

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

Third Affidavit from Katherine Wilson

BEFORE ME, the undersigned authority, on this day personally, February 14, 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.
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 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** provide WCU with Deeds in Lieu of Foreclosure, but rather, Security Deeds to be held as a form of collateral, which creates an equitable mortgage.

MCA 71-1-107 Transfers of Interest. (1) Every transfer of an interest in property, other than in trust, **made only as a security for the performance of another act is to be deemed a mortgage** except when in the case of personal property, it is accompanied by actual change of possession, in which case it is deemed a pledge.

(2) The fact that a transfer was made subject to defeasance on a condition may, for the purpose of showing such transfer to be a mortgage, be proved (except as against a subsequent purchaser or encumbrancer for value and without notice), though the fact does not appear by the terms of the instrument.

The only deeds found that were provided to WCU by Thorco Inc. or the Thorntons, were the Warranty Deed in connection to the Settlement Agreement and Mutual Release (SAMR) dated June 8, 2016.

The Realty Transfer Certificate (RTC) was also dated June 8, 2016 and the RTC instructions state, under Part 1 – Date of Transfer, “This should be the date on which the instrument or deed was executed (the date the instrument or deed was signed by the Seller (Grantor) and Buyer (Grantee) unless otherwise specified in the deed or date of decedents death). Contracts for Deeds and Notices of Purchasers interest should use the date the contract or notice was initially effective. The SAMR was effective June 8, 2016. Nowhere in the RTC or Deeds does it state that they are “Deeds in Lieu of Foreclosure” and nowhere does it state that the deeds will be recorded at a later time.

According to the SAMR, these Non-Merger Warranty Deeds were to be placed in escrow at the signing of the SAMR, but were not. By admission of WCU's attorney, Sean Frampton, in DV-18-336D, ANSWER filed July 5, 2018, and the Second Affidavit of Sean Frampton, filed June 29, 2018, the documents were kept in his possession until they were unlawfully recorded on October 25, 2018. This is in violation of MCA 2-59-1724 (9) Records to be Maintained by Mortgage Lender and MCA 32-1-471 - Penalty for unlawful hypothecation of property received. **See Exhibit 1 – ANSWER, Second Affidavit of Sean Frampton.**

I would like to note that in this investigation, I was asked to determine if the deeds, provided WCU were Deeds in Lieu of Foreclosure and during the course of my investigation, it will be shown that WCU made no mention of "Deeds in Lieu of Foreclosure" in any of their filings. During my research of court documents in Bankruptcy Court Case No. 17-61219-11, DV-18-336, the correspondence between the attorneys, the Settlement Term Sheet, the SAMR, or on the Non-Merger Warranty Deed, I found no mention of the term "Deeds in Lieu of Foreclosure".

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. **See Exhibit 2 – Thorco Corrected Release of Mortgage and Special Warranty Deed to Mo Somers, LLC.**

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.** This is not what took place in Thorco Inc, Dennis and Donna Thorntons case. WCU and Thorco Inc., and the Thorntons were in litigation in Case No. DV-12-174, in which WCU won Summary Judgement. Instead of going to trial, WCU attorney, Sean Frampton, approached Thornton's attorney and requested mediation.

In the above-described action, the parties engaged in mediation on or about April 4, 2016. On that date, the parties executed a Settlement Term Sheet, and then the Settlement Agreement and Mutual Release (SAMR). A true and correct copy of which is attached here in as **Exhibit 3 – Settlement Term Sheet and Settlement Agreement and Mutual Release.**

The Settlement Agreement and Mutual Release (SAMR), 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, WCU required 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 below:

The SAMR, Term 1 & 2 obligations to act are as follows:

“1. Cash Component, WCU shall pay one hundred fifty thousand dollars (\$150,000) to Releasers 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 \$1,100,00; 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).”**

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 Non-Merger Warranty Deeds, provided to them by Thorco Inc. and the Thornton, per the SAMR, 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 new mortgages prior to dismissal of the foreclosure action. Paragraph 2.b clearly states there is to be releases of its mortgages, which was the original mortgage from March 2009, for \$3.36M.

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 that 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. WCU's MOTION TO MODIFY STAY, Case No. 17-61219-11, filed in US Bankruptcy Court states,

" #11. The settlement envisioned that the parties would establish an escrow at First American Title Company to hold 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." See Exhibit 4 – WCU's Bankruptcy Courts Motion to Modify Stay, Case No. 17-61219-11.

This statement made by WCU's attorney is correct in the fact that the settlement envisioned that the parties would establish an escrow at First American Title Company and that neither party established the escrow, that statement is true. What is not true is the statement made by WCU that, *"Debtor provided its fully executed Warranty Deeds to WCU's counsel to hold the documents in trust..."*.

The Warranty Deeds were only delivered to WCU's counsel because the Settlement Agreement still needed to be signed by WCU and the Warranty Deeds were an attachment to the SAMR. It was expected by Thorco Inc., the Thorntons, and their attorneys, that after WCU's signing of the documents, WCU would place the Warranty Deeds into escrow. This wasn't done and according to Sean Frampton's Second Affidavit, #5 states, "The parties could not agree on the instructions and First American returned the documents to my office. #6. Even though WCU held the original documents, nothing precluded the Thorntons from requesting those documents and opening up the escrow themselves. They never placed demand on WCU to either open an escrow or deliver the documents until Klinkhammer did on March 19, 2018." See **Exhibit 1 – Second Affidavit of Sean Frampton.**

After evaluating these last few statements made by WCU's attorneys, Dean Stensland and Sean Frampton, it is concluded they are statements made in court filings that did not intent the reader to interpret the deeds being discussed as Deeds in Lieu of Foreclosure, but rather security deeds:

1. *"The parties could not agree on the instructions"*, the instructions were not debatable, the escrow instructions were clearly laid out in the SAMR. Additionally, if these were Deeds in Lieu of Foreclosure, WCU would not need the Thorntons to agree on escrow instructions.
2. *"Even though WCU held the original documents, nothing precluded Thorntons from requesting those documents and opening the escrow themselves."* If the statement made in #5 was true, WCU's disagreement on the escrow instructions would be one item that prevented the Thorntons from opening escrow.
3. The Thorntons, by law, could not have open the escrow account.

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 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.

In the same email, WCU attorney still agrees “#5... WCU will agree to execute deeds to Thorco for the land, deposit the deeds into escrow, and instruct the escrow agent to record the deeds upon the deposit of \$1.4M of good funds with WCU, or return the deeds to WCU on June 10, 2018, if Thorco has not closed the purchase of the land. With the dismissal of Thorco bankruptcy case, WCU agreed to put the deeds into escrow upon signing of the SAMR.” See Exhibit 5 – Email from D. Stensland to J. Binney.

This is further backed up, as to what the parties’ intentions were, and can be found in WCU’s proof of claim filed with U.S. Bankruptcy Court on April 26, 2018. Where in WCU stated it had recorded mortgages in the amount of \$1,400,000. I dock shows there **have never been** any recorded mortgages in the amount of \$1,400,000 against any of the property. But what can be gleaned from this proof of claim is the intent of the parties was that there were to be two new mortgages, totaling \$1.4M. WCU claims, in this proof of claim filed 4/26/18, Part 2, #6., the only mortgage recorded, the 2009 mortgage was their security, the nature of the property was Real Estate, basis for perfection was Recorded Mortgages, and the amount of claim that is secured \$1,400,000. The 2009 mortgage was to be disposed of in DV-12-174B. It is well-established law in Montana that a mortgage is a special lien and can be only be used for one obligation.

71-3-101. Definitions. For purposes of this part, the following definitions apply:

(3) A "special lien" is one that the holder of the lien can enforce only as security for the performance of a particular act or obligation and of the obligations that may be incidental to the particular act or obligation.

This is also affirmed by Melanie Halls testimony in the February 10, 2022 hearing in Helena, where she is asked by Rep. Kassmier, “Is a mortgage a Special Lien?”, and her reply, “Yes.”.

71-3-106. Extent of lien. The existence of a lien upon property does not of itself entitle the person in whose favor it exists to a lien upon the same property for the performance of any other obligation than that which the lien originally secured.

See Exhibit 6 – WCU Proof of Claim

In my investigation, I have found that the deeds mentioned 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.”, could not be Deeds in Lieu of Foreclosure.

I have identified that the above statement could not be true for the following reasons:

1. The Settlement Agreement and Mutual Release was not the prevailing document at the time of recording, Case No. DV-18-336 was, which means the deeds from the Settlement agreement were extinguished and any use of them after that date was unlawful. The dismissal with prejudice was the prevailing document that disposed of the entire 2009 loan. The record shows on August 31, 2018, Aaron Archer submitted to the court an affidavit in DV-18-336D stating in paragraph two: [The total indebtedness on the Thorco loan is currently over \$4 million. Since the option was not exercised, the total indebtedness remains.] – The affiant statement makes no mention of WCU receiving Deeds in Lieu of Foreclosure, only the mention of a debt owed. This amount of debt is NOT debatable, since the Proof of Claim submitted April 26, 2016 states \$1.4M. This is clear evidence the Thorntons did not **willingly** provide Deeds in Lieu of Foreclosure.
2. If, in fact, the judgment from DV-18-336 was lawful and WCU was in lawful possession of the property, WCU did not do a Sheriff’s Sale, according to MCA 71-1-222, therefore, they unlawfully transferred the property.
3. The deeds noted in the settlement agreement are deeds that were not properly recorded on October 25, 2018, because they were not done with:
 - a. The proper power of attorney.
 - b. WCU did not have the required Realty Transfer Certificate attached to the recording as required by MCA-15-7-304, 304, and 310. The only RTC that was signed, was on June 8, 2018.
 - c. WCU had not properly placed the trust indenture mortgage deeds into escrow within three days or recorded mortgage within the proper timeframe of 20 days within receipt of mortgage documents, therefore, were null and void.

It is well established law in Montana that a mortgage is the assignment for the benefit of a creditor and must be recorded within 20 days or it is void. This would mean the mortgage needed to be recorded by June 28, 2018.

31-2-217. Effect of failing to record. An assignment for the benefit of creditors **is void** against creditors of the assignor and against purchasers and encumbrances in good faith and for value unless it is recorded within 20 days after the date of the assignment.

I have been asked to determine if a mortgage must be recorded.

The answer is yes.

70-21-202. Certain transfers in trust -- mortgages -- when to be recorded. Transfers of property in trust for the benefit of creditors and transfers or liens on property by way of mortgage or abstract of such document are required to be recorded in the cases specified in Title 31, chapter 2, on the special relation of debtor and creditor and Title 71 on mortgages, respectively.

70-21-301. Conveyance defined. The term "conveyance", as used in 70-21-302 through 70-21-304, embraces every instrument in writing by which any estate or interest in real property is created, aliened, mortgaged, or encumbered or by which the title to real property may be affected, except wills.

71-1-207. Recording of mortgages and assignments. (1) Mortgages of real property may be acknowledged or proved, certified, and recorded in the same manner and with the same effect as grants of real property.

(2) An assignment of a real estate mortgage may be recorded in the same manner as a real estate mortgage, and the record operates as legal notice to the mortgagor and all persons subsequently deriving title to the mortgage from the assignor as well as to all other persons, including subsequent purchasers, encumbrancers, mortgagees, or other lienholders. An assignment must contain the assignee's post-office address at the assignee's place of residence and may not be recorded or filed unless it contains the post-office address.

It is well established law in Montana that a mortgage is the assignment for the benefit of a creditor and must be recorded within 20 days or it is void.

31-2-217. Effect of failing to record. An assignment for the benefit of creditors **is void** against creditors of the assignor and against purchasers and encumbrances in good faith and for value unless it is recorded within 20 days after the date of the assignment.

Thorco Inc., Dennis and Donna Thornton, completed their requirements of the SAMR Term 2, C, by delivering the signed SAMR, which included the mortgage documents as attachments, for signature to WCU attorney, Sean Frampton's office after the signing of the agreement. I found WCU failed to uphold their end of the agreement by failing to release the original \$3.36M mortgage and failed to place

the two warranty deeds; one for \$1.1M and one for \$300,000, into escrow within 20 days as required by MCA 31-2-217.

I discovered that the Realty Transfer Certificate (RTC), completed by WCU attorney Johnna Preble, in Part 4. Type Of Transfer (more than one may apply), did not have the "Deed in Lieu of Foreclosure" box checked; it had the "other" box checked and noted the SAMR.

I discovered the RTC, Part 5, Exceptions for Providing Sale Price Information, has the box "other" checked and notes the Settlement in Cause No. DV-12-174B. In the SAMR, it states that Thorco has 18 months to purchase the two tracts. If these were Deeds in Lieu of Foreclosure, they would not have needed the SAMR to afford Thorco with an Option to Purchase., WCU simply would have kept the property and ended the case with their original judgment from DV-12-174B. I would also like to note that although it says Option to Purchase, the property is still in Thorco Inc.'s name; and one cannot purchase what they already own.

In the RTC, Part 6- Sale Price, if this had been a "Deed in Lieu of Foreclosure", WCU would have needed to have the Actual Sale Price listed in this section in order to record the amount of money that was satisfied on the debt owed by Thorco. Under that same section, beside Financing, the "other" box is checked.

After reviewing Case no. DV-12-174B, the Settlement Term Sheet, the SAMR and the Realty Transfer Certificate, I cannot find anywhere that WCU took the option, or opportunity, to make note that this was a "Deed in Lieu of Foreclosure" or check the box that would indicate that this was to be considered a "Deed in Lieu of Foreclosure", I have come to the conclusion that WCU did not initially intend for these documents to be used as "Deeds in Lieu of Foreclosure", but noted rather what they were, security deed that were to be placed into escrow and released back to Thorco Inc. upon deposit of the \$1.4M.

Additionally, "Deeds in Lieu Foreclosure" are generally used prior to and in place of foreclosure. Deeds in Lieu of Foreclosure are given prior to a foreclosure action and can only stay on one credit report for a term of four years. This eliminates the court action and no judgment is entered against the borrower. A successful Judgment of Foreclosure and Order of Sale stays on borrowers' credit report for seven years. If a borrower challenges the foreclosure action and is successful by adjudication on the merits, the borrower does not have to claim a foreclosure on a credit application.

August 24, 2016, Case No. DV-12-174, WCU's Foreclosure and Order of Sale against Thorco, Inc. and the Thorntons, was adjudicated on its merits and was voluntarily Dismissed with Prejudice by WCU.

MCA 71-1-222 Proceedings in foreclosure suits. (1) There is only one action for the recovery of debt or the enforcement of any right secured by a mortgage upon real estate, and that action must be in accordance with the provisions of this part. That one action was Dismissed with Prejudice by WCU.

February 10, 2022, at the Economic Affairs Interim Committee, Bank Oversight Hearing in Helena, MT, according to Banking Commissioner Melanie Hall's and State Attorney Kelly O'Sullivan's testimony, "*there is a single action for a foreclosure, once it is done, it is done.*" When asked, "*If a judgment in a foreclosure lawsuit is vacated is the judgment still owed?*" And Ms. Hall replied, "*No, Mr. Chair, members of the committee, No. The judgment is not still owed.*" See **Exhibit 7 – Bank Oversight Committee Meeting**

Through my investigation, I have found that below is the Criteria for Deeds in Lieu of Foreclosure and next to the item is the actions that explains why WCU could not have had Deeds in Lieu of Foreclosure:

1. Deeds in Lieu of Foreclosure cancel the mortgage debt. **The deeds in this case were transferred on October 25, 2018 and the Thorco mortgage was not satisfied until May 12, 2022, when Title Financial Specialty Services, properly recorded, a Satisfaction of Mortgage.**

On May 12, 2022, Thorco Inc. received a letter from Title Financial Specialty Services, stating, "Congratulations! Your lien with Whitefish Credit Union has been released." This letter would not have been sent, mentioning liens, if the deeds were Deeds in Lieu of Foreclosure.

And, if these were Deeds in Lieu of Foreclosure, the cancellation of the \$3.36M debt would have taken place prior to the recording of these deeds, this did not happen. During the 3 years, 6 mo., and 16 days, the \$3.36M mortgage was still on the books, not the \$1.4M that should have been recorded by June 28, 2018.

The record shows the deeds recorded came from a June 8, 2016, Settlement Agreement and Mutual Release, as an attachment, that were escrow deeds used for security with First American Title that Thorco had the option to purchase out of escrow.

2. The record shows on April 26, 2018, WCU filed a Proof of Claim with U.S. Bankruptcy Court stating Thorco Inc. owed \$1,400,000. This is proof the deeds did not cancel the mortgage debt and are not Deeds in Lieu of Foreclosure. See **Exhibit 8 – WCU Proof of Claim**
3. Deeds in Lieu themselves must state they are Deeds in Lieu. **As stated above, there is no documentation that reflect WCU considering these Deeds in Lieu of Foreclosure. Nowhere in case 17-61219-1, DV-18-336, the Settlement Term Sheet, the SAMR, the RTC, or the Proof of Claim filed in Bankruptcy court, does it state, “Deeds in Lieu of Foreclosure”. See Exhibit 6 – WCU Proof of Claim**

What is even more compelling is that WCU drafted the Warranty Deeds recorded October 25, 2018, and it does not once state “Deed in Lieu of Foreclosure”. Under paragraph 3, it states, “AND it is expressly understood and agreed by Grantor and Grantee that all of the liens and security interest in the Property created...”. This document, in reference to WCU, states “LIEN under the Loan Document” SIX times.

The Warranty Deed also states, “the remedy of judicial or non-judicial foreclosure” and “if Grantee so elects, by foreclosure of the Loan Documents”. WCU drafted this document and nowhere does it mention “Deeds in Lieu of Foreclosure”, but mentioned “Liens” and “Loan Documents” which indicate that, at the drafting of this document, WCU did not intend for these deeds to be “Deeds in Lieu of Foreclosure” or they would have made sure to note it in the deeds document, as per the law. See Exhibit 8 – SAMR Warranty Deeds.

4. The realty transfer certificate must state they are “Deeds in Lieu of Foreclosure”. **The only RTC found recorded is the one dated June 8, 2016, prepared by WCU attorney Johnna Preble, which clearly shows in Part 4, Description of Transfer, please complete fully, more than one may apply. The “Deed in Lieu of Foreclosure” box is not checked. Under Part 5., it references the SAMR, which does not state “Deeds in Lieu of Foreclosure” even once. See Exhibit 9 – Realty Transfer Certificate**
5. “Deeds in Lieu of foreclosure” must be voluntarily given and a satisfaction of Mortgage recorded prior to recording of deeds. **Security deeds were given with the option to purchase them back out of escrow within 18 months, Thorco did not willingly provide “Deeds in Lieu of Foreclosure”.**

The record shows the 2009 mortgage stayed in place until 5-12-2022. This is proof the deeds were not “Deeds in Lieu of Foreclosure” because the 2009 mortgage was not satisfied and removed from the public record until 3 years, 6 months and 16 days AFTER the signing of the RTC. Additionally, Case No. DV-18-336 is based on WCU NOT placing the deeds into escrow, per the SAMR. If the Thorntons provided Deeds In Lieu of Foreclosure, they would not have needed to sue WCU.

6. Deeds in Lieu of Foreclosure must be transferable on the date received. **The Non-Merger Warranty Deeds were signed in accordance with the SAMR on June 8, 2016. The deeds were not recorded until they were unlawfully recorded on October 25, 2018. Yet, WCU provided a Satisfaction of Mortgage, that was properly recorded, to Thorco Inc. on May 12, 2022. The October 26, 2018 recording was a lawful recording and by that recording alone, it proves the recording was not a valid Warranty Deed transfer.**

Additionally, if the deeds were Deeds in Lieu of Foreclosure, WCU would not have needed to send a letter to Attorney Klinkhammer, requesting permission to record the documents. See Exhibit 10 – Satisfaction of Mortgage

7. If a corporation is involved, there must be a corporate resolution allowing a transfer of the assets and who has the power of attorney. **I have not found a corporate resolution allowing WCU CEO James Kenyon authority to transfer property for WCU. In fact, Steve Matthews with MT. ST. Auditors office, informed me that he does not show a license for WCU or James Kenyon, but he does have a license for Shaunna Romrell and Title Financial Specialty Services.**
8. If a corporation is involved (which in this case Thorco Inc. is a corporation), there must be a power of attorney to transfer the asset, prior to recording Deeds in Lieu of Foreclosure. **Thorco did not provide a power of Attorney for WCU to transfer the property on October 25, 2018. Title Financial Specialty Services is that Attorney-in-Fact for WCU, and has a special Power of Attorney on record with the State of Montana. TFSS did not do the transfer on October 25, 2018, WCU CEO Sean Frampton recorded document.**
9. If a corporation or a regulated lender is involved, the Satisfaction of Mortgage must be completed by an authorized agent who has a recorded Power of Attorney to act as an attorney in fact and must be referenced in the Satisfaction of Mortgage. **The Satisfaction of Mortgage recorded on May 12, 2022, was recorded properly by WCU's authorized agent with the proper Power of Attorney.**
10. Only after all of this criterion has been properly met may, a transfer using Deeds in Lieu of Foreclosure take place.

On October 4, 2018, in Case No. DV-18-336, Judge Dan Wilson reinstated a previously vacated judgment, that was voluntarily dismissed by WCU, from Case No. DV-12-174B, against Dennis and Donna Thornton. This award of judgment was based off of Frampton's pleadings and Aaron Archer's affiant statement which now carries a balance over \$7 million.

With the judgement WCU received on October 4, 2018, instead of having a Sheriff's Sale like was ordered in DV-12-174 (WCU originally had set up in February 26, 2016, then cancelled on April 5, 2016, due to the Settlement Term Sheet), WCU skipped all the below steps and stripped the deeds from

the SAMR and recorded them on October 25, 2018, electronically transferring the ownership to WCU.

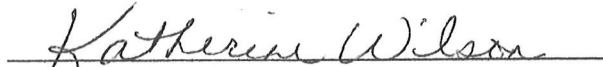
In doing that, WCU did not follow the below required steps of a Sheriffs Sale, per MCA71-1-222:

- 1. Frampton did not request a writ, nor received a writ of execution from the court authorizing the sale and the amount of debt allowed to recover, per MCA 25-13-401 &402, nor MCA 25-13-301 – Form and Content of Writ.**
- 2. Frampton did not disperse a “Notice of Seizure” to all parties of the suit as required, per MCA 25-13-211.**
- 3. MCA 25-13-305 Execution of Lien on Real Property. If the judgement is a lien upon real property, the writ shall require the sheriff or levy officer to satisfy the judgment...state law requires the sale of real property with a lien be sold by Sheriff’s Sale and although the deeds states “Lien” six times, WCU did not have a Sheriff’s Sale.**
- 4. The property was not held in trust for 10 days, after the notice went out, affording Thorco and Dennis and Donna Thornton the opportunity for an exemption hearing, per MCA 25-13-212.**
- 5. There were not notices posted or ad placed in the paper regarding the sale as required per MCA 71-1-223 nor MCA 25-13-701 Notice of Sale on execution.**
- 6. Frampton did this without filing with the courts a Return of Execution, per MCA 25-13-404 or Satisfaction of Judgement.**
- 7. Frampton did this without the use of a transfer agent who has a Power of Attorney to release and transfer property for WCU.**
- 8. Frampton did this without the recording of a Satisfaction of Mortgage that is required to cancel the debt.**

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 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.

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

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 JUL -5 PM 4: 23

FILED

BY: AM
DEPUTY

8 MONTANA ELEVENTH JUDICIAL DISTRICT COURT, FLATHEAD COUNTY

10 DENNIS THORNTON and DONNA
11 THORNTON,

11 Plaintiffs,

12 -vs-

13 WHITEFISH CREDIT UNION,

14 Defendant.

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Cause No. DV-18-336D

Judge Dan Wilson

ANSWER

16 Defendant Whitefish Credit Union ("WCU"), through counsel, answers Plaintiff's
17 Complaint as follows:

19 FIRST DEFENSE

20 Plaintiffs fail to state a claim upon which relief can be granted.

22 SECOND DEFENSE

23 WCU answers the Plaintiffs' allegations as follows:

- 24 1. WCU admits the allegations contained in paragraphs 1, 2, 3, 6, and 30.
25 2. WCU denies the allegations contained in 17, 18, 19, 20, 21, 22, 23, 25-29, 31-33,
26 34-39, and 41-42.
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- 3. WCU lacks sufficient information to admit or deny the allegations in the following paragraphs and therefore denies same: 9, 10, 11, 12, 13, 14, 15, and 16.
- 4. Answering paragraph 4, the Settlement Agreement speaks for itself. To the extent any of these allegations need to be answered, they are denied.
- 5. Answering paragraph 5, WCU admits that Thorco, Inc. and the Thorntons signed the Warranty Deeds and RTCs attached to the Settlement Agreement, and deny all remaining allegations.
- 6. Answering paragraph 7, WCU admits that the fully executed Settlement Agreement was held at Frampton Purdy Law Firm, and deny all remaining allegations.
- 7. Answering paragraph 8, WCU admits that it did not open an escrow and further admits that the Settlement Agreement provides that the releases and deeds must be placed into escrow with First American Title, and denies all remaining allegations.
- 8. Answering paragraphs 24 and 40, the allegation is a statement of law and not of fact. To the extent any factual allegations are made, they are denied.

AFFIRMATIVE DEFENSES

- 1. WCU did not have a duty to open the escrow.
- 2. Waiver
- 3. Estoppel
- 4. Thorntons failed to mitigate their damages.
- 5. Thorntons are not the real party in interest and/or lack standing.

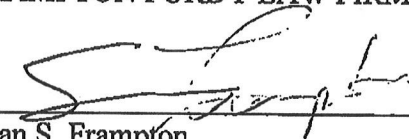
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WHEREFORE, WCU prays for relief as follows:

1. That Thorntons take nothing by their complaint.
2. That WCU be awarded attorney fees and costs;
3. For any other relief the Court deems just.

DATED this 5th day of July, 2018.

FRAMPTON PURDY LAW FIRM

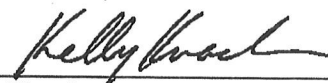
By: 
 Sean S. Frampton
 Attorneys for Whitefish Credit Union

CERTIFICATE OF MAILING

The undersigned does hereby certify that on the 5th day of July, 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

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

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

MONTANA ELEVENTH JUDICIAL DISTRICT COURT, FLATHEAD COUNTY

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

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

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

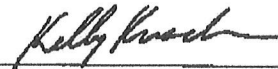
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CERTIFICATE OF MAILING

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



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.

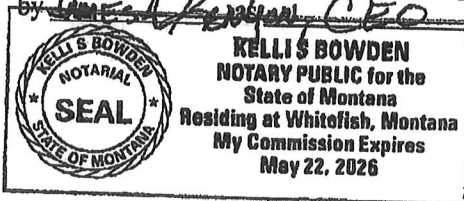
FURTHER, Whitefish Credit Union corrects the record to clarify that the Mortgagor had no ownership or other interest in the Mortgaged Property since the Warranty Deeds described above were recorded.

X [Signature]
James Kenyas 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 Kenyas CEO of Whitefish Credit Union.



[Signature]
Notary Public
Kelli S. Bowden

★★ 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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1B
3BA
3BB
3BC
3B
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1D

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
1

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.

1BGA
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1BFA
1BFB

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.

1BFE
1BFF
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1Bm

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.

1BFE
1BF



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.

[Signature]
Notary Public

(SEAL)

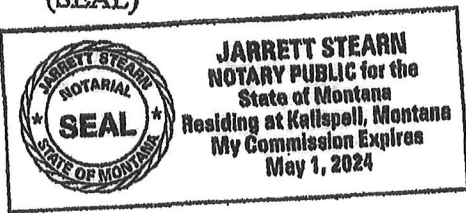




EXHIBIT A-LEGAL DESCRIPTION

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.

SETTLEMENT TERM SHEET

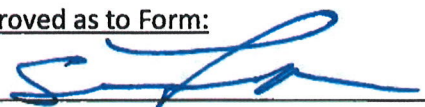
Whitefish Credit Union	“WCU”
Dennis and Donna Thornton (“Thorntons) & Thorco	Thorco and Thorntons are referred to as “Borrower Parties”. WCU and Borrower Parties are referred to as the “Parties”.
Option to Purchase:	<p>\$1,400,000.00 allocated as follows:</p> <ul style="list-style-type: none"> • 200 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.</p>
Term of the Option:	18 months
Cash Component:	\$150,000.00 to be delivered to Borrower Parties within 3 days of execution of the MDTL Release.
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.
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.
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.
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:	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.
Judgment & Dismissal:	The Judgment shall be vacated and the Case dismissed with prejudice.
Deficiency:	Borrower Parties shall not be liable for any deficiency that WCU claims under any loan document, note or guaranty at issue in the Case.
Redemption:	Borrower Parties waive any right of redemption in the 200 or 300 acres.
Confidentiality:	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.
Further Assurances:	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.
Attorneys' Fees:	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.
Date	4/4/16

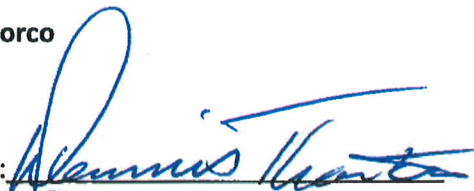
Whitefish Credit Union

By: 
 Its: SPECIAL ASSETS OFFICER

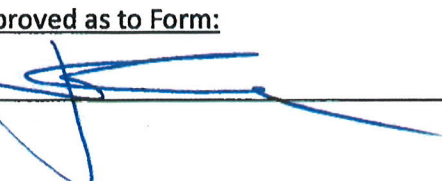
Approved as to Form:

By: 

Thorco

By: 
 Its: PRES.

Approved as to Form:

By: 

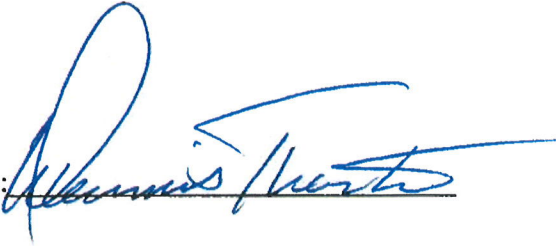
Attorney for Whitefish Credit Union

Attorney for Thorco, Dennis and Donna Thornton

Dennis Thornton

Donna Thornton

By:



By:



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)
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]*

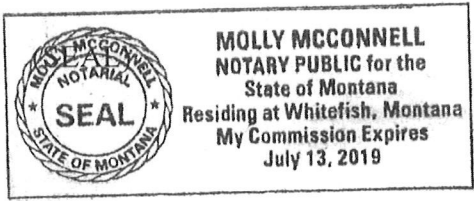
By: Aaron D. Archer As: SAG OFFICER

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

ATTORNEYS:

John L. Amsden
Justin P. Stalpes
Anthony F. Jackson
BECK & AMSDEN, pllc
1946 Stadium Drive, Suite 1
Bozeman, MT 59715

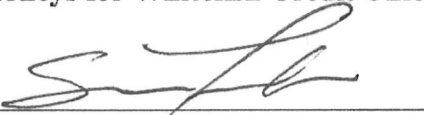
Attorney for Thorco, Inc., Dennis Thornton, and Donna Thornton

By: 

Date: 6/7/16

John L. Amsden
Justin P. Stalpes
Anthony F. Jackson

Sean S. Frampton
Johnna J. Preble
MORRISON & FRAMPTON, PLLP
Frank Lloyd Wright Building
341 Central Avenue
Whitefish, Montana 59937
Attorneys for Whitefish Credit Union

By: 

Date: 6-9-16

Sean S. Frampton
Johnna J. Preble

EXHIBIT A

200 Acre Tract:

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.

300 Acre Tract:

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);
AND
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.

EXHIBIT B

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)

RELEASE OF MORTGAGE

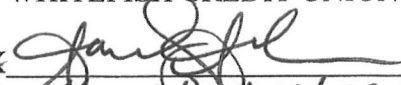
The undersigned, as the Mortgagee in that following described Mortgage, does hereby fully release and discharge the same of record:

- *Mortgage, to secure an original indebtedness of \$3,360,000.00, dated March 19, 2009 and any other amounts and/or obligations secured thereby.*
- *Recorded: March 24, 2009, Instrument No. 200900007830*
- *Mortgagor: Thorco, Inc.*
- *Mortgagee: Whitefish Credit Union*
- *Encumbered Real Property:*
 - 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.

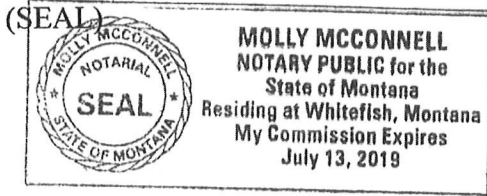
DATED this 8th day of JUNE, 2016.

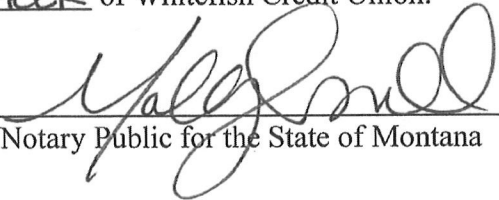
WHITEFISH CREDIT UNION

X 
By: AARON 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 ADIRON ARCHER as SAG OFFICER of Whitefish Credit Union.





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)

RELEASE OF MORTGAGE

The undersigned, as the Mortgagee in that following described Mortgage, does hereby fully release and discharge the same of record:

- *Mortgage, to secure an original indebtedness of \$3,360,000.00, dated March 19, 2009 and any other amounts and/or obligations secured thereby.*
- *Recorded: March 24, 2009, Instrument No. 200900007830*
- *Mortgagor: Thorco, Inc.*
- *Mortgagee: Whitefish Credit Union*
- *Encumbered Real Property:*

- 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);
AND

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.

DATED this 8th day of JUNE, 2016.

WHITEFISH CREDIT UNION

X [Signature]
By: AARON 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.



MOLLY MCCONNELL
NOTARY PUBLIC for the
State of Montana
Residing at Whitefish, Montana
My Commission Expires
July 13, 2019

[Signature]
Notary Public for the State of Montana

EXHIBIT C

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

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.

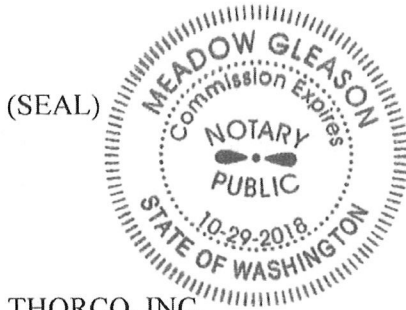
THORCO, INC.

X *Dennis Thornton*
By: Dennis Thornton; As: President

Date: 6-8-2016

STATE OF Washington)
: ss
County of Pend Oreille)

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



Meadow Gleason
Notary Public for the State of Washington

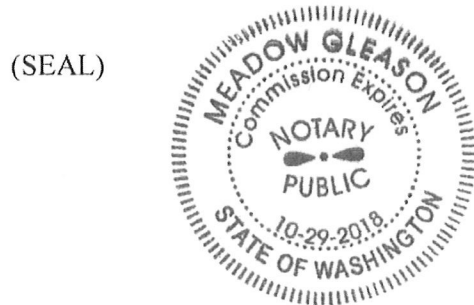
THORCO, INC.

X *Donna Thornton*
By: Donna Thornton; As: Sec/Treas

Date: 6-8-2016

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.



Meadow Gleason
Notary Public for the State of Washington

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. (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)

1 / 1 (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

Main Geocode Assessor Code or Parcel #

Buyer (Grantee) Name WHITEFISH CREDIT UNION Mailing Address 300 Baker Avenue (Permanent) City 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 checked

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 checked 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 Merger, consolidation, or other business entity reorganization (except sheriff's sale)

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 checked

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

Actual Sale Price \$ Financing: Cash FHA VA Contract Other checked 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 checked Did the buyer assume an SID? Yes No checked Amount of SID paid or assumed: \$ 0.00 Was a mobile home included in the sale? Yes No checked

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 Johnna Preble (please print) Signature Daytime Phone (406) 862-7600 Mailing Address 341 Central Ave. 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

EXHIBIT A

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.

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 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);

AND

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.

("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.

THORCO, INC.

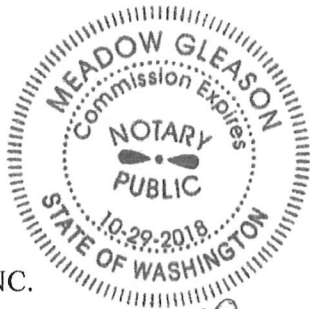
X [Signature]
By: Dennis Thornton As: President

Date: 6-8-2016

STATE OF Washington)
: ss
County of Pend Oreille)

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

Date: 6-8-2016

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

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, plc 1946 Stadium Drive, Suite 1 City Bozeman ST MT Zip 59715

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

Buyer Principal Residence Mailing Address For Tax Notice (If different) City ST Zip

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 28 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

Transfer by Operation of Law Termination of joint tenancy by death Termination of life estate by death Court order or decree 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 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 Johnna Preble (please print) Signature Daytime Phone Mailing Address 371 Central Ave 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

EXHIBIT A

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);
AND

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.

17-61219-BPH Doc#: 20 Filed: 03/30/18 Entered: 03/30/18 14:21:35 Page 1 of 9

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

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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.

12. The deadline contained in the Settlement Agreement and Mutual Release for Thorco to exercise the option was December 8, 2017. At the request of Thorco, the deadline was extended to December 22, 2017;
13. Thorco's option to purchase was not exercised on or before December 22, 2017;
14. Thorco requested additional time for a transaction to close;
15. Before WCU would consider an additional extension, WCU requested specific written assurances the transaction would timely close if an additional extension was granted;
16. Thorco failed to provide WCU with the requested written assurances, as a result no additional time to exercise the option to purchase was granted by WCU;
17. In accordance with the Settlement Agreement and Mutual Release, the Warranty Deeds were then authorized to be recorded. The Warranty Deeds did not get recorded before Debtor filed again for bankruptcy protection on December 27, 2017;
18. WCU seeks relief from the automatic stay to allow the Warranty Deeds to be recorded.

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
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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.		

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

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

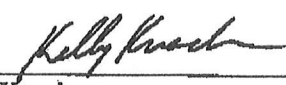
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CERTIFICATE OF MAILING

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

Declaration of Jon Binney

I, Jon Binney, hereby declare as follows:

1. I am an attorney licensed to practice in Montana. I represented Thorco Inc. in two Chapter 11 bankruptcy cases. Both cases involved real estate transactions between Thorco Inc. and Whitefish Credit Union hereafter (WCU)
2. The first case number 14-60633RBK was filed on 5/27/2014 . In that case (WCU) filed a proof of claim for (\$8,790,000) stating Thorco Inc. was a over secured creditor and that (WCU) should be allowed interest and attorney fees, a true and correct copy is attached hereto as Exhibit 1.
3. Cause number case number 14-60633RBK was dismissed on 3/3/2015 . It was my understanding, new counsel, for Thorco Inc. John Amsden, John Heenan and Ford Elsaesser were going to complete the litigation in Cause No. DV - 12 - 174B. The parties mutually agreed to dismiss the Chapter 11 bankruptcy.
4. It's my understanding that Thorco Inc. and WCU entered in to a Settlement Agreement whereby WCU dismissed its foreclosure action against Thorco Inc. Thorco Inc. dismissed its counterclaims against WCU. I was not a party and had no involvement in The Settlement Agreement.
5. I was contacted by Dennis Thornton, Pres. of Thorco Inc. on December 23, 2017. Dennis explained to me that Thorco Inc. had entered into a Settlement Agreement with WCU whereby WCU was to cancel all interest and \$1,900,000 in debt on Thorco Inc.'s 2009 mortgage with WCU that there was to be a Escrow set up at First American Title and that WCU had all of the necessary documents to do so and the escrow had not been set up.
6. Dennis Thornton came to my office in Missoula, Montana on December 26 with documentation showing that First American Title had no record of any Escrow and a title report from Alliance Title showing \$3,360,000 owed by Thorco Inc. and personally guaranteed by Dennis and Donna Thornton. Dennis also provided documentation showing a letter of intent to fund dated November 27, 2017 from Funding Edge in excess of \$2 million.

7. Dennis had emails from Thorco Inc.'s attorney's John Amsden and Mike Black with WCU's attorney Sean Frampton. Sean Frampton states in email dated December 23, 2017 that WCU would record the deeds provided in the Settlement Agreement and Mutual Release if WCU did not receive \$1,400,000 by noon on December 28, 2017.
8. Dennis explained that Thorco Inc. had several sources of funding to complete the transaction set forth in the Settlement Agreement and Mutual Release but because the cancellation of debt did not show on the public record no lender or investor was willing to move forward with such a large transaction without being able to verify that only \$1,400,000 was owed.
9. After interviewing Dennis Thornton and reviewing documents provided I believed it was proper to file a Emergency Chapter 11.
10. On December 27, 2017 my office filed a Chapter 11 bankruptcy case number 17-61219-BPH for Thorco Inc.
11. On January 29, 2018 I was present at Thorco Inc.'s first creditor meeting along with US Trustee Aaron Graham York. Also present was attorney Dean Stensland representing WCU and Aaron Archer SAG agent representing WCU. Dennis Thornton explained that no lender or investor was willing to move forward unless Thorco Inc. could provide a title report showing that only \$1.4 million was owed and that WCU needed to turn over the documents and open escrow so that Thorco could obtain the funding to complete the transaction with WCU.
12. On February 20, 2018 WCU proposed a new Settlement Agreement with different terms. This was presented to Thorco Inc. Thorco Inc. rejected the new proposed Settlement Agreement stating it would only agree to extend the original Agreement.
13. On March 21, 2018 both parties agreed to lift the confidentiality clause in the Settlement Agreement and Mutual Release
14. On April 26, 2018 WCU filed a Proof of Claim case 17-61219BPH claim 10 on page 2, item 7 proof of claim is for \$1,400,000 item 8 references Settlement Agreement and Mutual Release item 9 basis for perfection: recorded mortgages, value of property \$1,780,000 amount of the claim that is secured \$1,400,000. A true and correct copy of which is attached hereto as Exhibit 2

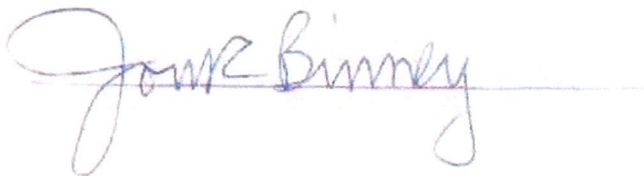
15. In May 2018. The parties agreed that if Thorco Inc. dismissed the Chapter 11 bankruptcy WCU would deposit and open the Escrow at First American Title.

16. After receiving verification from Dennis and Donna Thornton's personal attorney Michael Klinkhammer and Dennis Thornton, president of Thorco Inc. that all documents were at First American Title Thorco Inc. accepted WCU's offer.

17. Neither I or my office was involved in setting up the escrow but the dismissal of the Chapter 11 case number 17-61219-BPH was conditioned on setting up Escrow at First American Title

18. Thorco Inc. agreed by joint resolution of all creditors to dismiss the Chapter 11 bankruptcy on date May 11, 2018.

19. I was informed by Dennis Thornton that after the Chapter 11 was dismissed WCU went to First American Title and retrieved all necessary documents to open Escrow

A handwritten signature in blue ink that reads "Jane Binney". The signature is written in a cursive style and is positioned above a horizontal line.

Dennis and Donna

From: "Jon Binney" <jon@binneylaw.com>
Date: Sunday, May 6, 2018 7:24 AM
To: "Michael Klinkhammer" <mklinkhammer@montanadsl.net>
Cc: "Dennis and Donna" <thorco@centurytel.net>; "Scott Allen" <scott@binneylaw.com>; "Jon Binney" <jon@binneylaw.com>
Subject: RE: WCU info

Mike:

Thanks for the update. I will not tell WFCU counsel anything about this. Since the hearing is on May 17, the case should be dismissed this coming week. I will talk to the US Trustee about a stipulation to dismiss as soon as I hear from Dennis.

Jon

From: Michael Klinkhammer [mailto:mklinkhammer@montanadsl.net]
Sent: Saturday, May 05, 2018 10:45 PM
To: 'Jon Binney'
Subject: RE: WCU info

Jon

Whitefish Credit Union did not make an appearance. The clerk entered the Default. I have filed a motion for judgement upon entry of default. I also provided a judgement seeking 106,000,209.35 including attorney's fees of 26,000,000. I did not have to serve the motion or the request for default on Whitefish Credit Union as they did not make any appearance. So, do not tell them anything in the bankruptcy.

I have recommended to Dennis that he direct you to dismiss the bankruptcy. Most likely, WCU will claim that they did not respond based on the automatic stay. As the case was filed by Dennis and Donna personally, the motion will not have merit, but they will likely file it as their excuse.

In my last email to Sean Frampton, I offered to recommend that the Thornton's dismiss the bankruptcy but conditioned it on their agreeing to open the escrow and giving the Thornton's 18 months to exercise the option to purchase. I told him this would mitigate the damages to the Thornton's personally.

Mikw

From: Jon Binney <jon@binneylaw.com>
Sent: Saturday, May 05, 2018 12:59 PM
To: 'Michael Klinkhammer' <mklinkhammer@montanadsl.net>
Cc: 'Jon Binney' <jon@binneylaw.com>
Subject: FW: WCU info

Mike:

Did the judge sign and enter the default judgment?

Jon

From: Dennis and Donna [mailto:thorco@centurytel.net]

11/27/2019

Jon R. Binney, Esq.
I.D. #2895
BINNEY LAW FIRM, P.C.
P.O. Box 2253
Missoula, Montana 59806-2253
Telephone: (406) 541-8020
Fax: (406) 541-8006
E-Mail Address: jon@binneylaw.com
Attorneys for Debtor-in-Possession


UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA

IN RE: THORCO, INC., Debtor-in-Possession.	Case No. 17-60031-13 MOTION TO DISMISS; AND NOTICE
--	--

Pursuant to Rule 1017, Fed R. Bankr. P., and Mont. LBR 1017-1(b), the undersigned respectfully moves the Court to dismiss the above-entitled case. Counsel for the Debtor has conferred with Aaron G. York of the United States Trustee's Office who confirmed United States Trustee, Gregory M. Garvin, does not object to this Motion as set forth below:

1. This case was commenced voluntarily by the Debtor-in-Possession on December 27, 2017, and has not been previously converted.
2. Debtor-in-Possession believes it will be able to pay its creditors outside of the bankruptcy.
3. Debtor-in-Possession will be barred from filing a bankruptcy case under and chapter for a period of one (1) year following the dismissal of the instant case.

DATED this 8th day of May, 2018.

 /s/ Jon R. Binney
Jon R. Binney
Attorney for Debtor-in-Possession

Dennis and Donna

From: "Jon Binney" <jon@binneylaw.com>
Date: Tuesday, February 20, 2018 3:26 PM
To: "Dennis and Donna" <thorco@centurytel.net>
Cc: "Scott Allen" <scott@binneylaw.com>; "Jon Binney" <jon@binneylaw.com>
Subject: FW: Thorco

Dennis & Donna:

I just saw this response. We can discuss tomorrow.

Jon

From: Dean Stensland [mailto:dstensland@boonekarlberg.com]
Sent: Tuesday, February 20, 2018 1:52 PM
To: Jon Binney
Cc: AArcher@whitefishcu.com
Subject: Thorco

Jon:

In follow-up to our telephone conversation, Whitefish Credit Union ("WCU") will agree, on the following terms and conditions, to give Thorco, Inc., Dennis Thornton and Donna Thornton (collectively "Thorco") 120 days from February 9, 2018, to close the purchase of the 200 and 300 acre tracts of land ("land"):

1. Thorco dismisses its current bankruptcy and agrees not to re-file for bankruptcy for 12 months;
2. Thorco authorizes WCU to record the two Warranty Deeds previously executed by Thorco, wherein it granted the land to WCU;
3. Thorco agrees that during the time of WCU's ownership and exclusive control of the land, Thorco agrees not to trespass on the land, or allow any of its personal property or assets to be located on the land, without written permission from WCU;
4. Thorco executes a comprehensive release of all claims against WCU and its agents/representatives;
5. Once these conditions are satisfied, WCU and Thorco agree to execute and make effective an option for Thorco to purchase the land for \$1.4 M, with the closing date and expiration of the option no later than June 9, 2018. WCU will agree to execute deeds to Thorco for the land, deposit the deeds in escrow, and instruct the escrow agent to record the deeds upon deposit of \$1.4M of good funds with WCU, or return the deeds to WCU on June 10, 2018 if Thorco has not closed the purchase of the land.

Jon – please advise if there is anything not consistent with our conversations. I think that the last remaining term we were negotiating was the time period. Please contact me once you have final approval from your client.

Dean A. Stensland
BOONE  **KARLBERG**
201 West Main St., PO Box 9199
Missoula, MT 59807
406.543.6646

Dennis and Donna

From: "Jon Binney" <jon@binneylaw.com>
Date: Friday, March 23, 2018 3:05 PM
To: "'Dennis and Donna'" <thorco@centurytel.net>
Cc: "'Jon Binney'" <jon@binneylaw.com>
Subject: FW: Thorco/Whitefish Credit Union

Dennis:

This is the exchange of emails this week between Dean Stensland and I. I did also forward this to Mike Klinkhammer so he will have seen it before your meeting Monday.

Jon

From: Jon Binney [mailto:jon@binneylaw.com]
Sent: Wednesday, March 21, 2018 2:42 PM
To: 'Dean Stensland'
Cc: 'Jon Binney'
Subject: RE: Thorco/Whitefish Credit Union

Dean:

Thorco & the Thorntons consent to filing the settlement agreement and mutual release with the Bankruptcy Court. This will make it public record from that point on for other filings etc. The consent would only be effective from the date of this filing on and not retroactive if there were any previous breaches of the confidentiality agreement.

Jon Binney

From: Dean Stensland [mailto:dstensland@boonekarlberg.com]
Sent: Tuesday, March 20, 2018 2:16 PM
To: Jon Binney
Subject: RE: Thorco/Whitefish Credit Union

Jon:

When Whitefish Credit Union files for relief from the bankruptcy court, it intends to attach the Settlement Agreement and Mutual Release as an exhibit to its motion. Given Thorco's and Thornton's agreement with Whitefish Credit Union below, I wanted to follow-up with you to make sure the procedure for disclosure is approved by Thorco and Thorntons.

We could go through the process of separately submitting the Settlement Agreement and Mutual Release under seal to the court. However, given that the parties have stipulated and are in agreement that the document and its contents can be disclosed to allow the parties to present evidence surrounding the document and to allow the bankruptcy court to review prior to rendering a decision, that would seem to be unnecessary, along with avoiding the time and expense of a separate submission.

So that there is no misunderstanding, please provide Thorco's and Thornton's consent for Whitefish Credit Union to attach the Settlement Agreement and Mutual Release to its

motion.

I look forward to receiving your response.

Dean A. Stensland

BOONE  **KARLBERG**
ATTORNEYS AT LAW

201 West Main St., PO Box 9199

Missoula, MT 59807

406.543.6646

From: Dean Stensland

Sent: Friday, March 16, 2018 11:17 AM

To: Jon Binney

Subject: Thorco/Whitefish Credit Union

Jon:


After our telephone call yesterday, I was to follow-up our conversation with an email and memorialize our agreement. At issue is the June 8, 2016 Settlement Agreement and Mutual Release executed by our respective clients, specifically paragraph 12 of that document, the Confidential provision. As we discussed, our clients are not in agreement as to the import of all terms contained therein, or at least the interpretation of some of the specific provisions of the Settlement Agreement and Mutual Release.

Given that Thorco has filed for bankruptcy protection, the bankruptcy court could be engaged to sort out issues presented to it, which will require review of the Settlement Agreement and Mutual Release. We have both discussed this matter with our clients and both Thorco and Whitefish Credit Union have agreed to waive the "confidential" provision of the Settlement Agreement and Mutual Release and allow it to be filed with the bankruptcy court, so to allow the parties the opportunity to present evidence surrounding it and the court the opportunity to review prior to rendering a decision.

If I have incorrectly stated our understanding and agreement, please immediately advise.

Have a great weekend.

Dean A. Stensland

BOONE  **KARLBERG**
ATTORNEYS AT LAW

201 West Main St., PO Box 9199

Missoula, MT 59807

406.543.6646

11/27/2019

Fill in this information to identify the case:	
Debtor 1	<u>Thorce, Inc.</u>
Debtor 2 (Spouse, if filing)	_____
United States Bankruptcy Court for the District of Montana	
Case number	<u>17-61219-11</u>

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 \$600,000, 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 360) that you received.

Part 1 Identify the Claim															
1. Who is the current creditor?	<u>Whitefish Credit Union</u> Name of the current creditor (the person or entity to be paid for this claim) Other names the creditor uses with the debtor _____														
2. Has this claim been acquired from someone else?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____														
3. Where should notices and payments to the creditor be sent? <small>Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)</small>	<table border="0"> <tr> <td>Where should notices to the creditor be sent?</td> <td>Where should payments to the creditor be sent? (if different)</td> </tr> <tr> <td><u>Daan A. Stoneland</u> Name</td> <td>_____</td> </tr> <tr> <td><u>P.O. Box 9199</u> Number Street</td> <td>_____</td> </tr> <tr> <td><u>Missoula MT 59807</u> City State ZIP Code</td> <td>_____</td> </tr> <tr> <td>Contact phone <u>406-543-8848</u></td> <td>Contact phone _____</td> </tr> <tr> <td>Contact email <u>dstoneland@beonekalberg.com</u></td> <td>Contact email _____</td> </tr> <tr> <td colspan="2">Uniform claim (optional for electronic payments in chapter 13 (if you use one)) _____</td> </tr> </table>	Where should notices to the creditor be sent?	Where should payments to the creditor be sent? (if different)	<u>Daan A. Stoneland</u> Name	_____	<u>P.O. Box 9199</u> Number Street	_____	<u>Missoula MT 59807</u> City State ZIP Code	_____	Contact phone <u>406-543-8848</u>	Contact phone _____	Contact email <u>dstoneland@beonekalberg.com</u>	Contact email _____	Uniform claim (optional for electronic payments in chapter 13 (if you use one)) _____	
Where should notices to the creditor be sent?	Where should payments to the creditor be sent? (if different)														
<u>Daan A. Stoneland</u> Name	_____														
<u>P.O. Box 9199</u> Number Street	_____														
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Contact phone <u>406-543-8848</u>	Contact phone _____														
Contact email <u>dstoneland@beonekalberg.com</u>	Contact email _____														
Uniform claim (optional for electronic payments in chapter 13 (if you use one)) _____															
4. Does this claim amend one already filed?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ Filed on <u>04 / 04 / 2018</u>														
5. Do you know if anyone else has filed a proof of claim for this claim?	<input checked="" type="checkbox"/> No <input type="checkbox"/> 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?
 expired option to purchase 200 & 300 acre tracts of real property pursuant to 06/08/16 agreement No
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

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- Exh. 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: _____

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@shaneformt.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.