

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


Katherine Wilson PSP-PI-LIC-16517



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 \$3,360,000.00 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.

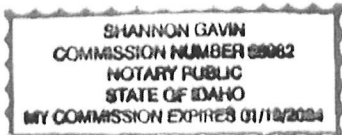
Whitefish Credit Union

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 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





**SCHEDULE C
 PROPERTY DESCRIPTION**

The land referred to in this Commitment is described as follows:

The North Half of the Northwest Quarter of the Northwest Quarter (N $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$); the South Half of the Northwest Quarter of the Northwest Quarter (S $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$); the North Half of the Northeast Quarter of the Northwest Quarter (N $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$); the South Half of the Northeast Quarter of the Northwest Quarter (S $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$); the North Half of the Southeast Quarter of the Northwest Quarter (N $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$); the South Half of the Southeast Quarter of the Northwest Quarter (S $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$); the North Half of the Southwest Quarter of the Northwest Quarter (N $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$); the South Half of the Southwest Quarter of the Northwest Quarter (S $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$), all in Section 28, Township 27 North, Range 21 West, M.P.M., Flathead County, Montana.

1A
 1B
 3BA
 3BB
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AND

The North Half of the Northwest Quarter of the Southwest Quarter (N $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$) and the South Half of the Northwest Quarter of the Southwest Quarter (S $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$) of Section 28, Township 27 North, Range 21 West, M.P.M., Flathead County, Montana.

1E
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AND

The North Half of the Southwest Quarter of the Northwest Quarter (N $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$); the South Half of the Southwest Quarter of the Northwest Quarter (S $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$); the North Half of the Northwest Quarter of the Southwest Quarter (N $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$); the South Half of the Northwest Quarter of the Southwest Quarter (S $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$); the North Half of the Southwest Quarter of the Southwest Quarter (N $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$) all in Section 27, Township 27 North, Range 21 West, M.P.M., Flathead County, Montana.

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AND

The North Half of the Northeast Quarter of the Southwest Quarter (N $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$); the South Half of the Northeast Quarter of the Southwest Quarter (S $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$); the North Half of the Southeast Quarter of the Southwest Quarter (N $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$); the South Half of the Southeast Quarter of the Southwest Quarter (S $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$); the North Half of the Northwest Quarter of the Southeast Quarter (N $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$); the South Half of the Northwest Quarter of the Southeast Quarter (S $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$); the North Half of the Southwest Quarter of the Southeast Quarter (N $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$) and the South Half of the Southwest Quarter of the Southeast Quarter (S $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$) all in Section 27, Township 27 North, Range 21 West, M.P.M., Flathead County, Montana.

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AND

The Southeast Quarter of the Northwest Quarter (SE $\frac{1}{4}$ NW $\frac{1}{4}$) of Section 27, Township 27 North, Range 21 West, M.P.M., Flathead County, Montana.

1BFD

EXCEPTING THEREFROM that portion deeded to Flathead County for road purposes, by instrument recorded June 26, 1937 under Recorder's Fee #2028, in Book 223, page 614, records of Flathead County, Montana



RETURN AFTER RECORDING TO:

Whitefish Credit Union

PO BOX 37

Whitefish, MT 59937

Loan # 9664280750-0750

[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.

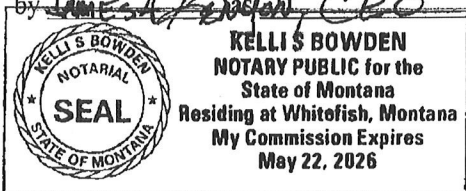
FURTHER, Whitefish Credit Union corrects the record to clarify that the Mortgagor had no ownership or other interest in the Mortgaged Property since the Warranty Deeds described above were recorded.

X [Signature]
James Koupas / 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 Koupas, CEO of Whitefish Credit Union.



[Signature]
Kelli S Bowden
Notary Public

★★ 0213950 tg



EXHIBIT A
PROPERTY DESCRIPTION

The land referred to in this Commitment is described as follows:

The North Half of the Northwest Quarter of the Northwest Quarter (N $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$); the South Half of the Northwest Quarter of the Northwest Quarter (S $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$); the North Half of the Northeast Quarter of the Northwest Quarter (N $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$); the South Half of the Northeast Quarter of the Northwest Quarter (S $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$); the North Half of the Southeast Quarter of the Northwest Quarter (N $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$); the South Half of the Southeast Quarter of the Northwest Quarter (S $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$); the North Half of the Southwest Quarter of the Northwest Quarter (N $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$); the South Half of the Southwest Quarter of the Northwest Quarter (S $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$), all in Section 28, Township 27 North, Range 21 West, M.P.M., Flathead County, Montana.

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AND

The North Half of the Northwest Quarter of the Southwest Quarter (N $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$) and the South Half of the Northwest Quarter of the Southwest Quarter (S $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$) of Section 28, Township 27 North, Range 21 West, M.P.M., Flathead County, Montana.

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AND

The North Half of the Southwest Quarter of the Northwest Quarter (N $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$); the South Half of the Southwest Quarter of the Northwest Quarter (S $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$); the North Half of the Northwest Quarter of the Southwest Quarter (N $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$); the South Half of the Northwest Quarter of the Southwest Quarter (S $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$); the North Half of the Southwest Quarter of the Southwest Quarter (N $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$) all in Section 27, Township 27 North, Range 21 West, M.P.M., Flathead County, Montana.

1B5A
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AND

The North Half of the Northeast Quarter of the Southwest Quarter (N $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$); the South Half of the Northeast Quarter of the Southwest Quarter (S $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$); the North Half of the Southeast Quarter of the Southwest Quarter (N $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$); the South Half of the Southeast Quarter of the Southwest Quarter (S $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$); the North Half of the Northwest Quarter of the Southeast Quarter (N $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$); the South Half of the Northwest Quarter of the Southeast Quarter (S $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$); the North Half of the Southwest Quarter of the Southeast Quarter (N $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$) and the South Half of the Southwest Quarter of the Southeast Quarter (S $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$) all in Section 27, Township 27 North, Range 21 West, M.P.M., Flathead County, Montana.

1B5
 1B5A
 1B5B
 1B5E
 1B5F
 1B5
 1B5M
 1B5E
 1B5F

AND

The Southeast Quarter of the Northwest Quarter (SE $\frac{1}{4}$ NW $\frac{1}{4}$) of Section 27, Township 27 North, Range 21 West, M.P.M., Flathead County, Montana.

1B5D

EXCEPTING THEREFROM that portion deeded to Flathead County for road purposes, by instrument recorded June 26, 1937 under Recorder's Fee #2028, in Book 223, page 614, records of Flathead County, Montana.

2022-2-14 Transcript of Melanie Hall and Kelly O'Sullivan

2022-2-10-Economic Affairs Interim Committee Capital Room 137 Bank Oversight
Hearing

Roll Call 8:50 AM

Sen. Ellsworth , Jason	email Jason.ellsworth@mtleg.gov	(406) 360-0009	(R)
Sen. Morigeau, Shane	email shane@shaneforamt.com	(406) 546-4290	(D)
Rep. Buckley, Alice	email aliceformontana@gmail.com	(406) 404-0891	(D)
Sen. Boland , Carline	email Carline.boland@mtleg.gov	(406) 868-1209	(D)
Rep. Ler, Brandon	email lerforrichland@gmail.com	(406) 480-5687	(R)
Rep. Kassmier, Josh	email JKassmier@Live.com	(406) 781-5386	(R)
Rep. Noland, Mark	email Marknolandhd10@gmail.com	(406) 253-8982	(R)
Sen. Bogner, Kenneth	email not listed	(406) 916-9690	(R)
Rep. Sullivan, Katie	email Sullivan89@gmail.com	(406) 616-3914	(R)

Testimony

10:40 AM Commissioner Melanie Hall

10:48 AM Nick Ramlow

10:50 AM Dennis Thornton

11:06 AM Toni Mitchell

11:20 AM Joe Clark

11:35 AM Donna Thornton

11:47 AM Winston Major

11:50 AM Rick Breckinridge

11:59 AM Baking Commissioner Melanie Hall questioned by the Oversight
Committee.

2022-2-14 Transcript of Melanie Hall and Kelly O'Sullivan

Rep. Noland: Mr. Chairman, are borrowers entitled to their loan files?
12:06:24 PM

Ms Hall: Yes.
12:14:10 PM

Rep. Noland: Thank you Mr. Chairman, Commissioner Hall can a recorded mortgage lien be used for any other obligation?

12:14:24 PM

Ms Hall: Mr. chair, members of the committee. No,
12:14 PM:31

Rep. Noland: No, Mr. chair Ms. Hall is there only one action for foreclosure?

12:14:39 PM

Ms Hall: There is a single action for foreclosure. Yes,
12:14:45 PM

Rep. Noland: Mr. Chair, Ms. Hall, If a judgment in a foreclosure lawsuit is vacated is the judgment still owed?

12:14:56 PM

Ms Hall: No Mr. chair, members of the committee. No. The judgment is not still owed.

Ms O'Sullivan: Members of the committee, Mr. Chairman my name is Kelly O'Sullivan I am legal counsel for the Division of Banking and Financial Institution.

12:16:39 PM

Rep. Noland: Thank you so my question Mr. chairman, Miss O'Sullivan that I ask is if a foreclosure lawsuit is dismissed with prejudice is considered adjudicated on the merits? It was a specific question.

12:17:00 PM

Ms O'Sullivan: If you're talking about the Thornton case and it was a voluntary dismissal with prejudice. Yes.

12:17:52 PM

Rep. Noland: So If were making, you know it's dismissed with prejudice. It's done, that's what we have heard today. That's what many of the folks here have felt that's what is supposed to have happened. How can it not happen if It's dismissed with prejudice? It's done its discharged.

12:18:10 PM

Ms O'Sullivan: The lawsuit is done. Yes that is correct. I'm sorry Mr. Chair, members of the committee, it's done.

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 *Dennis Thornton*
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)



Meadow Gleason
Notary Public for the State of Washington

THORCO, INC.

X *Donna Thornton*
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)



Meadow Gleason
Notary Public for the State of Washington

DENNIS THORNTON

X *Dennis Thornton*

STATE OF Washington)
County of Pend Oreille) : SS

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

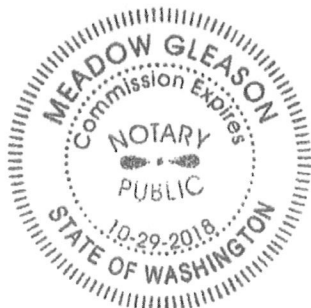
DONNA THORNTON

X *Donna Thornton*

STATE OF Washington)
County of Pend Oreille) : SS

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

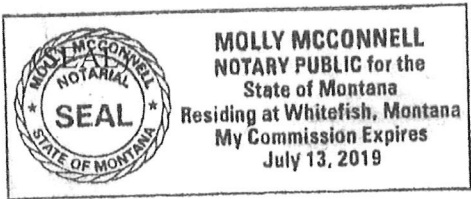
WHITEFISH CREDIT UNION

X [Signature]
By: Ammon D. Archer As: SAG OFFICER

STATE OF MONTANA)
 : SS
County of Flathead)

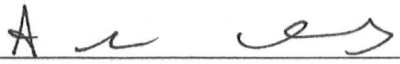
This instrument was acknowledged before me on the 8th day of June 2016, by
AARON ARCHER as SAG OFFICER of Whitefish Credit Union.

[Signature]
Notary Public for the State of Montana



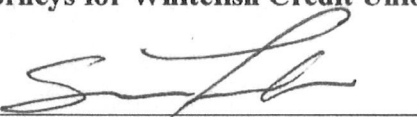
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Date: 6/7/16

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Johnna J. Preble

Date: 6-9-16