 677; *Glickman v. Collins* (1975) 13 C.3d 852, 86.

The presumption is rebuttable, and extrinsic evidence is admissible to show lack of consideration. (C.C. 1614; Ev.C. 622; *American Nat. Bank v. Sommerville* (1923) 191 C. 364, 369, 216 P. 376; *Estate of McConnell* (1936) 6 C.2d 493, 499, 58 P.2d 639; see 2 *Cal. Evidence*, 3d, §1001.)

PLAINTIFF'S REPLY MEMORANDUM TO DEFENDANT  
JV, LLC'S OPPOSITION TO PLAINTIFF'S MOTION FOR  
PARTIAL SUMMARY JUDGMENT

JV contends that it received no consideration for the Subordination Agreement. The document itself recites the fact that JV acknowledged receipt of “good and valuable” consideration. The document also reveals that JV received the promise from POBD that the funds (\$5M loan) were used for payments on other JV collateral, past indebtedness of POBD or its holding company, and other related debt past or future – ALL of which would benefit JV as its position in this and other collateral would be improved.

## CONCLUSION


For the foregoing reasons plaintiff renews its assertion that as a matter of law plaintiff should be granted partial summary judgment against JV as to reformation and establishing its prior mortgage as follows:

1. Based upon the scrivener’s error, the legal description, Exhibit “A” to the Mortgage as set forth in the First Amended Complaint, paragraph 34, should be reformed to wit: correcting the description to “Range 1 East” as noted.
2. UB has a valid, duly perfected, secured lien upon the subject real and personal property more particularly described in the Mortgage senior to the interest of JV as evidenced by the Litigation Guarantee, a true and correct copy of which is attached as Exhibit 1 to the Affidavits of plaintiff filed contemporaneously herewith.

RESPECTFULLY SUBMITTED:

DATED this 22<sup>nd</sup> day of July 2013

*The Law Office Of John E. Miller*  
*A Professional Corporation*



---

John E. Miller  
Attorney for Plaintiff

PLAINTIFF’S REPLY MEMORANDUM TO DEFENDANT  
JV, LLC’S OPPOSITION TO PLAINTIFF’S MOTION FOR  
PARTIAL SUMMARY JUDGMENT



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 22<sup>nd</sup> day of July 2013, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

  X   Facsimile transmitted to  
Bruce Anderson Fax (208) 667-2150  
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Susan P. Weeks  
JAMES, VERNON & WEEKS, PA  
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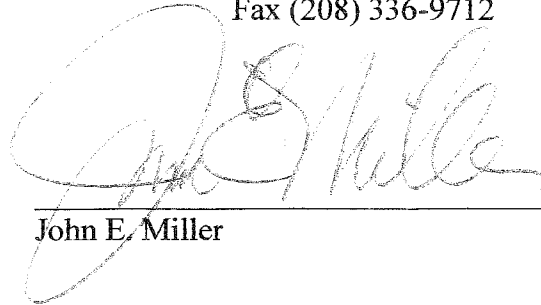
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Sandpoint, ID 83864

John A. Finney Fax (208) 263-8211  
FINNEY FINNEY & FINNEY, P.A.  
Attorneys at Law  
Old Power House Building  
120 East Lake Street, Suite 317  
Sandpoint, ID 83864

PLAINTIFF'S REPLY MEMORANDUM TO DEFENDANT  
JV, LLC'S OPPOSITION TO PLAINTIFF'S MOTION FOR  
PARTIAL SUMMARY JUDGMENT

Rick L. Stacey  
Meuleman Mollerup LLP  
755 W. Front Street, Ste. 200  
Boise, Idaho 83702

Fax (208) 336-9712



John E. Miller

PLAINTIFF'S REPLY MEMORANDUM TO DEFENDANT  
JV, LLC'S OPPOSITION TO PLAINTIFF'S MOTION FOR  
PARTIAL SUMMARY JUDGMENT

STATE OF IDAHO  
COUNTY OF KOOTENAI  
FIRST JUDICIAL DIST.

2013 JUL 31 AM 11 05

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF Kootenai

**COURT MINUTES**

DEPUTY

July 29, 2013, at 9:31  
Grangeville, Idaho

District Judge Presiding: Michael J. Griffin

Reporter: Keith Evans

Tape: District

Clerk: SClark

\*\*\*\*\*

Union Bank

Plaintiff,

vs.

Pend Orielle Development

Defendant.

\*\*\*\*\*

)  
) Case No. CV11-0135  
)  
)  
)  
)

Appearance for Plaintiff: John Miller

Appearance for Defendant: Susan Weeks, Finney

Subject of Proceedings:

BE IT KNOWN, that the following proceedings were had, to-wit:

- 9:31 Court introduces case, Miller, Finney, Weeks present telephonically
- 9:32 Miller argues for Summary Judgment for JV LLC
- 9:42 Finney argues against Summary Judgment
- 9:57 Miller responds
- 10:02 Miller argues for Summary Judgment on North Idaho Resorts
- 10:08 Weeks argues against Summary Judgment for NIR
- 10:15 Court addresses re: legal description
- 10:17 Miller responds
- 10:20 Court addresses re: exhibit A

Miller responds

10:21 Court addresses. Judicial Notice taken, Motion for Summary Judgment taken under advisement

10:22 Finney addresses Court

10:24 Miller responds


10:26 Weeks addresses Court

10:28 Miller responds

10:29 Court addresses

10:30 Recess

Signed:

  
\_\_\_\_\_  
District Judge

Signed:

  
\_\_\_\_\_  
Deputy Court Clerk

Susan P. Weeks  
 James, Vernon & Weeks, P.A.  
 1626 Lincoln Way  
 Coeur d'Alene, ID 83814  
 Phone: (208) 667-0683  
 Fax: (208) 664-1684  
 sweeks@jvwlaw.net  
 ISB No. 4255

STATE OF IDAHO  
 COUNTY OF BONNER  
 FIRST JUDICIAL DIST.  
 2013 AUG 12 AM 10 48  
 CLERK OF DISTRICT COURT  
 DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
 STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

UNION BANK, N.A., a national	)	Case No. CV-2011-00135
banking association,	)	
	)	JAMES W. BERRY'S AFFIDAVIT
Plaintiff,	)	IN OPPOSITION TO R.E.
	)	LOAN'S MOTION FOR PARTIAL
vs.	)	SUMMARY JUDGMENT
	)	
PEND OREILLE BONNER DEVELOPMENT,	)	
LLC, a Nevada limited liability	)	
company, et al,	)	
	)	
Defendants.	)	
	)	

STATE OF IDAHO )  
 : ss.  
 County of Bonner )

COMES NOW JAMES W. BERRY, being first duly sworn on oath  
 and states to the Court based on my personal knowledge on  
 matters which I am competent to testify, as follows:

1. I am a manager and member of JV, LLC.

2. JV is the owner and holder of a promissory note secured by Mortgage on the Trestle Creek real estate that is the subject of this action.

3. On or about July 31, 2008 I obtained a Borrower's Settlement Statement in relation to a \$22,270,000.00 loan from Mortgage Fund '08 LLC c/o Bar K, Inc.

4. Attached hereto as Exhibit "A" is a true and correct copy of the Borrower's Settlement Statement signed by me on behalf of JV, LLC.

  
\_\_\_\_\_  
JAMES W. BERRY

SUBSCRIBED AND SWORN TO before me this 9 day of August, 2013.



  
\_\_\_\_\_  
Notary Public-State of Idaho  
Residing at: Sandpoint  
My commission expires: 7-1-13

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by facsimile transmission, or as otherwise indicated, this 15 day of July, 2013, and addressed as follows:

John E. Miller  
Attorney at Law  
206 Indiana Avenue, Suite 200  
Coeur d'Alene, ID 83814  
Fax No. 1-208-665-9176  
(Attorney for Union Bank)

Douglas S. Marfice  
RAMSDEN & LYONS  
P.O. Box 1336  
Coeur d'Alene, ID 83816-1336  
Fax No. 1-208-664-5884  
(Attorney for B-K Lighting, Inc.)

Bruce Anderson  
ELSAESSER JARZABEK ANDERSON  
ELLIOTT & MACDONALD, CHTD  
320 E. Neider Ave, Suite 102  
Coeur d'Alene, ID 83815  
Fax No. 1-208-667-2150  
(Attorney for Dan S. Jacobson,  
Sage Holding, LLC, and Steve G.  
Lazor)

Honorable Michael J. Griffin  
Second District Court  
320 W. Main Street  
Grangeville, ID 83530  
Fax No. 1-208-983-2376  
(Out of County Judge)  
Honorable Michael J. Griffin  
Second District Court  
PO Box 8068  
Moscow, ID 83843  
Fax No. 1-208-883-5719  
(Out of County Judge)  
(Via Judge Stegner's Chambers)

R. Wayne Sweney  
Jonathon D. Hallin  
LUKINS & ANNIS, P.S.  
601 E. Front Ave., Suite 502  
Coeur d'Alene, ID 83814  
Fax No. 1-208-664-4125  
(Attorney for Mountain West Bank)

Gary Finney  
Finney Finney & Finney, P.A.  
120 East Lake Street, Ste 317  
Sandpoint, ID 83864-1366  
(Attorney for JV, LLC)

John A. Finney  
Finney Finney & Finney, P.A.  
120 East Lake St., Suite 317  
Sandpoint, ID 83864-1366  
(Attorney for ACI Northwest, Inc.)

Richard L. Stacey  
Anna E. Eberlin  
MEULMAN MOLLERUP, LLP  
755 W. Front St., Ste 200  
Boise, ID 83702  
Fax No. 1-208-336-9712  
(Attorney for R.E. Loans, LLC)

John G. Layman  
Patti Jo Foster  
LAYMAN, LAYMAN & ROBINSON, PLLP  
601 South Division Street  
Spokane, WA 99202  
Fax No. 1-509-624-2902  
(Attorney for Pend Oreille Bonner  
Development, LLC, Pend Oreille  
Bonner Development Holdings, Inc.,  
Montaheno Investments, LLC, Toyon  
Investments, LLC, Charles Reeves,  
and Ann B. Reeves)

*First American Title Company*

419 North Second Ave. • Sandpoint, ID 83864

**Borrower's Settlement Statement**

**Property:** NNA, Sandpoint, ID 83864

**File No:** 239217-S

**Officer:** Casey Linscott/cl

**New Loan No:**

**Settlement Date:** 07/31/2008

**Disbursement Date:** 07/31/2008

**Print Date:** 7/31/2008, 10:45 AM

**Buyer:** Pend Oreille Bonner Development LLC  
**Address:** 151 Clubhouse Way, Sandpoint, ID 83864  
**Seller:**  
**Address:**

Charge Description	Borrower Charge	Borrower Credit
<b>New Loan(s):</b>		
Lender: Mortgage Fund '08 LLC c/o Bar K, Inc.		
New Loan to File - Mortgage Fund '08 LLC c/o Bar K, Inc.		22,270,000.00
Loan Origination Fee - Mortgage Fund '08 LLC c/o Bar K, Inc.	189,000.00	
Document Preparation Fee - Mortgage Fund '08 LLC c/o Bar K, Inc.	11,000.00	
Payoff First Note - Loan No. P0099 - Mortgage Fund '08 LLC c/o Bar K, Inc.	6,473,545.18	
Payoff Second Note - Loan No. P0106 - Mortgage Fund '08 LLC c/o Bar K, Inc.	2,700,000.00	
Commission Due Bar K, Inc. per Note - Mortgage Fund '08 LLC c/o Bar K, Inc.	272,500.00	
3 Months Prepaid Interest - Mortgage Fund '08 LLC c/o Bar K, Inc.	81,000.00	
Attorney Fees/Administrative Charges - Mortgage Fund '08 LLC c/o Bar K, Inc.	15,000.00	
Retained Loan Funds - Mortgage Fund '08 LLC c/o Bar K, Inc.	12,480,000.00	
Lender: Pensco Trust Co., custodian fbo Barney Ng		
New Second Loan to File - Pensco Trust Co., custodian fbo Barney Ng		2,700,000.00
<b>Title/Escrow Charges to:</b>		
Settlement or Closing Fee - First American Title Company	1,500.00	
Endorsements 9.3-06/21-06 - First American Title Company	140.00	
Policy-Extended Lender's Policy - First American Title Company	9,438.00	
Policy-Extended Lenders Policy - First American Title Company	27,583.00	
Recording Fee-Mortgage (x3) - First American Title Company	270.00	
Recording Fee-Releases - First American Title Company	15.00	
Recording Fee-All-Inclusive Mortgage (x3) - First American Title Company	279.00	
Recording/Filing Fee-UCC - First American Title Company	45.00	
<b>Disbursements Paid:</b>		
Pay Down JV, LLC Account per Agmt to Panhandle Escrow Company	323,915.63	
Payoff Lien #750247 to ACI Northwest, Inc.	1,400,000.00	
Pay Balance of 2007 Taxes on all parcels to Bonner County Tax Collector	124,314.64	
Pay Direct Per Agreement (Outside of PEC) to JV, LLC	30,000.00	
Pay on Account to Genesis Golf Builders, Inc.	450,000.00	
	Cash ( From) (X To) Borrower	380,454.55
<b>Totals</b>	24,970,000.00	24,970,000.00

*Casey Linscott*  
*James W. Berry 7/31/08*  
*Jill A Berry*

EXHIBIT NO. 9  
 V. LEGG, CSR

DEFENDANT'S  
 EXHIBIT  
 A

1327



STATE OF IDAHO  
COUNTY OF BONNER  
FIRST JUDICIAL DIST.

2013 AUG 20 PM 3 23

CLERK DISTRICT COURT

DEPUTY

Richard L. Stacey, ISB #6800  
Chad M. Nicholson, ISB #7506  
MEULEMAN MOLLERUP LLP  
755 W. Front Street, Suite 200  
Boise, Idaho 83702  
(208) 342-6066 Telephone  
(208) 336-9712 Fax  
stacey@lawidaho.com  
nicholson@lawidaho.com

*Attorneys for R.E. Loans, LLC*

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

UNION BANK, a national association,

Plaintiff,

v.

PEND OREILLE BONNER  
DEVELOPMENT, LLC, et al.

Defendants.

Case No. CV-2011-0135

**STIPULATION AS TO CLAIMS OF  
NORTH IDAHO RESORTS, LLC  
AGAINST R.E. LOANS, LLC**

**AND ASSOCIATED COUNTERCLAIMS,  
CROSS-CLAIMS, AND THIRD-PARTY  
COMPLAINTS.**

COME NOW R.E. Loans, LLC ("R.E. Loans") and North Idaho Resorts, LLC ("NIR"), by and through their respective attorneys of record, and hereby stipulate and agree to dismiss certain claims made by R.E. Loans and NIR and to clarify the scope of NIR's cross-claims against R.E. Loans in this case (Bonner County Case No. CV-2011-0135) (the "NIR Cross-Claim"), as set forth hereinbelow:

**STIPULATION AS TO CLAIMS OF NORTH IDAHO RESORTS, LLC AGAINST R.E. LOANS, LLC -**

Page 1

IR:547261PLEDCV-2011-0135DRAFTStipulation (Re NIR Cross-Claims).doc

1. R.E. Loans has filed a Disclaimer of Interest in the real property commonly known as Trestle Creek and legally described on Exhibit A hereto;

2. R.E. Loans and NIR stipulate and agree that Counts 1, 2, 3, 4, 6 and 7 of the NIR Cross-Claim do not seek relief with respect to R.E. Loans.

3. R.E. Loans and NIR stipulate and agree that the NIR Cross-Claim in this case (Bonner County Case No. CV-2011-0135) only seeks to foreclose and adjudicate the priority of the named parties' respective interests in and to the real property commonly known as Trestle Creek and legally described on Exhibit A hereto. The NIR Cross-Claim does not seek to foreclose or adjudicate the priority of the named parties' respective interests in and to any other property that is subject to the R.E. Loans Mortgages recorded on June 19, 2006 at 1:38p in the Bonner County Recorder's Office as Instrument No. 706471 and/or on March 15, 2007, at 4:30 p.m. in the Bonner County Recorder's Office as Instrument No. 724829.

4. R.E. Loans and NIR stipulate to entry of a judgment in favor of NIR and against R.E. Loans on Count 5 of the NIR Cross-Claim establishing that NIR's right, title and interest in Trestle Creek, legally described on Exhibit A hereto, is superior and prior to that of R.E. Loans.

5. R.E. Loans agrees to dismiss, without prejudice, its counter-claims against NIR in this case (Bonner County Case No. CV-2011-0135).

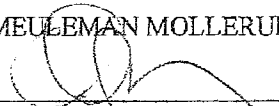
6. R.E. Loans and NIR further stipulate and agree that each party shall bear its own attorneys' fees and costs with respect to the NIR Cross-Claim and R.E. Loans' Cross-Claim in this case (Bonner County Case No. CV-2011-0135).


DATED this 20 day of August 2013.

DATED this \_\_\_ day of August 2013.

MEULEMAN MOLLERUP LLP

JAMES, VERNON AND WEEKS P.A.

  
By: Chad M. Nicholson  
Attorneys for R.E. Loans, LLC

  
By: Susan P. Weeks  
Attorneys for North Idaho Resorts, LLC

STIPULATION AS TO CLAIMS OF NORTH IDAHO RESORTS, LLC AGAINST R.E. LOANS, LLC -

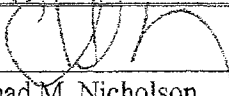
Page 2

IA1547.261NPLD\CV-2011-0135\DRAFT\Stipulation (Re NIR Cross-Claims).doc

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 20<sup>th</sup> day of August 2013, a true and correct copy of the foregoing document was served by the method indicated below to the following parties:

<p>John E. Miller The Law Office of John E. Miller 1424 Sherman Ave., Ste. 500 Coeur d'Alene, ID 83814 Telephone: 208/665-9464 Facsimile: 208/665-9176 <i>Counsel for Plaintiff</i> <input type="checkbox"/> Mail <input checked="" type="checkbox"/> Fax <input type="checkbox"/> Overnight <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Email</p>	<p>Gary A. Finney Finney Finney &amp; Finney, P.A. 120 E. Lake Street, Ste 317 Sandpoint, Idaho 83864 Fax: 208/263-8211 <i>Counsel for J.V., LLC</i> <input type="checkbox"/> Mail <input checked="" type="checkbox"/> Fax <input type="checkbox"/> Overnight <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Email</p>
<p>John Finney Finney Finney &amp; Finney, P.A. 120 E. Lake Street, Ste 317 Sandpoint, Idaho 83864 Fax: 208/263-8211 <i>Counsel for ACI Northwest, Inc.</i> <input type="checkbox"/> Mail <input checked="" type="checkbox"/> Fax <input type="checkbox"/> Overnight <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Email</p>	<p>Steven C. Wetzel James, Vernon &amp; Weeks, PA 1626 Lincoln Way Coeur d'Alene, ID 83814 Fax: 208/664-1684 <i>Counsel for North Idaho Resorts, LLC</i> <input type="checkbox"/> Mail <input checked="" type="checkbox"/> Fax <input type="checkbox"/> Overnight <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Email</p>
<p>John R. Layman Bradley C. Crockett Layman Law Firm, PLLP 601 South Division Street Spokane, WA 99202 Fax: 509/624-2902 <i>Counsel for Pend Oreille Bonner Development, LLC, Pend Oreille Bonner Development Holdings, Inc., Montaheno Investments, LLC, Toyon Investments, LLC, Charles Reeves, and Ann B. Reeves</i> <input type="checkbox"/> Mail <input checked="" type="checkbox"/> Fax <input type="checkbox"/> Overnight <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Email</p>	<p>Richard W. Sweney Lukins &amp; Annis PS 601 E. Front Ave., Ste. 502 Coeur d'Alene, ID 83814 Fax: 208/664-4125 <i>Counsel for Mountain West Bank</i> <input type="checkbox"/> Mail <input checked="" type="checkbox"/> Fax <input type="checkbox"/> Overnight <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Email</p>
<p>Douglas S. Marfice Ramsden &amp; Lyons, LLP P.O. Box 1336 Coeur d'Alene, ID 83816-1336 Fax: 208/664-5884 <i>Counsel for B-K Lighting, Inc.</i> <input type="checkbox"/> Mail <input checked="" type="checkbox"/> Fax <input type="checkbox"/> Overnight <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Email</p>	<p>Bruce A. Anderson Elsaesser Jarzabek Anderson Elliott &amp; MacDonald, Chtd. 320 East Neider Ave., Suite 102 Coeur d' Alene, ID 83815 Fax: 208/667-2150 <i>Counsel for Dan S. Jacobson, Steven G. Lazar, and Sage Holdings, LLC</i> <input type="checkbox"/> Mail <input checked="" type="checkbox"/> Fax <input type="checkbox"/> Overnight <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Email</p>

  
Chad M. Nicholson

**STIPULATION AS TO CLAIMS OF NORTH IDAHO RESORTS, LLC AGAINST R.E. LOANS, LLC - 3**

I:\1547.201\PL\DCV-2011-0135\Stipulation (Re NIR Crossclaims) 130820.Docx

Property Description

Real property in the County of Bonner, State of Idaho, described as follows:

**PARCEL 1:**

That portion of the Southwest quarter of the Southwest quarter of Section 16, Township 57 North, Range 1 East, Boise Meridian, lying West of the State Highway No. 200 right of way and East of the Northern Pacific Railway right of way and lying North of the North line of the following described tract:

Beginning at a point where the Section line between Sections 16 and 21, Township 57 North, Range 1 West, Boise Meridian, intersects the State Highway on the Westerly side as it now exists; thence in a Northwesterly direction along the Westerly side of said Highway, 752 feet; thence in a Southwesterly direction, 97 feet; thence in a Southeasterly direction, 672 feet to the Section line between Sections 16 and 21; thence East on said Section line between said Sections 16 and 21, 104.26 feet, more or less, to the place of beginning.

Said parcel is now described as follows:

A tract of land situated in the Southwest quarter of the Southwest quarter of Section 16, Township 57 North, Range 1 East of the Boise Meridian, Bonner County, Idaho, lying Southwest of the right of way of State Highway No. 200 and Northeast of the right of way of Montana Rail Link Railway, being a portion of that property described as Parcel 1 of Instrument No. 168846 and more particularly described as follows:

Commencing at the intersection of the South line of the Southwest quarter of the Southwest quarter of Section 16 and the Northeastern right of way of Montana Rail Link Railway which is South 88° 19' 58" East, 344.93 feet from the Southwest corner of Section 16; thence leaving said South line and along said right of way North 23° 38' 59" West, 672.90 feet to the true point of beginning; thence continuing along said right of way North 23° 38' 59" West, 756.98 feet to the intersection with the North line of the Southwest quarter of the Southwest quarter; thence leaving said right of way and along said North line South 88° 43' 23" East, 241.38 feet to the Westerly right of way of State Highway No. 200; thence leaving said North line and along said right of way the following four (4) courses:

on a non-tangential curve to the right having a central angle of 01° 19' 25" (radial bearing = South 73° 15' 16" West), a radius of 768.50 feet, for an arc length of 17.75 feet (chord = South 16° 08' 41" East, 17.75 feet); thence along a line offset 50.00 feet Westerly of and parallel to a spiral curve (centerline is = 200 feet, a = 3.5, S = 7°) for a chord of South 10° 43' 04" East, 193.87 feet; thence South 08° 25' 19" East, 85.06 feet; thence on a curve to the left having a central angle of 13° 56' 48", a radius of 1452.53 feet, for an arc length of 360.87 feet (chord = South 15° 23' 49" East, 359.98 feet);

thence leaving said right of way South 45° 37' 10" West, 106.45 feet (record = "Southwesterly 97 feet") to the true point of beginning.

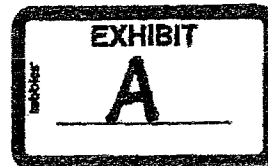
**PARCEL 2:**

That part of the Southwest quarter of the Southwest quarter in Section 16, Township 57 North, Range 1 East of the Boise Meridian, lying South and West of the Burlington Northern Inc. Railway right of way and Government Lot 5 in Section 17, Township 57 North, Range 1 East of the Boise Meridian, save and excepting therefrom:

The South 350 feet of Government Lot 5 in said Section 17, and also that part of the Southwest quarter of the Southwest quarter in said Section 16 lying Westerly of said Burlington Northern Inc. right of way as now in use and described as follows:

Beginning at the Southwest corner of said Section 16; thence North along the West Section

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line 350 feet thence East to the centerline of Trestle Creek; thence Southeasterly along said centerline to the South line of Section 16; thence West along the Section line 720 feet, more or less, to the point of beginning.

Said parcel is now described as follows:

A tract of land situated in the Southwest quarter of the Southwest quarter of Section 16, lying Southwest of Montana Rail Link Railroad right of way and Government Lot 5 of Section 17, all in Township 57 North, Range 1 East, of the Boise Meridian, Bonner County, Idaho, being a portion of that property described as Parcel 2 of Instrument No. 148848 and more particularly described as follows:

Beginning at the intersection of the South line of the Southwest quarter of the Southwest quarter of Section 16 and the Southwesterly right of way of Montana Rail Link Railway which is South 88° 10' 56" East, 834.19 feet from the Southwest corner of Section 16; thence leaving said South line and along said right of way North 23° 38' 59" West, 1457.84 feet to the intersection with the North line of the Southwest quarter of the Southwest quarter; thence leaving said right of way and along the North line of the Southwest quarter of the Southwest quarter, North 89° 43' 23" West, 243.71 feet to the Northwest corner of the Southwest quarter of the Southwest quarter; thence along the North line of Government Lot 5 in Section 17, North 89° 23' 48" West, 1223.84 feet to the meander line of Lake Peck Cradle, as defined by the original GLO Survey; thence leaving said North line and along said meander line the following two (2) courses;

South 52° 55' 48" East, 661.00 feet; thence South 37° 55' 48" East, 796.06 feet to a point on a line lying 350.00 feet North of and parallel to the South line of the Southwest quarter of the Southwest quarter of Section 16;

thence along said parallel line, South 88° 10' 56" East, 261.27 feet to the West line of the said Southwest quarter of the Southwest quarter; thence continuing South 88° 10' 56" East, 158.02 feet to the intersection with the centerline of Trestle Creek; thence along the centerline of Trestle Creek the following eight (8) courses;

South 52° 54' 34" East, 63.58 feet; thence South 46° 37' 24" East, 117.83 feet; thence South 42° 08' 45" East, 77.20 feet; thence South 80° 05' 07" East, 145.46 feet; thence South 55° 15' 32" East, 86.34 feet; thence South 46° 56' 31" East, 113.98 feet; thence South 75° 43' 10" East, 58.85 feet; thence South 37° 48' 28" East, 27.37 feet to the intersection with the South line of the Southwest quarter of the Southwest quarter;

thence leaving said creek centerline and along said South line South 88° 10' 56" East, 116.80 feet to the true point of beginning.

PARCEL 3:

A portion of the Northeast quarter of the Northwest quarter and Government Lot 1 in Section 21, Township 57 North, Range 1 East, Boise Meridian, Bonner County, Idaho, described as follows:

Beginning at a point where the South line of the Northeast quarter of the Northwest quarter of Section 21, Township 57 North, Range 1 East, Boise Meridian, Bonner County, Idaho, intersects the West line of the Northern Pacific Railroad Company right-of-way; thence 600 feet Northerly along said railroad right-of-way; thence West to the meander line of the lake; thence 600 feet Southerly to the the South line of Lot 1 of said Section 21; thence East to the point of beginning.

Said parcel is now described as follows:

A tract of land situated in the Northeast quarter of the Northwest quarter and Government Lot 1 of Section 21, Township 57 North, Range 1 East of the Boise Meridian, Bonner County,

C 2 3

Idaho, more particularly described as follows:

Beginning at the intersection of the South line of the Northeast quarter of the Northwest quarter of Section 21 and the Westery (right of way of Montana Rail Link Railroad which is South 88° 55' 48" East, 139.54 feet from the Southwest corner of said Northeast quarter of the Northwest quarter; thence leaving said South line and along said right of way the following two (2) courses:

on a non-tangential curve to the left having a central angle of 10° 44' 25" (radial bearing = South 85° 01' 49" West) a radius of 2884.79 feet, for an arc length of 498.53 feet (chord = North 30° 20' 24" West, 498.88 feet); thence North 25° 10' 12" West, 100.47 feet;

thence leaving said right of way and parallel to the South line of Government Lot 1, North 88° 55' 48" West, 536.05 feet to the meander line of Lake Pond Oreille as defined in the original GLO Survey; thence along said meander line the following two (2) courses:

South 14° 25' 48" East, 271.54 feet; thence South 46° 40' 48" East, 378.00 feet to the intersection with the South line of Government Lot 1;

thence along said South line South 88° 55' 48" East, 748.52 feet to the Southeast corner of Government Lot 1; thence along the South line of the Northeast quarter of the Northwest quarter, South 88° 55' 48" East, 239.54 feet to the true point of beginning.

Commonly known as: NHA, Sandpoint, ID #3864

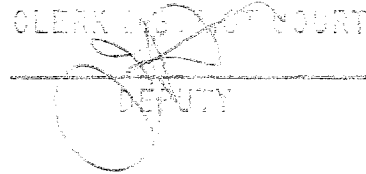


C 3 3

STATE OF IDAHO  
COUNTY OF BONNER  
FIRST JUDICIAL DIST.

2013 AUG 20 PM 3 23

CLERK OF DISTRICT COURT



Richard L. Stacey, ISB #6800  
Chad M. Nicholson, ISB #7506  
MEULEMAN MOLLERUP LLP  
755 W. Front Street, Suite 200  
Boise, Idaho 83702  
(208) 342-6066 Telephone  
(208) 336-9712 Fax  
stacey@lawidaho.com  
nicholson@lawidaho.com

*Attorneys for R.E. Loans, LLC*

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

UNION BANK, a national association,

Plaintiff,

v.

PEND OREILLE BONNER  
DEVELOPMENT, LLC, et al.

Defendants.

Case No. CV-2011-0135

**R.E. LOANS, LLC DISCLAIMER OF  
INTEREST IN TRESTLE CREEK**

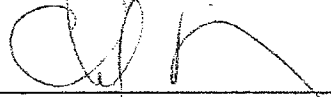
**AND ASSOCIATED COUNTERCLAIMS,  
CROSS-CLAIMS, AND THIRD-PARTY  
COMPLAINTS.**

COMES NOW R.E. Loans, LLC ("R.E. Loans"), by and through its attorneys of record, Meuleman Mollerup, LLP and, pursuant to Idaho Code § 6-402, disclaims all right, title, or interest of whatsoever character or extent in or to the real property commonly known as Trestle

Creek and legally described on Exhibit A hereto. This disclaimer is made with the understanding that court costs, including attorneys' fees, will not be awarded against R.E. Loans.

DATED this 20<sup>th</sup> day of August 2013.

MEULEMAN MOLLERUP LLP



By: Chad M. Nicholson  
Attorneys for R.E. Loans, LLC



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 20<sup>th</sup> day of August 2013, a true and correct copy of the foregoing document was served by the method indicated below to the following parties:

<p>John E. Miller The Law Office of John E. Miller 1424 Sherman Ave., Ste. 500 Coeur d'Alene, ID 83814 Telephone: 208/665-9464 Facsimile: 208/665-9176 <i>Counsel for Plaintiff</i> <input type="checkbox"/> Mail <input checked="" type="checkbox"/> Fax <input type="checkbox"/> Overnight <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Email</p>	<p>Gary A. Finney Finney Finney &amp; Finney, P.A. 120 E. Lake Street, Ste 317 Sandpoint, Idaho 83864 Fax: 208/263-8211 <i>Counsel for J.V., LLC</i> <input type="checkbox"/> Mail <input checked="" type="checkbox"/> Fax <input type="checkbox"/> Overnight <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Email</p>
<p>John Finney Finney Finney &amp; Finney, P.A. 120 E. Lake Street, Ste 317 Sandpoint, Idaho 83864 Fax: 208/263-8211 <i>Counsel for ACI Northwest, Inc.</i> <input type="checkbox"/> Mail <input checked="" type="checkbox"/> Fax <input type="checkbox"/> Overnight <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Email</p>	<p>Steven C. Wetzel James, Vernon &amp; Weeks, PA 1626 Lincoln Way Coeur d'Alene, ID 83814 Fax: 208/664-1684 <i>Counsel for North Idaho Resorts, LLC</i> <input type="checkbox"/> Mail <input checked="" type="checkbox"/> Fax <input type="checkbox"/> Overnight <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Email</p>
<p>John R. Layman Bradley C. Crockett Layman Law Firm, PLLP 601 South Division Street Spokane, WA 99202 Fax: 509/624-2902 <i>Counsel for Pend Oreille Bonner Development, LLC, Pend Oreille Bonner Development Holdings, Inc., Montaheno Investments, LLC, Toyon Investments, LLC, Charles Reeves, and Ann B. Reeves</i> <input type="checkbox"/> Mail <input checked="" type="checkbox"/> Fax <input type="checkbox"/> Overnight <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Email</p>	<p>Richard W. Sweney Lukins &amp; Annis PS 601 E. Front Ave., Ste. 502 Coeur d'Alene, ID 83814 Fax: 208/664-4125 <i>Counsel for Mountain West Bank</i> <input type="checkbox"/> Mail <input checked="" type="checkbox"/> Fax <input type="checkbox"/> Overnight <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Email</p>
<p>Douglas S. Marfice Ramsden &amp; Lyons, LLP P.O. Box 1336 Coeur d'Alene, ID 83816-1336 Fax: 208/664-5884 <i>Counsel for B-K Lighting, Inc.</i> <input type="checkbox"/> Mail <input checked="" type="checkbox"/> Fax <input type="checkbox"/> Overnight <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Email</p>	<p>Bruce A. Anderson Elsaesser Jarzabek Anderson Elliott &amp; MacDonald, Chtd. 320 East Neider Ave., Suite 102 Coeur d'Alene, ID 83815 Fax: 208/667-2150 <i>Counsel for Dan S. Jacobson, Steven G. Lazar, and Sage Holdings, LLC</i> <input type="checkbox"/> Mail <input checked="" type="checkbox"/> Fax <input type="checkbox"/> Overnight <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Email</p>

  
Chad M. Nicholson

**R.E. LOANS, LLC DISCLAIMER OF INTEREST IN TRESTLE CREEK - 3**

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Property Description

Real property in the County of Bonner, State of Idaho, described as follows:

**PARCEL 1:**

That portion of the Southwest quarter of the Southwest quarter of Section 16, Township 57 North, Range 1 East, Boise Meridian, lying West of the State Highway No. 200 right of way and East of the Northern Pacific Railway right of way and lying North of the North line of the following described tract:

Beginning at a point where the Section line between Sections 16 and 21, Township 57 North, Range 1 West, Boise Meridian, intersects the State Highway on the Westerly side as it now exists; thence in a Northwesterly direction along the Westerly side of said Highway, 782 feet; thence in a Southwesterly direction, 97 feet; thence in a Southeasterly direction, 672 feet to the Section line between Sections 16 and 21; thence East on said Section line between said Sections 16 and 21, 104.25 feet, more or less, to the place of beginning.

Said parcel is now described as follows:

A tract of land situated in the Southwest quarter of the Southwest quarter of Section 16, Township 57 North, Range 1 East of the Boise Meridian, Bonner County, Idaho, lying Southwest of the right of way of State Highway No. 200 and Northeast of the right of way of Montana Rail Link Railway, being a portion of that property described as Parcel 1 of Instrument No. 168846 and more particularly described as follows:

Commencing at the intersection of the South line of the Southwest quarter of the Southwest quarter of Section 16 and the Northeastly right of way of Montana Rail Link Railway which is South 88° 10' 56" East, 944.85 feet from the Southwest corner of Section 16; thence leaving said South line and along said right of way North 23° 38' 59" West, 672.00 feet to the true point of beginning; thence continuing along said right of way North 23° 38' 59" West, 786.69 feet to the intersection with the North line of the Southwest quarter of the Southwest quarter; thence leaving said right of way and along said North line South 86° 43' 23" East, 241.38 feet to the Westerly right of way of State Highway No. 200; thence leaving said North line and along said right of way the following four (4) courses:

on a non-tangential curve to the right having a central angle of 01° 19' 25" (radial bearing = South 73° 15' 16" West), a radius of 768.50 feet, for an arc length of 17.75 feet (chord = South 16° 06' 41" East, 17.75 feet); thence along a line offset 50.00 feet Westerly of and parallel to a spiral curve (containing  $b = 200$  feet,  $a = 3.5$ ,  $S = 7^\circ$ ) for a chord of South 10° 43' 01" East, 193.67 feet; thence South 08° 25' 19" East, 86.06 feet; thence on a curve to the left having a central angle of 13° 56' 48", a radius of 1482.53 feet, for an arc length of 360.87 feet (chord = South 15° 25' 43" East, 355.98 feet);

thence leaving said right of way South 44° 37' 18" West, 106.45 feet (record = "Southwesterly 97 feet") to the true point of beginning.

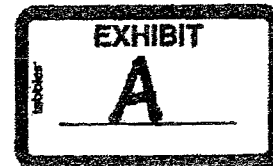
**PARCEL 2:**

That part of the Southwest quarter of the Southwest quarter in Section 16, Township 57 North, Range 1 East of the Boise Meridian, lying South and West of the Burlington Northern Inc. Railway right of way and Government Lot 5 in Section 17, Township 57 North, Range 1 East of the Boise Meridian, save and excepting therefrom:

The South 350 feet of Government Lot 5 in said Section 17, and also that part of the Southwest quarter of the Southwest quarter in said Section 16 lying Westerly of said Burlington Northern Inc. right of way as now in use and described as follows:

beginning at the Southwest corner of said Section 16; thence North along the West Section

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line 350 feet thence East to the centerline of Treble Creek; thence South easterly along said centerline to the South line of Section 16; thence West along the Section line 720 feet, more or less, to the point of beginning.

Said parcel is now described as follows:

A tract of land situated in the Southwest quarter of the Southwest quarter of Section 16, lying Southwest of Montana Rail Link Railroad right of way and Government Lot 5 of Section 17, all in Township 67 North, Range 1 East, of the Boise Meridian, Bonner County, Idaho, being a portion of that property described as Parcel 2 of Instrument No. 162240 and more particularly described as follows: -

Beginning at the intersection of the South line of the Southwest quarter of the Southwest quarter of Section 16 and the Southwesterly right of way of Montana Rail Link Railway which is South 88° 10' 56" East, 834.19 feet from the Southwest corner of Section 16; thence leaving said South line and along said right of way North 73° 58' 59" West, 1467.84 feet to the intersection with the North line of the Southwest quarter of the Southwest quarter; thence leaving said right of way and along the North line of the Southwest quarter of the Southwest quarter; North 88° 43' 23" West, 243.71 feet to the Northwest corner of the Southwest quarter of the Southwest quarter; thence along the North line of Government Lot 5 in Section 17, North 89° 23' 48" West, 1223.34 feet to the meander line of Lake Pend Oreille, as defined by the original GLO Survey; thence leaving said North line and along said meander line the following two (2) courses:

South 52° 55' 48" East, 561.80 feet; thence South 37° 55' 48" East, 798.56 feet to a point on a line lying 350.00 feet North of and parallel to the South line of the Southwest quarter of the Southwest quarter of Section 16;

thence along said parallel line, South 08° 10' 56" East, 281.27 feet to the West line of the said Southwest quarter of the Southwest quarter; thence continuing South 88° 10' 56" East, 159.02 feet to the intersection with the centerline of Treble Creek; thence along the centerline of Treble Creek the following eight (8) courses:

South 52° 54' 34" East, 65.58 feet; thence South 44° 37' 26" East, 117.83 feet; thence South 72° 08' 46" East, 77.28 feet; thence South 80° 05' 07" East, 145.48 feet; thence South 55° 15' 32" East, 86.34 feet; thence South 45° 56' 31" East, 113.88 feet; thence South 75° 43' 10" East, 58.83 feet; thence South 37° 48' 28" East, 27.37 feet to the intersection with the South line of the Southwest quarter of the Southwest quarter;

thence leaving said creek centerline and along said South line South 88° 10' 56" East, 116.80 feet to the true point of beginning.

PARCEL 3:

A portion of the Northeast quarter of the Northwest quarter and Government Lot 1 in Section 21, Township 57 North, Range 1 East, Boise Meridian, Bonner County, Idaho, described as follows:

Beginning at a point where the South line of the Northeast quarter of the Northwest quarter of Section 21, Township 57 North, Range 1 East, Boise Meridian, Bonner County, Idaho, intersects the West line of the Northern Pacific Railroad Company right-of-way; thence 600 feet Northerly along said railroad right-of-way; thence West to the meander line of the lake; thence 600 feet Southerly to the the South line of Lot 1 of said Section 21; thence East to the Point of Beginning.

Said parcel is now described as follows:

A tract of land situated in the Northeast quarter of the Northwest quarter and Government Lot 1 of Section 21, Township 57 North, Range 1 East of the Boise Meridian, Bonner County,

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Idaho, more particularly described as follows:

Beginning at the intersection of the South line of the Northeast quarter of the Northwest quarter of Section 21 and the Westerly right of way of Montana Rail Link Railroad which is South 88° 55' 48" East, 139.54 feet from the Southwest corner of said Northeast quarter of the Northwest quarter; thence leaving said South line and along said right of way the following two (2) courses:

on a non-tangential curve to the left having a central angle of 10° 44' 25" (radial bearing = South 85° 01' 45" West) a radius of 2664.79 feet, for an arc length of 499.53 feet (chord = North 30° 20' 24" West, 400.80 feet); thence North 25° 30' 12" West, 100.47 feet;

thence leaving said right of way and parallel to the South line of Government Lot 1, North 88° 55' 48" West, 536.05 feet to the meander line of Lake Pend Oreille as defined in the original GLO Survey; thence along said meander line the following two (2) courses:

South 14° 25' 48" East, 271.54 feet; thence South 46° 40' 48" East, 378.00 feet to the intersection with the South line of Government Lot 1;

thence along said South line South 88° 55' 48" East, 748.52 feet to the Southeast corner of Government Lot 1; thence along the South line of the Northeast quarter of the Northwest quarter, South 88° 55' 48" East, 139.54 feet to the true point of beginning.

Commonly known as: NNA, Sandpoint, 20 03864



C 3 3

STATE OF IDAHO  
COUNTY OF BONNER  
FIRST JUDICIAL DIST.

2013 AUG 28 AM 10 48

CLERK DISTRICT COURT

  
DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

UNION BANK, N. A., a national banking association,	)	CASE NO. CV 2011-135
	)	
Plaintiff,	)	MEMORANDUM ON PARTIAL
	)	SUMMARY JUDGMENT RE JV, LLC
vs.	)	
	)	
PEND OREILLE BONNER DEVELOPMENT, LLC, a Nevada limited liability company, et al.	)	
	)	
Defendants.	)	

BACKGROUND

North Idaho Resorts, LLC (NIR) sold some real property to Pend Oreille Bonner Development, LLC (POBD). A memorandum of that purchase and sale agreement was recorded with the County Recorder's office on June 19, 2006.

JV, LLC (JV) loaned money to POBD secured by the real property. That Real Estate Mortgage was recorded June 19, 2006.

The plaintiff, Union Bank, N. A. (UB), formerly known as Pacific Capital Bank, N.A., also loaned money to POBD. Their Commercial Mortgage, Security Agreement, and Assignment of Leases and Rents was recorded March 25, 2008.

On August 6, 2008 a Subordination Agreement was recorded. That agreement was signed by JV as a party to the agreement. The plaintiff was the other named party to the agreement, but did not sign the agreement. An authorized agent of POBD, who was not named as a party to the agreement, also signed the agreement as Borrower.

The property in question for purposes of this motion for partial summary judgment is referred to as the Trestle Creek Property. All of the documents recorded regarding the sale of the Trestle Creek Property, or mortgages secured by the Trestle Creek Property include the same legal description. In all portions of that legal description, except one, the property is described as lying in Section 16, Township 57 North, Range 1 East, Boise Meridian. At one place, in the second paragraph, the legal description reads: "Beginning at a point where the Section line between Sections 16 and 21, Township 57 North, Range 1 West, Boise Meridian". All parties agree that the correct legal description should always refer to Range 1 East.

#### MOTION FOR PARTIAL SUMMARY JUDGMENT

The plaintiff seeks through its motion for partial summary judgment against JV to have the legal description of the Trestle Creek Property reformed, and seeks to have their mortgage declared superior in priority to the mortgage of JV.

#### LEGAL STANDARD

Summary judgment is proper "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." I.R.C.P. 56(c).

"All disputed facts are to be construed liberally in favor of the nonmoving party, and all reasonable inferences that can be drawn from the record are to be drawn in favor of the nonmoving party." Mackay v. Four Rivers Packing Co., 145 Idaho 408, 410, 179 P.3d 1064, 1066 (2008). If reasonable people might reach a different conclusion from conflicting inferences based on the evidence then the motion must be denied. Id. "If the evidence is conflicting on material issues or supports conflicting inferences, or if reasonable minds could reach differing conclusions, summary judgment must be denied." Doe v. Sisters of the Holy Cross, 126 Idaho 1036, 1039, 895 P.2d 1229, 1232 (Ct.App.1995).

The burden of proving the absence of material facts is upon the moving party, Baxter v. Cranev, 135 Idaho 166, 170, 16 P.3d 263, 267 (2000). The party opposing a motion for summary judgment "must respond to the summary judgment motion with specific facts showing

there is a genuine issue for trial.” Tuttle v. Sudenga Indus., Inc., 125 Idaho 145, 150, 868 P.2d 473, 478 (1994). “[A] mere scintilla of evidence or only slight doubt as to the facts is insufficient to withstand summary judgment; there must be sufficient evidence upon which a jury could reasonably return a verdict resisting the motion.” Harpole v. State, 131 Idaho 437, 439, 958 P.2d 594, 596 (1998). “[A] moving party is entitled to summary judgment when the nonmoving party fails to make a showing sufficient to establish the existence of an element essential to that party’s case on which that party will bear the burden of proof at trial.” Thomson v. Idaho Ins. Agency, Inc., 126 Idaho 527, 530-31, 887 P.2d 1034, 1037-38 (1994) (citing Celotex Corp. v. Catrett, 477 U.S. 317, 322, 106 S.Ct. 2548, 2552, 91 L.Ed.2d 265, 273 (1986)).

#### DISCUSSION

All parties agree that the legal description for the Trestle Creek Property should consistently refer to Range 1 East and not Range 1 West. The plaintiff’s motion to reform the legal description of the Trestle Creek Property to correct the scrivener’s err should be granted.

The plaintiff argues that its Commercial Mortgage should be superior in priority to JV’s mortgage because of the subrogation agreement. The plaintiff’s mortgage was recorded after JV’s mortgage, and would therefore be inferior to JV’s mortgage unless the subrogation agreement is valid.

The subrogation agreement states the parties to be the plaintiff and JV. An authorized agent of JV signed the agreement (their signature was acknowledged). No one signed the agreement for the plaintiff. The president of POBD also signed that agreement as the Borrower and promised to be bound by the terms of the agreement.

JV argues that plaintiff’s failure to sign the subrogation agreement, and consequently the failure of the plaintiff’s signature to be acknowledged, prevents the document from being recorded. JV’s agent’s signature is acknowledged and therefore, the clerk properly accepted the document and recorded it.

The subrogation agreement is a written document and is signed by the party that is obligated to perform, JV. The failure of an agent of the plaintiff to sign the document does not mean there is no contract. The plaintiff’s only obligation was not to lend any more money to POBD without approval. The plaintiff performed its obligation.

JV argues that there was no consideration for the contract. JV seeks to offer parole evidence regarding the contract. However, the contract is a fully integrated contract. The

contract itself is presumptive evidence of consideration to JV. The contract recites: "For valuable consideration, receipt whereof is hereby acknowledged, and in consideration of the loans, advances, discounts, renewals or extensions now or hereafter made by (UB) to or for the account of (POBD)...Creditor agrees with (UB) as follows:"

The document clearly refers to past and future loans made earlier and to be made in the future by UB (up to a certain dollar maximum) to POBD.

The plaintiff is clearly the beneficiary of the contract. What JV agreed to in the subordination agreement was to make the plaintiff's mortgage superior in priority to JV's mortgage, even though JV's mortgage was recorded prior to the plaintiff's mortgage.

JV also argues fraud. JV does not argue fraud by UB, but fraud by the president of POBD. There is no showing of any fraud by UB. JV argues that it was misled to believe that money was to be lent to POBD by UB for the purpose of furthering the development of the Trestle Creek Property, thus making it more likely that JV would get repaid on its loan. JV argues that the money referred to in the subrogation contract had already been loaned to POBD and was used to pay off prior loans of POBD. Any such misconception by JV was not caused by any actions of UB.

There is no genuine issue of material fact that: 1) UB's mortgage was recorded after JV's mortgage; and 2) that a valid subrogation contract was entered into, by which JV's mortgage was made inferior to UB's mortgage.

UB's motion for partial summary judgment should be granted.

Dated this 28 day of August, 2013.

  
Michael J. Griffin  
District Judge



CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 11<sup>th</sup> day of Sept, 2013, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addresses to the following:

mailed postage prepaid  
 Facsimile transmitted to  
 hand delivered

John E. Miller  
Attorney at Law  
206 Indiana Avenue, Ste. 200  
Coeur d'Alene, ID 83814

Bruce Anderson  
Attorney at Law  
320 East Neider Avenue, Ste. 102  
Coeur d'Alene, ID 83815

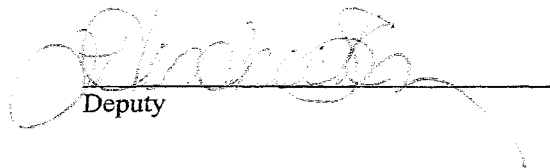
R. Wayne Sweeney  
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Steven C. Wetzel  
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120 East Lake Street, Ste. 317  
Sandpoint, ID 83864

Rick L. Stacey  
Attorney at Law  
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Boise, Idaho 83702

Clerk of the Court

  
Deputy

MEMORANDUM-5

STATE OF IDAHO  
County of Bonner  
FILED Aug 28 2013  
AT 10:48 O'CLOCK AM  
CLERK DISTRICT COURT

Deputy

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

UNION BANK, N. A., a national banking  
association,

Plaintiff,

vs.

PEND OREILLE BONNER  
DEVELOPMENT, LLC, a Nevada  
limited liability company, et al.

Defendants.

CASE NO. CV 2011-135


ORDER GRANTING PARTIAL  
SUMMARY JUDGMENT RE JV, LLC

For the reasons set forth in the court's memorandum filed contemporaneously the plaintiff's motion for partial summary judgment re: JV, LLC is granted.

IT IS ORDERED that the commercial mortgage recorded by the plaintiff, and secured by the Trestle Creek Property, on March 25, 2008 has priority over the mortgage recorded by JV, LLC, and secured by the same property, on June 19, 2006.

IT IS FURTHER ORDERED that the legal description of the Trestle Creek Property shall in all respects refer to Range 1 East, Boise Meridian. Counsel for both parties may submit any additional orders necessary to correct the scrivener's err in said descriptions.

Dated this 28<sup>th</sup> day of August, 2013.

  
Michael J. Griffin  
District Judge

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 17<sup>th</sup> day of Sept, 2013, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addresses to the following:

mailed postage prepaid  
 Facsimile transmitted to  
 hand delivered

John E. Miller  
Attorney at Law  
206 Indiana Avenue, Ste. 200  
Coeur d'Alene, ID 83814

Bruce Anderson  
Attorney at Law  
320 East Neider Avenue, Ste. 102  
Coeur d'Alene, ID 83815

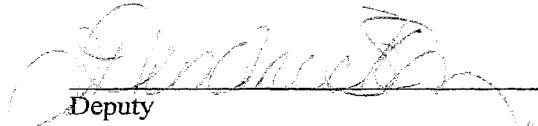
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Rick L. Stacey  
Attorney at Law  
755 W. Front Street, Ste. 200  
Boise, Idaho 83702

Clerk of the Court

  
Deputy

STATE OF IDAHO  
 County of Bonner  
 FILED 11/02/13 2013  
 AT 10:48 O'CLOCK A.M.  
 CLERK, DISTRICT COURT  
 Deputy

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE  
 STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

UNION BANK, N. A., a national banking association,	)	CASE NO. CV 2011-135
	)	
Plaintiff,	)	MEMORANDUM ON PARTIAL
	)	SUMMARY JUDGMENT RE NIR
vs.	)	
	)	
PEND OREILLE BONNER DEVELOPMENT, LLC, a Nevada limited liability company, et al.	)	
	)	
Defendants.	)	

BACKGROUND

North Idaho Resorts, LLC (NIR) sold some real property to Pend Oreille Bonner Development, LLC (POBD), including property known as the Trestle Creek Property. A memorandum of that purchase and sale agreement was recorded with the County Recorder's office on June 19, 2006, creating a vendor's lien.

The plaintiff (UB), formerly known as Pacific Capital Bank, N.A., loaned money to POBD, which loan was secured by the real property known as the Trestle Creek Property. Their Commercial Mortgage, Security Agreement, and Assignment of Leases and Rents was recorded March 25, 2008. UB was aware of the sale of the property to POBD by NIR.

On March 15, 2007 Sandpoint Title Insurance Co. presented for recording a document entitled 'Partial Termination of Real Property Purchase and Sale Agreement and Partial Termination of Memorandum of Real Property Purchase and Sale Agreement'. That document contains the signatures of the president of NIR and the president of POBD. The document purports to affect the property listed in Exhibit "A" attached thereto. Two exhibits labeled "A" are attached to the document. The first exhibit A is a one page document that does not affect the property in question for purposes of this summary judgment motion. It refers to a portion of the Golden Tee Estates property. The second exhibit A is 15 pages long and refers to numerous pieces of property, including the property in question today, the Trestle Creek Property. On page 11 of the second exhibit A there appears a reference to some of the same property in the Golden Tee Estates that is referred to in the first exhibit A. The second exhibit A exempts from partial termination a portion of the same property included in the partial termination in the first exhibit A. The two exhibit As are inconsistent with regard to that portion of the Golden Tee Estates Property.

On March 11, 2011 Sandpoint Title Insurance Co. filed for recording the same Partial Termination document from March 15, 2007, but this time only included the one page Exhibit A, the one page document which referred only to the Golden Tee Estates property.

All of the documents recorded regarding the sale of the Trestle Creek Property, or mortgages secured by the Trestle Property include the same legal description. In all portions of that legal description, except one, the property is described as lying in Section 16, Township 57 North, Range 1 East, Boise Meridian. At one place, in the second paragraph, the legal description reads: "Beginning at a point where the Section line between Sections 16 and 21, Township 57 North, Range 1 West, Boise Meridian". All parties agree that the correct legal description should always refer to Range 1 East.

#### MOTION FOR PARTIAL SUMMARY JUDGMENT

UB seeks, through its motion for partial summary judgment against NIR, to have their mortgage declared superior to the vendor's lien of NIR.

#### LEGAL STANDARD

Summary judgment is proper "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." I.R.C.P. 56(c).

“All disputed facts are to be construed liberally in favor of the nonmoving party, and all reasonable inferences that can be drawn from the record are to be drawn in favor of the nonmoving party.” Mackay v. Four Rivers Packing Co., 145 Idaho 408, 410, 179 P.3d 1064, 1066 (2008). If reasonable people might reach a different conclusion from conflicting inferences based on the evidence then the motion must be denied. Id. “If the evidence is conflicting on material issues or supports conflicting inferences, or if reasonable minds could reach differing conclusions, summary judgment must be denied.” Doe v. Sisters of the Holy Cross, 126 Idaho 1036, 1039, 895 P.2d 1229, 1232 (Ct.App.1995).

The burden of proving the absence of material facts is upon the moving party, Baxter v. Craney, 135 Idaho 166, 170, 16 P.3d 263, 267 (2000). The party opposing a motion for summary judgment “must respond to the summary judgment motion with specific facts showing there is a genuine issue for trial.” Tuttle v. Sudenga Indus., Inc., 125 Idaho 145, 150, 868 P.2d 473, 478 (1994). “[A] mere scintilla of evidence or only slight doubt as to the facts is insufficient to withstand summary judgment; there must be sufficient evidence upon which a jury could reasonably return a verdict resisting the motion.” Harpole v. State, 131 Idaho 437, 439, 958 P.2d 594, 596 (1998). “[A] moving party is entitled to summary judgment when the nonmoving party fails to make a showing sufficient to establish the existence of an element essential to that party's case on which that party will bear the burden of proof at trial.” Thomson v. Idaho Ins. Agency, Inc., 126 Idaho 527, 530-31, 887 P.2d 1034, 1037-38 (1994) (citing Celotex Corp. v. Catrett, 477 U.S. 317, 322, 106 S.Ct. 2548, 2552, 91 L.Ed.2d 265, 273 (1986)).

#### DISCUSSION

All parties agree that the legal description for the Trestle Creek Property should consistently refer to Range 1 East and not Range 1 West. The plaintiff's motion for reformation of the legal description of the Trestle Creek Property to correct the scrivener's err should be granted.


The plaintiff argues that its Commercial Mortgage should be superior to NIR's vendor's lien because of the partial termination of sale document recorded March 15, 2007. UB's mortgage would be superior only if the partial termination included the Trestle Creek Property.

The partial termination agreement is ambiguous. Not only are there two Exhibit As, when only one is referred to in the body of the agreement, but at least a portion of the same Golden Tee Estates property is identified in both Exhibit As. In the first Exhibit A the property

is included in the partial termination, but in the second Exhibit A (page 11) the same property is exempted from the partial termination. A title insurance policy, which UB argued it should be allowed to rely on, did not indicate that NIR had any ownership interest in the Trestle Creek Property. A title insurance policy does not alter the actual ownership of a piece of real property, or any liens on such property. UB knew that NIR sold the property to POBD and knew that NIR had not been paid in full.

A genuine issue of material fact exists as to what property was included in the partial termination of sale document. UB's motion for summary judgment on this issue should be denied.

Dated this 28 day of August, 2013.

  
Michael J. Griffin  
District Judge

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 11<sup>th</sup> day of August, 2013, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addresses to the following:

mailed postage prepaid  
 Facsimile transmitted to  
 hand delivered

John E. Miller  
Attorney at Law  
206 Indiana Avenue, Ste. 200  
Coeur d'Alene, ID 83814

Bruce Anderson  
Attorney at Law  
320 East Neider Avenue, Ste. 102  
Coeur d'Alene, ID 83815

R. Wayne Sweeney  
Jonathon D> Hallen  
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601 E. Front Avenue, Ste. 502  
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Steven C. Wetzel  
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120 East Lake Street, Ste. 317  
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Rick L. Stacey  
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Boise, Idaho 83702

Clerk of the Court

  
Deputy



STATE OF IDAHO  
 County of Bonner  
 FILED Aug 29 2013  
 AT 10:45 O'CLOCK A.M.  
 CLERK, DISTRICT COURT  
 Deputy


IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE  
 STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

UNION BANK, N. A., a national banking association,	)	CASE NO. CV 2011-135
	)	
Plaintiff,	)	ORDER GRANTING PARTIAL
	)	SUMMARY JUDGMENT RE NIR
vs.	)	IN PART
	)	
PEND OREILLE BONNER	)	
DEVELOPMENT, LLC, a Nevada	)	
limited liability company, et al.	)	
	)	
Defendants.	)	

For the reasons set forth in the court's memorandum filed contemporaneously the plaintiff's motion for partial summary judgment re: NIR is denied as to the plaintiff's request that its mortgage, secured by the Trestle Creek Property, be declared superior in priority to the vendors' lien of NIR. That issue shall be reserved for trial.

IT IS FURTHER ORDERED that the legal description of the Trestle Creek Property shall in all respects refer to Range 1 East, Boise Meridian. Counsel for both parties may submit any additional orders necessary to correct the scrivener's err in said descriptions.

Dated this 28th day of August, 2013.

  
 Michael J. Griffin  
 District Judge

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 11<sup>th</sup> day of Sept, 2013, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addresses to the following:

mailed postage prepaid  
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Boise, Idaho 83702

Clerk of the Court

  
Deputy

STATE OF IDAHO  
COUNTY OF BONNER  
FIRST JUDICIAL DIST.

2013 SEP 11 AM 11 36

CLERK DISTRICT COURT  
DEPUTY

Richard L. Stacey, ISB #6800  
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*Attorneys for R.E. Loans, LLC*

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

UNION BANK, a national association,  
  
Plaintiff,

v.

PEND OREILLE BONNER  
DEVELOPMENT, LLC, et al.  
  
Defendants.

Case No. CV-2011-0135

**STIPULATION AS TO CLAIMS OF JV,  
LLC AGAINST R.E. LOANS, LLC**

**AND ASSOCIATED COUNTERCLAIMS,  
CROSS-CLAIMS, AND THIRD-PARTY  
COMPLAINTS.**

COME NOW R.E. Loans, LLC ("R.E. Loans") and JV, LLC ("JV"), by and through their respective attorneys of record, and hereby stipulate and agree to clarify the scope of JV's cross-claims against R.E. Loans in this case (Bonner County Case No. CV-2011-0135) (the "JV Cross-Claim") and to judgment against R.E. Loans with respect to the JV Cross-Claim, as set forth hereinbelow:

**STIPULATION AS TO CLAIMS OF JV, LLC AGAINST R.E. LOANS, LLC - 1**

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130823.Docx

ORIGINAL

1. R.E. Loans has filed a Disclaimer of Interest in and to the real property commonly known as Trestle Creek and legally described on Exhibit A hereto;

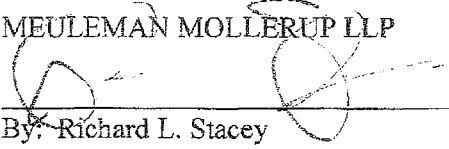
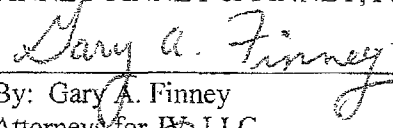
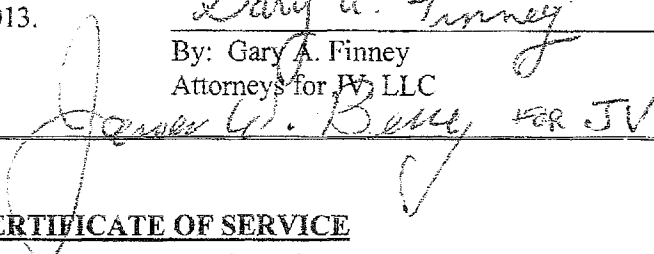
2. R.E. Loans and JV stipulate and agree that the JV Cross-Claim asserted in this matter only seeks to foreclose and adjudicate the priority of the named parties' respective interests in and to the real property commonly known as Trestle Creek and legally described on Exhibit A hereto. The JV Cross-Claim does not seek to foreclose or adjudicate the priority of the named parties' respective interests in and to any other property that is subject to the R.E. Loans Mortgages recorded on June 19, 2006 at 1:38p in the Bonner County Recorder's Office as Instrument No. 706471 and/or on March 15, 2007, at 4:30 p.m. in the Bonner County Recorder's Office as Instrument No. 724829.

3. R.E. Loans and JV stipulate to entry of a judgment in favor of JV and against R.E. Loans establishing only that JV's right, title and interest in Trestle Creek, legally described on Exhibit A hereto, is superior and prior to that of R.E. Loans.

4. R.E. Loans and JV further stipulate and agree that each party shall bear its own attorneys' fees and costs with respect to the JV Cross-Claim in this case (Bonner County Case No. CV-2011-0135).

**STIPULATION AS TO CLAIMS OF JV, LLC AGAINST R.E. LOANS, LLC - 2**

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130823.Docx

DATED this <u>11<sup>th</sup></u> day of August 2013.	MEULEMAN MOLLERUP LLP  By: Richard L. Stacey Attorneys for R.E. Loans, LLC
DATED this <u>6<sup>th</sup> September</u> day of <del>August</del> 2013.	FINNEY FINNEY & FINNEY, P.A.  By: Gary A. Finney Attorneys for JV, LLC 

**CERTIFICATE OF SERVICE**

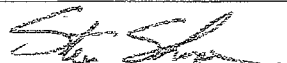
I HEREBY CERTIFY that on the 11<sup>th</sup> day of ~~August~~ <sup>September</sup> 2013, a true and correct copy of the foregoing document was served by the method indicated below to the following parties:

John E. Miller The Law Office of John E. Miller 1424 Sherman Ave., Ste. 500 Coeur d'Alene, ID 83814 Telephone: 208/665-9464 Facsimile: 208/665-9176 Counsel for Plaintiff <input type="checkbox"/> Mail <input checked="" type="checkbox"/> Fax <input type="checkbox"/> Overnight <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Email	Gary A. Finney Finney Finney & Finney, P.A. 120 E. Lake Street, Ste 317 Sandpoint, Idaho 83864 Fax: 208/263-8211 Counsel for J.V., LLC <input type="checkbox"/> Mail <input checked="" type="checkbox"/> Fax <input type="checkbox"/> Overnight <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Email
John Finney Finney Finney & Finney, P.A. 120 E. Lake Street, Ste 317 Sandpoint, Idaho 83864 Fax: 208/263-8211 Counsel for ACI Northwest, Inc. <input type="checkbox"/> Mail <input checked="" type="checkbox"/> Fax <input type="checkbox"/> Overnight <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Email	Steven C. Wetzel James, Vernon & Weeks, PA 1626 Lincoln Way Coeur d'Alene, ID 83814 Fax: 208/664-1684 Counsel for North Idaho Resorts, LLC <input type="checkbox"/> Mail <input checked="" type="checkbox"/> Fax <input type="checkbox"/> Overnight <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Email

STIPULATION AS TO CLAIMS OF JV, LLC AGAINST R.E. LOANS, LLC - 3

C:\Documents And Settings\Ceberley\Local Settings\Temporary Internet Files\OLK1C\Stipulation (Re JV LLC)  
 130823.Docx

<p>John R. Layman  Bradley C. Crockett  Layman Law Firm, PLLP  601 South Division Street  Spokane, WA 99202  Fax: 509/624-2902  <i>Counsel for Pend Oreille Bonner Development, LLC, Pend Oreille Bonner Development Holdings, Inc., Montaheno Investments, LLC, Toyon Investments, LLC, Charles Reeves, and Ann B. Reeves</i>  <input type="checkbox"/> Mail <input checked="" type="checkbox"/> Fax <input type="checkbox"/> Overnight <input type="checkbox"/> Hand Delivery  <input type="checkbox"/> Email</p>	<p>Richard W. Sweney  Lukins &amp; Annis PS  601 E. Front Ave., Ste. 502  Coeur d'Alene, ID 83814  Fax: 208/664-4125  <i>Counsel for Mountain West Bank</i>  <input type="checkbox"/> Mail <input checked="" type="checkbox"/> Fax <input type="checkbox"/> Overnight <input type="checkbox"/> Hand Delivery  <input type="checkbox"/> Email</p>
<p>Douglas S. Marfice  Ramsden &amp; Lyons, LLP  P.O. Box 1336  Coeur d'Alene, ID 83816-1336  Fax: 208/664-5884  <i>Counsel for B-K Lighting, Inc.</i>  <input type="checkbox"/> Mail <input checked="" type="checkbox"/> Fax <input type="checkbox"/> Overnight <input type="checkbox"/> Hand Delivery  <input type="checkbox"/> Email</p>	<p>Bruce A. Anderson  Elsaesser Jarzabek Anderson Elliott &amp; MacDonald, Chid.  320 East Neider Ave., Suite 102  Coeur d' Alene, ID 83815  Fax: 208/667-2150  <i>Counsel for Dan S. Jacobson, Steven G. Lazar, and Sage Holdings, LLC</i>  <input type="checkbox"/> Mail <input checked="" type="checkbox"/> Fax <input type="checkbox"/> Overnight <input type="checkbox"/> Hand Delivery  <input type="checkbox"/> Email</p>

 FOR  
Richard L. Stacey

STIPULATION AS TO CLAIMS OF JV, LLC AGAINST R.E. LOANS, LLC - 4

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Property Description

Real property in the County of Bonner, State of Idaho, described as follows:

**PARCEL 1:**

That portion of the Southwest quarter of the Southwest quarter of Section 16, Township 57 North, Range 1 East, Boise Meridian, lying West of the State Highway No. 200 right of way and East of the Northern Pacific Railway right of way and lying North of the North line of the following described tract:

Beginning at a point where the Section line between Sections 16 and 21, Township 57 North, Range 1 West, Boise Meridian, intersects the State Highway on the Westerly side as it now exists; thence in a Northwesterly direction along the Westerly side of said Highway, 752 feet; thence in a Southwesterly direction, 97 feet; thence in a Southeasterly direction 572 feet to the Section line between Sections 16 and 21; thence East on said Section line between said Sections 16 and 21, 104.25 feet, more or less, to the place of beginning.

Said parcel is now described as follows:

A tract of land situated in the Southwest quarter of the Southwest quarter of Section 16, Township 57 North, Range 1 East of the Boise Meridian, Bonner County, Idaho, lying Southwest of the right of way of State Highway No. 200 and Northeast of the right of way of Montana Rail Link Railway, being a portion of that property described as Parcel 1 of Instrument No. 168846 and more particularly described as follows:

Commencing at the intersection of the South line of the Southwest quarter of the Southwest quarter of Section 16 and the Northeastly right of way of Montana Rail Link Railway which is South 88° 10' 56" East, 944.95 feet from the Southwest corner of Section 16; thence leaving said South line and along said right of way North 23° 38' 59" West, 672.00 feet to the true point of beginning; thence continuing along said right of way North 23° 38' 59" West, 786.89 feet to the intersection with the North line of the Southwest quarter of the Southwest quarter; thence leaving said right of way and along said North line South 88° 43' 23" East, 241.38 feet to the Westerly right of way of State Highway No. 200; thence leaving said North line and along said right of way the following four (4) courses:

on a non-tangential curve to the right having a central angle of 01° 19' 25" (radius bearing = South 73° 15' 16" West), a radius of 768.50 feet, for an arc length of 17.75 feet (chord = South 16° 06' 41" East, 17.75 feet); thence along a line offset 50.00 feet Westerly of and parallel to a spiral curve (centerline is = 200 feet, a = 3.5, S = 7°) for a chord of South 10° 43' 01" East, 193.87 feet; thence South 08° 25' 19" East, 86.06 feet; thence on a curve to the left having a central angle of 13° 56' 48", a radius of 1482.53 feet, for an arc length of 368.87 feet (chord = South 15° 23' 43" East, 359.98 feet);

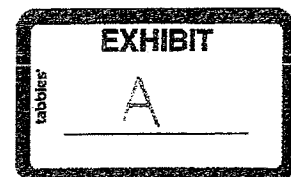
thence leaving said right of way South 44° 37' 10" West, 106.45 feet (record = "Southwesterly 97 feet") to the true point of beginning.

**PARCEL 2:**

That part of the Southwest quarter of the Southwest quarter in Section 16, Township 57 North, Range 1 East of the Boise Meridian, lying South and West of the Burlington Northern Inc. Railway right of way and Government Lot 5 in Section 17, Township 57 North, Range 1 East of the Boise Meridian, save and excepting therefrom:

The South 350 feet of Government Lot 5 in said Section 17, and also that part of the Southwest quarter of the Southwest quarter in said Section 16 lying Westerly of said Burlington Northern Inc. right of way as now in use and described as follows:

Beginning at the Southwest corner of said Section 16; thence North along the West Section



line 350 feet; thence East to the centerline of Trestle Creek; thence Southeasterly along said centerline to the South line of Section 16; thence West along the Section line 720 feet, more or less, to the point of beginning.

Said parcel is now described as follows:

A tract of land situated in the Southwest quarter of the Southwest quarter of Section 16, lying Southwest of Montana Rail Link Railroad right of way and Government Lot 5 of Section 17, all in Township 57 North, Range 1 East, of the Boise Meridian, Bonner County, Idaho, being a portion of that property described as Parcel 2 of Instrument No. 168846 and more particularly described as follows:

Beginning at the intersection of the South line of the Southwest quarter of the Southwest quarter of Section 16 and the Southwesterly right of way of Montana Rail Link Railway which is South  $88^{\circ} 10' 56''$  East, 824.19 feet from the Southwest corner of Section 16; thence leaving said South line and along said right of way North  $23^{\circ} 38' 59''$  West, 1457.84 feet to the intersection with the North line of the Southwest quarter of the Southwest quarter; thence leaving said right of way and along the North line of the Southwest quarter of the Southwest quarter; North  $88^{\circ} 43' 23''$  West, 243.71 feet to the Northwest corner of the Southwest quarter of the Southwest quarter; thence along the North line of Government Lot 5 in Section 17, North  $39^{\circ} 23' 45''$  West, 1223.84 feet to the meander line of Lake Pend Oreille, as defined by the original GLO Survey; thence leaving said North line and along said meander line the following two (2) courses:

South  $52^{\circ} 55' 48''$  East, 561.00 feet; thence South  $37^{\circ} 55' 48''$  East, 798.96 feet to a point on a line lying 350.00 feet North of and parallel to the South line of the Southwest quarter of the Southwest quarter of Section 16;

thence along said parallel line, South  $88^{\circ} 16' 56''$  East, 281.27 feet to the West line of the said Southwest quarter of the Southwest quarter; thence continuing South  $88^{\circ} 16' 56''$  East, 159.02 feet to the intersection with the centerline of Trestle Creek; thence along the centerline of Trestle Creek the following eight (8) courses:

South  $52^{\circ} 54' 34''$  East, 63.58 feet; thence South  $44^{\circ} 37' 26''$  East, 117.83 feet; thence South  $42^{\circ} 48' 45''$  East, 77.28 feet; thence South  $80^{\circ} 05' 07''$  East, 145.49 feet; thence South  $55^{\circ} 15' 32''$  East, 86.34 feet; thence South  $46^{\circ} 50' 31''$  East, 113.98 feet; thence South  $75^{\circ} 43' 10''$  East, 58.83 feet; thence South  $37^{\circ} 48' 28''$  East, 27.37 feet to the intersection with the South line of the Southwest quarter of the Southwest quarter;

thence leaving said creek centerline and along said South line South  $88^{\circ} 16' 56''$  East, 116.86 feet to the true point of beginning.

**PARCEL 3:**

A portion of the Northeast quarter of the Northwest quarter and Government Lot 1 in Section 21, Township 57 North, Range 1 East, Boise Meridian, Bonner County, Idaho, described as follows:

Beginning at a point where the South line of the Northeast quarter of the Northwest quarter of Section 21, Township 57 North, Range 1 East, Boise Meridian, Bonner County, Idaho, intersects the West line of the Northern Pacific Railroad Company right-of-way; thence 600 feet Northerly along said railroad right-of-way; thence West to the meander line of the lake; thence 600 feet Southerly to the the South line of Lot 1 of said Section 21; thence East to the Point of Beginning.

Said parcel is now described as follows:

A tract of land situated in the Northeast quarter of the Northwest quarter and Government Lot 1 of Section 21, Township 57 North, Range 1 East of the Boise Meridian, Bonner County,



Idaho, more particularly described as follows:

Beginning at the intersection of the South line of the Northeast quarter of the Northwest quarter of Section 21 and the Westerly right of way of Montana Rail Link Railroad which is South 88° 55' 48" East, 139.54 feet from the Southwest corner of said Northeast quarter of the Northwest quarter; thence leaving said South line and along said right of way the following two (2) courses:

on a non-tangential curve to the left having a central angle of 10° 44' 25" (radial bearing = South 65° 01' 49" West) a radius of 2664.79 feet, for an arc length of 499.53 feet (chord = North 30° 20' 24" West, 498.80 feet); thence North 25° 10' 12" West, 100.47 feet;

thence leaving said right of way and parallel to the South line of Government Lot 1, North 88° 55' 48" West, 936.05 feet to the meander line of Lake Pond Oreille as defined in the original G.O. Survey; thence along said meander line the following two (2) courses:

South 14° 25' 48" East, 271.54 feet; thence South 46° 40' 48" East, 378.00 feet to the intersection with the South line of Government Lot 1;

thence along said South line South 88° 55' 48" East, 748.52 feet to the Southeast corner of Government Lot 1; thence along the South line of the Northeast quarter of the Northwest quarter, South 88° 55' 48" East, 139.54 feet to the true point of beginning.

Commonly known as: NNA, Sandpoint, ID 83864

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 ISB No. 1356

STATE OF IDAHO  
 COUNTY OF BONNER  
 FIRST JUDICIAL DISTRICT  
 2013 SEP 19 PM 3 52  
 CLERK OF DISTRICT COURT  
 SANDPOINT, IDAHO

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
 STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

UNION BANK, N.A., a national	)	Case No. CV-2011-00135
banking association,	)	
	)	JV, LLC'S MOTION TO ALTER
Plaintiff,	)	AND AMEND ORDER GRANTING
	)	PARTIAL SUMMARY JUDGMENT
vs.	)	RE: JV, LLC, AND MOTION TO
	)	RECONSIDER
PEND OREILLE BONNER DEVELOPMENT,	)	
LLC, a Nevada limited liability	)	
company, et al,	)	
	)	
Defendants.	)	
	)	

COMES NOW JV, LLC, by and through counsel, GARY A. FINNEY,  
 and petitions and moves the Court, as follows:

1. The Court has entered an Order Granting Partial  
 Summary Judgment Re JV, LLC to the effect that Plaintiff's  
 Mortgage recorded March 25, 2008 has priority over the mortgage  
 of JV, LLC recorded June 19, 2006.

2. The Court is moved to alter, amend, reconsider, and set aside said Order under the authority set forth in IRCP 11(a)(2)(B) Motion for Reconsideration and IRCP 52(b) Amendment of Findings of Court.

3. The Court's Order is interlocutory, which is an intermediate decision, not appealable until a Judgment is entered. There is no Judgment yet entered in this action, and there is no final judgment. (*Oneida v. Oneida*, 95 Idaho 105, 503 P.2d 305 (1972)). The Order is not a final judgment because it is only partial and does not adjudicate all claims for relief, nor has it been certified as final pursuant to IRCP 54(b).

4. As an interlocutory Order the Court may alter, amend, and set it aside until final judgment.

5. The Court erred in the Memorandum and Order because on summary judgment motions (partial) the factors are to be liberally construed in favor of the party opposing the motion. In other words, the facts are to be liberally construed in favor of JV, LLC. Also, summary judgment is proper only when there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. (*Doe v. Durtschi*, 110 Idaho 466, 716 P.2d 1238 (1986) citing IRCP 56 (c)). The Court must look to the total facts and deny the motion if

conflicting inferences can be drawn and reasonable people might reach different conclusions. (*Doe v. Durtschi*)

6. The record on the Motion for partial summary judgment includes matters asserted by JV in its,

a) JV, LLC's Affidavit of James W. Berry, (filed 9/15/13)

b) JV, LLC's Memorandum (filed 7/15/12) - this includes discovery facts taken from Plaintiff's Production of Documents.

c) Affidavit of Susan Weeks (filed July 16, 2013) - which furnished documents from Plaintiff's Response to Request for Production of Documents. The affidavit lists the documents furnished by Plaintiff and these are part of the record on partial summary judgment. The Bank's loan files reflect that it had 5.0 million liquid dollars as a pledge deposit and personal guarantees from Reeve's partners, Bolby and Merschel, to secure the loan and they had also a second mortgage on Trestle Creek. Emphasis is made to the District Court that in a review of all of the Bank's loan documents, no mention is ever made of getting a Subordination Agreement from JV!

7. First, the Plaintiff, hereinafter BANK, filed no affidavits in opposition to the Affidavit of James W. Berry. Berry's facts must be taken as true. Berry's Affidavit, not referred to in the Court's Memorandum, includes:

a) Paragraph 5, page 2,

"The Plaintiff Bank's Mortgage is recorded subsequent to JV's mortgage and the Bank gave no consideration for the 2008 Mortgage. The 2008 Mortgage to the Bank is nothing more than to secure its 2007 loan by getting a Mortgage on Trestle Creek."

Therefore, it is a fact that the Bank gave no consideration, and the Court should not "weigh" matters to conclude otherwise. Lack of consideration is an issue for trial.

It is pointed out to the Court that the Bank's 2007 loan of 5 million to POBD was unsecured and the loan available proceeds (4.5 million) was disbursed by the Bank to POBD's account at Mountain West Bank, by wire October 29, 2007. Proof by a copy of the Bank's documents were attached to JV's Memorandum and the loan documents were attached to the Affidavit of Susan Weeks.

b) At no time did JV (Berry) have any discussion or agreement (emphasis added) or contact with the Bank concerning the Subordination Agreement, recorded August 6, 2008, Instrument No. 756403. (Affidavit of Berry, paragraph 6, page 2).

A "Subordination Agreement" according to Black's Fifth Addition Law Dictionary is an agreement by which the subordinating party agrees its interest should have a lower priority. An "agreement", according to Black's, is a coming together of two or more parties in accord on a given subject as

to their rights and duties. This is often referred to as a "contract".

For the Bank's subsequent mortgage of March 25, 2008, it actually gave no money to POBD. There was no consideration given, i.e. there was no money ever given for the 2008 mortgage to the Bank. The Bank's 2008 Mortgage was to secure a pre-existing loan. The security was a second priority mortgage on Trestle Creek. The Bank obtained title insurance, a Loan Policy, attached to Rick Lynskey's supplemental Affidavit (Policy 229121-S). Clearly, the Loan Policy, exception 26 discloses and excepts JV's recorded Mortgage of 6/2006 (Instrument No. 706470). The Bank had both constructive and actual notice of JV's first recorded purchase money mortgage.

8. Berry's Affidavit must be taken as true, as stated in paragraph 14, page 4 that,

a) JV received nothing, no consideration for the Subordination Agreement

b) The Subordination Agreement was obtained from and signed by JV, LLC on the fraudulent misrepresentations of Mr. Reeves (emphasis added).

9. The Subordination Agreement itself (recorded August 6, 2008, Instrument No. 756403) furnished by the Bank, in paragraph 1, refers to a "Third Amendment" between Creditor (JV) and POBD. The Third Amendment is a recorded document, recorded June 24,

2008 Instrument No. 753907. It is Exhibit No. 8 to Berry's deposition and Exhibit C to Reeves' deposition. A true copy is attached hereto. The Third Amendment recorded June 24, 2008, was incorporated by reference in the Subordination Agreement which was recorded a month later (6/24/2008). The Third Amendment contains the provision at the last line of page 3, paragraph 7(b) that, JV agrees to subordinate the indebtedness owed it on Trestle Creek, as follows:

"b. On the Trestle Creek property the present first lien priority of JV, LLC shall be subordinate and inferior to a new first lien priority of no more than \$5,000,000.00"

This provision states that the present first lien priority of JV shall be subordinated to a new first lien priority. In other words, on June 24, 2008 JV and POBD agreed, and the Bank had actual and constructive recorded knowledge that JV agreed to subordinate to a new first lien of \$5million. The Bank's 2007 unsecured loan of \$5.0, re-documented with no new money and no consideration by a second priority mortgage recorded March 28, 2008 (Instrument No. 748379 and 748380) could not be a new first lien as stated in the recorded Third Amendment.

10. The Subordination Agreement itself was never entered into by and between the Bank & JV, as stated in the first paragraph itself, for a loan...(words omitted) now "or hereinafter made by FNB". A loan hereafter made can only be a later, new

loan. The Subordination Agreement itself states conflicting options, as ambiguities. The Subordination Agreement states the loan may "hereafter" be made by FNB. Hereafter has to be after August 6, 2008, which would be a later (after) new loan by FNB to POBD just as stated in the Third Amendment as a new lien. Berry's Affidavit, paragraph 8, page 2, says that prior to the Subordination Agreement, around August 1, 2008 Mr. Reeves of POBD told Mr. Berry he had arranged to borrow \$5.0 million from a bank, the funds to be used to finish platting Trestle Creek and to build improvements (Condos and Townhouses) on the property. Mr. Reeves further told Mr. Berry that in order to receive the \$5.0 million JV would need to agree to subordinate its Mortgage to a new mortgage. (Berry's Affidavit, paragraph 9, page 3). The Bank's pre-existing loan and mortgage could not be "new". The 2007 unsecured loan proceeds had been long ago disbursed, i.e. October 29, 2007.

11. Berry's Affidavit is Undisputed.

Further, in his paragraph 19, that if he had known the truth and facts that POBD was not going to receive \$5.0 million dollars on a new loan, JV would not have executed the Subordination Agreement.

I. THE SUBORDINATION AGREEMENT IS CONFLICTING AND AMBIGUOUS AND UNENFORCEABLE.

12. First, the Subordination Agreement sought to be enforced by the Bank in its favor, is not entered into or



executed (signed or acknowledged) by the Bank. The Court holds the Subordination Agreement to be binding even though not executed by the Bank, apparently based on Idaho Code §9-905, statute of frauds, requiring an agreement be subscribed by the party to be charged. The statute refers the "agreement". The Subordination Agreement is not an agreement as it was not entered into, at all by the Bank. All of Idaho Code §9-905 refers to "the agreement". The statute of frauds does not apply to the facts of this action. The Court's only finding is contrary to the facts. The Court's Memorandum, page 4, next to last paragraph finds,

"that a valid subrogation (sic) contract was entered into, by which JV's mortgage was made inferior to UB's mortgage"

There is no subordination contract (emphasis added) because there is no contract between anyone, the Bank did not execute the supposed "contract".

The Idaho Supreme Court requires that a contract have a meeting of the minds of the contracting parties, as "The absence of a meeting of the minds on this material term supports the district court's finding that no contract was formed." (*Chapin v. Linden*, 144 Idaho 393, 162 P3d 772 (2007)).

Further, the Court finds that the Plaintiff "is clearly the beneficiary of the contract". If the Subordination Agreement is a contract, the Bank is not a contracting party. The contract

could only be between JV and POBD, the only 2 entities signing it. The Subordination Agreement, second paragraph last words are: "Creditor agrees with FNB, as follows"; however, FNB did not "agree". The Subordination Agreement does not state that the Bank (FNB) is a third party beneficiary. Rather, it was to be a contracting party. A contract may benefit a third party, but first is the requirement of a contract. Idaho Code §29-102 states,

"29-102 Enforcement by beneficiary. A contract, made expressly for the benefit of a third person, may be enforced by him at any time before the parties thereto rescind it."

*Chapin v. Linden,*  
144 Idaho 393, 162 p.3d 772 (2007)

JV has rescinded the Subordination Agreement in this action before the Court's Memorandum.

13. No Consideration. The Court found consideration for the Subordination Agreement; however, that is a disputed fact that can not be resolved by summary judgment. The mere recital of consideration is insufficient to support a contract on summary judgment in the face of Berry's Affidavit that JV received no consideration for the Subordination Agreement.

In *Lewis v. Fletcher*, 101 Idaho 530, 617 p.2d 834 (1980) an option to purchase recited a consideration of \$20.00 receipt of which is acknowledged by the option grantor, Fletcher. Fletcher testified they never received the \$20.00 and the option was

unenforceable for lack of consideration. The Supreme Court posed the issue as whether a written and signed option contract, which contains a false receipt of payment of consideration and acknowledgment of its receipt, is valid and enforceable. The Idaho Supreme Court held,

"We conclude it is not."

The Idaho Supreme Court went on to hold that,

"A party seeking to avoid or invalidate the contract may introduce evidence of a lack of consideration."

*Lewis v. Fletcher*  
101 Idaho 530 at 531

In the instant action, Berry's Affidavit states the Subordination Agreement is unenforceable for lack of consideration. This is a material issue of fact and can not be decided on Summary Judgment.

THE AMBIGUITIES OF THE "SUBORDINATION AGREEMENT"

1. It is not an agreement, nor a contract between the Bank and JV.
2. It is in consideration...of a loan hereinafter to be made. This means a later loan, not a prior loan. (second paragraph recitals).
3. Third paragraph 3. to secure a loan, "\*\*\*\*the proceeds of which Borrower has used to pay off the existing indebtedness of Borrower...and/or to pay for improvement and development of the property encumbered\*\*\*\*." Berry's Affidavit states that JV was

paid nothing out of the loan and no loan monies were used for improvements (condos, townhouses) which he was promised. The ambiguous Subordination Agreement can not be enforced on a disputed summary judgment proceeding.

Issue: Is the Bank a contracting party, a third party beneficiary, or neither under the Subordination Agreement?

JV submits it is neither. The Bank (FNB) never signed, executed, subscribed or acknowledged the Subordination Agreement. The Bank did not record the Subordination Agreement, nor does the Bank have possession of the original Subordination Agreement. These facts were acknowledged by the Bank's Attorney John Miller, during the oral argument. In other words, the recorded Subordination Agreement turned up as a gratuity surprise to the Bank when it appeared on the Bank's foreclosure title guarantee in 2010, approximately 2 years after the Bank's Loan Policy (of 2008) showing the Bank to have a second priority recorded mortgage.

If the Bank is a contracting party to the Subordination Agreement, which the Court's Memorandum finds, at page 4 next to last paragraph that "a valid subrogation (sic) contract was entered into \*\*\*(emphasis added), then the Bank can not be a "third party beneficiary" as it is a contracting party. The Court's Memorandum finds...The plaintiff is clearly the

beneficiary of the contract. (emphasis added) (second paragraph, page 4)

#### FRAUD SETS ASIDE THE SUBORDINATION AGREEMENT

The Court's Memorandum describes the Subordination Agreement, as a contract, and that the Bank's failure to sign it does not mean there is no contract. Further, the contract is a fully integrated contract. The contract itself is presumptive evidence of consideration to JV and "Creditor (JV) agrees with (UB) as follows:" The Court's Memorandum finds that JV (creditor) and the Bank "agree". Further, the document refers to past and future loans made earlier and to be made in the future by UB to POBD. Further, the plaintiff is "clearly the beneficiary of the contract. (JV submit that UB (Bank) can't be a party to the contract and a third party beneficiary to the contract. (Idaho Code §29-102). To establish status as a third party beneficiary, the purported third party must show the contract was made primarily for its benefit and not merely as an incidental beneficiary to the contract. (*Partout v. Harper*, 145 Idaho 685, 183 P.3d 771 (2008).

The Plaintiff is a bank (a corporation) which can only act through an agent. The Memorandum of the Court findings "the failure of an agent of the plaintiff to sign the document does not mean there is no contract". In this action, Mr. Reeves of POBD acted for POBD and as agent of the Bank to fraudulent

induce JV (Mr. Berry) to sign the Subordination Agreement. Mr. Reeves fraudulently induced JV (Mr. Berry) to sign the Subordination Agreement. This is unrefuted fact on summary judgment. The Court has found the Subordination Agreement to be a contract. A contract formation requires mutual assent of a distinct understanding common to both parties, so that a meeting of the minds is necessary of the formation of a contract. This mutual assent is a question of fact. (*Gray v. Tri-Way Construction*, 147 Idaho 378, 210 P.3d 63 (@009)).

The Court erred in its Memorandum in interpreting the meaning of the Subordination Agreement as a contract binding JV, as a matter of law. In *Chandler v. Hayden*, 147 Idaho 765, 215 P.3d 485 (2009) the Supreme Court ruled.. "In doing so the district court erred." (*Chandler, supra*, at 771)

The district court ruled that it was interpreting the meaning of a contract between the parties as a matter of law, which was done on a summary judgment motion. The *Chandler* case, supra, is very similar to the instant action. In *Chandler*, a party - First American Title presented an Agreement, signed by Chandler agreeing to release a mechanic's lien. The district court held that the agreement bound Chandler and ruled that the agreement had the effect of subordinating Chandler's lien to a bank's deed of trust. (*Chandler, supra*, 765 at 768). Chandler had asserted five defenses, one of which was fraud. The Supreme

Court reversed the district court's grant of summary judgment because,

\*\*\*\*In doing so, the district court erred. Under common law principles, a party induced to enter into a contract by means of fraud has the ability to elect among three remedies: damages, rescission, or enforcement of the contract according to the defrauding party's representation of the bargain. *Robinson v. State Farm Mut. Auto. Ins. Co.*, 137 Idaho 173, 180, 45 P.3d 829, 836 (2002) (citing 12 Samuel Williston, *Contracts* § 1523, at 606-07 (3rd ed.1970); *Queen City Farms v. Central Nat. Ins.*, 126 Wash.2d 50, 891 P.2d 718 (1995)). Similarly, one remedy for mutual mistake is rescission. *O'Connor v. Harger Const., Inc.*, 145 Idaho 904, 909, 188 P.3d 846, 851 (2008). We conclude the district court erred by enforcing a contract without first considering whether a genuine issue of material fact existed as to Chandler's affirmative defenses, which if proven, could invalidate the Agreement."

The Supreme Court in *Chandler, supra*, reversed the district court's grant of summary judgment. *Chandler* is legally identical to the instant action. In *Chandler, supra*, based on a lien release signed by Chandler, the district court granted the Bank priority on its Deed of Trust (mortgage) as against Chandler's mechanic's lien. This is the same thing the District Judge has done in the instant action. By granting the Bank's 2008 mortgage to have priority as against JV's 2006 mortgage, the District Judge has failed to recognize that JV's defense of fraud "rescinded" the Subordination Agreement.

POBD'S counsel also represented a "new" first loan from FNB

POBD not only through its president, Mr. Reeves, but also POBD's attorney William Sterling represented that POBD was negotiating a loan of \$5.0 million as a "new first" in favor of FNB.

FNB's mortgage was dated March 7, 2008 and recorded March 25, 2008. Attorney William Sterling's email letters are Exhibits 5, 6, and 7 to Berry's Deposition. They are attached as follows:

Exhibit No. 5 - Sterling's letter of March 31, 2008

Exhibit No. 6 - Sterling's letter of July 24, 2008(12:07 p.m.)

Exhibit No. 7 - Sterling's letter of July 24, 2008(4:27p.m)

These letters represent facts that,

a) Exhibit No. 5 (March 31, 2008) "Chuck is negotiating a loan from First National Bank,...., in the principal amount of \$5,000,000.00".

"\*\*\*Jim Berry and his entity JV, LLC, which has agreed to subordinate its mortgage on the Lake Parcels, which is currently in first position, to a new first in favor of FNB."

"\*\*\*I am in the course of preparing a letter agreement..  
\*\*\*that JV, LLC is amenable to subordinate its mortgage to any new first which takes out and replaces the FNB first." (July 24, 2008)



From the foregoing series of emails it appears that after, later, and subsequent to POBD's March 7, 2008 second priority recorded mortgage to FNB, that POBD represented, as facts, which are false, that,

a) Chuck Reeves is negotiating a loan from FNB for \$5.0 million

b) JV has agreed to subordinate its mortgage, which is currently in first position to a new first in favor of FNB.

c) there is to be a letter agreement that JV is amendable to subordinating its mortgage to any new first which takes out and replaces the FNB first.

d) As late as Thursday, July 24, 2008, POBD is aiming to close initial funding by Monday. FNB has been very, very slow in responding.

e) Reeves has obtained a new loan commitment under which he will make a series of draws, which first draw is the "initial funding".

f) Attorney Sterling was in a taffy pull with FNB about obtaining documents.

g) At closing the first draw, will leave JV's lien in first position, the security position he now has.

h) When the documentation is obtained from the First National Bank and after \$300,000.00 is paid, First American

would record Jim's subordination of his lien on the Lake Parcels to the lien securing First National Bank's lien.

i) A preliminary title report does not show the recorded Third Amendment, but it shows a subordination which will be cancelled at close of escrow (note: The Third Amendment was recorded a month prior, on June 24, 2008, Instrument No. 753907).

ATTACHMENTS HERETO

1. Third Amendment to Indebtedness and To Real Estate Security, and Subordination Agreement, recorded June 24, 2008 as Instrument No. 73907.

2. Exhibits 5, 6, and 7 to Berry's Deposition

Exhibit No. 5 - Sterling's letter of March 31, 2008

Exhibit No. 6 - Sterling's letter of July 24, 2008  
(12:07 p.m.)

Exhibit No. 7 - Sterling's letter of July 24, 2008  
(4:27p.m)

REQUEST FOR ORAL ARGUMENT AND A HEARING

JV requests oral argument on this motion and for a hearing date, time and place for JV to appear by counsel in person to argue (a telephone hearing is not requested). JV desires to supplement this motion/memorandum for the hearing.

DATED this 18<sup>th</sup> day of September, 2013.

  
\_\_\_\_\_  
GARY A. FINNEY  
Attorney for Defendant JV, LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by facsimile transmission, or as otherwise indicated, this 15<sup>th</sup> day of September, 2013, and addressed as follows:

John E. Miller  
Attorney at Law  
206 Indiana Avenue, Suite 200  
Coeur d'Alene, ID 83814  
Fax No. 1-208-665-9176  
(Attorney for Union Bank)

Steven C. Wetzel  
James, Vernon & Weeks, P.A.  
1626 Lincoln Way  
Coeur d'Alene, ID 83814  
Fax No. 1-208-664-1684  
(Attorney for North Idaho Resorts)

Douglas S. Marfice  
RAMSDEN & LYONS  
P.O. Box 1336  
Coeur d'Alene, ID 83816-1336  
Fax No. 1-208-664-5884  
(Attorney for B-K Lighting, Inc.)

John A. Finney  
Finney Finney & Finney, P.A.  
120 East Lake St., Suite 317  
Sandpoint, ID 83864-1366  
(Attorney for ACI Northwest, Inc.)  
(Via Hand Delivery)


Bruce Anderson  
ELSAESSER JARZABEK ANDERSON  
ELLIOTT & MACDONALD, CHTD  
320 E. Neider Ave, Suite 102  
Coeur d'Alene, ID 83815  
Fax No. 1-208-667-2150  
(Attorney for Dan S. Jacobson,  
Sage Holding, LLC, and Steve G.  
Lazor)

Richard L. Stacey  
Anna E. Eberlin  
MEULMAN MOLLERUP, LLP  
755 W. Front St., Ste 200  
Boise, ID 83702  
Fax No. 1-208-336-9712  
(Attorney for R.E. Loans, LLC)

Honorable Michael J. Griffin  
Second District Court  
320 W. Main Street  
Grangeville, ID 83530  
Fax No. 1-208-983-2376  
(Out of County Judge)

John G. Layman  
Patti Jo Foster  
LAYMAN, LAYMAN & ROBINSON, PLLP  
601 South Division Street  
Spokane, WA 99202  
Fax No. 1-509-624-2902  
(Attorney for Pend Oreille Bonner  
Development, LLC, Pend Oreille  
Bonner Development Holdings, Inc.,  
Montaheno Investments, LLC, Toyon  
Investments, LLC, Charles Reeves,  
and Ann B. Reeves)

R. Wayne Sweney  
Jonathon D. Hallin  
LUKINS & ANNIS, P.S.  
601 E. Front Ave., Suite 502  
Coeur d'Alene, ID 83814  
Fax No. 1-208-664-4125  
(Attorney for Mountain West Bank)



June 24, 2008

Recorded 6/24/08  
Instrument No. 753907

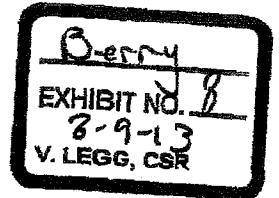
**THIRD AMENDMENT TO INDEBTEDNESS AND TO REAL ESTATE SECURITY, AND SUBORDINATION AGREEMENT**

(TO BE RECORDED)

**PARTIES:**

**A. HOLDER AND MORTGAGEE:** J.V., LLC, an Idaho limited liability company  
P.O. Box 3  
Sandpoint, Idaho, 83864

**B. PAYOR AND MORTGAGOR:** Pand Oreille Bonner Development Holdings, Inc., a Nevada corporation



JV'S #C  
C. Reeves 8-19-13

**C. INDEBTEDNESS AND REAL ESTATE SECURITY**

This Agreement concerns and effects the following Indebtedness and Real Estate Security:

1. A Promissory Note from V.P., Inc., an Idaho corporation, in the original sum of \$2,264,500.00 payable to the payee and holder, J.V., LLC, secured by a Real Estate Mortgage recorded October 24, 1995 as Instrument No. 474746 records of Bonner County, Idaho. This referenced real estate is referred to as MOOSE MOUNTAIN.

2. A Modification to Promissory Note and Real Estate Mortgage was signed by V.P., Inc. and J.V., LLC, dated February 7, 2005, which is not a recorded document.

3. Amendment of Promissory Note. This amendment includes a Subordination Agreement, and was signed by J.V., LLC and by the then new "Buyer" of the MOOSE MOUNTAIN real estate, Pand Oreille Bonner Development Holdings, Inc., and is dated June 19, 2006, which is not a recorded document. This document provided for additional real estate security to secure the original \$2,264,500.00 Promissory Note, dated October 20, 1995, which real estate is referred to as TRESTLE CREEK. The TRESTLE CREEK real estate was mortgaged to additionally secure J.V., LLC as Mortgagee by Pand Oreille Bonner Development Holdings, Inc., as Mortgagor, by a first priority lien by a Real Estate Mortgage,

recorded June 19, 2006, Instrument No. 706670 records of Bonner County, Idaho, on the TRIVIE CREEK real estate.

4. Subordination Agreement. A Subordination Agreement between Pend Oreille Bonner Development Holdings, Inc., as Owner, and J.V., LLC, as holder and mortgage secured party was recorded June 19, 2006 as Instrument No. 706674 which was recorded again on June 20, 2006 as Instrument No. 706582 records of Bonner County, Idaho, which Subordination Agreement has the effect of subordinating J.V., LLC's original Promissory Note (\$2,264,500.00) and Real Estate Mortgage (recorded October 19, 1995, Instrument No. 474746) to a new Lender, R.E. Towns, Inc., on a Mortgage on WOODS MOUNTAIN real estate to secure \$20,500,000.00 by a new Mortgage recorded June 19, 2006 as Instrument No. 706671 records of Bonner County, Idaho.

5. Second Subordination Agreement. A Second Subordination Agreement between V.P., Inc. and Pend Oreille Bonner Development Holdings, Inc. was recorded March 15, 2007 as Instrument No. 724833 records of Bonner County, Idaho.

**D. COLLECTION AND INDENTURES - ESCROW AGENT**

The Promissory Note and Real Estate Mortgage held by J.V., LLC are held for collection on behalf of J.V., LLC at Panhandle Escrow Company, Sandpoint, Idaho, Escrow No. 2067429 and the present interest rate is 10% and the last principal balance was \$1,771,002.41 as of April 1, 2006.

**E. THIRD AMENDMENT**

The terms and conditions of this Third Amendment are agreed upon, as follows:

1. Pend Oreille Bonner Development Holdings, Inc. represents and warrants that it has paid the R.E. Towns, Inc.'s first priority Real Estate Mortgage indebtedness down from \$20.5 million to \$8 million secured on the WOODS MOUNTAIN property and that J.V., LLC's Real Estate Mortgage, Instrument No. 474746 is the second priority lien on WOODS MOUNTAIN by reason of the Subordination Agreement, Instrument No. 474746.

2. Pend Oreille Bonner Development Holdings, Inc. shall on or before July 1, 2009 pay the interest current and also pay in principal a sum of money to J.V., LLC through Panhandle Escrow No. 2067429 so that the principal balance is reduced to

\$1,500,000.00 as of June 15, 2008. The sum of money to be paid under this provision is approximately:

a. Interest	\$ 36,650.00
b. Principal	<u>\$271,002.00</u>
TOTAL	<u>\$307,752.00</u>

3. In addition to the payment of the sums set forth in paragraph 2 above, and simultaneously with the payment referred to in paragraph 2 above, Bend Orellle Bonner Development Holdings, Inc. as and for an agreed consideration for J.V., LLC to enter into this agreement, shall also pay \$30,000.00 directly to J.V., LLC. This \$30,000.00 is over, above, and in addition to any sums or indebtedness owed to J.V., LLC and does not apply to interest, principal, or indebtedness.

4. As of June 15, 2008, the interest rate on the indebtedness due J.V., LLC shall increase from 10% to 12% simple annual interest.

5. The payor, Bend Orellle Bonner Development Holdings, Inc., commencing on July 15, 2008 and on the 15<sup>th</sup> of each month thereafter shall pay the monthly accrued interest at 12% per annum to J.V., LLC through the escrow agent. The Promissory Note and Indebtedness shall be extended for 36 months from June 15, 2008, and the entire remaining principal and interest shall be due and payable on June 15, 2011. The real estate maturity date on all of the real estate mortgages to J.V., LLC shall be June 15, 2011.

6. After the payments referred to above are paid, the payor may prepay at any time without penalty.

7. J.V., LLC agrees to further subordinate the indebtedness owed to it and the Real Estate Mortgage referred to in this Agreement, on MOOSE MOUNTAIN and on TREESTYLE CREEK, to a second priority lien position on both MOOSE MOUNTAIN real estate and the TREESTYLE CREEK real estate, as follows:

a. On MOOSE MOUNTAIN the second priority lien of J.V., LLC shall be inferior and subordinate to a first priority lien of no more than \$25,000,000.00.

b. On the TREESTYLE CREEK property the present first lien priority of J.V., LLC shall be subordinate and inferior to a new first lien priority of no more than \$5,000,000.00.

8. J.V., LLC agrees to execute partial releases of its Real Estate Mortgages provided the interest on the indebtedness is paid current for and in consideration of principal payments, as follows:

a. On the MOOSE MOUNTAIN real estate at \$8,000.00 per acre, which is the present agreed upon release payment rate.

b. On the TREESTLE CREEK real estate, which presently does not have a release payment provision, the partial release of mortgage sums to be paid J.V., LLC in principal payments shall be:

i. For the release of any land upon which a condominium unit is constructed the partial release of mortgage sums to be paid J.V., LLC in principal payments is \$20,000.00 per each of such condominium units.

ii. For the release of a platted single family lot the partial release of mortgage sums to be paid J.V., LLC in principal payments is \$20,000.00 per lot.

#### F. EXISTING TERMS AND DOCUMENTS

Except for the modification and provisions set forth in this Agreement, all of the terms, conditions, and documents existing between the parties shall remain in force and effect as written.

#### G. TIME FOR PERFORMANCE

In the event Pend Oreille Bonner Development Holdings, Inc. does not perform and pay the sums due to J.V., LLC under this agreement and also bring the existing payments current on Panhandle Escrow Account No. 2067429 by August 1, 2008 this Agreement is rescinded and terminated.

IN WITNESS WHEREOF, the parties have hereunto set their hands hereto on the 20<sup>th</sup> day of June, 2008.

FEND OREILLE BONNER DEVELOPMENT  
HOLDINGS, INC., a Nevada  
corporation

By: Charles W. Reeves  
CHARLES W. REEVES, President  
Date: 6/20/08

STATE OF IDAHO )  
                              :     ss.  
County of Bonner )

On this 20<sup>th</sup> day of June, 2008, before me, the undersigned Notary Public, personally appeared, CHARLES W. REEVES, proved to me on the basis of satisfactory evidence, to be the President of FEND OREILLE BONNER DEVELOPMENT HOLDINGS, INC. that executed the instrument or the person who executed the instrument on behalf of the corporation and acknowledged to me that such corporation executed the same.



Kathleen Groenewald  
Notary Public-State of Idaho  
Residing at: SPENDPOINT  
Commission Expires: 4/20/2013

J.V. LLC, an Idaho limited liability company

By: Hidden Lakes Limited Partnership, member

By: James W. Berry  
JAMES W. BERRY, a general partner  
Date: 6/23/08

By: William A. Berry  
WILLIAM A. BERRY, a general partner  
Date: 6/23/08



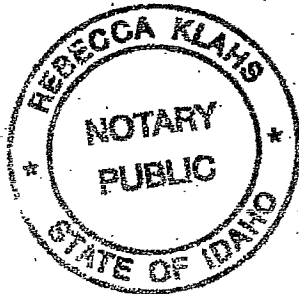
By: Sun Mountain, Inc., a managing member

By: William A. Berry  
WILLIAM A. BERRY, President  
Date: 6/23/08

By: James W. Berry  
JAMES W. BERRY, Secretary  
Date: 6/23/08

STATE OF IDAHO )  
  : ss.  
COUNTY OF BONNER )

On this 23rd day of June, 2008, before me, the undersigned Notary Public, personally appeared, WILLIAM A. BERRY and JAMES W. BERRY, known to me or proved to me on the basis of satisfactory evidence, to be the MANAGERS, PARTNERS, and OFFICERS who subscribed said J.V. LLC name to the foregoing instrument, and acknowledged to me that they executed the same in said name of J.V. LLC, by its members, the partnership & corporation.



Rebecca Klahs  
Notary Public-State of Idaho  
Residing at: Sandpoint  
My Commission Expires: 12/14/2011

**Finney Law**

**From:** william sterling [williamsterling@prodigy.net]  
**Sent:** Monday, March 31, 2008 11:24 AM  
**To:** Gary Finney  
**Cc:** Charles W. Reeves; Thomas J. Merschel; Sherry A Wagner; Chip Bowlby; Linda Brown  
**Subject:** IDAHO CLUB LOAN FROM JV, LLC  
**Attachments:** SubordinationAgr #2 WWS March 31, 2008.doc  
March 31, 2008

Dear Mr. Finney:

I represent the Idaho Club and work closely with Chuck Reeves and his partners on various aspects of the project. Chuck is negotiating a loan from First National Bank ("FNB") in Monterey, California, in the principal amount of \$5,000,000.

I understand that you represent Jim Berry and his entity JV, LLC, which has agreed to subordinate its mortgage on the Lake Parcels, which is currently in first position, to a new first in favor of FNB.

Attached at Chuck Reeves' request, for your review and comment, is a form of subordination agreement.

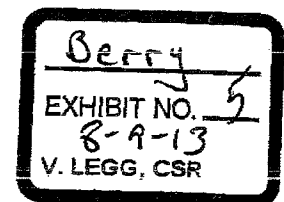
My contact data is as follows:

William ("Bill") W. Sterling	Tel 707-895-2349
680 Salmela Road	Fax 707-895-3320
Philo, CA 95466	Email <a href="mailto:williamsterling@prodigy.net">williamsterling@prodigy.net</a>

Please let me know if you have any questions. I shall look forward to working with you. I am in the course of preparing a letter agreement for the parties to memorialize the understanding conveyed to me that JV, LLC, is amenable to subordinating its mortgage to any new first which comes out and replaces the FNB first. I should be able to send a draft of the letter to you shortly.

Sincerely yours,

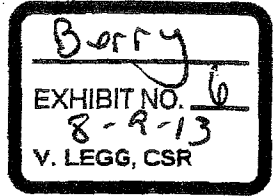
Bill Sterling



Rex Finney

4697-7

From: "william sterling" <williamsterling@prodigy.net>  
 To: "Gary Finney" <finneylaw@niwb.net>  
 Cc: "Charles W. Reeves" <creeves@theidahoclub.com>; "Rex Finney" <rexfinney@niwb.net>  
 Sent: Thursday, July 24, 2008 12:07 PM  
 Attach: SUBORDINATION (JV) #P0106&7 (7-22-08).pdf  
 Subject: Fw: PEND OREILLE



July 24, 2008 at 12:05 pm

Dear Gary,

Chuck had asked me to send the attached form of Subordination Agreement to Rex, which I did, then later realized I should have sent it to you. Here it is.

We are aiming to close the initial funding by Monday if at all possible, and I think the likelihood is good that we shall be able to do so. First National Bank has been very, very slow in responding. I shall call you in the course of the afternoon to chat about any new developments.

Best regards,

Bill Sterling

----- Original Message -----

From: william sterling  
 To: Rex Finney  
 Cc: Charles W. Reeves  
 Sent: Thursday, July 24, 2008 10:05 AM  
 Subject: Fw: PEND OREILLE

July 24, 2008 at 10:02 am

Dear Rex,

Chuck Reeves has asked me to forward to you a copy of the Subordination Agreement which JV Loans is to execute and deliver to First American Title Company as part of closing the impending escrow. Here it is.

Best regards,

Bill Sterling

*Handwritten notes:*  
 T/C 2 37  
 Jan Berry  
 5/29  
 Check said would  
 pay Jan 20  
 by end of month  
 so that's perfect Jan wants  
 (not this now "5 under Am

1387

7/24/2008

Finney Law Office

From: liam sterling [williamsterling@prodigy.net]  
Sent: Thursday, July 24, 2008 4:27 PM  
To: Gary Finney  
Cc: Charles W. Reeves  
Subject: PEND OREILLE

July 24, 2008 at 3:55 pm

Dear Gary,

I apologize for failing to return your phone call before you left the office this afternoon. I hope we may speak in the morning. Meanwhile let me seek to respond to the points you made in your telephone call to me.

Chuck Reeves has obtained a loan commitment under which he will make a series of draws. When I referred to the "initial funding", I meant the first draw, which we are working hard to close of record on Monday.

At this point I am in a taffy pull with First National Bank about obtaining documents from it which we need. The issues are bureaucratic, not substantive, but they are causing delay all the same.

What we would like to do at closing of the first draw is the following:

1. Leave Jim Berry's JV, LLC, deed of trust lien in first position on the Lake Parcels. This is the security position he has now.
2. Pay Jim out of escrow the sum of (A) the \$30,000 fee, which does not apply to the reduction of the principal balance of the loan and (B) any unpaid accrued interest through the date on which escrow for the first draw closes.
3. Pend Oreille will make the \$300,000 principal payment per the Third Amendment to the Note by August 1st.
4. At such time as we get the documentation we need from First National Bank, and following payment of the \$300,000 per #3 above, we would have First American record Jim's subordination of his lien on the Lake Parcels to the lien securing First National Bank's lien.
5. We would like Jim to execute the Subordination Agreement in favor of First National Bank in recordable form and deposit it in the escrow. I believe you already have the Subordination Agreement document. Please let me know right away if you do not have it. We should jointly then instruct First American to hold the Subordination Agreement until the \$300,000 payment has been completed through escrow and then to record the Subordination Agreement.

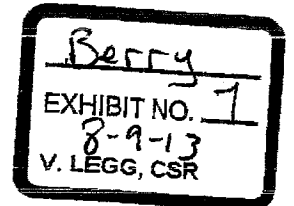
If you wish, I would be happy to draft escrow instructions regarding the foregoing for your review and approval.

In your telephone message you had asked about a title report. There is a now seriously dated title commitment which I fear may confuse matters more than clarify them. It does not show the recorded Third Amendment to the JV, LLC, note. It shows a subordination which will be cancelled at close of escrow as well as mechanics liens which will be released at close of escrow. At this point in time, with closing so imminent, I am loathe to burden First American with the request for an updated prelim or commitment. I am hopeful that you can live with that. Let's talk about this in the morning if it remains a concern for you.

Best regards,

Bill Sterling

*7/25/08*  
*707-895-2349* *Wm Sterling*  
*7/29/08* *1/22/08* *an "instruction" for FATCO*



7/24/2008 4:35 pm

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