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IN THE
SUPREME COURT
OF THE
STATE OF IDAHO

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

Valiant Idaho, LLC
Cross-Claimant/Respondent

vs.

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

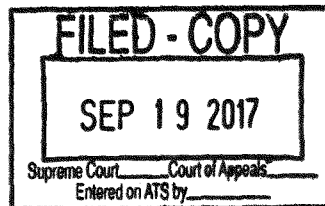
CLERK'S RECORD ON APPEAL

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

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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,

v.

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

) Case No. CV- 2009-1810
)
) JV'S SUPPLEMENTAL MOTION TO
) ALTER, AMEND, SET ASIDE THE
) JUDGMENT, BASED ON VALIANTS'
) MOTIONS TO CHANGE THE ORDER OF
) SALE AND CHANGE THE DECREE OF
) FORECLOSURE
) Pursuant to Rules 11(B); 52(b)
) and Rule 60

AND NOTICE OF HEARING

JV'S SUPPLEMENTAL MOTION TO ALTER, AMEND, SET ASIDE THE JUDGMENT, BASED ON
 VALIANTS' MOTIONS TO CHANGE THE ORDER OF SALE AND CHANGE THE DECREE OF
 FORECLOSURE

Pursuant to Rules 11(B); 52(b) and Rule 60 AND NOTICE OF HEARING

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

Defendants.

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

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

Plaintiff,

v.

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

Defendants.

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

JV'S SUPPLEMENTAL MOTION TO ALTER, AMEND, SET ASIDE THE JUDGMENT, BASED ON
VALIANTS' MOTIONS TO CHANGE THE ORDER OF SALE AND CHANGE THE DECREE OF
FORECLOSURE

Pursuant to Rules 11(B); 52(b) and Rule 60 AND NOTICE OF HEARING

VALIANT IDAHO, LLC, an Idaho
limited liability company,

Third Party
Plaintiff,

v.

PEND ORIELLE BONNER
DEVELOPMENT HOLIDINGS, INC., a
Nevada corporation; BAR K,
INC., a California
corporation; TIMBERLINE
INVESTMENTS LLC, an Idaho
limited liability company; AMY
KORENGUT, a married woman; HLT
REAL ESTATE, LLC, an Idaho
limited liability company;
INDEPENDENT MORTGAGE LTD. CO.,
an Idaho limited liability
company; PANHANDLE MANAGEMENT
INCORPORATED, an Idaho
corporation; FREDERICK J.
GRANT, an individual; CRISTINE
GRANT, an individual; RUSS
CAPITAL GROUP, LLC, an Arizona
limited liability company;
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; MONTAHEHO
INVESTMENTS, LLC, a Nevada
limited liability company;
CHARLES W. REEVES and ANN B.
REEVES, husband and wife; and
C.E. KRAMER CRANE &
CONTRACTING, INC., an Idaho
corporation,

Third Party
Defendants.

JV'S SUPPLEMENTAL MOTION TO ALTER, AMEND, SET ASIDE THE JUDGMENT, BASED ON
VALIANTS' MOTIONS TO CHANGE THE ORDER OF SALE AND CHANGE THE DECREE OF
FORECLOSURE
Pursuant to Rules 11(B); 52(b) and Rule 60 AND NOTICE OF HEARING

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

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

v.

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

Third Party
Defendants.

COMES NOW JV, L.L.C. ("JV") and MOVES the Court to
Alter, Amend and Reconsider the JUDGMENT and the Decree of

JV'S SUPPLEMENTAL MOTION TO ALTER, AMEND, SET ASIDE THE JUDGMENT, BASED ON
VALIANTS' MOTIONS TO CHANGE THE ORDER OF SALE AND CHANGE THE DECREE OF
FORECLOSURE

Pursuant to Rules 11(B); 52(b) and Rule 60 AND NOTICE OF HEARING

Foreclosure, based on Rules 11(B), 52(b) and Rule 60, and the ORDER OF SALE, as Follows:

I. Valiant's new post judgment & post decree motions, both dated 8-19-15.

1. Valiant has filed a Motion to Amend Decree of Foreclosure.

2. Valiant has filed a Motion to Amend the Order of Sale, JV's points out that there is no Order of Sale, yet entered in writing. At the hearing on Valiant's Motion For An Order of Sale the Court made oral rulings and directed entry of an Order of Sale; however no written Order of Sale has been entered.

The basis for Valiant's 2 motions is that Valiant, after the August 5, 2015 hearing, found out that:

a) There are 31 lots/parcels only encumbered by the 2007 RE Loan's Mortgage.

b) Those 31 lots/parcels, were never mortgaged to Pensco or MF08 on the 2008 Pensco Mortgage or the 2008 MF08 Mortgage.

- c) Valiant asserts there are 186 lots/parcels mortgaged by the 2007 RE Loans Mortgage; however,
- d) There are only 155 lots/parcels mortgaged by 2008 Pensco Mortgage and the 2008 MFO8 Mortgage.

Valiant's memorandums recognize a mistake was made in legal description subject to Valiant's three (3) Assigned Mortgages. Valiant's two (2) Motions do not appear to request an Amendment to the Judgment, filed August 5, 2015. However, JV submits that the Judgment must be amended before the post Judgment Decree of Foreclosure and Order of Sale are entered. JV contends the final Rule 54(a) Amended Judgment must include the Decree of Foreclosure and include the Order of Sale in order to make these issues "final" for appeal. If not done in this manner, the Idaho Supreme Court, on any appeal, will probably Order the District Court to do so before the appeal proceeds.

Valiant's Memorandum in support of its motion to alter the Order of Sale, on page 6, mid-page states:

"A final judgment should be amended if the District Court determines, in its description and upon reasoned analysis, that the judgment was erroneous." (Cases Cited

JV'S SUPPLEMENTAL MOTION TO ALTER, AMEND, SET ASIDE THE JUDGMENT, BASED ON VALIANTS' MOTIONS TO CHANGE THE ORDER OF SALE AND CHANGE THE DECREE OF FORECLOSURE

Pursuant to Rules 11(B); 52(D) and Rule 60 AND NOTICE OF HEARING

by Valiant, JV agrees with this statement that the final judgment filed August 5, 2015, is erroneous, and should be withdrawn and amended pursuant to Rule 60 as a new (Amended) Judgment.

In the heading V. Argument, (page 1 going to page 8) Valiant states it holds three separate mortgages as:

1. First priority is the 2007 RE Loans Mortgage
2. Second priority is the Pensco Mortgage
3. Third priority is the MFO8 Mortgage

JV holds its note and Mortgage, recorded August 24, 1995, as Instrument No. 474746 on 31 lots/parcels - not mortgaged to either Pensco or MFO8. As Pensco and MFO8 have no mortgages on the 31 lots/parcels, it is automatic that any Subordination by JV to Pensco or MFO8 has no effect as to those 31 lots/parcels.

The Court's prior Memorandum Decisions held that JV was "subordinate" to the 2008 Pensco Mortgage and to the 2008 MFO8 Mortgage by reason of the Subordinations JV August 6, 2008 as to those two mortgages.

As to the 31 lots/parcels that are not mortgaged by the 2008 Pensco Mortgage nor by the 2008 MFO8 Mortgage, JV therefore holds the 1st priority purchase money Mortgage, recorded August 1995, Instrument No. 474746.

JV'S SUPPLEMENTAL MOTION TO ALTER, AMEND, SET ASIDE THE JUDGMENT, BASED ON VALIANTS' MOTIONS TO CHANGE THE ORDER OF SALE AND CHANGE THE DECREE OF FORECLOSURE

Pursuant to Rules 11(B); 52 (b) and Rule 60 AND NOTICE OF HEARING

JV has never executed Partial Releases/ Satisfactions of its 1995 Mortgage for any of these 31 lots/parcels.

Valiant seeks to sell "the parcels encumbered by just the RE Loan's Mortgage be sold first to help satisfy POBD's debts to junior creditors." JV is the 1st priority creditor. (Memorandum page 8, first paragraph) JV, without waiving its positions and motions that RE has no 2007 mortgage remaining unpaid, does not object to the sale of the 186 lots/parcels first, on the 2007 RE Loans Mortgage/Judgment. The Order of Sale is a matter for V.P. /N.I.R. to assert. To date the 31 lots/parcels are not all legally identified as Valiant's proposed "Order of Sale" has not been entered.

JV holds its 1995 Mortgage ahead of both the 2008 Pensco Mortgage and the 2008 MFO8 Mortgage, as to those 31 lots/parcels never mortgaged to Pensco and MFO8. Since Pensco and MFO8 have no mortgages on the 31 lots/parcels, JV did not "subordinate" its 1995 mortgage as to those 31 lots/parcels.

JV has submitted prior motions/memorandums that state:

a. 2007 RE Mortgage is paid.

b. JV's Redemption Deed for tax delinquency paid by

JV is the first subrogated Bonner County lien in

favor of JV.

JV'S SUPPLEMENTAL MOTION TO ALTER, AMEND, SET ASIDE THE JUDGMENT, BASED ON VALIANTS' MOTIONS TO CHANGE THE ORDER OF SALE AND CHANGE THE DECREE OF FORECLOSURE

Pursuant to Rules 11(B); 52(D) and Rule 60 AND NOTICE OF HEARING

c. RE Loans had no "record of interest" and was not entitled to redeem the tax parcels, remaining after JV's Redemption.

d. Since Idaho Code §63-1007 only permits redemption within 14 months of the County Tax Deed of May 14, 2014, no one can presently redeem. By the 14 month statute of limitations/ which is a statute of repose - JV being subrogated to Bonner County's Tax Deed, JV has either a 1st lien on its Redemption Deed real estate, or is now the "owner" of its Redemption Deed real estate, not subject to any further right of redemption.

JV disputes Valiant's claim that after RE "The next two junior mortgages are the Pensco Mortgage and the MFO8 Mortgage as to the Lagoon Lot plus 31 more LOTS.

JV is 1st Mortgage 1995 Priority. On page 16 of the Memorandum, in the first paragraph beginning on that page; Valiant states:

"The next two junior mortgages are the Pensco Mortgage and the MFO8 Mortgage, which have second and third priority. However, these two

mortgages do not encumber the Lagoon Lot and the other 30 Lots mentioned hereinabove."

II. JV should have Judgment for its 1995 Mortgage priority on the 31 Lots/parcels.

15. Valiant now has filed a Motion to Amend the Decree of Foreclosure. JV points out that Valiant has not filed any motion to amend the Judgment, filed August 5, 2015. Due to the Idaho Supreme Court's rulings on the issue of the right to appeal to the Idaho State Supreme Court, it appears that appeals are permitted only from a "Judgment" that includes the words "JUDGMENT IS ENTERED AS FOLLOWS" (I.R.C.P. 54(a))

JV moves the Court to enter a Judgment - (Amended) including the following:

16. Any Decree of Foreclosure (post-judgment) be incorporated into the final Judgment - Amended document.

17. An Order of Sale (not yet entered) should be set forth in the Judgment - Amended document.

18. The Judgment entered August 5, 2015, should be withdrawn and Amended (Rule 60(b)) based on Rule 60 (b) (1) mistake, Rule 60(b) (2) newly

JV'S SUPPLEMENTAL MOTION TO ALTER, AMEND, SET ASIDE THE JUDGMENT, BASED ON VALIANTS' MOTIONS TO CHANGE THE ORDER OF SALE AND CHANGE THE DECREE OF FORECLOSURE

Pursuant to Rules 11(B); 52(b) and Rule 60 AND NOTICE OF HEARING

discovered evidence, and Rule 60(b) (6) the other reason its Valiant's admission /motions that only RE Loans has a mortgage on the 31 lots/parcels and that PENSICO and MFO8 have no mortgage(s) on the 31 lots/parcels. The Judgment entered August 5, 2015, has NO LEGAL DESCRIPTIONS of any real estate. Further, the DECREES OF FORECLOSURE also entered August 5, 2015, have NO LEGAL DESCRIPTIONS of any real estate. Paragraph 2 of the Decree of Foreclosure refers to EXHIBIT A attached hereto as (Real Property) however, the Decree of Foreclosure mailed by the Bonner County Clerk's office to JV's Attorney has no attached Exhibit A (Real Property). Legal Descriptions must be included in any judgment entered.

18. Based on Valiant's admission that the 31 lots/parcels are only mortgaged to RE and not to Pensco or MFO8, JV again asserts that it's 1995 Mortgage (Instrument No. 474746) is first priority on all the real estate within the legal description of the 1995 Mortgage, less the specifics described platted LOTS released by Partial Satisfaction of Mortgage, the legal

JV'S SUPPLEMENTAL MOTION TO ALTER, AMEND, SET ASIDE THE JUDGMENT, BASED ON VALIANTS' MOTIONS TO CHANGE THE ORDER OF SALE AND CHANGE THE DECREE OF FORECLOSURE

Pursuant to Rules 11(B) ; 52(b) and Rule 60 AND NOTICE OF HEARING

descriptions of which are JV's, Exhibit "F" to the Stipulation For Settlement, filed 8/24/2015. The reasons for JV having first priority are:

1. Since Pensco and MFO8 have no mortgage on the 31 lots/parcels, JV's 1995 Mortgage is not effected by any "subordination" by JV to the Pensco and MFO8 Mortgages.

19. JV is first in time of recording and is a purchase money mortgage, which gives JV first priority.

20. V.P. /N.I.R. conveyed to POBD, and by the contract of sale, POBD agreed to assume and pay the JV Mortgage. POBD defaulted on paying V.P.'S Mortgage to JV, leaving \$1,476,450.35 plus interest still owed to JV. V.P. is the seller, i.e. VENDOR to POBD, and as such V.P. has a statutory Vendor's Lien as of June 19, 2006 (the closing date of the sale V.P. to P.O.B.D.), which is the second priority lien.

21. RE Loans has been adjudicated as being paid by POBD in Judge Griffins Findings in Bonner County Case No. cv-2011-135 and in the same Findings filed June 3, 2014 (page 3), Judge

JV'S SUPPLEMENTAL MOTION TO ALTER, AMEND, SET ASIDE THE JUDGMENT, BASED ON VALIANTS' MOTIONS TO CHANGE THE ORDER OF SALE AND CHANGE THE DECREE OF FORECLOSURE

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Griffin found that POBD did not pay the debt (promissory note/mortgage) they assumed to JV.

22. RE Loans 2007 Mortgage was paid in full, as shown on two closing statements, by and for the August 2008 mortgages to Pensco and MFOS.

Pensco and MFOS have no mortgage liens on the 31 lots/parcels as admitted by their Assignee, Valiant.

23. Further, if any of the 31 lots/parcels, that were not mortgaged to Pensco or MFOS are within the legal description of JV's Redemption Deed, then JV has first priority lien, being subrogated to the tax lien/tax deed to Bonner County, or JV has title because no party can redeem.

Relief Requested by JV

24. That the Court adjudicate that JV has the 1st 1995 Mortgage Lien on the 31 lots/parcels; and JV has the 1st lien or title, on the 31 lots/parcels by reason, of its Redemption Deed as being subrogated to the 1st tax lien of Bonner County, and the 14 months for redemption has expired.

Hearing Requested

JV'S SUPPLEMENTAL MOTION TO ALTER, AMEND, SET ASIDE THE JUDGMENT, BASED ON VALIANTIS' MOTIONS TO CHANGE THE ORDER OF SALE AND CHANGE THE DECREE OF FORECLOSURE

Pursuant to Rules 11(B); 52 (b) and Rule 60 AND NOTICE OF HEARING

JV gives notice that this Motion be heard on 9-2-2015, at 11:00 a.m.

Further, with several post-judgment motions on file, and speed not being important to correctly rule on said motions, the District Court is moved to set all post judgment motions and issues for hearing at a later date, allowing at least 3 hours for the parties to orally argue.

Supporting Affidavit by JV

JV filed a verified pleading in its initial Special Appearance, and subsequent Affidavits opposing Valiant's Summary Judgment.

Now, JV makes an additional Affidavit by James Berry in further opposition to Valiant's motion(s), and in support of this Motion by JV.


GARY A. FINNEY

I, James Berry, first being duly sworn upon oath depose and say the following:

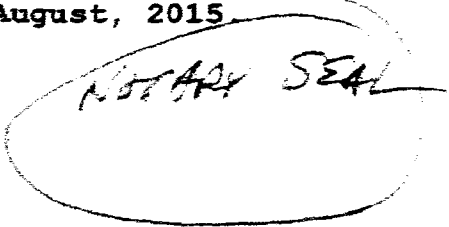
I am the Defendant in this case and I have read the foregoing JV'S SUPPLEMENTAL MOTION TO ALTER, AMEND, SET ASIDE THE JUDGMENT, BASED ON VALIANTS' MOTIONS TO CHANGE THE ORDER OF SALE AND CHANGE THE DECREE OF FORECLOSURE Pursuant to Rules 11(B); 52(b) and Rule 60 AND NOTICE OF HEARING, and know the contents therein stated and believe the same to be true.

JV'S SUPPLEMENTAL MOTION TO ALTER, AMEND, SET ASIDE THE JUDGMENT, BASED ON VALIANTS' MOTIONS TO CHANGE THE ORDER OF SALE AND CHANGE THE DECREE OF FORECLOSURE

Pursuant to Rules 11(B); 52(b) and Rule 60 AND NOTICE OF HEARING

James Berry
James Berry
Defendant

SUBSCRIBED AND SWORN to before me this 26 day of August, 2015.



Laura Finney
Notary Public - State of Idaho
Residing at: Subot
My Commission expires: OCT 14, 2017

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was delivered via facsimile or as otherwise indicated, this 26th day of August, 2015, and was addressed as follows:

Richard Stacey/Jeff Sykes
MCCONNELL WAGNER SYKES & STACEY PLLC
827 East Park Boulevard, Suite 201
Boise, ID 83712
[Attorney for R.E. LOANS, LLC & VALIANT IDAHO LLC]
Via Facsimile: (208) 489-0110

*fax attempt - not working
Sent via: 1st class, U.S. mail*


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

Stromson

JV'S SUPPLEMENTAL MOTION TO ALTER, AMEND, SET ASIDE THE JUDGMENT, BASED ON VALIANTS' MOTIONS TO CHANGE THE ORDER OF SALE AND CHANGE THE DECREE OF FORECLOSURE

Pursuant to Rules 11 (3) ; 52 (b) and Rule 50 AND NOTICE OF HEARING

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

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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.,)	Case No. CV- 2009-1810
formerly known as National)	
Golf Builders, Inc., a Nevada)	AFFIDAVIT OF JAMES BERRY ON
corporation,)	BEHALF OF JV, LLC
)	
Plaintiff,)	
)	
v.)	
)	
PEND OREILLE BONNER)	
DEVELOPMENT, LLC, a Nevada)	
limited liability company;)	
R.E. LOANS, LLC, a California)	
limited liability company; DAN)	
S. JACOBSON, an individual,)	
SAGE HOLDINGS LLC, an Idaho)	
limited liability company;)	
STEVEN G. LAZAR, an)	
individual; PENSCO TRUST CO.)	
CUSTODIAN FBO BARNEY NG;)	
MORTGAGE FUND '08 LLC, a)	
Delaware limited liability)	
company; VP, INCORPORATED, an)	
Idaho corporation; JV, LLC)	
L.L.C., an Idaho limited)	
liability company; WELLS FARGO)	
FOOTHILL, LLC, a Delaware)	
limited liability company;)	
INTERSTATE CONCRETE AND)	
ASPHALT COMPANY, an Idaho)	

corporation; T-O ENGINEERS,
INC., fka Toothman-Orton
Engineering Company, an Idaho
corporation; PUCCI
CONSTRUCTION INC., an Idaho
corporation; ACI NORTHWEST,
INC., an Idaho corporation;
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,
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COMPLAINTS

VALIANT IDAHO, LLC, an Idaho
limited liability company,

Third Party
Plaintiff,

v.

PEND ORIELLE BONNER
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Nevada corporation; BAR K,
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GRANT, an individual; CRISTINE
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CAPITAL GROUP, LLC, an Arizona
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TITLE COMPANY, a California
corporation; NETTA SOURCE LLC,
a Missouri limited liability
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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, LLC 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.

STATE OF IDAHO)
 : ss.
COUNTY OF BONNER)

James Berry, first being duly sworn on oath, deposes, says,
and testifies, as follows:

1. I am the manager of JV, LLC, an Idaho limited
liability company, and I make this affidavit based on my

personal knowledge of facts upon which I am competent to testify.

2. For in excess of 20 years before 1995, JV, LLC, or my other entities, was the owner of in excess of 600 acres lying South of Highway 200 in Bonner County, Idaho, referred to as Moose Mountain.

3. On or about October 24, 1995, JV, LLC, sold the Moose Mountain real estate to V.P. Inc., a corporation, managed by Richard Villelli. As a purchase money mortgage, V.P. Inc., as mortgagor, executed a real estate mortgage to JV, LLC, as Mortgagee, recorded October 24, 1995, Instrument No. 474716, records of Bonner County, Idaho. That 1995 mortgage is an Exhibit in this action, referred to as JV, LLC's Def's Exhibit B, which mortgage and promissory note to JV, LLC, was in the principal sum of \$2,264,500.00. The Promissory Note and said Mortgage were placed for escrow collection at Panhandle Escrow, No. 2067429, Sandpoint, Idaho.

4. On or about early 2006, with a closing date of June 19, 2006, V.P. Inc. sold the aforesaid Moose Mountain real estate, as described in the 1995 Mortgage, to an entity that became Pend Oreille Bonner Development, referred to as POBD. As part of the Purchase Price and down payment, POBD assumed payment of the Promissory Note and the Mortgage payable to JV,

LLC, as the secured party, in an adjusted principal sum of \$2,565,000.00.

5. POBD began to develop the Moose Mountain real estate into part of the Idaho Club golf course (approximately 7 fairways lying south of and adjacent to Highway 200) and into platted subdivision LOTS. From time to time, POBD platted additional LOTS and the remaining real estate was unplatted. As POBD sold platted lots to third persons, JV, LLC, executed Partial Satisfaction(s) of Mortgage, which were recorded as part of the settlement and closing of the Lot. POBD, through Panhandle Escrow paid JV, LLC, LLC, for agreed amounts per Lot in exchange for the Partial Satisfaction of Mortgage on the sold Lot.

6. About September 18, 2008, POBD quit paying JV, LLC, leaving a balance owed on the Promissory Note and said Mortgage in the principal sum of \$1,476,450.35 plus interest of 12.000% which is 485.408 per day. The principal and interest to September 18, 2015 is \$2,702,105.55.

7. JV, LLC, only ever released by Partial Satisfaction of Mortgage, Platted Lots that were sold by JV, LLC, to third parties. JV, LLC, did not ever release sewer lot(s), water system lot(s), roadways, easements, 7 golf fairways, or any unplatted real estate; hence all of the Moose Mountain real estate, except for Platted LOTS sold to Third Parties, which

LOTS are listed as "Partial Release" on the Defendant's Exhibit List "L" for JV, LLC, remains secured on the Mortgage to JV.

8. In addition to other defaults, POBD failed to pay Bonner County for real estate taxes on the Moose Mountain real estate. Bonner County took a Tax Deed on May 21/22, 2014. (Tax Deed recorded on May 22, 2014, Instrument No. 859659, which is JV, LLC's Defendant's Exhibit "I".)

9. Bonner County proceed to advertise and sell the Tax Deed real estate. To prevent the real estate going to sale by Bonner County, JV, LLC, gave a written Notice of Redemption to the Bonner County Tax Collector for a portion of the delinquency real estate. Pursuant to the Notice of Redemption, JV, LLC paid the delinquent and current year's estimated taxes in the sum of \$140,999.86. JV, LLC, received a Redemption Deed from Bonner County for five "RP" assessment numbers and further described by said real estate's actual legal descriptions. The Redemption Deed to JV was executed and made July 2/3, 2014 and recorded July 7, 2014, Instrument No. 861430 and rerecorded August 22, 2014, as Instrument No. 863295.

10. Subsequent to JV, LLC's Redemption Deed, First American Title Company on July 7, 2014, paid the tax collector for the Tax Deed real estate remaining after JV, LLC's redemption.

11. It is clear that Brian Kramer, referencing "our group" wrote to the Bonner County Tax Collector (Cheryl Peihl) on July 2, 2014, by e-mail, including his statement that, "***Please do e-mail us if there is in fact a Partial Redemption by JV, LLC, today at 1:00 p.m. along with the new pay-off amount so that our group may redeem the remainder of the unpaid taxes. (See Kramer's e-mail as part of the Bonner County Tax Collector's records - as Defendant's Exhibit "J" by JV, LLC, LLC) (Underlining added for emphasis).

12. Brian J. Kramer e-mailed again on July 2, 2014 to Cheryl Piehl, which included his statement, referring to Mr. Berry,

"***I take it has paid you with a suitable cashier's check and the redemption is irrevocable for the portion he has redeemed? (Underlining added).

Cheryl Piehl responded to Mr. Kramer, by e-mail that said,

"Mr. Berry redeemed RP57N01W020600A, RP58N01W369341A, RP033810010010A, RP033810020010A, and the south of Highway 200 portion of the Golf Course - RP0435905A000BA. He estimated the amounts at \$140,000.00, I sent him back to the bank. He paid a total of \$140,999.86 (needed the per diem)."

I am attaching the new payoff on the remaining (emphasis added) properties. This figure is good to Monday July 7. The total remaining is \$1,665,855.14 to redeem.

I have no idea what his reason is for this redemption. I was expecting all or none, so I was caught a little off guard. Had to balance the numbers & verify information before recalculating."

Sincerely,

Cheryl Piehl

Bonner County Treasurer

These e-mails/ documents are all included in JV, LLC's Defendant's Exhibit "J".

13. On July 7, 2014, First American Title Co. wired \$1,665,855.14 to the Bonner County Tax Collector to redeem the real estate remaining after JV, LLC's redemption, with the information ... "Beneficiary Info: Pend Oreil LE, BONNER DEV, LLC, ATTN Cheryl Pie"

14. By reason of the 1995 recorded purchase/money mortgage JV, LLC, has the first priority lien on the Moose Mountain real estate except for the Platted Lots released from said Mortgage by JV, LLC. Since Valiant's recent Motion To Amend Decree of Foreclosure now admits that neither the mortgages to Pensco of August 2008 and to MFO8 of August of 2008, encumbered specific 31 lots/parcels, JV, LLC, has the 1st priority mortgage lien on

those 31 lots/parcels. Additionally, any of the 31 lots/parcels that are within the legal description of JV, LLC's Redemption Deed, JV has 1st lien or ownership.

15. The C. Dean Shaffer recent Declaration, dated 18 Aug 2015, filed by Valiant, says he has re-examined the Legal Descriptions of the Valiant Redemption Deed, RE Loans 2007 Mortgage, Pensco 2008 Mortgage, and MFO8 Mortgage. He states in paragraph 9 that his previous Legal Description and Valiant Encumbrance is incorrect.

Further, to the extent that the 31 Lots, parcels on page 6 of Shaffer's recent Declaration, are within JV's Redemption Deed then JV, LLC, has first priority or title to the Lots/Parcels become JV, LLC's as SUBROGATED to Bonner County's first prior tax lien (Tax Deed, May 2014), and by Idaho Code § 63-1007, 14 months has expired and hence no one can redeem from JV, LLC, which has the effect of title in JV.

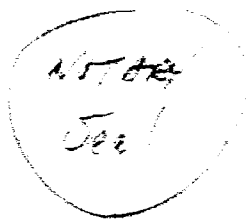
16. V.P. Inc. has the 2nd priority statutory Vendor's Lien on all of Moose Mountain real estate because J.V. was not paid on the purchase and sale agreement with POBD, because POBD did not pay-off its assumed mortgage to JV, LLC. V.P. has had that Vendor's Lien, with recording notice given to all parties by the Memorandum of Real Property Purchase and Sale Agreement, recorded June 19, 2006 (emphasis), Instrument No. 70647, EXHIBIT

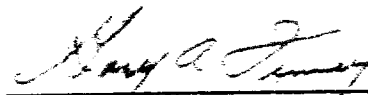
10, to Valiant's Summary Judgment Notice, in which, Memorandum, attached legal description includes "*** Section C: Moose Mountain Large Acreage For Development South of Highway 200 and the full legal description for Section C is also set forth. V.P. does not appear to have released or subordinated for his June 19, 2006, recorded Memorandum, Instrument No. 706475.



JAMES BERRY

SUBSCRIBED AND SWORN TO before me this 26 day of August, 2015.





Notary Public-State of Idaho
Residing at: SANDPOINT
My commission expires: OCT. 19, 2017

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was delivered via facsimile or as otherwise indicated, this 23rd day of August, 2015, and was addressed as follows:

Richard Stacey/Jeff Sykes
MCCONNELL WAGNER SYKES & STACEY PLLC
827 East Park Boulevard, Suite 201
Boise, ID 83712

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

Via Facsimile: (208) 484-0110

*Fax attempted - not working
Sent First class, U.S. Mail*

Susan Weeks

Steven C. Wetzel

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1626 Lincoln Way

Coeur d'Alene, ID 83814

Via Facsimile: (208) 664-1684

[Attorney for NORTH IDAHO RESORTS, LLC, V.P. INC, & FOR
JV'S THIRD PARTY DEFENDANTS]

J. Adamson

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DISTRICT COURT
FIRST JUDICIAL DISTRICT
STATE OF IDAHO
BOJAL

Attorneys for North Idaho Resorts, LLC and V.P., Inc.

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

NORTH IDAHO RESORTS, LLC AND
V.P., INC.'S MEMORANDUM IN
OPPOSITION TO VALIANT IDAHO'S
MOTION TO AMEND DECREE OF
FORECLOURE AND MOTION TO
ALTER, AMEND AND/OR RECONSIDER
THE ORDER OF SALE OF REAL
PROPERTY

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

I. Valiant's Motion to Amend the Decree of Foreclosure

Valiant moved the Court to alter or amend the Decree of Foreclosure it obtained in this matter on the basis of "new information obtained by Valiant." The source of the "new information" is a change of Valiant's expert's opinion regarding the property encumbered by each mortgage assigned to Valiant. Originally, Schafer's expert opinion was that the same property was encumbered by all three mortgages. This Court granted summary judgment based on this expert opinion and issued a decree of foreclosure that gave Valiant the right to foreclose on the exact same property for all three mortgages.

The expert relied upon by Valiant is not an expert in creating or ascertaining legal descriptions. He is a title officer whose area of expertise relates to searching title plant records, compiling chains of title, examining the status of title based upon recorded documents and preparing a title report based upon a title examination. He identifies his experience includes "reviewing" real property legal descriptions. The same could be said of a skilled real estate attorney. But experience in reviewing a real property description does not translate to expertise in preparing or translating real property legal descriptions. Nonetheless, over VP and NIR's objection, this Court found his expert opinion reliable and utilized it in granting summary judgment and finding that each mortgage encumbered the exact same property.

In his most recent submittal to this court, Valiant's expert, Schafer, testifies he again reviewed and familiarized himself with the same mortgages and the same redemption deed as previously, as well as the same Exhibit 5 legal description he reviewed previously (the source and preparation of which was never identified by Schafer) and issues a different expert opinion. Schafer acknowledges in his latest affidavit that he originally provided the expert opinion testified that all lots upon which foreclosure was sought were included in all three loans, i.e. the R.E. Loans mortgage; the Pensco Trust fbo Barney Ng loan; and the MF '08 Loan. Now, after the Court's decision on the Order of Foreclosure, Schafer, at the direction of Valiant's attorneys, has re-examined the legal description to "make sure" his previous testimony was not erroneous. After such urging by counsel, Schafer has decided his previous expert opinion testimony was incorrect and now offers the expert opinion that the Pensco and MF '08 Loans do not encumber all the lots as he previously testified. Mr. Schafer provides no explanation for the change in his expert opinion. Schafer never explains how he reviewed the exact same documents and arrived at a different expert opinion.

Under such circumstances, the Court should not accept Mr. Schafer's amended expert opinion. Further, the Court should not grant a decree of foreclosure under these circumstances because Schafer's declaration testimony is inconsistent. In *Capstar Radio Operating Company v. Lawrence*, 153 Idaho 411, 416, 283 P.3d 728, 733 (2012), the Supreme Court reviewed the standard for consideration of a motion for summary judgment when a jury trial is not requested and provided guidance regarding the trial court's function in drawing inferences and weighing evidence when the affidavit and deposition testimony of a witness are contradictory, holding:

When an action will be tried before a court without a jury, the court may, in ruling on the motions for summary judgment, draw probable inferences arising from the undisputed evidentiary facts. Drawing probable inferences under such circumstances is permissible because the court, as the trier of fact, would be responsible for resolving conflicting inferences at trial. However, if reasonable persons could reach differing conclusions or draw conflicting inferences from the evidence presented, then summary judgment is improper. *Losee v. Idaho Co.*, 148 Idaho 219, 222, 220 P.3d 575, 578 (2009) (internal citations omitted).

. . . Although the court, as the trier of fact, may draw the most probable inferences from the undisputed evidence, there are enough genuine issues of material fact to warrant deciding the merits of the case at trial. There is a fine line between drawing the most probable inferences and weighing the evidence, and this Court holds the belief that the district court should have allowed the case to go to trial in order to weigh the conflicting evidence and test the credibility of the witnesses.

The Supreme Court proceeded to observe that “. . . the record presents multiple instances in which witnesses have made contradictory statements regarding material facts. For instance, Funk's deposition testimony is inconsistent with his affidavit testimony regarding the location and formation of the GTC access road. . . . Moreover, Rook's deposition testimony contradicts his affidavit testimony regarding Rook's knowledge of Funk's use of the easement road. *Capstar* at 418. The Supreme Court further observed:

This presented the district court with another evidentiary conflict regarding a material fact of whether Funk's prior usage of the access road was apparent and continuous over a

number of years and whether Rook had adequate knowledge to testify to that matter. See *Baxter v. Craney*, 135 Idaho 166, 172, 16 P.3d 263, 269 (2000) (stating “it is not proper for the trial judge to assess the credibility of an affiant at the summary judgment stage when credibility can be tested in court before the trier of fact.”); *Argyle v. Slemaker*, 107 Idaho 668, 670, 691 P.2d 1283, 1285 (Ct.App.1984) (holding that even when the court will serve as trier of fact, credibility determinations “should not be made on summary judgment if credibility can be tested by testimony in court before the trier of fact”). Yet, here, the lower court seems to have weighed the conflicting evidence and judged the affiants' credibility in making a ruling on summary judgment.

Capstar at 419.

In the present case, Schafer's own declaration testimony is inconsistent. The property upon which foreclosure should be granted is material. To accept Schafer's second declaration over his first would require a weighing of conflicting testimony. This contradictory witness testimony places this case squarely within the holding of the *Capstar* case. Schafer's credibility is at issue. It would be inappropriate for the Court to amend the Decree of Foreclosure based upon this contradictory expert opinion. Also, granting a decree of foreclosure in reliance upon Schafer's declaration(s) is inappropriate given the conflict in his own expert opinion. This conflict creates a material issue of fact which must be resolved.

II. Valiant's Motion to Alter, Amend and/or Reconsider the Order for Sale of Real Property

A. Background Facts

Valiant draws the Court's attention to the fact that on March 6, 2007, POBD and RE Loans entered into a promissory note secured by mortgage with POBD. Prior to entering into this agreement, R.E. Loans was aware that the water and sewer system infrastructure was not included in the sale. At no time after becoming aware of this fact did Barney Ng, who was the principal loan manager for R. E. Loans, Pensco Trust fbc Barney Ng and MF '08, ever dispute this fact with VP. See February 4, 2015 and August 4, 2015 affidavits of Richard Vilelli.

B. Procedural History

Valiant raises that the pleadings filed by NIR and VP on August 4, 2015 were not timely.

Valiant originally noticed its motion for hearing on August 5, 2015. The Court cancelled that hearing and indicated it would not hear the matter and directed that a decree of foreclosure be provided by Valiant to the Court for entry by the Court. The Court then reinstated the hearing. Through no fault of VP or NIR, it was left to scramble and present its arguments to the Court. Valiant presented no argument that it was prejudiced by the filing and did not request additional time to respond. The Court considered the arguments.

Similarly, Valiant's opposition to NIR and VP's motion to reconsider was not filed timely before the July hearing. Valiant did not move for an enlargement of time for the filing of its memorandum. NIR and VP presented no argument that it was prejudiced by the late filing, which was caused by a delay in delivery of a federal express. The Court also considered these arguments. The Court has treated the parties in the same fashion regarding late filings.

C. Application of Equity in Foreclosure

Valiant contends VP did not present the Court with any legal authority for its request that the lagoon and water lots be sold last. The law on this aspect was already presented in Valiant's memorandum in support of its motion for an order of sale. However, it is again set forth herein.

This foreclosure action is before the Court sitting as a court in equity. *See Walker v. Nunnenkamp*, 84 Idaho 485, 373 P.2d 559 (1962). When faced with multiple lots or parcels, Idaho Code §§ 11-301 *et seq.* prescribes the manner in which property subject to a judgment may be levied and sold to pay off a judgment. This statute requires when the real property consists of several lots that they must be sold separately. The Court has power to direct the order in which

property shall be sold. *Federal Land Bank of Spokane v. Curts*, 45 Idaho 414, 422, 262 P. 877, 879 (1927). An exception exists when “[p]arcels not adapted for separate use and distinct enjoyment should be sold as a unit.” *Suchan v. Suchan*, 113 Idaho 102, 109, 741 P.2d 1289, 1296 (1987).

Lienholders and other interested parties may request the court to order a particular manner of sale. *Suchan, supra*. See also *Farm Credit Bank of Spokane v. Stevenson*, 125 Idaho 270, 869 P.2d 1365 (1994). Unlike the lienholder in *Farm Credit Bank of Spokane v. Stevenson, supra*, Valiant did not request in their third party complaint that any of the property be sold as a unit. It was not until after this Court issued its summary judgment that such a request was advanced by Valiant.

D. Change of Expert Opinion

Valiant proposes that this Court should now change its decree of foreclosure because its expert changed his expert opinion that all 186 lots were encumbered by all three loans. In an unprecedented move, relying on the same documents upon which his expert opinion was originally based, Valiant’s expert now offers a different expert opinion and claims that 31 lots are not encumbered by Pensco and MF ‘08’s mortgages. And coincidentally, one of those lots is the lagoon lot. No explanation is provided why the expert’s opinion changed so significantly while relying upon the same documents. The only explanation is that after this Court entered an order of sale opposed by Valiant that the expert was instructed to “make sure” his expert opinion was correct and it changed after such direction. This change in expert testimony creates a material question of fact that precludes entry of a decree of foreclosure.

Valiant categorizes this change in the expert’s opinion as “new evidence”. It is not new evidence. It did not rely upon any new documents or newly discovered facts. Instead, it is a

change of an expert opinion after summary judgment relying on the exact same documents as previously considered by the expert. In other words, the expert changed his testimony – which cannot be characterized as “new evidence”. No explanation is provided by the expert on why he changed his opinion. As noted above, given this change in expert opinion, it is inappropriate to amend the decree of foreclosure. Rather, it is appropriate to rescind the decree of foreclosure until the Court can determine the credibility of the expert’s opinions. Based upon this contradictory testimony of its own expert, the Court should rescind the decree of foreclosure.

E. The Equities do ~~not~~ Weigh in Valiant’s Favor

Valiant presents the declaration of Chuck Reeves’s in support of its motion to reconsider the order of sale. Chuck Reeves speculates in his declaration that the money received at a sale would not be enough to pay the three mortgages. The Court should not consider this testimony as it is purely speculative and not based upon personal knowledge. It also does not assist the Court in exercising its equitable powers.

Valiant proposes that the Court require the R.E. Loan lots, including the lagoon lot, be sold first. It postulates this would be in the best interest of the junior liens, i.e. the Pensco lien and the MF 08 liens. This recently constructed junior lien theory highlights why the Court should not grant Valiant’s motion, and should reconsider the previous summary judgment entered in favor of Valiant. Procedurally, Valiant now seeks to alter its own summary judgment by a change of its own expert’s opinion to its benefit to avoid the Court’s previous order of sale. The Court should not reward such gamesmanship.

Valiant also claims that if the Court continues to allow the lagoon lot to be sold last that it will be unable to determine how to make a credit bid on the lot. This balderdash is the attempt to create a problem where none existed until the expert changed his expert opinion. R.E. Loans

may bid on any lot on which it has lien for any amount up to the amount of the judgment. If the lagoon lot is sold last, and R.E. Loans has any credit bid amount left to bid, it would simply bid it.

Valiant further claims that the equities weigh against VP because it did not "pay" POBD for the four lots. This argument is disingenuous. VP provided consideration for the four lots. First, there was a contractual agreement in the Purchase and Sale Agreement and the CO to deed these lots to VP. When POBD failed to live up to its contractual agreement in the Purchase and Sale Agreement and the CO agreement, VP still stepped forward for the good of the community and loaned POBD money to bring the sewer system into compliance to avoid DEQ sanctions. As part of the consideration for this loan, POBD agreed to deed the four lots to VP. POBD never paid VP back the money it borrowed and did not deed the lots. Even after that, VP stepped forward again and agreed to be a party to a compliance agreement with DEQ as long as POBD deeded these four lots to it for functioning of the water and sewer system. Finally, under threat of DEQ sanctions, POBD finally lived up to its contractual obligations to transfer these lots. It cannot be said that VP did not give consideration for the transfer of these four lots. In fact, POBD failed to live up to its contractual obligations in failing to deed the lots to VP. In fact VP, perhaps foolishly, gave consideration three times for these lots. VP has gained no windfall here as argued by Valiant, and in fact has advanced money multiple times in seeking to obtain title to the lots it was supposed to initially receive as part of the consideration for the Purchase and Sale Agreement and the CO Agreement.

Valiant also claims that VP comes to this Court with unclean hands. This argument is supported by Reeves's declaration. As can be seen from Reeves's deposition testimony previously submitted in this matter, and the documents submitted with the affidavits of Richard

Villelli, Reeves has a convenient and fluid memory. Currently, his recollection is that VP was not allowed to charge anybody a connection fee ever. Reeves points to two lawsuits which did not involve buyers of POBD, or POBD itself, in support of his contention that VP did not honor this agreement.

As demonstrated in the language of the Purchase and Sale Agreement itself, the agreement not to charge connection fees was only between VP and POBI/POBD, and provided VP would not charge individuals to whom POBD sold lots connection fees. VP honored that agreement. The discussion by Reeves in his declaration that there were two lawsuits by parties who were not POBD buyers related to payment of connection fees is irrelevant to the agreement that VP had with POBI/POBD. There is nothing illegal or inequitable in charging a connection fee for a utility.

Valiant contends if VP is allowed to remain in a position to demand exorbitant hook-up fees, the value of the lots will likely significantly reduce and it will impair development. There is no evidence before this Court that VP's connection fees are illegal, even though two lawsuits challenging them were filed. The Court's foreclosure action is not an action on VP's rights as a utility provider to charge tolls and fees. It merely is an action to obtain funds to pay mortgages.

Valiant is confusing its rights as an assignee of a lender with POBD's developer rights. The Court's foreclosure action does not address limitations on VP's rights to charge connection fees to its water and sewer system based upon a contract it had with POBI/POBD. Any limitations to charging connection fees remains a contractual matter between POBD and VP and may be relevant if POBD redeems the property. However, it is not a consideration for the foreclosure of the mortgages. Retention by VP of its rights as a utility provider is not inequitable.

Finally, Valiant argues that VP in requesting the order of sale was actually seeking a marshaling of assets. This characterization is not true. Under the same statutes and case law that Valiant utilized to seek a sale of the lots in specific order, VP made the same request. It did not request the Court marshal assets and does not believe marshaling would apply to the facts of this case. VP's request is based purely on the power of the Court in equity to establish an order of sale. It was made before the surprise change in the expert's opinion.

There is a dearth of Idaho law regarding marshaling of assets. Valiant directs the Court's attention to *Wooddy v. Jameson*, 5 Idaho 566, 50 P. 1008 (1897) for the proposition that marshaling of securities is recognized in Idaho. A critical element of the marshaling doctrine is that the assets be owned by the same debtor. The doctrine of marshaling may only be invoked where the debtor has two distinct funds. *St. Paul Fire & Marine Ins. Co. v. Fort Vancouver Plywood Co. (In re Brazier Forest Products, Inc.)*, 921 F.2d 221, 223 (9th Cir.1990). POBD does not have two distinct funds in the present case. Rather, VP has four lots subject to Valiant's mortgages (or a lagoon lot subject only to R.E. Loans mortgage and three lots subject to all of Valiant's assigned loans if the new expert opinion is believable). Thus, marshaling is inapplicable.

It appears that it is actually Valiant which now seeks to have the assets marshaled even though it did not plead such matter in its third amended complaint. Rather, it arises from Valiant's newly formulated claim that there are 31 lots not encompassed in the Pensco and MF '08 loans. The Court should not alter its decision based upon this new expert opinion.

Also, in presenting its motion, Valiant ignores JV, LLC's interest. It is inappropriate for the Court to enter an order of sale or to marshal assets until the discrepancy in the expert's opinion is properly addressed. Further, a proper decree of foreclosure requires the Court address

JV, LLC's interests in the different properties upon which foreclosure is being granted. Not until JV's interests are adjudicated and included can the court issue a proper decree of foreclosure.

Valiant also claims that POBD waived any right to direct the order of sale based upon language contained in the mortgage document. The clause cited by Valiant does not stand for this proposition. Rather, it stands for the proposition that R.E. Loans may place a credit bid. It does not vitiate the Idaho statute and case law that allows the Court to determine the order of sale.

DATED this 19th day of August, 2015.

JAMES, VERNON & WEEKS, P.A.

By: *Susan P. Weeks*
Susan P. Weeks

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on the following persons in the manner indicated this 19th day of August, 2015:

<input type="checkbox"/>	U.S. Mail, Postage Prepaid	Gary A. Finney
<input type="checkbox"/>	Hand Delivered	FINNEY FINEY & FINNEY, PA
<input type="checkbox"/>	Overnight Mail	120 E Lake St., Ste. 317
<input checked="" type="checkbox"/>	Facsimile: 208-263-8211	Sandpoint, ID 83864
<input type="checkbox"/>	U.S. Mail, Postage Prepaid	Richard Stacey
<input type="checkbox"/>	Hand Delivered	McConnell Wagner Sykes & Stacey, PLLC
<input type="checkbox"/>	Overnight Mail	755 West Front St., Ste. 200
<input checked="" type="checkbox"/>	Facsimile: 208-489-0110	Boise, ID 83702

Susan P. Weeks

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

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

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

Plaintiff,

vs.

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

Defendants.

Case No. CV-2009-01810

DECLARATION OF RICHARD VILLELLI
IN OPOSITION TO VALIANT IDAHO,
LLC'S MOTION TO ALTER, AMEND
AND/OR RECONSIDER THE ORDER OF
SALE

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

Pursuant to Rule 7(d) of the Idaho Rules of Civil Procedure and Idaho Code § 9-1406,
Richard Vilelli declares as follows:

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

DECLARATION OF RICHARD VILLELLI IN OPOSITION TO VALIANT IDAHO,
LLC'S MOTION TO ALTER, AMEND AND/OR RECONSIDER THE ORDER OF SALE:

3. I am the president of Vilelli Enterprises, Inc. Vilelli Enterprises, Inc. is the managing member of North Idaho Resorts, LLC ("NIR").
4. I have reviewed the Declaration of Charles Reeves in Support of Valiant Idaho, LLC's Motion to Alter, Amend and/or Reconsider the Order of Sale of Real Property.
5. In paragraph 5 of the affidavit, Mr. Reeves sets forth facts which he indicates the Court should be aware in exercising its powers of equity. Many of these facts are either untrue or only partially true.
6. In paragraph 5(a), Mr. Reeves claims the Water Facilities and WTF infrastructure and other improvements were paid for with amounts Pend Oreille Bonner Development (POBD) borrowed from R.E. Loans, LLC, Pensco Trust Co. and Mortgage Fund '08 LLC. This statement is overly broad. Both the domestic water system and the waste water treatment systems were constructed in 1985 and extended in 2000 by VP, before Pend Oreille Bonner Investments, LLC (POBI) purchased the undeveloped real property which is referred to in this litigation as the Idaho Club. VP, Inc. invested millions of dollars into the water and sewer systems that now serve the Idaho Club and other adjacent properties before any agreement for its extension was made with POBI.
7. The Purchase and Sale Agreement submitted as Exhibit A to my August 4, 2014 affidavit allowed POBI to expand VP's sewer and water system so long as POBI paid for the expansion and transferred ownership of those improvements to VP Inc. when completed.
8. POBI provided me with copies of the planned unit development application and preliminary plat application for Golden Tee 2nd through 11th additions submitted to Bonner County. In both these applications, POBI identified in the "service information"

sections that VP, Inc. would provide and serve water and sewer service; that the as built system included an approved lagoon and land application system, and both systems were suitable for expansion. A copy of POBI's planned unit development application is attached hereto as Exhibit A and a copy of POBI's preliminary plat application is attached hereto as Exhibit B. Bonner County approved the PUD and preliminary plat conditioned upon VP providing water and sewer service, and POBI transferring the water and sewer infrastructure expansions to VP.

9. After obtaining PUD and plat approval, POBD proceeded to develop the property and it completed some expansion of the domestic water and sewer system. It expanded the size of the existing sewer lagoon on the existing lagoon lot. It extended some of the water and sewer lines to serve certain lots. It installed a water reservoir and booster pumps to serve some of the lots it developed with domestic water. However, it never completed the expansions. Even today, the expansion of the water and sewer system to the platted lots remains incomplete.
10. POBD refused to deed the infrastructure improvements to VP as agreed on the premise that POBD had not yet completed the expansion of the system and POBD was not required to deed the infrastructure to VP until such time as all of the infrastructure expansion improvements were completed.
11. On June 2, 2011, POBD borrowed money from VP to address Idaho Department of Environmental Quality (DEQ) permit compliance requirements under Municipal Wastewater Reuse Permit No. LA-000123-02. VP loaned POBD \$95,850.00 to assure that the wastewater system continued to operate. VP included in this loan that POBD would deed the lagoon lot and the water facility lots (well reservoir and booster pump

lots) to it as a condition of the loan. POBD has defaulted in repayment of the loan, but did quit claim the lots to VP. A true and correct copy of the executed loan agreement is attached hereto as Exhibit C.

12. VP paid for additional compliance work required by DEQ in the Compliance Agreement Schedule submitted as Exhibit H to my August 4, 2015 affidavit. VP has expended in excess of \$150,000.00 on this compliance, in addition to the unpaid loan to POBD, to keep the sewer system operational.
13. In paragraph 5(d), Mr. Reeves indicates it was agreed VP would not charge any hook-up or tap fees at any time it was operating the sewer system. This assertion simply is not true. The Purchase and Sale Agreement, which was drafted by POBI, provided at 11(j) “[n]either Buyer nor any party who purchases a lot or residential unit in the Project from Buyer shall be required or have any obligation to pay any hook-up fee to Seller or to any other party as a condition of receiving water and sanitary sewer services.” (Bates page stamped NIR000155.) (Vilelli August 4, 2015 Affidavit, Exhibit A, Purchase and Sale Agreement.) Buyers of POBD were not charged hook-up fees in accordance with this agreement.
14. Connection fees existed prior to and after POBD’s purchase of the Idaho Club. Other properties which were not sold by POBD which wished to connect to the sewer system were required to pay a connection fee.
15. POBD has substantially breached the CO Agreement and VP has recorded notice of POBD’s failure of performance of the CO Agreement. A true and correct copy of the notice is attached hereto as Exhibit D.


16. The litigation referenced by Mr. Reeves in 5(f) of his Affidavit involved a party who was not a Buyer from POBD and was resolved by a confidential settlement agreement to which Mr. Reeves was not privy.

17. Mr. Reeves's statement that VP did not "pay" POBD anything in consideration for transfer of the lagoon lot, the well lot, and the booster pump lots is misleading. The original PSA excluded the water and sewer infrastructure from the sale to POBL (Villelli Affidavit, Exhibit A, Third Amended Purchase and Sale Agreement.) The Purchase and Sale Agreement and the CO allowed POBD to extend VP's water and sewer system upon the condition that such improvements be deeded to VP. The deed for these lots were included as consideration of the entire sales transaction. This term was again included as part of the consideration for the compliance loan made by VP to POBD (Exhibit C to this affidavit). Deeding of these lots was also included as consideration for DEQ and VP to enter into the compliance agreement with POBD which saved POBD from potentially paying thousands in penalties and fines to DEQ. (Exhibit H to Villelli Affidavit signed August 4, 2015.)

18. As part of its agreement with NIR, POBD was required to provide NIR with an accounting of lot sales. There has not been a sale of a lot by POBD since August 2008.

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 26th day of August, 2015.


Richard Villelli

DECLARATION OF RICHARD VILLELLI IN OPOSITION TO VALIANT IDAHO,
LLC'S MOTION TO ALTER, AMEND AND/OR RECONSIDER THE ORDER OF SALE:

CERTIFICATE OF SERVICE

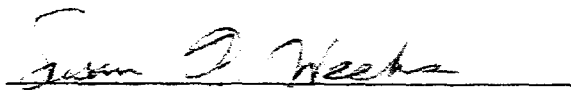
I hereby certify that a true and correct copy of the foregoing was served on the following persons in the manner indicated this 26th day of August, 2015:

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

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

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

Richard Stacey
McConnell Wagner Sykes & Stacey, PLLC
827 East Park Blvd., Ste. 201
Boise, ID 83712



**BONNER COUNTY PLANNING DEPARTMENT
REPLAT OF PORTIONS OF GOLDEN TEE AND GOLDEN TEE 1ST ADDITION
and
GOLDEN TEE 2ND through 11th ADDITIONS
COMMERCIAL RESORT, PRIVATE COMMUNITY FACILITY,
4-PLEX, PUBLIC UTILITY COMPLEX FACILITY
and
LARGE SCALE PLANNED UNIT DEVELOPMENT APPLICATION**

FILE# _____

FILED:

Applicant's Name: Pend Oreille Bonner Investments, LLC
Phone #: (775) 324-6900 (contact Chuck Reeves)
Address: 6900 South McCarran Blvd. Suite 1010
Reno, NV 89509

Landowners' Name: Villall Enterprises, Inc.
Phone #: (208) 255-4500
Address: 151 Clubhouse Way
Sandpoint, Idaho 83860

Monteheno Investments, LLC, et al
151 Clubhouse Way
Sandpoint, Idaho 83864

Bart and Laura Hill
6640 Dunwitch Way
Alexandria, VA 22315

Peter and Joan Brittain
206 N. Fourth Ave. Unit 146
Sandpoint, ID 83864

Steven and Ann Seaborn
64472 McGrath Road
Bend, OR 97701

MDG Nevada, Inc.
6900 Reno S. McCarran Blvd., Ste. 1010
Reno, NV 89509

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Exhibit

A

3430

Project Representative's Name: Martin E. Taylor, AICP, J.A. Sewell & Associates
Phone # (208)263-4160
Address: 1205 Highway 2, Sandpoint, ID 83864

PROJECT DESCRIPTION:

Describe in detail the proposed use or uses, housing densities and arrangements, parking facilities, preliminary subdivision plan (if applicable), common areas, open spaces and a transportation network for vehicular and pedestrian circulation:

The applicant is requesting a conditional use permit for:

1. A "large scale planned unit development" consisting of 454 single family residences and one 4-plex residence (adjacent to clubhouse); redesign of the existing golf course into a redesigned championship course, to include an expanded clubhouse and golf instruction center, subordinate commercial center, and commercial resort and related recreational uses and facilities, to include a fitness area, spa, pool, tennis and sport courts, eatery, kids center and recreation area, food, beverage, and retail sales in support of the resort operation; (BCRC, §§12-1440, paragraphs [a], [c], [l] and [n]; 12-2210, paragraphs [b] and [c]; and 12-2211, paragraphs [a] and [c]);
2. "Public utility complex facilities" consisting of:
 - a. An expansion of the existing sewage disposal system into an aerated treatment lagoon with land application, serving residential uses, golf clubhouse, ancillary recreational buildings and the subordinate commercial and recreational uses (BCRC, §§12-1440[m] and 12-2159);
 - b. An expansion of the existing public water system serving all residential units, the clubhouse, ancillary recreational buildings and subordinate commercial and recreational uses (BCRC, §§12-1440[m] and 12-2159);
 - c. A private solid waste collection and transfer site (see preliminary plat, Lot 1, Block 14A, Golden Tee 1st Addition);

Proposed Uses:

The overall "Hidden Lakes" property is designed to be developed with 494 single family residences and one multi-family 4-plex residence. Of the 498 total unit count, 171 of these units have been previously approved (see PUD C583-95). Thus, proposed densities not previously considered total 327.

In addition to proposed residential uses, the project includes a redesigned championship golf course, an estimated 3,000 square foot golf clubhouse addition, a spa and fitness area, eatery, kids center and recreation area, pool, tennis and sport courts and a small commercial center, including food, beverage, and retail operations in

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support of the resort operation (BCRC, §§12-1440(a), 12-2210(b) and 12-2211(c)).

Housing Densities and Arrangements:

This proposal includes 327 additional units, of which 68 additional units are situated north of Highway 200, and 259 units are designed south of the highway. (Note that the previously approved PUD located 147 units north of the highway, and 24 units south of the highway.) In total, the overall project includes 215 units north of the highway, and 283 units south of the highway, for a combined 498 unit count.

North of the highway, residential units are "clustered" in six distinct neighborhoods: The Golden Tee neighborhood located in the northernmost section of the project; the Golden Tee 1st Addition two neighborhoods located south of the clubhouse and south of Fairways 13, 17 and 18; and three neighborhood additions to the Golden Tee plats situated north of Fairway 3, and west and east of Fairway 12. Within these six neighborhoods, lots range from 0.09 acre (4,119 sq. ft.) to 0.61 acre (27,571 sq. ft.). All lots proposed are single family residential, with the exception of Lot 2, Block 12A, Golden Tee 1st Addition. This lot, located southeast of the clubhouse, is scheduled to be developed with one 4-plex.

South of the highway, residential units are "clustered" in essentially five neighborhoods: One neighborhood was designed west of Fairway 8 and north of Fairway 9; a second neighborhood is situated south of Fairway 7, east of Fairway 9; the third neighborhood lies east of Fairway 6; a fourth neighborhood is centrally located and includes "cabin" lots; the remaining neighborhood encompasses roughly the east half of the acreage south of the highway. Within these five neighborhoods, lots range from 0.14 acre (6,196 sq. ft.) acres to 21 acres. All lots are proposed are single family residential (BCRC, §12-2240(e)).

While clustering creates lots smaller than 12,000 square feet, the overall density of the project will be about 1.77 units per acre. These clusters are located in areas topographically suitable for "cabin" lots, of which 126 are less than 12,000 square feet. These cabin lots will be developed with smaller residences offered for sale, with the ability for the owner to place the home in a rental pool to be operated by the resort, as a rented seasonal living unit (see BCRC, §12-1440(a)). This "clustered" resort component is necessary to provide for the efficient operation of, and amenities necessary for, a first class resort operation. This clustering also preserves environmentally sensitive areas and preserves open space (BCRC, §12-2240(d)).

Parking facilities

Two on-site parking spaces will accompany each proposed lot (BCRC, §12-1818(e)). Approximately 100 parking spaces will be provided at the clubhouse and fitness and spa

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areas and an additional 75 spaces for employee and overflow parking (see 7/6/05 Landscape Architect Dwight DeMay parking analysis letter to Bonner County Planning Director Clare Marley, attached; see also accompanying conceptual development plan for parking locations, attached).

Preliminary subdivision plan (if applicable)

Accompanying this application is the planned unit development "development plan" depicting the items enumerated at BCRC, §12-2220(c).

Common areas and open spaces

In excess of planned unit development standards, common area consisting of about 17% (151 acres) of the 879 acre gross land area of the subject property is proposed to be reserved as open space as part of this planned unit development, where a minimum 10 percent is required (BCRC, §12-2240(a)). This acreage is exclusive of the access roads and other services, such as areas used for land application, the aeration lagoon for sewage treatment, and well radii (BCRC, §12-2240(a)). The designated open space tracts will remain a combination of meadow, forest, ponds and streams. A gazebo and rest rooms are proposed as an amenity to the common open space (see corresponding plat, L4, B1, GT5; Sheet 15).

Further, though not calculated as common area due to the land application of effluent, an additional 5% (45 acres) of adjacent forest land application area will be retained as open space.

Lastly, though not calculated as open space to be held in common by lot owners, an additional 22% (193 acres) of adjacent golf course greens and fairways will be retained as open space.

Transportation network for vehicular and pedestrian circulation

The subject property has direct frontage on, and direct access to, State Highway 200 and Lower Pack River Road, both public rights of way as recommended for all sites zoned Recreation (BCRC, §12-1420(c)).

Roads within the plat are proposed to be private.

Road maintenance will be by the homeowners' association.

Two accesses serve that portion of the property north of Highway 200. Lower Pack River Road provides access to the north end of the project. The intersection of Lower Pack River Road and the state highway has been improved pursuant to the terms and conditions of Planned Unit Development C583-95. Highway 200 provides access to the

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clubhouse grounds located north of the highway, and will provide access to that portion of the development located south of the highway. All proposed Highway 200 approach locations have been approved by the Idaho Transportation Department (see 6/9/05 ITD District Traffic Engineer Mike Porcelli letter to Bonner County Planning Director Clare Marley, attached). Highway 200 improvements associated with the proposed approaches will be constructed as conditions of final plat recording (see 7/15/05 Transportation Engineer CarrieAnn Hewitt analysis, attached).

Proposed interior subdivision roads will consist of 20 feet wide, paved travel ways with 3 feet wide gravel shoulders flanked by roadside utility and drainage swales, all located within a 40 feet wide strip of land to be dedicated to, and maintained by, the Homeowners' Association (see accompanying stormwater management plan, "typical roadway section detail"). Proposed individual driveways serving 10 lots will consist of 12 feet wide, paved travel ways with 1 foot wide gravel shoulders, similarly flanked by road side utility and drainage swales, all located within variable width easements, depending on grade. No roadway nor driveway grades will exceed 10%, or as otherwise approved by the Northside Fire District chief. These lots include:

L4, B2, GT2
L17, B7, GT4
L21, B6, GT4
L10, B2, GT7
L11, B2, GT7
L6, B1, GT9
L8, B1, GT9
L5, B4, GT10
L6, B4, GT10
L7, B5, GT10

Pedestrian paths are incorporated into the open space network.

Section: 36 Township: 58N Range: 1W

Section: 31 Township: 58N Range: 1E

Section: 2 Township: 57N Range: 1W

Section: 6 Township: 57N Range: 1E

Parcel #s:

RP 57N01E063601 A

RP 57N01W020102 A

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RP 58N01E316415 A
RP 58N01E313820 A

RP 58N01W369340 A
RP 58N01W361810 A
RP 58N01W362252 A

RP 043520020100 A
RP 043520030010 A
RP 043520030020 A
RP 043520030030 A
RP 043520040010 A
RP 043520040020 A
RP 043520040030 A
RP 043520040040 A
RP 043520040050 A
RP 043520050000 A

RP 043530070020 A
RP 043530080010 A
RP 043530090010 A
RP 043530090020 A
RP 043530090030 A
RP 043530090040 A
RP 043530100010 A
RP 043530110010 A
RP 043530120000 A
RP 043530130130 A
RP 043530140000 A

Total Site Acreage: 865
(879 total acres - 14 acres of existing residential lots not a part = 865 acres)

Legal Description: See attached deeds.

Current site zoning: Recreation and Agricultural (Note: A concurrent zone from Agricultural to Recreation is proposed for about 127 acres lying in the N1/2 of Section 2, T57N, R1W.)

Current Comprehensive Plan designation: Recreation and Rural

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Common Area/Open Space: As noted, in excess of planned unit development standards, common area consisting of about 17% (151 acres) of the 879 acre gross land area of the subject property is proposed to be reserved as open space as part of this planned unit development, where a minimum 10 percent is required (BCRC, §12-2240fa). This acreage is exclusive of the access roads and other services, such as areas used for land application, the aeration lagoon for sewage treatment, and well radii (BCRC, §12-2240fa). The designated open space tracts will remain a combination of meadow, forest, ponds and streams. A gazebo and rest rooms are proposed as an amenity to the common open space (see corresponding plat L4, B1, GT5; Sheet 15; see conceptual land use plan).

Further, though not calculated as common area due to the land application of effluent, an additional 5% (45 acres) of adjacent forest land application area will be retained as open space.

Lastly, though not calculated as open space to be held in common by lot owners, an additional 22% (193 acres) of adjacent golf course greens and fairways will be retained as open space.

Proposed Number Of Total Dwelling Units: This proposal includes 327 additional units, of which 68 additional units are situated north of Highway 200, and 259 units are designed south of the highway. (Note that the previously approved PUD located 147 units north of the highway, and 24 units south of the highway.) In total, the overall project includes 215 units north of the highway, and 283 units south of the highway, for a combined 498 unit count.

Directions to site (Include nearest mile post if located on state highway): From Sandpoint, proceed east on State Highway 200 about 8 miles to the Hidden Lakes Golf Course near the intersection of Lower Pack River Road and the state highway. The property lies on the north and south side of the state highway, predominantly east of Lower Pack River Road. The nearest milepost along Highway 200 is "38."

Nearest City: Kootenai

Distance to Nearest City: 5 miles

Uses of Surrounding Land (Describe lot sizes, structures, uses.):

North: Pack River and undeveloped large parcels developed with scattered single family residences.

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East: Pack River, Pack River Flats and Forest Service land that generally is undeveloped.

West: Hidden Lakes subdivision with one-third to one acre lots; large acreage parcels zoned Agricultural.

South: Lake Pend Oreille, the Burlington Northern Railroad and large rural residential parcels.

Current site zoning: Recreation and Agricultural (Note: A concurrent zone from Agricultural to Recreation is proposed for about 127 acres lying in the N1/2 of Section 2, T57N, R1W.)

Current Comprehensive Plan designation: Recreation and Rural

What zoning districts bound the project site?

North: Recreation (ZC176-90) and Agricultural

East: Rural and Recreation

West: Recreation (ZC176-90 and ZC249-97) and Agricultural (Note: About 126.4 acres included in Section 2, T57N, R1W, are included in a concurrent zone change request from Agricultural to Recreation).

South: Agricultural and Suburban-1/3.

ACCESS INFORMATION:

Describe existing access to project site: The subject property has direct frontage on, and direct access to, State Highway 200 and Lower Pack River Road, both public rights of way as recommended for all sites zoned Recreation (BCRC, §12-1420(c)).

Roads within the plat are proposed to be: Private.

Road maintenance will be by: Homeowners' Association.

Describe level of improvements, if any, for proposed roads (include surface type,

maximum and typical grades, width of right-of-way, width of improved surface, curbing, etc.): Two accesses serve that portion of the property north of Highway 200. Lower Pack River Road provides access to the north end of the project. The intersection of Lower Pack River Road and the state highway has been improved pursuant to the terms and conditions of Planned Unit Development C583-95. Highway 200 provides access to the clubhouse grounds located north of the highway, and will provide access to that portion of the development located south of the highway. All proposed Highway 200 approach locations have been approved by the Idaho Transportation Department (see 6/9/05 ITD District Traffic Engineer Mike Porcelli letter to Bonner County Planning Director Clare Marley, attached). Highway 200 improvements associated with the proposed approaches will be constructed as conditions of final plat recording (see 7/15/05 Transportation Engineer CarrieAnn Hewitt analysis, attached).

As noted, proposed interior subdivision roads will consist of 20 feet wide, paved travel ways with 3 feet wide gravel shoulders flanked by roadside utility and drainage swales, all located within a 40 feet wide strip of land to be dedicated to, and maintained by, the Homeowners' Association (see accompanying stormwater management plan, "typical roadway section detail"). Proposed individual driveways serving 10 lots, previously referenced, will consist of 12 feet wide, paved travel ways with 1 feet wide gravel shoulders, similarly flanked by road side utility and drainage swales, all located within variable width easements, depending on grade. No roadway nor driveway grades will exceed 10%, or as otherwise approved by the Northside Fire District fire chief.

SERVICE INFORMATION:

Distance (in miles) to the nearest: Public/Community sewer system: On-site (The project in its entirety is served by VP, Inc., a lagoon and land application, municipal sewer system.) Fire Station: 7 (Ponderay station) Secondary school: 10 (Sandpoint High School) Elementary School: 4 (Northside Elementary) Public/Community water system: On-site (The project in its entirety is served by VP, Inc., a municipal public water system.) County Road: The north property directly fronts on, directly accesses, Lower Pack River Road. Solid waste: On-site (The project will include a "public utility complex facility" solid waste collection site conditional use permit request made a part of this PUD application. See BCRC, §12-1440(m).)

Sewage disposal will be provided by: ■ VP, Inc.

If existing community system, provide name of facility: Hidden Lakes operated by VP Inc.

Explain type of sewage system, capacity, maintenance plan, location of facilities, if applicable, and other details:

The as-built system consists of a lagoon and land application system approved by Bonner County and the Idaho Department of Environmental Quality (Bonner County Conditional Use Permits 583-95 and 603-96, and DEQ Land Application Permit 000123-01). This system is suitable for expansion (see 7/21/05 Toothman-Orton Hidden Lakes Wastewater Treatment System Conceptual Master Plan, attached).

This system is defined as an "urban service" and "public utility complex facility," necessitating a conditional use permit (see BCRC, §12-202, "public utility complex facility" and "urban services"). This component of the plat is included in this planned unit development application.

Water to be supplied by: VP, Inc.

The as-built system consists of municipal wells approved by Bonner County and the Idaho Department of Water Resources (Bonner County Conditional Use Permits 583-95 and 603-96, and IDWR Well Permits 96-08625 and 96-09060). This system is suitable for expansion (see 6/6/05 Toothman-Orton Hidden Lakes Public Water System Conceptual Master Plan, attached).

This system is defined as an "urban service" and "public utility complex facility," necessitating a conditional use permit (see BCRC, §12-202, "public utility complex facility" and "urban services"). This component of the plat is included in this planned unit development application.

Which fire district is project site within? Northside Fire District

Which power company will service project site? Northern Lights and Avista. Avista will also provide gas service.

What are the potential effects of the use/plan on the quality or availability of present or future public services for the proposed site? Avista, Northern Lights and Verizon either

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currently serve a portion of the project site or have services available to the site and will serve the balance as it is developed. VP Inc. is the water and sewer provider and "will serve" the property as it is developed (see 7/7/05 Operations Director Robert Hansen's letter to Applicant Chuck Reeves, attached). The interior street network will be developed by the applicant and deeded to the Homeowners Association, and the expansion of the sewer and water systems will be developed by the applicant and conveyed to VP Inc. as the operator of the system.

SITE INFORMATION:

Provide detailed description of the following land features:

1. Topography (lay of land), including estimated maximum slope, rock outcroppings, benches, etc.: The overall site has a variety of topography including flat areas along the Pack River to a more mountainous setting south of Highway 200. Most lots have been located in areas of less than 20% slope, while some view lots on the mountain are in areas of less than 30% slope. The goal of the location and orientation of the lots is to provide views for each of the lots where possible, but to locate building sites in areas where the disturbance to tree cover and amount of any grading for roads and driveways to the lots, and any grading necessary to build a home on the lot, is minimized. Toward this end the areas of greater slope typically will have larger lots, upwards in size to as large as 20 acres.

There are 151 acres of functional common area to be dedicated and retained by the homeowners (196 acres total, including the 45 acres of land application area). This open space is designed to protect view sheds by providing for separation between lots, enhance wildlife habitat through shrub and forest canopy retention, and maintain surface water quality by serving as vegetated buffers. When the 193 acres of golf course property is included, about 44% (389 acres) of the 879 gross acres will remain open and not have any residential development. Only about 386 acres of the site will be committed to site development.

2. Water courses (lakes, streams, rivers, other bodies of water): The Pack River abuts the eastern boundary of the property. Several ponds and surface water courses are found on the property (see 7/13/05 Allwest Geologic Conditions and Surface Slippage analysis, attached). These watercourses are buffered by open

space areas and will be further buffered by setbacks from any homes to protect the natural setting of the water features. These areas will also be protected by the Bonner County regulation, where applicable, prohibiting any structures within 40 feet of surface water (see BCRC. §12-631).

3. Springs and wells: Two wells exist on the property located in existing Lots 1 and 3, Block 3, Golden Tee (Lot 1 is being replatted into Lot 1A, Block 3, Golden Tee).
4. Existing structures (size & use): A 17,000 square feet existing clubhouse, along with a temporary golf maintenance building, currently exist on the site. The golf maintenance area will be relocated to one of two locations (see preliminary plat, L1, B15, GT1, or B12A, GT1 and corresponding development plan). A temporary construction trailer will be used as a construction office and removed after plat buildout is completed.
5. Land cover (timber, pasture, etc.): About 75% of the property south and 30% north of Highway 200 is forested with mixed evergreens. The balance of the property consists of meadow and ponds, or is currently part of the Hidden Lakes golf course.
6. Other pertinent information: For planning background information, please refer to Book of Plats 6, Page 108, Golden Tee Estates, and Book of Plats 6, Page 114, Golden Tee Estates, 1st Addition, Bonner County records. For existing planned unit development and sewer and water systems background, please refer to Bonner County Planning Department Files C583-95 and C603-96, respectively.

A pre-application meeting was held May 24, 2005 (BCRC. §12-2222).

Is dedication of land for homeowner use planned? Yes

If yes, describe use and number of acres: In excess of planned unit development standards, common area consisting of about 17% (151 acres) of the 879 acre gross land area of the subject property is proposed to be reserved as open space as part of this planned unit development, where a minimum 10 percent is required (BCRC. §12-2240(a)). This acreage is exclusive of the access roads and other services, such as areas used for land application, the aeration lagoon for sewage treatment, and well radii

(BCRC, §12-2240[a]). The designated open space tracts will remain a combination of meadow, forest, ponds and streams. A gazebo and rest rooms are proposed as an amenity to the common open space (see corresponding plat L4, B1, GT5; Sheet 15; see conceptual land use plan).

Further, though not calculated as open space due to the land application of effluent, an additional 5% (45 acres) of adjacent forest land application area will be retained as open space.

Lastly, though not calculated as open space to be held in common by lot owners, an additional 22% (193 acres) of adjacent golf course greens and fairways will be retained as open space.

Pedestrian paths will be incorporated into the open space network.

Will the PUD design include any variations from the design standards of Title 12?

■ Yes

Lot coverage, rear yard setbacks, lot size minimums, access, and lot design standards are proposed to be deviated from in order to best utilize open space, vegetative buffers, water frontage and topography (view sheds). Specifically, proposed variations from conventional development standards include (BCRC, §12-2220[c]):

i. BCRC, §12-627, *thirty-five percent (35%) lot coverage by buildings and structures.*

The coverage for lots containing 6,000 square feet or less is not to exceed 45 percent.

If yes, describe and explain how variations achieve design goals: Lots containing 6,000 square feet or less will be developed with a "cabin-style" single family residence. It is desirable to provide for about 2,700 hundred square feet or less of lot coverage in order to accommodate an attached, two car garage and single story residence. This requested lot coverage maximum will still leave sufficient open space on-site to facilitate landscaping and stormwater management.

ii. BCRC, §12-630(a), *twenty-five feet front and rear yard setbacks.*

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The rear yard setbacks for lots containing 6,000 square feet or less will be a minimum of ten feet (10').

If yes, describe and explain how variations achieve design goals: The purpose for rear yard setbacks is to provide separation between uses, and to provide open space. Lots proposed for 6,000 square feet or less have been designed adjacent to fairways or wetland areas. Consequently, there are no uses or structures proposed in the "back yards" of these proposed lots, other than occasional golfers traversing the fairways. Accordingly, the proposed reduced rear yard setback will not result in conflicting uses.

- iii. BCRC, §12-1421(a), 12,000 square feet lot size minimum where all "urban services" are provided; 12-2305(g), lots smaller than one acre shall have all urban services; and 12-2305(l), lots less than 5 acres shall directly front on, and directly access, a public right of way.

The plan will include 126 lots that will contain less than 12,000 square feet. Lots will be served by a network of private roads versus public roads developed within public rights of way.

If yes, describe and explain how variations achieve design goals: Densities are to be "averaged" over the entire 879 acre property, with the overall density of about 1.77 units per acre, which is less than the density permitted within the underlying zone Recreation district which provides for one-third acre lots with the presence of "urban services" (BCRC, §12-224)(d)). This clustering of lots is proposed to minimize lot grading, tree removal, preserve open space and to protect environmentally sensitive areas. The clustering of these lots also will provide neighborhoods of homes of similar size and character that will serve as the resort component of this community.

All lots will be served by a private road system designed and constructed to meet or exceed minimum fire code standards, versus designed and constructed to Bonner County "Local 'A'" standards, which specifies a 40 foot wide roadway based on maximum zoning density (Bonner County Road Standards Manual). This standard is applicable when designing lots with an average density of 12,000 square feet. However, this project proposes an overall density of 1.77 units per acre. Further, the objective is to minimize tree removal and road grading, thus preserving the rural character of the site. Consequently, 26 foot wide roadways (20 foot wide paved travel way with 3 feet wide graveled shoulders) are adequate and advisable. There will be 10

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lots that do not directly front on a private road. These lots will have 12 feet wide paved driveways with 1 feet shoulders, or as otherwise approved by the Northside Fire District chief.

- iv. BCRC, §12-2305(b): 3:1 depth to width ratio and 85 degrees to 95 degrees angles of intersection.

If yes, describe and explain how variations achieve design goals: Some lots deviate from the typical 3:1 standard. This deviation is necessary in an effort to incorporate sound planning principals by minimizing the amount of road construction, resultant tree removal and grading that otherwise would have been required to align the roadway in such a manner to accommodate a more standard rectangular lot.

Some lots deviate from the 85-95 degree angle of intersection so that the views from the houses are oriented down the fairways instead of across each fairway. Each driveway will be located on each lot so as to not interfere with any adjacent properties.

The result is that it is feasible and desirable to provide depth to width and angle of intersection deviations will help preserve the rural character of the site (see 7/12/05 Landscape Architect Dwight DeMay lot configuration analysis letter to Bonner County Planning Director Clare Marley, attached).

Describe any planned berming, grading, contouring or filling of lands within proposed planned unit development:

Grading and filling within the proposed access "rights of way" will occur preparatory to road construction. Contouring preparatory to single family dwelling construction may occur within some of the proposed lots. A berm is planned on both sides of Highway 200 in the area just east of Lower Pack River Road. The berm will be landscaped in an effort to create a similar forested look as is found along Highway 200 in this vicinity.

Will the Planned Unit Development create a hazard or be dangerous to persons on or adjacent to the property?

All lots will be served by a road system designed and maintained to provide ready access for fire and other emergency vehicles.

All lots will be served by a municipal water system designed to provide fire flow.

All lots will be served by a public sewage disposal system approved by the Panhandle Health District or the Idaho Department of Environmental Quality, as appropriate.

How will the proposed use maintain the harmony with existing uses and intended character of the vicinity?

The surrounding uses are a mix of larger parcels and smaller lots. The goal of this development is to create as little disturbance through grading and tree removal as possible so that the natural environment and rural character of the site is maintained. To this end, the proposed plan includes only 498 units over 879 acres. The units are positioned so that the smaller lots are located on more gentle terrain while the more mountainous areas will have lots up to 20 acres in size. The golf course has been designed to play in areas where little grading is required.

Open space and wildlife corridors are positioned along watercourses and other areas to preserve the wilderness feel of the site. Design Guidelines will provide individual building envelopes that will locate homes in specific areas on each lot so as to limit the removal of trees and amount of grading around each home. Restrictions also will be in place preventing the removal of any trees greater than six inches in diameter without the approval of the Design Review Committee.

How is the use/plan in accordance with the general and specific objectives of the Comprehensive Plan?

ECONOMIC DEVELOPMENT

Bonner County intends to permit neighborhood businesses to locate in residential areas.

Lot 1, Block 15, 1st Addition to Golden Tee, located at the northeast intersection of Lower Pack River Road and Highway 200, will be developed as commercial center accessory to the golf resort. Uses to accommodate the general public as well as residents within this planned unit development include such things as a convenience store, food service operation, and movie rental store (see BCRC, §12-2211(c)). In addition, it is anticipated that the resort operation will employ approximately 100 people

Replat of Portions of Golden Tee and Golden Tee 1st Addition and Golden Tee 2nd through 11th Additions Commercial Resort, Private Community Facility, 4-Mex. Public Utility Complex Facility and Planned Unit Development Application

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over the course of each year.

Bonner County intends to consider the impact on natural resources in the location and density of future recreational development.

A biological assessment was conducted, concluding that while some low, medium and high value wetlands will be filled as a result of project buildout, the majority of wetland impacts have been mitigated through avoidance. No stream or river alterations are proposed. Wildlife will be displaced where housing will be developed, thus wildlife corridors have been established between larger open space tracts, thereby providing habitat connectivity (see 7/8/05 Intermountain Resources Initial Environmental Impacts Review, attached).

A wetlands delineation has occurred on the 879 acre property. The demarcated boundaries have been surveyed. These field located and surveyed boundaries are depicted on the preliminary plat and the accompanying conceptual land use plan. The entire project includes about 108 acres of jurisdictional wetlands. Of that total acreage, about 5 acres are proposed to be filled to accommodate access. None of the fills result in the alteration of hydrology that would alter or change the viability of adjacent wetland functions and values (Initial Environmental Impacts Review).

A geologic conditions and surface slippage analysis of the property was conducted, noting that no earth movement has occurred on the mapped faults located south and west of the subject site. The analysis further confirms that no evidence of large-scale slope movement or slope instability was observed on the premises, and therefore slopes are stable for road building and home construction. Groundwater is present in the lower areas of the project, possibly warranting trench drains or sumps to facilitate construction (Geologic Conditions and Surface Slippage analysis).

An archaeological reconnaissance of nearly 900 acres was performed. The investigation concluded "After a surface survey and subsurface shovel probing of the Hidden Lakes project area, we recorded four small, insignificant mining prospects and one proto-historic or prehistoric site that contained burned rocks and one stone tool in the project Area of Potential Effect." The report recommends that the prehistoric site be avoided and that no subsurface disturbance take place in the site area (see 4/27/05 Rain Shadow Research, Inc., Archaeological Survey of the Proposed Hidden Lakes Development, Project Report 94, public distribution copy, attached).

A turf management plan has been prepared incorporating best management practices for greens and fairways upkeep, thereby maintaining water quality, providing pest control, and assuring water conservation through controlled drainage and proper irrigation (see June 2005 Golf Ventures International Integrated Golf Course Management Plan for the Proposed Hidden Lakes Golf Course Remodel Project, attached).

Storm water from impervious surfaces generated by the access roads, parking areas and homes will be managed consistent with BCRC, Title 12, Chapter 24 (see August 1, 2005, James A Sewell & Associates Stormwater Management and Erosion Control Plan, attached).

Therefore, this project is located in a suitable area for the growth of recreational home site, commercial resort and golf course development.

PUBLIC SERVICES

Bonner County intends to consider the quality of existing services (police, schools, roads) in the location and density of new development.

The subject property has direct frontage on, and direct access to, State Highway 200 and Lower Pack River Road, both public rights of way as recommended for all sites zoned Recreation (BCRC, §12-1420fc).

Two accesses serve that portion of the property north of Highway 200. Lower Pack River Road provides access to the north end of the project. The intersection of Lower Pack River Road and the state highway has been improved pursuant to the terms and conditions of Planned Unit Development C583-95. Highway 200 provides access to the clubhouse grounds located north of the highway, and will provide access to that portion of the development located south of the highway. All proposed Highway 200 approach locations have been approved by the Idaho Transportation Department (see 6/9/05 ITD District Traffic Engineer Mike Porcelli letter to Bonner County Planning Director Clare Marley, attached). Highway 200 improvements associated with the proposed approaches will be constructed as conditions of final plat recording (see 7/15/05 Transportation Engineer CarrieAnn Hewitt analysis, attached).

As noted, proposed interior subdivision roads will consist of 20 feet wide, paved travel ways with 3 feet wide gravel shoulders flanked by roadside utility and drainage swales, all located within a 40 feet wide strip of land to be dedicated to, and maintained by, the Homeowners' Association (see accompanying stormwater management plan, "typical roadway section detail"). Proposed individual driveways serving 10 lots, previously referenced, will consist of 12 feet wide, paved travel ways with 1 foot wide gravel

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shoulders, similarly flanked by road side utility and drainage swales, all located within variable width easements, depending on grade. No roadway nor driveway grades will exceed 10%, or as otherwise approved by the Northside Fire District fire chief.

The new development will have only 498 residential units total on 879 acres, or one unit per 1.8 acres, while Recreation zoning conservatively provides for over 2,000 single family residential units with "urban services," as defined. It is estimated that only 20% of the residential units will be occupied year round and out of that number, only 25% of those year round residents will have school aged children, thus there will be little impact on schools. Because the roads are private and access will be limited by gatehouse, the impact and calls to the police department should also be less than typically found in a community of this size.

Bonner County intends to consider the quality of existing utilities (sewer, water) in the location and density of new development.

Sewage disposal will be provided by a public sewer system. The as-built system consists of a lagoon and land application system approved by Bonner County and the Idaho Department of Environmental Quality (Bonner County Conditional Use Permits 583-95 and 603-96, and DEQ Land Application Permit 000123-01). This system is suitable for expansion (see 7/21/05 Toothman-Orton Hidden Lakes Wastewater Treatment System Conceptual Master Plan, attached). This system is defined as an "urban service" and "public utility complex facility," necessitating a conditional use permit (see BCRC, §12-202, "public utility complex facility" and "urban services"). This component of the plat is included in this planned unit development application.

Water will be supplied by a public water system. The as-built system consists of municipal wells approved by Bonner County and the Idaho Department of Water Resources (Bonner County Conditional Use Permits 583-95 and 603-96, and IDWR Well Permits 96-08625 and 96-09060). This system is suitable for expansion (see 6/6/05 Toothman-Orton Hidden Lakes Public Water System Conceptual Master Plan, attached).

This system is defined as an "urban service" and "public utility complex facility," necessitating a conditional use permit (see BCRC, §12-202, "public utility complex facility" and "urban services"). This component of the plat is included in this planned unit development application.

Bonner County intends for new development to offset the capital costs of expanding services to their area.

Available public services needed to serve the project are limited to Northern Lights and Avista utilities and Verizon phone, all of either currently serve a portion of this property.

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or have services available to the property. The developer will pay for any necessary road improvements for the new entrances. The interior street network will be developed by the applicant, as will the expansion of the water and sewer systems.

Therefore, this project does provide essential public services to the residents of Bonner County, at no expense to the County.

TRANSPORTATION

Bonner County intends to consider safety hazards and congestion in the location and design of future development.

The existing approach location serving the north portion of the project has been approved by ITD and is already in place with left and right turn lanes. All proposed approach locations will be approved by ITD and Bonner County Public Works as required and the applicant will install or bond for any road improvements as required by either agency, prior to final plat recording.

Bonner County intends for roads within new development to be built to county standards and at the expense of the developer.

Through this planned unit development process, the applicant is requesting to deviate from the conventional "Local A", 40 feet wide road standard for lots zoned for 12,000 square feet or less. In order to reduce excessive cut and fill slopes, and thereby reduce potential erosion, all proposed interior roads constructed in conjunction with final platting have been designed to meet or exceed U.C./IFC standards. Ten lots do not directly front on a proposed road. Rather, these ten lots will be served by a 12 feet wide paved travel ways with 1 foot gravel shoulders and may have turnarounds for fire trucks at the house and may have turnouts along the driveways, as determined by the fire chief. These variations will be reviewed by the Fire Chief of Northside Fire District.

Bonner County intends for certain intense land use developments to provide paved roads.

All proposed interior roads will be paved by the developer.

Therefore, this project does provide a transportation system that is safe, unconfessed and well maintained.

NATURAL RESOURCES

Bonner County will attempt to protect agricultural land.

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The subject property does not contain any mapped "prime" agricultural soils (Bonner County Planning Department Prime Farmland in Bonner County GIS map).

Bonner County intends to regulate the location and density of new development in flood plains.

There are no home sites located within any flood plain areas. The proposed clubhouse addition made a part of this planned unit development application will be constructed in accordance with flood damage prevention ordinance standards, should it be determined that the proposed structure is in fact located within the flood hazard area (see PUD concept plan for location) see BCRC, §12-1601, et seq.)

Bonner County intends to consider wetlands and aquifer recharge areas in the location and density of future development.

A delineation of all wetlands has been conducted and the location of which can be found on the preliminary plat and PUD development plan. There is no proposed home development within any mapped area of wetlands and road crossings have been minimized as much as possible. The golf course is designed to incorporate the features of the wetlands and any fill in these areas has been avoided and minimized through careful and creative design. It is estimated that about 5 acres of the 128 total acres of wetlands will be filled. Any fill will occur only after obtaining any necessary USACOE 404 permit, as applicable.

Bonner County intends to maintain or enhance present water quality.

Subsequent site development (access roads, home sites and canoe portage area parking) will incorporate storm water management and erosion control best management practices. The golf course maintenance will also incorporate a best management practices through the implementation of the PUD-accompanying Integrated Golf Course Management Plan.

Bonner County intends to maintain or enhance our fish and wildlife resource.

Including the golf course area, approximately 45% of the gross land area will be maintained as open space in order to maintain wildlife cover and forage.

The property contains moose, elk and white-tailed deer critical wildlife habitat (Bonner County Planning Department Critical Wildlife Habitat in Bonner County GIS map). As noted, a biological assessment was conducted, concluding that wildlife will be displaced where housing will be developed, thus wildlife corridors have been established between larger open space tracts, thereby providing habitat connectivity. Further, no perimeter fencing along lot lines will be allowed, thus providing for wildlife movement.

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Bonner County will attempt to protect special archeological and historical sites.

An archaeological reconnaissance of nearly 900 acres was performed. The investigation concluded "After a surface survey and subsurface shovel probing of the Hidden Lakes project area, we recorded four small, insignificant mining prospects and one proto historic or prehistoric site that contained burned rocks and one stone tool in the project Area of Potential Effect." The report recommends that the prehistoric site be avoided and that no subsurface disturbance take place in the site area. There is no development planned anywhere near this area and thus there will be no impact to the site. As recommended in the report, this area will be fenced during construction to prevent any disturbance. The report concluded that no further investigations are recommended for the property.

Therefore, this project does manage natural resources to attain the greatest long-term public benefit.

COMMUNITY DESIGN

Bonner County intends for new development to locate in areas with similar densities and compatible uses.

The existing Hidden Lakes planned unit development was approved August 14, 1997, for 171 housing units. The current proposal adds 327 units, for a total unit count of 498 units.

To the north lies the Pack River and undeveloped large parcels developed with scattered single family residences. To the east lies the Pack River, Pack River Flats and Forest Service land that generally is undeveloped. To the west lies the Hidden Lakes subdivision with one-third to one acre lots, large acreage parcels zoned Agricultural. To the south lies Lake Pend Oreille, the Burlington Northern Railroad and large rural residential parcels.

Bonner County intends for new development to minimize the adverse impacts on adjacent areas.

The north portion of this property is already platted for single family uses with lot sizes averaging 15,000 square feet. The property immediately to the west of this site has lots that are one-third to about one acre in size. Thus, the proposed development is consistent with surrounding uses. Also, the majority of the site is zoned Recreation, which would conservatively allow over 2,000 units on the site, while the proposed plan calls for 327 additional residential units. Further, the largest portion of the property south of Highway 200 will have parcels ranging in size from one-third to over 20 acres and thus is consistent with the recreational character of the area. The development

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also proposes open space totaling about 196 acres, which will enhance the natural character and forest setting of the site. In total, when the golf course area is included, nearly 390 acres, or about 44%, of the total site will remain "open."

Therefore, this project does maintain a variety of lifestyles and a rural character for the future development of Bonner County.

Therefore, this plat is in accordance with the general and specific objectives of the Comprehensive Plan (BCRC, §12-2315(a)).

The proposed planned unit development or the first phase of it can be substantially completed within two (2) years from the date of approval (BCRC, §12-2250(b)).

The project includes twelve phases. Proposed Phase One can be substantially completed within two years and the concurrent preliminary plat and accompanying improvements are anticipated to be completed within the 6 years allocated for large scale PUDs (BCRC, §12-2270, paragraphs (c) and (e)).

Each individual development phase can exist as an independent unit capable of creating an environment of sustained desirability and stability, and the uses proposed will not be detrimental to present and potential surrounding uses but instead will have a beneficial effect which could not be achieved without a planned unit development (BCRC, §12-2250(c)).

Each phase of this planned unit development consists of platting single family residential lots and one 4-plex lot, the road system, attendant infrastructure and the common "open space" amenities, and thus can operate as an independent unit capable of creating an environment of sustained desirability and stability. This project as proposed creates a desirable and stable residential development consistent with the surrounding land uses, zoning, and the Bonner County Comprehensive Plan. In order to maintain the consistency with the rural character of the area, the proposed necessary lot design and road width variations are consistent with planned unit development standards (BCRC, §12-2220(c)).

The streets and thoroughfares proposed are suitable and adequate to gather anticipated traffic and will not generate traffic in such amounts as to overload the street network outside the planned unit development (BCRC, §12-2250(d)).

Highway 200 is a state highway, Bonner County classified "arterial," and as such is designed as a "main transportation route serving a system of collector and local access roads, which connect to the state highway system or serve as an important travel corridor" (Bonner County Road Standards Manual, Page 4).

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The existing approach location serving the north portion of the property is approved by ITD and already constructed, complete with left and right turn lanes. The three entrances to the south portion of the property have been reviewed by ITD and given preliminary approval as to their location, subject to review of detailed construction drawings. Any improvements required by ITD will be constructed and paid for by the applicant. There will be a new entrance to the project off of Lower Pack River Road. This entrance is currently being used for the sales and construction trailer. It will be submitted to Bonner County Public Works Department for specific approval. This new entrance will be a secondary entrance to the north portion of the property. Accordingly, the streets and thoroughfares proposed are suitable and adequate to gather anticipated traffic and will not generate traffic in such amounts as to overload the street network outside the planned unit development.

Any residential development will constitute a residential environment of sustained desirability and stability and will be in harmony with the character of the surrounding neighborhood and community and will result in densities no higher than those permitted by the base zone district, except as otherwise provided for in this chapter (BCRC, §12-2250[e]).

The subject property is physically suited for the proposed lot density as evidenced by abundant groundwater for domestic and fire flow usage, and the location of lots in areas suitable for construction. Single family residences are proposed in an area committed to similar residential developments.

Densities are to be "averaged" over the entire 879 acre property, with the overall density not exceeding that permitted within the underlying zone district (BCRC, 12-2240[d]). As noted, this project proposes an overall density of about 1.77 acres per unit, versus the 3.6 units per acre afforded within the Recreation District where all "urban services" are available.

Any proposed commercial or industrial development conforms to the applicable desirable standards and will constitute an efficient well organized development, with adequate provisions for access and storage, and it will not adversely affect adjacent or surrounding development (BCRC, §12-2250[f]).

Proposed "commercial" activities include a golf clubhouse (existing), a spa and fitness area, kids' center, eatery and recreational area, pool and tennis and sport courts, all ancillary to the property's use as a recreational community. The proposed commercial uses include such uses as a convenience store and movie rental store, and other food, beverage and retail operations ancillary to the resort, all of which will be subordinate to the residential planned development

The area surrounding the planned unit development can be planned and zoned in coordination and substantial compatibility with the proposed planned unit development (BCRC, §12-2250[g]).

The land directly west of Lower Pack River Road, north of Highway 200, is zoned Recreation and is developed with single family homes. Lands east of the project are either owned by the Forest Service, or consist of submerged lands (Pack River Flats). The land to the north is comprised of large agricultural and ranch type acreage buffered by the Pack River and dense tree cover. Lake Pend Oreille, the Burlington Northern Railroad and large rural residential parcels lie to the south.

Adequate utility service can be supplied to the area of the planned unit development (BCRC, §12-2250[g]).

Available public services needed to serve the project are limited to Northern Lights and Avista utilities and Verizon phone, all of which either currently serve the property or have services available to the subject property. Any required improvements to Highway 200 will be constructed and paid for by the applicant. The interior street network will be developed by the applicant, as will the expansion of the existing water and sewer systems.

Both municipal water and sewer facilities are able to be expanded to accommodate the proposed uses and proposed densities (see Toothman-Orton Hidden Lakes Wastewater Treatment System Conceptual Master Plan and Toothman-Orton Hidden Lakes Public Water System Conceptual Master Plan).

Therefore, the proposed public utility complex facilities will not adversely effect properties in the vicinity, and the proposed use is a public convenience and is a necessary facility (BCRC, §12-2159).

(See attached signature page from all affected land owners.)

BONNER COUNTY PLANNING DEPARTMENT
REPLAT OF PORTIONS OF GOLDEN TEE AND GOLDEN TEE 1ST ADDITION
and
GOLDEN TEE 2ND through 11th ADDITIONS
PRELIMINARY PLAT APPLICATION

FILE# _____

FILED:

Applicant's Name: Pend Oreille Bonner Investments, LLC
Phone #: (775) 324-6300 (contact Chuck Reeves)
Address: 6900 South McCarran Blvd. Suite 1010
Reno, NV 89509

Landowner's Name: Villelli Enterprises, Inc.
Address: 151 Clubhouse Way
Sandpoint, Idaho 83864

Montehene Investments, LLC, et al
151 Clubhouse Way
Sandpoint, Idaho 83864

Bart and Laura Hill
6640 Dunwitch Way
Alexandria, VA 22315

Peter and Joan Brittain
206 N. Fourth Ave. Unit 146
Sandpoint, ID 83864

Steven and Ann Seaborne
64472 McGrath Road
Bend, OR 97701

MDG Nevada, Inc.
6900 Reno S. McCarran Blvd., Ste. 1010
Reno, NV 89509

Project Representative's Name: Martin E. Taylor, AICP, J.A. Sewell & Associates
Phone # (208)263-4160
Address: 1205 Highway 2, Suite 101, Sandpoint, ID 83864

PROJECT DESCRIPTION:

Proposed Subdivision Name: Replat of Portions of Golden Tee and Golden Tee 1st Addition and Golden Tee 2nd Through 11th Additions

Section: 36 Township: 58N Range: 1W

Section: 31 Township: 58N Range: 1E

Section: 2 Township: 57N Range: 1W

Section: 6 Township: 57N Range: 1E

Total Site Acreage: 835.5 acres to be platted or replatted

(Note: The overall project 879 acres - 29 acres w. of Lower Pack River Rd. not a part of this plat/replat -14.5 acres existing Golden Tee/Golden Tee 1st Add. lots not a part of this plat/replat = 835.5 acres)

Parcel #s:

RP 57N01E063601 A

RP 57N01W020102 A

RP 58N01E316415 A

RP 58N01E313820 A

RP 58N01W369340 A

RP 58N01W361810 A

RP 58N01W362252 A

RP 043520020100 A

RP 043520030010 A

RP 043520030020 A

RP 043520030030 A

RP 043520040010 A

RP 043520040020 A

RP 043520040030 A

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RP 043520040040 A
RP 043520040050 A
RP 043520050000 A

RP 043530070020 A
RP 043530080010 A
RP 043530090010 A
RP 043530090020 A
RP 043530090030 A
RP 043530090040 A
RP 043530100010 A
RP 043530110010 A
RP 043530120000 A
RP 043530130130 A
RP 043530140000 A

Legal Description: See attached deeds.

Number of "lots" (inclusive of blocks): 481 total (403 new residential lots, 11 replatted residential lots, 52 open space lots, 5 golf blocks, 10 commercial/maintenance lots)

Replatted Golden Tee/Golden Tee 1st Addition lots include, specifically:

Golden Tee

Block 3, Lot 1

Block 4, Lots 1, 2, 3, 4 and 5

Block 2, Lot 10

Block 5

Golden Tee 1st Addition

Block 6, Lots 1 and 4

Block 7, Lots 1 and 2

Block 8, Lot 1

Block 9, Lots 2, 3 and 4

Block 10, Lot 1

Block 11, Lot 1

Block 12

Block 13, Lot 13

Block 14

Though not a part of this plat and replat, the entire project will include 495 residential lots (405 new residential lots + 9 replatted residential lots + 40 existing residential lots + 41 future residential lots west of Lower Pack River Road, north of Highway 200 = 495 total count).

Replat of Golden Tee and Golden Tee 1st addition and Golden Tee 2nd through 11th Additions Preliminary Plat

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Smallest lot size: 4,119 sq. ft. (L4, B4, GT8 "cabin" lot north of highway); 6,196 sq. ft. (L7, B7, GT4 "cabin" lot south of highway).

Largest lot size: 21 acres (L8, B4, GT10)

Common Area/Open Space: In excess of planned unit development standards, common area consisting of about 17% (151 acres) of the 879 acre gross land area of the subject property is proposed to be reserved as open space as part of the corresponding planned unit development, where a minimum 10 percent is required (BCRC, §12-2240(a)). This acreage is exclusive of the access roads and other services, such as areas used for land application, the aeration lagoon for sewage treatment, and well radii (BCRC, §12-2240(a)). The designated open space tracts will remain a combination of meadow, forest, ponds and streams. A gazebo and rest rooms are proposed as an amenity to the common open space (see L4, B1, GT5: Sheet 15).

Further, though not calculated as common area due to the land application of effluent, an additional 5% (45 acres) of adjacent forest land application area will be retained as open space.

Lastly, though not calculated as open space to be held in common by lot owners, an additional 22% (193 acres) of adjacent golf course greens and fairways will be retained as open space.

Proposed Number of Total Dwelling Units: This plat includes 408 additional proposed units (125 north of Highway 200; 283 south of Highway 200). (Note: Nine residential units/lots north of the highway were previously approved and are already platted. These lots are now proposed to be lot line adjusted as a part of this proposed plat/replat.)

Directions to site (Include nearest mile post if located on state highway): From Sandpoint, proceed east on State Highway 200 about 8 miles to the Hidden Lakes Golf Course near the intersection of Lower Pack River Road and the state highway. The property lies on the north and south side of the state highway, predominantly east of Lower Pack River Road. The nearest milepost along Highway 200 is "38."

Nearest City: Kootenai

Distance to Nearest City: 5 miles

Uses of Surrounding Land (Describe lot sizes, structures, uses.):

North: Pack River and undeveloped large parcels developed with scattered single family residences.

East: Pack River, Pack River Flats and Forest Service land that generally is undeveloped.

West: Hidden Lakes subdivision with one-third to one acre lots; large acreage parcels zoned Agricultural.

South: Lake Pend Oreille, the Burlington Northern Railroad and large rural residential parcels.

Current site zoning: Recreation and Agricultural (Note: A concurrent zone from Agricultural to Recreation is proposed for about 127 acres lying in the N1/2 of Section 2, T57N, R1W.)

Current Comprehensive Plan designation: Recreation and Rural

What zoning districts bound the project site?

North: Recreation (ZC176-90) and Agricultural

East: Rural and Recreation

West: Recreation (ZC176-90 and ZC249-97) and Agricultural (Note: About 126.4 acres included in Section 2, T57N, R1W, are included in a concurrent zone change request from Agricultural to Recreation).

South: Agricultural and Suburban-1/3.

ACCESS INFORMATION:

Describe existing access to project site: The subject property has direct frontage on, and direct access to, State Highway 200 and Lower Pack River Road, both public rights of way as recommended for all sites zoned Recreation (BCRC, §12-1420(c)).

Roads within the plat are proposed to be: Private.

Road maintenance will be by: Homeowners' Association.

Describe level of improvements, if any, for proposed roads (include surface type, maximum and typical grades, width of right-of-way, width of improved surface, curbing, etc.): Two accesses serve that portion of the property north of Highway 200. Lower Pack River Road provides access to the north end of the project. The intersection of Lower Pack River Road and the state highway has been improved pursuant to the terms and conditions of Planned Unit Development C583-95. Highway 200 provides access to the clubhouse grounds located north of the highway, and will provide access to that portion of the development located south of the highway. All proposed Highway 200 approach locations have been

approved by the Idaho Transportation Department (see 6/9/05 ITD District Traffic Engineer Mike Porcelli letter to Bonner County Planning Director Clare Marley, attached). Highway 200 improvements associated with the proposed approaches will be constructed as conditions of final plat recording (see 7/15/05 Transportation Engineer CarrieAnn Hewitt analysis, attached).

Proposed interior subdivision roads will consist of 20 feet wide, paved travel ways with 3 feet wide gravel shoulders flanked by roadside utility and drainage swales, all located within a 40 feet wide strip of land to be dedicated to, and maintained by, the Homeowners Association (see accompanying stormwater management plan, "typical roadway section detail"). Proposed individual driveways serving 10 lots will consist of 12 feet wide, paved travel ways with 1 feet wide gravel shoulders, similarly flanked by road side utility and drainage swales, all located within variable width easements, depending on grade. No roadway nor driveway grades will exceed 10%, or as otherwise approved by the Northside Fire District chief. These lots include:

L4, B2, GT2
L17, B7, GT4
L21, B6, GT4
L10, B2, GT7
L11, B2, GT7
L6, B1, GT9
L8, B1, GT9
L5, B4, GT10
L6, B4, GT10
L7, B5, GT10

SERVICE INFORMATION:

Distance (in miles) to the nearest: Public/Community sewer system: On-site (The project in its entirety is served by VP, Inc., a lagoon and land application, municipal sewer system.)
Fire Station: 7 (Ponderay station); Secondary school: 10 (Sandpoint High School)
Elementary School: 4 (Northside Elementary); Public/Community water system: On-site (The project in its entirety is served by VP, Inc., a municipal public water system) County Road: The north property directly fronts on, directly accesses, Lower Pack River Road.
Solid waste: On-site (The project will include a "private community facility" solid waste collection site conditional use permit request made a part of the corresponding PUD application. See BCRC, §12-1440(e).)

Sewage disposal will be provided by: ■ VP, Inc.

If existing community system, provide name of facility: Hidden Lakes operated by VP Inc.

Explain type of sewage system, capacity, maintenance plan, location of facilities, if

applicable, and other details:

The as-built system consists of a lagoon and land application system approved by Bonner County and the Idaho Department of Environmental Quality (Bonner County Conditional Use Permits 583-95 and 603-96, and DEQ Land Application Permit 000123-01). This system is suitable for expansion (see 7/21/05 Toothman-Orton Hidden Lakes Wastewater Treatment System Conceptual Master Plan, attached).

This system is defined as an "urban service" and "public utility complex facility," necessitating a conditional use permit (see BCRC, §12-202, "public utility complex facility" and "urban services"). This component of the plat is included in the corresponding planned unit development application.

Water to be supplied by: VP, Inc.

The as-built system consists of municipal wells approved by Bonner County and the Idaho Department of Water Resources (Bonner County Conditional Use Permits 583-95 and 603-96, and IDWR Well Permits 96-08625 and 96-09060). This system is suitable for expansion (see 6/6/05 Toothman-Orton Hidden Lakes Public Water System Conceptual Master Plan, attached).

This system is defined as an "urban service" and "public utility complex facility," necessitating a conditional use permit (see BCRC, §12-202, "public utility complex facility" and "urban services"). This component of the plat is included in the corresponding planned unit development application.

Which fire district is project site within? Northside Fire District

Which power company will service project site? Northern Lights and Avista. Avista will also provide gas service.

What are the potential effects of the use/plan on the quality or availability of present or future public services for the proposed site? Avista, Northern Lights and Verizon either currently serve a portion of the project site or have services available to the site and will serve the balance as it is developed. VP Inc. is the water and sewer provider and "will serve" the property as it is developed (see 7/7/05 Operations Director Robert Hansen's letter to Applicant Chuck Reeves, attached). The interior street network will be developed by the applicant and deeded to the Homeowners Association, and the expansion of the sewer and water systems will be developed by the applicant and conveyed to VP Inc. as the operator of the system.

SITE INFORMATION:

Provide detailed description of the following land features:

1. Topography (lay of land), including estimated maximum slope, rock outcroppings, benches, etc.: The overall site has a variety of topography including flat areas along the Pack River to a more mountainous setting south of Highway 200. Most lots have been located in areas of less than 20% slope, while some view lots on the mountain are in areas of less than 30% slope. The goal of the location and orientation of the lots is to provide views for each of the lots where possible, but to locate building sites in areas where the disturbance to tree cover and amount of any grading for roads and driveways to the lots, and any grading necessary to build a home on the lot, is minimized. Toward this end the areas of greater slope typically will have larger lots, upwards in size to as large as 20 acres.

There are 151 acres of functional common area to be dedicated and retained by the homeowners (196 acres total, including the 45 acres of land application area). This open space is designed to protect view sheds by providing for separation between lots, enhance wildlife habitat through shrub and forest canopy retention, and maintain surface water quality by serving as vegetated buffers. When the 193 acres of golf course property is included, about 44% (389 acres) of the 879 gross acres will remain open and not have any residential development. Only about 386 acres of the site will be committed to site development.
2. Water courses (lakes, streams, rivers, other bodies of water): The Pack River abuts the eastern boundary of the property. Several ponds and surface water courses are found on the property (see 7/13/05 Allwest Geologic Conditions and Surface Slippage analysis, attached). These watercourses are buffered by open space areas and will be further buffered by setbacks from any homes to protect the natural setting of the water features. These areas will also be protected by the Bonner County regulation, where applicable, prohibiting any structures within 40 feet of surface water (see BCRC, §12-631).
3. Springs and wells: Two wells exist on the property located in existing Lots 1 and 3, Block 3, Golden Tee (Lot 1 is being replatted into Lot 1A, Block 3, Golden Tee).
4. Existing structures (size & use): A 17,000 square feet existing clubhouse, along with a temporary golf maintenance building, currently exist on the site. The golf maintenance area will be relocated to one of two locations (see preliminary plat, L1, B15, GT1, or B12A, GT1 and corresponding development plan). A temporary construction trailer will be used as a construction office and removed after plat buildout is completed.

5. Land cover (timber, pasture, etc.): About 75% of the property south and 30% north of Highway 200 is forested with mixed evergreens. The balance of the property consists of meadow and ponds, or is currently part of the Hidden Lakes golf course.
6. Other pertinent information: For platting background information, please refer to Book of Plats 6, Page 108, Golden Tee Estates, and Book of Plats 6, Page 114, Golden Tee Estates, 1st Addition, Bonner County records. For existing planned unit development and sewer and water systems background, please refer to Bonner County Planning Department Files C583-95 and C603-96, respectively.

Is dedication of land for homeowner use planned? Yes

If yes, describe use and number of acres: In excess of planned unit development standards, common area consisting of about 17% (151 acres) of the 879 acre gross land area of the subject property is proposed to be reserved as open space as part of the corresponding planned unit development, where a minimum 10 percent is required (BCRC, §12-2240(a)). This acreage is exclusive of the access roads and other services, such as areas used for land application, the aeration lagoon for sewage treatment, and well radii [Chuck, concept plan still shows well site near canoe area as open space (BCRC, §12-2240(a)). The designated open space tracts will remain a combination of meadow, forest ponds and streams. A gazebo and rest rooms are proposed as an amenity to the common open space (see L4, B1, GT5; see Sheet 15).

Further, though not calculated as open space due to the land application of effluent, an additional 5% (45 acres) of adjacent forest land application area will be retained as open space.

Lastly, though not calculated as open space to be held in common by lot owners, an additional 22% (193 acres) of adjacent golf course greens and fairways will be retained as open space.

Is dedication of land for public use planned? Yes

An area along the west and east banks of the Pack River just south of Highway 200 will be designated as a canoe and kayak access point to the Pack River and will be open to the public. Approximately 10 parking spaces will also be provided. The access road off of Highway 200 will be gravel (see conceptual land use plan and preliminary plat for location).

Describe any planned berming, grading, contouring or filling of lands within proposed subdivision: The goal of the project is to minimize the grading as much as possible so that the natural tree cover and topography is disturbed as little as possible. Grading and filling within the proposed access "rights of way" will occur preparatory to subdivision road construction. Contouring preparatory to single family dwelling construction will occur within

the proposed lots. A berm is planned on the north and south sides of Highway 200, in the area east of Lower Pack River Road. This berm will be planted with trees in an effort to create a similar forest setting that is found along Highway 200 in this general vicinity.

How is the proposal compatible with the goals and objectives of the Bonner County Comprehensive Plan?

ECONOMIC DEVELOPMENT

Bonner County intends to permit neighborhood businesses to locate in residential areas.

Lot 1, Block 15, 1st Addition to Golden Tee, located at the northeast intersection of Lower Pack River Road and Highway 200, will be developed as commercial center accessory to the golf resort. Uses to accommodate the general public as well as residents within the corresponding planned unit development include such things as a convenience store, food service operation and movie rental store (see BCRC, §12-2211(f)). In addition, it is anticipated that the resort operation will employ approximately 100 people over the course of each year.

Bonner County intends to consider the impact on natural resources in the location and density of future recreational development.

A biological assessment was conducted, concluding that while some low, medium and high value wetlands will be filled as a result of project buildout, the majority of wetland impacts have been mitigated through avoidance. No stream or river alterations are proposed. Wildlife will be displaced where housing will be developed, thus wildlife corridors have been established between larger open space tracts, thereby providing habitat connectivity (see 7/8/05 Intermountain Resources Initial Environmental Impacts Review, attached).

A wetlands delineation has occurred on the 879 acre property. The demarcated boundaries have been surveyed. These field located and surveyed boundaries are depicted on the preliminary plat and corresponding conceptual land use plan. The entire project includes about 138 acres of jurisdictional wetlands. Of that total acreage, about 5 acres are proposed to be filled to accommodate access. None of the fills result in the alteration of hydrology that would alter or change the viability of adjacent wetland functions and values (Initial Environmental Impacts Review).

A geologic conditions and surface slippage analysis of the property was conducted, noting that no earth movement has occurred on the mapped faults located south and west of the subject site. The analysis further confirms that no evidence of large-scale slope movement or slope instability was observed on the premises, and therefore slopes are stable for road building and home construction. Groundwater is present in the lower areas of the project, possibly warranting trench drains or sumps to facilitate construction (Geologic Conditions

and Surface Slippage analysis).

An archaeological reconnaissance of nearly 900 acres was performed. The investigation concluded "After a surface survey and subsurface shovel probing of the Hidden Lakes project area, we recorded four small, insignificant mining prospects and one proto historic or prehistoric site that contained burned rocks and one stone tool in the project Area of Potential Effect." The report recommends that the prehistoric site be avoided and that no subsurface disturbance take place in the site area (see 4/27/05 Rain Shadow Research, Inc., Archaeological Survey of the Proposed Hidden Lakes Development, Project Report 94, public distribution copy, attached).

A turf management plan has been prepared incorporating best management practices for greens and fairways upkeep, thereby maintaining water quality, providing pest control, and assuring water conservation through controlled drainage and proper irrigation (see June 2005 Golf Ventures International Integrated Golf Course Management Plan for the Proposed Hidden Lakes Golf Course Remodel Project, attached).

Storm water from impervious surfaces generated by the access roads, parking areas and homes will be managed consistent with BCRC, Title 12, Chapter 24 (see August 1, 2005, James A Sewell & Associates Stormwater Management and Erosion Control Plan, attached).

Therefore, this project is located in a suitable area for the growth of recreational home site and golf resort development.

PUBLIC SERVICES

Bonner County intends to consider the quality of existing services (police, schools, roads) in the location and density of new development.

The subject property has direct frontage on, and direct access to, State Highway 200 and Lower Pack River Road, both public rights of way as recommended for all sites zoned Recreation (BCRC, §12-1420cf).

Two accesses serve that portion of the property north of Highway 200. Lower Pack River Road provides access to the north end of the project. The intersection of Lower Pack River Road and the state highway has been improved pursuant to the terms and conditions of Planned Unit Development C583-95. Highway 200 provides access to the clubhouse grounds located north of the highway, and will provide access to that portion of the development located south of the highway. All proposed Highway 200 approach locations have been approved by the Idaho Transportation Department (see 6/9/05 ITD District Traffic Engineer Mike Porcelli letter to Bonner County Planning Director Clare Marley, attached). Highway 200 improvements associated with the proposed approaches will be

constructed as conditions of final plat recording (see 7/15/05 Transportation Engineer CarrieAnn Hewitt analysis, attached).

Proposed interior subdivision roads will consist of 20 feet wide, paved travel ways with 3 feet wide gravel shoulders flanked by roadside utility and drainage swales, all located within a 40 feet wide strip of land to be dedicated to, and maintained by, the Homeowners' Association (see accompanying stormwater management plan, "typical roadway section detail"). As noted, proposed individual driveways serving 10 will consist of 12 feet wide, paved travel ways with 1 feet wide gravel shoulders, similarly flanked by road side utility and drainage swales, all located within variable width easements, depending on grade. No roadway nor driveway grades will exceed 10%, or as otherwise approved by the Northside fire chief.

The new development will have only 498 residential units total on 879 acres, or one unit per about 1.77 acres, while Recreation zoning conservatively provides for over 2,000 single family residential units with "urban services," as defined. It is estimated that only 20% of the residential units will be occupied year round and out of that number, only 25% of those year round residents will have school aged children, thus there will be little impact on schools. Because the roads are private and access will be limited by gatehouse, the impact and calls to the police department should also be less than typically found in a community of this size.

Bonner County intends to consider the quality of existing utilities (sewer, water) in the location and density of new development.

Sewage disposal will be provided by a public sewer system. The as-built system consists of a lagoon and land application system approved by Bonner County and the Idaho Department of Environmental Quality (Bonner County Conditional Use Permits 583-95 and 603-96, and DEQ Land Application Permit 000123-01). This system is suitable for expansion (see 7/21/05 Tooth man-Orton Hidden Lakes Wastewater Treatment System Conceptual Master Plan, attached). This system is defined as an "urban service" and "public utility complex facility," necessitating a conditional use permit (see BCRC, §12-202, "public utility complex facility" and "urban services"). This component of the plat is included in the corresponding planned unit development application.

Water will be supplied by a public water system. The as-built system consists of municipal wells approved by Bonner County and the Idaho Department of Water Resources (Bonner County Conditional Use Permits 583-95 and 603-96, and IDWR Well Permits 96-08625 and 96-09060). This system is suitable for expansion (see 7/21/05 Tooth man-Orton Hidden Lakes Public Water System Conceptual Master Plan, attached).

This system is defined as an "urban service" and "public utility complex facility," necessitating a conditional use permit (see BCRC, §12-202, "public utility complex facility" and "urban services"). This component of the plat is included in the corresponding planned unit development application.

Replat of Golden Tee and Golden Tee 1st addition and Golden Tee 2nd through 11th Additions Preliminary Plat Application

7/29/05

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Bonner County intends for new development to offset the capital costs of expanding services to their area.

Available public services needed to serve the project are limited to Northern Lights and Avista utilities and Verizon phone, all of either currently serve a portion of this property or have services available to the property. The developer will pay for any necessary road improvements for the new entrances. The interior street network will be developed by the applicant, as will the expansion of the water and sewer systems.

Therefore, this project does provide essential public services, to the residents of Bonner County, at no expense to the County.

TRANSPORTATION

Bonner County intends to consider safety hazards and congestion in the location and design of future development.

The existing approach location serving the north portion of the project has been approved by ITD and is already in place with left and right turn lanes. All proposed approach locations will be approved by ITD and Bonner County Public Works as required and the applicant will install any road improvements as required by either agency, prior to final plat recording.

Bonner County intends for roads within new development to be built to county standards and at the expense of the developer.

Through the corresponding planned unit development process, the applicant is requesting to deviate from the conventional "Local 'A", 40 feet wide road standard for lots zoned for 12,000 square feet or less. In order to reduce excessive cut and fill slopes, and thereby reduce potential erosion, all proposed interior roads constructed in conjunction with final platting have been designed to meet or exceed U.C./IFC standards. Ten lots do not directly front on a proposed road. Rather, these ten lots will be served by a 12 feet wide paved driveways and 1 foot gravel shoulders and may have turnarounds for fire trucks at the house and may have turnouts along the driveways, as determined by the fire chief. These variations have been reviewed by the Fire Chief of Northside Fire District and a letter with the conditions required for these lots will be submitted.

Bonner County intends for certain intense land use developments to provide paved roads.

All proposed interior roads will be paved by the developer.

Therefore, this project does provide a transportation system that is safe, uncongested and well maintained.

NATURAL RESOURCES

Bonner County will attempt to protect agricultural land.

The subject property does not contain any mapped "prime" agricultural soils (Bonner County Planning Department Prime Farmland in Bonner County GIS map).

Bonner County intends to regulate the location and density of new development in flood plains.

There are no home sites located within any flood plain areas. The proposed clubhouse addition (see accompanying PUD concept plan for location) made a part of the corresponding planned unit development application will be constructed in accordance with flood damage prevention ordinance standards, should it be determined that the proposed structure is in fact located within the flood hazard area (see BCRC, §12-1801, et seq.)

Bonner County intends to consider wetlands and aquifer recharge areas in the location and density of future development.

A delineation of all wetlands has been conducted and the location of which can be found on the preliminary plat and PUD development plan. There is no proposed home development within any mapped area of wetlands and road crossings have been minimized as much as possible. The golf course is designed to incorporate the features of the wetlands and any fill in these areas has been avoided and minimized through careful and creative design. It is estimated that about 5 acres of the 108 total acres of wetlands will be filled. Any fill will occur only after obtaining any necessary USACOE 404 permit, as applicable.

Bonner County intends to maintain or enhance present water quality.

Subsequent site development (access roads, home sites and canoe portage area parking) will incorporate storm water management and erosion control best management practices. The golf course maintenance will also incorporate a best management practices through the implementation of the PUD-accompanying Integrated Golf Course Management Plan.

Bonner County intends to maintain or enhance our fish and wildlife resource.

Including the golf course area, approximately 44% of the gross land area will be maintained as open space in order to maintain wildlife cover and forage.

The property contains moose, elk and white-tailed deer critical wildlife habitat (Bonner County Planning Department Critical Wildlife Habitat in Bonner County GIS map). As noted, a biological assessment was conducted, concluding that wildlife will be displaced where housing will be developed, thus wildlife corridors have been established between larger open space tracts, thereby providing habitat connectivity.

Bonner County will attempt to protect special archeological and historical sites.

An archaeological reconnaissance of nearly 900 acres was performed. The investigation concluded "After a surface survey and subsurface shovel probing of the Hidden Lakes project area, we recorded four small, insignificant mining prospects and one proto historic or prehistoric site that contained burned rocks and one stone tool in the project Area of Potential Effect." The report recommends that the prehistoric site be avoided and that no subsurface disturbance take place in the site area. There is no development planned anywhere near this area and thus there will be no impact to the site. As recommended in the report, this area will be fenced during construction to prevent any disturbance. The report concluded that no further investigations are recommended for the property.

Therefore, this project does manage natural resources to attain the greatest long-term public benefit.

COMMUNITY DESIGN

Bonner County intends for new development to locate in areas with similar densities and compatible uses.

The existing Hidden Lakes planned unit development was approved August 14, 1997, for 171 housing units. The concurrent PUD proposal adds 327 units, for a total unit count of 498 units.

To the north lies the Pack River and undeveloped large parcels developed with scattered single family residences. To the east lies the Pack River, Pack River Flats and Forest Service land that generally is undeveloped. To the west lies the Hidden Lakes subdivision with one-third to one acre lots; large acreage parcels zoned Agricultural. To the south lies Lake Pend Oreille, the Burlington Northern Railroad and large rural residential parcels.

Bonner County intends for new development to minimize the adverse impacts on adjacent areas.

The north portion of this property is already platted for single family uses with lot sizes averaging 15,000 square feet. The property immediately to the west of this site has lots that are one-third to about one acre in size. Thus, the proposed development is consistent with surrounding uses. Also, the majority of the site is zoned Recreation, which would conservatively allow over 2,000 units on the site, while the proposed plan calls for 327 additional residential units. Further, the largest portion of the property south of Highway 200 will have parcels ranging in size from one-third to over 20 acres and thus is consistent with the recreational character of the area. The development also proposes open space totaling over 196 acres, which will enhance the natural character and forest setting of the site. In total, when the golf course area is included, nearly 390 acres, or about 44%, of the total site will remain "open."

Therefore, this project does maintain a variety of lifestyles and a rural character for the future development of Bonner County.

Therefore, this plat is in accordance with the general and specific objectives of the Comprehensive Plan (BCRC, §12-2315(a)).

How is the site physically suitable for the proposed development?

Well pump tests confirm an abundance of available ground water for both domestic and fire flow needs (Hidden Lakes Public Water System Conceptual Master Plan).

Sewer analyses confirm the ability to expand waste water treatment (Hidden Lakes Wastewater Treatment System Conceptual Master Plan).

Slopes are suitable for the construction of UFC/IFC roads (not to exceed 13 percent, or as approved by the Northside Fire District chief).

The subject property directly fronts on, and is directly accessed by, two public roadways, Lower Pack River Road, and State Highway 200.

How is the proposed subdivision compatible with surrounding land uses and compatible with the densities of nearby lands?

Surrounding uses include single family, recreational, and predominantly seasonally occupied residences developed on one-third to 20 acre tracts.

How is the proposed subdivision in accord with the purposes of this Title and of the zone district in which it is located?

The plat is predicated on the current approval of the corresponding PUD and zone change. As such, the Recreation District conditionally permits golf courses, planned unit developments, multi-family dwellings, private community facilities and commercial resorts (BCRC, §12-1440, et seq.). The corresponding PUD proposes a "large scale" planned residential and recreational development, related "commercial" uses consisting of such items as a convenience store and food service store; and commercial recreation activities and facilities including a redesigned championship golf course, a spa and fitness center, kids' center, eatery and recreation area, tennis and sport courts, swimming pool, food, beverage and retail operations in support of the resort operations, and parking (BCRC, §§12-2210, paragraphs [b] and [c]; and 12-2211, paragraphs [a] and [c]).

How are the public services which will serve the proposed subdivision adequate for the needs of future residents or users?

Available public services needed to serve the project are limited to, Northern Lights and Avista utilities and Verizon phone, all of which currently either currently serve or have

services available to the property. The sewer and water system are currently operational and the necessary expansion of the sewer system will be paid for by the applicant. The proposed entrances will utilize the existing entrance off of Highway 200 and Lower Pack River Road, and establish three additional entrances off of Highway 200 to the South and one additional entrance off of Lower Pack River Road. All onsite and offsite road improvements will be constructed and paid for by the applicant.

How will the proposed subdivision not cause circumstances to exist that will cause future residents or the public at large to be exposed to hazards to health or safety?

The project is served by municipal water and sewer systems.

No residential flood plain development is proposed. The clubhouse addition, which is part of the corresponding PUD, will be constructed in accordance with flood damage prevention ordinance standards.

Slopes are suitable for the construction of UFC/FC roads (not to exceed 10 percent, or as approved by the Northside Fire District chief).

A portion of the property is located within the Pack River mapped flood hazard area (FIRM Panel 215). However, no homes are located within this "100-year" flood plain. The proposed clubhouse addition (see accompanying PUD concept plan for location) made a part of the corresponding planned unit development application will be constructed in accordance with flood damage prevention ordinance standards, should it be determined that the proposed structure is in fact located within the flood hazard area (see BCRC, §12-1601, et seq.)

How will the design of the proposed subdivision or related improvements provide for coordinated access with the County system of roads and with adjacent properties and how will the proposed subdivision not impede the use of public easements for access to, or through the proposed subdivision?

The subject property directly fronts on, and is directly accessed by, State Highway 200 and secondarily by Lower Pack River Road.

There are no current or proposed public access easements through the property.

How is the proposed subdivision designed to comply with the design criteria for subdivisions set forth at Section 12-2305, BCRC?

All proposed road names will be unique, according to the Bonner County Official Road Names list (BCRC, §12-2305(a)).

The applicant is requesting through the PUD process to deviate from the typical 3:1 ratio of "depth to width" and from the 85 to 95 degree angle of intersection for lots 100 feet or

less in width (BCRC, §12-2305[b]). The reasons for both of these requests are to minimize grading and tree removal and to preserve the rural character of the site. Each lot and building location has been carefully analyzed and verified so that the homes will be located in suitable building areas, both preserving the views from the home and the view sheds from adjacent properties. Because of the topography of the site, it is not conducive to creating symmetrical or rectangular lot lines. Without the depth to width deviation, the lot lines and roads would be forced onto the property as opposed to allowing the property to dictate where the lot lines should be. Likewise, the deviation from the 3:1 depth to width ratio is necessary to avoid unnecessary cuts and fills, which would have the impact of increasing grading and tree removal and diminishing the rural character of the site.

The design of all interior roads exceeds UFC/IFC standards. No roads exceed 10 percent, or as approved by the Northside Fire District chief. All roads meet 20 feet of paved travel way with 3 feet shoulders and will be hard surfaced (BCRC, §12-2305[c]).

Legal access is provided to the subject property via public highway 200 and Lower Pack River Road. Access to each lot is provided via a proposed 40 feet wide private "right of way" to be developed with a minimum UFC/IFC standard roads with grades not exceeding 10% prior to final plat recording (BCRC, §12-2305[d]). Any lots not directly fronting on one of the private roads will have a minimum 12 feet wide paved surface driveway with 1 feet wide shoulders on both sides. Turnouts on driveways will be provided as determined by the Northside Fire chief, as necessary. Fire trucks will have adequate turn around at the home if the lot does not front on one of the 20 feet wide private roads.

Road easements and the flood plain are shown on the preliminary plat. Lands reserved as open space or common area are depicted. (BCRC, §12-2305[e]).

The lots have been designed to protect building sites from natural hazards, specifically steeper slopes and the mapped flood hazard area (BCRC, §12-2305[f]).

The subdivision will be served by three of four urban services: a public water supply and distribution system; a public sewer collection and treatment system; and electric power and phone services. County standard roads is a proposed variation considered as part of the corresponding planned unit development (BCRC, §12-2305[g]).

No roads are proposed to be built for dedication to Bonner County.

Direct access to, and direct frontage on, a public right of way for each lot is not proposed. Rather, direct frontage on, and direct access to, private "rights of way" is a proposed variation also considered as part of the corresponding planned unit development (BCRC, §12-2305[h]). The subject property does, however, have direct frontage on, and direct access to, Highway 200 and Lower Pack River Road public rights of way.

(See attached signature page from all affected land owners.)

LOAN AGREEMENT

THIS AGREEMENT, dated June 2nd 2011, by and between Pend Oreille Bonner Development, LLC, a Nevada limited liability company whose address is 151 Clubhouse Way, Sandpoint, Idaho 83864 (hereafter the "Borrower"), VP, Incorporated, an Idaho corporation whose address is 533739 Highway 95, Bonners Ferry, ID 83805 (hereafter the "Lender") and Trestle Creek Utilities, LLC, an Idaho limited liability company.

RECITALS

A. Borrower applied for and obtained from the Idaho Department of Environmental Quality (DEQ) a Municipal Wastewater Reuse Permit No. LA-000123-02 for the Idaho Club located in Bonner County, Idaho.

B. The permit included compliance activities and monitoring requirements.

C. On February 14, 2011, DEQ notified Borrower that it was out of compliance with its permit and provided Borrower a list of items DEQ deemed to be out of compliance. DEQ has subsequently indicated that it will be requiring Borrower to sign a consent decree, although that document has not yet been presented to Borrower at the time of execution of this Loan Agreement.

D. DEQ has met with Borrower and is requiring Borrower to undertake certain compliance activities and monitoring requirements in order to allow continued operation of the sewer system at the Idaho Club. Such requirements as agreed to between the parties shall be contained in a final Consent Decree to be entered into between Borrower and DEQ.

E. Borrower requires funds to address DEQ issues with the sewer system.

F. Lender has been advised by Borrower that it desires to borrow funds to finance complete the system as a Class B municipal effluent treatment system as defined in Idaho Administrative Procedure Act 58.01.17.

G. Lender has agreed to loan funds to Borrower not to exceed \$95,850.00 to upgrade the current wastewater treatment system to a Class B municipal effluent treatment system on the terms and conditions hereinafter set forth:

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties hereto agree as follows:

ARTICLE II - THE LOAN

A. The Loan, Note, and Rate. Subject to the terms and conditions of this Agreement, the Lender hereby agrees to lend in installments to the Borrower and Borrower hereby agrees to borrow from the Lender in installments and repay the Lender, or its Assigns, an amount not to exceed Ninety-Five Thousand Eight Hundred Fifty Dollars (\$95,850.00) (hereafter called the "Loan"), together with interest at the rate of twelve percent (12%). The obligation of the Borrower to repay the Loan shall be

evidenced by the promissory note (hereafter the "Note") of the Borrower in a form satisfactory to the Lender dated the date on which the Loan is made (hereafter known as the "Closing Date") payable to the order of the Lender for the amount of the Loan with interest on the unpaid principal.

The proceeds of the Loan shall be advanced by Lender directly to contractors, laborers, suppliers and other professionals for payment of work as work progresses and payment of Lender's legal fees in the amount of Five Thousand Dollars (\$5,000.00), which expense Borrower agrees to pay. Execution of this Agreement by Borrower shall, and hereby does, constitute an irrevocable direction and authorization to so advance the funds so long as they materially comply with the budget attached hereto as Exhibit A and incorporated herein by reference. No further direction or authorization from Borrower shall be necessary to warrant such direct Loan advances to contractors, laborers and suppliers and all such Loan advances shall satisfy pro tanto the obligations of Lender hereunder.

B. The Term and Repayment. Principal and interest shall be paid according to the schedule set forth on Exhibit B attached hereto and incorporated herein, with the first payment coming due October 1, 2011, and subsequent payments becoming due on the 1st day of each calendar month thereafter, provided, however, that the entire unpaid principal balance, together with interest thereon, shall become due and payable as a balloon payment on the 1st day of January, 2015. Each and every payment on the Loan shall be applied first to the payment of interest and the remainder, if any, to principal; provided however, that any payment may be applied, at the option of the holder hereof and without notice to the Borrower, first to the repayment of any sums which may (but need not be) advanced by the holder hereof for keeping and maintaining the Project in accordance with DEQ's requirements in upgrading the system to a Class B effluent treatment system.

All or any part of the principal may be prepaid, together with interest accrued thereon, at any time without penalty; provided, however, that the effect of any such prepayment shall be to shorten the term of this Note and not to reduce the amount of any installment otherwise due after the prepayment date.

If the Borrower shall default in the payment of the principal or of interest, the Borrower shall on demand from time to time pay a late charge on any overdue payment of principal and, to the extent permitted by law, on overdue payments of interest up to the date of actual payment (after as well as before judgment) equal to five percent (5%) of such payment to cover the administrative expense involved in handling such delinquent payments, and such late charge shall be in addition to the interest rate charged on the Loan.

Principal and late fees will be payable to Lender at 533739 Highway 95, Bonners Ferry, ID 83805-1030, or at such other place as the Lender or the subsequent holder of the Promissory Note designates in writing, in thirty-nine (39) equal monthly installments of Two Thousand Nine Hundred Eighty and 13/100 Dollars (\$2,980.13) with the first monthly installment being due and payable thirty days from the Closing Date, and

continuing on the same day of each subsequent month thereafter until principal and late fees are paid in full.

C. **Purpose of Loan.** The purpose of the loan is to complete improvements to the wastewater treatment system at the Idaho to qualify it as a Class B municipal effluent treatment system as defined in Idaho Administrative Procedure Act 58.01.17.

D. **Additional Consideration for Loan.** As further consideration for this Loan, Borrower hereby agrees to Lender by warranty deed Block 17, Lot 2, Golden Tee Estates, as recorded in Book 8 of Plats, Page 77, Records of Bonner County ("lagoon lot") and the water reservoir lots, the legal description to be provided by Borrower. ("water reservoir lots"). Such deeds shall be executed and delivered to Lender upon completion of the improvements contemplated herein or sooner if demanded by Lender. Borrower also agrees to execute and deliver to Lender an easement for all water and sewer infrastructure in Idaho Club in a form acceptable to Lender. As further inducement to Lender to make this Loan, Borrower and Trestle Creek LLC further agrees to unconditionally assign their interest in that certain six (6) acre tract of real property located West of Trestle Creek Road, constituting a portion of the parcel described as parts of the Southwest Quarter North of State Highway 200, and West of the most-Northerly branch of Trestle Creek, in Section 16, Township 57 North, Range 1 East, Boise Meridian, Bonner County, Idaho, and the subject of that certain Purchaser's Amended Conditional Assignment of Contract executed December 17, 2010 ("Dreisbach agreement"). Such assignment does not release Borrower or Trestle Creek Utilities LLC's obligations to construct sewer facility on the above described parcel.

of
RW

ARTICLE III - REPRESENTATIONS AND WARRANTIES

The Borrower represents and covenants the following:

A. **Duly Organized.** The Borrower is a Nevada limited liability company, duly organized, validly existing, and is in good standing and qualified to do business under the laws of the state of Idaho and has the authority to enter into this Agreement and to borrow hereunder.

B. **No Legal Authorization Needed.** No authorization, consent, or approval, or any formal exemption of any governmental body, regulatory authorities (Federal, State, or Local) or mortgagee, creditor, or third party is or was necessary to the valid execution and delivery by the Borrower of this Agreement, the Note, or warranty deed except as provided herein.

C. **Representation of Ability.** Borrower has the business experience, financial resources, and responsibility to provide reasonable assurances that all obligations under this Loan Agreement will be paid as they become due.

ARTICLE IV - CONDITIONS OF LENDING

The obligation of the Lender to make the Loan shall be subject to the fulfillment at the time of closing of each of the following conditions:

A. **Execution and Delivery of Note and Loan.** The Borrower has executed and delivered to the Lender this Loan Agreement and the Note.

B. **Execution and Certification of Member's Resolution.** Borrower has executed and delivered to the Lender a duly certified copy of a Resolution of its Members authorizing the execution and delivery by it of the Loan Agreement, Promissory Note and other documents specified in Article II, Section D.

C. **Governmental Approval.** The Borrower has secured all necessary approvals or consents, if required, of governmental bodies having jurisdiction with respect to any operations contemplated in accordance with the use of proceeds of the Offer of Credit.

D. **DEQ Action.** This Loan is made by Lender with the understanding that DEQ will approve continuation of operation of the wastewater treatment system as a Class B municipal effluent treatment system as defined in Idaho Administrative Procedure Act 58.01.17 upon completion of the construction to be funded by this Loan and that DEQ will be issuing a Consent Decree which will contain this term and condition. In the event that the Consent Decree from DEQ contains terms contrary to this understanding, or Borrower refuses to sign the DEQ Consent Decree, Borrower agrees Lender may either cancel this Loan Agreement or require it to be amended to address any unforeseen conditions imposed by DEQ on the wastewater treatment system.

ARTICLE V - AFFIRMATIVE COVENANTS OF THE BORROWER

The Borrower agrees to comply with the following covenants from the date hereof until the Lender has been fully repaid with interest, unless the Lender shall otherwise consent in writing.

A. **Payment of the Note.** The Borrower agrees to pay punctually the principal and interest due on the Note according to its terms and conditions and to pay punctually any other amounts that may become due and payable to the Lender under or pursuant to the terms of this Agreement, the Note, and the Deed of Trust.

B. **Maintain Existence.** Borrower agrees to maintain its existence, rights, privilege, and franchises within the state of Idaho.

C. **Eminent Domain.** In case any or all of the real estate held as collateral is taken for public use, either by eminent domain proceedings or settlement and agreed sale, the portion of the award or agreed price remaining after payment of reasonable expenses of procuring the same is hereby assigned and shall be paid to Lender, who may apply the same to payment of any outstanding principal and accrued interest on the loan.

D. Null and Void Covenants. The Borrower agrees that, in the event that any provision of this Loan Agreement or any other instrument executed at closing or the application thereof to any person or circumstances shall be declared null and void, invalid, or held for any reason to be unenforceable by a court of competent jurisdiction, the remainder of such agreement shall nevertheless remain in full force and effect, and, to this end, the provisions of all covenants, conditions, and agreements described herein are deemed separate.

E. Notice of Default. The Borrower agrees to give written notice to the Lender of any event, within fifteen (15) days of the event, which constitutes an Event of Default under this Loan Agreement as described in Article VI herein or that would, with notice or lapse of time or both, constitute an Event of Default under this Loan Agreement.

F. Indemnification. The Borrower agrees to indemnify and save the Lender harmless against any and all liability with respect to, or resulting from, any delay in discharging any obligation of the Borrower.

G. Expenses of Collection or Enforcement. The Borrower agrees if, at any time, the Borrower defaults on any provision of this Loan Agreement, to pay the Lender in addition to any other amounts that may be due from the Borrower, an amount equal to the costs and expenses of collection, enforcement, or correction or waiver of the default incurred by the Lender. In the event that an action is brought pursuant to the terms of the Note or this Agreement, the prevailing party shall pay reasonable attorney's fees and court costs, including attorney's fees on appeal.

H. Indemnity. Unless based solely upon the gross negligence or willful misconduct of Lender, Borrower agrees to exonerate, protect, indemnify, defend, and hold harmless Lender from and against any and all liability, expense, loss, or damage of any kind or nature, including reasonable legal fees and expenses, and from any actions, suits, claims, or demands, on account of any matter or thing, whether in suit or not, arising out of the loan or this Agreement or collateral Agreement or in connection with the Loan, including without limitation thereto, disputes between Borrower and any contractor, subcontractor, materialman, or supplier or between Borrower, any contractor or any brokers which may be asserted by reason of the execution of this Agreement or the consummation of the transactions contemplated hereby.

ARTICLE VI - EVENTS OF DEFAULT

The entire unpaid principal of the Note, and the interest then accrued thereon, shall become and be immediately due and payable upon the written demand of the Lender, without any other notice or demand of any kind or any presentment or protest, if any one of the following events (hereafter an "Event of Default") shall occur and be continuing at the time of such demand, whether voluntarily or involuntarily, or without limitation, occurring or brought about by operation of law or pursuant to or in compliance with any judgment, decree, or order of any court or any order, rules, or regulation of any administrative or governmental body, provided, however, that such sum shall not be then

payable if Borrower's payments have been waived, or the time for making the Borrower's payments have been extended by the Lender.

A. **Nonpayment of Note.** If the Borrower shall fail to make payment when due of any installment of principal on the Note, or interest accrued thereon.

B. **Nonpayment of Other Indebtedness.** If the Borrower shall default in the performance of any other term, covenant, or agreement contained in this Loan Agreement or any of the other loan documents.

C. **Incorrect Representation or Warranty.** Any representation or warranty contained in, or made in connection with the execution and delivery of this Loan Agreement, or in any certificate furnished pursuant hereto, shall prove to have been incorrect when made in any material respect.

D. **Voluntary Insolvency.** If the Borrower shall become insolvent or shall cease to pay its debts as they mature or shall voluntarily file a petition seeking reorganization of, or the appointment of a receiver, trustee, or liquidation for it or a substantial portion of its assets, or shall make a voluntary assignment for the benefit of creditors.

E. **Involuntary Insolvency.** If an insolvency petition shall be filed against the Borrower under any bankruptcy, insolvency, or similar law or seeking the reorganization or the appointment of any receiver, trustee, or liquidator for the Borrower, or of a substantial part of the property of the Borrower, or a writ or warrant of attachment or similar process shall be issued against a substantial part of the property of the Borrower.

F. **Default in Covenants.** If Borrower shall default in the performance of any other term, covenant, or agreement contained in this Loan Agreement, and such default shall continue unremedied for thirty (30) days after either: (i) it becomes known to Borrower; or (ii) written notice thereof shall have been given to Borrower by Lender.

G. **Rights Upon Default.** Upon default by Borrower, Lender has all remedies available to it under state law in enforcing this Agreement and Lender's rights under any agreement executed pursuant to this agreement, including but not limited to, the following:

1. Accelerate and declare the full balance immediately due on the Note and commence suit for collection thereof;
2. Take possession of the collateral or render it unusable, without notice, except as required by law, provided that said self-help shall be done without breach of peace;
3. Specifically enforce the terms of the Note and agreements;
4. Foreclose on any personal property necessary for the operation of the wastewater or water systems; or

5. Pursue any and all other remedies available under law to enforce the terms of this Agreement.

H. Miscellaneous. The remedies contained herein are cumulative, and in addition to any remedy provided in any other document applicable to the Loan.

ARTICLE VII - MISCELLANEOUS

A. Waiver. No failure or delay on the part of the Lender in exercising any right, power, or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power, or remedy preclude any other or further exercise thereof or the exercise of any other right, power, or remedy hereunder. No modification or waiver of any provision of this Loan Agreement or of the Note, nor any consent to any departure by the Borrower therefrom, shall in any event be effective unless the same shall be in writing, and for the specific purpose for which given. No notice to or demand on the Borrower in any case shall entitle the Borrower to any other or further notice or demand in similar or other circumstances.

B. Amendments - Writing Required. The Lender hereby expressly reserves all rights to amend any provisions of this Agreement, to consent to or waive any departure from the provisions of this Loan Agreement, to amend or consent to, or waive departure from the provisions of the Note, and to release or otherwise deal with any collateral security for payment of the Note provided, however, that all such amendments be in writing and executed by the Lender and the Borrower.

C. Notices. All notices, consents, requests, demands, and other communications hereunder shall be in writing and shall be deemed to have been duly given to a party hereto if mailed by certified mail, prepaid, to the Lender at its address set forth at the beginning of this Loan Agreement, and to the Borrower at the address set forth at the beginning of this Loan Agreement or at such other addresses as any party may have designated in writing to any other party hereto. This section does not limit other means of delivering written notice if said notices are actually received. In the event Lender gives

D. Payments. The Borrower will make payments to the Lender in accordance with the terms and conditions and instructions contained in the Note and Offer of Credit.

E. Survival of Representations and Warranties. All agreements, representations, and warranties made by the Borrower herein or any other document or certificate delivered to the Lender in connection with the transactions contemplated by this Loan Agreement shall survive the delivery of this Agreement, and the Note hereunder, and shall continue in full force and effect so long as the Note is outstanding.

F. Successors and Assigns. This Loan Agreement shall be binding upon the Borrower, its Successors and Assigns, except that the Borrower may not assign or transfer its rights without prior written consent of the Lender. This Agreement shall inure to the benefit of the Lender, its assignees and successors, and, except as otherwise expressly provided in particular provisions hereof, all subsequent holders of the Note.

Borrower acknowledges that Lender may assign the Note and this Agreement and consents to such assignments.

G. Counterparts. This Loan Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

H. Governing Law. This Loan Agreement and the Note shall be deemed contracts made under the laws of the state of Idaho and for all purposes shall be construed in accordance with the laws of said state.

I. Waiver. Failure by Lender at any time to require performance by Borrower of any of the provisions of this Agreement shall in no way affect Lender's rights hereunder to enforce the same, nor shall any waiver by Lender of any breach hereof be held to be a waiver of any succeeding breaches or a waiver of this nonwaiver clause.

J. Election of Remedies. Lender shall have all of the rights and remedies granted herein, in the loan documents or otherwise available at law or in equity, and these same rights and remedies shall be cumulative and may be pursued separately, successively or concurrently against Borrower, Guarantors, and property covered by this Agreement, and any other property of Borrower.

K. Exhibits. All exhibits attached hereto are by this reference incorporated fully herein. The term "this Agreement" shall be considered to include all such exhibits.

L. Further Assurance. The Borrower shall, on demand of the Lender, do any act or execute any additional documents required by the Lender to comply with any agreement providing for the assignment by the Lender of the Note or for providing a certificate as to the amount of indebtedness evidenced by the Note.

M. Additional Documents. The Borrower agrees to execute any additional documents necessary to effectuate the purposes of this Agreement in a form acceptable to Lender.

N. Non-Assumption of DEQ Liability. Nothing contained in this paragraph shall be regarded as creating any relationship other than as set forth herein. By agreeing to make this Loan, Lender does not agree to assumption of DEQ liability for non-compliance with Borrower's DEQ permit.

O. Lender's Right to Arbitrate. At the option of the Lender, any claim or dispute at any time arising under or related to this Agreement, the supplements thereto, the other agreements mentioned in or related to this Agreement, or in any way pertaining to the loan, whether in law or equity, shall be submitted to arbitration in accordance with the Rules of the American Arbitration Association then prevailing. Any decision rendered in any arbitration proceeding shall be final and binding upon the parties. Notwithstanding the foregoing, the Lender may engage in self help and offset remedies and seek remedies through the courts including, without limitation, injunctive relief and

other remedies to protect the Lender's interest in any collateral pending entry of an arbitration award or to enforce the award, in addition, and without prejudice, to the exercise of the Lender option to arbitrate.

THIS WRITTEN LOAN AGREEMENT AND OTHER WRITTEN AGREEMENTS EXECUTED HERewith REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. IDAHO CODE § 9-505.5 PROVIDES THAT AN AGREEMENT TO LOAN AN AMOUNT OF FIFTY THOUSAND DOLLARS (\$50,000.00) OR MORE IS NOT ENFORCEABLE AGAINST THE LENDER UNLESS THE AGREEMENT, OR MEMORANDUM THEREOF, IS IN WRITING AND SUBSCRIBED BY THE LENDERS OR AGENT.

IN WITNESS WHEREOF, the parties hereto have each caused this Loan Agreement to be duly executed as of the day and the year first above written.
TRESTLE CREEK UTILITIES, LLC

By: Charles W. Reeves Dated: 6/2/2011
Member

VP, INCORPORATED

By: Richard A. Villelli Dated: 6-2-2011
RICHARD A. VILLELLI, President

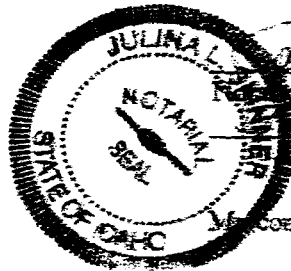
PEND OREILLE BONNER DEVELOPMENT, LLC

By: Charles W. Reeves
CHARLES W. REEVES, President

STATE OF IDAHO)
)
 : SS
County of Bonner)

On this 2nd day of June, 2011, before me personally appeared Charles A. Rowel to me known to be the Member of Trestle Creek Utilities, LLC, the Idaho limited liability company that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act of said limited liability company, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute the said instrument on behalf of said limited liability company.

GIVEN UNDER MY HAND AND OFFICIAL SEAL the day and year in this certificate first above written.



Julina L. Skinner
Public (Signature)

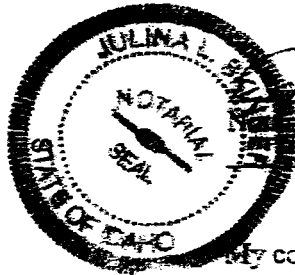
Julina L. Skinner
(Print Name)

My commission expires: 7/20/2016

STATE OF IDAHO)
)
 : SS
County of Bonner)

On this 2nd day of June, 2011, before me personally appeared Richard A. Villelli to me known to be the President of VP, Incorporated, the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute the said instrument on behalf of said corporation.

GIVEN UNDER MY HAND AND OFFICIAL SEAL the day and year in this certificate first above written.



Julina L. Skinner
Public (Signature)

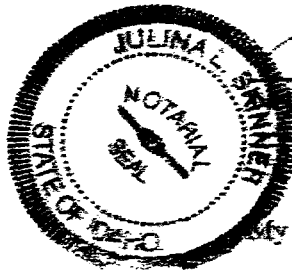
Julina L. Skinner
(Print Name)

My commission expires: 8/20/2016

STATE OF IDAHO)
)
 : ss
County of Bonner)

On this 2nd day of June, 2011, before me personally appeared Charles L. Bonner to me known to be the President of Pend Oreille Bonner Development, LLC, the Nevada limited liability company that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act of said limited liability company, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute the said instrument on behalf of said limited liability company.

GIVEN UNDER MY HAND AND OFFICIAL SEAL the day and year in this certificate first above written.



Juliana L. Skinner
Notary Public (Signature)
Juliana L. Skinner
(Print Name)

(Seal or Stamp)

My commission expires: 8/20/2014

Exhibit B

Loan Amortization Schedule

Amount of Loan: \$95,850.00 **Number of Payments:** 40
Annual Interest Rate: 12.0000% **Periodic Payment:** \$3,000.00
Loan Date: 06/01/2011 **1st Payment Date:** 10/01/2011
Payment Frequency: Monthly **Compounding:** Monthly
Points (%): 0.0000% **Amortization Method:** Normal

Pmt #/Yr	Date	Payment	Principal	Interest	Balance
Init/1	06/01/2011	0.00	0.00	.00	95,850.00
1/01	10/01/2011	3,000.00	-891.89	3,891.89	96,741.89
2/01	11/01/2011	3,000.00	2,032.58	967.42	94,709.31
3/01	12/01/2011	3,000.00	2,052.91	947.09	92,656.40
Y-T-D	12/31/2011	9,000.00	3,193.60	5,806.40	
<u>Running</u>	12/31/2011	9,000.00	3,193.60	5,806.40	
4/01	01/01/2012	3,000.00	2,073.44	926.56	90,582.96
5/01	02/01/2012	3,000.00	2,094.17	905.83	88,488.79
6/01	03/01/2012	3,000.00	2,115.11	884.89	86,373.68
7/01	04/01/2012	3,000.00	2,136.26	863.74	84,237.42
8/01	05/01/2012	3,000.00	2,157.63	842.37	82,079.79
9/01	06/01/2012	3,000.00	2,179.20	820.80	79,900.59
10/01	07/01/2012	3,000.00	2,200.99	799.01	77,699.60
11/01	08/01/2012	3,000.00	2,223.00	777.00	75,476.60
12/01	09/01/2012	3,000.00	2,245.23	754.77	73,231.37
13/02	10/01/2012	3,000.00	2,267.69	732.31	70,963.68

14/02	11/01/2012	3,000.00	2,290.36	709.64	68,673.32
15/02	12/01/2012 686.73				3,000.00 2,313.27 66,360.05
Y-T-D	12/31/2012	36,000.00	26,296.35	9,703.64	
Running	12/31/2012	45,000.00	29,489.95	15,510.05	
16/02	01/01/2013	3,000.00	2,336.40	663.60	64,023.65
17/02	02/01/2013	3,000.00	2,359.76	640.24	61,663.89
18/02	03/01/2013	3,000.00	2,383.36	616.64	59,280.53
19/02	04/01/2013	3,000.00	2,407.19	592.81	56,873.34
20/02	05/01/2013	3,000.00	2,431.27	568.73	54,442.07
21/02	06/01/2013	3,000.00	2,455.58	544.42	51,986.49
22/02	07/01/2013	3,000.00	2,480.14	519.86	49,506.35
23/02	08/01/2013	3,000.00	2,504.94	495.06	47,001.41
24/02	09/01/2013	3,000.00	2,529.99	470.01	44,471.42
25/03	10/01/2013	3,000.00	2,555.29	444.71	41,916.13
26/03	11/01/2013	3,000.00	2,580.84	419.16	39,335.29
27/03	12/01/2013	3,000.00	2,606.65	393.35	36,728.64
Y-T-D	12/31/2013	36,000.00	29,631.41	6,368.59	
Running	12/31/2013	81,000.00	59,121.36	21,878.64	
28/03	01/01/2014	3,000.00	2,632.71	367.29	34,095.93
29/03	02/01/2014	3,000.00	2,659.04	340.96	31,436.89
30/03	03/01/2014	3,000.00	2,685.63	314.37	28,751.26
31/03	04/01/2014	3,000.00	2,712.49	287.51	26,038.77
32/03	05/01/2014	3,000.00	2,739.61	260.39	23,299.16
33/03	06/01/2014	3,000.00	2,767.01	232.99	20,532.15

34/03	07/01/2014	3,000.00	2,794.68	205.32	17,737.47
35/03	08/01/2014	3,000.00	2,822.63	177.37	14,914.84
36/03	09/01/2014	3,000.00	2,850.85	149.15	12,063.99
37/04	10/01/2014	3,000.00	2,879.36	120.64	9,184.63
38/04	11/01/2014	3,000.00	2,908.15	91.85	6,276.48
39/04	12/01/2014	3,000.00	2,937.24	62.76	3,339.24
Y-T-D	12/31/2014	36,000.00	33,389.40	2,610.60	
Running	12/31/2014	117,000.00	92,510.76	24,489.24	
40/04	01/01/2015	3,372.63	3,339.24	33.39	0.00
Y-T-D	12/31/2015	3,372.63	3,339.24	33.39	
Running	12/31/2015	120,372.63	95,850.00	24,522.63	

Susan P. Weeks, ISB # 4255
James, Vernon & Weeks, P.A.
1626 Lincoln Way
Coeur d'Alene, ID 83814
Telephone: (208) 667-0683
Facsimile: (208) 664-1684
sweeks@jvwlaw.net

RECEIVED
JUL 27 2015
CLERK OF DISTRICT COURT

Attorneys for North Idaho Resorts, LLC and V.P., Inc.

**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

**ERRATA TO DECLARATION OF
RICHARD VILLELLI IN OPPOSITION TO
VALIANT IDAHO, LLC'S MOTION TO
ALTER, AMEND AND/OR RECONSIDER
THE ORDER OF SALE**

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

Richard Villelli, by and through his attorney of record, Susan P. Weeks of the firm James, Vernon & Weeks, P.A., submits the following Errata to Declaration of Richard Villelli in Opposition to Valiant Idaho, LLC's Motion to Alter, Amend and/or Reconsider the Order of Sale.

A copy of Exhibit "D", notice of POBD's failure of performance of the CO Agreement, was inadvertently not attached to Declaration of Richard Villelli in Opposition to Valiant Idaho, LLC's Motion to Alter, Amend and/or Reconsider the Order of Sale.

**ERRATA TO DECLARATION OF RICHARD VILLELLI IN OPPOSITION TO VALIANT
IDAHO, LLC'S MOTION TO ALTER, AMEND AND/OR RECONSIDER THE ORDER OF
SALE: 1**

Attached hereto is a copy of Exhibit "D" to Declaration of Richard Villelli in Opposition to Valiant Idaho, LLC's Motion to Alter, Amend and/or Reconsider the Order of Sale.

DATED this 27th day of August, 2015.

JAMES, VERNON & WEEKS, P.A.

By: *Susan P. Weeks*
Susan P. Weeks

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on the following persons in the manner indicated this 27th day of August, 2015:

- | | | |
|--------------------------|----------------------------|---------------------------------------|
| <u> </u> | U.S. Mail, Postage Prepaid | Gary A. Finney |
| <u> </u> | Hand Delivered | FINNEY FINEY & FINNEY, PA |
| <u> </u> | Overnight Mail | 120 E Lake St., Ste. 317 |
| <u> ✓ </u> | Facsimile: 208-263-8211 | Sandpoint, ID 83854 |
| <u> </u> | U.S. Mail, Postage Prepaid | Richard Stacey |
| <u> </u> | Hand Delivered | McCormell Wagner Sykes & Stacey, PLLC |
| <u> </u> | Overnight Mail | 755 West Front St., Ste. 200 |
| <u> ✓ </u> | Facsimile: 208-489-0110 | Boise, ID 83702 |

Christina Lawrence

Instrument # 859555
BONNER COUNTY, SANDPOINT, IDAHO
8-29-2014 09:30:46 No. of Pages: 10
Recorded for : JAMES VERNON & WEEKS
R. ANN DUTSON-SATER Fee: 37.00
Ex-Officio Recorder Deputy *CB*
Index to: MRSC

**NOTICE OF FAILURE OF PERFORMANCE
CONSTRUCTION AND OPERATING AGREEMENT**

A Construction and Operating Agreement was entered into between VP, Inc., an Idaho Corporation and Pend Oreille Bonner Development, LLC, a Nevada limited liability company on June 13, 2006, regarding sewer service to the real property described in Exhibit "A", attached hereto and incorporated herein. There has been a failure by Pend Oreill Bonner Development, LLC to perform as required under said agreement. Notice is hereby given that no third party may benefit from the provisions of this Construction and Operating Agreement, including Clause 12(b).

DATED this 19th day of May, 2014.

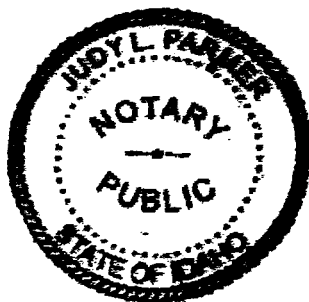
VP, Inc.

By: Susan P. Weeks
Susan P. Weeks, Attorney for VP, Inc.

STATE OF IDAHO)
)
)
County of Kootenai)
)
)

On this 19th day of May, 2014, before me, a Notary Public, personally appeared Susan P. Weeks, known or identified to me to be the attorney of the corporation that executed this instrument or the person who executed the instrument on behalf of said corporation and acknowledged to me that such corporation executed the same.

WITNESS my hand and official seal hereto affixed the day and year first above written.



Judy L. Farmer
Notary Public for Idaho
Residing at Looke Ogden
Commission expires 8/23/2014



Transnation Title Insurance Company

Exhibit A

SECTION A:

PARCEL 1:

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

That portion of said Sections 31 and 36, 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 in said Section 36, described as follows:

Beginning at the Southeast corner of said Section 36;

thence North 54 degrees 29' 19" West, 1919.58 feet to a point on the Northern right of way of State Highway 200, which is the true point of beginning;

thence North 1 degree 07' 07" East, 244.28 feet;

thence South 87 degrees 52' 03" West, 348.49 feet;

thence South 1 degree 07' 07" West, 250.00 feet to a point on the Northern right of way line of Highway 200;

thence North 79 degrees 45' 41" East, 66.62 feet along said right of way to the beginning of a curve, concave to the Southeast, having a radius of 2803.37 feet;

thence Northeasterly 282.99 feet along said curve through a central angle of 5 degrees 47' 02" to the true point of beginning. Said curve being the Northern right of way line of Highway 200.

LESS a parcel of land described as follows:

Beginning at the North sixteenth corner of Section 31, Township 58 North, Range 1 East of the Boise Meridian, being a brass cap set in a 3/4 inch iron pipe;

thence Easterly along the South boundary of the Northwest quarter of the Northwest quarter of said Section 31, a distance of 361 feet to an intersection with an existing fence line marking the North right of way line of an existing county road, being the true point of beginning and marked by an iron pipe;

thence South 26 degrees 46' East along said right of way, a distance of 161 feet to an iron pipe;

thence South 44 degrees 22' East, a distance of 125 feet along the aforesaid right of way to an iron pipe;

thence South 59 degrees 59' East along the aforesaid right of way, a distance of 99 feet to an iron pipe;

thence South 70 degrees 13' East along the aforesaid right of way, a distance of 262 feet to an iron pipe;

thence South 55 degrees 03' East along the aforesaid right of way, a distance of 67 feet to an iron pipe;



Transnation Title Insurance Company

thence North 39 degrees 54' East, a distance of 200 feet to an intersection with the thread line of Pack River;

thence Northerly and upstream along said thread line of Pack River to an intersection with the aforesaid South boundary of the Northwest quarter of the Northwest quarter of Section 31;

thence Westerly along the aforesaid South boundary of the Northwest quarter of the Northwest quarter of Section 31 to the true point of beginning, all more or less.

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

AND ALSO LESS that portion of Lot 2, Section 31, Township 58 North, Range 1 East of the Boise Meridian, Bonner County, Idaho, described as follows:

Beginning at the North sixteenth corner of Section 31, Township 58 North, Range 1 East of the Boise Meridian, the point of beginning, being a brass cap set in a 3/4 inch iron pipe;

thence Easterly along the South boundary of the Northwest quarter of the Northwest quarter of said Section 31, a distance of 361 feet marked by an iron pipe;

thence South 26 degrees 41' East along existing road right of way, a distance of 161 feet to an iron pipe;

thence South 44 degrees 22' East, a distance of 62 feet along aforesaid right of way to an iron pipe;

thence West 424 feet to the West line of Section 31, on the Boise Meridian, to an iron pipe;

thence North, 290 feet to the point of beginning at the North sixteenth corner of Section 31, on the Boise Meridian, being an aforesaid brass cap set in a 3/4 inch pipe.

AND ALSO LESS a tract of land in the Southeast quarter of the Northeast 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 Northeast corner of the Southeast quarter of the Northeast quarter of said Section 36;

thence along the East line of the Southeast quarter of the Northeast quarter, South 0 degrees 07' 21" West, 32.83 feet to the Southerly right of way of the Lower Pack River Road and the true point of beginning;

thence continuing along said East line, South 0 degrees 07' 21" West, 167.17 feet;

thence North 89 degrees 06' 55" West, 34.93 feet to the East line of Lot 29 of Hidden Lakes Subdivision;

thence along the East line of said Lot 29, North 0 degrees 26' 16" West, 10.90 feet;

thence North 7 degrees 09' 28" West, 131.29 feet to the Northeast corner of said Lot 29 and the Southerly right of way of the Lower Pack River Road;

thence along said right of way on a curve to the right having a central angle of 00 degrees 27' 31" and a radius of 4170.00 feet, for an arc length of 57.65 feet (chord = North 63 degrees 47' 31" East, 57.65 feet) to the true point of beginning.

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:



Transnation Title Insurance Company

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

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

thence continuing South 14 degrees 35' 50" East along said East right of way, a distance of 254.79 feet to an intersection with the North right of way of Old Highway No. 200 (E.A.P. No. 958);

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

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

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

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

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

PARCEL 3:

A tract of land in Government Lot 1, Section 31, Township 53 North, Range 1 East of the Boise Meridian, Bonner County, Idaho, more particularly described as follows:

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

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

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

thence South 27 degrees 14' 49" East, 79.53 feet;



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

thence along said South line, North 89 degrees 06' 55" West, 68.07 feet to the True Point of Beginning.

PARCEL 4:

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

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

thence parallel to the West line of the Section, North 0 degrees 07' 21" East, 118.03 feet;

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

thence North 44 degrees 00' 28" West, 23.17 feet to the Southeastly right of way of the Lower Pack River Road;

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

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

thence on a curve to the right having a central angle of 16 degrees 45' 40" and a radius of 173.31 feet, for an arc distance of 50.70 feet (chord = South 35 degrees 37' 29" East, 50.52 feet);

thence South 27 degrees 14' 49" East, 53.38 feet, to the true point of beginning.

PARCEL 5:

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

Beginning at a point on the West line of said Government Lot 2, which is South 0 degrees 07' 21" West, 200.00 feet from the Northwest corner of Government Lot 2;

thence parallel to the North line of said Government Lot 2, South 89 degrees 06' 55" East, 562.58 feet;

thence North 47 degrees 03' 53" West, 43.21 feet;

thence on a curve to the right having a central angle of 19 degrees 17' 39" and a radius of 650.32 feet, for an arc length of 218.99 feet (chord = North 37 degrees 25' 03" West, 271.96 feet) to the North line of Government Lot 2;

thence along said North line, North 89 degrees 06' 55" West, 68.07 feet;

thence South 27 degrees 14' 49" East, 26.15 feet;

thence on a curve to the left having a central angle of 09 degrees 49' 00" and a radius of 710.32 feet, for an arc length of 121.70 feet (chord = South 32 degrees 09' 19" East, 121.55 feet);

thence South 30 degrees 24' 50" West, 412.82 feet to the true point of beginning.

**Transnation Title Insurance Company**

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

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

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

PARCEL 6:

Block 5 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 7:

The Club House, and the Parking Lot in Block 12, as they are shown and depicted in GOLDEN TEE ESTATES FIRST ADDITION, according to the plat thereof, recorded in Book 6 of Plats, Page 114, records of Bonner County, Idaho.

PARCEL 8:

Maintenance Lot, Block 14, GOLDEN TEE ESTATES FIRST ADDITION, according to the plat thereof, recorded in Book 6 of Plats, Page 114, records of Bonner County, Idaho.

PARCEL 9:

Lots 1, 2 and 3, Block 5 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 10:

Lot 13, Block 13 and the Golf Course Area as shown and depicted in Block 12 of GOLDEN TEE ESTATES FIRST ADDITION, according to the plat thereof, recorded in Book 6 of Plats, Page 114, records of Bonner County, Idaho.

PARCEL 11:

Open space Lots shown as Lots 1 And 5 and Stormwater Lot, Block 4 and Stormwater Lot, Block 2 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.

Open space Lots 1 and 4, Block 6 and open space Lot 1, Block 7, open space Lot 1, Block 9, GOLDEN TEE ESTATES 1ST 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 12:

Lot 12, Block 2, Lot 3, Block 4 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 13:

Lot 2, Block 7, Lot 4, Block 9, Lot 1, Block 10 in GOLDEN TEE ESTATES FIRST ADDITION, according to the plat thereof, recorded in Book 6 of Plats, Page 114, records of Bonner County, Idaho.

PARCEL 14:



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Lot 1, Block 11 in GOLDEN TREES ESTATES FIRST ADDITION, according to the plat thereof, recorded in Book 6 of Plats, Page 114, records of Bonner County, Idaho.

SECTION B:

PARCEL 1:

Lots 1 and 7 and 9 in Block 1 of the FIRST ADDITION TO HIDDEN LAKES, according to the plat thereof, recorded in Book 4 of Plats, page 160, records of Bonner County, Idaho.

PARCEL 2:

Lots 2, 3, 4, 5 and 10, Block 2; Lots 1 and 2 in Block 3; and Lots 1, 2 and 3 in Block 4 of the SECOND ADDITION TO HIDDEN LAKES SUBDIVISION, according to the plat thereof, recorded in Book 5 of Plats, Page 151, records of Bonner County, Idaho.

PARCEL 3:

That portion of the East half of the Northeast quarter of the Southwest quarter of Section 36, Township 58 North, Range 1 West, Boise Meridian, Bonner County, Idaho, lying South and West of Olympic Drive as shown on the Plat of the Second Addition to Hidden Lakes Subdivision as recorded in Book 5 of Plats, Page 58, records of Bonner County, Idaho.

PARCEL 4:

That portion of the West half of the Southeast quarter of Section 36, Township 58 North, Range 1 West, Boise Meridian, Bonner County, Idaho, lying West of Olympic Drive, Southerly and Westerly of Fairway View Drive and Westerly of Lower Park River Road as shown on the plat of the Second Addition to Hidden Lakes Subdivision as recorded in Book 5 of Plats, Page 58, records of Bonner County, Idaho.

LESS any portion lying within the Highway right of way.

SECTION C:

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 150 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 beginning.

AND



Transnation Title Insurance Company

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;

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, Idaho, more fully described as follows:

BEGINNING at a point that is North 80 degrees 05'57" East a distance of 386.02 feet from the South 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 along said East right of way of the old county road a distance of 171.80 feet;

THENCE continuing South 14 degrees 35'53" 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 a 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 (chord of which bears South 88 degrees 02'31" West a distance of 48.43 feet);

2) North 79 degrees 07'52" West, 100.50 feet;

3) Around a curve to the left with a radius of 2668.37 feet a distance of 247.30 feet (the chord of which bears South 82 degrees 1'00" West a distance of 247.24 feet) to a P.S.C.;



Transnation Title Insurance Company

- 4) Along a spiral curve (S=2 degrees 12.3') a distance of 207.68 feet (the chord of which bears South 70 degrees 27'12" West a distance of 207.87 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, 18, 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 of the 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 of the 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 34 degrees 29' East 137.2 feet;

THENCE South 68 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 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 in Book 83 of Deeds, page 545, records of Bonner County, Idaho.

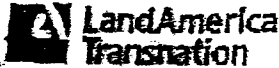
SECTION D:

PARCEL 1:

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

Beginning at a point where the Section line between Sections 15 and 21, Township 57 North, Range 1 East, Boise Meridian, intersects the State Highway on the Westerly side as it now exists;

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



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thence in a Southwesterly direction, 97 feet;

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

thence East on said Section line between said Sections 16 and 21, 194.25 feet, more or less, to the place of beginning.

PARCEL 2:

That part of the Southwest quarter of the Southwest quarter in Section 16, Township 57 North, Range 1 East of the Boise Meridian, lying South and West of the Burlington Northern Inc. Railway right of way and Government Lot 3 in Section 17, Township 57 North, Range 1 East, of the Boise Meridian, save and excepting therefrom:

The South 350 feet of Government Lot 3 in said Section 17, and also that part of the Southwest quarter of the Southwest quarter in said Section 16 lying Westerly of said Burlington Northern Inc. right of way as now in use and described as follows:

Beginning at the Southwest corner of said Section 16;

thence North along the West Section line 350 feet;

thence East to the centerline of Traskie Creek;

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

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

PARCEL 3:

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

Beginning at a point where the South line of the Northeast quarter of the Northwest quarter of Section 21, Township 57 North, Range 1 East of the Boise Meridian, Bonner County, Idaho, intersects the West line of the Northern Pacific Railroad Company right of way;

thence 600 feet Northerly along said railroad right of way;

thence West to the meander line of lake;

thence 600 feet Southerly to the South line of Lot 1 of said Section 21;

thence East to the Point of Beginning.

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

2009 07 01

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

GENESIS GOLF BUILDERS, INC.,) Case No. CV- 2009-1810
formerly known as National)
Golf Builders, Inc., a Nevada) JV'S REPLY TO VALIANT'S
corporation,) MEMORANDUM IN OPPOSITION TO
) JV'S MOTION FILED ON
Plaintiff,) 7/21/2015, AND MOTIONS TO
) STRIKE

v.)

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

ASPHALT COMPANY, an Idaho corporation; T-O ENGINEERS, INC., fka Toothman-Orton Engineering Company, an Idaho corporation; PUCCI CONSTRUCTION INC., an Idaho corporation; ACI NORTHWEST, INC., an Idaho corporation; 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 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; MONTAHEHO
INVESTMENTS, LLC, a Nevada
limited liability company;
CHARLES W. REEVES and ANN B.
REEVES, husband and wife; and
C.E. KRAMER CRANE &
CONTRACTING, INC., an Idaho
corporation,

Third Party
Defendants.

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

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

v.

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

Third Party
Defendants.

COMES NOW JV, L.L.C. ("JV") by and through its
Attorney GARY A. FINNEY and submits and makes this Reply
pursuant to IRCP 7(b)(3)(E).

JV'S REPLY TO VALIANT'S MEMORANDUM IN OPPOSITION TO JV'S MOTION
FILED ON 7/21/2015, AND MOTIONS TO STRIKE

I. This is J.V.'s Objection/Motion as to Valiant's Memorandum In Opposition To JV, LLC's Motion To Alter Amend, and Reconsider the Court's Memorandum and Order, filed July 21, 2015.

1. Valiant's above referenced Memorandum is dated and filed August 26, 2015.

2. Valiant's above referenced Memorandum states that it is in response to JV's Motion To Alter, Amend and to Reconsider filed July 30, 2015. Valiant's Opposition Memorandum is filed approximately 27 days after JV's Motion. As such, JV moves to strike Valiant's Memorandum pursuant to I.R.C.P. 7(b)(3)(E).

Computation of Time, Rule 6(a) states that the day of the act/event after which a designated period begins to run is not computed. The last date is counted unless it is Saturday, Sunday or a legal holiday in which event the period runs until the next day which is not Saturday, Sunday, or a legal holiday.

Rule 7(b)(3)(E) requires any responsive brief, shall be filed and served at least 7 days prior to the hearing. The Hearing is on September 2, 2015, at 11:00 a.m. From 2:31 p.m. on August 26, a "day" (not date) is 24 hours. The first day from 8/26 to 8/27 at 2:31 p.m. does not count

in computation of time, so 8/28 at 2:31 p.m. is 1 day, the 29th at the same time is the 2nd day; the 29th and 30th are a Saturday and a Sunday which should be excluded; August 31st (Monday at 2:31 p.m.) is the 3rd day and September 1st at 2:31 p.m. is the 4th day, with September 2nd at 2:31 p.m. being the expiration of the 5th day. The Hearing date is September 2, 2015 at 11:00 a.m., is still the 5th day.

II. The Memorandum in Opposition To JV's Motion should be denied on its merits.

3. JV's Motion To Alter, Amend, and to Reconsider is in response to the Court's Memorandum Decision and Order dated July 21, 2015. JV's Motion is meritorious because as it states and points out:

1. The Court's initial grant of Summary Judgment was filed on April 14, 2015. That Summary Judgment was inappropriate because there existed genuine issues of material fact as "***all pleadings, dispositions, and admissions on file together with the affidavits, if any " do not show that there is no genuine issue as to any material fact. Further, the Court is to liberally construe all facts in favor of the non-moving party. *Camp Easton Forever v. Inland Northwest*, 156 Idaho 893 at 897 (2014).

The original grant of Summary Judgment to Valiant (April 14, 2015), was in spite of JV's (original) Special Appearance, filed 9-15-2014, which was also an affidavit by Verification of James Berry, as member/manager of JV, LLC. JV's Memorandum in Opposition to Valiant's Motion for Summary Judgment, filed and dated February 2, 2015, was also an affidavit by Verification of James Berry, JV's member/manager. Further, the Deposition of Charles Reeves, a manager of POBD et. al. (RE Loans was a Defendant and Attorney Stacey was its counsel of record. Case No. CV-2011-0135.) Also, both of the 2008 Pensco and 2008 MF08, Borrowers Settlement Statement, was Defendant's JV Exhibit "G" and the Borrower's Final Settlement showed the mortgage to RE Loans was paid shown on Defendant's JV Exhibit "H", exhibits to Reeves deposition. Reeve's Testimony in the Deposition and the aforesaid Exhibit "G" AND "H" (final) show:

1. Pay-off First Note - Loan P0099 (MF08) and
2. Pay-off Second Note - Loan #P0106 (Pensco), and
3. POBD only received at closing, as Cash (From) (X To Borrowers) of \$69,214.66

Reeves testified repeatedly that none of the \$12,257,174.82 "Retained Loan Funds" were subsequently disbursed

to or received by POBD. Reeves' deposition testimony was that POBD made no payments because MFOS failed to fund POBD's first draw.

The Deposition of Reeves and the Exhibits thereto are in opposition/conflicting with the Affidavit of Reeves' given in support of Valiant's Motion For Summary Judgment, the motion stated it was only as to priority only i.e. it was only a motion for partial summary judgment. The Idaho Supreme Court in *Capstar v. Radio Operations Co. v. Lawrence* 153 Idaho 411 (2012) previously to the Court by JV, clearly held that when a witnesses deposition testimony and his affidavit testimony are inconsistent, the conflicting testimony presents a genuine issue of material fact. The Supreme Court held that "*** the lower court seems to have weighed the conflicting evidence and judged the affidavit's credibility in making a ruling ***" that "*** should not be made on summary judgment if credibility can be tested in court before the trier of facts." *Capstar* 153 Idaho at 419

JV submits that a trial on the issues should occur.

Issues as to Redemption Deeds, of both JV and Valiant

JV'S Redemption Deed, to the real estate described therein gives JV's the lien position of Bonner County's Tax Deed, of May 14, 2014, 1st lien position.

a) RE Loans' Redemption Deed, for the real estate remaining after JV previously redeemed, gives RE Loans the lien position of Bonner County's Tax Deed (May 2014)...1st lien position, if Valiant had a valid right of redemption by way of RE Loans' Assignment to Valiant. This issue has not been addressed in any of the Court's memorandum decisions, at all.

1. First of all, Valiant did not sue for or allege that it's Redemption payment (\$1,665,855.14) entitled Valiant to add that amount to the unpaid sum of \$278, 174.65 claimed on RE Loans' 2007 Mortgage. (See the Ledger, Loan P0099, third page, Reeves S001233, Exhibit E to Affidavit of Charles W. Reeves dated November 12, 2014.)

Valiant's first pleading filed 8-19-2014 is entitled VALIANT IDAHO, LLC'S COUNTERCLAIM, CROSS-CLAIM AND THIRD PARTY COMPLAINT FOR JUDICIAL FORECLOSURE, as follows:

a. See page 8 (The RE Loans Agreement), through page 10, paragraph 46. "As a direct and proximate result of POBD's failure to pay Bonner County property taxes when due, Valiant has been damaged by this breach of contract in the amount of \$1,665.14 plus interest accruing there on under Idaho law, Valiant alleges the

same thing on the PENSICO cause of action (paragraph 57) and the same thing on the MFOS cause of action (paragraph 68). Valiant's prayer for relief were PRAYER FOR RELIEF, paragraph A.4, - "For breach of 2007 RE Loan Agreement, the Pensco Agreement, and the MFOS Agreement" the sum of not less than \$1,665,055.14 plus accrued interest, the amount that Valiant paid to redeem the Tax Deed, and in paragraphs B, E, and F to foreclosure the Redemption Deed.

b. In summary, Valiant's foreclosure on the Redemption Deed, must necessarily be on only the real estate described in its Redemption Deed; which is Valiant's, EXHIBIT 2, to Syke's Declaration dated 16 January 2015. Please read Valiant's Redemption Deed for the fact that the legal description of the redeemed real estate, at the page thereof, reads:

"AND LESS all the following parcels below redeemed in Instrument No. 861430 Records of Bonner County, State of Idaho." The words "AND LESS" ... Instrument No. 861430 is the JV

Redemption Deed - i.e. Instrument No. 861430
(Defendant's EXHIBIT M of JV, LLC). When
Valiant's Redemption Deed was recorded it again
on the added page 12 said "AND LESS all of the
following described parcels described below".
The description was then setforth as Parcel 1,
Parcel 2, Parcel 3, and Parcel 4. The four
parcels of real estate excepted from as
Valiant's rerecorded Redemption Deed are the
exact same parcels conveyed to JV by its
Redemption Deed (rerecorded) describing the
same Parcel 1, Parcel 2, Parcel 3, and Parcel
4. In summary from the Redemption Deeds it is
clear that,

- i. JV made the 1st redemption of specific real estate and received JV's Redemption Deed.
- ii. Valiant, as Assignee for RE Loans, made the 2nd Redemption of specific real estate LESS the real estate of previously redeemed by JV.

JV's legal positions as to Redemption Deeds - both JV's and Valiant's - subject to the fact that Valiant was not entitled to

redeem as Valiant/RE Loans were not a "party of interest" as required by Idaho Code § 63-1007.

The Idaho Law is:

1. Valiant has failed to cite the authority to the Court of Idaho Code sections:

a) §45-113 Right to Redeem for Lien

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

b) §45-114 Rights of Junior Lienor

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

1. To redeem the property in the same manner as its owner might, from the superior lien; and,
2. To be subrogated to all the benefits of the superior lien, when necessary for the protection of his interest upon satisfying the claim secured thereby. Idaho Code §45-113 and §45-114 can be stated, using the facts, as follows:

As to JV's Redemption Deed

1. JV having a Mortgagee's interest in the Moose Mountain real estate, recorded October 1995, Instrument No. 474746 has a right to redeem from the lien for delinquent real estate taxes, taken by Bonner County by Tax Deed, recorded May 22, 2014, Instrument No. 859659 (Tax Deed is Defendant's Exhibit I, JV)
2. JV has the right to redeem, the property in the same manner of its owner (POBD) might from the superior lien of the Tax Deed; and
3. JV is subrogated to all the benefits of the tax lien, Tax Deed, as necessary for the protection of JV'S Mortgage interests upon satisfaction by "paying" the Tax Deed lien.
4. In summary, based on these statutes, JV is subrogated to the first tax lien, Bonner County, Tax Deed to the extent of JV's redemption payment (\$140,999.86) made on or about July 1, 2014. JV had the right to redeem in the same manner as the owner might. The owner was POBD and JV had the same right to redeem as POBD.

Secondly, JV was subrogated to all of the benefits of Bonner County's Tax Deed Lien, which is the 1st priority lien ahead of all, i.e. JV, RE LOANS, PENSCO, MFOS, and any other party with an inferior interest as a "party in interest".

The Right of Redemption for the Owner, lien holder, mortgagee, and any other "party in interest" has a cut-off date, entitled §63-1007 Redemption- Expiration of Right, which states that the right of redemption expires by sale or transfer by the County, but in the event a tax deed is issued (Tax Deed, issued May 22, 2014) if payment is not received within 14 months of the issuance of such tax deed, then the tax deed to the county is... fee simple title and title rest in the County.

No redemption occurred by any interested party within 14 months of the Tax Deed (May 22, 2014) except by JV as to the real estate described in its Redemption Deed, and by Valiant, as Assignee for RE Loans as to the

real estate described in its Redemption Deed
- which the legal description specifically
excluded as "AND LESS" the real estate
redeemed by JV.

5. JV after the 14 month expiration of right is
subrogated to the lien portion of Bonner
County, which includes the statutory
language that fee simple title rest in JV:
or alternatively JV has Bonner County's
first tax lien position (priority) in the JV
Redemption Deed. As to Valiant's Redemption
Deed, Valiant, if as a condition precedent,
was a "party in interest", as an Assignee
from RE Loans, it had a statutory §63-1007
right of redemption, then Valiant has been
subrogated to the lien position of Bonner
County's tax lien/Tax Deeds either as
subrogated fee simple title; or
alternatively Valiant has first tax lien
position (priority) in Valiant's Redemption
Deed.

Valiant's Seventh Case of Action was for Judicial
Foreclosure of its Redemption Deed No. 861460. The Redemption

Deed No. 861460 was rerecorded as Instrument No. 863298. (See Defendant's Exhibit N, JV, LLC) Valiant pled and sought foreclosure of its Redemption Deed as being superior to and prior to any interest of the Defendant's. JV believes Valiant has correctly and validly has a First Priority Lien for its Redemption Deed property, but only as to the real estate described as redeemed by Valiant in its Redemption Deed.

Nowhere in Valiant's pleading did it allege or plead that somehow the RE Loans mortgage amount merged into the Redemption Deed, or vice versa, to have the effect that the RE Loans mortgage foreclosure was included as "part" of it to get a single foreclosure of RE Loans in this amount of the RE Loans Mortgage plus the Redemption payment as a single sum in the Judgment.

Valiant is seeking a judgment to which it is not entitled. As a matter of law, Valiant cannot get summary judgment on an issue not plead, at all. The remaining issue is still whether or not Valiant was a "party in interest" by an Assignee from RE Loans, by a Power of Attorney, with no Power of Attorney being first recorded.

The case of *Hardy v McGill and Valdez 137 Idaho 280 (2002)* is good law, but it is clearly distinguishable from the present action. In *Hardy*, supra, the real estate was sold in 1980, by

way of a contract sale, such that one party was called "Seller" and the other party was called "Buyer". The Buyer failed to pay real estate taxes and Ada County took a Tax Deed. The real estate had changed hands, both the Sellers' interest and the Buyer's interest. For the 1992-1995 tax delinquencies, Ada County, seized the property on January 9, 1996. Valdez and McGill, as transferees, of the Seller's interest, became aware of the County's Tax Deed and finally took steps to pay the taxes and costs to Ada County. Ada County issued a Tax Deed in the names of McGill and Valdez. The trial court by partial summary judgment found the redemption by payment of the delinquent taxes erased the tax problem; however, the Sellers must still abide by the contract of the sale. *Hardy, supra 137 Idaho 280 at 283.*

The district court determined that the Buyer had not received proper notice of default as specified by the contract of sale. Further the district court determined that when Sellers paid the taxes to the County, a constructive trust resulted. Subsequently, 2 additional Notices of Default were served by Sellers/Appellants - called the second and third notices of default respectively). The District Court determined that the third notice of default gave substantial notice to the buyer of the basis for the default and what was necessary to cure the default. The buyer, tendered \$90,630.65 to the Court

as an estimate of the amount needed to cure the default. There were various motions and a hearing; from which the district court determined that questions about the contract needed to be resolved. After further testimony at a hearing on September 20, 1998, the district court decided that the issue would need to be addressed at trial along with the remaining issues. The parties entered a stipulation of issues to be tried, and a Court trial was held July and November, of 1999. (Hardy, supra, 137 Idaho 280 at 283) Then, two assignees filed U.S Bankruptcy, and the stay was lifted March 2000. The district court then found the third notice of Default was sufficient and that the Buyers had cured the default. The Sellers appeal and the Idaho Supreme Court held,

1. Both parties, Buyer and Seller, need to comply with the terms and conditions of the Contract of Sale. (Hardy, supra, 137 Idaho 280 at 287)
2. The Sellers failed to comply with the contract of sale requiring a proper notice of default, and the contract can only be enforced following a conforming notice of default and sufficient time for cure. (Hardy, supra, 137 Idaho 280 at 287)

3. By paying the delinquent taxes erased the tax deficiency and the contract of sale was still controls. (*Hardy, supra, 137 Idaho 280 at 287*)
4. The contract of sale provided that the Buyers were to pay all taxes assessed against the premises. The contract of sale also provided that if Buyer failed to pay the taxes, when due, then a default occurs and Sellers must give a written notice of default allowing Buyers 30 days to cure. (*Hardy, supra, 137 Idaho 280 at 287*)

Regarding seller's cure of the tax delinquency by payment of the taxes, the Supreme Court held, at *Hardy, supra 280 at 287* that,

1. A Redemption Deed is issued to the redemptioner in consideration of the payment of delinquent taxes.
2. The redemption deed simply cancels and terminates all rights of the county in and to the land acquired by virtue of the tax deed.
3. The delinquent taxes paid by the Sellers became a part of indebtedness protected by Sellers contract of sale. The taxes paid by Sellers become an additional amount owed by Buyer, but the contract of sale required default provisions which seller must follow.


Hardy v. McGill 137 Idaho 280(2002) is consistent with JV's position in the instant action. The *Hardy, supra*, case does not mention Idaho Code §45-113 or §45-114, both of which apply in the instant action. JV's payment of delinquent taxes is the consideration paid for its Redemption Deed, and JV is subrogated to all the benefits of Bonner County's Tax Deed, which was the 1st lien on the real estate, which is the exact application of Idaho Code §45-114(2). This statute is not mentioned by Valiant, nor does Valiant recognize Idaho Code §63-1007 requiring a redemption to be "the owner, or party in interest", and that 14 months after the Tax Deed in May of 2014, all rights of redemption expire and the County is the owner "in fee simple title". JV is subrogated to all rights of Bonner County, which results in fee simple title rests in JV.

In Summary - Relief Requested

1. JV's post summary judgment motions and memorandums, demonstrate that genuine issues of material facts exist requiring a trial as setforth in Idaho Supreme Court case law as have been cited to the Court on the issues of RE Loans

owed or "paid-off", and that MF08 furnished no loaned funds on its 2008 mortgage. JV agrees that 2008 Pensco mortgage is owed by POBD and JV in August 2008 subordinated to the 2008 Pensco Loan, subject to JV's Redemption Deed.

2. JV submits that it has all rights of Bonner County's tax deed lien in consideration of its tax redemption payment, by statutory subrogation. Since 14 months have expired after the May 2014 Tax Deed, JV is subrogated to Idaho Code §63-1007 provision that fee simple title rests in JV, because all rights of redemption have expired.
3. JV acknowledges that the same Idaho Code provisions apply to Valiant as an Assignee of RE Loans if RE Loans was still owed by POBD and the Assignment by Power of Attorney was valid record notice to make Valiant a "party in interest".
4. JV's Redemption Deed includes specific described real estate, part of Moose Mountain, then owned by POBD.
5. Valiant's Redemption Deed includes the specific described real estate remaining of POBD, "ALSO LESS" -the real estate redeemed by JV.


GARY A. FINNEY
Attorney for JV, LLC
August 31, 2015

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was delivered via facsimile or as otherwise indicated, this 31st day of August, 2015, and was addressed as follows:

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JV'S THIRD PARTY DEFENDANTS]

Sealed