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### Valiant Idaho, LLC v. North Idaho Resorts, LLC Clerk's Record v. 60 Dckt. 44583

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60-85

IN THE  
SUPREME COURT  
OF THE  
STATE OF IDAHO

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

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

vs.

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

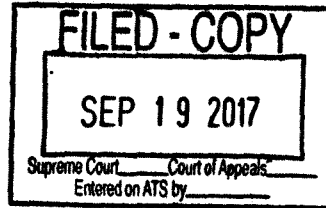
CLERK'S RECORD ON APPEAL

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

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44583

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STATE OF IDAHO  
 COUNTY OF BONNER  
 FIRST JUDICIAL DISTRICT  
 2016 NOV -2 PM 2: 18  
 CLERK DISTRICT COURT  
 DEPUTY

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

GENESIS GOLF BUILDERS, INC.,	)	Case No. CV-2009-1810
formerly known as National Golf	)	
Builders, Inc., a Nevada	)	Supreme Court Docket No.
corporation,	)	(not yet assigned)
	)	
Plaintiff,	)	JV L.L.C.'S THIRD PARTY
v.	)	CLAIM (IDAHO CODE §11-
	)	203)
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 )

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; 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, Counterclaimant 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.	)
<hr/>	)
VALIANT IDAHO, LLC, an Idaho	)
limited liability company,	)
	)
Respondent,	)
	)
v.	)
	)
JV L.L.C., an Idaho limited	)
liability company,	)
	)
Appellant.	)
<hr/>	)

Comes now JV L.L.C., herein "JV", Defendant, Counterclaimant and Cross-Claimant against all of the Defendants and Third-Party Plaintiff, and Appellant on appeal to the Idaho Supreme Court, and pursuant to Idaho Code §11-203 makes this statutory Third Party Claim, as follows:

I. Cash Deposit. JV has paid a cash deposit of \$21,154.60, which is the amount of the costs Judgment against JV of \$15,554.88 plus 36%. Based upon the cash deposit, I.A.R. 13(b)(15) provides for a stay of execution upon the posting of the cash deposit. Therefore, Valiant Idaho is stayed from any execution on its cost judgment against JV. The costs judgment (\$15,554.88) is Valiant's only judgment as against JV.

II. Valiant Idaho's Executions/Writs of Execution. Valiant Idaho has caused to be issued and has been proceeding to Sheriff's Sales on each Writ of Execution, as follows:

A. A Boundary County Sherriff's Sale on November 15,

2016 at 10:00 AM. This execution enforcement of Valiant Idaho is stayed by JV's cash deposit. Valiant's enforcement execution documents, true copies of which are attached to JV L.L.C.'s Motion and Application for Stay of Execution Upon Posting A Cash Deposit By JV L.L.C., consisting of:

1. Notice of Sheriff's Sale recorded October 24, 2016, Boundary County Instrument No. 268816

2. Notice of Levy recorded October 24, 2016, Boundary County Instrument No. 268815

3. Writ of Execution Against JV, L.L.C. for Boundary County, dated October 13, 2016, issued by the Bonner County Clerk of the Court

B. A Bonner County Sherriff's Sale on November 7 through November 10 and continuing through November 14, 2016. This execution enforcement of Valiant Idaho is stayed by JV's cash deposit. Valiant's enforcement execution documents, true copies of which are attached to JV L.L.C.'s Motion and Application for Stay of Execution Upon Posting A Cash Deposit By JV L.L.C., consisting of:

1. Writ of Execution, recorded October 12, 2016 as Bonner County Instrument No. 896302

2. Notice of Levy Under Writ of Execution recorded October 12, 2016 as Bonner County Instrument No. 896303

3. Notice of Sheriff's Sale dated October 12,

2016

Both the Boundary County execution and the Bonner County executions are stayed, as against JV's interests, by JV's posting of the cash deposit.

III. Valiant presently has no judgment against JV to be enforced by writ and execution, or at all. Because of JV's cash deposit, Valiant has no judgment against JV that may be enforced by execution or otherwise, as all execution or enforcement of any judgment is stayed.

IV. Valiant Idaho's Bonner County execution/enforcement should be quashed for additional reasons, as follows:

A. The Bonner County execution documents, Notice of Sheriff's Sale does not disclose who/the action party that Valiant's judgment(s) are against. The actual judgments of Valiant are only against the party, Pend Oreille Bonner Development, LLC, and these judgments are not against JV L.L.C.

B. The Notice of Sheriff's Sale states and purports to have a Sheriff's Sale for property of parcels comprising the "Idaho Club Property". In fact, there is no "Idaho Club Property" ownership or interest. By statute a Sheriff's Sale does not sell real property as it only sells the property interest of the judgment debtor. In other words, the only interest that can be sold is the interest of the judgment debtor, Pend Oreille Bonner Development, Defendant.

C. Property subject to executions is only "any interest" of the judgment debtor (Idaho Code §11-201).

D. Upon the sale of real property, the purchaser is substituted to and acquires all the right, title, claim and interest of the judgment debtor (Idaho Code §11-201 and 11-310).

E. Several of the real estate descriptions/tax parcels set forth as "Idaho Club Property" are not owned or vested in the judgment debtor (Pend Oreille Bonner Development) and Pend Oreille Bonner Development has no right, title, or interest in said real estate. The real estate/tax parcels that Pend Oreille Bonner Development has no interest in is all of the real estate described in Valiant's Writ, Execution, Levy and Bonner County Notice of Sheriff's Sale.

F. All of the real estate was lost by Pend Oreille Bonner Development to Bonner County by Tax Deed in 2014. The Tax Deed real estate of Bonner County was partially redeemed as to certain real estate tax parcels by JV L.L.C. JV L.L.C. received a Redemption Deed to that real estate/tax parcels. There was a statutory right of redemption, but no one redeemed from JV and the redemption time (14 months) has expired.

G. The other parcel of real estate, according to Valiant's documents and expert title examiner in this case is a parcel Valiant has identified as Parcel 121.

According to Valiant's own claims and documents filed by

Valiant, none of the entities of RE Loans, Pensco, or MF08 held any mortgage interest on Parcel 121, which is Lot 5, Block 2, Golden Tee Estates, platted in Book 8, Page 80, record of Plats, Bonner County, Idaho. Valiant is only an "assignee" from RE Loans, Pensco, and MF08, so Valiant Idaho has no mortgage interest on Parcel 121. Also, Valiant cannot hold a Sheriff's Mortgage foreclosure as to JV's mortgage interest in said Parcel 121 because Valiant's judgment against JV is stayed by JV's cash deposit.

V. JV's Third Party Claim. JV L.L.C. makes this Third Party Claim pursuant to Idaho Code §11-203. JV claims a portion of the property levied upon by Valiant Idaho for its Sheriff's foreclosure sale is real property of JV. JV has the only interest in the real property, as follows:

A. The Tax Deed to Bonner County and the Redemption Deed to JV L.L.C.

1. The real estate owner POBD failed to pay the real estate it owned for the time period which entitled Bonner County to foreclose its first priority tax lien and take all of POBD's real property by Tax Deed pursuant to Idaho Code §63-1009 which states:

The [tax] deed conveys to the grantee the absolute title to the land described thereon, free and clear of all encumbrances except mortgages of record to holders of which notice has not been



sent and provided in section 63-1005 Idaho Code, any lien for property taxes which may have attached subsequently to the assessment and by lien from special assessments.

2. As stated in specifically quoting the above statute, the Idaho Supreme Court held in *Regan V. Owen* 157 Idaho 758, 339 P.3d 1162 (2014), at 157 Idaho 758, page 764. The tax deed conveyed absolute title to the County free of encumbrances. This case law and statutes clearly mean that any and all encumbrances of RE, Pensco, MF08, Pend Oreille Bonner Development, and subsequently Valiant Idaho lost their interest in said real estate to Bonner County, Idaho, free and clear by the Tax Deed, recorded May 22, 2014 as Instrument No. 859659, records of Bonner County, Idaho. A true copy of said Tax Deed is attached hereto. This Tax Deed is JV L.L.C.'s First Supplemental Memorandum in Opposition to Valiant Idaho, LLC's Motion for Summary Judgment Exhibit I.

3. Valiant Idaho cannot foreclose by execution on its assigned judgment(s), which is only against POBD, by mortgage judicial foreclosure on any of the real estate in the Tax Deed to Bonner County, and more specifically, on the real estate in JV's Redemption.

B. JV's Redemption Deed. After the Tax Deed to Bonner County, conveying absolute title to Bonner County, the only avenue available is "Idaho Code §63-1009, Effect of tax deed as

conveyance - The deed conveys to the grantee the right, title, and intent held by the record owner or owners, provided that the title conveyed by the deed shall be free and clear of any recorded purchase contract, mortgage, deed of trust, security interest, lien or lease so long as notice has been sent to the party in interest as provided in section 63-201(17) and 63-1005 Idaho Code, and for the lien for taxes, assessments, charges, interest and penalties for which the lien is foreclosed and in satisfaction of which the property has been sold". (This statute was by amendment after Reagan v. Owen; however the prior Idaho Code §63-1009 provided that tax deed was absolute title to the grantee, free and clear of "all encumbrances except mortgages of record".)

In this action the interest of RE Loans, Pensco, and MF08, were all mortgage interests assigned to Valiant Idaho.

"63-1007. REDEMPTION -- EXPIRATION OF RIGHT. (1) After the issuance of a tax deed, real property may be redeemed only by the record owner or owners, or party in interest, up to the time the county commissioners have entered into a contract of sale or the property has been transferred by county deed. In order to redeem real property, the record owner or owners, or party in interest, shall pay any delinquency including the late charges, accrued interest, and costs, including, but not limited to, title search and other professional fees. The property taxes accrued against such property subsequent to the issuance of a tax deed to the county shall be extended upon a valuation to be given by the assessor upon application of the tax collector. The property taxes shall be computed according to the authorized levies for the year or years to be extended, including the current calendar year which shall be calculated using the previous year's levies until the current levies are authorized.

(2) Should such payments be made, a redemption deed shall be issued by the county tax collector into the name of the redemptioner and the rights, title and interest acquired by the county shall cease and terminate; 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."

JV was the first to redeem pursuant to Idaho Code §63-1007 as to portions of the Tax Deed real estate. The record owner POBD never redeemed at all. JV's 1994 recorded mortgage was that JV was a "party in interest" entitled to redeem.

JV gave a written Notice of Redemption, dated July 1, 2014 and paid to Bonner County the sum of \$140,000.00 to redeem. This is JV's Trial Exhibit K, a copy of which is attached hereto.

JV received a Redemption Deed, dated July 2, 2014, recorded July 7, 2014 as Instrument No. 861430 & re-recorded August 22, 2014 as Instrument No. 863295 for that real estate described in the Redemption Deed to JV, which were the Valiant "parcels" and are as follows:

	RP033810010010A	Parcel #82
	RP033810020010A	Parcel # ? - located above Parcel 177 and below Parcel 163
A Portion of:	RP0435905A000BA	Parcel #159
	RP57N01W020600A	Parcel #68
	RP58N01W369341A	Parcel #177

JV's Redemption Deed is Trial Exhibit L, a copy of which is

attached hereto. Valiant's execution, levy and Sheriff's sale purports to sell these parcels.

No owner, or party in interest, ever subsequently redeemed from JV, and by Idaho Code §63-1007 the right of redemption expired 14 months after the issuance of the Tax Deed to Bonner County, issued May 22, 2014, a copy of which is attached hereto.

Based on the Tax Deed to Bonner County, and the Redemption Deed to JV, all of the absolute title, free and clear in Bonner County went by statute and by subrogation to JV L.L.C. Idaho Code §45-114 Rights of Junior Lienor provides that one who has a lien inferior to another, upon the same property has a right:

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

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

The word subrogation basically means "substitution", so JV is subrogated, i.e. substituted to the position of Bonner County, which is absolute title owners, free and clear.

VI. JV makes this Third Party Claim against the execution of Sheriff's Sale of:

- A. JV's mortgage, as the only mortgage on Parcel 121, as Valiant has admitted and claimed in this action that RE Loans, Pensco, and MF08 held no mortgage on this parcel.

B. And because RE Loans, Pensco, and MF08 were all mortgage holders from the owner POBD, all of those three (3) entities lost their encumbrance by the Tax Deed to Bonner County. JV, as a statutory Redemption, obtained title and ownership of its Redemption Deed real property, and no party made any subsequent or otherwise redemption within 14 months of the Tax Deed. JV is subrogated to the absolute title, free and clear of Bonner County's Tax Deed. JV's Redemption Deed real estate is claimed by JV as a statutory Third Party Claim.

#### VII. Summary

A. Valiant Idaho cannot proceed on its execution, Sheriff's Sale, based upon its judgment against JV as execution is stayed by JV's cash deposit.

B. Valiant Idaho cannot proceed on its execution, Sheriff's Sale, as against Parcel 121, as Valiant Idaho acquired its mortgage interests, if any, from RE Loans, Pensco, and MF08, none of which Valiant has "admitted" had any mortgage on this Parcel. The only mortgage there was JV's original 1994 Vendor's Purchase Money Mortgage.

C. Valiant Idaho may not proceed to sell the Third Party Claim real estate of JV.


VIII. Oral Argument. JV requests the Court to issue its decision opinion without oral argument, unless the Court requests otherwise.

IX. JV's Requested Relief. The Court is request to grant relief to JV that,

A. Any execution of Valiant's judgment against JV be "stayed" by reason of JV's cash bond.

B. Valiant's mortgage foreclosure Writ of Execution be quashed on the parcels of JV's Redemption Deed because POBD lost all interest, and all mortgage encumbrances, of RE, Pensco and MF08 assigned to Valiant Idaho that were extinguished by the Tax Deed to Bonner County who because absolute owner, free and clear against all encumbrances. Further, JV is the absolute owner of the real estate described in its Redemption Deed, free and clear of all encumbrances and the time to redeem has expired. Both the Sheriff's Sale in Boundary County and in Bonner County should be quashed by the Third Party Claim of JV.

Dated this 2<sup>nd</sup> day of November, 2016.


  
\_\_\_\_\_  
GARY A. FINNEY  
FINNEY FINNEY & FINNEY, P.A.  
Attorney for Appellant  
JV L.L.C.

VERIFICATION

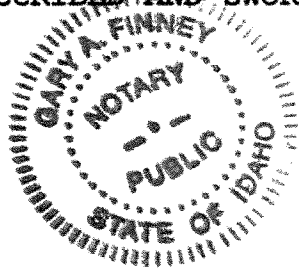
STATE OF IDAHO            )  
  : s.s.  
COUNTY OF BONNER        )


I, JAMES BERRY, first being duly sworn upon oath depose and say the following:

I am a Manager and Member for JV L.L.C. in this case and I have read the foregoing JV L.L.C.'S THIRD PARTY CLAIM, and know the contents therein stated and believe the same to be true.

  
\_\_\_\_\_  
JAMES BERRY  
Manager and Member  
JV L.L.C

SUBSCRIBED AND SWORN to before me this 2 day of November, 2016.



  
\_\_\_\_\_  
Notary Public-State of Idaho  
Residing at: Landsout  
My Commission Expires: OCT 18 2017

CERTIFICATE OF SERVICE

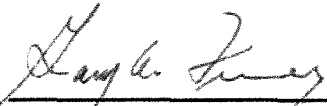
I hereby certify that a true and correct copy of the foregoing was served by the method as indicated, this 2<sup>nd</sup> day of November, 2016, and was addressed as follows:

Richard Stacey/Jeff Sykes/Chad Nicholson  
MCCONNELL WAGNER SYKES & STACEY PLLC  
827 East Park Boulevard, Suite 201  
Boise, ID 83712  
[Attorney for R.E. LOANS, LLC & VALIANT IDAHO, LLC]  
By US Mail

Susan Weeks  
JAMES, VERNON & WEEKS, P.A.  
1626 Lincoln Way  
Coeur d'Alene, ID 83814  
[Attorney for NORTH IDAHO RESORTS, LLC & V.P. INC]  
By US Mail

Boundary County Sheriff  
6438 Kootenai St.  
Bonners Ferry, ID 83805  
By Hand Delivery

Bonner County Sheriff  
4001 N. Boyer Road  
Sandpoint, ID 83864  
By Hand Delivery

By:   
\_\_\_\_\_  
Gary A. Finney  
Attorney for JV L.L.C.



STATE OF IDAHO  
COUNTY OF BONNER  
FIRST JUDICIAL DISTRICT

2016 NOV -3 PM 4:19

CLERK DISTRICT COURT

DEPUTY

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  
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Telephone: 208.489.0100  
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[sykes@mwsslawyers.com](mailto:sykes@mwsslawyers.com)  
[nicholson@mwsslawyers.com](mailto:nicholson@mwsslawyers.com)

Attorneys For Valiant Idaho, LLC

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

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

Plaintiff,

vs.

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

Defendants.

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

Case No. CV-09-1810

**NOTICE OF HEARING**

**Judge:** Honorable Barbara A. Buchanan  
**Place:** Bonner County Courthouse  
215 South First Avenue  
Sandpoint, Idaho 83864

**Date/Time:** November 4, 2016 - 1:30 p.m. PDST

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

**TeleNo:** 208.265.2281  
**Passcode:** 4990

**NOTICE IS HEREBY GIVEN** that Valiant Idaho, LLC will call its Motion Contesting JV L.L.C.'s Third Party Claim; and Opposition to JV L.L.C.'s of Motion and Application For Stay of Execution Upon Posting A Cash Deposit *and* its Motion For Sanctions Under I.C. § 12-123 and I.R.C.P. 11 for hearing on the 4<sup>th</sup> day of November 2016, at 1:30 p.m. PDST, the Honorable Barbara A. Buchanan, presiding.

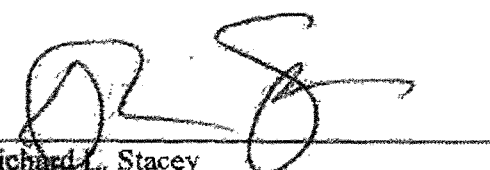
**NOTICE IS FURTHER GIVEN** that: (1) any party wishing to appear in person may do so at the Bonner County Courthouse, 215 South First Avenue, Sandpoint, Idaho 83864; and (2) any party wishing to appear by telephone is instructed to access the telephone conference by dialing 208.265.2281 and, when prompted, entering Participant Code No. 4990; *provided, however*, that said party provides written notice to the Court with service upon all other parties. Counsel is reminded there are five (5) incoming lines to the Court; thus, telephonic appearances in excess of five (5) may only be accomplished by conferencing with another party appearing telephonically.

A copy of the Court's instructions to attend a telephonic hearing is attached hereto as Exhibit A.

**DATED** this 3<sup>rd</sup> day of November 2016.

McCONNELL WAGNER SYKES & STACEY PLLC

BY:

  
Richard L. Stacey  
Attorneys For Valiant Idaho, LLC

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 3<sup>rd</sup> day of November 2016, a true and correct copy of the foregoing document was served by the method indicated below upon the following party(ies):

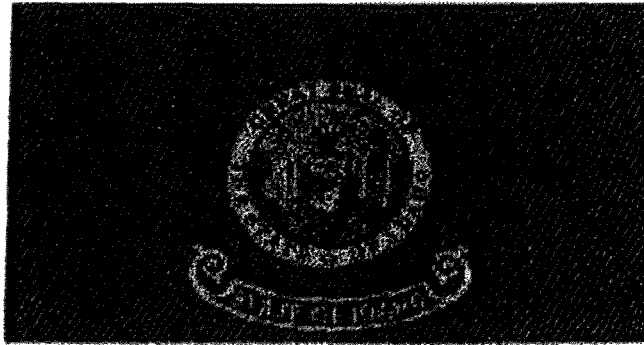
Gary A. Finney, Esq. Finney Finney & Finney, P.A. 120 East Lake Street, Suite 317 Sandpoint, Idaho 83864 Telephone: 208.263.7712 Facsimile: 208.263.8211 <i>Counsel For J.V., LLC</i>	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivered <input checked="" type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Electronic Mail <a href="mailto:garyfinney@finneylaw.net">garyfinney@finneylaw.net</a>
Susan P. Weeks, Esq. James, Vernon & Weeks, PA 1626 Lincoln Way Coeur d'Alene, Idaho 83814 Telephone: 208.667.0683 Facsimile: 208.664.1684 <i>Counsel For VP Incorporated/North Idaho Resorts</i>	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivered <input checked="" type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Electronic Mail <a href="mailto:sweeks@jvwlaw.net">sweeks@jvwlaw.net</a>

With a copy via facsimile to:

Honorable Barbara A. Buchanan  
Judge of the First Judicial District  
Bonner County Courthouse  
215 South First Avenue  
Sandpoint, Idaho 83864  
Facsimile: 208.263.0896

Bonner County Sheriff  
Ma. Sally Mitchell – Civil Supervisor  
208.265.4378

  
Richard L. Stacey



## CALLING THE COURT FOR A HEARING

- (1) Dial 208-265-2281;
- (2) When asked for a PROMPT enter 4990;
- (3) You will hear a short beep;
- (4) Wait on the line until the Judge dials you  
in to the hearing.

**EXHIBIT A**

STATE OF IDAHO  
COUNTY OF BONNER  
FIRST JUDICIAL DISTRICT

2016 NOV -3 PM 4:36

CLERK DISTRICT COURT

  
DEPUTY

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  
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[stacey@mwsslawyers.com](mailto:stacey@mwsslawyers.com)  
[sykes@mwsslawyers.com](mailto:sykes@mwsslawyers.com)  
[nicholson@mwsslawyers.com](mailto:nicholson@mwsslawyers.com)

Attorneys For Valiant Idaho, LLC

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

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

Plaintiff,

vs.

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

Defendants.

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

Case No. CV-09-1810

**VALIANT IDAHO, LLC'S  
MOTION CONTESTING JV L.L.C.'S  
THIRD PARTY CLAIM; AND  
OPPOSITION TO JV L.L.C.'S  
MOTION FOR STAY OF EXECUTION**

Honorable Barbara A. Buchanan

**Hearing:**

November 4, 2016 -- 1:30 p.m. PDST

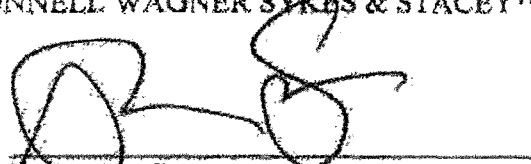
COMES NOW, Valiant Idaho, LLC ("Valiant"), by and through its attorneys of record, McConnell Wagner Sykes & Stacey PLLC, and, pursuant to Idaho Code § 11-203, moves this Court for an order denying JV L.L.C.'s Third Party Claim and Motion and Application For Stay of Execution Upon Posting A Cash Deposit filed on or about November 2, 2016.

This motion is made and based upon the records and files herein; the Memorandum in Support of [Valiant's] Motion Contesting JV L.L.C.'s Third Party Claim; and Opposition to Motion For Stay of Execution filed concurrently herewith; and any further evidence that may be presented at the hearing of this motion.

DATED this 3<sup>rd</sup> day of November 2016.

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

BY:



Richard L. Stacey  
Attorneys For Valiant Idaho, LLC

**CERTIFICATE OF SERVICE**


I HEREBY CERTIFY that on the 3<sup>rd</sup> day of November 2016, a true and correct copy of the foregoing document was served by the method indicated below upon the following party(ies):

Gary A. Finney, Esq. Finney Finney & Finney, P.A. 120 East Lake Street, Suite 317 Sandpoint, Idaho 83864 Telephone: 208.263.7712 Facsimile: 208.263.8211 <i>Counsel For J.V., LLC</i>	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivered <input checked="" type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Electronic Mail <a href="mailto:garyfinney@finneylaw.net">garyfinney@finneylaw.net</a>
Susan P. Weeks, Esq. James, Vernon & Weeks, PA 1626 Lincoln Way Coeur d'Alene, Idaho 83814 Telephone: 208.667.0683 Facsimile: 208.664.1684 <i>Counsel For VP Incorporated/North Idaho Resorts</i>	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivered <input checked="" type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Electronic Mail <a href="mailto:sweeks@jvwlaw.net">sweeks@jvwlaw.net</a>

With a copy via facsimile to:

Honorable Barbara A. Buchanan  
Judge of the First Judicial District  
Bonner County Courthouse  
215 South First Avenue  
Sandpoint, Idaho 83864  
Facsimile: 208.263.0896

Bonner County Sheriff  
Ms. Sally Mitchell – Civil Supervisor  
208.265.4378

  
Richard L. Stacey

STATE OF IDAHO  
COUNTY OF BONNER  
FIRST JUDICIAL DISTRICT

2016 NOV -3 PM 4:36

CLERK DISTRICT COURT



DEPUTY

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

Attorneys For Valiant Idaho, LLC

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

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

Plaintiff,

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DEVELOPMENT, LLC,**  
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Defendants.

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

Case No. CV-09-1810

**MEMORANDUM IN SUPPORT OF  
VALIANT IDAHO, LLC'S  
MOTION CONTESTING JV L.L.C.'S  
THIRD PARTY CLAIM; AND  
OPPOSITION TO JV L.L.C.'S  
MOTION FOR STAY OF EXECUTION**

**Honorable Barbara A. Buchanan**

**Hearing:**

November 4, 2016 - 1:30 p.m. PDST

MEMORANDUM IN SUPPORT OF  
VALIANT IDAHO, LLC'S MOTION CONTESTING  
JV L.L.C.'S THIRD PARTY CLAIM; AND OPPOSITION TO  
JV L.L.C.'S MOTION FOR STAY OF EXECUTION | Page 1

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COMES NOW, Valiant Idaho, LLC ("Valiant"), by and through its attorneys of record, McConnell Wagner Sykes & Stacey PLLC, and submits the following Memorandum in Support of Motion Contesting JV L.L.C.'s Third Party Claim; and Opposition to JV L.L.C.'s of Motion and Application For Stay of Execution Upon Posting A Cash Deposit.

**I.**  
**INTRODUCTION**

On July 20, 2016, this Court separately entered a Decree of Foreclosure and a Judgment in favor of Valiant. The Judgment awarded Valiant damages in the amount of \$21,484,912.26 and determined that Valiant's mortgages recorded against certain real property were prior in right, title and interest to any interest held by JV L.L.C. ("JV") or any of the other defendants in this case. The Decree of Foreclosure ordered the sale of said real property encumbered by Valiant's mortgages to pay-off the Judgment amounts awarded to Valiant. On August 22, 2016, this Court entered a second judgment awarding Valiant litigation costs of \$15,554.88 against JV ("Costs Judgment").

On October 5, 2016, Valiant obtained a Writ of Execution from the Bonner County Sheriff, requiring the Sheriff to satisfy the Judgment, plus post-Judgment interest and costs of the sale, by selling the real property encumbered by the Valiant mortgages. The sale of said property was scheduled for November 7, 2016. On October 13, 2016, the Bonner County Sheriff sent notice of the sale to all interested parties. Notice of the sale was posted in three public places and published in the Sandpoint Bee beginning on October 17, 2016. Moreover, the notice of sale of re-published in the Sandpoint Bee on October 24, 2016 and on October 31, 2016.

On October 13, 2015, Valiant obtained a writ of execution to execute on certain personal property of JV located in Boundary County to satisfy Valiant's Costs Judgment. The sale of this personal property is scheduled for November 15, 2016.

On November 2, 2016, JV filed a Motion and Application For Stay of Execution Upon Posting A Cash Deposit ("Motion For Stay") and filed a Third Party Claim ("JV Claim") with the Bonner County Sheriff. JV's Motion For Stay seeks: (1) the stay of execution against JV's personal property located in Boundary County; and (2) to stay the sale of the "Idaho Club Property" located in Bonner County, Idaho, to satisfy amounts awarded to Valiant against Pend Oreille Bonner Development, LLC ("POBD").<sup>1/</sup>

## **II. ARGUMENT**

Valiant does not object to entry of an order staying the sale of JV's personal property in Boundary County upon proof that JV has complied with Rule 13(b)(15) of the Idaho Appellate Rules. To the extent the requirements of Rule 13(b)(15) have been met, the Boundary County sale should be stayed as a matter of course. However, JV's Motion For Stay should be rejected with respect to its request to stay the sale of the Idaho Club Property in Bonner County and the JV Claim should be denied. JV's arguments in support of this briefing are the exact same arguments that JV has repeatedly raised throughout this case and which were always soundly rejected by this Court. Moreover, JV's Claim snubs its nose at this Court's orders and seeks to further delay the sale of the Idaho Club Property for no other reason than to harass Valiant and to

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<sup>1/</sup> JV's Motion For Stay also seeks to stay the sale of certain real property that was identified in the Judgment as "Parcel 121." However, Parcel 121 is not identified in the Notice of Sheriff's sale and, as such, is not part of the property that is subject to said sale.

cause it to incur the additional expenses associated with rescheduling the Sheriff's sale. JV intentionally seeks to mislead the Bonner County Sheriff into postponing the sale that JV is collaterally and judicially estopped from further raising in this or any other Court. JV's attempt to take advantage of the Sheriff's lack of legal knowledge is not only ethically outrageous, it is also in direct contempt of this Court's prior orders. This Court has adjudicated that JV's Claim has no merit and to advise the Sheriff otherwise is in direct violation of the Judgment and the Decree of Foreclosure.

**III.**  
**CONCLUSION**

Based upon the foregoing and the record on file herein, Valiant respectfully requests this Court to deny JV's Motion For Stay with respect to the sale of the Idaho Club Property and to issue an order denying JV's Claim pursuant to Idaho Code § 11-203, such that Valiant may proceed with said sale as scheduled on Monday, November 7, 2016.

**DATED** this 3<sup>rd</sup> day of November 2016.

McCONNELL WAGNER SYKES & STACEY PLLC

BY:

  
Richard L. Stacey  
Attorneys For Valiant Idaho, LLC

**CERTIFICATE OF SERVICE**

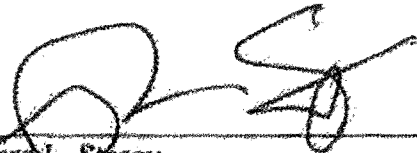
I HEREBY CERTIFY that on the 3<sup>rd</sup> day of November 2016, a true and correct copy of the foregoing document was served by the method indicated below upon the following party(ies):

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With a copy via facsimile to:

Honorable Barbara A. Buchanan  
Judge of the First Judicial District  
Bonner County Courthouse  
215 South First Avenue  
Sandpoint, Idaho 83864  
Facsimile: 208.263.0896

Bonner County Sheriff  
Ms. Sally Mitchell – Civil Supervisor  
208.265.4378

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

STATE OF IDAHO  
COUNTY OF BONNER  
FIRST JUDICIAL DISTRICT

2016 NOV -3 PM 4: 34

CLERK DISTRICT COURT

  
DEPUTY

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Attorneys For Valiant Idaho, LLC

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

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

Plaintiff,

vs.

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

Defendants.

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

Case No. CV-09-1810

**MOTION TO SHORTEN TIME TO HAVE  
HEARD VALIANT IDAHO, LLC'S  
(1) MOTION CONTESTING JV L.L.C.'S  
THIRD PARTY CLAIM; AND  
OPPOSITION TO JV L.L.C.'S  
MOTION FOR STAY OF EXECUTION;  
AND (2) MOTION FOR SANCTIONS  
UNDER I.C. § 12-123 AND I.R.C.P. 11**

Honorable Barbara A. Buchanan

Hearing:

November 4, 2016 – 1:30 p.m. PDST

COMES NOW, Valiant Idaho, LLC ("Valiant"), by and through its attorneys of record, McConnell Wagner Sykes & Stacey PLLC, and, pursuant to Rule 7(b)(3) of the Idaho Rules of Civil Procedure, moves this Court for an order shortening time to have heard its Motion Contesting JV L.L.C.'s Third Party Claim; and Opposition to JV L.L.C.'s of Motion and Application For Stay of Execution Upon Posting A Cash Deposit *and* its Motion For Sanctions Under I.C. § 12-123 and I.R.C.P. 11.

Good cause exists to shorten time because Valiant's motions seek an order denying and/or quashing JV L.L.C.'s attempt, through a frivolous third party claim and a motion to stay filed November 2, 2016, to stay the Bonner County Sheriff's sale set to commence November 7, 2016. As such, it is not possible to comply with the timing provisions of Rule 7(b)(3) of the Idaho Rules of Civil Procedure.


Therefore, Valiant respectfully requests this Court for an opportunity to be heard on its motions so as to preserve and move forward with the Sheriff's sale on November 7, 2016.

This motion is made and based upon the record and files herein; together with the Motion Contesting JV L.L.C.'s Third Party Claim; and Opposition to JV L.L.C.'s of Motion and Application For Stay of Execution Upon Posting A Cash Deposit *and* its Motion For Sanctions Under I.C. § 12-123 and I.R.C.P. 11, and all other pleadings filed in support thereof.

DATED this 3<sup>rd</sup> day of November 2016.

McCONNELL WAGNER SYKES & STACEY PLLC

BY:

  
Richard L. Stacey  
Attorneys For Valiant Idaho, LLC

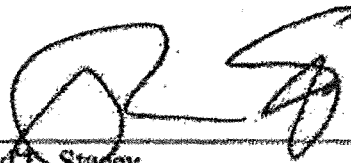
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 3<sup>rd</sup> day of November 2016, a true and correct copy of the foregoing document was served by the method indicated below upon the following party(ies):

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

Honorable Barbara A. Buchanan  
Judge of the First Judicial District  
Bonner County Courthouse  
215 South First Avenue  
Sandpoint, Idaho 83864  
Facsimile: 208.263.0896

  
Richard D. Stacey

STATE OF IDAHO  
COUNTY OF BONNER  
FIRST JUDICIAL DISTRICT

2016 NOV -3 PM 4:40

CLERK DISTRICT COURT

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

*SR*  
DEPUTY

**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

**ORDER SHORTENING TIME TO HAVE  
HEARD VALIANT IDAHO, LLC'S  
(1) MOTION CONTESTING JV L.L.C.'S  
THIRD PARTY CLAIM; AND  
OPPOSITION TO JV L.L.C.'S  
MOTION FOR STAY OF EXECUTION;  
AND (2) MOTION FOR SANCTIONS  
UNDER I.C. § 12-123 AND I.R.C.P. 11**

Honorable Barbara A. Buchanan

Hearing:

November 4, 2016 – 1:30 p.m. PDST

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

Valiant Idaho, LLC's ("Valiant") Motion to Shorten Time to Have Heard Its (1) Motion Contesting JV L.L.C.'s Third Party Claim; and Opposition to JV L.L.C.'s of Motion and Application For Stay of Execution Upon Posting A Cash Deposit; and (2) Motion For Sanctions Under I.C. § 12-123 and I.R.C.P. 11 ("Motion to Shorten") having come before and considered by this Court; and good cause appearing therefor;

**ORDER SHORTENING TIME TO HAVE HEARD  
VALIANT IDAHO, LLC'S (1) MOTION CONTESTING  
JV L.L.C.'S THIRD PARTY CLAIM; AND OPPOSITION TO  
JV L.L.C.'S MOTION FOR STAY OF EXECUTION; AND  
(2) MOTION FOR SANCTIONS UNDER I.C. § 12-123 AND I.R.C.P. 11 | Page 1**



**IT IS ORDERED** that (1) the Motion to Shorten is hereby *granted*, and (2) Valiant's motions shall be heard on November 4, 2016 at 1:30 p.m. PDST.

DATED this 3 day of November 2016



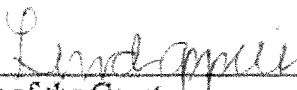
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**Honorable Barbara A. Buchanan**  
**Judge of the First Judicial District**

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 \_\_\_\_\_  
 Clerk of the Court

STATE OF IDAHO  
COUNTY OF BONNER  
FIRST JUDICIAL DISTRICT

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CLERK DISTRICT COURT

*SK*  
DEPUTY

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Attorneys For Valiant Idaho, LLC

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

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

Plaintiff,

vs.

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

Defendants.

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

Case No. CV-09-1810

**VALIANT IDAHO, LLC'S  
MOTION FOR SANCTIONS  
UNDER I.C. § 12-123 AND I.R.C.P. 11**

Honorable Barbara A. Buchanan

**Hearing:**

November 4, 2016 - 1:30 p.m. PDST

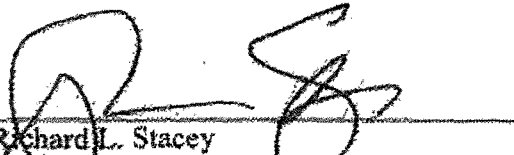
COMES NOW, Valiant Idaho, LLC ("Valiant"), by and through its attorneys of record, McConnell Wagner Sykes & Stacey PLLC, and, pursuant to Idaho Code § 12-123 and Rule 11 of the Idaho Rules of Civil Procedure, moves this Court for an award of attorneys' fees and costs against JV L.L.C.

This motion is made and based upon the records and files herein; the Memorandum in Support of [Valiant's] Motion For Sanctions Under I.C. § 12-123 and I.R.C.P. 11 filed concurrently herewith; and any further evidence that may be presented at the hearing of this motion.

DATED this 3<sup>rd</sup> day of November 2016.

McCONNELL WAGNER SYKES & STACEY PLLC

BY:

  
Richard L. Stacey  
Attorneys For Valiant Idaho, LLC

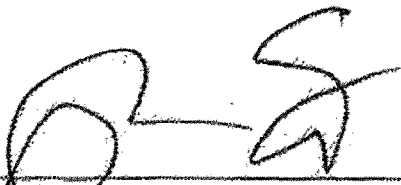
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\_\_\_\_\_  
Richard L. Stacey

STATE OF IDAHO  
COUNTY OF BONNER  
FIRST JUDICIAL DISTRICT

2016 NOV -3 PM 4:41

CLERK DISTRICT COURT

*Sf*  
DEPUTY

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[nicholson@mwsslawyers.com](mailto:nicholson@mwsslawyers.com)

Attorneys For Valiant Idaho, LLC

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT  
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**GENESIS GOLF BUILDERS, INC.,**  
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Plaintiff,

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Defendants.

**AND RELATED COUNTER, CROSS  
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PREVIOUSLY FILED HEREIN.**

Case No. CV-09-1810

**VALIANT IDAHO, LLC'S  
MEMORANDUM IN SUPPORT OF  
MOTION FOR SANCTIONS  
UNDER I.C. § 12-123 AND I.R.C.P. 11**

Honorable Barbara A. Buchanan

Hearing:

November 4, 2016 – 1:30 p.m. PDST

COMES NOW, Valiant Idaho, LLC (“Valiant”), by and through its attorneys of record, McConnell Wagner Sykes & Stacey PLLC, and submits this Memorandum in Support of Motion For Sanctions Under I.C. § 12-123 and I.R.C.P. 11 (“Sanction Motion”).

**I.**  
**INTRODUCTION**

Idaho Code § 12-123 (“§ 12-123”) and Idaho Rule of Civil Procedure (“Rule” or “Rules,” as applicable) 11(c)(1) permit an award of attorneys’ fees against both a party and counsel for frivolous conduct. As discussed below (and in prior briefing submitted by Valiant), JV L.L.C. (“JV”) and JV’s counsel Gary Finney (“Finney”) have repeatedly engaged in frivolous conduct throughout this litigation. As such, this Court should impose an award of attorneys’ fees and costs jointly and severally against JV and Finney for their frivolous conduct in filing its Motion and Application For Stay of Execution Upon Posting A Cash Deposit (“Motion For Stay”) and its Third Party Claim [of exemption] (“Third Party Claim”).

**II.**  
**ARGUMENT**

**A. Attorneys’ Fees Under Idaho Code § 12-123.**

The decision to award attorneys’ fees under § 12-123 is a discretionary decision. *Urrutia v. Harrison*, 156 Idaho 677, 681-82 (2014).

Section 12-123(2)(a) provides, in part, that “the court may award reasonable attorney’s fees to any party to that action adversely affected by frivolous conduct.” The purpose of § 12-123 is to deter inappropriate conduct, as defined by § 12-123, through sanctions. *Urrutia v. Harrison*, 156 Idaho 677, 681 (2014). Sanctions under § 12-123 are “limited to an award of reasonable

attorney fees and may be awarded against the offending party, that party's counsel, or both."

*Merrill v. Gibson*, 142 Idaho 692, 697 (Ct. App. 2005) citing I.C. §§ 12-123(2)(c) & 12-123(2)(d).

"Conduct" is defined as "filing a civil action, asserting a claim, defense, or other position in connection with a civil action, or taking any other action in connection with a civil action."

I.C. §12-123(1)(a). "Frivolous conduct" is defined as:

... conduct of a party to a civil action or of his counsel of record that satisfies either of the following:

- (i) It obviously serves merely to harass or maliciously injure another party to the civil action;
- (ii) It is not supported in fact or warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law.

I.C. § 12-123(1)(b). The Idaho Court of Appeals has recognized that "Idaho Code § 12-123 is written in the disjunctive, requiring *either* harassment or malicious injury *or* a lack of legal basis."

*Ackerman v. Bonneville Cnty.*, 140 Idaho 307, 314 (Ct. App. 2004) (emphasis in original).

The Idaho Court of Appeals decision in *Merrill v. Gibson*, 142 Idaho 692 (Ct. App. 2005), is instructive regarding an award under § 12-123(b)(i) based on conduct which only harassed and served to maliciously injure another party to the action. The *Merrill* decision summarized Gibson's conduct as follows:

Further, this appeal bears every indicator of being just the latest in a long line of *tactics bearing no purpose other than delay or harassment*. The district court's initial judgment in favor of the Merrills, which ordered Gibson to remove himself and his personal property from the disputed real property, was entered in April 2002. Rather than complying with the judgment, Gibson took an appeal to the Idaho Supreme Court which that Court characterized as frivolous and for which the Supreme Court awarded attorney fees against Gibson. Gibson thereupon filed a petition asking the United States Supreme Court to grant certiorari on an issue that the Idaho Supreme Court had deemed frivolous. He also sought a stay of execution of the district court's judgment pending a ruling on his petition for certiorari and, when that request was denied, repeatedly sought more time for



compliance with the district court's judgment without presenting the slightest evidence to support his counsel's assertion that he was "earnestly engaged" in removing his personalty. From the time of the Idaho Supreme Court's decision affirming the judgment requiring removal of Gibson's property from the Merrills' land, until the district court's September 16, 2004 order prohibiting Gibson's further entry on the real property, nearly seven months passed during which time Gibson did not comply with the judgment. Steps taken by Gibson that have delayed the Merrills' ability to experience "full access and peaceful and quiet enjoyment of the subject property" granted them by the July 31, 2002 judgment have culminated with the present appeal that presents no colorable basis for relief.

*This appeal can be seen only as the most recent stage in a pattern of delays by Gibson and his attorney to avoid relinquishing the Merrills' real property to their unhindered possession.* We conclude that Gibson and his counsel have interposed this appeal for an improper purpose, and this appeal therefore satisfies the standards for sanctions under both I.C. § 12-123 and I.A.R. 11.1. Accordingly, we impose sanctions against Gibson and his attorney jointly in the amount of reasonable attorney fees incurred by the Merrills for this appeal.

*Id.* at 697-698 (emphasis added).

As discussed in prior briefs, JV and Finney have engaged in a pattern of delays and tactics bearing no purpose other than delay the inevitable foreclosure of the Idaho Club property or to intentionally harass Valiant throughout the course of this case. JV's Motion For Stay and Third Party Claim are yet another attempt to needlessly delay and harass Valiant with frivolous motions that lack any bases in law. Sanctions should be imposed, jointly and severally, against JV and Finney for their harassing conduct and attempts to maliciously injure Valiant through delay. I.C. § 12-123(1)(b)(i).

Regarding an award of sanctions under § 12-123(b)(ii) for conduct which is unsupported by fact, law or a good faith argument for a change in the law, the Idaho Supreme Court's decision in *Urrutia v. Harrison*, 156 Idaho 677 (2014) is instructive. The trial court based an award of sanctions, in part, on the fact that the sanctioned parties and attorney—the appellants—had

asserted that their lien had priority despite the fact that the lien, “with a priority date of 2008, could not conceivably be higher in priority than [the respondent]’s deed of trust, which was recorded in 2007.” *Urrutia*, 156 Idaho at 681. An additional basis for the sanction was that the appellants “knew the \$220,000 claimed in the Second Lien, like the First Lien, contained numerous items that did not constitute improvements to the arena property and were not lienable under the mechanic’s lien statutes.” *Id.* Other bases for the sanction were noted as defending summary judgment with arguments that had no basis in law or fact. *See id.* at 678-682. Based on these actions, the trial court imposed sanctions under § 12-123(b)(ii). *Id.* at 681.

The Idaho Supreme Court upheld the sanctions by stating that “[t]he district court acted well within its discretion in granting fees against Appellants and their attorney under Idaho Code section 12-123 and we therefore affirm the court’s judgment.” *Id.* at 682.

**B. Attorneys’ Fees Under I.R.C.P. 11.**

Rule 11(b) provides that:

By presenting to the court a pleading, written motion, or other paper, whether by signing, filing, or submitting, or later advocating it, an attorney or unrepresented party certifies that to the best of the person’s knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

- (1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
- (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;
- (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and
- (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

Upon determining that Rule 11 has been violated, *“the court must impose an appropriate sanction* on any attorney, law firm, or party that violated the rule or is responsible for the violation. A law firm may be held jointly responsible for a violation committed by its partner, associate, or employee.” I.R.C.P. 11(c)(1) (emphasis added). The Idaho Court of Appeals has characterized Rule 11 sanctions as “a court management tool’ which should be exercised narrowly.” *Landvik v. Herbert*, 130 Idaho 54, 61 (Ct. App. 1997), quoting *Conley v. Looney*, 117 Idaho 627, 631 (Ct. App. 1990). As such, Rule 11 sanctions are to be awarded based on particular conduct, not “to make a ‘lump sum compensatory attorney fee award.’” *Landvik*, 130 Idaho at 61 quoting *Conley*, 117 Idaho at 630. Rule 11 sanctions “may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney’s fee.” I.R.C.P. 11(c)(4).

The decision to award attorneys’ fees and costs under Rule 11 is a matter reserved to the discretion of the trial court. *Sun Valley Shopping Ctr. v. Idaho Power Co.*, 119 Idaho 87, 94 (1991). When considering a fee award under Rule 11, “the appropriate focus of the trial court should [be] whether [an attorney] ‘made a proper investigation upon reasonable inquiry.’” *Id.* at 95, quoting *Durant v. Christensen*, 117 Idaho 70, 74 (1990).

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C. JV And Finney Engaged In Frivolous Conduct And Should Be Subjected To Sanctions Under § 12-123 And Rule 11.

Valiant respectfully submits that the following conduct of JV and Finney was frivolous conduct under § 12-123 and/or violated Rule 11 and requests fees and costs incurred as a result of such conduct:

On November 2, 2016—*four days* before Valiant's second noticed sheriff's sale—JV filed its Third Party Claim and Motion For Stay. This Motion For Stay raises the same arguments that JV and Finney have made, *and this Court has soundly rejected*, throughout this case. Moreover, the Third Party Claim ignores the Judgment and Decree of Foreclosure entered by this Court and directs the Bonner County Sheriff to postpone the sale of the Idaho Club Property in direct contempt of these orders. As final judgment has been entered in this case and the time to file a motion to reconsider or motion for new trial has long expired, the doctrines of collateral estoppel and *res judicata* prohibit JV from further raising these adjudicated arguments before this or any other Court. Even if this were not the case, this Court has repeatedly rejected these arguments throughout this case. The Motion For Stay could not have been brought because JV or its counsel reasonably believed that they would prevail. To the contrary, JV's Motion For Stay and the Third Party Claim were filed for wholly improper purposes (*i.e.*, to deceitfully direct the Sheriff to postpone the sale and to maliciously harass Valiant, delay the sale, increase the cost of litigation, and to thumb their noses at this Court). Valiant seeks an award of the fees it incurred in responding to the frivolous motions, jointly and severally against JV and Finney as sanctions for their conduct.

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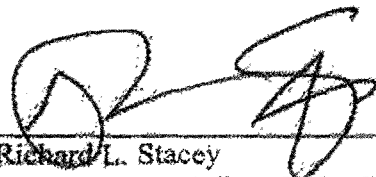
**III.**  
**CONCLUSION**

Valiant and its counsel recognize that an award of attorneys' fees and costs under § 12-123 and Rule 11(a) should be made only in egregious cases and neither Valiant nor its counsel take this filing of the present motion lightly. During this entire litigation, JV and Finney have advanced arguments which are not supported by fact and, more often than not, JV and Finney knew of facts that directly refuted the arguments being made. The most recent filings are a continuation of these tactics. The conduct engaged in by JV and Finney is egregious conduct which justifies imposition of sanctions under both § 12-123 and Rule 11(a). For these reasons, and the reasons set forth above, Valiant respectfully requests that its Motion For Sanctions Under I.C. § 12-123 and I.R.C.P. 11(a) be *granted*.

**DATED** this 3<sup>rd</sup> day of November 2016.

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

BY:

  
Richard L. Stacey  
Attorneys For Valiant Idaho, LLC

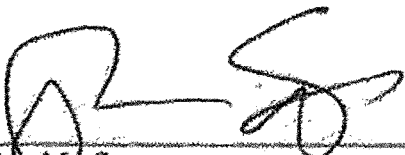
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 3<sup>rd</sup> day of November 2016, a true and correct copy of the foregoing document was served by the method indicated below upon the following party(ies):

Gary A. Finney, Esq. Finney Finney & Finney, P.A. 120 East Lake Street, Suite 317 Sandpoint, Idaho 83864 Telephone: 208.263.7712 Facsimile: 208.263.8211 <i>Counsel For J.V., LLC</i>	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivered <input checked="" type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Electronic Mail <a href="mailto:garyfinney@finneylaw.net">garyfinney@finneylaw.net</a>
Susan P. Weeks, Esq. James, Vernon & Weeks, PA 1626 Lincoln Way Coeur d'Alene, Idaho 83814 Telephone: 208.667.0683 Facsimile: 208.664.1684 <i>Counsel For VP Incorporated/North Idaho Resorts</i>	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivered <input checked="" type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Electronic Mail <a href="mailto:sweeks@jvwlaw.net">sweeks@jvwlaw.net</a>

With a copy via facsimile to:

Honorable Barbara A. Buchanan  
Judge of the First Judicial District  
Bonner County Courthouse  
215 South First Avenue  
Sandpoint, Idaho 83864  
Facsimile: 208.263.0896

  
\_\_\_\_\_  
Richard J. Stacey

STATE OF IDAHO  
COUNTY OF BONNER  
FIRST JUDICIAL DISTRICT

2016 NOV -4 AM 11:16

CLERK DISTRICT COURT

*[Signature]*  
DEPUTY

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  
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[stacey@mwslawyers.com](mailto:stacey@mwslawyers.com)  
[sykes@mwslawyers.com](mailto:sykes@mwslawyers.com)  
[nicholson@mwslawyers.com](mailto:nicholson@mwslawyers.com)

Attorneys For Valiant Idaho, LLC

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

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

Plaintiff,

vs.

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

Defendants.

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

Case No. CV-09-1810

**SUPPLEMENTAL MEMORANDUM IN  
SUPPORT OF VALIANT IDAHO, LLC'S  
MOTION CONTESTING JV L.L.C.'S  
THIRD PARTY CLAIM; AND  
OPPOSITION TO JV L.L.C.'S  
MOTION FOR STAY OF EXECUTION**

Honorable Barbara A. Buchanan

**Hearing:**

November 4, 2016 – 1:30 p.m. PDST

*✓ JB*

COMES NOW, Valiant Idaho, LLC ("Valiant"), by and through its attorneys of record, McConnell Wagner Sykes & Stacey PLLC, and submits the following Supplemental Memorandum in Support of Motion Contesting JV L.L.C.'s Third Party Claim; and Opposition to JV L.L.C.'s Motion and Application For Stay of Execution Upon Posting A Cash Deposit.

**SUPPLEMENTAL MEMORANDUM**

Valiant received a copy of JV, L.L.C.'s ("JV") Motion and Application For Stay of Execution Upon Posting A Cash Deposit ("Motion For Stay") and Third Party Claim ("JV Claim") from the Bonner County Sheriff on November 3, 2016. Upon receipt of said motions, counsel for Valiant immediately called the Court and requested an expedited hearing to avoid further delaying the sale of the Idaho Club Property scheduled for November 7, 2016. After studying JV's briefing, Valiant's counsel further attempted to contact the Sheriff to determine the date that the Notice of Sheriff's Sale was sent to JV, North Idaho Resorts, LLC ("NIR") and VP, Incorporated ("VP") in order to determine whether the JV Claim was timely filed. Despite several telephone calls and two voice mails, counsel for Valiant was unable to speak with the Bonner County Sheriff to discuss this issue on November 3, 2016.

This morning, November 4, 2016, Sally Mitchell on behalf of the Bonner County Sheriff telephoned counsel for Valiant and advised that the Notice of Sheriff's Sale was sent to JV, NIR and VP on October 14, 2016. Ms. Mitchell has executed a declaration filed herewith testifying that the mailings were sent on said date and attaching the certified mail receipts she received for the same. Declaration of Sally Mitchell in Support of Supplemental Memorandum Supporting Motion Contesting JV L.L.C.'s Third Party Claim; and Opposition to JV L.L.C.'s Motion and



Application For Stay of Execution Upon Posting A Cash Deposit ("Mitchell Dec."), ¶¶ 4-5, Exs. A-C. Therefore, the JV Claim is untimely and should be denied.

Idaho Code § 11-203 states:

The following procedures shall apply to a claim by the defendant or the defendant's representative that property levied upon is exempt and to any claim by a third party that property levied upon is his property or that he has a security interest therein. . . .

- (a) **The claim of exemption or third party claim shall be delivered or mailed to the sheriff within fourteen (14) days after the date the sheriff hand delivers or mails the documents required to be served upon the defendant and third parties** under section 8-507A, Idaho Code. If the claim is mailed, it must be received by the sheriff within the fourteen (14) day period. . . .

Ms. Mitchell sent the Notice of Sheriff's Sale to JV on October 14, 2016. Mitchell Dec., ¶¶ 4-5, Exs. A-C. Under Idaho law, any claim of exemption had to be received by the Sheriff within fourteen (14) days of that date (*i.e.*, October 28, 2016). The JV Claim was hand delivered to the Sheriff and filed with this Court on November 2, 2016. As such, JV's Claim was untimely. Moreover, even if JV is granted an additional three (3) days for service in accordance with Rule 2.2(c) of the Idaho Rules of Civil Procedure, the JV Claim was still untimely filed. Said Claim was required to be filed no later than October 31, 2016. An untimely filed claim of exemption is invalid as a matter of law. Per Idaho Code § 11-203(c):

. . . The sheriff shall refuse to accept or honor a claim not filed with him within [the appropriate] period and unless otherwise ordered by the court, shall, after such period has elapsed, proceed to sell or deliver the property levied upon to the plaintiff or other person in whose favor the execution runs. . . .

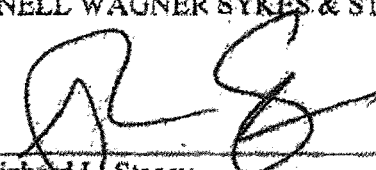
McConnell Wagner Sykes + Stacey

Based upon the foregoing law and argument, prior pleadings filed herein, and whatever evidence may be presented at the hearing of this matter, the JV Claim should be denied and dismissed as a matter of law.

DATED this 4<sup>th</sup> day of November 2016.

McCONNELL WAGNER SYKES & STACEY PLLC

BY:

  
Richard L. Stacey  
Attorneys For Valiant Idaho, LLC

**CERTIFICATE OF SERVICE**


I HEREBY CERTIFY that on the 4<sup>th</sup> day of November 2016, a true and correct copy of the foregoing document was served by the method indicated below upon the following party(ies):

Gary A. Finney, Esq. Finney Finney & Finney, P.A. 120 East Lake Street, Suite 317 Sandpoint, Idaho 83864 Telephone: 208.263.7712 Facsimile: 208.263.8211 <i>Counsel For J.V., LLC</i>	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivered <input checked="" type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Electronic Mail <a href="mailto:garyfinney@finneylaw.net">garyfinney@finneylaw.net</a>
Susan P. Weeks, Esq. James, Vernon & Weeks, PA 1626 Lincoln Way Coeur d'Alene, Idaho 83814 Telephone: 208.667.0683 Facsimile: 208.664.1684 <i>Counsel For VP Incorporated/North Idaho Resorts</i>	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivered <input checked="" type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Electronic Mail <a href="mailto:sweeks@jvwlaw.net">sweeks@jvwlaw.net</a>

With a copy via facsimile to:

Honorable Barbara A. Buchanan  
Judge of the First Judicial District  
Bonner County Courthouse  
215 South First Avenue  
Sandpoint, Idaho 83864  
Facsimile: 208.263.0896

Bonner County Sheriff  
Ms. Sally Mitchell - Civil Supervisor  
208.265.4378

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

STATE OF IDAHO  
COUNTY OF BONNER  
FIRST JUDICIAL DISTRICT

2016 NOV -4 AM 11:16

CLERK DISTRICT COURT

  
DEPUTY

Richard L. Stacey, ISB #6800  
Jeff R. Sykes, ISB #5058  
Chad M. Nicholson, ISB #7506  
**McCONNELL WAGNER SYKES & STACEY PLLC**  
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[stacey@mwsslawyers.com](mailto:stacey@mwsslawyers.com)  
[sykes@mwsslawyers.com](mailto:sykes@mwsslawyers.com)  
[nicholson@mwsslawyers.com](mailto:nicholson@mwsslawyers.com)

Attorneys For Valiant Idaho, LLC

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

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

Plaintiff,

vs.

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

Defendants.

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

Case No. CV-09-1810

**DECLARATION OF SALLY MITCHELL  
IN SUPPORT OF SUPPLEMENTAL  
MEMORANDUM SUPPORTING  
VALIANT IDAHO, LLC'S  
MOTION CONTESTING JV L.L.C.'S  
THIRD PARTY CLAIM; AND  
OPPOSITION TO JV L.L.C.'S  
MOTION FOR STAY OF EXECUTION**

**Honorable Barbara A. Buchanan**

**Hearing:**

November 4, 2016 - 1:30 p.m. PDST

DECLARATION OF SALLY MITCHELL IN SUPPORT OF  
SUPPLEMENTAL MEMORANDUM SUPPORTING  
VALIANT IDAHO, LLC'S MOTION CONTESTING  
JV L.L.C.'S THIRD PARTY CLAIM; AND OPPOSITION TO  
JV L.L.C.'S MOTION FOR STAY OF EXECUTION | Page 1  
[A1547.2016]Post-TrialContest-Mitchell Dec 161104.doc

1 JB


McConnell Wagner Sykes + Stacey

I, Sally Mitchell, hereby state and declare:

1. I am the Civil Supervisor in the Bonner County Sheriff's Office, and I make this declaration in that capacity and based upon my personal knowledge.
2. Pursuant to a voice mail request left November 3, 2016, this morning, November 4, 2016, I telephoned Rick Stacey, counsel for Valiant Idaho, LLC ("Valiant"), to discuss issues related to the upcoming Sheriff's sale scheduled to commence on November 7, 2016.
3. Specifically, I advised Mr. Stacey that JV L.L.C.'s ("JV") Third Party Claim, along with its Motion and Application For Stay of Execution Upon Posting A Cash Deposit, were hand delivered to the Bonner County Sheriff's Office on November 2, 2016.
4. I further confirmed with Mr. Stacey that, on October 14, 2016, I sent *via* United States Certified Mail the Notice of Sheriff's Sale to JV, North Idaho Resorts, LLC ("NIR") and VP, Incorporated ("VP").
5. Attached hereto as Exhibit A, Exhibit B and Exhibit C are true and correct copies of the certified mailing receipts and/or proofs of delivery for JV, NIR and VP, respectively.

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

DATED this 4<sup>th</sup> day of November 2016.

  
SALLY MITCHELL  
Civil Supervisor | Bonner County Sheriff's Office

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on the 4<sup>th</sup> day of November 2016, a true and correct copy of the foregoing document was served by the method indicated below upon the following party(ies):

Gary A. Finney, Esq. Finney Finney & Finney, P.A. 120 East Lake Street, Suite 317 Sandpoint, Idaho 83864 Telephone: 208.263.7712 Facsimile: 208.263.8211 <i>Counsel For J.V., LLC</i>	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivered <input checked="" type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Electronic Mail <a href="mailto:garyfinney@finneylaw.net">garyfinney@finneylaw.net</a>
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Facsimile: 208.263.0896

Bonner County Sheriff  
Ms. Sally Mitchell – Civil Supervisor  
208.265.4378

  
Richard L. Stacey

McConnell Wagner Sykes + Stacey

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<p>• Complete items 1, 2, and 3.                      • Print your name and address on the reverse so that we can return the card to you.                      • Attach this card to the back of the mailpiece, or on the front if space permits.</p>	<p>A. Signature <input type="checkbox"/> Agent  <input checked="" type="checkbox"/> Addressee                      B. Received by (Printed Name) <input type="checkbox"/> Date of Delivery                      Chris Eberley 11/07/16</p>
<p>1. Article Addressed to:                      JV, L.L.C.                      c/o Gary A. Finney, Esq.                      Finney Finney &amp; Finney, P.A.                      120 East Lake Street, Suite 317                      Sandpoint, Idaho 83864</p>	<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes                      If YES, enter delivery address below: <input type="checkbox"/> No</p>
<p>9590 8402 1891 6104 5621 15</p>	<p>3. Service Type  <input type="checkbox"/> Adult Signature  <input type="checkbox"/> Adult Signature Restricted Delivery  <input type="checkbox"/> Certified Mail®  <input type="checkbox"/> Certified Mail Restricted Delivery  <input type="checkbox"/> Collect on Delivery  <input type="checkbox"/> Collect on Delivery Restricted Delivery  <input type="checkbox"/> Insured Mail  <input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)  <input type="checkbox"/> Priority Mail Express®  <input type="checkbox"/> Registered Mail™  <input type="checkbox"/> Registered Mail Restricted Delivery  <input checked="" type="checkbox"/> Return Receipt for Merchandise  <input type="checkbox"/> Signature Confirmation™  <input type="checkbox"/> Signature Confirmation Restricted Delivery</p>
<p>2. Article Number (Horizontal bars) 7015 1520 0002 6140 1971</p>	
<p>PS Form 3811, July 2015 PSN 7530-02-000-9059</p>	<p>Domestic Return Receipt</p>

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Postage Paid For: 3.50

Basic Postage & Fees: 2.70

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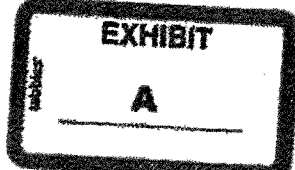
c/o Gary A. Finney, Esq.  
 Finney Finney & Finney, P.A.  
 120 East Lake Street, Suite 317  
 Sandpoint, Idaho 83864

1684

4001 N Boyer Rd  
 Sandpoint, ID 83864

Booner County Sheriff  
 Chris Eberley 11-15-16

7015 1520 0002 6140 1971



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Tracking Number: 70151820009261402190

Product & Tracking Information

Postal Product: Certified Mail™

DATE & TIME	STATUS OF ITEM	LOCATION	Email Updates
October 17, 2016, 11:34 am	Delivered, Front Desk/Reception	COEUR D ALENE, ID 83814	

Your item was delivered to the front desk or reception area at 11:34 am on October 17, 2016 in COEUR D ALENE, ID 83814.

October 18, 2016, 9:27 am	Out for Delivery	COEUR D ALENE, ID 83814	
October 15, 2016, 9:48 am	Business Closed	COEUR D ALENE, ID 83814	
October 13, 2016, 4:13 am	Arrived at Unit	COEUR D ALENE, ID 83814	
October 15, 2016, 2:30 am	Arrived at USPS Facility	COEUR D ALENE, ID 83814	
October 15, 2016, 1:24 am	Departed USPS Facility	SPOKANE, WA 99224	
October 14, 2016, 10:01 pm	Arrived at USPS Origin Facility	SPOKANE, WA 99224	
October 14, 2016, 5:34 pm	Departed Post Office	SANDPOINT, ID 83864	
October 14, 2016, 4:01 pm	Picked Up	SANDPOINT, ID 83864	

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DATE: 0479 2000 0251 5702

Postage: 3.30  
 Insurance: 2.70  
 Total: 7.35

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North Idaho Resorts, LLC  
 c/o Susan P. Weeks, Esq.  
 James, Vernon & Weeks, PA  
 1626 Lincoln Way  
 Coeur d'Alene, Idaho 83814

APR: Sally Dlb-1590  
 Bonner County Sheriff  
 4001 N Boyer Rd  
 Sandpoint, ID 83864

Track Another Package

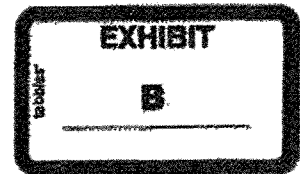
Tracking (or receipt) number

Track It

Manage Incoming Packages

Track all your packages from a dashboard (no tracking numbers necessary)

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SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<p>                     * Complete items 1, 2, and 3.                      * Print your name and address on the reverse so that we can return the card to you.                      * Attach this card to the back of the mailpiece, or on the front if space permits.                 </p>	<p>                     A. Signature <input type="checkbox"/> Agent <input type="checkbox"/> Addressee                      B. Registered by (Printed Name)                      C. Date of Delivery                 </p>
<p>                     VP, Incorporated                      c/o Susan P. Weeks, Esq.                      James, Vernon &amp; Weeks, PA                      1626 Lincoln Way                      Coeur d'Alene, Idaho 83814                 </p>	<p>                     D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No                      If YES, enter delivery address below:                 </p>
<p>                     9590 9402 1891 6104 5623 20                 </p>	<p>                     3. Service Type  <input type="checkbox"/> Adult Signature  <input type="checkbox"/> Adult Signature Restricted Delivery  <input checked="" type="checkbox"/> Certified Mail  <input type="checkbox"/> Certified Mail Restricted Delivery  <input type="checkbox"/> Collect on Delivery  <input type="checkbox"/> Collect on Delivery Restricted Delivery  <input type="checkbox"/> Insured Mail  <input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)                 </p>
<p>                     Article Identifier (Transfer from previous label)                      7015 1520 0002 6140 1702                 </p>	<p> <input type="checkbox"/> Priority Mail Express®  <input type="checkbox"/> Registered Mail™  <input type="checkbox"/> Registered Mail Restricted Delivery  <input type="checkbox"/> Return Receipt for Merchandise  <input type="checkbox"/> Signature Confirmation™  <input type="checkbox"/> Signature Confirmation Restricted Delivery                 </p>

PS Form 3811, July 2015 PSN 7500-02-000-6053 Domestic Return Receipt

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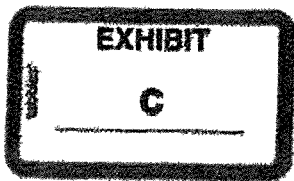
Add delivery instructions, unit or initials at end  
 19/14 1305

Certified Mail Fee	3.30
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Total: 10.65  
 Date: 10/14/14  
 Recipient: VP, Incorporated  
 c/o Susan P. Weeks, Esq.  
 James, Vernon & Weeks, PA  
 1626 Lincoln Way  
 Coeur d'Alene, Idaho 83814

App: Sally Old 1590  
 Bonner County Sheriff's  
 4001 N Boyer Rd  
 Sandpoint, ID 83864

EXHIBIT DATE 2008 025T 510L



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DATE & TIME	STATUS OF ITEM	LOCATION
October 17, 2016, 11:34 am	Delivered, Front Desk/Reception	COEUR D ALENE, ID 83814

Your item was delivered to the front desk of reception free at 11:34 am on October 17, 2016 in COEUR D ALENE, ID 83814.

October 16, 2016, 9:27 am	Out for Delivery	COEUR D ALENE, ID 83814
October 16, 2016, 8:46 am	Business Closed	COEUR D ALENE, ID 83814
October 15, 2016, 4:13 am	Arrived at Unit	COEUR D ALENE, ID 83814
October 14, 2016, 8:38 pm	Arrived at USPS Origin Facility	SPOKANE, WA 99221
October 14, 2016, 8:24 pm	Departed Post Office	SANDPOINT, ID 83864
October 14, 2016, 4:01 pm	Picked Up	SANDPOINT, ID 83864

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Postage: 3.70  
Total: 7.35

19/14  
12/15

VP, Incorporated  
c/o Susan P. Weeks, Esq.  
James, Vernon & Weeks, PA  
1626 Lincoln Way  
Coeur d'Alene, Idaho 83814

Mr. Salby Old - 15910  
Bonner County Sheriff's  
4001 N Boyer Rd  
Sandpoint, ID 83864

Available Actions

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Email Updates

SENDER, COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
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VP, Incorporated  
c/o Susan P. Weeks, Esq.  
James, Vernon & Weeks, PA  
1626 Lincoln Way  
Coeur d'Alene, Idaho 83814



Article Number (Reference from computer label)  
7015 1520 0002 6140 1902

COMPLETE THIS SECTION ON DELIVERY

A. Signature: *[Signature]*

B. Received by (Printed Name): *[Name]*

C. Date of Delivery: *[Date]*

D. Is delivery address different from item 1?  Yes  
If YES, enter delivery address below:  No

3. Service Type
- Adult Signature
  - Adult Signature Restricted Delivery
  - Certified Mail
  - Certified Mail Restricted Delivery
  - Collect on Delivery
  - Collect on Delivery Restricted Delivery
  - Insured Mail
  - Insured Mail Restricted Delivery (over \$500)
  - Priority Mail Express
  - Registered Mail™
  - Registered Mail Restricted Delivery
  - Return Receipt for Merchandise
  - Signature Confirmation™
  - Signature Confirmation Restricted Delivery

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Pages from a dashboard, if necessary

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STATE OF IDAHO  
COUNTY OF BONNER  
FIRST JUDICIAL DISTRICT

2016 NOV -4 PM 2:41

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,

vs.

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

Defendants.

Case No. CV-09-1810

**ORDER RE: JV L.L.C.'S  
THIRD PARTY CLAIM AND  
MOTION FOR STAY OF EXECUTION**

**Honorable Barbara A. Buchanan**

**Hearing:**

November 4, 2016 – 1:30 p.m. PDST


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

Valiant Idaho, LLC's ("Valiant") Motion Contesting JV L.L.C.'s Third Party Claim; and Opposition to JV L.L.C.'s Motion and Application For Stay of Execution Upon Posting A Cash Deposit; and Motion For Sanctions Under I.C. § 12-123 and I.R.C.P. 11, having come before this Court for hearing on November 4, 2016; with all parties appearing and represented by counsel; and this Court having considered the briefing submitted and the arguments presented at the hearing; and good cause appearing therefor;

**IT IS HEREBY ORDERED THAT:**

1. JV L.L.C.'s ("JV") Third Party Claim is *denied*. Therefore, the Bonner County Sheriff's sale of the Idaho Club Property will proceed as scheduled on November 7, 2016;
2. JV's Motion and Application For Stay of Execution Upon Posting A Cash Deposit is *denied* as it relates to the Bonner County Sheriff's sale set to commence on November 7, 2016. Therefore, the Bonner County Sheriff's sale of the Idaho Club Property will proceed as scheduled;
3. JV's Motion and Application For Stay of Execution Upon Posting A Cash Deposit as it relates to the sale of JV's personal property in Boundary County is *granted*, thereby canceling the Boundary County Sheriff's sale set for November 15, 2016; and
4. Valiant's Motion For Sanctions Under I.C. § 12-123 and I.R.C.P. 11 is hereby taken under advisement to be ruled upon at a later date.

DATED this 4th day of November, 2016.

  
\_\_\_\_\_  
**Honorable Barbara A. Buchanan**  
**Judge of the First Judicial District**

**CERTIFICATE OF SERVICE**


I HEREBY CERTIFY that on the 4 day of November 2016, a true and correct copy of the foregoing document was served by the method indicated below upon the following parties:

Gary A. Finney, Esq. Finney Finney & Finney, P.A. 120 East Lake Street, Suite 317 Sandpoint, Idaho 83864 Telephone: 208.263.7712 Facsimile: 208.263.8211 <i>Counsel For J.V., LLC</i>	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivered <input checked="" type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Electronic Mail  <a href="mailto:garyfinney@finneylaw.net">garyfinney@finneylaw.net</a>
Richard L. Stacey, Esq. Jeff R. Sykes, Esq. Chad M. Nicholson, Esq. McConnell Wagner Sykes & Stacey PLLC 827 East Park Boulevard, Suite 201 Boise, Idaho 83712 Telephone: 208.489.0100 Facsimile: 208.489.0110 <i>Counsel For Valiant Idaho, LLC</i>	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivered <input checked="" type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Electronic Mail  <a href="mailto:stacey@mwsslawyers.com">stacey@mwsslawyers.com</a> <a href="mailto:sykes@mwsslawyers.com">sykes@mwsslawyers.com</a> <a href="mailto:nicholson@mwsslawyers.com">nicholson@mwsslawyers.com</a>
Susan P. Weeks, Esq. James, Vernon & Weeks, PA 1626 Lincoln Way Coeur d'Alene, Idaho 83814 Telephone: 208.667.0683 Facsimile: 208.664.1684 <i>Counsel For VP Incorporated/North Idaho Resorts</i>	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivered <input checked="" type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Electronic Mail  <a href="mailto:sweeks@jvwlaw.net">sweeks@jvwlaw.net</a>

With a copy via facsimile to:

Bonner County Sheriff  
Ms. Sally Mitchell – Civil Supervisor  
208.265.4378

Boundary County Sheriff  
Deputy Mike Rosenthal, Civil Division  
208.267.3154

  
\_\_\_\_\_  
Clerk of the Court

STATE OF IDAHO  
COUNTY OF BONNER  
FIRST JUDICIAL DISTRICT

2016 NOV 14 PM 4:22

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**

**MEMORANDUM DECISION  
ORDER GRANTING VALIANT  
IDAHO, LLC'S MOTION FOR  
SANCTIONS**

---

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

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THIS MATTER came before the Court on November 4, 2016, for a hearing on Valiant Idaho, LLC's Motion for Sanctions Under I.C. § 12-123 and I.R.C.P. 11, filed November 3, 2016. Valiant Idaho, LLC ("Valiant") was represented at the hearing by Richard L. Stacey of MCCONNELL WAGNER SYKES & STACEY, PLLC. JV, LLC ("JV") was represented by Gary A. Finney, of FINNEY FINNEY & FINNEY, P.A. North Idaho Resorts, LLC ("NIR") and VP, Incorporated ("VP") were represented by Susan Weeks of JAMES, VERNON & WEEKS, P.A. Mr. Stacey and Ms. Weeks appeared by phone. Mr. Finney was present in the courtroom.

## I. RELEVANT FACTS

1. On July 20, 2016, this Court separately entered a Decree of Foreclosure and a Judgment in favor of Valiant. The Judgment awarded Valiant damages in the amount of \$21,484,912.26 (plus pre- and post-judgment interest at the rates set forth therein), and determined that Valiant's mortgages recorded against certain real property were prior in right, title and interest to any interest held by JV or any of the other defendants in this case. The Decree of Foreclosure ordered the sale of said real property encumbered by Valiant's mortgages to pay off the Judgment awarded to Valiant.
2. On August 22, 2016, this Court entered a second judgment awarding Valiant, *inter alia*, costs of \$15,554.88 against JV ("Costs Judgment").
3. On October 5, 2016, Valiant obtained a Writ of Execution from the Bonner County Sheriff, requiring the Sheriff to satisfy the Judgment, plus post-judgment interest and costs of the sale, by selling the real property encumbered by the Valiant mortgages. The sale of said property was scheduled for November 7, 2016.
4. On October 13, 2016, Valiant obtained a Writ of Execution to execute on certain personal property of JV located in Boundary County to satisfy Valiant's Costs Judgment. The sale of this personal property was scheduled for November 15, 2016. [This sale has been stayed by court order upon the posting of a cash bond in the amount of \$21,154.60].
5. On October 14, 2016, the Bonner County Sheriff sent a Notice of Sheriff's Sale to JV, NIR and VP via United States certified mail; and said Notice was delivered to JV's attorney, Gary Finney, on October 17, 2016. *Declaration of Sally Mitchell in Support of Supplemental Memorandum Supporting Motion Contesting JV L.L.C.'s Third Party*

*Claim; and Opposition to JV L.L.C.'s Motion and Application For Stay of Execution Upon Posting A Cash Deposit ("Mitchell Dec."),* ¶¶ 4-5, Exs. A-C.

6. On November 2, 2016, JV filed a Motion and Application For Stay of Execution Upon Posting A Cash Deposit ("Motion for Stay") and a Third Party Claim (Idaho Code § 11-203) ("Third Party Claim") with the Court. The Motion for Stay sought: (1) the stay of execution against JV's personal property located in Boundary County; and (2) to stay the sale of the "Idaho Club Property" located in Bonner County, Idaho, to satisfy amounts awarded to Valiant against Pend Oreille Bonner Development, LLC.<sup>1</sup>
7. The Motion for Stay and Third Party Claim were signed by JV's attorney, Gary Finney. The Third Party Claim was also verified by James Berry, as manager and member for JV.
8. Even though the Motion for Stay and Third Party Claim were filed shortly after 2:00 p.m. on Wednesday, November 2<sup>nd</sup>, and the Bonner County Sheriff's sale was scheduled to commence on Monday morning, November 7<sup>th</sup>, Mr. Finney did not notice the motions for a hearing; did not contact the Court for an expedited hearing; and did not contact counsel for Valiant. Rather, he placed the documents in regular U.S. Mail on November 2, 2016.
9. JV hand delivered the Motion for Stay and Third Party Claim to the Bonner County Sheriff on November 2, 2016. *Mitchell Dec.*, at ¶ 3.
10. Valiant received a copy of the Motion for Stay and Third Party Claim *from the Bonner County Sheriff* on November 3, 2016. Upon receipt of said motions, counsel for Valiant immediately called the Court and requested an expedited hearing to avoid further delaying the sale of the Idaho Club Property scheduled for November 7, 2016.
11. Valiant filed responsive briefs to JV's motions on November 3 and 4, 2016.



12. An expedited hearing on JV's motions was held on November 4, 2016.

## II. APPLICABLE LAW AND STANDARD OF REVIEW

Idaho Rule of Civil Procedure 11, governing representations to the Court and sanctions, provides, in relevant part:

**(a) Signature.** Every pleading, written motion, and other paper must be signed by at least one attorney of record licensed in the State of Idaho, in the individual attorney's name, or by a party personally if the party is unrepresented. The paper must state the signer's address, email address, and telephone number. Unless a rule or statute specifically states otherwise, a pleading need not be verified or accompanied by an affidavit. The court must strike an unsigned paper unless the omission is promptly corrected after being called to the attorney's or party's attention.

**(b) Representations to the Court.** By presenting to the court a pleading, written motion, or other paper, whether by signing, filing, or submitting, or later advocating it, **an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:**

- (1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
- (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;**
- (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and**
- (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

**(c) Sanctions.**

**(1) In General.** If, after notice and a reasonable opportunity to respond, the court determines that Rule 11(b) has been violated, the court must impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation. A law firm may be held jointly responsible for a violation committed by its partner, associate, or employee.

**(2) Motion for Sanction.** A motion for sanctions must be made separately from any other motion and must describe the specific conduct that allegedly violates Rule 11(b). The motion must be served under Rule 5, but it must not be filed or be

---

<sup>1</sup> JV's Motion for Stay also seeks to stay the sale of certain real property that was identified in the Judgment as "Parcel 121." However, Parcel 121 is not identified in the Notice of Sheriff's Sale and, as such, is not part of the property that is subject to said sale.

presented to the court if the challenged paper, claim, defense, contention, or denial is withdrawn or appropriately corrected within 21 days after service or within another time the court sets. If warranted, the court may award to the prevailing party on the motion, reasonable expenses, including attorney's fees and costs incurred for the motion.

...  
(4) *Nature of the Sanction.* The sanction imposed under this rule may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee. The sanction may also include nonmonetary directives.

...  
(6) *Requirements for an Order.* An order imposing a sanction must describe the sanctioned conduct and explain the basis for the sanction.

**(d) Inapplicability to Discovery.** This rule does not apply to disclosures and discovery requests, responses, objections, and motions under Rules 26 through 37.

I.R.C.P. 11. (Emphasis supplied).

In *Landvik by Landvik v. Herbert*, 130 Idaho 54, 936 P.2d 697 (Ct. App. 1997), the Idaho

Court of Appeals stated:

**Rule 11 applies only to the signing of a “pleading, motion or other paper,” and its “central feature is the certification established by the signature.”** *Id.* at 653, 837 P.2d at 328. **An “attorney is required to perform a prefiling inquiry into both the facts and the law involved to satisfy the affirmative duty imposed by Rule 11.”** *Riggins v. Smith*, 126 Idaho 1017, 1021, 895 P.2d 1210, 1213 (1995). **Reasonableness under the circumstances, and a duty to make reasonable inquiry prior to filing a pleading or other paper, is the appropriate standard to apply when evaluating an attorney's conduct.** *Durrant v. Christensen*, 117 Idaho 70, 74, 785 P.2d 634, 638 (1990). **Whether a pleading, motion or other signed document is sanctionable must be based on an assessment of the knowledge of the relevant facts and law that reasonably could have been acquired at the time the document was submitted to the court.** *Young*, 122 Idaho at 653, 837 P.2d at 328.

**This Court has held that Rule 11 sanctions ought not be applied to make a “lump sum compensatory attorney fee award.”** *Conley v. Looney*, 117 Idaho 627, 630, 790 P.2d 920, 923 (Ct.App.1990); *Kent v. Pence*, 116 Idaho 22, 24, 773 P.2d 290, 292 (Ct.App.1989). **Rather, Rule 11(a)(1) is “a court management tool” which should be exercised narrowly.** *Conley*, 117 Idaho at 631, 790 P.2d at 924; *State of Alaska ex rel. Sweat v. Hansen*, 116 Idaho 927, 929, 782 P.2d 50, 52 (Ct.App.1989). **In reviewing the trial court's action on a motion for Rule 11 sanctions, we apply an abuse of discretion standard.** *Riggins*, 126 Idaho at 1020, 895 P.2d at 1213; *Sun Valley Shopping Center*, 119 Idaho at 94, 803 P.2d at 1000.

*Id.* at 61, 936 P.2d at 704. (Emphasis supplied). *Accord Tolley v. THI Co.* 140 Idaho 253, 264, 92 P.3d 503, 514 (2004) (“The district court was within its discretion and acted accordingly to the legal standards to it, as evidenced by its reliance above on *Landvik v. Herbert.*”).

### III. DISCUSSION

As a preliminary matter, the Court notes that Valiant did not object to entry of an order staying the sale of JV’s personal property in Boundary County, Idaho, upon proof that JV had complied with Idaho Appellate Rule 13(b)(15), and this Court entered an order staying the Boundary County sale on November 4, 2016. However, Valiant did object to JV’s motion to stay the sale of the Idaho Club Property in Bonner County and to the Third Party Claim. This Court agreed and entered an order denying a stay of the Bonner County Sheriff’s sale and denying the Third Party Claim. The issue now before the Court is whether the filing of these motions by JV warrants the imposition of sanctions under Rule 11. This Court finds that it does, for the following reasons.

First, Idaho Code § 11-203 provides:

The following procedures shall apply to a claim by the defendant or the defendant's representative that property levied upon is exempt and to any claim by a third party that property levied upon is his property or that he has a security interest therein. . . .

**(a) The claim of exemption or third party claim shall be delivered or mailed to the sheriff within fourteen (14) days after the date the sheriff hand delivers or mails the documents required to be served upon the defendant and third parties** under section 8-507A, Idaho Code. If the claim is mailed, it must be received by the sheriff within the fourteen (14) day period. . . .

I.C. § 11-203(a). (Emphasis supplied).

The Bonner County Sheriff mailed the Notice of Sheriff’s Sale to JV on October 14, 2016. It was delivered to JV on October 17, 2016. *Mitchell Dec.*, ¶¶ 4-5, Exs. A-C. Under Idaho law, any claim of exemption had to be received by the Sheriff within fourteen (14)

days of that date (i.e., October 31, 2016). The Third Party Claim was hand delivered to the Sheriff and filed with this Court on November 2, 2016. As such, it was untimely. An untimely filed claim of exemption is invalid per Idaho Code § 11-203(c), which provides:

...The sheriff shall refuse to accept or honor a claim not filed with him within that period and unless otherwise ordered by the court, shall, after such period has elapsed, proceed to sell or deliver the property levied upon to the plaintiff or other person in whose favor the execution runs. ...

I.C. § 11-203(c).

Second, in the Third Party Claim, JV sets forth the same legal arguments that it has repeatedly raised throughout Valiant's foreclosure action—legal arguments which have been fully briefed, argued, and adjudicated, and which have been repeatedly rejected by this Court in numerous memorandum decisions regarding the defendants' various motions for reconsideration and/or to alter and amend the judgment.

Finally, Valiant was awarded a Judgment in excess of \$21 million, and a sale of the Idaho Club Property was ordered to pay off that Judgment amount. The Court finds that for JV to post a cash bond of \$21,154.60 (136% of the Costs Judgment), and to then instruct the Sheriff that the posting of said bond effected a stay upon the execution of the \$21 million plus Judgment, without scheduling a hearing or seeking an order from this Court, was an attempt to intentionally mislead the Sheriff into postponing the sale in direct violation of the orders of this Court.

For these reasons, the Court, in the exercise of its discretion, finds that JV's Motion for Stay and Third Party Claim were "(1) ... presented for an[ ] improper purposes, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; [and] (2) the claims, defenses, and other legal contentions [therein] are not warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing

new law.” I.R.C.P. 11(b)(1)-(2). Sanctions against JV are, therefore, warranted under Rule 11, and are hereby imposed. Valiant is thus entitled to recover against JV and Mr. Finney, *jointly and severally*, “the amount of the reasonable expenses incurred because of the filing of the ... motion, or other paper, including a reasonable attorney's fee.” I.R.C.P. 11(c)(4).

The Court having imposed sanctions under Rule 11, finds that it is not necessary to conduct an analysis under Idaho Code § 12-123.

#### IV. CONCLUSION AND ORDER

NOW, THEREFORE, based on the foregoing, IT IS HEREBY ORDERED THAT Valiant Idaho, LLC's Motion for Sanctions Under I.C. § 12-123 and I.R.C.P. 11 is GRANTED.

IT IS FURTHER ORDERED THAT Valiant shall within fourteen (14) days of this Order submit a Memorandum of Costs and an Affidavit of Attorney's Fees. JV may file an objection thereto in the manner provided in Idaho Rule of Civil Procedure 54(d) and 54(e).

IT IS SO ORDERED.

DATED this 14 day of November, 2016.



**Barbara Buchanan**  
**District Judge**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was delivered via facsimile transmission, this 14 day of November, 2016, to:

Gary A. Finney  
FINNEY FINNEY & FINNEY, PA  
120 East Lake Street, Suite 317  
Sandpoint, Idaho 83864  
**Facsimile: 208.263.8211**  
finneylaw@finneylaw.net  
*(Attorneys for For J.V., LLC)*

Susan P. Weeks  
Daniel M. Keyes  
JAMES, VERNON & WEEKS, PA  
1626 Lincoln Way  
Coeur d'Alene, Idaho 83814  
**Facsimile: 208.664.1684**  
sweeks@jvwlaw.net  
dkeyes@jvwlaw.net  
*(Attorneys for VP, Incorporated/North Idaho Resorts, LLC)*

Richard L. Stacey  
Jeff R. Sykes  
Chad M. Nicholson  
McCONNELL WAGNER SYKES  
& STACEY, PLLC.  
827 East Park Boulevard, Suite 201  
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stacey@mwsslawyers.com  
sykes@mwsslawyers.com  
nicholson@mwsslawyers.com  
*(Attorney for R.E. Loans, LLC; and Valiant Idaho, LLC)*

  
Deputy Clerk

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

(Bonner Co. Case) 2016 NOV 18 AM 10:33

**SERVE:** NORTH IDAHO RESORTS, LLC, by its agent, Mr. Richard Vellelli

**CASE #:** CV-2009-1810 (Bonner Co. Case)

DISTRICT COURT  
DEPUTY

**SHERIFF'S CERTIFICATE ON RETURN OF SERVICE, WRIT OF EXECUTION**

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

VS

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

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

GREG SPRUNGL, SHERIFF OF BOUNDARY COUNTY, DOES CERTIFY THAT HIS OFFICE RECEIVED A **WRIT OF EXECUTION**, WITH SUFFICIENT COPIES FOR SERVICE AND EXECUTION, ON **10/24/2016**, AND THAT THE SAME WAS EXECUTED WITHIN BOUNDARY COUNTY, IDAHO, AGAINST CERTAIN INTANGIBLE PERSONAL PROPERTY OF DEFENDANT NORTH IDAHO RESORTS, LLC, WHICH ENTITY WAS SERVED BY PERSONALLY SERVING ITS AGENT, MR. RICHARD VILLELLI, WITH NOTICE AT 533739 HWY 95, BOUNDARY COUNTY, IDAHO ON **10/24/2016**:

ON **10/24/2016** I DID LEVY UPON ALL RIGHT, TITLE, AND INTEREST OF THE ABOVE NAMED DEFENDANT IN AND TO THE FOLLOWING DESCRIBED INTANGIBLE PERSONAL PROPERTY, TO WIT:

**NIR's chose in action to collect amounts owed pursuant to the Third Amended and Restated Real Property Purchase and Sale Agreement, and any and all amendments or modifications thereto, entered into between NIR and Pend Oreille Bonner Investments, LLC, dated March 9, 2006. The chose of action identified herein specifically includes, but is not necessarily limited to, NIR's claims, defenses, causes of action and appeal rights associated with Bonner County Case Nos. CV-2009-01810 and CV-2011-0135, and Idaho Supreme Court Docket No. 42467-2014 ("NIR Property").**

WRIT AMOUNT	\$ 10,453.13
SHERIFF'S SER/RET FEE	\$ 50.00 ( <i>prepaid by plaintiff Vallant</i> )
SHERIFF'S COMMISSION	\$ 100.00
RECORDING FEES	\$ 51.00
POSTING	\$ 18.00
CERTIFICATE OF SALE	\$ 25.00
NOTICES OF LEVY/SALE	\$ 20.00
<b>TOTAL</b>	<b>\$ 10,717.13</b>

FULL AMOUNT COLLECTED

\$ 10,717.13 HIGH BID AT SHERIFF'S SALE  
OF ABOVE PERSONAL PROPERTY ON NOVEMBER 15, 2016.

PAID TO PLAINTIFF

\$ 10,503.13 – (WRIT AMOUNT PLUS PRE-PAID FEES)

THIS WRIT, BONNER COUNTY CASE **CV09-1810**, IS RETURNED TO THE COURT

**SATISFIED**

I DID SERVE THE DEFENDANT/PLAINTIFF AND/OR THIRD PARTY, IF APPLICABLE, WITH A COPY OF (1) THE WRIT OF EXECUTION; (2) SHERIFF'S NOTICE OF LEVY UNDER WRIT OF EXECUTION; (3) A NOTICE OF EXEMPTIONS AVAILABLE UNDER FEDERAL AND STATE LAW; (4) INSTRUCTIONS TO DEBTORS AND THIRD PARTIES FOR ASSERTING A CLAIM OF EXEMPTION; (5) A FORM FOR MAKING A CLAIM OF EXEMPTION AND (6) NOTICE OF SHERIFF'S SALE AT THE LAST KNOWN MAILING ADDRESS OF THE DEFENDANT/PLAINTIFF AND ATTORNEYS OF RECORD.

SHERIFF GREG SPRUNGL

BY CIVIL DEPUTY:

  
MIKE ROSENTHAL

DATE: 11/15/2016

WRIT OF EXECUTION RETURNED TO THE COURT OF **BONNER** COUNTY



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

Attorneys For Valiant Idaho, LLC

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

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

Plaintiff,

vs.

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

Defendants.

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

Case No. CV-09-1810

**WRIT OF EXECUTION AGAINST  
NORTH IDAHO RESORTS, LLC  
FOR BOUNDARY COUNTY**

Honorable Barbara A. Buchanan

**ORIGINAL**

STATE OF IDAHO  
County of Bonner  
FILED Nov-18, 2016 } ss  
AT 10:33 O'CLOCK A.M.  
CLERK DISTRICT COURT  
Deputy

**TO: THE SHERIFF OF BOUNDARY COUNTY, STATE OF IDAHO**

**WHEREAS**, on August 22, 2016, Valiant Idaho, LLC (“Valiant”) recovered a Judgment Re: Costs and Attorneys’ Fees (“Judgment”) in the First Judicial District of the State of Idaho, in and for the County of Bonner. A true and correct copy of the Judgment is attached hereto as Exhibit 1 and incorporated by reference as if fully set forth herein.

**WHEREAS**, the Judgment orders and adjudges that Valiant has been awarded costs and attorneys’ fees against North Idaho Resorts, LLC (“NIR”) in the total amount of **\$10,369.93**.

**WHEREAS**, Valiant is entitled to post-judgment interest accruing on the Judgment, as follows:

Judgment as of 08.22.16	\$ 10,369.93	
Post-Judgment interest [5.625%] through 10.13.16	\$ 83.20	[\$1.60 <i>per diem</i> ]
Amount received since entry of Judgment	\$ <u>0.00</u>	
<b>Total Amount Owing From NIR on Judgment as of October 13, 2016</b>	<b>\$ <u>10,453.13</u></b>	

**NOW, THEREFORE**, you, the Sheriff of Boundary County, are hereby required to satisfy said Judgment, plus post-judgment interest, fees and costs, as follows: (1) out of the personal property of NIR; and (2) out of the personal property of NIR held by its members, managers, personal representatives, agents, tenants, trustees or assignees, or the financial institutions of NIR.

If sufficient personal property cannot be found, then you are to satisfy said Judgment out of any real property belonging to NIR as of the day the Judgment was entered or docketed, or at any time thereafter, and make return of this Writ of Execution Against North Idaho Resorts, LLC (“Writ”) within sixty (60) days after receipt of the Writ with what you have done endorsed thereon.

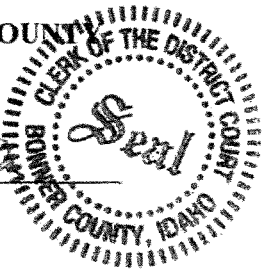
ATTEST my hand and the seal of said Court this 13 day of October 2016.

**MICHAEL W. ROSEDALE**  
**CLERK OF THE COURT – BONNER COUNTY**

By:

Laurie Mattila

Deputy Court Clerk



STATE OF IDAHO  
COUNTY OF BONNER  
FIRST JUDICIAL DISTRICT

2016 AUG 22 PM 3:41

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. )**

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

**CASE NO. CV-2009-0001810**

**JUDGMENT re:  
COSTS AND ATTORNEYS' FEES**

**JUDGMENT IS ENTERED AS FOLLOWS:**

1. Valiant Idaho, LLC is awarded costs and attorneys' fees against Pend Oreille Bonner Development, LLC, in the amount of \$731,275.48. This amount shall be incorporated into the Judgment as part of Valiant's first priority position pursuant to the 2007 RE Loans Mortgage.
2. Valiant Idaho, LLC is awarded costs against North Idaho Resorts, LLC in the amount of \$10,369.93.

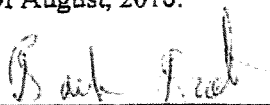
**JUDGMENT re: COSTS AND ATTORNEYS' FEES - 1**

**EXHIBIT 1**

3. Valiant Idaho, LLC is awarded costs against JV, LLC in the amount of **\$15,554.88.**
4. Valiant Idaho, LLC is awarded costs against VP, Incorporated in the amount of **\$15,554.88.**

IT IS SO ORDERED.

DATED this 22 day of August, 2016.



---

**Barbara Buchanan**  
**District Judge**



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

Attorneys For Valiant Idaho, LLC

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

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

Plaintiff,

vs.

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

Defendants.

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

Case No. CV-09-1810

**WRIT OF EXECUTION AGAINST  
NORTH IDAHO RESORTS, LLC  
FOR BOUNDARY COUNTY**

Honorable Barbara A. Buchanan

COPY

**TO: THE SHERIFF OF BOUNDARY COUNTY, STATE OF IDAHO**

**WHEREAS**, on August 22, 2016, Valiant Idaho, LLC (“Valiant”) recovered a Judgment Re: Costs and Attorneys’ Fees (“Judgment”) in the First Judicial District of the State of Idaho, in and for the County of Bonner. A true and correct copy of the Judgment is attached hereto as Exhibit 1 and incorporated by reference as if fully set forth herein.

**WHEREAS**, the Judgment orders and adjudges that Valiant has been awarded costs and attorneys’ fees against North Idaho Resorts, LLC (“NIR”) in the total amount of **\$10,369.93**.

**WHEREAS**, Valiant is entitled to post-judgment interest accruing on the Judgment, as follows:

Judgment as of 08.22.16	\$ 10,369.93	
Post-Judgment interest [5.625%] through 10.13.16	\$ 83.20	[\$1.60 <i>per diem</i> ]
Amount received since entry of Judgment	\$ <u>0.00</u>	
<b>Total Amount Owning From NIR on Judgment as of October 13, 2016</b>	<b>\$ <u>10,453.13</u></b>	

**NOW, THEREFORE**, you, the Sheriff of Boundary County, are hereby required to satisfy said Judgment, plus post-judgment interest, fees and costs, as follows: (1) out of the personal property of NIR; and (2) out of the personal property of NIR held by its members, managers, personal representatives, agents, tenants, trustees or assignees, or the financial institutions of NIR.



STATE OF IDAHO  
COUNTY OF BONNER  
FIRST JUDICIAL DISTRICT

2016 AUG 22 PM 3:41

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.**

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

**CASE NO. CV-2009-0001810**

**JUDGMENT re:  
COSTS AND ATTORNEYS' FEES**

JUDGMENT IS ENTERED AS FOLLOWS:

1. Valiant Idaho, LLC is awarded costs and attorneys' fees against Pend Oreille Bonner Development, LLC, in the amount of \$731,275.48. This amount shall be incorporated into the Judgment as part of Valiant's first priority position pursuant to the 2007 RE Loans Mortgage.
2. Valiant Idaho, LLC is awarded costs against North Idaho Resorts, LLC in the amount of \$10,369.93.

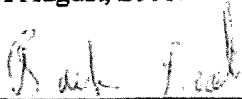
JUDGMENT re: COSTS AND ATTORNEYS' FEES - 1

**EXHIBIT 1**

3. Valiant Idaho, LLC is awarded costs against JV, LLC in the amount of **\$15,554.88**.
4. Valiant Idaho, LLC is awarded costs against VP, Incorporated in the amount of **\$15,554.88**.

IT IS SO ORDERED.

DATED this 22 day of August, 2016.



---

**Barbara Buchanan**  
**District Judge**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was mailed, postage prepaid AND a courtesy copies sent by electronic mail, this 22 day of August, 2016, to:

Gary A. Finney  
FINNEY FINNEY & FINNEY, PA  
120 East Lake Street, Suite 317  
Sandpoint, Idaho 83864  
Facsimile: 208.263.8211  
**finneylaw@finneylaw.net**  
*(Attorneys for For J.V., LLC)*

Susan P. Weeks  
Daniel M. Keyes  
JAMES, VERNON & WEEKS, PA  
1626 Lincoln Way  
Coeur d'Alene, Idaho 83814  
Facsimile: 208.664.1684  
**sweeks@jvwlaw.net**  
**dkeyes@jvwlaw.net**  
*(Attorneys for VP, Incorporated/North Idaho Resorts, LLC)*

Richard L. Stacey  
Jeff R. Sykes  
Chad M. Nicholson  
McCONNELL WAGNER SYKES  
& STACEY, PLLC.  
827 East Park Boulevard, Suite 201  
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Facsimile: 208.489.0110  
**stacey@mwsslawyers.com**  
**sykes@mwsslawyers.com**  
**nicholson@mwsslawyers.com**  
*(Attorney for R.E. Loans, LLC; and Valiant Idaho, LLC)*

DA  
Deputy Clerk

22 Sept. 16  
*Quia Bennett*

JUDGMENT re: COSTS AND ATTORNEYS' FEES - 3

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

(Bonner Co. Case) NOV 18 AM 10:33

**SERVE:** VP, INCORPORATED, by its agent, Mr. Richard Villelli, CLERK DISTRICT COURT

**CASE #:** CV-2009-1810 (Bonner Co. Case)

  
DEPUTY

**SHERIFF'S CERTIFICATE ON RETURN OF SERVICE, WRIT OF EXECUTION**

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

VS

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

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

GREG SPRUNGL, SHERIFF OF BOUNDARY COUNTY, DOES CERTIFY THAT HIS OFFICE RECEIVED A **WRIT OF EXECUTION**, WITH SUFFICIENT COPIES FOR SERVICE AND EXECUTION, ON **10/24/2016**, AND THAT THE SAME WAS EXECUTED WITHIN BOUNDARY COUNTY, IDAHO, AGAINST CERTAIN INTANGIBLE PERSONAL PROPERTY OF DEFENDANT VP, INCORPORATED, WHICH ENTITY WAS SERVED BY PERSONALLY SERVING ITS AGENT, MR. RICHARD VILLELLI, WITH NOTICE AT 533739 HWY 95, BOUNDARY COUNTY, IDAHO ON **10/24/2016**:

ON **10/24/2016** I DID LEVY UPON ALL RIGHT, TITLE, AND INTEREST OF THE ABOVE NAMED DEFENDANT IN AND TO THE FOLLOWING DESCRIBED INTANGIBLE PERSONAL PROPERTY, TO WIT:

**VP's chose in action in this matter, including but not necessarily limited to, its claims, defenses, causes of action and appeal rights arising out of Bonner County Case No. CV-2009-01810 ("VP Property").**

WRIT AMOUNT	\$ 15,679.68
SHERIFF'S SER/RET FEE	\$ 50.00 <i>(prepaid by plaintiff Valiant)</i>
SHERIFF'S COMMISSION	\$ 100.00
RECORDING FEES	\$ 48.00
POSTING	\$ 18.00
CERTIFICATE OF SALE	\$ 25.00
NOTICES OF LEVY/SALE	\$ 20.00

**TOTAL** \$ **15,940.68**

FULL AMOUNT COLLECTED \$ 15,940.68 HIGH BID AT SHERIFF'S SALE  
OF ABOVE PERSONAL PROPERTY ON NOVEMBER 15, 2016.

PAID TO PLAINTIFF \$ 15,729.68 - (WRIT AMOUNT PLUS PRE-PAID FEES)

THIS WRIT, BONNER COUNTY CASE **CV09-1810**, IS RETURNED TO THE COURT

**SATISFIED**

I DID SERVE THE DEFENDANT/PLAINTIFF AND/OR THIRD PARTY, IF APPLICABLE, WITH A COPY OF (1) THE WRIT OF EXECUTION; (2) SHERIFF'S NOTICE OF LEVY UNDER WRIT OF EXECUTION; (3) A NOTICE OF EXEMPTIONS AVAILABLE UNDER FEDERAL AND STATE LAW; (4) INSTRUCTIONS TO DEBTORS AND THIRD PARTIES FOR ASSERTING A CLAIM OF EXEMPTION; (5) A FORM FOR MAKING A CLAIM OF EXEMPTION AND (6) NOTICE OF SHERIFF'S SALE AT THE LAST KNOWN MAILING ADDRESS OF THE DEFENDANT/PLAINTIFF AND ATTORNEYS OF RECORD.

SHERIFF GREG SPRUNGL

BY CIVIL DEPUTY:

  
MIKE ROSENTHAL

DATE: 11/15/2016

WRIT OF EXECUTION RETURNED TO THE COURT OF **BONNER** COUNTY

2016

STATE OF IDAHO  
County of Bonner } ss  
FILED Nov 18, 2016  
AT 10:33 O'CLOCK AM  
CLERK, DISTRICT COURT  
Deputy [Signature]

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  
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[stacey@mwsslawyers.com](mailto:stacey@mwsslawyers.com)  
[sykes@mwsslawyers.com](mailto:sykes@mwsslawyers.com)  
[nicholson@mwsslawyers.com](mailto:nicholson@mwsslawyers.com)

Attorneys For Valiant Idaho, LLC

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

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

Plaintiff,

vs.

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

Defendants.

Case No. CV-09-1810

**WRIT OF EXECUTION AGAINST  
VP, INCORPORATED  
FOR BOUNDARY COUNTY**

**Honorable Barbara A. Buchanan**

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

**ORIGINAL**

**TO: THE SHERIFF OF BOUNDARY COUNTY, STATE OF IDAHO**

**WHEREAS**, on August 22, 2016, Valiant Idaho, LLC (“Valiant”) recovered a Judgment Re: Costs and Attorneys’ Fees (“Judgment”) in the First Judicial District of the State of Idaho, in and for the County of Bonner. A true and correct copy of the Judgment is attached hereto as Exhibit 1 and incorporated by reference as if fully set forth herein.

**WHEREAS**, the Judgment orders and adjudges that Valiant has been awarded costs and attorneys’ fees against VP, Incorporated (“VP”) in the total amount of **\$15,554.88**.

**WHEREAS**, Valiant is entitled to post-judgment interest accruing on the Judgment, as follows:

Judgment as of 08.22.16	\$ 15,554.88	
Post-Judgment interest [5.625%] through 10.13.16	\$ 124.80	[\$2.40 <i>per diem</i> ]
Amount received since entry of Judgment	\$ <u>0.00</u>	
<b>Total Amount Owing From VP on Judgment as of October 13, 2016</b>	<b>\$ <u>15,679.68</u></b>	

**NOW, THEREFORE**, you, the Sheriff of Boundary County, are hereby required to satisfy said Judgment, plus post-judgment interest, fees and costs, as follows: (1) out of the personal property of VP; and (2) out of the personal property of VP held by its officers, directors, personal representatives, agents, tenants, trustees or assignees, or the financial institutions of VP.

If sufficient personal property cannot be found, then you are to satisfy said Judgment out of any real property belonging to VP as of the day the Judgment was entered or docketed, or at any time thereafter, and make return of this Writ of Execution Against VP, Incorporated ("Writ") within sixty (60) days after receipt of the Writ with what you have done endorsed thereon.

ATTEST my hand and the seal of said Court this 13 day of October 2016.

MICHAEL W. ROSEDALE  
CLERK OF THE COURT – BONNER COUNTY

By:

Laurie Mathilda  
Deputy Court Clerk





STATE OF IDAHO  
COUNTY OF BONNER  
FIRST JUDICIAL DISTRICT

2016 AUG 22 PM 3:41

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. )

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

CASE NO. CV-2009-0001810

JUDGMENT re:  
COSTS AND ATTORNEYS' FEES

JUDGMENT IS ENTERED AS FOLLOWS:

1. Valiant Idaho, LLC is awarded costs and attorneys' fees against Pend Oreille Bonner Development, LLC, in the amount of \$731,275.48. This amount shall be incorporated into the Judgment as part of Valiant's first priority position pursuant to the 2007 RE Loans Mortgage.
2. Valiant Idaho, LLC is awarded costs against North Idaho Resorts, LLC in the amount of \$10,369.93.

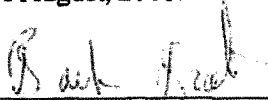
JUDGMENT re: COSTS AND ATTORNEYS' FEES - 1

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3. Valiant Idaho, LLC is awarded costs against JV, LLC in the amount of **\$15,554.88.**
4. Valiant Idaho, LLC is awarded costs against VP, Incorporated in the amount of **\$15,554.88.**

IT IS SO ORDERED.

DATED this 22 day of August, 2016.



---

**Barbara Buchanan**  
**District Judge**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was mailed, postage prepaid AND a courtesy copies sent by electronic mail, this 22 day of August, 2016, to:

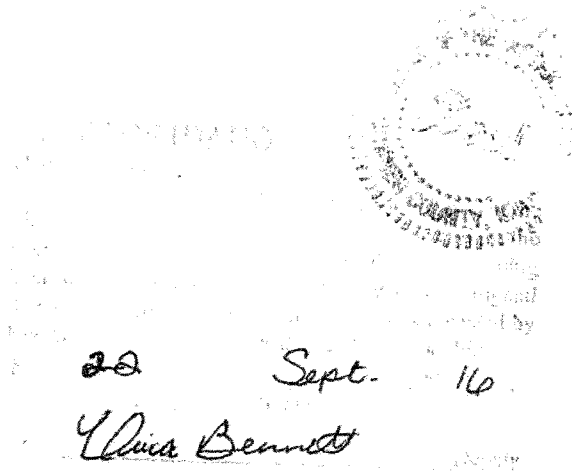
Gary A. Finney  
FINNEY FINNEY & FINNEY, PA  
120 East Lake Street, Suite 317  
Sandpoint, Idaho 83864  
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**finneylaw@finneylaw.net**  
*(Attorneys for For J.V., LLC)*

Susan P. Weeks  
Daniel M. Keyes  
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Coeur d'Alene, Idaho 83814  
Facsimile: 208.664.1684  
**sweeks@jvwlaw.net**  
**dkeyes@jvwlaw.net**  
*(Attorneys for VP, Incorporated/North Idaho Resorts, LLC)*

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**stacey@mwsslawyers.com**  
**sykes@mwsslawyers.com**  
**nicholson@mwsslawyers.com**  
*(Attorney for R.E. Loans, LLC; and Valiant Idaho, LLC)*

          
Deputy Clerk

*22* *Sept.* *16*  
*Chris Bennett*



Richard L. Stacey, ISB #6800  
Jeff R. Sykes, ISB #5058  
Chad M. Nicholson, ISB #7506  
**McCONNELL WAGNER SYKES & STACEY PLLC**  
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[sykes@mwsslawyers.com](mailto:sykes@mwsslawyers.com)  
[nicholson@mwsslawyers.com](mailto:nicholson@mwsslawyers.com)

Attorneys For Valiant Idaho, LLC

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

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

Plaintiff,

vs.

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

Defendants.

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

Case No. CV-09-1810

**WRIT OF EXECUTION AGAINST  
VP, INCORPORATED  
FOR BOUNDARY COUNTY**

**Honorable Barbara A. Buchanan**

COPY

STATE OF IDAHO  
COUNTY OF BONNER  
FIRST JUDICIAL DISTRICT

2016 AUG 22 PM 3:41

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. )**

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

**CASE NO. CV-2009-0001810**

**JUDGMENT re:  
COSTS AND ATTORNEYS' FEES**

**JUDGMENT IS ENTERED AS FOLLOWS:**

1. Valiant Idaho, LLC is awarded costs and attorneys' fees against Pend Oreille Bonner Development, LLC, in the amount of \$731,275.48. This amount shall be incorporated into the Judgment as part of Valiant's first priority position pursuant to the 2007 RE Loans Mortgage.
2. Valiant Idaho, LLC is awarded costs against North Idaho Resorts, LLC in the amount of \$10,369.93.

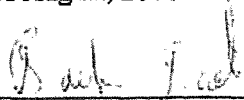
**JUDGMENT re: COSTS AND ATTORNEYS' FEES - 1**

**EXHIBIT 1**

3. Valiant Idaho, LLC is awarded costs against JV, LLC in the amount of **\$15,554.88.**
4. Valiant Idaho, LLC is awarded costs against VP, Incorporated in the amount of **\$15,554.88.**

IT IS SO ORDERED.

DATED this 22 day of August, 2016.



---

**Barbara Buchanan**  
**District Judge**

**CERTIFICATE OF SERVICE**

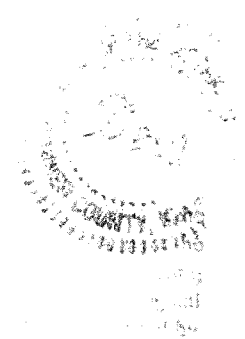
I hereby certify that a true and correct copy of the foregoing was mailed, postage prepaid AND a courtesy copies sent by electronic mail, this 22 day of August, 2016, to:

Gary A. Finney  
FINNEY FINNEY & FINNEY, PA  
120 East Lake Street, Suite 317  
Sandpoint, Idaho 83864  
Facsimile: 208.263.8211  
**finneylaw@finneylaw.net**  
*(Attorneys for For J.V., LLC)*

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Daniel M. Keyes  
JAMES, VERNON & WEEKS, PA  
1626 Lincoln Way  
Coeur d'Alene, Idaho 83814  
Facsimile: 208.664.1684  
**sweeks@jvwlaw.net**  
**dkeyes@jvwlaw.net**  
*(Attorneys for VP, Incorporated/North Idaho Resorts, LLC)*


Richard L. Stacey  
Jeff R. Sykes  
Chad M. Nicholson  
McCONNELL WAGNER SYKES  
& STACEY, PLLC.  
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Facsimile: 208.489.0110  
**stacey@mwsslawyers.com**  
**sykes@mwsslawyers.com**  
**nicholson@mwsslawyers.com**  
*(Attorney for R.E. Loans, LLC; and Valiant Idaho, LLC)*

209  
\_\_\_\_\_  
Deputy Clerk



22 Sept. 16  
*Chris Bennett*

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

STATE OF IDAHO  
COUNTY OF BONNER  
FIRST JUDICIAL DISTRICT  
2016 NOV 22 PM 2:10  
CLERK OF DISTRICT COURT  


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

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

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

Plaintiff,

vs.

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

Defendants.

Case No. CV-2009-1810

WITHDRAWAL OF APPLICATION FOR  
STAY

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

COMES NOW North Idaho Resorts, LLC. and VP, Inc. by and through their attorney of record, Susan P. Weeks of the firm James, Vernon & Weeks, P.A. and hereby withdraws their application for stay of execution in the above matter because the Court notified counsel prior to



the sheriff's sale and posting of cash bond that the Order would not be granted ex parte. No bond was posted and therefor such request is moot.

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

JAMES, VERNON & WEEKS, P.A.

By Susan P. Weeks  
Susan P. Weeks

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served on the following persons in the manner indicated this 22<sup>nd</sup> day of November, 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  
 Hand Delivered  
 Facsimile: 208-489-0110

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

Christine Elmore

STATE OF IDAHO  
COUNTY OF BONNER  
FIRST JUDICIAL DISTRICT

2016 NOV 25 AM 11:54

CLERK DISTRICT COURT

DEPUTY

Richard L. Stacey, ISB #6800  
Jeff R. Sykes, ISB #5058  
Chad M. Nicholson, ISB #7506  
**McCONNELL WAGNER SYKES & STACEY PLLC**  
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Attorneys For Valiant Idaho, LLC

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

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

Plaintiff,

vs.

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

Defendants.

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

Case No. CV-09-1810

**VALIANT IDAHO, LLC'S  
MEMORANDUM OF COSTS  
AND ATTORNEYS' FEES  
AGAINST JV L.L.C.**

**Honorable Barbara A. Buchanan**

**ORIGINAL**  
7438

COMES NOW, Valiant Idaho, LLC (“Valiant”), by and through its attorneys of record, McConnell Wagner Sykes & Stacey PLLC, and, consistent with this Court’s Memorandum Decision Order Granting Valiant Idaho, LLC’s Motion For Sanctions (“Order”) entered November 14, 2016, files its Memorandum of Costs and Attorneys’ Fees Against JV L.L.C. (“Memo of Costs”).

On November 2, 2016—just 5 days from Valiant’s scheduled sheriff’s sale—JV L.L.C. (“JV”) filed a Third Party Claim (“Third Party Claim”) and a Motion and Application For Stay of Execution Upon Posting A Cash Deposit (“Stay Motion”), seeking to (1) stay the execution against JV’s personal property located in Boundary County; and (2) stay the sale of the “Idaho Club Property” located in Bonner County, Idaho, to satisfy amounts awarded to Valiant against Pend Oreille Bonner Development, LLC.

On November 3, 2016, in response to the Third Party Claim and Stay Motion, and in order to preserve the validity of the sheriff’s sale of the Idaho Club Property set to commence November 7, 2016, Valiant filed its Motion Contesting JV L.L.C.’s Third Party Claim; and Opposition to JV L.L.C.’s Motion For Stay of Execution and supporting Memorandum in Support of Valiant Idaho, LLC’s Motion Contesting JV L.L.C.’s Third Party Claim; and Opposition to JV L.L.C.’s Motion For Stay of Execution. Also, the short time frame in which Valiant was required to act necessitated that Valiant to secure a hearing date and prepare and file a motion to shorten time.

Because JV’s arguments in support of its Third Party Claim and Stay Motion were untimely filed and essentially the same arguments JV repeatedly raised throughout this case and were soundly rejected by this Court, Valiant filed its Motion For Sanctions Under I.C. § 12-123 and I.R.C.P. 11 (“Motion For Sanctions”). JV’s Third Party Claim and Stay Motion were denied by this Court at the conclusion of an emergency hearing that took place on November 4, 2016.

On November 14, 2016, this Court entered the Order granting Valiant's Motion For Sanctions, as follows:

Valiant is thus entitled to recover against JV and Mr. Finney, *jointly and severally*, "the amount of the reasonable expenses incurred because of the filing of the . . . motion, or other paper, including a reasonable attorney's fee."

Order, p. 8 (emphasis and quote in original).

As such, pursuant to this Court's Order, Valiant is entitled to recover all attorneys' fees reasonably incurred to defend JV's Third Party Claim and Stay Motion. A true and correct copy of the attorneys' fees incurred by Valiant is attached as Exhibit A to the Declaration of Richard L. Stacey in Support of Memorandum of Costs and Attorneys' Fees Against JV L.L.C. filed concurrently herewith.

**RESPECTFULLY SUBMITTED** this 22<sup>nd</sup> day of November 2016.

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

BY:

  
Richard L. Stacey  
Attorneys For Valiant Idaho, LLC

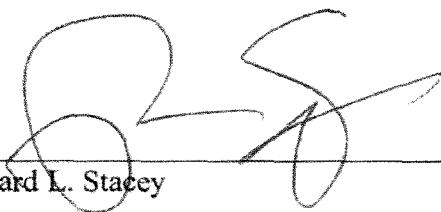
**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on the 22<sup>nd</sup> day of November 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 type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Electronic Mail <a href="mailto:garyfinney@finneylaw.net">garyfinney@finneylaw.net</a>
Susan P. Weeks, Esq. James, Vernon & Weeks, PA 1626 Lincoln Way Coeur d'Alene, Idaho 83814 Telephone: 208.667.0683 Facsimile: 208.664.1684 <i>Counsel For VP Incorporated/North Idaho Resorts</i>	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Electronic Mail <a href="mailto:sweeks@jvwlaw.net">sweeks@jvwlaw.net</a>

With two copies via United States Mail to:

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

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

COUNTY OF IDAHO  
COUNTY OF BONNER  
FIRST JUDICIAL DISTRICT

2016 NOV 25 AM 11:54

CLERK OF DISTRICT COURT



Richard L. Stacey, ISB #6800  
Jeff R. Sykes, ISB #5058  
Chad M. Nicholson, ISB #7506  
**McCONNELL WAGNER SYKES & STACEY PLLC**  
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[sykes@mwsslawyers.com](mailto:sykes@mwsslawyers.com)  
[nicholson@mwsslawyers.com](mailto:nicholson@mwsslawyers.com)

Attorneys For Valiant Idaho, LLC

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

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

Plaintiff,

vs.

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

Defendants.

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

Case No. CV-09-1810

**DECLARATION OF  
RICHARD L. STACEY IN SUPPORT OF  
VALIANT IDAHO, LLC'S  
MEMORANDUM OF COSTS  
AND ATTORNEYS' FEES  
AGAINST JV L.L.C.**

**Honorable Barbara A. Buchanan**

Pursuant to Rule 11.1 of the Idaho Rules of Civil Procedure and Idaho Code § 9-1406,

**Richard L. Stacey** declares as follows:

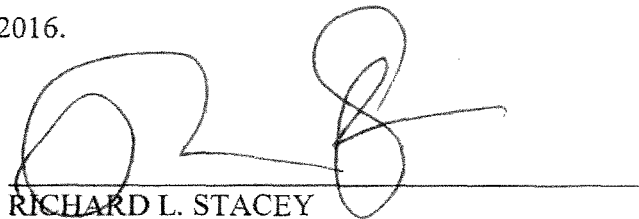
1. I am an attorney at law duly licensed to practice before this Court, and all Courts in the State of Idaho. I am member of the law firm of McConnell Wagner Sykes & Stacey PLLC, attorneys for Valiant Idaho, LLC (“Valiant”). I make this Declaration in support of Valiant’s Memorandum of Costs and Attorneys’ Fees Against JV L.L.C. (“Memo of Costs”) filed concurrently and upon my personal knowledge.

2. To defend against JV L.L.C.’s (“JV”) Third Party Claim (“Third Party Claim”) and Motion and Application For Stay of Execution Upon Posting A Cash Deposit (“Stay Motion”), Valiant incurred attorneys’ fees in the amount of \$5,724.00, as more particularly set forth on Exhibit A attached hereto.

3. I am familiar with the hourly rates charged by attorneys in this area and certify to the Court that the attorney time and hourly rates charged were reasonable and necessary to defend against the Third Party Claim and Stay Motion.

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

**DATED** this 22<sup>nd</sup> day of November 2016.

  
RICHARD L. STACEY

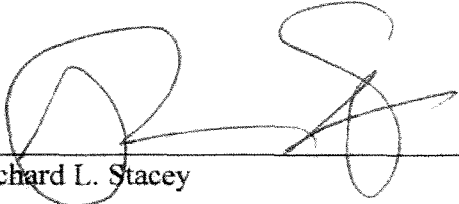
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 22<sup>nd</sup> day of November 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 type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Electronic Mail  <u>garyfinney@finneylaw.net</u>
Susan P. Weeks, Esq. James, Vernon & Weeks, PA 1626 Lincoln Way Coeur d'Alene, Idaho 83814 Telephone: 208.667.0683 Facsimile: 208.664.1684 <i>Counsel For VP Incorporated/North Idaho Resorts</i>	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Electronic Mail  <u>sweeks@jvwlaw.net</u>

With two copies via United States Mail to:

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

  
Richard L. Stacey

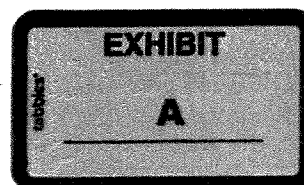


Primary Attorney: 10 Richard L. Stacey

Client: 10482.002M VALIANT IDAHO, LLC

VALIANT IDAHO, L

Date	Atty	H Src P	Ref #	Rate	Units	Hours Worke	Hours to Bill	Write-Up Down Hr	Amount	Write-Up Down A	Description
<b>Fees</b>											
11/02/2016	10 RLS		551	270.00		0.40	0.40		108.00		Telephone conference with sheriff regarding motion filed by JV
11/03/2016	10 RLS		552	270.00		8.90	8.90		2,403.00		Analyze motion and claim of exemption filed by JV; leave voicemail for sheriff; email clients; email B. Haberman; confer with J. Sykes regarding strategy to proceed; outline/analyze/draft/edit opposition briefing, motion to deny claim of exemption, and motion for sanctions; coordinate with assistant and court clerk attempting to obtain expedited emergency hearing; analyze emails from clerk regarding same
11/04/2016	10 RLS		553	270.00		7.90	7.90		2,133.00		Telephone conference with S. Mitchell regarding timing of service; analyze email from S. Mitchell attaching return receipts; draft email to S. Mitchell requesting additional information; analyze same; analyze/draft/edit supplemental memorandum and affidavit of S. Mitchell; prepare for hearing; participate in telephonic hearing; leave voicemail for client; email client; analyze response; telephone conference with B. Kramer; telephone conference with Boundary County sheriff regarding stay of proceedings against JV property only; analyze email from Boundary County sheriff and respond to same
11/21/2016	10 RLS		554	270.00		2.90	2.90		783.00		Study memorandum decision awarding sanctions; analyze billings and identify amounts incurred responding to JV's motion; analyze/outline/draft/edit memorandum of costs;



Primary Attorney: 10 Richard L. Stacey

Client: 10482.002M VALIANT IDAHO, LLC (Continued)

Date	Atty	H Src P	Ref #	Rate	Units	Hours Worked	Hours to Bill	Write-Up Down Hr	Amount	Write-Up Down A	Description
11/22/2016	10 RLS		555	270.00		1.10	1.10		297.00		analyze costs associated with same Analyze/edit/finalize memorandum of fees and costs and supporting declaration; update fees and costs
Billable Total:						21.20	21.20		5,724.00		
<b>Total Billable Fees</b>						<u>21.20</u>	<u>21.20</u>		<u>5,724.00</u>		

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  
 Email: garyfinney@finneylaw.net  
 ISB No. 1356  
 Attorney for Appellant JV L.L.C.

STATE OF IDAHO  
 COUNTY OF BONNER  
 FIRST JUDICIAL DISTRICT

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CLERK DISTRICT COURT

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

GENESIS GOLF BUILDERS, INC.,	)	Case No. CV-2009-1810
formerly known as National Golf	)	
Builders, Inc., a Nevada	)	Supreme Court Docket
corporation,	)	No. 44584-2016
	)	
Plaintiff,	)	JV'S OBJECTION, AND
v.	)	MOTION TO DISALLOW
	)	VALIANT'S MEMORANDUM OF
PEND OREILLE BONNER	)	ATTORNEY COSTS AND FEES
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	)	

JV'S OBJECTION, AND MOTION TO DISALLOW VALIANT'S MEMORANDUM OF ATTORNEY COSTS  
 AND FEES

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 )

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 )

JV'S OBJECTION, AND MOTION TO DISALLOW VALIANT'S MEMORANDUM OF ATTORNEY COSTS  
AND FEES

limited liability company; )  
MOUNTAIN WEST BANK, a division )  
of GLACIER BANK, a Montana )  
corporation; FIRST AMERICAN )  
TITLE COMPANY, a California )  
corporation; NETTA SOURCE LLC, )  
a Missouri limited liability )  
company; MONTAHEÑO INVESTMENTS, )  
LLC, a Nevada limited liability )  
company; CHARLES W. REEVES and )  
ANN B. REEVES, husband and )  
wife; and C.E. KRAMER CRANE & )  
CONTRACTING, INC., an Idaho )  
corporation, )

Third-Party )  
Defendants. )

---

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

Defendant, )  
Counterclaimant )  
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 )

JV'S OBJECTION, AND MOTION TO DISALLOW VALIANT'S MEMORANDUM OF ATTORNEY COSTS  
AND FEES

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. )  
 \_\_\_\_\_ )  
 VALIANT IDAHO, LLC, an Idaho )  
 limited liability company, )  
 )  
 Respondent, )  
 )  
 v. )  
 )  
 JV L.L.C., an Idaho limited )  
 liability company, )  
 )  
 Appellant. )  
 \_\_\_\_\_ )

Comes now JV L.L.C., herein "JV", by and through its attorney, GARY A. FINNEY, of Finney Finney & Finney, P.A., and files this objection and moves the Court to disallow Valiant's Memorandum of Costs and Attorney Fees, served by Valiant by U.S. Mail, dated and mailed November 22, 2016, as follows:

1. Valiant has made and filed a Memorandum of Costs and Attorney Fees, dated November 22, 2016, seeking \$5,724.00 in attorney fees to defend against JV's Third Party Claim and JV's Motion and Application For Stay of Execution Upon posting a Cash Deposit (STAY Motion).

2. These are broken down for this Objection, first as to JV's "STAY Motion" by JV's posting of a Cash Bond. The "STAY

Motion" of JV's is pursuant to I.A.R. 13(b)(15). The posting of a cash deposit to stay execution is a matter of right; provided however, any objection to the sufficiency of a cash deposit, deposit is waived unless a written objection is made and filed with the District Court within 21 days of filing such cash deposit.

In order to stay execution by a cash deposit, I.A.R. 13(b)(15) only requires the notification of cash deposit be served upon all parties to the appeal at the time of the Application for Stay of Execution. JV fully complied with this provision of I.A.R. 13(b)(15), and Valiant had no valid reason to object or to incur any attorney fees in objecting.

Much of Valiant's objection(s) and Attorney Memorandum involved JV's STAY Motion even though there were no grounds or valid objection(s) whatsoever. The cash deposit, STAY Motion of JV could not be frivolous or without foundation as it was specifically provided for by I.R.E. Therefore, no attorney fees should be awarded to Valiant on this issue.

Valiant's Declaration and Memorandum of November 22, 2016, claims and states that it was made...

"2. To defend against JV, LLC's ("JV") Third Party Claim (Third Party Claim) and Motion and Application For Stay of Execution Upon Posting Cash Deposit (STAY Motion), Valiant

incurred Attorney fees in the amount of \$5,724.00..."

3. All of Valiant's Attorney fees "to defend against J.V's (STAY Motion) Cash Deposit are not allowable and JV objects and moves he Court to disallow. Since there is no allocation of attorney time or documented work by Valiant's counsel for matters to defend the STAY Motion, Cash Deposit, there is no way to deduct or segregate these fees. Therefore, JV moves the Court to disallow the \$5,724.00 claimed by Valiant. Valiant is not the prevailing party on the STAY Motion, Cash Deposit.

4. As to Valiant's Memorandum of Attorney Fees "to defend" against JV's Third Party Claim, JV objects and moves the Court to disallow the entire sum because:

a) The \$5,724.00 is not broken down or itemized in any manner by Valiant and it includes fees to which Valiant is not entitled to recover.

b) Valiant's opposition thereto included that JV's Third Party Claim was untimely. JV does not dispute untimeliness. Valiant was entitled to prevail on untimeliness without the unreasonably necessity for Valiant to do all of the further legal work, which was resulting in unreasonable and unnecessary attorney fees to defend against said Third Party Claim.

c) The Court is awarding attorney fees to Valiant based on the legal theories of JV being frivolous, unreasonable, and



without any merit because JV's legal arguments had been made previously in the action and the Court had ruled against JV on these theories. JV does acknowledge that the Court had previously ruled against JV on some of these issues.

5. JV's argument and citation to authority was that I.C. § 11-201 states that only the property of the judgment debtor sells at a Sheriff's Sale, and that I.C. §11-310 STATES THAT THE Sheriff's Sale purchaser acquires only the interest of the judgment debtor. In this action, Valiant's judgment debtor is Pend Oreille Bonner Development, which judgment debtor had no right, title, or interest in the real estate which it lost and forfeited for non-payment of delinquent taxes by a TAX DEED to Bonner County in 2014. The forgoing 2 Idaho Code statutes and the Tax Deed, appear to be proper authority by the law of Idaho.

6. Undisputedly, JV had a recorded mortgage as to the Tax Deed real estate and Idaho Code §63-1007 provided JV to redeem the Tax Deed real estate, under certain statutory conditions. JV undisputedly made a timely, first and only, Tax Redemption on a portion of the Tax Deed real estate, and JV received a Redemption Deed to the real estate it redeemed.

7. The taking of all POBD's real property by Tax Deed to Bonner County was pursuant to Idaho Code §63-1009 was a reconveyance to the Grantee (Bonner County) of the absolute title

to the real estate free and clear of all encumbrances, (mortgages) except mortgages of record to holders of which notice had not been given as provided in Section §63-1005, Idaho Code. No party in the action, Valiant, RE Loans, PENSCO, MFO8, or JV made any claim that they had not been given the statutory notice required.

Therefore, Valiant as Assignee(s) of the RE Loans, the PENSCO, and the MFO8 mortgages had no mortgage interest as the real estate Tax Deed was "free and clear of all encumbrances, by absolute title to the Grantee (Bonner County). Likewise, as to the interest of JV's mortgage.

8. The remedy of loss of absolute title free and clear of all encumbrances/mortgage is Idaho Code §63-1007, Redemption - Expiration of Right. JV did redeem as to a portion of the Tax Deed real estate and did receive a Redemption Deed (recorded July 2014, Instrument No. 861430 and 863295 (JV's Trial Exhibit L) for the real estate described therein both by Bonner County Assessor's RP numbers and by full real estate description(s).

Moreover, no other party in interest, or any other party to this action; except for JV, ever redeemed or subsequently redeemed the JV Redemption Deed real estate, and upon 14 months from the Tax Deed (MAY 22, 2014) all rights of redemption expired, by Idaho Code §63-1007(2).

9. Idaho Code §45-114 provides that JV as a junior lienor

could redeem the real estate in the same manner as the owner might from the might from superior tax lien; and be subrogated (i.e. substituted) to all of the benefits of the superior lien.

10. The forgoing statutory law does not appear to be disputable. Based on those statutes, as to JV's Redemption Deeded real estate, the Judgment Debtor, POBD, had no interest therein. The Court has held that the forgoing law and assertion of all of the same by JV was frivolous, unreasonable, and without merit, and was made for improper purposes and that Valiant could thereby claim attorney fees against JV and JV's counsel.

11. JV and its counsel are requesting the Court to withhold its determination on Valiant's Memorandum of Costs on this issue until JV's notice of Appeal to the Idaho Supreme Court is determined on appeal. The issues of Tax Deed and JV's Redemption Deed are issues on appeal, which could result in JV prevailing thereon. If JV does not prevail on these issues, the Court is requested to then rule upon Valiant's Memorandum of Costs. There is no prejudice to Valiant to wait on the Notice of Appeal determination.

12. If the Court will not defer its ruling as requested by JV, then JV requests this Court to deny the award of \$5,724.00 to Valiant because:

a) Valiant only needed to file its Objection as JV being

untimely on the Third Party Claim, which reasonably would involve approximately 2 hours legal work.


b) Valiant's Memorandum of Attorney Fees is not allocated as to time or cost so as to determine "reasonable and necessary" attorney fees of Valiant. The amount sought is unreasonable and unnecessary.

c) The statutory law cited by JV is not frivolous even though it is disputed by Valiant, and the issue is not final until the Appeal is terminated.

d) If the Supreme Court (or Appellate) rules in favor of JV's position on the Tax Deed and Redemption Deed, then Valiant will not be the prevailing party.

13. JV submits this Objection and waives oral argument on this issue.

Dated this 2<sup>ND</sup> day of December, 2016.


  
\_\_\_\_\_  
GARY A. FINNEY  
FINNEY FINNEY & FINNEY, P.A.  
Attorney for Appellant  
JV L.L.C.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by the method as indicated, this 2<sup>nd</sup> day of December, 2016, and was addressed as follows:

Richard Stacey/Jeff Sykes/Chad Nicholson  
MCCONNELL WAGNER SYKES & STACEY PLLC  
827 East Park Boulevard, Suite 201  
Boise, ID 83712  
[Attorney for R.E. LOANS, LLC & VALIANT IDAHO, LLC]  
By US Mail & Facsimile: 1-208-489-0110

Susan Weeks  
JAMES, VERNON & WEEKS, P.A.  
1626 Lincoln Way  
Coeur d'Alene, ID 83814  
[Attorney for NORTH IDAHO RESORTS, LLC & V.P. INC]  
By US Mail & Facsimile: 1-208-664-1684

By:   
Gary A. Finney  
Attorney for JV L.L.C.

2016 DEC -6 AM 10:03

CLERK DISTRICT COURT

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

**GENESIS GOLF BUILDERS, INC., 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 COUNTER, CROSS AND )  
THIRD PARTY ACTIONS PREVIOUSLY )  
FILED HEREIN )**

**CASE NO. CV-2009-0001810**

**ORDER IMPOSING RULE 11  
SANCTIONS**

Idaho Rule of Civil Procedure 11(c)(6) provides that “[a]n order imposing a sanction must describe the sanctioned conduct and explain the basis for the sanction.” I.R.C.P. 11(c)(6). This Court has previously described the conduct by JV, LLC (“JV”) and attorney, Gary A. Finney, to be sanctioned and the basis for the sanction in the “Memorandum Decision and Order Granting Valiant Idaho, LLC’s Motion for Sanctions,” entered November 14, 2016, and all findings of fact and conclusions of law set forth therein are hereby incorporated by reference.

In the November 14, 2016, Memorandum Decision and Order, this Court stated:

For these reasons, the Court, in the exercise of its discretion, finds that JV's Motion for Stay and Third Party Claim were "(1) ... presented for an[ ] improper purposes, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; [and] (2) the claims, defenses, and other legal contentions [therein] are not warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law." I.R.C.P. 11(b)(1)-(2). **Sanctions against JV are, therefore, warranted under Rule 11, and are hereby imposed. Valiant is thus entitled to recover against JV and Mr. Finney, jointly and severally, "the amount of the reasonable expenses incurred because of the filing of the ... motion, or other paper, including a reasonable attorney's fee." I.R.C.P. 11(c)(4).**

*Memorandum Decision and Order Granting Valiant Idaho, LLC's Motion for Sanctions*, at pp. 7-8. (Emphasis in italics in original) (emphasis in bold supplied).

Per this Court's order, "Valiant Idaho, LLC's Memorandum of Costs and Attorneys' Fees Against JV L.L.C." and the "Declaration of Richard L. Stacey in Support of Valiant Idaho, LLC's Memorandum of Costs and Attorneys' Fees Against JV L.L.C." ("Stacey Declaration") were filed on November 25, 2016. On December 2, 2016, "JV's Objection, and Motion to Disallow Valiant's Memorandum of Attorney Costs and Fees" was filed, and therein, JV states that it "submits this Objection and waives oral argument on this issue." *JV's Objection, and Motion to Disallow Valiant's Memorandum of Attorney Costs and Fees*, at p. 10, ¶ 13.

WHEREFORE, this Court having given JV notice and an opportunity to respond to "Valiant Idaho, LLC's Motion for Sanctions Under I.C. § 12-123 and I.R.C.P. 11," filed November 3, 2016; this Court having fully described the sanctioned conduct and explained the basis for the sanction in the "Memorandum Decision and Order Granting Valiant Idaho, LLC's Motion for Sanctions," entered November 14, 2016; and this Court having given JV an opportunity to object to "Valiant's Memorandum of Costs and Attorneys' Fees," and JV having filed an Objection and waived oral argument thereon, this Court makes the following findings:

1. The Court, "in its sound discretion, consider[ing] the ... result of the action in relation to the relief sought by the respective parties," I.R.C.P. 54(d)(1)(B), finds that Valiant Idaho, LLC ("Valiant") is the prevailing party on JV's Third Party Claim and JV's Motion and Application For Stay of Execution Upon Posting A Cash Deposit.
2. The Court, considering the amount being requested by Valiant in attorney's fees incurred to defend against JV's motions (i.e., \$5,724.00), JV's objections thereto, and the itemization of said fees set forth in Exhibit A to the Stacey Declaration, finds that the amount of \$5,724.00, which Valiant is requesting as attorney's fees, is reasonable.
3. Having found that sanctions against JV under Idaho Rule of Civil Procedure 11 are warranted and that Valiant is the prevailing party, Valiant is entitled to recover the amount of \$5,724.00 against JV and Gary A, Finney, jointly and severally.

NOW, THEREFORE, based on the foregoing, IT IS HEREBY ORDERED THAT Rule 11 sanctions are imposed against JV and Gary A. Finney, jointly and severally, in the amount of \$5,724.00, in favor of Valiant. A Judgment shall be entered in accordance herewith.

IT IS SO ORDERED.

DATED this 6 day of December, 2016.



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**Barbara Buchanan**  
**District Judge**



**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was delivered via facsimile transmission, this   6   day of December, 2016, to:

Gary A. Finney  
FINNEY FINNEY & FINNEY, PA  
120 East Lake Street, Suite 317  
Sandpoint, Idaho 83864  
**Facsimile: 208.263.8211**  
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*(Attorney for R.E. Loans, LLC; and Valiant Idaho, LLC)*

  
\_\_\_\_\_  
Deputy Clerk

STATE OF IDAHO  
COUNTY OF BONNER  
FIRST JUDICIAL DISTRICT

2016 DEC -6 AM 10:03

CLERK DISTRICT COURT

  
\_\_\_\_\_  
CLERK

**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, )**

**CASE NO. CV-2009-0001810**

**Plaintiff, )**

**JUDGMENT re: RULE 11  
SANCTIONS**

**v. )**

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

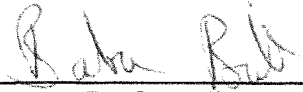
**Defendants. )**

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

JUDGMENT IS ENTERED AS FOLLOWS:

Judgment is entered in favor of Valiant Idaho, LLC, and against JV, LLC and Gary A. Finney, jointly and severally, in the amount of \$5,724.00, plus post-judgment interest at the legal rate of 5.625%.

DATED this 6 day of December, 2016.



**Barbara Buchanan**  
District Judge

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was delivered via facsimile transmission, this 6 day of December, 2016, to:

Gary A. Finney  
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(Attorney for R.E. Loans, LLC; and Valiant Idaho, LLC)

Deputy Clerk 