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### Valiant Idaho, LLC v. North Idaho Resorts, LLC Clerk's Record v. 28 Dckt. 44583

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Vol. **28** of **85**  
IN THE

**SUPREME COURT  
OF THE  
STATE OF IDAHO**

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

**Valiant Idaho, LLC**  
*Cross-Claimant/Respondent*

vs.

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

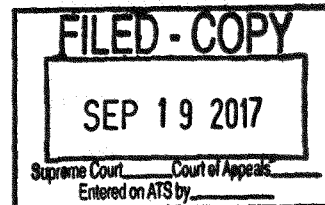
**CLERK'S RECORD ON APPEAL**

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

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**44583**

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**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 TO ALTER, AMEND  
AND/OR RECONSIDER  
THE ORDER OF SALE OF  
REAL PROPERTY**

Honorable Barbara A. Buchanan

**Hearing:**

September 2, 2015 – 11:00 a.m. PDST

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

COMES NOW, Valiant Idaho, LLC (“Valiant”), by and through its attorneys of record, McConnell Wagner Sykes & Stacey PLLC, and submits this Memorandum in Support of Valiant Idaho, LLC’s Motion to Alter, Amend and/or Reconsider the Order of Sale of Real Property.

## I. INTRODUCTION

On August 5, 2015, this Court set the order of sale for the 186 parcels subject to foreclosure. The Court determined that, based on equitable considerations, the four (4) parcels received by VP, Incorporated (“VP”) by way of Quitclaim Deeds recorded on May 20, 2014 (“VP Lots”) should be sold last. The VP Lots were identified as Parcels 1 through 4 on Exhibit 1 to the Declaration of C. Dean Shafer in Support of Valiant Idaho, LLC’s Motion For An Order of Sale of Real Property filed July 21, 2015 (“Shafer Sale Dec.”). Parcel 1 is the lot on which a sewer lagoon lot exists and will be referred to as the “Lagoon Lot.” Parcels 2 through 4 are the lots on which the sanitary water facilities and infrastructure are located and will be referred to collectively as the “Water Facilities Lots”. This Court further ordered that the Lagoon Lot be sold individually while the Water Facilities Lots are to be sold together as one parcel. Valiant does not object to the Water Facilities Lots being sold as one parcel and/or being sold last.

Since the August 5, 2015 hearing, Valiant has learned that only the mortgage granted by Pend Oreille Bonner Development, LLC (“POBD”) to R.E. Loans, LLC (“RE Loans”) on April 14, 2007 (“RE Loans Mortgage”) encumbers all 186 parcels. The mortgages granted by POBD to Pensco Trust Co. (“Pensco”) and Mortgage Fund ’08, LLC (“MF08”) (respectively, “Pensco Mortgage” and “MF08 Mortgage”) do not encumber all 186 parcels. Instead, the Pensco Mortgage and the MF08 Mortgage, together, only encumber 155 of these parcels. As such, there are 31 parcels that are only encumbered by the RE Loans Mortgage.

Valiant respectfully requests that this Court alter, amend and/or reconsider the order of sale set on August 5, 2015. This new information affects the order of sale approved by the Court and the equity of selling the Lagoon Lot as the last lot. In light of the information Valiant has learned since August 5, 2015, Valiant requests<sup>1</sup> that it be allowed to sell the 31 parcels that are only subject to the RE Loans Mortgage, including the Lagoon Lot, before the parcels subject only to the Pensco and/or MF08 Mortgages are sold. This will maximize the properties that are potentially available to secure the debts of all creditors and guarantee that VP is not unjustly enriched to the detriment of Valiant.

## II. FACTUAL BACKGROUND

On March 6, 2007, POBD and RE Loans entered into a promissory Note Secured by Mortgage ("RE Loans Note"). Memorandum Decision and Order Granting Valiant Idaho, LLC's Motion For Summary Judgment Against IV, LLC, North Idaho Resorts, LLC, and VP, Incorporated entered April 14, 2015 ("SJ Order"), p 3., ¶ 3. On March 6, 2007, POBD granted RE Loans a Mortgage, Assignment of Rents, Security Agreement, and Fixture Filing (*i.e.*, RE Loans Mortgage) securing amounts loaned under the RE Loans Note. *Id.*, p. 4, ¶ 4. The RE Loans Mortgage is secured by the real property legally described on Exhibit 5 to the Declaration of C. Dean Shafer in Support of [Valiant's] Motion For Entry of Final Judgment filed May 19, 2015 ("Shafer Judgment Dec.").

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<sup>1</sup> The specific order of sale for which Valiant seeks approval is set forth on Exhibit 1 to Valiant's Motion to Alter, Amend and/or Reconsider the Order of Sale of Real Property filed concurrently.

In August of 2008, POBD entered into a promissory note with Pensco (“Pensco Note”) which was secured by a Mortgage, Assignment of Rents, Security Agreement, and Fixture Filing (*i.e.*, Pensco Mortgage). SJ Order, p. 5, ¶¶ 8, 9. In August of 2008, POBD also entered into a promissory note with MF08 (“MF08 Note”) which was secured by a Mortgage, Assignment of Rents, Security Agreement, and Fixture Filing (*i.e.*, MF08 Mortgage). *Id.*, p. 6, ¶¶ 12, 13. The Pensco Note and Pensco Mortgage were recorded prior to the MF08 Note and MF08 Mortgage. *Id.*, p. 5, ¶ 9; p. 6, ¶ 13. There are 31 lots/parcels that are only encumbered by the RE Loans Mortgage.

By Quitclaim Deeds recorded on May 20, 2014, POBD conveyed to VP the Water Facilities Lots and the Lagoon Lot, which are subject to the pending foreclosure sale. *Id.*, p. 10, ¶ 32. The Lagoon Lot is one of the lots that is only encumbered by the RE Loans Mortgage. Declaration of C. Dean Shafer in Support of [Valiant’s] Motion to Alter, Amend and/or Reconsider Order of Sale of Real Property (“Shafer Alter/Reconsider Dec.”), ¶¶ 9.c., 10.

### III. PROCEDURAL HISTORY

After prevailing *via* summary judgment motions, on July 22, 2015 Valiant moved this Court for an order which would determine the order in which the 186 parcels subject to foreclosure would be sold. A hearing on Valiant’s motion was scheduled for August 5, 2015 to address the proposed order. On August 4, 2015 – the day before the hearing – VP filed its Objection to Motion For an Order of Sale of Real Property (“VP’s Objection”). Counsel for Valiant was not served with VP’s Objection until August 6, 2015 – the day after the hearing. In short, VP’s Objection was that the VP Lots should be sold last. VP argued that it would be inequitable for the VP Lots to be sold first as requested by Valiant. While VP did not identify any legal basis for its request,

VP asserted that it would be inequitable to sell the VP Lots first because Valiant's debts may be paid in full if the other 182 lots that are subject to the Valiant Mortgages are sold first. The Court agreed with VP and ordered that the VP Lots be sold last. The Court was not aware that the Lagoon Lot is one of several lots that are only encumbered by the RE Loans Mortgage.

At the time of the August 5, 2015 hearing, the Court and the parties understood that all 186 parcels to be foreclosed upon were subject to the RE Loans Mortgage, the Pensco Mortgage and the MF08 Mortgage. Following the August 5, 2015 hearing and in light of VP's request for marshaling, Valiant requested that C. Dean Shafer again examine the relevant mortgages and conveyances to confirm which lots are covered by the RE Loans Mortgage, the Pensco Mortgage and/or the MF08 Mortgage. Shafer Alter/Reconsider Dec., ¶ 8. Mr. Shafer confirmed that all 186 lots to be foreclosed are covered by the RE Loans Mortgage. *Id.*, ¶ 9.a. However, Mr. Shafer also determined that 31 parcels, including the Lagoon Lot, are *not* encumbered by the Pensco Mortgage or the MF08 Mortgage. *Id.*, ¶¶ 9.b.-9.c. The 31 parcels not encumbered by the Pensco Mortgage or the MF08 Mortgage are: Parcels 1 (*i.e.*, the Lagoon Lot), 14-16, 59, 62, 67, 82-85, 91, 101-107, 109, 112, 122, 132, 133, 141-143, 164, and 168-170. *Id.*

In light of this information, Valiant is filing concurrently with the present Motion to Alter, Amend and/or Reconsider Order of Sale of Real Property ("Motion to Alter/Reconsider") its Motion to Amend Decree of Foreclosure ("Motion to Amend Decree") which seeks to amend the August 5, 2015 Decree of Foreclosure so that it correctly identifies which lots are encumbered by the various mortgages. The Motion to Alter/Reconsider similarly requests that the Court alter, amend and/or reconsider its August 5, 2015 ruling regarding the order in which parcels would be sold in light of the fact that the RE Loans Mortgage covers all 186 parcels while the

Pensco Mortgage and MF08 Mortgage are only recorded against 155 parcels. Specifically, Valiant requests that the Order of Sale be amended to allow the parcels that are solely encumbered by the RE Loans Mortgage be sold first. See Motion to Alter/Reconsider, Exhibit A.

#### IV. STANDARD OF REVIEW

Idaho Rule of Civil Procedure 60(b) provides, in part, that:

On motion and upon such terms as are just, the court may relieve a party ... from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); ... (5) ... it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment.

A final judgment should be amended if the District Court determines, in its discretion and upon reasoned analysis, that the judgment was erroneous. See *Farner v. Idaho Falls Sch. Dist. No. 91*, 135 Idaho 337, 341, 17 P.3d 281, 285 (2000). “Excusable neglect is conduct that might be expected of a reasonably prudent person under the same circumstances.” *Nickels v. Durban*, 118 Idaho 198, 200-201, 795 P.2d 903, 905-906 (Ct. App. 1990). An order may be altered, amended and/or reconsidered on the basis of mistake were the order was based on a court’s misunderstanding of the factual situation that existed at the time of the order. *Allen v. Clinchfield R. Co.*, 325 F.Supp. 1305, 1307 (E.D. Tenn. 1971) (reversing grant of motion to dismiss based on “the reason of a mistake in the Court’s understanding factual situations then extant.”).

Idaho Rule of Civil Procedure 11(a)(2)(B) permits a party to file “[a] motion for reconsideration of any order of the trial court made after entry of final judgment ... within fourteen (14) days from the entry of such order.” “The purpose of a motion for reconsideration is

to reexamine the correctness of an order[.]” *Int’l Real Estate Solutions, Inc. v. Arave*, 157 Idaho 816, 819, 340 P.3d 465, 468 (2014). The Idaho Supreme “Court has explained that “[a] motion for reconsideration is a motion which allows the court – when new law is applied to previously presented facts, when new facts are applied to previously presented law, or any combination thereof – to reconsider the correctness of an interlocutory order.” *Id.* (quoting *Johnson v. N. Idaho Coll.*, 153 Idaho 58, 62, 278 P.3d 928, 932 (2012)) (alteration in original).

While motions for reconsideration are not required to be supported by new law and new evidence, where the moving party contends new facts support reconsideration, “[t]he burden is on the moving party to bring the trial court’s attention to the new facts.[.]” *Venable v. Internet Auto Rent & Sales, Inc.*, 156 Idaho 574, 584, 329 P.3d 356, 366 (2014) (quoting *Coeur d’Alene Mining Co. v. First Nat. Bank of N. Idaho*, 118 Idaho 812, 823, 800 P.2d 1026, 1037 (1990)). A trial court is not required to search the record for new information which would change facts established by the Court. *Venable*, 156 Idaho at 584, 329 P.3d at 366.

## V. ARGUMENT

### A. New Evidence Presented To The Court Regarding The Property Encumbered By The Mortgages To Be Foreclosed And Inequitable Conduct By VP Demonstrates The Need To Alter, Amend And/Or Reconsider The Order Of Sale So That An Equitable Result Is Achieved.

Valiant holds three separate mortgages which have been adjudicated to have first, second and third priority positions. The first priority mortgage, the RE Loans Mortgage, secures a judgment of \$2,504,461.46 plus accruing post-judgment interest. Judgment filed August 2015 (“Judgment”), ¶ 2. The second priority mortgage—the Pensco Mortgage—secures a judgment of

\$8,458,185.80 plus accruing post-judgment interest. *Id.*, ¶ 3. The third priority mortgage—the MF08 Mortgage—secures a judgment of \$5,976,381.06. *Id.*, ¶ 4. In all likelihood, the 186 lots foreclosed upon will not satisfy the collective judgments of \$16,939,028.32. Declaration of Charles W. Reeves in Support of [Valiant's] [Motion to Alter/Reconsider] the Order of Sale of Real Property (“Reeves Alter/Reconsider Dec.”), ¶ 5. Despite this reality, the Court has recognized, and Valiant agrees, that the foreclosure sale should be conducted in the manner most likely to repay the debts owed to all secured creditors. Valiant respectfully submits that an amended order of sale is the most equitable order of sale in that it maximizes the possibility that junior creditors will receive some payment. Valiant’s proposed order of sale would require that the parcels encumbered by just the RE Loans Mortgage be sold first. If the sale of just these parcels satisfies the debt owed under the RE Loans Note, the remaining property, which is encumbered by liens of junior creditors, would still be available to help satisfy POBD’s debts to said junior creditors.

On the other hand, the Court’s current order of sale elevates VP’s priority in the Lagoon Lot over multiple junior creditors who have priority over VP’s interest, *i.e.*, Valiant *via* Pensco, Valiant *via* MF08<sup>2</sup>. As this Court is aware, Valiant was assigned the interests of RE Loans, Pensco and MF08. Each of these entities are owed a different debt by POBD and each of these debts are secured by a different priority date. As such, these debts must be treated as if they are debts to three different secured creditors. Elevating VP’s interest at the expense of all other junior creditors

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2 JV, L.L.C., North Idaho Resorts, LLC, Dan S. Jacobson, Sage Holdings, LLC, Steven G. Lazar, R.C. Worst & Company, Inc., Pend Oreille Bonner Development Holdings, Inc., HLT Real Estate, LLC, Mountain West Bank, and Charles W. Reeves and Ann B. Reeves. See Declaration of Jeff R. Sykes in Support of Valiant Idaho, LLC’s Motion For Entry of Final Judgment filed May 20, 2015 (“Sykes Dec.”).



is inequitable to all interested parties other than VP. Moreover, requiring the Lagoon Lot to be sold last effectively subordinates Valiant's interest *via* RE Loans in that Lot and creates questions as to how Valiant may credit bid amounts secured by the RE Loans Mortgage against this Lot.

A further inequity of allowing the Lagoon Lot to be sold last is the fact that VP did not pay for this Lot or the other VP Lots which it now seeks to protect. Reeves Alter/Reconsider Dec., ¶ 4.g. Under the order of sale as currently adopted, if all of the VP Lots are sold last, it is possible that VP will receive those four parcels for free, despite the fact that other creditors whose interest is superior to VP actually gave money for their interest. Although Valiant does not believe there is sufficient value in the Idaho Club property to satisfy its \$16,939,028.32 Judgment, the 185 parcels that are to be sold prior to the Lagoon Lot may well satisfy the \$2,504,461.46 secured by the RE Loans Mortgage. As the Lagoon Lot is solely secured by the RE Loans Mortgage, VP would receive a windfall while at the same time reducing the number of lots available to satisfy debts owed to the other junior creditors. The Court clearly did not intend to create such an inequitable result.

The need to alter, amend and/or reconsider the order of sale is further supported by the fact that VP comes to this Court with unclean hands. "The clean hands doctrine 'stands for the proposition that 'a litigant may be denied relief by a court of equity on the ground that his conduct has been inequitable, unfair and dishonest, or fraudulent and deceitful as to the controversy in issue.'" *Ada Co. Hwy. Dist. v. Total Success Investments, LLC*, 145 Idaho 360, 370, 179 P.3d 323, 333 (*quoting Gilbert v. Nampa Sch. Dist. No. 131*, 104 Idaho 137, 145, 657 P.2d 1, 9 (1983) (*citing 27 Am.Jur.2d Equity* § 136 (1996))).

In objecting to the order of sale originally proposed by Valiant, Mr. Villelli testified that, pursuant to a purchase and sale agreement between Pend Oreille Bonner Investments, LLC (“POBD Investments”) and North Idaho Resorts, LLC (“NIR”), VP had “relieved the buyer [POBD Investments] and any party who purchased a lot in the Project from the Buyer to pay any hook-up fee to VP, Inc.” Declaration of Richard Villelli in Opposition to Valiant Idaho LLC’s Motion For Order of Sale filed August 4, 2015 (“Villelli Dec.”), ¶ 10; *see also id.* at Ex. A, Bates No. NIR000155. Despite agreeing to provide water and sewer service without hook-up fees, VP then demanded that property owners pay a \$35,000.00 hook-up fee resulting in litigation. Reeves Alter/Reconsider Dec., ¶¶ 4.e, 4.f, Exhibits A/B. If VP is allowed to remain in a position to demand exorbitant hook-up fees, the value of the lots within the Idaho Club will likely be significantly reduced and will impair development and use of such lots. *Id.*, ¶ 6. Moreover, such conduct is inequitable, unfair, dishonest, fraudulent and deceitful. As such, VP has unclean hands and should not be allowed to obtain through equitable principles property for which it has paid nothing. *Id.*, ¶ 4.g.

The order of sale adopted by the Court on August 5, 2015 may have been equitable at that time given the evidence that had been provided to the Court. Now that the Court has been appraised of additional relevant evidence, the inequity of the order of sale is apparent.

**B. Well-Established Equitable Principles Of Marshaling Support Alternation, Amendment And/Or Reconsideration Of The Order Of Sale.**

As noted previously, while VP did not specifically state that it was requesting a marshaling of assets or provide the Court with legal authority in support of marshaling, VP’s Objection was in effect a request that the Court exercise its equitable powers and marshal the encumbered property. The Court correctly attempted to marshal the encumbered property, but was

forced to engage in this endeavor without all relevant information because VP's Objection was filed the day before the hearing and not served on Valiant's counsel until after the hearing. Valiant requests that, in light of the new information provided to the Court and the legal authorities cited below, the Court alter, amend or reconsider the order of sale so that an equitable result can be obtained.

As early as 1897, the Idaho Supreme Court recognized that "[t]he doctrine of marshaling of securities is well established, and fully recognized." *Wooddy v. Jameson*, 5 Idaho 566, 50 P. 1008, 1009 (1897). Because one creditor's act of foreclosure can deprive another creditor of its security, the equitable doctrine of marshaling:

. . . restricts the discretion of a mortgagee in determining the order of foreclosure on multiple parcels of real estate covered by the same mortgage. Its premise is that, while a mortgagee may ultimately resort to all of its security, the mortgagee should do so in an order that will preserve, to the extent possible, the interests of other parties junior to the mortgage.

*Restatement (Third) of Property (Mortgages)* ("Restatement") § 8.6 cmt. a (1997); *see also* 2 Baxter Dunaway, Law Distressed Real Estate § 26:26 (2015) ("The senior lender has a duty to conduct the foreclosure sale in a manner that will most benefit the parties that are being foreclosed. This includes the duty to marshal and to sell in parcels or *en mass*."). *Restatement* sets forth the general rule of marshaling as follows:

. . . when foreclosing a mortgage covering more than one parcel of real estate, upon the motion or application of the holder of a subordinate interest protected by this section, the mortgagee must proceed against the parcels in the following order:

- (1) parcels on which no subordinate interests exist are foreclosed upon before parcels on which subordinate interests exist; and

(2) as among parcels on which subordinate interests exist, those with subordinate interests created more recently are foreclosed upon before those with subordinate interests created at a more remote time.

*Restatement* § 8.6; see also 53 Am.Jur.2d Marshaling Assets § 7. The first step in the marshaling order set out by the *Restatement* is commonly referred to as the “two fund rule” and “may be stated in simplified form as follows: where a mortgagee has two parcels securing its debt, and one of those parcels is also encumbered with a subordinate interest, the mortgagee should foreclose first on the parcel on which no subordinate interest exists.” *Restatement* § 8.6 cmt. b. The second step of marshaling is known as the “inverse order of alienation” rule. *Id.* at § 8.6 cmt. c.

Notably, the doctrine of marshaling is *not* to be applied where: (1) doing so would provide no benefit to a holder of a subordinate interest; (2) the holder of a subordinate interest “has relinquished that protection by a term of the mortgage or other conveyance granted to that person, by a term of the mortgage being foreclosed, or by other agreement;” or (3) if the marshaling “would materially prejudice the foreclosing mortgagee.” *Restatement* § 8.6(b); see also *American Nat’l Ins. Co. v. Vine-Wood Realty Co.*, 414 Pa. 263, 270, 199 A.2d 449, 454 (1964); *Indiana Lawrence Bank v. PSB Credit Services, Inc.*, 706 N.E.2d 570, 573 (Ind.App. 1999). Put differently,

*... marshaling does not apply where prejudice results to the senior creditor. Boone v. Clark*, 129 Ill. 466, 481, 21 N.E. 50 (1889) (noting that marshaling would not apply where delay results to prior creditor or where marshaling prevents him from realizing his whole debt, or where marshaling impairs his security). The party seeking marshaling must demonstrate that he is entitled to the equity sought, and that the rights of his co-creditor will be neither endangered nor injuriously affected. 53 Am.Jur.2d Marshaling Assets, § 41 at 33-4. Further, *marshaling is applicable only where it can be equitably fashioned as to all the parties. In Re Leonardo*, 11 B.R. 453, 455 (W.D.N.Y.1981).

*In re Rich Supply House, Inc.*, 43 B.R. 68, 70 (N.D. Ill. 1984) (emphasis added). “Injury to persons other than the senior lienholder is generally relevant only where the third person has a right or equity superior or equal to that of the person requesting the marshaling order.” *In re West Coast Optical Instruments, Inc.*, 177 B.R. 720, 722 (M.D. Flor. 1992); *see also* 53 Am.Jur.2d Marshaling Assets §§ 16, 23 (2015). Finally, the doctrine of marshaling does not “alter existing priorities among mortgages, or between mortgages and other interests in the real estate. *Restatement* § 8.6 cmt. a.

Valiant respectfully submits that marshaling supports altering and/or amending the order of sale to that proposed by the Motion to Alter/Reconsider. Additionally, granting VP’s request for marshaling was inappropriate because (a) Valiant, not VP, has standing to request marshaling; (b) any right VP may have had to request marshaling was waived under the terms of the RE Loans Mortgage; (c) VP’s interest in the Lagoon Lot was obtained after an interest created by the Pensco Note/Mortgage and the MF08 Note/Mortgage and, therefore, VP cannot demand marshaling that would harm Valiant’s interests under these Notes and Mortgages; and (d) VP failed to plead marshaling as an affirmative defense. Finally, even if VP had the ability to request marshaling, VP failed to carry its burden of establishing that the marshaling it proposed does not harm the senior creditor and is equitable to all junior creditors and third parties.

1. **Marshaling Supports Entry of the Order Proposed by the Motion to Alter/Reconsider.**

The foreclosure sale will result in 186 lots being sold; 155 of these lots are subject to a combination of the RE Loans Note/Mortgage, the Pensco Note/Mortgage and/or the MF08 Note/Mortgage. The remaining 31, including the Lagoon Lot, are only encumbered by the

RE Loans Mortgage. Equity dictates that Valiant be allowed to credit bid the amounts secured by the RE Loans Mortgage toward the purchase of properties solely secured by said Mortgage. This best protects the interests of all creditors (*i.e.*, Valiant *via* RE Loans, Valiant *via* Pensco, Valiant *via* MF08, JV, L.L.C. ["JV"], NIR, *etc.*).

The doctrine of inverse alienation is well-established in the United States and has been adopted by almost<sup>3</sup> every state. *Sav. Bank v. Creswell*, 100 U.S. 630, 636-38, 25 L. Ed. 713 (1879); *see also* 131 A.L.R. 4 (originally published in 1941) (compiling cases); *First State Bank of Oregon v. Meadow Lake Stables, Inc.*, 55 Or. App. 917, 920, 640 P.2d 662, 664 (1982) (continuing to apply the doctrine of inverse alienation). The doctrine of inverse alienation "provides a guideline for determining the order of foreclosure when more than one parcel is encumbered with a subordinate interest." *Restatement* § 8.6(a) cmt. c. The doctrine and the overwhelming weight of authority provide that:

... where land subject to a paramount encumbrance is subsequently sold or encumbered in parts or parcels at different times, no intention being disclosed that the purchaser or the encumbrancer of the part should pay the whole or his proportion of the paramount encumbrance, the parcel retained by the lienee should be first subjected to the discharge or payment of the paramount encumbrance, and the parcel alienated or encumbered should be reached only in the event the parcel retained by the lienee is not sufficient to pay that encumbrance in full, and then only to the extent of the deficiency; and that if all of the land subject to the prior paramount encumbrance has been successively alienated or encumbered in parcels, the parcel last alienated or encumbered

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3 The only States in which the doctrine of inverse alienation is distinctly repudiated are Kentucky and Iowa, which instead apply the principle of *pro rata* contribution based on the value of the alienated parcels. *See e.g.*, *Massie v. Wilson*, 16 Iowa 390, 394 (1864); *Bartley v. Pikeville Nat. Bank & Trust Co.*, 532 S.W.2d 446, 448 (Ky. 1975).

(the alienee or encumbrancer having notice of the prior alienation or encumbrance of the other parcels) must be first exhausted for the payment or discharge of the paramount encumbrance, before the parcel alienated or encumbered next preceding to the last may be reached, and so on in that order until the parcel first alienated or encumbered is reached, if need there be.

131 A.L.R. 4 §§ I, IV; *accord* Dunaway, Law Distressed Real Estate § 16:26; *Restatement* § 8.6(a).

The application of the doctrine is not limited to situations “where all the parcels covered by the paramount lien are either successively alienated or successively encumbered” but applies equally to situations “where some parcels are conveyed absolutely, and others are merely encumbered.”

131 A.L.R. 4 § VIII (compiling cases); *see, e.g., Hart v. Wandle*, 50 N.Y. 381 (1872).

The inverse alienation rule is based on the notion that a subsequent encumbrance or transfer should not undermine the expectations of a prior mortgagee or grantee. *Restatement* § 8.6(a) cmt. a. The right to have the doctrine of inverse alienation applied to protect the interests of those who received their interest first is a “fixed indefeasible right.” *Fid. & Cas. Co. of N. Y. v. Massachusetts Mut. Life Ins. Co.*, 74 F.2d 881, 884 (4th Cir. 1935). “The equity is recognized not only in favor of a prior grantee, but also in favor of that one of a number of successive mortgagees of separate parcels who is prior in time.” *Id.* However, “[t]he fairness of marshaling to later grantees or lienors . . . depends on their having at least constructive notice of not only the blanket mortgage, but also any earlier conveyances of or liens on other parcels subject to the blank mortgage.” *Restatement* § 8.6(a) cmt. a.

For the purpose of the rule, all encumbrances created on the individual parcels are regarded as “alienations *pro tanto*” of the parcels covered thereby, and “the inverse order rule is applied as if all were outright conveyances.” 131 A.L.R. 4 § VIII (compiling cases). Thus, as between a parcel first encumbered by a mortgage and a parcel subsequently conveyed to a grantee,

the parcel subsequently conveyed must be sold first to satisfy the paramount encumbrance before the parcel previously mortgaged is sold. *Id.*

In this case, POBD granted a mortgage to RE Loans that was secured by all 186 parcels of property at issue. The RE Loans Mortgage is senior to every other interest and is the paramount encumbrance on all of the property at issue. The next two junior mortgages are the Pensco Mortgage and the MF08 Mortgage, which have second and third priority. However, these two mortgages do not encumber the Lagoon Lot or the other 30 lots mentioned hereinabove. After executing the Pensco Mortgage and the MF08 Mortgage, POBD executed a series of other mortgages to various lienholders,<sup>4</sup> none of which encumbered the VP Lots. Most recently, after years of foreclosure litigation, by Quitclaim Deeds recorded on May 20, 2014, POBD conveyed to VP the VP Lots subject to the RE Loans Mortgage.

After the 30 parcels subject only to the RE Loans Mortgage are sold, the inverse order of alienation rule should be applied to the remaining 156 parcels and RE Loans should be permitted to first look to the Lagoon Lot to satisfy its claim as the Lagoon Lot was the most recently alienated.

**2. Valiant, Not VP, Has Standing to Request Marshaling.**

The party seeking a marshaling of assets based on the two fund rule must establish that (a) there is more than one creditor of the debtor, (b) there are two funds that belong to the debtor, (c) the senior creditor alone has a right to resort to both funds in satisfaction of its claim, and (d) neither the senior creditor nor any other third party will be harmed by the

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<sup>4</sup> JV, NIR, Dan S. Jacobson, Sage Holdings, LLC, Steven G. Lazar, R.C. Worst & Company, Inc., Pend Oreille Bonner Development Holdings, Inc., HLT Real Estate, LLC, Mountain West Bank, and Charles W. Reeves and Ann B. Reeves. *See* Sykes Dec.



proposed marshaling. *In re Luby*, 89 B.R. 120, 125 (D.Or. 1988). Moreover, the party seeking application of the two fund rule must establish that it is a creditor. *Peterson v. Brent Banking Co.*, 514 So.2d 888, 889 (Alab. 1987) (recognizing that the general rule is “that the doctrine of marshaling of assets may usually only be invoked by *creditors* of a defaulting debtor, and not by the debtor himself.” [Emphasis in original.]).

Valiant has established that RE Loans, Pensco and MF08 were creditors of POBD. Valiant has established that it is a creditor of POBD. Thus, it has standing to assert the two fund rule. On the other hand, VP has not, and cannot, establish that it is a creditor of POBD. In fact, VP has asserted that, with respect to the VP Lots, it is the “debtor in possession.” As such, VP cannot request application of the two fund rule.

3. **Any Right to Assert Marshaling Was Waived Under the Terms of the RE Loans Mortgage.**

“A quitclaim deed ..., conveys whatever interest legal or equitable, which the grantors possess at the time of the conveyance, including rights inchoate which later may ripen into a vested estate.” *Scogings v. Andreason*, 91 Idaho 176, 180, 418 P.2d 273, 277 (1966) (citations omitted).

The right to request marshaling is a waivable right. *Restatement* § 8.6, cmt. e (“Any person holding an interest in real estate protected by the marshaling doctrine may waive that protection.”).

In this case, VP received Parcel 4 from POBD *via* Quitclaim Deeds. As such, VP has only those rights possessed by POBD. Under the terms of the RE Loans Mortgage, POBD waived any right it might have had to request marshaling. Section 3.5 of the RE Loans Mortgage states:

Upon any sale or sales made under or by virtue of this Article 3 [rights and remedies upon default], Mortgagee may bid for and acquire the Mortgaged Property *or any part thereof* and, in lieu of paying cash therefor, may make settlement for the purchase price by crediting upon the indebtedness or other sums secured by this Mortgage the net sales price after deducting therefrom the expenses of sale and the costs of the judicial proceedings, if any, with interest at the Default Rate (as defined in the Note) and any other sums which Mortgagee are authorized to deduct under this Mortgage.

Affidavit of Charles W. Reeves filed January 20, 2015, Ex. D (emphasis added). By agreeing that the mortgagee, *i.e.* Valiant, could bid for and acquire “any part” of the mortgaged property, POBD knowingly waived its right to request a marshaling of the property subject to the RE Loans Mortgage. If no such waiver was made, then the mortgagee would not have the right to obtain all or part of the property.

Furthermore, “[a]s a general rule, the doctrine of marshaling may not be invoked by the debtor, since allowing the debtor to invoke the doctrine would have the effect of vitiating the contract between the debtor and his or her creditor.” 53 Am.Jur.2d Marshaling Assets § 20. Thus, as the debtor, POBD had no right to request marshaling because such a right would effectively destroy its contract with RE Loans. The Quitclaims Deeds gave VP only those rights held by POBD. As POBD had no right to request marshaling, VP has no right to request marshaling.

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4. **As VP's Interest in the Lagoon Lot Was Acquired After the Interest Created by the Pensco Note/Mortgage and the MF08 Note/Mortgage, VP Cannot Request a Marshaling That Would Harm the Interests Valiant Obtained via Pensco and MF08.**

The Court has found that VP's interest in the Lagoon Lot was obtained after the interest created by the Pensco Note/Mortgage and the MF08 Note/Mortgage. SJ Order, p. 17. As such, even if VP had standing to request marshaling, VP's request for marshaling should have been denied because it harms the interests of creditors whose interest arose prior to, and are superior to, VP's interest.

When VP obtained the Lagoon Lot, this foreclosure action had been pending for over five and one-half years and was well aware that numerous entities asserted claims against the VP Lots. VP obtained the Lagoon Lot despite not having paid a single penny for the Lot. Reeves Alter/Reconsider Dec., ¶ 4.g. As VP's interest in the Lagoon Lot arose well after, and is subordinate to, the interests of Pensco and MF08, and considering that VP took its interest with full knowledge of Pensco's and MF08's superior interests, VP cannot force a marshaling of the property which would impair Valiant's ability to collect *via* the interests obtained from Pensco and MF08.

5. **VP Failed to Plead Marshaling as an Affirmative Defense and Therefore Waived Any Right to Request Marshaling.**

A junior creditor who seeks the protection of marshaling must plead marshaling as an affirmative defense. *In re Starns*, 52 B.R. 405, 416 (S.D. Tex. 1985) ("The general rule is that the doctrine [of marshaling] must be raised by the pleadings, and that the party claiming the benefit of marshaling must allege such facts as entitle him to its application."); accord *In re Luby*, 89 B.R. at 125; see also 53 Am.Jur.2d Marshaling Assets § 31. As such, a junior creditor who asserts the

marshaling doctrine has the burden of establishing that the doctrine should be invoked. *Johnson v. Wilson*, 145 Wash. 515, 518, 261 P.102, 103 (1927); 53 Am.Jur.2d Marshaling Assets § 31.

VP did not plead marshaling as an affirmative defense. It was only after Judgment was entered against VP that VP asserted the defense of marshaling. This belated assertion of an affirmative defense is prejudicial to Valiant as Valiant is being forced to deal with a new defense *after* it has obtained a Judgment. VP waived its right to assert marshaling by failing to plead and prove this defense.

Based on the foregoing, Valiant respectfully submits that the Court erred when it entertained and granted VP's request for marshaling.

6. **VP Failed to Carry Its Burden of Establishing That Its Requested Marshaling Was Appropriate.**

Even if VP had standing to request marshaling and/or had not waived its (alleged) right to make such a request, VP failed to carry its burden of establishing that the marshaling it requested was appropriate.

VP has not, and cannot, establish that its proposed marshaling will not harm Valiant's interest as a superior junior creditor under the Pensco Note/Mortgage and the MF08 Note/Mortgage. Only the RE Loans Note/Mortgage is secured by the VP Lots. Shafer Alter/Reconsider Dec., ¶ 9. If Valiant is required to attempt to satisfy the RE Loans Note/Mortgage first from the lots only subject to RE Loans Mortgage, then from the remaining lots subject to all three Mortgages, then the Lagoon Lot and then the Water Facilities Lots, the RE Loans Note will, in all likelihood, be satisfied by the sale of lots that are subject to the Pensco Mortgage and/or MF08 Mortgage despite the fact that the Lagoon Lot, which is subject to *only* the RE Loans Mortgage, will not have been sold. As a result, it is unlikely that enough

property will be available to satisfy the Pensco Note/Mortgage and the MF08 Note/Mortgage despite the fact that all the property subject only to the RE Loans Mortgage has not been sold. This is an inequitable result and elevates the junior interest of VP over the more senior interests of the Pensco Note/Mortgage and the MF08 Note/Mortgage. Furthermore, VP's request harms not only the Pensco/MF08 interests but also the interest of every other junior creditor whose interest is superior to VP's, such as JV and NIR (assuming that these claims are valid claims)<sup>5</sup>. Protecting the interest of the most junior creditor at the expense of all other creditors is inequitable, violates marshaling principles and violates Idaho law regarding priority of interests. VP failed to carry its burden. As such, VP's request for application of the two fund rule should have been denied.

## VI. CONCLUSION

The Court has adjudicated that the RE Loans Note/Mortgage is the first priority encumbrance. Valiant recognizes that the property subject to its first party lien should be sold in a manner that that will best benefit junior creditors – despite the fact that, as the first priority lienholder, Valiant, while standing in the shoes of RE Loans, is entitled to use all encumbered security necessary to ensure that its lien is paid. Under well-established marshaling principles, the sheriff should first sell the 30 parcels subject only to the RE Loans Mortgage and still owned by POBD. If the sale of these 30 lots does not satisfy the RE Loans Note/Mortgage, then under the inverse order of alienation rule, the sheriff should next sell the Lagoon Lot. If, after the sale

---

<sup>5</sup> VP's request would also prejudice the following other junior creditors who obtained interests prior to VP's receipt of the VP Lots: Dan S. Jacobson, Sage Holdings, LLC, Steven G. Lazar, R.C. Worst & Company, Inc., Pend Oreille Bonner Development Holdings, Inc., HLT Real Estate, LLC, Mountain West Bank, and Charles W. Reeves and Ann B. Reeves. *See Sykes Dec.*

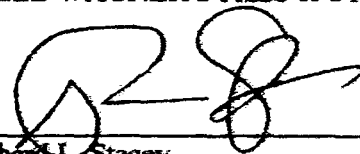
of these 31 parcels, the RE Loans Note/Mortgage has not been satisfied, the sheriff should begin selling the remaining 155 lots subject to the RE Loans Mortgage until such mortgage is paid, despite any prejudice that may result to junior creditors.

Based on the foregoing, Valiant requests that its Motion to Alter/Reconsider be *granted*.

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

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

BY:



Richard L. Stacey  
Attorneys For Valiant Idaho, LLC

**CERTIFICATE OF SERVICE**

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

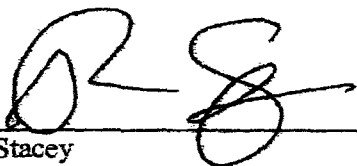
<p>Bruce A. Anderson, Esq. Elsaesser Jarzabek Anderson Elliott &amp; MacDonald, Chtd 320 East Neider Avenue, Suite 102 Coeur d' Alene, Idaho 83815 Telephone: 208.667.2900 Facsimile: 208.667.2150 <i>Counsel For Jacobson, Lazar and Sage Holdings</i></p>	<p>[ ] U.S. Mail [ ] Hand Delivered [ <input checked="" type="checkbox"/> ] Facsimile [ ] Overnight Mail [ <input checked="" type="checkbox"/> ] Electronic Mail <a href="mailto:brucea@ejame.com">brucea@ejame.com</a></p>
<p>Brent C. Featherston, Esq. Featherston Law Firm, Chtd 113 South Second Avenue Sandpoint, Idaho 83864 Telephone: 208.263.6866 Facsimile: 208.263.0400 <i>Counsel For Pensco/Mortgage Fund</i></p>	<p>[ ] U.S. Mail [ ] Hand Delivered [ <input checked="" type="checkbox"/> ] Facsimile [ ] Overnight Mail [ <input checked="" type="checkbox"/> ] Electronic Mail <a href="mailto:bcf@featherstonlaw.com">bcf@featherstonlaw.com</a></p>

<p>Gary A. Finney, Esq.          Finney Finney &amp; Finney, P.A.          120 East Lake Street, Suite 317          Sandpoint, Idaho 83864          Telephone: 208.263.7712          Facsimile: 208.263.8211  <i>Counsel For J.V., LLC</i></p>	<p><input type="checkbox"/> U.S. Mail  <input type="checkbox"/> Hand Delivered  <input checked="" type="checkbox"/> Facsimile  <input type="checkbox"/> Overnight Mail  <input checked="" type="checkbox"/> Electronic Mail  <u><a href="mailto:garyfinney@finneylaw.net">garyfinney@finneylaw.net</a></u></p>
<p>D. Toby McLaughlin, Esq.          Berg &amp; McLaughlin          414 Church Street, Suite 203          Sandpoint, Idaho 83864          Telephone: 208.263.4748          Facsimile: 208.263.7557  <i>Counsel For Idaho Club HOA/Panhandle Mngmnt</i></p>	<p><input type="checkbox"/> U.S. Mail  <input type="checkbox"/> Hand Delivered  <input checked="" type="checkbox"/> Facsimile  <input type="checkbox"/> Overnight Mail  <input checked="" type="checkbox"/> Electronic Mail  <u><a href="mailto:toby@sandpointlaw.com">toby@sandpointlaw.com</a></u></p>
<p>Susan P. Weeks, Esq.          James, Vernon &amp; Weeks, PA          1626 Lincoln Way          Coeur d'Alene, Idaho 83814          Telephone: 208.667.0683          Facsimile: 208.664.1684  <i>Counsel For VP Incorporated/North Idaho Resorts</i></p>	<p><input type="checkbox"/> U.S. Mail  <input type="checkbox"/> Hand Delivered  <input checked="" type="checkbox"/> Facsimile  <input type="checkbox"/> Overnight Mail  <input checked="" type="checkbox"/> Electronic Mail  <u><a href="mailto:sweeks@jvwlaw.net">sweeks@jvwlaw.net</a></u></p>


With a copy via Electronic Mail to:

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

[bbuchanan@co.bonner.id.us](mailto:bbuchanan@co.bonner.id.us)  
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 \_\_\_\_\_  
 Richard L. Stacey

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

FILED  
SEP 10 10 27 AM '15  
CLERK OF DISTRICT COURT  
BOISE, IDAHO  


Attorneys For Valiant Idaho, LLC

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

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

Plaintiff,

vs.

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

Defendants.

Case No. CV-09-1810

**DECLARATION OF  
CHAD M. NICHOLSON IN SUPPORT  
OF VALIANT IDAHO, LLC'S  
MOTION TO ALTER, AMEND AND/OR  
RECONSIDER THE ORDER OF SALE  
OF REAL PROPERTY**

**Honorable Barbara A. Buchanan**

**Hearing:**

September 2, 2015 – 11:00 a.m. PDST

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



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

**Chad M. Nicholson** 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 an associate of the law firm of McConnell Wagner Sykes & Stacey PLLC, attorneys for Defendant/Counter-Claimant/Cross-Claimant/Third Party Plaintiff Valiant Idaho, LLC ("Valiant"). I make this Declaration in support of the Motion to Reconsider the Order of Sale of Real Property filed concurrently and upon my personal knowledge.

2. The verified complaint referred to in Paragraph 4(f) and attached as Exhibit A to the Declaration of Charles W. Reeves in Support of Motion to Reconsider the Order of Sale of Real Property ("Reeves Dec.") was, according to the records of the Idaho Repository, filed on or about December 23, 2011 under Bonner County Case No. CV-2011-2351.

3. The letter referred to in Paragraph 4(f) and attached as Exhibit B to the Reeves Dec. references a lawsuit which, according to the records of the Idaho Repository, was filed on or about March 30, 2012 under Bonner County Case No. CV-2012-0557 and styled as *Mountain West Bank v. VP Inc.*

**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 19<sup>th</sup> day of August 2015.

  
\_\_\_\_\_  
CHAD M. NICHOLSON

**CERTIFICATE OF SERVICE**

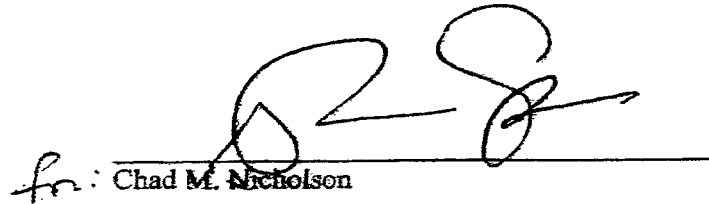
I HEREBY CERTIFY that on the 19<sup>th</sup> day of August 2015, a true and correct copy of the foregoing document was served by the method indicated below upon the following party(ies):

<p>Bruce A. Anderson, Esq.                  Elsaesser Jarzabek Anderson Elliott &amp;                  MacDonald, Chtd                  320 East Neider Avenue, Suite 102                  Coeur d' Alene, Idaho 83815                  Telephone: 208.667.2900                  Facsimile: 208.667.2150  <i>Counsel For Jacobson, Lazar and Sage Holdings</i></p>	<p>[ ] U.S. Mail                  [ ] Hand Delivered                  [ ✓ ] Facsimile                  [ ] Overnight Mail                  [ ✓ ] Electronic Mail  <u><a href="mailto:brucea@ejame.com">brucea@ejame.com</a></u></p>
<p>Brent C. Featherston, Esq.                  Featherston Law Firm, Chtd                  113 South Second Avenue                  Sandpoint, Idaho 83864                  Telephone: 208.263.6866                  Facsimile: 208.263.0400  <i>Counsel For Pensco/Mortgage Fund</i></p>	<p>[ ] U.S. Mail                  [ ] Hand Delivered                  [ ✓ ] Facsimile                  [ ] Overnight Mail                  [ ✓ ] Electronic Mail  <u><a href="mailto:bcbf@featherstonlaw.com">bcbf@featherstonlaw.com</a></u></p>
<p>Gary A. Finney, Esq.                  Finney Finney &amp; Finney, P.A.                  120 East Lake Street, Suite 317                  Sandpoint, Idaho 83864                  Telephone: 208.263.7712                  Facsimile: 208.263.8211  <i>Counsel For J.V., LLC</i></p>	<p>[ ] U.S. Mail                  [ ] Hand Delivered                  [ ✓ ] Facsimile                  [ ] Overnight Mail                  [ ✓ ] Electronic Mail  <u><a href="mailto:garyfinney@finneylaw.net">garyfinney@finneylaw.net</a></u></p>
<p>D. Toby McLaughlin, Esq.                  Berg &amp; McLaughlin                  414 Church Street, Suite 203                  Sandpoint, Idaho 83864                  Telephone: 208.263.4748                  Facsimile: 208.263.7557  <i>Counsel For Idaho Club HOA/Panhandle Mngmnt</i></p>	<p>[ ] U.S. Mail                  [ ] Hand Delivered                  [ ✓ ] Facsimile                  [ ] Overnight Mail                  [ ✓ ] Electronic Mail  <u><a href="mailto:toby@sandpointlaw.com">toby@sandpointlaw.com</a></u></p>
<p>Susan P. Weeks, Esq.                  James, Vernon &amp; Weeks, PA                  1626 Lincoln Way                  Coeur d'Alene, Idaho 83814                  Telephone: 208.667.0683                  Facsimile: 208.664.1684  <i>Counsel For VP Incorporated/North Idaho Resorts</i></p>	<p>[ ] U.S. Mail                  [ ] Hand Delivered                  [ ✓ ] Facsimile                  [ ] Overnight Mail                  [ ✓ ] Electronic Mail  <u><a href="mailto:sweeks@jvwlaw.net">sweeks@jvwlaw.net</a></u></p>

With a copy via Electronic Mail to:

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

bbuchanan@co.bonner.id.us  
sezerwa@bonnercountyid.gov

A handwritten signature in black ink, appearing to read 'Chad M. Nicholson', is written over a horizontal line. The signature is stylized and cursive.

STATE OF IDAHO  
County of Bonner  
FILED Aug 19 2015  
AT 9:00 AM  
CLERK DISTRICT COURT  
Deputy [Signature]

Richard L. Stacey, ISB #6800  
Jeff R. Sykes, ISB #5058  
Chad M. Nicholson, ISB #7506  
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[sykes@mwslawyers.com](mailto:sykes@mwslawyers.com)  
[nicholson@mwslawyers.com](mailto:nicholson@mwslawyers.com)

Attorneys For Valiant Idaho, LLC

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

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

Plaintiff,

vs.

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

Defendants.

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

Case No. CV-09-1810

**DECLARATION OF  
CHARLES W. REEVES IN SUPPORT OF  
VALIANT IDAHO, LLC'S  
MOTION TO ALTER, AMEND AND/OR  
RECONSIDER THE ORDER OF SALE  
OF REAL PROPERTY**

Honorable Barbara A. Buchanan

Hearing:

September 2, 2015 – 11:00 a.m. PDST

**DECLARATION OF CHARLES W. REEVES IN SUPPORT  
OF VALIANT IDAHO, LLC'S MOTION TO ALTER, AMEND AND/OR RECONSIDER  
THE ORDER OF SALE OF REAL PROPERTY - Page 1**

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Aff 150819.docx

I, Charles W. Reeves, hereby state and declare:

1. I am the president of Pend Oreille Bonner Development Holdings, Inc. ("POBDH"), which is a managing member of Pend Oreille Bonner Development, LLC ("POBD"). I make this declaration based on my own personal knowledge.

2. As the president of POBDH, which is a managing member of POBD, I have personal knowledge and familiarity with the marketing and development of the Idaho Club Golf Course Development Project ("Idaho Club"). My responsibilities included managing, supervising and directing the purchase, design, development and construction of the Idaho Club on behalf of POBD. I also managed, supervised and directed the marketing and sale of the lots/parcels within the development. Because of these things, I am also familiar with the value of the lots/parcels within the Idaho Club.

3. My principal place of residence is Sandpoint, Idaho. However, I am currently working in Reno, Nevada.

4. I understand that the Court has ordered that the lots on which the sanitary water facilities ("Water Facilities") are constructed (*i.e.*, Parcel 2, Parcel 3, and Parcel 4 (the "Water Facilities Lots") as legally described on Exhibit 2 to the Declaration of Dean Shafer in Support of the Motion for Order of Sale of Real Property (the "Shafer Sale Decl.)) will be sold separately from the lot on which the wastewater treatment facility ("WTF") is constructed (*i.e.*, Parcel 1 (the "Lagoon Lot") on Exhibit 2 to the Shafer Sale Decl.). I further understand that these lots will be sold at the conclusion of the foreclosure sale because they were transferred to VP, Inc. ("VP") *via* quitclaim deeds recorded on May 20, 2014.

**DECLARATION OF CHARLES W. REEVES IN SUPPORT  
OF VALIANT IDAHO, LLC'S MOTION TO ALTER, AMEND AND/OR RECONSIDER  
THE ORDER OF SALE OF REAL PROPERTY - Page 2**

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5. I am personally familiar with Exhibit B and Exhibit H to the Affidavit of Richard Villelli, which was filed August 4, 2015. I negotiated and executed the construction and operating agreement and compliance agreement schedule on behalf of POBD. The Court should be aware of the following facts related to the WTF:

a. The Water Facilities and WTF infrastructure, and other improvements, were paid for with amounts POBD borrowed from R.E. Loans, LLC, Pensco Trust Co. and Mortgage Fund '08, LLC.

b. VP did not pay for any of these improvements.

c. Certain remediation work may have been performed by VP since the WTF Lot was transferred to VP. However, in my opinion—based upon my knowledge and experience with the costs of constructing the original improvements—this remediation work was relatively minor and it should not have cost more than \$40,000.00, if VP expended any funds at all.

d. Pursuant to the construction and operating agreement, VP agreed that, at all times during which it was operating the WTF, it would not charge any hook-up or tap fees related to connecting any lot within the Idaho Club development to the Water Facilities or the WTF as the water and sewer service fees VP charges allow it to operate the WTF profitably.

e. Since POBD transferred the Water Facilities Lot and the WTF Lot to VP, it is my understanding that VP has attempted to charge new property owners a fee of up to \$35,000.00 per lot to tap into or to simply reconnect to the Water Facilities and WTF in violation of the construction and operating agreement.

**DECLARATION OF CHARLES W. REEVES IN SUPPORT  
OF VALLANT IDAHO, LLC'S MOTION TO ALTER, AMEND AND/OR RECONSIDER  
THE ORDER OF SALE OF REAL PROPERTY - Page 3**

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f. VP has been sued by property owners for trying to charge new property owners \$35,000.00 per lot to hook-up to the Water Facilities and WTF in violation of the construction and operating agreement. A true and correct copy of a verified complaint filed by US Bank, N.A. is attached hereto as Exhibit A. Attached hereto as Exhibit B is a letter to VP's counsel from counsel for another Idaho Club property owner. This letter VP's attempts to charge another Idaho Club property owner a \$35,000.00 per lot connection fee.

g. VP did not pay POBD anything whatsoever in consideration for the transfer of the Water Facilities Lots or the WTF Lot.

6. I am familiar with the values of the 186 lots ("Idaho Club Lots") identified in the Declaration of C. Dean Shafer in Support of Valiant Idaho, LLC's Motion For Order of Sale ("Shafer Decl."). I am familiar with the approximate current fair market value of Idaho Club Lots. I am familiar with the approximate amounts that another developer would have to pay to develop, market and sell the Idaho Club Lots. I am familiar with all of the costs associated with the operation and maintenance of a private golf course in Sandpoint, Idaho. I understand that Valiant has been awarded a judgment against POBD totaling \$16,939,028.32, including prejudgment interest thru July 24, 2015. In my opinion the foreclosure sale of Idaho Club's real property will not generate enough gross sales proceeds to pay off Valiant's damage award. In fact, I believe it is very likely that the gross sales proceeds will be significantly less than the amounts owed to Valiant.

7. The fair market value of the Idaho Club Lots cannot sustain water and sewer hook-up fees of \$35,000.00 per lot. If VP charges this amount for water and sewer hook-up fees it will reduce the value of the Idaho Club Lots substantially below my estimate.

**DECLARATION OF CHARLES W. REEVES IN SUPPORT  
OF VALIANT IDAHO, LLC'S MOTION TO ALTER, AMEND AND/OR RECONSIDER  
THE ORDER OF SALE OF REAL PROPERTY - Page 4**

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Aff 150819.docx

**I HEREBY CERTIFY AND DECLARE**, under penalty of perjury, that the foregoing is true and correct.

**DATED** this 18<sup>th</sup> day of August 2015.

  
\_\_\_\_\_  
CHARLES W. REEVES



**CERTIFICATE OF SERVICE**

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

<p>Bruce A. Anderson, Esq. Elsaesser Jarzabek Anderson Elliott &amp; MacDonald, Chtd 320 East Neider Avenue, Suite 102 Coeur d' Alene, Idaho 83815 Telephone: 208.667.2900 Facsimile: 208.667.2150 <i>Counsel For Jacobson, Lazar and Sage Holdings</i></p>	<p>[ ] U.S. Mail [ ] Hand Delivered [ <input checked="" type="checkbox"/> ] Facsimile [ ] Overnight Mail [ <input checked="" type="checkbox"/> ] Electronic Mail  <a href="mailto:brucea@ejame.com">brucea@ejame.com</a></p>
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<p>Gary A. Finney, Esq. Finney Finney &amp; Finney, P.A. 120 East Lake Street, Suite 317 Sandpoint, Idaho 83864 Telephone: 208.263.7712 Facsimile: 208.263.8211 <i>Counsel For J.V., LLC</i></p>	<p>[ ] U.S. Mail [ ] Hand Delivered [ <input checked="" type="checkbox"/> ] Facsimile [ ] Overnight Mail [ <input checked="" type="checkbox"/> ] Electronic Mail  <a href="mailto:garyfinney@finneylaw.net">garyfinney@finneylaw.net</a></p>
<p>D. Toby McLaughlin, Esq. Berg &amp; McLaughlin 414 Church Street, Suite 203 Sandpoint, Idaho 83864 Telephone: 208.263.4748 Facsimile: 208.263.7557 <i>Counsel For Idaho Club HOA/Panhandle Mngmnt</i></p>	<p>[ ] U.S. Mail [ ] Hand Delivered [ <input checked="" type="checkbox"/> ] Facsimile [ ] Overnight Mail [ <input checked="" type="checkbox"/> ] Electronic Mail  <a href="mailto:toby@sandpointlaw.com">toby@sandpointlaw.com</a></p>
<p>Susan P. Weeks, Esq. James, Vernon &amp; Weeks, PA 1626 Lincoln Way Coeur d' Alene, Idaho 83814 Telephone: 208.667.0683 Facsimile: 208.664.1684 <i>Counsel For VP Incorporated/North Idaho Resorts</i></p>	<p>[ ] U.S. Mail [ ] Hand Delivered [ <input checked="" type="checkbox"/> ] Facsimile [ ] Overnight Mail [ <input checked="" type="checkbox"/> ] Electronic Mail  <a href="mailto:sweeks@jvwlaw.net">sweeks@jvwlaw.net</a></p>

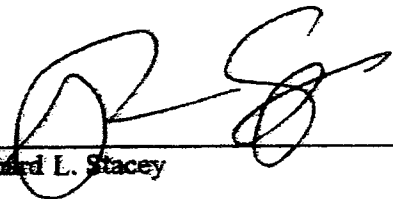
**DECLARATION OF CHARLES W. REEVES IN SUPPORT  
OF VALIANT IDAHO, LLC'S MOTION TO ALTER, AMEND AND/OR RECONSIDER  
THE ORDER OF SALE OF REAL PROPERTY - Page 6**

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With a copy via Electronic Mail to:

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

bbuchanan@co.bonner.id.us  
sezenwa@bonnercountyd.gov



---

Richard L. Stacey

**DECLARATION OF CHARLES W. REEVES IN SUPPORT  
OF VALIANT IDAHO, LLC'S MOTION TO ALTER, AMEND AND/OR RECONSIDER  
THE ORDER OF SALE OF REAL PROPERTY - Page 7**

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Aff 150819.docx

Geoffrey M. Wardle, ISB No. 5604  
 Jake D. McGrady, ISB No. 8209  
 HAWLEY TROXELL ENNIS & HAWLEY LLP  
 877 Main Street, Suite 1000  
 P.O. Box 1617  
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 Telephone: 208.344.6000  
 Facsimile: 208.954.5277  
 Email: gwardle@hawleytroxell.com  
 jmcgrady@hawleytroxell.com

Attorneys for Plaintiff US Bank N.A.

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

US BANK, NATIONAL ASSOCIATION, as )	
Indenture Trustee for CMLTI 2006-AR1, )	Case No. CV OC _____
)	
Plaintiff, )	VERIFIED COMPLAINT FOR
)	DECLARATORY JUDGMENT
vs. )	
)	Fee Category: A.
VP, INC., an Idaho corporation, )	Filing Fee: \$88.00
)	
Defendant. )	
)	

Plaintiff US Bank, National Association, as Indenture Trustee for CMLTI 2006-AR1, by and through its attorneys of record, Hawley Troxell Ennis & Hawley LLP, complains and alleges against Defendant VP, Inc., as follows:

I.  
**PARTIES AND VENUE**

1. Plaintiff US Bank, N.A. ("US Bank") is a legally organized bank and is authorized to do business in the State of Idaho.

**EXHIBIT A**

2. On information and belief, Defendant VP, Inc. is an Idaho corporation doing business in Bonner County, Idaho.

3. The Court has jurisdiction over the subject matter of this action pursuant to Idaho Code § 1-705 and § 10-1201.

4. Venue is proper in this Court pursuant to Idaho Code § 5-401, as this case relates to an estate or interest in real property located in Bonner County, Idaho.

## II. GENERAL ALLEGATIONS

5. The real property that is the subject of this lawsuit is situated in the State of Idaho, County of Bonner, and is described as:

Lot 2 of Block 10 of Golden Tee Estates First Addition Planned Unit Development (Phase Two), according to the plat thereof, recorded in Book 6 of Plats, page 114, Records of Bonner County, Idaho. Parcel No. RP043530100020A.

(the "Subject Property"). The Subject Property has a physical address of 135 Hidden Lakes Way, Sandpoint, Idaho.

6. On August 29, 1999, Vilelli Enterprises, Inc. ("Vilelli Enterprises") was the owner of certain real property located in the County of Bonner, State of Idaho, which was platted as the Hidden Lakes PUD.

7. The Subject Property is one of the lots located within the Hidden Lakes PUD.

8. Upon information and belief, on August 29, 1999, Richard Vilelli was, and currently still is, the President of Vilelli Enterprises.

9. Upon information and belief, on August 29, 1999, Thomas R. Vilelli was the Vice President of Vilelli Enterprises.

10. On August 29, 1999, Vilelli Enterprises, as the owner of the real property within the Hidden Lakes PUD, executed a "Protective Covenants for Hidden Lakes PUD" (the "Protective Covenants"), which was recorded August 7, 2000, as Instrument No. 567929, Bonner County Records. A true and correct copy of the Protective Covenants is attached hereto as Exhibit A.

11. As part of the Protective Covenants, VP, Inc. was "[t]he entity charged with the management and operation of roads, sewer, and water plants, and other facets of the Hidden Lakes PUD, including, but not limited to, Hidden Lakes Gold Club and related amenities." See Exhibit A.

12. The Protective Covenants further provided that "[e]ach structure designed for occupancy or use by human beings shall have a septic tank installed by the homesite owner, at homesite owner's expense, and connected to the water and sewer facilities of VP Inc., except lots of three acres or more, if such lots cannot practically be served by the VP Inc. sewer system." See Exhibit A.

13. Upon information and belief, on August 29, 1999, Richard Vilelli was, and currently still is, the President of VP, Inc.

14. By virtue of a Warranty Deed signed and recorded on March 23, 2001, as Instrument No. 579088, records of Bonner County, Idaho, Richard A. Vilelli, as President for Vilelli Enterprises, conveyed the Subject Property to Brent A. Baker and Laura B. Baker, husband and wife. A true and correct copy of the Warranty Deed is attached hereto as Exhibit B.

15. On July 26, 2001, Brent A. Baker and Laura B. Baker submitted a Building Location Permit to Bonner County, Idaho, for the construction of a single-family residence on

the Subject Property. A true and correct copy of the Building Location Permit is attached hereto as Exhibit C.

16. Upon information and belief, water and sewer connections were made on the Subject Property at the time the improvements were constructed thereon pursuant to the Building Location Permit.

17. By virtue of a Warranty Deed signed November 8, 2005, and recorded on November 28, 2005, as Instrument No. 692955, records of Bonner County, Idaho, Brent A. Baker and Laura B. Baker, husband and wife, conveyed the Subject Property to Thomas R. Vilelli. A true and correct copy of the Warranty Deed is attached hereto as Exhibit D.

18. On November 28, 2005, Thomas R. Vilelli, as Borrower, executed a Promissory Note in favor of Wells Fargo Bank, N.A., ("Wells Fargo") for five hundred thirty-five thousand two hundred dollars (\$535,200) (the "Promissory Note").

19. To secure the obligations due and owing under the Promissory Note, Thomas R. Vilelli executed a Deed of Trust to the Subject Property in the favor of Wells Fargo as beneficiary. The Deed of Trust was recorded as Instrument No. 692956, Records of Bonner County, Idaho, on November 28, 2005. A true and correct copy of the Deed of Trust is attached hereto as Exhibit E.

20. Pioneer Title Company of Ada County was appointed as Trustee under the Deed of Trust.

21. Later, Northwest Trustee Services, Inc. was assigned as successor Trustee under the Deed of Trust.

22. Upon information and belief, VP, Inc. provided sewer and water service to Thomas R. Vilelli during the entirety of the time in which Thomas R. Vilelli had an interest in the Subject Property.

23. On October 3, 2006, the Hidden Lakes PUD was replatted, and the Replat of Golden Tee Estates and Golden Tee Estates 1st Addition and Unplatted Land was recorded as Instrument No. 714738, records of Bonner County, Idaho. A true and correct copy of the Replat is attached hereto as Exhibit F.

24. The Replat document provided that “[a]ll of the Lots shown on this Plat will receive water and sewer service from VP, Inc.” See Exhibit F.

25. On September 8, 2010, Wells Fargo conveyed all beneficial interest under the Deed of Trust to Plaintiff US Bank, as Indenture Trustee for CMLTI 2006-ARI. A true and correct copy of the Assignment of Deed of Trust is attached hereto as Exhibit G.

26. Thomas R. Vilelli defaulted under the terms of the Promissory Note and a Notice of Default was sent to Thomas R. Vilelli, which was recorded as Instrument No. 798719, Mortgage Records of Bonner County, Idaho.

27. A Notice of Trustee’s Sale was recorded as Instrument No. 803161 in the Mortgage Records of Bonner County, Idaho, setting a non-judicial foreclosure sale for the Subject Property on or about August 26, 2011.

28. On or about August 31, 2011, pursuant to a Trustee’s Deed, Northwest Trustee Services, Inc., as successor trustee, transferred the Subject Property to US Bank National Association, as Trustee for Citigroup Mortgage Loan Trust Inc., Mortgage Pass-Through Certificates, Series 2006-ARI. A true and correct copy of the Trustee’s Deed is attached hereto as Exhibit H.

29. After US Bank obtained its interest in the Subject Property on August 21, 2011, VP, Inc. provided US Bank with a document entitled "V.P. Inc. Utility Sewer and Water Service Connection and Service Agreement" (the "Service Agreement"), and required that US Bank execute the Service Agreement with VP, Inc. A true and correct copy of the unsigned Service Agreement is attached hereto as Exhibit I.

30. The unsigned Service Agreement provided that "[t]he water and sewer hookup fees and initial service rates are specified in Exhibit 'D' attached hereto and incorporated herein by reference." See Exhibit I.

31. Exhibit D of the unsigned Service Agreement provided that "[t]he cost of said hook up shall be the then purchase price charged by Company for sewer and water hook ups. The connection fee shall be as set by the Company from time to time." See Exhibit I.

32. Moreover, the unsigned Service Agreement established an initial rate of \$85.00 per "1 Equivalent Residential Unit (ERU)" per month. See Exhibit I.

33. VP, Inc. informed US Bank's agent that not only would the execution of the Service Agreement be required for VP, Inc., to provide water and sewer service to the Subject Property but also that US Bank would have to pay a hook up fee of \$35,000, together with a \$250 transfer fee and a \$200 reconnect fee.

34. VP, Inc., has claimed that Thomas R. Vilelli had defaulted on his obligations to VP, Inc., and that he had failed to pay for water or sewer services. However, VP, Inc. has refused to provide US Bank with any information regarding Thomas R. Vilelli's alleged default.

35. Upon information and belief, VP, Inc. did not discontinue water or sewer services during the time Thomas R. Vilelli, was allegedly in default, but only did so after Thomas R. Vilelli's interest in the Subject Property was foreclosed.



36. On October 11, 2011, US Bank wrote to VP, Inc., asking for documentation concerning: (i) an accounting of any past fees due for the Subject Property; (ii) a copy of any notice of disconnect that was sent to the previous owner of the Subject Property; (iii) the payment and connection history for the Subject Property, including the date that any disconnection of service occurred; (iv) a copy of VP, Inc.'s rates and policies; and (v) documentation of VP, Inc.'s compliance with local and state regulations, including but not limited to, compliance with all requirements of the Idaho Public Utilities Commission.

37. After telephonic discussions with VP, Inc.'s counsel where US Bank again requested the information, US Bank wrote to VP, Inc., a second time on November 17, 2011, requesting the same information.

38. VP, Inc. has not provided US Bank with a signed Service Agreement between Thomas R. Vilelli and VP, Inc.

39. VP, Inc. has not provided US Bank with any Notices of Default sent to Thomas R. Vilelli.

40. VP, Inc. has not provided US Bank with any past fees due on the Subject Property by Thomas R. Vilelli.

41. VP, Inc. has not provided US Bank with any notice of disconnect that was sent to Thomas R. Vilelli.

42. VP, Inc. has not provided US Bank with a copy of VP, Inc.'s rates and policies.

43. VP, Inc. has not provided US Bank with documentation of VP, Inc.'s compliance with local and state regulations, including but not limited to, compliance with all requirements of the Idaho Public Utilities Commission for providing services as a public utility.

44. VP, Inc. has not filed any liens for the alleged default of Thomas R. Vilelli.

45. US Bank is willing to pay just and reasonable charges for water and sewer services at the Subject Property consistent with Idaho Code sections 61-301 and 61-303.

**III.**  
**FIRST CLAIM FOR RELIEF**  
**(Declaratory Judgment)**

46. US Bank realleges and incorporates herein by reference the preceding allegations paragraphs 1-45 of this Complaint as though they were fully set forth herein.

47. Each of the controversies framed by the allegations set forth above involve, in part, disputes between or among the parties relating to their rights, status, contractual and legal relations, necessitating and warranting the issuance of declaratory relief pursuant to Chapter 12, Title 10, Idaho Code, including, but not limited to, the following:

- a. declaration that US Bank is not liable for the \$35,000 hookup fee demanded by VP, Inc., because:
  - i. there is no written and binding policy whereby a subsequent owner of the Subject Property is liable for a hook up penalty of \$35,000 if the previous owner defaulted under the service agreement;
  - ii. the non-judicial foreclosure terminated all interests in the foreclosed property that are junior to the Deed of Trust, including any interest of VP, Inc. to recover the penalty of \$35,000 for Thomas R. Vilelli's alleged defaults;
  - iii. VP, Inc. cannot hold a new owner of the Subject Property liable for the default of the previous owner;

- iv. VP, Inc. did not follow the procedures as articulated in the Protective Covenants, or under Idaho law, or under any alleged service agreement and thus is denied the right to withhold services from the Subject Property;
  - v. VP, Inc. cannot show that it enforced any default against Thomas R. Vilelli;
  - vi. VP, Inc. has acted inequitably, with unclean hands, and in bad faith by failing to enforce the default provisions against the previous owner, Thomas R. Vilelli, who was an officer together with Richard Vilelli in the development entity that empowered VP, Inc. to provide water and sewer service to the Subject Property, while attempting to enforce the default provisions against US Bank;
  - vii. VP, Inc. has acted inequitably, with unclean hands, and in bad faith by failing to require the previous owner, Thomas R. Vilelli to pay an initial \$35,000 hookup fee, but then requiring US Bank to pay the same initial \$35,000 hookup fee only after Thomas R. Vilelli's interest in the Subject Property was foreclosed; and
  - viii. VP, Inc.'s sole remedy is against the previous owner, Thomas R. Vilelli;
- b. declaration that VP, Inc. cannot now disconnect the sewer system from the Subject Property;
  - c. declaration that VP, Inc., must provide water and sewer services to the Subject Property.

**IV.**  
**SECOND CLAIM FOR RELIEF**  
**(Violation of Idaho Code section 61-303)**

48. VP, Inc. qualifies as a "water corporation" pursuant to Idaho Code section 61-125 and is therefore a "public utility" pursuant to Idaho Code section 61-129.

49. Pursuant to Idaho Code section 61-301, all charges made, demanded or received by any public utility must be just and reasonable, and every unjust or unreasonable charge is prohibited and unlawful.

50. Pursuant to Idaho Code section 61-303, all rules and regulations made by a public utility affecting or pertaining to its charges or service to the public must be just and reasonable.

51. The charges made, demanded or received by VP, Inc. for a \$35,000 hookup fee are not just or reasonable.

52. The rules and regulations promulgated by VP, Inc. for a \$35,000 hookup fee are not just or reasonable.

**PRAYER FOR RELIEF**

WHEREFORE, US Bank prays for judgment as follows:

1. For declaratory relief as alleged in paragraph 47 above;
2. For a determination that the hookup fee is not just or reasonable;
3. For costs of suit, including reasonable attorney's fees as allowable under

Idaho law; and

4. For such other equitable relief as this Court deems just and proper.

DATED THIS \_\_\_\_\_ day of December, 2011.

HAWLEY TROXELL ENNIS & HAWLEY LLP

By \_\_\_\_\_  
Geoffrey M. Wardle, ISB No. 5604  
Attorneys for Plaintiff

VERIFICATION

Janene Brennan, being first duly sworn upon oath, deposes and say; that he/she has read the within and foregoing VERIFIED COMPLAINT FOR DECLARATORY JUDGMENT; and that the statements therein contained are true.

Janene Brennan

**JANENE BRENNAN**  
Vice President Loan Documentation

STATE OF Iowa )  
County of Polk ) ss.

SUBSCRIBED AND SWORN before me this 14<sup>th</sup> day of December, 2011.

Mike Hudson  
Notary Public for ~~Idaho~~ Iowa  
Residing at Des Moines, Ia  
My commission expires 2/10/14



SO Shipment -- Label

From: (515) 324-4183      Origin ID: UKNA  
MIKE HUDSON  
WELLS FARGO HOME MORTGAGE  
1 HOME CAMPUS - 820 W WF TRAI  
X2303-013  
DES MOINES, IA 50328



Ship Date: 14DEC11  
ActWgt: 0.5 LB  
CAD: 101721506/WSX12350

Delivery Address Bar Code



SHIP TO: (208) 388-4958  
**JAKE MCGRADY**  
**HAWLEY TROXELL**  
877 W MAIN ST STE 1000  
PO BOX 1817  
BOISE, ID 83702

BILL SENDER

Ref #      0037826  
Invoice #  
PO #  
Dept #

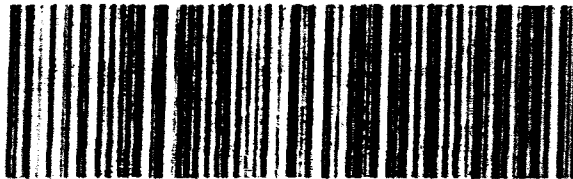
THU - 15 DEC A4  
STANDARD OVERNIGHT

TRK#      7978 4446 1500



83702  
ID-US  
BOI

**XX BOIA**



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**| LUKINS ANNIS |**

CELEBRATING | 40 | YEARS OF DEDICATION  
TO OUR CLIENTS AND COMMUNITY

601 E. Front Avenue, Suite 502  
Coeur d'Alene, ID 83814-5155  
t 208-667-0517  
f 208-664-4125 lukins.com

May 23, 2012  
VIA E-MAIL

Ms. Susan P. Weeks  
James, Vernon & Weeks, P.A.  
1626 Lincoln Way  
Coeur d'Alene, ID 83814

PETER J. SMITH IV  
Attorney  
Admitted In: Idaho  
psmith@lukins.com  
Direct Dial: 208-666-4108

Re: VP, Inc. - Water and Sewer Service to 3 Model Homes

Dear Susan:

Mountain West Bank has been approached by Pend Oreille Bonner Development ("POBD") regarding a lease of the 3 model homes. I understand the 3 model homes will be used as clubhouse facilities. This will allow the golf course to open.

As you know, VP, Inc. demands \$35,000 to hook the 3 model homes back up to the water and sewer system. Mountain West Bank asserts that no hook-up fees may be charged and/or those fees are unreasonable.

Setting the dispute aside, Mountain West Bank will sign the lease to allow the golf course to open if VP, Inc. will agree to hook up the 3 model homes to the system for this year. Mountain West Bank will pay the outstanding balance owed for the monthly charge of \$85.00/month and make those payments on time in the future.

Obviously, this is an urgent matter to get resolved. Mountain West Bank requests a response within 3 business days. The opening of the golf course hangs in the balance.

This action will not constitute a waiver by either party on the issue of the \$35,000 hook-up fee issue currently in litigation. This letter is governed by Idaho Rule of Evidence 408.

Very truly yours,


*Sent via email.*

PETER J. SMITH IV

PJS:pjs



Richard L. Stacey, ISB #6800  
Jeff R. Sykes, ISB #5058  
Chad M. Nicholson, ISB #7506  
McCONNELL WAGNER SYKES & STACEY <sup>PLLC</sup>  
827 East Park Boulevard, Suite 201  
Boise, Idaho 83712  
Telephone: 208.489.0100  
Facsimile: 208.489.0110  
[stacey@mwsslawyers.com](mailto:stacey@mwsslawyers.com)  
[sykes@mwsslawyers.com](mailto:sykes@mwsslawyers.com)  
[nicholson@mwsslawyers.com](mailto:nicholson@mwsslawyers.com)

FILED  
SEP 2 2015  
CLERK OF DISTRICT COURT  
BOISE, IDAHO  


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

DECLARATION OF C. DEAN SHAFER  
IN SUPPORT OF  
VALIANT IDAHO, LLC'S  
MOTION TO ALTER, AMEND AND/OR  
RECONSIDER ORDER FOR SALE OF  
REAL PROPERTY

Honorable Barbara A. Buchanan

Hearing:

September 2, 2015 – 11:00 a.m. PDST

DECLARATION OF C. DEAN SHAFER IN SUPPORT OF  
VALIANT IDAHO, LLC'S MOTION TO ALTER, AMEND AND/OR RECONSIDER  
ORDER FOR SALE OF REAL PROPERTY - Page 1

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**I, C. Dean Shafer, hereby state and declare:**

1. I am a Senior Title Officer/State Title Advisor at Pioneer Title Company ("Pioneer") in its Canyon County office located in Nampa, Idaho. I make this declaration based on my own personal knowledge.

2. I have been employed in the title industry for over 45 years and, during that time, I have held positions in a variety of capacities. My experience and credentials include, generally, the following:

a. Supervising title offices in both Nampa and Caldwell, Idaho, and, as Pioneer's State Title Advisor, instructing and advising personnel in all other Pioneer branch offices throughout the State of Idaho;

b. Reviewing real property legal descriptions and performing complex title examinations; and

c. Being retained to perform expert services and provide expert witness testimony related to complex title issues and the analysis of legal descriptions to identify the affected real property.

3. On May 19, 2015, I executed a Declaration in Support of Valiant Idaho, LLC's ("Valiant's") Motion for Entry of Final Judgment ("Shafer Judgment Decl."). I understand the Shafer Judgment Decl. was filed with this Court on or about said date.

4. Part of what I testified to in the Shafer Judgment Decl. was that I have reviewed and familiarized myself with the following documents in connection with the work I performed as an expert witness on behalf of Valiant:

**DECLARATION OF C. DEAN SHAFER IN SUPPORT OF  
VALIANT IDAHO, LLC'S MOTION TO ALTER, AMEND AND/OR RECONSIDER  
ORDER FOR SALE OF REAL PROPERTY - Page 2**

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- a. The 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 ("Valiant Redemption Deed"). A copy of the Valiant Redemption Deed is attached to the Shafer Judgment Decl. as Exhibit 1.
- b. The Mortgage, Assignment of Rents, Security Agreement, and Fixture Filing recorded March 15, 2007, as Instrument Nos. 724829 and 724834, Records of Bonner County, Idaho ("2007 RE Loans Mortgage"). A copy of the 2007 RE Loans Mortgage is attached to the Shafer Judgment Decl. as Exhibit 2.
- c. The Mortgage, Assignment of Rents, Security Agreement, and Fixture Filing recorded August 6, 2008, as Instrument Nos. 756394, 756395 and 756396, Records of Bonner County, Idaho ("Pensco Mortgage"). A copy of the Pensco Mortgage is attached to the Shafer Judgment Decl. as Exhibit 3.
- d. The Mortgage, Assignment of Rents, Security Agreement, and Fixture Filing recorded August 6, 2008, as Instrument Nos. 756397, 756398 and 756399, Records of Bonner County, Idaho ("MF08 Mortgage"). A copy of the MF08 Mortgage is attached to the Shafer Judgment Decl. as Exhibit 4.
- e. A legal description identifying certain real property located in Bonner County, Idaho ("Legal Description"). A copy of the Legal Description is attached to the Shafer Decl. as Exhibit 5.

5. I also testified to the following:

a. I have examined the Legal Description and compared it with the legal description attached to the Valiant Redemption Deed, the 2007 RE Loans Mortgage, the Pensco Mortgage and the MF08 Mortgage (“Valiant Encumbrances”).

b. The real property legally described on Exhibit 5 accurately describes the real property encumbered by the Valiant Encumbrances, subtracting the parcels released from the Valiant Encumbrances.

c. Valiant is entitled to foreclose the real property described by the Legal Description.

6. Valiant also retained my expert services to identify and legally describe each of the known lots/parcels that are included within the Legal Description. The individual lots/parcels are identified on Exhibit 1 to my Declaration in Support of Valiant’s Motion For an Order of Sale of Real Property (“Shafer Sale Decl.”), which was filed with this Court on or about July 21, 2015. The legal descriptions of these individual lots/parcels are set forth on Exhibit 2 to the Shafer Sale Decl.

7. I was further retained to review the Legal Description and the Valiant Encumbrances and identify each of the lots/parcels that are encumbered by: (a) the 2007 RE Loans Mortgage; (b) the Pensco Mortgage; and (c) the MF08 Mortgage. Several months prior to the hearing on the Motion For an Order of Sale of Real Property, I reviewed the Legal Description and the Valiant Encumbrances and advised counsel for Valiant that each of said liens encumber all of the lots/parcels included within the Legal Description.

**DECLARATION OF C. DEAN SHAFER IN SUPPORT OF  
VALIANT IDAHO, LLC’S MOTION TO ALTER, AMEND AND/OR RECONSIDER  
ORDER FOR SALE OF REAL PROPERTY - Page 4**

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8. After the hearing on the Motion for an Order of Sale of Real Property, I was advised by counsel for Valiant that the Court had ordered that the lots on which the wastewater treatment and sanitary water facilities and infrastructure are located shall be sold last. Because of the Court's decision, counsel for Valiant also asked that I re-examine the Legal Description and the Valiant Encumbrances to verify and make sure that all of the lots/parcels within the Legal Description are encumbered by all of the Valiant Encumbrances, specifically including, but not limited to, the lots on which the wastewater treatment and sanitary water facilities are constructed.

9. I have re-examined the Legal Description and the Valiant Encumbrances and discovered that some of the information that I previously provided counsel for Valiant is incorrect. The Valiant Encumbrances encumber the lots/parcels within the Legal Description as follows:

a. The 2007 RE Loans Mortgage encumbers the entire Legal Description and each and every lot/parcel within it.

b. The Pensco and MF08 Mortgages together encumber one hundred fifty-five (155) of the one hundred eighty-six (186) lots/parcels included within the Legal Description.

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**DECLARATION OF C. DEAN SHAFER IN SUPPORT OF  
VALIANT IDAHO, LLC'S MOTION TO ALTER, AMEND AND/OR RECONSIDER  
ORDER FOR SALE OF REAL PROPERTY - Page 5**

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c. As such, there are thirty one (31) lots/parcels that are encumbered by the 2007 RE Loans Mortgage but not encumbered by the Pensco or the MF08 Mortgage. These lots/parcels are legally described on Exhibit 2 to the Shafer Sale Decl. as:

Parcel 1	Parcel 105
Parcel 14	Parcel 106
Parcel 15	Parcel 107
Parcel 16	Parcel 109
Parcel 59	Parcel 112
Parcel 62	Parcel 122
Parcel 67	Parcel 132
Parcel 82	Parcel 133
Parcel 83	Parcel 141
Parcel 84	Parcel 142
Parcel 85	Parcel 143
Parcel 91	Parcel 164
Parcel 101	Parcel 168
Parcel 102	Parcel 169
Parcel 103	Parcel 170
Parcel 104	

10. Parcel 1 is the lot upon which the sewer lagoon and other wastewater treatment facilities and infrastructure are located. This is the lot that I understand that the court ordered should be sold last at the August 5, 2015 hearing date.

11. All of the testimony in the Shafer Judgment Decl. is true and correct.

12. All of the testimony in the Shafer Sale Decl. is true and correct.

13. Attached hereto as Exhibit A is a legal description identifying that certain real property located in Bonner County, Idaho encumbered by the Pensco Mortgage. This legal description does not include any of the lots that were released after said Mortgages were recorded.

**DECLARATION OF C. DEAN SHAFER IN SUPPORT OF  
VALIANT IDAHO, LLC'S MOTION TO ALTER, AMEND AND/OR RECONSIDER  
ORDER FOR SALE OF REAL PROPERTY - Page 6**

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14. Attached hereto as Exhibit B is a legal description identifying that certain real property located in Bonner County, Idaho encumbered by the Pensco Mortgage. This legal description does not include any of the lots that were released after said Mortgages were recorded.

**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 18<sup>th</sup> day of August 2015.

  
\_\_\_\_\_  
C. DEAN SHAFER

**DECLARATION OF C. DEAN SHAFER IN SUPPORT OF  
VALIANT IDAHO, LLC'S MOTION TO ALTER, AMEND AND/OR RECONSIDER  
ORDER FOR SALE OF REAL PROPERTY - Page 7**

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**CERTIFICATE OF SERVICE**

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

<p>Bruce A. Anderson, Esq. Elsaesser Jarzabek Anderson Elliott &amp; MacDonald, Chtd 320 East Neider Avenue, Suite 102 Coeur d' Alene, Idaho 83815 Telephone: 208.667.2900 Facsimile: 208.667.2150 <i>Counsel For Jacobson, Lazar and Sage Holdings</i></p>	<p>[ ] U.S. Mail [ ] Hand Delivered [ <input checked="" type="checkbox"/> ] Facsimile [ ] Overnight Mail [ <input checked="" type="checkbox"/> ] Electronic Mail <a href="mailto:brucea@ejame.com">brucea@ejame.com</a></p>
<p>Brent C. Featherston, Esq. Featherston Law Firm, Chtd 113 South Second Avenue Sandpoint, Idaho 83864 Telephone: 208.263.6866 Facsimile: 208.263.0400 <i>Counsel For Pensco/Mortgage Fund</i></p>	<p>[ ] U.S. Mail [ ] Hand Delivered [ <input checked="" type="checkbox"/> ] Facsimile [ ] Overnight Mail [ <input checked="" type="checkbox"/> ] Electronic Mail <a href="mailto:bef@featherstonlaw.com">bef@featherstonlaw.com</a></p>
<p>Gary A. Finney, Esq. Finney Finney &amp; Finney, P.A. 120 East Lake Street, Suite 317 Sandpoint, Idaho 83864 Telephone: 208.263.7712 Facsimile: 208.263.8211 <i>Counsel For J.V., LLC</i></p>	<p>[ ] U.S. Mail [ ] Hand Delivered [ <input checked="" type="checkbox"/> ] Facsimile [ ] Overnight Mail [ <input checked="" type="checkbox"/> ] Electronic Mail <a href="mailto:garvfinney@finneylaw.net">garvfinney@finneylaw.net</a></p>
<p>D. Toby McLaughlin, Esq. Berg &amp; McLaughlin 414 Church Street, Suite 203 Sandpoint, Idaho 83864 Telephone: 208.263.4748 Facsimile: 208.263.7557 <i>Counsel For Idaho Club HOA/Panhandle Mngmnt</i></p>	<p>[ ] U.S. Mail [ ] Hand Delivered [ <input checked="" type="checkbox"/> ] Facsimile [ ] Overnight Mail [ <input checked="" type="checkbox"/> ] Electronic Mail <a href="mailto:toby@sandpointlaw.com">toby@sandpointlaw.com</a></p>
<p>Susan P. Weeks, Esq. James, Vernon &amp; Weeks, PA 1626 Lincoln Way Coeur d'Alene, Idaho 83814 Telephone: 208.667.0683 Facsimile: 208.664.1684 <i>Counsel For VP Incorporated/North Idaho Resorts</i></p>	<p>[ ] U.S. Mail [ ] Hand Delivered [ <input checked="" type="checkbox"/> ] Facsimile [ ] Overnight Mail [ <input checked="" type="checkbox"/> ] Electronic Mail <a href="mailto:sweeks@jvwlaw.net">sweeks@jvwlaw.net</a></p>

DECLARATION OF C. DEAN SHAFER IN SUPPORT OF  
VALIANT IDAHO, LLC'S MOTION TO ALTER, AMEND AND/OR RECONSIDER  
ORDER FOR SALE OF REAL PROPERTY - Page 8

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With a copy viz Electronic Mail to:

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

bbuchanan@co.bonner.id.us  
sezenwa@bonnercountyid.gov

  
Richard L. Stacey

**DECLARATION OF C. DEAN SHAFER IN SUPPORT OF  
VALIANT IDAHO, LLC'S MOTION TO ALTER, AMEND AND/OR RECONSIDER  
ORDER FOR SALE OF REAL PROPERTY - Page 9**

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**Exhibit "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° 11' 33" West 953.40 feet (record per Instrument No. 457973 North 54° 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° 19' 29" West, 244.70 feet (record per Instrument No. 457973 = North 01° 07' 07" East, 244.28 feet); Thence South 88° 04' 08" West, 348.50 feet (record per instrument No. 457973 South 87° 52' 03" West, 348.49 feet); Thence South 01° 19' 12" West, 250.00 feet (record per instrument No. 457973 = South 01° 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° 34' 19" East 66.04 feet (record per Instrument No. 457973 = North 79° 46' 41" East, 66.62 feet); Thence on a curve to the right having a central angle of 05° 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° 47' 02" and an arc length of 282.99 feet) to the true point of beginning.**

**ALSO LESS a tract of land in the Southeast Quarter of the Southeast quarter (SE1/4 SE1/4) of Section 36, Township 58 North, Range 1 West of the Boise Meridian, Bonner County, Idaho, more particularly described as follows:**

**Commencing at a point on the East line of said Section 36, which is N 00° 08' 06" E, 563.94 feet from the Southeast corner of the Section; thence, perpendicular to the East line of the Section, N 89° 51' 54" W, 1103.43 feet to the Southwest corner of Instrument Number 457973 on the Northerly right of way of Highway 200 and the True Point of Beginning; thence, along the Western boundary of Instrument No. 457973, N 01° 25' 02" E, 99.41 feet, to a 5/8 inch rebar and plastic cap stamped PLS 3628; thence S 32° 20' 51" W, 132.00 feet, to a 5/8 inch rebar and plastic cap stamped PLS 3628 on the Northerly right of way of Highway 200; thence, along said right of way, N 79° 54' 11" E, 69.24 feet, to the True Point of Beginning.**

**AND ALSO LESS a tract of land in the Southeast Quarter of the Southeast quarter (SE1/4 SE1/4) of Section 36, Township 58 North, Range 1 West of the Boise Meridian, Bonner County, Idaho, more particularly described as follows:**

Commencing at a point on the East line of said Section 36, which is N 00° 08' 06" E, 582.67 feet from the Southeast corner of the Section; thence, perpendicular to the East line of the Section, N 89° 51' 54" W, 754.63 feet to the Southeast corner of Instrument Number 457973 on the Northerly right of way of Highway 200 and the True Point of Beginning; thence, along the Eastern boundary of that property described in Instrument Number 457973, N 01° 19' 29" E, 244.70 feet, to the Northeast corner of that property described in Instrument Number 457973; thence, along the Northern boundary of Instrument Number 457973, S 88° 04' 08" W, 77.25 feet, to a 5/8 inch rebar and plastic cap stamped PLS 3628; thence N 67° 17' 36" E, 84.44 feet, to a 5/8 inch rebar and plastic cap stamped PLS 3628; thence N 88° 04' 08" E, 41.01 feet, to a 5/8 inch rebar and plastic cap stamped PLS 3628; thence S 01° 19' 29" W, 277.55 feet, to a 5/8 inch rebar and plastic cap stamped PLS 3628 on the Northerly right of way of Highway No. 200; thence, along said Highway right of way on a non-tangential curve to the left (radial bearing = S 02° 28' 05" W), having a central angle of 00° 50' 13" and a radius of 2803.37 feet, for an arc distance of 40.95 feet (radial = S 01° 38' 12" W, chord = N 87° 56' 41" W, 40.95 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° 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, 168.45 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 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° 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° 14' 00" East along said East right of way of the old country road, a distance of 171.80 feet; thence continuing South 14° 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° 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° 58' 33" East, a distance of 336.00 feet to an intersection with the West high bank of Dry Creek; thence Northeasterly along said West high bank, a distance of 578 feet, more or less, to an intersection with the South right of way of said State Highway No. 200; thence Westerly along said South right of way the following six (6) courses:

- 1) Around a curve to the left with a radius of 2643.37 feet, a distance of 48.44 feet (the chord of which bears South 88° 02' 31" West, a distance of 48.43 feet);
- 2) North 79° 07' 52" West, 100.50 feet;
- 3) Around a curve to the left with a radius of 2668.37 feet, a distance of 247.30 feet (the chord of which bears South 82° 54' 00" West, a distance of 247.24 feet) to a P.S.C.;
- 4) Along a spiral curve (S=2° 12.3'), a distance of 207.68 feet (the chord of which bears South 70° 27' 12" West, a distance of 207.67 feet) to a P.S.;
- 5) South 69° 43' 21" West, 328.60 feet;
- 6) South 61° 11' 30" West, 119.79 feet to the point of beginning.

AND TOGETHER WITH any portion of the old Highway right of way abandonment, described in that certain 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.

**PARCEL 3:**

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

Beginning at a point on the West line of said Government Lot 2 (West line of Section 31) which is South 00° 07' 21" West, 200.00 feet from the Northwest corner of said Government Lot 2; Thence parallel to the North line of Government Lot 2, South 89° 06' 38" East (record = South 89° 06' 55" East) 562.61 feet (record 562.58 feet); Thence North 47° 03' 53" West, 43.24 feet (record 43.21 feet); Thence on a curve to the right having a central angle of 19° 17' 35" (record = 19° 17' 39") and a radius of 650.32 feet, for an arc distance of 218.98 feet (chord = North 37° 25' 03" West 271.95 feet) to the North line of Government Lot 2; Thence along said North line North 89° 06' 38" West (record = North 89° 06' 55" West) 68.07 feet; Thence South 27° 14' 49" East 26.15 feet; Thence on a curve to the left having a central angle of 09° 49' 00" and a radius of 710.32 feet, for an arc distance of 121.70 feet (chord South 32° 09' 19" East, 121.55 feet); Thence South 80° 25' 01" West 412.81 feet (record = South 80° 24' 50" West 412.82 feet) to the point of beginning.

EXCEPTING from Parcels 1, 2 and 3, 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.

**EXCEPTING from Parcels 1, 2 and 3 above any portion lying within the bounds of the following plats:**

**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.**

**REPLAT OF BLOCKS 15 AND 16 OF THE REPLAT OF GOLDEN TEE ESTATES & GOLDEN TEE ESTATES 1ST ADDITION AND UNPLATTED LAND, according to the plat thereof, recorded in Book 9 of Plats, page 5, records of Bonner County, Idaho.**

**REPLAT OF LOTS 5 & 6, BLOCK 22 AND LOT 20, BLOCK 20, REPLAT OF GOLDEN TEE ESTATES & GOLDEN TEE ESTATES 1ST ADDITION AND UNPLATTED LAND, according to the plat thereof, recorded in Book 9 of Plats, page 6, records of Bonner County, Idaho.**

**PARCEL 4:**

**Block 5A; Lot 1A, Block 11; Lots 1A, 2A and 3A, Block 12; Lot 1, Block 14A; Lot 1, Block 17; Block 18, of 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 5:**

**Lot 1A, Block 15 and Block 16A of A REPLAT OF BLOCKS 15 AND 16 OF THE REPLAT OF GOLDEN TEE ESTATES & GOLDEN TEE ESTATES 1ST ADDITION AND UNPLATTED LAND, according to the plat thereof, recorded in Book 9 of Plats, page 5, records of Bonner County, Idaho.**

**PARCEL 6:**

**That part of the Southeast quarter of the Northeast quarter lying North and West of Fairway View Drive of Section 36, Township 58 North, Range 1 West of the Boise Meridian, Bonner County, Idaho.**

and

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

**Beginning at the Southeast corner of the East half of the Northeast quarter of the Southwest quarter of said Section 36; Thence along the South line of the East half of the Northeast quarter of the Southwest quarter, North 89° 36' 27" West, 661.51 feet (record = North 89° 37' 10" West, 661.57 feet to the Southwest corner of the East half of the Northeast quarter of the Southwest quarter; Thence along the West line of the East half of the Northeast quarter of the Southwest quarter, North 00° 10' 22" East 856.45 feet (record = North 00° 09' 25" East, 856.45 feet); Thence North 89° 10' 53" East, 30.21 feet (record = East, 29.58 feet) to the Westerly right of way of Berry Drive (shown as Olympic Drive on the Second Addition Plat to Hidden Lakes); Thence Southeasterly along said right of way the following six (6) courses:**

**1. On a non-tangential curve to the left (radial bearing = North 87° 39' 13" East) having a central angle of 36° 44' 06" and a radius of 131.00 feet for an arc distance of 83.99 feet (record = 84.54 feet) (chord = South 20° 42' 50" East, 82.56 feet - record = South 20° 37' 27" East, 83.08 feet);**

2. Thence South 39° 04' 53" East, 419.67 feet (record = South 39° 06' 45" East, 419.68 feet);

3. Thence on a curve to the left having a central angle of 11° 42' 45" and a radius of 530.00 feet for an arc distance of 108.34 feet (chord = South 44° 56' 16" East, 108.15 feet - record = South 44° 58' 08" East, 108.16 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 7:**

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  $55^{\circ} 41' 27''$  and a radius of 90.00 feet for an arc distance of 87.48 feet (chord = South  $00^{\circ} 46' 05''$  East, 84.08 feet - record = South  $00^{\circ} 47' 56''$  East, 84.08 feet);

5. Thence South  $27^{\circ} 04' 39''$  West, 170.14 feet;

6. Thence on a curve to the right having a central angle of  $71^{\circ} 37' 11''$  and a radius of 60.0 feet, for an arc distance of 75.00 feet (chord = South  $08^{\circ} 43' 57''$  East, 70.21 feet);

7. Thence South  $44^{\circ} 32' 32''$  East, 50.94 feet;

8. Thence on a curve to the right having a central angle of  $69^{\circ} 10' 16''$  and a radius of 25.00 feet, for an arc distance of 30.18 feet (chord = South  $09^{\circ} 57' 24''$  East, 28.38 feet - record = South  $11^{\circ} 23' 51''$  East, 30.18 feet) to a point on the West right of way of Lower Pack River Road;

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

1. on a non-tangential curve to the right having a central angle of  $04^{\circ} 15' 19''$  and a radius of 1180.00 feet for an arc distance of 87.69 feet (chord = South  $22^{\circ} 30' 38''$  West, 87.67 feet);

2. Thence South  $20^{\circ} 22' 44''$  West, 114.57 feet;

3. Thence on a curve to the left having a central angle of  $22^{\circ} 29.50''$  and a radius of 502.65 feet, for an arc distance of 197.36 feet (chord = South  $09^{\circ} 07' 49''$  West, 196.10 feet);

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

Thence along the highway right of way, South  $77^{\circ} 42' 28''$  West, 72.14 feet (record = South  $78^{\circ} 15' 06''$  West, 71.11 feet); Thence continuing along the Highway right of way, South  $69^{\circ} 44' 57''$  West, 262.22 feet (record = South  $69^{\circ} 43' 16''$  West, 261.65 feet) to the West line of the Southwest quarter of the Southeast quarter of said Section 36; Thence along the West line of the Southwest quarter of the Southeast quarter, North  $00^{\circ} 08' 19''$  East, 1223.36 feet (record = North  $00^{\circ} 07' 13''$  East, 1223.17 feet) to the point of beginning.

**PARCEL 8:**

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

**LESS the following described property:**

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

Commencing at the Southeast corner of said Section 36; Thence along the East line of Section 36, North  $00^{\circ} 08' 06''$  East, 460.00 feet; Thence perpendicular to the East line of the Section, North  $89^{\circ} 51' 54''$  West, 568.00 feet to the true point of beginning; Thence South  $47^{\circ} 08' 06''$  West, 250.00 feet; Thence South  $42^{\circ} 51' 54''$  East, 348.50 feet; Thence North  $47^{\circ} 48' 06''$  East, 250.00 feet; Thence North  $42^{\circ} 51' 54''$  West, 348.50 feet to the true point of beginning.

**AND**

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

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

**Beginning at a right of way monument on the South right of way of State Highway No. 200, from which the Northwest corner of said Section 2 bears North 25° 54' 43" West, 798.00 feet (record = North 26° 28' 08" West, 798.11 feet; Thence along the South right of way of the Highway, North 68° 35' 39" East, 266.10 feet; Thence continuing along the Highway right of way, on a curve to the left (radial bearing = North 14° 03' 28" West) having a central angle of 00° 08' 55" and a radius of 5799.58 feet for an arc distance of 15.03 feet (chord = North 75° 52' 05" East, 15.03 feet - total distance along right of way from point of beginning 281.13 feet - record = 281.13 feet); Thence leaving said right of way South 00° 04' 10" West, 725.53 feet; Thence North 89° 14' 40" West, 330.00 feet; Thence North 00° 03' 26" West 607.20 feet, to the Southerly right of way of State Highway No. 200; Thence along said right of way North 79° 11' 55" East, 70.38 feet to the true point of beginning.**

**AND**

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

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

**Beginning at the North quarter corner of said Section 6, Township 57 North, Range 1 East of the Boise Meridian, Bonner County, Idaho; Thence South 1669.70 feet to Pack River and the True Point of Beginning; Thence South 66° 47' West, 203 feet; Thence South 69° 54' West 165.3 feet; Thence South 79° 56' West, 242.5 feet; Thence South 01° 11' East, 146 feet; Thence South 25° 18' East, 118.20 feet; Thence South 54° 29' East, 137.2 feet; Thence South 68° 10' East, 267.1 feet; Thence North 535.6 feet to a point 1669.7 feet South of the North quarter corner of Section 6.**

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

**Beginning at a point on the Southerly right of way of State Highway No. 200 which is South 55° 03' 21" East, 2460.29 feet from the Northwest corner of said Section 6 (record South 55° 14' East, 2451.3); Thence South 14° 53' 00" East, 223.22 feet (record); Thence South 04° 43' 00" East, 640.00 feet (record); Thence South 39° 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,  
RePlat of Blocks 15 and 16 of the RePlat of Golden Tee Estates & Golden Tee Estates 1st Addition and Unplatted Land, recorded in Book 9 of Plats, page 5,  
RePlat of Lots 5 and 6, Block 22 and Lot 20, Block 20, RePlat of Golden Tee Estates & Golden Tee Estates 1st Addition and Unplatted Land, recorded in Book 9 of Plats, page 6,  
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,  
Golden Tee Estates 6th Addition, recorded in Book 8 of Plats, Page 82,  
Golden Tee Estates 7th Addition, recorded in Book 9 of Plats, page 13,  
Golden Tee Estates 8th Addition, recorded in Book 9 of Plats, page 7.**

**PARCEL 9:**

**Lots 14 and 15, Block 2, Lot 5A, Block 4, Lot 4, Block 7, Lot 13A, Block 13, Lots 1 and 2, Block 19, Lots 1, 2, 3, 11, 12, 13, 14 and 16, Block 20; Lot 4, Block 22 of 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 2A, Block 15 of A REPLAT OF BLOCKS 15 AND 16 OF THE REPLAT OF GOLDEN TEE ESTATES & GOLDEN TEE ESTATES 1ST ADDITION AND UNPLATTED LAND, according to the plat thereof, recorded in Book 9 of Plats, page 5, records of Bonner County, Idaho.**

**PARCEL 11:**

**Lot 20A, Block 20 and Lots 5A and 6A, Block 22, A REPLAT OF LOTS 5 & 6, BLOCK 22 AND LOT 20, BLOCK 20, REPLAT OF GOLDEN TEE ESTATES & GOLDEN TEE ESTATES 1ST ADDITION AND UNPLATTED LAND, according to the plat thereof, recorded in Book 9 of Plats, page 6, records of Bonner County, Idaho.**

**PARCEL 12:**

**Lot 21A, Block 2, of REPLAT OF LOTS 20 AND 21, BLOCK 2 REPLAT OF GOLDEN TEE ESTATES & GOLDEN TEE ESTATES 1ST ADDITION, according to the plat thereof, recorded in Book 9 of Plats, page 81, records of Bonner County, Idaho.**

**PARCEL 13:**

**Lots 2, 4, 5, 6, 7 and 8, Block 1, Lots 2, 3, 5, 8 and 10, Block 2 of GOLDEN TEE ESTATES 2nd ADDITION, according to the plat thereof, recorded in Book 8 of Plats, page 79, records of Bonner County, Idaho.**

**PARCEL 14:**

**Lots 1, 5, 8, 9, 10, 11, 12, 13, 14, 16, and 17, Block 1; Lot 1, Block 2; Lots 2, 3, 4, 5, 6, 7 and 8, Block 3; Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12, Block 4; Lots 1 and 2, Block 5; Lots 3 and 4, Block 6; Lots 6 and 10, Block 7; Lots 1, 2, 4 and 6, Block 8; Lots 5, Block 9 of GOLDEN TEE ESTATES 3rd ADDITION, according to the plat thereof, recorded in Book 8 of Plats, page 78, records of Bonner County, Idaho.**

**PARCEL 15:**

**Lot 6, Block 1; Lot 1, Block 3; Lots 1, 2, 3, 6, 8 and 9, Block 4; Lots 1 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.**

**PARCEL 16:**

**Lots 1, 5, 7 and 9, Block 1; Lots 1, 5, 8, 9 and 11, Block 2, GOLDEN TEE ESTATES 5TH ADDITION, according to the plat thereof, recorded in Book 8 of Plats, page 81, records of Bonner County, Idaho.**

**PARCEL 17:**

**Lots 2 and 8, Block 1; Lots 2, 3 and 4, Block 2; Lot 1, Block 3; Lots 2, 3 and 4, Block 4 of GOLDEN TEE ESTATES 6TH ADDITION, according to the plat thereof, recorded in Book 8 of Plats, page 82, records of Bonner County, Idaho.**

**PARCEL 18:**

**Lots 1, 2, 3, 5, 6 and 7, Block 1; Lots 1, 2, 4, 5, 6, 8 and 9, Block 2 of GOLDEN TEE ESTATES 7TH ADDITION, according to the plat thereof, recorded in Book 9 of Plats, page 13, records of Bonner County, Idaho.**

**PARCEL 19:**

**Intentionally Omitted**

**PARCEL 20:**

**Lots 1A, 2A and 4A, Block 1, REPLAT OF LOTS 1 THROUGH 4, BLOCK 1 AND BLOCK 16A, REPLAT OF BLOCKS 15 & 16 OF THE REPLAT OF GOLDEN TEE ESTATES & GOLDEN TEE ESTATES 1ST ADDITION, according to the plat thereof, recorded in Book 9 of Plats, page 82, records of Bonner County, Idaho.**

**PARCEL 21:**

**Lot 2, Block 3 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 22:**

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

**PARCEL 23:**

**Lots 2, 3, 4 and 5, 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.**

**Exhibit "B"**

**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° 11' 33" West 953.40 feet (record per Instrument No. 457973 North 54° 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° 19' 29" West, 244.70 feet (record per Instrument No. 457973 = North 01° 07' 07" East, 244.28 feet); Thence South 88° 04' 08" West, 348.50 feet (record per instrument No. 457973 South 87° 52' 03" West, 348.49 feet); Thence South 01° 19' 12" West, 250.00 feet (record per instrument No. 457973 = South 01° 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° 34' 19" East 66.04 feet (record per Instrument No. 457973 = North 79° 46' 41" East, 66.62 feet); Thence on a curve to the right having a central angle of 05° 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° 47' 02" and an arc length of 282.99 feet) to the true point of beginning.**

**ALSO LESS a tract of land in the Southeast Quarter of the Southeast quarter (SE1/4 SE1/4) of Section 36, Township 58 North, Range 1 West of the Boise Meridian, Bonner County, Idaho, more particularly described as follows:**

**Commencing at a point on the East line of said Section 36, which is N 00° 08' 06" E, 563.94 feet from the Southeast corner of the Section; thence, perpendicular to the East line of the Section, N 89° 51' 54" W, 1103.43 feet to the Southwest corner of Instrument Number 457973 on the Northerly right of way of Highway 200 and the True Point of Beginning; thence, along the Western boundary of Instrument No. 457973, N 01° 25' 02" E, 99.41 feet, to a 5/8 inch rebar and plastic cap stamped PLS 3628; thence S 32° 20' 51" W, 132.00 feet, to a 5/8 inch rebar and plastic cap stamped PLS 3628 on the Northerly right of way of Highway 200; thence, along said right of way, N 79° 54' 11" E, 69.24 feet, to the True Point of Beginning.**

**AND ALSO LESS a tract of land in the Southeast Quarter of the Southeast quarter (SE1/4 SE1/4) of Section 36, Township 58 North, Range 1 West of the Boise Meridian, Bonner County, Idaho, more particularly described as follows:**

Commencing at a point on the East line of said Section 36, which is N 00° 08' 06" E, 582.67 feet from the Southeast corner of the Section; thence, perpendicular to the East line of the Section, N 89° 51' 54" W, 754.63 feet to the Southeast corner of Instrument Number 457973 on the Northerly right of way of Highway 200 and the True Point of Beginning; thence, along the Eastern boundary of that property described in Instrument Number 457973, N 01° 19' 29" E, 244.70 feet, to the Northeast corner of that property described in Instrument Number 457973; thence, along the Northern boundary of Instrument Number 457973, S 88° 04' 08" W, 77.25 feet, to a 5/8 inch rebar and plastic cap stamped PLS 3628; thence N 67° 17' 36" E, 84.44 feet, to a 5/8 inch rebar and plastic cap stamped PLS 3628; thence N 88° 04' 08" E, 41.01 feet, to a 5/8 inch rebar and plastic cap stamped PLS 3628; thence S 01° 19' 29" W, 277.55 feet, to a 5/8 inch rebar and plastic cap stamped PLS 3628 on the Northerly right of way of Highway No. 200; thence, along said Highway right of way on a non-tangential curve to the left (radial bearing = S 02° 28' 05" W), having a central angle of 00° 50' 13" and a radius of 2803.37 feet, for an arc distance of 40.95 feet (radial = S 01° 38' 12" W, chord = N 87° 56' 41" W, 40.95 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° 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, 168.45 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 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° 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° 14' 00" East along said East right of way of the old country road, a distance of 171.80 feet; thence continuing South 14° 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° 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° 58' 33" East, a distance of 336.00 feet to an intersection with the West high bank of Dry Creek; thence

Northeasterly along said West high bank, a distance of 578 feet, more or less, to an intersection with the South right of way of said State Highway No. 200; thence Westerly along said South right of way the following six (6) courses:

- 1) Around a curve to the left with a radius of 2643.37 feet, a distance of 48.44 feet (the chord of which bears South 88° 02' 31" West, a distance of 48.43 feet);
- 2) North 79° 07' 52" West, 100.50 feet;
- 3) Around a curve to the left with a radius of 2668.37 feet, a distance of 247.30 feet (the chord of which bears South 82° 54' 00" West, a distance of 247.24 feet) to a P.S.C.;
- 4) Along a spiral curve (S=2° 12.3'), a distance of 207.68 feet (the chord of which bears South 70° 27' 12" West, a distance of 207.67 feet) to a P.S.;
- 5) South 69° 43' 21" West, 328.60 feet;
- 6) South 61° 11' 30" West, 119.79 feet to the point of beginning.

AND TOGETHER WITH any portion of the old Highway right of way abandonment, described in that certain 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.

**PARCEL 3:**

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

Beginning at a point on the West line of said Government Lot 2 (West line of Section 31) which is South 00° 07' 21" West, 200.00 feet from the Northwest corner of said Government Lot 2; Thence parallel to the North line of Government Lot 2, South 89° 06' 38" East (record = South 89° 06' 55" East) 562.61 feet (record 562.58 feet); Thence North 47° 03' 53" West, 43.24 feet (record 43.21 feet); Thence on a curve to the right having a central angle of 19° 17' 35" (record = 19° 17' 39") and a radius of 650.32 feet, for an arc distance of 218.98 feet (chord = North 37° 25' 03" West 271.95 feet) to the North line of Government Lot 2; Thence along said North line North 89° 06' 38" West (record = North 89° 06' 55" West) 68.07 feet; Thence South 27° 14' 49" East 26.15 feet; Thence on a curve to the left having a central angle of 09° 49' 00" and a radius of 710.32 feet, for an arc distance of 121.70 feet (chord South 32° 09' 19" East, 121.55 feet); Thence South 80° 25' 01" West 412.81 feet (record = South 80° 24' 50" West 412.82 feet) to the point of beginning.

EXCEPTING from Parcels 1, 2 and 3, 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.**

**EXCEPTING from Parcels 1, 2 and 3 above any portion lying within the bounds of the following plats:**

**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.**

**REPLAT OF BLOCKS 15 AND 16 OF THE REPLAT OF GOLDEN TEE ESTATES & GOLDEN TEE ESTATES 1ST ADDITION AND UNPLATTED LAND, according to the plat thereof, recorded in Book 9 of Plats, page 5, records of Bonner County, Idaho.**

**REPLAT OF LOTS 5 & 6, BLOCK 22 AND LOT 20, BLOCK 20, REPLAT OF GOLDEN TEE ESTATES & GOLDEN TEE ESTATES 1ST ADDITION AND UNPLATTED LAND, according to the plat thereof, recorded in Book 9 of Plats, page 6, records of Bonner County, Idaho.**

**PARCEL 4:**

**Block 5A; Lot 1A, Block 11; Lots 1A, 2A and 3A , Block 12; Lot 1, Block 14A; Lot 1, Block 17; Block 18, of 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 5:**

**Lot 1A, Block 15 and Block 16A of A REPLAT OF BLOCKS 15 AND 16 OF THE REPLAT OF GOLDEN TEE ESTATES & GOLDEN TEE ESTATES 1ST ADDITION AND UNPLATTED LAND, according to the plat thereof, recorded in Book 9 of Plats, page 5, records of Bonner County, Idaho.**

**PARCEL 6:**

**That part of the Southeast quarter of the Northeast quarter lying North and West of Fairway View Drive of Section 36, Township 58 North, Range 1 West of the Boise Meridian, Bonner County, Idaho.**

**and**

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

**Beginning at the Southeast corner of the East half of the Northeast quarter of the Southwest quarter of said Section 36; Thence along the South line of the East half of the Northeast quarter of the Southwest quarter, North 89° 36' 27" West, 661.51 feet (record = North 89° 37' 10" West, 661.57 feet to the Southwest corner of the East half of the Northeast quarter of the Southwest quarter; Thence along the West line of the East half of the Northeast quarter of the Southwest quarter, North 00° 10' 22" East 856.45 feet (record = North 00° 09' 25" East, 856.45 feet); Thence North 89° 10' 53" East, 30.21 feet (record = East, 29.58 feet) to the Westerly right of way of Berry Drive (shown as Olympic Drive on the Second Addition Plat to Hidden Lakes); Thence Southeasterly along said right of way the following six (6) courses:**

1. On a non-tangential curve to the left (radial bearing = North 87° 39' 13" East) having a central angle of 36° 44' 06" and a radius of 131.00 feet for an arc distance of 83.99 feet (record = 84.54 feet) (chord = South 20° 42' 50" East, 82.56 feet - record = South 20° 37' 27" East, 83.08 feet);
  2. Thence South 39° 04' 53" East, 419.67 feet (record = South 39° 06' 45" East, 419.68 feet);
  3. Thence on a curve to the left having a central angle of 11° 42' 45" and a radius of 530.00 feet for an arc distance of 108.34 feet (chord = South 44° 56' 16" East, 108.15 feet - record = South 44° 58' 08" East, 108.16 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 7:**

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

Beginning at the Northwest corner of said Southwest quarter of the Southeast quarter of Section 36; Thence South 89° 36' 03" East 60.37 feet (record = South 89° 37' 09" East, 59.55 feet) to the Westerly right of way of Berry Drive (shown as Olympic Drive on the Plat of the Second Addition to Hidden Lakes); thence along said right of way for the following four (4) courses;

1. South 27° 04' 48" East, 299.95 feet (record = South 27° 06' 40" east, 300.83 feet);
2. North 62° 55' 12" East, 60.00 feet (record = North 62° 53' 20" East, 60.00 feet);
3. North 27° 04' 48" West, 125.34 feet (record = North 27° 06' 40" West, 125.34 feet);
4. Thence on a curve to the right having a central angle of 79° 01' 27" and a radius of 25.00 feet, for an arc distance of 34.48 feet (chord = North 12° 25' 55" East, 31.81 feet - record = North 12° 24' 03" East, 31.81 feet) to a point on the Southerly right of way of Fairway View Drive, as shown on the Plat of First Addition to Hidden Lakes; Thence along said right of way for the following eight (8) courses:
  1. North 51° 56' 39" East, 74.67 feet (record = North 51° 54' 47" East, 74.67 feet);
  2. Thence on a curve to the right having a central angle of 99° 26' 33" and a radius of 70.00 feet, for an arc distance of 121.49 feet (chord = South 78° 20' 05" East, 106.81 feet - record = South 78° 21' 57" East, 106.81 feet);

3. Thence South 28° 36' 48" East, 154.03 feet (record = South 28° 38' 40" East, 154.03 feet);

4. Thence on a curve to the right having a central angle of 55° 41' 27" and a radius of 90.00 feet for an arc distance of 87.48 feet (chord = South 00° 46' 05" East, 84.08 feet - record = South 00° 47' 56" East, 84.08 feet);

5. Thence South 27° 04' 39" West, 170.14 feet;

6. Thence on a curve to the right having a central angle of 71° 37' 11" and a radius of 60.0 feet, for an arc distance of 75.00 feet (chord = South 08° 43' 57" East, 70.21 feet);

7. Thence South 44° 32' 32" East, 50.94 feet;

8. Thence on a curve to the right having a central angle of 69° 10' 16" and a radius of 25.00 feet, for an arc distance of 30.18 feet (chord = South 09° 57' 24" East, 28.38 feet - record = South 11° 23' 51" East, 30.18 feet) to a point on the West right of way of Lower Pack River Road;

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

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

2. Thence South 20° 22' 44" West, 114.57 feet;

3. Thence on a curve to the left having a central angle of 22° 29. 50" and a radius of 502.65 feet, for an arc distance of 197.36 feet (chord = South 09° 07' 49" West, 196.10 feet);

4. Thence South 02° 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° 42' 28" West, 72.14 feet (record = South 78° 15' 06" West, 71.11 feet); Thence continuing along the Highway right of way, South 69° 44' 57" West, 262.22 feet (record = South 69° 43' 16" West, 261.65 feet) to the West line of the Southwest quarter of the Southeast quarter of said Section 36; Thence along the West line of the Southwest quarter of the Southeast quarter, North 00° 08' 19" East, 1223.36 feet (record = North 00° 07' 13" East, 1223.17 feet) to the point of beginning.

**PARCEL 8:**

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° 08' 06" East, 460.00 feet; Thence perpendicular to the East line of the Section, North 89° 51' 54" West, 568.00 feet to the true point of beginning; Thence South 47° 08' 06" West, 250.00 feet; Thence South 42° 51' 54" East, 348.50 feet; Thence North 47° 48' 06" East, 250.00 feet; Thence North 42° 51' 54" West, 348.50 feet to the true point of beginning.

**AND**

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

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

Beginning at a right of way monument on the South right of way of State Highway No. 200, from which the Northwest corner of said Section 2 bears North 25° 54' 43" West, 798.00 feet (record = North 26° 28' 08" West, 798.11 feet; Thence along the South right of way of the Highway, North 68° 35' 39" East, 266.10 feet; Thence continuing along the Highway right of way, on a curve to the left (radial bearing = North 14° 03' 28" West) having a central angle of 00° 08' 55" and a radius of 5799.58 feet for an arc distance of 15.03 feet (chord = North 75° 52' 05" East, 15.03 feet - total distance along right of way from point of beginning 281.13 feet - record = 281.13 feet); Thence leaving said right of way South 00° 04' 10" West, 725.53 feet; Thence North 89° 14' 40" West, 330.00 feet; Thence North 00° 03' 26" West 607.20 feet, to the Southerly right of way of State Highway No. 200; Thence along said right of way North 79° 11' 55" East, 70.38 feet to the true point of beginning.

**AND**

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

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

Beginning at the North quarter corner of said Section 6, Township 57 North, Range 1 East of the Boise Meridian, Bonner County, Idaho; Thence South 1669.70 feet to Pack River and the True Point of Beginning; Thence South 66° 47' West, 203 feet; Thence South 69° 54' West 165.3 feet; Thence South 79° 56' West, 242.5 feet; Thence South 01° 11' East, 146 feet; Thence South 25° 18' East, 118.20 feet; Thence South 54° 29' East, 137.2 feet; Thence South 68° 10' East, 267.1 feet; Thence North 535.6 feet to a point 1669.7 feet South of the North quarter corner of Section 6.

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

**Beginning at a point on the Southerly right of way of State Highway No. 200 which is South 55° 03' 21" East, 2460.29 feet from the Northwest corner of said Section 6 (record South 55° 14' East, 2451.3); Thence South 14° 53' 00" East, 223.22 feet (record); Thence South 04° 43' 00" East, 640.00 feet (record); Thence South 39° 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,  
RePlat of Blocks 15 and 16 of the RePlat of Golden Tee Estates & Golden Tee Estates 1st Addition and Unplatted Land, recorded in Book 9 of Plats, page 5,  
RePlat of Lots 5 and 6, Block 22 and Lot 20, Block 20, RePlat of Golden Tee Estates & Golden Tee Estates 1st Addition and Unplatted Land, recorded in Book 9 of Plats, page 6,  
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,  
Golden Tee Estates 6th Addition, recorded in Book 8 of Plats, Page 82,  
Golden Tee Estates 7th Addition, recorded in Book 9 of Plats, page 13,  
Golden Tee Estates 8th Addition, recorded in Book 9 of Plats, page 7.**

**PARCEL 9:**

**Lots 14 and 15, Block 2, Lot 5A, Block 4, Lot 4, Block 7, Lot 13A, Block 13, Lots 1 and 2, Block 19, Lots 1, 2, 3, 11, 12, 13, 14 and 16, Block 20; Lot 4, Block 22 of 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 2A, Block 15 of A REPLAT OF BLOCKS 15 AND 16 OF THE REPLAT OF GOLDEN TEE ESTATES & GOLDEN TEE ESTATES 1ST ADDITION AND UNPLATTED LAND, according to the plat thereof, recorded in Book 9 of Plats, page 5, records of Bonner County, Idaho.**

**PARCEL 11:**

**Lot 20A, Block 20 and Lots 5A and 6A, Block 22, A REPLAT OF LOTS 5 & 6, BLOCK 22 AND LOT 20, BLOCK 20, REPLAT OF GOLDEN TEE ESTATES & GOLDEN TEE ESTATES 1ST ADDITION AND UNPLATTED LAND, according to the plat thereof, recorded in Book 9 of Plats, page 6, records of Bonner County, Idaho.**

**PARCEL 12:**

**Lot 21A, Block 2, of REPLAT OF LOTS 20 AND 21, BLOCK 2 REPLAT OF GOLDEN TEE ESTATES & GOLDEN TEE ESTATES 1ST ADDITION, according to the plat thereof, recorded in Book 9 of Plats, page 81, records of Bonner County, Idaho.**

**PARCEL 13:**

**Lots 2, 4, 5, 6, 7 and 8, Block 1, Lots 2, 3, 5, 8 and 10, Block 2 of GOLDEN TEE ESTATES 2nd ADDITION, according to the plat thereof, recorded in Book 8 of Plats, page 79, records of Bonner County, Idaho.**

**PARCEL 14:**

**Lots 1, 5, 8, 9, 10, 11, 12, 13, 14, 16, and 17, Block 1; Lot 1, Block 2; Lots 2, 3, 4, 5, 6, 7 and 8, Block 3; Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12, Block 4; Lots 1 and 2, Block 5; Lots 3 and 4, Block 6; Lots 6 and 10, Block 7; Lots 1, 2, 4 and 6, Block 8; Lots 5, Block 9 of GOLDEN TEE ESTATES 3rd ADDITION, according to the plat thereof, recorded in Book 8 of Plats, page 78, records of Bonner County, Idaho.**

**PARCEL 15:**

**Lot 6, Block 1; Lot 1, Block 3; Lots 1, 2, 3, 6, 8 and 9, Block 4; Lots 1 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.**

**PARCEL 16:**

**Lots 1, 5, 7 and 9, Block 1; Lots 1, 5, 8, 9 and 11, Block 2, GOLDEN TEE ESTATES 5TH ADDITION, according to the plat thereof, recorded in Book 8 of Plats, page 81, records of Bonner County, Idaho.**

**PARCEL 17:**

**Lots 2 and 8, Block 1; Lots 2, 3 and 4, Block 2; Lot 1, Block 3; Lots 2, 3 and 4, Block 4 of GOLDEN TEE ESTATES 6TH ADDITION, according to the plat thereof, recorded in Book 8 of Plats, page 82, records of Bonner County, Idaho.**

**PARCEL 18:**

**Lots 1, 2, 3, 5, 6 and 7, Block 1; Lots 1, 2, 4, 5, 6, 8 and 9, Block 2 of GOLDEN TEE ESTATES 7TH ADDITION, according to the plat thereof, recorded in Book 9 of Plats, page 13, records of Bonner County, Idaho.**

**PARCEL 19:**

**Lots 5, 6, 7 and 8, Block 1; Lots 1 and 2, Block 2, GOLDEN TEE ESTATES 8TH ADDITION, according to the plat thereof, recorded in Book 9 of Plats, page 7, records of Bonner County, Idaho.**

**PARCEL 20:**

**Lots 1A, 2A and 4A, Block 1, REPLAT OF LOTS 1 THROUGH 4, BLOCK 1 AND BLOCK 16A, REPLAT OF BLOCKS 15 & 16 OF THE REPLAT OF GOLDEN TEE ESTATES & GOLDEN TEE ESTATES 1ST ADDITION, according to the plat thereof, recorded in Book 9 of Plats, page 82, records of Bonner County, Idaho.**

**PARCEL 21:**

**Lot 2, Block 3 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.**

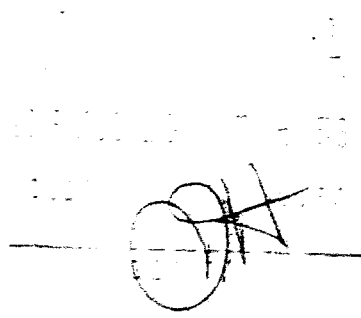
**PARCEL 22:**

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

**PARCEL 23:**

**Lots 2, 3, 4 and 5, 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.**

Richard L. Stacey, ISB #6800  
Jeff R. Sykes, ISB #5058  
Chad M. Nicholson, ISB #7506  
McCONNELL WAGNER SYKES & STACEY <sup>PLLC</sup>  
827 East Park Boulevard, Suite 201  
Boise, Idaho 83712  
Telephone: 208.489.0100  
Facsimile: 208.489.0110  
[stacey@mwsslawyers.com](mailto:stacey@mwsslawyers.com)  
[sykes@mwsslawyers.com](mailto:sykes@mwsslawyers.com)  
[nicholson@mwsslawyers.com](mailto:nicholson@mwsslawyers.com)



Attorneys For Valiant Idaho, LLC

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

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

Plaintiff,

vs.

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

Defendants.

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

Case No. CV-09-1810

**NOTICE OF HEARING ON  
VALIANT IDAHO, LLC'S  
MOTION TO ALTER, AMEND  
AND/OR RECONSIDER  
THE ORDER OF SALE  
OF REAL PROPERTY**

Judge: Honorable Barbara A. Buchanan  
Place: Bonner County Courthouse  
215 South First Avenue  
Sandpoint, Idaho 83864  
Date/Time: September 2, 2015 – 11:00 a.m. PDST

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

TeleNo: 208.265.2281  
Passcode: 4990

**NOTICE IS HEREBY GIVEN** that Valiant Idaho, LLC will call its Motion to Reconsider the Order of Sale of Real Property for hearing on the 2<sup>nd</sup> day of September 2015 at 11:00 a.m. PDST, the Honorable Barbara A. Buchanan, presiding.

**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 19<sup>th</sup> day of August 2015.

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

BY:

  
Richard L. Stacey

Attorneys For Valiant Idaho, LLC

**CERTIFICATE OF SERVICE**

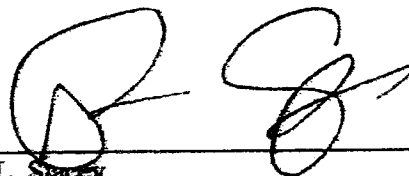
**I HEREBY CERTIFY** that on the 19<sup>th</sup> day of August 2015, a true and correct copy of the foregoing document was served by the method indicated below upon the following party(ies):

<p>Bruce A. Anderson, Esq.  Elsaesser Jarzabek Anderson Elliott &amp;  MacDonald, Chtd  320 East Neider Avenue, Suite 102  Coeur d' Alene, Idaho 83815  Telephone: 208.667.2900  Facsimile: 208.667.2150  <i>Counsel For Jacobson, Lazar and Sage Holdings</i></p>	<p><input type="checkbox"/> U.S. Mail  <input type="checkbox"/> Hand Delivered  <input checked="" type="checkbox"/> Facsimile  <input type="checkbox"/> Overnight Mail  <input checked="" type="checkbox"/> Electronic Mail  <u><a href="mailto:brucea@ejame.com">brucea@ejame.com</a></u></p>
<p>Brent C. Featherston, Esq.  Featherston Law Firm, Chtd  113 South Second Avenue  Sandpoint, Idaho 83864  Telephone: 208.263.6866  Facsimile: 208.263.0400  <i>Counsel For Pensco/Mortgage Fund</i></p>	<p><input type="checkbox"/> U.S. Mail  <input type="checkbox"/> Hand Delivered  <input checked="" type="checkbox"/> Facsimile  <input type="checkbox"/> Overnight Mail  <input checked="" type="checkbox"/> Electronic Mail  <u><a href="mailto:bcf@featherstonlaw.com">bcf@featherstonlaw.com</a></u></p>
<p>Gary A. Finney, Esq.  Finney Finney &amp; Finney, P.A.  120 East Lake Street, Suite 317  Sandpoint, Idaho 83864  Telephone: 208.263.7712  Facsimile: 208.263.8211  <i>Counsel For J.V., LLC</i></p>	<p><input type="checkbox"/> U.S. Mail  <input type="checkbox"/> Hand Delivered  <input checked="" type="checkbox"/> Facsimile  <input type="checkbox"/> Overnight Mail  <input checked="" type="checkbox"/> Electronic Mail  <u><a href="mailto:garyfinnew@finneylaw.net">garyfinnew@finneylaw.net</a></u></p>
<p>D. Toby McLaughlin, Esq.  Berg &amp; McLaughlin  414 Church Street, Suite 203  Sandpoint, Idaho 83864  Telephone: 208.263.4748  Facsimile: 208.263.7557  <i>Counsel For Idaho Club HOA/Parhandle Mngmnt</i></p>	<p><input type="checkbox"/> U.S. Mail  <input type="checkbox"/> Hand Delivered  <input checked="" type="checkbox"/> Facsimile  <input type="checkbox"/> Overnight Mail  <input checked="" type="checkbox"/> Electronic Mail  <u><a href="mailto:toby@sandpointlaw.com">toby@sandpointlaw.com</a></u></p>
<p>Susan P. Weeks, Esq.  James, Vernon &amp; Weeks, PA  1626 Lincoln Way  Coeur d'Alene, Idaho 83814  Telephone: 208.667.0683  Facsimile: 208.664.1684  <i>Counsel For VP Incorporated/North Idaho Resorts</i></p>	<p><input type="checkbox"/> U.S. Mail  <input type="checkbox"/> Hand Delivered  <input checked="" type="checkbox"/> Facsimile  <input type="checkbox"/> Overnight Mail  <input checked="" type="checkbox"/> Electronic Mail  <u><a href="mailto:sweeks@jvwlaw.net">sweeks@jvwlaw.net</a></u></p>

With a copy via Electronic Mail to:

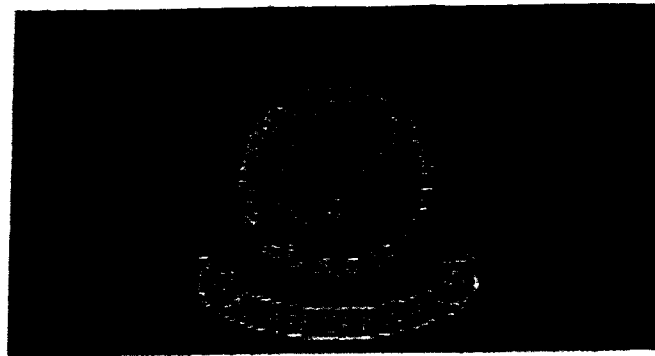
Honorable Barbara A. Buchanan  
Judge of the First Judicial District  
Bonner County Courthouse  
215 South First Avenue  
Sandpoint, Idaho 83864

bbuchanan@co.bonner.id.us  
sezenwa@bonnercountyid.gov

A handwritten signature in black ink, appearing to read 'R. Stacey', is written above a horizontal line.

Richard L. Stacey





# 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**

STATE OF IDAHO  
COUNTY OF BONNER  
FIRST JUDICIAL DISTRICT

2015 AUG 21 AM 11:44

CLERK OF DISTRICT COURT

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 third-party Defendants Richard A. Vilelli, Marie Victoria Vilelli, Vilelli Enterprises, Inc., and Richard A. Vilelli, as trustee of the Richard Anthony Vilelli and Marie Victoria Vilelli Revocable Trust

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-2009-1810

NOTICE OF SPECIAL APPEARANCE

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

Notice is hereby given that Susan P. Weeks, pursuant to IRCP 4(i)(2), enters a special appearance to contest personal jurisdiction in the above entitled matter as attorney of record for third party Defendants Richard A. Vilelli, a married man; Marie Victoria Vilelli, a married

woman; Vilelli Enterprises, Inc., a California corporation; and Richard A. Vilelli, as Trustee of the Richard Anthony Vilelli and Marie Victoria Vilelli Revocable Trust.

DATED this 21<sup>st</sup> day of August, 2015.

JAMES, VERNON & WEEKS, P.A.

By David Weeks #9992 for  
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 21<sup>st</sup> day of August, 2015:

U.S. Mail, Postage Prepaid  
 Hand Delivered  
 Overnight Mail  
 Facsimile: 208-263-8211  
 email to:  
 garyfinney@finneylaw.net

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

U.S. Mail, Postage Prepaid  
 Hand Delivered  
 Overnight Mail  
 Facsimile: 208-489-0110

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

*Christina Chase*

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

SEP 21 9 51 AM  
CLERK OF DISTRICT COURT

Attorneys for Defendant 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

V.P. INCORPORATED'S ANSWER TO JV,  
LLC'S CROSS-CLAIM

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

COMES NOW, Defendant, VP, Incorporated ("VP"), by and through its attorney of record,  
Susan P. Weeks of the firm James, Vernon & Weeks, P.A., and answers JV, LLC's ("JV") Cross-  
Claim as follows:

1. VP neither admits nor denies any paragraph of JV's Complaint except as set forth herein because such allegations do not pertain to JV's cross claim against VP.
2. Admit JV's cross claim as set forth in Paragraph 98 of its pleading.
3. To the extent Paragraph 104 (designated a Third Party Complaint) may be deemed a cross claim against VP, VP denies it owes the unpaid balance of the 1995 Promissory Note to JV or that JV is entitled to judgment against VP.

**PARTIES**

1. Denies for lack of knowledge or information, the allegations set for in paragraphs 1, 2, 3, 4,5, 6, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, and 28 of Valiant's Counterclaim, Cross-Claim and Third Party Complaint.
2. Answering paragraph 7, admits VP, Incorporated was and is an Idaho corporation in good standing. Denies its principal place of business is in Boundary County. VP, Inc.'s principal place of business is in Bonners County.
3. Answering Paragraph 11, admits North Idaho Resorts, LLC, was and is an Idaho corporation in good standing. Denies its principal place of business is in Boundary County. VP, Inc.'s principal place of business is in Bonners County.
4. To the extent that paragraph 29 of Valiant's Counterclaim, Cross-Claim and Third Party Complaint requires an admission or denial, this answering Defendants deny the allegations set forth in paragraph 9.

**AFFIRMATIVE DEFENSES**

As and for their affirmative defenses, VP asserts and states as follows:

1. JV's complaint fails to state claims upon which relief may be granted.
2. JV's claims are barred by the applicable statute of limitations I.C. § 5-216.

**PRAYER FOR RELIEF**

WHEREFORE, VP requests the court:

1. Dismiss the cross claim with prejudice;
2. Award VP their costs and disbursements, including reasonable attorney fees, to the extent permitted under law; and

3. Award such other and further relief as the Court shall deem to be just and proper.

DATED this 21<sup>st</sup> day of August, 2015.

JAMES, VERNON & WEEKS, P.A.

*Susan P. Weeks* #9492 For  
By: 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 21<sup>st</sup> day of August, 2015:

U.S. Mail, Postage Prepaid  
 Hand Delivered  
 Overnight Mail  
 Facsimile: 208-263-8211  
 Email to:  
garyfinney@finneylaw.net

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

U.S. Mail, Postage Prepaid  
 Hand Delivered  
 Overnight Mail  
 Facsimile: 208-489-0110

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

✓ C.C. J. Berry  
8/21/15

✓ 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

CLERK OF DISTRICT COURT  
DISTRICT OF IDAHO  
2015 AUG 24 A 10:08  
CLERK OF DISTRICT COURT

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

GENESIS GOLF BUILDERS, INC.,	)	Case No. CV-2009-1810
formerly known as National Golf	)	
Builders, Inc., a Nevada	)	STIPULATION FOR SETTLEMENT
corporation,	)	AND FOR JUDGMENT AS BETWEEN
	)	DEFENDANT V.P., INC. AND
Plaintiff,	)	NORTH IDAHO RESORTS AND THE
	)	DEFENDANT JV, L.L.C.
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 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	)	

STIPULATION FOR SETTLEMENT AND FOR JUDGMENT AS BETWEEN DEFENDANT  
V.P., INC. AND NORTH IDAHO RESORTS AND THE DEFENDANT JV, L.L.C. - 1



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

Defendants. )

---

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

---

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

Plaintiff, )

v. )

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

Defendants. )

---

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

---

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

Third Party Plaintiff, )

v. )

PEND ORIELLE BONNER DEVELOPMENT )  
HOLIDNGS, INC., a Nevada )  
corporation; BAR K, INC., a )

STIPULATION FOR SETTLEMENT AND FOR JUDGMENT AS BETWEEN DEFENDANT )  
V.P., INC. AND NORTH IDAHO RESORTS AND THE DEFENDANT JV, L.L.C. - 2 )

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; MOUNTIAN 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; MONTAHEÑO )  
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. )

COME NOW the parties V.P., INC. and NORTH IDAHO RESORTS,  
 referred to as V.P./N.I.R., and JV, L.L.C., referred to as JV,  
 and stipulate and agree to settlement between said parties and  
 that Judgment for JV be entered, as follows:

1. This Judgment is final as to V.P./N.I.R. and JV.
2. JV, as the owner, sold and conveyed a large parcel of real estate, lying south of Highway 200, to VP in 1995, payment for which was upon a promissory note secured by a purchase money mortgage. The Secured Promissory Note, dated October 20, 1995 was in the original sum of \$2,264,500.00 secured by the Mortgage, recorded October 24, 1995 as Instrument No. 474746, records of Bonner County, Idaho.
3. V.P. made payments to JV on said Secured Promissory Note and Mortgage through Panhandle Escrow No. 2067429 in Sandpoint, Idaho.
4. V.P./N.I.R. (Seller) sold various parcels of real

estate, including the real estate encumbered by the JV promissory note and Mortgage, Instrument No. 474746, to Pend Oreille Bonner Investments upon a contract entitled Third Amended and Restated Real Property Purchase and Sale Agreement, referred to as "this Agreement", dated January 6, 2005, which involved several parcels of real estate including "\*\*\*all the property owned by Seller south of Highway 200, commonly called "Moose Mountain"". The Moose Mountain property is the real estate that is secured by V.P., as mortgagor, in the 1995 Mortgage, Instrument No. 474746, to JV, as mortgagee.

5. The provisions of "this Agreement", on page 3, stated,

"2. Purchase Price

(a) Purchase Price. The purchase price (the "Purchase Price") for the Property shall be the sum of (i) a down payment (the "Down Payment") of Four Million Seven Hundred Fifty Thousand Dollars (\$4,750,000), which Buyer shall deposit in Escrow in immediately available funds prior to close of Escrow for delivery to Seller at Closing (as the terms "Escrow" and "Closing" are hereinafter defined) plus accepting title to the Property subject to the deeds of trust which secure the payment of two promissory notes, for which, upon transfer of title to the Property to Buyer, Buyer shall assume payment responsibility. One of said two promissory notes is payable to Mr. Berry (the "Berry Note") and the other is payable to R.E. Loans LLC, a California limited liability company (the "REL Note"). The Berry Note is originally dated October 24, 1995 and in the revised principal amount of \$2,565,000, and has been previously modified by the original maker and Mr. Berry; a copy of the Berry Note is attached hereto as Exhibit G. The REL Note is originally dated March 17, 2005 and in the original principal amount of \$8,515,000; provided, however, that if Seller reduces the principal amount of the REL note prior to closing,

Buyer, at its sole discretions, shall either execute a promissory note at closing to Seller for the exact amount of such principal reduction, which note shall be subordinate to financing Buyer main obtain and which shall otherwise be repaid to Seller under the same terms and conditions of the REL note and at the same interest rate, or pay in cash to Seller at closing the amount of such principal reduction made by Seller; a copy of the REL Note is attached hereto as Exhibit H. The above items included in (i) are collectively referred to as the Down Payment."

6. The aforesaid "Berry Note" and assumed deed of trust (a Mortgage) is the Secured Promissory Note and Mortgage Instrument No. 474746 to JV in the revised principal amount of \$2,565,000.00.

7. The successor Buyer is Pend Oreille Bonner Development, herein referred to as "POBD", a defendant party to this action. POBD assumed payment to JV through the existing Panhandle Escrow No. 2067429. POBD over a period of time paid the escrow indebtedness down to the principal sum of \$1,476,450.35 as of September 18, 2008 with interest accruing at 12.000%, which is \$485.408 per day to the present date. The principal and interest to August 18, 2015 is:

a) Principal	\$1,476,450.35
b) Interest for 2525 days @ \$485.408 per day	<u>\$1,225,655.20</u>
Total principal and interest to 08/18/2015	<u>\$2,702,105.55</u>

8. POBD did not fully pay the indebtedness it assumed from VP/NIR owing to JV, and JV is entitled to judgment in its favor of \$2,702,105.55 (to 8/18/15) and foreclosure of its

Mortgage, Instrument No. 474746 against POBD as the assuming party. Said mortgage is also foreclosed against V.P., as the original payee and mortgagor; provided however the foreclosure is against the real estate only and V.P. is released and shall have no personal or deficiency liability or obligation based on this Settlement. V.P. / N.I.R., as Seller, to P.O.B.D., as Buyer, has a Vendor's Lien against the real estate for the sum of money P.O.B.D. assumed but did not pay JV.

9. Additionally, POBD did not keep and pay the real estate taxes to Bonner County and the Moose Mountain real estate was included and taken for delinquent taxes by Tax Deed, in favor of Bonner County, recorded May 22, 2014, Instrument No. 859659, records of Bonner County, Idaho.

10. On July 1, 2014 JV, by James Berry, took a written NOTICE OF REDEMPTION to Bonner County, redeeming only a portion of the Moose Mountain real estate specifically describing 1 through 5, Bonner County Tax Parcels as stated in the Notice of Redemption. Pursuant to JV's Notice of Redemption JV paid \$140,999.86 to the Bonner County Tax Collector and JV received a Redemption Deed for the parcels of real estate redeemed by JV. JV's Redemption Deed was recorded by Bonner County on July 7, 2014 as Instrument No. 861430 and was re-recorded by Bonner County on August 22, 2014, Instrument No. 863295. By payment of the delinquent taxes and by Redemption Deed to JV, JV is

15, 2014, which is attached and incorporated herein.

Provided however, from time to time, JV executed and granted Partial Satisfactions of Mortgage for specifically described Lots sold by POBD to third party buyers. The List of Lots released by JV by Partial Satisfactions of Mortgage are described in JV's Defendant's Exhibit F to JV's Special Appearance pleading filed September 15, 2014. JV claims no encumbrance mortgage but ONLY on the List of Lots under the heading "Instrument Type" listed as "Partial Release", JV's Defendants Exhibit F, which is attached hereto and incorporated herein by reference.

12. Each party JV, V.P., and N.I.R. shall pay their own attorney fees and costs.

Wherefore, Judgment for JV, LLC shall be entered as set forth above.

FOR V.P./N.I.R. ORIGINAL  
Richard Vellelli  
RICHARD VILLELLI, officer &  
Manager  
Dated: 8-21-15

James Berry  
JAMES BERRY, Manager  
Dated: 8/21/15

ATTORNEY FOR V.P./N.I.R.  
Douglas A. Pierce JSBF8116  
SUSAN WEEKS  
Dated: 8/24/15  
Douglas A. Pierce

ATTORNEY FOR JV, LLC  
Gary A. Finney  
GARY A. FINNEY  
Dated: Aug 21, 2015

10574

47474G

MICHAEL C. STEWART  
Attorney at Law  
513 North Fourth Avenue  
Sandpoint, Idaho 83864  
Phone (208) 263-5664

Sandpoint Title Insurance

FILED BY \_\_\_\_\_

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REGISTRAR  
COUNTY CLERK

MORTGAGE

Mortgage made 10/20, 1995, between V.P., INC., an Idaho corporation, of 218 Cedar Street, Sandpoint, Idaho 83864, herein referred to as Mortgagor, and JV L.L.C., an Idaho limited liability company, of 109 First Avenue, Sandpoint, Idaho 83864, herein referred to as Mortgagee.

FOR VALUABLE CONSIDERATION, the above named Mortgagor does hereby mortgage to the Mortgagee real property described as follows:

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:

- Beginning at the Southeast corner of said Section 36;
- Thence North along the East line 460 feet;
- Thence due West 568 feet, more or less, to the True Point of Beginning;
- Thence South 47 degrees West 250.00 feet;
- Thence South 43 degrees East 348.5 feet;
- Thence North 47 degrees East 250 feet;
- Thence North 43 degrees West 348.5 feet to the point of

MORTGAGE 1

MAIL TO:  
JV L.L.C.  
P.O. BOX B  
SANDPOINT ID  
83864



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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, all being in Section 2, Township 57 North, Range 1 West of the Boise Meridian, Bonner County, Idaho, lying South of State Highway 200 and lying North and East of the Northern Pacific Railroad Company right-of-way;

LESS that portion of Section 2, Township 57 North, Range 1 West, Boise Meridian, Bonner County, Idaho, described as follows:

Beginning at a right-of-way monument on the South right-of-way line of Highway 200;

Thence the Northwest corner of said Section 2 bears North 26 degrees 28' 03" West a distance of 798.11 feet;

Thence North 68 degrees 10' 57" East along said South right-of-way line, a distance of 281.13 feet;

Thence South a distance of 725.53 feet;

Thence West a distance of 330.00 feet;

Thence North a distance of 607.20 feet to said South right-of-way line;

Thence North 78 degrees 39' 11" East along said South right-of-way line a distance of 70.38 feet to the True Point of Beginning;

Also Less that portion of Section 2, Township 57 North, Range 1 West, Boise Meridian, Bonner County, Idaho, described as follows:

Commencing at a right-of-way monument on the South right-of-way line of Highway 200;

Thence the Northwest corner of said Section 2 bears North 26 degrees 28' 08" West a distance of 798.11 feet;

Thence North 68 degrees 10' 57" East along said South right-of-way line, a distance of 281.13 feet to the True Point of Beginning;

Thence North 73 degrees 33' 03" East along said South right-of-way line, a distance of 344.08 feet;

MORTGAGE 2

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Thence South a distance of 704.63 feet;

Thence West a distance of 330.00 feet;

Thence North a distance of 607.20 feet to the True Point of Beginning.

EXCEPT from the above described parcels:

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

Beginning at a point that is North 83 degrees 05' 57" East a distance of 386.02 feet from the South one 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 county road;

Thence South 5 degrees 14' 00" East long said East right of way of the old county 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 courses:

1) Around a curve to the left with a radius of 2643.37 feet a distance of 48.44 feet (chord of which bears South 88 degrees 02' 31" West a distance of 48.43 feet);

2) North 79 degrees 07' 52" East a distance of 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.;

MORTGAGE 3

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4) Along a spiral curve ( $S=2$  degrees  $12.1'$ ) 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,

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

LESS the following described property;

Beginning at the North Quarter corner of Section 6, Township 57 North, Range 1 East, Boise Meridian;

Thence South 1669.7 feet to Pack River;

Thence South 66 degrees  $47'$  West 203 feet;

Thence South 69 degrees  $54'$  West 165.3 feet;

Thence South 79 degrees  $56'$  West 242.5 feet;

Thence South 1 degree  $11'$  East 146 feet;

Thence South 25 degrees  $18'$  East 118.2 feet;

Thence South 54 degrees  $29'$  East 137.2 feet;

Thence South 58 degrees  $10'$  East 267.1 feet;

Thence North 535.6 feet to a point 1669.7 feet South of said quarter corner;

AND EXCEPT all public and private roadways as they now exist;

ALSO LESS that portion of condemned by the United States of America per Judgment on Declaration of Taking recorded in Book 14 of Judgments, page 65, records of Bonner County, Idaho;

AND ALSO LESS that portion lying within the right of way conveyed to the State of Idaho by Right of Way Deed recorded

MORTGAGE 4

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in Book 83 of Deeds, Page 545, records of Bonner County, Idaho.

THIS MORTGAGE given to secure payment by the Mortgagor to the Mortgagee of a Promissory Note of same date in the principal amount of \$2,264,500.00 (TWO MILLION TWO HUNDRED SIXTY FOUR THOUSAND FIVE HUNDRED DOLLARS). The final payment on said Promissory Note is due September 1, 2010.

THIS MORTGAGE is also given to secure Mortgagor's compliance with a Profit Sharing Agreement of same date between the parties, which affects the herein described real property.

The Mortgagor hereby covenants and agrees to pay promptly all taxes and assessments levied or assessed upon the above described property, together with reasonable attorney fees in the event of foreclosure, and further agrees to pay such reasonable costs of searching records and abstracting and certifying the same as may be necessarily incurred in foreclosing this Mortgage or defending the same, and each and all of said items shall constitute and be a lien upon said real property.

The Mortgagor shall not commit, permit, or suffer any waste, impairment, or deterioration of the property, and shall keep the property and the improvements thereon at all times in good condition and repair.

AND, that failure to apply when due any sum herein contracted to be paid, or failure to comply with any of the agreements hereof, shall cause the whole debt to become immediately due and collectible at the option of the Mortgagee, its heirs, administrators and assigns. That all money paid by the Mortgagee for

MORTGAGE 5

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taxes, assessments, abstracting or searching and certifying records, or any sum paid for the protection of the lien of this Mortgage, shall bear interest from the date of such payment at the legal rate, payable with principal and shall be secured hereby and collectible with the principal note.

**IN THE EVENT** the Mortgagor shall fail to make any payments required hereunder, including taxes, assessments, insurance premiums or any other obligation of Mortgagor that may become due on said property described herein, the Mortgagee may, at its option, without waiving any default hereunder, pay said items, and upon the filing of receipts with the escrow holder showing such payment to have been made by Mortgagee, such sum or sums so paid by the Mortgagee shall become a part of the principal sum due hereunder and shall be immediately due and payable to the Mortgagee with interest thereon from the date paid by the Mortgagee at the maximum rate of interest allowable by law.

**PROCEEDS FROM CUTTING OF TIMBER:** All net proceeds due to the Mortgagor from the sale of timber removed from the herein described real property shall be paid to the Mortgagee and credited as payment(s) on the Promissory Note secured by this Mortgage.

**APPLICATION OF ROCK QUARRY ROYALTIES:** All net proceeds paid to Mortgagor from the sale of crushed rock produced on the premises shall be paid to the Mortgagee and credited as payments on the Promissory Note secured by this Mortgage.

**PARTIAL RELEASES:** For each \$3,500.00 (THREE THOUSAND FIVE

MORTGAGE 6

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HUNDRED DOLLARS) paid toward satisfying the Promissory Note secured by this Mortgage, (including principal and/or interest), at Mortgagor's request, the Mortgagee shall release from the lien of this Mortgage, 1 (ONE) acre of the herein described real property. Insurable legal access no less than 50 (SIXTY) feet in width shall be reserved to all land remaining encumbered by this Mortgage so long as any sum remains due on the subject Promissory Note. Mortgagor shall choose the parcels to be released, and at Mortgagor's expense. Mortgagor shall prepare and provide to Mortgagee the documentation required to accomplish each release.

**MORTGAGOR'S ENGINEERING PLANS, ETC.** As said documents become available to Mortgagor, Mortgagor shall deliver to Mortgagee true and correct copies of all engineering plans, designs, specifications and feasibility studies related to the intended development by the Mortgagor of the herein described real property, or any portion thereof.

**SUBORDINATION:** Mortgagee agrees to execute whatever documentation that is required to subordinate the lien of this Mortgage to Mortgages and/or Deeds of Trust that will secure loans to Mortgagor for the purpose of constructing improvements on the subject property. No funds from Promissory Notes secured by Mortgages and/or Deeds of Trust that become senior to the lien of this Mortgage shall be paid to the Mortgagor or to subsidiaries or affiliates of Mortgagor.

**1994 and 1995 REAL PROPERTY TAXES:** Mortgagee shall be responsible for the payment of the 1994 Bonner County Taxes on

MORTGAGE 7

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the herein described parcel, including penalties and interest. Mortgagee shall pay said taxes prior to the time the County of Bonner is able by law to deed the property to said County for the failure to pay same, OR, upon the request of Mortgagor where payment of the taxes will be a condition precedent for Mortgagor to secure financing for improvements on the subject property OR upon the sale by Mortgagor of a portion of said real property.

The 1995 taxes will be prorated as of September 1, 1995, however, the charge to Mortgagee for the period January 1, 1995, to September 1, 1995, will not be withheld at closing. Instead, Mortgagee shall be responsible for the payment of its share of said taxes in accordance with the preceding Paragraph above.

**Failure to Pay Taxes.** In the event Mortgagee fails to pay the taxes in accordance with the above, Mortgagor shall have the option to pay the taxes, including penalties and interest, if any. Should Mortgagee fail to reimburse Mortgagor for Mortgagor's payment of taxes, within 60 (Sixty) days of written demand thereof, Mortgagor shall be entitled to apply said tax payments made as a credit(s) to the Promissory Note secured by this Mortgage.

IN WITNESS WHEREOF, the undersigned Mortgagor and Mortgagee have executed this Mortgage on the day and year first written above.

MORTGAGE 8

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V.P., INC.

Barbara Huguenin  
By: BARBARA HUGUENIN, President

JV L.L.C.

BY: Hidden Lakes Limited Partnership, Member

William A. Berry  
By: WILLIAM A. BERRY, General Partner

X James Berry  
By: JAMES BERRY, General Partner

BY: Sun Mountain, Inc., Member

William A. Berry  
By: William A. Berry, President

X James Berry  
By: James Berry, Secretary

STATE OF IDAHO )  
County of Bonner ) ss.

On this day personally appeared before me, the undersigned Notary Public, BARBARA HUGUENIN, known to me to be the President of V.P., INC., an Idaho corporation, the corporation that executed the within instrument and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 20 day of DEC, 1995.

Barbara Huguenin  
Notary Public  
Residing at: 4400 West  
Comm. Exp.: 10/20/2000

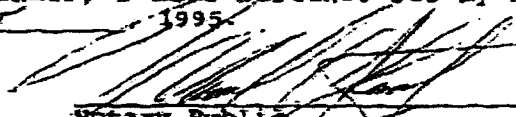


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STATE OF IDAHO )  
 ) ss.  
County of Bonner )

On this day personally appeared before me, the undersigned Notary Public, WILLIAM A. BERRY and JAMES BERRY, known to me to be the general partners in the partnership of HIDDEN LAKES LIMITED PARTNERSHIP, an Idaho limited partnership, and the general partners who subscribed said partnership name to the foregoing instrument, and said limited partnership is known to me to be a member of JV L.C.C., an Idaho limited liability company, and said persons acknowledged to me that said limited partnership executed the same in said limited liability company name.

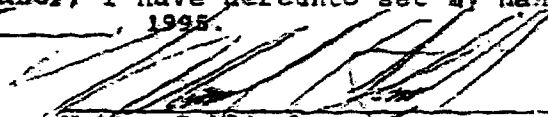
IN WITNESS WHEREOF, I have hereunto set my hand and seal this 20 day of Dec, 1995.

  
\_\_\_\_\_  
Notary Public  
Residing at: Sagebrush  
Comm. Exp.: 7/1/2000

STATE OF IDAHO )  
 ) ss.  
County of Bonner )

On this day personally appeared before me, the undersigned Notary Public, WILLIAM A. BERRY and JAMES BERRY, known to me to be the President and Secretary, respectively, of Sun Mountain, Inc., an Idaho corporation, the corporation that executed the within instrument and acknowledged to me that such corporation executed the same, and corporation is known to me to be a member of JV L.C.C., an Idaho limited liability company, and said persons acknowledged to me that said corporation executed the same in said limited liability company name.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 20 day of Dec, 1995.

  
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Notary Public  
Residing at: Sagebrush  
Comm. Exp.: 7/1/2000

MORTGAGE 10

County: ID\_Bonner\_Orders QuickSearch  
Search Criteria: REL 474746 8/13/2014 2:46:51 PM AR  
Effective Date: 7/25/2014

Selected	Pages	Grantor	Grantee	Doc #	RDoc #	Filed Date	Inst Type	Consideration Arb	Legal
<input type="checkbox"/>		1 HIDDEN LAKES LIMITED	VP INC	779497		9/10/2009	PARTIAL RELEA	\$0.00	Lot 8 Blk 20 Add GOLDEN TREE EST AND 1ST ADD RPLT AF
<input type="checkbox"/>		1 J V LLC	VP INC	779497		9/10/2009	PARTIAL RELEA	\$0.00	Lot 8 Blk 20 Add GOLDEN TREE EST AND 1ST ADD RPLT AF
<input type="checkbox"/>		1 SUN MOUNTAIN INC	VP INC	779497	474746	9/10/2009	PARTIAL RELEA	\$0.00	Lot 8 Blk 20 Add GOLDEN TREE EST AND 1ST ADD RPLT AF
<input type="checkbox"/>		1 J V LLC	SUN MOUNTAIN INC	772770	474746	5/27/2009	PARTIAL RELEA	\$0.00	Lot 20A Blk 2 Add GOLDEN TREE EST AND 1ST ADD RPLT AF
<input type="checkbox"/>		1 J V LLC	VP INC	772770		5/27/2009	PARTIAL RELEA	\$0.00	Lot 20A Blk 2 Add GOLDEN TREE EST AND 1ST ADD RPLT AF
<input type="checkbox"/>		1 J V LLC	VP INC	757250	474746	8/21/2008	PARTIAL RELEA	\$0.00	Lot 3 Blk 1 Add GOLDEN TREE ESTATES 4TH ADDITION 8-6
<input type="checkbox"/>		1 J V LLC	VP INC	756452		8/7/2008	PARTIAL RELEA	\$0.00	Lot 2 Blk 9 Add GOLDEN TREE ESTATES 3RD ADDITION 8-7
<input type="checkbox"/>		1 J V LLC	VP INC	756452	474746	8/7/2008	PARTIAL RELEA	\$0.00	Lot 2 Blk 9 Add GOLDEN TREE ESTATES 3RD ADDITION 8-7
<input type="checkbox"/>		15 J V LLC	PEND OREILLE BONNER DEV	756402	708470	8/8/2008	SUBORDINATION	\$0.00	1/4, 8--8, 31--30; Sec 16 Town 57N Rng 1E Abn 4, 6--8, 41--32
<input type="checkbox"/>		15 J V LLC	PEND OREILLE BONNER DEV	756402	474746	8/6/2008	SUBORDINATION	\$0.00	17
<input type="checkbox"/>		1 J V LLC	VP INC	756118	474746	8/1/2008	PARTIAL RELEA	\$0.00	Dir: SWSW Sec 31 Town 58N Rng 1E Abn 17
<input type="checkbox"/>		1 HIDDEN LAKES LIMITED	VP INC	755012	474746	7/15/2008	PARTIAL RELEA	\$0.00	Lot 8 Blk 16 Add GOLDEN TREE ESTATES 3RD ADDITION 8-8
<input type="checkbox"/>		1 J V LLC	VP INC	755012	474746	7/15/2008	PARTIAL RELEA	\$0.00	Lot 6 Blk 1 Add GOLDEN TREE ESTATES 6TH ADDITION 8-6
<input type="checkbox"/>		1 SUN MOUNTAIN INC	VP INC	755012	474746	7/15/2008	PARTIAL RELEA	\$0.00	Lot 8 Blk 1 Add GOLDEN TREE ESTATES 6TH ADDITION 8-6
<input type="checkbox"/>		0 PEND OREILLE BONNER DEV J V LLC		753907	474746	6/24/2008	MODIFICATION	\$0.00	Lot 8 Blk 1 Add GOLDEN TREE ESTATES 5TH ADDITION 8-8
<input type="checkbox"/>		1 J V LLC	VP INC	753490	474746	6/18/2008	AFFIDAVIT	\$0.00	Lot 1-2 Blk 2 Add GOLDEN TREE ESTATES 5TH ADDITION 8-8
<input type="checkbox"/>		2 HIDDEN LAKES LTD	VP INC	750087		4/23/2008	PARTIAL RELEA	\$0.00	Lot 1 Blk 2 Add GOLDEN TREE ESTATES 6TH ADDITION 8-6
<input type="checkbox"/>		2 HIDDEN LAKES LTD	VP INC	750087		4/23/2008	PARTIAL RELEA	\$0.00	Lot 3 Blk 3 Add GOLDEN TREE ESTATES 4TH ADDITION 8-8
<input type="checkbox"/>		2 HIDDEN LAKES LTD	VP INC	750087		4/23/2008	PARTIAL RELEA	\$0.00	Lot 6 Blk 5 Add GOLDEN TREE ESTATES 4TH ADDITION 8-8
<input type="checkbox"/>		2 HIDDEN LAKES LTD	VP INC	750087		4/23/2008	PARTIAL RELEA	\$0.00	Lot 6-7 Blk 2 Add GOLDEN TREE ESTATES 5TH ADDITION 8-8
<input type="checkbox"/>		2 J V LLC	VP INC	750087		4/23/2008	PARTIAL RELEA	\$0.00	Lot 7 Blk 1 Add GOLDEN TREE ESTATES 4TH ADDITION 8-8
<input type="checkbox"/>		2 SUN MOUNTAIN INC	VP INC	750087		4/23/2008	PARTIAL RELEA	\$0.00	Lot 2 Blk 6 Add GOLDEN TREE ESTATES 3RD ADDITION 8-7
<input type="checkbox"/>		1 J V LLC	VP INC	750087	474746	4/23/2008	PARTIAL RELEA	\$0.00	Lot 1 Blk 8 Add GOLDEN TREE ESTATES 6TH ADDITION 8-7
<input type="checkbox"/>		1 J V LLC	VP INC	749531	474746	4/14/2008	PARTIAL RELEA	\$0.00	Lot 8 Blk 1 Add GOLDEN TREE ESTATES 4TH ADDITION 8-8
<input type="checkbox"/>		1 HIDDEN LAKES LP	VP INC	748178	474746	3/21/2008	AFFIDAVIT	\$0.00	Lot 4 Blk 1 Add GOLDEN TREE ESTATES 7TH ADDITION 8-6
<input type="checkbox"/>		1 J V LLC	VP INC	748181	474746	3/21/2008	AFFIDAVIT	\$0.00	Lot 1-4 Blk 1 Add GOLDEN TREE ESTATES 8TH ADDITION 8-8
<input type="checkbox"/>		1 HIDDEN LAKES	VP INC	748178	474746	3/21/2008	AFFIDAVIT	\$0.00	Lot 1-4 Blk 1 Add GOLDEN TREE ESTATES 8TH ADDITION 8-8
<input type="checkbox"/>		1 J V LLC	VP INC	748178	474746	3/21/2008	AFFIDAVIT	\$0.00	Lot 20-21 Blk 2 Add GOLDEN TREE EST AND 1ST ADD RPLT AF
<input type="checkbox"/>		1 J V LLC	VP INC	746843	474746	2/26/2008	PARTIAL RELEA	\$0.00	Lot 20-21 Blk 2 Add GOLDEN TREE EST AND 1ST ADD RPLT AF
<input type="checkbox"/>		1 J V LLC	VP INC	746843		2/26/2008	PARTIAL RELEA	\$0.00	Lot 5 Blk 20 Add GOLDEN TREE EST AND 1ST ADD RPLT AF
<input type="checkbox"/>		1 J V LLC	VP INC	746842	474746	2/26/2008	PARTIAL RELEA	\$0.00	Lot 5 Blk 20 Add GOLDEN TREE EST AND 1ST ADD RPLT AF
<input type="checkbox"/>		1 J V LLC	VP INC	746842		2/26/2008	PARTIAL RELEA	\$0.00	Lot 5 Blk 1 Add GOLDEN TREE ESTATES 4TH ADDITION 8-8
<input type="checkbox"/>		1 J V LLC	VP INC	744425	474746	1/14/2008	PARTIAL RELEA	\$0.00	Lot 5 Blk 1 Add GOLDEN TREE ESTATES 4TH ADDITION 8-8
<input type="checkbox"/>		1 J V LLC	VP INC	744425		1/14/2008	PARTIAL RELEA	\$0.00	Lot 6 Blk 2 Add GOLDEN TREE ESTATES 6TH ADDITION 8-7
<input type="checkbox"/>		1 J V LLC	VP INC	743871	474746	1/4/2008	PARTIAL RELEA	\$0.00	Lot 6 Blk 2 Add GOLDEN TREE ESTATES 6TH ADDITION 8-7
<input type="checkbox"/>		1 J V LLC	VP INC	743871		1/4/2008	PARTIAL RELEA	\$0.00	Lot 10 Blk 2 Add GOLDEN TREE ESTATES 5TH ADDITION 8-8
<input type="checkbox"/>		1 J V LLC	VP INC	743871		1/4/2008	PARTIAL RELEA	\$0.00	Lot 10 Blk 2 Add GOLDEN TREE ESTATES 5TH ADDITION 8-8





Grantor	Doc #	Filed Date	Inst Type	Consideration Amt	Legal
13 JV LLC	736561	8/6/2007	PARTIAL RELEASE	\$0.00	Lot 10 Bldg 20 Add GOLDEN TREE EST AND 1ST ADD REPL A CRE SE Sec 36 Town 55N Rng 10W Mt 28 Cont LEHIGH OIL CR SE Sec 36 Town 55N Rng 10W Mt 28 Cont LEHIGH
HIDDEN LAKES LP	735741	8/29/2007	MISC	\$0.00	Lot 3 and 6th 27 Add GOLDEN TREE EST AND 1ST ADD REPL A
13 V LLC	735741	8/29/2007	MISC	\$0.00	Lot 11 Bldg 22 Add GOLDEN TREE EST AND 1ST ADD REPL A
HIDDEN LAKES LP	735740	8/29/2007	MISC	\$0.00	Lot 11 Bldg 22 Add GOLDEN TREE EST AND 1ST ADD REPL A
13 V LLC	735740	8/29/2007	MISC	\$0.00	Lot 11 Bldg 22 Add GOLDEN TREE EST AND 1ST ADD REPL A
HIDDEN LAKES LP	735739	8/29/2007	MISC	\$0.00	Lot 11 Bldg 22 Add GOLDEN TREE EST AND 1ST ADD REPL A
13 V LLC	735739	8/29/2007	MISC	\$0.00	Lot 11 Bldg 22 Add GOLDEN TREE EST AND 1ST ADD REPL A
13 V LLC	735625	8/22/2007	PARTIAL RELEASE	\$0.00	Lot 1 Bldg 21 Add GOLDEN TREE EST AND 1ST ADD REPL A
13 V LLC	735625	8/22/2007	PARTIAL RELEASE	\$0.00	Lot 1 Bldg 21 Add GOLDEN TREE EST AND 1ST ADD REPL A
13 V LLC	735620	8/22/2007	PARTIAL RELEASE	\$0.00	Lot 1 Bldg 21 Add GOLDEN TREE EST AND 1ST ADD REPL A
13 V LLC	735616	8/22/2007	PARTIAL RELEASE	\$0.00	Lot 1 Bldg 21 Add GOLDEN TREE EST AND 1ST ADD REPL A
13 V LLC	735612	8/10/2007	PARTIAL RELEASE	\$0.00	Lot 1 Bldg 21 Add GOLDEN TREE EST AND 1ST ADD REPL A
13 V LLC	735612	8/10/2007	PARTIAL RELEASE	\$0.00	Lot 1 Bldg 21 Add GOLDEN TREE EST AND 1ST ADD REPL A
13 V LLC	731129	8/10/2007	PARTIAL RELEASE	\$0.00	Lot 1 Bldg 21 Add GOLDEN TREE EST AND 1ST ADD REPL A
13 V LLC	731129	8/10/2007	PARTIAL RELEASE	\$0.00	Lot 1 Bldg 21 Add GOLDEN TREE EST AND 1ST ADD REPL A
13 V LLC	729037	8/10/2007	PARTIAL RELEASE	\$0.00	Lot 1 Bldg 21 Add GOLDEN TREE EST AND 1ST ADD REPL A
13 V LLC	729037	8/10/2007	PARTIAL RELEASE	\$0.00	Lot 1 Bldg 21 Add GOLDEN TREE EST AND 1ST ADD REPL A
13 V LLC	729587	8/29/2007	PARTIAL RELEASE	\$0.00	Lot 3 Bldg 1 Add GOLDEN TREE EST AND 1ST ADD REPL A
13 V LLC	729517	8/29/2007	PARTIAL RELEASE	\$0.00	Lot 3 Bldg 1 Add GOLDEN TREE EST AND 1ST ADD REPL A
13 V LLC	729517	8/29/2007	PARTIAL RELEASE	\$0.00	Lot 3 Bldg 1 Add GOLDEN TREE EST AND 1ST ADD REPL A
13 V LLC	729361	8/22/2007	PARTIAL RELEASE	\$0.00	Lot 6 Bldg 3 Add GOLDEN TREE EST AND 1ST ADD REPL A
13 V LLC	729361	8/22/2007	PARTIAL RELEASE	\$0.00	Lot 6 Bldg 3 Add GOLDEN TREE EST AND 1ST ADD REPL A
13 V LLC	729186	8/18/2007	PARTIAL RELEASE	\$0.00	Lot 10 Bldg 1 Add GOLDEN TREE EST AND 1ST ADD REPL A
13 V LLC	729186	8/18/2007	PARTIAL RELEASE	\$0.00	Lot 10 Bldg 1 Add GOLDEN TREE EST AND 1ST ADD REPL A
13 V LLC	729183	8/18/2007	PARTIAL RELEASE	\$0.00	Lot 7 Bldg 20 Add GOLDEN TREE EST AND 1ST ADD REPL A
13 V LLC	729122	8/18/2007	PARTIAL RELEASE	\$0.00	Lot 3 Bldg 7 Add GOLDEN TREE EST AND 1ST ADD REPL A
13 V LLC	728597	8/29/2007	PARTIAL RELEASE	\$0.00	Lot 19 Bldg 2 Add GOLDEN TREE EST AND 1ST ADD REPL A
13 V LLC	728597	8/29/2007	PARTIAL RELEASE	\$0.00	Lot 19 Bldg 2 Add GOLDEN TREE EST AND 1ST ADD REPL A
13 V LLC	728537	8/29/2007	PARTIAL RELEASE	\$0.00	Lot 2 Bldg 3 Add GOLDEN TREE EST AND 1ST ADD REPL A
13 V LLC	728537	8/29/2007	PARTIAL RELEASE	\$0.00	Lot 2 Bldg 3 Add GOLDEN TREE EST AND 1ST ADD REPL A
13 V LLC	728536	8/29/2007	PARTIAL RELEASE	\$0.00	Lot 18 Bldg 30 Add GOLDEN TREE EST AND 1ST ADD REPL A
13 V LLC	728536	8/29/2007	PARTIAL RELEASE	\$0.00	Lot 18 Bldg 30 Add GOLDEN TREE EST AND 1ST ADD REPL A
13 V LLC	728511	8/29/2007	PARTIAL RELEASE	\$0.00	Lot 1 Bldg 21 Add GOLDEN TREE EST AND 1ST ADD REPL A
13 V LLC	728511	8/29/2007	PARTIAL RELEASE	\$0.00	Lot 1 Bldg 21 Add GOLDEN TREE EST AND 1ST ADD REPL A
13 V LLC	727200	8/29/2007	PARTIAL RELEASE	\$0.00	Lot 5 Bldg 7 Add GOLDEN TREE EST AND 1ST ADD REPL A
13 V LLC	727200	8/29/2007	PARTIAL RELEASE	\$0.00	Lot 5 Bldg 7 Add GOLDEN TREE EST AND 1ST ADD REPL A
13 V LLC	726309	8/29/2007	PARTIAL RELEASE	\$0.00	Lot 6 Bldg 1 Add GOLDEN TREE EST AND 1ST ADD REPL A
13 V LLC	726309	8/29/2007	PARTIAL RELEASE	\$0.00	Lot 6 Bldg 1 Add GOLDEN TREE EST AND 1ST ADD REPL A
13 V LLC	726369	8/29/2007	PARTIAL RELEASE	\$0.00	Lot 3 Bldg 1 Add GOLDEN TREE EST AND 1ST ADD REPL A
13 V LLC	726369	8/29/2007	PARTIAL RELEASE	\$0.00	Lot 3 Bldg 1 Add GOLDEN TREE EST AND 1ST ADD REPL A
13 V LLC	726368	8/29/2007	PARTIAL RELEASE	\$0.00	Lot 17 Bldg 2 Add GOLDEN TREE EST AND 1ST ADD REPL A
13 V LLC	726368	8/29/2007	PARTIAL RELEASE	\$0.00	Lot 17 Bldg 2 Add GOLDEN TREE EST AND 1ST ADD REPL A
13 V LLC	725208	8/29/2007	PARTIAL RELEASE	\$0.00	Lot 3 and 4 Bldg 11 Add GOLDEN TREE EST AND 1ST ADD REPL A
13 V LLC	725208	8/29/2007	PARTIAL RELEASE	\$0.00	Lot 3 and 4 Bldg 11 Add GOLDEN TREE EST AND 1ST ADD REPL A
13 V LLC	725208	8/29/2007	PARTIAL RELEASE	\$0.00	Lot 3 and 4 Bldg 11 Add GOLDEN TREE EST AND 1ST ADD REPL A
13 V LLC	725208	8/29/2007	PARTIAL RELEASE	\$0.00	Lot 3 and 4 Bldg 11 Add GOLDEN TREE EST AND 1ST ADD REPL A
13 V LLC	724833	8/21/2007	PARTIAL RELEASE	\$0.00	Lot 1 Bldg 1 Add HIDDEN LAKES FIRST ADDITION CONVE SE
13 V LLC	724833	8/21/2007	PARTIAL RELEASE	\$0.00	Lot 1 Bldg 1 Add HIDDEN LAKES FIRST ADDITION CONVE SE
13 V LLC	724833	8/21/2007	PARTIAL RELEASE	\$0.00	Lot 1 Bldg 1 Add HIDDEN LAKES FIRST ADDITION CONVE SE
13 V LLC	724833	8/21/2007	PARTIAL RELEASE	\$0.00	Lot 1 Bldg 1 Add HIDDEN LAKES FIRST ADDITION CONVE SE
13 V LLC	724833	8/21/2007	PARTIAL RELEASE	\$0.00	Lot 1 Bldg 1 Add HIDDEN LAKES FIRST ADDITION CONVE SE







Selected	Pages	Grantor	Grantee	Doc #	RDoc #	Filed Date	Instr Type	Consideration	Arb	Legal
<input type="checkbox"/>		13 JV LLC	PEND OREILLE BONNER DEV724833		724830	3/15/2007	SUBORDINATIO	\$0.00		Lot: 5A Blk: 4 Add: GOLDEN TEE EST AND 1ST ADD RPLT AP
<input type="checkbox"/>		13 JV LLC	PEND OREILLE BONNER DEV724833		724830	3/15/2007	SUBORDINATIO	\$0.00		Lot: 8, 8 Blk: 10 Add: GOLDEN TEE ESTATES 3RD ADDITION
<input type="checkbox"/>		13 JV LLC	PEND OREILLE BONNER DEV724833		724830	3/15/2007	SUBORDINATIO	\$0.00		Lot: 6, 8 Blk: 10 Add: GOLDEN TEE ESTATES 3RD ADDITION
<input type="checkbox"/>		13 JV LLC	PEND OREILLE BONNER DEV724833		724830	3/15/2007	SUBORDINATIO	\$0.00		Lot: 6, 8 Blk: 10 Add: GOLDEN TEE ESTATES 3RD ADDITION
<input type="checkbox"/>		13 JV LLC	PEND OREILLE BONNER DEV724833		724830	3/15/2007	SUBORDINATIO	\$0.00		Lot: ALL Blk: 18 Add: GOLDEN TEE EST AND 1ST ADD RPLT
<input type="checkbox"/>		13 JV LLC	PEND OREILLE BONNER DEV724833		724830	3/15/2007	SUBORDINATIO	\$0.00		Lot: ALL Blk: 18 Add: GOLDEN TEE EST AND 1ST ADD RPLT
<input type="checkbox"/>		13 JV LLC	PEND OREILLE BONNER DEV724833		724830	3/15/2007	SUBORDINATIO	\$0.00		Lot: ALL Blk: 18 Add: GOLDEN TEE EST AND 1ST ADD RPLT
<input type="checkbox"/>		13 JV LLC	PEND OREILLE BONNER DEV724833		724830	3/15/2007	SUBORDINATIO	\$0.00		Lot: ALL Blk: 18 Add: GOLDEN TEE EST AND 1ST ADD RPLT
<input type="checkbox"/>		13 JV LLC	PEND OREILLE BONNER DEV724833		724830	3/15/2007	SUBORDINATIO	\$0.00		Lot: ALL Blk: 18 Add: GOLDEN TEE EST AND 1ST ADD RPLT
<input type="checkbox"/>		13 JV LLC	PEND OREILLE BONNER DEV724833		724830	3/15/2007	SUBORDINATIO	\$0.00		Lot: ALL Blk: 18 Add: GOLDEN TEE EST AND 1ST ADD RPLT
<input type="checkbox"/>		13 JV LLC	PEND OREILLE BONNER DEV724833		724830	3/15/2007	SUBORDINATIO	\$0.00		Lot: ALL Blk: 18 Add: GOLDEN TEE EST AND 1ST ADD RPLT
<input type="checkbox"/>		13 JV LLC	PEND OREILLE BONNER DEV724833		724830	3/15/2007	SUBORDINATIO	\$0.00		Lot: ALL Blk: 18 Add: GOLDEN TEE EST AND 1ST ADD RPLT
<input type="checkbox"/>		13 JV LLC	PEND OREILLE BONNER DEV724833		724830	3/15/2007	SUBORDINATIO	\$0.00		Lot: ALL Blk: 5A Add: GOLDEN TEE EST AND 1ST ADD RPLT
<input type="checkbox"/>		13 JV LLC	PEND OREILLE BONNER DEV724833		724830	3/15/2007	SUBORDINATIO	\$0.00		Lot: ALL Blk: 5A Add: GOLDEN TEE EST AND 1ST ADD RPLT
<input type="checkbox"/>		13 JV LLC	PEND OREILLE BONNER DEV724833		724830	3/15/2007	SUBORDINATIO	\$0.00		Lot: ALL Blk: 5A Add: GOLDEN TEE EST AND 1ST ADD RPLT
<input type="checkbox"/>		13 JV LLC	PEND OREILLE BONNER DEV724833		724829	3/15/2007	SUBORDINATIO	\$0.00	1, 24	Qtr: N2NW Sec: 21 Twns: 57N Rng: 1E Arb: 1, 24 Cmmt: SEC
<input type="checkbox"/>		13 JV LLC	PEND OREILLE BONNER DEV724833		724829	3/15/2007	SUBORDINATIO	\$0.00	1, 24	Qtr: N2NW Sec: 21 Twns: 57N Rng: 1E Arb: 1, 24 Cmmt: SEC
<input type="checkbox"/>		13 JV LLC	PEND OREILLE BONNER DEV724833		724829	3/15/2007	SUBORDINATIO	\$0.00	1, 24	Qtr: N2NW Sec: 21 Twns: 57N Rng: 1E Arb: 1, 24 Cmmt: SEC
<input type="checkbox"/>		13 JV LLC	PEND OREILLE BONNER DEV724833		708474	3/15/2007	SUBORDINATIO	\$0.00	2-3, 5-6, 9	Qtr: NWNE SE Sec: 2 Twns: 57N Rng: 1W Arb: 2-3, 5-6, 9 C
<input type="checkbox"/>		13 JV LLC	PEND OREILLE BONNER DEV724833		708474	3/15/2007	SUBORDINATIO	\$0.00	2-3, 5-6, 9	Qtr: NWNE SE Sec: 2 Twns: 57N Rng: 1W Arb: 2, 3, 5-6, 9 C
<input type="checkbox"/>		13 JV LLC	PEND OREILLE BONNER DEV724833		708474	3/15/2007	SUBORDINATIO	\$0.00	2-3, 5-6, 9	Qtr: NWNE SE Sec: 2 Twns: 57N Rng: 1W Arb: 2-3, 5-6, 9 C
<input type="checkbox"/>		13 JV LLC	PEND OREILLE BONNER DEV724833		708582	3/15/2007	SUBORDINATIO	\$0.00	17, 22-23, 3	Qtr: NWNW W2SW Sec: 31 Twns: 58N Rng: 1E Arb: 17, 22-
<input type="checkbox"/>		13 JV LLC	PEND OREILLE BONNER DEV724833		708582	3/15/2007	SUBORDINATIO	\$0.00	17, 22-23, 3	Qtr: NWNW W2SW Sec: 31 Twns: 58N Rng: 1E Arb: 17, 22-
<input type="checkbox"/>		13 JV LLC	PEND OREILLE BONNER DEV724833		708582	3/15/2007	SUBORDINATIO	\$0.00	17, 22-23, 3	Qtr: NWNW W2SW Sec: 31 Twns: 58N Rng: 1E Arb: 17, 22-
<input type="checkbox"/>		13 JV LLC	PEND OREILLE BONNER DEV724833		474746	3/15/2007	SUBORDINATIO	\$0.00	14, 17, 24-2	Qtr: SENE SE Sec: 38 Twns: 58N Rng: 1W Arb: 14, 17, 24-2
<input type="checkbox"/>		13 JV LLC	PEND OREILLE BONNER DEV724833		474746	3/15/2007	SUBORDINATIO	\$0.00	14, 17, 24-2	Qtr: SENE SE Sec: 38 Twns: 58N Rng: 1W Arb: 14, 17, 24-2
<input type="checkbox"/>		13 JV LLC	PEND OREILLE BONNER DEV724833		474746	3/15/2007	SUBORDINATIO	\$0.00	14, 17, 24-2	Qtr: SENE SE Sec: 38 Twns: 58N Rng: 1W Arb: 14, 17, 24-2
<input type="checkbox"/>		13 JV LLC	PEND OREILLE BONNER DEV724833		708472	3/15/2007	SUBORDINATIO	\$0.00	4-6	Qtr: SESE Sec: 17 Twns: 57N Rng: 1E Arb: 4-6 Cmmt: SECO
<input type="checkbox"/>		13 JV LLC	PEND OREILLE BONNER DEV724833		708472	3/15/2007	SUBORDINATIO	\$0.00	4-6	Qtr: SESE Sec: 17 Twns: 57N Rng: 1E Arb: 4-6 Cmmt: SECO
<input type="checkbox"/>		13 JV LLC	PEND OREILLE BONNER DEV724833		708472	3/15/2007	SUBORDINATIO	\$0.00	4-6	Qtr: SESE Sec: 17 Twns: 57N Rng: 1E Arb: 4-6 Cmmt: SECO
<input type="checkbox"/>		13 JV LLC	PEND OREILLE BONNER DEV724833		708471	3/15/2007	SUBORDINATIO	\$0.00	3, 20	Qtr: W2 Sec: 8 Twns: 57N Rng: 1E Arb: 3, 20 Cmmt: SECOND
<input type="checkbox"/>		13 JV LLC	PEND OREILLE BONNER DEV724833		708471	3/15/2007	SUBORDINATIO	\$0.00	3, 20	Qtr: W2 Sec: 8 Twns: 57N Rng: 1E Arb: 3, 20 Cmmt: SECOND
<input type="checkbox"/>		13 JV LLC	PEND OREILLE BONNER DEV724833		708471	3/15/2007	SUBORDINATIO	\$0.00	3, 20	Qtr: W2 Sec: 8 Twns: 57N Rng: 1E Arb: 3, 20 Cmmt: SECOND
<input type="checkbox"/>		13 JV LLC	PEND OREILLE BONNER DEV724833		708473	3/15/2007	SUBORDINATIO	\$0.00	8, 32, 78	Qtr: W2SW Sec: 18 Twns: 57N Rng: 1E Arb: 8, 32, 78 Cmmt: 1
<input type="checkbox"/>		13 JV LLC	PEND OREILLE BONNER DEV724833		708473	3/15/2007	SUBORDINATIO	\$0.00	8, 32, 78	Qtr: W2SW Sec: 18 Twns: 57N Rng: 1E Arb: 8, 32, 78 Cmmt: 1
<input type="checkbox"/>		13 JV LLC	PEND OREILLE BONNER DEV724833		708473	3/15/2007	SUBORDINATIO	\$0.00	8, 32, 78	Qtr: W2SW Sec: 18 Twns: 57N Rng: 1E Arb: 8, 32, 78 Cmmt: 1
<input type="checkbox"/>		1 JV LLC	V P INC	724384	474746	3/8/2007	PARTIAL RELEA	\$0.00		Lot: 4 Blk: 28 Add: GOLDEN TEE EST AND 1ST ADD RPLT AP
<input type="checkbox"/>		1 JV LLC	V P INC	723454	474746	2/22/2007	PARTIAL RELEA	\$0.00		Lot: 10 Blk: 28 Add: GOLDEN TEE EST AND 1ST ADD RPLT AP
<input type="checkbox"/>		1 JV LLC	V P INC	723336	474746	2/21/2007	PARTIAL RELEA	\$0.00		Lot: 1A Blk: 8 Add: GOLDEN TEE EST AND 1ST ADD RPLT AP
<input type="checkbox"/>		1 JV LLC	V P INC	723119	474746	2/15/2007	PARTIAL RELEA	\$0.00		Lot: 9 Blk: 28 Add: GOLDEN TEE EST AND 1ST ADD RPLT AP
<input type="checkbox"/>		1 JV LLC	V P INC	723117	474746	2/15/2007	PARTIAL RELEA	\$0.00		Lot: 3 Blk: 22 Add: GOLDEN TEE EST AND 1ST ADD RPLT AP
<input type="checkbox"/>		1 JV LLC	V P INC	723113	474746	2/16/2007	PARTIAL RELEA	\$0.00		Lot: 4 Blk: 3 Add: GOLDEN TEE ESTATES 2ND ADDITION AP

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Selected	Pages	Grantor	Grantee	Doc #	RDoc #	Filed Date	Instr Type	Consideration Arb	Legal
<input type="checkbox"/>	1	JV LLC	VP INC	722165	474746	2/2/2007	PARTIAL RELEA	\$0.00	Lot 6 Blk 2 Add GOLDEN TEE ESTATES 2ND ADDITION B-7
<input type="checkbox"/>	1	JV LLC	VP INC	722159	474746	2/2/2007	PARTIAL RELEA	\$0.00	Lot 8 Blk 3 Add GOLDEN TEE ESTATES 2ND ADDITION B-7
<input type="checkbox"/>	1	JV LLC	VP INC	722090	474746	2/1/2007	PARTIAL RELEA	\$0.00	Lot 4 Blk 1 Add GOLDEN TEE ESTATES 4TH ADDITION B-4
<input type="checkbox"/>	1	JV LLC	VP INC	720854	474746	1/11/2007	PARTIAL RELEA	\$0.00	Lot 7 Blk 3 Add GOLDEN TEE ESTATES 2ND ADDITION B-7
<input type="checkbox"/>	1	JV LLC	VP INC	720239	474746	1/3/2007	PARTIAL RELEA	\$0.00	Lot 7 Blk 10 Add GOLDEN TEE ESTATES 3RD ADDITION B-
<input type="checkbox"/>	1	JV LLC	VP INC	720123	474746	12/29/2006	PARTIAL RELEA	\$0.00	Lot 1 Blk 1 Add GOLDEN TEE ESTATES 6TH ADDITION A-8
<input type="checkbox"/>	1	JV LLC	VP INC	720059	474746	12/28/2006	PARTIAL RELEA	\$0.00	Lot 3-4 Blk 8 Add GOLDEN TEE ESTATES 3RD ADDITION F
<input type="checkbox"/>	1	JV LLC	VP INC	719971	474746	12/27/2006	PARTIAL RELEA	\$0.00	Lot 18 Blk 2 Add GOLDEN TEE EST AND 1ST ADD RPLT AF
<input type="checkbox"/>	1	JV LLC	VP INC	719657	474746	12/26/2006	PARTIAL RELEA	\$0.00	Lot 3 Blk 2 Add GOLDEN TEE ESTATES 4TH ADDITION B-A
<input type="checkbox"/>	1	JV LLC	VP INC	719536	474746	12/20/2006	PARTIAL RELEA	\$0.00	Lot 6 Blk 2 Add GOLDEN TEE ESTATES 4TH ADDITION B-B
<input type="checkbox"/>	1	JV LLC	VP INC	719239	474746	12/15/2006	PARTIAL RELEA	\$0.00	Lot 2 Blk 21 Add GOLDEN TEE EST AND 1ST AND RPLT AF
<input type="checkbox"/>	1	JV LLC	VP INC	719064	474746	12/13/2006	PARTIAL RELEA	\$0.00	Lot 14 Blk 4 Add GOLDEN TEE ESTATES 3RD ADDITION B-
<input type="checkbox"/>	1	JV LLC	VP INC	719060	474746	12/13/2006	PARTIAL RELEA	\$0.00	Lot 2 Blk 2 Add GOLDEN TEE ESTATES 5TH ADDITION B-E
<input type="checkbox"/>	1	1508 BLDG PARTN INC	JV LLC	718615	474746	12/7/2006	PARTIAL RELEA	\$0.00	Lot 5 Blk 1 Add GOLDEN TEE ESTATES 2ND ADDITION B-7
<input type="checkbox"/>	1	JV LLC	VP INC	718321	474746	12/4/2006	PARTIAL RELEA	\$0.00	Lot 5 Blk 1 Add GOLDEN TEE ESTATES 6TH ADDITION B-6
<input type="checkbox"/>	1	JV LLC	VP INC	717932	474746	11/29/2006	PARTIAL RELEA	\$0.00	Lot 2 Blk 5 Add GOLDEN TEE ESTATES 4TH ADDITION B-B
<input type="checkbox"/>	1	JV LLC	VP INC	716885	474746	11/8/2006	PARTIAL RELEA	\$0.00	Lot 9 Blk 3 Add GOLDEN TEE ESTATES 2ND ADDITION B-7
<input type="checkbox"/>	1	JV LLC	VP INC	716842	474746	11/8/2006	PARTIAL RELEA	\$0.00	Lot 2 Blk 1 Add GOLDEN TEE ESTATES 6TH ADDITION B-B
<input type="checkbox"/>	2	HIDDEN LAKES LIMITED	VP INC	716470	715907	11/2/2006	PARTIAL RELEA	\$0.00	Lot 1 Blk 11 Add GOLDEN TEE ESTATES 3RD ADDITION B-
<input type="checkbox"/>	2	HIDDEN LAKES LIMITED	VP INC	716470	715907	11/2/2006	PARTIAL RELEA	\$0.00	Lot 1 Blk 11 Add GOLDEN TEE ESTATES 3RD ADDITION B-
<input type="checkbox"/>	2	HIDDEN LAKES LIMITED	VP INC	716470	715907	11/2/2006	PARTIAL RELEA	\$0.00	Lot 1, 4 Blk 2 Add GOLDEN TEE ESTATES 4TH ADDITION E
<input type="checkbox"/>	2	HIDDEN LAKES LIMITED	VP INC	716470	715907	11/2/2006	PARTIAL RELEA	\$0.00	Lot 1, 4 Blk 2 Add GOLDEN TEE ESTATES 4TH ADDITION F
<input type="checkbox"/>	2	HIDDEN LAKES LIMITED	VP INC	716470	715907	11/2/2006	PARTIAL RELEA	\$0.00	Lot 1, 8, 8-9 Blk 7 Add GOLDEN TEE ESTATES 3RD ADDIT
<input type="checkbox"/>	2	HIDDEN LAKES LIMITED	VP INC	716470	715907	11/2/2006	PARTIAL RELEA	\$0.00	Lot 1, 8, 8-9 Blk 9 Add GOLDEN TEE ESTATES 3RD ADDIT
<input type="checkbox"/>	2	HIDDEN LAKES LIMITED	VP INC	716470	715907	11/2/2006	PARTIAL RELEA	\$0.00	Lot 1-3, 4, 7-9 Blk 7 Add GOLDEN TEE ESTATES 3RD ADI
<input type="checkbox"/>	2	HIDDEN LAKES LIMITED	VP INC	716470	715907	11/2/2006	PARTIAL RELEA	\$0.00	Lot 1-2, 4, 7-9 Blk 7 Add GOLDEN TEE ESTATES 3RD ADI
<input type="checkbox"/>	2	HIDDEN LAKES LIMITED	VP INC	716470	715907	11/2/2006	PARTIAL RELEA	\$0.00	Lot 1-6, 9 Blk 10 Add GOLDEN TEE ESTATES 3RD ADDITI
<input type="checkbox"/>	2	HIDDEN LAKES LIMITED	VP INC	716470	715907	11/2/2006	PARTIAL RELEA	\$0.00	Lot 1-5, 9 Blk 10 Add GOLDEN TEE ESTATES 3RD ADDITI
<input type="checkbox"/>	2	HIDDEN LAKES LIMITED	VP INC	716470	715907	11/2/2006	PARTIAL RELEA	\$0.00	Lot 18-17 Blk 4 Add GOLDEN TEE ESTATES 3RD ADDITIO
<input type="checkbox"/>	2	HIDDEN LAKES LIMITED	VP INC	716470	715907	11/2/2006	PARTIAL RELEA	\$0.00	Lot 18-17 Blk 4 Add GOLDEN TEE ESTATES 3RD ADDITIO
<input type="checkbox"/>	2	HIDDEN LAKES LIMITED	VP INC	716470	715907	11/2/2006	PARTIAL RELEA	\$0.00	Lot 3 Blk 1 Add GOLDEN TEE ESTATES 5TH ADDITION B-B
<input type="checkbox"/>	2	HIDDEN LAKES LIMITED	VP INC	716470	715907	11/2/2006	PARTIAL RELEA	\$0.00	Lot 3 Blk 1 Add GOLDEN TEE ESTATES 5TH ADDITION B-B
<input type="checkbox"/>	2	HIDDEN LAKES LIMITED	VP INC	716470	715907	11/2/2006	PARTIAL RELEA	\$0.00	Lot 3, 7 Blk 8 Add GOLDEN TEE ESTATES 3RD ADDITION I
<input type="checkbox"/>	2	HIDDEN LAKES LIMITED	VP INC	716470	715907	11/2/2006	PARTIAL RELEA	\$0.00	Lot 3, 7 Blk 8 Add GOLDEN TEE ESTATES 3RD ADDITION I
<input type="checkbox"/>	2	HIDDEN LAKES LIMITED	VP INC	716470	715907	11/2/2006	PARTIAL RELEA	\$0.00	Lot 3-4 Blk 1 Add GOLDEN TEE ESTATES 6TH ADDITION I
<input type="checkbox"/>	2	HIDDEN LAKES LIMITED	VP INC	716470	715907	11/2/2006	PARTIAL RELEA	\$0.00	Lot 3-4 Blk 1 Add GOLDEN TEE ESTATES 6TH ADDITION I
<input type="checkbox"/>	2	HIDDEN LAKES LIMITED	VP INC	716470	715907	11/2/2006	PARTIAL RELEA	\$0.00	Lot 4 Blk 2 Add GOLDEN TEE ESTATES 5TH ADDITION B-B
<input type="checkbox"/>	2	HIDDEN LAKES LIMITED	VP INC	716470	715907	11/2/2006	PARTIAL RELEA	\$0.00	Lot 4 Blk 2 Add GOLDEN TEE ESTATES 5TH ADDITION B-B
<input type="checkbox"/>	2	HIDDEN LAKES LIMITED	VP INC	716470	715907	11/2/2006	PARTIAL RELEA	\$0.00	Lot 5-8 Blk 5 Add GOLDEN TEE ESTATES 3RD ADDITION I
<input type="checkbox"/>	2	HIDDEN LAKES LIMITED	VP INC	716470	715907	11/2/2006	PARTIAL RELEA	\$0.00	Lot 5-8 Blk 5 Add GOLDEN TEE ESTATES 3RD ADDITION I

Selected	Pages	Grantor	Grantee	Doc #	RDoc #	Filed Date	Instr Type	Consideration	Arb	Legal
<input type="checkbox"/>		2 JV LLC	V P INC	715470	715907	11/2/2006	PARTIAL RELEA	\$0.00		Lot 2 4 Bk 1 Add GOLDEN TEE ESTATES 3RD ADDITION
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<input type="checkbox"/>		2 SUN MOUNTAIN INC	V P INC	715470	474746	11/2/2006	PARTIAL RELEA	\$0.00		Lot 3 14 Bk 1 Add GOLDEN TEE ESTATES 2ND ADDITION
<input type="checkbox"/>		2 SUN MOUNTAIN INC	V P INC	715470	474746	11/2/2006	PARTIAL RELEA	\$0.00		Lot 3 14 Bk 1 Add GOLDEN TEE ESTATES 2ND ADDITION
<input type="checkbox"/>		2 JV LLC	V P INC	715907	474746	10/25/2006	PARTIAL RELEA	\$0.00		Lot 1 Bk 11 Add GOLDEN TEE ESTATES 3RD ADDITION
<input type="checkbox"/>		2 JV LLC	V P INC	715907	474746	10/25/2006	PARTIAL RELEA	\$0.00		Lot 1 3-4 7-8 Bk 7 Add GOLDEN TEE ESTATES 3RD ADD
<input type="checkbox"/>		2 JV LLC	V P INC	715907	474746	10/25/2006	PARTIAL RELEA	\$0.00		Lot 1 4 Bk 2 Add GOLDEN TEE ESTATES 4TH ADDITION
<input type="checkbox"/>		2 JV LLC	V P INC	715907	474746	10/25/2006	PARTIAL RELEA	\$0.00		Lot 1 5 6-9 Bk 8 Add GOLDEN TEE ESTATES 3RD ADDIT
<input type="checkbox"/>		2 JV LLC	V P INC	715907	474746	10/25/2006	PARTIAL RELEA	\$0.00		Lot 1 5 9 Bk 10 Add GOLDEN TEE ESTATES 3RD ADDITIO
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<input type="checkbox"/>		2 JV LLC	V P INC	715907	474746	10/25/2006	PARTIAL RELEA	\$0.00		Lot 3 Bk 5 Add GOLDEN TEE ESTATES 4TH ADDITION
<input type="checkbox"/>		2 JV LLC	V P INC	715907	474746	10/25/2006	PARTIAL RELEA	\$0.00		Lot 3 11 Bk 1 Add GOLDEN TEE ESTATES 2ND ADDITION
<input type="checkbox"/>		2 JV LLC	V P INC	715907	474746	10/25/2006	PARTIAL RELEA	\$0.00		Lot 3 5-8 Bk 5 Add GOLDEN TEE ESTATES 3RD ADDITIO
<input type="checkbox"/>		2 JV LLC	V P INC	715907	474746	10/25/2006	PARTIAL RELEA	\$0.00		Lot 3 7 Bk 9 Add GOLDEN TEE ESTATES 3RD ADDITION
<input type="checkbox"/>		2 JV LLC	V P INC	715907	474746	10/25/2006	PARTIAL RELEA	\$0.00		Lot 3-4 Bk 1 Add GOLDEN TEE ESTATES 6TH ADDITION
<input type="checkbox"/>		11 GOLDEN LAKES LP		714257	474746	9/29/2006	MISC	\$0.00		Lot 4 Bk 2 Add GOLDEN TEE ESTATES 5TH ADDITION
<input type="checkbox"/>		11 GOLDEN LAKES LP		714257	474746	9/29/2006	MISC	\$0.00		Lot ALL Bk ALL Add GOLDEN TEE EST 1ST ADD 6-114 Cr
<input type="checkbox"/>		1 JV LLC		714257	714037	9/29/2006	MISC	\$0.00		Lot ALL Bk ALL Add GOLDEN TEE EST 1ST ADD 6-114 Cr
<input type="checkbox"/>		1 JV LLC		714257	714037	9/29/2006	MISC	\$0.00		Lot ALL Bk ALL Add GOLDEN TEE EST 1ST ADD 6-114 Cr
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<input type="checkbox"/>		6 JV LLC	PEND OREILLE BONNER DEV	706582	474746	6/20/2006	SUBORDINATIO	\$0.003		Qtr. E2 Sec. 4 Town. 67N Rng. 1E Arb. 1 Cont. GL 5, 6, 9, 10, 1
<input type="checkbox"/>		6 JV LLC	PEND OREILLE BONNER DEV	706582	474746	6/20/2006	SUBORDINATIO	\$0.003		Qtr. E2 Sec. 4 Town. 67N Rng. 1E Arb. 1 Cont. GL 5, 6, 9, 10, 1
<input type="checkbox"/>		6 JV LLC	PEND OREILLE BONNER DEV	706582	706474	6/20/2006	SUBORDINATIO	\$0.002, 9		Qtr. N2 Sec. 2 Town. 67N Rng. 1W Arb. 2, 9 Cont. GL 2, 3, 4, 8
<input type="checkbox"/>		6 JV LLC	PEND OREILLE BONNER DEV	706582	706474	6/20/2006	SUBORDINATIO	\$0.002, 9		Qtr. N2 Sec. 2 Town. 67N Rng. 1W Arb. 2, 9 Cont. GL 2, 3, 4, 8
<input type="checkbox"/>		6 JV LLC	PEND OREILLE BONNER DEV	706582	706474	6/20/2006	SUBORDINATIO	\$0.0014		Qtr. S2SE Sec. 26 Town. 68N Rng. 1W Arb. 14
<input type="checkbox"/>		6 JV LLC	PEND OREILLE BONNER DEV	706582	706474	6/20/2006	SUBORDINATIO	\$0.0014		Qtr. S2SE Sec. 26 Town. 68N Rng. 1W Arb. 14
<input type="checkbox"/>		6 JV LLC	PEND OREILLE BONNER DEV	706582	474746	6/20/2006	SUBORDINATIO	\$0.0017		Qtr. SWNW Sec. 31 Town. 68N Rng. 1E Arb. 17 Cont. GL 4
<input type="checkbox"/>		6 JV LLC	PEND OREILLE BONNER DEV	706474	474746	6/19/2006	SUBORDINATIO	\$0.0017		Qtr. SWNW Sec. 31 Town. 68N Rng. 1E Arb. 17 Cont. GL 4
<input type="checkbox"/>		6 JV LLC	PEND OREILLE BONNER DEV	706474	474746	6/19/2006	SUBORDINATIO	\$0.003		Qtr. E2 Sec. 4 Town. 67N Rng. 1E Arb. 2 Cont. GL 5, 6, 9, 10, 1
<input type="checkbox"/>		6 JV LLC	PEND OREILLE BONNER DEV	706474	474746	6/19/2006	SUBORDINATIO	\$0.002, 9		Qtr. N2 Sec. 2 Town. 67N Rng. 1W Arb. 2, 9 Cont. GL 2, 3, 4, 8
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<input type="checkbox"/>		2 JV LLC	V P INCORPORATED	594824	474746	1/15/2002	SUBORDINATIO	\$0.00		Qtr. SWNW Sec. 31 Town. 68N Rng. 1E Arb. 17 Cont. GL 4
<input type="checkbox"/>		2 JV LLC	V P INCORPORATED	591753	474746	11/16/2001	SUBORDINATIO	\$0.00		

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CLERK OF DISTRICT COURT  
COUNTY OF BONNER  
BOISE, IDAHO 83725

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

Defendants.

Case No. CV-09-1810

**MEMORANDUM IN OPPOSITION TO  
JV L.L.C.'S MOTION TO ALTER,  
AMEND AND TO RECONSIDER  
FILED 8/18/2015**

**Honorable Barbara A. Buchanan**

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

VALIANT IDAHO, LLC,  
an Idaho limited liability company,  
Third Party Plaintiff,

vs.

PEND OREILLE BONNER  
DEVELOPMENT HOLDINGS, INC., a  
Nevada corporation; *et al.*,

Third Party Defendants.

COMES NOW, Valiant Idaho, LLC ("Valiant") by and through its counsel of record, McConnell Wagner Sykes and Stacey, PLLC, and submits its Memorandum in Opposition to JV L.L.C.'s Motion to Alter, Amend and to Reconsider the Court's Memorandum Decision and Order Filed 8/18/2015.

**I. PROCEDURAL HISTORY**

Valiant incorporates as if set forth herein the statement of relevant procedural history contained in Valiant's Memorandum in Opposition to JV L.L.C.'s Motion to Alter, Amend and to Reconsider the Court's Memorandum Decision and Order Dated July 21, 2015, filed concurrently herewith. As noted in footnote 1 of that memorandum, on August 18, 2015, JV L.L.C. ("JV") filed a Motion to Reconsider, Alter, and Amend the Judgment ("4th Reconsider Motion").

The 4<sup>th</sup> Reconsider Motion contains only two new arguments. These arguments are not grounded in fact, warranted by existing law, nor supported by a good faith argument for the extension, modification or reversal of existing law. The first new argument is that the caption on the Judgment entered August 5, 2015 is incorrect. The second new argument is that the Court cannot enter any orders following entry of a judgment because any such orders are not appealable. These arguments are set forth on pages four (4) through six (6) of the 4<sup>th</sup> Reconsider Motion.

The arguments set forth in the remaining 11 ½ pages of the 4<sup>th</sup> Reconsider Motion appear to rely primarily on the “third time’s a charm doctrine” or in this case the “fifth time’s the charm doctrine.” as those pages contain a re-hashing of specious arguments previously raised in JV’s Memorandum in Opposition to Valiant Idaho, LLC’s Motion for Summary Judgment (“Opp. Brief”) filed on February 2, 2015, its April 28, 2015 Motion to Alter, Amend and to Reconsider the Court’s Memorandum Decision and Order filed 4/14/2015 (“1<sup>st</sup> Reconsider Motion”), its July 7, 2015 Objection to Entry of Final Judgment – As Drafted by Valiant (“2<sup>nd</sup> Reconsider Motion”), its July 30, 2015 Motion to Alter, Amend, and Reconsider the Court’s Memorandum Decision and Order RE: JV L.L.C.’s Motions to Reconsider, and JV L.L.C.’s Motion for Partial Summary Judgment For Affirmative Relief Concerning JV L.L.C.’s Redemption Deed as to Valiant’s Redemption Deed, and Request For Hearing (“3<sup>rd</sup> Reconsider Motion”) and on oral argument at numerous hearings in this case.

As with the 1<sup>st</sup> Reconsider Motion, the 2<sup>nd</sup> Reconsider Motion and the 3<sup>rd</sup> Reconsider Motion, the 4<sup>th</sup> Reconsider Motion lacks citation to new law and/or facts.

Given this background, the following will address the two new arguments raised by the 4<sup>th</sup> Reconsider Motion. Valiant will rely upon its prior briefing, oral arguments and the Court’s prior decisions to address the arguments that JV has now raised for a fifth time.

## II. RESPONSE ARGUMENT

### *1. The form of the Judgment complies with the Idaho Rules of Civil Procedure.*

JV argues that the form of the Judgment does not comply with the Idaho Rules of Civil Procedure (“Rules”) because the caption does not set forth the name of all of the parties.

This argument fails in light of Rule 7(b)(2), which governs captions of “other papers provided for by” the Rules.

Rule 10(a)(1) requires that “[i]n the complaint the title of the action shall include the names of all of the parties, but in subsequent pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of the other parties.” Rule 7(b)(2) provides that “[t]he rules applicable to captions, signing, and other matters of form of pleadings apply to all motions and other papers provided for by these rules.” A judgment is a “paper” provided for by the Rules. *See, e.g.* I.R.C.P. 54(a). As such, Rule 10(a)(1) applies to a judgment. Therefore, the caption of the Judgment entered on August 5, 2015 complies with the Rules and does not need to be amended.

*2. Neither the decree of foreclosure nor the order of sale are permitted to be set forth in the Judgment.*

JV argues that the Rules require the decree of foreclosure and order of sale to be set forth in the Judgment. This argument is based on the assertion that Rule 54(a) precludes entry of an order after entry of judgment. JV further contends that any order entered after judgment is not appealable. These arguments are without merit.

Rule 54(a) provides that “[a] judgment shall not contain a recital of pleadings, the report of a master, the record of prior proceedings, the court’s legal reasoning, findings of fact, or conclusions of law.” (Emphasis added.) The only exception to the prohibition of such information relates to findings of fact or conclusions of law: “[a] judgment can include any findings of fact or conclusions of law expressly required by statute, rule, or regulation.” (Emphasis added.) Rule 54(a) does not prohibit entry of orders after entry of final judgment.

Orders entered post-judgment are appealable under Idaho Rule of Appellate Procedure 11(a)(7). Thus JV's argument regarding the non-appealability of post judgment orders fails.

JV has failed to provide the Court with any statute, rule or regulation which requires the decree of foreclosure and/or the order of sale to be contained in the Judgment. The only statute cited by JV, Idaho Code § 6-101, provides the Court with the option to direct sale of encumbered property within a judgment. In the absence of a requirement that the direction of sale be within the Judgment, Rule 54(a) prohibits inclusion of either the decree of foreclosure or the order of sale within the Judgment.

The Judgment entered in this matter complies with Rule 54(a).

*3. JV's remaining arguments have been correctly rejected by the Court.*

For the sake of brevity, Valiant relies on its prior briefing and the Court's prior decisions to address the previously rejected arguments raised for a fifth time the 4<sup>th</sup> Reconsider Motion. To aid the Court, the prior briefing and decisions relied upon includes, but is not limited to, the following:

- a. regarding JV's contention that the SJ Decision addressed matters other than priority: the SJ Decision, the Memorandum in Opposition to JV L.L.C.'s Motion to Alter, Amend and to Reconsider the Court's Memorandum Decision and Order filed 4/14/2015 at pp. 5-6, filed on July 6, 2015, and the First Reconsideration Denial Order at p. 12;
- b. regarding JV's contention that the Court "gratuitously" included the Stipulation for Entry of Judgment against Pend Oreille Bonner Development filed on November 19, 2014 and corresponding order entered on November 20, 2014:

SJ Motion at p. 2 (“[t]his motion is made and based upon the records and files herein,” as well as papers filed concurrently with such motion);

- c. regarding JV’s contention that the SJ Motion only sought summary judgment based on redemption deeds: SJ Motion at p. 2 (requesting summary judgment based on mortgages assigned to Valiant) and the Memorandum in Support of Valiant Idaho, LLC’s Motion for Summary Judgment Against JV, L.L.C., North Idaho Resorts, LLC, and VP, Incorporated (“SJ Memo.”) at pp. 3-4 filed on January 20, 2015 (requesting summary judgment based on mortgages assigned to Valiant as well as based upon its Redemption Deed);
- d. regarding JV’s contention that Valiant only has a senior right under the Redemption Deed to the property described in such deed: Memorandum in Opposition to JV L.L.C.’s Motion to Alter, Amend and to Reconsider filed 7/30/2015 (“Memo. Opp. Third Reconsideration Motion”) filed concurrently herewith;
- e. regarding JV’s claim that the RE Loans Note/Mortgage has been paid: Stipulation to Entry of Judgment Against Pend Oreille Bonner Development, LLC at p. 3, filed on November 19, 2014. Order on Stipulation to Entry of Judgment Against Pend Oreille Bonner Development, LLC at p. 3, filed on November 20, 2014, the Affidavit of Charles W. Reeves at ¶ 8, filed on January 20, 2015, Memorandum in Reply to JV, L.L.C.’s Memorandum in Opposition to Valiant Idaho, LLC’s Motion For Summary Judgment (“Reply SJ Memo.”) at pp. 4-5, filed on March 11, 2015, and the First Reconsideration Denial Order at pp. 14-16; and



f. regarding JV's claim that findings made in the case of Bonner County Case No. CV-2011-135 ("Union Bank Case") are binding on Valiant: Reply SJ Memo. at pp. 3-4.

### III. REQUEST FOR ATTORNEYS' FEES

Rule 11(a)(1) requires that any pleading, motion or other paper be "well grounded in fact and ... warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation."

The two new arguments presented by JV regarding the caption of the Judgment and orders entered post-Judgment are wholly without merit and ignore the plain language of the Rules. JV has not presented any argument, much less a good faith argument, that the applicable rules should be extended, modified or reversed. As such, these arguments are frivolous and in violation of Rule 11(a)(1). The overwhelming majority of JV's argument in support of its 4<sup>th</sup> Reconsider Motion is nothing other than a re-hashing of prior arguments which the Court has rejected on multiple occasions. No new law or facts have been presented in support of these arguments. The only reason to continue to assert these meritless arguments is to harass Valiant, unnecessarily delay this matter and needlessly increase the cost of this litigation. If JV wants to continue to pursue these arguments, it can file an appeal.

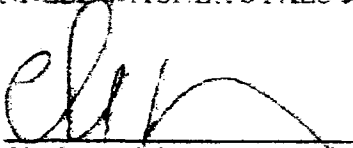
Enough is enough. JV and its counsel have needlessly increased the cost of this litigation and are unnecessarily delaying resolution of this protracted litigation. As such, Valiant respectfully requests that the Court enter an order requiring both JV and its counsel to pay for the attorneys' fees and costs incurred by Valiant in responding to the present motion.

**IV. CONCLUSION**

For the reasons set forth above, Valiant respectfully requests that JV's Motion to Alter, Amend and to Reconsider the Court's Memorandum Decision and Order Filed 8/18/2015 be **DENIED**. Valiant also requests that JV and its counsel, Gary A. Finney, be ordered to pay for the attorneys' fees and costs incurred by Valiant in defending the present motion as it has no factual support, it is without basis in law, and it was brought for the improper purposes of delaying this litigation and needlessly increasing the cost of this litigation.

**DATED** this 26<sup>th</sup> day of August 2015.

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

BY:   
Chad M. Nicholson  
Attorneys For Valiant Idaho, LLC

**CERTIFICATE OF SERVICE**

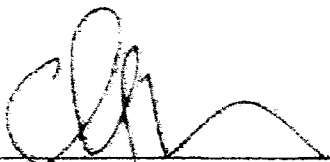
**I HEREBY CERTIFY** that on the 26<sup>th</sup> day of August 2015, a true and correct copy of the foregoing document was served by the method indicated below upon the following party(ies):

Bruce A. Anderson, Esq. Elsaesser Jarzabek Anderson Elliott & MacDonald, Chtd 320 East Neider Avenue, Suite 102 Coeur d' Alene, Idaho 83815 Telephone: 208.667.2900 Facsimile: 208.667.2150 <i>Counsel For Jacobson, Lazar and Sage Holdings</i>	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivered <input checked="" type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Electronic Mail <a href="mailto:brucea@ejame.com">brucea@ejame.com</a>
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<p>Gary A. Finney, Esq.          Finney Finney &amp; Finney, P.A.          120 East Lake Street, Suite 317          Sandpoint, Idaho 83864          Telephone: 208.263.7712          Facsimile: 208.263.8211  <i>Counsel For JV, LLC</i></p>	<p><input checked="" type="checkbox"/> U.S. Mail  <input type="checkbox"/> Hand Delivered  <input checked="" type="checkbox"/> Facsimile  <input type="checkbox"/> Overnight Mail  <input type="checkbox"/> Electronic Mail  <a href="mailto:garyfinney@finneylaw.net">garyfinney@finneylaw.net</a></p>
<p>D. Toby McLaughlin, Esq.          Berg &amp; McLaughlin          414 Church Street, Suite 203          Sandpoint, Idaho 83864          Telephone: 208.263.4748          Facsimile: 208.263.7557  <i>Counsel For Idaho Club HOA/Panhandle Mngmnt</i></p>	<p><input checked="" type="checkbox"/> U.S. Mail  <input type="checkbox"/> Hand Delivered  <input type="checkbox"/> Facsimile  <input type="checkbox"/> Overnight Mail  <input checked="" type="checkbox"/> Electronic Mail  <a href="mailto:toby@sandpointlaw.com">toby@sandpointlaw.com</a></p>
<p>Susan P. Weeks, Esq.          James, Vernon &amp; Weeks, PA          1526 Lincoln Way          Coeur d'Alene, Idaho 83814          Telephone: 208.667.0683          Facsimile: 208.664.1684  <i>Counsel For VP Incorporated/North Idaho Resorts</i></p>	<p><input checked="" type="checkbox"/> U.S. Mail  <input type="checkbox"/> Hand Delivered  <input checked="" type="checkbox"/> Facsimile  <input type="checkbox"/> Overnight Mail  <input type="checkbox"/> Electronic Mail  <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

  
Chad M. Nicholson

2015 AUG 26 PM 2:31  
 [Handwritten signature and scribbles over a horizontal line]

Richard L. Stacey, ISB #6800  
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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

**MEMORANDUM IN OPPOSITION TO  
 JV L.L.C.'S MOTION TO ALTER,  
 AMEND AND TO RECONSIDER THE  
 COURT'S MEMORANDUM DECISION  
 AND ORDER DATED JULY 21, 2015**

Honorable Barbara A. Buchanan

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

VALIANT IDAHO, LLC,  
an Idaho limited liability company,  
Third Party Plaintiff,

vs.

PEND ORELLE BONNER  
DEVELOPMENT HOLDINGS, INC., a  
Nevada corporation; *et al.*,

Third Party Defendants.

COMES NOW, Valiant Idaho, LLC ("Valiant") by and through its counsel of record, McConnell Wagner Sykes and Stacey, PLLC, and submits its Memorandum in Opposition to JV L.L.C.'s Motion to Alter, Amend and to Reconsider the Court's Memorandum Decision and Order Dated July 21, 2015.

I. PROCEDURAL HISTORY

Valiant filed a motion for summary judgment ("SJ Motion") against JV, L.L.C. ("JV"), North Idaho Resorts, LLC ("NIR"), and VP, Incorporated ("VP") on January 20, 2015. Said SJ Motion sought an adjudication that certain mortgages assigned to Valiant by R.E. Loans, LLC, Pensco Trust Co. and Mortgage Fund '08, LLC (collectively the "Valiant Mortgages") have priority in all right, title and interest over any interest possessed by JV, NIR and VP. JV filed a memorandum in opposition to the SJ Motion on February 2, 2015, which attached fourteen (14) exhibits. The affidavit filed in support of the opposition did not lay foundation, establish hearsay exceptions, or otherwise authenticate any of JV's exhibits. Counsel for JV appeared at the hearing on the SJ Motion and argued in opposition to the SJ Motion.

The Court granted the SJ Motion against JV, NIR and VP on April 14, 2015 ("SJ Decision").

On April 28, 2014, JV filed its first motion to reconsider the SJ Decision ("1st Reconsider Motion"). For unknown reasons, JV did not notice said Motion for hearing at that time. The 1<sup>st</sup> Reconsider Motion did not apply new law to facts previously presented. It did not apply new facts to previously presented law. Nor did it offer a coherent explanation as to why the SJ Decision was incorrect. Instead, JV simply rehashed the same specious arguments it had already made, which are based upon inadmissible hearsay and alleged "facts" that are not in the record.

On May 19, 2015, Valiant filed a motion for entry of final judgment ("Motion For Judgment") 29 days in advance of its hearing date on June 17, 2015. Notice of this hearing date was also served on June 17, 2015. The Motion For Judgment sought summary adjudication as to the specific real property encumbered by the Valiant Mortgages. The real property was identified in a legal description attached to the declaration of C. Dean Shafer, which also included Mr. Shafer's testimony establishing his qualifications as a bona fide title expert. JV did not file any briefing in opposition to the Motion For Judgment, nor did it file any motion requesting additional time to respond.

At the hearing on the Motion For Judgment, counsel for JV objected and raised the same spurious arguments that he had made in opposition to the SJ Motion. Additionally, upon questioning by the Court, JV had no explanation as to why it had not noticed its 1<sup>st</sup> Reconsider Motion for hearing.

On June 18, 2015, the Court set a hearing date of July 8, 2015 for the 1<sup>st</sup> Reconsider Motion.

On June 23, 2015, the Court granted Valiant's Motion For Judgment *via* a memorandum decision and order ("2<sup>nd</sup> SJ Decision"). The 2<sup>nd</sup> SJ Decision ordered that "Valiant shall submit a

proposed Final Judgment to the Court (with copies to JV, NIR, and VP) by 5:00 p.m., June 30, 2015. Any objections to the proposed Judgment must be filed with the Court in writing by 5:00 p.m., July 7, 2015." 2<sup>nd</sup> SJ Decision, p. 22.

In accordance with the 2<sup>nd</sup> SJ Decision, Valiant submitted a proposed Judgment and Decree of Foreclosure to the Court and provided copies to opposing counsel *via* letter and facsimile dated June 30, 2015. On July 7, 2015, JV filed a written objection to the proposed Judgment and Decree of Foreclosure ("2<sup>nd</sup> Reconsider Motion"). The 2<sup>nd</sup> Reconsider Motion recited the same arguments that had been made in its 1<sup>st</sup> Reconsider Motion and argued at the prior hearings. JV did not apply new law to facts previously presented. It did not apply new facts to previously presented law. Nor did it offer a coherent explanation as to why the SJ Decision or any other decision by this Court is incorrect. Instead, JV simply rehashed the same specious arguments that it had already made on several prior occasions.

On July 8, 2015, the Court held its hearing on JV's 1<sup>st</sup> Reconsider Motion and its hearing on JV's 2<sup>nd</sup> Reconsider Motion. Counsel for JV appeared and again made the same arguments asserted in its briefing, which had been repeatedly rejected by this Court.

On July 21, 2015, the Court entered its memorandum decision and order denying JV's 1<sup>st</sup> Reconsider Motion ("Order Denying 1<sup>st</sup> and 2<sup>nd</sup> Reconsider Motions"). The Order Denying 1<sup>st</sup> and 2<sup>nd</sup> Reconsider Motions required Valiant to separate its Judgment and Foreclosure Decree into two distinct documents pursuant to recent changes to Rule 54(a) of the Idaho Rules of Civil Procedure, but otherwise rejected all of the arguments JV set forth in its 1<sup>st</sup> Reconsider Motion and its 2<sup>nd</sup> Reconsider Motion.

On July 21, 2015, Valiant filed a motion for an order of sale. Said motion was noticed for hearing on August 5, 2015.

On July 30, 2015, JV filed its Motion to Alter, Amend and to Reconsider the Court's Denying 1<sup>st</sup> and 2<sup>nd</sup> Reconsider Motion ("3<sup>rd</sup> Reconsider Motion").<sup>1</sup> The 3<sup>rd</sup> Reconsider Motion recites the same arguments JV made in its 1<sup>st</sup> Reconsider Motion, 2<sup>nd</sup> Reconsider Motion, and argued at several prior hearings. JV does not apply new law to facts previously presented. It does not apply new facts to previously presented law. Nor does it offer a coherent explanation as to why the SJ Decision or any other decision by this Court is incorrect. Instead, JV simply rehashes the same tired arguments that it has already repeatedly made in this case.

Valiant respectfully submits that JV's 3<sup>rd</sup> Reconsider Motion should be denied because the Order Denying 1<sup>st</sup> and 2<sup>nd</sup> Reconsider Motions demonstrates that the Court viewed the evidence in the appropriate light and correctly applied applicable law.

## II. RESPONSE ARGUMENT

As already explained hereinabove, JV's 3<sup>rd</sup> Reconsider Motion is another rehash of arguments that JV has made on several prior occasions. Rather than copying and pasting Valiant's prior oppositions to each of these arguments, Valiant hereby reasserts and incorporates by reference, as if set forth fully herein: (a) Valiant's Memorandum and Declaration in Reply to JV's Memorandum in Opposition to Valiant's Motion For Summary Judgment, and (b) Valiant's Memorandum in Opposition to JV's 1<sup>st</sup> Reconsider Motion.

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<sup>1</sup> It is important to note that on August 13, 2015, JV filed a Motion to Reconsider, Alter, and Amend the Judgment ("4<sup>th</sup> Reconsider Motion") raising nearly the exact same arguments raised in JV's opposition to the SJ Motion, the 1<sup>st</sup> Reconsider Motion, the 2<sup>nd</sup> Reconsider Motion, the 3<sup>rd</sup> Reconsider Motion, and on oral argument at numerous hearings in this case. The 4<sup>th</sup> Motion to Reconsider is the subject of another opposition brief filed concurrently herewith.



Although the 3<sup>rd</sup> Reconsider Motion rehashes JV's prior arguments, it does raise certain arguments in writing that heretofore may have only be asserted at oral argument. Although the Court has already soundly rejected JV's arguments on several occasions, Valiant will, in an abundance of caution, respond again to these arguments in writing.

A. **JV's Redemption Deed Has The Same Priority Position As Its Underlying Mortgage, Which Is Junior To The Valiant Mortgages.**

This Court determined that JV subordinated its mortgage to the Valiant Mortgages on March 15, 2007 and August 6, 2008. SJ Decision, ¶¶ 22 – 23, p. 8. While the 3<sup>rd</sup> Reconsider Motion finally appears to concede this finding of fact, JV now argues that its Redemption Deed dated July 2, 2014 somehow granted it fee title ownership to the five (5) parcels subject to said Redemption Deed. This argument is without any basis in fact or law and has been rejected by the Idaho Supreme Court.

As this Court noted in its SJ Decision, 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 part of the claim for which his own lien exists.*

(Emphasis added.)

Moreover, the Idaho Supreme Court held in *Hardy v. McGill*, 137 Idaho 280 (2002):

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, 336 (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.

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

*Id.* at 286. (Emphasis added.)

The Supreme Court's decision is consistent with the express language of Idaho Code § 63-1007, which provides:

- (1) After issuance of a tax deed, real property may be redeemed only by the record owner or owners, or party in interest, up to the time the county commissioners have entered into a contract of sale or the property has been transferred by county deed. In order to redeem real property, the record owner or owners, or a party in interest shall pay any delinquency . . .
- (2) Should such payments be made, a redemption deed shall be issued by the county tax collector into the name of the redemptioner and *the rights, title and interest acquired by the county shall cease and terminate* . . .

(Emphasis added.)

Based upon the foregoing cases and authorities, it is clear that the Idaho Supreme Court has long rejected the argument repeatedly raised by JV in this case. JV's Redemption Deed did not transfer to JV any interest in the five (5) parcels subject to the Redemption Deed. To the contrary, the delinquent taxes paid by JV merely became part of the indebtedness secured by JV's purchase money mortgage with Pend Orielle Bonner Development, LLC. As JV subordinated its interest in the purchase money mortgage to the Valiant Mortgages, "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." SJ Decision at p. 13.

**B. JV's Redemption Deed Cannot Transfer Fee Title To JV.**

JV also argues that the language in its Redemption Deed transferred to JV fee title to the five (5) parcels it legally describes. This argument is beyond spurious.

Per Idaho Code § 63-1007, the "rights, title and interest acquired by the county cease and terminate" upon payment of the delinquent taxes. The delinquent taxes JV paid became part of

the debt secured by its underlying mortgage and Bonner County possessed no further interest in said property to transfer. *Hardy*, 137 Idaho at 286. Logic dictates that the County cannot transfer what it does not have regardless of the language of the Redemption Deed.

### III. REQUEST FOR ATTORNEYS' FEES

Rule 11(a)(1) requires that any pleading, motion or other paper be "well grounded in fact and ... warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needlessly increase in the cost of litigation." As demonstrated, the 3<sup>rd</sup> Reconsider Motion is not well grounded in fact or law. JV's arguments have long been rejected by the Idaho Supreme Court and it has not argued for the extension, modification or reversal of this existing law. The present motion is a clear attempt by JV to further delay this litigation and needlessly increase Valiant's costs and legal expenses. Valiant recognizes that District Courts only grant requests for Rule 11 sanctions in egregious situations. However, this is one of those cases. JV has caused Valiant to incur thousands of dollars needlessly briefing, arguing and traveling to argue in opposition to the same arguments over and over and over again. JV and its counsel should be ordered to pay for all attorneys' fees and costs Valiant has incurred in defending against these duplicative motions.

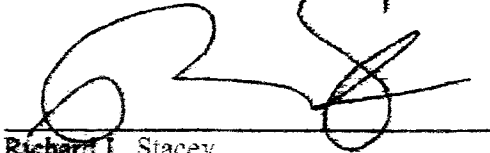
### IV. CONCLUSION

For the reasons set forth above, Valiant respectfully requests that JV's 3<sup>rd</sup> Reconsider Motion be **DENIED**. Valiant also requests that JV and its counsel, Gary A. Finney, be ordered to pay for the attorneys' fees and costs incurred by Valiant in defending the present motion as it has

no factual support, it is without basis in law, and was brought for the improper purposes of delaying this litigation and needlessly increasing the cost of this litigation.

DATED this 26<sup>th</sup> day of August 2015.

McCONNELL WAGNER SYKES & STACEY P.L.L.C.

BY:   
 Richard L. Stacey  
 Attorneys For Valiant Idaho, LLC

**CERTIFICATE OF SERVICE**

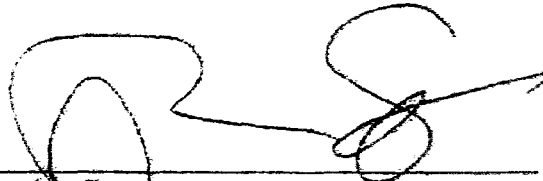
I HEREBY CERTIFY that on the 26<sup>th</sup> day of August 2015, a true and correct copy of the foregoing document was served by the method indicated below upon the following party(ies):

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Gary A. Finney, Esq. Finney Finney & Finney, P.A. 120 East Lake Street, Suite 317 Sandpoint, Idaho 83864 Telephone: 208.263.7712 Facsimile: 208.263.8211 <i>Counsel For J.V., LLC</i>	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivered <input checked="" type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Electronic Mail <a href="mailto:gary.finney@finneylaw.net">gary.finney@finneylaw.net</a>
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With two copies via United States mail to:

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



Richard B. Stacey