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### Valiant Idaho, LLC v. North Idaho Resorts, LLC Clerk's Record v. 36 Dckt. 44583

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Vol. **36** **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*

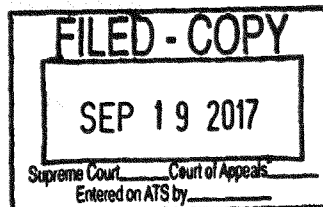
**CLERK'S RECORD ON APPEAL**

*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 XXXVI**

**44583**

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Handwritten initials "JH" in a circle.

Attorneys for Third Party Defendant 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

VP INC'S EXHIBIT LIST

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

COMES NOW Third Party Defendant, VP, Incorporated, by and through its attorneys of record, Susan P. Weeks of the firm James, Vernon & Weeks, P.A. and hereby submits its Exhibit List as required by the Court's scheduling order in the form attached hereto. In addition to the exhibits listed, Third Party Defendant may use any exhibit contained on Cross Claimant/Third Party Plaintiff's Exhibit List.

VP, INC.'S EXHIBIT LIST: 1

DATED this 14<sup>th</sup> day of January, 2016.

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 14<sup>th</sup> day of January, 2016:

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

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*Christine Elmore*

### DEFENDANT V.P., INCORPORATED'S EXHIBITS

**CASE NO.:** BONNER COUNTY CASE NO. CV-2009-1810

**TRIAL DATE:** January 28, 2016

**CASE TITLE:** Genesis Golf Builders, Inc., formerly known as National Golf Builders, Inc., a Nevada corporation vs. Pend Oreille Bonner Development, LLC, a Nevada limited liability company; et al.

NO.	DESCRIPTION	BY STIP.	OFFERED	ADMITTED	REFUSED	RESERVE RULING
200	State of California- Department of Corrections Desist and Refrain Order					
201	9/22/15 Declaration of Barney NG in Support of Valiant Idaho, LLC's Third Motion for Summary Judgment					
202	5/9/13 Declaration of Barney NG, Real party in Interest in Opposition to Motion for Relief from Automatic Stay by RE Loans					
203	Loan No. P0099 Loan Agreement					
204	4/8/14 First Amended Cross-Complaint					
205	Loan No. P0099 Borrower's Funding Authorization and Agreement					
206	Loan No. P0099 Escrow Instructions Dated March 6, 2007					
207	Greater Bay Bank Outgoing Domestic Funds Transfer Request					
208	Loan No. P0099 Payment History Detail					

NO.	DESCRIPTION	BY STIP.	OFFERED	ADMITTED	REFUSED	RESERVE RULING
209	Loan No. P0099 Real Estate Loan Disclosure Statement					
210	Deed of Trust/Mortgage Direction Letter					
211	Loan No. P0107 Loan Servicing Agreement					
212	6/12/2014 E-mail correspondence from William Haberman to Barney Ng					
213	6/19/14 E-mail correspondence from Barney Ng to William Haberman					
214	Agreement for Sale of Promissory Note and Assignment of Security Interests					
215	Estimated Settlement Statement					
216	9/19/15 E-mail from William Haberman to Barney Ng					
217	10/21/14 E-mail from Barney Ng to William Haberman					
218	California Department of Real Estate Proposed Decision					
219	Loan No. P0094 Note Secured by Mortgage					
220	Loan No. P0094 Mortgage Assignment of Rents, Security Agreement, and Fixture Filing					
221	Borrower Statement Final					
222	Settlement Statement					
223	Loan No. P0099 Loan Agreement					

NO.	DESCRIPTION	BY STIP.	OFFERED	ADMITTED	REFUSED	RESERVE RULING
224	Loan No. P0099 Note Secured by Mortgage					
225	6/6/2007 E-mail from Nancy Albanese to Chuck Reeves					
226	8/5/08 letter from Tami Barrows to Casey Linscott Re: Escrow Instruction re P0099 Pend Oreille Bonner Development					
227	8/5/08 E-mail from Casey Linscott to Vincent Hua					
228	8/1/08 First American Title Company Borrower Affidavit					
229	8/5/08 E-mail from Casey Linscott to Vincent Hua					
230	Loan Nos. P0106 & P0107 Escrow Instructions Dated August 1, 2008					
231	Loan Nos. P0106 & P0107 Borrower's Funding Authorization and Agreement					
232	First American Title Company Borrower's Final Settlement Statement					
233	First American Title Company Settlement Statement Mortgage Fund '08 LLC					
234	First American Title Company Settlement Statement Pensco Trust Co.					

NO.	DESCRIPTION	BY STIP.	OFFERED	ADMITTED	REFUSED	RESERVE RULING
235	Pend Oreille Bonner Development, LLC Deposit Receipt for \$69,274.66					
236	Sixth Commitment Schedule A					
237	E-mail from Casey Linscott to Vincent Hua and Barney Ng					
238	Borrower's Settlement Statement					
239	7/31/08 letter to First American Title Company from Gary Finney					
240	Calculations of Amounts Due Under Loans					
241	1/25/08 E-mail from Vincent Hua to Kathy Groenhout					
242	4/8/09 letter from Alex Furrukh to Masood Khan					
243	Liberty Northwest Check Enclosure					
244	6/4/2009 \$2,865,211.40 Safeco Check to Idaho Club Mgmt Co., RE Loans, Bar-K, Mrtg Fund 08, Pensco Trust, JV, LLC, Greenspan Co/Adj. International					
245	9/1/09 \$1,205,908.81 Safeco Check to Greenspan Co/Adjusters Intl, The Idaho Clug Mgmt., Co; RE Loans; Bar-K; Mrtg Fund 08; Pensco Trust; JV LLC					
246	10/5/09 letter from Chuck Reeves to Adjusters International					

NO.	DESCRIPTION	BY STIP.	OFFERED	ADMITTED	REFUSED	RESERVE RULING
247	2/20/09 \$500,000.00 Safeco check to Greenspan Co/Adjuster Intl.; Idaho Club Mtg Co; RE Loans; Bar-K; Mortgage Fun 08/ Pensco Trust; JV, LLC; Dan Jacobson					
248	10/23/09 \$490,948.35 Safeco check to Greenspan Company; Adjusters International; The Idaho Club Management Company; RE Loans; Bark-K; Mortgage Fund 08; Pensco Trust; JV, LLC; Steven Lazar; Dan Jacobson; Sage Investments					
249	10/26/09 \$1,000,000.00 Greenspan Adjusters International, Inc. check to Bar-K					
250	9/20/13 Quitclaim Deed Lot 7, Block 5					
251	9/20/13 Quitclaim Deed Lot 1, Block 1					
252	9/20/13 Quitclaim Deed Lot 2, Block 17					
253	9/20/13 Quitclaim Deed Lot 10, Block 2					
254	First American Title Company Nation Commercial Services Estimated Settlement Statement for R.E. Loans					
255	First American Title Company Nation Commercial Services Estimated Settlement Statement for MF '08					

NO.	DESCRIPTION	BY STIP.	OFFERED	ADMITTED	REFUSED	RESERVE RULING
256	E-mail from Chuck Reeves to Dave Wall					
257	E-mail from Chuck Reeves to Rick Lynskey					
258	E-mail from Dave Wall to Rick Lynskey					
259	8/19/2013 Deposition Transcript of Charles Reeves					
260	10/30/14 E-mail from Chuck Reeves to William Haberman					
261	6/7/14 E-mail from William Haberman to Rick Dishnica					
262	Consulting Agreement					
263	Consent to Judgment & Waiver of Claims					



STATE OF IDAHO  
CLERK OF DISTRICT COURT  
DISTRICT OF BONNER COUNTY  
BOISE, IDAHO  
DEPUTY

Richard L. Stacey, ISB #6800  
Jeff R. Sykes, ISB #5058  
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Attorneys For Valiant Idaho, LLC

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

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

Plaintiff,

vs.

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

Defendants.

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

Case No. CV-09-1810

**VALIANT IDAHO, LLC'S  
IDENTIFICATION OF  
TRIAL EXHIBITS**

**The Honorable Barbara A. Buchanan**

**TRIAL:  
January 28-29, 2016 – 9:00 a.m. PST**

COMES NOW, Valiant Idaho, LLC ("Valiant"), by and through its attorneys of record, McConnell Wagner Sykes & Stacey PLLC, and, pursuant to the Order Setting Trial and Pretrial Order entered September 3, 2015, hereby submits its list of exhibits for its case-in-chief, as set forth on Exhibit A attached hereto and incorporated herein by this reference.

Valiant reserves its right to use any exhibit identified by VP, Incorporated and/or JV, L.L.C., and to further amend or supplement its list of exhibits.

**DATED** this 14<sup>th</sup> day of January 2016.

McCONNELL WAGNER SYKES & STACEY PLLC

BY:

  
Richard L. Stacey

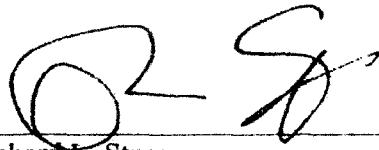
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 14<sup>th</sup> day of January 2016, 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>
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

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

VALIANT IDAHO, LLC  
TRIAL EXHIBIT LIST

EXHIBIT NO.	BATES	DATE	DESCRIPTION	DATE	BY STIP	OFFERED	ADMITTED	REFUSED	RESERVE RULING
1	VAL000494-526	03/15/07 4:30 p.m. PT	P0099: Mortgage, Assignment of Rents, Security Agreement, and Fixture Filing; Instrument Nos. 724829 and 729834						
2	VAL000539-542	03/15/07 4:30:01 p.m. PT	P0099 Promissory Note						
3	VAL000578-586	03/15/07 4:30:02 p.m. PT	P0099 Loan Agreement						
4	VAL002300-2316	03/15/07 4:31 p.m. PT	P0099 UCC-1 Filing						
5	NIRVP000583-600	03/15/07 4:33 p.m.	North Idaho Resorts, LLC ("NIR") Termination of Real Property Sale Agreement						
6	VAL002182-2194	03/15/07 4:34 p.m. PT	JV, L.L.C. ("JV") Second Subordination Agreement						
7	VAL003345-3363	07/31/07 12:08 p.m.	Collateral Assignment of Mortgage between RE Loans, LLC ("RE Loans") and Wells Fargo Foothill, LLC ("WFF")						
8	FATCO000310	6/27/2008	Enclosure letter from Gary Finney to William Wallace Sterling and Chuck Reeves with Third Amendment to Indebtedness and to Real Estate Security and Subordination Agreement						
9	357	06/24/08 3:52 p.m. PT	JV's Third Subordination Agreement						
10	FATCO000636-639	7/30/2008	Title Commitment Authorization Request						
11	FATCO000387-416	08/06/08 12:30 a.m. PT	Escrow Officer's notes on First American Title Company's ("FATCO") draft Borrower's Settlement Statement						
12	FATCO001157-1187	08/06/08 3:13 p.m. PT	FATCO Title Commitment to Pensco Trust Co. ("Pensco") and Mortgage Fun '08 LLC ("MF08") including amounts owed to FATCO for title insurance shown on the settlement statement						
13	FATCO000441	8/5/2008	WFF escrow instructions regarding RE Loans (P0099) providing for partial release of mortgage and two subordination agreements						
14	VAL001089-1094	8/1/2008	Escrow Instructions for Loan Nos. P0106 and P0107						
15	VAL001374-1377	8/1/2008	P0106 Pensco Promissory Note (Note Secured by Mortgage) entered into between Pensco and POBD						
16	VAL001324-1353	08/06/08 3:33 p.m. PT	Pensco Mortgage						
17	VAL01072-1078	8/1/2008	P0107 MF08 Promissory Note (All-Inclusive Note Secured By Mortgage) granted by POBD						
18	VAL001040-1070	08/06/08 3:37 p.m. PT	MF08 All-Inclusive Mortgage						
19	VAL001311-1313	8/1/2008	Borrower's Funding Authorization and Agreement for Loan Nos. P0106 and P0107						
20	VAL001096-1108	08/06/08 3:41 p.m. PT	MF08 UCC Financing Statement						
21	VAL001314-1323	8/1/2008	P0107 Loan Agreement between MF08 and POBD						
22	VAL001304-1308	8/1/2008	Second Amendment to Loan Agreement by RE Loans						
23	VAL001081-1082	8/1/2008	Assignment of Borrower's Interest in Construction Documents						
24	VAL001079-1080	8/1/2008	Deposit Account Agreement						
25	VAL001387-1401	08/06/08 3:45 p.m. PT	Subordination Agreement by JV to mortgages of Pensco and MF08						
26	MF08_000106-121	08/06/08 3:56 p.m. PT	Subordination Agreement by Sage Holdings, LLC ("Sage") to MF08 and Pensco						
27	VAL001402-1408	08/06/08 3:43 p.m. PT	Subordination Agreement by RE Loans and WFF against Lake Property to Pacific Capital Bank, N.A.						

VALIANT IDAHO, LLC  
TRIAL EXHIBIT LIST

EXHIBIT NO.	BATES	DATE	DESCRIPTION	DATE	BY STIP	OFFERED	ADMITTED	REFUSED	RESERVE RULING
28	VAL002209-2215	08/06/08 3:57 p.m. PT	Subordination Agreement by RE Loans and WFF to Sage						
29			UCC releasing Instrument No. 706473						
30	VAL001378-1380	08/06/08 3:48 p.m. PT	RE Loans and WFF Partial Release of Mortgage (lots in the Idaho Club)						
30-A	FATCO001546-1553	08/06/2008 3:47 p.m. PT	Subordination Agreement by JV to Pacific Capital Bank						
31	REEVES000757-760	8/4/2008	P0106 Mortgage Loan Disclosure and Good Faith Estimate sheet						
32	VAL001354-1356	7/30/2008	Pensco P0106 Deed of Trust Mortgage Direction letter						
33	REEVES000707	08/06/08 3:13 p.m. PT	Borrower's Revised Final Settlement Statement						
34	REEVES 000710-712	08/05/08 1:50 p.m. PT	FATCO P0106 Settlement Statement						
35	VAL001381-1386	08/05/08 1:55 p.m. PT	FATCO P0107 Settlement Statement						
36	FATCO000684-685	08/06/08 12:00 a.m. PT	FATCO Balance Sheet showing all payments received and amounts paid in conjunction with Pensco and MF08 closings						
37	Ex 7 - FATCO Depositions	1/7/2016	FATCO Form of a File Balance Sheet						
38	FATCO000680	08/06/08 12:00:01 a.m. PT	FATCO Receipt for Deposit of \$2,430,000.00 by Pensco into escrow						
39	FATCO000672	08/06/08 12:01 a.m. PT	FATCO Receipt for Deposit of \$545,000.00 by MF08 into escrow						
40	FATCO000670-671	08/06/08 12:01:01 a.m. PT	FATCO facsimile regarding \$545,000.00 wire transfer						
41	FATCO000322	08/06/08 12:02:01 a.m. PT	FATCO transaction report memorializing \$30,000.00 payment to JV from MF08 closing						
42	FATCO000329	08/06/08 12:02:02 a.m. PT	Panhandle Escrow Co. payoff calculation to reduce JV loan balance by \$317,809.11 to \$1,500,000.00						
43	FATCO000674	08/06/08 12:03 a.m. PT	FATCO Loan Disbursement of \$1,400,000.00 to ACI Northwest, Inc. ("ACI")						
44	FATCO000675	08/06/08 12:03:01 a.m. PT	Mountain West Bank ("MWB") confirmation report as to ACI disbursement						
45	FATCO000676	08/06/08 12:04:00 a.m. PT	FATCO Loan Disbursement of \$200,000.00 transfer to Genesis						
46	FATCO000677	08/06/08 12:04:01 a.m. PT	MWB confirmation report of \$200,000.00 transfer to Genesis						
47	FATCO000078	08/06/08 12:04:02 a.m. PT	Casey Linscott email to Ron Freund						
48	FATCO000679	08/06/08 12:04:03 a.m. PT	Danielle Barnett email to Casey Linscott						
49	FATCO000276	08/06/08 12:04:04 a.m. PT	Ron Freund response to Casey Linscott's email confirming \$250,000.00 of Genesis payment was being paid to Peak Sand & Gravel, Inc.						
50	FATCO000080-81	08/06/08 12:04:05 a.m. PT	Genesis instructions to record satisfaction of lien						

VALIANT IDAHO, LLC  
TRIAL EXHIBIT LIST

EXHIBIT NO.	BATES	DATE	DESCRIPTION	DATE	BY STP	OFFERED	ADMITTED	REFUSED	RESERVE RULING
51	FATCO000321	08/06/08 12:05 a.m. PT	FATCO Loan Disbursement of two payments of \$530,000.00 and \$15,000.00 to Sage from MF08 loan closing						
52	FATCO000365	08/06/08 12:05:01 a.m. PT	Computer generated copy of transaction report identifying payment to Sage						
53	FATCO000328	08/06/08 12:05:02 a.m. PT	Payoff amount from Bonner County Tax Assessor's office to Casey Linscott at FATCO						
54	REEVES000750-751	8/6/2008 12:06 a.m. PT	FATCO transaction report and check of \$69,274.66 to POBD						
55			RESERVED						
56			RESERVED						
57	FATCO000318-319	08/06/08 12:30:01 a.m. PT	Nevada Secretary of State's website identifying amounts for filing UCC-1s and UCC certifications						
58	FATCO000038-67	08/06/08 12:30:03 a.m. PT	Loan Policy of Title Insurance by FATCO to MF08						
59	FATCO0001188-1214	08/06/08 12:30:04 a.m. PT	Loan Policy of Title Insurance to Pensco						
60		08/06/08 3:52 p.m. PT	Satisfaction of Mortgage Security Agreement and Fixture Filing of RE Loans \$8,000,000.00 mortgage - Instrument No. 756408						
61	FATCO000442-443	7/31/2008	Sage Amendment, Modification and/or Correction of Secured Promissory Note						
62	000456 - 462	08/06/08 3:53 p.m. PT	Sage, et al., Amendment and Modification of Joint Mortgage						
63	REEVES000241-245; 239; 202-210; 195; 196-201 [reverse]; 189; 194 [reverse]	3/20/2009	Invoices for Loan No. P0107						
64	REEVES000211-235 [reverse]	3/20/2009	Invoices for Loan No. P0106						
65	REEVES000382; 377; 376; 370-71; 373-74; 360-61; 1149-50; 1139-42; 1144-45; 1128-1132; 1146-48; 1133-35	12/04/2009	Invoices for Loan No. P0099						
66	VAL000625-627	5/6/2010	Loan No. P0099 Payment History Detail Report						
67	VAL005017	8/11/2011	Loan No. P0107 Incremental Fundings Report						
68	VAL003273-3293	07/07/14 12:00 p.m. PT	Agreement of Sale of P0099 Promissory Note and Assignment of Interests from RE Loans to Valiant Idaho, LLC ("Valiant")						
69	VAL003191-3196	07/07/14 12:01 p.m. PT	Loan No. P0099 Allonges from WFF to Pensco and Pensco to WFF						
70	VAL003205-3208	07/07/14 12:08 p.m. PT	Loan No. P0099 Reassignment of Collateral Assignment to RE Loans						
71	VAL003200-3204	07/07/14 12:09 p.m. PT	Order of Bankruptcy Court Approving Sale of P0099 Loan Documents to Valiant						
72	VAL003209-3212	07/07/14 12:09 p.m. PT	Assignment of P0099 Mortgage, Note and Redemption Right from RE Loans to Valiant						
73		8/22/2014	Valiant Redemption Deed re-recorded 08.22.14						

VALIANT IDAHO, LLC  
TRIAL EXHIBIT LIST

EXHIBIT NO.	BATES	DATE	DESCRIPTION	DATE	BY STIP	OFFERED	ADMITTED	REFUSED	RESERVE RULING
74	VAL004053-4065	07/08/14 1:07 p.m. PT	Valiant Redemption Deed recorded 07.08.14						
75	VAL005123-5150	07/09/14 12:00 p.m. PT	Loan No. P0106 Agreement for Sale of Promissory Note and Assignment of Security Interests between Pensco and Valiant						
76	VAL002735	07/09/14 12:01 p.m. PT	Loan No. P0106 Allonge from Pensco to Valiant						
77	VAL002732-2733	07/09/14 12:02 p.m. PT	Affidavit of Lost Note P0106 and Assignment of Security Interests from Pensco to Valiant						
78	VAL02736-2738	07/09/14 12:03 p.m. PT	Assignment of P0106 Loan Documents from Pensco to Valiant						
79	VAL002764-2765	07/09/14 12:04 p.m. PT	Pensco Board Resolution approving sale of P106 loan documents and security interests to Valiant						
80	VAL002741-2743	07/09/14 4:27 p.m. PT	Assignment of P0106 Mortgage, Note and Security Agreement						
81	VAL002640-2666 redacted	07/16/14 12:00 a.m. PT	Loan No. P0107 Agreement for Sale of Promissory Note & Assignment of Security Interests between MF08 and Valiant						
82	VAL002667-2674	07/16/14 12:01 a.m. PT	Loan No. P0107 Allonge from MF08 to Valiant						
83	VAL002675-2677	07/16/14 12:02 a.m. PT	Assignment of P0107 Loan Documents from MF08 to Valiant						
84	VAL002584-2639	07/16/14 12:04 a.m. PT	Affidavit of Lost Note P0107 and Affidavit of Correct Loan Documents from MF08 to Valiant						
85	VAL002680-2682	07/16/14 11:10:29 a.m. PT	Assignment of Mortgage, Note & Security Agreement executed by MF08						
86	VAL000893-924	07/30/14 7:30 a.m. PT	Valiant Litigation Guarantee						
87	FATCO000355	12/10/2007	Dave Wall email to Rick Lynskey regarding the lots to be transferred to VP, Incorporated ("VP") upon completion of the water and sewer facilities						
88	FATCO000288-291	6/18/2008	Casey Linscott email to Vincent Ng regarding FATCO inquiry concerning \$8,000,000.00 mortgage closed by Sandpoint Title Company						
89			RESERVED						
90			RESERVED						
91	REEVES000716	07/25/08 12:11 p.m. PT	Barney Ng letter to						
92			RESERVED						
93	REEVES000714	7/30/2008	Letter from Barney Ng to Ron Freund regarding payment to Genesis Golf Builders, Inc. ("Genesis") of \$450,000.00 from loan proceeds						
94	REEVES000719-721	7/31/2008	Letter from William Wallace Sterling to FATCO and signed by Gary Finney						
95		7/28/2006 4:29 p.m. PT	Warranty Deed from Pend Oreille Bonner Development Holdings, Inc. to POBD; Instrument No. 709543						
96			RE Loans Interest Calculations						
97			Pensco Loans Interest Calculations						
98			MF08 Interest Calculations						
99			RESERVED						
100	Ng Depo Ex 100	8/5/2008	\$1,150,000.00 check from MF08 to Bar-K/POBD						

VALIANT IDAHO, LLC  
TRIAL EXHIBIT LIST

EXHIBIT NO.	BATES	DATE	DESCRIPTION	DATE	BY STIP	OFFERED	ADMITTED	REFUSED	RESERVE RULING
101	Ng Depo Ex 101	8/1/2008-8/31/2008	Wells Fargo Bank Statement identifying \$1,150,000.00 check was drawn from MF08's account						
102		1/1/2002	Certified copy by the California Secretary of State of RE Loans Articles of Organization	0					
103		8/26/1975	Certified copy by the California Secretary of State of the Articles of Incorporation of Bar K, Inc.						
104			Certified copy by the Delaware Secretary of State of MF08 Formation Documents						
105			Demonstrative exhibits, if any						
106									
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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

**VALIANT IDAHO, LLC'S  
IDENTIFICATION OF  
TRIAL WITNESSES**

**The Honorable Barbara A. Buchanan**

**TRIAL:  
January 28-29, 2016 – 9:00 a.m. PST**

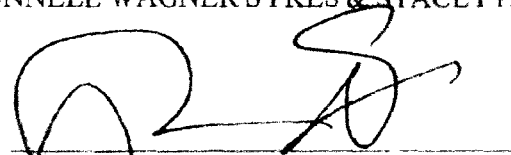
**COMES NOW**, Valiant Idaho, LLC (“Valiant”), by and through its attorneys of record, McConnell Wagner Sykes & Stacey PLLC, and, pursuant to the Order Setting Trial and Pretrial Order entered September 3, 2015, hereby submits and identifies the witnesses for its case-in-chief who may testify at the trial of this matter, as set forth on Exhibit A attached hereto and incorporated herein by this reference. This list may include rebuttal witnesses which VP, Incorporated and/or JV, L.L.C. (collectively, “Defendants”) anticipate calling to testify.

Valiant reserves its right to call the witnesses identified on the final and amended list of witnesses of Defendants, as well as such other rebuttal, impeachment and sur-rebuttal witnesses as are necessary and allowed by the Court, and further reserves its right to amend or supplement this witness list.

**DATED** this 14<sup>th</sup> day of January 2016.

McCONNELL WAGNER SYKES & STACEY PLLC

BY:



Richard L. Stacey  
Attorneys For Valiant Idaho, LLC

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on the 14<sup>th</sup> day of January 2016, 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  <u>brucea@ejame.com</u>
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  <u>garyfinney@finneylaw.net</u>
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  <u>sweeks@jvwlaw.net</u>

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



Richard L. Stacey

**EXHIBIT A**  
**to Valiant Idaho, LLC's Identification of Trial Witnesses**

*Genesis Golf Builders, Inc. v. Pend Oreille Bonner Development, LLC, et al.*  
Bonner County Case No. CV 2009-1810  
**Trial:** January 28 and 29, 2016  
The Honorable Barbara A. Buchanan, Presiding

<b>WITNESSES [LISTED IN ANTICIPATED ORDER]</b>	
1	Barney Ng Lafayette, California
2	Rick Lynskey First American Title Company
3	Casey Linscott First American Title Company
4	Charles Reeves Reno, Nevada
5	William Haberman Member, Valiant Idaho, LLC c/o McConnell Wagner Sykes & Stacey PLLC ("MWSS")
6	Richard Vilelli c/o James Vernon & Weeks, P.A.
7	James Berry c/o Finney Finney & Finney, P.A.
8	Gary Finney

Susan P. Weeks, ISB No. 4255  
JAMES, VERNON & WEEKS, PA  
1626 Lincoln Way  
Coeur d'Alene, Idaho 83814  
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Attorneys for Third Party Defendant 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

VP INC'S AMENDED EXHIBIT LIST

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

COMES NOW Third Party Defendant, VP, Incorporated, by and through its attorneys of record, Susan P. Weeks of the firm James, Vernon & Weeks, P.A. and hereby submits its Exhibit List as required by the Court's scheduling order in the form attached hereto. In addition to the exhibits listed, Third Party Defendant may use any exhibit contained on Cross Claimant/Third Party Plaintiff's Exhibit List.

DATED this 15<sup>th</sup> day of January, 2016.

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 15<sup>th</sup> day of January, 2016:

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 Hand Delivered  
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827 E. Park Blvd., Ste. 201  
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*Christine Elmore*

## DEFENDANT V.P., INCORPORATED'S EXHIBITS

**CASE NO.:** BONNER COUNTY CASE NO. CV-2009-1810

**TRIAL DATE:** January 28, 2016

**CASE TITLE:** Genesis Golf Builders, Inc., formerly known as National Golf Builders, Inc., a Nevada corporation vs. Pend Oreille Bonner Development, LLC, a Nevada limited liability company; et al.

NO.	DESCRIPTION	BY STIP.	OFFERED	ADMITTED	REFUSED	RESERVE RULING
200	State of California- Department of Corrections Desist and Refrain Order					
201	9/22/15 Declaration of Barney NG in Support of Valiant Idaho, LLC's Third Motion for Summary Judgment					
202	5/9/13 Declaration of Barney NG, Real party in Interest in Opposition to Motion for Relief from Automatic Stay by RE Loans					
203	Loan No. P0099 Loan Agreement					
204	4/8/14 First Amended Cross-Complaint					
205	Loan No. P0099 Borrower's Funding Authorization and Agreement					
206	Loan No. P0099 Escrow Instructions Dated March 6, 2007					
207	Greater Bay Bank Outgoing Domestic Funds Transfer Request					
208	Loan No. P0099 Payment History Detail					

NO.	DESCRIPTION	BY STIP.	OFFERED	ADMITTED	REFUSED	RESERVE RULING
209	Loan No. P0099 Real Estate Loan Disclosure Statement					
210	Deed of Trust/Mortgage Direction Letter					
211	Loan No. P0107 Loan Servicing Agreement					
212	6/12/2014 E-mail correspondence from William Haberman to Barney Ng					
213	6/19/14 E-mail correspondence from Barney Ng to William Haberman					
214	Agreement for Sale of Promissory Note and Assignment of Security Interests					
215	Estimated Settlement Statement					
216	9/19/15 E-mail from William Haberman to Barney Ng					
217	10/21/14 E-mail from Barney Ng to William Haberman					
218	California Department of Real Estate Proposed Decision					
219	Loan No. P0094 Note Secured by Mortgage					
220	Loan No. P0094 Mortgage Assignment of Rents, Security Agreement, and Fixture Filing					
221	Borrower Statement Final					
222	Settlement Statement					
223	Loan No. P0099 Loan Agreement					



NO.	DESCRIPTION	BY STIP.	OFFERED	ADMITTED	REFUSED	RESERVE RULING
224	Loan No. P0099 Note Secured by <b>Mortgage</b>					
225	6/6/2007 E-mail from Nancy Albanese to Chuck Reeves					
226	8/5/08 letter from Tami Barrows to Casey Linscott Re: Escrow Instruction re P0099 Pend Oreille Bonner <b>Development</b>					
227	8/5/08 E-mail from Casey Linscott to Vincent Hua					
228	8/1/08 First American Title Company Borrower Affidavit					
229	8/5/08 E-mail from Casey Linscott to Vincent Hua					
230	Loan Nos. P0106 & P0107 Escrow Instructions Dated August 1, 2008					
231	Loan Nos. P0106 & P0107 Borrower's Funding Authorization and Agreement					
232	First American Title Company Borrower's Final Settlement Statement					
233	First American Title Company Settlement Statement Mortgage Fund '08 LLC					
234	First American Title Company Settlement Statement Pensco Trust Co.					

NO.	DESCRIPTION	BY STIP.	OFFERED	ADMITTED	REFUSED	RESERVE RULING
235	Pend Oreille Bonner Development, LLC Deposit Receipt for \$69,274.66					
236	Sixth Commitment Schedule A					
237	E-mail from Casey Linscott to Vincent Hua and Barney Ng					
238	Borrower's Settlement Statement					
239	7/31/08 letter to First American Title Company from Gary Finney					
240	Calculations of Amounts Due Under Loans					
241	1/25/08 E-mail from Vincent Hua to Kathy Groenhout					
242	4/8/09 letter from Alex Furrukh to Masood Khan					
243	Liberty Northwest Check Enclosure					
244	6/4/2009 \$2,865,211.40 Safeco Check to Idaho Club Mgmt Co., RE Loans, Bar-K, Mrtg Fund 08, Pensco Trust, JV, LLC, Greenspan Co/Adj. International					
245	9/1/09 \$1,205,908.81 Safeco Check to Greenspan Co/Adjusters Intl, The Idaho Clug Mgmt., Co; RE Loans; Bar-K; Mrtg Fund 08; Pensco Trust; JV LLC					
246	10/5/09 letter from Chuck Reeves to Adjusters International					

NO.	DESCRIPTION	BY STIP.	OFFERED	ADMITTED	REFUSED	RESERVE RULING
247	2/20/09 \$500,000.00 Safeco check to Greenspan Co/Adjuster Intl.; Idaho Club Mtg Co; RE Loans; Bar-K; Mortgage Fun 08/ Pensco Trust; JV, LLC; Dan Jacobson					
248	10/23/09 \$490,948.35 Safeco check to Greenspan Company; Adjusters International; The Idaho Club Management Company; RE Loans; Bark-K; Mortgage Fund 08; Pensco Trust; JV, LLC; Steven Lazar; Dan Jacobson; Sage Investments					
249	10/26/09 \$1,000,000.00 Greenspan Adjusters International, Inc. check to Bar-K					
250	9/20/13 Quitclaim Deed Lot 7, Block 5					
251	9/20/13 Quitclaim Deed Lot 1, Block 1					
252	9/20/13 Quitclaim Deed Lot 2, Block 17					
253	9/20/13 Quitclaim Deed Lot 10, Block 2					
254	First American Title Company Nation Commercial Services Estimated Settlement Statement for R.E. Loans					
255	First American Title Company Nation Commercial Services Estimated Settlement Statement for MF '08					

NO.	DESCRIPTION	BY STIP.	OFFERED	ADMITTED	REFUSED	RESERVE RULING
256	E-mail from Chuck Reeves to Dave Wall					
257	E-mail from Chuck Reeves to Rick Lynskey					
258	E-mail from Dave Wall to Rick Lynskey					
259	8/19/2013 Deposition Transcript of Charles Reeves					
260	10/30/14 E-mail from Chuck Reeves to William Haberman					
261	6/7/14 E-mail from William Haberman to Rick Dishnica					
262	Consulting Agreement					
263	Consent to Judgment & Waiver of Claims					
264	First American Title Company Borrower's Final Settlement Statement					
265	First American Title Company Settlement Statement-Pensco Trust					
266	First American Title Company Settlement Statement-Mortgage Fund '08					
267	6/4/14 letter from William Haberman to Chuck Reeves					
268	Disclosure Statement for the Debtors' Fourth Amended Joint Chapter 11 Plan of Reorganization, Dated May 15, 2012					

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Attorneys For Valiant Idaho, LLC

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

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

vs.

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

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

Case No. CV-09-1810

**VALIANT IDAHO, LLC'S TRIAL BRIEF**

**Honorable Barbara A. Buchanan**

**Trial:**

January 28, 2016 – January 29, 2016

**ORIGINAL**

COMES NOW, cross-claimant and third party plaintiff Valiant Idaho, LLC (“Valiant”), by and through its attorneys of record, McConnell Wagner Sykes & Stacey PLLC, and submits this Trial Brief.

## I. PROCEDURAL HISTORY

As this Court is well aware, the upcoming trial for this case, scheduled for January 28 – 29, 2016, will complete the foreclosure litigation arising out of the construction and development of a golf course and residential housing project located in or around Sandpoint, Idaho. This project is commonly known as the Idaho Club Project. This trial will adjudicate the last issue remaining in a case that was originally filed on October 13, 2009.

Valiant has gone to great effort to whittle down the issues in this case to the single issue remaining for trial. Valiant prevailed on a motion for summary judgment by Order dated April 14, 2015 (the “First SJ Order”) adjudicating: 1) the amounts owed to Valiant by POBD; 2) that said amounts are secured by three mortgages properly assigned to Valiant (by R.E. Loans, LLC, Pensco Trust, Co., and Mortgage Fund 08, LLC) (collectively the “Valiant Mortgages”); and 3) the Valiant Mortgages are prior in right title and interest to any interest held by cross-defendants JV, LLC (“JV”) and North Idaho Resorts, LLC (“NIR”), and third party defendant VP, Inc. (“VP”).

Shortly thereafter, Valiant prevailed on a second motion for summary judgment by Order dated June 23, 2015 (the “Second SJ Order”). The Second SJ Order adjudicated the property that is subject to the Valiant Mortgages.

After entry of the First SJ Order and Second SJ Order there were no issues remaining for trial. As such, the Court granted Valiant a final judgment and decree of foreclosure (the “Final Judgment”) on August 5, 2015.

VP and JV filed numerous motions to reconsider this Court's First SJ Order, Second SJ Order, and the Final Judgment.<sup>1</sup> Among other things, VP and JV argued that there is a question of fact whether or not the loans secured by the RE Loans, LLC ("RE Loans") and Pensco Trust, Co. ("Pensco") were satisfied. The only admissible evidence submitted in support of this this argument was a revised settlement statement from the Mortgage Fund 08, LLC ("MF08") loan closing including the following language: Payoff First Note – Loan No. P0099 – Mortgage Fund '08 LLC c/o Bar K, Inc. \$6,172,325.18" and "Payoff Second Note – Loan No. P0106 – Mortgage Fund '08 LLC c/o Bark K, Inc. \$2,700,000." On September 5, 2015, the Court entered an order (the "Reconsider Order") granting the motions in part finding that,

. . . there is a genuine issue of material fact as to whether the 2007, RE Loans Note (Loan No. P0099) and Pensco Note (Loan No. P0106) have been satisfied . . . At trial, the Court would like to see and hear additional evidence on the issue of whether or not these loans have been satisfied including testimony from the title company that issued the Settlement Statement.

*Reconsider Order*, p. 3. The Court also held that there was a question of fact regarding the legal descriptions of the specific property subject to the Valiant Mortgages. *Id.* The Reconsider Order made it clear that the motions to reconsider were denied except for these two discreet issues, and that these two issues were the sole issues remaining for trial. *Id.* at p. 4.

Thereafter, Valiant filed a third motion for summary judgment seeking to adjudicate the two issues remaining in the case by virtue of the Reconsider Order. By Order dated October 30, 2015 (the "Third SJ Order"), the Court granted Valiant's motion for summary judgment in part by determining that there is no issue of material fact regarding the legal descriptions of the real property subject to the Valiant Mortgages. However, the Court denied the motion with respect to

<sup>1</sup> The Court ruled in its First SJ Order that NIR released its vendors lien "by way of Partial Termination recorded on March 15, 2007, and recorded on March 11, 2009. . ." NIR did not file a motion to reconsider this portion of the First SJ Order.

whether or not RE Loans' loan and Pensco's loan were satisfied. The Third SJ Order explained its decision as follows:

At the summary judgment hearing, counsel for Valiant utilized the MF08 loan documents to clarify how the MF08 loan was disbursed and how it was funded. Valiant reconciled the figures from the loan documents with those on the Borrower's Final Settlement Statement dated August 8, 2008 to support its argument that the 2007 RE Loans Note (Loan No. P0099) and the Pensco Note (Loan No. P0106) have not been satisfied. **Upon consideration of this evidence, the Court acknowledges the strength of Valiant's arguments in this regard.** Nevertheless, it appears that conflicting inferences may be drawn from the terms on Exhibit H: 'Payoff Second Note – Loan No. P0099 – Mortgage Fund '08 LLC c/o Bar K, Inc. . . . Payoff Second Note – Loan No. P0106 – Mortgage Fund '08 c/o Bar K, Inc. . . .' Does "payoff" in this context mean the loans have been, or have yet to be, paid off? Although this Court may grant the summary judgment despite the possibility of conflicting inferences, in this case, it will not do so.

*Third SJ Order*, p. 15. (Citations omitted). (Emphasis added). Although the Court denied Valiant's third summary judgment motion in part, it emphasized the strength of Valiant's position and the weakness of VP's and JV's arguments. The Third SJ Order concluded by ordering that **"the only issue remaining for the court trial is whether the 2007 RE Loans Note (Loan No. P0099) and the Pensco Note (P0106) have been satisfied."** *Id.* at p. 18. (Emphasis Added.)

In anticipation that VP and JV would not adhere to the Court's decisions limiting the issue remaining for trial, Valiant filed a motion in limine asking that the Court to prohibit evidence unrelated to this issue. VP and JV filed opposition briefing arguing that there was no such limitation in the Court's prior decisions. Based upon this opposition briefing, Valiant's concerns are warranted. The Court granted Valiant's motion in limine by Order dated December 29, 2015 (the "Limine Order") ruling that "Valiant's motion for an order precluding defendants NIR, VP and JV from presenting evidence at trial relating to any issue other than whether the 2007 RE Loans Note and/or the Pensco Note have been satisfied is granted." *Limine Order*, pp. 1-2.



JV and VP have continued to ignore the Court's decisions limiting the scope of trial. Since December 29, 2015, Valiant has taken the depositions of, *inter alia*, Barney Ng (the loan servicer for RE Loans and Pensco) and Charles Reeves (the principal of Pend Oreille Bonner Development, LLC). Despite the Court having made it clear that there is only one issue remaining in this case, VP and JV spent hours repeatedly questioning these deponents on unrelated issues. As a consequence of this inappropriate questioning, both of these depositions lasted an entire day.<sup>2</sup> Moreover, a perusal of the trial exhibits identified by VP and JV also indicate an intent to ignore the Court's decision.

This case is scheduled for a two (2) day trial because there is only one issue left to be decided by this Court. If JV and VP are allowed to expand the scope of the trial to unrelated issues that have already been adjudicated the trial will not be completed as scheduled. This case has been on the Court's docket for more than five (5) years. It is unfairly prejudicial to Valiant and wasteful to the Idaho Club Project to delay this matter any further. With each day that goes by the Idaho Club Project becomes more complicated and expensive to complete and less valuable to sell at the foreclosure sale. Valiant asks this Court to strictly adhere to its Orders limiting the scope of trial to whether or not RE Loans and Pensco were satisfied at the MF08 loan closing.

## II. LEGAL ISSUES

### A. *The defenses raised by VP and JV are frivolous and without any basis in fact or law.*

To prevail at trial, Valiant must prove the amounts remaining owed pursuant to the 2007 RE Loans Note and the Pensco Note. In so doing, this evidence will establish that neither the 2007 RE Loans Note nor the Pensco Note have been satisfied. Although Valiant bears the burden of proving its case by a preponderance of the evidence, Valiant anticipates that its evidence will be

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<sup>2</sup> The deposition of Barney Ng could not be completed in a day and has not been completed as of the filing of this pre-trial brief. As such, his deposition would have taken more than a day if it had been completed.

largely uncontroverted. Based upon the discovery that has been completed, VP and JV lack virtually any documentary or testimonial evidence to support their positions in this case.

To wit, Charles Reeves will testify on behalf of the borrower, POBD, that RE Loans and Pensco were not satisfied by the MF08 loan closing, and that POBD still owes a principal balance of \$278,147.65 pursuant to the 2007 RE Loans Note and \$2,700,000.00 pursuant to the Pensco Note. Likewise, Barney Ng will testify, on behalf of the loan servicer responsible for disbursing loan funds to POBD and tracking the amounts owed to RE Loans and Pensco, that RE Loans and Pensco were not satisfied by the MF08 loan closing. He will also testify that the loan servicer's business records show a principal balance owed to RE Loans of \$278,147.65. Mr. Ng is also the individual that loaned POBD \$2,700,000.00 from his self-directed IRA on behalf of Pensco. In this capacity he will testify that POBD still owed \$2,700,000.00 pursuant to the Pensco Note when it was transferred to Valiant in July of 2014. Additionally, the escrow officer for First American Title Company ("FATCO"), who was responsible for closing the MF08 loan, will testify that neither RE Loans nor Pensco were paid any monies by FATCO or anyone else at the FATCO loan closing. To the contrary, a total \$2,975,000.00 was paid into closing by Pensco and MF08 and a total of \$2,975,000.00 was disbursed to other entities. VP and JV cannot controvert this direct evidence by percipient witnesses.

Valiant's documentary evidence also establishes that the 2007 RE Loans Note and Pensco Note were not satisfied. Invoices sent to POBD by the loan servicer confirm principal balances owed to RE Loans of \$278,147.65 and to Pensco of \$2,700,000. Moreover, the MF08 loan documents and FATCO closing documents establish that RE Loans and Pensco could not have been satisfied at the MF08 loan closing. These documents establish that MF08 and Pensco disbursed a total of \$2,975,000.00 into escrow at FATCO. As RE Loans was owed \$6,172,325.18

and Pensco was owed \$2,700,000.00 (a combined total of \$8,872,325.18). RE Loans and Pensco could not possibly have been paid off with the \$2,975,000.00 disbursed into escrow. The terms of the MF08 loan documents further state that RE Loans would maintain a first priority loan position and Pensco would maintain a second priority lien position after closing. These provisions are meaningless if RE Loans and Pensco were to be paid off at the MF08 loan closing. Similarly, the subordination agreements and loan modification recorded by RE Loans and Pensco as condition precedents to the MF08 loan closing are non-nonsensical if RE Loans and Pensco were going to be paid off. JV and VP cannot controvert this documentary evidence.

Despite the fact that no witness will testify that either the 2007 RE Loans Note or the Pensco Note have been satisfied, and the fact that there are no documents that can establish that said Notes were satisfied at the MF08 loan closing, VP and JV continue to frivolously assert that one or both of these Notes were somehow paid. They continue to point to the Borrower's Final Settlement Statement (the "Settlement Statement") cited to by the Court in the Reconsider Order and the Third Summary Judgment Order as proof that these loans were satisfied. While this document was enough to barely withstand Valiant's third motion for summary judgment, it is woefully insufficient to overwhelm Valiant's evidence to the contrary. Wishful thinking is not evidence. The Settlement Statement does not have any legally binding effect upon the obligations of POBD, MF08, Pensco or RE Loans. Moreover, counsel for VP and JV have reviewed FATCO's documents<sup>3</sup> and participated in the depositions of the title officer and escrow officer for the MF08 loan closing. As such, VP and JV are fully aware that FATCO was not responsible for and that it did not disburse any amounts to RE Loans or Pensco at closing. Counsel for JV and VP also

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<sup>3</sup> FATCO's documents were subpoenaed and obtained by VP's counsel prior to the hearing on Valiant's third motion for summary judgment. However, these documents were intentionally withheld from Valiant until the day of said hearing because they unequivocally establish that RE Loans and Pensco were not satisfied at the MF08 loan closing.

participated in the depositions of Charles Reeves and Barney Ng and heard their testimony that RE Loans and Pensco have not been fully paid by POBD. Based upon the foregoing, there is no good faith basis upon which JV and VP can continue to defend against Valiant's claims in this case. The sole purpose of these defenses is to delay and harass Valiant and to make it as expensive as possible for Valiant to foreclose the Valiant Mortgages.

***B. Upon Valiant establishing its prima facie case, JV and VP must put forth admissible evidence that demonstrates the 2007 RE Loans Note and/or the Pensco Note have been satisfied.***

Valiant recognizes that it bears the initial burden of establishing that both the 2007 RE Loans Note and the Pensco Note remain unsatisfied. As discussed above, Valiant will meet its burden at trial. Once Valiant has established its prima facie case showing that amounts owing pursuant to the 2007 RE Loans Note and Pensco Note are still outstanding, the burden shifts to VP and JV to prove that these notes were somehow satisfied. The Idaho Supreme Court has long recognized the distinct burdens borne by the plaintiff and defendant in each case:

The term 'burden of proof' has two distinct meanings. In its strict sense, the term denotes the duty of establishing the truth of a given proposition or issue by such a quantum of evidence as the law demands in the case in which the issue arises, whether civil or criminal. In a secondary sense, the term 'burden of proof' is used to designate the obligation resting upon a party to meet with evidence a prima facie case created against him -- that is, the duty of proceeding with evidence at the beginning, or at any subsequent stage of the trial in order to make or meet a prima facie case." 29 Am.Jur.2d, Evidence, § 123, p. 154.

*Harman v. Nw. Mut. Life Ins. Co.*, 91 Idaho 719, 721 (1967). As such, to avoid entry of Judgment in favor of Valiant, JV and VP must submit sufficient evidence to establish by a preponderance of the evidence that the 2007 RE Loans Note and the Pensco Note have been paid in full. *Id.* It is not incumbent upon Valiant to prove a negative.

As explained hereinabove, VP and JV cannot sustain their burden of proof. No witness, including VP's expert witness, will testify that these Notes have been paid. Likewise, JV and VP cannot produce a single document that demonstrates that either of these Notes have been satisfied.

**DATED** this 21<sup>st</sup> day of January, 2016.

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

BY:


A handwritten signature in black ink, appearing to be 'R. Stacey', written over a horizontal line.

Richard L. Stacey  
Attorneys For Valiant Idaho, LLC

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 21<sup>st</sup> day of January 2016, a true and correct copy of the foregoing document was served by the method indicated below upon the following party(ies):

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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 type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivered <input checked="" type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Electronic Mail <a href="mailto:sweeks@jvwlaw.net">sweeks@jvwlaw.net</a>

  
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 ISB No. 1356

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

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

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

Defendants. )

---

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

---

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

Plaintiff, )

v. )

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

Defendants. )

---

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



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

Third Party )  
Plaintiff, )

v. )

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

Third Party )  
Defendants. )

\_\_\_\_\_ )  
)

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

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COMES NOW JV, L.L.C. ("JV") by and through its Attorney Gary A. Finney, Finney Finney & Finney, P.A., and makes this Pretrial Memorandum of facts, conclusions, application of law to facts and genuineness of documents, as follows:

1: Prior to 1995, JV was the vested owner of a large parcel

of real estate lying north and south of Highway 200, near the Pack River, in Bonner County, Idaho. JV developed the real estate, north of highway 200 into platted Lots and the Hidden Lakes golf course.

2: Subsequently through intervening owners, Richard Vilelli, through his various entities, acquired the real estate, lying north of Highway 200, and continued to develop and market platted lots and to operate the Hidden Lakes golf course.

3: Vilelli's entity, V.P., INC., an Idaho corporation, in October of 1995, purchased from JV the real estate, consisting of approximately 650 acres lying south of Highway 200, which has been referred to as "Moose Mountain".

4: As a purchase money mortgage, VP, as Mortgagor, mortgaged the Moose Mountain real estate to JV as Mortgagee, and that Mortgage was recorded October 24, 1995, Instrument No. 474746, records of Bonner County, Idaho. This Mortgage, was a purchase money mortgage, and was recorded first in time and priority for consideration and in good faith, without knowledge of any other encumbrance. A true and genuine copy of the Secured Promissory Note and the Mortgage are Exhibits A and B JV's Trial Exhibits.

5: The real estate known as Moose Mountain, is described, in the aforesaid Mortgage, recorded October 25, 1995 and is referred to herein as the "First Mortgage". The First Mortgage

was security for the Secured Promissory Note, dated October 20, 1995 in the original sum of \$2,264,500.00 payable to JV, LLC.

6: The Villelli entities include Villelli Enterprises, Inc., a California corporation, V.P., Inc., an Idaho corporation, Pend Oreille Limited Partnership, a California limited partnership, and North Idaho Resorts, LLC, an Idaho limited liability company.

7: In 2004, the Villelli entities consisting of Villelli Enterprises, Inc. and Pend Oreille Limited Partnership obtained a loan of money through Barney Ng on behalf of the Mortgagee. The loan of money was in the sum of \$8,000,000.00 in principal and was secured by a Mortgage recorded March 29, 2004 from Mortgagors, above named, to R.E. LOANS, LLC, a California limited liability company, the Mortgagee. The loan and mortgage were R.E. Loan's loan number V140.

8: The Mortgage referred to in no. 7 was recorded second in time for priority, for consideration and in good faith, with knowledge of the prior First Mortgage to JV and is referred to as the SECOND MORTGAGE on Moose Mountain real estate of March 24, 2004, Instrument No. 646455, in the principal sum of \$8,000,000.00.

9: The Second Mortgage (\$8 Million of 2004) granted R.E. Loans a mortgage on the real estate described therein. The mortgaged real estate, as described in said Second Mortgage is

described in its attached Exhibit "A" as including all of the following real estate:

Section A: describes as referenced in Parcel 1, through Parcel 11, all of which Parcels consist of the real estate lying north of Highway 200, known as the Hidden Lakes golf course, including platted lots, and specifically included the Parcel 7 including the Club House.

Section B: describes, as referenced, as Parcel 1 and Parcel 2, which described platted lots in the First Addition, and in the Second Addition, to Hidden Lakes. These parcels 1 and 2, are north of Highway 200.

Section C: describes real estate lying south of Highway 200, and is described as the real estate known as Moose Mountain, which is subject to the First Mortgage to JV as mortgagee recorded in October 1995.

Section D: describes Parcel 1, 2, and 3 which is the real estate lying near Trestle Creek as lake front on Lake Pend Oreille.

10: In 2004 and 2005 negotiations were entered into for Vilelli entities to sell all the real estate escribed in the Second Mortgage, to MDG Nevada, a Nevada Corporation. The negotiations resulted in a Third Amended and Restated Real Property and Sale Agreement by North Idaho Resorts, as Seller, for the various Vilelli entities, and to MDG's affiliate Pend

Oreille Bonner Investments, as Buyer.

11: The aforesaid Third Amended and Restated Real Property Purchase and Sale Agreement, which describes multiple parcels being referred to collectively as "Land". The Land is the property which Seller is selling to Buyer pursuant to the Agreement shall include, without limitation, the following:

- (1) - existing golf course common known as "Hidden Lakes Golf Course", including existing clubhouse and related amenities and facilities as well as the personal property used in connection therewith;
- (2) The portion of Land located north of Highway 200 subject to Seller's current development plan including, without limitation, the seven acre parcel, the ten acre parcel and the twelve acre parcel, the Cedar Cabins site, the Cottonwood condominium site, existing structures already constructed but not sold, and all unsold lots;
- (3) - all the property owned by Seller south of Highway 200 commonly called "Moose Mountain";
- (4) the two lakefront parcels;
- (5) existing intellectual property rights in connection with the foregoing such as, for example, the name of the golf course and other trade and marketing names used in connection with the Property;
- (6) all personal property used in connection with the Land and improvements on the Land, including, without limitation, furnishings, fixtures, equipment, vehicles, golf carts, supplies, accounts receivable, pro shop merchandise, claims and all other tangible and intangible property of Seller (including, without limitation, Seller's permit to sell alcoholic beverages) used in connection with the management, maintenance and operation of the Land and improvements on the Land, etc.;
- (7) - all of Seller's right, title, interest in and to all entitlements, easements, rights of way, rights of entry, rights of use and other appurtenances benefiting the Land and the improvement thereon;

12: The aforesaid Agreement, under the heading AGREEMENTS

state the purchase price, as follows:

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

The total consideration is:  
\$4,750,000.00 cash  
\$2,565,000.00 assume JV (Berry)  
\$8,515,000.00 assume Villelli Ents (RE Loans V140)  
\$15,830,000.00 Total

13: The loans stated in the Agreement that Buyer shall assume payment, consisted of "the Berry Note" dated October 24,

1995 in the revised principal amount of \$2,565,000.00, and the other being "the R E Loans Note", dated March 24, 2004, Instrument No. 646455 in the then principal amount of \$8,515,000.00, loan number V140.

14: The "Berry Note" is actually a JV LLC Promissory Note secured by the Mortgage recorded October 24, 1995, Instrument No. 474746, records of Bonner County, Idaho, which is the original Purchase Money Mortgage referred to as the FIRST MORTGAGE.

15: The R.E. Loans Note is actually the Note secured by the Mortgage recorded March 24, 2004, Instrument No. 646455, records of Bonner County, Idaho, which is the Loan No. V0140 to R.E. Loans, which is referred to as the SECOND MORTGAGE.

16: The closing and settlement of the Agreement occurred by recording date on June 19, 2006, with the actual Buyer being Pend Oreille Bonner Development Holdings, Inc. and the Seller being North Idaho Resorts. The successor to Pend Oreille Bonner Development Holdings is Pend Oreille Bonner Development, LLC, referred to as POBD.

17: At its closing and settlement, the Villelli entities that held actual title, were wholly owned entities owned by North Idaho Resorts, and were as follows:

- a) The deed wherein Villelli Enterprises, Inc. deeded a portion of the Idaho Club land to Pend Oreille Bonner



Development Holdings, Inc, recorded 6/19/2006 Instrument No. 706467 (Escrow No. 41847-NA)

b) The deed wherein V.P., Inc. deeded a portion of the Idaho Club land to Pend Oreille Bonner Development Holdings, Inc., recorded 6/19/2006, Instrument No. 706468 (Escrow No. 41847-NA)

c) The deed wherein Pend Oreille Limited deeded a portion of the Idaho land to Pend Oreille Bonner Development Holdings, Inc., recorded 6/19/2006, Instrument No. 706469 (Escrow No. 41847-NA0 which describes the Section D property known as Lakefront/Trestle Creek.

18: The Secured Promissory Note and the Purchase Money Mortgage to JV as Mortgagee was from the inception "FIRST MORTGAGE" and were held in collection at Panhandle Escrow No. 206742, in the revised sum, as of closing and settlement, of \$2,565,000.00, with the Seller named as JV LLC and the new assuming Buyer named as "PO Bonner Dev Holding, Inc." c/o Monterey Dev Group 6900 S McCarran Blvd No 100, Reno, NV 89509. The remaining indebtedness on the Secured Promissory Note is \$1,476,450.35 as of September 18, 2008 plus interest thereon at 12% per annum. The ledger of Panhandle Escrow No. 206742 is JV's Trial Exhibit "C", which is a true and genuine copy of the original thereof.

19: The "Second Mortgage" to R.E. Loans LLC, Loan No.

V0140, recorded 3/24/2004, Instrument No. 646455, from Villelli entities, in the then adjusted principal sum of \$9,100,000.00 was held for "loan servicing" with Bar K-Inc at 201 Lafayette Circle, 2<sup>nd</sup> Floor, Lafayette, California 94549, Telephone: 925-283-1771, Fax 925-283-8885.

20: The entities in this action (litigation) consisting of:

- a). R.E. Loans, and
- b). Mortgage Fund 08, LLC, and
- c). Pensco Trust, and
- d.) their agent
- e.) Bar K Inc

were all operated and managed by Barney Ng. Barney Ng is the only person that Charles Reeves for POBD dealt with for all of the above entities.

21: The closing and settlement agent for the Agreement (NIR to POBD) was Sandpoint Title Company, of Sandpoint, Idaho as Escrow No. 41847-NA, which escrow number is also the same used by Sandpoint Title for the Title Insurance Commitment and the Title Insurance Policy for the purchase and sale.

22: At or about June 14 through June 19, 2006, Mr. Richard Villelli, for the Seller, directed Sandpoint Title Company to deliver to James Berry, a Manager of JV, L.L.C., a copy of both:

- a.) Seller's Closing Statement, Escrow No. 41847-NA, a true and genuine copy thereof is JV's Exhibit "D"
- b.) Buyer's Closing Statement, Escrow No. 41847-NA, a true

and genuine copy thereof is JV's Exhibit "O"

23: The two closing statements, which Mr. Villelli had Sandpoint Title furnish to Jim Berry for the sale by North Idaho Resorts, Seller, to Pend Oreille Bonner Development Holdings, Inc, Buyer, dated 6/14/2006, Escrow No. 41847-NA by Sandpoint Title Company were as follows:

- a.) Seller's Closing Statement, 2 pages, which show and state, among other things, that "Berry Note" assumed by Buyer. . . \$2,565,000.00 and "LOAN PAYOFF Bar-K, Inc. \$8,064,776.21" (Loan V140).
- b.) The Debits on said Closing Statement itemized the money charges paid by Seller and deducted from Seller's CREDITS of \$15,830,000.00, resulted in \$2,742,402.13 as the net balance due to Seller. This document in JV's Defendant's Exhibit "D". In truth and fact the Loan Pay-off Bar-K, Inc. of \$8,064,776.21, is the Villelli entities named mortgage, Loan No. V0140 from the Mortgagors to R.E. Loans as Mortgagee.
- c.) Buyer/Borrower Statement, showing North Idaho Resorts as Seller and Pend Oreille Bonner Development Holdings, Inc as the Buyer/Borrower, 1 page, shows and states, among other things, that:  
  
"Berry Note assumed by Buyer of \$2,565,00.00"

and under

"New to Bar-K, Inc. . . . \$20,500,000.00" and

"Hold for Construction Bar-K, Inc. \$11,400,000.00"

This document is JV's Defendant's Exhibit "O".

24: The Buyer/Borrower Statement shows and states as "Credits" to Buyer/Borrower, which is Pend Oreille Bonner Development Holdings, Inc. It also shows and states as a Debit charge to Buyer/Borrower, who is Pend Oreille Bonner Development Holdings, Inc, under the heading of "LENDER CHARGES" - "HOLD FOR Construction; Bar-K, Inc. . . \$11,400,000.00 - ". The mathematical difference between the 2006 New loan to Bar-K, Inc. (actually RE Loans) of \$20,500,000.00 and the Hold for Construction Bar-K, Inc. of \$11,400,000.00 is \$9,100,000.00. The \$9,100,000.00 is the dollar amount then owed to R.E. Loans on the 2004 Loan No. V0140, secured by the Mortgage recorded March 24, 2004 as Instrument No. 646455 from the Villelli entities named therein and payable to R.E. Loans, the Mortgagee. RE Loans did not pay or advance any money to POBD at the loan closing.

25: On the same Buyer/Borrower Statement, the item "New to Bar-K, Inc. of \$20,500,000.00 is actually the \$20,500,000.00 Note Secured by Mortgage, dated May 31, 2006, Loan No. P0094, payable to R.E. LOANS, LLC, at 201 Lafayette Circle, 2<sup>nd</sup> Floor, Lafayette, CA 94549, as "LENDER" by the maker, Pend Oreille

Bonner Development Holdings Inc, a Nevada corporation, which document is Exhibit "A" to the Affidavit of Charles W. Reeves.

26: Bar-K, Inc. is not the payee or Lender on the aforesaid Note Secured by Mortgage dated November 12, 2014. The payee "Lender" and the Mortgagee is named R.E. Loans.

27: The Note Secured by Mortgage, is Note/Loan P0094. Neither Bar-K, Inc. or R.E. Loans paid, funded, or loaned any money at all as part of the Buyer/Borrower Statement closing and settlement (JV's Exhibit "O"). The entire \$11,400,000.00 amount was held by RE Loans for construction by POBD.

28: The aforesaid Note Secured by Mortgage, Loan No. P0094 had a maturity due date of two (2) years from recording of the Mortgage. The aforesaid Note Secured by Mortgage, was secured by the Mortgage recorded June 19, 2006 as Instrument No. 706471 and Instrument No. 706472, as Mortgage Loan No. P0094. The aforesaid Mortgage, on page 2 of 17, second paragraph, includes the words "The advancement of the principal amount by Mortgagee to Mortgagor is herein referred to as the "Loan"." There was "no advancement" of money by R.E. Loans.

29: In truth and fact, R.E. Loans, Mortgagee, did not advance any principal amount to Pend Oreille Bonner Development Holdings Inc, Mortgagor, from the stated principal amount of \$20,500,000.00. In truth and fact R.E. Loans used the \$9,100,000.00 balance of the Villelli entities 2004

Note/Mortgage, Loan No. V0140, to R.E. Loans as the beginning balance of the 2006 Note and Mortgage from Pend Oreille Bonner Development Holdings Inc.

30: The document furnished by Charles W. Reeves, entitled Bar-K 8-28-07 Spreadsheet is JV's Exhibit "P", a true and genuine copy of the original thereof, with the stated "DATE of 6/19/2006 Loan Balance of \$20,500,000.00, 6/19/2006 advanced \$9,100,000.00". There was no advance or loan of \$9,100,000.00 from Bar-K, Inc. or R.E. Loans on 6/19/2006 or any later date because all money loaned/advanced was the preexisting Loan No. V140 of 2004 to the Villelli entities. The document shows and states under the date of 11/9/2006 an advance of (\$88,411.47) and an advance of (\$478,176.17), which are the only funds loaned, furnished, or advanced by R.E. Loans to Pend Oreille Bonner Development Holdings Inc. pursuant to the Note and Mortgage recorded June 19, 2006, as Loan No. P0094. This document is Defendant JV's Exhibit "P".

31: On the same document, headed Bar-K, 8-28-07 the 2006 entries of advances shown of amounts of \$88,441.47 and \$478,176.97, which equals \$566,588.44. The amount shown on the Buyer/Borrower Statement, JV's Defendant's Exhibit "O". "Hold For Construction Bar-K, Inc. . . . \$11,400,000 minus the two (2) advances made in 2006 of \$88,441.47 and \$478,176.97 add together . . . \$566,588.44 which results in \$10,833,411.56 still held for

construction under the 2006 RE Loans Mortgage, none of which was ever loaned or paid out by RE Loans to POBD.

32: The aforesaid \$10,833,411.56 is shown under the Loan Balance heading on the document entitled Bar-K 8-28-07, JV's Exhibit "P", and in the column entitled "Balance of" shows and contains the money figures... "\$9,813,900.00 as Loan draws incl refinance costs" - \$3,713,900.00 as Pay-down old Loan" = \$6,100,000.00 still owed on the "old loan" i.e. the Villelli entities, 2004 Loan No. V140.

33: The aforesaid stated \$3,713,900.00 "Paydown old loan" refers to the Villelli entities old loan of March 2004, Loan No. V0140. The \$6,100,000.00 monetary amount figure represents the Bar-K, Inc. computation of the amount still owed on the "old loan", the Villelli entities loan from R.E. Loans, the 2004 Note/and Mortgage, Loan No. V0140.

34: The only money loaned by R.E. Loans and paid out by R.E. Loans, under the R.E. Loans, Note and Mortgage of March 2006, Loan No. P0094 after the date of the Note and the Mortgage for \$20,500,000.00 was \$88,441.47 and \$478,176.97, totaling \$566,588.44.

35: The Subordination Agreement, recorded June 19, 2006 as Instrument Nos. 706582 and 706474, is executed by Owner: Pend Oreille Bonner Development Holdings, Inc, By: Charles W. Reeves, Pres and by Beneficiary JV LLC by James W. Berry, General

Partner and William A. Berry, General Partner, By: Sun Mountain, Inc, Managing Member, by William A. Berry, Pres, a true copy of which is Valiant's Exhibit "7".

36: Pend Oreille Bonner Development Holding's Inc, Mortgagor, executed a Note and Mortgage in favor of R.E. Loans, Mortgagee, as Lender, recorded June 19, 2006, Instrument Nos. 706741, 706742, and 706473 in the original stated sum of \$20,500,000.00 Loan No. P0094, a true and genuine copy of which is Valiant's Exhibit "B" to the Reeve's Affidavit of November 12, 2014.

37: On page 1 of 17 of said Mortgage, Valiant's Exhibit "B", referred to in the preceding paragraph is the following statement:

"Mortgagor has contracted to borrow from Mortgagee the principal sum of Twenty Million Five Hundred Thousand Dollar (\$20,500,000) and is indebted to Mortgagee for so much of said loan as Mortgagee shall disburse to Mortgagor from time to time"

38: The sums of money disbursed from time to time by Mortgagee to Mortgagor, Mortgage recorded June 19, 2006 pursuant to the aforesaid Mortgage, Loan No. P0094, consists of only the two (2) following amounts on the following dates:

a.) 11/9/2006 . . . \$ 88,411.47  
b.) 11/9/2006 . . . \$478,176.97

Total \$566,588.44



39: The pay down on said Note and Mortgage Loan No. P0094 paid by POBD Holdings to R.E. Loans was the sum of \$3,713,900.00.

40: POBDH, Inc paid more money (approximately \$3.0 million) on its 2006 Loan No. P0094 than was disbursed by R.E. Loans, from time to time.

41: On said 2006 Note/Mortgage Loan, the 6/19/2006 advance of \$9,100,000.00 was the sum then owing on the Villelli entities Loan No. V140, 2004 Note and Mortgage.

42: The entry by Bar-K on JV's Exhibit "P" as the escrow agent loan servicing party refers to \$3,713,900.00 as "Paydown old loan", which "old loan" is the Villelli entities 2004 Note/Mortgage Loan No. V140.

43: POBDH, Inc, having paid more than the \$566,588.44 it borrowed in the 2006 Note/Mortgage, Loan No. 0094, had paid off the amount disbursed to Mortgagee from time to time, and had satisfied the 2006 Note/Mortgage in full before the 2007 R.E. Loan occurred.

44: POBD, Mortgagor, executed a Note Secured by Mortgage and a 2007 Mortgage to R.E. Loans, Mortgagee, Loan No. P0099, in the principal amount of \$21,200,000.00, recorded March 15, 2007, Instrument Nos. 724829 and 724834.

45: Said March 15, 2007, Loan No. P0099, Mortgage stated the Mortgagor is indebted to Mortgagee for so much of said loan

as Mortgagee shall disburse to Mortgagor from time to time . . .

46: The Bar-K ledger for said 2007 loan No. P0099 shows the date 3/15/2007 advance of \$6,100,000.00, which sum of money was not disbursed by R.E. Loans, Mortgagee to POBD, Inc.

47: The aforesaid \$6,100,000.00 was the amount that Bar-K and R.E. Loans treated as the initial advance on 3/15/2007, but said sum was actually the amount still owing on the Villelli old note, Mortgage Loan No. V140, from the 2004 Note/Mortgage.

48: Except for the \$6,100,000.00 old loan, Loan No. V140, POBD paid more money on its Loan No. P0099 than the amount of money actually disbursed to POBD, Inc, Mortgagor by RE Loans.

49: POBD paid the 2007 Note/Mortgage Loan No. P0099, in full, by repaying all of its "Draws" by paying the "Paydowns".

50: POBDH Inc paid to R.E. Loans more money than it borrowed as disbursement from R.E. Loans pursuant to both the 6/19/2006 Loan No. P0094 and the March 15, 2007 Loan No. P0099.

51: The Exhibit "E", Loan No. P0099, attached to the Affidavit of Charles W. Reeves, dated November 12, 2014, begins with the entry date 3/15/2007 Initial Advance of \$6,100,000.00, which was not any sum advanced or disbursed by R.E. Loans to POBD, Inc on the 2007 Loan No. P0099.

52: The aforesaid \$6,100,000.00 date 3/15/2007 is the sum of money Bar-K and R.E. Loans ledger shows as still owing on the 2004 Mortgage from the Villelli entities Loan No. V140.

53: On the Exhibit "E" to the Reeve's Affidavit, page 2, 8/06/08 as New Bal (Balance of \$6,172,325.18) included \$6,100,000.00 still owed on the 2004 Villelli Loan No. V140.

54: On the Borrower's Settlement Statement, File No. 239217-5, dated 7/31/2008, under "Charge Description", line 6, entitled "Pay-off First Note - Loan No. P099 - Mortgage Fund 08 LLC & Bar-K, Inc. in the Borrower charge of \$6,172,325.18 is the amount actually paid-off by POBD to R.E. Loans, Loan No. P0099, being the March 15, 2007, Note and Mortgage.

55: The Borrower's Final Settlement Statement, File No. 239217-5 of First American Title Co. under "Charge Description", line 6, in the sum of \$6,172,325.18 as "Pay-off First Note - Loan No. P0099 - Mortgage Fund 08 LLC c/o Bar-K, Inc., which document is JV's Exhibit "H" and the pay-off figure of \$6,172,325.18 for Loan No. P0099 is the same dollar figure under the Reeve's Affidavit, Exhibit "E", under the date of 08/06/08 New Bal of \$6,172,325.18.

56: POBD fully paid-off Loan No. P0099 from R.E. Loans and no money is owed to R.E. Loans by POBD, on the 2007 Note/Mortgage.

57: MF08 disbursed only \$69,274.66 to POBD on the August 1, 2008 Note, Loan No. P0107 in the original face amount of \$21,980,000.00 payable to Mortgage Fund 08 Lender, Reeve's Affidavit Exhibit "J".

58: MF08 disbursed no money whatsoever except for the \$69,274.66 to POBD on the August 1, 2008 Mortgage recorded August 6, 2008, Instrument No. 756397, 756398, 756399, in the original face amount of \$21,980,000.00 payable to Mortgage Fund 08 Lender Exhibit "J" to Reeves Affidavit. The all-inclusive Note Secured by Mortgage, Valiant's Exhibit "I", page 2 of 17, states in footnote 1. "Lender shall pay the installments of principal and interest as they become due on the INCLUDED NOTES, and". The First Included Note is the 2007 Note Mortgage, Loan No. P0099 and the Second Included Note is the 2008 Note/Mortgage to Pensco, Loan No. P0106.

59: In the action, Union Bank, Plaintiff vs. Pend Oreille Bonner Development LLC and others, the additional parties named as a Defendants, Bonner County Case No. CV-2011-0135, include all of the following:

- a.) North Idaho Resorts, LLC
- b.) Pend Oreille Development, LLC
- c.) Pend Oreille Development Holdings, Inc.
- d.) Pensco Trust Co. custodian f/b/a Barney Ng
- e.) R.E. Loans, LLC
- f.) Mortgage Fund '08 LLC
- g.) JV L.L.C.
- h.) Charles and Ann Reeves, husband and wife

60: The following attorneys represented the aforesaid

Defendants:

- a.) North Idaho Resorts, LLC - Attorney Susan Weeks
- b.) Pend Oreille Development, LLC - Attorney John Layman
- c.) Pend Oreille Development Holdings, Inc. - Attorney John Layman

- d.) Pensco Trust Co. custodian f/b/a Barney Ng - Attorney Brent Featherston
- e.) R.E. Loans, LLC - Attorney Richard Stacey
- f.) Mortgage Fund '08 LLC - went to Default, no appearance
- g.) JV L.L.C. - Attorney Gary Finney
- h.) Charles and Ann Reeves, husband and wife - Attorney John Layman

61: In Bonner County Case No. CV-2011-0135, the Deposition of Charles W. Reeves was taken on August 19, 2013, with Attorney John Layman present for Defendants POBD, LLC, POBD Holdings, Inc, Montaheno Investments, LLC, Toyon Investments, LLC, and for Charles Reeves and Ann B. Reeves. Charles Reeve's deposition was taken and his testimony was:

- a.) POBD LLC was formed to develop Idaho property, referred to as the Idaho Club (Deposition page 8).
- b.) Mr. Villelli's entity was North Idaho Resorts, and the purchase closed in June 2006 (Deposition page 10).
- c.) The payment made for the purchase was in the \$5.0 million range cash at closing, and assumed some debt that North Idaho Resorts had on the property - it was Barney Ng's entities, which may have been called Bar-K, Reeves was not sure.
- d.) A loan that North Idaho Resorts had with JV.
- e.) That was all, except, North Idaho Resorts was to be paid 20% of the sale price after \$80 million (Deposition page 12, 13).
- f.) The debt assumed to the Barney Ng entity was probably

- in the \$9.0 million dollar range (Deposition page 14).
- g.) The Deposition Notice sent out included a request that Charles Reeves bring some documents with him, but Reeves did not bring any documents (Deposition page 16).
  - h.) Sometime late summer, early fall of 2007, the Ng entities could not fund the monthly draws, a monthly draw request was submitted, and they could not fund them (Deposition page 17).
  - i.) The First National Bank of Monterey was approached for borrowing funds until things could be straightened out with Mr. Ng. and his organizations (Deposition page 18).
  - j.) We had a development loan with the NG enterprises, of which how much was left to be drawn he can't remember, but basically they stopped funding (Deposition pages 18-19).
  - k.) Around Thanksgiving of that same year (2007) Ng said he would be able to start up funding again, and ask to borrow some additional funds (Deposition page 20).
  - l.) The additional funding loan finally came through in July or August of 2008 (Deposition page 21).
  - m.) From POBD's standpoint, they were still dealing with one person, Barney Ng. The entities changed to R.E.

Loans. R.E. Loans may have been involved in the first one - MF 08 and Pensco Trust, which is Barney's personal account (Deposition page 21).

n.) The books and records of POBD were probably in two (2) places, at the Sandpoint office and in Monterey, California (Deposition page 23). The Barney Ng entities for the August 6, 2008 closing was probably in the \$14-\$15 million range. I think 2 plus million was funded at closing, and that's the last funding we got. So, Ng cut off the funding again - correct (Deposition page 30).

o.) Charles Reeves referred to the property on the northern side of the highway as the golf course property and on the south side as Moose Mountain. Moose Mountain being approximately 650 acres (Deposition page 60).

p.) Concerning the initial assumption to R.E., all Charles Reeves knows is that whatever - 7, \$8 million due on that, was taken up to 20, \$21 million loan. Whether they (R.E.) internally paid that off and advanced me funds and whether that loan stayed in place, I wouldn't know (Deposition page 63).

q.) When the transaction closed and closed with R.E. Loans, I view it as having a \$21 million credit

facilities of which whatever this number was, 8 or 9 million, wasn't available because it was funds that were already outstanding. So, whatever the math is, 12, 13, \$14 million of development funds from which we could draw (Deposition page 64).

r.) Concerning the June 2006 closing, Charles Reeves didn't remember how much money was obtained from the Barney Ng entities. They redid the transaction a year or two years later (Deposition page 65).

s.) Charles Reeves recognized a closing statement, which was Exhibit B to his deposition, as being a loan closing with the Ng entities in August 2008. Initially when closed in 2006 we financed the property with R.E. Loans. Sometime - a year later (2007) we did some sort of amendment to that transaction with R.E. Loans. Then the refinancing that took place in August 2008 is the exhibit JV's Exhibit No. B (Deposition page 67).

t.) The third transaction with R.E. Loans is the Exhibit B. On it is the statement "New Loans, Mortgage Fund '08 in care of Bar-K, Inc." under which is "New Loan to File - Mortgage Fund 08 which amount is under Borrower's Credit, \$22,270,000. Reeve's entity did not receive that loan in money funds (Deposition page



68).

- u.) The First Note-Loan No. P0099 - Mortgage Fund 08, \$6,473,545.18 is correct. At that time 8 million, 9 million is what was owed at that time in August '08. So Reeves undertook the closing and transaction, these two entities were paid-off and this new loan for \$22,270,000, part of those proceeds were used to pay-off those two loans (Deposition page 70).
- v.) The next entry is payoff a second loan note, P0106 - Mortgage Fund, the entry is \$2,700,000.00, Charles Reeves did not specifically recall, but the closing statement was acceptable at the time (Deposition page 70).
- w.) On the same document the words "Retained Loan Funds" - Mortgage Fund 08 in care of Bar-K is \$12,480,000, which is the amount of money available to draw for development work, etcetera. We received some money, plus or minus \$2 million at closing, and that is all we received with this loan. We didn't receive any more subsequent to closing (Deposition page 72).
- x.) We receive some money at closing. We had additional money to draw, my recollection would be \$12,480,000 that was what we had left to draw beginning next month out, starting September (Deposition page 72).

- y.) There has been no money subsequent to closing, Exhibit B (Deposition page 80).
- z.) A fire in the clubhouse occurred December of '08 (Deposition page 111).
- aa.) Barney Ng is a person who speaks for R.E. Loans. When refinancing the project there were different entities, R.E. Loans, MF 08, and Pensco Trust. We always looked at them as the Ng umbrella. One loan to us, but they were three different entities. Barney Ng was the only one we had any dealings with. He was the only one Charles Reeves ever spoke to with those entities (Deposition page 122/123).
- bb.) When first purchased, it came up that North Idaho Resorts had a loan with Ng entities, so Barney Ng was approached about assuming that loan and then advancing additional funds as a development and acquisition. The loan was essentially rolled into, if you will, by the August '08 closing with R.E. Loans.
- cc.) The pay-off first note Loan No. P00099 is the same loan number, so potentially or logically that was paid off (Deposition page 151).
- dd.) The other loan No. P0106 indicates a pay-off of \$2.7 million, but Charles Reeves did not know what loan that related to, just all part of the Ng umbrella of

names we owed at the time that were paid-off with the new facility, or covered by the new facility. There is no preparation of documents, Ng entities prepare the documents and that's what are used (Deposition page 152).

ee.) Charles Reeves knows there are three entities involved, but from a business standpoint he is dealing with one entity.

ff.) Charles Reeves said we aren't making any payments to anybody on that loan. As it turned out, it became moot because they didn't fund our first month's draw, so we weren't making any payments from then on. From Charles Reeves perspective they failed to fund (Deposition page 154).

gg.) They did not fund any further draws, so no, we did not make any future payments once they didn't fund any additional draws. It was POBD's position that we weren't going to pay until they funded future draws (Deposition page 156).

hh.) For the fire insurance claim we hired Greenspan, International, they handled the claim (Deposition page 156).

ii.) The total sale to date on the Idaho Complex are probably 62 or \$63 million (Deposition page 161).

62: Pursuant to the June 19, 2006 Note and Mortgage from POBD to R.E. Loans, Loan No. P0094, in the face amount of \$20,500,000.00 - which are Exhibits "A" and "B" to the Affidavit of Charles W. Reeves, dated 12 November 2014, R.E. Loans, subsequent to June 19, 2006 only loaned, disbursed, and funded to POBD the following (2) dollar amounts.

i.	11/9/2006	\$88,411.47
ii.	11/9/2006	<u>\$488,176.97</u>
	Total:	<u>\$576,588.44</u>

63: Pursuant to the June 19, 2006 Note and Mortgage from POBD to R.E. Loans, Loan No. P0094, POBD paid R.E. Loans as follows:

i.	Paydown 11/9/06	\$278,587.50
ii.	"	\$722,712.50
iii.	"	\$706,562.50
iv.	"	\$512,762.50
v.	"	\$472,387.50
vi.	"	\$200,000.00
vii.	"	\$200,000.00
viii.	"	\$153,000.00
ix.	"	\$310,877.00
x.	"	<u>\$153,000.00</u>
	Total of:	<u>\$3,709,889.50</u>

64: Concerning the aforesaid 2006 Note and Mortgage from POBD to R.E. Loans, Loan No. P0094, POBD paid on said Loan, and had loan draws as follows:

i.	POBD paydowns total =	\$3,709,889.50
ii.	POBD actual funds disburse to RE =	\$576,588.44
iii.	POBD pd R.E. Loans in excess of loan funds received =	\$3,133,301.06

65: Pursuant to the March 2007 Note and Mortgage from POBD to R.E. Loans, Loan No. P0099, POBD obtained loan disbursement draws shown on Exhibit "E" to Charles W. Reeves' Affidavit of November 12, 2014, taken from said Exhibit "E" as follows:

i.	3/18/07	Draw A	\$1,626,095.48
ii.	4/16/07	Draw B	\$2,078,812.80
iii.	5/21/07	Draw C	\$407,880.18
iv.	6/1/07	Draw D	\$949,396.41
v.	6/14/07	Draw E	\$831,578.95
vi.	7/17/07	Draw F	\$4,620,044.54
vii.	7/17/07	Draw G	\$82,021.01
viii.	7/30/07	Draw H	\$4,335,053.24
ix.	8/9/07	Draw I	\$109,162.95
x.	9/21/07	Draw J	<u>\$59,954.44</u>
		Total Loan Draws:	\$15,100,000.00

66: Pursuant to the March 2007 Note and Mortgage from POBD to R.E. Loans, Loan No. P0099, POBD made loan Paydowns, as shown on Exhibit "E" To the Affidavit of Charles W. Reeves, dated 12, November 2014, as follows:

i.	3/15/07	\$136,000.00
ii.	3/15/07	\$100,000.00
iii.	4/9/07	\$631,125.00
iv.	5/3/07	\$240,975.00
v.	5/7/07	\$332,775.00
vi.	5/7/07	\$178,500.00
vii.	5/10/07	\$309,825.00
viii.	5/18/07	\$455,175.00
ix.	5/18/07	\$187,000.00
x.	5/21/07	\$344,250.00
xi.	5/23/07	\$286,875.00
xii.	5/31/07	\$573,750.00
xiii.	6/14/07	\$115,000.00
xiv.	7/20/07	\$212,500.00
xv.	8/17/07	\$229,500.00
xvi.	8/23/07	\$234,250.00
xvii.	8/23/07	\$224,215.00
xviii.	8/23/07	\$215,175.00
xix.	8/27/07	\$140,250.00

xx.	9/14/07	\$178,500.00
xxi.	9/14/07	\$115,000.00
xxii.	9/28/07	\$470,475.00
xxiii.	9/28/07	\$582,275.00
xxiv.	10/01/07	\$455,175.00
xxv.	10/04/07	\$524,025.00
xxvi.	10/09/07	\$353,281.00
xxvii.	10/12/07	\$371,025.00
	12/12/07	\$531,675.00
		\$309,825.00
xxviii.	10/22/07	\$443,700.00
xxix.	10/23/07	\$371,025.00
xxx.	11/5/07	\$371,025.00
xxxi.	11/7/07	\$401,625.00
xxxii.	11/09/07	\$400,987.50
xxxiii.	11/13/07	\$969,000.00
xxxiv.	1/7/08	\$294,525.00
xxxv.	1/14/08	\$ 15,957.34
xxxvi.	2/25/08	\$187,000.00
xxxvii.	2/25/08	\$371,025.00
xxxviii.	3/31/08	\$290,030.00
xxxix.	4/15/08	\$290,000.00
xl.	5/12/08	\$ 11,220.00
xli.	7/16/08	\$140,935.98
xlii.	8/1/08	\$ 11,220.00
xliii.	8/1/08	\$290,000.00
xliv.	8/6/08	\$1,150,000.00
xlv.	8/7/08	\$290,000.00
xlvi.	8/21/08	\$290,000.00
xlvii.	8/22/08	\$290,000.00
xlviii.	10/7/08	\$ 11,220.00
xlix.	5/5/09	\$966,416.64
l.	7/2/09	\$2,640,474.03
li.	9/15/09	\$ 62,713.23
lii.	10/28/09	\$984,098.58
liii.	11/23/09	\$ 656.48
liv.	11/23/09	<u>\$358,598.59</u>

Total Loan Paydown by POBD: \$20,941,849.37

67: Concerning said 2007 Note and Mortgage from POBD to R.E. Loans, Exhibit "E" to Charles Reeves' Affidavit of 12 November 2014, the draws and paydowns are:

- i. R.E. disbursements, Total Draws, A through J: \$15,100,000.00
- ii. Total Paydowns: \$20,941,449.37
- iii. POBD paid to R.E. Loans/ Loan No. P0099  
in excess of POBDs total draws: (\$5,841,849.37)

68: POBD Fully paid the 2006 Note/Mortgage to R.E. Loans,  
Loan No. P0094.

69: POBD fully paid the 2007 Note/Mortgage to R.E. Loans,  
Loan No. P0099.

70: The following is taken from the Idaho Repository print  
out for CV-2011-135, the case of the Bank/Plaintiff vs. the  
Defendants which include:

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

71: In said Case No. CV-2011-135, the Idaho Repository  
Print Out shows:

- a. 2/02/2011: Notice of Appearance by Attorney Gary  
Finney for JV L.L.C
- b. 2/24/2011: Notice of Appearance by Attorney John R.  
Layman for Montaheno Investments LLC, a Nevada  
limited liabil, Pend Oreille Bonner Development

- Holdings, Inc., Pend Oreille Bonner Development, LLC, and Toyon Investments LLC
- c. 8/29/2011: JV, LLC Answer to First Amended Complaint, Counterclaim and Cross Claim
  - d. 9/28/2011: Stay Order (re Mortgage Fund 08, LLC)
  - e. 9/28/2011: Stay Order (re R.E. Loans, LLC)
  - f. 3/5/2012: Initial Appearance by Meulenman Mollerup for R.E. Loans LLC, co Appearance Richard L. Stacey
  - g. 5/23/2012: R.E. Loans granted Motion for Telephonic Appearance; and R.E. Loans Conditional Objection to Pacifica Capital Bank, N.A.'s Request to Lift the Stay Order
  - h. 6/15/2012: North Idaho Resorts, LLC's Answer to First Pacific Capital Bank, N.A.'s Amended Complaint, Counter Claim and Cross Claim
  - i. 9/19/2012: R.E. Loans, LLC's Notice of Non-Opposition [re: October 4, 2012, Hearings]
  - j. 1/29/2013: R.E. Loans, LLC's Notice of Non-Opposition [Re: January 31, 2013 Hearing]
  - k. 4/26/2013: R.E. Loans, LLC's Answer to JV LLC's Cross-Claim
  - l. 4/29/2013: R.E. Loans LLC's Answer to North Idaho Resorts, LLC's Cross-Claim and Cross-Claim Against



North Idaho Resorts, LLC

- m. 5/14/2013: R.E. Loans, LLC's Expert Witness Disclosure
- n. 5/15/2013: Notice of Service of Discovery (by RE)
- o. 6/17/2013: JV, LLC's Notice of Serving Answers to R.E. Loans, LLC's First Set of Discovery Requests to JV, LLC
- p. 6/24/2013: Notice of Service Defendant North Idaho Resorts, LLC's Answer and Responses to R.E. Loans, LLC's First Set of Discovery Request to North Idaho, Resorts, LLC
- q. 7/15/2013: R.E. Loans, LLC's Amended Cross-Claim Against North Idaho Resorts, LLC
- r. 7/18/2013: R.E. Loans, LLC's Motion for Partial Summary Judgment Against North Idaho Resorts, LLC
- s. 7/18/2013: R.E. Loans, LLC's Memorandum in Support of Motion for Partial Summary Judgment
- t. 7/24/2013: R.E. Loans, LLC's Notice of Intent to Appear Telephonically
- u. 8/20/2013: R.E. Loans, LLC Disclaimer of Interest in Trestle Creek
- v. 9/11/2013: Stipulation as to Claims of JV, LLC Against R.E. Loands (sic - Loans), LLC
- w. 9/19/2013: R.E. Loans, LLC's Request for Documents

form (sic - from) Deponent Clarkes (sic - Charles)

Reeves [Re: August 19, 2013 Deposition]

- x. 12/2/2013: R.E. Loans, LLC's Response to Request for Trial Setting
- y. 12/13/2013: R.E. Loans, LLC's Notice re: Order for Hearing re: JV, LLC's Motion to Alter/Reconsider
- z. 5/8/2014: Pensco Trust Co., Custodian FBO Barney NG, Special Appearance by Attorney Brent Featherston
- aa. 5/8/2014: Affidavit of Barney Ng
- bb. 5/12/2014: Hearing result for Motion to Set Aside Default Scheduled on 5/12/2014 9:00 AM: Motion Denied
- cc. 6/3/2014: Findings
- dd. 6/25/2014: Judgment and Decree of Foreclosure as to all Defendants (8 pages)
- ee. 11/17/2014: Amended Notice of Appeal

72: The aforesaid action, Bonner County Case No. CV-2011-135 is on appeal to and retained by the Idaho Supreme Court. JV L.L.C. is an Appellant and NIR is an Appellant.

73: The FINDINGS by District Judge Griffin in CV-2011-135 state that "POBD did pay the debt they assumed to R.E." and "POBD has not paid the debt they assumed to JV, LLC". The Findings are Valiant's Exhibit 14.

74: The aforesaid FINDINGS were served by a copy thereof

by mail to Rich L. Stacey, Attorney for R.E. Loans, on 3<sup>rd</sup> June 2014.

75: The Judgment and Decree of Foreclosure as to All Defendants, was served by fax copy on Rick L. Stacey, Meulenman Mollerup LLO 755 W. Front Street, Ste. 200, Boise, Idaho 83712 Fax (208) 336-9712.

76: R.E. Loans did not appeal in Case CV2011-135.

77: The Idaho Club clubhouse was totally destroyed by fire, and the fire insurance paid for the loss, as follows:

Safeco Insurance:

<u>Check No.</u>	<u>Date</u>	<u>Check Total</u>
922 524 30	3/23/2009	\$261,371.76
922 524 31	3/23/2009	\$ 6,300.27
922 524 32	3/23/2009	\$ 16,093.66
922 524 33	3/23/2009	\$ 8,337.32
922 524 34	3/23/2009	\$ 9,167.88
	Sum:	<u>\$301,270.89</u>
922 524 15	2/20/2009	\$500,000.00
922 566 92	6/04/2009	\$2,865,211.40
922 587 79	10/23/2009	\$490,940.35
922 588 74	9/01/2009	\$1,250,908.81
	Sum:	<u>\$5,107,060.56</u>

Total Sum of Safeco Insurance Checks: \$5,408,331.45

Liberty Northwest Insurance Company

<u>Letter Date</u>	<u>Totals Referenced</u>
4/8/2009	\$2,500,000.00
8/9/2009	\$ 31,740.57
8/9/2009	\$ 7,011.52
	Sum: <u>\$2,538,752.09</u>

Total Liberty Northwest Insurance Checks: \$2,538,752.09

Total Safeco & Liberty Northwest Insurance Checks: \$7,947,083.54

JV was a "loss-payee" on the insurance coverage.

78: On 6/4/2009, for the fire loss of the clubhouse, Safeco Insurance paid one check, Check No. 92256692, payment in the amount of \$2,865,211.40. One of the payees on said check was JV, LLC, but no part of the payment sums went to JV, LLC. JV LLC was not paid any sums from any of the fire loss insurance proceeds, at all.

79: The total insurance proceeds of \$7,947,083.54 was in excess and greater than all the monetary sums owed R.E. Loans, MF 08, Pensco and JV. The RE Loans No. 0099 sum and the Pensco Loan No. P0106, were paid-off by the All-Inclusive Mortgage to MF08 Loan No. P0107.

80: The 2008 Mortgage to Pensco Trust, contains on page 11 of 30, paragraph 1.21 the wording, "1.21 Mortgage will

As to the legal descriptions:

The Exhibit A, pages 19 through 30, legal descriptions in the 2008 Pensco Mortgage INTENTIONALLY OMITTS Parcel 20 on page 28. The 2008 Mortgage to MF 08, on page 29 of 31, Parcel 20 includes 6 platted Lots.

81: The MF 08 Mortgage covers 37 parcels/lots, but the Pensco Mortgage only covers 31 parcel/Lots, as Parcel 20 being 6 Lots is omitted in the Pensco 2008 Mortgage.

82: As to the Redemption Deed to Valiant, recorded 7/20/2014, Instrument No. 861460 and recorded 8/22/2014,

Instrument No. 863298, legal descriptions are for all tax delinquent property owned by POBD LESS and EXCLUDING the Legal Descriptions of all Parcels/Lots previously conveyed to and redeemed by JV. JV is a mortgage lien holder party in interest, made the first and only redemption of the real property described in the Redemption Deed to JV LLC.

83: As to Pensco, recorded August 6, 2008, Loan No. P0106, FATCO #239217, which is Exhibit "G" to the Affidavit of Charles W. Reeves, dated November 12, 2104, has Exhibit "A" as its legal description which describes:

Parcel 1 through 19, is different real estate than is described in the 2007 R.E. Loans Mortgage because between March of 2007 and August of 2008, POBD had platted and sold a significant number of parcels/Lots, so the sold property is not included in the Pensco 2008 Mortgage. Parcel 20 is INTENTIONALLY OMITTED.

84: As to MF 08, the Mortgage of \$21,980,000.00 to MF 08, recorded August 6, 2008, Loan No. P107, FATCO 239217, which is Exhibit "J" to the Affidavit of Charles W. Reeves, dated November 12, 2014, has the following provisions:

- a.) Page 1 of 31, "This Mortgage is expressly intended to be junior in priority to said \$2,700,000.00 Mortgage."
- b.) Page 4 of 31, "This is an all-inclusive Mortgage and is subject to and subordinate to the following

mortgages now of record or recorded concurrently herewith securing those certain notes (herein "INCLUDED NOTE") the current unpaid principal balances of which are including the Note:"

85: Page 2 and 3 of 7 of Exhibit "I" to the Affidavit of Charles W. Reeves, dated the 12 day of November 2014, which is the document entitled Loan No. P0107, All-Inclusive Note Secured by Mortgage, dated August 1, 2008 provides:

"Lender, by accepting this Note, agrees that so long as there is no uncured default under the provisions of this Note or any mortgage securing this Note:

1. Lender shall pay the installments of principal and interest as they become due on the INCLUDED NOTES, and
2. Lender shall secure and cause to have recorded a release of the mortgage securing the INCLUDED NOTES upon the undersigned's payment in full of the principal and interest due under this Note and full satisfaction of any other obligation contained in this Note or any mortgage securing this Note." . . .

86: The Lender, MF 08, Note/Loan No. P0107 was required to pay the installments of principal and interest as they became due on the INCLUDED NOTES which are the R.E. Loans 2007 Note/Mortgage Loan No. 0099, and the Pensco 2008 Note Mortgage P0106.

87: RE Loans is owed no sum of money by POBD on the 2007 RE Loan, Loan No. 0099.

88: Pensco is owed no sum of money by POBD on the 2008 Pensco Loan, Loan No. P0106.

89: Any sum of money owed by POBD is only owed to MF08, Loan No. P0107.

90: POBD sold three (3) lots to Shea, as buyer, commonly described as Marketing Lot A6-Lot 7, Block 2, Marketing Lot D3-Lot 4, Block 9, and Marketing Lots N1-Lot 16, Block 2 and POBD carried back three (3) promissory notes ("Seller Carry-Back Notes), each secured by a deed of trust from the buyer of these three (3) lots.

91: POBD assigned the Seller Carry-Back Notes and Seller Carry-Back Deeds of Trust to R.E. Loans, as collateral securing a prior loan from R.E. Loans to POBD, on Loan No. 0099.

92: These three (3) Seller Carry-Back Notes and Deeds of Trust were designated by R.E. Loans as P0102, P0103, and P0104.

93: Payments from these three (3) Seller Carry-Back Notes and Deeds of Trust designated as P0102, P0103, and P0104 have been partially "credited" as "pay-downs" on Loan 0099 as shown on Reeve's Affidavit Exhibit "E" which is shown on Bates Stamped "Reeves001233". They are also "paydowns" on JV's Exhibit "P" on 8/17&23/2008 (Shea) for \$234,250.00, \$244,215.00 and \$215,175.00, which amounts exceed any and all amounts owed R.E.

Loans on Loan No. P0094, the 2007 Mortgage to R.E. Loans.

94: The dollar amounts of the three (3) Seller Carry-Back Notes/Deeds of Trust, P0102, P0103, and P0104, assigned by POBD to R.E. Loans were in the unpaid dollar amounts greater than the sum owed to R.E. Loans, Loan No. 0099, by POBD.

Additional From Charles Reeves Deposition of 1/15/2016

These additional facts and exhibits came from information disclosed by Charles Reeves at his Deposition of January 15, 2016, as follows:

95: POBD sold its developed Lots for CASH, Except for 3 Lots said sold to David Shea and Linda Shae, husband and wife, and their corporation, Eagle Point Construction and Management, Inc., an Idaho Corporation, sold on carry-back Deeds of Trust, consisting of:

- a.) Lot 7, Block 2, Golden Tee Estates 2<sup>nd</sup> Addition, according to the plat thereof, on a carry back Deed of Trust recorded Augusts 22, 2007 as Instrument NO. 735623 securing the unpaid principal amount of \$240,500.00 - payable to POBD.
- b.) Lot 16, Block 2, of the Replat of Golden Tee Estates, and Golden Tees Estates 1<sup>st</sup> addition, an unplotted land, according to the Plat thereof, recorded in Book 8 of Plats, page 77, records of Bonner County, Idaho, securing the unpaid principal amount of \$110,000.00,



payable to POBD.

- c.) Lot 4, Block 9, Golden Tee Estates 3<sup>rd</sup> Addition, according to the Plat therefore, recorded in Book 8 of Plats, page 78, records of Bonner County, Idaho, secured by a carry-back Deed of Trust, recorded August 22, 2007, Instrument No. 735618, records of Bonner County, Idaho, securing the unpaid principal of \$177,500.00 and accruing interest thereon in the sum of \$177,500.00 payable to POBD>

96: All 3 Deeds of Trust were at recording, simultaneously assigned by POBD to RE Loans. POBD assigned all three (3) of the aforesaid Deeds of Trust to RE Loans LLC for application in an in payment of the 2007 loan No. P0099, indebtedness from POBD to RE Loans, by Assignment of Deed of Trust as follows:

- a.) The Lot 7, Block 2, Deed of Trust was by Assignment of Deed of Trust recorded August 22, 2-7, Instrument No. 736624 in the sum of \$240,500.00 was assed to RE Loans, LLC for payment on the 2007 Loan No. P0099 from RE Loans to POBD.
- b.) The Lot 16, Block 2, Deed of Turst was by Assignment of Deed of Trust recorded August 22, 2007, Instrument No. 735614 in the unpaid principal amount of \$110,000.00, plus accruing interest was assigned to RE Loans LLC for payment on the 2007 Loan No. P099 from

RE Loans to PBBD.

c.) The Lot 4, Block 9 Deed of Trust was by Assignment of Deed of Trust, recorded August 22, 2007, Instrument No. 735619, in the sum of \$177,500.00 was assigned to R.E. Loans LLC for payment of the 2007 Loan No. P0099 from R.E. Loans to POBD.

97: As a result of these three (3) Assignments of Deeds of Trust from POBD to RE Loans LLC, POBD paid RE Loans, on Loan No. P099, on August 22, 2007, in the sums of:

a.) \$240,500.00  
b.) \$110,000.00  
c.) \$177,500.00  
\$528,000 total

98: The payment record for Loan No. P0099 is a Trial Exhibit and is Exhibit No. "E" to Charles W. Reeve's Affidavit of 12 November 2014, submitted in support of Valiant's Motion for Summary Judgment, a partial summary judgment as to priority only, which shows the money applied by RE Loans to POBD's Loan mark P0099, as follows:

a.) These 3 Deeds of Trust were given loan number collection references by R.E. Loans as P102, P103, and P104. The only sums shown and applied by R.E. Loans to POBD's Loan No. P0099, are shown on page 2 of Reeve's Exhibit "E" as follows:

1. On 1/14/08 Paydown (\$15,957.34) P0102, P0103, P0104
  2. On 5/12/08 Paydown (\$11,220.00) P0102, P0103, P0104
  3. On 8/01/08 Paydown (\$11,220.00) P0102, P0103, P0104
  4. On 10/7/08 Paydown (\$11,220.00) P0102, P0103, P0104
- Total Paydown: \$49,617.34

99: POBD assign to RE Loans for payment on Loan No. 0099, on August 22, 2007, by the aforesaid Deeds of Trust, a total of \$528,000.00 for which RE Loans only credited on Loan No. 0099, pay down total of \$49,617.34.

\$528,000.00  
 -\$ 49,617.34

\$478,382.66 is the amount paid by POBD to RE Loans, Loan No. 0099, by 3 Assignments of Deeds of Trust, referred to as P0102, P0103, and P0104.

100: The uncredited dollar amount of \$478,382.66 exceeds the amount shown on Reeve's Exhibit "E" last page of 11/23/09, new balance of \$278,147.00.

The paid, uncredited amount exceeds the final New Balance, as follows:

(\$478,382.66)  
 - \$278,147.00  
(\$200,235.66)

101: POBD paid in full and in excess of any dollar amount to RE Loans on Loan No. P0099, and RE Loans is Paid in Full on said loan.

The aforesaid Deeds of Trust and Assignments of Deeds of Trust are JV's Supplemental Trial Exhibits of:

W: Deed of Trust, recorded August 22, 2007 as Instrument No. 735613, records of Bonner County Idaho

X: Assignment of Deed of Trust, recorded August 22, 2007 as Instrument No. 735614, records of Bonner County Idaho

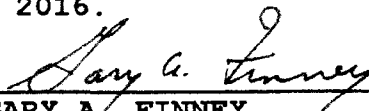
Y: Deed of Trust, recorded August 22, 2007 as Instrument No. 735623, records of Bonner County Idaho

Z: Assignment of Deed of Trust, recorded August 22, 2007 as Instrument No. 735624, records of Bonner County Idaho

AA: Deed of Trust, recorded August 22, 2007 as Instrument No. 735618, records of Bonner County Idaho

BB: Assignment of Deed of Trust, recorded August 22, 2007 as Instrument No. 735619, records of Bonner County Idaho

DATED this 22<sup>nd</sup> day of January, 2016.

  
\_\_\_\_\_  
GARY A. FINNEY  
Attorney for JV, LLC

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served as indicated, by facsimile, or by hand delivery, this 22 day of January, 2016, and was addressed as follows:

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

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]

The Honorable Barbara Buchanan -  
Bonner County Courthouse - Judge's Chambers  
215 S. First Avenue  
Sandpoint, ID 83864  
VIA HAND DELIVERY

By: *Guenther Victor*

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

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

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

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

Defendants. )

---

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

---

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

Plaintiff, )

v. )

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

Defendants. )

---

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

---

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

Third Party )  
Plaintiff, )

v. )

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

Third Party )  
Defendants. )

---

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

Defendant and )  
Cross-Claimant against all of )



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

COMES NOW JV L.L.C., by and through counsel, GARY A.

FINNEY, Finney Finney & Finney, P.A., and submits as follows:

JV L.L.C.'S DOCUMENTS AND EXHIBITS

- A. Secured Promissory Note, October 20, 1995, original sum \$2,264,500.00 to JV, LLC from V.P., Richard Villelli, Villelli Enterprises, Villelli Trust (all as makers)
- B. Mortgage recorded October 24, 1995, Instrument No. 474746 (V.P. Inc, Mortgagor; JV, LLC, Mortgagee)
- C. Panhandle Escrow No. 2067429, Ledger of Payments & Unpaid Balance

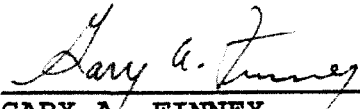
- D. Third Amended and Restated Real Property Purchase and Sale Agreement, January 6, 2005, North Idaho Resorts/MDGM
- E. Third Amendment to Indebtedness and to Real Estate Security and Subordination Agreement as recorded June 24, 2008, Instrument No. 753907
- F. Deposition of Chuck Reeves on 08/19/13 in BC Case No. CV-2011-0135
- G. Findings of District Judge Griffin in BC Case No. CV-2011-0135
- H. Seller's Closing Statement HUD-1 of 06/14/2006
- I. Borrower's Closing Statement of 7/31/2008
- J. Borrower's Final Settlement Statement of 08/06/2008
- K. Notice of Redemption dated July 1, 2014, JV to BC Tax Collector
- L. Redemption Deed, dated July 2, 2014, recorded July 7, 2014 as Instrument No. 861430 & re-recorded August 22, 2014 as Instrument No. 863295
- M. Bonner County Treasurer's Map showing real estate redeemed JV, and remainder of land redeemed by Valiant
- N. Redemption Deed, dated July 7, 2014, recorded July 8, 2014 as Instrument No. 861460 & re-recorded August 22, 2014 as Instrument No. 863298
- O. Buyer/Borrower Statement (POBD/NIR), dated June 13, 2006
- P. Bar-K 8-28-07 Spreadsheet
- Q. Satisfaction of Mortgage Security Agreement and Fixture Filing, recorded August 6, 2008 as Instrument No. 756408
- R. October 5, 2009 Letter to Adjusters International
- S. Photocopy of Greenspan Adjusters International, Inc. Check No. 1238
- T. Kathy Groenhout November 2, 2009 e-mail
- U. Kathy Groenhout October 27, 2009 e-mail
- V. R.E. Loan's Satisfaction of Mortgage recorded June 8, 2007, Instrument No. 730445
- W. Deed of Trust, recorded August 22, 2007 as Instrument No. 735613, records of Bonner County Idaho
- X: Assignment of Deed of Trust, recorded August 22, 2007 as Instrument No. 735614, records of Bonner County Idaho
- Y: Deed of Trust, recorded August 22, 2007 as Instrument No. 735623, records of Bonner County Idaho
- Z: Assignment of Deed of Trust, recorded August 22, 2007 as Instrument No. 735624, records of Bonner County Idaho

AA: Deed of Trust, recorded August 22, 2007 as Instrument No. 735618, records of Bonner County Idaho  
BB: Assignment of Deed of Trust, recorded August 22, 2007 as Instrument No. 735619, records of Bonner County Idaho

\* In addition to the foregoing, JV will use and introduce at trial Valiant's Exhibits 1 through 19 and Valiant's Exhibits A through J from Valiant's Motion for Summary Judgment of 1/16/2015 and as attached to the purporting Affidavit of Charles Reeves November 12, 2014 support therefore, all of which are file with the Court and all parties already have copies.

A copy of all of these Exhibits and Documents JV's A - V have previously been served on counsel for the parties and a copy delivered to the Court. The JV Exhibits W - BB are now served upon the parties and a copy to the Court. The Court's EXHIBIT "COPIES" are being hand delivered to the Court and the originals will be brought to Trial.

DATED this 22 day of January, 2016.

  
\_\_\_\_\_  
GARY A. FINNEY  
Attorney for JV L.L.C.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served as indicated, by facsimile, or by hand delivery, this 22 day of January, 2016, and was addressed as follows:

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

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]

The Honorable Barbara Buchanan -  
Bonner County Courthouse - Judge's Chambers  
215 S. First Avenue  
Sandpoint, ID 83864  
VIA HAND DELIVERY

By: 

**RECORDING REQUESTED BY**  
First American Title Company

**AND WHEN RECORDED MAIL TO:**  
First American Title Company  
419 North Second Ave.  
Sandpoint, ID 83864

First American Title

FILED BY

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735613

18-0  
MARIE SCOTT  
BONNER COUNTY RECORDER

RE DEPUTY

Space Above This Line for Recorder's Use Only

*FATCO*  
File No. 221075-S (cl)

## DEED OF TRUST

THIS DEED OF TRUST, made this **August 15, 2007**, between **EaglePointe Construction & Management, Inc., a Washington Corporation**, herein called GRANTOR(S), whose address is **PO Box 8207, Spokane, WA 99203**, and **First American Title Company**, herein called TRUSTEE, and **Pend Oreille Bonner Development LLC**, herein called BENEFICIARY, whose address is **151 Clubhouse Way, Sandpoint, ID 83864**.

WITNESSETH: That Grantor does hereby irrevocably GRANT, BARGAIN, SELL AND CONVEY TO TRUSTEE IN TRUST, WITH POWER OF SALE, that property in the County of **Bonner**, State of **Idaho**, located in the project in Sandpoint, Idaho, commonly known as the Idaho Club, described as follows and containing not more than Forty acres in area:

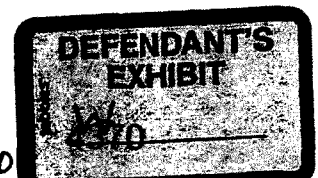
**Lot 16, Block 2 of the REPLAT OF GOLDEN TEE ESTATES AND GOLDEN TEE ESTATES 1ST ADDITION AND UNPLATTED LAND, according to the plat thereof, recorded in Book 8 of Plats, page 77, records of Bonner County, Idaho.**

TOGETHER WITH all the tenements, hereditaments and appurtenances now or hereafter thereunto belonging or in anywise appertaining to the lots, and the rents, issues, and profits thereof, SUBJECT, HOWEVER, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues and profits;

**For the purpose of securing:**

1. Performance of each agreement of Grantor herein contained.
2. Payment of the indebtedness evidenced by a promissory note, (the "Note") made by Grantor as Maker in favor of Beneficiary as payee, of even date herewith, and any extension or renewal thereof, in the principal amount of **ONE HUNDRED TEN THOUSAND & NO/100 Dollars (\$110,000.00)** payable to Beneficiary or order, the final payment of principal and interest thereof, if not sooner paid, to be finally due and payable on or before **February 15, 2010**.

JV'S  
CV-2009-1810



3. Payment of all such further sums as may hereafter be loaned or advanced by the Beneficiary herein to the Grantor herein, or any or either of them while record owner of present interest, for any purpose, and any notes, drafts or other instruments representing such further loans, advances or expenditures together with interest on all such sums at the rate therein provided. Provided, however, that the making of such further loans, advances or expenditures shall be optional with the Beneficiary, and provided further, that it is the express intention of the parties to this Deed of Trust that it shall stand as continuing security until paid for all such loans, advances or expenditures together with interest thereon.
  4. Performance of the covenants, obligations and agreements of Maker set forth in the written agreement (the "PSA") between Maker as Buyer and Payee as Seller dated as of August 8, 2007 and entitled REAL PROPERTY PURCHASE AND SALE AGREEMENT. Terms which are defined in the PSA shall, when used in this Deed of Trust, have the same meaning as in the PSA.
- A. To protect the security of this Deed of Trust, Grantor agrees:
1. To keep said property in good condition and repair; not to remove or demolish any building thereon; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon, and to pay when due all claims for labor performed and materials furnished; to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer or permit any act upon said property in violation of law; to cultivate, irrigate, fertilize, fumigate, prune and do all other acts which from the character or use of said property may be reasonably necessary, the specific enumerations herein not excluding the general.
  2. To provide, maintain and deliver to Beneficiary certificates reasonably acceptable to Beneficiary evidencing that the following insurance coverages are in full force and effect so long as this Deed of Trust is in effect; 1) Casualty and fire insurance, including insurance to protect building and construction materials stored on the LOTS and course of construction insurance, 2) Comprehensive general liability insurance which names Beneficiary as an additional named insured, and 3) Statutory workmen's compensation insurance in the minimum amount required by law, all of which coverages shall be satisfactory in nature and amount, and with loss payable, to Beneficiary. The amount collected under any such or other insurance policy may be applied by Beneficiary upon any indebtedness secured hereby and in such order as Beneficiary may determine, or at option of Beneficiary the entire amount so collected or any part thereof may be released to Grantor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.
  3. To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorneys' fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear.
  4. To pay: at least ten days before delinquency, all taxes and assessments affecting said property, when due, all encumbrances, charges and liens, with interest, on said property or any part thereof, which appear to be prior or superior hereto; all costs, fees and expenses of this Trust. In addition to the payments due in accordance with the terms of the note hereby secured the Grantor shall at the option, and on demand of the Beneficiary, pay each month 1/12 of the estimated annual taxes, assessments, insurance premiums, maintenance and other charges upon the property, nevertheless in trust for

Grantor's use and benefit and for the payment by Beneficiary of any such items when due. Grantor's failure so to pay shall constitute a default under this trust.

5. To pay immediately and without demand all sums expended by Beneficiary or Trustee pursuant to the provisions hereof, with interest from date of expenditure at the note rate.
  6. Should Grantor fail to make any payment or to perform any obligation secured by this Deed of Trust or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Grantor and without releasing Grantor from any obligation hereof, may: make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, in enforcing this Deed of Trust by judicial foreclosure, pay necessary expenses, employ counsel and pay his reasonable fees.
- B. Grantor, Trustee, and Beneficiary hereby agreed that:
1. Any award of damages in connection with any condemnation for public use of or injury to said property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply or release such moneys received by him in the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.
  2. By accepting payment of any sum secured hereby after its due date, Beneficiary does not waive his right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.
  3. At any time or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed and said note for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, Trustee may: reconvey all or any part of said property; consent to the making of any map or plat thereof; join in granting any easement thereon; or join in any extension agreement or any agreement subordinating the lien or charge hereof.
  4. Upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed and said Note to Trustee for cancellation and retention and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in any reconveyance executed under this Deed of Trust of any matters or facts shall be conclusive proof of the truthfulness thereof. The Grantee in such reconveyance may be described as "the person or persons legally entitled thereto."
  5. As additional security, Grantor hereby gives to and confers upon Beneficiary the right, power and authority, during the continuance of these Trusts, to collect the rents, issues and profits of said property, reserving unto Grantor the right, prior to any default by Grantor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in his own name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and

apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said property, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

6. Upon default by Grantor in payment of any indebtedness secured hereby or in performance of any agreement made or obligation secured hereunder, all sums secured hereby shall immediately become due and payable at the option of the Beneficiary. In the event of default, Beneficiary shall execute or cause the Trustee to execute a written notice of such default and of his election to cause to be sold the herein described property to satisfy the obligations hereof, and shall cause such notice to be recorded in the office of the recorder of each county wherein said real property or some part thereof is situated.

Notice of sale having been given as then required by law, and not less than the time then required by law having elapsed, Trustee, without demand on Grantor, shall sell said property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee shall deliver to the purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including the Beneficiary under the Deed of Trust, may purchase at such sale.

After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title and reasonable counsel fees in connection with sale, Trustee shall apply the proceeds of sale to payments of: all sums expended under the terms hereof, not then repaid, with accrued interest at the note rate; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.

7. This Deed applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns, the term Beneficiary shall mean the owner and holder of the Note secured hereby; or, if the note has been pledged, the pledgee thereof. In this Deed, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.
8. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Grantor, Beneficiary or Trustee shall be party unless brought by Trustee.
9. In the event of dissolution or resignation of the Trustee, the Beneficiary may substitute a Trustee or Trustees to execute the trust hereby created, and when any such substitution has been filed for record in the office of the Recorder of the County in which the property herein described is situated, it shall be conclusive evidence of the appointment of such Trustee or Trustees, and such new Trustee or Trustees shall succeed to all of the powers and duties of the Trustee or Trustees named herein.

Request is hereby made that a copy of any Notice of Default and a copy of any Notice of Sale hereunder be mailed to the Grantor at his address hereinbefore set forth.





Date: August 21, 2007

Deed of Trust - continued

File No.: 221075-S (d)

<b>THE PROMISSORY NOTE OR NOTES, AND ANY EVIDENCES OF FURTHER AND/OR ADDITIONAL ADVANCES MUST BE PRESENTED WITH THIS REQUEST</b>	
_____ Idaho _____	_____ 20 _____
To: _____	Trustee
You are hereby authorized and requested to execute a reconveyance hereunder and _____	
The undersigned hereby certified _____ Are the owner(s) and holder(s) of the debt mentioned in said Deed of Trust and that the same has never been	
Address: _____	By: _____
_____	By: _____
Telephone _____	_____

First American Title

FILED BY

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600  
MARIE SCOTT  
BONNER COUNTY RECORDER

~~735614~~ *PK* DEPUTY

**RECORDING REQUESTED BY**  
First American Title Company

**AND WHEN RECORDED MAIL TO:**  
First American Title Company  
419 North Second Ave.  
Sandpoint, ID 83864

Space Above This Line for Recorder's Use Only

File No.: *FATCO*  
**221075-S (cl)**

Date: **August 15, 2007**

**ASSIGNMENT OF DEED OF TRUST**

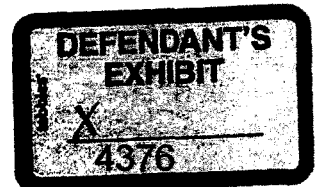
**Pend Oreille Bonner Development, LLC,** the Beneficiary, under the Deed of Trust dated **August 15, 2007**, executed by **EaglePointe Construction & Management, Inc.** to **First American Title Company**, as Trustee recorded **August 22, 2007** in official record book as Instrument Number 735613, recorded in **Bonner County, Idaho**, given to secure the payment of promissory note for the sum of **\$110,000.00**, and interest, does hereby **ASSIGN AND TRANSFER TO R.E. Loans, LLC, a California limited liability company** all right, title and interest in said note and all rights accrued under said Deed of Trust.

**Pend Oreille Bonner Development, LLC,**  
a Nevada limited liability company

**By: Pend Oreille Bonner Development Holding, Inc.,**  
a Nevada corporation, its managing member

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

*JV's*  
CV-2009-1810





**RECORDING REQUESTED BY**  
First American Title Company

**AND WHEN RECORDED MAIL TO:**  
First American Title Company  
419 North Second Ave.  
Sandpoint, ID 83864

First American Title

FILED BY

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18-50  
735603 MARIE SCOTT  
BONNER COUNTY RECORDER  
DEPUTY

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FATCO  
File No. 221082-S (cl)

## DEED OF TRUST

THIS DEED OF TRUST, made this **August 15, 2007**, between **EaglePointe Construction & Management, Inc., a Washington Corporation**, herein called GRANTOR(S), whose address is **PO Box 8207, Spokane, WA 99203**, and **First American Title Company**, herein called TRUSTEE, and **Pend Oreille Bonner Development LLC**, herein called BENEFICIARY, whose address is **151 Clubhouse Way, Sandpoint, ID 83864**.

WITNESSETH: That Grantor does hereby irrevocably GRANT, BARGAIN, SELL AND CONVEY TO TRUSTEE IN TRUST, WITH POWER OF SALE, that property in the County of **Bonner**, State of **Idaho**, located in the project in Sandpoint, Idaho, commonly known as the Idaho Club, described as follows and containing not more than Forty acres in area:

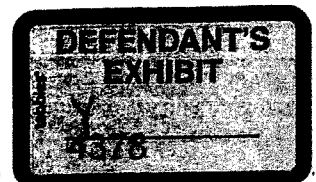
**Lot 7, Block 2, GOLDEN TEE ESTATES 2ND ADDITION, according to the plat thereof, recorded in Book 8 of Plats, page 79, records of Bonner County, Idaho.**

TOGETHER WITH all the tenements, hereditaments and appurtenances now or hereafter thereunto belonging or in anywise appertaining to the lots, and the rents, issues, and profits thereof, SUBJECT, HOWEVER, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues and profits;

**For the purpose of securing:**

1. Performance of each agreement of Grantor herein contained.
2. Payment of the indebtedness evidenced by a promissory note, (the "Note") made by Grantor as Maker in favor of Beneficiary as payee, of even date herewith, and any extension or renewal thereof, in the principal amount of **TWO HUNDRED FORTY THOUSAND FIVE HUNDRED & NO/100 Dollars (\$240,500.00)** payable to Beneficiary or order, the final payment of principal and interest thereof, if not sooner paid, to be finally due and payable on or before **February 15, 2010**.

JV's  
CV-2009-1810



3. Payment of all such further sums as may hereafter be loaned or advanced by the Beneficiary herein to the Grantor herein, or any or either of them while record owner of present interest, for any purpose, and any notes, drafts or other instruments representing such further loans, advances or expenditures together with interest on all such sums at the rate therein provided. Provided, however, that the making of such further loans, advances or expenditures shall be optional with the Beneficiary, and provided further, that it is the express intention of the parties to this Deed of Trust that it shall stand as continuing security until paid for all such loans, advances or expenditures together with interest thereon.
  4. Performance of the covenants, obligations and agreements of Maker set forth in the written agreement (the "PSA") between Maker as Buyer and Payee as Seller dated as of August 8, 2007 and entitled REAL PROPERTY PURCHASE AND SALE AGREEMENT. Terms which are defined in the PSA shall, when used in this Deed of Trust, have the same meaning as in the PSA.
- A. To protect the security of this Deed of Trust, Grantor agrees:
1. To keep said property in good condition and repair; not to remove or demolish any building thereon; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon, and to pay when due all claims for labor performed and materials furnished; to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer or permit any act upon said property in violation of law; to cultivate, irrigate, fertilize, fumigate, prune and do all other acts which from the character or use of said property may be reasonably necessary, the specific enumerations herein not excluding the general.
  2. To provide, maintain and deliver to Beneficiary certificates reasonably acceptable to Beneficiary evidencing that the following insurance coverages are in full force and effect so long as this Deed of Trust is in effect; 1) Casualty and fire insurance, including insurance to protect building and construction materials stored on the LOTS and course of construction insurance, 2) Comprehensive general liability insurance which names Beneficiary as an additional named insured, and 3) Statutory workmen's compensation insurance in the minimum amount required by law, all of which coverages shall be satisfactory in nature and amount, and with loss payable, to Beneficiary. The amount collected under any such or other insurance policy may be applied by Beneficiary upon any indebtedness secured hereby and in such order as Beneficiary may determine, or at option of Beneficiary the entire amount so collected or any part thereof may be released to Grantor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.
  3. To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorneys' fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear.
  4. To pay: at least ten days before delinquency, all taxes and assessments affecting said property, when due, all encumbrances, charges and liens, with interest, on said property or any part thereof, which appear to be prior or superior hereto; all costs, fees and expenses of this Trust. In addition to the payments due in accordance with the terms of the note hereby secured the Grantor shall at the option, and on demand of the Beneficiary, pay each month 1/12 of the estimated annual taxes, assessments, insurance premiums, maintenance and other charges upon the property, nevertheless in trust for

Grantor's use and benefit and for the payment by Beneficiary of any such items when due. Grantor's failure so to pay shall constitute a default under this trust.

5. To pay immediately and without demand all sums expended by Beneficiary or Trustee pursuant to the provisions hereof, with interest from date of expenditure at the note rate.
6. Should Grantor fail to make any payment or to perform any obligation secured by this Deed of Trust or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Grantor and without releasing Grantor from any obligation hereof, may: make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, in enforcing this Deed of Trust by judicial foreclosure, pay necessary expenses, employ counsel and pay his reasonable fees.

B. Grantor, Trustee, and Beneficiary hereby agreed that:

1. Any award of damages in connection with any condemnation for public use of or injury to said property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply or release such moneys received by him in the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.
2. By accepting payment of any sum secured hereby after its due date, Beneficiary does not waive his right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.
3. At any time or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed and said note for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, Trustee may: reconvey all or any part of said property; consent to the making of any map or plat thereof; join in granting any easement thereon; or join in any extension agreement or any agreement subordinating the lien or charge hereof.
4. Upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed and said Note to Trustee for cancellation and retention and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in any reconveyance executed under this Deed of Trust of any matters or facts shall be conclusive proof of the truthfulness thereof. The Grantee in such reconveyance may be described as "the person or persons legally entitled thereto."
5. As additional security, Grantor hereby gives to and confers upon Beneficiary the right, power and authority, during the continuance of these Trusts, to collect the rents, issues and profits of said property, reserving unto Grantor the right, prior to any default by Grantor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in his own name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and

apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said property, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

6. Upon default by Grantor in payment of any indebtedness secured hereby or in performance of any agreement made or obligation secured hereunder, all sums secured hereby shall immediately become due and payable at the option of the Beneficiary. In the event of default, Beneficiary shall execute or cause the Trustee to execute a written notice of such default and of his election to cause to be sold the herein described property to satisfy the obligations hereof, and shall cause such notice to be recorded in the office of the recorder of each county wherein said real property or some part thereof is situated.

Notice of sale having been given as then required by law, and not less than the time then required by law having elapsed, Trustee, without demand on Grantor, shall sell said property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee shall deliver to the purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including the Beneficiary under the Deed of Trust, may purchase at such sale.

After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title and reasonable counsel fees in connection with sale, Trustee shall apply the proceeds of sale to payments of: all sums expended under the terms hereof, not then repaid, with accrued interest at the note rate; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.

7. This Deed applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns, the term Beneficiary shall mean the owner and holder of the Note secured hereby; or, if the note has been pledged, the pledgee thereof. In this Deed, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.
8. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Grantor, Beneficiary or Trustee shall be party unless brought by Trustee.
9. In the event of dissolution or resignation of the Trustee, the Beneficiary may substitute a Trustee or Trustees to execute the trust hereby created, and when any such substitution has been filed for record in the office of the Recorder of the County in which the property herein described is situated, it shall be conclusive evidence of the appointment of such Trustee or Trustees, and such new Trustee or Trustees shall succeed to all of the powers and duties of the Trustee or Trustees named herein.

Request is hereby made that a copy of any Notice of Default and a copy of any Notice of Sale hereunder be mailed to the Grantor at his address hereinbefore set forth.





Date: August 21, 2007

Deed of Trust - continued

File No.: 221082-S (cl)

THE PROMISSORY NOTE OR NOTES, AND ANY EVIDENCES OF FURTHER AND/OR  
ADDITIONAL ADVANCES MUST BE PRESENTED WITH THIS REQUEST

\_\_\_\_\_ Idaho \_\_\_\_\_ 20 \_\_\_\_\_

To: \_\_\_\_\_ Trustee

You are hereby authorized and requested to execute a reconveyance hereunder and \_\_\_\_\_

The undersigned hereby certified \_\_\_\_\_  
Are the owner(s) and holder(s) of the debt mentioned in said Deed of Trust and that the same has never been \_\_\_\_\_

Address: \_\_\_\_\_ By: \_\_\_\_\_

\_\_\_\_\_ By: \_\_\_\_\_

Telephone \_\_\_\_\_

First American Title

RECORDING REQUESTED BY  
First American Title Company

AND WHEN RECORDED MAIL TO:  
First American Title Company  
419 North Second Ave.  
Sandpoint, ID 83864

735624

FILED BY

2007 AUG 22 P 12:19

*6-00*  
MARIE SCOTT  
BONNER COUNTY RECORDER

*RS* DEPUTY

Space Above This Line for Recorder's Use Only

*FATCO*  
File No.: 221082-S (cl)

Date: August 15, 2007

### ASSIGNMENT OF DEED OF TRUST

Pend Oreille Bonner Development, LLC,, the Beneficiary, under the Deed of Trust dated August 15, 2007, executed by EaglePointe Construction & Management, Inc. to First American Title Company, as Trustee recorded August 22, 2007 in official record book as Instrument Number 735623, recorded in Bonner County, Idaho, given to secure the payment of promissory note for the sum of \$240,500.00, and interest, does hereby ASSIGN AND TRANSFER TO R.E. Loans, LLC, a California limited liability company all right, title and interest in said note and all rights accrued under said Deed of Trust.

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

By: Pend Oreille Bonner Development Holding, Inc.,  
a Nevada corporation, its managing member

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

*JV'S*  
CV-2009-1810





**RECORDING REQUESTED BY**  
First American Title Company

**AND WHEN RECORDED MAIL TO:**  
First American Title Company  
419 North Second Ave.  
Sandpoint, ID 83864

First American Title

FILED BY

2007 AUG 22 P 12: 16

18 UN  
MARIE SCOTT  
BONNER COUNTY RECORDER

735618

*MS* DEPUTY

Space Above This Line for Recorder's Use Only

*FARD*  
File No. 221080-S (cl)

### DEED OF TRUST

THIS DEED OF TRUST, made this **August 15, 2007**, between **EaglePointe Construction & Management, Inc., a Washington Corporation**, herein called GRANTOR(S), whose address is **PO Box 8207, Spokane, WA 99203**, and **First American Title Company**, herein called TRUSTEE, and **Pend Oreille Bonner Development LLC**, herein called BENEFICIARY, whose address is **151 Clubhouse Way, Sandpoint, ID 83864**.

WITNESSETH: That Grantor does hereby Irrevocably GRANT, BARGAIN, SELL AND CONVEY TO TRUSTEE IN TRUST, WITH POWER OF SALE, that property in the County of **Bonner**, State of **Idaho**, located in the project in Sandpoint, Idaho, commonly known as the Idaho Club, described as follows and containing not more than Forty acres in area:

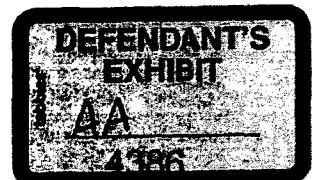
**Lot 4, Block 9, GOLDEN TEE ESTATES 3RD ADDITION, according to the plat thereof, recorded in Book 8 of Plats, page 78, records of Bonner County, Idaho.**

TOGETHER WITH all the tenements, hereditaments and appurtenances now or hereafter thereunto belonging or in anywise appertaining to the lots, and the rents, issues, and profits thereof, SUBJECT, HOWEVER, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues and profits;

**For the purpose of securing:**

1. Performance of each agreement of Grantor herein contained.
2. Payment of the indebtedness evidenced by a promissory note, (the "Note") made by Grantor as Maker in favor of Beneficiary as payee, of even date herewith, and any extension or renewal thereof, in the principal amount of **ONE HUNDRED SEVENTY SEVEN THOUSAND FIVE HUNDRED & NO/100 Dollars (\$177,500.00)** payable to Beneficiary or order, the final payment of principal and interest thereof, if not sooner paid, to be finally due and payable on or before **February 15, 2010**.

JV'S  
CV-2009-1810



3. Payment of all such further sums as may hereafter be loaned or advanced by the Beneficiary herein to the Grantor herein, or any or either of them while record owner of present interest, for any purpose, and any notes, drafts or other instruments representing such further loans, advances or expenditures together with interest on all such sums at the rate therein provided. Provided, however, that the making of such further loans, advances or expenditures shall be optional with the Beneficiary, and provided further, that it is the express intention of the parties to this Deed of Trust that it shall stand as continuing security until paid for all such loans, advances or expenditures together with interest thereon.
  4. Performance of the covenants, obligations and agreements of Maker set forth in the written agreement (the "PSA") between Maker as Buyer and Payee as Seller dated as of August 8, 2007 and entitled REAL PROPERTY PURCHASE AND SALE AGREEMENT. Terms which are defined in the PSA shall, when used in this Deed of Trust, have the same meaning as in the PSA.
- A. To protect the security of this Deed of Trust, Grantor agrees:
1. To keep said property in good condition and repair; not to remove or demolish any building thereon; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon, and to pay when due all claims for labor performed and materials furnished; to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer or permit any act upon said property in violation of law; to cultivate, irrigate, fertilize, fumigate, prune and do all other acts which from the character or use of said property may be reasonably necessary, the specific enumerations herein not excluding the general.
  2. To provide, maintain and deliver to Beneficiary certificates reasonably acceptable to Beneficiary evidencing that the following insurance coverages are in full force and effect so long as this Deed of Trust is in effect; 1) Casualty and fire insurance, including insurance to protect building and construction materials stored on the LOTS and course of construction insurance, 2) Comprehensive general liability insurance which names Beneficiary as an additional named insured, and 3) Statutory workmen's compensation insurance in the minimum amount required by law, all of which coverages shall be satisfactory in nature and amount, and with loss payable, to Beneficiary. The amount collected under any such or other insurance policy may be applied by Beneficiary upon any indebtedness secured hereby and in such order as Beneficiary may determine, or at option of Beneficiary the entire amount so collected or any part thereof may be released to Grantor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.
  3. To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorneys' fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear.
  4. To pay: at least ten days before delinquency, all taxes and assessments affecting said property, when due, all encumbrances, charges and liens, with interest, on said property or any part thereof, which appear to be prior or superior hereto; all costs, fees and expenses of this Trust. In addition to the payments due in accordance with the terms of the note hereby secured the Grantor shall at the option, and on demand of the Beneficiary, pay each month 1/12 of the estimated annual taxes, assessments, insurance premiums, maintenance and other charges upon the property, nevertheless in trust for

Grantor's use and benefit and for the payment by Beneficiary of any such items when due. Grantor's failure so to pay shall constitute a default under this trust.

5. To pay immediately and without demand all sums expended by Beneficiary or Trustee pursuant to the provisions hereof, with interest from date of expenditure at the note rate.
6. Should Grantor fail to make any payment or to perform any obligation secured by this Deed of Trust or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Grantor and without releasing Grantor from any obligation hereof, may: make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, in enforcing this Deed of Trust by judicial foreclosure, pay necessary expenses, employ counsel and pay his reasonable fees.

B. Grantor, Trustee, and Beneficiary hereby agreed that:

1. Any award of damages in connection with any condemnation for public use of or injury to said property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply or release such moneys received by him in the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.
2. By accepting payment of any sum secured hereby after its due date, Beneficiary does not waive his right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.
3. At any time or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed and said note for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, Trustee may: reconvey all or any part of said property; consent to the making of any map or plat thereof; join in granting any easement thereon; or join in any extension agreement or any agreement subordinating the lien or charge hereof.
4. Upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed and said Note to Trustee for cancellation and retention and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in any reconveyance executed under this Deed of Trust of any matters or facts shall be conclusive proof of the truthfulness thereof. The Grantee in such reconveyance may be described as "the person or persons legally entitled thereto."
5. As additional security, Grantor hereby gives to and confers upon Beneficiary the right, power and authority, during the continuance of these Trusts, to collect the rents, issues and profits of said property, reserving unto Grantor the right, prior to any default by Grantor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in his own name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and

apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said property, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

6. Upon default by Grantor in payment of any indebtedness secured hereby or in performance of any agreement made or obligation secured hereunder, all sums secured hereby shall immediately become due and payable at the option of the Beneficiary. In the event of default, Beneficiary shall execute or cause the Trustee to execute a written notice of such default and of his election to cause to be sold the herein described property to satisfy the obligations hereof, and shall cause such notice to be recorded in the office of the recorder of each county wherein said real property or some part thereof is situated.

Notice of sale having been given as then required by law, and not less than the time then required by law having elapsed, Trustee, without demand on Grantor, shall sell said property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee shall deliver to the purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including the Beneficiary under the Deed of Trust, may purchase at such sale.

After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title and reasonable counsel fees in connection with sale, Trustee shall apply the proceeds of sale to payments of: all sums expended under the terms hereof, not then repaid, with accrued interest at the note rate; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.

7. This Deed applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns, the term Beneficiary shall mean the owner and holder of the Note secured hereby; or, if the note has been pledged, the pledgee thereof. In this Deed, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.
8. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Grantor, Beneficiary or Trustee shall be party unless brought by Trustee.
9. In the event of dissolution or resignation of the Trustee, the Beneficiary may substitute a Trustee or Trustees to execute the trust hereby created, and when any such substitution has been filed for record in the office of the Recorder of the County in which the property herein described is situated, it shall be conclusive evidence of the appointment of such Trustee or Trustees, and such new Trustee or Trustees shall succeed to all of the powers and duties of the Trustee or Trustees named herein.

Request is hereby made that a copy of any Notice of Default and a copy of any Notice of Sale hereunder be mailed to the Grantor at his address hereinbefore set forth.





Date: August 21, 2007

Deed of Trust - continued

File No.: 221080-S (d)

**THE PROMISSORY NOTE OR NOTES, AND ANY EVIDENCES OF FURTHER AND/OR  
ADDITIONAL ADVANCES MUST BE PRESENTED WITH THIS REQUEST**

\_\_\_\_\_ Idaho \_\_\_\_\_ 20 \_\_\_\_\_

To: \_\_\_\_\_ Trustee

You are hereby authorized and requested to execute a reconveyance hereunder and \_\_\_\_\_

The undersigned hereby certified \_\_\_\_\_  
Are the owner(s) and holder(s) of the debt mentioned in said Deed of Trust and that the same has never been \_\_\_\_\_

Address: \_\_\_\_\_ By: \_\_\_\_\_  
\_\_\_\_\_ By: \_\_\_\_\_

Telephone \_\_\_\_\_

First American Title

FILED BY

2007 AUG 22 12:17

MARIE SCOTT  
BONNER COUNTY RECORDER

*MS* DEPUTY

**RECORDING REQUESTED BY**  
First American Title Company

**AND WHEN RECORDED MAIL TO:**  
First American Title Company  
419 North Second Ave.  
Sandpoint, ID 83864

735619

Space Above This Line for Recorder's Use Only

File No.: *FAYCO*  
221080-S (cl)

Date: August 15, 2007

### ASSIGNMENT OF DEED OF TRUST

Pend Oreille Bonner Development, LLC,, the Beneficiary, under the Deed of Trust dated August 15, 2007, executed by EaglePointe Construction & Management, Inc. to First American Title Company, as Trustee recorded August 22, 2007 in official record book as Instrument Number 735618, recorded in Bonner County, Idaho, given to secure the payment of promissory note for the sum of \$177,500.00, and interest, does hereby ASSIGN AND TRANSFER TO R.E. Loans, LLC, a California limited liability company all right, title and interest in said note and all rights accrued under said Deed of Trust.

**Pend Oreille Bonner Development, LLC,**  
**a Nevada limited liability company**

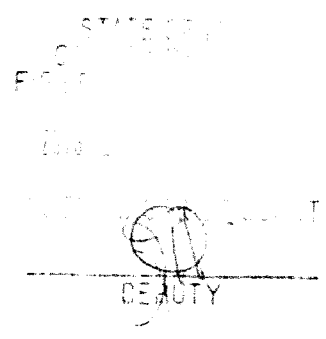
**By: Pend Oreille Bonner Development Holding, Inc.,**  
**a Nevada corporation, its managing member**

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



*JV'S*  
CV-2009-1810





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

Attorneys For Valiant Idaho, LLC

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

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

Plaintiff,

vs.

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

Defendants.

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

Case No. CV-09-1810

**VALIANT IDAHO, LLC'S TRIAL BRIEF**

**Honorable Barbara A. Buchanan**

**Trial:**

January 28, 2016 – January 29, 2016

**COMES NOW**, cross-claimant and third party plaintiff Valiant Idaho, LLC (“Valiant”), by and through its attorneys of record, McConnell Wagner Sykes & Stacey PLLC, and submits this Trial Brief.

## **I. PROCEDURAL HISTORY**

As this Court is well aware, the upcoming trial for this case, scheduled for January 28 – 29, 2016, will complete the foreclosure litigation arising out of the construction and development of a golf course and residential housing project located in or around Sandpoint, Idaho. This project is commonly known as the Idaho Club Project. This trial will adjudicate the last issue remaining in a case that was originally filed on October 13, 2009.

Valiant has gone to great effort to whittle down the issues in this case to the single issue remaining for trial. Valiant prevailed on a motion for summary judgment by Order dated April 14, 2015 (the “First SJ Order”) adjudicating: 1) the amounts owed to Valiant by POBD; 2) that said amounts are secured by three mortgages properly assigned to Valiant (by R.E. Loans, LLC, Pensco Trust, Co., and Mortgage Fund 08, LLC) (collectively the “Valiant Mortgages”); and 3) the Valiant Mortgages are prior in right title and interest to any interest held by cross-defendants JV, LLC (“JV”) and North Idaho Resorts, LLC (“NIR”), and third party defendant VP, Inc. (“VP”).

Shortly thereafter, Valiant prevailed on a second motion for summary judgment by Order dated June 23, 2015 (the “Second SJ Order”). The Second SJ Order adjudicated the property that is subject to the Valiant Mortgages.

After entry of the First SJ Order and Second SJ Order there were no issues remaining for trial. As such, the Court granted Valiant a final judgment and decree of foreclosure (the “Final Judgment”) on August 5, 2015.

VP and JV filed numerous motions to reconsider this Court's First SJ Order, Second SJ Order, and the Final Judgment.<sup>1</sup> Among other things, VP and JV argued that there is a question of fact whether or not the loans secured by the RE Loans, LLC ("RE Loans") and Pensco Trust, Co. ("Pensco") were satisfied. The only admissible evidence submitted in support of this this argument was a revised settlement statement from the Mortgage Fund 08, LLC ("MF08") loan closing including the following language: Payoff First Note – Loan No. P0099 – Mortgage Fund '08 LLC c/o Bar K, Inc. \$6,172,325.18" and "Payoff Second Note – Loan No. P0106 – Mortgage Fund '08 LLC c/o Bark K, Inc. \$2,700,000." On September 5, 2015, the Court entered an order (the "Reconsider Order") granting the motions in part finding that,

. . . there is a genuine issue of material fact as to whether the 2007, RE Loans Note (Loan No. P0099) and Pensco Note (Loan No. P0106) have been satisfied . . . At trial, the Court would like to see and hear additional evidence on the issue of whether or not these loans have been satisfied including testimony from the title company that issued the Settlement Statement.

*Reconsider Order*, p. 3. The Court also held that there was a question of fact regarding the legal descriptions of the specific property subject to the Valiant Mortgages. *Id.* The Reconsider Order made it clear that the motions to reconsider were denied except for these two discreet issues, and that these two issues were the sole issues remaining for trial. *Id.* at p. 4.

Thereafter, Valiant filed a third motion for summary judgment seeking to adjudicate the two issues remaining in the case by virtue of the Reconsider Order. By Order dated October 30, 2015 (the "Third SJ Order"), the Court granted Valiant's motion for summary judgment in part by determining that there is no issue of material fact regarding the legal descriptions of the real property subject to the Valiant Mortgages. However, the Court denied the motion with respect to

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<sup>1</sup> The Court ruled in its First SJ Order that NIR released its vendors lien "by way of Partial Termination recorded on March 15, 2007, and recorded on March 11, 2009. . ." NIR did not file a motion to reconsider this portion of the First SJ Order.

whether or not RE Loans' loan and Pensco's loan were satisfied. The Third SJ Order explained its decision as follows:

At the summary judgment hearing, counsel for Valiant utilized the MF08 loan documents to clarify how the MF08 loan was disbursed and how it was funded. Valiant reconciled the figures from the loan documents with those on the Borrower's Final Settlement Statement dated August 8, 2008 to support its argument that the 2007 RE Loans Note (Loan No. P0099) and the Pensco Note (Loan No. P0106) have not been satisfied. **Upon consideration of this evidence, the Court acknowledges the strength of Valiant's arguments in this regard.** Nevertheless, it appears that conflicting inferences may be drawn from the terms on Exhibit H: 'Payoff Second Note – Loan No. P0099 – Mortgage Fund '08 LLC c/o Bar K, Inc. . . . Payoff Second Note – Loan No. P0106 – Mortgage Fund '08 c/o Bar K, Inc. . . .' Does "payoff" in this context mean the loans have been, or have yet to be, paid off? Although this Court may grant the summary judgment despite the possibility of conflicting inferences, in this case, it will not do so.

*Third SJ Order*, p. 15. (Citations omitted). (Emphasis added). Although the Court denied Valiant's third summary judgment motion in part, it emphasized the strength of Valiant's position and the weakness of VP's and JV's arguments. The Third SJ Order concluded by ordering that **"the only issue remaining for the court trial is whether the 2007 RE Loans Note (Loan No. P0099) and the Pensco Note (P0106) have been satisfied."** *Id.* at p. 18. (Emphasis Added.)

In anticipation that VP and JV would not adhere to the Court's decisions limiting the issue remaining for trial, Valiant filed a motion in limine asking that the Court to prohibit evidence unrelated to this issue. VP and JV filed opposition briefing arguing that there was no such limitation in the Court's prior decisions. Based upon this opposition briefing, Valiant's concerns are warranted. The Court granted Valiant's motion in limine by Order dated December 29, 2015 (the "Limine Order") ruling that "Valiant's motion for an order precluding defendants NIR, VP and JV from presenting evidence at trial relating to any issue other than whether the 2007 RE Loans Note and/or the Pensco Note have been satisfied is granted." *Limine Order*, pp. 1-2.



JV and VP have continued to ignore the Court's decisions limiting the scope of trial. Since December 29, 2015, Valiant has taken the depositions of, *inter alia*, Barney Ng (the loan servicer for RE Loans and Pensco) and Charles Reeves (the principal of Pend Oreille Bonner Development, LLC). Despite the Court having made it clear that there is only one issue remaining in this case, VP and JV spent hours repeatedly questioning these deponents on unrelated issues. As a consequence of this inappropriate questioning, both of these depositions lasted an entire day.<sup>2</sup> Moreover, a perusal of the trial exhibits identified by VP and JV also indicate an intent to ignore the Court's decision.

This case is scheduled for a two (2) day trial because there is only one issue left to be decided by this Court. If JV and VP are allowed to expand the scope of the trial to unrelated issues that have already been adjudicated the trial will not be completed as scheduled. This case has been on the Court's docket for more than five (5) years. It is unfairly prejudicial to Valiant and wasteful to the Idaho Club Project to delay this matter any further. With each day that goes by the Idaho Club Project becomes more complicated and expensive to complete and less valuable to sell at the foreclosure sale. Valiant asks this Court to strictly adhere to its Orders limiting the scope of trial to whether or not RE Loans and Pensco were satisfied at the MF08 loan closing.

## II. LEGAL ISSUES

### A. *The defenses raised by VP and JV are frivolous and without any basis in fact or law.*

To prevail at trial, Valiant must prove the amounts remaining owed pursuant to the 2007 RE Loans Note and the Pensco Note. In so doing, this evidence will establish that neither the 2007 RE Loans Note nor the Pensco Note have been satisfied. Although Valiant bears the burden of proving its case by a preponderance of the evidence, Valiant anticipates that its evidence will be

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<sup>2</sup> The deposition of Barney Ng could not be completed in a day and has not been completed as of the filing of this pre-trial brief. As such, his deposition would have taken more than a day if it had been completed.

largely uncontroverted. Based upon the discovery that has been completed, VP and JV lack virtually any documentary or testimonial evidence to support their positions in this case.

To wit, Charles Reeves will testify on behalf of the borrower, POBD, that RE Loans and Pensco were not satisfied by the MF08 loan closing, and that POBD still owes a principal balance of \$278,147.65 pursuant to the 2007 RE Loans Note and \$2,700,000.00 pursuant to the Pensco Note. Likewise, Barney Ng will testify, on behalf of the loan servicer responsible for disbursing loan funds to POBD and tracking the amounts owed to RE Loans and Pensco, that RE Loans and Pensco were not satisfied by the MF08 loan closing. He will also testify that the loan servicer's business records show a principal balance owed to RE Loans of \$278,147.65. Mr. Ng is also the individual that loaned POBD \$2,700,000.00 from his self-directed IRA on behalf of Pensco. In this capacity he will testify that POBD still owed \$2,700,000.00 pursuant to the Pensco Note when it was transferred to Valiant in July of 2014. Additionally, the escrow officer for First American Title Company ("FATCO"), who was responsible for closing the MF08 loan, will testify that neither RE Loans nor Pensco were paid any monies by FATCO or anyone else at the FATCO loan closing. To the contrary, a total \$2,975,000.00 was paid into closing by Pensco and MF08 and a total of \$2,975,000.00 was disbursed to other entities. VP and JV cannot controvert this direct evidence by percipient witnesses.

Valiant's documentary evidence also establishes that the 2007 RE Loans Note and Pensco Note were not satisfied. Invoices sent to POBD by the loan servicer confirm principal balances owed to RE Loans of \$278,147.65 and to Pensco of \$2,700,000. Moreover, the MF08 loan documents and FATCO closing documents establish that RE Loans and Pensco could not have been satisfied at the MF08 loan closing. These documents establish that MF08 and Pensco disbursed a total of \$2,975,000.00 into escrow at FATCO. As RE Loans was owed \$6,172,325.18

and Pensco was owed \$2,700,000.00 (a combined total of \$8,872,325.18), RE Loans and Pensco could not possibly have been paid off with the \$2,975,000.00 disbursed into escrow. The terms of the MF08 loan documents further state that RE Loans would maintain a first priority loan position and Pensco would maintain a second priority lien position after closing. These provisions are meaningless if RE Loans and Pensco were to be paid off at the MF08 loan closing. Similarly, the subordination agreements and loan modification recorded by RE Loans and Pensco as condition precedents to the MF08 loan closing are non-nonsensical if RE Loans and Pensco were going to be paid off. JV and VP cannot controvert this documentary evidence.

Despite the fact that no witness will testify that either the 2007 RE Loans Note or the Pensco Note have been satisfied, and the fact that there are no documents that can establish that said Notes were satisfied at the MF08 loan closing, VP and JV continue to frivolously assert that one or both of these Notes were somehow paid. They continue to point to the Borrower's Final Settlement Statement (the "Settlement Statement") cited to by the Court in the Reconsider Order and the Third Summary Judgment Order as proof that these loans were satisfied. While this document was enough to barely withstand Valiant's third motion for summary judgment, it is woefully insufficient to overwhelm Valiant's evidence to the contrary. Wishful thinking is not evidence. The Settlement Statement does not have any legally binding effect upon the obligations of POBD, MF08, Pensco or RE Loans. Moreover, counsel for VP and JV have reviewed FATCO's documents<sup>3</sup> and participated in the depositions of the title officer and escrow officer for the MF08 loan closing. As such, VP and JV are fully aware that FATCO was not responsible for and that it did not disburse any amounts to RE Loans or Pensco at closing. Counsel for JV and VP also

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<sup>3</sup> FATCO's documents were subpoenaed and obtained by VP's counsel prior to the hearing on Valiant's third motion for summary judgment. However, these documents were intentionally withheld from Valiant until the day of said hearing because they unequivocally establish that RE Loans and Pensco were not satisfied at the MF08 loan closing.

participated in the depositions of Charles Reeves and Barney Ng and heard their testimony that RE Loans and Pensco have not been fully paid by POBD. Based upon the foregoing, there is no good faith basis upon which JV and VP can continue to defend against Valiant's claims in this case. The sole purpose of these defenses is to delay and harass Valiant and to make it as expensive as possible for Valiant to foreclose the Valiant Mortgages.

***B. Upon Valiant establishing its prima facie case, JV and VP must put forth admissible evidence that demonstrates the 2007 RE Loans Note and/or the Pensco Note have been satisfied.***

Valiant recognizes that it bears the initial burden of establishing that both the 2007 RE Loans Note and the Pensco Note remain unsatisfied. As discussed above, Valiant will meet its burden at trial. Once Valiant has established its prima facie case showing that amounts owing pursuant to the 2007 RE Loans Note and Pensco Note are still outstanding, the burden shifts to VP and JV to prove that these notes were somehow satisfied. The Idaho Supreme Court has long recognized the distinct burdens borne by the plaintiff and defendant in each case:

The term 'burden of proof' has two distinct meanings. In its strict sense, the term denotes the duty of establishing the truth of a given proposition or issue by such a quantum of evidence as the law demands in the case in which the issue arises, whether civil or criminal. In a secondary sense, the term 'burden of proof' is used to designate the obligation resting upon a party to meet with evidence a prima facie case created against him -- that is, the duty of proceeding with evidence at the beginning, or at any subsequent stage of the trial in order to make or meet a prima facie case." 29 Am.Jur.2d, Evidence, § 123, p. 154.

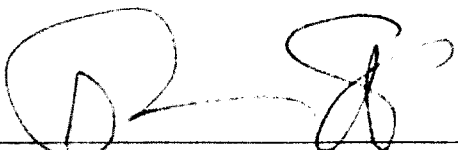
*Harman v. Nw. Mut. Life Ins. Co.*, 91 Idaho 719, 721 (1967). As such, to avoid entry of Judgment in favor of Valiant, JV and VP must submit sufficient evidence to establish by a preponderance of the evidence that the 2007 RE Loans Note and the Pensco Note have been paid in full. *Id.* It is not incumbent upon Valiant to prove a negative.

As explained hereinabove, VP and JV cannot sustain their burden of proof. No witness, including VP's expert witness, will testify that these Notes have been paid. Likewise, JV and VP cannot produce a single document that demonstrates that either of these Notes have been satisfied.

**DATED** this 21<sup>st</sup> day of January, 2016.

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

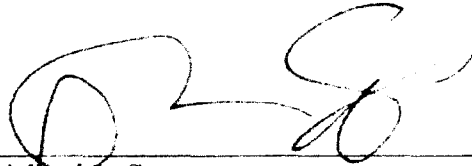
BY:

  
\_\_\_\_\_  
Richard L. Stacey  
Attorneys For Valiant Idaho, LLC

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 21<sup>st</sup> day of January 2016, a true and correct copy of the foregoing document was served by the method indicated below upon the following party(ies):

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 type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivered <input checked="" type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Electronic Mail <a href="mailto:garyfinney@finneylaw.net">garyfinney@finneylaw.net</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 type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivered <input checked="" type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Electronic Mail <a href="mailto:sweeks@jvwlaw.net">sweeks@jvwlaw.net</a>



Richard L. Stacey

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

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

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

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

Defendants. )

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

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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. )

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

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



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

Third Party )  
 Defendants. )

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JV L.L.C., an Idaho limited )  
 liability company, )  
 Defendant and )  
 Cross-Claimant against all of )

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

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COMES NOW JV L.L.C., by and through counsel, GARY A.

FINNEY, Finney Finney & Finney, P.A., and submits as follows:

JV L.L.C.'S DOCUMENTS AND EXHIBITS

- A. Secured Promissory Note, October 20, 1995, original sum \$2,264,500.00 to JV, LLC from V.P., Richard Villelli, Villelli Enterprises, Villelli Trust (all as makers)
- B. Mortgage recorded October 24, 1995, Instrument No. 474746 (V.P. Inc, Mortgagor; JV, LLC, Mortgagee)
- C. Panhandle Escrow No. 2067429, Ledger of Payments & Unpaid Balance

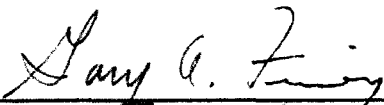
- D. Third Amended and Restated Real Property Purchase and Sale Agreement, January 6, 2005, North Idaho Resorts/MDGM
- E. Third Amendment to Indebtedness and to Real Estate Security and Subordination Agreement as recorded June 24, 2008, Instrument No. 753907
- F. Deposition of Chuck Reeves on 08/19/13 in BC Case No. CV-2011-0135
- G. Findings of District Judge Griffin in BC Case No. CV-2011-0135
- H. Seller's Closing Statement HUD-1 of 06/14/2006
- I. Borrower's Closing Statement of 7/31/2008
- J. Borrower's Final Settlement Statement of 08/06/2008
- K. Notice of Redemption dated July 1, 2014, JV to BC Tax Collector
- L. Redemption Deed, dated July 2, 2014, recorded July 7, 2014 as Instrument No. 861430 & re-recorded August 22, 2014 as Instrument No. 863295
- M. Bonner County Treasurer's Map showing real estate redeemed JV, and remainder of land redeemed by Valiant
- N. Redemption Deed, dated July 7, 2014, recorded July 8, 2014 as Instrument No. 861460 & re-recorded August 22, 2014 as Instrument No. 863298
- O. Buyer/Borrower Statement (POBD/NIR), dated June 13, 2006
- P. Bar-K 8-28-07 Spreadsheet
- Q. Satisfaction of Mortgage Security Agreement and Fixture Filing, recorded August 6, 2008 as Instrument No. 756408
- R. October 5, 2009 Letter to Adjusters International
- S. Photocopy of Greenspan Adjusters International, Inc. Check No. 1238
- T. Kathy Groenhout November 2, 2009 e-mail
- U. Kathy Groenhout October 27, 2009 e-mail
- V. R.E. Loan's Satisfaction of Mortgage recorded June 8, 2007, Instrument No. 730445
- W. Deed of Trust, recorded August 22, 2007 as Instrument No. 735613, records of Bonner County Idaho
- X. Assignment of Deed of Trust, recorded August 22, 2007 as Instrument No. 735614, records of Bonner County Idaho
- Y. Deed of Trust, recorded August 22, 2007 as Instrument No. 735623, records of Bonner County Idaho
- Z. Assignment of Deed of Trust, recorded August 22, 2007 as Instrument No. 735624, records of Bonner County Idaho

AA: Deed of Trust, recorded August 22, 2007 as Instrument No. 735618, records of Bonner County Idaho  
BB: Assignment of Deed of Trust, recorded August 22, 2007 as Instrument No. 735619, records of Bonner County Idaho  
CC: Chuck Reeves Letter dated September 29, 2009

\* In addition to the foregoing, JV will use and introduce at trial Valiant's Exhibits 1 through 19 and Valiant's Exhibits A through J from Valiant's Motion for Summary Judgment of 1/16/2015 and as attached to the purporting Affidavit of Charles Reeves November 12, 2014 support therefore, all of which are file with the Court and all parties already have copies.

A copy of all of these Exhibits and Documents JV's A - BB have previously been served on counsel for the parties and a copy delivered to the Court. The JV Exhibit CC is now served upon the parties and a copy to the Court. The Court's EXHIBIT "COPIES" are being hand delivered to the Court and the originals will be brought to Trial.

DATED this 26<sup>TH</sup> day of January, 2016.

  
\_\_\_\_\_  
GARY A. FINNEY  
Attorney for JV L.L.C.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served as indicated, by facsimile, or by hand delivery, this 26<sup>th</sup> day of January, 2016, and was addressed as follows:

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

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]

The Honorable Barbara Buchanan -  
Bonner County Courthouse - Judge's Chambers  
215 S. First Avenue  
Sandpoint, ID 83864  
VIA HAND DELIVERY

By: 



THE IDAHO CLUB

LAKE & GOLF RETREAT

September 29, 2009

Mr. Jim Berry  
JV LLC  
PO Box B  
Sandpoint, ID 83864

Re: New Financing

Jim:

Thanks for taking time to meet. I very much appreciate your patience as we try to work through our efforts to secure new financing. As we discussed, outlined below is a review of some of the options that we are considering.

As you know our main lender has failed to fund any draws since last August after the loan closed. Since then we had a closing set for December on a global refinance, only to discover later that the lender did not have the ability to fund. Since then we have explored many prospects, from a larger equity play to a short term debt structure that would give us some operating capital while we continue to work on the equity deal.

We still have several equity players who are reviewing our information. As I mentioned, it is difficult to predict the timing on any of these or exactly what the amount of capital or terms will be. We have two groups looking at a larger amount which would pay everyone off and have a couple of groups who might come back to us with a smaller amount of money, but we will just have to wait and see what might happen with those scenarios and then deal with them.

What I believe is the more likely scenario is that we will close a smaller debt structure first and then continue to pursue the equity deal. While our preference is to close a loan in the \$10mm range, we actually may be able to close a smaller loan, e.g. \$5mm-\$6mm more quickly, and then perhaps take it out with a loan in the \$10mm range over the next 60 days. While it sounds unusual to close two loans so close together, we are concerned about getting something done as soon as possible to help with our cash position, thus will do what is best to accomplish this.

If we do close the \$5mm loan first, our plan would be to pay you \$75,000 of back interest and then keep you current moving forward. When the \$10mm loan is closed, we would clean up whatever remaining accrued interest is owed. Under both loans you would retain your same priority position (i.e. 2<sup>nd</sup> on all our property) and receive your release

GOLF ADVISORY BOARD  
Jack Nicklaus, *Honorary Chairman*  
Scott McCarron • Jeff Gove

TENNIS ADVISORY BOARD  
Andy Roddick, *Honorary Chairman*  
John Roddick • Trent Lott

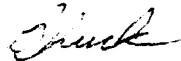
DEFENDANT'S EXHIBIT  
411  
CC

JV's  
09-29-09

price upon the sale of any lots. One thing you might want to talk to your tax advisor about is a new ruling that we heard about where the IRS allows lump sum pay downs to be applied as principal reductions vs. as payments of interest, thus effectively creating a non-taxable event. I am not sure whether this applies to individuals or banks, but it is worth asking about.

As you can see we are trying to manage cash very carefully and hope this scenario will be acceptable to you and your family. Please give me a call and I will keep you posted as well on our progress.

Best regards,

A handwritten signature in cursive script that reads "Chuck".

Chuck Reeves