

3-3-2011

Benz v. D.L. Evans Bank Clerk's Record v. 2 Dckt. 37814

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IN THE SUPREME COURT OF THE STATE OF IDAHO

LESLIE BENZ,)	
)	Supreme Court No.
Plaintiff/ Respondent,)	
	)	37814
vs.)	
)	
D.L. EVANS BANK,)	
)	
Defendants/Appellant.)	

RECORD ON APPEAL

Appeal from the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Blaine.

HONORABLE ROBERT J. ELGEE, DISTRICT JUDGE

JANET C. WYGLE
PO Box 1172
Ketchum, Idaho 83340

R.C. STONE
P. O. Box 910
Burley, Idaho 83318

Attorney for Plaintiff/
Respondent

Attorney for Defendants/
Appellant

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MAR 3 2011

Supreme Court _____ Court of Appeals _____
Entered on AFS by _____

VOLUME 2 of 2

37814

IN THE SUPREME COURT OF THE STATE OF IDAHO

LESLIE BENZ,)	
	)	Supreme Court No.
Plaintiff/ Respondent,)	
	)	37814
vs.)	
)	
D.L. EVANS BANK,)	
)	
Defendants/Appellant.)	

RECORD ON APPEAL

Appeal from the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Blaine.

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JANET C. WYGLE
PO Box 1172
Ketchum, Idaho 83340

R.C. STONE
P. O. Box 910
Burley, Idaho 83318

Attorney for Plaintiff/
Respondent

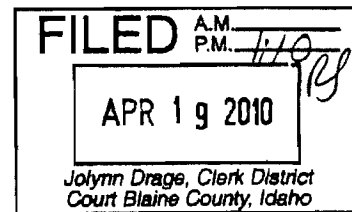
Attorney for Defendants/
Appellant

TABLE OF CONTENTS
(Volume 2 of 2)

Affidavit of Ken Nelson	4/19/2010	286
Affidavit of Bruce Hunsaker	4/19/2010	306
Reply Brief in Support of Motion for Summary Judgment	4/26/2010	340
Order of Summary Judgment	5/19/2010	350
Objection to Plaintiff's Order of Summary Judgment	5/20/2010	354
Notice of Appeal	6/17/2010	358
Amended Notice of Appeal	6/18/2010	362
Amended Judgment	7/12/2010	366
Clerk's Certificate		369
Certificate of Service		370

INDEX
(Volume 2 of 2)

Affidavit of Bruce Hunsaker	4/19/2010	306
Affidavit of Ken Nelson	4/19/2010	286
Amended Judgment	7/12/2010	366
Amended Notice of Appeal	6/18/2010	362
Certificate of Service		370
Clerk's Certificate		369
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Objection to Plaintiff's Order of Summary Judgment	5/20/2010	354
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Reply Brief in Support of Motion for Summary Judgment	4/26/2010	340



R.C. Stone
PARSONS, SMITH & STONE, LLP
 137 West 13th Street
 P.O. Box 910
 Burley, Idaho 83318
 (208) 878-8382 - Phone
 (208) 878-0146 - Fax
 Idaho State Bar #1890
 Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

LESLIE BENZ,
 Plaintiff,

Case No. CV-2009-613

vs.

AFFIDAVIT OF KEN NELSON

EAST AVENUE BLUFF, LLC, an Idaho
 limited liability company; D.L. EVANS
 BANK; TIMELESS DESIGN COMPANY;
 CLIFF R. IVERSON d.b.a. LEI'S
 CUSTOM TILE; FISHER APPLIANCE,
 INC.; VIEWPOINT, INC.; CAD
 DRAFTING SYSTEMS, INC.;
 BUCKHORN ELECTRIC, LLC/DEVILAN
 HAIRE; A.C. HOUSTON LUMBER
 COMPANY; MIKE PUNNETT;
 PRECISION PLUMBING, INC.;
 WATSON BUILDERS, INC.; HARRIS
 REFRIGERATION HEATING AND
 ELECTRIC; FERGUSON ENTERPRISES,
 INC.; ROCKY MOUNTAIN
 HARDWARE, INC.; SWEET'S
 PORTABLE WASTE SERVICES, LLC;

AFFIDAVIT OF KEN NELSON - 1

WHITE BUILDERS, LLC; MIKE'S)
 WELDING AND METAL WORKS, LLC;)
 SENTINEL FIRE & SECURITY, INC.;)
 STEVE McCOY, d.b.a. McCOY'S)
 PAINTING; CHRISTOPHER BRENNAN)
 d.b.a. BRENNAN'S CARPET; and)
 PAUL COOPER d.b.a. SUN VALLEY)
 DRYWALL,)
)
)
 Defendants.)

STATE OF IDAHO)
)ss
 County of Cassia)

Ken Nelson, having been first duly sworn deposes and states:

1. I was a loan officer at D.L. Evans Bank and was responsible for handling the loan from D.L. Evans Bank to East Avenue Bluff, LLC regarding the residence being purchased by Leslie Benz. I have personal knowledge of all facts set forth herein and am competent in every respect to testify thereto.

2. In July of 2007, I was advised the Senior Loan Committee would require confirmation that Ms. Benz had the financial capability of closing the transaction.

3. I contacted Ms. Benz either by telephone or e-mail and advised her that D.L. Evans Bank was working on putting together the loan to finance the construction and that we needed confirmation of her financial ability.

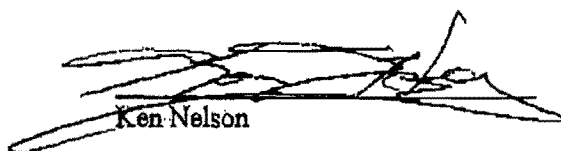
4. She authorized Castlerock Mortgage, which was working on her mortgage to complete the transaction, and authorized them to provide me with a copy of a letter from Union Bank of California confirming her financial condition. Attached as Exhibit A is a copy

AFFIDAVIT OF KEN NELSON - 2


of that letter dated July 18, 2007, together with a credit report provided me by Castlerock Mortgage.

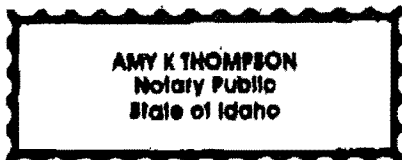
5. After receipt of the documents, I forwarded them to the Senior Loan Committee.

DATED this: 15 day of April, 2010.


Ken Nelson

Subscribed and sworn before me this 16 day of April, 2010.


Notary Public
Residing at: Blaine Co. ID
My Commission Expires: JUN 2 2013




CERTIFICATE OF DELIVERY

I hereby certify that on the 16 day of April, 2010, I served a copy of the foregoing AFFIDAVIT OF KEN NELSON upon the following named person(s) in the manner listed below:

Janet C. Wygle
LUBOVISKI, WYGLE,
FALLOWFIELD &
RITZAU, P.A.
PO Box 1172
Ketchum, ID 83340

- Via United States Mail
- Via Facsimile
- Via Overnight Carrier
- Via Hand Delivery

PARSONS, SMITH & STONE, LLP



 R.C. Stone
 Attorneys for Plaintiff



THE PRIVATE BANK

San Francisco Private Bank

July 18, 2007

Candy L. Robertson-Russet
Castle Rock Mortgage, Inc.
P.O. Box 2491
Ketchum, ID 83340

Reference: Leslie Benz

Dear Candy:

Please know that our client, Leslie Benz, has adequate resources in her account with Union Bank of California to pay cash for the purchase of real estate in the amount of \$3,000,000.

Should you have any further questions, please feel free to give me a call at (415) 705-7122.

Sincerely,

Susan Rogers
Senior Vice President/Regional Director

cc: Leslie Benz

Schedule A.

STOCKS AND BONDS

Number of Shares	Description - Rate - Maturity	In Name Of	Where Traded	Present Market Value	Cost	Are these Pledged To Whom?
	Union Bank of California			3,090,000		
	Contact Susan Rogers for verification					
	415-705-7122					
TOTALS						

Schedule B.

REAL ESTATE

Note: If taxes are delinquent on specific parcel, please show amount and year(s)

Type and Location of Property	Date Acquired	Original Cost	Title In Name Of	Income Per Month	Market Value	Mortgages			Holder of Lien
						Present Balance	Payment Terms	Int. Rate	
Ketchum ID	9-94				3,300,000	10,000		6.25	Chase Home
Ketchum ID	5-01				1,000,000				
Hauky ID	11-06				800,000				
TOTALS						5,080,000			

Schedule C.

NOTES, CONTRACTS AND ACCOUNTS RECEIVABLE

Due From (Name)	Date of Obligation	Balance			Payment Terms	Due Date	Description of Collateral If Any
		Original	Present	Int. Rate			
TOTALS							

Schedule D.

NOTES, CONTRACTS AND ACCOUNTS PAYABLE

Due To (Name)	Date of Obligation	Balance			Payment Terms	Due Date	Description of Collateral If Any
		Original	Present	Int. Rate			
Chase Home Finance	11-21	900,000	170,000	6.25			
TOTALS							

Schedule E.

OTHER BUSINESS INTERESTS

Business Name	Percent of Ownership	Equity Position	Personal Guaranty

Insurance Coverage

Building equipment, inventory \$ _____
 Business interruption insur. \$ _____

Net worth - 7,910,000.-
 Key Man Insurance \$ _____
 Liability (auto, etc.) \$ _____

References:

I/We hereby certify that the foregoing statement and schedules have been read by the undersigned before signing and that information disclosed is true to the best of my/our knowledge and belief. Intermountain Community Bank is authorized to make all inquiries it deems necessary to verify the accuracy of the statements made herein and to determine my/our credit worthiness. Furthermore I/we authorize any credit-reporting agency to furnish my/our consumer credit report to the Bank. These authorizations are in accordance with the Fair Credit Reporting Act requirements in Section 604(e)(2).

Applicant's Signature

[Signature]

Social Security No.

Applicant's Signature

Social Security No.

Telephone No.

208-726-5644

PRIVACY ACT NOTICE

This information is to be used by the agency collecting it or its assignees in determining whether you qualify as a prospective mortgagor under its Program. It will not be disclosed outside the agency except as required and permitted by law. You do not have to provide this information, but if you do not, your application for approval as a prospective mortgagor or borrower may be delayed or rejected. The information requested in this form is authorized by Title 38 USC, Chapter 37 (if VA); By 12 USC, Section 1701 et seq. (if HUD/FHA); by 42 USC, Section 1452b (if HUD/CPD), and Title 42 USC, 1471 et seq. or 7 USC, 1921 et seq. (if USDA/FmHA).

FAIR CREDIT REPORTING ACT

I/We understand that, as part of assembling my/our loan application, CASTLE ROCK MORTGAGE, INC. will request a consumer report bearing my/our credit worthiness, credit standing and credit capacity. This notice is given to me/us pursuant to the Fair Credit Reporting Act of 1970, Section 601, inclusive. I/We am/are entitled to such information within 60 days of written demand therefore made to the Credit Reporting Agency pursuant to Section 606(b) of the Fair Credit Reporting Act.

EQUAL CREDIT OPPORTUNITY ACT (ECOA)

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 company is:

Federal Trade Commission
Consumer Response Center
Washington, DC 20580
(202) 326-2222
TDD (866) 653-4261

CONSENT

I/We hereby give my/our consent to have CASTLE ROCK MORTGAGE, INC., or any credit reporting bureau which it may designate, obtain any and all information concerning my/our employment, checking and/or savings account, obligations, and all other credit matters which they may require in connection with my/our application for a loan. This form may be reproduced or photocopied and a copy shall be as effective consent as the original which I/we have signed.

Leslie Benz
Borrower

Borrower

Leslie Benz
Print Name

Print Name



Date of Birth: _____

Soc. Sec. # _____

Address: 345 Wall St. Ketchum, ID 83340

CASTLE ROCK MORTGAGE, INC.
Postal Box 2491 ♦ 220 Second Avenue, Ste. 103 ♦ Ketchum, Idaho 83340
Telephone: 1.800.726.2221 ♦ 208.726.3556 ♦ Facsimile: 208.726.3952
castlerock@cox-internet.com ♦ www.heytoyourcastle.com

Close

Credit report for SSN [REDACTED]

Credit Report is for mortgage professionals only and is not authorized for public distribution. Use of the credit report is subject to the terms and conditions of the Landsafe Subscriber Agreement.

Note that in an effort to enhance security and privacy of a consumer's credit bureau data, sensitive information such as account numbers are truncated.

LANDSAFE CREDIT MERGE REPORT

Original Request 3-File:	\$18.00	Request ID: CM8287399881
Other Related Fees:	\$ 0.00	Date: 06/15/2007
Total Cost:	\$18.00	
Prepared For: CASTLE ROCK MORTGAGE, INC.		Account #: 000093800090283
Address: 220 SECOND AVE STE 103		Requestor: CMELTON10
KETCHUM, ID 83340		Phone: 2087263556
Branch:		Fax: 2087263952
File ID: 3425802		Seller: 90283

Subject: BENZ, LESLIE(ssn [REDACTED])
 Spouse:
 Address: 345 WALL ST, KETCHUM, ID 83340

SUMMARY

ACCOUNT DISTRIBUTION			CURRENT STATUS (tradelines)						
Account Type	Count	Balance	Payments	Curr	Clsd	Unrt	30	60	90+
Real Estate	3	168035	1464	1	2	0	0	0	0
Installment	0	0	0	0	0	0	0	0	0
Revolving	17	3053	35	9	8	0	0	0	0
Other	4	6594	330	2	2	0	0	0	0
Total	24	177682	1829	12	12	0	0	0	0

INQUIRIES		PUBLIC RECORDS		HISTORICAL DELINQUENCIES (count)				
				Account Type	LastDlq	30	60	90+
90 Days Total	1	XPN	0	Real Estate	-	0	0	0
Less same day	0	EFX	0	Installment	-	0	0	0
Adjusted Total	1	TUC	0	Revolving	-	0	0	0
New Trades (6 mths)	0	Last 2Yrs	N	Other	-	0	0	0
Oldest Trd:	01/1980			Total		0	0	0

BUREAU SCORE INFORMATION

LastName, FirstName	Bureau - Product Code	Score
---------------------	-----------------------	-------

BENZ, LESLIE [REDACTED]	XPN - Experian/Fair, Isaac Model	823
08 - Too many inquiries last 12 months		
09 - Too many accounts recently opened		
05 - Too many accounts with balances		
10 - Proportion of balances to credit limits is too high		

BENZ, LESLIE [REDACTED]	EFX - EQUIFAX BEACON 5.0	802 293
-------------------------	--------------------------	---------

- 30 - Time since most recent account opening is too short
- 11 - Amount owed on revolving account is too high
- 08 - Too many inquiries last 12 months

BENZ, LESLIE [REDACTED] TUC - FICO CLASSIC 2004 798

- 30 - Time since most recent account opening is too short
- 11 - Amount owed on revolving account is too high
- 05 - Too many accounts with balances
- 28 - Number of established accounts
- In Addition to the factors listed above, the number of inquiries on the consumer's credit file has adversely affected the credit score

FULL CREDIT REPORT TO FOLLOW

LANDSAFE CREDIT MERGE REPORT

Page 1

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 Prepared For: CASTLE ROCK MORTGAGE, INC. Account #: 000093800090283
 Subject: BENZ, LESLIE(ssn [REDACTED])
 Spouse:
 Address: 345 WALL ST, KETCHUM, ID 83340

PUBLIC RECORD INFORMATION

NOTE: Public records may contain duplicate information. This report displays all information reported by the repositories accessed.

-- No Information Was Found --

COLLECTIONS

-- No Information Was Found --

DEROGATORY TRADELINES

-- No Information Was Found --

TRADELINES

Account Name/Number	(Bureau Reporting)	Past Due	Last
Type Open High Pymt Balance MOP Status Rptd	30 60 90+ MR Dlg		

Accounts under Subject/Spouse:

CHASE MANHATTAN MTGE [REDACTED]	(XPN-2991739, TUC, EFX)	SUBJECT
I 10-2006 172200 1464 168035	M-1 Current 05-2007 00 00 00 8	
Hist:05-2007 CCCCCC-----	LACT 05-2007	

Ctgy:Conventional RE mortgage
Fannie Mae account
Real estate mortgage

Term:180 Lmt:0

AMEX/1001-1131 (XPN-1229200,TUC,EFX) SUBJECT
I 01-1980 24594 302c 6031 O-1 Current 05-2007 00 00 00 48
Hist:05-2007 CCCCCCCCCCCCCCCCCCCCCCCCCC LACT 05-2007
Ctgy:Credit card Term:1 Lmt:0
Credit card

TARGET NB/1002-6557 (XPN-2218220,TUC,EFX) SUBJECT
I 09-1997 18500 30 2928 R-1 Current 05-2007 00 00 00 65
Hist:05-2007 CCCCCCCCCCCCCCCCCCCCCCCCCC LACT 05-2007
Ctgy:Credit card Term:REV Lmt:18500
Credit card
Amount in high credit is credit limit

AMEX/1003-1139 (XPN-1229200,TUC,EFX) SUBJECT
I 10-1980 34600 28c 563 O-1 Current 05-2007 00 00 00 48
Hist:05-2007 CCCCCCCCCCCCCCCCCCCCCCCCCC LACT 05-2007
Ctgy:Credit card Term:1 Lmt:34600
Credit Line Closed - Consumer Request - Reported by Subscriber
Credit card
Account closed (no date available)

continued on page 2

LANDSAFE CREDIT MERGE REPORT

Page 2

Request ID: CMS287399881
Original Request 3-File: \$18.00 Date: 06/15/2007
Other Related Fees: \$ 0.00
TotalCost: \$18.00

TRADELINES

Account Name/Number (Bureau Reporting) Past Due Last
Type Open High Pymt Balance MOP Status Rptd 30 60 90+ MR Dlg

Accounts under Subject/Spouse:

MCYDSNB/1004-1579 (XPN-1362830,TUC,EFX) SUBJECT
I 07-1991 1900 5 125 R-1 Current 05-2007 00 00 00 99
Hist:05-2007 CCCCCCCCCCCCCCCCCCCCCCCCCC LACT 05-2007
Ctgy:Charge account Term:REV Lmt:1900
Charge
Amount in high credit is credit limit

VISDSNB/1005-0017 (XPN-1362836,EFX) SUBJECT
I 05-1997 8000 0 0 R-1 Current 06-2007 00 00 00 99
Hist:06-2007 -CCCCCCCCCCCCCCCCCCCCCCCCC LACT 07-2001
Ctgy:Credit card Term:REV Lmt:8000

Credit Line Closed - Grantor Request - Reported by Subscriber
Account closed by credit grantor
Charge
Account closed (no date available)

UNION BANK/1006-2002 (XPN-3121580, EFX) SUBJECT
I 07-2006 2500 0 0 R-1 Current 05-2007 00 00 00 11
Hist:05-2007 -CCCCCCCCC----- LACT
Ctgy:Line of credit Term:REV Lmt:2500
Line of credit
Amount in high credit is credit limit

NORDSTROM/1007-7030 (EFX-701DC00529) SUBJECT
I 10-1988 8000 0 0 R-1 Current 06-2007 00 00 00 63
Hist:05-2007 CCCCCCCCCCCCCCCCCCCCCC LACT
Ctgy:Charge account Term:0 Lmt:0
Charge
Amount in high credit is credit limit

BK OF AMER/1008-180 (TUC-B1597029, EFX) SUBJECT
I 12-1996 26300 0 0 R-1 Current 08-2006 00 00 00 72
Hist:07-2006 CCCCCCCCCCCCCCCCCCCCCC LACT
Ctgy:Credit card Term:0 Lmt:26300
Credit card
Amount in high credit is credit limit
Account paid on 12-2001

HSBC/NEIMN/1009-8832 (XPN-1587439, TUC, EFX) SUBJECT
I 09-2000 5493 0 0 R-1 Current 06-2007 00 00 00 39
Hist:06-2007 CCCCCCCCCC-CCCCCCCCCCCC PAID
Ctgy:Charge account Term:REV Lmt:0
Charge
Account paid on 02-2006

continued on page 3

LANDSAFE CREDIT MERGE REPORT

Original Request 3-File: \$18.00 Request ID: CM8287399881
Other Related Fees: \$ 0.00 Date: 06/15/2007
TotalCost: \$18.00

TRADELINES

Account Name/Number (Bureau Reporting) Past Due Last
Type Open High Pymt Balance MOP Status Rptd 30 60 90+ MR Dlg

Accounts under Subject/Spouse:

HSBC/SAKS/1010-0407 (XPN-1579670, TUC, EFX) SUBJECT
I 04-1999 2230 0 0 R-1 Current 06-2007 00 00 00 50

Hist:06-2007 CCCCCCCCCC-----CCCC
Ctgy:Charge account
Charge
Account paid on 03-2003

LACT 03-2003
Term:REV Lmt:2500

AMEX/1011-1159 (XPN-1229200,TUC,EFX) SUBJECT
I 12-1980 11311 0 0 R-1 Current 10-2002 00 00 00 24
Hist:10-2002 -CCCCCCCCCCCCCCCCCCCCC LACT 10-2002
Ctgy:Credit card Term:REV Lmt:0
Account Closed by consumer
Credit Line Closed - Consumer Request - Reported by Subscriber
Paid account/zero balance
Account closed on 10-2002

AMEX/1012-3842 (TUC-B21WB001,EFX) SUBJECT
I 12-1980 6444 0 0 O-1 Current 10-2002 00 00 00 24
Hist:09-2002 CCCCCCCCCCCCCCCCCCCCCC LACT 10-2002
Ctgy:Credit card Term:0 Lmt:0
Account Closed by consumer
Paid account/zero balance
Account closed on 10-2002

PNCBANK/1013-0206 (EFX-496ON00010) SUBJECT
I 10-1984 7500 0 0 R-1 Current 03-2002 00 00 00 24
Hist:02-2002 CCCCCCCCCCCCCCCCCCCCCC LACT 03-2002
Ctgy:Line of credit Term:0 Lmt:0
Line of credit
Amount in high credit is credit limit

WFNNB/EXP/1014-0220 (EFX-667CS29609) SUBJECT
I 07-1991 500 0 0 R-1 Current 05-2001 00 00 00 24
Hist:04-2001 CCCCCCCCCCCCCCCCCCCCCC LACT 05-2001
Ctgy:Charge account Term:0 Lmt:0
Charge

SEARS/CBSD/1015-8143 (EFX-645DC09401) SUBJECT
I 04-1995 6970 0 0 R-1 Current 01-2001 00 00 00 67
Hist:12-2000 CCCCCCCCCCCCCCCCCCCCCC LACT 01-2001
Ctgy:Charge account Term:0 Lmt:0
Charge
Amount in high credit is credit limit

NORDSTROM FSB/1016-7030 (XPN-3338501,TUC) SUBJECT
I 10-1988 2339 0 0 R-1 Current 06-2007 00 00 00 65
Hist:06-2007 -CCCCCCCCCCCCCCCCCCCCC PAID 11-2003
Ctgy:Charge account Term:REV Lmt:8000
Account paid on 11-2003

continued on page 4

Original Request 3-File:
 Other Related Fees:
 TotalCost:

\$18.00 Date: 06/15/2007
 \$ 0.00
 \$18.00

 TRADELINES

Account Name/Number	(Bureau Reporting)			Past Due	Last
Type Open High Pymt Balance MOP Status Rptd	30	60	90+	MR	Dlq

Accounts under Subject/Spouse:

UNION BANK/1017-2002	(TUC-B570T02A)			SUBJECT	
I 07-2006 0 0 0	C-1	Current	04-2007	00 00 00	34
Hist:04-2007 CCCCCCCCCC----- LACT					
Ctgy:Line of credit Term:0 Lmt:2500					

MACYS/FDSB/1018-2495	(TUC-D1KKG001)			SUBJECT	
I 05-1997 573 0 0	R-1	Current	09-2002	00 00 00	30
Hist:09-2002 CCCCCCCCCCCCCCCCCC----- PAID 07-2001					
Ctgy:Charge account Term:0 Lmt:1500					
Account paid on 07-2001					

BANK OF AMERICA/1019-3657	(XPN-3202754)			SUBJECT	
I 11-1991 4075 0 0	R-1	Current	06-2000	00 00 00	99
Hist:06-2000 -----CC LACT					
Ctgy:Credit card Term:REV Lmt:8700					
Credit Line Closed - Consumer Request - Reported by Subscriber					
Account closed (no date available)					

BANK OF AMERICA/1020-180	(XPN-1230206)			SUBJECT	
I 12-1996 7305 0 0	R-1	Current	06-2007	00 00 00	82
Hist:06-2007 CCCCCCCC-CCCCCC----- LACT 12-2001					
Ctgy:Credit card Term:REV Lmt:26300					

WFNNB/EXPRESS/1021-0373	(XPN-1348760)			SUBJECT	
I 07-1991 87 0 0	R-1	Current	05-2001	00 00 00	99
Hist:05-2001 ----- LACT					
Ctgy:Revolving Charge Account Term:REV Lmt:500					

Joint Accounts:

CHASE MANHATTAN MORTGAGE/ [REDACTED]	(XPN-2991739, TUC, EFX)			JOINT	
J 08-1994 900000 0 0	M-1	Current	11-2006	00 00 00	49
Hist:11-2006 -CCCCCCCCCCCCCCCCCCCC LACT 11-2006					
Ctgy:Conventional RE mortgage Term:360 Lmt:0					
Closed					
Paid account/zero balance					
Real estate mortgage					
Account closed on 11-2006					

CHASE MANHATTAN MORTGAGE/ [REDACTED]	(XPN-1102761, TUC, EFX)			JOINT	
J 08-1994 900000 0 0	M-1	Current	08-2002	00 00 00	53
Hist:08-2002 -CCCCCCCCCCCCCCCCCCCC LACT 07-2002					

Ctgy: Conventional RE mortgage Term: 360 Lmt: 0
 Transferred to another lender
 Transferred to another lender or claim purchased
 Account Transferred or Sold
 Account closed on 08-2002

continued on page 5

LANDSAFE CREDIT MERGE REPORT

Page 5

Original Request 3-File: \$18.00 Request ID: CM8287399881
 Other Related Fees: \$ 0.00 Date: 06/15/2007
 Total Cost: \$18.00

IDENTIFICATION INFORMATION

Name	SSN	I	(Age)	Bureau
1. BENZ, LESLIE LANIER			(46)	EFX
2. BENZ, LESLIE L			(46)	TUC
3. BENZ, LESLIE L			(46)	XPN

INQUIRIES MADE IN THE LAST 90 DAYS:

Date	Credit Grantor	Bureau	Subscriber ID	Subject/Spouse
06/15/2007	LANDSAFE CRT	TUC	Z7183223	SUBJECT

ADDRESS INFORMATION

Address	Reported	Bureau	Subject/Spouse
PO BOX 2373 KETCHUM, ID 83340	12-1998	EFX	SUBJECT
2373 PO BOX 2373 KETCHUM, ID 83340	11-1998	TUC	SUBJECT
PO BOX 2373 KETCHUM, ID 833402373	10-1988	XPN	SUBJECT
345 WALL KETCHUM, ID 83340	04-1999	EFX	SUBJECT
BOX KETCHUM, ID 83340	04-1997	EFX	SUBJECT
661 PO BOX 661 KETCHUM, ID 83340		TUC	SUBJECT

299

PO BOX 1356
KETCHUM, ID 833401356

XPN SUBJECT

EMPLOYMENT INFORMATION

1. NEV ,
OCCUPATION UNKNOWN EFX SUBJECT

2. ,
SELF EFX SUBJECT

3. BURKE ENTERPRISES KETCHUM, ID
PRES EFX SUBJECT

continued on page 6

LANDSAFE CREDIT MERGE REPORT

Page 6

Original Request 3-File: \$18.00 Request ID: CM8287399881
Other Related Fees: \$ 0.00 Date: 06/15/2007
TotalCost: \$18.00

EMPLOYMENT INFORMATION

4. SELF EMPLOYED ,
OCCUPATION UNKNOWN Rptd 09-2000 XPN SUBJECT

5. BALDY VIEW CLUB ,
OCCUPATION UNKNOWN Rptd 07-1993 XPN SUBJECT

AKA INFORMATION

Name	Bureau	Subject/Spouse
1. BURKE, LESLIE LANIER	EFX	SUBJECT
2. BURKE, LESLIE, LANIER,	TUC	SUBJECT
3. BURKE, LESLIE LANIER	XPN	SUBJECT
4. LESLIE, BENZ	XPN	SUBJECT

MISCELLANEOUS INFORMATION

XPN SUBJECT
OFAC CLEAR

TUC SUBJECT
OFAC CLEAR

CONSUMER STATEMENTS

-- No Information Was Found --

FRAUD VERIFICATION INFORMATION

XPN FRAUD SHIELD SUBJECT
INQUIRY/ONFILE CURRENT ADDRESS CONFLICT
ADDR. USED 0000 TIMES SINCE 03/01/2007
SSN USED 0000 TIMES SINCE 03/01/2007
SSN ISSUED BETWEEN 1962 AND 1964
TUC HAWK ALERT SUBJECT
SSN issued: 1963-1964; state: PA
TUC HAWK ALERT SUBJECT
SSN issued: 1963-1964; state: PA
TUC TRANS-ALERT SUBJECT
TRANS-ALERT IS CLEAR
EPX SAFESCAN SUBJECT
SSN IS CLEAR, ADDRESS IS CLEAR
SSN ISSUED YEAR: 1963 ; STATE: PA

continued on page 7

LANDSAFE CREDIT MERGE REPORT

Page 7

Original Request 3-File: \$18.00 Request ID: CM8287399881
Other Related Fees: \$ 0.00 Date: 06/15/2007
TotalCost: \$18.00

DIRECT CHECK INFORMATION

Subscriber Name / Address	Subscriber#	Contact Phone
PNCBANK 2730 LIBERTY AVE, PITTSBURGH, PA 15222	0107220	8004417770
CHASE MANHATTAN MORTGA 1400 E NEWPORT CENTER DR, DEERFIELD BEACH, FL 33442	1102761	9546981153
AMEX PO BOX 297871, FORT LAUDERDALE, FL 33329	1229200	8008742717
BANK OF AMERICA POB 17054, WILMINGTON, DE 19884	1230206	8004212110
CHASE-PIER 800 BROOKSEEDGE BLVD, WESTERVILLE, OH 43081	1255420	8009559900
SEARS/CBSD PO BOX 6189, SIOUX FALLS, SD 57117	1323280	BYMAILONLY
WFNNB/EXPRESS PO BOX 330066, NORTHGLENN, CO 80233	1348760	
MCYDSNB 9111 DUKE BLVD, MASON, OH 45040	1362830	8004586229
VISDSNB 9111 DUKE BLVD, MASON, OH 45040	1362836	8002678472
HSBC/SAKS 140 W INDUSTRIAL DR, ELMHURST, IL 60126	1579670	8006280679
HSBC/NEIMN PO BOX 15221, WILMINGTON, DE 19850	1587439	8002094914
TARGET NB PO BOX 673, MINNEAPOLIS, MN 55440	2218220	BYMAILONLY
CHASE MANHATTAN MTGE 3415 VISION DR, COLUMBUS, OH 43219	2991739	8008489380
UNION BANK PO BOX 85643, SAN DIEGO, CA 92186	3121580	8002370561
BANK OF AMERICA	3202754	8004448430

PO BOX 1598, NORFOLK, VA 23501		
NORDSTROM FSB	3338501	8009641800
PO BOX 6555, ENGLEWOOD, CO 80155		
CHASE	3999492	7324528640
194 WOOD AVE S, ISELIN, NJ 08830		

continued on page 8

LANDSAFE CREDIT MERGE REPORT

Page 8

		Request ID: CM8287399881
Original Request 3-File:	\$18.00	Date: 06/15/2007
Other Related Fees:	\$ 0.00	
TotalCost:	\$18.00	

CONSUMER REFERRAL INFORMATION

Bureau	Address	Phone
EPX	EQUIFAX CREDIT INFORMATION SERVICES, INC. P.O. BOX 740241 (ORDER A REPORT) P.O. BOX 740256 (DISPUTE AN ITEM) ATLANTA, GA 30374 Web site: www.equifax.com	(800) 685-1111
XPN	EXPERIAN - NATIONAL CONSUMER ASSISTANCE CENTER P.O. BOX 2104 (ORDER A REPORT) P.O. BOX 9701 (DISPUTE AN ITEM) ALLEN, TX 75013-3742 Web site: www.experian.com	(888) 397-3742
TUC	TRANSUNION CONSUMER SOLUTIONS P.O. BOX 1000 (ORDER A REPORT) P.O. BOX 2000 (DISPUTE AN ITEM) CHESTER, PA 19022 Web site: www.transunion.com	(800) 888-4213

Prepared By: LandSafe Credit, Inc.
1515 Walnut Grove Ave.
Rosemead, CA 91770 (877) 572-5673

This report contains information supplied by the repositories named above. Its contents have not been verified by LandSafe and may contain duplicate information. While this report is being used for some real estate lending purposes, it is not a Residential Mortgage Credit Report as defined by FNMA, FHLMC, and FHA/VA guidelines.

-- END OF REPORT --

LANDSAFE CREDIT MERGE REPORT

Original Request 3-File:

\$18.00

Request ID: CM8287399881

Other Related Fees:

\$ 0.00

Date: 06/15/2007

Total Cost:

\$18.00

Prepared For: CASTLE ROCK MORTGAGE, INC.

Account #: 000093800090283

Subject: BENZ, LESLIE(ssn [REDACTED])

Spouse:

Address: 345 WALL ST, KETCHUM, ID 83340

ACCOUNT BALANCE SUMMARY

CREDITOR ACCOUNT#	OPEN REPD	HIGH BALANCE	TERM PAYMENT	MOP	PAY HIST 30-60-90	LOAN TYPE LAST DLQ	TYPE
CHASE MANHATTAN MTGE [REDACTED]	10-2006 05-2007	172200 168035	180 M 1464	M-1 (XPN, TUC, EFX)	0 0 0	CONV RE MTG	I-B
AMEX 1001-1131	01-1980 05-2007	24594 6031	1 M 302	O-1 (XPN, TUC, EFX)	0 0 0	CREDIT CARD	I-B
TARGET NB 1002-6557	09-1997 05-2007	18500 2928	REV M 30	R-1 (XPN, TUC, EFX)	0 0 0	CREDIT CARD	I-B
AMEX 1003-1139	10-1980 05-2007	34600 563	1 M 28	O-1 (XPN, TUC, EFX)	0 0 0	CREDIT CARD	I-B
MCYDSNB 1004-1579	07-1991 05-2007	1900 125	REV M 5	R-1 (XPN, TUC, EFX)	0 0 0	CHARGE ACCOUNT	I-B

=====

TOTAL BALANCE: 177682

TOTAL PAYMENTS: 1829

BUREAU SCORE INFORMATION

LastName, FirstName	Bureau - Product Code	Score
BENZ, LESLIE	XPN - Experian/Fair, Isaac Model	823
BENZ, LESLIE	EFX - EQUIFAX BEACON 5.0	802
BENZ, LESLIE	TUC - FICO CLASSIC 2004	798

CASTLE ROCK MORTGAGE, INC.
220 SECOND AVE STE 103
KETCHUM, ID 83340

Request ID: CM8287399881

Important information from your lender

NOTICE TO THE HOME LOAN APPLICANT

In connection with your application for a home loan, the lender must disclose to you the score that a consumer reporting agency distributed to users and the lender used in connection with your home loan, and the key factors affecting your credit scores.

The credit score is a computer generated summary calculated at the time of the request and based on information that a consumer reporting agency or lender has on file. The scores are based on data about your credit history and payment patterns. Credit scores are important because they are used to assist the lender in determining whether you will obtain a loan. They may also be used to determine what interest rate you may be offered on the mortgage. Credit scores can change over time, depending on your conduct, how your credit history and payment patterns change, and how credit scoring technologies change.

Because the score is based on information in your credit history, it is very important that you review the credit-related information that is being furnished to make sure it is accurate. Credit records may vary from one company to another.

If you have questions about your credit score or the credit information that is furnished to you, contact the consumer reporting agency at the address and telephone number provided with this notice, or contact the lender, if the lender developed or generated the credit score. The consumer reporting agency plays no part in the decision to take any action on the loan application and is unable to provide you with specific reasons for the decision on a loan application.

If you have questions concerning the terms of the loan, contact the lender.

One or more of the following credit bureaus provided the credit score(s):

Equifax P.O. Box 740241 Atlanta, GA 30374 www.equifax.com (800) 685-1111 (orders) (800) 685-1111 (disputes)	Experian P.O. Box 9701 Allen, TX 75013-3742 www.experian.com (888) 397-3742 (orders) (888) 397-3742 (disputes)	Trans Union P.O. Box 2000 Chester, PA 19022 www.transunion.com (800) 888-4213 (orders) (800) 916-8800 (disputes)
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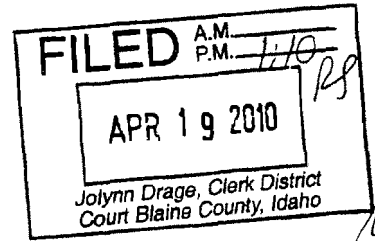
Applicant: BENZ, LESLIE
 Credit Score Date: 06/15/2007
 Name of Score: TRANSUNION/FICO CLASSIC 2004
 Credit Score: 798 Range: 350-850
 Key Factors affecting the Credit Score:
 TIME SINCE MOST RECENT ACCOUNT OPENING IS TOO SHORT
 AMOUNT OWED ON REVOLVING ACCOUNT IS TOO HIGH
 TOO MANY ACCOUNTS WITH BALANCES
 NUMBER OF ESTABLISHED ACCOUNTS
 IN ADDITION TO THE FACTORS LISTED ABOVE, THE NUMBER OF INQUIRIES ON THE
 CONSUMER'S CREDIT FILE HAS ADVERSELY AFFECTED THE CREDIT SCORE

Applicant: BENZ, LESLIE
 Credit Score Date: 06/15/2007
 Name of Score: EXPERIAN/EXPERIAN/FAIR, ISAAC MODEL

Credit Score: 823 Range: 300-850
Key Factors affecting the Credit Score:
TOO MANY INQUIRIES LAST 12 MONTHS
TOO MANY ACCOUNTS RECENTLY OPENED
TOO MANY ACCOUNTS WITH BALANCES
PROPORTION OF BALANCES TO CREDIT LIMITS IS TOO HIGH

Applicant: BENZ, LESLIE
Credit Score Date: 06/15/2007
Name of Score: EQUIFAX/EQUIFAX BEACON 5.0
Credit Score: 802 Range: 300-850
Key Factors affecting the Credit Score:
TIME SINCE MOST RECENT ACCOUNT OPENING IS TOO SHORT
AMOUNT OWED ON REVOLVING ACCOUNT IS TOO HIGH
TOO MANY INQUIRIES LAST 12 MONTHS

The information and credit scoring model(s) used here may be different than the credit score used by the lender.



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PARSONS, SMITH, STONE, LOVELAND & SHIRLEY, LLP
LAWYERS
BURLEY, IDAHO

R.C. Stone
PARSONS, SMITH & STONE, LLP
137 West 13th Street
P.O. Box 910
Burley, Idaho 83318
(208) 878-8382 - Phone
(208) 878-0146 - Fax
Idaho State Bar #1890
Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

LESLIE BENZ,	)	Case No. <u>CV-2009-613</u>
)	
Plaintiff,)	
)	
vs.	)	<u>AFFIDAVIT OF BRUCE</u>
	)	<u>HUNSAKER</u>
EAST AVENUE BLUFF, LLC, an Idaho)	
limited liability company; D.L. EVANS)	
BANK; TIMELESS DESIGN COMPANY;)	
CLIFF R. IVERSON d.b.a. LEI'S)	
CUSTOM TILE; FISHER APPLIANCE,)	
INC.; VIEWPOINT, INC.; CAD)	
DRAFTING SYSTEMS, INC.;)	
BUCKHORN ELECTRIC, LLC/DEVILAN)	
HAIRE; A.C. HOUSTON LUMBER)	
COMPANY; MIKE PUNNETT;)	
PRECISION PLUMBING, INC.;)	
WATSON BUILDERS, INC.; HARRIS)	
REFRIGERATION HEATING AND)	
ELECTRIC; FERGUSON ENTERPRISES,)	
INC.; ROCKY MOUNTAIN)	
HARDWARE, INC.; SWEET'S)	
PORTABLE WASTE SERVICES, LLC;)	

AFFIDAVIT OF BRUCE HUNSAKER - 1

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WHITE BUILDERS, LLC; MIKE'S)
WELDING AND METAL WORKS, LLC;)
SENTINEL FIRE & SECURITY, INC.;)
STEVE McCOY, d.b.a. McCOY'S)
PAINTING; CHRISTOPHER BRENNAN)
d.b.a. BRENNAN'S CARPET; and)
PAUL COOPER d.b.a. SUN VALLEY)
DRYWALL,)
)
)
Defendants.)

STATE OF IDAHO)
)ss
County of Cassia)

Bruce Hunsaker, having been first duly sworn deposes and states:

1. I am a Vice President of D.L. Evans Bank and the head of Special Credits.

2. I have personal knowledge of all of the facts set forth herein and am competent in every respect to testify thereto. I am the custodian of the Bank's file and have personal knowledge of its contents and of the original documents therein. At all times material to this action, I was also a member of the Senior Loan Committee and have personal knowledge of the proceedings leading to approval of the loan to East Avenue Bluff, LLC.

3. Attached hereto as Exhibit A is a true and correct copy of the original Promissory Note executed by Stacey Belton Rutherford as a member of East Avenue Bluff, LLC on the 29th day of August, 2007.

4. Attached hereto as Exhibit B is a true and correct copy of the Construction Deed of Trust dated the 29th day of August, 2007, executed by Stacey Belton Rutherford as a member of East Avenue Bluff, LLC and conveying in trust the real property which is the

1 subject matter of the Plaintiff's claim. It bears recording information showing that it was
2 recorded in the office of the Blaine County Recorder on the 30th day of August, 2007 as
3 Instrument No. 551107.

4
5 5. Attached hereto as Exhibit C is a Note Statement showing a complete history
6 of the Promissory Note attached as Exhibit A.

7 6. Early in the loan approval process, D.L. Evans Bank was made aware of the
8 Benz contract to purchase the property. The Senior Loan Committee required a copy of the
9 contract to be included. It also required confirmation that Ms. Benz's financial condition
10 would allow her to complete the purchase. The Loan Officer, Ken Nelson, procured the
11 correspondence attached as Exhibit D. The Committee mistakenly believed that the fact that
12 the property had been pre-sold and that Ms. Benz had a substantial investment, significantly
13 decreased the risk factor associated with the loan. They were unaware of the vendee's lien.

14
15 7. The loan was approved and D.L. Evans Bank funded the loan of \$2,650,000.00
16 on August 29, 2007.

17 8. Attached as Exhibit F to the Affidavit of Janet C. Wygle in Support of Motion
18 for Summary Judgment, is a proposed closing statement presented to D.L. Evans Bank
19 relative to a proposed closing of the Benz purchase.

20
21 8. D.L. Evans Bank commissioned an appraisal effective September 11, 2009.
22 The appraisal is part of the business records of D.L. Evans Bank and acquired and kept in
23 accordance with its ordinary business practices.

24 9. The appraised value effective that date was \$1,850,000.00. D.L. Evans Bank
25 procured the property at a Trustee's Sale on January 27, 2010, by making a credit bid. The


26 AFFIDAVIT OF BRUCE HUNSAKER - 3

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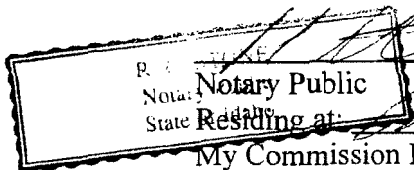
Bank has been attempting to market the property since that time, but the highest offer that it has received is \$1.5 million.

10. At this point, it appears D.L. Bank will suffer a loss on the transaction substantially in excess of \$1,300,000.00. If Plaintiff were to prevail on her claim, the loss would be substantially in excess of \$2,000,000.00.

DATED this 15th day of April, 2010.


Bruce Hunsaker

Subscribed and sworn before me this 15 day of April, 2010.


Notary Public
Residing at: 51st Ave
My Commission Expires: 5/1/2010

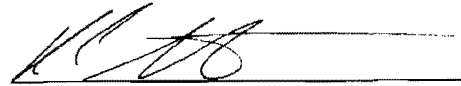
CERTIFICATE OF DELIVERY

I hereby certify that on the 16 day of April, 2010, I served a copy of the foregoing AFFIDAVIT OF BRUCE HUNSAKER upon the following named person(s) in the manner listed below:

Janet C. Wygle
LUBOVISKI, WYGLE,
FALLOWFIELD &
RITZAU, P.A.
PO Box 1172
Ketchum, ID 83340

- Via United States Mail
- Via Facsimile
- Via Overnight Carrier
- Via Hand Delivery

PARSONS, SMITH & STONE, LLP



R.C. Stone
Attorneys for Plaintiff

PARSONS, SMITH, STONE, LOVELAND & SHIRLEY, LLP
LAWYERS
BURLEY, IDAHO

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AFFIDAVIT OF BRUCE HUNSAKER - 5

499,010,70

PROMISSORY NOTE

Principal	Loan Date	Maturity	Loan No.	City	State	Account	Office	Initials
\$2,650,000.00	08-29-2007	08-29-2008						

References in the boxes above are for Lender's use only and do not limit the applicability of this document to any particular loan or item. Any item above containing "****" has been omitted due to text length limitations.

Borrower: East Avenue Bluff, LLC
P.O. Box 2337
Ketchum, ID 83340

Lender: D. L. Evans Bank
Ketchum Branch
P.O. Box 0120
680 Sun Valley Road, Suite 101
Ketchum, ID 83340
(208) 822-0415

Principal Amount: \$2,650,000.00 **Initial Rate:** 9.250% **Date of Note:** August 29, 2007

PROMISE TO PAY. East Avenue Bluff, LLC ("Borrower") promises to pay to D. L. Evans Bank ("Lender"), or order, in lawful money of the United States of America, the principal amount of Two Million Six Hundred Fifty Thousand & 00/100 Dollars (\$2,650,000.00) or so much as may be outstanding, together with interest on the unpaid outstanding principal balances of each advance. Interest shall be calculated from the date of each advance until repayment of each advance.

PAYMENT. Borrower will pay this loan in full immediately upon Lender's demand. If no demand is made, Borrower will pay this loan in one payment of all outstanding principal plus all accrued unpaid interest on August 29, 2008. In addition, Borrower will pay regular monthly payments of all accrued unpaid interest due as of each payment date, beginning October 1, 2007, with all subsequent interest payments to be due on the same day of each month after that. Unless otherwise agreed or required by applicable law, payments will be applied first to any accrued unpaid interest; then to principal; and then to any late charges. Interest on this Note is computed on a 365/365 simple interest basis; that is, by applying the ratio of the annual interest rate over the number of days in a year, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. Borrower will pay Lender at Lender's address shown above or at such other place as Lender may designate in writing.

VARIABLE INTEREST RATE. The interest rate on this Note is subject to change from time to time based on changes in an independent index which is the base rate on corporate loans posted by at least 75% of the nation's 30 largest banks known as the Wall Street Journal Prime Rate, (the "Index"). The Index is not necessarily the lowest rate charged by Lender on its loans. If the Index becomes unavailable during the term of this loan, Lender may designate a substitute index after notifying Borrower. Lender will tell Borrower the current index rate upon Borrower's request. The interest rate change will not occur more often than each day. Borrower understands that Lender may make loans based on other rates as well. The Index currently is 8.250% per annum. The interest rate to be applied to the unpaid principal balance during this Note will be at a rate of 1.000 percentage point over the Index, adjusted, if necessary for any minimum and maximum rate limitations described below, resulting in an initial rate of 9.250% per annum. **NOTICE:** Under no circumstances will the interest rate on this Note be less than 8.000% per annum or more than (except for any higher default rate shown below) the lesser of 18.000% per annum or the maximum rate allowed by applicable law.

PREPAYMENT. Borrower may pay without penalty all or a portion of the amount owed earlier than it is due. Early payments will not, unless agreed to by Lender in writing, relieve Borrower of Borrower's obligation to continue to make payments of accrued unpaid interest. Rather, early payments will reduce the principal balance due. Borrower agrees not to send Lender payments marked "paid in full", "without recourse", or similar language. If Borrower sends such a payment, Lender may accept it without losing any of Lender's rights under this Note, and Borrower will remain obligated to pay any further amount owed to Lender. All written communications concerning disputed amounts, including any check or other payment instrument that indicates that the payment constitutes "payment in full" of the amount owed or that is tendered with other conditions or limitations or as full satisfaction of a disputed amount must be mailed or delivered to: D. L. Evans Bank, Ketchum Branch, P.O. Box 9120, 680 Sun Valley Road, Suite 101, Ketchum, ID 83340.

LATE CHARGE. If a payment is 11 days or more late, Borrower will be charged 5.000% of the unpaid portion of the regularly scheduled payment of \$25.00, whichever is greater.

INTEREST AFTER DEFAULT. Upon default, including failure to pay upon final maturity, the interest rate on this Note shall be increased by adding a 4.000 percentage point margin ("Default Rate Margin"). The Default Rate Margin shall also apply to each succeeding interest rate change that would have applied had there been no default. However, in no event will the interest rate exceed the maximum interest rate limitations under applicable law.

DEFAULT. Each of the following shall constitute an event of default ("Event of Default") under this Note:

Payment Default. Borrower fails to make any payment when due under this Note.

Other Defaults. Borrower fails to comply with or to perform any other term, obligation, covenant or condition contained in this Note or in any of the related documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Borrower.

False Statements. Any warranty, representation or statement made or furnished to Lender by Borrower or on Borrower's behalf under this Note or the related documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

Death or Insolvency. The dissolution or termination of Borrower (regardless of whether election to continue is made), any member withdraws from Borrower, or any other termination of Borrower's existence as a going business or the death of any member, the insolvency of Borrower, the appointment of a receiver for any part of Borrower's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Borrower.

Creditor or Foreclosure Proceedings. Commencement of foreclosure or foreclosure proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Borrower or by any governmental agency against any collateral securing the loan. This includes a garnishment of any of Borrower's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Borrower as to the validity or reasonableness of the claim which is the basis of the creditor or foreclosure proceeding and if Borrower gives Lender written notice of the creditor or foreclosure proceeding and deposits with Lender monies or a surety bond for the creditor or foreclosure proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

Events Affecting Guarantor. Any of the preceding events occurs with respect to any Guarantor of any of the indebtedness or any Guarantor dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any guaranty of the indebtedness evidenced by this Note. In the event of a death, Lender, at its option, may, but shall not be required to, permit the Guarantor's estate to assume unconditionally the obligations arising under the guaranty in a manner satisfactory to Lender, and, in doing so, cure any Event of Default.

Adverse Change. A material adverse change occurs in Borrower's financial condition, or Lender believes the prospect of payment or performance of this Note is impaired.

Insecurity. Lender in good faith believes itself insecure.

LENDER'S RIGHTS. Upon default, Lender may declare the entire unpaid principal balance under this Note and all accrued unpaid interest immediately due, and then Borrower will pay that amount.

ATTORNEYS' FEES; EXPENSES. Lender may hire or pay someone else to help collect this Note if Borrower does not pay. Borrower will pay Lender that amount. This includes, subject to any limits under applicable law, Lender's reasonable attorneys' fees and legal expenses, whether or not there is a lawsuit, including (without limitation) all reasonable attorneys' fees and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), and appeals. If not prohibited by applicable law, Borrower also will pay any court costs, in addition to all other sums provided by law.

JURY WAIVER. Lender and Borrower hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by either Lender or Borrower against the other.

GOVERNING LAW. This Note will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Idaho without regard to its conflicts of law provisions. This Note has been accepted by Lender in the State of Idaho.

CHOICE OF VENUE. If there is a lawsuit, Borrower agrees upon Lender's request to submit to the jurisdiction of the courts of Blaine County, State of Idaho.

DISHONORED ITEM FEE. Borrower will pay a fee to Lender of \$20.00 if Borrower makes a payment on Borrower's loan and the check or preauthorized charge with which Borrower pays is later dishonored.

EXHIBIT A

311

001124

PROMISSORY NOTE
(Continued)

Loan No: [REDACTED]

Page 2

RIGHT OF SETOFF. To the extent permitted by applicable law, Lender reserves a right of setoff in all Borrower's accounts with Lender (whether checking, savings, or some other account). This includes all accounts Borrower holds jointly with someone else and all accounts Borrower may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Borrower authorizes Lender, to the extent permitted by applicable law, to charge or setoff all sums owing on the indebtedness against any and all such accounts, and, at Lender's option, to administratively freeze all such accounts to allow Lender to protect Lender's charge and setoff rights provided in this paragraph.

COLLATERAL. Borrower acknowledges this Note is secured by the following collateral described in the security instrument listed herein: a Construction Deed of Trust dated August 29, 2007, to a trustee in favor of Lender on real property located in Blaine County, State of Idaho.

LINE OF CREDIT. This Note evidences a straight line of credit. Once the total amount of principal has been advanced, Borrower is not entitled to further loan advances. The following person or persons are authorized to request advances and authorize payments under the line of credit until Lender receives from Borrower, at Lender's address shown above, written notice of revocation of such authority: Stacey Belton Rutherford, Member of East Avenue Bluff, LLC. Borrower agrees to be liable for all sums either: (A) advanced in accordance with the instructions of an authorized person or (B) credited to any of Borrower's accounts with Lender. The unpaid principal balance owing on this Note at any time may be evidenced by endorsements on this Note or by Lender's internal records, including daily computer print-outs.

SUCCESSOR INTERESTS. The terms of this Note shall be binding upon Borrower, and upon Borrower's heirs, personal representatives, successors and assigns, and shall inure to the benefit of Lender and its successors and assigns.

GENERAL PROVISIONS. This Note is payable on demand. The inclusion of specific default provisions or rights of Lender shall not preclude Lender's right to declare payment of this Note on its demand. If any part of this Note cannot be enforced, this fact will not affect the rest of the Note. Lender may delay or forgo enforcing any of its rights or remedies under this Note without losing them. Borrower and any other person who signs, guarantees or endorses this Note, to the extent allowed by law, waive presentment, demand for payment, and notice of dishonor. Upon any change in the terms of this Note, and unless otherwise expressly stated in writing, no party who signs this Note, whether as maker, guarantor, accommodation maker or endorser, shall be released from liability. All such parties agree that Lender may renew or extend (repeatedly and for any length of time) this loan or release any party or guarantor or collateral; or impair, fail to realize upon or perfect Lender's security interest in the collateral; and take any other action deemed necessary by Lender without the consent of or notice to anyone. All such parties also agree that Lender may modify this loan without the consent of or notice to anyone other than the party with whom the modification is made. The obligations under this Note are joint and several.

PRIOR TO SIGNING THIS NOTE, BORROWER READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS NOTE, INCLUDING THE VARIABLE INTEREST RATE PROVISIONS. BORROWER AGREES TO THE TERMS OF THE NOTE.

BORROWER ACKNOWLEDGES RECEIPT OF A COMPLETED COPY OF THIS PROMISSORY NOTE.

BORROWER:

EAST AVENUE BLUFF, LLC

By: 

Stacey Belton Rutherford, Member of East Avenue Bluff, LLC

LAMAR PRO Form 909 8/12/03 (Rev. 03/03) Last Printed 1 month 03 September, 2003 1081 1081 An Equal Housing Lender NO. 1 0314 P10297E 7/1/01 99 14

REGISTRATION REQUESTED BY:
D. L. Evans Bank
Ketchum Branch
P.O. Box 9120
880 Sun Valley Road, Suite 101
Ketchum, ID 83340

Instrument # 551107
HAILEY, BLAINE, IDAHO
2007-06-30 02:37:26 No. of Pages: 6
Recorded for: BLAINE COUNTY TITLE
JOLYNN DRAKE Fee: 12.00
Ex-Officio Recorder Deputy
INSTRUMENT DEED OF TRUST-SECOND DEED TRUSTING

WHEN RECORDED MAIL TO:
D. L. Evans Bank
Ketchum Branch
P.O. Box 9120
880 Sun Valley Road, Suite 101
Ketchum, ID 83340

SEND TAX NOTICES TO:
East Avenue Bluff, LLC
P.O. Box 2337
Ketchum, ID 83340

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE ONLY

CONSTRUCTION DEED OF TRUST

MAXIMUM LIEN. The lien of this Deed of Trust shall not exceed at any one time \$2,550,000.00.
THIS DEED OF TRUST is dated August 29, 2007, among East Avenue Bluff, LLC; an Limited Liability Company ("Grantor"); D. L. Evans Bank, whose address is Ketchum Branch, P.O. Box 9120, 880 Sun Valley Road, Suite 101, Ketchum, ID 83340 (referred to below sometimes as "Lender" and sometimes as "Beneficiary"); and Sun Valley Title Company, whose address is 221 South River Street #2A, Hailey, ID 83333 (referred to below as "Trustee").

CONVEYANCE AND GRANT. For valuable consideration, Grantor does hereby irrevocably grant, bargain, sell and convey in trust, with power of sale, to Trustee for the benefit of Lender as Beneficiary, all of Grantor's right, title, and interest in and to the following described real property, together with all existing or subsequently erected or added buildings, improvements and fixtures; all easements, rights of way, and appurtenances; all water, water rights and ditch rights (including stock in utilities with ditch or irrigation rights); and all other rights, royalties, and profits relating to the real property, including without limitation all minerals, oil, gas, geothermal and similar matters, (the "Real Property") located in Blaine County, State of Idaho:

LOT 3 IN BLOCK 41 OF THE CITY OF KETCHUM, ACCORDING TO THE OFFICIAL PLAT THEREOF, ON FILE IN THE OFFICE OF THE COUNTY RECORDER, BLAINE COUNTY, IDAHO.

The Real Property or its address is commonly known as 100 East Avenue South, Ketchum, ID 83340.
Grantor presently assigns to Lender (also known as Beneficiary in this Deed of Trust) all of Grantor's right, title, and interest in and to all present and future leases of the Property and all Rents from the Property. In addition, Grantor grants to Lender a Uniform Commercial Code security interest in the Personal Property and Rents.

THIS DEED OF TRUST, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS GIVEN TO SECURE: (A) PAYMENT OF THE INDEBTEDNESS AND (B) PERFORMANCE OF ANY AND ALL OBLIGATIONS UNDER THE NOTE, THE RELATED DOCUMENTS, AND THIS DEED OF TRUST. THIS DEED OF TRUST, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS ALSO GIVEN TO SECURE ANY AND ALL OF GRANTOR'S OBLIGATIONS UNDER THAT CERTAIN CONSTRUCTION LOAN AGREEMENT BETWEEN GRANTOR AND LENDER OF EVEN DATE HEREWITH, ANY EVENT OF DEFAULT UNDER THE CONSTRUCTION LOAN AGREEMENT, OR ANY OF THE RELATED DOCUMENTS REFERRED TO THEREIN, SHALL ALSO BE AN EVENT OF DEFAULT UNDER THIS DEED OF TRUST. THIS DEED OF TRUST IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:

PAYMENT AND PERFORMANCE. Except as otherwise provided in this Deed of Trust, Grantor shall pay to Lender all amounts secured by this Deed of Trust as they become due, and shall strictly and in a timely manner perform all of Grantor's obligations under the Note, this Deed of Trust, and the Related Documents.

CONSTRUCTION MORTGAGE. This Deed of Trust is a "construction mortgage" for the purposes of Sections 9-334 and 2A-309 of the Uniform Commercial Code, as those sections have been adopted by the State of Idaho.

POSSESSION AND MAINTENANCE OF THE PROPERTY. Grantor agrees that Grantor's possession and use of the Property shall be governed by the following provisions:

Possession and Use. Until the occurrence of an Event of Default, Grantor may (1) remain in possession and control of the Property; (2) use, operate or manage the Property; and (3) collect the Rents from the Property. The following provisions relate to the use of the Property or to other limitations on the Property. THE REAL PROPERTY EITHER IS NOT MORE THAN FORTY (40) ACRES IN AREA OR IS LOCATED WITHIN AN INCORPORATED CITY OR VILLAGE.

Duty to Maintain. Grantor shall maintain the Property in tenable condition and promptly perform all repairs, replacements, and maintenance necessary to preserve its value.

Compliance With Environmental Laws. Grantor represents and warrants to Lender that: (1) During the period of Grantor's ownership of the Property, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance by any person on, under, about or from the Property; (2) Grantor has no knowledge of, or reason to believe that there has been, except as previously disclosed to and acknowledged by Lender in writing, (a) any breach or violation of any Environmental Laws, (b) any use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance on, under, about or from the Property by any prior owners or occupants of the Property, or (c) any actual or threatened litigation or claims of any kind by any person relating to such matters; and (3) Except as previously disclosed to and acknowledged by Lender in writing, (a) neither Grantor nor any tenant, contractor, agent or other authorized user of the Property shall use, generate, manufacture, store, treat, dispose of or release any Hazardous Substance on, under, about or from the Property; and (b) any such activity shall be conducted in compliance with all applicable federal, state, and local laws, regulations and ordinances, including without limitation all Environmental Laws. Grantor authorizes Lender and its agents to enter upon the Property to make such inspections and tests, at Grantor's expense, as Lender may deem appropriate to determine compliance of the Property with this section of the Deed of Trust. Any inspections or tests made by Lender shall be for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to Grantor or to any other person. The representations and warranties contained herein are based on Grantor's due diligence in investigating the Property for Hazardous Substances. Grantor hereby (1) releases and waives any future claims against Lender for indemnity or contribution in the event Grantor becomes liable for cleanup or other costs under any such laws; and (2) agrees to indemnify, defend, and hold harmless Lender against any and all claims, losses, liabilities, damages, penalties, and expenses which Lender may directly or indirectly sustain or suffer resulting from a breach of this section of the Deed of Trust or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release occurring prior to Grantor's ownership or interest in the Property, whether or not the same was or should have been known to Grantor. The provisions of this section of the Deed of Trust, including the obligation to indemnify and defend, shall survive the payment of the indebtedness and the satisfaction and reconveyance of the lien of this Deed of Trust and shall not be affected by Lender's acquisition of any interest in the Property, whether by foreclosure or otherwise.

Nuisance, Waste. Grantor shall not cause, conduct or permit any nuisance nor remove, permit, or suffer any stripping of or waste on or to the Property or any portion of the Property. Without limiting the generality of the foregoing, Grantor will not remove, or grant to any other party the right to remove, any timber, minerals (including oil and gas), coal, clay, scoria, soil, gravel or rock products without Lender's prior written consent.

Removal of Improvements. Grantor shall not demolish or remove any improvements from the Real Property without Lender's prior written consent. As a condition to the removal of any improvements, Lender may require Grantor to make arrangements satisfactory to Lender to

EXHIBIT 8

31358

repairs such improvements with improvements of at least equal value.

Lender's Right to Enter. Lender and Lender's agents and representatives may enter upon the Real Property at all reasonable times to attend to Lender's interests and to inspect the Real Property for purposes of Grantor's compliance with the terms and conditions of this Deed of Trust.

Compliance with Governmental Requirements. Grantor shall promptly comply with all laws, ordinances, and regulations, now or hereafter in effect, of all governmental authorities applicable to the use or occupancy of the Property, including without limitation, the Americans With Disabilities Act. Grantor may contact in good faith any such law, ordinance, or regulation and without compliance during any proceeding, including appropriate appeals, so long as Grantor has notified Lender in writing prior to doing so and so long as, in Lender's sole opinion, Lender's interests in the Property are not jeopardized. Lender may require Grantor to post adequate security or a surety bond, reasonably satisfactory to Lender, to protect Lender's interest.

Duty to Protect. Grantor agrees neither to abandon or leave unattended the Property. Grantor shall do all other acts, in addition to those acts set forth above in this section, which from the character and use of the Property are reasonably necessary to protect and preserve the Property.

Construction Loan. If some or all of the proceeds of the loan creating the indebtedness are to be used to construct or complete construction of any improvements on the Property, the improvements shall be completed no later than the maturity date of the Note (or such earlier date as Lender may reasonably establish) and Grantor shall pay in full all costs and expenses in connection with the work. Lender will disburse loan proceeds under such terms and conditions as Lender may deem reasonable by necessity to insure that the interest created by this Deed of Trust shall have priority over all possible liens, including those of material suppliers and workmen. Lender may require, among other things, that disbursement requests be supported by receipts, bills, expense receipts, waivers of liens, construction progress reports, and such other documentation as Lender may reasonably request.

DEED ON SALE - CONSENT BY LENDER. Lender may, at Lender's option, declare immediately due and payable all sums secured by this Deed of Trust upon the sale or transfer, without Lender's prior written consent, of all or any part of the Real Property, or any interest in the Real Property. A "sale or transfer" means the conveyance of Real Property or any right, title or interest in the Real Property, whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, and contract, contract for deed, leasehold interest with a term greater than three (3) years, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Real Property, or by any other method of conveyance of an interest in the Real Property. If any Grantor is a corporation, partnership or limited liability company, transfer also includes any change in ownership of more than twenty-five percent (25%) of the voting stock, partnership interests or limited liability company interests, as the case may be, of such Grantor. However, this option shall not be exercised by Lender if such exercise is prohibited by federal law or by Idaho law.

TAXES AND LIENS. The following provisions relating to the taxes and liens on the Property are part of this Deed of Trust:

Payment. Grantor shall pay when due (and in all events prior to delinquency) all taxes, special taxes, assessments, charges (including water and sewer), fines and impositions levied against or on account of the Property, and shall pay when due all claims for work done on or for services rendered or material furnished to the Property. Grantor shall maintain the Property free of all liens having priority over or equal to the interests of Lender under this Deed of Trust, except for the lien of taxes and assessments not due and except as otherwise provided in this Deed of Trust.

Right to Contest. Grantor may withhold payment of any tax, assessment, or claim in connection with a good faith dispute over the obligation to pay, so long as Lender's interest in the Property is not jeopardized. If a lien arises or is filed as a result of nonpayment, Grantor shall within fifteen (15) days after the lien arises or, if a lien is filed, within fifteen (15) days after Grantor has notice of the filing, secure the discharge of the lien, or if requested by Lender, deposit with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender in an amount sufficient to discharge the lien plus any costs and reasonable attorney's fees, or other charges that could accrue as a result of a foreclosure or sale under the lien. In any contest, Grantor shall defend itself and Lender and shall advise its judgment before enforcement against the Property. Grantor shall name Lender as an additional obligee under any surety bond furnished in the contest proceedings.

Evidence of Payment. Grantor shall upon demand furnish to Lender satisfactory evidence of payment of the taxes or assessments and shall authorize the appropriate governmental official to deliver to Lender at any time a written statement of the taxes and assessments against the Property.

Notice of Construction. Grantor shall notify Lender at least fifteen (15) days before any work is commenced, any services are furnished, or any materials are supplied to the Property. If any mechanic's lien, materialman's lien, or other lien could be asserted on account of the work, services, or materials and the cost exceeds 1000.00, Grantor will upon request of Lender furnish to Lender advance assurances satisfactory to Lender that Grantor can and will pay the cost of such improvements.

PROPERTY DAMAGE INSURANCE. The following provisions relating to insuring the Property are a part of this Deed of Trust.

Maintenance of Insurance. Grantor shall procure and maintain policies of fire insurance with standard extended coverage endorsements on a replacement basis for the full insurable value covering all improvements on the Real Property in an amount sufficient to avoid application of any co-insurance clause, and with a standard mortgage clause in favor of Lender. Grantor shall also procure and maintain comprehensive general liability insurance in such coverage amounts as Lender may request with Lender being named as additional insureds in such liability insurance policies. Additionally, Grantor shall maintain such other insurance, including but not limited to hazard, business interruption, and boiler insurance, as Lender may reasonably require. Policies shall be written in form, amounts, coverages and be able reasonably acceptable to Lender and issued by a company or companies reasonably acceptable to Lender. Grantor, upon request of Lender, will deliver to Lender from time to time the policies or certificates of insurance in form satisfactory to Lender, including stipulations that coverages will not be cancelled or diminished without at least fifteen (15) days prior written notice to Lender. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Grantor or any other person. Should the Real Property be located in an area designated by the Director of the Federal Emergency Management Agency as a special flood hazard area, Grantor agrees to obtain and maintain Federal Flood Insurance, if available, for the full unpaid principal balance of the loan and any prior liens on the property securing the loan, up to the maximum policy limits set under the National Flood Insurance Program, or as otherwise required by Lender, and to maintain such insurance for the term of the loan.

Application of Proceeds. Grantor shall promptly notify Lender of any loss or damage to the Property if the estimated cost of repair or replacement exceeds 1000.00. Lender may make proof of loss if Grantor fails to do so within fifteen (15) days of the casualty. Whether or not Lender's security is impaired, Lender may, at Lender's election, receive and retain the proceeds of any insurance and apply the proceeds to the reduction of the indebtedness, payment of any lien affecting the Property, or the restoration and repair of the Property. If Lender elects to apply the proceeds to restoration and repair, Grantor shall repair or replace the damaged or destroyed improvements in a manner satisfactory to Lender. Lender shall, upon satisfactory proof of such expenditures, pay or reimburse Grantor from the proceeds for the reasonable cost of repair or restoration if Grantor is not in default under this Deed of Trust. Any proceeds which have not been disbursed within 180 days after their receipt and which Lender has not committed to the repair or restoration of the Property shall be used first to pay any amount owing to Lender under this Deed of Trust, then to pay accrued interest, and the remainder, if any, shall be applied to the principal balance of the indebtedness. If Lender holds any proceeds after payment in full of the indebtedness, such proceeds shall be paid to Grantor as Grantor's interests may appear.

Grantor's Report on Insurance. Upon request of Lender, however not more than once a year, Grantor shall furnish to Lender a report on each existing policy of insurance showing: (1) the name of the insurer; (2) the risks insured; (3) the amount of the policy; (4) the property insured; the then current replacement value of such property, and the manner of determining that value; and (5) the expiration date of the policy. Grantor shall, upon request of Lender, have an independent appraiser satisfactory to Lender determine the cash value replacement cost of the Property.

LENDER'S EXPENDITURES. If any action or proceeding is commenced that would materially affect Lender's interest in the Property or if Grantor fails to comply with any provision of this Deed of Trust or any Related Documents, including but not limited to Grantor's failure to discharge or pay when due any amount Grantor is required to discharge or pay under this Deed of Trust or any Related Documents, Lender on Grantor's behalf may (but shall not be obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on the Property and paying all costs for insuring, maintaining and preserving the Property. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note from the date incurred or paid by Lender to the date of repayment by Grantor. All such expenses will become a part of the indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity. The Deed of Trust

also will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which Lender may be entitled upon Default.

WARRANTY; DEFENSE OF TITLE. The following provisions relating to ownership of the Property are a part of this Deed of Trust:

Title. Grantor warrants that: (a) Grantor holds good and marketable title of record to the Property in fee simple, free and clear of all liens and encumbrances other than those set forth in the Real Property description or in any title insurance policy, title report, or final title opinion issued in favor of, and accepted by, Lender in connection with this Deed of Trust, and (b) Grantor has the full right, power, and authority to execute and deliver this Deed of Trust to Lender.

Defense of Title. Subject to the exception in the paragraph above, Grantor warrants and will forever defend the title to the Property against the lawful claims of all persons. In the event any action or proceeding is commenced that questions Grantor's title or the interest of Trustee or Lender under this Deed of Trust, Grantor shall defend the action at Grantor's expense. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of Lender's own choice, and Grantor will deliver, or cause to be delivered, to Lender such instruments as Lender may request from time to time to permit such participation.

Compliance With Laws. Grantor warrants that the Property and Grantor's use of the Property complies with all existing applicable laws, ordinances, and regulations of governmental authorities.

Survival of Representations and Warranties. All representations, warranties, and agreements made by Grantor in this Deed of Trust shall survive the execution and delivery of this Deed of Trust, shall be continuing in nature, and shall remain in full force and effect until such time as Grantor's indebtedness shall be paid in full.

CONDEMNATION. The following provisions relating to condemnation proceedings are a part of this Deed of Trust:

Proceedings. If any proceeding in condemnation is filed, Grantor shall promptly notify Lender in writing, and Grantor shall promptly take such steps as may be necessary to defend the action and obtain the award. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of his own choice, and Grantor will deliver or cause to be delivered to Lender such instruments and documentation as may be requested by Lender from time to time to permit such participation.

Application of Net Proceeds. If all or any part of the Property is condemned by eminent domain proceedings or by any proceeding or purchase in lieu of condemnation, Lender may, at its election, require that all or any portion of the net proceeds of the award be applied to the indebtedness or the repair or restoration of the Property. The net proceeds of the award shall first be applied to the payment of all reasonable costs, expenses, and attorneys' fees incurred by Trustee or Lender in connection with the condemnation.

IMPOSITION OF TAXES, FEES AND CHARGES BY GOVERNMENTAL AUTHORITIES. The following provisions relating to governmental taxes, fees and charges are a part of this Deed of Trust:

Current Taxes, Fees and Charges. Upon request by Lender, Grantor shall execute such documents in addition to this Deed of Trust and take whatever other action is requested by Lender to perfect and continue Lender's lien on the Real Property. Grantor shall reimburse Lender for all taxes, as described below, together with all expenses incurred in recording, perfecting or continuing this Deed of Trust, including without limitation all taxes, fees, documentary stamps, and other charges for recording or registering this Deed of Trust.

Taxes. The following shall constitute taxes to which this section applies: (1) a specific tax upon this type of Deed of Trust or upon all or any part of the indebtedness secured by this Deed of Trust; (2) a specific tax on Grantor which Grantor is authorized or required to deduct from payments on the indebtedness secured by this type of Deed of Trust; (3) a tax on this type of Deed of Trust chargeable against the Lender or the holder of the Note; and (4) a specific tax on all or any portion of the indebtedness or on payments of principal and interest made by Grantor.

Subsequent Taxes. If any tax to which this section applies is enacted subsequent to the date of this Deed of Trust, this event shall have the same effect as an Event of Default, and Lender may exercise any or all of his available remedies for an Event of Default as provided below unless Grantor either (1) pays the tax before it becomes delinquent, or (2) continues the tax as provided above in the Taxes and this section and deposits with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender.

SECURITY AGREEMENT; FINANCING STATEMENTS. The following provisions relating to this Deed of Trust as a security agreement are a part of this Deed of Trust:

Security Agreement. This instrument shall constitute a Security Agreement to the extent any of the Property constitutes fixtures, and Lender shall have all of the rights of a secured party under the Uniform Commercial Code as amended from time to time.

Security Interest. Upon request by Lender, Grantor shall take whatever action is requested by Lender to perfect and continue Lender's security interest in the Real and Personal Property. In addition to recording this Deed of Trust in the real property records, Lender may, at any time and without further authorization from Grantor, file associated counterparts, copies or reproductions of this Deed of Trust as a financing statement. Grantor shall reimburse Lender for all expenses incurred in perfecting or continuing this security interest. Upon default, Grantor shall not remove, sever or detach the Personal Property from the Property. Upon default, Grantor shall assemble any Personal Property not affixed to the Property in a manner and at a place reasonably convenient to Grantor and Lender and make it available to Lender within three (3) days after receipt of written demand from Lender to the extent permitted by applicable law.

Addresses. The mailing addresses of Grantor (debtor) and Lender (secured party) from which information concerning the security interest granted by this Deed of Trust may be obtained (such as required by the Uniform Commercial Code) are as stated on the first page of this Deed of Trust.

FURTHER ASSURANCES; ATTORNEY-IN-FACT. The following provisions relating to further assurances and attorney-in-fact are a part of this Deed of Trust:

Further Assurances. At any time, and from time to time, upon request of Lender, Grantor will make, execute and deliver, or will cause to be made, executed or delivered, to Lender or to Lender's designee, and when requested by Lender, cause to be filed, recorded, noted, or re-recorded, as the case may be, at such times and in such offices and places as Lender may deem appropriate, any and all such mortgages, deeds of trust, security deeds, security agreements, financing statements, continuation statements, instruments of further assurance, certificates, and other documents as may, in the sole opinion of Lender, be necessary or desirable in order to effectuate, complete, perfect, continue, or preserve (1) Grantor's obligations under the Note, this Deed of Trust, and the Related Documents, and (2) the liens and security interests created by this Deed of Trust as first and prior liens on the Property, whether now owned or hereafter acquired by Grantor. Unless prohibited by law or Lender agrees to the contrary in writing, Grantor shall reimburse Lender for all costs and expenses incurred in connection with the matters referred to in this paragraph.

Attorney-in-Fact. If Grantor fails to do any of the things referred to in the preceding paragraph, Lender may do so for and in the name of Grantor and as Grantor's attorney. For such purposes, Grantor hereby irrevocably appoints Lender as Grantor's attorney-in-fact for the purpose of making, executing, delivering, filing, recording, and doing all other things as may be necessary or desirable, in Lender's sole opinion, to accomplish the matters referred to in the preceding paragraph.

FULL PERFORMANCE. If Grantor pays all the indebtedness when due, and otherwise performs all the obligations imposed upon Grantor under this Deed of Trust, Lender shall execute and deliver to Trustee a request for full reconveyance and shall execute and deliver to Grantor a written statement of termination of any financing statement on the evidencing Lender's security interest in the Real and the Personal Property. Any reconveyance fee required by law shall be paid by Grantor, if permitted by applicable law.

EVENTS OF DEFAULT. Each of the following, at Lender's option, shall constitute an Event of Default under this Deed of Trust:

Payment Default. Grantor fails to make any payment when due under the indebtedness.

Other Defaults. Grantor fails to comply with or to perform any other term, obligation, covenant or condition contained in this Deed of Trust or in any of the Related Documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Grantor.

Compliance Default. Failure to comply with any other term, obligation, covenant or condition contained in this Deed of Trust, the Note or in any of the Related Documents.

Default on Other Payments. Failure of Grantor within the time required by this Deed of Trust to make any payment for taxes or insurance, or any other payment necessary to prevent filing of or to effect discharge of any lien.

False Statements. Any warranty, representation or statement made or furnished to Lender by Grantor or on Grantor's behalf under this Deed of Trust or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

Defective Collateralization. This Deed of Trust or any of the Related Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason.

Death or Insolvency. The dissolution of Grantor's (regardless of whether election to continue is made), any member withdrawal from the limited liability company, or any other termination of Grantor's existence as a going business or the death of any member, the insolvency of Grantor, the appointment of a receiver for any part of Grantor's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Grantor.

Creditor or Foreclosure Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Grantor or by any governmental agency against any property securing the indebtedness. This includes a garnishment of any of Grantor's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Grantor as to the validity or reasonableness of the claim which is the basis of the creditor or foreclosure proceeding and if Grantor gives Lender written notice of the creditor or foreclosure proceeding and deposits with Lender monies or a surety bond for the creditor or foreclosure proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

Breach of Other Agreement. Any breach by Grantor under the terms of any other agreement between Grantor and Lender that is not remedied within any grace period provided therein, including without limitation any agreement concerning any indebtedness or other obligation of Grantor to Lender, whether existing now or later.

Events Affecting Guarantor. Any of the preceding events occurs with respect to any Guarantor of any of the Indebtedness or any Guarantor dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any Guaranty of the Indebtedness. In the event of a death, Lender, at its option, may, but shall not be required to, permit the Guarantor's estate to assume unconditionally the obligations existing under the guaranty in a manner satisfactory to Lender, and, in doing so, cure any Event of Default.

Adverse Change. A material adverse change occurs in Grantor's financial condition, or Lender believes the prospect of payment or performance of the Indebtedness is impaired.

Insolvency. Lender in good faith believes itself insolvent.

RIGHTS AND REMEDIES ON DEFAULT. If an event of Default occurs under this Deed of Trust at any time thereafter, Trustee or Lender may exercise any one or more of the following rights and remedies:

Notice of Default. In the Event of Default Lender shall exercise or cause the Trustee to exercise a written notice of such default and of Lender's election to cause the Property to be sold to satisfy the Indebtedness, and shall cause such notice to be recorded in the office of the recorder of each county wherein the Real Property, or any part thereof, is situated.

Election of Remedies. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Grantor under this Deed of Trust, after Grantor's failure to perform, shall not affect Lender's right to declare a default and exercise its remedies.

Accelerate Indebtedness. Lender shall have the right at its option without notice to Grantor to declare the entire Indebtedness immediately due and payable, including any prepayment penalty which Grantor would be required to pay.

Foreclosure. With respect to all or any part of the Real Property, the Trustee shall have the right to foreclose by notice and sale, and Lender shall have the right to foreclose by judicial foreclosure, in either case in accordance with and to the full extent provided by applicable law.

UCC Remedies. With respect to all or any part of the Personal Property, Lender shall have all the rights and remedies of a secured party under the Uniform Commercial Code.

Collect Rents. Lender shall have the right, without notice to Grantor to take possession of and manage the Property and collect the Rents, including amounts past due and unpaid, and apply the net proceeds, over and above Lender's costs, against the Indebtedness. In furtherance of this right, Lender may require any tenant or other user of the Property to make payments of rent or use fees directly to Lender. If the Rents are collected by Lender, then Grantor irrevocably designates Lender as Grantor's attorney-in-fact to endorse instruments received in payment thereof in the name of Grantor and to negotiate the same and collect the proceeds. Payments by tenants or other users to Lender in response to Lender's demand shall satisfy the obligations for which the payments are made, whether or not any proper grounds for the demand existed. Lender may exercise its rights under this subparagraph either in person, by agent, or through a receiver.

Appoint Receiver. Lender shall have the right to have a receiver appointed to take possession of all or any part of the Property, with the power to protect and preserve the Property, to operate the Property pending foreclosure or sale, and to collect the Rents from the Property and apply the proceeds, over and above the cost of the receivership, against the Indebtedness. The receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver shall exist whether or not the appraised value of the Property exceeds the Indebtedness by a substantial amount. Employment by Lender shall not disqualify a person from serving as a receiver.

Tenancy at Sufferance. If Grantor remains in possession of the Property after the Property is sold as provided above or Lender otherwise becomes entitled to possession of the Property upon default of Grantor, Grantor shall become a tenant at sufferance of Lender or the purchaser of the Property and shall, at Lender's option, either (1) pay a reasonable rental for the use of the Property, or (2) vacate the Property immediately upon the demand of Lender.

Other Remedies. Trustee or Lender shall have any other right or remedy provided in this Deed of Trust or the Note or available at law or in equity.

Notice of Sale. Lender shall give Grantor reasonable notice of the time and place of any public sale of the Personal Property or of the time after which any private sale or other intended disposition of the Personal Property is to be made. Reasonable notice shall mean notice given at least ten (10) days before the time of the sale or disposition. Any sale of the Personal Property may be made in conjunction with any sale of the Real Property.

Sale of the Property. To the extent permitted by applicable law, Grantor hereby waives any and all rights to have the Property maintained, in exercising its rights and remedies, the Trustee or Lender shall be free to sell all or any part of the Property together or separately, in one sale or by separate sales. Lender shall be entitled to bid at any public sale on all or any portion of the Property. Notice of sale having been given as then required by law, and not less than the time required by law having elapsed, Trustee, without demand on Grantor, shall sell the property at the time and place fixed by it in the notice of sale at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee shall deliver to the purchaser his or her deed conveying the Property so sold, but without any covenant or warranty express or implied. The records in such deed of any matters or facts shall be conclusive proof of the truthfulness of such matters or facts. After deducting all costs, fees and expenses of Trustee and of this Trust, including costs of evidence of title and reasonable attorneys' fees, including those in connection with the sale, Trustee shall apply proceeds of sale to payment of: (a) all sums expended under this Deed of Trust, not then repaid with interest thereon as provided in this Deed of Trust; (b) all indebtedness secured hereby; and (c) the remainder, if any, to the person or persons legally entitled thereto.

Attorneys' Fees; Expenses. If Lender institutes any suit or action to enforce any of the terms of this Deed of Trust, Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees at trial and upon any appeal. Whether or not any court action is involved, and to the extent not prohibited by law, all reasonable expenses Lender incurs that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the Indebtedness payable on demand and shall bear interest at the Note rate from the date of the expenditure until repaid. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's reasonable attorneys' fees and Lender's legal expense whether or not there is a lawsuit, including reasonable attorneys' fees and expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, and appraisal fees, title insurance, and fees for the Trustee, to the extent permitted by applicable law. Grantor also will pay any court costs in addition to all other sums provided by law.

Rights of Trustee. Trustee shall have all of the rights and duties of Lender as set forth in this section.

POWERS AND OBLIGATIONS OF TRUSTEE. The following provisions relating to the powers and obligations of Trustee are part of this Deed of

Trust:

Powers of Trustee. In addition to all powers of Trustee arising as a matter of law, Trustee shall have the power to take the following actions with respect to the Property upon the written request of Lender and Grantor: (a) join in preparing and filing a map or plat of the Real Property, including the dedication of streets or other rights to the public; (b) join in granting any easement or creating any restriction on the Real Property; and (c) join in any subdivision or other agreement affecting this Deed of Trust or the interest of Lender under this Deed of Trust.

Obligations to Notify. Trustee shall not be obligated to notify any other party of a pending sale under any other trust deed or lien, or of any action or proceeding in which Grantor, Lender, or Trustee shall be a party, unless the action or proceeding is brought by Trustee.

Trustee's Powers. Trustee shall meet all qualifications required for Trustee under applicable law. In addition to the rights and remedies set forth above, with respect to all or any part of the Property, the Trustee shall have the right to foreclose by notice and sale, and Lender shall have the right to foreclose by judicial foreclosure, in either case in accordance with and to the full extent provided by applicable law.

Successor Trustee. Lender, at Lender's option, may from time to time appoint a successor Trustee to any Trustee appointed under this Deed of Trust by an instrument executed and acknowledged by Lender and recorded in the office of the recorder of Blaine County, State of Idaho. The instrument shall contain, in addition to all other matters required by state law, the names of the original Lender, Trustee, and Grantor, the book and page where this Deed of Trust is recorded, and the name and address of the successor trustee, and the instrument shall be executed and acknowledged by Lender or its successor in interest. The successor trustee, without conveyance of the Property, shall succeed to all the title, power, and duties conferred upon the Trustee in this Deed of Trust and by applicable law. The procedure for substitution of Trustee shall govern to the exclusion of all other provisions for substitution.

NOTICES. Any notice required to be given under this Deed of Trust, including without limitation any notice of default and any notice of sale shall be given in writing, and shall be effective when actually delivered, when actually received by mail/airmail (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, at first class, certified or registered mail postage prepaid, directed to the addressee shown near the beginning of this Deed of Trust. All copies of notices of foreclosure from the holder of any lien which has priority over the Deed of Trust shall be sent to Lender's address, as shown near the beginning of this Deed of Trust. Any party may change its address for notices under the Deed of Trust by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Grantor agrees to keep Lender informed at all times of Grantor's current address. Unless otherwise provided or required by law, if there is more than one Grantor, any notice given by Lender to any Grantor is deemed to be notice given to all Grantors.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Deed of Trust:

Amendments. This Deed of Trust, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Deed of Trust. No alteration or amendment to this Deed of Trust shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

Annual Reports. If the Property is used for purposes other than Grantor's residence, Grantor shall furnish to Lender, upon request, a certified statement of net operating income received from the Property during Grantor's previous fiscal year in such form and detail as Lender shall require. "Net operating income" shall mean all cash receipts from the Property less all cash expenditures made in connection with the operation of the Property.

Caption Headings. Caption headings in this Deed of Trust are for convenience purposes only and are not to be used to interpret or define the provisions of this Deed of Trust.

Merge. There shall be no merger of the interest or estate created by this Deed of Trust with any other interest or estate in the Property at any time held by or for the benefit of Lender in any capacity, without the written consent of Lender.

Governing Law. This Deed of Trust will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Idaho without regard to its conflicts of law provisions. This Deed of Trust has been accepted by Lender in the State of Idaho.

Choice of Venue. If there is a lawsuit, Grantor agrees upon Lender's request to submit to the jurisdiction of the courts of Blaine County, State of Idaho.

No Waiver by Lender. Lender shall not be deemed to have waived any rights under this Deed of Trust unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Deed of Trust shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Deed of Trust. No prior waiver by Lender, nor any course of dealing between Lender and Grantor, shall constitute a waiver of any of Lender's rights or of any of Grantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Deed of Trust, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

Severability. If a court of competent jurisdiction finds any provision of this Deed of Trust to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Deed of Trust. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Deed of Trust shall not affect the legality, validity or enforceability of any other provision of this Deed of Trust.

Successors and Assigns. Subject to any limitations stated in this Deed of Trust on transfer of Grantor's interest, this Deed of Trust shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Property becomes vested in a person other than Grantor, Lender, without notice to Grantor, may deal with Grantor's successors with reference to this Deed of Trust and the indebtedness by way of forbearance or extension without releasing Grantor from the obligations of this Deed of Trust or liability under the indebtedness.

Time is of the Essence. Time is of the essence in the performance of this Deed of Trust.

Waive Jury. All parties to this Deed of Trust hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by any party against any other party.

Waiver of Homestead Exemption. Grantor hereby releases and waives all rights and benefits of the homestead exemption laws of the State of Idaho as to all indebtedness secured by this Deed of Trust.

DEFINITIONS. The following capitalized words and terms shall have the following meanings when used in this Deed of Trust. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Deed of Trust shall have the meanings attributed to such terms in the Uniform Commercial Code.

Beneficiary. The word "Beneficiary" means D. L. Evans Bank, and its successors and assigns.

Borrower. The word "Borrower" means Erik Avanes Bluff, LLC and includes all co-signers and co-makers signing the Note and all their successors and assigns.

Deed of Trust. The words "Deed of Trust" mean this Deed of Trust among Grantor, Lender, and Trustee, and includes without limitation all assignment and security interest provisions relating to the Personal Property and Rents.

Default. The word "Default" means the Default set forth in this Deed of Trust in the section titled "Default".

Environmental Laws. The words "Environmental Laws" mean any and all state, federal and local statutes, regulations, rules and ordinances relating to the protection of human health or the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., or other applicable state or federal laws, rules, or regulations adopted pursuant thereto.

Event of Default. The words "Event of Default" mean any of the events of default set forth in this Deed of Trust in the events of default section of this Deed of Trust.

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Grantor. The word "Grantor" means East Avenue Bluff, LLC.

Guarantor. The word "Guarantor" means any guarantor, surety, or accommodation party of any or all of the indebtedness.

Guaranty. The word "Guaranty" means the guaranty from Guarantor to Lender, including without limitation a guaranty of all or part of the Note.

Hazardous Substances. The words "hazardous substances" mean materials that, because of their quantity, concentration or physical, chemical or infectious characteristics, may cause or pose a present or potential hazard to human health or the environment when improperly used, stored, disposed of, generated, manufactured, transported or otherwise handled. The words "hazardous substances" are used in their very broadest sense and include without limitation any and all hazardous or toxic substances, materials or waste as defined by or listed under the Environmental Laws. The term "hazardous substances" also includes, without limitation, petroleum and petroleum by-products of any fraction thereof and asbestos.

Improvements. The word "Improvements" means all existing and future improvements, buildings, structures, mobile homes affixed on the Real Property, facilities, additions, replacements and other construction on the Real Property.

Indebtedness. The word "Indebtedness" means all principal interest, and other amounts, costs and expenses payable under the Note or Related Documents, together with all renewals of, extensions of, modifications of, consolidations of and substitutions for the Note or Related Documents and any amounts expended or advanced by Lender to discharge Grantor's obligations or expenses incurred by Trustee or Lender to enforce Grantor's obligations under this Deed of Trust, together with interest on such amounts as provided in the Deed of Trust.

Lender. The word "Lender" means D. L. Evans Bank, its successors and assigns.

Note. The word "Note" means the promissory note dated August 29, 2007, in the original principal amount of \$2,650,000.00 from Grantor to Lender, together with all renewals of, extensions of, modifications of, consolidations of, and substitutions for the promissory note or agreement. The maturity date of this Deed of Trust is August 29, 2008. NOTICE TO GRANTOR: THE NOTE CONTAINS A VARIABLE INTEREST RATE.

Personal Property. The words "Personal Property" mean all equipment, fixtures, and other articles of personal property now or hereafter owned by Grantor, and now or hereafter attached or affixed to the Real Property, together with all accretions, parts, and additions to, all replacements of, and all substitutions for, any of such property, and together with all proceeds (including without limitation all insurance proceeds and refunds of premiums) from any sale or other disposition of the Property.

Property. The word "Property" means collectively the Real Property and the Personal Property.

Real Property. The words "Real Property" mean the real property, interests and rights, as further described in the Deed of Trust.

Related Documents. The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the indebtedness.

Rents. The word "Rents" means all present and future rents, revenues, income, issues, royalties, profits, and other benefits derived from the Property.

Trustee. The word "Trustee" means Sun Valley Title Company, whose address is 221 South River Street #2A, Holey, ID 83333 and any substitute or successor trustees.

GRANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS DEED OF TRUST, AND GRANOR AGREES TO ITS TERMS.

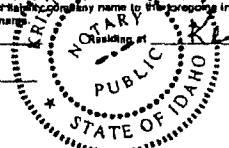
GRANTOR:

EAST AVENUE BLUFF, LLC

By: [Signature]
 Stacy Bilton Ruthford, Member of East Avenue Bluff, LLC

LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF Idaho)
) SS
 COUNTY OF Blaine)
 On this 30th day of August, 2007, before me Stacy Bilton Ruthford
 a Notary Public in and for the State of Idaho, personally appeared Stacy Bilton Ruthford, Member of East Avenue Bluff, LLC, known or identified to me (or proved to me) as the owner of the members or designated agents in the limited liability company of East Avenue Bluff, LLC, the member or designated agent or one of the members or designated agents who subscribed said limited liability company name to this foregoing instrument, and acknowledged to me that he or she executed the same in said limited liability company name.
 Notary Public for Idaho: [Signature]
 My commission expires 12-14-07



REQUEST FOR FULL RECONVEYANCE
(To be used only when obligations have been paid in full)

To: _____, Trustee

The undersigned is the legal owner and holder of all indebtedness secured by this Deed of Trust. All sums secured by this Deed of Trust have been fully paid and satisfied. You are hereby directed, upon payment to you of any sums owing to you under the terms of this Deed of Trust or pursuant to any applicable statute, to cancel the Note secured by this Deed of Trust (which is delivered to you together with this Deed of Trust), and to reconvey, without warranty, to the parties designated by the terms of this Deed of Trust, the estate now held by you under this Deed of Trust. Please mail the reconveyance and Related Documents to:

Date: _____ Beneficiary: _____
 By: _____
 Itz: _____

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Reporting Institution: 33

Note 2513300172 - EAST AVENUE BLUFF, LLC

	Rel	Birthdate	Phone	Tax Identification
[01] EAST AVENUE BLUFF, LLC P.O. BOX 2337 SUN VALLEY ID 83353	*		*****	*****

Account Title: PRE-SOLD CONSTRUCTION LOAN
Tax Name: [1] EAST AVENUE BLUFF, LLC

Summary

Principal Balance:	\$2,644,056.77	Interest Method:	[2] 365/365 P&I Separate
Interest Balance:	\$0.00	Current Payment Due Date:	Feb 25, 2009
Net Payoff:	\$2,780,879.50	Current Payment Due Amount:	\$2,644,056.77
Maximum Credit:	\$2,650,000.00	Current Interest Payment Due Date:	Jan 29, 2009
Maximum Credit Code:	Non-Revolving	Current Interest Payment Due Amount:	\$17,844.25
Current Available Credit:	\$0.00	Date Last Payment:	Jan 23, 2009
Current Late Charge Balance:	\$1,892.20	Amount Last Payment:	\$16,939.90
Extra Interest:	\$134,930.53	Current Days Past Due:	202
Active Principal:	\$2,344,056.77	Total Amount Due:	\$2,778,987.30
Charged Off Principal:	\$300,000.00	Total Amount Past Due:	\$2,778,987.30
Total Collateral Value:	\$3,400,000.00	Payment Frequency:	Maturity
Loan To Value Ratio:	0.7776	Regular Payment Amount:	\$2,659,402.05
Payments Scheduled:	1	Current Rate Over:	8.0000%
Payments Billed:	1	One Day's Interest:	\$579.5192
Payments Made:		Original Note Amount:	\$0.00
Times Extended:	1	Original Note Date:	Aug 29, 2007
Times Renewed:	0	Maturity Date:	Feb 25, 2009
Times Past Due 0-29 Days:	5	Date Accrued Through:	Aug 18, 2009
Times Past Due 30-59 Days:		Date Last Transaction Activity:	Jul 28, 2009
Times Past Due 60-89 Days:		Date Principal Paid To:	Aug 29, 2007
Times Past Due 90+ Days:	3	Date Interest Paid To:	Dec 29, 2008
		Date Last Change:	Jul 29, 2009
		Date Last Updated:	Aug 18, 2009

Available Credit

Maximum Credit:	\$2,650,000.00	Date Last Advance:	Jan 23, 2009
Maximum Credit Code:	Non-Revolving	Amount Last Advance:	\$17,786.89
Available Credit:	\$0.00	Date Last Zero Balance:	Aug 29, 2007
Line Available Balance Code:	Original Note Amount		

Available Credit History

	2009	2008	Loan-To-Date
Principal Advanced:	\$17,786.89	\$1,308,205.23	\$2,644,056.77
Principal Paid:	\$0.00	\$0.00	\$0.00
Average Balance:	\$2,642,355.42	\$1,731,424.64	

EXHIBIT C

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	2009	2008	Loan-To-Date
Low Principal Balance:	\$2,626,269.88	\$1,318,064.65	
High Principal Balance:	\$2,644,056.77	\$2,626,269.88	
Days Active:	230	366	
Days Inactive:			
Interest Earned:	(\$1,726.87)	\$139,082.90	\$176,166.40
Interest Paid:	\$16,939.90	\$120,416.13	\$176,166.40

Collateral Addenda 1

Description: DOT (100 EAST AVENUE SOUTH, KETCHUM) Collateral Code: [1330] Contractor-Presold Con 1st DOT
Address: (0) P.O. BOX 2337 Responsibility Code: [321] KEN NELSON
SUN VALLEY ID 83353 Miscellaneous Code: [0]
Collateral Value: \$3,400,000.00
Market Margin: 80.0000%

Collateral Addenda 2

Responsibility Code: [321] KEN NELSON
Miscellaneous Code: [0]

Balance Non-Accrual

Non-Accrual Code: [2] Non-Accrual (Accrual = 0)
Date Non-Accrual: Mar 03, 2009
Non-Accrual Interest: \$176,166.40
Net Payoff If Accrual: \$2,780,879.50
Lost Interest: \$134,930.53
Lost Interest 2009: \$134,930.53
Non-Accrual Principal Balance: \$2,644,056.77

Charge Off

Principal Balance: \$2,644,056.77
Charged Off Amount: \$300,000.00
Active Amount: \$2,344,056.77
Adjusted Principal: \$2,344,056.77
Date Charged Off: Jul 28, 2009
Amount Charged Off: \$300,000.00

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Note 2513300172 - EAST AVENUE BLUFF, LLC

	Rel	Birthdate	Phone	Tax Identification
[01] EAST AVENUE BLUFF, LLC	*		*****	*****
P.O. BOX 2337				
SUN VALLEY ID 83353				

Account Title: PRE-SOLD CONSTRUCTION LOAN
 Tax Name: [1] EAST AVENUE BLUFF, LLC

Loan To Date

Date	Description	Transaction Amount	Principal	Interest	Prncipal Balance
Aug 29, 2007	Original Rate	Interest Rate:	9.2500%		
Aug 29, 2007	Fees Financed	\$34,490.00	\$34,490.00		\$34,490.00
Aug 29, 2007	PRINCIPAL ADVANCE	\$0.00	\$0.00		\$34,490.00
Aug 30, 2007	PRINCIPAL ADVANCE	\$1,283,574.65	\$1,283,574.65		\$1,318,064.65
Sep 19, 2007	Rate Change	Interest Rate:	8.7500%		
Sep 26, 2007	Regular Payment	\$10,481.03	\$0.00	\$10,481.03	\$1,318,064.65
Nov 01, 2007	Rate Change	Interest Rate:	8.5000%		
Nov 06, 2007	Regular Payment	\$9,795.20	\$0.00	\$9,795.20	\$1,318,064.65
Nov 29, 2007	Regular Payment	\$9,208.39	\$0.00	\$9,208.39	\$1,318,064.65
Dec 11, 2007	Rate Change	Interest Rate:	8.2500%		
Dec 28, 2007	Regular Payment	\$9,325.75	\$0.00	\$9,325.75	\$1,318,064.65
Jan 22, 2008	Rate Change	Interest Rate:	8.0000%		
Jan 30, 2008	Regular Payment	\$9,235.47	\$0.00	\$9,235.47	\$1,318,064.65
Jan 31, 2008	Rate Change	Interest Rate:	8.0000%		
Feb 25, 2008	Regular Payment	\$8,287.54	\$0.00	\$8,287.54	\$1,318,064.65
Mar 18, 2008	Rate Change	Interest Rate:	8.0000%		
Mar 28, 2008	Regular Payment	\$8,955.61	\$0.00	\$8,955.61	\$1,318,064.65
May 01, 2008	Rate Change	Interest Rate:	8.0000%		
May 01, 2008	Regular Payment	\$8,666.71	\$0.00	\$8,666.71	\$1,318,064.65
May 23, 2008	PRINCIPAL ADVANCE	\$147,152.50	\$147,152.50		\$1,465,217.15
Jun 04, 2008	Regular Payment	\$9,245.88	\$0.00	\$9,245.88	\$1,465,217.15
Jun 06, 2008	PRINCIPAL ADVANCE	\$38,626.72	\$38,626.72		\$1,503,843.87
Jun 27, 2008	PRINCIPAL ADVANCE	\$46,166.72	\$46,166.72		\$1,550,010.59
Jul 11, 2008	Regular Payment	\$9,845.95	\$0.00	\$9,845.95	\$1,550,010.59
Jul 14, 2008	PRINCIPAL ADVANCE	\$91,810.32	\$91,810.32		\$1,641,820.91
Aug 07, 2008	PRINCIPAL ADVANCE	\$169,087.97	\$169,087.97		\$1,810,908.88
Aug 07, 2008	Regular Payment	\$10,934.25	\$0.00	\$10,934.25	\$1,810,908.88
Aug 15, 2008	PRINCIPAL ADVANCE	\$36,628.64	\$36,628.64		\$1,847,537.52
Sep 11, 2008	PRINCIPAL ADVANCE	\$204,343.16	\$204,343.16		\$2,051,880.68
Sep 11, 2008	Extension Fee (Manual)	\$0.00			\$2,051,880.68
Sep 12, 2008	Regular Payment	\$15,862.82	\$0.00	\$15,862.82	\$2,051,880.68
Oct 08, 2008	Rate Change	Interest Rate:	8.0000%		
Oct 09, 2008	Regular Payment	\$8,500.02	\$0.00	\$8,500.02	\$2,051,880.68
Oct 10, 2008	PRINCIPAL ADVANCE	\$251,278.61	\$251,278.61		\$2,303,159.29
Oct 30, 2008	Rate Change	Interest Rate:	8.0000%		

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Date	Description	Transaction Amount	Principal	Interest	Principal Balance
Oct 30, 2008	Regular Payment	\$14,538.21	\$0.00	\$14,538.21	\$2,303,159.29
Nov 13, 2008	PRINCIPAL ADVANCE	\$198,130.76	\$198,130.76		\$2,501,290.05
Dec 11, 2008	PRINCIPAL ADVANCE	\$124,979.83	\$124,979.83		\$2,626,269.88
Dec 15, 2008	Regular Payment	\$16,343.67	\$0.00	\$16,343.67	\$2,626,269.88
Dec 17, 2008	Rate Change	Interest Rate:	8.0000%		
Jan 13, 2009	Automatic Late Charge	\$846.99			\$2,626,269.88
Jan 23, 2009	PRINCIPAL ADVANCE	\$17,786.89	\$17,786.89		\$2,644,056.77
Jan 23, 2009	Late Charge Payment	\$846.99			\$2,644,056.77
Jan 23, 2009	Regular Payment	\$16,939.90	\$0.00	\$16,939.90	\$2,644,056.77
Feb 13, 2009	Automatic Late Charge	\$892.21			\$2,644,056.77
Mar 12, 2009	Automatic Late Charge	\$999.99			\$2,644,056.77
Jul 28, 2009	Charged Off Principal	\$300,000.00			\$2,644,056.77



THE PRIVATE BANK

San Francisco Private Bank

July 18, 2007

Candy L. Robertson-Russet
Castle Rock Mortgage, Inc.
P.O. Box 2491
Ketchum, ID 83340

Reference: Leslie Benz

Dear Candy:

Please know that our client, Leslie Benz, has adequate resources in her account with Union Bank of California to pay cash for the purchase of real estate in the amount of \$3,000,000.

Should you have any further questions, please feel free to give me a call at (415) 705-7122.

Sincerely,

Susan Rogers
Senior Vice President/Regional Director

cc: Leslie Benz

Schedule A.

STOCKS AND BONDS

Number of Shares	Description - Rate - Maturity	In Name Of	Where Traded	Present Market Value	Cost	Are these Pledged To Whom?
	Union Bank of California			3,070,000		
	Contract Susan Pappas for K. K. K. K.					
	415-705-7122					
	TOTALS					

Schedule B.

REAL ESTATE

Note: If taxes are delinquent on specific parcel, please show amount and year(s)

Type and Location of Property	Date Acquired	Original Cost	Title in Name Of	Income Per Month	Market Value	Mortgages			Holder of Lien
						Present Balance	Payment Terms	Int. Rate	
Ketchikan ID	9-94				320,000	170,000		6.25	Chase Home
Ketchikan ID	5-01				1,500,000				
Halky ID	11-06				80,000				
	TOTALS				5,080,000				

Schedule C.

NOTES, CONTRACTS AND ACCOUNTS RECEIVABLE

Due From (Name)	Date of Obligation	Balance			Payment Terms	Due Date	Description of Collateral If Any
		Original	Present	Int. Rate			
	TOTALS						

Schedule D.

NOTES, CONTRACTS AND ACCOUNTS PAYABLE

Due To (Name)	Date of Obligation	Balance			Payment Terms	Due Date	Description of Collateral If Any
		Original	Present	Int. Rate			
Chase Home Finance	11-21	900,000	170,000	6.25			
	TOTALS						

Schedule E.

OTHER BUSINESS INTERESTS

Business Name	Percent of Ownership	Equity Position	Personal Guaranty

Insurance Coverage

Building equipment, inventory \$ _____
 Business interruption insur. \$ _____

Net worth - 7,910,000.-
 Key Man Insurance \$ _____
 Liability (auto, etc.) \$ _____

References:

I/We hereby certify that the foregoing statement and schedules have been read by the undersigned before signing and that information disclosed is true to the best of my/our knowledge and belief. Intermountain Community Bank is authorized to make all inquiries it deems necessary to verify the accuracy of the statements made herein and to determine my/our credit worthiness. Furthermore I/we authorize any credit-reporting agency to furnish my/our consumer credit report to the Bank. These authorizations are in accordance with the Fair Credit Reporting Act requirements in Section 604(a)(2).

Applicant's Signature

Wally L. Form

Social Security No.

Applicant's Signature

Social Security No.

Telephone No.

208-726-5644

PRIVACY ACT NOTICE

This information is to be used by the agency collecting it or its assignees in determining whether you qualify as a prospective mortgagor under its Program. It will not be disclosed outside the agency except as required and permitted by law. You do not have to provide this information, but if you do not, your application for approval as a prospective mortgagor or borrower may be delayed or rejected. The information requested in this form is authorized by Title 38 USC, Chapter 37 (if VA); By 12 USC, Section 1701 et seq. (if HUD/FHA); by 42 USC, Section 1452b (if HUD/CPD), and Title 42 USC, 1471 et seq. or 7 USC, 1921 et seq. (if USDA/FmHA).

FAIR CREDIT REPORTING ACT

I/We understand that, as part of assembling my/our loan application, CASTLE ROCK MORTGAGE, INC. will request a consumer report bearing my/our credit worthiness, credit standing and credit capacity. This notice is given to me/us pursuant to the Fair Credit Reporting Act of 1970, Section 601, inclusive. I/We am/are entitled to such information within 60 days of written demand therefore made to the Credit Reporting Agency pursuant to Section 606(b) of the Fair Credit Reporting Act.

EQUAL CREDIT OPPORTUNITY ACT (ECOA)

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 company is:

Federal Trade Commission
Consumer Response Center
Washington, DC 20580
(202) 326-2222
TDD (866) 653-4261

CONSENT

I/We hereby give my/our consent to have CASTLE ROCK MORTGAGE, INC., or any credit reporting bureau which it may designate, obtain any and all information concerning my/our employment, checking and/or savings account, obligations, and all other credit matters which they may require in connection with my/our application for a loan. This form may be reproduced or photocopied and a copy shall be as effective consent as the original which I/we have signed.

Leslie Benz
Borrower

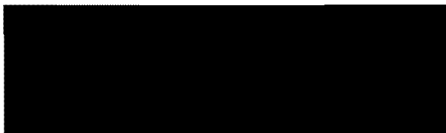
Leslie Benz
Print Name

Borrower

Print Name

Date of Birth: _____

Soc. Sec. # _____



Address: 345 Wall St. Ketchum, ID 83340

CASTLE ROCK MORTGAGE, INC.
Postal Box 2491 ♦ 220 Second Avenue, Ste. 103 ♦ Ketchum, Idaho 83340
Telephone: 1.800.726.2221 ♦ 208.726.3556 ♦ Facsimile: 208.726.3952
castlerock@cox-internet.com ♦ www.keytoyourcastle.com

Close

Credit report for SSN [REDACTED]

Credit Report is for mortgage professionals only and is not authorized for public distribution. Use of the credit report is subject to the terms and conditions of the Landsafe Subscriber Agreement.

Note that in an effort to enhance security and privacy of a consumer's credit bureau data, sensitive information such as account numbers are truncated.

LANDSAFE CREDIT MERGE REPORT

Original Request 3-File: \$18.00 Request ID: CM8287399881
 Other Related Fees: \$ 0.00 Date: 06/15/2007
 Total Cost: \$18.00
 Prepared For: CASTLE ROCK MORTGAGE, INC. Account #: [REDACTED]
 Address: 220 SECOND AVE STE 103 Requestor: CMELTON10
 KETCHUM, ID 83340 Phone: 2087263556
 Branch: Fax: 2087263952
 File ID: 3425802 Seller: 90283

Subject: BENZ, LESLIE(ssn [REDACTED])
 Spouse:
 Address: 345 WALL ST, KETCHUM, ID 83340

SUMMARY

ACCOUNT DISTRIBUTION			CURRENT STATUS (tradelines)						
Account Type	Count	Balance	Payments	Curr	Clsd	Unrt	30	60	90+
Real Estate	3	168035	1464	1	2	0	0	0	0
Installment	0	0	0	0	0	0	0	0	0
Revolving	17	3053	35	9	8	0	0	0	0
Other	4	6594	330	2	2	0	0	0	0
Total	24	177682	1829	12	12	0	0	0	0

INQUIRIES		PUBLIC RECORDS		HISTORICAL DELINQUENCIES (count)				
				Account Type	LastDlq	30	60	90+
90 Days Total	1	XPN	0	Real Estate	-	0	0	0
Less same day	0	EFX	0	Installment	-	0	0	0
Adjusted Total	1	TUC	0	Revolving	-	0	0	0
New Trades (6 mths)	0	Last 2Yrs	N	Other	-	0	0	0
Oldest Trd:	01/1980	Total				0	0	0

BUREAU SCORE INFORMATION

LastName, FirstName	Bureau - Product Code	Score
BENZ, LESLIE [REDACTED]	XPN - Experian/Fair, Isaac Model	823
08	- Too many inquiries last 12 months	
09	- Too many accounts recently opened	
05	- Too many accounts with balances	
10	- Proportion of balances to credit limits is too high	

BENZ, LESLIE [REDACTED] EFX - EQUIFAX BEACON 5.0 802 326

- 30 - Time since most recent account opening is too short
- 11 - Amount owed on revolving account is too high
- 08 - Too many inquiries last 12 months

BENZ, LESLIE [REDACTED] TUC - FICO CLASSIC 2004 798

- 30 - Time since most recent account opening is too short
- 11 - Amount owed on revolving account is too high
- 05 - Too many accounts with balances
- 28 - Number of established accounts
- In Addition to the factors listed above, the number of inquiries on the consumer's credit file has adversely affected the credit score

FULL CREDIT REPORT TO FOLLOW

LANDSAFE CREDIT MERGE REPORT

Page 1

Original Request 3-File: \$18.00 Request ID: CM8287399881
 Other Related Fees: \$ 0.00 Date: 06/15/2007
 TotalCost: \$18.00
 Prepared For: CASTLE ROCK MORTGAGE, INC. Account #: [REDACTED]
 Subject: BENZ, LESLIE(ssn [REDACTED])
 Spouse:
 Address: 345 WALL ST, KETCHUM, ID 83340

PUBLIC RECORD INFORMATION

NOTE: Public records may contain duplicate information. This report displays all information reported by the repositories accessed.

-- No Information Was Found --

COLLECTIONS

-- No Information Was Found --

DEROGATORY TRADELINES

-- No Information Was Found --

TRADELINES

Account Name/Number	(Bureau Reporting)			Past Due	Last
Type Open High Pymt Balance	MOP	Status	Rptd	30 60 90+	MR Dlq

Accounts under Subject/Spouse:

CHASE MANHATTAN MTGE/1377017682	(XPN-2991739, TUC, EFX)	SUBJECT
I 10-2006 172200 1464 168035 M-1 Current 05-2007 00 00 00 8		
Hist:05-2007 CCCCCCCC-----	LACT 05-2007	

327

Ctgy:Conventional RE mortgage
Fannie Mae account
Real estate mortgage

Term:180 Lmt:0

AMEX/1001-1131 (XPN-1229200,TUC,EFX) SUBJECT
I 01-1980 24594 302c 6031 O-1 Current 05-2007 00 00 00 48
Hist:05-2007 CCCCCCCCCCCCCCCCCCCCCC LACT 05-2007
Ctgy:Credit card Term:1 Lmt:0
Credit card

TARGET NB/1002-6557 (XPN-2218220,TUC,EFX) SUBJECT
I 09-1997 18500 30 2928 R-1 Current 05-2007 00 00 00 65
Hist:05-2007 CCCCCCCCCCCCCCCCCCCCCC LACT 05-2007
Ctgy:Credit card Term:REV Lmt:18500
Credit card
Amount in high credit is credit limit

AMEX/1003-1139 (XPN-1229200,TUC,EFX) SUBJECT
I 10-1980 34600 28c 563 O-1 Current 05-2007 00 00 00 48
Hist:05-2007 CCCCCCCCCCCCCCCCCCCCCC LACT 05-2007
Ctgy:Credit card Term:1 Lmt:34600
Credit Line Closed - Consumer Request - Reported by Subscriber
Credit card
Account closed (no date available)

continued on page 2

LANDSAFE CREDIT MERGE REPORT

Original Request 3-File: Request ID: CM8287399881 \$18.00 Date: 06/15/2007
Other Related Fees: \$ 0.00
TotalCost: \$18.00

TRADELINES

Account Name/Number (Bureau Reporting) Past Due Last
Type Open High Pymt Balance MOP Status Rptd 30 60 90+ MR Dlg

Accounts under Subject/Spouse:

MCYDSNB/1004-1579 (XPN-1362830,TUC,EFX) SUBJECT
I 07-1991 1900 5 125 R-1 Current 05-2007 00 00 00 99
Hist:05-2007 CCCCCCCCCCCCCCCCCCCCCC LACT 05-2007
Ctgy:Charge account Term:REV Lmt:1900
Charge
Amount in high credit is credit limit

VISDSNB/1005-0017 (XPN-1362836,EFX) SUBJECT
I 05-1997 8000 0 0 R-1 Current 06-2007 00 00 00 99
Hist:06-2007 -CCCCCCCCCCCCCCCCCCCCC LACT 07-2001
Ctgy:Credit card Term:REV Lmt:8000

Credit Line Closed - Grantor Request - Reported by Subscriber
Account closed by credit grantor
Charge
Account closed (no date available)

UNION BANK/1006-2002 (XPN-3121580, EFX) SUBJECT
I 07-2006 2500 0 0 R-1 Current 05-2007 00 00 00 11
Hist:05-2007 -CCCCCCCCC----- LACT
Ctgy:Line of credit Term:REV Lmt:2500
Line of credit
Amount in high credit is credit limit

NORDSTROM/1007-7030 (EFX-701DC00529) SUBJECT
I 10-1988 8000 0 0 R-1 Current 06-2007 00 00 00 63
Hist:05-2007 CCCCCCCCCCCCCCCCCCCCCC LACT 06-2007
Ctgy:Charge account Term:0 Lmt:0
Charge
Amount in high credit is credit limit

BK OF AMER/1008-180 (TUC-B1597029, EFX) SUBJECT
I 12-1996 26300 0 0 R-1 Current 08-2006 00 00 00 72
Hist:07-2006 CCCCCCCCCCCCCCCCCCCCCC LACT 08-2006
Ctgy:Credit card Term:0 Lmt:26300
Credit card
Amount in high credit is credit limit
Account paid on 12-2001

HSBC/NEIMN/1009-8832 (XPN-1587439, TUC, EFX) SUBJECT
I 09-2000 5493 0 0 R-1 Current 06-2007 00 00 00 39
Hist:06-2007 CCCCCCCCCC-CCCCCCCCCCCC PAID 02-2006
Ctgy:Charge account Term:REV Lmt:0
Charge
Account paid on 02-2006

continued on page 3

LANDSAFE CREDIT MERGE REPORT

Original Request 3-File: Request ID: CM8287399881 \$18.00 Date: 06/15/2007
Other Related Fees: \$ 0.00
TotalCost: \$18.00

TRADELINES

Account Name/Number (Bureau Reporting) Past Due Last
Type Open High Pymt Balance MOP Status Rptd 30 60 90+ MR Dlg

Accounts under Subject/Spouse:

HSBC/SAKS/1010-0407 (XPN-1579670, TUC, EFX) SUBJECT
I 04-1999 2230 0 0 R-1 Current 06-2007 00 00 00 50

Hist:06-2007 CCCCCCCCCC-----CCCC
Ctgy:Charge account
Charge
Account paid on 03-2003

LACT 03-2003
Term:REV Lmt:2500

AMEX/1011-1159
I 12-1980 11311 0 0
Hist:10-2002 -CCCCCCCCCCCCCCCCCCCCC
Ctgy:Credit card
Account Closed by consumer
Credit Line Closed - Consumer Request - Reported by Subscriber
Paid account/zero balance
Account closed on 10-2002

(XPN-1229200,TUC,EFX) SUBJECT
R-1 Current 10-2002 00 00 00 24
LACT 10-2002
Term:REV Lmt:0

AMEX/1012-3842
I 12-1980 6444 0 0
Hist:09-2002 CCCCCCCCCCCCCCCCCCCCCC
Ctgy:Credit card
Account Closed by consumer
Paid account/zero balance
Account closed on 10-2002

(TUC-B21WB001,EFX) SUBJECT
R-1 Current 10-2002 00 00 00 24
LACT 10-2002
Term:0 Lmt:0

PNCBANK/1013-0206
I 10-1984 7500 0 0
Hist:02-2002 CCCCCCCCCCCCCCCCCCCCCC
Ctgy:Line of credit
Line of credit
Amount in high credit is credit limit

(EFX-4960N00010) SUBJECT
R-1 Current 03-2002 00 00 00 24
LACT 03-2002
Term:0 Lmt:0

WFNNB/EXP/1014-0220
I 07-1991 500 0 0
Hist:04-2001 CCCCCCCCCCCCCCCCCCCCCC
Ctgy:Charge account
Charge

(EFX-667CS29609) SUBJECT
R-1 Current 05-2001 00 00 00 24
LACT 05-2001
Term:0 Lmt:0

SEARS/CBSD/1015-8143
I 04-1995 6970 0 0
Hist:12-2000 CCCCCCCCCCCCCCCCCCCCCC
Ctgy:Charge account
Charge
Amount in high credit is credit limit

(EFX-645DC09401) SUBJECT
R-1 Current 01-2001 00 00 00 67
LACT 01-2001
Term:0 Lmt:0

NORDSTROM FSB/1016-7030
I 10-1988 2339 0 0
Hist:06-2007 -CCCCCCCCCCCCCCCCCCCCC
Ctgy:Charge account
Account paid on 11-2003

(XPN-3338501,TUC) SUBJECT
R-1 Current 06-2007 00 00 00 65
PAID 11-2003
Term:REV Lmt:8000

continued on page 4

Original Request 3-File: \$18.00 Date: 06/15/2007
 Other Related Fees: \$ 0.00
 TotalCost: \$18.00

 TRADELINES

Account Name/Number	(Bureau Reporting)	Past Due	Last
Type Open High Pymt Balance MOP Status Rptd		30 60 90+	MR Dlg

Accounts under Subject/Spouse:

UNION BANK/1017-2002	(TUC-B570T02A)		SUBJECT
I 07-2006 0 0 0	C-1 Current 04-2007	00 00 00	34
Hist:04-2007 CCCCCCCCCC-----	LACT		
Ctgy:Line of credit	Term:0 Lmt:2500		

MACYS/FDSB/1018-2495	(TUC-D1KXG001)		SUBJECT
I 05-1997 573 0 0	R-1 Current 09-2002	00 00 00	30
Hist:09-2002 CCCCCCCCCC-----	PAID 07-2001		
Ctgy:Charge account	Term:0 Lmt:1500		
Account paid on 07-2001			

BANK OF AMERICA/1019-3657	(XPN-3202754)		SUBJECT
I 11-1991 4075 0 0	R-1 Current 06-2000	00 00 00	99
Hist:06-2000 -----CC	LACT		
Ctgy:Credit card	Term:REV Lmt:8700		
Credit Line Closed - Consumer Request - Reported by Subscriber			
Account closed (no date available)			

BANK OF AMERICA/1020-180	(XPN-1230206)		SUBJECT
I 12-1996 7305 0 0	R-1 Current 06-2007	00 00 00	82
Hist:06-2007 CCCCCCCC-CCCCC-----	LACT 12-2001		
Ctgy:Credit card	Term:REV Lmt:26300		

WFNNB/EXPRESS/1021-0373	(XPN-1348760)		SUBJECT
I 07-1991 87 0 0	R-1 Current 05-2001	00 00 00	99
Hist:05-2001 -----	LACT		
Ctgy:Revolving Charge Account	Term:REV Lmt:500		

Joint Accounts:

CHASE MANHATTAN MTGE/ [REDACTED]	(XPN-2991739, TUC, BFX)		JOINT
J 08-1994 900000 0 0	M-1 Current 11-2006	00 00 00	49
Hist:11-2006 -CCCCCCCCC-----	LACT 11-2006		
Ctgy:Conventional RE mortgage	Term:360 Lmt:0		
Closed			
Paid account/zero balance			
Real estate mortgage			
Account closed on 11-2006			

CHASE MANHATTAN MORTGA/ [REDACTED]	(XPN-1102761, TUC, BFX)		JOINT
J 08-1994 900000 0 0	M-1 Current 08-2002	00 00 00	53
Hist:08-2002 -CCCCCCCCC-----	LACT 07-2002		

Ctgy:Conventional RE mortgage
Transferred to another lender
Transferred to another lender or claim purchased
Account Transferred or Sold
Account closed on 08-2002

Term:360 Lmt:0

continued on page 5

LANDSAFE CREDIT MERGE REPORT

Page 5

Original Request 3-File: \$18.00 Request ID: CM8287399881
Other Related Fees: \$ 0.00 Date: 06/15/2007
TotalCost: \$18.00

IDENTIFICATION INFORMATION

Name	SSN	(Age)	Bureau
1. BENZ, LESLIE LANIER	[REDACTED]	(46)	EFX
2. BENZ, LESLIE L	[REDACTED]	(46)	TUC
3. BENZ, LESLIE L	[REDACTED]	(46)	XPN

INQUIRIES MADE IN THE LAST 90 DAYS:

Date	Credit Grantor	Bureau	Subscriber ID	Subject/Spouse
06/15/2007	LANDSAFE CRT	TUC	Z7183223	SUBJECT

ADDRESS INFORMATION

Address	Reported	Bureau	Subject/Spouse
PO BOX 2373 KETCHUM, ID 83340	12-1998	EFX	SUBJECT
2373 PO BOX 2373 KETCHUM, ID 83340	11-1998	TUC	SUBJECT
PO BOX 2373 KETCHUM, ID 833402373	10-1988	XPN	SUBJECT
345 WALL KETCHUM, ID 83340	04-1999	EFX	SUBJECT
BOX KETCHUM, ID 83340	04-1997	EFX	SUBJECT
661 PO BOX 661 KETCHUM, ID 83340		TUC	SUBJECT

PO BOX 1356
KETCHUM, ID 833401356

XPN SUBJECT

EMPLOYMENT INFORMATION

1. NEV ,
OCCUPATION UNKNOWN EFX SUBJECT

2. ,
SELF EFX SUBJECT

3. BURKE ENTERPRISES KETCHUM, ID
PRES EFX SUBJECT

continued on page 6

LANDSAFE CREDIT MERGE REPORT

Page 6

Original Request 3-File:	\$18.00	Request ID: CM8287399881
Other Related Fees:	\$ 0.00	Date: 06/15/2007
TotalCost:	\$18.00	

EMPLOYMENT INFORMATION

4. SELF EMPLOYED ,
OCCUPATION UNKNOWN Rptd 09-2000 XPN SUBJECT

5. BALDY VIEW CLUB ,
OCCUPATION UNKNOWN Rptd 07-1993 XPN SUBJECT

AKA INFORMATION

Name	Bureau	Subject/Spouse
1. BURKE, LESLIE LANIER	EFX	SUBJECT
2. BURKE, LESLIE, LANIER,	TUC	SUBJECT
3. BURKE, LESLIE LANIER	XPN	SUBJECT
4. LESLIE, BENZ	XPN	SUBJECT

MISCELLANEOUS INFORMATION

XPN SUBJECT
OFAC CLEAR

TUC SUBJECT
OFAC CLEAR

CONSUMER STATEMENTS

-- No Information Was Found --

FRAUD VERIFICATION INFORMATION

XPN FRAUD SHIELD SUBJECT
INQUIRY/ONFILE CURRENT ADDRESS CONFLICT
ADDR. USED 0000 TIMES SINCE 03/01/2007
SSN USED 0000 TIMES SINCE 03/01/2007
SSN ISSUED BETWEEN 1962 AND 1964
TUC HAWK ALERT SUBJECT
SSN issued: 1963-1964; state: PA
TUC HAWK ALERT SUBJECT
SSN issued: 1963-1964; state: PA
TUC TRANS-ALERT SUBJECT
TRANS-ALERT IS CLEAR
EFX SAFESCAN SUBJECT
SSN IS CLEAR, ADDRESS IS CLEAR
SSN ISSUED YEAR: 1963 ; STATE: PA

continued on page 7

LANDSAFE CREDIT MERGE REPORT

Page 7

Original Request 3-File: \$18.00 Date: 06/15/2007
Other Related Fees: \$ 0.00
TotalCost: \$18.00
Request ID: CM8287399881

DIRECT CHECK INFORMATION

Table with 4 columns: Subscriber Name / Address, Subscriber#, Contact Phone. Lists various banks and their contact information.

PO BOX 1598, NORFOLK, VA 23501		
NORDSTROM FSB	3338501	8009641800
PO BOX 6555, ENGLEWOOD, CO 80155		
CHASE	3999492	7324528640
194 WOOD AVE S, ISELIN, NJ 08830		

continued on page 8

LANDSAFE CREDIT MERGE REPORT

Page 8

		Request ID: CM8287399881
Original Request 3-File:	\$18.00	Date: 06/15/2007
Other Related Fees:	\$ 0.00	
TotalCost:	\$18.00	

CONSUMER REFERRAL INFORMATION

Bureau	Address	Phone
EFX	EQUIFAX CREDIT INFORMATION SERVICES, INC. P.O. BOX 740241 (ORDER A REPORT) P.O. BOX 740256 (DISPUTE AN ITEM) ATLANTA, GA 30374 Web site: www.equifax.com	(800) 685-1111
XPN	EXPERIAN - NATIONAL CONSUMER ASSISTANCE CENTER P.O. BOX 2104 (ORDER A REPORT) P.O. BOX 9701 (DISPUTE AN ITEM) ALLEN, TX 75013-3742 Web site: www.experian.com	(888) 397-3742
TUC	TRANSUNION CONSUMER SOLUTIONS P.O. BOX 1000 (ORDER A REPORT) P.O. BOX 2000 (DISPUTE AN ITEM) CHESTER, PA 19022 Web site: www.transunion.com	(800) 888-4213

Prepared By: LandSafe Credit, Inc.
1515 Walnut Grove Ave.
Rosemead, CA 91770 (877) 572-5673

This report contains information supplied by the repositories named above. Its contents have not been verified by LandSafe and may contain duplicate information. While this report is being used for some real estate lending purposes, it is not a Residential Mortgage Credit Report as defined by FNMA, FHLMC, and FHA/VA guidelines.

-- END OF REPORT --

Original Request 3-File: \$18.00 Request ID: CM8287399881
 Other Related Fees: \$ 0.00 Date: 06/15/2007
 TotalCost: \$18.00
 Prepared For: CASTLE ROCK MORTGAGE, INC. Account #: [REDACTED]
 Subject: BENZ, LESLIE(ssn [REDACTED])
 Spouse:
 Address: 345 WALL ST, KETCHUM, ID 83340

ACCOUNT BALANCE SUMMARY

CREDITOR ACCOUNT#	OPEN REPD	HIGH BALANCE	TERM PAYMENT	MOP	PAY HIST 30-60-90	LOAN TYPE LAST DLQ	TYPE
CHASE MANHATTAN MTGE [REDACTED]	10-2006 05-2007	172200 168035	180 M 1464	M-1 (XPN,TUC,EFX)	0 0 0	CONV RE MTG	I-B
AMEX 1001-1131	01-1980 05-2007	24594 6031	1 M 302	O-1 (XPN,TUC,EFX)	0 0 0	CREDIT CARD	I-B
TARGET NB 1002-6557	09-1997 05-2007	18500 2928	REV M 30	R-1 (XPN,TUC,EFX)	0 0 0	CREDIT CARD	I-B
AMEX 1003-1139	10-1980 05-2007	34600 563	1 M 28	O-1 (XPN,TUC,EFX)	0 0 0	CREDIT CARD	I-B
MCYDSNB 1004-1579	07-1991 05-2007	1900 125	REV M 5	R-1 (XPN,TUC,EFX)	0 0 0	CHARGE ACCOUNT	I-B

=====

TOTAL BALANCE: 177682	TOTAL PAYMENTS: 1829
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BUREAU SCORE INFORMATION

LastName, FirstName	Bureau - Product Code	Score
BENZ, LESLIE	XPN - Experian/Fair, Isaac Model	823
BENZ, LESLIE	EFX - EQUIFAX BEACON 5.0	802
BENZ, LESLIE	TUC - FICO CLASSIC 2004	798

CASTLE ROCK MORTGAGE, INC.
 220 SECOND AVE STE 103
 KETCHUM, ID 83340

Request ID: CM8287399881

Important information from your lender

NOTICE TO THE HOME LOAN APPLICANT

In connection with your application for a home loan, the lender must disclose to you the score that a consumer reporting agency distributed to users and the lender used in connection with your home loan, and the key factors affecting your credit scores.

The credit score is a computer generated summary calculated at the time of the request and based on information that a consumer reporting agency or lender has on file. The scores are based on data about your credit history and payment patterns. Credit scores are important because they are used to assist the lender in determining whether you will obtain a loan. They may also be used to determine what interest rate you may be offered on the mortgage. Credit scores can change over time, depending on your conduct, how your credit history and payment patterns change, and how credit scoring technologies change.

Because the score is based on information in your credit history, it is very important that you review the credit-related information that is being furnished to make sure it is accurate. Credit records may vary from one company to another.

If you have questions about your credit score or the credit information that is furnished to you, contact the consumer reporting agency at the address and telephone number provided with this notice, or contact the lender, if the lender developed or generated the credit score. The consumer reporting agency plays no part in the decision to take any action on the loan application and is unable to provide you with specific reasons for the decision on a loan application.

If you have questions concerning the terms of the loan, contact the lender.

One or more of the following credit bureaus provided the credit score(s):

Equifax	Experian	Trans Union
P.O. Box 740241	P.O. Box 9701	P.O. Box 2000
Atlanta, GA 30374	Allen, TX 75013-3742	Chester, PA 19022
www.equifax.com	www.experian.com	www.transunion.com
(800) 685-1111 (orders)	(888) 397-3742 (orders)	(800) 888-4213 (orders)
(800) 685-1111 (disputes)	(888) 397-3742 (disputes)	(800) 916-8800 (disputes)

Applicant: BENZ, LESLIE
 Credit Score Date: 06/15/2007
 Name of Score: TRANSUNION/FICO CLASSIC 2004
 Credit Score: 798 Range: 350-850
 Key Factors affecting the Credit Score:
 TIME SINCE MOST RECENT ACCOUNT OPENING IS TOO SHORT
 AMOUNT OWED ON REVOLVING ACCOUNT IS TOO HIGH
 TOO MANY ACCOUNTS WITH BALANCES
 NUMBER OF ESTABLISHED ACCOUNTS
 IN ADDITION TO THE FACTORS LISTED ABOVE, THE NUMBER OF INQUIRIES ON THE
 CONSUMER'S CREDIT FILE HAS ADVERSELY AFFECTED THE CREDIT SCORE

Applicant: BENZ, LESLIE
 Credit Score Date: 06/15/2007
 Name of Score: EXPERIAN/EXPERIAN/FAIR, ISAAC MODEL

337

Credit Score: 823 Range: 300-850
Key Factors affecting the Credit Score:
TOO MANY INQUIRIES LAST 12 MONTHS
TOO MANY ACCOUNTS RECENTLY OPENED
TOO MANY ACCOUNTS WITH BALANCES
PROPORTION OF BALANCES TO CREDIT LIMITS IS TOO HIGH

Applicant: BENZ, LESLIE
Credit Score Date: 06/15/2007
Name of Score: EQUIFAX/EQUIFAX BEACON 5.0
Credit Score: 802 Range: 300-850
Key Factors affecting the Credit Score:
TIME SINCE MOST RECENT ACCOUNT OPENING IS TOO SHORT
AMOUNT OWED ON REVOLVING ACCOUNT IS TOO HIGH
TOO MANY INQUIRIES LAST 12 MONTHS

The information and credit scoring model(s) used here may be different than the credit score used by the lender.

KETCHUM:

Name: **John R. & Stacey B. Rutherford**
Amount: \$2,650,000
Rate: WSJP plus 1% with floor of 8% & ceiling of 18%
Term: Interest monthly with maturity of 1 year, one 6 month extension
Collateral: Real estate
Guarantors: John R. & Stacey B. Rutherford
Loan Officer: Ken Nelson
Total discussion time: 1 hr.

Action Taken: Approved contingent upon the following:

1. Rutherford Architect LLC to guarantee.
2. When the additional \$250,000 earnest money is received, \$182,000 will be applied to the loan.
3. Demand deposit accounts for Jack Rutherford

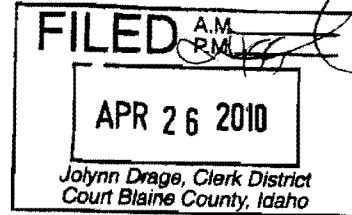
Purpose is for an undisbursed note for construction of a presold home. Repayment will come from sale of home upon completion. Total commitment to D.L. Evans Bank equals \$8,430,000.

John Rutherford is a guarantor for Lodges on Trail Creek. It was noted that Home #3 for Lodges on Trail Creek has been sold under contract and is scheduled to close in December.

The strength of this credit is that the home is presold with \$500,000 down in earnest money. Also on file is a verification of deposit from United Bank of California stating that the buyer has available resources in the amount of \$3mm. Collateral taken in addition to home being build will be a vacant lot on Trail Creek.

Ken Nelson via telephone presented the request. Upon completion of improvements on both lots and the home is sold, lot 3B will be refinanced for \$475,000. Release price of \$650,000 less prior down payment plus cost overruns is required. The request was approved with the above conditions.

Janet C. Wygle
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 Ketchum, Idaho 83340
 Tel: 208/726-8219
 Fax: 208/726-3750
 ISB# 2232
 Attorneys for Plaintiff



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

LESLIE BENZ,)
)
 Plaintiff,)

Case No. CV-2009-613

v.)

EAST AVENUE BLUFF, LLC, an Idaho limited)
 liability company; D.L. EVANS BANK;)
 TIMELESS DESIGN COMPANY; CLIFF R.)
 IVERSON dba LEI'S CUSTOM TILE; FISHER)
 APPLIANCE, INC.; VIEWPOINT, INC.; CAD)
 DRAFTING SYSTEMS, INC.; BUCKHORN)
 ELECTRIC, LLC/DEVILAN HAIRE; A.C.)
 HOUSTON LUMBER COMPANY; MIKE)
 PUNNETT; PRECISION PLUMBING, INC.;)
 WATSON BUILDERS, INC.; HARRIS)
 REFRIGERATION HEATING AND ELECTRIC;)
 FERGUSON ENTERPRISES, INC.; ROCKY)
 MOUNTAIN HARDWARE, INC.; SWEET'S)
 PORTABLE WASTE SERVICES, LLC; WHITE)
 BUILDERS, LLC; MIKE'S WELDING AND)
 METAL WORKS, LLC; SENTINEL FIRE &)
 SECURITY, INC.; STEVE McCOY, dba)
 McCOY'S PAINTING; CHRISTOPHER)
 BRENNAN dba BRENNAN'S CARPET; and)
 PAUL COOPER dba SUN VALLEY DRYWALL,)

REPLY BRIEF IN SUPPORT
 OF MOTION FOR
 SUMMARY JUDGMENT

Defendants.)

REPLY BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT/1

COMES NOW the Plaintiff, by and through her attorney of record, Janet C. Wygle of Luboviski, Wygle, Fallowfield & Ritzau, P.A., and provides this Reply Brief in Support of her Motion for Summary Judgment against Defendant, D.L. Evans Bank (hereinafter "the Defendant" or "the Bank").

ARGUMENT

The Bank's argument against summary judgment is two-fold: first, that a vendee's lien must be "claimed" or recorded to be valid, and, second, that the Bank has priority because it became a creditor of East Avenue Bluff LLC prior to the release of Ms. Benz's funds to East Avenue Bluff, LLC. Neither of these arguments has merit under the uncontested facts nor Idaho law.

The Bank states on page 8 of its Brief, "Based upon the Idaho statute and the *McMahon* opinion, the rule appears to be that priority of a vendee's lien requires a recording and the priority is base [sic] on the recording date vis a vis third party interests." The Plaintiff profoundly disagrees with that statement. Not only does Idaho Code §45-804 make no requirement for recording a Vendee's Lien or even a *lis pendens*, under Idaho law a subsequent encumbrancer with notice of the unrecorded interest is not given priority over the unrecorded interest. Idaho Code §55-606 (and cases cited in the annotations thereto); Idaho Code §55-812 (and the cases cited in the annotations thereto; *Farm Bureau Fin. Co., Inc. v. Carney*, 100 Idaho 745, 605 P.2d 509 (1980); *Langroise v. Becker*, 96 Idaho 218, 526 P.2d 178 (1974). In *Farm Bureau Fin. Co., Inc. v. Carney*, 100 Idaho 745, 605 P.2d 509 (1980), the issue was the priority of a recorded document with a defective acknowledgment over a subsequent encumbrancer. In finding that the subsequent encumbrancer's lien was subordinate if the encumbrancer had actual knowledge of the prior

interest claimed, the Supreme Court of Idaho stated:

When a subsequent encumbrancer or purchaser has actual knowledge of a prior interest, it makes no difference whether the prior interest was properly acknowledged and recorded. I.C. §§55-606, 55-812. A duly recorded interest is effective against prior unrecorded interests only where the recorded interest is taken for a valuable consideration and in good faith, *i.e.*, "without knowledge, either actual or constructive, that unrecorded interests exist." *Langroise v. Becker*, 96 Idaho 218, 220, 526 P.2d 178, 180 (1974).

100 Idaho at 747-748.

The Bank would have this Court add requirements to the validity and priority of a Vendee's Lien that the legislature failed to impose by statute. A more reasonable interpretation of the *McMahon* opinion is that a Vendee's Lien takes priority over subsequent interests in the property in those situations where the holder of the subsequent interest had notice of the vendee's existence and payment of a portion of the purchase price. In the *McMahon* case, the notice was provided by a *lis pendens* filed prior to the second purchase and subsequent bank loan. Any title inspection would have put both the purchaser, Eldridge, and the bank, Provident Federal, on notice that a prior purchaser had a continuing interest in the property. In the present case, D.L. Evans Bank certainly was put on notice of Ms. Benz's interest in the property *before* it decided to grant a loan to East Avenue Bluff, LLC and take a Deed of Trust on Lot 3 to secure that loan. Recording a *lis pendens* with a county recorder is deemed to give "constructive notice" to the world of a claim or right; having a copy of the written contract between the Seller and the Buyer which spells out the intended uses of the non-refundable earnest money (to pay a portion of the purchase price for the vacant Lot 3) and the extent of Ms. Benz's commitments to the Seller is *actual* notice. And, but for the Bank's ignorance of the Vendee lien law of Idaho, such notice was all the Bank needed to have been able to protect its interest, had it chosen to do so.

Title 45 of the Idaho Code is entitled "Liens, Mortgages and Pledges" and provides the

statutory basis for most lien claims. In order to be valid, most Idaho statutory liens depend upon the recording in the county Recorder's Office of notice of the lien or the possession of the item upon which a lien is claimed. For example, Loggers' Liens provided for by Idaho Code §45-401 require the recording of a statement of claim Mechanics Liens provided for by Idaho Code §45-501 require the recording of a written lien and service of such lien on the property owner under Idaho Code §45-507; and Hospital and Nursing Care Liens provided for by Idaho Code §45-701 require the recording of a verified statement of claim under Idaho Code §45-702. Also, by way of example, liens for services on or caring for personal property under Idaho Code §45-805, liens for making, altering, or repairing personal property under Idaho Code §45-806, and liens of a factor under Idaho Code §45-807 all depend upon possession of the personal property for the lien to be valid.

However, in the case of a Vendor's lien on real property sold (Idaho Code §45-801) or a Vendee's lien on real property partially purchased (Idaho Code §45-804), the statutes expressly do not require possession and make no mention of any recording requirement or written claim. Given that these types of liens are in the same Title 45 of the Idaho Code that contains all of the other lien provisions regarding recording claims, mailing notices, and/or retaining possession, it is clear that no such requirements apply to a Vendee's Lien. The repeatedly stated purpose of recording claims is to provide "notice" to the person obligated on the debt or possible innocent third parties.

Langroise v. Becker, 96 Idaho 218, 526 P.2d 178 (1974).

In the present case, D.L.Evans Bank had all of the notice one could ask for: the Bank had a copy of the Purchase and Sale Contract with the designated payment amounts and dates and terms, including that the funds paid by Ms. Benz would be non-refundable except upon the Seller's default. As shown on Exhibit E to Bruce Hunsaker's Affidavit filed April 19, 2010, the Bank made a condition to its loan that the Seller/Borrower would have to pay \$182,000 of Ms. Benz's

REPLY BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT/4

\$250,000 third earnest money installment to the Bank. The Bank was relying on Ms. Benz to comply with the terms of her purchase contract, which she did.

Ms. Benz's first payment of \$100,000 cleared her bank account on June 11, 2007, as shown on Exhibit B to the Affidavit of Janet C. Wygle (which is the same as Deposition Exhibits 4 and 6 to Leslie Benz's deposition attached to the Affidavit of R.C. Stone). Ms. Benz's second payment of \$400,000 cleared her bank account on June 25, 2007 (Exhibit D to Affidavit of Janet C. Wygle)(the Bank's brief states on page 9 that such deposit was made on August 25, 2007, which date is incorrect). As set forth in the Purchase and Sale contract, the initial \$500,000 of Ms. Benz's purchase deposits was used by East Avenue Bluff LLC to acquire Lot 3 from the prior owners. The original Purchase and Sale Agreement provided for the \$500,000 earnest money to be released to the Sellers on June 21, 2007. Whether that happened is unknown; however, in August of 2007, Ms. Benz's realtor/seller presented her with an addendum for the release of such funds *on or before* August 30, 2007. This Addendum seems redundant and irrelevant except maybe for some internal purpose within the realtor's office because the Purchase and Sale contract did not require any further or written authorization for disbursement of the funds to the Seller and they were already designated as "non-refundable" deposits. Moreover, the Addendum to the Purchase and Sale contract was not known to the Bank until this lawsuit was commenced and they were produced during discovery. Therefore, at the time of making the loan, the Bank would only have known about the June 21, 2007, release date, not the subsequent release date. Ms. Benz's final non-refundable deposit of \$250,000 cleared her bank account on November 14, 2007.

D.L. Evans Bank argues in its brief that because its loan documents were signed on August 29, 2007, it became a creditor before Ms. Benz's funds were disbursed to the Seller allegedly on August 30, and that, therefore, D.L. Evans Bank's Deed of Trust has priority over Ms. Benz's

REPLY BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT/5

Vendee's Lien. The argument lacks merit. First, as far as Ms. Benz was concerned, by July 1, 2007, she had paid \$500,000 to the Sellers: the funds had been taken out of her bank account, paid into an account controlled by third parties, and were designated as non-refundable. There was nothing left for her to do to pay that \$500,000.00 to the Sellers as required by the Purchase and Sale contract. D.L. Evans Bank, to the contrary, had not yet released a dime to East Avenue Bluff LLC as of August 29, 2007. The next day, August 30, 2007, the Bank made its first advance on the loan in the sum of \$1,283,574.65 (see page 3 of Exhibit C to Affidavit of Bruce Hunsaker). There is no valid argument that Ms. Benz had not paid \$500,000 of her purchase price to the Seller prior to the Bank becoming a creditor of East Avenue Bluff LLC.

The more interesting issue is whether Ms. Benz's \$250,000 payment on November 14, 2007, also has priority over the Bank's claim. That payment was the final in a string of payments, all of which were called for by the original contract Ms. Benz signed prior to the time that D.L. Evans Bank's Senior Loan Committee considered making a loan to the Seller on August 2, 2007. The payments were all part of a single purchase and sale transaction. The Bank expected the payment to be made by Ms. Benz and used by the Seller for the benefit of the Bank. The Bank could not have had any better notice of Ms. Benz's purchase payments than a copy of the Purchase and Sale contract.

The common law doctrine of "relation back" appears to be applicable to the present situation. This doctrine has been included in the Idaho Rule of Civil Procedure, Rule 15(c), regarding amendments to pleadings and is often used in situations involving the timeliness of a filing or the applicability of a statute of limitations. The concept is also used in determining water right priorities, where a water user's priority is determined by date of diversion and first beneficial use of the water. The doctrine is incorporated into federal and state drug-related property

forfeitures, where the government's claim "relates back" to the date of the initial drug crime. It is applied in Idaho to correction deeds, where the corrected deed "related back" to the original recording date. That issue was determined in *Sartain v. Fidelity Financial Services*, 116 Idaho 269, 775 P.2d 161 (Ct. App. 1989), in a case where the seller of property filed a *lis pendens* on the property sold subsequently to the recording of a deed of trust from the buyer to the lender with an incorrect legal description but prior to the recording of a correction deed which correctly identified the real property. The Idaho Court of Appeals held that the corrected deed related back to the original deed and that, therefore, the subsequently recorded *lis pendens* was subordinate to the deed of trust. [Note: in that case the only notice was by recording a *lis pendens*, which is not the situation in the present case, but it illustrates the concept of "relation back."] The key to any "relation back" application is the singularity and continuity of the conduct or transaction being scrutinized. The issues of when a claim accrued or when a right vested are not infrequently determined by use of the doctrine of "relation back."

In mechanics lien cases the concept of "relation back" is applied to the starting day of the work performed. If a mechanic lien claimant files a claim for unpaid services rendered, such claimant's lien rights commenced on the day of starting work, as long as the claimant records his lien claim within 90 days after completing work and commences a foreclosure action within six months thereafter. *Palmer v. Bradford*, 86 Idaho 395, 388 P.2d 96 (1963); *Pacific States Sav., Loan & Building Co., v. Dubois*, 11 Idaho 319, 83 P. 513 (1905); *see also*, Idaho Code §45-501 *et seq.* and cases cited in annotations thereto. Thus, all work done on the property, even that done long before the completion date and the start of the 90-day lien filing period, is included in the recoverable amount and protected by the lien. To make a contractor file a lien claim on the day he started work, just in case he wasn't timely paid was not the avenue taken by the Idaho legislature;

REPLY BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT/7

instead a contractor was given retroactive protection as long as certain conditions were met when the lien was filed. This concept of subsequent acts relating back to the original commencement date is appropriate because all of the work was contracted for by the owner or general contractor and was expected to be done by the persons obligated to pay for it.

The present vendee's lien case is analogous: Ms. Benz paid the entire \$750,000 to the Sellers pursuant to a single contract for payment. Her rights, as a vendee of the property, vested the day she signed the contract and made the first earnest money payment, and her rights were maintained by her compliance with the contract's payment schedule. D.L. Evans Bank had a copy of that contract and expected Ms. Benz to make the required payments. The Bank was in a unique position to protect itself from Ms. Benz's potential vendee's lien claim, just as it could protect itself from potential mechanics' liens. A lender granting mortgages or secured loans is capable of protecting the priority of its mortgage by obtaining releases or subordination agreements as a condition of making the loan. The Bank, in its Affidavits and Brief, candidly admits that the Senior Loan Committee members were unaware of Idaho's Vendee's Lien statute, Idaho Code §45-804. There is no reason under the facts of this case to grant the Bank's claim priority over Ms. Benz's final \$250,000 earnest money payment.

The Bank makes no mention in its Affidavits or Brief in Opposition to Summary Judgment regarding its affirmative defenses of waiver, laches and unclean hands. It must be assumed that it has no facts to support the defenses and no legal arguments to justify them.

CONCLUSION

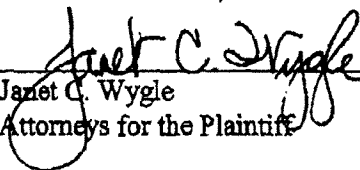
The Plaintiff meets all of the requirements for having a valid Vendee's Lien against Lot 3. D.L. Evans Bank had actual knowledge of the contract and the payment of the initial \$500,000.00 prior to the date on which it approved the loan to the Sellers. The final payment of the earnest

REPLY BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT/8

money was part of a continuous transaction, which would have been finalized, but for the Bank's resistance to accepting less from the closing that full payment of the amount it was owed by the Sellers. No requirement for filing or recording notice of a Vendee's Lien exists in Idaho and this Court should not decide in D.L. Evans Bank's favor, contrary to the long line of cases dealing with a "bona fide purchaser." Ms. Benz should be awarded her earnest money of \$750,000.00, plus interest thereon at the legal rate, from July 7, 2009 until paid by the Defendant DLEB pursuant to the prior stipulation of the parties filed here.

DATED this 26th day of April, 2010.

LUBOVISKI, WYGLE, FALLOWFIELD
& RITZAU, P.A.


Janet C. Wygle
Attorneys for the Plaintiff

CERTIFICATE OF SERVICE

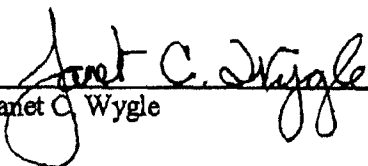
I HEREBY CERTIFY that on the 26th day of April, 2010, I served a true and correct copy of the within and foregoing document upon the following attorney, in the manner noted:

R.C. Stone
PARSONS, SMITH & STONE, LLP
137 West 13th Street
P.O. Box 910
Burley, ID 83318
FAX: 208-878-0146

___ By depositing copies of the same in the United States Mail, postage prepaid, at the post office at Ketchum, Idaho.

___ By hand delivering copies of the same.

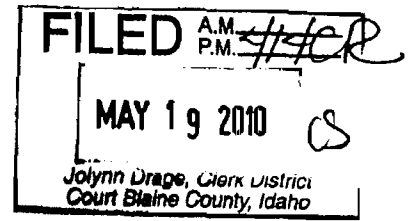
By transmitting copies of the same to said attorneys by facsimile machine process.


Janet C. Wygle

Janet C. Wygle
LUBOVISKI, WYGLE,
FALLOWFIELD & RITZAU, P.A.

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 ISB# 2232

Attorneys for Plaintiff



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

LESLIE BENZ,)
)
 Plaintiff,)

Case No. CV-2009-613

v.)

EAST AVENUE BLUFF, LLC, an Idaho limited)
 liability company; D.L. EVANS BANK;)
 TIMELESS DESIGN COMPANY; CLIFF R.)
 IVERSON dba LEI'S CUSTOM TILE; FISHER)
 APPLIANCE, INC.; VIEWPOINT, INC.; CAD)
 DRAFTING SYSTEMS, INC.; BUCKHORN)
 ELECTRIC, LLC/DEVILAN HAIRE; A.C.)
 HOUSTON LUMBER COMPANY; MIKE)
 PUNNETT; PRECISION PLUMBING, INC.;)
 WATSON BUILDERS, INC.; HARRIS)
 REFRIGERATION HEATING AND ELECTRIC;)
 FERGUSON ENTERPRISES, INC.; ROCKY)
 MOUNTAIN HARDWARE, INC.; SWEET'S)
 PORTABLE WASTE SERVICES, LLC; WHITE)
 BUILDERS, LLC; MIKE'S WELDING AND)
 METAL WORKS, LLC; SENTINEL FIRE &)
 SECURITY, INC.; STEVE McCOY, dba)
 McCOY'S PAINTING; CHRISTOPHER)
 BRENNAN dba BRENNAN'S CARPET; and)
 PAUL COOPER dba SUN VALLEY DRYWALL,)
)
 Defendants.)

ORDER OF SUMMARY
 JUDGMENT

THIS MATTER came on for hearing on the 3rd day of May, 2010, upon the Plaintiff's Motion for Summary Judgment against the remaining Defendant in this case, D. L. Evans Bank (hereinafter referred to as "the Bank"). Plaintiff was not present but was represented by Janet Wygle of Luboviski, Wygle, Fallowfield & Ritzau, P.A., and the Bank was not present but was represented by R.C. Stone of Parsons, Smith, Stone, Loveland & Shirley, LLP. The Court announced that it had read all of the briefs filed in support of and in opposition to such motion, and read all of the affidavits filed in support of and in opposition to such motion. The Court, having heard argument of counsel for both parties, recited its findings and conclusions on the record on May 3, 2010, including the following:

1. That the Bank had actual notice of the Plaintiff's real estate purchase contract and of the \$500,000.00 in purchase payments made by Plaintiff to the vendor prior to making its loan to such vendor;

2. That Plaintiff's payments were used to acquire or improve the subject real property which fact was known and relied upon by the Bank;

3. That the Plaintiff's \$250,000.00 partial purchase payment made by the Plaintiff to the vendor subsequent to the Bank's loan to the vendor was known in advance and relied upon by the Bank and relates back to the date of the Plaintiff's first payment for lien priority purposes ;

4. That there was no disadvantage to the Bank by anything done by the Plaintiff; and

5. That there was no evidence presented which could support any finding of laches, waiver or unclean hands against the Plaintiff.

The Court having found that there are no genuine issues as to any facts which are material to the
ORDER OF SUMMARY JUDGMENT/2

determination of the existence and validity of Plaintiff's Vendee's Lien under Idaho Code §45-804 and of the priority of such lien over the deed of trust lien of Defendant D. L. Evans Bank, and having concluded that the Plaintiff is entitled to judgment as a matter of law,

IT IS HEREBY ORDERED that Plaintiff's Summary Judgment motion is granted and the Plaintiff's Vendee's Lien of \$750,000.00, plus pre-judgment interest thereon at the rate of twelve percent (12%) per annum from February 6, 2009, in the amount of \$111,207.58, for a total judgment amount of \$861,207.58, has priority over the deed of trust lien of Defendant D. L. Evans Bank. This total judgment amount shall accrue interest at the legal rate for judgments of 5.625% per annum from May 3, 2010 until paid in full.

DATED this 14 day of May, 2010.



Robert J. Elgee
Magistrate Judge

CERTIFICATE OF SERVICE

I hereby certify that on the 19 day of May, 2010, I served a true and correct copy of the within and foregoing document upon the attorneys named below in the manner noted:

Janet C. Wygle
LUBOVISKI, WYGLE, FALLOWFIELD & RITZAU, P.A.
P.O. Box 1172
Ketchum, Idaho 83340

R.C. Stone
PARSONS, SMITH & STONE, LLP
137 West 13th Street
P.O. Box 910
Burley, ID 83318

- By depositing copies of the same in the United States mail, postage prepaid, at the post office at Hailey, Idaho.
- By hand delivering copies of the same to the offices of the attorney.
- By transmitting copies of the same to said attorney by facsimile machine process.


Clerk of the District Court

FILED A.M. _____
P.M. 1:50
MAY 20 2010
Jolynn Drage, Clerk District
Court Blaine County, Idaho

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PARSONS, SMITH, STONE, LOVELAND & SHIRLEY, LLP
LAWYERS
BURLEY, IDAHO

R.C. Stone
**PARSONS, SMITH, STONE,
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(208) 878-0146 - Fax
Idaho State Bar #1890
Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

LESLIE BENZ,	)	Case No. <u>CV-2009-613</u>
)	
Plaintiff,)	
)	
vs.)	
	)	OBJECTION TO PLAINTIFF'S
EAST AVENUE BLUFF, LLC, an Idaho	)	ORDER OF SUMMARY JUDGMENT
limited liability company; D.L. EVANS)	
BANK; TIMELESS DESIGN COMPANY;)	
CLIFF R. IVERSON d.b.a. LEI'S)	
CUSTOM TILE; FISHER APPLIANCE,)	
INC.; VIEWPOINT, INC.; CAD)	
DRAFTING SYSTEMS, INC.;)	
BUCKHORN ELECTRIC, LLC/DEVILAN)	
HAIRE; A.C. HOUSTON LUMBER)	
COMPANY; MIKE PUNNETT;)	
PRECISION PLUMBING, INC.;)	
WATSON BUILDERS, INC.; HARRIS)	
REFRIGERATION HEATING AND)	
ELECTRIC; FERGUSON ENTERPRISES,)	
INC.; ROCKY MOUNTAIN)	
HARDWARE, INC.; SWEET'S)	

OBJECTION TO PLAINTIFF'S
ORDER OF SUMMARY JUDGMENT - I

1 PORTABLE WASTE SERVICES, LLC;)
2 WHITE BUILDERS, LLC; MIKE'S)
3 WELDING AND METAL WORKS, LLC;)
4 SENTINEL FIRE & SECURITY, INC.;)
5 STEVE McCOY, d.b.a. McCOY'S)
6 PAINTING; CHRISTOPHER BRENNAN)
7 d.b.a. BRENNAN'S CARPET; and)
8 PAUL COOPER d.b.a. SUN VALLEY)
9 DRYWALL,)
10 Defendants.)

11 COMES NOW the Defendant, D.L. Evans Bank, who hereby objects to the Plaintiff's
12 Order of Summary judgment as follows:

- 13 1. It is not consistent with the Court's oral ruling.
- 14 2. It states the Bank was not present is incorrect. The hearing was attended by Bruce
15 Hunsaker.
- 16 3. There is no evidence in the record to support the statement that the bank had actual
17 notice of "\$500,000 in purchase payments made by Plaintiff to vendor prior to making its loan
18 to such vendor".
- 19 4. There is no evidence in the record to support the statement that the \$250,000
20 payment was "relied upon by the bank."
- 21 5. The recital of findings and conclusions is not sufficient to support an entry or an
22 order of summary judgment.
- 23 6. Prejudgment interest was computed from an alleged default date as opposed to the
24 rescission date, which is the earliest date from which prejudgment interest could accrue.

25
26 OBJECTION TO PLAINTIFF'S
ORDER OF SUMMARY JUDGMENT - 2

1 Rescission is a condition of the right of recovery under *McMahon v. Cooper*, 70 Idaho 39, 212
2 P.2d 657 (1949) which states in part:

3 Appellant was not in default at the time the notice of completion was given.
4 He was entitled, upon the breach of the contract by respondents, Cooper, to
5 rescind the contract and to recover the money paid thereon.

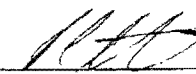
6 Id. at 70 Idaho 147, 212 P.2d 661.

7
8 7. The Order fails to cite or establish a rescission date based upon the record
9 currently before the Court.

10 8. The proposed "Order of Summary Judgment" is inconsistent with Idaho
11 law and the factual record before the Court as previously briefed and argued.

12 DATED this 10 day of May, 2010.

13
14 PARSONS, SMITH, STONE,
LOVELAND & SHIRLEY, LLP

15 
16 _____
R. C. Stone
17 Attorneys for Plaintiff

PARSONS, SMITH, STONE, LOVELAND & SHIRLEY, LLP
LAWYERS
BURLEY, IDAHO

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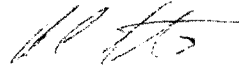
CERTIFICATE OF DELIVERY

I hereby certify that on the 12 day of May, 2010, I served a copy of the foregoing
OBJECTION TO PLAINTIFF'S ORDER OF SUMMARY JUDGMENT upon the following
named person(s) in the manner listed below:

Janet C. Wygle
LUBOVISKI, WYGLE,
FALLOWFIELD &
RITZAU, P.A.
PO Box 1172
Ketchum, ID 83340

Via United States Mail
 Via Facsimile
 Via Overnight Carrier
 Via Hand Delivery

**PARSONS, SMITH, STONE,
LOVELAND & SHIRLEY, LLP**

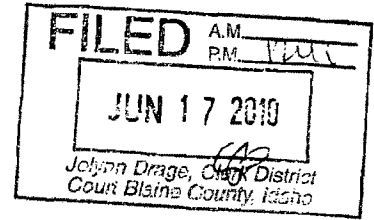


R.C. Stone
Attorneys for Plaintiff
137 West 13th Street
P.O. Box 910
Burley, Idaho 83318

OBJECTION TO PLAINTIFF'S
ORDER OF SUMMARY JUDGMENT - 4

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R.C. Stone
PARSONS, SMITH & STONE, LLP
137 West 13th Street
P.O. Box 910
Burley, Idaho 83318
(208) 878-8382 - Phone
(208) 878-0146 - Fax
Idaho State Bar #1890
Attorneys for Plaintiff



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

LESLIE BENZ,	)	Case No. <u>CV-2009-613</u>
)	
Plaintiff/Appellant,)	
)	
vs.	)	NOTICE OF APPEAL
)	
D.L. EVANS BANK,)	
)	
Defendant/Respondent.)	

TO: THE ABOVE NAMED RESPONDENT AND THE PARTY'S ATTORNEY, JANET C. WYGLE, PO BOX 1172, KETCHUM, IDAHO 83340, AND THE CLERK OF THE ABOVE ENTITLED COURT.

NOTICE IS HEREBY GIVEN THAT:

1. The above named appellant, D.L. Evans Bank, appeals against the above named respondent to the Idaho Supreme Court from the final judgment, entered in the above entitled action on the 19th day of May, 2010, Honorable Judge Elgee presiding.

2. D.L. Evans Bank has a right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Rule 11(a)(1)

1
2 3. A preliminary statement of the issues on appeal which D.L. Evans Bank intends to
assert include:

- 3 (a) Under what circumstances, if any, does a lien arising under Idaho Code
§45-804?
4 (b) Do the priority rules recognized in common law vendee's liens apply to
liens arising under Idaho Code §45-804?
5 (c) Is it appropriate to apply the express priority provisions of other
6 statutory liens to Idaho Code §45-804 where it is silent on the issue of
priority?
7 (d) Under what circumstances, if any, do payments made by a vendee after a
8 deed of trust is recorded become a lien with priority over that deed of
trust?
9 (e) Is it appropriate to award pre-judgment interest and include it in the
amount of the lien under Idaho Code §45-804 and, if so, from what date
10 does interest accrue and at what rate?
11 (f) Were there factual questions appearing in the record making entry of the
summary judgment improper?
12 (g) Were the trial court's findings of fact supported by uncontroverted facts
appearing in the record?

13
14 4. No order has been entered sealing any portion of the record.

15 5. The appellant requests preparation of the entire reporter's standard transcript which
is the oral argument taking place on the 3rd day of May, 2010 on the Respondent's Motion for
16 Summary Judgment.

17 6. The appellant requests the following documents be included in the clerk's record in
addition to those automatically included under Rule 28, I.A.R.:

- 18
19 (a) All affidavits in support of or opposition to the Plaintiff's Motion for
Summary Judgment.
20 (b) All briefs in support of or in opposition to the Plaintiff's Motion for
Summary Judgment.
21 (c) Plaintiff's Motion for Summary Judgment.

22
23 7. I certify:

24 (a) That a copy of this notice of appeal has been served on the reporter of whom the
transcript has been requested as named below and at the address set out below:

25 Susan Israel
26 Blaine County District Court
201 2nd Ave S, Ste 106
Hailey, ID 83333

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(b) That the clerk of the district court or administrative agency has been paid the estimated fee for preparation of the reporter's transcript.

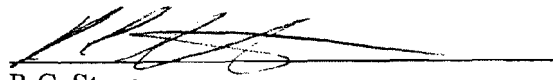
(c) That the estimated fee for preparation of the clerk's or agency's record has been paid.

(d) That the appellate filing fee has been paid.

(e) That service has been made upon all parties required to be served pursuant to Rule 20.

DATED this 15 day of June, 2010.

PARSONS, SMITH, STONE,
LOVELAND & SHIRLEY, LLP



R.C. Stone
Attorneys for
P.O. Box 910
Burley, Idaho 83318

PARSONS, SMITH, STONE, LOVELAND & SHIRLEY, LLP
LAWYERS
BURLEY, IDAHO

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CERTIFICATE OF DELIVERY

I hereby certify that on the 15 day of June, 2010, I served a copy of the foregoing
NOTICE OF APPEAL upon the following named person(s) in the manner listed below:

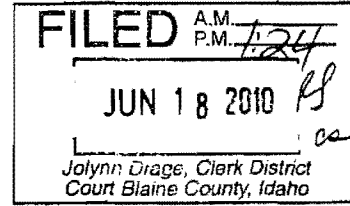
Janet C. Wygle Via United States Mail
LUBOVISKI, WYGLE, Via Facsimile
FALLOWFIELD & Via Overnight Carrier
RITZAU, P.A. Via Hand Delivery
PO Box 1172
Ketchum, ID 83340

Susan Israel Via United States Mail
Court Reporter, Via Facsimile
201 2nd Ave S, Ste 106 Via Overnight Carrier
Hailey, ID 83333 Via Hand Delivery

PARSONS, SMITH, STONE,
LOVELAND & SHIRLEY, LLP


R.C. Stone
Attorneys for Appellant

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R.C. Stone
PARSONS, SMITH, STONE, LOVELAND & SHIRLEY, LLP
137 West 13th Street
P.O. Box 910
Burley, Idaho 83318
(208) 878-8382 - Phone
(208) 878-0146 - Fax
Idaho State Bar #1890
Attorneys for Defendant/Appellant

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

LESLIE BENZ,	)	Case No. <u>CV-2009-613</u>
)	
Plaintiff/Respondent,)	
)	
vs.	)	AMENDED NOTICE
	)	OF APPEAL
D.L. EVANS BANK,)	
)	
Defendant/Appellant.)	

TO: THE ABOVE NAMED RESPONDENT AND THE PARTY'S ATTORNEY, JANET C. WYGLE, PO BOX 1172, KETCHUM, IDAHO 83340, AND THE CLERK OF THE ABOVE ENTITLED COURT.

NOTICE IS HEREBY GIVEN THAT:

1. The above named appellant, D.L. Evans Bank, appeals against the above named respondent to the Idaho Supreme Court from the final judgment, entered in the above entitled action on the 19th day of May, 2010, Honorable Judge Elgee presiding.

2. D.L. Evans Bank has a right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Rule 11(a)(1)

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3. A preliminary statement of the issues on appeal which D.L. Evans Bank intends to assert include:

- (a) Under what circumstances, if any, does a lien arising under Idaho Code §45-804?
- (b) Do the priority rules recognized in common law vendee's liens apply to liens arising under Idaho Code §45-804?
- (c) Is it appropriate to apply the express priority provisions of other statutory liens to Idaho Code §45-804 where it is silent on the issue of priority?
- (d) Under what circumstances, if any, do payments made by a vendee after a deed of trust is recorded become a lien with priority over that deed of trust?
- (e) Is it appropriate to award pre-judgment interest and include it in the amount of the lien under Idaho Code §45-804 and, if so, from what date does interest accrue and at what rate?
- (f) Were there factual questions appearing in the record making entry of the summary judgment improper?
- (g) Were the trial court's findings of fact supported by uncontroverted facts appearing in the record?

4. No order has been entered sealing any portion of the record.

5. The appellant requests preparation of the entire reporter's standard transcript which is the oral argument taking place on the 3rd day of May, 2010 on the Respondent's Motion for Summary Judgment.

6. The appellant requests the following documents be included in the clerk's record in addition to those automatically included under Rule 28, I.A.R.:

- (a) All affidavits in support of or opposition to the Plaintiff's Motion for Summary Judgment.
- (b) All briefs in support of or in opposition to the Plaintiff's Motion for Summary Judgment.
- (c) Plaintiff's Motion for Summary Judgment.

7. I certify:

(a) That a copy of this notice of appeal has been served on the reporter of whom the transcript has been requested as named below and at the address set out below:

Susan Israel
Blaine County District Court
201 2nd Ave S, Ste 106
Hailey, ID 83333

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(b) That the clerk of the district court or administrative agency has been paid the estimated fee for preparation of the reporter's transcript.

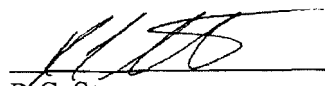
(c) That the estimated fee for preparation of the clerk's or agency's record has been paid.

(d) That the appellate filing fee has been paid.

(e) That service has been made upon all parties required to be served pursuant to Rule 20.

DATED this 12 day of June, 2010.

PARSONS, SMITH, STONE,
LOVELAND & SHIRLEY, LLP



R.C. Stone
Attorneys for
P.O. Box 910
Burley, Idaho 83318

PARSONS, SMITH, STONE, LOVELAND & SHIRLEY, LLP
LAWYERS
BURLEY, IDAHO

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CERTIFICATE OF DELIVERY

I hereby certify that on the 17 day of June, 2010, I served a copy of the foregoing AMENDED NOTICE OF APPEAL upon the following named person(s) in the manner listed below:

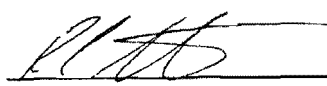
Janet C. Wygle
LUBOVISKI, WYGLE,
FALLOWFIELD &
RITZAU, P.A.
PO Box 1172
Ketchum, ID 83340

Via United States Mail
 Via Facsimile
 Via Overnight Carrier
 Via Hand Delivery

Susan Israel
Court Reporter,
201 2nd Ave S, Ste 106
Hailey, ID 83333

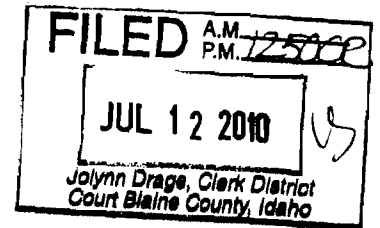
Via United States Mail
 Via Facsimile
 Via Overnight Carrier
 Via Hand Delivery

PARSONS, SMITH, STONE,
LOVELAND & SHIRLEY, LLP



R.C. Stone
Attorneys for Appellant

Janet C. Wygle
LUBOVISKI, WYGLE,
FALLOWFIELD & RITZAU, P.A.
 Suite 205, The Station
 460 Sun Valley Road
 P.O. Box 1172
 Ketchum, Idaho 83340
 Tel: 208/726-8219
 Fax: 208/726-3750
 ISB# 2232
 Attorneys for Plaintiff



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

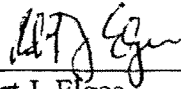
LESLIE BENZ,)
)
 Plaintiff,)
)
 v.)
)
 EAST AVENUE BLUFF, LLC, an Idaho limited)
 liability company; D.L. EVANS BANK;)
 TIMELESS DESIGN COMPANY; CLIFF R.)
 IVERSON dba LEI'S CUSTOM TILE; FISHER)
 APPLIANCE, INC.; VIEWPOINT, INC.; CAD)
 DRAFTING SYSTEMS, INC.; BUCKHORN)
 ELECTRIC, LLC/DEVILAN HAIRE; A.C.)
 HOUSTON LUMBER COMPANY; MIKE)
 PUNNETT; PRECISION PLUMBING, INC.;)
 WATSON BUILDERS, INC.; HARRIS)
 REFRIGERATION HEATING AND ELECTRIC;)
 FERGUSON ENTERPRISES, INC.; ROCKY)
 MOUNTAIN HARDWARE, INC.; SWEET'S)
 PORTABLE WASTE SERVICES, LLC; WHITE)
 BUILDERS, LLC; MIKE'S WELDING AND)
 METAL WORKS, LLC; SENTINEL FIRE &)
 SECURITY, INC.; STEVE McCOY, dba)
 McCOY'S PAINTING; CHRISTOPHER)
 BRENNAN dba BRENNAN'S CARPET; and)
 PAUL COOPER dba SUN VALLEY DRYWALL,)
)
 Defendants.)

Case No. CV-2009-613

AMENDED JUDGMENT

JUDGMENT is hereby entered in favor of the Plaintiff for her costs of right in the sum of \$1,075.05, and her discretionary costs in the sum of \$620.22, plus pre-judgment interest on her Vendee's Lien amount of \$750,000.00 at the rate of twelve percent (12%) per annum from February 6, 2009 to May 3, 2010, in the amount of \$111,207.58, for a total Vendee's Lien amount of \$862,902.85, which lien has priority over the deed of trust lien of Defendant D. L. Evans Bank and the liens of all other defendants on Lot 3 in Block 41 of the City of Ketchum, Blaine County, Idaho. This total judgment amount shall accrue interest at the legal rate for judgments of 5.625% per annum from May 3, 2010 until paid in full.

DATED this 2 day of July, 2010.



Robert J. Elgee
Magistrate Judge

CERTIFICATE OF SERVICE

I hereby certify that on the 12 day of July, 2010, I served a true and correct copy of the within and foregoing document upon the attorneys named below in the manner noted:

Janet C. Wygle
LUBOVISKI, WYGLE, FALLOWFIELD & RITZAU, P.A.
P.O. Box 1172
Ketchum, Idaho 83340

R.C. Stone
PARSONS, SMITH & STONE, LLP
137 West 13th Street
P.O. Box 910
Burley, ID 83318

- By depositing copies of the same in the United States mail, postage prepaid, at the post office at Ketchum, Idaho.
- By hand delivering copies of the same to the offices of the attorney.
- By transmitting copies of the same to said attorney by facsimile machine process.



Clerk of the District Court

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

LESLIE BENZ)
)
Plaintiff/ Respondent,) Supreme Court No. 37814
)
vs.) CLERK'S CERTIFICATE
)
D.L. EVANS BANK,)
)
Defendants/ Appellant.)
)
_____)

STATE OF IDAHO)
) ss.
County of Blaine)

I, Crystal Rigby, Deputy Clerk of the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Blaine, do hereby certify that the above and foregoing Clerk's Record on Appeal was compiled and bound under my direction and is a true, full and correct Record of the pleadings and documents as are automatically required under Rule 28 of the Idaho Appellate Rules as well as those requested by the Appellant.

I do further certify that all exhibits offered or admitted in the above-entitled cause and exhibits requested by the Appellant will be duly lodged with the Clerk of the Supreme Court along with the Clerk's Record on Appeal and the Court Reporter's Transcript on Appeal.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Hailey, Idaho, this 21 day of Sept., 2010.

Jolynn Drage, Clerk of the Court

By Crystal Rigby
Crystal Rigby, Deputy Clerk

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

LESLIE BENZ,	)	Supreme Court No. 37814
)	
Plaintiff/ Respondent,	)	CERTIFICATE OF SERVICE
)	
vs.)	
)	
D.L. EVANS BANK,)	
)	
Defendants/ Appellant.)	
_____)	

I, Crystal Rigby, Deputy Clerk of the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Blaine, do hereby certify that I have personally served or mailed, by United States mail, one copy of the Clerk's Record and Reporter's Transcript to each of the Attorneys of Record in this cause as follows:

Janet C. Wygle
PO Box 1172
Ketchum, Idaho 83340

R.C. Stone
P.O. Box 910
Burley, Idaho 83318

Plaintiff / Respondent

Defendant / Appellant

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court
this 21 day of Sept., 2010.

JOLYNN DRAGE, Clerk of the Court
By Crystal Rigby
Crystal Rigby, Deputy Clerk