

UNITED STATES BANKRUPTCY COURT

DISTRICT OF MONTANA

In re:

THORCO, INC.,

Debtor.

THORCO, INC., a Montana corporation,

Plaintiff,

vs.

WHITEFISH CREDIT UNION, a MT Credit Union; MO SOMERS, LLC, a Montana limited liability company; RUIS GLACIER, LLC, a Montana limited liability company; and DOES 1-10,

Defendants.

Case No. 22-90119-JMM

Chapter 11
(Subchapter V)

Adversary No. 22-____-JMM

**Fifth Affidavit from Katherine Wilson
Sale V. Mortgage**

BEFORE ME, the undersigned authority, on this day personally, April 25, 2023, I, Katherine Wilson, agent for Cogburn Enterprises, LLC, being of full age, swore or affirmed to tell the truth and on her oath deposes and says:

1. I am not a party to this case, with the exception of Cogburn Enterprises proof of claim for \$3,263.64
2. I am a citizen of the United States, a resident of the State of Montana, and over the age of 18.
3. I have been retained by Dennis and Donna Thornton and Thorco, Inc., to analyze Thorco Inc's 2009 mortgage with Whitefish Credit Union hereafter (WCU), as an expert to determine if Thorco Inc gave WCU deed to be considered a mortgage or a sale by Deeds in Lieu of Foreclosure. Below are my findings:

During the course of my investigation, I have found that Thorco Inc., Dennis, & Donna Thornton (henceforth, referred to as the Thorntons) did **not** conduct a sale with WCU via Deeds in Lieu of Foreclosure, but rather, entered into an agreement that involved Escrow Security Deeds to be held as a form of collateral, which creates an equitable mortgage. In order to determine my findings, a Sale V. Loan criteria was used and will be explained below.

In addition to what is outlined below is proof that this transaction was intended to be a loan not a sale or Deeds In Lieu of Foreclosure is in the fact that WCU could have easily used the term "Deeds in Lieu of Foreclosure"; you will not see that term in any of the documents WCU drafted, but instead WCU chose to use the terms "Lien", "Borrower Parties" and "Loan Documents". Proof also comes from WCU's attorney Sean Frampton, himself, April 06, 2018, at 10:14 a.m., in an email to Thornton's attorney, Mike Klinkhammer, which states,

"Mike,

The Settlement Agreement cannot "create ownership." Thorco owns the property and WCU holds a mortgage on the property. There is a debt remaining because the loan has never been paid. I disagree with the remaining statements in your email and do not believe the complaint you have drafted has any merit.

I will continue to represent WCU.

Sean"

Then at 11:21 a.m., April 06, 2018 from Michael Klinkhammer to Sean Frampton

“Sean,

The WCU claims were dismissed with prejudice. The warranty deeds provided were WCU surety of that. This has been their last opportunity. I will file today.

Does WCU object to the attachment of the Settlement and Mutual Release to the complaint.

From your email, I understand that WCU continues to refuse to open the escrow and opposes any ex parte motion.

Mike”

See email dated 4/6/2018 from Michael Klinkhammer

I. I would like to dissect the meaning of the above emails, but before doing so, a couple facts need to be known; the Settlement Agreement referred to in this email is the Settlement Agreement and Mutual Release (henceforth, referred to as SAMR) signed on June 9, 2016. In that SAMR, WCU agreed to cancel the 2009 mortgage and refinance \$1,400,000 of the remaining debt by creating two new mortgages; the 300-acre lot for \$1.1M and the 200-acre lot for \$300,000.

According to MCA 71-3-131 Acknowledgement of Lien Satisfaction, (1) Subject to subsection (2), when a lien authorized under this chapter is paid and satisfied or the claim upon which it based has been found invalid by final order or judgement of a court of competent jurisdiction, the creditors shall acknowledge satisfaction within 30 days and discharge the lien of record by filing a release of the lien in the office of the county clerk and recorder in each county in which the notice of lien was filed. If any creditor fails to acknowledge satisfaction, the creditor is liable to any person injured by the failure for a civil penalty of \$100, plus any other damages provided by law. See MCA 71-3-131

August 24, 2018, WCU draft and filed the Dismissal with Prejudice in case no. DV-12-174B and was signed by the Judge Allison. This was the end of the 2009 mortgage and WCU had 30 days to file the Satisfaction of Mortgage. Because the cancellation of debt did not occur on or before Sept. 23, 2018, the 2009 mortgage has remained in place, as the prevailing document, until May 12, 2022, when the Thorntons send a demand letter to WCU demanding they file a Satisfaction of Mortgage. WCU’s only recorded power of attorney then filed a Satisfaction of Mortgage, releasing the **lien** and **Quitclaiming** the Thorco Inc’s property back to

Thorco Inc. See Thornton 3-18-22 demand letter, TFSS letter, Satisfaction of Mortgage and Quitclaim Deed to Thorco, Inc.

When referring to the email exchange above, it may not be clear to the reader, but they are talking about two different court actions at the same time. The first email conversation:

“Mike,

The Settlement Agreement cannot “create ownership.” Thorco owns the property and WCU holds a mortgage on the property. There is a debt remaining because the loan has never been paid. I disagree with the remaining statements in your email and do not believe the complaint you have drafted has any merit.

I will continue to represent WCU.

Sean”

Attorney Sean Frampton states, “The Settlement Agreement cannot “create ownership”. In this sentence, the SAMR signed on June 9, 2016, is being referred to and is a true and correct statement. The sentence, “Thorco owns the property and WCU holds a mortgage on the property” is a true and correct statement, but the mortgage WCU holds is the 2009 mortgage that was still in place up until May 12, 2022. WCU only had a lien on the Thorco property and that is why, when TFSS filed the Satisfaction of Mortgage, reconveying the property back to Thorco Inc., they did so with the full faith and credit of WCU, as it states on their Power of Attorney, and did so correctly. See TFSS Special Power of Attorney

MCA 72-31-336 Authority That Requires Specific Grant – Grant of General Authority, grants Title Financial Specialty Services (TFSS), WCU’s Power of Attorney, the following authority: [(3) Subject to subsection (1), (2), (4), and (5), if a power of attorney grants to an agent authority to do all acts that a principle could do, the agent has the general authority described in 72-31-339 through 72-31-351]. It also states, [(7) An act performed by an agent pursuant to a power of attorney has the same effect and injures to the benefit of and binds the principal’s successors in interest as if the principal had performed the act]. See MCA 72-31-336

[MCA 72-31-340 Tangible Personal Property, Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to tangible personal property authorizes the agent to:

(1) demand, buy, receive, accept as a gift or as security for an extension of credit, or otherwise acquires or reject ownership or possession of tangible personal property or an interest in tangible personal property;

(2) sell, exchange, convey with or without covenants, representations, or warranties, quitclaim, release, surrender, create a security interest in, grant options concerning, lease, sublease, or otherwise dispose of tangible personal property or an interest in tangible personal property.

(4) release, assign, satisfy, or enforce, by litigation or otherwise, a security interest, lien, or other claim on behalf of the principal with respect to tangible personal property or an interest in tangible personal property.] See MCA 72-31-340; also see MCA 72-31-339 Real Property

The above referenced MCAs affirm that this was not a sale via Deeds in Lieu of Foreclosure, but in fact, Escrow Security Deeds. When TFSS received the request from WCU's Donna Goodrich, to draft and record the Satisfaction of Mortgage for the Thorco Property, Quitclaiming the Thorco Inc. property back to them, they did so with full faith and credit of WCU. If this were, in fact, a sale via Deeds in Lieu of Foreclosure, WCU employee, Donna Goodrich, would not have ordered the Satisfaction of Mortgage be recorded after receiving the Thornton's demand letter to do so. See Thornton's demand letter dated 3-18-2022

In dissecting the next email: *11:21 a.m., April 06, 2018 from Michael Klinkhammer to Sean Frampton*

"Sean,

The WCU claims were dismissed with prejudice. The warranty deeds provided were WCU surety of that. This has been their last opportunity. I will file today.

Does WCU object to the attachment of the Settlement and Mutual Release to the complaint.

From your email, I understand that WCU continues to refuse to open the escrow and opposes any ex parte motion.

Mike"

What has been determined by that email exchange is Michael Klinkhammer is reminding Sean Frampton that WCU's claims were dismissed with prejudice for case no. DV-12-174B, therefore, there was not to be the original mortgage still in place. WCU willingly dismissed that case with prejudice which is the final adjudication of the foreclosure action and upon the

adjudication of the 2009 mortgage, a lien satisfaction should have been recorded no later 30 days after the signed of the dismissal with prejudice on August 24, 2016 according to MCA 71-3-131 Acknowledgement of Lien Satisfaction.

Additionally, when Michael Klinkhammer states, “I understand that WCU continues to refuse to open the escrow...”, he is referring to the two new mortgages that were to be opened upon the signing of the SAMR, but were not. The deeds that were provided by Thorco Inc., as stated in the SAMR, were provided in good faith, that they would be placed into escrow, but were not. Admittedly, the deeds were held not at WCU, but in Sean Frampton’s office, due to what WCU’s attorneys claim more than two years later, is the inability to agree on escrow instructions. See No. 11, Motion to Modify Stay, Case no. 17-61219-11, Sean Frampton answer DC-18-336.

On April 27, 2023, Jennifer Archer, WCU employee, testified in the McAtee case no. DA-20-0556, that the Loan Processing Department is who is responsible for recording any assignments. According to her testimony, the process that should have been followed is after the Escrow Security Deeds were delivered to WCU’s attorney’s office for signing, they should have been sent to the Loan Processing Department for recording, not kept in Sean Frampton’s office as he states.

Additionally, Sean Frampton states in the same Second Affidavit of Sean Frampton, “(6) *Even though WCU held the original documents, nothing precluded Thorntons from requesting those documents and opening the escrow themselves. They never placed a demand on WCU to either open up an escrow or deliver the documents until Klinkhammer did on March 19, 2018*”. That statement contradicts number (5) *The parties could not agree on the instructions and First American returned the documents to my office.*

If the parties could not agree on escrow instructions when WCU was to record the documents, one could only assume the parties would not agree on escrow instructions if the Thornton’s tried to open an escrow.

In addition to Jennifer Archers testimony that the Loan Processing Department is responsible to record the documents, but Doug Johnson, former WCU loan officer, also testified in the McAtee case that it is WCU’s responsibility to record documents.

On May 12, 2022, Title Financial Specialty Services, Special Power of Attorney for WCU, recorded the Satisfaction of Mortgage on loan #966428-750. On September 22, 2022, Rae Albert, with Title Financial Specialty Services, stated that Thorco, Inc. was the owner and that WCU only had a lien on the property. See Affidavit of Katherine Wilson Re: Rae Albert, Shauna Romrell, & TFSS.

II. In order to help determine whether this is a sale or a loan, I refer to a memorandum opinion for Montana Bankruptcy Court Case No. 2:15-bk-60979-WLH Filed: 09/10/21 Entered: 09/10/21 12:09:55, Shoot the Moon, debtor, Cap Call, Plaintiff V. Jeremiah J. Foster. In this case, the Bankruptcy trustee stated that Montana law controls and in doing so, the court considers the following, as to the question of, “Is this a sale or a loan”, and although the cases are different, the same questions need to be answered to determine if there was a loan given or deeds in lieu in the Thorco case:

(1) Whether the buyer (WCU) has a right of recourse against the seller (Thorco, Inc.) and personal guarantors (Thornton’s); the answer is YES.

The right of recourse described in No. 7 of the SAMR, Further Damages, states in part, “*Inasmuch as the injuries, damages and losses resulting from the events described herein may not be fully known and may be more numerous or more serious than it is now understood or expected,*”. This indicates that there would be a right of recourse in future litigation, that is unknown at the time of signing the document. That language would not be necessary if these were Deeds in Lieu and would only be necessary for a mortgage. See SAMR

In addition, no. 11. of the SAMR, Attorney Fees states, “*In the event suit is brought or claim is made arising out of the breach of any of the provisions of this SAMR or to enforce any of the provisions of this SAMR, the prevailing party shall be entitled to recover its reasonable attorneys’ fees from the other party.*” This also indicates that there are recourse options available. See SAMR

Additionally, The Warranty Deed, filed and prepared by WCU, on page two, paragraph three, states, “*For the purpose of permitting Grantee to exercise such rights and remedies, Grantor and Grantee agree that the statutes of limitation applicable with respect to the exercise of such rights and remedies under the **Loan Documents** are hereby tolled and extended so that the exercise of such rights and remedies shall not be limited under any applicable statutes of*

limitation, by laches, or otherwise.” This again shows there were available remedies for recourse of the parties. See Warranty Deed filed 10/25/2018

(2) Whether the seller (Thorco, Inc.) continues to service the accounts and commingles receipts with its operating funds; The answer to this is undetermined because there was to be a balloon payment and the terms of the SAMR were never completed by WCU.

In referencing the SAMR, no. 3. states, “Deficiency- WCU agrees to waive any claim for deficiency under any loan document, note, or guaranty at issue in the above-described civil matter, Cause No. DV-12-174B”. This means that WCU agreed to cancel the 2009 mortgage and any judgment granted them in case no DV-12-174B.

In no.5. of the SAMR, it states, “Stipulation to Vacate Judgment and Dismiss with Prejudice. The parties agreed through stipulation to vacate the February 23, 2016 judgment and dismissed their claims and counterclaims with prejudice.

5. Stipulation to Vacate Judgment and Dismiss with Prejudice

The parties agree that they, or their attorneys of record, shall stipulate to vacate the Judgment of Foreclosure and Order of Sale and dismiss with prejudice, as fully settled upon the merits, the above-described civil matter, Cause No. DV-12-174B. Each party shall pay their own respective costs and attorneys’ fees.

As stated above, the terms were never completed for the two new mortgages because Sean Frampton kept the documents. The 2009 mortgage stayed in effect until it was released on May 12, 2022, by WCU’s authorized agent, Title Financial Specialty Services. See WCU’s Answer in DV-18-336D and Joint Motion to Vacate February 23, 2016 Judgement of Foreclosure and Order of Dismissal with Prejudice.

(3) Whether there was an independent investigation by the buyer (WCU) of the account debtor; I am unaware of any independent investigation because I am unaware if WCU ever requested a title report.

In an effort by Thorco Inc., and the Thorntons, to determine what has taken place with their loan file by WCU, they have exercised their right provided by MCA 30-9A-210 Request for Accounting – Request Regarding List of Collateral or Statement of Accounts, which has not been satisfied by WCU. Thorco Inc. and the Thornton’s have made numerous requests for their

loan file, even when requested through the Flathead County Sheriff and State Representative Mark Noland, copies of the loan file has been denied by WCU. See request letter from St. Rep. Mark Noland & MCA 30-9A-210.

(4) Whether the seller (Thorco, Inc.) has a right to excess collections; The answer is Yes.

On page two, paragraph three of the Warranty Deed recorded on October 25, 2018, states, *“The liens under the Loan Document shall not merge with the fee or leasehold title of the property unless and until Grantee elects to do so in its sole and absolute discretion by separate document recorded or, if the Grantee so elects, by foreclosure of the Loan Documents”*.

MCA 71-1-221 defines foreclosure as, “The term “foreclosure” for the purpose of this part shall include sale or possession of real property made or taken whether by judicial proceedings or otherwise. With the option of foreclosure available to the Grantee, MCA 71-1-225 would apply and states, “Surplus Money from Sale - If there be surplus money remaining after the payment of the amount due on the mortgage, lien, or encumbrance, with costs, the court may cause the same to be paid to the person entitle to it and in the meantime may direct it to be deposited in court. The foreclosure laws are clear in Montana, there is a right to excess collections for the seller, once all debt and costs are satisfied. See MCA 71-1-221 & 71-1-225

The Warranty Deed that was transferred on October 25, 2018, specifically on page 2, paragraph 3, states in part, *“The lien and the Loan Documents shall not be released or relinquished and are preserved and shall continue in full force and effect to protect the Grantee against any intervening liens, interest or title, or for other purpose of security.”* This indicates that the intent of the new agreement was that WCU was to only have a lien on the property.

In fact, the Warranty Deed, drawn up by WCU use the term “**liens**”, when referring to WCU, seven (7) times and two (2) times when referencing priority of other liens on the property. The Warranty Deeds references “Loan Document” six (6) times. The Settlement Term Sheet lists “Borrower Parties” 14 times.

To further support the fact that WCU only had a lien on the property, Title Financial Specialty Services, in a letter to Thorco dated May 12, 2022, states the following:

“Dear Valued Customer,

CONGRATULATIONS! Your **lien** with WCU has been released.

Enclosed please find the original recorded Satisfaction of Mortgage. This document releases the lien from your property.

We would like to take this opportunity to say “Thank You” for allowing Whitefish Credit Union and Title Financial Specialty Services to assist you in this transaction. Please let us know if we can be of service to you in the future.

Sincerely,
Title Financial Specialty Services”

With WCU having only a lien on the property, any excess surplus money would go to the borrower. Additionally, with just a lien on the property, this would not be considered a sale via Deeds in Lieu of Foreclosure, but a mortgage.

(5) Whether the seller (Thorco, Inc.) retains an option to repurchase accounts; The answer to this is Yes. Thorco, Inc. had the option to purchase the Escrow deeds from First American Title.

The SAMR states the following:

2. Option to Purchase

- a. *Within 18 months of the date of this Settlement Agreement and Mutual Release, Thorco may exercise an option to purchase the properties described above for one million four hundred thousand dollars (\$1,400,000). The option price is allocated to each parcel as follows: The 300-acre tract, legally described in Exhibit A, is priced at \$1,100,00; the 200-acre tract, legally described in Exhibit A, is priced at \$300,000. Within 18 months, Thorco may exercise its option to purchase either the 200-acre tract, the 300-acre tract, or both.*
- b. *WCU shall execute releases of its mortgage for the 200- and 300-acre tracts, a copy of which are attached as Exhibit B. At execution of this agreement, the executed releases shall be deposited into escrow at First American Title Company. If Thorco timely exercises its option, First American Title shall record the appropriate release or releases.*
- c. *Thorco shall execute Non-Merger Warranty Deeds conveying all of Thorco’s right, title, and interest in the 200- and 300-acre tracts to WCU along with a Realty Transfer Certificate, a copy of which are attached as Exhibit C. At execution of this agreement, the executed Non-Merger*

Warranty Deeds shall be deposited into escrow with First American Title Company. If Thorco fails to timely exercise its option(s), First American Title shall record the appropriate deed(s)."

As described in the settlement term sheet, no. 2b. states, "*WCU shall execute releases*" which again indicates plural; one for the 200-acres tract and one for the 300-acre tract. "*If Thorco fails to timely exercise its option(s), First American Title shall record the appropriate deed(s).*". Again, the terms of the agreement were not completed by WCU and documents necessary to complete the terms were in the possession Sean Frampton.

(6) Whether the buyer (WCU) can unilaterally alter the pricing terms; The pricing terms cannot be altered.

The SAMR, part 2 a. states, "*The option price is allocated to each parcel as follows: The 300-acre tract, legally described in Exhibit A, is priced at \$1,100,000; the 200-acre tract is priced at \$300,000.*" The SAMR does not allow for altering these prices. See SAMR

In section 8 of the SAMR, it states in part, "*It is understood that the above-mentioned sum is accepted by each recipient as the sole consideration for full satisfaction and accord to compromise a dispute claim, and that neither payment of the sum nor the negotiations for settlement shall be considered as an admission of liability*". This shows that the parties have accepted and agreed on the price stated in the SAMR.

To further support the fact that the pricing cannot be altered, no. 3 of the SAMR states, "*WCU agrees to waive any claim for deficiency under any loan document, note, or guaranty at issue in the above-described matter, Cause No. DV-12-174B*". See SAMR

In the Warranty Deed filed by WCU on 10/25/2018 states, in part, "*Further, the priority of the lien of the Loan Documents is not intended to be altered hereby, and nothing herein or in any document or instrument executed in connection herewith shall be construed to subordinate the priority of the liens of the Loan Documents to any other lien, encumbrances or interests whatsoever.*".

WCU drafted the Warranty deed and it stated **Lien and Loan Documents**, not Deeds in Lieu of Foreclosure, indicating that, at the time of the Warranty Deed drafting, WCU did not consider the Warranty Deeds to be Deeds in Lieu of Foreclosure.

(7) Whether the seller has the absolute power to alter or compromise the terms of the underlying asset; The Seller does NOT have the absolute power to alter or compromise the terms of the underlying asset.

The SAMR No. 14. Final Agreement states, *“This SAMR represents the party’s entire agreement with respect to the subject matter of this Agreement and supersedes any and all prior agreements, negotiations and oral understandings. This SAMR may not be modified or amended unless done so in writing and executed by the parties.”*

Not the seller, nor the buyer, can singly alter or compromise the terms of the underlying asset; it would take both parties to agree to any amendments to the agreement.

(8) The language of the agreement and the conduct of the parties.

It is clear the intent was for Thorco to provide escrow deeds for security purposes to the property that was to be held in escrow for two new loans. Those deeds were to be held at First American Title, but remained at the office of Sean Frampton. See Second Affidavit of Sean Frampton

The evidence will further reveal a course of performance by WCU that is deeply inconsistent with the language of the agreement.

SAMR no. 10. Further Assurances states, *“The parties agree to cooperate fully, to execute any and all additional documents and to take all additional actions that may be necessary or appropriate to give full force and effect to the terms of this SAMR.”* If WCU was fully cooperating, they would have made an effort to agree on escrow instructions, not just hold the Warranty Deeds in their office, when they should have been in an escrow account.

SAMR, No. 13. Tax Issues, states in paragraph two, *“Prior to the date escrow is established and during the time documents are held in escrow, real estate tax notices were and will be received by Thorco. Thorco may elect not to pay the real estate taxes, delinquent or to become delinquent, because it may elect not to close the escrow and record the releases of mortgage. WCU understands that it may be obligated to pay delinquent real estate taxes should it close the escrow and have the Warranty Deeds recorded.”*

This paragraph states that both parties understand that the documents will be held in escrow until the 18-month window runs out and who will be responsible for the taxes when the

deeds are released from escrow. It also appears that there was no cooperation from WCU to put the two escrow warranty deeds into escrow.

III. In my investigation, I have determined that the definition of a Deed-in-Lieu of Foreclosure is **an arrangement where you voluntarily turn over ownership of your home or property to the lender to avoid the foreclosure process.** Deeds in Lieu must be transferrable on the day received and cannot have conditions. This is not what took place in Thorco Inc, Dennis and Donna Thorntons case. Additional evidence that the Warranty Deeds were not Deeds in Lieu of Foreclosure is Sean Frampton's letter to Michael Klinkhammer, dated October 25, 2018, where he states,

*"Dear Mike,
Please be advised that WCU recorded the attached deeds to the property today. Judgement was ordered on October 9, 2018 and the 14-day automatic stay on execution of judgement passed on October 12, 2018. Also, the Thornton's complaint never contained a cause of action for preliminary or permanent injunction and thus neither the judgment nor the automatic stay provision would apply."*

If the Thorco Inc. provided Deeds in Lieu of Foreclosure, this letter to Michael Klinkhammer would not have been necessary because, the deeds would have been provided willingly, and on the contrary, this letter states the court awarded WCU a judgement on October 9, 2018. This judgement was against the Thornton's, the personal guarantors, not Thorco Inc.

WCU admitted that they held the documents the required 14-days automatic stay on the execution of the judgment. This, again, would not be required if the deeds provided to WCU were in fact, Deeds in Lieu of Foreclosure, they would have simply been able to go record the deeds. With this information, one can only surmise that they WERE NOT Deed in Lieu of Foreclosure creating a sale or they would not have had to receive a judgment to record the deeds. I also want to point out in addition there was no writ of execution. See Letter to Michael Klinkhammer dated October 25, 20218

The Realty Transfer Certificate (RTC) that WCU filed with the Warranty Deeds on October 25, 2018 states in Part 4, Type of Transfer, please complete fully and more than one option may apply. WCU checked the "Other" box, NOT the Deeds in Liu of Foreclosure box. If

these were in fact Deeds in Lieu of Foreclosure, it would have been automatic to check that box also, but it was not. See Realty Transfer Certificate and instructions.

In the RTC, Part 5 – Exemptions from Providing Sale Price Information, WCU did not check the box labeled “Transfer Pursuant to a Court Decree”, WCU attorney checked the box labeled “Other” and listed “Settlement in Cause no. DV-12-174B. The settlement reached in DV-12-174B was to Dismiss the case with Prejudice, which was done on August 2018.

In the RTC, Part 6 – Sale Price Information, please complete fully, more than one may apply, WCU attorney did not disclose an actual sale price, because the property was NOT being sold to WCU. The instructions for the RTC state, “If this is a contract for a deed or trust indenture, check the “Contract” box. That box was not checked, under the Financing option, WCU checked the “Other” box

I would like to note that in this investigation, I was asked to determine if the deeds, provided to WCU, were Deeds in Lieu of Foreclosure and during the course of my investigation, I have not found any mention by WCU that they received “Deeds in Lieu of Foreclosure”, not even when all they have to do is check the box. I will note that on actual Deeds in Lieu of Foreclosure that WCU has received, they state “Deeds in Lieu of Foreclosure” on the document and it is very clear what they are. See copies of Deeds in Lieu of Foreclosure examples.

During my research of court documents in DV-18-336, the correspondence between the attorneys, the Settlement Term Sheet, the SAMR, and on the Non-Merger Warranty Deeds, I found **no mention** of the term “Deeds in Lieu of Foreclosure”. In fact, Sean Frampton submitted Aaron Archers affidavit to the court on August 31, 2016, stating that Thorco Inc. owed over \$4M, and the Thorco Inc. loan is in default. If these were deeds in Lieu of Foreclosure Archer would have simply stated WCU had Deeds in Lieu of Foreclosure, not that Thorco Inc. was in default on a loan. Additionally, in Judge Dan Wilson’s ruling, he states that the Thorco Inc. loan was in default. See Archers affidavit and Judge Wilson’s ruling.

The only place that I have identified WCU claiming they acquired the property through Deeds in Lieu of Foreclosure is in the Bankruptcy case No. 22-90119-JMM and in the CORRECTED RELEASE OF MORTGAGE, dated June 6, 2022, where WCU CEO James Kenyon states, “*The Warranty Deeds recorded as Flathead County Records 201800026290 and*

201800026291 were recorded pursuant to a Settlement Agreement and in lieu of foreclosure of the mortgage. Based on the rulings identified herein in favor of Whitefish Credit Union on matters related to the title of Mortgaged Property.” And, contrary to that recorded document, on February 14, 2022, James Kenyon states on the Special Warranty Deed to Mo Somers that the “Grantor acquired the property through “foreclosure””, NOT in Lieu of Foreclosure. Because these two terms are not interchangeable, one can only assume that WCU uses the term that serves their need at that time. See Corrected Release of Mortgage and Special Warranty Deed to Mo Somers, LLC.

According to MCA 30-9A-518 Claim Concerning Inaccurate or Wrongfully Filed Record, (1) A person may file in the filing office an information statement with respect to a record indexed there under the person’s name if the person believes that the record is inaccurate or was wrongfully filed.

In Corrected Release of Mortgage signed by James Kenyon is more than an informational statement, it states that Thorco Inc. does not hold any ownership in the property that was reconveyed to them on May 12, 2022. The document was signed by WCU CEO, James Kenyon, not TFSS, WCU’s Special Power of Attorney. When emailing with Steve Matthews, Chief Financial Examiner, he was able to confirm Shaunna Romrell and TFSS both held security licenses in Montana, but was not able to confirm that James Kenyon held a security license authorizing them to transfer property. He suggested we consult an attorney specializing in transfers of property. See attached email dates January 20, 2023 and MCA-30-9A-518

The Settlement Term Sheet, in short, stated all parties agreed that if WCU dismissed their foreclosure action (DV-12-174), Thorco Inc., and the Thornton would dismiss their counterclaim of \$60M, WCU to provide Thorco Inc. with \$150,000 check, upon signing the agreement WCU was required by state law to release the original 2009 mortgage for \$3.36M and record the new mortgages and open the escrow, so that the balloon payments could be made to release the two tracts of land for \$1.4M, within 18 months. See Settlement Term Sheet

What I have discovered in my investigation is that WCU completed Term 1 of the Settlement Agreement by paying Thorco \$150,000, but failed to execute the release of mortgages for the original \$3.36M or put the two Escrow Warranty Deeds, provided to them by Thorco Inc. and the Thornton, per the settlement agreement, into escrow as required by Term 2, b & c of the SAMR.

It is clear what the parties intended; dispose of the 2009 mortgage and record the two new mortgages prior to dismissal of the foreclosure action. In the SAMR, paragraph 2.b clearly states there is to be **releases of its mortgages**, which could not happen until the original mortgage from March 2009, for \$3.36M was released.

2.b. **WCU shall execute releases of its mortgages** for the 200- and 300-acre tracts, a copy of which are attached as Exhibit B. At execution of this agreement, the executed releases shall be deposited into escrow with First American Title Company. If Thorco timely exercises its option, First American Title shall record the appropriate release or releases.

It is also clear what the parties intended; open up two new escrow accounts, one in the amount of \$1.1M and one in the amount of \$300,000. This is evident of the signing of the Warranty Deeds dated June 8, 2016, per the SAMR. Again, per the RTC, those deeds were dated June 8, 2016 and were to be acted on by being placed in to escrow, but WCU attorney did not place them into escrow.

Nowhere in the Deed does it state that they are “Deeds in Lieu of Foreclosure” and nowhere does it state that the deeds can be recorded by Sean Frampton. The deeds are attached to the SAMR and are restricted to the terms in the SAMR and can only be recorded by First American Title after the escrow term expired.

It was understood by Thorco Inc. and the Thorntons that the deeds were to be immediately placed into escrow. Not only does it state that in the SAMR, and on the RTC, but also in emails from WCU attorney Dean Stensland to Thornton attorney, Jon Binney, dated February 20, 2018, where WCU attorney was trying to get Thorco Inc. and the Thorntons to agree to a new term sheet and proposed language states, “#2 Thorco authorizes WCU to record the two Warranty Deeds previously executed by Thorco, wherein it granted the land to WCU.” If these were Deeds in Lieu of Foreclosure, WCU would not need Thorco to authorize the recording of deeds.

Additionally, in the Declaration of John L. Amsden, he states that WCU attorney required delivery of the original documents prior to dispersing the \$150,000 noted in term one of the SAMR. He also goes on to say that it was his understanding that WCU would set up the escrow upon funding the settlement. See Declaration of John L. Amsden

VI. On April 26, 2018, WCU filed a Proof of claim in Montana Bankruptcy Court for case no. 17-61219-BPH. In this Proof of Claim, WCU answers,

“7. How much is the claim? \$1.4M,

8. What is the basis of the claim? 06/08/16 Settlement Agreement and Mutual Release

9. Is all or part of the claim secured? Yes, Basis of perfection: Recorded Mortgages.

Although, in #9 where it states WCU has recorded mortgages, I would like to point out that in WCU’s response, it indicates a plural, that more than one mortgage is recorded. It is important to note that at the time of this Proof of Claim filing, and until May 12, 2022, there has only been the one, original 2009 mortgage in place, not the two mortgages discussed in previous paragraph. The SAMR states that Thorco can purchase out of escrow the two parcels of property for the \$1.4 M; \$1.1M for the 300-acres and \$300,000 for the 200-acre lot. This was not possible since the release of the 2009 mortgage was not released in compliance with MCA71-3-1231, the two new mortgages were never created. See WCU Proof of Claim filed 04/26/2018

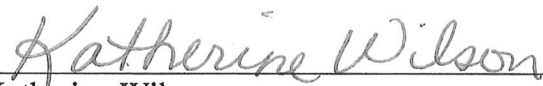
If the deeds WCU held were Deeds in Lieu of Foreclosure, WCU could have gone to the Clerk and Recorders office and record them and the Proof of Claim in the bankruptcy court would not have been required.

What I have concluded in my investigation is that Thorco Inc, nor Dennis and Donna Thornton, provided WCU with Deeds in Lieu of Foreclosure, rather Escrow Security Deeds that were to be filed upon the signing of SAMR dated June 8, 2018. WCU never intended to consider the deeds as Deeds in Lieu of Foreclosure until it suited them to state that they were Deeds in Lieu of Foreclosure, then unlawfully transferred the 500 acres from Thorco Inc. to WCU, citing a judgment from Case No. DV-12-174, that had already been dismissed with prejudice, which would have required a Sheriffs Sale, not simply a transfer from Thorco Inc. to WCU.

I have reviewed Thorco Inc.’s file, Thorco Inc. had the approved funding for the escrow deeds on or before December 8, 2017, but did not have access to the documents due to Sean Frampton keeping the documents in his possession, meaning that the 2009 Mortgage was the prevailing document until May 12, 2022. See 2009 Original Mortgage.

This is still an ongoing investigation and I reserve the right to provide supplemental reports that support this affidavit.

I DECLARE UNDER PENALTY OF PERJURY AND UNDER THE LAWS OF THE STATE OF MONTANA THAT THE FOREGOING IS TRUE AND CORRECT.

A handwritten signature in cursive script that reads "Katherine Wilson". The signature is written in black ink and is positioned above a horizontal line.

Katherine Wilson

PSP-PSV-LIC-16378 Process Server

PSP-PI-LIC-16517 Private Investigator

Michael Klinkhammer

From: Michael Klinkhammer <mklinkhammer@montanadsl.net>
Sent: Friday, April 06, 2018 11:21 AM
To: 'Sean Frampton'
Subject: RE: WCU and Thorco

Sean

The WCU claims were dismissed with prejudice. The warranty deeds provided were WCU surety of that. This has been their last opportunity. I will file today.

Does WCU object to the attachment of the Settlement and Mutual Release to the Complaint.

From you email, I understand that WCU continues to refuse to open the escrow and opposes any ex parte motion.

Mike

From: Sean Frampton <sean@framptonpurdy.com>
Sent: Friday, April 06, 2018 10:14 AM
To: Michael Klinkhammer <mklinkhammer@montanadsl.net>
Subject: RE: WCU and Thorco

Mike,

The Settlement Agreement cannot "create ownership." Thorco owns the property and WCU holds a mortgage on the property. There is a debt remaining because the loan has never been paid. I disagree with the remaining statements in your email and do not believe the complaint you have drafted has any merit.

I will continue to represent the WCU.

Sean

From: Michael Klinkhammer [<mailto:mklinkhammer@montanadsl.net>]
Sent: Tuesday, April 3, 2018 11:52 AM
To: Sean Frampton <sean@framptonpurdy.com>
Subject: RE: WCU and Thorco

Sean

I do not represent Carrie. I represent her husband Chris Alt in different matters. If Mr. Alt is uncomfortable, he may seek other representation.

In terms of the Thorco, I am attaching a copy of the Complaint I prepared. I was astounded at your letter. The Settlement and Release Waiver created a conditional ownership in the property. The ownership was conditioned on the Thorco's exercise of the option. As such, there was no mortgage. There is no debt. The mortgage language in the Warranty Deeds was not necessary and only done to accommodate the Whitefish Credit Unions concerns that other liens might be filed to encumber the property. Please do not try to argue that Thorco acknowledged the debt in the

MCA Contents / TITLE 71 / CHAPTER 3 / Part 1 / 71-3-131 Acknowledgm...

Montana Code Annotated 2021

TITLE 71. MORTGAGES, PLEDGES, AND LIENS

CHAPTER 3. LIENS

Part 1. General Provisions

Acknowledgment Of Lien Satisfaction -- Penalty

71-3-131. Acknowledgment of lien satisfaction -- penalty. (1) Subject to subsection (2), when a lien authorized under this chapter is paid and satisfied or the claim upon which it is based has been found invalid by final order or judgment of a court of competent jurisdiction, the creditors shall acknowledge satisfaction within 30 days and discharge the lien of record by filing a release of the lien in the office of the county clerk and recorder in each county in which the notice of lien was filed. If any creditor fails to acknowledge satisfaction, the creditor is liable to any person injured by the failure for a civil penalty of \$100, plus any other damages provided by law.

(2) If the owner of the property against which a lien is filed pays the underlying claim before an action is filed on that claim or to foreclose the lien, the owner of the property against which the lien was filed shall pay the lienholder's costs and attorney fees incurred for filing and recording the lien before the lien may be released.

History: En. Sec. 1, Ch. 525, L. 1985; amd. Sec. 2, Ch. 240, L. 1999.

Created by **LAWSON** 

3-18-2022

From : Dennis Thornton

To: Rep. Mark Noland Bank Oversight and Economic Affairs
Committee

Mark,

Can you forward this to the other members of the Bank Oversight and Economic Affairs Interim Committee, and the Director Misty Giles, Montana Department of Administration.

I will forward to Rep. Derek Skees, Sen. Mark Blasdel, Sen. Greg Hertz the National Credit Union Association, in Alexandria, Virginia, and the IRS.

As part of the complaint process to the NCUA, there is a requirement that I meet with Whitefish Credit Unions, supervisory committee, if you could also arrange that, I would appreciate.

Mark and to All;

On February 10 2022, Banking Commissioner Melanie Hall and Chief Legal Counsel for the Commission, Kelly O'Sullivan both testified in front of the Economic Affairs Interim Committee, that our business Thorco Inc. it's 12 shareholders, my wife Donna and I do not owe any money to Whitefish Credit Union for a loan taken out in 2009 by Thorco Inc. that my wife and I personally guaranteed.

They both testified, the mortgage and the debt was adjudicated and no longer owed. Both admitted they know the debt is no longer owed, but neither has taken the steps to stop WCU from collecting on the adjudicated debt.

Commissioner Hall testified that we are entitled to our loan files, but we have not been able to get them and neither has the Sheriff.

We now make the following demands:

Request for Cease and Desist Order under MCA 32-3-205

The National Credit Union Association and the Montana Department of Administration, having concurrent Jurisdiction and Regulatory Authority over Whitefish Credit Union hereafter (WCU). We ask that the following immediate actions be taken against WCU:

Demand

1. Issue a cease-and-desist order against WCU for the collection of an unlawful debt that is not owed.
2. Order WCU to turn over the loan files requested by Sheriff Brian Heino and all Tax related information so that Thorco Inc., its shareholders, Dennis and Donna Thornton can properly file their tax returns.
3. File a lien satisfaction with the Flathead County Clerk and Recorder's Office to remove the adjudicated special mortgage lien against Thorco Inc.

Introduction

First Statement of Facts

In 2009 Thorco Inc. entered into a two-part mortgage contract with WCU pledging 24 tracts of land totaling 500 acres for the development of an upper scale subdivision. The first phase of funding was \$3,360,000. The two-part mortgage contract was personally guaranteed by wife Donna and I. WCU recorded a special mortgage lien against the pledged property. In 2011 Thorco Inc. submitted a loan request of \$1,900,000 for the second phase of funding. WCU denied the request.

In February of 2012 WCU filed a foreclosure action for the collection of the debt against the special mortgage lien and against Thorco Inc., my wife Donna and I.

Thorco Inc., wife Donna and I countersued in the amount of \$60 million.

On February 23, 2016 WCU received a partial Summary Judgment in the amount of \$4,348,880 against the special mortgage lien (the property) Thorco Inc., my wife Donna and I. Trial was set for mid-April 2016.

On April 4, 2016, Mediation was held, the lawsuit was settled between the parties.

At settlement WCU offered \$3 million and to Dismiss WCU's foreclosure lawsuit and to Vacate the Judgment in exchange for the dismissal of the \$60 million counterclaim.

Thorco Inc., wife Donna and I accepted the \$3 million on the condition that \$3 million be applied to the \$4.4 million debt and agreed to two new mortgage contracts to be serviced by First American Title's Escrow Department.

On April 11 2016. The Settlement Master reported to the court, the lawsuit settled.

On June 8 2016, we entered into a final agreement for the cancellation of the \$4,348,880 Judgment and Debt.

On August 16, 2016 the court granted a Joint Motion filed by WCU, Thorco Inc., wife Donna and I to vacate the February 23, 2016 Partial Summary Judgment. The vacated Judgment canceled the Judgment and Canceled the Debt.

August 24, 2016 the court granted a Joint Motion filed by WCU, Thorco Inc., my wife Donna and I to dismiss the lawsuit **With Prejudice**.

Discussion

The Vacated Judgment, and the Dismissal with Prejudice court orders foreclosed and terminated all of WCU's collection rights for the collection of the debt against the 2009 special mortgage lien and against Thorco Inc., Dennis and Donna Thornton and is considered adjudicated on the merits by a court of competent jurisdiction. All collection actions by WCU against Thorco Inc., my wife Donna and I are terminated by MCA 71-1-222. Montana's one action rule to foreclose and barred by Rez-Judicata.

The Vacated Judgment canceled the Judgment and canceled the debt.

The 2009 mortgage lien was foreclosed on adjudicated, by a court of competent jurisdiction and satisfied.

As of August 16, 2016 the February 23, 2016 \$4,348,880 partial Summary Judgment is no longer owed or collectible and is no longer a lawful debt.

As of August 24, 2016, the \$60 million counterclaim brought by Thorco Inc., my wife Donna and I is no longer collectible.

The August 24, 2016 court order and Dismissal With Prejudice forever by bars by preclusion, Rez- Judicata and Montana one action rule, either party from further litigation to foreclose any other claims.

Under MCA 71-1-131 WCU was required to file a satisfaction of mortgage with the Flathead County Clerk and Recorder's Office. That did not happen.

Under 12 CFR 702 and under MCA 32-9-172 WCU is required to adjust WCU's books to reflect the loss of \$4,348,880 on WCU's net worth statement. That did not happen.

Under the Bank Security Act WCU is required to issue a 1099-C by January 15 of the following calendar year to Thorco Inc. and by February 28 to the IRS. That did not happen.

WCU did not cancel the debt did not apply the \$3 million payment as agreed.

In December 2017 Thorco Inc., had several real estate and financial transactions in the works that required title insurance. It was discovered that WCU was claiming the debt of \$4,348,880 was still owed and had not removed the adjudicated 2009 mortgage cloud from the public record or recorded the new mortgages as agreed.

On April 6, 2018 Dennis and Donna Thornton filed a personal lawsuit, (DV-18-336D) against WCU, to have the adjudicated special mortgage lien that contained Dennis and Donna Thornton's personal guarantees removed from the public record.

In that suit WCU claimed a fictitious obligation in violation of 18 USC 514 committed fraud on the court by making false claims that the 2009 adjudicated debt was still owed. Because of the false claims WCU was able to persuade the court the debt on the 2009, special mortgage lien was still owed, with no evidence other than an affidavit.

Because of the false statements and affidavits. The court resurrected the February 23, 2016 **Partial Summary Judgment** from a court proceeding that the Judge had no involvement in, that was vacated and incorporated it into a new Summary Judgment with no trial, and no discovery which now carries a balance of almost **\$7 million** in debt against Thorco Inc., wife Donna and I. This Judgment is the collection of an **Unlawful Debt** and in violation of several statutes in US code title 18.

On February 10, 2022 Banking Commissioner Melanie Hall and Kelly O'Sullivan, Chief Legal Counsel for the Banking Commission both testified that debt was no longer owed after the Judgment was Vacated on August 16, 2016 and the lawsuit was Dismissed With Prejudice, on August 24, 2016 and the debt and mortgage is satisfied on those dates.

This Judgment has clouded all of my personal and real property and all of Thorco Inc.'s personal and real property.

With this Unlawful Judgment in place, Thorco Inc., my wife Donna and I are not able to borrow money, convey clear title to any personal or real property. This Unlawful Judgment has completely devastated our business and our livelihood.

Because of the cloud of litigation, WCU has created, We ask that the following three issues be addressed in order, one at a time, to avoid confusion.

I demand WCU's unlawful Judgment in DV-18-336D, dated October 4, 2018 be vacated and removed from the public record.

I demand the 2009 adjudicated mortgage be removed from the public record.

I demand the loan files and the tax related issues be turned over so that we can properly file a tax return. I have included the earlier request made through Sheriff Brian Heino.

I can be reached at 406-261-6814 or by email at thorcoinc@outlook.com

Thanks Much,

Dennis Thornton

TFSS

TITLE
FINANCIAL
SPECIALTY
SERVICES

May 12, 2022

THORCO INCORPORATED
PO BOX 1557
KALISPELL, MI 50003-1557

Dear Valued Customer,

CONGRATULATIONS! Your lien with Whitefish Credit Union has been released.

Enclosed please find the original recorded Satisfaction of Mortgage. This document releases the lien from your property.

We would like to take this opportunity to say "Thank You" for allowing Whitefish Credit Union and Title Financial Specialty Services to assist you in this transaction. Please let us know if we can be of service to you in the future.

Sincerely,

Title Financial Specialty Services
Central Release Department
1-208-785-2515



Debbie Pierson, Flathead County MT by JW

202200012228
Page: 1 of 2
Fees: \$16.00
5/12/2022 11:10 AM

0213950 tg



Return to: Title Financial Specialty Services
P.O. Box 339
Blackfoot, Idaho 83221
1-208-785-2515

Loan Number: 9669428-0750-12 Client Name: Whitefish Credit Union

SATISFACTION OF MORTGAGE

KNOW ALL MEN BY THESE PRESENTS, that Whitefish Credit Union, does hereby certify that a certain mortgage, dated, made and executed by THORCO INCORPORATED, as Mortgagor, to Whitefish Credit Union, Mortgagee, conveying certain real estate therein mentioned as security for the payment of \$53,360,000.00 as therein stated, which mortgage was recorded in the office of the County Clerk and Ex-Officio Register of Deeds of Flathead County, Montana, on the 03-24-2009, as Instrument No. 200900007830 in Book and Page, and mortgaging certain described real estate in said County, including the following portion

is, with the note secured thereby, and the aforementioned debt, fully paid, satisfied, released and discharged, and in consideration thereof the said Mortgagee does hereby release and quitclaim unto the said Mortgagor the premises thereby conveyed and mortgaged

WITNESS the due execution and delivery of this Satisfaction of Mortgage this 12 day of May, in the year 2022.

Whitefish Credit Union

By TFSS, Inc. as Attorney in Fact
Dated 7/23/2014
Shauna Romrell, President

State of Idaho, County of Bingham; SS

On this 12 day of May, in the year 2022, before me a Notary Public of said State, personally appeared Shauna

Return to: Title Financial Specialty Services
P.O. Box 339
Blackfoot, Idaho 83221
1-208-785-2515

2022-00012728
Flathead
05/12/2022 1110

Loan Number: 9669128-075012 Client Name: Whitefish Credit Union

SATISFACTION OF MORTGAGE

KNOW ALL MEN BY THESE PRESENTS, that Whitefish Credit Union, does hereby certify that a certain mortgage, dated, made and executed by THORCO INCORPORATED, as Mortgagor, to Whitefish Credit Union, Mortgagee, conveying certain real estate therein mentioned as security for the payment of \$83,360,000.00 as therein stated, which mortgage was recorded in the office of the County Clerk and Ex-Officio Register of Deeds of Flathead County, Montana, on the 03/24/2009, as Instrument No. 200900007830 in Book and Page, and mortgaging certain described real estate in said County, including the following portion:

is, with the note secured thereby, and the aforementioned debt, fully paid, satisfied, released and discharged, and in consideration thereof the said Mortgagee does hereby release and quitclaim unto the said Mortgagor the premises thereby conveyed and mortgaged.

WITNESS the due execution and delivery of this Satisfaction of Mortgage this 12 day of May, in the year 2022

Whitefish Credit Union



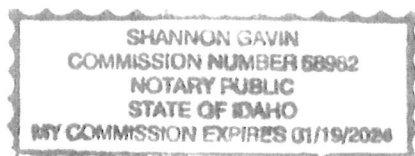
By TESS, Inc. as Attorney in Fact

Dated 7/23/2014

Shauna Romrell, President

State of Idaho, County of Blaine, SS

On this 12 day of May, in the year 2022, before me a Notary Public of said State, personally appeared Shauna Romrell, known to me to be the President of Title Financial Specialty Services, Inc., as the attorney in fact of Whitefish Credit Union, and acknowledged that she executed the same within the instrument on behalf of Title Financial Specialty Services and that Title Financial Specialty Services executed the same.




Notary Public
Residing at Blackfoot, Idaho

MCA Contents / TITLE 72 / CHAPTER 31 / Part 3 / 72-31-336 Authority tha...

Montana Code Annotated 2021

TITLE 72. ESTATES, TRUSTS, AND FIDUCIARY RELATIONSHIPS
CHAPTER 31. MISCELLANEOUS PROVISIONS RELATING TO FIDUCIARIES
Part 3. Uniform Power of Attorney Act

Authority That Requires Specific Grant -- Grant Of General Authority

72-31-336. Authority that requires specific grant -- grant of general authority. (1) An agent under a power of attorney may do the following on behalf of the principal or with the principal's property only if the power of attorney expressly grants the agent the authority and exercise of the authority is not otherwise prohibited by another agreement or instrument to which the authority or property is subject:

- (a) create, amend, revoke, or terminate an inter vivos trust;
- (b) make a gift;
- (c) create or change rights of survivorship;
- (d) create or change a beneficiary designation;
- (e) delegate authority granted under the power of attorney;
- (f) waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan;
- (g) exercise fiduciary powers that the principal has authority to delegate; or
- (h) disclaim property, including a power of appointment.

(2) Notwithstanding a grant of authority to do an act described in subsection (1), unless the power of attorney otherwise provides, an agent that is not an ancestor, spouse, or descendant of the principal may not exercise authority under a power of attorney to create in the agent or in an individual to whom the agent owes a legal obligation of support an interest in the principal's property, whether by gift, right of survivorship, beneficiary designation, disclaimer, or otherwise.

(3) Subject to subsections (1), (2), (4), and (5), if a power of attorney grants to an agent authority to do all acts that a principal could do, the agent has the general authority described in **72-31-339** through **72-31-351**.

(4) Unless the power of attorney otherwise provides, a grant of authority to make a gift is subject to **72-31-352**.

(5) Subject to subsections (1), (2), and (4), if the subjects over which authority is granted in a power of attorney are similar or overlap, the broadest authority controls.

(6) Authority granted in a power of attorney is exercisable with respect to property that the principal has when the power of attorney is executed or acquires later, whether or not the property is located in this state and whether or not the authority is exercised or the power of attorney is executed in this state.

Montana Code Annotated 2021

TITLE 72. ESTATES, TRUSTS, AND FIDUCIARY RELATIONSHIPS

CHAPTER 31. MISCELLANEOUS PROVISIONS RELATING TO FIDUCIARIES

Part 3. Uniform Power of Attorney Act

Tangible Personal Property

72-31-340. Tangible personal property. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to tangible personal property authorizes the agent to:

- (1) demand, buy, receive, accept as a gift or as security for an extension of credit, or otherwise acquire or reject ownership or possession of tangible personal property or an interest in tangible personal property;
- (2) sell, exchange, convey with or without covenants, representations, or warranties, quitclaim, release, surrender, create a security interest in, grant options concerning, lease, sublease, or otherwise dispose of tangible personal property or an interest in tangible personal property;
- (3) grant a security interest in tangible personal property or an interest in tangible personal property as security to borrow money or pay, renew, or extend the time of payment of a debt of the principal or a debt guaranteed by the principal;
- (4) release, assign, satisfy, or enforce, by litigation or otherwise, a security interest, lien, or other claim on behalf of the principal with respect to tangible personal property or an interest in tangible personal property;
- (5) manage or conserve tangible personal property or an interest in tangible personal property on behalf of the principal, including:
 - (a) insuring against liability or casualty or other loss;
 - (b) obtaining or regaining possession or protecting the property or interest, by litigation or otherwise;
 - (c) paying, assessing, compromising, or contesting taxes or assessments or applying for and receiving refunds in connection with taxes or assessments;
 - (d) moving the property from place to place;
 - (e) storing the property for hire or on a gratuitous bailment; and
 - (f) using and making repairs, alterations, or improvements to the property; and
- (6) change the form of title of an interest in tangible personal property.

History: En. Sec. 3, Ch. 580, L. 1991; amd. Sec. 117, Ch. 494, L. 1993; Sec. 72-31-203, MCA 1991; redes. 72-31-225 by Code Commissioner, 1993; amd. Sec. 31, Ch. 109, L. 2011; Sec. 72-31-225, MCA 2009; redes. 72-31-340 by Code Commissioner, 2011.

Montana Code Annotated 2021

TITLE 72. ESTATES, TRUSTS, AND FIDUCIARY RELATIONSHIPS

CHAPTER 31. MISCELLANEOUS PROVISIONS RELATING TO FIDUCIARIES

Part 3. Uniform Power of Attorney Act

Real Property

72-31-339. Real property. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to real property authorizes the agent to:

(1) demand, buy, lease, receive, accept as a gift or as security for an extension of credit, or otherwise acquire or reject an interest in real property or a right incident to real property;

(2) sell, exchange, convey, with or without covenants, representations, or warranties; quitclaim; release; surrender; retain title for security; encumber; partition; consent to partitioning; subject to an easement or covenant; subdivide; apply for zoning or other governmental permits; plat or consent to platting; develop; grant an option concerning; lease; sublease; contribute to an entity in exchange for an interest in that entity; or otherwise grant or dispose of an interest in real property or a right incident to real property;

(3) pledge or mortgage an interest in real property or right incident to real property as security to borrow money or pay, renew, or extend the time of payment of a debt of the principal or a debt guaranteed by the principal;

(4) release, assign, satisfy, or enforce, by litigation or otherwise, a mortgage, deed of trust, conditional sale contract, encumbrance, lien, or other claim to real property that exists or is asserted;

(5) manage or conserve an interest in real property or a right incident to real property, owned or claimed to be owned by the principal, including:

(a) insuring against a liability or casualty or other loss;

(b) obtaining or regaining possession or protecting the interest or right, by litigation or otherwise;

(c) paying, assessing, compromising, or contesting taxes or assessments, or applying for and receiving refunds in connection with them; and

(d) purchasing supplies, hiring assistance or labor, and making repairs or alterations in the real property;

(6) use, develop, alter, replace, remove, erect, or install structures or other improvements upon real property in or incident to which the principal has or claims to have an interest or right;

(7) participate in a reorganization with respect to real property or an entity that owns an interest in or right incident to real property and receive, hold, and act with respect to stocks and bonds or other property received in a plan of reorganization, including:

(a) selling or otherwise disposing of them;

(b) exercising or selling an option, right of conversion, or similar right with respect to them; and

(c) exercising any voting rights in person or by proxy;

(8) change the form of title of an interest in or right incident to real property; and

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Dean A. Stensland
Boone Karlberg P.C.
201 West Main, Suite 300
P.O. Box 9199
Missoula MT 59807-9199
Telephone: (406) 543-6646
Facsimile: (406) 549-6804
E-mail: dstensland@boonekarlberg.com
Montana State Bar ID No. 3447

Attorneys for Whitefish Credit Union

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA

IN RE:

Case No. 17-61219-11

THORCO, INC

MOTION TO MODIFY STAY

Debtor.

The Motion of Whitefish Credit Union (hereinafter "Creditor" or "WCU")
respectfully represents:

1. The Debtor filed a Petition in this Court under Chapter 11 of the
Bankruptcy Code on the 27th day of December, 2017.
2. According to Debtor's bankruptcy schedules, Creditor is the holder of
a secured claim against the Debtor, and pursuant to Mont. LBR 4000-1, provides
the following information:
 - (a) According to Debtor's bankruptcy schedules, the amount of
claim owing to Creditor is: \$3,360,000.00.



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(b) The date upon which the subject debt was incurred is: Loan was provided March 19, 2009.

(c) According to Debtor's bankruptcy schedules, Creditor holds a security interest or lien upon the following described real property of the estate: Tracts 1B, 1BN, 1BF, 1BFG, 1BM, 1BL, 1BFF, 1BFE, 1BFD, 1BJ, 1BFF, 1BFA, 1BG, 1BGA of Section 27, T27N, R21W (300 Acres), located in Flathead County, Montana;

Tracts 1, 1A, 1B, 1C, 1D, 1E, 3BA, 3BB, 3BC, and 3BD of Section 28, T27N, R21W (200 Acres), located in Flathead County, Montana;

(d) The nature of Creditor's claim, the date upon which the security interest was obtained, the date upon which the security interest was perfected are as follows: On March 19, 2009, to secure its Loan, Debtor executed a Mortgage on the real property described in subparagraph 2 (c), which was recorded March 24, 2009 under Document No. 200900007830. The Mortgage is attached as Exhibit A. On March 10, 2014, the Flathead County District Court granted WCU's motion for summary judgment to foreclose on the above-referenced collateral. Thorco, Inc., Dennis Thornton and Donna Thornton (collectively "Thorco") and WCU entered into a Settlement Agreement and Mutual Release dated June 9, 2016. The Settlement Agreement and Mutual Release is attached as Exhibit B. Thorco and WCU have agreed to waive the confidential provisions

17-61219-BPH Doc#: 20 Filed: 03/30/18 Entered: 03/30/18 14:21:35 Page 3 of 9

contained in the Settlement Agreement and Mutual Release, to allow the parties to present evidence surrounding the agreement and to allow the court the opportunity to review the agreement;

(e) A description of Creditor's collateral, including its location, is as follows: See paragraph 2 (c).

(f) Debtor's bankruptcy schedules value WCU's collateral at \$8,790,000.00. However, according to an appraisal obtained by WCU, the fair market value of Creditor's collateral as of June 15, 2017 was \$1,780,000.00.

(g) A description of, and the amounts due upon, any other security interests which have priority over that of Creditor are as follows: None.

(h) If the Debtor is in default, the number of defaulted installments and the total amount in default are as follows: The loan has matured, summary judgment was obtained, and a Settlement Agreement and Mutual Release was executed.

(i) This Motion is made under and pursuant to the following subsections of 11 U.S.C. § 362 (d)(1) and (2).

(j) Other facts which are relevant in determining whether relief should be granted are as follows:

1. On March 19, 2009, Debtor borrowed \$3,360,000.00 from WCU. Dennis Thornton and Donna Thornton each executed a

personal guarantee for the loan;

2. Debtor agreed to pay the loan amount back to WCU within two years;
3. Debtor failed to pay the amount due when the loan matured on March 15, 2011;
4. WCU initiated foreclosure proceedings in February, 2012. Thorco filed numerous counterclaims against WCU;
5. On March 10, 2015, WCU was awarded summary judgment against Thorco on each of its counterclaims except the negligence count. The State District Court awarded WCU \$115,000.00 of attorney's fees against Thorco;
6. After trial was scheduled for May 27, 2015, Debtor filed for bankruptcy protection. The bankruptcy was dismissed less than one year later;
7. After WCU sought a judgment of foreclosure and order of sale from the State District Court, Thorco appealed the State District Court's earlier summary judgment decision. The Montana Supreme Court dismissed the appeal March 22, 2016;
8. Mediation was held, which resulted in the Settlement Agreement and Mutual Release;

9. As part of the Settlement Agreement and Mutual Release, WCU executed Releases of Mortgage and Debtor executed Warranty Deeds. Another provision of the settlement was that Whitefish Credit Union granted Thorco an option, for eighteen months, to purchase the property subject to the deeds and releases;

10. The parties to the Settlement Agreement and Mutual Release agreed that if the option was timely exercised by Thorco, the Releases of Mortgage would be recorded. The parties also agreed that if the option was not timely exercised by Thorco, the Warranty Deeds would be recorded;

11. The settlement envisioned that the parties would establish an escrow at First American Title Company to hold the original Releases of Mortgage executed by WCU and the original Warranty Deeds executed by Debtor. Neither party established the escrow at First American Title Company. Instead, Debtor provided its fully executed Warranty Deeds to WCU's counsel to hold the documents in trust together with the Releases of Mortgage, pending Thorco's performance or non-performance of the option to purchase.

WHEREFORE, the Creditor Whitefish Credit Union moves the Court to grant this Motion to Modify Stay, including waiver of the fourteen day period set forth in F.R.B.P. 4001(a)(3), to allow it to record the Warranty Deeds, in accord with the Settlement Agreement and Mutual Release, and to grant such other relief as the Court may deem appropriate.

DATED this 30th day of March, 2018.

Boone Karlberg P.C.

By: /s/ Dean A. Stensland
Dean A. Stensland
Attorneys for Whitefish Credit Union

1 Sean S. Frampton
2 FRAMPTON PURDY LAW FIRM
3 530 West 19th Street #301
4 Whitefish, Montana 59937
5 Telephone: (406) 862-9600
6 Facsimile: (406) 862-9611
7 E-mail: sean@framptonpurdy.com
8 *Attorneys for Defendant*

CLERK OF DISTRICT COURT
2018 JUN 29 PM 3:23
FILED
BY RM
DEPUTY

9 MONTANA ELEVENTH JUDICIAL DISTRICT COURT, FLATHEAD COUNTY

10 DENNIS THORNTON and DONNA]]	Cause No. DV-18-336D
11 THORNTON,]]	
]]	Judge Dan Wilson
12 Plaintiffs,]]	
13 -vs-]]	SECOND AFFIDAVIT OF
]]	SEAN S. FRAMPTON
14 WHITEFISH CREDIT UNION,]]	
]]	
15 Defendant.]]	

16 Sean S. Frampton, being first duly sworn, deposes and states as follows:

- 17
- 18 1. I am an attorney with Frampton Purdy Law Firm in Whitefish, Montana and I have been
 - 19 representing the Whitefish Credit Union since approximately 2008.
 - 20 2. Klinkhammer did, in fact, request that WCU open an escrow and I told him Thorntons
 - 21 could open it.
 - 22 3. I delivered the documents to First American Title.
 - 23 4. First American Title advised it would return the documents if it did not receive agreed
 - 24 upon escrow instructions by May 10, 2018.
 - 25 5. The parties could not agree on the instructions and First American returned the
 - 26 documents to my office.
 - 27 6. Even though WCU held the original documents, nothing precluded Thorntons from
 - 28 requesting those documents and opening the escrow themselves. They never placed

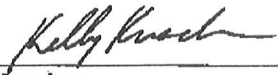
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CERTIFICATE OF MAILING

The undersigned does hereby certify that on the 29th day of June, 2018, a true and correct copy of the foregoing document was served upon the persons named below, at the addresses set out below their names, as indicated below.

Michael Klinkhammer
Klinkhammer Law Offices
1111 S. Main
Kalispell, MT 59901
Attorney for Plaintiffs

- U.S. Mail (first class postage)
- Hand Delivery
- Telecopy (facsimile)
- Other email



Kelly Kracker
Frampton Purdy Law Firm

UNITED STATES BANKRUPTCY COURT

DISTRICT OF MONTANA

In re:

THORCO, INC.,

Debtor.

THORCO, INC., a Montana corporation,

Plaintiff,

vs.

WHITEFISH CREDIT UNION, a _____ credit union; MO SOMERS, LLC, a Montana limited liability company; RUIS GLACIER, LLC, a Montana limited liability company; and DOES 1-10,

Defendants.

Case No. 22-90119-JMM

Chapter 11
(Subchapter V)

Adversary No. 22-____-JMM

Affidavit from Katherine Wilson
Re: Rae Albert, Shauna Romrell, & TFSS

BEFORE ME, the undersigned authority, on this day personally, November 16, 2022, I, Katherine Wilson, Agent for Cogburn Enterprises, LLC, being of full age, swore or affirmed to tell the truth and on her oath deposes and says:

1. I am not a party to this case.
2. I am a citizen of the United States, a resident of the State of Montana, and over the age of 18.
3. I have been retained by Dennis and Donna Thornton and Thorco, Inc to investigate the filing of the Satisfaction of Mortgage dated May 12, 2022.
4. On September 27, 2022, at 4:30 p.m., I contacted Title Financial Specialty Services (TFSS), Blackfoot, Idaho at 208-785-2515 and requested to speak with Shauna Romrell, President and Attorney in Fact for Whitefish Credit Union (WCU). Ms. Romrell did not answer. A voicemail was left requesting a return call.
5. On September 27, 2022 at 4:50 p.m., I had not received a return call from Ms. Romrell. Another call was made to Ms. Romrell, who was still not available. Instead, I spoke with Rae Albert regarding the filing of the Satisfaction of Mortgage, Instrument No. 200900007830, WCU Loan # 9669428-0750/12, filed on May 12, 2022.

The following are questions and answers from myself (K) and Rae Albert (R) relayed to you to the best of my recollection:

- (K) I am calling to confirm that you, Title Financial Specialty Services, had the authority to file the Satisfaction of Mortgage on May 12, 2022, regarding the Thorco Inc. property, loan #9669428-0750/12. Did your company have the authority to file that document?
- (R) Yes, when WCU requested us to file the Satisfaction of Mortgage, that gave us the authority to file the document.
- (K) Can you tell me who at WCU requested the Satisfaction of Mortgage be filed?
- (R) I am not sure if I can tell that, uh yes, it was Donna Goodrich.
- (K) Does it say what branch she is out of or do you have any contact information?
- (R) It shows her phone number is 406-758-0464
- (K) Doesn't this Satisfaction of Mortgage show Thorco, Inc. is the owner or could someone else own the property?
- (R) Yes, the owners should be Thorco, Inc., WCU only had a lien on it.
- (K) So, when it says, "Fully paid, satisfied, release and discharged", does that mean they no longer owe the \$3.36 million on it or that they are the owners of the property?
- (R) Yes, they would be the owners. I can't speak to any debt.
- (K) This release states that the lien of \$3.36 million was released and satisfied, does

that include any and all interest on the original amount of the loan?

(R) I don't know those details, that would be between Whitefish Credit Union and Thorco.

(K) Why if Thorco was the owner, would WCU say they were the owners and sell the property to a Mo Somers, LLC?

(R) I don't know, they only had a lien on the property. You would have to do a little research to see if there were any other liens.

(K) If Thorco owed any more money after this Satisfaction of Mortgage was released, WCU would need to let me know in writing, correct? Or they wouldn't release the lien, correct?

(R) I would believe so, but I don't know.

(K) So, according to this document, as of May 12, 2022, Thorco, Inc. was the owner of the property listed in the Satisfaction of Mortgage and that's why you sent them that letter?

(R) Yes.

(K) Can I get a copy of the lien release?

(R) You should be able to get a copy from Donna.

(K) Ok, thank you for your time.

(R) You're welcome.

End of phone call.

6.) At 12:20 p.m. on November 125, 2022, I phoned Shauna Romrell, President, at Title Financial Services, Blackfoot, Idaho at 208-785-2515 and left a message asking for a return call. At 1:17 p.m., I received a return call from Shauna Romrell at 208-643-4669 and spoke with Shauna Romrell and Shannon (last name unknown) on speaker phone for exactly 15 minutes regarding the Satisfaction of Mortgage filed by TFSS on May 12, 2022 and the Corrected Release of Mortgage filed by James Kenyon, WCU CEO, filed on June 7, 2022.

7. Due to the length of the conversation, I will summarize the important details of the call. During our phone conversation, when asked about whether they were aware there was a Corrected Release of Mortgage filed on the Thorco, Inc. Property, they both admitted they were not aware of the filing. In fact, both individuals expressed being extremely puzzled, and frankly stunned, by the filing.

When asked about the Corrected Release of Mortgage, and the statements that TFSS erroneously filed the Satisfaction of Mortgage without review and approval, both stated that they had approval to file the documents, which also meant WCU would have reviewed the file before sending the request.

Shauna and Shannon were asked how WCU makes their request for a Satisfaction of Mortgage to be filed. I was informed that there is an electronic reconveyance release platform that is used, which is a request that, they stated, has a lot of boxes that needs to be filled in with the loan information.

When asked if they could explain how WCU was able to sell the property before the release was

filed, they both stated they could not answer that. I believe it was Shauna who asked if there was ever a Deed in Lieu of Foreclosure and I informed her that I was unaware of one. She then questioned what would have transferred it to WCU and I informed her the only thing I knew of was a deed in their case that was dismissed with prejudice.

Shauna informed me that she could not understand the need for a Corrected Release of Mortgage, because either way, the property was to be release and the first one did that. Shauna also recommended that we order a title search to show the life of the property. End of conversation.

8. At 3:05 p.m., on November 16, 2022, I phoned Shauna Romrell, President of TFSS and left a message asking her to return my call. While I waited for her return call, it was decided that I would send her an email with the questions we were seeking answers to, to the following is a copy of the email that was sent to her:

Hi Shauna,

We do have a few more questions for you, if you don't mind taking the time to answer them, we would appreciate it. But first, I'd like to let you know a brief history of events; WCU got a judgement against Thorco, WCU then vacated that judgement and dismissed the lawsuit with prejudice. After all that, Feb. 10th 2022, at a hearing in Helena, the Banking Commissioner and the Chief Legal Counsel stated that the mortgage had been satisfied and nothing was owed, see attached (abbreviated) minutes. We believe that hearing is what spurred WCU, or James Kenyon, WCU CEO, to sell the property, even before the Satisfaction of Mortgage was filed.

- 1.) If a corrected Release of Mortgage is required, would you, or in this case, James Kenyon, not be required to contact Thorco, Inc. and inform them that there was an error that needed to be corrected?
- 2.) I want to confirm, you stated that you were not aware of the Corrected Mortgage Release being filed? Correct?
- 3.) Typically, if a Corrected Release of Mortgage was filed, wouldn't you be part of the process and need to correct the document that you filed? Can you explain that process?
- 4.) Would you not need an affidavit of approval from the owner to file a corrected mortgage release?
- 5.) Can you explain how WCU sold the property before the Satisfaction of Mortgage was filed?
- 6.) Attached is a copy of the settlement agreement, would this property not be considered a security, such as a trust indenture, because it has three parties?
- 7.) On the realty transfer certificate, these are not deeds in lieu, they were escrow/security deeds. How can escrow/security deeds be used for conveyance without first being in escrow?
First American Title has no record of this escrow, that per the settlement agreement, was to take place.
- 8.) In your power of attorney, it appears you are the successor of First American Title, did you ever receive these documents?
- 9.) After reviewing the corrected Release of Mortgage, I sent to you that was filed by James Kenyon, do you believe that, as stated, you did not have the review or approval of the WCU?

We greatly appreciate you taking the time to answer these questions.

Thank you,
Kathy Wilson
406-471-3341

9. Immediately following the sending of this email, I received a phone call from Shauna stating that she was not at liberty to discuss the questions asked in my email. She further went on to say that, what she could let me know was that when she recorded the documents, she had the authority to do so. And that what happened before or after the filing has nothing to do with her and she wished not to get in the middle of it. Shauna then followed up with an email response:

Good afternoon Kathy,

As per our telephone conversation just now, Title Financial Specialty Services/First American Title Company is not in a position to answer your questions. We played a very small role and followed the direction given by WCU to release the mortgage. Anything that happened prior to that or after that does not involve us.

I am very sorry that I can not be of more assistance to you and I wish you the best of luck.

Sincerely,

Shauna

End of communication with Shauna Romrell and TFSS.

I DECLARE UNDER PENALTY OF PERBURY AND UNDER THE LAWS OF THE STATE OF MONTANA THAT THE FOREGOING IS TRUE AND CORRECT.

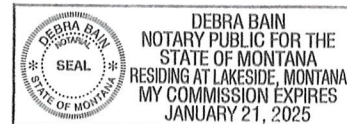
Katherine Wilson
Katherine Wilson PSP-PI-LIC-16517

State of Montana
County of Flathead

This instrument was signed and sworn to before me

on Nov 17, 2022 by Katherine Wilson
(Name of Signer)

Debra Bain
(Notary)



SETTLEMENT AGREEMENT AND MUTUAL RELEASE

RELEASORS: Thorco, Inc., Dennis Thornton, Donna Thornton (collectively "Thorco").

RELEASEE: Whitefish Credit Union ("WCU").

DESCRIPTION OF CASUALTY: All counterclaims described in DV-12-174B.

SETTLEMENT AND RELEASE TERMS:

1. Cash Component

WCU shall pay one hundred fifty thousand dollars (\$150,000) to Releasors within three days of the execution of this Settlement Agreement and Mutual Release.

2. Option to Purchase

- a. Within 18 months of the date of this Settlement Agreement and Mutual Release, Thorco may exercise an option to purchase the properties described above for one million four hundred thousand dollars (\$1,400,000). The option price is allocated to each parcel as follows: The 300 Acre Tract, legally described in Exhibit A, is priced at \$1,100,000; the 200 Acre Tract, legally described in Exhibit A, is priced at \$300,000. Within the 18 months, Thorco may exercise its option to purchase either the 200 Acre Tract, the 300 Acre Tract, or both.
- b. WCU shall execute releases of its mortgages for the 200 and 300 acre tracts, a copy of which are attached as Exhibit B. At execution of this agreement, the executed releases shall be deposited into escrow with First American Title Company. If Thorco timely exercises its option, First American Title shall record the appropriate release or releases.
- c. Thorco shall execute Non-Merger Warranty Deeds conveying all of Thorco's right, title, and interest in the 200 and 300 acre tracts to WCU along with a Realty Transfer Certificate, a copy of which are attached as Exhibit C. At execution of this agreement, the executed Non-Merger Warranty Deeds shall be deposited into escrow with First American Title Company. If Thorco fails to timely exercise its option(s), First American Title shall record the appropriate deed(s).

3. Deficiency

WCU agrees to waive any claim for deficiency under any loan document, note, or guaranty at issue in the above-described civil matter, Cause No. DV-12-174B.

4. Right of Redemption

Thorco waives any right of redemption in the 200 or 300 acre tracts.

5. Stipulation to Vacate Judgment and Dismiss with Prejudice

The parties agree that they, or their attorneys of record, shall stipulate to vacate the Judgment of Foreclosure and Order of Sale and dismiss with prejudice, as fully settled upon the merits, the above-described civil matter, Cause No. DV-12-174B. Each party shall pay their own respective costs and attorneys' fees.

6. Release

Releasors, in consideration of the terms of the Settlement Agreement set forth above, fully and forever release and discharge WCU, its subsidiaries, affiliates, and parent companies, heirs, executors, personal representatives, successors, assigns, employers, employees, agents, attorneys, and any other person, firm or corporation liable or who may be claimed to be liable as a result of the casualty described, from any and all actions, claims, causes of action, demands, or expenses for damages or injuries, whether asserted or unasserted, known or unknown, foreseen or unforeseen, arising out of the described casualty, including any and all claims for attorneys' fees.

7. Future Damages

Inasmuch as the injuries, damages, and losses resulting from the events described herein may not be fully known and may be more numerous or more serious than it is now understood or expected, Releasors agree, as a further consideration of this agreement, that this Mutual Release applies to any and all injuries, damages and losses resulting from the casualty described herein, even though now unanticipated, unexpected and unknown, as well as any and all injuries, damages and losses which have already developed and which are now known or anticipated.

8. No Admission of Liability

It is understood that the above-mentioned sum is accepted by each recipient as the sole consideration for full satisfaction and accord to compromise a disputed claim, and that neither payment of the sum nor the negotiations for settlement shall be considered as an admission of liability. The debt evidenced by Judgment of Foreclosure and Order of Sale in Cause No. DV-12-174B, Flathead County District Court is disputed by Thorco.

9. No Additional Claims

The parties mutually represent that no present or future claims are filed or contemplated against any other party potentially liable for the losses, damages and injuries for which this Mutual Release is given. In the event any additional claim is made which directly or indirectly results in additional liability exposure to either party for the losses, injuries, and damages for which this Mutual Release is given, the parties hereto covenant and agree to indemnify and save each other harmless from all such claims and demands, including reasonable attorney fees and all other expenses necessarily incurred.

10. Further Assurances

The parties agree to cooperate fully, to execute any and all additional documents and to take all additional actions that may be necessary or appropriate to give full force and effect to the terms of this Settlement Agreement and Mutual Release.

11. Attorneys' Fees

In the event suit is brought or claim is made arising out of the breach of any of the provisions of this Settlement Agreement and Mutual Release or to enforce any of the provisions of this Settlement Agreement and Mutual Release, the prevailing party shall be entitled to recover its reasonable attorneys' fees from the other party.

12. Confidential

The parties acknowledge that the amount and terms of this settlement are to be confidential and shall not be publicly disclosed by them or their representatives, except a party may disclose such information: (1) as its counsel may advise it is required to disclose under applicable laws and regulations, (2) as otherwise required by an order of a court of competent jurisdiction, or (3) as required for Thorco to disclose terms in connection with efforts related to performance of the above-described Option to Purchase, including without limitation, efforts to secure financing or investors.

13. Tax Issues

WCU shall file a Form 1099 in accordance with its standard practices regarding debt reduction. WCU agrees it will report only the principal balance of the loans in question, an amount up to \$3,360,170.62, on the Form 1099. Thorco agrees to bring no claim against WCU regarding the Form 1099. WCU agrees not to formally or voluntarily intervene with any tax-related protest to the IRS by Thorco regarding the Form 1099, and will only participate to the extent it is legally obligated or compelled to do. WCU agrees it will make no negative report to any credit agency in relation to the loan in question.

Prior to the date escrow is established and during the time documents are held in escrow, real estate tax notices were and will be received by Thorco. Thorco may elect not to

pay the real estate taxes, delinquent or to become delinquent, because it may elect not to close the escrow and record the releases of mortgage. WCU understands that it may be obliged to pay delinquent real estate taxes should it close the escrow and have the Warrant Deeds recorded.

14. Final Agreement

This Settlement Agreement and Mutual Release represents the parties' entire agreement with respect to the subject matter of this Agreement and supersedes any and all prior agreements, negotiations, and oral understandings. This Settlement Agreement and Mutual Release may not be modified or amended unless done so in writing and executed by the parties.

15. Disclaimer

The parties have carefully read the foregoing, discussed its legal effect with their attorneys, understand the contents thereof, and sign the same of their own free will and accord.

This Settlement Agreement and Mutual Release shall be binding upon the parties' heirs, executors, successors, personal representatives and assigns.

DATED, this 8 day of June 2016.

CAUTION: READ BEFORE SIGNING!

PARTIES:

THORCO, INC.

X [Signature]
By Dennis Thornton As: President

STATE OF Washington)
: SS
County of Pend Oreille)

This instrument was acknowledged before me on the 8 day of June 2016, by Dennis Thornton as President of Thorco, Inc.

(SEAL)



[Signature]
Notary Public for the State of Washington

THORCO, INC.

X [Signature]
By: Donna Thornton As: Sec/Treas

STATE OF Washington)
: SS
County of Pend Oreille)

This instrument was acknowledged before me on the 8 day of June 2016, by Donna Thornton as Sec/Treas of Thorco, Inc.

(SEAL)



[Signature]
Notary Public for the State of Washington

DENNIS THORNTON

X *Dennis Thornton*

STATE OF Washington)
: SS
County of Pend Oreille)

This instrument was acknowledged before me on the 8 day of June 2016, by
Dennis Thornton.

(SEAL)



Meadow Gleason
Notary Public for the State of Washington

DONNA THORNTON

X *Donna Thornton*

STATE OF Washington)
: SS
County of Pend Oreille)

This instrument was acknowledged before me on the 8 day of June 2016, by
Donna Thornton.

(SEAL)



Meadow Gleason
Notary Public for the State of Washington

WHITEFISH CREDIT UNION

X [Signature]

By: Ammon D. Archer As: SAG OFFICER

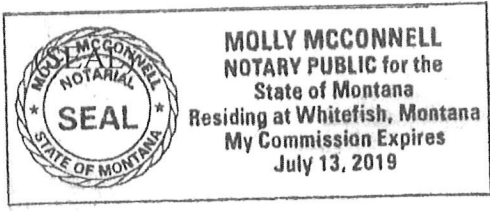
STATE OF MONTANA)

: SS

County of Flathead)

This instrument was acknowledged before me on the 8th day of June 2016, by AARON ARCHER as SAG OFFICER of Whitefish Credit Union.

[Signature]
Notary Public for the State of Montana



Return after Recording to:

Thorco, Inc.
c/o John L. Amsden
BECK & AMSDEN, pllc
1946 Stadium Drive, Suite 1
Bozeman, MT 59715

With a copy to:

Whitefish Credit Union
c/o Sean S. Frampton
MORRISON & FRAMPTON, PLLP
341 Central Avenue
Whitefish, MT 59937

[Above this line is for recording purposes only.]

(Loan # 966428-750) (Guarantee #FT20120081)

WARRANTY DEED

For, and in consideration of, the covenants herein provided, **THORCO, INC.** ("Grantor"), a Montana corporation, hereby grants, sells and conveys unto **WHITEFISH CREDIT UNION** ("Grantee"), of Whitefish, Montana, the following described real property, TOGETHER with any and all appurtenances thereto belonging or in any way appertaining, located in County of Flathead, State of Montana, and more particularly described as follows:

The North Half Northwest Quarter Northwest Quarter (N1/2NW1/4NW1/4);
The South Half Northwest Quarter Northwest Quarter (S1/2NW1/4NW1/4);
The North Half Northeast Quarter Northwest Quarter (N1/2NE1/4NW1/4);
The South Half Northeast Quarter Northwest Quarter (S1/2NE1/4NW1/4);
The North Half Southeast Quarter Northwest Quarter (N1/2SE1/4NW1/4);
The South Half Southeast Quarter Northwest Quarter (S1/2SE1/4NW1/4);
The North Half Southwest Quarter Northwest Quarter (N1/2SW1/4NW1/4);
The South Half Southwest Quarter Northwest Quarter (S1/2SW1/4NW1/4);
AND
The North Half Northwest Quarter Southwest Quarter (N1/2NW1/4SW1/4);
The South Half Northwest Quarter Southwest Quarter (S1/2NW1/4SW1/4);

ALL in Section 28, Township 27 North, Range 21 West, P.M.M., Flathead County, Montana.

("Property")

TO HAVE AND TO HOLD unto the Grantee and to the Grantee's successors and assigns, forever.

AND the Grantor(s) and Grantor(s) heirs do hereby covenant that they will forever warrant and defend the Grantee's right, title and interest in and to the said premises and the quiet



2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 78

("Property")

TO HAVE AND TO HOLD unto the Grantee and to the Grantee's successors and assigns, forever.

AND the Grantor(s) and Grantor(s) heirs do hereby covenant that they will forever warrant and defend the Grantee's right, title and interest in and to the said premises and the quiet and peaceful possession thereof unto the Grantee and the Grantee's successors and assigns, against the acts and deeds of the Grantor(s) and all and every person or persons whomsoever lawfully claim or to claim the same.

AND it is expressly understood and agreed by Grantor and Grantee that all of the liens and security interests in the Property created and evidenced by the Loan Agreement, Mortgage, and Guarantees entered into between the parties on March 19, 2009 ("Loan Documents"), and all of Grantee's rights and remedies with respect thereto, including, but not limited to, the remedy of judicial or non-judicial foreclosure, and the equitable estate of Grantee in the Property shall not merge with the legal estate and title in the Property to be conveyed by Grantor to Grantee pursuant to this Deed. To the contrary, Grantee's liens and security interests under the Loan Documents and the beneficial estate of Grantee in the Property shall be and remain separate and distinct from the legal estate and title in the Property to be acquired by Grantee from Grantor pursuant to this Deed. The liens and the Loan Documents shall not be released or relinquished and are preserved and shall continue in full force and effect to protect Grantee against any intervening lien, interest or title, or for other purposes of security. Further, the priority of the liens of the Loan Documents is not intended to be altered hereby, and nothing herein or in any document or instrument executed in connection herewith shall be construed to subordinate the priority of the liens of the Loan Documents to any other liens, encumbrances or interests whatsoever. The liens under the Loan Documents shall not merge with the fee or leasehold title to the Property unless and until Grantee elects to do so in its sole and absolute discretion by separate document recorded hereafter or, if Grantee so elects, by foreclosure of the Loan Documents. For the purposes of permitting Grantee to exercise such rights and remedies, Grantor and Grantee agree that the statutes of limitation applicable with respect to the exercise of such rights and remedies under the Loan Documents are hereby tolled and extended so that the exercise of such rights and remedies shall not be limited under any applicable statutes of limitation, by laches or otherwise. The parties agree that Grantee shall not be deemed a mortgagee in possession, or be deemed in control of or a partner or joint venturer of Grantor by virtue of this Deed or the dealings of the parties, and Grantor shall not hold itself out as such or make claim against Grantee by virtue of any of the foregoing.

This Deed is an absolute conveyance of title, in effect as well as in form, and is not intended as a mortgage, trust conveyance, or security of any kind.

REALTY TRANSFER CERTIFICATE

Confidential Tax Document

The information contained in this certificate is confidential by Montana law. Unauthorized disclosure of this information is a criminal offense.

GEOCODE(S)
ASSESSMENT CODE:

The Department of Revenue will change the name on ownership records used for the assessment and taxation of real property when this form is fully and accurately completed and signed.

PART 1 - DATE OF TRANSFER (SALE)

MM/DD/YYYY

PART 2 - PARTIES Please complete this section in full; if additional space is required, please attach a separate page

Seller (Grantor)
Name THORCO, INC.
Mailing Address c/o BECK & AMSDEN, pllc
1946 Stadium Drive, Suite 1
City Bozeman ST MT Zip 59715

List the last 4 digits of the SSN or FEIN
SSN 000 - 00 -
SSN 000 - 00 -
FEIN 00 - 000 0137
Daytime Phone

Main Geocode
Assessor Code or Parcel #

Buyer (Grantee)
Name WHITEFISH CREDIT UNION
Mailing Address 300 Baker Avenue
City Whitefish ST MT Zip 59937

SSN 000 - 00 -
SSN 000 - 00 -
FEIN 00 - 000 8730
Daytime Phone

Buyer Principal Residence Yes No
Mailing Address
For Tax Notice
City ST Zip

Transfer to Trustee, Custodian, or other Representative:
Trust FEIN 00 - 000
Minor SSN 000 - 00 -

PART 3 - PROPERTY DESCRIPTION Please complete fully; if additional space is required, please attach a separate page

Legal Description SEE ATTACHED EXHIBIT A Attachment
Add/Sub Block Lot
County FLATHEAD City/Town Section 27 Township 27n Range 21w

PART 4 - TYPE OF TRANSFER Please complete fully, more than one may apply.

Sale Gift Barter Nominal or No Consideration Part of 1031 or 1033 exchange Transfer is subject to a reserved life estate
Sheriff's sale: mortgage trust indenture other Deed in lieu of foreclosure Short sale Auction/Sealed bid
A copy of the recorded instrument must be attached to the Realty Transfer Certificate.
Transfer by Operation of Law
Termination of joint tenancy by death Termination of life estate by death Court order or decree (except sheriff's sale) Merger, consolidation, or other business entity reorganization

PART 5 - EXCEPTIONS FROM PROVIDING SALES PRICE INFORMATION Please complete fully, more than one may apply

Gift Termination of life estate by death
Transfer in contemplation of death without consideration Transfer pursuant to court decree (except sheriff's sale)
Transfer between husband/wife or parent/child for nominal consideration Tax deed
Transfer of property of the estate of a decedent Merger, consolidation or reorganization of business entity
Transfer by government agency Land eligible for timberland/forestland classification (15-44-103, MCA)
Correction, modification, or supplement of previously recorded instrument, no additional consideration Land eligible for agricultural classification (15-7-201, MCA)
Termination of joint tenancy by death Transfer to a revocable living trust
Other (Specify Type) Settlement in Cause No. DV-12-174B

PART 6 - SALE PRICE INFORMATION Please complete fully, more than one may apply

Actual Sale Price \$
Financing: Cash FHA VA Contract Other
Terms: New loan OR Assumption of existing loan
Value of personal property included in sale \$ 0.00
Value of inventory included in sale \$ 0.00
Value of licenses included in sale \$ 0.00
Value of good will included in sale \$ 0.00
Was an SID payoff included in the sale price? Yes No
Did the buyer assume an SID? Yes No
Amount of SID paid or assumed: \$ 0.00
Was a mobile home included in the sale? Yes No

PART 7 - WATER RIGHT DISCLOSURE - This Disclosure is only applicable to the property identified in PART 3 above

A. Property is served by a public water supply, i.e., city, irrigation district, or water district provides water.
B. Seller has no water rights on record with DNRC to transfer.
C. Seller is transferring ALL water rights on record with DNRC to the Buyer.
D. Seller is dividing or exempting (reserving) water rights. Seller must file Water Right Update form.
Seller (Grantor) Signature Date 6-8-2016

PART 8 - PREPARER INFORMATION Preparer's signature is required

Name/Title Johanna Preble (please print) Signature
Mailing Address 341 Central Ave. Daytime Phone (406) 862-9600
City Whitefish ST MT Zip 59937

Recorder and Recorder Use Only

Recording Information: Document # Book Page Date
Warranty Trust Deed Quit Claim Grant Contract for Deed Decree Interest
Bargain & Sale Deed Notice of Purchaser's Interest Statement of Acknowledgement Termination of Joint Tenancy
Tax Deed Beneficiary Deed Other

Department of Revenue Copy

CERTIFIED

CLERK OF DISTRICT COURT

2016 AUG 24 PH 4:08

FILED

BY SA
DEPUTY

Honorable Robert B. Allison
District Judge, Department 2
Flathead County Justice Center
920 South Main Street, Suite 310
Kalispell, MT 59901
Telephone: (406) 758-5906

201800002381
Page: 23 of 28
Fees: \$196.00
2/2/2018 4:16 PM

MONTANA ELEVENTH JUDICIAL DISTRICT COURT, FLATHEAD COUNTY

WHITEFISH CREDIT UNION,

Plaintiff,

-vs-

THORCO, INC., a Montana Corporation,
DENNIS THORNTON, DONNA
THORNTON, and JOHN DOE(s) 1-10.

Defendants.

Cause No. DV-12-174 B

Judge: Robert B. Allison

**ORDER OF DISMISSAL WITH
PREJUDICE**

THORCO INC., a Montana corporation,
DENNIS THORNTON and
DONNA THORNTON,

Counter-Claimants,

-vs-

WHITEFISH CREDIT UNION, and
JOHN DOES 1 - 10,

Counter-Defendants.

Pursuant to written Stipulation by and between the parties, through their respective
counsel,


ORDER OF DISMISSAL WITH PREJUDICE
Cause No. DV-12-174B

232

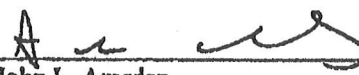
1 THORCO INC., a Montana corporation, }
2 DENNIS THORNTON and }
3 DONNA THORNTON, }
4 Counter-Claimants, }
5 -vs- }
6 WHITEFISH CREDIT UNION, and }
7 JOHN DOES 1-10, }
8 Counter-Defendants. }
9 }

9 COME NOW the parties, Whitefish Credit Union, Thorco, Inc., Dennis Thornton, and
10 Donna Thornton, who jointly move that, in accordance with the settlement reached between the
11 parties, the Judgment of Foreclosure and Order of Sale entered by this Court on February 23,
12 2016 be vacated.

14 DATED this 11th day of August, 2016

16 MORRISON & FRAMPTON, PLLP
17 Attorneys for Whitefish Credit Union
18 By: 
19 Sean S. Frampton
20 Johnna J. Preble

20 DATED this 11th day of August, 2016

21 BECK & AMSDEN, pllc
22 Attorneys for Thorco, Inc., Dennis Thornton,
23 and Donna Thornton
24 By: 
25 John L. Amsden
26 Justin P. Stalpes
27 Anthony F. Jackson
28

CERTIFIED

CLERK OF DISTRICT COURT

2016 AUG 12 PM 1:50

FILED

BY SA
DEPUTY

1 Sean S. Frampton
 2 Johnna J. Preble
 3 MORRISON & FRAMPTON, PLLP
 4 Frank Lloyd Wright Building
 5 341 Central Avenue
 6 Whitefish, MT 59937
 7 Tel: (406) 862-9600
 8 Fax: (406) 862-9611
 9 sean@morrisonframpton.com; johnna@morrisonframpton.com
 10 Attorneys for Plaintiff Whitefish Credit Union

11 John L. Amsden
 12 Justin P. Stalpes
 13 Anthony F. Jackson
 14 BECK & AMSDEN, PLLC
 15 1946 Stadium Drive, Suite 1
 16 Bozeman, MT 59715
 17 Tel: (406) 586-8700
 18 Fax: (406) 586-8960
 19 amsden@becklawyers.com; justin@becklawyers.com; anthony@becklawyers.com

201800002381
 Page: 13 of 28
 Fees: \$196.00
 2/2/2018 4:16 PM

12 John Heenan
 13 BISHOP & HEENAN LAW FIRM
 14 1631 Zimmerman Trail
 15 Billings, MT 59102
 16 Tel: (406) 839-9091
 17 Fax: (406) 839-9092
 18 john@bishopandheenan.com

16 Ford Elsaesser
 17 ELSAESSER JARZABEK ANDERSON
 18 ELLIOTT & MACDONALD, CHTD.
 19 123 South Third Avenue, Suite 24, PO Box 1049
 20 Sandpoint, ID 83864
 21 Tel: (208) 263-8517
 22 Fax: (208) 263-0759
 23 ford@ejame.com

Attorneys for Defendants and Counter-Claimants

MONTANA ELEVENTH JUDICIAL DISTRICT COURT, FLATHEAD COUNTY

23 WHITEFISH CREDIT UNION,

Cause No. DV-12-174B

24 Plaintiff,

Judge: Robert B. Allison

-vs-

26 THORCO, INC., a Montana Corporation,

JOINT MOTION TO VACATE
FEBRUARY 23, 2016 JUDGMENT OF

27 DENNIS THORNTON, DONNA

FORECLOSURE AND ORDER OF
SALE

28 THORNTON, and JOHN DOES 1-10.

Defendants.

JOINT MOTION TO VACATE FEB. 23, 2016 JUDGMENT OF FORECLOSURE AND ORDER OF SALE
Cause No. DV-11-326B

Page 1

STATE OF MONTANA)
County of Flathead)

I hereby certify that the instrument to which this certificate is affixed is a true, correct and compared copy of the original on file in the office of the Clerk of the District Court of Flathead County this 2 day of Feb, 2018.


PEG ALLISON, Clerk of the District Court
By Richard K. ...
Deputy Clerk



230

1 **IT IS HEREBY ORDERED** that the claims between Whitefish Credit Union, Thorco,
2 Inc., Dennis Thornton, and Donna Thornton are hereby dismissed with prejudice, each party to
3 bear its own costs and attorney fees.

4 DATED this 24th day of August, 2016.


5
6 Hon. Robert B. Allison
District Court Judge

7
8 cc: Sean S. Frampton/Johnna J. Preble
9 John L. Amsden/Justin P. Stalpes
10 John Heenan
11 Ford Elsaesser
12 8/24/16 &

STATE OF MONTANA)
County of Flathead)
I hereby certify that the instrument to which this certificate
is affixed is a true, correct and compared copy of the original or
file in the office of the Clerk of the District Court of Flathead
County this 2 day of Feb, 2018.
PEG B. ALLISON, Clerk of the District Court
By Richard R. Woods
Deputy Clerk



Dated: 9/7/2022

From: Rep Mark Noland HD 10
PO Box 1852,
Bigfork MT 59911

To: Bankruptcy Trustee
Christy L. Brandon
PO Box 1544 Bigfork MT. 59911

To: Bankruptcy Clerk's Office
Room 263 Federal Building
400 North Main Butte, MT 59701

To: Matthew F Shimanek Law PLLC
317 East Spruce Street
Missoula, MT 59802

To: Governor Greg Gianforte
P.O. Box 200801
Helena, MT 59620-0801

To: Montana Department of Administration
Misty Ann Giles, Director
North Roberts Street
PO Box 200101
Helena Montana 59620-0101

Re: 9:22-bk-90119-BPH

Preface:

To say this has been written, and rewritten several times, would be an understatement. I sit and contemplate how much I've recently learned about Processes & Procedures; like the laws and ordinances set forth to protect each and every one of us from extortion, theft, and state-advantage. In this drafting, I have once or twice included copies of these laws, I have added procedural rules, I have tried to include all the necessary ingredients to allow the reader some insight into understanding – which is absolutely needed in this complicated matter – *and I have deleted it all* (also for the sake of directness and brevity). There is no spoon feeding or hand holding which will be adequate to ensure a complete understanding of what has unfolded over a decades time.

Early on, I myself set out to ascertain the entire truth concerning Thorco Inc., and Dennis and Donna Thorton; specifically in regard to the lending institution, Whitefish Credit Union. Knowing it was patently impossible for me to see things rightly or fairly as things were, I dedicated time to educate myself so as to gain discernment, and it has taken more than a couple cursory glances or a default confidence to accomplish this. Now let me speak plainly... Prior to all the evidence and all the affiant documents being included, there can be no right conclusion.

In my purview as a constituent Representative, any successes won by those who might actually stand in opposition to the truth, have won them using methods that ensure the macro-totality of this conspiracy are never included together or discoverable in any one court, or in any one action. They have used processes that fragment and blur, that blend-in proceedings already settled, adding, mixing, and matching to confuse and muddle.

Conclusively, it is my adept opinion that this Bankruptcy court conjunctively: bring in all witnesses, exhibits, affiant documents, records, Powers of Attorney, discovery, depositions, et al into one action. I urge this court to not lift any automatic stays – and to move all State court actions into the Bankruptcy Action – so that certain protections might be realized and that the Thornton's and Thorco Inc. can receive equitable resolution.

A brief Introduction And Qualifying Statements:

My name is Representative Mark Noland. I represent House District 10, & serve on the Montana House of Representatives Bank Oversight Committee. My role on the oversight committee is to address complaints from my constituents, as well as to work with and assist them in solutions and resolutions regarding banking related matters.

This involves ensuring that all State and Federal laws, rules, and regulations are followed and adhered to by all lenders. If it is determined, through the complaint process, that regulations are not being followed – then I and other members of the committee take the appropriate action for correction and guidance.

Over some time, I have received several complaints from my constituents involving Whitefish Credit Union (WCU). In particular, from Dennis and Donna Thornton, being 2 of the 12 shareholders of Thorco Inc., who are personally responsible for its daily operations. This analysis will focus on Thorco Inc. & Dennis and Donna Thornton, and their cause relating to their specific complaints.

Relevant Considerations:

The Thornton's signed a personal guarantee for Thorco Inc. in March 2009 – for a mortgage in the amount of \$3,360,000 with WCU.

WCU foreclosed on the above 2009 mortgage, in a foreclosure lawsuit (DV-12-174B). Thorco Inc. and the Thornton's countersued in the amount of \$60 million. WCU received a partial summary judgment on March 23, 2016 in the amount of \$4,348,880. Trial was set for mid April 2016. WCU's attorney, Sean Frampton, approached Thorco Inc.'s attorney prior to trial, asking for another settlement conference. The parties then agreed to another settlement conference.

Subsequently, settlement was reached on April 4, 2016. The settlement called for canceling the debt on the 2009 mortgage (an important detail to note) which included vacating the February 23, 2016 judgment in the amount of \$4,348,880 – dismissing the foreclosure lawsuit with prejudice, which also extinguished Thorco Inc.'s. & the Thornton's \$60 million-dollar counterclaim (DV-12,174B).

Another provision of the agreement called for WCU to open an escrow at First American Title, with security deeds for two new mortgages. One in the amount of \$300,000.00 – the other in the amount of \$1,100,000.00 (\$1,400,000.00 in total) accompanied by the mortgage releases for the new agreement. As I understand it, First American Title's escrow department has no record of an escrow between the parties, nor any record of any filing, deposit, recordation or holding there. By all accounts, the Thornton's were instructed by their legal counsel to deliver the signed agreement to WCU's attorney Sean Frampton for the completion of the transaction –

with the assumption the terms of the agreement would be followed. It's now known that the documents may have never been delivered to WCU's Credit Department in any form, but instead were deposited in Mr. Frampton's personal desk.

With the benefit of time, we can check the record, and upon inspection see that Mr. Frampton kept the agreement in his own possession, and that it was WCU that never completed the terms of the agreement. It has also become known that the cancellation of debt never occurred until as recently as **May 12, 2022.**

We can also see that Thorco Inc. had funding available and could have completed the transactions in 2017 – had the new Mortgages been recorded as agreed, so that title insurance could be provided. Title agent Debbie Pierce has signed an affidavit stating she could not determine what was owed on the property.

See: Exhibit

Whitefish Credit Union, in Thorco Inc.'s previous bankruptcy proceedings with said court, filed a proof of claim under the penalty of perjury in the amount of \$1,400,000.00. The Flathead County Clerk and Recorder's Office has no record of any recorded mortgages by WCU in the amount of \$1,400,000.00.

Seemingly WCU, through its agent Aaron Archer and attorney Sean Frampton, mutually continued to pursue the canceled debt from the now defunct 2009 mortgage – even though they had signed documents canceling the debt; vacating the judgment, and dismissing the lawsuit with prejudice. In a personal lawsuit brought by the Thornton's in 2018, more than two years after the settlement agreement, District Court Judge Dan Wilson (DV-18-336D) brought back the canceled debt and reinstated the February 23, 2016 judgment from the original foreclosure lawsuit (which was permanently extinguished/vacated). Now this indentured the Thornton's to a hefty balance of almost \$7 million-dollars.

Deeds for the sake of a mortgage, in my understanding, can't be used for more than a security on a note, and are not intended, legally or otherwise, to transfer ownership of Real Property (Mr. Frampton recently stated they were deeds in lieu). Sean Frampton removed these so-called "settlement agreement deeds," as a means of making them conveyance deeds – transferring Thorco Inc.'s property with no recorded PoA and no Writ of Execution, Corporate Resolution, or Court order to do so.

The Introduction Of Sheriff Heino:

In an attempt to get resolution to this matter, Flathead County Sheriff Brian Heino was given permission from Dennis Thornton – granting Mr. Heino temporary and legal custody of Thorco Inc.'s loan file, being a neutral third-party with impeccable credentials, I happily co-requested the documents as well. It has been relayed to me, that WCU refused to turn over the loan files and referred Mr. Heino to Sean Frampton's office, who thereupon also refused to turn over any loan files. This could be construed as abnormal behavior, specifically from a Standards & Practices perspective. I have spoken with Sheriff Brian Heino and he has indicated that he does not believe that WCU has come into lawful ownership of the Thorco Inc. property.

On January 19, 2022 – Sheriff Brian Heino requested a subpoena for Thorco Inc.'s loan files from Flathead County Attorney Travis Ahnor, as I understand it, Ahnor refused the subpoena; instead insisting Dennis Thornton be charged with Criminal Trespass on January 19, 2022. This is also irregular, as a Mortgage Holder is an owner, so a trespass would certainly be an interesting charge on its own merits – and is another area needing more focus and attention regarding the Due Process of Law, and whether or not the Thornton's were aided in their redresses, or conspired against in a complicated and varied operation designed to defraud.

See: Exhibit

Helena Committee Hearing:

In proceedings on February 10, 2022, at the Montana Economic Affairs InTerim Committee Hearing In Helena (where I'm a sitting member), I and several of my colleagues questioned Montana's Banking Commissioner, Ms. Melanie Hall, and the Chief Legal Counsel for the Division of Banking, Ms. Kelly O'Sullivan.

Ms. Hall stated that a Mortgage Lien is a "Special Lien," and can only be used for one obligation; that when WCU vacated its judgment and dismissed its lawsuit with prejudice against Thorco Inc./Thornton's; that there was only one legal action to pursue the debt – and that action had already been taken, and effectively 'used up.' The mortgage between the parties was done and over and no longer owed as of August 2016.

See: Exhibit

Current Events Leading To Today:

I later learned that on February 14, 2022 – WCU's employee James Kenyon – sold Thorco Inc.'s property to Sean Frampton's client "MO Somers," for \$4 million dollars, using a Special Warranty Deed. As defined, a Special Warranty Deed does not guarantee 100% ownership to the buyer, so that other parties, known or unknown, may have a claim on the property described in the deed. By the nature of the WCU/Mo Somers transaction, it proceeded with no Title Insurance, and references no Power of Attorney (PoA). This property was sold while Thorco Inc.'s 2009 recorded mortgage with WCU was still in place.

I have been advised, that if there had been extant recorded mortgages in the amount of \$1,400,000.00, as stated in the prior Bankruptcy, and the property was correctly ushered through the only legitimate foreclosure process – any surplus money(s) must be returned to the borrower Thorco Inc. I have been satisfactorily convinced that the \$2,600,000.00 in surplus money – has never been turned over to Thorco Inc.

Sean Frampton then filed a motion, on behalf of his client Mo Somers, for a temporary restraining order against Dennis and Donna Thornton (Mortgage Holders) and the shareholders of Thorco Inc. – while simultaneously requesting a Quiet Title Action on Thorco Inc.'s heavy construction equipment.

Moving forward to May 12, 2022 – WCU's Credit Department, using WCU's sole-authorized PoA Agent of Record (Title Financial Specialty Services of Blackfoot, Idaho) – legally recorded, with the Flathead County Clerk and Recorder's Office, a filing to the satisfaction of Thorco Inc.'s 2009 mortgage – which also contained a Quit Claim describing the 500 acres sold to MO Somers.

See: Exhibit

Cancellation of Thorco's Debt:

It is undisputed that WCU did not complete the Cancellation of Debt until **May 12, 2022** – through its authorized Title Agent – Title Financial Specialty Services. This is almost 6 years after entering into the Debt Cancellation Agreement with Thorco Inc.

Reputedly, taxes would be due to the Montana Department of Revenue, and the IRS, for the completed Cancellation of Debt. As part of his complaint, Dennis Thornton said they have no 1099-C; one has never been issued for the Cancellation of Debt, and that this detail was also a part of the aforementioned Settlement Agreement. The perception of the Banking Regulations is, once the Cancellation of Debt has occurred, the IRS immediately receives a Statutory Lien on the property. This would proceed to a required issuance of the 1099-C for the May 12, 2022 Satisfaction of Mortgage/Cancellation of Debt, which is time-sensitive and should be done by January 15, 2023. Dennis Thornton has stated this stalemate regarding the issuance of proper tax documents, will pose a problem for Thorco Inc., because it no longer has the assets or the resources to pay the tax debt, or accompanying fines or penalties.

For all its appearances, Sean Frampton's client MO Somers, ostensibly could be an insider. Mr. Frampton represents both WCU and MO Somers at the same time, creating an interesting consideration for a Conflict of Interest. I have been told that Rusty Murphy will be representing WCU and has filed a motion to modify the stay on the District Court action in the MO Somers case.

Conclusive Statements:

Demonstrably, Sean Frampton asserts that Whitefish Credit Union is allowed to:

- 1) Use a type-and-kind of non-judicial foreclosure on Thorco Inc., to receive a partial summary judgment in order to gain ownership of Thorco's real property.
- 2) Reuse prejudiced judgments to further a Color of Law process against Thorco Inc. – and its 12 Shareholders.
- 3) Use the courts to remove the Public Record, and to deny the entry of evidence, including Expert Witness Reports.

Thank you for your time and consideration,

Representative Mark Noland
DISTRICT 10

Contact Cell: 406-253-8982
Email: marknolandhd10@gmail.com

Mark Noland . 9-12-2022

Montana Code Annotated 2021

TITLE 30. TRADE AND COMMERCE

CHAPTER 9A. UNIFORM COMMERCIAL CODE SECURED TRANSACTIONS

Part 2. Effectiveness of Security Agreement -- Attachment of Security Interest - - Rights of Parties to Security Agreement

Request For Accounting -- Request Regarding List Of Collateral Or Statement Of Account

30-9A-210. Request for accounting -- request regarding list of collateral or statement of account. (1)

In this section, the following definitions apply:

(a) "Request" means a record of a type described in subsection (1)(b), (1)(c), or (1)(d).

(b) "Request for an accounting" means a record authenticated by a debtor requesting that the recipient provide an accounting of the unpaid obligations secured by collateral and reasonably identifying the transaction or relationship that is the subject of the request.

(c) "Request regarding a list of collateral" means a record authenticated by a debtor requesting that the recipient approve or correct a list of what the debtor believes to be the collateral securing an obligation and reasonably identifying the transaction or relationship that is the subject of the request.

(d) "Request regarding a statement of account" means a record authenticated by a debtor requesting that the recipient approve or correct a statement indicating what the debtor believes to be the aggregate amount of unpaid obligations secured by collateral as of a specified date and reasonably identifying the transaction or relationship that is the subject of the request.

(2) Subject to subsections (3), (4), (5), and (6), a secured party, other than a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor shall comply with a request within 14 days after receipt:

(a) in the case of a request for an accounting, by authenticating and sending to the debtor an accounting; and

(b) in the case of a request regarding a list of collateral or a request regarding a statement of account, by authenticating and sending to the debtor an approval or correction.

(3) A secured party that claims a security interest in all of a particular type of collateral owned by the debtor may comply with a request regarding a list of collateral by sending to the debtor an authenticated record including a statement to that effect within 14 days after receipt.

(4) A person that receives a request regarding a list of collateral, that claims no interest in the collateral when it receives the request, and that claimed an interest in the collateral at an earlier time shall comply with the request within 14 days after receipt by sending to the debtor an authenticated record:

(a) disclaiming any interest in the collateral; and

(b) if known to the recipient, providing the name and mailing address of any assignee of or successor to the recipient's interest in the collateral.

(5) A person that receives a request for an accounting or a request regarding a statement of account, that claims no interest in the obligations when it receives the request, and that claimed an interest in the obligations at an earlier time shall comply with the request within 14 days after receipt by sending to the debtor an authenticated record:

(a) disclaiming any interest in the obligations; and

(b) if known to the recipient, providing the name and mailing address of any assignee of or successor to the recipient's interest in the obligations.

(6) A debtor is entitled without charge to one response to a request under this section during any 6-month period. The secured party may require payment of a charge not exceeding \$25 for each additional response.

History: En. Sec. 19, Ch. 305, L. 1999; amd. Sec. 6, Ch. 179, L. 2001; Sec. 30-9-220, MCA 1999; redes. 30-9A-210 by Code Commissioner, 2001.

MCA Contents / TITLE 71 / CHAPTER 1 / Part 2 / 71-1-221 Definition of f...

Montana Code Annotated 2021

TITLE 71. MORTGAGES, PLEDGES, AND LIENS

CHAPTER 1. MORTGAGES

Part 2. Mortgages of Real Property

Definition Of Foreclosure

71-1-221. Definition of foreclosure. The term "foreclosure" for the purpose of this part shall include sale or possession of real property made or taken whether by judicial proceedings or otherwise.

History: En. Sec. 2, Ch. 2, L. 1935; re-en. Sec. 9473.2, R.C.M. 1935; R.C.M. 1947, 93-6009.

MCA Contents / TITLE 71 / CHAPTER 1 / Part 2 / 71-1-225 Surplus mone...

Montana Code Annotated 2021

TITLE 71. MORTGAGES, PLEDGES, AND LIENS

CHAPTER 1. MORTGAGES

Part 2. Mortgages of Real Property

Surplus Money From Sale

71-1-225. Surplus money from sale. If there be surplus money remaining after the payment of the amount due on the mortgage, lien, or encumbrance, with costs, the court may cause the same to be paid to the person entitled to it and in the meantime may direct it to be deposited in court.

History: En. Sec. 247, p. 186, L. 1867; re-en. Sec. 296, p. 92, Cod. Stat. 1871; re-en. Sec. 347, p. 136, L. 1877; re-en. Sec. 347, 1st Div. Rev. Stat. 1879; re-en. Sec. 359, 1st Div. Comp. Stat. 1887; re-en. Sec. 1291, C. Civ. Proc. 1895; re-en. Sec. 6862, Rev. C. 1907; re-en. Sec. 9468, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 727; re-en. Sec. 9468, R.C.M. 1935; R.C.M. 1947, 93-6002.

October 25, 2018

VIA US MAIL AND EMAIL mklinkhammer@montanadsl.net

Mr. Michael Klinkhammer
Klinkhammer Law Offices
1111 S Main St
Kalispell, MT 59901

RE: Recording of Warranty Deeds per Agreement

Dear Mike:

Please be advised that WCU recorded the attached deeds to the property today. Judgment was entered on October 9, 2018 and the 14-day automatic stay on execution of the judgment passed on October 23, 2018. Also, Thornton's complaint never contained a cause of action for preliminary or permanent injunction and thus neither the judgment nor the automatic stay provision would apply.

With the assistance of the Flathead County Sheriff's office, the locks at the entrance of the property have been changed. We understand that your client has machinery and personal property located on the property and WCU will grant supervised access for the Thorntons to remove their personal property so long as this office receives 48 hours of advanced notice and the Flathead County Sheriff's office is available to accompany and supervise the removal.

Finally, please be advised that your client does not have permission to be on the property and that any attempt to access the property without the advance written consent of WCU will be considered a trespass for which WCU will report to the Flathead County Sheriff.

Frampton Purdy Law Firm



Sean S. Frampton

SSF/kk
Enclosures

REALTY TRANSFER CERTIFICATE

Confidential Tax Document

The information contained in this certificate is confidential by Montana law. Unauthorized disclosure of this information is a criminal offense.

ASSESSMENT CODE: _____

GEocode(S) _____

The Department of Revenue will change the name on ownership records used for the assessment and taxation of real property when this form is fully and accurately completed and signed. (Please read the attached instructions on page 1 for assistance in completing and filing this form).
 Montana law requires this form be completed and may impose up to a \$500 penalty for failure to file a Realty Transfer Certificate (15-7-304, 305 and 310, MCA)

PART 1 - DATE OF TRANSFER (SALE)

____/____/____ (MM/DD/YYYY)

PART 2 - PARTIES Please complete this section in full; if additional space is required, please attach a separate page

Seller (Grantor)
 Name THORCO, INC.
 Mailing Address c/o BECK & AMSDEN, PLLC
 (Permanent) 1946 Stadium Drive, Suite 1
 City Bozeman ST MT Zip 59715
 Seller Principal Residence Yes No

List the last 4 digits of the SSN or FEIN
 SSN 000 - 00 -
 SSN 000 - 00 -
 FEIN 00 - 000 0137
 Daytime Phone _____

Buyer (Grantee)
 Name WHITEFISH CREDIT UNION
 Mailing Address 300 Baker Avenue
 (Permanent) Whitefish ST MT Zip 59937
 Buyer Principal Residence Yes No
 Mailing Address _____
 For Tax Notice _____
 (If different) City _____ ST _____ Zip _____

SSN 000 - 00 -
 SSN 000 - 00 -
 FEIN 00 - 000 8730
 Daytime Phone _____

Transfer to Trustee, Custodian, or other Representative:
 Trust FEIN 00 - 000
 Minor SSN 000 - 00 -

PART 3 - PROPERTY DESCRIPTION Please complete fully; if additional space is required, please attach a separate page

Legal Description SEE ATTACHED EXHIBIT A Attachment

Add/Sub _____ Block _____ Lot _____
 County FLATHEAD City/Town _____ Section 27 Township 27n Range 21w

PART 4 - TYPE OF TRANSFER Please complete fully, more than one may apply.

Sale Gift Barter Nominal or No Consideration Part of 1031 or 1033 exchange Transfer is subject to a reserved life estate
 Sheriff's sale: mortgage trust indenture other Deed in lieu of foreclosure Short sale Auction/Sealed bid
 A copy of the recorded instrument must be attached to the Realty Transfer Certificate.

Transfer by Operation of Law

Termination of joint tenancy by death Termination of life estate by death Court order or decree (except sheriff's sale) Merger, consolidation, or other business entity reorganization

PART 5 - EXCEPTIONS FROM PROVIDING SALES PRICE INFORMATION Please complete fully, more than one may apply

Gift Termination of life estate by death
 Transfer in contemplation of death without consideration Transfer pursuant to court decree (except sheriff's sale)
 Transfer between husband/wife or parent/child for nominal consideration Tax deed
 Transfer of property of the estate of a decedent Merger, consolidation or reorganization of business entity
 Transfer by government agency Land eligible for timberland/forestland classification (15-44-103, MCA)
 Correction, modification, or supplement of previously recorded instrument, no additional consideration Land eligible for agricultural classification (15-7-201, MCA)
 Termination of joint tenancy by death Transfer to a revocable living trust
 Other (Specify Type) Settlement in Cause No. DV-12-174B

PART 6 - SALE PRICE INFORMATION Please complete fully, more than one may apply

Actual Sale Price \$ _____
 Financing: Cash FHA VA Contract Other
 Terms: New loan OR Assumption of existing loan
 Value of personal property included in sale \$ 0.00
 Value of inventory included in sale \$ 0.00
 Value of licenses included in sale \$ 0.00
 Value of good will included in sale \$ 0.00
 Was an SID payoff included in the sale price? Yes No
 Did the buyer assume an SID? Yes No
 Amount of SID paid or assumed: \$ 0.00
 Was a mobile home included in the sale? Yes No

PART 7 - WATER RIGHT DISCLOSURE - This Disclosure is only applicable to the property identified in PART 3 above

A. Property is served by a public water supply, i.e., city, irrigation district, or water district provides water. B. Seller has no water rights on record with DNRC to transfer. C. Seller is transferring ALL water rights on record with DNRC to the Buyer. D. Seller is dividing or exempting (reserving) water rights. Seller must file Water Right Update form.

Seller (Grantor) Signature [Signature] Date 6-8-2016

PART 8 - PREPARER INFORMATION Preparer's signature is required

Name/Title Johnna Prekie (please print) Signature [Signature]
 Mailing Address 711 Central Ave Daytime Phone (406) 812-7100
 City Whitefish ST MT Zip 59937

Clerk and Recorder Use Only

Recording Information: Document # _____ Book _____ Page _____ Date _____
 Warranty Trust Deed Quit Claim Grant Contract for Deed Decree Interest
 Bargain & Sale Deed Notice of Purchaser's Interest Statement of Acknowledgement Termination of Joint Tenancy
 Tax Deed Beneficiary Deed Other _____

Department of Revenue Copy

AFTER RECORDING PLEASE RETURN TO:

Whitefish Credit Union
PO BOX 37
Whitefish, MT 59937



Paula Robinson Flathead County MT hv NC

201100020562
Page: 1 of 1
Fees: \$17.00
10/6/2011 4:48 PM

Space Above this Line is For Recorder's Use Only

DEED IN LIEU OF FORECLOSURE

For, and in consideration of the covenants herein provided, [REDACTED], of Flathead, MT, hereby grants, bargains, sells and conveys to the Whitefish Credit Union ("Grantee"), of Whitefish, MT, all its right, title, interest, claim and demand in and to the following described real property, TOGETHER with any improvements, structures and all appurtenances thereto belonging or in any way appertaining, located in the County of Flathead, State of Montana, and more particularly described as follows:

- Misspell City Airport Hangar Site Lease A-1, Improvement No. 1957, located on Tr 3A in the southwest quarter of the Northwest Quarter of Section 20, Township 20N, Range 21W, T.M.M., Flathead County, Montana, and
 - Misspell City Airport Hangar Site Lease A-2, Improvement No. 1626, located on Tr 3A in the southwest quarter of the Northwest Quarter of Section 20, Township 20N, Range 21W, T.M.M., Flathead County, Montana
- Subject to and Together with current encumbrances, easements, reservations and restrictions, apparent or of record.

TO HAVE AND TO HOLD unto the Grantee and to the Grantee's successors and assigns, forever.

This Deed is an absolute conveyance of title, in effect as well as in form, and is not intended as a mortgage, trust conveyance, or security of any kind. The consideration for this Deed is the release by Whitefish Credit Union of all of the debts and obligations heretofore existing on account of and secured by those Commercial Security Agreements in favor of Grantee on that real property described above.

DATED this 22 day of SEPTEMBER, 2011.

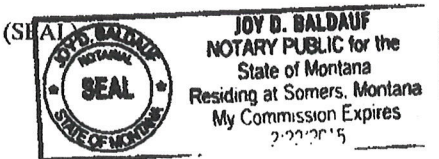
GRANTOR(S):

[REDACTED]
X [REDACTED]

, Manager/Managing Member

STATE OF MT; COUNTY OF Flathead

This instrument was acknowledged before me on the 22 day of September, 2011, by Dennis Lonnerk, as Managing Member of Executive Travel Assets, LLC.




Joy D. Baldauf
Printed Name: Joy D. Baldauf
Notary Public for the State of MT
Residing in Somers
My Commission Expires: 02/22/2015

APPROVED 10/6/11 JF

1 Sean S. Frampton
2 FRAMPTON PURDY LAW FIRM
3 530 West 19th Street #301
4 Whitefish, Montana 59937
5 Telephone: (406) 862-9600
6 Facsimile: (406) 862-9611
7 E-mail: sean@framptonpurdy.com

8 *Attorneys for Defendant*

CLERK OF DISTRICT COURT
2018 AUG 31 PM 12:45
FILED
BY _____ DEPUTY 

9 **MONTANA ELEVENTH JUDICIAL DISTRICT COURT, FLATHEAD COUNTY**

10 DENNIS THORNTON and DONNA
11 THORNTON,

12 Plaintiffs,

13 -vs-

14 WHITEFISH CREDIT UNION,

15 Defendant.

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Cause No. DV-18-336D

Judge Dan Wilson

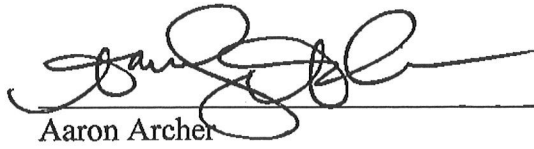
**THIRD AFFIDAVIT OF
AARON ARCHER**

16
17 Aaron Archer, being first duly sworn, deposes and states as follows:

- 18 1. I did not speak to Dennis Thornton or any of his representatives about the option. My
19 office is located at the business building in south Kalispell and it is not a retail branch
20 of Whitefish Credit Union. I never spoke with a person named Harshbarger.
21
22 2. The total indebtedness on the Thorco loan is currently over \$4 million. Since the
23 option was not exercised, the total indebtedness remains.
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26

27 Further, affiant sayeth not.
28

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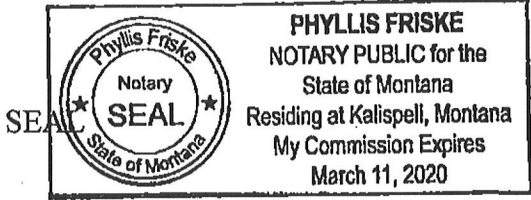


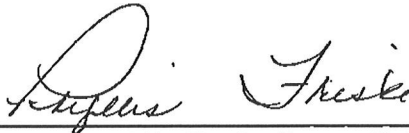
Aaron Archer

STATE OF MONTANA)
 : ss
County of Flathead)

AARON ARCHER, being first duly sworn upon his oath, states that the foregoing affidavit and it is true and correct to the best of his knowledge and belief.

Subscribed in my presence and sworn to before me this 29th day of August, 2018.





Notary Public for the State of Montana

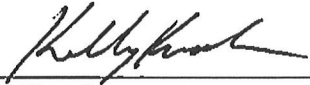
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CERTIFICATE OF MAILING

The undersigned does hereby certify that on the 31st day of August, 2018, a true and correct copy of the foregoing document was served upon the persons named below, at the addresses set out below their names, as indicated below.

Michael Klinkhammer
Klinkhammer Law Offices
1111 S. Main
Kalispell, MT 59901
Attorney for Plaintiffs

U.S. Mail (first class postage)
 Hand Delivery
 Telecopy (facsimile)
 Other email



Kelly Kracker
Frampton Purdy Law Firm



DV-18-336

Regarding Defendant's motion to strike from the public record recording number 201800026040, described as a *Notice of Dismissal of Judgment of Foreclosure with Prejudice and Lien Satisfaction* and record recording number 201800026153, described as an *Amended Notice of Dismissal of Judgment of Foreclosure with Prejudice and Lien Satisfaction*, and taking into consideration Plaintiffs' Counsel's consent and stipulation in open court to this Court executing an order striking the recordings from the public record,

IT IS HEREBY ORDERED that Defendant's motion is GRANTED. The Court finds the *Notice* and *Amended Notice* are diametrically opposed to this Court's rulings and judgment which were affirmed on appeal and therefore null and void.

IT IS FURTHER ORDERED that the Flathead County Clerk shall strike public record recording number 201800026040, described as a *Notice of Dismissal of Judgment of Foreclosure with Prejudice and Lien Satisfaction* and record recording number 201800026153, described as an *Amended Notice of Dismissal of Judgment of Foreclosure with Prejudice and Lien Satisfaction* from the public record. Defendant shall file a certified copy of this Order with the Office of the Flathead County Recorder. The property affected by this Order is legally described in Exhibit A attached hereto.

IT IS FURTHER ORDERED that the Court retains jurisdiction under the authority cited above to address Defendant's motion for an award of attorney fees and to declare Plaintiffs vexatious litigants. Defendants are permitted to refile those requests under Rule 60(b),
M.R.Civ.P.

DATED: November 12, 2019.

Dan Wilson
District Court Judge

cc: Quentin Rhoades
Kristin Barrigan
Sean Frampton

RETURN AFTER RECORDING TO:
Whitefish Credit Union
PO BOX 37
Whitefish, MT 59937
Loan # 9664280750-0750

★★ 0213950 tg

[Above this line is for recording purposes only.]

CORRECTED RELEASE OF MORTGAGE -

This Corrected Release of Mortgage supersedes and replaces the Satisfaction of Mortgage ("Satisfaction") recorded 05-12-2022 as Document No. 202200012228 in the records of the office of the Clerk and Recorder of Flathead County, Montana, as said Satisfaction was erroneously filed by TFSS INC, Whitefish Credit Union's, attorney in fact, but without review and approval of Whitefish Credit Union.

The then-Mortgagor's property, as legally described in the Mortgage ("Mortgaged Property"), and associated Mortgage has been the subject of litigation in Causes DV-12-174, DV-18-336, and DV-19-534, Eleventh Judicial District, Flathead County, and Supreme Court cases DA-18-0595 (2019 MT 138N) and DA-20-179 (2021 MT 207N). The Warranty Deeds recorded as Flathead County Records 201800026290 and 201800026291 were recorded pursuant to a Settlement Agreement and in lieu of foreclosure of the Mortgage. Based on the rulings identified herein in favor of Whitefish Credit Union on matters related to the title of Mortgaged Property,

NOW THEREFORE, Whitefish Credit Union, does hereby certify that the mortgage ("Mortgage") executed by THORCO INCORPORATED, as "Mortgagor", to Whitefish Credit Union, as "Mortgagee", conveying certain real estate therein mentioned as security for the payment of \$3,360,000.00 as therein stated, recorded with the Clerk and Recorder of Flathead County, Montana, on the 03/24/2009, as Document No.200900007830, and mortgaging certain described real estate on Exhibit A, is released pursuant to the terms of the Settlement Agreement as satisfied by the recording of the Warranty Deeds mentioned above.

FURTHER, Whitefish Credit Union corrects the record to clarify that at no time has the Mortgagor paid or satisfied the Mortgage other than as described above.

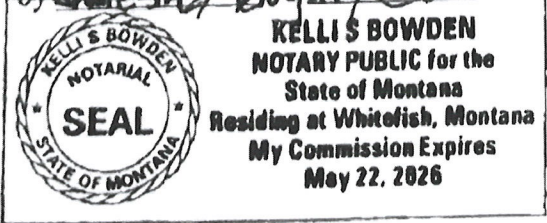
FURTHER, Whitefish Credit Union corrects the record to clarify that the Mortgagor had no ownership or other interest in the Mortgaged Property since the Warranty Deeds described above were recorded.

X [Signature]
James Keayon CEO of Whitefish Credit Union
President

Dated June 6th, 2022

STATE OF MT; COUNTY OF FLATHEAD

This instrument was acknowledged before me on the 6th day of JUNE 20 22
by James Keayon CEO of Whitefish Credit Union.



[Signature]
Notary Public Kelli S. Bowden



Debbie Pierson, Flathead County MT by YH

202200004002

Page: 1 of 3

Fees: \$24.00

2/14/2022 4:19 PM

After recording, please return Deed to:
MO SOMERS LLC
PO BOX 2478
Columbia Falls, MT 59912

0213950

Approved 02/14/2022 tg

SPECIAL WARRANTY DEED

FOR VALUABLE CONSIDERATION, WHITEFISH CREDIT UNION (hereinafter "Grantor"), of P.O. Box 37, Whitefish, MT 59937, hereby grants unto MO SOMERS LLC, a Montana limited liability company (hereinafter "Grantee"), of PO BOX 2478, Columbia Falls, MT 59912, and to its successors and assigns forever, the following property in Flathead County, Montana:

SEE ATTACHEHD EXHIBIT A, WHICH IS INCORPORATED HEREIN BY THIS REFERENCE.

TO HAVE AND TO HOLD unto Grantee, and to his successors and assigns, forever, SUBJECT TO AND TOGETHER WITH THE FOLLOWING:

- (a) Reservations and exceptions in patents from the United States or the State of Montana;
- (b) Visible easements, easements and rights of way of record and/or shown on plats and surveys of the property;
- (c) All building, use, zoning, sanitary and environmental restrictions;
- (d) Taxes and assessments for current tax year and subsequent years;
- (e) Restrictions, covenants, conditions, limitations, agreements and reservations of record; and
- (f) Encumbrances and exceptions apparent or of record on the date this deed is executed by Grantor.

TO HAVE AND TO HOLD, all and singular the above-mentioned and described property, together with all appurtenances including water rights appurtenant to the property, unto the Grantee, and to the Grantee's successors and assigns, FOREVER. And Grantor hereby covenants to forever WARRANT and DEFEND all right, title and interest in and to the said property and the quiet and peaceable possession thereof, unto the Grantee and the Grantee's successors and assigns, against all acts and deeds of the Grantor and all and every person or persons whomsoever lawfully claiming or to claim the same by, through, or under Grantor, BUT NOT OTHERWISE. Grantee, by acceptance of this Special Warranty Deed understands that Grantor acquired this property through foreclosure and therefore makes no warranty not particularly described herein.



IN WITNESS WHEREOF, Grantor has caused these presents to be executed by it the date, month and year first stated below.

GRANTOR: Whitefish Credit Union

Signed: *[Signature]*
James Kenyon, Chief Executive Officer

2/14/22
Date

State of Montana)
 : ss.
County of Flathead)

This instrument was signed before me on 2-14-2022 by James Kenyon as Chief Executive Officer of the Whitefish Credit Union.

(SEAL)

[Signature]
Notary Public

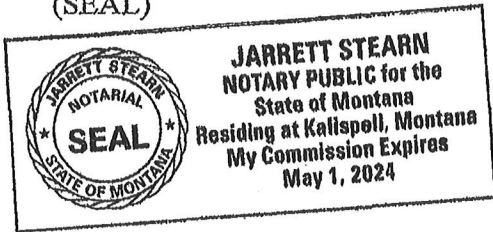




EXHIBIT A-LEGAL DESCRIPTION

The North Half Northwest Quarter Northwest Quarter (N1/2NW1/4NW1/4);
The South Half Northwest Quarter Northwest Quarter (S1/2NW1/4NW1/4);
The North Half Northeast Quarter Northwest Quarter (N1/2NE1/4NW1/4);
The South Half Northeast Quarter Northwest Quarter (S1/2NE1/4NW1/4);
The North Half Southeast Quarter Northwest Quarter (N1/2SE1/4NW1/4);
The South Half Southeast Quarter Northwest Quarter (S1/2SE1/4NW1/4);
The North Half Southwest Quarter Northwest Quarter (N1/2SW1/4NW1/4);
The South Half Southwest Quarter Northwest Quarter (S1/2SW1/4NW1/4);
The North Half Northwest Quarter Southwest Quarter (N1/2NW1/4SW1/4); and
The South Half Northwest Quarter Southwest Quarter (S1/2NW1/4SW1/4);
ALL in Section 28, Township 27 North, Range 21 West, P.M.M., Flathead County, Montana.

AND

The North Half Southwest Quarter Northwest Quarter (N1/2SW1/4NW1/4);
The South Half Southwest Quarter Northwest Quarter (S1/2SW1/4NW1/4);
The North Half Northwest Quarter Southwest Quarter (N1/2NW1/4SW1/4);
The South Half Northwest Quarter Southwest Quarter (S1/2NW1/4SW1/4);
The North Half Southwest Quarter Southwest Quarter (N1/2SW1/4SW1/4);
The North Half Northeast Quarter Southwest Quarter (N1/2NE1/4SW1/4);
The South Half Northeast Quarter Southwest Quarter (S1/2NE1/4SW1/4);
The North Half Southeast Quarter Southwest Quarter (N1/2SE1/4SW1/4);
The South Half Southeast Quarter Southwest Quarter (S1/2SE1/4SW1/4);
The North Half Northwest Quarter Southeast Quarter (N1/2NW1/4SE1/4);
The South Half Northwest Quarter Southeast Quarter (S1/2NW1/4SE1/4);
The North Half Southwest Quarter Southeast Quarter (N1/2SW1/4SE1/4);
The South Half Southwest Quarter Southeast Quarter (S1/2SW1/4SE1/4); and
The Southeast Quarter Northwest Quarter (SE1/4NW1/4),
EXCEPTING THEREFROM that portion deeded to Flathead County for road purposes by Deed
recorded June 26, 1937 in Book 223, Page 614, records of Flathead County, Montana.
ALL in Section 27, Township 27 North, Range 21 West, P.M.M., Flathead County, Montana.



Kathy Wilson <cogburnenterprises@gmail.com>

Satisfaction of Mortgage questions

6 messages

Kathy Wilson <cogburnenterprises@gmail.com>
To: "smatthews@mt.gov" <smatthews@mt.gov>

Fri, Jan 20, 2023 at 1:08 PM

Hi Steve,

Thank you for taking the time to talk with Dennis and I today. In our conversation you said that you might be able to answer some questions for us.

What we are trying to determine is if Title Financial Specialty Services, a company out of Blackfoot Idaho, is licensed or registered to do business with the state of Montana Security and Insurance Commission?

We would like to know if Title Financial Specialty Services is authorized to make transfers of real property like the one included? We did find a recorded special power of attorney that was recorded with the Flathead County Clerk and Recorder's Office that we have included and it appears they were authorized with the county.

We would like to know if anyone transferring documents for a financial institution is required to have such documents or is there any type of required statements that your office may have when transferring documents?

The person that appears to have signed the Satisfaction of Mortgage as an attorney-in-fact is Shauna Romrell. Does Shauna Romrell have any type of securities license or insurance that is registered with the Montana Securities and Insurance Commission?

The Special Power of Attorney states in section 2, "Full Faith In Credit", states that they are authorized to give such actions taken, documents signed, and writing submitted by the agent full faith and credit. Do you know what Full Faith and Credit means or where we can find that legal definition?

Thank you so much for taking the time to answer our questions.

Kathy

--
Katherine Wilson
Cogburn Enterprises, LLC.
Cell 406-471-3341

2 attachments **6-24-2022 Lt from TFSS (1) (2).pdf**
320K **Recorded POA TFSS (1).pdf**
1221K

Matthews, Steve <smatthews@mt.gov>
To: Kathy Wilson <cogburnenterprises@gmail.com>

Fri, Jan 20, 2023 at 1:57 PM

Kathy:

Both Title Financial Specialty Services and Shauna Romrell are licensed as Title Insurance Producers in Montana. I've attached a link to Montana Code Annotated, Title 33, Chapter 25, Part 2, which discusses the powers and duties of title insurers and title producers. I believe your answers may be found therein.

https://leg.mt.gov/bills/mca/title_0330/chapter_0250/part_0020/section_0010/0330-0250-0020-0010.html

Steve



Steve Matthews | Chief Financial Examiner

Office of the Montana State Auditor

Commissioner of Securities and Insurance

406.444.4372

840 Helena Ave. | Helena, MT 59601



This e-mail transmission and any attachments to it may contain information from the Office of the Montana State Auditor, Commissioner of Securities and Insurance, which is confidential and/or privileged. The information is intended to be solely for the use of the individual or entity named above. If you are not the intended recipient, any disclosure, copying, distribution or use of the contents of this information is prohibited. If you received this e-mail in error, please immediately notify me by return e-mail and delete the information your received in error immediately. Thank you.

[Quoted text hidden]



image001.png
116K

Kathy Wilson <cogburnenterprises@gmail.com>
To: dennis thornton <thorcoinc@outlook.com>

Fri, Jan 20, 2023 at 2:14 PM

[Quoted text hidden]

11 attachments



image001.png
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image002.png
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Kathy Wilson <cogburnenterprises@gmail.com>
To: "Matthews, Steve" <smatthews@mt.gov>

Fri, Jan 20, 2023 at 3:11 PM

Hi Steve,

Thank you for your response and the information.

I did look through that and didn't find exactly what I was looking for, so if you wouldn't mind, could I ask just a couple more questions?

We have a Corrected Release of Mortgage that was filed by James Kenyon of Whitefish Credit Union. Can you tell me if James Kenyon is authorized to make real property transfers in Montana? Or if Whitefish Credit Union is licensed to make these types of transactions?

If someone is not licensed in Montana to make transactions like this, is there anything that they can file with the documents that would authorize them to make the transactions?

Thanks again for your help and have a great weekend.

Kathy

[Quoted text hidden]

Matthews, Steve <smatthews@mt.gov>
To: Kathy Wilson <cogburnenterprises@gmail.com>

Mon, Jan 23, 2023 at 11:58 AM

Kathy:

Sorry, but don't think I can be of any help. The powers/authorities of Credit Unions related to filing property transfer documents and/or release of mortgage documents is outside the purview of this Office. You may be best served by consulting with an attorney experienced in the transfer of property.

Steve

From: Kathy Wilson <cogburnenterprises@gmail.com>
Sent: Friday, January 20, 2023 3:11 PM
To: Matthews, Steve <smatthews@mt.gov>
Subject: Re: [EXTERNAL] Satisfaction of Mortgage questions

Hi Steve,

Thank you for your response and the information.

I did look through that and didn't find exactly what I was looking for, so if you wouldn't mind, could I ask just a couple more questions?

We have a Corrected Release of Mortgage that was filed by James Kenyon of Whitefish Credit Union. Can you tell me if James Kenyon is authorized to make real property transfers in Montana? Or if Whitefish Credit Union is licensed to make these types of transactions?

If someone is not licensed in Montana to make transactions like this, is there anything that they can file with the documents that would authorize them to make the transactions?

Thanks again for your help and have a great weekend.

Kathy

On Fri, Jan 20, 2023 at 1:57 PM Matthews, Steve <smatthews@mt.gov> wrote:

Kathy:

Montana Code Annotated 2021

TITLE 30. TRADE AND COMMERCE

CHAPTER 9A. UNIFORM COMMERCIAL CODE SECURED TRANSACTIONS

Part 5. Filing

Claim Concerning Inaccurate Or Wrongfully Filed Record

30-9A-518. Claim concerning inaccurate or wrongfully filed record. (1) A person may file in the filing office an information statement with respect to a record indexed there under the person's name if the person believes that the record is inaccurate or was wrongfully filed.

(2) An information statement under subsection (1) must:

(a) identify the record to which it relates by:

(i) the file number assigned to the initial financing statement to which the record relates; and

(ii) if the information statement relates to a record filed in a filing office described in **30-9A-501(1)(a)**, the date that the initial financing statement was filed or recorded and the information specified in **30-9A-502(2)**;

(b) indicate that it is an information statement; and

(c) provide the basis for the person's belief that the record is inaccurate and indicate the manner in which the person believes the record should be amended to cure any inaccuracy or provide the basis for the person's belief that the record was wrongfully filed.

(3) A person may file in the filing office an information statement with respect to a record filed there if the person is a secured party of record with respect to the financing statement to which the record relates and believes that the person that filed the record was not entitled to do so under **30-9A-509(4)**.

(4) An information statement under subsection (3) must:

(a) identify the record to which it relates by:

(i) the file number assigned to the initial financing statement to which the record relates; and

(ii) if the information statement relates to a record filed in a filing office described in **30-9A-501(1)(a)**, the date that the initial financing statement was filed and the information specified in **30-9A-502(2)**;

(b) indicate that it is an information statement; and

(c) provide the basis for the person's belief that the person that filed the record was not entitled to do so under **30-9A-509(4)**.

(5) The filing of an information statement does not affect the effectiveness of an initial financing statement or other filed record.


History: En. Sec. 88, Ch. 305, L. 1999; Sec. 30-9-538, MCA 1999; redes. 30-9A-518 by Code

SETTLEMENT TERM SHEET

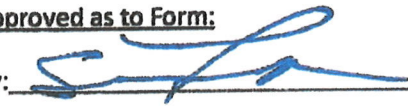
Whitefish Credit Union	"WCU" (13)
Dennis and Donna Thornton ("Thorntons") & Thorco	Thorco and Thorntons are referred to as "Borrower Parties". WCU and Borrower Parties are referred to as the "Parties". (14)
Option to Purchase:	<p>\$1,400,000.00 allocated as follows:</p> <ul style="list-style-type: none"> • 200 acres \$300,000.00; • 300 acres \$1,100,000.00. <p>This option may be exercised by Borrower Parties at any time within 18 months of the date of the MDTL Mutual Release. It may be exercised on the 200 acres, or on the 300 acres, or both at the option of the Borrower Parties. (1)</p>
Term of the Option:	18 months (2)
Cash Component:	\$150,000.00 to be delivered to Borrower Parties within 3 days of execution of the MDTL Release. (3)
MDTL Mutual Release:	To be completed by the Parties and their counsel.
	Recital in MDTL Agreement that debt evidenced by Judgment in Cause No, 12-174B, Flathead County District Court (the "Case") is disputed, by Borrower Parties. (4)
Non Merger Warranty Deed:	Borrower Parties shall execute a Non Merger Warranty Deed (the "Deed"), or other deed as reasonably requested by WCU and consistent with this Settlement Term Sheet, in connection with executing the MDTL Release conveying all of their right title and interest to WCU in the 200 and 300 acre tracts, along with an RTC, and the Deed and RTC shall be deposited into escrow with First American Title Company. (5)
Partial Release of Mortgage:	WCU shall execute a Release of Mortgage for the 200, and 300 acre tracts (the "Releases") and the Releases shall be deposited into escrow with First American Title Company. (6)
Failure to Exercise Option:	If Borrower Parties fail to timely exercise option above, the Deed and RTC held in escrow shall be delivered to WCU, and WCU shall be entitled to record the Deed.

Option Exercised:	<p style="text-align: center;">(7)</p> <p>If Borrower Parties timely exercise option above, the Releases held in escrow shall be delivered to Borrower Parties, and Borrower Parties shall be entitled to record the Releases.</p>
Judgment & Dismissal:	<p>The Judgment shall be vacated and the Case dismissed with prejudice.</p>
Deficiency:	<p style="text-align: center;">(10)</p> <p>Borrower Parties shall not be liable for any deficiency that WCU claims under any loan document, note or guaranty at issue in the Case.</p>
Redemption:	<p style="text-align: center;">(11)</p> <p>Borrower Parties waive any right of redemption in the 200 or 300 acres.</p>
Confidentiality:	<p style="text-align: center;">(12)</p> <p>MDTL release to include standard confidentiality provision, excepting therefrom Borrower Parties right to disclose terms in connection with efforts related to performance of option, including without limitation, efforts to secure financing or investors.</p>
Further Assurances:	<p>All Parties agree to cooperate fully, to execute any and all additional documents and to take all additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of this Settlement Term Sheet and the Parties Agreement.</p>
Attorneys' Fees:	<p>Should any complaint be filed or claim be made arising out of the breach of any of the provisions of this Settlement Term Sheet or for the purpose of enforcing any of its provisions, the prevailing party or parties shall be entitled to recover its or their reasonable attorney fees from the other party. Each party shall bear his or her own attorney fees and costs.</p>
Date	<p style="text-align: center;">4/4/16</p>

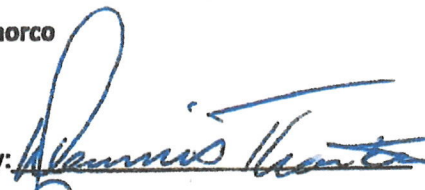
Whitefish Credit Union

By: 
 Its: SPECIAL ASSETS OFFICER

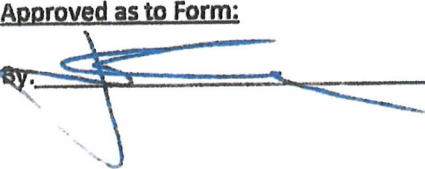
Approved as to Form:

By: 

Thorco

By: 
 Its: PRES.

Approved as to Form:

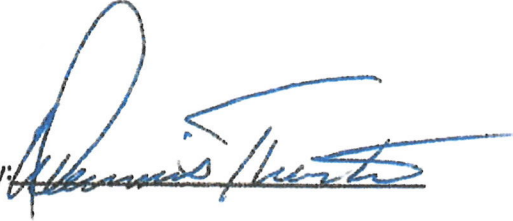
By: 

Attorney for Whitefish Credit Union

Attorney for Thorco, Dennis and Donna Thornton

Dennis Thornton

Donna Thornton

By: A handwritten signature in blue ink, appearing to read "Dennis Thornton", written over a horizontal line.

By: A handwritten signature in blue ink, appearing to read "Donna Thornton", written over a horizontal line.

1 Michael Klinkhammer
2 Klinkhammer Law Offices
3 1111 S. Main
4 Kalispell, MT 59901
5 Phone: (406) 257-7277
6 Fax: (888) 414-1015
7 Email: mklinkhammer@montanadsl.net
8 *Attorney for Plaintiffs*

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ELEVANTH JUDICIAL DISTRICT COURT,
FLATHEAD COUNTY

DENNIS THORNTON and DONNA THORNTON, Plaintiffs, vs. WHITEFISH CREDIT UNION, Defendant.	Cause No. DV-18-336D Judge Dan Wilson DECLARATION OF JOHN L. AMSDEN
--	--

I, JOHN L. AMSDEN, hereby declare as follows:

1. I am an attorney licensed to practice in Montana. I represented Plaintiffs in a previous action filed in this Court under Cause No. DV-12-174B. Defendant was also the adverse party in that previous action.
2. In the previous action referenced above, the parties engaged in a mediation on or about April 4, 2016. On that date, the parties executed a Settlement Term Sheet, a true and correct copy of which is attached hereto as Exhibit 1.

1 3. On or about June 8, 2016, the parties entered into a Settlement Agreement and
2 Mutual Release, a true and correct copy of which is attached hereto as Exhibit 2.

3
4 4. The attorney for Whitefish Credit Union (Sean S. Frampton, Esq.) required
5 delivery of the original signed Non-Merger Warranty Deeds and Realty Transfer
6 Certificate (to be attached as Exhibit C to the Settlement Agreement and Mutual
7 Release, as provided in Section 2.c) to his office prior to disbursing settlement funds
8 (as required by Section 1) to Plaintiffs.
9

10 5. The original signed Non-Merger Warranty Deeds and Realty Transfer
11 Certificate were not delivered back to our office after they were delivered to Mr.
12 Frampton. Whitefish Credit Union did not deliver the original releases of its
13 mortgages (executed pursuant to Section 2.b) to my office. None of the original
14 documents that were required to be placed in escrow have been in in the possession
15 of me or my office after June 8, 2016.
16
17

18 6. After delivery of the original signed Non-Merger Warranty Deeds and Realty
19 Transfer Certificate to the attorney for Whitefish Credit Union, we did not receive
20 any request to execute any additional documents or take any additional actions (as
21 provided for in the Settlement Term Sheet on page 2 and in the Settlement
22 Agreement and Mutual Release in Section 10) regarding the requirement of the
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Settlement Agreement and Mutual Release in Section 2.b-c that the original documents shall be deposited into escrow with First American Title Company.

7. It was my understanding that Whitefish Credit Union would set up the escrow upon funding the settlement. Whitefish Credit Union tendered the \$150,000 settlement payment to my office in June 2016. At that point, it was my understanding that the settlement was concluded.

8. Whitefish Credit Union or its counsel possessed all original instruments to be placed in escrow after June 8, 2016 and did not inform me or my office that these instruments had not been placed in escrow.

9. I hereby declare under penalty of perjury that the foregoing is true and correct.

Fill in this information to identify the case:

Debtor 1 Thorco, Inc.

Debtor 2 _____
(Spouse, if filing)

United States Bankruptcy Court for the: District of Montana

Case number 17-61219-11

Official Form 410

Proof of Claim

04/18

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3671.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 399) that you received.

Part 1: Identify the Claim

1. Who is the current creditor? Whitefish Credit Union
Name of the current creditor (the person or entity to be paid for this claim)
 Other names the creditor used with the debtor _____

2. Has this claim been acquired from someone else?
 No
 Yes. From whom? _____

3. Where should notices and payments to the creditor be sent?
Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent? <u>Dean A. Stensland</u> <small>Name</small> <u>P.O. Box 9199</u> <small>Number Street</small> <u>Missoula MT 59807</u> <small>City State ZIP Code</small> Contact phone <u>406-543-8846</u> Contact email <u>dstensland@buonekarlberg.com</u>	Where should payments to the creditor be sent? (if different) <small>Name</small> _____ <small>Number Street</small> _____ <small>City State ZIP Code</small> _____ Contact phone _____ Contact email _____
--	---

Uniform claim (essential for electronic payments in chapter 13 (if you use one))

4. Does this claim amend one already filed?
 No
 Yes. Claim number on court claims registry (if known) _____ Filed on _____
MM / DD / YYYY

5. Do you know if anyone else has filed a proof of claim for this claim?
 No
 Yes. Who made the earlier filing? _____

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor? No
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: _____

7. How much is the claim? \$ 1,400,000.00 Does this amount include interest or other charges?
 No
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3061(c)(2)(A).
 expired option to purchase 200 & 300 acre tracts of real property pursuant to 06/08/16 agreement

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
 Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
 Limit disclosing information that is entitled to privacy, such as health care information.
06/08/16 Settlement Agreement and Mutual Release (Dkt. #20- Bxh. B)

9. Is all or part of the claim secured? No
 Yes. The claim is secured by a lien on property.
 Nature of property:
 Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
 Motor vehicle
 Other. Describe: _____
 Basis for perfection: Recorded mortgages
 Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)
 Value of property: \$ 1,780,000.00
 Amount of the claim that is secured: \$ 1,400,000.00
 Amount of the claim that is unsecured: \$ 0.00 (The sum of the secured and unsecured amounts should match the amount in line 7.)
 Amount necessary to cure any default as of the date of the petition: \$ N.A.
 Annual Interest Rate (when case was filed) _____ %
 Fixed
 Variable

10. Is this claim based on a lease? No
 Yes. Amount necessary to cure any default as of the date of the petition. \$ _____

11. Is this claim subject to a right of setoff? No
 Yes. Identify the property: _____

Return To:
WHITEFISH CREDIT UNION
PO BOX 37
WHITEFISH, MT 59937



200900007830
Page: 1 of 12
Fees: \$84.00

Paula Robinson, Flathead County MT by NC 3/24/2009 3:48 PM

Prepared By:
WHITEFISH CREDIT UNION
PO BOX 37
WHITEFISH, MT 59937

0213950
★
★

State of Montana _____ Space Above This Line For Recording Data _____

CG-49765
[3]

REAL ESTATE MORTGAGE
(With Future Advance Clause)

1. **DATE AND PARTIES.** The date of this Mortgage (Security Instrument) is 03-19-2009 and the parties, their addresses and tax identification numbers, if required, are as follows:

MORTGAGOR: THORCO, INC.
151 AMATASIA LANE
KALISPELL, MT 59901

If checked, refer to the attached Addendum incorporated herein, for additional Mortgagors, their signatures and acknowledgments.

MORTGAGEE:
("Lender") WHITEFISH CREDIT UNION
PO BOX 37
WHITEFISH, MT 59937

2. **CONVEYANCE.** For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debt (defined below) and Mortgagor's performance under this Security Instrument, Mortgagor grants, bargains, conveys, sells and mortgages to Lender, with power of sale, the following described property:

SEE SCHEDULE "C"

Parcel ID Number:

DT DT _____ (page 1 of 11)

MONTANA - AGRICULTURAL/COMMERCIAL REAL ESTATE SECURITY INSTRUMENT MORTGAGE
(NOT FOR FNMA, FHLMC, FHA OR VA USE, AND NOT FOR CONSUMER PURPOSES)

Expers® ©1994, 2001 Bankers Systems, Inc., St. Cloud, MN Form AGCORESIM-MT 1/11/2005



The property is located in FLATHEAD at NHN BOON ROAD
 (County)
SOMERS, Montana 59932
 (Address) (City) (Zip Code)

Together with all rights, easements, appurtenances, royalties, mineral rights, oil and gas rights, crops, timber, all diversion payments or third party payments made to crop producers, all water and riparian rights, wells, ditches, reservoirs, and water stock and all existing and future improvements, structures, fixtures, and replacements that may now, or at any time in the future, be part of the real estate described above (all referred to as "Property").

3. **MAXIMUM OBLIGATION LIMIT.** The total principal amount secured by this Security Instrument at any one time, including any sums advanced for the insurance, protection, and preservation of the Property or Lender's interest therein, shall not exceed \$ 3,360,000.00, provided, however, that nothing contained in this Security Instrument shall constitute a commitment to make additional or future loans or advances, beyond those defined as "Secured Debt" below, in any amounts. Any such commitment must be agreed to in a separate writing.

4. **SECURED DEBT AND FUTURE ADVANCES.** The term "Secured Debt" is defined as follows:

A. Debt incurred under the terms of all promissory note(s), contract(s), guaranty(ies) or other evidence of debt described below and all their extensions, renewals, modifications or substitutions. *(When referencing the debts below it is suggested that you include items such as borrowers' names, note amounts, interest rates, maturity dates, etc.)*

BORROWER: THORCO, INC.
 NOTE AMOUNT: \$3,360,000.00
 NOTE DATE: 3-19-2009
 MATURITY DATE: 3-15-2011
 INTEREST RATE: 6.50%

B. All future advances from Lender to Mortgagor or other future obligations of Mortgagor to Lender under any promissory note, contract, guaranty, or other evidence of debt existing now or executed after this Security Instrument whether or not this Security Instrument is specifically referenced. If more than one person signs this Security Instrument, each Mortgagor agrees that this Security Instrument will secure all future advances and future obligations that are given to or incurred by any one or more Mortgagor, or any one or more Mortgagor and others. All future advances and other future obligations are secured by this Security Instrument even though all or part may not yet be advanced. All future advances and other future obligations are secured as if made on the date of this Security Instrument. Nothing in this Security Instrument shall constitute a commitment to make additional or future loans or advances in any amount. Any such commitment must be agreed to in a separate writing.

C. All obligations Mortgagor owes to Lender, which now exist or may later arise, to the extent not prohibited by law, including, but not limited to, liabilities for overdrafts relating to any deposit account agreement between Mortgagor and Lender.

D. All additional sums advanced and expenses incurred by Lender for insuring, preserving or otherwise protecting the Property and its value and any other sums advanced and expenses incurred by Lender under the terms of this Security Instrument.

This Security Instrument will not secure any other debt if Lender fails to give any required notice of the right of rescission.

(page 2 of 11)

DT *DT*



5. **PAYMENTS.** Mortgagor agrees that all payments under the Secured Debt will be paid when due and in accordance with the terms of the Secured Debt and this Security Instrument.
6. **WARRANTY OF TITLE.** Mortgagor warrants that Mortgagor is or will be lawfully seized of the estate conveyed by this Security Instrument and has the right to grant, bargain, convey, sell, and mortgage the Property, with power of sale. Mortgagor also warrants that the Property is unencumbered, except for encumbrances of record.
7. **PRIOR SECURITY INTERESTS.** With regard to any other mortgage, deed of trust, security agreement or other lien document that created a prior security interest or encumbrance on the Property, Mortgagor agrees:
- A. To make all payments when due and to perform or comply with all covenants.
 - B. To promptly deliver to Lender any notices that Mortgagor receives from the holder.
 - C. Not to allow any modification or extension of any note or agreement secured by the lien document without Lender's prior written consent.
 - D. To restrict lien priority of any prior security interest allowing future advances by recording a notice of limitation as provided in M.C.A. 71-1-206(3).
8. **CLAIMS AGAINST TITLE.** Mortgagor will pay all taxes, assessments, liens, encumbrances, lease payments, ground rents, utilities, and other charges relating to the Property when due. Lender may require Mortgagor to provide to Lender copies of all notices that such amounts are due and the receipts evidencing Mortgagor's payment. Mortgagor will defend title to the Property against any claims that would impair the lien of this Security Instrument. Mortgagor agrees to assign to Lender, as requested by Lender, any rights, claims or defenses Mortgagor may have against parties who supply labor or materials to maintain or improve the Property.
9. **DUE ON SALE OR ENCUMBRANCE.** Lender may, at its option, declare the entire balance of the Secured Debt to be immediately due and payable upon the creation of, or contract for the creation of, any lien, encumbrance, transfer or sale of all or any part of the Property. This right is subject to the restrictions imposed by federal law (12 C.F.R. 591), as applicable. This covenant shall run with the Property and shall remain in effect until the Secured Debt is paid in full and this Security Instrument is released.
10. **TRANSFER OF AN INTEREST IN THE MORTGAGOR.** If Mortgagor is an entity other than a natural person (such as a corporation or other organization), Lender may demand immediate payment if:
- A. A beneficial interest in Mortgagor is sold or transferred.
 - B. There is a change in either the identity or number of members of a partnership or similar entity.
 - C. There is a change in ownership of more than 25 percent of the voting stock of a corporation or similar entity.
- However, Lender may not demand payment in the above situations if it is prohibited by law as of the date of this Security Instrument.
11. **ENTITY WARRANTIES AND REPRESENTATIONS.** If Mortgagor is an entity other than a natural person (such as a corporation or other organization), Mortgagor makes to Lender the following warranties and representations which shall continue as long as the Secured Debt remains outstanding:
- A. Mortgagor is duly organized and validly existing in Mortgagor's state of incorporation or organization. Mortgagor is in good standing in all states in which Mortgagor transacts business. Mortgagor has the power and authority to own the Property and to carry on its business as now being conducted and, as applicable, is qualified to do so in each state in which Mortgagor operates.
 - B. The execution, delivery and performance of this Security Instrument by Mortgagor and the obligations evidenced by the Secured Debt are within the power of Mortgagor, have been duly authorized, have received all necessary governmental approval, and will not violate any provision of law, or order of court or governmental agency.

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C. Other than previously disclosed in writing to Lender, Mortgagor has not changed its name within the last ten years and has not used any other trade or fictitious name. Without Lender's prior written consent, Mortgagor does not and will not use any other name and will preserve its existing name, trade names and franchises until the Secured Debt is satisfied.

12. **PROPERTY CONDITION, ALTERATIONS AND INSPECTION.** Mortgagor will keep the Property in good condition and make all repairs that are reasonably necessary. Mortgagor shall not commit or allow any waste, impairment, or deterioration of the Property. Mortgagor will keep the Property free of noxious weeds and grasses. Mortgagor agrees that the nature of the occupancy and use will not substantially change without Lender's prior written consent. Mortgagor will not permit any change in any license, restrictive covenant or easement without Lender's prior written consent. Mortgagor will notify Lender of all demands, proceedings, claims, and actions against Mortgagor, and of any loss or damage to the Property.

No portion of the Property will be removed, demolished or materially altered without Lender's prior written consent except that Mortgagor has the right to remove items of personal property comprising a part of the Property that become worn or obsolete, provided that such personal property is replaced with other personal property at least equal in value to the replaced personal property, free from any title retention device, security agreement or other encumbrance. Such replacement of personal property will be deemed subject to the security interest created by this Security Instrument. Mortgagor shall not partition or subdivide the Property without Lender's prior written consent.


Lender or Lender's agents may, at Lender's option, enter the Property at any reasonable time for the purpose of inspecting the Property. Lender shall give Mortgagor notice at the time of or before an inspection specifying a reasonable purpose for the inspection. Any inspection of the Property shall be entirely for Lender's benefit and Mortgagor will in no way rely on Lender's inspection.

13. **AUTHORITY TO PERFORM.** If Mortgagor fails to perform any duty or any of the covenants contained in this Security Instrument, Lender may, without notice, perform or cause them to be performed. Mortgagor appoints Lender as attorney in fact to sign Mortgagor's name or pay any amount necessary for performance. Lender's right to perform for Mortgagor shall not create an obligation to perform, and Lender's failure to perform will not preclude Lender from exercising any of Lender's other rights under the law or this Security Instrument. If any construction on the Property is discontinued or not carried on in a reasonable manner, Lender may take all steps necessary to protect Lender's security interest in the Property, including completion of the construction.

14. **ASSIGNMENT OF LEASES AND RENTS.** Mortgagor assigns, grants, bargains, conveys and mortgages to Lender as additional security all the right, title and interest in the following (Property).

- A. Existing or future leases, subleases, licenses, guaranties and any other written or verbal agreements for the use and occupancy of the Property, including but not limited to, any extensions, renewals, modifications or replacements (Leases).
- B. Rents, issues and profits, including but not limited to, security deposits, minimum rents, percentage rents, additional rents, common area maintenance charges, parking charges, real estate taxes, other applicable taxes, insurance premium contributions, liquidated damages following default, cancellation premiums, "loss of rents" insurance, guest receipts, revenues, royalties, proceeds, bonuses, accounts, contract rights, general intangibles, and all rights and claims which Mortgagor may have that in any way pertain to or are on account of the use or occupancy of the whole or any part of the Property (Rents).

In the event any item listed as Leases or Rents is determined to be personal property, this Assignment will also be regarded as a security agreement.

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Mortgagor will promptly provide Lender with copies of the Leases and will certify these Leases are true and correct copies. The existing Leases will be provided on execution of the Assignment, and all future Leases and any other information with respect to these Leases will be provided immediately after they are executed. Mortgagor may collect, receive, enjoy and use the Rents so long as Mortgagor is not in default. Mortgagor will not collect in advance any Rents due in future lease periods, unless Mortgagor first obtains Lender's written consent. Upon default, Mortgagor will receive any Rents in trust for Lender and Mortgagor will not commingle the Rents with any other funds. When Lender so directs, Mortgagor will endorse and deliver any payments of Rents from the Property to Lender. Amounts collected will be applied at Lender's discretion to the Secured Debts, the costs of managing, protecting and preserving the Property, and other necessary expenses. Mortgagor agrees that this Security Instrument is immediately effective between Mortgagor and Lender. This Security Instrument will remain effective during any statutory redemption period until the Secured Debts are satisfied. Unless otherwise prohibited or prescribed by state law, Mortgagor agrees that Lender may take actual possession of the Property without the necessity of commencing any legal action or proceeding. Mortgagor agrees that actual possession of the Property is deemed to occur when Lender notifies Mortgagor of Mortgagor's default and demands that Mortgagor and Mortgagor's tenants pay all Rents due or to become due directly to Lender. Immediately after Lender gives Mortgagor the notice of default, Mortgagor agrees that either Lender or Mortgagor may immediately notify the tenants and demand that all future Rents be paid directly to Lender.

As long as this Assignment is in effect, Mortgagor warrants and represents that no default exists under the Leases, and the parties subject to the Leases have not violated any applicable law on leases, licenses and landlords and tenants. Mortgagor, at its sole cost and expense, will keep, observe and perform, and require all other parties to the Leases to comply with the Leases and any applicable law. If Mortgagor or any party to the Lease defaults or fails to observe any applicable law, Mortgagor will promptly notify Lender. If Mortgagor neglects or refuses to enforce compliance with the terms of the Leases, then Lender may, at Lender's option, enforce compliance.

Mortgagor will not sublet, modify, extend, cancel, or otherwise alter the Leases, or accept the surrender of the Property covered by the Leases (unless the Leases so require) without Lender's consent. Mortgagor will not assign, compromise, subordinate or encumber the Leases and Rents without Lender's prior written consent. Lender does not assume or become liable for the Property's maintenance, depreciation, or other losses or damages when Lender acts to manage, protect or preserve the Property, except for losses and damages due to Lender's gross negligence or intentional torts to the extent permitted by law. Otherwise, Mortgagor will indemnify Lender and hold Lender harmless for all liability, loss or damage that Lender may incur when Lender opts to exercise any of its remedies against any party obligated under the Leases.

15. LEASEHOLDS; CONDOMINIUMS; PLANNED UNIT DEVELOPMENTS. Mortgagor agrees to comply with the provisions of any lease if this Security Instrument is on a leasehold. If the Property includes a unit in a condominium or a planned unit development, Mortgagor will perform all of Mortgagor's duties under the covenants, by-laws, or regulations of the condominium or planned unit development.

16. DEFAULT. Mortgagor will be in default if any of the following occur:

- A. Any party obligated on the Secured Debt fails to make payment when due;
- B. A breach of any term or covenant in this Security Instrument or any other document executed for the purpose of creating, securing or guarantying the Secured Debt;
- C. The making or furnishing of any verbal or written representation, statement or warranty to Lender that is false or incorrect in any material respect by Mortgagor or any person or entity obligated on the Secured Debt;
- D. The death, dissolution, or insolvency of, appointment of a receiver for, or application of any debtor relief law to, Mortgagor or any other person or entity obligated on the Secured Debt;

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- E. A good faith belief by Lender at any time that Lender is insecure with respect to any person or entity obligated on the Secured Debt or that the prospect of any payment is impaired or the value of the Property is impaired;
- F. A material adverse change in Mortgagor's business including ownership, management, and financial conditions, which Lender in its opinion believes impairs the value of the Property or repayment of the Secured Debt; or
- G. Any loan proceeds are used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 C.F.R. Part 1940, Subpart G, Exhibit M.

17. REMEDIES ON DEFAULT. In some instances, federal and state law will require Lender to provide Mortgagor with notice of the right to cure or other notices and may establish time schedules for foreclosure actions. Subject to these limitations, if any, Lender may accelerate the Secured Debt and foreclose this Security Instrument in a manner provided by law if Mortgagor is in default.

At the option of Lender, all or any part of the agreed fees and charges, accrued interest and principal shall become immediately due and payable, after giving notice if required by law, upon the occurrence of a default or anytime thereafter. In addition, Lender shall be entitled to all the remedies provided by law, the terms of the Secured Debt, this Security Instrument and any related documents. In addition, Lender shall be entitled to all the remedies provided by law, the terms of the Secured Debt, this Security Instrument and any related documents, including without limitation, the power to sell the Property.

If there is a default, Lender may, in addition to any other permitted remedy, advertise and sell the Property as a whole or in separate parcels at public auction to the highest bidder for cash and convey absolute title free and clear of all right, title and interest of Mortgagor at such time and place as Lender designates. If Lender invokes the power of sale, Lender shall give notice of the sale including the time, terms, and place of sale and a description of the property to be sold as required by the applicable law in effect at the time of the proposed sale. Lender or its designee may purchase the Property at any sale.

Upon sale of the Property and to the extent not prohibited by law, Lender shall make and deliver a deed to the Property sold which conveys absolute title to the purchaser. Lender shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable attorneys' fees; (b) to all sums secured by this Mortgage; and (c) any excess to the person or persons legally entitled to it. The recitals in any deed of conveyance shall be prima facie evidence of the facts set forth therein.

All remedies are distinct, cumulative and not exclusive, and the Lender is entitled to all remedies provided at law or equity, whether or not expressly set forth. The acceptance by Lender of any sum in payment or partial payment on the Secured Debt after the balance is due or is accelerated or after foreclosure proceedings are filed shall not constitute a waiver of Lender's right to require complete cure of any existing default. By not exercising any remedy on Mortgagor's default, Lender does not waive Lender's right to later consider the event a default if it continues or happens again.

18. EXPENSES; ADVANCES ON COVENANTS; ATTORNEYS' FEES; COLLECTION COSTS.

Except when prohibited by law, Mortgagor agrees to pay all of Lender's expenses if Mortgagor breaches any covenant in this Security Instrument. Mortgagor will also pay on demand any amount incurred by Lender for insuring, inspecting, preserving or otherwise protecting the Property and Lender's security interest. These expenses will bear interest from the date of the payment until paid in full at the highest interest rate in effect as provided in the terms of the Secured Debt. Mortgagor agrees to pay all costs and expenses incurred by Lender in collecting, enforcing or protecting Lender's rights and remedies under this Security Instrument. This amount may include, but is not limited to, attorneys' fees, court costs, and other legal expenses. This Security Instrument shall remain in effect until released. Mortgagor agrees to pay for any recordation costs of such release.

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19. ENVIRONMENTAL LAWS AND HAZARDOUS SUBSTANCES. As used in this section, (1) Environmental Law means, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, 42 U.S.C. 9601 et seq.), all other federal, state and local laws, regulations, ordinances, court orders, attorney general opinions or interpretive letters concerning the public health, safety, welfare, environment or a hazardous substance; and (2) Hazardous Substance means any toxic, radioactive or hazardous material, waste, pollutant or contaminant which has characteristics which render the substance dangerous or potentially dangerous to the public health, safety, welfare or environment. The term includes, without limitation, any substances defined as "hazardous material," "toxic substances," "hazardous waste" or "hazardous substance" under any Environmental Law.

Mortgagor represents, warrants and agrees that:

- A. Except as previously disclosed and acknowledged in writing to Lender, no Hazardous Substance has been, is, or will be located, transported, manufactured, treated, refined, or handled by any person on, under or about the Property, except in the ordinary course of business and in strict compliance with all applicable Environmental Law.
- B. Except as previously disclosed and acknowledged in writing to Lender, Mortgagor has not and will not cause, contribute to, or permit the release of any Hazardous Substance on the Property.
- C. Mortgagor will immediately notify Lender if (1) a release or threatened release of Hazardous Substance occurs on, under or about the Property or migrates or threatens to migrate from nearby property; or (2) there is a violation of any Environmental Law concerning the Property. In such an event, Mortgagor will take all necessary remedial action in accordance with Environmental Law.
- D. Except as previously disclosed and acknowledged in writing to Lender, Mortgagor has no knowledge of or reason to believe there is any pending or threatened investigation, claim, or proceeding of any kind relating to (1) any Hazardous Substance located on, under or about the Property; or (2) any violation by Mortgagor or any tenant of any Environmental Law. Mortgagor will immediately notify Lender in writing as soon as Mortgagor has reason to believe there is any such pending or threatened investigation, claim, or proceeding. In such an event, Lender has the right, but not the obligation, to participate in any such proceeding including the right to receive copies of any documents relating to such proceedings.
- E. Except as previously disclosed and acknowledged in writing to Lender, Mortgagor and every tenant have been, are and shall remain in full compliance with any applicable Environmental Law.
- F. Except as previously disclosed and acknowledged in writing to Lender, there are no underground storage tanks, private dumps or open wells located on or under the Property and no such tank, dump or well will be added unless Lender first consents in writing.
- G. Mortgagor will regularly inspect the Property, monitor the activities and operations on the Property, and confirm that all permits, licenses or approvals required by any applicable Environmental Law are obtained and complied with.
- H. Mortgagor will permit, or cause any tenant to permit, Lender or Lender's agent to enter and inspect the Property and review all records at any reasonable time to determine (1) the existence, location and nature of any Hazardous Substance on, under or about the Property; (2) the existence, location, nature, and magnitude of any Hazardous Substance that has been released on, under or about the Property; or (3) whether or not Mortgagor and any tenant are in compliance with applicable Environmental Law.
- I. Upon Lender's request and at any time, Mortgagor agrees, at Mortgagor's expense, to engage a qualified environmental engineer to prepare an environmental audit of the Property and to submit the results of such audit to Lender. The choice of the environmental engineer who will perform such audit is subject to Lender's approval.

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- J. Lender has the right, but not the obligation, to perform any of Mortgagor's obligations under this section at Mortgagor's expense.
- K. As a consequence of any breach of any representation, warranty or promise made in this section, (1) Mortgagor will indemnify and hold Lender and Lender's successors or assigns harmless from and against all losses, claims, demands, liabilities, damages, cleanup, response and remediation costs, penalties and expenses, including without limitation all costs of litigation and attorneys' fees, which Lender and Lender's successors or assigns may sustain; and (2) at Lender's discretion, Lender may release this Security Instrument and in return Mortgagor will provide Lender with collateral of at least equal value to the Property secured by this Security Instrument without prejudice to any of Lender's rights under this Security Instrument.
- L. Notwithstanding any of the language contained in this Security Instrument to the contrary, the terms of this section shall survive any foreclosure or satisfaction of this Security Instrument regardless of any passage of title to Lender or any disposition by Lender of any or all of the Property. Any claims and defenses to the contrary are hereby waived.

20. CONDEMNATION. Mortgagor will give Lender prompt notice of any pending or threatened action, by private or public entities to purchase or take any or all of the Property through condemnation, eminent domain, or any other means. Mortgagor authorizes Lender to intervene in Mortgagor's name in any of the above described actions or claims. Mortgagor assigns to Lender the proceeds of any award or claim for damages connected with a condemnation or other taking of all or any part of the Property. Such proceeds shall be considered payments and will be applied as provided in this Security Instrument. This assignment of proceeds is subject to the terms of any prior mortgage, deed of trust, security agreement or other lien document.

21. INSURANCE. Mortgagor agrees to maintain insurance as follows:

- A. Mortgagor shall keep the Property insured against loss by fire, flood, theft and other hazards and risks reasonably associated with the Property due to its type and location. This insurance shall be maintained in the amounts and for the periods that Lender requires. What Lender requires pursuant to the preceding two sentences can change during the term of the Secured Debt. The insurance carrier providing the insurance shall be chosen by Mortgagor subject to Lender's approval, which shall not be unreasonably withheld. If Mortgagor fails to maintain the coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights in the Property according to the terms of this Security Instrument.

All insurance policies and renewals shall be acceptable to Lender and shall include a standard "mortgage clause" and, where applicable, "loss payee clause." Mortgagor shall immediately notify Lender of cancellation or termination of the insurance. Lender shall have the right to hold the policies and renewals. If Lender requires, Mortgagor shall immediately give to Lender all receipts of paid premiums and renewal notices. Upon loss, Mortgagor shall give immediate notice to the insurance carrier and Lender. Lender may make proof of loss if not made immediately by Mortgagor.

Unless otherwise agreed in writing, all insurance proceeds shall be applied to restoration or repair of the Property or to the Secured Debt, whether or not then due, at Lender's option. Any application of proceeds to principal shall not extend or postpone the due date of scheduled payment nor change the amount of any payment. Any excess will be paid to the Mortgagor. If the Property is acquired by Lender, Mortgagor's right to any insurance policies and proceeds resulting from damage to the Property before the acquisition shall pass to Lender to the extent of the Secured Debt immediately before the acquisition.

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Paula Robinson, Flathead County MT by NC

- B. Mortgagor agrees to maintain comprehensive general liability insurance naming Lender as an additional insured in an amount acceptable to Lender, insuring against claims arising from any accident or occurrence in or on the Property.
 - C. Mortgagor agrees to maintain rental loss or business interruption insurance, as required by Lender, in an amount equal to at least coverage of one year's debt service, and required escrow account deposits (if agreed to separately in writing), under a form of policy acceptable to Lender.
- 22. ESCROW FOR TAXES AND INSURANCE.** Unless otherwise provided in a separate agreement, Mortgagor will not be required to pay to Lender funds for taxes and insurance in escrow.
- 23. FINANCIAL REPORTS AND ADDITIONAL DOCUMENTS.** Mortgagor will provide to Lender upon request, any financial statement or information Lender may deem reasonably necessary. Mortgagor agrees to sign, deliver, and file any additional documents or certifications that Lender may consider necessary to perfect, continue, and preserve Mortgagor's obligations under this Security Instrument and Lender's lien status on the Property.
- 24. JOINT AND INDIVIDUAL LIABILITY; CO-SIGNERS; SUCCESSORS AND ASSIGNS BOUND.** All duties under this Security Instrument are joint and individual. If Mortgagor signs this Security Instrument but does not sign an evidence of debt, Mortgagor does so only to mortgage Mortgagor's interest in the Property to secure payment of the Secured Debt and Mortgagor does not agree to be personally liable on the Secured Debt. If this Security Instrument secures a guaranty between Lender and Mortgagor, Mortgagor agrees to waive any rights that may prevent Lender from bringing any action or claim against Mortgagor or any party indebted under the obligation. These rights may include, but are not limited to, any anti-deficiency or one-action laws. Mortgagor agrees that Lender and any party to this Security Instrument may extend, modify or make any change in the terms of this Security Instrument or any evidence of debt without Mortgagor's consent. Such a change will not release Mortgagor from the terms of this Security Instrument. The duties and benefits of this Security Instrument shall bind and benefit the successors and assigns of Mortgagor and Lender.
- 25. APPLICABLE LAW; SEVERABILITY; INTERPRETATION.** This Security Instrument is governed by the laws of the jurisdiction in which Lender is located, except to the extent otherwise required by the laws of the jurisdiction where the Property is located. This Security Instrument is complete and fully integrated. This Security Instrument may not be amended or modified by oral agreement. Any section in this Security Instrument, attachments, or any agreement related to the Secured Debt that conflicts with applicable law will not be effective, unless that law expressly or impliedly permits the variations by written agreement. If any section of this Security Instrument cannot be enforced according to its terms, that section will be severed and will not affect the enforceability of the remainder of this Security Instrument. Whenever used, the singular shall include the plural and the plural the singular. The captions and headings of the sections of this Security Instrument are for convenience only and are not to be used to interpret or define the terms of this Security Instrument. Time is of the essence in this Security Instrument.
- 26. NOTICE.** Unless otherwise required by law, any notice shall be given by delivering it or by mailing it by first class mail to the appropriate party's address on page 1 of this Security Instrument, or to any other address designated in writing. Notice to one mortgagor will be deemed to be notice to all mortgagors.
- 27. WAIVERS.** Except to the extent prohibited by law, Mortgagor waives all appraisal and homestead exemption rights relating to the Property.

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28. U.C.C. PROVISIONS. If checked, the following are applicable to, but do not limit, this Security Instrument:

- Construction Loan.** This Security Instrument secures an obligation incurred for the construction of an improvement on the Property.
- Fixture Filing.** Mortgagor grants to Lender a security interest in all goods that Mortgagor owns now or in the future and that are or will become fixtures related to the Property.
- Crops; Timber; Minerals; Rents, Issues and Profits.** Mortgagor grants to Lender a security interest in all crops, timber and minerals located on the Property as well as all rents, issues and profits of them including, but not limited to, all Conservation Reserve Program (CRP) and Payment in Kind (PIK) payments and similar governmental programs (all of which shall also be included in the term "Property").
- Personal Property.** Mortgagor grants to Lender a security interest in all personal property located on or connected with the Property, including all farm products, inventory, equipment, accounts, documents, instruments, chattel paper, general intangibles, and all other items of personal property Mortgagor owns now or in the future and that are used or useful in the construction, ownership, operation, management, or maintenance of the Property (all of which shall also be included in the term "Property"). The term "personal property" specifically excludes that property described as "household goods" secured in connection with a "consumer" loan as those terms are defined in applicable federal regulations governing unfair and deceptive credit practices.
- Filing As Financing Statement.** Mortgagor agrees and acknowledges that this Security Instrument also suffices as a financing statement and any carbon, photographic or other reproduction may be filed of record for purposes of Article 9 of the Uniform Commercial Code.

29. OTHER TERMS. If checked, the following are applicable to this Security Instrument:

- Line of Credit.** The Secured Debt includes a revolving line of credit provision. Although the Secured Debt may be reduced to a zero balance, this Security Instrument will remain in effect until released.
- Agricultural Property.** Mortgagor covenants and warrants that the Property will be used principally for agricultural or farming purposes and that Mortgagor is an individual or entity allowed to own agricultural land as specified by law.
- Separate Assignment.** The Mortgagor has executed or will execute a separate assignment of leases and rents. If the separate assignment of leases and rents is properly executed and recorded, then the separate assignment will supersede this Security Instrument's "Assignment of Leases and Rents" section.
- Additional Terms.**

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SIGNATURES: By signing below, Mortgagor agrees to the terms and covenants contained in this Security Instrument and in any attachments. Mortgagor also acknowledges receipt of a copy of this Security Instrument on the date stated on page 1.

Entity Name: THORCO, INC.

Dennis Thornton
(Signature) DENNIS THORNTON, PRESIDENT (Date)

Donna Thornton
(Signature) DONNA THORNTON, SECRETARY/TREASURER

(Signature) (Date)

(Signature) (Date)

ACKNOWLEDGMENT:

(Individual) STATE OF _____, COUNTY OF _____ } ss.
This instrument was acknowledged before me this _____ day of _____
by _____

(Signature of Notarial Officer)

(Name - typed, stamped, or printed)

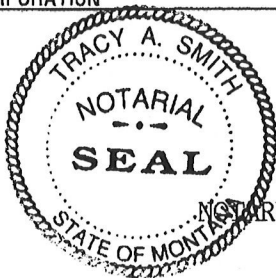
(Title and Rank)

(Residing at)

My Commission Expires: _____

(Business or Entity Acknowledgment) STATE OF MONTANA, COUNTY OF FLATHEAD } ss.
This instrument was acknowledged before me this 19TH day of MARCH, 2009
by DENNIS THORNTON, PRESIDENT; DONNA THORNTON, SECRETARY/TREASURER

(Title(s))
of THORCO, INC. (Name of Business or Entity)
a MONTANA CORPORATION on behalf of the business or entity.



Tracy A. Smith
(Signature of Notarial Officer)

TRACY A SMITH
(Name - typed, stamped, or printed)

NOTARY PUBLIC FOR THE STATE OF MONTANA
(Title and Rank)

COLUMBIA FALLS
(Residing at)

My Commission Expires: OCT 13, 2012