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IN THE

**SUPREME COURT
OF THE
STATE OF IDAHO**

ISC #44583, 44584, 44585
Bonner #CV2009-1810

Valiant Idaho, LLC
Cross-Claimant/Respondent

vs.

**North Idaho Resorts
JV, LLC
VP Incorporated**
Cross-Defendants/Appellants

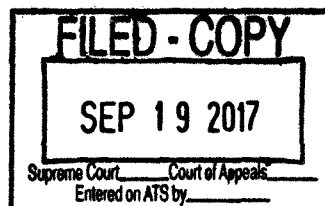
CLERK'S RECORD ON APPEAL

*Appealed from the District Court of the First Judicial District
of the State of Idaho, in and for the County of Bonner*

Richard L. Stacey
Jeff R. Sykes
Chad M. Nicholson
827 East Park Boulevard, Suite 201
Boise, Idaho 83712
Attorneys for Respondents

Gary A. Finney
120 East Lake Street, Suite 317
Sandpoint, Idaho 83864
Attorney for Appellant JV

Daniel M. Keyes
Susan P. Weeks
1626 Lincoln Way
Coeur d'Alene, Idaho 83814
Attorneys for Appellants VP and North Idaho Resorts



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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
 FILED Jan 15, 2015¹³
 AT 2:40 O'CLOCK P.M.
 CLERK, DISTRICT COURT
 Deputy 

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

GENESIS GOLF BUILDERS, INC.,)	Case No. CV-2009-1810
formerly known as National Golf)	
Builders, Inc., a Nevada)	JUDGMENT
corporation,)	
)	(DISMISSAL OF JV, LLC'S
Plaintiff,)	THIRD PARTY COMPLAINT
)	AGAINST IDAHO CLUB
v.)	HOMEOWNER'S ASSOCIATION,
)	INC.)
PEND OREILLE BONNER)	
DEVELOPMENT, LLC, a Nevada)	
limited liability company; R.E.)	
LOANS, LLC, a California)	
limited liability company; DAN)	
S. JACOBSON, an individual,)	
SAGE HOLDINGS LLC, an Idaho)	
limited liability company;)	
STEVEN G. LAZAR, an individual;)	
PENSCO TRUST CO. CUSTODIAN FBO)	
BARNEY NG; MORTGAGE FUND '08)	
LLC, a Delaware limited)	
liability company; VP,)	
INCORPORATED, an Idaho)	
corporation; JV L.L.C., an)	
Idaho limited liability)	
company; WELLS FARGO FOOTHILL,)	
LLC, a Delaware limited)	
liability company; INTERSTATE)	
CONCRETE AND ASPHALT COMPANY,)	
an Idaho corporation; T-O)	
ENGINEERS, INC., fka Toothman-)	
Orton Engineering Company, an)	

JUDGMENT (DISMISSAL OF JV, LLC'S THIRD PARTY COMPLAINT AGAINST IDAHO CLUB
 HOMEOWNER'S ASSOCIATION, INC.) - 1

Idaho corporation; PUCCI)
CONSTRUCTION INC., an Idaho)
corporation; ACI NORTHWEST,)
INC., an Idaho corporation;)
LUMBERMENS, INC., dba ProBuild,)
a Washington corporation;)
ROBERT PLASTER dba Cedar Etc;)
NORTH IDAHO RESORTS, LLC, an)
Idaho limited liability)
company; R.C. WORST & COMPANY,)
INC., an Idaho corporation;)
DOES 1 through X,)

Defendants.)

AND RELATED COUNTERCLAIMS,)
CROSS-CLAIMS, AND THIRD-PARTY)
COMPLAINTS)

GENESIS GOLF BUIDLERS, INC.,)
formerly known as NATIONAL GOLF)
BUILDERS, INC., a Nevada)
corporation,)

Plaintiff,)

v.)

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

Defendants.)

AND RELATED COUNTERCLAIMS,)
CROSS-CLAIMS, AND THIRD-PARTY)
COMPLAINTS)

VALIANT IDAHO, LLC, an Idaho)
limited liability company,)

Third Party)

Plaintiff,)

v.)

PEND ORIELLE BONNER DEVELOPMENT)

HOLIDINGS, INC., a Nevada)
corporation; BAR K, INC., a)
California corporation;)
TIMBERLINE INVESTMENTS LLC, an)
Idaho limited liability)
company; AMY KORENGUT, a)
married woman; HLT REAL ESTATE,)
LLC, an Idaho limited liability)
company; INDEPENDENT MORTGAGE)
LTD. CO., an Idaho limited)
liability company; PANHANDLE)
MANAGEMENT INCORPORATED, an)
Idaho corporation; FREDERICK J.)
GRANT, an individual; CRISTINE)
GRANT, an individual; RUSS)
CAPITAL GROUP, LLC, an Arizona)
limited liability company;)
MOUNTAIN WEST BANK, a division)
of GLACIER BANK, a Montana)
corporation; FIRST AMERICAN)
TITLE COMPANY, a California)
corporation; NETTA SOURCE LLC,)
a Missouri limited liability)
company; MONTAHEO INVESTMENTS,)
LLC, a Nevada limited liability)
company; CHARLES W. REEVES and)
ANN B. REEVES, husband and)
wife; and C.E. KRAMER CRANE &)
CONTRACTING, INC., an Idaho)
corporation,)

Third Party)
Defendants.)

JV L.L.C., an Idaho limited)
liability company,)
Defendant and)
Cross-Claimant against all of)
the Defendants and)
Third Party Plaintiff,)

v.)
VALIANT IDAHO, LLC, an Idaho)
limited liability company;)
V.P., INC., an Idaho)
corporation; RICHARD A.)

VILLELLI, a married man; MARIE)
 VICTORIA VILLELLI, a married)
 woman; VILLELLI ENTERPRISES,)
 INC., a California corporation;)
 RICHARD A. VILLELLI, as TRUSTEE)
 OF THE RICHARD ANTHONY VILLELLI)
 AND MARIE VICTORIA VILLELLI)
 REVOCABLE TRUST; THE IDAHO CLUB)
 HOA ASSOCIATION, INC., an Idaho)
 corporation; the entity named)
 in Attorney Toby McLaughlin's)
 Notice of Unpaid Assessment as)
 PANHANDLE MANAGEMENT,)
 INCORPORATED, an Idaho)
 corporation; and HOLMBERG)
 HOLDINGS, LLC, a California)
 limited liability company,)
)
 Third Party)
 Defendants.)

JUDGEMENT IS ENTERED AS FOLLOWS:

The Stipulation For Settlement And Dismissal Of JV, LLC's
 Third Party Complaint Against Idaho Club Homeowner's
 Association, Inc. having been filed with the Court, pursuant to
 I.R.C.P. 54(a) requirements,

~~IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT~~ ^{by} this matter
 is dismissed between JV, LLC and Idaho Club HOA with prejudice,
 and with each party bearing their own attorney fees and costs.

DATED this 15 day of January, 2015.



 DISTRICT JUDGE

CERTIFICATE OF CLERK'S RULE 77(d) SERVICE

I hereby certify that a true and correct copy, with the clerk's filing stamp thereon showing the date of filing, of the JUDGMENT (DISMISSAL OF JV, LLC'S THIRD PARTY COMPLAINT AGAINST IDAHO CLUB HOMEOWNER'S ASSOCIATION, INC.), was served as indicated, this 16th day of Jan, 2015, and was addressed as follows:

Bruce A. Anderson
Ford Elsaesser
ELSAESSER JARZABEK ANDERSON
ELLIOTT & MACDONALD, CHTD.
320 E. Neider Ave, Suite 102
Coeur d'Alene, ID 83815
[Attorneys for SAGE HOLDINGS,
LLC, DAN JACOBSON, and STEVEN
G. LAZAR]
Via Facsimile: 208-667-2150

Brent C. Featherston
FEATHERSTON LAW FIRM, CHTD.
113 S. Second Avenue
Sandpoint, ID 83864
[Formerly Attorney for PENSICO
TRUST CO. CUSTODIAN FBO BARNEY
NG; and MORTGAGE FUND '08 LLC]
Via Facsimile: 208-263-0400

Gary I. Amendola
AMENDOLA & DOTY, PLLC
702 N. 4TH Street
Coeur d'Alene, ID 83814
[Attorney for T-O ENGINEERS,
INC.- Defaulted]
Via Facsimile: 208-765-1046

Richard Stacey/Jeff R. Sykes
MCCONNELL WAGNER SYKES &
STACEY PLLP
755 W. Front St., Ste.200
Boise, ID 83702
[Attorney for R.E. LOANS,
MORTGAGE FUND '08 LLC, WELLS
FARGO BANK, PENSICO TRUST CO.
& VALIANT IDAHO LLC]
Via Facsimile: 208-489-0110

Susan Weeks
Steven C. Wetzel
JAMES, VERNON & WEEKS, P.A.
1626 Lincoln Way
Coeur d'Alene, ID 83814
[Attorney for NORTH IDAHO
RESORTS, LLC, V.P. INC, &
FOR JV'S THIRD PARTY
DEFENDANTS]
Via Facsimile: 208-664-1684

John A. Finney/Gary A. Finney
FINNEY FINNEY & FINNEY, P.A.
120 E. Lake St, Ste 317
Sandpoint, Idaho 83864
[Attorney for ACI NORTHWEST,
INC. and for PUCCI
CONSTRUCTION, INC.]
Via Facsimile: 208-263-8211

GENESIS GOLF BUILDERS, INC.
Attn: Ron Freund
PO Box 1271
McHenry, IL 60050
[Pro Se]
Via US Mail

Charles M. Dodson
DODSON & RAEON LAW OFFICES
Attorneys at Law
1424 Sherman Avenue, Suite 300
Coeur d'Alene, ID 83814
[Attorney for R.C. WORST &
COMPANY, INC.]
Via Facsimile: 208-666-9211

John Layman
LAYMAN LAW FIRM
601 S. Division St.
Spokane, WA 99202
[Attorney for PEND OREILLE
BONNER DEVELOPMENT, LLC]
Via Facsimile: 509-624-2902

Toby McLaughlin
BERG & MCLAUGHLIN, CHTD.
414 Church St., Ste. 203
Sandpoint, ID 83864
[Attorney for THE IDAHO CLUB
HOA ASSOCIATION & PANHANDLE
MANAGEMENT, INC.]
Via Facsimile: 208-263-7557

Robert J. Fasnacht, Jr.
c/o Interstate Concrete
6062 N. Lafayette Lane
Coeur d'Alene, ID 83815
Via U.S. Mail

Stanley J. Tharp
Peter Ware
EBERLE, BERLIN, KADING,
TURNBOW & MCKLVEEN, CHTD.
P.O. Box 1368
Boise, ID 83701
[Attorneys for WELLS FARGO
CAPITAL FINANCE LLC
(Formerly WELLS FARGO
FOOTHILL, INC.)
Via Facsimile: 208-344-8542

By: 

STATE OF IDAHO
County of Bonner
FILED Jan 15 2015
AT 9:00 O'CLOCK A.M.
CLERK DISTRICT CLERK
Deputy

Richard L. Stacey, ISB #6800
Jeff R. Sykes, ISB #5058
Chad M. Nicholson, ISB #7506
McCONNELL WAGNER SYKES & STACEY PLLC
755 West Front Street, Suite 200
Boise, Idaho 83702
Telephone: 208.489.0100
Facsimile: 208.489.0110
stacey@mwsslawyers.com
sykes@mwsslawyers.com
nicholson@mwsslawyers.com

Attorneys For Valiant Idaho, LLC

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

GENESIS GOLF BUILDERS, INC.,
formerly known as
NATIONAL GOLF BUILDERS, INC.,
a Nevada corporation,

Plaintiff,

vs.

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

Defendants.

Case No. CV-09-1810

**ORDER ON
STIPULATION TO ENTRY OF
JUDGMENT AGAINST
IDAHO CLUB HOMEOWNER'S
ASSOCIATION, INC.**

Honorable Barbara A. Buchanan

**AND RELATED COUNTER, CROSS
AND THIRD PARTY ACTIONS
PREVIOUSLY FILED HEREIN.**

ORIGINAL

VALIANT IDAHO, LLC,
an Idaho limited liability company,

Third Party Plaintiff,

vs.

PEND ORELLE BONNER DEVELOPMENT HOLDINGS, INC., a Nevada corporation;
BAR K, INC., a California corporation;
TIMBERLINE INVESTMENTS LLC, an Idaho limited liability company;
AMY KORENGUT, a married woman;
HLT REAL ESTATE, LLC, an Idaho limited liability company;
INDEPENDENT MORTGAGE LTD. CO., an Idaho limited liability company;
PANHANDLE MANAGEMENT INCORPORATED, an Idaho corporation;
FREDERICK J. GRANT, an individual;
CHRISTINE GRANT, an individual;
RUSS CAPITAL GROUP, LLC, an Arizona limited liability company;
MOUNTAIN WEST BANK, a division of GLACIER BANK, a Montana corporation;
FIRST AMERICAN TITLE COMPANY, a California corporation;
NETTA SOURCE LLC, a Missouri limited liability company;
MONTAHEO INVESTMENTS, LLC, a Nevada limited liability company;
CHARLES W. REEVES and ANN B. REEVES, husband and wife;
and C. E. KRAMER CRANE & CONTRACTING, INC., an Idaho corporation,

Third Party Defendants.

////

////

////

The Stipulation to Entry of Judgment Against Idaho Club Homeowner's Association, Inc. ("Stipulation") having come regularly before this Court; and having considered the terms agreed to by and between Third Party Plaintiff Valiant Idaho, LLC ("Valiant") and Third Party Defendant Idaho Club Homeowner's Association ("HOA"); and this Court finding good cause appearing therefor,

IT IS HEREBY ORDERED AS FOLLOWS:

1. Valiant has recorded mortgages in the Bonner County Recorder's Office as Instrument Nos. 706471, 706472, 724829, 724834, 756394, 756395, 756396, 756397, 756398 and 756399 (collectively, "Mortgages"); Valiant has paid real property taxes assessed by Bonner County in the amount of \$1,665,855.14 and recorded a redemption deed in the Bonner County Recorder's Office as Instrument No. 861460 to evidence said payment ("Tax Payment"); and, Valiant, by virtue of the Mortgages and the Tax Payment, is entitled to a judgment to be entered by the above Court adjudicating that Valiant's interest(s) in and to the property legally described as:

see the legal description attached hereto as Exhibit A
("Property")

are superior in right, title and interest to any interest claimed by the HOA.

2. Valiant and the HOA will each bear their own attorneys' fees and costs with respect to Valiant's claims against the HOA.

IT IS SO ORDERED.

DATED this 15 day of January 2015



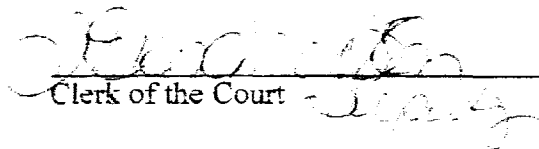
Honorable Barbara A. Buchanan
District Judge

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on the 17th day of January 2015, a true and correct copy of the foregoing document was served by the method indicated below upon the following party(ies):

<p>Bruce A. Anderson, Esq. Elsaesser Jarzabek Anderson Elliott & MacDonald, Chtd 1320 East Neider Avenue, Suite 102 Coeur d' Alene, Idaho 83815 Telephone: 208.667.2900 Facsimile: 208.667.2150 <i>Counsel For Jacobson, Lazar and Sage Holdings</i></p>	<p><input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Electronic Mail brucea@ejame.com</p>
<p>Brent C. Featherston, Esq. Featherston Law Firm, Chtd 113 South Second Avenue Sandpoint, Idaho 83864 Telephone: 208.263.6866 Facsimile: 208.263.0400 <i>Counsel For Persco/Mortgage Fund</i></p>	<p><input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Electronic Mail bcf@featherstonlaw.com</p>
<p>Gary A. Finney, Esq. Finney Finney & Finney, P.A. 120 East Lake Street, Suite 317 Sandpoint, Idaho 83864 Telephone: 208.263.7712 Facsimile: 208.263.8211 <i>Counsel For J.V., LLC</i></p>	<p><input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Electronic Mail garvfinnev@finneylaw.net</p>
<p>John A. Finney, Esq. Finney Finney & Finney, P.A. 120 East Lake Street, Suite 317 Sandpoint, Idaho 83864 Telephone: 208.263.7712 Facsimile: 208.263.8211 <i>Counsel For Pucci Construction/ACI Northwest</i></p>	<p><input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Electronic Mail johnfinnev@finneylaw.net</p>
<p>D. Toby McLaughlin, Esq. Berg & McLaughlin 414 Church Street, Suite 203 Sandpoint, Idaho 83864 Telephone: 208.263.4748 Facsimile: 208.263.7557 <i>Counsel For Idaho Club HOA/Panhandle Mngmnt</i></p>	<p><input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Electronic Mail tobv@sandpointlaw.com</p>

<p>Richard L. Stacey, Esq. McConnell Wagner Sykes & Stacey PLLC 755 West Front Street, Suite 200 Boise, Idaho 83702 Telephone: 208.489.0100 Facsimile: 208.489.0110 <i>Counsel For Valiant Idaho, LLC</i></p>	<p><input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Electronic Mail <u>stacey@lawidaho.com</u></p>
<p>Susan P. Weeks, Esq. James, Vernon & Weeks, PA 1626 Lincoln Way Coeur d'Alene, Idaho 83814 Telephone: 208.667.0683 Facsimile: 208.664.1684 <i>Counsel For VP Incorporated/North Idaho Resorts</i></p>	<p><input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Electronic Mail <u>sweeks@jvwlaw.net</u></p>



 Clerk of the Court

Escrow No. 49214-NA

EXHIBIT "A"
Legal Description

The land referred to in this document is situated in the State of Idaho, County of Bonner, and is described as follows:

SECTION A:

PARCEL 1:

A tract of land located in Section 36, Township 58 North, Range 1 West AND Section 31, Township 58 North, Range 1 East of the Boise Meridian, Bonner County, Idaho, more particularly described as follows:

That portion of said Sections 36 and 31 lying East of Pack River Road, a county road, West of the Pack River, North of State Highway No. 200, and South of the South line of Government Lot 1 of said Section 31 and South of the South line of the Northeast quarter of the Northeast quarter of said Section 36;

LESS that land included in the Plat of Hidden Lakes Subdivision as recorded in Book 4 of Plats, page 64, records of Bonner County, Idaho.

ALSO LESS a parcel of land in Section 36, Township 58 North, Range 1 West of the Boise Meridian, Bonner County, Idaho more particularly described as follows:

Commencing at the Southeast corner of said Section 36;

Thence North $52^{\circ} 11'33''$ West 953.40 feet (record per Instrument No. 457973 = North $54^{\circ} 29'10''$ West, 1019.58 feet) to a point on the Northerly right of way of State Highway No. 200 and the true point of beginning;

Thence North $01^{\circ} 19'29''$ West, 244.70 feet (record per Instrument No. 457973 = North $01^{\circ} 07'07''$ East, 244.28 feet);

Thence South $88^{\circ} 04'08''$ West, 348.50 feet (record per Instrument No. 457973 = South $87^{\circ} 52'03''$ West, 348.49 feet)

Thence South $01^{\circ} 19'12''$ West, 250.00 feet (record per Instrument No. 457973 = South $01^{\circ} 07'07''$ West, 250.00 feet) to the Northerly right of way of State Highway No. 200;

Thence along said right of way North $80^{\circ} 34'19''$ East 66.04 feet (record per Instrument No. 457973 = North $79^{\circ} 46'41''$ East, 66.62 feet);

Thence on a curve to the right having a central angle of $05^{\circ} 47'35''$ and a radius of 2803.37 feet, for an arc distance of 283.45 feet (record per Instrument No. 457973 = a central angle of $05^{\circ} 47'02''$ and an arc length of 282.99 feet) to the true point of beginning.

LESS a tract of land in Government Lot 2 of Section 31, Township 58 North, Range 1 East of the Boise Meridian, Bonner County, Idaho, more particularly described as follows:

Beginning at the intersection of the North line of said Government Lot 2 and an existing fence line marking the right of way of an old County Road, said point being South $89^{\circ} 06'38''$ East, 398.07 feet from the Northwest corner of Government Lot 2 (record = 361.00 feet);

Thence along said fence line as noted of record per Instrument No. 217765 on a curve to the left (radial bearing = North 62° 13'42" East) having a central angle of 19° 17'35" and a radius of 650.32 feet, for an arc distance of 218.98 feet (chord = South 37° 25'05" East, 217.95 feet);

Thence continuing along said fence line, South 47° 03'53" East, 43.24 feet;

Thence North 89° 06'38" West, 12.33 feet;

Thence continuing along the fence line, South 59° 55'24" East, 65.99 feet to an iron pipe as described in Instrument No. 217765;

Thence along the fence line, South 70° 07'45" East, 262.49 feet to an iron pipe as described in Instrument No. 217765 (record = South 70° 13'00" East 262.00 feet);

Thence South 54° 48'04" East, 67.00 feet;

Thence North 40° 08'56" East, 158.45 feet to the right bank of Pack River (record = 200.00 feet to the thread of Pack River);

Thence North 40° 08'56" East to the intersection with the thread of Pack River;

Thence Northerly and upstream along the thread line of Pack River to the intersection with the North line of Government Lot 2 of said Section 31;

Thence South 89° 06'38" East, along said North line to the true point of beginning.

LESS any part of the above described property lying North and East of Pack River.

LESS a tract of land in Government Lots 1 and 2 of Section 31, Township 58 North, Range 1 East and the Southeast quarter of the Northeast quarter of Section 36, Township 58 North, Range 1 West of the Boise Meridian, Bonner County, Idaho and more particularly described as follows:

Mary's Pack River Lots and all that property dedicated to the public for right of way as shown and recorded in Instrument No. 699091, records of Bonner County, Idaho.

PARCEL 2:

A tract of land located in Section 36, Township 58 North, Range 1 West AND Section 2, Township 57 North, Range 1 West of the Boise Meridian, Bonner County, Idaho, more fully described as follows:

Beginning at a point that is North 80 degrees 05' 57" East, a distance of 386.02 feet from the South quarter corner of said Section 36, said point also being at the intersection of the South right of way of State Highway No. 200 and the East right of way of the Old Country Road;

thence South 5 degrees 14' 00" East along said East right of way of the old country road, a distance of 171.80 feet;

thence continuing South 14 degrees 35' 50" East along said East right of way, a distance of 254.70 feet to an intersection with the North right of way of Old Highway No. 200 (EAP No. 95F);

thence North 72 degrees 38' 24" East along said North right of way, a distance of 372.40 feet;

thence continuing along said North right of way, North 72 degrees 58' 33" East, a distance of 336.00 feet to an intersection with the West high bank of Dry Creek;

thence Northeasterly along said West high bank, a distance of 578 feet, more or less, to an intersection with the South right of way of said State Highway No. 200;

thence Westerly along said South right of way the following six (6) courses:

- 1) Around a curve to the left with a radius of 2643.37 feet, a distance of 48.44 feet (the chord of which bears South 88 degrees 02' 31" West, a distance of 48.43 feet);
- 2) North 79 degrees 07' 52" West, 100.50 feet;
- 3) Around a curve to the left with a radius of 2668.37 feet, a distance of 247.36 feet (the chord of which bears South 82 degrees 54' 00" West, a distance of 247.24 feet) to a P.S.C.;
- 4) Along a spiral curve (S=2 degrees 12.3'), a distance of 207.68 feet (the chord of which bears South 70 degrees 27' 12" West, a distance of 207.67 feet) to a P.S.;
- 5) South 69 degrees 43' 21" West, 328.60 feet;
- 6) South 61 degrees 11' 30" West, 119.79 feet to the point of beginning.

AND TOGETHER WITH any portion of the old Highway right of way abandonment, described in that certain Quit Claim Deed, executed by the State of Idaho, as Instrument No. 696025 and recorded on January 11, 2006, lying within the bounds of the above described property

PARCEL 3:

A tract of land in Government Lot 1 of Section 31, Township 58 North, Range 1 East of the Boise Meridian, Bonner County, Idaho, being that property described in Instrument No. 484825 and more particularly described as follows:

Beginning at a point on the South line of said Government Lot 1, which is South 89° 06'38" East (record = South 89° 06'55" East) 330.00 feet from the Southwest corner of Government Lot 1, marked by a brass cap stamped RLS 974;

Thence parallel to the West line of the Section, North 00° 07'21" East, 118.03 feet;

Thence in a Southeasterly direction on a curve to the right (radial bearing = South 50° 01'02" West) having a central angle of 12° 44'09" and a radius of 233.31 feet, for an arc distance of 51.86 feet (chord = South 33° 36'53" East, 51.76 feet);

Thence South 27° 14'49" East, 79.53 feet;

Thence on a curve to the left (radial bearing = North 62° 45'11" East) having a central angle of 00° 31'29" (record = 00° 31'25") and a radius of 650.32 feet for an arc distance of 5.95 (record = 5.94 feet) feet (chord = South 27° 30'31" East, 5.95 feet), to the South line of Government Lot 1;

Thence along said South line North 89° 06'38" West (record = North 89° 06'55" West), 68.07 feet to the true point of beginning.

PARCEL 4:

A tract of land in Government Lot 1 of Section 31, Township 58 North, Range 1 East of the Boise Meridian, Bonner County, Idaho, being that property described in Instrument No. 495753 and more particularly described as follows:

Beginning at a point on the South line of said Government Lot 1, which is South 89° 06'38" East (record = South 89° 06'55" East) 330.00 feet from the Southwest corner of Government Lot 1, marked by a brass cap stamped RLS 974;

Thence parallel to the West line of the Section North 00° 07'21" East, 118.03 feet;

Thence on a curve to the left (radial bearing = South 50° 01'02" West) having a central angle of 04° 01'30" and a radius of 233.31 feet, for an arc distance of 15.39 feet (chord = North 41° 59'43" West 16.39 feet)

Thence North 44° 00'28" West 23.17 feet to the Southeasterly right of way of the Lower Pack River Road;

Thence along said right of way on a curve to the right (radial bearing = North 53° 09'38" West) having a central angle of 12° 32'30" and a radius of 275.00 feet, for an arc distance of 60.20 feet (chord = South 43° 06'37" West, 60.08 feet);

Thence leaving said right of way, South 44° 00'28" East, 20.15 feet;

Thence on a curve to the right having a central angle of 16° 45'40" and a radius of 173.31 feet, for an arc distance of 50.70 feet (chord = South 35° 37'39" East 50.52 feet);

Thence South 27° 14'49" East, 53.38 feet to the true point of beginning

PARCEL 5:

A tract of land in Government Lot 2 of Section 31, Township 58 North, Range 1 East of the Boise Meridian, Bonner County, Idaho, being that property described in Instrument No. 495753 and more particularly described as follows:

Beginning at a point on the West line of said Government Lot 2 (West line of Section 31) which is South 00° 07'21" West, 200.00 feet from the Northwest corner of said Government Lot 2;

Thence parallel to the North line of Government Lot 2, South 89° 06'38" East (record = South 89° 06'55" East) 562.61 feet (record = 562.58 feet);

Thence North 47° 03'53" West, 43.24 feet (record = 43.21 feet);

Thence on a curve to the right having a central angle of 19° 17'35" (record = 19° 17'39") and a radius of 650.32 feet, for an arc distance of 218.98 feet (chord = North 37° 25'03" West 271.95 feet) to the North line of Government Lot 2;

Thence along said North line North 89° 06'38" West (record = North 89° 06'55" West) 68.07 feet;

Thence South 27° 14'49" East 26.15 feet;

Thence on a curve to the left having a central angle of 09° 49'00" and a radius of 710.32 feet, for an arc distance of 121.79 feet (chord = South 32° 09'19" East, 121.55 feet);

Thence South 80° 25'01" West 412.81 feet (record = South 80° 24'50" West 412.82 feet) to the point of beginning.

EXCEPTING from Parcels 1, 3, 4 and 5, the following two tracts:

Any portion encompassed by the Plat of GOLDEN TEE ESTATES PLANNED UNIT DEVELOPMENT (PHASE ONE), according to the plat thereof, recorded in Book 6 of Plats, Page 108, records of Bonner County, Idaho.

AND any portion encompassed by the Plat of GOLDEN TEE ESTATES FIRST ADDITION, (PHASE TWO) according to the plat thereof, recorded in Book 6 of Plats, Page 114, records of Bonner County, Idaho.

PARCEL 6:

Lot 2, Block 3 in GOLDEN TEES ESTATES PLANNED UNIT DEVELOPMENT (PHASE ONE), according to the plat thereof, recorded in Book 6 of Plats, Page 108, records of Bonner County, Idaho.

PARCEL 7:

All private roads in GOLDEN TEE ESTATES PLANNED UNIT DEVELOPMENT (PHASE ONE), according to the plat thereof, recorded in Book 6 of Plats, Page 108, records of Bonner County, Idaho.

PARCEL 8:

All private roads in GOLDEN TEES ESTATES FIRST ADDITION (PHASE TWO), according to the plat thereof, recorded in Book 6 of Plats, Page 114, records of Bonner County, Idaho.

EXCEPTING from Parcels 1,2,3,4,5,6,7 and 8 any portion lying within the bounds of the following plats:

Replat of Golden Tee Estates and Golden Tee Estates 1st Addition and unplatted land, recorded in Book 8 of Plats, Page 77.

PARCEL 9:

Lots 14, 15, 16, 17, 19, 20 and 21, Block 2; All of Block 5A; Lot 4, Block 7; Lots 1A, Block 11; Lots 1A, 2A and 3A Block 12; Lot 13A, Block 13; Lot 1, Block 14A; Lots 1 & 2, Block 15; Lots 1 and 2, Block 17; all of Block 18; Lots 1 and 2, Block 19; Lots 2, 3, 5, 6, 7, 8, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20, Block 20; Lots 1, 3 and 4 Block 21; Lots 1, 2, 4, 5 and 6, Block 22 of the replat of Golden Tee Estates and Golden Tee Estates 1st Addition and unplatted land, according to the Plat thereof, recorded in Book 8 of Plats, Page 77, records of Bonner County, Idaho.

PARCEL 10:

Lot 5A, Block 4, of the replat of Golden Tee Estates and Golden Tee Estates 1st Addition and unplatted land according to the Plat thereof, recorded in Book 8 of Plats, Page 77, records of Bonner County, Idaho.

PARCEL 11:

All of Block 16 of the replat of Golden Tee Estates and Golden Tee Estates 1st Addition and unplatted land according to the Plat thereof, recorded in Book 8 of Plats, Page 77, records of Bonner County, Idaho.

PARCEL 12:

Lot 1A Block 19 of the replat of Golden Tee Estates and Golden Tee Estates 1st Addition and unplatted land, according to the plat thereof, recorded in Book 8 of Plats, Page 77, records of Bonner County, Idaho.

PARCEL 13:

Lot 1, Block 20 of the replat of Golden Tee Estates and Golden Tee Estates 1st Addition and unplatted land according to the plat thereof, recorded in Book 8 of Plats, Page 77, records of Bonner County, Idaho.

SECTION B:

PARCEL 1:

Lot 1 in Block 1 of the FIRST ADDITION TO HIDDEN LAKES, according to the plat thereof, recorded in Book 4 of Plats, page 161, records of Bonner County, Idaho.

PARCEL 2:

Lots 2, 3, 4, 5 in Block 2 of the SECOND ADDITION TO HIDDEN LAKES SUBDIVISION, according to the plat thereof, recorded in Book 5 of Plats, Page 58, records of Bonner County, Idaho.

PARCEL 3:

A tract of land in the East half of the Northeast quarter of the Southwest quarter and the Northwest quarter of the Southeast quarter of Section 36, Township 58 North, Range 1 West of the Boise Meridian, Bonner County, Idaho, more particularly described as follows:

Beginning at the Southeast corner of the East half of the Northeast quarter of the Southwest quarter of said Section 36;

Thence along the South line of the East half of the Northeast quarter of the Southwest quarter, North 89° 36'27" West, 661.51 feet (record = North 89° 37'10" West, 661.57 feet to the Southwest corner of the East half of the Northeast quarter of the Southwest quarter;

Thence along the West line of the East half of the Northeast quarter of the Southwest quarter, North 00° 10'22" East 856.45 feet (record = North 00° 09'25" East, 856.45 feet);

Thence North 89° 10'53" East, 30.21 feet (record = East, 29.58 feet) to the Westerly right of way of Berry Drive (shown as Olympic Drive on the Second Addition Plat to Hidden Lakes);

Thence Southeasterly along said right of way the following six (6) courses:

1. on a non tangential curve to the left (radial bearing = North 87° 39'13" East) having a central angle of 36° 44'06" and a radius of 131.00 feet for an arc distance of 83.99 feet (record = 84.54 feet) (chord = South 20° 42'50" East, 82.56 feet - record = South 20° 37'27" East, 83.08 feet);
2. thence South 39° 04'53" East, 419.67 feet (record = South 39° 06'45" East, 419.68 feet);
3. thence on a curve to the left having a central angle of 11° 42'45" and a radius of 530.00 feet for an arc distance of 108.34 feet (chord = South 44° 56'16" East, 108.15 feet - record = South 44° 58'08" East, 108.15 feet);
4. thence South 50° 47'39" East, 69.68 feet (record = South 50° 49'31" East, 69.68 feet);
5. thence on a curve to the right having a central angle of 23° 42'51" and a radius of 970.00 feet, for an arc distance of 401.47 feet (chord = South 38° 56'14" East, 398.61 feet - record = South 38° 58'05" East 398.61 feet);
6. thence South 27° 04'48" East, 31.65 feet to the South line of the Northwest quarter of the Southeast quarter (record = South 27° 06'40" East, 30.77 feet);

thence leaving said right of way North 89° 36'03" West, 60.37 feet (record = North 89° 37'09" West, 59.55 feet) to the point of beginning.

PARCEL 4:

A tract of land located in a portion of the Southwest quarter of the Southeast quarter of Section 36, Township 58 North, Range 1 West, Boise Meridian, Bonner County, Idaho, more particularly described as follows:

Beginning at the Northwest corner of said Southwest quarter of the Southeast quarter of Section 36;

Thence South 89° 36'03" East 60.37 feet (record = South 89° 37'09" East, 59.55 feet) to the Westerly right of way of Berry Drive (shown as Olympic Drive on the Plat of the Second Addition to Hidden Lakes);

Thence along said right of way for the following four (4) courses:

1. South 27° 04'48" East, 299.95 feet (record = South 27° 06'40" East, 300.83 feet);
2. North 62° 55'12" East, 60.00 feet (record = North 62° 53'20" East, 60.00 feet);
3. North 27° 04'48" West, 125.34 feet (record = North 27° 06'40" West, 125.34 feet);
4. thence on a curve to the right having a central angle of 79° 01'27" and a radius of 25.00 feet, for an arc distance of 34.48 feet (chord = North 12° 25'55" East, 31.81 feet - record = North 12° 24'03" East, 31.81 feet) to a point on the Southerly right of way of Fairway View Drive, as shown on the Plat of First Addition to Hidden Lakes;

thence along said right of way for the following eight (8) courses:

1. North 51° 56'39" East, 74.67 feet (record = North 51° 54'47" East, 74.67 feet);
2. thence on a curve to the right having a central angle of 99° 26'33" and a radius of 70.00 feet, for an arc distance of 121.49 feet (chord = South 78° 20'05" East, 106.81 feet - record = South 78° 21'57" East, 106.81 feet);
3. thence South 28° 36'48" East, 154.03 feet (record = South 28° 38'40" East, 154.03 feet);
4. thence on a curve to the right having a central angle of 55° 41'27" and a radius of 90.00 feet for an arc distance of 87.48 feet (chord = South 00° 46'05" East, 84.08 feet - record = South 00° 47'56" East, 84.08 feet);
5. thence South 27° 04'39" West, 170.14 feet;
6. thence on a curve to the right having a central angle of 71° 37'11" and a radius of 60.0 feet, for an arc distance of 75.00 feet (chord = South 08° 43'57" East, 70.21 feet);
7. thence South 44° 32'32" East, 50.94 feet;
8. thence on a curve to the right having a central angle of 69° 10'16" and a radius of 25.00 feet, for an arc distance of 30.18 feet (chord = South 09° 57'24" East, 28.38 feet - record = South 11° 23'51" East, 30.18 feet) to a point on the West right of way of Lower Pack River Road;

thence Southerly along said right of way for the following four (4) courses:

1. on a non tangential curve to the right having a central angle of 04° 15'19" and a radius of 1180.00 feet for an arc distance of 87.69 feet (chord = South 22° 30'38" West, 87.67 feet);
2. thence South 20° 22'44" West, 114.57 feet;

3. thence on a curve to the left having a central angle of $22^{\circ} 29' 50''$ and a radius of 502.65 feet, for an arc distance of 197.36 feet (chord = South $09^{\circ} 07' 49''$ West, 196.10 feet)

4. thence South $02^{\circ} 07' 06''$ East, 157.81 feet to the Northerly right of way of State Highway No. 200;

thence along the highway right of way, South $77^{\circ} 42' 28''$ West, 72.14 feet (record = South $78^{\circ} 15' 06''$ West, 71.11 feet);

thence continuing along the Highway right of way, South $69^{\circ} 44' 57''$ West, 262.22 feet (record = South $69^{\circ} 43' 16''$ West, 261.65 feet) to the West line of the Southwest quarter of the Southeast quarter of said Section 36;

thence along the West line of the Southwest quarter of the Southeast quarter, North $00^{\circ} 08' 19''$ East, 1223.36 feet (record = North $00^{\circ} 07' 13''$ East, 1223.17 feet) to the point of beginning.

PARCEL 5:

That portion of the Southeast quarter of the Northeast quarter of Section 36, Township 58 North, Range 1 West of the Boise Meridian, Bonner County, Idaho, lying West of the Lower Pack River Road,

EXCEPT the First Addition to Hidden Lakes Subdivision, according to the plat thereof, recorded in Book 4 of Plats, Page 161, record of Bonner County, Idaho.

SECTION C:

PARCEL 1:

All that portion of the Southeast Quarter in Section 36, Township 58 North, Range 1 West, Boise Meridian, Bonner County, Idaho, lying South of State Highway 200; and all that portion of Government Lot 4 in Section 31, Township 58 North, Range 1 East, Boise Meridian, Bonner County, Idaho, lying South of State Highway 200;

LESS the following described property:

A tract of land in the Southeast quarter of Section 36, Township 58 North, Range 1 West of the Boise Meridian, Bonner County, Idaho, being that property described in Instrument No. 92981, records of Bonner County, Idaho and more particularly described as follows:

Commencing at the Southeast corner of said Section 36;

Thence along the East line of Section 36, North $00^{\circ} 08' 06''$ East, 460.00 feet;

Thence perpendicular to the East line of the Section, North $89^{\circ} 51' 54''$ West, 568.00 feet to the true point of beginning;

Thence South $47^{\circ} 08' 06''$ West, 250.00 feet;

Thence South $42^{\circ} 51' 54''$ East, 348.50 feet;

Thence North $47^{\circ} 48' 06''$ East, 250.00 feet;

Thence North $42^{\circ} 51' 54''$ West, 348.50 feet to the true point of beginning.

AND

All that portion of Government Lots 2, 3, 4, 5, 6, 7, 8 and 9; the Southwest quarter of the Northeast quarter; and the South half of the Northwest quarter of Section 2, Township 57 North, Range 1 West of the Boise Meridian, Bonner County, Idaho, lying South of State Highway No. 200 and lying North and East of the Northern Pacific Railroad (now Montana Rail Link) right of way.

LESS that portion of Section 2, Township 57 North, Range 1 West of the Boise Meridian, Bonner County, Idaho; being that property described in Instrument No. 592059 and more particularly described as follows:

Beginning at a right of way monument on the South right of way of State Highway No. 200, from which the Northwest corner of said Section 2 bears North 25° 54' 43" West, 798.00 feet (record = North 26° 28' 08" West, 798.11 feet);

Thence along the South right of way of the Highway, North 68° 35' 39" East, 266.10 feet;

Thence continuing along the Highway right of way, on a curve to the left (radial bearing = North 14° 03' 28" West) having a central angle of 00° 08' 55" and a radius of 5799.58 feet for an arc distance of 15.03 feet (chord = North 75° 52' 05" East, 15.03 feet - total distance along right of way from point of beginning = 281.13 feet - record = 281.13 feet);

thence leaving said right of way South 00° 04' 10" West, 725.53 feet;

Thence North 89° 14' 40" West, 330.00 feet;

Thence North 00° 03' 26" West 607.20 feet, to the Southerly right of way of State Highway No. 200;

Thence along said right of way North 79° 11' 55" East, 70.38 feet to the true point of beginning.

LESS a tract of land located in Section 36, Township 58 North, Range 1 West and Section 2, Township 57 North, Range 1 West of the Boise Meridian, Bonner County, Idaho; being a portion of that property described in Instrument No. 464572 and more particularly described as follows:

Beginning at a point that is North 80° 05' 57" East 386.02 feet from the South quarter of said Section 36, said point also being at the intersection of the South right of way of State Highway No. 200 and the East right of way of the Old County Road;

Thence South 05° 14' 00" East along the East right of way of the Old County Road, 171.80 feet;

Thence continuing South 14° 35' 50" East along said East right of way, 254.70 feet to the intersection with the North right of way of Old Highway 200 (FAP No. 95F);

Thence North 72° 38' 24" East along said North right of way, 372.40 feet;

Thence continuing along said North right of way, North 72° 58' 33" East, 336.00 feet to the intersection with the West high bank of Dry Creek;

Thence Northeasterly along said West high bank, a distance of 578 feet, more or less, to the intersection with the South right of way of State Highway No. 200;

Thence Westerly along said South right of way the following six (6) courses:

1. around a curve to the left with a radius of 2643.37 feet, a distance of 48.44 feet (chord = South 88° 02' 31" West, 48.43 feet);
2. North 79° 07' 52" West, 100.50 feet;
3. around a curve to the left with a radius of 2668.37 feet for a distance of 247.30 feet (chord = South 82°

54'00" West, 247.24 feet);

4. along a spiral curve (South = $02^{\circ} 12' 18''$), a distance of 207.68 feet (chord = South $70^{\circ} 27' 12''$ West, 207.67 feet);

5. South $69^{\circ} 43' 21''$ West, 328.60 feet;

6. South $61^{\circ} 11' 30''$ West, 119.79 feet to the point of beginning.

TOGETHER WITH any portion of the old highway right of way abandonment described in that certain Quitclaim Deed, executed by the State of Idaho, as Instrument No. 696025 and recorded on January 11, 2006, and lying within the bounds of the above described property.

AND

Government Lots 5, 9, 10 and 11; the Southeast quarter of the Northwest quarter; the East half of the Southwest quarter; and Government Lot 6, all in Section 6, Township 57 North, Range 1 East of the Boise Meridian, Bonner County, Idaho.

LESS that property described in Instrument No. 22533, records of Bonner County, Idaho, and described as follows:

Beginning at the North quarter corner of said Section 6, Township 57 North, Range 1 East of the Boise Meridian, Bonner County, Idaho;

Thence South 1669.70 feet to Pack River and the True Point of Beginning;

Thence South $66^{\circ} 47'$ West, 203 feet;

Thence South $69^{\circ} 54'$ West 165.3 feet;

Thence South $79^{\circ} 56'$ West, 242.5 feet;

Thence South $01^{\circ} 11'$ East, 146 feet;

Thence South $25^{\circ} 18'$ East, 118.20 feet;

Thence South $54^{\circ} 29'$ East, 137.2 feet;

Thence South $68^{\circ} 10'$ East, 267.1 feet;

Thence North 535.6 feet to a point 1669.7 feet South of the North quarter corner of Section 6.

LESS a tract of land in Government Lot 6 and the Southeast quarter of the Northwest quarter of Section 6, Township 57 North, Range 1 East of the Boise Meridian, Bonner County, Idaho, being that property identified as Tract No. Q-1755-2 in Instrument No. 42975 and more particularly described as follows:

Beginning at a point on the Southerly right of way of State Highway No. 200 which is South $55^{\circ} 03' 21''$ East, 2460.29 feet from the Northwest corner of said Section 6 (record = South $55^{\circ} 14'$ East, 2451.3);

Thence South $14^{\circ} 53' 00''$ East, 223.22 feet (record);

Thence South $04^{\circ} 43' 00''$ East, 640.00 feet (record);

Thence South $39^{\circ} 48' 00''$ East, 430.00 feet (record);

Thence South 30° 28'00" East, 387.49 feet (record = 500 feet plus or minus) to the East line of the Southeast quarter of the Northwest quarter of said Section 6.

TOGETHER WITH any portion of the Old Highway right of way abandonment described in that certain Quitclaim Deed, executed by the State of Idaho, as Instrument No. 696025 and recorded on January 11, 2006, lying within the bounds of the above described property

EXCEPTING therefrom all of the above described properties, any portion lying within the bounds of the following Plats:

Replat of Golden Tee Estates and Golden Tee Estates 1st Addition and unplatted land, recorded in Book 8 of Plats, Page 77,

Golden Tee Estates- 2nd Addition, recorded in Book 8 of Plats, Page 79

Golden Tee Estates - 3rd Addition, recorded in Book 8 of Plats, Page 78,

Golden Tee Estates - 4th Addition, recorded in Book 8 of Plats, Page 80,

Golden Tee Estates - 5th Addition, recorded in Book 8 of Plats, Page 81 and Golden Tee Estates- 6th, recorded in Book 8 of Plats, Page 82

PARCEL 2:

Lots 1, 2, 4, 5, 6, 7, 8, 9 and 10, Block 1; Lots 1,2, 3, 4, 5, 7, 8, 9 and 10, Block 2; Lots 1, 2, 3, 6, and 10, Block 3 of Golden Tee Estates 2nd Addition according to the Plat thereof, recorded in Book 8 of Plats, Page 79, records of Bonner County, Idaho and

Lots 1, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17 Block 1; Lot 1, Block 2; Lots 1, 2, 3, 4, 5, 6, 7 and 8, Block 3; Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 15, Block 4; Lots 1, 2, 7 and 8, Block 5; Lots 1, 2, 3, and 4, Block 6; Lots 3, 5, 6 and 10, Block 7; Lots 1, 2, 4, 5 and 6 Block 8; Lots 2, 3, 4 and 5, Block 9; Lots 6, and 8, Block 10; Lot 2 Block 11 of Golden Tee Estates 3rd Addition, according to the Plat thereof, recorded in Book 8 of Plats, Page 78, records of Bonner County, Idaho.

AND

Lots 1, 2, 3, 5, 6, 7 and 8, Block 1; Lots 2, and 5, Block 2; Lots 1, 2 and 3, Block 3; Lots 1, 2, 3, 4, 5, 6, 7, 8 and 9, Block 4; Lots 1, 4, 5, 6 and 7, Block 5 of Golden Tee Estates 4th Addition, according to the Plat thereof, recorded in Book 8 of Plats, Page 80, records of Bonner County, Idaho.

AND

Lots 1, 4, 5, 6, 7, 8 and 9, Block 1; Lots 1, 3, 5, 6, 7, 8, 9, 10 and 11, Block 2 of Golden Tee Estates 5th Addition, according to the Plat thereof, recorded in book 8 of Plats, Page 81 records of Bonner County, Idaho.

AND

Lots 2, 6, 7 and 8, block 1; Lots 1, 2, 3, 4 and 5, Block 2; Lot 1, Block 3; Lots 1, 2, 3, 4 and 5, Block 4; Lot 1, Block 5 of Golden Tee Estates 6th Addition, according to the Plat thereof, recorded in Book 8 of Plats, Page 82, records of Bonner County, Idaho.

SECTION D:

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, 104.25 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. 163846 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 Northeasterly right of way of Montana Rail Link Railway which is South $88^{\circ} 10' 56''$ East, 944.95 feet from the Southwest corner of Section 16;

Thence leaving said South line and along said right of way North $23^{\circ} 38' 59''$ West, 672.00 feet to the true point of beginning;

Thence continuing along said right of way North $23^{\circ} 38' 59''$ West, 786.99 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 $88^{\circ} 43' 23''$ 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 $01^{\circ} 19' 25''$ (radial bearing = South $73^{\circ} 15' 16''$ West), a radius of 768.50 feet, for an arc length of 17.75 feet (chord = South $16^{\circ} 06' 41''$ East, 17.75 feet);

Thence along a line offset 50.00 feet Westerly of and parallel to a spiral curve (centerline $ls = 200$ feet, $a = 3.5$, $S = 7^{\circ}$) for a chord of South $10^{\circ} 43' 01''$ East 193.87 feet);

Thence South $08^{\circ} 25' 19''$ East, 86.06 feet;

Thence on a curve to the left having a central angle of $13^{\circ} 56' 48''$, a radius of 1482.53 feet, for an arc length of 360.87 feet (chord = South $15^{\circ} 23' 43''$ East, 359.98 feet);

Thence leaving said right of way South $44^{\circ} 37' 10''$ 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, 834.19 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 $89^{\circ} 23'45''$ 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) course:

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 $88^{\circ} 10'56''$ East, 281.27 feet to the West line of the said Southwest quarter of the Southwest quarter;

Thence continuing South $88^{\circ} 10'56''$ 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° 08' 45" East, 77.28 feet;

Thence South 89° 05' 07" East, 145.49 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, 58.83 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 of 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 of the 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 lake;

thence 600 feet Southerly to 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 55° 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 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 $46^{\circ} 40' 48''$ East, 378.00 feet to the intersection with the South line of Government Lot 1;

Thence along said South line South line South $88^{\circ} 55' 48''$ 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 $88^{\circ} 55' 48''$ East, 139.54 feet to the true point of beginning.

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DIST
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CLERK DISTRICT COURT
DEPUTY

Richard L. Stacey, ISB #6800
Jeff R. Sykes, ISB #5058
McCONNELL WAGNER SYKES & STACEY PLLC
755 West Front Street, Suite 200
Boise, Idaho 83702
Telephone: 208.489.0100
Facsimile: 208.489.0110
stacey@mwsslawyers.com
sykes@mwsslawyers.com

Attorneys For Valiant Idaho, LLC

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

GENESIS GOLF BUILDERS, INC.,
formerly known as
NATIONAL GOLF BUILDERS, INC.,
a Nevada corporation,

Plaintiff,

vs.

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

Defendants.

**AND RELATED COUNTER, CROSS
AND THIRD PARTY ACTIONS
PREVIOUSLY FILED HEREIN.**

Case No. CV-09-1810

**VALIANT IDAHO, LLC'S
MOTION FOR SUMMARY JUDGMENT
AGAINST JV, L.L.C.,
NORTH IDAHO RESORTS, LLC,
AND VP, INCORPORATED**

Honorable Barbara A. Buchanan

Hearing:
February 18, 2015 – 1:30 p.m. PST

ORIGINAL
1720

VALIANT IDAHO, LLC,
an Idaho limited liability company,

Third Party Plaintiff,

vs.

PEND OREILLE BONNER DEVELOPMENT
HOLDINGS, INC., a Nevada corporation;
BAR K, INC., a California corporation;
TIMBERLINE INVESTMENTS LLC,
an Idaho limited liability company;
AMY KORENGUT, a married woman;
HLT REAL ESTATE, LLC,
an Idaho limited liability company;
INDEPENDENT MORTGAGE LTD. CO.,
an Idaho limited liability company;
PANHANDLE MANAGEMENT
INCORPORATED, an Idaho corporation;
FREDERICK J. GRANT, an individual;
CHRISTINE GRANT, an individual;
RUSS CAPITAL GROUP, LLC,
an Arizona limited liability company;
MOUNTAIN WEST BANK, a division of
GLACIER BANK, a Montana corporation;
FIRST AMERICAN TITLE COMPANY,
a California corporation;
NETTA SOURCE LLC,
a Missouri limited liability company;
MONTAHENO INVESTMENTS, LLC,
a Nevada limited liability company;
CHARLES W. REEVES and
ANN B. REEVES, husband and wife;
and C. E. KRAMER CRANE &
CONTRACTING, INC., an Idaho corporation,

Third Party Defendants.


COMES NOW, Valiant Idaho, LLC ("Valiant"), by and through its attorneys of record, McConnell Wagner Sykes & Stacey PLLC, and pursuant to Rule 56 of the Idaho Rules of Civil Procedure, moves this Court for a judgment that the mortgages assigned to Valiant by R. E. Loans, LLC, Pensco Trust Co. and Mortgage Fund '08 LLC are senior and superior to any and all interest claimed by JV, L.L.C., North Idaho Resorts, LLC, and VP Incorporated (collectively, "Claimants") in and to that certain real property that is the subject of Valiant's Counterclaim, Cross-Claim and Third Party Complaint For Judicial Foreclosure filed August 19, 2014.

This motion is made and based upon the records and files herein, the Memorandum in Support of [Valiant's] Motion For Summary Judgment Against [Claimants], the Statement of Facts in Support of [Valiant's] Motion For Summary Judgment Against [Claimants], the Affidavit of Charles W. Reeves, and the Declaration of Jeff R. Sykes in Support of [Valiant's] Motion For Summary Judgment Against [Claimants] filed concurrently herewith, and whatever further evidence may be presented at the hearing of this motion.

DATED this 16th day of January 2015.

McCONNELL WAGNER SYKES & STACEY^{PLLC}

BY:


Jeff R. Sykes

Attorneys For Valiant Idaho, LLC

CERTIFICATE OF SERVICE

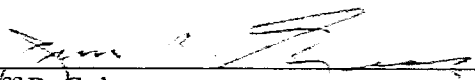
I HEREBY CERTIFY that on the 16th day of January 2015, a true and correct copy of the foregoing document was served by the method indicated below upon the following party(ies):

<p>Bruce A. Anderson, Esq. Elsaesser Jarzabek Anderson Elliott & MacDonald, Chtd 320 East Neider Avenue, Suite 102 Coeur d' Alene, Idaho 83815 Telephone: 208.667.2900 Facsimile: 208.667.2150 <i>Counsel For Jacobson, Lazar and Sage Holdings</i></p>	<p><input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Electronic Mail brucea@ejame.com</p>
<p>Brent C. Featherston, Esq. Featherston Law Firm, Chtd 113 South Second Avenue Sandpoint, Idaho 83864 Telephone: 208.263.6866 Facsimile: 208.263.0400 <i>Counsel For Pensco Mortgage Fund</i></p>	<p><input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Electronic Mail bcf@featherstonlaw.com</p>
<p>Gary A. Finney, Esq. Finney Finney & Finney, P.A. 120 East Lake Street, Suite 317 Sandpoint, Idaho 83864 Telephone: 208.263.7712 Facsimile: 208.263.8211 <i>Counsel For J.V., LLC</i></p>	<p><input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Electronic Mail garyfinney@finneylaw.net</p>
<p>John A. Finney, Esq. Finney Finney & Finney, P.A. 120 East Lake Street, Suite 317 Sandpoint, Idaho 83864 Telephone: 208.263.7712 Facsimile: 208.263.8211 <i>Counsel For Pucci Construction/ACI Northwest</i></p>	<p><input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Electronic Mail johnfinney@finneylaw.net</p>
<p>D. Toby McLaughlin, Esq. Berg & McLaughlin 414 Church Street, Suite 203 Sandpoint, Idaho 83864 Telephone: 208.263.4748 Facsimile: 208.263.7557 <i>Counsel For Idaho Club HOA/Panhandle Mngmnt</i></p>	<p><input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Electronic Mail tobv@sandpointlaw.com</p>

Susan P. Weeks, Esq. James, Vernon & Weeks, PA 1626 Lincoln Way Coeur d'Alene, Idaho 83814 Telephone: 208.667.0683 Facsimile: 208.664.1684 <i>Counsel For VP Incorporated/North Idaho Resorts</i>	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Electronic Mail sweeks@jvwlaw.net
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With two copies via United States Mail to:

Honorable Barbara A. Buchanan
 Judge of the First Judicial District
 Bonner County Courthouse
 215 South First Avenue
 Sandpoint, Idaho 83864



 Jeff R. Sykes

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DISTRICT

2015 JAN 20 PM 2:13

CLERK DISTRICT COURT

Richard L. Stacey, ISB #6800
Jeff R. Sykes, ISB #5058
McCONNELL WAGNER SYKES & STACEY
755 West Front Street, Suite 200
Boise, Idaho 83702
Telephone: 208.489.0100
Facsimile: 208.489.0110
stacey@mwsslawyers.com
sykes@mwsslawyers.com

Attorneys For Valiant Idaho, LLC

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

GENESIS GOLF BUILDERS, INC.,
formerly known as
NATIONAL GOLF BUILDERS, INC.,
a Nevada corporation,

Plaintiff,

vs.

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

Defendants.

**AND RELATED COUNTER, CROSS
AND THIRD PARTY ACTIONS
PREVIOUSLY FILED HEREIN.**

Case No. CV-09-1810

**MEMORANDUM IN SUPPORT OF
VALIANT IDAHO, LLC'S
MOTION FOR SUMMARY JUDGMENT
AGAINST JV, L.L.C.,
NORTH IDAHO RESORTS, LLC,
AND VP, INCORPORATED**

Honorable Barbara A. Buchanan

VALIANT IDAHO, LLC,
an Idaho limited liability company,

Third Party Plaintiff,

vs.

PEND OREILLE BONNER DEVELOPMENT
HOLDINGS, INC., a Nevada corporation;
BAR K, INC., a California corporation;
TIMBERLINE INVESTMENTS LLC,
an Idaho limited liability company;
AMY KORENGUT, a married woman;
HLT REAL ESTATE, LLC,
an Idaho limited liability company;
INDEPENDENT MORTGAGE LTD. CO.,
an Idaho limited liability company;
PANHANDLE MANAGEMENT
INCORPORATED, an Idaho corporation;
FREDERICK J. GRANT, an individual;
CHRISTINE GRANT, an individual;
RUSS CAPITAL GROUP, LLC,
an Arizona limited liability company;
MOUNTAIN WEST BANK, a division of
GLACIER BANK, a Montana corporation;
FIRST AMERICAN TITLE COMPANY,
a California corporation;
NETTA SOURCE LLC,
a Missouri limited liability company;
MONTAHENO INVESTMENTS, LLC,
a Nevada limited liability company;
CHARLES W. REEVES and
ANN B. REEVES, husband and wife;
and C. E. KRAMER CRANE &
CONTRACTING, INC., an Idaho corporation,

Third Party Defendants.

COMES NOW, Valiant Idaho, LLC (“Valiant”), by and through its attorneys of record, McConnell Wagner Sykes & Stacey PLLC, and files the following Memorandum in Support of Valiant Idaho, LLC’s Motion [“Motion”] For Summary Judgment Against JV, L.L.C., North Idaho Resorts, LLC, and VP, Incorporated.

I.
INTRODUCTION

On August 19, 2014, Valiant filed its Counterclaim, Cross-Claim and Third Party Complaint For Judicial Foreclosure (“Valiant Complaint”) in this lawsuit. Valiant seeks to foreclose mortgages which were granted to R. E. Loans, LLC (“RE Loans”), Pensco Trust Co. (“Pensco”) and Mortgage Fund ‘08 LLC (“MF08”) by Pend Oreille Bonner Development, LLC (“POBD”), which mortgages secure promissory notes made by POBD (collectively, “Mortgages”). The Mortgages were assigned to Valiant and are in default.

By way of this Motion, Valiant seeks a judgment that its Mortgages against POBD’s real property located in the County of Bonner, State of Idaho (“POBD Property”), and more particularly described in Exhibit I to the Declaration of Jeff R. Sykes in Support of [Valiant’s] Motion For Summary Judgment Against JV, L.L.C., North Idaho Resorts, LLC, and VP, Incorporated (“Sykes Dec.”), are senior in right and priority to any interest claimed by JV, L.L.C. (“JV”), North Idaho Resorts, LLC (“NIR”), and VP, Incorporated (“VP”) (collectively, “Claimants”) in the POBD Property. The POBD Property and all improvements thereon are collectively referred to herein as the “Idaho Club Property.”

By way of this Motion, Valiant also seeks a judgment that Valiant's interest in a portion of the Idaho Club Property described in a Redemption Deed ("Redemption Deed") conveyed by the Bonner County Treasurer and Tax Collector and recorded July 8, 2014, as Instrument No. 861460, and re-recorded August 22, 2014, as Instrument No. 863298, Records of Bonner County, Idaho, is senior to any right, title and interest of Claimants in the property described in the Redemption Deed. Sykes Dec., Ex. 2.

II. STATEMENT OF FACTS

A. Valiant's Interest And Priority Date In The Idaho Club Property.

1. 2006 RE Loans Note and Mortgage.

On or about May 31, 2006, Pend Oreille Bonner Development Holdings, Inc. ("POBD Holdings") entered into a promissory Note Secured by Mortgage ("2006 RE Loans Note"), which memorialized POBD Holding's promise to repay RE Loans all amounts loaned up to but not to exceed \$20,500,000.00. Affidavit of Charles W. Reeves ("Reeves Aff."), ¶ 3, Ex. A.

On or about May 31, 2006, POBD Holdings granted to RE Loans a Mortgage, Assignment of Rents, Security Agreement, and Fixture Filing ("2006 RE Loans Mortgage"), securing all amounts owed under the 2006 RE Loans Note. *Id.*, ¶ 5, Ex. B. The 2006 RE Loans Mortgage was recorded June 19, 2006 at 1:38 p.m., as Instrument Nos. 706471 and 706472, Records of Bonner County, Idaho. *Id.*

2. 2007 RE Loans Note and Mortgage.

On or about March 6, 2007, POBD and RE Loans entered into a promissory Note Secured by Mortgage (“2007 RE Loans Note”), which memorialized POBD’s promise to repay RE Loans all amounts loaned up to but not to exceed \$21,200,000.00. *Id.*, ¶ 5, Ex. C. Under the terms of the 2007 RE Loans Note, POBD borrowed \$21,200,000.00 from RE Loans. *Id.*, ¶ 8, Ex. E.

On or about March 6, 2007, POBD granted to RE Loans a Mortgage, Assignment of Rents, Security Agreement, and Fixture Filing (“2007 RE Loans Mortgage”), securing all amounts owed under the 2007 RE Loans Note. *Id.*, ¶ 6, Ex. D. The 2007 RE Loans Mortgage was recorded March 15, 2007 at 4:30 p.m. as Instrument No. 724829 and at 4:36 p.m. as Instrument No. 724834, Records of Bonner County, Idaho. *Id.*

On November 23, 2009, POBD made its last payment in the amount of \$358,598.59 toward the amount owed to RE Loans under the 2007 RE Loans Note. *Id.*, ¶ 8. Following the November 23, 2009 payment, the balance owed by POBD to RE Loans and secured by the 2007 RE Loans Mortgage was \$278,147.65, excluding accrued interest and costs of foreclosure. *Id.* POBD has not made any payments to RE Loans since November 23, 2009. *Id.*

On or about July 7, 2014, RE Loans assigned to Valiant the 2007 RE Loans Note and the 2007 RE Loans Mortgage. Sykes Dec., Ex. 3.

On or about November 17, 2014, POBD and Valiant entered into a Stipulation to Entry of Judgment Against [POBD] (“POBD/Valiant Stipulation”), which was filed with this Court on November 19, 2014, memorializing, among other things, that, as of November 1, 2014, the amount owed Valiant under the 2007 RE Loans Note/Mortgage was \$749,225.00, with interest accruing at the rate of 17% per annum, or \$336.02 per diem. On or about November 20, 2014,

this Court entered its Order on Stipulation to Entry of Judgment Against [POBD] (“Stipulated Judgment”).

3. The Pensco Note and Mortgage.

On or about August 6, 2008, POBD and Pensco entered into a promissory Note Secured by Mortgage (“Pensco Note”), under which POBD borrowed and promised to pay Pensco up to \$2,700,000.00. Reeves Aff., ¶¶ 11-12, Ex. F. Pursuant to the terms of the Pensco Note, POBD borrowed from Pensco the sum of \$2,700,000.00. *Id.*, ¶ 13.

On or about August 6, 2008, POBD provided to Pensco a Mortgage, Assignment of Rents, Security Agreement, and Fixture Filing (“Pensco Mortgage”) to secure all amounts owed to Pensco. *Id.*, ¶ 14, Ex. G. The Pensco Mortgage was recorded August 6, 2008 at 1:38 p.m., as Instrument Nos. 756394, 756395 and 756396, Records of Bonner County, Idaho. *Id.*

On July 9, 2014, the Pensco Note and Pensco Mortgage were assigned to Valiant. Sykes Dec., Ex. 4.

No payments were made on the Pensco Note. Reeves Aff., ¶ 15. The Pensco Note is in default and POBD owes Valiant \$2,700,000.00 pursuant to the terms of the Pensco Note. Stipulated Judgment, ¶ 2. With accrued interest, the total amount owed as of November 1, 2014 is \$7,560,489.00. *Id.* This amount continues to accrue interest at the rate of \$3,374.80 per *diem* until paid. *Id.*

4. The MF08 Note and Mortgage.

On or about August 6, 2008, POBD entered into an All-Inclusive Notice Secured by Mortgage with ("MF08 Note"), under which POBD borrowed and promised to pay MF08 up to \$21,980,000.00. Reeves Aff., ¶¶ 17-18, Ex. I. Pursuant to the terms of the MF08 Note, POBD borrowed from MF08 the sum of \$2,127,409.34. *Id.*, ¶ 19.

On or about August 6, 2008, POBD granted to MF08 an All-Inclusive Mortgage, Assignment of Rents, Security Agreement, and Fixture Filing ("MF08 Mortgage") to secure all amounts owed to MF08. *Id.*, ¶ 20, Ex. J. The MF08 Mortgage was recorded August 6, 2008 at 3:37 p.m., as Instrument Nos. 756397, 756398 and 756399, Records of Bonner County, Idaho. *Id.*

On July 16, 2014, the MF08 Note and MF08 Mortgage were assigned to Valiant. Sykes Dec., Ex.5.

No payments have been made on the MF08 Note since February 1, 2009. Reeves Aff., ¶ 21. The MF08 Note is in default and POBD owes Valiant \$2,127,409.34 pursuant to the terms of the MF08 Note. Stipulated Judgment, ¶ 3. With accrued interest, the total amount owed as of November 1, 2014 is \$5,330,025.00. *Id.* This amount continues accrue interest at the rate of \$2,429.91 per *diem* until paid. *Id.*

5. Valiant's 2014 Tax Redemption Deed.

On or about July 7, 2014, Valiant paid Bonner County \$1,665,855.14 to redeem a portion of the Idaho Club Property from property taxes owed to Bonner County. Sykes Dec., Ex. 2.

On July 8, 2014, the Redemption Deed in favor of Valiant in the amount of \$1,665,055.14 was recorded as Instrument No. 861460 and re-recorded August 22, 2014 as Instrument No. 863298, Records of Bonner County, Idaho. *Id.*

6. Valiant's Complaint.

On August 19, 2014, Valiant, as successor-in-interest and assignee of the Mortgages, in response to a foreclosure action filed by Genesis Golf Builders, Inc., filed the Valiant Complaint to foreclose the Mortgages against the Idaho Club Property. Pursuant to the Fourth, Fifth and Sixth Causes of Action alleged in the Valiant Complaint, Valiant seeks to foreclose the Mortgages and for a judgment that its interest in the Idaho Club Property is superior and senior in right, title and interest to any interest claimed by Claimants in the Idaho Club Property.

Pursuant to the Seventh Cause of Action alleged in the Valiant Complaint, Valiant seeks to foreclose the Redemption Deed and for an adjudication that Valiant's interest in the real property described therein is superior and senior in right, title and interest to any claimed interest in the real property by Claimants.

B. JV's Claimed Interest.

On or about October 24, 1995 JV recorded a Mortgage ("JV Mortgage") against certain real property that is at issue in this case. The JV Mortgage was recorded as Instrument No. 474746, Records of Bonner County, Idaho. Sykes Dec., Ex. 6.

On June 19, 2006, JV recorded a Subordination Agreement subordinating the JV Mortgage to the 2006 RE Loans Note and 2006 RE Loans Mortgage. *Id.*, Ex. 7. The Subordination Agreement was recorded as Instrument No. 706474 and re-recorded as Instrument No. 706582, Records of Bonner County, Idaho.

On March 15, 2007, JV recorded a Second Subordination Agreement as Instrument No. 724833, Records of Bonner County, Idaho, subordinating the JV Mortgage to the 2007 RE Loans Note and 2007 RE Loans Mortgage. *Id.*, Ex. 8.

On August 6, 2008, JV recorded a third Subordination Agreement subordinating any interest of JV to the Pensco Note, Pensco Mortgage, MF08 Note and MF08 Mortgage. The Subordination Agreement was recorded as Instrument No. 756402, Records of Bonner County, Idaho. *Id.*, Ex. 9.

On or about September 15, 2014, JV filed its Special Appearance Contesting Jurisdiction; and JV L.L.C.'s Answer to [Valiant's] Counterclaim, Cross Claim and Third Party Complaint For Judicial Foreclosure; and JV L.L.C.'s Cross Claim; and JV L.L.C.'s Third Party Complaint ("JV Counterclaim"). In its Counterclaim, JV alleges that:

JV holds a Vendor's purchase money mortgage Instrument No. 474746 recorded October 24, 1995, which is the first duly recorded purchase money mortgage on the real estate described in said Mortgage, less the platted Lots released by JV by partial satisfactions of mortgage. JV's Mortgage is the first priority Mortgage securing the Promissory Note in the amount set forth in paragraph 78 above. JV is entitled to a decree of foreclosure.

JV's Counterclaim, ¶ 98.

In its prayer for relief, JV seeks:

Judgment for JV L.L.C. that it's [sic] Mortgage, Instrument No. 474746, is the first priority Lien/Mortgage in the Moose Mountain Real Estate as described in said Mortgage - Less the Lot's [sic] released by JV from its Mortgage.

Id., ¶ 108(3).

C. **NIR's Claimed Interest.**

On June 19, 2006, NIR recorded its Memorandum of Real Property Purchase and Sale Agreement as Instrument No. 706475, Records of Bonner County, Idaho ("Memorandum of Sale"). Sykes Dec., Ex. 10.

On March 14, 2007, NIR executed a Subordination Agreement subordinating its interest in and to the subject property to the 2007 RE Loans Note and 2007 RE Loans Mortgage. NIR's Subordination Agreement was recorded as Instrument No. 724832, Records of Bonner County, Idaho. *Id.*, Ex. 11.

On March 15, 2007 and March 11, 2009, NIR recorded Partial Terminations of Real Property Purchase and Sale Agreements and Partial Terminations of Memorandum of Real Property Purchase and Sale Agreements (collectively, "Partial Terminations"), partially terminating the Memorandum of Sale, as amended by the First Amendment to Memorandum of Real Property Purchase and Sale Agreement recorded May 10, 2007, as Instrument No. 728621, Records of Bonner County, Idaho. *Id.*, Exs. 12-13. The Partial Terminations were recorded as Instrument Nos. 724831 and 768269, respectively, Records of Bonner County, Idaho.

On June 3, 2014, Judge Griffin in *Union Bank, N.A. v. Pend Oreille Bonner Development, LLC, et al.*, Bonner County Case No. CV 2011-135, addressing NIR's alleged vendor's lien created by the June 19, 2006 Memorandum of Sale (*id.*, Ex. 10), issued Findings which provided:

Even if NIR had a vendor's lien it would only be for so much of the purchase price as remains unpaid and unsecured otherwise than by the personal obligation of POBD. NIR has received all of the benefit of its deal with POBD except a share of future bulk sales or its share of revenues in excess of \$80,000,000.00. NIR was paid \$4,750,000.00 at closing, was paid an additional note of approximately \$500,000.00, and POBD assumed both the RE Loans and JV, LLC loans.

The possibility of future bulk sales or revenues in excess of \$80,000,000.00 is unknown and open to speculation. NIR may or may not be due additional monies from POBD in the future, but NIR has received all of the monies guaranteed to it based upon the acquisition of Trestle Creek by POBD.

Therefore, if NIR has a vendor's lien it has no value.

Sykes Dec., Ex. 14, Findings, p. 4.

On or about September 19, 2014, NIR filed its Answer to [Valiant's] Counterclaim, Cross-Claim and Third Party Complaint For Judicial Foreclosure ("NIR Answer"). As to Valiant's Fourth, Fifth, Sixth and Seventh Causes of Action foreclosing the Mortgages and the Redemption Deed, NIR answered as follows:

As to North Idaho Resorts, LLC, deny that Valiant is entitled to judgment foreclosing and adjudicating its mortgage to be superior to and prior in right, title and interest. . . .

NIR Answer, ¶¶ 72, 80, 84.

D. VP's Claimed Interest.

On June 13, 2011, VP recorded a Loan Agreement as Instrument No. 810884, Records of Bonner County, Idaho, memorializing the terms of a loan between VP and POBD. *Id.*, Ex. 15. In the Loan Agreement, POBD promises to convey certain properties by warranty deed to VP. The Loan Agreement states:

As further consideration for this Loan, Borrower hereby agrees to [sic] Lender by warranty deed Block 17, Lot 2, Golden Tee Estates, as recorded in Book 8 of Plats, Page 77, Records of Bonner County (“lagoon lot”) and the water reservoir lots, the legal description to be provided by Borrower. [sic] (“water reservoir lots”).

Id., § II.D., p. 3.

On May 20, 2014, POBD conveyed by Quitclaim Deeds recorded as Instrument Nos. 859562, 859563, 859564 and 859565, respectively, Records of Bonner County, Idaho, the properties identified therein and which are subject to the Valiant Mortgages, as follows:

Instrument No. 859562: LOT 7, BLOCK 3, OF GOLDEN TEE ESTATES 4TH ADDITION, ACCORDING TO THE PLAT THEREOF, RECORDED IN BOOK 8 OF PLATS, PAGE 80, RECORDS OF BONNER COUNTY.

Instrument No. 859563: LOT 1, BLOCK 1, OF GOLDEN TEE ESTATES 3RD ADDITION, ACCORDING TO THE PLAT THEREOF, RECORDED IN BOOK 8 OF PLATS, PAGE 78, RECORDS OF BONNER COUNTY.

Instrument No. 859564: LOT 10, BLOCK 2, OF GOLDEN TEE ESTATES 2ND ADDITION, ACCORDING TO THE PLAT THEREOF, RECORDED IN BOOK 8 OF PLATS, PAGE 79, RECORDS OF BONNER COUNTY.

Instrument No. 859565: LOT 2, BLOCK 17, OF THE REPLAT OF GOLDEN TEE ESTATES AND GOLDEN TEE ESTATES 1ST ADDITION AND UNPLATTED LAND, ACCORDING TO THE PLAT THEREOF, RECORDED IN BOOK 8 OF PLATS, PAGE 77, RECORDS OF BONNER COUNTY.

Id., Exs. 15-18.

On or about December 11, 2014, VP filed its Answer to [Valiant's] Counterclaim, Cross-Claim and Third Party Complaint For Judicial Foreclosure ("VP Answer"). As to Valiant's Fourth, Fifth, Sixth and Seventh Causes of Action foreclosing the Mortgages and the Redemption Deed, VP responds as follows:

46. Answering paragraph 71 as to VP, deny that Valiant is entitled to judgment foreclosing and adjudicating its mortgage to be superior to and prior in right, title and interest in the goon [sic] lot, the well lots and the infrastructure easements. As to the balance of paragraph 71, deny for lack of knowledge or information.
47. As to VP, deny that valiant [sic] is entitled to judgment foreclosing and adjudicating its mortgage to be superior to and prior in right, title and interest. As to the balance of paragraph 72, deny for lack of knowledge or information.
.....
50. As to VP, deny that Valiant is entitled to judgment foreclosing and adjudicating its mortgage to be superior to and prior in right, title and interest in the well lots, the lagoon lot and the utility easements. As to the balance of paragraph 75, deny for lack of knmvledge [sic] or information.
51. As to VP, deny that Valiant is entitled to judgment foreclosing and adjudicating its mortgage to be superior to and prior in right, title and interest. As to the balance of paragraph 76, deny for lack of knowledge or information.
.....
54. As to VP, deny that Valiant is entitled to judgment foreclosing and adjudicating it mortgage to be superior to and prior in right, title and interest in the lagoon lot, the well lots and the easements. As to the balance of paragraph 79, deny for lack of knowledge or information.
55. As to VP, deny that Valiant is entitled to judgment foreclosing and adjudicating it mortgage to be superior to and prior in right, title and interest. As to the balance of paragraph 80, deny for lack of knowledge or information.
.....

58. As to North Idaho Resorts, LLC', [sic] deny that Valiant is entitled to judgment foreclosing and adjudicating it [sic] mortgage to be superior to and prior in right, title and interest. As to the balance of paragraph 83, deny for lack of knowledge or information.
59. As to North Idaho Resorts, LLC', [sic] deny that Valiant is entitled to judgment foreclosing and adjudicating it [sic] mortgage to be superior to and prior in right, title and interest. As to the balance of paragraph 84, deny for lack of knowledge or information.

VP Answer, ¶¶ 46, 47, 50, 51, 54, 55, 58, 59.

III. SUMMARY JUDGMENT STANDARD

A motion for summary judgment "shall be rendered forthwith 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 judgment as a matter of law." I.R.C.P. 56(c); *Pena v. Minidoka County*, 133 Idaho 222, 224 (1999).

In a motion for summary judgment, the non-moving party's case must be anchored in something more than speculation, and a mere scintilla of evidence is not enough to create a genuine issue of fact. *Id.* at 225. The Idaho Supreme Court has stated:

The moving party is entitled to judgment when the non-moving party fails to make a sufficient showing as to the essential elements to which that party will bear the burden of proof at trial. *Smith v. Meridian Joint School District No. 2*, 128 Idaho 714, 918 P.2d 583 (1996); *Dekker v. Magic Valley Regional Medical Center*, 115 Idaho 332, 766 P.2d 1213 (1989).... The non-moving party "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). The Court considers only that material contained in affidavits and depositions which is based on personal knowledge and which would be admissible at trial.

Harris v. State, Dep't of Health & Welfare, 123 Idaho 295, 298, 847 P.2d 1156, 1159 (1992). Summary judgment is appropriate where a non-moving party fails to make a showing sufficient to establish the existence of an element essential to its case when it bears the burden of proof. *Id.*

Samuel v. Hepworth, Nungester & Lezamiz, Inc., 134 Idaho 84, 87-88 (2000).

On issues that will not be tried before a jury, a court ruling on summary judgment motions may draw probable inferences arising from the undisputed facts. *Losee v. Idaho Co.*, 148 Idaho 219, 222 (2009). Only conflicting facts must be viewed in favor of the non-moving party. *Id.* Summary judgment is proper unless “reasonable persons could reach differing conclusions or draw conflicting inferences from the evidence presented.” *Id.*

IV. ARGUMENT

Idaho Code § 55-811 provides:

Every conveyance of real property acknowledged or proved, and certified, and recorded as prescribed by law, from the time it is filed with the recorder for record, is constructive notice of the contents thereof to subsequent purchasers and mortgag(e)es.

Idaho Code § 55-812 provides:

Every conveyance of real property other than a lease for a term not exceeding one (1) year, is void as against any subsequent purchaser or mortgagee of the same property, or any part thereof, in good faith and for a valuable consideration, whose conveyance is first duly recorded.

Idaho Code § 55-812 is a race notice statute and provides that the first party to record a mortgage on a particular property shall have priority over any subsequent lien or mortgage that is recorded against the same property. *See Insight LLC v. Gunter*, 154 Idaho 777, 779 (2013).

An instrument first recorded takes precedence when the recording party is holder for valuable consideration and in good faith. *Sun Valley Land & Minerals, Inc. v. Burt*, 123 Idaho 862 (1993).

In this instance, the 2006 RE Loans Mortgage was recorded June 19, 2006, as Instrument Nos. 706471 and 706472. Reeves Aff., Ex. B. The 2007 RE Loans Mortgage was recorded March 15, 2007, as Instrument Nos. 724829 and 729834. *Id.*, Ex. D. The Pensco Mortgage was recorded August 6, 2008, as Instrument Nos. 756394, 756395 and 756396. *Id.*, Ex. G. The MF08 Mortgage was recorded August 6, 2008, as Instrument Nos. 756397, 756398 and 756399. *Id.*, Ex. J. On July 8, 2014, Valiant's Redemption Deed from the Bonner County Tax Assessor was recorded as Instrument No. 861460. Sykes Dec., Ex. 2.

Each of these transactions was entered into in good faith and for value. Thus, each of the foregoing Mortgages is entitled to a priority date based upon its record date and is senior to all other claims recorded later or subordinated.

A. Valiant's Right, Title And Interest In The Idaho Club Property Are Senior To Any Interest Claimed By JV.

JV recorded the JV Mortgage against the Idaho Club Property on October 24, 1995, as Instrument No. 474746; however, on June 19, 2006, as Instrument No. 706582, on March 15, 2007, as Instrument No. 706582, and on August 6, 2008, as Instrument No. 756402, JV executed and recorded subordination agreements subordinating the JV Mortgage to the 2006 RE Loans Mortgage, the 2007 RE Loans Mortgage, the Pensco Mortgage and the MF08 Mortgage. Thus, it is undisputed that any rights retained by JV in the Idaho Club Property pursuant to the JV Mortgage are junior in right, title and interest to Valiant's interest in the Idaho Club Property, and judgment should be entered accordingly.

B. Valiant's Right, Title And Interest In The Idaho Club Property Are Senior To Any Interest Of NIR.

It is unclear from the NIR Answer what interest NIR may claim in the Idaho Club Property. Notwithstanding, a search of the real property records of Bonner County revealed that on June 19, 2006 at 1:41 p.m. PDST, NIR recorded a Memorandum of Real Property Purchase and Sale Agreement ("NIR Memorandum of Purchase and Sale") by and between NIR and POBD that may have established a right to a vendor's lien under Idaho Code §§ 45-801, *et seq.* Sykes Dec., Ex. 10. No other recorded interest was found. However, on March 14, 2007, NIR executed and recorded a Subordination Agreement under which NIR expressly subordinated any interest it had in the Idaho Club Property to the 2007 RE Loans Mortgage. *Id.*, Ex. 11. Thus, NIR's lien is, as a matter of law, junior to the 2007 RE Loans Mortgage. Likewise, it appears from the real property records that NIR terminated the NIR Memorandum of Purchase and Sale as to the property encumbered by the Pensco Mortgage and the MF08 Mortgage and is, therefore, junior to those Mortgages.

Additionally, following a trial on the merits in the case of *Union Bank, N.A. v. Pend Oreille Bonner Development, LLC, et al.*, Bonner County Case No. CV 2011-135, Judge Griffin ruled that NIR's alleged vendor's lien (the same one that may be at issue in this case) was paid in full and had no value. Sykes Dec., Ex. 14, Findings, p. 4. Thus, any issue involving the validity of NIR's alleged vendor's lien was tried and it was found to be invalid as the underlying contract was paid in full. Under Idaho law, NIR is collaterally estopped from re-litigating that issue. *Rodriguez v. Department of Corrections*, 136 Idaho 90 (2001).

Based upon the foregoing, NIR's alleged lien should be judged junior to the 2007 RE Loans Mortgage, the Pensco Mortgage and the MF08 Mortgage.

C. **Valiant's Right, Title And Interest In The Idaho Club Property Are Senior To Any Interest Of VP.**

A thorough review of the real property records of Bonner County reveals that VP has no recorded interest in any of the Idaho Club Property recorded prior to the 2007 RE Loans Mortgage, the Pensco Mortgage and/or the MF08 Mortgage. VP's only alleged interests were recorded June 13, 2011 and May 20, 2014—several years after the 2007 RE Loans Mortgage (2007), the Pensco Mortgage (2008) and the MF08 Mortgage (2008)—and are junior to those Mortgages as a matter of law. Idaho Code § 55-812.

Further, VP can establish no basis under which any claim it may have in the Idaho Club Property is senior to Valiant's interests. Therefore, judgment should be entered finding that the 2007 RE Loans Mortgage, the Pensco Mortgage and the MF08 Mortgage are senior in right, title and interest to any interest claimed by VP in the Idaho Club Property.

E. **Valiant's Redemption Deed Has Priority Over JV, NIR And VP.**

On or about July 7, 2014, Valiant paid Bonner County \$1,665,855.14 to redeem a portion of the Idaho Club Property from property taxes owed to Bonner County. On July 8, 2014, the Redemption Deed in favor of Valiant was recorded as Instrument No. 861460, and re-recorded August 22, 2014 as Instrument No. 863298.

Under Idaho law, a redemption deed is not a tax deed given by the county upon a sale to a purchaser; it is a deed issued to a redemptioner in consideration for the payment of delinquent taxes. *Hardy v. McGill*, 137 Idaho 280, 286 (2012); *Thrusty v. Ray*, 73 Idaho 232, 236 (1952). A redemption deed cancels and terminates all rights of the county in and to the land acquired by

virtue of the treasurer's tax deed. *Id.*; see also Idaho Code §§ 63-1124 and 63-1140. The delinquent taxes paid by the redemptioner become part of the indebtedness protected contract.

Idaho Code § 45-114 provides:

One who has a lien inferior to another, upon the same property, has a right:

1. To redeem the property in the same manner as its owner might, from the superior lien; and,
2. To be subrogated to all the benefits of the superior lien, when necessary for the protection of his interests upon satisfying the claim secured thereby.

Idaho Code § 45-105 provides:

Where the holder of a special lien is compelled to satisfy a prior lien for his own protection, he may enforce payment of the amount so paid by him, as a part of the claim for which his own lien exists.

Pursuant to Idaho Code §§ 63-1124, 63-1140, 45-105 and 45-114 and *Hardy*, when the holder of a lien, such as Valiant which holds the 2007 RE Loans Mortgage against the Idaho Club Property, pays back-taxes to redeem property, it is entitled to enforce the indebtedness as part of its own contract and the amount paid is entitled to the priority of the existing debt/mortgage, at a minimum.

Under *Hardy*, Valiant is entitled to include the amount paid to Bonner County to redeem the property with the amount due under the 2007 RE Loans Note and that amount is entitled to the priority date of the 2007 RE Loans Mortgage (March 15, 2007), at a minimum. As such, the amount paid by Valiant should be deemed senior to any interest of JV, NIR and VP as set forth above.

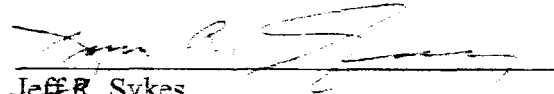
V.
CONCLUSION

Based upon the foregoing argument and legal authority, and whatever further evidence may be presented at the hearing of Valiant's Motion, Valiant respectfully requests this Court to enter judgment that Valiant's 2006 RE Loans Mortgage, 2007 RE Loans Mortgage, Pensco Mortgage and MF08 Mortgage are senior in right, title and interest in the Idaho Club Property to any claim to the Idaho Club Property by JV, NIR and VP.

DATED this 16th day of January 2015.

McCONNELL WAGNER SYKES & STACEY^{PLLC}

BY:



Jeff R. Sykes

Attorneys For Valiant Idaho, LLC

CERTIFICATE OF SERVICE

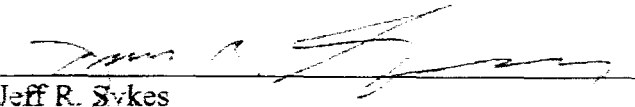
I HEREBY CERTIFY that on the 16th day of January 2015, a true and correct copy of the foregoing document was served by the method indicated below upon the following party(ies):

Bruce A. Anderson, Esq. Isaesser Jarzabek Anderson Elliott & MacDonald, Chtd 320 East Neider Avenue, Suite 102 Coeur d' Alene, Idaho 83815 Telephone: 208.667.2900 Facsimile: 208.667.2150 <i>Counsel For Jacobson, Lazar and Sage Holdings</i>	[<input checked="" type="checkbox"/>] U.S. Mail [<input type="checkbox"/>] Hand Delivered [<input type="checkbox"/>] Facsimile [<input type="checkbox"/>] Overnight Mail [<input type="checkbox"/>] Electronic Mail <u>brucea@ejame.com</u>
Brent C. Featherston, Esq. Featherston Law Firm, Chtd 113 South Second Avenue Sandpoint, Idaho 83864 Telephone: 208.263.6866 Facsimile: 208.263.0400 <i>Counsel For Pensco/Mortgage Fund</i>	[<input checked="" type="checkbox"/>] U.S. Mail [<input type="checkbox"/>] Hand Delivered [<input type="checkbox"/>] Facsimile [<input type="checkbox"/>] Overnight Mail [<input type="checkbox"/>] Electronic Mail <u>bct@featherstonlaw.com</u>
Gary A. Finney, Esq. Finney Finney & Finney, P.A. 120 East Lake Street, Suite 317 Sandpoint, Idaho 83864 Telephone: 208.263.7712 Facsimile: 208.263.8211 <i>Counsel For J.V., LLC</i>	[<input checked="" type="checkbox"/>] U.S. Mail [<input type="checkbox"/>] Hand Delivered [<input type="checkbox"/>] Facsimile [<input type="checkbox"/>] Overnight Mail [<input type="checkbox"/>] Electronic Mail <u>garyfinney@finneylaw.net</u>
John A. Finney, Esq. Finney Finney & Finney, P.A. 120 East Lake Street, Suite 317 Sandpoint, Idaho 83864 Telephone: 208.263.7712 Facsimile: 208.263.8211 <i>Counsel For Pucci Construction/ACI Northwest</i>	[<input checked="" type="checkbox"/>] U.S. Mail [<input type="checkbox"/>] Hand Delivered [<input type="checkbox"/>] Facsimile [<input type="checkbox"/>] Overnight Mail [<input type="checkbox"/>] Electronic Mail <u>johnfinney@finneylaw.net</u>
D. Toby McLaughlin, Esq. Berg & McLaughlin 414 Church Street, Suite 203 Sandpoint, Idaho 83864 Telephone: 208.263.4748 Facsimile: 208.263.7557 <i>Counsel For Idaho Club HOA/Panhandle Mngmnt</i>	[<input checked="" type="checkbox"/>] U.S. Mail [<input type="checkbox"/>] Hand Delivered [<input type="checkbox"/>] Facsimile [<input type="checkbox"/>] Overnight Mail [<input type="checkbox"/>] Electronic Mail <u>toby@sandpointlaw.com</u>

Susan P. Weeks, Esq. James, Vernon & Weeks, PA 1626 Lincoln Way Coeur d'Alene, Idaho 83814 Telephone: 208.667.0683 Facsimile: 208.664.1684 <i>Counsel For VP Incorporated/North Idaho Resorts</i>	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Electronic Mail sweeks@jvwlaw.net
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With two copies via United States Mail to:

Honorable Barbara A. Buchanan
 Judge of the First Judicial District
 Bonner County Courthouse
 215 South First Avenue
 Sandpoint, Idaho 83864


 Jeff R. Sykes