

8-30-2013

Hap Taylor & Sons v. Summerwind Partners Clerk's Record v. 7 Dckt. 40514

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs

Recommended Citation

"Hap Taylor & Sons v. Summerwind Partners Clerk's Record v. 7 Dckt. 40514" (2013). *Idaho Supreme Court Records & Briefs*. 4506.
https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs/4506

This Court Document is brought to you for free and open access by Digital Commons @ UIIdaho Law. It has been accepted for inclusion in Idaho Supreme Court Records & Briefs by an authorized administrator of Digital Commons @ UIIdaho Law. For more information, please contact annablaine@uidaho.edu.

IN THE
SUPREME COURT
OF THE
STATE OF IDAHO

LAW CLERK

**HAP TAYLOR & SONS, INC., d/b/a
KNIFE RIVER, an Oregon corporation,**

Plaintiff-Cross Respondent,

-vs-

**L222-1 ID SUMMERWIND, LLC.,
A Nevada limited liability corporation,**

Defendant-Cross Appellant,

And

IDAHO GOLF PARTNERS, INC.,

Intervenor-Appellant.

**CONGER MANAGEMENT GROUP, INC.,
An Idaho corporation,**

**Plaintiff-Counterdefendant-Cross
Defendant-Respondent,**

-vs-

STANLEY CONSULTANTS, INC.,

**Defendant-Counterclaimant-Cross
Claimant-Appellant,**

And

**INTEGRATED FINANCIAL ASSOCIATES,
INC., a Nevada corporation,**

**Defendant-Counterdefendant-Cross
Defendant-Respondent-Cross Appellant,**

And

**GENEVA EQUITIES, LLC., an Idaho limited
Liability company; TRADITIONAL
SPRINKLERS AND LANDSCAPING, INC., an
Idaho corporation; DENNIS PHIPPS WELL
DRILLING, INC., an Idaho corporation;
RIVERSIDE, INC., an Idaho corporation,**

**Defendants-Counterdefendants-
Cross Defendants-Respondents,**

And

IDAHO GOLF PARTNERS, INC.,

Intervenor-Appellant.

**Appealed from the District of the Third Ju
for the State of Idaho, in and for Canyon C**

Honorable JUNEAL C. KERRICK, Distr

**Thomas E. Dvorak, Martin C.
Hendrickson, Elizabeth M Donick
Attorneys for Appellant (Stanley Consul**

**Michael O. Roe
Attorney for Appellant (Integrated Financ
Assoc., Summerwind Partner**

**David T. Krueck
Attorney for Respondents**



40514

IN THE SUPREME COURT OF THE
STATE OF IDAHO

HAP TAYLOR & SONS, INC., d/b/a)
KNIFE RIVER, an Oregon corporation,)
)
Plaintiff-Cross Respondent,)
)
-vs-)
)
L222-1 ID SUMMERWIND, LLC.,)
a Nevada limited liability corporation,)
)
Defendant-Cross Appellant,)
And)
)
IDAHO GOLF PARTNERS, INC.,)
)
Intervenor-Appellant.)
)

CONGER MANAGEMENT GROUP, INC., an)
Idaho corporation,)
)
Plaintiff-Counterdefendant- Cross)
Defendant-Respondent,)
)
-vs-)
)
STANLEY CONSULTANTS, INC.,)
)
Defendant-Counterclaimant-Cross)
Claimant-Appellant,)
And)
)
INTEGRATED FINANCIAL ASSOCIATES,)
INC., a Nevada corporation,)
)
Defendant-Counterdefendant-Cross)
Defendant-Respondent-Cross Appellant,)
And)
)
GENEVA EQUITIES, LLC., an Idaho limited)
Liability company; TRADITIONAL)
SPRINKLERS AND LANDSCAPING, INC., an)
Idaho corporation; DENNIS PHIPPS WELL)
DRILLING, INC., an Idaho corporation;)
RIVERSIDE, INC., an Idaho corporation,)
)
Defendants-Counterdefendants-)
Cross Defendants-Respondents,)
And)
)
IDAHO GOLF PARTNERS, INC.,)
)
Intervenor-Appellant.)

Supreme Court No. 40514-2012

Appeal from the Third Judicial District, Canyon County, Idaho

HONORABLE JUNEAL C. KERRICK, Presiding

Thomas E. Dvorak, Martin C. Hendrickson, Elizabeth M. Donick,
GIVENS PURSLEY LLP., P O Box 2720, Boise, ID 83701

Attorneys for Appellant (Stanley Consultants)

Michael O. Roe, MOFFATT THOMAS BARRETT ROCK &
FIELDS, CHTD., P O Box 829, Boise, ID 83701

Attorney for Appellants (Integrated Financial Assoc.,
Summerwind Partners)

David T. Krueck, JONES GLEDHILL FUHRMAN GOURLEY, PA.,
P O Box 1097, Boise, ID 83701-1617

Attorney for Respondents

TABLE OF CONTENTS

	Page No.	Vol. No.
Register of Actions	1 – 13	1
Complaint for Foreclosure of Claim of Lien, filed 4-22-08	14 – 68	1
Defendant Integrated Financial Associates, Inc's and Certain Other Named Defendants Answer to Complaint, filed 7-7-08	69 – 84	1
Answer of L222-I ID Summerwind LLC and Union Land Company LLC, filed 7-9-08	85 – 89	1
Answer to Complaint by Defendant, Riverside Inc an Idaho Corporation and Demand for Jury Trial, filed 7-9-08	90 – 95	1
Order for Default, filed 7-16-08	96 – 101	1
Answer Counterclaim and Crossclaim of Stanley Consultants, Inc, filed 7-17-08	102 – 121	1
Riverside Incs Answer-Disclaimer to Crossclaim by Stanley Consultants Inc., filed 7-22-08	122 – 124	1
Extreme Line Logistics Incs Answer Counterclaim and Crossclaim, filed 7-24-08	125 – 142	1
Riverside Incs Answer to Crossclaim by Extreme Line Logistics Inc, filed 8-13-08	143 – 148	1
Stanley Consultants Incs Answer to Crossclaim of Extreme Line Logistics Inc., filed 8-14-08	149 – 158	1
Rexius Forest By-Products Incs Answer to Complaint for Foreclosure, filed 10-30-08	159 – 173	1
Order to Consolidate, filed 3-2-09	174 – 177	1
Answer to Crossclaim of Stanley Consultants Inc, filed 3-4-09	178 – 185	1
Order Entering Default Re: Traditional Sprinklers, filed 3-16-09	186 – 189	1
Answer to Crossclaim of Stanley Consultants Inc., dated July 16, 2008, filed 3-24-09	190 – 193	2
Order Entering Default Re: Phipps Well Drilling, filed 3-26-09	194 – 197	2

TABLE OF CONTENTS, Continued

	Page No.	Vol. No.
Order Entering Default Re: L222-1 ID Summerwind LLC, 222-2 ID Summerwind LLC, 222-3 ID Summerwind LLC, and Union Land Company LLC, filed 3-26-09	198 – 201	2
Default Judgment Re: L222-1 ID Summerwind, L222-2 ID Summerwind, L222-3 ID Summerwind, Union Land Company, Filed 3-26-09	202 – 204	2
Memorandum in Support of Extreme Line Logistics Inc. Motion For Summary Judgment, filed 10-14-09	205 – 213	2
Affidavit of William L Smith in Support of Motion for Summary Judgment, filed 10-14-09	214 – 228	2
Affidavit of Casey Daniels in Support of Motion for Summary Judgment, filed 10-14-09	229 – 285	2
Integrated Financial Associates Inc Cross-Motion for Summary Judgment, filed 12-7-09	286 – 289	2
Combined Memorandum in Opposition to Extreme Line Logistics Incs Motion for Summary Judgment and in Support Of Integrated Financial Associates Incs Cross-Motion for Summary Judgment, filed 12-7-09	290 – 300	2
Plaintiffs Motion for Summary Judgment, filed 12-9-09	301 – 304	2
Memorandum in Support of Plaintiffs Motion for Summary Judgment, filed 12-9-09	305 – 317	2
Affidavit of Casey Daniels, filed 12-9-09	318 – 328	2
Affidavit of Jesse Rosin in Support of Plaintiffs Motion for Summary Judgment, filed 12-9-09	329 – 410	3
Affidavit of David T Krueck in Support of Plaintiffs Motion for Summary Judgment, filed 12-9-09	411 – 466	3
Motion for Summary Judgment as to Knife Rivers Lien Foreclosure Claims, filed 12-9-09	467 – 470	3
Memorandum in Support of Motion for Summary Judgment As to Knife Rivers Lien Foreclosure Claims, filed 12-9-09	471 – 488	3
Affidavit of Rebecca A Rainey in Support of Motion for Summary Judgment as to Knife Rivers Lien Foreclosure Claims, Filed 12-9-09	489 – 630	4

TABLE OF CONTENTS, Continued

	Page No.	Vol. No.
Defendant/Counterclaimant/CrossClaimant Stanley Consultants Incs Motion for Summary Judgment, filed 12-10-09	631 – 636	4
Memorandum in Support of Defendant/Counterclaimant/Cross Claimant Stanley Consultants Incs Motion for Summary Judgment, filed 12-10-09	637 – 651	4
Affidavit of Eric Nelson in Support of Defendant/Counter Claimant/CrossClaimant Stanley Consultants Incs Motion for Summary Judgment, filed 12-10-09	652 – 670	4
Affidavit of Steve Arnold in Support of Defendant/Counter Claimant/Crossclaimant Stanley Consultants Incs Motion for Summary Judgment, filed 12-10-09	671 – 686	5
Notice of Hearing on Stanley Consultants Incs Motion for Summary Judgment, filed 12-10-09	687 – 691	5
Second Affidavit of Steve Arnold in Support of Defendant/ Counterclaimant/Crossclaimant Stanley Consultants Incs Motion for Summary Judgment, filed 12-14-09	692 – 734	5
Defendant/Counterclaimant/Crossclaimant Stanley Consultants Incs Response to Defendant Integrated Financial Associates Incs Cross-Motion for Summary Judgment, filed 12-21-09	735 – 738	5
Defendant/Counterclaimant/Crossclaimant Stanley Consultants Incs Response to Defendant/Crossclaimant Extreme Line Logistics Incs Motion for Summary Judgment, filed 12-21-09	739 – 742	5
Reply Memorandum in Opposition to Integrated Financial Associates Incs Cross-Motion for Summary Judgment and Stanley Consultants Incs Motion for Summary Judgment, Filed 12-24-09	743 – 759	5
Memorandum in Opposition to Stanley Consultants Incs Motion For Summary Judgment, filed 12-24-09	760 – 795	5
Memorandum in Opposition to Plaintiff Hap Taylor & Sons Inc d/b/a Knife River's Motion for Summary Judgment, filed 12-24-09	796 – 805	5
Affidavit of Rebecca A Rainey in Support of Opposition to Plaintiffs Motion for Summary Judgment, filed 12-24-09	806 – 827	5

TABLE OF CONTENTS, Continued

	Page No.	Vol. No.
Preliminary Scheduling Order on Motions for Summary Judgment, filed 12-30-09	828 – 831	5
Reply Memorandum in Support of Integrated Financial Associates Incs Cross-Motion for Summary Judgment, Filed 12-31-09	832 – 841	5
Plaintiffs Reply to Memorandum in Opposition to Plaintiff Hap Taylor & Sons Inc d/b/a Knife Rivers Motion for Summary Judgment, filed 12-31-09	842 – 853	5
Defendant/Counterclaimant/Crossclaimant Stanley Consultants Incs Reply to Integrated Financial Associates Incs Opposition To Motion for Summary Judgment, filed 12-31-09	854 – 861	6
Affidavit of David T Krueck in Opposition to Motion for Summary Judgment as to Knife River's Lien Foreclosure Claim, filed 1-28-10	862 – 900	6
Memorandum in Opposition to Motion for Summary Judgment As to Knife Rivers Lien Foreclosure Claims, filed 1-28-10	901 – 917	6
Stipulation to Dismiss Rexius Forest By-Products Inc Without Prejudice, filed 2-3-10	918 – 936	6
Notice of Hearing, filed 2-4-10	937 – 939	6
Order to Dismiss Rexius Forest By-Products Inc Without Prejudice, filed 2-8-10	940 – 949	6
Reply Memorandum in Support of Motion for Summary Judgment as to Knife Rivers Claims of Lien, filed 2-24-10	950 – 966	6
Order on Motions for Summary Judgment, filed 4-13-10	967 – 995	6
Defendant IFA's Motion for Reconsideration, filed 8-18-10	996 – 999	6
Affidavit of Rebecca A Rainey in Support of Defendant IFA's Motion for Reconsideration, filed 8-18-10	1000 – 1048	6
Memorandum in Support of Defendant IFA's Motion for Reconsideration, filed 8-18-10	1049 – 1089	7
Affidavit of Jesse Rosin in Opposition to Motion to Reconsider, filed 9-2-10	1090 – 1096	7

TABLE OF CONTENTS, Continued

	Page No.	Vol. No.
Memorandum in Opposition to Defendant IFA's Motion for Reconsideration, filed 9-2-10	1097 – 1116	7
Errata Re: Affidavit of Jesse Rosin in Opposition to Defendant IFA's Motion for Reconsideration, filed 9-3-10	11117 – 1124	7
Reply Memorandum in Support of Defendant IFA's Motion for Reconsideration, filed 9-7-10	1125 – 1146	7
Affidavit of Jesse Rosin in Support of Plaintiffs Second Motion For Summary Judgment, filed 12-16-10	1147 – 1155	7
Memorandum in Support of Plaintiffs Second Motion for Summary Judgment, filed 12-16-10	1156 – 1166	7
Plaintiffs Second Motion for Summary Judgment, filed 12-16-10	1167 – 1170	7
Affidavit of David T Krueck in Support of Plaintiffs Second Motion for Summary Judgment, filed 12-16-10	1171 – 1222	7
Defendant Integrated Financial Associates Second Motion for Reconsideration, filed 12-30-10	1223 – 1227	8
Defendant Integrated Financial Associates Motion for Continuance Pursuant to IRCP 56(f), filed 12-30-10	1228 – 1231	8
Affidavit of Rebecca A Rainey in Support of Motion for Continuance Pursuant to IRCP 56(f), filed 12-30-10	1232 – 1272	8
Combined Memorandum in Opposition to Plaintiffs Second Motion for Summary Judgment and in Support of IFA's Second Motion for Reconsideration, filed 12-30-10	1273 – 1349	8
Memorandum in Opposition to Defendant IFA's Second Motion for Reconsideration, filed 1-6-11	1350 – 1361	8
Opposition to IFA's Motion for Continuance Pursuant to IRCP 56(f), filed 1-6-11	1362 – 1368	8
Plaintiff's Reply to IFA's Memorandum in Opposition to Plaintiffs Second Motion for Summary Judgment, filed 1-6-11	1369 – 1375	8
Combined Reply Memorandum in Support of IFA's Second Motion for Reconsideration and Motion for Continuance, Filed 1-11-11	1376 – 1386	8

TABLE OF CONTENTS, Continued

	Page No.	Vol. No.
Amended Complaint for Foreclosure of Claim of Lien, Filed 1-14-11	1387 – 1401	8
Answer Counterclaim and Cross-Claim of Stanley Consultants Inc to Plaintiffs First Amended Complaint, filed 2-4-11	1402 – 1416	8
Answer to Amended Complaint, filed 2-17-11	1417 – 1423	8
Combined Supplemental Memorandum in Support of Plaintiffs Second Motion for Summary Judgment and in Opposition to IFA's Second Motion for Reconsideration, filed 11-8-11	1424 – 1447	9
Plaintiffs Motion to Entry of Judgment, filed 6-6-12	1448 – 1451	9
Affidavit of David T Krueck in Support of Plaintiffs Motion for Entry of Judgment, filed 6-6-12	1452 – 1464	9
Memorandum in Support of Plaintiffs Motion for Entry of Judgment, filed 6-6-12	1465 – 1475	9
IFA's Opposition to Knife Rivers Motion for Entry of Judgment, filed 7-12-12	1476 – 1482	9
Plaintiffs Reply to IFA's Opposition to Knife Rivers Motion for Entry of Judgment, filed 7-16-12	1483 – 1489	9
Plaintiffs Second Motion for Entry of Judgment, filed 9-19-12	1490 – 1493	9
Affidavit of David T Krueck in Support of Plaintiffs Second Motion for Entry of Judgment, filed 9-19-12	1494 – 1508	9
Memorandum in Support of Plaintiffs Second Motion for Entry of Judgment, filed 9-19-12	1509 – 1516	9
Stipulation for Reconsideration and Entry of Certified Judgment, Filed 9-26-12	1517 – 1532	9
Order on Motion for Entry of Judgment, filed 10-16-12	1533 – 1537	9
Certified Judgment on Stanley Consultants Incs Motion for Summary Judgment, filed 10-16-12	1538 – 1542	9
Judgment and Decree of Foreclosure, filed 10-26-12	1543 – 1551	9
Notice of Appeal, filed 11-26-12	1552 – 1581	9
Notice of Appeal, filed 12-6-12	1582 – 1591	9

TABLE OF CONTENTS, Continued

	Page No.	Vol. No.
Order Remanding to District Court, filed 12-6-12	1592 – 1593	9
Order Clarifying Determination on Reconsideration After Remand, filed 3-15-13	1594 – 1608	9
Judgment, filed 3-15-13	1609 – 1611	9
Order Granting Petition to Intervene, filed 3-27-13	1612 – 1614	9
Certificate of Exhibit	1615 – 1616	9
Certificate of Clerk	1617 – 1618	9
Certificate of Service	1619 – 1620	9

INDEX

	Page No.	Vol. No.
Affidavit of Casey Daniels in Support of Motion for Summary Judgment, filed 10-14-09	229 – 285	2
Affidavit of Casey Daniels, filed 12-9-09	318 – 328	2
Affidavit of David T Krueck in Opposition to Motion for Summary Judgment as to Knife River's Lien Foreclosure Claim, filed 1-28-10	862 – 900	6
Affidavit of David T Krueck in Support of Plaintiffs Motion for Summary Judgment, filed 12-9-09	411 – 466	3
Affidavit of David T Krueck in Support of Plaintiffs Motion for Entry of Judgment, filed 6-6-12	1452 – 1464	9
Affidavit of David T Krueck in Support of Plaintiffs Second Motion for Summary Judgment, filed 12-16-10	1171 – 1222	7
Affidavit of David T Krueck in Support of Plaintiffs Second Motion for Entry of Judgment, filed 9-19-12	1494 – 1508	9
Affidavit of Eric Nelson in Support of Defendant/Counter Claimant/CrossClaimant Stanley Consultants Incs Motion for Summary Judgment, filed 12-10-09	652 – 670	4
Affidavit of Jesse Rosin in Opposition to Motion to Reconsider, filed 9-2-10	1090 – 1096	7
Affidavit of Jessee Rosin in Support of Plaintiffs Motion for Summary Judgment, filed 12-9-09	329 – 410	3
Affidavit of Jessee Rosin in Support of Plaintiffs Second Motion For Summary Judgment, filed 12-16-10	1147 – 1155	7
Affidavit of Rebecca A Rainey in Support of Defendant IFA's Motion for Reconsideration, filed 8-18-10	1000 – 1048	6
Affidavit of Rebecca A Rainey in Support of Motion for Continuance Pursuant to IRCP 56(f), filed 12-30-10	1232 – 1272	8
Affidavit of Rebecca A Rainey in Support of Motion for Summary Judgment as to Knife Rivers Lien Foreclosure Claims, Filed 12-9-09	489 – 630	4
Affidavit of Rebecca A Rainey in Support of Opposition to Plaintiffs Motion for Summary Judgment, filed 12-24-09	806 – 827	5

INDEX, Continued

	Page No.	Vol. No.
Affidavit of Steve Arnold in Support of Defendant/Counter Claimant/Crossclaimant Stanley Consultants Incs Motion for Summary Judgment, filed 12-10-09	671 – 686	5
Affidavit of William L Smith in Support of Motion for Summary Judgment, filed 10-14-09	214 – 228	2
Amended Complaint for Foreclosure of Claim of Lien, Filed 1-14-11	1387 – 1401	8
Answer Counterclaim and Cross-Claim of Stanley Consultants Inc to Plaintiffs First Amended Complaint, filed 2-4-11	1402 – 1416	8
Answer Counterclaim and Crossclaim of Stanley Consultants, Inc, filed 7-17-08	102 – 121	1
Answer of L222-I ID Summerwind LLC and Union Land Company LLC, filed 7-9-08	85 – 89	1
Answer to Amended Complaint, filed 2-17-11	1417 – 1423	8
Answer to Complaint by Defendant, Riverside Inc an Idaho Corporation and Demand for Jury Trial, filed 7-9-08	90 – 95	1
Answer to Crossclaim of Stanley Consultants Inc, filed 3-4-09	178 – 185	1
Answer to Crossclaim of Stanley Consultants Inc., dated July 16, 2008, filed 3-24-09	190 – 193	2
Certificate of Clerk	1617 – 1618	9
Certificate of Exhibit	1615 – 1616	9
Certificate of Service	1619 – 1620	9
Certified Judgment on Stanley Consultants Incs Motion for Summary Judgment, filed 10-16-12	1538 – 1542	9
Combined Memorandum in Opposition to Extreme Line Logistics Incs Motion for Summary Judgment and in Support Of Integrated Financial Associates Incs Cross-Motion for Summary Judgment, filed 12-7-09	290 – 300	2
Combined Memorandum in Opposition to Plaintiffs Second Motion for Summary Judgment and in Support of IFA's Second Motion for Reconsideration, filed 12-30-10	1273 – 1349	8

INDEX, Continued

	Page No.	Vol. No.
Combined Reply Memorandum in Support of IFA's Second Motion for Reconsideration and Motion for Continuance, Filed 1-11-11	1376 – 1386	8
Combined Supplemental Memorandum in Support of Plaintiffs Second Motion for Summary Judgment and in Opposition to IFA's Second Motion for Reconsideration, filed 11-8-11	1424 – 1447	9
Complaint for Foreclosure of Claim of Lien, filed 4-22-08	14 – 68	1
Default Judgment Re: L222-1 ID Summerwind, L222-2 ID Summerwind, L222-3 ID Summerwind, Union Land Company, Filed 3-26-09	202 – 204	2
Defendant IFA's Motion for Reconsideration, filed 8-18-10	996 – 999	6
Defendant Integrated Financial Associates Motion for Continuance Pursuant to IRCP 56(f), filed 12-30-10	1228 – 1231	8
Defendant Integrated Financial Associates Second Motion for Reconsideration, filed 12-30-10	1223 – 1227	8
Defendant Integrated Financial Associates, Inc's and Certain Other Named Defendants Answer to Complaint, filed 7-7-08	69 – 84	1
Defendant/Counterclaimant/CrossClaimant Stanley Consultants Incs Motion for Summary Judgment, filed 12-10-09	631 – 636	4
Defendant/Counterclaimant/Crossclaimant Stanley Consultants Incs Response to Defendant Integrated Financial Associates Incs Cross-Motion for Summary Judgment, filed 12-21-09	735 – 738	5
Defendant/Counterclaimant/Crossclaimant Stanley Consultants Incs Response to Defendant/Crossclaimant Extreme Line Logistics Incs Motion for Summary Judgment, filed 12-21-09	739 – 742	5
Defendant/Counterclaimant/Crossclaimant Stanley Consultants Incs Reply to Integrated Financial Associates Incs Opposition To Motion for Summary Judgment, filed 12-31-09	854 – 861	6
Errata Re: Affidavit of Jesse Rosin in Opposition to Defendant IFA's Motion for Reconsideration, filed 9-3-10	1117 – 1124	7
Extreme Line Logistics Incs Answer Counterclaim and Crossclaim, filed 7-24-08	125 – 142	1

INDEX, Continued

	Page No.	Vol. No.
IFA's Opposition to Knife Rivers Motion for Entry of Judgment, filed 7-12-12	1476 – 1482	9
Integrated Financial Associates Inc Cross-Motion for Summary Judgment, filed 12-7-09	286 – 289	2
Judgment and Decree of Foreclosure, filed 10-26-12	1543 – 1551	9
Judgment, filed 3-15-13	1609 – 1611	9
Memorandum in Opposition to Defendant IFA's Motion for Reconsideration, filed 9-2-10	1097 – 1116	7
Memorandum in Opposition to Defendant IFA's Second Motion for Reconsideration, filed 1-6-11	1350 – 1361	8
Memorandum in Opposition to Motion for Summary Judgment As to Knife Rivers Lien Foreclosure Claims, filed 1-28-10	901 – 917	6
Memorandum in Opposition to Plaintiff Hap Taylor & Sons Inc d/b/a Knife River's Motion for Summary Judgment, filed 12-24-09	796 – 805	5
Memorandum in Opposition to Stanley Consultants Incs Motion For Summary Judgment, filed 12-24-09	760 – 795	5
Memorandum in Support of Defendant IFA's Motion for Reconsideration, filed 8-18-10	1049 – 1089	7
Memorandum in Support of Defendant/Counterclaimant/Cross Claimant Stanley Consultants Incs Motion for Summary Judgment, filed 12-10-09	637 – 651	4
Memorandum in Support of Extreme Line Logistics Inc. Motion For Summary Judgment, filed 10-14-09	205 – 213	2
Memorandum in Support of Motion for Summary Judgment As to Knife Rivers Lien Foreclosure Claims, filed 12-9-09	471 – 488	3
Memorandum in Support of Plaintiffs Motion for Entry of Judgment, filed 6-6-12	1465 – 1475	9
Memorandum in Support of Plaintiffs Motion for Summary Judgment, filed 12-9-09	305 – 317	2

INDEX, Continued

	Page No.	Vol. No.
Memorandum in Support of Plaintiffs Second Motion for Summary Judgment, filed 12-16-10	1156 – 1166	7
Memorandum in Support of Plaintiffs Second Motion for Entry of Judgment, filed 9-19-12	1509 – 1516	9
Motion for Summary Judgment as to Knife Rivers Lien Foreclosure Claims, filed 12-9-09	467 – 470	3
Notice of Appeal, filed 11-26-12	1552 – 1581	9
Notice of Appeal, filed 12-6-12	1582 – 1591	9
Notice of Hearing on Stanley Consultants Incs Motion for Summary Judgment, filed 12-10-09	687 – 691	5
Notice of Hearing, filed 2-4-10	937 – 939	6
Opposition to IFA's Motion for Continuance Pursuant to IRCP 56(f), filed 1-6-11	1362 – 1368	8
Order Clarifying Determination on Reconsideration After Remand, filed 3-15-13	1594 – 1608	9
Order Entering Default Re: L222-1 ID Summerwind LLC, 222-2 ID Summerwind LLC, 222-3 ID Summerwind LLC, and Union Land Company LLC, filed 3-26-09	198 – 201	2
Order Entering Default Re: Phipps Well Drilling, filed 3-26-09	194 – 197	2
Order Entering Default Re: Traditional Sprinklers, filed 3-16-09	186 – 189	1
Order for Default, filed 7-16-08	96 – 101	1
Order Granting Petition to Intervene, filed 3-27-13	1612 – 1614	9
Order on Motion for Entry of Judgment, filed 10-16-12	1533 – 1537	9
Order on Motions for Summary Judgment, filed 4-13-10	967 – 995	6
Order Remanding to District Court, filed 12-6-12	1592 – 1593	9
Order to Consolidate, filed 3-2-09	174 – 177	1
Order to Dismiss Rexius Forest By-Products Inc Without Prejudice, filed 2-8-10	940 – 949	6

INDEX, Continued

	Page No.	Vol. No.
Plaintiff's Reply to IFA's Memorandum in Opposition to Plaintiffs Second Motion for Summary Judgment, filed 1-6-11	1369 – 1375	8
Plaintiffs Motion for Summary Judgment, filed 12-9-09	301 – 304	2
Plaintiffs Motion to Entry of Judgment, filed 6-6-12	1448 – 1451	9
Plaintiffs Reply to IFA's Opposition to Knife Rivers Motion for Entry of Judgment, filed 7-16-12	1483 – 1489	9
Plaintiffs Reply to Memorandum in Opposition to Plaintiff Hap Taylor & Sons Inc d/b/a Knife Rivers Motion for Summary Judgment, filed 12-31-09	842 – 853	5
Plaintiffs Second Motion for Entry of Judgment, filed 9-19-12	1490 – 1493	9
Plaintiffs Second Motion for Summary Judgment, filed 12-16-10	1167 – 1170	7
Preliminary Scheduling Order on Motions for Summary Judgment, filed 12-30-09	828 – 831	5
Register of Actions	1 – 13	1
Reply Memorandum in Opposition to Integrated Financial Associates Incs Cross-Motion for Summary Judgment and Stanley Consultants Incs Motion for Summary Judgment, Filed 12-24-09	743 – 759	5
Reply Memorandum in Support of Defendant IFA's Motion for Reconsideration, filed 9-7-10	1125 – 1146	7
Reply Memorandum in Support of Integrated Financial Associates Incs Cross-Motion for Summary Judgment, Filed 12-31-09	832 – 841	5
Reply Memorandum in Support of Motion for Summary Judgment as to Knife Rivers Claims of Lien, filed 2-24-10	950 – 966	6
Rexius Forest By-Products Incs Answer to Complaint for Foreclosure, filed 10-30-08	159 – 173	1
Riverside Incs Answer to Crossclaim by Extreme Line Logistics Inc, filed 8-13-08	143 – 148	1
Riverside Incs Answer-Disclaimer to Crossclaim by Stanley Consultants Inc., filed 7-22-08	122 – 124	1

INDEX, Continued

	Page No.	Vol. No.
Second Affidavit of Steve Arnold in Support of Defendant/ Counterclaimant/Crossclaimant Stanley Consultants Incs Motion for Summary Judgment, filed 12-14-09	692 – 734	5
Stanley Consultants Incs Answer to Crossclaim of Extreme Line Logistics Inc., filed 8-14-08	149 – 158	1
Stipulation for Reconsideration and Entry of Certified Judgment, Filed 9-26-12	1517 – 1532	9
Stipulation to Dismiss Rexius Forest By-Products Inc Without Prejudice, filed 2-3-10	918 – 936	6

Michael O. Roe, ISB No. 4490
Rebecca A. Rainey, ISB No. 7525
MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED
101 South Capitol Boulevard, 10th Floor
Post Office Box 829
Boise, Idaho 83701
Telephone (208) 345-2000
Facsimile (208) 385-5384
mor@moffatt.com
rar@moffatt.com
23690.0002

F I L E D
A.M. 3:35 P.M.
AUG 18 2010
CANYON COUNTY CLERK
DEPUTY
J

Attorneys for Defendants Integrated Financial Associates, Inc.,
Geneva Equities, LLC, and Certain Other Named Defendants

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

HAP TAYLOR & SONS, INC., d/b/a KNIFE
RIVER, an Oregon corporation doing business
as Knife River,

Plaintiff,

vs.

L222-1 ID SUMMERWIND, LLC, et al.,

Defendants.

HAP TAYLOR & SONS, INC. d/b/a KNIFE
RIVER, an Oregon corporation doing business
as Knife River,

Plaintiff,

vs.

L222-1 ID SUMMERWIND, LLC, an Idaho
limited liability company, et al.,

Defendants.

Case No. CV08-4251C, consolidated with
CV08-4252C and CV08-11321

**MEMORANDUM IN SUPPORT OF
DEFENDANT IFA'S MOTION FOR
RECONSIDERATION**

**MEMORANDUM IN SUPPORT OF DEFENDANT IFA'S
MOTION FOR RECONSIDERATION**

Client:1714491.1

CONGER MANAGEMENT GROUP, INC., an
Idaho corporation,

Plaintiff,

vs.

L222-1 ID SUMMERWIND, LLC, an Idaho
corporation, et al.,

Defendants.

TABLE OF CONTENTS

	Page
I. INTRODUCTION.....	1
II. LEGAL AUTHORITY.....	3
III. STATEMENT OF NEW OR ADDITIONAL FACTS	4
IV. ARGUMENT.....	6
A. Genuine Issue of Material Fact Exists Regarding Whether There Were Two Contracts Between Knife River and Extreme Line.....	6
1. Extreme Line did not solicit a bid from plaintiff to provide all of the asphalt for the entire Summerwind project.....	6
2. Evidence shows that the parties negotiated a different price for additional and different work related to the cart path job.....	15
3. There is evidence that Extreme Line told Union Land it had entered into a separate, verbal agreement with Knife River to pave the cart paths.....	23
4. Plaintiff’s evidence regarding the “change order” that links the roadway job and the cart path job together under one contract is unreliable.....	26
B. Knife River Knew, or Had Reason to Know, That Extreme Line Had Two Contracts With Union Land.....	29
V. CONCLUSION	36

COME NOW Defendants Integrated Financial Associates, Inc., Geneva Equities, LLC, and Certain Other Named Defendants (collectively "IFA") and hereby file this memorandum in support of its motion for reconsideration of that portion of this Court's order on motions for summary judgment, entered April 13, 2010 ("Order") wherein it found that "Plaintiff has adduced sufficient evidence to entitle it to summary judgment determining that its liens are superior to IFA's interest in the property" and, pursuant to such reconsideration, enter an order denying plaintiff Knife River's motion for summary judgment.

I. INTRODUCTION

The critical issue in the underlying motion for summary judgment was whether Knife River's work on the Summerwind project was performed pursuant to one or more contracts with Extreme Line Construction, the general contractor. In support of its position that there were two contracts at issue, IFA pointed to the inconsistencies between the statements set forth in the affidavits of Casey Daniels and Jesse Rosin (respectively, the "Daniels Aff." and "Rosin Aff.") and the documentary evidence attached to those affidavits. Based on the internal inconsistencies in plaintiff's evidence, IFA argued that plaintiff failed to meet its summary judgment burden, as its own evidence created genuine issues of material fact. In its Order, however, this Court found that the internal inconsistencies in plaintiff's evidence were insufficient to create a genuine issue of material fact, and held that, as a matter of law, there was only one contract related to the asphalt provided by Knife River on the Summerwind project.

In its Order, this Court stated that either "documentary evidence and/or the affidavit by a person with knowledge connecting the invoices to separate contracts between Plaintiff and ELL" would be required for the Court to find that a reasonable trier of fact to conclude, based solely on the invoices prepared by plaintiff and submitted by Extreme Line Logistics, Inc. (hereafter "ELL" or "Extreme Line"), that two different contracts were at issue.

Order at 20. In the present motion, IFA respectfully requests that this Court reconsider the internally inconsistent evidence that plaintiff relied upon in support of its motion for summary judgment, as well as the new and additional evidence presented herein. Specifically, IFA asks this Court to consider the deposition testimony of Casey Daniels,¹ taken June 10, 2010 (“Daniels Depo.,” submitted contemporaneously herewith as Exhibit A to the Affidavit of Rebecca A. Rainey in Support of Defendant IFA’s Motion for Reconsideration (“Rainey Aff.”)).

The testimony elicited during Daniels’ deposition is directly related to whether Knife River provided asphalt to the Summerwind project pursuant to one or more contracts and whether Knife River knew, or had reason to know, of Extreme Line’s two contracts with Union Land regarding the roadway job and the cart path job. The evidence presented herein establishes that: (i) the bid solicited from Knife River by Extreme Line was based on the estimates to pave the roadways only, not estimates to pave the entire project; (ii) the parties negotiated a new price for additional and different work related to the cart paths; (iii) Extreme Line confirmed this new price for new and additional work in a memorandum to Union Land and represented the same to be a new “verbal agreement” between the parties; and (iv) plaintiff’s evidence regarding an alleged – but apparently non-existent – change order intended to link the roadway job and the cart path job together under a single contract is unreliable, unsubstantiated, and directly contradicts Daniels’ sworn deposition testimony.

Daniels’ deposition provides the Court with new and additional evidence that further supports IFA’s original position that the internally inconsistent evidence provided by plaintiff in support of its motion for summary was not sufficient to meet plaintiff’s burden of

¹ At the time the events that are the subject of this lawsuit took place, Daniels was the president and sole owner of Extreme Line Construction, the general contractor that hired plaintiff Knife River, to do the asphalt paving work on the Summerwind product. (Rainey Aff., Ex. A (Daniels Depo. 11:20-25).)

proof on its motion for summary judgment. Because this evidence contains facts from which a reasonable trier of fact could conclude either that (i) Knife River had two separate contracts with Extreme Line for the work that gives rise to its claim of lien, and/or (ii) that Knife River knew, or should have known, that Extreme Line had two separate contracts with the developer on the Summerwind project, IFA respectfully requests that this Court reconsider its order granting summary judgment in favor of Knife River and allow these matters to be presented to the trier of fact.

II. LEGAL AUTHORITY

Rule 11(a)(2)(B), I.R.C.P., provides in pertinent part:

Motion for Reconsideration. A motion for reconsideration of any interlocutory orders of the trial court may be made at any time before the entry of final judgment but not later than fourteen (14) days after the entry of the final judgment.

With respect to motions to reconsider in general, the Idaho Supreme Court has stated:

A rehearing or reconsideration in the trial court usually involves new or additional facts, and a more comprehensive presentation of both law and fact. Indeed, the chief virtue of a reconsideration is to obtain a full and complete presentation of all available facts, so that the truth may be ascertained, and justice done, as nearly as may be.

J. I. Case Co. v. McDonald, 76 Idaho 223, 229, 280 P.2d 1070, 1073 (1955). More recently, the Supreme Court discussed Rule 11(a)(2)(B) specifically and stated:

On a motion for reconsideration of the specification of facts deemed established pursuant to I.R.C.P. 56(d), the trial court should consider those facts in light of any new or additional facts that are submitted in support of the motion.

Coeur d'Alene Mine Co. v. First Nat'l Bank, 118 Idaho 812, 823, 800 P.2d 1026, 1037 (1990).

III. STATEMENT OF NEW OR ADDITIONAL FACTS

1. It was Extreme Line's practice to estimate the tonnage needed to fill a particular contract and to shop around to various asphalt suppliers for the cheapest asphalt price to fill that particular contract. Rainey Aff., Ex. A (Daniels Depo. 50:20 – 51:5; 35:16 – 37:5).

2. It was not Extreme Line's practice to solicit bids for an entire development project. Rainey Aff., Ex. A (Daniels Depo. 50:20 – 51:5).

3. With respect to the Summerwind project, Extreme Line was consistent with its typical practice and did not solicit bids for the entire project. Rainey Aff., Ex. A (Daniels Depo. 50:20 – 51:5; 37:6 – 37:14).

4. When Extreme Line solicited bids for its first contract on the Summerwind project, it solicited a bid for approximately 6,202 tons of asphalt, the amount of asphalt Extreme Line estimated would be necessary to pave only the roadways in the Summerwind project. Rainey Aff., Ex. A (Daniels Depo. 60:3-21).

5. When Extreme Line solicited bids for its first contract on the Summerwind project, it did not include estimates for the anticipated cart paths on the golf course because (i) Extreme Line did not know when the developer would be ready to proceed with cart paths; (ii) the cart paths were not designed at the time Extreme Line solicited bids for its first contract; and (iii) Extreme Line had no manner or means to estimate the amount of asphalt that would be required to pave the cart paths. Rainey Aff., Ex. A (Daniels Depo. 62:9-18; 44:9 – 45:12; 114:4 – 116:9; 64:4 – 65:5).

6. When Knife River provided its proposal to Extreme Line for providing the approximately 6,020 tons of asphalt that Extreme Line estimated to be necessary to pave the roadways, Knife River knew that Extreme Line anticipated work under a separate contract for the cart path job. Rainey Aff., Ex. A (Daniels Depo. 114:4 – 116:9; 62:14 – 63:16; 64:4 – 65:5).

7. When Knife River provided its proposal to Extreme Line for providing the approximately 6,020 tons of asphalt that Extreme Line estimated to be necessary to pave the roadways, Knife River knew that the 6,020 ton estimation did not include the anticipated future cart path job. Rainey Aff., Ex. A (Daniels Depo. 114:4 – 116:9; 62:14 – 63:16; 64:4 – 65:5).

8. At the time Extreme Line prepared a proposal to submit to the developer for the cart path contract, it solicited a new bid from Knife River for the asphalt needed to pave the cart paths. In addition to providing for asphalt, the new bid that Extreme Line solicited from Knife River also sought an estimate for new and additional work of placing and compacting 3/4-inch road mix on the cart paths. Rainey Aff., Ex. A (Daniels Depo. 86:24 – 87:4).

9. Because Knife River's proposal for the cart path work included the new and additional job of placing and compacting 3/4-inch road mix and an additional 1,500 tons of asphalt provided at an increased price, Knife River's scope of work related to the cart path job differed from its scope of work related to the roadway job. Rainey Aff., Ex. A (Daniels Depo. 102:11 – 105:1).

10. Extreme Line and Knife River reached a verbal agreement that Knife River would receive \$68.00/ton for the cart path job, which involved both placing 3/4-inch road mix and providing asphalt (which had, by that time, increased in price). Rainey Aff., Ex. A (Daniels Depo. 102:20-23); Rainey Aff., Exs. C, D, and E.

11. Extreme Line confirmed this verbal agreement to the developer, Union Land, by a letter signed by Casey Daniels of Extreme Line and sent via Extreme Line's fax to Bob Larison of Union Land. Rainey Aff., Ex. E.

12. Knife River subsequently billed Extreme Line for the cart path job with an invoice for asphalt at \$65.40/ton and placing and compacting 3/4 in road mix at a cost of \$2.60/ton. Rainey Aff., Ex. D. This invoice was consistent with the nature of the agreement

between Extreme Line and Knife River that Casey Daniels represented to Union Land by the faxed confirmation letter referenced in paragraph 11, above.

13. Casey Daniels of Extreme Line testified that he never requested a change order from Knife River to expand the scope of the original contract for the roadway job to include the separate cart path job. Rainey Aff., Ex. A (Daniels Depo. 91:14 – 92:3).

IV. ARGUMENT

A. Genuine Issue of Material Fact Exists Regarding Whether There Were Two Contracts Between Knife River and Extreme Line.

1. Extreme Line did not solicit a bid from plaintiff to provide all of the asphalt for the entire Summerwind project.

Plaintiff's motion for summary judgment rested, almost entirely, on the theory that it had one contract with Extreme Line, which contract was for all asphalt required to pave the entire Summerwind project. However, contrary to the affidavit testimony of Casey Daniels and Jessee Rosin submitted in support of such theory, Casey Daniels' deposition testimony tells an entirely different story. Indeed, Daniels testified in his deposition that it was not his practice to solicit bids for asphalt for an entire development project but, rather, it was his practice to solicit bids based on the estimated tonnage needed to fill a contract. Daniels further testified that, with respect to the Summerwind project, Daniels followed his standard practice and, in August 2006, solicited bids from asphalt suppliers for approximately 6,020 tons of asphalt, the amount of asphalt necessary to complete the just roadway job within the Summerwind project:

Q. (R. Rainey) When did you start soliciting bids for the paving work?

A. (C. Daniels) Not necessarily -- I mean, you go in and pave a road that we prep. It's 26 feet wide, all the roads are. So I wasn't necessarily soliciting for this project. We talked to paving companies probably once every two weeks to see where paving prices were. That is what we do.

Q. Is that what you did with respect to the Summerwind project?

A. Correct.

Rainey Aff., Ex. A (Daniels Depo. 50:20 – 51:5 (emphasis added)). When Daniels would solicit bids for asphalt on a particular project, he did not identify the scope of the work as “all labor, equipment and materials necessary to pave all of the asphalt throughout the Development,” as set forth in his paragraphs 8-11 of Daniels’ affidavit; rather, he would estimate the tonnage necessary, by reference to the scope of work contained in the plans and his contract, and solicit a bid for the amount of asphalt necessary to fulfill his contractual obligations for that scope of work only:

Q. (R. Rainey) When you are working with someone to develop the scope of work on a project, what are the different ways that that scope of work can be defined?

A. (C. Daniels) What? You have to start over.

(W. Smith): Object; that’s vague.

Q. (R. Rainey) We are doing the Summerwind project. Okay?

A. (C. Daniels) Okay.

Q. So you go to Hap Taylor and you say I need you to do the asphalt on this project. And they say how big is the project, what is my scope of work. How is that typically defined, the scope of work?

(W. Smith): Object again; this is a mixed hypothetical and factual question you are saying. It’s just really confusing. I think it’s vague and unfair.

Q. (R. Rainey) Do you understand what I’m asking you?

A. (C. Daniels) Yeah.

Q. Go ahead and answer.

A. “Can you pave this?” is what I’ll ask.

Q. So if they say "this," what do you mean by "this"?

A. Well, when I look at a set of plans, I know instantly how many tons it takes. So I will call Jesse and say: Greenleaf subdivision -- I mean, this conversation literally probably took less than a minute on the phone.

(W. Smith): Is this what actually happened or is this what you would do in a typical situation?

A. (C. Daniels) Yeah. Are you talking about in a typical situation?

Q. (R. Rainey) In a typical situation.

A. I know how many tons I need and I call and say I need a per ton price. And I don't just call Knife River, I call everybody else.

Rainey Aff., Ex. A (Daniels Depo. 35:16 – 37:5). Daniels further testified that with respect to the Summerwind project, he remained consistent with his typical practice and solicited bids based on the tonnage that he estimated would be necessary to do the paving work set forth in the plans for the roadways:

Q. (R. Rainey) Did you call other people to get bids on the Summerwind project?

A. (C. Daniels) Yes.

Q. When you called to get that bid, you expressed what you need in terms of tons?

A. Yes, tons of asphalt.

Q. That is based on the set of plans that you've received from the developer.

A. Exactly.

Rainey Aff., Ex. A (Daniels Depo. 37:6-14). In the case of the Summerwind project, Daniels estimated the tonnage required to fulfill his contract to pave the roadways, based on the plans provided to him:

Q. (R. Rainey) Where it says that this Masco proposal is for approximately 6,020 tons -- do you know where that 620,000-ton [sic] number originated from?

(W. Smith): I'll object, I think that misstates what the exhibit says.

(C. Daniels): It's approximately.

Q. (R. Rainey) Do you know where the approximately 6,020-ton number comes from?

A. (C. Daniels) The plans.

Q. Did you provide that number to Masco for the purposes of them creating this proposal?

A. Yes.

Q. You testified earlier that you could look at a plan and know how many tons it's going to take and that was your estimate of how many tons of asphalt it would take to pave this project.

A. Correct.

Rainey Aff., Ex. A (Daniels Depo. 60:3-21). Daniels further testified that the initial proposal he solicited to cover the scope of asphalt work required under his first contract with Union Land was for the roadway job only and did not cover the cart path job:

Q. (R. Rainey) So this Masco proposal that we are looking at gives the approximate tonnage of asphalt that would be needed to pave the roads; correct?

A. (C. Daniels) Correct.

Q. The golf course wasn't included in that approximation because at the time you solicited this bid you didn't know what would be involved with the cart paths; correct?

A. Correct.

Rainey Aff., Ex. A (Daniels Depo. 62:9-18). Daniels further testified that it was industry standard, and it was the case in this particular instance, that bids were solicited by the ton because the asphalt supplier needed to make sufficient oil purchases to cover the contract:

Q. (R. Rainey) Were the golf courses included in the plans at that time?

A. (C. Daniels) The golf cart paths?

Q. The cart paths.

A. They were not. But I will tell you the reason they do this, for the approximately how many tons, so they have an idea of where they are going to be for the year, so on their oil purchases. Because they have to buy their oil up front, so they want to know how many tons. They don't care how many tons when I call; they care about how much -- when they send me a bill, it's not for the proposal, it's for how many tons they use. That is all they care about. They want to know how big the project is so they can get their oil order in.

Rainey Aff., Ex. A (Daniels Depo. 68:11 – 69:1).

Daniels made it absolutely and unequivocally clear that he solicited bids to do paving work under the his first contract with Union Land based on the estimated tonnage required for the roadway job only, that he did not solicit a proposal for the entire Summerwind project, that Extreme Line, as the asphalt purchaser, would check prices every couple of weeks to see which asphalt supplier was providing the best price, that his practice was consistent with industry standards, and that industry standards were driven by the asphalt supplier's need to purchase sufficient oil to cover a specific order. All of this testimony creates a genuine issue of material fact regarding whether Knife River's work, performed under the Extreme Line's separate contract for cart path job, could be deemed to have been included in Knife River's proposal for the 6020 tons necessary to do the roadway job.

Tellingly, when Daniels realized that the testimony regarding industry standards and the precise manner in which he solicited bids for this particular project would not support plaintiff's theory of the case and, further, that such testimony was inconsistent with his prior affidavit testimony (i.e., that he solicited a bid for asphalt for the entire Summerwind project, not just the roadway job), Daniels developed amnesia:

Q. (R. Rainey) In looking at the Masco proposal, I do not see anything that reflects the possibility of potential golf course work. Would you please review the Masco proposal and tell me if you see anything in that proposal where potential golf course work is reflected.

A. (C. Daniels) Summerwind.

Q. The fact that it says "Summerwind"?

A. Yeah.

Q. Do you see anywhere else where it reflects potential golf course work?

A. I don't even see where -- I mean, it's just a price for paving at Summerwind.

Q. It's a price for paving at approximately 6,020 tons; correct?

A. Yes.

Q. That is your estimate of the amount of asphalt that would be required to do the roads; correct?

A. Correct.

Q. Not the cart paths.

A. But we go by unit pricing, so that's...

Q. But I'm looking specifically at the Masco proposal and it's for the amount of asphalt that would be required to do the roads; correct?

(W. Smith): Objection.

(D. Krueck): Objection; form.

(W. Smith): The proposal says what it says.

(C. Daniels): Not necessarily.

Q. (R. Rainey) Explain to me why that's not necessarily.

A. Because we unit rate, because everything fluctuates.

Q. But this approximately 6,020-ton number --

A. I think what they did --

Q. Please let me finish my question.

The number that is approximately 6,020 tons you testified earlier, did you not, that that is the amount you determined by looking at the plans it would take to pave the roads?

(W. Smith): Objection; asked and answered.

Q. (R. Rainey) Was that not your testimony?

A. (C. Daniels) I don't remember.

(W. Smith): Now you are badgering the witness.

(C. Daniels): I don't remember.

Q. (R. Rainey) You don't remember what your testimony is?

(W. Smith): We can have her read it back.

Q. (R. Rainey) Yes. Would you please read back the testimony regarding how that 6,020, approximately 6,020-ton number was arrived at.

(Record read back as follows: "The plans.")

Q. (R. Rainey) So your answer to that question was that the 6,020-ton number came from, quote, "the plans."

(W. Smith): That's what the record says.

Q. (R. Rainey) Was that the plans for the roadwork?

A. (C. Daniels) That was the plans that I was given.

Q. What were the plans that you were given when you came up with this 6,000 --

A. What was the plans?

Q. Yes.

A. Summerwind at Orchard Hills Phase 1 and 2.

Q. Were the golf courses included in the plans at that time?

A. The golf cart paths?

Q. The cart paths.

A. They were not.

Rainey Aff., Ex. A (Daniels Depo. 65:13 – 68:15 (emphasis added)). And, after taking a lunch break (Daniels Depo., 90:11), Daniels' amnesia regarding how he solicited bids for the paving work on his first contract with Union Land grew worse:

Q. (R. Rainey) When you look at Exhibit 2, that 6,020 tons is only for the asphalt required for the roadwork; is that correct?

A. (C. Daniels) No, that is not correct.

Q. In addition to the roadwork, what else was encompassed by that 6,020 tons stated in Exhibit 2?

A. That's what we knew we had at that point.

Q. It did not include the cart paths?

A. It included everything that we had at that point.

Q. Did you have the cart paths at that point?

A. A little bit of it, but we weren't sure what. I'm telling you, I mean, it was literally we are going to pave all this, we just don't know what we are doing yet, okay.

Q. What portion of the cart paths did you have at that point?

A. I don't know. I didn't know how big the cart paths were. I didn't know how big the parking lot was.

Q. How did the 6,020-ton figure include the cart paths if you didn't know what was involved with the cart paths?

A. That is not my number. I don't know where he came up with that.

(W. Smith): I'm just going to object. You are talking about this very precise 6,020-ton figure, but the exhibit says approximately 6,020 ton. That is a unit price.

(D. Krueck): And I'll object on grounds of lack of foundation since it's not the witness' form and he stated earlier he did not prepare it.

Q. (R. Rainey) Is it your testimony right now that you do not know where Hap Taylor came up with the number of approximately 6,020?

(D. Krueck): Object to form; that was asked and answered earlier today.

Q. (R. Rainey) Is it your testimony at this point in the day that you do not know where Hap Taylor came up with the approximately 6,020-ton figure?

A. At this point it's going to be different than it was two hours ago?

Q. Exactly. Is that what you are saying right now, that you don't know where that came from?

A. I don't remember.

Q. You don't remember where it came from?

A. I don't remember your question.

Q. Do you know where the figure approximately 6,020 tons that is stated in Exhibit 2 came from?

A. No, I don't remember.

Rainey Aff., Ex. A (Daniels Depo. 115:7 – 117:12). This testimony directly contradicts Daniels' testimony taken earlier that day and directly contradicted Daniels' affidavit testimony submitted in support of plaintiff's motion for summary judgment. The affidavit testimony, which is not

supported by either version of Daniels' sworn deposition testimony, was crafted in an attempt to support plaintiff's theory that all of the asphalt was provided under a single contract – a theory plaintiff must conclusively prove in order to be granted summary judgment on the timeliness, priority, and validity of its single lien claim. The problem with plaintiff's theory (and the affidavits of both Daniels and Jessee Rosin, submitted in support of plaintiff's motion for summary judgment), is that the affidavit testimony is inconsistent with industry practice, inconsistent with these parties' prior course of dealing, and directly contradicted by Daniels' sworn deposition testimony. The trier of fact needs the opportunity to weigh this conflicting evidence and assess the credibility of the witnesses to determine if there was really one or more contracts for asphalt in this matter.

2. Evidence shows that the parties negotiated a different price for additional and different work related to the cart path job.

The undisputed evidence shows that a different price was paid for the work done by plaintiff on the roadway job and the work done by plaintiff on the cart path job. This was, in part, due to an increase in oil prices that caused an increase in asphalt prices. However, an additional component of the increased price between the two jobs was that plaintiff performed additional and different work with respect to the cart path job.

Q. (R. Rainey) At some point did you agree to pay Hap Taylor more per ton than what was set forth in your original agreement with Hap Taylor?

(W. Smith): Objection; asked and answered.

(C. Daniels): We are way off here. I have no idea where you are going. If the price of oil goes up, yeah, I got to pay more. That's how it works.

Q. (R. Rainey) I'm just trying to get a clear picture of how the pricing structure worked between yourself and Hap Taylor.

At the beginning of the contract did you set -- at the beginning of your relationship with Hap Taylor --

A. (C. Daniels) On the Summerwind project.

Q. -- on the Summerwind project, did you establish a price that would be paid for the asphalt used on the project?

A. Yes.

Q. Did that price ever change?

(W. Smith): Objection; asked and answered. He's already answered this three times.

(R. Rainey): Counsel, he hasn't answered it. We are trying to get clarification as to what his testimony is.

Q. (R. Rainey) My question is: Did the price ever change from what was established at the beginning of the contract?

A. (C. Daniels) Yes.

(W. Smith): Four times.

(C. Daniels): That would be the fourth time. You can probably read that.

Rainey Aff., Ex. A (Daniels Depo. 30:15 – 31:25).

Q. (R. Rainey) Now I want to look at the cost of the cart path pavement reflected on Exhibit 4, which is \$68.

A. (C. Daniels) Okay.

Q. We've talked earlier about the price increased from the \$64.50 that is reflected in Exhibit 2 and now we are seeing it \$68 reflected in Exhibit 4. Is that consistent with your recollection?

A. Say what?

Q. We've talked earlier about how the price of asphalt jumped.

A. Yes.

Q. These two prices that we see in Exhibit 2 and 4, it goes from 64.50 to 68.

A. Yeah.

Q. Is that consistent with your recollection of that jump in price?

A. Yeah.

Q. Is that a "yes"?

A. Yes.

Rainey Aff., Ex. A (Daniels Depo. 77:12 – 78:7). As previously stated, plaintiff would have this Court believe that the change in price was simply the function of a change in unit price of asphalt (caused by a spike in oil prices) and that such price change was contemplated by the terms of the original proposal prepared by plaintiff and provided to Extreme Line. However, there is no evidence anywhere in the record indicating that the price Knife River was charging Extreme Line for asphalt at the time it did the cart path work was \$68.00.

Q. (R. Rainey) There was nothing in writing between yourself and Hap Taylor reflecting the increased asphalt price for the asphalt provided for the Summerwind project?

A. (C. Daniels) Isn't there something on here that says if it -- they have to cover themselves.

(W. Smith): (Indicating.)

(C. Daniels): Somewhere in there. Oh, okay. In the event oil escalates, Masco retains the -- yeah, it's right there, if the oil costs go up, pay more.

Q. (R. Rainey) Was there anything ever in writing between yourself and Hap Taylor where they say oil cost has gone up, the price is now X?

(D. Krueck): Object to the form. I think the exhibit speaks for itself he was just reading from.

(C. Daniels): Yeah.

Q. (R. Rainey) I'm not reading from any exhibit. I'm asking if there is a document.

A (C. Daniels) It's right here.

Q. No. This document says oil price could go up and if it does we'll charge more. I'm asking if there is a document that says oil did go up and we are charging more?

A. Then the next proposal says 68 bucks.

Q. This is a proposal that you prepared. I'm asking for a document that Hap Taylor gave to you saying oil has gone up, the new price is.

A. Do we not have one of those?

(W. Smith): If you can recall, if there is a piece of paper that says what she wants it to say.

(C. Daniels): I have no idea.

Q. (R. Rainey) Do you understand what information I was looking for there?

A. (C. Daniels) No.

Q. I'm going to ask the question again just so we have a very clear record.

I'm asking for a document that Hap Taylor prepared and gave to you that said oil price has gone up, the new price for asphalt for the Summerwind project is going to be?

A. Blankety blank.

Q. Did you ever receive that type of document from Hap Taylor?

A. I don't remember receiving a document, but I remember the discussions.

Rainey Aff., Ex. A (Daniels Depo. 81:12 – 83:10). Contrary to the representation that the price increase from 64.50/ton to 68.00/ton was solely the function of market fluctuation in oil prices, a closer examination of the documentary evidence shows that \$2.60 of the increase was because Knife River agreed to perform different and additional work with respect to paving the cart paths that was not covered in the proposal for paving the roadways. This creates additional issues of

material fact regarding whether the golf course job was performed under a separate contract or (as plaintiff argues) a change order request, which allegedly expanded the scope of work under the proposal for the roadways.

With respect to the roadways, plaintiff prepared a bid proposal with a price that included only the placement and compaction of approximately 6,020 tons of asphalt.

Q. (R. Rainey) One of the things that has been said in this litigation is one of your duties was, quote: "The placement and compaction of asphalt paving."

Will you describe to me what that means.

A. (C. Daniels) Place and compact asphalt.

Q. Yes. What is involved in placing and compacting asphalt. Walk me through the process.

A. I contracted Knife River to do that.

Q. Is it something that --

A. I don't do?

Q. Yes.

A. Very good.

Rainey Aff., Ex. A (Daniels Depo. 25:9-20). The price quote for "place and compact asphalt" includes materials and labor:

Q. (R. Rainey) When you contracted with Knife River or Hap Taylor to do this, I see there was a price per ton paid. Did that include both the asphalt and the labor to place and compact?

A. (C. Daniels) Correct.

Q. So that price per ton encompasses materials and labor?

A. Everything.

Rainey Aff., Ex. A (Daniels Depo. 33:16-23).

Q. (R. Rainey) So the paving, that \$406,000 number that is on that line that says "paving," that is for the purchase of the asphalt?

A. (C. Daniels) That's correct.

Q. Also the cost that it took Hap Taylor to go place it and compact it?

A. Correct.

Rainey Aff., Ex. A (Daniels Depo. 54:21 – 55:2). All things being equal, the basis for calculating price per tonnage for asphalt should have included both labor and materials for both the roadway job and the cart path job.

Q. (R. Rainey) In your dealings with Hap Taylor on the Summerwind project, did that difference in what is involved in compacting a cart path affect the cost at all?

A. (C. Daniels) No.

Rainey Aff., Ex. A (Daniels Depo. 34:15-19). However, with respect to the invoice for cart path job, plaintiff's price per ton for performing the work is based on two separate tasks: (1) place and compact asphalt (the same task plaintiff performed with respect to the roadway job) and (2) place and compact 3/4" road mix (a task performed by Extreme Line on the roadway job).

Q. (R. Rainey) When we look at Exhibit 5, it's got a line item in there for "place and compact 3/4-inch road mix." Is that the same line item but now Knife River is charging you for it because they ended up doing it?

A. (C. Daniels) Place and compact.

Q. 3/4-inch road mix.

A. What about it?

Q. Over here you said it was the idea that Extreme Line was going to place and compact that 3/4-inch road mix and then on Exhibit 5 Knife River is billing Extreme Line for that work.

A. Yeah, we placed it. We hauled it there. We got it there.

Q. And they compacted it?

A. Yeah. They put it down and compacted it. It should say "delivery" on mine, but it's not exactly the same.

Q. Then with the place and compact the A/C plant mix, is that "A/C plant mix" the cart path pavement that is reflected on Exhibit 4?

A. I would say so.

Q. The price for that is 65.40 in Exhibit 5 and it's 68 in Exhibit 4. Do you know why those are different?

A. Couldn't tell you.

Q. One thing I was looking at when I was preparing for this is if you add the 64.50 and the 2.60, that comes up to 68, which was the estimate for Extreme Line's work.

A. That's correct.

Q. Does that make sense that those two numbers added together would --

A. Yeah.

Q. Can you explain --

A. No. We might have asked Knife River how much they would charge to put the road mix and the paving as well before we did the proposal. I mean, there was a million things going on back then. It's just -- I don't know.

Q. Is it your testimony then you do not know or you do not remember why it says \$68 for cart path pavement 2 inches thickness in Exhibit 4 and why that's broken down into two pieces in Exhibit 5?

(D. Krueck): Object to the form; lack of foundation.

(W. Smith): Objection; asked and answered. You can answer again if you want.

(C. Daniels): I mean, what do you want out of this? It's 68 bucks. I'm covering my ass. If Knife River comes in and does the job, I

don't want to end up paying more than what I proposed, so it's 60 bucks.

Q. (R. Rainey) Okay. And that \$68 --

A. (C. Daniels) I'm not saying this happened, but there could have been -- I don't remember. Okay. I don't remember. Don't remember.

Rainey Aff., Ex. A (Daniels Depo. 85:15 – 87:22).

Q. (R. Rainey) What I'm trying to get is, which of the two entities were responsible for getting the gravel on --

A. (C. Daniels) I was responsible for getting the gravel onto the cart path.

Q. Did Extreme Line actually do it or was that something Hap Taylor ended up doing?

A. Hap Taylor ended up doing it.

Q. That is why Hap Taylor charged you for it in this Exhibit 5 invoice; is that correct?

A. Yes.

(D. Krueck): Object to the form.

Q. (R. Rainey) Then after the gravel was put down, Hap Taylor went through and put the asphalt down; is that correct?

A. (C. Daniels) Yes.

Rainey Aff., Ex. A (Daniels Depo. 89:10-25). Again, given that Knife River charged Extreme Line a different price for the cart path job, which price appears to have included additional, different work that was not covered by the proposal for the roadway job, the trier of fact should have the opportunity to consider why the documentary evidence suggests that two contracts were at issue and why the two interested witnesses submitted affidavits that there is only one contract at issue, and why one of those witnesses, when questioned under oath regarding these discrepancies, cannot explain the price changes that are consistently reflected throughout the

documents, does not know the underlying bases for the prices he was charged for the work, and cannot remember how this transaction unfolded.

3. **There is evidence that Extreme Line told Union Land it had entered into a separate, verbal agreement with Knife River to pave the cart paths.**

As additional documentary evidence supporting the argument that there were two contracts at issue, Exhibit 7 to Daniels' deposition is a letter bearing Daniels' name and signature and addressed to Bob Larison (of Union Land), stating that Extreme Line had entered into a verbal agreement with Hap Taylor to pave the cart paths, which agreement would include placing *both* the roadmix and the asphalt. Rainey Aff., Ex. E. Though Exhibit 7 to the Daniels' Deposition bears Extreme Line's fax stamp at the bottom of the page and a bears a signature that Mr. Daniels recognized and identified as his own, and is otherwise consistent with plaintiff's invoice for the cart path job, which included placing both the roadmix and asphalt for a total price of \$68.00, Mr. Daniels claims not to have any memory of such document.

Q. (R. Rainey) Have you seen Exhibit 7 before?

A. (C. Daniels) I don't remember.

Q. Is that your signature on Exhibit 7?

A. That is my signature.

Q. For the record, Exhibit 7 is an undated one-paragraph letter addressed to Bob Larison, signed by Casey Daniels. I'd like you to look at the bottom of Exhibit 7. It appears to me to be a fax stamp dated November 1 of '07 at 11:06. It says "ELL & ELC."² Do you know whether that refers to your company?

A. I don't know.

² Mr. Daniels' company, at various times, went by the names "Extreme Line Logistics" and "Extreme Line Construction." Rainey Aff., Ex. A (Daniels Depo., 11:10-15).

Q. The number there is (208) 465-5065.³ Is that not the fax number for your company?

A. That is.

Rainey Aff., Ex. A (Daniels Depo. 101:4-19). Though Mr. Daniels was unwilling to admit that there was a difference between the “verbal agreement” referred to in Exhibit 7 and his original contract with Extreme Line, the facts respecting the two agreements strongly suggest that there were two separate contracts:

Q. (R. Rainey) Let’s just walk through it. It says: “There was a verbal agreement between myself and Knife River to pave the cart paths at Summerwind Golf Course.” Did I read that correctly; that first sentence, did I read that correctly?

A. (C. Daniels) Yes.

Q. [. . .] Would you agree with the statement that there was a verbal agreement between yourself and Knife River to pave the cart paths?

A. Yes.

Q. Was that verbal agreement the same as the written agreement that is contained in the proposal?

A. Yes.

Q. It states that: “The price agreed upon was \$68 per ton.” That \$68 is different from the price stated in the proposal; correct?

(D. Krueck): Object to form.

(W. Smith): Object.

(D. Krueck): The proposal speaks for itself.

(W. Smith): And I’ll object it’s been asked and answered with regard to the price escalation clause.

³ Mr. Daniels independently confirmed that the fax number for his company was 465-5065. Rainey Aff., Ex. A (Daniels Depo., 12:11-12).

Q. (R. Rainey) What is the expressed price stated in the proposal?

(D. Krueck): Same objection.

(W. Smith): Asked and answered.

Q. (R. Rainey) The Masco proposal.

A. (C. Daniels) Which one?

Q. The document Exhibit 2 that we've been referring to as the Masco proposal.

A. What is the price?

Q. Yes.

A. I don't know. You have it right there.

Q. The price in the Masco proposal is 64.50.

A. 64.50 is what it was.

Q. The price stated in this letter is \$68; correct?

A. Correct.

Q. It also says that \$68 included placing the 3/4-inch road mix and asphalt; is that correct?

A. Correct.

Q. In the Masco proposal, which is just Exhibit 2, okay.

A. Okay.

Q. Did that proposal involve placing any road mix?

A. No.

Q. This letter also states that the golf course would take 15 tons of asphalt or that you estimate it would take 15 tons of asphalt.

A. 1,500.

Q. Pardon me, 1,500 tons of asphalt. Is that 1,500 tons of asphalt reflected in the Masco proposal?

A. Yes.

Q. Is it included within that 6,020 or is it in addition to that 6,020 that is contained in the Masco --

A. It's in addition.

Rainey Aff., Ex. A (Daniels Depo. 102:11 – 105:1). Again, given that (i) plaintiff has not produced any documents consistent with its theory that there was only one contract at issue, (ii) Daniels cannot explain any of the evidence in multiple documents that consistently suggest there were two contracts at issue (an inference that is consistent with the industry practice and Extreme Line's standard practice), the trier of fact should have an opportunity to consider and weigh the conflicting evidence.

4. Plaintiff's evidence regarding the "change order" that links the roadway job and the cart path job together under one contract is unreliable.

Plaintiff attempts to link the work performed under these two different asphalt jobs together with a reference to a "change order" that was allegedly requested by Extreme Line and allegedly prepared by Knife River. Daniels Aff., ¶ 12; Rosin Aff., ¶ 10. Plaintiff's theory is that the cart path job was performed pursuant to a "change order" that merely expanded the scope of the roadway job. Tellingly, plaintiff has not yet produced any evidence of such "change order." Rather, the document allegedly submitted as the change order was a small job worksheet for a repair job on previous asphalt work. Rosin Aff., ¶ 11, Ex. B; Memorandum in Opposition at 4, ¶ 7. Plaintiff makes no effort to refute or explain this clear discrepancy, and continues to rely on the incorrect "small job worksheet" as evidence of the alleged change order that allegedly links the two asphalt projects together under a single contract. Reply Memorandum in Support of Plaintiff's Motion for Summary Judgment at 9 ("As set forth in the Affidavit of Jesse Rosin,

Hap Taylor's contract is based on its Proposal to Extreme Line Construction with change order work described on Hap Taylor's Small Job Worksheet.”).

Not only has plaintiff failed to provide this Court with the alleged “change order,” Daniels, the party credited with having requested such change order (as stated in both the Daniels and Rosin Affidavits), has no memory or recollection of the same and – until reminded that he once testified that he had requested one – emphatically denied that there was ever a change order involved with Knife River.

Q. (R. Rainey) Did you ever request a change order, that Hap Taylor do a change order for the extra asphalt that was needed for the cart path work?

A. (C. Daniels) No. Everything is based on unit price, so...

Q. So change orders weren't necessary.

A. No.

Q. You never did request one.

A. Not through Knife River or Masco or Hap Taylor or Dakota Utility, NDU.

Q. Who is that?

A. That's who owns Hap Taylor.

Q. So no change orders involved in this project at all?

A. Not with them.

Rainey Aff., Ex. A (Daniels Depo. 91:14 – 92:3). When confronted with the affidavit of Jessee Rosin stating that Extreme Line did request a change order, Daniels continued to deny that one was ever requested and then attempted to explain the inconsistency as a difference in terminology.

Q. (R. Rainey) ... I want you to look at paragraph 10 and 11, if you would, please. Paragraph 10 reads: “In or around August

2007, Casey Daniels on behalf of Extreme Line requested that I prepare a change order under the contract with Hap Taylor described herein to include additional paving for a pathway as part of the overall project.” That is inconsistent with your prior testimony that said you never did request a change order; is that accurate?

(objections by counsel)

Q. (R. Rainey) Did you ever request a change order?

A. (C. Daniels) Did not.

Q. So when he says that Casey Daniels “requested that I prepare a change order,” is that inconsistent with your recollection of the events?

A. That is tough because I really don’t remember. I mean, it was just call up Jessee and we are going to do this now.

Q. But as you sit here today, you don’t specifically recall asking Jessee to prepare a change order?

A. I do not specifically recall. Also, their termination -- or their --

Q. Terminology?

A. Terminology is a little different than what we would use, too.

Rainey Aff., Ex. A (Daniels Depo. 93:1 – 94:8). And, when confronted with his own conflicting affidavit testimony, wherein he testified that he did request a change order, Daniels’ amnesia again resurfaced:

Q. (R. Rainey) Look at paragraph 12, paragraph 12 says: “In August of 2007 on behalf of Extreme Line Logistics, Inc., I requested that Hap Taylor provide Extreme Line Logistics, Inc. with a change order under our subcontract agreement.”

Did I read that correctly?

A. (C. Daniels) You didn’t finish reading it, but as far as you went you did.

Q. “A change order under our subcontract agreement for paving an asphalt pathway within the project.”

You testified earlier that you did not request a change order; is that correct?

(W. Smith) I'll object; I think that misstates the testimony. I think what he said is he did not recall requesting a change order.

You can answer if you can.

(C. Daniels) Yeah.

Q. (R. Rainey) Do you recall now whether or not you requested a change order?

A. Nope.

Q. Is there anything that would help refresh your recollection as to whether or not you requested a change order?

A. I'm sure there is somewhere.

Rainey Aff., Ex. A (Daniels Depo. 118:23 – 119:22). Daniels also testified that he has no recollection of receiving a document from plaintiff estimating the amount of asphalt necessary to do the cart path work and the price for such asphalt. Rainey Aff., Ex. A (Daniels Depo., 98:6 – 99:6). The lack of any competent evidence supporting plaintiff's "change order" theory, which appears to be the only link between the separate paving jobs on the property, creates further genuine issues of material fact that preclude granting plaintiff's motion for summary judgment.

B. Knife River Knew, or Had Reason to Know, That Extreme Line Had Two Contracts With Union Land.

Even if this Court finds that the Knife River's proposal for the approximately 6,020 tons estimated to be necessary to pave the roadways was broad enough to encompass future cart path work, performed one year later, plaintiff was still under a duty to file separate liens for the separate jobs because plaintiff knew, or had reason to know, that Extreme Line had separate contracts with Union Land regarding the two jobs.

First, as explained above, Daniels testified that it was industry standard for an asphalt purchaser to solicit proposals based on the tonnage required under their specific contract. Daniels also testified that he almost always used Knife River (Rainey Aff., Ex. A (Daniels Depo., 51:13-17)), and that, in large part, Extreme Line's practice of seeking a proposal for tonnage expected to fill the contract was to allow the asphalt supplier (Knife River) to purchase sufficient oil to fill the requirements of the contract (Rainey Aff., Ex. A (Daniels Depo., 68:15 – 69:1)). Daniels further testified that, in this instance, he did solicit a proposal for the approximate tonnage required to fulfill Extreme Line's contract with Union Land to pave the roadways:

Q. (R. Rainey) Explain to me why there were two contracts for the one project, if you know.

A. (C. Daniels) When we originally started this thing we were doing the streets and then we were doing whatever we could do on the golf course. My original contract was I had plans for the roads in the subdivision, so that is all I could bid. They were still a little vague on exactly what they were doing with the golf course. In fact, I think they were trying to go through a couple different golf course designers, guys had different ideas. And it just -- they weren't, Union Land wasn't organized. They were too busy trying to be con artists, but they just weren't organized. They didn't know what they really wanted to do. So I didn't have the ability to bid everything at once.

Q. So the first contract you entered into with Union Land was --

A. I wasn't going to start the project without a contract,⁴ so I did what I could to get a contract rolling. If I would have had all the plans right there, everything would have been one contract.

⁴ Later, Daniels would testify that he had been working on the project for approximately two months before he prepared a contract and submitted it to Union Land.

Q. (R. Rainey) I'm looking at this proposal which predates the Union Land contract.

Q. As it actually occurred, the first contract included what?

A. The first contract included what we discussed earlier, the paving the roads and building the subdivision.

Rainey Aff., Ex. A (Daniels Depo. 44:9 – 45:12). Even though the first contract did not include the cart paths, the parties knew and expected that there would be additional paving work associated with the cart paths, they just did not have sufficient information at the time Extreme Line solicited and plaintiff prepared the first proposal to include a bid for the cart path work.

Q. (R. Rainey) But this is the unit price. Would you agree with me that Exhibit 2 only states the unit price for the 6,020 tons?

A. (C. Daniels) No.

Q. It does not?

A. No. That was for any asphalt going down.

Q. But the unit price changed --

A. You've got to understand how unorganized these guys were, Union Land, and everything else. I'm at lunch at Goodwood and I'm told to hurry up and get out there. I don't have stakes, I don't have plans, there is nothing put together. All I'm hearing is hearsay of what is going in.

A. (C. Daniels) We work -- we don't work like attorneys. Everything was going 100 miles an hour then. I talked to Jim Conger early June, he said get out there. We were out there two weeks later. We had been out there for two months before this contract ever got done.

Q. Working?

A. Working, yeah.

This contract, that is when they got to finally typing it up. That doesn't mean anything to me.

Rainey Aff., Ex. A (Daniels Depo. 56:13-25).

So when I go to Knife River, I have a bunch of paving going on. I know I got these streets because I just got the plans. There is a golf course, because when you look at the plans, there's big old plans and there's a bunch of area out there doing nothing. We knew that was the golf course. We weren't sure where everything was. They didn't know where everything was.

Q. I understand that. But when we look at Exhibit 2 --

A. But they had to get something done in three months or they couldn't have got their money. So that's what we were doing.

Q. When you look at Exhibit 2, that 6,020 tons is only for the asphalt required for the roadwork; is that correct?

A. No, that is not correct.

Q. In addition to the roadwork, what else was encompassed by that 6,020 tons stated in Exhibit 2?

A. That's what we knew we had at that point.

Q. It did not include the cart paths?

A. It included everything that we had at that point.

Q. Did you have the cart paths at that point?

A. A little bit of it, but we weren't sure what. I'm telling you, I mean, it was literally we are going to pave all this, we just don't know what we are doing yet, okay.

Q. What portion of the cart paths did you have at that point?

A. I don't know. I didn't know how big the cart paths were. I didn't know how big the parking lot was.

Q. How did the 6,020-ton figure include the cart paths if you didn't know what was involved with the cart paths?

A. That is not my number. I don't know where he came up with that.

Rainey Aff., Ex. A (Daniels Depo. 114:4 – 116:9). It is clear from Daniels' testimony that plaintiff knew, or should have known, that the original proposal, for approximately 6,020 tons of

asphalt, was for the roadwork only and that golf course work was additional work that would come to Extreme Line under a different contract.

Q. (R. Rainey) The golf course wasn't included in that approximation because at the time you solicited this bid you didn't know what would be involved with the cart paths; correct?

A. (C. Daniels) Correct.

(D. Krueck): Object to form.

Q. (R. Rainey) Does the Masco proposal provide any express reference to the golf course?

(W. Smith): Objection. The document says what it says. Go ahead and read the whole proposal if you want to answer it accurately.

(C. Daniels): Summerwind at Orchard Hills Phase 1 and 2.

Q. (R. Rainey) Was it your understanding when you received the Masco proposal that you would be able to get additional asphalt for the golf course in accordance with the Masco proposal?

A. (C. Daniels) Yes, because that was discussed.

Q. When was that discussed?

A. When I was getting this number.

Q. Who did you discuss that with?

A. Jessee Rosin or Steve Kirkman.

Actually, I don't recall that one. It could have been Steve or it could have been Jim, it could have been Jessee. I can't remember who I was talking to.

Rainey Aff., Ex. A (Daniels Depo. 62:14 – 63:16). And, Daniels' testimony provides evidence that Knife River was aware that the original bid solicited from it did not include the cart paths:

Q. (R. Rainey) So while you recall there were discussions, you don't have specific recollections of any of those discussions?

A. (C. Daniels) Don't remember, no. We were all pretty excited about this project. It seemed like a pretty cool thing to do. So we talked about it with people. It was kind of a hot conversation.

Q. Do you recall whether in any of these nonspecified discussions you agreed on the price that the asphalt would be provided for the cart path work?

A. Say that again.

Q. When you were having these discussions in June 26 of 2006 --

A. No, we had no idea. We didn't know what we were doing. We didn't even -- we had no idea. We had no idea how wide they were, how thick they were, where they were, how long they were.⁵

Q. So you didn't know then how much asphalt would be required to do the cart paths?

A. Obviously.

Q. Did you know when they were going to start working on the golf course?

A. When Union Land figured out what they were doing. It was a hurry up and get this thing going. They couldn't rob the money fast enough.

⁵ Given the unsettled and indefinite terms related to the cart path work, this Court has sufficient evidence to conclude, as a matter of law, that plaintiff's proposal for the 6,020 tons necessary to pave the roadways did not contractually bind plaintiff to provide the new and additional work related to the cart paths more than one year later. Under Idaho law, a contract is not enforceable if it is not "sufficiently definite and certain in its terms and requirements so that it can be determined what acts are to be performed and when performance is complete." *Dales' Service Co. v. Jones*, 96 Idaho 662, 664, 534 P.2d 1102, 1104 (1975) (emphasis added). Under the express terms of the Masco Proposal, Knife River was contractually obligated to provide approximately 6,020 tons of asphalt (or that amount which was necessary to pave the roadways). Because Knife River was not contractually obligated to provide any more than what was necessary to pave the roadways, the parties entered into a new and separate (verbal) agreement, for Knife River to provide new and additional work related to the cart path. This new, verbal agreement provided a higher price for the new asphalt and provide an additional price for new services to be provided by Knife River. Under these facts and under Idaho law, there are clearly genuine issues of material facts regarding whether Knife River's lien is for work performed under separate contracts.

Rainey Aff., Ex. A (Daniels Depo. 64:4 – 65:5). There is also evidence that when Daniels did prepare the proposal for the second contract that he entered into with Union Land, that he discussed the same and specifically sought input from Knife River regarding how much it would cost for paving the cart paths.

Q. (R. Rainey) Can you explain --

A. (C. Daniels) No. We might have asked Knife River how much they would charge to put the road mix and the paving as well before we did the proposal. I mean, there was a million things going on back then. It's just -- I don't know.

Rainey Aff., Ex. A (Daniels Depo. 86:24 – 87:4).

As the foregoing demonstrates, there are genuine issues of material fact regarding whether plaintiff knew, or should have known, whether Extreme Line had two separate contracts with Union Land for its work on the Summerwind project: (1) Extreme Line submitted a request of proposal for only enough asphalt to do the roadway job; (2) it was Extreme Line's practice to request a proposal for all asphalt needed to fulfill an entire contract; (3) Knife River was Extreme Line's primary supplier of asphalt and was, presumably, familiar with Extreme Line's practices regarding requests for proposals; (4) Extreme Line's practices regarding requests for proposals were consistent with industry standards, which were driven by the asphalt supplier's need to procure sufficient oil to cover the contract; (5) Extreme Line had discussions with Knife River regarding the possibility of additional cart path job when the developer was ready to proceed with that additional work; (6) Knife River knew that the original request for proposal (and its original proposal) did not include enough asphalt to pave the cart paths; and (7) at the time Extreme Line prepared the proposal that led to its second contract (the contract for the cart path job), it solicited an additional bid from Knife River, which additional bid included extra and different work – not just a current price on asphalt. These factors are more than sufficient to


have put Knife River on notice that Extreme Line was preparing to enter into a second contract with Union Land regarding the cart path job.

V. CONCLUSION

For the foregoing reasons, IFA respectfully requests that this Court reconsider its prior order on motions for summary judgment in light of the evidence submitted in opposition to plaintiff's original motion for summary judgment, as well as in light of the new and additional evidence submitted herewith, and find that genuine issues of material fact exist that preclude entry of summary judgment on plaintiff's claim of lien. Accordingly, it is appropriate to go to trial on the issues of (i) whether plaintiff's lien claim for asphalt provided for the roadway job was timely filed, and (ii) the priority date of plaintiff's lien claim for the cart path job. Therefore, IFA requests that this Court grant the present motion to reconsider and, upon such reconsideration, enter an order denying plaintiff's motion for summary judgment.

DATED this 18th day of August, 2010.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

By 
Rebecca A. Rainey – Of the Firm
Attorneys for Defendants
Integrated Financial Associates, Inc.,
Geneva Equities, LLC, and
Certain Other Named Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of August, 2010, I caused a true and correct copy of the foregoing **MEMORANDUM IN SUPPORT OF DEFENDANT IFA'S MOTION FOR RECONSIDERATION** to be served by the method indicated below, and addressed to the following:

David T. Krueck
TROUT JONES GLEDHILL FUHRMAN, P.A.
225 N. 9th St., Suite 800
P.O. Box 1097
Boise, ID 83701-1617
Fax (208) 331-1529
*Attorneys for Hap Taylor & Sons, Inc. d/b/a
Knife River*

U.S. Mail, Postage Prepaid
 Hand Delivered
 Overnight Mail
 Facsimile

David E. Wishney
300 W. Myrtle St., Suite 200
P.O. Box 837
Boise, ID 83701-0837
Facsimile (208) 342-5749
*Attorneys for L222-1 ID Summerwind, LLC,
L222-2 ID Summerwind, LLC, L222-3 ID
Summerwind, LLC, and Union Land Company,
LLC, Kerry Angelos*

U.S. Mail, Postage Prepaid
 Hand Delivered
 Overnight Mail
 Facsimile

Donald W. Lojek
LOJEK LAW OFFICES, CHTD.
623 W. Hays St.
P.O. Box 1712
Boise, ID 83701
Facsimile (208) 345-0050
Attorneys for PMA, Inc.

U.S. Mail, Postage Prepaid
 Hand Delivered
 Overnight Mail
 Facsimile

Richard B. Eismann
EISMANN LAW OFFICES
3016 Caldwell Blvd.
Nampa, ID 83651-6416
Facsimile (208) 466-4498
Attorneys for Riverside, Inc.

U.S. Mail, Postage Prepaid
 Hand Delivered
 Overnight Mail
 Facsimile

David M. Swartley
EBERLE BERLIN KADING TURNBOW MCKLVEEN
& JONES
1111 W. Jefferson Street, Suite 530
P.O. Box 1368
Boise, ID 83701-1368
Facsimile (208) 344-8542
Attorneys for Conger Management Group, Inc.

U.S. Mail, Postage Prepaid
 Hand Delivered
 Overnight Mail
 Facsimile

Thomas E. Dvorak
Martin C. Hendrickson
Elizabeth M. Donick
GIVENS PURSLEY LLP
600 W. Bannock
P.O. Box 2720
Boise, ID 83701
Facsimile (208) 388-1300
Attorneys for Stanley Consultants, Inc.

U.S. Mail, Postage Prepaid
 Hand Delivered
 Overnight Mail
 Facsimile

William L. Smith
SMITH HARRAS, P.A.
5561 N. Glenwood St., Suite B
P.O. Box 140857
Boise, ID 83714
Facsimile 800-881-6219
Attorneys for Extreme Line Logistics, Inc.

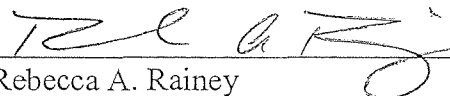
U.S. Mail, Postage Prepaid
 Hand Delivered
 Overnight Mail
 Facsimile

David E. Kerrick
1001 Blaine St.
P.O. Box 44
Caldwell, ID 83606
Facsimile (208) 459-4573
*Attorneys for Michael W. Benedict and
Carol L. Benedict*

U.S. Mail, Postage Prepaid
 Hand Delivered
 Overnight Mail
 Facsimile

Tom Mehiel, President
VALLEY HYDRO, INC.
1904 E. Beech St.
Caldwell, ID 83605
Pro Se Defendant

U.S. Mail, Postage Prepaid
 Hand Delivered
 Overnight Mail
 Facsimile



Rebecca A. Rainey

DAVID T. KRUECK, ISB No. 6246
TROUT ♦ JONES ♦ GLEDHILL ♦ FUHRMAN, P.A.
225 North 9th Street, Suite 800
P.O. Box 1097
Boise, ID 83701-1617
Telephone: (208) 331-1170
Facsimile: (208) 331-1529
Email: dkrueck@idalaw.com

F I L E D
A.M. 4:33 P.M.

SEP 02 2010

CANYON COUNTY CLERK
T. CRAWFORD, DEPUTY

Attorneys for Plaintiff Hap Taylor & Sons, Inc. d/b/a Knife River

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

HAP TAYLOR & SONS, INC. d/b/a KNIFE
RIVER, an Oregon corporation doing business as
Knife River,

Plaintiff,

vs.

L222-1 ID SUMMERWIND, LLC, an Idaho
limited liability company; et. al.,

Defendants.

CASE NO. CV08-4251C

**AFFIDAVIT OF JESSEE ROSIN IN
OPPOSITION TO MOTION TO
RECONSIDER**

HAP TAYLOR & SONS, INC. d/b/a KNIFE
RIVER, an Oregon corporation doing business as
Knife River,

Plaintiff,

vs.

L222-1 ID SUMMERWIND, LLC, an Idaho
limited liability company; et. al.,

Defendants.

CASE NO. CV08-4252C

and accepted by Extreme Line Construction. A true and correct copy of the Proposal is attached hereto as Exhibit 'A,' and is fully incorporated herein by this reference.

6. The Proposal accepted by Extreme Line Construction for the Summerwind Project contains an escalation clause that allows Hap Taylor to increase the unit price of the asphalt described in the Proposal, in the event the price of liquid cement rose above the projected amount of \$400 per ton set forth in the Proposal.

7. Knife River reserved the right to increase the unit price for asphalt within Knife River's discretion without having to provide additional written notification to Extreme Line Construction.

8. Knife River documents change orders under existing contracts and accepted proposals with Small Job Worksheets.

9. The Small Job Worksheet for the Summerwind Pathway is attached hereto as Exhibit 'B,' and is fully incorporated herein by this reference.

10. I prepared the Small Job Worksheet for the Summerwind Pathway after I received a call from Casey Daniels asking me to estimate the amount of asphalt necessary to pave the pathway under the unit price amount described in the Proposal for the Summerwind Project. During this conversation, Mr. Daniels also requested that I provide a unit price for the use of Knife River's paver for the placement and compaction of road mix for the Summerwind Pathway. The paver utilized for the placement and compaction of road mix for the Summerwind Pathway was already onsite and was being used for the placement and compaction of asphalt.

11. The notation on the Small Job Worksheet for the Summerwind Pathway stating "Bill Proposal" references the Proposal Extreme Line Construction signed and

accepted for the placement and compaction of asphalt for the Summerwind Development. This reference is a notation that Knife River will bill Extreme Line for the asphalt work related to the Summerwind Pathway under the accepted Proposal.

12. Casey Daniels did not request a new bid or new proposal for the placement and compaction of the asphalt necessary to construct the Summerwind Pathway.


13. If Casey Daniels had requested a new bid for the placement and compaction of asphalt necessary to construct the Summerwind Pathway, I would have prepared a new Proposal for Extreme Line Construction to consider, rather than a Small Job Worksheet.

14. My understanding of the request made by Mr. Daniels on August 16, 2007 for the placement and compaction of the estimated amount of asphalt necessary to construct the Summerwind Pathway was that Knife River was providing the materials, equipment and labor necessary to construct the Summerwind Pathway under the existing contract and accepted Proposal.


15. The price of liquid cement increased in the time period between June 26, 2006 and August 16, 2007, which triggered the escalation clause in the Proposal accepted by Extreme Line Construction.

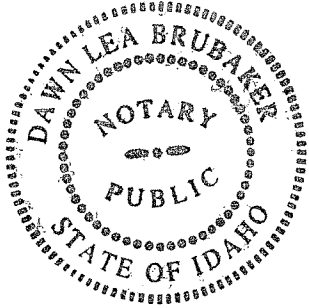
16. Based on the increased price of liquid cement, the unit price for the asphalt Knife River agreed to provide to Extreme Line Construction under the terms and conditions of the accepted Proposal increased from \$64.50 to \$65.40. This unit price increase is acknowledged in the Small Job Worksheet for the Summerwind Pathway.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

By: 
Jessee Rosin

Subscribed and sworn to before me this 31 day of August, 2010.


Notary Public, State of Idaho
Residing at: Boise, ID
My commission expires: 9/25/2015



CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, with offices at 225 N. 9th Street, Suite 820, Boise, Idaho 83702, certifies that on the 2nd day of September, 2010, he caused a true and correct copy of the foregoing document to be forwarded by the method(s) indicated below, to the following:

Samuel A. Diddle	Hand Delivered	<input type="checkbox"/>
David M. Swartley	U.S. Mail	<input type="checkbox"/>
Eberle Berlin Kading Turnbow & McKlveen, Chtd.	Facsimile	<input checked="" type="checkbox"/>
PO Box 1368		
Boise, ID 83701-1368		
<i>Attorney for Conger Management Group, Inc.</i>		

David E. Wishney	Hand Delivered	<input type="checkbox"/>
Attorney at Law	U.S. Mail	<input type="checkbox"/>
PO Box 837	Facsimile	<input checked="" type="checkbox"/>
Boise, ID 83701		
<i>Attorney for L222-1 ID Summerwind, LLC; L222-2 ID Summerwind, LLC; L222-3 ID Summerwind, LLC; and Union Land Company, LLC</i>		

Richard B. Eismann	Hand Delivered	<input type="checkbox"/>
EISMANN LAW OFFICES	U.S. Mail	<input type="checkbox"/>
3016 Caldwell Blvd.	Facsimile	<input checked="" type="checkbox"/>
Nampa, ID 83651-6416		
<i>Attorney for Riverside, Inc.</i>		

Donald W. Lojek	Hand Delivered	<input type="checkbox"/>
LOJEK LAW OFFICES	U.S. Mail	<input type="checkbox"/>
PO Box 1712	Facsimile	<input checked="" type="checkbox"/>
Boise, ID 83701		
<i>Attorney for PMA, Inc.</i>		

Thomas E. Dvorak	Hand Delivered	<input type="checkbox"/>
Martin C. Hendrickson	U.S. Mail	<input type="checkbox"/>
Elizabeth M. Donick	Facsimile	<input checked="" type="checkbox"/>
GIVENS PURSLEY LLP		
PO Box 2720		
Boise, ID 83701		
<i>Attorney for Stanley Consultants, Inc.</i>		

William L. Smith
Smith Horras, P.a.
5561 N. Glenwood St., Suite B
P.O. Box 140857
Boise, ID 83714
Attorney for Extreme Line Logistics, Inc.

Hand Delivered
U.S. Mail
Facsimile

David E. Kerrick
PO Box 44
Caldwell, ID 83606
Attorneys for Michael W. Benedick and Carol L. Benedick

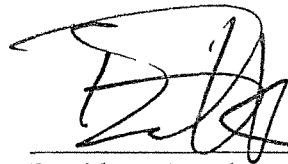
Hand Delivered
U.S. Mail
Facsimile

Tom Mehiel, President
Valley Hydro, Inc.
1904 E. Beech Street
Caldwell, ID 83605
Pro Se Defendant

Hand Delivered
U.S. Mail
Facsimile

Michael O. Roe
Rebecca A. Rainey
Moffatt, Thomas, Barrett, Rock & Fields, Chtd.
101 S. Capitol Blvd., 10th Floor
P.O. Box 829
Boise, ID 83701

Hand Delivered
U.S. Mail
Facsimile



David T. Krueck

DAVID T. KRUECK, ISB No. 6246
TROUT ♦ JONES ♦ GLEDHILL ♦ FUHRMAN, P.A.
225 North 9th Street, Suite 800
P.O. Box 1097
Boise, ID 83701-1617
Telephone: (208) 331-1170
Facsimile: (208) 331-1529
Email: dkrueck@idalaw.com

FILED 9-9 Kernik
A.M. 4:35 P.M.

SEP 02 2010

CANYON COUNTY CLERK
T. CRAWFORD, DEPUTY

Attorneys for Plaintiff Hap Taylor & Sons, Inc. d/b/a Knife River

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

HAP TAYLOR & SONS, INC. d/b/a KNIFE
RIVER, an Oregon corporation doing business as
Knife River,

Plaintiff,

vs.

L222-1 ID SUMMERWIND, LLC, an Idaho
limited liability company; et. al.,

Defendants.

CASE NO. CV08-4251C

**MEMORANDUM IN OPPOSITION
TO DEFENDANT IFA'S MOTION
FOR RECONSIDERATION**

HAP TAYLOR & SONS, INC. d/b/a KNIFE
RIVER, an Oregon corporation doing business as
Knife River,

Plaintiff,

vs.

L222-1 ID SUMMERWIND, LLC, an Idaho
limited liability company; et. al.,

Defendants.

CASE NO. CV08-4252C

CONGER MANAGEMENT GROUP, INC., an
Idaho corporation,

Plaintiff,

vs.

L222-1 ID SUMMERWIND, LLC, an Idaho
limited liability company; et. al.,

Defendants.

CASE NO. CV08-11321

COMES NOW, the Plaintiff, Hap Taylor & Sons, Inc. d/b/a Knife River (“Knife River”), by and through its counsel of record, Trout Jones Gledhill Fuhrman, P.A., and hereby respectfully submits this Memorandum in Opposition to Defendant IFA’s Motion for Reconsideration, wherein IFA seeks to have the Order issued on April 13, 2010 granting Knife River’s motion for partial summary judgment reconsidered and denied.

I.

INTRODUCTION

As the Court is aware, this case involves the foreclosure of Knife River’s mechanics’ lien rights against development property for which Knife River provided asphalt as a subcontractor to Extreme Line Construction. Knife River and IFA filed cross-motions for summary judgment. Oral argument was conducted on March 3, 2010, and the Court issued its Order on Motions for Summary Judgment (“Order”) on April 13, 2010.

IFA argued in its summary judgment motion that Knife River’s liens should be deemed invalid, based on alleged constructive fraud. Alternatively, IFA asserted that Knife River failed to designate amounts due in its claim of lien for purported separate improvements under Idaho Code § 45-508, thereby subordinating Knife River’s lien rights to the interests of IFA. The Court denied IFA’s motion.

Knife River sought an order for partial summary judgment to determine the validity and priority of its lien rights against the subject property. Knife River relied on the affidavit testimony of Jesse Rosin, a project manager for Knife River, and Casey Daniels, the owner of Extreme Line Construction. IFA opposed Knife River's motion on the theory that Knife River and Extreme Line Construction entered into two separate and distinct contracts for the asphalt work performed by Knife River. IFA, however, failed to present any evidence whatsoever in support of its defense, other than evidence that Extreme Line Construction had two contracts for work it performed. IFA also argued that there were inconsistencies in the affidavits and documents submitted by Knife River in support of its motion. The Court rejected IFA's arguments, and granted Knife River's motion.

The analysis employed by the Court in its Order granting Knife River's motion for partial summary judgment is sound, and, moreover, is unaffected by the alleged "new facts" and arguments raised in IFA's motion. IFA is asking the Court to reconsider the purported "inconsistent evidence" that the Court relied upon in reaching its Order. In addition, IFA contends that new and additional evidence has been presented through the deposition testimony of Casey Daniels which raises genuine issues of material fact to preclude entry of summary judgment in favor of Knife River. As set forth herein, the Court should deny IFA's motion for reconsideration.

II.

STATEMENT OF MATERIAL FACTS

1. Knife River performed its work in the Summerwind Development under the terms of its unit price contract with Extreme Line Construction evidenced by the June 26, 2006

Proposal signed by the parties. Affidavit of Jessee Rosin in Opposition to Motion to Reconsider (“Rosin Affidavit”) ¶ 5; Daniels Deposition, p. 91: 2-10.

2. Knife River performed all of its work to improve the Summerwind Development under a single contract with Extreme Line Construction. Id.

3. While working on the construction of the asphalt roads in the Summerwind Development, Extreme Line Construction contacted Knife River in August 2007 to request that Knife River include additional asphalt paving under its existing contract for the construction of the Summerwind Pathway. Rosin Affidavit ¶ 10.

4. The work related to the construction of the Summerwind Pathway was performed by Knife River under the terms and conditions of the Proposal signed and accepted by Extreme Line Construction in June 2006. Rosin Affidavit ¶¶ 10-13.

5. The Proposal contains a specific clause that allows Knife River to increase the agreed asphalt unit price in the event the price of liquid asphalt cement rose above \$400 per ton. Rosin Affidavit ¶¶ 9-10, Exhibit ‘B.’

6. Knife River prepared a Small Job Worksheet to internally account for the asphalt provided for the Summerwind Pathway to Extreme Line Construction under the accepted Proposal. Id.

7. As part of the Summerwind Pathway change order, Extreme Line Construction requested to use Knife River’s paver for laying and compacting ¾” road base for the asphalt pathway. Id.

8. Knife River included the additional cost for Extreme Line’s use of Knife River’s paver in its Small Job Worksheet documenting the change order. Id.

9. Knife River was unaware of the contractual relationship between Extreme Line Construction and the owner of the Summerwind Development.

III.

STANDARD OF REVIEW

Rule 11(a)(2)(B) of the Idaho Rules of Civil Procedure provides, in pertinent part:

Motion for Reconsideration. A motion for reconsideration of any interlocutory orders of the trial court may be made at any time before the entry of final judgment but not later than fourteen (14) days after the entry of the final judgment.

When considering a motion of this type, the trial court should take into account any new facts presented by the moving party that bear on the correctness of the interlocutory order. *Barmore v. Perrone*, 145 Idaho 340, 344, 179 P.3d 303, 307 (2008) (citing *Coeur d'Alene Mining Co. v. First National Bank of North Idaho*, 118 Idaho 812, 800 P.2d 1026 (1990)). The burden is on the moving party to bring the trial court's attention to the new facts. *Id.*

"The decision to grant or deny a request for reconsideration generally rests in the sound discretion of the trial court." *Jordan v. Beeks*, 135 Idaho 586, 592, 21 P.3d 908, 914 (2001). On review, an appellate court considers "(1) whether the trial court correctly perceived the issue as one of discretion; (2) whether the trial court acted within the outer boundaries of its discretion and consistently with the legal standards applicable to the specific choices available to it; and (3) whether the trial court reached its decision by an exercise of reason." *Lettunich v. Lettunich*, 145 Idaho 746, 749, 185 P.3d 258, 261 (2008).

Because IFA seeks reconsideration of a summary judgment ruling, the summary judgment standard is likewise applicable. "When an action will be tried before the court without a jury, the trial court as the trier of fact is entitled to arrive at the most probable inferences based upon the undisputed evidence properly before it and grant the summary judgment despite the possibility

of conflicting inferences.” *Shawver v. Huckleberry Estates, L.L.C.*, 140 Idaho 354, 360-61, 93 P.3d 685, 691-92 (2004). The trial judge is free to arrive at the most probable inferences to be drawn from uncontroverted evidentiary facts. *Loomis v. City of Hailey*, 119 Idaho 434, 807 P.2d 1272 (1991); *Riverside Dev. Co. v. Ritchie*, 103 Idaho 515, 650 P.2d 657 (1982) (allowing the trial judge in non-jury cases to grant summary judgment on undisputed evidentiary facts, despite conflicting inferences, because the court alone will be responsible for choosing those inferences).

A motion for summary judgment is to be decided upon the facts shown, not upon facts which might have been shown. *Verbillis v. Dependable Appliance Co.*, 107 Idaho 335, 689 P.2d 1075 (Ct. App. 1984); *see also Eimco Div., Envirotech Corp. v. United Pacific Ins. Co.*, 109 Idaho 762, 710 P.2d 672 (Ct. App. 1985) (holding that hypothetical facts cannot defeat a summary judgment). Creating only a “slight doubt” as to the facts will not defeat summary judgment. *Snake River Equip. Co. v. Christensen*, 107 Idaho 541, 691 P.2d 787 (Ct. App. 1984). Nor will a mere “scintilla” of evidence defeat summary judgment. *Corbridge v. Clark Equip. Co.*, 112 Idaho 85, 730 P.2d 1005 (1986).

IV.

ARGUMENT

IFA has asked the Court to reconsider the allegedly “internally inconsistent evidence” offered by Knife River in support of its motion to find that Knife River is not entitled to summary judgment with respect to its contractual relationship with Extreme Line Construction. In its Order, the Court correctly notes that “in light of the absence of any documentary evidence or an affidavit by a person with knowledge connecting the invoices to separate contracts between Plaintiff and ELL, the court cannot find that a reasonable trier of fact could conclude, based solely on the invoices adduced by IFA, that two contracts existed between Plaintiff and ELL.”

IFA has failed to make any arguments in its motion to change the Court's analysis. In fact, Casey Daniels' deposition testimony provides additional support for the Court's conclusion regarding the invoices submitted by Knife River for payment under the terms of the parties' single contract. Daniels Deposition, p. 129:22 – 131:10.

The Court properly applied Idaho law in its Order with respect to the issue of whether the existence of two contracts between Extreme Line Construction and the developer has any impact on Knife River's lien rights. The Court determined that Knife River must either have "actual knowledge or reason to know, because of lapse of time, cessation of work, occupation of the premises by the owner, settlement of accounts or other circumstances" that Extreme Line Construction had two contracts with the owner. IFA has failed to provide any new arguments or, more importantly, new evidence to change the Court's decision on this issue.

IFA provides four arguments in support of its motion for the Court reconsider its decision and deny Knife River's motion for summary judgment: (1) the Knife River Proposal accepted by Extreme Line Construction in June 2006 was limited to the roadways in the Summerwind Development; (2) Extreme Line Construction and Knife River negotiated a new contract with new pricing for paving the Summerwind Pathway; (3) Extreme Line Construction "confirmed" the existence of a "new 'verbal agreement'" with Knife River in a memorandum to Union Land; and (4) IFA challenges the existence of the change order for the work performed by Knife River to construct the Summerwind Pathway. For the reasons set forth below, each of these arguments fails to raise any genuine issue of material fact to change the Court's Order.

A. THE COURT CANNOT CONSIDER INADMISSIBLE EVIDENCE OFFERED IN OPPOSITION TO A MOTION FOR SUMMARY JUDGMENT.

Idaho statutes and case law provide that affidavits or deposition testimony containing the following infirmities may not be considered by the Court when evaluating the merits of a motion for summary judgment:

1. Statements which are not based upon the affiant's personal knowledge.

Idaho Rule of Civil Procedure 56(e) provides that affidavits opposing summary judgment “shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. These requirements “are not satisfied by an affidavit that is conclusory, based on hearsay, and not supported by personal knowledge.” *Posey v. Ford Credit Co.*, 141 Idaho 477, 483, 111 P.3d 162, 168 (Ct. App. 2005). The same analysis applies to deposition testimony offered in opposition to a motion for summary judgment.

2. Statements which speculate as to the intentions of third parties and statements concerning transactions in which the witness either did not participate or has not laid a proper foundation to establish his participation.

In *Hecla Mining Company v. Star-Morning Mining Company*, 122 Idaho 778, 786-87 (1992), the Supreme Court held that statements in the affidavit of a lessee's operations manager regarding, *inter alia*, representations, communications, and understanding between parties, were conclusory and did not provide the kind of specific, admissible facts that would either support or prevent entry of summary judgment and, thus, the trial court was not required to consider such statements in ruling on lessors' motion for summary judgment. In *Posey v. Ford Motor Credit Company*, 141 Idaho 477 (2005), the Court of Appeals held that the trial court was required to strike portions of a credit company lessor's employee's summary judgment affidavit that pertained to an alleged internet communication between the lessee and the lessor and a letter

from the lessor to the lessee, in a breach of contract case arising out of a dispute over a truck lease, where the employee's affidavit did not show any participation in the transaction at issue, or that the employee witnessed any of the events in the case, or that the employee communicated with the lessee at any time. In *State v. Shama Resources Limited Partnership*, 127 Idaho 267 (1995), the Supreme Court struck affidavits which contained "generalizations about all of the offerees and investors in Shama and declarations about information supposedly known by the Shama offerees and investors without statements by those individuals."

3. Statements which contain inadmissible hearsay.

In both *Posey v. Ford Motor Credit Company*, 141 Idaho 477 (2005) and *State v. Shama Resources Limited Partnership*, 127 Idaho 267 (1995), the Court of Appeals and the Supreme Court, respectively, struck affidavits which "contained statements of hearsay that would not be admissible into evidence." *Id.*

Portions of the deposition testimony of Casey Daniels offered by IFA in its motion for reconsideration are inadmissible, so the Court must disregard this testimony when evaluating IFA's motion.

IFA contends that "Knife River knew that Extreme Line anticipated work under a separate contract for the cart path job." Memorandum in Support of Defendant IFA's Motion for Reconsideration ("IFA's Memorandum"), ¶ 6, p.4. IFA goes on to state that Knife River "knew" that its proposal did not include the cart path. IFA cites to portions of Mr. Daniels' deposition transcript to support these alleged new fact. The obvious flaw with these assertions by IFA is that Mr. Daniels cannot testify to what Knife River knew or did not know. The deposition transcript fails to provide any foundation to allow Mr. Daniels to testify about Knife River's knowledge with regard to the project at issue.

IFA also offers testimony from Mr. Daniels regarding industry standards for asphalt production and the business practices of asphalt suppliers. IFA Memorandum, p. 10, citing Daniels Deposition, p. 68:11 – 69:1. Not only is Mr. Daniels unqualified to properly testify regarding industry standards for supplying asphalt, IFA relies upon testimony in support of its motion from Mr. Daniels that IFA itself objected to during Mr. Daniels' deposition.

Q. Were the golf courses included in the plans at that time?

A. The golf cart paths?

Q. The cart paths.

A. They were not. But I will tell you the reason they do this, for the approximately how many tons, so they have an idea of where they are going to be for the year, so on their oil purchases. Because they have to buy their oil up front, so they want to know how many tons. They don't care how many tons when I call; they care about how much -- when they send me a bill, it's not for the proposal, it's for how many tons they use. That is all they care about. They want to know how bit the project is so they can get their oil order in.

MS. RAINEY: I'm going to object to that testimony as nonresponsive and lacking foundation.

Daniels Deposition, p. 68:11 – 69:4 (emphasis added).

Finally, IFA bases a portion of its argument as to the alleged existence of two separate contracts between Knife River and Extreme Line Construction on an Exhibit to the Daniels' deposition that is inadmissible hearsay. IFA produced an undated letter purportedly from Extreme Line Construction to Bob Larison and marked this document as Exhibit 7 to Mr. Daniels' deposition. While Mr. Daniels believes the signature on this letter appears to be his, there are substantial evidentiary issues regarding the foundation necessary to admit this letter as hearsay evidence at trial. The letter is not on Extreme Line Construction's business letterhead, and Mr. Daniels has no recollection of ever writing, requesting or signing the letter.

Q. Let's go back to Exhibit 7, which is that letter that you testified your signature was on that was to Bob Larison. Do you have that in front of you?

A. Yes.

Q. Am I correct that your testimony is you don't recall this document at all?

A. I don't.

Q. For Extreme Line Logistics or Extreme Line Construction, do they have stationery that it is standard for all -- or did they have stationery that is standard for all your letters to go out on?

A. Yes.

Q. So other than the fact that that appears to be your signature, do you have any other indication that you actually wrote this letter?

A. No.

Q. Is it possible that this is a forgery?

A. The signature, I don't know, I'm not a forger, that is pretty damn good. But I do not recall ever writing that or typing that or telling someone to type that.

Q. Okay.

A. That makes no sense. I don't even know why I would.

Daniels Deposition, 126:17 – 127: 20.

B. THE RECORD SUPPORTS THE COURT'S FINDING THAT ALL WORK PERFORMED BY KNIFE RIVER IN THE SUMMERWIND DEVELOPMENT WAS UNDER A SINGLE CONTRACT BETWEEN KNIFE RIVER AND EXTREME LINE CONSTRUCTION

All of the evidence properly before this Court supports the conclusion that Knife River and Extreme Line Construction had a single contract for Knife River to provide the labor, materials and equipment necessary to place and compact asphalt for all of the work Knife River performed in the Summerwind Development. The Court rightfully concluded in its Order that the evidence adduced through the affidavit testimony of Casey Daniels and Jessee Rosin proves that there was only one contract between Extreme Line Construction and Knife River. Mr. Daniels' deposition testimony does not offer any new evidence to dissuade the Court from the analysis and conclusions contained in its Order.

Mr. Daniels considered the Summerwind Development to include the subdivision phases and the golf course that is located in the middle of the two phases. Mr. Daniels consistently testified during his deposition that Extreme Line Construction solicited a bid from Knife River

for the placement and compaction of all of the asphalt needed for the entire Summerwind Development. *See Daniels Deposition*, 91:2 - 91:14; 124:19 - 125:19; 130:15 - 131:10; 22:10 - 22:19; 33:16 - 34: 19; 44:1 - 44:5.

Mr. Daniels testified that Extreme Line Construction and Knife River agreed to a unit price contract for all of the labor, materials and equipment required for the construction of the asphalt throughout the entire Summerwind Development. IFA appears to misunderstand the nature of a unit price contract.

Unit price contracts “entitle the contractor to payment for work completed, at the agreed upon unit price, even in circumstances in which the amount of work is considerably in excess of the estimates.” *Waltech Construction Corp. v. Town of Thompson*, 237 A.D.2d 716, 717, 654 N.Y.S.2d 456, 457 (3d Dept. 1997).

Knife River is only entitled to payment for the actual units (tons of asphalt) that it places and compacts under the terms and conditions of the Proposal signed by Extreme Line Construction. The fact that the Proposal contains an estimated tonnage is irrelevant.

During his deposition, Mr. Daniels described the terms of the unit price contract and inclusion of the pathway under the unit price contract.

Q. It’s a price for paving at approximately 6,020 tons; correct?

A. Yes.

Q. That is your estimate of the amount of asphalt that would be required to do the roads; correct?

A. Correct.

Q. Not the cart paths.

A. But we go by unit pricing, so that’s . . .

Q. But I’m looking specifically at the Masco proposal and its’ for the amount of asphalt that would be required to do the roads; correct?

MR. SMITH: Objection.

MR. KRUECK: Objection; form.

MR. SMITH: The proposal says what it says.

THE WITNESS: Not necessarily.

Q. (BY MS. RAINEY) Explain to me why that's not necessarily.

A. Because we unit rate, because everything fluctuates.

...

Q. did you ever see any document prepared by Hap Taylor estimating the amount of asphalt and road mix necessary to construct the cart paths?

A. I don't recall. I recall getting a price, but I don't know if. . .

Q. You don't recall a document; is that correct?

A. That's correct.

Q. When did you get a price from Hap Taylor for the asphalt that would be used in the cart path?

A. In June of '06.

Q. The price that would be used in the cart path?

A. Yeah, price for asphalt.

Daniels Deposition, 66:1 – 66:21; 98:23 – 99:13.

IFA attempts to mischaracterize the contract between Knife River and Extreme Line Construction as a fixed price contract. “Courts cannot make for the parties better agreements than they themselves have been satisfied to make, and by a process of interpretation relieve one of the parties from the terms which he voluntarily consented to; nor can courts interpret an agreement to mean something the contract does not itself contain.” *J.R. Simplot Co. v. Chambers*, 82 Idaho 104, 110, 350 P.2d 211 (1960). In addition, the Ninth Circuit Court of Appeals has held that a non-party's interpretation of a contract is irrelevant. *Affordable Housing Development Corp. v. City of Fresno*, 433 F.3d 1182, 1190, 1192 (9th Cir. 2006). Where the “parties to the agreements did not dispute their meaning,” a non-party's interpretation of the contract's meaning was irrelevant. *Id.* at 1192. Consequently, IFA cannot change the terms or scope of the contract between Knife River and Extreme Line Construction to benefit its arguments.

C. THE PROPOSAL CONTAINS AN ESCALATION CLAUSE THAT ALLOWED KNIFE RIVER TO INCREASE THE UNIT PRICE IN THE EVENT THE COST OF LIQUID CEMENT ROSE ABOVE A CERTAIN AMOUNT

IFA emphasizes the increase in the cost per ton from \$64.50 to \$65.40 identified in Knife River's invoices for work performed in the Summerwind Development, and argues that this is evidence of separate contracts between Extreme Line Construction and Knife River. This argument ignores the plain language in the Proposal that provides for an increase in the event the price for liquid cement escalates above \$400 per ton. The Proposal specifically states that "[a]ll items in this proposal requiring hot plant mix asphalt are based on projected liquid cement cost of \$400 per Ton. FOB supplier. [Knife River] retains the exclusive right to honor the quoted price, in the event that oil prices escalate to a level above the quoted price. By accepting this proposal, in this form or any other, the customer agrees to pay [Knife River] for extra costs at [Knife River's] discretion."

The deposition testimony of Casey Daniels and the Rosin Affidavit provide further explanation for the \$.90 increase per ton for asphalt. The cost of liquid cement rose in the interim between June 26, 2006 and August 16, 2007, so the unit price of the asphalt also increased. Extreme Line Construction clearly understood the impact of this provision when it accepted Knife River's Proposal, and Extreme Line Construction does not dispute that this increase was appropriate.

D. EXHIBIT 7 TO THE DANIELS' DEPOSITION IS NOT EVIDENCE OF A NEW CONTRACT

Notwithstanding the questionable circumstances surrounding this Exhibit to Mr. Daniels' deposition, the document is not evidence of separate contracts between Extreme Line Construction and Knife River. Even if the Court considers this document for the purpose of determining whether Knife River is entitled to summary judgment, the Exhibit only purports to

describe a verbal agreement between Mr. Daniels and Knife River to pave the pathway. This “verbal agreement” is consistent with the testimony of Mr. Daniels that he called Knife River to request that Knife River pave the cart paths under the terms of the accepted Proposal. This testimony is also consistent with the Rosin Affidavit and Small Job Worksheet that documents the date Mr. Daniels called Knife River to request the estimated quantity for the asphalt and road mix. Again, there is no evidence of a new or separate agreement between the parties, but instead, this is another example of a conclusory argument by IFA asking the Court to find an issue of fact relating to the contractual relationship between Knife River and Extreme Line Construction that simply does not exist.

E. THE SUMMERWIND PATHWAY SMALL JOB WORKSHEET DOCUMENTS KNIFE RIVER’S CHANGE ORDER WORK TO CONSTRUCT THE PATHWAY UNDER ITS PROPOSAL

IFA questions the veracity of Knife River’s claim that the work performed to construct the asphalt pathway was documented and confirmed as a change order to the Extreme Line Construction Proposal. The Rosin Affidavit filed in opposition to IFA’s motion clearly sets out the manner in which Extreme Line Construction requested Knife River to perform the work to construct the Summerwind Pathway and the documentation by Knife River of this request. The Small Job Worksheet for the Summerwind Pathway is attached as Exhibit ‘B’ to the Rosin Affidavit, and this document links the Summerwind Pathway to the Proposal. Furthermore, the Small Job Worksheet is consistent with the testimony of Casey Daniels regarding Extreme Line Construction’s request that Knife River provide an estimate for the cost of the additional asphalt ordered under the parties’ existing contract at the unit prices set forth in the Proposal for the Summerwind Development.

Jessee Rosin testifies in his affidavit that he received a call from Casey Daniels wherein Mr. Daniels requested that Knife River provide Extreme Line Construction with an estimate for the construction of the Summerwind Pathway. Mr. Daniels did not request a new bid from Knife River. If Mr. Daniels had requested a new bid for a new contract to construct the Summerwind Pathway, Mr. Rosin would have prepared a new Proposal for Extreme Line Construction, rather than a Small Job Worksheet. Rosin Affidavit ¶ 12. Knife River utilizes Small Job Worksheets to document change orders to existing contracts. Rosin Affidavit ¶ 8. The Summerwind Pathway Small Job Worksheet specifically references the Proposal accepted and signed by Extreme Line Construction. Rosin Affidavit ¶ 11.

The Small Job Worksheet for the Summerwind Pathway is clear evidence supporting the testimony of Jessee Rosin and Casey Daniels that the work relating to the construction of the pathway was performed under the parties' single contract. There is no evidence anywhere in the record to contradict their testimony or the documents supporting the contractual relationship between Knife River and Extreme Line Construction.

IFA contends that the inclusion of the cost for the use of Knife River's paver to place ¾" road mix is evidence of a new contract for work outside of the scope of Knife River's contract. Mr. Daniels testified during his deposition that the 6 foot width of the pathway was narrower than the dump trucks owned and used by Extreme Line Construction on this project. In an effort to minimize costs and efficiently lay the base for the asphalt pathway, Mr. Daniels requested to use Knife River's paver, which was already mobilized and onsite, to lay and compact this material. Extreme Line Construction provided the road base, along with the labor to operate Knife River's paver. By allowing Extreme Line Construction to utilize this equipment, Knife River was facilitating construction to benefit the project. Knife River documented the cost of

this equipment in its Small Job Worksheet, and billed the agreed cost to Extreme Line Construction in Knife River's invoice.

Even if the Court were to find that the cost of the equipment for laying the road base material falls outside of the scope of Knife River's contract with Extreme Line Construction, this would only affect the amount of Knife River's lien, not the validity or priority of the lien.

F. KNIFE RIVER DID NOT HAVE ANY KNOWLEDGE REGARDING THE CONTRACTUAL RELATIONSHIP BETWEEN EXTREME LINE CONSTRUCTION AND THE OWNER

IFA's argument that Knife River knew, or should have known, that Extreme Line Construction had separate contracts for the work it performed in the Summerwind Development rests entirely on speculation and conjecture.

The testimony of Casey Daniels that IFA relies upon at pages 30-34 of IFA's Memorandum does not support the conclusion surmised by IFA that Knife River had any notice of whether Extreme Line was performing its work to improve the subdivision phases and golf course under one or more contracts. There is no testimony anywhere to be found in the record that Casey Daniels, or anyone for that matter, ever notified Knife River of the contract(s) Extreme Line Construction was performing work under.

Mr. Daniels testified that in the summer of 2006 he was aware that the Summerwind Development included phases I and II and a golf course. Mr. Daniels further testified that at the time he accepted Knife River's Proposal that he intended to have Knife River provide asphalt for the pathway under the terms of the accepted Proposal. Daniels Deposition, p. 63:3-16. There would be no reason for Knife River to inquire about the contract Extreme Line Construction was operating under when Extreme Line Construction requested the asphalt for the pathway in

August 2007. Likewise, there was no reason for Casey Daniels to discuss Extreme Line Construction's contract with the developer when he ordered the asphalt.

IFA has failed to provide the Court with any new evidence to take this case outside of the holding in *Gem State Lumber Co. v. School District No. 8, Caribou County*, 44 Idaho 359, 256 P. 949 (1927). Knife River incorporates by reference all of the arguments contained in Plaintiff's Reply to Memorandum in Opposition to Plaintiff's Motion for Summary Judgment filed on December 31, 2009. Knife River provided the Court with a detailed argument regarding the application of the Court's decision in *Gem State* at pages 5 – 8 of that Reply Memorandum and respectfully submits that the same analysis and arguments apply to deny the present motion filed by IFA.

V.


CONCLUSION

For the reasons set forth herein, the Court should deny IFA's motion for reconsideration.

RESPECTFULLY SUBMITTED this 2nd day of September, 2010.

TROUT ♦ JONES ♦ GLEDHILL ♦ FUHRMAN, P.A.

By: _____


David T. Krueck, Esq.
Attorney for Plaintiff

CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, with offices at 225 N. 9th Street, Suite 820, Boise, Idaho 83702, certifies that on the 2nd day of September, 2010, he caused a true and correct copy of the foregoing document to be forwarded by the method(s) indicated below, to the following:

Samuel A. Diddle	Hand Delivered	<input type="checkbox"/>
David M. Swartley	U.S. Mail	<input type="checkbox"/>
Eberle Berlin Kading Turnbow & McKlveen, Chtd.	Facsimile	<input checked="" type="checkbox"/>
PO Box 1368		
Boise, ID 83701-1368		
<i>Attorney for Conger Management Group, Inc.</i>		

David E. Wishney	Hand Delivered	<input type="checkbox"/>
Attorney at Law	U.S. Mail	<input type="checkbox"/>
PO Box 837	Facsimile	<input checked="" type="checkbox"/>
Boise, ID 83701		
<i>Attorney for L222-1 ID Summerwind, LLC; L222-2 ID Summerwind, LLC; L222-3 ID Summerwind, LLC; and Union Land Company, LLC</i>		

Richard B. Eismann	Hand Delivered	<input type="checkbox"/>
EISMANN LAW OFFICES	U.S. Mail	<input type="checkbox"/>
3016 Caldwell Blvd.	Facsimile	<input checked="" type="checkbox"/>
Nampa, ID 83651-6416		
<i>Attorney for Riverside, Inc.</i>		

Donald W. Lojek	Hand Delivered	<input type="checkbox"/>
LOJEK LAW OFFICES	U.S. Mail	<input type="checkbox"/>
PO Box 1712	Facsimile	<input checked="" type="checkbox"/>
Boise, ID 83701		
<i>Attorney for PMA, Inc.</i>		

Thomas E. Dvorak	Hand Delivered	<input type="checkbox"/>
Martin C. Hendrickson	U.S. Mail	<input type="checkbox"/>
Elizabeth M. Donick	Facsimile	<input checked="" type="checkbox"/>
GIVENS PURSLEY LLP		
PO Box 2720		
Boise, ID 83701		
<i>Attorney for Stanley Consultants, Inc.</i>		

William L. Smith
Smith Horras, P.a.
5561 N. Glenwood St., Suite B
P.O. Box 140857
Boise, ID 83714
Attorney for Extreme Line Logistics, Inc.

Hand Delivered
U.S. Mail
Facsimile

David E. Kerrick
PO Box 44
Caldwell, ID 83606
Attorneys for Michael W. Benedick and Carol L. Benedick

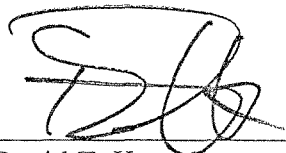
Hand Delivered
U.S. Mail
Facsimile

Tom Mehiel, President
Valley Hydro, Inc.
1904 E. Beech Street
Caldwell, ID 83605
Pro Se Defendant

Hand Delivered
U.S. Mail
Facsimile

Michael O. Roe
Rebecca A. Rainey
Moffatt, Thomas, Barrett, Rock & Fields, Chtd.
101 S. Capitol Blvd., 10th Floor
P.O. Box 829
Boise, ID 83701

Hand Delivered
U.S. Mail
Facsimile



David T. Krueck

9-9 Kerrick

FILED
11:00 A.M. P.M.

SEP 03 2010

CANYON COUNTY CLERK
J HEIDEMAN, DEPUTY

DAVID T. KRUECK, ISB No. 6246
TROUT ♦ JONES ♦ GLEDHILL ♦ FUHRMAN, P.A.
225 North 9th Street, Suite 800
P.O. Box 1097
Boise, ID 83701-1617
Telephone: (208) 331-1170
Facsimile: (208) 331-1529
Email: dkrueck@idalaw.com

Attorneys for Plaintiff Hap Taylor & Sons, Inc. d/b/a Knife River

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

HAP TAYLOR & SONS, INC. d/b/a KNIFE
RIVER, an Oregon corporation doing business as
Knife River,

Plaintiff,

vs.

L222-1 ID SUMMERWIND, LLC, an Idaho
limited liability company; et. al.,

Defendants.

CASE NO. CV08-4251C

**ERRATA RE: AFFIDAVIT OF
JESSE ROSIN IN OPPOSITION TO
DEFENDANT IFA'S MOTION FOR
RECONSIDERATION**

HAP TAYLOR & SONS, INC. d/b/a KNIFE
RIVER, an Oregon corporation doing business as
Knife River,

Plaintiff,

vs.

L222-1 ID SUMMERWIND, LLC, an Idaho
limited liability company; et. al.,

Defendants.

CASE NO. CV08-4252C

ERRATA RE: AFFIDAVIT OF JESSE ROSIN IN OPPOSITION TO
DEFENDANT IFA'S MOTION FOR RECONSIDERATION

- 1 -

CONGER MANAGEMENT GROUP, INC., an Idaho corporation,

Plaintiff,

vs.

L222-1 ID SUMMERWIND, LLC, an Idaho limited liability company; et. al.,

Defendants.

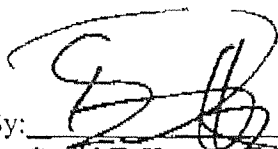
CASE NO. CV08-11321

COMES NOW, the Plaintiff, Hap Taylor & Sons, Inc. d/b/a Knife River ("Knife River"), by and through its counsel of record, Trout Jones Gledhill Fuhrman, P.A., and hereby respectfully submits this Errata Re: Affidavit of Jesse Rosin in Opposition to Defendant IFA's Motion for Reconsideration.

On September 2, 2010, Plaintiff filed the Affidavit of Jesse Rosin which includes references to Exhibits A and B. Exhibits A and B were inadvertently not attached to the copy of Mr. Rosin's affidavit filed with the Court. Attached hereto are true and correct copies of Exhibits A and B to the Affidavit of Jesse Rosin in Opposition to Defendant IFA's Motion for Reconsideration.

RESPECTFULLY SUBMITTED this 2nd day of September, 2010.

TROUT ♦ JONES ♦ GLEDHILL ♦ FUHRMAN, P.A.

By: 
David T. Krueck, Esq.
Attorney for Plaintiff

CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, with offices at 225 N. 9th Street, Suite 820, Boise, Idaho 83702, certifies that on the 3rd day of September, 2010, he caused a true and correct copy of the foregoing document to be forwarded by the method(s) indicated below, to the following:

Samuel A. Diddle	Hand Delivered	<input type="checkbox"/>
David M. Swartley	U.S. Mail	<input type="checkbox"/>
Eberle Berlin Kading Turnbow & McKlveen, Chtd.	Facsimile	<input checked="" type="checkbox"/>
PO Box 1368		
Boise, ID 83701-1368		
<i>Attorney for Conger Management Group, Inc.</i>		

David E. Wishney	Hand Delivered	<input type="checkbox"/>
Attorney at Law	U.S. Mail	<input type="checkbox"/>
PO Box 837	Facsimile	<input checked="" type="checkbox"/>
Boise, ID 83701		
<i>Attorney for L222-1 ID Summerwind, LLC; L222-2 ID Summerwind, LLC; L222-3 ID Summerwind, LLC; and Union Land Company, LLC</i>		

Richard B. Eismann	Hand Delivered	<input type="checkbox"/>
EISMANN LAW OFFICES	U.S. Mail	<input type="checkbox"/>
3016 Caldwell Blvd.	Facsimile	<input checked="" type="checkbox"/>
Nampa, ID 83651-6416		
<i>Attorney for Riverside, Inc.</i>		

Donald W. Lojek	Hand Delivered	<input type="checkbox"/>
LOJEK LAW OFFICES	U.S. Mail	<input type="checkbox"/>
PO Box 1712	Facsimile	<input checked="" type="checkbox"/>
Boise, ID 83701		
<i>Attorney for PMA, Inc.</i>		

Thomas E. Dvorak	Hand Delivered	<input type="checkbox"/>
Martin C. Hendrickson	U.S. Mail	<input type="checkbox"/>
Elizabeth M. Donick	Facsimile	<input checked="" type="checkbox"/>
GIVENS PURSLEY LLP		
PO Box 2720		
Boise, ID 83701		
<i>Attorney for Stanley Consultants, Inc.</i>		

William L. Smith
Smith Horras, P.a.
5561 N. Glenwood St., Suite B
P.O. Box 140857
Boise, ID 83714
Attorney for Extreme Line Logistics, Inc.

Hand Delivered
U.S. Mail
Facsimile

David E. Kerrick
PO Box 44
Caldwell, ID 83606
Attorneys for Michael W. Benedick and Carol L. Benedick

Hand Delivered
U.S. Mail
Facsimile

Tom Mehiel, President
Valley Hydro, Inc.
1904 E. Beech Street
Caldwell, ID 83605
Pro Se Defendant

Hand Delivered
U.S. Mail
Facsimile

Michael O. Roe
Rebecca A. Rainey
Moffatt, Thomas, Barrett, Rock & Fields, Chtd.
101 S. Capitol Blvd., 10th Floor
P.O. Box 829
Boise, ID 83701

Hand Delivered
U.S. Mail
Facsimile



David T. Krueck

EXHIBIT A



8488 W. Geeson Rd.
Boles, Idaho 83709
Phone: (208) 382-8182
Fax: (208) 382-8188

PROPOSAL

Date: June 26, 2006

Submitted To : E.L.C.
Street Address : 8145 E. Colter Bay Dr.
City, State, Zip : Nampa, ID 83687

Attn: Casey Daniels
Phone 465-5055
Fax 465-5065

Project Name : Summer Wind @ Orchard Hills Ph 1 & 2
Project Address : Greenleaf, ID
Engineer : N/A

Plan Date: VERBAL

Last Revision Date:

BID REFLECTS:

- 1) Place and compact 3" of CL III SPWC Plant Mix.

Approximately 6,020 TON @ \$64.50 \$388,290.00

Billing to be based on actual tonnage.

DOES NOT INCLUDE THE FOLLOWING:

- 1) Permits, fees, or bonds of any kind.
- 2) Fees for inspections or compaction testing.
- 3) Off-site disposal of excess fill material.
- 4) Foundation stabilization.
- 5) Surface repair.
- 6) Concrete collars.
- 7) Drop inlets.
- 8) Rock excavation, if required.
- 9) Surveying or staking of work quoted.
- 10) Blue marker at fire hydrant.
- 11) Pavement striping.
- 12) Erosion control or SWPP Plan.

Aggregates used for pavements to be checked for stability and any soft spots to be repaired before placing material to pave.

All items on this proposal requiring hot plant mix asphalt are based on projected liquid content cost of \$400.00 per Ton, FOB supplier. Masco retains the exclusive right to honor the quoted price, to the extent that oil prices escalate in excess above the quoted price. By accepting this proposal, in this form or any other, the contractor agrees to pay Masco for extra taxes at Masco's discretion.

Payment shall be paid for actual quantities installed. Payment is due upon progress billings each 30 days. The amount due shall bear interest at the highest rate allowed by law from date of billing.

All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to the specifications and standard practices. Any alteration or deviation from above specifications involving extra costs will be estimated only upon written orders, and will become an extra charge over and above the estimate. All agreements concerning extra work, conditions or change beyond Masco's control. Masco's workers are fully covered by Worker's Compensation Insurance. Masco may withdraw this proposal if not accepted within 15 days from the date of proposal. In the event of litigation, the prevailing party shall be entitled to Masco's attorney's fees.

Masco, Inc.

Authorized Signature: Jessica Rojin

Date:

Acceptance of Proposal - The above price, specifications and conditions are satisfactory and are hereby accepted. Masco is authorized to do the work as specified. Payment will be made as outlined above.

Authorized Signature: Date: _____

C:\proposal 2006\1\toSummerWind@OrchardHillsPh1&2.doc

Thank You For Your Business

EXHIBIT B

Small Job Worksheet

Summerwind Pathway

Small Job #:	77423	Start Date:	8/17/07
Date Job Received:	8/16/07	Projected Completion Date:	8/29/07
Received By:	Jason Bush	Subdivision/Street:	Summerwind Pathway
Name of Caller:	Cathy Daniels	Job site (city):	Greenleaf
Assigned to:	Steve K.	County of job:	Canyon
Bill to:	ELC		
Street Address:			
City:		State:	
Contact/Caller:		Phone:	
Description of work:			

Job Completion Date: 8/17 - 8/29

Materials Used on Job Vendor / Yard

Bill Proposed

Plus + Compact A/E P&EDs	034 hrs @ 135.40	= 4587.60
Plus + Compact 3/4" base	1576 hrs @ 2.60	= 4097.20
		<u>8684.80</u>

Office Use:

Labor Equipment

OK

Please use Small Job # on Dailys,
and purchase order # when purchasing materials

926111
92682

Michael O. Roe, ISB No. 4490
Rebecca A. Rainey, ISB No. 7525
MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED
101 South Capitol Boulevard, 10th Floor
Post Office Box 829
Boise, Idaho 83701
Telephone (208) 345-2000
Facsimile (208) 385-5384
mor@moffatt.com
rar@moffatt.com
23690.0002

FILED
A.M. 3:30 P.M.
SEP 07 2010
CANYON COUNTY CLERK
JS DEPUTY

Attorneys for Defendants Integrated Financial Associates, Inc.,
Geneva Equities, LLC, and Certain Other Named Defendants

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

HAP TAYLOR & SONS, INC., d/b/a KNIFE
RIVER, an Oregon corporation doing business
as Knife River,

Plaintiff,

vs.

L222-1 ID SUMMERWIND, LLC, et al.,

Defendants.

HAP TAYLOR & SONS, INC. d/b/a KNIFE
RIVER, an Oregon corporation doing business
as Knife River,

Plaintiff,

vs.

L222-1 ID SUMMERWIND, LLC, an Idaho
limited liability company, et al.,

Defendants.

Case No. CV08-4251C, consolidated with
CV08-4252C and CV08-11321

**REPLY MEMORANDUM IN
SUPPORT OF DEFENDANT IFA'S
MOTION FOR RECONSIDERATION**

**REPLY MEMORANDUM IN SUPPORT OF DEFENDANT IFA'S
MOTION FOR RECONSIDERATION - 1**

Client:1761786.1

CONGER MANAGEMENT GROUP, INC., an
Idaho corporation,

Plaintiff,

vs.

L222-1 ID SUMMERWIND, LLC, an Idaho
corporation, et al.,

Defendants.

I. INTRODUCTION

In support of its motion for reconsideration, Integrated Financial Associates, Geneva Equities, LLC, and certain other named defendants (collectively, “IFA”) met the necessary burden of evidentiary proof by coming forward with direct, competent, admissible evidence that further buttressed IFA’s theory on the underlying motion for summary judgment: the internal inconsistencies in the documents submitted by Knife River, the unexplainable lapse in time between the completion of the roadway project and the commencement of the cart path project, and the credibility of the witnesses, combined to create genuine issues of material fact that entry of summary judgment in favor of Knife River.

IFA met this burden by taking the deposition of Casey Daniels of Extreme Line Logistics (“ELL”), the party with whom Knife River contracted for both of the paving projects on the Summerwind development. Through the Daniels deposition, IFA elicited evidence that it was not ELL’s typical practice to solicit bids for an entire project (which was inconsistent with prior affidavits); that ELL did not solicit a bid for the entire Summerwind project in this instance (which was inconsistent with prior affidavits); confirmed that the written proposal prepared by Knife River and accepted by ELL on or about July 26, 2006 (the “Masco Proposal”), was for the estimate tonnage necessary to do the roadways only; that ELL had conversations with

representatives from Knife River that future cart path work was contemplated but the designs of the golf courses were not completed to the point where they could estimate the scope of work on the cart paths; and that Knife River did new and additional work on the cart paths that was not included on its work with the roadways. All of these facts, viewed in the light most favorable to IFA, show that there were two contracts between Knife River and ELL or, alternatively, that Knife River knew or had reason to know of the two contracts between ELL and Union Land.

In response to the overwhelming evidence creating a number of genuine issues of material fact, Knife River submitted another affidavit of Jesse Rosin (the "Second Rosin Aff."), which affidavit further confirmed that the original contract did not include cart path work and that Rosin made the decision to bill for the cart path work under the existing contract at the time the cart path estimate was requested (which was, incidentally, some 113 days after the roadways were substantially completed and 23 days after Knife River's lien rights for the roadways had expired). The affidavit also cured an evidentiary defect that existed in the underlying motion for summary judgment by affixing the correct small job worksheet that allegedly linked the roadways and the cart path work together under a single contract. Significantly, the Second Rosin Affidavit did not affirmatively deny that Knife River knew of the two contracts that ELL had with Union Land, nor did Rosin deny the occurrence of the conversations discussed in the Daniels deposition regarding the bi-furcated nature of the project. In short, the Second Rosin Affidavit failed to dispel the genuine issues of material fact created by the Daniels deposition and, significantly, gave rise to additional issues of material fact.

Because IFA has come forward with new and additional evidence on its motion for reconsideration, and because Knife River has failed to dispel this evidence or otherwise establish that it is incompetent or inadmissible, IFA has presented this Court with sufficient basis

to grant the present motion for reconsideration and enter and order denying Knife River's motion for summary judgment.

II. ARGUMENT

A. The Case is Distinguishable From *Gem State Lumber Co. v. School District No. 8 in Caribou County* in Every Material Respect.

Knife River continues to rely on *Gem State Lumber Co. v. School District No. 8 in Caribou County*, 44 Idaho 359, 256 P. 949 (1927) for the proposition that there is not sufficient evidence to impute knowledge of ELL's two contracts with the developer, Union Land, onto Knife River. This reliance is misplaced as the present case is distinguishable from *Gem State* in every material respect.

In *Gem State*, the lien claimant was a strict materials supplier providing lumber on "successive orders from the contractor, and carried to the school site several miles into the country." *Id.* In this matter, Knife River was not a strict materials supplier, but was providing the asphalt on-site and responsible for actual paving. The Idaho Supreme Court has expressly held that, when analyzing substantial completion of a contract, there is a material distinction between a strict materialmen and lien claimants who furnish both labor and material:

A builder or sub-contractor is generally on the job site pursuant to a contract to complete the project or a specified portion of a project. A determination of when that contract has been substantially completed can be made from the facts and knowledge of the project's status is inherent in its performance. In contract, an open account materialman's contract is to furnish materials when requested.

Franklin Building Supply Co. v. Sumpter, 139 Idaho 846, 851, 87 P.3d 955, 960 (2004). Based on this rationale, unlike the lumber supplier in *Gem State*, Knife River cannot reasonably claim that it was simply providing asphalt with no specific knowledge of how the product was being used. Rather, the undisputed evidence shows that Knife River was on-site paving the roadways.

Knife River was well aware that the roadways were substantially completed in April 2007. Affidavit of Jessee Rosin in Support of Plaintiff's Motion for Summary Judgment ("First Rosin Aff."), Ex. C. Approximately 113 days after the roadways were substantially completed, Knife River was asked to pave the cart paths. Second Rosin Aff., ¶ 14. The actual knowledge that the roadways had been completed for nearly four months prior to the request to pave the cart path distinguishes Knife River from the strict materials supplier in *Gem State*.

The *Gem State* Court also took note that the nature of materials furnished for the two contracts "could only have been considered by plaintiff as proper items in the running account." 44 Idaho at 359, 256 P. at 949. To state it differently, when a strict materialman provides lumber for a schoolhouse and lumber for a protective shanty, there is nothing to put him on notice of the possibility that the lumber is being used for projects that could be subject to two different contracts. Conversely, in this matter, the asphalt supplied by Knife River went first to the roadways and, much later, to the cart paths. Memorandum in Support of Defendant IFA's Motion for Reconsideration at 18-22. Knife River also performed new and different services when it paved the cart paths. The existence of two materially different paving projects, of which Knife River had actual knowledge, distinguishes this case from *Gem State* and serves as an additional factor that should have put Knife River on notice of the possibility of two separate contracts between ELL and Union Land.

The present case is also distinguishable from *Gem State* in the amount of time that lapsed between the two at issue contracts. In *Gem State*, the schoolhouse that was built under the first contract was completed on October 4, 1922. *Id.* The parties entered into a second contract for the protective shanty that same day. *Id.* The court found that the absence of any delay could not have put the lumber supplier on notice that the general contractor had shifted from one contract to the next. In the present matter, there was a delay so substantial that Knife River's lien

rights for the roadways expired before the golf course work was even requested. The direct evidence in the record shows that Knife River's roadway work was completed on or about April 25, 2007. First Rosin Aff., Ex. C. The evidence further shows that Knife River did not receive the request for an estimate on the cart path work until August 16, 2007, 113 days after completion of the prior contract. Second Rosin Aff., ¶ 14. In *Valley Lumber & Mfg. Co. v. Driessel*, the Idaho Supreme Court held that a 59-day delay between the two contracts was sufficient to create a genuine issue of material fact regarding whether the subcontractor had knowledge of the two contracts between the landowner and the general contractor. 13 Idaho 662, 93 P. 765, 760 (1908). The 113-day delay between the two contracts in this case is sufficient evidence to create a genuine issue of material fact regarding whether Knife River was, at the very least, on inquiry notice of the two contracts between ELL and Union Land.

In addition to the distinguishing characteristics between the present case and *Gem State*, there is additional evidence in the record from which reasonable minds could conclude that Knife River knew, or had reason to know, that there were two contracts between ELL and Union Land. The facts show that the Masco Proposal was for the roadways only. Rainey Aff., Ex. A (Daniels Depo., 60:3-21; 62:9-18; 68:11 – 69:1). The facts also show that, at the time the Masco Proposal was prepared the golf courses were not yet designed and no one knew what would be included any future cart path work. Rainey Aff., Ex. A (Daniels Depo., 115:7 – 117:12) There is direct evidence from Casey Daniels, president and sole owner of ELL, that he had discussions with representatives of Knife River regarding the possibility of future cart path work and the fact that those prospective cart paths were not yet designed and, therefore, could not be included in the original bid. Rainey Aff., Ex. A (Daniels Depo., 62:14 – 63:16). These combined facts provide sufficient evidence to put Knife River on notice that the roadways and the cart paths would be done pursuant to two separate contracts.

B. Knife River Has Not Denied That It Had Knowledge of the Two Contracts Between ELL and Union Land.

It should not escape this Court's attention that Knife River has not affirmatively denied that it had knowledge of the two contracts between ELL and Union Land. Though paragraph 9 of the statement of material facts submitted in Knife River's memorandum in opposition to defendant IFA's motion for reconsideration states that "Knife River was unaware of the contractual relationship between Extreme Line Construction and the owner of the Summerwind Development," Knife River does not cite to any evidence supporting this alleged fact. Significantly, neither of the affidavits of Jesse Rosin that have been submitted in this matter deny that Knife River had knowledge of the two contracts between Extreme Line and Union Land. Conversely, IFA can and has identified a number of facts tending to show that Knife River knew, or had reason to know, of the two contracts between ELL and Union Land. **Knife River has not denied this evidence.** Rather, Knife River attempts to defeat the current motion for reconsideration by attacking the quality of such evidence. Because the only evidence in the record shows that Knife River knew, or had reason to know, of the two contracts between ELL and Union Land, summary judgment is not appropriate and this Court should grant IFA's motion to reconsider.

C. Evidence Submitted by IFA Regarding Knife River's Knowledge of the Two Contracts is Competent and Reliable.

Knife River contends that evidence supporting paragraph 6 of the Statement of New or Additional Facts contained in the Memorandum in Support of IFA's Motion for Reconsideration is insufficient to establish that Knife River knew that the Masco Proposal did not include the cart paths even though such future cart path work was contemplated. As noted above, it is important to recognize that Knife River **does not deny** that the conversations

discussed in Daniels' deposition occurred; Knife River only attempts only to attack the admissibility of this evidence.

In support of the proposition that Knife River knew, or had reason to know, that there were two contracts between ELL and Union Land, IFA cites the deposition testimony of Casey Daniels, wherein Daniels testified that, at the time the Masco Proposal was entered into, he went to Knife River with a bunch of plans which specifically defined the roadways and which indicated that golf courses (and cart paths) would eventually be built, but that such cart paths were not yet designed. Rainey Aff., Ex. A (Daniels Depo., 114:12 – 116:9). While Daniels' testimony is inconsistent regarding who, between ELL and Knife River, actually came up with the approximately 6,020 tons of asphalt estimated to be necessary to pave the roadways, even this inconsistent testimony provides evidence that Knife River had some input in determining the amount of asphalt necessary to pave the roadways under the plans that were available under ELL's first contract – which included the roadways only. Rainey Aff., Ex. A (Daniels Depo., 115:11 – 117:12). Daniels further testified that at the time he received the Masco Proposal from Knife River, he had discussions with representatives from Knife River wherein he informed Knife River of the future cart path work and discussed whether or not the future cart path work would be covered by the Masco Proposal. Rainey Aff., Ex. A (Daniels Depo., 63:3 – 65:5). Daniels further testified that such discussions did not include the specifics of the cart path work because, at the time the parties entered into the Masco Proposal, no one had sufficient information about the cart paths to define the scope of that future, anticipated work. Rainey Aff., Ex. A (Daniels Depo., 64:11 – 65:5). This deposition testimony reflects direct conversations between Daniels and representatives of Knife River. These conversations are not hearsay; these conversations are not lacking in foundation; these conversations are competent, reliable evidence. The deposition testimony, which provides direct, competent evidence that Casey

Daniels discussed the bi-furcated nature of the Summerwind development with Knife River, thereby giving Knife River actual, constructive and/or inquiry knowledge of the matters discussed.

Knife River also attacks the admissibility of Exhibit 7 to the Daniels Deposition (hereafter, the “Larison Letter”) on the grounds that it is “inadmissible hearsay” and has other “foundation issues.” Neither of these challenges provide a basis to exclude the Larison Letter. With respect to the alleged “foundation issues,” a document is admissible and satisfies the authenticity requirement where the proponent can establish that “the matter in question is what the proponent claims.” Idaho Rule of Evidence 901(a). Idaho Rule of Evidence 901(b) provides a non-exhaustive list of methods for authenticating a document, one of which is “distinctive characteristics and the like” and another of which is “nonexpert opinion on handwriting.”

IFA offers the Larison Letter as a faxed document from ELL to Bob Larison of Union Land, which explains the nature of the agreement between ELL and Knife River regarding the cart paths. The Larison Letter bears ELL’s fax stamp and fax number and bears a signature that Casey Daniels has identified as his own. The Larison Letter accurately reflects the terms of the agreement regarding the cart path with respect to (i) price, (ii) scope of work, and (iii) amount of materials required. While Knife River claims “evidentiary issues” related to the Larison Letter, relying, in part, on Casey Daniels’ inability to remember signing the same, Idaho Rule of Evidence 903 provides that the testimony of a subscribing witness is not necessary for the authentication of a document: while Daniels’ testimony is necessary to identify the signature as his own (which he did), it is not necessary for authentication purposes that Daniels testify that he remembers authoring the document or causing the same to be authored. Rather the evidence should be admitted if “sufficient proof has been introduced so that a reasonable juror could find in favor of authentication or identification.” *State v. Hebner*, 108 Idaho 196, 201, 697 P.2d

1210, 1215 (App. 1985) (quoting 5 J. Weinstein & M. Berger, Weinstein's Evidence ¶ 901 (a) [01] at 16 (Supp. 1983)). Accordingly, the fact that Casey Daniels cannot remember the Larison Letter speaks only to the weight of the evidence, not its admissibility, and that is a question for the trier of fact. *Id.*

The Larison Letter is also admissible under the "recorded recollection" exception to the hearsay rule. Idaho Rule of Civil Procedure 803(5) provides that, regardless of the availability of the witness, a statement is admissible if the statement sought to be admitted is contained in a "recorded recollection." Specifically, the "recorded recollection" exception to the hearsay rule provides as follows:

A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the memory of the witness and to reflect that knowledge correctly. If admitted, the memorandum or record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party.

IDAHO RULE OF EVIDENCE 803(5). The Larison Letter satisfies every element of the recorded recollection exception to the hearsay rule. The document was faxed on November 10, 2007, not quite three months after ELL entered into the agreement with Knife River regarding the cart path work, at a time when the details relating to the contract were fresh in Daniels' mind. Rainey Aff., Ex. E. Daniels claims that he does not have a present recollection of how events unfolded at the time he entered into the agreement with Knife River to do the cart path work. Rainey Aff., Ex. A (Daniels Depo., 86:24 – 87:4). The Larison Letter accurately reflects the terms and conditions of the cart path work and is consistent with the manner in which Knife River bid the job and billed ELL for the job. Daniels is shown to have adopted the statements set forth in the memorandum by his signature thereon and by the fact that it was sent to Union Land by use of

ELL's fax machine. Accordingly, the Larison Letter is admissible under the "recorded recollection" exception to the hearsay rule.

Because the Larison Letter would be admissible at trial, the trier of fact is entitled to consider whether the reference to a "verbal contract" contained in the Larison Letter means a separate verbal contract (as IFA contends) or whether the "verbal contract" referenced in the Larison Letter is an awkward reference to the theory that the cart paths were included in the prior written contract made between Knife River and ELL prior to the time ELL had authority to engage a subcontractor for the cart path work. In reaching this determination, the trier of fact is entitled to weigh the Larison Letter in conjunction with other evidence in the record and consider whether it logically follows that if Daniels believed the original Masco Proposal, a written document, was broad enough to cover the later cart path work (as he testified in his deposition), that Daniels would have represented to Larison that he had reached a "verbal agreement" with Knife River. Indeed, construing the record evidence in the light most favorable to IFA, as this Court must do on a motion for summary judgment, the trier of fact could determine that Daniels' recorded recollection set forth in the Larison Letter of a "verbal contract" is (i) more consistent with Daniels' testimony that he did not, as a matter of practice, solicit bids for entire projects; (ii) more consistent with Daniels' testimony that he did not solicit a bid for the entire Summerwind project in this case; (iii) more consistent with the record evidence that the Masco Proposal only reflects the asphalt necessary to perform the roadway work; and (iv) better supports the ultimate conclusion that by using the phrase "verbal agreement," Daniels meant a separate verbal agreement that was not included within the original Masco Proposal.

Based on this consistent evidence tending to show that the parties did not intend for the Masco Proposal to include the cart paths, a genuine issue of material fact exists regarding whether there were one or two contracts.

D. The Fact that the Roadways Were “Substantially Complete” When the Alleged Change Order Was Requested Provides Additional Basis for the Trier of Fact to Conclude that Two Contracts Were at Issue.

While Idaho’s mechanic’s lien laws are to be liberally construed, such liberal construction does not override the requirement that a lien claimant substantially comply with the lien laws. *Boone v. P & B Logging Co.*, 88 Idaho 111, 115, 397 P.2d 31, 33 (1964). Attempting to tack together work performed under two separate contracts, or attempting to add work to extend one’s lien rights under an existing contract that has been substantially completed, runs afoul of the substantial compliance standard and will cause a lien claim to be declared invalid. *Id.* (citing *Valley Lumber & Manufacturing v. Driessel*, 13 Idaho 662, 93 P. 765 (1907)). Whether a contract has been “substantially completed” is to be determined by “the conditions of the contract, the conduct of the parties with reference thereto, and the surrounding facts and circumstances.” *Gem State Lumber Co. v. Witty*, 37 Idaho 489, 217 P. 1027, 1030 (1923). Under Idaho law, where “the time for filing a lien would otherwise have lapsed, and the lien claimant relies upon the delivery of additional material in order to revive or keep alive the time for filing his lien, it must not only be shown that the material was actually used in the building, but that it was reasonably necessary to complete the same according to the terms of the original contract.” *Gem State Lumber Co. v. Witty*, 37 Idaho 489, 217 P. 1027 (1923).

In this matter, it is undisputed that the roadwork had been substantially completed and the time for filing the lien for the roadways had lapsed prior to the time Knife River commenced the cart path work. The timeline of significant events is as follows:

- 6/26/2006 – ELL accepts the Masco Proposal
- 4/25/2007 – Knife River performs the last work on the roadways
- 5/25/2007 – Knife River provides invoices for the roadways (\$166,603.50)
- 7/16/2007 – Knife River performs a patch job on the roadways

- 7/24/2007 – 90 day deadline for filing roadway lien passes
- 8/16/2007 – Knife River receives request to do cart path work
- 8/17/2007 – Cart path work commences
- 8/27/2007 – Knife River provides invoice for the cart paths (\$49,474.80)
- 10/25/2007 – Knife River files claim of lien for all asphalt work.

“Ordinarily, furnishing an article or performing a service trivial in character is not sufficient to extend the time for claiming a lien or to revive an expire lien, where the article is furnished or the service rendered after a substantial completion of the contract, and the article is not expressly required by the terms thereof.” *Gem State Lumber Co. v. Witty*, 37 Idaho 489, 1027, 1030 (1923). Knife River should not be able to get around this well settled law through use of an alleged “change order” that attempts to bring work that was non-expressly required (or even contemplated) by the terms of the original contract within the scope of the original contract after the deadline for perfecting lien rights on the original contract had otherwise expired. Because Knife River did not even receive the request for an estimate to do the cart path work until August 2007, some 113 days after the roadways were substantially completed (23 days after Knife River’s lien rights for the roadways had expired), Knife River should not be able to claim the “additional work” was performed pursuant to a “change order” not expressly contemplated under the original contract in order to renew expired lien rights.

It should also not escape this Court’s attention that, at the time Knife River commenced work on the cart paths, it had not been paid for the roadways and had an outstanding invoice in the amount of \$166,603.50 for the roadway work. Knife River’s deadline for filing a claim of lien to secure the \$166,603.50 ran on July 24, 2007 and, after that date, Knife River’s lien rights had expired. ELL did not enter into a written contract with Union Land for the cart paths until August 15, 2007 – well after Knife River’s lien rights had expired. ELL did not

solicit a bid from Knife River for the cart paths until August 16, 2007. Given this timeline, it strains credulity to think that after having a receivable of \$166,603.50 more than 113 days outstanding, Knife River would agree to do new and additional work in the amount \$49,474.80 pursuant to a change order. Rather, the more likely explanation, and the explanation the trier of fact should be entitled to consider, is that Knife River realized that its lien rights had expired and, in order to restore the expired lien rights, did an additional \$49,474.80 worth of work.

E. The Masco Proposal is Ambiguous as a Matter of Law.

The ultimate question posed by plaintiff's motion for summary judgment and the present motion for reconsideration is whether the scope of work under the Masco Proposal included possible future cart path work. Based on the evidence presented on the underlying motion for summary judgment and the present motion for reconsideration, it is undisputed that the Masco Proposal did not *expressly* include the cart path work. Assuming, *arguendo*, that in the absence of the express requirement that Knife River do the cart path work, Knife River can still rely on the alleged change order and the delayed commencement of the cart path work to revive lien claims that would have otherwise expired,¹ whether future cart path work was intended or implied at the time ELL and Knife River entered into the Masco Agreement is a question for the trier of fact.

ELL claims that the original Masco Proposal was broad enough to cover future cart path work without the need for a change order. Rainey Aff., Ex. A (Daniels Depo., 91:2-17). Knife River claims that the future cart path work came into the purview of the Masco

¹ IFA maintains that the requirement set forth in *Gem State Lumber Co. v. Witty*, 37 Idaho 489, 1027, 1030 (1923) applies to this case and, absent an express requirement in the Masco Proposal that Knife River pave the cart paths, Knife River cannot use the cart path work – even if it was performed pursuant to a change order and billed pursuant to the Masco Proposal – in order to revive lien rights which would have otherwise expired. The argument presented herein is included in the event that this Court disagrees with IFA's interpretation of *Witty*.

Proposal when, in August 2007 (some 113 days after the roadways were substantially completed and more than three weeks after Knife River's lien rights had expired), ELL requested that Knife River prepare a bid for the additional golf course work and Knife River agreed to do the work under an alleged "change order." Second Rosin Aff., ¶ 10-14. IFA argues that the Masco Proposal contemplated paving necessary for the Summerwind roadways only and that the future cart path work was performed pursuant to a separate contract or agreement. Given that there are three differing interpretations offered by the three different stakeholders, if this Court determines – based on the facts presented – that these differing interpretations are reasonable, then the contract is ambiguous, and determination of its meaning becomes a question of fact.

Determining whether a contract is ambiguous is a question of law over which this Court exercises free review. *Crist Viene Pentecostal Church v. Paz*, 144 Idaho 304, 308, 160 P.3d 743, 747 (2007). If the language of the contract is unambiguous, then its meaning and legal effect must be determined from its words. *Crist Viene Pentecostal Church v. Paz*, 144 Idaho 304, 308, 160 P.3d 743, 747 (2007). However, a contract is ambiguous if it is reasonably subject to conflicting interpretations. *Id.* Each of the parties rely on three different provisions as critical to their interpretation of the contract. ELL cites to the project name set forth in the Masco Proposal that references "Summer Wind @ Orchard Hills Ph. 1 & 2." Rainey Aff., Ex. A (Daniels Depo., 62:20 – 63:2). Knife River relies heavily on the price escalation provision (Second Rosin Aff., ¶¶ 6, 15, and 16) and his subjective, undisclosed understanding that he was supposed to provide the labor and materials for the cart paths under the prior proposal (Second Rosin Aff., ¶ 14). IFA relies on the Masco Proposal wherein it states that the bid reflects "Approximately 6020 tons @ \$64.50" and Daniels' testimony that (i) his typical practice was to solicit bids based on the tonnage necessary to fulfill a specific contract (Rainey Aff., Ex. A (Daniels Depo., 35:16 – 37:5)); (ii) that he followed his typical practice in this case (Rainey Aff., Ex. A (Daniels Depo.,

37:6-8)); and (iii) that the “approximate 6020 ton” figure reflected in the Masco Proposal was specifically referable to the plans to pave the roadways (Rainey Aff., Ex. A (Daniels Depo., 60:10-15; 62:9-17)). Based on the competing interpretations and the evidence relied on by the parties in reaching these different interpretations, it can be said that, as a matter of law the Masco Proposal is ambiguous regarding the scope of work that Knife River was supposed to perform on the Summerwind project and the matter should be submitted to the trier of fact.

F. Genuine Issues of Material Fact Exist Regarding the Scope of Work Intended Under the Masco Proposal.

Where a contract is ambiguous and the parties’ mutual intent cannot be understood from the language, intent is a question for the trier of fact. *Farnsworth v. Dairymen’s Creamery Ass’n*, 125 Idaho 866, 870, 876 P.2d 148, 152 (Ct.App. 1994). Whether there was a meeting of the minds as to all essential terms of the contract is a determination for the trier of fact. *Hess v. Wheeler*, 127 Idaho 151, 154, 898 P.2d 82 (App. 1995) (citing *Johnson v. Allied Stores Corp.*, 106 Idaho 363, 679 P.2d 640 (1984); *Dante v. Golas*, 121 Idaho 149, 151, 823 P.2d 183, 185 (Ct.App. 1992)). “[A] contract must be complete, definite and certain in all its material terms, or contain provisions which are capable in themselves of being reduced to certainty.” *Kohring v. Robertson*, 137 Idaho 94, 99, 44 P.3d 1149 (2002) (citing *Giacobbi Square v. PEK Corp.*, 105 Idaho 346, 348, 670 P.2d 51, 53 (1983) (citations omitted) (emphasis in original)). “An enforceable contract requires ‘distinct understanding common to both parties.’” *Potts Construction Co. v. North Kootenai Water Dist.*, 141 Idaho 678, 681, 116 P.3d 8, 11 (quoting *Hoffman v. S V Co., Inc.*, 102 Idaho 187, 189, 628 P.2d 218, 220 (1981) (emphasis added)). While “a party’s subjective, undisclosed intent is immaterial to the interpretation of a contract” (*J.R. Simplot Co. v. Bosen*, 144 Idaho 611, 614, 167 P.3d 748, 751 (2006)) “[p]roof of a meeting of the minds requires evidence of mutual understanding as to the terms of the

agreement and the assent of both parties” (*Potts*, 141 Idaho at 671, 116 at 11 (citing *Thomas v. Schmelzer*, 118 Idaho 353, 356, 796 P.2d 1026, 1029 (Ct. App. 1990))). Accordingly, where the evidence shows that the parties had different undisclosed subjective intents, it can be fairly said that there was not a meeting of the minds.

In this matter, there are a number of genuine issues of material fact regarding whether there was a meeting of minds regarding whether the Masco Proposal included future contemplated golf course work. First and foremost, as discussed above, Knife River and ELL have different understandings regarding the relationship of the cart path work to the Masco Proposal: ELL argues that the Masco Proposal was broad enough, on its face, to include the cart path work; Knife River concedes that the cart path work came only pursuant to a change order which, necessarily, expanded the scope of work that Knife River was to do on the Summerwind Project. Second, it is questionable whether it was even possible for the parties to have a meeting of the minds regarding the future cart path work because, at the time the Masco Proposal was entered into, the parties had no idea what would be included in the cart path work, when the cart path work would commence, what the price of asphalt would be at the time the cart path commenced, or what scope of work (i.e., laying 3/4-inch road mix and asphalt) Knife River would be required to do with respect to the cart paths. Rainey Aff., Ex. A (Daniels Depo., 63:3 – 65:5). At best, the parties could have only entered into an agreement to agree regarding the cart paths: “No enforceable contract comes into being when parties leave a material term for future negotiations, creating a mere agreement to agree.” *Maroun v. Wyreless Systemes, Inc.*, 141 Idaho 604, 614, 114 P.3d 974, 984 (2005) (emphasis added). Because *every* material term regarding the cart path was left open for future negotiation (including whether ELL would even get the cart path contract and, therefore, be able to sub-contract the work to Knife River), the

parties could not have contracted for the cart path work at the time they executed the Masco Proposal.

Third, despite the fact that ELL claims that the Masco Proposal was broad enough to contemplate all asphalt work on the Summerwind project, ELL offered conflicting testimony that it was not its practice to solicit bids for entire projects and that it did not solicit a bid for the entire Summerwind project in this instance.

Q (By R. Rainey): When did you start soliciting bids for the paving work?

A (By C. Daniels): Not necessarily – I mean, you go in and pave a road that we prep. It's 26 feet wide, all the roads are. So I wasn't necessarily soliciting for this project. We talked to paving companies probably once every two weeks to see where paving prices were. That is what we do.

Q: Is that what you did with respect to the Summerwind project?

A: Correct.

Rainey Aff., Ex. A (Daniels Depo., 50:20 – 51:5) (emphasis added). This is consistent with statements made in the Second Rosin Affidavit, which make it appear that Knife River decided in August 2007, the time when the estimate for the cart paths was requested, that it was proper to bill the cart paths under the existing proposal. Though Rosin suggests that the decision was based upon the phraseology used in Daniels' request for the estimate ("estimate of asphalt necessary to pave the pathways") triggers a change order or small job worksheet (Second Rosin Aff., ¶ 10) whereas a request for "a new bid or new proposal" would require a new, separate contract (Second Rosin Aff., ¶¶ 12 – 14), the trier of fact is entitled to consider whether Rosin's decision had more to do with the fact that lien rights on the outstanding \$166,630.50 had expired and the only hope at reviving the same was to do an additional \$50,000.00 worth of work and make it appear as though it was performed pursuant to a prior existing contract. Because all

reasonable inferences are to be drawn in favor of the non-moving party on a motion for summary judgment, these facts and the inferences to be drawn from such facts, give this Court sufficient bases to grant IFA's present motion for reconsideration.

As a final matter, under Idaho law, the statement made in paragraph 13 of the Second Rosin Affidavit, standing alone, provides sufficient evidence from which the trier of fact could conclude that Knife River was not contractually obligated to provide asphalt for the cart paths and Extreme Line was not contractually obligated to use Knife River to supply the asphalt for the cart paths. In the case of *Barlow's Inc. v. Bannock Cleaning Corp.*, the Idaho Court of Appeals looked specifically to the affidavit of the lien claimant (which had been ignored by the trial court) and found that statements made in the lien claimant's affidavit, when construed in the light most favorable to the property owner, were sufficient to create a genuine issue of material fact regarding the existence of more than one contract and remanded the matter for determination of that issue. 103 Idaho 301, 314, 647 P.2d 766, 770 (1982). Paragraph 13 of the second Rosin Affidavit provides as follows:

If Casey Daniels had requested a new bid for the placement and compaction of asphalt necessary to construct the Summerwind Pathway, I would have prepared a new Proposal for Extreme Line Construction to consider, rather than a Small Job Worksheet.

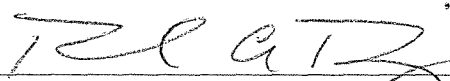
Construing this paragraph in the light most favorable to IFA, one would conclude that the Masco Proposal did not contractually obligate Knife River to perform the cart path work and that Knife River only decided that the cart paths should relate to the prior existing contract at the time the additional work was requested. Because this evidence, when construed in the light most favorable to IFA, supports the inference that Knife River determined to bill the cart path work under the existing contract solely in an attempt to revive previously extinguished lien rights, summary judgment is not appropriate and this Court should grant IFA's motion to reconsider.

III. CONCLUSION

For the foregoing reasons, IFA respectfully requests that this Court grant the present motion for reconsideration and enter an order denying plaintiff's motion for summary judgment.

DATED this 7th day of September, 2010.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

By 
Rebecca A. Rainey – Of the Firm
Attorneys for Defendants
Integrated Financial Associates, Inc.,
Geneva Equities, LLC, and
Certain Other Named Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of September, 2010, I caused a true and correct copy of the foregoing **REPLY MEMORANDUM IN SUPPORT OF DEFENDANT IFA'S MOTION FOR RECONSIDERATION** to be served by the method indicated below, and addressed to the following:

David T. Krueck
TROUT JONES GLEDHILL FUHRMAN, P.A.
225 N. 9th St., Suite 800
P.O. Box 1097
Boise, ID 83701-1617
Fax (208) 331-1529
*Attorneys for Hap Taylor & Sons, Inc. d/b/a
Knife River*

U.S. Mail, Postage Prepaid
 Hand Delivered
 Overnight Mail
 Facsimile

David E. Wishney
300 W. Myrtle St., Suite 200
P.O. Box 837
Boise, ID 83701-0837
Facsimile (208) 342-5749
*Attorneys for L222-1 ID Summerwind, LLC,
L222-2 ID Summerwind, LLC, L222-3 ID
Summerwind, LLC, and Union Land Company,
LLC, Kerry Angelos*

U.S. Mail, Postage Prepaid
 Hand Delivered
 Overnight Mail
 Facsimile

Donald W. Lojek
LOJEK LAW OFFICES, CHTD.
623 W. Hays St.
P.O. Box 1712
Boise, ID 83701
Facsimile (208) 345-0050
Attorneys for PMA, Inc.

U.S. Mail, Postage Prepaid
 Hand Delivered
 Overnight Mail
 Facsimile

Richard B. Eismann
EISMANN LAW OFFICES
3016 Caldwell Blvd.
Nampa, ID 83651-6416
Facsimile (208) 466-4498
Attorneys for Riverside, Inc.

U.S. Mail, Postage Prepaid
 Hand Delivered
 Overnight Mail
 Facsimile

David M. Swartley
EBERLE BERLIN KADING TURNBOW MCKLVEEN
& JONES
1111 W. Jefferson Street, Suite 530
P.O. Box 1368
Boise, ID 83701-1368
Facsimile (208) 344-8542
Attorneys for Conger Management Group, Inc.

U.S. Mail, Postage Prepaid
 Hand Delivered
 Overnight Mail
 Facsimile

Thomas E. Dvorak
Martin C. Hendrickson
Elizabeth M. Donick
GIVENS PURSLEY LLP
600 W. Bannock
P.O. Box 2720
Boise, ID 83701
Facsimile (208) 388-1300
Attorneys for Stanley Consultants, Inc.

U.S. Mail, Postage Prepaid
 Hand Delivered
 Overnight Mail
 Facsimile

William L. Smith
SMITH HERRAS, P.A.
5561 N. Glenwood St., Suite B
P.O. Box 140857
Boise, ID 83714
Facsimile 800-881-6219
Attorneys for Extreme Line Logistics, Inc.

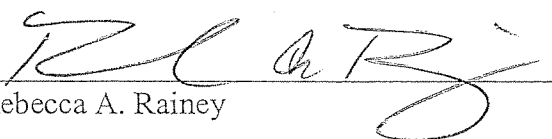
U.S. Mail, Postage Prepaid
 Hand Delivered
 Overnight Mail
 Facsimile

David E. Kerrick
1001 Blaine St.
P.O. Box 44
Caldwell, ID 83606
Facsimile (208) 459-4573
*Attorneys for Michael W. Benedict and
Carol L. Benedict*

U.S. Mail, Postage Prepaid
 Hand Delivered
 Overnight Mail
 Facsimile

Tom Mehiel, President
VALLEY HYDRO, INC.
1904 E. Beech St.
Caldwell, ID 83605
Pro Se Defendant

U.S. Mail, Postage Prepaid
 Hand Delivered
 Overnight Mail
 Facsimile


Rebecca A. Rainey

DEC 16 2010

CANYON COUNTY CLERK
RH, DEPUTY

DAVID T. KRUECK, ISB No. 6246
TROUT ♦ JONES ♦ GLEDHILL ♦ FUHRMAN ♦ GOURLEY, P.A.
225 North 9th Street, Suite 800
P.O. Box 1097
Boise, ID 83701-1617
Telephone: (208) 331-1170
Facsimile: (208) 331-1529
Email: dkrueck@idalaw.com

Attorneys for Plaintiff Hap Taylor & Sons, Inc. d/b/a Knife River

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

HAP TAYLOR & SONS, INC. d/b/a KNIFE
RIVER, an Oregon corporation doing business as
Knife River,

Plaintiff,

vs.

L222-1 ID SUMMERWIND, LLC, an Idaho
limited liability company; et. al.,

Defendants.

CASE NO. CV08-4251C ✓

**AFFIDAVIT OF JESSEE ROSIN IN
SUPPORT OF PLAINTIFF'S
SECOND MOTION FOR
SUMMARY JUDGMENT**

HAP TAYLOR & SONS, INC. d/b/a KNIFE
RIVER, an Oregon corporation doing business as
Knife River,

Plaintiff,

vs.

L222-1 ID SUMMERWIND, LLC, an Idaho
limited liability company; et. al.,

Defendants.

CASE NO. CV08-4252C

CONGER MANAGEMENT GROUP, INC., an
Idaho corporation,

Plaintiff,

vs.

L222-1 ID SUMMERWIND, LLC, an Idaho
limited liability company; et. al.,

Defendants.

CASE NO. CV08-11321

STATE OF IDAHO)
) :ss
County of ADA)

JESSEE ROSIN, being duly sworn upon oath, deposes and says:

1. I am at least eighteen (18) years of age and am competent to testify regarding the matters set forth herein.

2. I am an employee of Hap Taylor & Sons, Inc. ("Hap Taylor"), and have been since January 14, 2002.


3. I am, and was at all times described in this affidavit, an Estimator and Project Manager for Hap Taylor, and I am familiar with Hap Taylor's methods and procedures for preparing bids for construction projects, entering into contracts for construction projects and billing procedures for construction projects.

4. Hap Taylor has not been fully compensated for the work it performed for Extreme Line Construction on the Summerwind at Orchard Hills development in Canyon County, Idaho ("Summerwind").

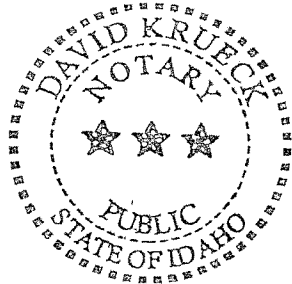
5. Attached hereto as Exhibit 'A,' and fully incorporated herein by this reference, are the outstanding invoices for work Hap Taylor performed for Extreme Line Construction at Summerwind.

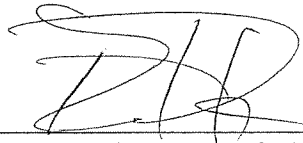
6. The principal balance due and owing to Hap Taylor under the terms and conditions of Hap Taylor's contract with Extreme Line for work performed at Summerwind is \$198,928.53.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

By: 
Jesse Rosin

Subscribed and sworn to before me this 15th day of December, 2010.




Notary Public, State of Idaho
Residing at: Boise, Idaho
My commission expires: 9/5/2012

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 16th day of December, 2010, I served a true and correct copy of the foregoing by delivering the same to each of the following individuals by the method indicated below, addressed as follows:

David E. Wishney
Attorney at Law
PO Box 837
Boise, ID 83701
*Attorney for L222-1 ID Summerwind, LLC;
L222-2 ID Summerwind, LLC; L222-3 ID
Summerwind, LLC; and Union Land
Company, LLC*

U.S. Mail
 Facsimile
 Overnight Mail
 Hand Delivery

Richard B. Eismann
EISMANN LAW OFFICES
3016 Caldwell Blvd.
Nampa, ID 83651-6416
Attorney for Riverside, Inc.

U.S. Mail
 Facsimile
 Overnight Mail
 Hand Delivery

Donald W. Lojek
LOJEK LAW OFFICES
PO Box 1712
Boise, ID 83701
Attorney for PMA, Inc.

U.S. Mail
 Facsimile
 Overnight Mail
 Hand Delivery

Thomas E. Dvorak
Martin C. Hendrickson
Elizabeth M. Donick
GIVENS PURSLEY LLP
PO Box 2720
Boise, ID 83701
Attorney for Stanley Consultants, Inc.

U.S. Mail
 Facsimile
 Overnight Mail
 Hand Delivery

William L. Smith
Smith Horras, P.a.
5561 N. Glenwood St., Suite B
P.O. Box 140857
Boise, ID 83714
Attorney for Extreme Line Logistics, Inc.

U.S. Mail
 Facsimile
 Overnight Mail
 Hand Delivery

David E. Kerrick
Kerrick & Associates
PO Box 44
Caldwell, ID 83606
*Attorneys for Michael W. Benedick and
Carol L. Benedick*

U.S. Mail
 Facsimile
 Overnight Mail
 Hand Delivery

Tom Mehiel, President
Valley Hydro, Inc.
1904 E. Beech Street
Caldwell, ID 83605
Pro Se Defendant

U.S. Mail
 Facsimile
 Overnight Mail
 Hand Delivery

Michael O. Roe
Rebecca A. Rainey
Moffatt, Thomas, Barrett, Rock & Fields, Chtd.
101 S. Capitol Blvd., 10th Floor
P.O. Box 829
Boise, ID 83701
*Attorneys for Integrated Financial Associates,
Inc., Geneva Equities, LLC, and Certain Other
Named Defendants*

U.S. Mail
 Facsimile
 Overnight Mail
 Hand Delivery



David T. Krueck

EXHIBIT A



Southern Idaho Division

5450 W. Gowen Road
 Boise, Idaho 83709
 Phone: 208-362-6152
 Fax: 208-362-6199

Customer: 84799
 EXTREME LINE CONSTRUCTION
 8145 E COLTER BAY DR
 Nampa ID 83687

Invoice Number 7317	Invoice Date 05/25/07
Application Number 2	Job Number 2566062
Job Description SUMMER WIND PH 1 & 2	
Customer Ref #	

DAN000000002

1	PLACE & COMPACT 3" POANT MIX 4,965.00 TN	64.50	321,597.00	4886	321,597.00	2403.00	154,993.50	2533.00	156,603.50
---	--	-------	------------	------	------------	---------	------------	---------	------------

Total Original Amount:	\$	321,597.00	\$	154,993.50	\$	156,603.50
Subtotal Amount:	\$	321,597.00	\$	154,993.50	\$	156,603.50
Total Invoice Amount:	\$	321,597.00	\$	154,993.50	\$	156,603.50

1153



Southern Idaho Division
 8450 W. Gowen Road
 Boise, Idaho 83709
 208-362-6152

86680		07/16/07	
84799			
Net 10th			

Sold To: **EXTREME LINE CONSTRUCTION**
 8146 E COLTER BAY DR
 NAMPA ID 83887

001	SUMMERWIND AC PATCH		
002			
003	REPAIR ASPHALT WHERE EQUIP		
004	WAS DRUG ACROSS ASPHALT		
006	AND AC PATCH		
006			
007	07/16/07		
008	4.16 TN @ \$47 1/2" ASPHALT		196.52
009	2.5 HRS @ \$85 TRUCKING		212.50
010	2.0 HRS @ \$65 SKIDSTEER		130.00
011	4.0 HRS @ \$75 ROLLER		300.00
012	536 HRS @ \$41 LABOR		222.56
013	4.0 HRS @ \$61 FOREMAN W/TRUCK		244.00
014			
016	JOB 2577361 - SUMMERWIND AC		
			1,307.52
			1,307.52

DAN000000003



Southern Idaho Division
 5450 W. Gowen Road
 Boise, Idaho 83709
 208-382-6152

92892	08/29/07
84799	
Net 10th	

Sold To: **EXTREME LINE CONSTRUCTION**
 8146 E COLTER BAY DR
 NAMPA ID 83687

001	SUMMERWIND PATHWAY		
002			
003	08/17/07 - 08/28/07		
004	PLACE & COMPACT A/C PLNT MIX		
005	694 TNS @ \$65.40		45,387.60
006			
007	PLACE & COMPACT 3/4" ROAD MIX		
008	1,672 TNS @ \$2.60		4,087.20
009			
010	JOB 2577423 - SUMMERWIND		
			49,474.80
			49,474.80

DAN000000004

DEC 16 2010

CANYON COUNTY CLERK
RH, DEPUTY

DAVID T. KRUECK, ISB No. 6246
TROUT ♦ JONES ♦ GLEDHILL ♦ FUHRMAN ♦ GOURLEY, P.A.
225 North 9th Street, Suite 800
P.O. Box 1097
Boise, ID 83701-1617
Telephone: (208) 331-1170
Facsimile: (208) 331-1529
Email: dkrueck@idalaw.com

Attorneys for Plaintiff Hap Taylor & Sons, Inc. d/b/a Knife River

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

HAP TAYLOR & SONS, INC. d/b/a KNIFE
RIVER, an Oregon corporation doing business as
Knife River,

Plaintiff,

vs.

L222-1 ID SUMMERWIND, LLC, an Idaho
limited liability company; et. al.,

Defendants.

CASE NO. CV08-4251C ✓

MEMORANDUM IN SUPPORT OF
PLAINTIFF'S SECOND MOTION
FOR SUMMARY JUDGMENT

HAP TAYLOR & SONS, INC. d/b/a KNIFE
RIVER, an Oregon corporation doing business as
Knife River,

Plaintiff,

vs.

L222-1 ID SUMMERWIND, LLC, an Idaho
limited liability company; et. al.,

Defendants.

CASE NO. CV08-4252C

CONGER MANAGEMENT GROUP, INC., an
Idaho corporation,

Plaintiff,

vs.

L222-1 ID SUMMERWIND, LLC, an Idaho
limited liability company; et. al.,

Defendants.

CASE NO. CV08-11321

COMES NOW, the Plaintiff, Hap Taylor & Sons, Inc. d/b/a Knife River (“Knife River”), by and through its counsel of record, Trout Jones Gledhill Fuhrman, P.A., and hereby respectfully submits this Memorandum in Support of Plaintiff’s Second Motion for Summary Judgment.

I.

INTRODUCTION

This case involves the foreclosure of Knife River’s interests in real property located in Canyon County, Idaho, previously owned by Union Land Company and/or its subsidiary companies, commonly referred to as the Summer Wind at Orchard Hills Subdivision (“Property”). Knife River recorded two (2) Claims of Lien against the Property, and commenced foreclosure proceedings on its liens in April 2008.¹

On April 13, 2010, the Court entered its Order on Motions for Summary Judgment (“Summary Judgment Order”), finding that Knife River has valid lien rights against the Property. Summary Judgment Order, p. 21 The Court further held that Knife River’s lien rights are prior

¹ Knife River initially commenced separate proceedings to enforce the Claims of Lien described in this motion. The cases have since been consolidated.

and superior to the interests of Integrated Financial Associates and Geneva Equities (collectively referred to hereinafter as “IFA”).² Id.

IFA filed a Motion to Reconsider the Summary Judgment Order. The Court heard oral argument on IFA’s motion on September 9, 2010. On October 26, 2010, the Court issued its Order on Defendant IFA’s Motion for Reconsideration (“Reconsideration Order”), denying IFA’s motion.

Knife River is now seeking a second summary judgment order to liquidate the amount of its claim. The record before the Court supports a finding that Knife River is entitled to a foreclosure judgment as a matter of law against the Property in the principal amount of \$198,928.53.

As set for the below, Tax Deeds were recently issued for several of the lots subject to Knife River’s liens due to the owner’s failure to pay property taxes.

II.

UNDISPUTED FACTS

1. Summerwind Partners, LLC (“Summerwind Partners”) is the record owner of the Property by way of Trustee’s Deeds issued in 2009. Affidavit of David T. Krueck in Support of Plaintiff’s Second Motion for Summary Judgment (“Krueck Affidavit”) Exhibit ‘A.’

2. Summerwind Partners is a manager managed limited liability company organized under the laws of the state of Nevada. Krueck Affidavit Exhibit ‘D.’

3. IFA is the manager member and registered agent of Summerwind Partners. Krueck Affidavit Exhibit ‘D.’

² IFA filed a cross-motion for summary judgment against Knife River that was denied by the Court. Summary Judgment Order, p. 26.

4. IFA and Summerwind Partners share the same physical address located at 7785 W. Sahara Ave., Suite 100, Las Vegas, Nevada 89117. Krueck Affidavit Exhibits 'C' and 'D.'

5. On November 30, 2010, the Canyon County Treasurer's Department issued Tax Deeds for nineteen (19) of the lots owned by Summerwind Partners for failure to pay property taxes assessed against these lots. Krueck Affidavit Exhibit 'E.'

6. The lots subject to the Tax Deeds issued by the Canyon County Treasurer's Department are part of the Property and are subject to Knife River's liens. Krueck Affidavit Exhibit 'E.'³

7. Knife River is owed the principal sum of \$198,928.53 from Extreme Line Construction for the work performed to improve the Property under the terms and conditions of the parties' subcontract agreement. Affidavit of Jesse Rosin in Support of Plaintiff's Second Motion for Summary Judgment ("Rosin Affidavit") ¶ 6, Exhibit 'A.'

8. Extreme Line Construction does not dispute the charges by Knife River for the work Knife River performed to improve the Property. Daniels Deposition p. 129:22 – 131:10, Exhibit 10; Krueck Affidavit Exhibit 'F.'

9. Knife River's liens against the Property are for \$198,928.53. Affidavit of David T. Krueck in Opposition to Motion for Summary Judgment as to Knife River's Lien Foreclosure Claim filed on or about January 28, 2010, Exhibit 'A.'

III.

STANDARD OF REVIEW

Rule 56(b) provides that a party against whom a claim is asserted may, at any time, move, with or without supporting affidavits, for a summary judgment in that party's favor as to

³ Knife River's Claims of Lien are attached to its foreclosure Complaints. The liens are also attached as Exhibit 'A' to the Affidavit of David T. Krueck in Support of Plaintiff's Motion for Summary Judgment filed on or about December 9, 2009.

all or any part thereof. See I.R.C.P. 56(b). Rule 56(c) of the Idaho Rules of Civil Procedure provides, in part, that upon the filing of a motion for summary judgment:

the judgment sought shall be rendered forthwith if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact, and that the moving party is entitled to a judgment as a matter of law.

See also Tetzlaff v. Brooks, 130 Idaho 903, 950 P.2d 1242 (1997). A mere scintilla of evidence or only slight doubt as to the facts is not enough to create a genuine issue for purposes of summary judgment. Harpoole v. State, 131 Idaho 437, 439, 958 P.2d 594, 596 (1998). The non-moving party must respond to the summary judgment motion with the specific facts showing there is a genuine issue for trial. Tuttle v. Sudenga Industries, Inc., 125 Idaho 145, 150, 868 P.2d 473, 478 (1994).

Summary judgment is appropriate where a non-moving party fails to make a showing sufficient to establish the existence of an element essential to its case when it bears the burden of proof. Harris v. State Department of Health & Welfare, 123 Idaho 295, 298, 857 P.2d 1156, 1159 (1992). A party against whom a summary judgment is sought cannot merely rest on its pleadings, but when faced with affidavits or depositions supporting the motion, must come forward by way of affidavit, deposition, admissions or other documentation to establish the existence of material issues of fact which preclude the issuance of summary judgment. Podolan v. Idaho Legal Aid Services, Inc., 123 Idaho 937, 854 P.2d 280 (Ct. App. 1993). “A complete failure of proof concerning an essential element of the non-moving party’s case necessarily renders all other facts immaterial.” McGilvray v. Farmers New World Life Ins. Co., 136 Idaho 39, 42, 28 P.3d 380, 383 (2001).

“When an action will be tried before the court without a jury, the trial court as the trier of fact is entitled to arrive at the most probable inferences based upon the undisputed evidence properly before it and grant the summary judgment despite the possibility of conflicting inferences.” *Shawver v. Huckleberry Estates, L.L.C.*, 140 Idaho 354, 360-61, 93 P.3d 685, 691-92 (2004).

IV.

ARGUMENT

Idaho’s lien statutes are liberally construed to effectuate their object and promote justice. *Metropolitan Life Ins. Co. v. First Sec. Bank of Idaho*, 94 Idaho 489, 493, 491 P.2d 1261, 1265 (1971). The goal of Idaho’s lien statutes is to compensate those that have performed work in the construction, alteration or repair of a structure. *Barber v. Honorof*, 116 Idaho 767, 768-69, 780 P.2d 89, 90-91 (1989).

Idaho Code § 45-511 provides in pertinent part “[t]he original or subcontractor shall be entitled to recover, upon claim filed by him, only such amount as may be due to him according to the terms of his contract.” The amount and extent of the lien is measured by the amount due to the claimant on its contract at the time of the filing of the lien. *Steltz v. Armory Co.*, 15 Idaho 551, 558, 99 P. 98, 101 (1908).

In the case at bar, the Court has already found that Knife River has valid liens attaching to the Property. The only issue left to be determined is the amount secured by Knife River’s liens, which is measured by the amount due under Knife River’s contract with Extreme Line Construction. Based upon the record before the Court, the undisputed principal amount due and owing to Knife River from Extreme Line Construction for the work Knife River performed to improve the Property is \$198,928.53.

Casey Daniels was the President of Extreme Line Construction at the time the subcontract agreement was entered into with Knife River for the placement and compaction of asphalt to develop and improve the Property. Mr. Daniels testified during his deposition that the invoices from Knife River to Extreme Line Construction totaling \$217,385.82 for work performed on the Property were unpaid. Mr. Daniels further testified that these invoices were submitted by Knife River for payment under the terms and conditions of Extreme Line Construction's contract with Knife River. Finally, Mr. Daniels testified that Extreme Line Construction does not dispute the amounts charged by Knife River in these invoices.

Jessee Rosin was the Project Manager for Knife River who negotiated the subcontract agreement with Extreme Line Construction for the work Knife River performed to improve the Property. Mr. Rosin testifies in his affidavit that the principal balance due and owing to Knife River under its contract with Extreme Line Construction is \$198,928.53. Knife River's liens against the Property total \$198,928.53, which represents the balance due under its contract from Extreme Line Construction.

The amount secured by Knife River's liens is undisputed. The parties to the contract agree on the amount. Consequently, Knife River is entitled to summary judgment liquidating the principal amount of its lien foreclosure rights against the Property for the undisputed amount of \$198,928.53.

Based upon information recently received by Knife River, the record owner is not paying property taxes on portions of the Property, which prejudices and imperils Knife River's foreclosure rights. On November 30, 2010, the Canyon County Treasurer's Department sent written notice to Knife River and all other interested parties that Tax Deeds were issued in favor

of the County for no less than nineteen (19) separate lots which comprise a substantial portion of Phase 2 of the Property.

Summerwind Partners is the record owner of the Property by way of a series of Trustee's Deeds issued in January and April 2009, following the non-judicial foreclosure of IFA's Deed of Trust against the Property. These conveyances all took place after Knife River's liens were recorded and these foreclosure proceedings were commenced. Moreover, the Trustee's Deeds transferring title to Summerwind Partners were issued and recorded long after Knife River recorded its Lis Pendens Instruments on April 29, 2008.

The Court has already determined that Knife River's interest in the Property is superior to the interests of IFA. Summerwind Partners took title to the Property as a result of IFA's foreclosure of its Deed of Trust. Therefore, Summerwind Partners acquired title to the Property subject to Knife River's liens.

IFA is the managing member and registered agent of Summerwind Partners. The two companies share the same physical address in Las Vegas, Nevada. By all appearances, Summerwind Partners was formed by IFA in November 2008 for the sole purpose of acquiring title to the Property. Summerwind Partners, however, failed to pay property taxes for nineteen lots in Phase 2 of the Property, thereby allowing Tax Deeds to be issued transferring title to the County.

Summerwind Partners' failure to pay property taxes impairs Knife River's lien rights. Extreme Line Construction already filed for bankruptcy relief, and received its discharge. Knife River, therefore, only has the remedy of foreclosing its liens to recover the amounts due and owing to it for work performed to improve the Property. Since these rights are threatened by Summerwind Partners' failure to pay taxes, Knife River seeks to enforce its foreclosure rights as

soon as possible to preserve title to the Property. Based upon the record before the Court, the Court should enter judgment as a matter of law to allow Knife River to immediately proceed with its foreclosure and credit bid for the principal sum of \$198,928.53.

V.


CONCLUSION

Knife River is entitled to summary judgment on the issue of the amount secured by its liens. The Court has already held that Knife River's liens are valid and superior to the interests of IFA in the Property, so the only remaining issue for the Court to determine is the amount due and owing to Knife River under its contract with Extreme Line Construction. As set forth above, the principal amount due and owing to Knife River by Extreme Line Construction for the work Knife River performed to improve the Property is \$198,928.53. Extreme Line Construction does not dispute this amount.

The record owner's failure to pay property taxes impairs Knife River's rights. Since the owner is not paying property taxes, Knife River should be entitled to a final judgment of foreclosure to allow Knife River to enforce its rights as soon as possible.

RESPECTFULLY SUBMITTED this 16th day of December, 2010.

TROUT ♦ JONES ♦ GLEDHILL ♦ FUHRMAN ♦ GOURLEY, P.A.

By: 
David T. Krueck, Esq.
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 16th day of December, 2010, I served a true and correct copy of the foregoing by delivering the same to each of the following individuals by the method indicated below, addressed as follows:

David E. Wishney
Attorney at Law
PO Box 837
Boise, ID 83701
*Attorney for L222-1 ID Summerwind, LLC;
L222-2 ID Summerwind, LLC; L222-3 ID
Summerwind, LLC; and Union Land
Company, LLC*

U.S. Mail
 Facsimile
 Overnight Mail
 Hand Delivery

Richard B. Eismann
EISMANN LAW OFFICES
3016 Caldwell Blvd.
Nampa, ID 83651-6416
Attorney for Riverside, Inc.

U.S. Mail
 Facsimile
 Overnight Mail
 Hand Delivery

Donald W. Lojek
LOJEK LAW OFFICES
PO Box 1712
Boise, ID 83701
Attorney for PMA, Inc.

U.S. Mail
 Facsimile
 Overnight Mail
 Hand Delivery

Thomas E. Dvorak
Martin C. Hendrickson
Elizabeth M. Donick
GIVENS PURSLEY LLP
PO Box 2720
Boise, ID 83701
Attorney for Stanley Consultants, Inc.

U.S. Mail
 Facsimile
 Overnight Mail
 Hand Delivery

William L. Smith
Smith Horras, P.a.
5561 N. Glenwood St., Suite B
P.O. Box 140857
Boise, ID 83714
Attorney for Extreme Line Logistics, Inc.

U.S. Mail
 Facsimile
 Overnight Mail
 Hand Delivery

David E. Kerrick
Kerrick & Associates
PO Box 44
Caldwell, ID 83606
*Attorneys for Michael W. Benedick and
Carol L. Benedick*

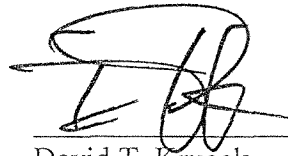
U.S. Mail
 Facsimile
 Overnight Mail
 Hand Delivery

Tom Mehiel, President
Valley Hydro, Inc.
1904 E. Beech Street
Caldwell, ID 83605
Pro Se Defendant

U.S. Mail
 Facsimile
 Overnight Mail
 Hand Delivery

Michael O. Roe
Rebecca A. Rainey
Moffatt, Thomas, Barrett, Rock & Fields, Chtd.
101 S. Capitol Blvd., 10th Floor
P.O. Box 829
Boise, ID 83701
*Attorneys for Integrated Financial Associates,
Inc., Geneva Equities, LLC, and Certain Other
Named Defendants*

U.S. Mail
 Facsimile
 Overnight Mail
 Hand Delivery



David T. Krueck

DEC 16 2010

CANYON COUNTY CLERK
KAL, DEPUTY

DAVID T. KRUECK, ISB No. 6246
TROUT ♦ JONES ♦ GLEDHILL ♦ FUHRMAN ♦ GOURLEY, P.A.
225 North 9th Street, Suite 800
P.O. Box 1097
Boise, ID 83701-1617
Telephone: (208) 331-1170
Facsimile: (208) 331-1529
Email: dkrueck@idalaw.com

Attorneys for Plaintiff Hap Taylor & Sons, Inc. d/b/a Knife River

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

HAP TAYLOR & SONS, INC. d/b/a KNIFE
RIVER, an Oregon corporation doing business as
Knife River,

Plaintiff,

vs.

L222-1 ID SUMMERWIND, LLC, an Idaho
limited liability company; et. al.,

Defendants.

CASE NO. CV08-4251C ✓

**PLAINTIFF'S SECOND MOTION
FOR SUMMARY JUDGMENT**

HAP TAYLOR & SONS, INC. d/b/a KNIFE
RIVER, an Oregon corporation doing business as
Knife River,

Plaintiff,

vs.

L222-1 ID SUMMERWIND, LLC, an Idaho
limited liability company; et. al.,

Defendants.

CASE NO. CV08-4252C

CONGER MANAGEMENT GROUP, INC., an
Idaho corporation,

Plaintiff,

vs.

L222-1 ID SUMMERWIND, LLC, an Idaho
limited liability company; et. al.,

Defendants.

CASE NO. CV08-11321

COMES NOW the Plaintiff Hap Taylor & Sons, Inc. d/b/a Knife River, by and through its counsel of record, the law firm of TROUT ♦ JONES ♦ GLEDHILL ♦ FUHRMAN ♦ GOURLEY, P.A., and hereby respectfully submits this Second Motion for Summary Judgment pursuant to Rule 56 of the Idaho Rules of Civil Procedure seeking an order from this Court finding that the Plaintiff is entitled to foreclose its Claims of Lien against the subject property for the amount secured by said Claims of Lien. This Motion is further supported by the Memorandum in Support of Plaintiff's Second Motion for Summary Judgment, the Affidavit of Jessee Rosin in Support of Plaintiff's Second Motion for Summary Judgment, the Affidavit of David T. Krueck in Support of Plaintiff's Second Motion for Summary Judgment and the pleadings and papers on file in this matter.

Oral argument is requested.

RESPECTFULLY SUBMITTED this 16th day of December, 2010.

TROUT ♦ JONES ♦ GLEDHILL ♦ FUHRMAN ♦ GOURLEY, P.A.



David T. Krueck, Esq.
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 16th day of December, 2010, I served a true and correct copy of the foregoing by delivering the same to each of the following individuals by the method indicated below, addressed as follows:

David E. Wishney
Attorney at Law
PO Box 837
Boise, ID 83701
*Attorney for L222-1 ID Summerwind, LLC;
L222-2 ID Summerwind, LLC; L222-3 ID
Summerwind, LLC; and Union Land
Company, LLC*

U.S. Mail
 Facsimile
 Overnight Mail
 Hand Delivery

Richard B. Eismann
EISMANN LAW OFFICES
3016 Caldwell Blvd.
Nampa, ID 83651-6416
Attorney for Riverside, Inc.

U.S. Mail
 Facsimile
 Overnight Mail
 Hand Delivery

Donald W. Lojek
LOJEK LAW OFFICES
PO Box 1712
Boise, ID 83701
Attorney for PMA, Inc.

U.S. Mail
 Facsimile
 Overnight Mail
 Hand Delivery

Thomas E. Dvorak
Martin C. Hendrickson
Elizabeth M. Donick
GIVENS PURSLEY LLP
PO Box 2720
Boise, ID 83701
Attorney for Stanley Consultants, Inc.

U.S. Mail
 Facsimile
 Overnight Mail
 Hand Delivery

William L. Smith
Smith Horras, P.a.
5561 N. Glenwood St., Suite B
P.O. Box 140857
Boise, ID 83714
Attorney for Extreme Line Logistics, Inc.

U.S. Mail
 Facsimile
 Overnight Mail
 Hand Delivery

David E. Kerrick
Kerrick & Associates
PO Box 44
Caldwell, ID 83606
*Attorneys for Michael W. Benedick and
Carol L. Benedick*

U.S. Mail
 Facsimile
 Overnight Mail
 Hand Delivery

Tom Mehiel, President
Valley Hydro, Inc.
1904 E. Beech Street
Caldwell, ID 83605
Pro Se Defendant

U.S. Mail
 Facsimile
 Overnight Mail
 Hand Delivery

Michael O. Roe
Rebecca A. Rainey
Moffatt, Thomas, Barrett, Rock & Fields, Chtd.
101 S. Capitol Blvd., 10th Floor
P.O. Box 829
Boise, ID 83701
*Attorneys for Integrated Financial Associates,
Inc., Geneva Equities, LLC, and Certain Other
Named Defendants*

U.S. Mail
 Facsimile
 Overnight Mail
 Hand Delivery



David T. Krueck

FILED
A.M. 3:00 P.M.

DEC 16 2010

CANYON COUNTY CLERK
A, DEPUTY

DAVID T. KRUECK, ISB No. 6246
TROUT ♦ JONES ♦ GLEDHILL ♦ FUHRMAN ♦ GOURLEY, P.A.
225 North 9th Street, Suite 800
P.O. Box 1097
Boise, ID 83701-1617
Telephone: (208) 331-1170
Facsimile: (208) 331-1529
Email: dkrueck@idalaw.com

Attorneys for Plaintiff Hap Taylor & Sons, Inc. d/b/a Knife River

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

HAP TAYLOR & SONS, INC. d/b/a KNIFE
RIVER, an Oregon corporation doing business as
Knife River,

Plaintiff,

vs.

L222-1 ID SUMMERWIND, LLC, an Idaho
limited liability company; et. al.,

Defendants.

CASE NO. CV08-4251C

**AFFIDAVIT OF DAVID T. KRUECK
IN SUPPORT OF PLAINTIFF'S
SECOND MOTION FOR
SUMMARY JUDGMENT**

HAP TAYLOR & SONS, INC. d/b/a KNIFE
RIVER, an Oregon corporation doing business as
Knife River,

Plaintiff,

vs.

L222-1 ID SUMMERWIND, LLC, an Idaho
limited liability company; et. al.,

Defendants.

CASE NO. CV08-4252C

CONGER MANAGEMENT GROUP, INC., an
Idaho corporation,

Plaintiff,

vs.

L222-1 ID SUMMERWIND, LLC, an Idaho
limited liability company; et. al.,

Defendants.

CASE NO. CV08-11321

STATE OF IDAHO)
) :ss
County of ADA)

DAVID T. KRUECK, being duly sworn upon oath, deposes and says:

1. I am at least eighteen (18) years of age and am competent to testify regarding the matters set forth herein.

2. I am a member of the law firm of TROUT ♦ JONES ♦ GLEDHILL ♦ FUHRMAN ♦ GOURLEY, P.A., representing the Plaintiff in this matter, and I make the following statements based upon my own personal knowledge.

3. Attached hereto as Exhibit 'A,' and fully incorporated herein by this reference, are true and correct copies of Trustee's Deeds transferring ownership of the property at issue in this matter to Summerwind Partners, LLC.

4. Attached hereto as Exhibit 'B,' and fully incorporated herein by this reference, is a true and correct copy of the Certificate of Authority issued by the Idaho Secretary of State for Integrated Financial Associates, Inc.

5. Attached hereto as Exhibit 'C,' and fully incorporated herein by this reference, is a true and correct copy of the Annual Report filed by Integrated Financial Associates, Inc. with the Idaho Secretary of State on or about April 21, 2010.

6. Attached hereto as Exhibit 'D,' and fully incorporated herein by this reference, is a true and correct copy of the Entity Details posted on the Nevada Secretary of State's website for Summerwind Partners, LLC.

7. Attached hereto as Exhibit 'E,' and fully incorporated herein by this reference, are true and correct copies of Notices of Tax Deeds served upon my office by the Canyon County Tax Assessor's Office, indicating that Tax Deeds were issued on November 30, 2010 against nineteen (19) parcels owned by Summerwind Partners, LLC that are subject to Knife River's liens and the Lis Pendens recorded in these consolidated proceedings.

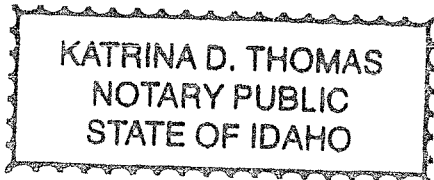
8. Attached hereto as Exhibit 'F,' and fully incorporated herein by this reference, is a true and correct copy of excerpts from the deposition of Casey Daniels taken on June 10, 2010 and Exhibit 10 to the deposition.

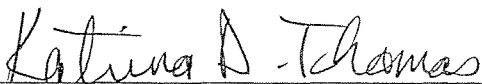
FURTHER YOUR AFFIANT SAYETH NAUGHT.

TROUT ♦ JONES ♦ GLEDHILL ♦ FUHRMAN, PA

By: 
David T. Krueck

Subscribed and sworn to before me this 16th day of December, 2010.




Notary Public, State of Idaho
Residing at: Boise, ID
My commission expires: 5/22/12

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 16th day of December, 2010, I served a true and correct copy of the foregoing by delivering the same to each of the following individuals by the method indicated below, addressed as follows:

David E. Wishney
Attorney at Law
PO Box 837
Boise, ID 83701
*Attorney for L222-1 ID Summerwind, LLC;
L222-2 ID Summerwind, LLC; L222-3 ID
Summerwind, LLC; and Union Land
Company, LLC*

U.S. Mail
 Facsimile
 Overnight Mail
 Hand Delivery

Richard B. Eismann
EISMANN LAW OFFICES
3016 Caldwell Blvd.
Nampa, ID 83651-6416
Attorney for Riverside, Inc.

U.S. Mail
 Facsimile
 Overnight Mail
 Hand Delivery

Donald W. Lojek
LOJEK LAW OFFICES
PO Box 1712
Boise, ID 83701
Attorney for PMA, Inc.

U.S. Mail
 Facsimile
 Overnight Mail
 Hand Delivery

Thomas E. Dvorak
Martin C. Hendrickson
Elizabeth M. Donick
GIVENS PURSLEY LLP
PO Box 2720
Boise, ID 83701
Attorney for Stanley Consultants, Inc.

U.S. Mail
 Facsimile
 Overnight Mail
 Hand Delivery

William L. Smith
Smith Horras, P.a.
5561 N. Glenwood St., Suite B
P.O. Box 140857
Boise, ID 83714
Attorney for Extreme Line Logistics, Inc.

U.S. Mail
 Facsimile
 Overnight Mail
 Hand Delivery

David E. Kerrick
Kerrick & Associates
PO Box 44
Caldwell, ID 83606
*Attorneys for Michael W. Benedick and
Carol L. Benedick*


U.S. Mail
 Facsimile
 Overnight Mail
 Hand Delivery

Tom Mehiel, President
Valley Hydro, Inc.
1904 E. Beech Street
Caldwell, ID 83605
Pro Se Defendant

U.S. Mail
 Facsimile
 Overnight Mail
 Hand Delivery

Michael O. Roe
Rebecca A. Rainey
Moffatt, Thomas, Barrett, Rock & Fields, Chtd.
101 S. Capitol Blvd., 10th Floor
P.O. Box 829
Boise, ID 83701
*Attorneys for Integrated Financial Associates,
Inc., Geneva Equities, LLC, and Certain Other
Named Defendants*

U.S. Mail
 Facsimile
 Overnight Mail
 Hand Delivery



David T. Krueck

EXHIBIT A

REQUEST
TYPE Deed FEE 1100
ALLIANCE-NAMPA



WILLIAM H. HURST
CANYON CITY RECORDER
BY William Hurst

2008 FEB 17 PM 4 34

RECORDED

20080212818

Trustee's Deed

ATF: 4990804603-06

Alliance Title & Escrow Corp., (herein called Trustee) as Trustee under the Deed of Trust hereinafter particularly described, does hereby BARGAIN, SELL and CONVEY, WITHOUT WARRANTY, TO SUMMERWIND PARTNERS, LLC, A NEVADA LIMITED LIABILITY COMPANY (herein called GRANTEE) whose address is: 7785 W. SAHARA AVE., SUITE 100, LAS VEGAS, NV 89117 all of the real property situated in the County of Canyon, State of Idaho described as follows:

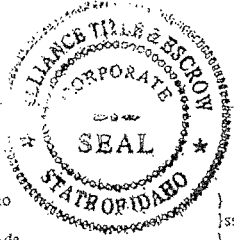
Lot 18, Block 4 of SummerWind at Orchard Hills Subdivision Phase II, Canyon County, Idaho, according to the official plat thereof, filed in Book 39 at Page 22, records of said County.

By reason of the automatic stay provisions of U.S. Bankruptcy Code 11 U.S.C. 362, the sale was discontinued, and pursuant to provisions of Idaho Code 45-1506(A) the sale was rescheduled and conducted following expiration or termination of the effect of the stay in the manner provided by that section. The Affidavit of Compliance with I.C. 45-1506A(2)(3), together with copies of the required Affidavit of Affidavits which are attached hereto and incorporated herein.

This conveyance is made pursuant to the powers conferred upon Trustee by the Deed of Trust between L222-1 ID Summerwind, LLC, an Idaho limited liability company as Grantor, the Alliance Title & Escrow Corp., Successor Trustee herein, and Integrated Financial Associates, Inc., a Nevada corporation as Beneficiary, recorded July 13, 2007, as Instrument No. 2007048606, records of Canyon County, Idaho, the beneficial interest being further assigned to those certain assignees more particularly identified on Exhibit "A" attached hereto by those certain Assignments of Note and Deed of Trust recorded as Instrument Nos. 2007065526, 2007065541 and 2007066074, records of Canyon County, Idaho, and after the fulfillment of the conditions specified in said Deed of Trust authorizing this conveyance as follows:

- (a) Default occurred in the obligations for which such Deed of Trust was given as security and the Beneficiary made demand upon the said Trustee to sell said property pursuant to the terms of said Deed of Trust. Notice of default was recorded as Instrument No. 2008032934, Canyon County Mortgage Records and in the office of the Recorder of each other county in which the property described in said Deed of Trust, or any part thereof, is situated, the nature of such default being as set forth in said notice of Default. Such default still existed at the time of sale.
- (b) After recordation of said Notice of Default, Trustee gave notice of the time and place of the sale of said property by registered or certified mail, by personal service upon the occupants of said real property, by posting in a conspicuous place on said property and by publishing in a newspaper of general circulation in each of the counties in which the property is situated as more fully appears in affidavits recorded at least 20 days prior to date of sale as Instrument No.(s): 2008047435, 2008047436 and 2008047437, Canyon County, Idaho Mortgage Records.
- (c) The provisions, recitals and contents of the Notice of Default referred to in paragraph (a) supra and of the Affidavits referred to in paragraph (b) supra shall be and they are hereby incorporated herein and made an integral part hereof for all purposes as though set forth herein at length.
- (d) Not less than 120 days elapsed between the giving of notice of sale by registered or certified mail and the sale of said property.
- (e) Trustee, at the time and place of sale fixed by said notice, at public auction, in one parcel, struck off to the Grantee, being the highest bidder therefore, the property herein described, for the sum of \$ 30,000.00, subject however to all prior liens and encumbrances. No person or corporation offered to take any part of said property less than the whole thereof for the amount of principal, interest, advances and costs.

IN WITNESS WHEREOF, The Trustee, pursuant a resolution of its Board of Directors has caused its corporate name to be hereunto subscribed by its Asst. Vice President and its corporate seal to be affixed by its Assistant Secretary this 9th day of March, 2009.



Alliance Title & Escrow Corp.

By: [Signature]

Attest: [Signature]

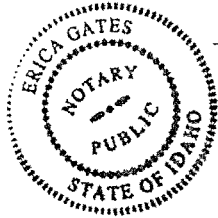
State of Idaho

County of Ada

} ss.

On this 9th day of March, 2009, before me, a Notary Public in and for said state, personally appeared Larry Floyd known to me to be the Asst. Vice President, and Bobbi Oldfield, known to me to be the Assistant Secretary of the Corporation, and acknowledged to me that pursuant to a Resolution of the Board of Directors, they executed the foregoing in said Corporation name.

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



[Signature]

Notary Public for the State of Idaho
Residing at: Boise, ID
Commission Expires: 12/23/2014

2009004168

RECORDED

2009 JAN 29 PM 4 31

WILLIAM H. HURST
CANYON CNTY RECORDER
BY *M.A. Berman*



ALLIANCE
TITLE & ESCROW CORP.

ALLIANCE - NAMP

REQUEST TYPE *Deed* \$2,000

Trustee's Deed

ATF: 4990804603-01

Alliance Title & Escrow Corp., (herein called Trustee) as successor Trustee under the Deed of Trust hereinafter particularly described, does hereby BARGAIN, SELL and CONVEY, WITHOUT WARRANTY, TO SUMMERWIND PARTNERS, LLC, A NEVADA LIMITED LIABILITY COMPANY

(herein called GRANTEE)

whose address is: 7785 W. SAHARA AVE., SUITE 100, LAS VEGAS, NV 89117
all of the real property situated in the County of Canyon, State of Idaho described as follows:

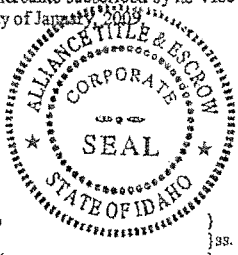
Lots 49-51, 53-61 and 63-65, Block 1; Lot 66, Block 1; and Lots 67-68, Block 1 of SummerWind at Orchard Hills Subdivision Phase II, Canyon County, Idaho, according to the official plat thereof, filed in Book 39 of Plats at Page 22, records of said County.

By reason of the automatic stay provisions of U.S. Bankruptcy Code 11 U.S.C. 362, the sale was discontinued, and pursuant to provisions of Idaho Code 45-1506(A) the sale was rescheduled and conducted following expiration or termination of the effect of the stay in the manner provided by that section. The Affidavit of Compliance with I.C. 45-1506A(2)(3), together with copies of the required Affidavit of Affidavits which are attached hereto and incorporated herein.

This conveyance is made pursuant to the powers conferred upon Trustee by the Deed of Trust between L222-1 ID Summerwind, LLC, an Idaho limited liability company as Grantor, the Alliance Title & Escrow Corp. (successor) Trustee herein, and Integrated Financial Associates, Inc., a Nevada corporation as Beneficiary, recorded July 13, 2007, as Instrument No. 2007048601, records of Canyon County, Idaho, the beneficial interest being further assigned to those certain assignees more particularly identified on Exhibit "A" attached hereto by those certain Assignments of Note and Deed of Trust recorded as Instrument Nos. 2007065531, 2007065546 and 2007066079, records of Canyon County, Idaho, and after the fulfillment of the conditions specified in said Deed of Trust authorizing this conveyance as follows:

- (a) Default occurred in the obligations for which such Deed of Trust was given as security and the Beneficiary made demand upon the said Trustee to sell said property pursuant to the terms of said Deed of Trust. Notice of default was recorded as Instrument No. 2008032924, Canyon County Mortgage Records and in the office of the Recorder of each other county in which the property described in said Deed of Trust, or any part thereof, is situated, the nature of such default being as set forth in said notice of Default. Such default still existed at the time of sale.
- (b) After recordation of said Notice of Default, Trustee gave notice of the time and place of the sale of said property by registered or certified mail, by personal service upon the occupants of said real property, by posting in a conspicuous place on said property and by publishing in a newspaper of general circulation in each of the counties in which the property is situated as more fully appears in affidavits recorded at least 20 days prior to date of sale as Instrument No.(s): 2008047443, 2008047444 and 2008047445, Canyon County, Idaho Mortgage Records.
- (c) The provisions, recitals and contents of the Notice of Default referred to in paragraph (a) supra and of the Affidavits referred to in paragraph (b) supra shall be and they are hereby incorporated herein and made an integral part hereof for all purposes as though set forth herein at length.
- (d) Not less than 120 days elapsed between the giving of notice of sale by registered or certified mail and the sale of said property.
- (e) Trustee, at the time and place of sale fixed by said notice, at public auction, in two parcels, struck off to the Grantee, being the highest bidder therefore, the properties herein described, for the sum of \$700,000.00 as to Lots 49-51, 53-61, 63-65 and 67-68 in Block 1 and for the sum of \$300,000.00 as to Lot 66 in Block 1, subject however to all prior liens and encumbrances. No person or corporation offered to take any part of said property less than the whole thereof for the amount of principal, interest, advances and costs.

IN WITNESS WHEREOF, The Trustee, pursuant a resolution of its Board of Directors has caused its corporate name to be hereunto subscribed by its Vice President and its corporate seal to be affixed by its Assistant. Secretary this 22nd day of January, 2009.



Alliance Title & Escrow Corp.

By: [Signature]

Attest: [Signature]

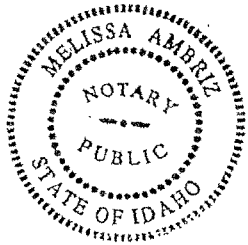
State of Idaho

County of Ada

} ss.

On this 22nd day of January, 2009, before me, a Notary Public in and for said state, personally appeared Kurtis Funke known to me to be the Vice President, and Bobbi Oldfield, known to me to be the Assistant Secretary of the Corporation, and acknowledged to me that pursuant to a Resolution of the Board of Directors, they executed the foregoing in said Corporation name.

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



[Signature]
Notary Public for the State of Idaho
Residing at: Kuna, ID
Commission Expires: 2-28-09

REQUESTED
BY Deed
8-2-00

ALLIANCE - MAMPA



Trustee's Deed

2009 JUN 29 PM 4 31
WILLIAM H. HORST
CANYON CNTY RECORDER
BY John W. Blevins

RECORDED

20080307100
2009064166

ATF: 4990804603-03

Alliance Title & Escrow Corp., (herein called Trustee) as successor Trustee under the Deed of Trust hereinafter particularly described, does hereby BARGAIN, SELL and CONVEY, WITHOUT WARRANTY, TO SUMMERWIND PARTNERS, LLC, A NEVADA LIMITED LIABILITY COMPANY (herein called GRANTEE) whose address is: 7785 W. SAHARA AVE., SUITE 100, LAS VEGAS, NV 89117 all of the real property situated in the County of Canyon, State of Idaho described as follows:

Lot 1, Block 1; Lots 2-14, Block 1; Lot 16, Block 1; and Lot 18, Block 1 of SummerWind at Orchard Hills Subdivision Phase I, Canyon County, Idaho, according to the official plat thereof, filed in Book 39 of Plats at Page 21, records of said County.

By reason of the automatic stay provisions of U.S. Bankruptcy Code 11 U.S.C. 362, the sale was discontinued, and pursuant to provisions of Idaho Code 45-1506(A) the sale was rescheduled and conducted following expiration or termination of the effect of the stay in the manner provided by that section. The Affidavit of Compliance with I.C. 45-1506A(2)(3), together with copies of the required Affidavit of Affidavits which are attached hereto and incorporated herein.

This conveyance is made pursuant to the powers conferred upon Trustee by the Deed of Trust between L222-1 1D Summerwind, LLC, an Idaho limited liability company as Grantor, the Alliance Title & Escrow Corp. (successor) Trustee herein, and Integrated Financial Associates, Inc., a Nevada corporation as Beneficiary, recorded July 13, 2007, as Instrument No. 2007048603, records of Canyon County, Idaho, the beneficial interest being further assigned to those certain assignees more particularly identified on Exhibit "A" attached hereto by those certain Assignments of Note and Deed of Trust recorded as Instrument Nos. 2007065529, 2007065544 and 2007066077, records of Canyon County, Idaho, and after the fulfillment of the conditions specified in said Deed of Trust authorizing this conveyance as follows:

- (a) Default occurred in the obligations for which such Deed of Trust was given as security and the Beneficiary made demand upon the said Trustee to sell said property pursuant to the terms of said Deed of Trust. Notice of default was recorded as Instrument No. 2008032928, Canyon County Mortgage Records and in the office of the Recorder of each other county in which the property described in said Deed of Trust, or any part thereof, is situated, the nature of such default being as set forth in said notice of Default. Such default still existed at the time of sale.
- (b) After recordation of said Notice of Default, Trustee gave notice of the time and place of the sale of said property by registered or certified mail, by personal service upon the occupants of said real property, by posting in a conspicuous place on said property and by publishing in a newspaper of general circulation in each of the counties in which the property is situated as more fully appears in affidavits recorded at least 20 days prior to date of sale as Instrument No.(s): 2008048643, 2008048644 and 2008048645, Canyon County, Idaho Mortgage Records.
- (c) The provisions, recitals and contents of the Notice of Default referred to in paragraph (a) supra and of the Affidavits referred to in paragraph (b) supra shall be and they are hereby incorporated herein and made an integral part hereof for all purposes as though set forth herein at length.
- (d) Not less than 120 days elapsed between the giving of notice of sale by registered or certified mail and the sale of said property.
- (e) Trustee, at the time and place of sale fixed by said notice, at public auction, in one parcel, struck off to the Grantee, being the highest bidder therefore, the property herein described, for the sum of \$ 800,000.00, subject however to all prior liens and encumbrances. No person or corporation offered to take any part of said property less than the whole thereof for the amount of principal, interest, advances and costs.

2009004165

RECORDED

2009 JAN 29 PM 4 31

WILLIAM H. ARNST
CANYON COUNTY RECORDER
BY *Dina Barrow*



ALLIANCE
TITLE & ESCROW CORP.

Trustee's Deed

REQUEST
TYPE *Deed*
81.00
ALLIANCE - NAMPA

ATF: 4990804603-04

Alliance Title & Escrow Corp. (herein called Trustee) as successor Trustee under the Deed of Trust hereinafter particularly described, does hereby BARGAIN, SELL and CONVEY, WITHOUT WARRANTY, TO SUMMERWIND PARTNERS, LLC, A NEVADA LIMITED LIABILITY COMPANY

(herein called GRANTEE)

whose address is: 7785 W. SAHARA AVE., SUITE 100, LAS VEGAS, NV 89117
all of the real property situated in the County of Canyon, State of Idaho described as follows:

Lot 15, Block 1 and Lot 17, Block 1 of SummerWind at Orchard Hills Subdivision Phase I, Canyon County, Idaho, according to the official plat thereof, filed in Book 39 of Plats at Page 21, records of said County.

By reason of the automatic stay provisions of U.S. Bankruptcy Code 11 U.S.C. 362, the sale was discontinued, and pursuant to provisions of Idaho Code 45-1506(A) the sale was rescheduled and conducted following expiration or termination of the effect of the stay in the manner provided by that section. The Affidavit of Compliance with I.C. 45-1506A(2)(3), together with copies of the required Affidavit of Affidavits which are attached hereto and incorporated herein.

This conveyance is made pursuant to the powers conferred upon Trustee by the Deed of Trust between L222-1 ID Summerwind, LLC, an Idaho limited liability company as Grantor, the Alliance Title & Escrow Corp. (successor) Trustee herein, and Integrated Financial Associates, Inc., a Nevada corporation as Beneficiary, recorded July 13, 2007, as Instrument No. 2007048604, records of Canyon County, Idaho, the beneficial interest being further assigned to those certain assignees more particularly identified on Exhibit "A" attached hereto by those certain Assignments of Note and Deed of Trust recorded as Instrument Nos. 2007065528, 2007065543 and 2007066076, records of Canyon County, Idaho, and after the fulfillment of the conditions specified in said Deed of Trust authorizing this conveyance as follows:

- (a) Default occurred in the obligations for which such Deed of Trust was given as security and the Beneficiary made demand upon the said Trustee to sell said property pursuant to the terms of said Deed of Trust. Notice of default was recorded as Instrument No. 2008032930, Canyon County Mortgage Records and in the office of the Recorder of each other county in which the property described in said Deed of Trust, or any part thereof, is situated, the nature of such default being as set forth in said notice of Default. Such default still existed at the time of sale.
- (b) After recordation of said Notice of Default, Trustee gave notice of the time and place of the sale of said property by registered or certified mail, by personal service upon the occupants of said real property, by posting in a conspicuous place on said property and by publishing in a newspaper of general circulation in each of the counties in which the property is situated as more fully appears in affidavits recorded at least 20 days prior to date of sale as Instrument No.(s): 2008048640, 2008048641 and 2008048642, Canyon County, Idaho Mortgage Records.
- (c) The provisions, recitals and contents of the Notice of Default referred to in paragraph (a) supra and of the Affidavits referred to in paragraph (b) supra shall be and they are hereby incorporated herein and made an integral part hereof for all purposes as though set forth herein at length.
- (d) Not less than 120 days elapsed between the giving of notice of sale by registered or certified mail and the sale of said property.
- (e) Trustee, at the time and place of sale fixed by said notice, at public auction, in one parcel, struck off to the Grantee, being the highest bidder therefore, the property herein described, for the sum of \$ 80,000.00, subject however to all prior liens and encumbrances: No person or corporation offered to take any part of said property less than the whole thereof for the amount of principal, interest, advances and costs.

IN WITNESS WHEREOF, The Trustee, pursuant a resolution of its Board of Directors has caused its corporate name to be hereunto subscribed by its Vice President and its corporate seal to be affixed by its Assistant Secretary this 22nd day of January, 2009.



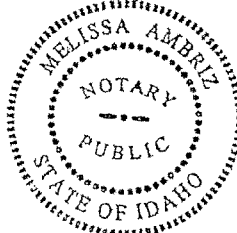
Alliance Title & Escrow Corp.

By: [Signature]
Attest: Bobbi Oldfield

State of Idaho
County of Ada } ss.

On this 22nd day of January, 2009, before me, a Notary Public in and for said state, personally appeared Kurtis Funke known to me to be the Vice President, and Bobbi Oldfield, known to me to be the Assistant Secretary of the Corporation, and acknowledged to me that pursuant to a Resolution of the Board of Directors, they executed the foregoing in said Corporation name.

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



[Signature]
Notary Public for the State of Idaho
Residing at: Kuna, ID
Commission Expires: 2-28-09

2009004164

RECORDED

2009 JUN 29 PM 4 34

WILLIAM H. FORST
CANYON COUNTY RECORDER
BY *W.M. & B. Brumby*



ALLIANCE
TITLE & ESCROW CORP.

ALLIANCE - NAMPBA

REQUEST
TYPE *D.O.D.*

93.00

Trustee's Deed

ATF: 4990804603-05

Alliance Title & Escrow Corp., (herein called Trustee) as successor Trustee under the Deed of Trust hereinafter particularly described, does hereby BARGAIN, SELL and CONVEY, WITHOUT WARRANTY, TO SUMMERWIND PARTNERS, LLC, A NEVADA LIMITED LIABILITY COMPANY (herein called GRANTEE) whose address is: 7785 W. SAHARA AVE., SUITE 100, LAS VEGAS, NV 89117 all of the real property situated in the County of Canyon, State of Idaho described as follows:

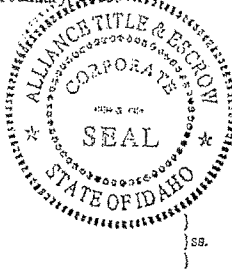
Lots 19-38, Block 1; Lot 39, Block 1; and Lot 40, Block 1 of SummerWind at Orchard Hills Subdivision Phase I, Canyon County, Idaho, according to the official plat thereof, filed in Book 39 of Plats at Page 21, records of said County.

By reason of the automatic stay provisions of U.S. Bankruptcy Code 11 U.S.C. 362, the sale was discontinued, and pursuant to provisions of Idaho Code 45-1506(A) the sale was rescheduled and conducted following expiration or termination of the effect of the stay in the manner provided by that section. The Affidavit of Compliance with I.C. 45-1506A(2)(3), together with copies of the required Affidavit of Affidavits which are attached hereto and incorporated herein.

This conveyance is made pursuant to the powers conferred upon Trustee by the Deed of Trust between L222-1 ID Summerwind, LLC, an Idaho limited liability company as Grantor, the Alliance Title & Escrow Corp. (successor) Trustee herein, and Integrated Financial Associates, Inc., a Nevada corporation as Beneficiary, recorded July 13, 2007, as Instrument No. 2007048605, records of Canyon County, Idaho, , the beneficial interest being further assigned to those certain assignees more particularly identified on Exhibit "A" attached hereto by those certain Assignments of Note and Deed of Trust recorded as Instrument Nos. 2007065527, 2007065542 and 2007066075, records of Canyon County, Idaho, and after the fulfillment of the conditions specified in said Deed of Trust authorizing this conveyance as follows:

- (a) Default occurred in the obligations for which such Deed of Trust was given as security and the Beneficiary made demand upon the said Trustee to sell said property pursuant to the terms of said Deed of Trust. Notice of default was recorded as Instrument No. 2008032932, Canyon County Mortgage Records and in the office of the Recorder of each other county in which the property described in said Deed of Trust, or any part thereof, is situated, the nature of such default being as set forth in said notice of Default. Such default still existed at the time of sale.
- (b) After recordation of said Notice of Default, Trustee gave notice of the time and place of the sale of said property by registered or certified mail, by personal service upon the occupants of said real property, by posting in a conspicuous place on said property and by publishing in a newspaper of general circulation in each of the counties in which the property is situated as more fully appears in affidavits recorded at least 20 days prior to date of sale as instrument No.(s): 2008047438, 2008047439 and 2008047440, Canyon County, Idaho Mortgage Records.
- (c) The provisions, recitals and contents of the Notice of Default referred to in paragraph (a) supra and of the Affidavits referred to in paragraph (b) supra shall be and they are hereby incorporated herein and made an integral part hereof for all purposes as though set forth herein at length.
- (d) Not less than 120 days elapsed between the giving of notice of sale by registered or certified mail and the sale of said property.
- (e) Trustee, at the time and place of sale fixed by said notice, at public auction, in one parcel, struck off to the Grantee, being the highest bidder therefore, the property herein described, for the sum of \$ 150,000.00 subject however to all prior liens and encumbrances. No person or corporation offered to take any part of said property less than the whole thereof for the amount of principal, interest, advances and costs.

IN WITNESS WHEREOF, The Trustee, pursuant a resolution of its Board of Directors has caused its corporate name to be hereunto subscribed by its Vice President and its corporate seal to be affixed by its Assistant Secretary this 22nd day of January, 2009.



Alliance Title & Escrow Corp.

By: [Signature]

Attest: Bobbi Oldfield

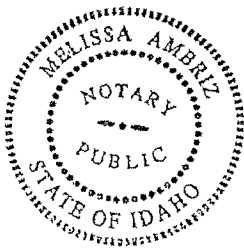
State of Idaho

County of Ada

} ss.

On this 22nd day of January, 2009, before me, a Notary Public in and for said state, personally appeared Kurtis Funke known to me to be the Vice President, and Bobbi Oldfield, known to me to be the Assistant Secretary of the Corporation, and acknowledged to me that pursuant to a Resolution of the Board of Directors, they executed the foregoing in said Corporation name.

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



[Signature]
Notary Public for the State of Idaho
Residing at: Kuna, ID
Commission Expires: 2-28-09

2009004163

RECORDED

2009 JUN 29 PM 4 30

WILLIAM H. HUBST
CANYON CNTY RECORDER
BY *M.A. Brown*



ALLIANCE
TITLE & ESCROW CORP.

ALLIANCE - NAMPBA

REQUEST
TYPE *Deal*

9/6/09

Trustee's Deed

ATF: 4990804603-06

Alliance Title & Escrow Corp., (herein called Trustee) as Trustee under the Deed of Trust hereinafter particularly described, does hereby BARGAIN, SELL and CONVEY, WITHOUT WARRANTY, TO SUMMERWIND PARTNERS, LLC, A NEVADA LIMITED LIABILITY COMPANY (herein called GRANTEE) whose address is: 7785 W. SAHARA AVE., SUITE 100, LAS VEGAS, NV 89117 all of the real property situated in the County of Canyon, State of Idaho described as follows:

Lots 2-8 and 10-14, Block 2; Lot 15, Block 2; and Lot 1, Block 3 of SummerWind at Orchard Hills Subdivision Phase I, Canyon County, Idaho, according to the official plat thereof, filed in Book 39 of Plats at Page 21, records of said County; AND Lots 2-7, Block 4; Lot 9, Block 4; Lots 11-16, Block 4; and Lot 19, Block 4 of SummerWind at Orchard Hills Subdivision Phase II, Canyon County, Idaho, according to the official plat thereof, filed in Book 39 at Page 22, records of said County.

By reason of the automatic stay provisions of U.S. Bankruptcy Code 11 U.S.C. 362, the sale was discontinued, and pursuant to provisions of Idaho Code 45-1506(A) the sale was rescheduled and conducted following expiration or termination of the effect of the stay in the manner provided by that section. The Affidavit of Compliance with I.C. 45-1506A(2)(3), together with copies of the required Affidavit of Affidavits which are attached hereto and incorporated herein.

This conveyance is made pursuant to the powers conferred upon Trustee by the Deed of Trust between L222-1 ID Summerwind, LLC, an Idaho limited liability company as Grantor, the Alliance Title & Escrow Corp. (successor) Trustee herein, and Integrated Financial Associates, Inc., a Nevada corporation as Beneficiary, recorded July 13, 2007, as Instrument No. 2007048606, records of Canyon County, Idaho, , the beneficial interest being further assigned to those certain assignees more particularly identified on Exhibit "A" attached hereto by those certain Assignments of Note and Deed of Trust recorded as Instrument Nos. 2007065526, 2007065541 and 2007066074, records of Canyon County, Idaho, and after the fulfillment of the conditions specified in said Deed of Trust authorizing this conveyance as follows:

- (a) Default occurred in the obligations for which such Deed of Trust was given as security and the Beneficiary made demand upon the said Trustee to sell said property pursuant to the terms of said Deed of Trust. Notice of default was recorded as Instrument No. 2008032934, Canyon County Mortgage Records and in the office of the Recorder of each other county in which the property described in said Deed of Trust, or any part thereof, is situated, the nature of such default being as set forth in said notice of Default. Such default still existed at the time of sale.
- (b) After recordation of said Notice of Default, Trustee gave notice of the time and place of the sale of said property by registered or certified mail, by personal service upon the occupants of said real property, by posting in a conspicuous place on said property and by publishing in a newspaper of general circulation in each of the counties in which the property is situated as more fully appears in affidavits recorded at least 20 days prior to date of sale as Instrument No.(s): 2008047435, 2008047436 and 2008047437, Canyon County, Idaho Mortgage Records.
- (c) The provisions, recitals and contents of the Notice of Default referred to in paragraph (a) supra and of the Affidavits referred to in paragraph (b) supra shall be and they are hereby incorporated herein and made an integral part hereof for all purposes as though set forth herein at length.
- (d) Not less than 120 days elapsed between the giving of notice of sale by registered or certified mail and the sale of said property.
- (e) Trustee, at the time and place of sale fixed by said notice, at public auction, in one parcel, struck off to the Grantee, being the highest bidder therefore, the property herein described, for the sum of \$ 200,000.00, subject however to all prior liens and encumbrances. No person or corporation offered to take any part of said property less than the whole thereof for the amount of principal, interest, advances and costs.

IN WITNESS WHEREOF, The Trustee, pursuant a resolution of its Board of Directors has caused its corporate name to be hereunto subscribed by its Vice President and its corporate seal to be affixed by its Assistant Secretary this 22nd day of January, 2009.



Alliance Title & Escrow Corp.

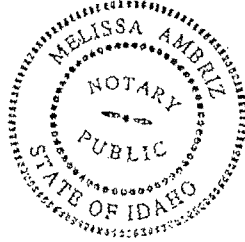
By: [Signature]

Attest: Bobbi Oldfield

State of Idaho
County of Ada

On this 22nd day of January, 2009, before me, a Notary Public in and for said state, personally appeared Kurtis Funke known to me to be the Vice President, and Bobbi Oldfield, known to me to be the Assistant Secretary of the Corporation, and acknowledged to me that pursuant to a Resolution of the Board of Directors, they executed the foregoing in said Corporation name.

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



[Signature]
Notary Public for the State of Idaho
Residing at: Kuna, ID
Commission Expires: 2-28-09

EXHIBIT B

State of Idaho

Office of the Secretary of State

CERTIFICATE OF AUTHORITY
OF
INTEGRATED FINANCIAL ASSOCIATES, INC.

File Number C.178821

I, BEN YSURSA, Secretary of State of the State of Idaho, hereby certify that an Application for Certificate of Authority, duly executed pursuant to the provisions of the Idaho Business Corporation Act, has been received in this office and is found to conform to law.

ACCORDINGLY and by virtue of the authority vested in me by law, I issue this Certificate of Authority to transact business in this State and attach hereto a duplicate of the application for such certificate.

Dated: June 3, 2008



Ben Ysursa
SECRETARY OF STATE

By _____

FILED EFFECTIVE



APPLICATION FOR CERTIFICATE OF AUTHORITY (For Profit)

(Instructions on Back of Application)

08 JUN -3 PM 4: 54

SECRETARY OF STATE STATE OF IDAHO

The undersigned Corporation applies for a Certificate of Authority and states as follows:

- 1. The name of the corporation is: Integrated Financial Associates, Inc.
2. The name which it shall use in Idaho is: Integrated Financial Associates, Inc.
3. It is incorporated under the laws of: Nevada
4. Its date of incorporation is: 1/24/1997
5. The address of its principal office is: 7785 W. Sahara Ave., Suite 100, Las Vegas, Nevada 89117
6. The address to which correspondence should be addressed, if different from item 5, is:
7. The street address of its registered office in Idaho is: 420 W. Washington St., Boise, Idaho 83702 and its registered agent in Idaho at that address is: Brian F. McColl

8. The names and respective business addresses of its directors and officers are:

Table with 3 columns: Name, Title, Business Address. Rows include William Dyer (President), Thomas Lea (Director), and Jerome F. Snyder (Secretary).

Dated: May 7, 2008
Signature: [Handwritten Signature]
Typed Name: William Dyer
Capacity: President
(The signer must be a director or an officer of the corporation.)

Customer Acct #:
Secretary of State use only
IDAHO SECRETARY OF STATE
06/04/2008 05:00
CK: 43536 CT: 50298 BH: 1118868
1 @ 100.00 = 100.00 AUTH PRO # 2

C178821

SECRETARY OF STATE



**CERTIFICATE OF EXISTENCE
WITH STATUS IN GOOD STANDING**

I, ROSS MILLER, the duly elected and qualified Nevada Secretary of State, do hereby certify that I am, by the laws of said State, the custodian of the records relating to filings by corporations, non-profit corporations, corporation soles, limited-liability companies, limited partnerships, limited-liability partnerships and business trusts pursuant to Title 7 of the Nevada Revised Statutes which are either presently in a status of good standing or were in good standing for a time period subsequent of 1976 and am the proper officer to execute this certificate.

I further certify that the records of the Nevada Secretary of State, at the date of this certificate, evidence, **INTEGRATED FINANCIAL ASSOCIATES, INC.**, as a corporation duly organized under the laws of Nevada and existing under and by virtue of the laws of the State of Nevada since January 24, 1997, and is in good standing in this state.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of State, at my office on May 7, 2008.



Ross Miller
ROSS MILLER
Secretary of State

Electronic Certificate
Certificate Number: C20080507-1149
You may verify this electronic certificate
online at <http://secretaryofstate.biz/>

EXHIBIT C

No. C 178821		Due no later than Jun 30, 2010 Annual Report Form		2. Registered Agent and Address (NO PO BOX)		
Return to: SECRETARY OF STATE 700 WEST JEFFERSON PO BOX 83720 BOISE, ID 83720-0080 NO FILING FEE IF RECEIVED BY DUE DATE		1. Mailing Address: Correct in this box if needed. INTEGRATED FINANCIAL ASSOCIATES, INC. WILLIAM DYER 7785 W SAHARA AVE STE 100 LAS VEGAS NV 89117 USA		BRIAN F MCCOLL 420 W WASHINGTON ST BOISE ID 83702		
				3. <u>New</u> Registered Agent Signature:*		
4. Corporations: Enter Names and Business Addresses of President, Secretary, Directors and (optional) Treasurer.						
Office Held	Name	Street or PO Address	City	State	Country	Postal Code
PRESIDENT	WILLIAM DYER	7785 W SAHARA AVE STE 100	LAS VEGAS	NV	USA	89117
SECRETARY	JEROME F SNYDER	7785 W SAHARA AVE STE 100	LAS VEGAS	NV	USA	89117
5. Organized Under the Laws of: NV C 178821		6. Annual Report must be signed.* Signature: William Dyer Name (type or print): William Dyer Date: 04/21/2010 Title: President				
Processed 04/21/2010		* Electronically provided signatures are accepted as original signatures.				

EXHIBIT D

SUMMERWIND PARTNERS, LLC

Business Entity Information

Status:	Active	File Date:	11/10/2008
Type:	Domestic Limited-Liability Company	Entity Number:	E0704042008-7
Qualifying State:	NV	List of Officers Due:	11/30/2011
Managed By:	Managers	Expiration Date:	1/01/2030
NV Business ID:	NV20081555015	Business License Exp:	11/30/2011

Registered Agent Information

Name:	INTEGRATED FINANCIAL ASSOCIATES INC	Address 1:	7785 W SAHARA AVE STE 100
Address 2:		City:	LAS VEGAS
State:	NV	Zip Code:	89117
Phone:		Fax:	
Mailing Address 1:		Mailing Address 2:	
Mailing City:		Mailing State:	
Mailing Zip Code:			
Agent Type:	Noncommercial Registered Agent		

Financial Information

No Par Share Count:	0	Capital Amount:	\$ 0
No stock records found for this company			

Officers

 Include Inactive Officers

Manager - INTEGRATED FINANCIAL ASSOCIATES, INC.			
Address 1:	3311 S. RAINBOW BLVD.	Address 2:	SUITE 209
City:	LAS VEGAS	State:	NV
Zip Code:	89146	Country:	
Status:	Active	Email:	

Actions\Amendments

Action Type:	Articles of Organization		
Document Number:	20080741071-30	# of Pages:	1
File Date:	11/10/2008	Effective Date:	
(No notes for this action)			
Action Type:	Initial List		
Document Number:	20080741073-52	# of Pages:	1
File Date:	11/10/2008	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20090824813-97	# of Pages:	1
File Date:	11/30/2009	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20100873425-52	# of Pages:	1
File Date:	11/22/2010	Effective Date:	
(No notes for this action)			

EXHIBIT E



CANYON COUNTY
TREASURER'S DEPARTMENT
1115 ALBANY STREET
CALDWELL, IDAHO 83605

RECEIVED

DEC 07 2010

36544174 0
DAVID T KRUECK, ISB #6246
225 N 9TH ST STE 800
BOISE ID 83701-1617

Article #: 71791000164470848922
Date/Time: 12/2/2010 1:35:38PM
Code: 36544174 0

This letter is to inform you that on November 30, 2010, a Tax Deed was issued in favor of CANYON COUNTY, STATE OF IDAHO, by TRACIE LLOYD, Treasurer and Ex-officio Tax Collector for Canyon County, State of Idaho, in compliance with Idaho State Code Sections 63-1005 and 63-1006, on the following described property:

Account No: 36544174 0
Parcel No: 082140010680
Acreage: 0.71
Section: 32-4N-4W SE
SUMMERWIND PH 2 LT 68 BLK 1

The name and last known address of the record owner or owners of said property were:

SUMMERWIND PARTNERS LLC
7785 W SAHARA AVE STE 100
LAS VEGAS NV 89117

If you are interested in redeeming said property, you must pay any delinquency, including late charges, accrued interest and costs, including, but not limited to, title search and other professional fees. All payments must be in the form of cashier's checks, money orders, certified checks or cash.
NO PERSONAL CHECKS WILL BE ACCEPTED.

Idaho Code Section 63-1007 sets forth the time and manner in which your redemption right expires.

For more information contact the Treasurer's Department at 1115 Albany, Room 342, Caldwell, Idaho 83605 or Phone (208) 454-7354.

TRACIE LLOYD
County Treasurer and Ex-officio
Tax Collector for Canyon County, Idaho



CANYON COUNTY
TREASURER'S DEPARTMENT
1115 ALBANY STREET
CALDWELL, IDAHO 83605

RECEIVED

DEC 07 2010

36544182 0
DAVID T KRUECK, ISB #6246
225 N 9TH ST STE 800
BOISE ID 83701-1617

Article #: 71791000164470849271
Date/Time: 12/2/2010 1:35:38PM
Code: 36544182 0

This letter is to inform you that on November 30, 2010, a Tax Deed was issued in favor of CANYON COUNTY, STATE OF IDAHO, by TRACIE LLOYD, Treasurer and Ex-officio Tax Collector for Canyon County, State of Idaho, in compliance with Idaho State Code Sections 63-1005 and 63-1006, on the following described property:

Account No: **36544182 0**
Parcel No: 082140040090
Acreage: 0.83
Section: 32-4N-4W SE
SUMMERWIND PH 2 LT 9 BLK 4

The name and last known address of the record owner or owners of said property were:

SUMMERWIND PARTNERS LLC
7785 W SAHARA AVE STE 100
LAS VEGAS NV 89117

If you are interested in redeeming said property, you must pay any delinquency, including late charges, accrued interest and costs, including, but not limited to, title search and other professional fees. All payments must be in the form of cashier's checks, money orders, certified checks or cash.
NO PERSONAL CHECKS WILL BE ACCEPTED.

Idaho Code Section 63-1007 sets forth the time and manner in which your redemption right expires.

For more information contact the Treasurer's Department at 1115 Albany, Room 342, Caldwell, Idaho 83605 or Phone (208) 454-7354.

TRACIE LLOYD
County Treasurer and Ex-officio
Tax Collector for Canyon County, Idaho



CANYON COUNTY
TREASURER'S DEPARTMENT
1115 ALBANY STREET
CALDWELL, IDAHO 83605

RECEIVED
DEC 07 2010

36544168 0
DAVID T KRUECK, ISB #6246
225 N 9TH ST STE 800
BOISE ID 83701-1617

Article #: 71791000164470848571
Date/Time: 12/2/2010 1:35:38PM
Code: 36544168 0

This letter is to inform you that on November 30, 2010, a Tax Deed was issued in favor of CANYON COUNTY, STATE OF IDAHO, by TRACIE LLOYD, Treasurer and Ex-officio Tax Collector for Canyon County, State of Idaho, in compliance with Idaho State Code Sections 63-1005 and 63-1006, on the following described property:

Account No: **36544168 0**
Parcel No: 082140010610
Acreage: 0.73
Section: 32-4N-4W SE
SUMMERWIND PH 2 LT 61 BLK 1

The name and last known address of the record owner or owners of said property were:

SUMMERWIND PARTNERS LLC
7785 W SAHARA AVE STE 100
LAS VEGAS NV 89117

If you are interested in redeeming said property, you must pay any delinquency, including late charges, accrued interest and costs, including, but not limited to, title search and other professional fees. All payments must be in the form of cashier's checks, money orders, certified checks or cash.

NO PERSONAL CHECKS WILL BE ACCEPTED.

Idaho Code Section 63-1007 sets forth the time and manner in which your redemption right expires.

For more information contact the Treasurer's Department at 1115 Albany, Room 342, Caldwell, Idaho 83605 or Phone (208) 454-7354.

TRACIE LLOYD
County Treasurer and Ex-officio
Tax Collector for Canyon County, Idaho



CANYON COUNTY
TREASURER'S DEPARTMENT
1115 ALBANY STREET
CALDWELL, IDAHO 83605

RECEIVED
DEC 07 2010

36544171 0
DAVID T KRUECK, ISB #6246
225 N 9TH ST STE 800
BOISE ID 83701-1617

Article #: 71791000164470848717
Date/Time: 12/2/2010 1:35:38PM
Code: 36544171 0

This letter is to inform you that on November 30, 2010, a Tax Deed was issued in favor of CANYON COUNTY, STATE OF IDAHO, by TRACIE LLOYD, Treasurer and Ex-officio Tax Collector for Canyon County, State of Idaho, in compliance with Idaho State Code Sections 63-1005 and 63-1006, on the following described property:

Account No: 36544171 0
Parcel No: 082140010640
Acreage: 0.82
Section: 32-4N-4W SE
SUMMERWIND PH 2 LT 64 BLK 1

The name and last known address of the record owner or owners of said property were:

SUMMERWIND PARTNERS LLC
7785 W SAHARA AVE STE 100
LAS VEGAS NV 89117

If you are interested in redeeming said property, you must pay any delinquency, including late charges, accrued interest and costs, including, but not limited to, title search and other professional fees. All payments must be in the form of cashier's checks, money orders, certified checks or cash.
NO PERSONAL CHECKS WILL BE ACCEPTED.

Idaho Code Section 63-1007 sets forth the time and manner in which your redemption right expires.

For more information contact the Treasurer's Department at 1115 Albany, Room 342, Caldwell, Idaho 83605 or Phone (208) 454-7354.

TRACIE LLOYD
County Treasurer and Ex-officio
Tax Collector for Canyon County, Idaho



CANYON COUNTY
TREASURER'S DEPARTMENT
1115 ALBANY STREET
CALDWELL, IDAHO 83605

RECEIVED
DEC 07 2010

36544170 0
DAVID T KRUECK, ISB #6246
225 N 9TH ST STE 800
BOISE ID 83701-1617

Article #: 71791000164470848649
Date/Time: 12/2/2010 1:35:38PM
Code: 36544170 0

This letter is to inform you that on November 30, 2010, a Tax Deed was issued in favor of CANYON COUNTY; STATE OF IDAHO, by TRACIE LLOYD, Treasurer and Ex-officio Tax Collector for Canyon County, State of Idaho, in compliance with Idaho State Code Sections 63-1005 and 63-1006, on the following described property:

Account No: **36544170 0**
Parcel No: 082140010630
Acreage: 0.72
Section: 32-4N-4W SE
SUMMERWIND PH 2 LT 63 BLK 1

The name and last known address of the record owner or owners of said property were:

SUMMERWIND PARTNERS LLC
7785 W SAHARA AVE STE 100
LAS VEGAS NV 89117

If you are interested in redeeming said property, you must pay any delinquency, including late charges, accrued interest and costs, including, but not limited to, title search and other professional fees. All payments must be in the form of cashier's checks, money orders, certified checks or cash.
NO PERSONAL CHECKS WILL BE ACCEPTED.

Idaho Code Section 63-1007 sets forth the time and manner in which your redemption right expires.

For more information contact the Treasurer's Department at 1115 Albany, Room 342, Caldwell, Idaho 83605 or Phone (208) 454-7354.

TRACIE LLOYD
County Treasurer and Ex-officio
Tax Collector for Canyon County, Idaho



CANYON COUNTY
TREASURER'S DEPARTMENT
1115 ALBANY STREET
CALDWELL, IDAHO 83605

RECEIVED
DEC 07 2010

Article #: 71791000164470848786
Date/Time: 12/2/2010 1:35:38PM
Code: 36544172 0

36544172 0
DAVID T KRUECK, ISB #6246
225 N 9TH ST STE 800
BOISE ID 83701-1617

This letter is to inform you that on November 30, 2010, a Tax Deed was issued in favor of CANYON COUNTY, STATE OF IDAHO, by TRACIE LLOYD, Treasurer and Ex-officio Tax Collector for Canyon County, State of Idaho, in compliance with Idaho State Code Sections 63-1005 and 63-1006, on the following described property:

Account No: **36544172 0**
Parcel No: 082140010650
Acreage: 0.84
Section: 32-4N-4W SE
SUMMERWIND PH 2 LT 65 BLK 1

The name and last known address of the record owner or owners of said property were:

SUMMERWIND PARTNERS LLC
7785 W SAHARA AVE STE 100
LAS VEGAS NV 89117

If you are interested in redeeming said property, you must pay any delinquency, including late charges, accrued interest and costs, including, but not limited to, title search and other professional fees. All payments must be in the form of cashier's checks, money orders, certified checks or cash.

NO PERSONAL CHECKS WILL BE ACCEPTED.

Idaho Code Section 63-1007 sets forth the time and manner in which your redemption right expires.

For more information contact the Treasurer's Department at 1115 Albany, Room 342, Caldwell, Idaho 83605 or Phone (208) 454-7354.

TRACIE LLOYD
County Treasurer and Ex-officio
Tax Collector for Canyon County, Idaho



CANYON COUNTY
TREASURER'S DEPARTMENT
1115 ALBANY STREET
CALDWELL, IDAHO 83605

RECEIVED

DEC 07 2010

36544184 0
DAVID T KRUECK, ISB #6246
225 N 9TH ST STE 800
BOISE ID 83701-1617

Article #: 71791000164470849349
Date/Time: 12/2/2010 1:35:38PM
Code: 36544184 0

This letter is to inform you that on November 30, 2010, a Tax Deed was issued in favor of CANYON COUNTY, STATE OF IDAHO, by TRACIE LLOYD, Treasurer and Ex-officio Tax Collector for Canyon County, State of Idaho, in compliance with Idaho State Code Sections 63-1005 and 63-1006, on the following described property:

Account No: 36544184 0
Parcel No: 082140040110
Acreage: 0.83
Section: 32-4N-4W SE
SUMMERWIND PH 2 LT 11 BLK 4

The name and last known address of the record owner or owners of said property were:

SUMMERWIND PARTNERS LLC
7785 W SAHARA AVE STE 100
LAS VEGAS NV 89117

If you are interested in redeeming said property, you must pay any delinquency, including late charges, accrued interest and costs, including, but not limited to, title search and other professional fees. All payments must be in the form of cashier's checks, money orders, certified checks or cash.
NO PERSONAL CHECKS WILL BE ACCEPTED.

Idaho Code Section 63-1007 sets forth the time and manner in which your redemption right expires.

For more information contact the Treasurer's Department at 1115 Albany, Room 342, Caldwell, Idaho 83605 or Phone (208) 454-7354.

TRACIE LLOYD
County Treasurer and Ex-officio
Tax Collector for Canyon County, Idaho



CANYON COUNTY
TREASURER'S DEPARTMENT
1115 ALBANY STREET
CALDWELL, IDAHO 83605

RECEIVED
DEC 07 2010

Article #: 71791000164470849066
Date/Time: 12/2/2010 1:35:38PM
Code: 36544176 0

36544176 0
DAVID T KRUECK, ISB #6246
225 N 9TH ST STE 800
BOISE ID 83701-1617

This letter is to inform you that on November 30, 2010, a Tax Deed was issued in favor of CANYON COUNTY, STATE OF IDAHO, by TRACIE LLOYD, Treasurer and Ex-officio Tax Collector for Canyon County, State of Idaho, in compliance with Idaho State Code Sections 63-1005 and 63-1006, on the following described property:

Account No: 36544176 0
Parcel No: 082140040030
Acreage: 0.81
Section: 32-4N-4W SE
SUMMERWIND PH 2 LT 3 BLK 4

The name and last known address of the record owner or owners of said property were:

SUMMERWIND PARTNERS LLC
7785 W SAHARA AVE STE 100
LAS VEGAS NV 89117

If you are interested in redeeming said property, you must pay any delinquency, including late charges, accrued interest and costs, including, but not limited to, title search and other professional fees. All payments must be in the form of cashier's checks, money orders, certified checks or cash.

NO PERSONAL CHECKS WILL BE ACCEPTED.

Idaho Code Section 63-1007 sets forth the time and manner in which your redemption right expires.

For more information contact the Treasurer's Department at 1115 Albany, Room 342, Caldwell, Idaho 83605 or Phone (208) 454-7354.

TRACIE LLOYD
County Treasurer and Ex-officio
Tax Collector for Canyon County, Idaho



CANYON COUNTY
TREASURER'S DEPARTMENT
1115 ALBANY STREET
CALDWELL, IDAHO 83605

RECEIVED
DEC 07 2010

36544175 0
DAVID T KRUECK, ISB #6246
225 N 9TH ST STE 800
BOISE ID 83701-1617

Article #: 71791000164470848991
Date/Time: 12/2/2010 1:35:38PM
Code: 36544175 0

This letter is to inform you that on November 30, 2010, a Tax Deed was issued in favor of CANYON COUNTY, STATE OF IDAHO, by TRACIE LLOYD, Treasurer and Ex-officio Tax Collector for Canyon County, State of Idaho, in compliance with Idaho State Code Sections 63-1005 and 63-1006, on the following described property:

Account No: **36544175 0**
Parcel No: 082140040020
Acreage: 0.97
Section: 32-4N-4W SE
SUMMERWIND PH 2 LT 2 BLK 4

The name and last known address of the record owner or owners of said property were:

SUMMERWIND PARTNERS LLC
7785 W SAHARA AVE STE 100
LAS VEGAS NV 89117

If you are interested in redeeming said property, you must pay any delinquency, including late charges, accrued interest and costs, including, but not limited to, title search and other professional fees. All payments must be in the form of cashier's checks, money orders, certified checks or cash.
NO PERSONAL CHECKS WILL BE ACCEPTED.

Idaho Code Section 63-1007 sets forth the time and manner in which your redemption right expires.

For more information contact the Treasurer's Department at 1115 Albany, Room 342, Caldwell, Idaho 83605 or Phone (208) 454-7354.

TRACIE LLOYD
County Treasurer and Ex-officio
Tax Collector for Canyon County, Idaho



CANYON COUNTY
TREASURER'S DEPARTMENT
1115 ALBANY STREET
CALDWELL, IDAHO 83605

RECEIVED
DEC 07 2010

36544177 0
DAVID T KRUECK, ISB #6246
225 N 9TH ST STE 800
BOISE ID 83701-1617

Article #: 71791000164470849134
Date/Time: 12/2/2010 1:35:38PM
Code: 36544177 0

This letter is to inform you that on November 30, 2010, a Tax Deed was issued in favor of CANYON COUNTY, STATE OF IDAHO, by TRACIE LLOYD, Treasurer and Ex-officio Tax Collector for Canyon County, State of Idaho, in compliance with Idaho State Code Sections 63-1005 and 63-1006, on the following described property:

Account No: **36544177 0**
Parcel No: 082140040040
Acreage: 0.80
Section: 32-4N-4W SE
SUMMERWIND PH 2 LT 4 BLK 4

The name and last known address of the record owner or owners of said property were:

SUMMERWIND PARTNERS LLC
7785 W SAHARA AVE STE 100
LAS VEGAS NV 89117

If you are interested in redeeming said property, you must pay any delinquency, including late charges, accrued interest and costs, including, but not limited to, title search and other professional fees. All payments must be in the form of cashier's checks, money orders, certified checks or cash.
NO PERSONAL CHECKS WILL BE ACCEPTED.

Idaho Code Section 63-1007 sets forth the time and manner in which your redemption right expires.

For more information contact the Treasurer's Department at 1115 Albany, Room 342, Caldwell, Idaho 83605 or Phone (208) 454-7354.

TRACIE LLOYD
County Treasurer and Ex-officio
Tax Collector for Canyon County, Idaho



CANYON COUNTY
TREASURER'S DEPARTMENT
1115 ALBANY STREET
CALDWELL, IDAHO 83605

RECEIVED
DEC 07 2010

36544187 0
DAVID T KRUECK, ISB #6246
225 N 9TH ST STE 800
BOISE ID 83701-1617

Article #: 71791000164470849554
Date/Time: 12/2/2010 1:35:38PM
Code: 36544187 0

This letter is to inform you that on November 30, 2010, a Tax Deed was issued in favor of CANYON COUNTY, STATE OF IDAHO, by TRACIE LLOYD, Treasurer and Ex-officio Tax Collector for Canyon County, State of Idaho, in compliance with Idaho State Code Sections 63-1005 and 63-1006, on the following described property:

Account No: 36544187 0
Parcel No: 082140040140
Acreage: 0.79
Section: 32-4N-4W SE
SUMMERWIND PH 2 LT 14 BLK 4

The name and last known address of the record owner or owners of said property were:

SUMMERWIND PARTNERS LLC
7785 W SAHARA AVE STE 100
LAS VEGAS NV 89117

If you are interested in redeeming said property, you must pay any delinquency, including late charges, accrued interest and costs, including, but not limited to, title search and other professional fees. All payments must be in the form of cashier's checks, money orders, certified checks or cash.
NO PERSONAL CHECKS WILL BE ACCEPTED.

Idaho Code Section 63-1007 sets forth the time and manner in which your redemption right expires.

For more information contact the Treasurer's Department at 1115 Albany, Room 342, Caldwell, Idaho 83605 or Phone (208) 454-7354.

TRACIE LLOYD
County Treasurer and Ex-officio
Tax Collector for Canyon County, Idaho



CANYON COUNTY
TREASURER'S DEPARTMENT
1115 ALBANY STREET
CALDWELL, IDAHO 83605

RECEIVED
DEC 07 2010

36544180 0
DAVID T KRUECK, ISB #6246
225 N 9TH ST STE 800
BOISE ID 83701-1617

Article #: 71791000164470849202
Date/Time: 12/2/2010 1:35:38PM
Code: 36544180 0

This letter is to inform you that on November 30, 2010, a Tax Deed was issued in favor of CANYON COUNTY, STATE OF IDAHO, by TRACIE LLOYD, Treasurer and Ex-officio Tax Collector for Canyon County, State of Idaho, in compliance with Idaho State Code Sections 63-1005 and 63-1006, on the following described property:

Account No: **36544180 0**
Parcel No: 082140040070
Acreage: 0.83
Section: 32-4N-4W SE
SUMMERWIND PH 2 LT 7 BLK 4

The name and last known address of the record owner or owners of said property were:

SUMMERWIND PARTNERS LLC
7785 W SAHARA AVE STE 100
LAS VEGAS NV 89117

If you are interested in redeeming said property, you must pay any delinquency, including late charges, accrued interest and costs, including, but not limited to, title search and other professional fees. All payments must be in the form of cashier's checks, money orders, certified checks or cash.
NO PERSONAL CHECKS WILL BE ACCEPTED.

Idaho Code Section 63-1007 sets forth the time and manner in which your redemption right expires.

For more information contact the Treasurer's Department at 1115 Albany, Room 342, Caldwell, Idaho 83605 or Phone (208) 454-7354.

TRACIE LLOYD
County Treasurer and Ex-officio
Tax Collector for Canyon County, Idaho



CANYON COUNTY
 TREASURER'S DEPARTMENT
 1115 ALBANY STREET
 CALDWELL, IDAHO 83605

RECEIVED
 DEC 07 2010

Article #: 71791000164470849769
 Date/Time: 12/2/2010 1:35:38PM
 Code: 36544191 0

36544191 0
 DAVID T KRUECK, ISB #6246
 225 N 9TH ST STE 800
 BOISE ID 83701-1617

This letter is to inform you that on November 30, 2010, a Tax Deed was issued in favor of CANYON COUNTY, STATE OF IDAHO, by TRACIE LLOYD, Treasurer and Ex-officio Tax Collector for Canyon County, State of Idaho, in compliance with Idaho State Code Sections 63-1005 and 63-1006, on the following described property:

Account No: 36544191 0
 Parcel No: 082140040180
 Acreage: 0.91
 Section: 32-4N-4W SE
 SUMMERWIND PH 2 LT 18 BLK 4

The name and last known address of the record owner or owners of said property were:

SUMMERWIND PARTNERS LLC
 7785 W SAHARA AVE STE 100
 LAS VEGAS NV 89117

If you are interested in redeeming said property, you must pay any delinquency, including late charges, accrued interest and costs, including, but not limited to, title search and other professional fees. All payments must be in the form of cashier's checks, money orders, certified checks or cash.
NO PERSONAL CHECKS WILL BE ACCEPTED.

Idaho Code Section 63-1007 sets forth the time and manner in which your redemption right expires.

For more information contact the Treasurer's Department at 1115 Albany, Room 342, Caldwell, Idaho 83605 or Phone (208) 454-7354.

TRACIE LLOYD
 County Treasurer and Ex-officio
 Tax Collector for Canyon County, Idaho



CANYON COUNTY
TREASURER'S DEPARTMENT
1115 ALBANY STREET
CALDWELL, IDAHO 83605

RECEIVED
DEC 07 2010

Article #: 71791000164470849691
Date/Time: 12/2/2010 1:35:38PM
Code: 36544189 0

36544189 0
DAVID T KRUECK, ISB #6246
225 N 9TH ST STE 800
BOISE ID 83701-1617

This letter is to inform you that on November 30, 2010, a Tax Deed was issued in favor of CANYON COUNTY, STATE OF IDAHO, by TRACIE LLOYD, Treasurer and Ex-officio Tax Collector for Canyon County, State of Idaho, in compliance with Idaho State Code Sections 63-1005 and 63-1006, on the following described property:

Account No: **36544189 0**
Parcel No: 082140040160
Acreage: 0.82
Section: 32-4N-4W SE
SUMMERWIND PH 2 LT 16 BLK 4

The name and last known address of the record owner or owners of said property were:

SUMMERWIND PARTNERS LLC
7785 W SAHARA AVE STE 100
LAS VEGAS NV 89117

If you are interested in redeeming said property, you must pay any delinquency, including late charges, accrued interest and costs, including, but not limited to, title search and other professional fees. All payments must be in the form of cashier's checks, money orders, certified checks or cash.
NO PERSONAL CHECKS WILL BE ACCEPTED.

Idaho Code Section 63-1007 sets forth the time and manner in which your redemption right expires.

For more information contact the Treasurer's Department at 1115 Albany, Room 342, Caldwell, Idaho 83605 or Phone (208) 454-7354.

TRACIE LLOYD
County Treasurer and Ex-officio
Tax Collector for Canyon County, Idaho

RECEIVED

DEC 07 2010



CANYON COUNTY
TREASURER'S DEPARTMENT
1115 ALBANY STREET
CALDWELL, IDAHO 83605

Article #: 71791000164470849622
Date/Time: 12/2/2010 1:35:38PM
Code: 36544188 0

36544188 0
DAVID T KRUECK, ISB #6246
225 N 9TH ST STE 800
BOISE ID 83701-1617

This letter is to inform you that on November 30, 2010, a Tax Deed was issued in favor of CANYON COUNTY, STATE OF IDAHO, by TRACIE LLOYD, Treasurer and Ex-officio Tax Collector for Canyon County, State of Idaho, in compliance with Idaho State Code Sections 63-1005 and 63-1006, on the following described property:

Account No: 36544188 0
Parcel No: 082140040150
Acreage: 0.76
Section: 32-4N-4W SE
SUMMERWIND PH 2 LT 15 BLK 4

The name and last known address of the record owner or owners of said property were:

SUMMERWIND PARTNERS LLC
7785 W SAHARA AVE STE 100
LAS VEGAS NV 89117

If you are interested in redeeming said property, you must pay any delinquency, including late charges, accrued interest and costs, including, but not limited to, title search and other professional fees. All payments must be in the form of cashier's checks, money orders, certified checks or cash.
NO PERSONAL CHECKS WILL BE ACCEPTED.

Idaho Code Section 63-1007 sets forth the time and manner in which your redemption right expires.

For more information contact the Treasurer's Department at 1115 Albany, Room 342, Caldwell, Idaho 83605 or Phone (208) 454-7354.

A handwritten signature in cursive script that reads "Tracie Lloyd".

TRACIE LLOYD
County Treasurer and Ex-officio
Tax Collector for Canyon County, Idaho



CANYON COUNTY
TREASURER'S DEPARTMENT
1115 ALBANY STREET
CALDWELL, IDAHO 83605

RECEIVED

DEC 07 2010

Article #: 71791000164470849837
Date/Time: 12/2/2010 1:35:38PM
Code: 36544192 0

36544192 0
DAVID T KRUECK, ISB #6246
225 N 9TH ST STE 800
BOISE ID 83701-1617

This letter is to inform you that on November 30, 2010, a Tax Deed was issued in favor of CANYON COUNTY, STATE OF IDAHO, by TRACIE LLOYD, Treasurer and Ex-officio Tax Collector for Canyon County, State of Idaho, in compliance with Idaho State Code Sections 63-1005 and 63-1006, on the following described property:

Account No: 36544192 0
Parcel No: 082140040190
Acreage: 0.80
Section: 32-4N-4W SE
SUMMERWIND PH 2 LT 19 BLK 4

The name and last known address of the record owner or owners of said property were:

SUMMERWIND PARTNERS LLC
7785 W SAHARA AVE STE 100
LAS VEGAS NV 89117

If you are interested in redeeming said property, you must pay any delinquency, including late charges, accrued interest and costs, including, but not limited to, title search and other professional fees. All payments must be in the form of cashier's checks, money orders, certified checks or cash.

NO PERSONAL CHECKS WILL BE ACCEPTED.

Idaho Code Section 63-1007 sets forth the time and manner in which your redemption right expires.

For more information contact the Treasurer's Department at 1115 Albany, Room 342, Caldwell, Idaho 83605 or Phone (208) 454-7354.

TRACIE LLOYD
County Treasurer and Ex-officio
Tax Collector for Canyon County, Idaho



CANYON COUNTY
TREASURER'S DEPARTMENT
1115 ALBANY STREET
CALDWELL, IDAHO 83605

RECEIVED

DEC 07 2010

Article #: 71791000164470848854
Date/Time: 12/2/2010 1:35:38PM
Code: 36544173 0

36544173 0
DAVID T KRUECK, ISB #6246
225 N 9TH ST STE 800
BOISE ID 83701-1617

This letter is to inform you that on November 30, 2010, a Tax Deed was issued in favor of CANYON COUNTY, STATE OF IDAHO, by TRACIE LLOYD, Treasurer and Ex-officio Tax Collector for Canyon County, State of Idaho, in compliance with Idaho State Code Sections 63-1005 and 63-1006, on the following described property:

Account No: **36544173 0**
Parcel No: 082140010670
Acreage: 0.70
Section: 32-4N-4W SE
SUMMERWIND PH 2 LT 67 BLK 1

The name and last known address of the record owner or owners of said property were:

SUMMERWIND PARTNERS LLC
7785 W SAHARA AVE STE 100
LAS VEGAS NV 89117

If you are interested in redeeming said property, you must pay any delinquency, including late charges, accrued interest and costs, including, but not limited to, title search and other professional fees. All payments must be in the form of cashier's checks, money orders, certified checks or cash.
NO PERSONAL CHECKS WILL BE ACCEPTED.

Idaho Code Section 63-1007 sets forth the time and manner in which your redemption right expires.

For more information contact the Treasurer's Department at 1115 Albany, Room 342, Caldwell, Idaho 83605 or Phone (208) 454-7354.

TRACIE LLOYD
County Treasurer and Ex-officio
Tax Collector for Canyon County, Idaho



CANYON COUNTY
TREASURER'S DEPARTMENT
1115 ALBANY STREET
CALDWELL, IDAHO 83605

RECEIVED
DEC 07 2010

36544186 0
DAVID T KRUECK, ISB #6246
225 N 9TH ST STE 800
BOISE ID 83701-1617

Article #: 71791000164470849486
Date/Time: 12/2/2010 1:35:38PM
Code: 36544186 0

This letter is to inform you that on November 30, 2010, a Tax Deed was issued in favor of CANYON COUNTY, STATE OF IDAHO, by TRACIE LLOYD, Treasurer and Ex-officio Tax Collector for Canyon County, State of Idaho, in compliance with Idaho State Code Sections 63-1005 and 63-1006, on the following described property:

Account No: **36544186 0**
Parcel No: 082140040130
Acreage: 0.78
Section: 32-4N-4W SE
SUMMERWIND PH 2 LT 13 BLK 4

The name and last known address of the record owner or owners of said property were:

SUMMERWIND PARTNERS LLC
7785 W SAHARA AVE STE 100
LAS VEGAS NV 89117

If you are interested in redeeming said property, you must pay any delinquency, including late charges, accrued interest and costs, including, but not limited to, title search and other professional fees. All payments must be in the form of cashier's checks, money orders, certified checks or cash.
NO PERSONAL CHECKS WILL BE ACCEPTED.

Idaho Code Section 63-1007 sets forth the time and manner in which your redemption right expires.

For more information contact the Treasurer's Department at 1115 Albany, Room 342, Caldwell, Idaho 83605 or Phone (208) 454-7354.

TRACIE LLOYD
County Treasurer and Ex-officio
Tax Collector for Canyon County, Idaho



CANYON COUNTY
TREASURER'S DEPARTMENT
1115 ALBANY STREET
CALDWELL, IDAHO 83605

RECEIVED
DEC 08 2010

Article #: 71791000164470849417
Date/Time: 12/2/2010 1:35:38PM
Code: 36544185 0

36544185 0
DAVID T KRUECK, ISB #6246
225 N 9TH ST STE 800
BOISE ID 83701-1617

This letter is to inform you that on November 30, 2010, a Tax Deed was issued in favor of CANYON COUNTY, STATE OF IDAHO, by TRACIE LLOYD, Treasurer and Ex-officio Tax Collector for Canyon County, State of Idaho, in compliance with Idaho State Code Sections 63-1005 and 63-1006, on the following described property:

Account No: **36544185 0**
Parcel No: 082140040120
Acreage: 0.83
Section: 32-4N-4W SE
SUMMERWIND PH 2 LT 12 BLK 4

The name and last known address of the record owner or owners of said property were:

SUMMERWIND PARTNERS LLC
7785 W SAHARA AVE STE 100
LAS VEGAS NV 89117

If you are interested in redeeming said property, you must pay any delinquency, including late charges, accrued interest and costs, including, but not limited to, title search and other professional fees. All payments must be in the form of cashier's checks, money orders, certified checks or cash.
NO PERSONAL CHECKS WILL BE ACCEPTED.

Idaho Code Section 63-1007 sets forth the time and manner in which your redemption right expires.

For more information contact the Treasurer's Department at 1115 Albany, Room 342, Caldwell, Idaho 83605 or Phone (208) 454-7354.

TRACIE LLOYD
County Treasurer and Ex-officio
Tax Collector for Canyon County, Idaho

EXHIBIT F

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

HAP TAYLOR & SONS, INC., d/b/a)
KNIFE RIVER, an Oregon)
corporation doing business as)
Knife River,)

Plaintiff,)

vs.)

L222-1 ID SUMMERWIND, LLC,)
et al.,)

Defendants.)

) Case No.
) CV08-4251C,
) consolidated with
) CV08-4252C and
) CV08-11321
)

COPY

HAP TAYLOR & SONS, INC., d/b/a)
KNIFE RIVER, an Oregon)
corporation doing business as)
Knife River,)

Plaintiff,)

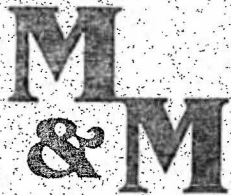
vs.)

L222-1 ID SUMMERWIND, LLC, an)
Idaho limited liability company,)
et al.,)

Defendants.)

DEPOSITION OF CASEY DANIELS

TAKEN JUNE 10, 2010



REPORTED BY:
Court Reporting Service, Inc.
BEVERLY A. BENJAMIN
Notary Public

SOUTHERN
1-800-234-9611

BOISE, ID 208-345-9611

TWIN FALLS, ID 208-734-1700

POCATELLO, ID 208-233-0816

ONTARIO, OR 541-881-1700

HAILEY, ID 208-578-1049

NORTHERN
1-800-879-1700

COEUR D'ALENE, ID 208-765-1700

SPOKANE, WA 509-455-4515

EXAMINATION

QUESTIONS BY MR. KRUECK:

Q. Could you please put back in front of you, Casey, what Madam Court Reporter has marked as Exhibit No. 5 today. I believe that is an invoice from Knife River to Extreme Line dated August 29, 2007.

A. Okay.

Q. Do you have that in front of you?

A. I have it right here, yes.

Q. I believe there is some handwriting down towards the bottom left. Do you see that?

A. Yes.

Q. Is that your handwriting?

A. That is -- no.

Q. Do you recognize it?

A. I do not.

Q. Thank you.

MR. KRUECK: If we can mark this one, please.

(Exhibit 10 marked.)

Q. (BY MR. KRUECK) You now have in front of you what Madam Court Reporter has marked as Exhibit 10 to your deposition today. Do you see that, sir?

A. Yes.

Q. Do you recognize those invoices?

A. Yes.

Q. What are they?

A. Invoices for that patch job I had to pay for and the cart paths at Summerwind.

Q. Do you know whether those invoices have been paid, sir, as we sit here today?

A. I know that none of these have been paid.

Q. Do you disagree with any of the amounts contained in those invoices that make up Exhibit 10 to your deposition today?

A. I do not.

Q. Is it your testimony today that the work performed by Knife River reflected in the invoices in front of you as Exhibit 10 was performed under its single contract with Extreme Line Construction?

A. Yes.

MS. RAINEY: Object to form.

MR. KRUECK: On what basis is the objection?

MS. RAINEY: Foundation.

MR. KRUECK: Okay.

Q. (BY MR. KRUECK) Did you negotiate the contract with Knife River for the placement and compaction of asphalt at the Summerwind project that you've been testifying about today, sir?

A. Yes.

Q. Is it your testimony that the work and charges reflected in those invoices in Exhibit 10 were performed under that contract with Knife River?

A. Yes.

MR. KRUECK: Thank you. No further questions.

MS. RAINEY: I have one quick follow-up.

FURTHER EXAMINATION
QUESTIONS BY MS. RAINEY:

Q. When you estimated the amount of asphalt that would be required to do the cart path work, was that for 18 holes or just 9 holes?

A. You know, I was thinking about that earlier and I do not remember. I don't remember. We really didn't have -- I don't remember.

Q. The actual cart path work that was done was only nine holes worth; correct?

A. Almost nine holes.

Q. Is there anything that would refresh your memory with respect to whether or not the estimate for the cart path work was for 18 holes or 9 holes?

A. Yeah, the old plans, if you had them, because I know how many feet it took.

Q. For the entire 18 or --

A. No. I know how many feet I estimated.

Q. Exhibit 3, which is the cart path contract, talks about 11,900 linear feet of cart paths. Does that help you recall whether or not that was for 9 or 18?

A. No. I know --

Q. You'd have to see the plans?

A. I know it's 11,900 linear feet because I saw that earlier. I can't remember if that's for 9 holes or 18 holes.

Q. I don't have --

A. Rexius would have them plans. I'm sure they would love to give them to you.

MS. RAINEY: I have no further questions.

(Deposition concluded at 2:03 p.m.)
(Signature requested.)



Southern Idaho Division

5450 W. Gowen Road
 Boise, Idaho 83709
 Phone: 208-362-6152
 Fax: 208-362-6199

Customer: 84799
 EXTREME LINE CONSTRUCTION
 8145 E COLTER BAY DR
 NAMPA ID 83687

Invoice Number 7317	Invoice Date 05/25/07
Application Number 2	Job Number 2566062
Job Description SUMMER WIND PH 1 & 2	
Customer Ref #	

DAN0000000002



1 PLACE & COMPACT 3" PLANT MIX 4,365.00 TN 64.50 321,597.00 4806 321,597.00 2803.00 154,983.50 2583.00 156,603.50

Total Original Amount: \$ 321,597.00 \$ 154,983.50 \$ 156,603.50

Subtotal Amount: \$ 321,597.00 \$ 154,983.50 \$ 156,603.50

Total Invoice Amount: \$ 321,597.00 \$ 154,983.50 \$ 156,603.50

Exh. No. 10
 Date 6/11/07
 Name Daniels
 M & H Court Reporting

1220



Southern Idaho Division
 8450 W. Gowen Road
 Boise, Idaho 83709
 208-362-6152

86580		07/16/07	
84799			
Net 10th			

Sold To: **EXTREME LINE CONSTRUCTION**
 8146 E COLTER BAY DR
 NAMPA ID 83887

001	SUMMERWIND AC PATCH		
002			
003	REPAIR ASPHALT WHERE EQUIP		
004	WAS DRUG ACROSS ASPHALT		
006	AND AC PATCH		
006			
007	07/16/07		
008	4.16 TN @ \$47 1/2" ASPHALT		195.52
009	2.5 HRS @ \$85 TRUCKING		212.50
010	2.0 HRS @ \$65 SKIDSTEER		130.00
011	4.0 HRS @ \$75 ROLLER		300.00
012	536 HRS @ \$41 LABOR		225.50
013	4.0 HRS @ \$61 FOREMAN W/TRUCK		244.00
014			
016	JOB 2577361 - SUMMERWIND AC		
			1,307.52
			1,307.52



Southern Idaho Division
 5450 W. Gowen Road
 Boise, Idaho 83709
 208-382-6152

92892	08/29/07
84799	
Net 10th	

Sold To: **EXTREME LINE CONSTRUCTION**
 8146 E COLTER BAY DR
 NAMPA ID 83887

001	SUMMERWIND PATHWAY		
002			
003	08/17/07 - 08/29/07		
004	PLACE & COMPACT A/C PLNT MIX		
006	694 TNS @ \$65.40		45,387.60
008			
007	PLACE & COMPACT 3/4" ROAD MIX		
008	1,672 TNS @ \$2.60		4,087.20
009			
010	JOB 2577423 - SUMMERWIND		
			49,474.80
			49,474.80