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### Valiant Idaho, LLC v. North Idaho Resorts, LLC Clerk's Record v. 22 Dckt. 44583

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Vol. **22** IN THE **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*

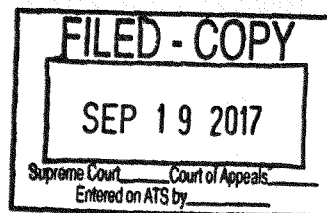
**CLERK'S RECORD ON APPEAL**

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

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**VOLUME XXII**

44583

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Attorneys For Valiant Idaho, LLC

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

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

Plaintiff,

vs.

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

Defendants.

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

Case No. CV-09-1810

ORDER ON  
STIPULATION TO ENTRY OF  
JUDGMENT AGAINST  
MOUNTAIN WEST BANK

Honorable Barbara A. Buchanan

VALIANT IDAHO, LLC,  
an Idaho limited liability company,

Third Party Plaintiff,

vs.

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

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The Stipulation to Entry of Judgment Against Mountain West Bank ("Stipulation") having come regularly before this Court; and having considered the terms agreed to by and between Third Party Plaintiff Valiant Idaho, LLC ("Valiant") and Third Party Defendant Mountain West Bank, a division of Glacier Bank, a Montana corporation ("MWB"); and this Court finding good cause appearing therefor,

**IT IS HEREBY ORDERED AS FOLLOWS:**

1. Valiant has recorded mortgages in the Bonner County Recorder's Office as Instrument Nos. 724829, 729834, 756394, 756395, 756396, 756397, 756398 and 756399 (collectively, "Mortgages"); Valiant has paid real property taxes assessed by Bonner County in the amount of \$1,665,855.14 and recorded a redemption deed in the Bonner County Recorder's Office as Instrument No. 861460 to evidence said payment ("Tax Payment"); and, Valiant, by virtue of the Mortgages and the Tax Payment, is entitled to a judgment to be entered by the above Court adjudicating that Valiant's interest(s) in and to the property legally described as:

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

are superior in right, title and interest to any interest claimed by MWB under a \$1,750,000.00 mortgage dated March 15, 2010 and recorded as Instrument No. 789924, Records of Bonner County, Idaho, and claimed interests by MWB, if any, that arose or were recorded prior to August 2, 2008.

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

**IT IS SO ORDERED.**

DATED this 6 day of February 2015.


  
 \_\_\_\_\_  
 Honorable Barbara A. Buchanan  
 District Judge

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 10<sup>th</sup> 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.<br>Eisaesser Jarzabek Anderson Elliott &<br>MacDonald, Chtd<br>1320 East Neider Avenue, Suite 102<br>Coeur d' Alene, Idaho 83815<br>Telephone: 208.667.2900<br>Facsimile: 208.667.2150<br><i>Counsel For Jacobson, Lazar and Sage Holdings</i> | <input checked="" type="checkbox"/> U.S. Mail<br><input type="checkbox"/> Hand Delivered<br><input type="checkbox"/> Facsimile<br><input type="checkbox"/> Overnight Mail<br><input type="checkbox"/> Electronic Mail<br><u>brucea@ejame.com</u>         |
| Brent C. Featherston, Esq.<br>Featherston Law Firm, Chtd<br>113 South Second Avenue<br>Sandpoint, Idaho 83864<br>Telephone: 208.263.6866<br>Facsimile: 208.263.0400<br><i>Counsel For Pensco/Mortgage Fund</i>   | <input checked="" type="checkbox"/> U.S. Mail<br><input type="checkbox"/> Hand Delivered<br><input type="checkbox"/> Facsimile<br><input type="checkbox"/> Overnight Mail<br><input type="checkbox"/> Electronic Mail<br><u>bef@featherstonlaw.com</u>   |
| Gary A. Finney, Esq.<br>Finney Finney & Finney, P.A.<br>120 East Lake Street, Suite 317<br>Sandpoint, Idaho 83864<br>Telephone: 208.263.7712<br>Facsimile: 208.263.8211<br><i>Counsel For J.V., LLC</i>  | <input checked="" type="checkbox"/> U.S. Mail<br><input type="checkbox"/> Hand Delivered<br><input type="checkbox"/> Facsimile<br><input type="checkbox"/> Overnight Mail<br><input type="checkbox"/> Electronic Mail<br><u>garyfinney@finneviaw.net</u> |

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| <p>D. Toby McLaughlin, Esq.<br/>         Berg &amp; McLaughlin<br/>         414 Church Street, Suite 203<br/>         Sandpoint, Idaho 83864<br/>         Telephone: 208.263.4748<br/>         Facsimile: 208.263.7557<br/> <i>Counsel For Idaho Club HOA/Panhandle Mngmnt</i></p>                                       | <p><input checked="" type="checkbox"/> U.S. Mail<br/> <input type="checkbox"/> Hand Delivered<br/> <input type="checkbox"/> Facsimile<br/> <input type="checkbox"/> Overnight Mail<br/> <input type="checkbox"/> Electronic Mail<br/> <u>tobv@sandpointlaw.com</u></p>                                  |
| <p><b>Mountain West Bank:</b><br/>         Jonathon D. Hallin, Esq.<br/>         Lukins &amp; Annis, PS<br/>         61 East Front Street, Suite 502<br/>         Coeur d'Alene, Idaho 83814</p>   | <p><input checked="" type="checkbox"/> U.S. Mail</p>  |
| <p>Richard L. Stacey, Esq.<br/>         Jeff R. Sykes, Esq.<br/>         McConnell Wagner Sykes &amp; Stacey PLLC<br/>         755 West Front Street, Suite 200<br/>         Boise, Idaho 83702<br/>         Telephone: 208.489.0100<br/>         Facsimile: 208.489.0110<br/> <i>Counsel For Valiant Idaho, LLC</i></p> | <p><input checked="" type="checkbox"/> U.S. Mail<br/> <input type="checkbox"/> Hand Delivered<br/> <input type="checkbox"/> Facsimile<br/> <input type="checkbox"/> Overnight Mail<br/> <input type="checkbox"/> Electronic Mail<br/> <u>stacey@mwslawyers.com</u><br/> <u>sykes@mwslawyers.com</u></p> |
| <p>Susan P. Weeks, Esq.<br/>         James, Vernon &amp; Weeks, PA<br/>         1626 Lincoln Way<br/>         Coeur d'Alene, Idaho 83814<br/>         Telephone: 208.667.0683<br/>         Facsimile: 208.664.1684<br/> <i>Counsel For VP Incorporated/North Idaho Resorts</i></p>                                       | <p><input checked="" type="checkbox"/> U.S. Mail<br/> <input type="checkbox"/> Hand Delivered<br/> <input type="checkbox"/> Facsimile<br/> <input type="checkbox"/> Overnight Mail<br/> <input type="checkbox"/> Electronic Mail<br/> <u>sweeks@jvwlaw.net</u></p>                                      |

  
 Clerk of the Court - *Deputy*

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, 244.28 feet);

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

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

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

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

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

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

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

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

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

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

Thence along the fence line, South 70° 07'45" East, 262.49 feet to an iron pipe as described in Instrument No. 217765 (record = South 70° 18'00" East 262.00 feet);

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

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

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

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

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

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

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

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

PARCEL 2:

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

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

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

thence continuing South 14 degrees 35' 50" East along said East right of way, a distance of 254.70 feet to an intersection with the North right of way of Old Highway No. 200 (FAP 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 88 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 said Highway right of way abandonment, described in that certain Quit Claim Deed, executed by the State of Idaho, as Instrument No. 696025 and recorded on January 11, 2006, lying within the bounds of the above described property

PARCEL 3:

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

Beginning at a point on the South line of said Government Lot 1, which is South 89° 06'38" East (record = South 89° 06'55" East) 330.90 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° 31'29" (record = 00° 31'25") and a radius of 650.32 feet for an arc distance of 5.95 (record = 5.94 feet) feet (chord = South 27° 30'31" East, 5.95 feet), to the South line of Government Lot 1;

Thence along said South line North 89° 06'38" West (record = North 89° 06'55" West), 63.07 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  $89^{\circ} 06'38''$  East (record = South  $89^{\circ} 06'55''$  East) 530.00 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  $00^{\circ} 07'21''$  East, 118.03 feet;

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

Thence North  $44^{\circ} 00'28''$  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  $53^{\circ} 09'38''$  West) having a central angle of  $12^{\circ} 32'30''$  and a radius of 275.00 feet, for an arc distance of 60.20 feet (chord = South  $43^{\circ} 06'37''$  West, 60.08 feet);

Thence leaving said right of way, South  $44^{\circ} 00'28''$  East, 20.15 feet;

Thence on a curve to the right having a central angle of  $16^{\circ} 45'49''$  and a radius of 173.31 feet, for an arc distance of 50.70 feet (chord = South  $35^{\circ} 37'39''$  East 50.52 feet);

Thence South  $27^{\circ} 14'49''$  East, 53.38 feet to the true point of beginning

PARCEL 5:

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

Beginning at a point on the West line of said Government Lot 2 (West line of Section 31) which is South  $00^{\circ} 07'21''$  West, 200.00 feet from the Northwest corner of said Government Lot 2;

Thence parallel to the North line of Government Lot 2, South  $89^{\circ} 06'38''$  East (record = South  $89^{\circ} 06'55''$  East) 562.61 feet (record = 562.58 feet);

Thence North  $47^{\circ} 03'53''$  West, 43.24 feet (record = 43.21 feet);

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

Thence along said North line North  $89^{\circ} 06'38''$  West (record = North  $89^{\circ} 06'55''$  West) 58.07 feet;

Thence South  $27^{\circ} 14'49''$  East 26.15 feet;

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

Thence South  $80^{\circ} 25'01''$  West 412.81 feet (record = South  $80^{\circ} 24'50''$  West 412.82 feet) to the point of beginning.

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

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

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

PARCEL 6:

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

PARCEL 7:

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

PARCEL 8:

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

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

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

PARCEL 9:

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

PARCEL 10:

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

PARCEL 11:

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

PARCEL 12:

Lot 1A Block 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 8 of Plats, Page 77, records of Bonner County, Idaho.

PARCEL 13:

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

SECTION B:

PARCEL 1:

Lot 1 in Block 1 of the FIRST ADDITION TO HIDDEN LAKES, according to the plat thereof, recorded in Book 4 of Plats, page 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° 36'27" West, 661.51 feet (record = North 89° 37'10" West, 661.57 feet to the Southwest corner of the East half of the Northeast quarter of the Southwest quarter;

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

Thence North 89° 19'53" East, 30.21 feet (record = East, 29.58 feet) to the Westerly right of way of Berry Drive (shown as Olympic Drive on the Second Addition Plat to Hidden Lakes);

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

1. on a non tangential curve to the left (radial bearing = North 87° 39'13" East) having a central angle of 36° 44'06" and a radius of 131.00 feet for an arc distance of 83.99 feet (record = 84.54 feet) (chord = South 20° 42'50" East, 82.56 feet - record = South 20° 37'27" East, 83.08 feet);
2. thence South 39° 04'53" East, 419.57 feet (record = South 39° 06'45" East, 419.68 feet);
3. thence on a curve to the left having a central angle of 11° 42'45" and a radius of 530.00 feet for an arc distance of 108.34 feet (chord = South 44° 56'16" East, 108.15 feet - record = South 44° 58'08" East, 108.15 feet);
4. thence South 50° 47'39" East, 69.68 feet (record = South 50° 49'31" East, 69.68 feet);
5. thence on a curve to the right having a central angle of 23° 42'51" and a radius of 970.00 feet, for an arc distance of 401.47 feet (chord = South 38° 56'14" East, 398.61 feet - record = South 38° 58'05" East 398.61 feet);
6. thence South 27° 04'48" East, 31.65 feet to the South line of the Northwest quarter of the Southeast quarter (record = South 27° 06'40" East, 30.77 feet);

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

PARCEL 4:

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

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

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

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

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

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

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

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

1. on a non tangential curve to the right having a central angle of 94° 15'19" and a radius of 1180.00 feet for an arc distance of 87.69 feet (chord = South 22° 30'38" West, 87.67 feet);
2. thence South 20° 22'44" West, 114.57 feet;

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

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

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

thence continuing along the Highway right of way, South  $69^{\circ} 44' 57''$  West, 262.22 feet (record = South  $69^{\circ} 43' 15''$  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 06° 08' 55" and a radius of 5799.58 feet for an arc distance of 15.03 feet (chord = North 75° 52' 05" East, 15.03 feet - total distance along right of way from point of beginning = 281.13 feet - record = 281.13 feet);

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

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

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

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

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

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

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

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

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

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

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

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

1. around a curve to the left with a radius of 2643.37 feet, a distance of 48.44 feet (chord = South 88° 02' 31" West, 48.43 feet);
2. North 79° 07' 52" West, 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  $61^{\circ} 11' 30''$  West, 119.79 feet to the point of beginning.

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

AND

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

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

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

Thence South 1569.70 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 535.5 feet to a point 1569.7 feet South of the North quarter corner of Section 6.

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

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

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

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

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

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

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

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

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

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

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

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

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

**PARCEL 2:**

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

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

AND

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

AND

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

AND

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

**SECTION D:**

**PARCEL 1:**



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

Beginning at a point where the Section line between Sections 16 and 21, Township 57 North, Range 1 West, Boise Meridian, intersects the State Highway on the Westerly side as it now exists;

thence in a Northwesterly direction along the Westerly side of said Highway, 752 feet;

thence in a Southwesterly direction, 97 feet;

thence in a Southeasterly direction, 672 feet to the Section line between Sections 16 and 21;

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

SAID parcel is now described as follows:

A tract of land situated in the Southwest quarter of the Southwest quarter of Section 16, Township 57 North, Range 1 East of the Boise Meridian, Bonner County, Idaho, lying Southwest of the right of way of State Highway No. 200 and Northeast of the right of way of Montana Rail Link Railway; being a portion of that property described as Parcel 1 of Instrument No. 163846 and more particularly described as follows:

Commencing at the intersection of the South line of the Southwest quarter of the Southwest quarter of Section 16 and the Northeastery 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  $23^{\circ} 38' 59''$  West, 786.99 feet to the intersection with the North line of the Southwest quarter of the Southwest quarter;

Thence leaving said right of way and along said North line South  $88^{\circ} 43' 23''$  East, 241.38 feet to the Westerly right of way of State Highway No. 200;

Thence leaving said North line and along said right of way the following four (4) courses:

on a non-tangential curve to the right having a central angle of  $01^{\circ} 19' 25''$  (radial bearing = South  $73^{\circ} 15' 16''$  West), a radius of 768.50 feet, for an arc length of 17.75 feet (chord = South  $15^{\circ} 06' 41''$  East, 17.75 feet);

Thence along a line offset 50.90 feet Westerly of and parallel to a spiral curve (centerline is = 200 feet,  $a = 3.5$ ,  $S = 7^{\circ}$ ) for a chord of South  $19^{\circ} 43' 01''$  East 193.87 feet);

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

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

Thence leaving said right of way South  $44^{\circ} 37' 10''$  West, 106.45 feet (record = "Southwesterly 97 feet") to the true point of beginning.

#### PARCEL 2:

That part of the Southwest quarter of the Southwest quarter in Section 16, Township 57 North, Range 1 East of the Boise Meridian, lying South and West of the Burlington Northern Inc. Railway right of way and

Government Lot 5 in Section 17, Township 57 North, Range 1 East, of the Boise Meridian, save and excepting therefrom:

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

Beginning at the Southwest corner of said Section 16;

thence North along the West Section line 350 feet;

thence East to the centerline of Trestle Creek;

thence Southeasterly along said centerline to the South line of Section 16;

thence West along the Section line 720 feet, more or less, to the point of beginning.

SAID parcel is now described as follows:

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

Beginning at the intersection of the South line of the Southwest quarter of the Southwest quarter of Section 16 and the Southwesterly right of way of Montana Rail Link Railway which is South  $88^{\circ} 10' 56''$  East, 834.19 feet from the Southwest corner of Section 16;

Thence leaving said South line and along said right of way North  $23^{\circ} 38' 59''$  West, 1457.84 feet to the intersection with the North line of the Southwest quarter of the Southwest quarter;

Thence leaving said right of way and along the North line of the Southwest quarter of the Southwest quarter, North  $88^{\circ} 43' 23''$  West, 243.71 feet to the Northwest corner of the Southwest quarter of the Southwest quarter;

Thence along the North line of Government Lot 5 in Section 17, North  $89^{\circ} 23' 45''$  West, 1223.84 feet to the meander line of Lake Pend Oreille, as defined by the original GLO Survey;

Thence leaving said North line and along said meander line the following two (2) 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, 281.27 feet to the West line of the said Southwest quarter of the Southwest quarter;

Thence continuing South  $88^{\circ} 10' 56''$  East, 159.02 feet to the intersection with the centerline of Trestle Creek;

Thence along the centerline of Trestle Creek the following eight (8) courses:

South  $52^{\circ} 54' 34''$  East, 63.58 feet;

Thence South  $44^{\circ} 37' 26''$  East, 117.83 feet;

Thence South  $42^{\circ} 08'45''$  East, 77.28 feet;

Thence South  $80^{\circ} 05'07''$  East, 145.49 feet;

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

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

Thence South  $75^{\circ} 43'10''$  East, 58.83 feet;

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

Thence leaving said creek centerline and along said South line South  $83^{\circ} 10'56''$  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  $13^{\circ} 44'25''$  (radial bearing = South  $65^{\circ} 01'49''$  West) a radius of 2664.79 feet, for an arc length of 499.53 feet (chord = North  $30^{\circ} 20'24''$  West, 498.80 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, 936.05 feet to the meander line of Lake Pend Oreille as defined in the original GLO Survey;

Thence along said meander line the following two (2) courses:

South  $14^{\circ} 25'48''$  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  $88^{\circ} 55' 48''$  East, 748.52 feet to the Southeast corner of Government Lot 1;

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

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

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

Case No. CV-09-1810

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

Judge: Honorable Barbara A. Buchanan  
 Place: Bonner County Courthouse  
 215 South First Avenue  
 Sandpoint, Idaho 83864  
 Date/Time: ~~February 13, 2015 1:30 p.m. PST~~  
 March 13, 2015 - 3:30 p.m. PDST

**Participant Dial-In TeleConference  
 Access Information:**

TeleNo: 208.255.2281  
 Passcode: 4990

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 IS HEREBY GIVEN that Valiant Idaho, LLC ("Valiant") will call its Motion For Summary Judgment Against JV, L.L.C., North Idaho Resorts, LLC, and VP, Incorporated ("SJ Motion") for hearing on the 18<sup>th</sup> day of March 2015, at 3:30 p.m. PDST, the Honorable Barbara A. Buchanan, presiding. Also, by way of this notice, Valiant *vacates* its SJ Motion hearing previously noticed for February 18, 2015, at 1:30 p.m. PST.

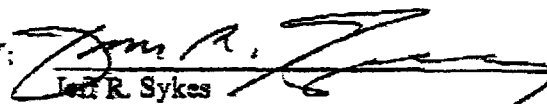
NOTICE IS FURTHER GIVEN that: (1) any party wishing to appear in person may do so at the Bonner County Courthouse, 215 South First Avenue, Sandpoint, Idaho 83864; and (2) any party wishing to appear by telephone is instructed to access the telephone conference by dialing 208.265.2281 and, when prompted, entering Participant Code No. 4990; *provided, however*, that said party provides written notice to the Court with service upon all other parties. Counsel is reminded there are five (5) incoming lines to the Court; thus, telephonic appearances in excess of five (5) may only be accomplished by conferencing with another party appearing telephonically.

A copy of the Court's instructions to attend a telephonic hearing is attached hereto as Exhibit A.

DATED this 13<sup>th</sup> day of February 2015.

McCONNELL WAGNER SYKES & STACEY <sup>PLLC</sup>

BY:

  
Jeff R. Sykes  
Attorneys For Valiant Idaho, LLC

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 13<sup>th</sup> 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.<br/>Elsaesser Jarzabek Anderson Elliott &amp;<br/>MacDonald, Chtd<br/>320 East Neider Avenue, Suite 102<br/>Coeur d' Alene, Idaho 83815<br/>Telephone: 208.667.2900<br/>Facsimile: 208.667.2150<br/><i>Counsel For Jacobson, Lazar and Sage Holdings</i></p> | <p><input type="checkbox"/> U.S. Mail<br/><input type="checkbox"/> Hand Delivered<br/><input checked="" type="checkbox"/> Facsimile<br/><input type="checkbox"/> Overnight Mail<br/><input type="checkbox"/> Electronic Mail<br/><br/><a href="mailto:brucea@ejame.com">brucea@ejame.com</a></p>                 |
| <p>Brent C. Featherston, Esq.<br/>Featherston Law Firm, Chtd<br/>113 South Second Avenue<br/>Sandpoint, Idaho 83864<br/>Telephone: 208.263.6866<br/>Facsimile: 208.263.0400<br/><i>Counsel For Pensco/Mortgage Fund</i></p>   | <p><input type="checkbox"/> U.S. Mail<br/><input type="checkbox"/> Hand Delivered<br/><input checked="" type="checkbox"/> Facsimile<br/><input type="checkbox"/> Overnight Mail<br/><input type="checkbox"/> Electronic Mail<br/><br/><a href="mailto:bef@featherstonlaw.com">bef@featherstonlaw.com</a></p>     |
| <p>Gary A. Finney, Esq.<br/>Finney Finney &amp; Finney, P.A.<br/>120 East Lake Street, Suite 317<br/>Sandpoint, Idaho 83864<br/>Telephone: 208.263.7712<br/>Facsimile: 208.263.8211<br/><i>Counsel For J.V., LLC</i></p>  | <p><input type="checkbox"/> U.S. Mail<br/><input type="checkbox"/> Hand Delivered<br/><input checked="" type="checkbox"/> Facsimile<br/><input type="checkbox"/> Overnight Mail<br/><input type="checkbox"/> Electronic Mail<br/><br/><a href="mailto:garyfinney@finneylaw.net">garyfinney@finneylaw.net</a></p> |
| <p>John A. Finney, Esq.<br/>Finney Finney &amp; Finney, P.A.<br/>120 East Lake Street, Suite 317<br/>Sandpoint, Idaho 83864<br/>Telephone: 208.263.7712<br/>Facsimile: 208.263.8211<br/><i>Counsel For Pucci Construction/ACI Northwest</i></p>   | <p><input type="checkbox"/> U.S. Mail<br/><input type="checkbox"/> Hand Delivered<br/><input checked="" type="checkbox"/> Facsimile<br/><input type="checkbox"/> Overnight Mail<br/><input type="checkbox"/> Electronic Mail<br/><br/><a href="mailto:johnfinney@finneylaw.net">johnfinney@finneylaw.net</a></p> |
| <p>D. Toby McLaughlin, Esq.<br/>Berg &amp; McLaughlin<br/>414 Church Street, Suite 203<br/>Sandpoint, Idaho 83864<br/>Telephone: 208.263.4748<br/>Facsimile: 208.263.7557<br/><i>Counsel For Idaho Club HOA/Parhandle Mngmnt</i></p>  | <p><input type="checkbox"/> U.S. Mail<br/><input type="checkbox"/> Hand Delivered<br/><input checked="" type="checkbox"/> Facsimile<br/><input type="checkbox"/> Overnight Mail<br/><input type="checkbox"/> Electronic Mail<br/><br/><a href="mailto:tobv@sandpointlaw.com">tobv@sandpointlaw.com</a></p>       |

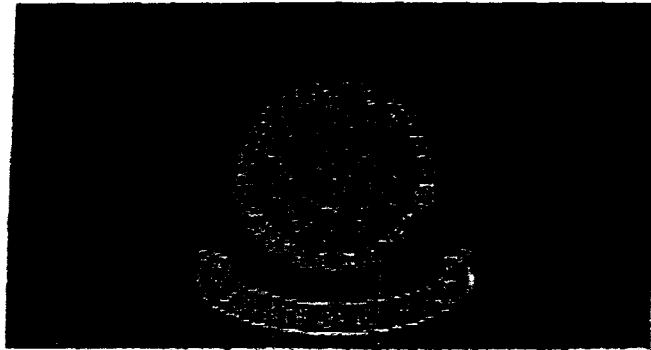


|  |  |
|--|--|
| <p>Susan P. Weeks, Esq.<br/> James, Vernon &amp; Weeks, PA<br/> 1626 Lincoln Way<br/> Coeur d'Alene, Idaho 83814<br/> Telephone: 208.667.0683<br/> Facsimile: 208.664.1684<br/> <i>Counsel For VP Incorporated/North Idaho Resorts</i></p> | <p>[ ] U.S. Mail<br/> [ ] Hand Delivered<br/> [ <input checked="" type="checkbox"/> ] Facsimile<br/> [ ] Overnight Mail<br/> [ ] Electronic Mail<br/> <a href="mailto:sweeks@jvwlaw.net">sweeks@jvwlaw.net</a></p> |
|--|--|

With two copies via United States Mail to:

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

*Jeff R. Sykes*  
Jeff R. Sykes



# CALLING THE COURT FOR A HEARING

- (1) Dial 208-265-2281;
- (2) When asked for a PROMPT enter 4990;
- (3) You will hear a short beep;
- (4) Wait on the line until the Judge dials you  
in to the hearing.

**EXHIBIT A**

JOHN A. FINNEY  
 FINNEY FINNEY & FINNEY, P.A.  
 Attorneys at Law  
 Old Power House Building  
 120 East Lake Street, Suite 317  
 Sandpoint, Idaho 83864  
 Phone: (208) 263-7712  
 Fax: (208) 263-8211  
 ISB No. 5413  
 Attorney for ACI NORTHWEST, INC.

FILED  
 2009-11-11  
 DISTRICT COURT  
 BONNER COUNTY  
 IDAHO

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

|                                 |   |                          |
|---------------------------------|---|--------------------------|
| GENESIS GOLF BUILDERS, INC.,    | ) | Case No. CV-2009-1810    |
| formerly known as National Golf | ) |                          |
| Builders, Inc., a Nevada        | ) | JUDGMENT                 |
| corporation,                    | ) |                          |
|                                 | ) | (RE: PUCCI CONSTRUCTION, |
| Plaintiff,                      | ) | INC.)                    |
|                                 | ) |                          |
| v.                              | ) |                          |
|                                 | ) |                          |
| PEND OREILLE BONNER             | ) |                          |
| DEVELOPMENT, LLC, a Nevada      | ) |                          |
| limited liability company; R.E. | ) |                          |
| LOANS, LLC, a California        | ) |                          |
| limited liability company; DAN  | ) |                          |
| S. JACOBSON, an individual,     | ) |                          |
| SAGE HOLDINGS LLC, an Idaho     | ) |                          |
| limited liability company;      | ) |                          |
| STEVEN G. LAZAR, an individual; | ) |                          |
| PENSCO TRUST CO. CUSTODIAN FBO  | ) |                          |
| BARNEY NG; MORTGAGE FUND '08    | ) |                          |
| LLC, a Delaware limited         | ) |                          |
| liability company; VP,          | ) |                          |
| INCORPORATED, an Idaho          | ) |                          |
| corporation; JV, LLC, an Idaho  | ) |                          |
| limited liability company;      | ) |                          |
| WELLS FARGO FOOTHILL, LLC, a    | ) |                          |
| Delaware limited liability      | ) |                          |
| company; INTERSTATE CONCRETE    | ) |                          |
| AND ASPHALT COMPANY, an Idaho   | ) |                          |

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

Defendants. )


---

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

---

JUDGMENT IS ENTERED AS FOLLOWS: The claims of PUCCI  
 CONSTRUCTION, INC. are dismissed with prejudice, including upon  
 its claim(s) of lien, and it is dismissed as a party, without an  
 award of attorney fees or costs against it.

DATED this 18 day of February, 2015.

  
 \_\_\_\_\_  
 BARBARA BUCHANAN  
 District Judge

CLERK'S CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the  
 foregoing Judgment, with the filing stamp thereon, showing the  
 date of filing, was served by deposit in First Class U.S. Mail,  
 postage prepaid, unless otherwise indicated, this 18 day  
 of February, 2015, and addressed as follows:

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

Brent C. Featherston  
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113 S. Second Avenue  
Sandpoint, ID 83854  
[Attorney for PENSCO TRUST CO. CUSTODIAN  
FBO BARNEY NG; and MORTGAGE FUND '08  
LLC]

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BERG & MCLAUGHLIN  
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Sandpoint, ID 83854  
[Attorney for IDAHO CLUB HOA and  
PANHANDLE MANAGEMENT]

Susan Weeks  
Steven C. Wetzel  
JAMES, VERNON & WEEKS, P.A.  
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Peter Ware  
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TURNBOW & MCKLVEEN, CHTD.  
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FINANCE LLC (Formerly WELLS FARGO  
FOOTHILL, INC.)]

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[Attorney for R.E. LOANS, LLC and  
VALIANT IDAHO, LLC]

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[Attorney for J.V. LLC]

John A. Finney  
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120 East Lake St., Suite 317  
Sandpoint, ID 83854  
[Attorney for ACI NORTHWEST, INC.  
and PUCCI CONSTRUCTION, INC.]

By: *[Signature]*  
Deputy Clerk

JOHN A. FINNEY  
 FINNEY FINNEY & FINNEY, P.A.  
 Attorneys at Law  
 Old Power House Building  
 120 East Lake Street, Suite 317  
 Sandpoint, Idaho 83864  
 Phone: (208) 263-7712  
 Fax: (208) 263-8211  
 ISB No. 5413  
 Attorney for ACI NORTHWEST, INC.

*[Handwritten signature and notes]*

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

|                                 |   |                           |
|---------------------------------|---|---------------------------|
| GENESIS GOLF BUILDERS, INC.,    | ) | Case No. CV-2009-1810     |
| formerly known as National Golf | ) |                           |
| Builders, Inc., a Nevada        | ) | JUDGMENT                  |
| corporation,                    | ) |                           |
|                                 | ) | (RE: ACI NORTHWEST, INC.) |
| Plaintiff,                      | ) |                           |
|                                 | ) |                           |
| v.                              | ) |                           |
|                                 | ) |                           |
| PEND OREILLE BONNER             | ) |                           |
| DEVELOPMENT, LLC, a Nevada      | ) |                           |
| limited liability company; R.E. | ) |                           |
| LOANS, LLC, a California        | ) |                           |
| limited liability company; DAN  | ) |                           |
| S. JACOBSON, an individual,     | ) |                           |
| SAGE HOLDINGS LLC, an Idaho     | ) |                           |
| limited liability company;      | ) |                           |
| STEVEN G. LAZAR, an individual; | ) |                           |
| PENSCO TRUST CO. CUSTODIAN FBO  | ) |                           |
| BARNEY NG; MORTGAGE FUND '08    | ) |                           |
| LLC, a Delaware limited         | ) |                           |
| liability company; VP,          | ) |                           |
| INCORPORATED, an Idaho          | ) |                           |
| corporation; JV, LLC, an Idaho  | ) |                           |
| limited liability company;      | ) |                           |
| WELLS FARGO FOOTHILL, LLC, a    | ) |                           |
| Delaware limited liability      | ) |                           |
| company; INTERSTATE CONCRETE    | ) |                           |
| AND ASPHALT COMPANY, an Idaho   | ) |                           |

corporation; T-O ENGINEERS, )  
 INC., fka Toothman-Orton )  
 Engineering Company, an Idaho )  
 corporation; PUCCI CONSTRUCTION )  
 INC., an Idaho corporation; ACI )  
 NORTHWEST, INC., an Idaho )  
 corporation; LUMBERMENS, INC., )  
 dba ProBuild, a Washington )  
 corporation; ROBERT PLASTER dba )  
 Cedar Etc; NORTE IDAHO RESORTS, )  
 LLC, an Idaho limited liability )  
 company; R.C. WORST & COMPANY, )  
 INC., an Idaho corporation; )  
 DOES 1 through X, )  
 )  
 Defendants. )


---

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

---

JUDGMENT IS ENTERED AS FOLLOWS: The claims of ACI NORTHWEST,  
 INC. are dismissed with prejudice, including upon its claim(s) of  
 lien, and it is dismissed as a party, without an award of attorney  
 fees or costs against it.

DATED this 8 day of February, 2015.

  
 \_\_\_\_\_  
 BARBARA BUCHANAN  
 District Judge

CLERK'S CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the  
 foregoing Judgment, with the filing stamp thereon, showing the  
 date of filing, was served by deposit in First Class U.S. Mail,  
 postage prepaid, unless otherwise indicated, this      day  
 of February, 2015, and addressed as follows:

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

Brent C. Featherston  
FEATHERSTON LAW FIRM, CHTD.  
113 S. Second Avenue  
Sandpoint, ID 83864  
[Attorney for PENSICO TRUST CO. CUSTODIAN  
FEO BARNEY NG; and MORTGAGE FUND '08  
LLC]

Toby McLaughlin  
BERG & MCLAUGHLIN  
414 Church St, Ste 203  
Sandpoint, ID 83864  
[Attorney for IDAHO CLUB HOA and  
PANHANDLE MANAGEMENT]


Susan Weeks  
Steven C. Wetzel  
JAMES, VERNON & WEEKS, P.A.  
1626 Lincoln Way  
Coeur d'Alene, ID 83814  
[Attorney for NORTH IDAHO RESORTS, LLC]

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

Richard Stacey  
MCCONNELL WAGNER SYKES &  
STACEY PLLP  
755 W. Front St., Ste.200  
Boise, ID 83702  
[Attorney for R.E. LOANS, LLC and  
VALIANT IDAHO, LLC]

Gary A. Finney  
FINNEY FINNEY & FINNEY, P.A.  
120 East Lake St., Suite 317  
Sandpoint, ID 83864  
[Attorney for J.V. LLC]

John A. Finney  
FINNEY FINNEY & FINNEY, P.A.  
120 East Lake St., Suite 317  
Sandpoint, ID 83864  
[Attorney for ACI NORTHWEST, INC.  
and PUCCI CONSTRUCTION, INC.]

By:   
Deputy Clerk



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

STATE OF IDAHO  
 COUNTY OF BONNER  
 FIRST JUDICIAL DISTRICT  
 2009 FEB 27 PM 4:10  
 CLERK OF DISTRICT COURT  
 SANDPOINT, IDAHO

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

|                                 |   |                          |
|---------------------------------|---|--------------------------|
| GENESIS GOLF BUILDERS, INC.,    | ) | Case No. CV-2009-1810    |
| formerly known as National Golf | ) |                          |
| Builders, Inc., a Nevada        | ) | JV L.L.C.'S FIRST        |
| corporation,                    | ) | SUPPLEMENTAL MEMORANDUM  |
|                                 | ) | IN OPPOSITION TO VALIANT |
| Plaintiff,                      | ) | IDAHO, LLC'S MOTION FOR  |
|                                 | ) | SUMMARY JUDGMENT         |
| v.                              | ) |                          |
|                                 | ) |                          |
| PEND OREILLE BONNER             | ) |                          |
| DEVELOPMENT, LLC, a Nevada      | ) |                          |
| limited liability company; R.E. | ) |                          |
| LOANS, LLC, a California        | ) |                          |
| limited liability company; DAN  | ) |                          |
| S. JACOBSON, an individual,     | ) |                          |
| SAGE HOLDINGS LLC, an Idaho     | ) |                          |
| limited liability company;      | ) |                          |
| STEVEN G. LAZAR, an individual; | ) |                          |
| PENSCO TRUST CO. CUSTODIAN FBO  | ) |                          |
| BARNEY NG; MORTGAGE FUND '03    | ) |                          |
| LLC, a Delaware limited         | ) |                          |
| liability company; VP,          | ) |                          |
| INCORPORATED, an Idaho          | ) |                          |
| corporation; JV L.L.C., an      | ) |                          |
| Idaho limited liability         | ) |                          |
| company; WELLS FARGO FOOTHILL,  | ) |                          |
| LLC, a Delaware limited         | ) |                          |
| liability company; INTERSTATE   | ) |                          |
| CONCRETE AND ASPHALT COMPANY,   | ) |                          |

an Idaho corporation; T-O )  
ENGINEERS, INC., fka Toothman- )  
Orton Engineering Company, an )  
Idaho corporation; PUCCI )  
CONSTRUCTION INC., an Idaho )  
corporation; ACI NORTHWEST, )  
INC., an Idaho corporation; )  
LUMSERMENS, INC., dba ProBuild, )  
a Washington corporation; )  
ROBERT PLASTER dba Cedar Etc; )  
NORTH IDAHO RESORTS, LLC, an )  
Idaho limited liability )  
company; R.C. WORST & COMPANY, )  
INC., an Idaho corporation; )  
DOES 1 through X, )

Defendants. )

---

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

---

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

Plaintiff, )

v. )

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

Defendants. )

---

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

---

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

Third Party )  
Plaintiff, )

v. )

FEND ORIELLE BONNER DEVELOPMENT )  
HOLIDINGS, INC., a Nevada )  
corporation; BAR K, INC., a )  
California corporation; )  
TIMBERLINE INVESTMENTS LLC, an )  
Idaho limited liability )  
company; AMY KORENGUT, a )  
married woman; HLT REAL ESTATE, )  
LLC, an Idaho limited liability )  
company; INDEPENDENT MORTGAGE )  
LTD. CO., an Idaho limited )  
liability company; PANHANDLE )  
MANAGEMENT INCORPORATED, an )  
Idaho corporation; FREDERICK J. )  
GRANT, an individual; CRISTINE )  
GRANT, an individual; RUSS )  
CAPITAL GROUP, LLC, an Arizona )  
limited liability company; )  
MOUNTAIN WEST BANK, a division )  
of GLACIER BANK, a Montana )  
corporation; FIRST AMERICAN )  
TITLE COMPANY, a California )  
corporation; NETTA SOURCE LLC, )  
a Missouri limited liability )  
company; 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. )

JV L.L.C., an Idaho limited )  
liability company, )

Defendant and )  
Cross-Claimant against all of )  
the Defendants and )  
Third Party Plaintiff, )

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

---

COMES NOW JV L.L.C., an Idaho limited liability company,  
 herein "JV", by and through its attorney GARY A. FINNEY of  
 Finney Finney & Finney, P.A., and submits this First  
 Supplemental Memorandum in Opposition to Valiant Idaho, LLC's  
 Motion for Summary Judgment, dated January 16, 2015; and in  
 further opposition to Valiant Idaho, LLC's, herein "Valiant",  
 Memorandum in Support, dated January 16, 2015, as follows:

I. RE LOAN'S ASSIGNMENT OF MORTGAGE NOTE AND REDEMPTION  
 RIGHT IS OF NO FORCE OR EFFECT

In Valiant's Memorandum in Support OF Valiant Idaho, LLC's Motion for Summary Judgment Against JV, L.L.C., North Idaho Resorts, LLC, and VP, Incorporated, under its "II Statement of Facts", paragraph 2, fourth paragraph down, Valiant States:

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

The Declaration of Jeff R. Sykes in Support of Valiant Idaho, LLC's Motion for Summary Judgment Against JV, L.L.C., North Idaho Resorts, LLC, and VP, Incorporated, paragraph four, page three, stated that the attached Exhibit 3 is a copy of the Assignment of Mortgage Note and Redemption Right.

The Court is referenced to look at the Exhibit 3 document itself. JV's defense to this Exhibit 3, in opposition to Valiant's Motion for Summary Judgment is:

A. The 2007 Loans/Mortgages are paid as of the "new" loan in August 1, 2008, and the 2008 loan documents so state and show as follows:

i. The Assignment of Mortgage Note and Redemption Right, Exhibit 3, is recorded July 7, 2014, Instrument No. 861388, and states that it is for the assignment of the 2007 note and 2007 mortgage. The 2007 note and mortgage were fully paid by a new MF08 Loan, dated July 31/August 1, 2008. The Borrower's Settlement Statement, JV's Defendant Exhibit G shows:

On 5<sup>th</sup> Line: "Payoff First Note - Loan No. P0099 - Mortgage Fund '08 LLC c/o Bar K, Inc." . . . . . \$6,473,545.18  
On 6<sup>th</sup> Line: "Payoff Second Note - Loan No. P0106 - Mortgage Fund '08 LLC c/o Bar K, Inc." . . . . . \$2,700,000.00

JV's Defendant Exhibit H is for the same July 31, 2008

(August 6, 2008) loan. JV's Defendant Exhibit H is 4 pages in

length, marked as "REVISED FINAL" it shows:

On Pg. 1, 5<sup>th</sup> Line: is the same "Payoff First Note - Loan No. P0099 - Mortgage Fund '08 LLC c/o Bar K, Inc." . . . . . \$6,172,325.18

(This was actually the RE Loan, there was no prior loan from MF08)

On Pg. 1, 6<sup>th</sup> Line: is the same Payoff Second Note - Loan No. P0106 - Mortgage Fund '08 LLC c/o Bar K, Inc." . . . . . \$2,700,000.00

These "pay-offs" are repeated on the third page as:

Paragraph 810 "Payoff First Note Loan No. P0099 - Mortgage Fund '08 LLC c/o Bar K, Inc." . . . . . \$6,172,325.18

Paragraph 810 "Payoff Second Note - Loan No. P0106 - Mortgage Fund '08 LLC c/o Bar K, Inc." . . . . . \$2,700,000.00

There was no loan of additional money by the 2008 Loan and

JV's Exhibit H shows:

3<sup>rd</sup> Page on "H": Retained Loan Funds \$12,257,174.82  
(REVISED FINAL)

Undisputed fact to which all parties agree is the Retained Loan Funds (\$12,257,174.82) were never "funded" or disbursed at all, none, nilch.

ii. Where did the pay-off of First Note Loan P0099, \$6,172,325.18 go? The answer is found in the Charles Reeves (for POBD) Affidavit, Valiant's Exhibit E. Exhibit E

(Reeves S001232), which is is stated to be for loan P0099. On its second page (Reeves S001233), under the August 6, 2008 is the PAY DOWN to \$6,172,325.18, which is the same EXACT as pay-off of First Loan P00099 (\$6,172,325.18) on JV's Exhibit H (Revised Final).

iii. The First Note loan P0099 being paid-off, results in Valiant receiving nothing by way of its "Assignment of Mortgage Note and Redemption Right", Exhibit 3 to the Attorney Syke's Declaration. This is because the August 2008 loan from MF08 "paid-off" the 2007 RE loan, and further, the 2008 Mortgage to MF08 shows the prior RE loan of 2007 as being paid by the "all-inclusive" 2008 MF08 Mortgage.

Further, the aforesaid "Assignment (Exhibit 3) is invalid and was not entitled to be recorded on July 7, 2014, Instrument No. 861383.

Why? Because Idaho has a statutory form of the common law equal dignity rule, which is Idaho Code §55-806, "Power must be recorded before conveyance by attorney. - An instrument executed by an attorney in fact must not be recorded until the power of attorney authorizing the execution of the instrument is filed for record in the same office."

The Assignment, Valiant's Exhibit 3, page 3 (Skye's Declaration) is signed for as follows:

R.E. Loans, LLC,  
a California limited liability company

By: (x) (signed)  
Name: Howard Marc Spector  
Title: Attorney-in-Fact

The acknowledgment, on page 3, is for Howard Marc Spector, in his capacity as Attorney-in-fact for R.E. Loans, LLC.

The legal result is that there is no recorded power of attorney from R.E. Loans, LLC to Howard Marc Spector, none, at all, nilch. No power of attorney was first (or al all) recorded in Bonner county, Idaho.

iv. The Assignment, Exhibit 3, Syke's Declaration, was not entitled to be recorded in Bonner County, Idaho by reason of Idaho Code §55-806. Even through it was recorded it does not constitute constructive notice (Hurt v McDonald, 65 Idaho 610, 149 p 2d 792 1944).

The Assignment instrument is not deemed to be recorded. See Idaho Code §55-809 "When deemed recorded. - An instrument is deemed to be recorded when, being duly acknowledged, or proved and certified, it is deposited in the recorder's office with proper officer for record."

v. Valiant's ". . . Redemption Right" (Exhibit 3, Syke's Declaration), a portion in the Assignment also fails. Valiant had no interest in the paid-off RE 2007 loan (P0099), and



did not have any interest for a tax redemption, based on the Redemption Deed, Syke's Declaration, Exhibit 2, recorded July 8, 2014 as Instrument No. 861460 at 01.07.28 PM. The "re-recording" of the same Redemption Deed, (as signed and acknowledged) by the County Treasurer on August 22, 2014, Instrument No. 863298, is of no force or effect and is of no moment, as it was two months after the supposed "redemption" by Valiant.

In Summary

JV admits \$278,147.65 is owed one (1) time only; nothing is owed to RE as part of its 2007 mortgage because it was "paid-off" and shown as being "all-inclusive" in the face of MF08's 2008 Mortgage", (on page 3). This same \$278,147.65 cannot be owed "twice". The only sum JV admits is a priority loan as to JV is the \$278,147.65 owed to MF08.

Wherefore JV further and supplementally moves the Court to deny Valiant Idaho, LC's Motion for Summary Judgment.

DATED this 27<sup>TH</sup> day of February, 2015.



GARY A. FINNEY  
Attorney for JV E.L.C., an  
Idaho limited liability  
company

VERIFICATION

STATE OF IDAHO )  
 : s.s.  
COUNTY OF BONNER )

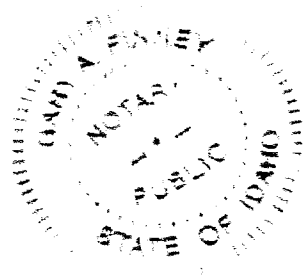
I, James Berry, as a Member/Manager of JV L.L.C., first being duly sworn upon oath depose and say the following:

I am the Member/Manager of JV L.L.C. in this case and I have read JV L.L.C.'S FIRST SUPPLEMENTAL MEMORANDUM IN OPPOSITION TO VALLIANT IDAHO, LLC'S MOTION FOR SUMMARY JUDGMENT dated the 27<sup>th</sup> day of February, 2015, and know the contents therein stated and believe the same to be true.

JV L.L.C.

James Berry  
By: James Berry  
Its: Member/Manager

SUBSCRIBED AND SWORN to before me this 27<sup>th</sup> day of February 2015.



James G. Berry  
Notary Public - State of Idaho  
Residing at Laurel  
My Commission Expires 06/17/2018

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via facsimile, this 27 day of February, 2015, and addressed as follows:

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

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

Richard Stacey  
Jeff Sykes  
MCCONNELL WAGNER SYKES &  
STACEY PLLP  
755 W. Front St., Ste.200  
Boise, ID 83702  
[Attorney for R.E. LOANS,  
LLC & VALIANT IDAHO LLC]  
Via Facsimile: (208) 489-0110

Susan Weeks  
Steven C. Wetzel  
JAMES, VERNON & WEEKS, P.A.  
1626 Lincoln Way  
Coeur d'Alene, ID 83814  
[Attorney for NORTH IDAHO  
RESORTS, LLC, V.P. INC, &  
FOR JV'S THIRD PARTY  
DEFENDANTS]  
Via Facsimile: (208) 664-1584

By: [Signature]

Susan P. Weeks, ISB No. 4255  
JAMES, VERNON & WEEKS, PA  
1626 Lincoln Way  
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Telephone: (208) 667-0683  
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[sweeks@jvwlaw.net](mailto:sweeks@jvwlaw.net)

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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 MOTION FOR  
ENLARGEMENT OF TIME TO FILE  
ANSWERS AND RESPONSES TO  
DISCOVERY REQUESTS PROPOUNDED  
BY VALLANT IDAHO, LLC

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

COME NOW Defendants, North Idaho Resorts, LLC and VP, Incorporated, by and through their attorney of record, Susan P. Weeks of the law firm James, Vernon & Weeks, P.A., and pursuant to I.R.C.P. 6(b), hereby moves this Court for a seven (7) day enlargement of time, through and including March 9, 2015 in which to file Answers and Responses to Interrogatories and Requests for Production of Documents Propounded by Valiant Idaho, LLC Upon North

DEFENDANTS NORTH IDAHO RESORTS, LLC AND VP INCORPORATED'S  
MOTION FOR ENLARGEMENT OF TIME TO FILE ANSWERS AND RESPONSES TO  
DISCOVERY REQUESTS PROPOUNDED BY VALLANT IDAHO, LLC: 1

Idaho Resorts, LLC and VP, Incorporated.

This motion is made by and for the reason that the agent for North Idaho Resorts, LLC and VP, Incorporated is currently has pneumonia and requires additional time to complete his discovery responses.

DATED this 2<sup>nd</sup> day of March, 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 2nd day of March, 2015:

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

Christie Clouse

STATE OF IDAHO  
COUNTY OF BONNER  
FIRST JUDICIAL DISTRICT

015 MAR 11 AM 10 58

CLERK OF DISTRICT COURT  
DEPUTY

Richard L. Stacey, ISB #6800  
Jeff R. Sykes, ISB #5058  
McCONNELL WAGNER SYKES & STACEY <sup>PLLC</sup>  
755 West Front Street, Suite 200  
Boise, Idaho 83702  
Telephone: 208.489.0100  
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[stacey@mwsslawyers.com](mailto:stacey@mwsslawyers.com)  
[sykes@mwsslawyers.com](mailto:sykes@mwsslawyers.com)

Attorneys For Valiant Idaho, LLC

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

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

Plaintiff,

vs.

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

Defendants.

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

Case No. CV-09-1810

MEMORANDUM IN REPLY TO  
JV, L.L.C.'S MEMORANDUM  
IN OPPOSITION TO  
VALIANT IDAHO, LLC'S  
MOTION FOR SUMMARY JUDGMENT

Honorable Barbara A. Buchanan

Hearing:

March 18, 2015 - 3:30 p.m. PDST

ORIGINAL

VALIANT IDAHO, LLC,  
an Idaho limited liability company,

Third Party Plaintiff,

vs.

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



COMES NOW, Valiant Idaho, LLC ("Valiant"), by and through its attorneys of record, McConnell Wagner Sykes & Stacey PLLC, and files the following Memorandum in Reply to JV, L.L.C.'s ["JV"] Memorandum in Opposition ["JV Opposition"] to Valiant Idaho, LLC's Motion For Summary Judgment ["SJ Motion"]. The terms as defined in the Memorandum in Support of Valiant's SJ Motion] Against [JV], North Idaho Resorts, LLC, and VP, Incorporated are incorporated herein by this reference.

1  
ARGUMENT

A. The Findings In The Union Bank Case Are Not Binding On Valiant.

JV argues that no debt is owed by POBD under the 2007 RE Loans Note because in the case styled *MCFG Union Bank N.A. v. Pardi O'neille Bowner Development, LLC, et al.*, Bonner County Case No. CV-2011-0135, it was allegedly adjudicated that any debt owed by POBD was paid in full. JV cites to the Findings made by Judge Griffin attached as Exhibit 14 to the Sykes Declaration. JV's assertion is incorrect.

The matter that went to trial and the findings issued by Judge Griffin involved North Idaho Resorts, LLC ("NIR") and Union Bank not RE Loans. For collateral estoppel to apply, among several factors, the party against whom preclusion is asserted must have had a full and final opportunity to litigate the issue and the issues must be identical. *Tisor Title Co. v. Stanion*, 144 Idaho 119, 123 (2007). In *Union Bank*, on August 12, 2013, RE Loans disclaimed any interest in the Trestle Creek Property (the real property at issue in that case), and, on August 11, 2013, stipulated with JV that JV's right, title and interest to the Trestle Creek Property was senior to that of RE Loans. Supplemental Declaration of Jeff R. Sykes in Support of Memorandum in Reply to

[JV's Opposition] to [Valiant's SJ Motion], Exs. 20, 21. When Charles Reeves was deposed on August 12, 2013, and when the case went to trial thereafter, RE Loans had no interest in the litigation or the real property at issue. Any finding made by Judge Griffin that RE Loans was paid by POBD was not litigated by RE Loans and is not a basis for the application of collateral estoppel. Moreover, Judge Griffin, in his Findings, does not set forth which obligations, if any, which were paid by POBD to RE Loans.

**B. The Uncontroverted Facts Establish That POBD Owes \$278,147.65 Plus Accrued Interest To RE Loans, Valiant Under The 2007 RE Loans Note.**

JV argues that the 2007 RE Loans Note was paid in full; thus, POBD owes nothing under the 2007 RE Loans Note. To make this argument, JV cites to a string of facts and arguments which are unsupported by any affidavit or declaration submitted to this Court, and cites to closing statements from Sandpoint Title and First American Title [Opposition, Exs. D, F, G, H] to somehow try and demonstrate that any indebtedness under the 2007 RE Loans Note was paid in full. JV's arguments are not persuasive.

First, JV does not present any sworn facts to the Court. Second, none of the closing statements are properly before the Court. JV attaches the closing statements to its Opposition without setting forth any foundation that the closing statements are authentic or even accurate copies of any loans which actually closed. The closing statements are not part of any affidavit or declaration establishing that the documents would be admissible at trial. I.R.C.P. 56(e). The closing statements do not raise any question of fact in this matter whether a debt obligation is owed by POBD to RE Loans under the 2007 RE Loans Note and Mortgage.

On the other hand, Valiant has submitted the Affidavit of Charles W. Reeves ("Reeves Aff."), who was the custodian and member of POBD responsible for the financing aspects of the entity, and sets forth in his Affidavit all of the payments made by POBD toward the 2007 RE Loans 2007 Note, the Pensco Note and the MF08 Note. Reeves testifies that, under the 2007 RE Loans Note and Mortgage, POBD owes RE Loans \$278,147.65. Reeves Aff., ¶¶ 7, 8. The closing statements relied on by JV in no way challenge that fact or raise a question of fact. There is no way to tell from the closing statements that any loans actually closed or that they relate in any way to the 2007 RE Loans Note and Mortgage. It would stand to reason that, had the loans closed as asserted by JV, documents would exist in which the 2007 RE Loans Note was satisfied and the 2007 RE Loans Mortgage was released of record (similar to the release of the 2006 RE Loans Mortgage—Opposition, Ex. A). No such documents have been presented by JV to this Court. JV simply makes unsupported arguments in an attempt to raise a question of fact which has no basis in reality or the factual record.

**C. There Is No Issue Concerning The Validity Of JV's Subordination Agreements.**

JV seems to argue, based upon the Affidavit of James W. Berry ["Berry"] Opposing Valiant's Motion For Summary Judgment ("Berry Aff."), that JV was fraudulently induced to subordinate its interest in the subject properties to the 2007 RE Loans Mortgage, the Pensco Mortgage and the MF08 Mortgage; however, there is no evidence presented by Berry that he was fraudulently induced to sign the subordinations. Nowhere in the Berry Aff. does Berry deny signing any of the subordination agreements and, in fact, admits signing the 2008 subordination agreement. Berry Aff., ¶ 9. Under Idaho law, Berry is deemed to have known and understood the documents he signed. *Olsen v. Hawkins*, 90 Idaho 28 (1965); *Liebelt v. Liebelt*, 118 Idaho 845 (1990).

Additionally, nowhere in the Berry Aff. does Berry set forth any facts that he was actually fraudulently induced into signing the subordination agreements, nor does he set forth facts which meet the elements for fraud. Berry makes wild allegations that Reeves breached a contract and that Reeves's factual statements were allegedly false, but offers no evidence of any breach or that any of the statements made by Reeves were false. The Berry Aff. contains self-serving statements without any factual background and do not serve as a basis to deny Valiant's SJ Motion.

**D. Valiant Had Every Right To Redeem The Bonner County Tax Deed.**

JV argues that Valiant had no right to redeem the Bonner County Tax Deed; thus, Valiant has no right to recover the amount paid to the Bonner County Tax Assessor as part of its foreclosure action. JV claims that Valiant had no interest in any of the properties redeemed and, therefore, could not redeem under Idaho law. JV's arguments are, again, incorrect.

On or about July 7, 2014, RE Loans assigned to Valiant the 2007 RE Loans Note and the 2007 RE Loans Mortgage [Sykes Dec., Ex. 3]; on or about July 9, 2014, the Pensco Note and Pensco Mortgage were assigned to Valiant [Sykes Dec., Ex. 4]; and, on or about July 15, 2014, the MF08 Note and MF08 Mortgage were assigned to Valiant [Sykes Dec., Ex. 5]. On or about July 7, 2014, after Valiant was assigned the 2007 RE Loans Note and Mortgage and obtained an interest in that real property, Valiant paid Bonner County \$1,665,855.14 to redeem a portion of the Idaho Club Property (included in the RE Loans Mortgage) from Bonner County [Sykes Dec., Ex. 2] in accordance with Idaho Code §§ 63-1003 and 1010 (formerly codified as Idaho Code §§ 63-1124 and 1140).

Idaho Code § 63-1007 expressly allows for a one year period after the issuance of a tax deed for the real property to be redeemed by the record owner or a party in interest by paying the

past due taxes. In this instance, as of July 7, 2014, Valiant had an interest in the subject property by virtue of the assignment from RE Loans. As a matter of law, Valiant had the right to redeem the tax deed prior to sale by the Bonner County Tax Assessor under Idaho Code § 63-1007. Likewise, as in *Hardy v. McGill*, 137 Idaho 280, 286 (2012), Valiant has the right to add the amount paid to redeem the tax deed to its existing obligations (*i.e.*, the 2007 RE Loans Note and Mortgage) and collect that amount as part of its foreclosure.

## II. CONCLUSION

Simply stated, JV offers no facts or legal arguments which would preclude granting summary judgment in favor of Valiant. This Court should find that the 2007 RE Loans Mortgage, the Pensco Mortgage and the MF08 Mortgage are senior in right, title and interest to the property described in those Mortgages to any interest in those properties claimed by JV in this litigation; and enter judgment that Valiant's 2007 RE Loans Mortgage, Pensco Mortgage and MF08 Mortgage are senior in right, title and interest with regard to the real property described in the Mortgages to any claim made by JV to the subject properties; and that the amount paid by Valiant to redeem the tax deed can be recovered as part of Valiant's foreclosure of the 2007 RE Loans Mortgage, which right is senior to any rights claimed by JV, NIR and VP, Incorporated.

DATED this 10<sup>th</sup> day of March 2015.

McCONNELL WAGNER SYKES & STACEY<sup>PLLC</sup>

BY: 

Jeff R. Sykes

Attorneys For Valiant Idaho, LLC

**CERTIFICATE OF SERVICE**

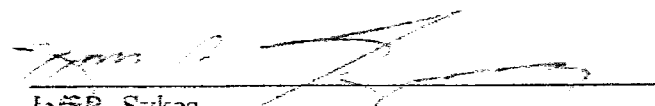
I HEREBY CERTIFY that on the 10<sup>th</sup> day of March 2015, a true and correct copy of the foregoing document was served by the method indicated below upon the following party(ies):

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

|   |  |
|---|--|
| Susan P. Weeks, Esq.<br>James, Vernon & Weeks, PA<br>1626 Lincoln Way<br>Coeur d'Alene, Idaho 83814<br>Telephone: 208.667.0683<br>Facsimile: 208.664.1684<br><i>Counsel For VP Incorporated/North Idaho Resorts</i> | <input checked="" type="checkbox"/> U.S. Mail<br><input type="checkbox"/> Hand Delivered<br><input checked="" type="checkbox"/> Facsimile<br><input type="checkbox"/> Overnight Mail<br><input type="checkbox"/> Electronic Mail<br><a href="mailto:sweeks@jvwlaw.net">sweeks@jvwlaw.net</a> |
|---|--|


With two copies via Federal Express to:

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

  
\_\_\_\_\_  
Jeff R. Sykes

STATE OF IDAHO  
COUNTY OF BONNER  
FIRST JUDICIAL DISTRICT

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CLERK OF DISTRICT COURT  


Richard L. Stacey, ISB #6800  
Jeff R. Sykes, ISB #5058  
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[sykes@mwwsslawyers.com](mailto:sykes@mwwsslawyers.com)

Attorneys For Valiant Idaho, LLC

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

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

Plaintiff,

vs.

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

Defendants

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

Case No. CV-09-1310

SUPPLEMENTAL DECLARATION OF  
JEFF R. SYKES IN SUPPORT OF  
MEMORANDUM IN REPLY TO  
JV, L.L.C.'S MEMORANDUM  
IN OPPOSITION TO  
VALIANT IDAHO, LLC'S  
MOTION FOR SUMMARY JUDGMENT

Honorable Barbara A. Buchanan

Hearing:

March 18, 2015 - 3:30 p.m. PDST

ORIGINAL



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 Memorandum in Reply to JV, L.L.C.'s Memorandum in Opposition to Valiant's Motion For Summary Judgment Against ("Reply") filed concurrently and upon my personal knowledge.

2. Attached as Exhibit 20 is a true and correct copy of the Disclaimer of Interest in Trestle Creek ("Disclaimer") filed and served August 20, 2013 by R.E. Loans, LLC ("RE Loans") in the litigation styled as *MUFG Union Bank, N.A. v. Pend Oreille Bonner Development, LLC, et al.*, Bonner County Case No. CV-2011-0135, whereby RE Loans disclaims any interest in the property commonly known as "Trestle Creek" and "legally described on Exhibit A" to the Disclaimer.

3. Attached as Exhibit 21 is a true and correct copy of the Stipulation As To Claims of JV, LLC Against R.E. Loans, LLC ("Stipulation") signed by RE Loans on August 11, 2013, and filed and served September 11, 2013 in *Union Bank*, whereby R.E. Loans stipulates to JV, L.L.C.'s priority in right, title and interest in the Trestle Creek Property, as "legally described on Exhibit A" to the Stipulation.

4. Attached as Exhibit 22 are Pages 1 and 15 of the Case Number Result Page for *Union Bank* as shown on the website for the Idaho Repository and printed on March 9, 2015, which confirms on Page 15 the filing dates of the Disclaimer and the Stipulation as set forth above.

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 10<sup>th</sup> day of March 2015.

  
JEFF R. SYKES

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 10<sup>th</sup> day of March 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.<br/>Elsaesser Jarzabek Anderson Elliott &amp; MacDonald, Chtd<br/>320 East Neider Avenue, Suite 102<br/>Coeur d' Alene, Idaho 83815<br/>Telephone: 208.667.2900<br/>Facsimile: 208.667.2150<br/><i>Counsel For Jacobson, Lazar and Sage Holdings</i></p> | <p><input checked="" type="checkbox"/> U.S. Mail<br/><input type="checkbox"/> Hand Delivered<br/><input type="checkbox"/> Facsimile<br/><input type="checkbox"/> Overnight Mail<br/><input type="checkbox"/> Electronic Mail<br/><br/><u>brucea@ejame.com</u></p>                     |
| <p>Brent C. Featherston, Esq.<br/>Featherston Law Firm, Chtd<br/>113 South Second Avenue<br/>Sandpoint, Idaho 83864<br/>Telephone: 208.263.6866<br/>Facsimile: 208.263.0400<br/><i>Counsel For Pensco Mortgage Fund</i></p>   | <p><input checked="" type="checkbox"/> U.S. Mail<br/><input type="checkbox"/> Hand Delivered<br/><input type="checkbox"/> Facsimile<br/><input type="checkbox"/> Overnight Mail<br/><input type="checkbox"/> Electronic Mail<br/><br/><u>bcf@featherstonlaw.com</u></p>               |
| <p>Gary A. Finney, Esq.<br/>Finney Finney &amp; Finney, P.A.<br/>120 East Lake Street, Suite 317<br/>Sandpoint, Idaho 83864<br/>Telephone: 208.263.7712<br/>Facsimile: 208.263.8211<br/><i>Counsel For J.V., LLC</i></p>  | <p><input checked="" type="checkbox"/> U.S. Mail<br/><input type="checkbox"/> Hand Delivered<br/><input checked="" type="checkbox"/> Facsimile<br/><input type="checkbox"/> Overnight Mail<br/><input type="checkbox"/> Electronic Mail<br/><br/><u>gary.finney@finneylaw.net</u></p> |

|  |   |
|--|---|
| John A. Finney, Esq.<br>Finney Finney & Finney, P.A.<br>120 East Lake Street, Suite 317<br>Sandpoint, Idaho 83864<br>Telephone: 208.263.7712<br>Facsimile: 208.263.8211<br><i>Counsel For Pucci Construction/ACI Northwest</i> | <input checked="" type="checkbox"/> U.S. Mail<br><input type="checkbox"/> Hand Delivered<br><input type="checkbox"/> Facsimile<br><input type="checkbox"/> Overnight Mail<br><input type="checkbox"/> Electronic Mail<br><br><a href="mailto:johnfinney@finneylaw.net">johnfinney@finneylaw.net</a> |
| D. Toby McLaughlin, Esq.<br>Berg & McLaughlin<br>414 Church Street, Suite 203<br>Sandpoint, Idaho 83864<br>Telephone: 208.263.4748<br>Facsimile: 208.263.7557<br><i>Counsel For Idaho Club HGA Panhandle Mngmnt</i>            | <input checked="" type="checkbox"/> U.S. Mail<br><input type="checkbox"/> Hand Delivered<br><input type="checkbox"/> Facsimile<br><input type="checkbox"/> Overnight Mail<br><input type="checkbox"/> Electronic Mail<br><br><a href="mailto:tobv@sandpointlaw.com">tobv@sandpointlaw.com</a>       |
| Susan P. Weeks, Esq.<br>James, Vernon & Weeks, PA<br>1626 Lincoln Way<br>Coeur d'Alene, Idaho 83814<br>Telephone: 208.667.0683<br>Facsimile: 208.664.1684<br><i>Counsel For VP Incorporated/North Idaho Resorts</i>            | <input checked="" type="checkbox"/> U.S. Mail<br><input type="checkbox"/> Hand Delivered<br><input checked="" type="checkbox"/> Facsimile<br><input type="checkbox"/> Overnight Mail<br><input type="checkbox"/> Electronic Mail<br><br><a href="mailto:sweeks@jvwlaw.net">sweeks@jvwlaw.net</a>    |

With two copies via Federal Express to:

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

  
 \_\_\_\_\_  
 Jeff R. Sykes

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

*Attorneys for R.E. Loans, LLC*

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

UNION BANK, a national association,

Plaintiff,

v.

PEND OREILLE BONNER  
DEVELOPMENT, LLC, et al.

Defendants.

Case No. CV-2011-0135

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


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

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

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

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

MEULEMAN MOLLERUP LLP




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

**CERTIFICATE OF SERVICE**

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

|   |   |
|---|---|
| <p>John E. Miller<br/>The Law Office of John E. Miller<br/>1424 Sherman Ave., Ste. 500<br/>Coeur d'Alene, ID 83814<br/>Telephone: 208/665-9464<br/>Facsimile: 208/665-9176<br/><i>Counsel for Plaintiff</i><br/><input type="checkbox"/> Mail <input checked="" type="checkbox"/> Fax <input type="checkbox"/> Overnight <input type="checkbox"/> Hand Delivery<br/><input type="checkbox"/> Email</p>  | <p>Gary A. Finney<br/>Finney Finney &amp; Finney, P.A.<br/>120 E. Lake Street, Ste 317<br/>Sandpoint, Idaho 83864<br/>Fax: 208/263-8211<br/><i>Counsel for J.V., LLC</i><br/><input type="checkbox"/> Mail <input checked="" type="checkbox"/> Fax <input type="checkbox"/> Overnight <input type="checkbox"/> Hand Delivery<br/><input type="checkbox"/> Email</p>   |
| <p>John Finney<br/>Finney Finney &amp; Finney, P.A.<br/>120 E. Lake Street, Ste 317<br/>Sandpoint, Idaho 83864<br/>Fax: 208/263-8211<br/><i>Counsel for ACI Northwest, Inc.</i><br/><input type="checkbox"/> Mail <input checked="" type="checkbox"/> Fax <input type="checkbox"/> Overnight <input type="checkbox"/> Hand Delivery<br/><input type="checkbox"/> Email</p>  | <p>Steven C. Wetzel<br/>James, Vernon &amp; Weeks, PA<br/>1625 Lincoln Way<br/>Coeur d'Alene, ID 83814<br/>Fax: 208/664-1684<br/><i>Counsel for North Idaho Resorts, LLC</i><br/><input type="checkbox"/> Mail <input checked="" type="checkbox"/> Fax <input type="checkbox"/> Overnight <input type="checkbox"/> Hand Delivery<br/><input type="checkbox"/> Email</p>   |
| <p>John R. Layman<br/>Bradley C. Crockett<br/>Layman Law Firm, PLLP<br/>601 South Division Street<br/>Spokane, WA 99202<br/>Fax: 509/624-2902<br/><i>Counsel for Pend Oreille Bonner<br/>Development, LLC, Pend Oreille Bonner<br/>Development Holdings, Inc., Montaheno<br/>Investments, LLC, Toyon Investments, LLC,<br/>Charles Reeves, and Ann B. Reeves</i><br/><input type="checkbox"/> Mail <input checked="" type="checkbox"/> Fax <input type="checkbox"/> Overnight <input type="checkbox"/> Hand Delivery<br/><input type="checkbox"/> Email</p> | <p>Richard W. Sweney<br/>Lukins &amp; Annis PS<br/>601 E. Front Ave., Ste. 502<br/>Coeur d'Alene, ID 83814<br/>Fax: 208/664-4125<br/><i>Counsel for Mountain West Bank</i><br/><input type="checkbox"/> Mail <input checked="" type="checkbox"/> Fax <input type="checkbox"/> Overnight <input type="checkbox"/> Hand Delivery<br/><input type="checkbox"/> Email</p>   |
| <p>Douglas S. Marfice<br/>Ramsden &amp; Lyons, LLP<br/>P.O. Box 1336<br/>Coeur d'Alene, ID 83816-1336<br/>Fax: 208/664-5884<br/><i>Counsel for B-K Lighting, Inc.</i><br/><input type="checkbox"/> Mail <input checked="" type="checkbox"/> Fax <input type="checkbox"/> Overnight <input type="checkbox"/> Hand Delivery<br/><input type="checkbox"/> Email</p>  | <p>Bruce A. Anderson<br/>Elsaesser Jarzabek Anderson Elliott &amp;<br/>MacDonald, Chtd.<br/>320 East Neider Ave., Suite 102<br/>Coeur d' Alene, ID 83815<br/>Fax: 208/667-2150<br/><i>Counsel for Dan S. Jacobson, Steven G. Lazar,<br/>and Sage Holdings, LLC</i><br/><input type="checkbox"/> Mail <input checked="" type="checkbox"/> Fax <input type="checkbox"/> Overnight <input type="checkbox"/> Hand Delivery<br/><input type="checkbox"/> Email</p> |

  
Chad M. Nicholson

Property Description

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

PARCEL 1:

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

Beginning to 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 West side at a curve existing thence in a Northwesterly direction along the West side of said Highway 782 feet thence in a Southwesterly direction 37 feet thence in a Southeastery direction 172 feet to the Section line between Sections 16 and 21, thence East on said Section line between said Sections 16 and 21, 104.26 feet, more or less, to the 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, Township 57 North, Range 1 East of the Boise Meridian, Bonner County, Idaho, lying Southwest of the right of way of State Highway No. 200 and Northeast of the right of way of Montana Rail Link Railway, being a portion of that property described as Parcel 1 of Instrument No. 168846 and more particularly described as follows:

Commencing at the intersection of the South line of the Southwest quarter of the Southwest quarter of Section 16 and the Northwesterly right of way of Montana Rail Link Railway which is South  $28^{\circ} 10' 56''$  East, 344.35 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, 472.00 feet to the true point of beginning; thence continuing along said right of way North  $23^{\circ} 38' 59''$  West, 796.39 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  $48^{\circ} 43' 13''$  East, 142.38 feet to the West side right of way of State Highway No. 200; thence leaving said North line and along said right of way the following four (4) courses:

an arc beginning at the point having a central angle of  $21^{\circ} 23' 25''$  (chord bearing = South  $71^{\circ} 13' 13''$  West), a radius of 762.50 feet, for an arc length of 17.75 feet (chord = South  $15^{\circ} 16' 42''$  East, 17.75 feet); thence along a line offset 50.00 feet Westward of and parallel to a spiral curve (central angle =  $200$  feet,  $e = 3.5$ ,  $S = 7^{\circ}$ ) for a chord of South  $15^{\circ} 43' 21''$  East, 103.37 feet); thence South  $78^{\circ} 23' 13''$  East, 36.16 feet; thence on a curve to the left having a central angle of  $13^{\circ} 56' 48''$ , a radius of 1482.53 feet, for an arc length of 148.37 feet (chord = South  $28^{\circ} 23' 42''$  East, 329.38 feet);

thence leaving said right of way South  $14^{\circ} 37' 10''$  West, 106.45 feet (record = "Southwesterly 37 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 Westward 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

... C ... 1 3



Run 358 feet thence East to the centerline of Trestle Creek thence Southeastly along said centerline to the South line of Section 16; thence West along the Section line 728 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 22, Township 57 North, Range 1 East, of the Boise Meridian, Blaine County, Idaho, being a portion of that property described as Parcel 1 of Instrument No. 138843 and more particularly described as follows:

Beginning at the intersection of the South line of the Southwest quarter of the Section 22 quarter of Section 16 and the Southeastly right-of-way of Mountain Rail Link Railway which is South 38° 10' 56" East, 834.12 feet; from the Southwest corner of Section 16 thence leaving said South line and along said right-of-way North 23° 30' 30" West, 1487.84 feet to the intersection with the North line of the Southwest quarter of the Southwest quarter of Section 22; thence leaving said right-of-way and along the North line of the Southwest quarter of the Southwest quarter of the Southwest quarter of Section 22 North 39° 23' 48" West, 1223.84 feet to the meander line of Lake Pond Canal, as defined by the original S.L.O. Survey; thence leaving said North line and along said meander line the following two (2) courses:

South 22° 35' 48" East, 561.30 feet thence South 27° 53' 48" East, 798.26 feet to a point on a line lying 358.30 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 38° 10' 56" East, 281.27 feet to the West line of the said Southwest quarter of the Southwest quarter; thence continuing South 38° 10' 56" East, 159.32 feet to the intersection with the centerline of Trestle Creek; thence along the centerline of Trestle Creek the following eight (8) courses:

South 57° 24' 36" East, 13.38 feet; thence South 48° 27' 24" East, 117.33 feet; thence South 42° 30' 48" East, 77.48 feet; thence South 30° 15' 37" East, 246.48 feet; thence South 25° 25' 22" East, 361.34 feet; thence South 18° 55' 21" East, 123.88 feet; thence South 75° 43' 10" East, 78.43 feet; thence South 37° 48' 18" 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 38° 10' 56" East, 116.80 feet to the true point of beginning.

**PARCEL 3:**

A portion of the Northeast quarter of the Northwest quarter and Government Lot 1 in Section 22, Township 57 North, Range 1 East, Boise Meridian, Blaine County, Idaho, described as follows:

Beginning at a point where the South line of the Northeast quarter of the Northwest quarter of Section 22, Township 57 North, Range 1 East, Boise Meridian, Blaine County, Idaho, intersects the West line of the Northern Pacific Railroad Company right-of-way; thence 500 feet Northerly along said railroad right-of-way; thence West to the meander line of the lake; thence 400 feet Southerly to the North line of Lot 1 of said Section 22; 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 22, Township 57 North, Range 1 East of the Boise Meridian, Blaine County,

C 2 3



Idaho, more particularly described as follows:

Beginning at the intersection of the South line of the Northeast quarter of the Northwest quarter of Section 22 and the Westerly right of way of Montana Rail Link Railroad which is South  $38^{\circ} 35' 48''$  East, 139.34 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 400-tangential curve to the left having a central angle of  $18^{\circ} 49' 26''$  (radius bearing = South  $43^{\circ} 32' 48''$  West) a radius of 2644.79 feet, an arc length of 469.33 feet (chord = North  $38^{\circ} 28' 24''$  West, 469.33 feet); thence North  $28^{\circ} 18' 12''$  West, 100.42 feet;

thence leaving said right of way and parallel to the South line of Government Lot 1, North  $38^{\circ} 35' 48''$  East, 936.95 feet to the boundary line of Lake Forest Grange as defined in the original S.L.D. Survey; thence along said boundary line the following two (2) courses:

South  $14^{\circ} 25' 48''$  East, 271.54 feet; thence South  $16^{\circ} 40' 48''$  East, 375.00 feet to the intersection with the South line of Government Lot 2;

thence along said South line South  $38^{\circ} 35' 48''$  East, 743.52 feet to the Southeast corner of Government Lot 2; thence along the South line of the Northeast quarter of the Northwest quarter, South  $38^{\circ} 35' 48''$  East, 139.34 feet to the true point of beginning.

Commonly known as: NNA, Sandpoint, ID 83864



C 3 3

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*Attorneys for R.E. Loans, LLC*

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

UNION BANK, a national association,

Plaintiff,

v.

PEND OREILLE BONNER  
DEVELOPMENT, LLC, et al.

Defendants.

Case No. CV-2011-0135

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

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

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



**ORIGINAL**

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

C:\Documents And Settings\Coberley\Local Settings\Temporary Internet Files\OLK1\C\Stipulation (Re JV LLC)  
130823.Docx

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

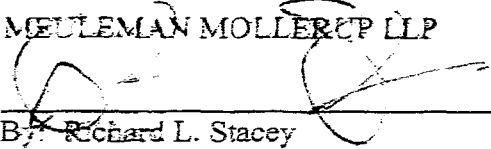
2. R.E. Loans and JV stipulate and agree that the JV Cross-Claim asserted in this matter only seeks to foreclose and adjudicate the priority of the named parties' respective interests in and to the real property commonly known as Trestle Creek and legally described on Exhibit A hereto. The JV Cross-Claim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

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

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

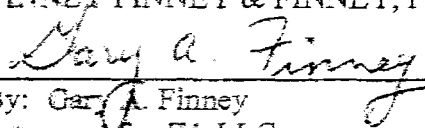
DATED this 11<sup>th</sup> day of August 2013.

MEULEMAN MOLLERUP LLP

  
By: Richard L. Stacey  
Attorneys for R.E. Loans, LLC

DATED this 6<sup>th</sup> day of ~~August~~ September 2013.

FINNEY FINNEY & FINNEY, P.A.

  
By: Gary A. Finney  
Attorneys for JV, LLC

*James W. Weeks FOR JV*


**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 11<sup>th</sup> day of ~~August~~ September 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<br/>The Law Office of John E. Miller<br/>1424 Sherman Ave., Ste. 500<br/>Coeur d'Alene, ID 83814<br/>Telephone: 208/665-9464<br/>Facsimile: 208/665-9176<br/>Counsel for Plaintiff<br/><input type="checkbox"/> Mail <input checked="" type="checkbox"/> Fax <input type="checkbox"/> Overnight <input type="checkbox"/> Hand Delivery<br/><input type="checkbox"/> Email</p> | <p>Gary A. Finney<br/>Finney Finney &amp; Finney, P.A.<br/>120 E. Lake Street, Ste 317<br/>Sandpoint, Idaho 83864<br/>Fax: 208/263-8211<br/>Counsel for J.V., LLC<br/><input type="checkbox"/> Mail <input checked="" type="checkbox"/> Fax <input type="checkbox"/> Overnight <input type="checkbox"/> Hand Delivery<br/><input type="checkbox"/> Email</p>     |
| <p>John Finney<br/>Finney Finney &amp; Finney, P.A.<br/>120 E. Lake Street, Ste 317<br/>Sandpoint, Idaho 83864<br/>Fax: 208/263-8211<br/>Counsel for ACI Northwest, Inc.<br/><input type="checkbox"/> Mail <input checked="" type="checkbox"/> Fax <input type="checkbox"/> Overnight <input type="checkbox"/> Hand Delivery<br/><input type="checkbox"/> Email</p>                             | <p>Steven C. Wetzel<br/>James, Vernon &amp; Weeks, PA<br/>1526 Lincoln Way<br/>Coeur d'Alene, ID 83814<br/>Fax: 208/664-1684<br/>Counsel for North Idaho Resorts, LLC<br/><input type="checkbox"/> Mail <input checked="" type="checkbox"/> Fax <input type="checkbox"/> Overnight <input type="checkbox"/> Hand Delivery<br/><input type="checkbox"/> Email</p> |

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

|   |   |
|---|---|
| <p>John R. Layman<br/> Bradley C. Crockett<br/> Layman Law Firm, PLLP<br/> 601 South Division Street<br/> Spokane, WA 99202<br/> Fax: 509/624-2902<br/> <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><br/> <input type="checkbox"/> Mail <input checked="" type="checkbox"/> Fax <input type="checkbox"/> Overnight <input type="checkbox"/> Hand Delivery<br/> <input type="checkbox"/> Email</p> | <p>Richard W. Sweney<br/> Lukins &amp; Annis PS<br/> 601 E. Front Ave., Ste. 502<br/> Coeur d'Alene, ID 83814<br/> Fax: 208/664-4125<br/> <i>Counsel for Mountain West Bank</i><br/> <input type="checkbox"/> Mail <input checked="" type="checkbox"/> Fax <input type="checkbox"/> Overnight <input type="checkbox"/> Hand Delivery<br/> <input type="checkbox"/> Email</p>  |
| <p>Douglas S. Marfice<br/> Ramsden &amp; Lyons, LLP<br/> P.O. Box 1336<br/> Coeur d'Alene, ID 83816-1336<br/> Fax: 208/664-5334<br/> <i>Counsel for B-K Lighting, Inc.</i><br/> <input type="checkbox"/> Mail <input checked="" type="checkbox"/> Fax <input type="checkbox"/> Overnight <input type="checkbox"/> Hand Delivery<br/> <input type="checkbox"/> Email</p>   | <p>Bruce A. Anderson<br/> Elsaesser Jarzabek Anderson Elliott &amp; MacDonald, Chtd.<br/> 320 East Neider Ave., Suite 102<br/> Coeur d'Alene, ID 83815<br/> Fax: 208/667-2150<br/> <i>Counsel for Dan S. Jacobson, Steven G. Lazar, and Sage Holdings, LLC</i><br/> <input type="checkbox"/> Mail <input checked="" type="checkbox"/> Fax <input type="checkbox"/> Overnight <input type="checkbox"/> Hand Delivery<br/> <input type="checkbox"/> Email</p> |

 FOR  
\_\_\_\_\_  
Richard L. Stacey

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

Property Description

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

**PARCEL 1:**

That portion of the Southwest quarter of the Southwest quarter of Section 15, Township 57 North, Range 1 East, Boise Meridian, lying West of the State Highway No. 268 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 15 and 21, Township 57 North, Range 1 East, 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, 732 feet; thence in a Southwesterly direction, 97 feet; thence in a Southeastery direction 172 feet to the Section line between Sections 15 and 21; thence East to said Section line between said Sections 15 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 15, Township 57 North, Range 1 East of the Boise Meridian, Bonner County, Idaho, lying Southwest of the right of way of State Highway No. 268 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. 138848 and more particularly described as follows:

Commencing at the intersection of the South line of the Southwest quarter of the Southwest quarter of Section 15 and the Northeastery right of way of Montana Rail Link Railway which is South 33° 10' 54" East, 344.25 feet from the Southwest corner of Section 15; thence leaving said South line and along said right of way North 23° 33' 59" West, 572.10 feet to the true point of beginning; thence continuing along said right of way North 23° 33' 59" West, 736.35 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 33° 43' 23" East, 242.33 feet to the Westerly right of way of State Highway No. 268; thence leaving said North line and along said right of way the following four (4) courses:

as a non-circular curve to the right having a central angle of 11° 13' 25" (true bearing = South 72° 15' 13" West), a radius of 734.50 feet, for an arc length of 17.75 feet (chord = South 15° 16' 41" East, 17.75 feet); thence along a line offset 50.00 feet Westerly of and parallel to a spiral curve (tangent line is 300 feet,  $\Delta = 3.5$ ,  $\beta = 7^\circ$ ) for a chord of South 10° 43' 21" East, 192.37 feet; thence South 38° 25' 19" East, 13.06 feet; thence on a curve to the left having a central angle of 13° 56' 43", a radius of 1432.53 feet, for an arc length of 350.37 feet (chord = South 15° 23' 43" East, 350.38 feet);

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

**PARCEL 2:**

That part of the Southwest quarter of the Southwest quarter in Section 15, 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 15 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 15; 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 15; 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 15, 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. L18944 and more particularly described as follows:

Beginning at the intersection of the South line of the Southwest quarter of the Southwest quarter of Section 15 and the Southwest right of way of Montana Rail Link Railway which is South  $98^{\circ} 18' 56''$  East, 234.13 feet from the Southwest corner of Section 15; thence leaving said South line and along said right of way North  $23^{\circ} 38' 53''$  West, 1457.34 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  $83^{\circ} 43' 23''$  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, 1223.34 feet to the meander line of Lake Pend Oreille, as defined by the original GLO Survey; thence leaving said North line and along said meander line the following two (2) courses:

South  $52^{\circ} 55' 48''$  East, 551.00 feet; thence South  $37^{\circ} 53' 48''$  East, 793.96 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 15;

thence along said parallel line, South  $83^{\circ} 10' 56''$  East, 281.27 feet to the West line of the said Southwest quarter of the Southwest quarter; thence continuing South  $83^{\circ} 10' 56''$  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  $42^{\circ} 38' 45''$  East, 77.28 feet; thence South  $30^{\circ} 06' 31''$  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  $75^{\circ} 43' 10''$  East, 58.83 feet; thence South  $37^{\circ} 48' 28''$  East, 27.37 feet to the intersection with the South line of the Southwest quarter of the Southwest quarter;

thence leaving said creek centerline and along said South line South  $83^{\circ} 10' 56''$  East, 116.80 feet to the true point of beginning.

#### PARCEL 3:

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

Beginning at a point where the South line of the Northeast quarter of the Northwest quarter of Section 21, Township 57 North, Range 1 East, Boise Meridian, Bonner County, Idaho, intersects the West line of the Northern Pacific Railroad Company right-of-way; thence 700 feet Northerly along said railroad right-of-way; thence West to the meander line of the lake; thence 600 feet Southerly to the the South line of Lot 1 of said Section 21; thence East to the point of beginning.

Said parcel is now described as follows:

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

Idaho, more particularly described as follows:

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

on a non-tangential curve to the left having a central angle of 10° 44' 25" (radial bearing = South 55° 01' 48" West) a radius of 2554.79 feet, for an arc length of 499.53 feet (chord = North 39° 28' 24" West, 488.80 feet); thence North 25° 13' 12" West, 180.47 feet;

thence leaving said right of way and parallel to the South line of Government Lot 1, North 38° 55' 48" West, 935.05 feet to the meander line of Lake Pond Oreille as defined in the original G.L.O. Survey; thence along said meander line the following two (2) courses:

South 14° 25' 48" East, 271.54 feet; thence South 46° 40' 48" East, 373.00 feet to the intersection with the South line of Government Lot 2;

thence along said South line South 88° 55' 48" East, 748.52 feet to the Southeast corner of Government Lot 2; thence along the South line of the Northeast quarter of the Northwest quarter, South 88° 55' 48" East, 139.54 feet to the true point of beginning.

Commonly known as: MNA, Sandpoint, ID 83864



**Case Number Result Page**

**Bonner**

**1 Cases Found.**

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

Case: **CV-2011-0000135** District Filed: **01/28/2011** Subtype: **Other Claims** Judge: **Idaho Supreme Court** Status: **Pend: 01/2**

Defendants: **ACI Northwest Inc, an Idaho corporation B-K Lighting Inc Dussich, Joseph Gra Christine Grant, Frederick J HLT Real Estate LLC JY L.L.C. Jacobson, Dan S Kor Amy Lazar, Steven G Montaheno Investments LLC, a Nevada limited liabil Mort Fund '08 LLC Mountain West Bank North Idaho Resorts LLC, an Idaho limited lia Panhandle State Bank, an Idaho corporation Pend Oreille Bonner Development Holdings, Inc. Pend Oreille Bonner Development, LLC Pensco Trust Co. R.E. Loa a California Limited Liability Co Reeves, Ann B Reeves, Charles W Russ Capital LLC Sage Holdings LLC State of Idaho Department of Revenue and Taxation Timberline Investments, LLC, an Idaho limited liab Toyon Investments LLC Wall Fargo Capital Finance LLC a Delaware LL Co.**

Plaintiffs: **MUFG Union Bank N.A.**

| Disposition: Date | Judgment Type    | Disposition Date | Disposition Type | Parties   | In Favor Of |
|-------------------|------------------|------------------|------------------|---|-------------|
| 03/14/2011        | Default Judgment |                  |                  | Pend Oreille Bonner Development, LLC (Defendant), Pend Oreille Bonner Development Holdings, Inc. (Defendant), Montaheno Investments LLC, a Nevada limited liabil (Defendant), Toyon Investments LLC (Defendant), Reeves, Charles W (Defendant), Reeves, Ann B (Defendant), MUFG Union Bank N.A. (Plaintiff) | Plaintiff   |

Comment: In favor of Plaintiff against Defendants listed at left; no judgment amount at this time

|            |         |  |  |   |           |
|------------|---------|--|--|---|-----------|
| 07/21/2011 | Default |  |  | Pend Oreille Bonner Development Holdings, Inc. (Defendant), Montaheno Investments | Plaintiff |
|------------|---------|--|--|---|-----------|



- 07/23/2013 Plaintiff's Reply Memorandum to Defendant JV, LLC's  
Opposition to Plaintiff's Motion for Partial Summary Judgment
- 07/24/2013 Plaintiff's Reply Memorandum to Defendant North Idaho  
Resorts, LLC's Opposition to Plaintiff's Motion for Partial  
Summary Judgment
- 07/24/2013 R.E. Loans, LLC's Notice of Intent to Appear Telephonically
- 07/25/2013 Defendant's North Idaho Resort, LLC's Notice of Intent to  
Appear by Phone
- 07/25/2013 \*\*\*\*\*END OF FILE #6\*\*\*BEGIN FILE #7\*\*\*\*\*  
Hearing result for Motion for Partial Summary Judgment  
scheduled on 07/29/2013 09:30 AM: District Court Hearing
- 07/29/2013 Held Court Reporter: Keith Evans Number of Transcript Pages  
for this hearing estimated: (To be heard in Idaho County) -  
Susan Weeks telephonic
- 08/07/2013 Notice of Service of Plaintiff's First Set of Interrogatories and  
Requests for Production to North Idaho Resorts
- 08/12/2013 Amended Certificate of Service re: Defendant North Idaho  
Resort, LLC's Memorandum in Opposition to RE Loans Motion  
for Partial Summary Judgment
- 08/12/2013 Notice of Service of Plaintiff's First Set of Interrogatories and  
Requests for Production to JV, LLC
- 08/12/2013 James W. Berry's Affidavit in Opposition to R.E. Loans's Motion  
for Partial Summary Judgment
- 08/12/2013 Defendant North Idaho Resort, LLC's Memorandum in  
Opposition to R.E. Loan's Motion for Partial Summary  
Judgment
- 08/13/2013 Notice of Service of Plaintiff's Second Set of Interrogatories  
and Requests for Production to JV, LLC
- 08/20/2013 Notice Vacating Hearing on R.E. Loans, LLC's Motion for Partial  
Summary Judgment Against North Idaho Resorts, LLC
- 08/20/2013 Stipulation as to Claims of North Idaho Resorts, LLC Against  
R.E. Loans, LLC
- 08/20/2013 R.E. Loans, LLC Disclaimer of Interest In Trestle Creek  
Hearing result for Motion for Partial Summary Judgment  
scheduled on 08/26/2013 03:00 PM: Hearing Vacated In  
Idaho County - Telephonic
- 08/22/2013 Hearing result for Motion for Partial Summary Judgment  
scheduled on 08/25/2013 03:00 PM: Hearing Vacated In  
Idaho County - Telephonic - Per Judge Griffin by phone 8-22-  
2013 / 924am
- 08/28/2013 Memorandum on Partial Summary Judgment RE JV, LLC
- 08/28/2013 Order Granting Partial Summary Judgment RE JV, LLC
- 08/28/2013 Memorandum on Partial Summary Judgment RE NIR
- 08/28/2013 Order Granting Partial Summary Judgment RE NIR in Part
- 08/28/2013 JV, LLC's Request to Charles Reeves - For Docuemtns re: His  
Deposition of August 19, 13
- 09/03/2013 M&M Court Reporting Service, Inc re: Deponent: James W.  
Berry
- 09/03/2013 M&M Court Reporting Service, Inc re: Deponent: Gary A.  
Finney, Esq.
- 09/05/2013 M&M Court Reporting Service, Inc re: Deponent: Charles  
Reeves
- 09/11/2013 Stipulation as to Claims of JV, LLC Against R.E. Loans, LLC
- 09/11/2013 M&M Court Reporting Service, Inc re: Deponent Richard A.  
Villelli

STATE OF IDAHO  
COUNTY OF BONNER  
FIRST JUDICIAL DISTRICT

2015 MAR 11 AM 10:58

CLERK OF DISTRICT COURT  
DEPUTY

Richard L. Stacey, ISB #5800  
Jeff R. Sykes, ISB #5058  
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Attorneys For Valiant Idaho, LLC

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

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

Plaintiff,

vs.

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

Defendants

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

Case No. CV-09-1810

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

Honorable Barbara A. Buchanan

Hearing:

March 18, 2015 - 3:30 p.m. PDST

ORIGINAL

VALIANT IDAHO, LLC,  
an Idaho limited liability company,

Third Party Plaintiff,

vs.

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

Third Party Defendants.

COMES NOW, Valiant Idaho, LLC ("Valiant"), by and through its attorneys of record, McConnell Wagner Sykes & Stacey PLLC, and files the following Memorandum in Reply to North Idaho Resorts, LLC ["NIR"] and VP, Incorporated's ["VP"] Memorandum in Opposition ["NIR/VP Opposition"] to Valiant Idaho, LLC's Motion For Summary Judgment ["SJ Motion"]. The terms as defined in the Memorandum in Support of [Valiant's SJ Motion] Against JV, L.L.C., [NIR and VP] are incorporated herein by this reference.

**L**  
**ARGUMENT**

**A. The Documents Attached To The Sykes Dec. Are Admissible.**

NIR and VP argue that the documents attached to the Sykes Dec. are not admissible because they are not certified as required by Rule 902 of the Idaho Rules of Evidence. NIR/VP's argument is without merit.

Rule 56(e) of the Idaho Rules of Civil Procedure provides:

Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. . . .

Rule 902(8) of the Idaho Rules of Evidence Civil Procedure provides that "[d]ocuments accompanied by a certificate of acknowledgement executed in the manner provided by law by a notary public or other officer authorized by law to take acknowledgements" are self-authenticating.

In this instance, each of the documents attached to the Sykes Dec. are sworn to be true and accurate copies by the affiant. Second, each of the documents attached to the Sykes Dec. are copies of documents that have been recorded in the real property records of Bonner County, Idaho, and are acknowledged—thus, self-authenticating. Only Exhibit 1 and Exhibit 14 are not acknowledged. Exhibit 1 is a legal description and Exhibit 14 is the Findings of Judge Griffin in the case styled *MUFG Union Bank N.A. v. Pend Oreille Bonner Development, LLC, et al.*, Bonner County Case No. CV-2011-0135, of which this Court can take judicial notice. This Court can also take judicial notice of the other recorded documents.

**B. NIR And VP's Concerns With The Legal Descriptions In The Mortgages Are Immaterial At This Stage Of The Litigation.**

NIR and VP allege that the legal descriptions attached to the Mortgages sought to be foreclosed by Valiant, *et al.*, 2007 RE Loans Mortgage, the Pensco Mortgage and the MFC8 Mortgage, do not match. NIR and VP present no evidence to this Court that the properties described are not the same properties. Nonetheless, whether there is any discrepancy in the legal descriptions between the Mortgages is immaterial at this stage in the litigation. Valiant seeks an order from the Court establishing priority of its Mortgages over any interests claimed by JV, L.L.C. ("JV"), NIR and VP in the subject properties. At this stage in the litigation, Valiant is not seeking a judgment of foreclosure or an order for a sheriff's sale. Valiant is only seeking to establish priority. The property described in the Mortgages is the property over which Valiant seeks priority over JV's, NIR's and VP's claimed interest in that property. Once priority has been established, Valiant will submit to the Court evidence establishing exactly which property is encumbered by the Mortgages such that an appropriate form of judgment can be entered allowing the property to be sold at a sheriff's sale

NIR and VP's complaint concerning the legal descriptions is not material at this point in the litigation.

C. **NIR And VP's Argument Concerning The 2006 RE Loans Note And Mortgage Is Immaterial.**

At Pages 4 and 5 of the NIR/VP Opposition, NIR and VP spend significant time discussing the 2006 RE Loans Note and Mortgage. The 2006 RE Loans Note and Mortgage are not at issue in this case. The only Mortgages Valiant seeks to foreclose are the 2007 RE Loans Mortgage, the Pensco Mortgage and the MF08 Mortgage. Any argument made by NIR and/or VP with regard to the 2006 RE Loans Note and Mortgage are immaterial. Reference to the 2006 RE Loans Note and Mortgage in Valiant's SJ Motion is simply for reference and the Court's benefit.

D. **The 2007 RE Loans Note And Mortgage Are Senior To Any Interest Claimed By NIR.**

At Pages 5 and 6 of the NIR/VP Opposition, NIR addresses Valiant's claimed priority of the 2007 RE Loans Mortgage over NIR's interest in the subject property. NIR admits that it subordinated any and all interest it had in the subject property to the 2007 RE Loans Mortgage. NIR's only argument is that the 2007 RE Loans Note was allegedly paid and bases its entire argument upon the memorandum in opposition to Valiant's SJ Motion filed by JV. NIR's argument suffers from the same defect as JV's argument; there is no evidence to establish or even raise a question of fact that the 2007 RE Loans Note was paid in full. To the contrary, all the evidence presented to the Court by way of the Affidavit of Charles W. Reeves establishes that POBD owes under the terms of the 2007 RE Loans Note. NIR presents no basis on which to deny Valiant's SJ Motion that the 2007 RE Loans Note and Mortgage are senior in all right, priority and interest to any interest claimed by NIR.

**E. NIR Is Barred From Re-Litigating Issues Already Decided In Union Bank.**

In response to Valiant's claim that any interest claimed by NIR in the subject properties is junior to the Pensco Mortgage and the MF08 Mortgage based upon the decisions made by Judge Griffin in *Union Bank*, NIR argues that collateral estoppel does not attach to Judge Griffin's decision because *Union Bank* is on appeal. NIR, however, provides the Court with no Idaho authority for the proposition that once a matter has gone to final judgment and is on appeal, the issues decided at the trial level are not entitled to preclusive effect. NIR provides the Court with no evidence that the issue raised in this case is even on appeal in *Union Bank*. In this instance, NIR litigated against Union Bank and it was determined that any amount owed NIR under the Memorandum of Real Property Purchase and Sale Agreement ("Memorandum of Sale") recorded June 19, 2006, as Instrument No. 706475, Records of Bonner County, Idaho [Sykes Dec., Ex. 10], was paid in full; thus, NIR had no interest in the Trestle Creek Property. The exact issue is raised in this case. NIR claims an interest in the property secured by the 2007 RE Loans Mortgage, the Pensco Mortgage and the MF08 Mortgage—all based upon the same Memorandum of Sale (i.e., vendor's lien) which was at issue in *Union Bank*. Judge Griffin has ruled that NIR's alleged vendor's lien has no force and effect and was paid in full. That same result should be reached in this case; the doctrine of collateral estoppel or *res judicata* should be utilized to preclude NIR from relitigating the issue. The appeal of *Union Bank* does not stay the underlying decision or its preclusive effect.

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F. **VP's Claimed Quitclaim Deeds, Prescriptive Easements And Equitable Servitudes Must Be Deemed Junior To Valiant's Interest In The Subject Properties.**

VP presents no evidence to the Court that it has any valid, recorded property interest in any of the real property subject to the 2007 RE Loans Mortgage, the Pensco Mortgage or the MF08 Mortgage. VP's only arguments are that it took some of the property (4 lots) by quitclaim deed, that it has "prescriptive easements," and that it is entitled to an equitable servitude. VP's arguments are without merit.

First, the fact that VP took some of the lots by quitclaim deed is immaterial. VP's claimed interest in the property was conveyed and recorded after the 2007 RE Loans Mortgage, the Pensco Mortgage and the MF08 Mortgage were recorded. JV's quitclaim deeds, as a matter of law, are junior to Valiant's Mortgages.

Second, VP must prove that it acquired a prescriptive easement. *Beckstead v. Price*, 146 Idaho 57, 62 (2008). VP offers no evidence that it acquired a prescriptive easement against the properties being foreclosed by Valiant or when the prescriptive easements were acquired. VP says it is entitled to a prescriptive easement but offers this Court no evidence that it acquired a prescriptive easement. There is no question of fact raised precluding Valiant's requested summary judgment.

Finally, VP provides no evidence to the Court that VP has acquired or is entitled to an equitable servitude in the properties which are subject to the foreclosure. VP has the burden of proving the right to an equitable servitude. *See West Wood Investments, Inc. v. Acord*, 141 Idaho 75, 82 (2005). VP does not provide the Court the alleged "Construction and Operating Agreement"

upon which VP claims an equitable servitude. VP does not provide the Court with any evidence whatsoever that it acquired an equitable servitude.

## II. CONCLUSION

Based upon the foregoing argument and legal authority, and whatever further evidence may be presented at the hearing of Valiant's SJ Motion, Valiant respectfully requests this Court to enter judgment that Valiant's 2007 RE Loans Mortgage, Pensco Mortgage and MF08 Mortgage are senior in right, title and interest with regard to the real property described in the Mortgages to any claim made by NIR and/or VP to the subject properties.

DATED this 10<sup>th</sup> day of March 2015

McCONNELL WAGNER SYKES & STACEY<sup>PLLC</sup>

BY:

  
L. R. Sykes

Attorneys For Valiant Idaho, LLC

**CERTIFICATE OF SERVICE**

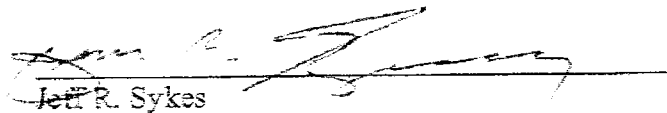
I **HEREBY CERTIFY** that on the 10<sup>th</sup> day of March 2015, a true and correct copy of the foregoing document was served by the method indicated below upon the following party(ies):

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

|   |  |
|---|--|
| Susan P. Weeks, Esq.<br>James, Vernon & Weeks, PA<br>1626 Lincoln Way<br>Coeur d'Alene, Idaho 83814<br>Telephone: 208.667.0683<br>Facsimile: 208.664.1684<br><i>Counsel For VP Incorporated/North Idaho Resorts</i> | <input checked="" type="checkbox"/> U.S. Mail<br><input type="checkbox"/> Hand Delivered<br><input checked="" type="checkbox"/> Facsimile<br><input type="checkbox"/> Overnight Mail<br><input type="checkbox"/> Electronic Mail<br><a href="mailto:sweeks@jvwlaw.net">sweeks@jvwlaw.net</a> |
|---|--|

With two copies via Federal Express to:

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

  
 Jeff R. Sykes

A handwritten signature, possibly 'J. Vernon', is written over a horizontal line. Above the signature, there are some faint, illegible markings and a stamp-like impression.

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

ORDER GRANTING DEFENDANTS  
 NORTH IDAHO RESORTS, LLC AND VP,  
 INCORPORATED'S MOTION FOR  
 ENLARGEMENT OF TIME TO FILE  
 ANSWERS AND RESPONSES TO  
 DISCOVERY REQUESTS PROPOUNDED  
 BY VALIANT IDAHO, LLC

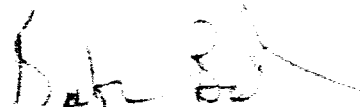
AND RELATED COUNTER, CROSS  
 AND THIRD PARTY ACTIONS  
 PREVIOUSLY FILED HEREIN

THIS MATTER having come before the Court upon the Defendants North Idaho  
 Resorts, LLC and VP, Incorporated's Motion for Enlargement of Time to Answer and Respond  
 to Interrogatories and Requests for Production of Documents Propounded by Valiant Idaho, LLC  
 Upon North Idaho Resorts, LLC and VP, Incorporated and good cause appearing therefor,

ORDER GRANTING DEFENDANTS NORTH IDAHO RESORTS, LLC AND VP,  
 INCORPORATED'S MOTION FOR ENLARGEMENT OF TIME TO FILE ANSWERS  
 AND RESPONSES TO DISCOVERY REQUESTS PROPOUNDED BY VALIANT  
 IDAHO, LLC: 1

IT IS HEREBY ORDERED that Defendants North Idaho Resorts, LLC and VP, Incorporated have seven (7) days, which to file their Answer and Responses to Interrogatories and Requests for Production of Documents Propounded by Valiant Idaho, LLC Upon North Idaho Resorts, LLC and VP, Incorporated in this action.

DATED this 12 day of March, 2015

  
\_\_\_\_\_  
Barbara A. Buchanan  
District Judge

ORDER GRANTING DEFENDANTS NORTH IDAHO RESORTS, LLC AND VP, INCORPORATED'S MOTION FOR ENLARGEMENT OF TIME TO FILE ANSWERS AND RESPONSES TO DISCOVERY REQUESTS PROPOUNDED BY VALIANT IDAHO, LLC: 2

**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 12 day of March, 2015:

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



ORDER GRANTING DEFENDANTS NORTH IDAHO RESORTS, LLC AND VP, INCORPORATED'S MOTION FOR ENLARGEMENT OF TIME TO FILE ANSWERS AND RESPONSES TO DISCOVERY REQUESTS PROPOUNDED BY VALLANT IDAHO, LLC: 3

STATE OF IDAHO  
County of Bonner  
FILED April 14 2015<sup>155</sup>  
APR 30 O'CLOCK P.M.  
CLERK DISTRICT COURT  
[Signature]  
Deputy

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

GENESIS GOLF BUILDERS, INC.,  
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-2009-0001810

MEMORANDUM DECISION & ORDER  
GRANTING VALIANT IDAHO, LLC'S  
MOTION FOR SUMMARY JUDGMENT  
AGAINST JV, LLC,  
NORTH IDAHO RESORTS, LLC,  
AND VP, INCORPORATED

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

THIS MATTER came before the Court on March 18, 2015, for a hearing on Valiant Idaho, LLC's Motion for Summary Judgment against JV, LLC, North Idaho Resorts, LLC, and VP, Incorporated, filed on January 20, 2015. Valiant Idaho, LLC (hereafter, "Valiant") is represented by Richard L. Stacey and Jeff R. Sykes, of McCONNELL WAGNER SYKES & STACEY, PLLC. JV, LLC (hereafter, "JV") is represented by Gary A. Finney, of FINNEY



FINNEY & FINNEY, P.A. North Idaho Resorts, LLC (hereafter, "NIR") and VP, Incorporated (hereafter, "VP") are represented by Susan P. Weeks, of JAMES, VERNON & WEEKS, P.A.

## I. INTRODUCTION

On August 19, 2014, Valiant filed a Counterclaim, Cross-Claim and Third Party Complaint for Judicial Foreclosure (hereafter, "Valiant Complaint"). Valiant seeks to foreclose mortgages granted to RE Loans, LLC (hereafter, "RE Loans"), Pensco Trust Co. (hereafter, "Pensco") and Mortgage Fund '08 LLC (hereafter, "MF08") by Pend Oreille Bonner Development, LLC (hereafter, "POBD"), which secure promissory notes made by POBD (collectively, "Mortgages"). The Mortgages were assigned to Valiant and are in default.

Valiant now moves for a summary judgment that its Mortgages against POBD's real property located in Bonner County, Idaho<sup>1</sup> are senior in right and priority to any interest claimed by JV, NIR, and VP (collectively, "Claimants") in the property. The property and all improvements thereon are referred to herein as the "Idaho Club Property."

Valiant also requests a summary judgment that its interest in a portion of the Idaho Club Property described in a Redemption Deed conveyed by the Bonner County Treasurer and Tax Collector, and recorded July 8, 2014, as Instrument No. 861460, and re-recorded August 22, 2014, as Instrument No. 863298, in the records of Bonner County, Idaho, is senior to any right, title, and interest of the Claimants in the property described in the Redemption Deed. *Declaration of Jeff R. Sykes in Support of Valiant Idaho, LLC's Motion for Summary Judgment Against JV, LLC, North Idaho Resorts, LLC, and VP, Incorporated* (filed January 20, 2015) (hereafter, "Sykes Dec."), at Ex. 2,

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<sup>1</sup> The property is particularly described in Exhibit 1 to the Declaration of Jeff R. Sykes in Support of Valiant Idaho, LLC's Motion for Summary Judgment Against JV, LLC, North Idaho Resorts, LLC, and VP, Incorporated, filed on January 20, 2015.

## II. STATEMENT OF UNDISPUTED FACTS

### Re: 2006 RE Loans Note and Mortgage

1. On May 31, 2006, Pend Oreille Bonner Development Holdings, Inc. (hereafter, "POBD Holdings") entered into a promissory Note Secured by Mortgage (hereafter, "2006 RE Loans Note"), which memorialized POBD Holding's promise to repay RE Loans all amounts loaned up to but not to exceed \$20,500,000.00. *Affidavit of Charles W. Reeves* (filed January 15, 2015) (hereafter, "*Reeves Aff.*"), at Ex. A.
2. On May 31, 2006, POBD Holdings granted to RE Loans a Mortgage, Assignment of Rents, Security Agreement, and Fixture Filing (hereafter, "2006 RE Loans Mortgage"), securing all amounts owed under the 2006 RE Loans Note. *Id.*, at Ex. A. The 2006 RE Loans Mortgage was recorded June 19, 2006 at 1:38 p.m., as Instrument Nos. 706471 and 706472, in the records of Bonner County, Idaho. *Id.*, at Ex. B.<sup>2</sup>

### Re: 2007 RE Loans Note and Mortgage

3. On March 6, 2007, POBD and RE Loans entered into a promissory Note Secured by Mortgage (hereafter, "2007 RE Loans Note"), which memorialized POBD's promise to repay RE Loans all amounts loaned up to but not to exceed \$21,200,000.00. *Reeves Aff.*, at Ex. C. Under the terms of the 2007 RE Loans Note, POBD borrowed \$21,200,000.00 from RE Loans. *Id.*, at ¶ 8.

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<sup>2</sup> There is information in the record that this Mortgage and Note have been released. Therefore, they will not be addressed in the discussion in this Decision.

4. On March 6, 2007, POBD granted to RE Loans a Mortgage, Assignment of Rents, Security Agreement, and Fixture Filing (hereafter, "2007 RE Loans Mortgage"), securing all amounts owed under the 2007 RE Loans Note. *Id.*, at Ex. D. The 2007 RE Loans Mortgage was recorded March 15, 2007 at 4:30 p.m. as Instrument No. 724829, and at 4:36 p.m. as Instrument No. 724834, in the records of Bonner County, Idaho. *Id.*
5. On November 23, 2009, POBD made its last payment in the amount of \$358,598.59 toward the amount owed to RE Loans under the 2007 RE Loans Note. *Id.*, at ¶8, Ex. E. Following the November 23, 2009 payment, the balance owed by POBD to RE Loans, and secured by the 2007 RE Loans Mortgage, was \$278,147.65, excluding accrued interest and costs of foreclosure. *Id.* POBD has not made any payments to RE Loans since November 23, 2009. *Id.*
6. On July 7, 2014, RE Loans assigned to Valiant the 2007 RE Loans Note and the 2007 RE Loans Mortgage. *Sykes Dec.*, at Ex. 3. The Assignment of Mortgage Note and Redemption Right was recorded on July 7, 2014, as Instrument No. 861388, in the records of Bonner County, Idaho. *Id.*
7. On November 19, 2014, Valiant filed with the Court a Stipulation to Entry of Judgment Against Pend Oreille Bonner Development, LLC, which memorialized that, as of November 1, 2014, the amount owed to Valiant under the 2007 RE Loans Note/Mortgage was \$749,225.00, with interest accruing at the rate of 17% per annum, or \$336.02 per diem until paid. *Stipulation to Entry of Judgment Against Pend Oreille Bonner Development, LLC* (filed November 19, 2014), at ¶ 1. On November 20, 2014, this Court entered its Order on Stipulation to Entry of

Judgment Against Pend Oreille Bonner Development, LLC (hereafter, "Stipulated Order").

Re: Pensco Note and Mortgage

8. On August 1, 2008, POBD and Pensco entered into a promissory Note Secured by Mortgage (hereafter, "Pensco Note"), under which POBD borrowed and promised to pay Pensco up to \$2,700,000.00. *Reeves Aff.*, at Ex. F. Pursuant to the terms of the Pensco Note, POBD borrowed from Pensco the sum of \$2,700,000.00. *Id.*, at ¶ 13.
9. On August 6, 2008, POBD provided to Pensco a Mortgage, Assignment of Rents, Security Agreement, and Fixture Filing (hereafter, "Pensco Mortgage") to secure all amounts owed to Pensco. *Id.*, at Ex. G. The Pensco Mortgage was recorded August 6, 2008 at 3:33 p.m., as Instrument No. 756394; at 3:35 p.m. as Instrument No. 756395; and at 3:36 p.m. as Instrument No. 756396, in the records of Bonner County, Idaho. *Id.*
10. On July 9, 2014, the Pensco Note and Pensco Mortgage were assigned to Valiant. *Sykes Dec.*, at Ex. 4. The Assignment of Mortgage, Note & Security Agreement was recorded on July 9, 2014, as Instrument No. 861559, in the records of Bonner County, Idaho. *Id.*
11. No payments were made on the Pensco Note. *Reeves Aff.*, at ¶ 16. The Pensco Note is in default and POBD owes Valiant \$2,700,000.00. *Stipulated Order.* at ¶ 2. With accrued interest, the total amount owed as of November 1, 2014 is \$7,560,489.00. *Id.* This amount continues to accrue interest at the rate of \$3,374.80 per diem until paid. *Id.*

Re: The MF08 Note and Mortgage

12. On August 1, 2008, POBD entered into an All-Inclusive Notice Secured by Mortgage with MF08 (hereafter, "MF08 Note"), under which POBD borrowed and promised to repay MF08 up to \$21,980,000.00. *Reeves Aff.*, at Ex. I. Pursuant to the terms of the MF08 Note, POBD borrowed from MF08 the sum of \$2,127,409.34. *Id.*, at ¶ 19.
13. On August 6, 2008, POBD granted to MF08 an All-Inclusive Mortgage, Assignment of Rents, Security Agreement, and Fixture Filing (hereafter, "MF08 Mortgage") to secure all amounts owed to MF08. *Reeves Aff.*, at Ex. J. The MF08 Mortgage was recorded August 6, 2008 at 3:37 p.m. and 3:39 p.m., as Instrument Nos. 756397, 756398 and 756399, in the records of Bonner County, Idaho. *Id.*
14. On July 16, 2014, the MF08 Note and MF08 Mortgage were assigned to Valiant. *Sykes Dec.* at Ex.5. The Assignment of Mortgage, Note & Security Agreement was recorded on July 16, 2014, as Instrument No. 861843, in the records of Bonner County, Idaho. *Id.*
15. No payments have been made on the MF08 Note since February 1, 2009. *Reeves Aff.*, at ¶ 21. The MF08 Note is in default and POBD owes Valiant \$2,127,409.34. *Stipulated Order*, ¶ 3. With accrued interest, the total amount owed as of November 1, 2014 is \$5,330,024.90. *Id.* This amount continues accrue interest at the rate of \$2,429.91 per diem until paid. *Id.*

Re: Valiant's 2014 Tax Redemption Deed

16. On July 7, 2014, Valiant paid Bonner County \$1,665,855.14 to redeem a portion of the Idaho Club Property from property taxes owed to Bonner County. *Sykes Dec.*, at Ex. 2.
17. On July 8, 2014, the Redemption Deed in favor of Valiant in the amount of \$1,665,055.14 was recorded as Instrument No. 861460, and re-recorded August 22, 2014 as Instrument No. 863298, in the records of Bonner County, Idaho. *Id.*

Re: Valiant's Complaint

18. On August 19, 2014, Valiant, as successor-in-interest and assignee of the Mortgages, in response to a foreclosure action filed by Genesis Golf Builders, Inc., filed the Valiant Complaint to foreclose the Mortgages against the Idaho Club Property.
19. In the Valiant Complaint, Valiant seeks to foreclose the Mortgages and for a judgment that its interest in the Idaho Club Property is superior and senior in right, title and interest to any interest claimed by the Claimants in the Idaho Club Property. Valiant also seeks to foreclose the Redemption Deed and for an adjudication that Valiant's interest in the real property described therein is superior and senior in right, title and interest to any claimed interest in the real property by the Claimants.

Re: JV's Claimed Interest

20. On October 24, 1995, JV recorded a Mortgage (hereafter, "JV Mortgage") against certain real property that is at issue in this case. The JV Mortgage was recorded

as Instrument No. 474746, in the records of Bonner County, Idaho. *Sykes Dec.*, at Ex. 6.

21. On June 19, 2006, JV recorded a Subordination Agreement, subordinating the JV Mortgage to the 2006 RE Loans Note and 2006 RE Loans Mortgage. *Id.*, at Ex. 7. The Subordination Agreement was recorded as Instrument No. 706474, and re-recorded as Instrument No. 706582, in the records of Bonner County, Idaho.
22. On March 15, 2007, JV recorded a Second Subordination Agreement as Instrument No. 724833, in the records of Bonner County, Idaho, subordinating the JV Mortgage to the 2007 RE Loans Note and 2007 RE Loans Mortgage. *Id.*, at Ex. 8. This Second Subordination Agreement stated that the 2006 RE Loans Mortgage and Note “are to be discharged and released ....” *Id.*
23. On August 6, 2008, JV recorded a third Subordination Agreement subordinating any interest of JV to the Pensco Note, Pensco Mortgage, MF08 Note and MF08 Mortgage. The Subordination Agreement was recorded as Instrument No. 756402, in the records of Bonner County, Idaho. *Id.*, at Ex. 9.
24. On September 15, 2014, JV filed its Special Appearance Contesting Jurisdiction; and JV L.L.C.’s Answer to Complaint; and JV L.L.C.’s Answer to Valiant Idaho, LLC’s Counterclaim, Cross-Claim and Third Party Complaint For Judicial Foreclosure; and JV L.L.C.’s Cross-Claim; and JV L.L.C.’s Third Party Complaint (hereafter, “*JV Counterclaim*”).
25. In its Counterclaim, JV alleges that:  
  
JV holds a Vendor’s purchase money Mortgage Instrument No. 474746 recorded October 24, 1995, which is the first duly

recorded purchase money mortgage on the real estate described in said Mortgage, less the platted Lots released by JV by partial satisfactions of mortgage. JV's Mortgage is the first priority Mortgage securing the Promissory Note in the amount set forth in paragraph 78 above. JV is entitled to a decree of foreclosure.

*JV Counterclaim*, at ¶ 98.

Re: NIR's Claimed Interest

26. On June 19, 2006, NIR recorded its Memorandum of Real Property Purchase and Sale Agreement as Instrument No. 706475, in the records of Bonner County, Idaho (hereafter, "Memorandum of Sale"). *Sykes Dec.*, at Ex. 10.
27. On March 14, 2007, NIR executed a Subordination Agreement, subordinating its interest in and to the subject property to the 2007 RE Loans Note and 2007 RE Loans Mortgage. NIR's Subordination Agreement was recorded as Instrument No. 724832, in the records of Bonner County, Idaho. *Id.*, at Ex. 11.
28. On March 15, 2007 and March 11, 2009, respectively, NIR recorded and re-recorded a "Partial Termination of Real Property Purchase and Sale Agreement and Partial Termination of Memorandum of Real Property Purchase and Sale Agreement," partially terminating the Memorandum of Sale, as amended. *Id.*, at Ex. 12 and Ex. 13. The Partial Termination was recorded as Instrument No. 724831, and re-recorded as Instrument No. 768269, in the records of Bonner County, Idaho.
29. On September 19, 2014, NIR filed its Answer to Valiant Idaho, LLC's Counterclaim, Cross-Claim and Third Party Complaint For Judicial Foreclosure (hereafter, "*NIR Answer*").



30. As to Valiant's request to foreclose the Mortgages and the Redemption Deed,

NIR answered as follows:

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

*NIR Answer*, at ¶¶ 72, 80, 84.

Re: VP's Claimed Interest

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

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

*Id.*, at § II.D., p. 3.

32. On May 20, 2014, POBD conveyed by Quitclaim Deeds recorded as Instrument Nos. 859562, 859563, 859564 and 859565, respectively, in the records of Bonner County, Idaho, the properties identified therein and which are subject to the Valiant Mortgages. *Id.*, at Ex 16, Ex. 17, Ex. 18 and Ex. 19.

33. On December 11, 2014, VP filed its Answer to Valiant Idaho, LLC's Counterclaim, Cross-Claim and Third Party Complaint For Judicial Foreclosure (hereafter, "*VP Answer*").

34. As to Valiant's request to foreclose the Mortgages and the Redemption Deed, VP denies that Valiant is entitled to judgment foreclosing and adjudicating its

mortgages to be superior to and prior in right, title and interest. *VP Answer*, at pp. 6-7.

### III. LEGAL STANDARD

In *Jones v. Healthsouth Treasure Valley Hospital*, 147 Idaho 109, 206 P.3d 473 (2009), the Idaho Supreme Court set forth the summary judgment standard as follows:

When reviewing an order for summary judgment, this Court applies the same standard of review as was used by the trial court in ruling on the motion for summary judgment. See *Cristo Viene Pentecostal Church v. Paz*, 144 Idaho 304, 307, 160 P.3d 743, 746 (2007). **Summary judgment is proper "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."** I.R.C.P. 56(c). "If there is no genuine issue of material fact, only a question of law remains, over which this Court exercises free review." *Cristo*, 144 Idaho at 307, 160 P.3d at 746 (quoting *Infanger v. City of Salmon*, 137 Idaho 45, 47, 44 P.3d 1100, 1102 (2002)).

"It is axiomatic that upon a motion for summary judgment the non-moving party may not rely upon its pleadings, but must come forward with evidence by way of affidavit or otherwise which contradicts the evidence submitted by the moving party, and which establishes the existence of a material issue of disputed fact." *Zehm v. Associated Logging Contractors, Inc.*, 116 Idaho 349, 350, 775 P.2d 1191, 1192 (1988). **This Court liberally construes all disputed facts in favor of the nonmoving party, and all reasonable inferences drawn from the record will be drawn in favor of the nonmoving party.** *Cristo*, 144 Idaho at 307, 160 P.3d at 746. If reasonable persons could reach differing conclusions or draw conflicting inferences from the evidence presented, then summary judgment is improper. *McPheters v. Maile*, 138 Idaho 391, 394, 64 P.3d 317, 320 (2003).

*Id.* at 112, 206 P.3d at 476. (Emphasis supplied).

### IV. DISCUSSION

#### A. Idaho is a Race-Notice State.

Idaho Code § 55-811 provides:

Every conveyance of real property acknowledged or proved, and certified, and recorded as prescribed by law, from the time it is filed with the recorder for

record, is constructive notice of the contents thereof to subsequent purchasers and mortgag(e)es.

Every conveyance of real property acknowledged or proved, and certified, and recorded as prescribed by law, and which is executed by one who thereafter acquires an interest in said real property by a conveyance which is constructive notice as aforesaid, is, from the time such latter conveyance is filed with the recorder for record, constructive notice of the contents thereof to subsequent purchasers and mortgagees.

Idaho Code § 55-812 provides:

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

*In re Young*, 156 B.R. 282 (Bkrtcy. D.Idaho 1993), provides:

Idaho has a "race-notice" recording requirement which provides:

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

Idaho Code § 55-812. Therefore, the first good faith purchaser to record evidence of title will prevail under this statute. The Idaho Supreme Court has held that "Idaho Code § 55-811 attaches constructive notice to '[e]very conveyance of real property acknowledged or proved, and certified, and recorded as prescribed by law....' The term 'conveyance' embraces every instrument in writing by which any estate or interest in real property is created, alienated, mortgaged, or encumbered, or by which title to any real property may be affected, except wills.' I.C. § 55-813" *Haugh v. Smelick*, 93.3 I.S.C.R. 108, 109, n. 4.

*Id.* at 285. (Emphasis supplied).

"Quite simply, in a dispute involving priority between two mortgages in a single transaction, where *both* parties are good faith encumbrancers of property for value, the first to record has priority against all other subsequent mortgages." *Insight LLC v. Gunter*, 154 Idaho 779, 787, 302 P.3d 1052, 1060 (2013) (citations omitted) (emphasis in original).

In the instant case, the 2007 RE Loans Mortgage was recorded on March 15, 2007, as Instrument Nos. 724829 and 724834. The Pensco Mortgage was recorded on August 6, 2008, as Instrument Nos. 756394, 756395 and 756396. The MF08 Mortgage was recorded on August 6, 2008, as Instrument Nos. 756397, 756398 and 756399. On July 8, 2014, Valiant's Redemption Deed from the Bonner County Tax Assessor was recorded as Instrument No. 861460, and re-recorded on August 22, 2014 as Instrument No. 863298, in the records of Bonner County, Idaho.

There has been insufficient evidence presented by JV, NIR, and VP to dispute that each of these transactions was entered into in good faith and for value. Thus, each of the foregoing Mortgages, if not satisfied or released, is entitled to a priority date based upon its record date and is senior to all other claims recorded later or subordinated. There has been insufficient evidence presented by JV, NIR, and VP that any of the foregoing Mortgages has been satisfied or released.

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

JV recorded the JV Mortgage against the Idaho Club Property on October 24, 1995, as Instrument No. 474746. However, on March 15, 2007 and August 6, 2008, JV executed and recorded second and third subordination agreements, which subordinated the JV Mortgage to the 2007 RE Loans Mortgage, Pensco Mortgage, and MF08 Mortgage.

Thus, it is undisputed that any rights retained by JV in the Idaho Club Property pursuant to the JV Mortgage are junior in right, title and interest to Valiant's interest in the Idaho Club Property.

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

On June 19, 2006, NIR recorded a Memorandum of Sale by and between NIR and POBD that may have established a right to a vendor's lien. However, on March 14, 2007, NIR executed and recorded a Subordination Agreement, which subordinated any interest NIR had in the Idaho Club Property to the 2007 RE Loans Mortgage. Thus, the Court finds that NIR's alleged lien is, as a matter of law, junior to the 2007 RE Loans Mortgage.<sup>3</sup>

Moreover, it appears that NIR, by way of the Partial Termination recorded on March 15, 2007, and re-recorded on March 11, 2009, terminated the Memorandum of Sale as to the property encumbered by the Pensco Mortgage and MFO8 Mortgage, and NIR's claimed interest is, therefore, junior to those Mortgages.

---

<sup>3</sup> The Court also notes that following a trial on the merits in the case of *Union Bank, N.A. v. Pend Oreille Bonner Development, LLC, et al.*, Bonner County Case No. CV 2011-0135, District Judge Michael Griffin ruled that NIR's alleged vendor's lien (the same one that may be at issue in this case) was paid in full and had no value, to-wit:

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

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

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

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

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

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

Following a review of the record, it appears that VP has no recorded interest in any of the Idaho Club Property prior to the 2007 RE Loans Mortgage, Pensco Mortgage, and/or the MF08 Mortgage. VP's only alleged interests were recorded on June 13, 2011 and May 20, 2014—several years after the 2007 RE Loans Mortgage, Pensco Mortgage and MF08 Mortgage—and are, thus, found to be junior to those Mortgages as a matter of law.

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

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

In *Hardy v. McGill*, 137 Idaho 280, 47 P.3d 1250 (2002), the Idaho Supreme Court stated:

Idaho law makes it clear that the redemption deed is not a tax deed given by the county upon a sale to a purchaser; it is a deed issued to a redemptioner in consideration of the payment of delinquent taxes. *Trusty v. Ray*, 73 Idaho 232, 236, 249 P.2d 814, 818 (1952). A redemption deed simply cancels and terminates all rights of the county in and to the land acquired by virtue of the treasurer's tax deed. *Id.*; see also I.C. §§ 63-1124, -1140.

The delinquent taxes paid by the Appellants became a part of the indebtedness protected by the Appellants' and Hardy's contract of sale. *Id.* (citing *Eaton v. McCarty*, 34 Idaho 747, 202 P. 603 (1921); *Gillette v. Oberholtzer*, 45 Idaho 571, 264 P. 229 (1928); *Union Cent. Life Ins. Co. v. Nielson*, 62 Idaho 483, 114 P.2d 252 (1941)).

*Id.* at 286, 47 P.3d at 1256. (Emphasis supplied).

Further, Idaho Code § 45-113 provides:

Every person, having an interest in property subject to a lien, has a right to redeem it from the lien, at any time after the claim is due, and before his right of redemption is foreclosed.

Idaho Code § 45-114 provides:

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

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

Idaho Code § 45-105 provides:

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

Based upon the foregoing statutory provisions, together with *Hardy*, the Court is persuaded by Valiant's argument that it, as the holder of a lien such as the 2007 RE Loans Mortgage against the Idaho Club Property, and as the payor of back taxes to redeem the property, is now entitled to enforce the indebtedness as part of its own contract and the amount paid is entitled to the priority of the existing mortgage.

Accordingly, this Court finds that Valiant is entitled to include the amount paid to Bonner County to redeem the property with the amount due under the 2007 RE Loans Note and that amount is entitled to the priority date of the 2007 RE Loans Mortgage (i.e., March 15, 2007). As such, the amount paid by Valiant shall be deemed senior to any interest of JV, NIR and VP.

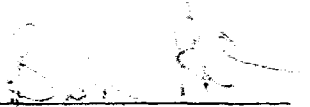
## V. CONCLUSION AND ORDER

NOW, THEREFORE, based upon the foregoing, IT IS HEREBY ORDERED THAT: Valiant's Motion for Summary Judgment against JV, NIR, and VP is GRANTED. Judgment shall be entered that:

1. Valiant's 2007 RE Loans Mortgage, Pensco Mortgage and MF08 Mortgage are senior in right, title and interest in the Idaho Club Property to any claim to the Idaho Club Property by JV, NIR and VP.
2. Valiant's interest in the portion of the Idaho Club Property described in the Redemption Deed is senior to any right, title, and interest of JV, NIR and VP in the property described in the Redemption Deed. Valiant is entitled to include the amount paid to Bonner County to redeem the property with the amount due under the 2007 RE Loans Note and that amount is entitled to the priority date of the 2007 RE Loans Mortgage (i.e., March 15, 2007).

IT IS SO ORDERED.

DATED this 15 day of April, 2015.



**Barbara Buchanan**  
District Judge



## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was mailed, postage prepaid, and delivered via facsimile transmission, this 15 day of April, 2015, to:

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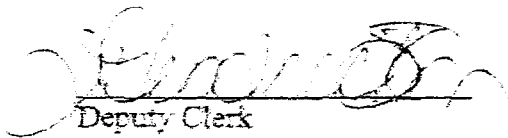
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APR 15 2015  
 10:00 AM  
 CLERK OF DISTRICT COURT  
 100 N. 1ST ST. SANDPOINT, IDAHO 83864  
 (208) 263-7712

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,

v.

PEND OREILLE BONNER DEVELOPMENT,  
 LLC, a Nevada limited liability  
 company; R.E. LOANS, LLC, a  
 California limited liability  
 company; DAN S. JACOBSON, an  
 individual, SAGE HOLDINGS LLC, an  
 Idaho limited liability company;  
 STEVEN G. LAZAR, an individual;  
 PENSICO TRUST CO. CUSTODIAN FBO  
 BARNEY NG; MORTGAGE FUND '08 LLC,  
 a Delaware limited liability  
 company; VP, INCORPORATED, an  
 Idaho corporation; JV L.L.C., an  
 Idaho limited liability company;  
 WELLS FARGO FOOTHILL, LLC, a  
 Delaware limited liability  
 company; INTERSTATE CONCRETE AND

) Case No. CV-2009-1810  
 )  
 ) JV L.L.C.'S MOTION TO  
 ) ALTER, AMEND AND TO  
 ) RECONSIDER THE COURT'S  
 ) MEMORANDUM DECISION AND  
 ) ORDER FILED 4/14/2015 AND  
 ) REQUEST FOR ORAL ARGUMENT  
 ) TIME/DATE FOR A HEARING;  
 ) NOT YET TO BE SET

JV L.L.C.'S MOTION TO ALTER, AMEND AND TO RECONSIDER THE COURT'S MEMORANDUM  
 DECISION AND ORDER FILED 4/14/2015 AND REQUEST FOR ORAL ARGUMENT TIME/DATE  
 FOR A HEARING; NOT YET TO BE SET - 1

ASPHALT COMPANY, an Idaho corporation; T-O ENGINEERS, INC., fka Toothman-Orton Engineering Company, an Idaho corporation; PUCCI CONSTRUCTION INC., an Idaho corporation; ACI NORTHWEST, INC., an Idaho corporation; LUMBERMENS, INC., dba ProBuild, a Washington corporation; ROBERT PLASTER dba Cedar Etc; NORTH IDAHO RESORTS, LLC, an Idaho limited liability company; R.C. WORST & COMPANY, INC., an Idaho corporation; DOES 1 through X,

Defendants.

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

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

Plaintiff,

v.

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

Defendants.

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

VALIANT IDAHO, LLC, an Idaho limited liability company,

Third Party

Plaintiff, )

v. )

FEND ORIELLE BONNER DEVELOPMENT )  
HOLIDINGS, INC., a Nevada )  
corporation; BAR K, INC., a )  
California corporation; )  
TIMBERLINE INVESTMENTS LLC, an )  
Idaho limited liability company; )  
AMY KORENGUT, a married woman; )  
ELT REAL ESTATE, LLC, an Idaho )  
limited liability company; )  
INDEPENDENT MORTGAGE LTD. CO., an )  
Idaho limited liability company; )  
PANHANDLE MANAGEMENT )  
INCORPORATED, an Idaho )  
corporation; FREDERICK J. GRANT, )  
an individual; CRISTINE GRANT, an )  
individual; RUSS CAPITAL GROUP, )  
LLC, an Arizona limited liability )  
company; MOUNTAIN WEST BANK, a )  
division of GLACIER BANK, a )  
Montana corporation; FIRST )  
AMERICAN TITLE COMPANY, a )  
California corporation; NETTA )  
SOURCE LLC, a Missouri limited )  
liability company; 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. )

---

JV L.L.C., an Idaho limited )  
liability company, )

Defendant and Cross- )  
Claimant against all of the )  
Defendants and Third )  
Party Plaintiff, )

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

COMES NOW JV, L.L.C., by and through its attorney, GARY A. FINNEY, and submits to the Court and moves the Court to Amend, Alter and Reconsider its Memorandum Decision and Order Granting Valiant Idaho, LLC's Motion for Summary Judgment Against, JV, LLC, North Idaho Resorts, LLC and VP Incorporated. These Motions by JV, L.L.C. (hereafter, "JV") only involve the Memorandum Decision and Order as against JV.

These Motions are made and based upon I.C.R.P. 52(b) to amend the findings, and I.C.R.P. 11(a)(2)(B) to reconsider.

The Court's Memorandum Decision is interlocutory. It is not a final judgment and does not adjudicate all claims for release. As an interlocutory order, the Court may alter, amend, and set it aside until final judgment.

On Summary Judgment motions (partial) the facts are to be liberally constituted in favor of the party opposing the motion. Summary Judgment is only possible when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. The motion should be denied if conflicting inferences can be drawn and reasonable people might reach different conclusions. (Doe v. Durtschi 110 Idaho 466 (1986) citing IRCP 56(c)).

Interlocutory motions for reconsideration may be made at any time before entry of final judgment, but not later than 14 days after entry of final judgment (IRCP 11(a)(2)B). Neild v. Pocatello Health Services Inc 156 Idaho 802, 332 P. 3d 714(214). Neild is not new law as it cites Supreme Court cases from 1955 and 1990. The legal standard is clear, upon motion to reconsider, the Court is to consider any new or additional evidence that bears on the correctness of the Court's decision, may involve new or additional facts, and a more comprehensive presentation of both law and fact. All doubts must be resolved

against the party moving for a summary judgment, and the Court cannot weigh the evidence to determine issues.

The first initial objection by JV is to the Court's footnote 1. Page 2, which states, "The property is particularly described in Exhibit 1 to the Declaration of Jeff R. Sykes in Support of Valiant Idaho, LLC's Motion for Summary Judgment Against JV, LLC. North Idaho Resorts, LLC, and VP, Incorporated, filed on January 20, 2015."

Both JV and North Idaho Resorts, LLC (hereafter, "NIR")/VP, Incorporated (hereafter, "VP") objected to Attorney Sykes being the only "witness" on his client's claim to the legal description of the "real property located in Bonner County". Syke's Declaration (affidavit) Exhibit is his claimed fact of the legal description Valiant Idaho, LLC (hereafter, "Valiant") is foreclosing upon. First, Valiant's own Counsel, Attorney Sykes, cannot be a fact witness at all. Secondly, I.R.C.P. 9(j) requires in an action for recovery of real property it must be described in the Complaint which such certainty as to enable an officer, upon exception, to identify it. In Valiant's pleading, which was in this case, in which Valiant was not a party, Valiant sought to foreclose on,

1. Loan P0094, 2006 Mortgage to R.E. Loans, LLC (hereafter, "RE Loans"),



2. Loan P0099, 2007 Mortgage to RE Loans,
3. Loan P0106, 2008 Mortgage to Pensco Trust Co. Custodian Fbo Barney Ng (hereafter, "Pensco Trust"), and
4. Loan P0107, 2008 Mortgage to Mortgage Fund '08 LLC (hereafter, "Mortgage Fund '08").

None of the legal descriptions in those four mortgages "match" the summary judgment motion, Sykes declaration, Appendix 1. Further, JV's foreclosure is on real estate from a 1995 sale and vendor's mortgage back to JV. The legal description is not as claimed by Sykes. On Summary Judgment the Court cannot weigh the evidence or make the finding as to the legal description of the real estate. That is a true material issue of fact and the District Judge was in error in her footnote 1, page 2, Memorandum Decision.

For exact comparison of legal descriptions set forth in Attorney Sykes "Exhibit A" to his Declaration against the mortgage(s) legal descriptions, the Court is requested to please read:

a. JV's Vendor's Purchase Money Mortgage, recorded October 25, 1995, Instrument No. 474745 (Syke's Declaration Exhibit 6). This is a true legal description of all of the land, lying south of Highway 200 ("Moose Mountain") approximately 650+ acres.

b. RE Loans (No P0094) Mortgage from POBD, its initial Mortgage recorded, June 19, 2006, Instrument No. 706471/706472 (Reeve's Affidavit, Exhibit B).

The legal description of RE's 2006 Mortgage is divided into four sections, being:

Section A - Hidden Lakes Golf Course, Lodge, Parking, Maintenance. This is all north of Highway 200.

Section B - Highland Areas Platted Lots. This is all north of Highway 200 and west of Lower Pack River Road.

Section C - Moose Mountain Large Acreage for Development south of Highway 200. This is the property sold by JV in 1995, retaining a purchase money mortgage.

Section D - Idaho Resort area on the waters of Lake Pend Oreille at Trestle Creek. This land is miles away from the Hidden Lakes/Idaho Club properties A, B & C above.

The legal/descriptions of RE's 2007 (Loan # P0099) Mortgage recorded March 15, 2007 as Instrument No. 724829/724834 from POBD, is Reeve's Affidavit, Exhibit D. The legal description in it, for Parcel C, Moose Mountain, is similar; however Section C has an Exception all of the Plats described as:

Replat of Golden Tees Estates and Golden Tee Estates  
1<sup>st</sup> Addition,  
Golden Tee Estates - 2<sup>nd</sup> Addition,  
Golden Tee Estates - 3<sup>rd</sup> Addition,  
Golden Tee Estates - 4<sup>th</sup> Addition,  
Golden Tees Estates - 5<sup>th</sup> Addition

Golden Tees Estates - 6<sup>th</sup>

And

Excepting a Parcel 2: which describes numerous  
additional Platted Lots.

From the indentation of the typing it is unclear whether Parcel 2 is included or excluded from the Mortgage. See Reeve's Affidavit, Exhibit D, the attached Exhibit "A" legal description, on the last page of Section C, at the bottom of the page it begins with Section D: Parcel 1.

The 2008 all-inclusive Mortgages (Loan P0106) from POBD to Pensco recorded August 6, 2008 (756394, 756395, 756396) which is Reeve's Affidavit, Exhibit G, the legal descriptions being pages number 1 through 30.

The 2008 (Loan No 0107) all-inclusive Mortgage from POBD to Mortgage Fund '08, which is recorded August 6, 2008 (756397, 756398, 756399), which is Reeve's Affidavit, Exhibit J, the legal descriptions being page 1 through 30.

The conclusion as to legal descriptions is that none of them match as to legal descriptions in Syke's Declaration. JV submits its 1995 Mortgage description is the correct legal description, from VP to JV, and subsequently, assumed by POBD.

The legal description, Exhibit 1 to the Declaration of Attorney Sykes is inadmissible hearsay from Valiant's own Attorney, and it should not be accepted as the fact - in the

face of all of the actual recorded Mortgages using different legal descriptions!

The Court seems to have "weighed" facts that were not within Valiant's Motion.

First, the Court used and cited as uncontested facts, many of the matters set forth in a Stipulation to Entry of Judgment, Against Pend Oreille Bonner Development LLC, which "memorialized" certain facts and conclusions in the Court's "Stipulated Order". This "Stipulated Order" did not involve JV, LLC and it is not a grounds to decide any facts or conclusions against JV.

The Court appeared to "weigh" the evidence.

The Memorandum Decision does not specify what "evidence" was presented by JV (NIR, and VP) to dispute that each transaction was entered into in good faith and for value (Memorandum, page 13, first beginning paragraph). Further the Court stated, "There has been insufficient evidence presented by JV, NIR and VP that any of the foregoing Mortgages has been satisfied or released."

The foregoing Court's conclusions are in error. The Court has failed to consider any of JV's submissions in its Memorandum in Opposition, as verified by James Berry for JV, dated February 2, 2015, which are itemized as follows:

1. Set forth in III, page 7, first paragraph, "There is no debt to RE Loans, at all. District Judge Griffin, in CV-2011-135, found that "POBD did pay the debt it assumed to RE". The indebtedness of POBD to RE Loans was actually litigated in Bonner County, CV-2011-135. The Court's Memorandum Decision totally ignores and fails to even discuss that issue.

2. Set forth on page 9, at V. "RE Loans is owed NOTHING by POBD." The 2006 loan from RE was released, paid, and discharged by RE Loan's Satisfaction of Mortgage recorded June 8, 2007, Instruments No. 730445 (JV's Exhibit "A").

3. RE Loans original loan of \$3,000,000.00 loan # V0104 (sic), from VP was first paid off at the June 19, 2006 closing, and proof is JV's Exhibit "D" the Seller's Closing Statement, see Loan Payoff - Bar - K Inc. \$3,064-776.21).

4. RE Loans acknowledged payment by Satisfaction of Mortgage recorded June 8, 2007, Instrument No. 730445 (JV's Exhibit "A").

5. All 2007 Loans/Mortgages were paid off by a new loan of August 1, 2008 (JV's Memorandum, starting at page 5). The only document to Valiant is an Assignment of Mortgage Note and Redemption Right (Pl's Exhibit 3) which states it is for the assignment of a 2007 note and mortgage. Clearly, nothing was owed. JV's Exhibit "H" is the 2008 loan closing "Borrower's

Settlement Statement" and JV's Exhibit "G" is "Borrower's Final Settlement Statement". Both state:

Pay-off First Note - Loan No. P0099 & Bar K \$6,172,325.18

Pay-off Second Note - Loan No. 0106 - Mortgage Fund 08 & Bar K \$2,700,000.00

The Court's Memorandum Decision never states or refers to any "Loan Number" of RE, Mortgage Fund '08, or Pensco, yet every Mortgage clearly has the loan number on the face of the recorded Mortgage. It is clear that loan P0099 and Loan No. 0106 were paid-off.

6. On the Mortgage Fund '08, 2008 Mortgage no loan funds were ever disbursed. The final closing statement, second line, "Retained Loan Funds, Mortgage Fund '08 & Bar K Inc. . . is \$12, 257,174.82"

Mr. Charles Reeves was clear in his deposition in saying that Mortgage Fund '08 (RE) failed to fund the loan, no loan funds were ever disbursed. The Court seemingly read Charles Reeves Affidavit, but did not read, consider or reference Mr. Reeve's sworn Deposition (JV's Exhibit E), that POBD didn't make any payments on the 2008 Loans because "they didn't fund our first month's draws". "From our perspective they "failed to Fund (see JV's Memorandum, page 17)."

### Valiant's Redemption

Finally, how did Valiant obtain an interest in the real estate in order to redeem?

1. Since RE was paid-off. The Assignment from RE did not give any interest to Valiant. The question is/was . . . Is Valiant a "party in interest"? (as required by Idaho Code §63-1007(1)). The Court's Memorandum Decision, pages 15 - 16, covers this issue, but the Court never cited to the only statute on the issue, i.e. Idaho Code §63-1007(i).

Additionally, Valiant held no recorded interest; nor did it give any authority or reference to it's "interest" for the redemption.

All of the Bonner County Tax Collection public records were furnished to the Court as JV's Exhibit J. The only submission was by Mr. Kramer refers to our group as intending to redeem. The Wire Operations Advice of Credit (JV's Exhibit K) wired \$1,655,855.14 referencing only "Pend Oreil and LE (? What/who is "LE") Bonner Dev LLC".

The Memorandum Decision cites statutes which are non-existent i.e. Idaho Code§ 63-1124-1140!

In summary, it is unclear, as to how Valiant became "record owner . . . or party in interest at the time and date of its

wire funds. Certainly, no document of its "interest" was ever given to the Bonner County Tax Collector.

#### Summary

All of the Memorandum Decision comes from supposed undisputed facts from Valiant's Memorandum. The Memorandum Decision discuss none of JV's Memorandum or Exhibits. The Court's only reference to JV is:

a. JV presented insufficient evidence - page 13, paragraph 2  
The standards for summary judgment in favor of Valiant, were not met.

#### Motion to Strike

JV moves the court to strike from its Memorandum Decision and to alter, amend, and reconsider it to strike out and eliminate findings and conclusions that were not within the scope of Valliant's Motion for Summary Judgment as follows:

Re: Stipulation to Entry of Judgment Against POBD (filed November 19, 2014) and "Stipulated Order"

The Memorandum Decision references the Stipulation to Entry of Judgment, which is between Valiant and Pend Oreille Bonner Development (POBD) in paragraph 7 of its Memorandum Decision and references the "Stipulated Oder" thereon in paragraph 7, at ¶ 1. Further, paragraph 11 at ¶ 2 and in paragraph 15 ¶ 3, refers to the "Stipulated Order." JV was never a party to either Stipulation to Entry of Judgment nor to the "Stipulated Order."



Further, Valiant's actual Motion for Summary Judgment (January 16, 2015) and its Memorandum in Support (January 16, 2015) do not reference the Stipulation for Entry of Judgment nor the "Stipulated Order". Additionally at oral argument Valiant's counsel did not refer to those documents as any of Valiant's grounds on facts in support of its Motion for Summary Judgment.

The only issue of Valiant's Motion for Summary Judgment, taken from the Motion itself is:

" . . . for a judgment that the mortgages assigned to Valiant by R.E. Loans, LLC, Pensco Trust Co. and Mortgage Fund 03 are senior and superior to all interest claimed JV LLC . . . ."

At oral argument, Valiant's counsel phased the only issue to be the priority of the relative mortgages.

Wherefore, everything should be stricken from the Court's Memorandum Decision that concerns the aforesaid Stipulation and the "Stipulated Order".

Issue as to "Finality" of Judgment

First, the Memorandum Decision on page 17, paragraph V. Conclusion and Order includes the words that "Judgment shall be entered that:" (see paragraph 1 & 2)

Is this Conclusion and Order a final judgment from which an appeal may be taken by JV? It is submitted that the Court's

Memorandum, Order and Conclusion should be amended to be a only partial summary judgment on the issues of priority of real estate interests, and that it be stated to be an Interlocutory partial summary judgment on priority of recorded interests to the real estate, and that all other issues are unresolved, and the words "Judgment shall be entered that:" be stricken. If not, is this V. Conclusions and Order, with words "Judgment shall be entered that:" appealable, or not?

Hearing

JV requests a hearing to present oral argument. The Court is requested not to set this motion for Court hearing until requested to do so by JV. JV needs additional time to depose Sandpoint Title records for 2004, 2006, and 2007 closings with RE as lender; depose First American records for 2008 loan closing, for lender Mortgage Fund '08/Pensco; and to depose Cheryl Piehl as Bonner County Tax Collector. Further JV desires to depose Charles Reeves, in Bonner County, his place of residence.

DATED this 28<sup>th</sup> day of April, 2015.

  
GARY A. FINNEY

Attorney for JV L.L.C.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was delivered via facsimile, this 28 day of April, 2015, and was addressed as follows:

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By: 

JV L.L.C.'S MOTION TO ALTER, AMEND AND TO RECONSIDER THE COURT'S MEMORANDUM DECISION AND ORDER FILED 4/14/2015 AND REQUEST FOR ORAL ARGUMENT TIME/DATE FOR A HEARING: NOT YET TO BE SET - 17

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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

MOTION FOR RECONSIDERATION AND CLARIFICATION

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

North Idaho Resorts, LLC (NIR) and VP, Inc. (VP) by and through their counsel of record, Susan P. Weeks of the firm James, Vernon & Weeks, P.A., hereby moves the Court pursuant to Rule 11 (a)(2) I.R.C.P, for reconsideration of the Court's Memorandum Decision and Order in the above matter. NIR and VP also seek a clarification of the decision. Pursuant to

Rule 7(b)(3)(c), L.R.C.P., NIR and VP shall file a brief in support of this motion within 14 days.

Oral argument is requested.

DATED this 28<sup>th</sup> day of April, 2015.

JAMES, VERNON & WEEKS, P.A.

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 28 day of April, 2015:

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Facsimile: 208-253-8211

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Christina Clause

015 71 11 50 7 04  
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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 MOTION FOR  
ENLARGEMENT OF TIME TO FILE  
MEMORANDUM IN SUPPORT OF  
MOTION FOR RECONSIDERATION AND  
CLARIFICATION

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

COME NOW Defendants, North Idaho Resorts, LLC and VP, Incorporated, by and through their attorney of record, Susan P. Weeks of the law firm James, Vernon & Weeks, P.A., and pursuant to I.R.C.P. 6(b), hereby moves this Court for a fourteen (14) day enlargement of time, through and including May 26, 2015 in which to file Defendants North Idaho Resorts, LLC and VP Incorporated's Memorandum in Support of Motion for Reconsideration and

DEFENDANTS NORTH IDAHO RESORTS, LLC AND VP INCORPORATED'S  
MOTION FOR ENLARGEMENT OF TIME TO FILE MEMORANDUM IN SUPP~~2598~~  
MOTION FOR RECONSIDERATION AND CLARIFICATION: 1

**Clarification.**

The basis for the motion is counsel requires more time to research and prepare a memorandum in support of the motion. Defendant, Valiant Idaho, LLC will not be prejudiced because the motion is scheduled for hearing on July 8, 2015, and Defendant, Valiant Idaho, LLC will have full opportunity to respond.

DATED this 11<sup>th</sup> day of May, 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 11<sup>th</sup> day of May, 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 | Richard Stacey                        |
| <input type="checkbox"/>            | Hand Delivered             | McConnell Wagner Sykes & Stacey, PLLC |
| <input type="checkbox"/>            | Overnight Mail             | 755 West Front St., Ste. 200          |
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Christine Clouse

2015 JUN 20 07 10 16  
CLERK OF DISTRICT COURT  
BOISE, IDAHO

Richard L. Stacey, ISB #6800  
Jeff R. Sykes, ISB #5058  
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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

VALIANT IDAHO, LLC'S  
MOTION FOR  
ENTRY OF FINAL JUDGMENT

Honorable Barbara A. Buchanan

Hearing:  
June 17, 2015 - 3:30 p.m. PDST

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

ORIGINAL



VALIANT IDAHO, LLC,  
an Idaho limited liability company,

Third Party Plaintiff,

vs.

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

COMES NOW, Valiant Idaho, LLC ("Valiant"), by and through its attorneys of record, McConnell Wagner Sykes & Stacey PLLC, and, pursuant to Rule 54 of the Idaho Rules of Civil Procedure, moves this Court for entry of a final judgment establishing the real property encumbered by the 2007 RE Loans Mortgage, the Pensco Mortgage and the MF08 Mortgage; decreeing that the encumbered property be foreclosed and sold; establishing the amount owed and secured by the 2007 RE Loans Mortgage, the Pensco Mortgage and the MF08 Mortgage; and, the amount Valiant is entitled to credit bid at the sheriff's sale.

This motion is made and based upon the records and files herein, and the (1) Memorandum in Support of Motion For Entry of Final Judgment; (2) Declaration of Jeff R. Sykes in Support of Motion For Entry of Final Judgment; and (3) Declaration of C. Dean Shafer in Support of Motion For Entry of Final Judgment filed concurrently herewith; and any further evidence that may be presented at the hearing of this motion.

DATED this 19<sup>th</sup> day of May 2015.

McCONNELL WAGNER SYKES & STACEY PLLC

BY:

  
Jeff R. Sykes  
Attorneys For Valiant Idaho, LLC

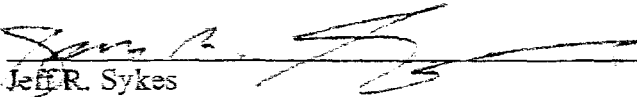
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 19<sup>th</sup> day of May 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.<br/>Elsaesser Jarzabek Anderson Elliott &amp;<br/>MacDonald, Chtd<br/>320 East Neider Avenue, Suite 102<br/>Coeur d' Alene, Idaho 83815<br/>Telephone: 208.667.2900<br/>Facsimile: 208.667.2150<br/><i>Counsel For Jacobson, Lazar and Sage Holdings</i></p> | <p><input checked="" type="checkbox"/> U.S. Mail<br/><input type="checkbox"/> Hand Delivered<br/><input type="checkbox"/> Facsimile<br/><input type="checkbox"/> Overnight Mail<br/><input type="checkbox"/> Electronic Mail<br/><br/><a href="mailto:brucea@ejame.com">brucea@ejame.com</a></p>                   |
| <p>Brent C. Featherston, Esq.<br/>Featherston Law Firm, Chtd<br/>113 South Second Avenue<br/>Sandpoint, Idaho 83864<br/>Telephone: 208.263.6866<br/>Facsimile: 208.263.0400<br/><i>Counsel For Pensco/Mortgage Fund</i></p>   | <p><input checked="" type="checkbox"/> U.S. Mail<br/><input type="checkbox"/> Hand Delivered<br/><input type="checkbox"/> Facsimile<br/><input type="checkbox"/> Overnight Mail<br/><input type="checkbox"/> Electronic Mail<br/><br/><a href="mailto:bcr@featherstonlaw.com">bcr@featherstonlaw.com</a></p>       |
| <p>Gary A. Finney, Esq.<br/>Finney Finney &amp; Finney, P.A.<br/>120 East Lake Street, Suite 317<br/>Sandpoint, Idaho 83864<br/>Telephone: 208.263.7712<br/>Facsimile: 208.263.8211<br/><i>Counsel For J.V., LLC</i></p>  | <p><input type="checkbox"/> U.S. Mail<br/><input type="checkbox"/> Hand Delivered<br/><input type="checkbox"/> Facsimile<br/><input checked="" type="checkbox"/> Overnight Mail<br/><input type="checkbox"/> Electronic Mail<br/><br/><a href="mailto:gary.finney@finneylaw.net">gary.finney@finneylaw.net</a></p> |
| <p>D. Toby McLaughlin, Esq.<br/>Berg &amp; McLaughlin<br/>414 Church Street, Suite 203<br/>Sandpoint, Idaho 83864<br/>Telephone: 208.263.4743<br/>Facsimile: 208.263.7557<br/><i>Counsel For Idaho Club HOA/Panhandle Mfrgmt</i></p>  | <p><input checked="" type="checkbox"/> U.S. Mail<br/><input type="checkbox"/> Hand Delivered<br/><input type="checkbox"/> Facsimile<br/><input type="checkbox"/> Overnight Mail<br/><input type="checkbox"/> Electronic Mail<br/><br/><a href="mailto:toby@sandpointlaw.com">toby@sandpointlaw.com</a></p>         |
| <p>Susan P. Weeks, Esq.<br/>James, Vernon &amp; Weeks, PA<br/>1626 Lincoln Way<br/>Coeur d'Alene, Idaho 83814<br/>Telephone: 208.667.0683<br/>Facsimile: 208.664.1684<br/><i>Counsel For VP Incorporated/ North Idaho Resorts</i></p>   | <p><input type="checkbox"/> U.S. Mail<br/><input type="checkbox"/> Hand Delivered<br/><input type="checkbox"/> Facsimile<br/><input checked="" type="checkbox"/> Overnight Mail<br/><input type="checkbox"/> Electronic Mail<br/><br/><a href="mailto:sweeks@jvwlaw.net">sweeks@jvwlaw.net</a></p>                 |

With two copies via Federal Express to:

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

  
Jeff R. Sykes

2015 APR 20 09 10 13

Richard L. Stacey, ISB #6800  
Jeff R. Sykes, ISB #5058  
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[stacey@mwsslawyers.com](mailto:stacey@mwsslawyers.com)  
[sykes@mwsslawyers.com](mailto:sykes@mwsslawyers.com)

\_\_\_\_\_  
*[Signature]*

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

MEMORANDUM IN SUPPORT OF  
VALIANT IDAHO, LLC'S  
MOTION FOR  
ENTRY OF FINAL JUDGMENT

Honorable Barbara A. Buchanan

Hearing:

June 17, 2015 – 3:30 p.m. PDST

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

ORIGINAL

VALIANT IDAHO, LLC,  
an Idaho limited liability company,

Third Party Plaintiff,

vs.

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

Third Party Defendants.

**COMES NOW**, Valiant Idaho, LLC (“Valiant”), by and through its attorneys of record, McConnell Wagner Sykes & Stacey PLLC, and files with this Court its Memorandum in Support of Motion For Entry of Final Judgment.

**I.**  
**INTRODUCTION**

By way of the Memorandum Decision & Order Granting Valiant Idaho, LLC’s Motion For Summary Judgment Against JV, LLC [“JV”], North Idaho Resorts, LLC [“NIR”], and VP, Incorporated [“VP”] entered April 14, 2015 (“04.14.15 Order”), this Court has determined the validity, enforceability and priority of Valiant’s mortgages (*i.e.*, the 2007 R. E. Loans Mortgage, the Pensco Mortgage and the MF08 Mortgage [collectively, “Mortgages”]) against the real property described in those Mortgages against JV, NIR and VP.

This Court further ruled that Valiant’s interest in a portion of the Idaho Club Property described in a Redemption Deed (“Redemption Deed”) conveyed by the Bonner County Treasurer and Tax Collector and recorded July 8, 2014, as Instrument No. 861460, and re-recorded August 22, 2014, as Instrument No. 863298, Records of Bonner County, Idaho, is senior to any right, title and interest of JV, NIR and/or VP in the property described in the Redemption Deed, and the amount paid for the redemption is to be added to the debt owed under the 2007 RE Loans Note and Mortgage.

Pursuant to either stipulation or default, each of the other parties who have may have claimed some interest in the real property encumbered by the Mortgages and Redemption Deed have been determined to be junior to the interests of Valiant in the real property. Each of the parties whose alleged interest in the real property was adjudicated through stipulation or default is attached as

Exhibit B to the Declaration of Jeff R. Sykes in Support of Valiant Idaho, LLC's Motion For Entry of Final Judgment ("Sykes Dec.") filed concurrently.

Pursuant to the Order on Stipulation to Entry of Judgment Against Pend Oreille Bonner Development, LLC entered November 20, 2014 ("11.20.14 Order"), this Court has determined the amount owed Valiant under the 2007 RE Loans Note, the Pensco Note and MF08 Note, and the amounts secured by the respective Mortgages.

Valiant now respectfully requests this Court to determine the real property encumbered by the Mortgages and Redemption Deed and the amounts owed, and enter a final judgment allowing foreclosure and sale of the encumbered property.<sup>1</sup>

## II. ARGUMENT

### A. This Court Has Determined The Validity, Priority And Enforceability Of Valiant's Mortgages And Redemption Deed Against All Interested Parties.

The 04.14.15 Order states:

1. Valiant's 2007 RE Loans Mortgage, Pensco Mortgage and MF08 Mortgage are senior in right, title and interest in the Idaho Club Property to any claim to the Idaho Club Property by JV, NIR and VP.
2. Valiant's interest in the portion of the Idaho Club Property described in the Redemption Deed is senior to any right, title, and interest of JV, NIR and VP in the property described in the Redemption Deed. Valiant is entitled to include the amount paid to Bonner County to redeem the property with the amount due under the 2007 RE Loans Note and that amount is entitled to the priority date of the 2007 RE Loans Mortgage (*i.e.*, March 15, 2007).

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<sup>1</sup> A proposed final judgment will be lodged with the Court in advance of the hearing.



Order, p. 17.

As is set forth in the Sykes Dec., a Litigation Guarantee was purchased by Valiant as part of its foreclosure action related to the Mortgages against the real property at issue. The legal description in the Litigation Guarantee is attached as Exhibit A to the Sykes Dec. and as Exhibit 5 to the Declaration of C. Dean Shafer in Support of Valiant Idaho, LLC's Motion For Entry of Final Judgment ("Shafer Dec."). As is set forth in the Shafer Dec., the legal description attached as Exhibit 5 identifies each parcel of property encumbered by the Mortgages and Redemption Deed. The description divides the property into 23 separate parcels. Each of the 23 parcels is subdivided into multiple parcels identified by block and lot in the appropriate subdivision and/or described by metes and bounds. The described property should be deemed the real property encumbered by the Mortgages and ordered to be foreclosed and sold.

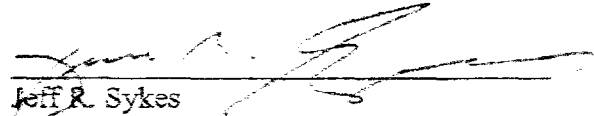
### III. CONCLUSION

Based upon the Court's prior rulings, the 11.20.14 Order, the 04.14.15 Order, the Sykes Dec. and the Shafer Dec., a final judgment should be entered adjudicating and finding (1) that Valiant's Mortgages and Redemption Deed are senior in right, title and interest to all parties to the litigation; (2) the real property encumbered by the Mortgages and the Redemption Deed is that property identified in the legal description set forth in Exhibit 5 to the Shafer Dec.; (3) the real property encumbered by the Mortgages be foreclosed and sold in accordance with Idaho law; and (4) the amounts owed Valiant under the notes secured by the Mortgages are the amounts Valiant is entitled to credit bid at the sheriff's sale.

DATED this 19<sup>th</sup> day of May 2015

McCONNELL WAGNER SYKES & STACEY<sup>PLLC</sup>

BY:

  
Jeff R. Sykes

Attorneys For Valiant Idaho, LLC

CERTIFICATE OF SERVICE

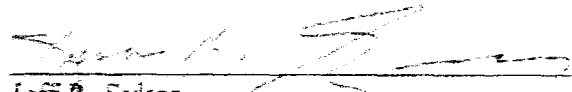
I HEREBY CERTIFY that on the 19<sup>th</sup> day of May 2015, a true and correct copy of the foregoing document was served by the method indicated below upon the following party(ies):

|   |   |
|---|---|
| Bruce A. Anderson, Esq.<br>Elsaesser Jarzabek Anderson Elliott &<br>MacDonald, Chtd<br>320 East Neider Avenue, Suite 102<br>Coeur d' Alene, Idaho 83815<br>Telephone: 208.667.2900<br>Facsimile: 208.667.2150<br><i>Counsel For Jacobson, Lazar and Sage Holdings</i> | <input checked="" type="checkbox"/> U.S. Mail<br><input type="checkbox"/> Hand Delivered<br><input type="checkbox"/> Facsimile<br><input type="checkbox"/> Overnight Mail<br><input type="checkbox"/> Electronic Mail<br><br><u>brucea@eiame.com</u>          |
| Brent C. Featherston, Esq.<br>Featherston Law Firm, Chtd<br>113 South Second Avenue<br>Sandpoint, Idaho 83864<br>Telephone: 208.263.6866<br>Facsimile: 208.263.0400<br><i>Counsel For Pensco/Mortgage Fund</i>  | <input checked="" type="checkbox"/> U.S. Mail<br><input type="checkbox"/> Hand Delivered<br><input type="checkbox"/> Facsimile<br><input type="checkbox"/> Overnight Mail<br><input type="checkbox"/> Electronic Mail<br><br><u>bcf@featherstonlaw.com</u>    |
| Gary A. Finney, Esq.<br>Finney Finney & Finney, P.A.<br>120 East Lake Street, Suite 317<br>Sandpoint, Idaho 83864<br>Telephone: 208.263.7712<br>Facsimile: 208.263.8211<br><i>Counsel For J.V., LLC</i>   | <input type="checkbox"/> U.S. Mail<br><input type="checkbox"/> Hand Delivered<br><input type="checkbox"/> Facsimile<br><input checked="" type="checkbox"/> Overnight Mail<br><input type="checkbox"/> Electronic Mail<br><br><u>gary.finney@finneylaw.net</u> |

|   |   |
|---|---|
| D. Toby McLaughlin, Esq.<br>Berg & McLaughlin<br>414 Church Street, Suite 203<br>Sandpoint, Idaho 83864<br>Telephone: 208.263.4748<br>Facsimile: 208.263.7557<br><i>Counsel For Idaho Club HOA/Panhandle Mngmnt</i> | <input checked="" type="checkbox"/> U.S. Mail<br><input type="checkbox"/> Hand Delivered<br><input type="checkbox"/> Facsimile<br><input type="checkbox"/> Overnight Mail<br><input type="checkbox"/> Electronic Mail<br><br><a href="mailto:toby@sandpointlaw.com">toby@sandpointlaw.com</a> |
| Susan P. Weeks, Esq.<br>James, Vernon & Weeks, PA<br>1626 Lincoln Way<br>Coeur d'Alene, Idaho 83814<br>Telephone: 208.667.0683<br>Facsimile: 208.664.1684<br><i>Counsel For VP Incorporated/North Idaho Resorts</i> | <input type="checkbox"/> U.S. Mail<br><input type="checkbox"/> Hand Delivered<br><input type="checkbox"/> Facsimile<br><input checked="" type="checkbox"/> Overnight Mail<br><input type="checkbox"/> Electronic Mail<br><br><a href="mailto:sweeks@jvwlaw.net">sweeks@jvwlaw.net</a>         |

With two copies via Federal Express to

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Judge of the First Judicial District  
Bonner County Courthouse  
215 South First Avenue  
Sandpoint, Idaho 83864


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Jeff R. Sykes