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Vol. **21** IN THE OF **85**
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

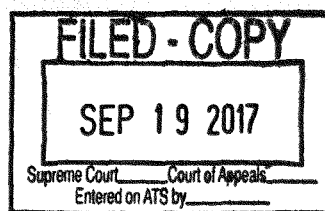
CLERK'S RECORD ON APPEAL

*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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Writ of Execution Against VP, Incorporated for Boundary County (268811) – filed 10/31/2016.....	Vol. LIX - 7285

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@mwsllawyers.com
sykes@mwsllawyers.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 ORELLE 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

DECLARATION OF
JEFF R. SYKES IN SUPPORT
OF VALLANT IDAHO, LLC'S
MOTION FOR ENTRY OF DEFAULT
AGAINST THIRD PARTY DEFENDANT
BAR K, INC.

Honorable Barbara A. Buchanan

DECLARATION OF JEFF R. SYKES IN SUPPORT OF
VALLANT IDAHO, LLC'S MOTION FOR ENTRY OF DEFAULT
AGAINST THIRD PARTY DEFENDANT BAR K, INC. - Page 1
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ORIGINAL
2342

VALLIANT IDAHO, LLC,
an Idaho limited liability company,

Third Party Plaintiff,

vs.

PEND OREILLE BONNIER 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;
MONTAHERO 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.

Pursuant to Rule 7(d) of the Idaho Rules of Civil Procedure and Idaho Code § 9-1406,

Jeff R. Sykes declares as follows:

1. I am an attorney at law duly licensed to practice before this Court, and all Courts in the State of Idaho. I am member of the law firm of McConnell Wagner Sykes & Stacey PLLC, attorneys for Defendant/Counter-Claimant/Cross-Claimant/Third Party Plaintiff Valiant Idaho, LLC ("Valiant"). I make this Declaration in support of the Motion For Entry of Default Against Third Party Defendant Bar K, Inc. ("Bar K") filed concurrently and upon my personal knowledge.

2. Bar K was and is a California corporation in goodstanding, with its principal place of business in the City of Lafayette, County of Contra Costa, State of California.

3. The address most likely to provide notice of said default and default judgment to Bar K is:

Mr. Kelly William Ng
Registered Agent and President of Bar K, Inc
c/o Lompoc (USP)
3901 Klein Boulevard
Lompoc, California 93436

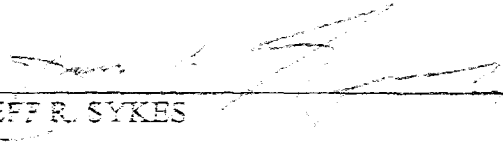
4. Bar K was personally, duly and regularly served with Valiant's Counterclaim, Cross-Claim and Third Party Complaint ("3rd Party Complaint") on January 8, 2015 through its registered agent and President, as set forth on the Proof of Service – Summons on file herein, a copy of which is attached as Exhibit 1.

5. The time for Bar K to appear and plead in response to the 3rd Party Complaint has expired and Bar K has not pled further in any manner.

6. The 3rd Party Complaint is, by Idaho Rule of Civil Procedure 8(d), taken as admitted by Bar K for failure to appear and plead further.

I HEREBY CERTIFY AND DECLARE, under penalty of perjury pursuant to the laws of the State of Idaho, that the foregoing is true and correct.

DATED this 29th day of January 2015.



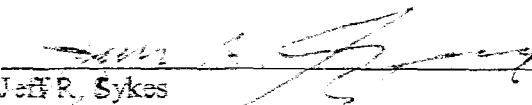
JEFF R. SYKES

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 29th 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 <u>brucea@eiame.com</u></p>
<p>Brent C. Featherston, Esq. Featherston Law Firm, Chtd 113 South Second Avenue Sandpoint, Idaho 83854 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 <u>bcf@featherstonlaw.com</u></p>
<p>Gary A. Finney, Esq. Finney Finney & Finney, P.A. 120 East Lake Street, Suite 317 Sandpoint, Idaho 83854 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 <u>gary.finney@finneylaw.net</u></p>
<p>John A. Finney, Esq. Finney Finney & Finney, P.A. 120 East Lake Street, Suite 317 Sandpoint, Idaho 83854 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 <u>johnfinney@finneylaw.net</u></p>
<p>D. Toby McLaughlin, Esq. Berg & McLaughlin 414 Church Street, Suite 203 Sandpoint, Idaho 83854 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 <u>tobw@sandpointlaw.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 sweeks@jvwlaw.net</p>
--	--



Jeff R. Sykes

ATTORNEY (Name and Address) 6800	FOR COURT USE ONLY
McConnell Wagner Sykes & Stacey 755 W. Front St., Suite 200 Boise, ID 83702	STATE OF IDAHO COUNTY OF BONNER FIRST JUDICIAL DISTRICT
ATTORNEY FOR: Genesis Golf Builders, Inc. et al	2015 JAN 23 AM 11 24
NAME OF COURT, JUDICIAL DISTRICT or BRANCH COURT, IF ANY: First Judicial District Court-Idaho , ID	CLERK OF DISTRICT COURT
PLAINTIFF: Genesis Golf Builders, Inc. et al	COURT CASE NO. CV-09-1319
DEFENDANT: Pand Oreille Bonner Development, LLC et al	
Proof of Service - Summons	LEVYING OFFICER FILE NO. 2014006135

1. At the time of the service I was at least 18 years of age and not a party to this action.
2. I served copies of the:
 - f. other (specify documents): **Counterclaim, Cross-Claim, Summons on Third Party Complaint, Third Party Complaint for Judicial Foreclosure**
3. a. Party served: **Bar K, Inc., A California Corporation**
 b. Person (other than the party in item 3a) served on behalf of the entity or as an authorized agent (and not a person under item 5b on whom substituted service was made): **By serving Kelly William Ng, President.**
4. Address where party was served: **3901 Klein Blvd. (Lompoc USP)
Lompoc, CA 93436**
5. I served the party:
 - a. by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive service of the process for the party (1) on: **01/08/2015** (2) at: **08:45 AM.**

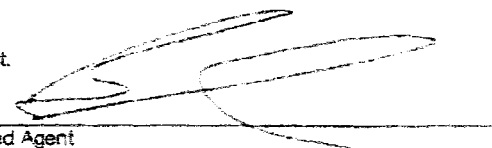
7. Person who served papers:
 - a. Name: **Senior Deputy Brandon Collins, 2773**
 - b. Address: **Sheriff's Civil Bureau 312 East Cook St. P.O. Box 5049 Santa Maria, CA 93456**
 - c. Telephone Number: **(805) 346-7430**
 - d. The fee for service was: **\$35.00**

9. I am a California sheriff or marshal and I certify that the foregoing is true and correct.

Thursday, January 08, 2015

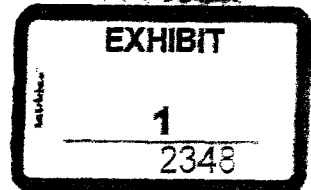
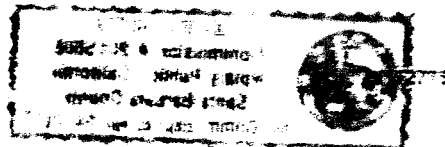
Hearing: **<No information>**

Remarks



 Sheriff's Authorized Agent
 Bill Brown, Sheriff

COPY



First Judicial District Court-Idaho

, ID

*** This certificate ONLY for out of state courts ***

CERTIFICATE OF ACKNOWLEDGEMENT

State of California
County of Santa Barbara

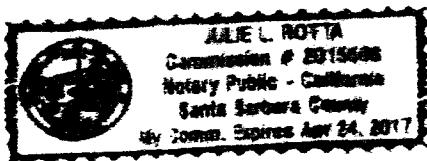
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

On 6-8-15, before me Julie L. Roffa
personally appeared Brandon Collins, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY of PERJURY under the laws of the state of California that the foregoing paragraph is true and correct.

(NOTARY SEAL)

WITNESS my hand and official seal.



Julie L. Roffa

Richard L. Stacey, ISB #6800
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@lawidaho.com
nicholson@lawidaho.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

SUMMONS ON
THIRD PARTY COMPLAINT
BROUGHT BY
THIRD PARTY PLAINTIFF
VALIANT IDAHO, LLC
[Bar K, Inc.]

Honorable Michael J. Griffin

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

SUMMONS ON THIRD PARTY COMPLAINT BROUGHT
BY THIRD PARTY PLAINTIFF VALIANT IDAHO, LLC
[Bar K, Inc.] - Page 1
[E:\10432.002\PLD\Summons-BarK 140813.doc]

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;
MONTAHEHO 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.

**NOTICE: YOU HAVE BEEN SUED BY THE ABOVE-NAMED THIRD PARTY
PLAINTIFF. THIS COURT MAY ENTER JUDGMENT AGAINST YOU
WITHOUT FURTHER NOTICE UNLESS YOU RESPOND WITHIN
TWENTY (20) DAYS. READ THE INFORMATION BELOW.**

**SUMMONS ON THIRD PARTY COMPLAINT BROUGHT
BY THIRD PARTY PLAINTIFF VALLANT IDAHO, LLC**

[Bar K, Inc.] - Page 2

IN:0482.002PLD\Ssummons-BarK 140813.doc

TO: **BAR K, INC.**
c/o Kelly Ng, Registered Agent
201 Lafayette Circle, 2nd Floor
Lafayette, California 94549

You are hereby notified that in order to defend this lawsuit, an appropriate written response must be filed with the above-designated Court at **215 South First Avenue, Sandpoint, Idaho 83864, 208.265.1445**, within twenty (20) days after service of this Third Party Summons ("Summons") upon you. If you fail to so respond, this Court may enter judgment against you as demanded by the Third Party Plaintiff in its Third Party Complaint ("Complaint").

A copy of the Complaint is served with this Summons. If you wish to seek the advice or representation by an attorney in this matter, you should do so promptly so that your written response, if any, may be filed in time and other legal rights protected.

An appropriate written response requires compliance with Rule 10(a)(1) and other Idaho Rules of Civil Procedure, and shall also include:

1. The title and number of this case.
2. If your response is an answer to the Complaint, it must contain admissions or denials of the separate allegations of the Complaint and other defenses you may claim.
3. Your signature, mailing address and telephone number, or the signature, mailing address and telephone number of your attorney.
4. Proof of mailing or delivery of a copy of your response to Third Party Plaintiff's attorney, as designated above.

To determine whether you must pay a filing fee with your response, contact the Clerk of the above-named Court.

DATED this ^{31st} ~~30th~~ day of ^{Sept} ~~Aug~~ 2014.

R. ANN DUSTON-SATER
CLERK OF THE DISTRICT COURT

By: 
Deputy Clerk

SUMMONS ON THIRD PARTY COMPLAINT BROUGHT
BY THIRD PARTY PLAINTIFF VALIANT IDAHO, LLC

[Bar K, Inc.] - Page 3

IN10432.002PLD\Ssummons-BarK 140813.doc

CLERK OF DISTRICT COURT
JAN 13 2015 3 09 11 PM



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 FOR ENTRY OF DEFAULT
AGAINST BAR K, INC.

Honorable Barbara A. Buchanan

AND ALL RELATED COUNTER,
CROSS AND THIRD PARTY ACTIONS
PREVIOUSLY FILED HEREIN
[including Valiant Idaho, LLC's
Counterclaim, Cross-Claim and Third Party
Complaint Filed August 19, 2014].

IN THIS ACTION, Third Party Defendant Bar K, Inc. ("Bar K") having been personally served on January 8, 2015 with Valiant Idaho, LLC's Counterclaim, Cross-Claim and Third Party Complaint ("3rd Party Complaint"), and the time for Bar K to have appeared and plead in response to the 3rd Party Complaint has expired and Bar K has not pled further in any manner;

ORDER FOR ENTRY OF DEFAULT AGAINST
BAR K, INC. - Page 1


D:\94727\PLD\CV42009-1310\Default-Bar K - Order 150128.doc

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2353

NOW, THEREFORE, IT IS ORDERED AND THIS DOES ORDER, that the default of

Bar K be entered herein.

DATED this 3 day of February 2015


Honorable Barbara A. Buchanan
Judge of the First Judicial District

CERTIFICATE OF SERVICE

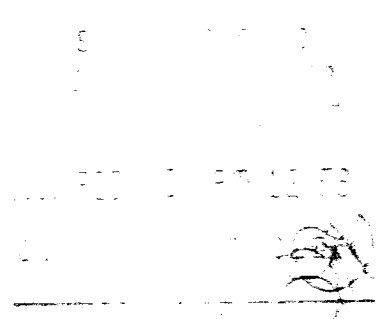
I HEREBY CERTIFY that on the 3 day of February 2015, a true and correct copy of the foregoing document was served by the method indicated below upon the following party(ies):

Bruce A. Anderson, Esq. 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>	<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@evuma.com
<u>Bar K, Inc.:</u> Bar K, Inc. c/o Kelly William Ng Registered Agent and President c/o Lompoc (USP) 3901 Klein Boulevard Lompoc, California 93436	<input checked="" type="checkbox"/> U.S. Mail
Brent C. Featherston, Esq. Featherston Law Firm, Chtd 113 South Second Avenue Sandpoint, Idaho 83854 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 bcf@featherstonlaw.com

<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</p> <p>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 A CI 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</p> <p>johnfinney@finneylaw.net</p>
<p>D. Toby McLaughlin, Esq. Berg & McLaughlin 414 Church Street, Suite 203 Sandpoint, Idaho 83864 Telephone: 208.263.4743 Facsimile: 208.263.7557 <i>Counsel For Idaho Club HOA/Parhandle 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</p> <p>toby@sandpointlaw.com</p>
<p>Richard L. Stacey, Esq. Jeff R. Sykes, 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</p> <p>stacey@mwslawyers.com sykes@mwslawyers.com</p>
<p>Susan P. Weeks, Esq. James, Vernon & Weeks, PA 1626 Lincoln Way Coeur d'Alene, Idaho 83814 Telephone: 208.667.0683 Facsimile: 208.664.1634 <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</p> <p>sweeks@jvwlaw.net</p>

[Handwritten Signature]

Clerk of the Court



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 ORELLE BONNER
DEVELOPMENT, LLC,
a Nevada limited liability company, *et al.*,

Defendants

Case No. CV-09-1810

CLERK'S ENTRY OF DEFAULT
AGAINST BAR K, INC.

Honorable Barbara A. Buchanan

AND ALL RELATED COUNTER,
CROSS AND THIRD PARTY ACTIONS
PREVIOUSLY FILED HEREIN
[including Valiant Idaho, LLC's
Counterclaim, Cross-Claim and Third Party
Complaint Filed August 19, 2014].


IN THIS ACTION, Third Party Defendant Bar K, Inc. ("Bar K") having been personally served on January 8, 2015 with Valiant Idaho, LLC's Counterclaim, Cross-Claim and Third Party Complaint ("3rd Party Complaint"); and the time for Bar K to have appeared and plead in response to the 3rd Party Complaint has expired and Bar K has not pled further in any manner;

ORIGINAL
2336

DEFAULT IS HEREBY ENTERED and filed according to law.

WITNESS MY HAND AND SEAL of this Court on the 3 day of February 2015.

MICHAEL W. ROSEDALE
CLERK OF THE DISTRICT COURT

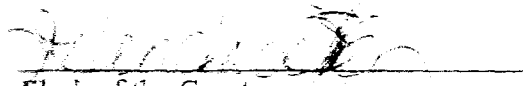

Deputy Clerk

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 3 day of February 2015, a true and correct copy of the foregoing document was served by the method indicated below upon the following party(ies):

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Bar K, Inc.: Bar K, Inc. c/o Kelly William Ng Registered Agent and President c/o Lompoc (USP) 3901 Klein Boulevard Lompoc, California 93436	<input checked="" type="checkbox"/> U.S. Mail
Brent C. Featherston, Esq. Featherston Law Firm, Chtd 113 South Second Avenue Sandpoint, Idaho 83864 Telephone: 208.253.6866 Facsimile: 208.253.0400 <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 bcf@featherstonlaw.com

<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>
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<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 toby@sandpointlaw.com</p>
<p>Richard L. Stacey, Esq. Jeff R. Sykes, 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 stacey@mwwsslawvers.com sykes@mwwsslawvers.com</p>
<p>Susan P. Weeks, Esq. James, Vernon & Weeks, PA 1626 Lincoln Way Coeur d'Alene, Idaho 83314 Telephone: 208.667.0633 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 sweeks@jvwlaw.net</p>



Clerk of the Court

Susan P. Weeks, ISB No. 4255
JAMES, VERNON & WEEKS, PA
1526 Lincoln Way
Coeur d'Alene, Idaho 83814
Telephone: (208) 667-0683
Facsimile: (208) 664-1684
sweeks@jvwlaw.net

Attorneys for Defendants North Idaho Resorts, LLC and VP, Incorporated

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-2009-01810

DEFENDANTS NORTH IDAHO
RESORTS, LLC and VP
INCORPORATED'S MEMORANDUM IN
OPPOSITION TO VALIANT IDAHO,
LLC'S MOTION FOR SUMMARY
JUDGMENT

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

I. INTRODUCTION

In this matter, Valiant Idaho, LLC ("Valiant") moves for summary judgment based upon causes of action assigned to it by R.E. Loans, LLC ("R.E. Loans"), Mortgage Fund '08, LLC ("MF08") and Pensco Trust Co. ("Pensco"). Valiant seeks foreclosure of certain mortgages

securing promissory notes which it claims are in default for each of these entities against North Idaho Resorts, LLC ("NIR"), VP, Incorporated ("VP") and JV, LLC ("JV"). By way of its motion, Valiant seeks a judgment that certain mortgages are senior to in right and priority to any interest claimed by NIR, VP, and JV in the Idaho Club Property. This motion must be denied.

II. STANDARD OF REVIEW

In *Comer v. Hodges*, 157 Idaho 19, 23, 333 P.3d 130, 134 (2014), our Supreme Court reiterated:

"On appeal from the grant of a motion for summary judgment, this Court utilizes the same standard of review used by the district court originally ruling on the motion." *Arregui v. Gallegos-Mata*, 153 Idaho 801, 804, 291 P.3d 1000, 1003 (2012). Summary judgment is proper "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Idaho Rule of Civil Procedure 56(c). "When considering whether the evidence in the record shows that there is no genuine issue of material fact, the trial court must liberally construe the facts, and draw all reasonable inferences, in favor of the nonmoving party." *Dulaney v. St. Alphonsus Reg'l Med. Ctr.*, 137 Idaho 160, 163, 45 P.3d 816, 819 (2002). "If the evidence reveals no disputed issues of material fact, then only a question of law remains, over which this Court exercises free review." *Lapham v. Stewart*, 137 Idaho 582, 585, 51 P.3d 396, 399 (2002).

III. ARGUMENT

A. North Idaho Resort's Interest and Priority

Valiant claims it does not know the nature of NIR's claim even though Valiant named NIR as a party that claimed an interest. NIR's interest is that of a vendor. The vendor lien may be a legal concept that has existed for a long period. In the recent decision of *Harris v. Bank of Commerce*, 154 Idaho 356, ___, 298 P.3d 1060, 1064 (2013), our Supreme Court held:

"One who sells real property has a vendor's lien thereon, independent of possession, for so much of the price as remains unpaid and unsecured otherwise than by the personal obligation of the buyer." I.C. § 45-801. Vendor's liens "are valid against every one claiming under the feitor, except a purchaser or assignor in good faith and for value." I.C. § 45-803. With respect to the Harris' claimed vendor's lien in the property, there must be evidence that the

Bank had notice that the purchase price for the land remained unpaid. See *Benz v. D.L. Evans Bank*, 152 Idaho 215, 228, 268 P.3d 1167, 1180 (2012) (where bank had notice that contract purchaser of property had paid a portion of the purchase price, bank was not a good faith encumbrancer).

Good faith in section 45-803 means lack of actual or constructive knowledge of the lien. *Benz v. D.L. Evans Bank*, 152 Idaho 215, 228, 268 P.3d 1167, 1180 (2012).

In its statement of undisputed facts, Valiant identifies the sources of its interests and priority dates and claims it is undisputed based upon certain recorded documents that its assigned interests are senior in right and priority to NIR. However, it is disputed that Valiant holds a senior lien position to NIR based upon the loans and mortgages identified by it.

The documents of record with the Bonner County Recorder attached to both the Jeff R. Sykes' Declaration are not certified as required by Rule 902, I.R.E., and are therefore inadmissible. Despite this, the substantive arguments of Valiant are addressed herein without waiver of this defect.

It must also be noted that the legal descriptions for the mortgages through which Valiant claims foreclosure do not match the legal descriptions of the property it identified as the Idaho Club Property. No foundation is laid or presented to the court that the property upon which it seeks foreclosure is the same property in the various mortgages.

1. First Loan on Idaho Club Property

The first loan secured by a mortgage on the Idaho Club Property related to money owed by VP to JV. On October 20, 1995, a Mortgage was recorded as Instrument No. 474746 between VP and JV.¹ Sykes Declaration, Exhibit 6.

¹ The legal description included in this mortgage, identified as being relevant to the Court's decision, is not the same legal description identified by Valiant as the "Idaho Club Property".

2. 2006 RE Loans Note and Mortgage/Loan No. P0094

The next mortgage identified by Valiant to its motion is a note secured by Mortgage executed by Pend Oreille Bonner Development Holdings, Inc., a Nevada Corporation, in favor of R.E. Loans, LLC on May 31, 2006, for \$20,500,000. Reeves Declaration, Exhibit A. This Loan is identified as Loan No. P0094. A mortgage securing Loan No. P0094 was recorded by Sandpoint Title Insurance on June 19, 2006 as Instrument Nos. 706471 and 706472. JV subordinated to this mortgage. Sykes Declaration, Exhibit 7. The legal description appears much broader than the Idaho Club Property identified by Valiant.

This mortgage in the legal description identified Title Commitment No. 41847 and the fact of the mortgage identified 43147 and Loan No. P0094 on the face of the mortgage. In his declaration, Charles Reeves claims he executed these documents on behalf of Pend Oreille Bonner Development, LLC ("POBD"). This statement is not supported by the documents. The documents themselves establish for summary judgment they were executed on behalf of Pend Oreille Bonner Development Holding, Inc., a separate entity. Valiant has placed nothing before this court indicating it was assigned any interest of Pend Oreille Bonner Development Holding, Inc. The assignment made by R.E. Loans to Valiant was of its rights arising under Instrument No. 724329, which was re-recorded as Instrument No. 724334. Sykes Declaration, Exhibit 3. The inference that must be drawn for purposes of this summary judgment is that Valiant has no claim of seniority based upon this loan and recorded mortgage against NIR, VP or JV.

Further, the inference in the record is this note was discharged and released. In a subsequent subordination by JV, LLC, the second subordination specifically indicated:

Valiant has failed to introduce any evidence regarding the boundaries of the property as it relates to the Idaho Club Property identified in Exhibit 1, Sykes Declaration.

THAT, WHEREAS, V.P. Inc. did execute a Mortgage dated October 20, 1995, covering: the Legal Description for the mortgaged real estate is the same as described in said Mortgage less any partial "released" by the Jr. Mortgagee.

See attached Exhibit "A"

to secure a Note in the original sum of \$2,264,500.00 in favor of JV L.L.C., which Mortgage was recorded on October 24, 1995 as Instrument No. 474746, records of Bonner County, ID. This mortgage was subordinated by an agreement recorded June 19, 2006 as Instrument No. 706474 and re-recorded June 20, 2006 as Instrument No. 706582 to a Mortgage and Note in the sum of \$20,500,000.00 in favor of R.E. Loans, LLC., hereinafter referred as 'Lender', which Mortgage was recorded on June 19, 2006 as Instrument No. 706471, records of said County; and fixture filing as Instrument No. 706472 and UCC-1 as Instrument No. 706473, which Mortgage and Note (\$20,500,000.00) are to be discharged and released and to be replaced by a new Note and Mortgage securing the original sum of \$20,200,000.00. (Emphasis added.)

Given the above facts, the inference in the record is that the 2006 Mortgage associated with Loan P0094 provides no support to Valliant's claim to a senior position.

3. 2007 RE Loan Note and Mortgage Loan No. P0099 of NER

The next mortgage upon which Valliant relies upon for a claim of seniority is a Promissory Note Secured by Mortgage dated March 6, 2007 executed by POBD in favor of R.E. Loans. Reeves Declaration, Exhibit C. This document identifies the loan which it is associated with as P0099. The mortgage was recorded March 15, 2007, as Instrument Nos. 724829 and 724834. Sykes Declaration, Exhibit D. The mortgage contains a legal description describing four property sections, with multiple parcel numbers in each section, Idaho Club is identified by Valliant as 23 parcels of property. Only the first two legal descriptions match between the mortgage and the property identified by Valliant as the Idaho Club property. The legal description on the 2007 mortgage and the face of the 2007 mortgage identify Escrow No. 49214-NA associated with the loan.

The only portion of the legal description in the mortgage which matches the Idaho Club Property identified by Valiant as the subject of its foreclosure action are Section A, Parcels 1 and 2. No foundation is provided by Valiant that the remaining parcels of property described by it as the Idaho Club property are encompassed by this mortgage.

On June 19, 2006, Sandpoint Title Insurance filed a Memorandum of Real Property Purchase and Sale Agreement. This Purchase and Sale Agreement identified an unrecorded Third Amended and Restated Real Property Purchase and Sale Agreement which concerned the property described on the attached exhibit, and indicated the purchaser, Pend Oreille Bonner Development Holdings, Inc., agreed to purchase the property subject to the provisions of the unrecorded written agreement.

NIR executed a subordination agreement in favor of R.E. Loans subordinating its superior interest arising under the Third Restated Purchase and Sale Agreement to R.E. Loan's mortgage recorded as Instrument No. 724829-724829. This subordination agreement included the number 49214-NA. It was recorded also recorded March 15, 2007 as Instrument No. 724832. Sykes Declaration, Exhibit 11. JV also signed a subordination agreement, identified as Second Subordination Agreement, recorded as Instrument No. 724833, which also contained the same Order No. 49214-NA. It was recorded as Instrument No. 724833. Sykes Declaration, Exhibit 8.

Valiant was assigned this mortgage. Sykes affidavit, Exhibit 3. Valiant claims it has a senior lien position based upon this loan. However, the evidence in the record raises an inference this loan was paid off by a subsequent loan. In a July 31, 2008, loan closing statement referencing a subsequent loan identified as Loan No. P0107 provided to Jim Berry, Manager of JV, the closing statement reflected that the loan was paid. Berry Affidavit filed August 12, 2013.

Exhibit A. (A courtesy copy of Exhibit A is appended to this brief.) The reasonable inference from this evidence is that the loan was paid by subsequent loan proceeds. Valiant is not entitled to summary judgment regarding this loan.

4. The Pensco Note Loan No. P0106

Valiant next turns to a Note Secured by Mortgage executed by POD in favor of Pensco Trust on August 1, 2008, for \$2,700,000.00. This loan was assigned Loan No. P0106. Reeves Declaration, Exhibit F. A mortgage was filed regarding this loan on August 6, 2008. Reeves Declaration, Exhibit G. The note and mortgage were assigned to Valiant. Sykes Declaration, Exhibit 4.

JV subordinated to this loan. Sykes Declaration, Exhibit 9. NIR did not subordinate to this mortgage. The evidence in the July 31, 2008, loan closing statement provided as Exhibit A to the Berry Affidavit raises the inference this loan was paid with subsequent loan proceeds from Loan No. P0107. Valiant has no superior right to NIR and JV based upon this loan.

5. The MF08 Note and Mortgage Loan No. P0107

The last debt upon which Valiant relies for priority is an All-Inclusive Note Secured by Mortgage for \$21,930,000.00 executed by POBD in favor of MF08. The note indicates this note was associated with Loan No. P0107. Reeves Declaration, Exhibit I. The mortgage was recorded August 6, 2008. Reeves Affidavit Exhibit J. The closing statement placed in the record by JV relates to this loan. Neither NIR nor JV subordinated to this loan. Valiant has no superior right to NIR and JV based upon this loan.

6. Res Judicata against NIR

Valiant claims it is unclear what right, title or interest NIR claims in the property that is the subject of the foreclosure. Interestingly, while advancing this argument Valiant sued NIR,

acknowledging that NIR claimed a right, title and interest in the property arising from the recorded memorandum of sale. Further, in a summary judgment proceeding filed by R.E. Loans in *Union Bank, N.A. v Pend Oreille Bonner Development, LLC, et al.*, Bonner County Case No. CV 20-11,135, R.E. Loans acknowledged that NIR has a vendor's lien arising from a March 9, 2006 sale of real property to POBD evidenced by a Memorandum of Real Property Purchase and Sale Agreement recorded as Bonner County Instrument No. 706475. (Request for Judicial Notice, Undisputed Fact 2.)

Regarding res judicata, our Supreme Court held in *Tabor Title Co. v Stanton*, 144 Idaho 119, 123, 157 P.3d 613, 617 (2007) :

The doctrine of res judicata covers both claim preclusion (true res judicata) and issue preclusion (collateral estoppel). *Hindmarsh v. Mock*, 138 Idaho 92, 94, 57 P.3d 803, 805 (2002). Claim preclusion bars a subsequent action between the same parties upon the same claim or upon claims "relating to the same cause of action ... which might have been made." *Id.* Issue preclusion protects litigants from litigating an identical issue with the same party or its privy. *Rodriguez v. Dep't of Corr.*, 136 Idaho 90, 92, 29 P.3d 401, 403 (2001). Separate tests are used to determine whether claim preclusion or issue preclusion applies. See *D.A.R., Inc. v. Sheffer*, 134 Idaho 141, 144, 997 P.2d 602, 605 (2000). Res judicata serves three fundamental purposes: (1) it preserves the acceptability of judicial dispute resolution against the corrosive disrespect that would follow if the same matter were twice litigated to inconsistent results; (2) it serves the public interest in protecting the courts against the burdens of repetitious litigation; and (3) it advances the private interest in repose from the harassment of repetitive claims. *Hindmarsh*, 138 Idaho at 94, 57 P.3d at 805 (quoting *Aldape v. Akins*, 105 Idaho 254, 257, 668 P.2d 130, 133 (Ct.App.1983)).

Regarding the differences between the two theories, the Supreme Court held:

Five factors are required in order for issue preclusion to bar the relitigation of an issue determined in a prior proceeding: (1) the party against whom the earlier decision was asserted had a full and fair opportunity to litigate the issue decided in the earlier case; (2) the issue decided in the prior litigation was identical to the issue presented in the present action; (3) the issue sought to be precluded was actually decided in the prior litigation; (4) there was a final judgment on the merits in the prior litigation; and (5) the party against whom the issue is asserted was a party or in privity with a party to the litigation. *Rodriguez*, 136 Idaho at 93, 29 P.3d at 404.

Id. at 124, 157 P.3d at 618.

As to claim preclusion, the Supreme Court held:

For claim preclusion to bar a subsequent action there are three requirements: (1) same parties; (2) same claim; and (3) final judgment. *Hindmarsh*, 138 Idaho at 94, 57 P.3d at 805; *Farmers Nat'l Bank v. Shirey*, 126 Idaho 63, 68, 878 P.2d 762, 757 (1994). Ticor argues that no element of claim preclusion has been met in this case.

Id. at 124, 157 P.3d at 618.

The present issue does not relate to claim preclusion. The Court must determine if the elements of issue preclusion are met. The *Union Bank* matter is on appeal on all aspects of Judge Griffin's decision against NIR. Res judicata requires the existence of a final judgment before precluding relitigation of issues underlying the judgment. Our Court of Appeals held that a judgment reversed on appeal resulted in lack of a "final" judgment. *Capps v. Wood*, 117 Idaho 614, 790 P.2d 395 (Ct.App.1990). Given this holding, the doctrine of claim preclusion should not apply to NIR's claims in this case.²

7. Notice of Lien

Valiant also claims there was no constructive notice that NIR had a vendor's lien due to recording of a document titled "Partial Termination of Real Property Purchase and Sale Agreement and Partial Termination of Memorandum of Real Property Purchase and Sale Agreement". This release contains two separate Exhibit "A"'s with different legal descriptions. The first Exhibit "A" releases a small portion of property encompassed in the Memorandum of

² There is a clear split of authority within the various jurisdictions regarding whether a final judgment exists for purposes of res judicata in the presence on an appeal on the issue which is the subject of the issue preclusion. 50 CJS JUDGMENTS § 956 (database updated December 2014).

Sale. The second Exhibit "A" legal description encompassed the entire NIR legal description in the Memorandum of Sale. One issue in *Union Bank* was whether Union Bank's predecessor had actual knowledge that the partial release was erroneous. The same issue exists in this case.

The partial termination of NIR's vendor's lien (Sykes Dec., Exhibit 12) was part of a series of documents recorded in connection with funding of a loan from R.E. Loans. The partial release (Inst. No. 724331) was recorded immediately prior to NIR's subordination of its vendor's interest to R.E. Loans (Inst. No. 724332). If the partial release was instead intended to be a complete release, there would have been no need for R.E. Loans to require a subordination of the vendor's lien. The reasonable inference from the documents recorded in relation to Loan No. P0099 is that it was understood by the Lender, R.E. Loans, POBD and NIR that the partial release was only a partial release.

R.E. Loans, Pensco Trust and MF08 are related entities. Since Barney Ng is the principal control person regarding each of these entities, the reasonable inference regarding the 2007 Loans (P0106 and P0107) is these entities were aware the partial termination was not intended to be a complete release of NIR's vendor lien. The reasonable inference from the evidence before the Court is that a question of material fact exists whether R.E. Loans had actual notice of NIR's vendor lien.

B. VP's Interest

According to I.C. § 45-1302, in any suit brought to foreclose a mortgage or lien upon real property, the plaintiff may make a party any person claiming or appearing to have or claim any title, estate, or interest to the real property, and the court besides granting relief in the foreclosure action may determine the title, estate or interest of the defendant to the same extent and effect as

in an action to quiet title. Valiant sued VP, Inc. seeking a declaration that its mortgages are senior to *any* claim of VP.

Valiant claims it has liens against the property described in Exhibits 16, 17, 18 and 19 of Sykes Affidavit based upon the mortgages assigned to it which are superior to VP, Inc's interests. VP, Inc. does not have a mortgage against on these properties. The nature of VP's claim to the property are prescriptive easements for infrastructure, an express claim by deed to four parcels, and an equitable servitude.

Turning first to the deeds, regarding Exhibit 19, there was no mortgage against Lot 2, Block 17 of the replat of Golden Tee Estates and Golden Tee Estates 1st Addition as recorded in Book 8 of Plats, Page 77, Records of Bonner County described in the Mortgage for Loan No. P0107. VP's interest in this lot may not be foreclosed.

Further, VP has prescriptive easement rights stemming from its infrastructure for the prescriptive period (5 years before 2006 and 20 years after 2006). I.C. § 5-203, *see also Capstar Radio Operating Co. v. Lawrence*, 153 Idaho 411, 283 P.3d 728 (2012). Valiant presents nothing to defeat these prescriptive easement claims in its motion for summary judgment.

Finally, VP has an equitable servitude upon the lots upon which its lagoons, water system and pumping stations placed in connection with the Construction and Operating Agreement (CO Agreement) between POBD and VP. In *West Wood Invs., Inc. v. Acord*, 141 Idaho 75, 106 P.3d 401 (2005) our Supreme Court held:

Whether a successor in interest takes the interest subject to the equitable servitude is a question of notice. *Streets*, 898 P.2d at 379-81 (Wyo.1995). Whether a party has notice of an issue or event is a question of fact. See, e.g., *Taylor v. Soran Restaurant, Inc.*, 131 Idaho 525, 960 P.2d 1254 (1993) (Whether notice of injury subject to workers' compensation claim was given to employer was question of fact.)

VP's equitable servitude arises from the CO Agreement. The CO Agreement was in place before Loan No. P0107 was made. See Vilelli Declaration. Valiant provides no facts regarding its knowledge or lack of knowledge of the CO agreement. Therefore, the reasonable inference to be drawn is that Valiant knew of the CO agreement which gives rise to VP's claim of equitable servitude, and summary judgment is inappropriate on this claim.

IV. CONCLUSION

For the reasons stated herein, Valiant is not entitled to summary judgment foreclosing its mortgage and declaring it superior to NIR's vendor lien or JV's mortgage. Further, even if the Court determined that Valiant had a senior lien, there exists a question of fact regarding the amount of Valiant's lien based upon the documents provided in support and opposition of the summary judgment.

Regarding claims unrelated to the priority of the mortgages raised by Valiant against VP, Valiant has presented no undisputed facts that demonstrate it may quiet title against VP, Inc. regarding the prescriptive easements or the equitable servitude which VP claims. VP has introduced evidence in the Declaration of Richard Vilelli opposing summary judgment on these quiet title claims. Therefore, summary judgment regarding these claims of VP must be denied.

DATED this 4th day of February, 2015.

JAMES, VERNON & WEEKS, P.A.

By: Susan P. Weeks
Susan P. Weeks

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on the following persons in the manner indicated this 7th day of February, 2015:

U.S. Mail, Postage Prepaid
 Hand Delivered
 Overnight Mail
 Facsimile: 208-263-8211

Gary A. Finney
FINNEY FINEY & FINNEY, PA
120 E Lake St., Ste. 317
Sandpoint, ID 83864

U.S. Mail, Postage Prepaid
 Hand Delivered
 Overnight Mail
 Facsimile: 208-667-2150

Bruce A. Anderson
Elsaesser Jarzabek Anderson Marks Elliott &
McHugh, Chtd.
1400 Northwood Ct., Ste. C
Coeur d'Alene, ID 83814

U.S. Mail, Postage Prepaid
 Hand Delivered
 Overnight Mail
 Facsimile: 208-439-0110

Richard Stacey
McConnell Wagner Sykes & Stacey, PLLC
755 West Front St., Ste. 200
Boise, ID 83702

U.S. Mail, Postage Prepaid
 Hand Delivered
 Overnight Mail
 Facsimile: 208-263-7557

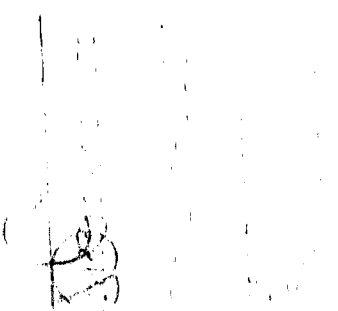
D. Toby McLaughlin
Berg & McLaughlin
414 Church Street, Ste 203
Sandpoint, ID 83864

U.S. Mail, Postage Prepaid
 Hand Delivered
 Overnight Mail
 Facsimile: 208-263-8211

John A. Finney
FINNEY FINEY & FINNEY, PA
120 E Lake St., Ste. 317
Sandpoint, ID 83864



Susan P. Weeks, ISB No. 4255
JAMES, VERNON & WEEKS, PA
1626 Lincoln Way
Coeur d'Alene, Idaho 83814
Telephone: (208) 667-0683
Facsimile: (208) 664-1684
sweeks@jvwlaw.net



Attorneys for Defendants North Idaho Resorts, LLC and VP, Incorporated

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,

Case No. CV-2009-01810

Plaintiff,

vs.

REQUEST FOR JUDICIAL NOTICE

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

Defendants.

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

COMES NOW the Defendants, North Idaho Resorts, LLC and VP, Inc., by and through
their attorney of record, Susan P. Weeks of the firm James, Vernon and Weeks, and hereby requests
the Court take judicial notice of James W. Berry's Affidavit in Opposition to R.E. Loan's Motion
for Partial Summary Judgment and R.E. Loan's Memorandum in Support of Summary Judgment
filed in *Union Bank v. Pend Oreille Bonner Development, LLC, et al.*, Bonner County Case No.


CV-2009-01810, copies of which are attached hereto.

REQUEST FOR JUDICIAL NOTICE: 1

2372

DATED this 4th day of February, 2015.

JAMES, VERNON & WEEKS, P.A.



Susan P. Weeks
Attorneys for Defendant, V.P., Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on the following persons in the manner indicated this 4th day of February, 2015:

<input type="checkbox"/>	U.S. Mail, Postage Prepaid	Gary A. Finney
<input type="checkbox"/>	Hand Delivered	FINNEY FINEY & FINNEY, PA
<input type="checkbox"/>	Overnight Mail	120 E Lake St., Ste. 317
<input checked="" type="checkbox"/>	Facsimile: 208-263-8211	Sandpoint, ID 83864
<input type="checkbox"/>	U.S. Mail, Postage Prepaid	Bruce A. Anderson
<input type="checkbox"/>	Hand Delivered	Elsaesser Jarzabek Anderson Marks Elliott &
<input type="checkbox"/>	Overnight Mail	McHugh, Chfd.
<input checked="" type="checkbox"/>	Facsimile: 208-657-2150	1400 Northwood Ct., Ste. C
		Coeur d'Alene, ID 83814
<input type="checkbox"/>	U.S. Mail, Postage Prepaid	Richard Stacey
<input type="checkbox"/>	Hand Delivered	McConnell Wagner Sykes & Stacey, PLLC
<input type="checkbox"/>	Overnight Mail	755 West Front St., Ste. 200
<input checked="" type="checkbox"/>	Facsimile: 208-489-0110	Boise, ID 83702
<input type="checkbox"/>	U.S. Mail, Postage Prepaid	D. Toby McLaughlin
<input type="checkbox"/>	Hand Delivered	Berg & McLaughlin
<input type="checkbox"/>	Overnight Mail	414 Church Street, Ste 203
<input checked="" type="checkbox"/>	Facsimile: 208-263-7557	Sandpoint, ID 83864
<input type="checkbox"/>	U.S. Mail, Postage Prepaid	John A. Finney
<input type="checkbox"/>	Hand Delivered	FINNEY FINEY & FINNEY, PA
<input type="checkbox"/>	Overnight Mail	120 E Lake St., Ste. 317
<input type="checkbox"/>	Facsimile: 208-263-8211	Sandpoint, ID 83864



7/17

COPY

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

Attorneys for R.E. Loans, LLC

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

UNION BANK, a national association,

Plaintiff,

v

PEND OREILLE BONNER
DEVELOPMENT, LLC, et al.

Defendants.

Case No. CV-2011-0135

R.E. LOANS, LLC'S MEMORANDUM IN
SUPPORT OF MOTION FOR PARTIAL
SUMMARY JUDGMENT

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

COMES NOW, Defendant/Cross-Defendant/Cross-Claimant R.E. Loans, LLC ("RE Loans"), by and through its attorneys of record, Meuleman Mollerup LLP, and files this Memorandum in Support of Motion for Partial Summary Judgment.

I. INTRODUCTION

North Idaho Resorts, LLC ("NIR") has filed a cross-claim which sets forth seven causes of action. Through Counts 1, 4, 5, and 7 of its cross-claim, NIR seeks a determination that its

interest in certain real property subject to this suit is prior in right, time and interest and superior to the interest of RE Loans in such property. RE Loans has filed an Amended Cross-Claim against NIR which seeks damages for NIR's Breach of a Subordination Agreement of which RE Loans was the intended beneficiary. The Amended Cross-Claim also seeks a declaratory judgment that RE Loans' interest in the real property subject to this suit is prior in right, title and interest and superior to any interest claimed by NIR in such property.

RE Loans now moves for entry of partial summary judgment establishing that (1) RE Loans' interest in the real property subject to this suit is prior in right, title and interest and superior to any interest claimed by NIR in such property and (2) that NIR has breached the terms of the Subordination Agreement by asserting that its interest in certain real property is prior in right, title and interest and superior to the interest of RE Loans.

II. LEGAL STANDARD FOR SUMMARY JUDGMENT

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(e). *See also Heath v. Idaho State Tax Commission*, 134 Idaho 407, 3 P.3d 532 (Ct. App. 2000). 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. *Pena v. Minidoka County*, 133 Idaho 222, 934 P.2d 710 (1999); *West v. Sonke*, 132 Idaho 133, 968 P.2d 223 (1996); *Nelson, A.I.A., supra*. 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*, 123 Idaho 714, 918 P.2d 533 (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, Numbester & Lezamiz, Inc., 134 Idaho 84, 87-88, 996 P.2d 303, 306-307 (2000).

III. STATEMENT OF UNDISPUTED FACTS

For the purposes of RE Loans' Motion for Partial Summary Judgment, the following facts are undisputed.

1. On or about March 9, 2006 North Idaho Resorts, LLC ("NIR") and Pend Oreille Bonner Development ("POBD") entered into an agreement entitled Third Amended and Restated Real Property Purchase and Sale Agreement ("NIR Sale Contract"). *North Idaho Resorts, LLC's Cross Claim ("Cross-Claim")* at ¶ 30, filed on June 15, 2012.

2. On June 19, 2006, a Memorandum of Real Property Purchase and Sale Agreement was recorded in the Bonner County Recorder's office as Instrument No. 706475 ("Sale Memo"). Exhibit A to the Affidavit of Chad M. Nicholson in Support of R.E. Loans, LLC's Motion for Partial Summary Judgment Against North Idaho Resorts, LLC ("*Nicholson Affid.*"), filed concurrently herewith. *See also Cross-Claim* at ¶ 31 and Exhibit "CC-B" thereto.

3. At 4:30pm on March 15, 2007, RE Loans' Mortgage Assignment of Rents, Security Agreement, and Fixture Filing was recorded in the Bonner County Recorder's Office as Instrument No. 724329 ("RE Loans Mortgage"). Exhibit B to the *Nicholson Affid.* The real

property described in the RE Loans Mortgage and thereby subject to the RE Loans Mortgage will hereinafter be referred to as the "Real Property."

4. At 4:32pm on March 15, 2007 a Partial Termination of Real Property Purchase and Sale Agreement and Partial Termination of Memorandum of Real Property Purchase and Sale Agreement was recorded as Instrument No. 724831 by the Bonner County Recorder's Office ("2007 Partial Termination"). Exhibit D to the *Nicholson Affid.*

5. Attached to the 2007 Partial Termination were two documents identified as "Exhibit A". *Id.* The second Exhibit "A" described the Real Property subject to the RE Loans Mortgage. *Compare Exhibits B & D* to the *Nicholson Affid.*

6. On March 14, 2007, Perd Orelle Bonner Development, LLC ("POBD") and NIR entered into a Subordination Agreement which was recorded in the Bonner County Recorder's office at 4:33pm on March 15, 2007, as Instrument No. 724832 (the "Subordination Agreement"). Exhibit C to the *Nicholson Affid.* and Exhibit CC-D to *Gross-Claim.*

7. The land subject to the Subordination Agreement is the Real Property subject to the RE Loans Mortgage. *Compare Exhibits B & C* to the *Nicholson Affid.*

8. The Subordination Agreement states that NIR was the "present owner and holder of The Memorandum of Real Property and Sale Agreement, dated June 19, 2006 as Instrument 706475 *file*, the Sale Memo." Exhibit C to the *Nicholson Affid.*

9. The Subordination Agreement advised NIR that it "results in your security interest in the property described herein becoming subject to and of lower priority than the lien of some other or later Security Instrument" *Id.*

10. The Subordination Agreement states that RE Loans Mortgage "shall unconditionally be and remain at all times a lien or charge on the property therein described, prior and superior to the lien or charge of the" Sale Memo. *Id.* Under the terms of the

Subordination Agreement, NIR also “intentionally and unconditionally waive[d], relinquish[e] and subordinate[d] the lien or charge of the [Sale Memo] in favor of the lien or charge upon said land of the [RE Loans Mortgage.]” *Id.*

11. By executing the Subordination Agreement, NIR acknowledged its understanding “[t]hat [RE Loans] would not make its loan ... without this Subordination Agreement.” *Id.*

12. By executing the Subordination Agreement, NIR:

[D]eclare[d], agree[d], and acknowledge[d] that ... [it] intentionally and unconditionally waive[d], relinquish[e] and subordinate[d] the lien or charge of the Deed of Trust first above mentioned in favor of the lien or charge upon said land of the Deed of Trust in favor of [RE Loans] and understands that in reliance upon, and in consideration of this waiver, relinquishment and subordination specific loans and advances are being and will be entered into which would not be made or entered into but for said reliance upon this waiver, relinquishment and subordination[.]

Id.

13. NIR has admitted that “[t]he Subordination Agreement was intended ... to subordinate NIR’s interest in certain property in the NIR Sale Contract to R.E. Loans, LLC[.] ... The Subordination Agreement only applied to R.E. Loans, LLC.” *Cross-Claim* at ¶ 34.2

14. On March 11, 2009 a the Partial Termination of Real Property Purchase and Sale Agreement and Partial Termination of Memorandum of Real Property Purchase and Sale Agreement was recorded as Instrument No. 768269 by the Bonner County Recorder’s Office (“2009 Partial Termination”). Exhibit E to the *Nicholson Affid.* and Exhibit “CC-B” to *Cross-Claim*.

15. The 2009 Partial Termination is identical to the 2007 Partial Termination except that the 2009 Partial Termination does not contain a legal description of the Real Property. Compare Exhibits D & E to the *Nicholson Affid.*

16. NIR asserts that it acquired a vendor's lien against the Real Property by its recordation of the Sale Memo. *See generally, Cross-Claim.*

17. NIR asserts that, by virtue of the Sale Memo, its interest in the Real Property is prior in right, title, and interest and superior to the interest of RE Loans in the Real Property. *See generally, Cross-Claim.*

IV. ARGUMENT

A. The interest of RE Loans is prior in right, title and interest and superior to that of NIR.

"Idaho is a race-notice recording state: 'Every conveyance of real property ... is void as against any subsequent purchaser or mortgagee of the same property, or any part thereof, in good faith and for valuable consideration, whose conveyance is first duly recorded.'" *Insight, LLC v. Gunter*, 2013 WL 1730149 at *3 (Idaho April 16, 2013) quoting I.C. § 55-812 (ellipsis in original). While priority is governed by statute, the Idaho Supreme Court has recognized that a lienholder may contractually agree to subordinate its interest to the priority of another: a lienholder "has every right to release his claim on his position of priority ... and place himself behind" a party who has junior priority. *Blickenstaff v. Clegg, et al.*, 140 Idaho 572, 580, 97 P.3d 439, 447 (2004). This can be accomplished through a subordination agreement which is:

"An agreement by which one holding an otherwise senior lien or other real estate interest *consents to a reduction in priority* vis-a-vis another person holding an interest in the same real estate. An agreement by which *the subordinating party agrees that its interest in real property should have a lower priority than the interest to which it is being subordinated.*"

Id. at 580, 97 P.3d at 447 quoting *AmSouth Bank, N.A. v. J & D Financial Corp.*, 679 So.2d 695, 698 (Ala. 1996) (emphasis in original). Where a subordination agreement contains clear and unambiguous language, "the language employed will be construed for its legal effect according

[to] its ordinary meaning.” *Provident Fed. Sav. & Loan Assoc. v. Idaho Land Developers, Inc.*, 114 Idaho 453, 455, 757 P.2d 716, 718 (Ct. App. 1988).

The holding of *Provident Fed. Sav. & Loan Assoc. v. Idaho Land Developers, Inc.* is instructive. In that case, the Mockwitzes¹ bought land (“Ady Parcel”) from, and signed a promissory note (“Ady Note”) in favor of, the Adys. *Provident Fed. Sav. & Loan Assoc.*, 114 Idaho at 454, 757 P.2d at 717. A deed of trust securing the Ady Note was recorded. *Id.* A year later, Idaho Land Developer’s, Inc. (“ILD”) acquired the Ady Parcel by assuming the obligation on the promissory note. *Id.* Despite ILD assuming the obligation, the Mockwitzes remained liable on the Ady Note because a novation was not executed and no release from the Adys’ was obtained. *Id.*

Having acquired the Ady Parcel, ILD developed both it and a larger adjoining parcel (collectively “Entire Parcel”). *Id.* ILD then obtained a “take out” loan from Provident Fed. Sav. & Loan Assoc. (“Provident”) which was conditioned on Provident being secured by a first priority lien on the Entire Parcel. *Id.* To satisfy this condition, the Adys’ executed a subordination agreement in favor of Provident. *Id.* The subordination agreement provided:

In consideration of the purchase of the above described property by Mookwitz-Pelham from Sellers [the Adys] and for the purpose of enabling Idaho Land Developers, Inc. to obtain a loan from PROVIDENT FEDERAL SAVINGS AND LOAN ASSOCIATION for construction on the above described real property, which loan is to be secured by the above property, the Sellers do hereby subordinate the above described Deed of Trust to be recorded by PROVIDENT FEDERAL SAVINGS AND LOAN ASSOCIATION against said property, and Sellers agree that the Deed of Trust in favor of PROVIDENT FEDERAL SAVINGS AND LOAN ASSOCIATION shall be prior to and superior to the lien of the said Deed of Trust in favor of Sellers.

¹ The original purchase and promissory note was made by the Mockwitzes and Pelhams. *Provident Fed. Sav. & Loan Assoc.*, 114 Idaho at 454, 757 P.2d at 717. The Mockwitzes subsequently assumed the entire obligation. *Id.*

Id. at 456, 757 P.2d at 797 (bracketed material in original) (emphasis added). Provident then received a promissory note from ILD which was secured by a deed of trust on the Entire Parcel. *Id.* at 454-455, 757 P.2d at 717-718. After ILD defaulted on its obligations, Provident filed suit and prevailed at summary judgment. *Id.* at 455, 757 P.2d at 718. On appeal, having acknowledged the unambiguous nature of the subordination agreement, the Mookwitzes contended that "the Adys [we]re subordinated and Provident [could] foreclose only to the extent of construction money actually expended on the Ady parcel or to the actual value of the improvements on the Ady parcel." *Id.* at 456, 757 P.2d at 719. The Idaho Court of Appeals rejected this argument and held that the subordination agreement was "unlimited." *Id.* The Court of Appeals approved the district court's holding that "The Subordination Agreement at issue in this case clearly provides a first priority status to [Provident]. The recitation of the purpose of the [s]ubordination [a]greement does not change the character of it; it gives a priority lien status to [Provident]." *Id.*

The Subordination Agreement executed by NER is substantially similar to that analyzed by the Court of Appeals in the *Provident*. Like the subordination agreement executed by the Adys', the Subordination Agreement executed by NER clearly and unambiguously states that RE Loans' interest is to "unconditionally be and remain at all times a lien or charge on the [Real Property], *prior and superior to the lien or charge of* NER. Exhibit C to the *Nicholson Affid.* (emphasis added). Given this clear and unambiguous language, NER contractually agreed to subordinate its interest in the Real Property to that of RE Loans. Therefore, a judgment declaring that RE Loans' Mortgage in the Real Property is prior in right, title and interest and superior to the interest of NER should be entered, as requested by the Second Cause of Action in

RE Loans Amended Cross-Claim. Likewise, RE Loans is entitled to summary judgment in its favor on Counts 4, 5 and 7 of NIR's Cross-Claim.²

B. NIR has breached the Subordination Agreement by asserting that its interest is prior in right, title and interest and superior to that of RE Loans.

"A contract, made expressly for the benefit of a third person, may be enforced by him at any time before the parties thereto rescind it." Idaho Code § 29-102. A third-party beneficiary contract is a contract that is entered "for the benefit of a third party who, although not a signatory to the contract, thereby possesses the right to enforce the contract." *Intermountain Health Care, Inc. v. Bd. of Co. Comm'rs of Blaine Co.*, 107 Idaho 243, 251, 683 P.2d 250, 263 (Ct. App. 1984) overturned on other grounds but relevant holding affirmed by *Intermountain Health Care, Inc. v. Bd. of Co. Comm'rs of Blaine Co.*, 109 Idaho 299, 707 P.2d 410 (1985). A third-party beneficiary may seek either legal or equitable relief for breach of the contract of which it is a beneficiary. *Bush v. Upper Valley Telecable Co.*, 95 Idaho 83, 85, 524 P.2d 1055, 1058 (1973). See also *Just's Inc. v. Arrington Constr. Co., Inc.*, 99 Idaho 462, 455, 583 P.2d 997, 1001 (1978) (third party beneficiaries "are entitled to sue for enforcement or breach of" the contract).

"The test for determining a party's status as a third-party beneficiary capable of properly invoking the protection of I.C. § 29-102, is whether the agreement reflects an intent to benefit the third party." *Idaho Power Co. v. Hulet*, 140 Idaho 110, 113, 90 P.3d 335, 338 (2004) citing *Stewart v. Arrington Constr. Co.*, 92 Idaho 526, 445 P.2d 895 (1968). To enforce the contract, the third party must show "that the contract was made for its direct benefit, or as sometimes stated primarily for his benefit, and that it is not sufficient that he be a mere incidental beneficiary." *Addison Corp. v. American Bldg. Co.*, 107 Idaho 406, 409, 690 P.2d 341, 344

² By its terms, Count 4 of NIR's *Cross-Claim* appears to seek relief only against POBD and Union Bank. See *Cross-Claim* at ¶¶ 54-57. However, NIR's Prayer for Relief with respect to Count 4 seeks a declaration "that the interests of all the other Defendants are also inferior to the NTC [sic] Sales Contract." *Cross-Claim* at p. 19. Given the relief requested, RE Loans seeks summary judgment in its favor on Count 4.

(1934) quoting *Dawson v. Eldredge*, 84 Idaho 331, 337, 372 P.2d 414, 418 (1962). The intent to benefit the third party must be expressed by the terms of the contract. *Adkison Corp.*, 107 Idaho at 409, 690 P.2d at 344. A later creditor whose interest is made superior to that of an earlier creditor via a subordination agreement is a third party beneficiary of the subordination agreement. See, e.g., *In re Environmental Aspects, Inc.*, 235 B.R. 373, 397 (Bankr. E.D.N.C. 1999).

The clear and unambiguous language of the Subordination Agreement demonstrates that it was intended to benefit RE Loans

The Subordination Agreement first identifies NIR as the "present owner and holder of" the Sale Memo. Exhibit C to the *Nicholson Affid.* It then states that POBD executed a Deed of Trust and Note in favor of RE Loans. *Id.* The RE Loans' Deed of Trust is defined as Instrument No. 724829, i.e. the RE Loans Mortgage. The Subordination Agreement defines "Lender" as RE Loans. *Id.* Thus, the first "Deed of Trust first above mentioned" is NIR's Sale Memo and the "Deed of Trust in favor of Lender" is the RE Loans Mortgage.

In executing the Subordination Agreement, "and in order to induce Lender" to make the loan to POBD³, NIR "declared, understood and agreed ... [t]hat Lender would not make its loan above described without this Subordination Agreement." *Id.* With this understanding NIR,

intentionally and unconditionally waives, relinquishes and subordinates the lien or charge of the Deed of Trust first above mentioned [i.e. NIR's Sale Memo.] in favor of the lien or charge upon said land of the Deed of Trust in favor of Lender above referred to [i.e. RE Loans' Mortgage] and understands that in reliance upon, and in consideration of this waiver, relinquishment and subordination specific loans and advances are being and will be entered into which would not be made or entered into but for said reliance upon this waiver, relinquishment and subordination[.]

³ NIR recognized that the RE Loans loan to POBD was "to the mutual benefit of" both POBD and NIR. Exhibit C to the *Nicholson Affid.*

17. Given the foregoing language, the Subordination Agreement specifically and expressly demonstrates and intent to benefit RE Loans. Therefore, RE Loans is a third-party beneficiary of the Subordination Agreement.

Furthermore, NTR has admitted that the intent of the Subordination Agreement was to benefit RE Loans. Paragraph 34.2 of NTR's *Cross-Claim* states, in part:

... The Subordination Agreement was intended to keep the obligations between POBD and NTR in the NTR Sale Contract in place, and to subordinate NTR's interest in certain property in the NTR Sale Contract to R.E. Loans, LLC; however, POBD was to remain liable for all obligations contained in the NTR Contract. The Subordination Agreement only applied to R.E. Loans, LLC.

(Emphasis added).

Given NTR's judicial admission⁴ that the "The Subordination Agreement was intended ... to subordinate NTR's interest in certain property in the NTR Sale Contract to R.E. Loans, LLC," there is no dispute that RE Loans was an intended beneficiary of the Subordination Agreement. Likewise, it is indisputable that NTR agreed to subordinate its interest in the Real Property to the interest of RE Loans. It is also undisputed that NTR has asserted in this action that its interest is prior in time, title and right and superior to that of RE Loans. By making this assertion and attempting to establish that its interest in the Real Property is superior to that of RE Loans, NTR has breached its promise to subordinate its interest to RE Loans and thereby breached the Subordination Agreement. As such, RE Loans is entitled to summary judgment on the First Cause of Action set forth in its Amended Counter-Claim.

⁴ "A judicial admission is a formal act or statement made by a party or attorney, in the course of judicial proceedings, for the purpose, or with the effect, of dispensing with the need for proof by the opposing party of some fact." *Stovace v. K-Trek, Inc.*, 129 Idaho 515, 613, 930 P.2d 1351, 1353 (Ct. App. 1997). Moreover, statement made by a party in its "pleadings are generally seen as binding judicial admissions." *Id.* at 515, 930 P.2d at 1354. Admissions in pleadings signed by a party's attorney are deemed to be admissions of the party. *See Stover v. McWary*, 75 Idaho 99, 104, 267, P.2d 525, 528 (1954).

C. RE Loans' interest in the Real Property is prior in right, title and interest and superior to the interest of NIR even if the Partial Termination Agreement recorded on March 15, 2007 is reformed.

NIR seeks reformation of the 2007 Partial Termination so that the legal description contained therein is deemed to have been the legal description as set forth in the 2009 Partial Termination. While RE Loans does not concede that NIR is entitled to the requested reformation, even if the 2007 Partial Termination is reformed, RE Loans interest in the Real Property remains superior in light of the Subordination Agreement, as previously discussed. As such, summary judgment should be entered establishing that, even if the 2007 Partial Termination is reformed, RE Loans interest in the Real Property remains superior to NIR's interest in the Real Property.

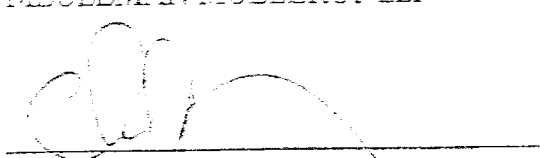
V. CONCLUSION

For the reasons set forth above, R.E. Loans, LLC respectfully requests that its Motion for Partial Summary Judgment be granted.

DATED this 17th day of July 2013.

MEULEMAN MOLLERUP LLP


BY:


Chad M. Nicholson
Attorneys For Defendant/Cross-Defendant/Cross-Claimant R.E. Loans, LLC

CERTIFICATE OF SERVICE

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

<p>John E. Miller The Law Office of John E. Miller 1424 Sherman Ave., Ste. 500 Coeur d'Alene, ID 83814 Telephone: 208/665-9464 Facsimile: 208/665-9176 <i>Counsel for Plaintiff</i> <input checked="" type="checkbox"/> Mail <input type="checkbox"/> Fax <input type="checkbox"/> Overnight <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Email</p>	<p>Gary A. Finney Finney Finney & Finney, P.A. 120 E. Lake Street, Ste 317 Sandpoint, Idaho 83364 Fax: 208/263-8211 <i>Counsel for J.V., LLC</i> <input checked="" type="checkbox"/> Mail <input type="checkbox"/> Fax <input type="checkbox"/> Overnight <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Email</p>
<p>John Finney Finney Finney & Finney, P.A. 120 E. Lake Street, Ste 317 Sandpoint, Idaho 83364 Fax: 208/263-8211 <i>Counsel for ACI Northwest, Inc.</i> <input checked="" type="checkbox"/> Mail <input type="checkbox"/> Fax <input type="checkbox"/> Overnight <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Email</p>	<p>Steven C. Wetzel James, Vernon & Weeks, PA 1626 Lincoln Way Coeur d'Alene, ID 83814 Fax: 208/664-1684 <i>Counsel for North Idaho Resorts, LLC</i> <input type="checkbox"/> Mail <input type="checkbox"/> Fax <input checked="" type="checkbox"/> Overnight <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Email</p>
<p>John R. Layman Bradley C. Crockett Layman Law Firm, PLLP 601 South Division Street Spokane, WA 99202 Fax: 509-624-2902 <i>Counsel for Pend Oreille Bonner Development, LLC, Pend Oreille Bonner Development Holdings, Inc., Montaheno Investments, LLC, Toyon Investments, LLC, Charles Reeves, and Ann B. Reeves</i> <input checked="" type="checkbox"/> Mail <input type="checkbox"/> Fax <input type="checkbox"/> Overnight <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Email</p>	<p>Richard W. Sweney Lukins & Annis PS 601 E. Front Ave., Ste. 602 Coeur d'Alene, ID 83314 Fax: 208/664-4125 <i>Counsel for Mountain West Bank</i> <input checked="" type="checkbox"/> Mail <input type="checkbox"/> Fax <input type="checkbox"/> Overnight <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Email</p>
<p>Douglas S. Marfice Ramsden & Lyons, LLP P.O. Box 1336 Coeur d'Alene, ID 83316-1336 Fax: 208/664-5384 <i>Counsel for B-K Lighting, Inc.</i> <input checked="" type="checkbox"/> Mail <input type="checkbox"/> Fax <input type="checkbox"/> Overnight <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Email</p>	<p>Bruce A. Anderson Elsaesser Jarzabek Anderson Elliott & MacDonald, Chtd 320 East Neider Ave., Suite 102 Coeur d' Alene, ID 83315 Fax: 208/667-2150 <i>Counsel for Dan S. Jacobson, Steven G. Lazar, and Sage Holdings, LLC</i> <input checked="" type="checkbox"/> Mail <input type="checkbox"/> Fax <input type="checkbox"/> Overnight <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Email</p>


Chad M. Nicholson

8/12

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

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DISTRICT
CLERK OF DISTRICT COURT
JAMES W. BERRY
DEPUTY

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

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

STATE OF IDAHO)
 : ss.
County of Bonner)

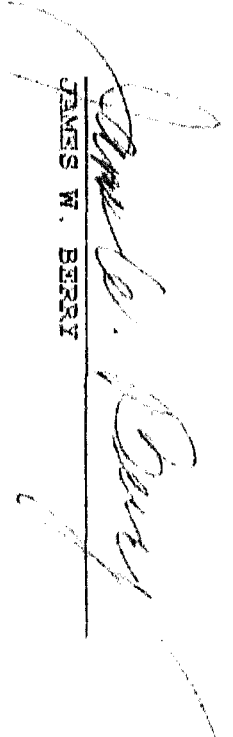
COMES NOW JAMES W. BERRY, being first duly sworn on oath
and states to the Court based on my personal knowledge on
matters which I am competent to testify, as follows:

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

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


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

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

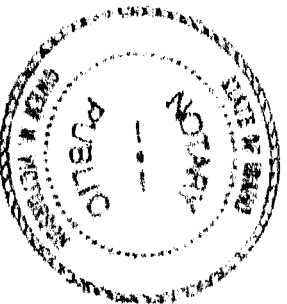


JAMES W. BERRY

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



Notary Public-State of Idaho
Residing at: Sandpoint
My commission expires: 7-1-2018



CERTIFICATE OF SERVICE

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

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

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

Douglas S. Marfice
RAMSDEN & LYONS
P.O. Box 1336
Coeur d'Alene, ID 83815-1336
Fax No. 1-208-664-5884
(Attorney for B-K Lighting, Inc.)

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

Bruce Anderson
EUSAESSER JARZABEK ANDERSON
ELLIOTT & MACDONALD, CMTD
320 E. Neider Ave, Suite 102
Coeur d'Alene, ID 83815
Fax No. 1-208-667-2150

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

(Attorney for Dan S. Jacobson,
Sage Holding, LLC, and Steve G.
Lazor)

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

Honorable Michael J. Griffin
Second District Court
320 W. Main Street
Grangeville, ID 83530
Fax No. 1-208-983-2375
(Out of County Judge)
Honorable Michael J. Griffin
Second District Court
PO Box 8068
Moscow, ID 83343
Fax No. 1-208-883-5719
(Out of County Judge)
(via Judge Stegner's Chambers)

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



First American Title Company

419 North Second Ave. • Sandpoint, ID 83864

Borrower's Settlement Statement

Property: NNA, Sandpoint, ID 83864

File No: 239217-S

Officer: Casey Linscott

New Loan No:

Settlement Date: 07/31/2008

Disbursement Date: 07/31/2008

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

Buyer: Fend Creille Bonner Development LLC

Address: 151 Clubhouse Way, Sandpoint, ID 83864

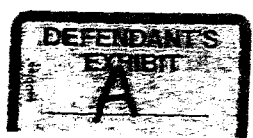
Seller:

Address:

Charge Description	Borrower Charge	Lender Charge
New Loans:		
Under Mortgage Fund '08 LLC c/o Bar K, Inc.		
New Loan to File - Mortgage Fund '08 LLC c/o Bar K, Inc.		24,970,000.00
Loan Origination Fee - Mortgage Fund '08 LLC c/o Bar K, Inc.	189,000.00	
Document Preparation Fee - Mortgage Fund '08 LLC c/o Bar K, Inc.	1,000.00	
Payoff First Note - Loan No. P0106 - Mortgage Fund '08 LLC c/o Bar K, Inc.	2,478,545.13	
Payoff Second Note - Loan No. P0106 - Mortgage Fund '08 LLC c/o Bar K, Inc.	2,750,000.00	
Communication Due Bar K, Inc. per Note - Mortgage Fund '08 LLC c/o Bar K, Inc.	171,500.00	
3 Months Prepaid Interest - Mortgage Fund '08 LLC c/o Bar K, Inc.	31,000.00	
Attorney Fees, Administrative Charges - Mortgage Fund '08 LLC c/o Bar K, Inc.	5,000.00	
Residual Loan Funds - Mortgage Fund '08 LLC c/o Bar K, Inc.	10,800,000.00	
Lender Payoff Trust Co., custodian for Bar K, Inc.		
New Second Loan to File - Payco Trust Co., custodian for Bar K, Inc.		2,700,000.00
Title/Escrow Charges to:		
Settlement or Closing Fee - First American Title Company	1,500.00	
Endorsements 9/2-26, 31-36 - First American Title Company	143.00	
Polite-Extended Lenders Policy - First American Title Company	1,420.00	
Polite-Extended Lenders Policy - First American Title Company	27,583.00	
Recording Fee-Mortgage '08 - First American Title Company	270.00	
Recording Fee-Releases - First American Title Company	15.00	
Recording Fee-Alt-Insurable Mortgage '08 - First American Title Company	270.00	
Recording/Filing Fee-LCC - First American Title Company	45.00	
Disbursements Paid:		
Pay Down FV, LLC Account per Agent to Embrace Escrow Company	325,915.53	
Payoff Lien #750247 to ACL Northwest, Inc.	1,400,000.00	
Pay Balance of 2077 Taxes on all parcels in Bonner County Tax Collector	124,314.54	
Pay Direct Pay Agreement - Outside of ZEO to PV, LLC	30,000.00	
Pay on Account to Genesis Golf Builders, Inc.	-50,000.00	
	Cash (From) X 19) Borrower	360,454.55
Totals		24,970,000.00

Casey Linscott
James W. Bonney 7/31/08
Will A. Bonney

EXHIBIT NO. 7
 V. LEGG, CSR



Susan P. Weeks, ISB No. 4255
JAMES, VERNON & WEEKS, PA
1626 Lincoln Way
Coeur d'Alene, Idaho 83814
Telephone: (208) 667-0683
Facsimile: (208) 664-1684
sweeks@jvwlaw.net

Attorneys for Defendants North Idaho Resorts, LLC and VP, Incorporated

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-2009-01810

DECLARATION OF RICHARD VILLELLI
IN OPOSITION TO VALIANT IDAHO,
LLC'S MOTION FOR SUMMARY
JUDGMENT AGAINST JV, L.L.C., NORTH
IDAHO RESORTS, LLC, AND VP,
INCORPORATED

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

Pursuant to Rule 7(d) of the Idaho Rules of Civil Procedure and Idaho Code § 9-1406,

Richard Villelli declares as follows:

1. I am over the age of 18, and competent to testify to the matters set forth herein. I make this Affidavit of my own personal knowledge, and have personal knowledge of the facts herein contained.

DECLARATION OF RICHARD VILLELLI IN OPOSITION TO VALIANT IDAHO,
LLC'S MOTION FOR SUMMARY JUDGMENT AGAINST JV, L.L.C., NORTH IDAHO
RESORTS, LLC, AND VP, INCORPORATED: 1

2392

2. I am the president of Vilelli Enterprises, Inc. Vilelli Enterprises, Inc. is the managing member of North Idaho Resorts, LLC. I make this Affidavit of my own personal knowledge, and have personal knowledge of the facts herein contained.
3. I am the President of VP, Incorporated.
4. North Idaho Resorts, LLC, had business dealings with R.E. Loans, LLC in 2004. At that time, Barney Ng was the person managing the loan. Mr. Ng visited me in Idaho in connection with processing a loan to North Idaho Resorts, LLC in the approximate amount of \$8,000,000.00.
5. NIR sold its interest in property to Pend Oreille Bonner Development Holding, Inc.. Attached hereto as Exhibit "A" is a true and correct copy of the Third Restated Purchase and Sale Agreement, which is the document upon which North Idaho Resort's vendor's lien is premised.
6. I introduced Barney Ng to Charles Reeves and Chip Bowlby, who were involved with Pend Oreille Bonner Development Holding, Inc. The discussions with Mr. Ng related to Pend Oreille Bonner Development Holding, Inc.'s assumption of North Idaho Resort's loan and a possible additional loan to Pend Oreille Bonner Development Holding, Inc.
7. On or about March 14, 2007, I executed a partial release of 7 lots at the request of Charles Reeves because these lots were not intended to be part of the legal description encumbered by the vendor's lien. These lots were specifically mentioned in the Purchase and Sale Agreement as lots that would not to be encumbered. However, due to an oversight, they were not excluded from in the P&S Agt. Memorandum legal description.

8. On or about March 14, 2007, I executed a subordination of North Idaho Resort's vendor lien to a loan to POBD made by RE Loan, identified on the Subordination Agreement as Order No. 49214-NA. At the time of signing the subordination agreement, I understood that RE Loans required the subordination to advance the loan to Pend Oreille Bonner Development. As part of the requirement to agree to this subordination, I required that distributions must comply with the terms of the Third Restated Purchase and Sale Agreement, a Memorandum of which was recorded June 19, 2006 as Instrument No. 706475. R.E. Loans requested and I provided a copy of the Second Restated Purchase and Sale Agreement. I understood R.E. Loans had a copy of the Third Restated Purchase and Sale Agreement when I required inclusion of this term. Compliance by the Lender would have been impossible without possession of a copy of the document. Although the document indicated in a few locations that the subordinated interest was North Idaho Resort's deed of trust, the referenced recorded document was NIR's memorandum of the purchase and sale agreement.
9. Based upon documents I reviewed in 2009, I learned that Barney Ng had other entities which he managed whom had loaned money to Pend Oreille Bonner Development. These entities were Pensco Trust, LLC and MF08. Mr. Ng spoke on behalf of RE Loans, Pensco Trust and Mortgage Fund '08. We had several discussions regarding a global settlement of Pend Oreille Bonner Development's defaults with all the Ng entities, North Idaho Resorts and VP. At no time did Mr. Ng contend that North Idaho Resorts had completely released its vendor's lien. The discussions also included failure of Pend Oreille Bonner Development's to meet requirements of the purchase and sale agreement and operating agreement that required POBD to complete utility

infrastructure and transfer the ownership of those improvements to VP Inc. At no time did Mr. Ng ever contend that VP was not entitled to deed to the infrastructure lots and improvements.

10. VP, Inc. entered into a Construction and Operating Agreement with Pend Oreille Bonner Development on June 13, 2006 which addressed construction of extensions to VP's existing water and sewer system by Pend Oreille Bonner Development and VP's operation of the system. Much of this infrastructure has been in place for over 20 years.
11. The Construction and Operating Agreement required Pend Oreille Bonner Development to extend portions of existing water and sewer utility infrastructure, required Pend Oreille Bonner Development to transfer easements for the completed infrastructure and title to those lots upon which the sewer lagoons and water systems were located, and required VP to operate the system. VP operated the system as required. Pend Oreille Bonner Development partially extended the system. Pend Oreille Bonner Development failed to grant easements for the existing infrastructure and infrastructure extensions. It did not grant deeds to the lots where sewer lagoons, water towers and pumping stations were situated until Idaho Department of Environmental Quality (DEQ) required the transfer concurrent with threatened enforcement action and a consent decree. The deeds attached to Jeff Syke's Declaration as Exhibits 16, 17, 18 and 19 are the lots deeded to VP, Inc. in compliance with the Construction and Operating Agreement upon which lagoons, water towers or pumping stations are situated.

I HEREBY CERTIFY AND DECLARE, under penalty of perjury pursuant to the laws of the State of Idaho, that the foregoing is true and correct.

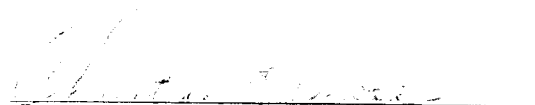
DATED this 4th day of February, 2015.


Richard Villelli

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on the following persons in the manner indicated this 4th day of February, 2015:

<input type="checkbox"/>	U.S. Mail, Postage Prepaid	Gary A. Finney
<input type="checkbox"/>	Hand Delivered	FINNEY FINEY & FINNEY, PA
<input type="checkbox"/>	Overnight Mail	120 E Lake St., Ste. 317
<input checked="" type="checkbox"/>	Facsimile: 208-263-8211	Sandpoint, ID 83864
<input type="checkbox"/>	U.S. Mail, Postage Prepaid	Bruce A. Anderson
<input type="checkbox"/>	Hand Delivered	Elsaesser Jarzabek Anderson Marks Elliott &
<input type="checkbox"/>	Overnight Mail	McHugh, Chtd.
<input type="checkbox"/>	Facsimile: 208-667-2150	1400 Northwood Ct., Ste. C
		Coeur d'Alene, ID 83814
<input type="checkbox"/>	U.S. Mail, Postage Prepaid	Richard Stacey
<input type="checkbox"/>	Hand Delivered	McConnell Wagner Sykes & Stacey, PLLC
<input type="checkbox"/>	Overnight Mail	755 West Front St., Ste. 200
<input checked="" type="checkbox"/>	Facsimile: 208-489-0110	Boise, ID 83702
<input type="checkbox"/>	U.S. Mail, Postage Prepaid	D. Toby McLaughlin
<input type="checkbox"/>	Hand Delivered	Berg & McLaughlin
<input type="checkbox"/>	Overnight Mail	414 Church Street, Ste 203
<input checked="" type="checkbox"/>	Facsimile: 208-263-7557	Sandpoint, ID 83864
<input type="checkbox"/>	U.S. Mail, Postage Prepaid	John A. Finney
<input type="checkbox"/>	Hand Delivered	FINNEY FINEY & FINNEY, PA
<input type="checkbox"/>	Overnight Mail	120 E Lake St., Ste. 317
<input checked="" type="checkbox"/>	Facsimile: 208-263-8211	Sandpoint, ID 83864



THIRD AMENDED AND RESTATED
REAL PROPERTY PURCHASE AND SALE AGREEMENT

This Third Amended and Restated Real Property Purchase and Sale Agreement ("this Agreement"), the original predecessor of which was entered into on January 6, 2005, between MDG Nevada, Inc., a Nevada corporation, ("MDG") and North Idaho Resorts, LLC, and which was subsequently assigned to MDG's affiliate Pend Oreille Bonner Investments, LLC, a Nevada limited liability company, (referred to as "PBI" or "Buyer") on August 10, 2005, is entered into and made effective as of March 9, 2005 (the "Agreement Date") by and between PBI or such affiliate of PBI as PBI shall designate (in either case "Buyer") and NORTH IDAHO RESORTS, LLC, an Idaho limited liability company ("Seller").

RECITALS

- A. Seller owns developed and undeveloped real property (collectively the "Land") located in County of Bonner (the "County"), State of Idaho. The Land is described in Exhibit A hereto. The Land consists of multiple parcels and is subject to different uses and the Land and the property which Seller is selling to Buyer pursuant to this Agreement shall include, without limitation, the following:
- the existing golf course commonly known as "Hidden Lakes Golf Course", including the existing clubhouse and related amenities and facilities as well as the personal property used in connection therewith;
 - the portion of the Land located north of Highway 200 subject to Seller's current development plan including, without limitation, the seven acre parcel, the ten acre parcel and the twelve acre parcel, the Cedar Cabins site, the Cottonwood condominium site, existing structures already

Exhibit
A

conservated but not sold, and all unsold lots;

- all the property owned by Seller south of Highway 200 commonly called "Moose Mountain";

- the two lakefront parcels;

- existing intellectual property rights in connection with the foregoing such as, for example, the name of the golf course and other trade and marketing names used in connection with the Property;

- all personal property used in connection with the Land and improvements on the Land, including, without limitation, furnishings, fixtures, equipment, vehicles, golf carts, supplies, accounts receivable, pro shop merchandise, claims and all other tangible and intangible property of Seller (including, without limitation, Seller's permit to sell alcoholic beverages) used in connection with the management, maintenance and operation of the Land and improvements on the Land, etc.;

- all Seller's right, title and interest in and to all entitlements, easements, rights of way, rights of entry, rights of use and other appurtenances benefiting the Land and the improvements thereon;

As used herein, the term "Property" shall include: the Land; any improvements on or appurtenant to the Land; the items owned by Seller enumerated above; and all right, title and interest of Seller in and to all entitlements, easements, mineral rights, oil and gas rights, water, water rights (excluding domestic water rights which are retained by sewer and water company V.P. Inc. including easements for operation and delivery of said domestic water and sewer service including sewer lagoon and land application; Buyer may move lagoon and may alter land application sites, but must provide approved alternate application site and build adequate new lagoon all to DEQ's approval) air rights, development rights, licenses, permits, maps and privileges appurtenant to the Land and/or to any improvements on the Land. Seller's current development plan is described

schematically on Exhibit B-1 hereto and shows the locations of the components of the Property itemized above. The physical elements which constitute, and the development, marketing and disposition of the Property by Buyer, is hereinafter called the "Project".

B. As used in this Agreement the term "Developer Group" shall mean and include each and any combination of the following: (i) Chip L. Bowlby, (ii) Thomas J. Merschel, (iii) Charles W. Reeves, and/or (iv) and their respective membership or shareholder interests in any entity wholly owned or jointly and severally owned by any one or any combination of said three individuals and their respective spouses. As used in this Agreement the term "Developer Group Interest" shall mean the ownership interest of any member of the Developer Group in Buyer and/or in any project entity which Buyer may hereafter form for purposes of owning and managing the Project.

C. Seller wishes to sell the Property to Buyer, and Buyer wishes to purchase the Property from Seller, all pursuant to the provisions of this Agreement.

AGREEMENTS

NOW, THEREFORE, for good and valuable consideration, including the mutual covenants contained in this Agreement, receipt of which the parties hereby acknowledge, Buyer and Seller agree as follows:

1. Purchase and Sale. Seller shall sell the Property to Buyer, and Buyer shall purchase the Property from Seller, subject and pursuant to all the provisions of this Agreement.

2. Purchase Price.

(a) Purchase Price. The purchase price (the "Purchase Price") for the Property shall be the sum of (i) a down payment (the "Down Payment") of Four Million Seven Hundred Fifty Thousand Dollars (\$4,750,000), which Buyer shall deposit in Escrow in immediately available funds prior to close of Escrow for delivery to Seller at Closing (as the terms "Escrow" and "Closing" are hereinafter defined) plus (ii) accepting title to the Property subject

to the deeds of trust which secure the payment of two promissory notes, for which, upon transfer of title to the Property to Buyer, Buyer shall assume payment responsibility. One of said two promissory notes is payable to Mr. Berry (the "Berry Note") and the other is payable to R.E. Loans LLC, a California limited liability company (the "REL Note"). The Berry Note is originally dated October 24, 1995 and in the revised principal amount of \$2,565,000, and has been previously modified by the original maker and Mr. Berry; a copy of the Berry Note is attached hereto as Exhibit G. The REL Note is originally dated March 17, 2005 and in the original principal amount of \$8,515,000; provided, however, that if Seller reduces the principal amount of the REL note prior to closing, Buyer, at its sole discretions, shall either execute a promissory note at closing to Seller for the exact amount of such principal reduction, which note shall be subordinate to financing Buyer main obtain and which shall otherwise be repaid to Seller under the same terms and conditions of the REL note and at the same interest rate, or pay in cash to Seller at closing the amount of such principal reduction made by Seller; a copy of the REL Note is attached hereto as Exhibit H. The above items included in (i) and (ii) are collectively referred to as the Down Payment. In addition to the Down Payment, the Purchase Price shall also include (i) the sum of \$441,000 to be paid as additional Participation after the Seller has received \$22 million in proceeds from the Down Payment and Participation; and (ii) a participation (the "Participation") in gross sales revenue which Buyer receives from the Project equal to twenty percent (20%) of the gross sales revenue in excess of Eighty Million Dollars (\$80,000,000) (the "Base Revenue Goal") which Buyer receives as the proceeds of sales of Project land (including sales of lots and parcels), sales of dock slips, and sales of golf course memberships in Project golf courses, whether such sales are to an entity affiliated with Buyer or to an unaffiliated third party; provided, however, that the 49 platted lots currently owned by third parties, of which seven of these 49 lots have been purchased prior to closing by Buyer or any affiliated entity or individuals set forth in Recital B above, all as finally configured in Buyer's land plan, shall not be included as lots or parcels in the calculation of the Participation, nor shall the 6 lots numbered 5, 6, 8, 9, 10, and 14 as labeled on the Hidden Lakes sales brochure attached hereto as Exhibit I, all of which are located west

of Lower Pack River Road, purchased prior to closing by Buyer or an affiliated entity or group of Buyer or the individuals set forth in Recital B above, be included in the calculation of the Participation. If Buyer produces finished residential units for sale, Buyer shall designate a dollar value to each of the lots underlying each release of such units, and Buyer shall notify Seller in writing of the designated dollar values, before Buyer offers the finished residential units for sale to any unaffiliated third party. Only the amount of the designated lot value shall be included in gross sales revenue for purposes of calculating the Base Revenue Goal and the Participation. If Seller disagrees with any such designated lot value, Seller may cause the residual value of the lot without any unit on it to be appraised by a mutually acceptable qualified appraiser, and the appraised value shall be used instead of the value designated by Buyer. Subject to any applicable restrictions and conditions on payment of the Participation imposed by Buyer's lender(s) who provide Buyer with financing for the Project, Buyer shall pay the Participation to Seller on an on-going basis out of the sale escrow for each lot and parcel which Buyer sells; accordingly Buyer shall instruct the escrow agent, for all such sales which first occur after gross sales exceed the Base Revenue Goal, to distribute to Seller twenty percent (20%) of the gross sales price for each such sale after achievement of the Base Revenue Goal upon close of the escrow for such sale. If, however, Buyer finances any such sale which closes after achievement of the Base Revenue Goal, the obligation of Buyer to pay the Participation on such a Buyer-financed sale shall be contingent upon the availability of cash proceeds of sale in the escrow sufficient to pay, first, all other costs of closing, and then the Participation; to the extent the cash proceeds do not suffice to pay the entire Participation due on the sale, the proceeds Buyer receives from payments on the purchaser's promissory note to Buyer shall be paid to Seller until Seller has received the full amount of the Participation due on the sale.

(b) Example of Participation. To illustrate calculation of the Participation, if the gross sales revenue which Buyer receives from the Project were to equal One Hundred Eighty Million Dollars (\$180,000,000), as the parties presently anticipate, then the Participation payable to Seller would be Twenty Million Dollars (\$20,000,000). For \$180,000,000 - \$80,000,000 =

\$100,000,000, and 20% of \$100,000,000 = \$20,000,000.

(c) Early Payment of the Participation. Seller shall be entitled to receive fifty percent (50%) of the first Twelve Million Dollars (\$12,000,000) of profit earned by Buyer after the date of Close of Escrow which Buyer (subject to any applicable restrictions and conditions on distributions imposed by Buyer's lender(s) who provide Buyer with financing for the Project) from time to time designates for actual distribution to any member of the Developer Group on account of any such member's Developer Group interest. Buyer shall pay Seller's share of any such profit so designated for actual distribution to Seller concurrently with the payment of the distribution to the holder of the Developer Group interest. Seller shall not be entitled to receive more than Six Million Dollars (\$6,000,000) pursuant to this Section 2(c), and all payments to Seller pursuant to this Section 2(c) shall apply to and be credited as payments on account of the Participations next coming due to Seller under Section 2(a) above. Seller acknowledges that development and/or management fees paid to any affiliate of Buyer and/or the Developer Group for services in connection with the development of the Project shall be recorded as project expenses, shall not exceed industry standards, and shall not be deemed to be profits distributed to Buyer and/or any member of the Developer Group. The provisions of this Section 2(c) shall cease to operate and apply at such time as the sum of (i) the Down Payment (with any deductions for early closing excluded from the calculation of down payment) and (ii) payments to Seller on account of the Participation equal Twenty-Two Million Dollars (\$22,000,000).

(d) Protection of Participation. In order to protect Seller's anticipated profit referred to herein as the Participation, Seller shall be afforded the following rights:

(i) If Buyer elects to enter into a sale (a "Bulk Sale" of Fifty percent (50%) or more of the assets included in the Property, such percentage to be determined by value not land area, Seller shall have the right to acquire the portion of the Project subject to the Bulk Sale on the same terms and conditions as the Bulk Sale purchaser. Buyer shall give written notice of the terms and conditions of any such proposed Bulk Sale to Seller and

shall offer Seller the right to enter into the Bulk Sale on such terms and conditions. Seller shall have thirty (30) business days to notify Buyer whether Seller accepts or refuses Buyer's offer. If Seller fails to notify Buyer in writing prior to the expiration of said thirty (30) day period that Seller accepts such offer, and to accompany such written notice with any earnest money deposit which the terms and conditions of the Bulk Sale require, Seller's right to enter into the Bulk Sale shall lapse and be of no further force or effect. If the Bulk Sale shall then fail to close, Seller's right of first refusal to future Bulk Sales shall continue.

(ii) If Buyer closes a Bulk Sale to a third party purchaser of assets included in the Property, Buyer having complied with the provisions of Subsection (i) above, Buyer shall have the right either (A) to pay Seller Thirty-Four Million Dollars (\$34,000,000) in proportion to the value of the assets which are part of the Property included in the Bulk Sale based on the projected gross revenue which the Business Plan allocates to such assets in full satisfaction of the Participation otherwise payable for the assets included in the Bulk Sale, whereupon Seller's rights to any additional Participation hereunder as to said assets shall cease and thereby terminate any further obligation or (B) to obtain the agreement of the Bulk Sale purchaser in favor of Seller, which shall be memorialized in a recorded memorandum acceptable in form to Seller, Buyer and the purchaser, to pay the Participation to Seller with respect to the portion of the Project covered by the Bulk Sale if the Bulk Sale is for any amount less than \$180,000,000. As an example if Buyer closes a Bulk Sale for \$120,000,000, the difference is \$60,000,000 and Seller shall have the right to the Participation in gross sales revenue from sales of the portion of the Project covered by the Bulk Sale equal to 6.66%. This percentage is obtained by dividing the difference of \$60,000,000 by \$180,000,000 the resulting percentage of which is multiplied by participation percentage ($\$60,000,000/\$180,000,000 = 33.33\% \times 20\% = 6.66\%$).

(iii) If Buyer shall sell unplatted lots or parcels (Acreage Sales) then Seller shall be entitled to payment of release amounts on a per acre basis, which shall apply on account of and shall reduce pro tanto Buyer's obligation to pay the Participation hereunder. The per acre release price

for sales on Moose Mountain shall be \$25,000 per acre, with one acre of greater than 35% slope land be released for each acre of less than 35% released, for sales on Idaho Country Resorts, \$250,000 per acre, and for land north of Highway 200 \$100,000 per acre excluding the Hidden Lakes Golf course. The release price for the Hidden Lakes Golf course shall be \$8,000,000.

(iv) Recordation of Memorandum. At or before Close of Escrow the parties shall execute in recordable form, and deposit in Escrow for recordation at Close of Escrow, a memorandum of the Participation which shall be substantially in the form of Exhibit F hereto.

(e) Deposit. Provided Buyer has delivered the Acceptance Notice to Seller on or before February 10, 2005 (subject to the extension of said deadline in connection with the review of title as provided below), Buyer shall deposit in Escrow immediately available funds, Two Hundred Fifty Thousand Dollars (\$250,000) (the "Deposit") on February 10, 2005. Said amount shall be released as provided for in paragraph 6(d) of this Agreement.

3. ESCROW.

(a) General. Within five (5) business days after both Buyer and Seller have executed this Agreement in at least three counterparts, Buyer shall open an escrow account (the "Escrow") in the office of Sandpoint Title Insurance Inc. ("Sandpoint") located at the following address:

120 S. 2nd Avenue
Sandpoint, Idaho 83864

Telephone No. 208-263-2222
Facsimile No. 208-265-4040
Email Address jullina@sandpoint.com

Escrow Officer Jullina Skinner
Title Officer Larry Morrison

Buyer shall deposit one fully executed counterpart of this

Agreement with Sandpoint, arrange for Sandpoint to execute counterpart joinders, and deliver one counterpart joinder fully executed by Sandpoint to Seller. Buyer shall also obtain the number of the Escrow and notify Seller in writing of the number of the Escrow. Buyer and Seller each agree and intend that Sandpoint shall serve as both administrator of the Escrow and as issuer of title insurance to Buyer.

(b) Reinsurance. Buyer and/or Buyer's lender shall have the reasonable right to require the title insurance to be issued by Sandpoint to be reinsured by one or more additional title insurers reasonably acceptable to Buyer and/or Buyer's lender with principal amounts of reinsurance coverage acceptable to Buyer and/or Buyer's lender.

4. Sales of Adjacent Properties. As used in this Agreement the term "DRP" (for Development Related Property) shall mean a property which is not part of the Property and which is a property (a) record title to which vests in Buyer not later than three years from the date of this agreement, (b) the purchase of which by Buyer was arranged or assisted by Seller, and (c) which is either (i) contiguous to the Property and becomes part of the overall Project, or (ii) a property onto which Buyer transfers units or lots which the initially approved Business Plan contemplated would be developed on the Property. If Buyer acquires record title to a DRP, Buyer shall pay Seller an amount equal to twenty percent (20%) of the net pre-tax profit of Developer Group from each such property. Pre-tax profit shall mean the net pre-tax profit arising from the sale of the DRP which is allocated to any member of the Developer Group on account of such member's interest in the entity which effected the sale. Pre-tax profit shall mean, for purposes of this Section, the profit remaining after payment of all debt service and financing costs, hard and soft acquisition and development costs including any reasonable allocations of community development costs to such property, development and/or management fees paid to any affiliate of Buyer for services in connection with the development of the Project, and costs of administration, marketing and sales. All indirect costs incurred in determining pretax profit shall be consistent with industry standards.

5. Review Period.

(a) Definition. As used herein, the term with which to make the payment "Review Period" shall mean the time period which commences on the Agreement Date and ends at midnight Pacific Time on February 10, 2005 (the "Review Period Expiration Date"). Notwithstanding the foregoing, Seller acknowledges that the information Buyer requires to review title to the Property was delivered to Buyer too few days before February 10, 2005 to allow Buyer a reasonable time to review title. Accordingly Seller hereby agrees that Buyer shall have until February 28, 2005 (the "Extended Title Review Date" in which to complete Buyer's review of title as to those items enumerated on Schedule A. If Buyer shall not affirmatively approve title by written notice delivered to Seller on or before the Extended Title Review Date, Seller, upon written demand from Buyer, shall return the Deposit to Buyer if Buyer has delivered the Deposit to Escrow. The above notwithstanding, Buyer accepts the exceptions noted in the preliminary title report subject to the removal of all statutory and monetary liens pursuant to paragraph 5(b)(vi) below, and the removal of title exceptions numbered 20 and 67 relating to the right of way held by Idaho Department of Transportation.

(b) Due Diligence Activities.

(i) In General. Buyer shall undertake during the Review Period, at Buyer's sole cost and expense, such inspections, testings, analyses and feasibility studies concerning the Property as Buyer shall deem useful or advisable (including, without limitation, geologic, seismic, soils, engineering, topographical, drainage, archaeological, environmental, biological, land planning, financing and marketing investigations), all of which are collectively called "Investigations" herein. In connection with the Investigations, Buyer, at Buyer's sole cost and expense, may retain engineers, contractors, soils and geological consultants, architects, natural scientists, environmental auditors, economists, accountants, attorneys, planners and all such other advisors as Buyer deems useful or advisable, all of whom are collectively called "Buyer's Advisors" herein. In the course of the Investigations and Buyer's other activities in connection with the Project during the Review Period, and at all times after the Review Period Expiration Date while this Agreement is in effect and Close of Escrow has not occurred, Buyer shall prevent any lien being placed on the Property on account of any action of Buyer or any of Buyer's Advisors, and should any

such lien be placed on the Property notwithstanding Buyer's best efforts to prevent such an occurrence, Buyer shall immediately cause any such lien to be removed.

(ii) Environmental Audit. During the Review Period Buyer shall have the right, in particular, to cause an environmental audit of the Property to be conducted, at Buyer's sole cost and expense, by an Advisor designated by Buyer.

(iii) Physical Inspections.

A. Insurance. As a condition precedent to any entry onto the Property by Buyer or any of Buyer's Advisors pursuant to this Agreement, Buyer shall have delivered to Seller evidence (in the form of a copy of the relevant insurance policy or of a certificate thereof which describes the policy limits and shows Seller as an additional named insured party) that any property damage or personal injury or death resulting from said entry is insured against under a comprehensive general public liability insurance policy in favor of Buyer, which policy shall (I) have a combined as well as single occurrence limit of One Million Dollars (\$1,000,000), (II) name Seller as an additional insured party, and (III) be issued by an insurance company licensed to do business in the State of Idaho.

B. Entry. At any time and from time to time during the Review Period (and for the remainder of the term of this Agreement if Buyer shall have issued the Acceptance Notice as said term "Acceptance Notice" is defined below), Buyer and any of Buyer's Advisors, upon at least two (2) business day's prior written notice to Seller, may enter upon and conduct physical inspections and tests upon and to the Property. Said activities may include, without limitation, taking samples of air, water, soils and other materials from the Property, installing and maintaining monitoring devices, drilling test holes and digging test trenches, conducting seismic investigations, surveying, and performing engineering studies. If Buyer or Buyer's Advisors bore holes or dig trenches, the same shall be refilled and leveled upon completion of the testing.

C. Hold Harmless. Buyer shall indemnify and hold Seller harmless from any liens imposed against the Property on account of Investigations and from

all claims, demands, liabilities and costs, including reasonable legal fees, arising out of any damage to the Property or out of injury to or death of any person as a direct result of Buyer's Investigations on the Property prior to close of Escrow. Buyer shall have no obligation, however, to indemnify or hold Seller harmless on account of damages, personal injuries or loss of life resulting from the intentional or negligent acts or omissions of Seller. Buyer shall have no obligation to remedy or compensate Seller for any conditions or defects on or under the Property not caused by Buyer but discovered by Buyer in the course of the Investigations.

(iv) Documents.

A. Delivery to Buyer. As used in this Agreement the term "Seller's Documents" shall mean any and all documents in the possession or custody of Seller, or reasonably available to Seller, which pertain to the Property, to its current use, or to its use for a resort and residential subdivision, including, without limitation, contracts, maps, plans, blueprints, photographs, studies and reports, records of actual or threatened litigation, administrative proceedings, land use proceedings, eminent domain or condemnation proceedings, records of fees and charges paid to governmental agencies, utilities bills, records relating to taxes and assessments, records relating to prior ownerships and prior uses, correspondence and other records of whatsoever nature. Within three (3) business days after the Agreement date Seller shall deliver to Buyer (I) an itemized list of all of Seller's Documents and (II) originals or copies of all of Seller's Documents.

B. Assignment at Close of Escrow. At Buyer's written request made at the close of Escrow, Seller shall assign to Buyer all Seller's right, title and interest in, to, and under any of Seller's Documents which Buyer shall designate for assignment. As part of such assignment, Seller shall also assign to Buyer: (I) all claims, counterclaims, defenses and/or actions, whether at law or pursuant to any other applicable federal, state or local law, which Seller may have against any third parties relating to the design and/or construction of the project and/or the existence of Hazardous Materials (as the term "Hazardous Materials" is hereinafter defined) in, at, on, under or about the Property; (II) any warranties, guaranties or other assurances from suppliers and vendors

of materials and equipment incorporated in the Project; (III) any vehicles and other self-propelled machines owned by Seller and used in connection with the Project; and (IV) existing contracts with consultants (such as civil engineers, environmental consultants, soils engineers, architects, etc.) whose services Buyer elects to retain in connection with the Project. The assignment to be made pursuant to this Subsection B shall be substantially in the form of the written assignment (the "General Assignment") attached hereto as Exhibit C.

C. Definition of "Hazardous Materials". As used in this Agreement the term "Hazardous Materials" shall mean any substance, material, waste, chemical, mixture or compound which: (I) is flammable, ignitable, radioactive, hazardous, toxic, corrosive or reactive, and which is regulated under law or by a public entity, (II) is a "Hazardous Substance" as defined or listed under the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended, or under any regulations promulgated thereunder as amended, (III) is crude oil, petroleum, natural gas, or distillates or fractions thereof, and/or (IV) damages or threatens to damage health, safety, or the environment or is required by any law or public entity (including, without limitation, the County) to be remediated, including remediation which such law or public entity requires in order for the Property to be used for any lawful purpose, including, without limitation, use as a residential subdivision.

D. Remediation. If any remediation is required by any law or public entity with respect to Hazardous Materials which affect the Property, Seller, at Seller's sole cost and expense, shall cause the remediation promptly to be undertaken, diligently prosecuted, and fully completed prior to close of Escrow. Seller hereby warrants to Buyer that all remediation work shall be performed without defects or deficiencies in accordance with all applicable legal requirements and guarantees the integrity and effectiveness of such work. Seller shall indemnify and hold Buyer harmless against any claims, demands, damages, liabilities, costs and expenses which Buyer may suffer or incur on account of Hazardous Materials existing in, at, on, under or about the Property prior to close of Escrow on account of any remediation work

performed by Seller.

(v) Title. At the time Buyer opens the Escrow, Buyer shall order from Sandpoint a preliminary report of title (the "Report") on the Property, together with complete and legible copies of all the matters (collectively "Exceptions" and individually "Exception") which the Report shows as exceptions to title. Seller shall immediately engage a licensed civil engineer or surveyor to conduct a boundary survey (the "Survey") of the Property in sufficient detail and standards to enable Sandpoint to use such boundary Survey to issue an ALTA policy of title insurance on the Property at close of Escrow; provided, however, that Buyer shall be responsible for completing any survey and site work within the boundaries of the Property necessary for ALTA purposes. Seller shall pay the surveyor for the cost of the boundary survey portion of the Survey, and Buyer shall pay any additional survey and site work costs necessary to produce a survey which satisfies the requirements for an acceptable ALTA survey. Buyer shall have until the later of (A) the Review Period Expiration Date or (B) ten (10) days after Buyer has received the Report, the Exceptions, and the Survey, in which to examine title to the Property; provided, however, that if Buyer shall not have received all of the Report, the Exceptions and any Survey which Buyer shall have ordered on or before January 15, 2005, Buyer shall have the right to extend the Review Period Expiration Date one day for each day after January 15, 2005, which elapses until Buyer has received all said material. Prior to expiration of the Review Period Expiration Date, Buyer shall notify Seller in writing of any objections to title arising from Buyer's review of the Report, the Exceptions and any Survey. Within three (3) business days after receipt of Buyer's notice of objections to title, Seller shall inform Buyer in writing (I) if there are any matters to which Buyer objected that Seller is unable or unwilling to remove, and (II) how Seller plans to remove the objections that Seller is willing to remove. If following the conclusion of the Review Period Expiration Date, Seller or Buyer shall discover an exception to title (a "Late Exception") which was not disclosed by the Report or a Survey, the discovering party shall immediately notify the other party thereof; Buyer shall then have three (3) business days to notify Seller if Buyer objects to the Late Exception. If Buyer does object to a Late Exception, then

Seller, within the next two (2) business days shall notify Buyer whether or not Seller will remove the Late Exception and, if yes, how. If there are objections (whether to Exceptions and/or to Late Exceptions) which Seller is unable or unwilling to remove, Buyer shall have the right either to accept the exception(s) in question or to terminate this Agreement, in which latter case Escrow Holder shall immediately return the Deposit to Buyer in immediately available funds. If there are objections which Seller states it will remove, and if removal may require the expenditure of funds, Buyer shall have the right to require Seller to effect the removal by an agreed date or to post security in an amount agreed to by both parties that is adequate to cover the cost of removal, so that Buyer shall have reasonable assurance, as Buyer expends funds and manpower in satisfaction of Buyer's obligations under Section 6(a) below, that the objection will in fact be removed before or removable at the close of Escrow.

(vi) Approved Exceptions. As used herein the term "Approved Exceptions" shall mean (A) a lien for non-delinquent property taxes and assessments, (B) any exceptions to title shown in the Report and/or any Survey to which Buyer did not object prior to expiration of the Review Period, (C) exceptions to title shown in the Report and/or Survey and/or Late Exceptions to which Buyer did timely object, which Seller then timely notified Buyer that Seller was unable or unwilling to remove, in which notice from Seller Buyer then acquiesced, and (D) liens and encumbrances (including entitlements) imposed on the Property at or prior to close of Escrow at the instance of or with the consent of Buyer. Any Exception which evidences a lien or other security interest (collectively "Monetary Liens") against the Property to secure any indebtedness of Seller or any other party other than Buyer (excluding, however, statutory liens to secure the payment of real property taxes and assessments) shall automatically constitute a disapproved Exception, and Seller hereby covenants to cause all Monetary Liens to be removed not later than Close of Escrow.

(c) Acceptance Notice. If Buyer, as a result of the Investigations, wishes to proceed under this Agreement and to keep this Agreement in effect, Buyer, prior to expiration of the Review Period, shall deliver written notice (the "Acceptance Notice") to both Seller and Sandpoint stating that Buyer will proceed under this

Agreement.

(d) Termination. Buyer shall have the right, exercisable in Buyer's sole and absolute discretion at any time during the Review Period, by written notice to Seller and to Sandpoint, to terminate this Agreement if the results of the Investigations do not meet with Buyer's approval. If Buyer does terminate the Agreement prior to the Review Period Expiration Date (as the same may be extended in connection with title review), this Agreement and the Escrow shall automatically terminate, and the parties shall have no further obligations or liabilities to each other hereunder.

(e) No Earnest Money. Seller acknowledges that Buyer will expend material amounts of manpower and money in conducting Buyer's Investigations pursuant to this Agreement and that, as an integral part of Buyer's Investigations, Buyer, at Buyer's expense, will commence the preparation of preliminary development materials such as a final land plan, golf course routings, a business plan for the Project and pro forma budgets and financial projections. Seller further acknowledges that the manpower and money which Buyer so expends will constitute a detriment to Buyer if Buyer elects not to deliver the Acceptance Notice to Seller, thereby terminating Buyer's interest in the Project. Recognizing said detriment as a valid consideration, Seller has agreed not to require any earnest money payment on account of the Purchase Price upon the execution of this Agreement by the parties. Buyer, in reciprocity, hereby covenants, if Buyer elects not to deliver the Acceptance Notice, to deliver to Seller the information about the property resulting from Buyer's Investigations and the preliminary development materials which Buyer shall have prepared unless Buyer is restricted by contract or by law from delivering any such information and/or material to Seller. Buyer shall use its best efforts to obtain, in any contract Buyer enters in furtherance of Buyer's Investigations, the consultant's permission to deliver to Seller, if Buyer elects not to deliver the Acceptance Notice, whatever written information and/or material is generated pursuant to the contract.

6. Rights and Obligations of the Parties.

(a) Planning Work.

(i) Entitlements. Concurrently with conducting its Investigations during the Review Period, Buyer shall undertake the land use entitlement work necessary to submit a final development plan for the Project to the County and shall diligently prosecute the work required to prepare such a submittal. If Buyer shall issue the Acceptance Notice, Buyer, unless Buyer has previously made the submission, shall as soon as possible after the date of the Acceptance Notice submit to the County and diligently pursue applications for, and use Buyer's best reasonable professional efforts to obtain, the land use entitlements (individually "Entitlement" and collectively "Entitlements") necessary for all the distinct parcels which the Land comprises, recognizing that said parcels are not all contiguous and that distinct parcels may require separate applications, including, without limitation, the entitlements listed in Exhibit B-2 hereto. The term "Entitlements" as used herein shall also include such other permits, licenses, approvals and governmental authorizations (whether from the County or from any other local, state or federal agency with jurisdiction over the Property) as may be necessary for lawful development of the Project in accordance with Buyer's development plan. Buyer, at Buyer's sole cost and expense, shall pay for the governmental fees, charges and taxes which are payable in connection with applying for the Entitlements and for the cost of the planning, engineering and architectural services necessary to prepare the submittals which the application procedures require.

(ii) Definition of "finally approved". As used in this Agreement the term "final" or "finally approved" shall mean, with respect to any Entitlement that (A) the necessary governmental agency which is required to approve an Entitlement shall have approved the Entitlement and such approval shall be stated in a resolution adopted by such agency and certified by the secretary of such agency and (B) the time period for filing or entering any administrative or legal appeal from or objection to the approval of an Entitlement shall have expired without an appeal or objection having been filed or entered, or, if an appeal or objection has been filed or entered, that the proceedings on such appeal or objection shall have been

terminated with the approval of the Entitlement being upheld substantially as initially approved, and the time period for filing or entering any administrative or legal appeal from the upheld decision shall have expired without further appeals or objections having been made.

(111) Business Plan. Seller acknowledges that

Buyer intends to prepare a business plan (the "Business Plan") for the development of the Project as a high-end resort and residential community and that, as of the Agreement Date, the work necessary to complete the Business Plan has only just commenced and is therefore in a preliminary, formative stage. Buyer covenants, however, to use diligent efforts to complete the Business Plan prior to the Review Period Expiration Date and to submit the completed Business Plan to Seller for review and approval. The purpose of granting Seller the right to review the Business Plan is to assure Seller that the Business Plan does not differ materially from Seller's existing development plan for the Project taking into account that the Business Plan will likely include high-end resort and residential community features, which Seller hereby accepts and approves, such as a single family lots, home units which may be free-standing and/or attached, hotel units, units to be sold and integrated into a rental pool, time-share and/or fractional interest units, one or more championship golf courses, and other amenities appropriate for a first-class resort. Therefore the scope of Seller's review of the Business Plan shall be limited to determining that the Business Plan does not differ materially from Seller's existing development plan in light of the variations and augmentations for developing the Project as a high-end resort and residential community included in the Business Plan. Seller shall not unreasonably withhold or delay its approval of the Business Plan within the aforesaid scope of review. Unless Seller notifies Buyer in writing of specific objections to the Business Plan within ten (10) days after Buyer has delivered the Business Plan to Seller for review, Seller shall be deemed to have approved the Business Plan. Once the Business Plan is approved, Buyer shall use Buyer's best reasonable efforts to execute the Business Plan as approved subject to whatever changes in the Business Plan are necessary to respond prudently to actual market circumstances and to any changed conditions. It is agreed and understood that Seller is entering into this agreement with the anticipation of

profiting from the overall sales anticipated by said plan. Seller's approval of said Business plan is in anticipation of a sharing of profits that should reach \$20,000,000 for Seller's share. Said \$20,000,000 is over and above the \$16,000,000 down payment. Any Business Plan that shows anticipated profits to Seller of an amount less than said \$20,000,000 or that shows profits that are unrealistically achievable may be grounds for Seller's rejection of said Business Plan.

(b) Reservations in favor of Seller.

(i) Lots. From time to time as final subdivision maps are recorded upon the Land, Seller shall have the right, for at least fourteen (14) days prior to release of such lots to the public for purchase, to select and purchase up to a maximum of seven (7) lots on which no units are planned for construction for eighty percent (80%) of the intended release prices

(ii) Golf Memberships. If Buyer determines that golf privileges at any Project golf course shall be subject to private golf memberships (each, a "Membership"), then, Seller shall be entitled to seven (7) honorary memberships, i.e., memberships for which Seller shall be exempt from paying the purchase price. But Seller shall be responsible for paying periodic dues, greens fees, and other charges which are a function of the use which the holders of said seven (7) memberships make of golf course facilities. Said seven (7) honorary memberships are personal to Seller and are not transferable or redeemable. Each Membership shall in any event be on such terms and conditions as Buyer determines in Buyer's sole and absolute discretion, including, without limitation, terms and conditions as to the cost of Membership, tee-time priority, greens-fees discounts, pro shop merchandise discounts and termination of the Membership. Buyer, furthermore, shall have the right to determine, in Buyer's reasonable discretion exercised in good faith, whether to implement, and thereafter whether to continue or terminate, any Membership program. Notwithstanding the foregoing, but without in any way limiting Buyer's right to determine all other terms and conditions of any private golf Membership program, so long as Buyer elects to implement and continue a private

Membership program at the Project golf course, Buyer hereby agrees that Buyer shall not terminate without cause any of the seven (7) honorary Memberships hereby granted to Seller. Buyer is hereby informed that there are several life time memberships that were a part of the membership of the existing Hidden Lakes Golf Course when acquired by Seller and those memberships must remain. Buyer is further hereby informed that various lot purchasers have time remaining on golf membership rights and boat slip privileges. Seller shall furnish a list of said life time memberships and said lots purchasers with unexpired rights to Buyer prior to January 25, 2005.

(c) Seller's Cooperation. Throughout the term of this Agreement, Seller shall cooperate with Buyer and with Buyer's efforts to secure final approval of the Entitlements. Buyer shall be responsible for the payment of application and processing fees charged by governmental agencies and for the services of such Advisers as Buyer may utilize in connection with the processing for the Entitlements.

(d) Deposit to Seller. Upon the date which is the earlier of (i) the date upon which Buyer submits its application to the County for issuance and approval of the Entitlements or (ii) the Review Period Expiration Date (as the same may be extended for title review as provided herein), the Deposit shall be released to Seller.

(e) Discount to Cottonwood Buyers. Buyer agrees to offer a \$20,000 discount off any retail purchase price set established by Buyer on any lot or home that Buyer constructs to any person who as of the date of this Agreement had a valid and buying deposit on a Cottonwood Condominium, such parties being identified on Schedule B. Such right to purchase shall be subject to all rules and regulations set forth by Buyer as to any priority system of choosing lots and homes so that Buyer in its sole discretion may determine who has first choice of such lots and homes. This discount shall apply to the first release only of lots and homes and if the prospective purchaser elects not to purchase then such right shall forever be waived. Further, such right shall not apply or be used as part of the Founder program, but only to the sale of lots or homes to the general public on a retail basis.

(f) Inventory and Bill of Sale. Immediately

Following the Agreement Date Seller, at Seller's expense, shall prepare, for review and testing by Buyer's auditors (whose expense Buyer shall pay) a complete and detailed written inventory (the "Inventory") of all the personal property which the Property encompasses (including, without limitation, furniture, fixtures, appliances, equipment, cars and other vehicles, golf carts, pro shop merchandise, supplies and accounts receivable). The Inventory shall be based upon a physical inventory of the personalty which the Property includes and which shall be conducted in the presence of an auditor whom Buyer designates. Seller shall deliver the Inventory to Seller for review at least thirty (30) days prior to Close of Escrow. At Close of Escrow Seller shall execute and deliver to Buyer a written certification (the "Inventory Certification") that the Inventory, subject to any corrections and additions made between the date Seller first submits the Inventory to Buyer and Close of Escrow, constitutes a complete itemized description of all the personal property which the Property includes. At Close of Escrow Seller shall also deliver to Buyer a bill of sale (the "Bill of Sale"), which shall be substantially in the form of Exhibit D hereto, conveying marketable title to said personal property to Buyer free and clear of any liens, claims, security interests and encumbrances.

(g) Protocol for Prorating Golf Course Operations. Buyer and Seller shall prorate and settle the allocation of operating income and operating expenses as of the Closing Date or as of such other date upon which they may agree. Buyer shall pay for Seller's inventory at cost, which payment shall be in addition to the Purchase Price; the inventory shall include, without limitation, food and beverages, clothing, wine and liquor, fuels, and maintenance supplies. The operating expenses to be prorated shall include, but not be limited to, management fees payable under any applicable management agreement, insurance, water and sewer charges, maintenance, supply costs, personnel and payroll costs, and charges for electricity, gas, telephone and other utilities and license fees. Any utility deposits ("Utility Deposits") made with utilities providers shall be transferred and assigned to Buyer as part of the Property in consideration for the Purchase Price. If the parties are unable to make a final reconciliation of any Utility Deposits as of Close of Escrow, the Utility Deposits shall be subject to adjustment promptly upon receipt of deposit information sufficient to

permitted completion of said adjustment. Seller shall also transfer and assign to Buyer, as part of the Property, any and all amounts associated with any Project golf course which originated as refundable membership deposits or initiation fees, all outing, tournament, and banquet deposits, all deposits or membership fees paid in connection with season or annual golf passes or similar play-privilege programs, and all complimentary play awards (collectively, the "Accrued Deposits"). Buyer shall take title to the Property at Close of Escrow subject to the liabilities and obligations associated with the Accrued Deposits. Seller shall have all rights to any deposit refunds and/or the benefit of any bonds securing the obligation for completion of the intersection at Lower Back River Road and Seller shall be responsible for any unfinished portions of that intersection.

(h) As-Built Plans. Within three (3) days after the Agreement Date Seller shall deliver to Buyer, in each case to the extent in Seller's possession or in the possession of Seller's consultants or otherwise reasonably subject to Seller's control: (i) as-built plans, if any, for existing structures and facilities (including Infrastructure Facilities) on the Land; (ii) maps showing the location of existing structures and facilities (including Infrastructure Facilities); and (iii) any other plans and drawings pertaining to existing or proposed structures and facilities for the Property.

(i) Seller's Step-In Rights. Buyer shall use Buyer's best reasonable commercial efforts, in negotiating and concluding an Institutional Loans for the acquisition and development and for the construction of the Project, to obtain provisions in the loan documentation requiring the lender to notify Seller upon the occurrence of an event of default on the part of Buyer under any such loan and allowing Seller the right to cure such default

(j) Termination by Buyer. At any time between the Agreement Date and Close of Escrow, Buyer, by written notice to Seller and Sandpoint, may terminate this Agreement without liability to Seller. If Buyer does so terminate this Agreement, Seller shall retain the Deposit and the parties shall have no further liability to each other hereunder; provided, however, if Buyer submits plans

to the County for approval, such plans are approved, but an appeal or lawsuit is filed that prevents Buyer from having Final Approvals by January 31, 2007, and Buyer elects to terminate this Agreement, then Buyer shall receive a percentage ownership in the Property in a ratio equal to the total amount of all deposits paid by Buyer to \$35,000,000.

7. Close of Escrow.

- (a) Time for Close of Escrow. Escrow shall close on the business day which first occurs after twenty (20) calendar days shall have elapsed after all the Entitlements for all the parcels which the Land comprises have been finally approved unless the parties shall hereafter mutually agree upon another earlier or later date. The above notwithstanding, closing shall occur on or before June 30, 2006, unless an appeal or lawsuit has been filed challenging the project, in which case Buyer may extend the closing to January 31, 2007, by paying Seller the sum of \$500,000, of which \$250,000 shall be applicable against the Down Payment at closing. Buyer shall use its best efforts to, and diligently proceed with, the submittal of all entitlement documents, pursuing the entitlements with the County, and defending any actions challenging the approvals obtained. Buyer shall have no obligation to proceed to close the purchase of the Property unless and until all the Entitlements have been approved and/or issued. Seller presently anticipates that all the Entitlements will be approved and/or issued in time for Escrow to close not later than September 30, 2005. Seller recognizes, however, that Close of Escrow may occur later than September 30, 2005. The above notwithstanding, the deeds conveying the two lakefront parcels known as Idaho Country Resorts shall be executed by Seller and placed in escrow at Sandpoint Title Company, and the release from escrow and recordation of such deeds shall be at such time as Buyer determines in its sole discretion, but in no event later than November 15, 2006. The use of such property during the period of time the deeds are held in escrow shall be governed by separate agreement executed between the Buyer and

Seller:

(b) Precise Moment of Closing. The closing of the purchase and sale transaction which this Agreement contemplates and the close of Escrow shall each be deemed to occur at the moment when the grant deed from Seller to Buyer (described in Section 8(b) below) is recorded in the Official Records of the County.

(c) Closing Costs and Prorations. As part of the closing proceedings, Sandpoint shall charge the parties for various costs and prorations, allocating them as follows. Seller shall be charged and shall pay for: any documentary transfer and municipal transfer taxes charged by the County or other governmental agencies; the premium for Buyer's title insurance; any monumentation fees; the cost of recording the grant deed; and one-half of Sandpoint's fees for administering the Escrow. Buyer shall pay for one-half of Sandpoint's fees for administering the Escrow. Sandpoint shall prorate non-delinquent property taxes and assessments as of the date of close of Escrow. Sandpoint shall allocate any other charges or costs which closing the Escrow entails in accordance with custom in the County.

(d) Proceedings at Close of Escrow. This Agreement shall constitute joint escrow instructions to Sandpoint. The parties shall execute such additional instructions not inconsistent with the provisions of this Agreement as Sandpoint may reasonably request; provided, however, that as between the parties, if any conflict arises between the provisions of this Agreement and the provisions of any of Sandpoint's separate instructions, then the provisions of this Agreement shall control. Sandpoint is designated the "real estate reporting person" for purposes of Section 6045 of the Internal Revenue Code of 1986, as amended and Treasury Regulation 1.6045-4, and any instructions or settlement statement prepared by Sandpoint shall so provide. Sandpoint shall be responsible for filing Form 1099-S with the Internal Revenue Service. Buyer and Seller may each submit separate additional written escrow instructions to Sandpoint for Sandpoint's direction and use in administering the closing. Such separate additional instructions shall be consistent with, and shall not contradict, the provisions of this Agreement. In case of any conflict between any instructions which either Seller or Buyer shall submit and the provisions of

this Agreement, the provisions of this Agreement shall prevail and control.

8. Conditions Precedent to Close of Escrow.

(a) Conditions Precedent in favor of Seller. At or prior to close of Escrow, the following condition precedent shall have been satisfied: namely, that Buyer shall have deposited in Escrow in immediately available funds the sum of (i) the entirety of the Purchase Price due at closing, subject to a credit for the Deposit, and (ii) Buyer's share of closing costs and prorations.

(b) Conditions Precedent in favor of Buyer. At or prior to close of Escrow, each of the following conditions precedent shall have been waived by Buyer (any such waiver to be in writing and delivered to Sandpoint) or satisfied:

(i) Seller shall have performed all its obligations hereunder to be performed prior to close of Escrow and shall not be in breach of any representation or warranty of Seller made herein.

(ii) Seller shall have deposited the following instruments in Escrow: (A) a grant deed, executed in recordable form, sufficient according to Sandpoint to convey marketable fee simple title to the Property to Buyer subject only to Approved Exceptions; (B) the General Assignment, executed in final form by Seller; and (C) the Inventory Certification and the Bill of Sale (D) documentation necessary to relieve Buyer of its obligation to withhold taxes from the Purchase Price in accordance with the Foreign Investment in Real Property Tax Act and any equivalent Idaho statute or regulation. The documentation for clause (D) of the preceding sentence shall be reasonably satisfactory in form and substance to Buyer and Buyer's legal counsel.

(iii) The Entitlements shall have been finally approved for all parcels which the Land includes.

(iv) Seller shall have approved the Business Plan.

(v) Seller shall have fully performed and fully paid for any remediation work required pursuant to

Section 5(b)-(iv) (D) hereof.

(vi) Sandpoint shall be ready and willing to issue, conditioned only upon payment of the premium therefore, its standard A.L.T.A. policy of title insurance (1970 Form-B), together with such endorsements as Buyer and/or Buyer's lender may reasonably require (including, without limitation, a lien-free endorsement), dated and effective as of the time of close of Escrow and supported by such policies of reinsurance as Buyer and/or Buyer's lender may require, insuring Buyer in the principal amount of the Purchase price that marketable fee simple title to the Property is vested in Buyer subject only to Approved Exceptions, and insuring Buyer's lender (if any) that the deed of trust securing said lender's purchase money loan to Buyer is a lien of first priority against the Property.

(vii) Buyer and Seller shall have completed the preparations and inventory as contemplated in Section 6(g) above.

(viii) Buyer shall have received estoppel certificates from each of Seller's consultants whom Buyer shall designate, dated as of the date of Close of Escrow and otherwise satisfactory to Buyer and Buyer's legal counsel in form and substance, certifying that work which such consultant has done in connection with the Project, describing any work which is unperformed under the consultant's contract with Seller, certifying that the consultant has completed the scope of work specified in its contract with Seller and has been fully paid for its services in connection with the Property (or, if the contractor has not completed its work and/or has not been fully paid, describing (A) amounts billed to Seller and unpaid under such contract, (B) amounts accrued but unbilled, and (C) the cost to complete work yet unperformed under the contract).

(ix) There shall have been no material adverse

changes to the physical condition of or title to the Property between the Agreement Date and the Close of Escrow.

(x) Effective not later than Close of Escrow, Seller shall have terminated the employment in connection with the Property of all employees of Seller or of any affiliate of Seller and shall have fully paid all such employees all compensation due to such employees for such employment through the effective date of their respective terminations, including all benefits to which such employees are entitled, payroll taxes and withholding taxes.

(xi) Seller shall have delivered to Buyer the will serve letter required in Section 11(j) below.

(xii) Seller shall have secured consents from Mr. Berry and R.E Loans LLC, respectively, for transfer of the Property to Buyer upon the understanding that Buyer will accept title to the Property subject to the deeds of trust which secure the Berry Note and the REL Note and will become responsible for the payments due under said two promissory notes. Buyer agrees to pay to R E. Loans LLC one point for the assumption of said loan

(xiii) Mr. Berry shall have agreed to a modification of the Berry Note to provide that the Berry Note shall be payable on an interest-only basis, with installments of interest payable monthly/quarterly/annually in arrears, with all amounts of principal and interest due under the Berry Note payable in full on or before the third anniversary of close of Escrow.

(xiv) Buyer will waive the entitlement contingency on the lakefront property and close on all the property upon receipt of entitlements on the mountain and golf parcels, all under the

timeframes as outlined in the third amendment and Seller agrees to the same, and the closing of such lakefront parcels shall occur as described in paragraph 7(a) above.

(c) Failure of Conditions. If any one or more of the conditions precedent in favor of Buyer listed above in Section 8(b) shall not be waived by Buyer or satisfied, Escrow shall not close, and Buyer, at Buyer's sole and exclusive election, may either (i) unilaterally extend the time for close of Escrow for such reasonable period as in Buyer's commercial judgment is sufficient for permitting satisfaction of any such failed condition or (ii) by written notice to Seller and Sandpoint terminate this Agreement and the Escrow. Thereafter the parties shall have no further obligations or liabilities to each other hereunder; provided, however, if Escrow fails to close by reason of the default of Seller under this Agreement, Buyer shall be entitled to immediate return of the Deposit in immediately available funds and to exercise, singly or in any combination, any and all remedies available to Buyer at law or in equity.

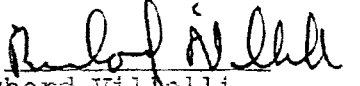
9. Liquidated Damages. IF BUYER HAS DELIVERED THE ACCEPTANCE NOTICE TO SELLER AND THEREAFTER ALL THE CONDITIONS PRECEDENT IN FAVOR OF BUYER HAVE BEEN WAIVED BY BUYER OR ARE SATISFIED, AND BUYER THEN FAILS TO PAY THE PURCHASE PRICE TO SELLER AND DOES NOT CLOSE THE ESCROW IN ACCORDANCE WITH BUYER'S OBLIGATIONS UNDER THIS AGREEMENT, BUYER AND SELLER AGREE THAT THE DAMAGES TO SELLER WOULD BE DIFFICULT AND IMPRACTICAL TO DETERMINE. ACCORDINGLY BUYER AND SELLER HAVE AGREED TO FIX AS LIQUIDATED DAMAGES THE AMOUNT EQUAL TO THE PLAN SUBMITTAL PAYMENT OF TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000). SAID AMOUNT SHALL BE RELEASED AND RETAINED BY SELLER AS LIQUIDATED DAMAGES AND SHALL CONSTITUTE SELLER'S SOLE AND EXCLUSIVE REMEDY FOR BUYER'S FAILURE TO PURCHASE THE PROPERTY. THE RETENTION OF SAID AMOUNT BY SELLER AS LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY; IT IS INTENDED INSTEAD AS LIQUIDATED DAMAGES. SELLER AGREES THAT SAID AMOUNT AS LIQUIDATED DAMAGES SHALL BE IN LIEU OF ANY OTHER MONETARY RELIEF OR OTHER REMEDY, INCLUDING, WITHOUT LIMITATION, SPECIFIC PERFORMANCE OR DAMAGES TO WHICH SELLER MIGHT OTHERWISE BE ENTITLED, WHETHER UNDER THIS AGREEMENT OR AT LAW OR IN EQUITY. SELLER AND BUYER SPECIFICALLY

ACKNOWLEDGE THEIR AGREEMENT TO THIS LIQUIDATED DAMAGES PROVISION BY SIGNING THIS SECTION IN THE APPROPRIATE SPACES BELOW:

Seller's signature

North Idaho Resorts, LLC

By Villelli Enterprises Inc.
Managing Member

By 
Richard Villelli
President

Buyer's signature

Pend Oreille Bonner
Investments, LLC

By _____
Chip L. Bowiby
Member

10. Seller's Covenants.

(a) Insurance. Throughout the term of this Agreement Seller shall keep in effect all existing insurance on the Property in effect, which shall include, at a minimum, a comprehensive general public liability policy with a combined and single occurrence coverage of at least One Million Dollars (\$1,000,000).

(b) New Transactions. Throughout the term of this Agreement, Seller shall not enter or extend any existing leases, occupancy agreements or other arrangements which confer any possessory rights in the Property upon third parties, or grant any easements or other rights which would constitute exceptions to title to the Property, or grant or suffer any liens or encumbrances against the Property on account of monetary or other obligations of Seller, or increase the amount of any indebtedness secured by the Property on the Agreement Date unless such increases occur in the ordinary course of operating the ongoing business and provided that any such indebtedness obligations shall be the responsibility of the Seller.

(c) Existing Transactions. Throughout the term of this Agreement, Seller shall timely and fully perform the obligations of Seller under any existing leases,

contracts, loan agreements, security instruments (such as mortgages, deeds of trust, and Uniform Commercial Code financing statements and security agreements), bonds or other agreements affecting the Property and shall take such actions and enter such further agreements as are necessary to enable Seller to cause all such existing agreements to be terminated at or prior to close of Escrow.

(d) Delivery of Possession. Immediately upon close of Escrow Seller shall tender delivery of possession of the Property to Buyer, free and clear of the occupancy of any third persons or entities and free and clear of the personal property of any third persons or entities except those persons occupying RV spaces at Idaho Country resorts shall have until the later of (i) September 30, 2005 and (ii) Close of Escrow to vacate their spaces and manager of said resorts shall be allowed to remain on premises until given 90 day notice by Buyer after Close of Escrow. Seller shall be responsible for causing occupants of the RV spaces to vacate by not later than the later of (i) September 30, 2005 and (ii) Close of Escrow and, at Close of Escrow, shall provide Buyer with a written agreement from the resort manager agreeing to vacate his premises upon receipt of a 90 day notice from Buyer. Seller shall have caused any third persons or entities fully to have vacated the Property by the close of Escrow and to have removed any personal property belonging to such third persons or entities. All risk of material or immaterial loss and damage (including condemnation of the Property) by casualty or other cause shall be and remain with Seller until close of Escrow. Upon close of Escrow all risk of material and immaterial loss and damage to the Property shall pass to Buyer.

(i) If any damage or destruction to any of the Property occurs prior to Closing (including the destruction of natural vegetation by fire), Seller shall immediately give Buyer written notice of such damage or destruction, and Buyer shall have the option, exercisable within ten (10) days thereafter either (A) to terminate this Agreement, in which case Sandpoint shall immediately return all documents, instruments and monies to the Party which deposited same in respect of the Closing and Seller shall immediately return to Buyer the Deposit, or (B) to accept the Property in its condition at that time, and to receive an assignment of all of Seller's rights to any insurance proceeds payable by reason of such damage or

destruction, with a commensurate reduction in the Purchase Price for loss over and above insurance proceeds. If Buyer elects to proceed under clause (B) above, Seller shall not compromise, settle or adjust any such insurance claims without Buyer's prior written consent.

(ii) If prior to the Closing all or any portion of the Property is subject to an actual or threatened taking by a public authority, by the power of eminent domain or otherwise, Buyer shall have the right, exercisable by giving written notice to Seller within ten (10) days after Buyer's receipt of written notice of such taking, either (A) terminate Escrow, in which case Escrow Holder shall immediately return all documents, instruments and monies to the Party which deposited same in respect of the Closing and Seller shall immediately return to Buyer the Deposit or (B) to accept the applicable portion of the Property in its then condition, and to receive an assignment of all of Seller's rights to any condemnation award payable by reason of such taking. If Buyer elects to proceed under clause (B) above, Seller shall not compromise, settle or adjust any claims to such award without Buyer's prior written consent.

(e) Disclosure Statement. Within five (5) business days after the Agreement Date, Seller shall deliver to Buyer a written statement (the "Disclosure Statement") in which Seller shall set forth in itemized fashion all information, facts and circumstances of which Seller is aware (or by examination of Seller's records and other information available to Seller could become aware) concerning the matters enumerated below in this Section 10(e). Thereafter, throughout the term of this Agreement, Seller shall update and augment the Disclosure Statement by notifying Buyer in writing of any information of which Seller becomes aware which adds to or is contrary to information that Seller has previously provided to Buyer. To the extent that Seller does not provide any information to Buyer regarding any matter enumerated below in this Section 10(e), Seller shall be deemed to have represented to Buyer that Seller has no knowledge regarding such matter. Seller acknowledges that Buyer intends to rely on the information which Seller provides to Buyer pursuant to this Section 10(e), that the reliability of said information is a material inducement to Buyer to enter this Agreement and to perform Buyer's obligations hereunder, and that Buyer's right of reliance and Seller's representation

shall survive and be enforceable after the close of Escrow.

Seller shall inform Buyer with respect to the following matters regarding the Property:

(i) Whether Seller's interest in the Property is anything other than fee simple title to the Property.

(ii) Whether there are any mortgages, liens, encumbrances, leases, tenancies, security interests, covenants, conditions, restrictions, rights-of-way, easements, judgments, and rights of succession, options, or any other matters affecting title to the Property, except for those matters identified in the Report and/or the Survey.

(iii) Whether the Property presently consists of one or more legally subdivided parcels.

(iv) Whether any of the Property is subject to a conservation easement or other land use arrangement which precludes or restricts the development and sale of the property for commercial purposes.

(v) Whether: (A) the Property has been or is in violation of, or has been or is under investigation for a violation of, any federal, state or local law, ordinance or regulation relating to industrial hygiene or to environmental conditions in, at, on, under or about the Property including but not limited to soil and ground water conditions; (B) the Property has been subject to, or is within 2000 feet of, a deposit of Hazardous Materials; (C) Seller or any third party has used, generated, manufactured, stored or disposed in, at, on, under or about the Property or transported from the Property any Hazardous material; (D) there has been any discharge, migration or release of any Hazardous Material from, into, on, under or about the Property; (E) any underground and/or above-ground storage tanks currently exist or have existed in the past on the Property; and (F) whether any shooting ranges (including target ranges, skeet or trap ranges, and the like) currently exist or have existed in the past on the Property and, if so in either case, indicating the location of each such shooting range.

(vi) Whether there are any seismic safety

problems relating to the Property, and/or whether known or suspected fault lines and fault zones underlie and/or are located in the vicinity of the Property.

(vii) Whether there are any endangered or threatened species or protected natural habitat, wetlands, flora and/or fauna on the Property or lands adjacent to the Property or any areas that are or could be designated as wetlands.

(viii) Whether any portion of the Property is located in a flood zone.

(ix) Whether there are any existing, proposed or threatened eminent domain or condemnation actions or assessment district proceedings relating to the Property.

(x) Whether there are any facts or circumstances that would preclude Seller from delivering fee simple title to the Property to Buyer at close of Escrow subject only to Approved Exceptions.

(xi) Whether there is any governmental policy or action precluding or inhibiting (A) issuance of grading or building permits, (B) approval of precise engineering plans, environmental impact reports, or tentative or final subdivision maps, (C) issuance of certificates of occupancy, or (D) issuance of water, sewer, or other utility connection permits affecting the Property.

(xii) Whether there are any new development fees, impact fees or other fees, and/or increases therein, which will be levied (or are under consideration by any governmental agency or body) in connection with the development of the Property.

(xiii) Whether there is any action, suit or proceeding pending or threatened against or affecting the Property, or any portion thereof, or relating to or arising out of the operation or the use thereof, in any court or before any federal, state or local agency, or other governmental instrumentality.

(xiv) Whether the Property is not in compliance with all applicable governmental laws, ordinances, rules and regulations, including without

limitation such as concern Hazardous Materials, zoning and building regulations, and all licenses, permits and other governmental approvals and/or authorizations relating to the Property.

(xv) Whether there are any approvals and consents necessary in connection with the execution of this Agreement by Seller or the performance by Seller of Seller's obligations under this Agreement that have not been obtained.

(xvi) Whether this Agreement or anything to be done under this Agreement violates or will violate any contract, document, agreement or instrument to which Seller is a party or by which Seller is bound.

(xvii) Whether any of Seller's Documents is inaccurate or misleading in any material respect, and whether any of the agreements to which Seller is a party and included among Seller's Documents is not a true, correct and complete copy thereof or is not binding upon Seller.

(xviii) Whether there are any archaeological features and/or remains on the Property, and whether there are any cemeteries, burial grounds or other Native American sites on the Property.

(f) Release of Options and Rights of First Refusal.

Not later than fifteen days after the date of this agreement Seller, at Seller's exclusive cost, shall cause any purchase options or rights of first refusal or any other rights to acquire a legal or equitable interest in all or any portion of the Property, which presently exist in favor of any third party, to be released, terminated and extinguished (but subject to the provisions of Section 11(h) below. To the extent any such right exists of record, Seller shall cause the right to be terminated of record. Seller shall indemnify, protect, defend, and hold and save Buyer harmless from and against any failure of Seller to perform the covenant set forth in this Section 10(f).

11. Seller's Representations and Warranties.
Seller hereby makes the following representations and

warranties to Buyer, which shall survive the Close of Escrow and be enforceable at all times thereafter.

(a) Seller's Authority. Seller is a limited liability company duly formed and in good standing under the laws of the State of Idaho. Seller or Seller's partners own marketable fee simple title to the entirety of the Property. Seller has the legal power, right and authority to enter into this Agreement and the instruments referenced herein, and to consummate the transaction contemplated in this Agreement.

(b) No Conflict. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereunder on the part of Seller do not violate any applicable law, ordinance, statute, rule, regulation, order, decree or judgment, conflict with or result in the breach of any material terms or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge, or encumbrance upon the Property or any other assets of Seller by reason of the terms of any contract, mortgage, lien, lease, agreement, indenture, instrument or judgment to which Seller is a party or which is or purports to be binding upon Seller or which otherwise affects Seller, which will not be discharged, assumed or released at the Close of Escrow. No action by any federal, state or municipal or other governmental department, commission, board, bureau or instrumentality is necessary to make this Agreement a valid instrument binding upon Seller in accordance with its terms.

(c) Pending Actions. There are no pending or threatened actions, suits, arbitrations, claims, or proceedings, at law, in equity or otherwise, affecting, or which may affect, all or any portion of the Property or in which Seller is or will be a party by reason of Seller's ownership of the Property, including, but not limited to, judicial, municipal or administrative proceedings in eminent domain, collection or bankruptcy actions or proceedings to establish a new assessment district or increase the assessments imposed by an existing assessment district, zoning change, moratorium or other government policy or practice which affects the Property or Buyer's anticipated development of the Property.

(d) Violations. Seller has received no notice of any alleged building code violations, health and

safety violations, and federal, state, or local agency actions regarding environmental matters, federal environmental protection agency or zoning violations.

(e) Consultants' Work Product. Except as provided in Section 6(e) above, after Close of Escrow Buyer shall have the right to use all work product produced by or for Seller prior to the Close of Escrow with respect to soils, engineering and architectural work, at no additional cost to Buyer. The Purchase Price is consideration for and the Property includes all such work product. Seller represents and warrants that (i) all Seller's contracts with its consultants are listed on Exhibit E hereto; (ii) all amounts due to consultants for their work product under said contracts have been paid in full by Seller through the date of this Agreement, and amounts which accrue hereafter shall be paid in full prior to Close of Escrow, other than miscellaneous reimbursements which Seller covenants to pay on or before the Close of Escrow; (iii) no further amounts are due to any consultant, other than miscellaneous reimbursements which Seller covenants to pay on or before the Close of Escrow, (iv) neither Seller nor any other party to any of said contracts are in default thereunder; (v) all work to be performed under said contracts has been completed or will be completed prior to Close of Escrow; and (vi) that no consultant has filed a lien against the Property on account of work such consultant has performed. Seller agrees, at Closing, to assign to Buyer all of Seller's rights, including, without limitation, all guarantees, warranties, representations and indemnities, whether contractual or statutory (collectively, the "Warranties"), under said contracts. If any of the Warranties or any other rights assigned to Buyer pursuant to the foregoing are not enforceable by Buyer, or if Buyer is not named as an additional insured on any policy of insurance for which Seller was added as an additional insured by the contracting party under any of said contracts, then Seller shall, at Buyer's request, exercise good faith efforts to enforce (y) such Warranties or other rights for the benefit of Buyer, or (z) Seller's rights under such additional insured endorsement for the benefit of Buyer, as the case may be; provided, that Buyer shall pay Seller's reasonable out-of-pocket costs incurred in such enforcement efforts to the extent that Buyer would have incurred such costs had such Warranties or other rights been enforceable directly by Buyer or had Buyer been named as an additional insured with respect to work

performed under the Project Documents. The intent of the foregoing provision is to put Buyer and Seller in the same position they would have been in whether or not the Warranties or other rights of Seller become enforceable directly by Buyer or had Buyer been named as an additional insured on any policy of insurance for which Seller was added as an additional insured to the third party's insurance.

(f) Occupancy Rights. There are no leases, occupancy agreements or other arrangements which confer any possessory rights in the Property on third parties and Seller shall deliver the Property to Buyer at the Close of Escrow free of any and all third party occupancy rights except for those at Idaho Country Resorts described above.

(g) Hazardous Materials. There are no Hazardous Materials present on, in or under the Property. There are chemicals and fuels stored for golf course maintenance purposes.

(h) Binding Obligations. This Agreement constitutes the legal, valid and binding obligation of Seller enforceable against Seller in accordance with its terms, except to the extent that such enforcement may be limited by applicable bankruptcy, insolvency, moratorium and other principles relating to or limiting the rights of contracting parties generally. Neither this Agreement nor the consummation of any of the transactions contemplated hereby violates or shall violate any provision of any agreement or document to which Seller is a party or to which Seller is bound. No consent from any third party is required before any of the Property may be conveyed to Buyer. Buyer acknowledges that the Moose Mountain property is encumbered by a first right of refusal and a profit sharing restriction in favor of JV LLC. Seller covenants to attempt to obtain a release (the "Moose Mountain Release") of said right of first refusal and restriction, executed in recordable form by JV LLC, which shall be satisfactory to Buyer in form and substance, and to deliver the Moose Mountain Release to Buyer not later than fifteen days from the date of this agreement. If Seller fails to deliver the Moose Mountain Release to Buyer by said date, Buyer shall have the right to terminate this Agreement. For purposes of this agreement and for purposes of presenting holder of the first right of refusal, the purchase price of Moose Mountain shall be \$7,400,000. Notwithstanding, Seller covenants to present and disclose this Agreement in

its entirety to the holder of the option and right of first refusal.

(i) No Insolvency Condition. Neither Seller, nor any entity or person that directly or indirectly owns or controls Seller is bankrupt or insolvent under any applicable Federal or state standard, nor has any such party filed for protection or relief under any applicable bankruptcy or creditor protection statute nor has any such party been threatened by creditors with an involuntary application of any applicable bankruptcy or creditor protection statute. Seller is not entering into the transactions described in this Agreement with intent to defraud any creditor or to prefer the rights of one creditor over any other. Seller and Buyer have negotiated this Agreement at arms-length and the consideration to be paid represents fair value for the assets.

(j) No Hook-Up Fees. Seller (or its affiliate VP Inc.) owns the domestic water and sanitary sewer systems which serves and will serve the Project. Said systems presently have approvals to provide sufficient and adequate service to the Project for 326 units. At Close of Escrow Seller shall deliver a will serve letter for 326 units to Buyer less whatever hook-ups have already been provided to the existing Hidden Lakes community, which shall reasonably acceptable to Buyer in form and substance. Neither Buyer nor any party who purchases a lot or residential unit in the Project from Buyer shall be required or have any obligation to pay any hook-up fee to Seller or to any other party as a condition to receiving water and sanitary sewer services. The existing systems may be expanded upon the issuance of proper governmental approvals (by extension of the existing pipelines and provision of additional lagoon and land application capacity) to provide sufficient and adequate service additional units, in excess of the aforesaid 326 units, specified in Buyer's Business Plan; provided, the foregoing representation and warranty relating to service for any such additional units is made subject to the understanding that Seller shall not be responsible for the costs of expanding said systems to accommodate any such additional units. Buyer acknowledges that the ability to increase capacity is subject to governmental approvals and that Buyer must finance any such expansion. VP Inc., which owns and operates the existing water and sewer facilities, is an affiliate of Seller. Seller therefore hereby represents, warrants and covenants

to Buyer that VP, Inc. will enter into any agreements, execute any land use entitlement applications, and grant new rights of use or easements and remove any existing rights of use and easements (such as for sewer line, water line and lagoon use and land application) necessary or useful for the system and the development of the property by the Buyer. Buyer hereby represents, warrants and covenants to VP, Inc. that Buyer will enter into any agreements, execute any land use entitlement applications, and grant rights to use and easements for sewer lines, water lines and lagoon use and land application necessary or useful for system.

12. Indemnity. At all times from and after the Agreement Date Seller shall indemnify, protect, defend, save and hold Buyer harmless against any and all claims, losses, expenses, damages, liabilities, and causes of action which Buyer may suffer or incur at any time after the Agreement Date in consequence of any breach or default on the part of Seller under this Agreement and/or on account of the failure of Seller to perform any obligation of Seller relating to the Property which obligation first arises prior to the Closing Date hereunder. From and after Close of Escrow, Buyer shall indemnify, protect, defend, save and hold Seller harmless against any and all claims, losses, expenses, damages, liabilities, and causes of action which Seller may suffer or incur in consequence of the failure of Buyer to perform any obligation of Buyer relating to the Property which obligation first arises after the Closing Date hereunder.

13 Notices. All notices required hereunder shall be in writing and shall be delivered by personal delivery, commercial courier, by facsimile transmission (provided that receipt is confirmed by telephone or otherwise), or by mailing such notice by first class mail, certified, return receipt requested, postage and fees prepaid, addressed as follows:

SELLER

North Idaho Resorts, LLC

To Both

c/o Hidden Lakes Golf Resort

151 Clubhouse Way

Sandpoint, Idaho 83864

Attention: Mr. Richard Villelli

Telephone: (208) 255-4500)
Facsimile: (208) 255-4498)

Lee Deierling
Villegli Enterprises Inc.
1001 W Whittier Blvd.
La Habra, CA 90631

Telephone 562-697-5000
Facsimile 714-5260212

BUYER

Pend Oreille Bonner Investments, LLC
To both:

6900 South McCarran Boulevard
Suite 1010
Reno, Nevada 89509
Attention: Chip L. Bowlby

Telephone: (775) 324-6900
Facsimile: (775) 324-6922

9731 Blue Larkspur Lane
Monterey, CA 93940
Attention: Charles W. Reeves

Telephone: (831) 658-0395
Facsimile: (831) 642-9179

With a copy to:

William W. Sterling, Esq.
1821 Shoreline Highway
Sausalito, CA 94965

Telephone (415) 381-6455
Facsimile (415) 388-9615

SANDPOINT

Sandpoint Title Insurance Inc.
120 S 2nd Ave
Sandpoint Idaho 83864

Telephone 208-263-2222
Facsimile 208-265-4040

or to such other address as either party may designate by written notice to the other. All notices shall be deemed delivered upon actual receipt or refusal of delivery.

14 Broker's Commission. Seller has used the services of one or more finders, real estate brokers and/or real estate salesmen in connection with the purchase and sale of the Property; Seller shall be exclusively responsible for the payment of any fees and commissions owing to such persons. Buyer represents and warrants to Seller that Buyer has not engaged any person, firm or entity to represent it in connection with the purchase and sale of the Property. Each party shall indemnify and hold the other harmless against any breach by it of the foregoing representation and warranty.

15. Nominee. At any time after the Agreement Date Buyer may assign any or all of its right, title and interest in and to this Agreement to another party or parties (collectively "Nominee") each of which is, directly or indirectly, an affiliate of Buyer and/or any of Chip L. Bowlby, Thomas J. Merschel, and Charles W. Reeves. Provided Nominee shall assume in writing all the then unperformed obligations of Buyer under this Agreement, Buyer shall thereupon automatically be relieved of all its liabilities and obligations under, and shall be fully released from, this Agreement. Buyer shall notify Seller and Sandpoint in writing upon the occurrence of any such assignment, and in the notice shall provide the name, address, telephone and facsimile numbers of Nominee.

16. Confidentiality. Buyer and Seller shall at all times keep the transactions contemplated hereby and all documents received from each other confidential, except (a) to the extent necessary to comply with applicable laws and regulations, (b) for discussion with Buyer's Advisors, (c) as needed to carry out the obligations of the parties hereunder, including, in the case of Buyer, arranging equity investments and debt financing for the Property.

17. Miscellaneous Provisions.

(a) Effectiveness of Instrument. This Agreement shall not constitute a binding agreement between Seller and Buyer until such time as both Buyer and Seller have executed this Agreement by completing and signing the signature blocks below and by signing and/or initialing the liquidated damages provisions in Section 9 above.

(b) Governing Law; Amendment; Construction. This Agreement shall be construed, interpreted and enforced in accordance with the laws of the State of Idaho. Any modification of this Agreement must be in writing and signed by both Buyer and Seller. This Agreement memorializes the agreements reached after arms-length bargaining between Seller and Buyer; the parties and their counsel have reviewed it fully and it shall be deemed jointly drafted. Words, phrases, and all provisions hereof shall, except as specifically defined herein, be interpreted in accordance with their ordinary meanings. All personal pronouns used in this Agreement shall include the other genders. The singular shall include the plural, and the plural the singular, whenever and as often as may be appropriate. The captions and headings in this Agreement are for convenience only, are not part of the substantive provisions of this Agreement, and do not in any way limit or amplify the provisions hereof.

(c) Entire Agreement. This Agreement (together with any Exhibits hereto) constitutes the sole and entire agreement between Seller and Buyer concerning the Property and supersedes any and all prior oral or written agreements or understandings between them pertaining to the transactions contemplated herein. No representations, warranties or inducements, express or implied, have been made by either party to the other, except as set forth herein.

(d) Partial Invalidity. If a court of competent jurisdiction shall hold that any provision of this Agreement is invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect and shall in no way be impaired or invalidated. The parties shall, however, substitute for the provision held to be invalid or unenforceable a provision which is valid and enforceable which approximates as closely as possible the commercial and economic intent of the stricken provision.

(e) Attorney's Fees. Each party shall be separately responsible for any attorney's fees it may incur in connection with the negotiation and preparation of this Agreement, any Exhibits hereto and any other instruments or documents mentioned herein, as well as for such fees incurred in connection with the closing of the Escrow. If there is any legal action or proceeding between Seller and Buyer to enforce any provision of this Agreement or to protect or establish any right or remedy of either party hereunder, the prevailing party shall be entitled to all its costs and expenses, including attorney's fees and expert witness fees, incurred in connection with such action and in any appeal therefrom.

(f) Successors and Assigns. The provisions of this Agreement shall survive recordation of the grant deed (by which title to the Property is conveyed from Seller to Buyer) and close of Escrow. The provisions of this Agreement shall inure to the benefit of and bind Seller and Buyer and their respective successors and assigns.

(g) Further Documents. At any time and from time to time during the term of this Agreement as well as following the close of Escrow, each party, at the expense of the requesting party, shall execute and deliver (and acknowledge before a notary public where necessary) such instruments of transfer and such other documents as the other party may reasonably request or as are necessary to carry out and give effect to the purposes and intent of this Agreement.

(h) Definition of "business day". The term "business day" shall mean those weekdays on which Bank of America, National Association, is open for business to the public and is conducting its customary retail banking transactions in the State of California.

(i) Payment of Escrow Fees on Early Termination. If this Agreement terminates for any reason other than by close of Escrow, Seller and Buyer shall each pay directly to Sandpoint, upon demand, one-half of any fees or other charges owed to Sandpoint in its capacities as Sandpoint and Sandpoint hereunder.

(j) Incorporation of Exhibits. Any Exhibit mentioned in this Agreement shall be deemed incorporated in this Agreement by reference as though the provisions of the

Exhibit were fully set forth herein.

(k) Memorandum of this Agreement for Recordation. Neither Seller nor Buyer shall cause or permit the recordation of this Agreement. Upon the request of Buyer or Seller, however, made concurrently with or at any time after the execution of this Agreement by both parties, Buyer and Seller shall execute in recordable form and deliver to Buyer and Seller a memorandum of this Agreement, in the form of Exhibit F hereto, which Buyer and Seller may record, at recording party's expense, in the Official Records of the County.

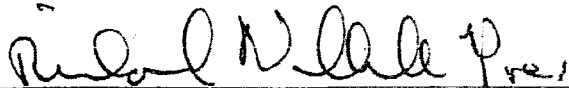
(l) Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be a fully binding and enforceable contract and agreement against the party signing such counterpart, but all such counterparts shall together constitute but one agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Agreement Date.

SELLER

NORTH IDAHO RESORTS, LLC, an Idaho
limited liability company

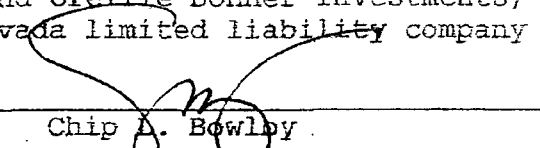
By Villelli Enterprises Inc.
Managing Partner



By Richard A. Villelli
President

BUYER

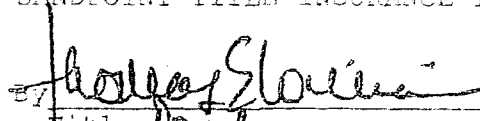
Pend Oreille Bonner Investments, LLC, a
Nevada limited liability company

By 
Chip A. Bowlby
Member MANAGER

Acceptance of Agreement

The undersigned hereby: acknowledges receipt of a fully executed counterpart of this Agreement; accepts such authorizations, directions and instructions as are set forth herein for Sandpoint and Sandpoint; and agrees to act as Sandpoint and Sandpoint pursuant to this Agreement and to be bound by and perform the terms of this Agreement as such terms apply to the undersigned.

SANDPOINT TITLE INSURANCE INC.



title pres.

Acceptance of Agreement

The undersigned hereby; acknowledges receipt of a fully executed counterpart of this Agreement; accepts such authorizations, directions and instructions as are set forth herein for Sandpoint and Sandpoint; and agrees to act as Sandpoint and Sandpoint pursuant to this Agreement and to be bound by and perform the terms of this Agreement as such terms apply to the undersigned.

SANDPOINT TITLE INSURANCE INC.

By _____
Title _____

EXHIBITS

INDEX OF EXHIBITS

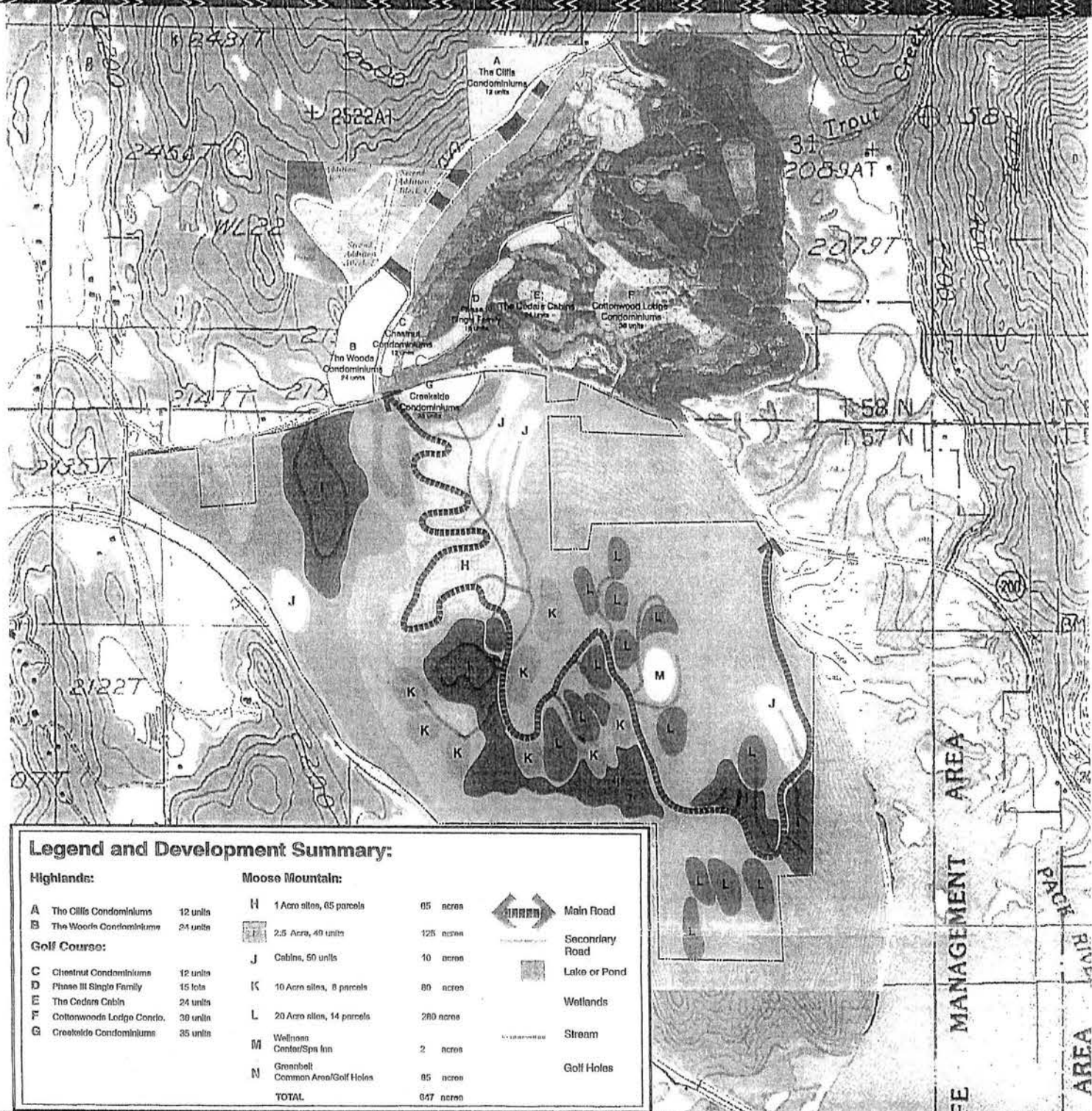
Exhibit A	Legal Description of Project Land
Exhibit B-1	Seller's Development Plan
Exhibit B-2	List of Entitlements
Exhibit C	General Assignment
Exhibit D	Bill of Sale
Exhibit E	Contracts with Consultants
Exhibit F	Memorandum of Agreement
Exhibit G	Berry Note
Exhibit H	R.E Loans LLC Note
EXHIBIT I	Hidden Lakes sales brochure
Schedule A	Title Exceptions

EXHIBIT A
LEGAL DESCRIPTIONS

EXHIBIT B-1

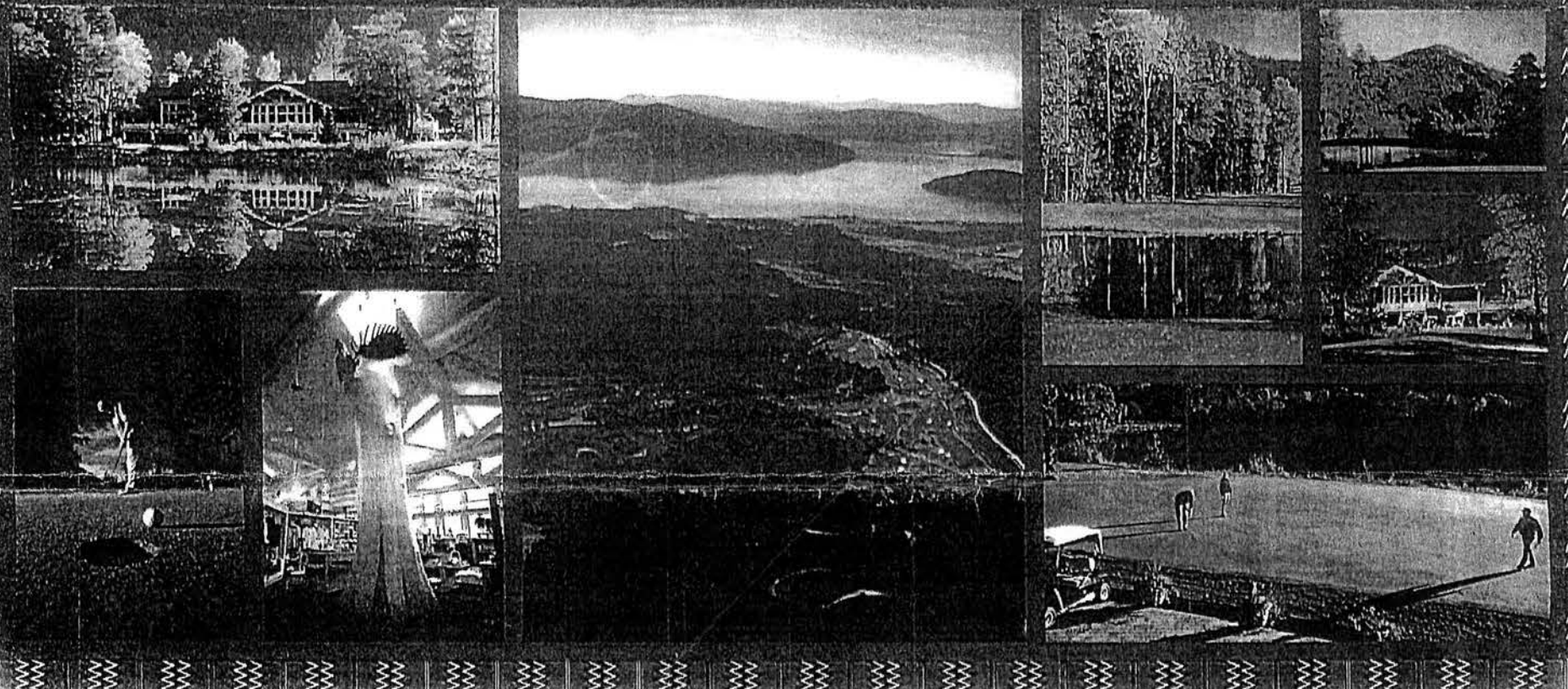
SELLER'S DEVELOPMENT PLAN

EXHIBIT - 1 Seller's Development Plan



Legend and Development Summary:

Highlands:		Moose Mountain:		
A	The Cliffs Condominiums 12 units	H	1 Acre sites, 65 parcels 05 acres	Main Road
B	The Woods Condominiums 24 units	J	2.5 Acres, 49 units 125 acres	Secondary Road
Golf Course:				Lake or Pond
C	Chestnut Condominiums 12 units	K	10 Acre sites, 8 parcels 80 acres	Wetlands
D	Phase III Single Family 15 lots	L	20 Acre sites, 14 parcels 280 acres	Stream
E	The Cedars Cabin 24 units	M	Wellness Center/Spa Inn 2 acres	Golf Holes
F	Cottonwoods Lodge Condo. 38 units	N	Common Area/Golf Holes 85 acres	
G	Creekside Condominiums 35 units	TOTAL	047 acres	



Client
Dick Villelli
151 Clubhouse Way
Sandpoint,
ID 83864
Tel. 208-263-1642
Fax. 208-263-1925

Golf and Residential Resort

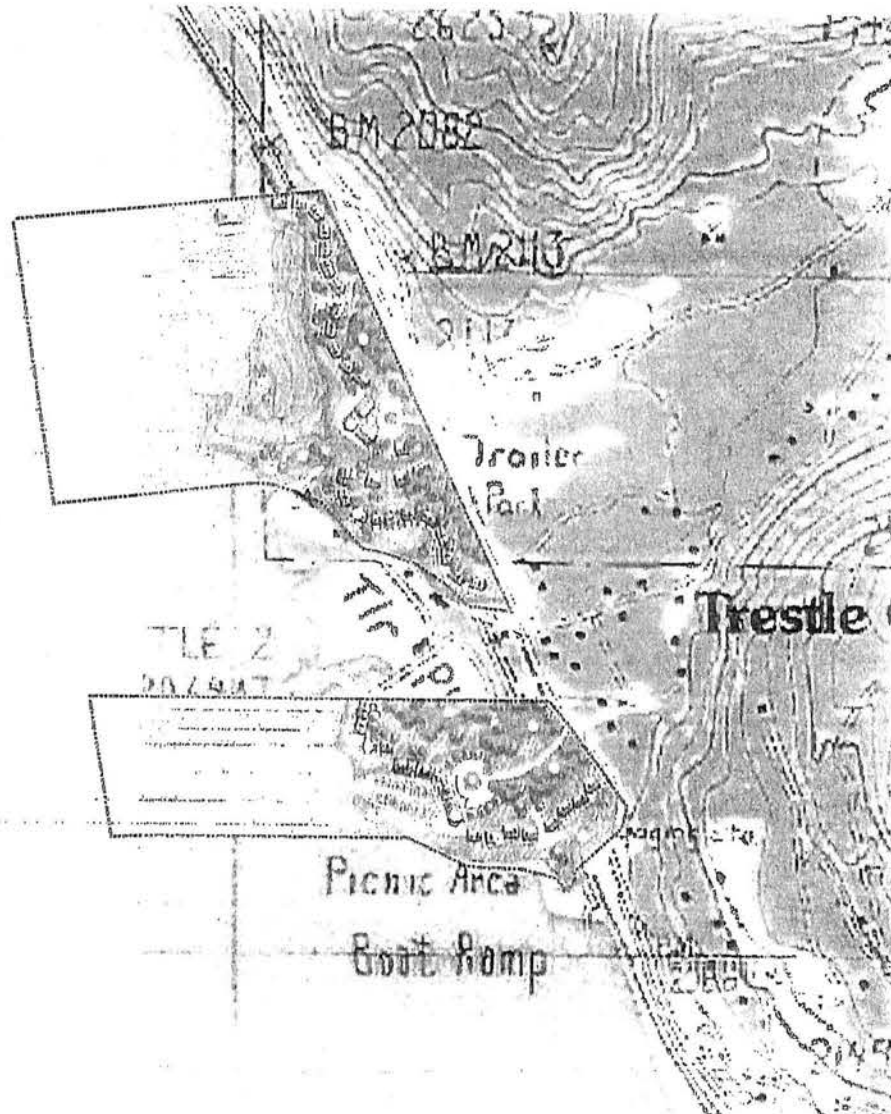


North Park
Yacht Club and Marina Store

- 100 Slips Marina (50 Covered Slips)
- Beach
- Cabana/Gazebo
- Tennis Courts+Play Area
- Fire pit
- Canal Moorage
- Putting Green
- Lodge Building
- Deck+Courtyard
- 26 Waterfront Bungalows
- Storage and Parking

South Park

- Storage and Parking
- Beach
- Duplex Waterfront Cottages
- Tennis Courts
- Cabana/Gazebo
- Lodge Buildings with Restaurant, Lounge, Conference facility and 6 Condominium Units
- Duplex Waterfront Cottages
- Putting Green
- Marinas with Existing 60 Slips



Development Summary:

North Park	
Free standing single family bungalow with garage	20 units
South Park	
12 Free standing duplex units	24 units
Upper level lodge condominiums	6 units
TOTAL	50 units



Client
Dick Villelli
151 Clubhouse Way
Sandpoint,
ID 83864
Tel. 208-263-1642
Fax. 208-263-1925

Marina and Waterfront Development



EXHIBIT B-2

LIST OF ENTITLEMENTS

[THIS ENUMERATION IS SUBJECT TO REVIEW AND REFINEMENT DURING THE REVIEW PERIOD]

Planned unit development application; conceptual land use plan; PUD compliance report; environmental analysis, to include wetlands delineation, wildlife assessment and cultural resources inventory; land capability report, to include domestic, irrigation and fire flow water availability, and sewage disposal suitability; stormwater management and erosion control plan; preliminary plat; preliminary plat application; flood plain delineation and mitigation measures; and traffic study (to include RR crossing at Trestle Creek).

PUD conditional use permit; final plat; sewer system approved "as-builts;" water system approved "as-builts;" approach permits; development permits (for flood plain activities); Corps 404 permits (if wetlands are filled or shorelines are stabilized); dock or marina Dept. of Lands permits; EPA NPDES (National Pollution Discharge Elimination System) permit (if we discharge stormwater into surface water); and county building permits

Two other permits on the Trestle Creek parcels: the railroad and the Idaho Transportation Department will most likely require a "license" (in the case of the RR), and an "approach or encroachment" permit (in the case of the ITD) to bore under the tracks and state highway should we need to run sewer lines to upland disposal sites

EXHIBIT C

GENERAL ASSIGNMENT

This General Assignment ("this Assignment") is made as of _____, 2005 by NORTH IDAHO RESORTS, LLC, a _____ limited liability company ("Assignor"), in favor of Pend Oreille Bonner Investmens, LLC a Nevada limited liability company ("Assignee"), pursuant to the written agreement entitled *Real Property Purchase and Sale Agreement* by and between Assignor as seller and Assignee as buyer, dated December __, 2004 (the "Purchase Agreement"). This Assignment is subject to the provisions of the Purchase Agreement, and if any inconsistency between the Purchase Agreement and this Assignment arises, the provisions of the Purchase Agreement shall control. Terms which are defined in the Purchase Agreement shall, when used he rein, have the same meaning as therein.

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor hereby sells, conveys, grants, delivers, transfers and assigns to Assignee, all of Assignor's right, title and interest in, to and under any and all of the following items (collectively the "Assigned Property"), which is part of Property, including, without limitation, the Land, which is the subject matter of the Agreement:

(a) The Entitlements, including, without limitation, all governmental zoning, use, occupancy, and operating permits, and all other governmental permits, licenses, approvals, applications, subdivision maps, entitlements, certificates, rights under development agreements, school fee mitigation agreements, building permits, development allocations, and development rights relating to the Property;

(b) All utility and other permits relating to the Property;

(c) All fee credits and license tax credits; all prepaid expenses, fees, and deposits with municipal agencies and utilities, applicable to the Property, and the right to any refunds thereunder or rebates thereof, including without limitation the Utility Deposits; and all tax and assessment protest actions and claims and rights to

prosecute the same, including without limitation all tax and assessment refunds or rebates now or hereafter payable;

(d) All plans and specifications for infrastructure, buildings, structures and fixtures located on the Property, whether existing or anticipated;

(e) All Assignor's rights, title and interest in and to Seller's Documents, the Consultant Contracts (which are listed in Exhibit F to the Agreement) and the Warranties;

(f) all claims, counterclaims, defenses and/or actions, whether at common law or pursuant to any other applicable federal, state or local law, which Seller may have against any third parties relating to the design and/or construction of the Project and/or the existence of Hazardous Materials (as the term "Hazardous Materials" is hereinafter defined) in, at, on, under or about the Property;

(g) any warranties, guaranties or other assurances from suppliers and vendors of materials and equipment incorporated in the Project; and

(h) any vehicles and other self-propelled machines owned by Seller and used in connection with the Project. Specifically excluded items are the 1965 Chris Craft boat and the 28 foot party barge. Both purchased and owned by Richard A. Villelli.

Assignor hereby represents, covenants and warrants in favor of Assignee and Assignee's successors and assigns that, (i) Assignor is the lawful owner and present holder of all the right, title and interest which presently exists in the Assigned Property, (ii) Assignor has good and marketable title to the Assigned Property and the exclusive lawful right to sell, assign, convey, transfer and set over title to the Assigned Property unto Assignee, (iii) no other party whomsoever has any legal or equitable interest in any item of the Assigned Property, (iv) the Assigned Property is in good usable operating condition and repair, and (v) Assignee shall quietly hold and enjoy the Assigned Property as against any claims advanced by or through Assignor, Assignor hereby covenanting and agreeing to defend and indemnify Assignee against any expenses (including reasonable legal fees and court costs) which Assignee may suffer or incur by reason of any such claims.

The provisions of this Assignment shall be binding upon and shall inure to the benefit of the successors and assigns of Assignor and Assignee, respectively.

ASSIGNOR:

NORTH IDAHO RESORTS,
LLC, a _____ limited liability
company

By _____
Title _____

EXHIBIT D

BILL OF SALE

The undersigned NORTH IDAHO RESORTS, LLC, a _____ limited liability company ("Seller"), for good and valuable consideration, the sufficiency and receipt of which Seller hereby acknowledges, hereby sells, assigns, conveys, transfers and sets over unto Pend Oreille Bonner Investments, LLC, a Nevada limited liability company ("Buyer"), all of Seller's right, title and interest in and to all the items of personal property listed on Schedule One hereto (collectively, the "Personalty"). The Personalty does not include any personal property used with the Property which is leased. Copies of the pertinent leases are attached hereto and made a part hereof. Buyer must assume said leases in order to have the right to use the lease property.

Seller hereby represents, covenants and warrants in favor of Buyer and Buyer's successors and assigns that, (i) Seller is the lawful owner and present holder of all the right, title and interest which presently exists in the Personalty, (ii) Seller has good and marketable title to the Personalty and the exclusive lawful right to sell, assign, convey, transfer and set over title to the Personalty unto Buyer, (iii) no other party whomsoever has any legal or equitable interest in any item of the Personalty, (iv) the Personalty is in good usable operating condition and repair, and (v) Buyer shall quietly hold and enjoy the Personalty as against any claims advanced by or through Seller, Seller hereby covenanting and agreeing to defend and indemnify Buyer against any expenses (including reasonable legal fees and court costs) which Buyer may suffer or incur by reason of any such claims.

Dated: _____, 2005

SELLER:

NORTH IDAHO RESORTS, LLC, a
_____ limited
liability company

By _____

Title _____

SCHEDULE ONE

SCHEDULE ONE
TO
BILL OF SALE

1. The Accrued Deposits
2. The items on the attached Inventory.

[ATTACH INVENTORY]

EXHIBIT E

CONTRACTS WITH CONSULTANTS

EXHIBIT F

MEMORANDUM FOR RECORDATION

Recorded at the request of, &
after recording please return to:

Pend Oreille Bonner Investments, LLC
6900 South McCarran Boulevard
Suite 1010
Reno, Nevada 89509
Attention: Sherry Wagner

MEMORANDUM OF REAL PROPERTY
PURCHASE AND SALE AGREEMENT

NORTH IDAHO RESORTS, LLC, a _____ limited liability
company ("Seller") and Pend Oreille Bonner Investments,
LLC, a Nevada limited liability company ("Buyer"), hereby
acknowledge and agree as follows:

1. Seller and Buyer have entered into a written
agreement entitled "Real Property Purchase and Sale
Agreement" made and entered into effective as of December
____, 2004. Said agreement is unrecorded.

2. Said agreement concerns the real property (the
"Property") located in the County of Bonner, State of
Idaho. The Property is described in said agreement and on
Exhibit One hereto.

3. Seller hereby agrees to sell the Property to
Buyer, and Buyer hereby agrees to purchase the Property
from Seller, all pursuant to the provisions of said
unrecorded written agreement.

IN WITNESS WHEREOF, Seller and Buyer have executed
this Memorandum.

SELLER

NORTH IDAHO RESORTS, LLC, a

Limited Liability Company

By _____
Title _____

BUYER

Pend Oreille Bonner Investments, LLC, a
Nevada limited liability company

By Chip L. Bowlby, Member

EXHIBIT ONE

EXHIBIT ONE
TO
MEMORANDUM FOR RECORDATION

**SCHEDULE A
TITLE EXCEPTIONS**

Based on the Preliminary Title Report issued on January 3, 2005 at 8:00 a.m. and reissued on February 1, 2005, by Sandpoint Title, Commitment No., the following numbered exceptions are objected to and should be removed as exceptions to title:

19, 24, 29, 30, 32, 43, 44, 46, 47, 48, 49, 50, 67, 68, 69, 70, 71, 79, 87, 88, 89, 93, 102, 117, 118, 119, and 120.

The following exceptions and underlying documents need further review to determine their impact on the development plan and as provided in the Amended and Restated Agreement, the Buyer shall have until February 28, 2005, to review these exceptions:

18, 20, 21, 22, 23, 25, 26, 27, 31, 33, 38, 53, 54, 55, 56, 57, 58, 59, 74, 75, 78, 80, 81, 82, 83, 92, 94, 95, 96, 97, 104, 105, 106, 107, 108, 110, 112, 114, and Railroad Right-of-way as it relates to Section D.

EXHIBIT G
Berry Note and Mortgage

EXHIBIT H
R.E. Loans LLC Note and Mortgage

EXHIBIT I
Sales Map of Lots West of Lower Pack River Road

Richard L. Stacey, ISB #6800
Jeff R. Sykes, ISB #5053
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@mwslawyers.com
sykes@mwslawyers.com
nicholson@mwslawyers.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

STIPULATION TO ENTRY OF
JUDGMENT AGAINST
MOUNTAIN WEST BANK

Honorable Barbara A. Buchanan

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

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;
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.

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COMES NOW, Counterclaimant/Cross-Claimant/Cross-Defendant/Third Party Plaintiff Valiant Idaho, LLC ("Valiant"), by and through its attorneys of record, McConnell Wagner Sykes & Stacey PLLC, and Third Party Defendant Mountain West Bank, a division of Glacier Bank, a Montana corporation ("MWB"), by and through its attorneys of record, Lukins & Arnis, P.S, and hereby stipulate and agree as follows:

1. Valiant has recorded mortgages in the Bonner County Recorder's Office as Instrument Nos. 724829, 729834, 755394, 755395, 755396, 755397, 755398 and 755399 (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 and re-recorded as Instrument No. 863298 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 MWB under a \$1,750,000.00 mortgage dated March 15, 2010 and recorded as Instrument No. 788924, Records of Bonner County, Idaho, and claimed interests by MWB, if any, that arose or were recorded prior to August 2, 2008.

2. The parties further stipulate and agree that each party is to bear its own attorney's fees and costs with respect to Valiant's claims against MWB.

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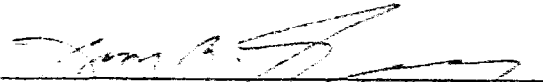
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STIPULATION TO ENTRY OF JUDGMENT AGAINST

MOUNTAIN WEST BANK - Page 2
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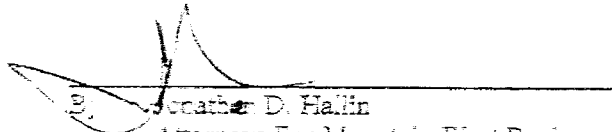
DATED this 2nd day of February 2015.

McCONNELL WAGNER SYKES & STACEY PLLC


By Jeff R. Sykes
Attorneys For Valiant Idaho, LLC

DATED this 2nd day of February 2015.

LUKINS & ANNIS, PS

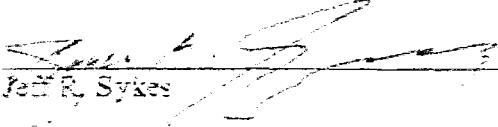

By Jonathan D. Hallin
Attorneys For Mountain West Bank

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 7th day of February 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 83315 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 <u>brucea@ejame.com</u></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 <u>bcf@featherstonlaw.com</u></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 <u>garyfinney@finneylaw.net</u></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 <u>johnfinney@finneylaw.net</u></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 <u>toby@sandpointlaw.com</u></p>

Mountain West Bank: Jonathon D. Hallin, Esq. Lukins & Amis, PS 61 East Front Street, Suite 502 Coeur d'Alene, Idaho 83814	<input checked="" type="checkbox"/> U.S. Mail
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



 Jeff R. Sykes

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, 1010.58 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, 244.23 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, 250.30 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 Paak River (record = 290.00 feet to the thread of Paak River);

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

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

Thence South 39° 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 Paak 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 Paak 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 (TAP 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 43.44 feet (the chord of which bears South 83 degrees 02' 31" West, a distance of 43.43 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 247.30 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. 434825 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, 113.03 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° 31'09" (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), 58.07 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, 113.83 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 16.39 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 275.06 feet, for an arc distance of 60.28 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, 53.33 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 213.98 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 25.15 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 412.31 feet (record = South 80° 24'50" West 412.32 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 6 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 6 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 6 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 6 of Plats, Page 77, records of Bonner County, Idaho.

PARCEL 12:

Lot 1A Block 10 of the replat of Golden Tee Estates and Golden Tee Estates 1st Addition and unplatted land, according to the plat thereof, recorded in Book 6 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 151, 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 $89^{\circ} 36' 27''$ West, 661.51 feet (record = North $89^{\circ} 37' 13''$ 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 $00^{\circ} 10' 22''$ East 856.45 feet (record = North $00^{\circ} 09' 25''$ East, 856.45 feet);

Thence North $89^{\circ} 10' 53''$ 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 new tangential curve to the left (radial bearing = North $87^{\circ} 39' 13''$ East) having a central angle of $36^{\circ} 44' 06''$ and a radius of 131.00 feet for an arc distance of 83.99 feet (record = 84.54 feet) (chord = South $20^{\circ} 42' 50''$ East, 82.56 feet - record = South $20^{\circ} 37' 27''$ East, 83.08 feet);

2. thence South $39^{\circ} 04' 53''$ East, 419.57 feet (record = South $39^{\circ} 06' 45''$ East, 419.68 feet);

3. thence on a curve to the left having a central angle of $11^{\circ} 42' 45''$ and a radius of 530.00 feet for an arc distance of 108.34 feet (chord = South $44^{\circ} 56' 16''$ East, 108.15 feet - record = South $44^{\circ} 58' 08''$ East, 108.15 feet);

4. thence South $50^{\circ} 47' 39''$ East, 69.68 feet (record = South $50^{\circ} 49' 31''$ East, 69.68 feet);

5. thence on a curve to the right having a central angle of $23^{\circ} 42' 51''$ and a radius of 970.00 feet, for an arc distance of 401.47 feet (chord = South $38^{\circ} 56' 14''$ East, 398.61 feet - record = South $38^{\circ} 58' 05''$ East 398.61 feet);

6. thence South $27^{\circ} 04' 48''$ East, 31.65 feet to the South line of the Northwest quarter of the Southeast quarter (record = South $27^{\circ} 06' 40''$ 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 73° 23'05" East, 106.81 feet - record = South 73° 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 30.13 feet (chord = South 09° 57'24" East, 28.38 feet - record = South 11° 23'51" East, 30.13 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 1130.00 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 $73^{\circ} 15' 06''$ West, 71.11 feet);

thence continuing along the Highway right of way, South $69^{\circ} 44' 57''$ West, 262.22 feet (record = South $69^{\circ} 43' 15''$ 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 151, 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, 450.00 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 90° 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 2543.37 feet, a distance of 48.44 feet (chord = South 88° 02' 31" West, 48.43 feet);
2. North 79° 07' 52" West, 190.50 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 $51^{\circ} 11' 30''$ 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, 337.49 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, 572 feet to the Section line between Sections 16 and 21;

thence East on said Section line between said Sections 16 and 21, 104.25 feet, more or less, to the place of beginning.

SAID parcel is now described as follows:

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

Commencing at the intersection of the South line of the Southwest quarter of the Southwest quarter of Section 16 and the Northeasterly right of way of Montana Rail Link Railway which is South $88^{\circ} 19' 56''$ 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 $23^{\circ} 33' 59''$ West, 736.99 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 $91^{\circ} 19' 25''$ (radial bearing = South $73^{\circ} 15' 15''$ West), a radius of 758.50 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 $13^{\circ} 43' 01''$ 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 1432.53 feet, for an arc length of 360.37 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. 153346 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) courses:

South $52^{\circ} 55'48''$ East, 561.00 feet;

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

Thence along said parallel line, South $88^{\circ} 10'56''$ East, 231.27 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 $42^{\circ} 08'45''$ East, 77.28 feet;

Thence South $89^{\circ} 05'07''$ East, 145.49 feet;

Thence South $55^{\circ} 15'32''$ East, 86.34 feet;

Thence South $46^{\circ} 56'31''$ East, 113.98 feet;

Thence South $75^{\circ} 43'13''$ East, 58.83 feet;

Thence South $37^{\circ} 48'28''$ East, 27.37 feet to the intersection with the South line of the Southwest quarter of the Southwest quarter;

Thence leaving said creek centerline and along said South line South $88^{\circ} 10'56''$ East, 115.80 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 $88^{\circ} 55'48''$ 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 $10^{\circ} 44'25''$ (radial bearing = South $65^{\circ} 01'49''$ West) a radius of 2664.79 feet, for an arc length of 499.53 feet (chord = North $36^{\circ} 20'24''$ West, 498.30 feet);

Thence North $25^{\circ} 10'12''$ West, 100.47 feet;

Thence leaving said right of way and parallel to the South line of Government Lot 1, North $88^{\circ} 55'48''$ West, 336.95 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 $14^{\circ} 25'48''$ 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 $83^{\circ} 55' 48''$ 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 $33^{\circ} 55' 48''$ East, 139.54 feet to the true point of beginning.