2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 01

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sorry. I don't remember the exact date.
Q. Okay. He's testified it was September 2009.
And at about that time, either he or the board or both of them adopted a new policy, did they not, that there would be no new money loaned on development loans?
MR. FRAMPTON: Objection. Misstates testimony.
BY MR. MANLEY:
Q. I'm actually basing this on your testimony from the Sherman deposition. That's why I'm asking it the way I'm asking it.
A. New development loans.
Q. Well, and that based -- didn't you previously testify that there would be no new money loaned on any development loans other than what had already been approved and --
A. What had been committed. Correct.
Q. Right. Committed. And so it's true, is it not, that you or the people on the credit committee felt they had to say "No" to any new money requests on any developments, even those that were partially complete, past the dollar amount already committed on paper?
A. True.
Q. Okay. And that was based upon this new policy that had been implemented; correct?

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A. Correct.
Q. So there were development projects that were half done or partially done, and those folks -- or you felt like you had to say "No" to any new money for those that hadn't previously been committed in writing because of the new policy?
MR. FRAMPTON: Objection. Foundation. Vague
You can answer every time I make an objection.
BY MR. MANLEY:
Q. He makes objections so it goes in the record, but, you know, then you can answer.
A. Right. Can you restate that?
Q. Yeah. If it helps at all, your previous deposition is in front of you. It's one of the depositions under Exhibit 104. I assume you didn't review that in preparation for this.
A. I did not.
Q. Nor did you review the deposition that you gave in the McAtee case?
A. I did not.
Q. I'm just trying to base my answers (sic) on what you said before --
A. Right.
Q. -- so that we can move through it.
A. Okay.

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Q. But even for those developments that were only partially complete, you and the credit committee felt you had to say "No" to any new money requests?
A. Right.
MR. FRAMPTON: Same objections.
BY MR. MANLEY:
Q. And that was based upon that policy?
A. Correct.
MR. FRAMPTON: Same objections.
BY MR. MANLEY:
Q. Okay. Now I'm going to skip ahead to March 2009, which was when the Thornton loan came over to your desk. It's a little bit unusual, it sounds like, because Pete Davis from Glacier Bank actually walked it over?
A. Correct.
Q. Okay. What do you remember about that? Did he call you on the phone first? If you remember. If you don't remember, certainly it's fair to say you don't remember.
A. Pete did call me on the phone to see if we would have any interest in looking at it.
Q. Okay. I assume you indicated you did have an interest?
A. Correct.

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Q. Then what do you remember happening next?
A. My recollection is that he brought the file over to us and went through it briefly in a meeting with me, and from there I think -- I know I had a conversation with Bill Paullin, who was the Glacier Bank -- I'll call him in charge of their construction department, chief appraiser or whatever. Asking him about the project and what his thoughts were on the project.
Q. Okay.
A. I think, then, after that discussion, maybe reviewing the information, somewhere I obviously had a conversation with Dennis and Donna.
Q. Let me stop you before we get to that.
A. Okay.
Q. Do you remember talking with Mr. Davis and Mr. Paullin about their history, relationship, lending relationship with the Thorntons?
A. Yes.
Q. And do you remember whether you received information indicating that the Thorntons had excellent credit and had an excellent relationship with Glacier Bank?
A. I believe both gentlemen gave them a positive reference.

ASA & GILMAN REPORTING, INC.
406.752.5751 - asagilman@centurytel.net

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Q. And, in fact, in order to have a member loan for anything near the magnitude of $3,000,000, it would require the borrowers to have excellent credit and an excellent credit history?
A. Correct.
Q. And they did, in fact, have that --
A. Correct.
Q. -- you were able to learn?
MR. FRAMPTON: I'm going to just put an objection on the record for leading questions and make it continuing.
BY MR. MANLEY:
Q. Okay. And it's my understanding -- and I guess I'm asking you if this comports with your recollection. It's my understanding, after receiving the Glacier Bank loan, you reviewed that, and you talked with Mr. Paullin, talked with Mr. Davis and then took it to the loan committee before you had ever actually talked or met with the Thorntons. Do you recall that?
A. I do not recall the order.
Q. Okay. That's fair enough. All we're trying to get is what you do or don't recall.
A. Uh-huh.
Q. And then do you remember that the first meeting with either of the Thorntons involved Dennis

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Thornton and their financial adviser, Don Garberg, coming in and meeting with you?
A. I remember that there was another individual in one of the meetings.
Q. Uh-huh. Did you know Don before?
A. I don't think I'd ever met Don before. I think I knew of him as far as financial counseling, but I don't think I had met him, that I was aware of. I don't remember if there was just Dennis and Don or if both Donna and Dennis were present. I don't remember.
Q. And do you remember sitting down and going over plans for the project and them explaining their vision or their plan, overall plan for that project?
A. Yes.
Q. And do you remember as of then you already had a commitment or already had gotten from the credit committee authority to offer them a loan of up to $3.3 million, including taking out what was owed to Glacier?
A. Again, I don't remember the dates or the order. It may be. I don't recollect.
Q. Okay. Could you tell us everything you remember about that meeting with Dennis and -- Dennis Thornton and Don Garberg?
A. To be perfectly honest, I don't remember much

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about it other than there was a meeting, and I'm sure we went through some of the information. I couldn't tell you.
Q. That's fair enough. We're just -- part of what we're doing is -- sometimes we go to trial on cases, and then we're surprised by what somebody remembers.
A. Sure.
Q. So this is our only ability to get inside and knock around in your memory and see what's there.
Okay. So, then, do you remember that there was discussion about they had 300 acres and 200 acres and Whitefish Credit Union wanted a first mortgage on both and then there was discussion about a subordination agreement on the 200 acres?
MR. FRAMPTON: Objection. Vague.
THE WITNESS: I remember that we took two pieces of collateral for the loan, and, yes, I recall there was a subordination.
BY MR. MANLEY:
Q. Okay. And let's see if I can find it pretty quick here.
In front of you there's a binder, and in Exhibit 1 (sic), there's a page at the bottom numbered 7155. Take as much time as you need to review that

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document.
A. Okay.
Q. Okay. On the first page of the letter, at the bottom it says "Subordination Agreement."
A. Uh-huh.
Q. What I'm trying to do is ask you everything you remember about any discussions relating to that.
A. What I recollect about the subordination, I recollect the amount of the 500,000, and my discussions that I recollect with the Thorntons were the fact that they wanted the subordination in place in the event that they needed to go back into the timber industry to generate additional funds. That's what I remember about that discussion.
Q. Okay.
A. Because if I remember correctly, their background was more in the timber industry, and thinking that if they ran into financial difficulties they could always go back and generate income.
Q. Okay. Anything else you remember about any discussions involving the subordination agreement?
A. I don't remember any other discussions about that.
Q. Okay. And this loan amount, including taking out the Glacier loan, is shown as $3,360,000?

Thorco's Bonding History

Thorco applied for individual bonds for each project. A sample is included for demonstration purposes only showing the total liability limit of $26,300.

In late 1997 Thorco submitted a financial statement to Western Surety, Western Surety increased Thorco's blanket bonding line to $3,383,000.

This allowed local agent Dottie Twillmann to issue individual bonds up to Thorco's limit of $3,383,000 without further approval from Western Surety.

Thorco needed to increase its bonding line into 2003 because Thorco's bonding line was maxed out projects were completed, but bonds had been returned.

Western Surety indicated Thorco's bonding line could be increased if Thorco had Dun &Bradstreet perform an updated audited financial statement and a business rating for Thorco.

Thorco hired Dun & Bradstreet to perform an updated audit and financial statement and business rating. After receiving the audited financial statement and business rating Thorco submitted it to Western Surety, Western Surety increased Thorco's blanket bonding line to $20 million.

This meant local agent Dottie Twillmann could write individual bonds up to $20 million without further approval from Western Surety.

DS-98

State of Montana
Department of Natural Resources
& Conservation

TIMBER SALE BID BOND

(See Instructions on Reverse Side)

DATE BOND EXECUTED (Must not be later than bid opening date)
07/23/03

PRINCIPAL (Legal name and business address)

THORCO, INC.
PO Box 1557
Kalispell, MT 59903-1557

TYPE OF ORGANIZATION ("X" one)
☐ Individual ☐ Partnership
☐ Joint Venture ☒ Corporation

STATE OF INCORPORATION
Montana

SURETY(IES) (Name and business address)

Western Surety Company
101 S. Phillips Avenue
Sioux Falls, SD 57104

PENAL SUM OF BOND (Express in words and figures)	BID IDENTIFICATION	
	DATE BID EXECUTED	SALE NAME
Six thousand, ninety two dollars & 00/100 ($6092.00)	07/23/03	Yellow Bay Salvage Timber Sale
	LEGAL DESCRIPTION: Section 36, T25N, R19W	

KNOW ALL MEN BY THESE PRESENTS, That we, the Principal and Surety(ies) hereto, are firmly bound to the State of Montana, (hereinafter called the State) in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally: Provided, That, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes. Each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the Principal has submitted the bid identified above.

NOW, THEREFORE, if the Principal, upon acceptance by the State of his bid identified above, within the period specified, shall execute such further contractual documents, if any, and give such bond(s) as may be required by the terms of the bid as accepted within the time specified (twenty (20) days if no period is specified) after receipt of the forms by him, or, in the event of failure to execute the contractual documents and give such bonds within the time specified, if the principal shall pay the State the actual damages resulting from the failure to fully perform the contract, then the above obligation shall be void and of no effect.

IN WITNESS WHEREOF, the Principal and Surety(ies) have executed this bid bond and have affixed their seals on the date set forth above.

PRINCIPAL			
SIGNATURE(S) 1. [signature] (seal)	2. (seal)	Corporate Seal
NAME(S) & TITLE(S) (typed) 1. Dennis Thornton, President	2.	
INDIVIDUAL SURETY(IES)		
SIGNATURE(S) 1. (seal)	2. (seal)	
NAME(S) (typed) 1.	2.	
CORPORATE SURETY(IES)		
NAME & ADDRESS: Western Surety Company, Sioux Falls, SD	STATE OF INC.: SD	LIABILITY LIMIT: $20,735,000
SURETY A — SIGNATURE(S) 1. [signature]	2.	
NAME(S) & TITLE(S) (typed) 1. Sherry L. Toole, Attorney-In-Fact	2.	

(OVER)

BID BOND

(See instructions on reverse)

DATE BOND EXECUTED (Must not be later than bid opening date): December 1, 1997

FORM APPROVED OMB NO. 9000-0045

Public reporting burden for this collection of information is estimated to average 25 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0045), Washington, D.C. 20503.

PRINCIPAL (Legal name and business address)

THORCO, INC.
P.O. Box 1557
KALISPELL, MT 59901

TYPE OF ORGANIZATION ("X" one)

☐ INDIVIDUAL ☐ PARTNERSHIP
☐ JOINT VENTURE ☒ CORPORATION

STATE OF INCORPORATION: MONTANA

SURETY(IES) (Name and business address)

WESTERN SURETY COMPANY
101 South Phillips Avenue, P.O. Box 5077
Sioux Falls, SD 57117-5077

PENAL SUM OF BOND					BID IDENTIFICATION	
PERCENT OF BID PRICE	AMOUNT NOT TO EXCEED				BID DATE	INVITATION NO.
	MILLION(S)	THOUSAND(S)	HUNDRED(S)	CENTS	12/2/97	Sale #015
		7	100	00	FOR (Construction, Supplies or Services)	NORTH YOUNG SALAVAGE SALE

OBLIGATION:

We, the Principal and Surety(ies) are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum. For payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally. However, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us. For all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of the sum shown opposite the name of the Surety. If no limit of liability is indicated, the limit of liability is the full amount of the penal sum.

CONDITIONS:

The Principal has submitted the bid identified above.

THEREFORE:

The above obligation is void if the Principal – (a) upon acceptance by the Government of the bid identified above, within the period specified therein for acceptance (sixty (60) days if no period is specified), executes the further contractual documents and gives the bond(s) required by the terms of the bid as accepted within the time specified (ten (10) days if no period is specified) after receipt of the forms by the principal; or (b) in the event of failure to execute such further contractual documents and give such bonds, pays the Government for any cost of procuring the work which exceeds the amount of the bid.

Each Surety executing this instrument agrees that its obligation is not impaired by any extension(s) of the time for acceptance of the bid that the Principal may grant to the Government. Notice to the surety(ies) of extension(s) are waived. However, waiver of the notice applies only to extensions aggregating not more than sixty (60) calendar days in addition to the period originally allowed for acceptance of the bid.

WITNESS:

The Principal and Surety(ies) executed this bid bond and affixed their seals on the above date.

PRINCIPAL

	1.	2.	3.	
SIGNATURE(S)	Dennis Thornton (Seal)	(Seal)	(Seal)	Corporate Seal
NAME(S) & TITLE(S) (Typed)	1. DENNIS D. THORNTON PRESIDENT	2.	3.	

INDIVIDUAL SURETY(IES)

	1.	2.
SIGNATURE(S)	(Seal)	(Seal)
NAME(S) (Typed)	1.	2.

CORPORATE SURETY(IES)

	NAME & ADDRESS	STATE OF INC.	LIABILITY LIMIT
A SURETY	WESTERN SURETY COMPANY P.O. BOX 5077, SIOUX FALLS, SD 57117-5077	S.Dakota	$3,383,000

	1.	2.
SIGNATURE(S)	Dottie Twillmann	
NAME(S) & TITLE(S) (Typed)	1. DOTTIE L. TWILLMANN, POWER-OF-ATTORNEY	2.

USDA-Forest Service

TIMBER SALE BID BOND

(Ref. FSM 6506)

(See instructions on reverse)

1. DATE BOND EXECUTED *(Must not be later than bid opening date)* November 11, 199

2. STATE OF INCORPORATION: MONTANA

3. PRINCIPAL *(Name and Business Address)*

THORCO, INC.
P.O. Box 1557
Kalispell, MT 59903

4. TYPE OF ORGANIZATION *("X" one)*

☐ INDIVIDUAL ☐ PARTNERSHIP ☐ JOINT VENTURE ☒ CORPORATION

5. SURETY(IES) *(Name and Business Address)*

WESTERN SURETY COMPANY
550 KIRKLAND WAY #404
KIRKLAND, WA 98033

6. PENAL SUM OF BOND *(Express in words and figures)*	7. BID IDENTIFICATION	
	a. DATE EXECUTED	b. SALE NAME
$26,300 Twenty Six Thousand Three Hundred and no/100 ($)	11/11/97 NATIONAL FOREST KOOTENAI	TREBRO SOUTH

KNOW ALL MEN BY THESE PRESENTS, That we, the Principal and Surety(ies) hereto, are firmly bound to the United States of America, (hereinafter called the Government) in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally: *Provided*, That, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the Principal has submitted the bid identified above.

NOW, THEREFORE, if the Principal, upon acceptance by the Government of his bid identified above, within the period specified, shall execute such further contractual documents, if any, and give such bond(s) or deposits as may be required by the terms of the bid as accepted within the time specified (ten (10) days if no period is specified) after receipt of the forms by him, or, in the event of failure to execute the contractual documents and give such bonds or deposits within the time specified, if the principal shall pay the Government the damages as liquidated in the bid resulting from the failure to fully perform the contract, then the above obligation shall be void and of no effect.

IN WITNESS WHEREOF, the Principal and Surety(ies) have executed this bid bond and have affixed their seals on the date set forth above.

PRINCIPAL

SIGNATURE(S)	1. Dennis Thornton (Seal)	2. (Seal)	CORPORATE SEAL
NAME(S) & TITLE(S) (Typed)	1. DENNIS D. THORNTON, PRESIDENT	2.	

CORPORATE SURETY(IES)

SURETY A — NAME & ADDRESS	WESTERN SURETY COMPANY 550 Kirkland Way #404 Kirkland, WA 98033	STATE OF INCORPORATION: SOUTH DAKOTA	LIABILITY LIMIT: $26,300	
SURETY A — SIGNATURE(S)	1. Dottie Twillmann	2.		
SURETY A — NAME(S) & TITLE(S) (Typed)	1. DOTTIE TWILLMANN ATTORNEY-IN-FACT	2.		
SURETY B — NAME & ADDRESS		STATE OF INCORPORATION	LIABILITY LIMIT	CORPORATE SEAL
SURETY B — SIGNATURE(S)	1.	2.		
SURETY B — NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY C — NAME & ADDRESS		STATE OF INCORPORATION	LIABILITY LIMIT	CORPORATE SEAL
SURETY C — SIGNATURE(S)	1.	2.		
SURETY C — NAME(S) & TITLE(S) (Typed)	1.	2.		

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 02

Whitefish Credit Union

300 Baker Ave. • 862-3525
Whitefish

234 E. Montana • 257-3123
Kalispell

320 Nucleus Ave. • 892-8000
Columbia Falls

110 3rd Ave. E. • 883-3600
Polson

202 Dewey Ave. E. • 297-7800
Eureka

107 Pond St. • 827-5626
Thompson Falls

P.O. BOX 37
WHITEFISH, MONTANA 59937-0037

March 18, 2009

Glacier Bank
202 Main Street
Kalispell, MT 59901

Attn: Pete Davis

RE: Payoff Request

Client: Thorco, Inc.
Dennis & Donna Thornton

Address: NHN Boon Road
Somers, MT 59932

Dear Pete,

Please provide the Whitefish Credit Union with a payoff as of Friday, March 20, 2009 for Thorco, Inc. (Dennis and Donna Thornton). The loan numbers are 1756163 and 1757431.

Please feel free to call me anytime at 406-862-3525 with any questions you may have. Thank you in advance for your prompt attention in this matter.

Regards,

Doug Johnson

Doug Johnson
Member Business Loan Officer
DJ/jf

GLACIER BANK

March 19, 2009

Whitefish Credit Union
PO Box 37
Whitefish, MT 59937

ATTN: Doug Johnson

RE: Appraisal dated 12/16/08 done by Barrie Appraisal & Consulting LLC, as well as updated reports dated 12/16/08 and 1/7/09, on below referenced client and property

CLIENT: Thorco, Inc
Dennis and Donna Thornton

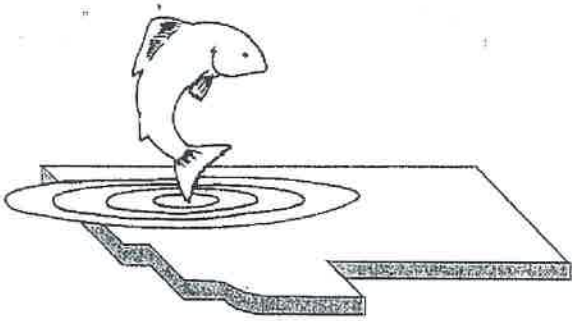
ADDRESS: NHN Boon Road
Somers, MT 59932

We hereby assign all rights, title and interest in the above referenced appraisal to Whitefish Credit Union.

Further, I certify the appraiser hiring process was in compliance with Section 564.5 of Title XI of FIRREA.

Sincerely,

Peter J. Davis
VP Commercial Loan Dept.



Whitefish Credit Union

300 Baker Ave. • 862-3525 Whitefish
234 E. Montana • 257-3123 Kalispell
320 Nucleus Ave. • 892-8000 Columbia Falls
110 3rd Ave. E. • 883-3600 Polson
202 Dewey Ave. E. • 297-7800 Eureka
107 Pond St. • 827-5626 Thompson Falls

P.O. BOX 37
WHITEFISH, MONTANA 59937-0037

March 18, 2009

Glacier Bank
202 Main Street
Kalispell, MT 59901

Attn: Pete Davis

RE: Appraisal Assignment

Client: Thorco, Inc.
Dennis & Donna Thornton

Address: NHN Boon Road
Somers, MT 59932

Dear Pete,

The Whitefish Credit Union is requesting an Appraisal Assignment Letter from Glacier Bank for the above referenced member. The appraisal was done by Travis Steindorf and Richard A. Hull both of Barrie Appraisal & Consulting, LLC. The Appraisal is dated December 16, 2008 with an "Update" Appraisal Summary dated January 7, 2009.

Please mail the Assignment Letter to my attention at PO Box 37, Whitefish, MT 59937; feel free to call me anytime at 406-862-3525 with any questions. Thank you in advance for your prompt attention in this matter.

Regards,

Doug Johnson

Doug Johnson
Member Business Loan Officer

ALL ACCOUNTS INSURED TO $100,000 BY NCUA

Makin' The Grade, Inc.
BY: RICK BRECKENRIDGE
752-3539

INFRASTRUCTURE COST BREAKDOWN

Boon Road, Thorco Property October 21, 2008

Engineering & Survey

Item No.	Description	Total Price	Sub-Contractor
101	Design/Architecture/Road Topo	44,500.00	
102	Construction Engineering and Inspection	7,000.00	
103	Surveying (Road Staking)	15,000.00	
104	Water System Design	65,000.00	
105	DEQ Approval w/ fees	96,250.00	
	SUBTOTAL	$227,750.00	

Roads--32,158 ft.

Item No.	Description	Total Price	Sub-Contractor
201	Mobilization/General Construction Reg.		
202	Topsoil Removal/Replacement/Seeding		
203	Excavation & Grading @9.00 /ft	289,422.00	
204	Sub-base/Pit run 52000 C.Y.	208,000.00	
205	Stabilizing Fabric		
206	Crushed Gravel 15500 C.Y.	139,500.00	
207	Asphalt	750,000.00	
208	Curbs & Gutters--roundabout	17,500.00	
209	Sidewalk/Bike Path Base		
210	Sidewalk/Bike Path		
211	Street Signs	1,000.00	
212	Culverts	12,000.00	
213	Trucking Costs	195,000.00	
214	Boon Road Improvements	200,000.00	
215	rough road for sub grade	300,000.00	
	SUBTOTAL	$2,112,422.00	

32,158 ft.
$4.00 per yd

$9.00 per yd
$1.54

Water System

Item No.	Description	Total Price	Sub-Contractor
301	Water Main & Laterals 6" Main	195,000.00	
302	Gate Valves/Boxes/Fittings	10,000.00	
303	Water Services	112,500.00	
304	Connection to Existing Water Main	5,000.00	
305	Fire Hydrants	24,000.00	
306	Test & Chlorinate	4,850.00	
307	Meters (To be purchased from HOA)		
308	Trenching & Bedding 90 C.Y.	23,405.00	
309	Drill 3 Wells 550 @$35'	60,000.00	
310			
	SUBTOTAL	$434,755.00	

Sewer System

Item No.	Description	Total Price	Sub-Contractor
401	Sewer Main		
402	Manholes		
403	Sewer Services (4" Gravity)		
404	Connection to Existing Sewer Main		
405	2 Lift Stations		
406	Test and Flush		
407			
	SUBTOTAL	$0.00	

Drainage

Item No.	Description	Total Price	Sub-Contractor
501	Storm Drain	35,000.00	
502	Catch Basins	60,000.00	
503	Curb Inlets	8,200.00	
504	Drywells	48,000.00	

505	Oil & Water Separator		
506	Manholes		
507			
508			
509			
	SUBTOTAL	$151,200.00	

Utilities

Item No.	Description	Total Price	Sub-Contractor
601	Trenching/Bedding 11,283'	101,547.00	
602	Conduit/Sweeps 11,283'	14,100.00	
603	Transformer Vaults 38 @ $650	24,700.00	
604	Transformer 35 @ $3300	115,500.00	
605	Street Lights		
606	Water Well & Pumps 3	18,000.00	
607	Pump House (10'x20')	10,000.00	
608	Water Storage Tank(s) - Fire		
609	10,000 gal. Storage pod	38,000.00	
610			
611			
	SUBTOTAL	$321,847.00	

Service Fees & Costs

Item No.	Description	Total Price	Sub-Contractor
701	Electricity 11,283'	112,830.00	
702	Water meters	51,200.00	
703	Natural Gas		
704	Telephone 11,283'	67,698.00	
705	TV/Cable		
706			
707			
708			
	SUBTOTAL	$231,728.00	

Landscaping

Item No.	Description	Total Price	Sub-Contractor
801	Trees & Plants	38,000.00	
802	Topsoil	30,000.00	
803	Sod/Seeding	14,500.00	
804	Irrigation		
805	Rocks	250,000.00	
806	Entries	18,000.00	
807	Bridges		
808	Pavilion		
809	Ponds/Waterfalls	135,000.00	
810	Site Grading	750,000.00	
811	Forest Restoration (topsoil restoration)	35,000.00	
812	Horse Riding Arena	185,000.00	
813	Rock Retaining walls	280,000.00	
814			
	SUBTOTAL	$1,735,500.00	

Miscellaneous

Item No.	Description	Total Price	Sub-Contractor
901	Mailboxes	18,450.00	
902	Fencing	12,500.00	
903	Silt Fence		
904	Rip Rap		
905	Blasting		
906	Fuel Surcharge		
907			
908			
	SUBTOTAL	$30,950.00	

Developer's Indirect Costs

Item No.	Description	Total Price	Sub-Contractor
1001	Contigency Fee 10 %	524,615.20	
1002	Final Plat Fees	25,000.00	
1003	Marketing Fee (Realty Fees)	1,200,000.00	
1004	Overhead		
1005	Taxes		

2-4-2022. Expert Witness Report of Gerald Fritts Exhibit 02

1006	Consulting Fee		
1007	Legal Fee (Wri[illegible]d review C & R's)	9,000.00	
1008	Insurance	4,600.00	
1009	Material Testing by Lab	3,000.00	
1010			
1011			
	SUBTOTAL	$1,766,115.20	

		Sub Totals
	$6,112,267.20	***Costs without impact fees***
Total Costs	$7,012,267.20	

THIS INFORMATION HAS BEEN SUBMITTED BY:

DATE: JULY 27, 2006

GLACIER BANK

October 22, 2008

Lloyd Barrie
P.O. Box 1235
Kalispell, MT 59901

RE: Appraisal request

Dear Mr. Barrie:

This is to confirm Glacier Bank's request for you to prepare an appraisal to be communicated as a **Summary Report** on the following commercial property:

Property Identification: **Thorco Inc – Dennis & Donna Thornton**
Boon Road
Somers, MT 59922
300 acres – partially developed
All of the following Tracts are in S27, T27N, R21W:
1B, 1BN, 1BF, 1BFG, 1BM, 1BL, 1BFF, 1BFE, 1BFD, 1BJ, 1BFB, 1BFA, 1BG, 1BGA

Please contact Dennis or Donna Thornton at 752-5623 or 253-2581 Donna for a guided tour and additional information. A new survey is supposed to be completed this month.

The Bank agrees to pay the sum of no more than **$3,250.00** to the appraiser, as total compensation, for the professional services required to be performed. The date of completion shall be on or before **11/14/08.** Upon review of the report for compliance with the terms of this agreement, your fee will be paid by Glacier Bank no later than seven (7) business days after delivery of the report.

The deadline mentioned may be extended should circumstances beyond the Appraiser's or Bank's control preclude delivery, providing you seek prior approval from the Bank in a timely manner.

Two original copies, plus one photocopy, of the appraisal report may be mailed to Glacier Bank Appraisal Department, 202 Main Street, Kalispell, MT 59901 or e-mail your report to appraisal@glacierbank.com

Property Type: Vacant Land – partially developed

The property rights to be appraised are as follows:
☒Fee Simple ☐Leased Fee ☐Leasehold ☐ Other

Intended User(s):
The intended user is the client, Glacier Bank.
Note: No other users are intended by Appraiser. Appraiser shall consider the intended user when determining the level of detail to be provided in the Appraisal Report.

Intended Use:
The intended use is for decision making purposes involving a loan request.

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sorry. I don't remember the exact date.
Q. Okay. He's testified it was September 2009.
And at about that time, either he or the board or both of them adopted a new policy, did they not, that there would be no new money loaned on development loans?
MR. FRAMPTON: Objection. Misstates testimony.
BY MR. MANLEY:
Q. I'm actually basing this on your testimony from the Sherman deposition. That's why I'm asking it the way I'm asking it.
A. New development loans.
Q. Well, and that based -- didn't you previously testify that there would be no new money loaned on any development loans other than what had already been approved and --
A. What had been committed. Correct.
Q. Right. Committed. And so it's true, is it not, that you or the people on the credit committee felt they had to say "No" to any new money requests on any developments, even those that were partially complete, past the dollar amount already committed on paper?
A. True.
Q. Okay. And that was based upon this new policy that had been implemented; correct?

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A. Correct.
Q. So there were development projects that were half done or partially done, and those folks -- or you felt like you had to say "No" to any new money for those that hadn't previously been committed in writing because of the new policy?
MR. FRAMPTON: Objection. Foundation. Vague
You can answer every time I make an objection.
BY MR. MANLEY:
Q. He makes objections so it goes in the record, but, you know, then you can answer.
A. Right. Can you restate that?
Q. Yeah. If it helps at all, your previous deposition is in front of you. It's one of the depositions under Exhibit 104. I assume you didn't review that in preparation for this.
A. I did not.
Q. Nor did you review the deposition that you gave in the McAtee case?
A. I did not.
Q. I'm just trying to base my answers (sic) on what you said before --
A. Right.
Q. -- so that we can move through it.
A. Okay.

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Q. But even for those developments that were only partially complete, you and the credit committee felt you had to say "No" to any new money requests?
A. Right.
MR. FRAMPTON: Same objections.
BY MR. MANLEY:
Q. And that was based upon that policy?
A. Correct.
MR. FRAMPTON: Same objections.
BY MR. MANLEY:
Q. Okay. Now I'm going to skip ahead to March 2009, which was when the Thornton loan came over to your desk. It's a little bit unusual, it sounds like, because Pete Davis from Glacier Bank actually walked it over?
A. Correct.
Q. Okay. What do you remember about that? Did he call you on the phone first? If you remember. If you don't remember, certainly it's fair to say you don't remember.
A. Pete did call me on the phone to see if we would have any interest in looking at it.
Q. Okay. I assume you indicated you did have an interest?
A. Correct.

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Q. Then what do you remember happening next?
A. My recollection is that he brought the file over to us and went through it briefly in a meeting with me, and from there I think -- I know I had a conversation with Bill Paullin, who was the Glacier Bank -- I'll call him in charge of their construction department, chief appraiser or whatever. Asking him about the project and what his thoughts were on the project.
Q. Okay.
A. I think, then, after that discussion, maybe reviewing the information, somewhere I obviously had a conversation with Dennis and Donna.
Q. Let me stop you before we get to that.
A. Okay.
Q. Do you remember talking with Mr. Davis and Mr. Paullin about their history, relationship, lending relationship with the Thorntons?
A. Yes.
Q. And do you remember whether you received information indicating that the Thorntons had excellent credit and had an excellent relationship with Glacier Bank?
A. I believe both gentlemen gave them a positive reference.

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406.752.5751 - asagilman@centurytel.net

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Q. And, in fact, in order to have a member loan for anything near the magnitude of $3,000,000, it would require the borrowers to have excellent credit and an excellent credit history?
A. Correct.
Q. And they did, in fact, have that --
A. Correct.
Q. -- you were able to learn?
MR. FRAMPTON: I'm going to just put an objection on the record for leading questions and make it continuing.
BY MR. MANLEY:
Q. Okay. And it's my understanding -- and I guess I'm asking you if this comports with your recollection. It's my understanding, after receiving the Glacier Bank loan, you reviewed that, and you talked with Mr. Paullin, talked with Mr. Davis and then took it to the loan committee before you had ever actually talked or met with the Thorntons. Do you recall that?
A. I do not recall the order.
Q. Okay. That's fair enough. All we're trying to get is what you do or don't recall.
A. Uh-huh.
Q. And then do you remember that the first meeting with either of the Thorntons involved Dennis

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Thornton and their financial adviser, Don Garberg, coming in and meeting with you?
A. I remember that there was another individual in one of the meetings.
Q. Uh-huh. Did you know Don before?
A. I don't think I'd ever met Don before. I think I knew of him as far as financial counseling, but I don't think I had met him, that I was aware of. I don't remember if there was just Dennis and Don or if both Donna and Dennis were present. I don't remember.
Q. And do you remember sitting down and going over plans for the project and them explaining their vision or their plan, overall plan for that project?
A. Yes.
Q. And do you remember as of then you already had a commitment or already had gotten from the credit committee authority to offer them a loan of up to $3.3 million, including taking out what was owed to Glacier?
A. Again, I don't remember the dates or the order. It may be. I don't recollect.
Q. Okay. Could you tell us everything you remember about that meeting with Dennis and -- Dennis Thornton and Don Garberg?
A. To be perfectly honest, I don't remember much

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about it other than there was a meeting, and I'm sure we went through some of the information. I couldn't tell you.
Q. That's fair enough. We're just -- part of what we're doing is -- sometimes we go to trial on cases, and then we're surprised by what somebody remembers.
A. Sure.
Q. So this is our only ability to get inside and knock around in your memory and see what's there.
Okay. So, then, do you remember that there was discussion about they had 300 acres and 200 acres and Whitefish Credit Union wanted a first mortgage on both and then there was discussion about a subordination agreement on the 200 acres?
MR. FRAMPTON: Objection. Vague.
THE WITNESS: I remember that we took two pieces of collateral for the loan, and, yes, I recall there was a subordination.
BY MR. MANLEY:
Q. Okay. And let's see if I can find it pretty quick here.
In front of you there's a binder, and in Exhibit 1 (sic), there's a page at the bottom numbered 7155. Take as much time as you need to review that

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document.
A. Okay.
Q. Okay. On the first page of the letter, at the bottom it says "Subordination Agreement."
A. Uh-huh.
Q. What I'm trying to do is ask you everything you remember about any discussions relating to that.
A. What I recollect about the subordination, I recollect the amount of the 500,000, and my discussions that I recollect with the Thorntons were the fact that they wanted the subordination in place in the event that they needed to go back into the timber industry to generate additional funds. That's what I remember about that discussion.
Q. Okay.
A. Because if I remember correctly, their background was more in the timber industry, and thinking that if they ran into financial difficulties they could always go back and generate income.
Q. Okay. Anything else you remember about any discussions involving the subordination agreement?
A. I don't remember any other discussions about that.
Q. Okay. And this loan amount, including taking out the Glacier loan, is shown as $3,360,000?

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 03

WHITEFISH CREDIT UNION COMMERCIAL LOAN WORKSHEET

Date: Feb. 16, 2009 Loan Officer: Doug J.

Borrower: Thorco, Inc.
Dennis & Donna Thornton Phone # Dennis-261-6814
Address: 151 Amatasia Lane Phone # Donna-253-2581
Kalispell Phone # Home-752-5623

Business Type: Logging & Land Development Type of Organization: S-Corp.

WCU relationship: Account # TBA $$ in Shares=
Account # $$ in Shares=

Existing Loans	Owing	Committed	Available	Rate	L:V	Collateral
None.						
TOTAL=	$0	$0	$0			

LOAN REQUEST: $3,360,000

New $$	$$ Renewed	Ln#	Rate	Balloon	Payment $$	Frqcy	Terms
$3,360,000	$0		6.50%	2 Years	Interest	Mo.	2 Year Maturity

PURPOSE:

Loan funds are being requested by the above noted borrower for the purposes noted below.

SOURCE OF FUNDS		USE OF FUNDS	
WCU Loan Proceeds	$ 3,360,000	Third Party Payoff	$ 1,360,000
		Road Work	890,000
		Utilities	435,000
		Landscaping	150,000
		Engineering & Surveying	25,000
		Interest Carry	500,000
Total Proceeds	$ 3,360,000		$ 3,360,000

The above noted planned expenditures will bring the subdivision to final plat stage which will allow for the sale of individual parcels.

COLLATERAL DESCRIPTION:

	VALUE	SOURCE	DATE
First mortgage position on 300 acres that has been divided into 13 parcels of 20 acres each and one parce of 40 acres.	$6,775,000	Barrie Appraisal "As Completed" with no paved roads and no water system	Jan. 2009
The current loan request would place the per acre indebtedness at $11.2M per acre. Additional collateral of approximately 200 acres in the same general area.	$2,000,000	Estimated value by loan officer from above noted appr.	
TOTAL	$8,775,000	**LOAN TO VALUE=**	38.3%

Source(s) of Repayment:
(1) Sale of Lots
(2) Sale of other assets of borrower & guarantor

Strengths: Loan to value, interest carry costs included in loan proceeds

Weaknesses: Competition (number of lots available) and demand for lots

Exceptions to Policy: None known

Action Taken by:	LO: Feb. 16, 2009	LOC: Feb. 17, 2009	CC: Feb. 24, 2009	BOD: Feb. 18, 2009

>>> Additional discretionary approval limit for LOC of also approved on by

Conditions/Reasons:

If you want information about coverage or need assistance to resolve a .nts, please call our toll free number 1-800-729-1902. If you make a claim under a olicy, you must furnish written notice in accordance with Section 3 of the Conditions Visit our World-Wide Web site at http://www.stewart.com

Thorco Inc.
966428-750

LOAN POLICY OF TITLE INSURANCE
ISSUED BY

stewart
title guaranty company

Any notice of claim and any other notice or statement in writing required to be given to the Company under this Policy must be given to the Company at the address shown in Section 17 of the Conditions.

COVERED RISKS

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B, AND THE CONDITIONS, STEWART TITLE GUARANTY COMPANY, a Texas corporation (the "Company") insures as of Date of Policy and, to the extent stated in Covered Risks 11, 13, and 14, after Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

1. Title being vested other than as stated in Schedule A.
2. Any defect in or lien or encumbrance on the Title. This Covered Risk includes but is not limited to insurance against loss from
   (a) A defect in the Title caused by
      (i) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
      (ii) failure of any person or Entity to have authorized a transfer or conveyance;
      (iii) a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;
      (iv) failure to perform those acts necessary to create a document by electronic means authorized by law;
      (v) a document executed under a falsified, expired, or otherwise invalid power of attorney;
      (vi) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or
      (vii) a defective judicial or administrative proceeding
   (b) The lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.
   (c) Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. The term "encroachment" includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land.
3. Unmarketable Title.
4. No right of access to and from the Land.
5. The violation or enforcement of any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
   (a) the occupancy, use, or enjoyment of the Land;
   (b) the character, dimensions, or location of any improvement erected on the Land;
   (c) the subdivision of land; or
   (d) environmental protection

Countersigned:

Authorized Countersignature

Sterling Title Services, Inc.
Company Name

Kalispell, MT
City, State

stewart
title guaranty company

STEWART TITLE GUARANTY CO. INCORPORATED 1908 TEXAS

Senior Chairman of the Board

Chairman of the Board

President

Policy Serial No. M-9302-001408706

Covered Risks – Cont.

if a notice, describing any part of the Land, is recorded in the Public Records setting forth the violation or intention to enforce, but only to the extent of the violation or enforcement referred to in that notice.

6. An enforcement action based on the exercise of a governmental police power not covered by Covered Risk 5 if a notice of the enforcement action, describing any part of the Land, is recorded in the Public Records, but only to the extent of the enforcement referred to in that notice.
7. The exercise of the rights of eminent domain if a notice of the exercise, describing any part of the Land, is recorded in the Public Records.
8. Any taking by a governmental body that has occurred and is binding on the rights of a purchaser for value without Knowledge.
9. The invalidity or unenforceability of the lien of the Insured Mortgage upon the Title. This Covered Risk includes but is not limited to insurance against loss from any of the following impairing the lien of the Insured Mortgage:
   (a) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
   (b) failure of any person or Entity to have authorized a transfer or conveyance;
   (c) the Insured Mortgage not being properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;
   (d) failure to perform those acts necessary to create a document by electronic means authorized by law;
   (e) a document executed under a falsified, expired, or otherwise invalid power of attorney;
   (f) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or
   (g) a defective judicial or administrative proceeding.
10. The lack of priority of the lien of the Insured Mortgage upon the Title over any other lien or encumbrance.
11. The lack of priority of the lien of the Insured Mortgage upon the Title
   (a) as security for each and every advance of proceeds of the loan secured by the Insured Mortgage over any statutory lien for services, labor, or material arising from construction of an improvement or work related to the Land when the improvement or work is either:
      (i) contracted for or commenced on or before Date of Policy; or
      (ii) contracted for, commenced, or continued after Date of Policy if the construction is financed, in whole or in part, by proceeds of the loan secured by the Insured Mortgage that the Insured has advanced or is obligated on Date of Policy to advance; and
   (b) over the lien of any assessments for street improvements under construction or completed at Date of Policy.
12. The invalidity or unenforceability of any assignment of the Insured Mortgage, provided the assignment is shown in Schedule A, or the failure of the assignment shown in Schedule A to vest title to the Insured Mortgage in the named Insured assignee free and clear of all liens.
13. The invalidity, unenforceability, lack of priority, or avoidance of the lien of the Insured Mortgage upon the Title
   (a) resulting from the avoidance in whole or in part, or from a court order providing an alternative remedy, of any transfer of all or any part of the title to or any interest in the Land occurring prior to the transaction creating the lien of the Insured Mortgage because that prior transfer constituted a fraudulent or preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws; or
   (b) because the Insured Mortgage constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws by reason of the failure of its recording in the Public Records
      i) to be timely, or
      ii) to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.
14. Any defect in or lien or encumbrance on the Title or other matter included in Covered Risks 1 through 13 that has been created or attached or has been filed or recorded in the Public Records subsequent to Date of Policy and prior to the recording of the Insured Mortgage in the Public Records.

The Company will also pay the costs, attorneys' fees, and expenses incurred in defense of any matter insured against by this Policy, but only to the extent provided in the Conditions.

Exclusions from Coverage

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
   (i) the occupancy, use, or enjoyment of the Land;
   (ii) the character, dimensions, or location of any improvement erected on the Land;
   (iii) the subdivision of land; or
   (iv) environmental protection; or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
   (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters:
   (a) created, suffered, assumed, or agreed to by the Insured Claimant;
   (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
   (c) resulting in no loss or damage to the Insured Claimant;
   (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 13, or 14); or
   (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law.
6. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is:
   (a) a fraudulent conveyance or fraudulent transfer, or
   (b) a preferential transfer for any reason not stated in Covered Risk 13(b) of this policy.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the Insured Mortgage in the Public Records. This Exclusion does not modify or limit the coverage provided under Covered Risk 11(b).

CONDITIONS

1. DEFINITION OF TERMS

The following terms when used in this policy mean:

(a) "Amount of Insurance": The amount stated in Schedule A, as may be increased or decreased by endorsement to this policy, increased by Section 8(b) or decreased by Section 10 of these Conditions.

(b) "Date of Policy": The date designated as "Date of Policy" in Schedule A.

(c) "Entity": A corporation, partnership, trust, limited liability company, or other similar legal entity.

(d) "Indebtedness": The obligation secured by the Insured Mortgage including one evidenced by electronic means authorized by law, and if that obligation is the payment of a debt, the Indebtedness isthe sum of

i) the amount of the principal disbursed as of Date of Policy;

ii) the amount of the principal disbursed subsequent to Date of Policy;

iii) the construction loan advances made subsequent to Date of Policy for the purpose of financing in whole or in part the construction of an improvement to the Land or related to the Land that the Insured was and continued to be obligated to advance at Date of Policy and at the date of the advance;

iv) interest on the loan;

v) the prepayment premiums, exit fees, and other similar fees or penalties allowed by law;

vi) the expenses of foreclosure and any other costs of enforcement;

vii) the amounts advanced to assure compliance with laws or to protect the lien or the priority of the lien of the Insured Mortgage before the acquisition of the estate or interest in the Title;

viii) the amounts to pay taxes and insurance; and

ix) the reasonable amounts expended to prevent deterioration of improvements; but the Indebtedness is reduced by the total of all payments and by any amount forgiven by an Insured.

(e) "Insured": The Insured named in Schedule A.

(i) The term "Insured" also includes

(A) the owner of the Indebtedness and each successor in ownership of the Indebtedness, whether the owner or successor owns the Indebtedness for its own account or as a trustee or other fiduciary, except a successor who is an obligor under the provisions of Section 12(c) of these Conditions;

(B) the person or Entity who has "control" of the "transferable record," if the Indebtedness is evidenced by a "transferable record," as these terms are defined by applicable electronic transactions law;

(C) successors to an Insured by dissolution, merger, consolidation, distribution, or reorganization;

(D) successors to an Insured by its conversion to another kind of Entity;

(E) a grantee of an Insured under a deed delivered without payment of actual valuable consideration conveying the Title

(1) if the stock, shares, memberships, or other equity interests of the grantee are wholly-owned by the named Insured,

(2) if the grantee wholly owns the named Insured, or

(3) if the grantee is wholly-owned by an affiliated Entity of the named Insured, provided the affiliated Entity and the named Insured are both wholly-owned by the same person or Entity;

(F) any government agency or instrumentality that is an insurer or guarantor under an insurance contract or guaranty insuring or guaranteeing the Indebtedness secured by the Insured Mortgage, or any part of it, whether named as an Insured or not;

(ii) With regard to (A), (B), (C), (D) , and (E) reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor Insured, unless the successor acquired the Indebtedness as a purchaser for value without Knowledge of the asserted defect, lien, encumbrance, or other matter insured against by this policy.

(f) "Insured Claimant": An Insured claiming loss or damage.

(g) "Insured Mortgage": The Mortgage described in paragraph 4 of Schedule A.

(h) "Knowledge" or "Known": Actual knowledge, not constructive knowledge or notice that may be imputed to an Insured by reason of the Public Records or any other records that impart constructive notice of matters affecting the Title.

(i) "Land": The land described in Schedule A, and affixed improvements that by law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is insured by this policy.

(j) "Mortgage": Mortgage, deed of trust, trust deed, or other security instrument, including one evidenced by electronic means authorized by law.

(k) "Public Records": Records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge. With respect to Covered Risk 5(d), "Public Records" shall also include environmental protection liens filed in the records of the clerk of the United States District Court for the district where the Land is located.

(l) "Title": The estate or interest described in Schedule A.

(m) "Unmarketable Title": Title affected by an alleged or apparent matter that would permit a prospective purchaser or lessee of the Title or lender on the Title or a prospective purchaser of the Insured Mortgage to be released from the obligation to purchase, lease, or lend if there is a contractual condition requiring the delivery of marketable title.

2. CONTINUATION OF INSURANCE

The coverage of this policy shall continue in force as of Date of Policy in favor of an Insured after acquisition of the Title by an Insured or after conveyance by an Insured, but only so long as the Insured retains an estate or interest in the Land, or holds an obligation secured by a purchase money Mortgage given by a purchaser from the Insured, or only so long as the Insured shall have liability by reason of warranties in any transfer or conveyance of the Title. This policy shall not continue in force in favor of any purchaser from the Insured of either (i) an estate or interest in the Land, or (ii) an obligation secured by a purchase money Mortgage given to the Insured.

3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT

The Insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 5(a) of these Conditions, (ii) in case Knowledge shall come to an Insured of any claim of title or interest that is adverse to the Title or the lien of the Insured Mortgage, as insured, and that might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if the Title or the lien of the Insured Mortgage, as insured, is rejected as Unmarketable Title. If the Company is prejudiced by the failure of the Insured Claimant to provide prompt notice, the Company's liability to the Insured Claimant under the policy shall be reduced to the extent of the prejudice.

4. **PROOF OF LOSS**

In the event the Company is unable to determine the amount of loss or damage, the Company may, at its option, require as a condition of payment that the Insured Claimant furnish a signed proof of loss. The proof of loss must describe the defect, lien, encumbrance, or other matter insured against by this policy that constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage.

5. **DEFENSE AND PROSECUTION OF ACTIONS**

(a) Upon written request by the Insured, and subject to the options contained in Section 7 of these Conditions, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an Insured in litigation in which any third party asserts a claim covered by this policy adverse to the Insured. This obligation is limited to only those stated causes of action alleging matters insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the Insured to object for reasonable cause) to represent the Insured as to those stated causes of action. It shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs, or expenses incurred by the Insured in the defense of those causes of action that allege matters not insured against by this policy.

(b) The Company shall have the right, in addition to the options contained in Section 7 of these Conditions, at its own cost, to institute and prosecute any action or proceeding or to do any other act that in its opinion may be necessary or desirable to establish the Title or the lien of the Insured Mortgage, as insured, or to prevent or reduce loss or damage to the Insured. The Company may take any appropriate action under the terms of this policy,w hether or not it shall be liable to the Insured. The exercise of these rights shall not be an admission of liability or waiver of any provision of this policy. If the Company exercises its rights under this subsection, it must do so diligently.

(c) Whenever the Company brings an action or asserts a defense as required or permitted by this policy, the Company may pursue the litigation to a final determination by a court of competent jurisdiction, and it expressly reserves the right, in its sole discretion, to appeal any adverse judgment or order.

6. **DUTY OF INSURED CLAIMANT TO COOPERATE**

(a) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding and any appeals, the Insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, including the right to use, at its option, the name of the Insured for this purpose. Whenever requested by the Company, the Insured, at the Company's expense, shall give the Company all reasonable aid (i) in securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act that in the opinion of the Company may be necessary or desirable to establish the Title, the lien of the Insured Mortgage, or any other matter as insured. If the Company is prejudiced by the failure of the Insured to furnish the required cooperation, the Company's obligations to the Insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

(b) The Company may reasonably require the Insured Claimant to submit to examination under oath by any authorized representative of the Company and to produce for examination, inspection, and copying, at such reasonable times and places as may be designated by the authorized representative of the Company, all records, in whatever medium maintained, including books, ledgers, checks, memoranda, correspondence, reports, e-mails, disks, tapes, and videos whether bearing a date before or after Date of Policy, that reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Insured Claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect, and copy all of these records in the custody or control of a third party that reasonably pertain to the loss or damage. All information designated as confidential by the Insured Claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Insured Claimant to submit for examination under oath, produce any reasonably requested information, or grant permission to secure reasonably necessary information from third parties as required in this subsection, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that claim.

7. **OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY**

In case of a claim under this policy, the Company shall have the following additional options:

(a) To Pay or Tender Payment of the Amount of Insurance or to Purchase the Indebtedness.

(i) To pay or tender payment of the Amount of Insurance under this policy together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay; or

(ii) To purchase the Indebtedness for the amount of the Indebtedness on the date of purchase, together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of purchase and that the Company is obligated to pay.

When the Company purchases the Indebtedness, the Insured shall transfer, assign, and convey to the Company the Indebtedness and the Insured Mortgage, together with any collateral security.

Upon the exercise by the Company of either of the options provided for in subsections (a)(i) or (ii), all liability and obligations of the Company to the Insured under this policy, other than to make the payment required in those subsections, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

(b) To Pay or Otherwise Settle With Parties Other Than the Insured or With the Insured Claimant.

(i) to pay or otherwise settle with other parties for or in the name of an Insured Claimant any claim insured against under this policy. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay; or

(ii) to pay or otherwise settle with the Insured Claimant the loss or damage provided for under this policy,t ogether with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in subsections (b)(i) or (ii), the Company's obligations to the Insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

8. DETERMINATION AND EXTENT OF LIABILITY

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy.

(a) The extent of liability of the Company for loss or damage under this policy shall not exceed the least of
  (i) the Amount of Insurance,
  (ii) the Indebtedness,
  (iii) the difference between the value of the Title as insured and the value of the Title subject to the risk insured against by this policy, or
  (iv) if a government agency or instrumentality is the Insured Claimant, the amount it paid in the acquisition of the Title or the Insured Mortgage in satisfaction of its insurance contract or guaranty.

(b) If the Company pursues its rights under Section 5 of these Conditions and is unsuccessful in establishing the Title or the lien of the Insured Mortgage, as insured,
  (i) the Amount of Insurance shall be increased by 10%, and
  (ii) the Insured Claimant shall have the right to have the loss or damage determined either as of the date the claim was made by the Insured Claimant or as of the date it is settled and paid.

(c) In the event the Insured has acquired the Title in the manner described in Section 2 of these Conditions or has conveyed the Title, then the extent of liability of the Company shall continue as set forth in Section 8(a) of these Conditions.

(d) In addition to the extent of liability under (a), (b), and (c), the Company will also pay those costs, attorneys' fees, and expenses incurred in accordance with Sections 5 and 7 of these Conditions.

9. LIMITATION OF LIABILITY

(a) If the Company establishes the Title, or removes the alleged defect, lien, or encumbrance, or cures the lack of a right of access to or from the Land, or cures the claim of Unmarketable Title, or establishes the lien of the Insured Mortgage, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused to the Insured.

(b) n the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals, adverse to the Title or to the lien of the Insured Mortgage, as insured.

(c) The Company shall not be liable for loss or damage to the Insured for liability voluntarily assumed by the Insured in settling any claim or suit without the prior written consent of the Company.

10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY

(a) All payments under this policy, except payments made for costs, attorneys' fees, and expenses, shall reduce the Amount of Insurance by the amount of the payment. However, any payments made prior to the acquisition of Title as provided in Section 2 of these Conditions shall not reduce the Amount of Insurance afforded under this policy except to the extent that the payments reduce the Indebtedness.

(b) The voluntary satisfaction or release oft he Insured Mortgage shall terminate all liability of the Company except as provided in Section 2 of these Conditions.

11. PAYMENT OF LOSS

When liability and the extent of loss or damage have been definitely fixed in accordance with these Conditions, the payment shall be made within 30 days.

12. RIGHTS OF RECOVERY UPON PAYMENT OR SETTLEMENT

(a) The Company's Right to Recover.

Whenever the Company shall have settled and paid a claim under this policy, it shall be subrogated and entitled to the rights of the Insured Claimant in the Title or Insured Mortgage and all other rights and remedies in respect to the claim that the Insured Claimant has against any person or property, to the extent of the amount of any loss, costs, attorneys' fees, and expenses paid by the Company. If requested by the Company, the Insured Claimant shall execute documents to evidence the transfer to the Company of these rights and remedies. The Insured Claimant shall permit the Company to sue, compromise, or settle in the name of the Insured Claimant and to use the name of the Insured Claimant in any transaction or litigation involving these rights and remedies.

If a payment on account of a claim does not fully cover the loss of the Insured Claimant, the Company shall defer the exercise of its right to recover until after the Insured Claimant shall have recovered its loss.

(b) The Insured's Rights and Limitations.
  (i) The owner of the Indebtedness may release or substitute the personal liability of any debtor or guarantor, extend or otherwise modify the terms of payment, release a portion of the Title from the lien of the Insured Mortgage, or release any collateral security for the Indebtedness, if it does not affect the enforceability or priority of the lien of the Insured Mortgage.
  (ii) If the Insured exercises a right provided in (b)(i), but has Knowledge of any claim adverse to the Title or the lien of the Insured Mortgage Insured against by this policy, the Company shall be required to pay only that part of any losses insured against by this policy that shall exceed the amount, if any, lost to the Company by reason of the impairment by the Insured Claimant of the Company's right of subrogation.

(c) The Company's Rights Against Noninsured Obligors

The Company's right of subrogation includes the Insured's rights against non-insured obligors including the rights of the Insured to indemnities, guaranties, other policies of insurance, or bonds, notwithstanding any terms or conditions contained in those instruments that address subrogation rights.

The Company's right of subrogation shall not be avoided by acquisition of the Insured Mortgage by an obligor (except an obligor described in Section 1(e)(i)(F) of these Conditions) who acquires the Insured Mortgage as a result of an indemnity, guarantee, other policy of insurance, or bond, and the obligor will not be an Insured under this policy.

13. ARBITRATION

Either the Company or the Insured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("Rules"). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this policy, any service in connection with its issuance or the breach of a policy provision, or to any other controversy or claim arising out of the transaction giving rise to this policy. All arbitrable matters when the Amount of Insurance is $2,000,000 or less shall be arbitrated at the option of either the Company or the Insured. All arbitrable matters when the Amount of Insurance is in excess of $2,000,000 shall be arbitrated only when agreed to by both the Company and the Insured. Arbitration pursuant to this policy and under the Rules shall be binding upon the parties. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction.

CONDITIONS – Continued

14. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT.

(a) This policy together with all endorsements, if any, attached to it by the Company is the entire policy and contract between the Insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage that arises out of the status of the Title or lien of the Insured Mortgage or by any action asserting such claim shall be restricted to this policy.

(c) Any amendment of or endorsement to this policy must be in writing and authenticated by an authorized person, or expressly incorporated by Schedule A of this policy.

(d) Each endorsement to this policy issued at any time is made a part of this policy and is subject to all of its terms and provisions. Except as the endorsement expressly states, it does not (i) modify any of the terms and provisions of the policy,(ii) modify any prior endorsement, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance.

15. SEVERABILITY.

In the event any provision of this policy, in whole or in part, is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision or such part held to be invalid, but all other provisions shall remain in full force and effect.

16. CHOICE OF LAW; FORUM.

(a) Choice of Law: The Insured acknowledges the Company has underwritten the risks covered by this policy and determined the premium charged therefore in reliance upon the law affecting interests in real property and applicable to the interpretation, rights, remedies, or enforcement of policies of title insurance of the jurisdiction where the Land is located.

Therefore, the court or an arbitrator shall apply the law of the jurisdiction where the Land is located to determine the validity of claims against the Title or the lien of the Insured Mortgage that are adverse to the Insured and to interpret and enforce the terms of this policy. In neither case shall the court or arbitrator apply its conflicts of law principles to determine the applicable law.

(b) Choice of Forum: Any litigation or other proceeding brought by the Insured against the Company must be filed only in a state or federal court within the United States of America or its territories having appropriate jurisdiction.

17. NOTICES, WHERE SENT.

Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at Claims Department at P.O. Box 2029, Houston, TX 77252-2029.

SCHEDULE A

File Number: 49765
Amount of Insurance: $ 3,360,000.00

Policy Number: M-9302-001408706
Premium: $ 5,044.00

Date of Policy: March 23, 2009 at 03:48 PM

1. Name of Insured:
   Whitefish Credit Union

2. The estate or interest in the land which is encumbered by the insured mortgage is:
   Fee Simple

3. Title to the estate or interest in the land is vested in:
   Thorco, Inc.,
   A Montana Corporation

4. The insured mortgage and assignments thereof, if any, are described as follows:
   Mortgage dated March 19, 2009, to secure payment of $3,360,000.00, together with interest and any other obligations secured thereby, recorded March 24, 2009 as Document #200900007830, records of Flathead County, Montana.
   Mortgagor: Thorco, Inc.,
   Mortgagee: Whitefish Credit Union

5. The land referred to in this policy is described as follows:
   SEE SCHEDULE C ATTACHED HERETO

By: _____
STERLING TITLE SERVICES, INC.

SCHEDULE B

File Number: 49765

Policy Number: M-9302-001408706

EXCEPTIONS FROM COVERAGE
PART I

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Property taxes, including any assessments collected with the taxes, for the year 2009.

2. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records. Proceedings by a public agency, which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by public record.

3. Any facts, rights, interest or claims which are not shown by the public records but which could be ascertained by an inspection of the land or by making inquiry of persons in possession thereof.

4. Easements, liens or encumbrances, or claims thereof, which are not shown by the public records.

5. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.

6. Any lien, or right to a lien, for services, labor, or material heretofore or hereafter furnished, imposed by law and not shown by the public records.

7. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records, or attaching subsequent to the effective date hereof but prior to the date the proposed Insured acquires for value of record the estate or interest or mortgage thereon covered by this Commitment.

8. County road rights-of-way, not recorded and indexed as a conveyance of record in the office of the Clerk and Recorder pursuant to Title 70, Chapter 21, M. C. A., including, but not limited to any right of the Public and the County of Flathead to use and occupy those certain roads and trails.

9. Any right, title or interest to water rights, claims or title to water. Any reservations or exceptions in patents.

10. Mineral rights, claims or title to minerals in or under said land, including but not limited to metals, oil, gas, coal, or other hydrocarbons, sand, gravel or stone, and easements or other rights relating thereto, whether express or implied, recorded or unrecorded.

11. Notwithstanding Paragraph 4 of the insuring clauses of the policy or policies to be issued, the policy or policies will not insure against loss arising by reason of any lack of a right of access to and from the lands. (as to that portion in Section 28)

12. Easement for flowage and related purposes, reserved in instrument recorded January 6, 1934 under Recorder's Fee #61, in Book 211, page 531, records of Flathead County, Montana.

13. Easement as may be necessary or convenient in removing timber of timber products, reserved in instruments recorded December 27, 1943 under Recorder's Fee #4347, in Book 254, page 243, March 31, 1944 under Recorder's Fee #1177, in Book 254, page 359, March 6, 1947 under Recorder's Fee #1146, in Book 278, page 132 and June 4, 1953 under Recorder's Fee #3183, in Book 349, page 65, all records of

SCHEDULE B - PART I
(Continued)

File Number: 49765

Policy Number: M-9302-001408706

Flathead County, Montana.

14. Transmission Line Easement granted to the United States of America, by instrument recorded June 28, 1947 under Recorder's Fee #3202 in Book 273, page 435, records of Flathead County, Montana, and modification of easement, recorded July 6, 1973 under Recorder's Fee #7440, in Book 556, page 421, records of Flathead County, Montana.

15. A 20 foot access road easement granted the United States of America, by instrument recorded November 8, 1974 under Recorder's Fee #10861, in Book 576, page 61, records of Flathead County, Montana.

16. A non-exclusive easement for roadway, power and utility purposes, granted in instrument recorded March 25, 1994 as Document #9408412150, records of Flathead County, Montana.

17. Declaration of Conditions, Covenants, and Restrictions and any rights, provisions, powers, obligations, liens or charges as provided therein, but omitting covenants or restrictions, if any, based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, or source of income, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law, recorded April 29, 1994 as Document #9411916370, records of Flathead County, Montana, and any amendments thereto, including but not limited to the following amendments: None

18. Two separate sixty foot easements for ingress, egress and utility purposes, granted in instrument recorded April 29, 1994 as Document #9411916500, records of Flathead County, Montana.

19. Terms and provisions contained in Revocable Road Use License, recorded July 26, 1996 as Document #9620510100, records of Flathead County, Montana.

SCHEDULE B

File Number: 49765

Policy Number: M-9302-001408706

PART II

In addition to the matters set forth in Part I of this Schedule, the title to the estate or interest in the land described or referred to in Schedule C is subject to the following matters, if any be shown, but the Company insures that these matters are subordinate to the lien or charge of the insured mortgage upon the estate or interest:

None

SCHEDULE C

File Number: 49765

Policy Number: M-9302-001408706

The North Half of the Northwest Quarter of the Northwest Quarter (N½NW¼NW¼); the South Half of the Northwest Quarter of the Northwest Quarter (S½NW¼NW¼); the North Half of the Northeast Quarter of the Northwest Quarter (N½NE¼NW¼); the South Half of the Northeast Quarter of the Northwest Quarter (S½NE¼NW¼); the North Half of the Southeast Quarter of the Northwest Quarter (N½SE¼NW¼); the South Half of the Southeast Quarter of the Northwest Quarter (S½SE¼NW¼); the North Half of the Southwest Quarter of the Northwest Quarter (N½SW¼NW¼); the South Half of the Southwest Quarter of the Northwest Quarter (S½SW¼NW¼), all in Section 28, Township 27 North, Range 21 West, M.P.M., Flathead County, Montana.

AND

The North Half of the Northwest Quarter of the Southwest Quarter (N½NW¼SW¼) and the South Half of the Northwest Quarter of the Southwest Quarter (S½NW¼SW¼) of Section 28, Township 27 North, Range 21 West, M.P.M., Flathead County, Montana.

AND

The North Half of the Southwest Quarter of the Northwest Quarter (N½SW¼NW¼); the South Half of the Southwest Quarter of the Northwest Quarter (S½SW¼NW¼); the North Half of the Northwest Quarter of the Southwest Quarter (N½NW¼SW¼); the South Half of the Northwest Quarter of the Southwest Quarter (S½NW¼SW¼); the North Half of the Southwest Quarter of the Southwest Quarter (N½SW¼SW¼) all in Section 27, Township 27 North, Range 21 West, M.P.M., Flathead County,
Montana.

AND

The North Half of the Northeast Quarter of the Southwest Quarter (N½NE¼SW¼); the South Half of the Northeast Quarter of the Southwest Quarter (S½NE¼SW¼); the North Half of the Southeast Quarter of the Southwest Quarter (N½SE¼SW¼); the South Half of the Southeast Quarter of the Southwest Quarter (S½SE¼SW¼); the North Half of the Northwest Quarter of the Southeast Quarter (N½NW¼SE¼); the South Half of the Northwest Quarter of the Southeast Quarter (S½NW¼SE¼); the North Half of the Southwest Quarter of the Southeast Quarter (N½SW¼SE¼) and the South Half of the Southwest Quarter of the Southeast Quarter (S½SW¼SE¼) all in Section 27, Township 27 North, Range 21 West, M.P.M., Flathead County, Montana.

AND

The Southeast Quarter of the Northwest Quarter (SE¼NW¼) of Section 27, Township 27 North,

SCHEDULE C
(Continued)

File Number: 49765 Policy Number: M-9302-001408706

Range 21 West, M.P.M., Flathead County, Montana.

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.

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 04

Whitefish Credit Union

300 Baker Ave. • 862-3525
Whitefish

234 E. Montana • 257-3123
Kalispell

320 Nucleus Ave. • 892-8000
Columbia Falls

110 3rd Ave. E. • 883-3600
Polson

202 Dewey Ave. E. • 297-7800
Eureka

107 Pond St. • 827-5626
Thompson Falls

P.O. BOX 37
WHITEFISH, MONTANA 59937-0037

March 11, 2009

Thorco, Inc.
151 Amatasia Lane
Kalispell, MT 59901

Dear Dennis and Donna:

The Whitefish Credit Union has approved your request for refinancing and infrastructure improvements on approximately 300 acres on Boon Road in Somers. The general terms of the financing arrangement would be as follows:

Borrowing Entity:	Thorco, Inc.
Loan Amount:	$3,360,000.00
Term:	24 Months
Credit Facility:	Straight Line of Credit
Interest Rate:	Fixed at 6.50% for 24 months
Interest Payments:	Due Monthly
Collateral:	First lien position on 300 acre parcel and additional 200 acre parcel on Boon Road in Somers.
Lot Release Provision:	Minimum amount of 70% of net sales proceeds
Subordination Agreement:	Whitefish Credit Union will subordinate its first lien position on the 200 acre tract up to an amount of $500,000 without additional committee approval for income producing

	projects undertaken by the borrower.
Guarantors:	Dennis and Donna Thornton
Fees/Costs:	No loan origination fees will be charged. The fees involved will be the Flathead County recording charge and title insurance in the appropriate amount.
Appraisal:	Assignment of Appraisal from Glacier Bank
Disbursements:	Draw requests to be supported by satisfactory documentation and funded on a percentage of completion basis.

The above terms and conditions are general in nature with specific terms included in loan documents.

Regards,

Doug Johnson

Doug Johnson
Member Business Loan Officer
DJ/jf

17. Terms, provisions, covenants, conditions, definitions, options, obligations and restrictions, contained in a document
    Purpose: Timber purchase agreement
    Recorded: March 30, 1993
    Instrument No.: 93-089-15310
    Affects Sections 27 and 28.

18. An easement for the purpose shown below and rights incidental thereto as set forth in a document:
    Granted To: Thorco, Inc., a Montana corporation
    Purpose: Right of ingress and egress and the right to install power and utilities
    Recorded: March 25, 1994
    Instrument No.: 94-084-12150
    Affects Section 28.

19. Covenants, conditions and restrictions, but omitting any covenant or restriction based on race, color, religion, sex, sexual orientation, disability, handicap, familial status, marital status, ancestry, national origin or source of income, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law.
    Recorded: April 29, 1994
    Instrument No.: 94-119-16370
    Affects Section 27.

20. Terms, provisions, limitations and obligations, whether expressed or implied, as contained in the easement recorded as Instrument No. 94-119-16490, identified in Schedule A as Parcel 2.
    Affects Section 27.

21. Terms, provisions, limitations and obligations, whether expressed or implied, as contained in the easement recorded as the Amended Plat of Lot 2A Upton Subdivision.

22. An easement for the purpose shown below and rights incidental thereto as set forth in a document:
    Granted To: STUDS, Inc.
    Purpose: Together with two separate 60 food road and utility easements that are to be located on that portion of Southeast Quarter of the Northwest Quarter of Section 27, Township 27 North, Range 21 West, Flathead County, Montana lying North of the County road
    Recorded: April 29, 1994
    Instrument No.: 94-119-16500
    Affects Section 27.

23. Easements reservations and dedications, as shown on Certificate of Survey 11751.
    Recorded: June 6, 1994
    Instrument No.: 94-157-16300
    Affects Section 27.

24. Terms, provisions, covenants, conditions, definitions, options, obligations and restrictions, contained in a document
    Purpose: Revocable Road Use License
    Recorded: July 23, 1996
    Instrument No.: 96-205-10100
    Affects Section 28.

25. A Mortgage to secure an indebtedness as shown below secured thereby:
    Amount $3,360,000.00
    Mortgagor: Thorco Inc., a Montana Corporation
    Mortgagee: Whitefish Credit Union
    Dated: March 19, 2009
    Recorded: March 24, 2009
    Instrument No.: 2009-000-07830
    Affects Sections 27 and 28.

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 05

Whitefish Credit Union

300 Baker Ave. • 862-3525
Whitefish

234 E Montana • 257-3123
Kalispell

320 Nucleus Ave. • 892-8000
Columbia Falls

110 3rd Ave. E. • 883-3600
Polson

202 Dewey Ave. E. • 297-7800
Eureka

107 Pond St. • 827-5626
Thompson Falls

P.O. BOX 37
WHITEFISH, MONTANA 59937-0037

August 3, 2011

Thorco, Inc.
Attn: Dennis & Donna Thornton
P.O. Box 1557
Kalispell, MT 59903

RE: Commercial Loan Application

Dear Dennis & Donna,

Thank you for your loan application dated 7/15/11 for a $500,000 revolving line of credit to finance operating capital and mobilization costs of a new gravel sales operation to be located in Williston North Dakota.

I regret to inform you that the Whitefish Credit Union is unable to approve any additional financing at this time. Our concerns are centered on insufficient verifiable income to support your existing and proposed debt obligations and insufficient collateral to support the new loan request.

Our focus now needs to be on structuring the renewal of your loan # 966428-750 with a principle balance of $3,360,133.62 that matured 3/15/11. The current accrued interest through 8/3/11 is $91,130.40 and must be paid in order to renew the loan.

In order to consider renewal of this loan we will need to discuss how the accrued interest is to be paid, and ultimately, how the principle balance will be reduced either through parcel sales and/or loan amortization.

Please give me a call at 862-3525 so we can set up a meeting as soon as possible to discuss this matter.

Sincerely,

Randy Cogdill
Vice President
Member Business Loans
Whitefish Credit Union

Please Image then
file Hard Copy.

Thorco, Inc

966428-750

ADVERSE ACTION NOTICE

TO: THORCO, INC
151 AMATASIA LN
KALISPELL, MT 59901

DATE: August 5, 2011

SUBJECT: Application, dated August 4, 2011 for a Business Revolving Line Of Credit loan.

Dear THORCO, INC:

Thank you for applying to us for the loan transaction described above. After carefully reviewing your application, we are sorry to advise you that we cannot grant a loan to you for the following reasons:

- Unable to verify income
- Income insufficient for amount of credit requested
- Value or type of collateral insufficient
- LACK OF REASONABLE ASSURANCE OF ABILITY TO REPAY LOAN (AND THEIR OBLIGATIONS) FROM EARNINGS.

  COLLATERAL, CONSIDERED ALONG WITH OTHER FACTORS, IS NOT DEEMED SUFFICIENT TO PROTECT THE INTEREST OF THE WHITEFISH CREDIT UNION

If you have any questions regarding this notice, you should contact us at:

WHITEFISH CREDIT UNION
MBL CENTER
Attn: RANDY COGDILL
215 EAST IDAHO AVENUE
KALISPELL, MT 59901
(406) 863-3904

LENDER:

WHITEFISH CREDIT UNION

x _____
RANDY COGDILL, VP MBL

EQUAL CREDIT OPPORTUNITY ACT NOTICE

The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is:

NATIONAL CREDIT UNION ADMINISTRATION
OFFICE OF CONSUMER PROTECTION
1775 DUKE STREET
ALEXANDRIA, VA 22314
Toll-free: (703) 518-1140
Fax: (703) 518-6672
TDD: _____

LASER PRO Lending, Ver. 5.57.10.001 Copr. Harland Financial Solutions, Inc. 1997, 2011 All Rights Reserved - MT ...

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 06

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

200900007830
Page: 1 of 12
Fees: $84.00
Paula Robinson, Flathead County MT by NC 3/24/2009 3:48 PM

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

State of Montana — Space Above This Line For Recording Data

CG-49765
13

REAL ESTATE MORTGAGE
(With Future Advance Clause)

0213950

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

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

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

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

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

SEE SCHEDULE "C"

Parcel ID Number:

DI DI

MONTANA - AGRICULTURAL/COMMERCIAL REAL ESTATE SECURITY INSTRUMENT MORTGAGE
(NOT FOR FNMA, FHLMC, FHA OR VA USE, AND NOT FOR CONSUMER PURPOSES)
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The property is located in FLATHEAD (County) at NHN BOON ROAD (Address), SOMERS (City), Montana 59932 (Zip Code)

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

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

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

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

   B. All future advances from Lender to Mortgagor or other future obligations of Mortgagor to Lender under any promissory note, contract, guaranty, or other evidence of debt existing now or executed after this Security Instrument whether or not this Security Instrument is specifically referenced. If more than one person signs this Security Instrument, each Mortgagor agrees that this Security Instrument will secure all future advances and future obligations that are given to or incurred by any one or more Mortgagor, or any one or more Mortgagor and others. All future advances and other future obligations are secured by this Security Instrument even though all or part may not yet be advanced. All future advances and other future obligations are secured as if made on the date of this Security Instrument. Nothing in this Security Instrument shall constitute a commitment to make additional or future loans or advances in any amount. Any such commitment must be agreed to in a separate writing.
   C. All obligations Mortgagor owes to Lender, which now exist or may later arise, to the extent not prohibited by law, including, but not limited to, liabilities for overdrafts relating to any deposit account agreement between Mortgagor and Lender.
   D. All additional sums advanced and expenses incurred by Lender for insuring, preserving or otherwise protecting the Property and its value and any other sums advanced and expenses incurred by Lender under the terms of this Security Instrument.

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

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5. **PAYMENTS.** Mortgagor agrees that all payments under the Secured Debt will be paid when due and in accordance with the terms of the Secured Debt and this Security Instrument.

6. **WARRANTY OF TITLE.** Mortgagor warrants that Mortgagor is or will be lawfully seized of the estate conveyed by this Security Instrument and has the right to grant, bargain, convey, sell, and mortgage the Property, with power of sale. Mortgagor also warrants that the Property is unencumbered, except for encumbrances of record.

7. **PRIOR SECURITY INTERESTS.** With regard to any other mortgage, deed of trust, security agreement or other lien document that created a prior security interest or encumbrance on the Property, Mortgagor agrees:
   A. To make all payments when due and to perform or comply with all covenants.
   B. To promptly deliver to Lender any notices that Mortgagor receives from the holder.
   C. Not to allow any modification or extension of any note or agreement secured by the lien document without Lender's prior written consent.
   D. To restrict lien priority of any prior security interest allowing future advances by recording a notice of limitation as provided in M.C.A. 71-1-206(3).

8. **CLAIMS AGAINST TITLE.** Mortgagor will pay all taxes, assessments, liens, encumbrances, lease payments, ground rents, utilities, and other charges relating to the Property when due. Lender may require Mortgagor to provide to Lender copies of all notices that such amounts are due and the receipts evidencing Mortgagor's payment. Mortgagor will defend title to the Property against any claims that would impair the lien of this Security Instrument. Mortgagor agrees to assign to Lender, as requested by Lender, any rights, claims or defenses Mortgagor may have against parties who supply labor or materials to maintain or improve the Property.

9. **DUE ON SALE OR ENCUMBRANCE.** Lender may, at its option, declare the entire balance of the Secured Debt to be immediately due and payable upon the creation of, or contract for the creation of, any lien, encumbrance, transfer or sale of all or any part of the Property. This right is subject to the restrictions imposed by federal law (12 C.F.R. 591), as applicable. This covenant shall run with the Property and shall remain in effect until the Secured Debt is paid in full and this Security Instrument is released.

10. **TRANSFER OF AN INTEREST IN THE MORTGAGOR.** If Mortgagor is an entity other than a natural person (such as a corporation or other organization), Lender may demand immediate payment if:
    A. A beneficial interest in Mortgagor is sold or transferred.
    B. There is a change in either the identity or number of members of a partnership or similar entity.
    C. There is a change in ownership of more than 25 percent of the voting stock of a corporation or similar entity.

    However, Lender may not demand payment in the above situations if it is prohibited by law as of the date of this Security Instrument.

11. **ENTITY WARRANTIES AND REPRESENTATIONS.** If Mortgagor is an entity other than a natural person (such as a corporation or other organization), Mortgagor makes to Lender the following warranties and representations which shall continue as long as the Secured Debt remains outstanding:
    A. Mortgagor is duly organized and validly existing in Mortgagor's state of incorporation or organization. Mortgagor is in good standing in all states in which Mortgagor transacts business. Mortgagor has the power and authority to own the Property and to carry on its business as now being conducted and, as applicable, is qualified to do so in each state in which Mortgagor operates.
    B. The execution, delivery and performance of this Security Instrument by Mortgagor and the obligations evidenced by the Secured Debt are within the power of Mortgagor, have been duly authorized, have received all necessary governmental approval, and will not violate any provision of law, or order of court or governmental agency.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mortgagor represents, warrants and agrees that:

A. Except as previously disclosed and acknowledged in writing to Lender, no Hazardous Substance has been, is, or will be located, transported, manufactured, treated, refined, or handled by any person on, under or about the Property, except in the ordinary course of business and in strict compliance with all applicable Environmental Law.

B. Except as previously disclosed and acknowledged in writing to Lender, Mortgagor has not and will not cause, contribute to, or permit the release of any Hazardous Substance on the Property.

C. Mortgagor will immediately notify Lender if (1) a release or threatened release of Hazardous Substance occurs on, under or about the Property or migrates or threatens to migrate from nearby property; or (2) there is a violation of any Environmental Law concerning the Property. In such an event, Mortgagor will take all necessary remedial action in accordance with Environmental Law.

D. Except as previously disclosed and acknowledged in writing to Lender, Mortgagor has no knowledge of or reason to believe there is any pending or threatened investigation, claim, or proceeding of any kind relating to (1) any Hazardous Substance located on, under or about the Property; or (2) any violation by Mortgagor or any tenant of any Environmental Law. Mortgagor will immediately notify Lender in writing as soon as Mortgagor has reason to believe there is any such pending or threatened investigation, claim, or proceeding. In such an event, Lender has the right, but not the obligation, to participate in any such proceeding including the right to receive copies of any documents relating to such proceedings.

E. Except as previously disclosed and acknowledged in writing to Lender, Mortgagor and every tenant have been, are and shall remain in full compliance with any applicable Environmental Law.

F. Except as previously disclosed and acknowledged in writing to Lender, there are no underground storage tanks, private dumps or open wells located on or under the Property and no such tank, dump or well will be added unless Lender first consents in writing.

G. Mortgagor will regularly inspect the Property, monitor the activities and operations on the Property, and confirm that all permits, licenses or approvals required by any applicable Environmental Law are obtained and complied with.

H. Mortgagor will permit, or cause any tenant to permit, Lender or Lender's agent to enter and inspect the Property and review all records at any reasonable time to determine (1) the existence, location and nature of any Hazardous Substance on, under or about the Property; (2) the existence, location, nature, and magnitude of any Hazardous Substance that has been released on, under or about the Property; or (3) whether or not Mortgagor and any tenant are in compliance with applicable Environmental Law.

I. Upon Lender's request and at any time, Mortgagor agrees, at Mortgagor's expense, to engage a qualified environmental engineer to prepare an environmental audit of the Property and to submit the results of such audit to Lender. The choice of the environmental engineer who will perform such audit is subject to Lender's approval.

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J. Lender has the right, but not the obligation, to perform any of Mortgagor's obligations under this section at Mortgagor's expense.

K. As a consequence of any breach of any representation, warranty or promise made in this section, (1) Mortgagor will indemnify and hold Lender and Lender's successors or assigns harmless from and against all losses, claims, demands, liabilities, damages, cleanup, response and remediation costs, penalties and expenses, including without limitation all costs of litigation and attorneys' fees, which Lender and Lender's successors or assigns may sustain; and (2) at Lender's discretion, Lender may release this Security Instrument and in return Mortgagor will provide Lender with collateral of at least equal value to the Property secured by this Security Instrument without prejudice to any of Lender's rights under this Security Instrument.

L. Notwithstanding any of the language contained in this Security Instrument to the contrary, the terms of this section shall survive any foreclosure or satisfaction of this Security Instrument regardless of any passage of title to Lender or any disposition by Lender of any or all of the Property. Any claims and defenses to the contrary are hereby waived.

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

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

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

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

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

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B. Mortgagor agrees to maintain comprehensive general liability insurance naming Lender as an additional insured in an amount acceptable to Lender, insuring against claims arising from any accident or occurrence in or on the Property.
C. Mortgagor agrees to maintain rental loss or business interruption insurance, as required by Lender, in an amount equal to at least coverage of one year's debt service, and required escrow account deposits (if agreed to separately in writing), under a form of policy acceptable to Lender.

22. **ESCROW FOR TAXES AND INSURANCE.** Unless otherwise provided in a separate agreement, Mortgagor will not be required to pay to Lender funds for taxes and insurance in escrow.

23. **FINANCIAL REPORTS AND ADDITIONAL DOCUMENTS.** Mortgagor will provide to Lender upon request, any financial statement or information Lender may deem reasonably necessary. Mortgagor agrees to sign, deliver, and file any additional documents or certifications that Lender may consider necessary to perfect, continue, and preserve Mortgagor's obligations under this Security Instrument and Lender's lien status on the Property.

24. **JOINT AND INDIVIDUAL LIABILITY; CO-SIGNERS; SUCCESSORS AND ASSIGNS BOUND.** All duties under this Security Instrument are joint and individual. If Mortgagor signs this Security Instrument but does not sign an evidence of debt, Mortgagor does so only to mortgage Mortgagor's interest in the Property to secure payment of the Secured Debt and Mortgagor does not agree to be personally liable on the Secured Debt. If this Security Instrument secures a guaranty between Lender and Mortgagor, Mortgagor agrees to waive any rights that may prevent Lender from bringing any action or claim against Mortgagor or any party indebted under the obligation. These rights may include, but are not limited to, any anti-deficiency or one-action laws. Mortgagor agrees that Lender and any party to this Security Instrument may extend, modify or make any change in the terms of this Security Instrument or any evidence of debt without Mortgagor's consent. Such a change will not release Mortgagor from the terms of this Security Instrument. The duties and benefits of this Security Instrument shall bind and benefit the successors and assigns of Mortgagor and Lender.

25. **APPLICABLE LAW; SEVERABILITY; INTERPRETATION.** This Security Instrument is governed by the laws of the jurisdiction in which Lender is located, except to the extent otherwise required by the laws of the jurisdiction where the Property is located. This Security Instrument is complete and fully integrated. This Security Instrument may not be amended or modified by oral agreement. Any section in this Security Instrument, attachments, or any agreement related to the Secured Debt that conflicts with applicable law will not be effective, unless that law expressly or impliedly permits the variations by written agreement. If any section of this Security Instrument cannot be enforced according to its terms, that section will be severed and will not affect the enforceability of the remainder of this Security Instrument. Whenever used, the singular shall include the plural and the plural the singular. The captions and headings of the sections of this Security Instrument are for convenience only and are not to be used to interpret or define the terms of this Security Instrument. Time is of the essence in this Security Instrument.

26. **NOTICE.** Unless otherwise required by law, any notice shall be given by delivering it or by mailing it by first class mail to the appropriate party's address on page 1 of this Security Instrument, or to any other address designated in writing. Notice to one mortgagor will be deemed to be notice to all mortgagors.

27. **WAIVERS.** Except to the extent prohibited by law, Mortgagor waives all appraisement and homestead exemption rights relating to the Property.

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

☒ **Construction Loan.** This Security Instrument secures an obligation incurred for the construction of an improvement on the Property.

☐ **Fixture Filing.** Mortgagor grants to Lender a security interest in all goods that Mortgagor owns now or in the future and that are or will become fixtures related to the Property.

☐ **Crops; Timber; Minerals; Rents, Issues and Profits.** Mortgagor grants to Lender a security interest in all crops, timber and minerals located on the Property as well as all rents, issues and profits of them including, but not limited to, all Conservation Reserve Program (CRP) and Payment in Kind (PIK) payments and similar governmental programs (all of which shall also be included in the term "Property").

☐ **Personal Property.** Mortgagor grants to Lender a security interest in all personal property located on or connected with the Property, including all farm products, inventory, equipment, accounts, documents, instruments, chattel paper, general intangibles, and all other items of personal property Mortgagor owns now or in the future and that are used or useful in the construction, ownership, operation, management, or maintenance of the Property (all of which shall also be included in the term "Property"). The term "personal property" specifically excludes that property described as "household goods" secured in connection with a "consumer" loan as those terms are defined in applicable federal regulations governing unfair and deceptive credit practices.

☐ **Filing As Financing Statement.** Mortgagor agrees and acknowledges that this Security Instrument also suffices as a financing statement and any carbon, photographic or other reproduction may be filed of record for purposes of Article 9 of the Uniform Commercial Code.

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

☒ **Line of Credit.** The Secured Debt includes a revolving line of credit provision. Although the Secured Debt may be reduced to a zero balance, this Security Instrument will remain in effect until released.

☐ **Agricultural Property.** Mortgagor covenants and warrants that the Property will be used principally for agricultural or farming purposes and that Mortgagor is an individual or entity allowed to own agricultural land as specified by law.

☐ **Separate Assignment.** The Mortgagor has executed or will execute a separate assignment of leases and rents. If the separate assignment of leases and rents is properly executed and recorded, then the separate assignment will supersede this Security Instrument's "Assignment of Leases and Rents" section.

☐ **Additional Terms.**

DT _____ _____

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

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

Entity Name: THORCO, INC.

(Signature) DENNIS THORNTON, PRESIDENT (Date)

(Signature) DONNA THORNTON, SECRETARY/TREASURER (Date)

(Signature) (Date)

(Signature) (Date)

ACKNOWLEDGMENT:

(Individual)

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

_____
(Signature of Notarial Officer)

_____
(Name - typed, stamped, or printed)

_____
(Title and Rank)

_____
(Residing at)

My Commission Expires: _____

(Business or Entity Acknowledgment)

STATE OF MONTANA, COUNTY OF FLATHEAD } ss.
This instrument was acknowledged before me this 19TH day of MARCH, 2009
by DENNIS THORNTON, PRESIDENT; DONNA THORNTON, SECRETARY/TREASURER
(Title(s))
of THORCO, INC. (Name of Business or Entity)
a MONTANA CORPORATION on behalf of the business or entity.

TRACY A. SMITH NOTARIAL SEAL STATE OF MONTANA

(Signature of Notarial Officer)

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

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

COLUMBIA FALLS
(Residing at)

My Commission Expires: OCT 13, 2012

SCHEDULE C
PROPERTY DESCRIPTION

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

The North Half of the Northwest Quarter of the Northwest Quarter (N½NW¼NW¼); the South Half of the Northwest Quarter of the Northwest Quarter (S½NW¼NW¼); the North Half of the Northeast Quarter of the Northwest Quarter (N½NE¼NW¼); the South Half of the Northeast Quarter of the Northwest Quarter (S½NE¼NW¼); the North Half of the Southeast Quarter of the Northwest Quarter (N½SE¼NW¼); the South Half of the Southeast Quarter of the Northwest Quarter (S½SE¼NW¼); the North Half of the Southwest Quarter of the Northwest Quarter (N½SW¼NW¼); the South Half of the Southwest Quarter of the Northwest Quarter (S½SW¼NW¼), all in Section 28, Township 27 North, Range 21 West, M.P.M., Flathead County, Montana.

AND

The North Half of the Northwest Quarter of the Southwest Quarter (N½NW¼SW¼) and the South Half of the Northwest Quarter of the Southwest Quarter (S½NW¼SW¼) of Section 28, Township 27 North, Range 21 West, M.P.M., Flathead County, Montana.

AND

The North Half of the Southwest Quarter of the Northwest Quarter (N½SW¼NW¼); the South Half of the Southwest Quarter of the Northwest Quarter (S½SW¼NW¼); the North Half of the Northwest Quarter of the Southwest Quarter (N½NW¼SW¼); the South Half of the Northwest Quarter of the Southwest Quarter (S½NW¼SW¼); the North Half of the Southwest Quarter of the Southwest Quarter (N½SW¼SW¼) all in Section 27, Township 27 North, Range 21 West, M.P.M., Flathead County, Montana.

AND

The North Half of the Northeast Quarter of the Southwest Quarter (N½NE¼SW¼); the South Half of the Northeast Quarter of the Southwest Quarter (S½NE¼SW¼); the North Half of the Southeast Quarter of the Southwest Quarter (N½SE¼SW¼); the South Half of the Southeast Quarter of the Southwest Quarter (S½SE¼SW¼); the North Half of the Northwest Quarter of the Southeast Quarter (N½NW¼SE¼); the South Half of the Northwest Quarter of the Southeast Quarter (S½NW¼SE¼); the North Half of the Southwest Quarter of the Southeast Quarter (N½SW¼SE¼) and the South Half of the Southwest Quarter of the Southeast Quarter (S½SW¼SE¼) all in Section 27, Township 27 North, Range 21 West, M.P.M., Flathead County, Montana.

AND

The Southeast Quarter of the Northwest Quarter (SE¼NW¼) of Section 27, Township 27 North, Range 21 West, M.P.M., Flathead County, Montana.

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.

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 07

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& Associates Inc.
Atlanta Office: 2915 Creek Tree Lane, Cumming GA 30041
Telephone: 678.613.1060 FAX: 770.205.4276
AllenCarver@Mindspring.com www.allencarver.com

Re: *WHITEFISH CREDIT UNION, Plaintiff vs.THORCO INC., a Montana corporation, DENNIS THORNTON, DONNA THORNTON and JOHN DOE(s) 1-10. Defendants; Counter claimants vs. WHITEFISH CREDIT UNION, and JOHN DOE(s) 1 – 10 Counter-Defendants. Cause No. DV-12-174B, MONTANA ELEVENTH JUDICIAL DISTRICT COURT, FLATHEAD COUNTY*

EXPERT REPORT OF ALLEN CARVER

Prepared for counsel for
THORCO INC., a Montana Corporation, DENNIS THORNTON, DONNA THORNTON, and JOHN DOES (s) 1 - 10

November 8, 2013

EXPERT REPORT OF ALLEN CARVER

Scope and Purpose of Engagement:

I was retained by counsel for THORCO INC., a Montana Corporation, DENNIS THORNTON, DONNA THORNTON, AND JOHN DOE(S) 1 – 10. ("Thorntons") in the above-referenced lawsuit to review, opine and, if called upon to do so, provide expert testimony regarding whether Whitefish Credit Union Association ("Whitefish"), a Federally insured credit union chartered under the laws of the State of Montana, committed a Breach of a Written Contract involving the loaning of money to finance a Thornton land development project. I have not previously performed any expert work or consulting services for Thornton or its counsel. I am being compensated at my standard hourly rate and no part of my compensation is dependent on the outcome of the lawsuits.

Professional Experience:

I am the principal of Allen Carver & Associates, Inc., a consulting firm located in Cumming, Georgia, (Atlanta) which I founded in 1998. Allen Carver & Associates' work relates exclusively to advising and consulting with credit union clients, or other clients on matters involving credit union-related matters, throughout the country. I also have provided expert witness testimony relating to credit union issues. I have never been precluded by a court from giving expert testimony. Our Firm has broad experience, among other things, in assisting clients in preparing regulatory filings for mergers, charter changes and conversions, reviewing member business loan portfolios and various regulatory issues. Detailed information about our Firm can be found at www.allencarver.com, which I incorporate as part of this report.

Prior to starting Allen Carver & Associates, Inc., I spent 33 years with the National Credit Union Administration ("NCUA") beginning in 1965. NCUA is the federal regulatory agency responsible for administering the federal deposit insurance program for Federally insured credit unions. For sixteen of those years, I was NCUA Regional Director in Atlanta and Chicago. For over 20 years, I was NCUA's Task Force Director for all chartering (including community charters), field of membership and merger policy revisions. I received numerous awards while at the NCUA, including the Presidential Meritorious Executive Award from President George Bush. I have testified before Congress, spoken at numerous national credit union meetings and conferences relating to credit unions.

Through my work with NCUA, and later as a consultant, I have developed broad expertise regarding NCUA's rules, practices, procedures and credit union oversight. For the last 15 years our Firm, Allen Carver and Associates, Inc., has provided management assistance, developed and facilitated strategic planning activities and developed and provided documentation. In some instances, our Firm provided interim management including providing staff to perform functions including but not limited to Chief Executive Officers and Chief Financial Officers. Our Firm has conducted many reviews of credit union policies and procedures. Our Firm has been accepted by NCUA to conduct reviews of credit union Member Business Loan Portfolios ("MBL") and we have reviewed such portfolios nationwide when called upon.

I am a graduate of Virginia Commonwealth University in Richmond, Virginia with a B.S. degree in Accounting. I also attended the John F. Kennedy School of Government at Harvard University in 1989.

Materials Reviewed/Interviews:

In preparing for this engagement and rendering the opinions described below, I was provided various written case materials by counsel for the Thorntons. Those written materials, along with others that I reviewed and considered, are set forth in Attachment A.

Background:

Credit Unions

Credit unions are member (customer) owned financial cooperatives. They provide an opportunity for persons of average means or less to build savings, receive loans for provident and productive purposes in a cooperative environment that many times reduces the interest costs to the members and provides for greater dividends on their savings versus other financial institutions.

As of September 30, 2013 there are approximately 6,600 credit unions in the United States with total assets of $1.05 trillion. . Individually the three largest banks in the United States have more assets than the entire credit union industry. About one-third of all credit unions are "mom and pop" operations with under $10 million in assets.
Large credit unions, defined as with assets exceeding $500 million are more sophisticated offering a full range of products and services one would expect from a similar size local community bank.

While credit unions primarily serve the savings and consumer borrowing needs of members, they are allowed to make a limited amount of Member Business Loans.
In addition, each credit union making Member Business Loans must have staff expertise and procedures in place or utilize outside third-parties meeting those requirements. Requirements and restrictions for making Member Business Loans are contained in Section 107A of the Federal Credit Union Act and Part 723 of the NCUA Rules and Regulations. Member Business Loans may not exceed the lessor of 1.75 times net worth or 12.5% of each credit union's assets. In recent years the common denominator found in several large troubled credit unions involved them having loan portfolios

holding Member Business Loans. Within the last several years two large credit unions, Arrowhead Federal Credit Union (California) and Texans Credit Union (Texas) with large troubled Member Business Loan Portfolios were placed into Conservatorship by the National Credit Union Administration.

Please note for the purposes of this Expert Witness Report that the terms, Commercial Loans, Business Loans, Development Loans and Member Business Loans are all used interchangeably.

Whitefish Credit Union Association

Whitefish Credit Union Association "Whitefish" is a State of Montana chartered credit union whose deposits are insured by the National Credit Union Administration "NCUA", a Federal regulatory agency.

According to Call Reports filed with the NCUA, as of September 30, 2013, Whitefish was reported to be Montana's largest credit union with 56,527 members, assets of $1.2 billion dollars and a branching structure of six offices that allowed them to service persons residing in Sanders, Flathead, Lake or Lincoln counties or within 50 miles of Whitefish. It is believed that Whitefish is one of the largest 250 credit unions in the United States. Those Call Reports show Whitefish engaged in potentially high risk Member Business Loan Activities that increased dramatically from $63 million as of March 31, 2003 to $317,320,126 as of March 31, 2009. Douglas Johnson, Whitefish's Vice President Member Business Loan Officer, incorrectly stated the Member Business Loan portfolio peaked at $305 million. As of March 31, 2009, Member Business Loans represented 28.5% of Whitefish's assets with the regulatory limit being 12.5%. Since

Whitefish is classified as a limited income credit union, the regulatory limit on member business loans can be waived. However, such a dramatic increase in Member Business Lending came with increased regulatory concerns and oversight from the NCUA and Montana Division of Banking and Financial Institutions. Other documents clearly showed that Whitefish was having major operational issues including failure to properly underwrite, document and monitor MBL activity. Charlie Abell, Whitefish's long time Chief Executive Officer resigned and was replaced by Jim Kenyon in September 2009 (Deposition of Kenyon page 8). When Whitefish's Board of Directors hired Mr. Kenyon, they mandated that he "take care" of problems with loans, delinquent loans, but especially development type or commercial loans (Kenyon deposition page 23). The Board enacted a policy in 2009 of not loaning any more money on development loans until circumstances were worked out that were causing a problem. (Underline added for emphasis) (Deposition of Randy Cogdill Page 20). It was disclosed that newly hired CEO Kenyon perhaps went beyond the Board's policy and said that there was a new policy adopted by him and followed by the credit union regarding this no new lending on ongoing development loans (underline added for emphasis). (Deposition of Randy Cogdill Page 24). During the same time, regulatory examiners showed a shift and discouraged any spec. home financing and subdivision financing (Deposition of Randy Cogdill Page 22). It is important to note that borrowers with Member Business Loans were not notified by Whitefish that they would not be loaning any more money on development loans, including existing loans (Deposition of Randy Cogdill Pages 24 and 25.) even though Whitefish's Loan Modification Guidelines dated March 4, 2010 required among other things that approximately two months prior to the balloon due date, a computer generated notice is mailed to the borrowers. The lack of such notification certainly violated usual and customary standards in the business lending

community. The only reasons I can give that Whitefish failed to notify their Member Business Loan borrowers is that Whitefish wanted to retain the loans and their related interest income as long as possible, which was contra to their policy of attempting to reduce their Member Business Loans, or Whitefish staff wanted to delay having a confrontation with Member Business Loan borrowers when they informed them Whitefish was not going to provide any additional funding.

Member Business Loan activity started to diminish, due to Whitefish's Board of Directors' mandate to Mr. Kenyon, and Mr. Kenyon's policy that was perhaps more restrictive than the Board's policy and perhaps in part, as a result of regulatory concerns. Member Business Loans were reduced to $275 million as of March 31, 2011 and had declined further to $193 million as of September 30, 2013. Unless indicated otherwise, all financial information is from Whitefish Call Reports filed with the NCUA.

(The remainder of this page was intentially left blank)

THORCO, INC, DENNIS THORNTON AND DONNA THORNTON MEMBER BUSINESS LOAN:

THORNTONS

Dennis Thornton and Donna Thornton "Thorntons" had many years of successful timber sales and harvesting and previous positive experiences in land development. In many instances these projects required the borrowing of large sums of money. There is no indication that the Thorntons had ever experienced any difficulties in repaying such prior loans.

At some point in time, the Thorntons borrowed funds from Interstate Bank. The loan was eventually moved to Glacier Bank. In March 2009 Glacier Bank's Vice President Commercial Lending Pete Davis contacted Douglas Johnson, Whitefish's Vice President Member Business Loan Officer, and inquired as to whether Whitefish would be interested in taking over one of their commercial loans. Mr. Davis walked the Glacier Bank's file covering the Thornton's loan to Whitefish. In conversations with Mr. Johnson, Glacier Bank's Pete Davis and Bill Paullin, in charge of Glacier Bank's construction loans, both gave the Thorntons a positive reference regarding their "excellent credit and an excellent relationship with Glacier Bank." In retrospect, for whatever reason(s) Glacier Bank wanted the Thorntons loan off their books and Whitefish was a likely financial institution to take their loan. Whitefish staff was so anxious to make the Thornton's loan that they did not order a new appraisal and did not even interview the Thorntons face to face as required by Whitefish's Lending Policies Version 3.7. It is not known if other requirements of Whitefish's Lending Policies were ignored. Even if Whitefish had followed each and every requirement of their lending

policies there is no indication that there were any reasons for them to not grant the Thornton's loans.

In subsequent conversations with Whitefish, the Thorntons conveyed their strong feelings that they wanted approval of a loan totaling $7.2 million, an amount that would pay off the Glacier Bank loan and leave sufficient funding to complete the development. Doug Johnson indicated that he wish he had known that Thorntons wanted $7.2 million approved because he could have gotten the Thornton's the full amount. For whatever reason, Johnson was hesitant to go back to the appropriate committee and satisfied the Thorntons' concerns about financing to complete the project with a verbal commitment to provide sufficient funding to finance the entire project (Deposition of Dennis Thornton pages 223 – 224). With that commitment the Thorntons continued their discussions with Whitefish. Mr. Johnson then indicated he wanted additional collateral in addition To the current development property. The Thorntons then put up 200 acres as additional collateral, but with the stipulation that Whitefish would subordinate their lien up to $500,000, if the Thorntons needed money for other purposes (Douglas Johnson deposition Page 30). In a letter dated March 21, 2009 printed on Whitefish letterhead and signed by Douglas Johnson, Whitefish's Vice President Member Business Loan Officer, who was empowered to commit Whitefish to the general terms of the financing Arrangement, contained in the letter which included amount other terms, Subordination Agreement: Whitefish Credit Union will subordinate its first lien position on the 200 acre tract up to an amount of $500,000 without additional committee approval for income producing projects undertaken by the borrower.

Thorntons were granted a MBL on or about March 15, 2009 with the full understanding that additional funds would be provided by Whitefish to complete the project and with a subordinaton agreement that would allow the Thorntons to borrow up to $500,000 on that property as needed for income producing projects undertaken by the borrower (Thorntons) without additional committee approval at Whitefish and Whitefish would subrogate their lien to such a transaction.

It is important to note that this loan was disbursed prior to regulatory pressure to cease making such loans (Deposition of Douglas Johnson page 27) and appears to have been prior to the Board's policy not to advance any new funds to Member Business Loans until circumstances were worked out that were causing a problem.

Within months of the Thorntons receiving their loan, the Whitefish Board enacted a policy later in 2009 of not loaning any more money on development loans until circumstances were worked out that were causing a problem. (Deposition of Randy Cogdill Page 20) Newly hired CEO Jim Kenyon adopted perhaps a more restrictive policy of no additional money to Member Business Loans (Deposition of Randy Cogdill deposition Page 24). As mentioned earlier in this report, it is important to note that borrowers with Member Business Loans, including the Thorntons (Deposition of Jim Kenyon Page 14), were not notified by Whitefish that they would not be loaning any more money on development loans, including existing loans (Deposition of Randy Cogdill Page 24.) For whatever reason Whitefish did not want Member Business Loan borrowers to know that they were cutting off their loans! Had Whitefish notified the Thorntons in late 2009 that they would no long advance any additional money when

their loan that would become due on or around March 15, 2011, the Thorntons could have sought financing from other sources at a time when their loan was current and the property was being actively developed. As late as 2011 Whitefish CEO Jim Kenyon reported that the property, "had great views. Also, as I said, that it was very well-groomed. I mean there wasn't anything out of place. It was a gorgeous piece of property" (Deposition of Jim Kenyon page 42).

As the Thornton's original loan matured on or about March 15, 2011, Whitefish staff never contacted the Thorntons. Not only did Whitefish never contact the Thorntons, but as the maturity date neared the Thorntons were unsuccessful in getting Whitefish staff to return calls or emails requesting a meeting (Deposition of Dennis Thornton page 35). It was also reported that Whitefish staff blocked the Thornton's emails from being received at Whitefish (Deposition of Dennis Thornton page 34). It was only after the Thorntons communicated to Whitefish's CEO Jim Kenyon, on the advice of their Counsel, that they were coming to the Whitefish headquarters and would sit in the office until he met with them, were they successful in meeting with the CEO of Whitefish.

It is important to note that even with a self declared net worth of $22,980,000 the Thorntons were eventually unable to secure financing (Deposition of Jim Kenyon pages 86 and 87).

The Thorntons had complied with all of their obligations in their dealings with Whitefish, (Deposition of Douglas Johnson Page 18).

Apparently Whitefish had an appraisal done of the development which failed to give any value to the improvements that had been made over the last several years. It was estimated by Dennis Thornton that the development was approximately 85% complete (Deposition of Dennis Thornton page 31).

Not only was Whitefish not notifying Member Business Loan borrowers of its policy not to advance any new money on such projects, but apparently Whitefish's Member Business Loan Department was having additional operational issues as shown by CEO Jim Kenyon and other staff not being aware of the subordination agreement contained in the Letter dated March 11, 2009 from Whitefish Credit Union's Vice President Member Business Loan Officer Doug Johnson to the Thorntons that contained the general terms of the financing arrangements including the Subordination Agreement.(Deposition of Jim Kenyon pages 97 and 98). Mr. Thornton's attorney furnished Whitefish a copy of the subordination agreement. While the subordination agreement called for up to $500,000 in additional working capital for addition income producing projects without further approval from Whitefish, (underline added for emphasis) the Thorntons went above and beyond the requirements of the subordination agreement and traveled to North Dakota and commenced to explore additional project(s) that could have proven to be extremely profitable. Each and every proposed project was dismissed by Whitefish.

Not only was Whitefish not loaning any additional money, they were not willing to honor their subordination agreement. Whitefish clearly committed not only a verbal agreement to finance the entire project to a total of approximately $7 million, but also committed a Breach of a Written Contract involving the loaning of $500,000 and

subordination of their lien as shown in the March 11, 2009 Whitefish letter outlining the general terms of the financing agreement signed by Doug Johnson, Vice President, Member Business Loan Officer. Suddenly Whitefish demanded a Marketing Plan for the development that was at least several years before completion (Deposition of Jim Kenyon page 79). Whitefish is another example of a large credit union getting involved in relatively large member business loans, not knowing what they were doing and then suddenly cutting the borrowers off at the knees by failing to provide agreed upon financing, totally disregarding the disastrous financial impact on commercial loan borrowers, their projects and employees.

The Whitefish Board of Directors, CEO Jim Kenyon and the regulators dictates not to advance any funding to Member Business Loans did NOT allow Whitefish and its staff to violate usual and customary commercial lending procedures and existing legally binding written contracts and agreement and, in some instances, binding verbal commitments and agreements. Whitefish should have sought legal advice from their counsel and worked with the regulators to develop workout plans that would comply with all legal requirements while at the same time eventually leading to the desired reductions in Whitefish's commercial loan portfolio. An orderly planned approach over time could have been developed that met all existing legal obligations and would eventually reduce Whitefish's Member Business Loan portfolio to within the limits desired by Whitefish and the regulators. To hide behind the regulatory dictate is very amateurish. Whitefish is a billion dollar asset credit union and should have conducted their business accordingly.

As time passed the Thorntons, without the ability to obtain additional funding from Whitefish, naturally became "delinquent" on their loan and were unsuccessful in refinancing the loan elsewhere. In a letter dated October 25, 2011 the Thorntons wrote to Mr. Pete Davis, Vice – President of Commercial Loan Department Glacier Bank requesting a working capital line of credit union for $500,000 secured by the 200 acres on Boon Road that Whitefish was legally bound to subordinate their lien. In a letter dated November 9, 2011 from Pete Davis the Thorntons were informed Glacier Bank was unable to grant the Thornton's request for a $500,000 line of credit. In the Statement of Credit Denial, Termination, or Change for Business Credit three principal reasons were given for the Credit Denial (Inadequate business sales and/or earnings history, Lack of established earnings record and Uncertainty over situation at WFCU regarding large subdivision loan and how that could impact future debt servicing requirement).

As mention earlier, as late as 2011 Jim Kenyon reported that the property, "had great views. Also, as I said, that it was very well-groomed. I mean there wasn't anything out of place. It was a gorgeous piece of property" (Deposition of Jim Kenyon page 42). In a self fulfilling prophecy, without the funds, the project eventually fell into disrepair and suddenly Whitefish sent experts to the development and reported back that the stone walls and roads were deteriorating and were not built to industry standards.

In summary, it is my professional opinion based on my 48 years in the credit union industry (33 years as a regulator and 15 years as a consultant), that Whitefish clearly committed and violated not only a verbal agreement to finance the entire

Thornton project to a total of approximately $7 million, but also committed a Breach of a Written Contract involving the loaning of $500,000 and subordination of their lien as shown in the March 11, 2009 Whitefish letter outlining the general terms of the financing agreement signed by Doug Johnson, Whitefish's Vice President, Member Business Loan Officer to the Thorntons and usual and customary procedures dealing with Member Business Loans. As a large billion dollar asset credit union, the Whitefish Board of Directors and Senior Staff knew or should have known how to reduce their Member Business Loan Portfolio. No doubt their handling of this issue created unnecessary financial hardship for impacted borrowers, such as the Thorntons, their employees and the inability of these borrowers to enjoy the profits that a fully completed development would have provided.

I reserve the right to supplement this opinion as new information may become available.

Allen Carver

ATTACHMENT A

In addition to drawing on my own professional experience and training, I have reviewed the following documents as related to Whitefish Credit Union (WCU) vs Thorco, Inc.et al:

Defendants' Amended Answer and Counter Claim to Plaintiff's Complaint for Foreclosure

Deposition of Jim Kenyon

Deposition of Randy Cogdill

Deposition of Douglas Johnson

WCU Redacted Board Meetings Minutes 2.18.09, 2.24.09, 4.10.09, 5.19.09, 5.28.09, 6.17.09, 4.20.10, 5.19.10, 6.16.10

Emails to/from Attorneys Rich DeJana and Ryan Purdy: 8.10.11, 8.11.11, 8.17.11, 8.18.11 DeJana (Thornton) and Purdy (WCU). 9.19.11, 9.20.11, 9.29.11, 9.30.11, 10.19.11, 1.4.12, 1.19.12.

WCU Allowance for Loan Loss Policy (Board approved 7.20.11)

WCU Collection Guidelines (Revised 9.20.10)

WCU Collection Guidelines (Revised 2.16.11)

WCU Consumer Lending Policy (Dated 1.20.10)

WCU Consumer Lending Policy (Board approved 6.22.11)

WCU Consumer Lending Program General Guidelines (Dated 1.20.10)

WCU Consumer Lending Program General Guideline modification notes (undated)

WCU Consumer Loan (Non-Real Estate) Procedure (Dated 1.27.10), Foreclosure/OREO Procedure (Dated 6.22.10) WCU Member Business Loan (MBL) Procedures (Version 3.7) WCU MBL Procedures undated

WCU General Statement 1. Loan Application Process.

WCU Member Business Loan Policy (Revised 6.17.09)

WCU Member Business Loan Policy (Board approved 6.22.01)

WCU Loan Modification Guidelines (Dated 3.4.10)

WCU Loan Policy (Revised 4.15.09)

WCU Loan Policy (Revised 5.20.09)

WCU Real Estate Loan Guidelines 2.9.10

WCU Loan Policy (Board approved 12.14.11)

WCU Real Estate Procedure (Dated 9.20.10)

WCU Real Estate Lending Policy (Dated 2.16.11).

WCU Reviewed Google Scholar Recent Delta Community CU Similar Lawsuit.

Letter from Attorney Manley to Allen Carver dated June 14, 2013

WCU Commitment Letter of March 11, 2009 (Includes Subordination Agreement)

WCU Promissory Note of March 16, 2009 and Real Estate Mortgage on 200 acres March 3.10.2009, Guaranty Agreement March 19, 2009

Deposition of Dennis Thornton

James Manley, attorney Thorntons' Motion for Partial Summary Judgment prepared in October 2013.

Disclosure List of Defendant's Expert Witnesses

WCU Call Reports sent to the National Credit Union Administration effective dates March 31, 2003, March 31, 2006, March 31, 2009, March 31, 2011 and September 30, 2013.

Letter dated October 25, 2011from Dennis Thornton in his capacity as President of Thorco, Inc. to Pete Davis, Vice-President, Commercial Loan Department of Glacier Bank.

Letter dated November 9, 2011 from Peter J. Davis, VP/Commercial Loan Department to Thorco, Inc.

Statement of Credit Denial from Glacier Bank dated November 9, 2011to Thorco, Inc.

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RESUME

Mr. Carver retired after a 34 year career with the National Credit Union Administration. Sixteen years of his career were spent as Regional Director in Atlanta and Chicago. For over 20 years Mr. Carver was NCUA's Task Force Director for all chartering (including community charters), field of membership and merger policy revisions. Allen testified before Congressional committees and spoke at numerous national credit union meetings.

A graduate of Virginia Commonwealth University in Richmond, Virginia, Mr. Carver has a B.S. degree in Accounting. He attended the John F. Kennedy School of Government at Harvard University. Allen was NCUA's most highly decorated staff person having received numerous awards including the Presidential Meritorious Executive Award from President George Bush and is the only recipient of NCUA's Excellence Award

Allen formed his Consulting Firm in 1998 and employs former regulatory chartering and merger experts. His Firm has completed over 300 community proposals. All proposals including charter conversions (Federal to State, State to Federal), single cities and counties or multiple counties involving millions of people and underserved communities were approved by regulators.

Allen also has extensive experience involving credit union mergers. While at NCUA it is estimated that Allen processed and approved over 1,600 mergers. Allen's Firm has completed over 300 mergers. Mr. Carver facilitated the three largest mergers recently. His Firm handles mergers of all size of credit unions including those with relatively small assets.

Allen's firm handles sales and purchases involving branches, shares and loans.

Allen frequently serves as an expert witness in credit union related court cases.

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Work Experience

National Credit Union Administration (1965 – 1998). Last sixteen years Regional Director Atlanta and Chicago

Allen Carver and Associates, Inc. (1998 – Present)

Awards

Meritorious Executive Presidential Rank Award presented by President George Bush 1989

National Credit Union Administration Meritorious Executive Award 1996. At time of Mr. Carver's retirement he was only recipient of that award.

Education

Virginia Commonwealth University Graduated Upper Quarter of Class 1965

Attended John F. Kennedy School of Government at Harvard University 1989

Conducted Seminars

Credit Union National Association – Annual Nationwide Meetings

National Association of Federal Credit Unions – Annual Nationwide Meetings

State Credit Union Trade Associations
Alabama, Arkansas, California, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Mississippi,

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Trade Associations (Continued)

Missouri, Montana, North Carolina, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Wisconsin.

American Institute of Certified Public Accountants – Several Meetings

United States Department of Defense Credit Union Annual Meetings

RSMcGladrey CPA Firm – Several Meetings

Orth, Chakler, Murnance & Company CPA Firm – One Meeting

O'Rourke Sacher & Moulton CPA Firm – Over Ten Meetings

Reinsel, Kuntz & Lesher CPA Firm – One Meeting

Attachment B – Expert Witness

Case Prepared Expert Witness Report and Testified

8.6.01
Re: Joseph S. Coey v. Parker. et al.
Second Judicial District Court Cause No. CV-2000-01925
Re: Joseph S. Coey v. New Mexico Educators Federal Credit Union
U. S. District Court Cause No. CIV 00-1613 MV/RLP (ACE)

Cases Prepared Expert Witness Report

4.30.04.
Re: Elizabeth Foster and Jerry Foster v. LOCO Credit Union, et al..
U. S. District Court Cause No. CIV-03-1243 LAM/KBM
CUMIS Claim No. 648023

2.15.08
Thirteen Defendants v American Partners Federal Credit Union, Dorinda M. Simpson, Ann Boone and David Morgan. In the General Court of Justice Superior Court Division 05 CVS 3401 (North Carolina) Prepared Affadivat.
Case related to the National Credit Union Administration Letter to Credit Unions 150

2.28.11
Robert Kross, Mary Kross, Robert Burns, Marcia Burns, and Sharon Dayton v. Belco Community Credit Union, Civil Action 2008-CV-12044-CV

Ronald Benner, Nancy Persuhn and Marjorie L. Bonner v. Belco Community Credit Union, Civil Action 2009-CV-00133-CV

Robert Handley, Holly Handley, Richard Johns, Joan Johns, and Fred Andrew v. Belco Community Credit Union, Civil Action 2006-CV-3217-CV

5.26.11
United States District Court, Southern District of Florida, West Palm Beach Division, Case No. 09-80973-CIV-RYSKAMP – Claudia Schorrig, and Jolene Sullivan, on their own behalf and on behalf of those similarly situated Plaintiffs,

vs. IBM Southeast Employees' Federal Credit Union, Southeast Services Organizations, Inc. and Barry Hughes, Defendants.

1.10.13
CoastHills Federal Credit Union, a Federal Corporation, Plaintiff, v. Atul P. Patel, Defendant, Case No. 9:11-bk-10091-RR, Adversary No.:9:11-AP-01129-RR Chapter 7

4.8.13
Re: Jay W. Preston and Robert F. Erickson, as Trustees for Ronan Telephone Company, Employee Profit Sharing Trust Plaintiffs, v Whitefish Credit Union Association and DOES 1 – 10, Defendants; Montana Twentieth Judicial District Court, Lake County Dept. No 2002 Cause No. DV-11-146

8.22.13
Re: Ben Heyward Plaintiff, v The Credit Union Times Defendant; United States District Court for the District of New Mexico; Complaint, Case No. 1:12-cv-00258 (D.N.M. 2012)

Whitefish Credit Union
vs
Thorco, Inc.et al

Allen Carver Expert Witness Time Log
June 11, 2013

Attached to Billing Statement 11.20.13

2013
Date Time

May – June 10 No Chg.
Numerous conversations and emails with attorneys at Manley Law Firm.

June 11 No Chg. – Received signed Expert Witness Proposal.

June 27 1.0 hour – Conference call Joshua + Jim. Overviewed case and Documents he will send me.

Oct. 22 No Chg. – Brief conversation with Joshua "Josh"Morigeau. Jim Manley becoming judge so Josh will be my contact.

Oct. 22 .75 hours – Updated work experience + expert witness information and prepared email to Josh.

Read, carefully studied, and made notes on the following documents for future use in the development of Expert Witness Report:

Fact: Loan made on or around March 15, 2009 Page 11, Due March 15, 2011 Page 18 Deposition of Douglas Johnson, former Whitefish Credit Union Vice President/Senior Loan Officer Page 5.

Oct. 23 1.25 hours
Defendants' Amended Answer and Counter Claim to Plaintiff's Complaint for Foreclosure

Oct. 23 2.50 hours Deposition of Jim Kenyon –

Oct 23 3.50 hours Deposition of Randy Cogdill

Oct. 24 1.00 hours Deposition of Douglas Johnson

Oct. 24 0.50 hours Redacted Board Meetings Minutes 2.18.09, 2.24.09, 4.10.09 (NCUA + SSA staff coming on site 4.27.09), 5.19.09, 5.28.09, 6.17.09, 4.20.10, 5.19.10, 6.16.10, and Emails to/from Attorneys Rich DeJana and Ryan Purdy: 8.10.11, 8.11.11, 8.17.11, 8.18.11 (comprehensive email from DeJana (Thornton) and Purdy (WCU). 8.19.11, 9.20.11, 9.29.11, 9.30.11, 10.19.11, 1.4.12, 1.19.12.

Oct. 24 1.75 hours Allowance for Loan Loss Policy (Board approved 7.20.11), Collection Guidelines (Revised 9.20.10), Collection Guidelines (Revised 2.16.11), Consumer Lending Policy (Dated 1.20.10), Consumer Lending Policy (Board approved 6.22.11) Boiler plate policy.

Oct. 28 3.0 hours Consumer Lending Program General Guidelines (Dated 1.20.10), Consumer Lending Program General Guideline modification notes (undated), Consumer Loan (Non-Real Estate) Procedure (Dated 1.27.10), Foreclosure/OREO Procedure (Dated 6.22.10) Member Business Loan (MBL) Procedures (Version 3.7) WCU MBL Procedures undated, General Statement 1. Loan Application.

Oct. 29 0.25 hours Two telephone calls with Attorney Josh Morigeau

Oct. 30 1.75 hours Loan Policy (Revised 4.15.09) Loan Policy (Revised 5.20.09), Real Estate Loan Guidelines 2.9.10, Loan Policy (Board approved 12.14.11), Real Estate Procedure (Dated 9.20.10), Real Estate Lending Policy (Dated 2.16.11).

Oct. 30 0.50 hours Telephone call and emails to/from Josh regarding Delta Community CU similar lawsuit settled in 2012. Google Scholar re: lawsuit.

Oct. 30 0.25 hours Letter from Attorney Manley to Allen Carver dated June 14, 2013

Nov. 6 4.5 hours Includes letter, commitment letter, promissory note and mortgage (very poor copy), real estate mortgage, Guaranty, Deposition of Dennis Thornton.)

Nov. 7 0.75 hours James Manley, attorney Thorntons' Motion for Partial Summary Judgment prepared in October 2013.

Nov. 7 0.50 hours Email from Josh Morigeau Plaintiff and Counter-Defendant Whitefish Credit Union's Expert Witnesses Disclosure list of defendant's "Expert Witnesses" plus email back to Josh.

Nov. 7 2.00 hours – Researched the following Whitefish Call Reports sent to the National Credit Union Administration showing date and amount of Member Business Loans: $63 mil. 3.31.03, $216 mil. 3.31.06, $295 mil. 3.31.09, $274 mil. 3.31.11, $193 mil.+ $1.2 billion in assets and 56,527 members 9.30.13.

Nov. 7 2.75 hours "thumbed all documents", developed questions for attorney Josh and made final notes.

Nov. 8 0.25 hours Telephone call with Josh

Nov. 8 1.00 hours (Three Following Documents) Josh sent a Letter dated October 25, 2011from Dennis Thornton in his capacity as President of Thorco, Inc. to Pete Davis, Vice-President, Commercial Loan Department of Glacier Bank

Josh sent a Letter dated November 9, 2011 from Peter J. Davis, VP/Commercial Loan Department to Thorco, Inc

Accompanying the letter was a Statement of Credit Denial from Glacier Bank dated November 9, 2011to Thorco, Inc.

11.9.13 (Sat) 2.00 hours – Working on first draft of Expert Witness Report.

11.11.13 3.00 hours – Continued working on first draft of Expert Witness Report.

11.12.13 1.75 hours – Continued working on first draft of Expert Witness Report.

11.13.13 3.50 hours – Continued working on first draft of Expert Witness Report, developed tracked changes regarding research of Federal Credit Union Act, NCUA Rules and Regulations and comparison of Whitefish MBL totals to Federal Credit Union Act and NCUA Rules and Regulations..

11.14.13 3.00 hours – Final acceptance of tracked changes, scan of entire Document Notebook, reviewed report, ran spell check and sent First Draft with Tracked Changes Accepted to Attorney.

11.15.13 – 11.20.13 1.50 hours – At least three telephone conversations with Attorneys Josh and Mike, reviewed first draft of report with Mike, considered his conversation and prepared SECOND DRAFT Expert Witness Report

44.50 hours Total Hours x $375 = $16,687.50	
Less Previous Paid Retainer	- 6,000.00
Balance Due	$10,687.50

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allencarver@mindspring.com www.allencarver.com

STATEMENT OF SERVICES

McKeon & Morigeau Law, PLLC.
P. O. Box 1558
Polson, MT 59860

November 20, 2013

Case: Whitefish Credit Union v. Thorco, Inc., et al

Per Attached Time Log:

44.50 Hours x $375 Per Hour = $16,687.50

Less: Paid Retainer - 6,000.00

Balance Due $10,687.50

Please make your check payable to Allen Carver & Associates, Inc. and mail to the above address.

Please let us know if you have any questions.

Thank you for retaining our Firm to prepare an Expert Witness Report for the above case.

Allen Carver & Associates, Atlanta Office: 2915 Creek Tree Lane, Cumming GA 30041
678-613-1060 allencarver@mindspring.com

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Justin P. Stalpes
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Ford Elsaesser
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Fax: (208) 263-0759
ford@ejame.com

Attorneys for Defendants and Counter-Claimants

* * * * * * *

MONTANA ELEVENTH JUDICIAL DISTRICT COURT
FLATHEAD COUNTY, MONTANA

* * * * * * *

WHITEFISH CREDIT UNION, Plaintiff, v. THORCO, INC., a Montana Corporation, DENNIS THORNTON, DONNA THORNTON, and JOHN DOES 1-10, Defendants.	Cause No. DV 12-174B **AFFIDAVIT OF ALLEN CARVER**
THORCO, INC., a Montana Corporation,	

DENNIS THORNTON and DONNA THORNTON, Counter-Claimants, v. WHITEFISH CREDIT UNION, and JOHN DOES 1-10, Counter-Defendants.	

STATE OF GEORGIA)
:ss.
County of Forsyth)

I, Allen Carver, being of lawful age and first duly sworn upon oath, depose and state:

1. I am the founding principal of Allen Carver and Associates Inc., an experienced consulting firm dealing exclusively with credit unions nationwide.

2. I have a B.S. in Accounting and attended the John F. Kennedy School of Government at Harvard University in 1989. I have 50 years of professional experience with National Credit Union Administration ("NCUA") regulatory work and private consulting with the credit union industry.

3. For sixteen years, I was NCUA Regional Director in Atlanta and Chicago. For over 20 years, I was NCUA's Task Force Director for all chartering (including community charters), field of membership and merger policy revisions. I received numerous awards while at the NCUA, including the Presidential

Meritorious Executive Award from the President. I have testified before Congress and spoken at numerous national credit union meetings and conferences.

4. I was previously retained as an expert in this litigation to offer opinion testimony on behalf of Defendants and Counterclaimants Thorco Inc., Dennis Thornton and Donna Thornton ("Thorco and Thorntons" herein). Attached hereto as Exhibit 1 is a disclosure dated November 18, 2013, filed by Thorco and Thorntons. A true and correct copy of my report dated November 20, 2013, is attached hereto as Exhibit 2.

5. The facts upon which I rely are set forth in: my report dated November 20, 2013; the affidavit of Dennis Thornton dated December 11, 2013, attached hereto as Exhibit 3; and other evidence in the record, including deposition testimony and documentary evidence.

6. If called upon to do so at trial, I would offer the following opinions:

7. Whitefish Credit Union ("WCU') violated well-established and usual customary procedures in dealing with member business loans, including in connection with its relationship with Thorco and Thorntons.

8. WCU was so eager to make the Somers development project loan to Thorco and Thorntons that it did not order an appraisal or interview the Thorntons and then verbally committed to additional financing without going back to the loan committee for formal approval of the total amount needed to complete the project.

9. In late 2009, within months of disbursing loan funds to Thorco and Thorntons, WCU adopted a policy not to loan any more money on development loans until addressing certain problems with its loan portfolio. Newly hired CEO Jim Kenyon treated this as a prohibition on new lending on ongoing development loans.

10. WCU violated both its own internal standards as well as customary and usual standards in the industry by failing to apprise borrowers, including Thorco and Thorntons, of this change in policy.

11. Had Thorco and Thorntons been informed in late 2009 that WCU would not be financing completion of the Somers development project, they could have taken steps at that time to adjust their business plans, including by not utilizing any additional loan funds, obtaining financing elsewhere, suspending the development, returning to their traditional logging operations, etc.

12. Not advising Thorco and Thorntons about the new policy not to loan additional money on development projects was contrary to standard and common business practice and procedure in the credit union industry.

13. By waiting until the loan matured—and Thorco and Thorntons were thus "delinquent"—to notify them there would be no additional financing, WCU prevented them from finding financing elsewhere, despite the value of the Somers development property.

14. WCU knew or should have known how to reduce its member business loan portfolio appropriately and without injury to borrowers, but it failed to do so.

15. Further, it was commercially unreasonable and a sign of operational deficiencies not to know about or have a plan for honoring the subordination agreement previously negotiated by the borrowers, which would have aided them in securing financing elsewhere.

16. WCU mishandled Thorco and Thorntons' loan, the handling of their file and its personal communications and dealings with them.

17. WCU failed to follow its own lending policies, failed to reasonably communicate with Thorco and Thorntons, and disregarded the consequences to the borrowers, their project, and employees resulting from failure to follow customary commercial lending procedures.

18. Customary and usual industry standards followed by reasonably prudent lenders would have required WCU to:

a. refrain from promising financing through completion of the project without formal approval from the loan committee;

b. more closely monitor its loan officers and their files;

c. notify borrowers upon adoption of the policy that there would be no additional money loaned on outstanding development projects;

d. warn the borrowers in advance of the balloon date that there would be no further financing;

e. use an "as improved" or "as completed" appraisal of the property before denying further financing;

f. manage the financing relationship in a manner that would not cause the borrowers to suffer loss or injury by reason of its negligence;

g. provide accurate information about the prospects for refinancing or additional financing;

h. minimize the confusion and risk to borrowers by providing accurate information and timely responses to inquiries;

i. know about and honor the subordination agreement that might have allowed the borrowers to obtain bridge financing; and

j. refrain from directing the borrowers to invest in business opportunities in North Dakota if WCU was not committed to providing bridge financing.

19. Failure to adhere to these customary industry standards as practiced by reasonable and prudent lenders caused unnecessary hardship to Thorco and Thorntons, depriving them of opportunities to obtain financing elsewhere, suspend the Somers development without spending down the loan, returning to their traditional business operations, etc., and causing damage to their finances, the

Somers development project, their business operations, their credit rating and, ultimately, loss of the value of the equity in the project.

FURTHER AFFIANT SAITH NOT.

Allen Carver

This instrument was signed and sworn to before me, a Notary Public in and for the State of Georgia on October 31, 2015, by Allen Carver.

(SEAL)

KHWAJI JOHNSON
NOTARY PUBLIC
GWINNETT COUNTY, GEORGIA
MY COMMISSION EXPIRES APRIL 24, 2016

Printed Name: Khwaji Johnson

MANLEY LAW FIRM
ATTORNEYS AT LAW

201 Fourth Avenue East
Polson, Montana 59860

James A. Manley
Ann L. Moderie
Joshua Morigeau

Telephone: (406) 883-6285
Telefax: (406) 883-2861

June 14, 2013

Allen Carver
Allen Carver and Associates Inc.
2915 Creek Tree Lane
Cumming, GA 30041

Dear Allen:

Thank you for agreeing to take a look at these cases to see if you can help us sort them out. I am leaving now to drive about 500 miles to watch a grandson play football, but wanted to get this retainer out to you before I leave. I will get you some more information on these cases next week, and perhaps we can talk about your initial thoughts.

Whitefish Credit Union v. McAtee

I am including a brief I filed awhile back. I thought the "Background Facts" section (pages 2-10) would give you a general understanding of the case.

Frankly, this case is so unusual, I am not even sure that your expertise is indicated. Also, we were brought into the case very late, after most of the pleadings were closed, and we are waiting for the Judge's ruling on whether our counterclaims will be allowed. I think the case is illuminating, however, on the way the new credit union officers and their attorneys behave.

Whitefish Credit Union v. Thornton

This case is more straight-forward. Thorntons owned several hundred acres of land and a lot of heavy equipment, and were experienced in land developments. After they had about $1M into a high-end residential development project, their bank asked if it could take the project, for the next phase, to Whitefish Credit Union (WCU), for the balance of the lending. The total project was projected to require a total of $7M to $8M. Our clients agreed, and had extensive meetings with the WCU commercial loan officer, laying out the whole project and the total lending that would be needed. WCU agreed to fund it, took over the underlying $1M debt, and loaned about $2M more. So our

clients owe more than $3M on a short (2 or 3 year) note. Our clients performed as planned, and then it was time for the next phase of lending to finish the project.

Unknown to our clients, some 6-12 months previous, WCU decided it had too many development loans out there, it brought in new management, and decided it would loan no more money on these. But WCU did not tell its customers. It led or let the customers, including the Thorntons, believe WCU still planned to fund the project as originally understood. Thorntons went on plowing money and labor into the project, using up all available funds.

Then WCU informed the Thorntons it would not lend the balance, and filed to foreclose the note and property.

WCU did some other things that were of doubtful propriety. For example, Thorntons owned another 200 acres nearby. According to the initial oral and written agreement, WCU would have a security interest in this property also, but agreed to subordinate its interest to another lender, in the event our clients needed to seek funding elsewhere to do other income-generating work (such as logging, road building, gravel hauling, etc.) to generate funds to live on, continue with this project and pay WCU interest when it came due. After WCU informed Thorntons it was cutting off funding and proceeding to foreclosure, WCU tried to deny and refuse to subordinate, and thereby prevented Thorntons from both seeking funding elsewhere, and generating income to save themselves.

We look forward to working with you, Allen. My associate, Josh Morigeau, is working on this case also, and should be knowledgeable if you call and I am traveling to watch grandchild sporting events.

Sincerely,

Jim

Jim Manley

From: Jim Manley <jimmanleylaw@centurytel.net>
Sent: Tuesday, June 11, 2013 1:25 PM
To: 'Allen Carver'
Subject: RE: Whitefish Matter

Allen – Sorry for the mixup on my end. Your terms are acceptable. I will get the retainer out and an overview or summary of the two cases, then maybe we can talk and see if you think your expertise will be appropriate for one or both of our cases.

From: Allen Carver [mailto:allencarver@mindspring.com]
Sent: Thursday, May 23, 2013 10:30 AM
To: jimmanleylaw@centurytel.net
Subject: FW: Whitefish Matter

Allen Carver
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Cumming, GA 30041
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allencarver@mindspring.com
www.allencarver.com

From: Allen Carver [mailto:allencarver@mindspring.com]
Sent: Thursday, May 16, 2013 9:11 AM
To: 'jimmanleylaw@centurytel.net'
Subject: Whitefish Matter

Jim,

Please confirm receipt of this email.

I enjoyed our informative telephone conversation yesterday.

I hope your medical procedure goes well today.

ttached is my resume.

allencarver@mindspring.com
www.allencarver.com

From: Josh Morigeau [mailto:josh@polsonmtlaw.com]
Sent: Thursday, October 17, 2013 6:24 PM
To: allencarver@mindspring.com
Subject: WCU vs. Thorco.

Good evening Mr. Carver,

The information regarding the WCU vs. Thorco Inc., et al. was sent out today via UPS. Just so you are not confused, I was the associate that spoke with you while I worked for Jim Manley. I have since formed my own law firm, but am still working some of the cases I was on with Jim. Jim is the one who paid your retainer through Manley Law Firm. Jim is up for the position of District Court Judge and may be appointed by the Governor any day. If he is appointed, he is required by law and ethical rules from practicing law. That is why we have the same people involved, just under different entities. We look forward to speaking with you soon. The tracking number for the UPS package is 1Z56333XPW21840962. Thank you and have a great weekend.

Joshua C. Morigeau

McKeon & Morigeau Law, PLLC.

PO Box 1558

Polson, MT 59860

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notify the sender by return email that you have received the communication in error. Thank you.

RE: WCU vs. Thorco.

From: **Allen Carver** (allencarver@mindspring.com)
Sent: Tue 10/22/13 12:20 PM
To: 'Josh Morigeau' (josh@polsonmtlaw.com)
2 attachments
Whitefish CU Matter v Thorco, Inc., et. al CU Work Related Background 10.22.13.doc (41.5 KB) , Whitefish CU Matter v Thorco, Inc., et.al. Attachment B Previous Expert Cases 10.22.13.docx (14.0 KB)

Josh,

I enjoyed talking with you today.

The two attachments are what I usually prepare on expert witness engagements. Please let me know if they do not meet your needs.

If you want to send me that "Latin name" for my witness experiences I would be pleased to retitle the attachment.

Please just let me know.

Many thanks.

Allen Carver

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Atlanta Office:
2915 Creek Tree Lane
nming, GA 30041
Telephone: 678-613-1060
Fax: 770-205-4276

RE: WCU/Thorco

rom: **Allen Carver** (allencarver@mindspring.com)
Sent: Wed 10/30/13 2:56 PM
To: 'Josh Morigeau' (josh@polsonmtlaw.com)

Josh,

I am told by my attorney that the "expert witness report" is the property of the attorney that I provided the report to. The case was named as follows and the attorney with her address and email address is shown below. I apologize for not having her telephone number. Please let me know if I can assist in any way.

Trustees for the Ronan Telephone Company

Employees Profit Sharing Plan ("the Client")

C/O

Jenny M. Jourdonnais, Attorney

Garlington, Lohn & Robinson, PLLP

350 Ryman Street

Missoula, MT 59807-7909

nny M. Jourdonnais jmjourdonnais@GARLINGTON.COM

Allen Carver

Allen Carver & Associates Inc.

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915 Creek Tree Lane
Cumming, GA 30041
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allencarver@mindspring.com
www.allencarver.com

From: Josh Morigeau [mailto:josh@polsonmtlaw.com]
Sent: Tuesday, October 29, 2013 5:29 PM
To: allencarver@mindspring.com
Subject: WCU/Thorco

Allen, I was wondering if it would be possible to get your deposition and expert report from the Ponzi Scheme case you worked on up here that Whitefish Credit Union was involved in? If you do not have them, I wonder if my best option would be to contact the counsel you worked with? Thank you.

Joshua C. Morigeau

McKeon & Morigeau Law, PLLC.

PO Box 1558

Polson, MT 59860

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communication contains confidential and/or privileged information intended only for the addressee. If you have received this communication in error, please call me immediately at (406) 883-6285. Also, please immediately notify the sender by return email that you have received the communication in error. Thank you.

RE: WCU Expert Witness Disclosure

rom: **Allen Carver** (allencarver@mindspring.com) This sender is in your safe list.
Sent: Thu 11/07/13 8:10 AM
To: 'Josh Morigeau' (josh@polsonmtlaw.com)

Josh,

I apologize for not responding sooner. I was out Monday due to very minor surgery. Everything is okay!

In response to your question below, the following is my take on their "expert witnesses."

Remembering that the issue is that Whitefish Credit Union "WCU" broke all inds of standard practices in denying additional funding, but in particular ıgnoring the subordination agreement to the Thorntons.

- **Lloyd Barrie – Appraiser – WCU relied on file from Glacier Bank and did not get their own appraisal. I don't recall anyone at WCU claiming to not loaning additional funds because of the development's value. Not relevant.**

- **Gary Quinn – Structural Engineer – October 30, 2013 letter to Attorney Frampton. Hired to inspect "rockery walls". I don't recall anyone at WCU claiming to not loaning additional funds because of the condition of the "rockery walls." Not relevant.**

- **Marc Vert – Retaining Wall Contractor – See # 2.**

- **Taylor Horst – Chief Lending Officer – Resume indicates somewhat impressive work experience related to lending. Once again, how does he get around the**

subordination agreement and the stalling and misleading actions of WCU staff. He was not employed at WCU when the Thornton's lending issues occurred.

Except for Taylor Horst I don't see the relevance of the appraised value, condition of roads and walls as I do not remember those being issues supporting the loan denial from WCU.

Please let me know whenever you have any questions.

Allen Carver

Allen Carver & Associates Inc.

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Fax: 770-205-4276
allencarver@mindspring.com
www.allencarver.com

From: Josh Morigeau [mailto:josh@polsonmtlaw.com]
Sent: Monday, November 04, 2013 12:58 PM
allencarver@mindspring.com
Subject: FW: WCU Expert Witness Disclosure

Good morning, Mr. Carver. Attached is Whitefish Credit Union's expert witness disclosure. We are sending to see if you have any thoughts on their experts on standard of care in credit unions. Thank you.

Joshua C. Morigeau

McKeon & Morigeau Law, PLLC.

PO Box 1558

Polson, MT 59860

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From: michael@polsonmtlaw.com
To: josh@polsonmtlaw.com
Subject: WCU Expert Witness Disclosure
Date: Mon, 4 Nov 2013 10:55:12 -0700

Michael John McKeon Jr.

McKeon & Morigeau Law, PLLC

P.O. 1558

201 Fourth Ave East

Polson, MT 59860

406-883-6285

Please let me know if your Firm has a standard engagement letter or document concerning expert witness engagements. Frequently client attorneys respond simply by letter confirming the details of the engagement. We will use whatever is most convenient for you.

I do all of the expert witness work and charge $375 per hour in quarter hour increments, maintain a detailed time log that is submitted to the client periodically and have never had a client complain about our work or our billings. I would require a $6,000 up front retainer.

I would prepare and maintain separate files for each of the two cases.

Please give me a call when convenient so we can answer any questions, get the necessary paperwork completed and get started.

I am wrapping up several mergers and could get started within a week after receiving the paper work, if any, and the retainer .

I look forward to hearing from you.

Thanks.

Allen Carver

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Expert Witness Report - Whitefish Credit Union vs. Thorco, Inc. and Thorntons

From: **Allen Carver** (allencarver@mindspring.com) This sender is in your safe list.
Sent: Thu 11/07/13 12:05 PM
To: 'Josh Morigeau' (josh@polsonmtlaw.com)

Josh,

With the exception of the Whitefish Credit Union Loan Policy approved by the Board of Directors on 4/24/13 that we viewed as irrelevant and the Deanna H. McAtee and Mortgage Source, Inc., Brief in Opposition to WCU's Motion to Dismiss and Motion to Strike, included with Mr. Manley's letter to me back in June, 2013, I completed my review of all documents you sent me to review.

I will proceed to develop the first draft of my Expert Witness Report.

Please let me know if you have any questions.

Thanks.

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www.allencarver.com

RE: Expert Witness Report - Whitefish Credit Union vs. Thorco, Inc. and Thorntons

From: **Josh Morigeau** (josh@polsonmtlaw.com)
Sent: Thu 11/07/13 12:11 PM
To: Allen Carver (allencarver@mindspring.com)

Allen,
Thank you for writing me in regard to WCU's expert witnesses. The only one I was worried about is their compliance guy, Taylor Horst. I assume he will insist that the practices and procedures of WCU at the time of the lending relationship were common in the lending industry. It is comforting that you disagree with that. I appreciate your promptness in this matter.

Joshua C. Morigeau

McKeon & Morigeau Law, PLLC.
PO Box 1558
Polson, MT 59860

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From: allencarver@mindspring.com
To: josh@polsonmtlaw.com
Subject: Expert Witness Report - Whitefish Credit Union vs. Thorco, Inc. and Thorntons
Date: Thu, 7 Nov 2013 14:05:47 -0500

Josh,

With the exception of the Whitefish Credit Union Loan Policy approved by the Board of Directors on 4/24/13 that we viewed as irrelevant and the Deanna H. McAtee and Mortgage Source, Inc., Brief in Opposition to WCU's Motion to Dismiss and Motion to Strike, included with Mr. Manley's letter to me back in June, 2013, I completed my review of all documents you sent me to review.

I will proceed to develop the first draft of my Expert Witness Report.

Please let me know if you have any questions.

Thanks.

Allen Carver

Allen Carver & Associates Inc.

Atlanta Office:
2915 Creek Tree Lane
Cumming, GA 30041
Telephone: 678-613-1060
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Whitefish CU Matter v Thorco First Draft Expert Witness Report Often Promised and Now Finally Delivered. Sorry Allen

From: **Allen Carver** (allencarver@mindspring.com) This sender is in your safe list.
Sent: Thu 11/14/13 6:37 PM
To: 'Josh Morigeau' (josh@polsonmtlaw.com)
1 attachment
Whitefish CU Matter v Thorco, Inc. et al First Draft Expert Witness Report with Tracked Changes Accepted 11.14.13.doc (81.5 KB)

Josh,

Please acknowledge receipt of the First Draft.

lease let me know your thoughts after the appropriate people have reviewed the report.

I look forward to hearing from you and apologize, once again, for the delay in sending you the report.

Thanks.

Allen Carver
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RE: Whitefish CU Matter v Thorco First Draft Expert Witness Report Often Promised and Now Finally Delivered. Sorry Allen

From: **Josh Morigeau** (josh@polsonmtlaw.com)
Sent: Thu 11/14/13 7:02 PM
To: Allen Carver (allencarver@mindspring.com)

Thank you Allen, I acknowledge receipt of this draft.

Joshua C. Morigeau

McKeon & Morigeau Law, PLLC.
PO Box 1558
Polson, MT 59860

DO NOT read, copy, or disseminate this communication unless you are the intended addressee. This e-mail communication contains confidential and/or privileged information intended only for the addressee. If you have received this communication in error, please call me immediately at (406) 883-6285. Also, please immediately notify the sender by return email that you have received the communication in error. Thank you.

From: allencarver@mindspring.com
To: josh@polsonmtlaw.com
Subject: Whitefish CU Matter v Thorco First Draft Expert Witness Report Often Promised and Now Finally Delivered. Sorry Allen
Date: Thu, 14 Nov 2013 20:37:30 -0500

Josh,

Please acknowledge receipt of the First Draft.

Please let me know your thoughts after the appropriate people have reviewed the report.

I look forward to hearing from you and apologize, once again, for the delay in sending you the report.

Thanks.

Allen Carver

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Fwd: Whitefish CU v Thorco, Inc., et al - Statement of Services

From: **Josh Morigeau** (josh@polsonmtlaw.com)
Sent: Wed 11/20/13 7:28 PM
To: Michael McKeon (michael@polsonmtlaw.com)

3 attachments
image001.gif (2.2 KB) , Whitefish CU Matter v Thorco, Inc. Statement of Services 11.20.13.docx (24.7 KB) , Whitefish CU Matter v Thorco, Inc. et al - Time Log Attached to Billing 11.20.13.doc (35.0 KB) ,

Sent from my iPhone

Begin forwarded message:

From: "Allen Carver" <allencarver@mindspring.com>
Date: November 20, 2013 at 4:25:50 PM MST
To: "'Josh Morigeau'" <josh@polsonmtlaw.com>
Subject: Whitefish CU v Thorco, Inc., et al - Statement of Services

Josh,

Please acknowledge receipt of this email and two attachments.

Attached is our Firm's Statement of Services for payment.

Also attached is our Time Log that outlines the date of work, number of hours and documents reviewed.

Please let me know if you have any questions.

Thank you.

Allen Carver

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Expert Witness Report

From: **Allen Carver** (allencarver@mindspring.com) This sender is in your safe list.
Sent: Wed 11/20/13 3:23 PM
To: 'Josh Morigeau' (josh@polsonmtlaw.com)
2 attachments
Whitefish CU Matter v Thorco, Inc. et al SECOND Draft Expert Witness Report with Tracked Changes Shown 11.20.13.doc (83.0 KB) , Whitefish CU Matter v Thorco, Inc. et al SECOND Draft Expert Witness Report with Tracked Changes Accepted 11.20.13.doc (82.5 KB)

Josh,

Mike and I talked earlier today.

Attached is my SECOND DRAFT Expert Witness Report now dated November 20, 2013. One attached report shows proposed tracked changes. The other attached report shows the proposed report with tracked changes accepted.

I ask that you and Mike carefully review the attachments and let me know if you have any questions.

Also, please confirm receipt of these two attached reports.

Please let me know whenever you or Mike have any questions.

Thanks.

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2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 08

MONTANA ELEVENTH JUDICIAL DISTRICT COURT
FLATHEAD COUNTY

WHITEFISH CREDIT UNION,)
)Cause No. DV-12-174B
Plaintiff,)
)
vs.)
)
THORCO INC., a Montana)
Corporation, DENNIS THORNTON,)
DONNA THORNTON, and)
JOHN DOE(s) 1-10,)
)
Defendants.)

DEPOSITION

OF

RANDY COGDILL

(Taken on behalf of the Defendants.)

Taken at the Red Lion Fireside Room
Kalispell Center Mall
20 North Main Street
Kalispell, Montana
Tuesday, July 16, 2013 - 9:07 a.m.

Reported by Beth Gilman, RPR, and Notary Public
for the State of Montana, County of Flathead

APPEARANCES

APPEARING ON BEHALF OF THE PLAINTIFF:
SEAN S. FRAMPTON, ESQ.
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341 Central Avenue
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sean@morrisonframpton.com

APPEARING ON BEHALF OF THE DEFENDANTS:

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michael@themckeonlaw.com

ALSO PRESENT:

DALE COCKRELL, ESQ.(Representing the Deponent.)
AARON ARCHER
DENNIS THORNTON
DONNA THORNTON

STIPULATIONS

It was stipulated by and between counsel for the respective parties that the deposition be taken by Beth Gilman, Registered Professional Reporter and Notary Public for the State of Montana, residing in Flathead County, Montana.

It was further stipulated and agreed by and between counsel for the respective parties that the deposition be taken at the time and place set out on the caption and pursuant to the Montana Rules of Civil Procedure.

It was further stipulated and agreed by and between counsel for the respective parties and the witness that the reading and signing of the deposition would be expressly reserved.

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EXHIBITS DESCRIPTION	PAGE
None Marked	

RANDY COGDILL, after having been duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. MANLEY:

Q. Would you state your name and physical address for the record, please?

A. Randy Cogdill, 510 Skyles Place, Whitefish, Montana.

Q. And I understand you've just rejoined Glacier?

A. Yes.

Q. And what years were you at Glacier the first time?

A. It would have been two thousand -- 2002, I believe, to 2009.

Q. And you went -- you were with Glacier from when, did you say?

A. I believe 2002 to 2009.

Q. And so then you went from there to Whitefish Credit Union?

A. Yes.

Q. And how long were you at Whitefish Credit Union?

A. From 2009 to 2012.

Q. And from there I understand you worked in Billings?

A. Yes.

Q. Where were you working there?

A. Wells Fargo.

Q. And how long did that job last?

A. Approximately five months.

Q. And then you were able to come back here to the Flathead.

A. Yes.

Q. Is Whitefish Credit Union the only credit union that you've worked for?

A. Yes.

Q. When going to work for the credit union, were you provided with any special -- or, any training or education relative to the differences between a credit union and a bank?

A. No.

Q. Were you on the various loan committees when you were at Glacier the first time?

A. Yes.

Q. And were you on -- do you know if you were on any of the loan committees that approved Thornton loans?

A. Yes.

Q. And were you on the loan committee that approved the loan on the 300-acre development project that's the subject of this action?

A. Not to my knowledge.

Q. So when you say that, I have to ask you, is that a "no", or you're not sure?

A. I'm not sure.

Q. What loan committees were you on at Glacier?

A. The officer loan committee.

Q. And what is that?

A. Just a loan committee comprised of the loan officers.

Q. Prior to working with Glacier did you work at any financial institution?

A. Yes.

Q. Could you run through those?

A. Worked at the Whitefish Credit Union previously, and a finance company, Avco Financial.

Q. And where was that located?

A. In Kalispell.

Q. And is that like a consumer loan type of place?

A. Yes.

Q. Just when we came in, Glacier's counsel, Mr. Cockrell, who's here, handed us a couple of

things, so I'm just taking a minute and looking at that.

Okay. So where did you graduate from high school?

A. Excuse me?

Q. Where did you graduate from high school?

A. Hellgate High School in Missoula.

Q. And what year was that?

A. 1981.

Q. And then did you go to college?

A. Yes.

Q. Where did you go?

A. University of Montana.

Q. And did you graduate from the U of M?

A. Yes.

Q. What year did you graduate?

A. Ninety-two, ninety-three.

Q. And what was your degree in?

A. Finance.

Q. Do you remember when I took your deposition in the Sherman case?

A. Not specifically.

Q. Well, you remember that deposition being taken though?

A. Yes.

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Q. When you say "not specifically", what do you mean by that?
A. I don't remember any of the details of it.
Q. And if my questions aren't clear, you can just let me know. I was just asking you if you remembered that deposition.
A. Yes.
Q. Okay. You told the truth during that deposition though; did you not?
A. Yes.
Q. And to the best of your ability, you told the whole truth and nothing but the truth?
A. Yes.
Q. Have you had a chance to read that deposition?
A. Not to my knowledge.
Q. So you didn't review it in preparation for this deposition?
A. No.
Q. One of the things that I asked you about were certain -- was a list of principles or industry standards. Do you remember that?
A. No.
Q. I've got your deposition. If at any point you want to look at it, it's in that binder. But

Page 10

could I ask you to look at Exhibit -- Deposition Exhibit 102 in that binder, please? Excuse me. It's 104, and then 104B. I'm sorry. I'm sorry. That's your deposition, if you want to look at it, and 104B.
A. 104B. Okay.
Q. Yeah, but what I'm going to ask you about is Exhibit 102, which is the same exhibit that you were asked about when I took your deposition the last time.
A. Okay.
Q. And do you recall I asked you if --
A. It's 102?
Q. Yeah. Not in there?
A. No.
MR. FRAMPTON: I don't have one in mine either.
BY MR. MANLEY:
Q. I'll give you this one. Do you remember I asked you about your knowledge of industry principles or standards that were generally recognized as applicable in the credit union industry?
A. Could you restate the question, please?
Q. Do you remember in that last deposition I asked you about a number of -- or, about your knowledge regarding certain industry standards or principles applicable in the credit union industry?

Page 11

A. I don't recall the question.
Q. Okay. Well, I'll ask you to look at -- could you look at principles numbered 2, 3, 4, and 5, please? (Witness complies.)
Do you agree that principle number 2 is a standard that's generally recognized as appropriate in the credit union industry?
A. Yes.
Q. And do you agree -- the same question with regard to principle number 3?
A. Yes.
Q. And number 4?
A. Yes.
Q. And number 5?
A. Yes.
Q. Okay. I'll take that back.
When you left Whitefish Credit Union's employment in 2012, did you resign or were you terminated?
A. I resigned.
Q. And were you told that you had the option of resigning or being terminated?
A. Yes.
Q. And was that Jim Kenyon that told you that?
A. No.

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Q. And who was that?
A. Mr. Moss.
Q. And who's he?
A. He is the vice-president of the credit union.
Q. Did he call you into his office?
A. Yes.
Q. And had you any advance notice that that was coming or being considered?
A. Yes.
Q. And what kind of advance notice or information did you have?
A. Just my understanding of the personality conflicts that I was having with the manager.
Q. And who was that? Kenyon?
A. No.
Q. Who was that?
A. That was a Mr. Horst.
Q. And could you describe in your own words the nature of the personality conflict?
A. In my view we didn't see eye-to-eye.
Q. On what kinds of matters?
A. Most matters.
Q. Can you narrow -- can you give us examples or narrow that down for us?

Page 13

A. We simply didn't get along, in my view.
Q. Well, did you not get along with regard to your work, how you were performing your work at the credit union?
A. No. In my opinion it was just a personality conflict. We didn't get along.
Q. What kinds of things would you have disagreements about?
A. Hard time communicating with him and receiving communication from him.
Q. So had you brought that to his attention or discussed it with him?
A. Yes.
Q. And what was his reaction?
A. I don't recall.
Q. So then you were brought into the meeting in which you were told you were being given the option of resigning or you would be terminated. And what was the reason that you were given?
A. Just trying to recall the conversation. I don't recall the specifics.
Q. Well, I would think that was unusual in your experience to be terminated from a job at a financial institution. Was it not?
A. Yes.

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Q. Only time it's ever happened in your life?
A. And I was not terminated.
Q. Well, you were given the choice of termination or resigning.
A. Yeah.
Q. Were you escorted out of the building?
A. No.
Q. Were you allowed to go back to your office unescorted?
A. No.
Q. So someone escorted you when you went back in your office and got your stuff?
A. No. I had already cleaned out my office.
Q. Because you knew this was coming.
A. Yes.
Q. And then someone escorted you to your office?
A. No.
Q. Where were you escorted after you were given this news, or this option?
A. I was not escorted anywhere.
Q. So you just left the building?
A. Yes.
Q. And given the fact that it was unusual in your professional life for something like this to

Page 15

happen, is it fair to assume that that would be something that you would remember, that is, that discussion?
A. Sure.
Q. Okay. And as you sit here today, is it your testimony you can remember nothing about that discussion?
A. No, I didn't say that.
Q. Please tell us what you remember.
A. Again, I think the conversation went towards performance with respect to customer contacts.
Q. And could you explain what you mean by that?
A. There had been a complaint of not returning a phone call.
Q. Do you remember who made the complaint?
A. No.
Q. And was that the only thing you remember about that discussion as far as the reason you were given?
A. Yes.
Q. It's your testimony the only reason that you were given for this choice that was before you was that you had not returned one phone call?
A. Yes.
Q. But you don't remember the nature of the

Page 16

phone call or who it was from.
A. No.
Q. Have you ever heard of anybody else being terminated or given the choice of termination or resignation at Whitefish Credit Union for not returning one phone call?
A. No.
Q. Did you say anything in response?
A. No.
Q. Were you told anything about what would be put in your personnel file with regard to the reason for giving you the choice of resignation or termination?
A. No.
Q. Have you ever had occasion to review your personnel file to see what's in there?
A. No.
Q. Now, when you first went to Whitefish Credit Union during that time, 2009 to 2012, did you begin there as a loan officer?
A. Yes.
Q. And what kind of loan officer?
A. A commercial loan officer.
Q. And at a certain point that job changed into vice-president for the special assets department,

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something like that?
A. Yes. That was part of the job.
Q. Okay. And is that the correct terminology? You became vice-president for special assets department?
A. Yes.
Q. And can you explain what special assets refers to?
A. In my view, it is managing loans for the financial organization that are either impaired, in trouble, past due, have some issues.
Q. And trouble loans, problem loans? Is that a fair description?
A. Yes.
Q. And when did you change from being just a loan officer to being in charge of the special assets?
A. I was not in charge of the special assets.
Q. Or, vice-president for the special assets division?
A. Can you restate the question?
Q. Yeah. If you can tell me what your title was as vice-president, then I'll use the correct terminology, because apparently we're not communicating. You were vice-president for what?
A. For the Whitefish Credit Union.

Page 18

Q. Okay. Vice-president for the Whitefish Credit Union, and you were in charge of the special assets division?
A. No.
Q. And so what was your position with the special assets?
A. I assisted in special asset loans as well as performing loans.
Q. And who all was in the special assets department?
A. Taylor Horst and Aaron Archer.
Q. Just the three of you?
A. Yes.
Q. And when did you take that position?
A. Would have been mid 2010, 2011 maybe. I don't recall specifically.
Q. Okay. Sometime between mid 2010 to what? Mid 2011?
A. Something like that.
Q. When I took your deposition in the Sherman case, that was closer in time to the events. Do you think your recollection of certain of these dates and that kind of thing might have been a little clearer then?
A. I don't know.

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Q. So your job, if you were managing a special assets account, was to find a way to either work that out or it came to the foreclosure process; correct?
A. Those are two elements, yes.
Q. Are there others?
A. Yes.
Q. What others?
A. Well, there's -- part of working the loan out would be just trying to get it either back in repayment or allow a renewal to allow extra time for the asset to be sold. There's many things that can be a subcategory to that.
Q. Or what's called a workout agreement?
A. That's a component.
Q. And I'm just using that because those are the words that you used when you testified before, so I'm trying to use your words.
Could you just describe or define, what is a workout agreement as you use the term?
A. It would be an agreement between the parties to ultimately get through the loan to either allow time for repayment on the loan, if it's -- when it's renewed, to allow either underlying assets that were securing a loan either to be sold or -- I mean, that's all --

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Q. Or transferred to Whitefish Credit Union by deed in lieu of foreclosure?
A. That is one -- one possibility, yes.
Q. And that was one you utilized in cases; was it not?
A. Yes. I'm --
Q. Okay. And when -- sorry. When in 2009 did you join Whitefish Credit Union?
A. I don't recall specifically.
Q. Do you remember whether it was the first half of the year or the second half of the year?
A. No.
Q. Do you remember whether it was before or after Jim Kenyon came on as CEO?
A. Would have been just before.
Q. And he came on, as I understand it, in about September of 2009? Does that sound right?
A. I don't recall.
Q. Okay. Both he and you have testified in the past that at that time when he came on board there was a policy that Whitefish Credit Union had adopted because of the financial circumstances that there would be no new loan money for development loans until circumstances were worked out that were causing a problem. And you remember testifying before that you

Page 21

were aware of that policy?
MR. FRAMPTON: Objection. Misstates testimony.
THE WITNESS: Could you restate that, please?
BY MR. MANLEY:
Q. Do you remember your testimony in that regard?
A. Could you restate the entire question, please?
Q. I'll even do better than that. I'll refer you to the deposition. How's that?
A. Okay.
Q. Okay. So could you look at 104?
A. Is that A or B?
Q. 104B. Could I ask you to look at page 13, please? Line 7. When you were asked, We have been told that there had been a policy in 2009 of not loaning any more money on these development loans. Do you recall that policy being enacted? And was your answer, Yes?
A. Yes.
Q. Okay. Do you remember that policy now?
A. Yes.
Q. Was that an honest answer when you made that

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answer in that deposition?
A. Yes.
Q. And then the next question is, Could you tell us what you recollect about that? When, who did it, what the explanation was? Did you answer, My recollection was that somewhere in that time period there was a regulatory shift with regard to our examiners who had been coming in, and certainly whether it was an absolute edict, if you will, from the regulators. Certainly they came in and they discouraged any spec. home financing, any subdivision financing.
Was that an honest answer?
A. Yes.
Q. And then the next question, They were putting pressure on you not to do that? Your answer was, Yes?
A. Yes.
Q. Was that an honest answer?
A. Yes.
Q. And then the next question, Were there some instances in which it was done, that is, ongoing developments were provided further lending? Was your answer, None that I recall?
A. Yes.

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Q. Was that an honest answer?
A. Yes.
Q. So the next question is, So all of them were just cut off at that point, as far as you recall. And your answer was, As far as I know.
Was that an honest answer?
A. Yes.
Q. Next question, Are you aware of Whitefish Credit Union notifying these members or customers, these members with loans, notifying them of that policy when it was adopted in 2009? And your answer was, Could you be more specific with your question? And then the next question was, Yeah. It's our understanding from prior depositions that when this new CEO came aboard in March of 2009 -- I'm going to skip through because there's some disagreement about the date, and then I come back and correct it at line 25 on page 14, You're right. I think it was August -- July or August, 2009. And your answer was, August or September.
We're talking about the CEO coming aboard.
A. Okay.
Q. Okay. Does that help refresh your recollection?
A. Yes.

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Q. Okay. And then the next question was, Okay. Whenever it was -- I'm on page 15 at line 3 now. Okay. Whenever it was, he's testified that there was a new policy adopted by him and followed by the credit union regarding this no new lending on ongoing development loans. My question is, What, if anything, was done to notify these developers of that new policy? And your answer was, As far as a formal notification or announcement, none that I know of.
Was that your answer and was that an honest answer?
A. Yes.
Q. And then the next question was, How about an informal? And your answer was, Certainly nothing informal as well.
Correct?
A. Yes.
Q. And so that was an honest answer when you made it?
A. Yes.
Q. Next question, Does that seem fair to you, that these people weren't notified of this new policy? And your answer was, I think the notification, at least on the loans that I was involved in, would have come at the time that there was a new application or,

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again -- I mean, that's where the notification would come from. As far as whether I thought that was fair, that was the world I was operating in.

Was that an honest answer when you gave it?

A. Yes.

Q. Okay. Question, So that was the new policy at Whitefish Credit Union? Your answer was, Yes. To notify them of this denial or refusal when they applied for the next renewal or restructuring? Your answer, That's when it would have, at least, again, on the loans that I was involved in, occurred.

So was that an honest answer when you made it at that time?

A. In 2009, yes.

Q. Well, you made -- you actually made the answer in -- on July 16 of 2012.

A. Yes, speaking of the framework of the answer. You asked me if that answer was correct. At the time it was.

Q. Well, so you want to clarify that or qualify that answer?

A. No. In terms of the time frame that we were operating in in 2009.

Q. Okay. That doesn't appear anywhere in the question that I asked you there though; does it?

Page 26

A. No.

Q. No. And let me ask you this. Between 2009 through the time your deposition was taken, 2012, are you aware of any formal notification to Whitefish Credit Union members or customers of this new policy of no new money on development loans?

A. None that I'm aware of.

Q. Or any informal notification to customers other than when, as you described it before, they would apply for new money?

A. None that I'm aware of.

Q. So there was no notification to customers or members of this policy unless and until they came in and applied for new money; correct?

MR. FRAMPTON: Objection. Foundation.

BY MR. MANLEY:

Q. That you're aware of.

A. None that I'm aware of.

Q. And I'll ask you now -- it's a year later. Does that seem fair to you?

MR. FRAMPTON: Objection. Calls for opinion testimony.

BY MR. MANLEY:

Q. He can state his objections for the record, and then you can answer.

Page 27

A. Yes.

Q. That seems fair to you?

A. Yes.

Q. So applying that, for instance, to the Thornton situation where they made their new application for new money in January, February, March of 2011, that's when they would have been notified that there would be no new money?

MR. FRAMPTON: Objection. Presumes facts or the application.

BY MR. MANLEY:

Q. He can make all these objections, although the rules say he doesn't have to, but he apparently is going to, so we just have to let him finish and then you can answer the question.

A. Can you restate the question, please?

Q. Yeah. So applying that to the Thornton situation where they made their application for new money on their development loan January, February, March, 2011, that's when they would have been notified that there was going to be no new money, and that seems fair to you?

MR. FRAMPTON: Same objection.

THE WITNESS: At the time I don't know what the policy was in 2010, '11, or '12, whenever you are

Page 28

speaking of. It would depend on what the policy was at that time.

BY MR. MANLEY:

Q. What policy, as far as loaning on new money on development loans?

A. Yes.

Q. That was still the policy though. The policy that was adopted in 2009 regarding no new money on development loans was still in effect in 2011 -- in March of 2011; wasn't it?

A. I have no knowledge of that.

Q. Do you have any knowledge of any change in the policy in that period?

A. None that I'm aware of.

Q. Okay. So you have no basis for testifying that the policy was not the same; do you?

A. I was unaware of the policy at that time.

Q. You were aware of it in 2009 but you were not aware of it in 2011?

A. As we sit here today, I have no recollection of what the policy was in 2011.

Q. Do you agree that the Thorntons were never told that there was not going to be any new money on their development loan before their loan was due on March 15th, 2009? (Sic.)

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A. I don't have a recollection of that.
Q. Do you have any recollection of you ever notifying them of that?
A. Recollection of me notifying them of what?
Q. The Thorntons, that there was going to be no new money on their development loan.
A. I do recall an adverse action that was sent a letter indicating as much.
Q. And do you recall whether that was before or after March 15th, 2011?
A. I don't recall when that was.
Q. We'll get to the adverse action.
Adverse action notifications have specific meaning and specific requirements; do they not?
A. As far as I know, yes.
Q. And with regard to the credit union industry, there are national standards for when an adverse action notification must be sent and what that has to include. Would you agree with that?
A. Yes.
Q. And when -- according to your understanding of the standards, when must such an adverse action notification be sent to the customer?
A. To my knowledge, it's 30 days after a full application is received.

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Q. And what's your knowledge of what that adverse action notification must include?
A. Reasons for the decline.
Q. Anything else?
A. No.
Q. You don't recall any other requirements or you don't think there are any other requirements other than giving notice of the reasons for the decline?
A. I don't recall any other requirements.
Q. Were you ever, according to your training or education, provided with other things, as many as ten things, that the adverse action letter had to include?
A. Not to my recollection.
Q. Do you recall being provided with any training or education regarding such an adverse action notification having to include rights to appeal certain things to certain entities?
MR. FRAMPTON: Objection. Foundation.
THE WITNESS: Not to my knowledge.
BY MR. MANLEY:
Q. Okay. Do you know if your adverse action notifications to the Thorntons complied with the national standard requirements?
MR. FRAMPTON: Objection. Foundation.
THE WITNESS: Not to my knowledge.

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BY MR. MANLEY:
Q. Are you aware of any notification to the Thorntons that there would be no new money for their development before the notification that was given to them on June 9th, 2011?
A. I have no knowledge of any.
Q. I was on page 16 going through this after Whitefish Credit Union's counsel had objected that I was misstating your previous answers, so I'll go on reading the questions and answers.
Page 16, line 3, Were there instances where people were denied the opportunity, like of six months or a year, to try to get other funding because of the lack of notice of this new policy? And your answer was, None that I know of.
A. Yes.
Q. And was that an honest answer when you gave it?
A. Yes.
Q. The next question, Generally speaking, the time that they were notified was when their loan was due and they came in to renew or restructure it, and if they were told no then, then they were in default? And your answer was, quote, No, end quote, in terms of -- are you asking if, specifically, at the maturity

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they were coming in requesting additional funds for, say, another phase? Question, Yeah. Or to be allowed to pay interest and renew it for another year. Either one. And your answer was, I know that we're making every effort to execute the renewals. Every opportunity that I had, as long as the interest was paid current, I can't think of one that we would not handle the renewal on.
Was that your answer and was that an honest answer at that time?
A. Yes.
Q. Now, applying that to the Thornton situation, when they came in on or about the time that their loan was due, three million three hundred sixty-some thousand dollars, on March 15th, 2011, one of the conditions that you consistently said before you would consider even a one-year extension or renewal would be that they pay the interest current, which was approximately $87,000; is that correct?
MR. FRAMPTON: Misstates the record. Objection.
MR. MANLEY: In what way does it misstate the record since that's from your record?
MR. FRAMPTON: Mr. Cogdill never said, that I'm aware of, that that was a condition.

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MR. MANLEY: That's because you're not aware of the Cogdill records.
MR. FRAMPTON: Okay.
BY MR. MANLEY:
Q. Does that comport with your recollection, that you stated that as a condition to renewing it or extending it or even considering that, that they would have to pay the interest current of eighty-- approximately $87,000?
A. I don't have any specific recollection of that.
Q. Does that sound like it comports with the policy that you were following at the time?
A. Yes.
MR. FRAMPTON: In fact, it was specifically not a requirement.
MR. MANLEY: Well, we're going to get the records and then maybe you can correct the record.
MR. FRAMPTON: Okay. Just let me state my objection and you can ask questions.
BY MR. MANLEY:
Q. Next question, And yet, if people came in and wanted to get funding for the next phase, that's when they would be told, quote, No, there is going to be no new funding, end quote. And your answer was,

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That is my recollection.
Was that an honest answer at that time?
A. Yes.
Q. Okay. That was when their loan was due that, generally, they would find that out? And your answer was, Yes.
Is that an honest answer at that time?
A. Yes.
Q. As of March 14th -- that is the day before their loan was due to be paid in full, March 14th of -- it was due on March 15 of 2011. As of March 14th of 2011, they were current on all their requirements on the loan; were they not -- the Thorntons?
A. That is my recollection.
Q. It would be what's called a performing loan at that point?
A. Yes.
Q. And you're not aware of any other -- any other basis for alleging that they were not doing exactly as they had agreed to do in their loan relationship with Whitefish Credit Union.
A. Could you restate the question?
Q. It was a bad question.
Would you agree that as of that time, March 14th of 2011, they had met all the metrics requirements under the loan?
A. Yes.
Q. Okay. Not just money requirements, but they were doing what they were supposed to be doing with the development as far as Whitefish Credit Union was concerned.
A. As far as my knowledge on the file.
Q. Right. Right. And having looked through the file, I don't see that Dana Henderson or Jim Kenyon or Doug Johnson, or anybody else, indicated that they were in any way performing inadequately in all respects of what was required of them. Are you aware of any?
A. No.
Q. And do you recall then discussions with them over a period of time to the effect that you would be willing to discuss with them, you know, some way to work this out or make arrangements that would provide them with more time, but one of the requirements was they would have to bring the interest due current?
A. I don't have specific recollection of those conversations.
Q. Does that sound like it was your policy at the time that you were following such loans?

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A. Yes.
Q. And it was in fact a consistent policy; wasn't it?
A. As far as my knowledge.
Q. Okay. Have you had occasion to review any of the Whitefish Credit Union documents with respect to the Thorntons?
A. No.
Q. In preparation for this?
A. No.
Q. Are you aware that the Whitefish Credit Union loan documentation makes it clear that the only source that they had -- the Thorntons had to pay off this loan, or pay interest, was continuing funding from the Whitefish Credit Union until they could complete the project and sell lots?
A. Not to my knowledge.
Q. And in fairness to you, when do you think the last time that you looked at these loan documents was?
A. I have no recollection.
Q. After it was turned over to attorneys for the foreclosure process, were you out of the day-to-day handling of the Thornton matter?
A. That is my recollection.

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Q. It appears to me -- and I'm just asking you to correct me, I guess, if I'm wrong. It appears to me that it was assigned to Attorney Purdy for purposes of beginning the foreclosure process, and after that it was primarily Aaron Archer who was involved in Whitefish Credit Union contacts with the attorneys with regard to this matter. Is that fairly accurate?

MR. FRAMPTON: Objection. Presumes facts

THE WITNESS: I don't have any specific recollection.

BY MR. MANLEY:

Q. Okay. Well, after it was turned over to the attorneys for foreclosure, do you have any recollection of doing anything with regard to the Thornton loan matter while you were at Whitefish Credit Union?

MR. FRAMPTON: Objection. Presumes facts

THE WITNESS: Yeah, I don't have a specific recollection of that.

BY MR. MANLEY:

Q. There were communications between one or more people in the Farran Group. Who is the Farran Group?

A. I don't recall.

Q. As I understand it, it's a financial entity

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in Missoula that, among other things, bought property that was up for foreclosure. Does that help ring a bell?

A. No.

Q. Would you -- Pat Corrick or "Corrick"? Does that name ring a bell?

A. Yes.

Q. Who is that?

A. A developer out of Missoula.

Q. Doing business as the Farran Group?

A. I'm not sure.

Q. And could you describe the history and nature of your relationship with Pat Corrick?

A. I was an account officer on a project that he was involved in in Whitefish.

Q. Could you explain what that means to a lay person?

A. It was a vertical development called Monterra.

Q. And what's a vertical development?

A. Which was a condo project.

Q. On a cliff?

A. No. It's just he was involved in --

Q. We don't know what a vertical development means.

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A. He was involved in the construction and the development of a parcel of ground that created a condominium village.

Q. Where was that located?

A. In Whitefish.

Q. And he had a loan with Whitefish Credit Union for that?

A. No.

Q. Had he purchased that property from a Whitefish Credit Union foreclosure or loan workout situation?

A. Not that I'm aware of.

Q. Do you know who he purchased the property from?

A. No.

Q. And so what was your involvement with regard to Mr. Corrick and that development project at Whitefish?

A. The bank I was working for had the financing on the project.

Q. What bank?

A. It was Glacier Bank of Whitefish.

Q. And was that before you went back -- was that before 2009 when you went to work for Whitefish?

A. That is my recollection.

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Q. Okay. So you first got to know him because in your relationship with -- in your employment at Glacier Bank there was a lending relationship to Mr. Corrick for this project you described in Whitefish.

A. Yes.

Q. And then with respect to the Thorntons' matter, while you were at Whitefish Credit Union, there's one or more e-mails from you to Corrick, and I'm asking you to please explain to us why that was. Why would you have been e-mailing him with regard to the Thorntons' property?

A. I believe it was in -- this is my recollection. It was in conjunction with an assessment that we were trying to complete on the project, either before or after an appraisal that we had on the project, to try to understand what the value was of the project up there.

Q. When you say "an assessment", is that something different than an appraisal?

A. Yes.

Q. Could you explain in lay terms what that means, what the difference is?

A. An expert, in my view, in the development side would be able to come in and take a purview or a

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review of the project site and give us as a lending institution an idea of ultimately what the market value could be in terms of the desirability of the lots and ultimately who would be interested maybe in purchasing these lots.

Q. Is that the same type of information that was provided in the appraisal that the Whitefish Credit Union had?

A. No.

Q. And how would that be different?

A. From the perspective of a developer, it would give a different approach.

Q. And did he respond with a report or information to your request for that?

A. Not to my knowledge.

Q. Were you personally personal friends with him?

A. No.

Q. For instance, would you have sent an e-mail congratulating him on a pregnancy or that type of thing?

A. Within the body of the business e-mail, that's possible.

Q. Were you also contacting him or communicating with him to see if he was interested in

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perhaps getting involved as a purchaser of the Thorntons' property?

A. Not to my knowledge.

Q. See, when you say "not to my knowledge", we have to try to figure out what that means. There's "yes" or "no" and then --

A. I have no recollection of that.

Q. So you don't know if you were contacting him in part to see if he was -- might be interested in purchasing the Thorntons' property?

A. I don't have any recollection of that.

Q. Is that possible?

A. It's possible.

Q. Because he would be one type of person who might be interested in taking this over and finishing the development himself?

A. As an investor, that is possible.

Q. Okay. Did you talk to anyone else to determine if anyone else might be interested in taking over the Thornton property or investing in it or purchasing it?

A. I don't have any recollection of anyone else.

Q. So I guess that means you don't remember whether you did or not.

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A. That is correct.

Q. And is that possible, that you did that?

A. It's possible.

Q. Now, to the best of your recollection, what reason or reasons were there for the decision not to loan more money to the Thorntons on this project, or to renew their loan?

A. On the first part of that question, which I can answer, is the market conditions certainly had deteriorated so severely that it wouldn't have been prudent to go forward at that point, in my view.

Q. Okay. And you said that's with respect to the first half of the question. It was a bad question. I apologize.

A. And --

Q. So that referred to the reasons for deciding not to loan new money on it.

A. Yes.

Q. Okay. And what were the reasons, as you recall any reasons you recall, for not renewing it or extending it?

A. My recollection is that we made every effort to renew the loan.

Q. Does this help you recollect that they weren't able to pay the interest current, and that you

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gave that as a reason?

A. I don't recall that specifically.

Q. When you say "we made every effort", could you explain what you recall that leads you to say that?

A. I recall having a meeting with the Thorntons and Jim Kenyon, and discussing some possible options for renewal.

Q. That was June 9th, 2011; wasn't it?

A. I don't recall the specific date.

Q. It was just the four of you there, the two Thorntons, Kenyon, and you?

A. That is my recollection.

Q. And you discussed some possible options; correct?

A. That is my recollection.

Q. And there were -- there were actually a couple subjects discussed. One was renewal or extension of the loan, and you also were discussing whether or not Whitefish Credit Union would loan them money to move equipment over for a project that they had outlined for Williston, North Dakota. Do you remember that?

A. I recall the discussion on those two topics. I don't recall the outline at that point with

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specifics to the North Dakota operation.
Q. And in fact, does it help your recollection that at the end of that meeting you made a note that they were going to get you some more information about the North Dakota business opportunity and get back to you on that?
A. Yes, that is my recollection.
Q. Okay. But that's separate than the question of renewal of -- or, extension of the development loan; correct?
A. Yes.
Q. Okay. Now, when you say you made every effort to work with them with regard to renewing or extending the development loan, can you recall anything that was discussed in that June 9th, 2011 meeting on that subject?
A. The only specifics that I recall would be Mr. Kenyon offering a long-term amortization. I believe he mentioned a 30-year amortization on the loan, as well as deferring some interest in order to get the loan renewed.
Q. And do you recall Kenyon actually offering that, or more talking about it as a possibility?
A. We were concepting and it came up in the discussion.

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Q. And when you use the word "concepting", what do you mean by that?
A. As part of the discussion, we were just looking at options in order to get the loan renewed.
Q. Kicking around possibilities?
A. Yes.
Q. So it wasn't an offer that Kenyon made to them at that point; was it?
A. Not in writing.
Q. Okay. And do you remember anything you said at that meeting, or Kenyon said, with regard to any such arrangement being contingent upon them bringing the interest current?
A. Not to my recollection.
Q. I think we got into the subject because you said, We made every effort to work with them to renew or extend their development loan. Any other -- any other efforts that you refer to when you answered that way?
A. At that specific meeting?
Q. Yes.
A. Nothing else that I recall.
Q. So at any other time -- you said "we made every effort". What other efforts did you or the others at Whitefish Credit Union make to -- with

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regard to renewal or extending the development loan?
A. There were requests for updated financials and an application.
Q. Okay. Do you remember -- do you remember any discussion about the request for updated financials?
A. Not specifically.
Q. Do you remember the Thorntons saying they had no income -- as shown in the Whitefish Credit Union files, they had no income for the last three years because they had spent all their time working on this development? That is, they had no income other than what they received from the loan proceeds from Whitefish Credit Union, and that updated financials wouldn't show any income? Do you remember that discussion?
A. No, I don't recall.
Q. Okay. Any other efforts that you refer to when you say, We made every effort to work with them to renew or extend the loan, the development loan?
A. Could you restate the question, please?
Q. Yeah. You said in your answer that, We made every effort to work with them to renew or extend the loan. So I'm just trying to get you to list everything that you or Whitefish Credit Union did to

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assist them or make it possible for them to renew or extend this loan.
A. And so the specific question is --
Q. Is there --
A. I don't understand the question.
Q. Yeah. Is there anything else Whitefish Credit Union did that fell under the category of you making every effort to help them renew or extend this loan?
A. None that I recall.
Q. There was a specific process that was gone through to begin the foreclosure process; correct?
A. That is my knowledge.
Q. Okay. And what steps did Whitefish Credit Union have to take before -- if any, before turning it over to the attorney for foreclosure?
MR. FRAMPTON: Objection. Presumes facts.
THE WITNESS: Could you restate the question, please?
BY MR. MANLEY:
Q. Yeah. What steps, if any, did White-- were you aware of the Whitefish Credit Union having to go through to begin the foreclosure process before turning it over to the attorney for foreclosure?
MR. FRAMPTON: Same objection.

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THE WITNESS: Well, our -- our procedure was to try to work with the borrowers, and then there was requesting specific financial information, trying to bring them to the table to enter into a workout arrangement. And as a last resort, if that failed, then we would turn the file over to the attorney.
BY MR. MANLEY:
Q. Try and work out a workout arrangement. That's the kind of workout that we discussed and you defined before?
A. Yes.
Q. And I apologize if my question isn't clear. I wasn't trying to ask you what your procedure was to try to work things out. I'm -- I was trying to ask you, once a decision was made to foreclose, there were -- as I understand it, there was a process or certain steps that had to be gone through in that foreclosure process; correct?
A. Yes.
Q. Okay. First of all, a decision had to be made by someone to turn it over for foreclosure; correct?
A. Yes.
Q. Now, in the Thorntons' case, who made that decision?

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A. My recollection is that it was Jim Kenyon.
Q. Was that made in conversation with you?
A. I don't have a specific recollection of that.
Q. Okay. So the first step is, Kenyon had to make the decision to foreclose.
A. Yes.
Q. And do you remember when he made that decision?
A. Not specifically.
Q. Do you remember who he communicated it to? Would it have been you or someone else?
A. It could have been.
Q. Do you remember when this loan was transferred into the special assets department?
A. No.
Q. Do you remember when this loan was designated as a special assets loan?
A. No.
Q. In 2011 when you were working -- from March 15th when the loan was due, of 2011, onward when you were working on this file, were you working on it as a special assets file?
A. That is my recollection.
Q. And do you know when you began your

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involvement with this Thornton loan as a special assets loan?
A. Not specifically.
Q. Do you recall in the fall or winter of 2010, 2011 communicating to the effect that this is going to blow up and at the very least it's going to be a TD -- something? TDL? TDR?
MR. FRAMPTON: Objection. Vague.
BY MR. MANLEY:
Q. Do you remember making a communication to that effect?
A. No, I have no recollection of that.
Q. What is a TDR? What would you have meant by that if you had used that term?
A. Within the financial industry it's a troubled debt restructure.
Q. And that would be like a workout arrangement like you've discussed?
A. Yes.
Q. Now, leading up to the -- to the due date, that is, leading up to March 15, 2011, you were communicating and reviewing things with respect to the Thornton loan, development loan. Were you doing that as a troubled -- or, a special asset loan in your capacity as the special asset person?

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A. I don't have any specific recollection of that.
Q. So in the foreclosure process there were certain steps, the first of which would have been for Mr. Kenyon to make the decision to foreclose. Correct? And then what additional steps would have been required of you or someone else at Whitefish Credit Union in that foreclosure process?
A. We would turn the file over to the attorney.
Q. Okay. Would you get an appraisal first, or do anything else with the file?
A. An appraisal sometimes could be ordered ahead, and it would depend.
Q. Okay. It would depend on what?
A. Whether we felt that it was warranted or not.
Q. And I'm trying to understand. Isn't it required in every foreclosure that an appraisal be done?
A. Ultimately, yes.
Q. Okay. And so what would determine whether it was necessary or not to be done before or after turning it over to the attorney?
A. With respect to the loan officer committee, they may request it, and/or the CEO would request an

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immediate appraisal be made. So it would depend.
Q. How about you? Did you have the authority to make that determination as the vice-president and in your capacity as the special asset person?
A. Yes. In my view that was part of --
Q. Part of your function?
A. Yes.
Q. Part of your authority. And did you do that from time to time?
A. Did I order appraisals?
Q. Yeah, for purposes of doing what was necessary for the foreclosure process.
A. Yes.
Q. And isn't it true that you usually did that? That was usually a step that you took care of as opposed to the attorney?
A. Sometimes.
Q. And what would determine whether you did it as opposed to whether the attorney did it?
A. I don't know.
Q. If it was done before turning it over to the attorney, was it your belief it did not have to then be expensed? In other words, if it was done before turning it over to the attorney and formally beginning the foreclosure process, if an appraisal was done, it

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was your belief that then the cost of that appraisal could be added to the loan.
A. I don't have specific knowledge of that.
Q. Do you have a specific knowledge of doing that with respect to the Thorntons?
A. No.
Q. Would that have been appropriate, according to your education and training in the industry?
A. I don't know.
Q. When the loan was turned over to Attorney Purdy for foreclosure, was that you or Mr. Archer that did that?
MR. FRAMPTON: Objection. Presumes facts
THE WITNESS: I don't know.
BY MR. MANLEY:
Q. Do you recall meeting with Mr. Purdy at the beginning of the foreclosure process?
A. No.
Q. Would you go over to Mr. Frampton's office and meet with the attorneys over there fairly frequently during this period?
A. Yes.
Q. And you would often take more than one file over and turn it over to them for the foreclosure process?

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A. Yes.
Q. And sometimes a fairly large number of files?
A. Would you define "large number".
Q. That's a fair question. What was the range of the number of files that you would take over to turn over to them to begin foreclosure process during this period of time? As many as ten at a time?
A. I don't recall taking ten files over to the attorneys.
Q. Five?
A. I don't recall five.
Q. Well, what would the range -- anywhere from one to what number of files?
MR. FRAMPTON: Objection. Vague.
THE WITNESS: From one to five.
BY MR. MANLEY:
Q. And would Mr. Archer also take some over there; do you know?
A. I don't know.
Q. What was Mr. Archer's role, as you understood it, in this period of time, 2011?
A. He was an officer in the special assets.
Q. And when you say "officer", what does that mean? Was he an actual bank officer?

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A. To my knowledge, he was an officer in special assets.
Q. Okay. And of special assets, Horst would have been the person at the top of that department?
A. As far as my knowledge, yes.
Q. And then there would be you and Archer, and who else in that department? I'm sorry. You told me, but I forgot the name.
A. There were -- there was another analyst.
Q. But that person wouldn't be called an officer because they weren't loan officers?
A. That is my understanding.
Q. So am I understanding you correctly that that's what you mean when you say "officer"?
A. Yes.
Q. That would be a loan officer in special assets?
A. Yes.
Q. So the two loan officers would be you and Mr. Archer in special assets, and an analyst, whose name you don't remember?
A. No. I remember.
Q. Who is that?
A. Dave Fennessy. First name Dave, Fennessy. Yep.

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Q. Anybody else in that department at that time?
A. That's all that I recall.
Q. And Mr. Horst was the supervisor.
A. Yes.
Q. And what would he have been? Like a senior vice-president at the bank?
A. I don't recall what his title was at the credit union.
Q. At any rate, he had a title that was higher than yours?
A. Yes.
Q. And then above Mr. Horst would have been who? Mr. Kenyon, or would there have been someone in between?
A. Mr. Kenyon.
Q. Do you recall in the June 9th, 2011 meeting between the Thorntons and you and Mr. Kenyon a discussion of -- or, a request from them for Whitefish Credit Union to acknowledge a subordination agreement?
A. My recollection is that it was discussed.
Q. And what do you recall about that discussion?
A. That they brought up the fact that there was a subordination agreed to by the credit union, and at

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the time my recollection was we were unaware of it.
Q. And that was because Doug Johnson had been the previous loan officer?
A. Yes.
Q. Do you recall them saying that Doug Johnson agreed to that?
A. Yes.
Q. And what did the subordination agreement refer to, as you recall? What property?
A. My recollection was that it was the 200-acre property.
Q. Okay. So Whitefish Credit Union had a mortgage on the 300 acres that was being developed, and also on a nearby 200 acres; correct?
A. Yes.
Q. And Whitefish Credit Union had a first position on each of those properties; correct?
A. That is my recollection.
Q. And the Thorntons said that -- and this was in that meeting with the four of you. They said that there was an agreement that Whitefish Credit Union had made, specifically Doug Johnson, for Whitefish Credit Union to subordinate their security interest in the 200 acres to the extent of $500,000; correct?
A. That is correct.

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Q. And they were asking you folks to acknowledge that so that they could use that 200 acres to go out and borrow money elsewhere and give that lender a first mortgage on the 200 acres.
A. That is my understanding.
Q. And that you or Mr. Kenyon or both of you indicated that you were not aware of any such agreement and that there was nothing in the file indicating that.
A. That is my recollection.
Q. And so you declined, or Mr. Kenyon -- one of you declined to agree to that subordination of your position on the 200 acres for that reason.
A. I don't recall that.
Q. What do you recall your position was?
A. That we were scrambling to try to find the document that they had referred to.
Q. Okay.
A. And I believe we brought in Jennifer either during the meeting or after the meeting to try to track the specific subordination.
Q. It would have probably been after the meeting since this was the first you had heard of it; right?
A. That is my recollection.

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Q. So you brought in Jennifer and asked her to track that. To a layman does that mean look for it?
A. Yes.
Q. To look for that subordination agreement. Okay. And what do you recall with regard to that effort?
A. That's all that I remember.
Q. Do you recall that it was not until December of 2011 that Whitefish Credit Union finally acknowledged they did have a duty to allow for that subordination?
A. No.
Q. Do you remember any time between June 9th, 2011 and December, 2011 communicating back to the Thorntons that Whitefish Credit Union would honor that subordination agreement?
A. I don't recall that.
Q. And unless Whitefish Credit Union would agree to subordination, there would have been no way that, as a practical matter, the Thorntons could have used that 200 acres to go out and borrow 500,000 from another financial institution. Would you agree with that?
A. I don't recall any specific request for a subordination during that period.

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Q. Other than the June 9th meeting?
A. Yes.
Q. But my question was, is it fair to say that without Whitefish Credit Union agreeing to subordinate its first position on the 200 acres, as a practical matter, it would have been impossible, or unlikely, that the Thorntons could go out and get $500,000 from another lending institution which would be second in line on the 200 acres behind Whitefish Credit Union's $3,000,000 loan?
MR. FRAMPTON: Objection. Vague, and foundation.
THE WITNESS: Yes. The Whitefish Credit Union would have to agree ultimately to subordination under that scenario.
BY MR. MANLEY:
Q. And because otherwise, with three million three hundred sixty-some thousand dollars shown as a loan and that property being security for the loan, it's unlikely another lending institution would loan money for a second position; correct?
MR. FRAMPTON: Objection. Asked and answered, foundation, and vague.
THE WITNESS: I can't speak for another financial institution.

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BY MR. MANLEY:
Q. And I'm not -- I wasn't asking you to speak for them. Based upon your knowledge in the industry, which is extensive, and based upon the circumstances then existing, isn't it true that it would have been impossible, or very unlikely, that the Thorntons were going to be able to get -- use that 200 acres without a subordination agreement as security for $500,000 anywhere else?
MR. FRAMPTON: Same objection.
THE WITNESS: It would have been unusual.
BY MR. MANLEY:
Q. And especially given the fact that they were showing as being in default at that point on a three million plus loan to Whitefish Credit Union.
A. Yes.
Q. Do you remember during that meeting or -- that June 9th meeting with the four of you, or at any other time, the Thorntons saying words to the effect that, What's the holdup? We need a decision from Whitefish Credit Union as to, you know, our loan requests. Do you remember discussion from Mr. Kenyon that Whitefish Credit Union was waiting to find out what Mr. Foley was going to do?
A. I have no knowledge of that.

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Q. You don't have any recollection of any discussion with Mr. Foley in connection with this matter?
A. I don't know who Mr. Foley is.
Q. The guy who owns Big Mountain.
A. Okay.
Q. Okay. You don't remember any discussion with regard to him in connection with the Thorntons' project.
A. Not to my recollection.
Q. Did you visit the property?
A. Yes.
Q. On more than one occasion?
A. I recall one site visit, and a second site visit.
Q. And I don't expect you to have exact dates, but could you place those as well as you can in the continuum of this Thornton matter?
A. The first site visit would have been with Mr. Johnson and Dana Henderson, and I don't recall when that would have been.
Q. And do you remember Mr. Thornton being there?
A. No.
Q. Okay. And what do you recall about that

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visit? That was well before -- was that before the loan was due on March 15th of 2011?
A. Yes.
Q. Well before it? A year before it, or --
A. I don't recall.
Q. Okay. At that point it was a performing loan and the reason for the site visit didn't have anything to do with concerns about the loan; did it?
A. Not to my knowledge.
Q. Okay. And what do you recall about that site visit, what you observed and what conclusions or impressions you came away with?
A. We drove through the property on our own. No conclusions.
Q. Okay. Did you see the rock wall work?
A. I don't recall.
Q. Okay. And what was the next visit that you recall?
A. It would have been with Jim Kenyon and myself and the Thorntons, and I believe Jeff Larsen.
Q. Their engineer?
A. Yes.
Q. And that would have been in 2011?
A. I don't recall the date specifically.
Q. What was the purpose of this visit, if you

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recall?
A. Just to tour the property to see the current status.
Q. Do you recall that that was at or near the time when the loan was due?
A. I don't recall specifically.
Q. Do you remember that the reasoning Kenyon came with you and you guys went up there was because of a concern about this loan?
A. Certainly the concern was that it was a large loan either coming up for maturity or already there.
Q. And what do you recall about that visit as far as any discussions or observations or impressions?
A. Nothing specific.
Q. You don't remember anything about that visit?
A. I remember driving around in some razors. (Phon.) That was unusual.
Q. Do you remember discussions with the Thorntons?
A. No.
Q. Do you remember the Thorntons pointing out the road work that they had done?
A. I don't recall.

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Q. Do you recall them pointing out the rock walls?
A. We did see the rock walls.
Q. Do you remember Mr. Thornton pointing out that the water drainage system had to be -- it was important to correct that because there was water reservoiring or collecting up on top behind one of the roads?
A. I don't recall that.
Q. Do you remember Mr. Thornton saying anything about this has to be drained out of there? In other words, more money has to be used to continue the project to drain the water out of there or it could have consequences to the development or to land owners below?
A. I have no recollection of that.
Q. Do you have any recollection of you and Mr. Kenyon discussing that on the way home, or at any time?
A. No.
Q. You remember the water collection area up there near the top that I'm talking about?
A. I do not.
Q. At that point do you recall seeing the rock walls?

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A. Yes.
Q. Do you remember that the rock walls were sloped, that there was a slope to them?
A. I don't recall seeing that.
Q. You don't recall them being pushed out from water pressure at that time; do you?
A. No.
Q. Or parts of the rock walls failing because of water pressure?
A. Not to my recollection.
Q. Or big boulders being blown out of the rock walls because of water pressure? You don't remember seeing anything like that; do you?
A. No, not to my recollection.
Q. In order to prepare for this deposition, did you have an opportunity to meet with Mr. Cockrell, that is, Glacier Bank's counsel, who's here?
A. Physically?
Q. Or by phone.
A. Just by phone, yes.
Q. And in addition, did you have a chance -- or, did you have any discussions with Mr. Frampton?
A. Yes.
Q. And when and where was that?
A. It would have been last week at his office.

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Q. And approximately how long did that take?
A. An hour and a half.
Q. And who all was present during that discussion?
A. Just myself and Sean.
Q. And did he ask you and did you review any documents?
A. Yes.
Q. What documents do you recall reviewing?
A. The Complaint.
Q. Okay. And do you remember discussing that with Mr. Frampton?
A. Yes.
Q. The Complaint or the Counterclaim, or both?
A. I guess both.
Q. And what do you recall about the discussions with Mr. Frampton with regard to the counterclaims?
A. Nothing specific, other than what the counterclaims were.
Q. Okay. And do you remember any going back and forth about, What did you know about this? What did you remember about the allegations in the counterclaims? Anything like that?
A. Nothing specific.
Q. And in an hour and a half conversation I

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assume there was a lot more discussed than that.
A. Yes.
Q. And what else do you remember being discussed?
A. Nothing else specifically, other than going through the Complaint, the Counterclaim, and just running through a chronology just to refresh my memory on --
Q. Did he provide you with a chronology that they had prepared?
A. No. We discussed it.
Q. Did he show you a chronology that they had prepared?
A. I recall an overview, maybe a handwritten overview.
Q. Handwritten by whom?
A. I presume Mr. Frampton.
Q. Approximately how many pages was that?
A. I believe just one.
Q. And what do you recall about any -- the rest of the discussion?
A. I don't recall anything else specifically.
Q. In an hour and a half, that's all you recall, is discussing the Counterclaim document and a one-page handwritten overview?

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A. Yes.
Q. And that took an hour and a half?
A. As far as I know.
Q. Did Mr. Frampton tell you anything about his opinions of the claims?
A. None that I recall.
Q. Did he ask you for your opinions of these counterclaims?
A. Not that I recall.
Q. Did he show you any other documents?
A. None that I recall.
Q. Did he ask you to review anything?
A. Not that I recall.
Q. It was just last week, so you would probably remember that; wouldn't you?
A. Sure.
Q. Okay. So did he ask you to review any other documents prior to the deposition?
A. Not that I recall.
Q. Did you ever make a statement to anyone that you couldn't believe that Whitefish Credit Union would loan money to people like that, referring to the Thorntons?
A. Not that I recall.
Q. Does that mean you could have, but you don't

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remember whether you did or not?
A. I don't remember whether I did or not.
Q. Is that possible?
A. It's possible.
Q. Does that indicate anything with regard to your opinion of the Thorntons?
A. It's possible.
Q. So what would "people like that" mean to you? What would you be referring to if you used words like that?
A. I don't know.
Q. What is your opinion of the Thorntons?
A. I believe they were trying to get a project to the market up there and unfortunately the market turned around on them with respect to --
Q. I apologize. I didn't ask you to tell us what they're trying --
A. Okay.
Q. What was your opinion of them as people, personal opinion?
A. Oh, I didn't know them well enough --
Q. So --
A. -- to have a personal opinion.
Q. So you didn't know them well enough to make a statement like you couldn't believe that that much

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money would be loaned to people like that?
A. Not to my knowledge.
Q. Now, following this June 9th, 2011 meeting, do you recall that with regard to the North Dakota project, it ended, and you or Mr. Kenyon had requested them to get back to you with some more information?
A. Could you restate that?
Q. Yeah. After that meeting, do you remember that the meeting ended with a request that they get back to you with some more information?
A. That is my recollection.
Q. And so it was not in a position on that date to take it to a loan committee; right?
A. Not to my knowledge, no.
Q. So it wouldn't have been taken to the member loan committee, that is, their request for 500,000, or --
A. Exactly.
Q. On that date. Or it wouldn't have been taken to the member loan committee on that date with respect to their request for more money on the development loan.
A. That is correct.
Q. Okay. Do you remember, when Mr. Kenyon first came into the room, do you remember anything

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about what he told them with regard to what Whitefish Credit Union would or would not do with regard to the development loan?
A. No, I don't recall anything specific.
Q. Okay. And one of the things that we do these depositions for is to protect against surprise at trial. And so we don't want a situation, if we can avoid it, where we ask people what they remember about a certain meeting and they don't remember anything, and then at trial they come in and give a detailed version about statements that surprise us; okay?
Do you remember anything else about anything that Mr. Kenyon said, or you said, at this June 9th, 2011 meeting?
A. Nothing that I remember.
Q. Okay. Do you remember anything that Mr. Kenyon said about whether or not Whitefish Credit Union was going to foreclose the Thorntons on the development property?
A. Not that I recall.
Q. And do you remember anything that he said about what Whitefish Credit Union was going to do to help them get back on their feet?
A. The only part of the conversation that I remember that would relate to that was, again,

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concepting to either deferring the interest and/or a 30-year mortgage on the property coming up with a payment that ultimately they could repay.
Q. Okay.
A. That's my only recollection.
Q. Do you have any other recollection regarding the subject of the subordination question?
A. No more than we've already discussed.
Q. Now, in August of 2011 do you remember a discussion that you had with Mr. Thornton?
A. No.
Q. In which he expressed some dissatisfaction or displeasure with you or the Whitefish Credit Union's actions at that point?
A. Not specifically.
Q. Do you remember him getting a little bit angry?
A. Not specifically.
Q. Do you remember any other phone conversations or conversations with Mr. Thornton after June 9th, 2011?
A. None specifically.
Q. Well, how about generally?
A. None generally.
Q. So you don't have any -- the answer is, no,

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you have no recollection of any other conversations.
A. That's correct.
Q. Do you remember that you took notes at the June 9th, 2011 meeting?
A. No, I do not recall that.
Q. If you did take notes, where would those notes be today?
A. In the file.
Q. They should be in the Thornton file?
A. Yes.
MR. FRAMPTON: Jim, when is a good time for a break?
MR. MANLEY: Is this a good time to break? You're doing all the work.
THE REPORTER: I'm fine.
MR. MANLEY: We can take a break now.
MR. FRAMPTON: Yes.
(Short recess.)
BY MR. MANLEY:
Q. During the break did you think of anything you wanted to -- that you had said earlier that you wanted to clarify or correct?
A. No.
Q. Could I ask you to look at the binder there, Exhibit 101, page 515? It's the first page of Exhibit

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101, and it's -- there's two numbers on these, and I'm referring to the bigger number, the one down in the bottom right. Okay.
A. Okay.
Q. This is an e-mail from you to Jennifer. And would this have been in your work in special assets, or were you just filling in for Doug Johnson in his absence on this day? What would be your best guess?
A. I was in the part of special assets, as far as I recall at this time.
Q. So sometimes when Johnson would be gone, would you fill in for a while, or -- I'm trying to understand why you were doing this e-mail and he was the loan officer.
A. My recollection was that he was on vacation at the time.
Q. Okay. And did you review the file and notice that some additional things were appropriate to ask for?
A. Just a cursory review of the file, yes.
Q. And you referred to Dana. That's Dana Henderson?
A. Yes.
Q. Being out at the property on August 10th of 2010 and taking photos; right? So you must have

reviewed that.
A. That is what it says, yes.
Q. And you indicate that at that point the plan was for submitting the plat to the county for 60 lots between one and three acres; correct?
A. That is what it says.
Q. Okay. So it was known to Whitefish Credit Union, at least by August 10, 2010, that the Thornton plan for the development at that point was 60 lots.
A. Yes.
Q. And in the second paragraph, it was understood that the Thorntons were working on this project, and so their income was just from the loan money. That's how they were living; right?
I'm sorry. I won't put words in your mouth. You say, I understand most of the money is going to Dennis directly for work performed.
A. Yes.
Q. However, any bills to surveyors, engineers, etc., or any other third party, should be in the file; right?
A. That is my understanding.
Q. So you knew that the Thorntons were being paid directly for their work performed from the loan proceeds.

A. That is correct.
Q. But your concern here was to make sure there was documentation for anything paid to third parties.
A. That is correct.
Q. Okay. And so the Thorntons paying themselves for work performed as they performed it was not a red flag or anything that concerned you or you considered any kind of a breach of the loan arrangements; was it?
A. To my knowledge, that's how the loan was structured.
Q. Okay. And then the next page -- or, the next page in your binder, which is 5017, this is an e-mail from Corrick to you; correct? Corrick of the Farran Group?
A. Yes.
Q. And he says, Please see the attached per our conversation this week; and let him know if you needed additional information, and that he was happy to run up to Whitefish and meet with your team as needed; correct?
A. That is what it says.
Q. And what was attached? This is the guy -- you said would have liked to get an assessment from a developer's standpoint?

A. Yes.
Q. So did he do a written assessment?
A. Not to my knowledge, no.
Q. Did he do any other kind of written document that he sent to you?
A. None that I recall.
Q. You have no recollection of what he attached?
A. No.
Q. Was it a possible proposal or anything indicating his possible interest in buying this property and developing it?
A. I don't recall any conversation to that effect.
Q. Did you ever have a conversation to that effect with him?
A. None that I recall.
Q. So you don't know if you did or not?
A. That is correct.
Q. And are you aware of Corrick either purchasing or investigating the purchase of any other property that Whitefish Credit Union was involved in in any way?
A. None that I recall.
Q. And out of all of the developers in Western

Montana at the time, was there a reason why you went to Pat Corrick for this assessment?
A. In my opinion he was a very savvy developer who had successfully marketed and sold a project in the Flathead Valley.
Q. And the next page in your binder is 5018. And without explanation, this is all blacked out and without any reference to it on a privilege list or anything. So I'm not blaming you for that. We know who did it; it wasn't you. But what do you recollect about this document that they have doctored up for us?
A. I have no recollection.
Q. It appears to be an e-mail from Corrick to you dated June 19, 2012; correct?
A. Yes.
Q. And you had written to him earlier that day, "Pat" -- and then there's all these blackout marks. Right?
A. That is what it shows.
Q. And then you end by saying, Also, I'll forward your contact info. to Sean Frampton who is representing us in the Whitefish Credit Union versus Thorco matter. Talk to you soon.
So what was your involvement in this with Corrick, and what was Frampton's involvement in this

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with Corrick?
A. At this point in 2012 it would have been, again, just trying to get an assessment on the project.
Q. Do you remember that?
A. I don't --
Q. Or are you guessing?
A. I am guessing. I don't remember it specifically.
Q. Fair enough. I'm just trying to get a clear understanding. That's an educated guess on your part.
A. Yes.
Q. Could it also have been a discussion regarding whether or not Corrick was interested in purchasing the development property from the Thorntons?
A. Not to my knowledge.
Q. You don't know?
A. I don't know.
Q. Okay. And then if I could ask you to look at 5023, which is the next page. This is an e-mail from you to Horst; correct? June 18, 2012.
A. Yes.
Q. So this would have been shortly after the June 9th meeting -- oh, no. I'm sorry. It's a year

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later.
Okay. You refer to loan pull something. What does that mean in your terminology?
A. I don't know.
Q. And how about the attachments?
A. That is referencing a first quarter of 2012 problem loan report, is what PLR is.
Q. And what's Northern Lights refer to?
A. That appears to be another file.
Q. Not the Thorntons'?
A. That is correct.
Q. Okay. And so then you say to Taylor that you don't see Thorco, Inc. in the file; "I know I have one completed for this relationship".
Are you talking about completed -- you have completed a problem loan report?
A. Yes.
Q. And would that have been in the file?
A. It should have been.
Q. And what information is contained in a problem loan report?
A. It just gives the current status of the loan, underlying assets securing the loan, any action plan change.
Q. Is it a form that you fill in the blanks,

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type information in the blanks?
A. Yes.
Q. So you did one with regard to the Thorntons.
A. That is what this is stating, that as far as I knew at the time, I had completed one.
Q. Could I ask you to skip ahead to 5100? Now, at this point as of January 6, 2012, Mr. Archer is receiving the e-mail. Does that indicate that you were no longer actively involved in the file; it had been turned over to Archer and he was the person at Whitefish Credit Union handling it?
A. Not necessarily.
Q. Do you recall seeing this?
A. I don't recall.
Q. Do you recall that the Thorntons were requesting of you and your attorney, Mr. Purdy, to have a meeting about what to do about this loan?
A. I don't recall.
Q. In the second paragraph he says -- that is, Mr. Purdy, the attorney, foreclosure attorney, is saying that he's not going to meet with the Thorntons or their attorney until they provide certain updated information; correct?
My question is, were you in on that decision to decline the meeting unless and until they provided

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additional information?
A. Not that I recall.
Q. Okay. 5118, please. You see down there a couple of e-mails down below. There's one from you to Cayla Johnson.
A. Yes.
Q. Who is Cayla Johnson and what was her role?
A. She was a commercial loan assistant.
Q. In the special assets?
A. No.
Q. And who did she -- what department did she work for?
A. She was employed in the commercial loan office in Kalispell for the Whitefish Credit Union.
Q. And it appears that she would be the one who was handling invoices for appraisals, to pay for appraisals? In other words, you're telling her to make sure that this latest appraisal for the 200 acres should not be added to the Thorco loan, but, rather, should be expensed because it's going to litigation; correct?
A. That is correct.
Q. Okay. Could you explain what that means so that we laymen can understand it?
A. Just what it says, that we were instructed

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to expense this particular appraisal as opposed to adding it to the loan.
Q. And why?
A. I don't know.
Q. Well, you're actually advising her, directing that she do that regarding the Barrie invoice. See, the Barrie invoice came to you at 1:17 on that date, and 10 minutes later you forwarded it to Cayla asking that it be paid, but telling her to expense it as opposed to putting it on the Thornton loan.
A. Yes.
Q. Okay. So that was your decision. In other words, you didn't call and ask somebody and they told you how to do it.
A. That was the procedure at that time.
Q. And what was your understanding of why it should be expensed rather than adding it to their loan?
A. Because it was the procedure at the time.
Q. What was your understanding for that procedure?
A. I had no knowledge as to why, other than that was the procedure at the time.
Q. And as you understand or relate the

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procedure to it, when would it be expensed and when would it be added to a person's loan, according to the procedure you're testifying about?
A. My understanding at the time, we were expensing them as opposed to adding to the loan.
Q. All appraisals?
A. With regard to files that we were working on in special assets and workouts, my understanding was that we were expensing them as opposed to adding them to the loan.
Q. But I thought you indicated that this wasn't a special asset matter, that as of August of 2011 that it was -- Cayla wasn't in the special assets department; right?
A. She was not formally in the special assets. I don't know why she would have been helping us other than maybe she was available. I'm just speculating.
Q. Okay. Let me see if I understand the policy. As you relate to the policy that you were instructed to follow at the time, if Whitefish Credit Union was the one who ordered or who the appraiser was working for, then Whitefish Credit Union would expense it; however, under other circumstances the appraisal cost would be added to the loan?
A. It may.

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Q. And that would be where the customer ordered the appraisal and needed the money to pay for the appraisal as part of the development project.
A. That is incorrect.
Q. Okay. And what -- in what circumstances would it be added to the loan?
A. The customers, as far as policy, are not allowed to order appraisals and the financial institution cannot accept those that are ordered by the customers.
Q. So if a customer orders an appraisal, the financial institution is not allowed to use that appraisal and they must retain their own appraisal.
A. That is my understanding.
Q. Okay. And my question was, under what circumstances would the appraisal cost be added to the loan?
A. It would depend.
Q. Let me ask just a "for example". If it was necessary to provide the documentation needed for a renewal or rollover of a loan, and so if the Whitefish Credit Union got the appraisal for that purpose, that would be a legitimate bill to add to the loan; would it not?
A. It could.

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Q. As opposed to a foreclosure situation where the appraisal was being ordered for purposes of the steps of foreclosure.
A. It could.
Q. I'm not getting anywhere, and I'm sure it's because my questions aren't the best. Can you give us an example of a situation where Whitefish Credit Union would order an appraisal but it would be appropriate to add that cost to the loan?
A. If a new customer was coming in for a loan request, and it was contingent upon an appraisal, then we could include that in the new loan request.
Q. Any other situation where you could include it in a loan?
A. There could be a renewal.
Q. Okay.
A. A -- again, a refinancing of an existing loan.
Q. Okay.
A. There's a whole host of reasons.
Q. The matters that can be added to a loan would be as determined by the terms of the loan; right? Let me try and clarify it.
Obviously if there was a development loan and there were draws, it would be appropriate to add

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those draw amounts then to a loan.
A. That is correct.
Q. And there's certain other kinds of situations where costs or things are added to the loan, but that can only be done with the agreement of the lending institution and the borrower; correct?
A. As evidenced by the loan agreements and promissory notes, the loan documentation, yeah.
Q. Right. Right. It would never be appropriate though for a lending institution to add things to the loan that the customers had not agreed would be added to the loan.
A. I don't know.
Q. Can you think of any situation where it would be inappropriate to add anything to a loan that the customers had not agreed to?
A. None that I can think of.
Q. And did Lloyd Barrie do a number of appraisals for Whitefish Credit Union during this period?
A. My recollection is, yes.
Q. Okay. And could you look at page 1 -- or, 5122? And this is from Jennifer to Kelly. Who is Kelly Knighton?
A. I don't know.

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Q. It looks like somebody at NCUA; correct?
A. That is correct.
Q. And there's an MBL grade report, and then some letters and numbers. What does that mean?
A. That is -- appears to be a loan report on the loan grade 4 or higher.
Q. What does that mean?
A. Each loan is risk rated on the commercial side on a scale.
Q. And what are -- what are the different categories 1, 2, 3, 4, or higher? What are --
A. Yeah, I believe at the time the grading scale was up to 8 with the Whitefish Credit Union.
Q. And would it be the higher the number, the higher the risk assessment?
A. That is correct.
Q. And so would that have been you or someone else who assigned a category 4?
A. My recollection, the risk ratings were proposed at the loan committee.
Q. And would that have been you who did this MBL grade report, or someone else?
A. That would have been someone else.
Q. And the reference in the body of the e-mail, We have allocated 250,000 for Thorco, Inc.

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Does that refer to an allocation of real costs for foreclosure?
A. No.
Q. What does that refer to?
A. My understanding, it would be a loan loss provision based on generally the current value at the time.
Q. Could you explain that? I'm not understanding how you -- the figure 250,000 would relate to any current value.
A. It would have been based on either an assumed market value or what the underlying collateral is worth, either supported by an appraisal or an analysis of an old appraisal, or just an opinion, and then an estimate is made as to how much would be allocated from a loan loss provision to cover the deficiency amount, which -- it appears there was a deficiency amount.
Q. And if I'm -- if the appraisal, for instance, for the 300 and the 200 came to a cumulative amount of somewhere around 2.5 million, and you -- and Whitefish Credit Union had approximately 3,360,000 debt owed, how would -- could you explain any further how that would result in a $250,000 deficiency allocation estimate?

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A. No.
Q. Were you in on a number of those meetings where these risk allocations were made?
A. A number of them I was present at. A number of them I was not.
Q. Okay. But you said it would be based upon certain factors such as the appraised value, and --
A. That's one component.
Q. What other components?
A. Just an assessment of what the current market value might be.
Q. Isn't that what an appraisal does, current appraisal?
A. That certainly gives you a current value, and then there's other ways, again just based on opinions, as to what -- watching the market, if it's continuing to go down. So there's other ways.
Q. To a lay person trying to understand this, is the $250,000 figure intended to reflect what the credit union estimates at that time they're going to lose net on this loan and property?
A. No.
Q. And what is it supposed to reflect?
A. The possible risk as part of the loan ultimately. There's a lot of other loans that are

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risk rated as well that have allocations that we don't -- that the banks, they don't lose any money on.
Q. And then 5140. You're directing Kaleena -- how do you pronounce that?
A. "Kaleena", yes.
Q. Last name?
A. Kujawa.
Q. Yeah. Now, who is she and what department did she work for at this time?
A. She was also a commercial loan assistant.
Q. And so you're -- with this e-mail, as I understand it, you were directing her to work up an adverse action document and what to put in it.
A. Yes.
Q. And the reason for the decline -- now, this is referring only to the $500,000 loan request for the North Dakota project; correct?
A. It refers to the $500,000 revolving line of credit request, yes.
Q. And those were the reasons given that you wanted in the adverse action report.
A. Yes.
Q. And then the last one down there, other reasons, Collateral, considered along with other factors, is not deemed sufficient to protect the

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interest of Whitefish Credit Union.
What other factors were you referring to?
A. I don't recall.
Q. And this was dated August 3rd, 2011?
A. Yes.
Q. So by that time we know that a decision had been made by the Whitefish Credit Union to deny this $500,000 revolving line of credit request for the North Dakota project; correct?
A. Correct.
Q. And isn't it true that as of that time Whitefish Credit Union had still never acknowledged that it had an obligation to subordinate its interest in -- the security interest in the 200 acres?
A. I have no knowledge of that.
Q. You have no knowledge of ever telling the Thorntons that Whitefish Credit Union would, by that time, though; do you?
A. I have no knowledge that there was a formal request for a subordination, and I cannot recall any specific time telling them that we would not subordinate.
Q. Okay. And the next one, 5142, an e-mail from you to Donna dated July 25th, 2011, indicating that you're going to take it to the committee.

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A. Yes.
Q. Did you do so?
A. I don't have any specific recollection.
Q. And what committee would that have been that you would have taken it to?
A. Either the loan officer committee or a committee comprising of Jim Kenyon and Taylor Horst.
Q. Not the membership loan committee?
A. That is the officer loan committee. (Sic.)
Q. And Kenyon as CEO and Horst as the head of special assets?
A. Yeah.
Q. So that would have consisted of you taking it to Kenyon and Horst.
A. Or the officer loan committee at large.
Q. But Horst was just special assets at that point; right?
A. No.
Q. What other functions or roles did he have?
A. My understanding, he was the second in command at the Whitefish Credit Union, oversaw the real estate department, consumer loan department, and all functions.
Q. Okay. And then the next page, 5145, this is from Mr. Archer to you. Correct?

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A. Yes.
Q. And when he talks about this, on July 14th, 2011, being taken over to Ryan, he's talking about Ryan Purdy, who's an associate in Mr. Frampton's office; correct?
A. That is correct.
Q. And that was for purposes of foreclosure; correct?
A. No.
MR. FRAMPTON: Objection. Foundation.
BY MR. MANLEY:
Q. For what purpose was it taken over there?
A. We would take files to our attorneys to review the documentation. We would take files to just review in general. Just because we took a file to the attorneys it didn't necessarily mean it was in foreclosure.
Q. Okay. So you say that Mr. Purdy needed to get familiar with the facts of that file.
A. That's a fair statement.
Q. And the next page, 5147. And that's an e-mail from you to Donna Thornton; correct?
A. That is correct.
Q. And that was written about roughly a half hour before the -- the e-mail from Archer to you

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regarding taking the file over to Purdy; correct?
Well, I'll just -- the one from you to Donna was 2:55 p.m. on July 14, 2011, and the one from Archer to you was 3:27 p.m. on the same date; correct?
A. Yes.
Q. Oh, I'm sorry. I'm sorry. It looks like -- on page 5145 it looks like you actually -- you received Archer's -- you sent Archer that at 2:57, that e-mail; correct?
A. Yes.
Q. And two minutes before that you had sent the e-mail to Donna on 5147; correct?
A. Yes.
Q. And both of those related to the commercial development loan; correct?
A. I don't know.
Q. Where it says, Commercial Application.pdf. Do you know what -- on 5147. Do you know what that -- what commercial application that refers to?
A. I don't recall specifically.
Q. Could you look at 5150, please? And this is from you to Kenyon dated the previous day, July -- July 13, 2011; correct?
A. July 13th, 2011. Yes.
Q. And this is another one where there isn't

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any privilege log or anything. They've just blacked out things without explanation. I just want you to know we didn't doctor up the copy that you're looking at. Do you know what you said there that they have blacked out?
A. I have no recollection.
Q. That would appear to relate though to the Thornton loan matters; right? I mean, the subject of it is clearly the Thornton --
A. It certainly could.
Q. Right. And it specifically refers to the 200 acres; correct?
A. Yes.
Q. And the importance is high; correct?
A. Yes.
Q. And it was not a communication between you and the legal counsel; was it?
A. It does not appear to be.
Q. Okay. Do you have any -- did you discuss this with Mr. Frampton?
A. Not to my knowledge.
Q. Do you have any idea at all why anybody could claim that this was an irrelevant or privileged matter?
A. Not to my knowledge.

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Q. So the next page, 5152, Jennifer is telling you and Kenyon, and others, that the Thorco loan file is being assigned to Purdy; correct?
A. That is correct.
Q. And the terminology as used at Whitefish Credit Union, what does that mean to you, that it's assigned to Ryan Purdy?
A. That could mean that he was reviewing the file again for the documentation issues for -- again, just for him to get familiar with the file.
Q. Or to begin the foreclosure process. It could mean that too; couldn't it?
A. It could mean that as well. There's a whole host of reasons that we take files over to the attorney.
Q. And on 5153, that's dated July 12th, 2011; correct?
A. That is correct.
Q. And first, Donna sent an e-mail to K. Bowden. Who is that?
A. Jim Kenyon's assistant.
Q. Okay. Asking for an answer regarding the North Dakota loan request; right? And it indicates that you had said you were taking it to the loan committee on Wednesday?

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A. That's what it says.
Q. Do you know if that was taken to the loan committee that week?
A. I don't know.
Q. And it appears that this was -- this was then forwarded from Kenyon to Aaron Archer; correct?
A. That is correct.
Q. And Aaron Archer's sole function was special assets; correct?
A. That was my understanding.
Q. And the $500,000 North Dakota matter was not a special assets loan at that time; was it?
A. Well, if the file was being handled by the special assets department, then any new loan request would in fact be part of that special assets purview.
Q. And so this would indicate that at least as of July 12, 2011, that was -- the Thornton matters, old and new, were in the special assets department.
A. It would certainly indicate that.
Q. Pardon?
A. It would certainly indicate that.
Q. You don't doubt or dispute that; do you?
A. No.
Q. No. And then on 5158 -- I don't have to ask you about that. It appears that the blackout marks

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were referring to other customers. Is that what it appears to you?
A. That is correct.
Q. And then the next one, 5160, please. So Donna sent you an e-mail on June 29th, 2011 at 10:27; correct?
A. Yes.
Q. And at 1:09 that same date you forwarded it to Kenyon.
A. Yes.
Q. And at 4:07 what was his response?
A. "Wow. What part of this don't they get"?
Q. And what did that mean to you?
MR. FRAMPTON: Objection. Foundation.
THE WITNESS: I don't know.
BY MR. MANLEY:
Q. What does it mean to you as you sit here and read it today?
MR. FRAMPTON: Same objection.
THE WITNESS: I don't know.
BY MR. MANLEY:
Q. It appears to be a somewhat demeaning comment on the Thorntons' request, or their revised loan request; does it not?
MR. FRAMPTON: Objection. Argumentative

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THE WITNESS: I don't know.
BY MR. MANLEY:
Q. And on 5164, this is dated June 16th, but it's referring to June 9th when you and Kenyon and the Thorntons met, and you concepted a deal that includes additional money. And it started with an e-mail earlier that day from Carrie Potter to you. Now, who's Carrie Potter?
A. She worked in the collection area of the credit union.
Q. Okay. And that's a separate department than the special assets. Or is it?
A. Yes.
Q. So she was handling or involved in the Thorco loan as a collection agent at that time, June 16th?
A. Her only capacity in my recollection was, she had to make loan comments on the system, because at this point I believe the loan was matured.
Q. And so she had to make periodic notes, update her notes?
A. That is my recollection.
Q. And would she make notes to indicate what, if any, actions she's taking as a collections person?
A. Yes. That would be part of her --

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Q. So she wants to know from you whether it went to member loan committee last week; right?
A. Yes.
Q. And you say that it went to member loan committee on 6-9, and that's when you concepted a deal that includes additional money, etc.?
A. That is what it says.
Q. And were waiting for Thorntons -- for some information?
A. Yes.
Q. But that wasn't true; was it?
A. I don't know.
Q. Well, do you remember we already talked about the meeting you had with the Thorntons?
A. Yes.
Q. And I think you agreed that it didn't go to the member loan committee that day.
A. Yes.
Q. So when you wrote this e-mail, that was not true; was it?
A. I could have been referring to the meeting with Jim Kenyon, which we also qualified as member business loan committee. Any time we were talking about a loan, loan request, that qualifies as well.
Q. So the member business loan committee that

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day consists of you and Jim Kenyon and the Thorntons?
A. That is a generic term that can be used to -- it's an acronym that we use for any kind of loan committee, or that the credit union would use.
Q. How did the Thorntons perform on that loan committee? Okay?
A. I don't know.
Q. On 5168, if you could just take a minute and review that, please. (Witness complies.)
Okay. It appears that -- are you done? I'm sorry.
A. Yep.
Q. I didn't mean to rush you. It appears that you're getting back to Donna regarding her refinance letter, and first of all apologizing that the previous loan officer hadn't gotten back to her timely. Would that have referred to Doug Johnson?
A. Yes.
Q. And Doug Johnson was resigned -- was given the opportunity to either resign or be terminated in March of 2011; was he not?
A. I don't know the specifics on that.
Q. I'm not asking you specifics. Do you know whether in March, 2011 he was given the same ultimatum that he either could resign or be terminated?

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A. No.
Q. Do you remember whether he was escorted out of the building?
A. No.
Q. Did you know he was escorted out of the building?
A. No.
Q. And you're indicating you needed additional financial documents; correct?
A. Yes.
Q. Before you could -- before you would present it to the loan committee.
A. Yes.
Q. And then you tell him in the second paragraph, however, that there's absolutely no way we can advance any additional funds at this time?
A. Yes.
Q. Okay. Isn't it true that that's the first time the Thorntons were ever told that there would be no additional funds provided to them by Whitefish Credit Union?
MR. FRAMPTON: Objection. Misstates testimony and vague.
THE WITNESS: I don't know.
BY MR. MANLEY:

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Q. Okay. Are you aware of any other oral or written communication from Whitefish Credit Union to the Thorntons stating that no additional funds would be provided?
MR. FRAMPTON: Same objection.
THE WITNESS: No.
BY MR. MANLEY:
Q. At any rate, you would agree that this is two and a half -- two to two and a half months after the loan was due on March 15, 2011; correct?
A. Yes.
Q. Then the next page, 5173. Who's Kayla?
A. She is a commercial loan assistant.
Q. And her last name is Ost, O-S-T?
A. Well, actually, if I could check that. I recall that she is a commercial loan assistant, but I don't know that for sure.
Q. And she is asking on May 17th, 2011 you to get her certain files for the auditor.
A. Oh, okay. Actually, if I could correct that earlier statement. Yeah, she's a file clerk.
Q. Okay.
A. At the Whitefish office.
Q. And when they refer to the auditor in this context, what auditor is that?

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A. I don't know.
Q. That could be an auditor from the national organization or an internal auditor?
A. It could be.
Q. And who at that time were the -- if anyone, were the internal auditors?
A. I don't know.
Q. Could I ask you, please, to look at 5187? And this is an e-mail from you to Carrie Potter, and it's dated April 21st, 2011. And if you look down to where it says Thorco, you stated, Meeting with borrower to go over action plan. This one will blow up, and at a minimum, be a TDR.
Could you explain what you meant by that and the reasons for saying that, please?
A. My inclination was that this was going to be a difficult loan based on it was a -- in an industry that had seen significant deterioration. It was a development loan.
Q. When you used the words "blow up", doesn't that mean something a little different than a difficult loan?
A. Not necessarily.
Q. So you could in those days have referred to any difficult loan as, This will blow up?

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A. Yes.
Q. I see. And at a minimum, be a TDR.
A. Yes.
Q. And could you please state what that means again for the record?
A. Again, it was, I believe, an accounting regulation. I don't recall the specific. Under the regulations we had to qualify loans that were either impaired and/or were in a workout state or had some issues as a troubled debt restructure.
Q. So a troubled debt restructure, you've been good enough to explain what that would have entailed. A loan that would blow up would have been something more serious than that; correct?
A. It could.
Q. Well, isn't that how you use it in that sentence?
A. It could mean that.
Q. Well, you say it's either going to be a TDR at a minimum or it's going to blow up. So doesn't that indicate that you're using the term "blow up" as something more serious than a TDR?
A. That that could be a possibility of this.
Q. Did you communicate that position or opinion to the Thorntons at that time?

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A. Not to my knowledge.
Q. Do you know if they were still going along in fool's paradise believing that you guys were working on redoing this loan?
MR. FRAMPTON: Objection. Vague, argumentative.
THE WITNESS: Not to my knowledge.
MR. MANLEY: Would this be a good time to take a lunch break?
(Off the record discussion.)
(Lunch recess.)
BY MR. MANLEY:
Q. So I think we're now on page 5192, and this was the -- it appears to be the e-mail requesting specific documents that would be necessary to consider their development loan request renewal, and it's a -- a copy of it was sent to you on March 11, 2011.
A. Yes.
Q. Okay. That's quite a bit of stuff to get together. Would you agree?
A. That would be normal for and consistent for a loan request.
Q. Would it be normal to request this -- all this information for the first time four days before the loan was due?

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A. Wouldn't say normal, no.
Q. Abnormal?
A. Certainly unusual in the industry.
Q. And a number of this information would have required expertise that the Thorntons didn't have, such as absorption schedule and that kind of thing. Would you agree?
MR. FRAMPTON: Objection. Foundation.
THE WITNESS: Not necessarily.
BY MR. MANLEY:
Q. Okay. And then the next page I wanted to ask you about is 5196, and this was dated -- the first one is from you, and it's dated March 8th of 2011; correct -- at the bottom?
A. Yes.
Q. And then you're telling -- or, you're telling Jennifer that all loan requests on Thorco's loan have to go through Jim Kenyon; correct?
A. No.
Q. Okay. All draw -- I'm sorry. All draw requests?
A. Yes.
Q. They had to go to Jim.
A. That's what it says.
Q. For his approval.

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A. Yes, that is what it says.
Q. But you're not sure how much of that's going to be conveyed to the Thorntons.
A. That is what it says.
Q. And you meant what it says, I assume. That's fair to assume, since you wrote it?
A. Yes.
Q. Is that unusual, that before -- while a loan is performing and not in any way in default, that the CEO is having to approve any draw requests on the loan?
A. Is it unusual?
Q. Yeah.
A. Not necessarily.
Q. You can think of other loans like that?
A. Within the industry?
Q. At Whitefish --
A. There's a possibility.
Q. I'm sorry. I didn't mean to ask you if within the industry it's possible. Do you remember any other loans at Whitefish Credit Union that were performing loans, not in default in any way, in which the draw requests on loans had to go through the CEO?
A. None that I'm aware of.
Q. And then she responds back to you, and -- I

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don't need to ask you about that. I guess that's self-explanatory; isn't it?
I don't -- 5214. And I assume you don't -- can't answer this, but I'll ask you anyway. Do you have any idea why Kathy Sammons' indictment is in the Thornton file?
A. No.
Q. Do you know who Kathy Sammons was?
A. Yes.
MR. FRAMPTON: I'll object to it being in the file.
MR. MANLEY: I guess we -- I guess we didn't get it then.
MR. FRAMPTON: Not that -- I don't know how it was in the file. It was probably e-mail requests and it's probably an attachment somehow.
MR. MANLEY: It's your Bates stamp at the bottom.
MR. FRAMPTON: I'm not saying we didn't produce it. I'm just saying it wasn't in the physical file.
MR. MANLEY: Well, you know, if you're going to testify as to where it came from, I think we need to put you under oath.
MR. FRAMPTON: Well, if your questions have

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the wrong premise I need to clear the record. That's all I'm doing.
BY MR. MANLEY:
Q. 5217. Did you get to that?
A. Yes.
Q. And is this information that you would have inputted, or been involved in inputting?
A. I don't know.
Q. Who would typically fill out the Problem Loan Report?
A. Typically someone in special assets.
Q. Which you were as of December 31st, 2011; correct?
A. Yes.
Q. And you were the person in special assets who was the officer on the Thornton loan?
A. For the most part.
Q. Okay. So it would typically be the person in your position?
A. It could.
Q. And the question is, it would typically be the person in your position.
A. It could be typical.
Q. And can you explain under the Risk Rating Current and Proposed? It's 7 at that time. Was there

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a reason that it climbed from 4 to 7 that you can help us understand?
A. I don't recall.
Q. Is this risk rating for some purpose other than the risk rating that we discussed before?
A. Should be one and the same.
Q. And who would have been involved in increasing it from 4 to 7?
A. It would have been either part of the loan committee and/or a discussion with Taylor Horst or Jim Kenyon.
Q. And did you say -- is 8 the highest risk?
A. My recollection was that the scale went from 1 to 8.
Q. Okay. And what reasons would there have been why this was such a high risk?
A. It could have been any of a number of reasons, loan-to-value, market conditions.
Q. Could it be also because the Whitefish Credit Union loan records showed that the only way that this borrower had to pay back the money would have been to complete the project and sell lots, and failing that, they had no ability to pay it back?
A. No.
Q. I see.

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MR. FRAMPTON: I don't think Mr. Cogdill finished his answer before he was cut off with a new question, if I could clarify.
BY MR. MANLEY:
Q. Can I ask you to look at the Financial Summary section? Now, that's on that same page. And as of 4-13 it appears that Donna and Dennis's total assets are $26,000 and total liabilities are $3,560; is that right?
A. No. More.
Q. What does that mean?
A. The number represents 26,000,000.
Q. So you add three zeroes to everything in that category?
A. That is my understanding.
Q. Because up above they didn't add -- in the block above. That's why I was wondering.
So the Financial Summary would have been completed by you or by somebody else with your assistance or input; correct?
A. Yes, with the numbers coming from a financial statement with the date 4-13-11 prepared by the -- Dennis and Donna Thornton.
Q. Then it says, Net Worth, 22,980,000, not applicable. What does that mean, or, NA?

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A. I don't know what that means, other than the non-applicable.
Q. Net Income? It showed no income; right? I'm sorry. Net Income, it says, Not applicable.
A. Yes.
Q. Because, in fact, Whitefish Credit Union records showed that they had had no income the past three years other than paying themselves out of this loan for their work on the project; correct?
A. I don't recall.
Q. And could I ask you to look at 5218? Now, is that something that appears to you to be something that you prepared?
A. It could have been.
Q. Does it appear to be something that you prepared?
A. I don't recall preparing this form specifically.
Q. Okay. It's safe to assume though, isn't it, that it was prepared at least with your input?
A. Someone else in special assets could have easily prepared it as well.
Q. Right. And in this it says the liquidation value of the property is $2,333,000; correct?
A. Yes.

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Q. And that's dated February 23rd, 2011?
A. Yes.
Q. And do you know what that's based on?
A. I don't have any recollection other than what it says here, that the valuation date was February 23rd of 2011, and then there's a reference over to the right, Appraisal.
Q. And that would be the Barrie appraisal; would it not?
A. I don't see any specific reference to that appraisal.
Q. Okay. Do you remember the Lloyd Barrie appraisal?
A. Vaguely.
Q. Do you remember that that appraisal was ordered by -- by the Thorntons in January, of Lloyd Barrie, and that at this time, on or about February 23rd -- let me see if I can get you better dates. That it was ordered by the Thorntons January 7th, 2011, or thereabouts, and that the Thorntons paid $8,500 for this Barrie appraisal, and that in February you contacted the Thorntons and asked them if they would assign the Barrie appraisal to Whitefish Credit Union, and that that was necessary if their renewal loan -- or, commercial loan request was going to be

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considered?
MR. FRAMPTON: Objection. Foundation, presumes facts.
MR. MANLEY: I'm asking him what he remembers.
BY MR. MANLEY:
Q. Do you remember that?
MR. FRAMPTON: Not with the other stuff that you had in your question.
THE WITNESS: I don't remember that specifically.
BY MR. MANLEY:
Q. Let me break it down. Do you remember contacting the Thorntons and asking them to assign their Barrie appraisal to the Whitefish Credit Union?
A. No, I do not remember asking them to assign the appraisal to the Whitefish Credit Union.
Q. What do you remember asking them to do?
A. My recollection was, we were trying to engage Lloyd Barrie to complete an appraisal on the project, and he had already been engaged by the Thorntons, and which again we would not be able to accept an appraisal that was ordered by the borrower. It had to be ordered by the credit union, and my recollection was in contacting Lloyd and having

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Whitefish Credit Union formally engage him and working through that with the Thorntons. That's my recollection.
Q. Asking Thorntons if they would sign something to allow that.
A. I believe Lloyd requested that he would need to receive something from the Thorntons requesting as much.
Q. Okay. So do you remember on or about February 25th, 2011 calling the Thorntons and asking them if they would sign whatever it is that Barrie said he needed to do that?
A. I do remember having a conversation with them letting them know that for us to use the appraisal we would have to engage the appraiser. I don't recall specifically what we needed at that point.
Q. Do you remember that Mr. Thornton agreed and in fact went in and signed a disengagement letter that Barrie had done on February 25th of 2011?
A. Can you restate your question?
Q. Yes. Do you remember then that Thornton went in and signed the Barrie disengagement letter that was required after your call on February 25th, 2011?

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A. I do remember that it must have occurred because at that time we had an official engagement for the appraiser to work on the project.
Q. Because by the time that Thornton signed that, you had an official appraiser? I'm sorry. I'm not understanding you.
A. At some point I was aware that the appraiser had been officially engaged, so he must have had whatever he needed on his side to allow that to happen.
Q. Okay. And had you seen that, would you have asked for it and gotten a copy of that disengagement letter for your records?
A. I don't recall.
Q. And are you aware that that's dated February 25th, 2011?
A. No.
Q. And that the appraisal was actually dated two days before that?
A. No.
Q. If the appraisal in fact was done and dated before he was disengaged and became Whitefish Credit Union's chosen appraiser, would you agree that that appraisal was done by the borrowers?
A. I wouldn't know, no.

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Q. Do you believe that would have been a violation of the national credit union standards?
A. I wouldn't, no.
Q. So then after the Barrie appraisal became the Whitefish Credit Union's appraisal, you got Lloyd Barrie's bill for approximately $3,600; did you not?
A. I don't recall.
Q. Do you recall learning that after he became Whitefish Credit Union's appraiser, Thorntons required Barrie to pay them back the $8,500 he had been paid for that appraisal, and then he billed Whitefish Credit Union for it?
A. I don't recall.
Q. Do you recall after getting the bill instructing the people, clerical people, at Whitefish Credit Union to add that to the Thorntons' loan?
A. I don't recall.
Q. When I say that, I'm talking about the amount of the Barrie appraisal bill for the Whitefish Credit Union's appraiser, Lloyd Barrie.
A. I don't recall.
Q. Do you know that that was in fact done?
A. No, I don't.
Q. Would you agree that if it had been done, that would have been inappropriate?

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A. I don't know.
Q. Well, are you aware of anything in any written document in the Whitefish Credit Union files that authorized you to add -- or, Whitefish Credit Union to add amounts such as this appraisal to the total loan amount?
A. Could you restate the question?
Q. Yeah. Are you aware of anything in writing anywhere in the Whitefish Credit Union's files that authorized Whitefish Credit Union to add the Lloyd Barrie appraisal bill to the Thornton loan amount?
A. I know that we were routinely adding those to some loans that we were ordering appraisals on.
Q. And I don't doubt that, but my question is, what authority did you have to do that?
A. Other than it was something that we routinely would do at the credit union.
Q. Well, because -- but did you have any written authority, any permission, from the Thorntons to do that?
A. None that I'm aware of.
Q. And are you aware of anything legal that gave you that legal authority?
MR. FRAMPTON: Objection. Asked and answered.

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THE WITNESS: Not that I'm aware of.
BY MR. MANLEY:
Q. At that point Whitefish Credit Union, and you being in charge of the decision, as I understand it, had to decide whether to pay that Lloyd Barrie bill or whether to expense it as you later did the appraisal for the 200 acres. Whitefish Credit Union, I believe upon your direction, instead of expensing it, added it to the Thornton loan without notifying them?
Now, if that -- if my recitation of facts is accurate, would you agree that that would be inappropriate on the part of Whitefish Credit Union?
A. Not necessarily.
Q. And why do you say that?
A. Because, again, we were routinely adding appraisals on loans. That was a procedure that was part of the Whitefish Credit Union's when we were handling these files.
Q. Why then did you do it differently with regard to the 200-acre appraisal by Lloyd Barrie?
A. I don't know.
Q. Page 5219. Now, that's the Barrie appraisal on the 200 acres; is it not?
A. Yes.

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Q. In ordering this appraisal on the 200 acres and the prior one on the 300 acres in February, did Whitefish Credit Union provide certain instructions to the appraiser?
A. I don't know.
Q. Did you routinely, you, as a loan officer at Whitefish Credit Union, when requesting an appraisal, issue certain directions to the appraiser?
A. Yes.
Q. That was standard.
A. Yes.
Q. And you had to instruct them such as whether you wanted just an as-is appraisal or an as-completed or projected appraisal, that kind of thing; correct?
A. Yes.
Q. And with respect to the 300 acres, did you request Barrie to do an as-is appraisal or an as-is and as-completed appraisal as had previously been done at Glacier -- by Glacier?
A. I don't recall.
Q. Is there any reason that you can think of that Whitefish Credit Union would not have asked that the Barrie appraisals -- the Barrie appraisal on the 300 acres include an as-completed estimate?
MR. FRAMPTON: Objection. Presumes facts.

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THE WITNESS: Could you restate the question, please?
BY MR. MANLEY:
Q. Yeah. Are you aware of any reason Whitefish Credit Union would have had for not requesting the Barrie appraisal include an estimate for as-completed in addition to as-is?
MR. FRAMPTON: Same objection.
THE WITNESS: One possibility would be that we didn't have the information to give to the appraiser at the time for an as-completed. It's just a hypothetical possibility.
BY MR. MANLEY:
Q. Any other possibility you can think of?
A. None that I can think of.
Q. And did you review the Barrie appraisal on the 300 acres that you got in February or March, 2011?
A. I recall reviewing it.
Q. And did you notice that it didn't give any value for any of the work that had been completed on the project up to that point, but was appraised as raw land, basically?
MR. FRAMPTON: Objection. Foundation.
THE WITNESS: I don't recall.
BY MR. MANLEY:

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Q. And with regard to the 200-acre appraisal, did you notice that it was appraised as one 200-hundred acre piece as opposed to ten 20-acre pieces, which it was qualified to sell as?
A. I don't recall.
Q. Did Whitefish Credit Union give any instructions to Barrie on those issues?
A. Not that I recall.
Q. And could I ask you to look at 5260, please? And I might suggest, if your counsel could -- that Mr. Frampton could look at that too.
Isn't it true that in the third paragraph you tell the Thorntons that as a condition to renewing the loan, they must pay the accrued interest, which at that time was $91,130.40?
A. That is what it says.
Q. Okay. And that was in fact a condition that you set before you would renew the loan; correct?
MR. FRAMPTON: Objection. Vague.
THE WITNESS: On August 3rd, yes.
BY MR. MANLEY:
Q. Okay. And do you remember earlier making similar statements when the interest was approximately $87,000?
A. I don't recall.

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Q. But there was a condition that they had to bring the interest current before you would renew it; correct?
MR. FRAMPTON: Asked and answered.
THE WITNESS: At this particular point in time on August 3rd.
BY MR. MANLEY:
Q. That's a "yes"?
A. Yes.
MR. FRAMPTON: Asked and answered.
BY MR. MANLEY:
Q. And now on page 5261, this is an Adverse Action Notice prepared by you; correct?
A. That is correct.
Q. And which loan request does this refer to?
A. The August 4th, 2011 revolving line of credit loan.
Q. Okay. That would have been the 500,000 North Dakota loan request?
A. That is my recollection.
Q. And this is what would have been sent to the clients; correct?
A. Yes.
Q. And does that, according to your information, education, training, include all of the

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information that is required by the national standard?
A. As far as Whitefish Credit Union is concerned and the procedures that we were asked to follow, yes.
Q. Do you know what the national standard requires for adverse action notices?
A. Not specifically.
Q. So you don't know if that includes all the required information notices; do you?
A. I do not.
Q. And could you please look at 5297? That's dated -- I'm sorry. Is it May -- in the upper right. At any rate, in the upper right it lists the amount of the loan; correct? Three million six hundred -- $3,360,000; correct?
A. That is correct.
Q. And the amount that they -- of the loan as it was turned over to the attorneys was more. And are you aware that that was because you added the cost of the Barrie appraisal to the total loan amount due?
MR. FRAMPTON: Objection. Foundation.
BY MR. MANLEY:
Q. Do you know?
A. I'm not aware of that.
Q. Could you look, please, at 5328? Now, this

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whole page is -- relates to member Thorco; right? Thorco, Inc.?
A. Yes, that is my understanding.
Q. And then for the different people who put input into this computer file, you have user numbers; correct?
A. Yes, that is my understanding.
Q. For instance, your user number is 81; isn't it? Do you see down at the bottom of the page, Yesterday I spoke with Dennis Thornton?
A. I don't recall what my user number was.
Q. At any rate, that's your input; isn't it, for 8-11-2011 under user 81? Well, it's your name after it; isn't it?
A. Yes, it does appear.
Q. So do you know who is -- who is 049?
A. No.
Q. Or 104?
A. No.
Q. And, now, did you have a chance to look at your input dated 8-11-2011?
A. I just gave it a cursory read.
Q. Well, please feel free to take all the time that you need so that we can visit about it. (Witness complies.)

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A. Okay.
Q. Okay. And just to clarify a couple of things that are necessary for motions, everything on these two pages, 5328, 5329, just refer to Thorco, Inc.; correct? There's not any other customers.
A. As far as I know, no.
Q. Well, that's certainly the way this appears; correct?
A. That is correct.
Q. And the first -- four out of the first five entries are blacked out, and it says P-R-V or P-R-I-V. Do you have any understanding why that would be privileged information?
A. No.
Q. And attorneys at Mr. Frampton's firm did not have user numbers and input into the Thorco account in the Whitefish Credit Union computers; did they?
A. Not as far as I know.
Q. Well, you know that's not true; don't you?
A. Not as far as I know.
Q. They didn't -- have you ever seen an attorney input information into the client account computer file in Whitefish Credit Union's files?
A. I have not seen it.
Q. So I had asked you before if you remembered

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that at a certain point Dennis Thornton called on the phone and he was upset when they got turned down on the North Dakota project money. Does this help refresh your recollection after reading your note about that call that had taken place on apparently August 10th?
A. Yes.
Q. Okay. And you remember that he was upset?
A. That is what this says.
Q. And -- but my question is, do you remember that?
A. No.
Q. Do you have any recollection as you sit here today about that conversation?
A. I do not.
Q. Okay. You say, He indicated that the prior account officer had already approved the $500,000 line of credit above the original $3,000,000 line, and he had documentation to that effect and would send a copy via his attorney.
Do you see that?
A. Yes.
Q. Do you recall that what he said was he had documentation of the subordination agreement for up to $500,000 on the 200 acres?

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A. That was my understanding, is that's what that related to.
Q. Right. And then you told him that he and Donna needed to come into the office to discuss the matured loan and what their options were to extend; correct?
A. That is what it says.
Q. And then you indicate you reaffirmed. So "reaffirmed" indicates you told him this before; correct? You reaffirmed there was approximately $87,000 in accrued interest owing, and he would need to bring that in, and if he did not have the full amount, what he could afford. Correct?
A. That is what that says.
Q. So he had to pay interest before you would talk to him about renewing the loan; right?
A. That is a procedure that we employed. Our first and foremost on any renewals, whether it was in special assets or in performing, is that we collect the accrued interest upon the maturity and renew the loan accordingly.
Q. Right. And I knew that, and I'm just asking you to affirm what's obvious for the record; okay?
And then the last three lines of your notes are crossed out, and it says, Privileged. Do you have

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any recollection of what you said there?
A. No.
MR. FRAMPTON: Objection. Don't answer.
BY MR. MANLEY:
Q. So you don't have any recollection of what you wrote there.
MR. FRAMPTON: Same objection. Don't answer.
MR. MANLEY: I'm just asking him what he recollects.
BY MR. MANLEY:
Q. And as I understand, you don't recollect what was in there anyway; right?
A. That is correct.
Q. Did you have any discussion with any attorneys in this case regarding the issue of crossing out those lines?
A. No.
Q. And, again, this was a communication from you to the Whitefish Credit Union computer file.
A. That is correct.
Q. For Whitefish Credit Union employees who were involved to read as necessary.
A. That's correct.
Q. And then the next one is 8-11, and it

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appears to be 081, which appears to be your user number, and could you explain what that means? It says, An additional comment is available for 5-17 in voided notes. It was inadvertently voided when trying to print a copy for file. Will have Robert try to reactivate.
Do you know what that refers to?
A. No.
Q. What are voided notes?
A. I don't know.
Q. And you don't know what the additional comment is that's available?
A. No.
Q. It appears you did write that though; did you? User number 081?
A. Yes, if that's my user number.
Q. Well, and I think that we've learned that it was on 8-11 on the previous comment.
A. Uh-huh.
Q. So then on 8-3, user number 081, the whole thing is blacked out. Do you have any recollection or knowledge what the subject matter of that is?
A. No.
Q. And then the next one, 7-13, 049, that appears to be Kenyon's user number; does it not?

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A. I wouldn't know.
Q. So you would have no knowledge or recollection of what was in there?
A. No.
Q. And then whoever 049 is inputted that on 6-16-2011 that person had received an e-mail from Randy, loan went to six, slash, nine member business loan committee. They concepted a deal, etc., etc.
And that was the membership loan committee consisting of you, Kenyon, and the Thorntons?
A. They wouldn't be involved in a loan committee.
Q. That's what I was wondering. It seems like the vote would have been two to two. There weren't any other member loan committee -- member business loan committee meetings that day on the Thornton issue; right?
A. None that I'm aware of.
Q. And minutes are required of such loan committee meetings; are they not?
A. To my knowledge, that is normal practice.
Q. Do you remember -- in answer to my question, they're actually required by the Whitefish Credit Union policies; are they not?
A. For a formal MBLC loan committee, yes.

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Q. Could you look at 5402, please? And you see at the top it says, Loan Officer Incentive Program.
A. Yes.
Q. Limit per quarter equals $3,600.
A. Yes.
Q. Okay. Could you explain that incentive -- that Loan Officer Incentive Program document?
A. I don't have any knowledge of this one.
Q. Never seen it before, don't know what it means?
A. (Witness shakes head.)
Q. I'm sorry. You got to answer out loud.
A. I'm sorry. Just still reading it. No, I have no knowledge of this.
Q. Were there other loan officer incentive programs, or were there loan officer incentive programs that were in force when you were a loan officer at Whitefish Credit Union?
A. During the time in question?
Q. During the time you were there.
A. I recall an incentive program a long time ago.
Q. This is 2006. I think you were there then; weren't you?
MR. FRAMPTON: Objection. Misstates the

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testimony.
THE WITNESS: Yeah, I don't recall seeing this particular program, but I know what I would qualify as in the old days there was an incentive program.
BY MR. MANLEY:
Q. But focusing in on 2009 to 2012, was there any loan officer incentive program that related to either volume of their loans or delinquencies on their loans?
A. No incentive program that I was aware of.
Q. Could you look at 7068, please? And this is the request for -- to Barrie for an appraisal of the 200 acres; is it not?
A. That is correct.
Q. Okay. When I come back, I'll ask you some questions. I have to take a break.
(Short recess.)
BY MR. MANLEY:
Q. Can I ask you to go back to page 5149, please? Who is David Mosby?
A. He is a credit analyst with the Whitefish Credit Union.
Q. And what department would he be in then?
A. In the commercial loan center in Kalispell.

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Q. And on July 11, 2011 he sent you a question, and he was asking you whether -- he was indicating they got the 2009 tax returns and a current financial statement for the Thorntons. Do you want to renew now or wait until the 2010 taxes are prepared? And then he indicates that you have authorization to release the info. so you could get them as soon as they are ready; correct? You could get those from the IRS?
A. That is what that says.
Q. Now, when he refers to, do you want to renew now or wait, does that indicate anything with regard to whether a decision had been made whether to renew the Thorco loan?
A. In this context it would mean to me that whether he would be instructed to proceed with a financial spreading on the file.
Q. And then you say, Go ahead and spread what you have.
What does that refer to? We don't know that word.
A. Again, what a credit analyst is charged with is using a software program to spread financial statements and tax returns on a year-over-year-over-year basis.
Q. And then that's something that is factored

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into a decision as to renewal or nonrenewal?
A. It plays a role, yes.
Q. And did you ever get that from Mosby?
A. I don't recall.
Q. Is that something that if he had done it, it should have been part of the Thornton file?
A. If it was a completed financial spread, it would have been in the financial file within the Thornton file.
Q. And in fact, you are telling him to go ahead and complete it; aren't you?
A. Yes. The instruction says, Go ahead and spread what you have. We won't wait for the 2010 taxes.
Q. And as you sit here today, you don't recall whether or not that was ever done, whether you ever saw such a report or analysis?
A. I don't recall.
Q. And please go back to 7148 where I interrupted you.
A. 7148?
Q. Yes, sir. That's a note by Dana Henderson, and it indicates that on July 30th, 2009 you and he and Doug Johnson all visited the construction site.
Does that help refresh your recollection as

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to a visit at that time?
A. Yes.
Q. Okay. And according to his note, anyway, it indicates that everything is progressing satisfactorily to Whitefish Credit Union. There are no concerns or conditions or anything like that recited in there; are there?
A. That's correct.
Q. And is that consistent with your recollection of what the status of that loan and development was at that time?
A. Yes.
Q. Then at 7150, this is a letter that Thornton provided to Glacier Bank when the time for renewal of his loan was approaching. Would you have been at Glacier Bank at that time, December 22nd, 2008?
A. I believe I was.
Q. Okay. But you were not involved in that loan at that time?
A. Not directly.
Q. Okay. And do you have any -- any recollection as you sit here today of any involvement in this loan?
A. None.
Q. And if you look at that three-page letter,

it recites a number of work that had already been completed. So in other words, this would have been completed before your July, 2009 site visit, when at that time you were working for Whitefish Credit Union and went up there with Dana and Doug?

A. According to this letter.

Q. Yeah, and it shows $4,000,000 worth of work done at that date of this letter. Do you have any basis for contesting or challenging those representations that that much work was done based upon your observations?

MR. FRAMPTON: Objection. Foundation.

THE WITNESS: I was not on the property in 2008, so I can't speak at all to how much work had been completed at that time.

BY MR. MANLEY:

Q. No. As of the time that you were there in 2009.

A. And your question again is --

Q. Do you have any basis for contesting or challenging whether this work in fact had been done by the time you saw it in July of 2009?

MR. FRAMPTON: Same objection.

THE WITNESS: I was unaware of the actual per lineal foot of what was construction up there, so

over and above that, I couldn't say either way.

BY MR. MANLEY:

Q. Okay. Could I ask you to look at 7155, please? Do you recall seeing this letter from Doug Johnson before?

A. Yes.

Q. And that the end of 7155 includes the subordination obligation of Whitefish Credit Union; right?

A. Yes.

Q. And do you recall that you indicated that that could not be found in the file and that the first time you saw it was when Thorntons' attorney provided their copy to Whitefish Credit Union's attorney?

A. That is my recollection.

Q. And yet it turned up in the Whitefish Credit Union file in discovery. Can you explain that?

A. No.

Q. You would agree though that, according to this letter of Doug Johnson, that Whitefish Credit Union did have an obligation to agree to subordinate its first lien on the 200 acres up to the amount of 500,000 without additional committee approval for income-producing projects which the borrower wanted to undertake.

A. That is correct.

Q. And you recall them requesting that Whitefish Credit Union do that in the June 9, 2011 meeting, and that you and Mr. Kenyon did not agree to it at that time?

A. I recall them bringing up that this subordination agreement was -- I believe their language -- was in the file, and that at the time we were trying to look for a copy of it.

Q. And then you had testified you tasked Jennifer to look for a copy of it?

A. That was my recollection.

Q. And it was your testimony that no such copy ever turned up, based upon your search or Jennifer's search?

A. That is my recollection.

Q. And so because you couldn't find such a copy, Whitefish Credit Union did not agree to this subordination request until December, 2011, or did not acknowledge the subordination obligation until sometime around December, 2011?

A. I do not know when the Whitefish Credit Union acknowledged the existence of this subordination agreement.

Q. Were you surprised when you first saw this?

A. Yes.

Q. Did you or anybody else at -- to your knowledge -- at Whitefish Credit Union do any analysis of the financial consequences to the Shermans of the Whitefish Credit Union refusing to acknowledge the subordination agreement? Not the Shermans. The Thorntons -- to the Thorntons because of the refusal of Whitefish Credit Union to acknowledge its subordination obligation between June, 2011 and whatever time it was that Whitefish Credit Union eventually acknowledged that?

MR. FRAMPTON: Objection. Foundation, presumes facts.

THE WITNESS: As far as I know, Whitefish Credit Union never received a formal request for a subordination to another lender.

BY MR. MANLEY:

Q. And my question was, are you aware -- did you or anybody else, to your knowledge, at Whitefish Credit Union ever do anything to evaluate or try to determine what losses may have been caused to the Thorntons during that period when Whitefish Credit Union was not acknowledging a subordination obligation?

MR. FRAMPTON: Same objection.

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THE WITNESS: None that I'm aware of.
BY MR. MANLEY:
Q. Do you remember when Doug Johnson was let go?
A. No.
Q. Do you remember whether it was right around the time that the Thorntons' loan was due on March 15, 2011?
A. I don't recall.
Q. And did you then immediately take over that loan? Were you the point person?
A. I don't recollect specifically when I got involved in the file.
Q. And when you got involved in the file after Doug Johnson had left, were you handling the file as a special asset file or a troubled asset file?
MR. FRAMPTON: Objection. Misstates testimony.
THE WITNESS: I wore a hat of working on special asset loans as well as performing loans, so -- I don't know if that answers your question.
BY MR. MANLEY:
Q. Did you disclose that to the Thorntons?
A. I don't know.
Q. Did you ever disclose anything to the

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Thorntons as to your role in their loan relationship other than that you were taking over for Doug Johnson as their loan officer?
A. Not that I'm aware of.
Q. Could I ask you to look at 7181? And that was your note, and that was related to this June 9, 2011 meeting with the Thorntons and you and Kenyon; correct?
A. Yes.
Q. And what was the purpose of typing that comment to file?
A. Simply to make a comment to the file on the meeting, just a highlight of the meeting that was had.
Q. And 7182, please. We've asked a little bit about this, but that's a note from -- an e-mail from you to Donna, and you apologized to her that the previous account officer did not call them back in a timely manner. Do you see that?
A. Yes.
Q. That would have been a reference to Doug Johnson?
A. I believe that is correct.
Q. Was it common to fire a loan officer for not returning one phone call, or make them resign in lieu of termination?

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A. I don't know.
MR. FRAMPTON: Objection. Foundation.
BY MR. MANLEY:
Q. And could I ask you to look at 7183 and 7184, please? And on the first paragraph, do you have any basis for contesting that those representations were accurate representations?
A. No.
Q. Okay. How about the second paragraph? Do you have any basis for contesting that those are accurate representations?
A. No.
Q. And how about the third paragraph? Do you have any basis for contesting that those are accurate representations?
MR. FRAMPTON: Object on foundation.
THE WITNESS: No.
BY MR. MANLEY:
Q. And so in going back to 7182, do you believe that your e-mail to Donna was in response to this May 27, 2011 letter?
A. I don't know.
Q. What do you think?
A. It could be.
Q. And on 7187, it appears that you sent them a

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loan application that needed to be filled out before Whitefish Credit Union would consider financing the Somers development further.
A. That is what this letter is saying.
Q. Is that common or uncommon that you would send that document to be filled out a month or more after the loan was actually past due?
A. At this particular time in the credit union, it was actually common.
Q. So it was common for the customers not to know whether there was going to be further financing until a month or more after the -- after the loan was due?
A. In some cases, yes.
Q. I think you said it was common.
A. Again, in some cases, yes, it was common.
Q. I don't mean to argue with you, but there's a significant difference between "in some cases" and "it was common".
A. In some cases that happened.
Q. And typically with this policy of lending with regard to new money on development projects, the customer wouldn't learn of the new policy of no new money lending until their loan was due, and about that time an application for new loan proceeds was

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provided. I think we covered that this morning. Do you recall?
A. Yes.
MR. FRAMPTON: Objection. Presumes facts.
BY MR. MANLEY:
Q. And so would it be accurate to say that in this case, the Thorntons didn't find out about the new policy of not lending new money on development loans until at least a month or more after their loan was already due?
MR. FRAMPTON: Objection. Foundation, presumes facts, and -- that's all.
THE WITNESS: That is correct.
BY MR. MANLEY:
Q. And you signed this as a member business loan officer; didn't you?
A. Signed it as member business loans.
Q. And you did not disclose that you were the -- you were also wearing the hat of the special assets person?
A. At this particular time I don't know if I was in special assets.
Q. Could I ask you to look at 7188 and 7189? And specifically on 7189, the paragraph numbered 3. And my question is, do you have any basis for

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contesting the accuracy of the allegations in that paragraph 3?
A. No.
Q. And in fact, you were the one that requested of the Thorntons to disengage -- to allow Barrie to be disengaged from his agreement with the Thorntons to do their appraisal.
A. That is correct.
Q. I may have said the wrong number, but it's 7189 if I didn't, so the record would so reflect.
Could I ask you to take a look at 7212, please? This is a March, 2011 Project Completion Estimate. Did you review that? Do you recall seeing that?
A. I don't recall.
Q. Does this appear to be some of the information that you were indicating was needed in order to review their request for further financing?
A. Yes.
Q. And you're having a chance to look through it. Does this help refresh your recollection at all about whether you ever saw that before or --
A. I do not have any specific recollection of seeing this.
Q. And on 7290, now, I'm asking you if my

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assumption is correct. It appears that this is a separate computer account, and that these are notes inputted by various individuals at the credit union regarding the collection notes or collection efforts.
A. That appears to be true.
Q. Okay. And as of May 17th, 2011, it indicates that you knew -- well, you had been up there to the site, met with Jeff Larsen and the Thorntons. And then down in the next paragraph you indicated you knew the Thorntons were requesting additional money of 1,500,000 to finish the project and bring it to the point that they could submit the 60 lots for approval, and then sell the lots.
And then you indicate you're very concerned and don't believe that any -- that you should proceed with any additional money, and try to structure whatever you can under a TDR status; correct?
A. That is correct.
Q. So by that time you had made up your mind that you were not going to loan any more money or did not advise any more money, and it was a collection status loan at that time.
MR. FRAMPTON: Objection. Misstates the testimony.
BY MR. MANLEY:

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Q. Is that accurate to say?
A. Certainly as my job as an underwriter, that's what my recommendation here says.
Q. And you made that recommendation knowing, did you not, that there was no way for the Thorntons to pay back the $3.3 million other than completing the project and selling the lots?
A. No.
Q. Could you explain "no"? I don't know if you mean "no" or "yes", really.
A. No. My -- if your question is whether they could repay the loan --
Q. Well, really, my question was, you knew at this time that without money to complete the project, they couldn't pay the loan because the only way they could repay the loan would have been completing the project and selling lots.
MR. FRAMPTON: Objection. Foundation.
BY MR. MANLEY:
Q. Isn't it true that you knew that at that time?
A. No. As far as the workout and/or the renewal that we were trying to work on was coming up with a loan payment that they would be able to support going forward over and above the sale of lots, or at

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least until they had some sales or some interest in the property.
Q. But they couldn't get sales of lots until they completed it; could they? And isn't it true that you knew that?
A. Certainly using the specific lots as collateral, if you're talking about the 60-lot plat, you're absolutely correct. If you're talking about the existing lots that were created -- I believe there were 14 lots up there, those could be sold, in my opinion.
Q. And yet it had been known for at least a year that the plan was for sale of 60 lots; right?
A. It appears so.
Q. And it had been known since the inception of this loan that the business plan called for repayment of the loan by completing the project and selling the lots. Do you agree with that?
MR. FRAMPTON: Objection. Misstates the testimony.
THE WITNESS: For a development loan, that is the primary repayment source, yes.
BY MR. MANLEY:
Q. And so then by that time, it's true, is it not, Whitefish Credit Union had already generated the

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three delinquent notices necessary before beginning foreclosure? I think you'll find that on 7291.
A. Yes.
Q. And on 7293, if I could ask you to look at that. Do you see the reference in the first big paragraph where you say that Thornton indicated that prior account loan officer had already approved a 500 line of credit -- $500,000 line of credit over and above the original?
Just to make sure that the reports are clear, he was referring to the subordination agreement there; wasn't he?
A. That was my understanding.
Q. Right. And then you reaffirm that there was approximately 80,000 in accrued interest, and he would have to pay that, or whatever amount he could pay, before there would be any further discussions about renewal. Correct?
A. Yes.
Q. But at that time it had already been determined, and it was already the policy of Whitefish Credit Union, not to loan new money on the developments, and specifically on this development; correct?
MR. FRAMPTON: Objection. Misstates

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testimony and presumes facts.
THE WITNESS: At this point in 2011, I don't know what the policy was specifically. I know in 2009 that was the policy.
BY MR. MANLEY:
Q. And I think you testified you don't remember that -- you don't have any information to indicate that the policy changed between then and May of 2011; correct?
A. Yeah. I don't have any knowledge of that.
Q. And I mean, as we sit here today, you know that was still the policy in May of 2011; don't you? No new money for development loans.
A. No, I don't know that.
MR. FRAMPTON: Objection. Asked and answered several times.
THE WITNESS: Yeah, I don't --
MR. FRAMPTON: Randy, let me finish my objections.
BY MR. MANLEY:
Q. And at 7297, could you look at that, please?
MR. FRAMPTON: Jim, let me pose an objection here for a second that I think this was inadvertently disclosed. It's privileged. I would ask that you not ask questions on it.

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BY MR. MANLEY:
Q. I would ask you to look at 7297, please. And you see subparagraph H there?
A. Yes.
Q. Do you have any basis for contesting what the debtor indicated that's referred to there?
MR. FRAMPTON: Objection. Foundation. Same objection under privilege.
THE WITNESS: That is correct.
BY MR. MANLEY:
Q. What is correct?
A. I have no objection.
Q. And at the end of that paragraph the attorney advises that Doug should be contacted to determine the extent of his conversations and the possible extensible agent liability of Whitefish Credit Union.
Did you make any effort in response to contacting Doug Johnson to find out information on that point?
MR. FRAMPTON: Same objection on privilege, and I'll just make it a continuing objection.
THE WITNESS: None that I'm aware of.
BY MR. MANLEY:
Q. Are you aware of anybody else at Whitefish

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Credit Union contacting Doug Johnson to determine that information?
A. Not that I'm aware of.
Q. 7302. Would you look at that, please? And do you recognize that as the map or plat of this development that was in Whitefish Credit Union's files?
MR. FRAMPTON: Objection. Vague on time, and foundation.
THE WITNESS: Would you restate the question?
BY MR. MANLEY:
Q. Well, do you recognize seeing that before?
A. I don't have recollection of it.
Q. These pages, 7300 through 7303 -- excuse me -- 7304, is that a form that the Whitefish Credit Union uses and fills that in as opposed to, say, an appraiser?
A. Yes. It appears to be from a credit authorization.
Q. And is that a Whitefish Credit Union form that you recognize?
A. Yes. This would have been completed.
Q. Back in 2009 before the credit was authorized; would it not?

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A. I don't know when this was completed. I don't see a date on it.
Q. If it helps you if you look at page 7300. It refers to the 1,360,000 due to be taken over by -- or, the Glacier Bank debt, and 2,000,000 additional new amounts. Do you see that?
MR. FRAMPTON: Objection. Misstates the document.
BY MR. MANLEY:
Q. See where it says Balance Owing, 1,360,000?
A. I see that, 1,360,000.
Q. And then below, New Amounts, 2,000,000?
A. Yes.
Q. And that would bring the total loan, if approved, to 3,360,000.
A. That would be the math on that.
Q. And that's what this loan was approved for by Whitefish Credit Union; correct?
A. My recollection is that that was the amount.
Q. Okay. So now I had asked you about 7302. And would you agree that in this 2009 Whitefish Credit Union form document they included a tract map with the 60 lots, not just 14 lots?
MR. FRAMPTON: Objection. Misstates the testimony.

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THE WITNESS: Could you restate the question?
BY MR. MANLEY:
Q. Yeah. This document, are you willing to agree that this document was part -- was a form of Whitefish Credit Union, and that it would have been generated -- it would either have been generated by Whitefish Credit Union at that time or received from Glacier Bank at that time and ended up in the Whitefish Credit Union files, which we got in discovery, and that on page 7302 it showed, even at that early date, that the project was not anticipated just to be 14 lots, but, rather, showing 60 lots?
MR. FRAMPTON: Objection. Foundation.
BY MR. MANLEY:
Q. And I probably should clarify it. The exact reference is to 58 lots at that point, if you look at the bottom of 7302.
A. Okay.
Q. Okay.
A. So again, if you could restate your question.
Q. Here's where I'm going with this. Various references that you made later on in 2010 were that the Thorntons had changed this, or you used the word

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"retooled" it from 14 lots into 60 lots, and I'm seeing if this helps your recollection that from its inception as a loan at Whitefish Credit Union, the business plan was to create 60 lots, or 58 lots at least?
A. My understanding was that it was the 14 lots.
Q. So this comes as a surprise to you looking at that?
A. Certainly at a later date I became aware that ultimately they were looking to revise the plat to a much higher density.
Q. Okay. But are you willing to concede that at least, according to this document, which appears to be -- have been created at or before the Whitefish Credit Union loaned the funds bringing the total to $3,360,000, that there was this plat or tract map configuration showing 58 lots, at least?
MR. FRAMPTON: Objection. Foundation.
THE WITNESS: If I could just add, to my knowledge, I was not at the credit union when this loan was originated.
BY MR. MANLEY:
Q. Okay.
A. So that's why, again, I have no recollection

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of seeing this particular tract map.
Q. But did you review the Whitefish Credit Union file when you took over for Doug Johnson, or at any time, sufficient to determine whether this document in fact was in the file?
A. Certainly that was part of my process, would be to review a file. I have no specific recollection of seeing this.
Q. And if you could look at 7315, and this is part of a Problem Loan Report that started on the previous page. And you see under Summary of Classification, was that your input as the person in charge of this loan file?
A. Certainly could be.
Q. And it says in bold type there, It should be noted that the borrowers changed the scope of the project to sub-lot the 14 parcels and create 62 high-end residential lots.
I assume you put that in bold type because you wanted to emphasize that change?
A. That is correct.
Q. And based upon what you've seen in reviewing these, are you willing to concede it's possible that the plan all along was to have somewhere between 58 and 62 lots, and that you just didn't realize that?

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MR. FRAMPTON: Objection. Foundation.
THE WITNESS: I don't know.
BY MR. MANLEY:
Q. And then on 7317, this Problem Loan Report, does it indicate who inputted the information?
A. Yes.
Q. Who did that?
A. It would have been me.
Q. Okay. And it indicates that as of the time you did this -- is it 7-26-11?
A. Yes.
Q. You knew that they had been working for the past four years exclusively on this new project, living on loan income; correct? It's under Financial Information and Analysis. I'm sorry.
A. That's correct.
Q. And then on the next page, you list the Reason For Adverse Rating and Potential For Loss, Downgrade is warranted based upon the following, and then you gave three reasons. One, Very high loan-to-value based on new appraisal with an estimate on excess land; right?
A. Yes.
Q. And that's based upon the new 2011 Barrie appraisal?

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A. It could have been.
Q. You're not aware of any other new appraisals; are you?
A. No.
Q. And the second one, they spent over 3,000,000 in bank/credit union money on the project with the infrastructure still nowhere near completion, and they project 3,000,000 more required to complete.
And the third reason is that the borrower re-concepted the project last year, spending the remaining infrastructure money on indirect and soft costs. There appears not to have been any concurrence with the credit union for this change.
Could you explain all the information that you based that on?
A. That was just my understanding at the time.
Q. And as I read that, you're indicating that the borrowers did something that the credit union did not concur in over the last year?
A. That was my understanding at the time.
Q. And what, if anything, did they do, or did you believe they had done, that the credit union had not concurred in?
A. Simply re-concepting from a lower -- from lower lot counts to a higher lot count.

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Q. And do you remember before we -- in addition to this plat tract map I showed you, in addition to that we talked about visits by you and some others from Whitefish Credit Union out to the property, and there was a report dated July, 2010 by Dana Henderson indicating you were out there with him. And at that time there was no -- nothing noted, was there, that the Thorntons were doing anything with this project that Whitefish Credit Union did not concur in?
A. Not that I'm aware of.
Q. And would you agree with me that no notice was ever given to the Thorntons that they were doing anything that Whitefish Credit Union did not concur in?
A. Not that I'm aware of.
Q. Are you familiar with the concept of building a file so that the file would justify action that a lending institution has already decided to make?
A. No, I've never heard of that.
Q. Never heard of that happening?
A. No.
Q. Well, it might be a good time to take a break. We received last week about 400 pages of e-mails that we had requested a year ago, and so we

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don't have copies for you, the witness, as well as all the others. So this may not move along at the fast, break-neck speed that it has been.

MR. MANLEY: So maybe we can take a five-minute break and then we'll come back and go through a bunch of these.

(Short recess.)

BY MR. MANLEY:

Q. Mr. Cogdill, I don't have an extra binder for you on this next part, and we just received a disc last week with approximately 400 pages of e-mails of the 1,100 that we believe exist. And many of these e-mails are blacked out, so obviously it's likely we're going to have to reconvene these depositions after we get the rest of the stuff that's been requested. But I'm going to ask you about just a few of these pages for purposes of a record.

Of these latest e-mails, if you refer to Frampton's Bates Number 1858, and do you recognize who Myra Appel is and David Zimmerman?

A. I recognize David Zimmerman.

Q. And who is he?

A. I believe he is the internal auditor with the Whitefish Credit Union.

Q. And Myra Appel?

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A. I don't recall who she is.

Q. And the subject is, From the MBL meeting this a.m. What is MBL?

A. Short for the member business loan.

Q. And it appears that this was sent on July 28th of 2011; does it not?

A. Yes, that is what it says.

Q. And it says Hi, Dave -- I'm reading the part that's not blacked out. Hi, Dave. And then there's three blacked-out lines and we go to the next paragraph and it's a blacked-out line, and the words, And Thorco came up, blacked-out lines, and then it reads, Maybe Thorco, question mark, and then about six more blacked-out lines.

Do you have any knowledge of what's in that?

A. No.

Q. As you look at it, can you even hazard a guess as to what the blacked-out lines say?

A. I could not.

Q. And this is -- the next page is 1843 (sic.), and this is an e-mail sent by you to Cayla, and it's dated May 9th, 2011; is it not?

A. Yes.

Q. And it says, Please add fee to loan; correct?

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A. Yes.

Q. And then there's two blacked-out lines; correct?

A. Yes.

Q. Regards, Randy.

Do you know what those blacked-out lines refer to?

A. No, I do not.

Q. And do you know what fee you're directing her to add to the loan on May 9th, 2011?

A. I have no recollection of that.

Q. Is that possible that that's the Barrie appraisal bill?

A. It's possible.

Q. That was about the time; wasn't it?

A. Yes.

Q. And the next page, this is from -- from Cayla to you, and it says, We are adding the appraisal fee to the Thorco loan. The amount is 3,750; correct?

A. Yes.

Q. And that's the amount of the Barrie appraisal fee in -- on the 300 acres; correct?

A. Yes.

Q. And you directed that that be added to the loan.

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A. Yes.

Q. And even with that information, you can't even hazard a guess, can you, as to what's blacked out without explanation?

A. No, I cannot.

Q. Or without a privilege log.

MR. FRAMPTON: Objection. There was a privilege log provided.

MR. MANLEY: Here's your privilege log. Please tell us where there's a reference to page 1943 on your privilege log. Your privilege log doesn't refer to all the blackouts. It refers to the pages you did not produce.

MR. FRAMPTON: Okay.

MR. MANLEY: Would you agree there's no reference to that page on the privilege log?

MR. FRAMPTON: Not on the one you handed me. I agree with that.

MR. MANLEY: Isn't that the one you sent me?

MR. FRAMPTON: I have no idea. Do you have a copy over there? I don't.

MR. MANLEY: Do you think I made this up?

MR. FRAMPTON: No.

MR. MANLEY: Nor does it refer to the grand daddy black-out page 1858 that we talked about; does

it?
MR. FRAMPTON: I don't know.
BY MR. MANLEY:
Q. I'm referring you to 1945, according to their Bates stamp number, also not referred to on Bates stamp -- or, the privilege log. This is from Cayla to you dated May 9th; right?
A. Yes.
Q. And it says, You didn't talk to me regarding the appraisal. And then there's a blacked-out line. Would you like me to go ahead and order the appraisal? Thanks. Cayla.
Do you know what the black line blacks out?
A. I do not.
Q. Now, on page -- their page 1976 of these new e-mails, there's one dated March 22nd regarding the Barrie appraisal. And it says, Report, Thorco. And it's referred to as an attachment; is it not? It's an e-mail from Lloyd Barrie to you.
A. Yes.
Q. So that would be -- that would indicate the date when you -- when you got the appraisal; right?
A. That was when it was sent to me.
Q. Okay. So until that time, March 22nd, you had never seen the new Barrie appraisal on the 300

acres; had you?
A. Not to my knowledge.
Q. And you had not obviously considered that appraisal, or the values in the appraisal, prior to the March 15th, 2011 loan due date, huh?
MR. FRAMPTON: Jim, I would ask you to identify the full date in there. March 22nd of which year?
MR. MANLEY: Of 2011, your Bates number 1976.
MR. FRAMPTON: Thank you.
THE WITNESS: If you could restate the question, please.
BY MR. MANLEY:
Q. The loan was due March 15, 2011. You received the Barrie appraisal on the 300 acres as an attachment March 22nd, 2011, approximately a week later after the loan was due.
A. That is what that says.
Q. So up to the time the loan was due, you never had an appraisal that you could factor into any decisions on renewal or extension or new money; right?
A. My recollection is there was an old appraisal that may have been referenced, but as far as a current appraisal --

Q. Right. There was the old 2009 appraisal that was done at the inception of this project; correct?
A. Yes, that is my recollection.
Q. But you weren't making any decisions on whether or not you were going to renew this loan based upon that 2009 appraisal; were you?
A. Not to my knowledge.
Q. And at that time as of the due date of the loan, you didn't have any other appraisal to base any decisions on; did you?
A. Not to my knowledge.
Q. But you had already, or Whitefish Credit Union had already, decided they weren't going to loan any new money on this project; correct?
MR. FRAMPTON: Objection. Misstates testimony.
THE WITNESS: I don't know.
MR. MANLEY: We're going to reserve our further questions until a later time when we get the e-mails that we requested, and unredacted copies of the e-mails that we did get. So that's all I have at this time.

EXAMINATION

BY MR. FRAMPTON:
Q. Randy, I just have a couple questions for you just to follow up.
In the renewal -- in the decision to approve or decline the Thorntons' request for an additional $1.9 million, did this supposed or alleged 2009 policy, as Mr. Manley referenced it, have any factor in your decision?
A. No.
Q. There were many questions early on in your deposition by Mr. Manley that asked about your recollection of the -- this file and how you acted on it. Do you agree with me that at least until we started going through the notebook you had no documents in front of you to which to refer?
A. Yes.
Q. Is the best evidence of -- for example, of reasons for you denying a loan contained within the documents in the file?
A. Yes.
Q. And that would go for all information the credit union had or actions it took; the best for the basis of that information and those actions would be contained within the file itself.
A. Yes.

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Q. Mr. Manley was asking questions about you requiring interest to be paid as part of a renewal. Explain -- well, strike that.

Was there a time when the credit union was considering a renewal that did not require the Thorntons to pay the interest payments out of its pocket?

A. Yes.

Q. Okay. Explain when that occurred and what you recall about that.

A. My recollection was that as Jim Kenyon and myself were talking about renewing this loan, we were willing to consider any and all options, which included options collecting interest if possible, even deferring interest if that would achieve a renewal with the borrowers. And that's something that we were routinely doing on other loans that were -- that we were being asked to renew where the borrowers could not come up with the accrued interest.

Q. What does capitalizing interest mean?

A. Well, my understanding of it is adding it to the loan.

Q. There are many questions that Mr. Manley asked about your roles with the credit union, one as a commercial officer and one as part of the special

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assets group. Let me see if I can just summarize this.

If a loan is performing, is it a special asset?

A. It could be.

Q. Okay. Under what circumstances?

A. If there had been issues with respect to some slow payments in the past, and it was transferred over to special assets to manage and ultimately we were able to get a loan, for example, back on a repayment, it would be a current loan, but it would still be a special asset.

Q. Was the Thornton or Thorco loan a special asset up and to maturity?

A. No.

Q. Mr. Manley was asking you questions about the timing of an appraisal as it relates to foreclosure. Are you aware of any requirement that says you must get an appraisal for a foreclosure?

A. No.

Q. Based on your understanding, what are the requirements for getting an appraisal?

A. It would depend. We can order an appraisal anywhere along the process in terms of well ahead of a foreclosure up until the day of a foreclosure. Again,

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it would really depend on the day.

Q. Talking about the subordination term of the approval, do you recall that term?

A. No.

Q. Do you recall the approval to the Thorntons for subordinating the 500 acres?

A. Subordinating for 500,000 on the 200 acres, yes.

Q. You corrected me. Thank you.

Did Jennifer -- well, how quickly after your meeting on June 8th or 9th did you look for that subordination?

A. My recollection is we looked for it immediately.

Q. And were you able to locate it?

A. Ultimately, yes.

Q. And do you have an understanding about whether or not the credit union's position was communicated to the Thorntons about the subordination?

A. My recollection is that it was, because they were encouraged to go out and seek financing for the subordination. In other words, we encouraged them to go out and do that.

Q. Mr. Manley was asking you questions about whether or not the Thorntons could get additional

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financing if there was no subordination on that 200 acres. Do you recall that?

A. Yes.

Q. And he was specifically talking about other lenders and what they might require. Do you recall that?

A. Yes.

Q. Do you have any idea when you were answering those questions about what other assets the Thorntons had available to them to offer to a different financial institution?

A. Not specifically. My knowledge was tied to the property itself, the 300 and the 200 acres.

Q. You have notes following your inspections of the property in the file. Are those the best evidence of your recollection of the purpose and your observations of those visits?

A. That would be at the time.

Q. Mr. Manley asked you about a comment or statement that says, quote, I can't believe Whitefish Credit Union would loan money to people like that, close quote.

Do you recall ever making that statement?

A. No, I do not.

Q. Is that something that you would normally

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say?
A. No.
Q. Do you recall when you became involved with the Thornton file at the credit union?
A. Not specifically.
Q. Do you recall whether it was before Doug Johnson left or after?
A. It would have been before he left.
Q. And once you became involved in the Thornton or Thorco loan, were you the primary contact on that loan?
A. I believe I was.
Q. Was there any specific reason the loan was given to you?
A. I think the prior account officer was just way too busy.
Q. When a loan matures and people do not have money to pay it off, what is the normal course of events for borrowers and how they handle that with the credit union?
A. Well, ultimately it's a -- for us at the credit union, it was a simple function of trying to get to all the loans that were maturing. And so by virtue of the loan maturing, it was -- we would not automatically begin foreclosure. We had a simple

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process to try to just get through the loan renewals one at a time, and ultimately when we got to that file, then we would request the financials, a loan application, if necessary, for the new money, and anything else that we needed ultimately to underwrite that loan for a renewal.
Q. And what initiates your consideration for additional money?
A. An application.
Q. Do you ever recall receiving an application from the Thorntons for 1.9 thousand in additional money?
A. For 1.9 million, no.
Q. For any amount of money besides the 500,000 that was --
A. No.
Q. On 7183 Mr. Manley was asking if you had any reason or basis to contest what was stated in the first paragraph -- all paragraphs, but I want to focus on the first paragraph; okay?
A. Yes.
Q. Do you recall that questioning?
A. Yes.
Q. And your answer was, No. And one of the statements in there is that Doug told Donna at that

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time not to worry about the refinance because at the very least, Thorco would be able to get the refinance with an additional 500,000 for interest carry in March of 2011. Do you see that?
A. Yes.
Q. So even though you said, No, you weren't looking at any documents at that time to determine your recollection; correct?
A. Yes.
Q. Besides this letter, were you looking at anything?
A. No. Besides this letter, no.
Q. Let me ask you this. Have you ever seen anything in the file that says that the credit union will refinance with an additional 500,000 for interest carry in March of 2011?
A. No, I have not.
Q. And have you -- in discussing this matter with anybody at the credit union, have you ever seen anything or evidence to support that statement?
A. No, I have not.
Q. Turning to 7302 -- 7300, if you can turn there. Do you recognize this form as a Glacier Bank credit authorization?
A. It could be.

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Q. If you look down at the fourth box, first line says, Balances Owing. Do you see that?
A. Yes.
Q. Third line says, Total Existing Commitments, 1,360,000?
A. Yes.
Q. Those existing commitments were Glacier Bank's commitments; correct?
A. To my knowledge, that would be correct.
Q. And in the narrative, the first paragraph without a box, it says, In May, 2007 we granted Thorco a $1,360,000 loan -- or, etc., etc., do you see that?
A. Yes.
Q. And "we" would mean Glacier Bank; correct?
A. That would support that.
Q. And if you turn to 7336, do you see at the top there it says, Whitefish Credit Union Commercial Loan Worksheet?
A. Yes.
Q. Do you recognize that as the credit authorization form that the Whitefish Credit Union uses?
A. Yes.
Q. So comparing that one to the previous document, does that help you understand whether or not

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the previous document belonged to Glacier Bank?
A. Yes, it does.
Q. And your answer then is what?
A. That that previous credit authorization was a Glacier Bank form.
Q. Now, this particular credit authorization document, 7336, which is dated February 16th, 2009, do you see under the Collateral Description it says, First mortgage position on 300 acres that has been divided into 13 parcels of 20 acres each, and one parcel of 40 acres?
A. Yes.
Q. Do you see anywhere on this document that says the loan -- excuse me -- that the development is going to be 60 -- approximately 60 lots?
A. I do not.
MR. FRAMPTON: I have nothing further. I'll reserve questions.

EXAMINATION
BY MR. MANLEY:
Q. On page 7336, that's a form that was filled out by someone at Whitefish Credit Union; correct?
A. Yes.
Q. And most likely that would be Doug Johnson?

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A. That is correct.
Q. And do you see anything in here that indicates that the Thorntons had any input into the information that went into that document?
A. I do not.
Q. And would you be surprised to find out that he prepared that document before he had ever met or talked to the Thorntons?
A. I would be surprised.
Q. And would you be surprised that -- that the approval for this initial loan at Whitefish Credit Union was initially approved or submitted by Doug Johnson before he had ever even met or talked with the Thorntons, but just based upon his contacts with Glacier Bank and the file they sent over?
MR. FRAMPTON: Objection. Foundation, presumes facts.
BY MR. MANLEY:
Q. Would that surprise you?
A. It would.
Q. And you are aware, are you not, that Glacier Bank walked a file over to Whitefish Credit Union -- Pete Davis from Glacier Bank walked the Thornton file over to Whitefish Credit Union to see if Whitefish Credit Union would make this loan?

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A. I am aware of that.
Q. So Whitefish Credit Union in fact did inherit a certain file from -- on the Thorntons regarding this development from Glacier Bank; correct?
MR. FRAMPTON: Objection. Argumentative.
THE WITNESS: I don't know what they inherited in the file.
BY MR. MANLEY:
Q. You've seen --
A. I don't understand what your question is.
Q. In your review of the Whitefish Credit Union file, aren't you aware that part of that file included a Glacier Bank file, documents they got from Glacier Bank?
A. I don't have recollection of that.
Q. What do you think Pete Davis walked over when he walked the file over to see if Whitefish Credit Union would do this loan to the Thorntons?
MR. FRAMPTON: Objection. Foundation.
THE WITNESS: It could have been tax returns, it could have been --
BY MR. MANLEY:
Q. It could have been pictures of their kid, but it's not likely; right?
A. It could have been a project projection,

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etc.
Q. Or it could have been the Glacier Bank file that now appears in the Whitefish Credit Union file that was produced to us in discovery; correct?
A. It could have been.
Q. Yeah. That's pretty logical, isn't it, if it was produced to us in discovery?
A. Yes.
Q. And as I understand it, the point you were asked to make was, you never saw a formal commercial loan application form for the new 1.9 million. Do you recall that?
A. That is my recollection.
Q. And do you recall sending a list to Donna Thornton as to documents you needed before a decision would be made by the loan committee?
A. Yes.
Q. And isn't it true that you never included completion of such a form in the documents that you told her were necessary?
A. I don't recall.
Q. If that were necessary, that's something you would have likely listed, wouldn't it be?
A. Certainly could be.
Q. And have you ever heard of selective

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long-term memory deficit?
A. No. I'm not familiar with that statement.
Q. Did you notice that your long-term memory deficit was disappearing as you were answering Mr. Frampton's questions?
MR. FRAMPTON: Objection. Argumentative
THE WITNESS: I didn't notice that.
BY MR. MANLEY:
Q. You indicated that it's not automatic when you have a troubled loan to just begin a foreclosure; correct?
A. That is correct.
Q. First you want to try to get all the interest you can; correct?
MR. FRAMPTON: Objection. Argumentative
BY MR. MANLEY:
Q. Wasn't that normal?
A. Yes.
Q. And first you want to build a file that will justify foreclosure. Isn't that normal?
A. No.
Q. Didn't you do that in every foreclosure case that you sent over to the Frampton firm, that is, build a file with the necessary documents that would justify a foreclosure?

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A. On the files that ultimately ended up in foreclosure.
Q. And you said with regard to whether a new appraisal would be necessary for a foreclosure, are you aware of any foreclosure that you were ever involved in at Whitefish Credit Union that did not involve a new appraisal, a current appraisal?
A. None that I can recall.
Q. You were asked questions regarding this 2009 policy that was in place when you were at Whitefish Credit Union that no new money would be provided on any development loan. Do you remember that, those questions?
A. Yeah.
Q. And you testified that you're not aware of that policy ever -- you were never notified that that policy was not -- no longer in effect between the time you came aboard -- between the time it was passed in 2009, and March of 2011, you never received any notification from Whitefish Credit Union that they had changed that policy; did you?
A. No.
Q. And you've also testified that during that period of time, you're not aware of one single case where new money was loaned on a development loan.

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Isn't that true?
A. To my recollection, because, again, the 2009 policy, as far as my knowledge, was implemented from the regulatory agencies.
Q. And if somebody else testified that it was implemented by the board, would that surprise you?
MR. FRAMPTON: Objection. Mischaracterizes his testimony.
THE WITNESS: No.
BY MR. MANLEY:
Q. So we know that in 2009 there was a new policy that was applied at Whitefish Credit Union that there would be no new money on development loans. We know that you were never told that that policy was retracted or no longer in effect prior to March 15th of 2011; correct?
A. I will add that things had changed from the bottom of the trough, which was essentially 2009, 2010. So although I cannot recall any advances being made on construction or the development loans, there may have been some requests out there. I don't know.
Q. Do you remember my question?
A. Can you restate your question?
Q. Yeah. Isn't it true that you're not aware of any communication that indicated that this policy,

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this 2009 policy, had been retracted or discontinued, that is, the no new money on development loan policy, between 2009 and March of 2011?
A. I'm unaware of any formal retraction of that.
Q. Or informal retraction of that; are you?
A. No.
Q. And in fact, you know it was not retracted by March of 2011, to be honest; don't you?
A. I don't know that.
Q. If it had been retracted, you would have been told about it, wouldn't you, as a commercial loan officer?
MR. FRAMPTON: Objection. Asked and answered.
THE WITNESS: At that time I don't know what I would have been told.
BY MR. MANLEY:
Q. But this policy that, according to the last communication that you had on the policy at Whitefish Credit Union, no new money for development loans, this policy played no factor in your decision, or Whitefish Credit Union's decision, not to loan new money on this development loan?
A. That's correct.

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Q. And you were asked about whether there was discussions regarding renewing this loan without paying interest. Do you remember those questions?
A. Yes.
Q. And isn't the best evidence of what the policy or discussion was is what appears in the file? You agreed with Mr. Frampton on that; didn't you?
A. Yes.
Q. Okay. Can you tell us any place in the Whitefish Credit Union files where there is reference to a discussion between you and Kenyon for renewing or extending this loan without the requirement of paying interest?
A. I'm unaware of anything specifically in the file.
Q. So this is the one instance where the best evidence is what's in your recovered memory; right?
A. I don't know that.
Q. Would you agree that you never communicated to the Thorntons that there was a possibility that you would renew or extend this loan without their paying interest first?
A. Could you restate the question?
Q. Would you agree that you never communicated to the Thorntons that it was possible you would renew

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or extend this loan without them paying the interest first?
A. I would agree that we indicated that was our first priority, was to try to get the accrued interest paid, and that ultimately we would consider any and all options in a workout with the borrowers, to include a deferral of interest.
Q. I didn't ask you about a workout. I asked you about a renewal or an extension of the loan. If you had ever communicated to the Thorntons that you would do that or would consider doing that without payment of the interest first, wouldn't the best evidence of such a communication be what is or is not in the file?
A. Yes.
Q. That's Mr. Frampton's best evidence rule; right?
MR. FRAMPTON: Objection. Argumentative.
BY MR. MANLEY:
Q. And are you aware that there's no such indication anywhere in the file?
A. None that I'm aware of.
MR. FRAMPTON: I would ask that you not interrupt me when I'm making my objection, Mr. Manley.
BY MR. MANLEY:

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Q. Now, you also said that you -- after learning there was a subordination obligation, that you -- well, first, that you guys were able to locate it. How and when do you claim you were able to locate it?
A. I can't recall when I became aware of it.
Q. And isn't it true that you located it when the Thorntons' attorney provided a copy they had to your attorney?
A. I can't recall the specific time.
Q. Isn't it true that the Thorntons located it; that Whitefish Credit Union never located it?
A. I don't know.
Q. But then you said that you would encourage them to go out and seek financing elsewhere with the subordination.
A. That was my recollection.
Q. And is the best evidence of whether you actually did that what's in the file?
A. I'm unaware of anything being in the file.
Q. Well, there isn't anything in the file indicating that you encouraged them to do that; is there?
A. None that I'm aware of.
Q. But your memory on that point recovered and

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you can remember encouraging that. Is that true?
A. That is correct. I could.
Q. Well, tell us everything that you have gained by this recovered memory on that point.
A. I just remembered having a conversation with them, but whether that was at a later date or on the phone --
Q. With one or both of them?
A. With one.
Q. Which one?
A. Probably Mr. Thornton.
Q. You don't know?
A. No. I -- I just recall having conveyed the message that we encouraged them to go shop for financing elsewhere.
Q. And that was after the subordination agreement had come to your attention.
A. I -- I don't know specifically when it was. I just remembered having a conversation.
Q. Well, you certainly wouldn't have encouraged them to do that until you saw that there was a subordination agreement; right?
A. Not that I remember.
Q. And by the time that the subordination agreement was provided through their attorney to your

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attorney in December of 2012 (sic.), this had already been turned over to Mr. Purdy and was in the process of foreclosure; correct?
MR. FRAMPTON: Objection. Misstates the testimony.
THE WITNESS: I don't know when the subordination was turned over to our attorney.
BY MR. MANLEY:
Q. They were being carried as in default on a $3.3 million loan at that point when their attorney provided their copy of the subordination agreement; correct?
A. Yeah. The loan would have been in default if it was produced in December, yes.
Q. And not much chance of getting financing anywhere when your credit report is showing that you're in default on a $3.3 million loan; is there?
MR. FRAMPTON: Objection. Foundation.
THE WITNESS: My understanding is that we did not report to the credit bureau on the commercial loan, so that would not be part of the credit bureau.
BY MR. MANLEY:
Q. Well, they would have to disclose that if they applied for financing; wouldn't they?
A. Certainly that would be up to them, yes.

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Q. I mean, they're required to be honest.
A. Yes.
Q. So they would be required to disclose that.
A. Yes.
Q. So if they were told in December, 2011 to seek financing elsewhere, even with this subordination agreement, based on your knowledge of the industry, don't you have to admit it's extremely unlikely anybody would loan to them?
A. I don't know that to be true.
MR. FRAMPTON: Objection. Foundation.
BY MR. MANLEY:
Q. Really. Have you ever loaned to anybody who was in default at the time on a $3.3 million loan?
A. Not on a $3.3 million loan do I recall.
Q. Thank you. And how long have you been in the lending industry?
A. About 15 years.
Q. But you won't agree it would have been extremely unlikely they could get anybody to loan them --
A. It certainly would be unusual.
MR. MANLEY: That's all I have.

EXAMINATION

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BY MR. FRAMPTON:
Q. Randy, if you could turn to 7316 for me.
A. Where is our numbers on those, Sean? There we go.
Q. That's a Problem Loan Report for the Whitefish Credit Union?
A. Yes.
Q. Is that something that you authored?
A. It appears so, yes.
Q. Is this for the -- all people involved in the Thornton/Thorco loan, such as Mr. Kenyon, Mr. Archer, Mr. Horst?
A. Yes.
Q. Turn to 7317 under your Recommendation. You say, I recommend declining any further extension of credit. Borrowers have indicated that anything short of the 500,000 does not make sense, and they are not interested in any offer other than the full amount. A concession I would make would be to allow a loan renewal under a TDR status at a reduced interest rate of four percent with the current unpaid interest of 85,000 to be either capitalized or deferred for not less than six months. I would include some level of payment semi-annually to allow borrower to catch up. Was that your recommendation?

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A. Yes, at the time that's what it was.
Q. And was that recommendation then -- in response to Mr. Manley's question, was that in fact the recommendation that you made then to Mr. Kenyon about a way for the Thorntons and Thorco to renew without having to come up with the interest?
A. That's correct.
MR. FRAMPTON: Nothing further.

EXAMINATION
BY MR. MANLEY:
Q. Does it say anywhere in this document that you were encouraging the Thorntons to go elsewhere for financing and use this subordination agreement to do so?
A. It does not.
Q. And does it say anywhere that you communicated this to the Thorntons, that is, that paragraph you just read?
A. It does not.
Q. And does it indicate that either Jim Kenyon or anybody else at Whitefish Credit Union ever approved this recommendation?
A. I don't see any reference to that effect.
Q. And based upon everything you know from the

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file, isn't it true that there was no practical way that they could pay back -- pay the interest of 85,000 in six months without completing the project and selling property?

MR. FRAMPTON: Objection. Foundation, misstates testimony.

THE WITNESS: Could you restate the question?

BY MR. MANLEY:

Q. Isn't it true that based upon everything that was in the file and everything you knew from the file, that it was obvious that even if it were extended for six months, the Thorntons would have no source of income to pay this 85,000 in interest?

MR. FRAMPTON: Same objections.

THE WITNESS: That's not true.

BY MR. MANLEY:

Q. What source would they have had?

A. It indicated that they were going to be looking for work, I believe, my recollection was either in North Dakota or other -- other sources for equipment to get there.

Q. And they needed 500,000 to do so; right?

A. Yeah.

Q. And you know you weren't giving them

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500,000.

A. Yes.

Q. So that wouldn't be a source to pay the 85,000 interest within six months; would it?

A. No. But my understanding was is that ultimately at the time we saw a lot of people hauling equipment to North Dakota, certainly for well under the 500,000, from the Flathead Valley that were in fact able to put their equipment to work.

Q. But whether it was 500,000 or 200,000, Whitefish Credit Union wasn't offering that money; was it?

MR. FRAMPTON: Objection. Misstates testimony.

THE WITNESS: That is correct.

BY MR. MANLEY:

Q. And in addition, as of this date at least, July of 2011, Whitefish Credit Union wasn't acknowledging or agreeing to honor its subordination agreement; was it?

A. At that point we had never had a request from any institution requesting a subordination for the 500,000.

Q. Do you remember my question?

A. Yes.

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Q. Okay. Whitefish Credit Union had never acknowledged as of this time that it had a subordination obligation; did it?

A. Not to my knowledge.

Q. And is the best evidence of whether they had or had not what's in the file?

A. Yes.

Q. So any other source that you can think of that was conceivable that they could have used to pay the 85,000 interest, even if it was delayed for six months?

A. Other source other than what?

Q. Well, first, you said they could go to North Dakota and work. That took money they didn't have; right?

A. Yes.

Q. And it took money they couldn't get unless Whitefish Credit Union acknowledged its subordination obligation. Do you agree?

MR. FRAMPTON: Objection. Misstates the testimony.

THE WITNESS: Yes.

BY MR. MANLEY:

Q. So that's out. Any other source of income that you can think of based upon everything you knew

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from the file that they could have used to pay 85,000 in interest in six months?

A. They could have put their equipment to work locally.

Q. What would they have used to run their equipment? What money?

A. I don't know.

Q. To put their equipment to work locally on a logging job or a road job, isn't it typical they would have had to be bonded?

A. I don't know.

Q. Any other source that you can think of? Because they couldn't, so any other source you can think of that they could have used to pay 85,000 in interest within six months?

MR. FRAMPTON: Objection. Argumentative.

THE WITNESS: None that I can think of.

BY MR. MANLEY:

Q. None that they could think of either. Thank you.

MR. FRAMPTON: Objection. Argumentative.

MR. MANLEY: Nothing further.

(Deposition concluded at 3:55 p.m. Witness excused. Signature reserved.)

CORRECTION PAGE

PAGE LINE CORRECTION

I have read the foregoing testimony and believe the same to be true, except for the corrections noted above.
Dated this ____ day of _____, ____.

_____
RANDY COGDILL
WHITEFISH CREDIT UNION vs. THORCO, INC., ET.AL.
CAUSE NO. DV-12-174B

BG

REPORTER'S CERTIFICATE

State of Montana)
County of Flathead)

I, Beth Gilman, Registered Professional Reporter and Notary Public for the State of Montana, do hereby certify:

THAT I did report the foregoing transcript after having first duly sworn the witness to testify to the truth;

THAT said transcript was taken at the time and place stated on the caption hereto; and

THAT the testimony of the witness was taken in shorthand by me and subsequently reduced to writing under my direction; and

THAT the foregoing is a true and correct transcription of all the testimony of said witness to the best of my ability.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my seal of office this 23rd day of July, 2013.

_____
Beth Gilman
Notary Public, State of Montana
Residing in Kalispell, Montana
My commission expires July 29, 2015

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were aware of that policy?
MR. FRAMPTON: Objection. Misstates testimony.
THE WITNESS: Could you restate that, please?
BY MR. MANLEY:
Q. Do you remember your testimony in that regard?
A. Could you restate the entire question, please?
Q. I'll even do better than that. I'll refer you to the deposition. How's that?
A. Okay.
Q. Okay. So could you look at 104?
A. Is that A or B?
Q. 104B. Could I ask you to look at page 13, please? Line 7. When you were asked, We have been told that there had been a policy in 2009 of not loaning any more money on these development loans. Do you recall that policy being enacted? And was your answer, Yes?
A. Yes.
Q. Okay. Do you remember that policy now?
A. Yes.
Q. Was that an honest answer when you made that

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answer in that deposition?
A. Yes.
Q. And then the next question is, Could you tell us what you recollect about that? When, who did it, what the explanation was? Did you answer, My recollection was that somewhere in that time period there was a regulatory shift with regard to our examiners who had been coming in, and certainly whether it was an absolute edict, if you will, from the regulators. Certainly they came in and they discouraged any spec. home financing, any subdivision financing.
Was that an honest answer?
A. Yes.
Q. And then the next question, They were putting pressure on you not to do that? Your answer was, Yes?
A. Yes.
Q. Was that an honest answer?
A. Yes.
Q. And then the next question, Were there some instances in which it was done, that is, ongoing developments were provided further lending? Was your answer, None that I recall?
A. Yes.

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Q. Was that an honest answer?
A. Yes.
Q. So the next question is, So all of them were just cut off at that point, as far as you recall. And your answer was, As far as I know.
Was that an honest answer?
A. Yes.
Q. Next question, Are you aware of Whitefish Credit Union notifying these members or customers, these members with loans, notifying them of that policy when it was adopted in 2009? And your answer was, Could you be more specific with your question? And then the next question was, Yeah. It's our understanding from prior depositions that when this new CEO came aboard in March of 2009 -- I'm going to skip through because there's some disagreement about the date, and then I come back and correct it at line 25 on page 14, You're right. I think it was August -- July or August, 2009. And your answer was, August or September.
We're talking about the CEO coming aboard.
A. Okay.
Q. Okay. Does that help refresh your recollection?
A. Yes.

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Q. Okay. And then the next question was, Okay. Whenever it was -- I'm on page 15 at line 3 now. Okay. Whenever it was, he's testified that there was a new policy adopted by him and followed by the credit union regarding this no new lending on ongoing development loans. My question is, What, if anything, was done to notify these developers of that new policy? And your answer was, As far as a formal notification or announcement, none that I know of.
Was that your answer and was that an honest answer?
A. Yes.
Q. And then the next question was, How about an informal? And your answer was, Certainly nothing informal as well.
Correct?
A. Yes.
Q. And so that was an honest answer when you made it?
A. Yes.
Q. Next question, Does that seem fair to you, that these people weren't notified of this new policy? And your answer was, I think the notification, at least on the loans that I was involved in, would have come at the time that there was a new application or,

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again -- I mean, that's where the notification would come from. As far as whether I thought that was fair, that was the world I was operating in.

Was that an honest answer when you gave it?

A. Yes.

Q. Okay. Question, So that was the new policy at Whitefish Credit Union? Your answer was, Yes. To notify them of this denial or refusal when they applied for the next renewal or restructuring? Your answer, That's when it would have, at least, again, on the loans that I was involved in, occurred.

So was that an honest answer when you made it at that time?

A. In 2009, yes.

Q. Well, you made -- you actually made the answer in -- on July 16 of 2012.

A. Yes, speaking of the framework of the answer. You asked me if that answer was correct. At the time it was.

Q. Well, so you want to clarify that or qualify that answer?

A. No. In terms of the time frame that we were operating in in 2009.

Q. Okay. That doesn't appear anywhere in the question that I asked you there though; does it?

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A. No.

Q. No. And let me ask you this. Between 2009 through the time your deposition was taken, 2012, are you aware of any formal notification to Whitefish Credit Union members or customers of this new policy of no new money on development loans?

A. None that I'm aware of.

Q. Or any informal notification to customers other than when, as you described it before, they would apply for new money?

A. None that I'm aware of.

Q. So there was no notification to customers or members of this policy unless and until they came in and applied for new money; correct?

MR. FRAMPTON: Objection. Foundation.

BY MR. MANLEY:

Q. That you're aware of.

A. None that I'm aware of.

Q. And I'll ask you now -- it's a year later. Does that seem fair to you?

MR. FRAMPTON: Objection. Calls for opinion testimony.

BY MR. MANLEY:

Q. He can state his objections for the record, and then you can answer.

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A. Yes.

Q. That seems fair to you?

A. Yes.

Q. So applying that, for instance, to the Thornton situation where they made their new application for new money in January, February, March of 2011, that's when they would have been notified that there would be no new money?

MR. FRAMPTON: Objection. Presumes facts on the application.

BY MR. MANLEY:

Q. He can make all these objections, although the rules say he doesn't have to, but he apparently is going to, so we just have to let him finish and then you can answer the question.

A. Can you restate the question, please?

Q. Yeah. So applying that to the Thornton situation where they made their application for new money on their development loan January, February, March, 2011, that's when they would have been notified that there was going to be no new money, and that seems fair to you?

MR. FRAMPTON: Same objection.

THE WITNESS: At the time I don't know what the policy was in 2010, '11, or '12, whenever you are

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speaking of. It would depend on what the policy was at that time.

BY MR. MANLEY:

Q. What policy, as far as loaning on new money on development loans?

A. Yes.

Q. That was still the policy though. The policy that was adopted in 2009 regarding no new money on development loans was still in effect in 2011 -- in March of 2011; wasn't it?

A. I have no knowledge of that.

Q. Do you have any knowledge of any change in the policy in that period?

A. None that I'm aware of.

Q. Okay. So you have no basis for testifying that the policy was not the same; do you?

A. I was unaware of the policy at that time.

Q. You were aware of it in 2009 but you were not aware of it in 2011?

A. As we sit here today, I have no recollection of what the policy was in 2011.

Q. Do you agree that the Thorntons were never told that there was not going to be any new money on their development loan before their loan was due on March 15th, 2009? (Sic.)

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MR. MANLEY: That's because you're not aware of the Cogdill records.
MR. FRAMPTON: Okay.
BY MR. MANLEY:
Q. Does that comport with your recollection, that you stated that as a condition to renewing it or extending it or even considering that, that they would have to pay the interest current of eighty--approximately $87,000?
A. I don't have any specific recollection of that.
Q. Does that sound like it comports with the policy that you were following at the time?
A. Yes.
MR. FRAMPTON: In fact, it was specifically not a requirement.
MR. MANLEY: Well, we're going to get the records and then maybe you can correct the record.
MR. FRAMPTON: Okay. Just let me state my objection and you can ask questions.
BY MR. MANLEY:
Q. Next question, And yet, if people came in and wanted to get funding for the next phase, that's when they would be told, quote, No, there is going to be no new funding, end quote. And your answer was,

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That is my recollection.
Was that an honest answer at that time?
A. Yes.
Q. Okay. That was when their loan was due that, generally, they would find that out? And your answer was, Yes.
Is that an honest answer at that time?
A. Yes.
Q. As of March 14th -- that is the day before their loan was due to be paid in full, March 14th of -- it was due on March 15 of 2011. As of March 14th of 2011, they were current on all their requirements on the loan; were they not -- the Thorntons?
A. That is my recollection.
Q. It would be what's called a performing loan at that point?
A. Yes.
Q. And you're not aware of any other -- any other basis for alleging that they were not doing exactly as they had agreed to do in their loan relationship with Whitefish Credit Union.
A. Could you restate the question?
Q. It was a bad question.
Would you agree that as of that time, March 14th of 2011, they had met all the metrics requirements under the loan?
A. Yes.
Q. Okay. Not just money requirements, but they were doing what they were supposed to be doing with the development as far as Whitefish Credit Union was concerned.
A. As far as my knowledge on the file.
Q. Right. Right. And having looked through the file, I don't see that Dana Henderson or Jim Kenyon or Doug Johnson, or anybody else, indicated that they were in any way performing inadequately in all respects of what was required of them. Are you aware of any?
A. No.
Q. And do you recall then discussions with them over a period of time to the effect that you would be willing to discuss with them, you know, some way to work this out or make arrangements that would provide them with more time, but one of the requirements was they would have to bring the interest due current?
A. I don't have specific recollection of those conversations.
Q. Does that sound like it was your policy at the time that you were following such loans?

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A. Yes.
Q. And it was in fact a consistent policy; wasn't it?
A. As far as my knowledge.
Q. Okay. Have you had occasion to review any of the Whitefish Credit Union documents with respect to the Thorntons?
A. No.
Q. In preparation for this?
A. No.
Q. Are you aware that the Whitefish Credit Union loan documentation makes it clear that the only source that they had -- the Thorntons had to pay off this loan, or pay interest, was continuing funding from the Whitefish Credit Union until they could complete the project and sell lots?
A. Not to my knowledge.
Q. And in fairness to you, when do you think the last time that you looked at these loan documents was?
A. I have no recollection.
Q. After it was turned over to attorneys for the foreclosure process, were you out of the day-to-day handling of the Thornton matter?
A. That is my recollection.

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Q. It appears to me -- and I'm just asking you to correct me, I guess, if I'm wrong. It appears to me that it was assigned to Attorney Purdy for purposes of beginning the foreclosure process, and after that it was primarily Aaron Archer who was involved in Whitefish Credit Union contacts with the attorneys with regard to this matter. Is that fairly accurate?

MR. FRAMPTON: Objection. Presumes facts

THE WITNESS: I don't have any specific recollection.

BY MR. MANLEY:

Q. Okay. Well, after it was turned over to the attorneys for foreclosure, do you have any recollection of doing anything with regard to the Thornton loan matter while you were at Whitefish Credit Union?

MR. FRAMPTON: Objection. Presumes facts

THE WITNESS: Yeah, I don't have a specific recollection of that.

BY MR. MANLEY:

Q. There were communications between one or more people in the Farran Group. Who is the Farran Group?

A. I don't recall.

Q. As I understand it, it's a financial entity

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in Missoula that, among other things, bought property that was up for foreclosure. Does that help ring a bell?

A. No.

Q. Would you -- Pat Corrick or "Corrick"? Does that name ring a bell?

A. Yes.

Q. Who is that?

A. A developer out of Missoula.

Q. Doing business as the Farran Group?

A. I'm not sure.

Q. And could you describe the history and nature of your relationship with Pat Corrick?

A. I was an account officer on a project that he was involved in in Whitefish.

Q. Could you explain what that means to a lay person?

A. It was a vertical development called Monterra.

Q. And what's a vertical development?

A. Which was a condo project.

Q. On a cliff?

A. No. It's just he was involved in --

Q. We don't know what a vertical development means.

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A. He was involved in the construction and the development of a parcel of ground that created a condominium village.

Q. Where was that located?

A. In Whitefish.

Q. And he had a loan with Whitefish Credit Union for that?

A. No.

Q. Had he purchased that property from a Whitefish Credit Union foreclosure or loan workout situation?

A. Not that I'm aware of.

Q. Do you know who he purchased the property from?

A. No.

Q. And so what was your involvement with regard to Mr. Corrick and that development project at Whitefish?

A. The bank I was working for had the financing on the project.

Q. What bank?

A. It was Glacier Bank of Whitefish.

Q. And was that before you went back -- was that before 2009 when you went to work for Whitefish?

A. That is my recollection.

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Q. Okay. So you first got to know him because in your relationship with -- in your employment at Glacier Bank there was a lending relationship to Mr. Corrick for this project you described in Whitefish.

A. Yes.

Q. And then with respect to the Thorntons' matter, while you were at Whitefish Credit Union, there's one or more e-mails from you to Corrick, and I'm asking you to please explain to us why that was. Why would you have been e-mailing him with regard to the Thorntons' property?

A. I believe it was in -- this is my recollection. It was in conjunction with an assessment that we were trying to complete on the project, either before or after an appraisal that we had on the project, to try to understand what the value was of the project up there.

Q. When you say "an assessment", is that something different than an appraisal?

A. Yes.

Q. Could you explain in lay terms what that means, what the difference is?

A. An expert, in my view, in the development side would be able to come in and take a purview or a

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 11

From: Pat Corrick [mailto:jpcorrick@thefarrangroup.com]
Sent: Wednesday, February 01, 2012 5:26 PM
To: Randy Cogdill (rcogdill@whitefishcreditunion.com)
Cc: Jim McLeod; Malletta, John
Subject: The Farran Group

Randy,

Please see the attached per our conversation this week. Please let me know if you need additional information, I'm happy to run up to Whitefish and meet with your team as needed.

Talk soon,

Pat Corrick

The Farran Group, LLC
430 N. Ryman, 2nd Floor
Missoula, MT 59802

P: 406.541.9000
C: 406-360-0742
jpcorrick@thefarrangroup.com

nicolev

From: Pat Corrick <jpcorrick@thefarrangroup.com>
Sent: Tuesday, June 19, 2012 5:15 PM
To: Randy Cogdill
Subject: Pls call 541-9000

Randy, please give me a call 541-9000. Thanks.

On Jun 19, 2012, at 4:44 PM, Randy Cogdill wrote:

Pat,

[redacted]

Also, I'll forward your contact info. to Sean Frampton who is representing us in the WCU vs. Thorco, Inc. matter.

Talk to you soon.

Regards,
Randy Cogdill
Vice President
Special Assets Group
Whitefish Credit Union

From: Pat Corrick [mailto:jpcorrick@thefarrangroup.com]
Sent: Wednesday, February 01, 2012 5:26 PM
To: Randy Cogdill (rcogdill@whitefishcreditunion.com)
Cc: Jim McLeod; Malletta, John
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Randy,

Please see the attached per our conversation this week. Please let me know if you need additional information, I'm happy to run up to Whitefish and meet with your team as needed.

Talk soon,

Pat Corrick

The Farran Group, LLC
430 N. Ryman, 2nd Floor
Missoula, MT 59802

P: 406.541.9000
C: 406-360-0742
jpcorrick@thefarrangroup.com

nicolev

From: Randy Cogdill <RCogdill@whitefishcu.com>
Sent: Tuesday, June 19, 2012 4:44 PM
To: jpcorrick@thefarrangroup.com
Subject: 1410 Wisconsin Avenue, WF

Pat,

[redacted]

Also, I'll forward your contact info. to Sean Frampton who is representing us in the WCU vs. Thorco, Inc. matter.

Talk to you soon.

Regards,
Randy Cogdill
Vice President
Special Assets Group
Whitefish Credit Union

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 12

Summary of Thorco Development
Construction To Date
Somers, Montana
January 20, 2011

The construction of this project is all custom and the features are unique. Views from the property are all commanding and look across Flathead Lake at a 40 to 45 degree angle into the Mission Mountains to the South. To the East and North, the Columbia Mountain Range and Big Mountain can be seen and on a clear day, the views of the peaks in Glacier Park are visible. To the West, the Black Tail Mountain range is visible. The views from the property are awe inspiring and are truly one of a kind and in a class all their own as is all construction.

The work on the project is 80% to 90% complete on a total of 300 acres. All roads that do not show incomplete on the cost analysis are within 6" to 8" of blue top sub grade. Considerable time and effort has been spent during construction to enhance this unique property and construct features that will add to the beauty and the inspirational spirit of the spectacular views from virtually every building site.

Upon completion, every road will have a wide pedestrian trail for all types of recreational use. Approximately 275 of the 300 acres have been parked out, stumped, cleared of brush and debris, etc. The rock retaining walls and rock blankets enhance areas where large amounts of fill were needed to get the road system to grade. Drainage features have all been enhanced with rock terraces and rock stream beds and retention ponds to enhance the esthetic nature of the area. Thorco believes in the beauty of place and attention to every detail during construction has been paid to preserve and enhance the beauty of the project.

The cost breakdown of all construction to date is:

Clearing	$3,149,150.00
Rock Walls	$4,633,756.00
Ponds	$ 172,430.00
Stream Channels	$ 273,070.00
Rock Blankets	$ 586,930.00
Roads	$7,780,446.00
Total Construction Completed to Date	$16,595,782.00

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 13

Collateral Analysis

Expressed in (000's)

Collateral Description	Loan #	Valuation Date	Value	Prior Liens	Advance Rate	Liquidation Value	Valuation Source
						$ -	
300 Acres + 200 Acres	750	02/23/11	$ 3,333,000	$ 3,360,133	70%	$ 2,333,100	Appraisal
Total			$ 3,333,000	$ 3,360,133		$ 2,333,100	

*Advance Rates should not exceed 70% for RE

Impaired Yes *If yes, impairment analysis is required

Summary of Classification

*Give detailed explanation for why the credit hs been criticized

Borrower Background and Loan History:

Loan #750 financed additional development costs for a residential subdivision located near Somers. The subject property is approximately 300 acres in size cut up into 13 parcels of 20 acres each, and one parcel of 40 acres at the time of our loan. The original intent was to complete the improvements to support the 14 lots and market them for not less than $800,000 each. **It should be noted that the borrowers changed the scope of the project to sub-lot the 14 parcels and create 62 "high-end" residential lots.** Each lot would be serviced by a community water system and on their own for septic. The Credit Union is also secured by an additional 200 acres of undeveloped ground located in the same vicinity, however, not contiguous.

Action Plan

*Action Plans are to be updated with tracked changes.

Attorney Ryan Purdy is working closely on file. Efforts are being made to meet with the debtors new attorney and our attorney to construct a workout discussion, if fails, attorney to proceed with moving forward on foreclosure.

Quarterly Update of Events

*Updates are to be kept as a log

WHITEFISH CREDIT UNION

300 Baker Ave.
PO Box 37
Whitefish, MT 59937
(406) 862-3525 FAX (406) 862-2143

RE: APPRAISAL CONTRACT LETTER

Barrie Appraisal
Lloyd Barrie

- ☐ Complete Summary Appraisal
- ☒ "As Is" value
- ☐ Cost & Market Approach only
- ☒ Subject to plans & specifications
- ☐ Land Only Appraisal
- ☐ Limited Scope valuation
- ☐ _____

Dear Appraiser:

This is to confirm Whitefish Credit Union's (WCU) request for you to complete appraisal of the following real property:

Boon Road Somers MT (see attached)

For access to the property, you are requested to contact:

The purpose of this appraisal is to estimate the Market Value (based on terms of cash) of the Fee Simple Estate of the subject property.

The appraisal shall meet and conform to the Uniform Standards of Professional Appraisal practice promulgated by the Appraisal Standards Board of the Appraisal Foundation that are in place at this time.

You shall determine and fully explain what you believe is the typical marketing period for this property, and explain how this determination has affected your Market Value conclusion and be in compliance with Standard 1 USPAP.

Please make note of <u>any</u> evidence of possible hazardous waste contamination. WCU recognizes that as an appraiser you are not an expert on the existence of hazardous waste nor does the appraisal assignment require analysis of such possible contamination. However, if physical signs are evident, a notation of such should be incorporated in the letter of transmittal.

We require that you sign the final appraisal report as the primary appraiser and personally inspect the subject and each of the comparable properties. **Please make every effort to have the effective date of the appraisal as close to the delivery date as possible.** In addition, all persons assisting in the preparation and analysis of the appraisal should be identified.

Please note the WCU reserves the right to convey a copy of the appraisal to third parties. Also, please note that you may be requested to meet with us, and possibly third parties, to discuss the analysis and value conclusions in the appraisal report.

We request you submit the original appraisal report to the WCU when it is completed along with a bill for your services. Your capacity in this assignment is as an independent contractor and not as an employee or agent of the Whitefish Credit Union, nor are you authorized to represent yourself as a WCU employee or agent, by implication or otherwise. If you have any questions concerning any part of this assignment please contact us.

Please acknowledge your understanding and agreement of the foregoing by returning a signed copy of this letter to the Whitefish Credit Union. Contact the undersigned, should you have any questions regarding this assignment.

Sincerely,

Jennifer D Faulkner, MAI — Whitefish Credit Union

Appraiser

2-3-11 — Date

***Please email to cjohnson@whitefishcreditunion.com**

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 14

Discounted Cash Flow Analyses

The "as is" value of the subject was analyzed through a discounted cash flow (DCF) analysis. This analysis was based on the above lot pricing and absorption together with local data from other developers and real estate agents.

In this analysis the estimated retail prices of the lots were projected over the estimated absorption period. (See preceding Valuation of Lots and Sales Absorption Analysis). Expenses were projected over the absorption period, resulting in net cash flows through the sell-out period. The annual net cash flows were discounted back to net present values based on discount rates obtained from several sources.

Projected Parcel Sales and Revenue

The lot sale prices projected over the absorption period were adjusted for anticipated appreciation after Year 2. An annual appreciation rate of approximately 5% per year was forecast for Years 3 through 7. Based on these assumptions, the Projected Parcel Sales and Revenue Summary is set forth below.

Projected Parcel Sales Revenue by Year

Period	1	2	3	4	5	6	7	
Year	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	Total
Parcel Sales	1	1	2	2	3	3	2	**14**
Average Price/Parcel	$637,500	$637,500	$669,000	$702,000	$737,000	$774,000	$813,000	
Total Projected Revenue	$637,500	$637,500	$1,338,000	$1,404,000	$2,211,000	$2,322,000	$1,626,000	**$10,176,000**

Development Costs

Development costs were based on information provided by the developer and checked with a commercial cost service. The remaining infrastructure development costs were projected at approximately $3,311,000, as previously set forth on page 9.

Expenses

General and sales expenses were projected through the entire sell-out period. These expenses included General and Administrative Expenses estimated at $25,000/year. Property Taxes based on lower classification were included within General and Administrative Expenses. Sales and closing expenses were estimated at 6% of annual projected revenue.

Discounted Cash Flow Static Model – As Is

In order to determine a likely sale price of the subject subdivision the DCF analysis was looked at two ways. Investors generally look for two things when purchasing an investment such as the subject subdivision one is the overall cash-on-cash return for the investment, and the other is the

internal rate of return (IRR) also known as a Discount Rate. It was determined when talking to investors that they generally would want between a 25% to 100% cash-on-cash return on an investment depending on length of time invested and amount of cash invested. With the subject subdivision and the current state of the economy it was determined that a 50% return would be needed to entice an investor. With these criteria the Cash-on-Cash Static Model generates the following numbers. (See *Discounted Cash Flow Analysis – As Is* in Exhibit III of the Addenda for more detailed information).

Static Model - As Completed - Cash-On-Cash

Aggregate Retail Revenues	50% Cash-On-Cash Return
Projected Revenue	
Lot Sales	$10,176,000
Expenses	
Development Costs	$3,311,000
General and administrative costs	$508,900
Sales & Closing Costs	$610,700
Total Costs & Expenses	$4,430,600
Entrepreneurial Profit	$3,392,000
Residual to Land	$2,353,400
Number of lots	14
Bulk Sale/Lot	$168,100
Profit as percent of Aggregate Retail Revenues	33.33%
Profit as Cash-On-Cash Return	50.00%
Implied Non-Leveraged IRR	12.60%
Implied Discount from Total Retail Revenues	76.87%

The above analysis indicates a net present value of approximately **$2,353,000**.

The implied IRR (internal rate of return) is 12.6%. A check of national indicators of discount rates (IRRs) for investment grade commercial properties indicated a current range from 5.50% to 14.00%, and an average around 9.10% (*PwC Real Estate Investor Survey*). Given the current market and the nature of the property an IRR of 12.6% is probably reasonable.

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 15

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 15

September 30, 2013

Mr. James Manley, Attorney
Manley Law Firm
201 Fourth Avenue East
Polson, Montana 59860

Re: Thorco Properties Appraisals - 300 acres & 200 acres, Boon Road, Somers, Montana

Dear Mr. Manley:

In response to your request for an appraisal of the two above-referenced properties, I have completed the appraisal of each and am submitting the accompanying report.

I have fully complied with the requirements and standards of the Uniform Standards of Professional Appraisal Practice (USPAP) in making this appraisal. The report has been written to contain the descriptions, discussion, and level of analysis consistent with the purpose of the appraisal and the scope of work. This report fully complies with Standards Rule 2-2 of USPAP.

The property has been appraised in fee simple as of the date of September 25, 2013. The purpose of the appraisal is to serve as a valuation aid in legal matters concerning the subject property. The appraisal is subject to special assumptions and limiting conditions. The appraiser has fully discussed those special assumptions and limiting conditions as "Extraordinary Assumptions" and "Hypothetical Conditions" in that section of report.

The appraiser assumes no responsibility for the marketability of the property and does understand that there are legal claims upon the title.

Based upon the scope of work and by reasons of my investigations, studies, and analyses, it is my opinion that the market value of the property as of the date of valuations, September 25, 2013, should be as follows:

300 acres subdivision - EIGHT MILLION DOLLARS ($8,000,000)
200 acres undeveloped - SEVEN HUNDRED, NINETY THOUSAND DOLLARS ($790,000)

Your attention is invited to the data and discussions that follow and which are the foundation of the valuation conclusions. I wish to thank you for the opportunity to be of service to you in this assignment. If I may further serve you in this assignment, or in future matters, please call.

Respectfully,

Roy L. Nicolet, MAI Montana Certified General License #193

offered for $280,000 and a 2.8 acre tract is offered at $1,175,000 but does includes golf course membership. None of the current sales are located on the golf course. There are some stunning views, but most are slivers or have to be carved out at some expense. Iron Horse is a lifestyle development with the amenities of the Golf Club which costs extra. A lot purchase only guarantees that you can submit an application, which if approved is very expensive for golf in Montana. The majority of the sites are smaller than the subject and located in typical mountainside terrain and timbered sites.

All of this discussion is to point out that this area is a draw for those of means and has demand. There is no question that for a period of at least four years, prices did back off a substantial amount, but it was not to the extent of the typical housing market whereby those owners did not have the discretionary income to weather the recession.

As we forecast the price level for the subject lots, we make the comparison with the competition. The primary draws of the subject that cannot be equaled by any other development are the views and the "parked out" landscape of the subject. The rock walls and other landscape features lend an air to the up-scale and high-end setting for the subject lots.

We also have to forecast how long it will take to sell the subject lots. When we look at Bear Mountain, the first two phases of Whitefish Hills and even Saddlehorn we see considerable activity in two to three years. I feel that will probably never happen again, at least not as long as people remember the past recession. I feel that a reasonable absorption period for the subject should be 7 years with 8 sales in the first year and 9 sales each in years 2 through 7.

I feel the data of my investigations strongly supports a lot value of $360,000 in the first year. Additionally, I feel there should be a $25,000 price reduction or promotion on the first four lots to get activity started for buyers who will build soon. It is recognized that differing lots will generally have some pricing difference, as to the prominence, view, size, etc. in the development. However, on average, the lots should support an income stream as shown below. It is felt that the income stream should appreciate at a reason rate of 5% per year or $20,000 per year per lot. Initially the rate would be 5.55% in the second year and 4.34% in the last year.

REVENUE FORECAST FROM LOT SALES

YEAR	# LOTS SOLD	PRICE	TOTAL SALES
1	4	$335,000	$1,340,000
1	4	360,000	1,440,000
2	9	380,000	3,420,000
3	9	400,000	3,600,000
4	9	420,000	3,780,000
5	9	440,000	3,960,000
6	9	460,000	4,140,000
7	9	480,000	4,320,000
Totals	62		$26,000,000

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 16

2-2-2011

To Jennifer

From Donna Thornton

Re: Feb 2011 Draw - 18 pages

Jennifer, can you have Doug give me a call when he gets a chance? I have a question for him re: March 2011. Thankyou! 253-2581

Also, call me if any questions on the draw or when its ready. Thanks again!

Thorco, Inc.
#966428-750

Donna

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 17

2-4-2022 Expert Witness Report by Gerald Fritts Exhibit 17

Whitefish Credit Union

300 Baker Ave. • 862-3525
Whitefish

234 E. Montana • 257-3123
Kalispell

320 Nucleus Ave. • 892-8000
Columbia Falls

110 3rd Ave. E. • 883-3600
Polson

202 Dewey Ave. E. • 297-7800
Eureka

107 Pond St. • 827-5626
Thompson Falls

P.O. BOX 37
WHITEFISH, MONTANA 59937-0037

April 27, 2011

Thorco, Inc.
Attn: Dennis & Donna Thornton
P.O. Box 1557
Kalispell, MT 59903

RE: Additional Subdivision Financing

Dear Dennis & Donna,

Please find the enclosed loan application that needs to be completed for us to consider any additional financing requests with regard to your project in Somers.

We also need to schedule a tour of the property and need to include our CEO Jim Kenyon as part of the inspection.

Please give me a call at 257-6042 if you have any questions.

Sincerely,

Randy Cogdill
Member Business Loans
Whitefish Credit Union

ALL ACCOUNTS INSURED TO $250,000 BY NCUA

April 13, 2011

Thorco Inc.
P. O. Box 1557
Kalispell, Montana 59903

Whitefish Credit Union
234 East Montana St.
Kalispell, Montana 59901

Dear Randy,

As discussed in previous conversations and emails, we are requesting continued financing of our Somers real estate development project. We are requesting refinance of the existing loan, at market interest rates to complete the project. This amount includes the current loan balance, and an additional $1,938,680.00. The additional funds requested include the items that need to be completed on the subdivision that are not bondable in the amount of $1,188,680.00, with an additional $750,000.00 for contingencies and interest carry. Loan proceeds will apply to paying off the existing loan balance with WFCU and establishing water and power systems and paving roads to the project. Please see the attached project completions estimate dated March 2011 for more detail.

Repayment: Payments would be made through the sale of sixty (60) parcels ranging from $250,000.00 to $350,000.00 each. All 60 parcels are considered prime view sites of Flathead Lake.

Although parcel sales are at this time considered the primary revenue source to the Business Plan, THORCO has interested developers that have national and international marketing basis, that are looking into the project. This would involve a buyout on some scale to the project.

Security: Of course, THORCO has substantial real estate assets to pledge as collateral to the loan. In addition to the core 300 acres, contiguous to the project are 200 acres that are planned as a Phase II to the project.

Marketing: Once preliminary plat approval is completed, the project will be marketed by Trails West Realty/Christies. A synopsis the preliminary marketing plan is attached.

Considerations:

1. Due to Thorco's extensive construction background, valuable sweat equity has gone into the project that would otherwise have to be contracted out at considerable expense. As determined by the study previously provided to you, a value of the work performed so far if done by outside contracting is $16,595,782.00, with actual cash outlay to date of only $3,360,000.00 or 20% of the work value. A projected amount to complete the project of $3,311,114.00 would add another $16,555,570.00 using this ratio.

2. Thorco has developed a group of advisors that work as a team in assisting Thorco in the complexities of decision making as the project proceeds. Outlined below is this group of advisors:

Engineer:	Jeff Larson, PE
Attorney:	James Bartlett, Tami Fisher, Noah Bodman
Accountant:	Vicki Hileman, CPA
Financial Advisors:	Mark Agather, CFP, Donald Garberg, ChFC
Realtor:	Jim Kuhlman, TWRE
Architect:	Kip Halverson, Halvorsen Architects, Bozeman, MT
Builder:	Harry Howard III, Yellowstone Traditions

3. In December it was decided to get an MAI appraisal for the investor groups showing interest in the project. It was intended that the appraisal reflect the value as a sixty lot subdivision and the landscaping and roadwork that has gone into the project. An appraisal was ordered with Lloyd Barrie, but the WFCU also ordered one on the property in January and we were then requested to disengage from our request. Consequently, an appraisal is not available with this request.
4. It is estimated that the 60 parcels will sell for $250,000.00 to $300,000.00.
5. Satellite projects are being considered subject to financing that include a marina on Flathead Lake, a contiguous golf course, the Blacktail ski Resort and an air strip within 5 miles of the project. These additional projects are in conjunction with the potential developers looking at the project, and would substantially elevate the projected lot sales prices in item 4.
6. WFCU has requested the phasing plan for the project on road paving and the water and power systems. Actually there is little phasing to be accomplished. The plan is to place the conduit system in for the power and water before the paving. A single well producing 165 gallons of water per minute is completed. Completing the water and electrical systems would take place on the first sale of the property.
7. Please be advised that Thorco has filed suit against a private party for disseminating false information on the project through emails to neighboring property owners.
8. Our financial statements will not be completed in time for your consideration of our request, but our accountant can and will answer your questions on our financial condition and provide copies of financials upon completion.

Thorco has enjoyed its association with WFCU and appreciates your consideration of our request. Please contact us at your earliest convenience to set a time and date for further discussion of our loan request.

Sincerely,

Dennis Thornton
President, Thorco Inc.

Enclosures:

1. Updated personal financial statement
2. Larsen Engineering & Surveying letter re preliminary plat application

3. 2008 & 2009 personal and business Federal Income Tax Returns
4. Flathead County subdivision preap request with mitigation letter from Somers volunteer fire
5. Letter from project team member Harry Howard & possible investor group Martis Camp sales info.
6. FEC power installation estimates and map
7. Projecte estimate of items to be completed
8. Preliminary marketing plan

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 18

May 27, 2011

THORCO INC.
151 Amatasia Lane
Kalispell, Montana 59901

Whitefish Credit Union
Attn: Randy Cogdill
300 Baker Avenue
Whitefish, Montana 59937

Re: Refinance Loan No. 0750, Acct No. 966428

Dear Randy:

As you are aware, Thorco's note with WFCU was due to be renewed on March 15, 2011. Because of the current market conditions, Donna stopped in and talked to Doug Johnson at the Kalispell office in September of 2011. Doug told Donna at that time not to worry about the refinance, because at the very least, Thorco would be able to get the refinance with an additional $500,000.00 for interest carry in March 2011. Donna tried on several occasions to get a hold of Doug Johnson around the first of January, 2011 regarding the renewal and was unable to get him to call her back. Consequently, Donna put a note on the cover sheet for the February 2, 2011, draw asking Jennifer to get Doug to call her regarding March 2011. Doug never did call. Donna went ahead and ordered documentation that she thought Doug would need on her own. We were quite surprised when we heard on March 14, 2011, that Doug was no longer with WFCU.

We appreciate that you have taken on a very burdensome task in managing Doug's loan portfolio and that you were not familiar with our situation and need time to get everything in order and to committee. However, Donna planned our working capital out to carry Thorco through the end of May. When we met with Jim and yourself on the project on May 12, 2011, you indicated that you would have our request to committee in the next couple of weeks. When you called yesterday, we thought you were calling to give us the committee results. Donna called Vickie Hileman's office immediately after her conversation with you yesterday, on May 26, 2011, and instructed them to email you the documents you need. If you do not receive them by Tuesday, May 31, please let her know immediately so that she can find out why.

In the interim, since you notified Donna that it will be at least another couple of weeks until you can go to committee, and I am assuming possibly another couple of weeks to get the paper work done, I would like to request a bridge loan of $50,000.00 to apply to equipment payments, expenses and salaries. The continued delays in the loan process have put Thorco in an unanticipated and awkward position

financially. If we need to drop the Somers job and look for work elsewhere, we can. However, if we do, we will be unable to continue work on the Somers site. Also, in order to service our debt, we need a job of substantial size which we anticipate would be anywhere from a six to twelve month job. Without knowing the results of WFCU's loan request, we are unable to make a decision on how to carry forward. This situation is serious for Thorco's continued financial stability. A bridge loan will give Thorco some additional leverage while we wait for a decision on the final outcome of Thorco's loan request.

In closing, we appreciate WFCU's position and the reason for the delays, and wish to come up with a solution that keeps both WFCU and Thorco in a positive posistion.

Sincerely,

Dennis Thornton
President, Thorco Inc.

Whitefish Credit Union

300 Baker Ave. • 862-3525
Whitefish

234 E. Montana • 257-3123
Kalispell

320 Nucleus Ave. • 892-8000
Columbia Falls

110 3rd Ave. E. • 883-3600
Polson

202 Dewey Ave. E. • 297-7800
Eureka

107 Pond St. • 827-5626
Thompson Falls

P.O. BOX 37
WHITEFISH, MONTANA 59937-0037

April 27, 2011

Thorco, Inc.
Attn: Dennis & Donna Thornton
P.O. Box 1557
Kalispell, MT 59903

RE: Additional Subdivision Financing

Dear Dennis & Donna,

Please find the enclosed loan application that needs to be completed for us to consider any additional financing requests with regard to your project in Somers.

We also need to schedule a tour of the property and need to include our CEO Jim Kenyon as part of the inspection.

Please give me a call at 257-6042 if you have any questions.

Sincerely,

Randy Cogdill
Member Business Loans
Whitefish Credit Union

ALL ACCOUNTS INSURED TO $250,000 BY NCUA

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 19

Utilities: Power, Phone, etc.

Trench: 25,938 LF of trenching @ $3.00 per LF		$ 77,814.00
Vaults		$ 25,652.00
Conduit		$ 46,464.00
Flathead Electric Company work order	(bonded) $ 588,434.00	
TOTAL TO INSTALL UTILITIES		$ 149,930.00

Legal Fees, Engineeering, Surveying, Subdivision Application Fees: $ 75,000.00

Items to be bonded for completion	
ROADS	**$1,234,000.00**
WATER SYSTEM	**$ 300,000.00**
UTILITIES	**$ 588,434.00**
TOTAL ESTIMATE OF BONDED ITEMS	**$2,122,434.00**

Non bonded items to be completed	
ROADS	**$ 413,750.00**
WATER SYSTEM, RETENTION PONDS, STREAM CHANNELS	**$ 550,000.00**
UTILITIES	**$ 149,930.00**
Legal Fees, Engineeering, Surveying, Subdivision Application Fees:	**$ 75,000.00**
TOTAL ESTIMATE OF NON BONDED ITEMS	**$ 1,188,680.00**
TOTAL ESTMATE FOR PROJECT COMPLETION	**$3,311,114.00**

EDR LoanCheck® Basic: Environmental Risk Review

January 14, 2009

Property Name
THORCO, INC
NHN BOON ROAD
SOMERS, MT 59932

440 Wheelers Farms Road
Milford, CT 06460
Phone:800-352-0050
Fax:800-231-6802
Web:www.edrnet.com

EDR® Environmental Data Resources Inc

ENVIRONMENTAL RISK LEVEL

To help evaluate environmental risk, the *EDR LoanCheck® Basic* provides an Environmental Risk Level, based on a search of current government records requested to be searched by Glacier Bancorp, Inc..

☐	**ELEVATED RISK**	Based on the records found in this report, the environmental risk level for this property is elevated.
X	**LOW RISK**	Based on the records found in this report, the environmental risk level for this property is minimal.

User Instructions
For more information regarding this Environmental Risk Level, please refer to page 2 and other supporting reports.

User Comments

Reports and Databases
The following reports an/or databases were requested by customer and were included in the Environmental Risk Level where available:

- EDR Radius Map Report

Environmental check showing property as "Low Risk".

As wlt expected.

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LOANS $

007214

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 20

Collateral Analysis

Expressed in (000's)

Collateral Description	Loan #	Valuation Date	Value	Prior Liens	Advance Rate	Liquidation Value	Valuation Source
						$ -	
300 Acres + 200 Acres	750	02/23/11	$ 3,333,000	$ 3,360,133	70%	$ 2,333,100	Appraisal
Total			$ 3,333,000	$ 3,360,133		$ 2,333,100	

*Advance Rates should not exceed 70% for RE

Impaired Yes *If yes, impairment analysis is required

Summary of Classification

*Give detailed explanation for why the credit hs been criticized

Borrower Background and Loan History:

Loan #750 financed additional development costs for a residential subdivision located near Somers. The subject property is approximately 300 acres in size cut up into 13 parcels of 20 acres each, and one parcel of 40 acres at the time of our loan. The original intent was to complete the improvements to support the 14 lots and market them for not less than $800,000 each. **It should be noted that the borrowers changed the scope of the project to sub-lot the 14 parcels and create 62 "high-end" residential lots.** Each lot would be serviced by a community water system and on their own for septic. The Credit Union is also secured by an additional 200 acres of undeveloped ground located in the same vicinity, however, not contiguous.

Action Plan

*Action Plans are to be updated with tracked changes.

Attorney Ryan Purdy is working closely on file. Efforts are being made to meet with the debtors new attorney and our attorney to construct a workout discussion, if fails, attorney to proceed with moving forward on foreclosure.

Quarterly Update of Events

*Updates are to be kept as a log

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 22

Whitefish Credit Union

300 Baker Ave. • 862-3525
Whitefish

234 E. Montana • 257-3123
Kalispell

320 Nucleus Ave. • 892-8000
Columbia Falls

110 3rd Ave. E. • 883-3600
Polson

202 Dewey Ave. E. • 297-7800
Eureka

107 Pond St. • 827-5626
Thompson Falls

P.O. BOX 37
WHITEFISH, MONTANA 59937-0037

March 11, 2009

Thorco, Inc.
151 Amatasia Lane
Kalispell, MT 59901

Dear Dennis and Donna:

The Whitefish Credit Union has approved your request for refinancing and infrastructure improvements on approximately 300 acres on Boon Road in Somers. The general terms of the financing arrangement would be as follows:

Borrowing Entity:	Thorco, Inc.
Loan Amount:	$3,360,000.00
Term:	24 Months
Credit Facility:	Straight Line of Credit
Interest Rate:	Fixed at 6.50% for 24 months
Interest Payments:	Due Monthly
Collateral:	First lien position on 300 acre parcel and additional 200 acre parcel on Boon Road in Somers.
Lot Release Provision:	Minimum amount of 70% of net sales proceeds
Subordination Agreement:	Whitefish Credit Union will subordinate its first lien position on the 200 acre tract up to an amount of $500,000 without additional committee approval for income producing

	projects undertaken by the borrower.
Guarantors:	Dennis and Donna Thornton
Fees/Costs:	No loan origination fees will be charged. The fees involved will be the Flathead County recording charge and title insurance in the appropriate amount.
Appraisal:	Assignment of Appraisal from Glacier Bank
Disbursements:	Draw requests to be supported by satisfactory documentation and funded on a percentage of completion basis.

The above terms and conditions are general in nature with specific terms included in loan documents.

Regards,

Doug Johnson

Doug Johnson
Member Business Loan Officer
DJ/jf

nicolev

From: Aaron Archer <aarcher@whitefishcreditunion.com>
Sent: Thursday, July 14, 2011 3:27 PM
To: 'Randy Cogdill'
Subject: RE: Thorco, Inc.

Yep.

From: Randy Cogdill [mailto:rcogdill@whitefishcreditunion.com]
Sent: Thursday, July 14, 2011 2:57 PM
To: 'Aaron Archer'
Subject: Thorco, Inc.

Aaron,
Can you take the Thorco file over to Ryan on your Tuesday visit. Let him know that he needs to get familiar with the file and shoot me an email to go over a number of pending issues.
Thanks,
Randy

nicolev

From: Randy Cogdill <rcogdill@whitefishcreditunion.com>
Sent: Monday, July 25, 2011 2:44 PM
To: 'Donna'
Subject: Loan Application

Donna,
Thank you for faxing me the loan application for the $500,000 revolving line of credit. I am back in the office today from vacation and will process that request and formally present it to the committee tomorrow afternoon. I will contact you as soon as I have a response.
Regards,

Randy Cogdill
Member Business Loan Officer
Whitefish Credit Union
406-257-6042
rcogdill@whitefishcreditunion.com

nicolev

From: Randy Cogdill <rcogdill@whitefishcreditunion.com>
Sent: Thursday, June 16, 2011 4:32 PM
To: 'Carrie Potter'
Subject: RE: thorco

It went to 6/9 MBLC. We concepted a deal that includes additional money to mobilize their equipment to North Dakota. We're waiting on the Thorton's for some information.
Thanks,
Randy

From: Carrie Potter [mailto:cpotter@whitefishcreditunion.com]
Sent: Thursday, June 16, 2011 4:04 PM
To: Randy Cogdill
Subject: thorco

hi randy,
did thorco go to mblc last wk? just updating my notes :)
thanks, carrie

nicolev

From: Randy Cogdill <rcogdill@whitefishcreditunion.com>
Sent: Thursday, June 16, 2011 4:32 PM
To: 'Carrie Potter'
Subject: RE: thorco

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Randy

From: Carrie Potter [mailto:cpotter@whitefishcreditunion.com]
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Subject: thorco

hi randy,
did thorco go to mblc last wk? just updating my notes :)
thanks, carrie

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 23

nicolev

From: Randy Cogdill <rcogdill@whitefishcreditunion.com>
Sent: Thursday, July 14, 2011 2:55 PM
To: 'Donna'
Attachments: Commercial Application.pdf

Donna,
Please complete the attached commercial loan application and sign and return as soon as you can. Thanks,
Randy

nicolev

From: jim kenyon <jkenyon@whitefishcreditunion.com>
Sent: Tuesday, July 12, 2011 3:49 PM
To: 'Aaron Archer'
Subject: FW: new request: please forward to Jim Kenyon

Whitefish Credit Union
300 Baker Ave
Whitefish, MT 59937
406.862.3525

From: Kelli Bowden [mailto:kbowden@whitefishcreditunion.com]
Sent: Monday, July 11, 2011 4:08 PM
To: Jim Kenyon
Cc: Jennifer Foultner
Subject: FW: new request: please forward to Jim Kenyon

From: Donna [mailto:thorco@centurytel.net]
Sent: Monday, July 11, 2011 11:07 AM
To: kbowden@whitefishcreditunion.com
Subject: new request: please forward to Jim Kenyon

Jim,

From talking to Randy last week I understand that our application is going to loan committee on Wednesday and that Randy is gone this week. Randy indicated to me that he would have you take our request to committee. As you know, Thorco needs to generate substantial income to meet operations and obligations. The business market in North Dakota supplies just that opportunity and our business plan would work there. To the best of my knowledge other opportunities are not available.

If it would be helpful to get together prior to Wednesday to provide deeper explanation into our cost estimates and income projections on moving an operation there, we would be more than happy to do so. If you need to call me, I can be reached at 406-261-6814. Thank you

Dennis Thornton

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 24

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 24
2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 24

Whitefish Credit Union

300 Baker Ave. • 862-3525
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Polson

202 Dewey Ave. E. • 297-7800
Eureka

107 Pond St. • 827-5626
Thompson Falls

P.O. BOX 37
WHITEFISH, MONTANA 59937-0037

August 3, 2011

Thorco, Inc.
Attn: Dennis & Donna Thornton
P.O. Box 1557
Kalispell, MT 59903

RE: Commercial Loan Application

Dear Dennis & Donna,

Thank you for your loan application dated 7/15/11 for a $500,000 revolving line of credit to finance operating capital and mobilization costs of a new gravel sales operation to be located in Williston North Dakota.

I regret to inform you that the Whitefish Credit Union is unable to approve any additional financing at this time. Our concerns are centered on insufficient verifiable income to support your existing and proposed debt obligations and insufficient collateral to support the new loan request.

Our focus now needs to be on structuring the renewal of your loan # 966428-750 with a principle balance of $3,360,133.62 that matured 3/15/11. The current accrued interest through 8/3/11 is $91,130.40 and must be paid in order to renew the loan.

In order to consider renewal of this loan we will need to discuss how the accrued interest is to be paid, and ultimately, how the principle balance will be reduced either through parcel sales and/or loan amortization.

Please give me a call at 862-3525 so we can set up a meeting as soon as possible to discuss this matter.

Sincerely,

Randy Cogdill
Vice President
Member Business Loans
Whitefish Credit Union

007175

ADVERSE ACTION NOTICE

TO: THORCO, INC
151 AMATASIA LN
KALISPELL, MT 59901

DATE: August 5, 2011

SUBJECT: Application, dated August 4, 2011 for a Business Revolving Line Of Credit loan.

Dear THORCO, INC:

Thank you for applying to us for the loan transaction described above. After carefully reviewing your application, we are sorry to advise you that we cannot grant a loan to you for the following reasons:

- Unable to verify income
- Income insufficient for amount of credit requested
- Value or type of collateral insufficient
- LACK OF REASONABLE ASSURANCE OF ABILITY TO REPAY LOAN (AND THEIR OBLIGATIONS) FROM EARNINGS.

COLLATERAL, CONSIDERED ALONG WITH OTHER FACTORS, IS NOT DEEMED SUFFICIENT TO PROTECT THE INTEREST OF THE WHITEFISH CREDIT UNION

If you have any questions regarding this notice, you should contact us at:

WHITEFISH CREDIT UNION
MBL CENTER
Attn: RANDY COGDILL
215 EAST IDAHO AVENUE
KALISPELL, MT 59901
(406) 883-3904

LENDER:

WHITEFISH CREDIT UNION

x _____
RANDY COGDILL, VP MBL

EQUAL CREDIT OPPORTUNITY ACT NOTICE

The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is:

NATIONAL CREDIT UNION ADMINISTRATION
OFFICE OF CONSUMER PROTECTION
1775 DUKE STREET
ALEXANDRIA, VA 22314
Toll-free: (703) 518-1140
Fax: (703) 518-6672
TDD: _____

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2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 25

nicolev

From: Ryan Purdy <ryan@morrisonframpton.com>
Sent: Wednesday, January 04, 2012 10:48 AM
To: Rich DeJana; Donna; 'James C. Bartlett'
Subject: RE: Thornton and WFCU

Gentlemen,
Please note that I still have not received any information or update on this file or a meeting. As a scheduling matter this meeting now needs to take place on or before Jan 12th. I am now fully booked the 13th and will be gone the following week. If we are not able to schedule a meeting to discuss these matters prior to my departure a foreclosure complaint will be drafted in my absence and filed upon my return. I intend to exhaust all options to review and work with the parties to address the debtors non-conformance with the loan; however, we must address the issues now poste haste.

Best regards,

Ryan D. Purdy

Morrison & Frampton, PLLP
341 Central Ave.
Whitefish, MT 59937
Email: ryan@morrisonframpton.com
Phone: (406)862-9600
Fax: (406)862-9611

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From: Rich DeJana [mailto:rdejana@montanasky.net]
Sent: Tuesday, December 20, 2011 4:37 PM
To: Donna; 'James C. Bartlett'
Cc: Ryan Purdy
Subject: Thornton and WFCU

Jim, Donna and Dennis: just got off the phone with Ryan and I am copying this to him to make sure I get everything right. First we confirmed Jim will be your counsel on wfcu issues. I advised and he agreed that the meeting should be the 9th or 13 of January. Ryan said they will need about 4 days before and income statement from 2011 and your forecast for 2012. If I got that wrong , Ryan will email all of you.

Richard DeJana
P.O. Box 1757
Kalispell, MT 59903-1757
406-752-4120
fax 406 752 5015

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nicolev

From: Ryan Purdy <ryan@morrisonframpton.com>
Sent: Tuesday, December 20, 2011 5:08 PM
To: Rich DeJana; Donna; 'James C. Bartlett'
Subject: RE: Thornton and WFCU

Mr. and Mrs. Thornton, that is correct please email me your current financials for 2011 and estimated financials for 2012 delineating from what source the income is derived. We will need this information before we set the meeting so as to make sure that we have financials to work with. Any options that the Credit Union has have to be supported by your income.

Please email me the information at your earliest convenience and I will try to get a meeting set up on the 13th or 19th of Jan.

Best regards,

Ryan D. Purdy

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341 Central Ave.
Whitefish, MT 59937
Email: ryan@morrisonframpton.com
Phone: (406)862-9600
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nicolev

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Sent: Tuesday, December 20, 2011 5:08 PM
To: Rich DeJana; Donna; 'James C. Bartlett'
Subject: RE: Thornton and WFCU

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Whitefish, MT 59937
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Phone: (406)862-9600
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2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 26

nicolev

From: Ryan Purdy <ryan@morrisonframpton.com>
Sent: Friday, January 06, 2012 3:19 PM
To: Donna Thornton; 'James C. Bartlett'; Rich DeJana
Cc: Aaron Archer
Subject: RE: Meeting

All,
I understand that I am the one that has been pressing for a meeting and that you are trying to facilitate that; however, we need updated financials(personal and corporate income statements and balance sheets for 2011 and projected for 2012, based upon current and contemplated contracts) and the opportunity to review the same before my clients will sit down and discuss options.

Mrs. Thornton, I don't mean to disregard your request but unfortunately I cant burden my clients nor you with the attorney's costs and fees if we have no updated and current information to base our discussion. Please ready and transmit said information and I will assist in setting up a meeting thereafter.

As told to Mr. DeJana, it is imperative that we address your outstanding loans post haste, as these loans have remained in default for some time while the debtors tried to seek additional sources of income.

Best regards,

Ryan D. Purdy

Morrison & Frampton, PLLP
341 Central Ave.
Whitefish, MT 59937
Email: ryan@morrisonframpton.com
Phone: (406)862-9600
Fax: (406)862-9611

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From: Donna Thornton [mailto:thorco@centurytel.net]
Sent: Friday, January 06, 2012 3:04 PM
To: Ryan Purdy
Subject: Re: Meeting

There was no income for last year. I can project next years and bring it along. We can discuss that at the meeting.

From: Ryan Purdy
Sent: Friday, January 06, 2012 2:57 PM
To: Rich DeJana
Cc: Donna ; 'James C. Bartlett'
Subject: RE: Meeting

Rich, we still don't have financials or any information to base the contents of the meeting on. It would be wasted time without that. Wcu needs time to review the submitted information and then we could have an intelligent conversation on possible options.

Thoughts?

Best regards,

Ryan D. Purdy

Morrison & Frampton, PLLP
341 Central Ave.
Whitefish, MT 59937
Email: ryan@morrisonframpton.com
Phone: (406)862-9600
Fax: (406)862-9611

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From: Rich DeJana [mailto:rdejana@montanasky.net]
Sent: Friday, January 06, 2012 2:54 PM
To: Ryan Purdy
Cc: Donna; 'James C. Bartlett'
Subject: Meeting

Ryan, please set up the meeting with the Donna, Dennis and Jim at the Kalispell office for Monday. You can advise them of the time. Thanks

nicolev

From: Ryan Purdy <ryan@morrisonframpton.com>
Sent: Friday, January 06, 2012 3:19 PM
To: Donna Thornton; 'James C. Bartlett'; Rich DeJana
Cc: Aaron Archer
Subject: RE: Meeting

All,
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Subject: RE: Meeting

nicolev

From: Ryan Purdy <ryan@morrisonframpton.com>
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To: Aaron Archer
Subject: FW: Meeting

See below.

Best regards,

Ryan D. Purdy

Morrison & Frampton, PLLP
341 Central Ave.
Whitefish, MT 59937
Email: ryan@morrisonframpton.com
Phone: (406)862-9600
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341 Central Ave.

nicolev

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From: Rich DeJana [mailto:rdejana@montanasky.net]
Sent: Tuesday, December 20, 2011 4:37 PM
To: Donna; 'James C. Bartlett'
Cc: Ryan Purdy
Subject: Thornton and WFCU

Jim, Donna and Dennis: just got off the phone with Ryan and I am copying this to him to make sure I get everything right. First we confirmed Jim will be your counsel on wfcu issues. I advised and he agreed that the meeting should be the 9th or 13 of January. Ryan said they will need about 4 days before and income statement from 2011 and your forecast for 2012. If I got that wrong , Ryan will email all of you.

Richard DeJana
P.O. Box 1757
Kalispell, MT 59903-1757
406-752-4120
fax 406 752 5015

CONFIDENTIALITY NOTICE: This e-mail and any attachments are for the exclusive and confidential use of the intended recipient. If you are not the intended recipient, you may not read, copy, distribute or take action in reliance upon this message. If you have received this message in error, please notify us immediately by return e-mail and

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 27

May 27, 2014	1	Petition Chapter 11 Voluntary Petition . Fee Amount $1213 Filed by THORCO, INC.. (BINNEY, JON) (Entered: 05/27/2014)
May 27, 2014		Judge RALPH B. KIRSCHER added to case. (Cunningham, Pamela) (Entered: 05/27/2014)
May 28, 2014	2	Receipt of Voluntary Petition (Chapter 11)(14-60633) [misc,volp11] (1213.00) Filing Fee. Receipt number 1853630. Fee amount 1213.00. (re: Doc# 1) (U.S. Treasury) (Entered: 05/28/2014)
May 29, 2014	3	Application to Employ Jon R. Binney, Binney Law Firm PC as Attorney for Debtor Filed by Debtor THORCO, INC.. (BINNEY, JON) (Entered: 05/29/2014)
May 29, 2014	4	Notice of Amendment (No Fee Required), Amended Schedules B and F Filed by THORCO, INC.. (Attachments: # 1 Schedule Amended Schedule B # 2 Schedule Amended Schedule F) (BINNEY, JON) (Entered: 05/29/2014)
May 29, 2014	5	341 Meeting of Creditors. 341(a) meeting to be held on 6/30/2014 at 10:30 AM at 341 KALISPELL CH 7&11;HILTON GARDEN INN;1840 HIGHWAY 93 SOUTH; LOGAN ROOM; KALISPELL, MT. (Cunningham, Pamela) (Entered: 05/29/2014)
May 31, 2014	6	BNC Certificate of Mailing - Meeting of Creditors. (related documents(s) 5 Meeting of Creditors Chapter 11). No. of Notices: 8. Notice Date 05/31/2014. (Admin.) (Entered: 05/31/2014)
Jun 17, 2014	7	Order Granting Application to Employ JON R. BINNEY AND BINNEY LAW FIRM, P.C. AS LEGAL COUNSEL. (Related Doc # 3) Signed on 6/17/2014. (Cunningham, Pamela) (Entered: 06/17/2014)
Jun 17, 2014	8	Request for/to Special Notice Filed by WHITEFISH CREDIT UNION. (STENSLAND, DEAN) (Entered: 06/17/2014)
Jun 19, 2014	9	BNC Certificate of Mailing - Order on Application to Employ. (related documents(s) 7 Order on Application to Employ). No. of Notices: 1. Notice Date 06/19/2014. (Admin.) (Entered: 06/19/2014)
Jul 18, 2014	18	Debtor-In-Possession Monthly Operating Report for Filing Period 05/27/2014 to 06/30/2014 Filed by THORCO, INC.. (BINNEY, JON) (Entered: 07/18/2014)
Jul 18, 2014	19	Second Notice of Amendment (No Fee Required), Amended Schedules B Filed by THORCO, INC.. (Attachments: # 1 Schedule 2nd Amended Schedule B) (BINNEY, JON) (Entered: 07/18/2014)
Aug 7, 2014	20	Debtor-In-Possession Monthly Operating Report for Filing Period 7/1/14 to 7/31/14 Filed by THORCO, INC.. (BINNEY, JON) (Entered: 08/07/2014)
Sep 3, 2014	21	Motion to Set Last Day to File Proofs of Claim Filed by Debtor THORCO, INC.. (BINNEY, JON) (Entered: 09/03/2014)
Sep 3, 2014	22	Order To Set Last Day to File Proofs of Claim November 3, 2014. Signed on 9/3/2014. Proofs of Claims due by 11/3/2014. (related documents 21 Motion to Set Last Day to File Proofs of Claim filed by Debtor THORCO, INC.). (Cunningham, Pamela) (Entered: 09/03/2014)

Sep 5, 2014	23	BNC Certificate of Mailing - Order Setting Last Day To File Proofs of Claim. (related documents(s) 22 Order To Set Last Day to File Proofs of Claim). No. of Notices: 9. Notice Date 09/05/2014. (Admin.) (Entered: 09/05/2014)
Sep 12, 2014	24	Debtor-In-Possession Monthly Operating Report for Filing Period 8/1/2014 to 8/31/2014 Filed by THORCO, INC.. (BINNEY, JON) (Entered: 09/12/2014)
Sep 22, 2014	25	Motion to Extend Exclusivity Period for Filing a Chapter 11 Plan and Disclosure Statement Filed by Debtor THORCO, INC.. Objection Due by 10/6/2014. (BINNEY, JON) (Entered: 09/22/2014)
Sep 22, 2014	26	Motion *to Waive Notice Requirement Under Mont. L.B.R. 9013-1(e) (Re: Docket No. 25)* Filed by Debtor THORCO, INC.. (BINNEY, JON) (Entered: 09/22/2014)
Sep 22, 2014	27	Order Granting DEBTOR'S MOTION TO WAIVE NOTICE REQUIREMENT AND THE NOTICE REQUIREMENT UNDER MONT. LBR 9013-1(e) IS HEREBY WAIVED. Signed on 9/22/2014 (related documents(s) 26 Generic Motion filed by Debtor THORCO, INC.). (Cunningham, Pamela) (Entered: 09/22/2014)

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 28

B10 (Official Form 10) (04/13)

UNITED STATES BANKRUPTCY COURT District of Montana		PROOF OF CLAIM
Name of Debtor Thorco, Inc	Case Number: 14-60633-11	
NOTE: *Do not use this form to make a claim for an administrative expense that arises after the bankruptcy filing. You may file a request for payment of an administrative expense according to 11 U.S.C. § 503*		
Name of Creditor (the person or other entity to whom the debtor owes money or property) Whitefish Credit Union		COURT USE ONLY
Name and address where notices should be sent Dean A. Stensland PO Box 9199 Missoula, MT 59807-9199 Telephone number: (406) 543-6646 email: dstensland@boonekarberg.com		☐ Check this box if this claim amends a previously filed claim Court Claim Number: ____ (*If known*) Filed on ____
Name and address where payment should be sent (if different from above) Telephone number email		☐ Check this box if you are aware that anyone else has filed a proof of claim relating to this claim. Attach copy of statement giving particulars

1. Amount of Claim as of Date Case Filed: $ 4,188,854.24

If all or part of the claim is secured, complete item 4

If all or part of the claim is entitled to priority, complete item 5

☑ Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges

2. Basis for Claim: loan of money, default, summary judgment granted
(See instruction #2)

3. Last four digits of any number by which creditor identifies debtor:	3a. Debtor may have scheduled account as: (See instruction #3a)	3b. Uniform Claim Identifier (optional): (See instruction #3b)

4. Secured Claim (See instruction #4)
Check the appropriate box if the claim is secured by a lien on property or a right of setoff, attach required redacted documents, and provide the requested information.

Nature of property or right of setoff: ☑ Real Estate ☐ Motor Vehicle ☐ Other
Describe:

Value of Property: $ 8,790,000.00 per Debtor's Disclosure Statement

Annual Interest Rate 10.000% ☑ Fixed or ☐ Variable
(when case was filed) - legal judgment rate

Amount of arrearage and other charges, as of the time case was filed, included in secured claim, if any:
$ ____

Basis for perfection: 3/10/14 Summary judgment order
3/19/09 Mortgage

Amount of Secured Claim: $ 4,188,854.24

Amount Unsecured: $ ____

5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507 (a). If any part of the claim falls into one of the following categories, check the box specifying the priority and state the amount.

☐ Domestic support obligations under 11 U.S.C. § 507 (a)(1)(A) or (a)(1)(B)

☐ Wages, salaries, or commissions (up to $12,475*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier - 11 U.S.C. § 507 (a)(4)

☐ Contributions to an employee benefit plan - 11 U.S.C. § 507 (a)(5)

Amount entitled to priority:

☐ Up to $2,775* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507 (a)(7)

☐ Taxes or penalties owed to governmental units - 11 U.S.C. § 507 (a)(8)

☐ Other - Specify applicable paragraph of 11 U.S.C. § 507 (a)(__)

$ ____

*Amounts are subject to adjustment on 4/01/16 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.

6. Credits. The amount of all payments on this claim has been credited for the purpose of making this proof of claim. (See instruction #6)

7. Documents: Attached are redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, security agreements, or, in the case of a claim based on an open-end or revolving consumer credit agreement, a statement providing the information required by FRBP 3001(c)(3)(A). If the claim is secured, box 4 has been completed, and redacted copies of documents providing evidence of perfection of a security interest are attached. If the claim is secured by the debtor's principal residence, the Mortgage Proof of Claim Attachment is being filed with this claim. *(See instruction #7, and the definition of "redacted".)*

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

8 Signature: (See instruction #8)

Check the appropriate box.

☐ I am the creditor. ☑ I am the creditor's authorized agent. ☐ I am the trustee, or the debtor, or their authorized agent. (See Bankruptcy Rule 3004.) ☐ I am a guarantor, surety, indorser, or other codebtor. (See Bankruptcy Rule 3005.)

I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief.

Print Name: Dean A. Stensland
Title: Attorney
Company: Boone Karlberg, P.C.
Address and telephone number (if different from notice address above):

(Signature) 11/3/14 (Date)

Telephone number: (406) 543-6646 email: dstensland@boonekarlberg.com

Penalty for presenting fraudulent claim: Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

INSTRUCTIONS FOR PROOF OF CLAIM FORM

The instructions and definitions below are general explanations of the law. In certain circumstances, such as bankruptcy cases not filed voluntarily by the debtor, exceptions to these general rules may apply.

Items to be completed in Proof of Claim form

Court, Name of Debtor, and Case Number:
Fill in the federal judicial district in which the bankruptcy case was filed (for example, Central District of California), the debtor's full name, and the case number. If the creditor received a notice of the case from the bankruptcy court, all of this information is at the top of the notice.

Creditor's Name and Address:
Fill in the name of the person or entity asserting a claim and the name and address of the person who should receive notices issued during the bankruptcy case. A separate space is provided for the payment address if it differs from the notice address. The creditor has a continuing obligation to keep the court informed of its current address. See Federal Rule of Bankruptcy Procedure (FRBP) 2002(g).

1. Amount of Claim as of Date Case Filed:
State the total amount owed to the creditor on the date of the bankruptcy filing. Follow the instructions concerning whether to complete items 4 and 5. Check the box if interest or other charges are included in the claim.

2. Basis for Claim:
State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card. If the claim is based on delivering health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information. You may be required to provide additional disclosure if an interested party objects to the claim.

3. Last Four Digits of Any Number by Which Creditor Identifies Debtor:
State only the last four digits of the debtor's account or other number used by the creditor to identify the debtor.

3a. Debtor May Have Scheduled Account As:
Report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the debtor.

3b. Uniform Claim Identifier:
If you use a uniform claim identifier, you may report it here. A uniform claim identifier is an optional 24-character identifier that certain large creditors use to facilitate electronic payment in chapter 13 cases.

4. Secured Claim:
Check whether the claim is fully or partially secured. Skip this section if the claim is entirely unsecured. (See Definitions.) If the claim is secured, check the box for the nature and value of property that secures the claim, attach copies of lien documentation, and state, as of the date of the bankruptcy filing, the annual interest rate (and whether it is fixed or variable), and the amount past due on the claim.

5. Amount of Claim Entitled to Priority Under 11 U.S.C. § 507 (a).
If any portion of the claim falls into any category shown, check the appropriate box(es) and state the amount entitled to priority. (See Definitions.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority.

6. Credits:
An authorized signature on this proof of claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

7. Documents:
Attach redacted copies of any documents that show the debt exists and a lien secures the debt. You must also attach copies of documents that evidence perfection of any security interest and documents required by FRBP 3001(c) for claims based on an open-end or revolving consumer credit agreement or secured by a security interest in the debtor's principal residence. You may also attach a summary in addition to the documents themselves. FRBP 3001(c) and (d). If the claim is based on delivering health care goods or services, limit disclosing confidential health care information. Do not send original documents, as attachments may be destroyed after scanning.

8. Date and Signature:
The individual completing this proof of claim must sign and date it. FRBP 9011. If the claim is filed electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what constitutes a signature. If you sign this form, you declare under penalty of perjury that the information provided is true and correct to the best of your knowledge, information, and reasonable belief. Your signature is also a certification that the claim meets the requirements of FRBP 9011(b). Whether the claim is filed electronically or in person, if your name is on the signature line, you are responsible for the declaration. Print the name and title, if any, of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. If the claim is filed by an authorized agent, provide both the name of the individual filing the claim and the name of the agent. If the authorized agent is a servicer, identify the corporate servicer as the company. Criminal penalties apply for making a false statement on a proof of claim.

PROOF OF CLAIM
Page 2

The Note, Mortgage, Motion for Summary Judgment Order, Order granting Whitefish Credit Union summary judgment on foreclosure claim, proposed Judgment for Foreclosure and Order of Sale, and applicable affidavits are attached. Interest continued to accrue from November 21, 2013 to May 27, 2014. As an over-secured creditor, Whitefish Credit Union is also entitled to reasonable attorney fees, costs, and interest post-petition

A. Breakdown of Total Amount Owed

Summary Judgment Order amount:	$4,073.741.54
Legal Fees to obtain summary judgment on judicial foreclosure	$ 115,112.70
TOTAL as of November 21, 2013	$4,188,854.24

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 29

Return to Thorco INC Box 1557 Kal. MT 59903 10/28/2015

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 29

CERTIFIED

JJ

Robert B. Allison
District Judge, Department No. 2
Flathead County Justice Center
920 South Main Street, Suite 310
Kalispell, Montana 59901
(406) 758-5906

CLERK OF DISTRICT COURT
2016 FEB 23 PM 4:34
FILED
BY [signature] DEPUTY

201800002381
Page: 1 of 28
Fees: $196.00
2/2/2018 4:16 PM
Debbie Pierson, Flathead County MT by DD

0213950

MONTANA ELEVENTH JUDICIAL DISTRICT COURT, FLATHEAD COUNTY

WHITEFISH CREDIT UNION, Plaintiff, -vs- THORCO, INC., a Montana Corporation, DENNIS THORNTON, DONNA THORNTON, and JOHN DOE(s) 1-10. Defendants.	Cause No. DV-12-174 B Judge: Robert B. Allison **JUDGMENT OF FORECLOSURE AND ORDER OF SALE**
THORCO INC., a Montana corporation, DENNIS THORNTON and DONNA THORNTON, Counter-Claimants, -vs- WHITEFISH CREDIT UNION, and JOHN DOES 1 - 10, Counter-Defendants.	

Having granted summary judgment to Whitefish Credit Union on its claim for foreclosure, and good cause appearing;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that judgment of foreclosure is hereby entered in favor of Whitefish Credit Union and against Defendants

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2-4-2022 Expert Witness Report by Gerald Pitts Exhibit 29

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

Thorco, Inc., Dennis Thornton, and Donna Thornton against the following described real properties located in Flathead County, Montana:

MORTGAGE :
(Document No. 200900007830)

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.

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.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the total indebtedness, including accrued interest, due and owing to Plaintiff by Defendants Thorco, Inc., Dennis Thornton and Donna Thornton is $4,348,880.81, said amount to accrue interest at the statutory rate of 10% per annum until paid in full.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Whitefish Credit Union's security interests are superior to all other liens or encumbrances.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the above-described property be sold by the Sheriff of Flathead County, Montana, according to the law and practice of this Court, with the proceeds of sale, including the payment of property taxes due at the time of foreclosure, being applied to costs of the court, the expenses of the sale, and the amount due the Plaintiff pursuant to the judgment as set forth above. If it appears from the Sheriff's return that the proceeds are insufficient and a balance still remains due on the judgment, judgment for the balance due is hereby entered against the Defendants Thorco, Inc., Dennis Thornton, and Donna Thornton.

DATED this 23rd day of February, 2018.

By: [signature]
Judge Robert B. Allison
Flathead County District Court

cc: Sean S. Frampton
John L. Amsden / Justin P. Stalpes
John Heenan
John Ford Elsaesser
2/23/16

STATE OF MONTANA)
County of Flathead)
I hereby certify that the instrument to which this certificate is affixed is a true, correct and compared copy of the original on file in the office of the Clerk of the District Court of Flathead County this 2 day of February, 2018.
PEG L. ALLISON, Clerk of the District Court
By [signature]
Deputy Clerk

SEAL

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 30

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 30

CERTIFIED

JJ
FILED
March 22 2016
Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA
Case Number: DA 16-0136

IN THE SUPREME COURT OF THE STATE OF MONTANA

FILED

DA 16-0136

DV-12-174B

MAR 22 2016
Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

THORCO, INC., a Montana Corporation, DENNIS THORNTON and DONNA THORTON,

Defendants/Counter-Claimants and Appellants,

v.

WHITEFISH CREDIT UNION,

Plaintiffs and Appellees.

ORDER

FILED
BY
DEPUTY
2016 MAR 23 AM 8:11
CLERK OF DISTRICT COURT

Appellee Whitefish Credit Union, by counsel (WCU), has filed a motion to dismiss the appeal of the defendants and appellants Thorco, Inc., and Dennis and Donna Thornton (collectively Thorco). Thorco, by counsel, has filed a response in opposition to the motion.

WCU sued to foreclose upon a development project owned by Thorco in 2012. Thorco answered and asserted affirmative defenses and counterclaims. Subsequently, the District Court entered summary judgment in favor of WCU on all of Thorco's counterclaims except negligence and punitive damages (and possibly negligent misrepresentation). Ultimately, on February 23, 2016, following the lift of a stay in a bankruptcy matter filed by Thorco, the District Court entered judgment of foreclosure and an order of sale of the subject property. Thorco appeals from the judgment of foreclosure and order of sale.

WCU maintains that Thorco's appeal must be dismissed because Thorco's counterclaims remain outstanding. It cites M. R. App. P. 6(5)(a) for the proposition that judgments which adjudicate fewer than all claims as to all parties, and which leave matters in the litigation undetermined, are not appealable. It maintains that this appeal is a stall tactic by Thorco in an attempt to delay the foreclosure sale. WCU further asserts that because Thorco's counterclaims rest on the same set of facts as the judgment and order from which appeal is taken, acceptance of this appeal would result in two appeals on the same set of

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Fees: $196.00
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facts. There having been no motion and no order to certify the judgment as a final judgment under M. R. Civ. P. 54(b), WCU asserts that this appeal must be dismissed until all claims have been adjudicated.

Thorco argues in response that a judgment of foreclosure is a final appealable order, citing three cases for the proposition: *FSLIC v. Hamilton*, 241 Mont. 367, 786 P .2d 1190 (1989); *First Western v. Lence*, 255 Mont. 7, 8 39 P.2d 1277 (1992); and *Bank of Baker v. Mikelson Land Co.*, 1999 MT 76, 294 Mont. 64. 979 P.2d 180. These cases do stand for the proposition stated. However, in none of the three cases was there a counterclaim interposed by the borrower which remained to be adjudicated, as in each case the judgment of foreclosure itself was not contested. Thus, M. R. App. P. 6(5)(a) (and its predecessor rule) was not implicated in any of the cases upon which Thorco relies.

Thorco maintains here that it raised "affirmative defenses" in response to WCU's foreclosure complaint. It apparently made the same contention in the District Court, but in its order of March 10, 2014, the court rejected the characterization of its multiple claims as affirmative defenses, stating "they are not affirmative defenses, they are claims for damages." The court observed that Thorco's negligence counterclaim arises out of Thorco's contention that WCU was negligent in the hiring, training, and supervision of its agents, and that summary judgment on this issue was not appropriate. The court also concluded that Thorco's counterclaim for punitive damages was not amenable to summary judgment. Therefore, at least two counterclaims arising out of the same facts that underlie WCU's complaint for foreclosure remain to be resolved in the District Court.

We conclude that Thorco's appeal is premature, due to the pendency of its counterclaims. Thorco could have requested that the District Court certify its judgment of foreclosure and order of sale as a final judgment pursuant to M. R. Civ. P. 54(b), thus clearing the way for an immediate appeal (M. R. App. P. 6(6)), but it did not. Therefore, its remedy at this juncture is to move for a stay of the foreclosure sale and seek the District Court's approval of a supersedeas bond, in accordance with M. R. App. P. 22(1)(b). Accordingly,

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IT IS ORDERED that WCU's motion to dismiss Thorco's appeal as premature is GRANTED. Thorco's appeal is DISMISSED WITHOUT PREJUDICE.

The Clerk of this Court is directed to serve notice of this Order upon all counsel of record.

DATED this 22nd day of March, 2016.

Patricia Cotter

Michael E W Reeves

Beth Baker

Laurie Parker

Jim Rice

Justices

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

SEAL
COURT ELEVENTH JUDICIAL DISTRICT

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 31

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 30

CERTIFIED

JJ
FILED
March 22 2016
Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA
DA 16-0136

IN THE SUPREME COURT OF THE STATE OF MONTANA

FILED

DA 16-0136

DV-12-174B

MAR 22 2016
Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

THORCO, INC., a Montana Corporation,
DENNIS THORNTON and DONNA THORTON,

Defendants/Counter-Claimants and Appellants,

v.

WHITEFISH CREDIT UNION,

Plaintiffs and Appellees.

ORDER

2016 MAR 23 AM 8:11
CLERK OF DISTRICT COURT
FILED
DEPUTY

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Fees: $196.00
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Page: 5 of 28
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facts. There having been no motion and no order to certify the judgment as a final judgment under M. R. Civ. P. 54(b), WCU asserts that this appeal must be dismissed until all claims have been adjudicated.

Thorco argues in response that a judgment of foreclosure is a final appealable order, citing three cases for the proposition: *FSLIC v. Hamilton*, 241 Mont. 367, 786 P .2d 1190 (1989); *First Western v. Lence*, 255 Mont. 7, 8 39 P.2d 1277 (1992); and *Bank of Baker v. Mikelson Land Co.*, 1999 MT 76, 294 Mont. 64. 979 P.2d 180. These cases do stand for the proposition stated. However, in none of the three cases was there a counterclaim interposed by the borrower which remained to be adjudicated, as in each case the judgment of foreclosure itself was not contested. Thus, M. R. App. P. 6(5)(a) (and its predecessor rule) was not implicated in any of the cases upon which Thorco relies.

Thorco maintains here that it raised "affirmative defenses" in response to WCU's foreclosure complaint. It apparently made the same contention in the District Court, but in its order of March 10, 2014, the court rejected the characterization of its multiple claims as affirmative defenses, stating "they are not affirmative defenses, they are claims for damages." The court observed that Thorco's negligence counterclaim arises out of Thorco's contention that WCU was negligent in the hiring, training, and supervision of its agents, and that summary judgment on this issue was not appropriate. The court also concluded that Thorco's counterclaim for punitive damages was not amenable to summary judgment. Therefore, at least two counterclaims arising out of the same facts that underlie WCU's complaint for foreclosure remain to be resolved in the District Court.

We conclude that Thorco's appeal is premature, due to the pendency of its counterclaims. Thorco could have requested that the District Court certify its judgment of foreclosure and order of sale as a final judgment pursuant to M. R. Civ. P. 54(b), thus clearing the way for an immediate appeal (M. R. App. P. 6(6)), but it did not. Therefore, its remedy at this juncture is to move for a stay of the foreclosure sale and seek the District Court's approval of a supersedeas bond, in accordance with M. R. App. P. 22(1)(b). Accordingly,

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IT IS ORDERED that WCU's motion to dismiss Thorco's appeal as premature is GRANTED. Thorco's appeal is DISMISSED WITHOUT PREJUDICE.

The Clerk of this Court is directed to serve notice of this Order upon all counsel of record.

DATED this 22nd day of March, 2016.

Patricia Cotter

Michael E Wheat

Justices

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

District Court Rules

$26,000,000 Land Value Relevant

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 32

CERTIFIED

Robert B. Allison, District Judge
Department No. 2
Flathead County Justice Center
920 South Main Street, Suite 310
Kalispell, Montana 59901
Telephone: (406) 758-5906

CLERK OF DISTRICT COURT
2016 MAR 31 AM 9:20
FILED
BY _____ DEPUTY

IN THE DISTRICT COURT OF THE ELEVENTH JUDICIAL DISTRICT OF THE STATE OF MONTANA, IN AND FOR THE COUNTY OF FLATHEAD

* * * * * * * * * * *

WHITEFISH CREDIT UNION,

Plaintiff,

vs.

THORCO, INC., a Montana corporation, DENNIS THORNTON, DONNA THORNTON, and JOHN DOES 1-10,

Defendants.

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

Counter-Claimants

vs.

WHITEFISH CREDIT UNION, and JOHN DOES 1-10,

Counter-Defendants.

Cause No. DV-12-174B

ORDER AND RATIONALE ON MOTION FOR SUMMARY JUDGMENT RE: NEGLIGENT MISREPRESENTATION AND MOTIONS *IN LIMINE*

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This matter is before the Court on Plaintiff Whitefish Credit Union's (WCU) motion *in limine*, WCU's motion *in limine* re: negligence and WCU's motion for summary judgment re: negligent misrepresentation. On the basis of said motions, supporting and opposition memoranda and oral argument having been waived, the Court, being fully advised in the premises, makes the following:

ORDER

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IT IS HEREBY ORDERED that WCU's motion *in limine* re: negligence claim is DENIED.

IT IS FURTHER ORDERED that ruling is reserved in part, denied in part and granted in part on WCU's motion *in limine* as set forth below.

IT IS FURTHER ORDERED that WCU's motion for summary judgment re: negligent misrepresentation is GRANTED.

RATIONALE

WCU's motion *in limine* re: negligence claim

WCU moves the Court *in limine* seeking an order from limiting Defendants Thorco, Inc., Dennis Thornton and Donna Thornton's (Thorco) negligence claim to its proper scope. WCU asserts that Thorco has not properly made claims for "negligent handling" and "negligent failure to follow policy" and that such claims would require expert testimony. WCU also argues that Thorco did not plead a claim for negligent misrepresentation, but has including allegations of negligent misrepresentation in its contentions in the Pretrial Order.

Thorco objects to the motion and argues that it is untimely and more properly presented as a motion for summary judgment. Thorco points out that WCU previously made a summary judgment motion which was denied by the Court which argued that Thorco's negligence claim was actually a professional negligence claim which required expert testimony. Thorco asserts that its negligence claims are properly pled.

WCU previously moved for summary judgment alleging that Thorco's negligence claim was a professional negligence claim and required expert testimony. The Court denied this motion. WCU's motion *in limine* seeking exclusion of claims for "negligent handling" and "negligent failure to follow policy" on the basis that they require expert testimony is an attempt for a second bite at the apple and is properly denied.

Thorco did not set forth a separate claim for negligent misrepresentation in its complaint. However, the allegations and arguments made by Thorco have always included representation, such as that Doug Johnson representing that all the money needed to develop the subdivision would be loaned. Misrepresentations have always been a part of the negligence claim. Thorco may assert a negligent misrepresentation claim although no separately set forth claim for negligent misrepresentation was pled in the complaint. Rule 8, M.R.Civ.P. requires only a short and plain statement of the claim and there is no requirement that claims be properly titled. There is no prejudice to WCU because the negligence misrepresentation allegations are no surprise. Prejudice to WCU is also prevented as the Court granted WCU leave to file a motion for

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summary judgment on the issue of Thorco's claim for negligent misrepresentation. The Final Pretrial Order contains a claim for negligent misrepresentation and it supersedes the pleadings. *Madison Addition Architectural Comm. v. Youngwirth*, 2000 MT 293, P 13, 302 Mont. 302, 15 P.3d 1175.

WCU's motion *in limine*

WCU moves the Court *in limine* to exclude evidence of the following: 1) standards for credit unions; 2) WCU's 2009 policy; 3) North Dakota and subordination; 4) negligence prior to May 1, 2009 and after March 15, 2011 and 5) specific damages. WCU also seeks an order excluding Thorco's expert Ray Nicolet from testifying. Thorco does not object to No. 2 and agrees that the Court has determined that WCU's 2009 policy against loaning to business members ended in 2010 and did not apply to Thorco. Thorco objects to the remainder of the motion.

WCU seeks to exclude evidence and testimony regarding credit union standards arguing they are no longer relevant since Thorco's bad faith claim was dismissed on summary judgment. It is possible that credit union standards would be relevant to Thorco's negligence claim. Since the motion does not specify the standards, the Court cannot determine relevance and reserves ruling until trial.

WCU argues that testimony and evidence regarding Thorco working in North Dakota and the subordination agreement are not relevant as Thorco has not made a claim that WCU wrongfully denied Thorco a loan to mobilize to North Dakota. Thorco has not made such a claim and evidence about the subordination agreement and possible work in North Dakota is not relevant, could be confusing and prejudicial and the Court has ruled that WCU did not breach the subordination agreement as a matter of law.

WCU asserts that any negligent act prior to May 1, 2009 is barred by the running of the statute of limitations. WCU also contends that any evidence of negligence after March 15, 2011 is not relevant because that was when Thorco's loan matured and WCU had no further obligation to Thorco beyond that date.

Thorco's claim was filed in April 2012 and any evidence of negligence which occurred prior to May 1, 2009 is barred by the three year statute of limitations for negligence. After Thorco's loan matured on March 15, 2011, WCU's obligations to Thorco ended. Thorco has not made any allegations of negligence following loan maturity other than WCU's failure to subordinate and the 2009 policy preventing renewal or refinancing. The Court has already determined that WCU did not refuse to subordinate and the 2009 policy did not apply to Thorco as a matter of law. This evidence is properly excluded.

WCU argues that Dennis Thornton (Dennis) should be precluded from testifying to damages because he failed to offer any testimony during his deposition. WCU contends that discovery responses from Thorco about damages were not sufficient for WCU to assess Thorco's damage claim.

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Thorco did list all the elements of damage it is seeking in response to interrogatories and responded that it sought $26 million for the highest and best use of the property which would be as a fully developed subdivision. WCU did not request any amounts of damages in any of its discovery. If the discovery responses were inadequate or Dennis Thornton's responses at his deposition were inadequate, WCU's remedy was to seek to compel discovery and then seek discovery sanctions pursuant to Rule 37, M.R.Civ.P. Evidence of Thorco's damages is relevant and admissible. The motion is denied. The one exception is that evidence of lost business income from being unable to work in North Dakota and eastern Montana is irrelevant and inadmissible because there is no claim by Thorco for being denied a loan for North Dakota and the Court has determined that WCU did not refuse to subordinate.

WCU asserts that the Court has excluded Thorco's expert Ray Nicolet from testifying at trial. The Court excluded Thorco's experts Allen Carver and Jeff Larsen. Thorco was granted an extension of the expert disclosure deadline to November 23, 2013. Thorco disclosed Ray Nicolet's full expert report by November 27, 2013. Exclusion of Nicolet for Thorco missing the disclosure deadline by four days when that deadline passed over two years ago would elevate form over function to a degree the Court is unwilling to do. WCU could have deposed Nicolet as the parties agreed that depositions could take place after the close of discovery. The concern regarding prejudice is the paramount concern in determining whether to exclude the testimony of expert witnesses. *Superior v. Montana Power*, 2002 MT 139, P 18, 310 Mont. 139, 49 P.3d 565. WCU has had Ray Nicolet's expert report for over two years and has had time to prepare to question him and refute him. The motion is denied.

WCU's motion for summary judgment on negligent misrepresentation

WCU moves for summary judgment on Thorco's negligent misrepresentation claim on the basis that it is barred by the statute of limitations. WCU argues that Dennis testified that Doug Johnson represented that WCU would loan a total of $7 million. Dennis also testified that this representation was made on March 15, 2009. WCU contends that Thorco brought its claim for negligent misrepresentation in April of 2012. Based upon the three year statute of limitations for negligence, the claim is barred. WCU also argues that, at the latest, the statute of limitations began running on the day that Thorco signed the promissory note and other loan documents on March 19, 2009. WCU also asserts that Doug Johnson's alleged promise to lend $7 million in phased financing cannot give rise to a claim for negligent misrepresentation because it is not a representation of a past or existing fact.

Thorco objects to the motion and argues that some of the negligent misrepresentations occurred after April of 2009; therefore, the statute of limitations had not run as to those representations when the claim was asserted in April of 2012. Thorco also cites the discovery rule in Section 27-2-102, MCA, and asserts that the running of the statute of limitations did not begin until Thorco discovered the falsity of the representations after March of 2011 when they conducted discovery. Thorco contends that it has established facts requiring trial in support of the claim for negligent misrepresentation. Thorco asserts that the "past or existing fact" requirement for negligent misrepresentation claims was eliminated for financial institutions by

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the Montana Supreme Court's decision in *Morrow v. Bank of America*, 2014 MT 117, 375 Mont. 38, 324 P.3d 1167.

The movant for summary judgment must demonstrate that no genuine issues of material fact exist. Once this has been accomplished, the burden then shifts to the non-moving party to prove, by more than mere denial and speculation, that a genuine issue does exist. Having determined that genuine issues of fact do not exist, the district court must then determine whether the moving party is entitled to judgment as a matter of law. *Pryor v. Babcock Building Corporation*, 2002 MT 68, 309 Mont. 222, 45 P.3d 35.

Thorco could and should have realized that the WCU loan was for $3.3 million not $7 million and that the financing was not phased when the loan documents were signed on March 19, 2009. For this reason, the running of the three year statute of limitations was not tolled and any allegations of negligent misrepresentation which occurred prior to April, 2009 are barred by the statute of limitations.

Thorco argues that some of the negligent misrepresentations occurred after April, 2009. Thorco claims that representations such as the representation that the loan would be renewed or refinanced made after April 2009 were false on the basis of WCU's 2009 policy freezing member business loans. Thorco contends that WCU's representation that its refusal to make an additional loan of $500,000 for North Dakota was because additional collateral was needed was false. Thorco argues the real reason was the 2009 policy. Thorco also argues that it was not until June of 2011 that it became aware that WCU disclaimed the existence of the subordination agreement. The Court has already ruled that WCU's 2009 policy did not apply to Thorco as a matter of law. The Court has also ruled as a matter of law that WCU did not refuse to subordinate, in fact, WCU acknowledged it was obligated to subordinate on the collateral consisting of the adjacent 200 acre parcel. These representations do not provide the basis for a claim for negligent misrepresentation as a matter of law.

Further, the representations relied upon by Thorco are all representations of future intent. Claims for negligent misrepresentation require representations of past or existing fact. The *Morrow* case did not eliminate this requirement for negligent misrepresentation claims against financial institutions. The Court in *Morrow* simply clarified that the Restatement (Second) of Torts Section 552 governing claims of negligent misrepresentation applied to claims against financial institutions. In the past Section 552 had been applied in the context professional negligence. *Morrow* merely determined Section 552 applied to financial institutions as well. The requirement for a past or exiting fact as an element of negligent misrepresentation was not altered or eliminated.

> In *Kitchen Krafters v. Eastside Bank*, we expanded upon this definition [from the Restatement (Second) of Torts Section 552] by adopting the following elements of negligent misrepresentation: a) the defendant made a representation as to a past or existing material fact ... we have continued to cite both the original language of the Restatement and the *Kitchen Krafters* elements ... We hold that a claim of negligent misrepresentation against a financial institution is governed by the definition in the Restatement (Second) of Torts Section 552, which we

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adopted in *State Bank*, 204 Mont. at 33, 664 P.2d at 301, and *Brown*, 197 Mont. at 12, 640 P.2d at 459-60

Morrow, 2014 MT 117, P 45, 46. There is no genuine issue of material fact and WCU is entitled to summary judgment on Thorco's claim for negligent misrepresentation as a matter of law.

DATED this 31st day of March, 2016.

Robert B. Allison
District Judge

cc: Sean S. Frampton, Attorney at Law
John L. Amsden/Anthony Jackson, Attorneys at Law
John Heenan, Attorney at Law
Ford Elsaesser, Attorney at Law

3/31/16
C

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

JUDICIAL DISTRICT, FLATHEAD CO. MONT. DISTRICT
SEAL

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 33

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Q. It appears to me -- and I'm just asking you to correct me, I guess, if I'm wrong. It appears to me that it was assigned to Attorney Purdy for purposes of beginning the foreclosure process, and after that it was primarily Aaron Archer who was involved in Whitefish Credit Union contacts with the attorneys with regard to this matter. Is that fairly accurate?
MR. FRAMPTON: Objection. Presumes facts
THE WITNESS: I don't have any specific recollection.
BY MR. MANLEY:
Q. Okay. Well, after it was turned over to the attorneys for foreclosure, do you have any recollection of doing anything with regard to the Thornton loan matter while you were at Whitefish Credit Union?
MR. FRAMPTON: Objection. Presumes facts
THE WITNESS: Yeah, I don't have a specific recollection of that.
BY MR. MANLEY:
Q. There were communications between one or more people in the Farran Group. Who is the Farran Group?
A. I don't recall.
Q. As I understand it, it's a financial entity

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in Missoula that, among other things, bought property that was up for foreclosure. Does that help ring a bell?
A. No.
Q. Would you -- Pat Corrick or "Corrick"? Does that name ring a bell?
A. Yes.
Q. Who is that?
A. A developer out of Missoula.
Q. Doing business as the Farran Group?
A. I'm not sure.
Q. And could you describe the history and nature of your relationship with Pat Corrick?
A. I was an account officer on a project that he was involved in in Whitefish.
Q. Could you explain what that means to a lay person?
A. It was a vertical development called Monterra.
Q. And what's a vertical development?
A. Which was a condo project.
Q. On a cliff?
A. No. It's just he was involved in --
Q. We don't know what a vertical development means.

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A. He was involved in the construction and the development of a parcel of ground that created a condominium village.
Q. Where was that located?
A. In Whitefish.
Q. And he had a loan with Whitefish Credit Union for that?
A. No.
Q. Had he purchased that property from a Whitefish Credit Union foreclosure or loan workout situation?
A. Not that I'm aware of.
Q. Do you know who he purchased the property from?
A. No.
Q. And so what was your involvement with regard to Mr. Corrick and that development project at Whitefish?
A. The bank I was working for had the financing on the project.
Q. What bank?
A. It was Glacier Bank of Whitefish.
Q. And was that before you went back -- was that before 2009 when you went to work for Whitefish?
A. That is my recollection.

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Q. Okay. So you first got to know him because in your relationship with -- in your employment at Glacier Bank there was a lending relationship to Mr. Corrick for this project you described in Whitefish.
A. Yes.
Q. And then with respect to the Thorntons' matter, while you were at Whitefish Credit Union, there's one or more e-mails from you to Corrick, and I'm asking you to please explain to us why that was. Why would you have been e-mailing him with regard to the Thorntons' property?
A. I believe it was in -- this is my recollection. It was in conjunction with an assessment that we were trying to complete on the project, either before or after an appraisal that we had on the project, to try to understand what the value was of the project up there.
Q. When you say "an assessment", is that something different than an appraisal?
A. Yes.
Q. Could you explain in lay terms what that means, what the difference is?
A. An expert, in my view, in the development side would be able to come in and take a purview or a

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review of the project site and give us as a lending institution an idea of ultimately what the market value could be in terms of the desirability of the lots and ultimately who would be interested maybe in purchasing these lots.

Q. Is that the same type of information that was provided in the appraisal that the Whitefish Credit Union had?

A. No.

Q. And how would that be different?

A. From the perspective of a developer, it would give a different approach.

Q. And did he respond with a report or information to your request for that?

A. Not to my knowledge.

Q. Were you personally personal friends with him?

A. No.

Q. For instance, would you have sent an e-mail congratulating him on a pregnancy or that type of thing?

A. Within the body of the business e-mail, that's possible.

Q. Were you also contacting him or communicating with him to see if he was interested in

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perhaps getting involved as a purchaser of the Thorntons' property?

A. Not to my knowledge.

Q. See, when you say "not to my knowledge", we have to try to figure out what that means. There's "yes" or "no" and then --

A. I have no recollection of that.

Q. So you don't know if you were contacting him in part to see if he was -- might be interested in purchasing the Thorntons' property?

A. I don't have any recollection of that.

Q. Is that possible?

A. It's possible.

Q. Because he would be one type of person who might be interested in taking this over and finishing the development himself?

A. As an investor, that is possible.

Q. Okay. Did you talk to anyone else to determine if anyone else might be interested in taking over the Thornton property or investing in it or purchasing it?

A. I don't have any recollection of anyone else.

Q. So I guess that means you don't remember whether you did or not.

Page

A. That is correct.

Q. And is that possible, that you did that?

A. It's possible.

Q. Now, to the best of your recollection, what reason or reasons were there for the decision not to loan more money to the Thorntons on this project, or to renew their loan?

A. On the first part of that question, which I can answer, is the market conditions certainly had deteriorated so severely that it wouldn't have been prudent to go forward at that point, in my view.

Q. Okay. And you said that's with respect to the first half of the question. It was a bad question. I apologize.

A. And --

Q. So that referred to the reasons for deciding not to loan new money on it.

A. Yes.

Q. Okay. And what were the reasons, as you recall any reasons you recall, for not renewing it or extending it?

A. My recollection is that we made every effort to renew the loan.

Q. Does this help you recollect that they weren't able to pay the interest current, and that you

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gave that as a reason?

A. I don't recall that specifically.

Q. When you say "we made every effort", could you explain what you recall that leads you to say that?

A. I recall having a meeting with the Thorntons and Jim Kenyon, and discussing some possible options for renewal.

Q. That was June 9th, 2011; wasn't it?

A. I don't recall the specific date.

Q. It was just the four of you there, the two Thorntons, Kenyon, and you?

A. That is my recollection.

Q. And you discussed some possible options; correct?

A. That is my recollection.

Q. And there were -- there were actually a couple subjects discussed. One was renewal or extension of the loan, and you also were discussing whether or not Whitefish Credit Union would loan them money to move equipment over for a project that they had outlined for Williston, North Dakota. Do you remember that?

A. I recall the discussion on those two topics. I don't recall the outline at that point with

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 34

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 34

From: John Amsden
Sent: Wednesday, March 23, 2016 11:45 AM
To: Dennis and Donna
Cc: Natalie Phillips ; Anthony Jackson ; Justin Stalpes
Subject: Thorco trial

Dennis and Donna:

I just heard from Anthony. The judge indicated he was going to run the two cases Sean had "concurrently." No one knows what that means, except that it is likely the Thorco trial will be the end of April. We will follow up with that issue in due course. We should intend on preparing for trial for the mid to end of April, probably April 23.

After the hearing, Sean asked Anthony if you would be interested in another mediation. We indicated that we **would be interested in using Tracy Axelberg or Mikel Moore, both well-known attorneys and mediators from that area. Do you have an issue with either one of them?**

Thanks,

John L. Amsden
Beck & Amsden pllc
1946 Stadium Dr., Ste. 1
Bozeman, MT 59715
(406)586-8700

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 34

From: Natalie Phillips
Sent: Friday, March 25, 2016 2:46 PM
To: thorco@centurytel.net
Cc: john@bishopandheenan.com ; ford@ejame.com ; John Amsden ; kim@bishopandheenan.com ; LLaPointe@ejame.com
Subject: THORCO: Mediation

Hello Dennis and Donna,

Your attendance is required at a mediation set for April 4th at:

Moore, Cockrell, Goicoechea & Johnson P.C
145 Commons Loop, Suite 200
Kalispell, MT 59901
Tel: 406.751.6000

Attorney Mikel Moore will serve as the mediator. It will likely begin around 9:00 a.m. These generally last all day. I believe both John and Justin from our office will attend. As more details become available, I will pass them along to you.

Best,

Natalie F. Phillips, RP
PACE Registered Paralegal

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

MONTANA 11TH JUDICIAL DISTRICT COURT, FLATHEAD COUNTY

* * * * * * * * * * * *

Whitefish Credit Union, Plaintiffs, vs. Thorco Inc, et al, Defendants.	Cause No. DV-12-174(B) ORDER SETTING JURY TRIAL

PLEASE BE ADVISED that the above-entitled matter having been previously set for the Jury term beginning April 25, 2016, has now been set for a Jury Trial on a date certain **Monday, April 25, 2016 at 9:30 a.m., for a period of four (4) days, as Case #2, with an attorneys' conference to be held at 9:00 a.m.** This matter shall be moved to Case #2 beginning Monday, May 2, 2016 if necessary. Proposed jury instructions, together with an electronic file (CD or email to: svining@mt.gov) which has each instruction numbered and saved individually, and otherwise in accordance with the Court's Rule 16 Scheduling Order herein and local Court rules, must be submitted by April 20, 2016.

DATED: March 23, 2016.

Robert B Allison
District Judge

cc: Sean Frampton, Attorney at Law
John Amsden, Attorney at Law

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 35

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 35

From: John Amsden
Sent: Tuesday, March 29, 2016 9:35 AM
To: Dennis and Donna
Cc: John Heenan (john@bishopandheenan.com) ; ford@ejame.com ; Justin Stalpes
Subject: WCU v Thorco mediation

Good morning, Dennis and Donna:

We have scheduled a mediation for next Monday in Missoula. The mediator is Ben Hursh with the Crowley Fleck law firm.

Is there a time we can discuss the issues in advance of the mediation?

Thanks,

John L. Amsden
Beck & Amsden pllc
1946 Stadium Dr., Ste. 1
Bozeman, MT 59715
(406)586-8700

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2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 35

CROWLEY | FLECK PLLP
ATTORNEYS

BENJAMIN P. HURSH
P. O. Box 7099
Missoula, MT 59807-7099
Telephone: (406) 523-3600
Facsimile: (406) 523-3636
Email: bhursh@crowleyfleck.com

March 30, 2016

John Amsden
Beck & Amsden, PLLC
1946 Stadium Drive, Suite 1
Bozeman, MT 59715

Sean Frampton
Morrison & Frampton, PLLP
341 Central Avenue
Whitefish, MT 59937

Re: Whitefish Credit Union – Thornton/Thorco Mediation

Dear Counsel:

I appreciate the opportunity to assist you with the resolution of this dispute. This will confirm that we will conduct the mediation in this matter beginning at 9:00 a.m., April 4, 2016 at 305 S. Fourth St., Suite 100 in Missoula, MT. I will initially meet with Mr. Amsden's clients, and plan to meet with Mr. Frampton's clients at 10:00 a.m.

There are several things I ask of you for ensuring a successful mediation. Please review these carefully and let me know if any of these requests present a problem for you or your client.

All counsel and client representatives with decision-making authority – including any representatives of any applicable insurers – should be available throughout the day if they are not personally attending the conference. This will insure decisions can be made in an efficient manner and the process is not delayed.

As a mediator in this case, I will act independently and will endeavor to assist the parties in reaching a mutually acceptable settlement. Neither I nor Crowley Fleck PLLP will be serving as counsel to either party to this mediation or in connection with the underlying legal matters. The proceedings shall be confidential and any information provided to me will remain confidential. If you share with me some fact, or otherwise communicate something to me that you do not want me to share with the other counsel or party, you must specifically tell me. If you fail to place this restriction on me, I may disclose it in the course of the mediation.

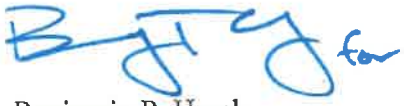
As I previously indicated in my email, it appears that my retention as a mediator in a matter involving Whitefish Credit Union ("WCU"), Dennis & Donna Thornton ("Thorntons") and their entity Thorco could be deemed a conflict of interest under the Montana Rules of Professional Conduct as a result of this firm's past and present representation of WCU, and its past representation of Thorntons and Thorco, on matters unrelated to this mediation and the underlying legal issues (the "Unrelated Matters"). My decision to go forward as a mediator is predicated on my understanding that each of you have discussed with your clients the applicable rules, this firm's prior representation of each of the respective parties in Unrelated Matters, as well as the present representation of WCU in Unrelated Matters. And, following this discussion, WCU, Thorntons and Thorco have decided to retain Crowley Fleck PLLP, acting through me as a mediator. The parties' decision to retain me and Crowley Fleck PLLP, and their signatures below, represent (a) their informed consent and waiver of any conflict of interest; and (b) their waiver of the right to disqualify Crowley Fleck PLLP from representing WCU and Thorntons/Thorco in any ongoing or future Unrelated Matters. To confirm this is correct, please ask your respective clients to sign the acknowledgment below. Along with consent, Crowley Fleck PLLP will put in place a screen so as to insure other attorneys at this firm actively handling Unrelated Matters for WCU are screened from this mediation matter.

I charge $275.00/hour plus expenses for my services as a mediator and, unless I hear otherwise, I will split that fee equally between/among the attorneys. My services are retained by the lawyers, not your clients or their insurers and I look to you and your firm for payment of my bill within 30 days of receipt.

I look forward to seeing all of you on April 4, 2016. Best regards.

Sincerely,

CROWLEY FLECK PLLP



Benjamin P. Hursh
BPH/dlh

WAIVER AND CONSENT

I, Dennis Thornton, hereby (a) give my informed consent and waiver of any conflict of interest; and (b) my waiver of the right to disqualify Crowley Fleck PLLP from representing WCU and Thorntons/Thorco in any ongoing or future Unrelated Matters.

Dated this _____ day of April, 2016.

_____
Dennis Thorton

WAIVER AND CONSENT

I, Donna Thornton, hereby (a) give my informed consent and waiver of any conflict of interest; and (b) my waiver of the right to disqualify Crowley Fleck PLLP from representing WCU and Thorntons/Thorco in any ongoing or future Unrelated Matters.

Dated this _____ day of April, 2016.

_____
Donna Thorton

WAIVER AND CONSENT

I, _____, as _____ of Whitefish Credit Union, hereby (a) give my informed consent and waiver of any conflict of interest; and (b) my waiver of the right to disqualify Crowley Fleck PLLP from representing WCU and Thorntons/Thorco in any ongoing or future Unrelated Matters.

Dated this _____ day of April, 2016.

By:_____
Its: _____

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 36

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:	$1,400,000.00 allocated as follows: • 200 acres $300,000.00; • 300 acres $1,100,000.00. 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.
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 Whiitefish Credit Union

Attorney for Thorco, Dennis and Donna Thornton

Dennis Thornton

By:

Donna Thornton

By:

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 37

Benjamin P. Hursh
CROWLEY FLECK PLLP
305 S. 4th Street E., Suite 100
P. O. Box 7099
Missoula, MT 59807-7099
Telephone: (406) 523-3600
Email: bhursh@crowleyfleck.com
Mediator

CLERK OF DISTRICT COURT
2016 APR 12 AM 10:40
BY FILED DEPUTY

IN THE MONTANA ELEVENTH JUDICIAL DISTRICT COURT,

FLATHEAD COUNTY

WHITEFISH CREDIT UNION, Plaintiff, -vs.- THORCO INC., a Montana corporation, DENNIS THORNTON, DONNA THORNTON, and JOHN DOE(s) 1-10, Defendants,	Cause No.: DV-12-174B THE HONORABLE ROBERT B. ALLISON **MEDIATOR'S REPORT**
THORCO INC., a Montana corporation, DENNIS THORNTON, DONNA THORNTON, Counter-Claimants, -vs.- WHITEFISH CREDIT UNION, and JOHN DOES 1-10, Counter-Defendants.	

The Mediator reports as follows:

Date and Time of Mediation:	April 4, 2016; 9:00 a.m.
Plaintiff/Counter-Defendants:	Whitefish Credit Union Represented by Sean S. Frampton Morrison & Frampton, PLLP
Defendants/Counter-Claimants:	Dennis and Donna Thornton Thorco, Inc. Represented by John Amsden and Justin Stalpes Beck & Amsden, PLLC
Time Spent Mediating:	9.00 hours
Preparation Time:	3.80 hours
Total:	12.80 hours
Result:	Settled

DATED this 11th day of April, 2016.

CROWLEY FLECK PLLP

By _____

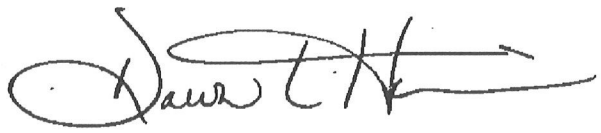
Benjamin P. Hursh
P.O. BOX 7099
Missoula, MT 59807-7099
Mediator

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of April, 2016, a true and correct copy of the within and foregoing was served by mail upon all the parties or opposing attorneys of record at their address or addresses as follows:

[x] U.S. Mail	John Amsden
[ ] FedEx	Justin Stalpes
[ ] Hand-Delivery	Beck & Amsden, PLLC
[ ] Facsimile	1946 Stadium Drive, Suite 1
[ ] Email	Bozeman, MT 59715
	Attorneys for Defendants and Counter-Claimants

[x] U.S. Mail	Sean Frampton
[ ] FedEx	Morrison & Frampton, PLLP
[ ] Hand-Delivery	341 Central Avenue
[ ] Facsimile	Whitefish, MT 59937
[ ] Email	*Attorneys for Plaintiffs and Counter-Defendant Whitefish Credit Union*



4-4-2016

Notes from settlement conference

At the pretrial conference, Sean Frampton approached Justin Stalpes to find out if we would entertain another settlement conference. We had a conference call with all counsel involved and a decision was made to accept the offer.

The Settlement conference was held in Missoula, Ben Hirsch was a settlement master. The settlement conference started at 9 AM.

Dennis and Donna Thornton attended on behalf of themselves personally and as officers of Thorco Inc. along with John Amsden and Justin Stalpes as legal counsel.

Aaron Archer attended on behalf of WCU as a loan officer/special asset group (SAG) agent along with Sean Frampton as legal counsel

The first thing that WCU offered was cash to buy us out. I immediately told John Amsden that unless the amount was somewhere close to the appraised value of the property 8,790,000 we would not be interested in that. That would be taking a huge loss because the completed value of the project was $26 million and there was only $3 million remaining to complete it. Amsden and Hirsch both suggested that we figure out what the dollar amount was that WCU would offer first, then decide whether to take it in the form of cash or apply it to WCU's judgment.

We worked on the dollar amount until about 1 PM.

WCU offered $3 million in cash. If Thorco Inc. Donna and I would dismiss our counterclaims and sign the property over to WCU.

We then counter offered. WCU apply the $3 million to WCU's judgment of $4,348,880 plus $300,000 in cash.

WCU countered. WCU will vacate its Judgment of Foreclosure and Order of Sale and Dismiss with Prejudice, conditioned on $3 million being applied to their Judgment of Foreclosure and Order of Sale and wanted $1,400,000 to be paid that day with no cash, on the condition we release our counterclaims and dismiss our $60 million counterclaim with prejudice against WCU.

All of the offers below were conditioned on WCU dismissing their judgment and Thorco, Donna and I dismissing our counterclaims and Dismissing with Prejudice.

We countered the $3 million offer being applied to the Judgment of Foreclosure and Order of Sale and that we would be given three years to pay the 1,400,000 with no interest and WCU pay $250,000 in cash.

While all this was going on I called around to see if I could find a lender that would loan me the $1,400,000 just to get them out of my hair. I couldn't find anyone that would give me a guaranteed commitment without a loan request.

Ben Hirsch came back at one point stating WCU refused to make any settlement unless we chose one of their options. The first option, WCU was to be cashed out in the amount of $1,400,000 within 30 days or the second option, we take the $3 million in cash and release all claims against WCU and sign over the property.

We countered the offer by stating the $3 million be applied to the judgment and that we be given three years to pay the $1,400,000, plus WCU pay $240,000 in cash within three days of settlement.

Ben Hirsch came back stating WCU was only going to accept one of the two options, we had to choose, or there was going to be no settlement. At that point I told Amsden if there not going to work with us. Let's tri the case and I just got up and walked out. Donna stayed in the conference room.

Ben Hirsch went back to WCU and told them that I had walked out. Ben Hirsch came back with another offer from WCU.

Amsden and Donna came outside and informed me that WCU had made another offer. Amsden ask me not to give up.

The offer was that Thorco sign deeds to the property and let WCU hold them for security for the payment of $1,400,000, for one year and WCU would pay $50,000 in cash within three days of the settlement.

It was explained to me by John Amsden that giving deeds for security creates an indenture of trust.

It was explained to me by Ben Hirsch and John Amsden that there would be one indenture of trust for $300,000 for the 200 acre tract of land and another indenture of trust for $1,100,000 for the 300 acre tract of land.

I had been informed by Russ Sherman who also had property foreclosed on by WCU and who also had entered into a settlement agreement with WCU whereby he gave deeds to his property. Russ informed me never to give them deeds because they didn't honor the agreement with him. I informed Amsden and Hirsch of what I had been told by Russ Sherman.

I absolutely refused to allow WCU to hold the deeds to Thorco's property.

Ben Hirsch asked if the deeds were held by a neutral third-party, such as held in escrow at a title company, if that would be acceptable. Amsden stated he thought that would be a workable solution. The decision was made to go see if WCU, would first agree to have a neutral third-party hold the documents before negotiating any other terms. I agreed and suggested Alliance Title.

WCU came back stating they would agree to an Escrow at First American Title, if we came to an agreement on the rest of the terms.

We made an offer that we would dismiss our counterclaim/lawsuit against WCU. If WCU dismissed its lawsuit /claim against us whereby we would provide a deed for security, for the 200 acre tract for the repayment of the financed amount of $300,000, with no interest to be placed in Escrow at First American Title, for three years and we would provide a deed for security, for the 300 acre tract for the repayment of the financed amount of $1,100,000, with no interest to be placed in escrow at First

American Title, for three years, with no personal guarantees and no deficiency, in the event that we could not find funding, plus WCU pay $200,000 in cash within three days of settlement.

WCU responded to our offer. WCU would dismiss its Judgment of Foreclosure and Order of Sale and Dismiss with Prejudice, WCU's lawsuit on the mortgage /claim against us. Conditioned on Thorco Inc. Donna and I would dismiss with prejudice our $60 million counterclaim lawsuit against WCU, in exchange Thorco, would provide security deeds on the 200 and 300 acre tracts of land described above, to be held in escrow at First American Title Company.

WCU would create two new mortgages finance the 200 acres for $300,000 and the 300 acres for $1,100,000 with no interest for a total repayment (balloon payment) amount of $1,400,000, for 18 months with an Option to Purchase the security deeds out of escrow back from First American Title, or just walk away, with no deficiency and no right of redemption. In addition, WCU would pay $100,000 in cash within three days of signing a completed agreement.

At that point we had agreed to everything except the cash payment amount, WCU was at $100,000 and we were at $200,000. It was getting late in the day it was about 7 PM, Ben Hirsch suggested that we meet in the middle at $150,000.

Ben Hirsch submitted the offer to WCU and WCU accepted. Ben Hirsch came back with a signed hand written agreement, signed by Aaron Archer and Sean Frampton, that spelled out all of the terms that WCU had agreed to.

We looked over Ben Hirsch's handwritten agreement. Donna and I discussed in detail with Ben Hirsch, John Amsden and Justin Stalpes by signing this agreement what it meant.

We were informed that this was a brand new agreement and that the 2009 mortgage and lawsuit would be terminated, and our $60 million counterclaim would be terminated once we signed the agreement. After careful consideration and consulting with counsel. We accepted the offer, Donna signed it, I signed it and John Amsden signed it.

Ben Hirsch then went and typed the agreement up, and named it the Settlement Term Sheet and brought it back. John Amsden signed as counsel for Thorco, I signed the Settlement Term Sheet for Thorco Inc. as president. Donna and I both signed personally. Aaron Archer signed for WCU, Sean Frampton, signed as counsel for WCU.

This is the general terms of the settlement that was reached on April 4, 2016. The Settlement Term Sheet created the framework for another document which is the final document called Settlement Agreement and Mutual Release.

This agreement is an underwritten agreement by Aaron Archer of WCU to create what is commonly known as a trust indenture or indenture of trust that involves the borrower, the lender and third-party trustee, which in this case was First American Title Company. Montana treats trust indenture's or indentures of trust

exactly the same way as a mortgage. A mortgage in Montana must be recorded with the Clerk and Recorder's Office within 20 days of signing.

This agreement was subject to WCU vacating its February 23, 2016 judgment dismissing its foreclosure action and Thorco dismissing its counterclaims both to be dismissed with prejudice, concluding the litigation of cause no. DV-12-174B in Montana's 11th judicial District Court.

This agreement is also subject to the Cancellation of Debt (COD) in the amount of $2,948,880.81.

This agreement is also subject to $150,000 in new money.

Thorco agreed that Thorco would create deeds for the 10-20-acre tracts totaling 200 acres and deeds for the 13-20-acre tracts and 1-40-acre tract's totaling 300 acres for security of a total amount of $1,400,000.

Thorco agreed with WCU the deeds were to be held for security for two new mortgages by a neutral third-party, First American Title Company.

WCU agreed with Thorco, WCU would create a release of the mortgage for the 10-20-acre tracts totaling 200 acres for $300,000. The release would be held in escrow by a neutral third-party, First American Title Company.

WCU agreed with Thorco, WCU would create a release of the mortgage for the 13-20-acre tracts and 1-40-acre tract totaling 300 acres for $1,100,000. The release would be held in escrow by a neutral third-party, First American Title Company.

WCU agreed that Thorco would have the option to purchase back the security deeds out of escrow from First American Title Company's escrow department.

If Thorco did not purchase the security deeds out of escrow First American Title Company's escrow agent was to return the security deeds to WCU and close the escrow.

If Thorco did not exercise the option to purchase the security deeds out of escrow and the security deeds were returned to WCU there was to be no deficiency, meaning Dennis and Donna Thornton and Thorco would have no further liability.

WCU would simply have the deeds to the property.

Both parties agreed that no transfer would take place to WCU, of the deeds by First American Title Company, if Thorco exercised the option, and not until the 18-month timeframe had expired if Thorco did not exercise the option.

Both parties agreed that only First American Title Company was the only entity authorized to transfer deeds or mortgage releases.

Both parties agreed that no transfer of release of the new mortgages would take place to Thorco unless $300,000 was tendered for the 10-20-acre tract totaling 200 acres and or $1,100,000 for the 13-20-acre tracts and 1-40-acre tract totaling 300 acres.

Place of payment was First American Title Company, meaning payment could be made at any First American Title Company, on or before the expiration of the 18 months.

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 38

4-5-2016

From: John Amsden
Sent: Tuesday, April 5, 2016 10:25 AM
To: Dennis and Donna
Cc: Ford Elsaesser ; John Heenan (john@bishopandheenan.com) ; Justin Stalpes
Subject: Thorco settlement term sheet

Good morning, Dennis and Donna:

Attached is the signed settlement term sheet. As we discussed, we recommend that as soon as possible you contact:

1. A tax advisor to consider issues associated with debt forgiveness;
2. A real estate attorney to draft and review the deeds mentioned in the settlement term sheet; and
3. Financial partners to take advantage of the very favorable options you negotiated in the settlement.

We will forward on to you any information we receive regarding finalizing this settlement.

Best regards,

John
-----Original Message-----
From: Beck & Amsden, PLLC - XEROX [mailto:info@becklawyers.com]
Sent: Tuesday, April 5, 2016 4:26 AM
To: John Amsden <Amsden@becklawyers.com>
Subject: Thorco settlement term sheet

Sent by: [info@becklawyers.com]
Attachment File Type: PDF

BECK & AMSDEN, PLLC
1946 Stadium Drive, Suite 1
Bozeman, MT 59715
Telephone (406) 586-8700
Fax (406) 586-8960

++

Attached document identified as (4-4-16 Thorco Settlement Term Sheet)

4-5-2016

From: Ford Elsaesser
Sent: Tuesday, April 5, 2016 4:02 PM
To: Dennis and Donna
Cc: John Amsden ; John Heenan (John@BishopandHeenan.com) ; Bruce Anderson
Subject: Thornton - Debt Forgiveness - Tax Issues

To: Dennis and Donna Thornton
cc: John Amsden, John Heenan and Bruce Anderson
Re: Thornton / Debt Forgiveness / Tax Issues

Dear Dennis and Donna:

My partner, Bruce Anderson, telephone (208) 667-2900 office, is a former IRS attorney who is also a CPA, and who would be able to assist us in figuring out your debt forgiveness issues. Please contact Bruce directly, or if you give me a call, I will set up a time to meet or talk by phone with you and Bruce.

I think this is a very good settlement for you, all things considered, taking into account that we were in front of a "hanging judge." I am sure having John A. and John H. on your team put the fear of God into WFCU.

Let's celebrate what is a true victory some day at the wine bar in beautiful downtown Priest River after work.

Very truly yours,

Ford Elsaesser
Attorney at Law
FE/ll

Elsaesser Jarzabek Anderson Elliott & Macdonald, Chtd.
P. O. Box 1049
123 South Third Avenue, Suite 24
Sandpoint, ID 83864
Telephone: 208-263-8517
Cell phone: 208-661-5773
Facsimile: 208-263-0759
ford@ejame.com

4-15-2016

From: Lisa McCumber
Sent: Friday, April 15, 2016 4:12 PM
To: Amsden@becklawyers.com ; thorco@centurytel.net
Cc: Ford Elsaesser ; Bruce Anderson
Subject: Thorco, Inc.

Dear Donna, Dennis and John:

Attached, please find a letter from Bruce Anderson regarding the matter involving Thorco, Inc., Dennis and Donna Thornton and Whitefish Credit Union.

Thank you,

Lisa McCumber
Secretary to Bruce A. Anderson
Elsaesser Jarzabek Anderson Elliott & Macdonald, Chtd.
320 East Neider Avenue, Suite 102
Coeur d'Alene, Idaho 83815
Phone: (208) 667-2900
Fax: (208) 667-215

++

Attached document identified as (4-15-16 20160415 Ltr to John Amsden) PDF

5-9-2016

From: James Bartlett
Sent: Monday, May 09, 2016 2:26 PM
To: Anthony Jackson
Cc: Dennis Thornton
Subject: Suggest word for real estate taxes

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 estates 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.

5-9-2016

On May 9, 2016, at 3:20 PM, Dennis and Donna <thorco@centurytel.net> wrote:

Jim, Looks good, also is there, or should there be, any language in there about the time not running on the escrow until the cash payments from the settlement are received? Thank you Dennis

5-9-2016

From: James Bartlett
Sent: Monday, May 9, 2016 4:07 PM
To: Donna Thornton
Subject: Re: Suggest word for real estate taxes

The last person to sign the settlement agreement will place a date for signature, and the 18 months runs from that date. They are to use the Idaho attorney's no 1099 language as well.

Are the real estate taxes current?

Jim

5-16-2016

From: Natalie Phillips
Sent: Monday, May 16, 2016 3:40 PM
To: Dennis and Donna
Subject: THORCO: Settlement Papers

Hello Dennis and Donna,

I was asked to let you know that John and Anthony are still negotiating the tax issues clause, and that Anthony will be in touch with you by the end of the day. Here is the proposed language as it currently stands.

Thank you for your continued patience.

Best,

Natalie F. Phillips, RP
PACE Registered Paralegal
BECK, AMSDEN & STALPES, pllc
1946 Stadium Drive, Suite 1
Bozeman, MT 59715
Tel: (406) 586-8700
Fax: (406) 586-8960
Email: natalie@becklawyers.com
Website: www.becklawyers.com

++

Attached document identified as (5-16-16 Settlement Agreement and Mutual Release) word

13. **Tax Issues**

The parties agree that any deemed reduction in the judgment amount or any other amounts claimed due by WCU is in consideration for claims which will not be asserted by Thorco. Accordingly, WCU agrees that no income from discharge of indebtedness exists as defined in 26 U.S.C. § 108, as there has been no cancellation of debt resulting in income. Accordingly, since there is no income from discharge of indebtedness pursuant to 26 U.S.C. § 108, no Form 1099 shall be issued by WCU for the same.

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.

5-17-2016

From: Anthony Jackson
Sent: Tuesday, May 17, 2016 9:30 AM
To: Dennis and Donna
Subject: Thorco: RE: I sent this in US Mail the other day

Dennis and Donna,

Nice speaking with you yesterday. Please see below that this letter has been sent.

Anthony
From: James Bartlett [mailto:bartlett@centurytel.net]
Sent: Tuesday, May 17, 2016 8:30 AM
To: Anthony Jackson <Anthony@becklawyers.com>
Subject: I sent this in US Mail the other day

From: Dennis and Donna [mailto:thorco@centurytel.net]
Sent: Thursday, May 19, 2016 2:23 PM
To: Anthony Jackson <Anthony@becklawyers.com>
Subject: Re: Thorco: RE: I sent this in US Mail the other day

Hi Anthony,

Any word on the paper work?

Dennis

5-19-2016

From: Anthony Jackson
Sent: Thursday, May 19, 2016 2:48 PM
To: Dennis and Donna
Cc: John Amsden ; Justin Stalpes ; bartlett@centurytel.net
Subject: RE: Thorco: RE: I sent this in US Mail the other day

Hi Dennis,

We have been negotiating with them throughout the day. We have everything almost agreed to now, except they are objecting to our paragraph 13. They want to strike the first paragraph as shown below:

13. Tax Issues

~~The parties agree that any deemed reduction in the judgment amount or any other amounts claimed due by WCU is in consideration for claims which will not be asserted by Thorco. Accordingly, WCU agrees that no income from discharge of indebtedness exists as defined in 26 U.S.C. § 108, as there has been no cancellation of debt resulting in income. Accordingly, since there is no income from discharge of indebtedness pursuant to 26 U.S.C. § 108, no Form 1099 shall be issued by WCU for the same.~~

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.

Do you have any thoughts on this ?

Anthony

5-20-2016

From: Anthony Jackson
Sent: Friday, May 20, 2016 1:00 PM
To: Dennis and Donna
Subject: RE: Thorco: RE: I sent this in US Mail the other day

Hi Dennis,

I spoke with Bruce and have proposed his recommendation to Sean to simply state that no 1099 will be issued. I am waiting to hear back. I'll contact you once I hear back from Sean.

Anthony

5-20-2016

From: Dennis and Donna [mailto:thorco@centurytel.net]
Sent: Friday, May 20, 2016 11:24 AM
To: Anthony Jackson <Anthony@becklawyers.com>
Subject: Re: Thorco: RE: I sent this in US Mail the other day

Hi Anthony,

How is it going today? Any progress? Thanks

Dennis

Anthony

5-24-2016

From: Dennis and Donna [mailto:thorco@centurytel.net]
Sent: Tuesday, May 24, 2016 11:20 AM
To: Anthony Jackson <Anthony@becklawyers.com>
Subject: agreement

Anthony,

I just finally was able to get ahold of my accountant, Vicki Hileman. I sent her a copy of the agreement I had. She wants the most recent version. I also gave her Bruce's number so she can talk to him. If you need to contact her, her number is 406-257-2522. Any progress? Thanks
Dennis

5-24-2016

From: Anthony Jackson
Sent: Tuesday, May 24, 2016 11:26 AM
To: Dennis and Donna
Cc: John Amsden ; Natalie Phillips
Subject: Thorco: RE: agreement

Dennis,

We are in agreement on everything except the tax issues clause. Nothing has changed to the agreement since the last version as no language has been agreed to regarding this clause. They have proposed:

WCU shall file a Form 1099 in accordance with its standard practices regarding debt reduction. 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.

I have asked that they inform me: (1) when they would issue the 1099; (2) how they would measure any alleged deficiency; and (3) the amounts that would be reported on the 1099. That information should be useful to you accountant and Bruce if we can get it. I have not heard back from them yet, but will let you know when I hear something.

Anthony

5-26-2016

From: Anthony Jackson [mailto:Anthony@becklawyers.com]
Sent: Thursday, May 26, 2016 3:12 PM
To: Vicki Hileman
Cc: John Amsden; Bruce Anderson
Subject: RE: Thorco

You as well Vicki.

I have copied John and Bruce to this e-mail. We'll keep an eye out for the returns.

Thanks.

Anthony

5-26-2016

From: Vicki Hileman [mailto:vicki@dtbcpas.com]
Sent: Thursday, May 26, 2016 3:05 PM
To: Anthony Jackson <Anthony@becklawyers.com>
Subject: Thorco

It was nice talking with you.

***Vicki D. Hileman*, CPA**
DeShazer, Toren & Braden CPAs, PLLC
22 2nd Avenue West, Suite 2100
Kalispell, MT 59901

(406) 755-3505 phone
(406) 257-0049 fax

vicki@dtbcpas.com

5-26-2016

From: Vicki Hileman [mailto:vicki@dtbcpas.com]
Sent: Thursday, May 26, 2016 4:04 PM
To: Anthony Jackson <Anthony@becklawyers.com>
Subject: RE: Thorco

Did you want me to email you the returns and you forward them on?

***Vicki D. Hileman,* CPA**
DeShazer, Toren & Braden CPAs, PLLC
22 2nd Avenue West, Suite 2100
Kalispell, MT 59901

(406) 755-3505 phone
(406) 257-0049 fax

vicki@dtbcpas.com

5-27-2016

From: Anthony Jackson [mailto:Anthony@becklawyers.com]
Sent: Friday, May 27, 2016 10:43 AM
To: Vicki Hileman
Subject: RE: Thorco

Hi Vicki,

The Thortons are wondering if you have a time frame for how long it will take to pull these taxes together? If you can let me know, I'll see that this information gets to them.

Thanks,

Anthony

5-27-2016

From: Vicki Hileman [mailto:vicki@dtbcpas.com]
Sent: Friday, May 27, 2016 11:12 AM
To: Anthony Jackson <Anthony@becklawyers.com>
Subject: RE: Thorco

Hi Anthony:
I am not in the office today, but will have them sometime on Tuesday. Would you please ask them to shoot me an email that authorizes me to release the returns?

Thank you.

Vicki D. Hileman, CPA
DeShazer, Toren & Braden CPAs, PLLC
22 2nd Avenue West, Suite 2100
Kalispell, MT 59901

(406) 755-3505 phone
(406) 257-0049 fax

vicki@dtbcpas.com

5-31-2016

Anthony
From: Vicki Hileman [mailto:vicki@dtbcpas.com]
Sent: Tuesday, May 31, 2016 11:03 AM
To: Anthony Jackson <Anthony@becklawyers.com>
Subject: RE: Thorco

Hi Anthony:
Would you please email me Dennis's cell phone number? They only authorized me to release tax returns to you, and no one else.

Thank you.

Vicki D. Hileman, CPA
DeShazer, Toren & Braden CPAs, PLLC
22 2nd Avenue West, Suite 2100
Kalispell, MT 59901

(406) 755-3505 phone
(406) 257-0049 fax

vicki@dtbcpas.com

5-31-2016

From: Anthony Jackson
Sent: Tuesday, May 31, 2016 11:09 AM
To: Vicki Hileman
Cc: Dennis and Donna
Subject: Thorco: Tax Documents RE: Thorco

Vicki – Dennis's cell is (406) 261-6814. However, I believe they are unavailable by cell and will need to be reached by e-mail. I have copied them on this e-mail. Both my firm, Beck, Amsden, & Stalpes, and Bruce Anderson's firm, Elsaesser Jarzabek Anderson Elliott & Macdonald, Chtd., will be reviewing these documents.

Anthony

5-31-2016

From: Anthony Jackson [mailto:Anthony@becklawyers.com]
Sent: Tuesday, May 31, 2016 5:12 PM
To: Bruce Anderson <brucea@ejame.com>
Cc: John Amsden <Amsden@becklawyers.com>
Subject: Thorco: Settlement Agreement and Mutual Release 3.0

Hi Bruce,

Attached is the current version of the release. Everything has been agreed to except the first paragraph of section 13 which WCU has proposed and is awaiting our response.

Let me know if you have any questions.

Anthony

6-1-2016

From: Bruce Anderson

Sent: Wednesday, June 1, 2016 10:22 AM
To: Dennis and Donna
Subject: FW: Thorco: Settlement Agreement and Mutual Release 3.0

Dennis and Donna: The tax language is at paragrapgh 13. The insolvency exception is the only real defense when a 1099 is issued by WCU, so I see no reason not to sign this. Bruce

Bruce A. Anderson
Elsaesser Jarzabek Anderson Elliott & Macdonald, Chtd.
320 E. Neider, Suite 102
Coeur d'Alene, ID 83815
(208) 667-2900
(208) 667-2150 fax
brucea@ejame.com

++

Attached document identified as (6-1-16 Settlement Agreement and Mutual Release) word

13. Tax Issues

WCU shall file a Form 1099 in accordance with its standard practices regarding debt reduction. 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.

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.

6-3-2016

From: Anthony Jackson
Sent: Friday, June 03, 2016 11:49 AM
To: Dennis and Donna
Cc: John Amsden ; Bruce Anderson
Subject: FW: Thorco

Dennis and Donna,

Please see below and share your thoughts.

Anthony

Johnna Preble is WCU's attorney

From: Johnna Preble [mailto:johnna@morrisonframpton.com]
Sent: Friday, June 3, 2016 11:25 AM
To: Anthony Jackson <Anthony@becklawyers.com>
Subject: Thorco

Anthony,

Below is the language WCU has agreed to. The highlighted section is new. Additionally, WCU said they can agree not to report on Thorco or Thorntons.

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 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.

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.

Think we can get this signed by Monday? Thanks and have a great weekend!

Johnna Preble

Morrison & Frampton, PLLP
Frank Lloyd Wright Bldg
341 Central Ave.
Whitefish, MT 59937
Phone: (406) 862-9600
Fax: (406) 862-9611
email: johnna@morrisonframpton.com
visit us: www.morrisonframpton.com

6-3-2016

From: Dennis and Donna [mailto:thorco@centurytel.net]
Sent: Friday, June 3, 2016 2:46 PM
To: Anthony Jackson <Anthony@becklawyers.com>
Subject: Re: Thorco

Looks fine. We are going home today, left a message for you to call me at 406-261-6814 this afternoon. If we can sign we will stay home Monday to get docs and get it done. We need it finished up. I will wait for your phone call. Leave me a message if I don't have service and I'll call you back as soon as I do. Thanks

Dennis

6-3-2016

From: Anthony Jackson

Sent: Friday, June 3, 2016 5:28 PM

To: Dennis and Donna
Cc: John Amsden ; Bruce Anderson
Subject: RE: Thorco

I won't be able to call you this afternoon. Please be available Monday. I'm hopeful we can get this done. In the meantime, please provide me with your understanding of the principal amount owed on the loan.

Thanks

6-6-2016

From: Anthony Jackson
Sent: Monday, June 6, 2016 3:37 PM
To: Dennis and Donna
Subject: FW: Thorco: Amount to be Reported

This is the issue we are discussing over phone.
From: Anthony Jackson
Sent: Monday, June 6, 2016 1:43 PM
To: 'Johnna Preble' <johnna@morrisonframpton.com>; 'Sean Frampton' <sean@morrisonframpton.com>
Cc: John Amsden <Amsden@becklawyers.com>
Subject: Thorco: Amount to be Reported

Johnna and Sean,

After reviewing the attached document it appears that $500,000 of the $3,360,000 was carry-over interest. As this was never advanced it should not be included on the 1099. Thus the reported amount would be approximately $2,860,000.

Please let me know if you agree.
++
Attached document identified as (6-6-16 ATT 12448). PDF

6-6-2016

From: Anthony Jackson
Sent: Monday, June 6, 2016 4:29 PM
To: Dennis and Donna
Subject: Thorco: Settlement Agreement and Mutual Release 3.3

Please review the attached settlement agreement. We are proofing this now, but I wanted to get this to you ASAP for your review. Please call when you have finished reviewing.

Anthony
++
Attached document identified as (6-6-16 a Settlement Agreement and Mutual Release)

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.

6-6 2016

From: Anthony Jackson

Sent: Monday, June 6, 2016 5:16 PM
To: Dennis and Donna
Cc: John Amsden
Subject: Thorco: Release

Hi Dennis and Donna,

Nice speaking with you earlier. There is light at the end of the tunnel and you're almost done with this.

Attached is a final version of the settlement agreement. Please review and let me know if you have any questions. If you have no other questions, go ahead and sign. I'll be in touch tonight or early tomorrow morning with instructions on where to send this.

Thanks again for all you work.

Anthony

++

Attached document identified as (6-6-16 b Settlement Agreement and Mutual Release)

6-6 2016

From: Anthony Jackson
Sent: Monday, June 6, 2016 5:23 PM
To: Dennis and Donna
Cc: John Amsden
Subject: RE: Thorco: Release

Dennis and Donna,

Please use this version instead which does not say draft.

Anthony

++

Attached document identified as (6-6-16 c Settlement Agreement and Mutual Release)

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.

6-7-2016

From: Natalie Phillips
Sent: Tuesday, June 07, 2016 8:43 AM
To: thorco@centurytel.net
Subject: Settlement Agreement

Good Morning Dennis and Donna,

I understand that Anthony emailed the Settlement Agreement to you yesterday. After you have both signed the Settlement Agreement individually and one of you has signed for Thorco **before a notary**, please hand deliver to MORRISON & FRAMPTON, PLLP and ask that they complete the signing and provide our office with a fully executed copy. It would be best to refrain from engaging in any further conversation during your brief stop at MORRISON & FRAMPTON, PLLP. Anthony mentioned you could drive this to Whitefish. Let me know if this presents a problem.

Thank you both.

Best,

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 38

Natalie F. Phillips, RP
PACE Registered Paralegal

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 39

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 _____
By: Dennis Thornton As: President

STATE OF Washington)
: ss
County of Pend Oreille)

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

(SEAL)

MEADOW GLEASON Commission Expires NOTARY PUBLIC 10-29-2018 STATE OF WASHINGTON

_____
Notary Public for the State of Washington

THORCO, INC.

X _____
By: Donna Thornton As: Sec/Treas

STATE OF Washington)
: ss
County of Pend Oreille)

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

(SEAL)

MEADOW GLEASON Commission Expires NOTARY PUBLIC 10-29-2018 STATE OF WASHINGTON

_____
Notary Public for the State of Washington

DENNIS THORNTON

X _____

STATE OF Washington)
: ss
County of Pend Oreille)

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

(SEAL)

MEADOW GLEASON Commission Expires NOTARY PUBLIC 10-29-2018 STATE OF WASHINGTON

_____
Notary Public for the State of Washington

DONNA THORNTON

X _____

STATE OF Washington)
: ss
County of Pend Oreille)

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

(SEAL)

MEADOW GLEASON Commission Expires NOTARY PUBLIC 10-29-2018 STATE OF WASHINGTON

_____
Notary Public for the State of Washington

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 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

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 AARON ARCHER as SAG OFFICER of Whitefish Credit Union.

(SEAL)

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

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 _____

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.

(SEAL)
MOLLY MCCONNELL NOTARIAL SEAL STATE OF MONTANA

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

_____
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 _____ Date: 6-8-2016
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 D. Thornton as President of Thorco, Inc.

(SEAL) MEADOW GLEASON Commission Expires NOTARY PUBLIC 10-29-2018 STATE OF WASHINGTON

_____
Notary Public for the State of Washington

THORCO, INC.

X _____ Date: 6-8-2016
By: Donna Thornton; As: Sec/Treas

STATE OF Washington)
: ss
County of Pend Oreille)

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

(SEAL) MEADOW GLEASON Commission Expires NOTARY PUBLIC 10-29-2018 STATE OF WASHINGTON

_____
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)

_____/_____/_____(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, plic

(Permanent) 1946 Stadium Drive, Suite 1

City Bozeman ST MT Zip 59715

Seller Principal Residence __Yes ✓No

List the last 4 digits of the SSN or FEIN

SSN 000 - 00 - _____

SSN 000 - 00 - _____

FEIN 00 - 000 0137

Daytime Phone _____

Buyer (Grantee)

Name WHITEFISH CREDIT UNION

Mailing Address 300 Baker Avenue

(Permanent) _____

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 - _____

Assessor Code or Parcel # _____

Main Geocode _____

PART 3 – PROPERTY DESCRIPTION

Please complete fully; if additional space is required, please attach a separate page

Legal Description SEE ATTACHED EXHIBIT A Attachment ☑

Add/Sub _____ Block _____ Lot _____

County FLATHEAD City/Town _____ Section 27 Township 27n Range 21w

PART 4 – TYPE OF TRANSFER

Please complete fully, more than one may apply.

☐ Sale ☐ Gift ☐ Barter ☐ Nominal or No Consideration ☐ Part of 1031 or 1033 exchange ☐ Transfer is subject to a reserved life estate

Sheriff's sale: ☐ mortgage ☐ trust indenture ☑ other ☐ Deed in lieu of foreclosure ☐ Short sale ☐ Auction/Sealed bid

A copy of the recorded instrument must be attached to the Realty Transfer Certificate.

Transfer by Operation of Law

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

PART 5 – EXCEPTIONS FROM PROVIDING SALES PRICE INFORMATION

Please complete fully, more than one may apply

☐ Gift

☐ Transfer in contemplation of death without consideration

☐ Transfer between husband/wife or parent/child for nominal consideration

☐ Transfer of property of the estate of a decedent

☐ Transfer by government agency

☐ Correction, modification, or supplement of previously recorded instrument, no additional consideration

☐ Termination of joint tenancy by death

☐ Termination of life estate by death

☐ Transfer pursuant to court decree (except sheriff's sale)

☐ Tax deed

☐ Merger, consolidation or reorganization of business entity

☐ Land eligible for timberland/forestland classification (15-44-103, MCA)

☐ Land eligible for agricultural classification (15-7-201, MCA)

☐ Transfer to a revocable living trust

☑ Other (Specify Type) Settlement in Cause No. DV-12-1748

PART 6 – SALE PRICE INFORMATION

Please complete fully, more than one may apply

Actual Sale Price $ _____

Financing: __Cash __FHA __VA __Contract ✓Other

Terms: __New loan OR __Assumption of existing loan

Value of personal property included in sale $ 0.00

Value of inventory included in sale $ 0.00

Value of licenses included in sale $ 0.00

Value of good will included in sale $ 0.00

Was an SID payoff included in the sale price? ___Yes ✓No

Did the buyer assume an SID? ___ Yes ✓No

Amount of SID paid or assumed: $ 0.00

Was a mobile home included in the sale? ___ Yes ✓No

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

☐ A. Property is served by a public water supply, i.e., city, irrigation district, or water district provides water.

☑ B. Seller has no water rights on record with DNRC to transfer.

☐ C. Seller is transferring ALL water rights on record with DNRC to the Buyer.

☐ D. Seller is dividing or exempting (reserving) water rights. Seller must file Water Right Update form.

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

PART 8 – PREPARER INFORMATION

Preparer's signature is required

Name/Title Johnna Preble (please print) Signature [signature]

Mailing Address 341 Central Ave. Daytime Phone (406) 862-9000

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);
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The South Half Southeast Quarter Northwest Quarter (S1/2SE1/4NW1/4);
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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);
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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 _____ Date: 6-8-2016
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 D Thornton as President of **Thorco, Inc.**

(SEAL)

MEADOW GLEASON Commission Expires NOTARY PUBLIC 10-29-2018 STATE OF WASHINGTON

_____
Notary Public for the State of Washington

THORCO, INC.

X _____ Date: 6-8-2016
By: Donna Thornton As: Sec/Treas

STATE OF Washington)
: ss
County of Pend Oreille)

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

(SEAL)

MEADOW GLEASON Commission Expires NOTARY PUBLIC 10-29-2018 STATE OF WASHINGTON

_____
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)

____/____/____(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

(Permanent) 1946 Stadium Drive, Suite 1

City Bozeman ST MT Zip 59715

Seller Principal Residence __Yes ✓No

List the last 4 digits of the SSN or FEIN

SSN 000 - 00 - ____

SSN 000 - 00 - ____

FEIN 00 - 000 0137

Daytime Phone ____

Buyer (Grantee)

Name WHITEFISH CREDIT UNION

Mailing Address 300 Baker Avenue

(Permanent) ____

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 - ____

Assessor Code or Parcel # ____ / / /

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);
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The North Half Northwest Quarter Southeast Quarter (N1/2NW1/4SE1/4);
The South Half Northwest Quarter Southeast Quarter (S1/2NW1/4SE1/4);
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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.

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 40

August 16, 2018 Declaration of Attorney John Amsden

Dennis and Donna <thorco@centurytel.net>
Sat 2/5/2022 5:31 PM
Settlement Agreement and Mutual Release 3.5.pdf
32 KB

Reply
Forward

From: Anthony Jackson
Sent: Monday, June 6, 2016 5:23 PM
To: Dennis and Donna
Cc: John Amsden
Subject: RE: Thorco: Release

Dennis and Donna,

Please use this version instead which does not say draft.

Anthony
From: Anthony Jackson
Sent: Monday, June 6, 2016 5:15 PM
To: 'Dennis and Donna' <thorco@centurytel.net>
Cc: John Amsden <Amsden@becklawyers.com>
Subject: Thorco: Release

Hi Dennis and Donna,

Nice speaking with you earlier. There is light at the end of the tunnel and you're almost done with this.

Attached is a final version of the settlement agreement. Please review and let me know if you have any questions. If you have no other questions, go ahead and sign. I'll be in touch tonight or early tomorrow morning with instructions on where to send this.

Thanks again for all you work.

Anthony

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 ___ day of June 2016.

CAUTION: READ BEFORE SIGNING!

PARTIES:

THORCO, INC.

X_____
By: _____; As: _____

STATE OF _____)
: ss
County of _____)

This instrument was acknowledged before me on the ____ day of June 2016, by _____ **as** _____ **of Thorco, Inc.**

_____
(SEAL) Notary Public for the State of _____

DENNIS THORNTON

X_____

STATE OF _____)
: ss
County of _____)

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

_____
(SEAL) Notary Public for the State of _____

DONNA THORNTON

X_____

STATE OF _____)
: ss
County of _____)

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

_____

(SEAL) Notary Public for the State of _____

WHITEFISH CREDIT UNION

X_____
By: _____; As: _____

STATE OF MONTANA)
: ss
County of Flathead)

This instrument was acknowledged before me on the ____ day of June 2016, by _____ **as** _____ **of Whitefish Credit Union.**

_____

(SEAL) 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:_____
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:_____
Sean S. Frampton
Johnna J. Preble

Michael Klinkhammer
Klinkhammer Law Offices
1111 S. Main
Kalispell, MT 59901
Phone: (406) 257-7277
Fax: (888) 414-1015
Email: mklinkhammer@montanadsl.net
Attorney for Plaintiffs

ELEVENTH JUDICIAL DISTRICT COURT,
FLATHEAD COUNTY

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

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

1. I am an attorney licensed to practice in Montana. I represented Plaintiffs in a previous action filed in this Court under Cause No. DV-12-174B. Defendant was also the adverse party in that previous action.

2. In the previous action referenced above, the parties engaged in a mediation on or about April 4, 2016. On that date, the parties executed a Settlement Term Sheet, a true and correct copy of which is attached hereto as Exhibit 1.

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

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

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

6. After delivery of the original signed Non-Merger Warranty Deeds and Realty Transfer Certificate to the attorney for Whitefish Credit Union, we did not receive any request to execute any additional documents or take any additional actions (as provided for in the Settlement Term Sheet on page 2 and in the Settlement Agreement and Mutual Release in Section 10) regarding the requirement of the

Settlement Agreement and Mutual Release in Section 2.b-c that the original documents shall be deposited into escrow with First American Title Company.

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

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

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

DATED this 16th day of August, 2018.

By: _____
John L. Amsden

CERTIFICATE OF SERVICE

I hereby certify that on the ___ day of August, 2018, I served a true and correct copy of the foregoing upon opposing party through his attorney or record by mailing the same through the U.S. Mail, first class postage prepaid thereon, and addressed as follows:

Sean S. Frampton
FRAMPTON PURDY LAW FIRM
530 West 19th Street #301
Whitefish, MT 59937

EXHIBIT 1

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:	$1,400,000.00 allocated as follows: • 200 acres $300,000.00; • 300 acres $1,100,000.00. 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.
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 Whiitefish Credit Union

Dennis Thornton

By:

Attorney for Thorco, Dennis and Donna Thornton

Donna Thornton

By:

EXHIBIT 2

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 _____
By Dennis Thornton As: President

STATE OF Washington)
: ss
County of Pend Oreille)

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

(SEAL)

MEADOW GLEASON Commission Expires NOTARY PUBLIC 10-29-2018 STATE OF WASHINGTON

_____
Notary Public for the State of Washington

THORCO, INC.

X _____
By: Donna Thornton As: Sec/Treas

STATE OF Washington)
: ss
County of Pend Oreille)

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

(SEAL)

MEADOW GLEASON Commission Expires NOTARY PUBLIC 10-29-2018 STATE OF WASHINGTON

_____
Notary Public for the State of Washington

DENNIS THORNTON

X _____

STATE OF Washington)
: ss
County of Pend Oreille)

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

(SEAL)

MEADOW GLEASON Commission Expires NOTARY PUBLIC 10-29-2019 STATE OF WASHINGTON

_____
Notary Public for the State of Washington

DONNA THORNTON

X _____

STATE OF Washington)
: ss
County of Pend Oreille)

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

(SEAL)

MEADOW GLEASON Commission Expires NOTARY PUBLIC 10-29-2019 STATE OF WASHINGTON

_____
Notary Public for the State of Washington

WHITEFISH CREDIT UNION

X _____

By: Aaron D Archer As: SAG OFFICERS

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

Notary Public for the State of Montana

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

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.

(SEAL)

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

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 _____

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.

(SEAL)

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

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 _____ Date: 6-8-2016
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 D. Thornton as President of Thorco, Inc.

(SEAL) MEADOW GLEASON Commission Expires NOTARY PUBLIC 10-29-2016 STATE OF WASHINGTON

_____
Notary Public for the State of Washington

THORCO, INC.

X _____ Date: 6-8-2016
By: Donna Thornton; As: Sec/Treas

STATE OF Washington)
: ss
County of Pend Oreille)

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

(SEAL) MEADOW GLEASON Commission Expires NOTARY PUBLIC 10-29-2016 STATE OF WASHINGTON

_____
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) – – – – – –
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– – – – – –
– – – – – –

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)

_____/_____/_____ (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 (Permanent): c/o BECK & AMSDEN, plc
1946 Stadium Drive, Suite 1
City: Bozeman ST: MT Zip: 59715
Seller Principal Residence: __Yes ✓No

List the last 4 digits of the SSN or FEIN

SSN 000 - 00 - ____
SSN 000 - 00 - ____
FEIN 00 - 000 0137
Daytime Phone ____

Buyer (Grantee)

Name: WHITEFISH CREDIT UNION
Mailing Address: 300 Baker Avenue
(Permanent)
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 0730
Daytime Phone ____

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

Assessor Code or Parcel # ____ Main Geocode ____

PART 3 – PROPERTY DESCRIPTION

Please complete fully; if additional space is required, please attach a separate page

Legal Description: SEE ATTACHED EXHIBIT A Attachment ☑

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

PART 4 – TYPE OF TRANSFER

Please complete fully, more than one may apply.

☐ Sale ☐ Gift ☐ Barter ☐ Nominal or No Consideration ☐ Part of 1031 or 1033 exchange ☐ Transfer is subject to a reserved life estate

Sheriff's sale: ☐ mortgage ☐ trust indenture ☑ other ☐ Deed in lieu of foreclosure ☐ Short sale ☐ Auction/Sealed bid

A copy of the recorded instrument must be attached to the Realty Transfer Certificate.

Transfer by Operation of Law

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

PART 5 – EXCEPTIONS FROM PROVIDING SALES PRICE INFORMATION

Please complete fully, more than one may apply

☐ Gift
☐ Transfer in contemplation of death without consideration
☐ Transfer between husband/wife or parent/child for nominal consideration
☐ Transfer of property of the estate of a decedent
☐ Transfer by government agency
☐ Correction, modification, or supplement of previously recorded instrument, no additional consideration
☐ Termination of joint tenancy by death
☐ Termination of life estate by death
☐ Transfer pursuant to court decree (except sheriff's sale)
☐ Tax deed
☐ Merger, consolidation or reorganization of business entity
☐ Land eligible for timberland/forestland classification (15-44-103, MCA)
☐ Land eligible for agricultural classification (15-7-201, MCA)
☐ Transfer to a revocable living trust
☑ Other (Specify Type) Settlement in Cause No. DV-12-1748

PART 6 – SALE PRICE INFORMATION

Please complete fully, more than one may apply

Actual Sale Price $ ____
Financing: __Cash __FHA __VA __Contract ✓Other
Terms: __New loan OR __Assumption of existing loan
Value of personal property included in sale $ 0.00
Value of inventory included in sale $ 0.00
Value of licenses included in sale $ 0.00

Value of good will included in sale $ 0.00
Was an SID payoff included in the sale price? ___Yes ✓No
Did the buyer assume an SID? ___Yes ✓No
Amount of SID paid or assumed. $ 0.00
Was a mobile home included in the sale? ___Yes ✓No

PART 7 – WATER RIGHT DISCLOSURE

This Disclosure is only applicable to the property identified in PART 3 above

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

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

PART 8 – PREPARER INFORMATION

Preparer's signature is required

Name/Title Johnna Preble (please print) Signature [signature]
Mailing Address 341 Central Ave
City Whitefish ST MT Zip 59937
Daytime Phone (406) 862-9000

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 _____ Date: 6-8-2016
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 D Thornton as President of Thorco, Inc.

(SEAL)

MEADOW GLEASON Commission Expires NOTARY PUBLIC 10-29-2018 STATE OF WASHINGTON

_____
Notary Public for the State of Washington

THORCO, INC.

X _____ Date: 6-8-2016
By: Donna Thornton As: Sec/Treas

STATE OF Washington)
: ss
County of Pend Oreille)

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

(SEAL)

MEADOW GLEASON Commission Expires NOTARY PUBLIC 10-29-2018 STATE OF WASHINGTON

_____
Notary Public for the State of Washington

REALTY TRANSFER CERTIFICATE

Confidential Tax Document

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GEOCODE(S) _

ASSESSMENT CODE: _____

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Montana law requires this form be completed and may impose up to a $500 penalty for failure to file a Realty Transfer Certificate (15-7-304, 305 and 310, MCA)

PART 1 – DATE OF TRANSFER (SALE)

_____/_____/_____(MM/DD/YYYY)

PART 2 – PARTIES

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

Seller (Grantor)

Name THORCO, INC

Mailing Address c/o BECK & AMSDEN, plc

(Permanent) 1946 Stadium Drive, Suite 1

City Bozeman ST MT Zip 59715

Seller Principal Residence __Yes ✓No

List the last 4 digits of the SSN or FEIN

SSN 000 - 00 - _____

SSN 000 - 00 - _____

FEIN 00 - 000 0137

Daytime Phone _____

Buyer (Grantee)

Name WHITEFISH CREDIT UNION

Mailing Address 300 Baker Avenue

(Permanent) _____

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 - _____

Assessor Code or Parcel # _____ Main Geocode _____

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

A copy of the recorded instrument must be attached to the Realty Transfer Certificate.

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

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Please complete fully, more than one may apply

☐ Gift

☐ Transfer in contemplation of death without consideration

☐ Transfer between husband/wife or parent/child for nominal consideration

☐ Transfer of property of the estate of a decedent

☐ Transfer by government agency

☐ Correction, modification, or supplement of previously recorded instrument, no additional consideration

☐ Termination of joint tenancy by death

☐ Termination of life estate by death

☐ Transfer pursuant to court decree (except sheriff's sale)

☐ Tax deed

☐ Merger, consolidation or reorganization of business entity

☐ Land eligible for timberland/forestland classification (15-44-103, MCA)

☐ Land eligible for agricultural classification (15-7-201, MCA)

☐ Transfer to a revocable living trust

☑ Other (Specify Type) Settlement in Cause No. DV-12-174B

PART 6 – SALE PRICE INFORMATION

Please complete fully, more than one may apply

Actual Sale Price $ _____

Financing: __Cash __FHA __VA __Contract ✓Other

Terms: __New loan OR __Assumption of existing loan

Value of personal property included in sale $ 0.00

Value of inventory included in sale $ 0.00

Value of licenses included in sale $ 0.00

Value of good will included in sale $ 0.00

Was an SID payoff included in the sale price? ___Yes ✓No

Did the buyer assume an SID? ___Yes ✓No

Amount of SID paid or assumed: $ 0.00

Was a mobile home included in the sale? ___Yes ✓No

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

☐ A. Property is served by a public water supply, i.e., city, irrigation district, or water district provides water.

☑ B. Seller has no water rights on record with DNRC to transfer.

☐ C. Seller is transferring ALL water rights on record with DNRC to the Buyer.

☐ D. Seller is dividing or exempting (reserving) water rights. Seller must file Water Right Update form.

Seller (Grantor) Signature [signature] Date 12-8-2011

PART 8 – PREPARER INFORMATION

Preparer's signature is required

Name/Title Johnna Hoble (please print) Signature [signature]

Mailing Address 341 Central Ave Daytime Phone (406) 862-9000

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 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);
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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.

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

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 41

August 15, 2018 Declaration of Attorney Mike Black

Michael Klinkhammer
Klinkhammer Law Offices
1111 S. Main
Kalispell, MT 59901
Phone: (406) 257-7277
Fax: (888) 414-1015
Email: mklinkhammer@montanadsl.net
Attorney for Plaintiffs

ELEVENTH JUDICIAL DISTRICT COURT,
FLATHEAD COUNTY

DENNIS THORNTON and DONNA THORNTON, Plaintiffs, vs. WHITEFISH CREDIT UNION, Defendant.	Cause No. DV-18-336D Judge Dan Wilson **DECLARATION OF MICHAEL G. BLACK**

I, MCHAEL G. BLACK, hereby declare as follows:

1. I am an attorney licensed to practice in Montana and I joined the Bozeman firm Beck, Amsden & Stalpes, PLLC several months ago.

2. On or about December 21, 2017, I first became aware of the Settlement Agreement and Mutual Release between the parties in a previous action filed in this Court under Cause No. DV-12-174B. I also learned of the letter to the attorney for Whitefish Credit Union confirming that the deadline for exercising the option under

Section 2 of the Settlement Agreement and Mutual Release had been extended to December 22, 2017. I called the attorney for Whitefish Credit Union (Sean S. Frampton, Esq.) and left a message at his office late in the afternoon on December 21, 2017.

3. I spoke with Mr. Frampton by phone three times on December 22, 2017. My purpose in calling the attorney for Whitefish Credit Union was to request and obtain an extension of the deadline for exercising the option under Section 2 of the Settlement Agreement and Mutual Release beyond December 22, 2017.

4. In my first phone call with Mr. Frampton in the morning that day, he began with the statement that Mr. Thornton has been the "biggest pain in the a**" to Whitefish Credit Union. Mr. Frampton requested more information before Whitefish Credit Union would agree to an additional extension.

5. Over the next few hours, I talked with several persons with knowledge of attempts to exercise the option. Realtor Kim Barstow informed me that the escrow specified in Section 2 of the Settlement Agreement and Mutual Release had not been established at First American Title.

6. In my second phone call with Mr. Frampton early in the afternoon that day, I specifically asked whether Whitefish Credit Union had established the escrow and Mr. Frampton responded "I don't know." After this second phone call and further communications with Ms. Barstow, I sent an email to Mr. Frampton stating that the

escrow had not been set up at First American Title. A true and correct copy of this email is attached as Exhibit 1.

7. My third and last phone call with Mr. Frampton that day occurred after 4:30 p.m. and lasted approximately three minutes. Mr. Frampton informed me he was on his way out of town for the holidays. He did not address the escrow issue in this conversation. He informed me he had spoken with Aaron Archer and Whitefish Credit Union would agree to leave open the time to exercise the option until at least Noon on December 27, 2017. I confirmed the discussion by email at 4:55 p.m. that day, true and correct copy of which is attached as Exhibit 2.

8. I later learned that Mr. Frampton admitted in a letter to Michael Klinkhammer (dated March 22, 2018) that all original documents that were to be placed in escrow have been in the possession of Whitefish Credit Union, which was "holding them in trust," since delivery of original documents to Mr. Frampton's office and the escrow had not been opened by Whitefish Credit Union.

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

DATED this 15th day of August, 2018.

By: _____
Michael G. Black

CERTIFICATE OF SERVICE

I hereby certify that on the ___ day of August, 2018, I served a true and correct copy of the foregoing upon opposing party through his attorney or record by mailing the same through the U.S. Mail, first class postage prepaid thereon, and addressed as follows:

Sean S. Frampton
FRAMPTON PURDY LAW FIRM
530 West 19th Street #301
Whitefish, MT 59937

EXHIBIT 1

Mike Black

From: Mike Black
Sent: Friday, December 22, 2017 1:59 PM
To: sean@framptonpurdy.com
Subject: RE: Exceptions on Thorco property

Sean:

Ex. B to SA appears to take care of Exception 24 on Schedule B on the Preliminary Title Report.

It seems the escrow was not established, unless I am mistaken. The $3.36MM mortgage on record and lack of escrow have been an impediment, to my understanding, to closing by 1/3/2018 under the 11/10/2017 buy-sell. Given where we are today, provided WCU receives the assurances from the buyer you requested in your email this morning, what can we do to push back the closing date and allow exercise of the option? It is my understanding WCU is amenable to pushing back the date if adequate assurances are received today, but I would like confirmation.

Thanks.

Mike

From: Mike Black
Sent: Friday, December 22, 2017 1:40 PM
To: Coachkim@FVBMT.com
Cc: sean@framptonpurdy.com
Subject: RE: Exceptions on Thorco property

Forgot the attachment. My apologies.

From: Mike Black
Sent: Friday, December 22, 2017 1:38 PM
To: Coachkim@FVBMT.com
Cc: sean@framptonpurdy.com
Subject: RE: Exceptions on Thorco property

Kim:

I have attached the two exhibits to the settlement agreement that Whitefish Credit Union has consented to disclose. These are the documents that were to be escrowed at FATCO. If Thorco exercises its option, the release(s) in Ex. B are to be recorded; if Thorco does not exercise its option, the deed(s) in Ex. C are to be recorded.

Mike

From: Coachkim@FVBMT.com [Coachkim@FVBMT.com]
Sent: Friday, December 22, 2017 1:13 PM
To: Mike Black
Subject: Exceptions on Thorco property

Mike

Here are the exceptions showing up on title.

Let me know if you have any questions. Kim

Kim Barstow "Coach Kim"
Commercial and Residential Realtor
431 1st Ave W | Kalispell MT 59901
Office: 406.752.8883 | Mobile: 406.250.2560 | Direct: 406.407.9030
Website: www.FlatheadValleyBrokers.com | Email: CoachKim@Outlook.com

EXHIBIT 2

Mike Black

From: Mike Black
Sent: Friday, December 22, 2017 4:56 PM
To: John Amsden
Cc: sean@framptonpurdy.com
Subject: FW: Exceptions on Thorco property

I just spoke with Sean Frampton. Thorco now has until Wednesday 12/27/2017 at Noon to have lending commitment letter from FIB for Mr. Cameron (the buyer) in order exercise the option. I will be receiving a confirmation letter or email from Sean Frampton shortly.

From: Mike Black
Sent: Friday, December 22, 2017 3:18 PM
To: Sean Frampton
Cc: Sean2
Subject: RE: Exceptions on Thorco property

406-546-0017. I still have not heard from Mr. Pelc.

From: Sean Frampton [sean@framptonpurdy.com]
Sent: Friday, December 22, 2017 3:00 PM
To: Mike Black
Cc: Sean2
Subject: RE: Exceptions on Thorco property

Mike,

I'll call you shortly after 4:30. At what number shall I reach you? Please reply to all.

From: Mike Black [mailto:mike@becklawyers.com]
Sent: Friday, December 22, 2017 2:47 PM
To: Sean Frampton <sean@framptonpurdy.com>
Subject: RE: Exceptions on Thorco property

I talked with the realtor and left a voicemail for the loan officer.

On item no. 1, there is a lender. It is my understanding that the borrower and project qualify for financing, but the $3.36MM WCU mortgage on the title report has held up a formal written commitment. I have attached a letter dated yesterday stating there has been an application made. I spoke with Mr. Pelc yesterday and the title issues seemed predominant. The realtor is going to send Ex. B from the SA to FIB loan officer.

On item no. 2, the realtor informs me that it is an impediment for the title company and the lender. I would like to propose a closing date of 2/15/2018 in order to allow the title company and lender to conclude due diligence but I do not have confirmation from the lender on the date yet.

From: Mike Black
Sent: Friday, December 22, 2017 2:21 PM
To: Sean Frampton
Subject: RE: Exceptions on Thorco property

I think I can address this issues promptly. I forwarded the email and will get on the phone. Thank you.

From: Sean Frampton [sean@framptonpurdy.com]
Sent: Friday, December 22, 2017 2:17 PM
To: Mike Black
Cc: AArcher@whitefishcu.com
Subject: RE: Exceptions on Thorco property

Mike,

Again, the WCU is seeking to know to nearly 100% that this deal is going forward. All we know is that an unknown buyer is interested. I will speak with my client but will need the following information as a basis for my discussion, which is in addition to the information from my earlier email:

1. Does the buyer have a lender? If so, will the lender send a commitment letter given the releases?
2. Is the impediment you mentioned affecting closing because of the lender or title company? Either way, what is the new proposed closing date?

Please provide answers to this as soon as you can so I can call my client to discuss. I will actually be in the office until about 2:50.

Sean

From: Mike Black [mailto:mike@becklawyers.com]
Sent: Friday, December 22, 2017 1:59 PM
To: Sean Frampton <sean@framptonpurdy.com>
Subject: RE: Exceptions on Thorco property

Sean:

Ex. B to SA appears to take care of Exception 24 on Schedule B on the Preliminary Title Report.

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Thanks.

Mike

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Cc: sean@framptonpurdy.com
Subject: RE: Exceptions on Thorco property

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From: Mike Black
Sent: Friday, December 22, 2017 1:38 PM
To: Coachkim@FVBMT.com
Cc: sean@framptonpurdy.com
Subject: RE: Exceptions on Thorco property

Kim:

I have attached the two exhibits to the settlement agreement that Whitefish Credit Union has consented to disclose. These are the documents that were to be escrowed at FATCO. If Thorco exercises its option, the release(s) in Ex. B are to be recorded; if Thorco does not exercise its option, the deed(s) in Ex. C are to be recorded.

Mike

From: Coachkim@FVBMT.com [Coachkim@FVBMT.com]
Sent: Friday, December 22, 2017 1:13 PM
To: Mike Black
Subject: Exceptions on Thorco property

Mike

Here are the exceptions showing up on title.

Let me know if you have any questions. Kim

Kim Barstow "Coach Kim"
Commercial and Residential Realtor
431 1st Ave W | Kalispell MT 59901
Office: 406.752.8883 | Mobile: 406.250.2560 | Direct: 406.407.9030
Website: www.FlatheadValleyBrokers.com | Email: CoachKim@Outlook.com

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 42

Joint Motions to Vacate February 23, 2016 Judgment in the Amount of $4,348,880.01

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 42

CERTIFIED

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2016 AUG 12 PM 1:50
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BY _____ DEPUTY

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amsden@becklawyers.com; justin@becklawyers.com; anthony@becklawyers.com

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Fees: $196.00
2/2/2018 4:16 PM

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123 South Third Avenue, Suite 24, PO Box 1049
Sandpoint, ID 83864
Tel: (208) 263-8517
Fax: (208) 263-0759
ford@ejame.com
Attorneys for Defendants and Counter-Claimants

MONTANA ELEVENTH JUDICIAL DISTRICT COURT, FLATHEAD COUNTY

WHITEFISH CREDIT UNION, Plaintiff, -vs- THORCO, INC., a Montana Corporation, DENNIS THORNTON, DONNA THORNTON, and JOHN DOES 1-10. Defendants.	Cause No. DV-12-174B Judge: Robert B. Allison **JOINT MOTION TO VACATE FEBRUARY 23, 2016 JUDGMENT OF FORECLOSURE AND ORDER OF SALE**

SEAL

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

230

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 42

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Fees: $196.00
2/2/2018 4:16 PM

THORCO INC., a Montana corporation, DENNIS THORNTON and DONNA THORNTON,	][
Counter-Claimants,	][
-vs-	][
WHITEFISH CREDIT UNION, and JOHN DOES 1-10,	][
Counter-Defendants.	][

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

DATED this 11th day of August, 2016

MORRISON & FRAMPTON, PLLP
Attorneys for Whitefish Credit Union

By: _____
Sean S. Frampton
Johnna J. Preble

DATED this 11th day of August, 2016

BECK & AMSDEN, pllc
Attorneys for Thorco, Inc., Dennis Thornton, and Donna Thornton

By: _____
John L. Amsden
Justin P. Stalpes
Anthony F. Jackson

201800002381
Page: 15 of 28
Fees: $196.00
2/2/2018 4:16 PM

DATED this 11 day of August, 2016

BISHOP & HEENAN LAW FIRM
Attorneys for Thorco, Inc., Dennis Thornton, and Donna Thornton

By: _____
John Heenan

DATED this ____ day of August, 2016

ELSAESSER JARZABECK ANDERSON ELLIOTT & MACDONALD, CHTD.
Attorneys for Thorco, Inc., Dennis Thornton, and Donna Thornton

By: _____
Ford Elsaesser

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

DATED this ____ day of August, 2016

BISHOP & HEENAN LAW FIRM
Attorneys for Thorco, Inc., Dennis Thornton, and Donna Thornton

By: _____
John Heenan

DATED this ____ day of August, 2016

ELSAESSER JARZABECK ANDERSON ELLIOTT & MACDONALD, CHTD.
Attorneys for Thorco, Inc., Dennis Thornton, and Donna Thornton

By: Bruce Anderson for
Ford Elsaesser

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 43

Order Vacating February 23, 2016 Judgment in the Amount of $4,348,880.01

8/16/16

-4-2022. Expert Witness Report by Gerald Fritts Exhibit 43

CERTIFIED

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

CLERK OF DISTRICT COURT
2016 AUG 16 PM 4:29
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BY
DEPUTY

201800002381
Page: 17 of 28
Fees: $196.00
2/2/2018 4:16 PM

MONTANA ELEVENTH JUDICIAL DISTRICT COURT, FLATHEAD COUNTY

WHITEFISH CREDIT UNION, Plaintiff, -vs- THORCO, INC., a Montana Corporation, DENNIS THORNTON, DONNA THORNTON, and JOHN DOE(s) 1-10. Defendants.	Cause No. DV-12-174 B Judge: Robert B. Allison **ORDER VACATING JUDGMENT OF FORECLOSURE AND ORDER OF SALE**
THORCO INC., a Montana corporation, DENNIS THORNTON and DONNA THORNTON, Counter-Claimants, -vs- WHITEFISH CREDIT UNION, and JOHN DOES 1 - 10, Counter-Defendants.	

Pursuant to the joint motion filed by the parties, through their respective counsel,

IT IS HEREBY ORDERED that the Judgment of Foreclosure and Order of Sale entered by this Court on February 23, 2016 is vacated.

DATED this 16th day of August, 2016.

Hon. Robert B. Allison
District Court Judge

cc: Sean S. Frampton/Johnna J. Preble
John L. Amsden/Justin P. Stalpes
John Heenan
Ford Elsaesser
8/10/16 sk

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

SEAL

201800002381
Page: 18 of 28
Fees: $196.00
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2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 44

Stipulation Dismissing with Prejudice All Claims and Counterclaims

8/16/16

-4-2022. Expert Witness Report by Gerald Fritts Exhibit 45

CERTIFIED

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

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FILED
BY _____ DEPUTY

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Page: 17 of 28
Fees: $196.00
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MONTANA ELEVENTH JUDICIAL DISTRICT COURT, FLATHEAD COUNTY

WHITEFISH CREDIT UNION, Plaintiff, -vs- THORCO, INC., a Montana Corporation, DENNIS THORNTON, DONNA THORNTON, and JOHN DOE(s) 1-10. Defendants.	Cause No. DV-12-174 B Judge: Robert B. Allison **ORDER VACATING JUDGMENT OF FORECLOSURE AND ORDER OF SALE**
THORCO INC., a Montana corporation, DENNIS THORNTON and DONNA THORNTON, Counter-Claimants, -vs- WHITEFISH CREDIT UNION, and JOHN DOES 1 - 10, Counter-Defendants.	

Pursuant to the joint motion filed by the parties, through their respective counsel,

IT IS HEREBY ORDERED that the Judgment of Foreclosure and Order of Sale entered by this Court on February 23, 2016 is vacated.

DATED this 10th day of August, 2016.

Hon. Robert B. Allison
District Court Judge

cc: Sean S. Frampton/Johnna J. Preble
John L. Amsden/Justin P. Stalpes
John Heenan
Ford Elsaesser
8/10/16 sb

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

SEAL

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Page: 18 of 28
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Attorneys for Defendants and Counter-Claimants

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MONTANA ELEVENTH JUDICIAL DISTRICT COURT, FLATHEAD COUNTY

WHITEFISH CREDIT UNION, Plaintiff, -vs- THORCO, INC., a Montana Corporation, DENNIS THORNTON, DONNA THORNTON, and JOHN DOES 1-10. Defendants.	][ ][ ][ ][ ][ ][ ][ ][ ][	Cause No. DV-12-174B Judge: Robert B. Allison STIPULATION TO DISMISS WITH PREJUDICE

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

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Page: 20 of 28
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THORCO INC., a Montana corporation,
DENNIS THORNTON and
DONNA THORNTON,

Counter-Claimants,

-vs-

WHITEFISH CREDIT UNION, and
JOHN DOES 1-10,

Counter-Defendants.

COME NOW the parties, Whitefish Credit Union, Thorco, Inc., Dennis Thornton, and Donna Thornton, who, upon grant of the parties' joint motion that the Court's February 23, 2016 Judgment of Foreclosure and Order of Sale be vacated, stipulate to dismiss with prejudice their respective claims which have now been settled.

DATED this 11th day of August, 2016

MORRISON & FRAMPTON, PLLP
Attorneys for Whitefish Credit Union

By: _____
Sean S. Frampton
Johnna J. Preble

DATED this 11th day of August, 2016

BECK & AMSDEN, pllc
Attorneys for Thorco, Inc., Dennis Thornton, and Donna Thornton

By: _____
John L. Amsden
Justin P. Stalpes
Anthony F. Jackson

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 45

Order Dismissing with Prejudice All Claims and Counterclaims

8/16/16

-4-2022. Expert Witness Report by Gerald Fritts Exhibit 45

CERTIFIED

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

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BY _____ DEPUTY

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Fees: $196.00
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MONTANA ELEVENTH JUDICIAL DISTRICT COURT, FLATHEAD COUNTY

WHITEFISH CREDIT UNION, Plaintiff, -vs- THORCO, INC., a Montana Corporation, DENNIS THORNTON, DONNA THORNTON, and JOHN DOE(s) 1-10. Defendants.	Cause No. DV-12-174 B Judge: Robert B. Allison **ORDER VACATING JUDGMENT OF FORECLOSURE AND ORDER OF SALE**
THORCO INC., a Montana corporation, DENNIS THORNTON and DONNA THORNTON, Counter-Claimants, -vs- WHITEFISH CREDIT UNION, and JOHN DOES 1 - 10, Counter-Defendants.	

Pursuant to the joint motion filed by the parties, through their respective counsel,

IT IS HEREBY ORDERED that the Judgment of Foreclosure and Order of Sale entered by this Court on February 23, 2016 is vacated.

DATED this 10th day of August, 2016.

Hon. Robert B. Allison
District Court Judge

cc: Sean S. Frampton/Johnna J. Preble
John L. Amsden/Justin P. Stalpes
John Heenan
Ford Elsaesser
8/10/16 SS

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

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2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 46

Affidavit

I Donna Thornton was with my husband Dennis Thornton in late November when we went to First American Title to check to see if First American had an escrow account set up for Thorco Inc. as required by the terms of the Settlement Agreement and Mutual Release entered into on June 8, 2016.

First American Title checked their records and with a place in Idaho and determined First American had no record of any escrow between Thorco and WFCU.

I was also present when my husband Dennis Thornton offered full payment of the $1,400,000 to First American Title.

First American Title stated they would not be able to accept payment because First American had no escrow account for the money to be deposited into.

I state above statement is true and correct to the best of my knowledge, under the penalty of perjury.

2/23/2021

Donna Thornton

2-22-2021

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 47

From: Donald Garberg
Sent: Sunday, December 3, 2017 12:03 PM
To: Dennis and Donna
Subject: Re: Fw: Thorco Whitefish Credit Settlement

Dennis, based on the information provided herein, it appears WFCU failed to adhere to the Settlement Agreement by
not establishing escrow with the executed documents. The fact that a 3rd party would want to inspect the escrow as part of investing
or lending on your project, and not finding the escrow would most likely have a negative effect on their decision. I recommend you
contact your attorney as soon as possible to get legal advise on this matter. Best regards, Don

Don Garberg, ChFC
406 270 8149
On Sun, Dec 3, 2017 at 9:49 AM, Dennis and Donna <thorco@centurytel.net> wrote:
From: Jim Kuhlman
Sent: Friday, December 01, 2017 5:18 PM
To: Brenda Nahring
Cc: thorco@centurytel.net
Subject: Re: Thorco Whitefish Credit Settlement

Thank you for your assistance.

Jim Kuhlman

Sent from my iPhone
On Dec 1, 2017, at 5:16 PM, Brenda Nahring <bnahring@gofirstam.com> wrote:

Hi Jim,

We have searched our computer for an open order since June 2012 on assessor number 0213950 in the name of Thorco Inc and do not find an open order.

According to the courthouse IDOC program, there has been nothing recorded on that same assessor number since 2009.

Please let me know if you need any additional information.

Have a wonderful weekend Jim!

---------- Forwarded message ----------
From: **Deborah Keller** <dkeller@gofirstam.com>
Date: Fri, Dec 1, 2017 at 4:40 PM
Subject: Fwd: Thorco Whitefish Credit Settlement
To: 1 Kal - Brenda Nahring <bnahring@gofirstam.com>

---------- Forwarded message ----------
From: **jim kuhlman** <jim@purewestmt.com>
Date: Fri, Dec 1, 2017 at 3:36 PM
Subject: Thorco Whitefish Credit Settlement
To: dkeller@gofirstam.com
Cc: thorco@centurytel.net

Deborah:

I am the real estate agent for Dennis and Donna Thorton who are the principals of Thorco., Inc. We need your assistence.

In June of 2016, Thorco reached a settlement agreement with Whitefish Credit Union regarding two tracks of land on Boon Road, Somers, Montana. I have attached a copy of the settlement agreement. As part of this agreement, WCU was to pay Thorco (Releasors) $150,000. Thorco was to receive a Purchase Option Agreement, and a release of mortgages from WCU and Thorco was to execute Non-Merger Warranty Deeds.

These agreements were executed by Thorco, and WCU did pay the $150,000 settlement amount. All related documents to this agreement were to be deposited with First American Title and recored by First American Title. Can you please confirm to us if First American Title is in possession of these agreements being held in escrow and if said agreements were recorded.

Unfortunately, we do not have WCU counter signed copies of these agreements. My client's attorney, Mr. Jim Bartlett, is desceased so we do not have access to the fully signed documents.

Thank you for your assistence and we look forward to hearing from you shortly.

Jim Kuhlman

Realtor at PureWest Real Estate

Bigfork, MT 59911

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 48

said were their concerns (*Id.*, ¶ 15); and why Brian Pelc of First Interstate Bank stopped working on Cameron's loan application (*Id.*, ¶ 17).

Competency: Barstow's interpretation of the Settlement Agreement vis-à-vis the title report is an inadmissible opinion addressing legal conclusion for both a contract interpretation and clear title.

Plaintiffs' Exhibit 8 – Deposition of Jeff Larsen in DV-12-174B

Immaterial: Evidence of the engineering done five years ago is immaterial to the issues before the Court. The underlying case was dismissed. WCU's motion provided limited background information and included a statement from Aaron Archer that the development was never completed and Thorntons never applied for plat. (*Mot. S.J.* at 2, l.1) Larsen's testimony supports Archer's statement as the engineering was only 30% done after four years and $3.3 million. (*Answer Br. Opposing WCU's Mot. S.J.* at 11, ¶ 18) Larsen's affidavit is also immaterial because it addresses Aaron Archer's first affidavit of May 9, 2018, but WCU did not rely upon this affidavit for its motion.

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 48

Plaintiffs' Exhibit 9 – Affidavit of Ed Harshbarger

Immaterial: As a potential investor, Harshbarger's testimony about meetings, conversations, and negotiations (*Pls.'* Exh. 9, ¶¶ 2-11) are immaterial to the legal issues presented in the motion. Thorntons rely on Harshbarger's testimony in only one respect on page 24 to show that he had spoken with the WCU in October 2017, but this evidence is inadmissible as argued below and cannot be used to create an issue of material fact.

However, no issue of material fact is created by Harshbarger's testimony. It doesn't relate to duty or title. Although immaterial, it is noteworthy on the reason Harshbarger walked away from the property. Harshbarger testified that the WCU reported that the property was in

foreclosure and approximately $4.5 million was owed on it. (*Pls.'* Exh. 9, ¶ 17) At the time of Mr. Harshbarger's trip to Montana in October 2017, this statement would have been true because Thorntons had not exercised the option. The option price, which effectively reduced the debt to $1.4 million, only became effective upon exercising the option.

Harshbarger did not walk away from the deal because of anything the WCU represented. He testified to three reasons why he walked away. First, Harshbarger walked away because he felt Dennis Thornton had been deceitful after he "checked at the Clerk and Recorders office and First American Title," not his inquiry with WCU. (*Id.*, ¶ 21) The second reason he walked away was because he did not want to get involved in litigation. (*Id.*, ¶ 22) Of course, in October 2017, the litigation had been dismissed long before. The third reason he walked away was because Dennis Thornton provided him with an incomplete agreement. (*Id.*, ¶ 23)

Finally, Mr. Harshbarger's continued interest in the property is immaterial. (*Id.*, ¶ 24)

Hearsay: Although a party admission is an exception to hearsay, it is not a party admission if the speaker lacks authority to make the representation. *Thornton v. Songstad*, 263 Mont. 390, 868 P.2d 633 (1994). In *Thornton*, Dennis Thornton, the same Dennis Thornton that is a Plaintiff here, submitted an affidavit on summary judgment containing hearsay statements from a store employee. "Thornton did nothing more than offer his own conclusory hearsay statements from his July 29, 1992 affidavit claiming that the trust manager told him that he [the manager] would agree to any decision of the four women co-owners." *Id.* at 398, 868 P.2d at 638. The Court held Dennis Thornton's affidavit was hearsay because, despite Rule 801(d)(2), he failed to identity the trust manager or establish his authority to speak on behalf of the trust. *Id.* at 399-400, 868 P.2d at 639. Similarly, Harshbarger does not identify with whom he spoke in October 2017. (*Pls.'* Exh. 9, ¶ 17) He doesn't identify the person as an officer or any other person of authority. (*Id.*) Presumably, the person was not an officer or management level person

From: gary baldwin
Sent: Thursday, October 19, 2017 2:06 PM
To: Donna Thornton
Subject: Somers Bay transaction

Here is the revised transaction plan.

--

Gary Baldwin
Bedrock Materials Inc.
G & B Consulting
PO Box 588
Sidney, Mt 59270
206-498-0650

TRANSACTION SUMMARY FOR SOMERS BAY DEVELOPMENT - SOMERS, MONTANA

This summary is for a 300 acre development of 62 lots overlooking Flathead lake at Somers Bay, Montana. The owner is Dennis and Donna Thornton in the name of Thorco, which is their corporation hereinafter referred to as owner. The investor shall be referred to as investor in the following business summary. Here are the initial assumptions :

EXISTING FACTS:

- The 62 lots are 80% finished with roads, rock retaining walls, stream channels rocked in and a multiple lake system designed and almost finished. The cost of this work was approximately $16M and was accomplished solely by the owner, and he is willing to put another $6.4M into finishing it. Owner owns all the equipment to complete the project and has the knowledge and capability to finish this work.

TRANSACTION DETAIL:

Owner is willing to sell the project finished for $15M based on the existing design, and owner will allow purchaser 100% control of the project and owner will finish project to investor satisfaction as long as owner and investor agree on the final design that presently exists.

The appraisal for the finished project was $26M 5 years ago, after the 2008 market crash, and the appraiser has indicated an increase in value may exist at a 9 to 14% rate per year. Appraiser has indicated the value of the project has definitely gone up.

A CMA was done by a Realtor in 2005 (before the 2008 market crash) that indicated the finished project will be worth $40M to $45M. This value was without any lake access.

This transaction can proceed with the following contractual understanding:

1. A loan has been verbally committed to by a local bank for $6.4M to pay off the encumbrance and finish the project.

2. Investor commits an irrevocable letter of credit for $15M with which the bank will fund the $6.4M loan to owner to finish the project. This loan will be to the owner and secured by the property. Owner and investor both understand that owner does not get any money until he finishes each phase in incremental fashion on a draw basis for completed work, and any payment of his equity will not be accomplished until entire project is finished.

3. Upon final plat approval obtained by the owner and completion of the project to investor satisfaction, in a period of 3 years or less, the investor will have 100% ownership of the 62 lot completed project for a price of $15 million, payable to owner at that time. During the completion time line, owner and their associates will assist investor in pre-selling lots with owner supplying release clauses on each lot sale. It is assumed these lots will sell for $750K or more. With the addition of lake access the price will be higher. The lake access transaction will be under separate contract to this summary.

4.The bank funding this construction loan has indicated that they want all lending they can obtain on this property including vertical construction of houses.

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 48

Michael Klinkhammer, Esq.
Klinkhammer Law Offices
1111 S. Main
Kalispell Montana 59901
Telephone: (406) 257-7277
Facsimile: 888.414.1015

Attorney for Plaintiffs

MONTANA ELEVENTH JUDICIAL DISTRICT COURT
FLATHEAD COUNTY

DENNIS THORNTON and DONNA THORTON,	)	**Cause No. DV-18-336D**
Plaintiffs,	)	**Honorable Dan Wilson**
vs.	)	**AFFIDAVIT OF ED HARSHBARGER**
WHITEFISH CREDIT UNION,	)	
Defendant.	)	

* * * \

3. Apparently, Mr. Sheldon gave my contact information to Dennis Thornton as Mr. Thornton called me regarding an investment opportunity in September of 2017.
4. Mr. Thornton gave me contact information for Gary Baldwin of G.B. Consulting and Jim Kuhlman of Pure West Realty.
5. After speaking with Gary Baldwin, I decided to go Montana to view the Thorco property.
6. Mr. Baldwin had emailed me documents concerning the development such as maps, photos, engineering reports and the appraisal.
7. In October 2017, I went to Montana to meet Dennis and view the tracts of land. I toured the 300-acre tract, 200-acre tract, adjoining property and the adjoining national forest.
8. While in Montana, I met with the Surveyor and the Engineer who were responsible for the surveying and engineering of the project.
9. After viewing the property and meeting with the Surveyor and Engineer, I met Dennis Thornton and Gary Baldwin at a restaurant. At that meeting, Dennis Thornton told me that he would sell me the 300-acre tract of land for 15 million dollars if I would contract with him to complete the development work. It was estimated the completed development work would costs 7 million dollars.
10. At that meeting, I said to write it up. It was my intent to accept the offer.
11. Gary Baldwin began work on the agreement to purchase.
12. After that meeting, I went to the Courthouse to do my due diligence to confirm what I had been told.
13. At the Clerk and Recorder Office, I found a mortgage for approximately 3.5 million dollars owed on the property.
14. After that, I went to First American Title and they had no record of any agreement.

15. After that, I drove to Whitefish Montana to speak with representatives of the Whitefish Credit Union.
16. I spoke with a representative and provided him a copy of the Settlement Agreement that Mr. Thornton had provided me.
17. The Whitefish Credit Union representative left for a while and then came back and stated that he had spoken with the attorney that had been involved in the matter. According to that attorney, the property was in foreclosure and approximately 4.5 million was owed on it.
18. After the meeting at Whitefish Credit Union, I walked away from the deal and did not speak with Mr. Thornton for quite some time.
19. It was not until August 2, 2018 that I called Dennis Thornton. I asked Dennis if he still had the property. I said, if I was to write a check for 4.5 million dollars tomorrow and put it in front of the nose of that credit union, would that get you out of the foreclosure and could we get clear title. I said I would do that for 25% interest. .
20. Dennis asked where I got the impression he was in foreclosure.
21. I told Dennis how I had checked at the Clerk and Recorders office and First American Title and after speaking with them felt that Dennis had been deceitful with me.
22. I had to walk away from the project because I did not want to get involved in litigation.
23. I also walked away from the project at that time because the Agreement Mr. Thornton provided only had his signature and his wife's. He did not have a fully signed agreement for me to review.
24. I recently told Dennis that if he could get the foreclosure matter dealt with for 4.5

million dollars, I would write the check in exchange for a 25% ownership in the property.

Dated this 26th day of August, 2018.

Ed Harshberger, Affiant

SUBSCRIBED AND SWORN TO before me this 26 day of August, 2018, by Ed Harshberger.

Notary Public, State of Utah
Residing at: Payson
My Commission Expires: 7-05-2020

BRYAN DINKEL
NOTARY PUBLIC · STATE OF UTAH
COMMISSION# 689901
COMM. EXP. 07-05-2020

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 49

November 17, 2017

Dennis Thornton
Thorco, Inc.
151 Anatasia Ln
Kalispell, MT 59901

RE: Introductory Letter (Letter of Intent)

We have processed your request for Commercial Real Estate Financing and have issued a Letter of Intent based on a private money option. Enclosed is the LOI for your review.

To move forward we request an original signature on Letter of Intent and Due Diligence Fee returned to our office within date of expiration. Upon receipt, you're assigned a processor that will make immediate contact and assist through to closing along with a loan coordinator.

Contact us with any questions you may have in moving forward.

Thank you.

Processing Department

LETTER OF INTENT

November 17, 2017

Dennis Thornton
Thorco, Inc.
151 Amatasia Ln
Kalispell, MT 59901

We have received your financing request and based on the review of documentation provided we are issuing a letter of intent for financing which is subject to final receipt, review and approval of documents and information described below. the terms of this transaction are estimated as follows

Collateral (First Lien):	- 300 Acres – Land Development – Boon Road, Somers, MT 59932
Type of Financing:	Refinance *Private Money Program – Bridge Loan
Est. Finance Amount:	$2,000,000
Amortization:	Interest Only
Term:	3 Year Note
Rate:	12%
Points:	8
LTV 'As Is':	25% of the 'As Is' Value
Conditions:	Final approval is subject to:

- Acceptable Value Review and Potential Site Visit
- Acceptable Debt Servicing Capability, Exit Strategy and/or Interest Reserve
- Acceptable Title Report, Environmental Questionnaire and Survey
- Provide any additional documentation requested in a timely manner

Due Diligence Fee: **$1,850^{00}** fee is required upon signing of Letter of Intent, to cover expenses incurred with processing the loan. In the event client elects, not to close the Loan after acceptance of this term sheet we will apply fee towards costs incurred. In the event financing is not approved any unused portion may be credited to client. Borrower is responsible for additional third-party fees, expenses and closing costs. This is not a commitment to finance and is to be construed only as intent to define terms of financing subject to conditions outlined. Multiple factors such as income, assets and cash flow are considered in determining a final credit tiering at underwriters' discretion. This agreement is on a best efforts basis.

This Letter of Intent Expires Tuesday, November 28th, 2017.

Initials DT *Date* 11-20-17

Upon acceptance of these terms, please sign the signature block provided. Upon receipt of signed LOI and fee our processing team and closing coordinator will make immediate contact

Acceptance of terms outlined in Letter of Intent. Agreed and Acknowledged:

Dennis Thornton
Thorco, Inc.

Sincerely,

R. Habbard

Managing Director
Funding Edge / Power2Fund

For payment, the following options are available:

- *Company and/or Personal Checks. Cashier Checks & Money Orders are made payable to FundingEdge*
- *For Wire Transfers – request instructions*
- *ACH or credit card payments – we invoice through QuickBooks & will email upon request.*

Affidavit of Randy Giddings

I am a loan broker with **excellcommercialfundinggroup**. I was contacted by Dennis Thornton of Thorco Inc., in October of 2017. Dennis was looking for funding for a development project in Montana.

I put Dennis in direct contact with Leon Hubbard at Funding Edge & Power 2 Fund. On November 20, 2017, Funding Edge & Power 2 Fund issued a Letter of Intent to fund Thorco's request. This Letter of Intent was signed and returned along with a wire transfer of $1850.00. The loan was to close on or before December 5, 2017.

In early December Funding Edge & Power 2 Fund, Leon Hubbard, contacted me and told me the Letter of Intent had been rescinded, because of suspected fraud, the documentation and loan balances they researched did not match what Thorco had provided them.

Dated this 16th day of August, 2018

Signature of Affiant

Sworn to subscribed before me this 16th day of August, 2018

Notary Public

My Commission Expires:
6-3-2020

DIANNE MAHAN
Notary Public
State of Idaho

Wire Transfer Services

Outgoing Wire Transfer Request

WELLS FARGO

[illegible]			Wells Fargo Reference Number
Banker Name			Officer/Portfolio Number
Banker Phone	Branch Number	Banker AU	Banker MAC

Outgoing wires can only be sent for Wells Fargo customers. Provide the Customer Copy to the customer ensuring you give them the Wire Transfer Agreement on pages 3 and 4. Note: Wells Fargo Wire Transfer Services will route wires based on correspondent banking relationships. See the Wire Transfer Information for explanations of the Mexican CLABE number, the SWIFT BIC, the International Routing Code ("IRC"), Indian Financial System Code (IFSC) and the International Bank Account Number ("IBAN").

Originator's Information

Originator Name			Street Address	
Primary ID Type	Primary ID Description		Address Line 2	
Primary ID Country Prov	Primary ID Issue Date	Primary ID Expiration Date	Address Line 3	
Secondary ID Type	Secondary ID Description		City	State
Secondary ID State/Country	Secondary ID Issue Date	Secondary ID Expiration Date	ZIP/Postal Code	Country
Business Owner or Estate Name			Home Phone	Business Phone

Wire Amount and Source of Funds

Cost/A	Amount (US Dollars)	Debit Wells Fargo Account	Bank/COID

Beneficiary/Recipient Information (This is the ultimate recipient of the wire transfer funds)

Beneficiary/Recipient Name	Name/Address Line 1
Beneficiary Account Number/IBAN (Foreign)/CLABE (Mexico)	Name/Address Line 2
Address of Fund	Name/Address Line 3
	Beneficiary Phone Number
Address of Destination	

Beneficiary Bank (This is the financial institution where the beneficiary maintains their account.)

ABA/ICN | SWIFT/BIC | Beneficiary Bank Name

Beneficiary Bank Address | City | State

Additional Instructions

Wire Fees

Wells Fargo wire transfer fees will be charged to the Originator's Debit Account. Wells Fargo Wire Transfer Fees are disclosed in your most recent Fee and Information Schedule and related amendments and, if applicable, on the Wells Fargo Combined Disclosure for Outgoing Consumer International Wires. Additional fees from intermediary and beneficiary banks may be charged to international transactions. My signature here indicates agreement to all of the information on this Outgoing Wire Transfer Request and to the terms and conditions of this request. Wells Fargo is authorized to rely on the information on this Request in making the requested funds transfer.

Customer Signature

Originator Name

Originator Signature

[redacted]

☐ Submit manually | Date

☐ Signature not required

Affidavit

I Donna Thornton was with my husband Dennis Thornton in late November when we went to First American Title to check to see if First American had an escrow account set up for Thorco Inc. as required by the terms of the Settlement Agreement and Mutual Release entered into on June 8, 2016.

First American Title checked their records and with a place in Idaho and determined First American had no record of any escrow between Thorco and WFCU.

I was also present when my husband Dennis Thornton offered full payment of the $1,400,000 to First American Title.

First American Title stated they would not be able to accept payment because First American had no escrow account for the money to be deposited into.

I state above statement is true and correct to the best of my knowledge, under the penalty of perjury.

Donna Thornton 2-22-2021

Donna Thornton 2-22-2021

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 50

Thank you for this letter of explanation. Per your request and the contingency terms of our Buy Sell agreement on the Juniper Bay land purchase, I have sent the termination notice to the Seller's agent.

It is very regrettable that we have had to terminate this purchase due to the fault of Whitefish Credit Union not honoring their settlement agreement with you. The Juniper Bay land is a very key piece in your development
Plan for the Boon Road property. In order to maximize the value of future lot sales, convenient Flathead Lake access and amenities are crucial. Without this access, lot sale prices may be significantly reduced. Availability of other nearby lake front properties, without usage restrictions, is very limited. Hopefully, this property will remain available, at the same price as you had negotiated.

Thank you for the opportunity to work on this project.

Jim Kuhlman, Realtor

Pure West Real Estate
Bigfork, Montana

From: jim kuhlman
Sent: Monday, December 4, 2017 8:47 AM
To: thorco@centurytel.net
Subject: WCU Settlement Agreement

Dennis:

As your real estate agent, in researching related financial documentation pertinent to the Buy Sell agreements which you have on land sales transactions on your Boon Road property, I am unable to locate the counter signed and fully executed settlement agreement dated June 7, 2016 with Whitefish Credit Union. According to the agreement, $150,000 was to be released to Releasers and related release documents, including a purchase option, for $1.4 million, a release of WCU mortgages, and a Non-Merger Warranty Deed were to be placed in escrow with First American Title Company by WCU.

First American Title has confirmed with me that they have no record of receipt of the above mentioned documents nor have any of these documents been recorded, thus there is no record of full execution of this agreement. The copy of the agreement which I have does contain your accepted signature but no counter signatures from WCU.

It appears that WCU had accepted the agreement by payment of the $150,000 cash component but failed to sign the documents and to place them in escrow with First American Title. In order to meet the contingencies of the Buy Sell agreements which are pending, we need to have a copy of all fully executed documents. Can you or your representative obtain the fully executed and recorded documents from WCU as soon as possible so that we may proceed with the pending transactions.

Thank you,

Jim Kuhlman

Thank you for this letter of explanation. Per your request and the contingency terms of our Buy Sell agreement on the Juniper Bay land purchase, I have sent the termination notice to the Seller's agent.

It is very regrettable that we have had to terminate this purchase due to the fault of Whitefish Credit Union not honoring their settlement agreement with you. The Juniper Bay land is a very key piece in your development
Plan for the Boon Road property. In order to maximize the value of future lot sales, convenient Flathead Lake access and amenities are crucial. Without this access, lot sale prices may be significantly reduced. Availability of other nearby lake front properties, without usage restrictions, is very limited. Hopefully, this property will remain available, at the same price as you had negotiated.

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Thank you,

Jim Kuhlman

Realtor at PureWest Real Estate
Bigfork, MT 59911

406-270-4625
jim@purewestmt.com

From: Jim Kuhlman
Sent: Saturday, November 11, 2017 9:13 PM
To: thorco@centurytel.net
Subject: Fwd: Counter

Here we go, looks like a take it or leave it, but we're in the game

Sent from my iPhone

Begin forwarded message:

From: Scott Hollinger <scotthollingermt@gmail.com>
Date: November 11, 2017 at 8:59:47 PM MST
To: jim kuhlman <jim@purewestmt.com>, Kellie Hilley <khilley@montanasky.net>
Subject: Counter

Hi Jim,
Here is a counter offer. This is well below past counter offers she has made. She doesn't want a counter to this.
Good luck,
Scott

Scott Hollinger

The Hollinger Team
RE/MAX of Bigfork
cell: 406.253.7268
office: 406.837.5531
ScottHollingerMT@gmail.com
www.LastBestPlace.com

Happy, kind, grateful.

Schedule a call with me.

Here we go, looks like a take it or leave it, but we're in the game

Sent from my iPhone

Begin forwarded message:
> From: Scott Hollinger <scotthollingermt@gmail.com>
> Date: November 11, 2017 at 8:59:47 PM MST
> To: jim kuhlman <jim@purewestmt.com>, Kellie Hilley <khilley@montanasky.net>
> Subject: Counter
>
> Hi Jim,
> Here is a counter offer. This is well below past counter offers she has made. She doesn't want a counter to this.
> Good luck,
> Scott
>
>
> Scott Hollinger
>
> The Hollinger Team
> RE/MAX of Bigfork
> cell: 406.253.7268
> office: 406.837.5531
> ScottHollingerMT@gmail.com
> www.LastBestPlace.com
>
>
> Happy, kind, grateful.
>
> Schedule a call with me.

From: Jim Kuhlman
Sent: Monday, November 13, 2017 1:52 PM
To: Dennis and Donna
Subject: Re: buysell

Perfect, we are under contract

Sent from my iPhone

On Nov 13, 2017, at 1:31 PM, Dennis and Donna <thorco@centurytel.net> wrote:

-----Original Message-----
From: jim kuhlman
Sent: Tuesday, November 14, 2017 2:22 PM
To: thorco@centurytel.net
Subject: Juniper Bay Disclosure Statement

Dennis

Here is the Owners Disclosure Statement, pls initial each page under 'buyer", plus sign on any page that says "buyer". Just email it back to me.

Also, I need your mailing address for the title company.

Thanks,

Jim

-----Original Message-----
From: bigfork@purewestmt.com [mailto:bigfork@purewestmt.com]
Sent: Tuesday, November 14, 2017 12:58 PM
To: jim@purewestmt.com
Subject: Scanned image from MX-2615N

Reply to: bigfork@purewestmt.com <bigfork@purewestmt.com> Device Name: Not Set Device Model: MX-2615N
Location: Not Set

File Format: PDF MMR(G4)
Resolution: 300dpi x 300dpi

Attached file is scanned image in PDF format.
Use Acrobat(R)Reader(R) or Adobe(R)Reader(R) of Adobe Systems Incorporated to view the document.
Adobe(R)Reader(R) can be downloaded from the following URL:
Adobe, the Adobe logo, Acrobat, the Adobe PDF logo, and Reader are registered trademarks or trademarks of Adobe Systems Incorporated in the United States and other countries.

-----Original Message-----
From: jim kuhlman
Sent: Thursday, November 16, 2017 9:41 AM
To: thorco@centurytel.net
Subject: FW: FIRPTA

Dennis

Pls call & we can discuss.

Jim

-----Original Message-----
From: Samantha Vondrich [mailto:samantha_vondrich@alliancetitle.com]
Sent: Wednesday, November 15, 2017 10:27 AM
To: 'jim kuhlman'
Subject: FIRPTA

Jim,
Please contact Lori Miller's office regarding the IRS withhold requirements for Canadian seller's. Her contact number is 406-730-2752...
I provided this information to the seller and their agent as well, thank you!

SAMANTHA VONDRICH | ESCROW ASSISTANT | Alliance Title & Escrow Corp.
501 S. MAIN ST |KALISPELL, MT | 59901
Direct (406) 982-7166 | Fax - (406)756-7064 http://www.alliancetitle.com

*****CONSUMER PROTECTION ALERT: Please call our branch and verify wire transfer instructions verbally with your escrow officer prior to wiring funds.*****

Online Ordering | Online Tools | Find an Office Near You

This message (including any attachments) contains confidential information intended for a specific individual and purpose, and is protected by law. If you are not the intended recipient, you should delete this message. Any disclosure, copying, or distribution of this message, or the taking of any action based on it by unauthorized persons, is strictly prohibited.

-----Original Message-----
From: jim kuhlman [mailto:jim@purewestmt.com]
Sent: Tuesday, November 14, 2017 2:19 PM
To: Samantha Vondrich <samantha_vondrich@alliancetitle.com>
Subject: RE: 376167: Thorco, Inc.: Contact info EXTERNAL

Dennis & Donna Thorton

406-261-6814

I need to get the mailing address.

Jim

-----Original Message-----
From: Samantha Vondrich [mailto:samantha_vondrich@alliancetitle.com]

Sent: Tuesday, November 14, 2017 11:12 AM
To: James; Candace Johnson, PureWest Real Estate
Subject: 376167: Thorco, Inc.: Contact info

Hi Jim,
May I please get contact information for Thorco Inc?
Thanks!

Samantha Vondrich | Escrow Assistant | Alliance Title & Escrow Corp. 501 South Main (P.O. Box 879) Kalispell Montana | 59901 (406) 752-7606 | Fax Number (406) 756-7064 http://www.alliancetitle.com Online Ordering | Online Tools | Find an Office Near You *****CONSUMER PROTECTION ALERT: Please call our branch and verify wire transfer instructions verbally with your escrow officer prior to wiring funds.*****

-----Original Message-----
From: jim kuhlman
Sent: Tuesday, November 28, 2017 10:15 AM
To: thorco@centurytel.net
Subject: FW: 376167: NHN Juniper Bay Road, Somers, MT 59932: Thorco, Inc.: Commitment

Dennis

Here is the title commitment.

Jim

-----Original Message-----
From: Gina Hall [mailto:gina_hall@alliancetitle.com]
Sent: Wednesday, November 22, 2017 10:39 AM
To: Kellie Hilley, RE/MAX of Bigfork; Scott Hollinger, RE/MAX of Bigfork; Candace Johnson, PureWest Real Estate; James; Samantha Vondrich, Alliance Title & Escrow Corp.; Jessica Crofts, Alliance Title & Escrow Corp.
Subject: 376167: NHN Juniper Bay Road, Somers, MT 59932: Thorco, Inc.: Commitment

Hello,

Attached is the commitment for file number 376167. For your convenience, we have hyperlinked the following items within the commitment:

- Taxes
- Vesting deed
- Map
- Homeowners Association Covenants, Conditions, and Restrictions (CCRs) – if applicable

To access these additional documents, open the commitment and click on the

hyperlinks which are in blue font and underlined for easy identification.

Thank you for the opportunity to serve you. Your business is appreciated!

If you have any questions or need further assistance, please do not hesitate to contact Suzanne Smith at (406) 862-3094 or suzanne_smith@alliancetitle.com.

Sincerely,

Alliance Title & Escrow Corp.

Gina Hall | Title Operations Specialist | Alliance Title & Escrow Corp.
105 Pine Street | Sandpoint, Id. | 83864
Phone: 208-263-2125 | Toll Free: 800-355-8763 | Fax: 208-263-1784
http://www.alliancetitle.com

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ALLIANCE
TITLE & ESCROW CORP.

PRELIMINARY TITLE COMMITMENT ATTACHED

Date: November 22, 2017 **File No.:** 376167

Property: NHN Juniper Bay Road, Somers, MT 59932

Buyer/Borrower: Thorco, Inc.

Seller: 211821 Holding Ltd

In connection with the above referenced transaction, we are providing you with the following contact information. Enclosed please find your Title Commitment.

Listing Agent:
RE/MAX of Bigfork
8545 Hwy. 35, PO Box 725
Bigfork, MT 59911
Phone: (406)837-5531
shollinger@montanasky.net
Attn: Scott Hollinger

Selling Agent:
PureWest Real Estate
420 Electric Ave.
Bigfork, MT 59911
Phone: (406)837-7050
jim@purewestmt.com
Attn: James (Jim) Kuhlman

Seller:
211821 Holding Ltd
Box 176
Picture Butte, AB T0K 1V0

Buyer/Borrower:
Thorco, Inc.
PO Box 1557
Kalispell, MT 59903

ALLIANCE
TITLE & ESCROW CORP.

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 50

Commitment for Title Insurance

Subject to conditions and stipulations contained therein

Your contacts for this transaction are as follows:

Escrow Officer

Jessica Crofts
501 S Main St., PO Box 879
Kalispell, MT 59901
jessica_crofts@alliancetitle.com
(406) 752-7606

Title Officer

Suzanne Smith
suzanne_smith@alliancetitle.com
(406) 862-3094
501 S Main (PO Box 879)
Kalispell, MT 59901

Email escrow closing documents to:

kalispell@alliancetitle.com

ALLIANCE
TITLE & ESCROW CORP.

In an effort to assure that your transaction goes smoothly, please review the following checklist and contact your Escrow Officer or Title Officer if you answer "Yes" to any of the following:

- **Will you be using a Power of Attorney?**
- **Are any of the parties in title incapacitated or deceased?**
- **Has a change in marital status occurred for any of the principals?**
- **Will the property be transferred into or from a trust, partnership, corporation or Limited Liability Company?**
- **Has there been any construction on the property in the last six months?**

Remember, all parties signing documents must have a current driver's license or other valid government issued photo I.D.

ALLIANCE
TITLE & ESCROW CORP.

Title Fees & Breakdown

Coverage

Sales Price	$830,000.00			
Owners Coverage	X	Standard Coverage		Extended Coverage
Loan Amount				
Loan Coverage		Standard Coverage		Extended Coverage
Underwriter	Old Republic National Title Insurance Company			

Title Policy Calculations For Disclosure

Product	CD Disclosed Premiums	Actual Premiums	Premium Adjustments
Loan Policy	$0.00	$0.00	(Simultaneous Issue Credit) $0.00
Owner's Policy	$2,055.50	$2,055.50	(Short Term Discount. – If Any) $0.00

Other Borrower Fees

Endorsements:	
Inspection Fee	
Additional Chain	

Recording Fees

Idaho	$15 for a Deed less than 30 pages. $45 for a Deed of Trust/Mortgage with less than 30 pages. Otherwise, $10 for the first page, $3 for each additional page
Montana	$7 .00 per page for a standard/conforming document. Add an additional $10.00 per document if the document is non-conforming (outside the required margins etc.)
Washington	$74 for the first page of a Deed and $75 for the first page of a Deed of Trust with, $1 for each additional page
Wyoming	$12 for the first page, $3 for each additional page
E-File Fees	
Idaho	An additional $4.50 per document in Idaho
Wyoming, and Montana	An additional $5.00 per document in Wyoming & Montana

COMMITMENT FOR TITLE INSURANCE
ISSUED BY
OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

NOTICE

IMPORTANT—READ CAREFULLY: THIS COMMITMENT IS AN OFFER TO ISSUE ONE OR MORE TITLE INSURANCE POLICIES. ALL CLAIMS OR REMEDIES SOUGHT AGAINST THE COMPANY INVOLVING THE CONTENT OF THIS COMMITMENT OR THE POLICY MUST BE BASED SOLELY IN CONTRACT.

THIS COMMITMENT IS NOT AN ABSTRACT OF TITLE, REPORT OF THE CONDITION OF TITLE, LEGAL OPINION, OPINION OF TITLE, OR OTHER REPRESENTATION OF THE STATUS OF TITLE. THE PROCEDURES USED BY THE COMPANY TO DETERMINE INSURABILITY OF THE TITLE, INCLUDING ANY SEARCH AND EXAMINATION, ARE PROPRIETARY TO THE COMPANY, WERE PERFORMED SOLELY FOR THE BENEFIT OF THE COMPANY, AND CREATE NO EXTRACONTRACTUAL LIABILITY TO ANY PERSON, INCLUDING A PROPOSED INSURED.

THE COMPANY'S OBLIGATION UNDER THIS COMMITMENT IS TO ISSUE A POLICY TO A PROPOSED INSURED IDENTIFIED IN SCHEDULE A IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF THIS COMMITMENT. THE COMPANY HAS NO LIABILITY OR OBLIGATION INVOLVING THE CONTENT OF THIS COMMITMENT TO ANY OTHER PERSON.

COMMITMENT TO ISSUE POLICY

Subject to the Notice; Schedule B, Part I—Requirements; Schedule B, Part II—Exceptions; and the Commitment Conditions, Old Republic National Title Insurance Company, a Florida Corporation (the "Company"), commits to issue the Policy according to the terms and provisions of this Commitment. This Commitment is effective as of the Commitment Date shown in Schedule A for each Policy described in Schedule A, only when the Company has entered in Schedule A both the specified dollar amount as the Proposed Policy Amount and the name of the Proposed Insured.

If all of the Schedule B, Part I—Requirements have not been met within 180 Days after the Commitment Date, this Commitment terminates and the Company's liability and obligation end.

This page is only a part of a 2016 ALTA® Commitment for Title Insurance. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I—Requirements; and Schedule B, Part II—Exceptions.

Issued through the Office of Alliance Title & Escrow Corp.
9288 W Emerald, Ste. 102
Boise, ID 83704
(208)378-1666

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY
A Stock Company
400 Second Avenue South, Minneapolis, Minnesota 55401
(612) 371-1111

By _____ *President*

Attest _____ *Secretary*

Authorized Signatory

COMMITMENT CONDITIONS

1. **DEFINITIONS**
   - (a) "Knowledge" or "Known": Actual or imputed knowledge, but not constructive notice imparted by the Public Records.
   - (b) "Land": The land described in Schedule A and affixed improvements that by law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is to be insured by the Policy.
   - (c) "Mortgage": A mortgage, deed of trust, or other security instrument, including one evidenced by electronic means authorized by law.
   - (d) "Policy": Each contract of title insurance, in a form adopted by the American Land Title Association, issued or to be issued by the Company pursuant to this Commitment.
   - (e) "Proposed Insured": Each person identified in Schedule A as the Proposed Insured of each Policy to be issued pursuant to this Commitment.
   - (f) "Proposed Policy Amount": Each dollar amount specified in Schedule A as the Proposed Policy Amount of each Policy to be issued pursuant to this Commitment.
   - (g) "Public Records": Records established under state statutes at the Commitment Date for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge.
   - (h) "Title": The estate or interest described in Schedule A.

2. If all of the Schedule B, Part I—Requirements have not been met within the time period specified in the Commitment to Issue Policy, this Commitment terminates and the Company's liability and obligation end.

3. The Company's liability and obligation is limited by and this Commitment is not valid without:
   - (a) the Notice;
   - (b) the Commitment to Issue Policy;
   - (c) the Commitment Conditions;
   - (d) Schedule A;
   - (e) Schedule B, Part I—Requirements; and
   - (f) Schedule B, Part II—Exceptions; and
   - (g) a counter-signature by the Company or its issuing agent that may be in electronic form.

4. **COMPANY'S RIGHT TO AMEND**
   The Company may amend this Commitment at any time. If the Company amends this Commitment to add a defect, lien, encumbrance, adverse claim, or other matter recorded in the Public Records prior to the Commitment Date, any liability of the Company is limited by Commitment Condition 5. The Company shall not be liable for any other amendment to this Commitment.

5. **LIMITATIONS OF LIABILITY**
   - (a) The Company's liability under Commitment Condition 4 is limited to the Proposed Insured's actual expense incurred in the interval between the Company's delivery to the Proposed Insured of the Commitment and the delivery of the amended Commitment, resulting from the Proposed Insured's good faith reliance to:
     - (i) comply with the Schedule B, Part I—Requirements;
     - (ii) eliminate, with the Company's written consent, any Schedule B, Part II—Exceptions; or
     - (iii) acquire the Title or create the Mortgage covered by this Commitment.

(b) The Company shall not be liable under Commitment Condition 5(a) if the Proposed Insured requested the amendment or had Knowledge of the matter and did not notify the Company about it in writing.

(c) The Company will only have liability under Commitment Condition 4 if the Proposed Insured would not have incurred the expense had the Commitment included the added matter when the Commitment was first delivered to the Proposed Insured.

d) The Company's liability shall not exceed the lesser of the Proposed Insured's actual expense incurred in good faith and described in Commitment Conditions 5(a)(i) through 5(a)(iii) or the Proposed Policy Amount.

(e) The Company shall not be liable for the content of the Transaction Identification Data, if any.

(f) In no event shall the Company be obligated to issue the Policy referred to in this Commitment unless all of the Schedule B, Part I—Requirements have been met to the satisfaction of the Company.

(g) In any event, the Company's liability is limited by the terms and provisions of the Policy.

6. LIABILITY OF THE COMPANY MUST BE BASED ON THIS COMMITMENT

(a) Only a Proposed Insured identified in Schedule A, and no other person, may make a claim under this Commitment.

(b) Any claim must be based in contract and must be restricted solely to the terms and provisions of this Commitment.

(c) Until the Policy is issued, this Commitment, as last revised, is the exclusive and entire agreement between the parties with respect to the subject matter of this Commitment and supersedes all prior commitment negotiations, representations, and proposals of any kind, whether written or oral, express or implied, relating to the subject matter of this Commitment.

(d) The deletion or modification of any Schedule B, Part II—Exception does not constitute an agreement or obligation to provide coverage beyond the terms and provisions of this Commitment or the Policy.

(e) Any amendment or endorsement to this Commitment must be in writing and authenticated by a person authorized by the Company.

(f) When the Policy is issued, all liability and obligation under this Commitment will end and the Company's only liability will be under the Policy.

7. IF THIS COMMITMENT HAS BEEN ISSUED BY AN ISSUING AGENT

The issuing agent is the Company's agent only for the limited purpose of issuing title insurance commitments and policies. The issuing agent is not the Company's agent for the purpose of providing closing or settlement services.

8. PRO-FORMA POLICY

The Company may provide, at the request of a Proposed Insured, a pro-forma policy illustrating the coverage that the Company may provide. A pro-forma policy neither reflects the status of Title at the time that the pro-forma policy is delivered to a Proposed Insured, nor is it a commitment to insure.

9. ARBITRATION

The Policy contains an arbitration clause. All arbitrable matters when the Proposed Policy Amount is $2,000,000 or less shall be arbitrated at the option of either the Company or the Proposed Insured as the exclusive remedy of the parties. A Proposed Insured may review a copy of the arbitration rules at <http://www.alta.org/arbitration>.

Transaction Identification Data for reference only:
Issuing Agent: Alliance Title & Escrow Corp.
Issuing Office: 501 S Main (PO Box 879), Kalispell, MT 59901
Loan ID Number:
Customer Reference Number:
Issuing Office File Number: 376167
Property Address: NHN Juniper Bay Road, Somers, MT 59932
Revision Number: _____

SCHEDULE A

1. Commitment date: **October 30, 2017 at 7:30 A.M**

2. Policy or Policies to be issued:

(a) **2006 ALTA® Owner's Policy** [X] **Standard** [ ] **Extended**
Amount: **$830,000.00**
Premium: **$2,055.50**

Proposed Insured: **Thorco, Inc.**

(b) **2006 ALTA® Loan Policy** [ ] **Standard** [ ] **Extended**
Amount:
Premium: **$0.00**

Endorsements:

Proposed Insured:

3. The estate or interest in the Land described or referred to in this Commitment is FEE SIMPLE

4. Title to the FEE SIMPLE estate or interest in the Land is at the Commitment Date vested in:
211821 Holding Ltd

5. The Land is described as follows:

See Attached Exhibit 'A'

This page is only a part of a 2016 ALTA® Commitment for Title Insurance. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I—Requirements; and Schedule B, Part II—Exceptions.

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

BY:_____
Authorized Signatory

File No. 376167

Exhibit 'A'

Parcel 2 of Certificate of Survey No. 16827 a tract of land situated, lying and being in Lot 2 of Section 35 Township 27 North, Range 21, West P.M.M., Flathead County, Montana.

SCHEDULE B - SECTION I

REQUIREMENTS

The following requirements must be met:

1. The Proposed Insured must notify the Company in writing of the name of any party not referred to in this Commitment who will obtain an interest in the Land or who will make a loan on the Land. The Company may then make additional Requirements or Exceptions.
2. Pay the agreed amount for the estate or interest to be insured.
3. Pay the premiums, fees, and charges for the Policy to the Company.
4. Documents satisfactory to the Company that convey the Title or create the Mortgage to be insured, or both, must be properly authorized, executed, delivered, and recorded in the Public Records.
5. The Proposed Policy Amount(s) must be increased to the full value of the estate or interest being insured, and any additional premium must be paid. An Owner's policy shall be issued for not less than (1) the amount of the current sales price of the land and any existing improvements appurtenant thereto, or (2) if no sale is to be made, the amount equal to the value of the land and any existing improvements at the time of issuance of the policy. A Loan policy shall be for not less than (a) the full principal amount of the indebtedness secured by the insured mortgage and may include up to 20% in excess thereof to cover foreclosure costs, etc., or (b) if the indebtedness is secured by other collateral, then for not less than the unencumbered value of the land or the amount of the loan, whichever is the lesser. Proposed Policy Amount(s) will be revised and premiums charged consistent therewith when the final amounts are approved.
6. The company will require completion of an extended affidavit and indemnity by the owners of the property herein described.
7. The company will require the following document in order to insure a conveyance, lease, exchange, other disposition or encumbrance by the corporation named below:
   Corporation: Thorco, Inc., a corporation. An original or certified copy of the resolution of the Board of Directors authorizing the subject transaction.
8. Delivery to and approval by the Company of documentation authorizing transaction and setting forth parties authorized to execute documents on behalf of Thorco, Inc.
9. The company will require a copy of articles of organization, operating agreements, if any, and a current list of its members and managers for 211821 Holding Ltd.
10. The company will require a copy of certificate of registration for 211821 Holding Ltd.
11. Delivery to and approval by the Company of documentation authorizing transaction and setting forth parties authorized to execute documents on behalf of 211821 Holding Ltd.

Note No. 1: We find no activity in the past 24 months regarding transfer of title to subject property. We note the following transfer of title to subject property:
Warranty Deed
Grantor: Juniper Bay Investment Group, LLC
Grantee: 211821 Holding Ltd
Recorded: April 1, 2013
Instrument No.: 2013-000-07838

Note No. 2: As of the date hereof there are no matters against Thorco, Inc. which would appear as exceptions in the policy to issue, except as shown herein.

Note No. 3: In the event this transaction fails to close and this commitment is cancelled a fee will be charged complying with the state insurance code.

Note No. 4: According to the available County Assessor's Office records, the purported address of said land is:
NHN Juniper Bay Road, Somers, MT 59932

Note No. 5: We would like to take this opportunity to thank you for your business, and inform you that your Title Officer is Suzanne Smith, and your Escrow Officer is Jessica Crofts.

A copy of our Privacy Policy is available on our website at www.alliancetitle.com/About/Privacy-Policy or via email, or paper format upon request. Please contact your Title Officer if you would like to request a copy of our Privacy Policy.

SCHEDULE B - SECTION II

EXCEPTIONS

THIS COMMITMENT DOES NOT REPUBLISH ANY COVENANT, CONDITION, RESTRICTION, OR LIMITATION CONTAINED IN ANY DOCUMENT REFERRED TO IN THIS COMMITMENT TO THE EXTENT THAT THE SPECIFIC COVENANT, CONDITION, RESTRICTION, OR LIMITATION VIOLATES STATE OR FEDERAL LAW BASED ON RACE, COLOR, RELIGION, SEX, SEXUAL ORIENTATION, GENDER IDENTITY, HANDICAP, FAMILIAL STATUS, OR NATIONAL ORIGIN.

The Policy will not insure against loss or damage resulting from the terms and provisions of any lease or easement identified in Schedule A, and will include the following Exceptions unless cleared to the satisfaction of the Company:

1. Any defect, lien, encumbrance, adverse claim, or other matter that appears for the first time in the Public Records or is created, attaches, or is disclosed between the Commitment Date and the date on which all of the Schedule B, Part I—Requirements are met.
2. Rights or claims of parties in possession not shown by the public records.
3. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land.
4. Easements, or claims of easements, not shown by the public records.
5. Any lien, or right to a lien, for services, labor, or material heretofore or hereafter furnished, imposed by law and not shown by the public records.
6. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights or easements appurtenant to water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the public records.
7. Taxes or special assessments which are not shown as existing liens by the public records of any taxing authority that levies taxes or assessments on real property or by the public records. Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
8. County road rights-of-way not shown by the Public Records, including, but not limited to any right of the Public and the County of Flathead to use and occupy those certain roads and trails as depicted on County Surveyor's maps on file in the office of the County Surveyor of Flathead County.
9. All minerals in or under said land including but not limited to metals, oil, gas, coal, stone and mineral rights, mining rights and easement rights or other matters relating thereto, whether expressed or implied.
10. Taxes, including any assessments collected therewith, Parcel # 29-0152350, for the year 2017 in the amount of $7,566.00 which are payable but not delinquent.
11. Liens, levies and assessments of the Lakeside County Water & Sewer District.

12. Reservations and exceptions in the United States Patent, and in the act authorizing the issuance thereof.
Recorded: July 22, 1897.
Book: 29 at Page: 87
Official Records: Flathead County.

13. Rights of the State of Montana in and to that portion of said premises, if any, lying in the bed or former bed of the Flathead Lake, if it is navigable.

14. Any question of location, boundary or area related to the Flathead Lake, including, but not limited to, any past or future changes in it.

15. Any prohibition or limitation on the use, occupancy, or improvements of the Land resulting from the rights of the public, appropriators, or riparian owners to use any waters, which may now cover the Land or to use any portion of the Land which is now or may formerly have been covered by water.

16. The right of the Public to use, for recreational and navigational purposes, any portion of said premises lying below or beyond the high-water line of Flathead Lake, or lying below or beyond the government meander line, together with the right to use any portions of said premises lying above the high-water line to portage around barriers.

17. An easement for the purpose shown below and rights incidental thereto as set forth in a document:
Granted To: Margaret Katherine Drew
Purpose: Road purposes
Recorded: November 1, 1937
Book 215, Page 345

18. An easement for the purpose shown below and rights incidental thereto as set forth in document:
Granted To: Rocky Mountain Power Company
Purpose: Public Utilities
Recorded: December 13, 1937
Instrument No.: 4018
Book: 231, Page: 63

19. Easement granted to Montana Power Company
Purpose: To control and regulate the waters of Flathead Lake
Recorded: September 15, 1938.
Book: 229, Page: 485

20. An easement for the purpose shown below and rights incidental thereto as set forth in a document:
Granted To: Ruby MacDonell
Purpose: Right of way for pipeline
Recorded: February 6, 1947
Book 280, Page 121

21. An easement for the purpose shown below and rights incidental thereto as set forth in a document:
Granted To: Mary L. Cobb
Purpose: Right of way for water pipeline
Recorded: October 2, 1950
Book 316, Page 308

22. An easement for the purpose shown below and rights incidental thereto as set forth in a document:
Granted To: Mary L. Cobb
Purpose: 30 foot road easement
Recorded: October 2, 1950
Book 316, Page 308

23. Reservations contained in the deed to the State of Montana.
Recorded: December 27, 1961
Instrument No.: 8970
Book: 445, Page: 269

Deed Exhibit No. 62
Recorded: December 27, 1961
Instrument No.: 8969

24. Easements reservations and dedications, as shown on Certificate of Survey 9315.
Recorded: September 2, 1988
Instrument No.: 88-246-10300

25. An easement for the purpose shown below and rights incidental thereto as set forth in a document:
Granted To: The Montana Power Company
Purpose: Pipeline easement
Recorded: November 17, 1997
Instrument No.: 1997-321-10190

26. An easement for the purpose shown below and rights incidental thereto as set forth in a document:
Granted To: The Montana Power Company
Purpose: Pipeline easement
Recorded: January 7, 1998
Instrument No.: 1998-007-09140

27. An easement for the purpose shown below and rights incidental thereto as set forth in a document:
Granted To: The Montana Power Company
Purpose: Pipeline easement
Recorded: January 15, 1998
Instrument No.: 1998-015-09500

28. An easement for the purpose shown below and rights incidental thereto as set forth in a document:
Granted To: Lakeside County Water and Sewer District
Purpose: The right to install, repair, maintain, alter, replace and operate sewers
Recorded: June 7, 2002
Instrument No.: 2002-158-13550

29. An easement for the purpose shown below and rights incidental thereto as set forth in a document:
Granted To: Lakeside County Water and Sewer District
Purpose: The right to install, repair, maintain, alter, replace and operate sewers
Recorded: June 7, 2002
Instrument No.: 2002-158-13570

30. An easement for the purpose shown below and rights incidental thereto as set forth in a document:
Granted To: Lakeside County Water and Sewer District
Purpose: The right to install, repair, maintain, alter, replace and operate sewers
Recorded: June 7, 2002
Instrument No.: 2002-158-13580

31. An easement for the purpose shown below and rights incidental thereto as set forth in a document:
Granted To: Lakeside County Water and Sewer District
Purpose: The right to install, repair, maintain, alter, replace and operate sewers
Recorded: June 7, 2002
Instrument No.: 2002-158-13590

32. Terms, provisions, covenants, conditions, definitions, options, obligations and restrictions, contained in a document
Purpose: Certificate of Inclusion of Additional Territory
Recorded: February 11, 2003
Instrument No.: 2003-042-09300

33. Terms, provisions, covenants, conditions, definitions, options, obligations and restrictions, contained in a document
Purpose: Certificate of Inclusion of Additional Territory
Recorded: May 20, 2005
Instrument No.: 2005-140-13110

34. Easements reservations and dedications, as shown on Certificate of Survey 16827.
Recorded: August 3, 2005
Instrument No.: 2005-215-12340

35. Terms and provisions of State of Montana, Department of Environmental Quality, Certificate of Subdivision Plat Approval, recorded August 3, 2005 with Instrument No. 2005-215-12340, of Official Records.

36. An easement for the purpose shown below and rights incidental thereto as set forth in a document:
Granted To: Dennis H. McCarthy and Allison J. McCarthy; Daniel C. Bangeman; R. Burce Jellison and Elizabeth A. Jellison; Harley R. Remington and Jean Remington; Jean P. Burns and J. Dawson Burns, Trustees of the Burns Family Trust 1992; Eloise J. Backer and Steve Backer; Eric Hurst and Janice Hurst; and Myron K. Strand and Marilyn J. Strand
Purpose: A permanent easement and right of way, for ingress, egress and roadway purposes
Recorded: February 14, 2007
Instrument No.: 2007-045-12530

37. An easement for the purpose shown below and rights incidental thereto as set forth in a document:
Granted To: Dennis H. McCarthy and Allison J. McCarthy; Daniel C. Bangeman; R. Bruce Jellison and Elizabeth A. Jellison; Harley R. Remington and Jean Remington; Jean P. Burns and J. Dawson Burns, Trustees of the Burns Family Trust 1992; Eloise J. Backer and Steve Backer; Eric Hurst and Janice Hurst; and Myron K. Strand and Marilyn J. Strand
Purpose: A permanent easement and right of way, for ingress, egress and roadway purposes
Recorded: November 2, 2007
Instrument No.: 2007-000-33650

38. An easement for the purpose shown below and rights incidental thereto as set forth in document:
Granted To: Flathead Electric Cooperative, Inc.
Purpose: Public Utilities
Recorded: December 13, 2007
Instrument No.: 2007-000-37540

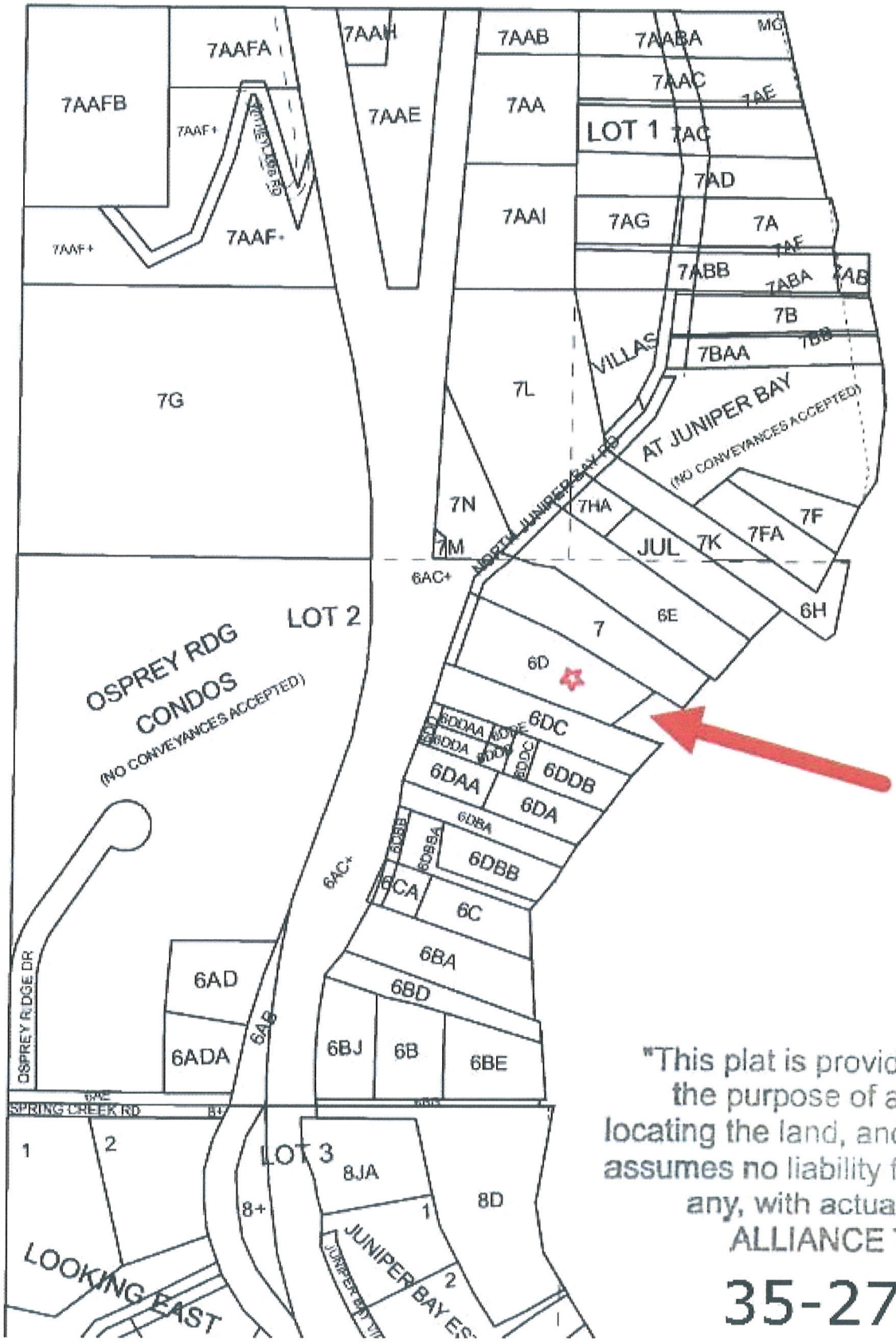
39. Terms, provisions, covenants, conditions, definitions, options, obligations and restrictions, contained in a document
Purpose: Easement agreement
Recorded: April 9, 2008
Instrument No.: 2008-000-09502

40. Terms, provisions, covenants, conditions, definitions, options, obligations and restrictions, contained in a document
Purpose: Shared Well Water Agreement
Recorded: March 23, 2010
Instrument No.: 2010-000-06713

41. An easement for the purpose shown below and rights incidental thereto as set forth in a document:
    Granted To: Juniper Bay Investment Group, LLC, a Montana Limited Liability Company
    Purpose: Permanent easement and right of way, for ingress, egress and roadway purposes
    Recorded: March 26, 2010
    Instrument No.: 2010-000-07096

42. Terms, provisions, covenants, conditions, definitions, options, obligations and restrictions, contained in a document
    Purpose: Amendment to Interlocal Agreement
    Recorded: November 26, 2012
    Instrument No.: 2012-000-17983

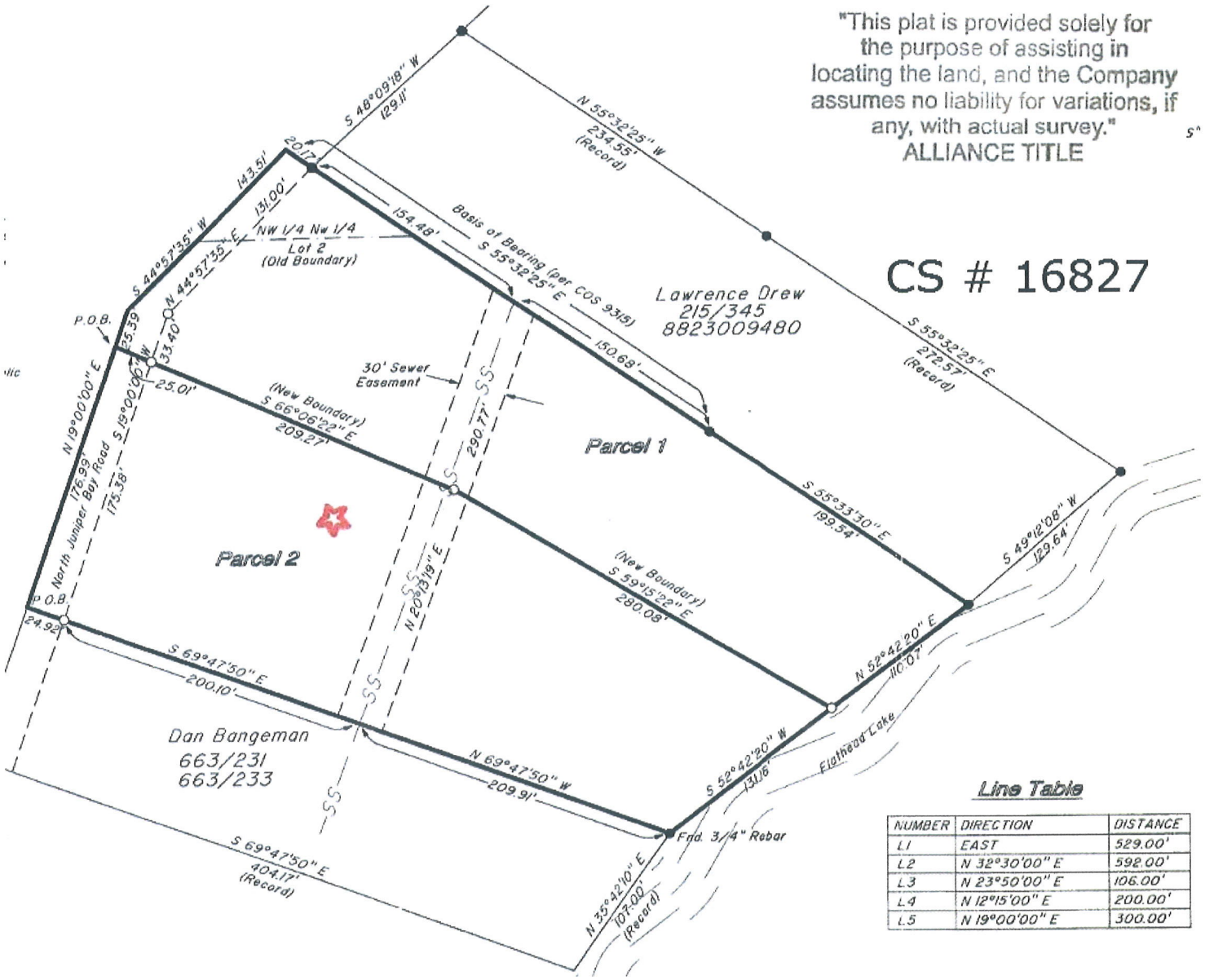
END OF SCHEDULE B



"This plat is provided solely for the purpose of assisting in locating the land, and the Company assumes no liability for variations, if any, with actual survey."
ALLIANCE TITLE

35-27-21

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 50



Line Table

NUMBER	DIRECTION	DISTANCE
L1	EAST	529.00'
L2	N 32°30'00" E	592.00'
L3	N 23°50'00" E	106.00'
L4	N 12°15'00" E	200.00'
L5	N 19°00'00" E	300.00'

Receipt For Check (Personal)
Alliance Title & Escrow Corp.

Glacier Bank FSB - Trust Account, ABA: 292970825, Account: XXXXXXXX8496

Receipt Number: 1106
File Number: 377820
Property Address: NHN Boon Road, Somers, MT 59932
Printed Date: 12/1/2017 2:56:03 PM
Received Date: 12/01/2017
Received By: Amber Cooper
Amount: **$10,000.00**
Payor: Jeffrey Cameron
Bank:
Account Number:
Routing Number:

Memo:
Note:

Description	Amount
Deposit	$10,000.00
	$10,000.00

Amber Cooper 12/1/2017 2:56:03 PM

Received By Amber Cooper **Date**

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 51

From: kim.barstow@yahoo.com

Sent: Friday, February 2, 2018 5:48 PM
To: 'Dennis and Donna'
Subject: RE: funding

Dennis and Donna

I am unable to put a transaction together with my buyer. The title commitment I received from Alliance on November 28, 2017, Schedule B, Exception 24 shows a Mortgage to secure an indebtedness of $3,360,000.

The Settlement Agreement between you and WCU showed an amount of $1,400,000. The Lender will not looking at any buy/sell due to the fact the settlement amount isn't viable.

I have a copy of the Title Commitment if you need it.

Any questions please let me know.

Kim

Kim Barstow "Coach Kim"
Commercial and Residential Realtor
431 1st Ave W | Kalispell MT 59901
Office: 406.752.8883 | Mobile: 406.250.2560 | Direct: 406.407.9030
Website: www.FlatheadValleyBrokers.com | Email: CoachKim@Outlook.com

From: Kim Barstow
Sent: Monday, January 8, 2018 7:15 PM
To: Dennis Thorton
Subject: Earnest money reimbursement Jeffrey Cameron - Earnest Money Deposit Disburseme

AuthentiSIGN®

Signing Document Delivery

Attention: Dennis Thorton

This notification is letting you know that the Authentisign E-Signature Process:

Name: **Jeffrey Cameron - Earnest Money Deposit Disburseme**

has been successfully reviewed and signed by all parties.

To save or print the final signed document Click Here.

To download a copy of the certificate of validation and completion Click Here.
To access the signing dashboard with additional information Click Here.

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For more information please visit Instanet Solutions at www.instanetsolutions.com.

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 51

From: Kim Barstow
Sent: Wednesday, November 22, 2017 1:16 PM
To: thorco@centurytel.net
Subject: buysell for John and Jeff

Kim Barstow
"Coach Kim"
Realtor
Commercial and Residential Properties
Flathead Valley Brokers
431 1st Ave West - Kalispell, MT 59901
406-752-8883 Office
406-407-9030 Direct
406-250-2560 Cell (Best)

FVB
FLATHEAD VALLEY
BROKERS
REDEFINING REAL ESTATE

BUY-SELL AGREEMENT (Land)

REALTOR® EQUAL HOUSING OPPORTUNITY

This Agreement stipulates the terms of sale of this property. Read carefully before signing. This is a legally binding contract. If not understood, seek competent advice.

Date: 11/10/2017

Jeffrey Cameron, as ☐ joint tenants with rights of survivorship, ☐ tenants in common, ☒ single in his/her own right, ☐ Other _____ _____ (hereinafter called "Buyer") agrees to purchase, and the Seller agrees to sell the following described real property (hereinafter referred to as "Property"), commonly known as NHN Boon Road 59932 in the City of Somers, County of Flathead. Montana, legally described as:

See attached legal descriptions for Parcels (Lots 1-12)

TOGETHER with all interest of Seller in vacated streets and alleys adjacent thereto, all easements and other appurtenances thereto, uncut timber and non-harvested crops and all improvements thereon except: None.

PERSONAL PROPERTY: The following items of personal property, free of liens and without warranty of condition, are included and shall be transferred by the bill of sale: None

PURCHASE PRICE AND TERMS:

$ 2,100,000.00 Purchase Price: Two Million One Hundred Thousand (U.S. Dollars)

$ 40,000.00 Earnest Money (credited to Buyer at closing)

$ 2,060,000.00 Balance Due (not including closing costs, prepaids and prorations) payable as follows (check one):

☐ All cash at closing (no financing contingency); OR

☐ Additional cash down payment at closing in the minimum amount of:

☐ $ _____ ☐ **OR** _____ % of the Purchase Price.

Balance to be financed as indicated below:

☒ Conventional ☐ Other Financing ☐ Seller Financing ☐ Assumption ☐ Home Equity

☒ Other _____

CLOSING DATE: The date of closing shall be (date) On or before 1.3.18 (the "Closing Date"). The parties may, by mutual agreement, close the transaction anticipated by this Agreement at any time prior to the date specified. The Buyer and Seller will deposit with the closing agent all instruments and funds necessary to complete the purchase in accordance with this Agreement. If third party financing is required by the terms of this Agreement (including assumptions, contracts for deed, and lender financing), the Closing Date may be extended without amendment by not more than 10 days to accommodate delays attributable solely to such third party financing.

POSSESSION: Seller shall deliver to Buyer possession of the property and allow occupancy:

☐ when the closing agent is in receipt of all required, signed documents and all funds necessary for the purchase; OR

☐ on the date of recording the deed, notice of purchaser's interest, OR

☒ At acceptance of the buysell

Seller shall provide keys and/or means to operate locks, mailboxes, security systems, alarms, garage door opener(s), and Homeowner's Association facilities, if applicable.

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This form presented by Kim Barstow | Flathead Valley Brokers | (406) 250-2560 | coachkim@FVBMT.com

InstanetFORMS

PAYMENT/RECEIPT OF EARNEST MONEY: Buyer agrees to provide Earnest Money in the amount of _____ Forty Thousand _____ U.S. Dollars ($ 40,000.00) as evidenced by ☐ Cash; OR ☒ Check, the receipt of which is acknowledged by the undersigned Broker/Salesperson; ☐ OR, _____ _____ .

Kim Barstow _____

(Broker/Salesperson's Printed Name and Phone Number) (Signature of Broker/Salesperson)

To be signed only if in actual receipt of cash or check

If Buyer fails to pay the Earnest Money as set forth above, Buyer will be in default of this Agreement and Seller shall be entitled to immediately terminate this Agreement and declare any Earnest Money already paid by Buyer to be forfeited.

DEPOSIT OF EARNEST MONEY: All parties to this transaction agree, unless otherwise provided herein, that the earnest monies will be deposited or delivered by the Broker/Salesperson listed above within (_____) business days of the date all parties have signed the Agreement or _____ and such funds will be held in a trust account by _____ .

The parties agree that interest accruing on earnest money, if any, while deposited shall be payable to the holder of the earnest money unless otherwise agreed herein. If interest is payable to the holder of the earnest money it is agreed that sums so paid are consideration for services rendered.

The parties authorize the holder of the earnest money to forward to the closing agent, upon its request, all or any portion of the earnest money required to complete the closing of the transaction.

FINANCING CONDITIONS AND OBLIGATIONS:

BUYER'S REPRESENTATION OF FUNDS: Buyer represents that they have sufficient funds for the down payment and closing costs to close this sale in accordance with this Agreement and are not relying upon any contingent source of such funds unless otherwise expressly set forth herein.

LOAN APPLICATION: If Buyer fails to make written application for financing and pay to the lender any required fees, apply for assumption of an existing loan or contract, or initiate any action required for completion of a contract for deed by 5:00 P.M. (Mountain Time) (date) _____ Complete _____ Buyer will be in breach of this Agreement and Seller can exercise Seller's remedies under this Agreement.

CONTINGENCIES: The contingencies set forth in this Agreement or on attached addenda shall be deemed to have been released, waived, or satisfied, and the transaction shall continue to closing, unless, by 5:00 p.m. (Mountain Time) on the date specified for each contingency, the party requesting that contingency has notified the other party or the other party's Broker/Salesperson in writing that the contingency is not released, waived, or satisfied. If a party has notified the other party on or before the release date that a contingency is not released, waived, or satisfied, the transaction is terminated, and the earnest money will be returned to the Buyer, unless the parties negotiate other terms or provisions.

FINANCING CONTINGENCY:

☐ This Agreement is contingent upon Buyer obtaining the financing specified in the section of this Agreement entitled "PURCHASE PRICE AND TERMS". If financing cannot be obtained by the Closing Date this Agreement is terminated and the earnest money will be refunded to the Buyer; **OR**

☒ This Agreement is contingent upon Buyer obtaining the financing specified in the section of this Agreement entitled "PURCHASE PRICE AND TERMS." Release Date: 12/15/2017 .

APPRAISAL CONTINGENCY:

☐ Property must appraise for at least ☐ the Purchase Price **OR** at least ☐ $_____ . If the Property does not appraise for at least the specified amount, this Agreement is terminated and earnest money refunded to the Buyer unless the Buyer elects to proceed with closing this Agreement without regard to appraised value. Written notice of Buyer's election to proceed shall be given to Seller or Seller's Broker/Salesperson within _____ days of Buyer or Buyer's Broker/Salesperson receiving notice of appraised value; **OR**

☒ This agreement is contingent upon the Property appraising for at least ☒ the Purchase Price **OR** at least ☐ $_____ . Release Date: 11/30/2017 .

TITLE CONTINGENCY: This Agreement is contingent upon Buyer's receipt and approval (to Buyer's satisfaction) of the preliminary title commitment (the "Commitment") issued for the Property. Release Date: 5 days from Buyer's or Buyer Broker's/Salesperson's receipt of the Commitment.

Buyer may approve the Commitment subject to the removal of specified exceptions. However, Buyer may not object to the standard pre-printed exceptions (general exceptions not unique to the Property). If Buyer provides Seller written objections to the Commitment prior to the release date above, Seller shall have ten (10) days from receipt of those objections to satisfy said objections or propose to Buyer a plan by which the objections would be satisfied within a time frame satisfactory to Buyer. If within said ten (10) day period Seller has not either satisfied Buyer's objection to the Commitment or proposed to Buyer a plan by which the objections would be satisfied, Buyer shall have three (3) days after expiration of said ten (10) day period to notify Seller whether Buyer desires to (i) terminate this Agreement in which case the earnest money shall be returned to the Buyer or (ii) waive said objections in which case this Agreement shall remain in full force and effect. The two remedies stated above shall be Buyer's sole remedies if Seller and Buyer are unable to resolve Buyer's objections to the Commitment.

PROPERTY INVESTIGATION: This offer is contingent upon Buyer's independent investigation of the following conditions relating to the property, including but not limited to; covenants, zoning, access, easements, well depths, septic and sanitation restrictions, surveys or other means of establishing the corners and boundaries, special improvement districts, restrictions affecting use, special building requirements, future assessments, utility hook up and installation costs, environmental hazards, airport affected area, road maintenance obligations or anything else Buyer deems appropriate. Buyer agrees that any investigations or inspections undertaken by Buyer or on his/her behalf shall not damage or destroy the property, without the prior written consent of Seller. Further, Buyer agrees to return the property to its original condition and to indemnify Seller from any damage or destruction to the property caused by the Buyer's investigations or inspections, if Buyer does not purchase the property. Release Date: 11/30/2017 .

This offer is contingent upon _____

_____ Release Date: _____

This offer is contingent upon _____

_____ Release Date: _____

ADDITIONAL PROVISIONS:

Buyer and seller to determine how water rights to be transferred to each lot at closing.

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CONVEYANCE: The Seller shall convey the real property by General Warranty deed, free of all liens and encumbrances except those described in the title insurance commitment, as approved by Buyer. The Seller shall convey the personal property by Bill of Sale.

WATER: All water, including surface water or ground water, any legal entitlement to water, including statements of claim, certificates of water rights, permits to appropriate water, exempt existing rights, decreed basins or any ditches, ditch rights, or ditch easements appurtenant to and/or used in connection with the Property are included with the Property, except _____.

Filing or transfer fees will be paid by ☐ Seller, ☐ Buyer, ☐ split equally between Buyer and Seller.
Documents for transfer will be prepared by Alliance Title.

WATER RIGHT OWNERSHIP UPDATE DISCLOSURE: By Montana law, failure of the parties at closing or transfer of real property to pay the required fee to the Montana Department of Natural Resources and Conservation for updating water right ownership may result in the transferee of the property being subject to a penalty. Additionally, in the case of water rights being exempted, severed, or divided, the failure of the parties to comply with section 85-2-424, MCA, could result in a penalty against the transferee and rejection of the deed for recording.

MINERAL RIGHTS: "Mineral rights" is a term used to describe the rights the owner of those rights has to use, mine, and/or produce any or all of the minerals and hydrocarbons including oil, gas, coal, sand, gravel, etc. lying below the surface of property. These mineral rights may be separate from the rights a property owner has for the surface of a property. In some cases, these mineral rights have been transferred to a party other than the property owner and as a result the subsurface mineral rights have been severed from the property owner's surface rights. If the mineral rights have been severed from the surface rights, the owner of the mineral rights has the right to enter the land and occupy it in order to mine the minerals even though they don't own the property. The undersigned Buyer acknowledges and agrees that neither the Seller nor the brokerage firms, brokers and salespersons involved in the transaction anticipated by this Agreement warrant or make any representations concerning the mineral rights, if any, for this Property and that neither the Seller nor the brokerage firms, brokers and salespersons involved in the Buyer's purchase of the Property have conducted an inspection or analysis of the mineral rights to and for the Property.

CLOSING AGENTS FEES: Closing agents fees will be paid by ☐ Seller ☐ Buyer ☒ Equally Shared.

TITLE INSURANCE: Seller, at Seller's expense and from a title insurance company chosen by Seller, shall furnish Buyer with an ALTA Standard Coverage Owners Title Insurance Policy (as evidenced by a standard form American Land Title Association title insurance commitment) in an amount equal to the purchase price. Buyer may purchase additional owner's title insurance coverage in the form of "Extended Coverage" or "Enhanced Coverage" for an additional cost to the buyer. It is recommended that buyer obtain details from a title company.

CONDITION OF TITLE: All mortgages, judgements and liens shall be paid or satisfied by the Seller at or prior to closing unless otherwise provided herein. Seller agrees that no additional encumbrances, restrictions, easements or other adverse title conditions will be placed against the title to the property subsequent to the effective date of the preliminary title commitment approved by the Buyer.

SECTION 1031 LIKE-KIND EXCHANGE: If either Buyer or Seller intends for this transaction to be part of a Section 1031 like-kind exchange, then the other party shall cooperate in the completion of the like-kind exchange provided the cooperating party does not incur any additional liability or cost in doing so. Any party who intends for this transaction to be part of a Section 1031 like-kind exchange may assign their rights under this Agreement to a qualified intermediary or any entity expressly created for the purposes of completing a Section 1031 like-kind exchange, notwithstanding the prohibition against the Buyer's assignment of this Agreement set forth in the "Binding Effect and Non-Assignability" section below.

SPECIAL IMPROVEMENT DISTRICTS: Special Improvement Districts (including rural SIDs), including those that have been noticed to Seller by City/County but not yet spread or currently assessed, if any, will be:

☐ paid off by Seller at closing;
☐ assumed by Buyer at closing; OR
☒ Any to be disclosed prior to closing

All perpetual SIDs shall be assumed by Buyer.

ASSOCIATION SPECIAL ASSESSMENTS: Any special or non-recurring assessments of any non-governmental association, including those that have been approved but not yet billed or assessed, will be:

☐ paid off by Seller at closing;

☐ assumed by Buyer at closing; OR

☒ Any to be disclosed prior to closing

PRORATION OF TAXES AND ASSESSMENTS: Seller and Buyer agree to prorate taxes, Special Improvement District assessments for the current tax year, as well as pre-paid rents, water and sewer system charges, heating fuel and tank rental, irrigation assessments, Homeowner's Association dues and/or common maintenance fees, if any, as of the date of closing unless otherwise agreed and: _____

_____

_____

_____

CONDITION OF PROPERTY: Seller agrees that the Property shall be in the same condition, normal wear and tear excepted, from the date of the execution of this Agreement up to the time Buyer takes possession of the Property. Seller will remove all personal property not included in this sale prior to closing.

NOXIOUS WEEDS DISCLOSURE: Buyers of property in the state of Montana should be aware that some properties contain noxious weeds. The laws of the State of Montana require owners of property within this state to control, and to the extent possible, eradicate noxious weeds. For information concerning noxious weeds and your obligations as an owner of property, contact either your local County extension agent or Weed Control Board.

MEGAN'S LAW DISCLOSURE: Pursuant to the provisions of Title 46, Chapter 23, Part 5 of the Montana Code Annotated, certain individuals are required to register their address with the local law enforcement agencies as part of Montana's Sexual and Violent Offender Registration Act. In some communities, law enforcement offices will make the information concerning registered offenders available to the public. If you desire further information please contact the local County Sheriff's office, the Montana Department of Justice, in Helena, Montana, and the probation officers assigned to the area.

BUYER'S REMEDIES: (A) If the Seller fails to accept the offer contained in this Agreement within the time period provided in the BUYER'S COMMITMENT section, all earnest monies shall be returned to the Buyer. (B) If the Seller accepts the offer contained in this Agreement, but refuses or neglects to consummate the transaction within the time period provided in this Agreement, the Buyer may:

(1) Demand immediate repayment of all monies that Buyer has paid as earnest money, and upon the return of such money, the rights and duties of Buyer and Seller under this Agreement shall be terminated; OR

(2) Demand that Seller specifically perform Seller's obligation under this Agreement; OR

(3) Demand monetary damages from Seller for Seller's failure to perform the terms of this Agreement.

SELLER'S REMEDIES: If the Seller accepts the offer contained in this Agreement and Buyer refuses or neglects to consummate the transaction within the time period provided in this Agreement, the Seller may:

(1) Declare the earnest money paid by Buyer be forfeited; OR

(2) Demand that Buyer specifically perform Buyer's duties and obligations under this Agreement; OR

(3) Demand that Buyer pay monetary damages for Buyer's failure to perform the terms of this Agreement.

BUYER'S AND SELLER'S CERTIFICATION: By entering into this Agreement, each person or persons executing this Agreement, as Buyer or Seller, represents that he/she is eighteen (18) years of age or older, of sound mind, and legally competent to own or transfer real property in the State of Montana; and, if acting on behalf of a corporation, partnership, or other non-human entity, that he/she is duly authorized to enter into this Agreement on behalf of such entity.

FOREIGN PERSON OR ENTITY: Section 1445 of the Internal Revenue Code provides for the withholding of tax upon the sale of U.S. real property owned by a foreign entity or foreign person unless the amount realized (usually the sales price) does not exceed $300,000 and the Buyer intends to use the property as a residence. If the Seller is a foreign entity or foreign person, Seller acknowledges and agrees that the Buyer or closing agent is required to deduct and withhold the applicable tax from the proceeds of sale at closing and submit the tax to the Internal Revenue Service unless the transfer of the property satisfies an exception provided for in Section 1445 of the Internal Revenue Code.

AGRICULTURAL FOREIGN INVESTMENT DISCLOSURE ACT: The Agricultural Foreign Investment Disclosure Act of 1978 (AFIDA) requires any foreign person who acquires or transfers any interest, other than a security interest, in agricultural land to submit a report to the Secretary of Agriculture not later than 90 days after the date of the acquisition or transfer. If Buyer or Seller is or may be considered a foreign person under the AFIDA they are advised to consult with an appropriate professional concerning any reporting that may be required by the AFIDA.

CONSENT TO DISCLOSE INFORMATION: Buyer and Seller hereby consent to the procurement and disclosure by Buyer, Seller, and Salespersons and their attorneys, agent, and other parties having interests essential to this Agreement, of any and all information reasonably necessary to consummate the transaction described in this Agreement, specifically including access to escrows for review of contracts, deeds, trust indentures, or similar documents concerning this property or underlying obligations pertaining thereto.

RISK OF LOSS: All loss or damage to any of the above-described real property or personal property to any cause is assumed by Seller through the time of closing unless otherwise specified.

TIME IS OF THE ESSENCE: Time is of the essence as to the terms and provisions of this agreement.

BINDING EFFECT AND NON-ASSIGNABILITY: This Agreement is binding upon the heirs, successors and assigns of each of the parties hereto; however, Buyer's rights under this Agreement are not assignable without the Seller's express written consent.

ATTORNEY FEES: In any action brought by the Buyer or the Seller to enforce any of the terms of this Agreement, the prevailing party in such action shall be entitled to such reasonable attorney fees as the court or arbitrator shall determine just.

COMMISSION: The Seller's and/or Buyer's commitment to pay a commission in connection with this transaction is an integral part of this Agreement.

FAX/COUNTERPARTS/ELECTRONIC SIGNATURES: This Agreement may be executed in counterparts and, when all counterpart documents are executed, the counterparts shall constitute a single binding instrument. Moreover, a signature transmitted by fax or other electronic means will be enforceable against any party, who executes the Agreement and transmits the signature by fax or other electronic means. The parties hereto, all agree that the transaction contemplated by this document may be conducted by electronic means in accordance with the Montana Uniform Electronic Transaction Act.

ENTIRE AGREEMENT: This Agreement, together with any attached exhibits and any addenda or amendments signed by the parties, shall constitute the entire agreement between Seller and Buyer, and supersedes any other written or oral agreements between Seller and Buyer. This Agreement can be modified only in writing, signed by the Seller and Buyer.

EARNEST MONEY DISPUTES: Buyer and Seller agree that, in the event of any controversy regarding the earnest money and things of value held by the Broker, closing agent, or any person or entity holding such money or property, unless mutual written instructions are received by the holder of the earnest money and things of value, Broker or closing agent shall not be required to take any action, but may await any proceedings, or, at Broker's or closing agent's option and sole discretion, may interplead all parties and deposit any monies or things of value in a Court of competent jurisdiction and may utilize as much of the earnest money deposit as may be necessary to advance the cost and fees required for filing such action.

ADDENDA AND/OR DISCLOSURES ATTACHED: (Check all that apply.)

☐ Contingency for Sale of Buyer's Property ☐ Back-up Offer
☐ Addendum for Additional Provisions
☐ Water Rights Acknowledgement
☐ _____

RELATIONSHIP CONFIRMATION: The parties to this agreement confirm that the real estate licensees identified hereafter have been involved in this transaction in the capacities indicated below and the parties have previously received the required statutory disclosures setting forth the licensees duties and the limits of their obligations to each party:

Jim Kuhlman (name of licensee) of Pure West Lakeside (name of Brokerage company)
is acting as ☒ Seller's Broker/Salesperson; ☐ Dual Agent/Salesperson; ☐ Statutory Broker.

Kim Barstow (name of licensee) of Flathead Valley Brokers (name of Brokerage company)
is acting as ☒ Buyer's Broker/Salesperson; ☐ Dual Agent/Salesperson; ☐ Statutory Broker;
☐ Seller's Broker/Salesperson (includes Seller's Sub-Broker or Salesperson).

BUYER'S ACKNOWLEDGMENT: Buyer acknowledges that he/she has examined the real and personal property, that Buyer enters into this Agreement in full reliance upon his/her independent investigation and judgement, that prior verbal representations by the Seller or Seller's agent or representatives do not modify or affect this Agreement, and that by signing this Agreement Buyer acknowledges having read and understood this entire Agreement.

BUYER'S COMMITMENT: I/We agree to purchase the above-described Property on the terms and conditions set forth in the above offer and grant to said Salesperson until (date) 11/10/2017 at 5 ☐ a.m. ☒ p.m. (Mountain Time) to secure Seller's written acceptance, whether or not that deadline falls on a Saturday, Sunday or holiday. Buyer may withdraw this offer at any time prior to Buyer being notified of Seller's written acceptance. If Seller has not accepted by the time specified, this offer is automatically withdrawn.

I/WE HEREBY ACKNOWLEDGE receipt of a copy of this Agreement bearing my/our signature(s).

Buyer's Address: _____ City _____ ,

State _____ , Zip Code _____

Buyer's Name Printed: Jeffrey Cameron

Dated this _____ , at _____ ☐ am ☐ pm (Mountain Time).

_____ _____
(Buyer's Signature) Jeffrey Cameron (Buyer's Signature)

©2017 Montana Association of REALTORS®
Buy-Sell Agreement Land, March 2017

This form presented by Kim Barstow | Flathead Valley Brokers | (406) 250-2560 | coachkim@FVBMT.com
InstanetFORMS

OFFER PRESENTATION: This offer was presented to the Seller(s) on

Date: _____ Time _____ ☐ am ☐ pm By: _____
(Signature of person presenting the offer)

SELLER'S COMMITMENT: I/We agree to sell and convey to Buyer the above-described Property on the terms and conditions herein above stated. I/We acknowledge a receipt of a copy of this Agreement bearing my/our signature(s) and that of the Buyer(s) named above.

Seller's Address: _____ City _____ ,

State _____ , Zip Code _____

Seller's Name Printed: Thorco, Inc

Dated this _____ , at _____ ☐ am ☐ pm (Mountain Time).

_____ _____
(Seller's Signature) (Seller's Signature)

ACTION TAKEN, IF OTHER THAN ACCEPTANCE:

I/We acknowledge receipt of this Agreement bearing my/our initial(s) and the signature(s) of the Buyer(s) named above.

☐ Rejected by Seller _____/_____/_____ ☐ Modified per Attached Counter _____/_____/_____
Seller's Initials Date Seller's Initials Date

NOTE: Unless otherwise expressly stated the term "Days" means calendar days and not business days. Business days are defined as all days as except Sundays and holidays. Any performance which is required to be completed on a Saturday, Sunday or a holiday can be performed on the next business day.

FLATHEAD VALLEY BROKERS
REDEFINING REAL ESTATE

BUY-SELL AGREEMENT (Land)

REALTOR® EQUAL HOUSING OPPORTUNITY

This Agreement stipulates the terms of sale of this property. Read carefully before signing. This is a legally binding contract. If not understood, seek competent advice.

Date: 11/19/2017

John L Sheldon and or assigns, as ☐ joint tenants with rights of survivorship, ☒ tenants in common, ☐ single in his/her own right, ☐ Other _____ (hereinafter called "Buyer") agrees to purchase, and the Seller agrees to sell the following described real property (hereinafter referred to as "Property"), commonly known as NHN Boon Road NHN Boon Road 59932 in the City of Somers, County of Flathead, Montana, legally described as:

Lot 5 and Lot 6 lying and being in NW 1/4 of the SE 1/4 of S27, T27N, R21W; Lot 7, lying and being in W1/2 of the SE 1/4 of S27, T27N, R21W

TOGETHER with all interest of Seller in vacated streets and alleys adjacent thereto, all easements and other appurtenances thereto, uncut timber and non-harvested crops and all improvements thereon except: NA.

PERSONAL PROPERTY: The following items of personal property, free of liens and without warranty of condition, are included and shall be transferred by the bill of sale: NA.

PURCHASE PRICE AND TERMS:

$ 900,000.00 Purchase Price: Nine Hundred Thousand (U.S. Dollars)

$ JC 40,000 Earnest Money (credited to Buyer at closing)

$ ~~900,000.00~~ JC 896,000.00 Balance Due (not including closing costs, prepaids and prorations) payable as follows (check one):

☐ All cash at closing (no financing contingency); OR

☐ Additional cash down payment at closing in the minimum amount of:

☐ $ _____ ☐ **OR** _____ % of the Purchase Price.

Balance to be financed as indicated below:

☒ Conventional ☐ Other Financing ☐ Seller Financing ☐ Assumption ☐ Home Equity

☒ Other _____

CLOSING DATE: The date of closing shall be (date) See Provisions (the "Closing Date"). The parties may, by mutual agreement, close the transaction anticipated by this Agreement at any time prior to the date specified. The Buyer and Seller will deposit with the closing agent all instruments and funds necessary to complete the purchase in accordance with this Agreement. If third party financing is required by the terms of this Agreement (including assumptions, contracts for deed, and lender financing), the Closing Date may be extended without amendment by not more than _____ days to accommodate delays attributable solely to such third party financing.

POSSESSION: Seller shall deliver to Buyer possession of the property and allow occupancy:

☐ when the closing agent is in receipt of all required, signed documents and all funds necessary for the purchase; OR

☒ on the date of recording the deed, notice of purchaser's interest, OR

☐ _____

Seller shall provide keys and/or means to operate locks, mailboxes, security systems, alarms, garage door opener(s), and Homeowner's Association facilities, if applicable.

PAYMENT/RECEIPT OF EARNEST MONEY: Buyer agrees to provide Earnest Money in the amount of _____ _____ U.S. Dollars ($ _____) as evidenced by ☐ Cash; OR ☐ Check, the receipt of which is acknowledged by the undersigned Broker/Salesperson; ☐ OR, _____ _____.

Kim Barstow (406) 250-2560 _____

(Broker/Salesperson's Printed Name and Phone Number) (Signature of Broker/Salesperson) Kim Barstow

To be signed only if in actual receipt of cash or check

If Buyer fails to pay the Earnest Money as set forth above, Buyer will be in default of this Agreement and Seller shall be entitled to immediately terminate this Agreement and declare any Earnest Money already paid by Buyer to be forfeited.

DEPOSIT OF EARNEST MONEY: All parties to this transaction agree, unless otherwise provided herein, that the earnest monies will be deposited or delivered by the Broker/Salesperson listed above within (5) business days of the date all parties have signed the Agreement or _____ and such funds will be held in a trust account by Alliance Title of Kalispell.

The parties agree that interest accruing on earnest money, if any, while deposited shall be payable to the holder of the earnest money unless otherwise agreed herein. If interest is payable to the holder of the earnest money it is agreed that sums so paid are consideration for services rendered.

The parties authorize the holder of the earnest money to forward to the closing agent, upon its request, all or any portion of the earnest money required to complete the closing of the transaction.

FINANCING CONDITIONS AND OBLIGATIONS:

BUYER'S REPRESENTATION OF FUNDS: Buyer represents that they have sufficient funds for the down payment and closing costs to close this sale in accordance with this Agreement and are not relying upon any contingent source of such funds unless otherwise expressly set forth herein.

LOAN APPLICATION: If Buyer fails to make written application for financing and pay to the lender any required fees, apply for assumption of an existing loan or contract, or initiate any action required for completion of a contract for deed by 5:00 P.M. (Mountain Time) (date) In progress Buyer will be in breach of this Agreement and Seller can exercise Seller's remedies under this Agreement.

CONTINGENCIES: The contingencies set forth in this Agreement or on attached addenda shall be deemed to have been released, waived, or satisfied, and the transaction shall continue to closing, unless, by 5:00 p.m. (Mountain Time) on the date specified for each contingency, the party requesting that contingency has notified the other party or the other party's Broker/Salesperson in writing that the contingency is not released, waived, or satisfied. If a party has notified the other party on or before the release date that a contingency is not released, waived, or satisfied, the transaction is terminated, and the earnest money will be returned to the Buyer, unless the parties negotiate other terms or provisions.

FINANCING CONTINGENCY:

☒ This Agreement is contingent upon Buyer obtaining the financing specified in the section of this Agreement entitled "PURCHASE PRICE AND TERMS". If financing cannot be obtained by the Closing Date this Agreement is terminated and the earnest money will be refunded to the Buyer; **OR**

☐ This Agreement is contingent upon Buyer obtaining the financing specified in the section of this Agreement entitled "PURCHASE PRICE AND TERMS." Release Date: _____.

APPRAISAL CONTINGENCY:

☒ Property must appraise for at least ☒ the Purchase Price **OR** at least ☐ $_____. If the Property does not appraise for at least the specified amount, this Agreement is terminated and earnest money refunded to the Buyer unless the Buyer elects to proceed with closing this Agreement without regard to appraised value. Written notice of Buyer's election to proceed shall be given to Seller or Seller's Broker/Salesperson within _____ days of Buyer or Buyer's Broker/Salesperson receiving notice of appraised value; **OR**

☐ This agreement is contingent upon the Property appraising for at least ☐ the Purchase Price **OR** at least ☐ $_____. Release Date: _____.

TITLE CONTINGENCY: This Agreement is contingent upon Buyer's receipt and approval (to Buyer's satisfaction) of the preliminary title commitment (the "Commitment") issued for the Property. Release Date: 3 days from Buyer's or Buyer Broker's/Salesperson's receipt of the Commitment.

Buyer may approve the Commitment subject to the removal of specified exceptions. However, Buyer may not object to the standard pre-printed exceptions (general exceptions not unique to the Property). If Buyer provides Seller written objections to the Commitment prior to the release date above, Seller shall have ten (10) days from receipt of those objections to satisfy said objections or propose to Buyer a plan by which the objections would be satisfied within a time frame satisfactory to Buyer. If within said ten (10) day period Seller has not either satisfied Buyer's objection to the Commitment or proposed to Buyer a plan by which the objections would be satisfied, Buyer shall have three (3) days after expiration of said ten (10) day period to notify Seller whether Buyer desires to (i) terminate this Agreement in which case the earnest money shall be returned to the Buyer or (ii) waive said objections in which case this Agreement shall remain in full force and effect. The two remedies stated above shall be Buyer's sole remedies if Seller and Buyer are unable to resolve Buyer's objections to the Commitment.

PROPERTY INVESTIGATION: This offer is contingent upon Buyer's independent investigation of the following conditions relating to the property, including but not limited to; covenants, zoning, access, easements, well depths, septic and sanitation restrictions, surveys or other means of establishing the corners and boundaries, special improvement districts, restrictions affecting use, special building requirements, future assessments, utility hook up and installation costs, environmental hazards, airport affected area, road maintenance obligations or anything else Buyer deems appropriate. Buyer agrees that any investigations or inspections undertaken by Buyer or on his/her behalf shall not damage or destroy the property, without the prior written consent of Seller. Further, Buyer agrees to return the property to its original condition and to indemnify Seller from any damage or destruction to the property caused by the Buyer's investigations or inspections, if Buyer does not purchase the property. Release Date: Final Plat .

This offer is contingent upon
1. Lots 5, 6, and 7 receiving final plat
2. The subdivision having waterfront access
3. The HOA's must read that lots 5, 6, and 7 have the ability to be VRBO with the understanding that sometime in the future the subdivision may determine the use to be strictly for the homeowners of the subdivision.

Release Date: Date of Final Plat

This offer is contingent upon
4. CC&Rs must be approved by buyer

Release Date:

ADDITIONAL PROVISIONS:
Closing shall take place within 10 days of Final Plat.

CONVEYANCE: The Seller shall convey the real property by General Warranty deed, free of all liens and encumbrances except those described in the title insurance commitment, as approved by Buyer. The Seller shall convey the personal property by Bill of Sale.

WATER: All water, including surface water or ground water, any legal entitlement to water, including statements of claim, certificates of water rights, permits to appropriate water, exempt existing rights, decreed basins or any ditches, ditch rights, or ditch easements appurtenant to and/or used in connection with the Property are included with the Property, except _____.

Filing or transfer fees will be paid by ☐ Seller, ☐ Buyer, ☒ split equally between Buyer and Seller.
Documents for transfer will be prepared by Alliance Title.

WATER RIGHT OWNERSHIP UPDATE DISCLOSURE: By Montana law, failure of the parties at closing or transfer of real property to pay the required fee to the Montana Department of Natural Resources and Conservation for updating water right ownership may result in the transferee of the property being subject to a penalty. Additionally, in the case of water rights being exempted, severed, or divided, the failure of the parties to comply with section 85-2-424, MCA, could result in a penalty against the transferee and rejection of the deed for recording.

MINERAL RIGHTS: "Mineral rights" is a term used to describe the rights the owner of those rights has to use, mine, and/or produce any or all of the minerals and hydrocarbons including oil, gas, coal, sand, gravel, etc. lying below the surface of property. These mineral rights may be separate from the rights a property owner has for the surface of a property. In some cases, these mineral rights have been transferred to a party other than the property owner and as a result the subsurface mineral rights have been severed from the property owner's surface rights. If the mineral rights have been severed from the surface rights, the owner of the mineral rights has the right to enter the land and occupy it in order to mine the minerals even though they don't own the property. The undersigned Buyer acknowledges and agrees that neither the Seller nor the brokerage firms, brokers and salespersons involved in the transaction anticipated by this Agreement warrant or make any representations concerning the mineral rights, if any, for this Property and that neither the Seller nor the brokerage firms, brokers and salespersons involved in the Buyer's purchase of the Property have conducted an inspection or analysis of the mineral rights to and for the Property.

CLOSING AGENTS FEES: Closing agents fees will be paid by ☐ Seller ☐ Buyer ☒ Equally Shared.

TITLE INSURANCE: Seller, at Seller's expense and from a title insurance company chosen by Seller, shall furnish Buyer with an ALTA Standard Coverage Owners Title Insurance Policy (as evidenced by a standard form American Land Title Association title insurance commitment) in an amount equal to the purchase price. Buyer may purchase additional owner's title insurance coverage in the form of "Extended Coverage" or "Enhanced Coverage" for an additional cost to the buyer. It is recommended that buyer obtain details from a title company.

CONDITION OF TITLE: All mortgages, judgements and liens shall be paid or satisfied by the Seller at or prior to closing unless otherwise provided herein. Seller agrees that no additional encumbrances, restrictions, easements or other adverse title conditions will be placed against the title to the property subsequent to the effective date of the preliminary title commitment approved by the Buyer.

SECTION 1031 LIKE-KIND EXCHANGE: If either Buyer or Seller intends for this transaction to be part of a Section 1031 like-kind exchange, then the other party shall cooperate in the completion of the like-kind exchange provided the cooperating party does not incur any additional liability or cost in doing so. Any party who intends for this transaction to be part of a Section 1031 like-kind exchange may assign their rights under this Agreement to a qualified intermediary or any entity expressly created for the purposes of completing a Section 1031 like-kind exchange, notwithstanding the prohibition against the Buyer's assignment of this Agreement set forth in the "Binding Effect and Non-Assignability" section below.

SPECIAL IMPROVEMENT DISTRICTS: Special Improvement Districts (including rural SIDs), including those that have been noticed to Seller by City/County but not yet spread or currently assessed, if any, will be:

☐ paid off by Seller at closing;
☐ assumed by Buyer at closing; OR
☒ Any SIDs to be disclosed prior to due-diligence period.

All perpetual SIDs shall be assumed by Buyer.

ASSOCIATION SPECIAL ASSESSMENTS: Any special or non-recurring assessments of any non-governmental association, including those that have been approved but not yet billed or assessed, will be:

☐ paid off by Seller at closing;
☐ assumed by Buyer at closing; OR
☒ Any ASA's to be disclosed prior to due-diligence period.

PRORATION OF TAXES AND ASSESSMENTS: Seller and Buyer agree to prorate taxes, Special Improvement District assessments for the current tax year, as well as pre-paid rents, water and sewer system charges, heating fuel and tank rental, irrigation assessments, Homeowner's Association dues and/or common maintenance fees, if any, as of the date of closing unless otherwise agreed and:
NA

CONDITION OF PROPERTY: Seller agrees that the Property shall be in the same condition, normal wear and tear excepted, from the date of the execution of this Agreement up to the time Buyer takes possession of the Property. Seller will remove all personal property not included in this sale prior to closing.

NOXIOUS WEEDS DISCLOSURE: Buyers of property in the state of Montana should be aware that some properties contain noxious weeds. The laws of the State of Montana require owners of property within this state to control, and to the extent possible, eradicate noxious weeds. For information concerning noxious weeds and your obligations as an owner of property, contact either your local County extension agent or Weed Control Board.

MEGAN'S LAW DISCLOSURE: Pursuant to the provisions of Title 46, Chapter 23, Part 5 of the Montana Code Annotated, certain individuals are required to register their address with the local law enforcement agencies as part of Montana's Sexual and Violent Offender Registration Act. In some communities, law enforcement offices will make the information concerning registered offenders available to the public. If you desire further information please contact the local County Sheriff's office, the Montana Department of Justice, in Helena, Montana, and the probation officers assigned to the area.

BUYER'S REMEDIES: (A) If the Seller fails to accept the offer contained in this Agreement within the time period provided in the BUYER'S COMMITMENT section, all earnest monies shall be returned to the Buyer. (B) If the Seller accepts the offer contained in this Agreement, but refuses or neglects to consummate the transaction within the time period provided in this Agreement, the Buyer may:

(1) Demand immediate repayment of all monies that Buyer has paid as earnest money, and upon the return of such money, the rights and duties of Buyer and Seller under this Agreement shall be terminated; OR
(2) Demand that Seller specifically perform Seller's obligation under this Agreement; OR
(3) Demand monetary damages from Seller for Seller's failure to perform the terms of this Agreement.

SELLER'S REMEDIES: If the Seller accepts the offer contained in this Agreement and Buyer refuses or neglects to consummate the transaction within the time period provided in this Agreement, the Seller may:

(1) Declare the earnest money paid by Buyer be forfeited; OR
(2) Demand that Buyer specifically perform Buyer's duties and obligations under this Agreement; OR
(3) Demand that Buyer pay monetary damages for Buyer's failure to perform the terms of this Agreement.

BUYER'S AND SELLER'S CERTIFICATION: By entering into this Agreement, each person or persons executing this Agreement, as Buyer or Seller, represents that he/she is eighteen (18) years of age or older, of sound mind, and legally competent to own or transfer real property in the State of Montana; and, if acting on behalf of a corporation, partnership, or other non-human entity, that he/she is duly authorized to enter into this Agreement on behalf of such entity.

FOREIGN PERSON OR ENTITY: Section 1445 of the Internal Revenue Code provides for the withholding of tax upon the sale of U.S. real property owned by a foreign entity or foreign person unless the amount realized (usually the sales price) does not exceed $300,000 and the Buyer intends to use the property as a residence. If the Seller is a foreign entity or foreign person, Seller acknowledges and agrees that the Buyer or closing agent is required to deduct and withhold the applicable tax from the proceeds of sale at closing and submit the tax to the Internal Revenue Service unless the transfer of the property satisfies an exception provided for in Section 1445 of the Internal Revenue Code.

AGRICULTURAL FOREIGN INVESTMENT DISCLOSURE ACT: The Agricultural Foreign Investment Disclosure Act of 1978 (AFIDA) requires any foreign person who acquires or transfers any interest, other than a security interest, in agricultural land to submit a report to the Secretary of Agriculture not later than 90 days after the date of the acquisition or transfer. If Buyer or Seller is or may be considered a foreign person under the AFIDA they are advised to consult with an appropriate professional concerning any reporting that may be required by the AFIDA.

CONSENT TO DISCLOSE INFORMATION: Buyer and Seller hereby consent to the procurement and disclosure by Buyer, Seller, and Salespersons and their attorneys, agent, and other parties having interests essential to this Agreement, of any and all information reasonably necessary to consummate the transaction described in this Agreement, specifically including access to escrows for review of contracts, deeds, trust indentures, or similar documents concerning this property or underlying obligations pertaining thereto.

RISK OF LOSS: All loss or damage to any of the above-described real property or personal property to any cause is assumed by Seller through the time of closing unless otherwise specified.

TIME IS OF THE ESSENCE: Time is of the essence as to the terms and provisions of this agreement.

BINDING EFFECT AND NON-ASSIGNABILITY: This Agreement is binding upon the heirs, successors and assigns of each of the parties hereto; however, Buyer's rights under this Agreement are not assignable without the Seller's express written consent.

ATTORNEY FEES: In any action brought by the Buyer or the Seller to enforce any of the terms of this Agreement, the prevailing party in such action shall be entitled to such reasonable attorney fees as the court or arbitrator shall determine just.

COMMISSION: The Seller's and/or Buyer's commitment to pay a commission in connection with this transaction is an integral part of this Agreement.

FAX/COUNTERPARTS/ELECTRONIC SIGNATURES: This Agreement may be executed in counterparts and, when all counterpart documents are executed, the counterparts shall constitute a single binding instrument. Moreover, a signature transmitted by fax or other electronic means will be enforceable against any party, who executes the Agreement and transmits the signature by fax or other electronic means. The parties hereto, all agree that the transaction contemplated by this document may be conducted by electronic means in accordance with the Montana Uniform Electronic Transaction Act.

ENTIRE AGREEMENT: This Agreement, together with any attached exhibits and any addenda or amendments signed by the parties, shall constitute the entire agreement between Seller and Buyer, and supersedes any other written or oral agreements between Seller and Buyer. This Agreement can be modified only in writing, signed by the Seller and Buyer.

EARNEST MONEY DISPUTES: Buyer and Seller agree that, in the event of any controversy regarding the earnest money and things of value held by the Broker, closing agent, or any person or entity holding such money or property, unless mutual written instructions are received by the holder of the earnest money and things of value, Broker or closing agent shall not be required to take any action, but may await any proceedings, or, at Broker's or closing agent's option and sole discretion, may interplead all parties and deposit any monies or things of value in a Court of competent jurisdiction and may utilize as much of the earnest money deposit as may be necessary to advance the cost and fees required for filing such action.

ADDENDA AND/OR DISCLOSURES ATTACHED: (Check all that apply.)

☐ Contingency for Sale of Buyer's Property ☐ Back-up Offer
☐ Addendum for Additional Provisions
☐ Water Rights Acknowledgement
☐ _____

jes / Buyer's Initials

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Buy-Sell Agreement Land, March 2017

I C / Seller's Initials

RELATIONSHIP CONFIRMATION: The parties to this agreement confirm that the real estate licensees identified hereafter have been involved in this transaction in the capacities indicated below and the parties have previously received the required statutory disclosures setting forth the licensees duties and the limits of their obligations to each party:

Kim Barstow (name of licensee) of Flathead Valley Brokers (name of Brokerage company)
is acting as ☐ Seller's Broker/Salesperson; ☒ Dual Agent/Salesperson; ☐ Statutory Broker.

Kim Barstow (name of licensee) of Flathead Valley Brokers (name of Brokerage company)
is acting as ☐ Buyer's Broker/Salesperson; ☒ Dual Agent/Salesperson; ☐ Statutory Broker;
☐ Seller's Broker/Salesperson (includes Seller's Sub-Broker or Salesperson).

BUYER'S ACKNOWLEDGMENT: Buyer acknowledges that he/she has examined the real and personal property, that Buyer enters into this Agreement in full reliance upon his/her independent investigation and judgement, that prior verbal representations by the Seller or Seller's agent or representatives do not modify or affect this Agreement, and that by signing this Agreement Buyer acknowledges having read and understood this entire Agreement.

BUYER'S COMMITMENT: I/We agree to purchase the above-described Property on the terms and conditions set forth in the above offer and grant to said Salesperson until (date) 11/20/2017 at 9 ☒ a.m. ☐ p.m. (Mountain Time) to secure Seller's written acceptance, whether or not that deadline falls on a Saturday, Sunday or holiday. Buyer may withdraw this offer at any time prior to Buyer being notified of Seller's written acceptance. If Seller has not accepted by the time specified, this offer is automatically withdrawn.

I/WE HEREBY ACKNOWLEDGE receipt of a copy of this Agreement bearing my/our signature(s).

Buyer's Address: _____ City _____,

State _____, Zip Code _____

Buyer's Name Printed: John L Sheldon and or assigns

Dated this 11/19/2017, at _____ ☐ am ☐ pm (Mountain Time).

Authentisign
John L Sheldon 11/20/2017
11/20/2017 3:46:21 PM MST John L Sheldon
(Buyer's Signature) (Buyer's Signature)

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OFFER PRESENTATION: This offer was presented to the Seller(s) on

Date: 11/30/2017 Time 4:30 ☐ am ☒ pm By: Kim Barstow
(Signature of person presenting the offer)

SELLER'S COMMITMENT: I/We agree to sell and convey to Buyer the above-described Property on the terms and conditions herein above stated. I/We acknowledge a receipt of a copy of this Agreement bearing my/our signature(s) and that of the Buyer(s) named above.

Seller's Address: _____ City _____,

State _____, Zip Code _____

Seller's Name Printed: _____

Dated this 1st day of December, at _____ ☐ am ☐ pm (Mountain Time).

Jeff Cameron _____
(Seller's Signature) Jeff Cameron (Seller's Signature)

ACTION TAKEN, IF OTHER THAN ACCEPTANCE:

I/We acknowledge receipt of this Agreement bearing my/our initial(s) and the signature(s) of the Buyer(s) named above.

☐ Rejected by Seller ____ / ____ / ____ ☐ Modified per Attached Counter ____ / ____ / ____
Seller's Initials Date Seller's Initials Date

NOTE: Unless otherwise expressly stated the term "Days" means calendar days and not business days. Business days are defined as all days as except Sundays and holidays. Any performance which is required to be completed on a Saturday, Sunday or a holiday can be performed on the next business day.

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This form presented by Kim Barstow | Flathead Valley Brokers | (406) 250-2560 | coachkim@FVBMT.com InstanetFORMS

RELATIONSHIPS/CONSENTS IN REAL ESTATE TRANSACTIONS (COMBINED EXPLANATION AND DISCLOSURE)

THIS IS A RELATIONSHIP DISCLOSURE REQUIRED BY MONTANA LAW. NEITHER THE EXECUTION OF THIS DOCUMENT NOR ANYTHING CONTAINED IN THIS DOCUMENT SHALL BE CONSTRUED AS CREATING A BINDING CONTRACT OR OTHER AGREEMENT BETWEEN THE PARTIES.

Definition of Terms and Description of Duties

A **"Seller Agent"** is obligated to the **Seller** to:

- act solely in the best interests of the seller, except that a seller agent, after written disclosure to the seller and with the seller's written consent, may represent multiple sellers of property or list properties for sale that may compete with the seller's property without breaching any obligation to the seller;
- obey promptly and efficiently all lawful instructions of the seller;
- disclose all relevant and material information that concerns the real estate transaction and that is known to the seller agent and not known or discoverable by the seller unless the information is subject to confidentiality arising from a prior or existing agency relationship on the part of the seller agent with a buyer or another seller;
- safeguard the seller's confidences;
- exercise reasonable care, skill, and diligence in pursuing the seller's objectives and in complying with the terms established in the listing agreement;
- fully account to the seller for any funds or property of the seller that comes into the seller agent's possession; and
- comply with all applicable federal and state laws, rules, and regulations.

A **"Seller Agent"** is obligated to the **Buyer** to:

- disclose to a buyer or the buyer agent any adverse material facts that concern the property and that are known to the seller agent, except that the seller agent is not required to inspect the property or verify any statements made by the seller;
- disclose to a buyer or the buyer agent when the seller agent has no personal knowledge of the veracity of information regarding adverse material facts that concern the property;
- act in good faith with a buyer and a buyer agent; and
- comply with all applicable federal and state laws, rules, and regulations.

A **"Buyer Agent"** is obligated to the **Buyer** to:

- act solely in the best interests of the buyer, except that a buyer agent, after written disclosure to the buyer and with the buyer's written consent, may represent multiple buyers interested in buying the same property or properties similar to the property in which the buyer is interested or show properties in which the buyer is interested to other prospective buyers without breaching any obligation to the buyer;
- obey promptly and efficiently all lawful instructions of the buyer;
- disclose all relevant and material information that concerns the real estate transaction and that is known to the buyer agent and not known or discoverable by the buyer, unless the information is subject to confidentiality arising from a prior existing agency relationship on the part of the buyer agent with another buyer or seller;
- safeguard the buyer's confidences;
- exercise reasonable care, skill, and diligence in pursuing the buyer's objectives and in complying with the terms established in the Buyer/Broker agreement;
- fully account to the buyer for any funds or property of the buyer that comes into the buyer agent's possession; and
- comply with all applicable federal and state laws, rules and regulations.

A **"Buyer Agent"** is obligated to the **Seller** to:

- disclose any adverse material facts that are known to the buyer agent and that concern the ability of the buyer to perform on any purchase offer;
- disclose to the seller or the seller agent when the buyer agent has no personal knowledge of the veracity of information regarding adverse material facts that concern the ability of the buyer to perform on any purchase offer;
- act in good faith with a seller and a seller agent; and
- comply with all applicable federal and state laws, rules and regulations.

DUAL AGENCY IF A SELLER AGENT IS ALSO REPRESENTING A BUYER, OR A BUYER AGENT IS ALSO REPRESENTING A SELLER WITH REGARD TO A PROPERTY, THEN A DUAL AGENCY RELATIONSHIP MAY BE ESTABLISHED. IN A DUAL AGENCY RELATIONSHIP, THE DUAL AGENT IS EQUALLY OBLIGATED TO BOTH THE SELLER AND THE BUYER. THESE OBLIGATIONS MAY PROHIBIT THE DUAL AGENT FROM ADVOCATING EXCLUSIVELY ON BEHALF OF THE SELLER OR BUYER AND MAY LIMIT THE DEPTH AND DEGREE OF REPRESENTATION THAT YOU RECEIVE. A BROKER OR A SALESPERSON MAY NOT ACT AS A DUAL AGENT WITHOUT THE SIGNED, WRITTEN CONSENT OF BOTH THE SELLER AND THE BUYER.

Initial jes

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This form presented by Kim Barstow | Flathead Valley Brokers | (406) 250-2560 | coachkim@FVBMT.com

InstanetFORMS

A **"Dual Agent"** is obligated to a Seller in the same manner as a seller agent and is obligated to a buyer in the same manner as a buyer agent, except that a dual agent:

- has a duty to disclose to a buyer or seller any adverse material facts that are known to the dual agent regardless of any confidentiality considerations; and
- may not disclose the following information without the written consent of the person whom the information is confidential;
  - (i) the fact that the buyer is willing to pay more than the offered purchase price;
  - (ii) the fact that the seller is willing to accept less than the purchase price that the seller is asking for the property;
  - (iii) factors motivating either party to buy or sell; and
  - (iv) any information that a party indicates in writing to the dual agent is to be kept confidential.

A **"Statutory Broker"** is not the agent of the Buyer or Seller but nevertheless is obligated to them to:

- disclose to:
  - (i) a buyer or a buyer agent any adverse material facts that concern the property and that are known to the statutory broker, except that the statutory broker is not required to inspect the property or verify any statements made by the seller; and
  - (ii) a seller or a seller agent any adverse material facts that are known to the statutory broker and that concern the ability of the buyer to perform on any purchase offer;
- exercise reasonable care, skill, and diligence in putting together a real estate transaction, and
- comply with all applicable federal and state laws, rules and regulations.

An **"Adverse material fact"** means a fact that should be recognized by a broker or salesperson as being of enough significance as to affect a person's decision to enter into a contract to buy or sell real property and may be a fact that:

(i) materially affects the value, affects structural integrity, or presents a documented health risk to occupants of the property; and

(ii) materially affects the buyer's ability or intent to perform the buyer's obligations under a proposed or existing contract.

"Adverse material fact" does not include the fact that an occupant of the property has or has had a communicable disease or that the property was the site of a suicide or felony.

Disclosures/Consents

The undersigned Broker or Salesperson hereby discloses the relationship(s) as checked below, and the undersigned Seller or Buyer acknowledges receipt of such disclosure(s) and consents to the relationship(s) disclosed.

Check all the Applicable Relationship(s):

☐ Seller Agent
- ☐ **By checking this box, the undersigned consents to the Broker or Salesperson representing multiple sellers of property that may compete with the Seller's property**

☐ Statutory Broker

☐ Buyer Agent
- ☐ **By checking this box, the undersigned consents to the Broker or Salesperson representing multiple buyers interested in buying the same property or properties similar to the property in which the buyer is interested or showing properties in which the buyer is interested to other prospective buyers, at the same time.**

☒ Dual Agent **(by checking this box, the undersigned consents to the Broker or Salesperson acting as a dual representative.)**

_____ _____ / _____
Broker and/or Salesperson Kim Barstow Date

Authentisign
John L Sheldon / 11/20/2017
11/20/2017 12:44:38 PM MST Date

☐ Seller ☒ Buyer John L Sheldon

NOTE: Unless otherwise expressly stated the term "Days" means calendar days and not business days. Business days are defined as all days as except Sundays and holidays. Any performance which is required to be completed on a Saturday, Sunday or a holiday can be performed on the next business day.

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AuthentiSign ID: 9E5A1B67-35F5-48B5-9CBF-65D35667968C

BUYER BROKER AGREEMENT - Short Form

REALTOR® EQUAL HOUSING OPPORTUNITY

The Buyer(s), identified below, authorize Kim Barstow (Broker/Salesperson) of Flathead Valley Brokers (company) to act as their Broker/Salesperson to locate real estate of the type and on the terms and conditions described below. Buyer(s) shall not be obligated to directly compensate the undersigned Broker/Salesperson for their efforts on behalf of the Buyer(s). Buyer(s) consent to the Broker/Salesperson receipt of compensation from a cooperating Broker or Seller. In this regard, the Broker/Salesperson is only retained to locate properties on which an offer of compensation to them from a cooperating Broker or Seller exists. The Civil Rights and Fair Housing Laws of the United States and Montana prohibit housing discrimination on the basis of race, religion, sex, national origin, color, handicap, familial status, marital status, age and creed. Buyer acknowledges that a seller is not obligated to treat the existence, terms or conditions of an offer which may be presented by buyer as confidential.

This Agreement is ☐ non-exclusive, Buyers are free to work with other Brokers and/or Salespersons in locating real estate, and it may be terminated at will of either party, without cause.

-OR-

This Agreement is ☒ exclusive, Buyers will work only with Broker/Salesperson, and this Agreement shall terminate on 07/02/18.

Buyer hereby affirms that Buyer is not a party to a current, valid exclusive agreement to provide the same type of real estate services as set forth in this agreement.

Buyers are aware that Broker has not and will not conduct an expert inspection or analysis of any property or its condition and makes no representations to Buyers as to the condition of any property that Buyers may be interested in purchasing or leasing. Moreover, Buyers understand and acknowledge that Broker does not and can not assure that any house and/or buildings will be satisfactory to Buyers in all respects, that all equipment will operate properly or that any property and/or improvements thereon that Buyers are considering purchasing or leasing comply with the current building and zoning codes.

Buyers understand that Broker IS NOT a building inspector, building contractor, structural engineer, electrician, plumber, sanitarian, septic or cesspool expert, well driller or well expert, land surveyor, civil engineer, flood plain or water drainage expert, roofing contractor or roofing expert, accountant, attorney, title examiner or expert in identifying hazardous waste and/or toxic materials. Buyers understand that it is Buyers' responsibility to be informed buyers and to be certain that any property is satisfactory to Buyers in every respect. Buyers are strongly encouraged to obtain professional inspections of any property that Buyers may be interested in purchasing or leasing to provide Buyers an in-depth, unbiased evaluation of any such property.

The type of real property and the terms and conditions are generally set out as follows:
Size: _____
Location: _____
Price: _____
Other terms and/or conditions: _____
Special Requirements:
Lots in the Stradivarius Subdivision

The parties hereto, all agree that the transaction contemplated by this document may be conducted by electronic means in accordance with the Montana Uniform Electronic Transaction Act.

Date: AuthentiSign 11/19/17

John L Sheldon 11/20/2017
11/20/2017 12:46:46 PM MST

Buyer John L Sheldon

Broker/Salesperson Kim Barstow

Buyer

Broker/Salesperson

NOTE: Unless otherwise expressly stated the term "Days" means calendar days and not business days. Business days are defined as all days as except Sundays and holidays. Any performance which is required to be completed on a Saturday, Sunday or a holiday can be performed on the next business day.

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Instanet forms

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 52

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 52

Michael Klinkhammer, Esq.
Klinkhammer Law Offices
1111 S. Main
Kalispell Montana 59901
Telephone: (406) 257-7277
Facsimile: 888.414.1015

Attorney for Plaintiffs

MONTANA ELEVENTH JUDICIAL DISTRICT COURT
FLATHEAD COUNTY

DENNIS THORNTON and DONNA THORTON,	)	Cause No. DV-18-336D
Plaintiffs,	)	Honorable Dan Wilson
vs.	)	**AFFIDAVIT OF DEBBIE PIERCE**
WHITEFISH CREDIT UNION,	)	
Defendant.	)	

* * * \

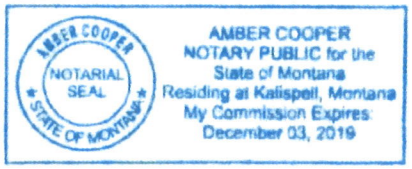
3. Alliance Title did the report and found a recorded mortgage in the amount of three million three hundred and sixty thousand dollars.
4. I contacted Whitefish Credit Union for a payoff. I was referred to Sean Frampton, the attorney for Whitefish Credit Union.
5. When I contacted Mr. Frampton in November of 2017, Mr. Frampton told me that Thorco had been in foreclosure, but that a settlement agreement had been completed.
6. After this investigation, I could not say how much was actually owed as based on the conversation with Mr. Frampton, the amount owed was disputed.
7. Mr. Jeff Cameron had entered into a Buy-Sell agreement dated November 10, 2017 on some of this property with Realtor Kim Barstow. Mr. Cameron had placed earnest money in escrow received by Alliance Title on December 1, 2017 pursuant to the Buy-Sell Agreement. Alliance Title provided the title search information to Ms. Barstow as to the possible sale to Jeff Cameron.
8. John Sheldon had entered into a Buy-Sell Agreement with Jeff Cameron to purchase 3 lots from Jeff Cameron. The purchase was dependent on the sale from Thorco to Mr. Cameron.
9. In about early December, Dennis Thornton came to my office with a partially signed copy of the Settlement Agreement and the Court Order dismissing the foreclosure.
10. As Mr. Thornton did not have a fully signed copy of the Settlement Agreement, I informed him that Mr. Frampton had stated he had a fully signed copy.
11. Mr. Thornton asked me if I would obtain a fully signed copy from Mr. Frampton for him and I did on December 2, 2017 .

12. As Mr. Frampton had sent me a copy of the Settlement Agreement, but had represented that Thorco owed Whitefish Credit Union an amount that was to be determined, I could not provide a statement of final amount owed on the property

Dated this 16 day of August, 2018.

Debbie Pierce, Affiant

SUBSCRIBED AND SWORN TO before me this 16 day of August, 2018, by Debbie Pierce.



Notary Public, State of Montana
Residing at: Kalispell
My Commission Expires: 12-3-19

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 53

Affidavit of Randy Giddings

I am a loan broker with **excellcommercialfundinggroup**. I was contacted by Dennis Thornton of Thorco Inc., in October of 2017. Dennis was looking for funding for a development project in Montana.

I put Dennis in direct contact with Leon Hubbard at Funding Edge & Power 2 Fund. On November 20, 2017, Funding Edge & Power 2 Fund issued a Letter of Intent to fund Thorco's request. This Letter of Intent was signed and returned along with a wire transfer of $1850.00. The loan was to close on or before December 5, 2017.

In early December Funding Edge & Power 2 Fund, Leon Hubbard, contacted me and told me the Letter of Intent had been rescinded, because of suspected fraud, the documentation and loan balances they researched did not match what Thorco had provided them.

Dated this 16th day of August, 2018

Signature of Affiant

Sworn to subscribed before me this 16th day of August, 2018

Notary Public

My Commission Expires:
6-3-2020

DIANNE MAHAN
Notary Public
State of Idaho

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 54

Affidavit of Gregg McGuire

I am a finance broker with Financial Services Unlimited Inc. (FSUI) In October of 2017 I was contacted by Gerald Fritz from Evergreen International. Gerald told me he had a client that was looking for funding for a takeout and land acquisition loan.

The required funds were to pay off the previous lender on a 200 and 300 acre tracts of land and the purchase of 2 acres on Flathead Lake that was to provide lake access for the 300 acre development.

I was given Dennis Thornton's contact information and he was given mine. Gerald suggested we work directly. Dennis and I talked several times and he provided me with all information necessary. FSUI submitted a loan request to Kennedy Funding Financial. Kennedy was interested. The principal from Kennedy worked with Dennis and me.

A loan for $3,650,000 was approved for Thorco. We were to have closed this loan on or before December 8, 2017. The funds are still available pending an extension of the original approval, but the property and the title would have had to pass an ALTA survey conducted by a licensed surveyor certified to conduct ALTA surveys.

Dennis stated to me that he had several other transactions in the works and that he was going to be looking for a much larger loan after these transactions closed.

FSUI set up a face to face meeting with the principals of Kennedy Funding Financial and Dennis Thornton. Dennis flew to New Jersey and met with them to work out a strategy for a larger loan somewhere in the range of $9,000,000 and /or the closing of the already approved loan of $3,650,000.

After Christmas, Dennis Thornton contacted me and informed me of the problems he was having with his previous lender and the settlement he had with them. He conveyed to me that his company Thorco had filed chapter 11 to stop the transfer of the property.

Dated this 16 day of August, 2018

Signature of Affiant

Sworn to subscribed before me this 16th day of August, 2018

Notary Public

My Commission Expires:
Dec. 03, 2018

NOTARY PUBLIC STATE OF OHIO

FIONA M. PENDELL
Notary Public, State of Ohio
My Commission Expires
December 3, 2018

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 55

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 55

Michael Klinkhammer, Esq.
Klinkhammer Law Offices
1111 S. Main
Kalispell Montana 59901
Telephone: (406) 257-7277
Facsimile: 888.414.1015

Attorney for Plaintiffs

MONTANA ELEVENTH JUDICIAL DISTRICT COURT
FLATHEAD COUNTY

DENNIS THORNTON and DONNA THORTON,	)	Cause No. DV-18-336D
	)	Honorable Dan Wilson
Plaintiffs,	)	
vs.	)	**AFFIDAVIT OF BRIAN PELC**
WHITEFISH CREDIT UNION,	)	
Defendant.	)	

* * * \

4. I also received a partially signed Settlement Agreement providing Thorco an option to purchase the land issue for 1.4 million dollars.
5. As the title report showed that Thorco owed Whitefish Credit Union Three Million Three Hundred Sixty Thousand Dollars on the property, I called Jeff Cameron and told him I needed to meet with Dennis Thornton.
6. In early to mid-December, I met with Mr. Cameron and Mr. Thornton and asked how we would get clear title and get into first position. I told Mr. Cameron and Mr. Thornton that until the two payoff numbers matched, we could not go forward with the loan request.

Dated this __ day of August, 2018.

Brian Pelc, Affiant

SUBSCRIBED AND SWORN TO before me this __ day of August, 2018, by Brian Pelc

ASHLEY DAVENPORT
NOTARY PUBLIC for the
State of Montana
Residing at Somers, Montana
My Commission Expires
December 23, 2020

Notary Public, State of Montana
Residing at: Somers, MT
My Commission Expires: 12/23/20

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 56

Michael Klinkhammer, Esq.
Klinkhammer Law Offices
1111 S. Main
Kalispell Montana 59901
Telephone: (406) 257-7277
Facsimile: 888.414.1015

Attorney for Plaintiffs

MONTANA ELEVENTH JUDICIAL DISTRICT COURT
FLATHEAD COUNTY

DENNIS THORNTON and DONNA THORTON,	)	**Cause No. DV-18-336D**
Plaintiffs,	)	**Honorable Dan Wilson**
vs.	)	**AFFIDAVIT OF JEFF CAMERON**
WHITEFISH CREDIT UNION,	)	
Defendant.	)	

* * * \

4. In early December 2017, I was made aware of issues with the payoff amounts needed to get clear title on the Thorco lots by Kim Barstow and Dennis Thornton.

5. Dennis Thornton told me that Sean Frampton, the attorney for WCU had claimed 4.5 or 4.6 million was due to WCU.

6. Dennis had shown me a settlement agreement that showed that only $1,400,000 was needed to be paid to WCU by Thorco in order to obtain clear title to the Thorco lots. The agreement stated that upon payment the reconveyences would be recorded by First American Title. It appeared to me that WCU actually owned the lots, which were being held in escrow, and that Thorco had only to exercise its option of $1,400,000 to have the lots released.

7. It was my understanding that a mortgage release for the 200 acres was being held at First American Title and the 200 acres was to be released upon payment of $300,000. It was also my understanding that a mortgage release for the 300 acres was being held at First American Title and the 300 acres was to be released upon payment of $1,100,000.

8. Dennis Thornton explained to me that the original mortgage had not been released and that the title company could not verify the amount of $1,400,000. That didn't make sense to me. Why would someone sign over their property and allow the mortgage to stay in place? Also, why would WCU need a mortgage if WCU had ownership?

9. Upon hearing of the problems, I decided that I may want to pull my offer. I did not pull the offer at this time, but I did reduce the earnest money from $40,000 to $10,000 because of the problems. I did not want $40,000 tied up in litigation.

10. Brian Pelc, my loan officer at First Interstate Bank, asked me to have Dennis Thornton come into his office with me. Brian had a copy of the title report. Brian asked Dennis how First Interstate was going to get first lien position on the 12 lots. Brian asked where the rest of the money was coming from.

11. Dennis told Brian that Thorco only owed WCU $1,400.000 and showed Brian a copy of the settlement agreement he had with WCU. Brian held up the title report in one hand and the settlement agreement in the other hand and he said to Dennis, "until these match no deal".

12. After the meeting I had with Dennis Thornton and Brian Pelc, First Interstate stopped processing my loan application.

13. I was present in Kim Barstow's office along with Kim Barstow and Dennis and Donna Thornton. A conference call to Mike Black, Thorco's attorney was made to see if the problems with WCU could be worked out.

14. On December 27, 2017, Dennis Thornton called me and told me that Thorco had filed Chapter 11 bankruptcy to stop the transfer of the property.

15. In January, 2018, I met with Dennis to get an update on Thorco's problems with WCU.

16. After meeting with Dennis, I thought it over and called Dennis to tell him I was pulling my offer to purchase property from Thorco.

17. I then called Kim Barstow and informed her that I wanted to pull my offer and wanted the $10,000 earnest money returned to me. I also asked Kim to inform John Sheldon and cancel the transaction between myself and John.

18. In late January or early February 2018, I was invited to look at a 31 acre project in Lakeside, Montana that was owned by Dennis and Donna Thornton.

19. I looked at the project with Dennis Thornton, Kim Barstow, and Hershel Walker on February 7, 2018.

20. The purchase price was to be $750,000 and Thorco wanted to retain over $2,000,000 in construction costs for the project. My business was to contract some of the construction work as well.

21. I attended an investor meeting on this project at Kim Barstow's office. At this meeting, I offered Dennis Thornton the funds which I had available so that engineering work and surveying work could start immediately.

22. Kim Barstow was going to draft the buy sell agreement for the Lakeside project.

23. Kim Barstow ordered a title report and it did not show any liens on the property. Kim then ordered an ALTA report. The ALTA report started that Dennis and Donna Thornton had signed personal guarantees with WCU on the Thorco property in Somers and this was a cloud on the Lakeside property which Dennis and Donna Thornton personally owned.

24. Kim Barstow contacted me and stated that she could not move forward on the Lakeside project until the matters with WCU were cleared up and because of this, no buy sell was done. The project was put on hold.

Dated this 17 day of August, 2018.

Jeff Cameron, Affiant

SUBSCRIBED AND SWORN TO before me this 17th day of August, 2018, by Jeff Cameron.

JUSTIN R RODY
NOTARY PUBLIC for the
State of Montana
Residing at Kalispell, Montana
My Commission Expires
January 21, 2022

Notary Public, State of Montana
Residing at: Kalispell, MT
My Commission Expires: 1/21/2022

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 57

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 57

Michael Klinkhammer, Esq.
Klinkhammer Law Offices
1111 S. Main
Kalispell Montana 59901
Telephone: (406) 257-7277
Facsimile: 888.414.1015

Attorney for Plaintiffs

MONTANA ELEVENTH JUDICIAL DISTRICT COURT
FLATHEAD COUNTY

DENNIS THORNTON and DONNA THORTON,	)	Cause No. DV-18-336D
Plaintiffs,	)	Honorable Dan Wilson
vs.	)	**AFFIDAVIT OF DARREN BRECKENRIDGE**
WHITEFISH CREDIT UNION,	)	
Defendant.	)	

* * * \

Road, in Section 27, Township 27 North, Range 21 West, Principal Meridian, Flathead County, Montana.

3. One of the ALTA survey's purposes is to discover by research, survey and inspection, matters which are not evidenced by the public records that affect title.
4. On December 13, 2017, I sent the Schedule A requirements to Dennis Thornton. I have a copy of that request. I began the process of getting the field work scheduled and the different parts of the project that I had previously worked on. I had hundreds of files to sort through and put together.
5. I received a copy of the Title Report prepared by Alliance Title. When I began the analysis of the documents I noticed that the court proceedings were not part of the title exceptions nor was the Settlement Agreement that Dennis Thornton had told me was signed and in escrow with First American Title. There was no evidence of an escrow account in the title policy.
6. I went to Alliance Title and met with the Vice President, Debbie Pierce to ask her about the Settlement Agreement referred to in the court proceedings of Whitefish Credit Union (WCU) and Thorco, and Dennis and Donna Thornton.
7. Ms. Pierce told me she was aware of the Settlement Agreement. She also said that she did not order a review of the court records on this policy. I was concerned because I thought that the Settlement Agreement affected the title because all the policy turned up was the WCU mortgage from 2009. I asked her if it was her opinion that Thorco had defaulted. She said it was. I then pressed her about the Settlement Agreement. She said that she was aware of it and that it was only an option and that Thorco was liable for the $3.3 million loan with interest, fees and penalties.

8. I then wrote a summation of the events that transpired for Dennis Thornton and advised him to seek competent legal counsel because, as Dennis and Donna Thornton along with Thorco were all parties to the litigation by Whitefish Credit Union (WCU), that in the opinion of Ms. Pierce, that the Thornton were personally liable and that their Settlement Agreement was only an option.
9. The ALTA survey was never certified because I had no lending institution listed on the Title Policy to certify to.
10. In the lawsuit filed by WCU, Thorco, Inc. and Dennis and Donna Thornton are all named as Defendants. This suggests to me that Dennis and Donna have signed as personal guarantors to the Thorco loan. I am concerned that all property held in their names are now encumbered by this action. At my request, Dennis Thornton did deliver to me for my inspection and inclusion in the record, the personal guarantee signed by him and Donna Thornton.
11. Because of the lawsuit naming both Dennis and Donna Thornton as defendants, and because of the amount claimed by WCU and the valuation of the property on Boon Road based on WCU's own appraisal, I would advise anyone buying, investing or developing any property titled in the name of Dennis and Donna Thornton or by Thorco, that there is a very high risk of a claim by WCU on any personally owned property because of personal guarantee on the defaulted loan. Section 6.B.xii of the ALTA Standards, requires such a note on the plat prepared for ALTA purposes, on affected title to all real property titled in their names.
12. ALTA Surveys are typically required for commercial loans. For example, out of state investors usually require an ALTA Survey.

13. In addition, lenders or purchasers of real property valued at a million dollars or more typically require an ALTA Survey.

14. In foreclosures, I always recommend an ALTA Survey.

15. I have a request from Kim Barstow for an ALTA Survey on the 31 acres on Bierney Creek Road owned by Dennis Thornton and Donna Thornton as she stated she has potential investors in the 31-acre tract.

16. In my opinion, until mortgage releases are filed regarding the 300-acre tracts and 200-acre tracts at issue in the litigation with WCU, Dennis Thornton and Donna Thornton's personal guarantees of loan cloud title to any sale of their real or personal assets.

Dated this 9 day of August, 2018.

Darren Breckenridge, Affiant

SUBSCRIBED AND SWORN TO before me this 9 day of August, 2018, by ~~Dennis Thornton~~ Darren R Breckenridge.

MICHAEL KLINKHAMMER
NOTARY PUBLIC for the
State of Montana
Residing at Kalispell, Montana
My Commission Expires
January 28, 2021

Notary Public, State of Montana
Residing at: Kalispell MT
My Commission Expires: 1/28/2021

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 58

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 58

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Facsimile: 888.414.1015

Attorney for Plaintiffs

MONTANA ELEVENTH JUDICIAL DISTRICT COURT
FLATHEAD COUNTY

DENNIS THORNTON and DONNA THORTON,	)	**Cause No. DV-18-336D**
Plaintiffs,	)	**Honorable Dan Wilson**
vs.	)	**AFFIDAVIT OF KIM BARSTOW**
WHITEFISH CREDIT UNION,	)	
Defendant.	)	

* * * \

3. In October, Gary and Dennis introduced me to Jeff Cameron. Jeff was interested in purchasing some of the Thorco property. Dennis told me that the property was not listed, but that he was going to retain Jim Kuhlman as Thorco's Realtor for the Cameron sale and that Cameron also needed a Realtor.

4. I agreed to write up the buy sell and represent Jeff Cameron in the transaction. Dennis informed me that he was also working with a loan broker who had ordered a title report on the property with Alliance Title in Kalispell and requested that we use Alliance as well.

5. I wrote up the buy sell for $2,100,000, (see attached), Jeff informed me that he intended to use First Interstate Bank for his financing and the loan officer was Brian Pelc. I contacted Brian and informed him of my involvement with the transaction. Jeff, I and Brian met regarding the sale, and I assisted in getting the paper work that Brian needed to get the transaction done.

6. Dennis told me that he had a settlement agreement with WCU and that the payoff was $1,400,000. I read through the documentation that Dennis provided me and there did not appear to be any problems with the agreement he provided which verified the amount.

7. Jeff, Dennis, and Gary then introduced me to a buyer for some of the property that Jeff was purchasing from Thorco, John Sheldon. We made several trips to the property with John, and we also looked at lake access that Thorco had a buy sell agreement on for all of the lots in the Thorco development.

8. I negotiated with Jeff and John Sheldon, a buy sell was drafted between Jeff and John for John to purchase 3 of the 12 lots that Cameron was purchasing from Thorco for $900,000.

9. Dennis and Gary also introduced me to several other individuals that they had been working with on the development. Several meetings took place in my office and the goal was to put together an amenity package for the development and a strategy for acquisition of all available contiguous properties. Several conference calls took place in my office. CCR's and HOA's were being drafted and an equestrian package was being put together that was to include an easement for trails, barns, etc...

10. In late November I received the title report from Alliance Title. The report showed a mortgage of $3,360,000. This was alarming to me because the way I read the settlement agreement, the property had or was to have been conveyed to WCU in June of 2016, and a reconveyance to Thorco was to take place if or when Thorco exercised its option for $1,400,000.

11. I contacted Dennis and he came into my office. I showed him the title report. We went over the report and the settlement agreement. The agreement clearly states that the property was to be held in escrow, conveyed to WCU with an option to purchase by Thorco or Thornton's. I could not understand how WCU was to have ownership of the property and a mortgage on record. It also clearly states that there is to be no mortgage, and that the lawsuit was to be dismissed.

12. I asked Dennis if the lawsuit had been dismissed and he said he did not know. He said it should have been. I also asked him if the escrow had been opened and he said it also should have been. I suggested to Dennis that he go to the Clerk of Court and see if the case had been dismissed and to go to First American Title and see if they had the escrow.

13. Dennis left my office and came back about an hour later with copies of the dismissal of the lawsuit. He told me that First American Title had no record of any escrow and that they were checking with their other offices to see if any of them had the escrow. Dennis told me that he was going to go to Alliance Title and see what more he could find out. A while later, that same day, Dennis came back and told me that he had spoken with Debbie Pierce at Alliance Title, and that she had told him that she spoke with WCU's attorney, Sean Frampton and she was unable to get a payoff. I also called First American Title to see if the escrow had been opened. They told me they had never gotten any instruction to do so. I asked if Dennis could open the escrow, and they told me no. I then called First American Title and Alliance Title both saying they have never received instructions from WCU to open anything for the Thorco property.

14. I told Dennis that I was going to have to notify all parties involved that there were some big problems with WCU. Dennis said he was going to get a hold of his attorney and left my office. I contacted everyone involved with the transactions and informed them that there were problems that needed to be worked through.

15. Jeff Cameron and John Sheldon had each given me a check for $40,000. One from Cameron in his purchase from Thorco and Sheldon had also given me $40,000 for his purchase from Cameron. I had not deposited these checks with Alliance Title at this time. After I notified Cameron and Sheldon of Thorco's problems with WCU, they both said that they were still interested in the property, but neither one of them wanted to get tangled up in litigation.

16. Jeff and Dennis came into my office. Jeff stated again that he did not want to have $40,000 tied up if this ended up in litigation. Jeff and Dennis agreed to a reduction in the earnest money from $40,000 to $10,000. John Sheldon reduced his earnest money from $40,000 to $3,000 after this.

17. After all of the problems with Thorco's escrow and the payoff amounts surfaced, Brian Pelc at First Interstate Bank stopped working on Cameron's loan application until the matter could be resolved.

18. On December 22, 2017, a telephone conference call was held in my office. Present on the call were Thorco's attorney, Mike Black, Dennis and Donna Thornton, Jeff Cameron and myself. We tried to work through some of the problems with the settlement agreement through Mike Black. We explained how the escrow not being set up and the title report showing a mortgage of $3,360,000 and nothing to verify the $1,400.000 payoff amount was holding up Cameron's transaction.

19. Mike Black indicated that unless Thorco could come up with $1,400,000 by noon on the 27th of December, 2017, Sean Frampton had indicated to Mike that WCU was going to transfer ownership of the Thorco property to WCU.

20. I was contacted by Dennis Thornton on December 27, 2017. Dennis stated that his company Thorco had filed for Chapter 11 that morning in order to stop the fraudulent transfer of the Thorco properties to WCU.

21. Dennis later came in to my office and told me that he and his wife, Donna, owned 31 acres personally in Lakeside, Montana on Birney Creek Road. He said that he had done much of the work already on the property and that he had a preliminary plan for subdividing that included 60 lots. Dennis said that he would sell the property for $750,000 if he could retain the construction work for his company, Thorco. Dennis supplied an estimate for the work that needed to be done to the property. I ordered a title report from Alliance Title and it did not show any liens on the property.

22. On February 7, 2018, Dennis, Jeff Cameron, Hershel Walker and I looked at the Lakeside property. Rick Breckenridge, surveyor, showed up and explained to everyone what would be required in order to subdivide the property.

23. I then set up a meeting with a group that was willing to invest in a development in Lakeside. Dennis and I met with the group. They were very interested as they were all familiar with the property and the area. They asked me to set up a meeting with a lender to inquire about it.

24. I set up a meeting with Brian Pelc at First Interstate Bank. Brian stated that First Interstate was interested and credit applications were given to the group. After the meeting, I contacted Rick Breckinridge and asked him if he could do an ALTA survey on the Birney Creek property. Rick contacted me and stated that the title was clouded because of the personal guarantees signed by Dennis and Donna Thornton on the loan that Thorco took out in 2009 with WCU.

25. At this time I contacted Dennis Thornton and explained to him that I could not be involved any further because of the potential problems with the title. I then contacted the investor group and explained the same.

Kim Barstow

Kim Barstow, Affiant

SUBSCRIBED AND SWORN TO before me this 17 day of August, 2018, by Kim Barstow.

Notary Public, State of MT
Residing at: Kalispell
My Commission Expires: 11-06-2019

KELLY JEAN HAWKINSON
NOTARY PUBLIC for the
State of Montana
Residing at Kalispell, Montana
My Commission Expires
November 06, 2019

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 59

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 59

1) My name is Jim Kuhlman, I am a Montana licensed realtor with Pure West Real Estate in Bigfork, Montana
2) I have worked with and represented Dennis and Donna Thorton in real estate transactions for approximately 10 years.
3) In October, Dennis requested me to represent him on the sale of land to Jeff Cameron valued at $2.1 million, said land that was not listed.
4) Dennis informed me that he had a settlement agreement with Whitefish Credit Union for a $1.4 million payoff on this property.
5) After reviewing the settlement agreement, there appeared to be no issues and the amount was confirmed.
6) In November, I learned from Alliance Title that there was a lien of $3.36 million, which was very surprising.
7) The title report was in conflict with the settlement agreement with WCU showing ownership of the property and mortgage.
8) As part of the lot sale agreement, Dennis was to provide Flathead Lake access, we placed under contract the purchase of a lake front property for $850,000 contingent upon the sale and close of the lots to Jeff Cameron.
9) Due to the conflicting information on the lien held by WCU, the sale was cancelled and never closed.
10) As this property has since sold, Dennis has lost the opportunity to own lake front access property for future development sales. Said loss will have a negative impact on future values of his property.

Jim Kuhlman, Realtor

8/17/18

STATE OF MONTANA
COUNTY OF FLATHEAD

This instrument was Ack before me on
(signed, sworn, acknowledged)
this 17 day of August, 2018,
by Jim Kuhlman
print name of signer(s)

Notary Signature

JOSH BEAUDRY
NOTARY PUBLIC for the
State of Montana
Residing at Bigfork, Montana
My Commission Expires
December 22, 2021

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 60

350 Mont. 516, 212 P3d 264. Second, Thorntons offer this evidence to argue Sean Frampton unilaterally amended the terms of the Settlement Agreement. (*See Answer Br. Opposing WCU's Mot. S.J.* at 20) Since the law does not allow one party to unilaterally amend a contract, Amsden's testimony is immaterial. § 28-2-1602, MCA.

Plaintiffs' Exhibit 5 – Affidavit of Mike Black

Immaterial: Since Thorntons did not exercise the option, Mr. Black's testimony concerning the extended deadline is immaterial. Also, Thorntons never argue this evidence.

Thorntons attempt to show an inconsistency between Sean Frampton's communications about whether WCU possessed the documents. (*Mot. S.J.* at 10, ¶¶ 15-16) Since WCU concedes it had the documents, these facts are immaterial. Nevertheless, the communications are not inconsistent where the December 2017 letter stated Frampton did not know whether an escrow had been opened but three months later, in March 2018, Mr. Frampton confirmed that WCU was holding the deeds. (*Pls.'* Exh. 4, p.3)

Hearsay: Mr. Black's testimony of what realtor, Kim Bartsow, said is hearsay. (*Pls.'* Exh. 5, ¶¶ 5); M.R.E. 801.

Plaintiffs' Exhibit 6 – Affidavit of Darren Breckenridge

Inadmissible Opinion: Whether property has clear title is a question of law. *West v. The Club at Spanish Peaks, L.L.C.*, 2008 MT 183, ¶ 59, 343 Mont. 434, 186 P.3d 1228. Expert witnesses may not offer testimony on questions of law. *Heltborg* and *Krajacich, supra.* Breckenridge's opinion – that Thorntons' title is clouded by a vacated judgment and dismissal of Cause DV-12-174B – is inadmissible. (*Answer Br. Opposing WCU's Mot. S.J.*, Statement of Facts at 11, ¶ 17, Argument at 25)

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 61

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 61

From: Debbie Pierce
Sent: Monday, December 4, 2017 8:20 AM
To: 'thorco@centurytel.net' ; 'jediwhitemoney@gmail.com' ; 'amsden@becklawyers.com'
Subject: WCU vs. Thorco Inc ATEC 376906

Good morning all,
Attached is the fully executed Settlement Agreement.
I understand that attorney, Sean Frampton is holding all original documents.

ALLIANCE
TITLE & ESCROW CORP
Yes, it matters where you close.

Debbie Pierce | Vice President & General Manager
Alliance Title & Escrow Corp.
501 South Main | Kalispell, MT | 59901
(406) 752-7606 or Direct 406-982-7161 |Fax (406) 756-7064
http://www.alliancetitle.com
dpierce@alliancetitle.com
Online Ordering | Online Tools | Find an Office Near You

Please refer to our order number on any correspondence.

ATEC will be closed in observance of the following holidays:
Christmas: Monday, December 25th
New Years: Monday, January 1st

*****CONSUMER PROTECTION ALERT: *Please call our branch and verify wire transfer instructions verbally with your escrow officer prior to wiring funds.*****

This message (including any attachments) contains confidential information intended for a specific individual and purpose, and is protected by law. If you are not the intended recipient, you should delete this message. Any disclosure, copying, or distribution of this message, or the taking of any action based on it by unauthorized persons, is strictly prohibited.

From: Sean Frampton [mailto:sean@framptonpurdy.com]
Sent: Saturday, December 02, 2017 2:54 PM
To: Debbie Pierce <deborah_pierce@alliancetitle.com>
Cc: AArcher@whitefishcu.com; John Amsden <Amsden@becklawyers.com>
Subject: RE: WCU vs. Thorco Inc ATEC 376906 EXTERNAL

Debbie,

Please see attached.

Sean

Frampton Purdy Law Firm
530 W. 19th Street
Whitefish, MT 59937
(406) 862-9600

M.R.E. 701; *ALPS. v. McLean, supra.* Dennis' testimony that WCU violated the law is either an inadmissible legal conclusion or inadmissible legal opinion. (*Pls.'* Exh. ¶ 27) Dennis' testimony on what he "feels" is fraud is inadmissible for the same reason. (*Id.*, ¶ 28) Likewise, Dennis' testimony that WCU breached the Settlement Agreement is inadmissible for the same reason. (*Id.*, ¶ 29) Dennis' interpretation of the Settlement Agreement is an inadmissible legal conclusion. (*Id.*, ¶¶ 40, 50, 59)

Statements of Counsel / Arguments / Speculation: Dennis' testimony of what WCU argued from brief to brief is inadmissible for three reasons. (*Id.*, ¶¶ 18-21, 37-39) First, statements of counsel are not evidence. Second, this testimony is hearsay because it is not based on Dennis' personal knowledge. Third, it is not evidence at all but rather an argument which Dennis, as a fact witness, is not allowed to make. Dennis' testimony of what WCU "could have" done to mitigate his damages is an argument, not evidence. (*Id.*, ¶¶ 22-23) Dennis' testimony on what WCU intended or its motivations are argumentative and speculative. (*Id.*, ¶¶ 29-30, 32, 47, 51, 62); *ALPS v. McLean, supra.* Dennis' testimony that Thorco has never been in default of the underlying loan is an inadmissible argument. (*Pls.'* Exh. 13, ¶ 46; *See also* ¶¶ 33, 49)

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 60

B. NOTEWORTHY EVIDENCE FROM PLAINTIFFS' EXHIBITS

Dennis Thornton made it clear to his attorney, John Amsden, in November 2017 or earlier that the escrow needed to be opened. (*Id.*, ¶ 58) Yet, it is undisputed that Amsden never asked that it be opened. (*See Motion* at 3-4) Thornton then made it clear to Mike Black that that the escrow must be opened on December 22, 2017. (*Pls.'* Exh. 13, ¶ 58) Again, undisputedly Mr. Black never opened it. (*See Motion* at 3-4)

Many of the affidavits, based on speculation and hearsay, address the amount of debt on the loan. It must be clarified that the total indebtedness on the Thorco loan is currently over $4 million. (3rd Aff. Archer, ¶ 2) However, there is no evidence in the record that WCU ever

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 62

U.S. Bankruptcy Court of Montana
U.S. Bankruptcy Court, District of Montana (Butte)
Bankruptcy Petition #: 17-61219-BPH

Assigned to: BENJAMIN P. HURSH
Chapter 11
Voluntary
Asset

Date filed: 12/27/2017
341 meeting: 01/29/2018
Deadline for filing claims: 04/30/2018
Deadline for objecting to discharge: 03/30/2018

Debtor

THORCO, INC.

P.O. BOX 1557
KALISPELL, MT 59901
FLATHEAD-MT
Tax ID / EIN: 81-0480137

represented by **JON R BINNEY**

P.O. BOX 2253
MISSOULA, MT 59806
406 541-8020
Email: jon@binneylaw.com

U.S. Trustee

OFFICE OF THE U.S. TRUSTEE

U.S. TRUSTEE'S OFFICE
LIBERTY CENTER SUITE 204
301 CENTRAL AVE
GREAT FALLS, MT 59401
406.761.8777

represented by **AARON GRAHAM YORK**

OFFICE OF THE US TRUSTEE
301 CENTRAL AVENUE STE 204
GREAT FALLS, MT 59401
406-761-8777
Email: Aaron.G.York@usdoj.gov

Latest Dockets

Date Filed	#	Docket Text
01/10/2018	9	All Schedules, Statement of Financial Affairs, Statement of Intent & Summary of Schedules Filed by THORCO, INC.. (BINNEY, JON) (Entered: 01/10/2018)
01/08/2018	8	Chapter 11 or Chapter 9 Cases Non-Individual: List of Creditors Who Have 20 Largest Unsecured Claims Against You and Are Not Insiders Filed by THORCO, INC.. (BINNEY, JON) (Entered: 01/08/2018)
01/06/2018	7	BNC Certificate of Mailing - Meeting of Creditors. (related documents(s) 6 Meeting of Creditors Chapter 11). No. of Notices: 12. Notice Date 01/06/2018. (Admin.) (Entered: 01/06/2018)

Date Filed	#	Docket Text
01/04/2018	6	341 Meeting of Creditors. 341(a) meeting to be held on 1/29/2018 at 10:00 AM at MISSOULA HEARINGS 201 E BROADWAY; CRTRM #200A, MISSOULA, MT. Last day to oppose discharge or dischargeability is 3/30/2018. Proofs of Claims due by 4/30/2018. (Mahoney, Patti) (Entered: 01/04/2018)
12/29/2017	5	BNC Certificiate of Mailing - All Chapter Deficiency Notice (related documents(s) 3 Deficiency Notice All Chapters). No. of Notices: 1. Notice Date 12/29/2017. (Admin.) (Entered: 12/29/2017)
12/27/2017	4	Notice of Appearance and Request for Notice by DEAN A. STENSLAND Filed by on behalf of Whitefish Credit Union. (STENSLAND, DEAN) (Entered: 12/27/2017)
12/27/2017	3	Deficiency Notice. (Palmer, Mary) (Entered: 12/27/2017)
12/27/2017		Judge BENJAMIN P. HURSH added to case. (Palmer, Mary) (Entered: 12/27/2017)
12/27/2017	2	Filing fee information: **Receipt number 2334936** . Regarding the filing fee for Voluntary Petition (Chapter 11)(17-61219) [misc,volp11] (1717.00). Fee amount 1717.00. (re: Doc# 1) (U.S. Treasury) (Entered: 12/27/2017)
12/27/2017	1	Chapter 11 Voluntary Petition Non-Individual . Fee Amount $1717 Filed by THORCO, INC.. Chapter 11 Plan due by 04/26/2018. Disclosure Statement due by 04/26/2018. Atty Disclosure Statement due 01/10/2018. Employee Income Record Due: 01/10/2018. Schedule B due 01/10/2018. Schedule D due 01/10/2018. Schedule F due 01/10/2018. Schedule G due 01/10/2018. Schedule H due 01/10/2018. Statement of Financial Affairs due 01/10/2018. Summary of Assets and Liabilities due 01/10/2018. Incomplete Filings due by 01/10/2018. (BINNEY, JON) (Entered: 12/27/2017)

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 63

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 63

18 U.S. Code § 484 - Connecting parts of different notes

Whoever so places or connects together different parts of two or more notes, bills, or other genuine instruments issued under the authority of the United States, or by any foreign government, or corporation, as to produce one instrument, with intent to defraud, shall be guilty of forgery in the same manner as if the parts so put together were falsely made or forged, and shall be fined under this title or imprisoned not more than 10 years, or both.

(June 25, 1948, ch. 645, 62 Stat. 708; Pub. L. 103–322, title XXXIII, § 330016(1)(H), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 107–56, title III, § 374(h), Oct. 26, 2001, 115 Stat. 341.)

18 U.S. Code § 472 - Uttering counterfeit obligations or securities

Whoever, with intent to defraud, passes, utters, publishes, or sells, or attempts to pass, utter, publish, or sell, or with like intent brings into the United States or keeps in possession or conceals any falsely made, forged, counterfeited, or altered obligation or other security of the United States, shall be fined under this title or imprisoned not more than 20 years, or both.

(June 25, 1948, ch. 645, 62 Stat. 705; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 107–56, title III, § 374(c), Oct. 26, 2001, 115 Stat. 340.)

18 U.S. Code § 473 - Dealing in counterfeit obligations or securities

Whoever buys, sells, exchanges, transfers, receives, or delivers any false, forged, counterfeited, or altered obligation or other security of the United States, with the intent that the same be passed, published, or used as true and genuine, shall be fined under this title or imprisoned not more than 20 years, or both.

(June 25, 1948, ch. 645, 62 Stat. 705; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 107–56, title III, § 374(d), Oct. 26, 2001, 115 Stat. 340.)

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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.

EXHIBIT 9

(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

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

NOTICE TO DEBTOR

If you object to the motion, you must file a written responsive pleading and request a hearing within fourteen (14) days of the date of the motion. The objecting party shall schedule the hearing and shall include in the caption of the responsive pleading the date, time and location of the hearing by inserting in the caption the following:

NOTICE OF HEARING
Date: _____
Time: _____
Location: _____

This contested matter shall be scheduled for hearing for the next hearing date scheduled in the division within which the case is filed. The date, time and location of the hearing can be obtained from the Clerk of Court or from the Court's website at www.mtb.uscourt.gov. In the event such scheduled hearing date is thirty (30) days beyond the filing date of the motion for relief, then a preliminary hearing within such thirty (30) day period shall be scheduled by the responding party after such party contacts the Clerk of Court to confirm the preliminary telephone hearing date and time, which shall be set forth in the response.

If you fail to file a written response to the above Motion to Modify stay with the particularity required by Mont. LBR 4001-1(b), and request a hearing, within fourteen (14) days of the date of this Notice, with service on the undersigned and all parties entitled to service under all applicable rules, then your failure to respond or to request a hearing will be deemed an admission that the motion for relief should be granted without further notice of hearing.

CERTIFICATE OF SERVICE

This is to certify that on March 30, 2018, copies of the foregoing were served electronically by ECF notice to all persons/entities requesting special notice or otherwise entitled to same.

BOONE KARLBERG P.C.

By: /s/ Dean A. Stensland
Dean A. Stensland

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

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

State of Montana — Space Above This Line For Recording Data

CG-49765
13

REAL ESTATE MORTGAGE
(With Future Advance Clause)

0213950

1. **DATE AND PARTIES.** The date of this Mortgage (Security Instrument) is 03-18-2009 and the parties, their addresses and tax identification numbers, if required, are as follows:

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

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

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

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

SEE SCHEDULE "C"

Parcel ID Number:

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

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

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

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

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

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

   B. All future advances from Lender to Mortgagor or other future obligations of Mortgagor to Lender under any promissory note, contract, guaranty, or other evidence of debt existing now or executed after this Security Instrument whether or not this Security Instrument is specifically referenced. If more than one person signs this Security Instrument, each Mortgagor agrees that this Security Instrument will secure all future advances and future obligations that are given to or incurred by any one or more Mortgagor, or any one or more Mortgagor and others. All future advances and other future obligations are secured by this Security Instrument even though all or part may not yet be advanced. All future advances and other future obligations are secured as if made on the date of this Security Instrument. Nothing in this Security Instrument shall constitute a commitment to make additional or future loans or advances in any amount. Any such commitment must be agreed to in a separate writing.
   C. All obligations Mortgagor owes to Lender, which now exist or may later arise, to the extent not prohibited by law, including, but not limited to, liabilities for overdrafts relating to any deposit account agreement between Mortgagor and Lender.
   D. All additional sums advanced and expenses incurred by Lender for insuring, preserving or otherwise protecting the Property and its value and any other sums advanced and expenses incurred by Lender under the terms of this Security Instrument.

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

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5. **PAYMENTS.** Mortgagor agrees that all payments under the Secured Debt will be paid when due and in accordance with the terms of the Secured Debt and this Security Instrument.

6. **WARRANTY OF TITLE.** Mortgagor warrants that Mortgagor is or will be lawfully seized of the estate conveyed by this Security Instrument and has the right to grant, bargain, convey, sell, and mortgage the Property, with power of sale. Mortgagor also warrants that the Property is unencumbered, except for encumbrances of record.

7. **PRIOR SECURITY INTERESTS.** With regard to any other mortgage, deed of trust, security agreement or other lien document that created a prior security interest or encumbrance on the Property, Mortgagor agrees:
   A. To make all payments when due and to perform or comply with all covenants.
   B. To promptly deliver to Lender any notices that Mortgagor receives from the holder.
   C. Not to allow any modification or extension of any note or agreement secured by the lien document without Lender's prior written consent.
   D. To restrict lien priority of any prior security interest allowing future advances by recording a notice of limitation as provided in M.C.A. 71-1-206(3).

8. **CLAIMS AGAINST TITLE.** Mortgagor will pay all taxes, assessments, liens, encumbrances, lease payments, ground rents, utilities, and other charges relating to the Property when due. Lender may require Mortgagor to provide to Lender copies of all notices that such amounts are due and the receipts evidencing Mortgagor's payment. Mortgagor will defend title to the Property against any claims that would impair the lien of this Security Instrument. Mortgagor agrees to assign to Lender, as requested by Lender, any rights, claims or defenses Mortgagor may have against parties who supply labor or materials to maintain or improve the Property.

9. **DUE ON SALE OR ENCUMBRANCE.** Lender may, at its option, declare the entire balance of the Secured Debt to be immediately due and payable upon the creation of, or contract for the creation of, any lien, encumbrance, transfer or sale of all or any part of the Property. This right is subject to the restrictions imposed by federal law (12 C.F.R. 591), as applicable. This covenant shall run with the Property and shall remain in effect until the Secured Debt is paid in full and this Security Instrument is released.

10. **TRANSFER OF AN INTEREST IN THE MORTGAGOR.** If Mortgagor is an entity other than a natural person (such as a corporation or other organization), Lender may demand immediate payment if:
    A. A beneficial interest in Mortgagor is sold or transferred.
    B. There is a change in either the identity or number of members of a partnership or similar entity.
    C. There is a change in ownership of more than 25 percent of the voting stock of a corporation or similar entity.

    However, Lender may not demand payment in the above situations if it is prohibited by law as of the date of this Security Instrument.

11. **ENTITY WARRANTIES AND REPRESENTATIONS.** If Mortgagor is an entity other than a natural person (such as a corporation or other organization), Mortgagor makes to Lender the following warranties and representations which shall continue as long as the Secured Debt remains outstanding:
    A. Mortgagor is duly organized and validly existing in Mortgagor's state of incorporation or organization. Mortgagor is in good standing in all states in which Mortgagor transacts business. Mortgagor has the power and authority to own the Property and to carry on its business as now being conducted and, as applicable, is qualified to do so in each state in which Mortgagor operates.
    B. The execution, delivery and performance of this Security Instrument by Mortgagor and the obligations evidenced by the Secured Debt are within the power of Mortgagor, have been duly authorized, have received all necessary governmental approval, and will not violate any provision of law, or order of court or governmental agency.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mortgagor represents, warrants and agrees that:

A. Except as previously disclosed and acknowledged in writing to Lender, no Hazardous Substance has been, is, or will be located, transported, manufactured, treated, refined, or handled by any person on, under or about the Property, except in the ordinary course of business and in strict compliance with all applicable Environmental Law.

B. Except as previously disclosed and acknowledged in writing to Lender, Mortgagor has not and will not cause, contribute to, or permit the release of any Hazardous Substance on the Property.

C. Mortgagor will immediately notify Lender if (1) a release or threatened release of Hazardous Substance occurs on, under or about the Property or migrates or threatens to migrate from nearby property; or (2) there is a violation of any Environmental Law concerning the Property. In such an event, Mortgagor will take all necessary remedial action in accordance with Environmental Law.

D. Except as previously disclosed and acknowledged in writing to Lender, Mortgagor has no knowledge of or reason to believe there is any pending or threatened investigation, claim, or proceeding of any kind relating to (1) any Hazardous Substance located on, under or about the Property; or (2) any violation by Mortgagor or any tenant of any Environmental Law. Mortgagor will immediately notify Lender in writing as soon as Mortgagor has reason to believe there is any such pending or threatened investigation, claim, or proceeding. In such an event, Lender has the right, but not the obligation, to participate in any such proceeding including the right to receive copies of any documents relating to such proceedings.

E. Except as previously disclosed and acknowledged in writing to Lender, Mortgagor and every tenant have been, are and shall remain in full compliance with any applicable Environmental Law.

F. Except as previously disclosed and acknowledged in writing to Lender, there are no underground storage tanks, private dumps or open wells located on or under the Property and no such tank, dump or well will be added unless Lender first consents in writing.

G. Mortgagor will regularly inspect the Property, monitor the activities and operations on the Property, and confirm that all permits, licenses or approvals required by any applicable Environmental Law are obtained and complied with.

H. Mortgagor will permit, or cause any tenant to permit, Lender or Lender's agent to enter and inspect the Property and review all records at any reasonable time to determine (1) the existence, location and nature of any Hazardous Substance on, under or about the Property; (2) the existence, location, nature, and magnitude of any Hazardous Substance that has been released on, under or about the Property; or (3) whether or not Mortgagor and any tenant are in compliance with applicable Environmental Law.

I. Upon Lender's request and at any time, Mortgagor agrees, at Mortgagor's expense, to engage a qualified environmental engineer to prepare an environmental audit of the Property and to submit the results of such audit to Lender. The choice of the environmental engineer who will perform such audit is subject to Lender's approval.

DT DT

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Paula Robinson, Flathead County MT by NC

J. Lender has the right, but not the obligation, to perform any of Mortgagor's obligations under this section at Mortgagor's expense.

K. As a consequence of any breach of any representation, warranty or promise made in this section, (1) Mortgagor will indemnify and hold Lender and Lender's successors or assigns harmless from and against all losses, claims, demands, liabilities, damages, cleanup, response and remediation costs, penalties and expenses, including without limitation all costs of litigation and attorneys' fees, which Lender and Lender's successors or assigns may sustain; and (2) at Lender's discretion, Lender may release this Security Instrument and in return Mortgagor will provide Lender with collateral of at least equal value to the Property secured by this Security Instrument without prejudice to any of Lender's rights under this Security Instrument.

L. Notwithstanding any of the language contained in this Security Instrument to the contrary, the terms of this section shall survive any foreclosure or satisfaction of this Security Instrument regardless of any passage of title to Lender or any disposition by Lender of any or all of the Property. Any claims and defenses to the contrary are hereby waived.

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

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

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

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

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

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B. Mortgagor agrees to maintain comprehensive general liability insurance naming Lender as an additional insured in an amount acceptable to Lender, insuring against claims arising from any accident or occurrence in or on the Property.
C. Mortgagor agrees to maintain rental loss or business interruption insurance, as required by Lender, in an amount equal to at least coverage of one year's debt service, and required escrow account deposits (if agreed to separately in writing), under a form of policy acceptable to Lender.

22. **ESCROW FOR TAXES AND INSURANCE.** Unless otherwise provided in a separate agreement, Mortgagor will not be required to pay to Lender funds for taxes and insurance in escrow.

23. **FINANCIAL REPORTS AND ADDITIONAL DOCUMENTS.** Mortgagor will provide to Lender upon request, any financial statement or information Lender may deem reasonably necessary. Mortgagor agrees to sign, deliver, and file any additional documents or certifications that Lender may consider necessary to perfect, continue, and preserve Mortgagor's obligations under this Security Instrument and Lender's lien status on the Property.

24. **JOINT AND INDIVIDUAL LIABILITY; CO-SIGNERS; SUCCESSORS AND ASSIGNS BOUND.** All duties under this Security Instrument are joint and individual. If Mortgagor signs this Security Instrument but does not sign an evidence of debt, Mortgagor does so only to mortgage Mortgagor's interest in the Property to secure payment of the Secured Debt and Mortgagor does not agree to be personally liable on the Secured Debt. If this Security Instrument secures a guaranty between Lender and Mortgagor, Mortgagor agrees to waive any rights that may prevent Lender from bringing any action or claim against Mortgagor or any party indebted under the obligation. These rights may include, but are not limited to, any anti-deficiency or one-action laws. Mortgagor agrees that Lender and any party to this Security Instrument may extend, modify or make any change in the terms of this Security Instrument or any evidence of debt without Mortgagor's consent. Such a change will not release Mortgagor from the terms of this Security Instrument. The duties and benefits of this Security Instrument shall bind and benefit the successors and assigns of Mortgagor and Lender.

25. **APPLICABLE LAW; SEVERABILITY; INTERPRETATION.** This Security Instrument is governed by the laws of the jurisdiction in which Lender is located, except to the extent otherwise required by the laws of the jurisdiction where the Property is located. This Security Instrument is complete and fully integrated. This Security Instrument may not be amended or modified by oral agreement. Any section in this Security Instrument, attachments, or any agreement related to the Secured Debt that conflicts with applicable law will not be effective, unless that law expressly or impliedly permits the variations by written agreement. If any section of this Security Instrument cannot be enforced according to its terms, that section will be severed and will not affect the enforceability of the remainder of this Security Instrument. Whenever used, the singular shall include the plural and the plural the singular. The captions and headings of the sections of this Security Instrument are for convenience only and are not to be used to interpret or define the terms of this Security Instrument. Time is of the essence in this Security Instrument.

26. **NOTICE.** Unless otherwise required by law, any notice shall be given by delivering it or by mailing it by first class mail to the appropriate party's address on page 1 of this Security Instrument, or to any other address designated in writing. Notice to one mortgagor will be deemed to be notice to all mortgagors.

27. **WAIVERS.** Except to the extent prohibited by law, Mortgagor waives all appraisement and homestead exemption rights relating to the Property.

DT DT

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

☒ **Construction Loan.** This Security Instrument secures an obligation incurred for the construction of an improvement on the Property.

☐ **Fixture Filing.** Mortgagor grants to Lender a security interest in all goods that Mortgagor owns now or in the future and that are or will become fixtures related to the Property.

☐ **Crops; Timber; Minerals; Rents, Issues and Profits.** Mortgagor grants to Lender a security interest in all crops, timber and minerals located on the Property as well as all rents, issues and profits of them including, but not limited to, all Conservation Reserve Program (CRP) and Payment in Kind (PIK) payments and similar governmental programs (all of which shall also be included in the term "Property").

☐ **Personal Property.** Mortgagor grants to Lender a security interest in all personal property located on or connected with the Property, including all farm products, inventory, equipment, accounts, documents, instruments, chattel paper, general intangibles, and all other items of personal property Mortgagor owns now or in the future and that are used or useful in the construction, ownership, operation, management, or maintenance of the Property (all of which shall also be included in the term "Property"). The term "personal property" specifically excludes that property described as "household goods" secured in connection with a "consumer" loan as those terms are defined in applicable federal regulations governing unfair and deceptive credit practices.

☐ **Filing As Financing Statement.** Mortgagor agrees and acknowledges that this Security Instrument also suffices as a financing statement and any carbon, photographic or other reproduction may be filed of record for purposes of Article 9 of the Uniform Commercial Code.

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

☒ **Line of Credit.** The Secured Debt includes a revolving line of credit provision. Although the Secured Debt may be reduced to a zero balance, this Security Instrument will remain in effect until released.

☐ **Agricultural Property.** Mortgagor covenants and warrants that the Property will be used principally for agricultural or farming purposes and that Mortgagor is an individual or entity allowed to own agricultural land as specified by law.

☐ **Separate Assignment.** The Mortgagor has executed or will execute a separate assignment of leases and rents. If the separate assignment of leases and rents is properly executed and recorded, then the separate assignment will supersede this Security Instrument's "Assignment of Leases and Rents" section.

☐ **Additional Terms.**

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

Entity Name: THORCO, INC.

(Signature) DENNIS THORNTON, PRESIDENT (Date)

(Signature) DONNA THORNTON, SECRETARY/TREASURER

(Signature) (Date)

(Signature) (Date)

ACKNOWLEDGMENT:

(Individual)

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

(Signature of Notarial Officer)

(Name - typed, stamped, or printed)

(Title and Rank)

(Residing at)

My Commission Expires: _____

(Business or Entity Acknowledgment)

STATE OF MONTANA, COUNTY OF FLATHEAD } ss.
This instrument was acknowledged before me this 19TH day of MARCH, 2009
by DENNIS THORNTON, PRESIDENT; DONNA THORNTON, SECRETARY/TREASURER
(Title(s))
of THORCO, INC. (Name of Business or Entity)
a MONTANA CORPORATION on behalf of the business or entity.

TRACY A. SMITH NOTARIAL SEAL STATE OF MONTANA

(Signature of Notarial Officer)
TRACY A SMITH
(Name - typed, stamped, or printed)
NOTARY PUBLIC FOR THE STATE OF MONTANA
(Title and Rank)
COLUMBIA FALLS
(Residing at)
My Commission Expires: OCT 13, 2012

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

SCHEDULE C

PROPERTY DESCRIPTION

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

1A

The North Half of the Northwest Quarter of the Northwest Quarter (N½NW¼NW¼); the South Half of the Northwest Quarter of the Northwest Quarter (S½NW¼NW¼); the North Half of the Northeast Quarter of the Northwest Quarter (N½NE¼NW¼); the South Half of the Northeast Quarter of the Northwest Quarter (S½NE¼NW¼); the North Half of the Southeast Quarter of the Northwest Quarter (N½SE¼NW¼); the South Half of the Southeast Quarter of the Northwest Quarter (S½SE¼NW¼); the North Half of the Southwest Quarter of the Northwest Quarter (N½SW¼NW¼); the South Half of the Southwest Quarter of the Northwest Quarter (S½SW¼NW¼), all in Section 28, Township 27 North, Range 21 West, M.P.M., Flathead County, Montana.

1B 3BA 3BB 3BC 3B 1C 1D

AND

The North Half of the Northwest Quarter of the Southwest Quarter (N½NW¼SW¼) and the South Half of the Northwest Quarter of the Southwest Quarter (S½NW¼SW¼) 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 (N½SW¼NW¼); the South Half of the Southwest Quarter of the Northwest Quarter (S½SW¼NW¼); the North Half of the Northwest Quarter of the Southwest Quarter (N½NW¼SW¼); the South Half of the Northwest Quarter of the Southwest Quarter (S½NW¼SW¼); the North Half of the Southwest Quarter of the Southwest Quarter (N½SW¼SW¼) all in Section 27, Township 27 North, Range 21 West, M.P.M., Flathead County,
Montana.

1BGA 1BG 1BJ 1BFA 1BFB

AND

The North Half of the Northeast Quarter of the Southwest Quarter (N½NE¼SW¼); the South Half of the Northeast Quarter of the Southwest Quarter (S½NE¼SW¼); the North Half of the Southeast Quarter of the Southwest Quarter (N½SE¼SW¼); the South Half of the Southeast Quarter of the Southwest Quarter (S½SE¼SW¼); the North Half of the Northwest Quarter of the Southeast Quarter (N½NW¼SE¼); the South Half of the Northwest Quarter of the Southeast Quarter (S½NW¼SE¼); the North Half of the Southwest Quarter of the Southeast Quarter (N½SW¼SE¼) and the South Half of the Southwest Quarter of the Southeast Quarter (S½SW¼SE¼) all in Section 27, Township 27 North, Range 21 West, M.P.M., Flathead County, Montana.

1BFE 1BFF 1BL 1BM 1BN 1B 1BFE 1BF

AND

The Southeast Quarter of the Northwest Quarter (SE¼NW¼) 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.

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).

EXHIBIT B

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
By: Dennis Thornton As: President

STATE OF Washington)
: ss
County of Pend Oreille)

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

(SEAL)

MEADOW GLEASON
Commission Expires
NOTARY
PUBLIC
10-29-2018
STATE OF WASHINGTON

Notary Public for the State of Washington

THORCO, INC.

X
By: Donna Thornton As: Sec/Treas

STATE OF Washington)
: ss
County of Pend Oreille)

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

(SEAL)

MEADOW GLEASON
Commission Expires
NOTARY
PUBLIC
10-29-2018
STATE OF WASHINGTON

Notary Public for the State of Washington

DENNIS THORNTON

X _____

STATE OF Washington)
: ss
County of Pend Oreille)

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

(SEAL)

MEADOW GLEASON
Commission Expires
NOTARY PUBLIC
10-29-2018
STATE OF WASHINGTON

_____
Notary Public for the State of Washington

DONNA THORNTON

X _____

STATE OF Washington)
: ss
County of Pend Oreille)

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

(SEAL)

MEADOW GLEASON
Commission Expires
NOTARY PUBLIC
10-29-2018
STATE OF WASHINGTON

_____
Notary Public for the State of Washington

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 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, 2018

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

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 64

From: Natalie Phillips
Sent: Tuesday, June 07, 2016 8:43 AM
To: thorco@centurytel.net
Subject: Settlement Agreement

Good Morning Dennis and Donna,

I understand that Anthony emailed the Settlement Agreement to you yesterday. After you have both signed the Settlement Agreement individually and one of you has signed for Thorco **before a notary**, please hand deliver to MORRISON & FRAMPTON, PLLP and ask that they complete the signing and provide our office with a fully executed copy. It would be best to refrain from engaging in any further conversation during your brief stop at MORRISON & FRAMPTON, PLLP. Anthony mentioned you could drive this to Whitefish. Let me know if this presents a problem.

Thank you both.

Best,

Natalie F. Phillips, RP
PACE Registered Paralegal
BECK, AMSDEN & STALPES, pllc
1946 Stadium Drive, Suite 1
Bozeman, MT 59715

From: Dennis and Donna [mailto:thorco@centurytel.net]
Sent: Tuesday, June 7, 2016 9:33 AM
To: Natalie Phillips <Natalie@becklawyers.com>
Subject: Re: Settlement Agreement

Natalie, We will do that. We should be able to get it done and delivered to Frampton before noon today. We will call your office when it has been delivered. Thanks.

From: Natalie Phillips
Sent: Tuesday, June 7, 2016 9:38 AM
To: Dennis and Donna
Subject: RE: Settlement Agreement

Sounds good. I'll let Anthony know.

Natalie F. Phillips, RP
PACE Registered Paralegal
BECK, AMSDEN & STALPES, pllc
1946 Stadium Drive, Suite 1
Bozeman, MT 59715

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 65

Fill in this information to identify the case:

Debtor 1 Thorco, Inc.

Debtor 2 (Spouse, if filing) _____

United States Bankruptcy Court for the: District of Montana

Case number 17-61219-11

Official Form 410

Proof of Claim

04/16

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

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

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

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 309) **that you received.**

Part 1: Identify the Claim

1. Who is the current creditor?

Whitefish Credit Union
Name of the current creditor (the person or entity to be paid for this claim)

Other names the creditor used with the debtor _____

2. Has this claim been acquired from someone else?

☑ No
☐ Yes. From whom? _____

3. Where should notices and payments to the creditor be sent?

Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?

Dean A. Stensland
Name

P.O. Box 9199
Number Street

Missoula MT 59807
City State ZIP Code

Contact phone 406-543-6646

Contact email dstensland@boonekarlberg.com

Where should payments to the creditor be sent? (if different)

Name

Number Street

City State ZIP Code

Contact phone _____

Contact email _____

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

_____

4. Does this claim amend one already filed?

☑ No
☐ Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY

5. Do you know if anyone else has filed a proof of claim for this claim?

☑ No
☐ Yes. Who made the earlier filing? _____

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

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

7. **How much is the claim?** $ 1,400,000.00
expired option to purchase 200 & 300 acre tracts of real property pursuant to 06/08/16 agreement
Does this amount include interest or other charges?
☑ 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: _____

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 66

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 66

B10 (Official Form 10) (04/13)

UNITED STATES BANKRUPTCY COURT District of Montana	PROOF OF CLAIM
Name of Debtor: Thorco, Inc.	Case Number: 14-60633-11
NOTE: *Do not use this form to make a claim for an administrative expense that arises after the bankruptcy filing. You may file a request for payment of an administrative expense according to 11 U.S.C. § 503.*	
Name of Creditor (the person or other entity to whom the debtor owes money or property): Whitefish Credit Union	COURT USE ONLY
Name and address where notices should be sent: Dean A. Stensland, PO Box 9199, Missoula, MT 59807-9199. Telephone number: (406) 543-6646 email: dstensland@boonekariberg.com	☐ Check this box if this claim amends a previously filed claim. Court Claim Number: _____ (*If known*) Filed on: _____
Name and address where payment should be sent (if different from above): Telephone number: email:	☐ Check this box if you are aware that anyone else has filed a proof of claim relating to this claim. Attach copy of statement giving particulars.

1. **Amount of Claim as of Date Case Filed:** $ 4,188,854.24

If all or part of the claim is secured, complete item 4.

If all or part of the claim is entitled to priority, complete item 5.

☑ Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges.

2. **Basis for Claim:** loan of money, default, summary judgment granted (See instruction #2)

3. Last four digits of any number by which creditor identifies debtor:	3a. Debtor may have scheduled account as: (See instruction #3a)	3b. Uniform Claim Identifier (optional): (See instruction #3b)

4. **Secured Claim** (See instruction #4)
Check the appropriate box if the claim is secured by a lien on property or a right of setoff, attach required redacted documents, and provide the requested information.

Nature of property or right of setoff: ☑ Real Estate ☐ Motor Vehicle ☐ Other
Describe:

Value of Property: $ 8,790,000.00 per Debtor's Disclosure Statement

Annual Interest Rate 10.000% ☑ Fixed or ☐ Variable (when case was filed) - legal judgment rate

Amount of arrearage and other charges, as of the time case was filed, included in secured claim, if any: $ _____

Basis for perfection: 3/10/14 Summary judgment order; 3/19/09 Mortgage

Amount of Secured Claim: $ 4,188,854.24

Amount Unsecured: $ _____

5. **Amount of Claim Entitled to Priority under 11 U.S.C. § 507 (a).** If any part of the claim falls into one of the following categories, check the box specifying the priority and state the amount.

☐ Domestic support obligations under 11 U.S.C. § 507 (a)(1)(A) or (a)(1)(B).

☐ Wages, salaries, or commissions (up to $12,475*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier – 11 U.S.C. § 507 (a)(4).

☐ Contributions to an employee benefit plan – 11 U.S.C. § 507 (a)(5).

Amount entitled to priority: $ _____

☐ Up to $2,775* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. § 507 (a)(7).

☐ Taxes or penalties owed to governmental units – 11 U.S.C. § 507 (a)(8).

☐ Other – Specify applicable paragraph of 11 U.S.C. § 507 (a)(__).

*Amounts are subject to adjustment on 4/01/16 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.

6. Credits. The amount of all payments on this claim has been credited for the purpose of making this proof of claim. (See instruction #6)

B10 (Official Form 10) (04/13)

7. **Documents:** Attached are redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, security agreements, or, in the case of a claim based on an open-end or revolving consumer credit agreement, a statement providing the information required by FRBP 3001(c)(3)(A). If the claim is secured, box 4 has been completed, and redacted copies of documents providing evidence of perfection of a security interest are attached. If the claim is secured by the debtor's principal residence, the Mortgage Proof of Claim Attachment is being filed with this claim. *(See instruction #7, and the definition of "redacted".)*

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

8. **Signature:** (See instruction #8)

Check the appropriate box.

☐ I am the creditor. ☑ I am the creditor's authorized agent. ☐ I am the trustee, or the debtor, or their authorized agent. (See Bankruptcy Rule 3004.) ☐ I am a guarantor, surety, indorser, or other codebtor. (See Bankruptcy Rule 3005.)

I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief.

Print Name: Dean A. Stensland
Title: Attorney
Company: Boone Karlberg, P.C.
Address and telephone number (if different from notice address above):

Dean A. Stensland 11/3/14
(Signature) (Date)

Telephone number: (406) 543-6646 email: dstensland@boonekarlberg.com

Penalty for presenting fraudulent claim. Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

INSTRUCTIONS FOR PROOF OF CLAIM FORM

The instructions and definitions below are general explanations of the law. In certain circumstances, such as bankruptcy cases not filed voluntarily by the debtor, exceptions to these general rules may apply.

Items to be completed in Proof of Claim form

Court, Name of Debtor, and Case Number:
Fill in the federal judicial district in which the bankruptcy case was filed (for example, Central District of California), the debtor's full name, and the case number. If the creditor received a notice of the case from the bankruptcy court, all of this information is at the top of the notice.

Creditor's Name and Address:
Fill in the name of the person or entity asserting a claim and the name and address of the person who should receive notices issued during the bankruptcy case. A separate space is provided for the payment address if it differs from the notice address. The creditor has a continuing obligation to keep the court informed of its current address. See Federal Rule of Bankruptcy Procedure (FRBP) 2002(g).

1. Amount of Claim as of Date Case Filed:
State the total amount owed to the creditor on the date of the bankruptcy filing. Follow the instructions concerning whether to complete items 4 and 5. Check the box if interest or other charges are included in the claim.

2. Basis for Claim:
State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card. If the claim is based on delivering health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information. You may be required to provide additional disclosure if an interested party objects to the claim.

3. Last Four Digits of Any Number by Which Creditor Identifies Debtor:
State only the last four digits of the debtor's account or other number used by the creditor to identify the debtor.

3a. Debtor May Have Scheduled Account As:
Report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the debtor.

3b. Uniform Claim Identifier:
If you use a uniform claim identifier, you may report it here. A uniform claim identifier is an optional 24-character identifier that certain large creditors use to facilitate electronic payment in chapter 13 cases.

4. Secured Claim:
Check whether the claim is fully or partially secured. Skip this section if the claim is entirely unsecured. (See Definitions.) If the claim is secured, check the box for the nature and value of property that secures the claim, attach copies of lien documentation, and state, as of the date of the bankruptcy filing, the annual interest rate (and whether it is fixed or variable), and the amount past due on the claim.

5. Amount of Claim Entitled to Priority Under 11 U.S.C. § 507 (a).
If any portion of the claim falls into any category shown, check the appropriate box(es) and state the amount entitled to priority. (See Definitions.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority.

6. Credits:
An authorized signature on this proof of claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

7. Documents:
Attach redacted copies of any documents that show the debt exists and a lien secures the debt. You must also attach copies of documents that evidence perfection of any security interest and documents required by FRBP 3001(c) for claims based on an open-end or revolving consumer credit agreement or secured by a security interest in the debtor's principal residence. You may also attach a summary in addition to the documents themselves. FRBP 3001(c) and (d). If the claim is based on delivering health care goods or services, limit disclosing confidential health care information. Do not send original documents, as attachments may be destroyed after scanning.

8. Date and Signature:
The individual completing this proof of claim must sign and date it. FRBP 9011. If the claim is filed electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what constitutes a signature. If you sign this form, you declare under penalty of perjury that the information provided is true and correct to the best of your knowledge, information, and reasonable belief. Your signature is also a certification that the claim meets the requirements of FRBP 9011(b). Whether the claim is filed electronically or in person, if your name is on the signature line, you are responsible for the declaration. Print the name and title, if any, of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. If the claim is filed by an authorized agent, provide both the name of the individual filing the claim and the name of the agent. If the authorized agent is a servicer, identify the corporate servicer as the company. Criminal penalties apply for making a false statement on a proof of claim.

PROOF OF CLAIM
Page 2

The Note, Mortgage, Motion for Summary Judgment Order, Order granting Whitefish Credit Union summary judgment on foreclosure claim, proposed Judgment for Foreclosure and Order of Sale, and applicable affidavits are attached. Interest continued to accrue from November 21, 2013 to May 27, 2014. As an over-secured creditor, Whitefish Credit Union is also entitled to reasonable attorney fees, costs, and interest post-petition

A. Breakdown of Total Amount Owed

Summary Judgment Order amount:	$4,073.741.54
Legal Fees to obtain summary judgment on judicial foreclosure	$ 115,112.70
TOTAL as of November 21, 2013:	$4,188,854.24

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 67

Michael Klinkhammer, Esq.
Klinkhammer Law Offices
1111 S. Main
Kalispell Montana 59901
Telephone: (406) 257-7277
Facsimile: 888.414.1015

Attorney for Plaintiff

CLERK OF DISTRICT COURT
2018 APR -6 PM 4:51
FILED
BY _____ DEPUTY

MONTANA ELEVENTH JUDICIAL DISTRICT COURT
FLATHEAD COUNTY

DENNIS THORNTON and , DONNA THORNTON,	Cause No. DV-18-3360
	Honorable **DAN WILSON**
Plaintiff,	
vs.	**COMPLAINT AND DEMAND FOR JURY TRIAL**
WHITEFISH CREDIT UNION,	
Defendant.	

* * * \

business in Flathead County, Lake County, Lincoln County and Sanders County of the State of Montana with its principal offices in Whitefish Montana.

3. On or about June 8, 2016, the Whitefish Credit Union Association [WCU], by and through its agent, Aaron Archer, SAG agent for the WCU entered into a Settlement Agreement and Mutual Release [Agreement] with Dennis Thornton, Donna Thornton, and Thorco Inc. collectively "Thorco."

4. Pursuant to that Agreement,

1) WCU was to pay Thorco a certain amount of money;

2) Thorco received an option to purchase one or both parcels of two tracts of property for a specified amount.

3) WCU agreed to execute mortgage releases for both tracts of property.

4) It was agreed that those mortgage releases would be deposited in escrow with the First American Title Company. If Thorco timely exercised its option, it was agreed that First American Title Company would record the appropriate release or releases.

5) Thorco agreed to execute non-merger Warranty Deeds conveying all of Thorco's right, title and interest in one or both of the tracts of land along with Realty Transfer Certificate. If Thorco failed to timely exercise its option(s), First American would record the deeds.

6) WCU agreed to waive any claim for deficiency under any loan, note or guaranty at issue in Cause No. DV-12-174B

7) Thorco waived any right of redemption on the two tracts of land.

8) The parties agreed to fully cooperate, 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 Agreement.

9) The parties further agreed that in the event that suit is brought or a claim was made arising out of the breach of any one of the provisions of the Agreement or to enforce any of the provisions of the Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees.

5. Thorco Inc., Dennis Thornton and Donna Thornton complied with the terms of the Agreement when they signed the non-merger Warranty Deeds and Realty Transfer Certificates and delivered them to the law office of Sean Frampton.

6. WCU also appeared to comply when it signed the Mortgage Releases.

7. WCU, by and through its agent, Sean Frampton, Attorney at Law, kept all of the original documents.

8. WCU did not open the escrow at First American Title even though the Agreement specified that an escrow must be opened and the mortgage releases, warranty deeds, and realty transfer certificate must be placed into escrow with First American Title.

9. Dennis Thornton and Donna Thornton had obtained lenders who would loan them the funds necessary to exercise the purchase option under the Agreement. The lenders willingness to loan the money was predicated on the fact that there was only the agreed upon option purchase price needed in order to exercise the purchase option on both tracts and that there were no other loans encumbering the real property which was to be verifiable at the escrow with First American Title.

10. Dennis Thornton and Donna Thornton referred the lenders to First American Title to

review the escrow documents which would demonstrate that there was only the purchase option price owed in order to exercise the purchase option on both tracts and obtain clear title to the real property.

11. Those lenders, and/or their agents, reviewed title to the property. As no mortgage release had been filed and the escrow had not been opened as required by the Agreement, the lenders refused to go forward as it appeared from the Flathead County Clerk and Recorder's Office that WCU held a lien of at least $3,360,172.00 .

12. The lenders refused to accept the Agreement as proof that there was only owed the purchase option price on one or both of two tracts of real property as the escrow had not been opened.

13. Due to the failure to open the escrow pursuant to the Agreement, oned of the potential lenders accused the Thorntons of fraud. As fraudulent attempts to obtain funding are reported, the Thornton's were substantially injured in their attempts to obtain funding to exercise the purchase option.

14. Dennis Thornton attempted to open the escrow, but First American Title refused as Mr. Thornton did not have the original documents to place into escrow.

15. Although the WCU was willing to extend Dennis Thornton, Donna Thornton and Thorco additional limited time to complete transactions with lenders and/or investors in order to obtain the needed option purchase price, they continued to refuse to open the escrow and thereby effectively prevented Dennis Thornton and Donna Thornton from exercising the purchase option.

16. Dennis Thornton and Donna Thornton have assurances that if the escrow were opened pursuant to the Agreement, it may still be possible to obtain the necessary funding to exercise to

the option to purchase.

17. As WCU is the only entity who might open the escrow as they hold all necessary original documents required to open the escrow, WCU is in breach of the Agreement by failing to open the escrow as required by the Agreement.

18. As result of this breach, WCU, by and through its agents, have caused Dennis Thornton, Donna Thornton and Thorco Inc. consequential damages which may exceed 60 million dollars in lost revenues which they would have been able to achieve if WCU had not breached the Agreement.

19. The breach of Agreement by WCU prevented the Plaintiffs performance of the exercise of their option to purchase. Applying Mont. Code Ann. 28-1-1302, the Plaintiffs are entitled to all the benefits they would have received if the obligation had been performed by the parties.

20. Plaintiffs Dennis Thornton and Donna Thornton seek an award of 60 million or more dollars in consequential damages which the Thorntons would have obtained if WCU had not breached the Agreement by refusing and/or preventing the opening of the escrow pursuant to the Agreement.

21. Pursuant to the Agreement, the Plaintiffs also seek an award of attorney's fees and costs in this matter.

COUNT II - BREACH OF CONTRACT - SPECIFIC PERFORMANCE

22. In the alternative, if the Court does not award the Plaintiff's consequential damages which may total 60 million dollars or more in consequential damages plus attorney's fees and costs, the Plaintiffs seek specific performance.

23. The Plaintiffs seek an Order from the Court providing that the Defendant WCU must open the escrow pursuant to the terms of the Agreement and that the Plaintiffs are granted 18 months from the date the escrow is opened to exercise their option to purchase the two tracts of land that are at issue.

COUNT III. BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALINGS.

24. The Agreement and the promises and representation include an implied - in - law covenant of good faith and fair dealings. That duty includes duties of utmost honesty, complete disclosure and commercially reasonable conduct.

25. This case involves a *special relationship* as defined by Montana law as:

1) the parties had unequal economic positions;

2) the Plaintiffs relied on WCU to do what it promised to do;

3) as WCU held all original documents, Plaintiffs were dependent on WCU doing what it promised to do; and

4) WCU was aware of this reliance and aware of the potential risk and financial loss/disaster to the Plaintiffs if the Plaintiffs were prevented from exercising the option to purchase due to WCU's breach of the Agreement;

26. As WCU kept all the original documents necessary to open the escrow pursuant to the Agreement, it breached the Agreement and the covenant of good faith and fair dealings when it refused to open the escrow.

27. WCU, by and through its agent(s), further breached the covenant of good faith and fair dealings when its agent stated to lenders that Dennis Thornton, Donna Thornton and/or Thorco Inc. were in default on a loan and owed well over 4 million dollars on such loan when in

fact the Judgement of Foreclosure and Order for Sale had been vacated based upon a stipulation to dismiss with prejudice the parties respective claims in DV-12-174B in accordance with the Agreement that is at issue in this matter.

28. Due to breach of the covenant of good faith and fair dealings, Plaintiffs suffered special and financial damages including financial loss, emotional and mental distress, damage to their credit rating and other consequential damages.

29. Under Montana law, Plaintiffs are entitled to recover fully for the damages suffered due to the breach of the covenant of good faith and fair dealings.

COUNT IV - DAMAGES TO DENNIS AND DONNA THORNTON PERSONALLY DUE TO BREACH OF CONTACT

30. Dennis Thornton and Donna Thornton had personally guaranteed the loans that Thorco had obtained which were at issue in DV-12-174B.

31. Due to the breach of contract by WCU by not opening the escrow with First American Title, the WCU actions clouded the title to the remaining real property owned by Dennis Thornton and Donna Thornton.

32. Due to that cloud of title to Dennis Thornton and Donna Thornton's personally held real property, which could not be overcome unless mortgage releases were filed or the escrow opened pursuant to the Agreement, Dennis Thornton and Donna Thornton were unable to secure financial assistance to develop their personally held real property.

33. As a result, Dennis Thornton and Donna Thornton have suffered the loss of approximately $2,750,000.00 in revenues to themselves.

COUNT V - ACTUAL FRAUD

34. Pursuant to Mont. Code Ann. 27-1-221(3), actual fraud is committed when the Defendant

(a) makes a representation with knowledge of its falsity; or

(b) conceals a material fact with the purpose of depriving the plaintiff of property or legal rights or otherwise causing injury.

35. In this matter, WCU, by and through its agents, represented to lenders that Dennis Thornton, Donna Thornton and/or Thorco Inc. owed more than four million dollars on the tracts of land at issue when in fact all that was owed in order to effect the purchase and obtain clear, marketable title was the agreed upon option purchase price.

36. WCU, having entered into the Agreement knew that after the Agreement was entered into that WCU held conditional title to the real property at issue subject only to Dennis Thornton, Donna Thornton and/or Thorco's contract right to purchase the property at issue at a specified price within 18 months from the date of the contract. If the Thorntons' did not, the Warranty Deeds would vest with WCU and could be filed. If the Thornton's exercised the right to purchase, the Warranty Deeds would be returned to the Thornton's and the Mortgage releases filed as they should have been when the Agreement was executed.

37. Consequently, WCU committed actual fraud in violation of Mont. Code Ann. 27-1-221(a) when it made the false representation that Dennis Thornton, Donna Thornton and/or Thorco owed more than agreed purchase option price in order to obtain clear title to the real property.

38. When the WCU refused to open the escrow pursuant to the Agreement, as it was the keeper of all original documents needed to open the escrow, WCU violated Mont. Code Ann. 27-1-

221(b) and committed actual fraud by concealing the material fact that in order to obtain clear title to the real property at issue, all that a lender for Dennis Thornton, Donna Thornton and/or Thorco Inc. would need to provide is the agreed option purchase price for one or both of the tracts of land at issue.

39. The Court should award Dennis Thornton and Donna Thornton punitive and exemplary damages in addition to actual and consequential damages.

COUNT VI - ACTUAL MALICE

40. Pursuant to Mont. Code Ann. 27-1-221(2), actual fraud is committed when the Defendant:

(a) deliberately proceeds to act in conscious or intentional disregard of the high probability of injury to the plaintiff; or

(b) deliberately proceeds to act with indifference to the high probability of injury to the plaintiff.

41. The Defendant committed actual malice when it failed to open the escrow pursuant to the Agreement with conscious and/or intentional disregard of the high probability of injury to the Plaintiff's the breach would create as the breach would make it virtually impossible for the Plaintiffs to obtain the needed option purchase price.

42. Alternatively, the Defendant committed actual malice by indifference to the high probability of injury to the Plaintiffs when it failed to open the escrow pursuant to the Agreement and went so far as to misrepresent to the Plaintiffs' potential lenders or investors that more than four million dollars was owed against the two tracts of land at issue.

WHEREFORE, the Plaintiff prays for Judgment as follows:

1) Actual and compensatory damages to be determined at trial but that the Plaintiffs

believe are approximately 80 million dollars;

2) In the alternative, if the Court does not award actual and compensatory damages which may total 80 million dollars, the Plaintiffs pray the Court will order specific enforcement of the Agreement such that Defendant WCU must open the escrow pursuant to the terms of the Agreement and that the Plaintiffs are granted 18 months from the date the escrow is opened to exercise their option to purchase the two tracts of land that are at issue.

3) That the Court find the Defendant has committed actual fraud and that the Plaintiffs are entitled to punitive and exemplary damages as permitted by law;

4) That the Court find that the Defendant acted with actual malice and that the Plaintiff's are entitled to punitive and exemplary damages as permitted by law;

5) That the Court award the Plaintiff's attorneys fees and costs as granted under the Agreement between the parties;

6) For whatever and further relief the Court deems just.

Dated this 4th day of April, 2018

Michael Klinkhammer
Attorney for Plaintiffs

VERIFICATION

STATE OF MONTANA)
: ss
County of Flathead)

I, Dennis Thornton, being first duly sworn upon oath, depose and state that I am one of the Plaintiff's in the above-captioned matter; that I have read foregoing Complaint and Demand for Jury Trial and the facts and matters contained therein are true and correct to the best of my knowledge and belief.

Dennis Thornton, Plaintiff

SUBSCRIBED AND SWORN TO before this 4th day of April, 2018 by Dennis Thornton.

MICHAEL KLINKHAMMER NOTARY PUBLIC for the State of Montana Residing at Kalispell, Montana My Commission Expires January 28, 2021

Notary Public for the State of Montana
Residing at Kalispell MT
My Commission expires: 1/28/2021

VERIFICATION

STATE OF MONTANA)
: ss
County of Flathead)

I, Donna Thornton, being first duly sworn upon oath, depose and state that I am one of the Plaintiff's in the above-captioned matter; that I have read foregoing Complaint and Demand for Jury Trial and the facts and matters contained therein are true and correct to the best of my knowledge and belief.

Donna Thornton, Plaintiff

SUBSCRIBED AND SWORN TO before this 4th day of April, 2018 by Donna Thornton.

MICHAEL KLINKHAMMER
NOTARY PUBLIC for the
State of Montana
Residing at Kalispell, Montana
My Commission Expires
January 28, 2021

Notary Public for the State of Montana
Residing at Kalispell MT
My Commission expires: 1/28/2021

Michael Klinkhammer, Esq.
Klinkhammer Law Offices
1111 S. Main
Kalispell Montana 59901
Telephone: (406) 257-7277
Facsimile: 888.414.1015

Attorney for Plaintiffs

CLERK OF DISTRICT COURT
2018 MAY -3 PM 3:25
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BY HKL
DEPUTY

MONTANA ELEVENTH JUDICIAL DISTRICT COURT
FLATHEAD COUNTY

DENNIS THORNTON and DONNA THORTON,	Cause No. DV-18-336D
Plaintiffs,	Honorable Dan Wilson
vs.	**ENTRY OF DEFAULT**
WHITEFISH CREDIT UNION,	
Defendant.	

* * * \

CLERK OF DISTRICT COURT
2018 MAY -3 PM 4:57
FILED
BY HKL
DEPUTY

Michael Klinkhammer, Esq.
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Attorney for Plaintiffs

MONTANA ELEVENTH JUDICIAL DISTRICT COURT
FLATHEAD COUNTY

DENNIS THORNTON and DONNA THORTON,	)	Cause No. DV-18-336D
	)	Honorable Dan Wilson
Plaintiffs,	)	
	)	**MOTION FOR ENTRY**
vs.	)	**OF JUDGEMENT UPON DEFAULT**
WHITEFISH CREDIT UNION,	)	
Defendant.	)	

* * * \

relief to the Court pursuant to the well-established precedent of *Bryden v. Lakeside Ventures, LLC*, 2009 MT 320 ¶26; 352 Mont. 452 ¶26; 218 P.3d 61 ¶26; which provides:

[*P26] *HN6*[↑] Courts have interpreted strictly the sum certain requirement. [****11] In fact, some courts appear to use interchangeably the terms "sum certain" and "liquidated amount." *See, e.g., Farm Family Mut. Ins. Co. v. Thorn Lumber Co., 202 W. Va. 69, 501 S.E.2d 786, 791 (W. Va. 1998)*. Courts generally have limited the sum certain criteria to situations where the amount of liability is capable of precise calculation, such as an amount appearing on the face of an instrument, *Thorpe v. Thorpe, 364 F.2d 692, 124 U.S. App. D.C. 299 (D.C. Cir. 1966)*, or the amount of a delinquent tax assessment, *United States v. Raleigh Restaurant, 398 F. Supp. 496 (E.D.N.Y. 1975)*. These situations do not ask the clerk to exercise discretion that he or she does not possess.

Dated this 7 day of May, 2013.

Michael Klinkhammer

Attorney for Plaintiffs

MAY 0 4 2018

HONORABLE DAN WILSON
District Court Judge, Eleventh Judicial District
920 S. Main, Ste 310
Kalispell Montana 59901
Telephone: (406) 758.5906
Facsimile: (406) 758-5857

CLERK OF DISTRICT COURT
2018 MAY -7 PM 4:26
FILED
BY _____ DEPUTY

MONTANA ELEVENTH JUDICIAL DISTRICT COURT
FLATHEAD COUNTY

DENNIS THORNTON and DONNA THORTON,	)	Cause No. DV-18-336D
Plaintiffs,	)	**ORDER SETTING HEARING ON MOTION FOR ENTRY OF JUDGEMENT UPON DEFAULT**
vs.	)	
WHITEFISH CREDIT UNION,	)	
Defendant.	)	

* * * \

Michael Klinkhammer, Esq.
Klinkhammer Law Offices
1111 S. Main
Kalispell Montana 59901
Telephone: (406) 257-7277
Facsimile: 888.414.1015

Attorney for Plaintiffs

CLERK OF DISTRICT COURT
2018 MAY -3 PM 4:57
FILED
BY HKL
DEPUTY

MONTANA ELEVENTH JUDICIAL DISTRICT COURT
FLATHEAD COUNTY

DENNIS THORNTON and DONNA THORTON,	)	Cause No. DV-18-336D
	)	Honorable Dan Wilson
Plaintiffs,	)	
	)	**AFFIDAVIT FOR AMOUNT**
vs.	)	**DUE BY DONNA THORNTON**
WHITEFISH CREDIT UNION,	)	
Defendant.	)	

* * * \

5. In addition, the Plaintiff's attorney's costs in this matter is 1/3 the recovery or 26. million dollars plus the filing fee of $120.00 and service of process 89.25

6. The total judgement should be 80,000,000.00 plus 26,000,000.00 plus 120.00 plus 8 9.25 or 106,000.209.25

More the Affiant sayeth not.

Dated this 3rd day of May, 2018.

Donna Thornton, ~~Plaintiff~~/Affiant

SUBSCRIBED AND SWORN TO before me this 3 day of May, 2018.

MICHAEL KLINKHAMMER NOTARIAL SEAL STATE OF MONTANA

MICHAEL KLINKHAMMER
NOTARY PUBLIC for the
State of Montana
Residing at Kalispell, Montana
My Commission Expires
January 28, 2021

Notary Public For The State Of Montana

CLERK OF DISTRICT COURT
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FILED
BY HKL
DEPUTY

Michael Klinkhammer, Esq.
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1111 S. Main
Kalispell Montana 59901
Telephone: (406) 257-7277
Facsimile: 888.414.1015

Attorney for Plaintiffs

MONTANA ELEVENTH JUDICIAL DISTRICT COURT
FLATHEAD COUNTY

DENNIS THORNTON and DONNA THORTON,	)	Cause No. DV-18-336D
Plaintiffs,	)	Honorable Dan Wilson
vs.	)	**AFFIDAVIT FOR AMOUNT DUE BY DENNIS THORNTON**
WHITEFISH CREDIT UNION,	)	
Defendant.	)	

* * * \

5. In addition, the Plaintiff's attorney's costs in this matter is 1/3 the recovery or 26. million dollars plus the filing fee of $120.00 and service of process 89.25

6. The total judgement should be 80,000,000.00 plus 26,000,000.00 plus 120.00 plus 8 9.25 or 106,000.209.25

More the Affiant sayeth not.

Dated this 3 day of MAY, 2018.

Dennis Thornton, Plaintiff/Affiant

SUBSCRIBED AND SWORN TO before me this 3 day of May, 2018.

Notary Public For The State Of Montana

MICHAEL KLINKHAMMER NOTARY PUBLIC for the State of Montana Residing at Kalispell, Montana My Commission Expires January 28, 2021

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 68

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 68

Sean S. Frampton
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BY HKL
DEPUTY

MONTANA ELEVENTH JUDICIAL DISTRICT COURT, FLATHEAD COUNTY

DENNIS THORNTON and DONNA THORNTON, Plaintiffs, -vs- WHITEFISH CREDIT UNION, Defendant.	][ ][ ][ ][ ][ ][ ][ ][ ][	Cause No. DV-18-336D Judge Dan Wilson **WCU'S MOTION TO SET ASIDE DEFAULT AND BRIEF IN SUPPORT**

Whitefish Credit Union, through Counsel, hereby moves to set aside the Default entered by the Clerk on May 3, 2018. In support of its motion, WCU files the following brief.

INTRODUCTION

Thorntons are serial litigators and WCU actively and diligently defends all of their claim. WCU mistakenly believed its counsel was aware of the service because emails between its Counsel, Sean Frampton, and Thornton's Counsel, Michael Klinkhammer, had the complaint attached. WCU's representative did not understand the distinction between personal service and notice of a lawsuit and, accordingly, did not think to make sure its counsel was filing an answer. At the same time, WCU's Counsel was acutely aware of the threat of a lawsuit but was never

advised by Thorntons' counsel that it had been filed or served. In fact, Klinkhammer's emails led Frampton to believe the Complaint was not filed.

Frampton did not discover that the lawsuit had been filed until Monday afternoon, May 7th. Early in the morning on May 9th, Frampton's office called the Clerk and discovered that a default had been entered. WCU and Frampton worked quickly to determine what occurred and file this motion the very next day, May 10, 2018.

Based on well settled Montana law, Thornton's default should be set aside.

FACTS

Many of the following facts were developed in *WCU v. Thorco, Dennis Thornton, and Donna Thornton*, Flathead County Cause DV-12-174(B) (Judge Allison) Some of the facts are supported by affidavits of Aaron Archer and Sean Frampton. This Court can take judicial notice of the pleadings in Cause DV-12-174(B).

Loan

Thorco and its principals, Dennis and Donna Thornton, borrowed $3.3 million from the WCU in March 2009 and agreed to pay it back in two years. (Aff. Aaron Archer, ¶ 2) $1.3 million of the loan proceeds were used to pay off Glacier Bank which Thorco used from 2007 to 2009 in the development of this project, and $2 million was used as additional funds to complete the project. (*Id.*) WCU performed as agreed and lent $3.3 million and Thorco failed to pay it back at maturity.

After four years and $3.3 million, Thorco failed to complete the development. In fact, it failed to start or complete the engineering for the roads, water, sewer, storm drain, and trails, and failed to apply for and obtain preliminary plat. (*Id.*, ¶ 3)

At maturity and in default for failing to pay the original amount due, Thorco requested that WCU loan it another $1.9 million. WCU denied that request. WCU was willing to renew the loan on terms that Thorco could afford but WCU never was willing to loan new money. (*Id.*)

Foreclosure

WCU ultimately foreclosed in February 2012 and the Thorntons were served in March 2012. Thorco counterclaimed[1] for bad faith, breach of contract, constructive fraud, negligence and a host of other claims. It claimed damages personally for the Thorntons, including emotional distress and loss of credit reputation. Its counterclaims were based on the incredulous allegations that WCU had agreed to lend it $7 million, not $3.3 million, and that WCU failed to disclose a 2009 policy that didn't apply.

WCU moved and was awarded summary judgment on every count and every claim of damages except negligence due to Montana law that doesn't allow for summary judgment on negligence. The rulings were made March 10, 2014. On April 16, the Court awarded the WCU $115,000 in attorney fees against Thorco. Trial was scheduled for May 27, 2014.

1st Bankruptcy

To avoid trial, Thorco filed for bankruptcy in early May. (Exhibit 1) On May 5, 2014, the District Court (Judge Allison) vacated the jury trial. The WCU defended its claims through its bankruptcy counsel, Dean Stensland of the Boone Karlberg Law Firm. (Aff. Archer, ¶ 4) After just over a year, their bankruptcy was dismissed on March 3, 2015. (Exhibit 2)

Appeal to Montana Supreme Court

When Judge Allison resumed jurisdiction, WCU sought a judgment of foreclosure and order of sale. (Aff. Archer, ¶ 5) The order of sale was granted on February 23, 2016. To

[1] Thorco's first three attorneys were James Manley, Josh Morigeau, and Michael McKeon, Jr. (Polson).

prevent the sale, Thorco, appealed[2] to the Montana Supreme Court on February 29, 2016. (*Id.*) The appeal was obviously premature and a delay tactic. (*Id.*) WCU moved and the Supreme Court granted WCU's motion to dismiss the appeal on March 22, 2016. (Exhibit 3)

Second Trial Setting and Mediation

Judge Allison reset the matter for trial on April 25, 2016. Prior to trial, the parties agreed to hold a second mediation with Ben Hursh (now Judge Hursh). Mediation was held on April 4, 2016. As a result of that mediation, the parties entered into the Settlement Agreement at issue. (Exhibit 4)

Settlement Agreement

Despite being in default for over seven years and owing the WCU well over $4 million in principal, interest, and fees, WCU agreed to give Thorco another 18 months (until December 8, 2017) and agreed to reduce its principal payoff amount to $1.4 million if Thorco timely exercised the option. The settlement agreements at issue were executed in June 2016. The Releases in Exhibit B to the Agreement were approved by all parties and executed. The deeds in Exhibit C to the Agreement were approved by all parties and executed. The releases and deeds were to be deposited with First American Title but the Agreement was silent on which party was to open the escrow. Neither party deposited their respective documents with First American Title. (Aff. Archer, ¶ 6)

Thorco failed to exercise its option.

Per the agreement, Thorco had an obligation to exercise its option on or before December

[2] After Thorco's first bankruptcy, its three new counsel were John Amsden (Bozeman), John Heenan (Billings), and Ford Elsaesser (Sandpoint, Idaho).

8, 2017. **Thorco failed to exercise its option and has *never* exercised its option!** (Aff. Archer, ¶ 7)

Exercising its option was a condition precedent to recording the releases. According to the Settlement Agreement, "If Thorco timely exercises its option, First American shall record the appropriate release or releases." Since Thorco did not timely exercise its option, the condition precedent was not satisfied and the releases were not recorded.

WCU cooperated with Thorco and its alleged buyers by extending the option deadline.

Despite 18 months to exercise its option, Thorco's counsel (Amsden) contacted Frampton on November 27, 2017 – 11 days before the deadline – to request an extension because Thorco claimed it had a buyer. (Aff. Sean Frampton, ¶ 4) Frampton worked expeditiously with Mr. Amsden to review the alleged Buy Sell Agreement that Thorco claimed it had (its legitimacy is still at issue) and agreed to an extension until December 15, 2017, which is when the financing contingency in the alleged Buy Sell Agreement passed. (*Id.*) WCU was suspect of the Buy Sell Agreement because, as one example, in a span of four days the earnest money fluctuated from $0 to $40,000 to $10,000. (Exhibit 5; Aff. S. Frampton, ¶ 5; Aff. Archer, ¶ 8) If the agreed upon earnest money wasn't paid, the Buy Sell Agreement is invalid.

Despite the request for an extension to December 15, WCU agreed to extend the option deadline from December 8 to December 22, 2017 – which was an extra week after the financing contingency passed. (*Id.*)

On December 22, 2017, Mike Black from Mr. Amsden's firm took over. Mr. Black asked for another extension. (Aff. Frampton, ¶ 6) As a condition therefore, WCU requested an assurance "to nearly 100% that this deal is going forward" and requested a lender commitment letter subject to the releases being recorded. (Aff. Archer, ¶ 9) Mr. Black responded a half hour later that he understood "the borrower and project qualify for financing" but the letter from Mr.

Pelc at First Interstate Bank stated only that an application had been made, not that the borrower qualified for financing or that a certain amount was approved subject to the releases. (*Id.*)

The option expired on December 22, 2017 and was never extended. (*Id.*, ¶ 10) **Thorco never exercised its option prior to the agreed upon extension to December 22, 2017.** (*Id.*) As a result, the Settlement Agreement provides that the Warranty Deeds should be recorded.

2nd Bankruptcy

Without warning, Thorco filed for bankruptcy a second time on December 27, 2017. This filing was obviously to prevent WCU from recording the deeds. WCU again hired Dean Stensland to defend its claim in the bankruptcy court. (Aff. Archer, ¶ 11)

Klinkhammer

After three months in bankruptcy, WCU first heard on March 19, 2018, that Michael Klinkhammer was representing the Thorntons in yet another claim against WCU. (Exhibit 6; Aff. Frampton, ¶ 7)

In his letter of March 19, Klinkhammer explains that the Thorntons, not Thorco, are making a claim against WCU for (1) failing to open an escrow even though the agreement was silent on which party was supposed to open the escrow and (2) failing to record the releases which were to be held in escrow. He demands (1) that the WCU open the escrow and (2) that it pay the Thorntons their damages suffered in the amount of $2,750,000. Importantly, Klinkhammer notes that *Thorco*, not Thorntons, may be making a claim against WCU in the bankruptcy action for $60,000,000. At no time does he claim the Thorntons have been damaged beyond $2,750,000. Regardless, the WCU took this demand very seriously and it became a point of discussion regularly between WCU and its Counsel. (Aff. Archer, ¶ 12)

On April 3, Klinkhammer sends another email with a "Complaint 1" attached. (Exhibit 7; Aff. S. Frampton, ¶ 8) This draft complaint is not signed by counsel or verified by the Thorntons. Again, WCU and its Counsel took this draft complaint very seriously. (Aff. Archer, ¶ 13)

On April 4, Klinkhammer sends another email with a document named "Complaint signed and ready to file" attached. (Exhibit 8; Aff. S. Frampton, ¶ 9) Although this Complaint was signed by Counsel and verified by the Thorntons, it had no filing stamp. Also, Klinkhammer's email discusses whether he should attach a copy of the Settlement Agreement to the Complaint, thus implying it was not filed.

Filing

On April 6, Klinkhammer sends another email at 11:21 am asking again if WCU objects to attaching the Settlement Agreement. (Exhibit 9)

According to the date stamp on the Complaint, it was filed on April 6 at 4:51 pm.

At no time did Klinkhammer advise Frampton that he actually filed the Complaint. (Aff. Frampton, ¶ 11)

Service

Service was accomplished on April 11, 2018. (*See Request for Entry of Default*)

Klinkhammer did not request Frampton to accept service, yet at no time did he advise Frampton that he served the Complaint. (Aff. Frampton, ¶ 11)

Aaron Archer, WCU's representative, was forwarded a copy of the Complaint. (Aff. Archer, ¶ 13) He tendered it to WCU's insurance company. (*Id.*) The insurance company did not engage counsel to answer the Complaint. (*Id.*)

Archer assumed WCU's Counsel, Frampton, knew to answer the Complaint because he had seen the emails where Klinkhammer attached a complaint. (*Id.*, ¶ 14) However, Archer did not appreciate the significant legal distinction between personal service and notice of a lawsuit. (*Id.*) Had he known, he would have discussed with Frampton filing an Answer. (*Id.*) The WCU has taken all of Thorntons' claims very seriously and it did not willfully ignore this Complaint. (*Id.*, ¶ 19)

Misleading Communication

Meanwhile, Frampton was unaware that the WCU had been served. (Aff. Frampton, ¶ 11) Since April 6, the next communication between Klinkhammer and Frampton occurred on April 17. (Exhibit 10; Aff. S. Frampton, ¶ 12) Importantly, even though the Complaint had been filed 11 days earlier, Klinkhammer's email attached a document named "Complaint signed and ready to file." This attached Complaint had no filing stamp or cause number. This fact, combined with the fact that Klinkhammer never advised the Complaint had been filed let alone served, **misled** Frampton into believing that the Complaint had not yet been filed. (Aff. Frampton, ¶ 12)

Between the service on April 11 and the request for default on May 3, Klinkhammer sent Frampton 12 email communications. (Exhibit 11; Aff. S. Frampton, ¶ 13) Not once did Klinkhammer mention that he had either filed or served the Complaint.

Notice of Default

On Tuesday, May 8, 2018, Frampton was forwarded a copy of Thorco's motion to dismiss its second bankruptcy. (Exhibit 12; Aff. Frampton, ¶ 14) On Wednesday, May 9 at around 8 am, Frampton's office called the Clerk of Court to see if a Complaint had been filed. (*Id.*) Frampton learned for the first time that the Complaint was served, that Thorntons had

requested a default, and that a hearing was set to determine damages for a default judgment. (*Id.*) Frampton worked quickly on Wednesday[3] to determine what occurred and to prepare this motion.

ARGUMENT

1. Standard of Review

The Montana Supreme Court generally disfavors default judgments because of its policy that cases should be tried on the merits. *In re Estate of Mills*, 2015 MT 245, ¶ 12, 380 Mont. 426, 354 P.3d 1271. The party seeking to set aside the judgment bears the burden of proof. *Id.* The proper standard of review when a trial judge *denies* a motion to set aside an entry of default is whether there has been a slight abuse of discretion. *Siewing v. Pearson Co.*, 226 Mont. 458, 736 P.2d 120 (1987). If the trial judge *grants* the motion to set aside, the standard of review is whether there has been a manifest abuse of discretion. *Id.*, citing to the discussion in *Lords v. Newman*, 212 Mont. 359, 688 P.2d 290, 293-294 (1984). A district court's discretion to set aside an entry of default should be liberally exercised to facilitate a trial on the merits. *Estate of Mills*, ¶ 12.

2. The Default Should be Set Aside.

The court may set aside an entry of default for good cause. M.R.Civ.P. 55(c); *Engelsberger v. Lake Cnty.*, 2007 MT 211, ¶ 12, 339 Mont. 22, 167 P.3d 902. When reviewing a motion to set aside a default (as opposed to a default judgment), the court should apply the more lenient "good cause" standard of M.R.Civ.P. 55(c), rather than the stricter standard of M.R.Civ.P. 60(b). *Bryden v. Lakeside Ventures, LLC*, 2009 MT 320, ¶ 37, 352 Mont. 452, 218

[3] Frampton worked despite the fact that his 13 year old son was in a four hour surgery for intestinal surgery related to Crohn's Disease.

P.3d 61. Whether "good cause" exists is an equitable determination, evaluated by the consideration of three factors:

> (1) whether the default was willful,
> (2) whether the plaintiff would be prejudiced if the default should be set aside, and
> (3) whether the defendant has presented a meritorious defense to plaintiff's claim.

Engelsberger, ¶ 12. The court should weigh all three factors before making the decision to set aside a default. *Engelsberger*, ¶ 17. However, a defendant need not establish all three factors in order for the court to grant its motion. *In re Estate of Mills*, 2015 MT 245, ¶ 21, 380 Mont. 426, 354 P.3d 1271 (reversing denial to set aside default where two of three factors established). The court must balance the defendant's interest in obtaining a decision on the merits against the public and the court's interest in the orderly and timely administration of justice. *Engelsberger*, ¶ 12.

In *Cribb v. Matlock Communications, Inc.*, 236 Mont. 27, 30, 768 P.2d 337, 339 (1989), the Supreme Court cited these factors from 6 J. Moore, Moore's Federal Practice paragraph 55.10[2], at 55-50 (2d ed. 1988), and *Sony Corp. v. Elm State Electronics, Inc.* (2nd Cir. 1986), 800 F.2d 317, 320. In the *Sony Corp* case, the parenthetical stated, "in addition to three factors above, courts may consider whether there was a good faith mistake, whether a harsh or large judgment would result, the strong preference of adjudication on the merits, and resolution of doubts in favor of granting motion to set aside."

a. WCU's failure to answer was not willful.

Where a defendant demonstrates its intent to contest a claim, this evidence can be used to show that a default was not willful. *In re Estate of Mills*, 2015 MT 245, 380 Mont. 426, 354 P.3d 1271. For example, the Court in *Estate of Mills* found that "David's earnest desire to contest the will is simply inconsistent with a finding that he willfully chose to ignore the very

procedures that would move his dispute toward resolution." *Id.*, ¶ 19. In *In re Marriage of Whiting*, 259 Mont. 180, 854 P.2d 343 (1993), the Court held a wife's "default was not willful, because she had tried to resolve dissolution issues with David for weeks preceding the default."

Here, WCU has vigorously defended each and every claim the Thorntons have filed for nearly 10 years. Since Klinkhammer sent his first communication on March 19, 2018, WCU and its Counsel have been actively and diligently responding to all issues and protecting its position. Archer testified that the default was not willful and the evidence supports his testimony. Further, Archer's explanation of his failure to understand the legal significance of service under these conditions establish that he mistakenly thought his Counsel was aware of the service rather than willfully ignoring the service. Accordingly, this factor weighs in WCU's favor.

In a similar case where defense counsel discovered that a default had been taken, the Montana Supreme Court found a district court abused its discretion in denying a motion to set aside the default. *Bryden v. Lakeside Ventures, LLC*, 2009 MT 320, 352 Mont. 452, 218 P.3d 61. In *Bryden*, plaintiff's counsel sent a demand letter with a copy of the proposed complaint. *Id.*, ¶ 8. Some correspondence occurred between counsel, including plaintiff's counsel's request that defense counsel accept service. *Id.*, ¶¶ 8-9. Plaintiff personally served the company through one of its managers but nobody informed defendant's counsel. *Id.*, ¶ 11. A few weeks later while defense counsel was at the courthouse, he checked with the clerk and discovered that a default was taken and a default judgment was entered. *Id.*, ¶ 14.

The Montana Supreme Court discussed at length the "willful" factor. The trial court denied the motion to set the default aside on the basis that the plaintiff had sent a copy of the complaint and asked defense counsel to accept service. *Id.*, ¶ 39. The Court reversed on the basis that given the sparse contact between counsel and the fact that the owner of the restaurant was out on vacation, "[i]t was not unreasonable under the circumstances, and certainly not

evidence of willfulness, for Lakeside's counsel to assume that the matter would be resolved upon Weimar's return from Alaska." *Id.*, ¶ 46.

The facts in this care are similar in that Klinkhammer sent Frampton a copy of the complaint to be filed, not one that had been filed. Even 11 days after filing the complaint, Klinkhammer sent the non-filed Complaint which misled Frampton. Also, Klinkhammer never informed Frampton that the Complaint had been filed or served. Like the company defendant in *Bryden*, the WCU had not informed its Counsel that it was served, yet in this case because of a mistaken understanding explained above. Like the *Bryden* Court held, it was not unreasonable under the circumstance, and certainly not evidence of willfulness, for WCU's Counsel to assume that he would get notice that the lawsuit had been filed and served and to assume that he would not be misled by Klinkhammer's emails.

As Archer and Frampton testified, WCU's failure to file an answer was not willful. Rather, it was a combination of Archer's failure to understand the distinction between personal service and notice of the Complaint that Frampton had because the unfiled version was attached to emails. Had he known, Archer would have undoubtedly directed Frampton to file an answer.

b. Thorntons will not be prejudiced.

Where little time has passed since the default was taken, a party will not be prejudiced. *Bryden v. Lakeside Ventures, LLC*, 2009 MT 320, ¶ 38, 352 Mont. 452, 218 P.3d 61. In *Bryden*, the Montana Supreme Court devoted little time to this factor: "And we discern little prejudice to Bryden due to the short time frame from her first contact with Weimar regarding the claim on June 2, 2008, to the entry of default on July 16, 2008. As a result, we will focus our analysis on the willfulness prong." *Id.*

Similarly, only seven days has passed since Thorntons received their default on May 3, 2018. Moreover, the Thorntons have been involved in litigation on the subject property for

nearly 10 years; its option to purchase that WCU granted expired on December 22, 2017; their company, Thorco, who owns the property, has been in bankruptcy since December 2017; and Thorntons only filed their complaint at the beginning of April 2018. Accordingly, this factor weighs in favor of WCU and setting aside the default.

c. WCU has meritorious defenses.

WCU has meritorious defenses that will result in dismissal of Thorntons' claims.

Per the Settlement Agreement, WCU granted an option until December 8, 2017, to purchase the property at $1.4 million. By written agreement, that deadline was extended to December 22, 2017. **The Thorntons never exercised their option!** Consequently, they have no claim.

They claim WCU failed to open the escrow but this fact does not result in any claim. (*Compl.*, ¶ 8) First, the Settlement Agreement was silent on which party was to open the escrow. Second, Thorntons could have opened the escrow at any time so its claim for damages would be subject to a defense that it failed to mitigate its damages by either ensuring it was open or opening it themselves. Third, Thorntons counsel never requested that they open an escrow account at any time during the option period. (Aff. Frampton, ¶¶ 4, 6) If it had been such an important issue, Thorntons' counsel would have either opened it or requested that WCU open it.

Thorco claims they had a lender to loan them money. (*Compl.*, ¶ 9) This is not true. Thorntons only had a buyer, and the alleged buy-sell agreement was suspect. (Exhibit 5; Aff. Frampton, ¶ 4) Thorntons never presented any evidence they had a lender. (*Id.*, ¶ 15)

Thorco claims that WCU had an obligation to record the releases which would have reduced its mortgage from $4 to $1.4 million. (*Compl.*, ¶ 11) However, the Settlement Agreement is clear that Thorntons' exercise of the option was a condition precedent to recording any releases. (Exhibit 4)

Thorntons claim that despite granting an extension from December 8 to December 22, 2017, WCU refused to open an escrow. (*Compl.*, ¶ 15) This is false. In all communications, Thorntons' counsel (Amsden and Black) never requested that WCU open an escrow. (Aff. Frampton, ¶¶ 4, 6) See also Thorntons' correspondence verifying no request to open an escrow. (Exhibit 13)

Thorntons claim they suffered damages of $60,000,000 if the releases would have been placed in escrow. (*Compl.*, ¶ 18) An escrow is just a holding account and the releases were available for any lender or investor that wanted to see them, thus the failure to open an escrow account did not cause any damages.

Thorntons second count requests an order of specific performance that requires WCU to open an escrow account for 18 months. (*Compl.*, ¶ 23) Even assuming the Court orders the escrow to be opened, the option has expired and the Settlement Agreement cannot be construed as extending the option for another 18 months.

Thorntons claim breach of the implied covenant of good faith and fair dealing. (*Compl.*, ¶¶ 24-29) However, failure to open an escrow account, even if that duty was assigned to WCU, was not a dishonest act. Further, Thornton will be unlikely to find a qualified expert to testify that it was commercially unreasonable for WCU to not open an escrow account. As should be obvious to anybody in the industry, a title company or lender/investor would simply request the release prior to closing. A qualified expert will testify that failure to open an escrow account made no difference in the industry.

Thorntons claim they had a "special relationship." (*Compl.*, ¶ 25) However, for a special relationship, the motivation for entering the contract must be a non-profit motivation. *Simmons Oil Corp. v. Holly Corp.*, 258 Mont. 79, 86-89, 852 P.2d 523, 527-29 (1993); *First Sec. Bank &*

Trust v. VZ Ranch (1991), 247 Mont. 453, 807 P.2d 1341. Since the subject property was commercial, no special relationship can be found.

Thorntons claim that failure to open the escrow clouded title in the Thorntons remaining property. (*Compl.*, ¶ 31) It would be impossible for WCU's mortgage on the Somers property, which had been there since 2009, to cloud title on any other property of Thorntons'. The title never changed since the Settlement Agreement was entered.

Thorntons claim fraud because WCU represented to lenders that the Thorntons owed more than $4 million on the Somers property. (*Compl.*, ¶ 35) Obviously, Thorntons are claiming that WCU's mortgage, which had been recorded since 2009, was a representation since WCU never spoke with any lenders. (Aff. Frampton, ¶ 16) Also, the alleged representation was correct in that Thorco and Thorntons owed over $4 million until and unless they exercised their option, which they never did. Exercising their option was a condition precedent to relasing part of the mortgages per the terms of the Settlement Agreement. Also, if WCU's made the representation, the lender, not Thorntons, would have a claim for fraud. If the representation was made to Thorntons, they could not reasonably rely upon it. There are a number of other eleemnts that the Thorntons cannot meet. Thus, there could be no fraud.

Thorntons claim actual malice for WCU's failure to open an escrow account. Compl., ¶ 40. Yet, the Settlement Agreement did not obligate WCU to open the account, Thorntons could have opened it, and their counsel never requested that it be opened before the option expired.

Thorntons pray for damages of $60 or $80 million. Compl., ¶ 20, also on page 9-10, ¶ 1. This prayer is obviously related to lost profits from the development of their property. However, the property is owned by Thorco, not Thorntons. It is undeveloped. Thorco never applied for plat approval. Thus, it's value is not based on speculative development but on its "as is" condition today.

In addition to these defenses to Thorntons allegations, there are a number of affirmative defenses that would apply including but not limited to waiver, estoppel, failure to mitigate.

d. Klinkhammer's misleading emails are another factor to weigh

In deciding a motion to set aside a default judgment, the Montana Supreme Court in *In re Marriage of Broere*, 263 Mont. 207, 210, 867 P.2d 1092, 1094 (1994) considered another factor than the ones for "good cause" under Rule 55(c):

> We want to point out that there is a second reason not raised or argued by the parties to reverse this case, and that is that Ranae's attorney affirmatively, though innocently, **misled** Robert by sending him the note of issue, leading him to believe the case would be tried. However, on discovering the fact that Robert had not filed his response, Ranae's attorney did nothing to rectify the misleading impression which he had left with Robert, but instead, took advantage of Robert's misunderstanding by obtaining, without notice, a default and a default judgment. This Court disapproves of this type of practice.

Similar conduct occurred in this case. The undersigned has no reason to believe that Klinkhammer's email sent 11 days after filing the lawsuit but which attached an unfiled complaint with the file name: "Complaint signed and ready to file" was innocent. Nevertheless, it was misleading and misled Frampton. The Court should consider this factor in WCU's favor.

CONCLUSION

Under the circumstances, Montana law would require this Court to set aside the default. To begin, the Montana Supreme court disfavors defaults. The policy in Montana is to try all cases on their merits.

Consistent with this policy, the Montana Supreme Court sets a low bar for this Court's discretion. In other words, although this Court does have discretion, a denial of WCU's motion is reviewed for only a slight abuse of that discretion. The Court has explicitly stated that a

district court's discretion to set aside an entry of default should be liberally exercised to facilitate a trial on the merits.

The WCU has established good cause to set aside the default. It's failure to answer was not willful as it has always defended Thorntons and Thorco's claims. Thorntons will suffer no prejudice because only a few days have passed since they took WCU's default and they still have not received a default judgment. Finally, WCU has meritorious defenses to the Complaint.

Therefore, WCU respectfully asks this Court to grant its motion to set aside the default and to allow it to file a responsive pleading.

DATED this 10 day of May, 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 10th day of May, 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

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

_____
Kelly Kracker
Frampton Purdy Law Firm

Michael John McKeon Jr.
Joshua C. Morigeau
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P.O. 1558
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Polson, MT 59860
(406) 883-6285
Attorneys For Defendants/
Counter-Claimants

COPY

MONTANA ELEVENTH JUDICIAL DISTRICT COURT, FLATHEAD COUNTY

WHITEFISH CREDIT UNION, Plaintiff, -vs- THORCO, INC., a Montana Corporation, DENNIS THORNTON, DONNA THORNTON, and JOHN DOE(s) 1-10. Defendants.	Cause No. DV-12-174B Judge: Robert B. Allison DEFENDANTS' NOTICE OF BANKRUPTCY FILING
THORCO INC., a Montana corporation, DENNIS THORNTON and DONNA THORNTON, Counter-Claimants, -vs- WHITEFISH CREDIT UNION, and JOHN DOES 1 - 10, Counter-Defendants.	

COME NOW Defendants/Counter-claimants, Thorco Inc. and Dennis and Donna Thornton (hereinafter "Thorco"), by and through their counsel of record, Michael J. McKeon Jr. of McKeon & Morigeau Law, PLLC, hereby provide notice that Thorco filed Chapter 11

EXHIBIT
tabbies
1

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 69

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

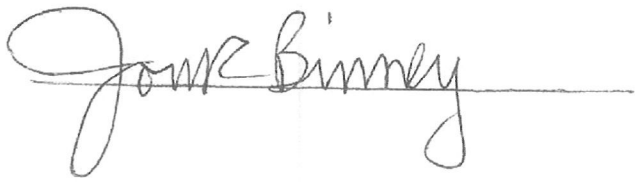
15. In May 2018. The parties agreed that if Thorco Inc. dismissed the Chapter 11 bankruptcy WCU would deposit and open the Escrow at First American Title.

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



2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 69

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

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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]

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

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 69

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.

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 69

Dean A. Stensland
BOONE KARLBERG P.C.
ATTORNEYS AT LAW
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 PC
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 to 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 PC
ATTORNEYS AT LAW
201 West Main St., PO Box 9199
Missoula, MT 59807
406.543.6646

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 70

Michael Klinkhammer, Esq.
Klinkhammer Law Offices
1111 S. Main
Kalispell Montana 59901
Telephone: (406) 257-7277
Facsimile: 888.414.1015

Attorney for Plaintiffs

CLERK OF DISTRICT COURT
2018 MAY 10 PM 4:23
FILED
BY #KL
DEPUTY

MONTANA ELEVENTH JUDICIAL DISTRICT COURT
FLATHEAD COUNTY

DENNIS THORNTON and DONNA THORTON, Plaintiffs, vs. WHITEFISH CREDIT UNION, Defendant.	Cause No. DV-18-336D Honorable Dan Wilson **MOTION FOR ORDER THAT WHITEFISH CREDIT UNION FILE THE MORTGAGE RELEASE WITH THE FLATHEAD COUNTY CLERK AND RECORDER OR AT A MINIMUM OPEN THE ESCROW PURSUANT TO THE TERMS OF THE SETTLEMENT AGREEMENT AND MUTUAL RELEASE**

* *

COMES NOW, the Plaintiffs, Dennis Thornton and Donna Thornton, by and through their attorney of record, file this MOTION FOR ORDER THAT WHITEFISH CREDIT UNION FILE THE MORTGAGE RELEASE WITH FLATHEAD COUNTY CLERK AND

10

RECORDER OFFICE OR AT A MINIMUM OPEN THE ESCROW PURSUANT TO THE TERMS OF THE SETTLEMENT AGREEMENT AND MUTUAL RELEASE. This motion is supported by the Affidavit of Dennis Thornton.

MEMORANDUM

I. Introduction.

Dennis Thornton and Donna Thornton (the Thornton's) face immediate and potentially irreparable harm if the Court does not grant their Motion for Order That Whitefish Credit Union File the Mortgage Release With the Flathead County Clerk and Recorder Office or At a Minimum Open the Escrow Pursuant to The Terms of The Settlement Agreement and Mutual Release. The Thornton's face this immediate and potentially irreparable harm as they may be forced into bankruptcy. The bankruptcy and harm to the Thornton's may be avoided if the court ordered Whitefish Credit Union to file the mortgage releases at issue or at a minimum open the escrow opened pursuant to the Settlement Agreement and Mutual Release [Agreement]. If forced into bankruptcy, all of the Thornton's non-exempt property would be taken into receivership and potentially sold to pay the Thornton's debts. This is unnecessary as, but for the failure file the mortgage releases or at a minimum to open the escrow pursuant to the Agreement, the Thornton's would have more than enough financial ability to pay their outstanding debt.

I. Statement of Facts.

1. Dennis Thornton and Donna Thornton own Thorco Inc.
2. Thorco Inc. had entered into loan arrangements with Whitefish Credit Union (WCU).
3. The Thornton's personally guaranteed the Thorco Loan entered with WCU.
4. WCU refused to enter the second half of the construction loan and instead sued for judicial foreclosure in Cause No. DV-12-174B.

5. The Judicial Foreclosure action involved two tracks of land-a 300-acre tract and a 200-acre tract.
6. The loan at issue in Cause No. DV-12-174B was for $3,360.172.
7. Thorco Inc., Donna Thornton and Dennis Thornton had counter-claims for breach of the implied covenant of good faith and fair dealings, breach of fiduciary duty, damage to credit and actual fraud seeking punitive and exemplary damages.
8. On November 22, 2013, WCU filed a motion for partial summary judgement for foreclosure sale.
9. On March 10, 2014, the Court granted WCU's motion for partial summary judgement.
10. The actual Judgement of Foreclosure and Order of Sale [Judgment] did not issue until February 23, 2016. That Judgment was recorded. See attached Exhibit 1.
11. On February 29, 2016, Dennis Thornton, Donna Thornton and Thorco, Inc. appealed the Judgement.
12. On March 22, 2016, the Montana Supreme Court issued an Order which dismissed the appeal without prejudice pending resolution of the remaining causes of action before the District Court.
13. On June 8, 2016, the parties entered into a Settlement Agreement and Mutual Release [Agreement]. See attached Exhibit 2.
14. On August 11, 2016, the parties entered into a Joint Motion to Vacate February 23, 2016 Judgement of Foreclosure and Order for Sale which was filed on August 12, 2016. See attached Exhibit 3.
15. On August 16, 2016, the Court issued its Order Vacating Judgement of Foreclosure and Order for Sale which was filed that same day. See attached Exhibit 4.

16. On August 11, 2016, the parties entered into a Stipulation to Dismiss with Prejudice which was filed on August 22, 2016. See attached Exhibit 5.
17. On August 24, 2016, the Court issued its Order of Dismissal with Prejudice with prejudice. See attached Exhibit 6.
18. The Thorntons own 100% of the shares of Thorco Inc.
19. As officers and/or agents of Thorco Inc., the Thorntons attempted to open the escrow with First American Title Company.
20. First American Title Company refused as the Thorntons did not have the original "inked" documents needed.
21. The Thornton's then legal counsel requested that WCU open the escrow pursuant to the Agreement but to the date of the filing of the Complaint in the above-caption matter, WCU has refused.
22. As only WCU could open the escrow and as WCU refused, no potential lender or investor could verify that all that was needed in order to obtain clear, marketable title to the property, was $1,100,000.00 on the 300-acre tract and $300,000.00 on the 200-acre tract. See attached Exhibit 7, Preliminary Title Commitment of Alliance Title and Escrow Corp. and Exhibit 8, Surveyor's Report, Dennis and Donna Thornton, Property under Mortgage Document No. 200900007830.
23. As a result of the failure to open the escrow pursuant to the Agreement, even though more than one lender or investor had indicated their willingness to provide the needed 1.4 million in funds, they all withdrew as according to the Clerk and Recorder's office, there is a mortgage debt of $3,360,172.00 on the property - which is not true pursuant to the

dismissal of DV-12-174B with prejudice and the Settlement Agreement and Waiver Release entered into by the parties.

24. Due to WCU's refusal to open the escrow, Thorco Inc. was forced to file a Chapter 11 bankruptcy before the United States Bankruptcy Court in Cause No. 17-61219 BPH

25. On March 30, 2018, in Cause No. 17-61219, WCU filed a Motion to Modify Stay in which the Agreement was made a public document. See attached Exhibit 9. Thorco Inc. subsequently moved to dismiss the Chapter 11 bankruptcy filing.

26. Darren R. Breckenridge, PLS, Mont. Reg. No. 11706LS, in his Survey Report(s), stated that it appears the failure to open the escrow has clouded title to both the Thorco 300-acre tract and the 200-acre tracts of land, and an additional eighty acres owned by Thorco Inc. See attached Exhibit 8.

27. Further, as the Thorntons had personally guaranteed the loan at issue in DV-12-174B, title to thirty-one acres that the Thortons' personally owned are also clouded. See attached Exhibit 10, Letter Darren R. Breckenridge, Breckenridge Surveying and Mapping to Kim Barstow, Commercial and Residential Realtor.

28. In addition, the title to Thornton's home and non-exempt assets are also clouded.

29. As a result, the Thortons not been able to sell any of their personally held real property. As title is clouded to our personal assets, it does not appear the Thornton's can even sell any of those.

30. In August 2017. Dennis Thornton left employment in Washington as he and his wife intended to develop Thorco Inc. real property interests and their personal real property interests. Mr. Thornton had reached a verbal sales agreement regarding their personal real property in which the Thorntons would sell it for 750,000 and, pursuant to that

agreement, the purchasers would retain Thorco Inc. to do $2,000,000.00 in development work on those acres.

31. When the purchaser(s) learned that the title to the thirty-one acres property was clouded by the failure of WCU to open the escrow, the purchasers refused to move forward until the escrow was opened.

32. Currently, the Thorntons have no income other than their real estate developments. Without income, the Thorntons face the following payments which must be made:

    1) Home mortgage $1,350.00/month;
    2) Credit Card Debt payments approximately $1,200.00/month;
    3) Medical Costs approximately $400.00/month;
    4) Transportation costs approximately $350.00/month;
    5) Vehicle Insurance approximately $375.00/ month;
    6) Food approximately $600 per month;
    7) Utilities approximately $300.00/month;
    8) Telecommunications approximately $425.00/month;
    9) Costs for disabled adult son $150 per month/month; and
    10) IRS payments 150 per month.

33. Lacking any other income, the Thorntons face potential foreclosure on their home.

34. Lacking any other income, the Thorntons will be unable to make their monthly medical expense payments which may result in lawsuit and judgements against them. That in turn would result in execution upon their bank accounts.

35. The Thorntons have no checking or savings balances available to them at this time to pay their necessary expenses.

36. Ordering Whitefish Credit Union to file the mortgage releases does not harm Whitefish Credit Union as in DV-12-174B, the foreclosure action of Whitefish Credit Union and counter-claims of Thorco Inc., Dennis Thornton and Donna Thornton were dismissed with prejudice. Consequently, any mortgage was extinguished. Mont. Code Ann. 28-1-1601, Mont. Code Ann. 71-1-211.

II. Argument.

The Thortons need the Court to grant their Motion for Order That Whitefish Credit Union File the Mortgage Release With the Flathead County Clerk and Recorder Office or At a Minimum Open the Escrow Pursuant to The Terms of The Settlement Agreement and Mutual Release so that they may sell the thirty-one acres of personal property which is available to them. As the documents demonstrate, the impediment is the failure of WCU to open the escrow account as agreed in the June 6, 2016 Settlement Agreement and Waiver Release.

The record demonstrates that the mortgage held by Whitefish Credit Union was extinguished when the parties entered into the Settlement Agreement and Mutual Release on June 8, 2016 and when the Flathead County District Court issued its Order of Dismissal with Prejudice on August 24, 2016. Mont. Code Ann. 28-1-1601 (2018) provides "An obligation is extinguished by a release therefrom given to the debtor by the creditor upon a new consideration or in writing, with or without new consideration." Applying Mont. Code Ann. 28-1-1601 and the Agreement, the mortgage held by Whitefish Credit Union was extinguished.

Mont. Code Ann. 71-1-211 addresses satisfaction of mortgage providing in pertinent part:

> (1) A mortgage must be discharged upon the record by the county clerk in whose custody it is recorded whenever there is presented to the clerk a certificate executed by the mortgagee or the mortgagee's personal representative or assignee, acknowledged or proved and certified as prescribed in this chapter

> that entitles a conveyance to be recorded, specifying that the mortgage has been paid or otherwise satisfied or discharged.

Mont. Code Ann. 71-1-211(1) (2018).

As the mortgage was extinguished, applying Mont. Code Ann. 71-1-211, the satisfaction of the mortgage should have been recorded. But for the manner in which the Settlement Agreement and Waiver Release was drafted, the mortgage release would have been filed. Given the requirements of Montana law, the mortgage releases should have been filed. The fact that they were not has contributed substantially to the damages suffered by the Thorntons. The Thornton's respectfully submit that they need the Court to Order the immediate filing of the mortgage releases to mitigate the damages they are suffering.

Alternatively, the Thornton's request at a minimum that the Court order the escrow opened. As the Survey Report of Darren R. Breckenridge demonstrates, opening the escrow account is in all parties best interests. As the Settlement Agreement and Waiver Release conveys Warranty Deed to WCU if the Thorco did not exercise the purchase option, the mortgages were terminated in Cause No. DV-12-174B and WCU received title to the two tracts of land via warranty deeds which were to be filed by the escrow agent if the Thornton's and or Thorco did not exercise the option to purchase. Although a primary issue in the instant case is the actions of WCU to prevent the Thortons from exercising their option to purchase, there is no doubt that the mortgages were extinguished. As such, at a minimum at this time, the escrow should be opened to clear title and allow the Thorntons to develop their personally owned thirty-one acres and avoid further financial catastrophe.

Further, as the Breckenridge Surveying and Mapping documents demonstrates that title to all real property involved will be clouded until the escrow is opened, opening the escrow account is also in the best interests of the WCU. As the Thortons face the prospect of being forced into

personal bankruptcy and further financial ruin, and as filing the mortgage releases and/or alternatively opening the escrow does not harm WCU, but actually helps clear title to real property for all parties, the Thornton's respectfully request the Court grant their motion.

Dated this __ day of May 2018.

Michael Klinkhammer
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I, Michael Klinkhammer, the undersigned, certify that on the __ day of April, 2018, I emailed and mailed a true and correct copy of the foregoing MOTION FOR OPENING OF ESCROW AS INTERIM RELIEF AND REQUEST FOR EXPEDITED HEARING along with a true and correct copy of AFFIDAVIT OF DENNIS THORNTON SUPPORTING MOTION TO OPEN ESCROW FOR INTERIM RELIEF as well as a copy of any proposed order , first class postage prepaid, U.S. mail to the following person(s):

Sean Frampton
Frampton Purdy Law
530 W. 19th Street, Ste 301
Whitefish Montana 59937

_____
Michael Klinkhammer

Return to Whitefish

Thorco INC
Box 1557 Kal. MT
59903

CERTIFIED

JJ

Robert B. Allison
District Judge, Department No. 2
Flathead County Justice Center
920 South Main Street, Suite 310
Kalispell, Montana 59901
(406) 758-5906

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Page: 1 of 28
Fees: $196.00
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Debbie Pierson, Flathead County MT by DD

02139750

MONTANA ELEVENTH JUDICIAL DISTRICT COURT, FLATHEAD COUNTY

WHITEFISH CREDIT UNION, Plaintiff, -vs- THORCO, INC., a Montana Corporation, DENNIS THORNTON, DONNA THORNTON, and JOHN DOE(s) 1-10. Defendants.	Cause No. DV-12-174 B Judge: Robert B. Allison **JUDGMENT OF FORECLOSURE AND ORDER OF SALE**
THORCO INC., a Montana corporation, DENNIS THORNTON and DONNA THORNTON, Counter-Claimants, -vs- WHITEFISH CREDIT UNION, and JOHN DOES 1 - 10, Counter-Defendants.	

Having granted summary judgment to Whitefish Credit Union on its claim for foreclosure, and good cause appearing;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that judgment of foreclosure is hereby entered in favor of Whitefish Credit Union and against Defendants

EXHIBIT 1

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Thorco, Inc., Dennis Thornton, and Donna Thornton against the following described real properties located in Flathead County, Montana:

MORTGAGE
(Document No. 200900007830)

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.

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.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the total indebtedness, including accrued interest, due and owing to Plaintiff by Defendants Thorco, Inc., Dennis Thornton and Donna Thornton is $4,348,880.81, said amount to accrue interest at the statutory rate of 10% per annum until paid in full.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Whitefish Credit Union's security interests are superior to all other liens or encumbrances.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the above-described property be sold by the Sheriff of Flathead County, Montana, according to the law and practice of this Court, with the proceeds of sale, including the payment of property taxes due at the time of foreclosure, being applied to costs of the court, the expenses of the sale, and the amount due the Plaintiff pursuant to the judgment as set forth above. If it appears from the Sheriff's return that the proceeds are insufficient and a balance still remains due on the judgment, judgment for the balance due is hereby entered against the Defendants Thorco, Inc., Dennis Thornton, and Donna Thornton.

DATED this 23rd day of February, 2016

By: _____
Judge Robert B. Allison
Flathead County District Court

cc: Sean S. Frampton
John L. Amsden / Justin P. Stalpes
John Heenan
John Ford Elsaesser

2/23/16

FEB 11TH, 2016

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.

CERTIFIED

CLERK OF DISTRICT COURT
2016 AUG 12 PM 1:50
FILED
BY _____ DEPUTY

Sean S. Frampton
Johnna J. Preble
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sean@morrisonframpton.com; johnna@morrisonframpton.com
Attorneys for Plaintiff Whitefish Credit Union

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Justin P. Stalpes
Anthony F. Jackson
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amsden@becklawyers.com; justin@becklawyers.com; anthony@becklawyers.com

John Heenan
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Ford Elsaesser
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Sandpoint, ID 83864
Tel: (208) 263-8517
Fax: (208) 263-0759
ford@ejame.com
Attorneys for Defendants and Counter-Claimants

MONTANA ELEVENTH JUDICIAL DISTRICT COURT, FLATHEAD COUNTY

WHITEFISH CREDIT UNION, Plaintiff, -vs- THORCO, INC., a Montana Corporation, DENNIS THORNTON, DONNA THORNTON, and JOHN DOES 1-10. Defendants.	][ ][ ][ ][ ][ ][ ][ ][ ][	Cause No. DV-12-174B Judge: Robert B. Allison JOINT MOTION TO VACATE FEBRUARY 23, 2016 JUDGMENT OF FORECLOSURE AND ORDER OF SALE

STATE OF MONTANA)
County of Flathead)
I hereby certify that the instrument to which this certificate is affixed is a true, correct and compared copy of the original on file in the office of the Clerk of the District Court of Flathead County this 2 day of Feb 2016.
PEGGY ALLISON, Clerk of the District Court
By _____

SEAL

EXHIBIT 3

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

Counter-Claimants,

-vs-

WHITEFISH CREDIT UNION, and JOHN DOES 1-10,

Counter-Defendants.

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

DATED this 11th day of August, 2016

MORRISON & FRAMPTON, PLLP
Attorneys for Whitefish Credit Union

By: _____
Sean S. Frampton
Johnna J. Preble

DATED this 11th day of August, 2016

BECK & AMSDEN, pllc
Attorneys for Thorco, Inc., Dennis Thornton, and Donna Thornton

By: _____
John L. Amsden
Justin P. Stalpes
Anthony F. Jackson

DATED this 11 day of August, 2016

BISHOP & HEENAN LAW FIRM
Attorneys for Thorco, Inc., Dennis Thornton, and Donna Thornton

By: _____
John Heenan

DATED this ____ day of August, 2016

ELSAESSER JARZABECK ANDERSON ELLIOTT & MACDONALD, CHTD.
Attorneys for Thorco, Inc., Dennis Thornton, and Donna Thornton

By: _____
Ford Elsaesser

DATED this ____ day of August, 2016

BISHOP & HEENAN LAW FIRM
Attorneys for Thorco, Inc., Dennis Thornton, and Donna Thornton

By: _____
John Heenan

DATED this ____ day of August, 2016

ELSAESSER JARZABECK ANDERSON ELLIOTT & MACDONALD, CHTD.
Attorneys for Thorco, Inc., Dennis Thornton, and Donna Thornton

By: Bruce Anderson for
Ford Elsaesser

2-4-2022. Expert Witness Report by Gerald Pitts Exhibit 70
CERTIFIED

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

CLERK OF DISTRICT COURT
2016 AUG 16 PM 4:29
FILED
BY
DEPUTY

MONTANA ELEVENTH JUDICIAL DISTRICT COURT, FLATHEAD COUNTY

WHITEFISH CREDIT UNION, Plaintiff, -vs- THORCO, INC., a Montana Corporation, DENNIS THORNTON, DONNA THORNTON, and JOHN DOE(s) 1-10. Defendants.	Cause No. DV-12-174 B Judge: Robert B. Allison **ORDER VACATING JUDGMENT OF FORECLOSURE AND ORDER OF SALE**
THORCO INC., a Montana corporation, DENNIS THORNTON and DONNA THORNTON, Counter-Claimants, -vs- WHITEFISH CREDIT UNION, and JOHN DOES 1 - 10, Counter-Defendants.	

Pursuant to the joint motion filed by the parties, through their respective counsel,

EXHIBIT 4

231

IT IS HEREBY ORDERED that the Judgment of Foreclosure and Order of Sale entered by this Court on February 23, 2016 is vacated.

DATED this 16th day of August, 2016.

Hon. Robert B. Allison
District Court Judge

cc: Sean S. Frampton/Johnna J. Preble
John L. Amsden/Justin P. Stalpes
John Heenan
Ford Elsaesser
8/16/16 SE

STATE OF [illegible]
County [illegible]
[illegible] this certificate
[illegible]
[illegible]
County [illegible] 2 Feb 2018
[illegible] the District Court
by Rachael R. Wark
Deputy Clerk

SEAL

CERTIFIED

CLERK OF DISTRICT COURT
2016 AUG 22 PM 1:58
FILED
BY SA
DEPUTY

Sean S. Frampton
Johnna J. Preble
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Attorneys for Plaintiff Whitefish Credit Union

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Justin P. Stalpes
Anthony F. Jackson
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Fax: (208) 263-0759
ford@ejame.com
Attorneys for Defendants and Counter-Claimants

MONTANA ELEVENTH JUDICIAL DISTRICT COURT, FLATHEAD COUNTY

WHITEFISH CREDIT UNION, Plaintiff, -vs- THORCO, INC., a Montana Corporation, DENNIS THORNTON, DONNA THORNTON, and JOHN DOES 1-10. Defendants.	Cause No. DV-12-174B Judge: Robert B. Allison **STIPULATION TO DISMISS WITH PREJUDICE**

STATE OF MONTANA)
County of Flathead)
I hereby certify that the within this certificate is a true and correct copy of the original document on file in my office.
County 2 Feb 2018
By Rachael R. Woods
Deputy Clerk

SEAL

EXHIBIT
5

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

Counter-Claimants,

-vs-

WHITEFISH CREDIT UNION, and JOHN DOES 1-10,

Counter-Defendants.

COME NOW the parties, Whitefish Credit Union, Thorco, Inc., Dennis Thornton, and Donna Thornton, who, upon grant of the parties' joint motion that the Court's February 23, 2016 Judgment of Foreclosure and Order of Sale be vacated, stipulate to dismiss with prejudice their respective claims which have now been settled.

DATED this 11th day of August, 2016

MORRISON & FRAMPTON, PLLP
Attorneys for Whitefish Credit Union

By: _____
Sean S. Frampton
Johnna J. Preble

DATED this 11th day of August, 2016

BECK & AMSDEN, pllc
Attorneys for Thorco, Inc., Dennis Thornton, and Donna Thornton

By: _____
John L. Amsden
Justin P. Stalpes
Anthony F. Jackson

DATED this 11 day of August, 2016

BISHOP & HEENAN LAW FIRM
Attorneys for Thorco, Inc., Dennis Thornton, and Donna Thornton

By: _____
John Heenan

DATED this ____ day of August, 2016

ELSAESSER JARZABECK ANDERSON ELLIOTT & MACDONALD, CHTD.
Attorneys for Thorco, Inc., Dennis Thornton, and Donna Thornton

By: _____
Ford Elsaesser

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

CLERK OF DISTRICT COURT
2016 AUG 24 PM 4:08
FILED
BY _____
DEPUTY

MONTANA ELEVENTH JUDICIAL DISTRICT COURT, FLATHEAD COUNTY

WHITEFISH CREDIT UNION, Plaintiff, -vs- THORCO, INC., a Montana Corporation, DENNIS THORNTON, DONNA THORNTON, and JOHN DOE(s) 1-10. Defendants.	Cause No. DV-12-174 B Judge: Robert B. Allison **ORDER OF DISMISSAL WITH PREJUDICE**
THORCO INC., a Montana corporation, DENNIS THORNTON and DONNA THORNTON, Counter-Claimants, -vs- WHITEFISH CREDIT UNION, and JOHN DOES 1 - 10, Counter-Defendants.	

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

EXHIBIT 6

232

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

DATED this 24th day of August, 2016.

Hon. Robert B. Allison
District Court Judge

cc: Sean S. Frampton/Johnna J. Preble
John L. Amsden/Justin P. Stalpes
John Heenan
Ford Elsaesser
8/24/16 SE

County Fee 2 Feb 2018
By Rachael R. Woods
Deputy Clerk

SEAL

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 71

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 JUL -5 PM 4:23
FILED
BY: DEPUTY

MONTANA ELEVENTH JUDICIAL DISTRICT COURT, FLATHEAD COUNTY

DENNIS THORNTON and DONNA THORNTON, Plaintiffs, -vs- WHITEFISH CREDIT UNION, Defendant.	][ ][ ][ ][ ][ ][ ][ ][	Cause No. DV-18-336D Judge Dan Wilson **ANSWER**

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

FIRST DEFENSE

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

SECOND DEFENSE

WCU answers the Plaintiffs' allegations as follows:

1. WCU admits the allegations contained in paragraphs 1, 2, 3, 6, and 30.

2. WCU denies the allegations contained in 17, 18, 19, 20, 21, 22, 23, 25-29, 31-33, 34-39, and 41-42.

29

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.

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

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

_____
Kelly Kracker
Frampton Purdy Law Firm

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 72

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.

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 73

Sean S. Frampton
FRAMPTON PURDY LAW FIRM
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Telephone: (406) 862-9600
Facsimile: (406) 862-9611
E-mail: sean@framptonpurdy.com

Attorneys for Defendant

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

MONTANA ELEVENTH JUDICIAL DISTRICT COURT, FLATHEAD COUNTY

DENNIS THORNTON and DONNA THORNTON, Plaintiffs, -vs- WHITEFISH CREDIT UNION, Defendant.	][ ][ ][ ][ ][ ][ ][ ][	Cause No. DV-18-336D Judge Dan Wilson **THIRD AFFIDAVIT OF AARON ARCHER**

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

1. I did not speak to Dennis Thornton or any of his representatives about the option. My office is located at the business building in south Kalispell and it is not a retail branch of Whitefish Credit Union. I never spoke with a person named Harshbarger.

2. The total indebtedness on the Thorco loan is currently over $4 million. Since the option was not exercised, the total indebtedness remains.

Further, affiant sayeth not.

Aaron Archer

STATE OF MONTANA)
: ss
County of Flathead)

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

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

SEAL

Phyllis Friske Notary SEAL State of Montana

PHYLLIS FRISKE
NOTARY PUBLIC for the
State of Montana
Residing at Kalispell, Montana
My Commission Expires
March 11, 2020

Notary Public for the State of Montana

CERTIFICATE OF MAILING

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

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

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

Kelly Kracker
Frampton Purdy Law Firm

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 73

Michael Klinkhammer, Esq.
Klinkhammer Law Offices
1111 S. Main
Kalispell Montana 59901
Telephone: (406) 257-7277
Facsimile: 888.414.1015

CLERK OF DISTRICT COURT
2018 SEP 17 PM 3:30
FILED ISSd
BY _____ DEPUTY

Attorney for Plaintiffs

MONTANA ELEVENTH JUDICIAL DISTRICT COURT
FLATHEAD COUNTY

DENNIS THORNTON, DONNA THORNTON and THORCO INC. Plaintiff,	Cause No. DV-18-336D Honorable Dan Wilson
vs.	**AMENDED SUMMONS**
WHITEFISH CREDIT UNION, SEAN FRAMPTON ESQ., AARON ARCHER, MORRISON AND FRAMPTON PLLP, FRAMPTON AND PURDY, JOHN AMSDEN ESQ., BECK, AMSDEN & STALPLES, PLLC, Defendant.	

* * * *

the relief demanded in the Amended Complaint.

Dated this 17 day of September, 2018.

PEG L ALLISON
Clerk of the District Court

(SEAL)

By: SHARA ARNT
Deputy Clerk

Dan Wilson
District Court Judge, Dept. 4
Flathead County Justice Center
920 South Main Street, Suite 310
Kalispell, MT 59901
Phone: (406) 758-5906

CLERK OF DISTRICT COURT
2018 SEP 20 PM 3: 32
FILED
BY KD
DEPUTY

ELEVENTH JUDICIAL DISTRICT COURT
FLATHEAD COUNTY, MONTANA

DENNIS THORNTON and DONNA THORNTON, Plaintiffs, vs. WHITEFISH CREDIT UNION, Defendant.	Cause No: DV-18-336D ORDER STRIKING AMENDED COMPLAINT

This matter is before the Court upon the filing, on September 14, 2018, Plaintiffs Dennis Thornton's and Donna Thornton's ("the Plaintiffs") Amended Complaint and Demand for Jury Trial in the above-entitled action. The Plaintiffs are represented by Michael Klinkhammer. Defendant Whitefish Credit Union (WCU) is represented by Sean S. Frampton.

Mont. R. Civ. P. 15(a) controls amendments to pleadings and, in relevant part, provides that a party may amend its pleadings once as a matter of course within 21 days after serving it or if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier. Mont. R. Civ. P. 15(a)(1). In all other cases, a party may amend its pleading only with the opposing party's written consent or leave of the court. Mont. R. Civ. P. 15(a)(2).

A review of the record shows that the original Complaint in this matter was filed on April 06, 2018. On May 03, 2018, WCU's default was entered. On June 15, 2018, the Court set aside WCU's default. WCU filed its Answer on July 05, 2018. The Plaintiffs did not file their Amended Complaint within 21 days after service of WCU's Answer, therefore the Plaintiffs may not amend their Complaint absent leave of the Court or WCU's written consent. The Plaintiffs

did not seek leave of the Court to amend and there is nothing in the record showing they obtained WCU's written consent.

On July 24, 2018, WCU filed its Motion for Summary Judgment in this matter. WCU's motion is fully briefed. Generally, due to the possibility of undue prejudice, once the opposing party has filed a response to the motion for summary judgment, a district court will not grant a motion to amend, absent extraordinary circumstances. *Peuse v. Malkuch*, 275 Mont. 221, 911 P.2d 1153, 1157 (1996); see also *Bardsley v. Pluger*, 2015 MT 301, ¶ 21, 381 Mont. 284, 358 P.3d 907.

As discussed above, the Plaintiffs failed to comply with the requirements of Mont. R. Civ. P. 15(a), therefore the Plaintiffs' Amended Complaint and Jury Demand (Dkt. No. 45) is STRICKEN and of no effect. Amendment of pleadings after the opposing party has filed a response to a motion for summary judgment is disfavored.

SO ORDERED.

DATED: September 19, 2018.

Dan Wilson
District Court Judge

c: Michael Klinkhammer
Sean S. Frampton

9/20/18 ca

Dan Wilson
District Court Judge, Dept. 4
Flathead County Justice Center
920 South Main Street, Suite 310
Kalispell, MT 59901
Phone: (406) 758-5906

CLERK OF DISTRICT COURT
2018 SEP 20 PM 3: 32
FILED
BY KD
DEPUTY

ELEVENTH JUDICIAL DISTRICT COURT
FLATHEAD COUNTY, MONTANA

DENNIS THORNTON and DONNA THORNTON, Plaintiffs, vs. WHITEFISH CREDIT UNION, Defendant.	Cause No: DV-18-336D ORDER STRIKING AMENDED COMPLAINT

This matter is before the Court upon the filing, on September 14, 2018, Plaintiffs Dennis Thornton's and Donna Thornton's ("the Plaintiffs") Amended Complaint and Demand for Jury Trial in the above-entitled action. The Plaintiffs are represented by Michael Klinkhammer. Defendant Whitefish Credit Union (WCU) is represented by Sean S. Frampton.

Mont. R. Civ. P. 15(a) controls amendments to pleadings and, in relevant part, provides that a party may amend its pleadings once as a matter of course within 21 days after serving it or if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier. Mont. R. Civ. P. 15(a)(1). In all other cases, a party may amend its pleading only with the opposing party's written consent or leave of the court. Mont. R. Civ. P. 15(a)(2).

A review of the record shows that the original Complaint in this matter was filed on April 06, 2018. On May 03, 2018, WCU's default was entered. On June 15, 2018, the Court set aside WCU's default. WCU filed its Answer on July 05, 2018. The Plaintiffs did not file their Amended Complaint within 21 days after service of WCU's Answer, therefore the Plaintiffs may not amend their Complaint absent leave of the Court or WCU's written consent. The Plaintiffs

did not seek leave of the Court to amend and there is nothing in the record showing they obtained WCU's written consent.

On July 24, 2018, WCU filed its Motion for Summary Judgment in this matter. WCU's motion is fully briefed. Generally, due to the possibility of undue prejudice, once the opposing party has filed a response to the motion for summary judgment, a district court will not grant a motion to amend, absent extraordinary circumstances. *Peuse v. Malkuch*, 275 Mont. 221, 911 P.2d 1153, 1157 (1996); see also *Bardsley v. Pluger*, 2015 MT 301, ¶ 21, 381 Mont. 284, 358 P.3d 907.

As discussed above, the Plaintiffs failed to comply with the requirements of Mont. R. Civ. P. 15(a), therefore the Plaintiffs' Amended Complaint and Jury Demand (Dkt. No. 45) is STRICKEN and of no effect. Amendment of pleadings after the opposing party has filed a response to a motion for summary judgment is disfavored.

SO ORDERED.

DATED: September 19, 2018.

Dan Wilson
District Court Judge

c: Michael Klinkhammer
Sean S. Frampton

9/20/18 a

DW

Dan Wilson
District Court Judge, Dept. 4
Flathead County Justice Center
920 South Main Street, Suite 310
Kalispell, MT 59901
Phone: (406) 758-5906

CLERK OF DISTRICT COURT
2018 SEP 21 AM 11:27
FILED
BY _____ DEPUTY

MONTANA ELEVENTH JUDICIAL DISTRICT COURT
FLATHEAD COUNTY

DENNIS THORNTON and DONNA THORNTON, Plaintiffs, vs. WHITEFISH CREDIT UNION, Defendant.	Cause No: DV-18-336 (D) ORDER STRIKING PLAINTIFFS' AMENDED ANSWER BRIEF

This matter is before the Court on Plaintiffs Dennis Thornton's and Donna Thornton's (Plaintiffs) "Amended Answer Brief Opposing WCU Motion for Summary Judgment," (Amended Answer Brief). The Plaintiffs contend they filed the amended brief because "Exhibit 8," was inadvertently omitted in their original filing and because the Affidavit of Dennis Thornton, included in their original filing, "had only been in draft stage." The Plaintiffs are represented by Michael Klinkhammer.

Defendant Whitefish Credit Union (WCU) objects to the Plaintiffs' Amended Answer Brief on the grounds that the brief is untimely and was filed without leave. WCU contends that it is prejudiced because the Plaintiffs' Amended Answer Brief was served one day before its counsel was to leave on a vacation and after he had already spent many hours preparing a reply to the Plaintiffs' originally-filed response. WCU asserts that it will not respond to the Plaintiffs' Amended Answer until it is properly before the Court, if at all. WCU is represented by Sean S. Frampton.

In pertinent part, Mont. R. Civ. P. 56(c(1)(B) provides that "a party opposing a motion for summary judgment must file a response, and any opposing affidavits, within 21 days after the

motion is served..." Within 14 days of service of the response, the movant may file a reply. Mont. R. Civ. P. 56(c)(1)(A). These times apply unless the court orders otherwise. Mont. R. Civ. P. 56(c)(1). When service is made by mail, Mont. R. Civ. P. 6(d) provides for a three-day extension of these deadlines.

A review of the record shows that WCU served and filed its Motion for Summary Judgment and incorporated brief on July 24, 2017. Applying the three-day extension for mailing, the Plaintiffs' were required to file their response and *any opposing affidavits* on or before August 17, 2018. The Plaintiffs filed and served their "Answer Brief Opposing WCU Motion for Summary Judgment" (Answer Brief), including attached affidavits, on August 17, 2018. The Plaintiffs filed their Amended Answer Brief, including attached affidavits, on August 24, 2018. WCU filed its "WCU's Reply to Its Motion for Summary Judgment" on August 31, 2018.

The Plaintiffs timely filed their Answer Brief, which included attached affidavits. The Plaintiffs did not subsequently provide notice to the Court and WCU of any defect in their filing. If their original filing was defective, the Plaintiffs could have and should have promptly provided notice of the defects to the Court and WCU. The Plaintiffs filed their Amended Answer Brief, which includes attached affidavits, seven (7) days after expiration of the deadline to file their response and *any* opposing affidavits. The Plaintiffs could have, but did not seek leave of the Court to extend the time to file a response brief or any opposing affidavit. The Plaintiffs' Amended Answer Brief was not timely filed.

Even if the Plaintiffs Amended Answer Brief had been timely filed, the Plaintiffs fail to cite any authority for the proposition that a party opposing summary judgment may file multiple, successive, or serial responses. The Rules of Civil Procedure do not provide for or contemplate the filing of multiple, successive, or serial responses. Mont. R. Civ. P. 56(c) provides that a party opposing a motion for summary judgment must timely file both "*a* response" and *any* opposing affidavits. Under Rule 56(c), the deadline for the movant to file an optional reply brief is determined by the date of service of "the response." The filing of multiple or serial responses would turn the deadline for a movant to file a reply into a moving target, which would prejudice the movant. The Plaintiffs' Amended Answer Brief is a successive or serial response for which there is no provision under Mont. R. Civ. P. 56(c).

Mont. R. Civ. P. 56(c) provides a 14-day timeframe for the movant to prepare and file a reply. Service of "the response" triggers the running of the time to prepare and file a reply. Once

"the response" has been served, the filing of a successive or serial response by the same party deprives the movant of the full measure of time to prepare a reply, which is prejudicial to the movant. Notwithstanding WCU's assertion that the Plaintiffs' Amended Answer Brief was served after its counsel had spent many hours preparing its reply to the Plaintiffs' original response, WCU was prejudiced by the filing of the Plaintiffs' Amended Answer Brief because it deprived WCU of the full measure of time to reply thereto afforded under Rule 56(c).

As discussed above, the Plaintiffs' Amended Answer Brief does not comport with Mont. R. Civ. P. 56(c). The Plaintiffs could have and should have sought leave of the Court to file an amended response to WCU's Motion for Summary Judgment. As discussed above, WCU was prejudiced by the filing of the Plaintiffs' Amended Answer Brief. WCU's objection to the Plaintiffs' Amended Answer Brief is well-taken and the objection is sustained. Accordingly, the Plaintiffs' "Amended Answer Brief Opposing WCU Motion for Summary Judgment" (Dkt. No. 39) is STRICKEN and will not be considered.

SO ORDERED.

DATED: September 20, 2018.

Dan Wilson
District Court Judge

c: Michael Klinkhammer
Sean S. Frampton
9/20/18 cc

DW

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 73

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MONTANA ELEVENTH JUDICIAL DISTRICT COURT
FLATHEAD COUNTY

DENNIS THORNTON and DONNA THORTON, Plaintiffs, vs. WHITEFISH CREDIT UNION, Defendant.	Cause No. DV-18-336D Honorable Dan Wilson **MOTION FOR LEAVE TO FILE AMENDED COMPLAINT**

* * * \

2. The Court's Rule 16 Scheduling Order made no reference to the requirements of Rule 15(a).

3. On September 14, 2018, the Plaintiffs Dennis Thornton and Donna Thornton filed an Amended Complaint and Demand for Jury Trial which did the following:

   1) Added as Plaintiff Thorco, Inc. which is a necessary party in interest;

   2) Add Sean Frampton, Morrison & Frampton PLLP, and Frampton & Purdy as necessary parties in interest as they, among other actions, falsely represented that Thorco owed more than four million dollars to potential investors and investors as well as making it impossible for the Thorco to exercise its options by demanding all original documents and by subsequently not opening the escrow pursuant to the Agreement.

   3) Added John Amsden, Justin P. Stalpes, Esq. Anthony F. Jackson, Esq and the Beck, Amsden & Stalpes, PLLC law firm for attorney malpractice for not fulfilling their duty by 1) recommending that the Plaintiffs enter an Agreement which was contrary to Montana Law as it agreed to not file a mortgage release when a mortgage was satisfied, 2) allowing Sean Frampton and WCU to unilaterally change the terms of the Agreement, and 3) failing to assure that an abstract of the agreement or notice of purchasers interest or option was filed pursuant to the Montana recording statutes any of which would have prevented the damage to the Thornton's and Thorco, Inc.

   4) Added Ford Elsaessar and Bruce Anderson and the Elsaessar Anderson CHTD law firm for attorney malpractice for not fulfilling their duty by 1) recommending that the Plaintiffs enter an Agreement which was contrary to Montana Law as it agreed to not file a mortgage release when a mortgage was satisfied, 2) allowing Sean Frampton and WCU

to unilaterally change the terms of the Agreement, and 3) failing to assure that an abstract of the agreement or notice of purchasers interest or option was filed pursuant to the Montana recording statutes any of which would have prevented the damage to the Thornton's and Thorco, Inc.

5) By adding John Heenan and the Bishop & Heenan Law Firm for attorney malpractice for not fulfilling their duty by 1) recommending that the Plaintiffs enter an Agreement which was contrary to Montana Law as it agreed to not file a mortgage release when a mortgage was satisfied, 2) allowing Sean Frampton and WCU to unilaterally change the terms of the Agreement, and 3) failing to assure that an abstract of the agreement or notice of purchasers interest or option was filed pursuant to the Montana recording statutes any of which would have prevented the damage to the Thornton's and Thorco, Inc

4. Plaintiffs initially mistakenly filed their Amended Complaint and Demand for Jury Trial in compliance with the Rule 16 scheduling Order but without meeting the requirements of M.R.C.P. 15(a).
5. The Amended Complaint and Demand for Jury Trial to the best of the Plaintiff's knowledge and belief now includes all potential parties and causes of action.
6. As the Amended Complaint and Demand for Jury Trial now includes Thorco Inc which is an essential party as Thorco, Inc. . had entered into loan arrangements with Whitefish Credit Union (WCU), Amendment of the Complaint is needed to assure that all Plaintiffs are properly parties.
7. As Ford Elsaessar and Bruce Anderson and the Elsaessar Anderson CHTD law firm are residents of Idaho, the issue of Federal Court jurisdiction under diversity delayed the

decision on the filing of the Amended Complaint and Demand for Jury Trial but the Plaintiff's believe that as Ford Elsaessar and Bruce Anderson and the Elsaessar Anderson CHTD law firm practice law in the State of Montana, that the Montana District Court would properly have jurisdiction over this matter.

I. Argument.

The Plaintiffs acknowledge the error in filing the Amended Complaint and Demand for Jury Trial without consent of the opposing party or leave of the Court. Cleveland v. Wright, 2001 ML 3779 (Mont. 21st District Court) [See attached]. Plaintiffs did not intend any disrespect. Plaintiff's legal counsel had been called out of state the first week of September due to a loss in the family and a funeral in Minnesota. Plaintiff's legal counsel had understood that the Rule 16 Order from the Court setting the final date for amendment of the pleadings and joinder of parties was September 14, 2018 had impliedly approved the filing of an Amended Complaint and Demand for Jury Trial without seeking leave of the Court.

Having now recognized the mistake, the Plaintiffs now respectfully move for leave file and Amended Complaint and Demand for Jury Trial properly in order to include joinder of all claims pursuant to Mont. Code Ann. 25-20-Rule 18 and required joinder of all parties pursuant to Mont. Code Ann. 25-20-Rule 19. Plaintiffs submit that granting leave to file the Amended Complaint and Demand for Jury Trial comports with the well established precedent that " . . . leave shall be freely given when justice so requires." Prentice Lumber Co. v Hukill, 161 Mont. 8,16; 504 P.2d 277,282 (Mont. 1972). As stated in Prentice:

> "Rule 15(a) declares that leave to amend 'shall be freely given when justice so requires'; this mandate is to be heeded. [Citing Moore's Federal Practice] If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits. In the absence of any apparent or declared reason -- such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, **[***16]** futility of amendment, etc. -- the leave sought should, as the rules require, be 'freely given'. Of course, the grant or denial of an opportunity to amend is within the discretion of the District Court, but outright refusal **[*18]** to grant the leave without any justifying reason appearing for the denial is not an exercise of discretion; it is merely abuse of that discretion and inconsistent with the spirit of the Federal Rules."
>
> Id. at 17-18, 504 P.2d at 282.
>
> As previously stated in the Eleventh Judicial District Court:
>
> The Montana Supreme Court has held that leave to amend should be granted unless the amendment would cause undue delay; be in bad faith; be subject to a dilatory motive on the part of the movant; would constitute a repeated failure to cure deficiencies by amendments previously allowed; would cause undue prejudice to the opposing party by virtue of allowance of the amendment; or would be futile. *Prentice Lumber Co. v. Hukill, 161 Mont. 8, 17, 504 P.2d 277, 282 (1972)*; *Mogan v. City of Harlem, 238 Mont. 1, 7, 755 P.2d 686 (1989)*. The denial of a proper and opportune amendment to the complaint **[**4]** has been held to be an abuse of discretion. *The Village Bank v. Cloutier, 249 Mont. 25, 813 P.2d 971 (1991)*; *State ex rel. Gold Creek Min. Co. v. Dist. Court, 99 Mont. 33, 43 P.2d 249 (1935)*.

Ivers v. Don K. Chevrolet 2004 ML 2641 ¶10 (Mont. 11th Judicial District Court 2004)

In this case, the Plaintiffs , Thorco, Inc. was not initially included as a party while Thorco, Inc. was in a bankruptcy. As the bankruptcy case has been dismissed, Thorco, Inc, may now be property included as a party without leave of the bankruptcy court.

The addition of the claims against Defendant Sean Frampton, Morrison and Frampton PLLP, and the Morrison Purdy law firm only came to light during discovery that has occurred since the original Complaint and Demand for Jury Trial was filed.

Similarly, the causes of action against the attorneys that represented Plaintiffs Dennis Thornton, Donna Thornton and Thorco Inc., only came to light during the discovery for Plaintiff's Response to Defendant's Motion for Summary Judgement. It was only then, that Plaintiff's learned that despite their requests to legal counsel for action to have the escrow opened, that no such action had taken place. It was also learned that then Plaintiffs' counsel had allowed WCU and its legal counsel to unilaterally change the terms of the Agreement. It was also learned that the Settlement Agreement itself was contrary to Montana law as Montana Law requires that whenever a mortgage is satisfied, a mortgage release is to be filed. Mont. Code Ann. 71.1.211. Finally, Plaintiffs also learned that their legal counsel had not acted to assure that the requirements of the Montana recording statutes had been met. Mont. Code Ann. 71-21-101 et. seq. If the escrow had been opened pursuant to the Agreement, Plaintiffs believe that the escrow agent would have filed the appropriate abstract of the agreement and/or notice of purchasers interest. As Plaintiffs legal counsel did not act to assure that the escrow was opened, it was incumbent upon Plaintiffs legal counsel to assure that an abstract of the agreement or notice of purchasers interest was filed so that potential investors and/or lenders would have notice of the Agreement and that the mortgage had been extinguished in the Agreement.

In the Plaintiffs defense, Defendant WCU filed its motion for summary judgement on July 24, 2018 – before any discovery was done. As there had been no discovery, Defendant's motion for summary judgement was essentially a late filed motion to dismiss, which, if supported by Affidavits is treated as a Motion for Summary Judgement. As a result, the Plaintiffs time on the case through August 17th was devoted to preparing and filing their response to the Plaintiff's motion for summary judgement. As result, while the Plaintiffs investigation and work preparing their response was of substantial value in learning to totality of circumstance,

Plaintiff's had less time than originally understood to prepare and file their Amended Complaint and Demand for Jury Trial. This is particularly true where, as here, one of the late discovered issues was the Plaintiff's discovery of their legal counsels failure to meet their duties and the impact of their comparative negligence on the Plaintiff's loss. The Plaintiffs believe that but for that negligence, they would not have suffered the loss at issue in this matter. That negligence was only recently discovered.

As the Plaintiff's have acted diligently, as have been no previous amendments admitted, and as there is no prejudice to the opposing parties as the Amended Complaint and Demand for Jury Trial actually opens the doors to comparative negligence claims, the Plaintiffs respectfully request the Court grant their motion.

Dated this 27 day of September , 2018.

Michael Klinkhammer
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I, Michael Klinkhammer, the undersigned, certify that on the 27 day of September, 2018, I emailed and mailed a true and correct copy of the foregoing MOTION FOR MOTION FOR LEAVE TO FILE AMENDED COMPLAINT as well as a copy of any proposed order, first class postage prepaid, U.S. mail to the following person(s):

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Attorney for Plaintiffs

MONTANA ELEVENTH JUDICIAL DISTRICT COURT
FLATHEAD COUNTY

DENNIS THORNTON, DONNA THORNTON and THORCO INC. Plaintiff,	Cause No. DV-18-336D Honorable Dan Wilson
vs.	**AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL**
WHITEFISH CREDIT UNION, SEAN FRAMPTON ESQ., AARON ARCHER, MORRISON AND FRAMPTON PLLP, FRAMPTON AND PURDY, JOHN AMSDEN ESQ., JUSTIN STALPES, ANTHONY F. JACKSON, BECK, AMSDEN & STALPES, PLLC LAW FIRM AND FORD ELSAESAR, AND BRUCE ANDERSON OF ELSAESSER ANDERSON, CHTD, JOHN HEENAN, BISHOP AND HEENAN LAW FIRM, Defendant.	

* * * \

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 74

DW

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District Court Judge, Dept. 4
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MONTANA ELEVENTH JUDICIAL DISTRICT COURT
FLATHEAD COUNTY

DENNIS THORNTON and DONNA THORNTON, Plaintiffs, vs. WHITEFISH CREDIT UNION, Defendant.	Cause No. DV-18-336 (D) ORDER GRANTING WCU'S MOTION FOR SUMMARY JUDGMENT AND ORDER DENYING THORNTONS' UNTIMELY MOTION TO AMEND THE COMPLAINT

Defendant Whitefish Credit Union (WCU) has moved for summary judgment. Its "Motion for Summary Judgment and (incorporated) Brief in Support" was filed on July 24, 2018. WCU is represented by Sean S. Frampton.

Plaintiffs Dennis Thornton and Donna Thornton ("the Thorntons") filed their "Answer Brief Opposing WCU's Motion for Summary Judgment" (Response) on August 17, 2018. The Plaintiffs are represented by Michael Klinkhammer.

WCU filed its reply brief on August 31, 2018.

The motion is fully briefed, and the parties have waived the right to a hearing. Mont. R. Civ. P. 56(c)(2)(A). A hearing would not be beneficial to a determination of the Motion. WCU's Motion for Summary Judgment is deemed submitted and ready for decision. Unif. Dist. Ct. R. 2(d).

The Thorntons own 100% of the shares of Thorco, Inc. Dkt. No. 10, Pl.'s Mot. for Or. to File Mortg. Releases 4 (May 10, 2018). In March 2009, Thorco, Inc. borrowed $3.3 million from WCU to subdivide and develop real property in Somers, Montana. Dkt. No. 34, 2nd Aff. Aaron Archer ¶ 2 (July 24, 2018). As collateral, Thorco, Inc. pledged real property. *Id.* The Thorntons personally guaranteed the loan. *Id.* at ¶ 3; Dkt. No. 38, Response 19 (Aug. 17, 2018). Thorco, Inc. did not pay back the loan at maturity. Dkt. No. 34, 2nd Aff. Archer ¶ 4. Thorco, Inc. never applied for a preliminary plat and never completed the development. *Id.* at ¶ 5.

In February 2012, WCU commenced a foreclosure action against Thorco, Inc. and the Thorntons. The action involved two tracts of land – a 300 acre tract and a 200 acre tract ("the Property"). Pursuant to Mont. R. Evid. 202(6), the Court takes judicial notice of the proceedings in *Whitefish Credit Union v. Thorco, Inc., Dennis Thornton, Donna Thornton, and John Doe(s) 1-10*, Cause No. DV-12-174 in Department B of this District Court (hereinafter "DV-12-174). In DV-12-174, Thorco, Inc. and the Thorntons asserted a host of counterclaims against WCU, including bad faith, breach of contract, constructive fraud and negligence, and sought punitive damages. DV-12-174, Dkt. No. 6, Ans. and Countercl. to Pl.'s Compl. for Foreclosure at pp. 12-15. In March 2014, WCU was granted summary judgment on its claim for foreclosure and on Thorco, Inc.'s and the Thorntons' counterclaims, except their counterclaim for negligence and punitive damages. See DV-12-174 Dkt. No. 156, Or. and Rationale on Pending Mot.s (March 10, 2014). In April 2014, WCU was awarded attorney fees. DV-12-174 Dkt. No. 171, Or. and Rationale on Mot. for Atty Fees (April 21, 2014). Trial was scheduled for May 27, 2014. DV-12-174 Dkt. No. 163, Min. Entry (Mar. 27, 2014). In early May 2014, the trial date was vacated. DV-12-174 Dkt. No. 175, Or. Vac. Sched. Or. (May 06, 2014). On May 27, 2014 Thorco, Inc. filed for bankruptcy protection under Chapter 11. DV-12-174 Dkt. No. 181, Def.s' Not of Bankr.

Filing (May 29, 2014). Thorco, Inc.'s bankruptcy case was dismissed on March 03, 2015. DV-12-174, Dkt. No. 193, Def.s' Not. of Dismiss. of Thorco, Inc.'s Ch. 11 Bankr. (Sept. 18, 2015).

In late February 2016, the Court in DV-12-174, having granted summary judgment to WCU on its claim for foreclosure, entered judgment of foreclosure in favor of WCU and against Thorco, Inc. and the Thorntons and decreed that the total indebtedness, including accrued interest, due and owing by Thorco, Inc. and the Thorntons was $4,348,880.01, said amount to accrue interest at the statutory rate of 10% per annum until paid in full. DV-12-174 Dkt. No. 217, J. of Foreclosure and Or. of Sale (Feb. 23, 2016). The Court in DV-12-174 ordered the Property to be sold. *Id.* Thorco, Inc. appealed from the judgment and order of sale. DV-12-174, Dkt. No. 218, Not. of Filing (Mar. 03, 2016). WCU moved to dismiss the appeal. DV-12-174, Dkt. No. 223, Or. Mar. 23, 2016). On March 22, 2016, The Montana Supreme Court granted WCU's motion to dismiss. *Id.*

In early April 2016, DV-12-174 settled at mediation. DV-12-174 Dkt. No. 229, Mediator's Rep. (Apr. 12, 2016). On June 08, 2016, the parties executed a "Settlement Agreement and Mutual Release" (Settlement Agreement). The Settlement Agreement names "Thorco, Inc., Dennis Thornton, Donna Thornton (collectively '*Thorco*')" as "Releasors" and WCU as "Releasee." Dkt. No. 32.1, WCU's Mot. S.J. and Br. in Support (Opening Br.) (July 24, 2018), Ex. A, Settlement Agreement at p. 1.

On April 06, 2018, the Thorntons filed their Complaint in this action and allege the following. Pursuant to the Settlement Agreement, an escrow was to be opened with First American Title. Dkt. No. 1, Compl. and Demand for J. Tr. ¶¶ 4(4) (Apr. 06, 2018). Mortgage releases signed by WCU, along with Warranty Deeds and Realty Transfer Certificates signed by the Thorntons, were to be placed into escrow with First American Title. *Id.* WCU did not open

the escrow. *Id. at* ¶ 8. Under the Settlement Agreement, Thorco, Inc. received an option to purchase the Property for a specified amount ($1.4 million). *Id. at* ¶ 4(2). WCU should have recorded mortgage releases showing the amount owed on the Property had been reduced to the purchase option amount. *Id. at* ¶ 11. WCU's failure to open the escrow prevented the Thorntons from exercising the option under the Settlement Agreement. *Id. at* ¶ 19. WCU breached the covenant of good faith and fair dealing by refusing to open the escrow. *Id. at* ¶ 26. The Thorntons personally guaranteed the loans obtained by Thorco, Inc. at issue in DV-12-174. *Id. at* ¶ 30. The Thorntons assert that, by not opening the escrow and/or recording the mortgage releases, WCU clouded the title to the remaining real property owned by the Thorntons, which prevented them from securing financial assistance to develop their personally held real property. *Id.* at ¶¶ 31-32. The Thorntons allege that WCU falsely represented to potential lenders that the Thorntons and/or Thorco, Inc. owed more than the agreed purchase option price. *Id.* at ¶¶ 35-38. The Thorntons allege that WCU committed actual malice when it failed to open the escrow and misrepresented, to the Thorntons' potential lenders, the amount owed. *Id.* at ¶¶ 41-42.

The Thorntons assert claims against WCU for breach of contract (Count 1); breach of contract-specific performance (Count II); breach of the covenant of good faith and fair dealing (Count III); damages to the Thorntons personally due to breach of contract (Count IV); actual fraud (Count V); and actual malice (Count VI). Dkt. No. 1, Compl. and Demand for J. Tr. ¶¶ 1-42 (Apr. 06, 2018). The Thorntons seek actual and compensatory damages in the amount of approximately $80 million, as well as punitive damages and attorney fees and costs. *Id.* at pp. 9-10. In the alternative, if the Court does not award the Plaintiffs' consequential damages plus attorney fees and costs, the Thorntons seek specific performance, requiring WCU to open the

escrow and extending, from the date the escrow is opened, the time to exercise the purchase option under the Settlement Agreement. *Id.* at p. 10.

On May 03, 2018, the Clerk entered the default of WCU upon the Thorntons' application. Dkt. No. 5, Entry of Def. (May 03, 2018). On May 10, 2018, WCU moved to set aside the default. Dkt. No. 12, WCU's Mot. to Set Aside Def. (May 10, 2018). On June 18, 2018, this Court granted WCU's motion to set aside the default. Dkt. No. 24, Or. Setting Aside Def. (June 18, 2018). WCU filed its Answer on July 05, 2018. Dkt. No. July 05, 2018.

WCU now seeks summary judgment on all of the Thorntons' claims.

ARUGMENTS

WCU argues that it is entitled to summary judgment on all of the counts of the Thorntons' Complaint because (1) under the Settlement Agreement, WCU did not have a duty to open the escrow; (2) an escrow is not a cloud on title to property and WCU's duty to record the mortgage releases was conditioned upon Thorco, Inc.'s performance of an obligation that was not performed; (3) it was Thorco, Inc.'s and/or the Thorntons' duty to open the escrow account, not WCU's duty, and no language in the Settlement Agreement ties the purchase option period to the date the escrow is opened; (4) WCU's agents never spoke with any lenders, the alleged statements about the amount owed by Thorco, Inc. are not false, and the Thorntons cannot satisfy the elements of a "special relationship" that would entitle them to tort damages; (5) WCU is not causing any cloud on the real property held in the Thorntons' personal names; (6) the Thorntons failed to plead all nine elements of fraud and cannot satisfy all the elements of a fraud claim; and

(7) actual malice is not an independent cause of action and WCU had no duty to open the escrow account.[1] Dkt. No. 32.1, WCU's Mot. S.J. and Br. in Support (Opening Br.) (July 24, 2018).

The Thorntons maintain that (1) WCU unilaterally changed the terms of the Settlement Agreement by insisting on delivery of Thorco's original signed Non-Merger Warranty Deeds and Realty Transfer Certificates before WCU would disburse the $150,000 payment, and it was impossible for the Thornton's to open the escrow because the original documents were kept by WCU's counsel; (2) the Settlement Agreement represents an accord and satisfaction of the mortgage and Thorco, Inc. no longer owes the mortgage on the property and, consequently, the titles to the subject tracts were improperly clouded by the failure to open the escrow; (3) WCU's argument as to specific performance fails because its actions made it impossible for Thorco, Inc. and/or the Thorntons to open the escrow; (4) statements in affidavits in the record show that WCU's counsel represented to potential lenders that the Property was in foreclosure and the Thorntons owed WCU more than the purchase option price; (5) WCU's argument that it is unlikely the Thorntons applied for, were approved or denied "financial assistance to develop their real property" is insufficient and false and an ALTA Survey would reveal the 31 acres of the Thorntons' personal real property was encumbered by the their personal guarantee of the loan (from WCU); (6) the Thorntons pleaded fraud with sufficient particularity and actual malice pursuant to § 27-1-221(2), MCA and, if there is any error in the Thorntons' pleadings as to fraud and actual malice, they should be allowed to correct the error in the amended pleadings.

[1] In its Opening Brief, WCU also argues that the Thorntons lacked standing. In their Response, the Thorntons argue, among other things, that they have standing because, under the Settlement Agreement, they, individually, have/had the right to exercise the purchase option. In its Reply, WCU concedes that the Plaintiffs had the right to exercise the purchase option and therefore the Plaintiffs have standing.

ANALYSIS

Motions for summary judgment are governed by Rule 56 of the Montana Rules of Civil Procedure. A party moving for summary judgment must show no genuine issue of material fact exists and it is entitled to judgment as a matter of law. M. R. Civ. P. 56; *Butler v. Domin*, 2000 MT 312, ¶ 19, 302 Mont. 452, 15 P.3d 1189. The same rules apply to a party seeking summary judgment on an opposing party's pleaded affirmative defenses. *Brinkman & Lenon vs. P&D Land Ent.*, 263 Mont. 238, 242, 8/67 P.2d 1112, 1115 (1994). "The evidence must be viewed in the light most favorable to the nonmoving party, and all reasonable inferences are to be drawn…in favor of the party opposing summary judgment." *McLeod v. State ex rel. Dept. of Transp.*, 2009 MT 130, ¶ 12, 206 P.3d 956, 960, 350 Mont. 285, 289. If the movant does not establish the absence of any genuine issue of material fact, the opposing party has no duty to present counter-proof. *Matthews v. Glacier Gen. Assurance Co.*, 184 Mont 368, 382, 60 P.2d 232, 240 (1979). Once the moving party has met its burden, the party opposing summary judgment must present affidavits or other testimony containing material facts that raise a genuine issue as to one or more elements of its case. *Tin Cup Co. Water and/or Sewer Dist. v. Garden City Plumbing & Heating, Inc.*, 2008 MT 434, ¶ 22, 347 Mont. 468, 200 P.3d 60.

The non-moving party must provide material and substantial evidence setting forth specific facts to raise a genuine issue of material fact, rather than relying on speculative, conclusory, or fanciful statements. *Hiebert v. Cascade Co.*, 2002 MT 233, ¶ 21, 311 Mont. 471, 56 P.3d 848 (internal quotation and other citation omitted). The non-moving party cannot create a genuine issue of material fact by putting his or her own "conclusions and interpretations on an otherwise clear set of facts." *Sprunk v. First Bank System*, 252 Mont. 463, 466, 830 P.2d 103, 105 (1992). If the non-moving party fails to raise a genuine issue of material fact, the court must

then determine whether summary judgment is appropriate as a matter of law based on the presented facts. *Hiebert*, ¶ 21 (citing *Scott v. Robson*, 182 Mont. 528, 535, 597 P.2d 1150, 1154 (1979)).

The Thorntons' claims for breach of contract and breach of the covenant of good faith and fair dealing (Counts I through IV) are premised on their allegations that (1) failure to record the mortgage releases clouded the title to the Property and to real property held in their personal names and (2) failure to open the escrow clouded the title to the Property and to real property held in their personal names. Dkt. No. 1, Compl. ¶¶ 11, 31.

> A grant may be deposited by the grantor with a third person, to be delivered on performance of a condition, and on delivery by the depositary, it will take effect. While in the possession of the third person and subject to condition, it is called an escrow.

§ 70-1-511, MCA. An escrow is a legal term of art to describe *a transaction* where a grantor delivers something of value to a third person, to be held by that third person until the performance of a prescribed condition (or the happening of a specified contingency), whereupon the third person is to then deliver the thing of value to a grantee. See also § 32-7-102(2), MCA; § 1-2-107, MCA. An instrument is deemed to be recorded when, being duly acknowledged or proved and certified, it is deposited in the county clerk's office with the proper officer for record. § 70-21-209, MCA. An instrument held in escrow does not become part of the public record until it is recorded. However, when an instrument is placed in escrow, the recording of the instrument before strict performance of the condition precedent or happening of the contingency is unauthorized and, even though the grantee or another records the instrument, no right or title passes. *Hart v. Barron*, 122 Mont. 350, 370-72, 204 P.2d 797 (1949) (citing 30 C.J.S. *Escrows* §§ 9-11 and 19 Am. Jur. *Escrows* §§ 20-21)).

A clear title means a good title and a good title means a martketable or merchantable title. *First Mont. Title Co. v. N. Point Square Assoc.*, 240 Mont. 33, 37-38, 782 P.2d 376, 378 (1989) (citing *Ogg v. Herman, et al.*, 71 Mont. 10, 15-16, 227 P. 476, 477 (1924)). "Marketable title is one of such character as assures to the purchaser the quiet and peaceable enjoyment of the property and one which is free from encumbrances." *Id.* Whether title is marketable is a question of law for the court. *West v. Club at Spanish Peaks, LLC*, 2008 MT 183, ¶ 19, 343 Mont. 434, 186 P.3d 1228. A "cloud on title" impairs the ability to sell the property to others. *Id.* "In order to constitute a cloud on a title to real property, the instrument must be one which, if valid, would affect or impair the title of the owner of a particular estate and which apparently on its face has that effect, but which can be shown by extrinsic evidence to be invalid or inapplicable to the estate in question." *Poulos v. Lyman Bros. Co.*, 63 Mont. 561, 567, 208 P. 598, 599 (1922).

In pertinent part, the Settlement Agreement provides the following:

> **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…for one million four hundred thousand dollars ($1,400,000). The option price is allocated to each parcel as follows…Within the 18 months, Thorco may exercise its option to purchase either [tract], or both.
>
> b. WCU shall execute releases of its mortgages for the…tracts… 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 …. tracts to WCU along with a Realty Transfer Certificate… 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).

Dkt. No. 32.1, WCU's Opening Br., Ex. A, Settlement Agreement at ¶¶ 1-2.

If the language of a contract is unambiguous, or reasonably susceptible to only one construction, the duty of the court is to apply the language as written. *Mary J. Baker Revocable Trust v. Cenex Harvest States, Coops., Inc.*, 2007 MT 159, ¶ 19, 338 Mont. 41, 164 P.3d 851 (citations omitted). The above quoted language of the Settlement Agreement is clear and unambiguous: Thorco, Inc. and/or the Thorntons had an 18-month period, beginning from the date of execution of the Settlement Agreement, to exercise the option to purchase one or both tracts of the Property and, upon such timely exercise of its option to purchase, the appropriate mortgage release(s) were to be recorded. Accordingly, Thorco, Inc.'s and/or the Thorntons timely exercise of the purchase option is a condition precedent[2] to the recording of the mortgage release or releases. The Thorntons do not dispute that the purchase option expired in late December 2017. It is undisputed that neither Thorco, Inc. nor the Thorntons timely exercised the purchase option. As a matter of law, no obligation accrued for any party to undertake the recording of the mortgage release(s), because Thorco, Inc. and/or the Thorntons failed to perform the condition precedent. Opening an escrow does not, of itself, establish or verify marketable title to the Property. The Thorntons rely on the testimony of Darren Breckenridge, a professional surveyor. However, Breckenridge does not testify that title to the Property or any property held personally by the Thorntons was clouded by failing to open an escrow. Even if an escrow had been opened and the mortgage releases were held in it, the title of the Property would have been unaffected because documents held in escrow are not part of the public record. Regardless where the documents were held (whether in escrow or by WCU or its counsel), the mortgage releases

[2] "A condition precedent is one which is to be performed before some right dependent thereon accrues or some act dependent thereon is performed." § 28-1-403, MCA.

were not to be recorded unless and until Thorco, Inc. and/or the Thorntons performed the condition precedent. It is undisputed that performance of the condition precedent did not occur. Consequently, even if the Settlement Agreement was construed to impose a duty upon WCU to open an escrow and/or to place the mortgage releases in the escrow, any alleged failure of WCU to do either act was of no consequence.

In November 2017, Thorco, Inc. obtained a preliminary commitment for title insurance for the Property from Alliance Title & Escrow Corp. Dkt. No. 32.10, WCU's Opening Br., Ex. M, Prelim. Title Commit. (November 29, 2017). Among the "exceptions" shown is WCU's original mortgage in the amount of $3,360,000.00 recorded on March 24, 2009. *Id.* at Schedule B, Exception 25. Under Montana law, the recording of a mortgage of real property is authorized and is required in transfers of property in trust for the benefit of creditors. §§ 71-1-207, 70-21-202, MCA. The original mortgage is securing an unpaid debt and its recording is authorized by law. If the Thorntons wanted the mortgage releases recorded prior to performance of the condition precedent, they could have (and must have) included language to that effect in the Settlement Agreement. When interpreting a contract, a court's role is merely to construe the instrument according to its terms and may neither insert nor omit terms to the contract. *Sayegusa v. Rogers*, 256 Mont. 269, 271, 846 P.2d 1005, 1006 (1993) (citing *Martin v. Laurel Cable TV, Inc.*, 215 Mont. 229, 696 P.2d 454 (1985); § 1-4-101, MCA). The Thorntons did not enter into a settlement requiring WCU to record the bargained-for mortgage releases before WCU was paid the $1.4 million option price. Because the terms of the Settlement Agreement are plain and unambiguous, this Court may not now insert that omitted provision into the Settlement Agreement. In short, Thorco, Inc. and/or the Thorntons are not entitled to have the mortgage

releases recorded, because they failed to perform the condition precedent, and the original mortgage is not a cloud on the title of the Property.

The Thorntons seek to rely on Breckenridge's opinion that, until mortgage releases are filed, the Thorntons' personal guarantee of the loan clouds the title to their personal real property assets. Dkt. No. 38, Pl.s' Resp., Ex. 6, Aff. Darren Breckenridge ¶ 16 (Aug. 09, 2018). "District courts need consider only admissible evidence when determining whether to grant a motion for summary judgment." *N. Cheyenne Tribe v. Roman Catholic Church*, 2013 MT 24, ¶ 21, 368 Mont. 330, 296 P.3d 450. A witness, expert or otherwise, is not allowed to give a legal conclusion and an expert may not express an opinion on a conclusion of law. *Heltborg v. Modern Mach.*, 244 Mont. 24, 29-31, 795 P.2d 954, 955-958 (1990). Whether a title is clear/marketable is a question of law. *First Mont. Title Co.*, 240 Mont. at 37-38, 782 P.2d at 378; *West*, ¶ 19. Breckenridge's opinion is inadmissible. The Thorntons have failed to show that the original mortgage is a cloud on the title of any of their personally-held real property.

As of the filing of WCU's Reply brief on August 31, 2018, the non-merger warranty deeds had not yet been recorded. If the Settlement Agreement had been followed according to its plain terms, WCU would have come into full ownership of the Property after Thorco, Inc. and/or the Thorntons failed to pay the option price in December 2017. The Thorntons cannot show that continuing to own the Property – presently free of the recording of the Non-Merger Warranty Deeds conveying all of *Thorco's* right, title, and interest in the Property to WCU – has caused them any compensable damages.

As discussed above, even if the Settlement Agreement was construed to impose a duty on WCU to open an escrow and/or to place the mortgage releases in escrow, any alleged failure of WCU to do either act was of no consequence. Even if an escrow had been opened and the

mortgage releases were held in escrow as contemplated by the Settlement Agreement, the title of the Property would have been unaffected because documents held in escrow are not part of the public record. Regardless where the documents were held (whether in escrow or by WCU or its counsel), the mortgage releases were not to be recorded unless the condition precedent was performed, and Thorco, Inc. and/or the Thorntons failed to perform and satisfy the condition precedent. The original mortgage is not a cloud on the title of the Property and the Thorntons failed to show that it is a cloud on the title of any real property held personally by them. The Thorntons have not shown that continuing to own the Property has caused them to suffer any compensable damages. For these reasons, the Thorntons' breach of contract claims (Counts I, II and IV) and their claim of breach of the covenant of good faith and fair dealing (Count III) (to the extent it is based on the allegation that WCU failed or refused to open an escrow) fail as a matter of law. The Thorntons have not raised any genuine issue of material fact as to the same.

The Thorntons further allege that WCU, either directly or through its agents, misrepresented to potential lenders that the loan is in default and remains owing. WCU disputes that it communicated with any potential lenders and that, even if it did, such information is not a misrepresentation. The statements in the various affidavits on which the Thorntons rely either constitute inadmissible hearsay or are based on assumption or speculation or have been mischaracterized and do not actually say what it is the Thorntons claim they say. The Thorntons have not offered competent evidence showing that WCU was dishonest and/or misrepresented the status of the loan to potential lenders. It is undisputed that Thorco, Inc. and/or the Thorntons did not pay the loan which is secured by the original mortgage on the Property. WCU's agreement to accept a steeply-discounted amount ($1.4 million) in satisfaction of the loan was contingent upon Thorco, Inc. and/or the Thorntons timely exercising the purchase option.

Because they failed to perform, Thorco, Inc. and the Thorntons have not satisfied the loan. WCU's loan to Thorco, Inc., personally guaranteed by the Thorntons, remains in default and owing. For these reasons, the Thorntons' claims of actual fraud (Count V) and breach of the covenant of good faith and fair dealing (Count III) (to the extent it is based on WCU's alleged misrepresentation) fail as a matter of law. The Thorntons have not raised any genuine issue of material fact as to the same.

The Thorntons finally assert a claim for "actual malice," pursuant to § 27-1-221(2), MCA. Section 27-1-221(2) provides the definition of "actual malice," presented in the context of statutory standards for punitive damage awards. Section 27-1-221, MCA does not establish an independent cause of action for "actual malice." Rather, it provides that a finding of actual malice or actual fraud is a required prerequisite to an award of punitive damages by the fact finder. § 27-1-221(1), MCA. "Contract claims do not provide an avenue for punitive damages." *Masters Group Intl., Inc. v. Comerica Bank*, 2015 MT 192, ¶ 77, 380 Mont. 1, 352 P.3d 1101 (citing § 27-1-220(2), MCA). Punitive damages are not recoverable absent a valid compensatory damages award on a predicate claim for relief. *Folsom v. Mont. Pub. Employees Assn.*, 2017 MT 204, ¶ 52, 388 Mont. 307, 400 P.3d 706. For the reasons discussed above, WCU is entitled to judgment in its favor on all of the Thorntons' claims against it. The Thorntons' claim for "actual malice" (Count VI) fails as a matter of law because "actual malice" is not an independent cause of action. Further, WCU's lack of liability on the Thorntons' underlying claims forecloses the Thorntons' punitive damages claim against WCU, as a matter of law.

THORNTONS' UNTIMELY MOTION TO AMEND THE COMPLAINT

The Thorntons made an improper attempt to amend their Complaint by filing an amended complaint on September 14, 2018, the last day under the scheduling order for the amendment of

pleadings. Their filing was stricken by order entered September 20, 2018, for two reasons. First, the Thorntons did not seek leave to file an amended complaint as required by Mont. R. Civ. P. 15(a). Second, the Thorntons filed their amended pleading after WCU's motion for summary judgment was fully briefed. See *Peuse v. Malkuch*, 275 Mont. 221, 911 P.2d 1153, 1157 (1996) (once a summary judgment motion has been briefed, only extraordinary circumstances justify granting motion to amend pleading). There are no such extraordinary circumstances.

In apparent response to the striking of the Thorntons' improperly filed amended complaint, they have since filed their Motion for Leave to File Amended Complaint on September 27, 2018, nearly two weeks after the deadline to amend pleadings expired. Although the time for briefing of the motion has not expired, the motion will be denied for the following reasons. First, the purported amendment would be futile. Second, the proposed, amended complaint seeking to add WCU's attorney and the attorney's law firm as party defendants would be futile. Third, because this Order dismisses this action with prejudice, there is no surviving action in which the Thorntons' proposed, amended complaint may be adjudicated.

The proposed, amended complaint repeats the claims against WCU that are dismissed by this Order. The new claims the Thorntons wish to assert against WCU, including Breach of Contract-Impossibility, Tortious Interference with Contract, and Commercial Interference with Contract, are merely derivative of the Thorntons' claims against WCU which are dismissed by this Order. In particular, the proposed, new claims are based on WCU's alleged failure to open the escrow and alleged misrepresentation concerning the status of the loan and mortgage. As the above analysis demonstrates, however, it is immaterial whether any party opened an escrow for the eventual recording of documents, because Thorco, Inc. and/or the Thorntons failed to satisfy the condition precedent by failing to pay the option price by the deadline in the Settlement

Agreement. Further, it is not disputed that the underlying loan is in default and that the mortgage on the Property merely secures payment of the loan. Finally, any allegation in the Thorntons' proposed, amended complaint that WCU violated the Montana recording statutes by failing to record an abstract of the Settlement Agreement or notice of the Thorntons' purchasers' interest in the option, is both tenuous and immaterial. First, in their Motion for Leave to Amend Complaint, the Thorntons represent they "believe" that if an escrow had been opened, the escrow agent would have recorded an abstract of the Settlement Agreement. However, the plain language of the Settlement Agreement calls for only for the mortgage releases, non-merger warrant deeds, and real estate transfer certificate to be deposited in escrow and recorded only upon the Thorntons' payment of the option price. In their motion to amend their Complaint the Thorntons have not cited any language from the Settlement Agreement requiring that an abstract of the agreement, itself, or notice of the Thorntons' purchasers' interest in the option to be deposited in escrow. Nor do the Thorntons cite any language from the Settlement Agreement purporting to impose such a duty upon WCU, its agents or attorneys, or an escrow agent. Second, in support of this allegation, the Thorntons have cited to a non-existent section of the Montana Code Annotated ("71-21-101, et seq." is not a statute, part, or chapter codified within the Code).[3] Although the Thorntons seek to justify their untimely request to amend their pleading on the basis that the new claims only came to light during discovery conducted after the original

[3] The Thorntons have failed to cite to any statute, in particular, which sets out the alleged duty by which WCU should have recorded an abstract of the Settlement Agreement or notice of the Thorntons' purchasers' interest in the option. Although it is not generally the duty of a court to conduct research on behalf of a party or to guess as to a party's precise position or legal theory (*State v. Chavez-Villa*, 2012 MT 250, ¶ 29, 366 Mont. 519, 289 P.3d 113), it appears the Thorntons may be relying on § 70-21-202, MCA, which generally provides for the recording of abstracts of documents accomplishing a transfer of property or an interest in property, but the statute is silent as to the identity of any party required to make such a recording.

Complaint was filed, the Thorntons never moved to extend the deadline to amend pleadings and never moved under Mont. R. Civ. P. 56(f) to extend the briefing schedule on the pending motion for summary judgment to conduct further discovery. Moreover, the content of any recording statutes the Thorntons now seek to rely on to impute a duty by WCU or its agents or attorneys to record an abstract of the Settlement Agreement or notice of the Thorntons' purchasers' interest in the option, were matters of public record at all times relevant to this action and could, with due diligence, have been asserted or raised by the Thorntons in a timely fashion in their original Complaint.

Adding WCU's attorney and his law firm as defendants would, likewise, be futile, because the claims the Thorntons wish to assert against Frampton and the law firm are the same claims (or derived from the same claims) originally asserted against WCU. The Tortious Interference with Contract claim against Frampton and his firm is based on the alleged misrepresentation concerning the amount owed under the original loan agreement and the failure to open the escrow, both theories this Court has rejected in this Order. As the above analysis shows, it is immaterial that no party opened an escrow for the eventual recording of documents, because Thorco, Inc. and/or the Thorntons failed to satisfy the condition precedent and the Settlement Agreement does not operate to reduce the indebtedness on the original loan unless and until Thorco, Inc. and/or the Thorntons timely exercised the purchase option. It is undisputed that the Thorntons failed to do so. Accordingly, if the Thorntons' amended complaint were allowed, both Frampton and his law firm would be entitled to summary judgment on the same basis that summary judgment is granted by this Order upon the claims asserted in the Thorntons' original Complaint. Any allegation in the Thorntons' proposed, amended complaint that Frampton and the law firm violated the Montana recording statutes by failing to record an

abstract of the Settlement Agreement or notice of the Thorntons' purchasers interest in the option, is tenuous and immaterial. As discussed above, nothing in the plain language of the Settlement Agreement calls for an abstract of the agreement or notice of the Thorntons' purchasers interest in the option to be deposited in escrow and the Thorntons fail to cite to any language in the Settlement Agreement imposing a duty on WCU, its agents or attorneys, or an escrow agent to record an abstract of the Settlement Agreement or notice of the Thorntons' purchasers' interest in the option. As also stated, above, in support of their allegations against Frampton and his law firm the Thorntons have cited to a section of the Montana code ("§ 71-21-101, et seq.") which does not exist.[4]

Finally, the amendment of the Thorntons' pleading also would be futile, because the dismissal of the original Complaint by this Order is a dismissal with prejudice, the effect of which is to dispose of the entire action.

CONCLUSION

For the reasons discussed above, WCU has shown that all the Thorntons' claims asserted in the Complaint, including their claim for punitive damages against WCU, fail as a matter of law, and it is entitled to summary judgment as to each.

WCU's Motion for Summary Judgment (Dkt. No. 32.1) is GRANTED, and the Complaint (Dkt. No. 1) is DISMISSED with prejudice. Further, the Thorntons' Motion for Leave to File Amended Complaint (Dkt. No. 55) is DENIED, and the scheduling Order (Dkt. No. 37) is VACATED.

SO ORDERED.

//

[4] See n. 3.

DATED: October 4, 2018.

Dan Wilson
District Court Judge

c: Sean S. Frampton
Michael Klinkhammer

10/4/18 CC

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 75

10/5/18

Judge Dan Wilson
District Court Judge
Department No. 4
Flathead County Justice Center
920 South Main, Suite 310
Kalispell, Montana 59901
406-758-5906

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MONTANA ELEVENTH JUDICIAL DISTRICT COURT, FLATHEAD COUNTY

DENNIS THORNTON and DONNA THORNTON, Plaintiffs, -vs- WHITEFISH CREDIT UNION, Defendant.	][ ][ ][ ][ ][ ][ ][ ][	Cause No. DV-18-336D Judge Dan Wilson **JUDGMENT**

The above cause came before this Court on Defendant Whitefish Credit Union's Motion for Summary Judgment and Plaintiffs Dennis Thornton and Donna Thornton's Motion for Leave to File Amended Complaint. In its *Order Granting WCU's Motion for Summary Judgment and Order Denying Thorntons' Untimely Motion to Amend the Complaint*, the Court granted Defendant's Motion for Summary Judgment and denied Plaintiffs' Motion for Leave to Amend.

JUDGMENT IS HEREBY ENTERED in favor of Defendant Whitefish Credit Union and against the Plaintiffs Dennis Thornton and Donna Thornton.

DATED this 9 day of October, 2018.

Judge Dan Wilson

cc: Sean S. Frampton
Michael Klinkhammer
10/10/18 CC

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 76

F. COUNT III – BREACH OF THE IMPLIED COVENANT

Thorntons claim breach of the implied covenant of good faith and fair dealing. (*Compl.*, ¶¶ 24-29) They alleged two bases for this claim: (1) First, they allege a breach occurred when WCU refused to open the escrow. (*Id.*, ¶ 26) This has been addressed above.

Second, they claim a breach occurred "when its agent stated to lenders that [Thorntons] were in default on a loan and owed well over 4 million dollars when in fact the [Judgment] had been vacated." (*Id.*, ¶ 27) The record is undisputed that WCU's agents never spoke to any lender. All email communications are set forth above. Aaron Archer never spoke with anyone, let alone a lender. (Aff. 2nd Archer, ¶ 8) The undersigned communicated with only Thorntons counsel and Alliance Title. Speaking with lenders is a material fact because Thorntons allege the lenders refused to loan them money. Thus, if WCU never spoke with any lenders, WCU could not have breached the covenant of good faith and fair dealing, as alleged, and is entitled to summary judgment.

In addition, the alleged statements are true. Breach of the covenant exists where there is dishonesty in fact. § 28-1-211, MCA. In *Mann Farms v. Traders State Bank*, 245 Mont. 234, 801 P.2d 73 (1990), the Court found no breach of the implied covenant because the record contained no evidence that the bank acted dishonestly. *See also First Sec. Bank & Trust v. VZ Ranch*, 247 Mont. 453, 807 P.2d 1341 (1991) (the Court found no breach of the implied covenant because the bank acted with honesty in classifying a loan as substandard). Thorco, Inc. is, indeed, in default on his loan and it owes well over $4 million dollars. The fact that the parties entitled into a Settlement Agreement and vacated the Judgment, which are legal means to achieve repayment, does not change the fact that Thorco, Inc. is in default and owes WCU over $4 million. Accordingly, even if WCU said what was alleged, this statement is truthful and it therefore did not breach the implied covenant and is entitled to summary judgment.

The only possible way a WCU lien could show on Thorntons' title report is with a judgment in favor of WCU and against the Thorntons. *See* § 25-9-301, MCA. The only Judgment WCU received was on February 23, 2016. However, that Judgment was vacated on August 16, 2016. (Exhibit O)

Accordingly, since it is undisputed that WCU is not causing any cloud on Thorntons' real property held in their personal names, this Count should be dismissed.

H. COUNT V – "ACTUAL FRAUD"

Rule 9(c), M.R.Civ.P. requires that fraud be pled with particularity, the failure of which to do results in dismissal of the claim. *C. Haydon Ltd. v. Montana Min. Properties*, 262 Mont. 321, 325, 864 P.2d 1253, 1256 (1993).

Here, Thorntons did not plead fraud with particularity. Instead, Thorntons attempt to plead a claim of "actual fraud" under § 27-1-221(3), MCA. That section, however, defines "actual fraud" and "actual malice" as the prerequisite for awarding punitive damages. *Id.* ("…reasonable punitive damages may be awarded when the defendant has been found guilty of actual fraud or actual malice.") In *Hallenberg v. General Mills Operations*, 2006 MT 191, ¶ 20, 333 Mont. 143, 141 P.3d 1216, the Court held that "the distinctive definition of 'actual fraud' under § 27-1-221(3), MCA, []applies only to the consideration of punitive damages and does not define—or affect the definition of—the underlying tort."

To establish a prima facie case of actual fraud, the party asserting the claim must establish the following nine elements: (1) a representation; (2) the falsity of that representation; (3) the materiality of the representation; (4) the speaker's knowledge of the representation's falsity or ignorance of its truth; (5) the speaker's intent that the representation should be acted upon by the person and in the manner reasonably contemplated; (6) the hearer's ignorance of the representation's falsity; (7) the hearer's reliance upon the truth of the representation; (8) the

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Return to 10/28/2015

Thorco INC
Box 1557 Kal. MT
59903

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CERTIFIED

JJ

Robert B. Allison
District Judge, Department No. 2
Flathead County Justice Center
920 South Main Street, Suite 310
Kalispell, Montana 59901
(406) 758-5906

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MONTANA ELEVENTH JUDICIAL DISTRICT COURT, FLATHEAD COUNTY

WHITEFISH CREDIT UNION, Plaintiff, -vs- THORCO, INC., a Montana Corporation, DENNIS THORNTON, DONNA THORNTON, and JOHN DOE(s) 1-10. Defendants.	Cause No. DV-12-174 B Judge: Robert B. Allison **JUDGMENT OF FORECLOSURE AND ORDER OF SALE**
THORCO INC., a Montana corporation, DENNIS THORNTON and DONNA THORNTON, Counter-Claimants, -vs- WHITEFISH CREDIT UNION, and JOHN DOES 1 - 10, Counter-Defendants.	

Having granted summary judgment to Whitefish Credit Union on its claim for foreclosure, and good cause appearing;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that judgment of foreclosure is hereby entered in favor of Whitefish Credit Union and against Defendants

217

Thorco, Inc., Dennis Thornton, and Donna Thornton against the following described real properties located in Flathead County, Montana:

2-4-2022 Expert Witness Report by Gerald Fritts Exhibit EE

MORTGAGE
(Document No. 200900007830)

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.

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.

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 77

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the total indebtedness, including accrued interest, due and owing to Plaintiff by Defendants Thorco, Inc., Dennis Thornton and Donna Thornton is $4,348,880.81, said amount to accrue interest at the statutory rate of 10% per annum until paid in full.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Whitefish Credit Union's security interests are superior to all other liens or encumbrances.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the above-described property be sold by the Sheriff of Flathead County, Montana, according to the law and practice of this Court, with the proceeds of sale, including the payment of property taxes due at the time of foreclosure, being applied to costs of the court, the expenses of the sale, and the amount due the Plaintiff pursuant to the judgment as set forth above. If it appears from the Sheriff's return that the proceeds are insufficient and a balance still remains due on the judgment, judgment for the balance due is hereby entered against the Defendants Thorco, Inc., Dennis Thornton, and Donna Thornton.

DATED this 23rd day of February, 2018.

By: _____
Judge Robert B. Allison
Flathead County District Court

cc: Sean S. Frampton
John L. Amsden / Justin P. Stalpes
John Heenan
John Ford Elsaesser

2/23/18

STATE OF MONTANA)
County of Flathead)
I hereby certify that the instrument to which this certificate is affixed is a true, correct and compared copy of the original on file in the office of the Clerk of the District Court of Flathead County this 2 day of February, 2018.
PEGGY ALLISON, Clerk of the District Court
By _____ Deputy Clerk

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 77

CERTIFIED

FILED
March 22 2016
Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA
DA 16-0136

IN THE SUPREME COURT OF THE STATE OF MONTANA

DA 16-0136

FILED
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Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

DV-12-174B

THORCO, INC., a Montana Corporation,
DENNIS THORNTON and DONNA THORTON,

Defendants/Counter-Claimants and Appellants,

v.

WHITEFISH CREDIT UNION,

Plaintiffs and Appellees.

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ORDER

Appellee Whitefish Credit Union, by counsel (WCU), has filed a motion to dismiss the appeal of the defendants and appellants Thorco, Inc., and Dennis and Donna Thornton (collectively Thorco). Thorco, by counsel, has filed a response in opposition to the motion.

WCU sued to foreclose upon a development project owned by Thorco in 2012. Thorco answered and asserted affirmative defenses and counterclaims. Subsequently, the District Court entered summary judgment in favor of WCU on all of Thorco's counterclaims except negligence and punitive damages (and possibly negligent misrepresentation). Ultimately, on February 23, 2016, following the lift of a stay in a bankruptcy matter filed by Thorco, the District Court entered judgment of foreclosure and an order of sale of the subject property. Thorco appeals from the judgment of foreclosure and order of sale.

WCU maintains that Thorco's appeal must be dismissed because Thorco's counterclaims remain outstanding. It cites M. R. App. P. 6(5)(a) for the proposition that judgments which adjudicate fewer than all claims as to all parties, and which leave matters in the litigation undetermined, are not appealable. It maintains that this appeal is a stall tactic by Thorco in an attempt to delay the foreclosure sale. WCU further asserts that because Thorco's counterclaims rest on the same set of facts as the judgment and order from which appeal is taken, acceptance of this appeal would result in two appeals on the same set of

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facts. There having been no motion and no order to certify the judgment as a final judgment under M. R. Civ. P. 54(b), WCU asserts that this appeal must be dismissed until all claims have been adjudicated.

Thorco argues in response that a judgment of foreclosure is a final appealable order, citing three cases for the proposition: *FSLIC v. Hamilton*, 241 Mont. 367, 786 P .2d 1190 (1989); *First Western v. Lence*, 255 Mont. 7, 8 39 P.2d 1277 (1992); and *Bank of Baker v. Mikelson Land Co.*, 1999 MT 76, 294 Mont. 64. 979 P.2d 180. These cases do stand for the proposition stated. However, in none of the three cases was there a counterclaim interposed by the borrower which remained to be adjudicated, as in each case the judgment of foreclosure itself was not contested. Thus, M. R. App. P. 6(5)(a) (and its predecessor rule) was not implicated in any of the cases upon which Thorco relies.

Thorco maintains here that it raised "affirmative defenses" in response to WCU's foreclosure complaint. It apparently made the same contention in the District Court, but in its order of March 10, 2014, the court rejected the characterization of its multiple claims as affirmative defenses, stating "they are not affirmative defenses, they are claims for damages." The court observed that Thorco's negligence counterclaim arises out of Thorco's contention that WCU was negligent in the hiring, training, and supervision of its agents, and that summary judgment on this issue was not appropriate. The court also concluded that Thorco's counterclaim for punitive damages was not amenable to summary judgment. Therefore, at least two counterclaims arising out of the same facts that underlie WCU's complaint for foreclosure remain to be resolved in the District Court.

We conclude that Thorco's appeal is premature, due to the pendency of its counterclaims. Thorco could have requested that the District Court certify its judgment of foreclosure and order of sale as a final judgment pursuant to M. R. Civ. P. 54(b), thus clearing the way for an immediate appeal (M. R. App. P. 6(6)), but it did not. Therefore, its remedy at this juncture is to move for a stay of the foreclosure sale and seek the District Court's approval of a supersedeas bond, in accordance with M. R. App. P. 22(1)(b). Accordingly,

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IT IS ORDERED that WCU's motion to dismiss Thorco's appeal as premature is GRANTED. Thorco's appeal is DISMISSED WITHOUT PREJUDICE.

The Clerk of this Court is directed to serve notice of this Order upon all counsel of record.

DATED this 22nd day of March, 2016.

Patricia Cotter

Michael E Wheat

Justices

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

CERTIFIED

Robert B. Allison, District Judge
Department No. 2
Flathead County Justice Center
920 South Main Street, Suite 310
Kalispell, Montana 59901
Telephone: (406) 758-5906

CLERK OF DISTRICT COURT
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FILED
BY _____ DEPUTY

IN THE DISTRICT COURT OF THE ELEVENTH JUDICIAL DISTRICT OF THE STATE OF MONTANA, IN AND FOR THE COUNTY OF FLATHEAD

* * * * * * * * * * *

WHITEFISH CREDIT UNION,

Plaintiff,

vs.

THORCO, INC., a Montana corporation, DENNIS THORNTON, DONNA THORNTON, and JOHN DOES 1-10,

Defendants.

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

Counter-Claimants

vs.

WHITEFISH CREDIT UNION, and JOHN DOES 1-10,

Counter-Defendants.

Cause No. DV-12-174B

ORDER AND RATIONALE ON MOTION FOR SUMMARY JUDGMENT RE: NEGLIGENT MISREPRESENTATION AND MOTIONS *IN LIMINE*

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This matter is before the Court on Plaintiff Whitefish Credit Union's (WCU) motion *in limine*, WCU's motion *in limine* re: negligence and WCU's motion for summary judgment re: negligent misrepresentation. On the basis of said motions, supporting and opposition memoranda and oral argument having been waived, the Court, being fully advised in the premises, makes the following:

ORDER

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IT IS HEREBY ORDERED that WCU's motion *in limine* re: negligence claim is DENIED.

IT IS FURTHER ORDERED that ruling is reserved in part, denied in part and granted in part on WCU's motion *in limine* as set forth below.

IT IS FURTHER ORDERED that WCU's motion for summary judgment re: negligent misrepresentation is GRANTED.

RATIONALE

WCU's motion *in limine* re: negligence claim

WCU moves the Court *in limine* seeking an order from limiting Defendants Thorco, Inc., Dennis Thornton and Donna Thornton's (Thorco) negligence claim to its proper scope. WCU asserts that Thorco has not properly made claims for "negligent handling" and "negligent failure to follow policy" and that such claims would require expert testimony. WCU also argues that Thorco did not plead a claim for negligent misrepresentation, but has including allegations of negligent misrepresentation in its contentions in the Pretrial Order.

Thorco objects to the motion and argues that it is untimely and more properly presented as a motion for summary judgment. Thorco points out that WCU previously made a summary judgment motion which was denied by the Court which argued that Thorco's negligence claim was actually a professional negligence claim which required expert testimony. Thorco asserts that its negligence claims are properly pled.

WCU previously moved for summary judgment alleging that Thorco's negligence claim was a professional negligence claim and required expert testimony. The Court denied this motion. WCU's motion *in limine* seeking exclusion of claims for "negligent handling" and "negligent failure to follow policy" on the basis that they require expert testimony is an attempt for a second bite at the apple and is properly denied.

Thorco did not set forth a separate claim for negligent misrepresentation in its complaint. However, the allegations and arguments made by Thorco have always included representation, such as that Doug Johnson representing that all the money needed to develop the subdivision would be loaned. Misrepresentations have always been a part of the negligence claim. Thorco may assert a negligent misrepresentation claim although no separately set forth claim for negligent misrepresentation was pled in the complaint. Rule 8, M.R.Civ.P. requires only a short and plain statement of the claim and there is no requirement that claims be properly titled. There is no prejudice to WCU because the negligence misrepresentation allegations are no surprise. Prejudice to WCU is also prevented as the Court granted WCU leave to file a motion for

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summary judgment on the issue of Thorco's claim for negligent misrepresentation. The Final Pretrial Order contains a claim for negligent misrepresentation and it supersedes the pleadings. *Madison Addition Architectural Comm. v. Youngwirth*, 2000 MT 293, P 13, 302 Mont. 302, 15 P.3d 1175.

WCU's motion *in limine*

WCU moves the Court *in limine* to exclude evidence of the following: 1) standards for credit unions; 2) WCU's 2009 policy; 3) North Dakota and subordination; 4) negligence prior to May 1, 2009 and after March 15, 2011 and 5) specific damages. WCU also seeks an order excluding Thorco's expert Ray Nicolet from testifying. Thorco does not object to No. 2 and agrees that the Court has determined that WCU's 2009 policy against loaning to business members ended in 2010 and did not apply to Thorco. Thorco objects to the remainder of the motion.

WCU seeks to exclude evidence and testimony regarding credit union standards arguing they are no longer relevant since Thorco's bad faith claim was dismissed on summary judgment. It is possible that credit union standards would be relevant to Thorco's negligence claim. Since the motion does not specify the standards, the Court cannot determine relevance and reserves ruling until trial.

WCU argues that testimony and evidence regarding Thorco working in North Dakota and the subordination agreement are not relevant as Thorco has not made a claim that WCU wrongfully denied Thorco a loan to mobilize to North Dakota. Thorco has not made such a claim and evidence about the subordination agreement and possible work in North Dakota is not relevant, could be confusing and prejudicial and the Court has ruled that WCU did not breach the subordination agreement as a matter of law.

WCU asserts that any negligent act prior to May 1, 2009 is barred by the running of the statute of limitations. WCU also contends that any evidence of negligence after March 15, 2011 is not relevant because that was when Thorco's loan matured and WCU had no further obligation to Thorco beyond that date.

Thorco's claim was filed in April 2012 and any evidence of negligence which occurred prior to May 1, 2009 is barred by the three year statute of limitations for negligence. After Thorco's loan matured on March 15, 2011, WCU's obligations to Thorco ended. Thorco has not made any allegations of negligence following loan maturity other than WCU's failure to subordinate and the 2009 policy preventing renewal or refinancing. The Court has already determined that WCU did not refuse to subordinate and the 2009 policy did not apply to Thorco as a matter of law. This evidence is properly excluded.

WCU argues that Dennis Thornton (Dennis) should be precluded from testifying to damages because he failed to offer any testimony during his deposition. WCU contends that discovery responses from Thorco about damages were not sufficient for WCU to assess Thorco's damage claim.

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Thorco did list all the elements of damage it is seeking in response to interrogatories and responded that it sought $26 million for the highest and best use of the property which would be as a fully developed subdivision. WCU did not request any amounts of damages in any of its discovery. If the discovery responses were inadequate or Dennis Thornton's responses at his deposition were inadequate, WCU's remedy was to seek to compel discovery and then seek discovery sanctions pursuant to Rule 37, M.R.Civ.P. Evidence of Thorco's damages is relevant and admissible. The motion is denied. The one exception is that evidence of lost business income from being unable to work in North Dakota and eastern Montana is irrelevant and inadmissible because there is no claim by Thorco for being denied a loan for North Dakota and the Court has determined that WCU did not refuse to subordinate.

WCU asserts that the Court has excluded Thorco's expert Ray Nicolet from testifying at trial. The Court excluded Thorco's experts Allen Carver and Jeff Larsen. Thorco was granted an extension of the expert disclosure deadline to November 23, 2013. Thorco disclosed Ray Nicolet's full expert report by November 27, 2013. Exclusion of Nicolet for Thorco missing the disclosure deadline by four days when that deadline passed over two years ago would elevate form over function to a degree the Court is unwilling to do. WCU could have deposed Nicolet as the parties agreed that depositions could take place after the close of discovery. The concern regarding prejudice is the paramount concern in determining whether to exclude the testimony of expert witnesses. *Superior v. Montana Power*, 2002 MT 139, P 18, 310 Mont. 139, 49 P.3d 565. WCU has had Ray Nicolet's expert report for over two years and has had time to prepare to question him and refute him. The motion is denied.

WCU's motion for summary judgment on negligent misrepresentation

WCU moves for summary judgment on Thorco's negligent misrepresentation claim on the basis that it is barred by the statute of limitations. WCU argues that Dennis testified that Doug Johnson represented that WCU would loan a total of $7 million. Dennis also testified that this representation was made on March 15, 2009. WCU contends that Thorco brought its claim for negligent misrepresentation in April of 2012. Based upon the three year statute of limitations for negligence, the claim is barred. WCU also argues that, at the latest, the statute of limitations began running on the day that Thorco signed the promissory note and other loan documents on March 19, 2009. WCU also asserts that Doug Johnson's alleged promise to lend $7 million in phased financing cannot give rise to a claim for negligent misrepresentation because it is not a representation of a past or existing fact.

Thorco objects to the motion and argues that some of the negligent misrepresentations occurred after April of 2009; therefore, the statute of limitations had not run as to those representations when the claim was asserted in April of 2012. Thorco also cites the discovery rule in Section 27-2-102, MCA, and asserts that the running of the statute of limitations did not begin until Thorco discovered the falsity of the representations after March of 2011 when they conducted discovery. Thorco contends that it has established facts requiring trial in support of the claim for negligent misrepresentation. Thorco asserts that the "past or existing fact" requirement for negligent misrepresentation claims was eliminated for financial institutions by

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the Montana Supreme Court's decision in *Morrow v. Bank of America*, 2014 MT 117, 375 Mont. 38, 324 P.3d 1167.

The movant for summary judgment must demonstrate that no genuine issues of material fact exist. Once this has been accomplished, the burden then shifts to the non-moving party to prove, by more than mere denial and speculation, that a genuine issue does exist. Having determined that genuine issues of fact do not exist, the district court must then determine whether the moving party is entitled to judgment as a matter of law. *Pryor v. Babcock Building Corporation*, 2002 MT 68, 309 Mont. 222, 45 P.3d 35.

Thorco could and should have realized that the WCU loan was for $3.3 million not $7 million and that the financing was not phased when the loan documents were signed on March 19, 2009. For this reason, the running of the three year statute of limitations was not tolled and any allegations of negligent misrepresentation which occurred prior to April, 2009 are barred by the statute of limitations.

Thorco argues that some of the negligent misrepresentations occurred after April, 2009. Thorco claims that representations such as the representation that the loan would be renewed or refinanced made after April 2009 were false on the basis of WCU's 2009 policy freezing member business loans. Thorco contends that WCU's representation that its refusal to make an additional loan of $500,000 for North Dakota was because additional collateral was needed was false. Thorco argues the real reason was the 2009 policy. Thorco also argues that it was not until June of 2011 that it became aware that WCU disclaimed the existence of the subordination agreement. The Court has already ruled that WCU's 2009 policy did not apply to Thorco as a matter of law. The Court has also ruled as a matter of law that WCU did not refuse to subordinate, in fact, WCU acknowledged it was obligated to subordinate on the collateral consisting of the adjacent 200 acre parcel. These representations do not provide the basis for a claim for negligent misrepresentation as a matter of law.

Further, the representations relied upon by Thorco are all representations of future intent. Claims for negligent misrepresentation require representations of past or existing fact. The *Morrow* case did not eliminate this requirement for negligent misrepresentation claims against financial institutions. The Court in *Morrow* simply clarified that the Restatement (Second) of Torts Section 552 governing claims of negligent misrepresentation applied to claims against financial institutions. In the past Section 552 had been applied in the context professional negligence. *Morrow* merely determined Section 552 applied to financial institutions as well. The requirement for a past or exiting fact as an element of negligent misrepresentation was not altered or eliminated.

> In *Kitchen Krafters v. Eastside Bank*, we expanded upon this definition [from the Restatement (Second) of Torts Section 552] by adopting the following elements of negligent misrepresentation: a) the defendant made a representation as to a past or existing material fact ... we have continued to cite both the original language of the Restatement and the *Kitchen Krafters* elements ... We hold that a claim of negligent misrepresentation against a financial institution is governed by the definition in the Restatement (Second) of Torts Section 552, which we

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adopted in *State Bank*, 204 Mont. at 33, 664 P.2d at 301, and *Brown*, 197 Mont. at 12, 640 P.2d at 459-60

Morrow, 2014 MT 117, P 45, 46. There is no genuine issue of material fact and WCU is entitled to summary judgment on Thorco's claim for negligent misrepresentation as a matter of law.

DATED this 31st day of March, 2016.

Robert B. Allison
District Judge

STATE OF MONTANA)
County of Flathead)
I hereby certify that the instrument to which this certificate is affixed is a true, correct and compared copy of the original on file in the office of the Clerk of the District Court of Flathead County this 2 day of Feb, 2018.
PEGGY ALLISON, Clerk of the District Court
By Rachael L. Work
Deputy Clerk

cc: Sean S. Frampton, Attorney at Law
John L. Amsden/Anthony Jackson, Attorneys at Law
John Heenan, Attorney at Law
Ford Elsaesser, Attorney at Law

3/31/16
C

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 77

CERTIFIED

CLERK OF DISTRICT COURT
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FILED
BY _____ DEPUTY

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Attorneys for Defendants and Counter-Claimants

MONTANA ELEVENTH JUDICIAL DISTRICT COURT, FLATHEAD COUNTY

WHITEFISH CREDIT UNION, Plaintiff, -vs- THORCO, INC., a Montana Corporation, DENNIS THORNTON, DONNA THORNTON, and JOHN DOES 1-10. Defendants.	][ ][ ][ ][ ][ ][ ][ ][ ][	Cause No. DV-12-174B Judge: Robert B. Allison **JOINT MOTION TO VACATE FEBRUARY 23, 2016 JUDGMENT OF FORECLOSURE AND ORDER OF SALE**

SEAL

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

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

Counter-Claimants,

-vs-

WHITEFISH CREDIT UNION, and JOHN DOES 1-10,

Counter-Defendants.

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

DATED this 11th day of August, 2016

MORRISON & FRAMPTON, PLLP
Attorneys for Whitefish Credit Union

By: _____
Sean S. Frampton
Johnna J. Preble

DATED this 11th day of August, 2016

BECK & AMSDEN, pllc
Attorneys for Thorco, Inc., Dennis Thornton, and Donna Thornton

By: _____
John L. Amsden
Justin P. Stalpes
Anthony F. Jackson

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Fees: $196.00
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DATED this 11 day of August, 2016

BISHOP & HEENAN LAW FIRM
Attorneys for Thorco, Inc., Dennis Thornton, and Donna Thornton

By: _____
John Heenan

DATED this ___ day of August, 2016

ELSAESSER JARZABECK ANDERSON ELLIOTT & MACDONALD, CHTD.
Attorneys for Thorco, Inc., Dennis Thornton, and Donna Thornton

By: _____
Ford Elsaesser

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Page: 16 of 28
Fees: $196.00
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DATED this ____ day of August, 2016

BISHOP & HEENAN LAW FIRM
Attorneys for Thorco, Inc., Dennis Thornton, and Donna Thornton

By: _____
John Heenan

DATED this ____ day of August, 2016

ELSAESSER JARZABECK ANDERSON ELLIOTT & MACDONALD, CHTD.
Attorneys for Thorco, Inc., Dennis Thornton, and Donna Thornton

By: Bruce Anderson for
Ford Elsaesser

8/16/16

2-4-2022. Expert Witness Report by Gerald Fritts Exhibit 17

CERTIFIED

Honorable Robert B. Allison
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920 South Main Street, Suite 310
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Telephone: (406) 758-5906

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Page: 17 of 28
Fees: $196.00
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MONTANA ELEVENTH JUDICIAL DISTRICT COURT, FLATHEAD COUNTY

WHITEFISH CREDIT UNION, Plaintiff, -vs- THORCO, INC., a Montana Corporation, DENNIS THORNTON, DONNA THORNTON, and JOHN DOE(s) 1-10. Defendants.	Cause No. DV-12-174 B Judge: Robert B. Allison **ORDER VACATING JUDGMENT OF FORECLOSURE AND ORDER OF SALE**
THORCO INC., a Montana corporation, DENNIS THORNTON and DONNA THORNTON, Counter-Claimants, -vs- WHITEFISH CREDIT UNION, and JOHN DOES 1 - 10, Counter-Defendants.	

Pursuant to the joint motion filed by the parties, through their respective counsel,

IT IS HEREBY ORDERED that the Judgment of Foreclosure and Order of Sale entered by this Court on February 23, 2016 is vacated.

DATED this 16th day of August, 2016.

Hon. Robert B. Allison
District Court Judge

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

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

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Page: 18 of 28
Fees: $196.00
2/2/2018 4:16 PM

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Attorneys for Defendants and Counter-Claimants

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MONTANA ELEVENTH JUDICIAL DISTRICT COURT, FLATHEAD COUNTY

WHITEFISH CREDIT UNION, Plaintiff, -vs- THORCO, INC., a Montana Corporation, DENNIS THORNTON, DONNA THORNTON, and JOHN DOES 1-10. Defendants.	Cause No. DV-12-174B Judge: Robert B. Allison STIPULATION TO DISMISS WITH PREJUDICE

STIPULATION TO DISMISS WITH PREJUDICE
Cause No. DV-11-326B

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

SEAL

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

Counter-Claimants,

-vs-

WHITEFISH CREDIT UNION, and
JOHN DOES 1-10,

Counter-Defendants.

COME NOW the parties, Whitefish Credit Union, Thorco, Inc., Dennis Thornton, and Donna Thornton, who, upon grant of the parties' joint motion that the Court's February 23, 2016 Judgment of Foreclosure and Order of Sale be vacated, stipulate to dismiss with prejudice their respective claims which have now been settled.

DATED this 11th day of August, 2016

MORRISON & FRAMPTON, PLLP
Attorneys for Whitefish Credit Union

By: _____
Sean S. Frampton
Johnna J. Preble

DATED this 11th day of August, 2016

BECK & AMSDEN, pllc
Attorneys for Thorco, Inc., Dennis Thornton, and Donna Thornton

By: _____
John L. Amsden
Justin P. Stalpes
Anthony F. Jackson

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DATED this 11 day of August, 2016

BISHOP & HEENAN LAW FIRM
Attorneys for Thorco, Inc., Dennis Thornton, and Donna Thornton

By: _____
John Heenan

DATED this ____ day of August, 2016

ELSAESSER JARZABECK ANDERSON ELLIOTT & MACDONALD, CHTD.
Attorneys for Thorco, Inc., Dennis Thornton, and Donna Thornton

By: _____
Ford Elsaesser

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Page: 22 of 28
Fees: $196.00
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DATED this ____ day of August, 2016

BISHOP & HEENAN LAW FIRM
Attorneys for Thorco, Inc., Dennis Thornton, and Donna Thornton

By: _____
John Heenan

DATED this ____ day of August, 2016

ELSAESSER JARZABECK ANDERSON ELLIOTT & MACDONALD, CHTD.
Attorneys for Thorco, Inc., Dennis Thornton, and Donna Thornton

By: Bruce Anderson for
Ford Elsaesser

CERTIFIED

Honorable Robert B. Allison
District Judge, Department 2
Flathead County Justice Center
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MONTANA ELEVENTH JUDICIAL DISTRICT COURT, FLATHEAD COUNTY

WHITEFISH CREDIT UNION, Plaintiff, -vs- THORCO, INC., a Montana Corporation, DENNIS THORNTON, DONNA THORNTON, and JOHN DOE(s) 1-10. Defendants.	Cause No. DV-12-174 B Judge: Robert B. Allison **ORDER OF DISMISSAL WITH PREJUDICE**
THORCO INC., a Montana corporation, DENNIS THORNTON and DONNA THORNTON, Counter-Claimants, -vs- WHITEFISH CREDIT UNION, and JOHN DOES 1 - 10, Counter-Defendants.	

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

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Fees: $196.00
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IT IS HEREBY ORDERED that the claims between Whitefish Credit Union, Thorco, Inc., Dennis Thornton, and Donna Thornton are hereby dismissed with prejudice, each party to bear its own costs and attorney fees.

DATED this 24th day of August, 2016.

Hon. Robert B. Allison
District Court Judge

cc: Sean S. Frampton/Johnna J. Preble
John L. Amsden/Justin P. Stalpes
John Heenan
Ford Elsaesser
8/24/16 SS

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

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Fees: $196.00
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MONTANA SECRETARY OF STATE

Return Method: Email

March 22, 2017

DONNA THORNTON
P.O. BOX 1557
KALISPELL MT 59903

CERTIFICATION LETTER

I, COREY STAPLETON, Secretary of State for the State of Montana, do hereby certify that

THORCO, INC.

filed its Annual Report 2017 with this office and has fulfilled the applicable requirements set forth in law. By virtue of the authority vested in this office, I hereby issue this certificate evidencing the filing is effective on the date shown below.

Certified File Number: D074743 - 10834814
Effective Date: March 22, 2017

Next year's annual report will be due by April 15th.

Thank you for being a valued member of the Montana business community. I wish you continued success in your future endeavors.

Corey Stapleton
Montana Secretary of State

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STATE OF MONTANA

10834814
Montana Secretary of State
Filed: March 22, 2017 03:31 PM
BID: D074743

Annual Report 2017

THORCO, INC. (D074743)

Annual Report Year 2017

Handling Option	Standard Processing
Corporate Type	General For Profit Corporation
State of Incorporation	Montana

Registered Agent in Montana

Name	DENNIS THORNTON
Street Address	151 AMATASIA LANE, KALISPELL, Montana, 59903, United States
Mailing Address	P.O. BOX 1557, KALISPELL, Montana, 59903, United States
Registered Agent Type	Non-Commercial

Business Mailing Address of Principal Office

Current Address

Postal Address	151 Amatasia Lane, Kalispell, Montana, 59901, United States
Purpose	ANY LAWFUL BUSINESS

Directors/Officers

Name	DONNA BARKER THORNTON
Status	Active
Business Mailing Address	151 AMATASIA LANE, KALISPELL, Montana, 59901, United States
Position	Treasurer

201800002381
Page: 27 of 28
Fees: $196.00
2/2/2018 4:16 PM

Name	DONNA BARKER-THORNTON
Status	Active
Business Mailing Address	151 AMATASIA LANE, KALISPELL, Montana, 59901, United States
Position	Secretary

Name	DENNIS THORNTON
Status	Active
Business Mailing Address	151 AMATASIA LANE, KALISPELL, Montana, 59901, United States
Position	President

Name	DENNIS THORNTON
Status	Active
Business Mailing Address	151 AMATASIA LANE, KALISPELL, Montana, 59901, United States
Position	Director

Signature

I have been authorized by the business entity to file this document online.
Yes

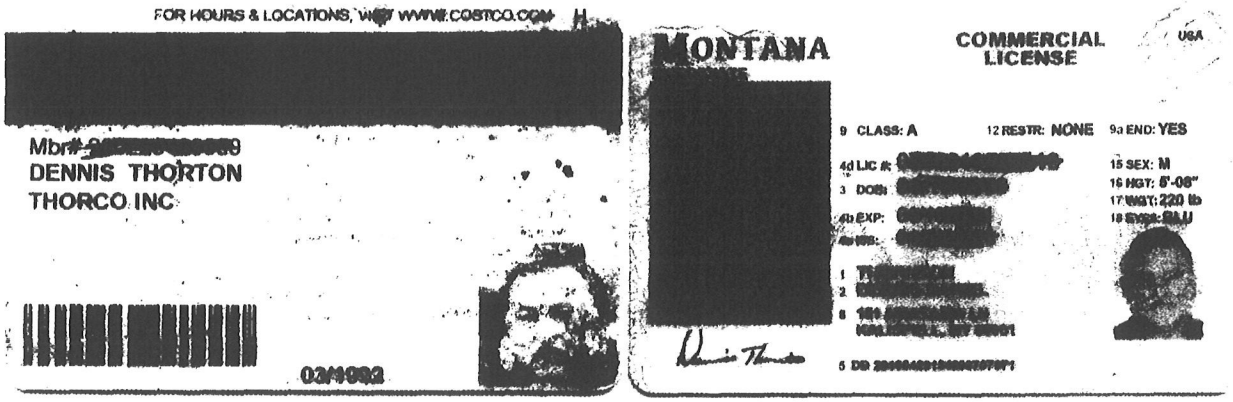
I, HEREBY SWEAR AND/OR AFFIRM, under penalty of law, including criminal prosecution, that the facts contained in this document are true. I certify that I am signing this document as the person(s) whose signature is required, or as an agent of the person(s) whose signature is required, who has authorized me to place his/her signature on this document.
Yes

Name	donna thornton
Position	Authorized Agent
Date	03/22/2017

Daytime Contact

Phone	406-2532581
Email	thorco@centurytel.net

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



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

FRAMPTON PURDY
ATTORNEYS AT LAW

SEAN S. FRAMPTON
DOUGLAS SCOTTI
RYAN D. PURDY

530 WEST 19TH STREET #301
WHITEFISH, MONTANA 59937
T: (406) 862-9600 F: (406) 862-9611
WWW.FRAMPTONPURDY.COM

LAURA J. WEBB
CONNOR C. WALKER

October 25, 2018

VIA US MAIL AND EMAIL mklinkhammer@montanadsl.net

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

RE: Recording of Warranty Deeds per Agreement

Dear Mike:

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

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

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

Frampton Purdy Law Firm

Sean S. Frampton

SSF/kk
Enclosures

201800026290
Page: 1 of 3
Fees: $21.00
Debbie Pierson, Flathead County MT by NW 10/25/2018 8:27 AM

0213950 PTN

Approved 10/25/2018 CW

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~~ 530 West 19th St. #301
Whitefish, MT 59937

[Above this line is for recording purposes only.]

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

WARRANTY DEED

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

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

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

("Property")

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

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

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

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.

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

THORCO, INC.

X _____ Date: 6-8-2016
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 D. Thornton as President of Thorco, Inc.

(SEAL) MEADOW GLEASON Commission Expires NOTARY PUBLIC 10-29-2018 STATE OF WASHINGTON

_____
Notary Public for the State of Washington

THORCO, INC.

X _____ Date: 6-8-2016
By: Donna Thornton; As: Sec/Treas

STATE OF Washington)
: ss
County of Pend Oreille)

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

(SEAL) MEADOW GLEASON Commission Expires NOTARY PUBLIC 10-29-2018 STATE OF WASHINGTON

_____
Notary Public for the State of Washington

201800026291
Page: 1 of 3
Fees: $21.00
Debbie Pierson, Flathead County MT by NW 10/25/2018 8:50 AM

Approved 10/25/2018 LB 0213950

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~~ 530 West 19th St. #301
Whitefish, MT 59937

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AND
The North Half Northeast Quarter Southwest Quarter (N1/2NE1/4SW1/4);
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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.

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By: Dennis Thornton As: President

STATE OF Washington)
: ss
County of Pend Oreille)

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(SEAL) MEADOW GLEASON Commission Expires NOTARY PUBLIC 10-29-2018 STATE OF WASHINGTON

_____
Notary Public for the State of Washington

THORCO, INC.

X _____ Date: 6-8-2016
By: Donna Thornton As: Sec/Treas

STATE OF Washington)
: ss
County of Pend Oreille)

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(SEAL) MEADOW GLEASON Commission Expires NOTARY PUBLIC 10-29-2018 STATE OF WASHINGTON

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Notary Public for the State of Washington