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IN THE

**SUPREME COURT
OF THE
STATE OF IDAHO**

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

Valiant Idaho, LLC
Cross-Claimant/Respondent

vs.

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

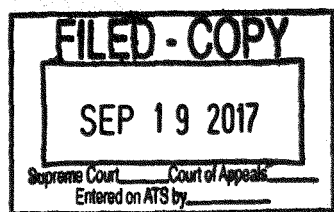
CLERK'S RECORD ON APPEAL

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

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44583

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CLERK
DEPUTY

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

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

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

Plaintiff,

vs.

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

Defendants.

Case No. CV-2009-01810

VP INC'S MOTION TO AMEND ANSWER
TO ASSERT AN AFFIRMATIVE
DEFENSE

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

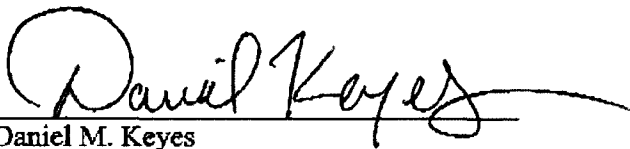
COMES NOW VP, Inc. ("VP"), by and through its attorneys of record, James, Vernon & Weeks, P.A., and respectfully moves the Court, pursuant to Rule 15 of the Idaho Rules of Civil Procedure, for an order granting Defendant leave to amend its Answer to include Idaho Code § 5-214A as an affirmative defense to Valiant's judicial foreclosure of Instrument Nos. 724829 & 724834.

Idaho Rule of Civil Procedure 15(a) provides that "a party may amend his pleading only by leave of court... and leave shall be freely given when justice so requires." Furthermore, Idaho Rule of Civil Procedure 1(a) states that "these rules shall be liberally construed to secure the just, speedy and inexpensive determination of every action and proceeding." Our Supreme Court has interpreted IRCP 1(a) and Rule 8(c) (pleading of affirmative defenses) to allow a party to raise an affirmative defense before trial when the parties are given time to present argument in opposition. See *Bluestone v. Mathewson*, 103 Idaho 453, 455, 649 P.2d 1209, 1211 (1982).

Oral argument is requested.

DATED this 27th day of 2016.

JAMES, VERNON & WEEKS, P.A.

By 
Daniel M. Keyes

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on the following persons in the manner indicated this 27th day of January, 2016:

U.S. Mail, Postage Prepaid
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Richard Stacey
 Jeff Sykes
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DEFENDANT JV, LLC'S FOURTH AMENDED EXHIBIT LIST

CASE NO: CV-09-1810

PLAINTIFF'S COUNSEL:

DATE: 3/11/2016

DEFENDANT JV, LLC's COUNSEL: Gary A. Finney

PLAINTIFFS: GENESIS GOLF BUILDERS, INC.

DEFENDANTS: PEND OREILLE BONNER DEVELOPMENT, LLC, et al.

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DISTRICT

2016 MAR 11 10:24 AM
[Handwritten Signature]

S T A T E	P L A I N T I F F	D E F E N D A N T	DESCRIPTION	M A R K E D	O F F E R E D	R E J E C T E D	A D M I T T E D	A D M I T T E D B Y S T I P	U N D E R A D V I S E M E N T
		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 8/19/13 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						
	DD	Villelli Enterprises, Inc./VP, Incorporated & POLP Mortgage of 2004, Loan No. V0104, recorded March 24, 2004 as Instrument No. 646455						
	EE	POBD, LLC April 2008 letter w/ Third Amendment to Promissory Note						
	FF	Partial Release of Mortgage, recorded September 25, 2007 as Instrument No. 737860 - RE Loans No. P0099 & Wells Fargo Foothill, LC for a) Lot 7 Block 2... b) Lot 4, Block 9... c) Lot 16, Block 2...						
	GG	Deed of Trust, recorded December 5, 2007 as Instrument No. 742185 - from Shea/Eagle Point Construction & Management, Inc. to Mountain West Bank, on <u>Lot 7, Blk 2, Golden Tees Estates, 2nd Addition</u> , for \$1,440,000.00						
	HH	Trustee's Deed, recorded August 12, 2010 as Instrument No. 796852, <u>Lot 7, Blk 2, Golden Tees . . . for \$877,500.00</u> credit bid subject to all prior liens & encumbrances						
	II	Trustee's Deed, recorded July 27, 2012 as Instrument No. 829818						

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STATE OF IDAHO
 COUNTY OF BONNER
 FIRST JUDICIAL DISTRICT

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

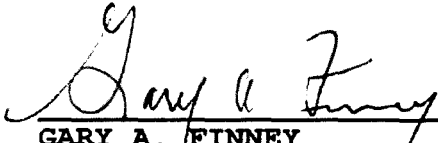
- D. Third Amended and Restated Real Property Purchase and Sale Agreement, January 6, 2005, North Idaho Resorts/MDGM
- E. Third Amendment to Indebtedness and to Real Estate Security and Subordination Agreement as recorded June 24, 2008, Instrument No. 753907
- F. Deposition of Chuck Reeves on 08/19/13 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
- CC: Chuck Reeves Letter dated September 29, 2009
- DD: Villelli Enterprises, Inc./VP, Incorporated & POLP Mortgage of 2004, Loan No. V0104, recorded March 24, 2004 as Instrument No. 646455
- EE: POBD, LLC April 2008 letter w/ Third Amendment to Promissory Note
- FF: Partial Release of Mortgage, recorded September 25, 2007 as Instrument No. 737860 - RE Loans No. P0099 & Wells Fargo Foothill, LC for a) Lot 7 Block 2... b) Lot 4, Block 9... c) Lot 16, Block 2...
- GG: Deed of Trust, recorded December 5, 2007 as Instrument No. 742185 - from Shea/Eagle Point Construction & Management, Inc. to Mountain West Bank, on Lot 7, Blk 2, Golden Tees Estates, 2nd Addition, for \$1,440,000.00
- HH: Trustee's Deed, recorded August 12, 2010 as Instrument No. 796852, Lot 7, Blk 2, Golden Tees . . . for \$877,500.00 credit bid subject to all prior liens & encumbrances
- II: Trustee's Deed, recorded July 27, 2012 as Instrument No. 829818

* 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 - DD have previously been served on counsel for the parties and a copy delivered to the Court (NOTE DD WAS ADMITTED AT TRIAL). The JV Exhibits EE - II 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 11 day of March, 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 11 day of March, 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: Gwen M. Victor

PEND OREILLE BONNER DEVELOPMENT, LLC
LETTERHEAD

April __, 2008

Mr. Jim Berry
J.V., LLC
P.O. Box B
Sandpoint, ID 83864

Dear Jim:

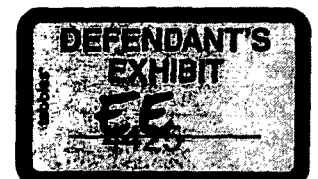
Thank you again for your readiness to execute the subordination agreement in favor of First National Bank ("FNB") for the purpose of subordinating the lien of J.V., LLC's mortgage on the Lake Parcels to the new first lien in favor of FNB on the Lake Parcels. In the Third Amendment to the promissory note which J.V.'s mortgage on the Lake Parcels secures, you agreed to resubordinate your lien to a new or replacement first mortgage lien on the Lake Parcels in favor of R.E. Loans, LLC, Barney Ng's entity. The principal amount of that loan may range up to \$30 to \$35 Million Dollars. You would remain in second position on the Lake Parcels, initially behind FNB, then behind R.E. Loans, LLC.

Once Barney Ng is able to fund the loan which R.E. Loans has contracted to make to us, we intend to use part of the proceeds to take out the FNB loan. We would pay FNB off in full. In order to do that we shall wish, and Barney shall doubtless require, that his loan have a first priority security interest in the Lake Parcels.

Accordingly, in furtherance of your agreement in the Third Amendment to subordinate again, I request that you sign and return to me the enclosed counterpart of this letter so that we each have a written memorial of our understanding as summarized below.

J.V., LLC ("JV"), agrees in favor of Pend Oreille Bonner Development, LLC ("POB") as follows:

1. Provided the proceeds of the loan from R.E. Loans, LLC ("Ng") are used in part to pay off in full the loan from First National Bank which is secured by a first mortgage on the Lake Parcels, JV will subordinate the lien of its mortgage on the Lake Parcels to a first mortgage on the Lake Parcels in favor of Ng.
2. A condition of the aforesaid subordination is that the principal amount of the loan from Ng shall not exceed Thirty-Five Million Dollars (\$ 35,000,000) and that the balance of the proceeds after payment of the FNB loan in full shall be used to refinance other indebtedness of the Idaho Club project and to pay for on-going costs of development.



JV 2008-106

3. JV agrees, upon request, to execute and deliver to Ng a written subordination agreement substantially in the form of the subordination agreement which JV has executed in favor of FNB pertaining to the Lake Parcels.

Many thanks, Jim, for confirming our agreement by means of this exchange of letter counterparts.

Sincerely yours,

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

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

By: _____
Charles W. Reeves
President

The undersigned hereby accepts and agrees to the provisions of the foregoing letter.

J.V. LLC, an Idaho limited liability company

By: _____
James W. Berry, Member

By: Hidden Lakes Ltd Partnership, Member

By: _____
William A. Berry

By: Sun Mountain, Inc.. Member

By: _____
William A. Berry. President

THIRD AMENDMENT TO PROMISSORY NOTE

This Third Amendment to Promissory Note ("**this Amendment**") is dated as of this _____ day of June, 2008, by and between J.V. LLC, an Idaho limited liability company ("**Holder**") as the holder of the promissory note ("**Note**") which this Amendment concerns, and Pend Oreille Bonner Holdings, Inc., a Nevada corporation ("**Payor**").

This Amendment pertains to an original promissory note (the "**Original Note**") entitled *Secured Promissory Note* dated October 20, 1995 in the principal amount of Two Million Two Hundred Sixty-Four Thousand Five Hundred Dollars ((2,264,500) made in favor of Holder by Richard Villelli *et al.* (collectively "**Villelli**"). The Original Note has been amended (i) by an instrument (the "**First Amendment**") entitled *Agreement to Release Right of First Refusal Upon Payment, Agreement for Payment On Profit Sharing Agreement and To Release Upon Payment, and Modifications to Promissory Note and Real Estate Mortgage* executed on February 7, 2005 by Villelli and Holder and (ii) by an instrument (the "**Second Amendment**") entitled *Amendment of Promissory Note* dated as of June 19, 2006 and executed by Holder and Payor. As used in this Amendment, the term "**Note**" shall mean the Original Note as amended by the First Amendment and the Second Amendment.

The Note is secured by a deed of trust (the "**Deed of Trust**").

Between the date of the First Amendment and the date of the Second Amendment, Payor acquired title to the real property in payment for which the Original Note was first given. Payor now holds said real property subject to the obligations set forth in the Note and the Deed of Trust..

For good and valuable consideration, including, without limitation, the agreements of the parties set forth in this Amendment, the receipt and adequacy of which consideration Holder and Payor hereby acknowledge, Holder and Payor hereby agree that, effective as of the date of this Amendment, the Note is hereby amended and modified as follows..

Except as specifically provided herein, the parties agree that all terms of the Note shall remain in full force and effect except as explicitly modified by the following provisions of this Amendment. The date (the "**Effective Date**") as of which the provisions of this Amendment shall become effective is the date of this Note set forth above.

1. Payor, on or before the effective date of the subordination described in paragraph 7 below, shall partially prepay the current principal balance of the Note in an amount which suffices to reduce the principal balance to One Million Five Hundred Thousand Dollars (\$1,500,000). Interest shall cease to accrue on the principal which has been prepaid.

2. The interest rate on the principal balance of the Note remaining after the prepayment described in Paragraph 1 above shall, commencing upon the date of said prepayment, be twelve percent (12%) simple interest per annum.

3. The term of the Note shall be extended for thirty-six months. Accordingly the new maturity date of the Note, on or before which date all principal and any unpaid accrued interest then unpaid under the Note shall be due and payable in full, shall be June ____, 2011.

4. Payor shall pay Holder a prepayment fee of Thirty Thousand Dollars (\$30,000) concurrently with the principal prepayment described in Paragraph 1 above.

5. After the principal prepayment described in Paragraph 1 above has been made to Holder, no further principal payments shall be due until the new maturity date of the Note. Payor shall, however, have the right (but no obligation) to prepay principal at any time and from time to time during the term of the Note, in whole or in part, and there will be no penalty or premium charged for any such principal prepayments. Interest shall cease to accrue on principal which has been prepaid.

6. Payor shall pay Holder as a release price for the partial release from the lien of the Deed of Trust (A) for the release of any land upon which a condominium unit shall be constructed, an amount equal to twenty thousand dollars (\$20,000.00) for each such unit of land conveyed; (B) for the release of any single family lot, an amount equal to twenty thousand dollars (\$20,000) per lot; and (C) for the release of land on Moose Mountain, an amount equal to Eight Thousand Dollars (\$8,000) per net acre.

7. Payor shall execute in recordable form and deliver to Holder for recordation a new deed of trust, which shall constitute a lien of second priority to secure the Note, on both the Moose Mountain and Trestle Creek properties. Holder agrees to execute a subordination agreement which will subordinate said new deed of trust to any first mortgage or deed of trust which presently exists or which Payor may hereafter grant upon either or both of the Moose Mountain and Trestle Creek properties. The terms and conditions of any such subordination shall be set forth in a letter agreement between Holder and Payor to be executed and delivered separately from but concurrently with this Amendment. Anything to the contrary notwithstanding, the maximum amount of the first deed of trust on the lake to which Holder's note shall be subordinated shall be \$5,000,000.

By: Pend Oreille Bonner Development Holdings, Inc
a Nevada Corporation

Charles W. Reeves
President

J.V. LLC, an Idaho limited liability company

By: _____
James W. Berry
Member

By: Hidden Lakes Ltd Partnership
Member

By: _____
William A. Berry

By: Sun Mountain, Inc.
Member

By: _____
William A. Berry
President

Fafco:
221082-S
221080-S
221075-S

FILED BY
First American Title
2007 SEP 25 P 2:46
700
MARIE SCOTT
BONNER COUNTY RECORDER
dl DEPUTY

737860

[Space Above This Line is for Recording Information]

Loan No. P0099

PARTIAL RELEASE OF MORTGAGE

R.E. LOANS LLC, a California limited liability company and the holder of the Mortgage hereinafter described, and WELLS FARGO FOOTHILL, LLC, a Delaware limited liability company as the a holder of a collateral assignment pertaining the Mortgage hereinafter described, in consideration of the sum of Ten Dollars (\$10.00) and other valuable consideration, the receipt of which is hereby acknowledged, do hereby release and discharge ONLY the property described as

221082 Lot 7, Block 2, GOLDEN TEE ESTATES 2nd ADDITION, according to Plat thereof, recorded in Book 8, of Plats, Page 79, records of Bonner County, Idaho

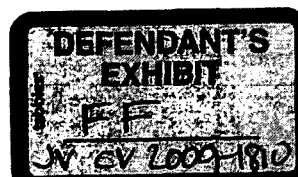
221080 Lot 4, Block 9, GOLDEN TEE ESTATES 3rd ADDITION, according to Plat thereof, recorded in Book 8, of Plats, Page 78, records of Bonner County, Idaho

221075 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

from the lien of that certain Mortgage Assignment of Rents, Security Agreement, and Fixture Filing (the "Mortgage") dated March 6, 2007, executed by Pend Oreille Bonner Development, LLC, which was recorded on March 15, 2007 in the Office of the Recorder of Bonner County, Idaho as Instrument No. 724829 and 724834.

This instrument releases ONLY the above described property from the lien of said Mortgage. Said Mortgage continues to encumber the remaining property therein described to the extent such property has not previously been released.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK



WELLS FARGO FOOTHILL, LLC, a
Delaware limited liability company

By: Jami Barrows

Its: Vice President

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

By Its Manager: B-4 PARTNERS LLC,
a California limited liability company

By: [Signature]

Its: MANAGER

STATE OF CALIFORNIA)
)ss.
COUNTY OF CONTRA COSTA)

On September 13, 2007, before me Guadalupe Rodriguez, a Notary Public in and for
said State and County, personally appeared Barney Kelly Ng, personally known to me (or
proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within
instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and
that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s)
acted, executed the instrument.

WITNESS my hand and official seal.

[Signature: Guadalupe Rodriguez]



STATE OF Texas)
)ss.
COUNTY OF Dallas)

On September 11, 2007, before me DORLISA RANEY, a Notary Public in and for
said State and County, personally appeared JAMI BARROWS, personally known to me (or
proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within
instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and
that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s)
acted, executed the instrument.

WITNESS my hand and official seal.

[Signature: Dorlisa Raney]



RECORDATION REQUESTED BY:
Mountain West Bank
Ponderay Commercial Lending Center
476655 Hwy 95
PO Box 399
Sandpoint, ID 83864

WHEN RECORDED MAIL TO:
Mountain West Bank
Ponderay Commercial Lending Center
476655 Hwy 95
PO Box 399
Sandpoint, ID 83864

SEND TAX NOTICES TO:
EAGLEPOINTE CONSTRUCTION & MANAGEMENT, INC.
PO BOX 8207
SPOKANE, WA 99203

SANDPOINT TITLE INSURANCE
FILED BY

2007 DEC 5 P 4:23
1800
MARIE SCOTT
BONNER COUNTY RECORDER
DEPUTY

742185
STL #52049-TO

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE ONLY

52049

DEED OF TRUST

THIS DEED OF TRUST is dated November 29, 2007, among EAGLEPOINTE CONSTRUCTION & MANAGEMENT, INC., A WASHINGTON CORPORATION, whose address is PO BOX 8207, SPOKANE, WA 99203 ("Grantor"); Mountain West Bank, whose address is Ponderay Commercial Lending Center, 476655 Hwy 95, PO Box 399, Sandpoint, ID 83864 (referred to below sometimes as "Lender" and sometimes as "Beneficiary"); and SANDPOINT TITLE COMPANY, whose address is PO BOX 1767, SANDPOINT, ID 83864 (referred to below as "Trustee").

CONVEYANCE AND GRANT. For valuable consideration, Grantor does hereby irrevocably grant, bargain, sell and convey in trust, with power of sale, to Trustee for the benefit of Lender as Beneficiary, all of Grantor's right, title, and interest in and to the following described real property, together with all existing or subsequently erected or affixed buildings, improvements and fixtures; all easements, rights of way, and appurtenances; all water, water rights and ditch rights (including stock in utilities with ditch or irrigation rights); and all other rights, royalties, and profits relating to the real property, including without limitation all minerals, oil, gas, geothermal and similar matters, (the "Real Property") located in BONNER County, State of Idaho:

LOT 7, BLOCK 2, OF GOLDEN TEE ESTATES 2ND ADDITION, ACCORDING TO THE OFFICIAL PLAT THEREOF, RECORDED IN BOOK 8 OF PLATS, PAGE 79, RECORDS OF BONNER COUNTY

The Real Property or its address is commonly known as 512 S IDAHO CLUB DRIVE, SANDPOINT, ID 83864. The Real Property tax identification number is 033810020070A.

CROSS-COLLATERALIZATION. In addition to the Note, this Deed of Trust secures all obligations, debts and liabilities, plus interest thereon, of Grantor to Lender, or any one or more of them, as well as all claims by Lender against Grantor or any one or more of them, whether now existing or hereafter arising, whether related or unrelated to the purpose of the Note, whether voluntary or otherwise, whether due or not due, direct or indirect, determined or undetermined, absolute or contingent, liquidated or unliquidated, whether Grantor may be liable individually or jointly with others, whether obligated as guarantor, surety, accommodation party or otherwise, and whether recovery upon such amounts may be or hereafter may become barred by any statute of limitations, and whether the obligation to repay such amounts may be or hereafter may become otherwise unenforceable.

Grantor presently assigns to Lender (also known as Beneficiary in this Deed of Trust) all of Grantor's right, title, and interest in and to all present and future leases of the Property and all Rents from the Property; in addition, Grantor grants to Lender a Uniform Commercial Code security interest in the Personal Property and Rents.

THIS DEED OF TRUST, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS GIVEN TO SECURE (A) PAYMENT OF THE INDEBTEDNESS AND (B) PERFORMANCE OF ANY AND ALL OBLIGATIONS UNDER THE NOTE, THE RELATED DOCUMENTS, AND THIS DEED OF TRUST. THIS DEED OF TRUST IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:

PAYMENT AND PERFORMANCE. Except as otherwise provided in this Deed of Trust, Grantor shall pay to Lender all amounts secured by this Deed of Trust as they become due, and shall strictly and in a timely manner perform all of Grantor's obligations under the Note, this Deed of Trust, and the Related Documents.

POSSESSION AND MAINTENANCE OF THE PROPERTY. Grantor agrees that Grantor's possession and use of the Property shall be governed by the following provisions:

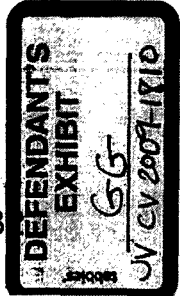
Possession and Use. Until the occurrence of an Event of Default, Grantor may (1) remain in possession and control of the Property; (2) use, operate or manage the Property; and (3) collect the Rents from the Property. The following provisions relate to the use of the Property or to other limitations on the Property. THE REAL PROPERTY EITHER IS NOT MORE THAN FORTY (40) ACRES IN AREA OR IS LOCATED WITHIN AN INCORPORATED CITY OR VILLAGE.

Duty to Maintain. Grantor shall maintain the Property in tenable condition and promptly perform all repairs, replacements, and maintenance necessary to preserve its value.

Compliance With Environmental Laws. Grantor represents and warrants to Lender that: (1) During the period of Grantor's ownership of the Property, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance by any person on, under, about or from the Property; (2) Grantor has no knowledge of, or reason to believe that there has been, except as previously disclosed to and acknowledged by Lender in writing, (a) any breach or violation of any Environmental Laws, (b) any use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance on, under, about or from the Property by any prior owners or occupants of the Property, or (c) any actual or threatened litigation or claims of any kind by any person relating to such matters; and (3) Except as previously disclosed to and acknowledged by Lender in writing, (a) neither Grantor nor any tenant, contractor, agent or other authorized user of the Property shall use, generate, manufacture, store, treat, dispose of or release any Hazardous Substance on, under, about or from the Property; and (b) any such activity shall be conducted in compliance with all applicable federal, state, and local laws, regulations and ordinances, including without limitation all Environmental Laws. Grantor authorizes Lender and its agents to enter upon the Property to make such inspections and tests, at Grantor's expense, as Lender may deem appropriate to determine compliance of the Property with this section of the Deed of Trust. Any inspections or tests made by Lender shall be for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to Grantor or to any other person. The representations and warranties contained herein are based on Grantor's due diligence in investigating the Property for Hazardous Substances. Grantor hereby (1) releases and waives any future claims against Lender for indemnity or contribution in the event Grantor becomes liable for cleanup or other costs under any such laws; and (2) agrees to indemnify, defend, and hold harmless Lender against any and all claims, losses, liabilities, damages, penalties, and expenses which Lender may directly or indirectly sustain or suffer resulting from a breach of this section of the Deed of Trust or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release occurring prior to Grantor's ownership or interest in the Property, whether or not the same was or should have been known to Grantor. The provisions of this section of the Deed of Trust, including the obligation to indemnify and defend, shall survive the payment of the indebtedness and the satisfaction and reconveyance of the lien of this Deed of Trust and shall not be affected by Lender's acquisition of any interest in the Property, whether by foreclosure or otherwise.

Nuisance, Waste. Grantor shall not cause, conduct or permit any nuisance nor commit, permit, or suffer any stripping of or waste on or to the Property or any portion of the Property. Without limiting the generality of the foregoing, Grantor will not remove, or grant to any other party the right to remove, any timber, minerals (including oil and gas), coal, clay, scoria, soil, gravel or rock products without Lender's prior written consent.

Removal of Improvements. Grantor shall not demolish or remove any improvements from the Real Property without Lender's prior written



DEED OF TRUST
(Continued)

Loan No: 107300028

Page 2

consent. As a condition to the removal of any improvements, Lender may require Grantor to make arrangements satisfactory to Lender to replace such improvements with improvements of at least equal value.

Lender's Right to Enter. Lender and Lender's agents and representatives may enter upon the Real Property at all reasonable times to attend to Lender's interests and to inspect the Real Property for purposes of Grantor's compliance with the terms and conditions of this Deed of Trust.

Compliance with Governmental Requirements. Grantor shall promptly comply with all laws, ordinances, and regulations, now or hereafter in effect, of all governmental authorities applicable to the use or occupancy of the Property, including without limitation, the Americans With Disabilities Act. Grantor may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Grantor has notified Lender in writing prior to doing so and so long as, in Lender's sole opinion, Lender's interests in the Property are not jeopardized. Lender may require Grantor to post adequate security or a surety bond, reasonably satisfactory to Lender, to protect Lender's interest.

Duty to Protect. Grantor agrees neither to abandon or leave unattended the Property. Grantor shall do all other acts, in addition to those acts set forth above in this section, which from the character and use of the Property are reasonably necessary to protect and preserve the Property.

DEFERRED SALE - CONSENT BY LENDER. Lender may, at Lender's option, declare immediately due and payable all sums secured by this Deed of Trust upon the sale or transfer, without Lender's prior written consent, of all or any part of the Real Property, or any interest in the Real Property. A "sale or transfer" means the conveyance of Real Property or any right, title or interest in the Real Property, whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than three (3) years, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Real Property, or by any other method of conveyance of an interest in the Real Property. If any Grantor is a corporation, partnership or limited liability company, transfer also includes any change in ownership of more than twenty-five percent (25%) of the voting stock, partnership interests or limited liability company interests, as the case may be, of such Grantor. However, this option shall not be exercised by Lender if such exercise is prohibited by federal law or by Idaho law.

TAXES AND LIENS. The following provisions relating to the taxes and liens on the Property are part of this Deed of Trust:

Payment. Grantor shall pay when due (and in all events prior to delinquency) all taxes, special taxes, assessments, charges (including water and sewer), fines and impositions levied against or on account of the Property, and shall pay when due all claims for work done on or for services rendered or material furnished to the Property. Grantor shall maintain the Property free of all liens having priority over or equal to the interest of Lender under this Deed of Trust, except for the lien of taxes and assessments not due and except as otherwise provided in this Deed of Trust.

Right to Contest. Grantor may withhold payment of any tax, assessment, or claim in connection with a good faith dispute over the obligation to pay, so long as Lender's interest in the Property is not jeopardized. If a lien arises or is filed as a result of nonpayment, Grantor shall within fifteen (15) days after the lien arises or, if a lien is filed, within fifteen (15) days after Grantor has notice of the filing, secure the discharge of the lien, or if requested by Lender, deposit with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender in an amount sufficient to discharge the lien plus any costs and reasonable attorneys' fees, or other charges that could accrue as a result of a foreclosure or sale under the lien. In any contest, Grantor shall defend itself and Lender and shall satisfy any adverse judgment before enforcement against the Property. Grantor shall name Lender as an additional obligee under any surety bond furnished in the contest proceedings.

Evidence of Payment. Grantor shall upon demand furnish to Lender satisfactory evidence of payment of the taxes or assessments and shall authorize the appropriate governmental official to deliver to Lender at any time a written statement of the taxes and assessments against the Property.

Notice of Construction. Grantor shall notify Lender at least fifteen (15) days before any work is commenced, any services are furnished, or any materials are supplied to the Property, if any mechanic's lien, materialman's lien, or other lien could be asserted on account of the work, services, or materials. Grantor will upon request of Lender, furnish to Lender advance assurance satisfactory to Lender that Grantor can and will pay the cost of such improvements.

PROPERTY DAMAGE INSURANCE. The following provisions relating to insuring the Property are a part of this Deed of Trust.

Maintenance of Insurance. Grantor shall procure and maintain policies of fire insurance with standard extended coverage endorsements on a replacement basis for the full insurable value covering all improvements on the Real Property in an amount sufficient to avoid application of any coinsurance clause, and with a standard mortgage clause in favor of Lender. Grantor shall also procure and maintain comprehensive general liability insurance in such coverage amounts as Lender may request with Trustee and Lender being named as additional insureds in such liability insurance policies. Additionally, Grantor shall maintain such other insurance, including but not limited to hazard, business interruption, and boiler insurance, as Lender may reasonably require. Policies shall be written in form, amounts, coverages and basis reasonably acceptable to Lender and issued by a company or companies reasonably acceptable to Lender. Grantor, upon request of Lender, will deliver to Lender, from time to time the policies or certificates of insurance in form satisfactory to Lender, including stipulations that coverages will not be cancelled or diminished without at least thirty (30) days prior written notice to Lender. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Grantor or any other person. Should the Real Property be located in an area designated by the Director of the Federal Emergency Management Agency as a special flood hazard area, Grantor agrees to obtain and maintain Federal Flood Insurance, if available, within 45 days after notice is given by Lender that the Property is located in a special flood hazard area, for the full unpaid principal balance of the loan and any prior liens on the property securing the loan, up to the maximum policy limits set under the National Flood Insurance Program, or as otherwise required by Lender, and to maintain such insurance for the term of the loan.

Application of Proceeds. Grantor shall promptly notify Lender of any loss or damage to the Property. Lender may make proof of loss if Grantor fails to do so within fifteen (15) days of the casualty. Whether or not Lender's security is impaired, Lender may, at Lender's election, receive and retain the proceeds of any insurance and apply the proceeds to the reduction of the indebtedness, payment of any lien affecting the Property, or the restoration and repair of the Property. If Lender elects to apply the proceeds to restoration and repair, Grantor shall repair or replace the damaged or destroyed improvements in a manner satisfactory to Lender. Lender shall, upon satisfactory proof of such expenditure, pay or reimburse Grantor from the proceeds for the reasonable cost of repair or restoration if Grantor is not in default under this Deed of Trust. Any proceeds which have not been disbursed within 180 days after their receipt and which Lender has not committed to the repair or restoration of the Property shall be used first to pay any amount owing to Lender under this Deed of Trust, then to pay accrued interest, and the remainder, if any, shall be applied to the principal balance of the indebtedness. If Lender holds any proceeds after payment in full of the indebtedness, such proceeds shall be paid to Grantor as Grantor's interests may appear.

Grantor's Report on Insurance. Upon request of Lender, however not more than once a year, Grantor shall furnish to Lender a report on each existing policy of insurance showing: (1) the name of the insurer; (2) the risks insured; (3) the amount of the policy; (4) the property insured, the then-current replacement value of such property, and the manner of determining that value; and (5) the expiration date of the policy. Grantor shall, upon request of Lender, have an independent appraiser satisfactory to Lender determine the cash value replacement cost of the Property.

LENDER'S EXPENDITURES. If any action or proceeding is commenced that would materially affect Lender's interest in the Property or if Grantor fails to comply with any provision of this Deed of Trust or any Related Documents, including but not limited to Grantor's failure to discharge or pay when due any amounts Grantor is required to discharge or pay under this Deed of Trust or any Related Documents, Lender or Grantor's behalf may (but shall not be obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on the Property and paying all costs for insuring, maintaining and preserving the Property. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note from the date incurred or paid by Lender to the date of repayment by Grantor. All such expenses will become a part of the indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity. The Deed of Trust also will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which Lender may be entitled upon Default.

WARRANTY; DEFENSE OF TITLE. The following provisions relating to ownership of the Property are a part of this Deed of Trust:

Title. Grantor warrants that: (a) Grantor holds good and marketable title of record to the Property in fee simple, free and clear of all liens and encumbrances other than those set forth in the Real Property description or in any title insurance policy, title report, or final title opinion

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issued in favor of, and accepted by, Lender in connection with this Deed of Trust, and (b) Grantor has the full right, power, and authority to execute and deliver this Deed of Trust to Lender.

Defense of Title. Subject to the exception in the paragraph above, Grantor warrants and will forever defend the title to the Property against the lawful claims of all persons. In the event any action or proceeding is commenced that questions Grantor's title or the interest of Trustee or Lender under this Deed of Trust, Grantor shall defend the action at Grantor's expense. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of Lender's own choice, and Grantor will deliver, or cause to be delivered, to Lender such instruments as Lender may request from time to time to permit such participation.

Compliance With Laws. Grantor warrants that the Property and Grantor's use of the Property complies with all existing applicable laws, ordinances, and regulations of governmental authorities.

Survival of Representations and Warranties. All representations, warranties, and agreements made by Grantor in this Deed of Trust shall survive the execution and delivery of this Deed of Trust, shall be continuing in nature, and shall remain in full force and effect until such time as Grantor's indebtedness shall be paid in full.

CONDEMNATION. The following provisions relating to condemnation proceedings are a part of this Deed of Trust:

Proceedings. If any proceeding in condemnation is filed, Grantor shall promptly notify Lender in writing, and Grantor shall promptly take such steps as may be necessary to defend the action and obtain the award. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of its own choice, and Grantor will deliver or cause to be delivered to Lender such instruments and documentation as may be requested by Lender from time to time to permit such participation.

Application of Net Proceeds. If all or any part of the Property is condemned by eminent domain proceedings or by any proceeding or purchase in lieu of condemnation, Lender may at its election require that all or any portion of the net proceeds of the award be applied to the indebtedness or the repair or restoration of the Property. The net proceeds of the award shall mean the award after payment of all reasonable costs, expenses, and attorneys' fees incurred by Trustee or Lender in connection with the condemnation.

IMPOSITION OF TAXES, FEES AND CHARGES BY GOVERNMENTAL AUTHORITIES. The following provisions relating to governmental taxes, fees and charges are a part of this Deed of Trust:

Current Taxes, Fees and Charges. Upon request by Lender, Grantor shall execute such documents in addition to this Deed of Trust and take whatever other action is requested by Lender to perfect and continue Lender's lien on the Real Property. Grantor shall reimburse Lender for all taxes, as described below, together with all expenses incurred in recording, perfecting or continuing this Deed of Trust, including without limitation all taxes, fees, documentary stamps, and other charges for recording or registering this Deed of Trust.

Taxes. The following shall constitute taxes to which this section applies: (1) a specific tax upon this type of Deed of Trust or upon all or any part of the indebtedness secured by this Deed of Trust; (2) a specific tax on Grantor which Grantor is authorized or required to deduct from payments on the indebtedness secured by this type of Deed of Trust; (3) a tax on this type of Deed of Trust chargeable against the Lender or the holder of the Note; and (4) a specific tax on all or any portion of the indebtedness or on payments of principal and interest made by Grantor.

Subsequent Taxes. If any tax to which this section applies is enacted subsequent to the date of this Deed of Trust, this event shall have the same effect as an Event of Default, and Lender may exercise any or all of its available remedies for an Event of Default as provided below unless Grantor either (1) pays the tax before it becomes delinquent, or (2) contests the tax as provided above in the Taxes and Liens section and deposits with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender.

SECURITY AGREEMENT; FINANCING STATEMENTS. The following provisions relating to this Deed of Trust as a security agreement are a part of this Deed of Trust:

Security Agreement. This instrument shall constitute a Security Agreement to the extent any of the Property constitutes fixtures, and Lender shall have all of the rights of a secured party under the Uniform Commercial Code as amended from time to time.

Security Interest. Upon request by Lender, Grantor shall take whatever action is requested by Lender to perfect and continue Lender's security interest in the Rents and Personal Property. In addition to recording this Deed of Trust in the real property records, Lender may, at any time and without further authorization from Grantor, file executed counterparts, copies or reproductions of this Deed of Trust as a financing statement. Grantor shall reimburse Lender for all expenses incurred in perfecting or continuing this security interest. Upon default, Grantor shall not remove, sever or detach the Personal Property from the Property. Upon default, Grantor shall assemble any Personal Property not affixed to the Property in a manner and at a place reasonably convenient to Grantor and Lender and make it available to Lender within three (3) days after receipt of written demand from Lender to the extent permitted by applicable law.

Addresses. The mailing addresses of Grantor (debtor) and Lender (secured party) from which information concerning the security interest granted by this Deed of Trust may be obtained (each as required by the Uniform Commercial Code) are as stated on the first page of this Deed of Trust.

FURTHER ASSURANCES; ATTORNEY-IN-FACT. The following provisions relating to further assurances and attorney-in-fact are a part of this Deed of Trust:

Further Assurances. At any time, and from time to time, upon request of Lender, Grantor will make, execute and deliver, or will cause to be made, executed or delivered, to Lender or to Lender's designee, and when requested by Lender, cause to be filed, recorded, refiled, or rerecorded, as the case may be, at such times and in such offices and places as Lender may deem appropriate, any and all such mortgages, deeds of trust, security deeds, security agreements, financing statements, continuation statements, instruments of further assurance, certificates, and other documents as may, in the sole opinion of Lender, be necessary or desirable in order to effectuate, complete, perfect, continue, or preserve (1) Grantor's obligations under the Note, this Deed of Trust, and the Related Documents, and (2) the liens and security interests created by this Deed of Trust as first and prior liens on the Property, whether now owned or hereafter acquired by Grantor. Unless prohibited by law or Lender agrees to the contrary in writing, Grantor shall reimburse Lender for all costs and expenses incurred in connection with the matters referred to in this paragraph.

Attorney-in-Fact. If Grantor fails to do any of the things referred to in the preceding paragraph, Lender may do so for and in the name of Grantor and at Grantor's expense. For such purposes, Grantor hereby irrevocably appoints Lender as Grantor's attorney-in-fact for the purpose of making, executing, delivering, filing, recording, and doing all other things as may be necessary or desirable, in Lender's sole opinion, to accomplish the matters referred to in the preceding paragraph.

FULL PERFORMANCE. If Grantor pays all the indebtedness when due, and otherwise performs all the obligations imposed upon Grantor under this Deed of Trust, Lender shall execute and deliver to Trustee a request for full reconveyance and shall execute and deliver to Grantor suitable statements of termination of any financing statement on file evidencing Lender's security interest in the Rents and the Personal Property. Any reconveyance fee required by law shall be paid by Grantor, if permitted by applicable law.

EVENTS OF DEFAULT. Each of the following, at Lender's option, shall constitute an Event of Default under this Deed of Trust:

Payment Default. Grantor fails to make any payment when due under the indebtedness.

Other Defaults. Grantor fails to comply with or to perform any other term, obligation, covenant or condition contained in this Deed of Trust or in any of the Related Documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Grantor.

Compliance Default. Failure to comply with any other term, obligation, covenant or condition contained in this Deed of Trust, the Note or in any of the Related Documents.

Default on Other Payments. Failure of Grantor within the time required by this Deed of Trust to make any payment for taxes or insurance, or any other payment necessary to prevent filing of or to effect discharge of any lien.

False Statements. Any warranty, representation or statement made or furnished to Lender by Grantor or on Grantor's behalf under this Deed of Trust or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

Defective Collateralization. This Deed of Trust or any of the Related Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason.

Insolvency. The dissolution or termination of Grantor's existence as a going business, the insolvency of Grantor, the appointment of a receiver for any part of Grantor's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Grantor.

Creditor or Forfeiture Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Grantor or by any governmental agency against any property securing the indebtedness. This includes a garnishment of any of Grantor's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Grantor as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Grantor gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

Breach of Other Agreement. Any breach by Grantor under the terms of any other agreement between Grantor and Lender that is not remedied within any grace period provided therein, including without limitation any agreement concerning any indebtedness or other obligation of Grantor to Lender, whether existing now or later.

Events Affecting Guarantor. Any of the preceding events occurs with respect to any Guarantor of any of the indebtedness or any Guarantor dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any Guaranty of the indebtedness. In the event of a death, Lender, at its option, may, but shall not be required to, permit the Guarantor's estate to assume unconditionally the obligations arising under the guaranty in a manner satisfactory to Lender, and, in doing so, cure any Event of Default.

Adverse Change. A material adverse change occurs in Grantor's financial condition, or Lender believes the prospect of payment or performance of the indebtedness is impaired.

Insecurity. Lender in good faith believes itself insecure.

Right to Cure. If any default, other than a default in payment is curable and if Grantor has not been given a notice of a breach of the same provision of this Deed of Trust within the preceding twelve (12) months, it may be cured if Grantor, after receiving written notice from Lender demanding cure of such default: (1) cures the default within ten (10) days; or (2) if the cure requires more than ten (10) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

RIGHTS AND REMEDIES ON DEFAULT. If an Event of Default occurs under this Deed of Trust, at any time thereafter, Trustee or Lender may exercise any one or more of the following rights and remedies:

Notice of Default. In the Event of Default Lender shall execute or cause the Trustee to execute a written notice of such default and of Lender's election to cause the Property to be sold to satisfy the indebtedness, and shall cause such notice to be recorded in the office of the recorder of each county wherein the Real Property, or any part thereof, is situated.

Election of Remedies. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Grantor under this Deed of Trust, after Grantor's failure to perform, shall not affect Lender's right to declare a default and exercise its remedies.

Accelerate Indebtedness. Lender shall have the right at its option without notice to Grantor to declare the entire indebtedness immediately due and payable, including any prepayment penalty which Grantor would be required to pay.

Foreclosure. With respect to all or any part of the Real Property, the Trustee shall have the right to foreclose by notice and sale, and Lender shall have the right to foreclose by judicial foreclosure, in either case in accordance with and to the full extent provided by applicable law.

UCC Remedies. With respect to all or any part of the Personal Property, Lender shall have all the rights and remedies of a secured party under the Uniform Commercial Code.

Collect Rents. Lender shall have the right, without notice to Grantor to take possession of and manage the Property and collect the Rents, including amounts past due, and unpaid, and apply the net proceeds, over and above Lender's costs, against the indebtedness. In furtherance of this right, Lender may require any tenant or other user of the Property to make payments of rent or use fees directly to Lender. If the Rents are collected by Lender, then Grantor irrevocably designates Lender as Grantor's attorney-in-fact to endorse instruments received in payment thereof in the name of Grantor and to negotiate the same and collect the proceeds. Payments by tenants or other users to Lender in response to Lender's demand shall satisfy the obligations for which the payments are made, whether or not any proper grounds for the demand existed. Lender may exercise its rights under this subparagraph either in person, by agent, or through a receiver.

Appoint Receiver. Lender shall have the right to have a receiver appointed to take possession of all or any part of the Property, with the power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, and to collect the Rents from the Property and apply the proceeds, over and above the cost of the receivership, against the indebtedness. The receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver shall exist whether or not the apparent value of the Property exceeds the indebtedness by a substantial amount. Employment by Lender shall not disqualify a person from serving as a receiver.

Tenancy at Sufferance. If Grantor remains in possession of the Property after the Property is sold as provided above or Lender otherwise becomes entitled to possession of the Property upon default of Grantor, Grantor shall become a tenant at sufferance of Lender or the purchaser of the Property and shall, at Lender's option, either (1) pay a reasonable rental for the use of the Property, or (2) vacate the Property immediately upon the demand of Lender.

Other Remedies. Trustee or Lender shall have any other right or remedy provided in this Deed of Trust or the Note or available at law or in equity.

Notice of Sale. Lender shall give Grantor reasonable notice of the time and place of any public sale of the Personal Property or of the time after which any private sale or other intended disposition of the Personal Property is to be made. Reasonable notice shall mean notice given at least ten (10) days before the time of the sale or disposition. Any sale of the Personal Property may be made in conjunction with any sale of the Real Property.

Sale of the Property. To the extent permitted by applicable law, Grantor hereby waives any and all rights to have the Property marshalled. In exercising its rights and remedies, the Trustee or Lender shall be free to sell all or any part of the Property together or separately, in one sale or by separate sales. Lender shall be entitled to bid at any public sale on all or any portion of the Property. Notice of sale having been given as then required by law, and not less than the time required by law having elapsed, Trustee, without demand on Grantor, shall sell the property at the time and place fixed by it in the notice of sale 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 his or her 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 of such matters or facts. After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title and reasonable attorneys' fees, including those in connection with the sale, Trustee shall apply proceeds of sale to payment of (a) all sums expended under this Deed of Trust, not then repaid with interest thereon as provided in this Deed of Trust; (b) all indebtedness secured hereby; and (c) the remainder, if any, to the person or persons legally entitled thereto.

Attorneys' Fees; Expenses. If Lender institutes any suit or action to enforce any of the terms of this Deed of Trust, Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees at trial and upon any appeal. Whether or not any court action is involved, and to the extent not prohibited by law, all reasonable expenses Lender incurs that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the indebtedness payable on demand and shall bear interest at the Note rate from the date of the expenditure until repaid. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's reasonable attorneys' fees and Lender's legal expenses whether or not there is a lawsuit, including reasonable attorneys' fees and expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, and appraisal fees, title insurance, and fees for the Trustee, to the extent permitted by applicable law. Grantor also will pay any court costs, in addition to all other sums provided by law.

Rights of Trustee. Trustee shall have all of the rights and duties of Lender as set forth in this section.

POWERS AND OBLIGATIONS OF TRUSTEE. The following provisions relating to the powers and obligations of Trustee are part of this Deed of Trust:

Powers of Trustee. In addition to all powers of Trustee arising as a matter of law, Trustee shall have the power to take the following actions with respect to the Property upon the written request of Lender and Grantor: (a) join in preparing and filing a map or plat of the Real Property, including the dedication of streets or other rights to the public; (b) join in granting any easement or creating any restriction on the Real Property; and (c) join in any subordination or other agreement affecting this Deed of Trust or the interest of Lender under this Deed of Trust.

Obligations to Notify. Trustee shall not be obligated to notify any other party of a pending sale under any other trust deed or lien, or of any action or proceeding in which Grantor, Lender, or Trustee shall be a party, unless the action or proceeding is brought by Trustee.

Trustee. Trustee shall meet all qualifications required for Trustee under applicable law. In addition to the rights and remedies set forth above, with respect to all or any part of the Property, the Trustee shall have the right to foreclose by notice and sale, and Lender shall have the right to foreclose by judicial foreclosure, in either case in accordance with and to the full extent provided by applicable law.

Successor Trustee. Lender, at Lender's option, may from time to time appoint a successor Trustee to any Trustee appointed under this Deed of Trust by an instrument executed and acknowledged by Lender and recorded in the office of the recorder of BONNER County, State of Idaho. The instrument shall contain, in addition to all other matters required by state law, the names of the original Lender, Trustee, and Grantor, the book and page where this Deed of Trust is recorded, and the name and address of the successor trustee, and the instrument shall be executed and acknowledged by Lender or its successors in interest. The successor trustee, without conveyance of the Property, shall succeed to all the title, power, and duties conferred upon the Trustee in this Deed of Trust and by applicable law. This procedure for substitution of Trustee shall govern to the exclusion of all other provisions for substitution.

NOTICES. Any notice required to be given under this Deed of Trust, including without limitation any notice of default and any notice of sale shall be given in writing, and shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Deed of Trust. All copies of notices of foreclosure from the holder of any lien which has priority over this Deed of Trust shall be sent to Lender's address, as shown near the beginning of this Deed of Trust. Any party may change its address for notices under this Deed of Trust by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Grantor agrees to keep Lender informed at all times of Grantor's current address. Unless otherwise provided or required by law, if there is more than one Grantor, any notice given by Lender to any Grantor is deemed to be notice given to all Grantors.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Deed of Trust:

Amendments. This Deed of Trust, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Deed of Trust. No alteration of or amendment to this Deed of Trust shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

Annual Reports. If the Property is used for purposes other than Grantor's residence, Grantor shall furnish to Lender, upon request, a certified statement of net operating income received from the Property during Grantor's previous fiscal year. The form and detail as Lender shall require. "Net operating income" shall mean all cash receipts from the Property less all cash expenditures made in connection with the operation of the Property.

Caption Headings. Caption headings in this Deed of Trust are for convenience purposes only and shall not be used to interpret or define the provisions of this Deed of Trust.

Merger. There shall be no merger of the interest or estate created by this Deed of Trust with any other interest or estate in the Property at any time held by or for the benefit of Lender in any capacity, without the written consent of Lender.

Governing Law. This Deed of Trust will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Idaho without regard to its conflicts of law provisions. This Deed of Trust has been accepted by Lender in the State of Idaho.

Choice of Venue. If there is a lawsuit, Grantor agrees upon Lender's request to submit to the jurisdiction of the courts of Bonner County, State of Idaho.

No Waiver by Lender. Lender shall not be deemed to have waived any rights under this Deed of Trust unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Deed of Trust shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Deed of Trust. No prior waiver by Lender, nor any course of dealing between Lender and Grantor, shall constitute a waiver of any of Lender's rights or of any of Grantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Deed of Trust, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

Severability. If a court of competent jurisdiction finds any provision of this Deed of Trust to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Deed of Trust. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Deed of Trust shall not affect the legality, validity or enforceability of any other provision of this Deed of Trust.

Successors and Assigns. Subject to any limitations stated in this Deed of Trust on transfer of Grantor's interest, this Deed of Trust shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Property becomes vested in a person other than Grantor, Lender, without notice to Grantor, may deal with Grantor's successors with reference to this Deed of Trust and the indebtedness by way of forbearance or extension without releasing Grantor from the obligations of this Deed of Trust or liability under the indebtedness.

Time is of the Essence. Time is of the essence in the performance of this Deed of Trust.

Waiver of Homestead Exemption. Grantor hereby releases and waives all rights and benefits of the homestead exemption laws of the State of Idaho as to all indebtedness secured by this Deed of Trust.

DEFINITIONS. The following capitalized words and terms shall have the following meanings when used in this Deed of Trust. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Deed of Trust shall have the meanings attributed to such terms in the Uniform Commercial Code:

Beneficiary. The word "Beneficiary" means Mountain West Bank, and its successors and assigns.

Borrower. The word "Borrower" means EAGLEPOINTE CONSTRUCTION & MANAGEMENT, INC. and includes all co-signers and co-makers signing the Note and all their successors and assigns.

Deed of Trust. The words "Deed of Trust" mean this Deed of Trust among Grantor, Lender, and Trustee, and includes without limitation all assignment and security interest provisions relating to the Personal Property and Rents.

Default. The word "Default" means the Default set forth in this Deed of Trust in the section titled "Default".

Environmental Laws. The words "Environmental Laws" mean any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., or other applicable state or federal laws, rules, or regulations adopted pursuant thereto.

Event of Default. The words "Event of Default" mean any of the events of default set forth in this Deed of Trust in the events of default section of this Deed of Trust.

Grantor. The word "Grantor" means EAGLEPOINTE CONSTRUCTION & MANAGEMENT, INC..

Guarantor. The word "Guarantor" means any guarantor, surety, or accommodation party of any or all of the Indebtedness.

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Guaranty. The word "Guaranty" means the guaranty from Guarantor to Lender, including without limitation a guaranty of all or part of the Note.

Hazardous Substances. The words "Hazardous Substances" mean materials that, because of their quantity, concentration or physical, chemical or infectious characteristics, may cause or pose a present or potential hazard to human health or the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported or otherwise handled. The words "Hazardous Substances" are used in their very broadest sense and include without limitation any and all hazardous or toxic substances, materials or waste as defined by or listed under the Environmental Laws. The term "Hazardous Substances" also includes, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos.

Improvements. The word "improvements" means all existing and future improvements, buildings, structures, mobile homes affixed on the Real Property, facilities, additions, replacements and other construction on the Real Property.

Indebtedness. The word "Indebtedness" means all principal, interest, and other amounts, costs and expenses payable under the Note or Related Documents, together with all renewals of, extensions of, modifications of, consolidations of and substitutions for the Note or Related Documents and any amounts expended or advanced by Lender to discharge Grantor's obligations or expenses incurred by Trustee or Lender to enforce Grantor's obligations under this Deed of Trust, together with interest on such amounts as provided in this Deed of Trust. Specifically, without limitation, indebtedness includes all amounts that may be indirectly secured by the Cross-Collateralization provision of this Deed of Trust.

Lender. The word "Lender" means Mountain West Bank, its successors and assigns.

Note. The word "Note" means the promissory note dated November 29, 2007, in the original principal amount of \$1,440,000.00 from Grantor to Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the promissory note or agreement. **NOTICE TO GRANTOR: THE NOTE CONTAINS A VARIABLE INTEREST RATE.**

Personal Property. The words "Personal Property" mean all equipment, fixtures, and other articles of personal property now or hereafter owned by Grantor, and now or hereafter attached or affixed to the Real Property; together with all accessions, parts, and additions to, all replacements of, and all substitutions for, any of such property; and together with all proceeds (including without limitation all insurance proceeds and refunds of premiums) from any sale or other disposition of the Property.

Property. The word "Property" means collectively the Real Property and the Personal Property.

Real Property. The words "Real Property" mean the real property, interests and rights, as further described in this Deed of Trust.

Related Documents. The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness.

Rents. The word "Rents" means all present and future rents, revenues, income, issues, royalties, profits, and other benefits derived from the Property.

Trustee. The word "Trustee" means SANDPOINT TITLE COMPANY, whose address is PO BOX 1767, SANDPOINT, ID 83864 and any substitute or successor trustees.

GRANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS DEED OF TRUST, AND GRANTOR AGREES TO ITS TERMS.

GRANTOR:

EAGLEPOINTE CONSTRUCTION & MANAGEMENT, INC.

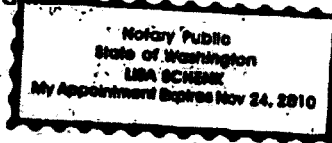
By: David R. Shea
DAVID R. SHEA, President of EAGLEPOINTE CONSTRUCTION & MANAGEMENT, INC.

Linda Shea
LINDA SHEA, SEC/TREAS of EAGLEPOINTE CONSTRUCTION & MANAGEMENT, INC.

CORPORATE ACKNOWLEDGMENT

STATE OF Washington
COUNTY OF SPOKANE

ISS



On this 3rd day of December, in the year 2007, before me Lisa Schenk, a notary public in and for the State of Washington, personally appeared DAVID R. SHEA, President of EAGLEPOINTE CONSTRUCTION & MANAGEMENT, INC. and LINDA SHEA, SEC/TREAS of EAGLEPOINTE CONSTRUCTION & MANAGEMENT, INC., known or identified to me or proved to me on the oath of EAGLEPOINTE CONSTRUCTION & MANAGEMENT, INC., the corporation that executed the instrument or the persons who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

Lisa Schenk Lisa Schenk Residing at SPOKANE
Notary Public for Washington

My commission expires NOV 24, 2010

REQUEST FOR FULL RECONVEYANCE

(To be used only when obligations have been paid in full)

To: _____ Trustee

The undersigned is the legal owner and holder of all indebtedness secured by this Deed of Trust. All sums secured by this Deed of Trust have been fully paid and satisfied. You are hereby directed, upon payment to you of any sums owing to you under the terms of this Deed of Trust or pursuant to any applicable statute, to cancel the Note secured by this Deed of Trust (which is delivered to you together with this Deed of Trust), and to reconvey, without warranty, to the parties designated by the terms of this Deed of Trust, the estate now held by you under this Deed of Trust. Please mail the reconveyance and Related Documents to:

Date: _____ Beneficiary: _____
By: _____
Its: _____

742185

4437

#325455

Instrument # 796852
BONNER COUNTY, SANDPOINT, IDAHO
8-12-2010 11:17:04 No. of Pages: 3
Recorded for : FATCO
MARIE SCOTT Fee: 16.00
Ex-Officio Recorder Deputy *CB*
Index to: TRUSTEE'S DEED

TRUSTEE'S DEED

JONATHON D. HALLIN (herein "Trustee"), as Successor Trustee under the Deed of Trust hereinafter particularly described, does hereby Bargain, Sell and Convey, without covenant or warranty, to MOUNTAIN WEST BANK, P.O. Box 1059, Coeur d'Alene, ID 83816-1059 (herein called "Grantee"), all of the real property situated in Bonner County, Idaho, particularly described as follows:

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.

Commonly known as: NNA, Sandpoint, ID 83864.

This conveyance is made pursuant to the powers conferred upon Trustee by a Deed of Trust described as follows:

Deed of Trust dated November 29, 2007, to secure an original indebtedness of \$1,440,000.00, and any other amounts and/or obligations secured thereby
Recorded: December 5, 2007, as Instrument No. 742185
Grantor: EaglePointe Construction & Management, Inc., a Washington Corporation
Trustee: Sandpoint Title Company
Beneficiary: Mountain West Bank

(a) Default occurred in the obligations for which such Deed of Trust was given as security and the Beneficiary made demand upon said Trustee to sell said property pursuant to the terms of said Deed of Trust. A Notice of Default was recorded February 17, 2010, Inst. No. 787950 records of Bonner County, Idaho, and in the office of the Recorder of each other county in which the property described in said Deed of Trust, or any thereof, is granted, the nature of such default being as set forth in said Notice of Default. Such default still existed at the time of sale.

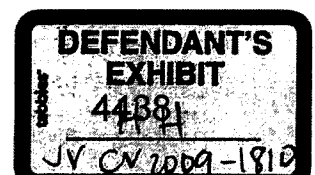
(b) After recordation of said Notice of Default, Trustee gave notice of the time and place of the sale of said property by certified mail, by posting and personal service and attempted personal service upon the occupants of said real property, and by publishing in a newspaper of general circulation in each of the counties in which the property is situated as more fully appeared in:

Affidavit by Trustee	Recorded March 11, 2010	Bonner County, Idaho, Inst. No. 789132
Affidavit of Posting	Recorded May 17, 2010	Bonner County, Idaho, Inst. No. 792485
Affidavit of Publication	Recorded May 17, 2010	Bonner County, Idaho, Inst. No. 792486

(c) Notice of sale was given before the day of the sale, in the time and manner required by Section 45-1506, Idaho Code, by registered or certified mail to the last known

TRUSTEE'S DEED

L:\MOUNTAIN\1005579\00555\080910 TRUSTEE'S DEED-MWB-EAGLEPOINTE-555-080910-KMS-KMS.DOCX



address of all persons who were entitled to notice by mail of the original sale and to any person who timely recorded a request for Notice of Sale.

(d) The provisions, recitals and contents of the Notice of Default referred to in paragraph (a), supra, and of the Affidavits referred to in paragraph (b), supra, shall be and they are hereby incorporated herein and made an integral part hereof for all purposes as though set forth at length.

(e) All requirements of law regarding the mailing, personal service, posting, publication and recording of Notice of Default and Notice of Sale and of all other notices have been complied with.

(f) No less than one hundred twenty (120) days has elapsed between the giving of notice of sale by registered mail and the sale of said property.

Trustee, on Friday, July 2, 2010, after 11:00 o'clock AM local time at the place of sale, at the request of the beneficiary announced a postponement of the sale to July 9, 2010 at the same time and place.

Trustee, on Friday, July 9, 2010, after 11:00 o'clock AM local time at the place of sale, at the request of the beneficiary announced a postponement of the sale to July 16, 2010 at the same time and place.

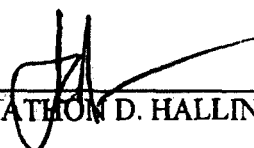
Trustee, on Friday, July 16, 2010, after 11:00 o'clock AM local time at the place of sale, at the request of the beneficiary announced a postponement of the sale to July 23, 2010 at the same time and place.

Trustee, on Friday, July 23, 2010, after 11:00 o'clock AM local time at the place of sale, at the request of the beneficiary announced a postponement of the sale to July 30, 2010 at the same time and place.

Trustee, on Friday, July 30, 2010, after 11:00 o'clock AM local time at the place of sale, at the request of the beneficiary announced a postponement of the sale to August 6, 2010 at the same time and place.

Trustee, on Friday, August 6, 2010, after 11:00 o'clock AM local time at the place of sale, at public auction, in one parcel, the Trustee struck off to Grantee, being the highest bidder therefor, the property herein described for the credit bid of EIGHT HUNDRED SEVENTY-SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$877,500.00), subject, however, to all prior liens and encumbrances, if any. No person or corporation offered to take any part of said property less than the whole thereof for the amount of principal, interest, advances and costs.

DATED: August 9, 2010



JONATHON D. HALLIN, Trustee

TRUSTEE'S DEED

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4439

STATE OF IDAHO)
 :ss.
County of Kootenai)

On August 9, 2010 before me, Kristine M. Scott, a Notary Public, personally appeared JONATHON D. HALLIN, known or identified to me to be the person whose name is subscribed to the within instrument as Trustee, and acknowledged to me that he executed the same as Trustee.

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

Kristine M. Scott
Notary Public
State of Idaho

Kristine M. Scott

Notary Public for Idaho
Residing at Post Falls
Commission Expires 12/21/2010

Instrument # 829818
BONNER COUNTY, SANDPOINT, IDAHO
7-27-2012 02:24:41 No. of Pages: 3
Recorded for : FATCO
MARIE SCOTT Fee: 16.00
Ex-Officio Recorder Deputy CB
Index to: TRUSTEE'S DEED

#410139

Space Above Reserved for Recorder's Office

TRUSTEE'S DEED

JONATHON D. HALLIN (herein "Trustee"), as Successor Trustee under the Deed of Trust hereinafter particularly described, does hereby Bargain, Sell and Convey, without covenant or warranty, to GLACIER BANK, a Montana state bank and successor in interest by merger to MOUNTAIN WEST BANK, P.O. Box 1059, Coeur d'Alene, ID 83816-1059 (herein called "Grantee"), all of the real property situated in Bonner County, Idaho, particularly described as follows:

Lot 8, Block 1, GOLDEN TEE ESTATES 5th ADDITION, according to the plat thereof, recorded in Book 8 of Plats, page 81, records of Bonner County, Idaho.

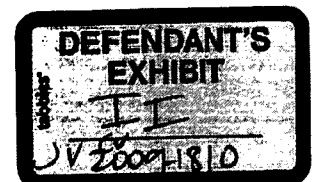
Commonly known as: NNA South Idaho Club Drive, Sandpoint, ID 83864

This conveyance is made pursuant to the powers conferred upon Trustee by a Deed of Trust described as follows:

Deed of Trust dated July 10, 2008, to secure an original indebtedness of \$330,000.00, and any other amounts and/or obligations secured thereby:
Recorded: July 15, 2008, as Instrument No. 755011
Grantor: Gary E. Randall and Julie K. Randall, husband and wife
Trustee: First American Title Company
Beneficiary: Mountain West Bank

(a) Default occurred in the obligations for which such Deed of Trust was given as security and the Beneficiary made demand upon said Trustee to sell said property pursuant to the terms of said Deed of Trust. A Notice of Default was recorded March 7, 2012, Inst. No. 823189, records of Bonner County, Idaho, and in the office of the Recorder of each other county in which the property described in said Deed of Trust, or any thereof, is granted, the nature of such default being as set forth in said Notice of Default. Such default still existed at the time of sale.

(b) After recordation of said Notice of Default, Trustee gave notice of the time and place of the sale of said property by certified mail, by posting and personal service and attempted personal service upon the occupants of said real property, and by publishing in a newspaper of general circulation in each of the counties in which the property is situated as more fully appeared in:



TRUSTEE'S DEED

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- 1 -

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Affidavit of Mailing	Recorded March 15, 2012	Bonner County, Idaho, Inst. No. 823522
Affidavit of Posting	Recorded May 14, 2012	Bonner County, Idaho, Inst. No. 826156
Affidavit of Publication	Recorded May 14, 2012	Bonner County, Idaho, Inst. No. 826157

(c) Notice of sale was given before the day of the sale, in the time and manner required by Section 45-1506, Idaho Code, by registered or certified mail to the last known address of all persons who were entitled to notice by mail of the original sale and to any person who timely recorded a request for Notice of Sale.

(d) The provisions, recitals and contents of the Notice of Default referred to in paragraph (a), supra, and of the Affidavits referred to in paragraph (b), supra, shall be and they are hereby incorporated herein and made an integral part hereof for all purposes as though set forth at length.

(e) All requirements of law regarding the mailing, personal service, posting, publication and recording of Notice of Default and Notice of Sale and of all other notices have been complied with.

(f) No less than one hundred twenty (120) days has elapsed between the giving of notice of sale by registered mail and the sale of said property.

Trustee on July 13, 2012, after 11:00 o'clock AM local time at the place of sale, at the request of the beneficiary announced a postponement of the sale to July 25, 2012 at the same time and place.

Trustee, on July 25, 2012, after 11:00 o'clock AM local time at the place of sale, at public auction, in one parcel, the Trustee struck off to Grantee, being the highest bidder therefor, the property herein described for the credit bid of Fifty-Five Thousand Two Hundred and No/100 Dollars (\$55,200.00), subject, however, to all prior liens and encumbrances, if any. No person or corporation offered to take any part of said property less than the whole thereof for the amount of principal, interest, advances and costs..

DATED: July 25th, 2012

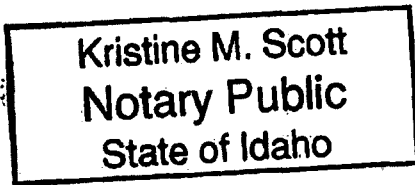


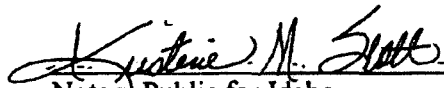
 JONATHON D. HALLIN, Trustee

STATE OF IDAHO)
 :SS.
County of Kootenai)

On July 25, 2012, before me, Kristine M. Scott, a Notary Public, personally appeared JONATHON D. HALLIN, known or identified to me to be the person whose name is subscribed to the within instrument as Trustee, and acknowledged to me that he executed the same as Trustee.

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




Notary Public for Idaho
Residing at Post Falls
Commission Expires 12/21/2016

STATE OF IDAHO
COUNTY OF BONNER
DISTRICT COURT

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@mwslawyers.com
sykes@mwslawyers.com
nicholson@mwslawyers.com

Attorneys For Valiant Idaho, LLC

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

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

Plaintiff,

vs.

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

Defendants.

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

Case No. CV-09-1810

**VALIANT IDAHO, LLC'S
CLOSING ARGUMENT**

Honorable Barbara A. Buchanan

COMES NOW, Valiant Idaho, LLC (“Valiant”), by and through its attorneys of record, McConnell Wagner Sykes & Stacey PLLC, and, pursuant to this Court’s order, submits its post-trial closing argument.

I.
INTRODUCTION

The trial of this matter took place over the course of four (4) days on January 28 - 29 and March 16 - 17, 2016. This trial was the culmination of almost seven (7) years of foreclosure litigation arising out of the Idaho Club golf course and residential housing development located in or around Sandpoint, Idaho. This litigation has included several motions for summary judgment, untold motions to reconsider, a final judgment that was later vacated, and a bifurcated four (4) day trial. The purpose of the trial was to adjudicate the single issue remaining in this case—whether a first position loan (“Loan No. P0099”) from RE Loans, LLC (“RE Loans”) to Pend Oreille Bonner Development, LLC (“POBD”) and a second position loan (“Loan No. P0106”) from Pensco Trust, Co. (“Pensco”) to POBD were satisfied. The Court repeatedly reiterated that this was the only issue left for trial in several pre-trial orders.

On September 5, 2015, the Court entered an order (“Reconsider Order”) granting, in part, motions to reconsider filed by JV, LLC (“JV”) and VP, Inc. (“VP”). The Reconsider Order held 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.

On October 30, 2015, this Court entered another order (“Third SJ Order”) granting, in part, Valiant’s third motion for summary judgment. The Third SJ Order reiterated 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.**” Third SJ Order, p. 18 (emphasis added).

Finally, on December 29, 2015, the Court entered a third order (“*Limine* Order”) holding 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.

From the outset of this case, JV and VP have asserted that Loan No. P0099 and Loan No. P0106 were paid-off at the closing of a third position wrap loan (“Loan No. P0107”) from Mortgage Fund ’08 LLC (“MF08”) to POBD that took place on August 6, 2008. JV and VP rely upon an ambiguously worded settlement statement (“MF08 Settlement Statement”) as the sole item of admissible evidence to support this position. Although the Court decided that the MF08 Settlement Statement was sufficiently ambiguous to create a question of fact for trial, it emphasized that this question of fact was tenuous at best. The Court explained:

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).

The overwhelming preponderance of evidence submitted at trial has resolved this issue. Loan No. P0099 and Loan No. P0106 were not satisfied at the MF08 loan closing or at any time thereafter. Valiant is still owed a principal balance of \$278,147.66 (plus interest and late fees) pursuant to Loan No. P099 and a principal balance of \$2,700,000.00 (plus interest and late fees) pursuant to Loan No. P0106.

II. UNDISPUTED FACTS

There are several undisputed facts that are pertinent to this case. Each of these facts is undisputed because it is either: (a) already been adjudicated in one of this Court's prior summary judgment decisions; or (b) completely uncontroverted at trial. The undisputed facts include, but are not limited to, the following:

A. Undisputed Facts Related To Loan No. P0099.

1. On March 6, 2007, RE Loans and POBD entered into Loan No. P0099, whereby RE Loans agreed to loan POBD \$21,200,000.00. Plaintiff's Exhibit 3. POBD executed a Promissory Note Secured by Mortgage ("2007 RE Note") evidencing Loan No. P0099. Plaintiff's Exhibit 2. The 2007 RE Note was secured by a Mortgage, Assignment of Rents, Security Agreement, and Fixture Filing ("2007 RE Mortgage"), which was recorded on March 15, 2007 in the Bonner County Recorder's Office. Plaintiff's Exhibit 1. The 2007 RE Note was also secured by a UCC Financing Statement dated March 15, 2007 ("2007 RE UCC-1"). Plaintiff's Exhibit 4. The 2007 RE Mortgage, 2007 RE Note, Loan No. P0099 and 2007 RE UCC-1 are referred to collectively herein as the "P0099 Loan Documents."

2. On July 17, 2007, the P0099 Loan Documents were collaterally assigned (“Collateral Assignment”) to Wells Fargo Foothill, LLC (“Wells Fargo”). Plaintiff’s Exhibit 7. Pursuant to the Collateral Assignment, RE Loans transferred to Wells Fargo all of its right, title and interest in and to the P0099 Loan Documents. *Id.* at p. 1, ¶ 1.

3. On June 30, 2014, Wells Fargo collaterally reassigned the P0099 Loan Documents back to RE Loans. Plaintiff’s Exhibit 70.

4. On July 1, 2014, RE Loans assigned the P0099 Loan Documents to Valiant. Plaintiff’s Exhibit 72.

5. Valiant has a first priority lien (pursuant to the 2007 RE Mortgage) against all real property encumbered by the 2007 RE Mortgage.

B. Undisputed Facts Related To Loan No. P0106.

1. On August 1, 2008, Pensco and POBD entered into Loan No. P0106, whereby Pensco agreed to loan POBD \$2,700,000.00. POBD executed a Note Secured by Mortgage (“Pensco Note”) evidencing the loan agreement. Plaintiff’s Exhibit 15. The Pensco Note was secured by a Mortgage, Assignment of Rents, Security Agreement, and Fixture Filing (“Pensco Mortgage”), which was recorded on August 6, 2008 in the Bonner County Recorder’s Office. Plaintiff’s Exhibit 16. The Pensco Mortgage and Pensco Note are referred to collectively herein as the “P0106 Loan Documents.”

2. On June 20, 2014, Pensco contractually agreed to assign Valiant its interests in the P0106 Loan Documents. Plaintiff’s Exhibit 75.

3. On July 7, 2014, the Pensco Loan Documents were assigned to Valiant. Plaintiff’s Exhibits 78 and 80.

4. Valiant has a second priority lien (pursuant to the Pensco Mortgage) against all real property encumbered by both the Pensco Mortgage and the 2007 RE Mortgage. Valiant has a first priority lien pursuant to said Mortgages against any real property encumbered by the Pensco Mortgage but is not encumbered by the 2007 RE Mortgage.

C. Undisputed Facts Related To Loan No. P0107.

1. On August 1, 2008, MF08 and POBD entered into wrap Loan No. P0107, whereby MF08 agreed to loan POBD up to \$21,980,000.00. Plaintiff's Exhibit 21. POBD executed an All Inclusive Note Secured by Mortgage ("MF08 Note") evidencing the loan agreement. Plaintiff's Exhibit 17. The MF08 Note was secured by an All Inclusive Mortgage, Assignment of Rents, Security Agreement, and Fixture Filing ("MF08 Mortgage"), which was recorded on August 6, 2008 in the Bonner County Recorder's Office. Plaintiff's Exhibit 18. The MF08 Note and the MF08 Mortgage were also secured by a financing statement ("MF08 UCC-1") dated August 6, 2008. Plaintiff's Exhibit 20. The MF08 Mortgage, MF08 Note, Loan No. P0107 and MF08 UCC-1 will be referred to collectively herein as the "P0107 Loan Documents."

2. On July 10, 2014, the P0107 Loan Documents were assigned to Valiant. Plaintiff's Exhibits 83 and 85.

3. Valiant has a third priority lien (pursuant to the MF08 Mortgage) against all real property encumbered by the MF08 Mortgage, the Pensco Mortgage and the 2007 RE Mortgage. Valiant has a second priority lien pursuant to said Mortgages against the real property encumbered only by the MF08 Mortgage and the Pensco Mortgage. Valiant has a first priority lien pursuant to said Mortgages against the real property encumbered only by the MF08 Mortgage.

D. Undisputed Facts Related To Valiant's Redemption Of The Idaho Club Property.

1. On or about July 7, 2014, Valiant paid Bonner County \$1,665,855.14 to redeem certain real property subject to the RE Mortgage, Pensco Mortgage and/or the MF08 Mortgage. Plaintiff's Exhibit 73. A legal description of the real property redeemed by Valiant is identified on an attachment to the Redemption Deed executed by the Bonner County Treasurer and recorded on July 8, 2014 in the Bonner County Recorder's Office. *Id.*

2. The amounts Valiant paid to redeem are incorporated into and secured by the 2007 RE Mortgage.

E. Undisputed Facts Related To The Record Owner Of The Idaho Club Property.

1. POBD is the record owner of all real property subject to the P0099 Loan Documents, the P0106 Loan Documents and the P0107 Loan Documents pursuant to a Warranty Deed recorded on July 28, 2006 in the Bonner County Recorder's Office. Plaintiff's Exhibit 95.

**III.
CLOSING ARGUMENT**

The overwhelming weight of the documentary and testimonial evidence submitted at trial establishes that Loan No. P0099 and Loan No. P0106 were not paid off at the MF08 (P0107) loan closing or at any time thereafter.

A. Neither Loan No. P0099 Nor Loan No. P0106 Were Satisfied At The Closing Of Loan No. P0107.

From the outset of this case, JV and VP have contended that Loan No. P0099 and Loan No. P0106 were satisfied with funds disbursed at the MF08 (P0107) loan closing. The undisputed testimony of Barney Ng, Charles Reeves and Casey Linscott, as well as the P0107 Loan Documents and other documents that were recorded as part of the Loan No. P0107

closing, establish that the 2007 RE Note and Pensco Note could not have been satisfied at this closing.

1. **The Undisputed Testimony of Barney Ng Establishes That Loan No. P0099 and Loan No. P0106 Could Not Have Been Paid-Off at the Closing of Loan No. P0107.**

Barney Ng is a member of the limited liability company that is the managing member of RE Loans. He is also the president of Bar K, Inc. (“BarK”), which was the loan servicer for Loan No. P0099 and Loan No. P0107. He actively participated in the servicing of Loan No. P0099 and Loan No. P0107. In his capacity as president, Mr. Ng personally brokered and negotiated each of these loans on behalf of RE Loans and MF08. He was responsible for the disbursement of all funds from RE Loans and MF08 to POBD. He was also responsible for making sure that all payments made by POBD in repayment of these loans were properly applied. Mr. Ng has direct personal knowledge of the loan documents, lender invoices, the amounts loaned by RE Loans and MF08, and the amounts repaid by POBD.

Mr. Ng is also the owner of a self-directed 401(k) investment account managed by Pensco. Mr. Ng sought and received approval from Pensco to loan funds from his 401(k) to POBD. These are the same funds that were disbursed to POBD pursuant to Loan No. P0106. BarK serviced Loan No. P0106. As the president of BarK, Mr. Ng actively participated in the servicing of this loan. Because the loan amounts were disbursed from his personal 401(k) account, Mr. Ng has direct personal knowledge of all amounts disbursed by Pensco and POBD’s failure to repay any of these amounts.

Mr. Ng testified that it is mathematically impossible for Loan No. P0099 and Loan No. P0106 to have been paid off at the closing of Loan No. P0107. This testimony was not disputed by any other witness at the trial.

a. The Amounts Loaned by MF08 Are Insufficient to Payoff Loan No. P0099 and Loan No. P0106.

Mr. Ng testified that MF08 loaned POBD a total of \$2,050,000.00 at its loan closing on August 6, 2008. However, of this amount \$1,150,000.00 was paid to Wells Fargo outside of escrow, which reduced POBD's debt to RE Loans from \$7,322,325.18 to \$6,172,325.18. This payment and/or balance is also reflected on several exhibits admitted into evidence at trial including but not limited to the following: the Borrower's Authorization and Funding Agreement (Plaintiff's Exhibit 19, p. 1); multiple invoices POBD received from BarK titled Calculations of Amounts Due under Loans ("RE Invoices") (Plaintiff's Exhibit 65, pp. 001326, 001329, 001332, 001336, 001340, 001344-46, 001357, 001362, 001364, and 001366-69); the invoice sent *via* facsimile on December 4, 2009 by BarK to POBD ("Final RE Invoice") (Plaintiff's Exhibit 65A, p. 1); the BarK payment history detail report ("Payment History Report") showing principal and interest payments paid by POBD (Plaintiff's Exhibit 66, p. 2); the check from MF08 to BarK (Plaintiff's Exhibit 100); and Wells Fargo's escrow instructions (Plaintiff's Exhibit 13). Mr. Ng also testified that the amounts loaned by MF08 included the following charges, which necessarily reduced the funds available for disbursement: (a) a loan fee due to BarK in the amount of \$279,500.00; (b) document drafting and other charges in the amount of \$11,000.00; and (c) attorneys' fees and administrative charges in the amount of \$15,000.00. These charges are reflected on the Borrower's Authorization and Funding Agreement (Plaintiff's Exhibit 19, p. 2) and the MF08 Note (Plaintiff's Exhibit 17, p. 1). The charges and payment to Wells Fargo reduced the amount available for disbursement by MF08 at closing as follows:

MF08 Loan Amount	\$ 2,050,000.00
Less payment to Wells Fargo	- \$ 1,050,000.00
Less loan fee	- \$ 279,500.00
Less document drafting and other charges	- \$ 11,000.00
Less attorneys' fees and administrative charges	- \$ 15,000.00
Total Amount Available for Disbursal at Closing:	\$ 545,000.00

Mr. Ng further testified that Pensco loaned POBD a total of \$2,700,000.00 when Loan No. P0106 closed on August 6, 2008. The amounts loaned by Pensco included the following charges that necessarily reduced the amounts available for disbursal: (a) points retained by Pensco in the amount of \$189,000.00; and (b) three (3) months' prepaid interest in the amount of \$81,000.00. These amounts are reflected on the Borrower's Authorization and Funding Agreement (Plaintiff's Exhibit 19, p. 2) and the Pensco Note (Plaintiff's Exhibit 15, p. 1). These charges reduced the amount available for Pensco to disburse at closing as follows:

Pensco Loan Amount	\$ 2,700,000.00
Less points retained by Pensco	- \$ 189,000.00
Less three (3) months prepaid interest	- \$ 81,000.00
Total Amount Available for Disbursal at Closing:	\$ 2,430,000.00

Mr. Ng also testified that the total amount that was disbursed at the closing of Loan No. P0107 was \$2,975,000.00. This is same amount identified on the Borrower's Authorization and Funding Agreement (Plaintiff's Exhibit 19, p. 2) as "NET PROCEEDS" and identified on First American Title Company's ("First American") File Balance Sheet (Plaintiff's Exhibit 36, pp. 1-2) as "Deposits to Bank."

The testimony of Mr. Ng and the calculations set forth above make it clear that RE Loans and Pensco could not possibly have been paid-off at the closing of Loan No. P0107. On August 6, 2008, RE Loans was still owed a total of \$6,172,325.18 (after the payment of \$1,150,000.00 was made from MF08 to Wells Fargo outside of escrow) and Pensco was owed a total of \$2,700,000.00. Thus, the total amount required to pay-off RE Loans and Pensco totaled \$8,872,325.18. As the total amount available for disbursement by MF08 is only \$545,000.00, there were insufficient funds to pay-off either RE Loans *or* Pensco, let alone both of them.

b. The Combined Amounts Disbursed by Pensco and MF08 Were Insufficient to Payoff Loan No. P0099.

Based upon the testimony of Mr. Ng and the calculation of amounts that were available for disbursement (set forth hereinabove), Loan No. P0099 could not have been paid-off even if RE Loans had been paid all of the funds that were disbursed by MF08 and Pensco. Again, RE Loans was owed a total of \$6,172,325.18 on August 6, 2008 (after the payment of \$1,050,000.00 was made from MF08 to Wells Fargo outside of escrow). The combined total amount disbursed by MF08 (\$545,000.00) and Pensco (\$2,430,000.00) on this date was \$2,975,000.00. Thus, there were insufficient funds to pay off RE Loans, even if it had been paid every penny of the combined amount that was disbursed by MF08 and Pensco on this date.^{1/}

2. The Undisputed Testimony of Casey Linscott Establishes That None of the Amounts Disbursed at the Closings of Loan Nos. P0106 and P0107 Were Used to Satisfy Any Portion of POBD's Debt to RE Loans or Pensco.

Casey Linscott is the escrow officer for First American who was in charge of the closing of both Loan Nos. P0106 and P0107 that took place on August 6, 2008. She testified she

^{1/} It should be noted that the \$2,975,000.00 disbursed by MF08 and Pensco on August 6, 2008 is the only amount that these two lenders ever disbursed to POBD. See Plaintiff's Exhibits 63 and 64. As such, Loan No. P0099 could not have been paid-off by amounts funded by MF08 and Pensco on August 6, 2008 or at any time thereafter.

has over twenty (20) years of experience with loan closings and she has personal knowledge of each disbursement that was made as part of the MF08 loan closing. Ms. Linscott also authenticated First American's File Balance Sheet and other closing documents. She testified that the File Balance Sheet shows all funds that were received into the escrow and all disbursements that were paid out of the escrow as part of the MF08 and Pensco loan closings on August 6, 2008. Plaintiff's Exhibit 36, pp. 1-2. Importantly, she testified that First American did not disburse any funds to RE Loans/Wells Fargo or Pensco as part of either closing.

The File Balance Sheet shows that First American received funds from MF08 totaling \$545,000.00 and funds from Pensco totaling \$2,430,000.00. *Id.*, p. 1. Thus, the total amount deposited into escrow was \$2,975,000.00. *Id.*, pp. 1-2. It is not a coincidence that this is the exact same amount that Barney Ng testified MF08 and Pensco disbursed.

According to the File Balance Sheet, the following disbursements and charges totaling \$2,975,000.00 were paid by First American out of escrow: (a) a check paid to POBD in the amount of \$69,274.66; (b) a check paid to the Bonner County Tax Collector in the amount of \$123,447.23 to pay the balance of 2007 taxes on all parcels; (c) a check paid to Panhandle Escrow Company in the amount of \$317,809.11 for payment of amounts owed to JV; (d) a check paid to Peak Sand and Gravel in the amount of \$250,000.00; (e) a check paid to JV in the amount of \$30,000.00; (f) a check paid to Independent Escrow in the amount of \$530,000.00 to pay-down Account # 81014; (g) a check paid to Panhandle State Bank in the amount of \$15,000.00 to pay a bank fee on Sage Holdings' Account; (h) a check for \$80.00 paid to the Nevada Secretary of State's Office for UCC filing fees; (i) First American paid itself closing fees/charges totaling \$39,389.00; (j) a wire transfer to ACI Northwest, Inc. in the amount of \$1,400,000.00 to pay-off

a lien; and (k) a wire transfer to Genesis Golf Builders, Inc. in the amount of \$200,000.00 to pay-off a lien. *Id.*, p. 1.

Ms. Linscott testified it is her job to make sure that the amounts paid into escrow and the amounts disbursed out of escrow match exactly. She made sure that \$2,975,000.00 was paid into escrow and that \$2,975,000.00 was paid out of escrow in accordance with the disbursements and charges identified on the File Balance Sheet. Not a single penny of these disbursements or charges was paid to RE Loans or to Pensco. Moreover, Ms. Linscott's testimony makes it clear that neither RE Loans nor Pensco could possibly have been paid any of the amounts that were disbursed at the MF08 (P0107) loan closing since every single penny of these amounts was disbursed to other entities. Ms. Linscott's testimony was not disputed by any other witness at trial.

3. **The Undisputed Testimony of Charles Reeves Further Establishes That Neither Loan No. P0099 Nor Loan No. P0106 Were Paid-Off At The Closing of Loan No. P0107.**

Charles Reeves is the managing member of the limited liability company that is the managing member of POBD. He testified he was personally responsible for the day-to-day operations of POBD and its efforts to market and develop the Idaho Club. Mr. Reeves's duties included negotiating and executing loan agreements with lenders and supervising the bookkeeping tasks performed by POBD's bookkeeper. He is personally familiar with the invoices POBD received from BarK and the amount of outstanding debt POBD owes pursuant to Loan Nos. P0099, P0106 and P0107. Mr. Reeves testified that neither Loan No. P099 nor Loan No. P0106 were satisfied at the MF08 loan closing.

Furthermore, Mr. Reeves authenticated the RE Invoices and the Final RE Invoice, which identify the amounts owed by POBD to RE Loans and to Pensco as of August 6, 2008. See Plaintiff's Exhibits 65 and 65A. Specifically, the Final RE Invoice shows every payment POBD made during the course of the loan that reduced the principal balance owed to RE Loans. It shows that RE Loans/Wells Fargo received a payment on behalf of POBD in the amount of \$1,150,000.00 on August 6, 2008, reducing the principal balance owed from \$7,322,325.18 to \$6,172,325.18. *Id.*, p. 2. It is not a coincidence that the Final RE Invoice shows the exact same payment identified in the Borrower's Funding and Authorization Agreement (Plaintiff's Exhibit 19) and to which Barney Ng testified at trial.

The Final RE Invoice also shows that RE Loans received ten (10) additional payments from POBD between August 8, 2008 (the day after Loan Nos. P0106 and P0107 closed) and November 23, 2009. It is axiomatic that POBD would not have continued to make payments to RE Loans if RE Loans had been paid-off at the MF08 loan closing.

Charles Reeves testified that the RE Invoices are a compilation of some of the invoices POBD received from BarK that were used to calculate the interest payments owed to RE Loans. See Plaintiff's Exhibit 65. The stamp and handwriting on each invoice shows POBD's method of calculating and tracking monthly interest payments due to RE Loans. *Id.* This Exhibit further establishes that RE Loans was not paid-off at the August 6, 2008 loan closing. The stamps and handwriting throughout the RE Invoices show that POBD continued to calculate the interest payments due to RE Loans long after Loan Nos. P0106 and P0107 closed. *Id.* Specifically, the invoices Bates numbered REEVES001325-001382 show the interest calculations POBD continued to make from August 22, 2008 thru at least November 1, 2009. *Id.* POBD would not

have continued to calculate interest payments if RE Loans had been paid-off at the closings of Loan Nos. P0107 and P0106.

Mr. Reeves further testified that, as of the date of trial, POBD owes Valiant the principal balance of \$278,147.66 pursuant to Loan No. P099 and that POBD owes Valiant the principal balance of \$2,700,000.00 pursuant to Loan No. P0106. He testified that POBD has never repaid any of the amounts that it borrowed from Pensco.

4. **Other Closing Documents Establish Loan No. P0099 Was Not Satisfied At the Closings of Loan Nos. P0107 and P0106.**

Numerous documents from the closings of Loan Nos. P0107 and P0106 were admitted into evidence at trial. See Plaintiff's Exhibits 14 – 30A. These documents are listed on the Escrow Instructions Dated August 1, 2008 (“Escrow Instructions”) from BarK. Plaintiff's Exhibit 14, p. 1. Certain of these documents have already been identified and explained hereinabove (*i.e.*, the Borrower’s Funding and Authorization Agreement). However, several other documents listed on the Escrow Instructions also establish that Loan No. P0099 was not paid-off at the MF08 loan closing.

a. **The MF08 Note.**

The MF08 Note is an all-inclusive note. See Plaintiff's Exhibit 17.

This note provides:

The principal amount of this Note **includes the current unpaid principal balances of the following described promissory notes** (“Included Notes”) which are secured by the following described mortgages:

FIRST INCLUDED NOTE^{12/1}	
Date of INCLUDED NOTE:	March 6, 2007
Amount of INCLUDED NOTE:	Original Amount: \$21,200,00.00 Principal Balance as of closing on this loan: \$6,172,325.18 As of closing on this loan interest is paid to: July 31, 2008
Maker of INCLUDED NOTE:	The undersigned
Payee of INCLUDED NOTE:	R.E. LOANS, LLC , a California limited liability company
Date of mortgage securing INCLUDED NOTE:	March 6, 2007
Mortgagor of mortgage securing INCLUDED NOTE:	The Undersigned
Mortgagee of mortgage securing INCLUDED NOTE:	R.E. LOANS, LLC, a California limited liability company
Instrument number of mortgage securing INCLUDED NOTE:	724829 and 724834
Date of recordation of mortgage securing INCLUDED NOTE:	March 15, 2007
County of recordation of mortgage securing Date of INCLUDED NOTE:	Bonner County, Idaho
SECOND INCLUDED NOTE^{13/1}	
Date of INCLUDED NOTE:	August 1, 2008
Amount of INCLUDED NOTE:	Original Amount: \$2,700,00.00 Principal Balance as of closing on this loan: \$2,700,000.00
Maker of INCLUDED NOTE:	The undersigned

^{12/} The First Included Note refers to the 2007 RE Note. Plaintiff's Exhibit 2.

^{13/} The Second Included Note refers to the Pensco Note. Plaintiff's Exhibit 15.

Payee of INCLUDED NOTE:	PENSCO TRUST CO., custodian fbo BARNEY NG
Date of mortgage securing INCLUDED NOTE:	August 1, 2008
Mortgagor of mortgage securing INCLUDED NOTE:	The Undersigned
Mortgagee of mortgage securing INCLUDED NOTE:	PENSCO TRUST CO., custodian fbo BARNEY NG
Instrument number of mortgage securing INCLUDED NOTE:	To be recorded immediately before the mortgage securing this Note
Date of recordation of mortgage securing INCLUDED NOTE:	To be recorded immediately before the mortgage securing this Note
County of recordation of mortgage securing Date of INCLUDED NOTE:	Bonner County, Idaho

....

Id., pp. 1-2 (emphasis added). This quotation and table make it crystal clear the parties intended that Loan No. P0099 and Loan No. P0106 would remain in place long after Loan No. P0107 closed on August 1, 2008. It is not a coincidence that the post-closing principal balance of \$6,172,325.18 is the exact same amount stated in the Borrower's Authorization and Funding Agreement (Plaintiff's Exhibit 19) and shown on the Final RE Invoice as the principal balance owed to RE Loans on August 6, 2008.

b. The MF08 Mortgage.

The MF08 Mortgage is an all-inclusive mortgage. See Plaintiff's Exhibit 18. The MF08 Mortgage also includes language that would not have been included if RE Loans and Pensco were going to be paid-off at the MF08 loan closing. For example, the MF08 Mortgage states:

This is an all-inclusive Mortgage and subject and subordinate to the following mortgages now of record or recorded concurrently herewith securing those certain notes (hereinafter "INCLUDED NOTE") the current unpaid principal balances of which are included in the note.

Id., p. 4 (emphasis added). Immediately following this quote, within the MF08 Mortgage, is the exact same table that was within the MF08 Note and inserted hereinabove [Section III.A.4.a.], which describes the terms and the unpaid principal balances owed on the on the RE Loans and Pensco Notes, and defines these notes as the "FIRST INCLUDED NOTE" and "SECOND INCLUDED NOTE," respectively. Again, it is not a coincidence that the amount shown as the unpaid principal balance on the 2007 RE Note is \$6,172,325.18. These provisions are superfluous and/or nonsensical if RE Loans and Pensco were going to be paid-off as part of the MF08 loan closing.

c. The MF08 Loan Agreement.

The MF08 loan agreement also includes language showing that Loan Nos. P0099 and P0106 were not supposed to be satisfied as part of the MF08 loan closing. Some of this language is found in the provisions governing the manner by which MF08 will be paid proceeds from the sale of lots. Plaintiff's Exhibit 21, p. 001319. Specifically, it provides that "until the note in favor of RE Loans, LLC is paid in full," payments of proceeds from lot sales "may be made directly to RE Loans in lieu of Lender." *Id.*, p. 001319, ¶ 12(h). Additionally, the loan agreement states:

The parties acknowledge that Borrower and RE Loans, LLC previously opened an interest bearing account (the "Development Account" at Wells Fargo Bank in Borrower's name. ***Until the INCLUDED NOTE in favor of RE Loans, LLC is paid in full*** the Development Account shall be administered in accordance with the loan agreement between Borrower and RE Loans, LLC.

Id., p. 001320, ¶ 12(j) (emphasis added). Again, these provisions are superfluous and/or nonsensical if RE Loans was supposed to be paid-off at the MF08 loan closing.

d. Second Amendment to Loan Agreement.

The Escrow Instructions also required RE Loans and POBD to execute a Second Amendment to Loan Agreement as a precondition to First American closing Loan No. P0107. See Plaintiff's Exhibits 14, 22 and 22A. This agreement had to be consented to by Wells Fargo. See Exhibits 22 and 22A. The Second Amendment to Loan Agreement modifies the terms under which RE Loans was to be paid proceeds from the sale of lots. *Id.* It would be nonsensical to require RE Loans to modify these terms as a precondition to closing on the MF08 loan if RE Loans was going to be paid-off from its proceeds.

e. RE Loans Subordination Agreements.

The Escrow instructions also required RE Loans and Wells Fargo to execute two different subordination agreements as a precondition to First American closing Loan No. P0107. See Plaintiff's Exhibits 14, 27 and 28. One of the subordination agreements subordinated the 2007 RE Mortgage to another mortgage recorded by Pacific Capital Bank, N.A. Plaintiff's Exhibit 27, p. 1. The other subordinated the 2007 RE Mortgage to a mortgage recorded Dan Jacobson, Sage Holdings, LLC, Steven Lazar, Amy Korengut, and HLT Real Estate, LLC. Plaintiff's Exhibit 28, p. 1. It is nonsensical to require another lender to execute subordination agreements as part of a loan closing if the subordinating party is going to be satisfied out of the proceeds of the loan closing. If Loan No. P0099 was going to be satisfied by the MF08 loan, the Escrow Instructions would have required RE Loans to execute a release of mortgage instead of subordination agreements.

B. Neither Loan No. P0099 Nor Loan No. P0106 Were Satisfied After The Closing Of Loan No. P0107.

From the outset of this case, JV and VP have contended that Loan No. P0099 and Loan No. P0106 were paid-off at the closing of Loan No. P0107. However, the testimony elicited by their counsel at trial indicates that JV and VP may now seek to alter this position. It appears that JV and VP may attempt to assert that Loan No. P0099 and Loan No. P0106 were somehow paid-off months or even years after Loan No. P0107 closed. This new position is irreconcilably inconsistent with the position taken by JV and VP at all times leading up to trial. POBD would not have made payments towards Loan No. P0099 and Loan No. P0106 after the MF08 loan closing if the 2007 RE Note and the Pensco Note had been satisfied at said closing. This new position makes it glaringly apparent that the position originally taken by JV and VP and argued throughout this case is frivolous and without any basis in fact or law. Moreover, JV and VP never disclosed their new contention in any discovery response, within any of their many motions for reconsideration, or within any opposition to Valiant's three motions for summary judgment. Regardless, the overwhelming preponderance of the evidence still establishes the RE Loan and the Pensco Loan were never paid off.

1. The Undisputed Testimony of Charles Reeves and William Haberman Establishes the 2007 RE Note Was Never Satisfied.

Charles Reeves testified that POBD spent untold hours reviewing RE Invoices to verify the accuracy of said invoices and to calculate upcoming interest payments as they became due. The product of these efforts can be seen by reviewing the RE Invoices. See Plaintiff's Exhibit 65. Each invoice has been stamped by POBD and includes handwritten notes calculating interest payments. Many of the invoices also include other handwritten notes further evidencing the diligence with which POBD reviewed each invoice. Mr. Reeves testified that he personally

reviewed the Final RE Invoice and it accurately reflects the principal amount due after subtracting all payments made by or on behalf of POBD. The amount of this principal balance is \$278,147.65. This testimony is undisputed.

William Haberman is the managing member of Valiant. He testified that he negotiated and entered into the loan assignment agreement with RE Loans. He also testified that he has not received any payments from POBD, or anyone on its behalf, since Valiant was assigned the P0099 Loan Documents. This testimony is undisputed.

2. **The Undisputed Testimony of Barney Ng, Charles Reeves and William Haberman Establishes the Pensco Note Was Never Satisfied.**

As previously explained hereinabove, the amounts loaned to POBD pursuant to Loan No. P0106 were obtained from Barney Ng's self-directed 401(k) account. As such, he testified that he has direct personal knowledge of all amounts disbursed by Pensco and POBD's failure to repay these amounts. Specifically, Mr. Ng testified that Pensco loaned a total of \$2,700,000.00 to POBD and that POBD never repaid a penny of this amount. This testimony is undisputed.

Charles Reeves confirmed Mr. Ng's testimony. He authenticated the invoices (titled Calculations of Amounts Due Under Loans) that BarK sent to POBD pursuant to Loan No. P0106 (the "Pensco Invoices"). Plaintiff's Exhibit 64. The Pensco Invoices also include POBD's stamp and handwritten calculations of the interest payments due each month. *Id.* However, these invoices show that POBD never repaid any of the amounts borrowed from Pensco. *Id.* Mr. Reeves confirmed the accuracy of the Pensco Invoices by testifying that POBD borrowed \$2,700,000.00 from Pensco and that POBD has never repaid any of this amount. This testimony is undisputed.

William Haberman is the managing member of Valiant. He testified that he negotiated and entered into the loan assignment agreement with Pensco. He also testified that he has not received any payments from POBD, or anyone on its behalf, since Valiant was assigned the P0106 Loan Documents.

C. **The Total Amounts Due And Owing To Valiant Pursuant To Loan No. P0099, Loan No. P0106 And Loan No. P0107 Are Undisputed.**

During the trial of this matter, Valiant submitted illustrative documents and testimony to establish the amounts currently due and owing to Valiant, inclusive of interest and late fees, pursuant to Loan No. P0099, Loan No. P0106 and Loan No. P0107. These amounts are undisputed.

1. **Valiant is Still Owed \$3,409,794.61 Pursuant To the 2007 RE Note.**

William Haberman testified that he calculated the total amount due and owing to Valiant pursuant to Loan No. P0099 thru the original trial date of January 23, 2016. The total amount due and owing on the 2007 RE Note as of that date was \$2,950,740.71. Plaintiff's Exhibit 96 (illustrative only). This amount incorporates the \$1,665,885.12 that was paid to redeem the Idaho Club property from the Bonner County Tax Collector. This Court has already determined that these amounts should be included in the amount secured by the 2007 RE Mortgage. Although this interest calculation was not disputed at trial, the amount Valiant is owed should be modified.

Tom Williams is the president of Sandpoint Title Insurance, Inc. ("Sandpoint Title"). He testified that on October 16, 2012, Sandpoint Title wired a payment to Wells Fargo in the amount of \$96,901.09 ("Sandpoint Title Payment"). Mr. Williams further testified he does not know whether his office ever advised POBD or RE Loans of this payment. Nonetheless, Valiant recognizes and acknowledges that payment of this amount should have

reduced the amount it is owed pursuant to the 2007 RE Note. As such, Mr. Haberman has generated a new interest calculation taking into account the Sandpoint Title Payment. A copy of this calculation is attached as Exhibit A to the Declaration of William Haberman (“Haberman Decl.”) filed herewith.

The 2007 RE Note states, “each payment and each prepayment (if any) on this Note shall be first credited to interest or other charges then due and payable to Lender and the remainder to principal, and interest shall thereupon cease upon the principal so credited.” Plaintiff’s Exhibit 2, p. 2. In accordance with this provision, Valiant has applied the Sandpoint Title Payment to the outstanding interest and late fees that were due and owing as of October 23, 2012. This resulted in a reduction of the interest that had accrued as of that date from \$175,077.56 to \$78,175.57. This reduction is shown on Exhibit A to the Haberman Decl. As such, the Sandpoint Title Payment reduces the amount of interest that is owed to Valiant but it does not affect the principal balance owed. As of March 23, 2016 Valiant was owed \$3,061,166.62 (including the \$1,665,885.12 redemption payment) with interest accruing at a rate of \$1,417.94 *per diem*. *Id.* Thru April 14, 2016 (the date on which this brief will be filed), an additional \$32,612.62 will have accrued.

Mr. Haberman also testified that Valiant is currently operating and maintaining the Idaho Club golf course at Valiant’s expense to prevent any waste from occurring to the real property encumbered by the 2007 RE Loans Mortgage. Valiant operated and maintained the course for this purpose throughout 2015. Mr. Haberman testified that, during this period, Valiant incurred losses totaling \$226,582.98. The losses Valiant incurred to operate and maintain the property and prevent waste thereto are amounts that are secured by the 2007 RE Mortgage.

The 2007 RE Mortgage states that it secures multiple obligations of POBD, including, but not limited to, “due, prompt, and complete observance, performance and discharge of all obligations of the Mortgagor under this Mortgage. . .” Plaintiff’s Exhibit 1, p. 4. The 2007 RE Mortgage further provides that “Mortgagee, at the expense of Mortgagor, may from time to time maintain and restore the Mortgaged Property or any part thereof as Mortgagee may reasonably deem desirable. . .” *Id.*, p. 12, ¶ 13. Valiant, as Mortgagee, was required to incur operation and maintenance costs in order to maintain and restore the real property that is subject to the 2007 RE Mortgage. As such, POBD is obligated to repay these amounts to Valiant. As POBD is unable to and has refused to make payment of these amounts, the amounts Valiant incurred are secured by the 2007 RE Mortgage.

Shortly before trial, Valiant discovered a diesel leak on the property that required immediate remediation to avoid contaminating surrounding areas. Mr. Haberman testified that Valiant incurred \$89,432.39 to remediate this leak. Plaintiff’s Exhibits 111 and 112. The costs Valiant incurred to remediate the diesel leak are amounts that are secured by the 2007 RE Mortgage. The 2007 RE Mortgage provides:

The Mortgagor further shall be personally and solely responsible for and shall indemnify and hold harmless the Mortgagee from and against . . . **(2) the costs of any required or necessary repair, cleanup or detoxification of the property and (3) all reasonable costs and expenses incurred by the Mortgagee . . .** in connection therewith.

Plaintiff’s Exhibit 1, pp. 15-16, ¶ 4.5 (emphasis added). POBD is obligated to indemnify and reimburse Valiant for all costs it incurs to repair, clean-up or detoxify the real property subject to the 2007 RE Mortgage. As POBD is unable to reimburse Valiant for these amounts, the costs Valiant incurs to perform this work is secured by the 2007 RE Mortgage.

Based upon the foregoing, POBD currently owes Valiant a total of \$3,409,794.61 (\$3,061,166.62 + \$32,612.62 + \$89,432.39 + \$226,582.98) thru April 14, 2016 pursuant to the 2007 RE Note, with interest thereon accruing at a *per diem* rate of \$1,417.94 until judgment has been entered. This amount includes the \$1,665,885.12 redemption payment. Each of the amounts identified in this paragraph is secured by the 2007 RE Mortgage.

2. Valiant is Still Owed \$9,590,474.85 Pursuant to the Pensco Note.

William Haberman testified that he calculated the total amount due and owing to Valiant pursuant to Loan No. P0106 thru the original trial date of January 23, 2016. The total amount due and owing on the Pensco Note as of that date was \$9,242,062.43. Plaintiff's Exhibit 97 (illustrative only). Per this calculation, interest is accruing at a rate of \$4,197.74 *per diem*. As such, an additional \$348,412.42 will have accrued thru April 14, 2016 (the date on which this brief will be filed).

Based upon the foregoing, POBD currently owes Valiant a total of \$9,590,474.85 (\$9,242,062.43 + \$348,412.42) thru April 14, 2016 pursuant to the Pensco Note, with interest thereon accruing at a *per diem* rate of \$4,197.74 until judgment has been entered. These amounts are secured by the Pensco Mortgage.

3. Valiant is Still Owed \$7,410,885.87 Pursuant to the MF08 Note.

William Haberman testified that he calculated the total amount due and owing to Valiant pursuant to Loan No. P0107 thru January 23, 2016. The total amount due and owing on the MF08 Note as of that date was \$7,141,610.63. Plaintiff's Exhibit 98 (illustrative only). Per this calculation, interest is accruing at a rate of \$3,244.28 *per diem*. As such, an additional \$269,275.24 will have accrued thru April 14, 2016 (the date on which this brief will be filed).

Based upon the foregoing, POBD currently owes Valiant a total of \$7,410,885.87 (\$7,141,610.63 + \$269,275.24) thru April 14, 2016 pursuant to the MF08 Note, with interest thereon accruing at a *per diem* rate of \$3,244.28 until judgment has been entered. These amounts are secured by the MF08 Mortgage.

IV.
CONCLUSION

Based upon the foregoing and the testimony and evidence submitted at trial, Valiant requests an order declaring that it entitled to final judgment in accordance with this Court's prior Summary Judgment Orders and awarding Valiant: (a) damages against POBD pursuant to the 2007 RE Note in the amount \$3,409,794.61, plus interest thereon at a rate of \$1,417.94 *per diem* from April 15, 2016 until judgment has been entered, the entirety of which is secured by the 2007 RE Mortgage; (b) damages against POBD pursuant to the Pensco Note in the amount \$9,590,474.85, plus interest thereon at a rate of \$4,197.74 *per diem* from April 15, 2016 until judgment has been entered, the entirety of which is secured by the Pensco Mortgage, and (c) damages against POBD pursuant to the MF08 Note in the amount \$7,410,885.87, plus interest thereon at a rate of \$3,244.28 *per diem* from April 15, 2016 until judgment has been entered, the entirety of which is secured by the MF08 Mortgage.

DATED this 14th day of April 2016.

McCONNELL, WAGNER SYKES & STACEY PLLC

BY:


Richard L. Stacey
Attorneys For Valiant Idaho, LLC

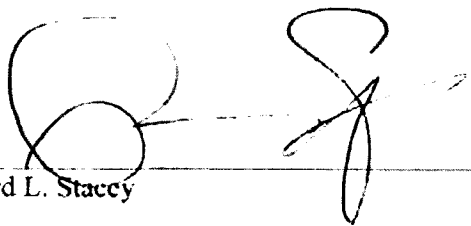
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 14th day of April 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 checked="" 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 garyfinney@finneylaw.net
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 checked="" type="checkbox"/> Electronic Mail sweeks@jvwlaw.net

With two (2) copies via U.S. Mail to:

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


Richard L. Stacy

STATE OF IDAHO
DISTRICT COURT
FIRST JUDICIAL DISTRICT



Richard L. Stacey, ISB #6800
Jeff R. Sykes, ISB #5058
Chad M. Nicholson, ISB #7506
McCONNELL WAGNER SYKES & STACEY P.L.L.C.
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stacey@mwsslawyers.com
sykes@mwsslawyers.com
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.

Case No. CV-09-1810

**DECLARATION OF
WILLIAM HABERMAN IN SUPPORT
OF VALIANT IDAHO, LLC'S
CLOSING ARGUMENT**

Honorable Barbara A. Buchanan

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

I, William Haberman, hereby state and declare:

1. I am the Manager of Valiant Idaho, LLC ("Valiant") and I make this declaration based on my own personal knowledge.
2. Attached as Exhibit A is a true and correct copy of the interest calculations for amounts owing to Valiant on the 2007 RE Note and 2007 RE Mortgage, as defined in Section II.1. of the Closing Argument, which interest calculations have been updated to reflect the amounts that were paid on October 16, 2012 by Sandpoint Title Insurance, Inc. to Wells Fargo Foothill, LLC.

I DECLARE, under penalty of perjury, that the foregoing is true and correct.

DATED this 14th day of April 2016.



WILLIAM HABERMAN

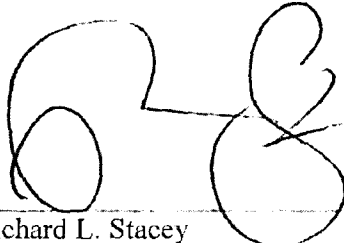
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 14th day of April 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 checked="" 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 garyfinney@finneylaw.net
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 checked="" type="checkbox"/> Electronic Mail sweeks@jvwlaw.net

With two (2) copies via U.S. Mail to:

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


Richard L. Stacey

5/23/2014	17.0%	\$0.00	\$8,155.21	\$0.00	\$583,844.11	\$215,105.89	\$1,176.69	\$2,348.65	\$271,058.65	\$96,448.33	\$0.00	\$211,058.65	\$96,448.33	5/23/2014
6/23/2014	17.0%	\$0.00	\$8,270.83	\$0.00	\$592,596.97	\$234,572.34	\$1,838.34	\$4,112.60	\$258,895.86	\$93,311.43	\$0.00	\$226,695.86	\$93,311.43	6/23/2014
7/23/2014	17.0%	\$0.00	\$8,388.01	\$0.00	\$601,764.35	\$251,764.35	\$5,920.95	\$2,160.08	\$278,817.35	\$95,848.49	\$0.00	\$284,665.84	\$95,848.49	7/23/2014
8/23/2014	17.0%	\$0.00	\$8,506.46	\$0.00	\$611,055.86	\$269,432.19	\$2,984.45	\$2,976.85	\$298,409.04	\$104,801.56	\$0.00	\$303,210.60	\$104,801.56	8/23/2014
9/23/2014	17.0%	\$0.00	\$8,626.28	\$0.00	\$620,582.58	\$288,095.94	\$3,910.06	\$3,912.52	\$320,321.56	\$114,843.47	\$0.00	\$321,165.03	\$114,843.47	9/23/2014
10/23/2014	17.0%	\$0.00	\$8,747.40	\$0.00	\$630,369.98	\$307,348.70	\$4,945.68	\$4,945.68	\$340,267.24	\$125,889.94	\$0.00	\$339,157.18	\$125,889.94	10/23/2014
11/23/2014	17.0%	\$0.00	\$8,869.83	\$0.00	\$640,418.81	\$327,225.43	\$6,090.94	\$6,090.94	\$360,358.18	\$137,994.88	\$0.00	\$357,353.06	\$137,994.88	11/23/2014
12/23/2014	17.0%	\$0.00	\$8,993.57	\$0.00	\$650,732.38	\$347,726.62	\$7,363.96	\$7,363.96	\$380,722.14	\$151,196.83	\$0.00	\$376,525.97	\$151,196.83	12/23/2014
1/23/2015	17.0%	\$0.00	\$9,118.61	\$0.00	\$661,340.99	\$368,853.37	\$8,774.84	\$8,774.84	\$401,497.18	\$165,043.86	\$0.00	\$396,453.32	\$165,043.86	1/23/2015
2/23/2015	17.0%	\$0.00	\$9,244.94	\$0.00	\$672,255.93	\$390,599.66	\$10,326.66	\$10,326.66	\$423,823.84	\$179,500.88	\$0.00	\$417,324.70	\$179,500.88	2/23/2015
3/23/2015	17.0%	\$0.00	\$9,372.56	\$0.00	\$683,378.49	\$413,070.72	\$12,028.84	\$12,028.84	\$446,852.56	\$194,633.34	\$0.00	\$439,419.20	\$194,633.34	3/23/2015
4/23/2015	17.0%	\$0.00	\$9,501.47	\$0.00	\$694,709.96	\$436,286.62	\$13,888.09	\$13,888.09	\$470,740.71	\$211,400.86	\$0.00	\$462,141.57	\$211,400.86	4/23/2015
5/23/2015	17.0%	\$0.00	\$9,631.67	\$0.00	\$707,251.63	\$460,250.96	\$15,913.96	\$15,913.96	\$495,654.67	\$229,683.86	\$0.00	\$486,370.53	\$229,683.86	5/23/2015
6/23/2015	17.0%	\$0.00	\$9,763.16	\$0.00	\$721,014.79	\$485,073.72	\$18,124.44	\$18,124.44	\$521,779.16	\$249,458.81	\$0.00	\$512,227.97	\$249,458.81	6/23/2015
7/23/2015	17.0%	\$0.00	\$9,895.94	\$0.00	\$735,999.73	\$510,767.48	\$20,530.96	\$20,530.96	\$549,298.44	\$270,743.74	\$0.00	\$539,942.20	\$270,743.74	7/23/2015
8/23/2015	17.0%	\$0.00	\$10,030.01	\$0.00	\$752,219.74	\$537,343.66	\$23,144.03	\$23,144.03	\$577,487.69	\$293,599.47	\$0.00	\$568,887.16	\$293,599.47	8/23/2015
9/23/2015	17.0%	\$0.00	\$10,165.36	\$0.00	\$769,675.10	\$564,813.72	\$25,967.39	\$25,967.39	\$606,855.11	\$318,079.79	\$0.00	\$599,934.32	\$318,079.79	9/23/2015
10/23/2015	17.0%	\$0.00	\$10,301.99	\$0.00	\$788,376.09	\$593,199.99	\$29,015.52	\$29,015.52	\$637,170.51	\$344,329.47	\$0.00	\$631,499.98	\$344,329.47	10/23/2015
11/23/2015	17.0%	\$0.00	\$10,440.00	\$0.00	\$808,326.09	\$622,527.28	\$32,398.33	\$32,398.33	\$668,925.61	\$371,523.69	\$0.00	\$666,407.12	\$371,523.69	11/23/2015
12/23/2015	17.0%	\$0.00	\$10,579.49	\$0.00	\$829,525.58	\$652,716.67	\$36,038.33	\$36,038.33	\$701,764.00	\$401,716.83	\$0.00	\$701,764.00	\$401,716.83	12/23/2015
1/23/2016	17.0%	\$0.00	\$10,720.47	\$0.00	\$851,575.05	\$683,777.66	\$39,955.94	\$39,955.94	\$735,730.00	\$434,812.85	\$0.00	\$735,730.00	\$434,812.85	1/23/2016
2/23/2016	17.0%	\$0.00	\$10,862.94	\$0.00	\$874,487.00	\$715,732.04	\$44,171.11	\$44,171.11	\$770,901.15	\$470,863.33	\$0.00	\$770,901.15	\$470,863.33	2/23/2016
3/23/2016	17.0%	\$0.00	\$11,006.99	\$0.00	\$908,273.99	\$749,603.66	\$48,800.46	\$48,800.46	\$817,404.12	\$510,924.30	\$0.00	\$817,404.12	\$510,924.30	3/23/2016

\$78.15 Late Fee
 \$1,417.94 Per Day Interest
 \$30,061.25

Unpaid Principal Balance - RF Loan Note	\$278,147.05
Business County Property Tax Backpayment - 3/9/2014	\$1,665,885.12
Interest Due from 12/23/09 to 3/23/2016 @ \$1,417.94 Per Day @ 22 Days @ 47440	\$1,096,218.57
Late Charges at \$78.15 each x 15	\$30,915.69
GRAND TOTAL	\$3,061,166.43

NOTE: Partial payment on 10/23/12 from Personal Eggs Farm, C/O Auction, closing on the amount of \$596,391.99 reflected in 10/23/12 worksheet and made above. Referral fee (see previous) applied on actual interest.

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

STATE OF IDAHO
 COUNTY OF BONNER
 DISTRICT COURT
 FILED
 10/21/09
 KB

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 MOTION TO
corporation,	)	STRIKE THE DECLARATION OF
	)	WILLIAM HABERMAN
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)	

JV L.L.C.'S MOTION TO STRIKE THE DECLARATION OF WILLIAM HABERMAN

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; 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,)

JV L.L.C.'S MOTION TO STRIKE THE DECLARATION OF WILLIAM HABERMAN

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

COMES NOW JV L.L.C., by and through its attorney, GARY A. FINNEY and moves the Court to Strike the Declaration of William Haberman in Support of Valiant Idaho, LLC's Closing Argument, dated 14 April 2016, as follows:

1. Valiant Idaho has the burden of proof on all matters of factS on its case in chief, which is a foreclosure of mortgage on Bonner County real estate.

2. Valiant Idaho failed on its burden of proof on several issues, including the amount of indebtedness existing on an underlying mortgage indebtedness, the Loan No. P099 to R.E. Loans. The RE Loan, P099, was fully paid, in fact it was paid in excess of any sum owed.

3. Valiant Idaho's post-trial Declaration of William Haberman, dated 14 April 2016, is inadmissible and JV moves to strike it from consideration.

4. The Declaration of William Haberman is hearsay, not subject to cross-examination, and is inadmissible.

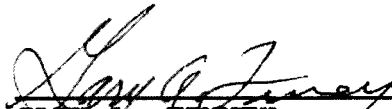
5. Valiant Idaho has cited no Rule, Statute or Authority to support said Declaration.

6. The Trial evidence proved that the RE Loan No. P0099 was fully paid, in fact "overpaid" by the 3 Assignments of first lien priority Deeds of Trust from Shea/Eagle Point and the subsequent escrow received from the sale of one of these Lots. All of this evidence was "withheld" by Valiant Idaho at the trial stage.

Wherefore, JV moves the Court to strike the Declaration of William Haberman in Support of Valiant Idaho, LLC's Closing Argument, dated 14 April 2016, and not consider it as evidence in this action, or at all.

DATED this 18th day of April, 2016.

Respectfully Submitted,


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

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served as indicated, by facsimile, or by hand delivery, this 18 day of April, 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]

JV L.L.C.'S MOTION TO STRIKE THE DECLARATION OF WILLIAM HABERMAN

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: *Eugen M. Victor*

Susan P. Weeks, ISB No. 4255
Daniel M. Keyes, ISB No. 9492
JAMES, VERNON & WEEKS, PA
1626 Lincoln Way
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sweeks@jvwlaw.net

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DISTRICT

KB.

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

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

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

Plaintiff,

vs.

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

Defendants.

Case No. CV-2009-01810

VP INC'S MOTION TO STRIKE THE
DECLARATION OF WILLIAM
HABERMAN

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

COMES NOW VP, Inc. ("VP"), by and through its attorneys of record, James, Vernon &
Weeks, P.A., and moves this Court to strike the April 14, 2016, Declaration of William
Haberman. This motion is supported by the Memorandum in Support of VP Inc.'s Motion to

Strike the Declaration of William Haberman.

DATED this 21st day of April, 2016.

JAMES, VERNON & WEEKS, P.A.

By *Daniel Keyes*
Daniel M. Keyes

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 21st day of April, 2016:

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

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

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

Christine Elmore

Susan P. Weeks, ISB No. 4255
Daniel M. Keyes, ISB No. 9492
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Telephone: (208) 667-0683
Facsimile: (208) 664-1684
sweeks@jvwlaw.net

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DISTRICT
CLERK OF COURT
Coeur d'Alene, Idaho
VB.

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

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

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

Plaintiff,

vs.

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

Defendants.

Case No. CV-2009-01810

MEMORANDUM IN SUPPORT OF VP
INC'S MOTION TO STRIKE THE
DECLARATION OF WILLIAM
HABERMAN

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

COMES NOW VP, Inc. ("VP"), by and through its attorneys of record, James, Vernon &
Weeks, P.A., and submits this Memorandum in Support of VP Inc.'s Motion to Strike the
Declaration of William Haberman.

ARGUMENT

This matter was tried before the Court on January 28-29 and March 16-17, 2016. At trial Valiant Idaho, LLC ("Valiant") as the foreclosing party had the burden of proof to establish the existence of the debt, a default on that debt, and the amount of the defaulted debt. *U.S. Bank Nat. Ass'n N.D. v. CitiMortgage, Inc.*, 157 Idaho 446, 451-52, 337 P.3d 605, 610-11 (2014). The time for Valiant to introduce that evidence was a trial where all the parties had the opportunity to cross-examine witnesses and rebut evidence presented. Valiant's post-trial submission of evidence through the Declaration of William Haberman is inappropriate because the conclusion of trial closed the time for submission of evidence in this matter. Submission of new evidence through a post-trial declaration denies the parties the opportunity to cross-examine Mr. Haberman and present rebuttal evidence. Accordingly, the Declaration of William Haberman should be stricken.

Idaho law provides a mechanism for a party to present post-trial evidence in certain situations. The Idaho Supreme Court has recognized the discretionary power of the trial court to reopen a case for submission of new evidence prior to entry of final judgment. *Davison's Air Serv., Inc. v. Montierth*, 119 Idaho 967, 968, 812 P.2d 274, 275 (1991); *Silkey v. Tiegs*, 51 Idaho 344, 5 P.2d 1049, 1052 (1931). In exercising its discretion to reopen this case for submission of new evidence this Court would need to first carefully consider the relevant factual circumstances and principles of law presented by the moving party (Valiant), "without arbitrary disregard for those facts and principles of justice." *Montierth*, 119 Idaho at 968, 812 P.2d at 275.

A party moving the Court to reopen a case must make a showing of "some reasonable excuse, such as oversight, inability to produce the evidence, or ignorance of the evidence." *Idaho Power Co. v. Cogeneration, Inc.*, 134 Idaho 738, 744, 9 P.3d 1204, 1210 (2000).

At this time Valiant has not moved this Court to reopen the case. Valiant has not made a showing that would warrant reopening the case to present new evidence. Idaho law provides Valiant Idaho a viable means of introducing post-trial evidence to the Court that it failed to provide at trial. However, presentation of new evidence by post-trial declaration is not allowed by Idaho law and therefore, the Declaration of William Haberman should be stricken.

DATED this 21st day of April, 2016.

JAMES, VERNON & WEEKS, P.A.

By *Daniel Keyes*
Daniel M. Keyes

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 21st day of April, 2016:

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

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

U.S. Mail, Postage Prepaid
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Richard Stacey
Jeff Sykes
McConnell Wagner Sykes & Stacey, PLLC
827 E. Park Blvd., Ste. 201
Boise, ID 83712

Christine Clouse

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DISTRICT

2016 APR 27 A 9:00

CLERK DISTRICT COURT


DEPUTY

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

**GENESIS GOLF BUILDERS, INC., 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.)

CASE NO. CV-2009-0001810

**ORDER DENYING MOTIONS
TO STRIKE**

On April 14, 2016, Valiant Idaho LLC filed the Declaration of William Haberman in Support of Valiant Idaho, LLC's Closing Argument. In response thereto, JV L.L.C. filed a Motion to Strike the Declaration of William Haberman on April 18, 2016, and VP Inc. filed a Motion to Strike the Declaration of William Haberman on April 21, 2016.


The Declaration of William Haberman contains the updated interest calculations for amounts owing to Valiant Idaho, LLC, on the 2007 RE Note and 2007 RE Mortgage.

Upon consideration of the declaration and the motions to strike, this Court shall not strike Mr. Haberman's Declaration because if the Court were to find in favor of Valiant Idaho, LLC, on the sole issue at trial of whether the 2007 R.E. Loans Note (Loan No. P0099) and Pensco Note (Loan No. P0106) have been satisfied, the updated interest calculations will be relevant.

NOW, THEREFORE, based on the foregoing, IT IS HEREBY ORDERED THAT JV, L.L.C.'s and VP, Inc.'s Motions to Strike the Declaration of William Haberman are DENIED.

IT IS SO ORDERED,

DATED this 27 day of April, 2016.



Barbara Buchanan
District Judge


CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was mailed, postage prepaid, this 27 day of April, 2016, to:

Gary A. Finney
FINNEY FINNEY & FINNEY,
120 East Lake Street, Suite 317
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Fax# (208) 489-0110
(Attorney for R.E. Loans, LLC; and Valiant Idaho, LLC)


Deputy Clerk

GARY A. FINNEY
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 Old Power House Building
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 Sandpoint, Idaho 83864
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 ISB No. 1356

FILED
 DISTRICT COURT
 SANDPOINT, IDAHO

[Handwritten signature]

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 POST TRIAL
corporation,	)	MEMORANDUM AND ARGUMENT
)	
Plaintiff,)	
)	
v.)	
)	
PEND OREILLE BONNER)	
DEVELOPMENT, LLC, a Nevada)	
limited liability company; RE)	
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;)
 MOUNTINA WEST BANK, a division)
 of GLACIER BANK, a Montana)
 corporation; FIRST AMERICAN)
 TITLE COMPANY, a California)
 corporation; NETTA SOURCE LLC,)
 a Missouri limited liability)
 company; MONTAHENO INVESTMENTS,)
 LLC, a Nevada limited liability)
 company; CHARLES W. REEVES and)
 ANN B. REEVES, husband and)
 wife; and C.E. KRAMER CRANE &)
 CONTRACTING, INC., an Idaho)
 corporation,)

Third Party)
 Defendants.)

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

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

v.)
)
 VALIANT IDAHO, LLC, an Idaho)

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

COMES NOW JV L.L.C. (hereafter JV), by and through its
 attorney, GARY A. FINNEY and submits this post trial memorandum
 and argument.

THE WHOLE STORY, THE FACTS

In February of 2005, by a Third Amended Purchase and Sale
 Agreement, V.P., Inc. and its related entities, all owned and
 managed by Richard Villelli, contracted to sell several parcels
 of real estate to the Monterey Group, managed by Charles Reeves,
 who is a predecessor to POBD. The terms and conditions of the
 purchase price were:

- a) \$4,750,000.00 cash
- b) Assume the 1st purchase money mortgage of October 1995

from V.P. Inc. to JV, LLC, on the 650 acres known as

Moose Mountain of \$2,565,000.00 owed, escrowed at
Panhandle Escrow No. 2067429

c) Assumed V.P. et al 2004 Mortgage to RE Loans, a second
mortgage of \$8,515,000.00, RE Loan No. V0140,
collected through Bar-K
for total consideration of \$15,830,000.00.

At the time of the Third Amended Purchase and Sale
Agreement (February 2005), RE Loans had been
suspended/prohibited from making loans by the State of
California. RE Loans had no money to loan until about June of
2006. This delayed the closing of VP to POBD from 2005 to over
a year, until about June 14/19, 2006. The closing occurred for
the purchase and sale closing and also for a refinance loan from
RE Loans, to POBD, as 2006 Loan No. 0094, which both occurred
simultaneously. The sale closing settlement statement is JV
Defendant Exhibit H, Seller's Closing Statement (POBD/NIR).
This shows the Total Consideration of \$15,830,000.00, and about
six lines down is "Berry Note assumed by buyer"... \$2,565,000.00.
The Villelli (VP/NIR) 2004 mortgage RE Loans V0140 entered as
Loan Payoff: Bar-K. . . \$8,064,776.27 (which sum was not paid).

The Buyer/Borrower Statement for the 2006 RE loan of the
same date (6/14/2006) is JV Defendant Exhibit O, for the 2006
POBD/RE Mortgage signed by REEVES for POBD, shows the total
consideration of \$15,830,000.00. There is an entry for a 1995
JV Mortgage assumption for \$2,565,000.00 by POBD; however the
JV L.L.C.'S POST TRIAL MEMORANDUM AND ARGUMENT - 5

2004 V.P. et al/RE Mortgage V0140 is not listed at all on the Buyer/Borrower Statement. The 2006 new mortgage RE/POBD (\$20,500,000.00) is listed specifically on the statement. It is disclosed as "New to Bar-K Inc... \$20,500,000.00" along with "Hold For Construction: Bar-K Inc... \$11,400,000.00". The Buyer/Borrower Statement, JV Defendant Exhibit O, does not show any money disbursed from RE to POBD, at all, because no new 2006 loan money was advanced or disbursed. Of course, all references to Bar-K Inc., should have referred to RE Loans, as Bar-K was only a loan broker/record keeper for Barney Ng, it was never a lender. The difference between;

"New to Bar-K Inc...	\$20,500,000.00"
and "Hold For Construction: Bar-K Inc...	\$11,400,000.00"
is	\$ 9,100,000.00

This \$9,100,000.00 is the amount determined by Bar-K (Barney Ng) and POBD as the dollar amount still owed on POBD's Assumption of the existing 2004 RE/V.P. Mortgage Loan V0140. This figure in the Third Amended Purchase and Sale Agreement, assumption dollar amount was \$8,515,000.00 in February of 2005, which by the time of closing, over a year later, in June of 2006 was \$9,100,000.00. It needs to be kept in mind that at the purchase and sale closing (June 2006) POBD did not even have enough money to pay the agreed cash of \$4,750,000.00, nor did RE have any money to loan POBD to make up the shortfall, so the Buyer/Borrower Statement, JV Defendant Exhibit O, and the Seller's Closing Statement, JV Defendant Exhibit H, of June 14, JV L.L.C.'S POST TRIAL MEMORANDUM AND ARGUMENT - 6

2006, both show the entry of "Note for RE loan differential...\$511,583.34, for which POBD gave an unsecured promissory note to seller NIR/VP et al.

In point of fact, the February 2005 Third Amended Purchase and Sale closing did not occur until June 2006 (1 year and 4 months later) because neither POBD nor RE Loans had enough cash money to close the sale, and RE Loans had no money to loan or advance for "new construction". Therefore, the assumed 2004 V.P./RE Loan V0140 was carried over at \$9,100,000.00, none of which was new or cash at all. This is easier further identified by going to POBD's (Reeves) own financing record with RE, being JV Defendant Exhibit P, which is captioned Bar-K 6-28-07, showing., on the first, second and third line:

"Date"	"Loan Balance"
"06/19/2006	\$20,500,000.00"
"06/19/2006	\$ 9,100,000.00"

The so called "advance" was the balance of the 2004 Mortgage RE/V.P. Loan No. V0140, assumed but not paid, still owing of \$9,100,000.00.

The 2006 RE/POBD Mortgage loan of \$20,500,000.00 was never disbursed except for a small dollar amount because RE didn't have the money shown as "Hold For Construction: Bar-k Inc.. of \$11,400,000.00" and because POBD was commencing to sell LOTS and to paydown. JV Defendant Exhibit P further discloses only two (2) loan advances from RE to POBD of:

Line 5 "advance \$(88,411.47)" and
Line 9 "advance \$(478,176.97)"
these total to \$ 566,588.44 which is all, the entire RE

2006 Loan dollar amount to POBD.

There were also previous listed paydowns, so the 2006 RE/POBD under Draw Balance was entered as \$(454,266.12). JV Defendant Exhibit P further shows that in 2006 POBD made no more construction draws except for the 2 aforementioned (listed as "advance"); however, POBD made Lot sales for several more paydowns resulting in entries (far right) of "\$9,813,900.00 - Loan draws incl refinance costs" and "(\$3,713,900.00) Paydown old loan." In other words, POBD borrowed only \$566,588.44 on the 2006 \$20,500,000 Loan from RE, but POBD paid down \$3,713,900.00 on the "old loan" of 2004 Mortgage V0140 Villelli entities to RE.

It is very important to read JV Defendant Exhibit P because it says "refinance", not "new" finance, and it says "Paydown old loan". The words "refinance" and "Paydown old loan" used in the 2006 Mortgage contract must necessarily reference and do actually refer to the refinance and paydown of the previous "old loan" i.e. the RE/V.P. Inc. 2004 Loan/Mortgage No. V0140 which by the written purchase and sale contract was "assumed" by POBD at the February 2005 balance of \$8,515,000.00 = growing to June of 2006 to \$9,100,000.00.

The Bar-K, 8-28-07 document, JV Defendant Exhibit P, coming from Reeves at POBD, as the business record of POBD for its
JV L.L.C.'S POST TRIAL MEMORANDUM AND ARGUMENT - 8

financial records of both the 2006 refinance and the 2007 second refinance, reveal the actual financial money figures. At the top of that JV Defendant Exhibit P the ending balance for the 2006 refinance of the 2004 loan assumption shows:

\$9,813,900.00 Loan draws incl refinance costs
\$3,713,900.00 Paydown old loan - with the
 difference of \$6,100,000.00 being the dollar amount still owed
 on the 2006 refinance of the "old loan" (2004) of VP (No. 0140).

Then, on JV Defendant Exhibit P, mid-page begins with "3/15/2007...\$21,200,000.00" upon which the 2004/2006 old loan carryover \$6,100,000.00 was still owed and a balance of \$15,100,000.00 was used by RE as the beginning balance advance; however, no \$6,100,000.00 actual money was loaned or "advanced". This is further verified by the Plaintiff's Exhibit 65-A (Reeves 001310) first entry for the 2007 new loan as

<u>"Date</u>	<u>P0099</u>	<u>"Pend Oreille"</u>
03/15/2007	Init Adv	\$6,100,000.00

The Settlement Closing Statement for the RE to POBD 2007 Loan No. P099 verifies that no money (new money) was advanced - it was merely a carryover of 2004 to 2006 to 2007. The 2007 Loan Agreement and the buyer borrower settlement shows the 2007 mortgage to be \$21,200,000 of which \$6,100,000 was "used up", so only \$15,100,000 was available to borrow on the 2007 RE/POBD Loan No. 0094. This is actually disclosed in the 2007 Loan Agreement, RE/POBD, Plaintiff's Exhibit 3.

JV's Mortgage is recorded October 24, 1995, Instrument No. 474746 on all of approximately 650 acres. From time to time JV partially released only platted LOTS as sold by POBD. JV is the superior mortgage on all the real estate known as Moose Mountain, less platted lots sold and released, because:

a. JV's Mortgage is the original vendor's priority purchase money mortgage when sold and conveyed by JV and mortgaged by VP Inc. as provided by Idaho Code § 45-112, and Idaho Code § 45-801, and

b. JV's Mortgage is recorded first in time, first in right, pursuant to Idaho's Race Notice recording statute, Idaho Code § 55-811, and

c. The 2006 Subordination Agreement by JV did not "subordinate" JV to RE because RE did not loan the \$20,500,000.00 claimed in its Mortgage recorded 6/19/2006 and any money loaned was fully repaid and the 2006 Mortgage was discharged. Normally, the RE 2006 Mortgage and JV's Subordination would not need to be discussed, but the facts make it important to analyze. First, the 2006 Mortgage loan closing document is entitled Buyer/Borrower Statement/Escrow No. 41847 by Sandpoint Title is JV Defendant Exhibit O. That document, under Ledger Charges, a "New to Bar-K Inc of \$20,500,000.00; however, no loan was advanced or distributed. Rather, the entity "Hold For Construction Bar-K Inc... \$11,400,000.00 - was held for construction draws by POBD from Re. The difference

between \$20,500,000.00 and \$11,400,000.00 is \$9,100,000.00 the then unpaid balance of the VP loan from RE No. V0140, Mortgage of 2004, which Mortgage was assumed by POBD in the Third Purchase and Sale Agreement as part of the purchase price, total consideration of \$15,830,000.00. The 2006 RE Mortgage was nothing more than a "refinance" of the VP 2004 Mortgage to RE assumed by POBD. The VP 2004 Mortgage, Loan No. V0140 was left and remained a recorded record. That loan statement furnished by REEVES, which is JV Defendant Exhibit P, starts with the date 6/19/2006 Loan Balance Advance (6/19/2006) \$20,500,000.00 and \$9,100,000.00 (which is the 2004 VP Mortgage to RE, assumed by POBD at closing of the purchase and sale). Under the heading Draw Balance it is shown that, \$9,813,900.00 was the Loan draws including refinance costs POBD. The \$9,100,000.00 of 6/19/2006 was never a "loan draw" it was merely the refinance amount still owed in 2006 on the RE/VP 2004 Mortgage Loan No. V0140. The further entry shows: (loan draws and refinance) \$9,813,900.00 - \$3,713,900.00 PAYDOWN Old Loan the difference = \$6,100,000.00, which is the amount still owed from the 2004 Mortgage. Even though the JV Defendant Exhibit B shows \$6,100,000.00 still unpaid, which sum carried over, so the 3/15/2007 Mortgage entered that amount as an advance of \$6,100,000.00. However, RE clearly fully satisfied the 2006 RE Mortgage by recording a SATISFACTION of Mortgage on 6/8/2007, Instrument No. 730445, which document is JV Defendant Exhibit V, which document states

JV L.L.C.'S POST TRIAL MEMORANDUM AND ARGUMENT - 11

that RE acknowledges the \$20,500,00.00 Mortgage of June 19, 2006 has been Fully Satisfied and Discharged (emphasis added) and a full satisfaction thereof (emphasis added) is to be entered.

Clearly, the 2004/2006 "old loan" refinance was fully satisfied and discharged by RE. However, contrarily RE started the 2007 Mortgage loan balance ledger with the already released and discharged sum of \$6,100,000.00 entered as 3/15/2007 "Init. (Initial) Advance" for Pend Oreille as \$6,100,000.00 (See Plaintiff's Exhibit 65A, Reeves 001343).

In conclusion:

a. The 2004/2006 "old loan" paydown to \$6,100,000.00 was satisfied by 2006 Satisfaction of Mortgage executed and recorded by RE in June of 2007, and

b. At no time and in no document did JV ever agree to be subordinate to VP's 2004 Mortgage No. V0140 to RE.

The JV Defendant Exhibit P continues at mid-page to the 2007 RE/POBD Mortgage, recorded June 19, 2006 for \$21,200,000.00. The actual Mortgage of 2007 is Loan No. 0099, Plaintiff's Exhibit 1. The Loan Agreement (P0099) is Plaintiff's Exhibit 3. These documents are for 3/15/2007, Loan No. P0099 between RE Loans and POBD. RE neither advanced nor loaned any money as part of the loan closing. The remainder still owed from the 2004/2006 RE loans in sum of \$6,100,000.00, even though it was DISCHARGED of record (JV Defendant Exhibit

V), was entered as a carry over on the Plaintiff's Exhibit 65A, Reeves 001133, as a 3/15/2007, Initial advance, \$6,100,000.-.

REEVES verified that for the 2006 loan, no funds were disbursed by RE to POBD because the sum of \$8 or \$9 million was already used up (because 2004 VP loan was still unpaid). Also for the 2007 RE to POBD loan (P0099) the \$6 million from the 2004 Loan was already used up, because the 2004 VP loan was still unpaid. The 2007 Loan No. P0099, Promissory Note and Mortgage were in the face amount of \$21,200,000.00 of which still unpaid from the Second Mortgage of 2004 VP to RE (Loan No. V0140) still unpaid was \$6,100,000.00, which left the unfunded, undisbursed new loan balance = \$15,100,000.000.

The 2007 Mortgage actually states that "the Mortgagor (POBD) is indebted to Mortgagee (RE) for so much of said loan as Mortgage (RE) shall disburse to Mortgagor (POBD) from time to time". So, the actual money disbursed of \$15,100,000 was the agreed only indebtedness POBD to RE on the 2007 loan. The proof is that the actual disbursements RE to POBD for the 2007 loan, totals only \$15,100,000 - the exact amount unfunded and undisbursed at closing: \$21,200,000.00 was never actually disbursed by RE to POBD. Plaintiff's Exhibit 65A, Reeves001133, 001134, and 001135 show all of the actual loan disbursements, called DRAWS, starting 3/16/07 and ending on DRAW J on 9/21/07. These 10 DRAWS are compiled as:

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

The loan paydowns on Plaintiff's Exhibit 65A, Reeves001133, 001134, and 001135 total more money than disbursed as draws by POBD, 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
		\$531,675.00
		\$309,825.00
xxvii.	10/12/07	\$371,025.00
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
	11/23/2009	
		\$358,598.59
Total Paydowns		\$20,941,849.37

POBD, on the 2007 loan, had actual disbursements as Draws A to J of only \$15,100,000-, but POBD made "paydowns" in the sum

of \$20,941,849.37, the excess paid down over advances of \$5,841,849.37.

This was because POBD was still paying, long after March of 2007, on the 2004 VP V0140 "old loan" refinance balance of \$6,100,000- even though it was fully satisfied and discharged by the Satisfaction of Mortgage signed and recorded by RE on June 7, 2007 as Instrument No. 730445, JV Defendant Exhibit V.

In addition, the Second Subordination Agreement, signed by JV, recorded 3/15/07, Instrument No. 724833, which is Plaintiff's Exhibit 6, also stated and required that the 2006 Mortgage "to be discharged and released and to be replaced by a New Note and Mortgage securing the original sum of \$21,200,000." In other words, JV did not want or agree to give a new Second Subordination Agreement and also be subordinate to any indebtedness prior to it. This is why in 2007 RE actually signed and recorded the Satisfaction of Mortgage, JV Defendant Exhibit V, for the 2006 Mortgage. The proof is that RE carried over VP's 2004 Mortgage, V0140, on the payment record under the heading "Init. Advance" in spite of the wording of the Second Subordination Agreement, which wording is the fifth paragraph that, "1. The 20,500,000.00 Note and Mortgage shall be discharged and release (sic) of record, and the "new" Note and Mortgage (21,200,000.00) shall be the only obligation and lien to which the Jr. Mortgage is subordinate *** " (underline added -see Plaintiff's Exhibit 6, middle of first page).

In fact, RE did not sign and record the Satisfaction of Mortgage of the 2004 VP/RE Mortgage until recorded August 6, 2008, Instrument No. 756408 (JV Defendant Exhibit O).

As to JV's Second Subordination Agreement (2007), JV is not subordinate to any sums under RE's 2007 Mortgage Loan No. P0099 because,

a. RE was fully paid in excess of the \$278,147.65 balance on 11/23/2009 because of the Shea Assignments of three (3) first Notes and Deeds of Trust, plus more cash on one of the Deeds of Trust, from the closing agent Sandpoint Title, and

b. RE only disbursed funds of \$15,100,000 as Loan Draws A - J, Loan No. P0099, but received Paydowns totaling over \$20,000,000, resulting in paydowns in excess of draws, and

c. The Second Subordination Agreement by JV (2007) required all prior loans/mortgages to be released and discharged, so that the only obligation and lien on to which JV was subordinate was the "new" 2007 loan/mortgage, and

d. RE, contrary to JV's agreement and requirement, did not sign and record a Satisfaction for the 2004 VP "old loan" until August 2008, Instrument No. 756408, which is JV Defendant Exhibit O.

The payment history showed that the last entry was on 11/23/09 reflecting an unpaid principal balance of \$278,147.65 (Plaintiff's Exhibit 65A, Reeves 001135). NG was gone from Bar-K before that date.

THE SHEA/EAGLE POINT 3 SELLER CARRY BACK NOTES/DEEDS OF TRUST

None of the Plaintiff's witnesses made any mention of four references in Plaintiff's Exhibit 65A starting 1/14/08 through 10/7/08 (Reeves 001134) all as "P0101, P0103, P0104 until cross-examined by JV's counsel and by VP's counsel. What were these reference numbers? This can be answered by starting with JV Defendant Exhibit P, Charles Reeves (hereafter REEVES), manager of POBD, identified as part of the business records he furnished on a document discovery request. On JV Defendant Exhibit P, lines 2, 3, and 4 up from the bottom left column, are 3 entries all on

8/23/07	Paydown Shea	\$234,250.-
8/23/07	Paydown Shea	\$224,215.-
8/23/07	Paydown Shea	\$215,175.-

Shea are individuals doing business as Eagle Point Construction. REEVES testified to the only three (3) seller-carry back sale of lots by POBD to Shea. All of the other Lot sales were for CASH and pursuant to the RE/POBD "release clause" the greater of three (3) provisions, i.e. 85% of the sale price had to be paid at closing to RE for a partial release of its mortgage on the Lot(s) sold. Shea was unable to pay enough CASH for 85% to be given to RE for a partial release of each of said three (3) Lots. So Shea, REEVES, and RE agreed that RE would get all of the cash down payment and POBD would "assign" each promissory note and first lien priority deed of trust to RE, whereby RE would give a partial release in exchange for all of

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the sale proceeds cash and purchase money deeds of trust for the three (3) Lots sold to Shea. Plaintiff's Exhibit 65A, all dated 8/23/07, are three (3) Paydowns of \$234,250, \$224,215, \$215,175 which are the exact Shea cash down payments shown on JV Defendant Exhibit P. All of the sale proceeds, cash and seller carry back notes/deeds of trust were assigned to RE, and RE gave a simultaneous partial release of mortgage on each Shea Lot. PBOD and RE used the same legal format on all 3 Shea Lots, to wit.

a. RE, through Bar-K Loan No. P0099 received all of the cash, as three (3) PAYDOWNS.

b. RE executed and recorded a Partial Release of Mortgage identified on Loan No. P0099 on the document recorded 9/25/07, Instrument No. 737860.

c. The legal descriptions identified the three (3) Lots as Lot 7, Block 2; Lot 4, Block 9, and Lot 16, Block 2, of their respective Plats and Additions in Golden Tees Estates (this is JV Defendant Exhibit FF). Shea for Eagle Point Construction gave a recorded seller carry-back purchase money first lien deed of trust for each of the three (3) Lots being;

1. Lot 16, Block 2 - purchase money Deed of Trust recorded August 22, 2007 as Instrument No. 735613 for \$110,000 (JV Defendant Exhibit W)

a. Simultaneously the purchase money first lien Deed of Trust was assigned from POBD to RE, by

Assumption of Deed of Trust, for \$110,000 recorded August 22, 2007 as Instrument No. 735614 (JV Defendant Exhibit X)

2. Lot 7, Block 2 - purchase money Deed of Trust securing POBD recorded 8/22/2007, Instrument No. 735623 - for \$240,000 (JV Defendant Exhibit Y)

a. Simultaneously the purchase money first lien Deed of Trust was assigned from POBD to RE, by Assumption of Deed of Trust, for \$240,000 recorded August 22, 2007 as Instrument No. 735624 (JV Defendant Exhibit Z)

3. Lot 4, Block 9 - purchase money Deed of Trust securing POBD recorded 8/22/2007, Instrument No. 735618 - for \$177,500 (JV Defendant Exhibit AA)

a. Simultaneously the purchase money first lien Deed of Trust was assigned from POBD to RE, by Assumption of Deed of Trust, for \$177,500 recorded August 22, 2007 as Instrument No. 735619 (JV Defendant Exhibit BB)

d. As of August 22, 2007 RE received all of the down payment cash Paydowns, totaling \$673,640 (\$234,250 + \$224,215 + \$215,175) and 3 first lien Deeds of Trust totaling:

a. \$110,000
b. \$240,000
c. \$177,500
\$527,500

All three (3) of these Promissory Notes/Deeds of Trust, state a final due date maturity of February 15, 2010, which date is after the ending date of Plaintiffs Exhibit 65 A, and is after Barney Ng's departure date from RE.

POBD was never given any credit on the 2007 Loan No P0099, Plaintiff's Exhibit 65A, for the 3 assigned first lien Deeds of Trust totaling \$527,500 toward the P0099 last balance entry of \$278,147.66, so:

(\$527,500.00) = received on 3 Deeds of Trust assigned to RE
\$278,147.65 - last entry of unpaid balance
(\$249,352.35) = amount POBD OVERPAID RE LOAN P0099

2. Also, Shea/Eagle Point later resold one (1) of the Lots. Tom Williams, of Sandpoint Title, who did the closing/settlement was subpoenaed by VP and he produced STI file (60642) showing the Lot 4, Block 9 Shea Lot, upon which RE Loans held an assigned first Deed of Trust for \$177,500, was sold in October 16, 2012, and Demand for Payment was made by Wells Fargo Bank, who was RE's Assignee of the entire Mortgage POBD/RE Loan No. P0099. The net proceeds were disbursed by Sandpoint Title for \$96,901.99 to credit on the RE Loan to POBD (P0099). This resulted in more overpayment by POBD on the RE Loans of:

(\$249,352.35) + amount POBD OVERPAID RE LOAN P0099 (3 Shea Lots)
\$96,901.99 + Shae resale cash
(\$346,254.34) = amount POBD OVERPAID RE LOAN P0099

3. Also, RE held 2 more first Deeds of Trust assigned from POBD, which were held and owned by RE. The amounts received on these Deeds of Trust would result in more overpayment to RE. The
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burden of proof is on Valiant to prove the amount, if any, owed on the 2007 Mortgage, and Valiant offers no proof.

In summary, on this issue of payment of the 2007 RE Loan No. P0099, the fact is the loan was fully paid, and even paid in excess of what it was owed. No witness from Valiant, NG, REEVE, or anyone disputed this evidence. It is undisputed evidence.

THE 2007 MORTGAGE POBD TO RE, WAS "ASSIGNED TO VALIANT BY ASSIGNMENT OF MORTGAGE, SIGNED FOR RE BY A POWER OF ATTORNEY - WHICH ASSIGNMENT WAS NOT EVEN ENTITLED TO BE RECORDED

The 2007 Mortgage No. P099 was assigned by RE to Valiant Idaho, which was recorded 7/7/2014, Instrument No. 861388, which is Plaintiff's Exhibit 72. This Assignment shows on its face that it was signed in Texas "By: Howard Marc Spector, Attorney in Fact," for RE Loans.

Valiant did not offer any proof of the authority of Spector to sign for RE by power of attorney. This is an obligation required by Idaho Code § 55-806 statute.

"55-806 POWER MUST BE RECORDED BEFORE CONVEYANCE BY ATTORNEY. An instrument executed by an attorney in fact must not be recorded until the power of attorney authorizing the execution of the instrument is filed for record in the same office."

Therefore, the Plaintiff's Exhibit 72, Assignment of RE Mortgage (2007 Mortgage No. P0099) by Spector "by power of attorney" could not be recorded in Bonner County, Idaho.

Since RE Loan No. P0099, the 2007 Mortgage was already
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"fully-overpaid", RE held no "right of redemption" for the Tax Deed to Bonner County. Also Valiant was "no" party in interest because the Spector assignment was not entitled to be recorded. Further, to be entitled to redeem from a Tax Deed, the redemption must meet Idaho Code § 63-1007 as being a "party in interest". A party in interest as to real estate, must necessarily hold a recorded interest, i.e. RE held a recorded, but already fully paid-off 2007 Mortgage. RE was not a redemptioner, but Valiant somehow obtained a Redemption Deed (Plaintiff's Exhibit 74) from Bonner County Tax Collector. Having no valid by recorded power of attorney for Spector, the Assignment (Plaintiff's Exhibit 72) of Mortgage could not be recorded. Therefore, Valiant never held a recordable Assignment of Mortgage and could not be a statutory Redemptioner and was not entitled to its Redemption Deed (Plaintiff's Exhibit 74) being of no legal force or effect. A document that is not entitled to be recorded is no notice at all, neither constructive or actual notice.

JV's positions that the 2007 RE Mortgage was fully paid and that the Assignment of it to Valiant could not be recorded, means Valiant as assignee of RE could not have redeemed from Bonner County's Tax Deed.

If the Court disagrees with JV, and permits Valiant to redeem and to receive the Redemption Deed, Plaintiff's Exhibit 74, then the further applicable facts and results are:

a. Valiant's redemption was a few days after JV had already redeemed a portion of the Tax Deed real estate. JV gave the Bonner County Tax Collector, a written Notice of Redemption and paid the amount of money necessary to redeem. JV's Notice of Redemption is JV Defendant Exhibit K and the Redemption Deed to JV, recorded July 7, 2014, Instrument No. 861430, subsequently rerecorded by the Tax Collector, is JV Defendant Exhibit L reciting that JV paid \$140,999.86 on July 2, 2014 in order to redeem.

JV OWNS THE REAL ESTATE DESCRIBED IN ITS REDEMPTION DEED - FREE AND CLEAR.

The facts are undisputable that Bonner County took title to all of the Idaho Club real estate by Tax Deed for non-payment of taxes. JV made the first redemption by written Notice of Redemption, JV Defendant Exhibit K, and payment thereon of \$140,999.86 paid July 2, 2014. The Tax Collector gave JV a Redemption Deed recorded 7/7/2014, Instrument No. 861430 and rerecorded 8/22/2014 as Instrument No. 863295 (JV Defendant Exhibit L). Valiant later redeemed the remaining Tax Deed real estate, i.e. the real estate remaining after JV first redeemed. The legal description conveyed to JV is described in its Redemption Deed, as Parcels 1, 2, 3 & 4. Valiant's Redemption Deed describes the real estate it redeemed, withholding the real estate redeemed by JV. The withheld real estate being "And Less the following parcels redeemed by Instrument No. 861430" (JV's

Redemption Deed). The rerecorded Redemption Deed to Valiant also again withheld the JV's redemption real estate by the words "And Less all of the following parcels described below:

Which described the Parcels 1, 2, 3, and 4 previously redeemed by JV."

The legal effect of which is governed by Idaho Statutory law, as follows:

a. Idaho Code § 45-113 gives every person having an interest in property, a right to redeem before his right of redemption expires.

b. Idaho Code § 45-114 provides that one who has a lien inferior to another upon the same property, has a right:

1. To redeem the property the same manner as its owner might, from the superior lien, and

2. To be subrogated to all the benefits of the superior lien, for the protection of his interests upon satisfying the claim secured thereby.

Apply these statutes to the facts as stated that JV having a mortgage interest in the POBD Idaho Club real estate, JV, has a right to redeem before its right of redemption expires. JV's mortgage lien being inferior, the Bonner County's real estate tax lien upon the same property, gives JV a right to redeem in the same manner as its owner might (POBD was the owner) from the superior tax lien; and JV is subrogated to all the benefits of the superior lien for the protection of JV's interests, upon

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satisfying the tax lien. JV paid Bonner County, hence redeeming the real estate described in its Redemption Deed and thereby JV became subrogated to all the benefits of Bonner County's tax lien, Tax Deed. By Case law:

a. A deed from the County for the property acquired by it for non-payment of taxes to the County's purchase, conveys the property free and clear. (Smith v. City of Nampa 57 Idaho 736, 68 P.2d 344 (1937))

b. Where realty is subject to redemption from tax deed made to the County, the time of redemption from the deed is governed by the law in effect at the time the County obtained title. Winans v. Swisher 68 Idaho 364, 195 P.2d 357(1948)

c. The Redemption - Expiration right is as stated in Idaho Code § 63-1007 broken down into 2 sections being:

(1) After the issuance of a tax deed, real property may be redeemed only (emphasis added) by the record owner or owners (POBD), or party in interest (JV as Mortgage holder), up to the time the county commissioners have entered into a contract of sale or the property has been transferred by county deed (neither of which had occurred in this matter). In order to redeem real property, the record owner or owners (POBD), or party in interest (JV), shall pay any delinquency including the late charges, accrued interest, and costs, including the current calendar year. JV made a valid redemption of the real estate in its Notice of Redemption and paid the dollar amount.

(2) Should such payments be made, a redemption deed shall be issued by the county tax collector into the name of the redemptioner (JV) and the rights, title and interest acquired by the county shall cease and terminate; provided however, that such right of redemption shall expire fourteen (14) months from the date of issuance of a tax deed to the county, in the event the county commissioners have not extinguished the right of redemption by contract of sale or transfer by county deed during said redemption period. In the event a tax deed is issued and payment is not received within fourteen (14) months of the issuance of such tax deed, then said tax deed to the county is presumptive evidence of the regularity of all proceedings prior thereto and the fee simple title, after the issuance of said tax deed, rests in the county.

In the instant action, JV validly "redeemed" in July 2014. No one redeemed from JV, and 14 months after the county tax deed (which was in May of 2014) the fee simple title rests in JV, who is statutorily subrogated to all the rights of Bonner County. In the instant action, no further redemption is permitted by the statute, and fee simple title rests in JV, as no party can get ahead of the tax lien tax deed and all rights of redemption have long since expired.

THE EFFECT OF A TAX REDEMPTION

After a statutory period of non-payment of real estate taxes, the real estate described in the tax assessments and the
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amount thereof, plus interest/costs/fees, is conveyed to Bonner County by the Tax Collector. In the case of the POBD real estate, "Idaho Club" the real estate was conveyed to Bonner County by Tax Deed. The sequence was;

a. JV redeemed a portion of the real estate on July 2, 2014 and received Redemption Deed, recorded July 7, 2014 then Valiant, as the purported Assignee of the already paid-off Mortgage, purported to redeem the remaining real estate not already redeemed by JV, and Valiant paid on 7 July 2014 and received a Redemption Deed recorded July 8, 2014. The real estate previously redeemed by JV is described in its Redemption Deed, and it is further described in the Valiant Redemption Deed as being with-held by the words:

And Less all of the following parcels below redeemed in Instrument # 861130 (i.e. JV's redeemed parcels) and Less all of the parcels described below: - The LESS parcels are described as the same exact legal descriptions as conveyed to JV in its previous Redemption Deed.

Keep in mind that William Haberman, testifying at trial for Valiant, stated that Valiant redeemed after JV and Valiant only partially redeemed, only as to the real estate remaining after JV's redemption. Valiant never offered anything at trial contesting JV's Redemption Deed.

Issue: What is the result of a tax redemption under Idaho Code § 63-1007?

First, the delinquent real estate taxes are the priority tax lien on the real estate. The real estate tax lien against the POBD real estate, Idaho Code" is the first priority and Bonner County took a Tax Deed to the real estate.

Alternatively, JV as first lien on its Redemption Real Estate, being subrogated (substituted) in place of the first lien delinquent taxes and the Tax Deed.

REEVES TESTIMONY FAVORING VALIANT IS CONTRADICTED BY HIM AND IS
IMPEACHED

The testimony of Charles Reeves, POBD, totally supports JV's claim. His trial testimony in favor of Valiant is totally impeached by his contract, with Valiant to "pay" him and his partners, with 3 buildings lots only if Valiant prevails. The compensation document is dated 20 June, 2014 and is Plaintiff's Exhibit 75.

The testimony of Charles Reeves, manager of POBD, must be broken down into 2 segments. First is his deposition testimony given prior to his compensation agreement with Valiant; and then his testimony subsequently given after the compensation agreement for Valiant to give he and his 2 partners - (3) three free and clear residential lots - only if Valiant successfully prevails!

The testimony/deposition of Charles Reeves:

POBD closed the purchase in June of 2006 by paying the cash of about \$5.0 million, plus assuming some debt NIR had on the

property with the Barney Ng entities - possibly called Bar-K. (This is the 2004 Mortgage VP et al to RE in the sum of \$8.0 million in 2004 Loan No. V0140) and POBD assumed a loan NIR (VP) had with JV. (This is the 1995 Mortgage to JV from VP on all of the Moose Mountain real estate - i.e. 650 + acres lying south of highway 200).

The debt assumed to the Barney Ng entity was probably in the \$9.0 million dollar range. Sometime later the Ng entity (RE) could not fund a POBD monthly draw request. The Ng entity development loan had money left to be drawn, but basically they (Ng - RE) stopped funding. Later, Ng said he would be able to start funding again and POBD ask to borrow additional funding. From Reeves' standpoint, POBD was still dealing with one person Barney Ng. The entities are Re, MF08, and Pensco. The Ng entities August 6, 2008 closing was probably in the \$14-15 million dollar range.

Concerning the original assumption of VP et al Mortgage to Re, all Reeves knows is that whatever \$7, \$8 million due on that was then upped to \$20, \$21 million. Whether RE intentionally paid that off (\$8.0 mortgage of 2004) and advanced funds and whether that loan actually stayed in place, Reeves didn't know. However, when the 2006 refinance loan closed with RE, Reeves viewed it as have a "21 million dollar credit facility of which, whatever the number was, 8 or 9 million wasn't available because those funds were already outstanding...So whatever the math is, JV L.L.C.'S POST TRIAL MEMORANDUM AND ARGUMENT - 30

12, 13, or 14 million of development funds remained of which POBD could have drawn on.

Concerning the June 2006 closing, Reeves couldn't remember how much money was obtained, but POBD redid the transaction a year or two later. Reeves recognized Exhibit B to his deposition (which is also JV Defendant Exhibit I and J) as being the third transaction (refinancing) with RE. On the closing settlement statement the "New Loans, Mortgage Fund 08 in care of Bar K, Inc. under New Loan to file - MF08 is with Borrowers credit \$22,270,000.00 Reeves said his entity (POBD) did not receive that loan in money funds. The first note-loan No. P0099 to RE of \$6,473,545 is correct, but two entities were paid off of about 8/9 million, and the new loan (MF08) of \$22,270,000, part of those proceeds were used to pay off those two (2) loans. The next entry was the P0106 (PENSCO) entry paid off of \$2,700,000.00). The closing statement was acceptable to Reeves at that time. The entry words "Retained Loan Funds, Mortgage Fund 08 in care of Bar-K of \$12,480,000. was retained as money available to later draw. POBD received some money, plus or minus \$2.0 million at closing, and that is all we received with this loan. We didn't receive any more subsequent to closing. The additional money to draw of \$12,480,000 was to begin in the next month's draw requests (about September 2008), but there was no money subsequent at closing.

The club house burned in December of 2008.

Barney Ng is the person who speaks for the financing, with the three (3) entities RE, MF08, and Pensco Trust. POBD always looked to them as the NG Umbrella. One loan to POBD, but three (3) different entities. Barney Ng was the only one POBD had dealings with, he being the only one Reeves ever spoke with to those entities.

When first purchased, NIR (VP) had a loan with Ng entities, so Barney Ng was approached about POBD assuming that loan, and then advancing additional funds as development and acquisition. The loan was essentially rolled into one by the August, 2008 closing with RE. The "pay off" first Loan No. P0099 is the same loan number, so potentially or logically that was paid off. The other loan No. P0106 indicates a payoff of \$2.7 million but Reeves did not know what loan related to, just part of the Ng umbrella of money POBD owed at the time they were paid off with the "new facility or covered by the new facility". There are no negotiations for preparation of documents, Ng entities prepare the documents and that's what are used. Reeves knows there are 3 entities involved, but from a business standpoint he is dealing with 1 entity.

After the August 2008 MF08 loan, POBD made no payments to anybody, as it became moot because MF08 didn't fund POBD's first draw request, so POBD didn't make any payment from then on- from Reeves perspective MF08 failed to fund. Reeves said they (MF08) didn't fund any further draws, so POBD did not make any further

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payments once MF08 failed to fund. POBD's position was that it wasn't going to pay until they (MF08) funded future draws.

Reeves admitted that on the June 19, 2006 RE Note and Mortgage Loan No. P0094 in the face amount of \$20,500,000. - that subsequently RE only loaned and disbursed \$88,411.47 and \$488,176.97, a total of \$576,588.44; however, POBD actually paid \$3,709,889.50 on that 2006 Loan No. P0094 and on the "old loan(s)".

POBD STILL OWES VP FOR THE UNPAID 1995 JV MORTGAGE POBD ASSUMED
BUT DID NOT PAY

Judge Griffins finding and conclusions, entitled FINDINGS, in CV-2011-135 were that,

a. "POBD" did pay the debt they assumed to RE". This is the VP et. all 2004 Mortgage, Loan No. V0140, which was not discharged and satisfied of record by Re until August 6, 2008, recorded Satisfaction of Mortgage, Instrument No. 756408 (JV Defendant Exhibit 0).

b. "POBD has not paid the debt they assumed to JV, LLC". This was also the trial testimony by James Berry. JV Defendant Exhibit H is the unpaid Secured Promissory Note, 10/20/1995, JV Defendant Exhibit B is JV's Mortgage recorded October 24, 1995, Instrument No. 474716, and JV Defendant Exhibit C is the entire payment record from Panhandle Escrow, No. 2067429, from payor PO Bonner to JV seller, showing the last unpaid principal balance of \$1,476,450.35 as of 9/18/08 plus interest at \$485.408 per day

until paid.

JV is entitled to a mortgage foreclosure in said amount. VP is likewise entitled to a mortgage foreclosure thereon in the same amount based on it being a part of the purchase price assumed in the contract from NIR to POBD which POBD assumed but did not pay secured by Idaho Code § 45-801 which provides that, "One who sells real property has a vendor's lien thereon, independent of possession, for so much of the price as remains unpaid and unsecured otherwise than by the personal obligation of the buyer."

By Idaho Statute, VP has a Vendor's Lien for so much of the purchase price remaining as unsecured otherwise than by the personal obligation of POBD by its contractual assumption of the JV Mortgage. RE, Barney Ng, Pensco and MF08 all had constructive notice from title reports and recording and had actual knowledge, at all time of POBDs Assumption of the JV Mortgage. They had actual knowledge, at all time of POBD's Assumption of the JV Mortgage and VP Vendor's lien is valid and superior to everyone claiming under the debtor, POBD. Valiant is only an "assignee" from RE, Pensco and MF08, so Valiant takes subject to VP's Vendor's Lien (Idaho Code § 45-803).

THE 2007 RE MORTGAGE/LOAN NO 0099 AND THE 2008 PENSICO MORTGAGE, LOAN P016 ARE FULLY PAID AND DISCHARGED.

JV was given a Borrower's Settlement Statement at Reeve's request and was ask to sign it immediately. JV's principals,

James W. Berry and William A. Berry, went carefully over the document with JV's Counsel, Gary Finney. This document is JV Defendant Exhibit I, which clearly, without any ambiguity whatsoever, states:

"New Loan(s)"

"Lender: Mortgage Fund '08 LLC c/o Bar K, Inc."

"New Loan to File - Mortgage Fund '08 LLC c/o Bar K, Inc. .
. . \$22,270,000.00"

Then 5/6 lines down JV Defendant Exhibit I states:

"Payoff First Note - Loan No. P009 - Mortgage Fund '08 LLC
c/o Bar K, Inc. \$6,473,545.18"

This entry clearly states that the "First" Loan No. P0099, which is the 2007 Mortgage Loan from RE to POBD has been paid off by MFO8 in the sum of \$6,473,545.18.

Then are the words,

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

This entry clearly states that the "Second" Loan No. P0106, which is the 2008 Loan/Mortgage to Pensco Inc.

After reviewing and understanding the clear language of JV Defendant Exhibit I, JV (James and William Berry) took the document to First American Title. Theron, they signed the Subordination Agreement recorded 8/6/2008, Instrument No. 756402, which is Valiant Plaintiff Exhibit 25. The body of the document refers to the Pensco Mortgage (\$2,700,000) and the JV L.L.C.'S POST TRIAL MEMORANDUM AND ARGUMENT - 35

Mortgage Fund 08 Mortgage (\$21,908,000) which are the Loan No. P0106 and Loan No. P0107.

Briefly, at that point in time, RE Loan No. P0099 and Pensco Loan No. P0106 were "paid off" which resulted in JV's 1995 Mortgage being the first priority mortgage of record. Backing up to Plaintiff's Exhibit 25, the Subordination Agreement recorded later on the same day, August 6, 2008, Instrument No. 756402 has a specific provision on page 2 of 15, Val 001388, that provides that Subordination Agreement of 2006 by JV and the Second Subordination Agreement of 2007 by JV are no longer of any force or effect. However, recorded on August 6, 2008 as Instrument No. 756394, 756395, 756396 the Mortgage from POBD to RENSCO was recorded (Plaintiff's Exhibit 16) and following on August 6, 2008, Instrument No. 756397, 756398, 756399, All-Inclusive Mortgage for \$21,980,000.00 was recorded from POBD to Mortgage Fund 08. Of course, that is true because the 2007 Mortgage to RE, Loan No. P0099 was then "paid-off" in full. In fact, the Subordination Agreement, Plaintiff's Exhibit 25, supports JV's position that P0099 to RE was paid in full because Plaintiff's Exhibit 25, page 2 of 15, signed by JV, states,

"Para. 4. This subordination agreement, when executed, shall constitute the one and only (emphasis added) agreement or set of rights and obligations as between Lenders and the
Undersigned***"

Since the Subordination Agreement, Plaintiff's Exhibit 25 is a document from and prepared by Bar k, and JV is called the Undersigned, it is clear that this Subordination Agreement is the "one and only agreement of set of rights and obligations as between Lenders (Pensco & MF08) and the undersigned (JV)".

As to the pay-offs an RE Loan P0099 and Pensco P0106, Valiant itself admitted proof of those pay-offs by Valiant's Exhibit 11. On page 1, FATCO 000387, line 6 & 7 down are the exact words.

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

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

These words are repeated on Page 2 (FATCO 000388) and again on Page 3 (FATCO 000389).

Further, Valiant's Plaintiff Exhibit 34 (second page, Reeves 000711) and 35 (second page Val 001382, line 810 and 811) both show P0099 and P0106 as "Pay-off". These pay-off entries are again on the page Val 001385, lines 810 and 811. These Exhibits are signed by Charles Reeves for POBD. Casey Linscott at First American testified that she furnished copies to Bar K both before and after closing to Bar K and no one made any objection to the pay-off entries at all.

Further proof that Mortgage Fund 08 paid-off RE Loan No. P099 and Pensco Loan No. P0106, was also furnished by Valiant, JV L.L.C.'S POST TRIAL MEMORANDUM AND ARGUMENT - 37

as Plaintiff's Exhibit 19, page 1 of 3, Val001311 with entries that the Gross Loan Amount by MF08 is \$21,980,000.00. The "Note" states that the Gross Loan by MF08 includes the First Included and the Second Included Notes. From the MF08 Gross Loan is a deduction of " - \$6,172,325.18" which is the payoff amount to RE Loan No. P0099. The Second Included Note is also "-\$2,700,000.00" which is a deduction from the Pensco Loan No. P0106 payoff. In other words the MF08 Gross Loan amount available to POBD was decreased by deduction of the exact payoff amounts of P0099 (RE) and P0106 (PENSCO). After payoffs of P0099, P0106, and the points, interests, loan fees and document preparation, amount remaining to be funded by Mortgage Fund 08 on page 2 of 3, Val 001312 is shown as \$12,257,174.82. It is undisputed fact that MF08 never funded any of the retained \$12,257,174.82 from the MF08 loan.

THE MF08 "ALL INCLUSIVE NOTE AND ALL INCLUSIVE MORTGAGE HAVE MANY PROVISIONS VERIFYING THAT P0099 AND P0106 ARE PAID BY MF08

The all-inclusive Note, Loan NO. P0107 (\$21,980,000) is Valiant's Plaintiff Exhibit 17, and the recorded All - Inclusive Mortgage, receiving \$21,980,000. is Valiant's Plaintiff Exhibit 18. Both prove the position of JV, as follows:

All - Inclusive Note provisions: (Plaintiff's Exhibit 17)

a. The principal amount of this Note includes the current unpaid balances of the following described promissory notes ("INCLUDED NOTES") which are secured by

the following mortgages: (VAL061072)

b. The footnote 1. recites the same language.

c. The "First Include Note" is the March 2007 RE Loan (No. P0099),

d. The "Second Include Note" is the August 2008 Pensco Loan (No. 0106)

e. "Lender, by accepting this Note, agrees that so long as there is no unsecured default under this Note or any mortgage securing this Note: Provisions of

i. Lender shall pay the installments of principal and interest as they become due on the INCLUDED Notes, and "Plaintiff's Exhibit 17 (Page 2 of 7, Val 001073)

Keep in mind that all testimony was that no notice of default was ever give to POBD by RE, Pensco or MF08.

Plaintiff's Exhibit 17, page 3 of 2, Val001074 continues at the top with,

"2. Lender shall secure and cause to be recorded a release of the mortgage securing the INCLUDED NOTE upon the undersigned's payment in full of the principal and interest due under this Note "o".

In other words, MF08 agreed to pay and release the RE (P0099) Mortgage and the Pensco (P0106) Mortgage, for POBD's payment only of the amount due under the MF08 Note (testified to be \$2,000,500.).

Then Page 3 of 7 (Plaintiff's Exhibit 17) states "Should Lender fail to pay any installment when due under the INCLUDED NOTES...". In other words, Lender (MF08) is to pay the indebtedness due RE and Pensco.

Then, on Page 3 of 7, net to last paragraph, is proof that MF08 is to be the first priority mortgage, leaving JV as second priority, with the language, "The Undersigned acknowledges that Lender prefers it be secured by a first priority mortgage. * * *"

The Idaho law of All-Inclusive Mortgages has been cited by case law to the Court by NIR/VP's prior briefing, and Idaho law substantiates JV and NIR/VP positions that RE and Pensco are to be paid by MF08, not by POBD.

The All-Inclusive Mortgage recorded August 6, 2008 is Plaintiff's Exhibit 18, and its all-inclusive provisions are beginning on Page 4 of 31, the First Included Note is RE 2007 (Loan NO. P0099) and the Second Included Note is Pensco 2008 (Loan No. P0106). On Page 5 of 31, mid-page, is the provision that in the event of the foreclosure the lien of the Mortgage (i.e. MF08, P0107) the indebtedness due Mortgagee (MF08) may not exceed the sum of the following amounts:

"a) The difference between the unpaid principal and interest on the Note secured hereby and the then unpaid balance of principal on the INLCUED NOTES; and ***". In other words, any balance on RE 2007 and Pensco 2008 that remain unpaid by
JV L.L.C.'S POST TRIAL MEMORANDUM AND ARGUMENT - 40

MF08, reduce the amount due MF08. This supports the all-inclusive provisions that MF08 pays the included notes.

There is unrefuted proof that MF08 was to pay off the RE and Pensco loans, not just because the All-Inclusive Note and All-Inclusive Mortgage said so, but because MF08 actually did pay a loan sum of \$1,150,000.00 to RE. That was paid by MF08 Check 1168 on 8/5/2008, which is Plaintiff's Exhibit 100. That payment is posted on Plaintiff's Exhibit 65 A as a paydown on 8/6/06 of \$1,150,000. - with the notation of "AITD P0107" (Plaintiff's Exhibit 100, Reeves001134). The AITD P0107 is the 2008 MF08 Loan/Mortgage. This is proof positive that MF08 was to pay and did pay RE!

VALIANT'S CLAIMS OF 3 MORTGAGES AHEAD OF JV IS REBUTTED.

Valiant claims the priority of mortgages as:

1. 2007 RE Loan No. P0099 - as first priority
2. Pensco 2008 Loan No. P0106 - as second priority
3. MF08 2008 Loan No. P0107 - as third priority
4. And then JV's 1995 Mortgage

JV has shown:

1. 2007 RE Loan No. P0099 is paid-off, no mortgage lien.
2. 2008 Pensco Loan No. P0106 is paid by MF08 - no mortgage lien.
3. 2008 MF08 Loan No. P0107 is in existence as an All-Inclusive Mortgage, but the amount of debt it secures was unproved by Valiant.

4. This leaves JV's 1995 as a second priority mortgage subject to only, any actual dollar amount loaned to POBD by MF08.

Charles Reeves substantiated that JV is a second position lien. He gave a letter, dated September 29, 2009, to Jim Berry of JV. As of that date, which first page is after the 2008 Pensco and MF08 transactions occurred, Reeves confirmed that JV "**** would retain you same priority position (i.e. 2nd on all our property). (See last paragraph, first page of JV Defendant Exhibit CC)

This statement by Reeve's supports JV's positions that JV has a second priority mortgage only behind MF08 (August 2008) loan NO. P0107, with Valiant's only testimony/evidence was that the unpaid balance was \$2,000,500.00 (Plaintiff's Exhibit 64).

BARNEY NG'S TESTIMONY AS TO RE P0099 AND PENSICO 0106 LOAN BALANCES ARE IMPEACHED

Barney Ng tried to support Valiant's claim that RE P0099 and Pensco 0106 were still "owed" at the time of trail. He impeached his own claims to that effect by admitting the genuineness of the written loan settlement states clearly stating to the contrary. Ng further admitted the MF08 Loan No. 0107 was intended and agreed to fund and pay off both RE and Pensco. MF08 had assured Barney Ng that MF08 would have the funds available to do.

Barney Ng admitted that his sale of the 2008 Pensco loan

No. 0106 was pursuant to Plaintiff's Exhibit 75. The Agreement for Sale of Promissory Note and Assignment of Security Interest, which is dated 20 June 2014. Barney Ng testified and admitted that the "REDACTED" portions of Exhibit 75, provided that the purchase price payment would be increased (\$120,000/\$150,000) only if Valiant was successful on foreclosing on the 2008 Pensco Mortgage and being the successful bidder at a Sheriff's foreclosure sale. In addition, William Haberman, for Valiant, gave the same testimony as Barney Ng.

In other words, Pensco through Mr. Ng and Valiant through Mr. Haberman both testified that the additional payment on the assign purchase price "increased" contingent upon Valiant's success at foreclosure and sheriff's sale. This contingent payment, only if Valiant was successful, impeaches Ng's contradicting testimony that Pensco was paid-off by MF08's All-Inclusive Note/Mortgage or that Pensco was not paid off. Ng's testimony as to Pensco 0106 "not paid off" lacks total credibility. Pensco (Ng) is being paid only if Valiant "wins".

SUMMARY AND CONCLUSION

The only recovery for Valiant is its position that MF08 has a first priority mortgage for \$2,000,500. But only secured by the real estate described in its All-Inclusive Mortgage Plaintiff's Exhibit 17, on the Exhibit A.

JV has the title/ownership for the real estate in its Redemption Deed, having been subrogated to Bonner County's first JV L.L.C.'S POST TRIAL MEMORANDUM AND ARGUMENT - 43

lien Tax Deed position since 14 months have expired, no one can further "redeem".

JV has a second priority mortgage on the real estate described in MF08's All-Inclusive Mortgage, Plaintiff's Exhibit 17. JV has first lien priority on the remaining real estate in JV's 1995 Mortgage, which covers real estate not included in the MF08 Mortgage. JV has a 1995 Mortgage on all of Moose Mountain, the entire original 650 acres Less only Platted Lots partially released by JV which are legally described in VP's Answer, Counterclaim, Cross-Claim Third Party Complaint, filed September 15, 2014.

JV's lien amount is \$1,476,450.35 principal from 9/18/08 plus 12% interest at \$485.408 per day, plus attorney fees and costs.

VP has a Vender's Lien on all of the POBD real estate, ahead of any entity, including POBD, RE, PENSCO and MF08, for \$1,476,450.35 interest at 12% from 9/18/2008 at \$485.408 per day; subject to the alternative relief of Valiant's tax redemption if any.

JV is entitled to such other and further relief as available on the facts, at law and equity.

ADDITIONAL CLOSING

Valiant has the burden of proof on how much money, if any, is owed to RE, Pensco and MF08. Valiant introduced Plaintiff's Exhibit 24, which is 2 pages, Page 1 of 2 and Page 2 of 7, JV L.L.C.'S POST TRIAL MEMORANDUM AND ARGUMENT - 44

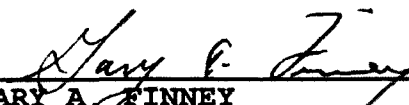
Val001079 and Val001080. This Plaintiff's Exhibit 24, entitled "DEPOSIT ACCOUNT AGREEMENT, AUGUST 1, 2008, WHICH IS AFTER RE WAS PAID OFF. Plaintiff's Exhibit 24 is captioned for "Loan No. P0106 & P0107". Reading Plaintiff's Exhibit 24 shows that POBD (Customer) had a Bank account No. 1605110949 at Wells Fargo Bank. At the request of "Lenders" all of the money in such account has been pledged by Customer (POBD) to Lenders. All of the net money from POBD sales of real estate had to be deposited in that account as a "lock-box" account, i.e. it could only be withdrawn

"1. By a check or checks requiring
X one signature from Bar-K Inc., as the agent for either Lender, only"

In other words, only Bar-K (Barney Ng) could withdraw POBD's money! Valiant gave no evidence, nor did Barney Ng of where did the Deposit Account money go. POBD's bank account money would have paid off RE, PENSCO, MF08. At any rate, Valiant had the burden of proof and gave none.

DATED this 12TH day of May, 2016.

Respectfully Submitted,


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

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served as indicated, by facsimile, or by hand delivery, this 12 day of May, 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 RE LOANS, LLC & VALIANT IDAHO LLC]

Susan Weeks
Steven C. Wetzel
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1626 Lincoln Way
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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: 

Susan P. Weeks, ISB No. 4255
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STATE OF IDAHO
County of Bonner } ss
FILED 5-12-16
AT 4:37 O'CLOCK P M
CLERK, DISTRICT COURT
Deputy [Signature]

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

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

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

Plaintiff,

vs.

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

Defendants.

Case No. CV-2009-01810

VP INC'S CLOSING ARGUMENT

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

COMES NOW VP, Inc. ("VP"), by and through its attorneys of record, James, Vernon &
Weeks, P.A., and submits its post-trial closing argument.

I. INTRODUCTION

This matter involved foreclosure of three loans. Evidence at trial demonstrated the
principals of the lenders were interrelated to each other in varying degrees. Based upon previous

partial summary judgments entered by this Court, the only loan which affects VP's interest is Loan No. P0099.

On March 6, 2007, Pend Oreille Bonner Development, LLC (POBD) executed a non-recourse promissory note for \$21,200,000.00 (Exhibit 2). The promissory note matured April 30, 2009. On July 17, 2007, R.E. Loans made a collateral assignment of all its right, title and interest in the mortgage, together with the note and all other loan documents, to Wells Fargo Foothill, LLC (Wells Fargo). Exhibit 7. An allonge of the note was executed to Wells Fargo (Exhibit 69) at the same time. Wells Fargo executed an allonge to R.E. Loans on July 2, 2014 (Exhibit 69).¹ No allonge from R.E. Loans to Valiant is admitted into evidence.

A Loan Agreement was also executed on March 6, 2007 (Exhibit 3). The Loan Agreement was amended on August 1, 2008 (Exhibits 22 and 22A). The agreement deleted original Paragraph 10.h which required payment of the greater of \$115,000.00 per cabin lot or \$290,000 per single family lot, or 85% of the gross sales price for each lot sold in return for a partial release by the lender. The amended loan agreement provided for a new paragraph 10.h, 10.i and 10.j which allowed for the same amounts of money to be paid as consideration for a partial release. The new paragraph 10.i provided if there was no default in the loan documents, any amounts collected that were greater than the \$115,000 or \$290,000 release price respectively would be deposited to a development account under the control of the lender and not credited to the loan. The funds were to pay any interest due on the notes due Pensco and MF '08, and to give the lender discretion to make the funds available to POBD for construction as long as it was not in default. R.E. Loans had the discretion to cure a loan default from the account. If the

¹ Title 28, Chapter 3 of the Idaho Uniform Commercial Code employs the concept of a "person entitled to enforce" a note to determine the person entitled to enforce a note. I.C. § 28-3-301. That person might or might not be the owner of the note (I.C. § 28-3-203), but payment to that person discharges the maker's obligation under the note. I.C. §§ 28-3-412 and 28-3-602(1)

development account funds exceeded the amount owed on the R.E. Loans note, POBD had the right to require that the note be paid in full.

The promissory note was secured by a mortgage (Exhibit 1). Section 3.1 of the mortgage allowed R.E. Loans to declare the entire principal of the note to be due and payable immediately upon default. No evidence was presented at trial that R.E. Loans had ever declared the principal of the note due and payable pursuant to Section 3.1 of the mortgage. Section 3.4 of the mortgage allowed R.E. Loans to foreclose the mortgage if the options in Section 3.1 were exercised. No evidence was presented at trial that Wells Fargo had declared the principal of the note due and payable pursuant to Section 3.1.

R.E. Loans was formed in 2002. At the times relevant to the loans in this matter, B-4 Partners was the sole manager of R.E. Loans. Walter Ng, Kelly Ng, Barney Ng and Bruce Horowitz were the managers of B-4 Partners. Barney Ng testified his father, Water Ng, was the manager of B-4 Partners.

Bar-K was the loan originator and the loan servicer for R.E. Loans. At the time of the loan, Barney Ng and his brother, Kelly Ng were the sole members of Bar-K. Barney Ng testified he originated the loans and spent most of his time traveling in that capacity. Barney Ng testified Kelly Ng was responsible for daily operation of the loan servicing aspect of the business. Barney Ng testified he was the president of Bar-K until September 2009. Barney Ng testified he discontinued his participation in the operation of Bar-K because his brother was lying and hiding money. Barney Ng testified he was the inside informant against his brother and father in an SEC action and an FBI investigation.

Bar-K was terminated as the R.E. Loans servicer on October 1, 2010. At that time, LEND, Inc, whose stock holders were Walter Ng and Kelly Ng, took over servicing for R.E. Loans.

On August 1, 2008, POBD executed a non-recourse promissory note in favor of Pensco Trust Co., custodian for the benefit of Barney Ng in the amount of \$2,700,000.00 (Exhibit 15). The Loan Number assigned to this loan was P0106. At the same time, a mortgage was executed (Exhibit 16).

On August 1, 2008, POBD also executed an All-Inclusive Note Secured by Mortgage in favor of Mortgage Fund '08 (MF '08) in the amount of \$21,980,000.00 (Exhibit 17). The loan was assigned Loan No. P0107. An All-Inclusive Mortgage was also executed by POBD (Exhibit 18). According to Barney Ng's testimony, The Mortgage Fund, LLC was the sole member and manager of MF '08. Barney Ng's trial testimony also established that Kelly Ng was the only manager of The Mortgage Fund, LLC.

On June 13, 2014, R.E. Loans sold its promissory note and assigned its security interest to Valiant Idaho, LLC (Valiant) (Exhibit 68). R.E. Loans did not have the promissory note to deliver at that time because of the allonge it executed to Wells Fargo (Exhibit 69). On June 30, 2014, Wells Fargo executed a reassignment of collateral assignment of mortgage and loan documents to R.E. Loans (Exhibit 70). Apparently, the note itself was delivered later. On July 2, 2014, Wells Fargo executed an allonge of the note to R.E. Loans (Exhibit 69).

II. ARGUMENT

1. Burden of Proof at Trial

As the foreclosing party, Valiant Idaho, LLC ("Valiant") had the burden of proof at trial. The "party seeking foreclosure has the burden of establishing the existence of the debt and

default on that debt.” *U.S. Bank Nat. Ass’n N.D. v. CitiMortgage, Inc.*, 157 Idaho 446, 451-52, 337 P.3d 605, 610-11 (2014). The standard of proof required is the preponderance of the evidence standard. *Nield v. Pocatello Health Servs., Inc.*, 156 Idaho 802, 848, 332 P.3d 714, 760 (2014). The only burden the Defendants carried at trial was to prove any affirmative defenses asserted. *Id.* An affirmative defense is an “assertion raising new facts and arguments that, if true, will defeat the plaintiff’s...claim...even if all allegations in the complaint are true.” *Fuhriman v. State, Dep’t of Transp.*, 143 Idaho 800, 803, 153 P.3d 480, 483 (2007).

As the party seeking foreclosure, Valiant has the burden to prove that 1) a debt exists that is owed to Valiant, and 2) there was a default on that debt. Contained within the burden to prove the debt and its default is the burden to prove the *amount* of that debt. To be clear, Valiant has the burden of proof to establish by a preponderance of the evidence at trial to prove what amount was owed under each of the three notes secured by the mortgages it is foreclosing in this case: the RE Loans note (P0099), the Pensco note (P0106), and the MF08 note (P0107). Despite the clear burden of proof on the foreclosing party, Valiant attempted to shift that burden of proof to VP and JV, LLC (“LV”) by asserting that VP and JV have the burden to prove the notes were paid. This is absolutely wrong. Put simply, Valiant had the burden to prove amounts owed on the notes, in doing so it necessarily has to prove that the notes have not been satisfied. Valiant is the foreclosing party with the burden of proof at trial and it failed to meet that burden.

2. Valiant did not prove the amount owed on the R.E. Note (P0099)

a. Failure to Produce POBD Accounting Records

At trial Valiant did not offer any independent accounting records of the P0099, P0106, or P0107 loans from POBD. Charles Reeves, the managing member of POBD, testified he was unable to locate any of POBD’s accounting records.

However, Charles Reeves produced faxes from Bar-K. Chuck Reeves testified that Bar-K sent them regular statements of amounts owed and testified that Exhibits 63, 64, 65, 65A, and 66 were copies of the records and that much of the handwriting was their former bookkeeper, Kathy Groenhout.² Ms. Groenhout's hand notes on Exhibit 65 (pages Reeves13780-1380) indicated that upon application of the last payments to R.E. Loans that the payments exceeded the amount due by \$313.57.

Charles Reeves testified that Kathy Groenhout would receive those account statements from Bar-K, review them, and if necessary raise any discrepancies with her contact, Vincent Hua at Bar-K. Valiant interprets these efforts as something approaching heroic when they argue to the Court that "Charles Reeves testified that POBD spent untold hours reviewing RE Invoices to verify the accuracy of said invoices and to calculate upcoming interest payments as they became due." Valiant's Closing Argument, p. 20. However, Charles Reeves agreed that POBD kept its own set of books where it kept track of payments (although he testified they were not produced in this litigation because he could not locate them). They were obviously available to him in 2011 when he prepared the pro forma in Exhibit 107. It seems incredible to believe a business would keep copies of faxed loan statements from a lender with its hand notes on them, but not its own set of books.

As noted above, Barney Ng testified he handled the loan brokering side of Bar-K and his brother handled the loan servicing operation. However, Barney Ng testified he was familiar with reports that the software Bar-K used and knew the reports it could generate. Barney Ng testified Exhibits 63, 64, 65, 65A and 66 were reports that the software could generate upon request.

² Mr. Reeves testified Ms. Groenhout had brain cancer and it impaired her ability to recall facts by the time of trial. Neither party called her as a witness.

The Bar-K reports admitted into evidence are incomplete to show payment history. Testimony at trial established POBD sold three lots to Eagle Pointe s and carried their own papers back (Exhibits W, X, Y, Z, AA, BB). The mortgages were assigned to R.E. Loans in payment for three lots sold to Eagle Pointe by POBD. Barney Ng testified the amount of the notes should have been credited against Loan P0099. The amount of the Eagle Pointe mortgages totaled \$527,410 which was not applied to the loan following the assignment. It is anticipated that Valiant will argue in rebuttal that the assignments were collateral assignments to further secure Loan No. P0099. However, the assignments were complete assignments and not a collateral assignment as was given to Wells Fargo. Thus, POBD retained no rights in the promissory notes secured by the deeds of trust following assignment on August 22, 2007.

Exhibit 66 is a Bar-K report that is a payment history detail through 5/6/2010. As noted above, prior to the amendment to the loan agreement, the entire lot payments collected by R.E. Loans were to be applied to the loan. After the amendment on August 1, 2008, any portion of the lot payments that exceeded the minimum were to be allocated to the development account.

Prior to the August 1, 2008 loan amendment changing the allocation of loan payments, R.E. Loans failed to credit the entire lot payments to the loan. On April 1, 2008, R.E. Loans credited \$206,121.06 to a category specified as "Other" which did not reduce the loan principal, which was not authorized by the loan agreement. Again on April 1, 2008, Bar-K credited \$199,451.25 of a collected lot payment to "Other" rather than applying to it to the loan as required by the loan agreement.

Further, on May 5, 2009, R.E. Loans received a \$1,516,416.64 payment which was a fire insurance proceeds check. Nothing in the loan agreement or the amendment to the loan agreement allowed R.E. Loans not to apply the entire payment to the loan. However, R.E. Loans

accounting indicates it credited \$550,000 of the payment to the column specified as "Other". In total, Exhibit 66 reveals that R.E. Loans failed to apply \$1,699,890.18 in payments to the loan. Only \$743,207.88 of that amount was properly directed to the development account pursuant to the amended loan agreement. The remaining \$955,632.30 in payments were required to be applied to Loan P0099 by Bar-K according to the terms of the loan agreement.³ No testimony was provided at trial regarding the impounded \$743,207.88 account. Apparently, R.E. Loans (of the trustee in liquidation) received this money. However, there was no forfeiture provision, and this money should have been applied to the loan.

Another piece of evidence inconsistent with Bar-K records is Exhibit 107. This record indicated that through 2011, POBD had lot sales totaling \$45,519,615. At 85% of the value of sales, R.E. Loans would have collected \$38,691,672, even if all that amounts collected were not applied to the loan. However, the May 6, 2010 payment history for R.E. Loans reveals only \$21,489,471.60 in total payments, which included the \$1,150,000 from the MF '08 loan. Richard Vilelli testified at trial that Kathy Groenhout with POBD gave him regular reports of lots sales, and based upon the report of lot sales provided to him, over three million in lot sales were unaccounted for in Bar-K's accounting. This leads to the inference that loan payments were not properly accounted for by Bar-K.

Evidence at trial proves the payment history presented at trial is incomplete because it did not account for payments received on the Eagle Pointe lot at assignment or in 2012, after Bar-K was no longer the loan servicer.⁴ Other evidence demonstrated it was inaccurate because it did

³ There was also \$1,050.00 deducted from payments pursuant to the loan agreement for a \$30 fee on some payments, which was appropriate.

⁴ Despite Barney Ng's testimony that the Eagle Pointe promissory notes should have been credited against Loan No. P0099 upon assignment, Chuck Reeves testified that he understood an assigned note would only be reflected as a payment when actual payments on the assigned notes were collected.

not properly account for the assigned notes secured by mortgage for Eagle Pointe. Further, it did not apply a payment received of \$550,000 to the loan. Other loan payments itemized above were also not credited against the loan.

b. Failure of Valiant to Produce records for Wells Fargo

Valiant presented no accounting records for Wells Fargo, who also had a right to collect under the note. Charles Reeves testified he had personal knowledge none of the Eagle Pointe lots had sold. However, Tom Williams with Sandpoint Title testified on October 16, 2012, Wells Fargo collected \$96,901.99 on a sale of one of the Eagle Pointe lots. Exhibit 270 verified this payment. This evidence discredits Charles Reeves' testimony regarding personal knowledge of all payments. It is unknown if Wells Fargo collected any other amounts as Valiant did not produce their accounting records or testimony from them.

c. Failure of Valiant to Produce Records for LEND, Inc.

It was undisputed by Barney Ng at trial that Bar-K ceased to service the POBD loan after October 1, 2010. Charles Reeves was unaware at trial that the loan servicer had changed. No testimony was offered by Valiant regarding the accounting records for LEND, Inc., so amounts owed on Loan No. P0099 after that date were not proven by a preponderance of the evidence as the Court has no record before it of amounts paid, fees charged, or interest accrued. Defendants were able to show there was at least one payment in 2012, and there may have been others. It was Valiant's burden to show the payment history between October 1, 2010 and the date of trial. It failed to do so.

d. R.E. Loans self disclosed its loan was paid

Barney Ng testified at trial that POBD was the only borrower that MF '08 and R.E. Loans had in common. He reviewed R.E. Loans bankruptcy disclosure statement which indicated that

the MF '08 loan to the common borrower paid off R.E. Loans. He quibbled that the disclosure indicated there was a list of notes that were assigned from R.E. Loans to MF '08 which he did not see attached to the federal pleading, so he was unable to ascertain if it was accurate. However, he acknowledged the disclosure (Refused exhibit 268) indicated the exhibit related to notes that were assigned and was unrelated to the common borrower loan.

3. Credibility of Witnesses

At trial Valiant relied heavily on the testimony of Barney Ng and Charles Reeves to prove the amounts owed today on the RE Loans note, except for the claim of interest and attorney fees. As noted earlier, Mr. Reeves had no accounting records of POBD upon which to base his testimony. Instead, he had faxed copies of loan statements with the bookkeeper's handwriting on them. The handwriting did not agree with his opinion regarding the amount due. Ms. Groenhout's last notations showed no further amounts due. Further, Mr. Reeves was impeached by Tom Williams' testimony which established there was a sale of one of the Eagle Pointe lots, contrary to Mr. Reeves testimony. Further, Mr. Reeves acknowledged he testified in the companion case (Union Bank) that Loan No. P0099 was paid in full.

In its closing argument Valiant repeatedly claims that the Ng and Reeves testimony was undisputed at trial. However, there was substantial and competent evidence presented at trial that both disputed the testimony of Ng and Reeves, as well as impeached the credibility of each witness. The Idaho Supreme Court has discussed the interplay between substantive evidence and impeachment evidence, both of which were presented to this Court at trial:

While substantive evidence is "offered for the purpose of persuading the trier of fact as to the truth of a proposition on which the determination of the tribunal is to be asked," impeachment evidence "is designed to discredit a witness, i.e. to reduce the effectiveness of his testimony by bringing forth the evidence which explains why the jury should not put faith in him or his testimony." *Ellington I*,

151 Idaho at 74, 253 P.3d at 748. Evidence that does both is both substantive and impeaching. *Id.*

State v. Ellington, 157 Idaho 480, 486, 337 P.3d 639, 645 (2014). At trial, VP presented the Court with both substantive evidence and impeachment evidence, which taken together must lead the Court to the conclusion that Valiant failed to carry its burden of proof at trial. The substantive evidence on Loan No. P0099 is discussed above.

Almost all of the Exhibits admitted into evidence by Valiant were either authenticated through Ng or Reeves. Almost all of the so called "accounting records" admitted into evidence were done so through Barney Ng or Charles Reeves. Yet, there was substantial and competent evidence presented at trial that seriously called into question the accuracy of the admitted exhibits and the testimony of each witness.

The testimony and evidence presented at trial was that Barney Ng and his family members were not trustworthy, nor were their financial records. Barney Ng acknowledged that he disassociated from continuing management of Bar-K after September 1, 2009 because his brother was hiding money. Barney Ng testified he turned state's evidence against his brother and father, leading to their convictions.

Barney Ng testified that during June and July of 2008, the Department of Real Estate for the State of California audited Bar-K's various business records. Ng agreed the result of that audit was a report that listed multiple deficiencies including failure to maintain exact real estate records, failure to record deeds of trust in the name of beneficiaries, failure to provide lenders/purchasers with disclosure statements in a timely manner, incomplete income and net worth statements, inexact funding constituting fraud or dishonest dealing, and unlawful acts of Barney Ng. Mr. Ng testified that as a result of this audit and investigation his California real estate license as well as the license held by Bar-K were suspended in 2010 for various violations

of loan servicing agreements, including mismanagement of trust funds, in which he and his entities were involved. Barney Ng testified he lost his real estate license in California, which allowed him to operate a mortgage brokerage and loan servicing business, because of his brother's dishonest actions within Bar-K. Yet, Valiant asks this Court to give great weight and credibility to Bar-K's accounting records without independent accounting or bookkeeping records from POBD to substantiate the information.

Further evidence that Barney Ng was disingenuous in his dealings is found in the Pensco loan application documents. Barney Ng testified that the Pensco loan was from his retirement funds, but that he had to have the oversight and approval of Pensco to make the loan. Barney Ng testified he reviewed and signed all the Pensco loan documents. These documents indicated that the Pensco loan would be in first position. Yet at trial, Barney Ng testified it was never contemplated that the Pensco loan would be in first position and claimed not to have noticed the representation. The reasonable inference was that Barney Ng, a loan servicer well experienced in the review and processing of loan applications, provided Pensco with false information to induce its agreement to extend the loan.⁵

Valiant asks the Court to rely on the accounting records produced by Bar-K to determine that the P0099 and other loans were never satisfied. These are the same records produced by an entity and individuals investigated for failure to maintain exact records, failure to record deeds of trust in the name of beneficiaries, failure to provide lenders/purchasers with disclosure statements, incomplete income and net worth statements, inexact funding constituting fraud or dishonest dealing, and failure to exercise reasonable supervision of activities and personnel of

⁵ VP does not address the Pensco loan nor the MF '08 loan in its closing argument because the lots owned by VP are not encumbered by these loans.

Bar-K. The accuracy of these records is questionable at best and Barney Ng has proved to be have no credibility before this Court.

Coupled with the above issues is the concern that Barney Ng testified he has a financial interest in the outcome of this litigation only if it is successful. Barney Ng's attendance at trial was not pursuant to a subpoena, and his testimony was given to protect his financial interest in a successful foreclosure.

Like Barney Ng, Charles Reeves testified he too had a financial interest in this matter is there was a successful foreclosure. Charles Reeves reached an agreement with Valiant wherein Reeves would cooperate with the foreclosure action and consult and assist Valiant in this litigation. Trial Exhibit 262. Charles Reeves testified at trial that as consideration for his cooperation in the foreclosure action Reeves will be compensated with a home and the opportunity to provide additional professional services at the Idaho Club. This is an important fact for the Court to weigh because before Reeves obtained this financial motive for a successful foreclosure, he testified in a companion case which also involved R.E. Loans that he understood that Loan No. P0099, has been paid in full. The fact that Reeves has a direct financial interest in the outcome of this action, coupled with the fact that he has changed his sworn testimony since he acquired the direct financial interest in the action, seriously calls into questions the reliability and credibility of all testimony presented by Mr. Reeves. This motivation combined with POBD's inability in this litigation to locate any of its financial documents other than faxes regarding the loans calls into question his credibility.

4. Property Ownership

Valiant claims in its closing that POBD is the record of all the real property subject to the P0099 Loan. That is not true. At trial, VP attempted to admit deeds showing it owned four (4)

lots. This Court refused to admit Exhibits 250, 251, 252, and 253 on the basis it had already ruled on that issue, and ownership of the property was not within the limited scope of trial the Court was allowing. Thus, the Court should not accept this “undisputed” fact, or if it is inclined to accept it, VP respectfully requests it reverse its ruling regarding the admissibility of Exhibits 250-253.

5. Remediation

Valiant contends it should be allowed to collect on the costs expended to remediate a diesel leak discovered shortly before trial in the amount of \$89,432.39. The pleadings did not state a claim for recoupment of costs for remediation of the secured collateral. Over the objection of the Defendants, Plaintiff was allowed to introduce such cost at trial.

This ruling of the Court was prejudicial to the Defendants. The testimony at trial revealed there was a lease between POBD and Valiant to operate the property. Charles Reeves testified that the lease required Valiant to pay all expenses. Defendants had no fair opportunity to determine if this expense was related to Valiant’s activities as a lessee of the premises. Further, Defendants had no fair opportunity to conduct discovery on the cause of the leak, the responsible party for the leak, if the claimed costs related to the leak, or how the diesel came to be stored on the property.

In its most recent order issued by the Court allowing the post-trial declaration of William Haberman, this Court again emphasized that it had limited the trial to the amount owed on the loans. The cost of repair for remediation was not within that scope. Thus, the Court should not consider this issue.

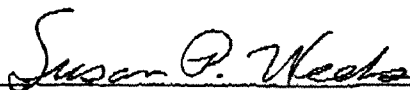
III. CONCLUSION

Valiant implies to this Court that VP's defense of the foreclosure was frivolous because the facts at trial were not the same as the facts known at the time of summary judgment. Given the breadth and years of experience of the district judge, VP believes the Court can appreciate that facts known at various stages of litigation expand and shift with discovery and depositions. Further, Charles Reeves changed his testimony regarding payment of the loan from testimony given in a prior companion proceeding. Further, by their own admission following the close of evidence, Valiant has admitted it was unaware of certain payments on the loan. Thus, VP had every right to try this matter before this Court, and such conduct was not frivolous.

Based upon the foregoing evidence, VP requests this Court adjudge that Valiant has not met its burden of proof of establishing the amounts due under the loan.

DATED this 12th day of May, 2016.

JAMES, VERNON & WEEKS, P.A.

By 
Susan P. Weeks

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on the following persons in the manner indicated this 12th day of May, 2016:

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