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### Valiant Idaho, LLC v. North Idaho Resorts, LLC Clerk's Record v. 32 Dckt. 44583

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Vol. **32** **85**  
IN THE

**SUPREME COURT  
OF THE  
STATE OF IDAHO**

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

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

vs.

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

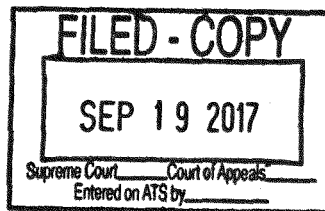
**CLERK'S RECORD ON APPEAL**

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

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**VOLUME XXXII**

**44583**

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STATE OF IDAHO  
 COUNTY OF BONNER  
 FIRST JUDICIAL DIST.

2015 OCT 13 PM 4 00

CLERK DISTRICT COURT

*JL*  
 DEPUTY

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

GENESIS GOLF BUILDERS, INC.,  
 formerly known as National  
 Golf Builders, Inc., a Nevada  
 corporation,

Plaintiff,

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;

) Case No. CV-2009-1810  
 )  
 ) JV L.L.C.'S OBJECTION AND  
 ) MEMORANDUM IN OPPOSITION TO  
 ) VALIANT IDAHO, LLC'S THIRD  
 ) MOTION FOR SUMMARY JUDGMENT  
 ) AND JV L.L.C.'S MOTION TO  
 ) STRIKE VALIANT'S THIRD MOTION  
 ) FOR SUMMARY JUDGMENT AND  
 ) NOTICE OF HEARING FOR OCTOBER  
 ) 23, 2015 AT 1:30 P.M.

JV L.L.C.'S OBJECTION AND MEMORANDUM IN OPPOSITION TO VALIANT IDAHO,  
 LLC'S THIRD MOTION FOR SUMMARY JUDGMENT AND JV L.L.C.'S MOTION TO  
 STRIKE VALIANT'S THIRD MOTION FOR SUMMARY JUDGMENT AND NOTICE OF  
 HEARING FOR OCTOBER 23, 2015 AT 1:30 P.M. - 1

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 )

JV L.L.C.'S OBJECTION AND MEMORANDUM IN OPPOSITION TO VALIANT IDAHO,  
LLC'S THIRD MOTION FOR SUMMARY JUDGMENT AND JV L.L.C.'S MOTION TO  
STRIKE VALIANT'S THIRD MOTION FOR SUMMARY JUDGMENT AND NOTICE OF  
HEARING FOR OCTOBER 23, 2015 AT 1:30 P.M.- 2

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; MONTAHENO )  
INVESTMENTS, LLC, a Nevada )  
limited liability company; )  
CHARLES W. REEVES and ANN B. )  
REEVES, husband and wife; and )  
C.E. KRAMER CRANE & )  
CONTRACTING, INC., an Idaho )  
corporation, )

Third Party )  
Defendants. )

---

JV L.L.C.'S OBJECTION AND MEMORANDUM IN OPPOSITION TO VALIANT IDAHO,  
LLC'S THIRD MOTION FOR SUMMARY JUDGMENT AND JV L.L.C.'S MOTION TO  
STRIKE VALIANT'S THIRD MOTION FOR SUMMARY JUDGMENT AND NOTICE OF  
HEARING FOR OCTOBER 23, 2015 AT 1:30 P.M. - 3

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 the Defendant JV, L.L.C. ("JV") by and through  
 its Attorney Gary A. Finney, and makes this objection and  
 memorandum in opposition to "Valiant's" Third Motion for Summary  
 Judgment, as follows:

JV L.L.C.'S OBJECTION AND MEMORANDUM IN OPPOSITION TO VALIANT IDAHO,  
 LLC'S THIRD MOTION FOR SUMMARY JUDGMENT AND JV L.L.C.'S MOTION TO  
 STRIKE VALIANT'S THIRD MOTION FOR SUMMARY JUDGMENT AND NOTICE OF  
 HEARING FOR OCTOBER 23, 2015 AT 1:30 P.M.- 4



I. VALIANT'S THIRD MOTION FOR SUMMARY JUDGMENT

Valiant's Third Motion for Summary Judgment is actually only a second Motion for Summary Judgment. What Valiant refers to as the Second Summary Judgment Motion, was actually entitled and consisted of a Motion for Entry of Final Judgment, AS "legal descriptions". Valiant's Motion was orally granted. JV, VP, and NIR made motions to alter, amend and reconsider the so called "final" judgment, which was granted by the Court. The Judgment and the Decree of Foreclosure, entered August 5, 2015 were both vacated. The Order Vacating Judgment was filed September 17, 2015 and the Order Vacating Decree of Foreclosure was filed September 17, 2015. An Order of Sale has never been filed or entered in the Clerk's record.

JV and VP/NIR entered a written Stipulation for Settlement and Judgment, filed August 24, 2015, which is a full and final settlement between those parties. A proposed Judgment was submitted to the Court in conformity with said Stipulation. The Court did not enter the proposed Judgment as between VP/NIR and JV, but did enter and file a Notice - filed September 17, 2015, which is the same date the Court vacated and set aside both the Judgment and the Decree of Foreclosure. The Notice, page 2, contains this sentence...

"The Court shall not enter any judgments or decrees in this cause until the conclusion of the evidentiary hearing in January 2016."

II. JV'S MOTION TO STRIKE VALIANT'S THIRD (SIC) MOTION FOR SUMMARY JUDGMENT AND TO VACATE THE OCTOBER 23, 2015 HEARING DATE.

Valiant's Third (sic) Motion for Summary Judgment seeks the relief requested to be, "an order" of summary judgment establishing that there is no genuine issue of material fact as to the real property subject to the 2007 RE Loan/Note/Mortgage, the Pensco Note/Mortgage and the MF08 Note/Mortgage (all as defined in the Memorandum."

In other words, Valiant's Third Motion seeks "an order of summary judgment" which is in violation of and contrary to the Court's NOTICE, September 17, 2015, which said no to entry of any judgments or decrees until conclusion of the evidentiary hearing (trial) in January of 2016.

JV therefore moves and requests the Court to strike and to refuse the hear Valiant's stated Third Motion for Summary Judgment.

III. PROCEDURE BELOW TO DATE AND JV'S RESPONSE TO VALIANT'S MOTION.

First, the only issue stated in Valiant's first motion was for a partial summary judgment, which Valiant's counsel repeated, at the hearing thereon, was the issue of priority of JV L.L.C.'S OBJECTION AND MEMORANDUM IN OPPOSITION TO VALIANT IDAHO, LLC'S THIRD MOTION FOR SUMMARY JUDGMENT AND JV L.L.C.'S MOTION TO STRIKE VALIANT'S THIRD MOTION FOR SUMMARY JUDGMENT AND NOTICE OF HEARING FOR OCTOBER 23, 2015 AT 1:30 P.M. - 6

various mortgages. The Court's decision, findings and conclusions granting the first motion went far beyond the Motion itself. The Court looked at the other documents in file, made by Stipulation between Valiant and POBD as to indebtedness amounts on the various mortgages and used those facts/stipulation to make its decision on Valiant's First Motion for Partial Summary Judgment.

Any and all of the Court orders/findings/conclusions/decisions/decrees and judgments to date are interlocutory only, and may be altered and amended on motion at any time, provided the motion is made within fourteen days of the final judgment (Rule 52(b)). Case law requires the Court to consider new evidence, facts and legal arguments made during the same time frames.

IV. WITHOUT REGARD TO THE AMOUNT OF THE INDEBTEDNESS, IF ANY, BETWEEN THE DEBTOR/BORROWER POBD AND THE LENDER, RE LOANS, JV'S MORTGAGE IS NOT SUBORDINATE TO ANY DOLLAR AMOUNTS.

The facts of this action commence with the Third Amended Restated Real Property Purchase and Sale Agreement, dated January 6, 2005 between NIR, as Seller, and MDG as Buyer. MDG's interest was assigned and assumed by POBD. This Purchase and Sale Agreement has been placed in the record several times. The pertinent part of the purchase and sale is the paragraph 2

Purchase Price starting on page 3 and continuing on page 4. The

Purchase Price is stated to be:

- a. \$4,750,000.00 down payment
- b. POBD assuming the JV note and mortgage recorded October 24, 1995, called the "Berry Note" in the sum of \$2,565,000.00
- c. POBD assuming the Seller's (NIR) note and Mortgage recorded March 29, 2004 from Villelli entities to RE Loans in the unpaid sum of \$8,515,000.00
- d. Total = \$15,830,000.00

The "Berry Note" is JV Defendant Exhibit "B" recorded October 1995 and the 2004 Villelli Mortgagee (Loan No. V0140) recorded March 24, 2004 to RE is JV Defendant's Exhibit "C", both filed with the Court as Exhibits to JV's Memorandum in Opposition to Valiant's Motion, filed February 2, 2015.

The purchase and sale from the Villelli entities to POBD occurred by documents, recorded June 19, 2006. As a result of the closing, Villelli furnished to JV, the closing statement(s) which are:

- a. NIR's Seller's Closing Statement, Title Order No. 41847-NA, and
- b. POBD's Buyer/Borrower Statement, Title Order No. 41847-NA.

JV L.L.C.'S OBJECTION AND MEMORANDUM IN OPPOSITION TO VALIANT IDAHO, LLC'S THIRD MOTION FOR SUMMARY JUDGMENT AND JV L.L.C.'S MOTION TO STRIKE VALIANT'S THIRD MOTION FOR SUMMARY JUDGMENT AND NOTICE OF HEARING FOR OCTOBER 23, 2015 AT 1:30 P.M. - 8

The NIR Seller's closing statement is Defendant JV's Exhibit "D" previously submitted but submitted again attached hereto. The POBD Buyer/Borrower Statement is attached to the contemporaneous Berry Affidavit, as JV's Exhibit "O", filed in support of this JV Objection and Memorandum. JV is numbering its Exhibits, hopefully, in sequence so as not to confuse its EXHIBITS. The pertinent parts of these two closing statements is, first as to the Seller's Closing Statement, JV's Exhibit "D",

- a. The Total Consideration is \$15,830,000.00, the Purchase Price stated in the Third Purchase and Sale Agreement
- b. Berry Note (i.e JV's) assumed by . . . \$2,565,000.00
- c. Loan Pay-off: Bar - K, which is the Villelli 2004 Mortgage to RE Loans (Loan No V0140), paid off in the sum of \$8,064,776.12

In other words, POBD assumed the original 1995 Mortgage to JV of \$2,565,000.00, but POBD "paid-off" instead of assuming the \$8,000,000.00 2004 Mortgage to RE Loans. As of that moment, the only Mortgage existing was the original purchase money mortgage, i.e. the October 1995 seller/vendor Mortgage to JV.

The Buyer/Borrower Statement (POBD) verifies the same situation. The Consideration is \$15,830,000.00 made up of assuming the Berry Note (JV) by buyer (POBD) of \$2,565,000.00,

giving a New to Bar-K of \$20,500,000.00, after deducting the 2004 Vilelli Mortgage and adding "LENDER" "CHARGES", costs of closing resulted in "Hold for Construction: Bar K" of \$11,400,000.00. Barney Ng was operating many entities such as RE Loans, MF08, PENSCO, and "Bar-K". Bar-K was never the lender, or mortgage holder - Bar - K was the "loan servicer" and "loan broker" agent of all of the aforesaid NG entities.

In no way did JV ever subordinate its 1995 mortgage to the \$8.0 2004 Mortgage from Vilelli entities to RE Loans. First of all, because the June 2006 closing statements show it was "Loan Payoff: Bar-K Inc of \$8,064,776.21" paid-off. The Buyer/Borrower Statement, JV's "O" shows "New to Bar - K . . . \$20,500,000.00" with "Hold For Construction; Bar - K Inc.. \$11,400,000.00. Clearly out of a \$20,500,000.00 loan, the sum of \$11,400,000.00 was held for later disbursement for Construction. No money was received by POBD from RE at the June 19, 2006 closing. The difference in money being:

	\$20,500,000.00
-	\$11,400,000.00
	<u>\$ 9,100,000.00</u>

Taken from the discovery deposition/document request, is JV's Exhibit "P". This is Mr. Reeve's POBD "Bar-K" ledger, dated at top as August 28, 2007, but it actually starts as Date July 19, 2006 loan of \$20,500,000.00 with a entry the same date

for an advance of \$9,100,000.00. This is the same figure as the Buyer/Borrower, Defendant JV's Exhibit "O". From the \$20,500,000.00 RE Mortgage of June 19, 2006, the paid-off balance of the 2004 Vellelli entities Mortgage to RE Loans was "deducted" as an advance, so that only \$11,400,000.00 was potentially available for POBD to borrow from the money "Hold For Construction Bar K . . . \$11,400,000.00.

The JV 2006 "Subordination Agreement" is Valiant's Exhibit 7 is subordinate only to available funds of \$11,400,000.00, which is RE Loans Loan No. P0094. This is in conformity with Charles Reeves deposition of August 19, 2013, which is Defendant JV's prior Exhibit "E". On page 62, 63, and 64 Charles Reeves testified that he does know if RE "internally paid off and advance me funds, or the loan stayed in place of probably more than 7, might have been 9; however whatever it was, 8 or 9 million, was unavailable because it was funds that were already outstanding. So they gave us - whatever the math is - 12, 13, or 14 million of development funds from which we could draw (page 64, lines 2-15). The actual math was:

\$20,500,000.00	
- \$ 9,100,000.00	
<u>\$11,400,000.00</u>	- held for construction from which POBD
—could "draw"	

What did POBD actually draw on the June 2006 Loan No. P0094 (\$20,500,000.00 RE Mortgage)? The answer is shown on JV's JV L.L.C.'S OBJECTION AND MEMORANDUM IN OPPOSITION TO VALIANT IDAHO, LLC'S THIRD MOTION FOR SUMMARY JUDGMENT AND JV L.L.C.'S MOTION TO STRIKE VALIANT'S THIRD MOTION FOR SUMMARY JUDGMENT AND NOTICE OF HEARING FOR OCTOBER 23, 2015 AT 1:30 P.M. - 11

Exhibit "P". The \$9,100,000.00 was the sum already used up. The actual money loan made on the 2006 mortgage is only 2 sums of an November 9, 2006 advance of \$ 88,411.47 and an advance of \$478,176.97.

The only 2 sums borrowed by POBD on the 2006 RE Loan totals \$566,388.43. The Bar K August 28, 2007 ledger (JV's Exhibit "P") contains the figure of \$9,100,000.00 + \$566,883.43 of totally \$9,666,883.43. POBD actually paid more money than it "borrowed" on the 2006 mortgage. POBD borrowed only \$566,588.43, but the ledger shows \$3,713,900.00 "Pay down an old loan" (underlying added for emphasis). That is all of the 2006 RE Loan Mortgage advances paid out by RE to POBD.

The JV Exhibit "P" shows a starting amount for the 2007 RE Loan (No. P0099) Mortgage of \$21,200,000.00 as having an initial advance of \$6,100,000.00, which sum was still owed in the "old loan" i.e. the \$9,100,000.00 owed on the Villelli entities original 2004 Mortgage "Loan No. V0140" paid down by POBD to \$6,100,000.00.

The \$6,100,000.00 was then moved by Bar K the "loan servicer" to a new ledger for Loan P0099, for the 2007 Mortgage of \$21,200,000.00, with the beginning date of March 15, 2007 of \$6,100,000.00. This document is Valiant's Exhibit "E" to Reeve's Affidavit. RE Loans again made the entry that out of



the \$21,200,00.00 2007 loan/mortgage, the sum of - \$6,100,000.00 was already used up, so the difference \$15,100,000.00 was all that was available for POBD to borrow on the 2007 RE Mortgage was \$15,100,000.00 to be drawn for "construction". With a starting advance of the "old loan" of \$6,100,000.00 the ledger (Valiant's Exhibit "E") shows draws and pay downs to the last date of November 23, 2009 new balance of \$278,147.65 (see "E", page 3).

Conclusion by JV: POBD paid RE Loans, on the 2006 mortgage and the 2007 mortgage, more money that JV "subordinated to" because these loans started with \$9,100,00.00 in 2006 paid down to \$6,100,000.00 in 2007, and finally \$278,147.65 was left unpaid. The next result is:

\$ 9,100,000.00 beginning "old loan"/i.e. Villelli's  
2004 Mortgage to RE

\$9,100,000.00 is the amount of money to which JV never subordinated by either the 2006 Subordination Agreement or the 2007 Second Subordination Agreement, which is Valiant's Exhibit "8". This Second Subordination Agreement states it very clear, in the fourth paragraph down that the June 19, 2006 that the 2006 \$20,500,000.00 loan in favor of Re Loans "\*\*\* are to be discharged and released and replaced by a new Note and Mortgage". Further down in the Second Subordination Agreement it is also very clear and specific that,

JV L.L.C.'S OBJECTION AND MEMORANDUM IN OPPOSITION TO VALIANT IDAHO, LLC'S THIRD MOTION FOR SUMMARY JUDGMENT AND JV L.L.C.'S MOTION TO STRIKE VALIANT'S THIRD MOTION FOR SUMMARY JUDGMENT AND NOTICE OF HEARING FOR OCTOBER 23, 2015 AT 1:30 P.M. - 13

"1. The \$20,500,000.00 Note and Mortgage shall be discharged and release (sic) of record, and the "new" Note and Mortgage (\$21,200,000.00) shall be the only obligations and loan to which the JV Mortgage is subordinate". The JV Mortgage is identified in the Second Subordination Agreement as being JV, LLC.

By the terms and conditions of the Second Subordination the 2006 Note/Mortgage was released and discharged, so that the beginning amount of the 2007 Mortgage was - 0 - i.e. nothing owed. In fact, as required by the Second Subordination Agreement RE Loans did sign and record of Release and Sale of its 2006 Mortgage, which was recorded June 8, 2007, Instrument No. 730445, a true and correct copy of which is JV's Exhibit "A" hereto. RE Loans, contrary to the terms of the Second Subordination Agreement and contrary to its own Release and Satisfaction of the 2006 Mortgage, the Bar K - ledger for the new 2007 Mortgage "carried-over" \$6,100,000.00 from the "old loans" (2004 Villelli & 2006 POBD).

In Summary, JV's First Mortgage of 1995 is not subordinate to any sums actually loaned by RE on either of its 2006 Mortgage or its 2007 Mortgage! The unpaid amount owed by POBD of \$278,147.66 as of November 23, 2009 owed to RE Loans is not an amount to which JV is subordinate at all.

JV L.L.C.'S OBJECTION AND MEMORANDUM IN OPPOSITION TO VALIANT IDAHO, LLC'S THIRD MOTION FOR SUMMARY JUDGMENT AND JV L.L.C.'S MOTION TO STRIKE VALIANT'S THIRD MOTION FOR SUMMARY JUDGMENT AND NOTICE OF HEARING FOR OCTOBER 23, 2015 AT 1:30 P.M. - 14

V. THE AUGUST 6, 2008 BORROWER'S SETTLEMENT STATEMENT PAY-OFF OF THE FIRST NOTES (P0099) OF \$6,473,545.18 AND OF THE SECOND NOTE (P016) OF \$2,700,000.00, AND THE PAY-OFFS WERE CONFIRMED IN THE BORROWER'S FINAL SETTLEMENT STATEMENT BY A SIMULTANEOUS RECORDING OF A SATISFACTION OF MORTGAGE, RECORDED AUGUST 6, 2008, INSTRUMENT NO. 756408.

JV and VP/NIR have previously filed with the Court, the "closing statements" of the August 6, 2008 "New Loan to File" (\$22,270,000.00 to MF08) and "New Second Loan to File - Pensco - \$2,700,000.00, which are JV's Exhibit "B" and JV's Exhibit "H" to JV's Memorandum of Opposition to Valiant's Motion for Summary Judgment (actually only a Motion for Partial Summary Judgment - because Valiant. Both of these documents were used in the August 2008 loans claimed by MF08 and PENSCO. Both of JV's Exhibit "B" and JV's Exhibit "H" identify the File No. as 239217. The District Judge, in one of her decision memorandums posed the issue of whether or not there was a SATISFACTION/RELEASE recorded for the loans that both JV and VP/NIR claims to have been "paid-off". The answer is yes, at the closing/settlement, identified on "FATCO 239217", First American Title recorded a SATISFACTION of Mortgage by RE LOAN, LLC, which was signed by Kelly NG, as Manager of RE LOANS, on June 23, 2008, and recorded August 6, 2008 as Instrument No. 756408, records of Bonner County, Idaho. A copy of said Satisfaction of Mortgage is attached hereto as JV's Exhibit "Q". There can be

JV L.L.C.'S OBJECTION AND MEMORANDUM IN OPPOSITION TO VALIANT IDAHO, LLC'S THIRD MOTION FOR SUMMARY JUDGMENT AND JV L.L.C.'S MOTION TO STRIKE VALIANT'S THIRD MOTION FOR SUMMARY JUDGMENT AND NOTICE OF HEARING FOR OCTOBER 23, 2015 AT 1:30 P.M. - 15

no reasonable doubt that the "First Loan - No. PO99" was paid-off. As part of First American Title's, Order No. 239217, JV's Exhibit "H", fourth line down, Borrower's Final Settlement Statements, shows \$6,172,325.18 "Loan No 0099" as "Pay-off First Note - Loan PO 0099, which is the exact same dollar amount shown on Reeve's Affidavit Exhibit "E" , second page, date August 6, 2008 "New Bal . . . \$6,172,325.18. In short, all Loans from RE Loans, including the Villelli Mortgage of \$8,000,000.00 recorded March 19, 2004, and the POBD/Mortgage of 2006, and the POBD/RE Mortgage of 2007 were "all - inclusive" and were all paid-off and Satisfied of Record. The March 2007 POBD/RE Loans own records, subordinated by Valiant as Exhibit "C" and "D" to the Reeve's Affidavit as of November 12, 2014 show the 2007 POBD/RE Loan # as being Loan No. PO99.

VI. PENSOC CLAIMS AN AUGUST 2008 MORTGAGE SECURING \$2.7 MILLION; HOWEVER THE SUM OF \$1.0 MILLION WAS PAID TO PENSOCO TRUST ON OCTOBER 26, 2009 BY PROCEEDS OF THE FIRE INSURANCE ON THE CLUB HOUSE FIRE.

The Club House was destroyed by fire in early 2009, and POBD had fire insurance coverage. POBD hired its own insurance adjuster to submit claims on the insurance policy. Charles Reeves, of POBD, furnished documents in response to JV's demand for production of documents as part of Reeve's Deposition, Defendant JV's Exhibit "E". These record documents included the following insurance payment records:

JV L.L.C.'S OBJECTION AND MEMORANDUM IN OPPOSITION TO VALIANT IDAHO, LLC'S THIRD MOTION FOR SUMMARY JUDGMENT AND JV L.L.C.'S MOTION TO STRIKE VALIANT'S THIRD MOTION FOR SUMMARY JUDGMENT AND NOTICE OF HEARING FOR OCTOBER 23, 2015 AT 1:30 P.M.- 16

1. On October 5, 2009 in a memo to POBD's insurance adjustor Adjustors International, Charles Reeves signed an authorization and directed payment, out of \$1,205,908.81 insurance proceeds to be made:

a. To Adjusters International	\$ 57,280.67
b. Bar-K; Pensco Trust	\$1,000,000.00
c. The Idaho Club Management	<u>\$ 148,628.14</u>
Total:	<u>\$1,205,908.81</u>

2. On October 27, 2009 Kathy Groenhout, for POBD (The Idaho Club) to Vincent Hua (Bar-K) and told him that he should be receiving an insurance claim money of \$1,000,000.00 either today or tomorrow and she requested a spread sheet after it was posted, as to how he "booked the payment".

3. On October 26, 2009, Greenspan Adjustors International, by Check No. 1238 paid \$1,000,000.00 dollars to Bar K with the notation "For Bar K's share in the \$1,205,908.81 Trust Account Deposit on October 16, 2009.

4. On November 2, 2009, Kathy Groenhout, bookkeeper/secretary for POBD emailed to Vincent Hua of Bar-K, stating that POBD had not received a pay down schedule for the \$1,000,000.00 paid on October 27, 2009.

These are JV's Exhibits:

1. Is JV's Exhibit "R"

JV L.L.C.'S OBJECTION AND MEMORANDUM IN OPPOSITION TO VALIANT IDAHO, LLC'S THIRD MOTION FOR SUMMARY JUDGMENT AND JV L.L.C.'S MOTION TO STRIKE VALIANT'S THIRD MOTION FOR SUMMARY JUDGMENT AND NOTICE OF HEARING FOR OCTOBER 23, 2015 AT 1:30 P.M. - 17

2. Is JV's Exhibit "S"

3. Is JV's Exhibit "T"

4. Is JV's Exhibit "U"

Valiant's Third Motion for Summary Judgment, supported by the Declaration of Barney Ng, dated September 22, 2015, at page 4, claims Pensco made a \$2,700,000.00 loan to POBD, supported by the NOTE and the Pensco Mortgage as the Exhibits "F" and "G" to the Reeve's Affidavit. Barney Ng's Declaration, page 10, at the top, states that as of the "Closing" the principal amount on the 2008 Pensco Note/Mortgage was \$2,700,000.00. It is clear that "Bar-K" Pensco Trust" was paid \$1,000,000.00, out of POBD's insurance proceeds, by check #1238 date October 26, 2009, authorized by "Charles W. Reeves, (The Idaho Club Management)" on October 5, 2009.

Twice Kathy Groenhout, for The Idaho Club (POBD), wrote to Vincent Hua at Bar-K, inquiring of a spread sheet showing how the \$1,000,000.00 payment was booked, as the pay down schedule.

There is no evidence, yet discovered, as to any reply from Bar-K, nor how Bar-K applied the \$1,000,000.00 to pay down schedule as to how Bar-K booked the payments. That is still a good question, as Bar Ng claims nothing was paid on the Pensco Mortgage, but Bar-K did received \$1.0 million on its 2008 Mortgage.

The \$1.0 million dollar payment to Pensco creates a genuine issue of material fact as to what, if any, amount is owed on the Pensco Mortgage, assigned to Valiant.

Barney Ng's Declaration, 22 September 2015, makes the claim that MF08 loan total of \$2,127,409.34 to POBD on the 2008 MF08 Note/Mortgage. (Ng's paragraph 28). Barney Ng's Declaration, claims \$2,127,509.34 was loaned by 2008 Note/Mortgage from MF08 to POBD "outside" of closing. However, the only sum Barney Ng's Declaration claims to have funded outside of closing is stated in his paragraph 23 and paragraph 24 was a "credit" of \$1,150,000.00 made on the 2007 RE Loan payment record on August 6, 2008.

JV raises the issue that Valiant claims \$2,127,409.34 from the 2008 MF08 Note/Mortgage; however, the only dollar amount claimed by Ng's Declaration is a credit, outside of escrow, placed on the 2007, P0099, Valiant's Exhibit "E", behind the date 08/06/08 "Paydown of \$1,150,000.00". In other words, MF08 furnished no money funding on its 2008 Mortgage, it only put a "credit" on the 2007 loan record, Valiant's Exhibit "E". The difference between the sum claimed .....\$2,127,409.34 on the artificial "credit" of .....\$1,150,000.00 is .....\$ 977,409.34

Ng's Declaration does not state or show how the \$977,409.34 difference was ever paid, funded, or credited by MF08 to POBD.

VII. RELIEF REQUESTED BY JV

1. Valiant's Third Motion For Summary Judgment and the NG Declaration be stricken and quashed as it is in violation of the Court's Order/Notice of September 17, 2015.

2. Valiant's Third Motion for Summary Judgment does not create matters of undisputed fact upon which the Court can enter, and a hearing on October 23, 2015 is untimely - at least 28 days having not expired.

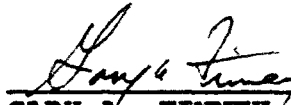
3. JV's Memorandum in Opposition and Affidavit of James Berry for JV, creates genuine issues of material fact.

4. That Valiant's Third Summary Judgment be denied.

5. That JV has at least ten (10) more days to produce and study 1,700 pages of First American Title's 2008 closings for MF08 and Pensco.

6. That the matter go to trial on January 25, 2016 as Ordered by the Court.

Respectfully submitted, this 13<sup>th</sup> day of October, 2015.

  
\_\_\_\_\_  
GARY A. FINNEY  
Attorney at Law



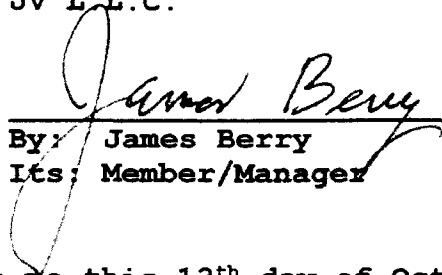
VERIFICATION

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

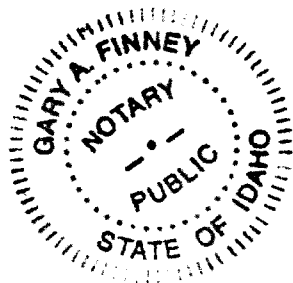
I, James Berry, as a Member/Manager of JV L.L.C., first being duly sworn upon oath depose and say the following:


I am the Member/Manager of JV L.L.C. in this case and I have read the foregoing JV L.L.C.'S OBJECTION AND MEMORANDUM IN OPPOSITION TO VALIANT IDAHO, LLC'S THIRD MOTION FOR SUMMARY JUDGMENT AND JV L.L.C.'S MOTION TO STRIKE VALIANT'S THIRD MOTION FOR SUMMARY JUDGMENT AND NOTICE OF HEARING FOR OCTOBER 23, 2015 AT 1:30 P.M. dated the 13<sup>th</sup> day of October, 2015, and know the contents therein stated and believe the same to be true.

JV L.L.C.

  
By: James Berry  
Its: Member/Manager

SUBSCRIBED AND SWORN to before me this 13<sup>th</sup> day of October, 2015.



  
Notary Public-State of Idaho  
Residing at ~~2042~~ Sandpoint  
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 13<sup>th</sup> day of October, 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

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]

By: 



Sandpoint Title Insurance, Inc.

Sandpoint Title Insurance, Inc.  
120 South 2nd Avenue  
Post Office Box 1767  
Sandpoint, ID 83864

Filed for Record at Request of:

Name BAR-K  
Address 101 Lafayette Circle  
City, State, Zip Lafayette, Ca. 94549

FILED BY  
SANDPOINT TITLE INSURANCE  
2007 JUN -8 P 4:09  
300  
MARIE SCOTT  
BONNER COUNTY RECORDER  
DEPUTY

File #49214-NA

730445

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

SATISFACTION OF MORTGAGE

KNOW ALL MEN BY THESE PRESENTS: That R.E. LOANS LLC, A California Limited Liability Company, the owner and holder of that certain mortgage bearing the date of June 19, 2006, executed by PENE ORBILLE BONNER DEVELOPMENT HOLDINGS INC., and recorded on JUNE 19, 2006, as Instrument No. 706471, records of Bonner County, Idaho, to secure payment of the sum of TWENTY MILLION FIVE HUNDRED THOUSAND Dollars (\$20,500,000.00) and interest, do hereby acknowledge said mortgage has been FULLY SATISFIED AND DISCHARGED, and does hereby authorize and direct the said County Auditor to enter full satisfaction thereof. IN WITNESS WHEREOF, I have hereunto set my hand(s) and seal(s) this 7<sup>th</sup> day of June, 2007..

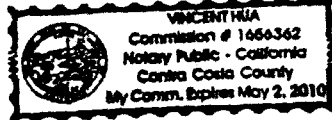
R.E. LOANS LLC

BY:

STATE OF CALIFORNIA )  
COUNTY OF Contra Costa )  
JSE

On this 7<sup>th</sup> day of June 7 in the year 2007 before me, a Notary Public in and for said state, personally appeared EDUARD HUBER, known or identified to me to be the person that executed this instrument as the member of R.E. LOANS LLC or the person who executed the instrument on behalf of said company and acknowledged to me that said company executed the same.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal the day and year first above written.



Notary Public for the State of  
Residing at: Lafayette, CA  
Commission Expires: MAY 2, 2010



STATE OF IDAHO

County of Bonner

I, Michael W. Rosedale, County Recorder in and for the county and state aforesaid, do hereby certify that the foregoing instrument is a true and correct copy of the original thereof recorded in my office by instrument number 730445. Witness my hand and seal.

The 13 day of Oct, 2015  
BONNER COUNTY RECORDER

By: Cynthia Brannon Deputy

JVS EXHIBIT A

CV-2009-1818



Sandpoint Title Insurance, Inc.

BUYER/BORROWER STATEMENT  
Estimated

Escrow Number: 41847-NA  
Escrow Officer: Nancy Albanese

Title Order Number: 41847-NA  
Date: 06/13/2006 - 8:55:54AM  
Closing Date: 06/14/2006

Buyer/Borrower: Pend Oreille Bonner Development Holdings Inc.  
Seller: North Idaho Resorts LLC

Property: Hidden Lakes Golf Course, 151 Clubhouse Way, Sandpoint, ID 83864

<b>TOTAL CONSIDERATION</b>		15,830,000.00
<b>PRORATIONS/ADJUSTMENTS:</b>		
Taxes @ 72,448.60 per 12 month(s) 1/01/2006 to 4/15/2006		20,642.89
Water assoc @ 1,108.00 per 1 month(s) 6/14/2006 to 7/01/2006	619.27	
Homeowner's Association Dues @ 5,600.00 per 12 month(s) 6/14/2006 to 12/31/2006	3,616.44	
Berry Note assumed by buyer		2,565,000.00
Note for REL loan differential		511,583.34
<b>TITLE CHARGES</b>		
Owner's Premium for 15,830,000.00: Sandpoint Title Insurance, Inc.	13,515.00	
Lender/Mortgagee Premium for 20,500,000.00: Sandpoint Title Insurance, Inc.	22,159.00	
8.1, 100, 116: Sandpoint Title Insurance, Inc.		
Mortgage Recording Fee: Sandpoint Title Insurance, Inc.		
Recording fees: Sandpoint Title Insurance, Inc.	500.00	
<b>ESCROW CHARGES TO: Sandpoint Title Insurance, Inc.</b>		
Escrow Fee	5,000.00	
Courier Fee		
<b>LENDER CHARGES</b>		
New to Bar-K Inc.:		20,500,000.00
Hold For Construction: Bar-K Inc.	11,400,000.00	
Origination Fee: Bar-K Inc.	355,000.00	
Inspection Fee: Bar-K Inc.	6,500.00	
Attorney Fees: Bar-K Inc.	22,500.00	
<b>LOAN PAYOFF: J.V. LLC</b>		
Interest 4/15 To 6/1	38,311.68	
Total Loan Payoff	38,311.68	
<b>BALANCE DUE TO ESCROW</b>		4,100,495.16
<b>TOTALS</b>	27,697,721.39	27,697,721.39

Pend Oreille Bonner Development Holdings Inc.

COPY

By: \_\_\_\_\_  
Chip L. Bowlby, President

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

JV's EXHIBIT 0

CV-2009-1810

3771

Date		LOAN BALANCE	Advance	Draw Balance	
6/19/2006		20,600,000.00		19,475,000.00	
8/19/2006	advance	(9,100,000.00)	9,100,000.00	(9,100,000.00)	
11/9/2006	paydown		(278,587.50)		
	paydown		(722,712.50)		
	paydown		(708,562.50)		
	advance	(88,411.47)	88,411.47	(83,990.90)	
	paydown		(512,762.50)		
	paydown		(472,387.50)		
	paydown		(200,000.00)		
	advance	(478,176.97)	478,176.97	(454,268.12)	9,813,900.00 Loan draws incl refinance costs
	paydown		(204,000.00)		(3,713,900.00) Paydown old loan
	paydown		(153,000.00)		6,100,000.00
	paydown		(310,887.50)		
	paydown		(153,000.00)		
		(9,866,588.44)	10,833,411.56	5,952,688.44	9,836,740.98
			869.78	(869.79)	
			(22,975.35)	22,975.35	
			(51,266.00)	51,266.00	
			(73,950.00)	73,950.00	
		10,888,100.00	6,100,000.00		
3/15/2007		21,200,000.00		21,200,000.00	
3/15/2007	Advance 5%	(6,100,000.00)	6,100,000.00	(6,100,000.00)	(6,100,000.00)
				(755,000.00)	(6,855,000.00)
3/15/2007	Paydown		(136,000.00)		
3/15/2007	Paydown		(100,000.00)		
3/16/2007	Advance	(1,826,095.48)	1,826,095.48	(1,544,790.71)	
4/9/2007	Paydown		(831,126.00)		
4/16/2007	Advance	(2,078,812.80)	2,078,812.80	(1,974,872.16)	
5/3/2007	Paydown Hopper		(240,975.00)		
5/7/2007	Paydown Feehan		(332,775.00)		
5/7/2007	Paydown Sullivan Homes		(178,500.00)		
5/10/2007	Paydown Cove		(309,825.00)		
5/18/2007	Paydown Washington		(455,175.00)		
5/18/2007	Paydown Sullivan Homes		(187,000.00)		
5/21/2007	Paydown Belle		(344,250.00)		
5/21/2007	Advance	(407,880.18)	407,880.18	(387,488.17)	
5/23/2007	Paydown Madi		(288,875.00)		
	Paydown	(263,157.89)	263,157.89	(250,000.00)	
	Paydown				
5/31/1975	Paydown		(573,750.00)		
5/31/2007	Advance	(803,947.37)	803,947.37	(573,750.00)	
8/1/2007	Advance June 1 interest	(82,291.16)	82,291.16	(78,176.80)	
8/16/2007	Paydown Reeves		(115,000.00)		
8/16/2007	Advance	(121,052.63)	121,052.63	(115,000.00)	11,893,763.82 New Loan draws
		(710,526.32)	710,526.32	(675,000.00)	(3,891,250.00) New loan paydowns
		9,206,236.18	8,102,513.82	8,745,924.36	8,102,513.82
7/17/2007	Advance	(4,920,044.54)	4,620,044.54	(4,389,042.31)	
7/17/2007	Advance Interest 7-1-07	(82,021.01)	82,021.01	(77,819.96)	
7/20/2007	Paydown Hagen		0.00	(212,500.00)	
7/30/2007	Advance Draw 10	(4,335,053.24)	4,335,053.24	(4,118,300.58)	
8/9/2007	Advance Interest 8-1-07	(109,162.95)	109,162.95	(103,704.80)	
8/17/2007	Paydown Quill		0.00	(229,500.00)	
8/23/2007	Paydown Shea		0.00	(234,250.00)	
8/23/2007	Paydown Shea		0.00	(224,215.00)	
8/23/2007	Paydown Shea		0.00	(215,175.00)	
8/27/2007	Paydown Todd Sullivan (pers)		(140,250.00)		
		59,964.44	15,982,905.58	58,968.71	
			(21,140,045.56)		

JV's EXHIBIT P

CV-2009-1810

FATCO  
239217

756408

756408

**SATISFACTION OF MORTGAGE  
SECURITY AGREEMENT AND FIXTURE FILING**

FILED BY  
First American Title  
2008 AUG - 6 P 3:52  
300  
MARIE SCOTT  
BONNER COUNTY RECORDER  
CB DEPUTY

The undersigned, R.E. Loans, LLC., a California limited liability company, is the legal owner and holder of the Mortgage for the total sum of \$8,000,000.00, and all other indebtedness secured by Mortgage dated March 19, 2004, executed by Vilelli Enterprises, Inc., a California Corporation, VP, Incorporated, and Idaho Corporation, and Pend Oreille Limited Partnership (aka in California as Pend Oreille, Ltd.), a California limited partnership, to R.E. Loans, LLC, a California limited liability company, recorded March 24, 2004, as Instrument No.: 646455, in the records of Bonner County, Idaho.

I hereby certify that all of the property described in said Mortgage, together with the debt thereby secured, is fully paid, satisfied and discharged.

Dated this 23<sup>rd</sup> day of June, 2008.

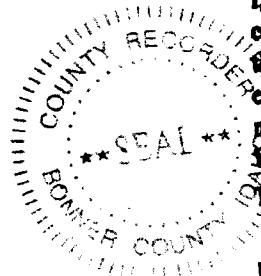
R.E. Loans, LLC

By: [Signature]

Title: [Signature]

**STATE OF IDAHO**

County of Bonner  
I, Michael W. Rosedale, County Recorder in and for the county and state aforesaid, do hereby certify that the foregoing instrument is a true and correct copy of the original thereof recorded in my office by instrument number 756408.  
Witness my hand and seal,

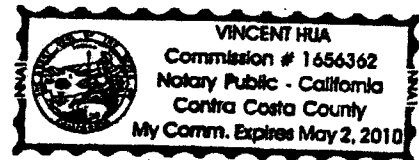


The 13 day of OCT, 2015.  
BONNER COUNTY RECORDER  
By: Cynthia Branner Deputy

STATE OF CALIFORNIA )  
COUNTY OF CONTRA COSTA : ss

On this 23<sup>rd</sup> day of June, 2008, before me, a Notary Public, personally appeared Kelly All, known or identified to me, to be the manager or a member of the limited liability company that executed the instrument or the person who executed the instrument on behalf of said limited liability company and acknowledged to me that such limited liability company executed the same..

[Signature]  
Notary Public of California  
Residing at: 201 Lafayette Creek, Lafayette, CA  
Commission Expires: May 2, 2010



W0140

JV'S EXHIBIT Q

CV-2009-3873

Date: October 5, 2009

Adjusters International  
305 E Pine St  
Seattle, Washington 98122

Re: Fire Loss on: 12/22/2008  
Insured Name: The Idaho Club Mgmt.  
Loss Location: 151 Clubhouse Way, Sandpoint, ID 83864

Gentlemen:

This letter authorizes Adjusters International to deposit Safeco Insurance Companies Insurance Check No. 92258874, dated September 1, 2009, in the amount of \$1,205,908.81 into Drew Delaloye Lucurell Attorney at Law IOLTA Trust Account with The Commerce Bank of Washington.

When the check clears the account, Adjusters International is hereby authorized to issue the following checks, payable to:

Adjusters International	\$57,280.67
Bar-K; Pensco Trust	\$1,000,000.00
The Idaho Club Mgmt.	<u>\$148,628.14</u>
Total:	<u>\$1,205,908.81</u> =====

With reference to this Trust Account deposit, the undersigned insured agrees to hold harmless Adjusters International, and Drew D. Lucurell, and its employees and agents, from any costs or liabilities which may arise from the insolvency, neglect, misconduct or default of The Commerce Bank of Washington.

Signed: \_\_\_\_\_ Date: \_\_\_\_\_  
(Bar-K)

Signed: \_\_\_\_\_ Date: \_\_\_\_\_  
(Pensco Trust)

Signed: *Blaine W. Rame* Date: 10/5/09  
(The Idaho Club Mgmt.)

JV's EXHIBIT R  
CV-2009-1810  
3774

See Exhibit 5

See Exhibit 5

1238

**GREENSPAN ADJUSTERS INTERNATIONAL, INC.**  
 CLIENT TRUST ACCOUNT  
 400 OYSTER POINT BLVD. STE. 519  
 SOUTH SAN FRANCISCO, CA 94080

DATE OCT. 26, 2009 80-7118-3211

PAY TO THE ORDER OF BAR-K \$1,000,000.00

ONLY ONE MILLION & 00/100 DOLLARS

**citibank**  
CITIBANK, N.A. 60 FRED  
 400 OYSTER POINT BLVD. SUITE 100  
 SOUTH SAN FRANCISCO, CA 94080

FOR BACKS SHOWN IN THE #125408 81  
TRUST ACCOUNT DEPOSIT ON 10/26/09

**COPY COPY COPY**

⑈001238⑈ ⑈321171184⑈ 202192183⑈

JV's EXHIBIT S

CV-2009-181D  
3775

no 3



See Exhibit 5

Page 1 of 1

**Kathy Groenhout**

---

**From:** Kathy Groenhout  
**Sent:** Monday, November 02, 2009 9:59 AM  
**To:** 'Vincent Hua'  
**Cc:** Chuck Reeves  
**Subject:** FW: insurance money

Hi Vincent,

Please see the note below I sent last week . I do not believe I received the pay down schedule from you regarding our \$1,000,000 payment on the 27<sup>th</sup> of October. Would you please fax it again. Thanks and have a great week.

Kathy Groenhout  
The Idaho Club  
208-255-4079 ph  
208-255-4183 fax  
kgroenhout@TheIdahoClub.com

---

JV'S EXHIBIT T

CV-2009-1810  
3776

**From:** Kathy Groenhout  
**Sent:** Tuesday, October 27, 2009 8:40 AM  
**To:** 'Vincent Hua'  
**Subject:** insurance money

Hi Vincent,

You should be receiving insurance claim money of \$1,000,000 either today or tomorrow. Would you please send me our spreadsheet after it is posted so I know how you booked the payment? Chuck is anxious to have it booked today or tomorrow. Thanks so much and hope you are having a great week.... We had snow yesterday.... I'm not ready for winter.....  
Kathy

Kathy Groenhout  
The Idaho Club  
208-255-4079 ph  
208-255-4183 fax  
kgroenhout@TheIdahoClub.com

11/2/2009

JV's EXHIBIT 4

CV-2009-1810 3777

GARY A. FINNEY  
FINNEY FINNEY & FINNEY  
Attorneys at Law

Old Power House Building  
120 East Lake Street, Suite 317  
Sandpoint, Idaho 83864  
Phone: (208) 263-7712  
Fax: (208) 263-8211  
ISB No. 1356

STATE OF IDAHO  
COUNTY OF BONNER  
FIRST JUDICIAL DIST.  
OCT 13 PM 4 00  
CLERK DISTRICT COURT  
DEPUTY

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

GENESIS GOLF BUILDERS, INC., ) Case No. CV-2009-1810  
formerly known as National )  
Golf Builders, Inc., a Nevada ) AFFIDAVIT OF JAMES BERRY ON  
corporation, ) BEHALF OF JV, LLC IN  
 ) OPPOSITION TO VALIANT IDAHO,  
Plaintiff, ) LLC'S THIRD MOTION FOR SUMMARY  
 ) JUDGMENT

v. )

PEND OREILLE BONNER )  
DEVELOPMENT, LLC, a Nevada )  
limited liability company; )  
R.E. LOANS, LLC, a California )  
limited liability company; DAN )  
S. JACOBSON, an individual, )  
SAGE HOLDINGS LLC, an Idaho )  
limited liability company; )  
STEVEN G. LAZAR, an )  
individual; PENSCO TRUST CO. )  
CUSTODIAN FBO BARNEY NG; )  
MORTGAGE FUND '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 )

AFFIDAVIT OF JAMES BERRY ON BEHALF OF JV, LLC IN OPPOSITION TO VALIANT  
IDAHO, LLC'S THIRD MOTION FOR SUMMARY JUDGMENT- 1

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 )

AFFIDAVIT OF JAMES BERRY ON BEHALF OF JV, LLC IN OPPOSITION TO VALIANT  
IDAHO, LLC'S THIRD MOTION FOR SUMMARY JUDGMENT- 2

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; MONTAHENO )  
INVESTMENTS, LLC, a Nevada )  
limited liability company; )  
CHARLES W. REEVES and ANN B. )  
REEVES, husband and wife; and )  
C.E. KRAMER CRANE & )  
CONTRACTING, INC., an Idaho )  
corporation, )

Third Party )  
Defendants. )

---

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

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

AFFIDAVIT OF JAMES BERRY ON BEHALF OF JV, LLC IN OPPOSITION TO VALIANT  
IDAHO, LLC'S THIRD MOTION FOR SUMMARY JUDGMENT- 3

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, testifies, as follows:

1. I am the manager of JV, LLC, and at all times since I sold Moose Mountain to VP, Inc. (Villelli Entity) and took back a recorded purchase money mortgage, recorded October 24, 1995, I have personal knowledge of the transactions when the Villelli entities sold Moose Mountain to POBD.

AFFIDAVIT OF JAMES BERRY ON BEHALF OF JV, LLC IN OPPOSITION TO VALIANT IDAHO, LLC'S THIRD MOTION FOR SUMMARY JUDGMENT- 4

2. Mr. Villelli gave me a copy of the Third Purchase and Sale Agreement of February 2005 because JV had agreed the new buyer could assume the 1995 Note/Mortgage to JV in the then unpaid principal sum of \$2,565,000.00. The Third Purchase and Sale Agreement also stated that the Buyer (POBD) assumed a 2004 Note/Mortgage from Villelli Entities to RE Loans, in the then sum of \$8,515,000.00. The down payment/purchase amount was show as:

1. Cash at Closing.....	\$4,500,000.00
2. Assume "Berry" Note (1995) to JV of...	\$2,565,000.00
3. Assume Villelli Note(2004) to RE Loans	<u>\$8,515,000.00</u>
Totals:	\$15,580,000.00

3. The sale to POBD did not close until June 19, 2006.

4. From 1995 until just prior to the June 19, 2006 closing date, the JV 1<sup>st</sup> Mortgage was always the first priority recording on Moose Mountain.

5. Just prior to the June 19, 2006 closing date, Mr. Charles Reeves asked me to agree for JV to subordinate to a new loan POBD was getting from POBD by borrowing \$20,500,000.00 dollars to be used for construction and financing of the new golf course and platting lots for resale as the project called The Idaho Club. I agreed to do so, but JV must have some first lien mortgage. Reeves agreed to give JV a first mortgage for \$2,565,000.00 on the part of the property POBD was acquiring from the Villelli entities, called Lakefront or Trestle Creek.

6. Right about the closing, June 19, 2006, Mr. Villelli gave me a copy of the Closing Statement, JV's Exhibit D, which showed the Berry Note assumed by buyer of \$2,565,000.00. I also saw that instead of POBD assuming the Villelli 2004 Mortgage to RE, that it was paid-off under the entry LOAN PAYOFF: BAR-K, INC....\$8,064,776.21. This showed me that the 1995 Mortgage to JV would be the only Mortgage on Moose Mountain because POBD paid-off the 2004 second recorded Mortgage to RE loans on the \$8.0 million Mortgage, Defendant's Exhibit "C" for JV.

7. I also have a copy of the Buyers/Borrowers Statement for the sale and purchase, signed by Charles W. Reeves, which is attached hereto as JV's Exhibit O. This shows the New to Bar-K, Inc....\$20,500,000.00, and it shows "Hold For Construction Bar K, Inc...\$11,400.00. The difference is ...\$9,100,000.00.

8. Charles Reeves was deposed on August 18, 2013, which is Defendant JV's Exhibit E. Later, Mr. Reeves furnished "boxes" of POBD records as the production of records he was requested to bring to the deposition. Reeves' Deposition was in the case *Union Bank v. BOPD, et al.*, Bonner County Case No. 2011-0135. The Defendants in that case included JV, VP/NIR/RE LOANS; PENSCO; and MORTGAGE FUND 08.

Attorney Rick Stacey represented RE Loans. Attorney Brent Featherston filed an appearance for MF08 and Pensco. The Court is requested to judicially notice the Clerk's file record of Case No. CV-2011-0135 to verify my foregoing statement.

AFFIDAVIT OF JAMES BERRY ON BEHALF OF JV, LLC IN OPPOSITION TO VALIANT IDAHO, LLC'S THIRD MOTION FOR SUMMARY JUDGMENT- 6



9. Since the 2004 Mortgage to RE Loans (\$8,000,000) was paid-off, I relied on that to believe the only Mortgage was JV's 1995 first record Mortgage.

10. I have spent over 100 hours going through and analyzing the documents furnished by Charles Reeves. In Mr. Reeves' documents is a page dated 8/29/2007, titled Bar-K, 8/28/07, page 1 which is attached hereto as JV's Exhibit P. This Exhibit P shows the beginning date of June 19, 2006, which is the closing date to the POBD purchase, which shows the Loan Balance of \$20,500,000.00 with a 6/19/2006 "advance" of \$9,100,000. This \$9,100,000 sum is the then unpaid amount of the Villelli Entities 2004 Mortgage. This is confirmed as the difference of POBD purchase closing statement of

	\$20,500,000.00	New to Bar-K
less	<u>\$11,400,000.00</u>	Hold For Construction
	\$9,100,000.00	

11. At no time did JV agree to subordinate its 1995 Mortgage first recorded, to a 2004 second mortgage for Villelli to RE Loans, yet that is how "Bar K" booked the very first entry as an "advance" on RE Loans 2006 Mortgage to RE. There was no money advanced or paid out by RE Loans on its 2006 Mortgage. As JV's Exhibit P shows, the only actual money RE paid out on the 2006 Mortgage (advanced) were 2 sums:

a)	\$ 88,411.47
b)	<u>\$478,176.97</u>
	\$566,588.44

In other words, on its 2006 Mortgage for \$20,500,000.00, RE only loaned actual money of \$566,588.44. As JV's Exhibit P shows, there were many "pay down" sums paid by POBD to RE. JV's Exhibit P shows total pay downs of \$5,952,688.44 so that as of the 2007 RE Loan/Mortgage for \$21,200,000.00 dated 3/15/2007 remaining unpaid on the 2004 Mortgage was reduced to \$6,100,000.00 as a loan "beginning" balance, which is the amount still unpaid on the 2004 Villelli Mortgage to RE.

12. As part of the negotiations between myself and Charles Reeves, in 2007, when he asked for JV to do a Second Subordination Agreement, I agreed but I required the 2006 Loan/Mortgage (\$20,500,000.00) to be discharged and released of record. This clause was paragraph 1, page 1 of 13, in the Second Subordination Agreement recorded March 15, 2007 (Instrument No. 728433, which states:

"1. The \$20,500,000.00 Note and Mortgage shall be discharged and release (sic) of record, and the "new" Note and Mortgage (\$21,500,000.00) shall be the only obligation and lien to which the JV Mortgage is subordinate...."

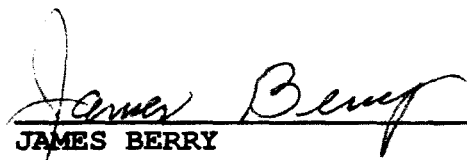
This Second Subordination Agreement is RE's Exhibit 8 to its first Motion for Summary Judgment (partial - as only to priorities).

13. As required, RE Loans signed and filed a Satisfaction of its 2006 Mortgage (\$20,500,000.00), recorded June 8, 2007, Instrument No. 730445. This SATISFACTION was previously AFFIDAVIT OF JAMES BERRY ON BEHALF OF JV, LLC IN OPPOSITION TO VALIANT IDAHO, LLC'S THIRD MOTION FOR SUMMARY JUDGMENT- 8

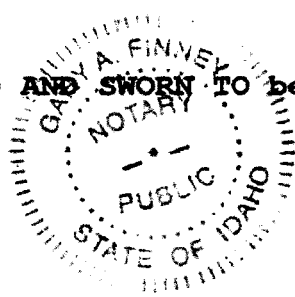
submitted to the Court in JV's Memorandum in Opposition to Valiant's Motion for Summary Judgment, as JV Defendant's Exhibit A. Another copy of JV's Exhibit A is attached hereto as Exhibit "A" for convenience of the Court and the parties.

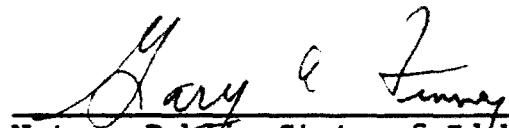
14. By this 2007 Satisfaction of Mortgage (Exhibit A) all of the 2006 Mortgage sums were discharged and released, which would include the \$6,100,000.00 unpaid amount. However, Valiant has submitted proof that RE Loans started the 2007 (Note/Loan/\$21,200,000.00) with the 3/15/2007 entry of "initial advance" .....\$6,100,000.00. This is shown on Valiant's prior exhibit, Exhibit E, attached to Charles Reeves' Affidavit.

15. After starting with \$6,100,000.00 the Exhibit E, page 3, shows as of November 23, 2009 New Balance....\$278,147.65, which is the 2007 RE Mortgage sum assigned to Valiant and sought to be foreclosed. Between the parties POBD/RE Loan/and Valiant, the \$278,147.65 may still be owed, but it is not any sum to which JV is subordinated by its Second Subordination Agreement.

  
\_\_\_\_\_  
JAMES BERRY

SUBSCRIBED AND SWORN TO before me this 13<sup>TH</sup> day of October, 2015.



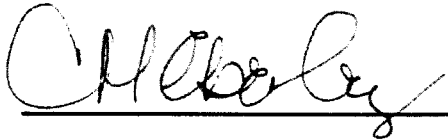
  
\_\_\_\_\_  
Notary Public-State of Idaho  
Residing at: SANDPOINT  
My Commission expires: OCT 14 2017

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was delivered via facsimile or as otherwise indicated, this 13<sup>th</sup> day of October, 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

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]

  
\_\_\_\_\_



Sandpoint Title Insurance, Inc.

BUYER/BORROWER STATEMENT  
Estimated

Escrow Number: 41847-NA  
Escrow Officer: Nancy Albanese

Title Order Number: 41847-NA  
Date: 06/13/2006 - 8:55:54AM  
Closing Date: 06/14/2006

Buyer/Borrower: Pend Oreille Bonner Development Holdings Inc.  
Seller: North Idaho Resorts LLC

Property: Hidden Lakes Golf Course, 151 Clubhouse Way, Sandpoint, ID 83864

<b>TOTAL CONSIDERATION</b>	15,830,000.00	
<b>PRORATIONS/ADJUSTMENTS:</b>		
Taxes @ 72,448.60 per 12 month(s) 1/01/2006 to 4/15/2006		20,642.89
Water assoc @ 1,108.00 per 1 month(s) 6/14/2006 to 7/01/2006	619.27	
Homeowner's Association Dues @ 6,600.00 per 12 month(s) 6/14/2006 to 12/31/2006	3,616.44	
Berry Note assumed by buyer		2,565,000.00
Note for RBL loan differential		511,583.34
<b>TITLE CHARGES</b>		
Owner's Premium for 15,830,000.00: Sandpoint Title Insurance, Inc.	13,515.00	
Lender/Mortgagee Premium for 20,300,000.00: Sandpoint Title Insurance, Inc.	22,159.00	
8.1, 100, 116: Sandpoint Title Insurance, Inc.		
Mortgage Recording Fee: Sandpoint Title Insurance, Inc.		
Recording fees: Sandpoint Title Insurance, Inc.	500.00	
<b>ESCROW CHARGES TO: Sandpoint Title Insurance, Inc.</b>		
Escrow Fee	5,000.00	
Courier Fee		
<b>LENDER CHARGES</b>		
New to Bar-K Inc.:		20,500,000.00
Hold For Construction: Bar-K Inc.	11,400,000.00	
Origination Fee: Bar-K Inc.	955,000.00	
Inspection Fee: Bar-K Inc.	6,500.00	
Attorney Fees: Bar-K Inc.	22,500.00	
<b>LOAN PAYOFF: J.V. LLC</b>		
Interest 4/15 To 6/1	38,311.68	
Total Loan Payoff	38,311.68	
<b>BALANCE DUE TO ESCROW</b>		4,100,495.16
<b>TOTALS</b>	27,697,721.39	27,697,721.39

Pend Oreille Bonner Development Holdings Inc.

COPY

By: \_\_\_\_\_  
Chip L. Bowlby, President

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

JV'S EXHIBIT 0

CV-2009-1810

3788

Date		LOAN BALANCE	Advance	Draw Balance	
8/19/2006		20,500,000.00		19,475,000.00	
8/19/2006	advance	(9,100,000.00)	9,100,000.00	(9,100,000.00)	
11/9/2006	paydown		(278,587.50)		
	paydown		(722,712.50)		
	paydown		(708,582.50)		
	advance	(88,411.47)	88,411.47	(83,990.90)	
	paydown		(512,782.50)		
	paydown		(472,387.50)		
	paydown		(200,000.00)		9,813,900.00 Loan draws incl refinance costs
	advance	(478,176.97)	478,176.97	(454,288.12)	(3,713,900.00) Paydown old loan
	paydown		(204,000.00)		6,100,000.00
	paydown		(153,000.00)		
	paydown		(310,887.50)		
	paydown		(153,000.00)		
		(9,858,588.44)	10,833,411.56	5,952,688.44	9,836,740.98
			889.79	(869.79)	
			(22,975.35)	22,975.35	
			(51,258.00)	51,258.00	
			(73,950.00)	73,950.00	
			10,886,100.00	6,100,000.00	
3/15/2007		21,200,000.00		21,200,000.00	
3/15/2007	Advance	(9,100,000.00)	6,100,000.00	(6,100,000.00)	(6,100,000.00)
	5%			(755,000.00)	(6,855,000.00)
3/15/2007	Paydown		(136,000.00)		
3/15/2007	Paydown		(100,000.00)		
3/16/2007	Advance	(1,828,095.48)	1,828,095.48	(1,544,790.71)	
4/9/2007	Paydown		(831,125.00)		
4/16/2007	Advance	(2,078,812.80)	2,078,812.80	(1,974,872.18)	
6/3/2007	Paydown Hopper		(240,975.00)		
5/7/2007	Paydown Feehan		(332,775.00)		
5/7/2007	Paydown Sullivan Homes		(178,500.00)		
5/10/2007	Paydown Gove		(309,825.00)		
5/18/2007	Paydown Washington		(455,175.00)		
5/18/2007	Paydown Sullivan Homes		(187,000.00)		
5/21/2007	Paydown Baile		(344,260.00)		
5/21/2007	Advance	(407,880.18)	407,880.18	(387,486.17)	
6/23/2007	Paydown Maci		(288,975.00)		
	Paydown	(263,157.89)	263,157.89	(250,000.00)	
	Paydown				
5/31/1975	Paydown		(573,750.00)		
5/31/2007	Advance	(603,947.37)	603,947.37	(573,750.00)	
6/1/2007	Advance June 1 interest	(82,291.18)	82,291.18	(78,176.80)	
6/15/2007	Paydown Reeves		(115,000.00)		
6/15/2007	Advance	(121,062.63)	121,062.63	(115,000.00)	11,893,763.82 New Loan draws
		(710,526.32)	710,526.32	(675,000.00)	(3,891,250.00) New loan paydowns
			9,206,236.18	8,102,513.82	8,102,513.82
7/17/2007	Advance	(4,620,044.54)	4,620,044.54	(4,389,042.31)	
7/17/2007	Advance interest 7-1-07	(82,021.01)	82,021.01	(77,919.98)	
7/20/2007	Paydown Hagen		(212,500.00)		
7/30/2007	Advance Draw 10	(4,335,053.24)	4,335,053.24	(4,119,300.58)	
8/9/2007	Advance interest 8-1-07	(109,162.95)	109,162.95	(103,704.80)	
8/17/2007	Paydown Quill		(229,500.00)		
8/23/2007	Paydown Shea		(234,250.00)		
8/23/2007	Paydown Shea		(224,215.00)		
8/23/2007	Paydown Shea		(215,175.00)		
8/27/2007	Paydown Todd Sullivan (pers)		(140,250.00)		
		59,954.44	15,992,905.58	66,966.71	
			(21,140,045.56)		

JV's EXHIBIT P

CV-2009-1810 3789



Sandpoint Title Insurance, Inc.

Sandpoint Title Insurance, Inc.  
178 South 2nd Avenue  
Post Office Box 1767  
Sandpoint, ID 83864

Filed for Record at Request of:

Name BAR-K  
Address 101 Lafayette Circle  
City, State, Zip Lafayette, Ca. 94549

FILED BY  
SANDPOINT TITLE INSURANCE  
2007 JUN - 8 P 4:09  
300  
MARIE SCOTT  
BONNER COUNTY RECORDER  
DEPUTY

File #49214-NA

730445

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

SATISFACTION OF MORTGAGE

KNOW ALL MEN BY THESE PRESENTS: That R.E. LOANS LLC, A California Limited Liability Company, the owner and holder of that certain mortgage bearing the date of June 19, 2006, executed by PEND OREILLE BONNER DEVELOPMENT HOLDINGS INC., and recorded on JUNE 19, 2006, as Instrument No. 706471, records of Bonner County, Idaho, to secure payment of the sum of TWENTY MILLION FIVE HUNDRED THOUSAND Dollars (\$20,500,000.00) and interest, do hereby acknowledge said mortgage has been FULLY SATISFIED AND DISCHARGED, and does hereby authorize and direct the said County Auditor to enter full satisfaction thereof. IN WITNESS WHEREOF, I have hereunto set my hand(s) and seal(s) this 7<sup>th</sup> day of June, 2007.

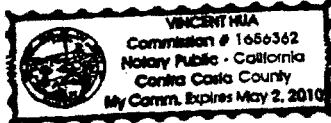
R.E. LOANS LLC

BY:

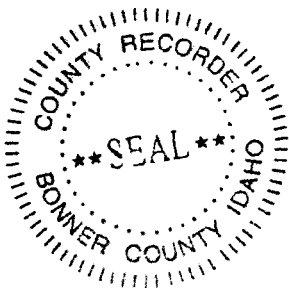
STATE OF CALIFORNIA }  
COUNTY OF Contra Costa } ss.

On this 7<sup>th</sup> day of June 7 in the year 2007 before me, a Notary Public in and for said state, personally appeared Vincent Hurl before me, Notary Public in and for said state, personally appeared Vincent Hurl before me, a Notary Public in and for said state, known or identified to me to be the person that executed this instrument as the member of R.E. LOANS LLC or the person who executed the instrument on behalf of said company and acknowledged to me that said company executed the same.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal the day and year first above written.



Notary Public for the State of  
Residing at: Lafayette, CA  
Commission Expires: MAY 2, 2010



STATE OF IDAHO

County of Bonner

I, Michael W. Rosedale, County Recorder in and for the county and state aforesaid, do hereby certify that the foregoing instrument is a true and correct copy of the original thereof recorded in my office by instrument number 730445

Witness my hand and seal,

The 13 day of Oct, 2015

BONNER COUNTY RECORDER

By Cynthia Branner Deputy

JVS

EXHIBIT A

CV-2009-1810

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

CLERK OF DISTRICT COURT  
2015 OCT 13 P 4:25  
CLERK OF DISTRICT COURT

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

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

GENESIS GOLF BUILDERS, INC., formerly  
known as National Golf Builders, Inc., a  
Nevada corporation,

Plaintiff,

vs.

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

Defendants.

Case No. CV 2009-01810

DECLARATION OF SUSAN P. WEEKS IN  
OPPOSITION TO VALLANT'S THIRD  
MOTION FOR SUMMARY JUDGMENT

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,

Susan P. Weeks declares as follows:


1. I am over the age of 18, and competent to testify to the matters set forth herein. I make this Declaration of my own personal knowledge, and have personal knowledge of the facts herein contained.
2. I am the attorney of record for Defendants North Idaho Resorts, LLC and VP, Incorporated.



3. Attached hereto for review and consideration as Exhibit A is a true and correct copy of a First American Title Company (FATCO) Settlement Statement produced in response to a subpoenas duces tecum issued to FATCO.
4. Attached hereto for review and consideration as Exhibit B is a true and correct copy of a First American Title Company (FATCO) Borrower's Final Settlement Statement produced in response to a deposition duces tecum in the Pacific Capital matter issued to Pend Oreille Bonner Development, LLC.
5. Attached hereto for review and consideration as Exhibit C is a true and correct copy of an e-mail string produced in response to a subpoenas duces tecum issued to FATCO.
6. Attached hereto for review and consideration as Exhibit D is a true and correct copy of a copy of an October 5, 2009, letter produced in response to a deposition duces tecum in the Pacific Capital matter issued to Pend Oreille Bonner Development, LLC.
7. Attached hereto for review and consideration as Exhibit E is a true and correct copy of a First American Title Company (FATCO) Borrower's Final Settlement Statement produced in response to a deposition duces tecum in the Pacific Capital matter issued to Pend Oreille Bonner Development, LLC.
8. Attached hereto for review and consideration as Exhibit F is a true and correct copy of a an October 26, 2009 check produced in response to a deposition duces tecum in the Pacific Capital matter issued to Pend Oreille Bonner Development, LLC.
9. Attached hereto for review and consideration as Exhibit G is a true and correct copy of a copy of a Declaration of Barney Ng obtained from the United States Pacer system.

**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.

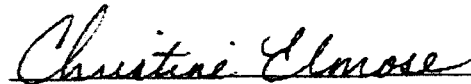
DATED this 13<sup>th</sup> day of October, 2015.

  
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 13<sup>th</sup> day of October, 2015:

- |                                     |                            |                                       |
|-------------------------------------|----------------------------|---------------------------------------|
| <input type="checkbox"/>            | U.S. Mail, Postage Prepaid | Gary A. Finney                        |
| <input type="checkbox"/>            | Hand Delivered             | FINNEY FINNEY & FINNEY, PA            |
| <input type="checkbox"/>            | Overnight Mail             | 120 E Lake St., Ste. 317              |
| <input checked="" type="checkbox"/> | Facsimile: 208-263-8211    | Sandpoint, ID 83864                   |
| <br>                                |                            |                                       |
| <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                       |







<b>Supplemental Page HUD-1 Settlement Statement</b>		File No. 208217-6
<b>First American Title Company Settlement Statement</b>		Loan No.
		Settlement Date: 07/14/2015
Borrower Name & Address: <b>Pend Oreille Banner Development LLC</b> 101 Chelmsford Way, Sandpoint, ID 83864		
Seller Name & Address:		
Section I. Settlement Charges continued		
Item	Description	Amount
1	First American Title Company	37,000.00
2	First American Title Company	0.00
3	First American Title Company	0.00
4	First American Title Company	0.00
5	First American Title Company	0.00
6	First American Title Company	0.00
7	First American Title Company	0.00
8	First American Title Company	0.00
9	First American Title Company	0.00
10	First American Title Company	0.00
11	First American Title Company	0.00
12	First American Title Company	0.00
13	First American Title Company	0.00
14	First American Title Company	0.00
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96	First American Title Company	0.00
97	First American Title Company	0.00
98	First American Title Company	0.00
99	First American Title Company	0.00
100	First American Title Company	0.00

I have carefully reviewed the HUD-1 Settlement Statement and in the best of my knowledge and belief, fill in true and accurate statement of all settlements and distributions made on my behalf or for which I am liable. I hereby certify that I have received a copy of the HUD-1 Settlement Statement.

**BUYER(S):**

**Pend Oreille Banner Development, LLC**  
By: **Pend Oreille Banner Development Holdings, Inc., a Nevada limited liability company**

*Charles W. Reeves*  
By: **Charles W. Reeves, President**

First American Title Company  
By: *[Signature]*  
Company Representative

FATCO000074

3796



CND Approved No. 2802-0205

<b>A. Settlement Statement</b>		<b>B. Type of Loan</b>	
<b>First American Title Company Settlement Statement</b>		1-A. Loan Type Conv. Under	
		C. File Number 230217-5	
		7. Loan Number	
		8. Mortgage Insurance Case Number	
<p><b>C. Note:</b> This form is furnished to give you a statement of assets and liabilities. Amounts paid to and by the settlement agent are shown. Items marked "P" are paid out of the escrow. They are shown here for informational purposes and are not included in the total.</p>			
<p><b>D. Name of Borrower:</b> Patel Oracle Business Development LLC 191 Clubhouse Way, Sandpoint, ID 83864</p>			
<p><b>E. Name of Seller:</b></p>			
<p><b>F. Name of Lender:</b> Pacific Trust Co., custodian for Bancay Bg &amp; Co Bar N, Inc., 201 Lafayette Circle Lafayette, CA 94509</p>			
<p><b>G. Property Location:</b> MHA, Sandpoint, ID 83864</p>			
<p><b>H. Settlement Agent:</b> First American Title Company Address: P.O. Box 892, Sandpoint, ID 83864</p>		<p>Settlement Date: 07/01/2015 Print Date: 08/05/2015, 1:55 PM Disbursement Date: 08/05/2015</p>	
<p>Place of Settlement Address: 419 N. Second Ave., Sandpoint, ID 83864</p>			
<b>I. Summary of Borrower's Transactions</b>		<b>K. Summary of Seller's Transactions</b>	
101. Gross Amount Due From Borrower		401. Gross Amount Due To Seller	
102. Contract Sales Price		402. Contract Sales Price	
103. Prepaid Property		403. Prepaid Property	
104. Settlement charges to borrower (see 1400)	23,759,314.85	404. Total Deposits	
105. Pay Balance of 2007 Taxes on all parcels in Shoshone County	123,447.23	405.	
106. 1200 Corporation Fee - Pacific Trust Co., custodian for	180,000.00	406.	
Adjustments for items paid by seller in advance		Adjustments for items paid by seller in advance	
107. Children's fees		407. Children's fees	
108. County taxes		408. County taxes	
109. Assessments		409. Assessments	
110.		410.	
111.		411.	
112.		412.	
113.		413.	
114.		414.	
115.		415.	
130. Gross Amount Due From Borrower	24,071,761.88	420. Gross Amount Due To Seller	
201. Amounts Paid by Or to Benefit of Borrower		421. Inductions to Amount Due to Seller	
202. Deposit of earnest money		422. Gross deposit (see instructions)	
203. Principal amount of pay receipt	24,000,000.00	423. Settlement charges (see 1400)	
204. Existing loan(s) being subject		424. Existing loan(s) being subject	
205. New Loan to Finance Pacific Trust Co., custodian for	2,700,000.00	425. Payoff of first mortgage loan	
206.		426. Payoff of second mortgage loan	
207.		427.	
208.		428.	
209.		429.	
Adjustments for items received by seller		Adjustments for items received by seller	
210. Children's fees		430. Children's fees	
211. County taxes		431. County taxes	
212. Assessments		432. Assessments	
213.		433.	
214.		434.	
215.		435.	
216.		436.	
217.		437.	
218.		438.	
219.		439.	
220. Total Paid By/for Borrower	24,890,000.00	430. Total Induction Amount Due Seller	
301. Cash At Settlement From The Borrower		440. Cash At Settlement (After Seller)	
302. Gross amount due from Borrower (line 120)	24,071,761.88	441. Gross amount due to Seller (line 420)	
303. Loan amount paid by the Borrower (line 220)	24,000,000.00	442. Loan inductions in amount due to Seller (line 420)	
304. Cash (Paid) To The Borrower	609,228.14	443.	
<p>The HUD-1 Settlement Statement which I have prepared is a true and accurate account of this transaction. I have caused or will cause the funds to be disbursed in accordance with this statement.</p>			
Settlement Agent:		Date: 8-5-15	

\*See Supplemental Page For details.

File No. 2017-4

Individual Charges	Paid From Borrower's Funds at Settlement	Paid From Seller's Funds at Settlement
1. Supplemental Charges		
700. Total Salesperson's Commission based on price		
Division of Commission (See Page 49 of Note)		
701.		
702.		
703. Commission paid at Settlement		
704.		
2. Agent's Expense in Connection with Loan		
801. Loan Origination Fee		
802. Loan Document		
803. Appraisal Fee		
804. Credit Report		
805. Credit's Supplemental Fee		
806. Mortgage Lender's Application Fee/Program		
807. Assessment Fee		
808. Escrowed Loan Fees - Mortgage Fund 08 LLC dba Bar K, Inc.	12,387,174.85	
809. Escrowed Production Fee - Mortgage Fund 08 LLC dba Bar K, Inc.	14,000.00	
810. Payoff First Note - Loan No. 90000 - Mortgage Fund 08 LLC dba Bar K, Inc.	8,472,825.18	
811. Payoff Second Note - Loan No. 91000 - Mortgage Fund 08 LLC dba Bar K, Inc.	2,700,000.00	
812. Commission (Bar K, Inc. pay to) - Mortgage Fund 08 LLC dba Bar K, Inc.	278,300.00	
813. 1 Month Prepaid Interest - Paycom Tech Co.	61,000.00	
814. Attorney Fees/Production Charges - Mortgage Fund 08 LLC dba Bar K, Inc.	18,000.00	
Supplemental Guaranty		
901. Bonus Payable by Lender to be Paid in Advance		
901. Bonus		
902.		
903. Hazard Insurers Program for		
904.		
905.		
Supplemental Guaranty		
1000. Amount Disbursed with Lender		
1001. Hazard Insurance		
1002. Mortgage Insurance		
1003. City Property Taxes		
1004. County Property Taxes		
1005. Annual Assessments		
1006.		
1007.		
1008. Applicable Accounting Adjustment		
1100. Title Charges		
1101. Settlement or closing fee - First American Title Company	1,500.00	
1102. Abstract or file search		
1103. Title commitment		
1104. Title insurance binder		
1105. Document Fee		
1106. History Fee		
1107. Attorney Fee		
Subtotal above item numbers 1		
1108. Title Insurance - See supplemental page for breakdown of individual fees and charges	87,021.00	
Subtotal above item numbers 1		
1109. Lender's coverage 300,000.00 Premium 807.021.00		
1110. Owner's coverage 90.00		
1111. Subrogation 9,300.00 - First American Title Company	140.00	
1112.		
1113.		
1114.		
1115.		
1116.		
1117.		
1200. Government Accounting and Transfer Charges		
1201. Recording Fee - Bond 016.00 Mortgage 048.00 Release 15.00	400.00	
1202. Disbursement Charge		
1203. State Income Tax		
1204. Recording Fee 1.00 - First American Title Company	45.00	
1205. Recording Fee 0.00 - First American Title Company	48.00	
1206. Recording Fee 0.00 - First American Title Company	38.00	
1300. Additional Settlement Charges		
1301. Survey to		
1302. Post Inspection to		
1303. Pay Cost of LLC Account per Agent to Peninsula Escrow Company	222,919.88	
1304. Payoff Loan 90000 to ACF National, Inc.	1,400,000.00	
1305. Pay Direct Pay Agreement (Check of PFI) to JV, LLC	30,000.00	
1306. Pay an Account to Climate Checkmate, Inc.	450,000.00	
1307.		
1308.		
1309.		
1310.		
1311.		
1312.		
1313.		
1314.		
Supplemental Guaranty		
1400. Total Supplemental Charges (order on page 102, Section 4 and 302, Sec 004 IX)	28,798,318.85	

\* See Supplemental Page for details.

POBD001601



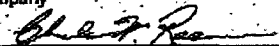
Supplemental Page HUD-1 Settlement Statement	File No. 208217-S
First American Title Company Settlement Statement	Loan No.
	Settlement Date: 07/31/2014
Borrower Name & Address: Pend Oreille Bonner Development LLC 151 Clubhouse Way, Sandpoint, ID 83864	
Seller Name & Address:	


Section I, Settlement Charges continued	Paid From Borrower's Funds at Settlement	Paid From Seller's Funds at Settlement
1166. Supplemental Statement	37,021.00	
1167. Escrow Account Lease/2 Year - First American Title Company		8,428.00
1168. Policy Escrowed - Loan/2 Policy - First American Title Company		27,593.00
1201. Supplemental Statement	609.00	
1202. Escrow Account Lease/2 Year - First American Title Company		270.00
1203. Escrowed Policy - Loan/2 Policy - First American Title Company		18.00
1204. Escrowed Policy - Loan/2 Policy - First American Title Company		270.00
1205. Escrowed Policy - Loan/2 Policy - First American Title Company		48.00

I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account by me in this transaction. I further certify that I have received a copy of the HUD-1 Settlement Statement.

BUYER(S):

Pend Oreille Bonner Development, LLC  
By: Pend Oreille Bonner Development  
Holdings, Inc. a Nevada limited liability  
company

  
By: Charles W. Reeves, President

First American Title Company  
By:   
Casey Lindcott

Full Screen Image Viewer

Page 1 of 4

Page 1 of 1

From: "Chuck Reeves" <creeves@midstateclub.com>  
To: "Dave Wall" <dwall@midstateclub.com>

Dave- would you identify by lot and block all the parcels that will be conveyed to VP Inc. We need it to our new form.  
Thank

Chuck Reeves President VP, Chelsea Hwy Escondido, CA 92025		[REDACTED]
Phone	204-255-4098 x101	
Fax	204-220-4103	
Mobile	204-648-2298	
<a href="mailto:creeves@midstateclub.com">creeves@midstateclub.com</a> <a href="http://www.midstateclub.com">www.midstateclub.com</a>		

file://C:\DOCUME~1\jvw\my\LOCALS~1\Temp\word\bin

12/10/2007

Page: 1

EXHIBIT 2

Full Screen Image Viewer

Page 2 of 4

In

Page 1 of 1

To: "Rick Lynskey" <rlynskey@firstam.com>  
Subject: RA: file commitment  
From: craeves@theidaclub.com

The up lids are the ones u have identified as sealer and sewer lids. Double check when dave sends them to u.  
NS is correct fix  
C

Sent from my Verizon Wireless BlackBerry

>From: Rick Lynskey <rlynskey@firstam.com>

>Date: Mon, 10 Dec 2007 06:36:26

>To: "Chuck Craeves" <craeves@theidaclub.com>

...and...

>> <http://www.theidaclub.com/> <http://www.theidaclub.com>

>> <mailto:craeves@theidaclub.com> <craeves@theidaclub.com>

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Printed for Rick Lynskey <rlynskey@firstam.com>

12/10/2007

Page: 2

Dave Walk, 10:18 AM 12/10/2007, Bath Club Water and Sewer parcels

Page 1 of 1

X-EdLoop: 1  
 X-Server-UUID: B08D06CD-8F7B-409A-8F5A-2E0E208AA2A6  
 From: "Dave Walk" <dwalk@theldahockub.com>  
 To: rlynskey@firstam.com  
 cc: "Chuck Reeves" <creeves@theldahockub.com>  
 Subject: Bath Club Water and Sewer parcels  
 Date: Mon, 10 Dec 2007 10:18:16 -0800  
 X-Mailer: Microsoft Office Outlook 11  
 thread-index: Aqf7V62VUMELs3DMITQeZUe837682j==  
 X-Original-Header-Time: 10 Dec 2007 18:20:46.0406 (UTC)  
 FILETIME: 821A098D01C93869  
 X-THUND-Span-Summary: SEV=1.1; DFV=A4097121C12; IFV=2.0.8.A.0-7;  
 RFD=4.00.0004;  
 RFDID=202030412E20413031303230332E2027344068236512E503035202D462D5544084  
 ENG=RF; TS=20071210182016; CAT=NONE; CON=NONE;  
 X-MS-Id: 68436C9526267287-14-01

Rick,  
 Chuck Reeves asked me to send you lot numbers for parcels we will convey to V.P. Inc. after our water and sewer facilities are complete. The parcels are as follows:

- ✓ The Lagoon Parcel is Lot 2, Block 17 of the Replat of Golden Tees Estates 1<sup>st</sup> Addition
- ✓ The Reservoir Parcel is Lot 7, Block 6 of Golden Tees Estates 4<sup>th</sup> Addition
- ✓ Booster Station 1 is Lot 10, Block 2 of Golden Tees Estates 2<sup>nd</sup> Addition
- Booster Station 2 is Lot 1, Block 1 of Golden Tees Estates 3<sup>rd</sup> Addition

*Manely Selected*

If you have any questions about these parcels please call me.

Dave Walk

Dave Walk Construction Manager 151 Chisholm Way Burnsville, MN 55337	
toll-free phone fax cell email website	888-339-7827 x407 763-299-0222 x399 763-299-0222 763-299-0222 dwalk@theldahockub.com dwalk@theldahockub.com

Full Screen Image Viewer

Chuck Reeves, 05:57 AM 12/10/2007, title commitment

Page 1 of 1

X-File-Obj: 1  
 X-Server-UUID: 6841F839-EBF2-471D-ABAE-316C1E3C48D0  
 From: "Chuck Reeves" <creeves@stetson.edu>  
 To: "Rick Lynskey" <rlsynskey@firstam.com>  
 cc: wallmastering@pro.sny.net  
 Subject: title commitment  
 Date: Mon, 10 Dec 2007 06:57:04 -0800  
 X-Mailer: Microsoft Office Outlook, Build 11.0.8510  
 Error-Info: Aq77Wschu8UC0fzTL0BFRFAet3mww  
 X-OriginalArrivalTime: 10 Dec 2007 13:55:32.0203 (UTC)  
 FILETIME=(0FC82C80001C87834)  
 X-THAND-Span-Summary: SRA=1; DFW=A2007121010; IPV=2.0.8.4.0.7;  
 RPDID=003940312830413081303220412E343735443485513-2E308030482D482D63446B-4  
 ENCL=ERR TS=20071210135534; CAT=NONE; CON=NONE;  
 X-WSS-ID: 8B43EAB128C1783E1-07-01

Note: I realized that there are 10 bits that have not yet transferred but will not be part of the new calendar for the  
 year. These are "Punches" and that were to be released for an consideration by the if out have yet to transfer.  
 They include the following:

- ✓ 08 08 08
- ✓ 09 09 09
- ✓ 10 10 10
- ✓ 11 11 11
- ✓ 12 12 12
- ✓ 13 13 13
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*Deleted*

MC 207 271 271 271 to get a list and look this one up. It is just to the south of the 28th one next to M4 in the  
 middle of the original collection.

Chuck Reeves  
 Position:  
 151 Oakwood Way  
 Stoughton, MA 01964

Phone 307-237-0791 ext1  
 Fax 307-237-0639  
 Mobile 208-946-3287  
 http://www.stetson.edu/~creeves  
 creeves@stetson.edu

Printed for Rick Lynskey <rlsynskey@firstam.com>

12/10/2007

Date: October 6, 2009

Adjusters International  
305 E Pine St  
Seattle, Washington 98122

Re: Fire Loss on: 12/22/2008  
Insured Name: The Idaho Club Mgmt.  
Loss Location: 151 Clubhouse Way, Sandpoint, ID 83864

Gentlemen:

This letter authorizes Adjusters International to deposit Safeco Insurance Companies Insurance Check No. 9226874, dated September 1, 2009, in the amount of \$1,205,908.81 into Drew Delaloye Lucurell Attorney at Law IOLTA Trust Account with The Commerce Bank of Washington.

When the check clears the account, Adjusters International is hereby authorized to issue the following checks, payable to:

Adjusters International	\$57,280.87
Bar-K; Pensco Trust	\$1,000,000.00
The Idaho Club Mgmt.	<u>\$148,628.14</u>
Total:	<u><u>\$1,205,908.81</u></u>

With reference to this Trust Account deposit, the undersigned insured agrees to hold harmless Adjusters International, and Drew D. Lucurell, and its employees and agents, from any costs or liabilities which may arise from the insolvency, neglect, misconduct or default of The Commerce Bank of Washington.

Signed: \_\_\_\_\_ Date: \_\_\_\_\_  
(Bar-K)

Signed: \_\_\_\_\_ Date: \_\_\_\_\_  
(Pensco Trust)

Signed: *Albert W. Raine* Date: 10/6/09  
(The Idaho Club Mgmt.)

EXHIBIT D

1238

**GREENSPAN ADJUSTERS INTERNATIONAL, INC.**  
 CLIENT TRUST ACCOUNT  
 400 OYSTER POINT BLVD, STE. 919  
 SOUTH SAN FRANCISCO, CA 94080

DATE OCT. 26, 2009 807118-3211

PAY TO THE ORDER OF BAR-K \$ 1,000,000.

ONLY ONE MILLION & 00/100 DOLLARS

**citibank** **COPY COPY COPY**

ISSUANCE OF THIS CHECK REQUIRES SIGNATURE OF ACCOUNTANT OR OTHER AUTHORIZED OFFICER OF THE BANK

PLEASE SIGN IN THE PRESENCE OF A NOTARY PUBLIC IN THE STATE OF CALIFORNIA

\*001238\* 6322191234 202192183\*

EXHIBIT E

POBD000193

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John Kenneth Dorwin, SBN 111082  
Attorney and Counselor at Law  
90 W. HWY 246, Suite 4  
P.O. Box 2011  
Buellton, CA. 93427  
Telephone (805) 688-8377  
FAX (805) 686-1577

(Space below for filing stamp only)

Attorney for BARNEY NG, Real Party in Interest

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION**

U.S. BANKRUPTCY COURT  
NORTHERN DIST. OF CAL.  
OAKLAND, CA.  
2013 MAY -9 AM 10: 01

FILED

In Re: )  
MORTGAGE FUND '08 LLC )  
Debtor. )

Bk. No. 11-49803-RLE - 11

Chapter 11

**DECLARATION OF  
BARNEY NG,  
REAL PARTY IN INTEREST  
IN OPPOSITION TO  
MOTION FOR RELIEF  
FROM AUTOMATIC STAY  
BY RE LOANS.**

**Hearing:**  
Date: May 8, 2013  
Time: 2:00 p.m.  
Place: Oakland Division,  
1300 Clay Street, Oakland, CA  
94612 Courtroom 201

Judge: Judge Efremsky

I, BARNEY NG, declare as follows:

1. I am a licensed California Real Estate Salesman. I was president of BAR K Inc., which was a mortgage broker for the loans which are the subject of the pending Motion. In March of 2007, I was a licensed Real Estate Broker and I obtained a \$21,200,000 loan for the developer of the Idaho Club Golf Course project and residential development from RE LOANS. In the fall of 2008, Wells Fargo Foothill in Dallas, Texas began interfering with this loan

**EXHIBIT F**



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and the draws on this financing such that only \$13,000,000 of the loan was ever accessible to the borrower. In an effort to work around this problem, I had my self-directed IRA through the custodian, PENSCO loan the developer the interim funding. I am the real party in interest on the PENSCO loan because that is my IRA which made the loan. At the same time, I arranged the MFO8 loan, which released several of the Golf Course lots from the RE LOANS Note and Deed of Trust. These parcels are now covered by the PENSCO loan as a first Deed of Trust. These lots are nowhere mentioned in the pending Motion. There was a shortfall at the time of the MFO8 closing such that I had to cover the first draw that MFO8 had committed to.

- 2. From the Motion it appears RE LOANS, and its creditor Wells Fargo Foothill are attempting to foreclose upon the entire IDAHO CLUB project. I only learned of this Motion last week from a friend who has tracked the MFO8 bankruptcy. The pending Motion is over broad and attempts to wipe out all my equity in the recorded Notes and Deeds of Trust/Mortgages without any analysis of what Wells Fargo involvement was in the project and their directing RE LOANS to create a technical default in the original loan in 2008 when none existed. I am involved in several similar cases with Wells Fargo where they have created breaches of the loans which were placed by BAR K INC with RE LOANS. This problem and its related fall out is currently the subject of at least one enforcement action in which I am a cooperating witness/informant, (See SEC Filing Case No.: NC C 13 0895).
- 3. Based upon the undue influence and control which has been exerted by Wells Fargo over RE LOANS, I believe the Court should conduct an inquiry into the history of this project and the relative priority of the loans given the misconduct and failure of Wells Fargo Foothill and RE LOANS to

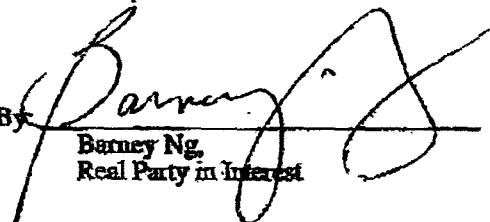
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fully fund the March 6, 2007 Loan No. P0099 in the agreed sum of \$21,200,000.00 for the IDAHO CLUB development.

- 4. Based upon my knowledge of the situation and who did what to whom in the interference with this loan transaction, I believe RE LOANS and PENSCO liens should have equal priority under Bankruptcy law, i.e. 11 USC §510. This would be a fair result which would not prejudice my interests and allow me to protect my retirement. I would agree to such a relief Motion if given the opportunity.
- 5. If allowed to testify, I could competently testify to the above facts of my own personal knowledge, observations, and experiences.

I declare under penalty of perjury the foregoing facts are true and correct according to the laws of the United States.

Dated: May 6, 2013

By   
 Barney Ng,  
 Real Party in Interest

NO  
 BONNER  
 DISTRICT  
 COURT  
 2015 OCT 13 P 4:25  
 CLERK DISTRICT COURT  
 2015

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

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

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

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

Plaintiff,

vs.

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

Defendants.

Case No. CV-2009-01810

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

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

**A. Timeliness of Response**

Valiant filed a Third Motion for Summary Judgment on September 25, 2015. This response addresses that pleading. It is anticipated that Valiant will claim that this pleading is untimely because a response to a motion for summary judgment is due fourteen (14) days before hearing. I.R.C.P. 56(c).

Although the pleading is labeled as a third motion for summary judgment, in actuality it is a motion requesting the Court reconsider its revised ruling on Valiant's previous motion for summary judgment. Pleadings are to be construed as to do substantial justice. I.R.C.P. 8(f). *See also Archer v. Shields Lumber Co.*, 91 Idaho 861, 434 P.2d 79 (1967 holding it is appropriate to look beyond the caption of a document to determine its purpose.) The purpose of Valiant's motion is to introduce new declarations of fact and ask the Court to reconsider its prior ruling on Valiant's previous summary judgment motion. As such, the motion is controlled by I.R.C.P. 11(a)(2)(B). Under this rule, a response is due seven days before the hearing. I.R.C.P. 7(b)(3).

Further, if the Court considers the matter as a motion for summary judgment, the response is still timely because the motion and supporting pleadings were served by a commercial carrier. The documents were sent by Federal Express and received on September 25, 2015. Rule 5(b) addresses the approved methods service on parties. Service by commercial carrier is not one of the methods of approved service and service is not considered complete upon deposit with the commercial carrier as is the case with U.S. mail. I.R.C.P. 5(b)(C). The summary judgment pleadings were not properly served by an approved method.

However, the Court is not being requested by NIR and VP to strike the pleadings.<sup>1</sup> NIR and VP is mindful in *Houston v. Whittier*, 147 Idaho 900, 904, 216 P.3d 1272, 1276 (2009) that our Supreme Court held:

"The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties." I.R.C.P. 61. Absent any prejudice, we need not address whether the district court abused its discretion in refusing to strike the reply memorandum on the ground that it was served

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<sup>1</sup> NIR and VP filed a Rule 56(f) motion. This response is done without waiver of the Rule 56(f) motion as NIR and VP are entitled to more time to conduct discovery before addressing the issues raised by Valiant in the present motion.

one day late. *Vendelin v. Costco Wholesale Corp.*, 140 Idaho 416, 426, 95 P.3d 34, 44 (2004).

Pursuant to I.R.C.P. 6(e)(1), three days is added to the prescribed time period when a pleading is served by mail. Since a commercial carrier is not an allowed method of service, this rule does not address service by a commercial carrier. However, application of this rule in the present circumstance would be appropriate to assure that no party is prejudiced. Given that the courts were closed on Columbus Day, filing of this pleading on October 13, 2015 is not untimely.

#### **B. Standard of Review**

In this summary judgment, Valiant emphasizes that the present matter will be tried by the Court. Valiant cites the Court to *Johnson v. McPhee*, 147 Idaho 455, 460, 210 P.3d 563, 568 (Ct.App. 2009) for the proposition that:

...[O]n a summary judgment motion the court is entitled to draw the most probable inferences from the undisputed evidence properly before it, and may grant the summary judgment despite the possibility of conflicting inferences.

Our Supreme Court has visited this issue on more than one occasion. In *Capstar Radio Operating Co. v. Lawrence*, 153 Idaho 411, 283 P.3d 728, 831 (2012), the Supreme Court held:

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).

In its third summary judgment motion, Valiant proposes that the additional evidence it has submitted in support of the third motion eliminates the disputed facts and the Court should draw the reasonable inference that the first two loans were not paid off. However, based upon the discussion below, Valiant's position is injudicious.

**C. The applicable statute of limitations prevents collection of R.E. Loans Loan No. P0099**

Valiant seeks to foreclose of R.E. Loans Loan No. P0099. The promissory note was submitted as Exhibit C to the Reeves Affidavit filed January 20, 2015. The Mortgage for Loan No. P0099 was submitted as Exhibit D to the Reeves Affidavit filed January 20, 2015. Both the note and the mortgage indicated they were due 24 months after recordation of the mortgage. The mortgage was recorded March 15, 2007 as Instrument No. 724829.

Pursuant to Idaho Code § 5-214A provides that “[a]n action for the foreclosure of a mortgage on real property must be commenced within five (5) years from the maturity date of the obligation or indebtedness secured by such mortgage.” The five year limitation period for foreclosure of R.E. Loans Loan No. P0099 was March 15, 2012.

On April 21, 2011, R.E. Loans filed an answer to Genesis Golfs’ complaint. No counterclaims or cross claims for foreclosure were included. On September 29, 2011, a stay order was entered due to R.E. Loans bankruptcy. On June 28, 2012, R.E. Loans moved to lift the stay. On August 24, 2012, an order was entered lifting the R.E. Loans automatic stay.

Similarly, MF 08 filed bankruptcy. A stay order was entered September 29, 2011 on MF 08. On June 26, 2013, R.E. Loans moved to lift the MF 08 stay. On August 12, 2013, an order was entered lifting the automatic stay for MF 08.

When a matter is stayed by a bankruptcy proceeding, creditors are stopped from their collection efforts. The automatic stay prevents “the commencement or continuation... of a judicial, administrative, or other action or proceeding against the debtor. 11 U.S.C. § 362(a)(1). During the stay, 11 U.S.C. § 108(c) tolls any statute of limitations for creditors who are barred by the automatic stay from taking timely action against the debtor. Under the provisions of this

statute, a statute of limitations does not expire until the later of the end of the period or 30 days after notice of the termination of the stay.

On August 19, 2014, without leave of the Court, Valiant filed a counterclaim, cross claim and third party complaint for judicial foreclosure. On October 6, 2014, VP filed a motion to dismiss the amended pleading which in part was for failure to obtain leave of Court to file the pleading. On November 5, 2014, Valiant filed a motion requesting leave of Court to file the cross claims and third party complaint. On November 19, 2014, the Court granted Valiant leave to file the amended answer, counterclaim, cross claim and third party complaint. Even using the earlier filing date of August 19, 2014 for the analysis of the statute of limitation period, R.E. Loans is precluded from pursuing its cause of action.

This affirmative defense was not raised in NIR or VP's answer. However, it may be raised at this time in opposition to the summary judgment. In *Fuhriman v. State, Dept. of Transp.*, 143 Idaho 800, 804, 153 P.3d 480, 484 (2007) our Supreme Court observed that Rule 8(d), I.R.C.P., requires that affirmative defenses be pled, but does not specify the consequences of failing to plead affirmative defenses. The Supreme Court further noted that it previously held that an affirmative defense may be raised for the first time on a motion for summary judgment, citing to *Bluestone v. Mathewson*, 103 Idaho 453, 455, 649 P.2d 1209, 1211 (1982).

The inference from the facts presently before the Court is that the statute of limitations defense prevents R.E. Loans from foreclosing on Loan No. P0099. Thus, the third request for summary judgment should be denied.

#### **D. Disputed Questions of Material Fact Exist**

1. *Questions of Fact regarding POBD's ownership of the mortgaged premises exist.*

Valiant has failed in a fundamental aspect of its summary judgment. It is undisputed that the R.E. Loans mortgage was granted by Pend Oreille Bonner Development, LLC ("POBD"). See Reeves affidavit filed January 20, 2015, Exhibit D. It is undisputed that the Pensco Trust Mortgage fbo Barney Ng for Loan No. P0106 was granted by POBD. See Reeves Affidavit filed January 20, 2015, Exhibit G. It is undisputed the MF 08 Mortgage for Loan No. P0107 was granted by POBD. See Reeves Affidavit filed January 20, 2015, Exhibit J. The real property transferred as part of the Third Amended and Restated Real Property Purchase and Sale Agreement was deeded by three deeds, one from Vilelli Enterprises, Inc. transferring property to Pend Oreille Bonner Development Holdings, Inc.; another from V.P., Inc. transferring property to Pend Oreille Bonner Development Holdings, Inc., and the third from property held by Pend Oreille Limited to Pend Oreille Bonner Development Holdings, Inc. See Vilelli Declaration filed October 13, 2015, Exhibits A, B and C. Valiant has presented no evidence that POBD was the owner of the property upon which it seeks to foreclose. It is not enough to show it granted mortgages on the property. The fundamental first step of establishing POBD was the owner and had the ability to grant the mortgages has been skipped by Valiant.

2. *Questions of fact exist regarding R.E. Loans entitlement to foreclose due to its breach of the loan agreement.*

Valiant averred at paragraph 39 of its cross claim that R.E. Loans had performed all acts required of it. As the Court is aware, MF 08 filed for bankruptcy. The bankruptcy proceeding was conducted in the United States Bankruptcy Court for the Northern Division of California, Oakland Division, and the case number was Bk. No. 11-49803-RLE-11. Barney Ng submitted a declaration in this bankruptcy. See Request for Judicial Notice filed herein. In his declaration, Ng testified he was the president of Bar K and obtained a loan for the developer of the Idaho Club Golf Course in the amount of \$21,200,000. *Id.* Ng testified that Wells Fargo began



interfering with this loan such that only \$13,000,000 was ever accessible to the borrower. *Id.* This testimony is consistent with the deposition testimony of Charles Reeves previously submitted to this court that R.E. Loans did not loan the money it had agreed to loan. Since R.E. Loans breached the contract, POBD was entitled to cease performance. R.E. Loans is not entitled to seek to foreclose on a mortgage agreement it had breached.

3. *Questions of fact exist regarding MF 08's entitlement to foreclose due to its breach of the loan agreement.*

As discussed above, Valiant averred in its cross claim that MF 08 had performed all acts required of it. As indicated in part 4 below, Charles Reeves testified in his deposition that MF 08 failed to perform as agreed and POBD ceased making the agreed loan payments. As argued above, since R.E. Loans breached the contract, POBD was entitled to cease performance. R.E. Loans is not entitled to seek to foreclose on a mortgage agreement it had breached.

4. *Disputed evidentiary facts exist regarding pay off of Loan No. P0099 (R.E. Loans) and Loan No. P0106 (Pensco Trust)*

The following evidentiary facts which are relevant to this response are taken from NIR and VP's submittal on their pending motion to reconsider.

1. Chuck Reeves identified Bar K as a loan servicing agent for R.E. Loans. ¶ 6, Reeves's Affidavit filed January 20, 2015. Bar K's address was 201 Lafayette Circle 2<sup>nd</sup> Floor, Lafayette, CA 94549 at all relevant times. Reeves's 1/20/15 Affidavit Exhibits B, D, G, and J.
2. The 2007 R.E. Loan Note for Loan No. P0099 identified R.E. Loans as the lender on Loan No. P0099 and showed R.E. Loan's address as 201 Lafayette Circle 2<sup>nd</sup> Floor, Lafayette CA 94549. Reeves's 1/20/15 Affidavit Exhibit B.
3. The mortgage for the 2007 R.E. Loan No. P0099 note indicated on its face it should be returned to Bar K after it was recorded. Reeves's 1/20/15 Affidavit, Exhibit D.
4. The Bar K Loan Transaction Detail Report identified by Reeves as an accounting of amounts owed to R.E. Loans on Loan No. P0099 contained an identifier for POBD as "P0099 Pend Oreille Bonner Development Holdings Inc. Hidden Lakes" and indicated the original loan amount was \$21,200,000. Reeves's 1/20/15 Affidavit, Exhibit E. On August 6, 2008, the loan statement indicated a pay down of \$1,160,000.00 from funds from Loan P0107 (MF '08 Loan). *Id.*

5. First American Title prepared a Borrower's Settlement statement on July 31, 2008 showing a New Loan to File in the amount of \$22,270,000.00. Charged against this borrowed amount was payoff of Loan No. P0099 in the amount of \$6,473,545.18 and P0106 in the amount of \$2,700,000. See Request for Judicial Notice of Berry Affidavit filed February 4, 2015. See also Exhibits G of Finney Memorandum filed February 5, 2015. The title company was First American Title and title officer on the statement was Casey Linscott. *Id.* The borrower was identified as POBD. *Id.*
6. On August 6, 2008, a revised borrower's statement was prepared. It showed payoffs against the loan proceeds of R.E. Loan No. P0099 at \$6,172,325.18 and payoff of Pensco Loan No. P0106 at \$2,700,000. Exhibit H to Finney Memorandum filed 2/2/15. This revised statement was signed by title officer Casey Linscott.
7. On August 6, 2008, First American Title recorded a Mortgage on Pensco Loan No. P0106. Reeves's Affidavit filed 1/20/15, Exhibit G.
8. An All Inclusive Note secured by Mortgage with MF '08 identified as the lender on Loan No. P0107 in the amount of \$21,980,000 was executed by POBD on August 1, 2008. MF '08's address was 201 Lafayette Circle, 2<sup>nd</sup> Floor, Lafayette, CA 94549. Bar K was identified as the entity to whom the loan fee should be paid. Reeves's Affidavit filed 1/20/15, Exhibit I.
9. An All-Inclusive Mortgage in favor of MF '08 for Loan No. P0107 was recorded August 6, 2008 by First American Title. The signatures to the mortgage were notarized by Casey Linscott. The document was recorded by First American Title. Reeves's Affidavit filed 1/20/15, Exhibit J.
10. On August 31, 2009, Bar K provided another Loan Transaction Detail Report directed to "P0099 Pend Oreille Bonner Development Holdings Hidden Lakes" for a Loan Note in the amount of \$21,980,000. Reeves's Affidavit filed 1/20/15, Exhibit H.
11. Reeves testified that MF '08 made the loan to POBD. Reeves's Affidavit ¶ 21.
12. A tax deed was issued to Bonner County on May 22, 2014. JV LLC Exhibit I.
13. On July 7, 2014, First American Title Company paid Bonner County \$1,665,855.14 to redeem certain property in the area identified as the Idaho Club. Finney Memorandum, Exhibit I. The redemption deed identified Valiant as the redemptioner. Sykes Declaration Exhibit 2.
14. At the time of the redemption, only R.E. Loans and Pensco had assigned their mortgage interests to Valiant. Sykes Declaration Exhibits 3 and 4. MF '08 did not assign its interests to Valiant until July 10, 2014, after Bonner County's issuance the redemption deed. Sykes Declaration Exhibit 5.
15. Reeves's deposition was taken August 19, 2013.<sup>2</sup> In his deposition, Reeves testified that:

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<sup>2</sup> It appears the Reeves affidavit was attached to a memorandum submitted by JV, LLC instead of submitted by affidavit or declaration. To avoid any issue of proper foundation and whether it is appropriate for the Court's to consider this testimony, VP and NIR are re-submitting the Reeves deposition transcript as an attachment to an affidavit.

- a. Barney Ng was involved with Bar K, R.E. Loans, MF08 and Pensco Trust and they functioned under an umbrella as the "Ng entities". Reeves Dep. Tr. p. 12, ll. 19-22; p. 16, l. 23- p. 18, l. 24; p. 20, l. 13- p. 21, l. 24; p. 57, ll. 1-8; p. 62, ll. 8-25; p. 121, l. 22 - p. 125, l. 17; p. 150, ll. 15-22; p. 152, ll. 16 - p. 153, l. 7-21.
- b. In June 2006, R.E. Loans gave a credit facility of \$21 million which refinanced a previous loan of 8 million. Reeves Dep. Tr. p. 64, l. 5 - p. 65, l. 2.
- c. The loan was refinanced again by the Ng entities a year or two later. Reeves Dep. Tr. p. 65, ll. 11- p. 66, l. 18;
- d. Reeves identified the Borrowers Statement attached to the Berry Affidavit and identified it as a closing statement from their loan that closed in August 2008. Reeves also testified in response to questions about payment of the P0099 loan and the P0106 loan during the MF '08 closing as follows: "So as I understand the closing statement **and the transaction**, these two entities were paid off on that and this new loan for 22, - 22, 270 - 22, 270,000, **part of those proceeds were used to pay off those two loans**. Reeves Dep. Tr. p. 66, l. 23 - p. 70, l. 5. Reeves testified the R.E. Loans and Pensco loan were rolled into the August '08 closing. Reeves Dep. Tr. p. 126, ll. 6021.
- e. After payment of the two loans and fees associated with the MF '08 loan, \$12,480,000 was available for draws for development work, but only approximately plus or minus 2 million was received by POBD at closing. The funding was then cut off. Reeves Dep. Tr. p. 30, l. 14 - p. 31, l. 1; p. 71, l. 1 - p. 74, l. 14.
- f. Reeves did not bring documents to his deposition as requested. Reeves Dep. Tr. p. 97, ll. 8-18. The majority of POBD's documents were destroyed in a fire December, 2008. Reeves Dep. Tr. p. 110, l. 25 - 7 - p. 111, l. 20.
- g. POBD did not repay MF '08 because it breached the loan agreement by failing to fund loan draws as agreed. Reeves Dep. Tr. p. 154, l. 6- p. 155, l. 18.

Additional facts are contained in a Request for Judicial Notice, a Declaration of Richard Vilelli in opposition to the third motion for summary judgment, and a Declaration of Susan Weeks in opposition to the third motion for summary judgment submitted herewith.

In its current motion, Valiant argues that the MF 08 loan was an all-inclusive deed of trust, and loan agreement, and as such the only inference that can be drawn from the evidence is that the R.E. Loans and the MF 08 loans were not paid with MF 08 loan proceeds. Typically, an all-inclusive deed of trust is utilizing when a borrower agrees to assume the seller's responsibility for payment on previous senior loans, in addition to paying a new loan to the seller. The buyer also agrees to make a payment back to the seller in addition to the assumption of the seller's pre-existing debt. *See Adams v. George*, 119 Idaho 973, 812 P.2d 280 (1991)

(holding that a wraparound mortgage is a subsequent and subordinate mortgage secured by real property upon which there exists a senior mortgage that is outstanding and unsatisfied for which the seller remains personally liable and the purchaser does not become personally liable.) In *Adams*, the Court noted that a distinctive feature of such transaction is the agreement by the wraparound seller that upon receipt of the debt service on the wraparound mortgage a deduction is made from the all-inclusive mortgage and the payment remitted directly to the first mortgagee to credit the required debt service on the first mortgage. *Adams* at 976, 812. P.2d at 283. In the present case there was no seller. It was simply the extension of three separate loans to the same borrower by different lenders. The transaction was not a standard wrap around mortgage.

Both the R.E. Loans and the Pensco Trust mortgages contained due on sale or encumbrance clauses. The R.E. Loans mortgage required that the loan be paid in full before any further encumbrance be placed against the property. A similar clause was contained in the Pensco Trust mortgage. Without the express written permission of these lenders, a wraparound mortgage was not possible given these terms of the mortgage. Valiant presented no evidence that R.E. Loans approved a wraparound of its loan. The evidence is that a wraparound was not an option, and complete payment of the R.E. Loans Loan No. P0099 and Pensco Loan No. P0106 funding was required at closing of the MF 08 loan.

Further, the settlement statement signed by Reeves on behalf of POBD showed that there was \$21,990,000 in new loans and another \$2,700,000 in new loans from Pensco at closing. Weeks Declaration Exhibit A. The same settlement statement indicated in the 800 section labeled "Items Payable in Connection with Loan" that the first note was paid off and that the second note was paid off. *Id.*

These figures were consistent with the revised final borrower's settlement statement prepared by First American Title with respect to the MF 08 loan. The final settlement statement showed a new loan advanced in the amount of \$21,980,000. Charges against this loan included pay off of Loan No. P0099 and payoff of Loan No. P0106. *See Weeks Affidavit Exhibit B.* Thus, there exists disputed evidentiary facts regarding the payoff of Loan No. P0099 (R.E. Loans) and Loan No. P0106 (Pensco). Contrary to Valiant's views, the Court may not disregard these facts and consider only Barney Ng's declaration filed in this matter to draw inferences to resolve the summary judgment. Reasonable minds could reach different conclusions regarding these disputed evidentiary facts.

During the course of the same closing, POBD employees and principals informed the title company that four lots would be conveyed to VP Inc after the water and sewer facilities were completed. *See Weeks Declaration, Exhibit C.* The title company included a note indicating these lots were already deleted. In addition to these four (4) lots, ten additional lots were identified as not included in collateral Pensco and/or MF 08 loan(s). *Id.* Ng also testified that RE Loans released several of the Golf Course lots from the RE Loans note and deed of trust which were in the Pensco loan. *Id.*

In the first declaration made by Schafer, Valiant's title officer expert, Schafer testified that all three mortgages covered all of the same properties. In his second affidavit, Schafer indicated that the mortgages did not cover the same property. This circumstances is analogous to the situation reviewed in *Capstar, supra*. Rook testified to one set of facts in his affidavit and later contradicted these facts in his deposition. Given the contradiction in testimony, the Supreme Court held that the trial court should not have granted summary judgment based upon Rook's testimony and a trial was required to weight the conflicting testimony. The same is true

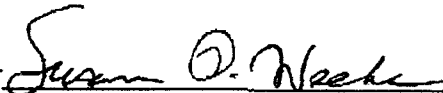
in the present case. Further, Ng's declaration from the bankruptcy supports that Shafer was mistaken in his opinion regarding the covered properties.

Finally, Valiant claims none of the Pensco loan was paid. However, on October 5, 2009, Reeves on behalf of Idaho Club Management directed Adjusters International to pay \$1,000,000 to Bar-K from a fire loss to Bar-K for Pensco Trust. *See Weeks Declaration Exhibit D.* On October 26, 2009, a one million dollar check was issued to Bar K from Greenspan Adjusters. However, no credit has been given for this payment in the pending suit. *See Weeks Declaration Exhibit E.* There are evidentiary facts disputing the amount Valiant claims is owed under the Pensco loan.

For the above reasons, the motion for summary judgment should be denied.

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

JAMES, VERNON & WEEKS, P.A.

By   
Susan P. Weeks

**CERTIFICATE OF SERVICE**

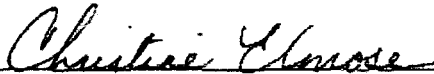
I hereby certify that a true and correct copy of the foregoing was served on the following persons in the manner indicated this 13<sup>th</sup> day of October, 2015:

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

  
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Susan P. Weeks, ISB #4255  
JAMES, VERNON & WEEKS, PA  
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IDAHO  
BONNER  
COUNTY DIST.  
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CLERK DISTRICT COURT  
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Attorneys for Defendants North Idaho Resorts, LLC and VP, Incorporated

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

GENESIS GOLF BUILDERS, INC., formerly  
known as National Golf Builders, Inc., a  
Nevada corporation,

Plaintiff,

vs.

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

Defendants.

Case No. CV 2009-01810

DEFENDANTS NORTH IDAHO RESORTS  
AND VP, INCORPORATED'S MOTION  
FOR JUDICIAL NOTICE OF  
DECLARATION OF BARNEY NG,

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

Defendants, North Idaho Resorts, LLC and VP, Incorporated, by and through their attorney of record, Susan P. Weeks of the firm James, Vernon & Weeks, P.A., hereby move this Court to take judicial notice under Idaho Rule of Evidence 201 of the Declaration of Barney NG, Real party in Interest in Opposition to Motion for Relief from Automatic Stay by RE Loans as it is publicly available via the PACER system in the United States Bankruptcy Court, Northern District of California, Oakland Division. This is the type of document that is not subject to reasonable dispute and is capable of accurate and ready determination by resort to sources whose accuracy cannot be readily questioned. I.R.E 201(b); see *In re Gampa*, 2006 WL 6810989, at \*1, n. 4 (9th Cir. BAP 2006) (noting court took judicial notice of copies of court documents obtained



from the bankruptcy court's docket via PACER under Rule 201 of the Federal Rules of Evidence). A copy of the document is attached hereto as Exhibit "A".

DATED this 13<sup>th</sup> day of October, 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 13<sup>th</sup> day of October, 2015:

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 Hand Delivered  
 Overnight Mail  
 Facsimile: 208-263-8211

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

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*Christine Elmore*

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John Kenneth Dorwin, SBN 111082  
Attorney and Counselor at Law  
90 W. HWY 246, Suite 4  
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Huellton, CA, 93427  
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U.S. BANKRUPTCY COURT  
NORTHERN DIST. OF CAL.  
OAKLAND, CA.

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Attorney for BARNEY NG, Real Party in Interest

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION**

In Re: )  
MORTGAGE FUND '08 LLC )  
Debtor. )

Bk. No. 11-49803-RLE - 11

Chapter 11

**DECLARATION OF  
BARNEY NG,  
REAL PARTY IN INTEREST  
IN OPPOSITION TO  
MOTION FOR RELIEF  
FROM AUTOMATIC STAY  
BY RE LOANS.**

**Hearing:**

Date: May 8, 2013  
Time: 2:00 p.m.  
Place: Oakland Division,  
1300 Clay Street, Oakland, CA  
94612 Courtroom 201

Judge: Judge Efremsky

I, BARNEY NG, declare as follows:

1. I am a licensed California Real Estate Salesman. I was president of BAR K Inc., which was a mortgage broker for the loans which are the subject of the pending Motion. In March of 2007, I was a licensed Real Estate Broker and I obtained a \$21,200,000 loan for the developer of the Idaho Club Golf Course project and residential development from RE LOANS. In the fall of 2008, Wells Fargo Foothill in Dallas, Texas began interfering with this loan

1 and the draws on this financing such that only \$13,000,000 of the loan was  
2 ever accessible to the borrower. In an effort to work around this problem, I  
3 had my self-directed IRA through the custodian, PENSICO loan the  
4 developer the interim funding. I am the real party in interest on the  
5 PENSICO loan because that is my IRA which made the loan. At the same  
6 time, I arranged the MF08 loan, which released several of the Golf Course  
7 lots from the RE LOANS Note and Deed of Trust. These parcels are now  
8 covered by the PENSICO loan as a first Deed of Trust. These lots are  
9 nowhere mentioned in the pending Motion. There was a shortfall at the time  
10 of the MF08 closing such that I had to cover the first draw that MF08 had  
11 committed to.

12 2. From the Motion it appears RE LOANS, and its creditor Wells Fargo  
13 Foothill are attempting to foreclose upon the entire IDAHO CLUB project. I  
14 only learned of this Motion last week from a friend who has tracked the  
15 MF08 bankruptcy. The pending Motion is over broad and attempts to wipe  
16 out all my equity in the recorded Notes and Deeds of Trust/Mortgages  
17 without any analysis of what Wells Fargo involvement was in the project  
18 and their directing RE LOANS to create a technical default in the original  
19 loan in 2008 when none existed. I am involved in several similar cases with  
20 Wells Fargo where they have created breaches of the loans which were  
21 placed by BAR K INC with RE LOANS. This problem and its related fall  
22 out is currently the subject of at least one enforcement action in which I am a  
23 cooperating witness/informant, (See SEC Filing Case No.: NC C 13 0895).

24 3. Based upon the undue influence and control which has been exerted by  
25 Wells Fargo over RE LOANS, I believe the Court should conduct an  
26 inquiry into the history of this project and the relative priority of the loans  
27 given the misconduct and failure of Wells Fargo Foothill and RE LOANS to  
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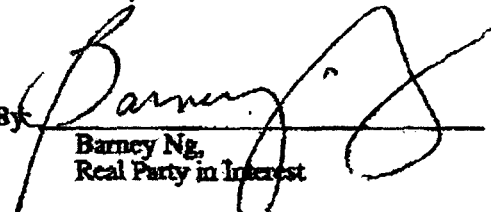
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fully fund the March 6, 2007 Loan No. P0099 in the agreed sum of \$21,200,000.00 for the IDAHO CLUB development.

- 4. Based upon my knowledge of the situation and who did what to whom in the interference with this loan transaction, I believe RE LOANS and PENSICO liens should have equal priority under Bankruptcy law, i.e. 11 USC §510. This would be a fair result which would not prejudice my interests and allow me to protect my retirement. I would agree to such a relief Motion if given the opportunity.
- 5. If allowed to testify, I could competently testify to the above facts of my own personal knowledge, observations, and experiences.

I declare under penalty of perjury the foregoing facts are true and correct according to the laws of the United States.

Dated: May 6, 2013

By   
Barney Ng,  
Real Party in Interest

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

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IST.  
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CLERK DISTRICT COURT  
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DEPT. J

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

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

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

Plaintiff,

vs.

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

Defendants.

Case No. CV-2009-01810

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

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

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

Richard Villelli declares as follows:

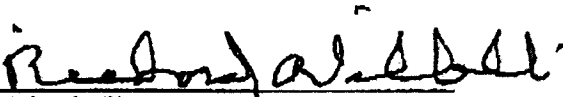
1. I am over the age of 18, and competent to testify to the matters set forth herein. I make this Affidavit of my own personal knowledge, and have personal knowledge of the facts herein contained.

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

2. I am the president of Vilelli Enterprises, Inc. Vilelli Enterprises, Inc. is the managing member of North Idaho Resorts, LLC. I make this Affidavit of my own personal knowledge, and have personal knowledge of the facts herein contained.
3. I am the President of VP, Incorporated.
4. I am the president of Vilelli Enterprises, Inc.
5. I am the President of R.A.V., Inc., which is the managing partner of Pend Oreille Limited.
6. North Idaho Resorts, LLC entered into a land sale contract with Pend Oreille Bonner Development Holdings, Inc. Third Amended and Restated
7. Attached hereto as Exhibit A is a true and correct copy of the recorded deed wherein Vilelli Enterprises, Inc. deeded a portion of the Idaho Club land to Pend Oreille Bonner Development Holdings, Inc.
8. Attached hereto as Exhibit B is a true and correct copy of the recorded deed wherein V.P., Inc. deeded a portion of the Idaho Club land to Pend Oreille Bonner Development Holdings, Inc.
9. Attached hereto as Exhibit C is a true and correct copy of the recorded deed wherein Pend Oreille Limited deeded a portion of the Idaho land to Pend Oreille Bonner Development Holdings, Inc.

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

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

  
Richard Vilelli

DECLARATION OF RICHARD VILLELLI IN OPOSITION TO VALIANT IDAHO, LLC'S THIRD MOTION FOR SUMMARY JUDGMENT AGAINST JV, L.L.C., NORTH IDAHO RESORTS, LLC, AND VP, INCORPORATED: 2

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served on the following persons in the manner indicated this 13<sup>TH</sup> day of October, 2015:

<input type="checkbox"/>	U.S. Mail, Postage Prepaid
<input type="checkbox"/>	Hand Delivered
<input checked="" type="checkbox"/>	Overnight Mail
	Facsimile: 208-263-8211

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

<input type="checkbox"/>	U.S. Mail, Postage Prepaid
<input type="checkbox"/>	Hand Delivered
<input checked="" type="checkbox"/>	Overnight Mail
	Facsimile: 208-489-0110

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

Christae Elmore

DECLARATION OF RICHARD VILLELLI IN OPOSITION TO VALIANT IDAHO, LLC'S THIRD MOTION FOR SUMMARY JUDGMENT AGAINST JV, L.L.C., NORTH IDAHO RESORTS, LLC, AND VP, INCORPORATED: 3



Sandpoint Title Insurance, Inc.

After recording mail to: Grantor

WARRANTY DEED

Escrow No.: 41847-NA

FOR VALUE RECEIVED

VILLAGE ENTERPRISES INC., a California corporation

the grantor, do(es) hereby grant, bargain, sell and convey unto

Pend Opella Bonner Development Holdings Inc., a Nevada corporation

whose current address is 6900 South McCarran Boulevard #1010 Reno, NV 89509

the grantee, the following described premises, in Bonner County, Idaho, TO WIT:

SEE EXHIBIT "A" ATTACHED HERETO FOR COMPLETE LEGAL DESCRIPTION.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee, their heirs and assigns forever. And the Grantor does hereby covenant to and with the Grantee, that it is the owner in fee simple of said premises; that they are free from all encumbrances EXCEPT all easements, right of ways, covenants, restrictions, reservations of record and taxes and assessments, and that they will warrant and defend the same from all lawful claims whatsoever.

DATED: JUNE 16, 2006

1st Court, Ex-Officio Auditor and Recorder, Bonner County, Idaho

Sandpoint, Idaho, 6/19/06

VILLAGE ENTERPRISES INC.

By: Richard A. Villali, Pres.

REQUEST OF 1:34

Fees 27.00

Any inquiry regarding this instrument please refer to this number: N# 706467

STATE OF IDAHO )
COUNTY OF BONNER ) SS.

On this 16th day of June, 2006, before me, the undersigned, a Notary Public in and for said state, personally appeared Richard A. Villali known or identified to me to be the President of the Corporation that executed this instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that said Corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year in this certificate first above written.



Signature of Notary Public for the State of Idaho, Residing at Sandpoint, Commission Expires 1-31-11





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

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

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

Commencing at the Southeast corner of said Section 36;

Thence North  $52^{\circ} 11' 35''$  West 953.40 feet (record per Instrument No. 457973 - North  $54^{\circ} 29' 10''$  West, 1010.58 feet) to a point on the Northern right of way of State Highway No. 200 and the true point of beginning;

Thence North  $01^{\circ} 19' 29''$  West, 244.70 feet (record per Instrument No. 437973 - North  $01^{\circ} 07' 07''$  East, 244.28 feet);

Thence South  $88^{\circ} 04' 06''$  West, 348.50 feet (record per Instrument No. 457973 - South  $87^{\circ} 52' 03''$  West, 348.49 feet)

Thence South  $01^{\circ} 19' 12''$  West, 250.80 feet (record per Instrument No. 457973 - South  $01^{\circ} 07' 07''$  West, 250.00 feet) to the Northern right of way of State Highway No. 200;

Thence along said right of way North  $80^{\circ} 34' 19''$  East 66.04 feet (record per Instrument No. 437973 - North  $79^{\circ} 46' 41''$  East, 66.62 feet);

Thence on a curve to the right having a central angle of  $05^{\circ} 47' 35''$  and a radius of 2893.37 feet, for an arc distance of 283.45 feet (record per Instrument No. 457973 - a central angle of  $05^{\circ} 47' 02''$  and an arc length of 282.99 feet) to the true point of beginning;

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

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

Thence along said fence line as noted of record per Instrument No. 217765 on a curve to the left (radial bearing - North  $62^{\circ} 13' 42''$  East) having a central angle of  $19^{\circ} 17' 36''$  and a radius of 430.32 feet, for an arc distance of 218.98 feet (chord - South  $37^{\circ} 25' 05''$  East, 217.95 feet);

Thence continuing along said fence line, South  $47^{\circ} 03' 53''$  East, 43.24 feet;

Thence North  $89^{\circ} 06' 38''$  West, 12.33 feet;

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Thence continuing along the fence line, South 59° 55' 24" East, 65.99 feet to an iron pipe as described in Instrument No. 417765;

Thence along the fence line, South 70° 07' 45" East, 262.49 feet to an iron pipe as described in Instrument No. 217765 (record = South 78° 18' 08" East 262.00 feet);

Thence South 34° 48' 04" East, 67.00 feet;

Thence North 40° 08' 56" East, 168.45 feet to the right bank of Pack River (record = 200.00 feet to the thread of Pack River);

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

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

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

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

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

Mary's Pack River Lots and all that property dedicated to the public for right of way as shown and recorded in Instrument No. 699891, records of Bonner County, Idaho.

PARCEL 2:

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

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

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

thence continuing South 14 degrees 35' 50" East along said East right of way, a distance of 254.70 feet to an intersection with the North right of way of Old Highway No. 200 (PAP 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 Northeastly 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 2649.37 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, 100.30 feet;



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- 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 84 degrees 34' 00" West, a distance of 247.24 feet) to a T.S.C.;
- 4) Along a spiral curve (S=3 degrees 12.3'), a distance of 207.68 feet (the chord of which bears South 70 degrees 27' 12" West, a distance of 207.67 feet) to a P.S.;
- 5) South 69 degrees 43' 21" West, 328.60 feet;
- 6) South 61 degrees 11' 30" West, 119.79 feet to the point of beginning.

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

**PARCEL 3:**

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

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

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

Thence in a Southeasterly direction on a curve to the right (radial bearing = South 50° 01'02" West) having a central angle of 12° 44'09" and a radius of 133.31 feet, for an arc distance of 51.86 feet (chord = South 33° 36'33" East, 51.76 feet);

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

Thence on a curve to the left (radial bearing = North 62° 45'11" East) having a central angle of 00° 31'29" (record = 00° 31'25") and a radius of 650.33 feet for an arc distance of 5.95 (record = 5.94 feet) feet (chord = South 27° 30'31" East, 5.95 feet), to the South line of Government Lot 1;

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

**PARCEL 4:**

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

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

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

Thence on a curve to the left (radial bearing = South 50° 01'02" West) having a central angle of 04° 01'30" and a radius of 131 feet, for an arc distance of 16.39 feet (chord = North 41° 53'43" West 16.39 feet)

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

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Thence along said right of way on a curve to the right (radial bearing = North 53° 09'38" West) having a central angle of 12° 31'30" and a radius of 275.00 feet, for an arc distance of 60.20 feet (chord = South 43° 06'37" West, 60.08 feet);

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

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

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

**PARCEL 5:**

A tract of land in Government Lot 2 of Section 31, Township 38 North, Range 1 East of the Boise Meridian, Bonner County, Idaho, being that property described in Instrument No. 495753 and more particularly described as follows:

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

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

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

Thence on a curve to the right having a central angle of 19° 17'35" (record = 19° 17'39") and a radius of 650.33 feet, for an arc distance of 218.98 feet (chord = North 37° 24'02" West 271.95 feet) to the North line of Government Lot 2;

Thence along said North line North 89° 06'38" West (record = North 89° 06'55" West) 68.87 feet;

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

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

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

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

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

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

**PARCEL 6:**

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 (PHASE TWO), according to the plat thereof, recorded in Book 6 of Plats, Page 114, records of Bonner County, Idaho.

**PARCEL 8:**

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**Assurance Loc, Block 14, GOLDEN TREES ESTATES FIRST ADDITION (PHASE TWO)** according to the plat thereof, recorded in Book 6 of Plats, Page 114, records of Bonner County, Idaho.

**PARCEL 9:**

Lot 2, Block 3 in **GOLDEN TREES 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 12, Block 13 and the Golf Course Area as shown and depicted in Block 12 of **GOLDEN TREES ESTATES FIRST ADDITION (PHASE TWO)** 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 8, **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:**

Open space Lot 1, of Block 8, **GOLDEN TEE ESTATES FIRST ADDITION PUD (PHASE TWO)**, according to the plat thereof, recorded in Book 6 of Plats, Page 114, records of Bonner County, Idaho

**PARCEL 13:**

Lot 1, Block 11 in **GOLDEN TREES ESTATE FIRST ADDITION (PHASE TWO)**, according to the plat thereof, recorded in Book 6 of Plats, Page 114, records of Bonner County, Idaho.

**PARCEL 14:**

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

**PARCEL 15:**

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

**SECTION B:**

**PARCEL 1:**

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

**PARCEL 2:**

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



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**PARCEL 3:**

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

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

Thence along the South line of the East half of the Northeast quarter of the Southwest quarter, North 89° 36'37" West, 661.61 feet (record = North 89° 37'10" West, 661.57 feet to the Southwest corner of the East half of the Northeast quarter of the Southwest quarter;

Thence along the West line of the East half of the Northeast quarter of the Southwest quarter, North 00° 10'22" East 856.45 feet (record = North 00° 09'25" East, 856.43 feet);

Thence North 89° 10'53" East, 20.21 feet (record = East, 29.58 feet) to the Westerly right of way of Berry Drive (shown as Olympic Drive on the Second Addition Plat to Hidden Lakes);

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

1. on a non-tangential curve to the left (radial bearing = North 27° 39'13" East) having a central angle of 36° 44'06" and a radius of 131.06 feet for an arc distance of 83.99 feet (record = 94.54 feet) (chord = South 20° 42'50" East, 81.56 feet - record = South 20° 27'27" East, 83.08 feet);

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

thence on a curve to the left having a central angle of 11° 42'45" and a radius of 530.06 feet for an arc distance of 108.34 feet (chord = South 44° 56'16" East, 108.15 feet - record = South 44° 58'08" East, 108.16 feet);

4. thence South 50° 47'39" East, 69.68 feet (record = South 50° 49'31" East, 69.68 feet);

5. thence on a curve to the right having a central angle of 23° 42'51" and a radius of 970.08 feet, for an arc distance of 401.47 feet (chord = South 38° 56'14" East, 398.61 feet - record = South 38° 38'05" East, 398.61 feet);

6. thence South 27° 04'48" East, 31.65 feet to the South line of the Northwest quarter of the Southeast quarter (record = South 27° 06'40" East, 30.77 feet);

thence leaving said right of way North 89° 36'03" West, 60.37 feet (record = North 89° 37'09" West, 59.35 feet) to the point of beginning.

**PARCEL 4:**

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

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

Thence South 39° 36'03" East 60.37 feet (record = South 39° 37'09" East, 59.35 feet) to the Westerly right of way of Berry Drive (shown as Olympic Drive on the Plat of the Second Addition to Hidden Lakes);

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

1. South 27° 04'48" East, 299.95 feet (record = South 27° 06'40" East, 300.83 feet);

2. North 62° 53'12" East, 60.00 feet (record = North 62° 53'20" East, 60.00 feet);



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1. North 27° 04'48" West, 125.34 feet (record = North 27° 06'40" West, 125.34 feet);

4. thence on a curve to the right having a central angle of 73° 01'37" and a radius of 25.00 feet, for an arc distance of 34.48 feet (chord = North 17° 23'45" East, 31.81 feet - record = North 12° 24'03" East, 31.81 feet) to a point on the Southerly right of way of Fairway View Drive, as shown on the Plat of First Addition to Hidden Lakes;

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

1. North 51° 56'39" East, 74.67 feet (record = North 51° 54'47" East, 74.67 feet);

2. thence on a curve to the right having a central angle of 29° 26'33" and a radius of 70.06 feet, for an arc distance of 121.49 feet (chord = South 78° 28'03" East, 106.81 feet - record = South 78° 21'57" East, 106.81 feet);

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

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

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

6. thence on a curve to the right having a central angle of 71° 37'11" and a radius of 60.0 feet, for an arc distance of 75.30 feet (chord = South 08° 43'57" East, 70.21 feet);

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

8. thence on a curve to the right having a central angle of 69° 10'15" and a radius of 25.00 feet, for an arc distance of 30.18 feet (chord = South 09° 57'24" East, 28.38 feet - record = South 11° 23'51" East, 30.18 feet) to a point on the West right of way of Lower Park River Road;

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

1. on a non tangential curve to the right having a central angle of 04° 15'19" and a radius of 1180.00 feet for an arc distance of 87.69 feet (chord = South 21° 20'38" West, 87.67 feet);

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

3. thence on a curve to the left having a central angle of 22° 29'50" and a radius of 502.65 feet, for an arc distance of 197.36 feet (chord = South 09° 07'49" West, 196.18 feet);

4. thence South 02° 07'06" East, 157.81 feet to the Northerly right of way of State Highway No. 200;

thence along the highway right of way, South 77° 42'28" West, 72.14 feet (record = South 78° 15'06" West, 71.11 feet);

thence continuing along the Highway right of way, South 69° 44'57" West, 262.32 feet (record = South 69° 43'16" West, 261.65 feet) to the West line of the Southwest quarter of the Southeast quarter of said Section 36;

thence along the West line of the Southwest quarter of the Southeast quarter, North 00° 09'19" East, 1223.36 feet (record = North 00° 07'13" East, 1223.17 feet) to the point of beginning.

**PARCEL 2:**

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

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



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**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:

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

Commencing at the Southeast corner of said Section 36;

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

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

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

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

Thence North  $47^{\circ} 48' 06''$  East, 350.00 feet;

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

AND

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

LESS that portion of Section 2, Township 57 North, Range 1 West of the Boise Meridian, Bonner County, Idaho; being that property described in Instrument No. 92269 and more particularly described as follows:

Beginning at a right of way monument on the South right of way of State Highway No. 200, from which the Northwest corner of said Section 2 bears North  $26^{\circ} 54' 43''$  West, 798.00 feet (record = North  $26^{\circ} 28' 08''$  West, 798.11 feet;

Thence along the South right of way of the Highway, North  $68^{\circ} 35' 39''$  East, 266.10 feet;

Thence continuing along the Highway right of way, on a curve to the left (radial bearing = North  $14^{\circ} 03' 28''$  West) having a central angle of  $00^{\circ} 09' 55''$  and a radius of 3798.53 feet for an arc distance of 15.03 feet (chord = North  $78^{\circ} 52' 05''$  East, 15.03 feet - total distance along right of way from point of beginning = 281.13 feet - record = 281.13 feet);

thence leaving said right of way South  $00^{\circ} 04' 10''$  West, 725.53 feet;

Thence North  $89^{\circ} 14' 40''$  West, 330.00 feet;

Thence North  $00^{\circ} 03' 26''$  West 607.20 feet, to the Southerly right of way of State Highway No. 200;

thence along said right of way North  $79^{\circ} 11' 55''$  East, 70.38 feet to the true point of beginning.





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LESS a tract of land located in Section 36, Township 56 North, Range 1 West and Section 2, Township 57 North, Range 1 West of the Boise Meridian, Bonner County, Idaho; being a portion of that property described in Instrument No. 484572 and more particularly described as follows:

Beginning at a point that is North 86° 05'57" East 386.02 feet from the South quarter of said Section 36, said point also being at the intersection of the South right of way of State Highway No. 200 and the East right of way of the Old County Road;

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

Thence continuing South 14° 34'50" East along said East right of way, 254.70 feet to the intersection with the North right of way of Old Highway 200 (FAP No. 95F);

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

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

Thence Northeasterly along said West high bank, a distance of 378 feet, more or less, to the intersection with the South right of way of State Highway No. 200;

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

1. around a curve to the left with a radius of 2643.37 feet, a distance of 48.44 feet (chord = South 88° 07'51" West, 48.43 feet);

2. North 79° 07'52" West, 100.50 feet;

3. around a curve to the left with a radius of 2668.37 feet for a distance of 247.30 feet (chord = South 82° 54'00" West, 247.24 feet);

4. along a spiral curve (South = 03° 12'18"), a distance of 207.63 feet (chord = South 70° 27'12" West, 207.67 feet);

5. South 69° 49'21" West, 328.60 feet;

6. South 61° 11'30" West, 119.79 feet to the point of beginning.

TOGETHER WITH any portion of the old highway right of way abandonment described in that certain Quitclaim-Deed, executed by the State of Idaho, as Instrument No. 696025 and recorded on January 11, 1996, and lying within the bounds of the above described property.

AND

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

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

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

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

Thence South 66° 47' West, 203 feet;

Thence South 69° 54' West 163.3 feet;

Thence South 79° 56' West, 242.5 feet;



Transaction Title Insurance Company

Thence South 01° 11' East, 146 feet;

Thence South 25° 18' East, 118.20 feet;

Thence South 54° 29' East, 137.2 feet;

Thence South 68° 10' East, 267.1 feet;

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

LESS a tract of land in Government Lot 6 and the Southeast quarter of the Northwest quarter of Section 6, Township 57 North, Range 1 East of the Boise Meridian, Bonner County, Idaho, being that property identified as Tract No. Q-1758-3 in Instrument No. 42975 and more particularly described as follows:

Beginning at a point on the southerly right of way of State Highway No. 200 which is South 55° 03' 21" East, 2460.29 feet from the Northwest corner of said Section 6 (record - South 56° 14' East, 2451.3):

Thence South 14° 53' 00" East, 223.23 feet (record);

Thence South 04° 43' 00" East, 640.09 feet (record);

Thence South 39° 48' 00" East, 430.00 feet (record);

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

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

**SECTION D:**

**PARCEL 1:**

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

Beginning at a point where the Section line between Sections 16 and 21, Township 57 North, Range 1 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;

thence in a Southerly direction, 97 feet;

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

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

SAID parcel is now described as follows:

tract of land situated in the Southwest quarter of the Southwest quarter of Section 16, Township 57 North, Range 1 East of the Boise Meridian, Bonner County, Idaho, lying Southwest of the right of way of State Highway No. 200 and Northeast of the right of way of Montana Rail Link Railway; being a portion of that property described as Parcel 1 of Instrument No. 163546 and more particularly described as follows:



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Commencing at the intersection of the South line of the Southwest quarter of the Southwest quarter of Section 16 and the Northeasterly right of way of Montana Rail Link Railway which is South 88° 18'56" East, 944.96 feet from the Southwest corner of Section 16;

Thence leaving said South line and along said right of way North 23° 38'59" West, 672.00 feet to the true point of beginning;

Thence continuing along said right of way North 23° 38'59" West, 786.99 feet to the intersection with the North line of the Southwest quarter of the Southwest quarter;

Thence leaving said right of way and along said North line South 88° 43'23" East, 241.38 feet to the Westerly right of way of State Highway No. 208;

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

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

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

Thence South 08° 25'19" East, 86.86 feet;

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

Thence leaving said right of way South 44° 37'10" West, 106.46 feet (record = "Southwesterly 97 feet") to the true point of beginning.

**PARCEL 2:**

That part of the Southwest quarter of the Southwest quarter in Section 16, Township 57 North, Range 1 East of the Boise Meridian, lying South and West of the Burlington Northern Inc. Railway right of way and Government Lot 5 in Section 17, Township 57 North, Range 1 East, of the Boise Meridian, save and excepting therefrom:

The South 360 feet of Government Lot 5 in said Section 17, and also that part of the Southwest quarter of the Southwest quarter in said Section 16 lying Westerly of said Burlington Northern Inc. right of way as now in use and described as follows:

Beginning at the Southwest corner of said Section 16;

thence North along the West Section line 350 feet;

thence East to the centerline of Trestle Creek;

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

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

SAID parcel is now described as follows:

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

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Transaction Title Insurance Company

beginning at the intersection of the South line of the Southwest quarter of the Southwest quarter of Section 16 and the southerly right of way of Montana Rail Link Railway which is South  $88^{\circ} 10' 56''$  East, 234.19 feet from the Southwest corner of Section 16;

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

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

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

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

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

Thence South  $37^{\circ} 54' 48''$  East, 798.96 feet to a point on a line lying 350.00 feet North of and parallel to the South line of the Southwest quarter of the Southwest quarter of Section 16;

Thence along said parallel line, South  $88^{\circ} 10' 56''$  East, 231.27 feet to the West line of the said Southwest quarter of the Southwest quarter;

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

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

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

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

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

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

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

Thence South  $46^{\circ} 56' 21''$  East, 113.98 feet;

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

Thence South  $37^{\circ} 48' 23''$  East, 27.27 feet to the intersection with the South line of the Southwest quarter of the Southwest quarter;

Thence leaving said creek centerline and along said South line South  $88^{\circ} 10' 56''$  East, 116.30 feet to the true point of beginning.

PARCEL 3:

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

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



Sandpoint Title Insurance, Inc.

After recording mail to: Grantee

WARRANTY DEED

Escrow No.: 41947-NA

FOR VALUE RECEIVED

V.P. INC. an Idaho corporation

the grantor, do(es) hereby grant, bargain, sell and convey unto

Pand Oreille Bonner Development Holdings Inc., a Nevada corporation

whose current address is 6900 South McCarran Boulevard #1010 Reno, NV 89509

the grantee, the following described premises, in Bonner County, Idaho, TO WIT:

SEE EXHIBIT "A" ATTACHED HERETO FOR COMPLETE LEGAL DESCRIPTION.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee, their heirs and assigns forever. And the Grantor does hereby covenant to and with the Grantee, that it is the owner in fee simple of said premises; that they are free from all encumbrances EXCEPT all easements, right of ways, covenants, restrictions, reservations, mineral and other and assessments, and that they will warrant and defend the same from all lawful claims whatsoever.

DATED: June 16, 2006

Notary Court, Ex-Officio Auditor and Registrar, Bonner County, Idaho

V.P. INC.

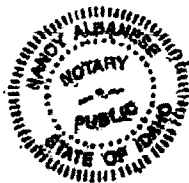
By: Richard A. Villali, Pres.

Notary Public Seal for Sandpoint, Idaho, dated 6/19/06, with handwritten initials and 'REQUEST OF 1:35'.

STATE OF IDAHO )
COUNTY OF BONNER )

On this 16th day of June, 2006, before me, the undersigned, a Notary Public in and for said state, personally appeared Richard A. Villali known or identified to me to be the President of the Corporation that executed this instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that said Corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year in this certificate first above written.



Signature of Nancy Albanese, Notary Public for the State of Idaho, Residing at Sandpoint, Commission Expires 1-31-11



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 36 and 31 lying East of Pack River Road, a county road, West of the Pack River, North of State Highway No. 208, and South of the South line of Government Lot 1 of said Section 31 and South of the South line of the Northeast quarter of the Northeast quarter of said Section 36;

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

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

Commencing at the Southeast corner of said Section 36;

Thence North  $52^{\circ} 11' 33''$  West 953.46 feet (record per Instrument No. 457973 = North  $54^{\circ} 29' 10''$  West, 1010.58 feet) to a point on the Northern right of way of State Highway No. 208 and the true point of beginning;

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

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

Thence South  $01^{\circ} 19' 12''$  West, 250.00 feet (record per Instrument No. 457973 = South  $01^{\circ} 07' 07''$  West, 250.00 feet) to the Northern right of way of State Highway No. 208;

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

Thence on a curve to the right having a central angle of  $03^{\circ} 47' 35''$  and a radius of 2863.37 feet, for an arc distance of 283.45 feet (record per Instrument No. 457973 = a central angle of  $03^{\circ} 47' 02''$  and an arc length of 282.99 feet) to the true point of beginning.

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

Beginning at the intersection of the North line of said Government Lot 3 and an existing fence line marking the right of way of an old County Road, said point being South  $89^{\circ} 06' 38''$  East, 398.07 feet from the Northwest corner of Government Lot 2 (record = 361.80 feet);

Thence along said fence line as noted of record per Instrument No. 217765 on a curve to the left (radial bearing = North  $62^{\circ} 13' 42''$  East) having a central angle of  $19^{\circ} 17' 36''$  and a radius of 650.32 feet, for an arc distance of 218.93 feet (chord = South  $37^{\circ} 25' 05''$  East, 217.95 feet);

Thence continuing along said fence line, South  $47^{\circ} 03' 53''$  East, 43.24 feet;

Thence North  $89^{\circ} 06' 38''$  West, 12.33 feet;

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Thence continuing along the fence line, South 59° 55' 24" East, 65.99 feet to an iron pipe as described in Instrument No. 212763;

Thence along the fence line, South 70° 07' 45" East, 262.49 feet to an iron pipe as described in Instrument No. 217763 (record = South 70° 18' 00" East 262.00 feet;

Thence South 54° 49' 04" East, 67.00 feet;

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

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

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

Thence South 89° 06' 39" East, along said North line to the true point of beginning.

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

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

Mary's Pack River Lots and all that property dedicated to the public for right of way as shown and recorded in Instrument No. 699094, records of Bonner County, Idaho.

**PARCEL 2:**

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

Beginning at a point that is North 90 degrees 05' 57" East, a distance of 386.02 feet from the South quarter corner of said Section 26, 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' 40" East along said East right of way of the old County road, a distance of 177.86 feet;

thence continuing South 14 degrees 36' 50" East along said East right of way, a distance of 254.70 feet to an intersection with the North right of way of Old Highway No. 200 (RAP No. 953);

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 Northwesterly 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 2645.37 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' 32" West, 100.50 feet;



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- 3) Around a curve to the left with a radius of 1668.37 feet, a distance of 247.30 feet (the chord of which bears South 82 degrees 54' 00" West, a distance of 247.24 feet) to a P.S.C.;
- 4) Along a spiral curve (S=0 degrees 12.3'), a distance of 207.68 feet (the chord of which bears South 78 degrees 27' 12" West, a distance of 207.67 feet) to a P.S.;
- 5) South 69 degrees 43' 21" West, 318.60 feet;
- 6) South 61 degrees 11' 30" West, 119.79 feet to the point of beginning.

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

**PARCEL 3:**

A Tract of land in Government Lot 1 of Section 31, Township 38 North, Range 1 East of the Boise Meridian, Bonner County, Idaho, being that property described in Instrument No. 484825 and more particularly described as follows:

Beginning at a point on the South line of said Government Lot 1, which is South 89° 06' 38" East (record = South 89° 06' 55" East) 130.00 feet from the Southwest corner of Government Lot 1, marked by a brass cap stamped BLS 974;

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

Thence in a southeasterly direction on a curve to the right (radial bearing = South 50° 01' 02" West) having a central angle of 12° 44' 09" and a radius of 238.51 feet, for an arc distance of 51.86 feet (chord = South 33° 36' 53" East, 51.76 feet);

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

Thence on a curve to the left (radial bearing = North 62° 45' 11" East) having a central angle of 00° 31' 29" (record = 00° 31' 25") and a radius of 650.32 feet for an arc distance of 5.95 (record = 5.94 feet) feet (chord = South 27° 30' 21" East, 5.95 feet), to the South line of Government Lot 1;

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

**PARCEL 4:**

A Tract of land in Government Lot 1 of Section 31, Township 38 North, Range 1 East of the Boise Meridian, Bonner County, Idaho, being that property described in Instrument No. 495753 and more particularly described as follows:

Beginning at a point on the South line of said Government Lot 1, which is South 89° 06' 38" East (record = South 89° 06' 55" East) 130.00 feet from the Southwest corner of Government Lot 1, marked by a brass cap stamped BLS 974;

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

Thence on a curve to the left (radial bearing = South 50° 01' 02" West) having a central angle of 04° 01' 30" and a radius of 23.31 feet, for an arc distance of 16.39 feet (chord = North 41° 59' 43" West 16.39 feet)

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





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Thence along said right of way on a curve to the right (radial bearing = North 53° 09'38" West) having a central angle of 12° 32'30" and a radius of 275.60 feet, for an arc distance of 60.20 feet (chord = South 43° 06'37" West, 60.08 feet);

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

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

Thence South 27° 14'45" East, 53.38 feet to the true point of beginning

**PARCEL 5:**

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

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

Thence parallel to the North line of Government Lot 2, South 89° 06'33" East (record = South 89° 06'55" East) 562.61 feet (chord = 562.58 feet);

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

Thence on a curve to the right having a central angle of 15° 17'39" (record = 15° 17'39") and a radius of 650.32 feet, for an arc distance of 218.90 feet (chord = North 37° 25'03" West 271.95 feet) to the North line of Government Lot 2;

Thence along said North line North 89° 06'38" West (record = North 89° 06'45" West) 68.07 feet;

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

Thence on a curve to the left having a central angle of 09° 49'00" and a radius of 710.32 feet, for an arc distance of 121.78 feet (chord = South 25° 09'19" East, 121.55 feet);

Thence South 80° 25'01" West 413.31 feet (record = South 80° 24'50" West 412.82 feet) to the point of beginning.

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

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

**PARCEL 6:**

Block 5 in GOLDEN TREE 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 TREE ESTATES FIRST ADDITION (PHASE TWO), according to the plat thereof, recorded in Book 6 of Plats, Page 114, records of Bonner County, Idaho.

**PARCEL 8:**



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Minimums Lot, Block 14, GOLDEN TREES ESTATES FIRST ADDITION (PHASE TWO) according to the plat thereof, recorded in Book 6 of Plats, Page 114, records of Bonner County, Idaho.

**PARCEL 9:**

Lot 2, Block 5 in GOLDEN TREES 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 13 of GOLDEN TREES ESTATES FIRST ADDITION (PHASE TWO) 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 2 and Stormwater Lot, Block 4 and Stormwater Lot, Block 3 of GOLDEN TREES 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 TREES 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:**

Open space Lot 1, of Block 8, GOLDEN TREES ESTATES FIRST ADDITION PUD (PHASE TWO), according to the plat thereof, recorded in Book 6 of Plats, Page 114, records of Bonner County, Idaho.

**PARCEL 13:**

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

**PARCEL 14:**

All private roads in GOLDEN TREES 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 15:**

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

**SECTION 8:**

**PARCEL 1:**

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

**PARCEL 2:**

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

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**PARCEL 3:**

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

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

Thence along the South line of the East half of the Northeast quarter of the Southwest quarter, North 89° 36' 27" West, 661.61 feet (record = North 89° 37' 10" West, 661.67 feet to the Southwest corner of the East half of the Northeast quarter of the Southwest quarter;

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

Thence North 89° 10' 53" East, 30.21 feet (record = East, 29.53 feet) to the Westerly right of way of Berry Drive (shown as Olympic Drive on the Second Addition Plat to Hidden Lakes);

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

1. on a non tangential curve to the left (radial bearing = North 87° 39' 25" East) having a central angle of 98° 44' 06" and a radius of 131.00 feet for an arc distance of 83.99 feet (record = 84.54 feet) (chord = South 20° 42' 50" East, 82.36 feet - record = South 20° 37' 27" East, 82.08 feet);

2. thence South 39° 04' 55" East, 419.67 feet (record = South 39° 06' 45" East, 419.68 feet);

3. thence on a curve to the left having a central angle of 11° 42' 45" and a radius of 530.00 feet for an arc distance of 108.34 feet (chord = South 44° 56' 18" East, 108.15 feet - record = South 44° 58' 08" East, 108.16 feet);

4. thence South 50° 47' 39" East, 89.68 feet (record = South 50° 49' 31" East, 89.68 feet);

5. thence on a curve to the right having a central angle of 25° 42' 31" and a radius of 970.00 feet, for an arc distance of 401.47 feet (chord = South 38° 58' 14" East, 398.61 feet - record = South 38° 58' 05" East, 398.61 feet);

6. thence South 27° 04' 48" East, 31.05 feet to the South line of the Northwest quarter of the Southeast quarter (record = South 27° 06' 40" East, 30.77 feet);

thence leaving said right of way North 89° 36' 03" West, 60.37 feet (record = North 89° 37' 09" West, 60.35 feet) to the point of beginning.

**PARCEL 4:**

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

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

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

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

1. South 27° 04' 48" East, 299.95 feet (record = South 27° 06' 40" East, 300.83 feet);

2. North 62° 53' 12" East, 60.00 feet (record = North 62° 53' 20" East, 60.00 feet);



Transnation Title Insurance Company

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

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

1. North 51° 56'39" East, 74.67 feet (record = North 51° 54'47" East, 74.67 feet);
2. thence on a curve to the right having a central angle of 99° 26'33" and a radius of 70.00 feet, for an arc distance of 121.49 feet (chord = South 78° 20'05" East, 106.81 feet - record = South 78° 21'57" East, 106.81 feet);
3. thence South 28° 36'48" East, 154.03 feet (record = South 28° 38'40" East, 154.03 feet);
4. thence on a curve to the right having a central angle of 55° 41'27" and a radius of 90.00 feet for an arc distance of 87.48 feet (chord = South 00° 46'05" East, 84.68 feet - record = South 00° 47'56" East, 84.68 feet);
5. thence South 27° 04'39" West, 170.14 feet;
6. thence on a curve to the right having a central angle of 71° 37'11" and a radius of 60.0 feet, for an arc distance of 75.00 feet (chord = South 08° 43'57" East, 70.21 feet);
7. thence South 44° 32'32" East, 50.34 feet;
8. thence on a curve to the right having a central angle of 69° 10'16" and a radius of 25.00 feet, for an arc distance of 30.18 feet (chord = South 09° 37'24" East, 28.38 feet - record = South 11° 23'51" East, 30.18 feet) to a point on the West right of way of Lower Park River Road;

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

1. on a non-tangential curve to the right having a central angle of 04° 15'19" and a radius of 1180.00 feet for an arc distance of 87.69 feet (chord = South 22° 36'38" West, 87.67 feet);
  2. thence South 20° 22'44" West, 114.57 feet;
  3. thence on a curve to the left having a central angle of 22° 29'50" and a radius of 502.65 feet, for an arc distance of 197.36 feet (chord = South 09° 07'49" West, 196.16 feet);
  4. thence South 02° 07'05" East, 157.81 feet to the Northerly right of way of State Highway No. 200;
- thence along the highway right of way, South 77° 42'28" West, 72.14 feet (record = South 78° 15'06" West, 71.11 feet);
- thence continuing along the Highway right of way, South 69° 44'57" West, 262.22 feet (record = South 69° 43'16" West, 261.65 feet) to the West line of the Southwest quarter of the Southeast quarter of said Section 36;
- thence along the West line of the Southwest quarter of the Southeast quarter, North 00° 08'19" East, 1223.36 feet (record = North 00° 07'13" East, 1223.17 feet) to the point of beginning.

PARCEL 5:

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

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



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**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:

A tract of land in the Southeast quarter of Section 36, Township 58 North, Range 1 West of the Boise Meridian, Bonner County, Idaho, being that property described in Instrument No. 52981, records of Bonner County, Idaho and more particularly described as follows:

Commencing at the Southeast corner of said Section 36;

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

Thence perpendicular to the East line of the Section, North  $89^{\circ} 51' 54''$  West, 563.00 feet to the true point of beginning;

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

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

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

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

AND

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

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

Beginning at a right of way monument on the South right of way of State Highway No. 200, from which the Northwest corner of said Section 2 bears North  $25^{\circ} 34' 43''$  West, 798.00 feet (record = North  $26^{\circ} 28' 02''$  West, 798.11 feet);

Thence along the South right of way of the Highway, North  $68^{\circ} 35' 39''$  East, 266.10 feet;

Thence continuing along the Highway right of way, on a curve to the left (radial bearing = North  $14^{\circ} 03' 28''$  West) having a central angle of  $00^{\circ} 08' 53''$  and a radius of 5739.58 feet for an arc distance of 15.03 feet (chord = North  $75^{\circ} 52' 05''$  East, 15.03 feet - total distance along right of way from point of beginning = 281.13 feet - record = 281.13 feet);

thence leaving said right of way South  $00^{\circ} 04' 10''$  West, 725.53 feet;

Thence North  $89^{\circ} 14' 40''$  West, 330.00 feet;

Thence North  $00^{\circ} 03' 26''$  West 507.20 feet to the Southern right of way of State Highway No. 200;

thence along said right of way North  $79^{\circ} 11' 23''$  East, 70.38 feet to the true point of beginning.



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

Beginning at a point that is North 05° 05' 57" East 386.02 feet from the South quarter of said Section 36, said point also being at the intersection of the South right of way of State Highway No. 206 and the East right of way of the Old County Road;

Thence South 05° 14' 09" East along the East right of way of the Old County Road, 171.80 feet;

Thence continuing South 14° 35' 50" East along said East right of way, 254.70 feet to the intersection with the North right of way of Old Highway 200 (EALP No. 958);

Thence North 72° 35' 24" East along said North right of way, 372.40 feet;

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

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

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

1. around a curve to the left with a radius of 2542.37 feet, a distance of 48.44 feet (chord = South 88° 02' 31" West, 48.43 feet);
2. North 79° 07' 52" West, 100.50 feet;
3. around a curve to the left with a radius of 2668.37 feet for a distance of 247.30 feet (chord = South 82° 54' 00" West, 247.24 feet);
4. along a spiral curve (South = 02° 12' 18"), a distance of 207.68 feet (chord = South 70° 27' 12" West, 207.67 feet);
5. South 69° 48' 21" West, 328.60 feet;
6. South 61° 11' 30" West, 119.79 feet to the point of beginning.

TOGETHER WITH any portion of the old highway right of way abandonment described in that certain Quitclaim Deed, executed by the State of Idaho, as Instrument No. 696025 and recorded on January 11, 1906, and lying within the bounds of the above described property.

AND

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

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

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

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

Thence South 66° 47' West, 203 feet;

Thence South 69° 54' West 165.3 feet;

Thence South 79° 56' West, 242.5 feet;



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Thence South 01° 11' East, 146 feet;

Thence South 25° 18' East, 118.20 feet;

Thence South 54° 29' East, 137.2 feet;

Thence South 88° 10' East, 267.1 feet;

Thence North 535.6 feet to a point 1609.7 feet South of the North quarter corner of Section 6.

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

Beginning at a point on the Southeast right of way of State Highway No. 200 which is South 55° 03' 21" East, 2460.29 feet from the Northwest corner of said Section 6 (record = South 55° 14' East, 2451.5);

Thence South 14° 53' 00" East, 228.23 feet (record);

Thence South 04° 48' 00" East, 540.00 feet (record);

Thence South 39° 48' 00" East, 430.00 feet (record);

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

TOGETHER WITH any portion of the Old Highway right of way abandonment described in that certain Quitclaim Deed, signed by the State of Idaho, as Instrument No. 496025 and recorded on January 14, 1986, lying within the bounds of the above-described property.



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Commencing at the intersection of the South line of the Southwest quarter of the Southwest quarter of Section 16 and the Northeastly right of way of Montana Rail Link Railway which is South  $88^{\circ} 10' 56''$  East, 944.95 feet from the Southwest corner of Section 16;

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

Thence continuing along said right of way North  $23^{\circ} 38' 59''$  West, 736.99 feet to the intersection with the North line of the Southwest quarter of the Southwest quarter;

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

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

on a non-tangential curve to the right having a central angle of  $01^{\circ} 19' 25''$  (radial bearing = South  $73^{\circ} 15' 16''$  West), a radius of 768.40 feet, for an arc length of 17.75 feet (chord = South  $16^{\circ} 08' 41''$  East, 17.75 feet);

Thence along a line offset 30.00 feet Westwardly of said parallel to a spiral curve (centerline  $l_s = 200$  feet,  $n = 3.5$ ,  $S = 7$ ) for a chord of South  $10^{\circ} 43' 01''$  East 193.87 feet;

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

Thence on a curve to the left having a central angle of  $13^{\circ} 50' 48''$ , a radius of 1482.53 feet, for an arc length of 360.87 feet (chord = South  $18^{\circ} 23' 43''$  East, 357.58 feet);

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

**PARCEL 2:**

That part of the Southwest quarter of the Southwest quarter in Section 16, Township 57 North, Range 1 East of the Boise Meridian, lying South and West of the Burlington Northern Inc. Railway right of way and Government Lot 5 in Section 17, Township 57 North, Range 1 East, of the Boise Meridian, save and excepting therefrom:

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

Beginning at the Southwest corner of said Section 16;

thence North along the West Section line 350 feet;

thence East to the centerline of Trestle Creek;

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

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

SAID parcel is now described as follows:

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





Transaction Title Insurance Company

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

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

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

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

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

South  $52^{\circ} 55'43''$  East, 561.60 feet;

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

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

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

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

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

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

Thence South  $42^{\circ} 08'45''$  East, 77.38 feet;

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

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

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

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

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

Thence leaving said creek centerline and along said South line South  $88^{\circ} 10'56''$  East, 116.80 feet to the true point of beginning.

**PARCEL 3:**

A portion of the Northeast quarter of the Northwest quarter and Government Lot 1 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;



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ence 600 feet Northerly along said railroad right of way;  
thence West to the meander line of lake;  
thence 600 feet Southerly to the South line of Lot 1 of said Section 21;  
thence East to the Point of Beginning.

SAID parcel is now described as follows:

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

Beginning at the intersection of the South line of the Northeast quarter of the Northwest quarter of Section 21 and the Westerly right of way of Moenac Rail Link Railroad which is South 88° 55' 48" East, 139.54 feet from the Southwest corner of said Northeast quarter of the Northwest quarter;

Thence leaving said South line and along said right of way the following two (2) courses:

On a non-circular curve to the left having a central angle of 10° 44' 26" (radial bearing - South 65° 01' 49" West) a radius of 2664.79 feet, for an arc length of 499.53 feet (chord - North 30° 28' 24" West, 498.90 feet);

Thence North 29° 10' 12" West, 100.47 feet;

Thence leaving said right of way and parallel to the South line of Government Lot 1, North 88° 55' 48" West, 936.05 feet to the meander line of Lake Peed Orilla as defined in the original GLO Survey;

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

South 14° 25' 48" East, 271.54 feet;

Thence South 46° 40' 48" East, 378.90 feet to the intersection with the South line of Government Lot 1;

Thence along said South line South 75° 55' 48" East, 745.52 feet to the Southeast corner of Government Lot 1;

Thence along the South line of the Northeast quarter of the Northwest quarter, South 88° 55' 48" East, 139.54 feet to the true point of beginning.



Transaction Title Insurance Company

Thence 600 feet Northerly along said railroad right of way;

thence West to the meander line of lake;

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

thence East to the Point of Beginning.

SAID parcel is now described as follows:

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

Beginning at the intersection of the South line of the Northeast quarter of the Northwest quarter of Section 21 and the Westerly right of way of Montana RmL Lark Railroad which is South 88° 55'43" East, 139.54 feet from the Southwest corner of said Northeast quarter of the Northwest quarter;

Thence leaving said South line and along said right of way the following two (2) courses:

On a non-tangential curve to the left having a central angle of 10° 44'25" (radial bearing = South 65° 01'49" West) a radius of 2664.79 feet, for an arc length of 499.53 feet (chord = North 30° 20'24" West, 498.88 feet);

Thence North 25° 10'12" West, 169.47 feet;

Thence leaving said right of way and parallel to the South line of Government Lot 1, North 88° 55'48" West, 936.05 feet to the meander line of Lake Pend Oreille as defined in the original G.S.O. Survey;

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

South 14° 25'43" East, 271.54 feet;

Thence South 46° 40'48" East, 378.00 feet to the intersection with the South line of Government Lot 1;

Thence along said South line South line South 88° 55'46" East, 748.52 feet to the Southeast corner of Government Lot 1;

Thence along the South line of the Northeast quarter of the Northwest quarter, South 88° 55'43" East, 139.54 feet to the true point of beginning.

Form 4100-04

NIRVP000516

3858



Sandpoint Title Insurance, Inc.

After recording mail to: Grantee

WARRANTY DEED

Excow No.: 41847-NA

FOR VALUE RECEIVED

PEND OREILLE LIMITED, A California limited partnership

the grantor, do(es) hereby grant, bargain, sell and convey unto

Pend Oreille Bonner Development Holdings Inc., a Nevada corporation

whose current address is 6900 South McCarran Boulevard #1018 Reno, NV 89509

the grantee, the following described premises, in Bonner County, Idaho, TO WIT:

SEE EXHIBIT "A" ATTACHED HERETO FOR COMPLETE LEGAL DESCRIPTION.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee, their heirs and assigns forever. And the Grantor does hereby covenant to and with the Grantee, that it is the owner in fee simple of said premises; that they are free from all encumbrances EXCEPT all easements, right of ways, covenants, restrictions, reservations of record and taxes and assessments, and that they will warrant and defend the same from all lawful claims whatsoever.

DATED: JUNE 16<sup>th</sup> 2006

Notary Court, Ex-Officio Auditor and Recorder, Bonner County, Idaho

PEND OREILLE LIMITED BY: R.A.V. INC.

By: Richard A. Villell, Pres.

Notary seal area with handwritten date 6/19/06, TO REQUEST OF 1736, Fee \$500, and instrument number N# 706469.

STATE OF IDAHO } COUNTY OF BONNER }

On this 16<sup>th</sup> day of June, 2006, before me, the undersigned, a Notary Public in and for said state, personally appeared Richard A. Villell known or identified to me to be the President of the Corporation that executed this instrument as the General Partner of Pend Oreille Limited, and acknowledged to me that said Corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year in this certificate first above written.



Signature of Notary Public for the State of Idaho, Residing at Sandpoint, Commission Expires 1-5-11

EXHIBIT C

SECTION D:PARCEL 1:

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

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

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

thence in a Southwesterly direction, 97 feet;

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

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

SAID parcel is now described as follows:

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



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Commencing at the intersection of the South line of the Southwest quarter of the Southwest quarter of Section 16 and the Northeasterly right of way of Montana Rail Link Railway which is South 88° 10'56" East, 944.95 feet from the Southwest corner of Section 16;

Thence leaving said South line and along said right of way North 23° 38'59" West, 672.00 feet to the true point of beginning;

Thence continuing along said right of way North 23° 38'59" West, 786.99 feet to the intersection with the North line of the Southwest quarter of the Southwest quarter;

Thence leaving said right of way and along said North line South 88° 43'23" East, 241.38 feet to the Westerly right of way of State Highway No. 206;

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

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

Thence along a line offset 30.00 feet Westerly of and parallel to a spiral curve (centerline  $l_s = 200$  feet,  $a = 3.5$ ,  $S = 7^\circ$ ) for a chord of South 10° 43'01" East 193.87 feet);

Thence South 08° 25'19" East, 86.06 feet;

Thence on a curve to the left having a central angle of 13° 56'48", a radius of 1482.53 feet, for an arc length of 368.87 feet (chord = South 15° 23'43" East, 359.98 feet);

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

PARCEL 2:

That part of the Southwest quarter of the Southwest quarter in Section 16, Township 57 North, Range 1 East of the Boise Meridian, lying South and West of the Burlington Northern Inc. Railway right of way and Government Lot 5 in Section 17, Township 57 North, Range 1 East, of the Boise Meridian, save and excepting therefrom:

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

Beginning at the Southwest corner of said Section 16;

thence North along the West Section line 350 feet;

thence East to the centerline of Trestle Creek;

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

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

SAID parcel is now described as follows:

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



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

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

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

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

Thence leaving said North line and along said meander line the following two (2) course:

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

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

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

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

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

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

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

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

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

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

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

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

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

Thence leaving said creek centerline and along said South line South  $88^{\circ} 10'56''$  East, 116.80 feet to the true point of beginning.

**PARCEL 3:**

A portion of the Northeast quarter of the Northwest quarter and Government Lot 1 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;



Transnation Title Insurance Company

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.

SAD parcel is now described as follows:

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

Beginning at the intersection of the South line of the Northeast quarter of the Northwest quarter of Section 21 and the Westerly right of way of Montana Rail Link Railroad which is South  $88^{\circ} 55' 48''$  East, 139.54 feet from the Southwest corner of said Northeast quarter of the Northwest quarter;

Thence leaving said South line and along said right of way the following two (2) courses:

On a non-tangential curve to the left having a central angle of  $10^{\circ} 44' 25''$  (radial bearing = South  $65^{\circ} 01' 49''$  West) a radius of 2664.79 feet, for an arc length of 499.53 feet (chord = North  $30^{\circ} 20' 24''$  West, 498.80 feet);

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

Thence leaving said right of way and parallel to the South line of Government Lot 1, North  $88^{\circ} 55' 48''$  West, 936.05 feet to the under line of Lake Pend Oreille as defined in the original GLO Survey;

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

South  $14^{\circ} 25' 48''$  East, 271.54 feet;

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

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

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



STATE OF IDAHO  
COUNTY OF BONNER  
FIRST JUDICIAL DIST.  
2015 OCT 16 PM 2 46  
CLERK DISTRICT COURT  
Up  
DEPUTY

Richard L. Stacey, ISB #6800  
Jeff R. Sykes, ISB #5058  
Chad M. Nicholson, ISB #7506  
McCONNELL WAGNER SYKES & STACEY <sup>PLLC</sup>  
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[nicholson@mwsslawyers.com](mailto:nicholson@mwsslawyers.com)

Attorneys For Valiant Idaho, LLC

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

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

Plaintiff,

vs.

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

Defendants.

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

Case No. CV-09-1810

**MOTION TO STRIKE MEMORANDA  
AND DECLARATIONS/AFFIDAVITS  
IN OPPOSITION TO  
VALIANT IDAHO, LLC'S  
THIRD MOTION FOR  
SUMMARY JUDGMENT OR, IN THE  
ALTERNATIVE, MOTION FOR  
EXTENSION OF TIME TO  
FILE REPLY MEMORANDA**

Honorable Barbara A. Buchanan

Hearing:

October 23, 2015 - 1:30 p.m. PDST

**MOTION TO STRIKE MEMORANDA AND DECLARATIONS/  
AFFIDAVITS IN OPPOSITION TO VALIANT IDAHO, LLC'S  
THIRD MOTION FOR SUMMARY JUDGMENT OR, IN THE  
ALTERNATIVE, MOTION FOR EXTENSION OF TIME TO FILE  
REPLY MEMORANDA - Page 1**

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COMES NOW, Valiant Idaho, LLC ("Valiant"), by and through its attorneys of record, McConnell Wagner Sykes & Stacey PLLC, and files this Motion to Strike Memoranda and Declarations/Affidavits in Opposition to Valiant Idaho, LLC's Third Motion For Summary Judgment or, in the Alternative, Motion For Extension of Time to File Reply Memoranda ("Motion to Strike or Extend").

**I.**  
**ARGUMENT**

On September 25, 2015, Valiant filed its Third Motion For Summary Judgment ("3<sup>rd</sup> SJ Motion"), a notice of hearing, and a supporting memorandum and a declaration (collectively, "SJ Papers"). Valiant served the SJ Papers on counsel for JV, LLC ("JV"), North Idaho Resorts, Inc. ("NIR"), and VP, Incorporated ("VP") (collectively, "Defendants") in the same manner that it had served numerous other pleadings in this matter: *via Federal Express* ("FedEx"). The SJ Papers were deposited with FedEx on Thursday, September 24, 2015, for overnight delivery to counsel for Defendants. *Declaration of Chad M. Nicholson Dated October 16, 2015* ("Nicholson Decl."), ¶¶ 2-4, filed concurrently herewith. The SJ Papers were then hand-delivered on Friday, September 25, 2015, to counsel for Defendants by leaving a copy of the SJ Papers at the respective offices of counsel. *Id.*, Exs. A-B. As such, the SJ Papers were served **28 days** prior to the October 23, 2015 hearing of Valiant's 3<sup>rd</sup> SJ Motion, as required by Idaho Rule of Civil Procedure ("Rule") 56(c).

Defendants were required to serve any response to the SJ Papers 14 days prior to the hearing, *i.e.*, October 9, 2015. Rule 56(c).

**MOTION TO STRIKE MEMORANDA AND DECLARATIONS/  
AFFIDAVITS IN OPPOSITION TO VALIANT IDAHO, LLC'S  
THIRD MOTION FOR SUMMARY JUDGMENT OR, IN THE  
ALTERNATIVE, MOTION FOR EXTENSION OF TIME TO FILE  
REPLY MEMORANDA - Page 2**

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JV failed to serve any response whatsoever on October 9, 2015. Instead, on October 12, 2015, JV served upon Valiant's counsel a document entitled "Gary A. Finney's Affidavit and JV's Motion to Vacate Valiant's Hearing on October 23, 2015." This document was filed with the Court on October 13, 2015. On October 13, 2015 – 10 days before the hearing – JV also filed and served "JV L.L.C.'s Objection and Memorandum in Opposition to Valiant Idaho, LLC's Third Motion For Summary Judgment and JV L.L.C.'s Motion to Strike Valiant's Third Motion For Summary Judgment and Notice of Hearing For October 23, 2015 at 1:30 p.m. ("JV's Third SJ Opp."), as well as the "Affidavit of James Berry on Behalf of JV, LLC in Opposition to Valiant Idaho, LLC's Third Motion For Summary Judgment" ("Berry Third SJ Opp. Aff.").

Likewise, NIR and VP also failed to timely respond to Valiant's 3<sup>rd</sup> SJ Motion. On October 13, 2015 – 10 days before the hearing of the 3<sup>rd</sup> SJ Motion – NIR and VP filed and served on Valiant's counsel: (1) Defendants North Idaho Resorts, LLC and VP Incorporated's Memorandum in Opposition to Valiant Idaho, LLC's Third Motion For Summary Judgment, (2) Declaration of Susan P. Weeks in Opposition to Valiant's Third Motion For Summary Judgment, (3) Defendants North Idaho Resorts and VP, Incorporated's Motion For Judicial Notice of Declaration of Barney Ng. and (4) Declaration of Richard Villelli in Opposition to Valiant Idaho, LLC's Third Motion For Summary Judgment Against JV, L.L.C., North Idaho Resorts, LLC, and VP, Incorporated (collectively "NIR/VP Third SJ Opp."). On October 13, 2015, NIR and VP filed (1) Defendants North Idaho Resorts, LLC and VP Incorporated's Rule 56(f) Request For Additional Time to Conduct Discovery, (2) Declaration of Susan Weeks in Support of North Idaho Resort's and VP's Rule 56(f) Request For Additional Time To Conduct Discovery,

**MOTION TO STRIKE MEMORANDA AND DECLARATIONS/  
AFFIDAVITS IN OPPOSITION TO VALIANT IDAHO, LLC'S  
THIRD MOTION FOR SUMMARY JUDGMENT OR, IN THE  
ALTERNATIVE, MOTION FOR EXTENSION OF TIME TO FILE  
REPLY MEMORANDA - Page 3**

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(3) Memorandum in Support of Defendants North Idaho Resorts, LLC and VP Incorporated's Rule 56(f) Request For Additional Time to Conduct Discovery, (4) Notice Of Hearing on North Idaho Resort, LLC and VP, Inc.'s Rule 56(f) Motion, and (5) Defendants North Idaho Resorts, LLC and VP Incorporated's Motion For Enlargement of Time to File Reply to Plaintiff's Opposition To North Idaho Resorts, LLC and VP, Inc.'s Renewed Motion For Reconsideration and Clarification (collectively "56(f) and Enlargement Papers"). The 56(f) and Enlargement Papers were served on Valiant's counsel on October 9, 2013.

Defendants' untimely response to the SJ Papers resulted in Valiant having only 3 days to reply as opposed to the 7 days provided for by Rule 56(c). As such, Valiant moves to strike the following:

- a. JV's Third SJ Opp.;
- b. Berry Third SJ Opp. Aff.; and
- c. NIR/VP Third SJ Opp.

Alternatively, Valiant requests that it be allowed to file and serve replies in support of its 3<sup>rd</sup> SJ Motion on October 20, 2015. Such an extension affords Valiant 7 days to reply as provided by Rule 56(c).

## **II.** **CONCLUSION**


For the reasons set forth above, Valiant respectfully requests that its Motion to Strike or Extend be *granted*. Alternatively, if the Motion to Strike or Extend is denied, Valiant respectfully requests that it be granted through October 20, 2015 to file its reply memoranda.

**MOTION TO STRIKE MEMORANDA AND DECLARATIONS/  
AFFIDAVITS IN OPPOSITION TO VALIANT IDAHO, LLC'S  
THIRD MOTION FOR SUMMARY JUDGMENT OR, IN THE  
ALTERNATIVE, MOTION FOR EXTENSION OF TIME TO FILE  
REPLY MEMORANDA - Page 4**

EX547.261PLD/CV-2009-1810Valiant-Strike A-O Extend 151016.docx

DATED this 16<sup>th</sup> day of October 2015.

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

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

**CERTIFICATE OF SERVICE**

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

Bruce A. Anderson, Esq. Elsaesser Jarzabek Anderson Elliott & MacDonald, Chtd 320 East Neider Avenue, Suite 102 Coeur d' Alene, Idaho 83815 Telephone: 208.667.2900 Facsimile: 208.667.2150 <i>Counsel For Jacobson, Lazar and Sage Holdings</i>	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivered <input checked="" type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Electronic Mail <a href="mailto:brucea@ejame.com">brucea@ejame.com</a>
Gary A. Finney, Esq. Finney Finney & Finney, P.A. 120 East Lake Street, Suite 317 Sandpoint, Idaho 83864 Telephone: 208.263.7712 Facsimile: 208.263.8211 <i>Counsel For J.V., LLC</i>	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivered <input checked="" type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Electronic Mail <a href="mailto:garvfinney@finneylaw.net">garvfinney@finneylaw.net</a>
D. Toby McLaughlin, Esq. Berg & McLaughlin 414 Church Street, Suite 203 Sandpoint, Idaho 83864 Telephone: 208.263.4748 Facsimile: 208.263.7557 <i>Counsel For Idaho Club HOA/Panhandle Mngmnt</i>	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivered <input checked="" type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Electronic Mail <a href="mailto:toby@sandpointlaw.com">toby@sandpointlaw.com</a>

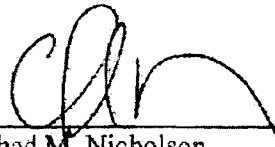
MOTION TO STRIKE MEMORANDA AND DECLARATIONS/  
AFFIDAVITS IN OPPOSITION TO VALIANT IDAHO, LLC'S  
THIRD MOTION FOR SUMMARY JUDGMENT OR, IN THE  
ALTERNATIVE, MOTION FOR EXTENSION OF TIME TO FILE  
REPLY MEMORANDA - Page 5

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

With two (2) copies via United States Mail to:

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



Chad M. Nicholson

**MOTION TO STRIKE MEMORANDA AND DECLARATIONS/  
 AFFIDAVITS IN OPPOSITION TO VALIANT IDAHO, LLC'S  
 THIRD MOTION FOR SUMMARY JUDGMENT OR, IN THE  
 ALTERNATIVE, MOTION FOR EXTENSION OF TIME TO FILE  
 REPLY MEMORANDA - Page 6**

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STATE OF IDAHO  
COUNTY OF BONNER  
FIRST JUDICIAL DIST.  
2015 OCT 16 PM 2 53  
CLERK DISTRICT COURT  
*[Signature]*  
DEPUTY

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

Attorneys For Valiant Idaho, LLC

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

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

Plaintiff,

vs.

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

Defendants.

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

Case No. CV-09-1810

**DECLARATION OF  
CHAD M. NICHOLSON  
DATED OCTOBER 16, 2015**

Honorable Barbara A. Buchanan

**Hearing:**  
October 23, 2015 – 1:30 p.m. PDST

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

**Chad M. Nicholson** declares as follows:

1. I am an attorney at law duly licensed to practice before this Court, and all Courts in the State of Idaho. I am an associate of the law firm of McConnell Wagner Sykes & Stacey PLLC ("MWSS"), attorneys for Defendant/Counter-Claimant/Cross-Claimant/Third Party Plaintiff Valiant Idaho, LLC ("Valiant"). I make this Declaration in support of the (a) Memorandum in Opposition to Defendants North Idaho Resorts, LLC ["NIR"] and VP, Incorporated's ["VP"] Motion For Enlargement of Time to File Opposition to [Valiant's] Third Motion For Summary Judgment; and (b) Motion to Strike Memoranda and Declarations/Affidavits in Opposition to Valiant Idaho, LLC's Third Motion For Summary Judgment or, in the alternative, Motion For Extension of Time to File Reply Memoranda filed concurrently, and upon my personal knowledge.

2. On September 24, 2015, I signed each Certificate of Service attached to Valiant's (a) Third Motion For Summary Judgment, (b) Notice of Hearing on [Valiant's] Third Motion For Summary Judgment, (c) Memorandum in Support of [Valiant's] Third Motion For Summary Judgment, and (d) Declaration of Barney Ng in Support of [Valiant's] Third Motion For Summary Judgment ("SJ Pleadings"). Each Certificate of Service indicates, among other things, that the SJ Pleadings would be delivered to counsel for NIR, VP and JV, L.L.C. ("JV") *via* "Overnight Mail." The overnight mail courier utilized by MWSS was Federal Express ("FedEx").

3. Attached hereto as Exhibit A is a copy of the email confirmation of delivery received by MWSS from FedEx establishing that, on September 25, 2015—28 days prior to the hearing date of October 23, 2015—at 12:15 p.m. PDT, a FedEx courier "personally" delivered a

**DECLARATION OF CHAD M. NICHOLSON**  
**DATED OCTOBER 16, 2015 - Page 2**

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package from MWSS to Susan P. Weeks, Esq., at James Vernon & Weeks, counsel for NIR/VP. In addition, the email confirmation identifies "T. Olsen" as the individual at James Vernon & Weeks who acknowledged receipt of the package.

4. Attached hereto as Exhibit B is a copy of the email confirmation of delivery received by MWSS from FedEx establishing that, on September 25, 2015—28 days prior to the hearing date of October 23, 2015—at 10:23 a.m. PDST, a FedEx courier "personally" delivered a package from MWSS to Gary A. Finney, Esq., at Finney Finney & Finney, counsel for JV. In addition, the email confirmation identifies "S. Sarah" as the individual at Finney Finney & Finney who acknowledged receipt of the package.

**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 16<sup>th</sup> day of October 2015.

  
CHAD M. NICHOLSON

**CERTIFICATE OF SERVICE**

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

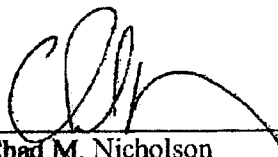
Bruce A. Anderson, Esq. Elsaesser Jarzabek Anderson Elliott & MacDonald, Chtd 320 East Neider Avenue, Suite 102 Coeur d' Alene, Idaho 83815 Telephone: 208.667.2900 Facsimile: 208.667.2150 <i>Counsel For Jacobson, Lazar and Sage Holdings</i>	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/>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

DECLARATION OF CHAD M. NICHOLSON  
 DATED OCTOBER 16, 2015 - Page 4

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With two (2) copies *via* United States Mail to:

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



---

Chad M. Nicholson

**Pamela Lemieux**

---

**From:** trackingupdates@fedex.com  
**Sent:** Friday, September 25, 2015 1:21 PM  
**To:** lemieux  
**Subject:** FedEx Shipment 774590935285 Delivered

## Your package has been delivered

Tracking # 774590935285

Ship date:  
Thu, 9/24/15  
Richard L. Stacey  
BOISE, ID 83702  
US

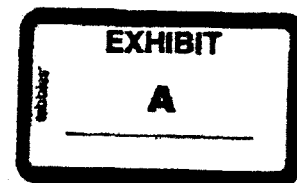
Delivery date:  
Fri, 9/25/15 12:15 pm  
**Susan P. Weeks, Esq.**  
James Vernon & Weeks  
1626 Lincoln Way  
COEUR D'ALENE, ID 83814  
US



### Shipment Facts

Our records indicate that the following package has been delivered.

**Tracking number:** 774590935285  
**Status:** Delivered: 09/25/2015 12:15 PM Signed for By: T.OLSEN  
**Reference:** 10482.2  
**Signed for by:** T.OLSEN  
**Delivery location:** COEUR D'ALENE, ID  
**Delivered to:** Receptionist/Front Desk  
**Service type:** FedEx Standard Overnight  
**Packaging type:** FedEx Pak  
**Number of pieces:** 1  
**Weight:** 2.00 lb.  
**Special handling/Services:** Adult Signature Required  
Deliver Weekday



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To track the latest status of your shipment, click on the tracking number above, or go to [fedex.com](http://fedex.com).

This tracking update has been sent to you by FedEx at your request. FedEx does not validate the authenticity of the requestor and does not validate, guarantee or warrant the authenticity of the request, the requestor's message, or the accuracy of this tracking update. For tracking results and terms of use, go to [fedex.com](http://fedex.com).

Thank you for your business.

**Pamela Lemieux**

**From:** trackingupdates@fedex.com  
**Sent:** Friday, September 25, 2015 11:28 AM  
**To:** lemieux  
**Subject:** FedEx Shipment 774590881899 Delivered

## Your package has been delivered

Tracking # 774590881899

Ship date:  
 Thu, 9/24/15

Richard L. Stacey  
 BOISE, ID 83702  
 US

Delivery date  
 Fri, 9/25/15 10:23 am

Gary A. Finney, Esq.  
 Finney Finney & Finney  
 120 East Lake Street Suite 317  
 SANDPOINT, ID 83864  
 US



### Shipment Facts

Our records indicate that the following package has been delivered.

**Tracking number:** 774590881899  
**Status:** Delivered: 09/25/2015 10:23 AM Signed for by: S SARAH  
**Reference:** 10482.2  
**Signed for by:** S SARAH  
**Delivery location:** SANDPOINT, ID  
**Delivered to:** Receptionist/Front Desk  
**Service type:** FedEx Priority Overnight  
**Packaging type:** FedEx Pak  
**Number of pieces:** 1  
**Weight:** 2.00 lb.  
**Special handling/Services:** Adult Signature Required  
 Deliver Weekday



If you do not respond to this message, this email was sent from an unattended mailbox. This report was generated at approximately 12:31 PM EDT on 10/16/2015.

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Thank you for your business.

STATE OF IDAHO  
COUNTY OF BONNER  
FIRST JUDICIAL DIST.

2015 OCT 16 PM 4 36

CLERK DISTRICT COURT  
*[Signature]*  
DEPUTY

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

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

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

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

Plaintiff,

vs.

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

Defendants.

Case No. CV-2009-01810

DEFENDANTS NORTH IDAHO  
RESORTS, LLC and VP  
INCORPORATED'S MEMORANDUM IN  
OPPOSITION TO VALIANT IDAHO,  
LLC'S MOTION TO STRIKE  
INADMISSIBLE EVIDENCE

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

Valiant Idaho has requested the Court strike certain evidentiary items to eliminate any material questions of fact in this matter. For the reasons set forth below, this motion should be denied by the Court.

**A. Reeves Union Bank Deposition Testimony is Admissible**

Charles Reeves, as an agent for POBD, has testified three times in the present matter.

Reeves provided testimony in this matter by an affidavit filed January 20, 2015. Reeves testified



by declaration filed July 22, 2015. Reeves additional declaration testimony was filed August 19, 2015. Valiant contends that Rule 32, I.R.C.P. does not allow JV, NIR or VP to utilize Charles Reeves' deposition testimony given under oath as an agent for POBD from another matter involving the same loans. Valiant arrives at this conclusion by taking language from Rule 32 out of context and ignoring other relevant sections of Rule 32, I.R.C.P.

In support of its argument, Valiant directs the Court's attention to the last paragraph of Rule 32 which addresses the use of depositions from a previously dismissed actions between the same parties on the subject matter to be used in a reinstated suit. This provision allows all depositions from the previously dismissed action to be used in the reinstated suit. Valiant claims this language infers that depositions from other suits may not be used except when used in a suit between the same parties on the same subject matter. This argument is contrary to the express language of Rule 32.

Rule 32, I.R.C.P. provides at the hearing of a motion any part of a deposition may be used as though the witness were present and testifying in court as long as admissible under the rules of evidence. Rule 32(a)(1) specifically provides any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of a witness or any other purpose allowed by Idaho Rules of Evidence. Charles Reeves is a witness when his affidavit and declarations are presented to this Court in support of Valiant's motion. VP, NIR and JV are allowed to impeach his testimony as a witness by use of his deposition testimony in the Union Bank matter under the express terms of Rule 32(a)(1). Further, POBD is a party in this matter. Even though it has confessed judgment with respect to the claims against it by the assigned interest prosecuted by Valiant, the cross claims of JV remain at issue. Thus, POBD's testimony also is admissible pursuant to Rule 32(a)(2).

Valiant is also incorrect that Reeves' testimony is inadmissible hearsay. Rule 801(d), I.R.E., addresses statements which are not within the definition of hearsay. Prior inconsistent statements under oath by a witness are not hearsay. Rule 801(d)(1).

Even if hearsay, the deposition testimony would fit within the exception of Rule 803(24), I.R.C.P. A statement not specifically addressed by the specific enumerations of Rule 803, I.R.E. may be admission under subsection 24 if there are equivalent circumstantial guarantees of trustworthiness and the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative of the point for which it is offered than any other evidence with the proponent can procure through reasonable efforts, and (C) the general purposes of the rules of evidence and the interest of justice will best be served by admission of the statement into evidence. I.R.E. 803(24). These criteria are met in the present case. The statements of Reeves were made under oath, with an attorney present who represented POBD. The statement is probative of the point for which it is offered and is the best evidence of Reeves' prior inconsistent statements; and allowing the admission of the deposition testimony serves the general purposes of the rules of evidence and the interest of justice. Were the statement not allowed, Reeves would be allowed to make contradictory statements in judicial proceedings to the prejudice of NIR, VP and JV without allowing these parties the opportunity to have his credibility determined.

**B. The Borrower's Settlement Statement and the Borrower's Final Settlement Statement are Admissible**

Valiant contends that the Court should not consider the settlement statements attached to the memorandum of JV. NIR and VP do not disagree that these documents are not admissible evidence when attached to a memorandum. However, these documents have been introduced

into the record through other appropriate means. Reeves deposition was introduced into the record by affidavit. The Court was requested to take judicial notice of the Berry affidavit which contained the settlement statements, which was a business record of JV, LLC and fits the exception of Rule 803(6), I.R.E. The settlement statements were again introduced by declaration following production pursuant to a properly issued subpoena duces tecum directed to First American Title. Thus, they are not hearsay.

Even if hearsay, the settlement statements as introduced in the request for judicial notice and the Weeks declaration fit within the exception of Rule 803(24), I.R.C.P. A statement not specifically addressed by the specific enumerations of Rule 803, I.R.E. may be admission under subsection 24 if there are equivalent circumstantial guarantees of trustworthiness and the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative of the point for which it is offered than any other evidence with the proponent can procure through reasonable efforts, and (C) the general purposes of the rules of evidence and the interest of justice will best be served by admission of the statement into evidence. I.R.E. 803(24). These criteria are met in the present case. The Berry Affidavit indicates the settlement statement was forwarded to him as part of the MF 08 closing to induce him to sign a subordination agreement in connection with the closing. It was kept as one of JV's business records. The settlement statement related to material facts in this case. It is more probative of a fact than other evidence the parties can procure through reasonable efforts and the purpose of the rules of evidence of justice are served by allowing its admission. The same is true of the documents produced by First American Title Company in response to a subpoena duces tecum issued pursuant to Rule 45(b). The documents are probative of the point for which they are offered and is the best evidence of the loans being paid as part of the closing. Allowing the

admission of the documents serves the general purposes of the rules of evidence and the interest of justice.

For the above reasons, the motion for summary judgment should be denied.

DATED this 16<sup>th</sup> day of October, 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 16<sup>th</sup> day of October, 2015:

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- Hand Delivered
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