

9-13-2012

Bank of Commerce v. Jefferson Enterprises Clerk's Record v. 3 Dckt. 40034

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Vol 3 of 3

SUPREME COURT OF THE STATE OF IDAHO

THE BANK OF COMMERCE, an Idaho Banking Corp.

Plaintiff-Respondent

vs.

LAW CLERK
JEFFERSON ENTERPRISES, LLC, AN

Idaho Limited Liability Company

Defendant-Appellant

Hon. Robert C. Naftz District Judge

Appealed from the District Court of the Sixth
Judicial District of the State of Idaho, in and for
Bannock County.

A. Bruce Larson

ABLE LAW PC

Attorney ☒ For Appellant ☒

Brian T. Tucker

NELSON HALL PARRY TUCKER, P.A.

Attorney ☒ For Respondent ☒

FILED - COPY 3073
Filed this day of
2012 SEP 13 2012

Clerk

Deputy

40034

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VOLUME III

The Bank Of Commerce vs. Jefferson Enterprises LLC, Dustin Morrison, Sonya Morrison, City of Pocatello

Date	Code	User		Judge
10/21/2008	LOCT	MARLEA	Clerk's Vault	Peter D. McDermott
	NCOC	MARLEA	New Case Filed-Other Claims	Peter D. McDermott
	COMP	MARLEA	Complaint to Foreclose Real Estate Mortgage.	Peter D. McDermott
	SMIS	MARLEA	Summons Issued (4)	Peter D. McDermott
		MARLEA	Filing: A - Civil Complaint for more than \$1,000.00 Paid by: anerson Receipt number: 0039209 Dated: 10/21/2008 Amount: \$88.00 (Check) For:	Peter D. McDermott
	ATTR	CINDYBF	Plaintiff: The Bank Of Commerce Attorney Retained Brian T Tucker	Peter D. McDermott
		CINDYBF	Notice of Lis Pendens- by pltf thru PA Tucker.	Peter D. McDermott
11/12/2008	AFFD	CAMILLE	Affidavit of service - srvd on Rhonda Johnson on 10-29-08	Peter D. McDermott
11/13/2008	AMCO	CAMILLE	Amended Complaint to Foreclose Real Estate Mortgage; aty Brian Tucker for plntf	Peter D. McDermott
11/14/2008		MARLEA	Filing: 17 - All Other Cases Paid by: robinson and associates Receipt number: 0042733 Dated: 11/14/2008 Amount: \$58.00 (Check) For: Morrison, Dustin (defendant)	Peter D. McDermott
	NOAP	CAMILLE	Notice Of Appearance; aty Brent Robinson for Scott and Jennifer Dayley Snake River Jerseys	Peter D. McDermott
	NOAP	CAMILLE	Notice Of Appearance; aty Brent Robinson for Jefferson Enterprises, LLC and Idaho Limited Liability Company, Dustin Morrison and Sonya Kidd aka Sonya Morrison;	Peter D. McDermott
	ATTR	CAMILLE	Defendant: Jefferson Enterprises LLC Attorney Retained Brent T Robinson	Peter D. McDermott
	ATTR	CAMILLE	Defendant: Morrison, Dustin Attorney Retained Brent T Robinson	Peter D. McDermott
	ATTR	CAMILLE	Defendant: Morrison, Sonya Attorney Retained Brent T Robinson	Peter D. McDermott
11/17/2008	AFDS	CINDYBF	Affidavit of Service - Summons & Complaint served Dustin Morrison thru Sonya Morrison, wife, on 11-8-08.	Peter D. McDermott
	AFDS	CINDYBF	Affidavit of Service - Summons & Complaint served Sonya Kidd aka Sonya Morrison 11-8-08.	Peter D. McDermott
	AFDS	CINDYBF	Affidavit of Service - Summons & Complaint served Jefferson Enterprises thru Dustin Morrison, 11-11-08.	Peter D. McDermott
11/24/2008	HRSC	CAMILLE	Hearing Scheduled (Court Trial 03/10/2009 09:00 AM)	Peter D. McDermott
12/2/2008	NOTC	CAMILLE	Notice of Appearance to Amended Complaint to Foreclose Real Estate Mortgage; aty Kirk Bybee for def City of Pocatello	Peter D. McDermott
	ATTR	CAMILLE	Defendant: City of Pocatello Attorney Retained D Kirk Bybee	Peter D. McDermott

The Bank Of Commerce vs. Jefferson Enterprises LLC, Dustin Morrison, Sonya Morrison, City of Pocatello

Date	Code	User	Judge
12/8/2008	NOTC	CAMILLE	Notice of intent to take default; aty Brian Tucker for Bank of commerce Peter D. McDermott
12/12/2008	ANSW	CAMILLE	Answer to Amended Complaint to Foreclose Real Estate Mortgage and Counterclaim and Demand for Jury Trial; aty Brent Robinson for Jefferson Enterprises, LLC Dustin Morrison and Sonya Kidd aka Sonya Morrison Peter D. McDermott
	NOTC	DCANO	Notice of Service of Jefferson Enterprises, LLC, Dustin Morrison and Sonya Morrison's First Set of Interrogatories and Request for Production of Documents to Plaintiff. Brent T. Robinson, Attorney for Dfdts. Robert C Naftz
12/18/2008	NOTC	CAMILLE	Notice of service - Plntfs first Set of Interrog and REq for Production of Documents to Defs Jefferson Enterprises, LIC Dustin Morrison and Sonya Kidd aka Morrison : aty Brian Tucker for Bank of Commerce Peter D. McDermott
2/9/2009		DCANO	Plaintiff's Exhibit List; Brian T. Tucker, Atty for Bank of Commerce. Peter D. McDermott
		DCANO	Plaintiff's witness List; Brian T. Tucker, Atty for Bank of commerce. Peter D. McDermott
2/26/2009		CAMILLE	Ex Parte Motion to set aside the Order setting the Matter for Trial and Deadlines and Requesting that this matter be set for a Telephonic Status Conference; aty Brent Robinson for Jefferson Enterprises, LLC Dustin Morrison and Sonya Kidd aka sonya Morrison Peter D. McDermott
		CAMILLE	Ex Parte Order setting aside the ORder setting the Matter for Trial and Deadlines and to set Telephonic Status Conference; aty Brent Robinson : J Mcdermott 2-19-09 Peter D. McDermott
	ORDR	CAMILLE	Order; this matter is set for Status Conference on 3-16-09 at 1:15 pm: J Mcdermott 2-25-09 Peter D. McDermott
3/6/2009		CAMILLE	Notice of service of Jefferson Enterprises, LLC Dustin Morrison and Sonya Morrisons Responses to Plaintiffs First set fo Interrog. and Req for Production of Documents; aty Brent Robinson for Jefferson Enterprises Dustin Morrison and Sonya Kidd Peter D. McDermott
3/24/2009	ORDR	CAMILLE	Order; this matter is reset for Jury Trial on 1-12-2010 @ 9am: Peter D. McDermott
	HRSC	CAMILLE	Hearing Scheduled (Jury Trial 01/12/2010 09:00 AM) Peter D. McDermott
3/4/2009		CAMILLE	Notice of Bankruptcy Peter D. McDermott
	INAC	CAMILLE	Inactive Peter D. McDermott
3/18/2009		CAMILLE	Order ; all further proceedings in this case are STAYED and the Jury Trial on 1-12-10, is VACATED: J Mcdermott 8-14-09 Peter D. McDermott

The Bank Of Commerce vs. Jefferson Enterprises LLC, Dustin Morrison, Sonya Morrison, City of Pocatello

Date	Code	User	Judge
10/20/2009		CAMILLE	Motion to Place Matter Back on Trial Calendar; aty Brian Tucker
11/20/2009	HRSC	NICOLE	Hearing Scheduled (Status Conference 12/21/2009 01:30 PM)
		CAMILLE	Order for Status conference; s/ Judge Naftz 11-20-10
12/1/2009		CAMILLE	Request to participate in hearing by telephone; aty Brent Robinson for Jefferson enterprises
12/2/2009		CAMILLE	Notice of intent to appear telephonically; aty Brian Tucker
12/21/2009	DCHH	NICOLE	Hearing result for Status Conference held on 12/21/2009 01:30 PM: District Court Hearing Held Court Reporter: Stephanie Davis Number of Transcript Pages for this hearing estimated: less than 100 pages Telephonic
12/30/2009	HRSC	NICOLE	Hearing Scheduled (Status Conference 03/22/2010 01:30 PM)
		CAMILLE	Minute Entry and Order; this matter is set another Status Conference: s/ Judge Naftz 12-30-2010
3/26/2010	DCHH	NICOLE	Hearing result for Status Conference held on 03/22/2010 01:30 PM: District Court Hearing Held Court Reporter: Stephanie Davis Number of Transcript Pages for this hearing estimated: less than 100 pages
	HRSC	NICOLE	Hearing Scheduled (Status Conference 05/03/2010 02:00 PM)
		CAMILLE	Minute Entry and Order; Mr. Morrisons bankruptcy action is moving forward, all parties will be discussing a settlement : s/ Judge 3-26-2010
5/11/2010	DCHH	NICOLE	Hearing result for Status Conference held on 05/03/2010 02:00 PM: District Court Hearing Held Court Reporter: Stephanie Davis Number of Transcript Pages for this hearing estimated: less than 100 pages
	HRSC	NICOLE	Hearing Scheduled (Status Conference 07/06/2010 01:30 PM)
		CAMILLE	Minute Entry and Order; Mr. Robinson represented to the court that the Morrisons bankruptcy action is closer to being finalized and jointly recommended another status conference be scheduled: s/ Judge Naftz 5-11-2010
7/16/2010	DCHH	NICOLE	Hearing result for Status Conference held on 07/06/2010 01:30 PM: District Court Hearing Held Court Reporter: Stephanie Davis Number of Transcript Pages for this hearing estimated: less than 100 pages

The Bank Of Commerce vs. Jefferson Enterprises LLC, Dustin Morrison, Sonya Morrison, City of Pocatello

Date	Code	User	Judge
7/16/2010	HRSC	NICOLE	Hearing Scheduled (Status Conference 08/30/2010 02:00 PM)
7/20/2010		CAMILLE	Minute Entry and Order; Status Conference is scheduled in this matter for 8-30-2010 @ 2pm: s/ Judge Naftz 7-18-2010
9/10/2010	DCHH	NICOLE	Hearing result for Status Conference held on 08/30/2010 02:00 PM: District Court Hearing Held Court Reporter: Stephanie Davis Number of Transcript Pages for this hearing estimated: less than 100 pages
	HRSC	NICOLE	Hearing Scheduled (Status Conference 10/18/2010 01:30 PM)
		CAMILLE	Order setting Status Conference; s/ Judge Naftz
10/18/2010	INHD	BRANDY	Hearing result for Status Conference held on 10/18/2010 01:30 PM: Interim Hearing Held
10/22/2010	HRSC	NICOLE	Hearing Scheduled (Status Conference 11/29/2010 01:30 PM)
10/26/2010		CAMILLE	Order setting another Status Conference; s/ Judge Naftz
12/9/2010	DCHH	NICOLE	Hearing result for Status Conference held on 11/29/2010 01:30 PM: District Court Hearing Held Court Reporter: no court reporter Number of Transcript Pages for this hearing estimated: telephonic
	HRSC	NICOLE	Hearing Scheduled (Status Conference 12/20/2010 03:30 PM) telephonic
12/10/2010		CAMILLE	Notice of Appearance on Behalf of Jefferson Enterprises, LLC; aty Bruce Larson for def
	ATTR	NICOLE	Defendant: Jefferson Enterprises LLC Attorney Retained A Bruce Larson
		CAMILLE	Minute Entry and Order; Status conference is scheduled for 12-20-10
12/29/2010	DCHH	NICOLE	Hearing result for Status Conference held on 12/20/2010 03:30 PM: District Court Hearing Held Court Reporter: Stephanie Davis Number of Transcript Pages for this hearing estimated: less than 100 pages telephonic (Robinson)
	HRSC	NICOLE	Hearing Scheduled (Jury Trial 11/29/2011 09:00 AM) First week of first setting
	HRSC	NICOLE	Hearing Scheduled (Jury Trial 12/06/2011 09:00 AM) Second week of first setting
	HRSC	NICOLE	Hearing Scheduled (Jury Trial 01/31/2012 09:00 AM) First week of backup setting
	HRSC	NICOLE	Hearing Scheduled (Jury Trial 02/07/2012 09:00 AM) Second week of backup setting

The Bank Of Commerce vs. Jefferson Enterprises LLC, Dustin Morrison, Sonya Morrison, City of Pocatello

Date	Code	User	Judge
12/30/2010		CAMILLE	Minute Entry and Order; this matter be set for trial pending the filing of other motions and completion of discovery; court will not order the parties to participate in mediation but highly recommends they consider mediation as an option for resolving the issues in this case: s/ Judge Naftz 12-29-2010
		CAMILLE	Scheduling Order, Notice of Trial Setting and initial pretrial order; s/ Judge Naftz 12-29-2010
1/26/2011	HRSC	NICOLE	Hearing Scheduled (Motion 02/22/2011 01:30 PM) Motion for Leave to Amended Answer to Amended Complaint to Foreclose Real Estate Mortgage and to Amended Counterclaim
		CAMILLE	Motion for leave to Amended Answer to Amended complaint to foreclosure real estate mortgage and to amended cunterclaim; aty Bruce Larson
2/22/2011		CAMILLE	Amended Answer to Amended complaint to foreclose real estate mortgage, Amended counterclaim and demand for Jury Trial; aty Bruce Larson
3/11/2011	DCHH	NICOLE	Hearing result for Motion held on 02/22/2011 01:30 PM: District Court Hearing Held Court Reporter: Stephanie Davis Number of Transcript Pages for this hearing estimated: less than 100 pages Motion for Leave to Amended Answer to Amended Complaint to Foreclose Real Estate Mortgage and to Amended Counterclaim
		CAMILLE	Minute Entry and Order; (order on Defs Motin for leave to Amended Answer , amended counterclaim was GRANTED) crt encourages parties to participate in mediation: s/ Judge Naftz 3-11-2011
3/28/2011		CAMILLE	Notice of service of discovery; Requests for admission, interrog. and requests for production of documents on the plntf/counterdefendant Bank of Comerce; aty Bruce Larson
4/28/2011		CAMILLE	Notice of service - The Bank of Commerce's Response to Jefferson Enterprises, LLC requests for admissions: aty Brian Tucker
5/3/2011		CAMILLE	Notice of service - The Bank of Commerces Response to Jefferson Enterprises, LLC's Interrog and requests for production of documents: aty Brian Tucker
7/8/2011		CAMILLE	Notice of Deposition of the Bank of Commerce on 7-25-2011 @ 1pm:
		CAMILLE	Notice of Deposition of Steve Worton; on 7-26-2011 @ 9am:
3/16/2011		CAMILLE	Motion to vacate first Trial setting; aty Bruce Larson

The Bank Of Commerce vs. Jefferson Enterprises LLC, Dustin Morrison, Sonya Morrison, City of Pocatello

Date	Code	User	Judge
9/20/2011		CAMILLE	Response to Motion to vacate first Trial setting; aty Brent Robinson for def /counterclaimants
10/28/2011		CAMILLE	Notice of taking deposition of Dustin Morrison; on 11-4-2011 @ 9:30 : aty Brian Tucker
		CAMILLE	Notice of taking deposition of Sonya Morrison on 11-4-2011 @ 1pm: aty Brian Tucker
11/7/2011	HRVC	NICOLE	Hearing result for Jury Trial scheduled on 11/29/2011 09:00 AM: Hearing Vacated First week of first setting per motion
	HRVC	NICOLE	Hearing result for Jury Trial scheduled on 12/06/2011 09:00 AM: Hearing Vacated Second week of first setting; per motion and order signed by the court
		CAMILLE	Order to vacate first Trial setting; s/ Judge Naftz 11-5-2011
11/14/2011	HRSC	NICOLE	Hearing Scheduled (Motion for Summary Judgment 12/12/2011 02:30 PM) Plaintiff's
		CAMILLE	Memorandum in support of motion for summary judgment; aty Brian Tucker for Bank of Commerce
		CAMILLE	Affidavit of Thomas J Romrell; aty Brian Tucker for The Bank of Commerce
		CAMILLE	Affidavit of Steve Worton; aty Brian Tucker for Bank of Commerce
		CAMILLE	Affidavit of A Michael Morrison; aty Brian Tucker for The Bank of Commerce
		CAMILLE	Affidavit of Brian Tucker; aty Brian Tucker for The Bank of Commerce
		CAMILLE	Motion for Summary Judgment; aty BrianTucker for The Bank of Commerce
11/15/2011	NOTC	BRANDY	Notice of hearing; aty for pltf; Motion for Summary Judgment 12-12-11 at 2:30
11/16/2011	CONT	NICOLE	Continued (Motion for Summary Judgment 12/19/2011 02:30 PM) Plaintiff's motion; conflict with the Court's calendar
11/18/2011	ORDR	NICOLE	Order Continuing Hearing on Motion for Summary Judgment; pursuant to conflict with the Court's calendar, Plaintiff's/Counterdefendant's Motion for Summary Judgment will be continued to 12-19-11 at 2:30 pm; s/ J. Naftz 11-18-11
		CAMILLE	Expert witness disclosures; aty Bruce larson
		CAMILLE	Fact witness disclosure; aty Bruce Larson for Jefferson enterprises LLC
11/21/2011		CAMILLE	Notice of service - Plntfs second set of interrog and requests for production of documents to def Jefferson enterprises, LLC: aty Brian Tucker

The Bank Of Commerce vs. Jefferson Enterprises LLC, Dustin Morrison, Sonya Morrison, City of Pocatello

Date	Code	User	Judge
11/21/2011		CAMILLE	Objection to late expert witness disclosure; aty Brian Tucker
12/5/2011	MEMO	NICOLE	Memorandum in Opposition to Plaintiff's Motion for Summary Judgment filed by A. Bruce Larson for Jefferson Enterprises, LLC
	AFFD	NICOLE	Affidavit of Eric R. Polatis filed by A. Bruce Larson
	AFFD	NICOLE	Affidavit of A. Bruce Larson filed by A. Bruce Larson
12/13/2011		CAMILLE	Reply Memorandum in support of motion for summary judgment; aty Brian Tucker for Bank of Commerce
12/21/2011		CAMILLE	Expert witness disclosure; aty Brian Tucker
12/30/2011	DCHH	NICOLE	Hearing result for Motion for Summary Judgment scheduled on 12/19/2011 02:30 PM: District Court Hearing Held Court Reporter: Stephanie Davis Number of Transcript Pages for this hearing estimated: less than 100 pages Plaintiff's motion
	ADVS	NICOLE	Case Taken Under Advisement 12-19-11
		CAMILLE	Motion to vacate Trial setting; aty Bruce Larson
1/4/2012	HRSC	NICOLE	Hearing Scheduled (Motion 01/09/2012 03:30 PM) Motion to Vacate Trial Setting
	MEOR	NICOLE	Minute Entry and Order; parties came before the court on 12-19-11 for Plaintiff's Motion for Summary Judgment; the court heard argument from counsel and considered all documents in support of and in opposition to Plaintiff's motion; the Court will take Plaintiff's Motion for Summary Judgment under advisement and enter a written decision; the court will further address Plaintiff's Objection to Late Expert Witness Disclosure in its written decision as to Defendant's, Jefferson Enterprises' timeliness for disclosure of expert witnesses as it relates to the Scheduling Order previously issued in this matter; s/ J. Naftz 12-31-11
1/6/2012		CAMILLE	Notice of hearing on motion to vacate trial setting; aty Bruce Larson
1/11/2012	STIP	NICOLE	Stipulation to Vacate First Trial Setting and Amend Pretrial Order filed by A. Bruce Larson

The Bank Of Commerce vs. Jefferson Enterprises LLC, Dustin Morrison, Sonya Morrison, City of Pocatello

Date	Code	User	Judge
1/17/2012	MEMO	NICOLE	Robert C Naftz
			Memorandum Decision and Order; summary judgment in favor of Plaintiff must be entered; statute of frauds prevents Jefferson from prevailing on issue of breach of contract; no sufficient facts to create material issue of facts regarding claim of interference with prospective economic advantage; no evidence submitted by Jefferson as to claim of fraudulent misrepresentation; Jefferson's claim regarding promissory estoppel does not raise material issue of fact; the court dismisses Defendant's, Jefferson's, amended counterclaims with prejudice; Jefferson did not present any evidence or objection to bank's request to foreclose on the mortgages; bank is entitled to foreclose on both mortgages, sell the property and apply the proceeds of any sale to the outstanding debts owed by Jefferson; s/ J. Naftz 1-17-12
	JDMT	NICOLE	Robert C Naftz
			Judgment; pursuant to memorandum decision and order, this court dismissed Jefferson Enterprises' Amended Counterclaim in its entirety finding that the Bank of Commerce was entitled to Summary Judgment; Plaintiffs were entitled to foreclose upon the two mortgages it held, sell the property and apply the proceeds of the sale to any debt owed by Jefferson; Plaintiffs have the highest priority with regard to the two mortgaged properties that are a part of this lawsuit; each party shall pay their respective attorney fees and court costs; s/ J. Naftz 1-17-12
1/18/2012	DCHH	NICOLE	Robert C Naftz
			Hearing result for Motion scheduled on 01/09/2012 03:30 PM: District Court Hearing Held Court Reporter: Stephanie Davis Number of Transcript Pages for this hearing estimated: less than 100 pages Motion to Vacate Trial Setting
	CONT	NICOLE	Robert C Naftz
			Continued (Jury Trial 04/24/2012 09:00 AM) First Week of Trial Setting
	CONT	NICOLE	Robert C Naftz
			Continued (Jury Trial 05/01/2012 09:00 AM) First Week of Trial Setting

The Bank Of Commerce vs. Jefferson Enterprises LLC, Dustin Morrison, Sonya Morrison, City of Pocatello

Date	Code	User	Judge
1/18/2012	MEOR	NICOLE	Minute Entry and Order; parties came before court on 1-9-12 for hearing on Jefferson Enterprises' Motion to Vacate Trial Setting; parties appeared telephonically; the court heard argument from counsel and received no objection as to allowing a continuance of the trial pending the Court's decision on Plaintiff's Motion for Summary Judgment and for additional discovery and deposition to be taken; it is ordered that Defendant's motion is granted; Jury Trial currently scheduled to begin 1-31-12 is vacated and continued until 4-24-12 at 9:00 am through 4-27-12 and again on 5-1-12; any and all deadlines as outlined in the Court's previous Scheduling Order now pertain to the new trial date of April 24, 2012; s/ J. Naftz 1-18-12
1/30/2012	AFFD	DCANO	Affidavit of Brian T. Tucker in Support of Motion for Award of Attorney's Fees and Costs. Brian T. Tucker, Attorney for Plntfs.
	MEMO	DCANO	Memorandum in Support of Motion for Award of Attorney's Fees and Costs. Brian T. Tucker, Atty. for Plntfs.
1/31/2012		CAMILLE	Motion to reconsider, vacate summary judgment and in the alternative to alter or amend judgment; aty Bruce Larson
		CAMILLE	Memorandum in support of motin to reconsider, vacate summay judgment, and in the alternative to alter or amend judgment; aty Bruce Larson
2/13/2012		CAMILLE	Objection to award of costs and attorney fees: aty Bruce Larson
2/22/2012	HRSC	NICOLE	Hearing Scheduled (Motion 03/19/2012 01:30 PM) Motion for Award of Attorney's Fees
2/23/2012	HRSC	NICOLE	Hearing Scheduled (Motion 03/19/2012 01:30 PM) Motion to Reconsider, Vacate Summary Judgment and in the Alternative to alter or Amend Judgment
2/27/2012		CAMILLE	Notice of hearing; set for 3-19-2012 @ 1:30 pm:
3/12/2012		CAMILLE	Objection to motion to reconsider; aty Brian Tucker for plntf
4/19/2012	DCHH	NICOLE	Hearing result for Motion scheduled on 03/19/2012 01:30 PM: District Court Hearing Hek Court Reporter: Stephanie Davis Number of Transcript Pages for this hearing estimated: less than 100 pages; Motion for Award of Attorney's Fees; court took under advisement

The Bank Of Commerce vs. Jefferson Enterprises LLC, Dustin Morrison, Sonya Morrison, City of Pocatello

Date	Code	User	Judge
4/19/2012	DCHH	NICOLE	Hearing result for Motion scheduled on 03/19/2012 01:30 PM: District Court Hearing Held Court Reporter: Stephanie Davis Number of Transcript Pages for this hearing estimated: less than 100 pages Motion to Reconsider, Vacate Summary Judgment and in the Alternative to alter or Amend Judgment; court took under advisement
		CAMILLE	Memorandum Decision and Order on Attorney fees and costs; Plaintiff Bank of Commerce is entitled to a total judgment in the amount of \$54,898.76: s/ Judge Naftz
		CAMILLE	Memorandum Decision and Order on motion to reconsider; (Court DENIES Def/Counterclaimants Motion to reconsider, Vacate Summary Judgment and in the Alternative to Alter or Amend Judgment) s/ Judge Naftz 4-18-2012
		CAMILLE	Decree of Foreclosure and Order of Sale; s/ Judge Naftz 4-19-2012
	JDMT	CAMILLE	Judgment RE: Attorney fees and costs; Plaintiff be awarded and recover from Defendant, Jefferson Enterprises, LLC the total amount of \$54,898.76: s/ Judge Naftz 4-19-2012
	CSTS	CAMILLE	Case Status Changed: Closed
4/26/2012	HRVC	NICOLE	Hearing result for Jury Trial scheduled on 04/24/2012 09:00 AM: Hearing Vacated First Week of Trial Setting; Plaintiff has no further action in this matter
	HRVC	NICOLE	Hearing result for Jury Trial scheduled on 05/01/2012 09:00 AM: Hearing Vacated Second Week of Trial Setting; Plaintiff has no remaining issues in this matter
5/31/2012		DCANO	Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: A. Bruce Larson Receipt number: 0020187 Dated: 5/31/2012 Amount: \$101.00 (Check) For: Jefferson Enterprises LLC (defendant)
	APSC	DCANO	Appealed To The Supreme Court
	MISC	DCANO	Received Check # 6149 in the amount of \$100.00 for deposit of Clerk's Record.
3/7/2012	MISC	DCANO	CLERK'S CERTIFICATE OF APPEAL: Signed and Mailed to Supreme Court on 6-7-12. (Received file from Dist. Court on 6-6-12.)
3/12/2012	MISC	DCANO	IDAHO SUPREME COURT; Received Notice of Appeal on 6-8-12. Docket Number #40034-2012. Clerk's Record must be filed with SC on 8-14-12. (7-10-12 5 weeks prior)

Date: 7/19/2012

Sixth Judicial District Court - Bannock County

User: DCANO

Time: 03:28 PM

ROA Report

Page 11 of 11


Case: CV-2008-0004231-OC Current Judge: Robert C Naftz

The Bank Of Commerce vs. Jefferson Enterprises LLC, etal.

The Bank Of Commerce vs. Jefferson Enterprises LLC, Dustin Morrison, Sonya Morrison, City of Pocatello

Date	Code	User	Judge
6/12/2012	MISC	DCANO	IDAHO SUPREME COURT: Received Clerk's Cert. on 6-8-12. Carefully examine the title and Cert. and advise the Dist. Clerk of any corrections. The Title in the Cert. must appear on all documents filed in SC.
6/13/2012	MISC	DCANO	REQUEST FOR ADDITIONAL CLERK'S RECORD: Brian T. Tucker, Attorney for Bank of Commerce.
7/3/2012		CAMILLE	Affidavit of amount due; under IRCP noo 69: aty Robert C Naftz Brian Tucker for plntf
7/6/2012	WRIT	CAMILLE	Writ Issued and mailed back to counsel
7/16/2012		CAMILLE	Miscellaneous Payment: Writs Of Execution Paid by: Nelson Hall Parry Tucker Receipt number: 0025671 Dated: 7/16/2012 Amount: \$2.00 (Check)
7/19/2012	MISC	DCANO	CLERK'S RECORD received in Court Records on 7-19-12.

A. Bruce Larson -ISB No. 2093
ABLE LAW PC -- Attorneys at Law
155 South 2nd Ave.
P.O. Box 6369
Pocatello, ID 83205-6369
Telephone: (208) 478-7600
Fax: (208) 478-7602

FILED
CLERK
2011 DEC -5 PM 3:37
BY 
DEPUTY CLERK

Attorneys for Jefferson Enterprises, LLC, an Idaho limited liability company.

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

THE BANK OF COMMERCE, an Idaho
banking corporation,)

Plaintiff, Counterdefendant,)

vs.)

JEFFERSON ENTERPRISES, LLC, an Idaho)
limited liability company, DUSTIN)
MORRISON and SONYA KIDD aka SONYA)
MORRISON,)

Defendants, Counterclaimants,)

THE CITY OF POCA TELLO, an Idaho)
municipality,)

Defendant.)

Case No. CV 08-4231 OC

AFFIDAVIT OF ERIC R. POLATIS

State of Idaho)
)ss.
County of ADA)

Eric R. Polatis, being first duly sworn upon oath deposes and states as follows:

1. I was formerly employed by First American Title Company, at their office in Pocatello, as a Title Officer, the term of my employment included the months of April and May 2006.

2. As a part of my duties as a Title Officer I participated in the preparation of a series of Commitments for Title Insurance on real property in a transaction between the Bank of Commerce and Jefferson Enterprises, LLC. The transaction involved the Bank of Commerce loaning money to Jefferson Enterprises, LLC, to be secured by real property located in Bannock County, Idaho. Copies of the First, Second, Third and Fourth Commitments are attached as Exhibits "A", "B", "C" and "D" respectively. The Second Third and Fourth Commitments were all prepared at the request of the Bank of Commerce between 11:00 a.m. and 2:00 p.m. on May 9, 2006.

3. After the issuance of the First Commitment I met with representatives of the Bank of Commerce to discuss and explain the contents of the Commitment and in particular the exceptions set out in Schedule B -Section Two of the Commitment. One of the Bank's representatives that I met with was Steve Worton, I do not recall the names of the other representative of the Bank at the meeting. To the best of my recollection the meeting took place sometime during the first week of May 2006 at First American Title Company's offices in Pocatello I believe that one of the Closing Officers of First American Title Company was also present.

4. The Commitment involved four parcels of real property, Parcel 1 and 2 were owned by Michael R. Wood and Ruth A. Wood, husband-and-wife, Parcel 3 was owned by an entity known as Black Cliffs Development, Inc., Parcel 4 was owned by Southern Hills Development Company, LLC an entity that belong to Jefferson Enterprises, LLC. There were some title issues involved with Parcel 3.

5. The meeting among other things focused on the ownership of the Black Cliffs Development, Inc.'s property and a number of lots that had been sold in that subdivision. During the meeting Dustin Morrison was contacted with a request that he bring in additional

documentation relating to the Black Cliff's property in order to satisfy the concerns expressed by the Bank's representatives. Mr. Morrison brought the information requested but did not stay or participate further in the meeting.

6. Although I reviewed exceptions 23, 24, and 25 of the First Commitment during the meeting with the representatives of the Bank they did not express any need to have the first mortgage holder on Parcel 4, "80 Acres, Inc." subordinate its interest under the mortgage to the Bank of Commerce in order to complete the transaction with Jefferson Enterprises, LLC or that Jefferson would be required to pay off the 80 Acres, Inc., obligation as a condition of the closing.

7. As a part of the discussion, Steve Worton and the other representative of the Bank of Commerce acknowledged that they were aware that an option to purchase which affected Parcels in 1, 2 and 3 would expire on May 10, 2006 and that it was urgent to complete the transaction before that date.

8. The First through Third Commitments consistently show that the amount of the loan to be insured was the sum of \$2,800,000. The amount of the loan to be insured in the Fourth Commitment was reduced to the sum of \$2,223,805 .00.

9. I had had a conversation some time prior to the meeting I have described in this affidavit with the Bank of Commerce's representatives Mike Wood and his attorney Randall C. Budge who advised me that they were unwilling to extend the option and that they had other parties interested in purchasing the real property subject to the option at a price greater than the option price. I recall this issue being discussed with the representatives of the Bank of Commerce.

10. I learned some time on May 9, 2006 that there were problems with the pending closing involving the transaction that I have described in this affidavit because the Bank of Commerce was requiring that Jefferson Enterprises, LLC, to have 80 Acre, Inc. subordinate it

mortgage to the Bank of Commerce. The need for the subordination had not been discussed in the meeting that occurred a few days earlier with the representatives of the Bank.

11. Without a subordination agreement from 80 Acres, Inc., Jefferson would be required to pay off the indebtedness that it owed to 80 Acres, Inc. in order to close the transaction. In order to do that Jefferson Enterprises would have to come up with approximately \$700,000 to close and exercise the option to purchase Parcels 1, 2 and 3. before it expired on May 10, 2011.

12. At that point in time I thought that the transaction would not close but I prepared the Fourth Commitment pursuant to the instructions of the Bank of Commerce.

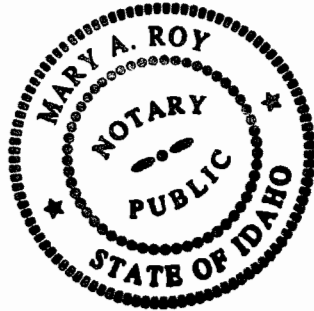
13. On the afternoon of May 10, 2006 I was requested to help with the Closing, Jefferson Enterprises was trying to accumulate the cash required at closing. I talked with Dustin Morrison and Sonya Morrison during this period of time and they were in a panic because they expressed to me that they believed that the Bank was going to subordinate it's new mortgage to the existing mortgage of 80 Acres, Inc.

14. I assisted the closing agent count a large amount of cash that had been brought in by the Morison's own behalf of Jefferson Enterprises, LLC. I also took the cash along with a number of checks to be deposited in First American's escrow account before the bank closed on May 10, 2006.

Dated this 25th day of November, 2011.


Eric R. Polatis

Subscribed and Sworn to by Eric R. Polatis before me the undersigned Notary Public on this 25th day of November 2011.



Mary A Roy
Notary Public for the State of Idaho
Residing at: Mereden, ID
Commission expires: 02-04-2012

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 5th day of December, 2011, a true and correct copy of the within and foregoing Document was served upon:

Douglas R. Nelson, Esq.
Brian Tucker, Esq.
ANDERSON NELSON HALL SMITH, P.A.
P. O. Box 51630
Idaho Falls, Idaho 83405-1630

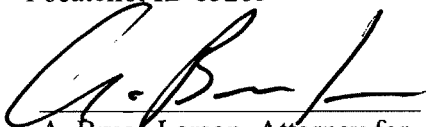
☐ U.S. Mail
☐ Facsimile: 208-523-7254
☒ Hand Delivery
☐ Overnight Delivery
☐ Email

Brent T. Robinson, Esq
ROBINSON & ASSOCIATES
Attorneys at Law
P. O. Box 396
Rupert, Idaho 83350

☒ U.S. Mail
☐ Facsimile: 208-436-6804
☐ Hand Delivery
☐ Overnight Delivery
☐ Email

Kirk Bybee
Office of the City Attorney
P.O. Box 4169
Pocatello, ID 83205

☒ U.S. Mail
☐ Facsimile: 208-239-6986
☐ Hand Delivery
☐ Overnight Delivery
☐ Email


A. Bruce Larson, Attorney for
Jefferson Enterprises, LLC

Revised 5-5-04 SEW

Form No. 1068-2
Plain Language Commitment

Commitment No.: 158156-P
Page 1 of 15



First American Title Company

2240 East Center, Pocatello, ID 83201
Phone (208)232-6224 - Fax (208)232-6257

Escrow Officer: **Sheila Garrett**
Title Officer: **Eric Polatis**

To: **Racine, Olson, Nye, Budge, and Bailey Chartered**
P.O. Box 1391
Pocatello, ID 83204

Order No.: **158156-P**

Attn: **Randy Budge**

Your Ref:

Re: Property Address: **NNA, Pocatello, ID 83201**

COMMITMENT FOR TITLE INSURANCE

Issued by

FIRST AMERICAN TITLE INSURANCE COMPANY

Agreement to Issue Policy

We agree to issue a policy to you according to the terms of this Commitment.

When we show the policy amount and your name as the proposed insured in Schedule A, this Commitment becomes effective as of the Commitment Date shown in Schedule A.

If the Requirements shown in this Commitment have not been met within six months after the Commitment Date, our obligation under this Commitment will end. Also, our obligation under this Commitment will end when the Policy is issued and then our obligation to you will be under the Policy.

Our obligation under this Commitment is limited by the following:

- The Provisions in Schedule A.
- The Requirements in Schedule B-1.
- The Exceptions in Schedule B-2.
- The Conditions.

This Commitment is not valid without Schedule A and Section 1 and 2 of Schedule B.

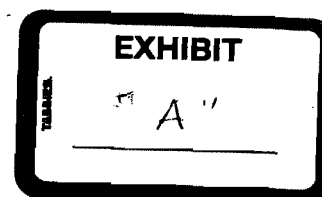
First American Title Insurance Company

By: *Gregory J. Kierstead* President

Attest: *Mark R. Anderson* Secretary
Countersigned
First American Title Company

Lawrence H. Hightower

547-7409
221-0688



**FIRST COMMITMENT
SCHEDULE A**

1. Commitment Date : **April 26, 2006 at 7:30 A.M.**

2. Policy or Policies to be issued:

	Policy Amount	Premium Amount
Owner's Policy		
Standard Owner's Policy (10/17/92) Form 1402-92	\$1,980,000.00	\$4,740.00
with applied credit of		\$ None
Proposed Insured as to Parcels 1, 2, & 3:		
Jefferson Enterprises, LLC		
Loan Policy		
Standard Loan Policy (10-17-92) Form 1056-92	\$2,800,000.00	\$1,715.00
with applied credit of		\$ None
Proposed Insured as to Parcels 1,2,3, & 4:		
Bank of Commerce, its successors and/or assigns as their respective interests may appear.		
Endorsements:		\$

3. A fee simple interest in the land described in this Commitment is owned, at the Commitment Date by:

Parcels 1 and 2
Michael R. Wood and Ruth A. Wood, husband and wife

Parcel 3
Black Cliffs Development, Inc.

Parcel 4
Southern Hills Development Company, LLC

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

The land referred to herein is described in the Legal Description attached hereto.

Commonly known as: **NNA Pocatello, ID 83201**

SCHEDULE B-SECTION ONE

REQUIREMENTS

The following requirements must be met:

- (a) Pay the agreed amounts for the interest in the land and/or the mortgage to be insured.
- (b) Pay us the premiums, fees and charges for the policy.
- (c) Documents satisfactory to us creating the interest in the land and/or the mortgage to be insured must be signed, delivered and recorded.
- (d) You must tell us in writing the name of anyone not referred to in this Commitment who will get an interest in the land or who will make a loan on the land. We may then make additional requirements and exceptions.
- (e) Release(s) or Reconveyance(s) of items(s) **23-26**.
- (f) With respect to Southern Hills Development Company an L.L.C. we require:
 - a. A copy of its operating agreement and any amendments,
 - b. A certificate of good standing of recent date issued by the secretary of state of the L.L.C.'s state of domicile,
 - c. That the forthcoming conveyance, encumbrance or other instrument executed by the L.L.C. upon which the Company is asked to rely, be executed in accordance with its operating agreement.
 - d. Other requirements which the Company may impose following its review of the material required herein and other information which the Company may require.
- (g) With respect to Black Cliffs Development a corporation, we require:
 - a. A certified copy of good standing of recent date issued by the secretary of state of the corporation's state of domicile.
 - b. A certified copy of a resolution of the board of directors authorizing the contemplated transaction and designating which corporate officers shall have the power to execute on behalf of the corporation.
 - c. Other requirements which the Company may impose following its review of the material required herein and other information which the Company may require.

SCHEDULE B -SECTION TWO

EXCEPTIONS

Any policy we issue will have the following exceptions unless they are taken care of to our satisfaction.

PART I:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
3. Easements, claims of easement or encumbrances which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (A) Unpatented mining claims; (B) Reservations or exceptions in patents or in Acts authorizing the issuance thereof; (C) Water rights, claims or title to water; whether or not the matters excepted under (A), (B) or (C) are shown by the public records.
6. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the public records.

7. 2006 taxes are an accruing lien, not yet due and payable until the fourth Monday in November of the current year. The first one-half is not delinquent until after December 20 of the current year, the second one-half is not delinquent until after June 20 of the following year. Taxes which may be assessed and entered on the property roll for 2006 with respect to new improvements and first occupancy, which may be included on the regular property, which are an accruing lien, not yet due and payable.

General taxes as set forth below. Any amounts not paid when due will accrue penalties and interest in addition to the amount stated herein:

Year	Original Amount	Amount Paid	Parcel Number	Covers
2005	R4013008300	\$534.14	\$534.14	Parcel 1
2005	R4013008201	\$75.42	\$75.42	Parcel 1
2005	R4013013901	\$482.22	\$482.22	Parcel 2
2005	R4013013802	\$19.84	\$19.84	Parcel 2
2005	R4013012600	\$108.04	\$108.04	Parcel 2
2005	R4013010802	\$60.88	\$60.88	Parcel 2
2005	R4013013300	\$79.06	\$79.06	Parcel 2
2005	R4013012700	\$308.92	\$308.92	Parcel 2
2005	R4013012902	\$249.84	\$249.84	Parcel 2
2005	RRSVE000100	\$2.50	\$2.50	Parcel 3
2005	RRSVE000200	\$1.90	\$1.90	Parcel 3
2005	RRSVE000300	\$1.90	\$1.90	Parcel 3
2005	RRSVE000400	\$1.68	\$1.68	Parcel 3
2005	RRSVE000500	\$4.74	\$4.74	Parcel 3
2005	RRSVE000600	\$2.20	\$2.20	Parcel 3
2005	RRSVE000700	\$1.80	\$1.80	Parcel 3
2005	RRSVE000800	\$1.68	\$1.68	Parcel 3
2005	RRSVE001000	\$1.90	\$1.90	Parcel 3
2005	RRSVE001100	\$1.90	\$1.90	Parcel 3
2005	RRSVE001200	\$1.90	\$1.90	Parcel 3
2005	RRSVE001300	\$2.02	\$2.02	Parcel 3
2005	RRSVE001400	\$2.02	\$2.02	Parcel 3
2005	RRSVE001500	\$2.02	\$2.02	Parcel 3
2005	RRSVE001600	\$2.02	\$2.02	Parcel 3
2005	RRSVE001700	\$2.02	\$2.02	Parcel 3
2005	RRSVE001800	\$2.02	\$2.02	Parcel 3
2005	RRSVE001900	\$1.68	\$1.68	Parcel 3
2005	RRSVE002000	\$1.68	\$1.68	Parcel 3
2005	RRSVE002100	\$3.20	\$3.20	Parcel 3
2005	RRSVE002200	\$3.08	\$3.08	Parcel 3
2005	RRSVE002300	\$1.90	\$1.90	Parcel 3
2005	RRSVE002400	\$1.90	\$1.90	Parcel 3
2005	RRSVE002700	\$2.02	\$2.02	Parcel 3
2005	RRSVE002800	\$2.02	\$2.02	Parcel 3
2005	RRSVE002900	\$2.02	\$2.02	Parcel 3
2005	RRSVE003000	\$2.02	\$2.02	Parcel 3
2005	RRSVE003100	\$1.90	\$1.90	Parcel 3
2005	RRSVE003200	\$1.90	\$1.90	Parcel 3
2005	RRSVE003300	\$1.90	\$1.90	Parcel 3
2005	RRSVE003400	\$1.90	\$1.90	Parcel 3
2005	RRSVE003500	\$1.90	\$1.90	Parcel 3
2005	RRSVE003600	\$1.90	\$1.90	Parcel 3
2005	RRSVE003700	\$1.90	\$1.90	Parcel 3

BOC 000900

2005	RRSVE003800	\$2.20	\$2.20	Parcel 3
2005	RRSVE003900	\$3.08	\$3.08	Parcel 3
2005	RRSVE004000	\$1.68	\$1.68	Parcel 3
2005	RRSVE004100	\$1.68	\$1.68	Parcel 3
2005	RRSVE004300	\$1.90	\$1.90	Parcel 3
2005	RRSVE004400	\$1.90	\$1.90	Parcel 3
2005	RRSVE004500	\$1.90	\$1.90	Parcel 3
2005	RRSVE004600	\$2.02	\$2.02	Parcel 3
2005	RRSVE004700	\$2.02	\$2.02	Parcel 3
2005	RRSVE004800	\$2.02	\$2.02	Parcel 3
2005	RRSVE004900	\$2.16	\$2.16	Parcel 3
2005	RRSVE005000	\$2.86	\$2.86	Parcel 3
2005	RRSVE005100	\$3.18	\$3.18	Parcel 3
2005	RRSVE005200	\$1.80	\$1.80	Parcel 3
2005	RRSVE005300	\$2.02	\$2.02	Parcel 3
2005	RRSVE005400	\$2.02	\$2.02	Parcel 3
2005	RRSVE005500	\$2.50	\$2.50	Parcel 3
2005	RRSVE005600	\$2.98	\$2.98	Parcel 3
2005	RRSVE005800	\$2.40	\$2.40	Parcel 3
2005	RRSVE006000	\$2.18	\$2.18	Parcel 3
2005	RRSVE006100	\$2.18	\$2.18	Parcel 3
2005	RRSVE006400	\$2.18	\$2.18	Parcel 3
2005	RRSVE006500	\$2.18	\$2.18	Parcel 3
2005	RRSVE006600	\$2.18	\$2.18	Parcel 3
2005	RRSVE006700	\$2.18	\$2.18	Parcel 3
2005	RRSVE006800	\$2.18	\$2.18	Parcel 3
2005	RRSVE007100	\$1.94	\$1.94	Parcel 3
2005	RRSVE007200	\$1.94	\$1.94	Parcel 3
2005	RRSVE007300	\$3.36	\$3.36	Parcel 3
2005	RRSVE007400	\$2.96	\$2.96	Parcel 3
2005	RRSVE007500	\$2.96	\$2.96	Parcel 3
2005	RRSVE007600	\$1.38	\$1.38	Parcel 3
2005	RRSVE007700	\$1.38	\$1.38	Parcel 3
2005	RRSVE007800	\$1.38	\$1.38	Parcel 3
2005	RRSVE007900	\$1.38	\$1.38	Parcel 3
2005	RRSVE008000	\$1.38	\$1.38	Parcel 3
2005	RRSVE008100	\$1.38	\$1.38	Parcel 3
2005	RRSVE008200	\$1.38	\$1.38	Parcel 3
2005	RRSVE008300	\$1.38	\$1.38	Parcel 3
2005	RRSVE008400	\$1.38	\$1.38	Parcel 3
2005	RRSVE008500	\$2.28	\$2.28	Parcel 3
2005	RRSVE008600	\$2.28	\$2.28	Parcel 3
2005	RRSVE008700	\$1.38	\$1.38	Parcel 3
2005	RRSVE008800	\$1.38	\$1.38	Parcel 3
2005	RRSVE008900	\$1.38	\$1.38	Parcel 3
2005	RRSVE009000	\$1.38	\$1.38	Parcel 3
2005	RRSVE009100	\$1.38	\$1.38	Parcel 3
2005	RRSVE009200	\$1.84	\$1.84	Parcel 3
2005	RRSVE009300	\$1.84	\$1.84	Parcel 3
2005	RRSVE009600	\$2.20	\$2.20	Parcel 3
2005	RRSVE009700	\$2.20	\$2.20	Parcel 3
2005	RRSVE009800	\$2.20	\$2.20	Parcel 3
2005	RRSVE009900	\$2.20	\$2.20	Parcel 3

2005	RRSVE010000	\$2.20	\$2.20	Parcel 3
2005	RRSVE010100	\$2.18	\$2.18	Parcel 3
2005	RRSVE010200	\$2.18	\$2.18	Parcel 3
2005	RRSVE010300	\$2.18	\$2.18	Parcel 3
2005	RRSVE010400	\$3.36	\$3.36	Parcel 3
2005	RRSVE010500	\$2.26	\$2.26	Parcel 3
2005	RRSVE010600	\$2.90	\$2.90	Parcel 3
2005	RRSVE010700	\$1.58	\$1.58	Parcel 3
2005	RRSVE010800	\$1.90	\$1.90	Parcel 3
2005	RRSVE010900	\$2.22	\$2.22	Parcel 3
2005	RRSVE011000	\$3.24	\$3.24	Parcel 3
2005	RRSVE011100	\$2.46	\$2.46	Parcel 3
2005	RRSVE011200	\$2.28	\$2.28	Parcel 3
2005	RRSVE011300	\$2.08	\$2.08	Parcel 3
2005	RRSVE011400	\$2.56	\$2.56	Parcel 3
2005	RRSVE011500	\$2.66	\$2.66	Parcel 3
2005	RRSVE011600	\$3.28	\$3.28	Parcel 3
2005	RRSVE011700	\$4.46	\$4.46	Parcel 3
2005	RRSVE011800	\$5.18	\$5.18	Parcel 3
2005	RRSVE011900	\$5.14	\$5.14	Parcel 3
2005	RRSVE012000	\$5.14	\$5.14	Parcel 3
2005	RRSVE012100	\$3.26	\$3.26	Parcel 3
2005	RRETY000100	\$69.78	\$34.89	Parcel 4
2005	RRETY001200	\$66.36	\$33.18	Parcel 4
2005	RRETY002200	\$23.42	\$11.71	Parcel 4
2005	RRETY002300	\$19.16	\$9.58	Parcel 4
2005	RRETY002400	\$24.00	\$12.00	Parcel 4
2005	RRETY002500	\$21.92	\$10.96	Parcel 4
2005	RRETY002600	\$27.40	\$13.70	Parcel 4
2005	RRETY002700	\$23.98	\$11.99	Parcel 4
2005	RRETY002800	\$16.44	\$8.22	Parcel 4
2005	RRETY002900	\$24.66	\$12.33	Parcel 4
2005	RRETY003000	\$60.26	\$30.13	Parcel 4
2005	RRETY003100	\$7.28	\$3.64	Parcel 4
2005	RRETY003200	\$6.10	\$3.05	Parcel 4
2005	RRETY003300	\$6.10	\$3.05	Parcel 4
2005	RRETY003400	\$6.10	\$3.05	Parcel 4
2005	RRETY003500	\$6.10	\$3.05	Parcel 4
2005	RRETY003600	\$6.10	\$3.05	Parcel 4
2005	RRETY003700	\$6.10	\$3.05	Parcel 4
2005	RRETY003800	\$6.10	\$3.05	Parcel 4
2005	RRETY003900	\$6.10	\$3.05	Parcel 4
2005	RRETY004000	\$6.10	\$3.05	Parcel 4
2005	RRETY004100	\$6.40	\$3.20	Parcel 4
2005	RRETY004200	\$65.06	\$32.53	Parcel 4
2005	RRETY004300	\$13.28	\$6.64	Parcel 4
2005	RRETY004400	\$46.84	\$23.42	Parcel 4
2005	RRETY004500	\$113.66	\$56.83	Parcel 4
2005	RRETY004600	\$91.74	\$45.87	Parcel 4
2005				

Homeowners Exemption is not in effect for 2005.
Circuit breaker is not in effect for 2005.

BOC 000903

8. Reservations in United States Patent.
9. Water rights, claims or title to water, whether or not the matters are shown by the public records.
10. Right, Title and Interest of the public in and to those portions of above described premises falling within the bounds of roads or highways.
11. Easement for POWER LINE granted to IDAHO POWER COMPANY, recorded MARCH 2, 1950 as Instrument No. 271368. AFFECTS PORTION IN PARCEL 2.
12. Easement for POWER LINES granted to IDAHO POWER COMPANY, recorded MARCH 4, 1976 as Instrument No. 550990.
13. Easement for Public Utilities and incidental purposes and ingress and egress granted to IDAHO POWER COMPANY, recorded July 5, 1961 as Instrument No. 370134.
14. EASEMENT Agreement upon the terms, conditions and provisions contained therein:
Parties: AMERICAN LAND TITLE COMPANY, INC, PAUL KATSILOMETES AND TOM KATSILOMETES
Recorded: APRIL 2, 1979, Instrument No. 621533 *Easement to cross corner of property.*
15. WATER SUPPLY Agreement upon the terms, conditions and provisions contained therein:
Parties: BLACK CLIFFS DEVELOPMENT, INC., C.A. PATTERSON AND LOIS E. PATTERSON AND DOUGLAS K. PATTERSON AND CHERYL S. PATTERSON
Recorded: MAY 22, 1992, Instrument No. 92007739
16. Provisions in RESOLUTION NO. 1998-10 recorded AUGUST 5, 1998 as Instrument No. 98015312.
City Built High School. Portion from City to help pay for Sewer.
17. All matters, covenants, conditions, restrictions, easements and any rights, interests or claims which may exist by reason thereof, disclosed by Record of Survey recorded DECEMBER 7, 1998, as instrument number 98024480, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c). AFFECTS SECTION 9, TOWNSHIP 7 SOUTH, RANGE 35 EAST, B.M.
18. All matters, covenants, conditions, restrictions, easements and any rights, interests or claims which may exist by reason thereof, disclosed by Record of Survey recorded DECEMBER 7, 1998, as instrument number 98024481, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c). AFFECTS SECTION 16, TOWNSHIP 7 SOUTH, RANGE 35 EAST, B.M.
19. All matters, covenants, conditions, restrictions, easements and any rights, interests or claims which may exist by reason thereof, disclosed by the recorded plat of said subdivision, recorded OCTOBER 16, 1961, as instrument number 373461, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c). AFFECTS PARCELS 3 & OTHER
20. Covenants, Conditions and Restrictions of SOUTH VALLEY VIEW ESTATES SUBDIVISION appearing of record, but omitting any covenant, condition or restriction based on race, color, religion, sex, handicap, familial status, or national origin to the extent that such covenants, conditions or restrictions violate 42 USC 3604(c).

21. Provisions in WARRANTY DEED recorded AUGUST 3, 1949 as Instrument No. 267035. *Reserved 5070*
Affects the E2 SW1/4 AND W2SE1/4 SECTION 9, TOWNSHIP 7 SOUTH, RANGE 35 EAST, B.M. 0.14
All property in South Valley View estate Mineral Rights
22. Provisions in WARRANTY DEED recorded JANUARY 19, 1970 as Instrument No. 466846. *Irrigation Pipe*
23. *Subordination?* Mortgage dated March 21, 2005, to secure an original indebtedness of \$633,767.00, and any other amounts and/or obligations secured thereby.
Recorded: March 23, 2005, as Instrument No. 20505311
Mortgagor: Southern Hills Development Co., LLC
Mortgagee: Eighty Acres, Inc.
(Covers Parcel 4)
24. Mortgage dated July 29, 2005, to secure an original indebtedness of \$177,012.00, and any other amounts and/or obligations secured thereby.
Recorded: August 1, 2005, as Instrument No. 20515638
Mortgagor: Southern Hills Development Company, LLC
Mortgagee: D.L. Evans Bank
(Covers Parcel 4)

Modification Agreement recorded September 20, 2005, as Instrument No. 20519877.

25. Deed of Trust dated July 29, 2005, to secure an original indebtedness of \$177,012.00, and any other amounts and/or obligations secured thereby
Recorded: August 1, 2005, as Instrument No. 20515639
Grantor: Southern Hills Development Company, LLC
Trustee: Northern Title Co. of Idaho
Beneficiary: D.L. Evans Bank
(Covers Parcel 4)

Modification Agreement recorded September 20, 2005, as Instrument No. 20519876.

- Mike Woods Contract?*
26. Unrecorded Contract of Sale as disclosed by Assignment, recorded August 1, 2005 as Instrument No. 20515640.

NOTE: The foregoing numbered exceptions (1-6) may be eliminated in an ALTA Extended or EAGLE Coverage Policy.

May Remorse
Payoff DL Evans?

Payoff Randy Budge for Mike Woods?

INFORMATIONAL NOTES

- A. Pursuant to the State of Idaho Insurance Regulations: A cancellation fee will be charged on all cancelled orders, unless notified to the contrary, all orders shall be cancelled and a billing sent within 6 months of the effective date on the commitment.

CONDITIONS

1. DEFINITIONS

(a) "Mortgage" means mortgage, deed of trust or other security instrument.

(b) "Public Records" means title records that give constructive notice of matters affecting the title according to the state law where the land is located.

2. LATER DEFECTS

The Exceptions in Schedule B - Section Two may be amended to show any defects, liens or encumbrances that appear for the first time in the public records or are created or attached between the Commitment Date and the date on which all of the Requirements (a) and (c) of Schedule B - Section One are met. We shall have no liability to you because of this amendment.

3. EXISTING DEFECTS

If any defects, liens or encumbrances existing at Commitment Date are not shown in Schedule B, we may amend Schedule B to show them. If we do amend Schedule B to show these defects, liens or encumbrances, we shall be liable to you according to Paragraph 4 below unless you knew of this information and did not tell us about it in writing.

4. LIMITATION OF OUR LIABILITY

Our only obligation is to issue to you the Policy referred to in this Commitment, when you have met its Requirements. If we have any liability to you for any loss you incur because of an error in this Commitment, our liability will be limited to your actual loss caused by your relying on this Commitment when you acted in good faith to:

comply with the Requirements shown in Schedule B - Section One

or

eliminate with our written consent any Exceptions shown in Schedule B - Section Two.

We shall not be liable for more than the Policy Amount shown in Schedule A of this Commitment and our liability is subject to the terms of the Policy form to be issued to you.

5. CLAIMS MUST BE BASED ON THIS COMMITMENT

Any claim, whether or not based on negligence, which you may have against us concerning the title to the land must be based on this commitment and is subject to its terms.

Exhibit "A"

Real property in the County of Bannock, State of Idaho, described as follows:

PARCEL 1:

A TRACT OF LAND IN THE SOUTH HALF OF SECTION 9, TOWNSHIP 7 SOUTH, RANGE 35 EAST, BOISE MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTH QUARTER CORNER OF SECTION 9, TOWNSHIP 7 SOUTH, RANGE 35 EAST, BOISE MERIDIAN, THE SAME BEING THE SOUTHEAST CORNER OF SOUTH VALLEY VIEW ESTATES, A SUBDIVISION RECORDED IN THE RECORDS OF BANNOCK COUNTY AS INSTRUMENT 373461; THENCE NORTH 00°15'43" EAST FOR A DISTANCE OF 1320.91 FEET TO A FOUND 3/4 INCH DIAMETER IRON PIN ACCEPTED AS THE NORTHEAST CORNER OF SOUTH VALLEY VIEW ESTATES, THENCE NORTH 89°50'47" WEST ALONG THE NORTH BOUNDARY LINE OF SOUTH VALLEY VIEW ESTATES FOR A DISTANCE OF 659.93 FEET; THENCE NORTH 00°06'14" EAST ALONG THE WEST BOUNDARY LINE OF THE EAST HALF OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 9 FOR A DISTANCE OF 1315.23 FEET TO A POINT ON THE LATITUDINAL CENTERLINE OF SECTION 9; THENCE SOUTH 88°55'17" EAST ALONG THE LATITUDINAL CENTERLINE OF SECTION 9 FOR A DISTANCE OF 1976.72 FEET TO THE EAST 1/16TH CORNER ON SAID CENTERLINE; THENCE SOUTH 00°05'41" WEST FOR A DISTANCE OF 2638.63 FEET TO THE EAST 1/16TH CORNER ON THE SOUTH LINE OF SECTION 9; THENCE NORTH 88°51'13" WEST FOR A DISTANCE OF 1320.88 FEET TO THE POINT OF BEGINNING.

PARCEL 2:

A TRACT OF LAND IN THE NORTH HALF OF THE NORTHWEST QUARTER, THE NORTHEAST QUARTER AND THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 16, TOWNSHIP 7 SOUTH, RANGE 35 EAST BOISE MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SECTION 16, TOWNSHIP 7 SOUTH, RANGE 35 EAST, BOISE MERIDIAN, THENCE SOUTH 88°50' 35" EAST ALONG THE NORTH LINE OF SECTION 16 FOR A DISTANCE OF 800.00 FEET TO THE NORTHEAST CORNER OF PIEDMONT ACRES, A SUBDIVISION RECORDED IN THE RECORDS OF BANNOCK COUNTY AS INSTRUMENT 601980; THENCE SOUTH 00°46'58" WEST ALONG THE EAST SIDE OF PIEDMONT ACRES FOR A DISTANCE OF 25.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE SOUTH 88°50'35" EAST ALONG THE SOUTH RIGHT OF WAY LINE OF PIEDMONT ROAD FOR A DISTANCE OF 519.31 FEET TO THE WEST 1/16TH LINE OF SECTION, THENCE NORTH 00°37'47" EAST FOR A DISTANCE OF 25.00 FEET TO THE WEST 1/16TH CORNER ON THE NORTH LINE OF SECTION 16, THENCE SOUTH 88°50'35" EAST FOR A DISTANCE OF 1319.24 FEET TO THE NORTH QUARTER CORNER OF SECTION 16, THENCE SOUTH 88°51'13" EAST FOR A DISTANCE OF 2641.77 FEET TO THE NORTHEAST CORNER OF SECTION 16, THENCE SOUTH 00°32'19" WEST ALONG THE EAST LINE OF SECTION 16 FOR A DISTANCE OF 2091.20 FEET TO THE NORTHEAST CORNER OF THE LAND DESCRIBED IN INSTRUMENT 788114; THENCE NORTH 89°20'56" WEST FOR A DISTANCE OF 1046.00 FEET TO THE NORTHWEST CORNER OF THE SAID LAND; THENCE SOUTH 00°32'19" WEST FOR A DISTANCE OF 500.00 FEET TO THE SOUTHWEST CORNER OF THE SAID LAND; THENCE SOUTH 89°20'56" EAST ALONG THE SOUTH LINE OF SAID LAND, THE SAME BEING THE LATITUDINAL CENTERLINE OF SECTION 16 FOR A DISTANCE OF 56.81 FEET; THENCE SOUTH 00°33'48" WEST FOR A DISTANCE OF 528.00 FEET; THENCE NORTH 89°20'55" WEST FOR A DISTANCE OF 329.11 FEET TO A POINT ON THE EAST 1/16TH LINE OF SECTION 16; THENCE NORTH 00°29'48" EAST FOR A DISTANCE OF 528.00 FEET TO THE EAST 1/16TH CORNER ON THE LATITUDINAL CENTERLINE OF SECTION 16; THENCE NORTH 89°20'56" WEST ALONG THE SAID LATITUDINAL CENTERLINE FOR A DISTANCE OF 1023.90 FEET TO THE SOUTHEAST CORNER OF THE LAND DESCRIBED IN INSTRUMENT 93021655; THENCE NORTH 00°27'19" EAST FOR A DISTANCE OF 320.00 FEET TO THE NORTHEAST CORNER OF THE LAND DESCRIBED IN INSTRUMENT 93021655; THENCE NORTH 89°20'56" WEST FOR A

DISTANCE OF 295.00 FEET TO THE NORTHWEST CORNER OF THE SAID LAND; THENCE NORTH 00°27'19" EAST ALONG THE MERIDIONAL CENTERLINE OF SECTION 16 FOR A DISTANCE OF 1236.51 FEET TO A POINT IS MARKED WITH A FOUND 1/2 INCH DIAMETER IRON PIN ACCEPTED AS THE NORTHEAST CORNER OF THE LAND DESCRIBED IN INSTRUMENT 473513; THENCE FOLLOWING THE BOUNDARY LINES OF THE LAND DESCRIBED IN INSTRUMENT 621688 FOR THE NEXT FIVE (5) COURSES: (1) SOUTH 89°06'35" EAST FOR A DISTANCE OF 260.00 FEET; THENCE (2) NORTH 14°06'45" EAST FOR A DISTANCE OF 140.00 FEET; THENCE (3) NORTH 41°32'41" EAST FOR A DISTANCE OF 450.00 FEET; THENCE (4) NORTH 41°17'29" WEST FOR A DISTANCE OF 180.00 FEET; THENCE (5) SOUTH 48°42'31" WEST FOR A DISTANCE OF 907.24 FEET TO A POINT ON THE NORTH BOUNDARY LINE OF THE LAND DESCRIBED IN INSTRUMENT 473513; THENCE NORTH 88°35'51" WEST ALONG THE SAID NORTH BOUNDARY LINE FOR A DISTANCE OF 490.35 FEET TO A POINT IS MARKED WITH A FOUND 1/2 INCH DIAMETER IRON PIN ACCEPTED AS THE NORTHWEST CORNER OF THE LAND DESCRIBED IN INSTRUMENT 473513; THENCE NORTH 00°37'47" EAST ALONG THE EAST BOUNDARY LINE OF THE LAND DESCRIBED IN INSTRUMENT 675569 FOR A DISTANCE OF 435.85 FEET; THENCE NORTH 88°37'03" WEST FOR A DISTANCE OF 264.18 FEET; THENCE NORTH 00°37'47" EAST FOR A DISTANCE OF 66.00 FEET; THENCE NORTH 88°37'03" WEST FOR A DISTANCE OF 360.03 FEET TO A POINT ON THE WEST 1/16TH LINE OF SECTION 16, SAID POINT IS MARKED WITH A FOUND 1/2 INCH DIAMETER IRON PIN ACCEPTED AS THE NORTHWEST CORNER OF THE LAND DESCRIBED IN INSTRUMENT 95003247; THENCE SOUTH 00°37'47" WEST ALONG THE WEST 1/16TH LINE FOR A DISTANCE OF 302.77 FEET; THENCE NORTH 88°37'03" WEST FOR A DISTANCE OF 790.30 FEET; THENCE SOUTH 00°37'47" WEST FOR A DISTANCE OF 423.23 FEET TO A POINT ON THE NORTH RIGHT OF WAY LINE OF KATSILOMETES ROAD; THENCE NORTH 88°37'03" WEST ALONG THE NORTH RIGHT OF WAY LINE OF KATSILOMETES ROAD FOR A DISTANCE OF 193.21 FEET TO A POINT ON A CURVE IN THE EAST RIGHT OF WAY LINE OF OLD US HIGHWAY 30; THENCE NORTHWESTERLY ALONG THE SAID RIGHT OF WAY LINE, FOLLOWING A 5769.58 FOOT RADIUS CURVE, CONCAVE TO THE SOUTHWEST, THROUGH A CENTRAL ANGLE OF 05°02'19" AND AN ARC DISTANCE OF 507.38 FEET TO A POINT ON THE WEST LINE OF SECTION 16, THE CHORD OF THE AFORE DESCRIBED CURVE BEARS NORTH 41°10'59" WEST A DISTANCE OF 507.21 FEET; THENCE NORTH 00°46'58" EAST ALONG THE SAID WEST LINE FOR A DISTANCE OF 218.97 FEET TO THE SOUTHWEST CORNER OF PIEDMONT ACRES; THENCE SOUTH 88°50'35" EAST FOR A DISTANCE OF 800.00 FEET TO THE SOUTHEAST CORNER OF PIEDMONT ACRES; THENCE NORTH 00°46'58" EAST ALONG THE EAST BOUNDARY LINE OF PIEDMONT ACRES FOR A DISTANCE OF 653.40 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM:

A PARCEL OF LAND IN THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 16, TOWNSHIP 7 SOUTH, RANGE 35 EAST, BOISE MERIDIAN, BEING THAT PARCEL OF LAND DESCRIBED IN INSTRUMENT 634749 OF THE RECORDS OF BANNOCK COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER QUARTER CORNER OF SECTION 16, TOWNSHIP 7 SOUTH, RANGE 35 EAST, BOISE MERIDIAN; THENCE SOUTH 89°20' 56" EAST ALONG THE LATITUDINAL CENTERLINE OF SECTION 16 FOR A DISTANCE OF 294.26 FEET; THENCE NORTH 53°40'56" EAST FOR A DISTANCE OF 459.93 FEET; THENCE NORTH 48°49'49" WEST 50.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING NORTH 48°49'49" WEST FOR A DISTANCE OF 208.71 FEET; THENCE SOUTH 53°40'56" WEST FOR A DISTANCE OF 213.80 FEET; THENCE SOUTH 48°49'49" EAST FOR A DISTANCE OF 208.71 FEET; THENCE NORTH 53°40'56" EAST FOR A DISTANCE OF 213.80 FEET TO THE POINT OF BEGINNING.

PARCEL 3:

LOT 1, BLOCK 1; LOTS 1 THROUGH 7 AND 9 THROUGH 11, BLOCK 2, LOTS 1 THROUGH 12 AND 15 THROUGH 18, BLOCK 3; LOTS 1 THROUGH 11 AND 13 THROUGH 15, BLOCK 4; LOTS 1 THROUGH 9, BLOCK 5; LOTS 1 AND 2, BLOCK 6; LOTS 1, 3, 4, 7 THROUGH 11 AND 14 THROUGH 36, BLOCK 7; LOTS 2 THROUGH 20, BLOCK 8; LOTS 1 THROUGH 7, BLOCK 9, ALL LOCATED IN SOUTH VALLEY VIEW ESTATES SUBDIVISION, BANNOCK COUNTY, IDAHO, AS THE SAME APPEARS ON THE OFFICIAL PLAT THEREOF, RECORDED OCTOBER 16, 1961 AS INSTRUMENT NO. 373461.

PARCEL 4:

LOT ALL, BLOCK ALL, EIGHTY ACRES, INC. SUBDIVISION, BANNOCK COUNTY, IDAHO, AS THE SAME APPEARS ON THE OFFICIAL PLAT THEREOF, RECORDED FEBRUARY 28, 1950 AS INSTRUMENT NO. 271259.

EXCEPTING THEREFROM:

LOTS 1, 2, 3, 4, 5, 6, 7, 8, 9, AND 10, BLOCK 2 AND LOTS 1, 2, 3, 4, 5, 6, 7, 8, AND 9, BLOCK 3, EIGHTY ACRES, INC. SUBDIVISION, BANNOCK COUNTY, IDAHO, AS THE SAME APPEARS ON THE OFFICIAL PLAT THEREOF, RECORDED FEBRUARY 28, 1950 AS INSTRUMENT NO. 271259.



First American Title Company

2240 East Center, Pocatello, ID 83201
Phone (208)232-6224 - Fax (208)232-6257

PRIVACY POLICY

We Are Committed to Safeguarding Customer Information

In order to better serve your needs now and in the future, we may ask you to provide us with certain information. We understand that you may be concerned about what we will do with such information – particularly any personal or financial information. We agree that you have a right to know how we will utilize the personal information you provide to us. Therefore, together with our parent company, The First American Corporation, we have adopted this Privacy Policy to govern the use and handling of your personal information.

Applicability

This Privacy Policy governs our use of the information which you provide to us. It does not govern the manner in which we may use information we have obtained from any other source, such as information obtained from a public record or from another person or entity. First American has also adopted broader guidelines that govern our use of personal information regardless of its source. First American calls these guidelines its *Fair Information Values*, a copy of which can be found on our website at www.firstam.com.

Types of Information

Depending upon which of our services you are utilizing, the types of nonpublic personal information that we may collect include:

- Information we receive from you on applications, forms and in other communications to us, whether in writing, in person, by telephone or any other means;
- Information about your transactions with us, our affiliated companies, or others; and
- Information we receive from a consumer reporting agency.

Use of Information

We request information from you for our own legitimate business purposes and not for the benefit of any nonaffiliated party. Therefore, we will not release your information to nonaffiliated parties except: (1) as necessary for us to provide the product or service you have requested of us; or (2) as permitted by law. We may, however, store such information indefinitely, including the period after which any customer relationship has ceased. Such information may be used for any internal purpose, such as quality control efforts or customer analysis. We may also provide all of the types of nonpublic personal information listed above to one or more of our affiliated companies. Such affiliated companies include financial service providers, such as title insurers, property and casualty insurers, and trust and investment advisory companies, or companies involved in real estate services, such as appraisal companies, home warranty companies, and escrow companies. Furthermore, we may also provide all the information we collect, as described above, to companies that perform marketing services on our behalf, on behalf of our affiliated companies, or to other financial institutions with whom we or our affiliated companies have joint marketing agreements.

Former Customers

Even if you are no longer our customer, our Privacy Policy will continue to apply to you.

Confidentiality and Security

We will use our best efforts to ensure that no unauthorized parties have access to any of your information. We restrict access to nonpublic personal information about you to those individuals and entities who need to know that information to provide products or services to you. We will use our best efforts to train and oversee our employees and agents to ensure that your information will be handled responsibly and in accordance with this Privacy Policy and First American's *Fair Information Values*. We currently maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

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BOC 000915

**SECOND COMMITMENT
SCHEDULE A**

1. Commitment Date : **April 26, 2006 at 7:30 A.M.**

2. Policy or Policies to be Issued:

Policy Amount Premium Amount

Owner's Policy

Standard Owner's Policy (10/17/92) Form 1402-92

\$ 2,100,000.00

\$ 4,980.00

with applied credit of

\$ None

Proposed Insured as to Parcels 1, 2, & 3:

Jefferson Enterprises, LLC

Dustin Morrison
Sauja

Loan Policy

Standard Loan Policy (10-17-92) Form 1056-92

2,200,000
\$ 2,800,800.00

\$ 1,475.00

with applied credit of

\$ None

Proposed Insured as to Parcels 1, 2, 3, & 4:

Bank of Commerce, its successors and/or assigns as their respective interests may appear.

Endorsements:

\$

3. A fee simple interest in the land described in this Commitment is owned, at the Commitment Date by:

Parcels 1 and 2

Michael R. Wood and Ruth A. Wood, husband and wife

Parcel 3

Black Cliffs Development, Inc.

Parcel 4

Southern Hills Development Company, LLC

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

The land referred to herein is described in the Legal Description attached hereto.

Commonly known as: **NNA Pocatello, ID 83201**

EXHIBIT

"B"

SCHEDULE B-SECTION ONE**REQUIREMENTS**

The following requirements must be met:

- (a) Pay the agreed amounts for the interest in the land and/or the mortgage to be insured.
- (b) Pay us the premiums, fees and charges for the policy.
- (c) Documents satisfactory to us creating the interest in the land and/or the mortgage to be insured must be signed, delivered and recorded.
- (d) You must tell us in writing the name of anyone not referred to in this Commitment who will get an interest in the land or who will make a loan on the land. We may then make additional requirements and exceptions.
- (e) Release(s) or Reconveyance(s) of items(s) **22-24**.
- (f) With respect to Southern Hills Development Company an L.L.C. we require:
 - a. A copy of its operating agreement and any amendments,
 - b. A certificate of good standing of recent date issued by the secretary of state of the L.L.C.'s state of domicile,
 - c. That the forthcoming conveyance, encumbrance or other instrument executed by the L.L.C. upon which the Company is asked to rely, be executed in accordance with its operating agreement.
 - d. Other requirements which the Company may impose following its review of the material required herein and other information which the Company may require.
- (g) With respect to Black Cliffs Development a corporation, we require:
 - a. A certified copy of good standing of recent date issued by the secretary of state of the corporation's state of domicile.
 - b. A certified copy of a resolution of the board of directors authorizing the contemplated transaction and designating which corporate officers shall have the power to execute on behalf of the corporation.
 - c. Other requirements which the Company may impose following its review of the material required herein and other information which the Company may require.

SCHEDULE B - SECTION TWO**EXCEPTIONS**

Any policy we issue will have the following exceptions unless they are taken care of to our satisfaction.

PART I:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
3. Easements, claims of easement or encumbrances which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (A) Unpatented mining claims; (B) Reservations or exceptions in patents or in Acts authorizing the issuance thereof; (C) Water rights, claims or title to water; whether or not the matters excepted under (A), (B) or (C) are shown by the public records.
6. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the public records.

7.

2006 taxes are an accruing lien, not yet due and payable until the fourth Monday in November of the current year. The first one-half is not delinquent until after December 20 of the current year, the second one-half is not delinquent until after June 20 of the following year. Taxes which may be assessed and entered on the property roll for 2006 with respect to new improvements and first occupancy, which may be included on the regular property, which are an accruing lien, not yet due and payable.

General taxes as set forth below. Any amounts not paid when due will accrue penalties and interest in addition to the amount stated herein:

Year	Original Amount	Amount Paid	Parcel Number	Covers
2005	R4013008300	\$534.14	\$534.14	Parcel 1
2005	R4013008201	\$75.42	\$75.42	Parcel 1
2005	R4013013901	\$482.22	\$482.22	Parcel 2
2005	R4013013802	\$19.84	\$19.84	Parcel 2
2005	R4013012600	\$108.04	\$108.04	Parcel 2
2005	R4013010802	\$60.88	\$60.88	Parcel 2
2005	R4013013300	\$79.06	\$79.06	Parcel 2
2005	R4013012700	\$308.92	\$308.92	Parcel 2
2005	R4013012902	\$249.84	\$249.84	Parcel 2
2005	RRSVE000100	\$2.50	\$2.50	Parcel 3
2005	RRSVE000200	\$1.90	\$1.90	Parcel 3
2005	RRSVE000300	\$1.90	\$1.90	Parcel 3
2005	RRSVE000400	\$1.68	\$1.68	Parcel 3
2005	RRSVE000500	\$4.74	\$4.74	Parcel 3
2005	RRSVE000600	\$2.20	\$2.20	Parcel 3
2005	RRSVE000700	\$1.80	\$1.80	Parcel 3
2005	RRSVE000800	\$1.68	\$1.68	Parcel 3
2005	RRSVE001000	\$1.90	\$1.90	Parcel 3
2005	RRSVE001100	\$1.90	\$1.90	Parcel 3
2005	RRSVE001200	\$1.90	\$1.90	Parcel 3
2005	RRSVE001300	\$2.02	\$2.02	Parcel 3
2005	RRSVE001400	\$2.02	\$2.02	Parcel 3
2005	RRSVE001500	\$2.02	\$2.02	Parcel 3
2005	RRSVE001600	\$2.02	\$2.02	Parcel 3
2005	RRSVE001700	\$2.02	\$2.02	Parcel 3
2005	RRSVE001800	\$2.02	\$2.02	Parcel 3
2005	RRSVE001900	\$1.68	\$1.68	Parcel 3
2005	RRSVE002000	\$1.68	\$1.68	Parcel 3
2005	RRSVE002100	\$3.20	\$3.20	Parcel 3
2005	RRSVE002200	\$3.08	\$3.08	Parcel 3
2005	RRSVE002300	\$1.90	\$1.90	Parcel 3
2005	RRSVE002400	\$1.90	\$1.90	Parcel 3
2005	RRSVE002700	\$2.02	\$2.02	Parcel 3
2005	RRSVE002800	\$2.02	\$2.02	Parcel 3
2005	RRSVE002900	\$2.02	\$2.02	Parcel 3
2005	RRSVE003000	\$2.02	\$2.02	Parcel 3
2005	RRSVE003100	\$1.90	\$1.90	Parcel 3
2005	RRSVE003200	\$1.90	\$1.90	Parcel 3
2005	RRSVE003300	\$1.90	\$1.90	Parcel 3
2005	RRSVE003400	\$1.90	\$1.90	Parcel 3
2005	RRSVE003500	\$1.90	\$1.90	Parcel 3
2005	RRSVE003600	\$1.90	\$1.90	Parcel 3
2005	RRSVE003700	\$1.90	\$1.90	Parcel 3

2005	RRSVE003800	\$2.20	\$2.20	Parcel 3
2005	RRSVE003900	\$3.08	\$3.08	Parcel 3
2005	RRSVE004000	\$1.68	\$1.68	Parcel 3
2005	RRSVE004100	\$1.68	\$1.68	Parcel 3
2005	RRSVE004300	\$1.90	\$1.90	Parcel 3
2005	RRSVE004400	\$1.90	\$1.90	Parcel 3
2005	RRSVE004500	\$1.90	\$1.90	Parcel 3
2005	RRSVE004600	\$2.02	\$2.02	Parcel 3
2005	RRSVE004700	\$2.02	\$2.02	Parcel 3
2005	RRSVE004800	\$2.02	\$2.02	Parcel 3
2005	RRSVE004900	\$2.16	\$2.16	Parcel 3
2005	RRSVE005000	\$2.86	\$2.86	Parcel 3
2005	RRSVE005100	\$3.18	\$3.18	Parcel 3
2005	RRSVE005200	\$1.80	\$1.80	Parcel 3
2005	RRSVE005300	\$2.02	\$2.02	Parcel 3
2005	RRSVE005400	\$2.02	\$2.02	Parcel 3
2005	RRSVE005500	\$2.50	\$2.50	Parcel 3
2005	RRSVE005600	\$2.98	\$2.98	Parcel 3
2005	RRSVE005800	\$2.40	\$2.40	Parcel 3
2005	RRSVE006000	\$2.18	\$2.18	Parcel 3
2005	RRSVE006100	\$2.18	\$2.18	Parcel 3
2005	RRSVE006400	\$2.18	\$2.18	Parcel 3
2005	RRSVE006500	\$2.18	\$2.18	Parcel 3
2005	RRSVE006600	\$2.18	\$2.18	Parcel 3
2005	RRSVE006700	\$2.18	\$2.18	Parcel 3
2005	RRSVE006800	\$2.18	\$2.18	Parcel 3
2005	RRSVE007100	\$1.94	\$1.94	Parcel 3
2005	RRSVE007200	\$1.94	\$1.94	Parcel 3
2005	RRSVE007300	\$3.36	\$3.36	Parcel 3
2005	RRSVE007400	\$2.96	\$2.96	Parcel 3
2005	RRSVE007500	\$2.96	\$2.96	Parcel 3
2005	RRSVE007600	\$1.38	\$1.38	Parcel 3
2005	RRSVE007700	\$1.38	\$1.38	Parcel 3
2005	RRSVE007800	\$1.38	\$1.38	Parcel 3
2005	RRSVE007900	\$1.38	\$1.38	Parcel 3
2005	RRSVE008000	\$1.38	\$1.38	Parcel 3
2005	RRSVE008100	\$1.38	\$1.38	Parcel 3
2005	RRSVE008200	\$1.38	\$1.38	Parcel 3
2005	RRSVE008300	\$1.38	\$1.38	Parcel 3
2005	RRSVE008400	\$1.38	\$1.38	Parcel 3
2005	RRSVE008500	\$2.28	\$2.28	Parcel 3
2005	RRSVE008600	\$2.28	\$2.28	Parcel 3
2005	RRSVE008700	\$1.38	\$1.38	Parcel 3
2005	RRSVE008800	\$1.38	\$1.38	Parcel 3
2005	RRSVE008900	\$1.38	\$1.38	Parcel 3
2005	RRSVE009000	\$1.38	\$1.38	Parcel 3
2005	RRSVE009100	\$1.38	\$1.38	Parcel 3
2005	RRSVE009200	\$1.84	\$1.84	Parcel 3
2005	RRSVE009300	\$1.84	\$1.84	Parcel 3
2005	RRSVE009600	\$2.20	\$2.20	Parcel 3
2005	RRSVE009700	\$2.20	\$2.20	Parcel 3
2005	RRSVE009800	\$2.20	\$2.20	Parcel 3
2005	RRSVE009900	\$2.20	\$2.20	Parcel 3

2005	RRSVE010000	\$2.20	\$2.20	Parcel 3
2005	RRSVE010100	\$2.18	\$2.18	Parcel 3
2005	RRSVE010200	\$2.18	\$2.18	Parcel 3
2005	RRSVE010300	\$2.18	\$2.18	Parcel 3
2005	RRSVE010400	\$3.36	\$3.36	Parcel 3
2005	RRSVE010500	\$2.26	\$2.26	Parcel 3
2005	RRSVE010600	\$2.90	\$2.90	Parcel 3
2005	RRSVE010700	\$1.58	\$1.58	Parcel 3
2005	RRSVE010800	\$1.90	\$1.90	Parcel 3
2005	RRSVE010900	\$2.22	\$2.22	Parcel 3
2005	RRSVE011000	\$3.24	\$3.24	Parcel 3
2005	RRSVE011100	\$2.46	\$2.46	Parcel 3
2005	RRSVE011200	\$2.28	\$2.28	Parcel 3
2005	RRSVE011300	\$2.08	\$2.08	Parcel 3
2005	RRSVE011400	\$2.56	\$2.56	Parcel 3
2005	RRSVE011500	\$2.66	\$2.66	Parcel 3
2005	RRSVE011600	\$3.28	\$3.28	Parcel 3
2005	RRSVE011700	\$4.46	\$4.46	Parcel 3
2005	RRSVE011800	\$5.18	\$5.18	Parcel 3
2005	RRSVE011900	\$5.14	\$5.14	Parcel 3
2005	RRSVE012000	\$5.14	\$5.14	Parcel 3
2005	RRSVE012100	\$3.26	\$3.26	Parcel 3
2005	RRETY000100	\$69.78	\$34.89	Parcel 4
2005	RRETY001200	\$66.36	\$33.18	Parcel 4
2005	RRETY002200	\$23.42	\$11.71	Parcel 4
2005	RRETY002300	\$19.16	\$9.58	Parcel 4
2005	RRETY002400	\$24.00	\$12.00	Parcel 4
2005	RRETY002500	\$21.92	\$10.96	Parcel 4
2005	RRETY002600	\$27.40	\$13.70	Parcel 4
2005	RRETY002700	\$23.98	\$11.99	Parcel 4
2005	RRETY002800	\$16.44	\$8.22	Parcel 4
2005	RRETY002900	\$24.66	\$12.33	Parcel 4
2005	RRETY003000	\$60.26	\$30.13	Parcel 4
2005	RRETY003100	\$7.28	\$3.64	Parcel 4
2005	RRETY003200	\$6.10	\$3.05	Parcel 4
2005	RRETY003300	\$6.10	\$3.05	Parcel 4
2005	RRETY003400	\$6.10	\$3.05	Parcel 4
2005	RRETY003500	\$6.10	\$3.05	Parcel 4
2005	RRETY003600	\$6.10	\$3.05	Parcel 4
2005	RRETY003700	\$6.10	\$3.05	Parcel 4
2005	RRETY003800	\$6.10	\$3.05	Parcel 4
2005	RRETY003900	\$6.10	\$3.05	Parcel 4
2005	RRETY004000	\$6.10	\$3.05	Parcel 4
2005	RRETY004100	\$6.40	\$3.20	Parcel 4
2005	RRETY004200	\$65.06	\$32.53	Parcel 4
2005	RRETY004300	\$13.28	\$6.64	Parcel 4
2005	RRETY004400	\$46.84	\$23.42	Parcel 4
2005	RRETY004500	\$113.66	\$56.83	Parcel 4
2005	RRETY004600	\$91.74	\$45.87	Parcel 4
2005				

Homeowners Exemption is not in effect for 2005.
Circuit breaker is not in effect for 2005.

8. Reservations In United States Patent.

9. Water rights, claims or title to water, whether or not the matters are shown by the public records.

10. Right, Title and Interest of the public in and to those portions of above described premises falling within the bounds of roads or highways.

11. Easement for POWER LINE granted to IDAHO POWER COMPANY, recorded MARCH 2, 1950 as Instrument No. 271368. AFFECTS PORTION IN PARCEL 2.

12. Easement for POWER LINES granted to IDAHO POWER COMPANY, recorded MARCH 4, 1976 as Instrument No. 550990.

13. Easement for Public Utilities and incidental purposes and ingress and egress granted to IDAHO POWER COMPANY, recorded July 5, 1961 as Instrument No. 370134.

14. EASEMENT Agreement upon the terms, conditions and provisions contained therein:
Parties: AMERICAN LAND TITLE COMPANY, INC, PAUL KATSILOMETES AND TOM KATSILOMETES
Recorded: APRIL 2, 1979, Instrument No. 621533

Small Easement roadway for access (right of way)

15. WATER SUPPLY Agreement upon the terms, conditions and provisions contained therein:
Parties: BLACK CLIFFS DEVELOPMENT, INC., C.A. PATTERSON AND LOIS E. PATTERSON AND DOUGLAS K. PATTERSON AND CHERYL S. PATTERSON
Recorded: MAY 22, 1992, Instrument No. 92007739

All matters, covenants, conditions, restrictions, easements and any rights, interests or claims which may exist by reason thereof, disclosed by Record of Survey recorded DECEMBER 7, 1998, as instrument number 98024480, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c). AFFECTS SECTION 9, TOWNSHIP 7 SOUTH, RANGE 35 EAST, B.M.

All matters, covenants, conditions, restrictions, easements and any rights, interests or claims which may exist by reason thereof, disclosed by Record of Survey recorded DECEMBER 7, 1998, as instrument number 98024481, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c). AFFECTS SECTION 15, TOWNSHIP 7 SOUTH, RANGE 35 EAST, B.M.

All matters, covenants, conditions, restrictions, easements and any rights, interests or claims which may exist by reason thereof, disclosed by the recorded plat of said subdivision, recorded OCTOBER 16, 1961, as Instrument number 373461, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c). AFFECTS PARCELS 3 & OTHER

Covenants, Conditions and Restrictions of SOUTH VALLEY VIEW ESTATES SUBDIVISION appearing of record, but omitting any covenant, condition or restriction based on race, color, religion, sex, handicap, familial status, or national origin to the extent that such covenants, conditions or restrictions violate 42 USC 3604(c).

Provisions in WARRANTY DEED recorded AUGUST 3, 1949 as Instrument No. 267035. Affects the E2 SW1/4 AND W2SE1/4 SECTION 9, TOWNSHIP 7 SOUTH, RANGE 35 EAST, B.M.

50% mineral - oil

MAY. 9. 2006 11:43AM

T AMERICAN TITLE

Form No. 1068-2

Plain Language Commitment

NO. 798 P. 9

Commitment No.: 158156-P

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21.

Provisions in WARRANTY DEED recorded JANUARY 19, 1970 as Instrument No. 466846.

22.

Mortgage dated March 21, 2005, to secure an original indebtedness of \$633,767.00, and any other amounts and/or obligations secured thereby.

Recorded: March 23, 2005, as Instrument No. 20505311

Mortgagor: Southern Hills Development Co., LLC

Mortgagee: Eighty Acres, Inc.

(Covers Parcel 4)

23.

Mortgage dated July 29, 2005, to secure an original indebtedness of \$177,012.00, and any other amounts and/or obligations secured thereby.

Recorded: August 1, 2005, as Instrument No. 20515638

Mortgagor: Southern Hills Development Company, LLC

Mortgagee: D.L. Evans Bank

(Covers Parcel 4)

Modification Agreement recorded September 20, 2005, as Instrument No. 20519877.

24.

Deed of Trust dated July 29, 2005, to secure an original indebtedness of \$177,012.00, and any other amounts and/or obligations secured thereby

Recorded: August 1, 2005, as Instrument No. 20515639

Grantor: Southern Hills Development Company, LLC

Trustee: Northern Title Co. of Idaho

Beneficiary: D.L. Evans Bank

(Covers Parcel 4)

Modification Agreement recorded September 20, 2005, as Instrument No. 20519876.

NOTE: The foregoing numbered exceptions (1-6) may be eliminated in an ALTA Extended or EAGLE Coverage Policy.

Exhibit "A"

Real property in the County of Bannock, State of Idaho, described as follows:

PARCEL 1:

A TRACT OF LAND IN THE SOUTH HALF OF SECTION 9, TOWNSHIP 7 SOUTH, RANGE 35 EAST, BOISE MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTH QUARTER CORNER OF SECTION 9, TOWNSHIP 7 SOUTH, RANGE 35 EAST, BOISE MERIDIAN, THE SAME BEING THE SOUTHEAST CORNER OF SOUTH VALLEY VIEW ESTATES, A SUBDIVISION RECORDED IN THE RECORDS OF BANNOCK COUNTY AS INSTRUMENT 373461; THENCE NORTH 00°15'43" EAST FOR A DISTANCE OF 1320.91 FEET TO A FOUND 3/4 INCH DIAMETER IRON PIN ACCEPTED AS THE NORTHEAST CORNER OF SOUTH VALLEY VIEW ESTATES, THENCE NORTH 89°50'47" WEST ALONG THE NORTH BOUNDARY LINE OF SOUTH VALLEY VIEW ESTATES FOR A DISTANCE OF 659.93 FEET; THENCE NORTH 00°06'14" EAST ALONG THE WEST BOUNDARY LINE OF THE EAST HALF OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 9 FOR A DISTANCE OF 1315.23 FEET TO A POINT ON THE LATITUDINAL CENTERLINE OF SECTION 9; THENCE SOUTH 88°55'17" EAST ALONG THE LATITUDINAL CENTERLINE OF SECTION 9 FOR A DISTANCE OF 1976.72 FEET TO THE EAST 1/16TH CORNER ON SAID CENTERLINE; THENCE SOUTH 00°05'41" WEST FOR A DISTANCE OF 2638.63 FEET TO THE EAST 1/16TH CORNER ON THE SOUTH LINE OF SECTION 9; THENCE NORTH 88°51'13" WEST FOR A DISTANCE OF 1320.88 FEET TO THE POINT OF BEGINNING.

PARCEL 2:

A TRACT OF LAND IN THE NORTH HALF OF THE NORTHWEST QUARTER, THE NORTHEAST QUARTER AND THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 16, TOWNSHIP 7 SOUTH, RANGE 35 EAST BOISE MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SECTION 16, TOWNSHIP 7 SOUTH, RANGE 35 EAST, BOISE MERIDIAN, THENCE SOUTH 88°50'35" EAST ALONG THE NORTH LINE OF SECTION 16 FOR A DISTANCE OF 800.00 FEET TO THE NORTHEAST CORNER OF PIEDMONT ACRES, A SUBDIVISION RECORDED IN THE RECORDS OF BANNOCK COUNTY AS INSTRUMENT 601980; THENCE SOUTH 00°46'58" WEST ALONG THE EAST SIDE OF PIEDMONT ACRES FOR A DISTANCE OF 25.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE SOUTH 88°50'35" EAST ALONG THE SOUTH RIGHT OF WAY LINE OF PIEDMONT ROAD FOR A DISTANCE OF 519.31 FEET TO THE WEST 1/16TH LINE OF SECTION, THENCE NORTH 00°37'47" EAST FOR A DISTANCE OF 25.00 FEET TO THE WEST 1/16TH CORNER ON THE NORTH LINE OF SECTION 16, THENCE SOUTH 88°50'35" EAST FOR A DISTANCE OF 1319.24 FEET TO THE NORTH QUARTER CORNER OF SECTION 16, THENCE SOUTH 88°51'13" EAST FOR A DISTANCE OF 2641.77 FEET TO THE NORTHEAST CORNER OF SECTION 16, THENCE SOUTH 00°32'19" WEST ALONG THE EAST LINE OF SECTION 16 FOR A DISTANCE OF 2091.20 FEET TO THE NORTHEAST CORNER OF THE LAND DESCRIBED IN INSTRUMENT 788114; THENCE NORTH 89°20'56" WEST FOR A DISTANCE OF 1046.00 FEET TO THE NORTHWEST CORNER OF THE SAID LAND; THENCE SOUTH 00°32'19" WEST FOR A DISTANCE OF 500.00 FEET TO THE SOUTHWEST CORNER OF THE SAID LAND; THENCE SOUTH 89°20'56" EAST ALONG THE SOUTH LINE OF SAID LAND, THE SAME BEING THE LATITUDINAL CENTERLINE OF SECTION 16 FOR A DISTANCE OF 56.81 FEET; THENCE SOUTH 00°33'48" WEST FOR A DISTANCE OF 528.00 FEET; THENCE NORTH 89°20'55" WEST FOR A DISTANCE OF 329.11 FEET TO A POINT ON THE EAST 1/16TH LINE OF SECTION 16; THENCE NORTH 00°29'48" EAST FOR A DISTANCE OF 528.00 FEET TO THE EAST 1/16TH CORNER ON THE LATITUDINAL CENTERLINE OF SECTION 16; THENCE NORTH 89°20'56" WEST ALONG THE SAID LATITUDINAL CENTERLINE FOR A DISTANCE OF 1023.90 FEET TO THE SOUTHEAST CORNER OF THE LAND DESCRIBED IN INSTRUMENT 93021655; THENCE NORTH 00°27'19" EAST FOR A DISTANCE OF 320.00 FEET TO THE NORTHEAST CORNER OF THE LAND DESCRIBED IN INSTRUMENT 93021655; THENCE NORTH 89°20'56" WEST FOR A

DISTANCE OF 295.00 FEET TO THE NORTHWEST CORNER OF THE SAID LAND; THENCE NORTH 00°27'19" EAST ALONG THE MERIDIONAL CENTERLINE OF SECTION 16 FOR A DISTANCE OF 1236.51 FEET TO A POINT IS MARKED WITH A FOUND 1/2 INCH DIAMETER IRON PIN ACCEPTED AS THE NORTHEAST CORNER OF THE LAND DESCRIBED IN INSTRUMENT 473513; THENCE FOLLOWING THE BOUNDARY LINES OF THE LAND DESCRIBED IN INSTRUMENT 621688 FOR THE NEXT FIVE (5) COURSES: (1) SOUTH 89°06'35" EAST FOR A DISTANCE OF 260.00 FEET; THENCE (2) NORTH 14°06'45" EAST FOR A DISTANCE OF 140.00 FEET; THENCE (3) NORTH 41°32'41" EAST FOR A DISTANCE OF 450.00 FEET; THENCE (4) NORTH 41°17'29" WEST FOR A DISTANCE OF 180.00 FEET; THENCE (5) SOUTH 48°42'31" WEST FOR A DISTANCE OF 907.24 FEET TO A POINT ON THE NORTH BOUNDARY LINE OF THE LAND DESCRIBED IN INSTRUMENT 473513; THENCE NORTH 88°35'51" WEST ALONG THE SAID NORTH BOUNDARY LINE FOR A DISTANCE OF 490.35 FEET TO A POINT IS MARKED WITH A FOUND 1/2 INCH DIAMETER IRON PIN ACCEPTED AS THE NORTHWEST CORNER OF THE LAND DESCRIBED IN INSTRUMENT 473513; THENCE NORTH 00°37'47" EAST ALONG THE EAST BOUNDARY LINE OF THE LAND DESCRIBED IN INSTRUMENT 675569 FOR A DISTANCE OF 435.85 FEET; THENCE NORTH 88°37'03" WEST FOR A DISTANCE OF 264.18 FEET; THENCE NORTH 00°37'47" EAST FOR A DISTANCE OF 66.00 FEET; THENCE NORTH 88°37'03" WEST FOR A DISTANCE OF 360.03 FEET TO A POINT ON THE WEST 1/16TH LINE OF SECTION 16, SAID POINT IS MARKED WITH A FOUND 1/2 INCH DIAMETER IRON PIN ACCEPTED AS THE NORTHWEST CORNER OF THE LAND DESCRIBED IN INSTRUMENT 95003247; THENCE SOUTH 00°37'47" WEST ALONG THE WEST 1/16TH LINE FOR A DISTANCE OF 302.77 FEET; THENCE NORTH 88°37'03" WEST FOR A DISTANCE OF 790.30 FEET; THENCE SOUTH 00°37'47" WEST FOR A DISTANCE OF 423.23 FEET TO A POINT ON THE NORTH RIGHT OF WAY LINE OF KATSILOMETES ROAD; THENCE NORTH 88°37'03" WEST ALONG THE NORTH RIGHT OF WAY LINE OF KATSILOMETES ROAD FOR A DISTANCE OF 193.21 FEET TO A POINT ON A CURVE IN THE EAST RIGHT OF WAY LINE OF OLD US HIGHWAY 30; THENCE NORTHWESTERLY ALONG THE SAID RIGHT OF WAY LINE, FOLLOWING A 5769.58 FOOT RADIUS CURVE, CONCAVE TO THE SOUTHWEST, THROUGH A CENTRAL ANGLE OF 05°02'19" AND AN ARC DISTANCE OF 507.38 FEET TO A POINT ON THE WEST LINE OF SECTION 16, THE CHORD OF THE AFORE DESCRIBED CURVE BEARS NORTH 41°10'59" WEST A DISTANCE OF 507.21 FEET; THENCE NORTH 00°46'58" EAST ALONG THE SAID WEST LINE FOR A DISTANCE OF 218.97 FEET TO THE SOUTHWEST CORNER OF PIEDMONT ACRES; THENCE SOUTH 88°50'35" EAST FOR A DISTANCE OF 800.00 FEET TO THE SOUTHEAST CORNER OF PIEDMONT ACRES; THENCE NORTH 00°46'58" EAST ALONG THE EAST BOUNDARY LINE OF PIEDMONT ACRES FOR A DISTANCE OF 653.40 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM:

A PARCEL OF LAND IN THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 16, TOWNSHIP 7 SOUTH, RANGE 35 EAST, BOISE MERIDIAN, BEING THAT PARCEL OF LAND DESCRIBED IN INSTRUMENT 634749 OF THE RECORDS OF BANNOCK COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER QUARTER CORNER OF SECTION 16, TOWNSHIP 7 SOUTH, RANGE 35 EAST, BOISE MERIDIAN; THENCE SOUTH 89°20' 56" EAST ALONG THE LATITUDINAL CENTERLINE OF SECTION 16 FOR A DISTANCE OF 294.26 FEET; THENCE NORTH 53°40'56" EAST FOR A DISTANCE OF 459.93 FEET; THENCE NORTH 48°49'49" WEST 50.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING NORTH 48°49'49" WEST FOR A DISTANCE OF 208.71 FEET; THENCE SOUTH 53°40'56" WEST FOR A DISTANCE OF 213.80 FEET; THENCE SOUTH 48°49'49" EAST FOR A DISTANCE OF 208.71 FEET; THENCE NORTH 53°40'56" EAST FOR A DISTANCE OF 213.80 FEET TO THE POINT OF BEGINNING.

PARCEL 3:

LOT 1, BLOCK 1; LOTS 1 THROUGH 7 AND 9 THROUGH 11, BLOCK 2, LOTS 1 THROUGH 12 AND 15 THROUGH 18, BLOCK 3; LOTS 1 THROUGH 11 AND 13 THROUGH 15, BLOCK 4; LOTS 1 THROUGH 9, BLOCK 5; LOTS 1 AND 2, BLOCK 6; LOTS 1, 3, 4, 7 THROUGH 11 AND 14 THROUGH 36, BLOCK 7; LOTS 2 THROUGH 20, BLOCK 8; LOTS 1 THROUGH 7, BLOCK 9, ALL LOCATED IN SOUTH VALLEY VIEW ESTATES SUBDIVISION, BANNOCK COUNTY, IDAHO, AS THE SAME APPEARS ON THE OFFICIAL PLAT THEREOF, RECORDED OCTOBER 16, 1961 AS INSTRUMENT NO. 373461.

PARCEL 4:

LOT ALL, BLOCK ALL, EIGHTY ACRES, INC. SUBDIVISION, BANNOCK COUNTY, IDAHO, AS THE SAME APPEARS ON THE OFFICIAL PLAT THEREOF, RECORDED FEBRUARY 28, 1950 AS INSTRUMENT NO. 271259.

EXCEPTING THEREFROM:

LOTS 1, 2, 3, 4, 5, 6, 7, 8, 9, AND 10, BLOCK 2 AND LOTS 1, 2, 3, 4, 5, 6, 7, 8, AND 9, BLOCK 3, EIGHTY ACRES, INC. SUBDIVISION, BANNOCK COUNTY, IDAHO, AS THE SAME APPEARS ON THE OFFICIAL PLAT THEREOF, RECORDED FEBRUARY 28, 1950 AS INSTRUMENT NO. 271259.

523-7254

**THIRD COMMITMENT
SCHEDULE A**

1. Commitment Date : **April 26, 2006 at 7:30 A.M.**

2. Policy or Policies to be issued:

	Policy Amount	Premium Amount
Owner's Policy		
Standard Owner's Policy (10/17/92) Form 1402-92	\$ 2,100,000.00	\$ 4,980.00
with applied credit of		\$ None
Proposed Insured as to Parcels 1, 2, & 3: 4?		
Jefferson Enterprises, LLC		
Loan Policy	2,200,000	
Standard Loan Policy (10-17-92) Form 1056-92	\$ 2,800,000.00	\$ 1,475.00 ?
with applied credit of		\$ None
Proposed Insured as to Parcels 1,2,3, & 4:		
Bank of Commerce, its successors and/or assigns as their respective interests may appear.		
Endorsements:		\$

3. A fee simple interest in the land described in this Commitment is owned, at the Commitment Date by:

Parcels 1 and 2

Michael R. Wood and Ruth A. Wood, husband and wife

Parcel 3

Black Cliffs Development, Inc.

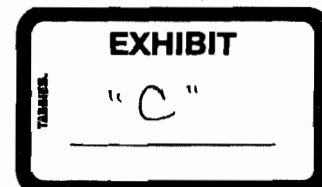
Parcel 4

Southern Hills Development Company, LLC

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

The land referred to herein is described in the Legal Description attached hereto.

Commonly known as: NNA Pocatello, ID 83201



SCHEDULE B-SECTION ONE
REQUIREMENTS

The following requirements must be met:

- (a) Pay the agreed amounts for the interest in the land and/or the mortgage to be insured.
- (b) Pay us the premiums, fees and charges for the policy.
- (c) Documents satisfactory to us creating the interest in the land and/or the mortgage to be insured must be signed, delivered and recorded.
- (d) You must tell us in writing the name of anyone not referred to in this Commitment who will get an interest in the land or who will make a loan on the land. We may then make additional requirements and exceptions.
- (e) Release(s) or Reconveyance(s) of items(s) 20-22.
- (f) With respect to Southern Hills Development Company an L.L.C. we require:
 - a. A copy of its operating agreement and any amendments,
 - b. A certificate of good standing of recent date issued by the secretary of state of the L.L.C.'s state of domicile,
 - c. That the forthcoming conveyance, encumbrance or other instrument executed by the L.L.C. upon which the Company is asked to rely, be executed in accordance with its operating agreement.
 - d. Other requirements which the Company may impose following its review of the material required herein and other information which the Company may require.
- (g) With respect to Black Cliffs Development a corporation, we require:
 - a. A certified copy of good standing of recent date issued by the secretary of state of the corporation's state of domicile.
 - b. A certified copy of a resolution of the board of directors authorizing the contemplated transaction and designating which corporate officers shall have the power to execute on behalf of the corporation.
 - c. Other requirements which the Company may impose following its review of the material required herein and other information which the Company may require.

SCHEDULE B -SECTION TWO

EXCEPTIONS

Any policy we issue will have the following exceptions unless they are taken care of to our satisfaction.

PART I:

- bK {
1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
 2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
 3. Easements, claims of easement or encumbrances which are not shown by the public records.
 4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
 5. (A) Unpatented mining claims; (B) Reservations or exceptions in patents or in Acts authorizing the issuance thereof; (C) Water rights, claims or title to water; whether or not the matters excepted under (A), (B) or (C) are shown by the public records.
 6. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the public records.

7.

2006 taxes are an accruing lien, not yet due and payable until the fourth Monday in November of the current year. The first one-half is not delinquent until after December 20 of the current year, the second one-half is not delinquent until after June 20 of the following year.

Taxes which may be assessed and entered on the property roll for 2006 with respect to new improvements and first occupancy, which may be included on the regular property, which are an accruing lien, not yet due and payable.

*Must be
Current*

General taxes as set forth below. Any amounts not paid when due will accrue penalties and interest in addition to the amount stated herein:

Year	Original Amount	Amount Paid	Parcel Number	Covers
2005	R4013008300	\$534.14	\$534.14	Parcel 1
2005	R4013008201	\$75.42	\$75.42	Parcel 1
2005	R4013013901	\$482.22	\$482.22	Parcel 2
2005	R4013013802	\$19.84	\$19.84	Parcel 2
2005	R4013012600	\$108.04	\$108.04	Parcel 2
2005	R4013010802	\$60.88	\$60.88	Parcel 2
2005	R4013013300	\$79.06	\$79.06	Parcel 2
2005	R4013012700	\$308.92	\$308.92	Parcel 2
2005	R4013012902	\$249.84	\$249.84	Parcel 2
2005	RRSVE000100	\$2.50	\$2.50	Parcel 3
2005	RRSVE000200	\$1.90	\$1.90	Parcel 3
2005	RRSVE000300	\$1.90	\$1.90	Parcel 3
2005	RRSVE000400	\$1.68	\$1.68	Parcel 3
2005	RRSVE000500	\$4.74	\$4.74	Parcel 3
2005	RRSVE000600	\$2.20	\$2.20	Parcel 3
2005	RRSVE000700	\$1.80	\$1.80	Parcel 3
2005	RRSVE000800	\$1.68	\$1.68	Parcel 3
2005	RRSVE001000	\$1.90	\$1.90	Parcel 3
2005	RRSVE001100	\$1.90	\$1.90	Parcel 3
2005	RRSVE001200	\$1.90	\$1.90	Parcel 3
2005	RRSVE001300	\$2.02	\$2.02	Parcel 3
2005	RRSVE001400	\$2.02	\$2.02	Parcel 3
2005	RRSVE001500	\$2.02	\$2.02	Parcel 3
2005	RRSVE001600	\$2.02	\$2.02	Parcel 3
2005	RRSVE001700	\$2.02	\$2.02	Parcel 3
2005	RRSVE001800	\$2.02	\$2.02	Parcel 3
2005	RRSVE001900	\$1.68	\$1.68	Parcel 3
2005	RRSVE002000	\$1.68	\$1.68	Parcel 3
2005	RRSVE002100	\$3.20	\$3.20	Parcel 3
2005	RRSVE002200	\$3.08	\$3.08	Parcel 3
2005	RRSVE002300	\$1.90	\$1.90	Parcel 3
2005	RRSVE002400	\$1.90	\$1.90	Parcel 3
2005	RRSVE002700	\$2.02	\$2.02	Parcel 3
2005	RRSVE002800	\$2.02	\$2.02	Parcel 3
2005	RRSVE002900	\$2.02	\$2.02	Parcel 3
2005	RRSVE003000	\$2.02	\$2.02	Parcel 3
2005	RRSVE003100	\$1.90	\$1.90	Parcel 3
2005	RRSVE003200	\$1.90	\$1.90	Parcel 3
2005	RRSVE003300	\$1.90	\$1.90	Parcel 3
2005	RRSVE003400	\$1.90	\$1.90	Parcel 3
2005	RRSVE003500	\$1.90	\$1.90	Parcel 3
2005	RRSVE003600	\$1.90	\$1.90	Parcel 3
2005	RRSVE003700	\$1.90	\$1.90	Parcel 3

2005	RRSVE003800	\$2.20	\$2.20	Parcel 3
2005	RRSVE003900	\$3.08	\$3.08	Parcel 3
2005	RRSVE004000	\$1.68	\$1.68	Parcel 3
2005	RRSVE004100	\$1.68	\$1.68	Parcel 3
2005	RRSVE004300	\$1.90	\$1.90	Parcel 3
2005	RRSVE004400	\$1.90	\$1.90	Parcel 3
2005	RRSVE004500	\$1.90	\$1.90	Parcel 3
2005	RRSVE004600	\$2.02	\$2.02	Parcel 3
2005	RRSVE004700	\$2.02	\$2.02	Parcel 3
2005	RRSVE004800	\$2.02	\$2.02	Parcel 3
2005	RRSVE004900	\$2.16	\$2.16	Parcel 3
2005	RRSVE005000	\$2.86	\$2.86	Parcel 3
2005	RRSVE005100	\$3.18	\$3.18	Parcel 3
2005	RRSVE005200	\$1.80	\$1.80	Parcel 3
2005	RRSVE005300	\$2.02	\$2.02	Parcel 3
2005	RRSVE005400	\$2.02	\$2.02	Parcel 3
2005	RRSVE005500	\$2.50	\$2.50	Parcel 3
2005	RRSVE005600	\$2.98	\$2.98	Parcel 3
2005	RRSVE005800	\$2.40	\$2.40	Parcel 3
2005	RRSVE006000	\$2.18	\$2.18	Parcel 3
2005	RRSVE006100	\$2.18	\$2.18	Parcel 3
2005	RRSVE006400	\$2.18	\$2.18	Parcel 3
2005	RRSVE006500	\$2.18	\$2.18	Parcel 3
2005	RRSVE006600	\$2.18	\$2.18	Parcel 3
2005	RRSVE006700	\$2.18	\$2.18	Parcel 3
2005	RRSVE006800	\$2.18	\$2.18	Parcel 3
2005	RRSVE007100	\$1.94	\$1.94	Parcel 3
2005	RRSVE007200	\$1.94	\$1.94	Parcel 3
2005	RRSVE007300	\$3.36	\$3.36	Parcel 3
2005	RRSVE007400	\$2.96	\$2.96	Parcel 3
2005	RRSVE007500	\$2.96	\$2.96	Parcel 3
2005	RRSVE007600	\$1.38	\$1.38	Parcel 3
2005	RRSVE007700	\$1.38	\$1.38	Parcel 3
2005	RRSVE007800	\$1.38	\$1.38	Parcel 3
2005	RRSVE007900	\$1.38	\$1.38	Parcel 3
2005	RRSVE008000	\$1.38	\$1.38	Parcel 3
2005	RRSVE008100	\$1.38	\$1.38	Parcel 3
2005	RRSVE008200	\$1.38	\$1.38	Parcel 3
2005	RRSVE008300	\$1.38	\$1.38	Parcel 3
2005	RRSVE008400	\$1.38	\$1.38	Parcel 3
2005	RRSVE008500	\$2.28	\$2.28	Parcel 3
2005	RRSVE008600	\$2.28	\$2.28	Parcel 3
2005	RRSVE008700	\$1.38	\$1.38	Parcel 3
2005	RRSVE008800	\$1.38	\$1.38	Parcel 3
2005	RRSVE008900	\$1.38	\$1.38	Parcel 3
2005	RRSVE009000	\$1.38	\$1.38	Parcel 3
2005	RRSVE009100	\$1.38	\$1.38	Parcel 3
2005	RRSVE009200	\$1.84	\$1.84	Parcel 3
2005	RRSVE009300	\$1.84	\$1.84	Parcel 3
2005	RRSVE009600	\$2.20	\$2.20	Parcel 3
2005	RRSVE009700	\$2.20	\$2.20	Parcel 3
2005	RRSVE009800	\$2.20	\$2.20	Parcel 3
2005	RRSVE009900	\$2.20	\$2.20	Parcel 3

2005	RRSVE010000	\$2.20	\$2.20	Parcel 3
2005	RRSVE010100	\$2.18	\$2.18	Parcel 3
2005	RRSVE010200	\$2.18	\$2.18	Parcel 3
2005	RRSVE010300	\$2.18	\$2.18	Parcel 3
2005	RRSVE010400	\$3.36	\$3.36	Parcel 3
2005	RRSVE010500	\$2.26	\$2.26	Parcel 3
2005	RRSVE010600	\$2.90	\$2.90	Parcel 3
2005	RRSVE010700	\$1.58	\$1.58	Parcel 3
2005	RRSVE010800	\$1.90	\$1.90	Parcel 3
2005	RRSVE010900	\$2.22	\$2.22	Parcel 3
2005	RRSVE011000	\$3.24	\$3.24	Parcel 3
2005	RRSVE011100	\$2.46	\$2.46	Parcel 3
2005	RRSVE011200	\$2.28	\$2.28	Parcel 3
2005	RRSVE011300	\$2.08	\$2.08	Parcel 3
2005	RRSVE011400	\$2.56	\$2.56	Parcel 3
2005	RRSVE011500	\$2.66	\$2.66	Parcel 3
2005	RRSVE011600	\$3.28	\$3.28	Parcel 3
2005	RRSVE011700	\$4.46	\$4.46	Parcel 3
2005	RRSVE011800	\$5.18	\$5.18	Parcel 3
2005	RRSVE011900	\$5.14	\$5.14	Parcel 3
2005	RRSVE012000	\$5.14	\$5.14	Parcel 3
2005	RRSVE012100	\$3.26	\$3.26	Parcel 3
2005	RRETY000100	\$69.78	\$34.89	Parcel 4
2005	RRETY001200	\$66.36	\$33.18	Parcel 4
2005	RRETY002200	\$23.42	\$11.71	Parcel 4
2005	RRETY002300	\$19.16	\$9.58	Parcel 4
2005	RRETY002400	\$24.00	\$12.00	Parcel 4
2005	RRETY002500	\$21.92	\$10.96	Parcel 4
2005	RRETY002600	\$27.40	\$13.70	Parcel 4
2005	RRETY002700	\$23.98	\$11.99	Parcel 4
2005	RRETY002800	\$16.44	\$8.22	Parcel 4
2005	RRETY002900	\$24.66	\$12.33	Parcel 4
2005	RRETY003000	\$60.26	\$30.13	Parcel 4
2005	RRETY003100	\$7.28	\$3.64	Parcel 4
2005	RRETY003200	\$6.10	\$3.05	Parcel 4
2005	RRETY003300	\$6.10	\$3.05	Parcel 4
2005	RRETY003400	\$6.10	\$3.05	Parcel 4
2005	RRETY003500	\$6.10	\$3.05	Parcel 4
2005	RRETY003600	\$6.10	\$3.05	Parcel 4
2005	RRETY003700	\$6.10	\$3.05	Parcel 4
2005	RRETY003800	\$6.10	\$3.05	Parcel 4
2005	RRETY003900	\$6.10	\$3.05	Parcel 4
2005	RRETY004000	\$6.10	\$3.05	Parcel 4
2005	RRETY004100	\$6.40	\$3.20	Parcel 4
2005	RRETY004200	\$65.06	\$32.53	Parcel 4
2005	RRETY004300	\$13.28	\$6.64	Parcel 4
2005	RRETY004400	\$46.84	\$23.42	Parcel 4
2005	RRETY004500	\$113.66	\$56.83	Parcel 4
2005	RRETY004600	\$91.74	\$45.87	Parcel 4
2005				

Homeowners Exemption is not in effect for 2005.
Circuit breaker is not in effect for 2005.

8. Reservations in United States Patent.
9. Water rights, claims or title to water, whether or not the matters are shown by the public records.
10. Right, Title and Interest of the public in and to those portions of above described premises falling within the bounds of roads or highways.
11. Easement for POWER LINE granted to IDAHO POWER COMPANY, recorded MARCH 2, 1950 as Instrument No. 271368. AFFECTS PORTION IN PARCEL 2.
12. Easement for POWER LINES granted to IDAHO POWER COMPANY, recorded MARCH 4, 1976 as Instrument No. 550990.
13. Easement for Public Utilities and incidental purposes and ingress and egress granted to IDAHO POWER COMPANY, recorded July 5, 1961 as Instrument No. 370134.
14. EASEMENT Agreement upon the terms, conditions and provisions contained therein:
Parties: AMERICAN LAND TITLE COMPANY, INC, PAUL KATSILOMETES AND TOM KATSILOMETES
Recorded: APRIL 2, 1979, Instrument No. 621533
ok
road way easement
15. WATER SUPPLY Agreement upon the terms, conditions and provisions contained therein:
Parties: BLACK CLIFFS DEVELOPMENT, INC., C.A. PATTERSON AND LOIS E. PATTERSON AND DOUGLAS K. PATTERSON AND CHERYL S. PATTERSON
Recorded: MAY 22, 1992, Instrument No. 92007739
ok
16. All matters, covenants, conditions, restrictions, easements and any rights, interests or claims which may exist by reason thereof, disclosed by the recorded plat of said subdivision, recorded OCTOBER 16, 1961, as instrument number 373461, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c). AFFECTS PARCELS 3 & OTHER
17. Covenants, Conditions and Restrictions of SOUTH VALLEY VIEW ESTATES SUBDIVISION appearing of record, but omitting any covenant, condition or restriction based on race, color, religion, sex, handicap, familial status, or national origin to the extent that such covenants, conditions or restrictions violate 42 USC 3604(c).
once plotted will eliminate
18. Provisions in WARRANTY DEED recorded AUGUST 3, 1949 as Instrument No. 267035. Affects the E2 SW1/4 AND W2SE1/4 SECTION 9, TOWNSHIP 7 SOUTH, RANGE 35 EAST, B.M.
ok
Warranty Deed right
19. Provisions in WARRANTY DEED recorded JANUARY 19, 1970 as Instrument No. 466846.
ok
must be substituted
- Mortgage dated March 21, 2005, to secure an original indebtedness of \$633,767.00, and any other amounts and/or obligations secured thereby.
Recorded: March 23, 2005, as Instrument No. 20505311
Mortgagor: Southern Hills Development Co., LLC
Mortgagee: Eighty Acres, Inc.
(Covers Parcel 4)

Form No. 1068-2
Plain Language Commitment

Commitment No.: 158156-P
Page 9 of 15

21. Mortgage dated July 29, 2005, to secure an original indebtedness of \$177,012.00, and any other amounts and/or obligations secured thereby.

Recorded: August 1, 2005, as Instrument No. 20515638

Mortgagor: Southern Hills Development Company, LLC

Mortgagee: D.L. Evans Bank

(Covers Parcel 4)

Modification Agreement recorded September 20, 2005, as Instrument No. 20519877.

22. Deed of Trust dated July 29, 2005, to secure an original indebtedness of \$177,012.00, and any other amounts and/or obligations secured thereby.

Recorded: August 1, 2005, as Instrument No. 20515639

Grantor: Southern Hills Development Company, LLC

Trustee: Northern Title Co. of Idaho

Beneficiary: D.L. Evans Bank

(Covers Parcel 4)

Modification Agreement recorded September 20, 2005, as Instrument No. 20519876.

NOTE: The foregoing numbered exceptions (1-6) may be eliminated in an ALTA Extended or EAGLE Coverage Policy.

Exhibit "A"

Real property in the County of Bannock, State of Idaho, described as follows:

PARCEL 1:

A TRACT OF LAND IN THE SOUTH HALF OF SECTION 9, TOWNSHIP 7 SOUTH, RANGE 35 EAST, BOISE MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTH QUARTER CORNER OF SECTION 9, TOWNSHIP 7 SOUTH, RANGE 35 EAST, BOISE MERIDIAN, THE SAME BEING THE SOUTHEAST CORNER OF SOUTH VALLEY VIEW ESTATES, A SUBDIVISION RECORDED IN THE RECORDS OF BANNOCK COUNTY AS INSTRUMENT 373461; THENCE NORTH 00°15'43" EAST FOR A DISTANCE OF 1320.91 FEET TO A FOUND 3/4 INCH DIAMETER IRON PIN ACCEPTED AS THE NORTHEAST CORNER OF SOUTH VALLEY VIEW ESTATES, THENCE NORTH 89°50'47" WEST ALONG THE NORTH BOUNDARY LINE OF SOUTH VALLEY VIEW ESTATES FOR A DISTANCE OF 659.93 FEET; THENCE NORTH 00°06'14" EAST ALONG THE WEST BOUNDARY LINE OF THE EAST HALF OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 9 FOR A DISTANCE OF 1315.23 FEET TO A POINT ON THE LATITUDINAL CENTERLINE OF SECTION 9; THENCE SOUTH 88°55'17" EAST ALONG THE LATITUDINAL CENTERLINE OF SECTION 9 FOR A DISTANCE OF 1976.72 FEET TO THE EAST 1/16TH CORNER ON SAID CENTERLINE; THENCE SOUTH 00°05'41" WEST FOR A DISTANCE OF 2638.63 FEET TO THE EAST 1/16TH CORNER ON THE SOUTH LINE OF SECTION 9; THENCE NORTH 88°51'13" WEST FOR A DISTANCE OF 1320.88 FEET TO THE POINT OF BEGINNING.

PARCEL 2:

A TRACT OF LAND IN THE NORTH HALF OF THE NORTHWEST QUARTER, THE NORTHEAST QUARTER AND THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 16, TOWNSHIP 7 SOUTH, RANGE 35 EAST BOISE MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SECTION 16, TOWNSHIP 7 SOUTH, RANGE 35 EAST, BOISE MERIDIAN, THENCE SOUTH 88°50'35" EAST ALONG THE NORTH LINE OF SECTION 16 FOR A DISTANCE OF 800.00 FEET TO THE NORTHEAST CORNER OF PIEDMONT ACRES, A SUBDIVISION RECORDED IN THE RECORDS OF BANNOCK COUNTY AS INSTRUMENT 601980; THENCE SOUTH 00°46'58" WEST ALONG THE EAST SIDE OF PIEDMONT ACRES FOR A DISTANCE OF 25.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE SOUTH 88°50'35" EAST ALONG THE SOUTH RIGHT OF WAY LINE OF PIEDMONT ROAD FOR A DISTANCE OF 519.31 FEET TO THE WEST 1/16TH LINE OF SECTION, THENCE NORTH 00°37'47" EAST FOR A DISTANCE OF 25.00 FEET TO THE WEST 1/16TH CORNER ON THE NORTH LINE OF SECTION 16, THENCE SOUTH 88°50'35" EAST FOR A DISTANCE OF 1319.24 FEET TO THE NORTH QUARTER CORNER OF SECTION 16, THENCE SOUTH 88°51'13" EAST FOR A DISTANCE OF 2641.77 FEET TO THE NORTHEAST CORNER OF SECTION 16, THENCE SOUTH 00°32'19" WEST ALONG THE EAST LINE OF SECTION 16 FOR A DISTANCE OF 2091.20 FEET TO THE NORTHEAST CORNER OF THE LAND DESCRIBED IN INSTRUMENT 788114; THENCE NORTH 89°20'56" WEST FOR A DISTANCE OF 1046.00 FEET TO THE NORTHWEST CORNER OF THE SAID LAND; THENCE SOUTH 00°32'19" WEST FOR A DISTANCE OF 500.00 FEET TO THE SOUTHWEST CORNER OF THE SAID LAND; THENCE SOUTH 89°20'56" EAST ALONG THE SOUTH LINE OF SAID LAND, THE SAME BEING THE LATITUDINAL CENTERLINE OF SECTION 16 FOR A DISTANCE OF 56.81 FEET; THENCE SOUTH 00°33'48" WEST FOR A DISTANCE OF 528.00 FEET; THENCE NORTH 89°20'55" WEST FOR A DISTANCE OF 329.11 FEET TO A POINT ON THE EAST 1/16TH LINE OF SECTION 16; THENCE NORTH 00°29'48" EAST FOR A DISTANCE OF 528.00 FEET TO THE EAST 1/16TH CORNER ON THE LATITUDINAL CENTERLINE OF SECTION 16; THENCE NORTH 89°20'56" WEST ALONG THE SAID LATITUDINAL CENTERLINE FOR A DISTANCE OF 1023.90 FEET TO THE SOUTHEAST CORNER OF THE LAND DESCRIBED IN INSTRUMENT 93021655; THENCE NORTH 00°27'19" EAST FOR A DISTANCE OF 320.00 FEET TO THE NORTHEAST CORNER OF THE LAND DESCRIBED IN INSTRUMENT 93021655; THENCE NORTH 89°20'56" WEST FOR A

DISTANCE OF 295.00 FEET TO THE NORTHWEST CORNER OF THE SAID LAND; THENCE NORTH 00°27'19" EAST ALONG THE MERIDIONAL CENTERLINE OF SECTION 16 FOR A DISTANCE OF 1236.51 FEET TO A POINT IS MARKED WITH A FOUND 1/2 INCH DIAMETER IRON PIN ACCEPTED AS THE NORTHEAST CORNER OF THE LAND DESCRIBED IN INSTRUMENT 473513; THENCE FOLLOWING THE BOUNDARY LINES OF THE LAND DESCRIBED IN INSTRUMENT 621688 FOR THE NEXT FIVE (5) COURSES: (1) SOUTH 89°06'35" EAST FOR A DISTANCE OF 260.00 FEET; THENCE (2) NORTH 14°06'45" EAST FOR A DISTANCE OF 140.00 FEET; THENCE (3) NORTH 41°32'41" EAST FOR A DISTANCE OF 450.00 FEET; THENCE (4) NORTH 41°17'29" WEST FOR A DISTANCE OF 180.00 FEET; THENCE (5) SOUTH 48°42'31" WEST FOR A DISTANCE OF 907.24 FEET TO A POINT ON THE NORTH BOUNDARY LINE OF THE LAND DESCRIBED IN INSTRUMENT 473513; THENCE NORTH 88°35'51" WEST ALONG THE SAID NORTH BOUNDARY LINE FOR A DISTANCE OF 490.35 FEET TO A POINT IS MARKED WITH A FOUND 1/2 INCH DIAMETER IRON PIN ACCEPTED AS THE NORTHWEST CORNER OF THE LAND DESCRIBED IN INSTRUMENT 473513; THENCE NORTH 00°37'47" EAST ALONG THE EAST BOUNDARY LINE OF THE LAND DESCRIBED IN INSTRUMENT 675569 FOR A DISTANCE OF 435.85 FEET; THENCE NORTH 88°37'03" WEST FOR A DISTANCE OF 264.18 FEET; THENCE NORTH 00°37'47" EAST FOR A DISTANCE OF 66.00 FEET; THENCE NORTH 88°37'03" WEST FOR A DISTANCE OF 360.03 FEET TO A POINT ON THE WEST 1/16TH LINE OF SECTION 16, SAID POINT IS MARKED WITH A FOUND 1/2 INCH DIAMETER IRON PIN ACCEPTED AS THE NORTHWEST CORNER OF THE LAND DESCRIBED IN INSTRUMENT 95003247; THENCE SOUTH 00°37'47" WEST ALONG THE WEST 1/16TH LINE FOR A DISTANCE OF 302.77 FEET; THENCE NORTH 88°37'03" WEST FOR A DISTANCE OF 790.30 FEET; THENCE SOUTH 00°37'47" WEST FOR A DISTANCE OF 423.23 FEET TO A POINT ON THE NORTH RIGHT OF WAY LINE OF KATSILOMETES ROAD; THENCE NORTH 88°37'03" WEST ALONG THE NORTH RIGHT OF WAY LINE OF KATSILOMETES ROAD FOR A DISTANCE OF 193.21 FEET TO A POINT ON A CURVE IN THE EAST RIGHT OF WAY LINE OF OLD US HIGHWAY 30; THENCE NORTHWESTERLY ALONG THE SAID RIGHT OF WAY LINE, FOLLOWING A 5769.58 FOOT RADIUS CURVE, CONCAVE TO THE SOUTHWEST, THROUGH A CENTRAL ANGLE OF 05°02'19" AND AN ARC DISTANCE OF 507.38 FEET TO A POINT ON THE WEST LINE OF SECTION 16, THE CHORD OF THE AFORE DESCRIBED CURVE BEARS NORTH 41°10'59" WEST A DISTANCE OF 507.21 FEET; THENCE NORTH 00°46'58" EAST ALONG THE SAID WEST LINE FOR A DISTANCE OF 218.97 FEET TO THE SOUTHWEST CORNER OF PIEDMONT ACRES; THENCE SOUTH 88°50'35" EAST FOR A DISTANCE OF 800.00 FEET TO THE SOUTHEAST CORNER OF PIEDMONT ACRES; THENCE NORTH 00°46'58" EAST ALONG THE EAST BOUNDARY LINE OF PIEDMONT ACRES FOR A DISTANCE OF 653.40 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM:

A PARCEL OF LAND IN THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 16, TOWNSHIP 7 SOUTH, RANGE 35 EAST, BOISE MERIDIAN, BEING THAT PARCEL OF LAND DESCRIBED IN INSTRUMENT 634749 OF THE RECORDS OF BANNOCK COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER QUARTER CORNER OF SECTION 16, TOWNSHIP 7 SOUTH, RANGE 35 EAST, BOISE MERIDIAN; THENCE SOUTH 89°20'56" EAST ALONG THE LATITUDINAL CENTERLINE OF SECTION 16 FOR A DISTANCE OF 294.26 FEET; THENCE NORTH 53°40'56" EAST FOR A DISTANCE OF 459.93 FEET; THENCE NORTH 48°49'49" WEST 50.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING NORTH 48°49'49" WEST FOR A DISTANCE OF 208.71 FEET; THENCE SOUTH 53°40'56" WEST FOR A DISTANCE OF 213.80 FEET; THENCE SOUTH 48°49'49" EAST FOR A DISTANCE OF 208.71 FEET; THENCE NORTH 53°40'56" EAST FOR A DISTANCE OF 213.80 FEET TO THE POINT OF BEGINNING.

PARCEL 3:

LOT 1, BLOCK 1; LOTS 1 THROUGH 7 AND 9 THROUGH 11, BLOCK 2, LOTS 1 THROUGH 12 AND 15 THROUGH 18, BLOCK 3; LOTS 1 THROUGH 11 AND 13 THROUGH 15, BLOCK 4; LOTS 1 THROUGH 9, BLOCK 5; LOTS 1 AND 2, BLOCK 6; LOTS 1, 3, 4, 7 THROUGH 11 AND 14 THROUGH 36, BLOCK 7; LOTS 2 THROUGH 20, BLOCK 8; LOTS 1 THROUGH 7, BLOCK 9, ALL LOCATED IN SOUTH VALLEY VIEW ESTATES SUBDIVISION, BANNOCK COUNTY, IDAHO, AS THE SAME APPEARS ON THE OFFICIAL PLAT THEREOF, RECORDED OCTOBER 16, 1961 AS INSTRUMENT NO. 373461.

PARCEL 4:

LOT ALL, BLOCK ALL, EIGHTY ACRES, INC. SUBDIVISION, BANNOCK COUNTY, IDAHO, AS THE SAME APPEARS ON THE OFFICIAL PLAT THEREOF, RECORDED FEBRUARY 28, 1950 AS INSTRUMENT NO. 271259.

EXCEPTING THEREFROM:

LOTS 1, 2, 3, 4, 5, 6, 7, 8, 9, AND 10, BLOCK 2 AND LOTS 1, 2, 3, 4, 5, 6, 7, 8, AND 9, BLOCK 3, EIGHTY ACRES, INC. SUBDIVISION, BANNOCK COUNTY, IDAHO, AS THE SAME APPEARS ON THE OFFICIAL PLAT THEREOF, RECORDED FEBRUARY 28, 1950 AS INSTRUMENT NO. 271259.

**FOURTH COMMITMENT
SCHEDULE A**

1. Commitment Date : **April 26, 2006 at 7:30 A.M.**

2. Policy or Policies to be issued:

Policy Amount Premium Amount

Owner's Policy

Standard Owner's Policy (10/17/92) Form 1402-92
with applied credit of

\$ 2,100,000.00 \$ 4,980.00

\$ None

Proposed Insured as to Parcels 1, 2, & 3:

Jefferson Enterprises, LLC

Loan Policy

Standard Loan Policy (10-17-92) Form 1056-92
with applied credit of

\$ 2,200,000.00 \$ 275.00

\$ None

Proposed Insured as to Parcels 1,2,3, & 4:

Bank of Commerce, its successors and/or assigns as their respective interests may appear.

Endorsements:

\$

3. A fee simple interest in the land described in this Commitment is owned, at the Commitment Date by:

Parcels 1 and 2

Michael R. Wood and Ruth A. Wood, husband and wife

Parcel 3

Black Cliffs Development, Inc.

Parcel 4

Southern Hills Development Company, LLC

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

The land referred to herein is described in the Legal Description attached hereto.

Commonly known as: NNA Pocatello, ID 83201

EXHIBIT

"D"

SCHEDULE B-SECTION ONE
REQUIREMENTS

The following requirements must be met:

- (a) Pay the agreed amounts for the interest in the land and/or the mortgage to be insured.
- (b) Pay us the premiums, fees and charges for the policy.
- (c) Documents satisfactory to us creating the interest in the land and/or the mortgage to be insured must be signed, delivered and recorded.
- (d) You must tell us in writing the name of anyone not referred to in this Commitment who will get an interest in the land or who will make a loan on the land. We may then make additional requirements and exceptions.
- (e) Release(s) or Reconveyance(s) of items(s) **20-22**.
- (f) With respect to Southern Hills Development Company an L.L.C. we require:
 - a. A copy of its operating agreement and any amendments,
 - b. A certificate of good standing of recent date issued by the secretary of state of the L.L.C.'s state of domicile,
 - c. That the forthcoming conveyance, encumbrance or other instrument executed by the L.L.C. upon which the Company is asked to rely, be executed in accordance with its operating agreement.
 - d. Other requirements which the Company may impose following its review of the material required herein and other information which the Company may require.
- (g) With respect to Black Cliffs Development a corporation, we require:
 - a. A certified copy of good standing of recent date issued by the secretary of state of the corporation's state of domicile.
 - b. A certified copy of a resolution of the board of directors authorizing the contemplated transaction and designating which corporate officers shall have the power to execute on behalf of the corporation.
 - c. Other requirements which the Company may impose following its review of the material required herein and other information which the Company may require.

SCHEDULE B -SECTION TWO

EXCEPTIONS

Any policy we issue will have the following exceptions unless they are taken care of to our satisfaction.

PART I:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
3. Easements, claims of easement or encumbrances which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (A) Unpatented mining claims; (B) Reservations or exceptions in patents or in Acts authorizing the issuance thereof; (C) Water rights, claims or title to water; whether or not the matters excepted under (A), (B) or (C) are shown by the public records.
6. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the public records.

7. 2006 taxes are an accruing lien, not yet due and payable until the fourth Monday in November of the current year. The first one-half is not delinquent until after December 20 of the current year, the second one-half is not delinquent until after June 20 of the following year. Taxes which may be assessed and entered on the property roll for 2006 with respect to new improvements and first occupancy, which may be included on the regular property, which are an accruing lien, not yet due and payable.

General taxes as set forth below. Any amounts not paid when due will accrue penalties and interest in addition to the amount stated herein:

Year	Original Amount	Amount Paid	Parcel Number	Covers
2005	R4013008300	\$534.14	\$534.14	Parcel 1
2005	R4013008201	\$75.42	\$75.42	Parcel 1
2005	R4013013901	\$482.22	\$482.22	Parcel 2
2005	R4013013802	\$19.84	\$19.84	Parcel 2
2005	R4013012600	\$108.04	\$108.04	Parcel 2
2005	R4013010802	\$60.88	\$60.88	Parcel 2
2005	R4013013300	\$79.06	\$79.06	Parcel 2
2005	R4013012700	\$308.92	\$308.92	Parcel 2
2005	R4013012902	\$249.84	\$249.84	Parcel 2
2005	RRSVE000100	\$2.50	\$2.50	Parcel 3
2005	RRSVE000200	\$1.90	\$1.90	Parcel 3
2005	RRSVE000300	\$1.90	\$1.90	Parcel 3
2005	RRSVE000400	\$1.68	\$1.68	Parcel 3
2005	RRSVE000500	\$4.74	\$4.74	Parcel 3
2005	RRSVE000600	\$2.20	\$2.20	Parcel 3
2005	RRSVE000700	\$1.80	\$1.80	Parcel 3
2005	RRSVE000800	\$1.68	\$1.68	Parcel 3
2005	RRSVE001000	\$1.90	\$1.90	Parcel 3
2005	RRSVE001100	\$1.90	\$1.90	Parcel 3
2005	RRSVE001200	\$1.90	\$1.90	Parcel 3
2005	RRSVE001300	\$2.02	\$2.02	Parcel 3
2005	RRSVE001400	\$2.02	\$2.02	Parcel 3
2005	RRSVE001500	\$2.02	\$2.02	Parcel 3
2005	RRSVE001600	\$2.02	\$2.02	Parcel 3
2005	RRSVE001700	\$2.02	\$2.02	Parcel 3
2005	RRSVE001800	\$2.02	\$2.02	Parcel 3
2005	RRSVE001900	\$1.68	\$1.68	Parcel 3
2005	RRSVE002000	\$1.68	\$1.68	Parcel 3
2005	RRSVE002100	\$3.20	\$3.20	Parcel 3
2005	RRSVE002200	\$3.08	\$3.08	Parcel 3
2005	RRSVE002300	\$1.90	\$1.90	Parcel 3
2005	RRSVE002400	\$1.90	\$1.90	Parcel 3
2005	RRSVE002700	\$2.02	\$2.02	Parcel 3
2005	RRSVE002800	\$2.02	\$2.02	Parcel 3
2005	RRSVE002900	\$2.02	\$2.02	Parcel 3
2005	RRSVE003000	\$2.02	\$2.02	Parcel 3
2005	RRSVE003100	\$1.90	\$1.90	Parcel 3
2005	RRSVE003200	\$1.90	\$1.90	Parcel 3
2005	RRSVE003300	\$1.90	\$1.90	Parcel 3
2005	RRSVE003400	\$1.90	\$1.90	Parcel 3
2005	RRSVE003500	\$1.90	\$1.90	Parcel 3
2005	RRSVE003600	\$1.90	\$1.90	Parcel 3
2005	RRSVE003700	\$1.90	\$1.90	Parcel 3

2005	RRSVE003800	\$2.20	\$2.20	Parcel 3
2005	RRSVE003900	\$3.08	\$3.08	Parcel 3
2005	RRSVE004000	\$1.68	\$1.68	Parcel 3
2005	RRSVE004100	\$1.68	\$1.68	Parcel 3
2005	RRSVE004300	\$1.90	\$1.90	Parcel 3
2005	RRSVE004400	\$1.90	\$1.90	Parcel 3
2005	RRSVE004500	\$1.90	\$1.90	Parcel 3
2005	RRSVE004600	\$2.02	\$2.02	Parcel 3
2005	RRSVE004700	\$2.02	\$2.02	Parcel 3
2005	RRSVE004800	\$2.02	\$2.02	Parcel 3
2005	RRSVE004900	\$2.16	\$2.16	Parcel 3
2005	RRSVE005000	\$2.86	\$2.86	Parcel 3
2005	RRSVE005100	\$3.18	\$3.18	Parcel 3
2005	RRSVE005200	\$1.80	\$1.80	Parcel 3
2005	RRSVE005300	\$2.02	\$2.02	Parcel 3
2005	RRSVE005400	\$2.02	\$2.02	Parcel 3
2005	RRSVE005500	\$2.50	\$2.50	Parcel 3
2005	RRSVE005600	\$2.98	\$2.98	Parcel 3
2005	RRSVE005800	\$2.40	\$2.40	Parcel 3
2005	RRSVE006000	\$2.18	\$2.18	Parcel 3
2005	RRSVE006100	\$2.18	\$2.18	Parcel 3
2005	RRSVE006400	\$2.18	\$2.18	Parcel 3
2005	RRSVE006500	\$2.18	\$2.18	Parcel 3
2005	RRSVE006600	\$2.18	\$2.18	Parcel 3
2005	RRSVE006700	\$2.18	\$2.18	Parcel 3
2005	RRSVE006800	\$2.18	\$2.18	Parcel 3
2005	RRSVE007100	\$1.94	\$1.94	Parcel 3
2005	RRSVE007200	\$1.94	\$1.94	Parcel 3
2005	RRSVE007300	\$3.36	\$3.36	Parcel 3
2005	RRSVE007400	\$2.96	\$2.96	Parcel 3
2005	RRSVE007500	\$2.96	\$2.96	Parcel 3
2005	RRSVE007600	\$1.38	\$1.38	Parcel 3
2005	RRSVE007700	\$1.38	\$1.38	Parcel 3
2005	RRSVE007800	\$1.38	\$1.38	Parcel 3
2005	RRSVE007900	\$1.38	\$1.38	Parcel 3
2005	RRSVE008000	\$1.38	\$1.38	Parcel 3
2005	RRSVE008100	\$1.38	\$1.38	Parcel 3
2005	RRSVE008200	\$1.38	\$1.38	Parcel 3
2005	RRSVE008300	\$1.38	\$1.38	Parcel 3
2005	RRSVE008400	\$1.38	\$1.38	Parcel 3
2005	RRSVE008500	\$2.28	\$2.28	Parcel 3
2005	RRSVE008600	\$2.28	\$2.28	Parcel 3
2005	RRSVE008700	\$1.38	\$1.38	Parcel 3
2005	RRSVE008800	\$1.38	\$1.38	Parcel 3
2005	RRSVE008900	\$1.38	\$1.38	Parcel 3
2005	RRSVE009000	\$1.38	\$1.38	Parcel 3
2005	RRSVE009100	\$1.38	\$1.38	Parcel 3
2005	RRSVE009200	\$1.84	\$1.84	Parcel 3
2005	RRSVE009300	\$1.84	\$1.84	Parcel 3
2005	RRSVE009600	\$2.20	\$2.20	Parcel 3
2005	RRSVE009700	\$2.20	\$2.20	Parcel 3
2005	RRSVE009800	\$2.20	\$2.20	Parcel 3
2005	RRSVE009900	\$2.20	\$2.20	Parcel 3

2005	RRSVE010000	\$2.20	\$2.20	Parcel 3
2005	RRSVE010100	\$2.18	\$2.18	Parcel 3
2005	RRSVE010200	\$2.18	\$2.18	Parcel 3
2005	RRSVE010300	\$2.18	\$2.18	Parcel 3
2005	RRSVE010400	\$3.36	\$3.36	Parcel 3
2005	RRSVE010500	\$2.26	\$2.26	Parcel 3
2005	RRSVE010600	\$2.90	\$2.90	Parcel 3
2005	RRSVE010700	\$1.58	\$1.58	Parcel 3
2005	RRSVE010800	\$1.90	\$1.90	Parcel 3
2005	RRSVE010900	\$2.22	\$2.22	Parcel 3
2005	RRSVE011000	\$3.24	\$3.24	Parcel 3
2005	RRSVE011100	\$2.46	\$2.46	Parcel 3
2005	RRSVE011200	\$2.28	\$2.28	Parcel 3
2005	RRSVE011300	\$2.08	\$2.08	Parcel 3
2005	RRSVE011400	\$2.56	\$2.56	Parcel 3
2005	RRSVE011500	\$2.66	\$2.66	Parcel 3
2005	RRSVE011600	\$3.28	\$3.28	Parcel 3
2005	RRSVE011700	\$4.46	\$4.46	Parcel 3
2005	RRSVE011800	\$5.18	\$5.18	Parcel 3
2005	RRSVE011900	\$5.14	\$5.14	Parcel 3
2005	RRSVE012000	\$5.14	\$5.14	Parcel 3
2005	RRSVE012100	\$3.26	\$3.26	Parcel 3
2005	RRETY000100	\$69.78	\$34.89	Parcel 4
2005	RRETY001200	\$66.36	\$33.18	Parcel 4
2005	RRETY002200	\$23.42	\$11.71	Parcel 4
2005	RRETY002300	\$19.16	\$9.58	Parcel 4
2005	RRETY002400	\$24.00	\$12.00	Parcel 4
2005	RRETY002500	\$21.92	\$10.96	Parcel 4
2005	RRETY002600	\$27.40	\$13.70	Parcel 4
2005	RRETY002700	\$23.98	\$11.99	Parcel 4
2005	RRETY002800	\$16.44	\$8.22	Parcel 4
2005	RRETY002900	\$24.66	\$12.33	Parcel 4
2005	RRETY003000	\$60.26	\$30.13	Parcel 4
2005	RRETY003100	\$7.28	\$3.64	Parcel 4
2005	RRETY003200	\$6.10	\$3.05	Parcel 4
2005	RRETY003300	\$6.10	\$3.05	Parcel 4
2005	RRETY003400	\$6.10	\$3.05	Parcel 4
2005	RRETY003500	\$6.10	\$3.05	Parcel 4
2005	RRETY003600	\$6.10	\$3.05	Parcel 4
2005	RRETY003700	\$6.10	\$3.05	Parcel 4
2005	RRETY003800	\$6.10	\$3.05	Parcel 4
2005	RRETY003900	\$6.10	\$3.05	Parcel 4
2005	RRETY004000	\$6.10	\$3.05	Parcel 4
2005	RRETY004100	\$6.40	\$3.20	Parcel 4
2005	RRETY004200	\$65.06	\$32.53	Parcel 4
2005	RRETY004300	\$13.28	\$6.64	Parcel 4
2005	RRETY004400	\$46.84	\$23.42	Parcel 4
2005	RRETY004500	\$113.66	\$56.83	Parcel 4
2005	RRETY004600	\$91.74	\$45.87	Parcel 4
2005				

Homeowners Exemption is not in effect for 2005.
Circuit breaker is not in effect for 2005.

8. Reservations in United States Patent.
9. Water rights, claims or title to water, whether or not the matters are shown by the public records.
10. Right, Title and Interest of the public in and to those portions of above described premises falling within the bounds of roads or highways.
11. Easement for POWER LINE granted to IDAHO POWER COMPANY, recorded MARCH 2, 1950 as Instrument No. 271368. AFFECTS PORTION IN PARCEL 2.
12. Easement for POWER LINES granted to IDAHO POWER COMPANY, recorded MARCH 4, 1976 as Instrument No. 550990.
13. Easement for Public Utilities and incidental purposes and ingress and egress granted to IDAHO POWER COMPANY, recorded July 5, 1961 as Instrument No. 370134.
14. EASEMENT Agreement upon the terms, conditions and provisions contained therein:
Parties: AMERICAN LAND TITLE COMPANY, INC, PAUL KATSILOMETES AND TOM KATSILOMETES
Recorded: APRIL 2, 1979, Instrument No. 621533
15. WATER SUPPLY Agreement upon the terms, conditions and provisions contained therein:
Parties: BLACK CLIFFS DEVELOPMENT, INC., C.A. PATTERSON AND LOIS E. PATTERSON AND DOUGLAS K. PATTERSON AND CHERYL S. PATTERSON
Recorded: MAY 22, 1992, Instrument No. 92007739
16. All matters, covenants, conditions, restrictions, easements and any rights, interests or claims which may exist by reason thereof, disclosed by the recorded plat of said subdivision, recorded OCTOBER 16, 1961, as instrument number 373461, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c). AFFECTS PARCELS 3 & OTHER
17. Covenants, Conditions and Restrictions of SOUTH VALLEY VIEW ESTATES SUBDIVISION appearing of record, but omitting any covenant, condition or restriction based on race, color, religion, sex, handicap, familial status, or national origin to the extent that such covenants, conditions or restrictions violate 42 USC 3604(c).
18. Provisions in WARRANTY DEED recorded AUGUST 3, 1949 as Instrument No. 267035.
Affects the E2 SW1/4 AND W2SE1/4 SECTION 9, TOWNSHIP 7 SOUTH, RANGE 35 EAST, B.M.
19. Provisions in WARRANTY DEED recorded JANUARY 19, 1970 as Instrument No. 466846.
20. Mortgage dated March 21, 2005, to secure an original indebtedness of \$633,767.00, and any other amounts and/or obligations secured thereby.
Recorded: March 23, 2005, as Instrument No. 20505311
Mortgagor: Southern Hills Development Co., LLC
Mortgagee: Eighty Acres, Inc.
(Covers Parcel 4)

21. Mortgage dated July 29, 2005, to secure an original indebtedness of \$177,012.00, and any other amounts and/or obligations secured thereby.
Recorded: August 1, 2005, as Instrument No. 20515638
Mortgagor: Southern Hills Development Company, LLC
Mortgagee: D.L. Evans Bank
(Covers Parcel 4)

Modification Agreement recorded September 20, 2005, as Instrument No. 20519877.

22. Deed of Trust dated July 29, 2005, to secure an original indebtedness of \$177,012.00, and any other amounts and/or obligations secured thereby
Recorded: August 1, 2005, as Instrument No. 20515639
Grantor: Southern Hills Development Company, LLC
Trustee: Northern Title Co. of Idaho
Beneficiary: D.L. Evans Bank
(Covers Parcel 4)

Modification Agreement recorded September 20, 2005, as Instrument No. 20519876.

NOTE: The foregoing numbered exceptions (1-6) may be eliminated in an ALTA Extended or EAGLE Coverage Policy.

Exhibit "A"

Real property in the County of Bannock, State of Idaho, described as follows:

PARCEL 1:

A TRACT OF LAND IN THE SOUTH HALF OF SECTION 9, TOWNSHIP 7 SOUTH, RANGE 35 EAST, BOISE MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTH QUARTER CORNER OF SECTION 9, TOWNSHIP 7 SOUTH, RANGE 35 EAST, BOISE MERIDIAN, THE SAME BEING THE SOUTHEAST CORNER OF SOUTH VALLEY VIEW ESTATES, A SUBDIVISION RECORDED IN THE RECORDS OF BANNOCK COUNTY AS INSTRUMENT 373461; THENCE NORTH 00°15'43" EAST FOR A DISTANCE OF 1320.91 FEET TO A FOUND 3/4 INCH DIAMETER IRON PIN ACCEPTED AS THE NORTHEAST CORNER OF SOUTH VALLEY VIEW ESTATES, THENCE NORTH 89°50'47" WEST ALONG THE NORTH BOUNDARY LINE OF SOUTH VALLEY VIEW ESTATES FOR A DISTANCE OF 659.93 FEET; THENCE NORTH 00°06'14" EAST ALONG THE WEST BOUNDARY LINE OF THE EAST HALF OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 9 FOR A DISTANCE OF 1315.23 FEET TO A POINT ON THE LATITUDINAL CENTERLINE OF SECTION 9; THENCE SOUTH 88°55'17" EAST ALONG THE LATITUDINAL CENTERLINE OF SECTION 9 FOR A DISTANCE OF 1976.72 FEET TO THE EAST 1/16TH CORNER ON SAID CENTERLINE; THENCE SOUTH 00°05'41" WEST FOR A DISTANCE OF 2638.63 FEET TO THE EAST 1/16TH CORNER ON THE SOUTH LINE OF SECTION 9; THENCE NORTH 88°51'13" WEST FOR A DISTANCE OF 1320.88 FEET TO THE POINT OF BEGINNING.

PARCEL 2:

A TRACT OF LAND IN THE NORTH HALF OF THE NORTHWEST QUARTER, THE NORTHEAST QUARTER AND THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 16, TOWNSHIP 7 SOUTH, RANGE 35 EAST BOISE MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SECTION 16, TOWNSHIP 7 SOUTH, RANGE 35 EAST, BOISE MERIDIAN, THENCE SOUTH 88°50' 35" EAST ALONG THE NORTH LINE OF SECTION 16 FOR A DISTANCE OF 800.00 FEET TO THE NORTHEAST CORNER OF PIEDMONT ACRES, A SUBDIVISION RECORDED IN THE RECORDS OF BANNOCK COUNTY AS INSTRUMENT 601980; THENCE SOUTH 00°46'58" WEST ALONG THE EAST SIDE OF PIEDMONT ACRES FOR A DISTANCE OF 25.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE SOUTH 88°50'35" EAST ALONG THE SOUTH RIGHT OF WAY LINE OF PIEDMONT ROAD FOR A DISTANCE OF 519.31 FEET TO THE WEST 1/16TH LINE OF SECTION, THENCE NORTH 00°37'47" EAST FOR A DISTANCE OF 25.00 FEET TO THE WEST 1/16TH CORNER ON THE NORTH LINE OF SECTION 16, THENCE SOUTH 88°50'35" EAST FOR A DISTANCE OF 1319.24 FEET TO THE NORTH QUARTER CORNER OF SECTION 16, THENCE SOUTH 88°51'13" EAST FOR A DISTANCE OF 2641.77 FEET TO THE NORTHEAST CORNER OF SECTION 16, THENCE SOUTH 00°32'19" WEST ALONG THE EAST LINE OF SECTION 16 FOR A DISTANCE OF 2091.20 FEET TO THE NORTHEAST CORNER OF THE LAND DESCRIBED IN INSTRUMENT 788114; THENCE NORTH 89°20'56" WEST FOR A DISTANCE OF 1046.00 FEET TO THE NORTHWEST CORNER OF THE SAID LAND; THENCE SOUTH 00°32'19" WEST FOR A DISTANCE OF 500.00 FEET TO THE SOUTHWEST CORNER OF THE SAID LAND; THENCE SOUTH 89°20'56" EAST ALONG THE SOUTH LINE OF SAID LAND, THE SAME BEING THE LATITUDINAL CENTERLINE OF SECTION 16 FOR A DISTANCE OF 56.81 FEET; THENCE SOUTH 00°33'48" WEST FOR A DISTANCE OF 528.00 FEET; THENCE NORTH 89°20'55" WEST FOR A DISTANCE OF 329.11 FEET TO A POINT ON THE EAST 1/16TH LINE OF SECTION 16; THENCE NORTH 00°29'48" EAST FOR A DISTANCE OF 528.00 FEET TO THE EAST 1/16TH CORNER ON THE LATITUDINAL CENTERLINE OF SECTION 16; THENCE NORTH 89°20'56" WEST ALONG THE SAID LATITUDINAL CENTERLINE FOR A DISTANCE OF 1023.90 FEET TO THE SOUTHEAST CORNER OF THE LAND DESCRIBED IN INSTRUMENT 93021655; THENCE NORTH 00°27'19" EAST FOR A DISTANCE OF 320.00 FEET TO THE NORTHEAST CORNER OF THE LAND DESCRIBED IN INSTRUMENT 93021655; THENCE NORTH 89°20'56" WEST FOR A

DISTANCE OF 295.00 FEET TO THE NORTHWEST CORNER OF THE SAID LAND; THENCE NORTH 00°27'19" EAST ALONG THE MERIDIONAL CENTERLINE OF SECTION 16 FOR A DISTANCE OF 1236.51 FEET TO A POINT IS MARKED WITH A FOUND 1/2 INCH DIAMETER IRON PIN ACCEPTED AS THE NORTHEAST CORNER OF THE LAND DESCRIBED IN INSTRUMENT 473513; THENCE FOLLOWING THE BOUNDARY LINES OF THE LAND DESCRIBED IN INSTRUMENT 621688 FOR THE NEXT FIVE (5) COURSES: (1) SOUTH 89°06'35" EAST FOR A DISTANCE OF 260.00 FEET; THENCE (2) NORTH 14°06'45" EAST FOR A DISTANCE OF 140.00 FEET; THENCE (3) NORTH 41°32'41" EAST FOR A DISTANCE OF 450.00 FEET; THENCE (4) NORTH 41°17'29" WEST FOR A DISTANCE OF 180.00 FEET; THENCE (5) SOUTH 48°42'31" WEST FOR A DISTANCE OF 907.24 FEET TO A POINT ON THE NORTH BOUNDARY LINE OF THE LAND DESCRIBED IN INSTRUMENT 473513; THENCE NORTH 88°35'51" WEST ALONG THE SAID NORTH BOUNDARY LINE FOR A DISTANCE OF 490.35 FEET TO A POINT IS MARKED WITH A FOUND 1/2 INCH DIAMETER IRON PIN ACCEPTED AS THE NORTHWEST CORNER OF THE LAND DESCRIBED IN INSTRUMENT 473513; THENCE NORTH 00°37'47" EAST ALONG THE EAST BOUNDARY LINE OF THE LAND DESCRIBED IN INSTRUMENT 675569 FOR A DISTANCE OF 435.85 FEET; THENCE NORTH 88°37'03" WEST FOR A DISTANCE OF 264.18 FEET; THENCE NORTH 00°37'47" EAST FOR A DISTANCE OF 66.00 FEET; THENCE NORTH 88°37'03" WEST FOR A DISTANCE OF 360.03 FEET TO A POINT ON THE WEST 1/16TH LINE OF SECTION 16, SAID POINT IS MARKED WITH A FOUND 1/2 INCH DIAMETER IRON PIN ACCEPTED AS THE NORTHWEST CORNER OF THE LAND DESCRIBED IN INSTRUMENT 95003247; THENCE SOUTH 00°37'47" WEST ALONG THE WEST 1/16TH LINE FOR A DISTANCE OF 302.77 FEET; THENCE NORTH 88°37'03" WEST FOR A DISTANCE OF 790.30 FEET; THENCE SOUTH 00°37'47" WEST FOR A DISTANCE OF 423.23 FEET TO A POINT ON THE NORTH RIGHT OF WAY LINE OF KATSILOMETES ROAD; THENCE NORTH 88°37'03" WEST ALONG THE NORTH RIGHT OF WAY LINE OF KATSILOMETES ROAD FOR A DISTANCE OF 193.21 FEET TO A POINT ON A CURVE IN THE EAST RIGHT OF WAY LINE OF OLD US HIGHWAY 30; THENCE NORTHWESTERLY ALONG THE SAID RIGHT OF WAY LINE, FOLLOWING A 5769.58 FOOT RADIUS CURVE, CONCAVE TO THE SOUTHWEST, THROUGH A CENTRAL ANGLE OF 05°02'19" AND AN ARC DISTANCE OF 507.38 FEET TO A POINT ON THE WEST LINE OF SECTION 16, THE CHORD OF THE AFORE DESCRIBED CURVE BEARS NORTH 41°10'59" WEST A DISTANCE OF 507.21 FEET; THENCE NORTH 00°46'58" EAST ALONG THE SAID WEST LINE FOR A DISTANCE OF 218.97 FEET TO THE SOUTHWEST CORNER OF PIEDMONT ACRES; THENCE SOUTH 88°50'35" EAST FOR A DISTANCE OF 800.00 FEET TO THE SOUTHEAST CORNER OF PIEDMONT ACRES; THENCE NORTH 00°46'58" EAST ALONG THE EAST BOUNDARY LINE OF PIEDMONT ACRES FOR A DISTANCE OF 653.40 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM:

A PARCEL OF LAND IN THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 16, TOWNSHIP 7 SOUTH, RANGE 35 EAST, BOISE MERIDIAN, BEING THAT PARCEL OF LAND DESCRIBED IN INSTRUMENT 634749 OF THE RECORDS OF BANNOCK COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER QUARTER CORNER OF SECTION 16, TOWNSHIP 7 SOUTH, RANGE 35 EAST, BOISE MERIDIAN; THENCE SOUTH 89°20' 56" EAST ALONG THE LATITUDINAL CENTERLINE OF SECTION 16 FOR A DISTANCE OF 294.26 FEET; THENCE NORTH 53°40'56" EAST FOR A DISTANCE OF 459.93 FEET; THENCE NORTH 48°49'49" WEST 50.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING NORTH 48°49'49" WEST FOR A DISTANCE OF 208.71 FEET; THENCE SOUTH 53°40'56" WEST FOR A DISTANCE OF 213.80 FEET; THENCE SOUTH 48°49'49' EAST FOR A DISTANCE OF 208.71 FEET; THENCE NORTH 53°40'56" EAST FOR A DISTANCE OF 213.80 FEET TO THE POINT OF BEGINNING.

PARCEL 3:

LOT 1, BLOCK 1; LOTS 1 THROUGH 7 AND 9 THROUGH 11, BLOCK 2, LOTS 1 THROUGH 12 AND 15 THROUGH 18, BLOCK 3; LOTS 1 THROUGH 11 AND 13 THROUGH 15, BLOCK 4; LOTS 1 THROUGH 9, BLOCK 5; LOTS 1 AND 2, BLOCK 6; LOTS 1, 3, 4, 7 THROUGH 11 AND 14 THROUGH 36, BLOCK 7; LOTS 2 THROUGH 20, BLOCK 8; LOTS 1 THROUGH 7, BLOCK 9, ALL LOCATED IN SOUTH VALLEY VIEW ESTATES SUBDIVISION, BANNOCK COUNTY, IDAHO, AS THE SAME APPEARS ON THE OFFICIAL PLAT THEREOF, RECORDED OCTOBER 16, 1961 AS INSTRUMENT NO. 373461.

PARCEL 4:

LOT ALL, BLOCK ALL, EIGHTY ACRES, INC. SUBDIVISION, BANNOCK COUNTY, IDAHO, AS THE SAME APPEARS ON THE OFFICIAL PLAT THEREOF, RECORDED FEBRUARY 28, 1950 AS INSTRUMENT NO. 271259.

EXCEPTING THEREFROM:

LOTS 1, 2, 3, 4, 5, 6, 7, 8, 9, AND 10, BLOCK 2 AND LOTS 1, 2, 3, 4, 5, 6, 7, 8, AND 9, BLOCK 3, EIGHTY ACRES, INC. SUBDIVISION, BANNOCK COUNTY, IDAHO, AS THE SAME APPEARS ON THE OFFICIAL PLAT THEREOF, RECORDED FEBRUARY 28, 1950 AS INSTRUMENT NO. 271259.

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IDAHO FALLS, IDAHO

Attorneys for The Bank of Commerce

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

THE BANK OF COMMERCE, an Idaho
banking corporation,

Plaintiff,

v.

JEFFERSON ENTERPRISES, LLC, an Idaho
limited liability company, DUSTIN
MORRISON and SONYA KIDD aka SONYA
MORRISON, THE CITY OF POCA TELLO,
an Idaho municipality,

Defendants.

DUSTIN MORRISON and SONYA KIDD aka
SONYA MORRISON, and JEFFERSON
ENTERPRISES, LLC, an Idaho limited
liability company,

Counterclaimants,

vs.

THE BANK OF COMMERCE, an Idaho
banking corporation,

Counterdefendant.

Case No. CV-08-4231-OC

**REPLY MEMORANDUM IN
SUPPORT OF MOTION FOR
SUMMARY JUDGMENT**

REPLY MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT - 1

1/10/12

The Bank of Commerce (the “Bank” herein) by and through its attorneys of record, hereby replies to Jefferson Enterprises, LLC’s (“Jefferson Enterprises”) opposition to its Motion for Summary Judgment as follows:

I. ARGUMENT

A. The Bank’s Mortgages

The Bank has two Mortgages encumbering the Subject Property. Jefferson Enterprises has not objected to the Bank’s foreclosures of its Mortgages. Therefore, this Court should enter a judgment and order allowing the Bank to foreclose on and sell the Subject Property.

B. Allegations in the Amended Counterclaim

1. Breach of Contract

Jefferson Enterprises claims that the Bank agreed to loan money to Jefferson Enterprises in accordance with the terms and conditions of the loan application, including the condition that the Bank would be secured on the Eighty Acre parcel by taking a second lien position. However, even when construing the evidence in favor of Jefferson Enterprises, the evidence does not support the breach of contract claim. Despite Jefferson Enterprises’ continual claims of such an agreement, in fact there is no such evidence in the record.

a. Statute of Frauds

There is no evidence the Bank entered into any kind of commitment to loan money based on the Jefferson Enterprises’ application for the loan. More specifically, there is no evidence the Bank agreed to loan Jefferson Enterprises the \$2.2 million but to only take a second position on the Eighty Acre parcel.

Dustin Morrison (“Dustin”) knew that Steve Worton did not have the authority to

approve the loan that Jefferson Enterprises was requesting. D. Morrison Depo. Tr. p. 105, l. 24 to p. 106, l. 1. In fact, any loan over \$250,000.00 had to be approved by the officers and directors of the Bank in a formal meeting. Aff. Romrell, ¶ 7. The May 9, 2006, meeting of the officers and directors of the Bank was the only time Jefferson Enterprises' loan request was presented to the officers and directors of the Bank. Aff. Romrell ¶ 6. It was never presented at any prior meeting of the officers and directors of the Bank. *Id.* Therefore, despite Dustin's belief that the Bank had given him a precommitment to loan him the money while agreeing to take a second position in the Eighty Acre parcel, there is no evidence that the Bank ever offered or approved any such precommitment.

Even if there were such evidence, there is no evidence that such a precommitment agreement complied with the Statute of Frauds. In fact, Idaho Code § 9-505 requires that a promise or commitment to loan \$50,000 or more must not only be in writing, but must also be subscribed by the alleged lender. *See also Lettunich v. Key Bank Nat. Assoc.*, 141 Idaho 362, 109 P. 3d 1104 (2005) (although Key Bank had prepared written commitments to loan more than \$50,000, Key Bank had never signed those commitments and therefore any such oral commitment to loan the money violated the Statute of Frauds and was not enforceable).

In its objection to the Bank's Motion for Summary Judgment, Jefferson Enterprises only vaguely responds to the issues regarding the Statute of Frauds by claiming, without any authority, that Steve Worton's statement should be barred.

However, in his deposition, Dustin admits there was not any written precommitment to loan Jefferson Enterprises the money. D. Morrison Depo. Tr., p. 64, ll. 1-13. Because there was no such written precommitment, it logically was not subscribed by the Bank or its authorized

agent.

Therefore, Jefferson Enterprises' claim for breach of the alleged precommitment promise to loan money fails because there was no such precommitment promise. Even if there were such an oral precommitment, it would have violated the Statute of Frauds and would therefore, be unenforceable. Either way, this Court should dismiss Jefferson Enterprises' breach-of-contract claim.

b. Novation.

Even if there had been a precommitment agreement to loan Jefferson Enterprises money while taking a second lien position in the Eighty Acre parcel, when Jefferson Enterprises closed the \$2.2 million loan on May 10, 2006, that closing agreement would have become a novation. If Jefferson Enterprises truly believed it had an enforceable precommitment agreement with the Bank to loan it the money while taking a second lien position in the Eighty Acres parcel, then Jefferson Enterprises could have chosen not to close the loan on May 10, 2006, under allegedly different terms, and to instead pursue a claim against the Bank for breach of that precommitment agreement. However, Jefferson Enterprises instead knowingly and voluntarily substituted any such alleged precommitment agreement when it entered into the May 10, 2006 agreement by executing the promissory note and mortgage and accepting the \$2.2 million from the Bank.

Dustin testified:

Q. Ultimately you decided that you would accept the terms that the bank offered and close the loan.

A. Yes....

D. Morrison Depo. Tr., p. 73, ll. 20-22.

Therefore, this Court should grant the Bank summary judgment by dismissing Jefferson Enterprises' claim that the Bank breached the alleged precommitment agreement.

2. Fraud and Misrepresentation

a. Alleged Precommitment

Jefferson Enterprises claims that the Bank fraudulently misrepresented that it would accept a second lien position on the Eighty Acre parcel and then allegedly changed its position less than 48 hours before the loan closing and the expiration of the option to purchase the Wood property by insisting on a first lien position.

Regardless of how many times Jefferson Enterprises repeats this claim, there is no evidence in the record to support such a claim. Even if Steve Worton initially thought the Bank would agree to the second lien position on the Eighty Acre parcel and even if he conveyed his belief to Dustin, Dustin knew that Steve Worton could not bind the Bank and that the Bank's board of directors would ultimately have to approve the loan.

Dustin testified:

A. ... I meet with Steve Worton, Steve Worton says I think we can get you what you want....

D. Morrison Depo. Tr., p. 56, ll. 23-24.

Dustin also testified:

Q. You don't feel like Steve Worton was purposely trying to mislead you –

A. I don't think Steve Worton misled me.... I think Steve was forthright, I think Steve was as frantic as I was those two days before to clarify with Tom the board's intention.

D. Morrison Depo. Tr., p. 100, l. 24 to p. 101, l. 10.

In regards to what Jefferson Enterprises claims was the precommitment Dustin testified as follows:

Q. I want to go back, I don't want to spend a lot of time on this April 25, I know it's not the exact date, but this precommitment. That was just we think we might be able to get something approved, I mean it was –

A. No, it was more than that.

Q. Not in writing but –

A. I believe there was an interest rate expressed. I believe that there was a condition or a change from my application that was spelled out in the amount, the loan amount, not 2.8, we will do 2.2. No other conditions. And the term, one year. That's it, that's it. 2.2 for one year.

The words weren't saying everything else in your application or loan request are acceptable or approved, but there was certainly the effort to clarify the changes to my loan request and application.

Q. So they were telling you what they thought the changes would have to be.

A. Yes.

Q. In order to even have the board approve that loan.

A. It was more than that, it was somebody had said we could do this. *If everything checks out, after due diligence, if everything checks out as you implied, we could do this*, it was that far.

D. Morrison Depo. Tr., p. 83, l. 10 to p. 84, l. 14 (emphasis added).

Finally, regarding Steve Worton's limited authority, Dustin testified:

Q. But you know he had to go get approval from the board of directors on a loan of this size.

A. Yes....

D. Morrison Depo. Tr., p. 105, l. 24-25 to p. 106, l. 1.

Jefferson Enterprises has not shown that the Bank knowingly made a false representation

to Dustin nor that Jefferson Enterprises reasonably was justified in relying on any such alleged representation. For purposes of its fraud and misrepresentation claim, knowing that final approval had to come from the Bank's board of directors, it is not reasonable that Dustin relied on Steve Worton's belief that the Bank would probably approve the loan with the Bank taking a second lien position in the Eighty Acres parcel. Because Jefferson Enterprises has failed to establish a false representation by the Bank as well as a reasonable reliance on the alleged false representation, the claim of fraud and misrepresentation fail. This Court should dismiss Jefferson Enterprises' fraud and misrepresentation claim.

b. Alleged Promise of Future Long-term Loans

In addition, Jefferson Enterprises claims that the Bank fraudulently misrepresented that it would provide additional financing in the future, but that the Bank subsequently refused to provide that additional financing.

In *Kruse v. Bank of America*, 202 Cal.App.3d 38, 248 Cal.Rptr. 217 (1988), the California Court of Appeals reviewed a similar case in which various persons sued a bank because the bank had allegedly promised to provide future long-term loans, but subsequently refused to extend those loans. One of the plaintiffs, Irene Kruse, sued the bank claiming fraud. The appellate court stated:

The theory advanced at trial was that the Bank fraudulently induced Mrs. Kruse to execute the transfer of stock by misrepresenting to Mrs. Kruse that long-term financing would then be provided....

...

It seems obvious that Mrs. Kruse's central complaint is not the Bank's fraudulent inducement but rather the Bank's refusal to provide long-term financing for the O'Connell Company....

Yet, contrary to her assertions, the record contains no evidence of a “commitment” or “promise” to make such long-term loan. Unlike the Jewells, at trial Mrs. Kruse conceded there was no contract to lend money, since no terms had been negotiated. The thrust of her argument is directed to the Bank’s conduct in 1977 and 1978 as the basis of an implied representation that the Bank would fund a long-term loan when in fact it had no intention to do so. The argument fails under its own weight, the record reflecting an absence of any substantial evidence supporting either an implied promise to lend money or the essential requirement of justifiable reliance.

At most, Sullivan [the bank’s loan officer] expressed interest in securing the desired financing. As previously discussed, he and George M. Jewell engaged in ongoing discussions and negotiations for the purpose of obtaining the necessary loan approval from Sullivan’s superiors, a prospect long incubating within George M. Jewell’s hopeful expectation, an optimism he quickly shared with Mrs. Kruse and her son. Yet, George M. Jewell’s optimism was unfounded. He knew that Sullivan lacked authority to approve the sizable loan necessary to fund the dehydration plant. The very premise of their frequent discussions was the need to obtain the approval of the regional office. In fact, the stock transfer in response to Sullivan’s request was purportedly a step towards facilitating the needed approval. It is indisputable that the regional office’s approval was recognized by both the Jewells and the O’Connells as a condition precedent to the Bank’s expected commitment to extend long-term financing. The evidence of such contingent expectations and negotiations is far removed from a binding promise to lend money and also negates any reasonable reliance upon the Bank’s alleged misrepresentations.

Id. at 62-64, 248 Cal. Rptr. at 231-33.

Similarly, Jefferson Enterprises appears to be claiming that the Bank fraudulently induced it to enter into the \$2.2 million loan on May 10, 2006, by misrepresenting to Dustin that long-term financing would later be provided. However, the evidence does not support fraud or misrepresentation. Jefferson Enterprises knew that any future loans from the Bank would have to be negotiated to determine the terms of any such loans. Jefferson Enterprises also knew that the Bank’s board of directors would have to approve of any such loans. Dustin testified:

Q. What was the commitment?

A. I think the commitment was a little bit ambiguous versus how you

are trying to package it. And I am aware of what that sounds like. The commitment was the bank will do whatever it can to facilitate your success.

Q. And this commitment was, again, verbally from Mr. Worton?

A. Yes. And it was assuming the bank's logic –

Q. So the bank would have to approve it.

A. Yes. And probably define terms and all of those things, you know.

Q. So none of that was decided or discussed.

A. That's right. The commitment was broad and more in principle, you know, the bank will do what it can to facilitate your success with this project and continued income.

Q. I mean there wasn't this discussion, where you said, okay it would be this much money for this long, for this interest rate or –

A. That right, you are right.

D. Morrison Depo. Tr., p. 88, ll. 4-24.

The evidence of such contingent expectations and negotiations is far removed from a binding promise to lend money and also negates any reasonable reliance upon the Bank's alleged misrepresentations. *See Kruse, supra*. Therefore, Jefferson Enterprises' fraud and misrepresentation claim fails, and this Court should grant the Bank's Motion for Summary Judgment.

3. Interference with a Prospective Economic Advantage

Jefferson Enterprises also claims the Bank's position requiring Jefferson Enterprises to use existing liquid cash reserves to place the Bank in a first position on the Eighty Acre parcel materially interfered with Jefferson Enterprises' foreseeable prospective economic advantage. *See Amended Counterclaim, ¶ 24*. However, the evidence simply does not support Jefferson

Enterprises' allegation of interference with a prospective economic advantage.

In *Kruse v. Bank of America, supra*, Mrs. Kruse also brought a claims against the bank for intentional interference with a prospective economic advantage. The California Court of Appeals stated:

To the extent that the argued interference was directed to the unkept promise of long-term financing, Mrs. Kruse failed to establish a cause of action. The tort of intentional interference with economic advantage affords a remedy for wrongful interference with an economic relationship by a *third party*. (*Dryden v. Tri-Valley Growers* (1977) 65 Cal.App.3d 990, 998-999, 135 Cal.Rptr. 720; *Kelly v. General Telephone Co.* (1982) 136 Cal.App.3d 278, 288, 186 Cal.Rptr. 184; see also Prosser & Keeton, *The Law of Torts, supra*, § 129, p. 978; Rest.2d Torts, § 766.) Here, however, only two parties were involved: the O'Connell Company, anxiously hoping for the bank loan, and the Bank itself which, through a convoluted reasoning process, is charged with interference by denying the loan.

The presence of the Jewells does not fulfill the third party requirement. In the context presented, the Bank's alleged promise was to provide long-term financing directly to the O'Connell Company, not to the Jewells. And, at the risk of repetition, it bears emphasis that George M. Jewell consistently rejected any suggestion to obtain financing by encumbering the ranch.

While wrongful interference with one's own business may arguably constitute a breach of contract, it cannot serve as the basis of the claimed tort liability. Indeed, interference with business relations is ordinarily privileged if one has a financial interest in one of the parties. (*Culcal Stylco, Inc. v. Vornado* (1972) 26 Cal.App.3d 879, 882, 103 Cal.Rptr. 419; Rest.2d Torts, § 769.) The Bank's refusal to extend long-term financing to the O'Connell Company, even if that refusal amounted to an outright repudiation of a firm commitment, does not give rise to tort liability for interference with an economic advantage.

Kruse, supra at 66, 248 Cal. Rptr. at 234 (Ct. App. 1988) (emphasis in original).

Jefferson Enterprises has not shown any third party to the relationship. In fact, Jefferson Enterprises has failed to even address the third-party relationship in its opposing memorandum.

Moreover, for Jefferson Enterprises to prevail on its claim of intentional interference with a prospective economic advantage, it must establish all of five elements as set forth by the Idaho

Supreme Court. *Cantwell v. City of Boise*, 146 Idaho 127, 137-38, 191 P.3d 205, 215-16 (2005).

However, Jefferson Enterprises has failed to establish any of the five requirements. *See* Memorandum in Support of Motion for Summary Judgment, p. 16. In its opposing brief, Jefferson Enterprises acknowledges the five required elements, as well as other authority regarding interference with a prospective economic advantage. However, Jefferson Enterprises failed to cite specific evidence in the record to support any of the required elements, let alone all five elements. On the other hand, the Bank has set forth numerous instances of Dustin's own testimony which contradicts all five elements. *See id.*, at pp. 18-21.

Therefore, based on the uncontroverted evidence in the record, this Court should grant the Bank summary judgment by dismissing Jefferson Enterprises' intentional interference with a prospective economic advantage claim.

4. Promissory Estoppel

In its opposing brief, Jefferson Enterprises sets forth the elements of promissory estoppel, and then argues there are disputed issues of fact regarding those elements. However, Jefferson Enterprises again fails to cite to the record to establish any facts to support those elements.

The evidence in the record does not support promissory estoppel even when viewed in the light most favorable to Jefferson Enterprises. As set forth previously, there is no actual evidence of any enforceable precommitment agreement. The Bank's Board of Directors never met to approve Jefferson Enterprises' loan request until May 9, 2006. *Aff. Romrell*, ¶ 6.

Additionally, just as there was no reasonable reliance to support a claim of fraud or misrepresentation, there is no reasonable reliance to support promissory estoppel. *See* citations to the record above and the in Memorandum in Support of Motion for Summary Judgment.

Finally, Jefferson Enterprises has also failed to address the *Lettunich* case, which was cited by the Bank in its Memorandum in Support of Motion for Summary Judgment. In *Lettunich, supra*, the plaintiff tried to use promissory estoppel to prevent Key Bank from denying the enforceability of an oral promise to lend money. The Idaho Supreme Court held that promissory estoppel did not apply because there was adequate consideration; there was not, however, a definite agreement.

Similarly, there was adequate consideration in the present case, as the Bank loaned Jefferson Enterprises \$2.2 million, and Jefferson Enterprises agreed to pay that amount back plus loan fees and interest. Just as in *Lettunich*, there was not a definite or valid precommitment agreement in the present case. For all of the reasons set forth previously, there is not sufficient evidence in the record to establish the existence of a precommitment agreement. Moreover, there is no genuine issue of fact regarding the following: the requested loan was for well over \$50,000 and the alleged precommitment agreement was not in writing nor was any such writing signed by the Bank. D. Morrison Depo. Tr., p. 99, ll. 3-10. As such, any alleged oral precommitment would not be enforceable as it would not have complied with the Statute of Frauds. Promissory estoppel cannot be used to create the alleged precommitment agreement, as such would violate the Statute of Frauds.

Therefore, this Court should grant the Bank summary judgment by dismissing Jefferson Enterprises' promissory estoppel claim.

5. Damages

Jefferson Enterprises admits that "Dustin Morrison may not have know the exact dollar amount of Jefferson's damages..." Memorandum in Opposition to Plaintiff's Motion for

Summary Judgment, p. 20. In fact, Jefferson Enterprises has not set forth any amount of damages.

The Idaho Supreme Court has stated:

“A district court’s award of damages will be upheld on appeal where there is sufficient evidence supporting the award.” *Griffith I*, 143 Idaho 733, 740, 152 P.3d 604, 611 (2007) (*quoting Sells v. Robinson*, 141 Idaho 767, 774, 118 P.3d 99, 106 (2005)). This Court has held that evidence is sufficient if it proves the damages with reasonable certainty. *Griffith I*, 143 Idaho at 740, 152 P.3d at 611. “Reasonable certainty requires neither absolute assurance nor mathematical exactitude; rather, the evidence need only be sufficient to remove the existence of damages from the realm of speculation.” *Id.*

Griffith v. Clear Lakes Trout Co., Inc., 146 Idaho 613, 618, 200 P.3d 1162, 1167 (2009)

However, the only way damages could be calculated in the present case is by conjecture.

Dustin does not know what his damages are. D. Morrison Depo. Tr., p. 97, ll. 16 to 21.

Therefore, by his own admission, he is not competent to testify as to the amount of damages.

Additionally, Jefferson Enterprises has not disclosed any expert witness to testify regarding the claims set forth in its Amended Counterclaim, which would include damages, nor has it supported its objection to the Bank’s Motion for Summary Judgment with any affidavit from any expert witness. Therefore, there is no evidence in the record supporting damages and there are no witnesses who will be able to testify at trial as to the amount of damages allegedly suffered by Jefferson Enterprises.

Because the record does not contain any evidence, let alone sufficient evidence, to support Jefferson Enterprises’ alleged damages, this Court should dismiss the Amended Counterclaim and grant the Bank summary judgment.

C. The Mortgages Contain Provisions that Preclude Jefferson Enterprises’ Claims

Jefferson Enterprises has failed to address the following clauses contained in the

Mortgages that it signed: “This Mortgage is complete and fully integrated. This Mortgage may not be amended or modified by oral agreement.” “Nothing in this Mortgage, however, shall constitute a commitment to make additional oral future loans or advances in any amount. Any such commitment would need to be agreed to in a separate writing.”

Pursuant to the first clause, any alleged oral representations made prior to the execution of the Mortgages were superceded and not made part of the Mortgages. Pursuant to the second clause, Jefferson Enterprises knew or should have known that no future additional loans could be agreed to orally.

Based on the language contained in the Mortgages, this Court should grant the Bank summary judgment by dismissing Jefferson Enterprises’ Amended Counterclaim in its entirety.

D. Judgment

The Court should declare that the Bank has the highest priority position in the Subject Property. The Court should enter a foreclosure judgment based on the Promissory Notes and Mortgages executed by Jefferson Enterprises. To the extent there is a deficiency following the foreclosure sale, then the Court should also enter a deficiency judgment against Jefferson Enterprises in an amount to be calculated using the principal amounts and per diem interest rates set forth in the Affidavit of Michael Morrison.

II. CONCLUSION

This Court should grant the Bank summary judgment by dismissing Jefferson Enterprises’ Amended Counterclaim and entering an order allowing the Bank to foreclose on the Subject Property and declaring that the Bank’s priority rights are superior to all other claimed interests.

In addition, to the extent there is a deficiency following the foreclosure sale, then the Court should enter a deficiency judgment against Jefferson Enterprises in an amount to be calculated using the Affidavit of Michael Morrison.

DATED this 12 day of December, 2011.



BRIAN T. TUCKER

CERTIFICATE OF SERVICE

I hereby certify that I served a true copy of the foregoing document upon the following this 12 day of December, 2011, by mailing with the necessary postage affixed thereto, via facsimile or electronic mail.

Kirk Bybee
P.O. Box 4169
Pocatello, ID 83205

- ☒ Mailing
- ☐ Hand Delivery
- ☐ Facsimile
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Brent T. Robinson
ROBINSON & ASSOCIATES
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BRIAN T. TUCKER

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BY 
DEPUTY CLERK

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT IN AND
FOR THE STATE OF IDAHO, COUNTY OF BANNOCK

THE BANK OF COMMERCE, an Idaho
banking corporation,

Plaintiff/Counterdefendant,

vs

JEFFERSON ENTERPRISES, LLC, an
Idaho limited liability company, DUSTIN
MORRISON and SONYA KIDD aka
SONYA MORRISON, THE CITY OF
POCATELLO, an Idaho municipality,

Defendants/Counterclaimants.

Case No: CV-2008-0004231-OC

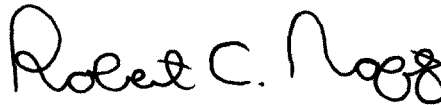
MINUTE ENTRY & ORDER

THE PARTIES came before the Court on the 19th day of December, 2011, for hearing on Plaintiff's Motion for Summary Judgment. Brian Tucker appeared on behalf of the Plaintiff. A. Bruce Larson appeared on behalf of the Defendant, Jefferson Enterprises, LLC.

The Court, having heard argument from counsel and having considered all documents in support of and in opposition to Plaintiff's motion,

IT IS HEREBY ORDERED that the Court will take Plaintiff's Motion for Summary Judgment under advisement and enter a written decision. The Court will further address Plaintiff's Objection to Late Expert Witness Disclosure in its written decision as to Defendant's (Jefferson Enterprises') timeliness for disclosure of expert witnesses as it relates to the Scheduling Order previously issued in this matter.

DATED this 31 day of December, 2011.

A handwritten signature in black ink, appearing to read "Robert C. Nafiz", written over a horizontal line.

Honorable Robert C. Nafiz
District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 4 day of January 2012, I served a true and correct copy of the foregoing document upon each of the following individuals in the manner indicated.

Douglas R. Nelson
Brian T. Tucker
ANDERSON NELSON HALL
SMITH, P.A.
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Idaho Falls, ID 83405-1630

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Office of the City Attorney
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VRD
Deputy Clerk

A. Bruce Larson -ISB No. 2093
ABLE LAW PC -- Attorneys at Law
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FILED
COUNTY
JAN 11 2012
CLERK
DEPUTY

Attorneys for Jefferson Enterprises, LLC, an Idaho limited liability company.

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

THE BANK OF COMMERCE, an Idaho
banking corporation,

Plaintiff, Counterdefendant,

vs.

JEFFERSON ENTERPRISES, LLC, an Idaho
limited liability company, DUSTIN
MORRISON and SONYA KIDD aka SONYA
MORRISON,

Defendants, Counterclaimants,

THE CITY OF POCA TELLO, an Idaho
municipality,

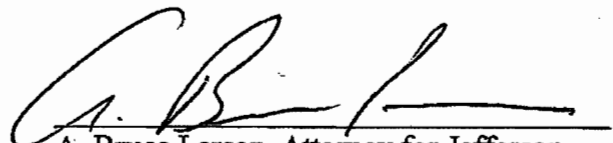
Defendant.

Case No. CV 08-4231 OC

**NOTICE OF HEARING ON MOTION TO
VACATE TRIAL SETTING**

NOTICE IS GIVEN that the defendant Jefferson Enterprises LLC, will bring its motion for an order vacating the trial setting (beginning January 31, 2012 through February 3, 2012 and February 6, 2012 through February,10, 2012) for hearing before the above Court in a telephonic conference, initiated by Defendants/Counterclaimants attorney, on the 9th day of January 2012 at the hour of 3:30 p.m.

Dated this 6th day of January, 2012.


A. Bruce Larson, Attorney for Jefferson
Enterprises LLC

NOTICE OF HEARING ON MOTION TO VACATE TRIAL SETTING

Page 1

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 6th day of January, 2012, a true and correct copy of the within and foregoing document was served upon:

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Brian Tucker, Esq.
ANDERSON NELSON HALL SMITH, P.A.
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Idaho Falls, Idaho 83405-1630


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A. Bruce Larson, Attorney for
Jefferson Enterprises LLC

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BANNOCK COUNTY
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2012 JAN 11 AM 10:01
DEPUTY CLERK

Attorneys for Jefferson Enterprises, LLC, an Idaho limited liability company.

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

THE BANK OF COMMERCE, an Idaho
banking corporation,

Plaintiff, Counterdefendant,

vs.

JEFFERSON ENTERPRISES, LLC, an Idaho
limited liability company, DUSTIN
MORRISON and SONYA KIDD aka SONYA
MORRISON,

Defendants, Counterclaimants,

THE CITY OF POCA TELLO, an Idaho
municipality,

Defendant.

Case No. CV 08-4231 OC

**STIPULATION TO VACATE FIRST
TRIAL SETTING AND AMEND
PRETRIAL ORDER**

COMES NOW the defendant Jefferson Enterprises, LLC, by and through its counsel of record, the plaintiff Bank of Commerce through its counsel of record, the defendants Dustin Morrison and Sonya Kidd Morrison, through their counsel of record, and the defendant City of Pocatello through its counsel of record, and hereby stipulate that the Court's Scheduling Order's first trial setting, beginning on November 29, 2011, be vacated and the said Order shall be

STIPULATION TO VACATE FIRST TRIAL SETTING AND AMEND PRETRIAL ORDER

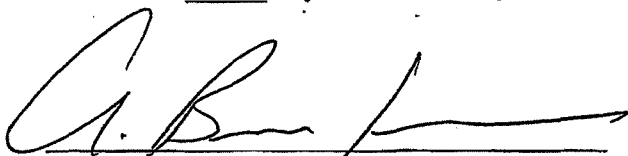
Page 1

amended to state that the specific calendar dates associated with any deadlines shall be adjusted in reference to the backup trial date beginning on January 31, 2012.

The parties further stipulate that the deadline for filing dispositive motions shall be November 14, 2011 to be heard on Monday December 12, 2011.

The parties further stipulate that this Court enter an Order pursuant to I.R.C.P. Rule 15(a) granting said defendant Jefferson Enterprises, LLC, leave to file its Amended Answer and Counterclaim to the Amended Complaint that was provided to Plaintiff's attorney prior to depositions. The proposed amendments are in the interest of justice.

Dated this 14th day of November, 2011.

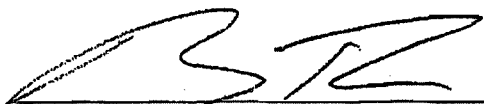


A. Bruce Larson, Attorney for Jefferson Enterprises, LLC

Dated this ____ day of November, 2011.

Brent Robinson, Attorney for Dustin Morrison and Sonya Kidd Morrison

Dated this 11 day of November, 2011.



Brian Tucker, Attorney for Bank of Commerce

Dated this ____ day of November, 2011.

Kirk Bybee, Attorney for the City of Pocatello

amended to state that the specific calendar dates associated with any deadlines shall be adjusted in reference to the backup trial date beginning on January 31, 2012.

The parties further stipulate that the deadline for filing dispositive motions shall be November 14, 2011 to be heard on Monday December 12, 2011.

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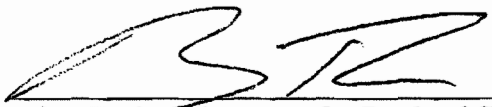
Dated this ____ day of November, 2011.

A. Bruce Larson, Attorney for Jefferson
Enterprises, LLC

Dated this ____ day of November, 2011.

Brent Robinson, Attorney for Dustin Morrison
and Sonya Kidd Morrison

Dated this 11 day of November, 2011.



Brian Tucker, Attorney for Bank of Commerce

Dated this ____ day of November, 2011.

Kirk Bybee, Attorney for the City of Pocatello

amended to state that the specific calendar dates associated with any deadlines shall be adjusted in reference to the backup trial date beginning on January 31, 2012.

The parties further stipulate that the deadline for filing dispositive motions shall be November 14, 2011 to be heard on Monday December 12, 2011.

The parties further stipulate that this Court enter an Order pursuant to I.R.C.P. Rule 15(a) granting said defendant Jefferson Enterprises, LLC, leave to file its Amended Answer and Counterclaim to the Amended Complaint that was provided to Plaintiff's attorney prior to depositions. The proposed amendments are in the interest of justice.

Dated this ____ day of November, 2011.

A. Bruce Larson, Attorney for Jefferson
Enterprises, LLC

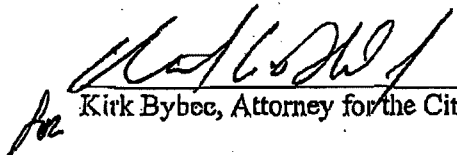
Dated this ____ day of November, 2011.

Brent Robinson, Attorney for Dustin Morrison
and Sonya Kidd Morrison

Dated this ____ day of November, 2011.

Brian Tucker, Attorney for Bank of Commerce

Dated this 16th day of November, 2011.



Kirk Bybee, Attorney for the City of Pocatello

STIPULATION TO VACATE FIRST TRIAL SETTING, AMEND PRETRIAL ORDER, EXTEND DISPOSITIVE
MOTIONS DATES AND AMEND THE ANSWER AND COUNTERCLAIM

Page 2

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**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK**

THE BANK OF COMMERCE, an Idaho
banking corporation,

Plaintiffs,

vs.

JEFFERSON ENTERPRISES, LLC, an
Idaho limited liability company, DUSTIN
MORRISON and SONYA KIDD aka
SONYA MORRISON, THE CITY OF
POCATELLO, an Idaho municipality,

Defendants.

Case No. CV-2008-4231-OC

**MEMORANDUM DECISION
AND ORDER**

DUSTIN MORRISON and SONYA KIDD
aka SONYA MORRISON, and
JEFFERSON ENTERPRISES, LLC, an
Idaho limited liability company,

Counterclaimants,

vs.

THE BANK OF COMMERCE, an Idaho
banking corporation,

Counterdefendant.

NATURE OF THE ACTION

This case comes before this Court pursuant to a Motion for Summary Judgment filed by the Plaintiff/Counterdefendant, Bank of Commerce (the “Bank”). The Bank asks this Court to enter a Summary Judgment in its favor pursuant to Rule 56, I.R.C.P., or in the alternative grant the Bank partial summary judgment on the grounds that there is no genuine issue of material fact and the Bank is entitled to summary judgment as a matter of law.

Oral arguments regarding these matters were conducted on December 19, 2011. After reviewing the entire file and the relevant law, and considering the arguments made by the parties, this Court now issues this Memorandum Decision and Order.

STATEMENT OF FACTS

In late April of 2006, Dustin Morrison (“Morrison”) the owner and managing member of Jefferson Enterprises, LLC (“Jefferson”) approached Steve Worton (“Worton”) a loan officer at the Bank seeking financing for the Southern Hills Development Project (the “Project”). The reason Mr. Morrison sought this financing from the Bank was to purchase property adjacent to property already owned by Jefferson for purposes of a sub-division development. At the time Morrison approached the Bank Jefferson had already acquired the property referred to as the “80 Acre” parcel at what was described as an exceptional financing arrangement. Morrison wanted to exercise his option to purchase the adjacent property referred to as the “Wood” parcel and develop both properties.

Discussions ensued with both Morrison and Worton on the financing of the project. As discussions between the Bank and Jefferson continued Morrison faced a May 10, 2006 deadline to exercise his option to purchase the Wood property. Morrison already knew that the owner of the Wood property had declined to extend the deadline and that without the Wood property the Project would be jeopardized.

By May 8, 2006, a loan application was submitted to the Bank's Review Committee. On May 9, 2006, the Bank's Board of Trustees approved the loan to Jefferson for \$2,200,000, rather than the \$2,800,000 requested. As part of the approval of the loan the Bank would have to be placed in first position on both the Wood property and the 80 Acre parcel. Jefferson disputes that the Bank wanted a first position on the 80 Acre parcel at the time the loan application was submitted to the loan review committee and approved. Morrison believed that at that time the Bank would take a second position with regard to the 80 Acre parcel allowing Jefferson to maintain the exceptional financing arrangements on the property. Regardless, Jefferson accepted the terms of the Bank's loan requiring a first position on both properties.

On the day of closing the loan with the Bank, Morrison did contact Ashley Lyman and offered to pay some amount of money on the 80 Acre mortgage in order to allow the Bank to take a first position on the property. Lyman declined the offer. Faced with losing financing on the Wood property Morrison had to pay off the mortgage on the 80 Acre parcel in order to put the Bank in a first position on the property. In order to pay off the mortgage on the property Morrison liquidated the assets of Jefferson and related entities. As a result of this decision it

placed Morrison in a precarious position since he essentially used the operating capital of Jefferson and his related businesses to pay off the 80 Acre parcel. Morrison's decision to liquidate the assets of entities left him with no working capital and as a result he was unable to move forward with the Project or repay the loan from the Bank.

SUMMARY JUDGMENT STANDARD OF REVIEW

One of the principal purposes of the summary judgment "is to isolate and dispose of factually unsupported claims" *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). Summary judgment shall be rendered "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." IDAHO R. CIV. P. 56(c). The burden of establishing the absence of a genuine issue of material fact rests at all times with the party moving for summary judgment. *Tingley v. Harrison*, 125 Idaho 86, 89, 867 P.2d 960, 963 (1994). This Court liberally construes the record in favor of the party opposing the motion and draws all reasonable inferences and conclusions in that party's favor. *Friel v. Boise City Hous. Auth.*, 126 Idaho 484, 485, 887 P.2d 29, 30 (1994). If the evidence reveals no disputed issues of material fact, then summary judgment should be granted. *Loomis v. City of Hailey*, 119 Idaho 434, 437, 807 P.2d 1272, 1275 (1991).

If the moving party challenges an element of the non-moving party's case on the basis that no genuine issue of material fact exists, the burden now shifts to the non-moving party to come forward with sufficient evidence to create a genuine issue of fact. *Tingley*, 125 Idaho at 90,

867 P.2d at 964. Summary judgment is properly granted in favor of the moving party when the nonmoving party fails to establish the existence of an element essential to that party's case upon which that party bears the burden of proof at trial. *Thomson*, 126 Idaho at 530-31, 887 P.2d at 1037-38; *Badell v. Beeks*, 115 Idaho 101, 102, 765 P.2d 126, 127 (1988). The party opposing the summary judgment motion “may not rest upon the mere allegations or denials of that party's pleadings, but the party's response, by *affidavits* or as otherwise provided in this rule, must *set forth specific facts showing that there is a genuine issue for trial.*” IDAHO R. CIV. P. 56(e) (emphasis added). “Creating only a slight doubt as to the facts will not defeat a summary judgment motion; a summary judgment will be granted whenever on the basis of the evidence before the court a directed verdict would be warranted or whenever reasonable minds could not disagree as to the facts.” *Snake River Equip. Co. v. Christensen*, 107 Idaho 541, 549, 691 P.2d 787, 795 (Idaho Ct. App. 1984). More than a slight doubt as to the facts is needed to forestall summary judgment. *Petricevich v. Salmon River Canal Co.*, 92 Idaho 865, 871, 452 P.2d 632, 368 (1969). “Flimsy or transparent contentions, theoretical questions of fact which are not genuine, or disputes as to matters of form do not create genuine issues which will preclude summary judgment.” *Id.*

ISSUES

Whether the grant the Plaintiff's Motion for Summary Judgment.

Memorandum Decision and Order

Re: Plaintiff's Motion for Summary Judgment

Case No. CV-2008-4231-OC

DISCUSSION

1. Motion for Summary Judgment

a. Breach of Contract

Jefferson argues that the Bank agreed to loan money in accordance with the terms and conditions of the Board of Trustees approval of Jefferson's loan application. Jefferson further alleges that the conditions of the loan agreement provided, among other things, that the Bank would be secured on the 80 Acre parcel in a second priority position. (Mem. Opp. Sum. Jud. p. 13, Dec. 5, 2011). Accepting these facts as true and knowing that Jefferson had made application for a loan in the amount of \$2,800,000, in order for the Court to consider a breach of contract, it must look to the Statute of Frauds,¹ since this promise to loan money involved much more than \$50,000. Idaho Code §19-505 requires that certain agreements must be in writing in order to be valid. One of those agreements is a promise or commitment to lend money in an original principal amount of fifty thousand dollars or more, made by an entity engaged in the

¹ 9-505 Certain agreements to be in writing. In the following cases the agreement is invalid, unless the same or some note or memorandum thereof, be in writing and subscribed by the party charged, or by his agent. Evidence, therefore, of the agreement cannot be received without the writing or secondary evidence of its contents:

1. An agreement that by its terms is not to be performed within a year from the making thereof.
2. A special promise to answer for the debt, default or miscarriage of another, except in the cases provided for in section 9-506, Idaho Code.
3. An agreement made upon consideration of marriage, other than a mutual promise to marry.
4. An agreement for the leasing, for a longer period than one (1) year, or for the sale, of real property, or of an interest therein, and such agreement, if made by an agent of the party sought to be charged, is invalid, unless the authority of the agent be in writing, subscribed by the party sought to be charged.
5. A promise or commitment to lend money or to grant or extend credit in an original principal amount of fifty thousand dollars (\$50,000) or more, made by a person or entity engaged in the business of lending money or extending credit.

Memorandum Decision and Order

Re: Plaintiff's Motion for Summary Judgment
Case No. CV-2008-4231-OC

business of lending money or extending credit. (I.C. §9-505(5)).

The deposition of Dustin Morrison clearly shows no written pre-commitment loan agreement was entered into by the parties. In fact Mr. Morrison clearly states in his deposition that there was nothing in writing with regard to a pre-commitment agreement.

Everything was related to what Steve Worton told me because there wasn't one thing in writing, nothing. There wasn't an approval in writing, there wasn't a list of conditions in writing, contingencies in writing. There wasn't a formal request in writing. Nothing was in writing.

(Dustin Morrison Depo. Tr., p. 64, ll 8-13)

The testimony of Morrison shows that there was never any writing subscribed by the Bank or any of its agents which set forth any loan agreement with a condition that the Bank would take a second lien position to the 80 Acre parcel. The amended counterclaim of Jefferson asserts that the Bank initially committed to lend it money pursuant to the loan application which included the Bank taking a second position on the 80 Acre parcel. Further, the Bank later breached that commitment when it required a first lien position on the 80 Acre parcel. Nothing in the deposition of Morrison suggests that the bank pre-committed to loan the money based upon the submission of the loan application.

In Idaho, contract formation is typically a question of fact for the trier of fact to resolve. *P.O. Ventures, Inc. v. Loucks Family Irrevocable Trust*, 144 Idaho 233, 237, 159 P.3d 870. A valid contract requires a meeting of the minds evidenced by a manifestation of mutual intent to contract, formed by an offer and acceptance. *Id at 238*. "In a dispute over contract formation it is incumbent upon the plaintiff to prove a distinct and common understanding between the

Memorandum Decision and Order

Re: Plaintiff's Motion for Summary Judgment
Case No. CV-2008-4231-OC

parties. *Id* (internal quotation and citation omitted).

Defendant has not presented any evidence of any written pre-commitment loan agreement entered into by the Bank and Jefferson prior to the approval of the loan. The only thing relied upon by Jefferson is the argument that the loan application represented a pre-commitment agreement regarding the terms of the proposed loan. However, the submission of a loan application to a lender does not manifest an acceptance of the offer. Without such evidence there cannot be a breach of any loan commitment prior to the closing. Based upon the lack of such evidence there exists no material issue of fact that relates to the existence of such document and the Court has no choice but to grant the Bank's summary judgment regarding Jefferson's breach of contract claim.

b. Interference with a Prospective Economic Advantage

i. Existence of valid economic expectancy and knowledge

In order to prove interference with a prospective economic advantage the plaintiff must prove the following:

(1) The existence of a valid economic expectancy; (2) knowledge of the expectancy on the part of the interferer; (3) intentional interference inducing termination of the expectancy; (4) the interference was wrongful by some measure beyond the fact of the interference itself (i.e. that the defendant interfered for an improper purpose or improper means) and (5) resulting damage to the plaintiff whose expectancy has been disrupted. *See Bliss*, 121 Idaho at 285-86, 824 P.2d at 859-60; *Barlow*, 95 Idaho at 893, 522 P.2d at 1114; *Pleas*, 774 P.2d at 1161-63.

In reviewing the evidence most favorably for the non-moving party the Court finds that

Jefferson needed the loan from the Bank so that they could exercise the option to purchase the Wood property before that option expired. The Bank approved the loan for a period of one year. Because the Bank required a first position on the 80 Acre parcel Jefferson made the choice to use its working capital to pay off the mortgage. Jefferson anticipated that the Bank would then loan them additional money in order to have working capital to develop the Project and ultimately service the loan on the Wood property.

The Court finds that there was a valid economic expectancy by Jefferson and that the Bank was aware of that expectancy. In his deposition Morrison testifies that he approached the Bank in order to secure a loan on the Wood property in order to develop it as part of the Southern Hills subdivision.

Q. What was the down side to you if you didn't exercise your option?

A. Lost the project and all that had been invested in the project, the equity we had gained in the project, which was substantial. We had taken an absolutely useless piece of land, to the definition of useless, it had never been used for anything, hadn't been able to be approved for anything, and turned it into a multi-family, multi-use, mixed use commercial-residential, fantastic development and got approved and entitled.

Q. So you had dumped you say a lot of your money into it?

A. Yes. I want to say close to a million dollars maybe. If you take all the down payments and the options, purchases and all of that, you know, money plus the money that -- yeah, a lot of money, and a lot more time than money, too.

Q. And you spent all of that money knowing that you didn't have at the time money to purchase the property?

A. No. We didn't have money to purchase because we hadn't asked yet, because we didn't know what its value would be until we were done with the process. So we knew that there would be money available, we didn't know how much money would be available.

Q. So you took a risk and spent a million dollars --

A. Don't hold me to that, it might have been eight or seven, but a substantial amount of money.

Q. You spent a substantial amount of money in getting entitlement, doing all of

Memorandum Decision and Order

Re: Plaintiff's Motion for Summary Judgment
Case No. CV-2008-4231-OC

those things on the property –

A. Engineering, all of that, yes.

Q. -- with the hope and belief that you would eventually be able to get financing for it?

A. Yes.

Dustin Morrison Depo. Tr., p. 33, l. 25 to p. 35 l. 11.

Q. Was it due in April of 2006 when you were looking for financing for the entire project?

A. I don't know, maybe. We were looking for financing starting in December of '05, I think.

Q. When you say you were looking for financing, you were looking for financing for the entire Southern Hills project, to acquire the Wood property?

A. Yes, exactly as submitted. We wanted to -- whoever it was, we always -- and see, we never submitted to D.L. Evans for any amount less than the \$2.8 million, and it was always that number.

And the reason why was we wanted to get our out-of-pocket expenses reimbursed and offset that by this new equity position that those funds actually generated, to put back into our working capital so that there wasn't deficient due to this project that at that point hadn't generated anything besides just equity.

Id. at p. 30, l. 25, to p. 40, l. 16.

ii. Intentional interference inducing termination of the expectancy

Next the Court must consider whether the Bank intentionally interfered with the valid economic expectancy. In order to prove the element of intent a party may show that the interference “with the other’s prospective contractual relation is intentional if the actor desires to bring it about or if he knows that the interference is certain or substantially certain to occur as a result of his action.” RESTATEMENT (SECOND) OF TORTS § 766B etm. D (1977). *Higland Enterprises, Inc. v. Barker*, 133 Idaho 330, 340, 986 P.2d 996. “Intent can be shown even if the interference is incidental to the actor’s intended purpose and desire but known to him to be a

necessary consequence of his action” *Id.* at 340 (internal citation omitted).

Morrison testified at his deposition that ultimately he made the choice to enter into the loan with the Bank understanding the possible consequences of having to use his operating capital to pay off the 80 Acre parcel and place the Bank in a first position on that property.

Q. So you are saying that when you closed on this loan on May 10, that you knew that you wouldn’t be able to keep the property, you didn’t think you had any chance in the world of being able to come up with some plan to salvage this property?

A. No, that’s not fair. I had 48 hours, I hadn’t digested everything, I hadn’t processed every option. I think the bulk of that 48 hours until maybe -- actually until 11:30 the day of closing my efforts were to change Tom’s mind. They weren’t how can I make this work in these conditions.

But my conclusion at that time, without processing and without digesting the whole thing is there is absolutely no way that I can maintain this income that’s depending on this \$3.5 million line of credit. There is no way I can maintain the same income without that capital that secures or enables this line of credit. That seems like common sense. I didn’t know if I was going to get lucky the next day and land some hospital job that I could build a hospital, I didn’t know that for sure.

So, no, my failure wasn’t inevitable, it was absolutely unknown, and I didn’t know what the right thing to do was. And I begged Steve for counsel, I begged Tom for counsel.

Q. Ultimately, though, the decision was yours.

A. It was, and the decision considered those other things that I just said.

Id. at p. 80, l. 11 to p. 81, l. 13.

Q. Good. In Paragraph 15 you allege that Jefferson and other related entities lost the ability to take advantage of the foreseeable prospective economic opportunities related to the 80 Acres parcel, the Southern Hill projects, and other real estate developments.

A. And this one wasn’t truly foreseen, like to the extent that it impacted us, it wasn’t foreseen or foreseeable with my set of knowledge. It was truly after we went out courting investors, them asking for financial statements and them seeing our weaknesses and defining our weaknesses as exactly what had just changed.

Q. So you at the time, you didn’t realize the impact it potentially could have, you said you later discovered –

A. I knew it would have an impact on my appeal to investors. I didn’t fully

Memorandum Decision and Order

Re: *Plaintiff’s Motion for Summary Judgment*
Case No. CV-2008-4231-OC

appreciate how to the extent.

Id. at p. 95, l. 9 to p. 96, l. 1.

Viewing all the evidence most favorably for the Defendant the Court does not find that the Bank intentionally proposed a loan that would interfere with and cause Jefferson to lose any economic expectancy. In fact Morrison made the choice to accept the terms of the loan knowing that it would make him vulnerable, but that he did not believe that it was inevitable that he would lose the property and the opportunity to develop the Project.

iii. The interference was for an improper purpose or means

iv. Resulting damages as a result of the interference

Having found that the Bank did not intentionally interfere in and induce the termination of the economic expectancy it is not necessary to evaluate the next two elements, since they are dependent upon a finding that interference occurred. Therefore the Court does not need to examine the final two elements regarding the intentional interference with a prospective economic advantage.

c. Fraud and Misrepresentation

In order to prove a claim of fraud a party must establish the following nine elements with particularity:

(1) a statement or a representation of fact; (2) its falsity; (3) its materiality; (4) the speaker's knowledge of its falsity; (5) the speaker's intent that there be reliance; (6) the hearer's ignorance of the falsity of the statement; (7) reliance by the hearer; (8) justifiable reliance; and (9) resultant injury. *Lettunich v. Key Bank Nat. Ass'n*, 141 Idaho 362, 368, 109 P.3d 1104, 1110 (2005) (citing *Lindberg v. Roseth*, 137 Idaho 222, 226, 46 P.3d 518, 522 (2002)) (citing *Hines v. Hines*, 129

Idaho 847, 851, 934 P.2d 20, 24 (1997)).

Chavez v. Barrus, 146 Idaho 212, 223, 192 P.3d 1036.

Jefferson claims that the Bank and its representatives misrepresented that they would take a second lien position with regard to the 80 Acre parcel and that further that the Bank would provide further financing in the future to enable Jefferson to develop the Southern Hills subdivision.

i. 80 Acre Parcel

With regard to any fraudulent misrepresentation concerning the Bank taking a second position on the 80 Acre parcel evidence must be presented that the Bank or its representative told Morrison that the Board of Directors had approved the loan and agreed to take a second position with regard to the 80 Acre parcel, that the Bank or its representative knew this to be false and that they would only be willing to accept a first position on the 80 Acre parcel. In relation to this claim Morrison testified that he did not believe the Bank or its representative purposefully misled him into believing the Bank would take a second lien position on the 80 Acre parcel.

Q. In paragraph 19 of your counterclaim you state that the change of position of the bank, and this is talking about the change in 80 Acres financing, was timed in such a manner that Jefferson was unable to seek alternate financing to exercise the option to purchase the Wood property.

Is it your position that the bank purposely misled you, kind of led you along to that point and then kind of hit you below the belt?

A. I haven't said that and you didn't read that in that Paragraph 19, that is a presumption you just jumped on.

Q. No, I am just asking –

A. I would say minimum negligently and I don't know, I don't know, you know. I don't fancy myself a paranoid or conspiracy theorist, but it is hard to ignore that there

Memorandum Decision and Order

Re: Plaintiff's Motion for Summary Judgment
Case No. CV-2008-4231-OC

could be some inherent benefit to the Bank of Commerce recovering that piece of property under those terms.

Q. What do think the inherent benefits to the Bank of Commerce would be?

A. Well I think it could become an asset to another client that has got the capacity to bring more money to the bank. And it also has a value to a potential client that you don't have that has a lot more financial strength than I do. Like you said, I am not saying that I have any evidence, there is nothing in writing, I'm not -- I am just saying that, yeah, there could be some motivation for the bank getting this piece of property back under those terms.

Q. But do you believe that that was the motive that drove this supposed change as you call it?

A. I don't know for sure, but, no, my gut and my instinct is that it was just simple negligence, the left hand didn't know what the right hand was doing, and that Tom's arrogance wouldn't consider something that would mitigate its impact on me. It was absolute negligence at least.

Q. You don't feel like Steve Worton was purposely trying to mislead you --

A. I don't think Steve Worton misled me. I think Steve Worton came here today and absolutely said 20 things that were not off but were totally untrue. Now, whether that's because he doesn't remember or whether it's because he signed some hold harmless thing with the Bank of Commerce, I don't know, it doesn't matter to me. I know what happened with Steve. I think Steve was forthright, I think Steve was as frantic as I was those two days before to clarify with Tom the board's intention.

Q. You are saying it wasn't purposeful, you don't think it was --

A. I'm not saying it wasn't purposeful. I am saying I don't think that it was but I don't know. I want that answer to be enough.

Q. But you don't have any facts that would support this belief that you can point to that caused you to say this was purposeful because of this?

A. That's right.

Id. at p. 99, l. 11 to p. 101, l. 19.

Viewing all evidence most favorably for Jefferson the Court must conclude that Morrison did not believe that the Bank or its representative purposefully misled him to believe that the Bank would take a second lien position on the 80 Acre parcel. There is no evidence that when the Bank or its representative made this statement they knew it was false. Without evidence to the contrary Jefferson cannot prove an essential element for the claim of fraudulent

Memorandum Decision and Order

Re: Plaintiff's Motion for Summary Judgment
Case No. CV-2008-4231-OC

14

misrepresentation. Summary judgment is appropriate with regard to this issue since the allegations of fraudulent misrepresentation are not supported by the record before this Court and do not raise a material issue of fact.

ii. Future Financing

The next allegation related to this claim is the promise of future financing in order for Jefferson to go forward with working capital in order to develop the Project. Rule 9(b) of the Idaho Rules of Civil Procedure requires that all allegations of fraud must be stated with particularity.² In evaluating the claims of Jefferson they assert that they relied upon the statements of the Bank's representative that they would provide future financing in order to preserve their working capital.

Q. But you continued to operate after that, didn't you?

A. No, we suffered, we bled, desperately. So when I told Steve this, you understand there is no way I can maintain my business without my working capital. That working capital will disappear if I do what you are asking me to do, I lose this project and every dime that I have spent on this project to date. So I'm at a mitigation point, crossroads right now.

Steve says there is no way the bank wants you to fail, there is no way that the bank wants this to fail, there is no way the bank wants this as an asset. So you do whatever you think is the right thing for you to do, but if you do this, my hunch is that you will be able to come back into this bank and they will consider whatever your loss was.

Id at p. 72, l. 2 to l. 18.

² Rule 9(b). Fraud, mistake, condition of the mind, violation of civil or constitutional rights. In all averments of fraud or mistake, or violation of civil or constitutional rights, the circumstances constituting fraud or mistake, or violation of civil or constitutional rights shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally.

The Idaho Supreme Court faced a similar issue in *Economic Development Council v. Lockwood*, 139 Idaho 492, 80 P.3d 1093. In that case the Defendant, Gold's claims of fraud or misrepresentation were not specific and supported by the record. *Id.* at 496. Gold asserted that the plaintiff made assurances to him that, prior to his execution of a personal guaranty; they would not seek recovery from Gold unless all other options were exhausted. *Id.* at 497. The Court found that the assertions made by Gold did not amount to a particular allegation of misrepresentation in the inducement. *Id.* At best this was a promise of future performance and therefore did not raise a genuine issue of material fact. *Id.* Morrison's testimony that the Bank's representative had a "hunch" that they would not allow him to fail does not amount to a particular allegation of misrepresentation in the inducement to enter into the loan agreement with the Bank. Viewing all inferences most favorably for Jefferson the Court does not find that they raise a material issue of fact and find the entry of summary judgment on this issue is appropriate.

d. Promissory Estoppel

Jefferson argues that they relied upon the representations made by the Bank/representative regarding the Bank taking a second lien position on the 80 Acre parcel. That because of their reliance on these representations Jefferson suffered substantial economic loss. Statements relied on refer to the pre-commitment discussions Morrison had with the Bank's representative, Steve Worton. The Court has previously determined that Idaho Code §9-505 is the controlling law when it relates to any agreement regarding a promise or commitment to loan money. The Statute of Frauds requires a writing in order to enforce reliance

upon agreed terms. The Court has determined that no such pre-commitment writing existed and that only the loan agreement entered into by the Bank and Jefferson can be considered for purposes of reliance and enforceability. Based upon that finding the assertion of promissory estoppel is not applicable. The Court must conclude that there is no material issue of fact because since there was no written pre-commitment agreement there is no valid or definite agreement. Therefore summary judgment is appropriate.

e. Novation

The concept of novation requires that an existing obligation be extinguished and a new one is entered into in its place. *Harris v. Wildcat Corporation*, 97 Idaho 884, 886, 556 P.2d 67. Looking at the evidence most favorably for the non-moving party, Morrison testified, in his deposition, that he believed that the Bank would take a second position on the 80 Acre parcel.

Q. As I understand it, it's your position that Steve Worton -- you believe Steve Worton told you that the bank would take a second position on the 80 Acres is that right, the 80 Acres, Inc., property?

A. I believe that I explained that to Steve perfectly clear, I believe that Steve understood that was the way the loan was proposed, and I believe that's how Steve presented it. And I believe that when Steve gave me his representation of the bank's preliminary approval, I believe that it was not a change to my application stipulated anywhere, as the other changes were stipulated. I believe it was a surprise to Steve that Tom expressed some sense that it was supposed to be or intended or represented to offer that first position.

Q. You have heard Steve say that --

A. I did, I heard it loud and clear.

Q. -- that he thought it was going to be subordinated.

A. I did.

Id. p. 107, l. 24 to p. 108, l. 19.

Additionally, Morrison, as referred to earlier in his deposition, believed that the Bank would not

Memorandum Decision and Order

Re: Plaintiff's Motion for Summary Judgment
Case No. CV-2008-4231-OC

allow him to fail and would loan him additional money to replenish the depletion of his working capital. In order for the parties to enter into a new agreement it must be done knowing and intentionally. *Heckman v. Boise Valley Livestock Commission Co.*, 92 Idaho 862, 864, 452 P.2d 359. Assuming Jefferson relied on the representations of Steve Worton regarding the preliminary approval of the loan with the Bank remaining in a second position on the 80 Acre parcel, that pre-commitment (loan application) was later modified by way of the final loan agreement the parties entered into. Viewing these facts most favorably for Jefferson there were a series of novations that occurred which changed the terms of the original loan application by Jefferson, but ultimately Jefferson entered into a loan agreement with the Bank which extinguished all other pre-loan agreements that may have been contemplated by the parties.

A. I believe that I explained that to Steve perfectly clear, I believe that Steve understood that was the way the loan was proposed, and I believe that's how Steve presented it. And I believe that when Steve gave me his representation of the bank's preliminary approval, I believe that it was not a change to my application stipulated anywhere, as the other changes were stipulated.

Id. p. 108, l. 5 to l. 11.

Q. Ultimately you had to decide what was best for you.

A. I did, I did.

Q. And you made a decision.

A. I did.

Id. p. 81, l. 24 to p. 82, l. 3.

CONCLUSION

Summary judgment in favor of the Plaintiffs must be entered. The Statute of Frauds prevents Jefferson from prevailing on the issue of breach of contract. Without a written pre-

Memorandum Decision and Order

Re: Plaintiff's Motion for Summary Judgment

Case No. CV-2008-4231-OC

commitment agreement there can be no breach of contract and the Court must rely on the written loan agreement entered into by the parties. Jefferson has not presented sufficient facts to create a material issue of fact regarding their claim of interference with a prospective economic advantage. The evidence viewed most favorably in favor of Jefferson does not show that the Bank intentionally interfered with an economic opportunity held by Jefferson. As to the claim of fraudulent misrepresentation no evidence was submitted by Jefferson to show that any representation made by the Bank's representative that the Bank would take a second position was false. Additionally that any further representation by the Bank that future financing would be available was anything more than a promise for future performance that does not raise a material issue of fact. Likewise Jefferson's claim regarding promissory estoppel does not raise a material issue of fact since no written pre-loan commitment exists only the written loan agreement can be looked to for purposes of reliance and enforceability.

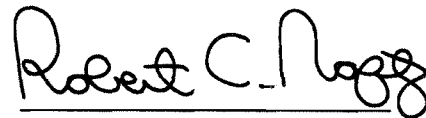
Therefore, based on the foregoing, the Plaintiff is entitled to summary judgment as a matter of law. The Court hereby dismisses Defendant's, Jefferson amended counterclaims with prejudice.

The Court further finds that the Plaintiff holds two mortgages that encumber the Wood property and the 80 Acre parcel respectively. That Defendant Jefferson did not present any evidence or objection to the Bank's request to foreclose on the mortgages. Finding that the Plaintiff has the highest priority on the mortgaged property they are entitled to foreclose on both

mortgages, sell the property and apply the proceeds of any sale to the outstanding debts owed by Jefferson.

IT IS SO ORDERED.

Dated this 17 day of January, 2012.



ROBERT C. NAFTZ
District Judge

Copies to:

Kirk Bybee
Brent T. Robinson
A. Bruce Larson
Brian T. Tucker

FILED
BANNOCK COUNTY
CLERK

2017 JAN 17 PM 5:57

DEPUTY CLERK

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK**

THE BANK OF COMMERCE, an Idaho
banking corporation,

Plaintiffs,

vs.

JEFFERSON ENTERPRISES, LLC, an
Idaho limited liability company, DUSTIN
MORRISON and SONYA KIDD aka
SONYA MORRISON, THE CITY OF
POCATELLO, an Idaho municipality,

Defendants.

DUSTIN MORRISON and SONYA KIDD
aka SONYA MORRISON, and
JEFFERSON ENTERPRISES, LLC, an
Idaho limited liability company,

Counterclaimants,

vs.

THE BANK OF COMMERCE, an Idaho
banking corporation,

Counterdefendant.

Case No. CV-2008-4231-OC

JUDGMENT

Pursuant to its Memorandum Decision and Order, this Court dismissed Defendant,

Jefferson Enterprises Amended Counterclaim in its entirety finding that the Plaintiff, Bank of

Judgment

Case No. CV-2008-4231-OC

1

Commerce was entitled to Summary Judgment since Defendant, Jefferson did not present sufficient evidence raising a material issue of fact concerning any of its counterclaims.

Furthermore, that Plaintiffs were entitled to foreclose upon the two mortgages it held, sell the property and apply the proceeds of the sale to any debt owed by Jefferson Enterprises to the Bank of Commerce regarding these two mortgages. Furthermore, the Plaintiffs have the highest priority with regard to the two mortgaged properties that are a part of this lawsuit. Each party shall pay their respective attorney fees and court costs.


IT IS SO ORDERED.

Dated this 17 day of January, 2012.


ROBERT C. NAFTZ
District Judge

Copies to:

Kirk Bybee
Brent T. Robinson
A. Bruce Larson
Brian T. Tucker

FILED
BANNOCK COUNTY
2012 JAN 18 PM 2:15
BY 
DEPUTY CLERK

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT IN AND
FOR THE STATE OF IDAHO, COUNTY OF BANNOCK

THE BANK OF COMMERCE, an Idaho
banking corporation,

Plaintiff,

vs.

JEFFERSON ENTERPRISES, LLC, an
Idaho limited liability company, DUSTIN
MORRISON and SONYA KIDD aka SONYA
MORRISON,

Defendants/Counterclaimants,

THE CITY OF POCA TELLO, an Idaho
municipality,

Defendant.

Case No: CV-2008-0004231-OC

MINUTE ENTRY & ORDER

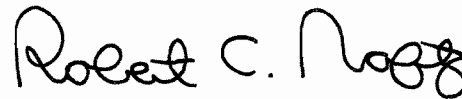
THE PARTIES came before the Court on the 9th day of January, 2012, for hearing on Defendant's, Jefferson Enterprises, LLC, Motion to Vacate Trial Setting. Brian Tucker appeared telephonically on behalf of the Plaintiff. A. Bruce Larson appeared telephonically on behalf of the Defendant, Jefferson Enterprises, LLC, and Brent Robinson appeared telephonically on behalf of Dustin and Sonya Morrison. Stephanie Davis was the Court Reporter.

Case No.: CV-2008-0004231-OC
MINUTE ENTRY & ORDER
Page 1 of 3

The Court heard argument from counsel and received no objection as to allowing a continuance of the trial pending the Court's decision on Plaintiff's Motion for Summary Judgment and for additional discovery and depositions to be taken. Counsel also represented that a stipulation was previously circulated and executed changing the time frames for discovery deadlines and further shortening the time to allow Plaintiff to file their summary judgment motion; therefore,

IT IS HEREBY ORDERED that Defendant's, Jefferson Enterprises, LLC, Motion to Vacate Trial Setting is GRANTED. The Jury Trial currently scheduled to begin January 31, 2012, is vacated and continued until April 24, 2012, at 9:00 a.m. through April 27, 2012, and again on May 1, 2012. Any and all deadlines as outlined in the Court's previous Scheduling Order will now pertain to the new trial date of April 24, 2012.

DATED this 18 day of January, 2012.



ROBERT C. NAFTZ
District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 18 day of January, 2012, I served a true and correct copy of the foregoing document upon each of the following individuals in the manner indicated.

Douglas R. Nelson
Brian T. Tucker
ANDERSON NELSON HALL
SMITH, P.A.
P.O. Box 51630
Idaho Falls, ID 83405-1630

☒ U.S. Mail
☐ Overnight Delivery
☐ Hand Deliver
☐ Fax:

A. Bruce Larson
Able Law PC
P.O. Box 6369
Pocatello, ID 83205-6369


☒ U.S. Mail
☐ Overnight Delivery
☐ Hand Deliver
☐ Fax:

Brent T. Robinson
ROBINSON & ASSOCIATES
P.O. Box 396
Rupert, ID 83350

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☐ Fax:

Kirk Bybee
Office of the City Attorney
P.O. Box 4169
Pocatello, ID 83205

☒ U.S. Mail
☐ Overnight Delivery
☐ Hand Deliver
☐ Fax:



Deputy Clerk

Brian T. Tucker
Wiley R. Dennert
NELSON HALL PARRY TUCKER, P.A.
490 Memorial Drive
Post Office Box 51630
Idaho Falls, Idaho 83405-1630
Telephone (208) 522-3001
Fax (208) 523-7254
Attorney for The Bank of Commerce
Idaho State Bar Numbers 5236 & 6216

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CW

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

THE BANK OF COMMERCE, an Idaho
banking corporation,

Plaintiff,

v.

JEFFERSON ENTERPRISES, LLC, an Idaho
limited liability company, DUSTIN
MORRISON and SONYA KIDD aka SONYA
MORRISON, THE CITY OF POCA TELLO,
an Idaho municipality,

Defendants.

Case No. CV-08-4231-OC

**MOTION FOR AWARD OF
ATTORNEY'S FEES**

DUSTIN MORRISON and SONYA KIDD aka
SONYA MORRISON, and JEFFERSON
ENTERPRISES, LLC, an Idaho limited
liability company,

Counterclaimants,

vs.

THE BANK OF COMMERCE, an Idaho
banking corporation,

Counterdefendant.

COMES NOW the The Bank of Commerce, and hereby moves¹ the Court for an Order awarding costs and attorney's fees against Jefferson Enterprises, LLC in the sum of \$48,985 for attorney's fees and the sum of \$9,121.42 for costs necessarily incurred by The Bank of Commerce in pursuing this collection of its judgment in the instant action. This motion is based on Idaho Code §12-120(3), the parties agreements, Idaho Rule Civil Procedure 54, the Memorandum in Support of Motion for Attorney's Fees, and the files and pleadings within the Court file.

DATED this 27 day of January, 2012.


BRIAN T. TUCKER

¹The Judgment entered by the court on January 17, 2012 stated that "each party shall pay their respective attorney fees and court costs." However, costs and attorney fees had not yet been requested and it is believed that was simply a sentence retained from a prior form. To the extent the court intended to rule on attorney fees and costs, this motion shall be deemed a Motion For Reconsideration.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I served a true copy of the foregoing document upon the following this 22 day of January, 2012, by hand delivery, mailing with the necessary postage affixed thereto, facsimile, or overnight mail.

Kirk Bybee
P.O. Box 4169
Pocatello, ID 83205

- ☒ Mailing
- ☐ Hand Delivery
- ☐ Facsimile: (208) 239-6986
- ☐ Overnight Mail

Brent T. Robinson
ROBINSON & ASSOCIATES
P.O. Box 396
Rupert, ID 83350-0396

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ABLE LAW, PC
P.O. Box 6369
Pocatello, ID 83205-6369

- ☒ Mailing
- ☐ Hand Delivery
- ☐ Facsimile: (208) 478-7602
- ☐ Overnight Mail


Brian T. Tucker

L:\BTT\0260.455\attorneys.fees - motion.wpd

Brian T. Tucker
Wiley R. Dennert
NELSON HALL PARRY TUCKER, P.A.
490 Memorial Drive
Post Office Box 51630
Idaho Falls, Idaho 83405-1630
Telephone (208) 522-3001
Fax (208) 523-7254
Attorney for The Bank of Commerce
Idaho State Bar Numbers 5236 & 6216

Handwritten signature and initials

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

THE BANK OF COMMERCE, an Idaho
banking corporation,

Plaintiff,

v.

JEFFERSON ENTERPRISES, LLC, an Idaho
limited liability company, DUSTIN
MORRISON and SONYA KIDD aka SONYA
MORRISON, THE CITY OF POCA TELLO,
an Idaho municipality,

Defendants.

Case No. CV-08-4231-OC

**MEMORANDUM OF
ATTORNEY'S FEES
AND COSTS**

DUSTIN MORRISON and SONYA KIDD aka
SONYA MORRISON, and JEFFERSON
ENTERPRISES, LLC, an Idaho limited
liability company,

Counterclaimants,

vs.

THE BANK OF COMMERCE, an Idaho
banking corporation,

Counterdefendant.

STATE OF IDAHO)
 : ss.
County of Bonneville)

BRIAN T. TUCKER, being first duly sworn on oath, deposes and says:

That he is an attorney with offices at Idaho Falls, Idaho in the firm of Nelson Hall Parry Tucker, P.A.; that I have assisted in the representation of The Bank of Commerce, in the above-entitled action, and that the following costs and fees have been necessarily expended in such representation to date:

The Bank of Commerce requests an award of costs and attorney's fees pursuant to Idaho Rule of Civil Procedure 54, Idaho Code Section 12-120(3), and the parties agreement.

1. Costs as a Matter of Right

Filing Fee (Rule 54 (d)(1)(C)(1), I.R.C.P.)	\$ 88.00
Filing fee (Rule 54 (d)(1)(C)(1), I.R.C.P.)	\$ 150.00
Litigation Guaranty (Rule 54(d)(1)(c)(7)	\$6,228.00
Services Fees (Rule 54(d)(1)(C)(2)	\$ 130.00
Deposition Cost - Dustin Morrison (Rule 54(d)(1)(C)(9), I.R.C.P.)	\$1,112.00
Deposition Costs - Steven Worton (Rule 54(d)(1)(C)(9), I.R.C.P.)	\$ 185.14
Deposition Costs - Mike Morrison (Rule 54(d)(1)(C)(10), I.R.C.P.)	\$ 208.77
Deposition Costs - Sonya Morrison (Rule 54(d)(1)(C)(9), I.R.C.P.)	\$ 79.00
Deposition Costs - Pamela Wake (Rule 54(d)(1)(C)(9), I.R.C.P.)	\$ 195.85

Total Costs as a Matter of Right \$8,376.76

MEMORANDUM OF ATTORNEY'S FEES AND COSTS - 2

2. **Discretionary Costs (Rule 54(d)(1)(D), I.R.C.P.)**

Copies	\$ 72.15
Certification fees	\$ 3.50
Conference calls	\$ 100.65
Mileage	\$ 198.26
Recording Fee	\$ 15.00
Deposition Costs - Dustin Morrison (prior litigation)	\$ 355.10

Total Discretionary Costs	<u>\$ 744.66</u>
---------------------------	------------------

TOTAL COSTS	<u>\$9,121.42</u>
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3. **Attorney's Fees (Idaho Code §12-120(3), the parties' agreement, and I.R.C.P. Rule 54)**

See attached Exhibit "A"	<u>\$48,985.00</u>
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GRAND TOTAL	<u>\$58,106.42</u>
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The foregoing claimed costs and attorney's fees are true and accurate to the best of my knowledge. I have removed various entries that might be considered duplicate or not related to this foreclosure.

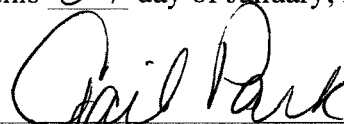
All costs are believed to be necessary and exceptional costs reasonably incurred, and should in the interest of justice be assessed against Jefferson Enterprises, LLC.

DATED this 24 ⁰⁰
Bankruptcy Fees
\$744.66
Discretionary Costs
GOODMAN

ON HALL PARRY TUCKER, P.A.


BRIAN T. TUCKER

SUBSCRIBED AND SWORN to before me this 27 day of January, 2012.


Notary Public for the State of Idaho
Residing at: Shelley, Idaho
My commission expires: 10-21-17

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I served a true copy of the foregoing document upon the following this 27 day of January, 2012, by hand delivery, mailing with the necessary postage affixed thereto, facsimile, or overnight mail.

Kirk Bybee
P.O. Box 4169
Pocatello, ID 83205

☒ Mailing
☐ Hand Delivery
☐ Facsimile: (208) 239-6986
☐ Overnight Mail

Brent T. Robinson
ROBINSON & ASSOCIATES
P.O. Box 396
Rupert, ID 83350-0396

☒ Mailing
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A. Bruce Larson
ABLE LAW, PC
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☒ Mailing
☐ Hand Delivery
☐ Facsimile: (208) 478-7602
☐ Overnight Mail



Brian T. Tucker

LABTT\0260.455\attorneys.fees - memorandum.wpd

MEMORANDUM OF ATTORNEY'S FEES AND COSTS - 4

Nelson Hall Parry Tucker, PA
P.O. Box 51630
490 Memorial Drive
Idaho Falls, ID 8340

Invoice submitted to:
Bank of Commerce
P.O. Box 1887
Idaho Falls ID 83403

January 27,2012

In Reference To: Foreclosure- Jefferson Enterprises, LLC
Dustin & Sonja Morrison, American Dream Home Builders, LLC &
American Dream Construction, LLC

Professional Services

		Rate	Tax#	Amount
7/10/2008 - BTT	Telephone conference with Mike Morrison			48.00
		160.00/hr		
7/31/2008 - BTT	Telephone conference with Mike Morrison; begin			64.00
	reviewing file	160.00/hr		
8/1/2008 - BTT	Draft demand letter to Jefferson Enterprises, LLC;			160.00
	draft guarantor demand letters to Mr. & Mrs. Morrison,	160.00/hr		
	American Dream Home Builders, LLC, and American			
	Dream Construction, LLC			
8/11/2008 - BTT	Receive and review letter from Brent Robinson; draft			64.00
	letter to Mike Morrison	160.00/hr		
8/27/2008 - BTT	Telephone conference with Mike Morrison			32.00
		160.00/hr		
9/9/2008 - BTT	Draft letter to Brent Robinson; review file; research;			400.00
	draft complaint to foreclose mortgage and complaint to	160.00/hr		
	sue guarantors; telephone conference with Mike			
	Morrison			
9/12/2008 - BTT	Telephone conference with Mardi at First American in			64.00
	Pocatello	160.00/hr		
9/18/2008 - BTT	Review title report; revise and review foreclosure			192.00
	complaint	160.00/hr		



			<u>Rate</u>	<u>Tax#</u>	<u>Amount</u>
9/19/2008	- BTT	Draft letter to Mike Morrison			48.00
			160.00/hr		
	- DRN	Review loan documents and edit to foreclosure complaint			157.50
			175.00/hr		
10/2/2008	- BTT	Telephone conference with Mike Morrison; receive verification from Mike; telephone conference with title company; draft Lis Pendens			80.00
			160.00/hr		
10/6/2008	- BTT	Receive and review litigation guarantee from First American Title			80.00
			160.00/hr		
10/8/2008	- BTT	Research issues with development agreement; telephone conference with Mike Morrison; revise complaint; draft letter to Mike Morrison			304.00
			160.00/hr		
	- DRN	Review title report; telephone call to B. Robinson; call to Pocatello City attorney			140.00
			175.00/hr		
10/16/2008	- DRN	Review pleading; telephone call to Attorney B. Robinson			122.50
			175.00/hr		
10/18/2008	- BTT	Receive and review letter from Brent Robinson; draft letter to Brent Robinson			64.00
			160.00/hr		
10/23/2008	- BTT	Receive documents from court; record notice of lis pendens; arrange for service			64.00
			160.00/hr		
10/30/2008	- BTT	Receive and review letter from Kirk Bybee, attorney for Pocatello; review deed			80.00
			160.00/hr		
10/31/2008	- BTT	Telephone conference with Kirk Bybee			48.00
			160.00/hr		
11/4/2008	- BTT	Telephone conferences with Marty Ottley at First American; telephone conference with Mike Morrison; draft amended foreclosure complaint to correct lot deeded to City of Pocatello			208.00
			160.00/hr		
11/7/2008	- BTT	Telephone conference with Mike Morrison; receive and review letter from Ryan Lewis; research other cases pending against Jefferson Enterprises			160.00
			160.00/hr		
11/10/2008	- BTT	Telephone conference with Mike Morrison; telephone conference with Kirk Bybee; draft acceptance of service; draft letter to Kirk Bybee; draft letter to Brent Robinson			192.00
			160.00/hr		
12/1/2008	- BTT	Telephone conference with Bill Isley			48.00
			160.00/hr		

		<u>Rate</u>	<u>Tax#</u>	<u>Amount</u>
12/3/2008 - BTT	Telephone conference with Al Stephens	160.00/hr		32.00
12/5/2008 - BTT	Draft notice of intent to take default; draft letter to Brent Robinson; receive and review notice of appearance from Brent Robinson and Kirk Bybee; receive and review order from court; telephone conference with Mike Morrison	160.00/hr		144.00
12/12/2008 - BTT	Receive and review answer and counterclaim; telephone conferences with Mike Morrison; receive and review letter from Mike; draft letter to Mike	160.00/hr		160.00
12/15/2008 - BTT	Receive and review discovery requests from Brent Robinson; draft letter to Mike Morrison; draft interrogatories and request for production of documents	160.00/hr		240.00
12/26/2008 - BTT	Receive and review timeline of information from Steve Worton	160.00/hr		64.00
12/29/2008 - BTT	Telephone conference with Steve Worton; draft letter to Steve Worton	160.00/hr		48.00
12/31/2008 - BTT	Telephone conference with Mike Morrison	160.00/hr		32.00
1/7/2009 - BTT	Receive and review letter from Dave McGuire; telephone conference with Mike Morrison	160.00/hr		64.00
1/9/2009 - BTT	Telephone conference with Aldon Tyler; telephone conference with Dan Ryan; telephone conference with Mike Morrison	160.00/hr		64.00
2/3/2009 - BTT	Receive and review letter from Brent Robinson; telephone conference with Mike Morrison	160.00/hr		48.00
2/6/2009 - BTT	Telephone conferences with Mike Morrison; draft witness list; draft exhibit list; receive and review letters from Brent Robinson	160.00/hr		256.00
- DRN	Review preparation and conference	175.00/hr		210.00
2/9/2009 - BTT	Deposition of Karen Hammond at American Falls; draft letter to Dave McGuire; telephone conference with Buchanan Reporting	160.00/hr		704.00
2/21/2009 - BTT	Draft letter to Mike Morrison; receive and review motion to continue trial; receive and review letter from Kirk Bybee; draft letter to Kirk Bybee	160.00/hr		96.00

			<u>Rate</u>	<u>Tax#</u>	<u>Amount</u>
2/24/2009 -	DRN	Review file and pleadings	160.00/hr		64.00
3/3/2009 -	BTT	Receive and review order vacating trial and scheduling status conference	160.00/hr		32.00
3/5/2009 -	DRN	File review; prepare for discovery	175.00/hr		227.50
3/9/2009 -	BTT	Telephone conference with Mike Morrison	160.00/hr		32.00
3/16/2009 -	BTT	Telephonic status conference with court; conference with Mike Morrison	160.00/hr		64.00
3/27/2009 -	DRN	Document review; respond to telephone call	175.00/hr		105.00
4/9/2009 -	DRN	Document review; brief research	175.00/hr		210.00
4/16/2009 -	DRN	Document review; preparation	175.00/hr		210.00
4/28/2009 -	DRN	Review and preparation; discovery	175.00/hr		227.50
4/30/2009 -	DRN	Discovery preparation	175.00/hr		140.00
5/1/2009 -	DRN	Review and preparation	185.00/hr		222.00
5/2/2009 -	BTT	Research on statute of frauds; receive and review motion to reopen case and dismiss claims	160.00/hr		208.00
5/8/2009 -	BTT	Additional research on statute of frauds	160.00/hr		144.00
5/19/2009 -	BTT	Telephone conference with Tom Romrell; review possible summary judgment issue	160.00/hr		48.00
5/21/2009 -	BTT	Receive and review letter from Brent Robinson	160.00/hr		32.00
6/3/2009 -	BTT	Telephone conference with Tom Romrell; telephone conference with Karen Hammon; research status of seperate Morrison lawsuit; telephone conference with Steve Worton	160.00/hr		192.00

		<u>Rate</u>	<u>Tax#</u>	<u>Amount</u>
6/11/2009	- DRN Research and review	185.00/hr		240.50
6/12/2009	- DRN Review and preparation	185.00/hr		148.00
6/15/2009	- WRD Review file documents; research re: statute of frauds and promisory estoppel	160.00/hr		480.00
6/17/2009	- BTT Work on affidavit of Steve Worton	160.00/hr		80.00
	- DRN Document review and preparation	185.00/hr		240.50
	- WRD Draft the affidavit of Steve Worton	160.00/hr		560.00
6/18/2009	- DRN Review affidavit; telephone call	185.00/hr		111.00
	- WRD Make additions to the affidavit of Steve Worton	160.00/hr		160.00
6/19/2009	- DRN Telephone calls; emails; preparation	185.00/hr		222.00
6/22/2009	- DRN Long conference with investigator; various telephone calls	185.00/hr		166.50
6/23/2009	- BTT Research on affirmative defenses	160.00/hr		160.00
	- DRN Edit affidavit; travel to Pocatello; conference with S. Morton to execute affidavit; transmittal	185.00/hr		425.50
6/30/2009	- DRN Preparation; discovery review	185.00/hr		240.50
8/6/2009	- DRN Review legal notice; hearing	185.00/hr		129.50
8/17/2009	- BTT Telephone conferences with Karen Hammond; review file	160.00/hr		64.00
9/30/2009	- BTT Research and review bankruptcy schedules; draft notice of appearance; telephone conference with Rebecca Judy; draft letter to Rebecca Judy; draft motion to reset trial date	160.00/hr		256.00

			<u>Rate</u>	<u>Tax#</u>	<u>Amount</u>
10/2/2009 - BTT	Telephone conference with Brent Robinson; review file		160.00/hr		64.00
10/19/2009 - BTT	File motion to re-set trial date and notice of appearance		160.00/hr		48.00
10/20/2009 - BTT	Attempts to contact Brent Robinson; draft notice of hearing		160.00/hr		80.00
11/13/2009 - BTT	Review new bankruptcy documents; telephone conference with court clerk regarding telephonic hearing		160.00/hr		64.00
11/28/2009 - BTT	Receive and review order for status conference; draft notice of intent to appear via telephone		160.00/hr		64.00
12/21/2009 - BTT	Status conference		160.00/hr		64.00
1/2/2010 - BTT	Receive and review minute entry and order setting status conference		160.00/hr		32.00
1/19/2010 - BTT	Research		160.00/hr		80.00
2/10/2010 - BTT	Receive and review minute entry on hearing in bankruptcy court		160.00/hr		32.00
2/18/2010 - DRN	Case file review; dictation; conference		190.00/hr		133.00
3/4/2010 - BTT	Receive and review disclosure statement and Chapter 11 plan		160.00/hr		96.00
3/15/2010 - BTT	Telephone conference with Mike Morrison; attempts to contact Brent Robinson		160.00/hr		32.00
3/22/2010 - BTT	Telephone conference with Brent Robinson; status conference with court		160.00/hr		80.00
3/30/2010 - BTT	Telephone conference with Al Stephens; receive and review objection to disclosure statement		160.00/hr		80.00
4/21/2010 - BTT	Receive and review monthly operating statements; receive and review objection to disclosure statement		160.00/hr		80.00
5/3/2010 - BTT	Receive and review letter form Brent Robinson; telephonic status conference; telephone conference with Brent Robinson		160.00/hr		160.00

		<u>Rate</u>	<u>Tax#</u>	<u>Amount</u>
5/14/2010 - BTT	Telephone conference with Dan Ryan at Travelers Insurance	160.00/hr		48.00
5/21/2010 - BTT	Draft letter to Brent Robinson	160.00/hr		32.00
5/25/2010 - BTT	Receive and review letter from Brent Robinson; draft letter to Brent Robinson	160.00/hr		48.00
5/28/2010 - BTT	Telephone conference with Brent Robinson	160.00/hr		48.00
6/4/2010 - BTT	Receive and review amended disclosure statement, amended plan, and tax returns	160.00/hr		128.00
6/10/2010 - BTT	Draft letter to Brent Robinson	160.00/hr		48.00
7/6/2010 - BTT	Telephonic status conference; telephone conference with Kurt Bybee; telephone conference with Brent Robinson	160.00/hr		112.00
7/9/2010 - BTT	Review file; draft letter to Brent Robinson	160.00/hr		64.00
7/19/2010 - BTT	Telephone conference with Brent Robinson; receive and review letter from Brent Robinson; telephone conference with Mike Rice	160.00/hr		80.00
7/22/2010 - BTT	Receive and review objection to plan; receive and review order from court	160.00/hr		64.00
7/23/2010 - BTT	Telephone conference with Brent Robinson	160.00/hr		48.00
7/26/2010 - DRN	Review settlement letter; review file documents; conference	190.00/hr		209.00
- BTT	Receive and review letter from Brent Robinson; draft letter to Judy Barnes at Brent Robinson's office; review file; draft letter to Mike Morrison and Mike Rice	160.00/hr		272.00
7/27/2010 - DRN	Long telephone conference with T. Romrell; preparation	190.00/hr		76.00
7/28/2010 - BTT	Telephone conference with Mike Rice	160.00/hr		64.00
- DRN	Review and comment on settlement offer; telephone conference	190.00/hr		152.00

			Rate	Tax#	Amount
7/29/2010 -	BTT	Telephone conference with Mike Morrison; research			80.00
			160.00/hr		
8/4/2010 -	BTT	Receive and review letter and documents from Brent Robinson; draft letter to Mike Morrison			48.00
			160.00/hr		
8/5/2010 -	BTT	Telephone conference with Brent Robinson			48.00
			160.00/hr		
8/6/2010 -	BTT	Draft letter to Mike Morrison; telephone conference with Kurt Bybee; draft letter to Mike Morrison regarding conversation with Kurt Bybee; conference with Al Stephens			224.00
			160.00/hr		
8/10/2010 -	BTT	Telephone conference with Brent Robinson			32.00
			160.00/hr		
-	WRD	Begin research re: statute of frauds and other issues			96.00
			160.00/hr		
8/11/2010 -	WRD	Continue research re: statute of frauds and other issues			80.00
			160.00/hr		
8/12/2010 -	DRN	Review; research; preparation for settlement conference			152.00
			190.00/hr		
8/13/2010 -	BTT	Receive and review letter from Brent Robinson; review statute of frauds cases; review Mike Rice's analysis of appraisal			176.00
			160.00/hr		
-	WRD	Research re: loan commitment agreements and option contracts; draft summary of applicable law			560.00
			160.00/hr		
8/17/2010 -	BTT	Receive and review Chapter 11 ballots and summary			48.00
			160.00/hr		
8/19/2010 -	BTT	Receive and review confirmation report			48.00
			160.00/hr		
8/20/2010 -	DRN	Preparation; review and respond to email			95.00
			190.00/hr		
-	BTT	Telephone conference with Brent Robinson; draft letter to Mike Morrison; receive and review letter from Mike Morrison			64.00
			160.00/hr		
8/24/2010 -	BTT	Receive and review memorandum and decision on attorney fees; telephone conference with Brent Robinson; draft letter to Mike Morrison			96.00
			160.00/hr		

			Rate	Tax#	Amount
8/25/2010 -	DRN	Review and preparation			133.00
			190.00/hr		
8/30/2010 -	BTT	Telephone conference with Kurt Bybee; telephonic status conference with Judge Naftz			128.00
			160.00/hr		
9/8/2010 -	BTT	Telephone conference with Brent Robinson			32.00
			160.00/hr		
9/9/2010 -	BTT	Office conference with Brent Robinson, Dustin Morrison, and Bruce Larsen			416.00
			160.00/hr		
-	DRN	Preparation; review case summary; mediation conference with B. Robinson and Summers; post mediation conference with client			361.00
			190.00/hr		
9/13/2010 -	BTT	Receive and review order of status conference from court			32.00
			160.00/hr		
9/14/2010 -	BTT	Telephone conference with Tom Romrell			32.00
			160.00/hr		
9/27/2010 -	BTT	Receive and review amended disclosure statement and amended plan; telephone conference with Brent Robinson; draft letter to Mike Morrison; draft motion for relief from stay			368.00
			160.00/hr		
9/28/2010 -	DRN	Receipt and review of Morrison bankruptcy disclosure statement; dictation			76.00
			190.00/hr		
9/29/2010 -	DRN	Review Morrison bankruptcy disclosure; telephone conference regarding property site development			133.00
			190.00/hr		
9/30/2010 -	BTT	Revise motion for stay relief; telephone conference with Mike Rice			96.00
			160.00/hr		
10/5/2010 -	BTT	Receive and review objection to plan			48.00
			160.00/hr		
10/7/2010 -	BTT	Receive and review objection to motion for stay relief and notice of hearing			48.00
			160.00/hr		
10/13/2010 -	BTT	Receive and review motion for stay relief			48.00
			160.00/hr		
10/18/2010 -	BTT	Telephonic status conference hearing			80.00
			160.00/hr		
-	DRN	Telephone call; report to bank			114.00
			190.00/hr		

		<u>Rate</u>	<u>Tax#</u>	<u>Amount</u>
10/19/2010 - BTT	Receive and review letter from Mike Morrison	160.00/hr		32.00
11/1/2010 - BTT	Prepare for hearing on stay relief; research	160.00/hr		192.00
11/2/2010 - BTT	Attend hearing on objection to stay relief; draft proposed order; draft letter to Brent Robinson	160.00/hr		448.00
11/3/2010 - BTT	Telephone conference with appraiser	160.00/hr		32.00
11/19/2010 - BTT	Attempts to contact Brent Robinson; draft letter to court; draft letter to attorney's regarding status conference	160.00/hr		80.00
11/23/2010 - BTT	Receive and review order lifting automatic stay	160.00/hr		48.00
11/29/2010 - BTT	Participate in status conference	160.00/hr		96.00
12/10/2010 - BTT	Receive and review notice of appearance from Bruce Larson	160.00/hr		32.00
12/16/2010 - BTT	Receive and review letter and appraisal from Mike Rice	160.00/hr		48.00
12/20/2010 - BTT	Telephonic conference with court	160.00/hr		96.00
1/10/2011 - BTT	Receive and review letter from Mike Morrison; telephone conference with Mike Morrison	160.00/hr		48.00
1/12/2011 - DRN	Review; telephone conference with attorney Larsen; telephone conference with attorney Robison; dictation	190.00/hr		247.00
1/14/2011 - BTT	Receive and review amended plan	160.00/hr		32.00
1/27/2011 - BTT	Correspondence with Mike Rice	160.00/hr		32.00
2/4/2011 - BTT	Receive and review motion to amend answer and counterclaim	160.00/hr		80.00
2/8/2011 - DRN	Review of pleading; preparation	190.00/hr		133.00
2/16/2011 - DRN	Review; telephone call; preparation	190.00/hr		114.00

			<u>Rate</u>	<u>Tax#</u>	<u>Amount</u>
2/21/2011	- BTT	Prepare for hearing; draft letter to Mike Morrison	160.00/hr		240.00
2/22/2011	- BTT	Attend hearing on motion to amend; conference with Bruce Larson; telephone conference with Mike Morrison	160.00/hr		512.00
	- WRD	Research re: the required elements for pleading fraud with particularity and review proposed amended counterclaim for particularity in allegation of fraud	160.00/hr		208.00
2/24/2011	- BTT	Telephone conference with Bruce Larson	160.00/hr		48.00
2/25/2011	- BTT	Draft letter to Bruce Larson	160.00/hr		48.00
3/22/2011	- BTT	Telephone conference with Bruce Larsen	160.00/hr		48.00
3/24/2011	- BTT	Telephone conference with Mike Morrison; telephone conferences with Bruce Larsen; draft letter to Bruce Larsen	160.00/hr		80.00
	- DRN	Telephone conference with Bruce Larsen's office; document review	190.00/hr		114.00
3/25/2011	- BTT	Draft letter to Mike Morrison	160.00/hr		32.00
3/31/2011	- DRN	Receipt, review and transmit discovery request	190.00/hr		133.00
4/11/2011	- BTT	Telephone conference with Mike Morrison	160.00/hr		48.00
4/26/2011	- BTT	Draft letter to Mike Morrison; receive and review letter from Mike Morrison	160.00/hr		48.00
4/27/2011	- BTT	Telephone conference with Mike Morrison; receive and review letter and documents from Mike Morrison; begin working on discovery responses	160.00/hr		144.00
	- WRD	Draft the Bank's responses to Jefferson Enterprises' requests for admission; prepare notice of service; draft letter to Bruce Larson; review hundreds of pages of potential discovery on C.D. to determine which documents are privileged and not discoverable	160.00/hr		480.00

			Rate	Tax#	Amount
4/28/2011 -	WRD	Draft the banks answers to interrogatories and responses to requests for production of documents with objections	160.00/hr		480.00
4/29/2011 -	BTT	Review discovery answers; draft letter to Mike Morrison	160.00/hr		128.00
-	WRD	Redact private information from discovery documents re: other bank customers and attorney-client privileged documents; make changes and additions to the bank's answers to interrogatories and responses to requests for production of documents	160.00/hr		400.00
6/22/2011 -	BTT	Telephone conference with Bruce Larson	180.00/hr		72.00
6/30/2011 -	BTT	Telephone conference with Mike Morrison	180.00/hr		36.00
7/11/2011 -	DRN	Receipt and review of email and file; transmittal	200.00/hr		80.00
7/12/2011 -	BTT	Correspondence with Mike Morrison	180.00/hr		54.00
7/20/2011 -	BTT	Receive and review letter and notices from Bruce Larson; telephone conference with Mike Morrison; telephone conference with Bruce Larson	180.00/hr		126.00
7/25/2011 -	DRN	File review; preparation; brief conference	200.00/hr		140.00
7/26/2011 -	DRN	Document review; preparation	200.00/hr		160.00
8/1/2011 -	DRN	Review and preparation	220.00/hr		264.00
8/23/2011 -	BTT	Telephone conference with Bruce Larson	180.00/hr		54.00
8/25/2011 -	BTT	Telephone conference with Mike Morrison	180.00/hr		54.00
9/15/2011 -	BTT	Telephone conferences with Bruce Larson; telephone conference with Mike Morrison; receive and review letter from Bruce Larson; receive and review motion to continue	180.00/hr		324.00
9/16/2011 -	BTT	Draft letter to Bruce Larson; receive and review letter from Bruce Larson	180.00/hr		126.00

			<u>Rate</u>	<u>Tax#</u>	<u>Amount</u>
9/27/2011	- BTT	Telephone conference with Bruce Larson; draft letter to Mike Morrison	180.00/hr		72.00
9/29/2011	- BTT	Telephone conferences with Judge Naftz's clerk	180.00/hr		54.00
10/14/2011	- BTT	Telephone conferences with Bruce Larson; draft letter to Mike Morrison; receive and review letter from Mike Morrison; telephonic status conference	180.00/hr		234.00
10/25/2011	- BTT	Telephone conference with claims adjustor Daniel Ryan	180.00/hr		54.00
10/26/2011	- BTT	Receive and review deposition notices; draft deposition notices for Dustin and Sonja Morrison; telephone conference with Bruce Larson; research; receive and review stipulation to continue trial	180.00/hr		234.00
10/27/2011	- BTT	Telephone conferences with Bruce Larson; review file	180.00/hr		90.00
10/28/2011	- BTT	Draft letter to Bruce Larsen; draft letter to Dan Ryan; review file	180.00/hr		504.00
10/31/2011	- BTT	Review documents and depositions	180.00/hr		216.00
11/1/2011	- WRD	Begin reviewing file in preparation for the deposition of Dustin Morrison; read portions of Dustin Morrison's previous deposition transcript taken in other case	160.00/hr		160.00
	- BTT	Receive and review file; research; prepare for Pam Wake deposition; telephone conference with Mike Morrison	180.00/hr		1,044.00
	- DRN	Preparation for discovery depositions; strategy conference	200.00/hr		140.00
11/2/2011	- WRD	Draft seven pages of the outline for Friday's deposition of Dustin Morrison; research re: interference with a prospective economic advantage	160.00/hr		640.00
	- BTT	Deposition of Pam Wake; conference with Dustin Morrison and Bruce Larson; telephone conference with Mike Morrison; telephone conference with Bruce Larson	180.00/hr		1,206.00
	- DRN	Preparation; conference regarding discovery	200.00/hr		160.00

		<u>Rate</u>	<u>Tax#</u>	<u>Amount</u>
11/3/2011 - WRD	Research re: fraud and misrepresentation; additional research re: interference of a prospective economic advantage; research re: promissory estoppel; continue drafting outline and questions for tomorrow's deposition of Dustin Morrison	160.00/hr		720.00
- BTT	Conference with Mike Morrison; deposition of Mike Morrison; telephone conference with Judge Naftz's office; long telephone conference with Steve Worton; prepare for depositions of Morrison's and Steve Worton; research	180.00/hr		1,800.00
- DRN	Preparation and review	200.00/hr		120.00
11/4/2011 - BTT	Depositions of Steve Worton, Dustin and Sonja Morrison	180.00/hr		1,512.00
- DRN	Work on summary judgment issues	200.00/hr		240.00
11/7/2011 - WRD	Draft affidavit of Mike Morrison; continue drafting memorandum in support of motion for summary judgment	160.00/hr		560.00
- BTT	Revise affidavit of Mike Morrison; research	180.00/hr		162.00
11/8/2011 - WRD	Make changes to the affidavit of Mike Morrison; continue drafting memorandum in support of motion for summary judgment	160.00/hr		624.00
- BTT	Telephone conference with Sheila Garrett; telephone conference with Deena Green; search for Eric Polatis; telephone conference with Ashley Lyman; correspondence with Phil DeAngeli; telephone conference with Bruce Larson; research; telephone conference with Donna Andrews	180.00/hr		756.00
11/9/2011 - WRD	Begin reading and high lighting the transcript from Dustin Morrison's deposition	160.00/hr		320.00
11/10/2011 - WRD	Finish reading and high lighting the transcript of Dustin Morrison's deposition; additional research; finish drafting a rough draft of the memorandum in support of motion for summary judgment	160.00/hr		1,440.00
- BTT	Telephone conference with Phil DeAngeli; draft affidavit of Tom Romrell; telephone conference with Mike Morrison; research work on motion for summary	180.00/hr		684.00

		<u>Rate</u>	<u>Tax#</u>	<u>Amount</u>
	judgment; receive and review letter and documents from Rebecca Judy			
11/10/2011 - DRN	Discovery review; consult on summary judgment brief and motions	200.00/hr		260.00
11/11/2011 - WRD	Proofread and make changes to memorandum in support of motion for summary judgment; draft affidavit of Brian T. Tucker; research re: accord and satisfaction; research re: novation; redact portions of Dustin Morrison's deposition transcript	160.00/hr		960.00
- BTT	Telephone conferences with Bruce Larson; receive and review letter and stipulation from Bruce Larson; revise stipulation; draft letter to Bruce Larson; research; finalize summary judgment motion; add new grounds for summary judgment	180.00/hr		1,116.00
- DRN	Work on summary judgment brief and motion	200.00/hr		220.00
11/12/2011 - BTT	Draft letter to Phil DeAngeli	180.00/hr		54.00
11/14/2011 - BTT	Correspondence with Bruce Larson; telephone conference with court to schedule hearing; review brief; telephone conference with Bill Isley; draft notice of hearing; draft letter to Mike Morrison	180.00/hr		270.00
11/15/2011 - DRN	Conclude summary judgment review and transmittal	200.00/hr		160.00
11/16/2011 - BTT	Draft letter to Daniel Ryan; review file; telephone conference with Judge Naftz clerk	180.00/hr		162.00
11/17/2011 - BTT	Receive and review letter from Phil DeAngeli; draft letter to Mike Morrison and Steve Worton regarding review of depositions; receive and review witness lists	180.00/hr		180.00
11/18/2011 - WRD	Read Jefferson Enterprises' expert witness disclosures and also it's factual witness disclosures; review the court's scheduling order, notice of trial setting and initial pretrial order; research disclosure requirements under the Rules of Civil Procedure; draft: 1) objection to expert witnesses, 2) plaintiff's second set of interrogatories and requests for production of documents to defendant Jefferson Enterprises, and 3) notice of service	160.00/hr		480.00
- BTT	Research	180.00/hr		72.00

		<u>Rate</u>	<u>Tax#</u>	<u>Amount</u>
11/18/2011 - DRN	Preparation and review			140.00
		200.00/hr		
11/21/2011 - BTT	Receive and review letter from Phil DeAngeli			54.00
		180.00/hr		
11/28/2011 - BTT	Receive and review letter from Daniel Ryan			54.00
		180.00/hr		
11/30/2011 - BTT	Draft letter to Dan Ryan at Travelers Insurance			72.00
		180.00/hr		
12/5/2011 - BTT	Receive and review affidavit of Eric Polatis; draft letter to court reporter			90.00
		180.00/hr		
12/6/2011 - BTT	Research			108.00
		180.00/hr		
- WRD	Read affidavit of Eric R. Polatis; read memorandum in opposition to plaintiff's motion for summary judgment; research			288.00
		160.00/hr		
12/7/2011 - WRD	Begin drafting reply to Jefferson Enterprises' opposition to the banks motion for summary judgment			320.00
		160.00/hr		
12/9/2011 - BTT	Review memorandum; research			270.00
		180.00/hr		
- WRD	Additional research; continue drafting reply memorandum in support of motion for summary judgment			720.00
		160.00/hr		
12/12/2011 - WRD	Additional research re: damages; finish drafting reply memorandum in support of motion for summary judgment			560.00
		160.00/hr		
- BTT	Finalize reply to motion for summary judgment			216.00
		180.00/hr		
12/13/2011 - BTT	Draft letter to Daniel Ryan			72.00
		180.00/hr		
12/14/2011 - BTT	Review new statute of frauds case			126.00
		180.00/hr		
12/19/2011 - BTT	Prepare for hearing; conference with Bruce Larson; hearing on summary judgment motion			1,008.00
		180.00/hr		

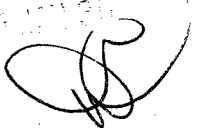
		<u>Rate</u>	<u>Tax#</u>	<u>Amount</u>
12/20/2011 - BTT	Work on expert witness disclosures; telephone conference with Kevin Oakey; telephone conferences with Mike Morrison; revise expert witness disclosure; draft discovery letter to Bruce Larson	180.00/hr		270.00
- WRD	Research re: the banks experts; draft the banks expert witness disclosure; proofread and make additions and changes to expert witness disclosure	160.00/hr		400.00
- DRN	Work on identifying and selecting potential expert damage witness; telephone conference with E. Jensen and K. Oakey; contact with D. Smith	200.00/hr		260.00
12/22/2011 - DRN	Email exchange with David Smith, CVA regarding possible expert witness testimony; transmittals	200.00/hr		120.00
12/26/2011 - BTT	Receive and review supplemental discovery answers	180.00/hr		90.00
12/30/2011 - BTT	Review file; telephone conference with Bruce Larson; research; receive and review motion to vacate trial setting; draft letter to Mike Morrison	180.00/hr		324.00
1/2/2012 - DRN	Receipt, review and respond to motion; conference	200.00/hr		160.00
1/3/2012 - BTT	Telephone conference with county treasurer regarding past due taxes on lots; research; review file; research	180.00/hr		288.00
1/4/2012 - BTT	Telephone conferences with Bruce Larsen; draft outline	180.00/hr		126.00
1/5/2012 - BTT	Receive and review minute entry and order; telephone conference with Mike Morrison	180.00/hr		54.00
1/6/2012 - BTT	Telephone conference with Bruce Larson; receive and review notice of hearing	180.00/hr		72.00
1/9/2012 - BTT	Review file; prepare for hearing; telephone conference with Bruce Larson; hearing on motion to vacate trial; draft letter to Mike Morrison	180.00/hr		180.00
1/10/2012 - BTT	Receive and review letter from Daniel Ryan; draft letter to Daniel Ryan	180.00/hr		72.00
1/11/2012 - BTT	Telephone conference with Daniel Ryan	180.00/hr		54.00
1/17/2012 - DRN	Work on expert issues	200.00/hr		140.00

		<u>Rate</u>	<u>Tax#</u>	<u>Amount</u>
1/19/2012 - DRN	Receipt and review of memorandum decision and judgment; email report to bank	200.00/hr		100.00
- BTT	Receive and review memorandum decision and order from court; research; telephone conference with Mike Morrison; draft letter to Mike Morrison; draft letter to Daniel Ryan; attorney fee request	180.00/hr		432.00
- WRD	Read memorandum decision on motion for summary judgment; research	160.00/hr		96.00
For professional services rendered		286.70		\$48,985.00
Additional Charges :				
		<u>Qty/Price</u>		
10/9/2008 - DRN	Litigation Guarantee	1 6,228.00		6,228.00
10/16/2008 - DRN	Certification Fee	1 3.50		3.50
- DRN	Filing Fee	1 88.00		88.00
10/24/2008 - DRN	Recording Fee	1 15.00		15.00
11/10/2008 - DRN	Service Fee	1 40.00		40.00
11/14/2008 - BTT	Service Fee	1 90.00		90.00
11/20/2008 -	Copying cost	300 0.15		45.00
2/23/2009 - DRN	Copy of Deposition Transcript	1 355.10		355.10
3/16/2009 - DRN	Conference call	1 49.93		49.93
3/20/2009 -	Copying cost	28 0.15		4.20
6/23/2009 - DRN	Travel to/from Chubbuck	1 41.76		41.76

	<u>Qty/Price</u>	<u>Tax#</u>	<u>Amount</u>
6/11/2010 - DRN Conference Call	1 50.72		50.72
10/1/2010 - DRN Filing Fee	1 150.00		150.00
10/20/2010 - Copying cost	153 0.15		22.95
11/3/2010 - DRN Travel to/from Pocatello	1 50.00		50.00
2/24/2011 - DRN Travel to/from Pocatello	1 51.00		51.00
11/15/2011 - DRN Deposition Cost	1 1,112.00		1,112.00
11/17/2011 - DRN Deposition Cost	1 195.85		195.85
11/18/2011 - DRN Deposition Cost	1 472.91		472.91
1/4/2012 - DRN Travel to/from Pocatello	1 55.50		55.50
Total costs			<u>\$9,121.42</u>

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Telephone (208) 522-3001
Fax (208) 523-7254
Attorney for The Bank of Commerce
Idaho State Bar Numbers 5236 & 6216

FILED
JAN 13 2009
CLERK OF DISTRICT COURT
IDAHO FALLS, IDAHO



IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

THE BANK OF COMMERCE, an Idaho
banking corporation,

Plaintiff,

v.

JEFFERSON ENTERPRISES, LLC, an Idaho
limited liability company, DUSTIN
MORRISON and SONYA KIDD aka SONYA
MORRISON, THE CITY OF POCA TELLO,
an Idaho municipality,

Defendants.

Case No. CV-08-4231-OC

**AFFIDAVIT OF BRIAN T.
TUCKER IN SUPPORT OF
MOTION FOR AWARD OF
ATTORNEY'S FEES AND
COSTS**

DUSTIN MORRISON and SONYA KIDD aka
SONYA MORRISON, and JEFFERSON
ENTERPRISES, LLC, an Idaho limited
liability company,

Counterclaimants,

vs.

THE BANK OF COMMERCE, an Idaho
banking corporation,

Counterdefendant.

STATE OF IDAHO)
 : ss.
County of Bonneville)

BRIAN T. TUCKER, after being first duly sworn, deposes and states as follows:

1. I am one of the attorneys for The Bank of Commerce, in the above-entitled action.
2. The Bank of Commerce agreed to pay attorney fees to our office. Said attorney fees, incurred by the Plaintiff, were incurred at the rate of \$160.00 to \$180.00 for myself and Wiley Dennert and \$185.00 to \$200.00 for Doug Nelson at various times during the representation as set forth more fully in the billing statements attached to the Memorandum of Fees and Costs. Said rates are reasonable and comparable to other attorneys in this area and practice.
3. The Bank of Commerce is entitled to attorney's fees pursuant to Idaho Code §12-120(3), the parties agreements, and Idaho Rules of Civil Procedure 54.
4. We have devoted the time set forth in the Memorandum of Costs and Fees with its attachments, the same is included by reference herein. The total amount of attorney fees claimed by The Bank of Commerce is \$48,985.00. The total amount of costs is \$9,121.42.
5. Based upon the experience, education, and background, the prevailing charges for like kind work would be between \$175.00 and \$225.00 per hour in the local area.

**AFFIDAVIT OF BRIAN T. TUCKER IN SUPPORT OF MOTION FOR AWARD OF ATTORNEY'S FEES
AND COSTS - 2**

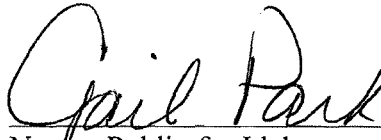
6. In the instant case, the Court awarded a judgment in favor of The Bank of Commerce.

DATED this 27 day of January, 2012.



BRIAN T. TUCKER

SUBSCRIBED AND SWORN TO, before me the undersigned, a Notary Public in and for said State, this 27 day of January, 2012.



Notary Public for Idaho

Residing at: Shelley, Idaho

My commission expires: 10-21-17

(Seal)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I served a true copy of the foregoing document upon the following this 27 day of January, 2012, by hand delivery, mailing with the necessary postage affixed thereto, facsimile, or overnight mail.

Kirk Bybee
P.O. Box 4169
Pocatello, ID 83205

- ☒ Mailing
- ☐ Hand Delivery
- ☐ Facsimile: (208) 239-6986
- ☐ Overnight Mail

Brent T. Robinson
ROBINSON & ASSOCIATES
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ABLE LAW, PC
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- ☒ Mailing
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- ☐ Overnight Mail



Brian T. Tucker

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**AFFIDAVIT OF BRIAN T. TUCKER IN SUPPORT OF MOTION FOR AWARD OF ATTORNEY'S FEES
AND COSTS - 4**

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Attorney for The Bank of Commerce
Idaho State Bar Numbers 5236 & 6216

FILED
CLERK
2012 JAN 30 11:35
BY [Signature]
DEPUTY CLERK

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

THE BANK OF COMMERCE, an Idaho
banking corporation,

Plaintiff,

v.

JEFFERSON ENTERPRISES, LLC, an Idaho
limited liability company, DUSTIN
MORRISON and SONYA KIDD aka SONYA
MORRISON, THE CITY OF POCA TELLO,
an Idaho municipality,

Defendants.

Case No. CV-08-4231-OC

**MEMORANDUM IN SUPPORT
OF MOTION FOR AWARD OF
ATTORNEY'S FEES AND COSTS**

DUSTIN MORRISON and SONYA KIDD aka
SONYA MORRISON, and JEFFERSON
ENTERPRISES, LLC, an Idaho limited
liability company,

Counterclaimants,

vs.

THE BANK OF COMMERCE, an Idaho
banking corporation,

Counterdefendant.

COMES NOW The Bank of Commerce, by and through its attorneys of record, Nelson Hall Parry Tucker, PA, and files this Memorandum in support of its request for attorney's fees.

Pursuant to Idaho Code §12-120(3), and the parties' Promissory Notes and Mortgages, The Bank of Commerce is entitled to reasonable attorney's fees and costs incurred in this foreclosure.

When awarding attorney fees, a district court must consider applicable factors set forth in IRCP 54(e)(3) A through L and may consider any other factor that the court deems appropriate. *Hines v. Hines*, 129 Idaho 847, 855, 934 P.2d 20, 28 (1997). The determination is discretionary by the court but must be directed to the factors in IRCP Rule 54(e)(3). *Kelly v. Hodges*, 119 Idaho 872, 876, 811 P.2d 48, 52 (Ct. Appt. 1991). The Court should provide a record establishing that the Court considered the factors under IRCP Rule 54(e)(3). *Elliott v. Darwin Neibaur Farms*, 138 Idaho 774, 785, 69 P.3d 1035, 1046 (2003). When considering the factors, courts need not demonstrate how they employed any of those factors in reaching an award amount." *Smith v. Mitton*, 140 Idaho 893, 902, 104 P.3d 367, 376 (2004); *Lettunich v. Lettunich*, 145 Idaho 746, 749, 185 P.3d 258 (2008).

In reviewing the criteria of IRCP Rule 54(e)(3), the fee request is appropriate. The fee was not fixed or contingent. The fees were necessitated and appropriate considering the response to the litigation. The hourly rates are consistent or below prevailing rate for attorneys with similar experience.

MEMORANDUM IN SUPPORT OF MOTION FOR AWARD OF ATTORNEY'S FEES AND COSTS - 2

The Promissory Notes state:

I agree to pay all costs of collection, replevin or any other or similar type of cost if I am in default. In addition, if you hire an attorney to collect this note, I also agree to pay any fee you incur with such attorney plus court costs

The Mortgages state:

EXPENSES; ADVANCES ON COVENANTS; ATTORNEYS' FEES; COLLECTION COSTS. Except when prohibited by law, Mortgagor agrees to pay all of Lender's expenses if Mortgagor breaches any covenant in this Mortgage. Mortgagor will also pay on demand all of Lender's expenses incurred in collecting, insuring, preserving or protecting the Property or in any inventories, audits, inspections or other examination by Lender in respect to the Property. Mortgagor agrees to pay all costs and expenses incurred by Lender in enforcing or protecting Lender's rights and remedies under this Mortgage, including, but not limited to, attorneys' fees, court costs, and other legal expenses. Once the Secured Debt is fully and finally paid, lender agrees to release this Mortgage and Mortgagor agrees to pay for any recordation costs. All such amounts are due on demand and will bear interest from the time of the advance at the highest rate in effect, from time to time, as provided in the Evidence of Debt and as permitted by law.

The Bank of Commerce respectfully requests the Court to award its attorney's fees in the full amount set forth in the Affidavit and Memorandum of Costs, against Jefferson Enterprises, LLC.

All costs are believed to be necessary and exceptional costs reasonably incurred, and should in the interest of justice be assessed against Jefferson Enterprises, LLC. The Ligation Guarantee was an exceptional cost necessitated due to this being a foreclosure action. The amount of the premium is based on the amount owing by Jefferson Enterprises, LLC. It is necessary to determine who may have an interest in the property being foreclosed.

Submitted herewith for the Court's consideration is a proposed Decree of Foreclosure, and Order of Sale which includes a provision awarding costs and fees.

DATED this 27 day of January, 2012.



Brian T. Tucker

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I served a true copy of the foregoing document upon the following this 27 day of January, 2012, by hand delivery, mailing with the necessary postage affixed thereto, facsimile, or overnight mail.

Kirk Bybee
P.O. Box 4169
Pocatello, ID 83205

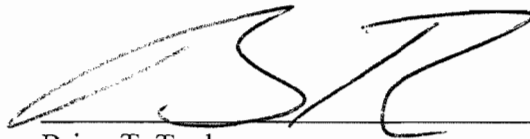
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Brian T. Tucker

L:\BTT\0260.455\attorneys.fees - memo.wpd

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2012 JAN 31 PM 3:40
FILED

Attorneys for Jefferson Enterprises, LLC, an Idaho limited liability company.

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

THE BANK OF COMMERCE, an Idaho)
banking corporation,)

Plaintiff, Counterdefendant,)

vs.)

JEFFERSON ENTERPRISES, LLC, an Idaho)
limited liability company, DUSTIN)
MORRISON and SONYA KIDD aka SONYA)
MORRISON,)

Defendants, Counterclaimants,)

THE CITY OF POCA TELLO, an Idaho)
municipality,)

Defendant.)

Case No. CV 08-4231 OC

**MOTION TO RECONSIDER, VACATE
SUMMARY JUDGMENT AND IN THE
ALTERNATIVE TO ALTER OR AMEND
JUDGMENT**

COMES NOW the Defendant Jefferson Enterprises LLC, by and through its counsel of record, and respectfully moves this court reconsider its Memorandum Decision and Order granting Plaintiff Bank of Commerce's Motion for Summary Judgment and enter an order vacating the Judgment entered on the 17th day of January 2012; or, in the alternative, for an order alter altering and amending the judgment in accordance with the provisions of IRCP Rule 59(a). This motion is made upon the basis and for the reasons set forth in the Memorandum and

supporting affidavits filed in opposition to the Motion for Summary Judgment and the Memorandum filed with this motion.

Oral argument is requested.

Dated this 31st day of January, 2012.

A handwritten signature in black ink, appearing to read 'A. Bruce Larson', written over a horizontal line.

A. Bruce Larson, Attorney for Jefferson
Enterprises LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 31st day of January, 2012, a true and correct copy of the within and foregoing was served upon:

Douglas R. Nelson, Esq.
Brian Tucker, Esq.
ANDERSON NELSON HALL SMITH, P.A.
P. O. Box 51630
Idaho Falls, Idaho 83405-1630


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Attorneys at Law
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A. Bruce Larson, Attorney for
Jefferson Enterprises LLC

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FILED
2018 JAN 31 PM 3:40
CLERK

Attorneys for Jefferson Enterprises, LLC, an Idaho limited liability company.

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

THE BANK OF COMMERCE, an Idaho)
banking corporation,)

Plaintiff, Counterdefendant,)

vs.)

JEFFERSON ENTERPRISES, LLC, an Idaho)
limited liability company, DUSTIN)
MORRISON and SONYA KIDD aka SONYA)
MORRISON,)

Defendants, Counterclaimants,)

THE CITY OF POCA TELLO, an Idaho)
municipality,)

Defendant.)

Case No. CV 08-4231 OC

**MEMORANDUM IN SUPPORT OF
MOTION TO RECONSIDER, VACATE
SUMMARY JUDGMENT, AND IN THE
ALTERNATIVE TO ALTER OR AMEND
JUDGMENT**

COMES NOW the Defendant Jefferson Enterprises LLC, ("Jefferson") by and through its counsel of record, and respectfully submits the following Memorandum in support of its motion to reconsider, vacate summary judgment and in the alternative, for an order alter altering and amending the judgment in accordance with the provisions of IRCP Rule 59(e).

**MEMORANDUM IN SUPPORT OF MOTION TO RECONSIDER, VACATE SUMMARY JUDGMENT,
AND IN THE ALTERNATIVE TO ALTER OR AMEND JUDGMENT**

ARGUMENT

A motion asking the district court to reconsider its decision is properly considered as a motion to alter or amend a judgment, as described in I.R.C.P. 59(e). *In re SRBA*, 149 Idaho 532, 237 P.3d 1, Idaho (2010).

When ruling on a motion for summary judgment disputed facts are to be construed liberally in favor of the non-moving party, and all reasonable inferences that can be drawn from the record are to be drawn in favor of the non-moving party. Summary judgment is appropriate only if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact. When the record shows the existence of genuine and material issues of fact and the record contains conflicting inferences or if reasonable minds might reach different conclusions the moving party is not entitled to a judgment as a matter of law. *Fazzio v. Mason*, 150 Idaho 591, 249 P.3d 390 (Idaho, 2011). Summary judgment is appropriate “if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” I.R.C.P. 56(c). Disputed facts and reasonable inferences are construed in favor of the non-moving party. *Estate of Becker v. Callahan*, 140 Idaho 522, 525, 96 P.3d 623, 626 (2004).

The court is permitted to draw probable inferences from the uncontradicted evidence because it would serve as the trier of fact, it is not permitted to make conclusive findings with regard to issues upon which the parties submit conflicting evidence. See *Williams v. Computer Res., Inc.*, 123 Idaho 671, 673, 851 P.2d 967, 969 (1993) (holding that the trial court was not permitted to draw inferences regarding the parties' intent when the parties submitted conflicting evidence on the issue); *Ashby v. Hubbard*, 100 Idaho 67, 70, 593 P.2d 402, 405 (1979) (holding

that a question involving the "intention expressed by the acts and statements of the parties" was a factual question for the jury); *Argyle v. Slemaker*, 107 Idaho 668, 670-71, 691 P.2d 1283, 1285-86 (Ct. App. 1984) (holding that findings based on conflicting evidence may only be made on summary judgment when "the evidence is entirely confined to a written record, there is no additional, in-court testimony to be obtained, and the trial judge alone will be responsible for choosing the evidentiary facts he deems most probable"). Nor is the court permitted to judge the credibility of the affiants. See *Baxter*, 135 Idaho at 172, 16 P.3d at 269 ("[I]t is not proper for the trial judge to assess the credibility of an affiant at the summary judgment stage when credibility can be tested in court before the trier of fact."); *Argyle*, 107 Idaho at 670, 691 P.2d at 1285 (holding that even when the court will serve as trier of fact, credibility determinations "should not be made on summary judgment if credibility can be tested by testimony in court before the trier of fact").

[W]hen a party moves for summary judgment, the initial burden of establishing the absence of a genuine issue of material fact rests with that party. *Tingley v. Harrison*, 125 Idaho 86, 89, 867 P.2d 960, 963 (1994) ("The burden of proving the absence of a material fact rests at all times upon the moving party."); See also *Harris v. State, Dep't. of Health & Welfare*, 123 Idaho 295, 298, 847 P.2d 1156, 1159 (1992); *McCoy v. Lyons*, 120 Idaho 765, 769, 820 P.2d 360, 364 (1991); *G & M Farms v. Funk Irrigation Co.*, 119 Idaho 514, 517, 808 P.2d 851, 854 (1991). Thus, it follows that if the moving party fails to challenge an element of the nonmovant's case, the initial burden placed on the moving party has not been met and therefore does not shift to the nonmovant.

Breach of Contract. Jefferson reiterates the arguments made in opposition to the Motion for Summary Judgment. The court has made determinations of disputed material issues of fact in

favor of the Plaintiff. It is the province of the jury in this case and not the court to make a determination of whether or not the Plaintiff breached the implied covenant of good faith and fair dealing in its requirement at the 11th hour of the transaction to have Jefferson deplete most of its working capital.

Interference with a Prospective Economic Advantage. This court has determined that Jefferson had a valid economic expectancy and the Plaintiff had knowledge of that economic expectancy. However, the court has incorrectly determined that the Plaintiff did not intentionally interfere with Jefferson's valid economic expectancy. In the courts memorandum decision the court states: " In order to prove the element of intent a party may show that the interference "with the other's prospective contractual relation is intentional if the actor desires to bring it about or if he knows that the interference is certain or substantially certain to occur as a result of his action." RESTATEMENT. (SECOND) OF TORTS § 766B etn. D (1977). *Higland Enterprises, Inc. v. Barker*, 133 Idaho 330, 340, 986 P.2d 996. "Intent can be shown even if the interference is incidental to the actor's intended purpose and desire but known to him to be a necessary consequence of his action" *Id.* at 340 (internal citation omitted)." The focus of the Court's analysis is directed to the intentions of Jefferson to the testimony of Dustin Morrison rather than on the knowledge and intentions of the Plaintiff. The deposition testimony presented in opposition to the Motion for Summary Judgment shows that not only was the Plaintiff aware of the valid economic expectancy but intentionally interfered with that expectancy. Steve Worton testified as follows: (Worton Depo. p. 68)

·Q· When you had your conversation with Mr.
·9· Morrison, I guess on the evening of the 9th, morning of
10· the 10th, I am sure there were a lot of conversations,
11· was that working capital amount discussed with you?
12· ·A· No, not that I recall.
13· ·Q· Did Mr. Morrison tell you where he was going

14 to get the money to close the loan?

15 A No, he didn't.

16 Q From your review of his financial information,
17 where was the most likely spot that he was going to get
18 the money?

19 A Cash in the bank.

20 Q And that was a significant portion of the
21 working capital that you had referenced in 803.

The Plaintiff in its deposition affirmed that it had knowledge of the working capital requirements in the loan application. (Mike Morrison Depo. pp.95-96)

Q Mr. Morrison's working capital was decreased
15 and his ratio, current ratio of assets to liability was
16 substantially impacted because of the payoff of the 80
17 Acre parcel; isn't that right?

18 A Yes.

19 Q Had that payoff occurred prior to the time
20 that the loan review committee saw the application,
21 would the loan have been approved under the policies of
22 the bank at that time?

23 A I don't know.

24 Q Would it have been a significant factor in the
25 approval or disapproval of the loan?

1 A Yes.

2 Q No question that the use of working capital to
3 pay off the 80 Acres reduced that working capital
4 significantly?

5 A Yes.

6 Q And as we look through the documents to the
7 later date, it went from around \$900,000 to as little as
8 \$70,000.

9 A Yes.

10 Q The bank was aware that Jefferson Enterprises
11 was just one of the entities that Mr. Morrison owned and
12 operated?

13 A Yes.

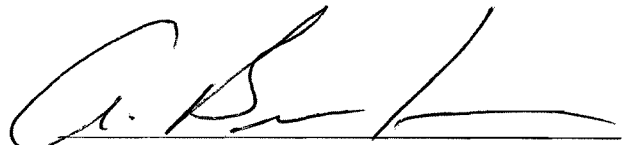
14 Q And the other entities included a construction
15 company, a home building company, and each of those
16 depended on the same pool of working capital?

17 A Yes.

The testimony of the Plaintiff cited in Jefferson's Memorandum and Opposition to Motion for Summary Judgment clearly establishes that the Plaintiff had the intent to interfere with Jefferson's expectancy and in fact interfered with the valid economic expectancy. The interference resulted in Jefferson's damages. This Court construed disputed issues of fact favorably to the moving party and found that the acts of the Plaintiff were not intentional. The determination is not allowed by Rule 56(c). The case was to be heard by a jury as the trier of fact, it is the province of the jury to determine if the Plaintiff's actions were intentional.

Jefferson adopts the arguments contained in its opposition to the Motion for Summary Judgment including the Memorandum and the information contained in the affidavits.

Dated this 31st day of January 2012.



A. Bruce Larson, Attorney for Jefferson
Enterprises LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 31st day of January, 2012, a true and correct copy of the within and foregoing was served upon:

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Brian Tucker, Esq.
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Idaho Falls, Idaho 83405-1630

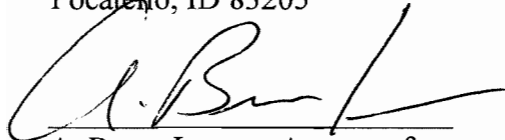
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FILED 13 FEB 14

Attorneys for Jefferson Enterprises, LLC, an Idaho limited liability company.

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

THE BANK OF COMMERCE, an Idaho
banking corporation,

Plaintiff, Counterdefendant,

vs.

JEFFERSON ENTERPRISES, LLC, an Idaho
limited liability company, DUSTIN
MORRISON and SONYA KIDD aka SONYA
MORRISON,

Defendants, Counterclaimants,

THE CITY OF POCA TELLO, an Idaho
municipality,

Defendant.

Case No. CV 08-4231 OC

**OBJECTION TO AWARD OF COSTS AND
ATTORNEY FEES**

COMESNOW the Defendant Jefferson Enterprises, LLC and objects to the Plaintiff's
motion for an award of costs and fees and requests that the same be disallowed for the following
reasons:

1. The motion and memorandum of costs were not filed within the time limits of IRCP
Rule 54(5).

OBJECTION TO AWARD OF COSTS AND ATTORNEY FEES

Page 1

2. Costs as a matter of right claimed for a Litigation Guarantee \$6,228.00 are not awardable as a "Bond Premium" pursuant to the provisions of IRCP 54(d)(1)(C)(7); Plaintiff has not request the award as a discretionary cost.
3. The items requested by the Plaintiff as discretionary costs have not been shown to be necessary and exceptional costs reasonably incurred, that should in the interest of justice be assessed against Jefferson Enterprises, LLC. None of the claimed amounts were necessary or exceptional costs, the claimed copies, certifications and mileage are costs typically incurred in any action. The deposition of Dustin Morrison in a prior action was not disclosed in discovery, has no relevance to this action and was not used by either party in support or in opposition to the Motion for Summary Judgment.
4. Attorney fees incurred by the Plaintiff in the Chapter11 Bankruptcy filed by Dustin and Sonya Morrison should not be awarded in this action. The attorney fees requested are excessive and unreasonable. Plaintiff has not filed an accounting with sufficient detail to allow the Defendant to determine what fees were either necessary or reasonable.

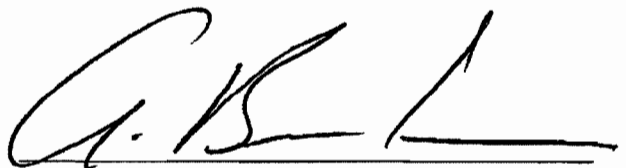
The bottom line in an award of attorney fees is reasonableness. *See, Sun Valley Potato Growers, Inc. v. Texas Refinery Corp.*, 139 Idaho 761, 86 P.3d 475 (2004) (award of attorney fees vacated where prevailing party did not provide the trial court with sufficient information from which to determine the reasonableness of the amount claimed). *Lettunich v. Lettunich*, 145 Idaho 746, 185 P.3d 258 (2008). As the Court of Appeals succinctly stated in *Hackett v. Streeter*, 109 Idaho 261, 264, 706 P.2d 1372, 1375 (Ct.App.1985):

If we require the trial court to consider the enumerated factors in rule 54(e)(3), then it logically follows as a corollary that the court must have sufficient information at its disposal concerning those factors. Some information may come from the court's own knowledge and experience, some may come from the record of the case, but some obviously can only be supplied by the attorney of the party who is requesting the fee award....We believe it is incumbent upon a party seeking attorney fees to present sufficient information for the court to consider factors as they specifically relate to the prevailing party or parties seeking fees. *Hackett v. Streeter*, 109 Idaho 261, 264, 706 P.2d 1372, 1375 (Ct.App.1985).

The Plaintiff submits an affidavit with what appears to a billing statement attached the attachment does not describe how many of the itemized charges relate in any manner to this action of the reasonableness of the fees claimed.

For the foregoing reasons the Plaintiff's request for an award if costs and fees should be disallowed.

Dated this 13th day of February, 2012.

A handwritten signature in dark ink, appearing to read 'A. Bruce Larson', written over a horizontal line.

A. Bruce Larson, Attorney for Jefferson Enterprises, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 13th day of February, 2012, a true and correct copy of the within and foregoing Document was served upon:

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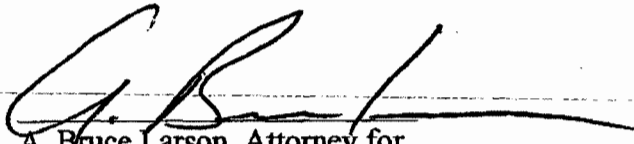
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Attorneys for The Bank of Commerce

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

THE BANK OF COMMERCE, an Idaho
banking corporation,

Plaintiff,

v.

JEFFERSON ENTERPRISES, LLC, an Idaho
limited liability company, DUSTIN
MORRISON and SONYA KIDD aka SONYA
MORRISON, THE CITY OF POCA TELLO,
an Idaho municipality,

Defendants.

DUSTIN MORRISON and SONYA KIDD aka
SONYA MORRISON, and JEFFERSON
ENTERPRISES, LLC, an Idaho limited
liability company,

Counterclaimants,

vs.

THE BANK OF COMMERCE, an Idaho
banking corporation,

Counterdefendant.

Case No. CV-08-4231-OC

**OBJECTION TO MOTION TO
RECONSIDER**

OBJECTION TO MOTION TO RECONSIDER - 1

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The Bank of Commerce (the “Bank” herein) by and through its attorneys of record, hereby objects to Jefferson Enterprises, LLC’s Motion to Reconsider, Vacate Summary Judgment and in the Alternative to Alter or Amend Judgment (“Motion to Reconsider”) as follows:

I. ARGUMENT

Jefferson Enterprises, LLC (“Jefferson Enterprises”) limited its Motion to Reconsider to the issues regarding breach of contract and interference with a prospective economic advantage. However, Jefferson Enterprises does not provide any new evidence or arguments, but simply reiterates its previous positions made in its opposition to the Bank’s Motion for Summary Judgment. As the Court correctly granted the Bank’s Motion for Summary Judgment, the Motion to Reconsider should be dismissed.

A. Breach of Contract

Jefferson Enterprises claims the Court made determinations of disputed material fact in favor of the Bank on the breach-of-contract issue. Although it is not clear exactly what disputed material fact Jefferson Enterprises is arguing that the Court improperly made, it appears that Jefferson Enterprises is claiming that the jury, not the Court, should be making determinations regarding the violation of the implied covenant of good faith and fair dealing. However, even construing the facts in Jefferson Enterprises’ favor, there are no facts to support its claim that the Bank breached the implied covenant of good faith and fair dealing.

The implied covenant of good faith and fair dealing “simply requires that the parties perform in good faith the obligations imposed by their agreement.” *Jenkins v. Boise Cascade Corp.*, 141 Idaho 233, 243, 108 P.3d 380, 390 (2005).

Of course, in order to violate the implied covenant of good faith and fair dealing, there must

OBJECTION TO MOTION TO RECONSIDER - 2

be an enforceable agreement in the first place. This Court determined that there was no evidence of any written pre-commitment loan agreement. Under the Statute of Frauds, an oral loan agreement for more than \$50,000 is not enforceable. In this case, Jefferson Enterprises requested a \$2.8 million loan. Upon construing the facts in favor of Jefferson Enterprises, there is no evidence of an enforceable pre-commitment loan agreement, and therefore, no obligations to which the Bank would be bound to perform in good faith. As such, it is impossible for the Bank to have violated the implied covenant of good faith and fair dealing as it would apply to the alleged unwritten and unenforceable pre-commitment loan agreement.

The Court correctly entered summary judgment in favor of the Bank on Jefferson Enterprises' breach-of-contract claim.

B. Interference with a Prospective Economic Advantage

As the Court recognized in its Memorandum Decision and Order, the five (5) necessary elements to prove intentional interference with a prospective economic advantage are:

(1) The existence of a valid economic expectancy; (2) knowledge of the expectancy on the part of the interferer; (3) intentional interference inducing termination of the expectancy; (4) the interference was wrongful by some measure beyond the fact of the interference itself (i.e. that the defendant interfered for an improper purpose or improper means) and (5) resulting damage to the plaintiff whose expectancy has been disrupted.

Highland Enterprises, Inc. v. Barker, 133 Idaho 330, 338, 986 P.2d 996, 1004 (1999).

1. No Intentional Interference Inducing Termination of the Expectancy

Jefferson Enterprises asks the Court to reconsider its determination that the third element was not met. Specifically, Jefferson Enterprises argues that the Court incorrectly focused on the Bank's knowledge and intentions. However, what the Court actually focused on was whether the Bank intentionally *interfered* with the valid economic expectancy, thus inducing termination of the

expectancy. The Court determined that in viewing the evidence in a light most favorable to Jefferson Enterprises, i.e. Dustin Morrison's own deposition testimony, the Bank did not interfere with or cause Jefferson Enterprises to lose any economic expectancy. Rather it was Dustin Morrison who made the decision to accept the loan and "he did not believe that it was inevitable that he would lose the property and the opportunity to develop the Property." *See* Memorandum Decision and Order, p. 12.

(a) Intentional

To prevail on the third element, Jefferson Enterprises must show that the Bank intentionally interfered with the economic expectancy. Jefferson Enterprises attempts to shift the focus by claiming that the Bank interfered with its economic expectancy because the Bank knew Dustin Morrison used much of his cash to pay off the 80 Acre parcel, thus reducing his working capital. However, this is not evidence of intentional interference. In fact, when viewing the evidence in a light most favorable to Jefferson Enterprises the Court determined that Jefferson Enterprises had a valid economic expectancy (element #1) and that the Bank was aware of it (element #2). However, there is no evidence that the Bank intentionally interfered in that expectancy (element #3). In fact, Dustin Morrison's own testimony is that the Bank did not intentionally interfere. He testified as follows:

Q. Do you have some basis to believe that the bank legally couldn't make this loan to you or –

A. No, it just seems completely unsound. It seems like you are loan sharking at that time. You are lending money anticipating failure and anticipating getting the land back.

Q. Is that what you think the bank did?

A. *I don't think the bank thought....*

D. Morrison Depo Tr., p. 79, ll. 9-16 (emphasis added).

It is impossible for the Bank's alleged interference to be intentional, if the Bank did not think.

In addition, Dustin Morrison testified:

Q. But do you believe that that was the motive that drove this supposed change as you call it?

A. I don't know for sure, but no, my gut and my instinct is that it was just *simple negligence*, the left hand didn't know what the right hand was doing,...

Id. at p. 100, ll. 16-20 (emphasis added).

Again, the Bank's conduct cannot be intentional if it was simply negligent. Negligence does not include an element of intentional conduct.¹

Dustin Morrison also testified:

Q. But you don't have any facts that would support a belief that you can point to that cause you to say this was purposeful because of this?

A. That's right.

Id. at p. 101, p. 16-19.

"Intentionally" is defined as follows: "To do something purposely, and not accidentally or involuntarily...." Black's Law Dictionary 560 (Abr. 6th ed. 1991). Since Dustin Morrison does not have any evidence that the Bank's conduct was purposeful, there is of course no evidence that its conduct was intentional.

Jefferson Enterprises' claim for intentional interference with an economic expectancy fails because there is no evidence that the Bank's alleged interference was intentional.

¹ "The elements of negligence are well established: (1) duty; (2) breach; (3) causation; and (4) damages." *McPheters v. Maile*, 138 Idaho 391, 395, 64 P.3d 317, 321 (2003). Intention is not an element of negligence. For this reason, there are differences between negligent and intentional torts, such as *negligent* infliction of emotional distress and *intentional* infliction of emotional distress. Relevant to the present case, Idaho has not recognized the tort of *negligent* interference with a prospective economic advantage.

(b) Interference

Jefferson Enterprises must also show that the Bank interfered with the economic expectancy. However, as the Court noted, it was Dustin Morrison who ultimately chose to use his working capital to pay off the 80 Acre mortgage and to enter into the loan agreement with the Bank.

Dustin Morrison testified:

Q. Ultimately you decided that you would accept the terms that the bank offered and close the loan.

A. Yes....

Id. at p. 73, ll.20-22.

Q. ...but legally you could have walked away from that loan up until the minute you signed the documents.

A. Certainly....

Id. at p. 86, ll. 4-6.

A. ...

So, no, my failure wasn't inevitable, it was absolutely unknown, and I didn't know what the right thing to do was. And I begged Steve for counsel, I begged Tom for counsel.

Q. Ultimately, though, the decision was yours.

A. It was,....

Id. at p. 81, ll. 7-12.

Q. Ultimately you had to decide what was best for you?

A. I did, I did.

Q. And you made a decision.

A. I did.

Q. And that decision as you said was not based on some promise of future financing.

A. No,...

Id. at p. 81, l. 24 to p. 82, l. 6.

The Bank did not interfere with Jefferson Enterprises' economic expectancy. Rather, Dustin Morrison chose to accept the loan offered by the Bank.

(c) Inducing Termination of Expectancy

Not only must Jefferson Enterprises show that the Bank's conduct was intentional and interfered, it must also show that the alleged interference induced termination of the expectancy. However, there is no evidence of such inducement.

Regarding his decision to agree to the \$2.2 million loan with the Bank, Dustin Morrison testified:

A. ...

I don't know if I made the best choice or not,... I don't think it's solely due to the Bank of Commerce either, I think the market itself, the downturn in the market. Bank policy on spec construction and lending. Our own construction practices. A million things have played into it.

Id. at p. 104, ll. 8-16.

It was Dustin Morrison's choice, as well as many other factors unrelated to the Bank's actions, that caused the termination of the expectancy. He cannot now blame the Bank.

2. No Wrongful Interference

Because the Court determined that the facts do not support the third element of intentional interference with an economic prospective, it did not address the forth and fifth elements. In light of Jefferson Enterprises' Motion to Reconsider, it may be appropriate for the Court to determine that

even when the facts are construed in favor of Jefferson Enterprises, the forth and fifth elements are also not met.

The fourth required element is that the interference was wrongful by some measure beyond the fact of the interference itself (i.e. that the defendant interfered for an improper purpose or improper means). *See Highland Enterprises, supra*. Throughout his deposition Dustin Morrison testified that he didn't "think the bank thought", that he had not taken the position that the Bank purposely misled him, that he believed it was a case of simple negligence as the Bank's "left hand didn't know what the right hand was doing", that "Steve Worton never misled [him]" and that "Steve was forthright". D. Morrison Depo. Tr., p. 79, ll. 15-16; p. 99, ll. 17-22; p. 100, ll. 16-20; p. 100, l. 24 to p. 101, l. 1; p. 101, ll. 7-8. Dustin Morrison also testified as follows:

Q. ... But is it your belief that when they supposedly gave you this precommitment that they knew at that time that they were going to change their position?

A. No, I don't think. And you keep saying "they," understand the only contact was with Steve until the day before the loan and then that was with Steve and Tom. So "they" being Steve, no, I don't think that he had any intention of changing the game at the last minute.

Id. at p. 110, l. 18 to p. 111, l. 2.

Dustin Morrison also recognized the following:

Q. And, to your knowledge, does the bank's insistence that it have a first lien on the 80 Acres, is that somehow a violation of any statute that you are aware of?

A. No.

Q. Is it a violation of any regulation or rule that you are aware of?

A. I think like you said, they can ask for whatever they want. They can ask for my first born, I guess, if they want.

Id. at p. 106, ll. 2-11.

OBJECTION TO MOTION TO RECONSIDER - 8

Finally, Dustin Morrison acknowledged:

Q. But you understand that the decision, whether the bank agrees to loan money or not, that's a decision they have; correct?

A. Yes.

Q. They are not obligated to accept your proposal just because it's your proposal, are they?

A. No,...

Id. at p. 70, ll. 7-13.

Even when construing the facts in favor of Jefferson Enterprises, there is no evidence to support the fourth element that the Bank's insistence upon receiving a first priority lien position in the 80 Acre parcel was wrongful.

Furthermore, although a lender can be liable for failure to loan money pursuant to a written agreement to loan money, the Bank can find no authority to support the proposition that, in the absence of a valid contract, a lender can be liable for damages for failure to loan money on the terms and conditions applied for by a potential borrower. Dustin Morrison acknowledge the following:

Q. But you understand that the decision, whether the bank agrees to loan money or not, that's a decision they have; correct?

A. Yes.

Q. They are not obligated to accept your proposal just because it's your proposal, are they?

A. No,...

Q. But you wanted 2.8 million as well; right?

A. Yes.

Q. And you realized that what you want and what a lender may eventually approve are not always the same thing?

OBJECTION TO MOTION TO RECONSIDER - 9

A. Absolutely....

D. Morrison, Depo Tr., p. 70, l. 7 to p. 71, l. 2.

Just as the Bank cannot be liable for refusal to loan money under the terms that Dustin Morrison had requested, the Bank cannot be liable for damages that may have resulted when it loaned money to Jefferson Enterprises under different terms because Dustin Morrison agreed to those different terms. In fact, if the Bank had not fulfilled its duties under the written loan agreement, to which Jefferson Enterprises had agreed, then the Bank would be potentially liable for damages caused by such breach of contract as well as by the breach of the covenant of good faith and fair dealing.² However, it is impossible for the Bank to be liable for damages for having fulfilled its side of the contract to loan money as agreed upon by the parties. The Bank's actions of loaning the \$2.2 million under the agreed upon terms of the loan cannot be construed as wrongful for purposes of Jefferson Enterprises' claim of intentional interference with a prospective economic advantage.

3. No Evidence of Resulting Damages

Finally, the fifth element necessary to prove a claim of intentional interference with a prospective economic advantage is resulting damages. *See Highland Enterprises, supra*. Again, Jefferson Enterprises has failed to provide any evidence to support its alleged damages.

Dustin Morrison has testified that at the time of the loan, "[his] failure wasn't inevitable, it was just absolutely unknown,..." *Id.* at p. 81., ll. 7-8. Furthermore, the ultimate decision whether or not to take the loan from the Bank, to pay off the 80 Acre mortgage and to place the Bank into

² "'The covenant [of good faith and fair dealing] requires that the parties perform, in good faith, the obligations imposed by their agreement....'" *Lettunich v. Key Bank National Assoc.*, 141 Idaho 362, 368 109, P.3d 1104, 1110 (2005), *citing Idaho Power Co. v. Cogeneration, Inc.*, 134 Idaho 738, 750, 9 P.3d 1204, 1216 (2000).

first position on the 80 Acre Parcel was made by Dustin Morrison. *Id.* at p. 73, ll. 20-22; p. 81, l. 24 to p. 82, l. 3; p. 95, ll. 6-8. Up until he signed the loan documents, Dustin Morrison admitted that he could have walked away from the loan. *Id.* at p. 86, ll. 4-6. Dustin Morrison testified that he doesn't know if he made the best choice or not. *Id.* at p. 104, l. 8. He admits that the impact his decision has had on his life is not solely due to the Bank of Commerce, but "[a] million things have played into it." *Id.* at p. 104, ll. 11-16. Therefore, there is no evidence that Jefferson Enterprises' alleged damages were caused by the Bank.

Finally, Jefferson Enterprises has not provided any evidence upon which damages can be proven with reasonable certainty.

"A district court's award of damages will be upheld on appeal where there is sufficient evidence supporting the award." *Griffith I*, 143 Idaho 733, 740, 152 P.3d 604, 611 (2007) (*quoting Sells v. Robinson*, 141 Idaho 767, 774, 118 P.3d 99, 106 (2005)). This Court has held that evidence is sufficient if it proves the damages with reasonable certainty. *Griffith I*, 143 Idaho at 740, 152 P.3d at 611. "Reasonable certainty requires neither absolute assurance nor mathematical exactitude; rather, the evidence need only be sufficient to remove the existence of damages from the realm of speculation." *Id.* Ultimately however, it is for the trier of fact to fix the amount after determining the credibility of the witnesses, resolving conflicts in the evidence, and drawing reasonable inferences therefrom. *See id.*

Griffith v. Clear Lakes Trout Co., Inc., 146 Idaho 613, 618, 200 P.3d 1162, 1167 (2009).

In the present case, there is no evidence upon which a trier of fact could fix the amount of damages. Dustin Morrison admitted that he was not competent to determine the amount of damages as he testified that "you would need somebody a little bit smarter than me to define that number". *Id.* at p. 98, ll. 8-9. Jefferson Enterprises has not provided any opinion from any qualified expert as to the amount of the alleged damages.

II. CONCLUSION

This Court should dismiss Jefferson Enterprises' Motion to Reconsider.

OBJECTION TO MOTION TO RECONSIDER - 11

DATED this 9 day of March, 2012.


BRIAN T. TUCKER

CERTIFICATE OF SERVICE

I hereby certify that I served a true copy of the foregoing document upon the following this 9 day of March, 2012, by mailing with the necessary postage affixed thereto or electronic mail.

Kirk Bybee
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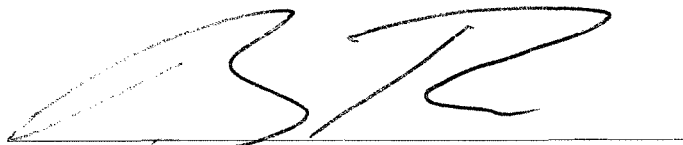
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BRIAN T. TUCKER

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**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK**

THE BANK OF COMMERCE, an Idaho
banking corporation,

Plaintiffs,

vs.

JEFFERSON ENTERPRISES, LLC, an
Idaho limited liability company, DUSTIN
MORRISON and SONYA KIDD aka
SONYA MORRISON, THE CITY OF
POCATELLO, an Idaho municipality,

Defendants.

DUSTIN MORRISON and SONYA KIDD
aka SONYA MORRISON, and
JEFFERSON ENTERPRISES, LLC, an
Idaho limited liability company,

Counterclaimants,

vs.

THE BANK OF COMMERCE, an Idaho
banking corporation,

Counterdefendant.

Case No. CV-2008-4231-OC

**MEMORANDUM DECISION
AND ORDER ON ATTORNEY
FEES AND COSTS**

NATURE OF THE ACTION

This matter comes before this Court pursuant to a petition for attorney's fees and costs regarding the summary judgment proceedings filed by the plaintiff, Bank of Commerce ("Bank"). That motion is a result of this Court's recent decision granting summary judgment in favor of the Bank on January 17, 2012.

DISCUSSION

1. ATTORNEY FEES

The authority for an award of attorney fees under the facts and circumstances of this case is found in Idaho Code ("IC") § 12-120(3) and Idaho Rule of Civil Procedure ("IRCP") 54(e)(1). By the express wording of IC §12-120, the dollar limitation and demand requirements of subsection (1) do not apply to claims for attorney fees under subsection (3). Any action covered by subsection (3), regardless of the dollar amount, carries with it the mandatory award of attorney fees to the prevailing party. *Torix v. Allred*, 100 Idaho 905, 911, 606 P.2d 1334, 1340 (1980) (referring to the former I.C. § 12-120(2) which is now subsection (3)); *see also Merrill v. Gibson*, 139 Idaho 840, 845 87 P.3d 949, 954 (2004); *Inland Title Co. v. Comstock*, 116 Idaho 701, 705, 779 P.2d 15, 19 (1989); *Steiner v. Amalgamated Sugar Co.*, 106 Idaho 111, 115, 675 P.2d 826, 830 (Idaho Ct. App. 1984).

A prevailing party is authorized to receive an award of attorney fees in actions brought to recover (1) open account; (2) account stated; (3) note; (4) bill; (5) negotiable instrument; (6) guaranty; (7) contract relating to the purchase or sale of goods, wares, merchandise; (8) contract

for services; and (9) commercial transaction. *Rahas v. Vermett*, 141 Idaho 412, 414-415, 111 P.3d 97, 99-100 (2005)(citing *Iron Eagle Development, LLC, v. Quality Design Systems, Inc.*, 138 Idaho 493, 65 P.3d 509, 515 (2003)). Subsection (3) encompasses a number of areas, including a contract relating to the purchase or sale of goods, wares, merchandise, or services. “[I]t is not enough that the relationship between the parties relates to the purchase of goods or services; the action itself must be one to recover on the contract.” *Nelson v. Anderson Lumber Co.*, 140 Idaho 702, 715, 99 P.3d 1092, 1105 (2004). Furthermore, in order for the “commercial transaction” clause of Idaho Code § 12-120(3) to apply, there must be a commercial transaction between the parties. That statute cannot be invoked if the commercial transaction between the parties is only indirectly related. *Great Plains Equipment, Inc. v. Northwest Pipeline Corp.*, 136 Idaho 466, 471-72, 36 P.3d 218, 222-223 (2001). Attorney fees have also been awarded for breach of a covenant under a deed of trust which provided for attorney fees in such an action. *Nationsbank Mortgage Corp. of New York v. Cazier*, 127 Idaho 879, 884, 908 P.2d 572, 577 (Idaho Ct.App.1995). In that case, the Idaho Court of Appeals granted the prevailing party an award of attorney fees on the basis of the language in the deed of trust providing for attorney’s fees in any action purporting to affect the security of the deed of trust or the rights of the beneficiary. *Id.* This Court concludes that the commercial transaction is between the Bank and Jefferson.

Next, this Court must determine whether the commercial transaction comprises the gravamen of the lawsuit. That analysis consists of two steps: (1) the commercial transaction

must be integral to the claim, and (2) the commercial transaction must constitute a basis on which the party is attempting to recover. “The commercial transaction must be an actual basis of the complaint, that is, the lawsuit and the causes of action must be based on a commercial transaction, not simply a situation that can be characterized as a commercial transaction.” *Id.*, 136 Idaho at 471, 36 P.3d at 222; *see also Iron Eagle Development v. Quality Design Systems, Inc.*, 138 Idaho 487, 493, 65 P.3d 509, 515 (2003). This Court has found that the commercial transaction involving the mortgage of two parcels of property is the material issue involved in the Bank’s lawsuit to foreclose on the property. Therefore, pursuant to IC § 12-120(3), this case involves a commercial transaction, which entitles the prevailing party to an award of attorney fees.

Since this Court has granted summary judgment in favor of the Bank, it must conclude the Bank is the prevailing party, entitled to an award of attorney fees pursuant to IC §12-120(3). The Bank is additionally entitled to an award of attorney fees pursuant to the language contained in the Promissory Notes, whereby the defendant, Jefferson Enterprises, LLC (“Jefferson”), “agree[d] to pay all costs of collection, replevin or any other or similar type of cost if I am in default.” (Memo. Supp. Attorney Fees, January 30, 2012, p. 3.) Also, the mortgages state that the Mortgagor agrees to pay all costs and expenses incurred by the Lender in enforcing or protecting the Lender’s rights and remedies under the mortgage which includes attorney fees, court costs, and other legal expenses. *Id.* Therefore, based upon the grant of summary judgment

in favor of the Bank, IC §12-120(3), and the language contained in the Promissory Notes and the Mortgage, this Court concludes that the Bank is entitled to an award of reasonable attorney fees.

2. RULE 54(e)(3) CONSIDERATIONS

The amount of attorney fees to be awarded is properly determined by utilizing the factors in Rule 54(e)(3), and no one factor is to be given more weight than any other. Courts are not required to give the amount involved in the case more emphasis than that given to the other applicable factors. Furthermore, Rule 54(e)(3) does not require the amount of attorney fees to be proportionate to the size of the damages award. *Electrical Wholesale Supply Co. v. Nielson*, 136 Idaho 814, 827, 41 P.3d 242, 255 (2001). In determining the amount of attorney fees to be awarded, the court should consider all of the factors enumerated in IRCP 54(e)(3) without emphasizing any single factor. “We hold that when attorney fees are allowed under I.R.C.P. 54(e)(1), either by statute or contract, the amount should not be calculated based upon individual prevailing ‘theories.’ Rather, the amount should be determined by appropriate application of the I.R.C.P. 54(e)(3) factors.” *Nalen v. Jenkins*, 113 Idaho 79, 82, 741 P.2d 366, 369 (Idaho Ct.App. 1987).

a. THE TIME AND LABOR REQUIRED

Counsel for the Bank have provided this Court with affidavits and accounting statements that detail the time spent on the case. In reviewing the time sheets provided, this Court finds the bulk of the work done by Brian Tucker and other members of his firm were necessary and that the tasks performed were not duplicative. However, this Court has also determined that the

hours billed for work on the bankruptcy matters involved in this case, although related, were not directly related to the motion for summary judgment. Therefore, except for the time spent on bankruptcy issues, this Court finds the time spent with this case by counsel was reasonable and necessary.

b. THE NOVELTY AND DIFFICULTY OF THE QUESTIONS

This case involved a summary judgment motion regarding the foreclosure on property. This Court finds that, on its face, this case did not present such unique questions of fact or law. However, Jefferson's counterclaims did present extra challenges requiring additional time and labor.

c. THE SKILL REQUISITE TO PERFORM THE LEGAL SERVICE AND THE EXPERIENCE AND ABILITIES OF THE ATTORNEYS IN THE PARTICULAR FIELD OF LAW

A case of this type required the lawyering skills of an experienced attorney. Lawyers specializing in this type of litigation are best suited to tackle the hurdles that a case of this nature presents. The need for seasoned attorneys to work on this type of case is reasonable.

d. THE PREVAILING CHARGES FOR LIKE WORK

Criterion (D) of Rule 54(e)(3) requires the court to consider "the prevailing charges for like work." The Idaho Supreme Court has held that a court "should consider the fee rates generally prevailing in the pertinent geographic area, rather than what any particular segment of the legal community may be charging." *Lettunic v. Lettunich*, 141 Idaho 425, 435, 111 P.3d 110 (2005). Our Supreme Court has further found an award of attorney fees was proper because:

1) the award was properly based on the hourly rates charged by plaintiff's Boise counsel, 2) defendant's actions were properly considered in determining the amount of time reasonably required by plaintiff's attorneys, and 3) defendant failed to show that it was error to award fees for the time spent by two attorneys to be present at trial representing plaintiff.

Lettunich v. Lettunich, 145 Idaho 746, 185 P.3d 258 (2008).

This Court has reviewed the Memorandum of Attorney Fees submitted by counsel and does find that, based upon the experience of the attorneys involved and the type of case, the prevailing charges for this type of work would be between \$160.00 and \$225.00 per hour in Pocatello, Idaho.

e. WHETHER THE FEE IS FIXED OR CONTINGENT

The charges in this case were based upon an hourly rate.

f. THE AMOUNT INVOLVED AND THE RESULTS OBTAINED

This case involved the foreclosure on property, which the Bank had loaned Jefferson over \$2 million to purchase.

g. THE UNDESIRABILITY OF THE CASE

This is not an undesirable type of case, and a plaintiff would not have difficulty finding representation.

h. THE NATURE AND LENGTH OF THE PROFESSIONAL RELATIONSHIP WITH THAT CLIENT

There is nothing in the record to suggest that counsel and client had a long standing business relationship. However, it would not be atypical for counsel to perform similar work for the same client regarding issues similar in nature over a long period of time.

Having considered those factors contained in IRCP 54(e)(3), this Court hereby awards the Bank attorney fees in the sum of **\$46,552.00**. This award is \$2,433.00 less than requested since this Court deducted those fees it felt pertained only to issues involved in the bankruptcy.

3. COSTS AS A MATTER OF RIGHT

With regard to the Bank's requests for costs as a matter of right, counsel for Jefferson only objected to the cost claimed for a Litigation Guarantee in the amount of \$6,228.00. This Court finds that the Litigation Guarantee the Bank had to obtain because of the nature of this case is a cost contemplated in IRCP 54(d)(1)(C)(7), and, as such, is a cost recoverable as a matter of right. Therefore, this Court **GRANTS** the award of Costs as a Matter of Right in the amount of **\$8,376.76**.

4. DISCRETIONARY COSTS

The Bank has claimed discretionary costs for copies, certification fees, conference calls, mileage, recording fees, and a deposition for Dustin Morrison in a prior litigation.

The right to discretionary costs is governed by IRCP 54(d)(1)(D).¹ "Discretionary costs are additional items of cost not enumerated in Rule 54(d)(1), and can include such items as long distance telephone calls, photocopying, faxes, travel expenses and postage." *Auto. Club Ins. Co. v. Jackson*, 124 Idaho 874, 880, 865 P.2d 965, 971 (1993). While the awarding of such costs is

¹ **(D) Discretionary Costs.** Additional items of cost not enumerated in, or in an amount in excess of that listed in subparagraph (C), may be allowed upon a showing that said costs were necessary and exceptional costs reasonably incurred, and should in the interest of justice be assessed against the adverse party. The trial court, in ruling upon objections to such discretionary costs contained in the memorandum of costs, shall make express findings as to why such specific item of discretionary cost should or should not be allowed. In the absence of any objection to such an item of discretionary costs, the court may disallow on its own motion any such items of discretionary costs and shall make express findings supporting such disallowance.

discretionary as explained previously, “the burden is on the prevailing party to make an adequate initial showing that these costs were necessary and exceptional and reasonably incurred, and should in the interests of justice be assessed against the adverse party. *Westfall v. Caterpillar, Inc.*, 120 Idaho 918, 926, 821 P.2d 973, 981 (1991).” *Id.* Furthermore, “Rule 54(d)(1)(D) also provides that the trial court shall make express findings as to why each discretionary cost item should or should not be allowed.” *Id.* However, “[e]xpress findings as to the general character of requested costs and whether such costs are necessary, reasonable, exceptional, and in the interests of justice is sufficient to comply with this requirement.” *Hayden Lake Fire Prot. Dist. v. Alcorn*, 141 Idaho 307, 314, 109 P.3d 161, 168 (2005) (internal citation omitted); *see also*, *Fish v. Smith*, 131 Idaho 492, 494, 960 P.2d 175, 177 (1998)(affirming trial court’s denial of discretionary costs for expert witness fees despite the fact that the court did not evaluate each cost item by item).

This Court will next address which of the claimed costs the Defendant has a right to collect.

Copies

Counsel for the Bank identifies three entries where they incurred copying costs totaling \$72.15. They assert that these costs were exceptional, necessary, and reasonably incurred. This Court would agree that these costs were certainly necessary and reasonable as a part of litigation. However, this Court cannot find that these were exceptional costs as contemplated by the Idaho Supreme Court in *Hayden Lake Fire Prot. Dist.* Nothing in the Plaintiff’s Memorandum of

Attorney Fees and Costs suggest that these costs were incurred because of the nature of the case itself. Therefore this Court **DENIES** the request for copying costs.

Certification and Recording Fees

This Court does not have sufficient information in order to determine if the request for certification and recording fees is warranted as a necessary and exceptional cost reasonably incurred. Therefore, this Court must **DENY** that request.

Mileage

This Court declines to grant the mileage costs incurred by counsel in order to travel from their home office in Idaho Falls to Pocatello on four occasions. This type of expense is something the Plaintiff should reasonably expect to pay to out-of-town counsel and is not an exceptional cost under the rule. Therefore, the Court **DENIES** that request.

Deposition Fee

Without further information, this Court must deny Plaintiff's request for payment of the deposition of Dustin Morrison from a prior litigation. This Court does not see the relevance that deposition had to this case, nor does this Court recollect seeing the deposition as a part of the Plaintiff's summary judgment motion. Therefore, this Court **DENIES** the request for reimbursement of that particular deposition.

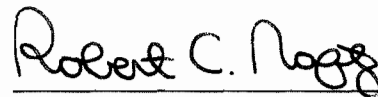
CONCLUSION

Based on the foregoing, as well as after careful consideration of the applicable statutes and civil rules of procedure, as well as the contents of the Promissory Notes and Mortgages, this

Court has concluded that the Bank is entitled to Costs as a Matter of Right in the amount of **\$8,376.76**. The Bank is further entitled to an award of attorney fees in the amount of **\$46,522.00**. Therefore, Plaintiff Bank of Commerce is entitled to a total judgment in the amount of **\$54,898.76**, representing an award of attorney fees and costs.

IT IS SO ORDERED.

Dated this 19 day of April, 2012.


ROBERT C. NAFTZ
District Judge

Copies to:

Kirk Bybee
Brent T. Robinson
A. Bruce Larson
Brian T. Tucker

BANNOCK
CLERK
2012 APR 19 AM 11:18
DEPUTY CLERK

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK**

THE BANK OF COMMERCE, an Idaho
banking corporation,

Plaintiffs,

vs.

JEFFERSON ENTERPRISES, LLC, an
Idaho limited liability company, DUSTIN
MORRISON and SONYA KIDD aka
SONYA MORRISON, THE CITY OF
POCATELLO, an Idaho municipality,

Defendants.

DUSTIN MORRISON and SONYA KIDD
aka SONYA MORRISON, and
JEFFERSON ENTERPRISES, LLC, an
Idaho limited liability company,

Counterclaimants,

vs.

THE BANK OF COMMERCE, an Idaho
banking corporation,

Counterdefendant.

Case No. CV-2008-4231-OC

**MEMORANDUM DECISION
AND ORDER ON MOTION TO
RECONSIDER**

Memorandum Decision and Order
Defendant's Motion to Reconsider,
Vacate Summary Judgment and in the
Alternative to Alter or Amend Judgment
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NATURE OF THE ACTION

This case comes before this Court pursuant to a Motion to Reconsider, Vacate Summary Judgment and in the Alternative to Alter or Amend Judgment (“Motion for Reconsideration”) filed by Jefferson Enterprises, the defendant/counterclaimant. The motion for reconsideration was supported by a memorandum. The Plaintiff/Counterdefendant Bank of Commerce filed an Objection to Motion to Reconsider.

Oral arguments were conducted on March 19, 2012. After reviewing the entire file and the relevant law, and considering the arguments made by the parties, this Court now issues this Memorandum Decision and Order.

STATEMENT OF FACTS

In late April of 2006, Dustin Morrison (“Morrison”), the owner and managing member of Jefferson Enterprises, LLC (“Jefferson”), approached Steve Worton (“Worton”), a loan officer at the Bank, seeking financing for the Southern Hills Development Project (the “Project”). The reason Mr. Morrison sought this financing from the Bank was to purchase property adjacent to property already owned by Jefferson for purposes of a sub-division development. At the time Morrison approached the Bank, Jefferson had already acquired the property referred to as the “80 Acre” parcel in what was described as an exceptional financing arrangement. Morrison wanted to exercise his option to purchase the adjacent property referred to as the “Wood” parcel and develop both properties.

Discussions on the financing of the project occurred between Morrison and Worton. As discussions between the Bank and Jefferson continued, Morrison faced a May 10, 2006, deadline to exercise his option to purchase the Wood property. Morrison already knew the owner of the Wood property had declined to extend the deadline and that, without the Wood property, the Project would be jeopardized.

By May 8, 2006, a loan application was submitted to the Bank's Review Committee. On May 9, 2006, the Bank's Board of Trustees approved the loan to Jefferson for \$2,200,000, rather than the \$2,800,000 requested. As part of the approval of the loan, the Bank would have to be placed in first position on both the Wood property and the 80 Acre parcel. Jefferson disputes that the Bank wanted a first position on the 80 Acre parcel at the time the loan application was submitted to the loan review committee and approved. Morrison believed that at that time the Bank would take a second position with regard to the 80 Acre parcel allowing Jefferson to maintain the exceptional financing arrangements on the property. Regardless, Jefferson accepted the terms of the Bank's loan requiring a first position on both properties.

On the day of closing the loan with the Bank, Morrison contacted Ashley Lyman and offered to pay some amount of money on the 80 Acre mortgage in order to allow the Bank to take a first position on the property. Lyman declined the offer. Faced with losing financing on the Wood property, Morrison had to pay off the mortgage on the 80 Acre parcel in order to put the Bank in a first position on the property. In order to pay off the mortgage on the property, Morrison liquidated the assets of Jefferson and related entities. As a result of this decision,

Morrison was placed in a precarious position since he essentially used the operating capital of Jefferson and his related businesses to pay off the 80 Acre parcel. Morrison's decision to liquidate his assets left him with no working capital, and, consequently, he was unable to move forward with the Project or repay the loan from the Bank.

The Plaintiff/Counterdefendant eventually moved for summary judgment. This Court granted that motion on January 17, 2012, and entered Judgment dismissing with prejudice all of the claims of the Defendant/Counterclaimants against the Plaintiff/Counterdefendant.

ISSUES

1. Whether to grant the Defendant/Counterclaimant's Motion for Reconsideration.
2. Whether to grant the Defendant/Counterclaimant's Motion to Alter or Amend Judgment.

DISCUSSION

1. Motion for Reconsideration

Idaho Rule of Civil Procedure (IRCP) 11(a)(2)(B) states that "a motion for reconsideration of any interlocutory orders of the trial court may be made at any time before the entry of final judgment but not later than fourteen (14) days after the entry of the final judgment." The Idaho Supreme Court held that IRCP 11(a)(2)(B) provides the authority for a district court to reconsider and vacate interlocutory orders so long as final judgment has not yet been entered. *Sammis v. Magnetek, Inc.*, 130 Idaho 342, 346, 941 P.2d 314, 318 (1997) (citing *Farmers Nat'l Bank v. Shirey*, 126 Idaho 63, 68, 878 P.2d 762, 767 (1994)). This includes the authority for a Court to reconsider a prior order at any time prior to entry of final judgment even

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on the Court's own motion. *Elliott v. Darwin Neibaur Farms*, 774, 785, 69 P.3d 1035, 1046 (2003).

a. Breach of Contract

In its Motion for Reconsideration, Jefferson reiterates its prior argument that the Bank “breached the implied covenant of good faith and fair dealing.” (Def. Memo. of Supp. to Recon. Jan. 31, 2012, 4.) This Court has already accepted as true the fact that the Bank agreed to loan money in accordance with the terms and conditions of the Board of Trustees approval of Jefferson's loan application. This Court has also accepted as true that the conditions of the loan agreement provided, among other things, that the Bank would be secured on the 80 Acre parcel in a second priority position. In addition, this Court accepted as true that Jefferson had made application for a loan in the amount of \$2,800,000 from the Bank. However, as this Court stated previously, in order for the Court to consider a breach of contract, it must look to the Statute of Frauds,¹ since this promise to loan money involved much more than \$50,000. Idaho Code §19-

¹ 9-505 Certain agreements to be in writing. In the following cases the agreement is invalid, unless the same or some note or memorandum thereof, be in writing and subscribed by the party charged, or by his agent. Evidence, therefore, of the agreement cannot be received without the writing or secondary evidence of its contents:

1. An agreement that by its terms is not to be performed within a year from the making thereof.
2. A special promise to answer for the debt, default or miscarriage of another, except in the cases provided for in section 9-506, Idaho Code.
3. An agreement made upon consideration of marriage, other than a mutual promise to marry.
4. An agreement for the leasing, for a longer period than one (1) year, or for the sale, of real property, or of an interest therein, and such agreement, if made by an agent of the party sought to be charged, is invalid, unless the authority of the agent be in writing, subscribed by the party sought to be charged.

505 requires that certain agreements must be in writing in order to be valid. One of those agreements is a promise or commitment to lend money in an original principal amount of \$50,000 or more, made by an entity engaged in the business of lending money or extending credit. IDAHO CODE ANN. § 9-505(5)(2011). The deposition of Dustin Morrison clearly shows no written pre-commitment loan agreement was entered into by the parties. In fact, Mr. Morrison clearly stated in his deposition that there was nothing in writing with regard to a pre-commitment agreement.

Everything was related to what Steve Worton told me because there wasn't one thing in writing, nothing. There wasn't an approval in writing, there wasn't a list of conditions in writing, contingencies in writing. There wasn't a formal request in writing. Nothing was in writing.

(Dustin Morrison Depo. Tr., p. 64, ll 8-13.) The amended counterclaim of Jefferson asserts that the Bank initially committed to lend it money pursuant to the loan application, which included the Bank taking a second position on the 80 Acre parcel. Jefferson further claims the Bank later breached that commitment when it required a first lien position on the 80 Acre parcel. However, nothing in the deposition of Morrison suggests that the bank pre-committed to loan the money based upon the submission of the loan application. In fact, the testimony of Morrison shows there was never any writing subscribed by the Bank or any of its agents which set forth any loan agreement with a condition that the Bank would take a second lien position to the 80 Acre parcel.

5. A promise or commitment to lend money or to grant or extend credit in an original principal amount of fifty thousand dollars (\$50,000) or more, made by a person or entity engaged in the business of lending money or extending credit.

In Idaho, contract formation is typically a question of fact for the trier of fact to resolve. *P.O. Ventures, Inc. v. Loucks Family Irrevocable Trust*, 144 Idaho 233, 237, 159 P.3d 870 (2007). A valid contract requires a meeting of the minds evidenced by a manifestation of mutual intent to contract, formed by an offer and acceptance. *Id.* at 238. “In a dispute over contract formation it is incumbent upon the plaintiff to prove a distinct and common understanding between the parties.” *Id.* (internal quotation and citation omitted).

The Defendant did not present any evidence of any written pre-commitment loan agreement entered into by the Bank and Jefferson prior to the approval of the loan. The only thing relied upon by Jefferson is the argument that the loan application represented a pre-commitment agreement regarding the terms of the proposed loan. However, the submission of a loan application to a lender does not manifest an acceptance of the offer. Without such evidence, there cannot be a breach of any loan commitment prior to the closing. Without an enforceable pre-commitment loan agreement, there could be no binding obligations upon the Bank, and it would therefore have been impossible for the Bank to violate the implied covenant of good faith and fair dealing. The Defendant has not provided this Court with any new or additional information to give this Court reason to vacate or amend its decision to grant summary judgment with regard to this issue. Therefore, Jefferson’s motion to reconsider is hereby denied.

b. Interference with a Prospective Economic Advantage

As stated previously in this Court’s Memorandum and Decision, in order to prove interference with a prospective economic advantage, a plaintiff must prove the following:

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(1) The existence of a valid economic expectancy; (2) knowledge of the expectancy on the part of the interferer; (3) intentional interference inducing termination of the expectancy; (4) the interference was wrongful by some measure beyond the fact of the interference itself (i.e. that the defendant interfered for an improper purpose or improper means) and (5) resulting damage to the plaintiff whose expectancy has been disrupted. *See Bliss*, 121 Idaho at 285-86, 824 P.2d at 859-60; *Barlow*, 95 Idaho at 893, 522 P.2d at 1114; *Pleas*, 774 P.2d at 1161-63.

This Court further found that in order to prove the element of intent, a party may show that the interference “with the other’s prospective contractual relation is intentional if the actor desires to bring it about or if he knows that the interference is certain or substantially certain to occur as a result of his action.” RESTATEMENT (SECOND) OF TORTS § 766B etm. D (1977). *Higland Enterprises, Inc. v. Barker*, 133 Idaho 330, 340, 986 P.2d 996 (1999). “Intent can be shown even if the interference is incidental to the actor’s intended purpose and desire but known to him to be a necessary consequence of his action” *Id.* at 340 (internal citation omitted). In its previous decision, this Court determined there was a valid economic expectancy by Jefferson and that the Bank was aware of that expectancy. However, this Court also found that the Bank did not intentionally interfere with that valid economic expectancy.

Morrison testified at his deposition that he ultimately made the choice to enter into the loan with the Bank understanding the possible consequences of needing to use his operating capital to pay off the 80 Acre parcel and place the Bank in a first position on that property.

Q. So you are saying that when you closed on this loan on May 10, that you knew that you wouldn’t be able to keep the property, you didn’t think you had any chance in the world of being able to come up with some plan to salvage this property?

A. No, that's not fair. I had 48 hours, I hadn't digested everything, I hadn't processed every option. I think the bulk of that 48 hours until maybe -- actually until 11:30 the day of closing my efforts were to change Tom's mind.

They weren't how can I make this work in these conditions.

But my conclusion at that time, without processing and without digesting the whole thing is there is absolutely no way that I can maintain this income that's depending on this \$3.5 million line of credit. There is no way I can maintain the same income without that capital that secures or enables this line of credit. That seems like common sense. I didn't know if I was going to get lucky the next day and land some hospital job that I could build a hospital, I didn't know that for sure.

So, no, my failure wasn't inevitable, it was absolutely unknown, and I didn't know what the right thing to do was. And I begged Steve for counsel, I begged Tom for counsel.

Q. Ultimately, though, the decision was yours.

A. It was, and the decision considered those other things that I just said.

(Dustin Morrison Depo. Tr. at p. 80, l. 11 to p. 81, l. 13.)

Q. Good. In Paragraph 15 you allege that Jefferson and other related entities lost the ability to take advantage of the foreseeable prospective economic opportunities related to the 80 Acres parcel, the Southern Hill projects, and other real estate developments.

A. And this one wasn't truly foreseen, like to the extent that it impacted us, it wasn't foreseen or foreseeable with my set of knowledge. It was truly after we went out courting investors, them asking for financial statements and them seeing our weaknesses and defining our weaknesses as exactly what had just changed.

Q. So you at the time, you didn't realize the impact it potentially could have, you said you later discovered --

A. I knew it would have an impact on my appeal to investors. I didn't fully appreciate how to the extent.

(*Id.* at p. 95, l. 9 to p. 96, l. 1.)

After careful review of the evidence presented, this Court still does not find any evidence that the Bank intentionally proposed a loan that would interfere with and cause Jefferson to lose

any economic expectancy. As stated previously, Morrison made the choice to accept the terms of the loan knowing that it would make him vulnerable, but he did not believe it was inevitable that he would lose the property and the opportunity to develop the Project.

In its previous decision, after determining that the Bank did not intentionally interfere with Jefferson's economic expectancy, this Court found it was unnecessary to further analyze whether the interference was for an improper purpose or means and whether any damages resulted from the interference. However, upon further reflection, this Court believes additional explanation regarding this issue is needed. In order for the element of intentional interference to be met, there must be some evidence to demonstrate the Bank interfered for an improper purpose or improper means. *See Highland Enterprises, supra*. This Court has again reviewed the depositions of Mr. Morrison and Mr. Worton regarding this element. As stated previously, with regard to the element of intentional interference, this Court cannot find any evidence to suggest that the Bank interfered for an improper purpose or improper means. Mr. Morrison did not suggest that the Bank interfered with his economic expectancy, let alone that the Bank interfered for an improper means or purpose. In his deposition, Mr. Morrison admitted he had no evidence of any purposeful conduct by the Bank that interfered with his economic expectancy.

Q. In paragraph 19 of your counterclaim you state that the change of position of the bank, and this is talking about the change in 80 Acres financing, was timed in such a manner that Jefferson was unable to seek alternate financing to exercise the option to purchase the Wood property.

Is it your position that the bank purposely misled you, kind of led you along to that point and then kind of hit you below the belt?

A. I haven't said that and you didn't read that in that Paragraph 19, that is

a presumption you just jumped on.

Q. No, I am just asking –

A. I would say minimum negligently and I don't know, I don't know, you know. I don't fancy myself a paranoid or conspiracy theorist, but it is hard to ignore that there could be some inherent benefit to the Bank of Commerce recovering that piece of property under those terms.

Q. What do think the inherent benefits to the Bank of Commerce would be?

A. Well I think it could become an asset to another client that has got the capacity to bring more money to the bank. And it also has a value to a potential client that you don't have that has a lot more financial strength than I do. Like you said, I am not saying that I have any evidence, there is nothing in writing, I'm not -- I am just saying that, yeah, there could be some motivation for the bank getting this piece of property back under those terms.

Q. But do you believe that that was the motive that drove this supposed change as you call it?

A. I don't know for sure, but, no, my gut and my instinct is that it was just simple negligence, the left hand didn't know what the right hand was doing, and that Tom's arrogance wouldn't consider something that would mitigate its impact on me. It was absolute negligence at least.

Q. You don't feel like Steve Worton was purposely trying to mislead you

–

A. I don't think Steve Worton misled me. I think Steve Worton came here today and absolutely said 20 things that were not off but were totally untrue. Now, whether that's because he doesn't remember or whether it's because he signed some hold harmless thing with the Bank of Commerce, I don't know, it doesn't matter to me. I know what happened with Steve. I think Steve was forthright, I think Steve was as frantic as I was those two days before to clarify with Tom the board's intention.

Q. You are saying it wasn't purposeful, you don't think it was --

A. I'm not saying it wasn't purposeful. I am saying I don't think that it was but I don't know. I want that answer to be enough.

Q. But you don't have any facts that would support this belief that you can point to that caused you to say this was purposeful because of this?

A. That's right.

(Dustin Morrison Depo. Tr. at p. 99, l. 11 to p. 101, l. 19.)

This Court appreciates Mr. Morrison's candor, but, even construing all facts most

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favorably for Jefferson, there is simply no evidence to suggest the Bank's interference (assuming there was any interference at all) was for a wrongful means or wrongful purpose. Therefore, this Court must conclude that *if* the Bank did interfere with Jefferson's economic expectancy, it was not done for an improper purpose or improper means.

The last element this Court must consider is the resulting damages from the wrongful interference. Again, the candor of Mr. Morrison sets the tone for consideration of this element. The deposition of Mr. Morrison clearly indicates that his decision to enter into the loan with the Bank was his decision alone. (*See id.* at p. 81, ll. 12-13.) Mr. Morrison was not sure whether all was lost by entering into this loan, he just did not know. (*Id.* at p. 81, ll. 7-8.) Reviewing all evidence in favor of Jefferson, this Court cannot find that any damages suffered by Jefferson were a result of any intentional, wrongful interference by the Bank.

Plaintiff/Counterdefendant also argues that Jefferson has not provided any evidence upon which damages can be proven with reasonable certainty. (Obj. Mot. Recon. P. 11.) This Court finds that argument persuasive. As stated in *Griffith v. Clear Lakes Trout Co., Inc.*, 146 Idaho 613, 618, 200 P.3d 1162 (2009):

Reasonable certainty requires neither absolute assurance nor mathematical exactitude; rather, the evidence need only be sufficient to remove the existence of damages from the realm of speculation. Ultimately however, it is for the trier of fact to fix the amount after determining the credibility of the witnesses, resolving conflicts in the evidence, and drawing

reasonable inferences therefrom.

Unfortunately, Jefferson has not provided any evidence upon which a trier of fact could fix the amount of damages. Mr. Morrison candidly admitted he was not competent to determine the amount of damages Jefferson had incurred. (*See* Dustin Morrison Depo. Tr., p. 98, ll. 8-9.) Jefferson has not provided any opinion from any qualified expert as to the amount of the alleged damages. Based upon these findings, this Court must conclude that Jefferson has failed to establish any material issue of fact as to damage. Therefore, summary judgment as to this issue is appropriate as a matter of law.

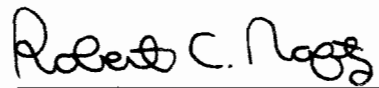
CONCLUSION

Having carefully reviewed all the materials and arguments presented to this Court on the motion for summary judgment and the motion for reconsideration, this Court has concluded that the granting of summary judgment in favor of the Plaintiff/Counterdefendant was appropriate. This Court found the Statute of Frauds prevented Jefferson from prevailing on the issue of breach of contract. Without a written pre-commitment agreement, there can be no breach of contract. In addition, Jefferson has not presented sufficient facts to create a material issue of fact regarding their claim of interference with a prospective economic advantage. The evidence viewed most favorably in favor of Jefferson does not show that the Bank intentionally interfered with an economic opportunity held by Jefferson. In addition, Jefferson has failed to present any evidence that shows the Plaintiff/Counterdefendant intentionally interfered with Jefferson's economic expectancy for an improper purpose or improper means. Jefferson has further failed to

present evidence that they incurred damages within reasonable certainty. Therefore, based on the foregoing, the Court **DENIES** Defendant/Counterclaimant's Motion to Reconsider, Vacate Summary Judgment and in the Alternative to Alter or Amend Judgment.

IT IS SO ORDERED.

Dated this 18 day of April, 2012.



ROBERT C. NAFTZ
District Judge

Copies to:

Kirk Bybee
Brent T. Robinson
A. Bruce Larson
Brian T. Tucker

Brian T. Tucker
Wiley R. Dennert
NELSON HALL PARRY TUCKER, P.A.
490 Memorial Drive
Post Office Box 51630
Idaho Falls, Idaho 83405-1630
Telephone (208) 522-3001
Fax (208) 523-7254
Attorney for The Bank of Commerce
Idaho State Bar Numbers 5236 & 6216

BANNOCK COUNTY
CLERK
2012 APR 19 AM 11:19
CLERK
DENNERT

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

THE BANK OF COMMERCE, an Idaho
banking corporation,

Plaintiff,

v.

JEFFERSON ENTERPRISES, LLC, an Idaho
limited liability company, DUSTIN
MORRISON and SONYA KIDD aka SONYA
MORRISON, THE CITY OF POCA TELLO,
an Idaho municipality,

Defendants.

Case No. CV-08-4231-OC

**DECREE OF FORECLOSURE
AND ORDER OF SALE**

DUSTIN MORRISON and SONYA KIDD aka
SONYA MORRISON, and JEFFERSON
ENTERPRISES, LLC, an Idaho limited
liability company,

Counterclaimants,

vs.

THE BANK OF COMMERCE, an Idaho
banking corporation,

Counterdefendant.

Based on the Court's Judgment dated January 17, 2012, and for good cause appearing
therefore;

IT IS HEREBY ORDERED:

1. That The Bank of Commerce ("Bank" herein) have an in rem judgment against
Jefferson Enterprises, LLC, an Idaho limited liability company ("Jefferson Enterprises" herein) in
the sum of \$3,373,334.81, detailed as follows:

Principal balance due as of 7/15/08	\$2,647,217.13
Interest through 7/15/08	\$76,280.27
Total Principal and Interest due 7/15/08	\$2,723,497.40
Combined per diem of \$507.68548 (7/16/2008 to 1/17/2012 = 1,280 days)	\$649,837.41
Total principal & interest due as of 1/17/2012	\$3,373,334.81

2. Based on the Motion for Attorney's Fees and Costs was filed by the Bank of
Commerce on January 30, 2012, along with the Affidavit of Brian T. Tucker in support of Motion for
Attorney's Fees and Costs and the Memorandum of Attorney's Fees and Costs; it appearing from the
Motion, Affidavit, and Memorandum that the requested fees and costs are reasonable and necessarily
expended, IT IS HEREBY ORDERED that the Bank of Commerce be awarded attorney's fees and
costs in the amount of ~~\$58,106.42~~ **\$54,896.76** and that such judgment be in addition to the amount owing as set
forth above.

DECREE OF FORECLOSURE AND ORDER OF SALE - 2

3. That Jefferson Enterprises' Mortgages to the Bank of Commerce dated May 10, 2006, and recorded May 10, 2006 in the records of Bannock County, Idaho as Instrument No. 20609793, and the Mortgage dated the June 27, 2007, and recorded June 27, 2007, in the records of Bannock County, Idaho as Instrument No. 20715644, are adjudged a first and prior lien upon the mortgaged property superior to any right, title, claim or interest on the part of the named Defendants or any persons claiming by through, or under said Defendants. Attached as Exhibit "A" is the legal descriptions of the Mortgaged Property.

4. That the Court, hereby retains jurisdiction and reserves the final determination of a deficiency judgment against Jefferson Enterprises, the issue of the value of the Mortgaged Property and hereby orders that following the sale of the Mortgaged Property, The Bank of Commerce may establish the reasonable value of the Mortgaged Property herein described according to proof and determine the amount of any deficiency.

5. That the Bank of Commerce's Real Estate Mortgage described herein is foreclosed and said Mortgaged Property, together with water rights, however evidenced, be sold in one (1) parcel in accordance with and in the manner provided by law; that the Bank of Commerce is permitted to be a purchaser at sale; that the net proceeds of said sale shall be applied first toward the payment of the costs of said sale and then toward the payment of the Bank of Commerce's Judgement; that the Bank of Commerce has and shall retain a right to apply for a Deficiency Judgement against Jefferson Enterprises, and each of them, jointly and severally, in the event that bid at sale or fair market value of the Mortgaged Property is less than the sum of the Bank of Commerce's entire Judgement, plus costs of sale.

6. That after the sale of said Mortgaged Property, all right, title, claim, lien, or interest in the above-named Defendants, and of every person claiming by, through, or under said Defendants, in or to said property, including the right of possession thereof from and after said sale, shall be forever barred and foreclosed and that the purchaser at said sale shall be entitled to immediate possession of the premises as allowed by law subject only to such statutory right of redemption as said Defendants may have by law.

7. That in the event the Bank of Commerce is the purchaser at sale and possession of said premises is not surrendered to the Bank of Commerce, a Writ of Assistance shall be issued

directing the sheriff of Bannock County, Idaho, to deliver possession of said premises to the Bank of Commerce.

DATED this 19 day of April, 2012.



ROBERT C. NAFTZ, District Judge

CLERK'S CERTIFICATE OF SERVICE

I hereby certify that I served a true copy of the foregoing document upon the following this 19 day of April, 2012, by hand delivery, mailing with the necessary postage affixed thereto, facsimile, or overnight mail.

Brian T. Tucker
NELSON HALL PARRY TUCKER, P.A.
P.O. Box 51630
Idaho Falls, ID 83405

☒ Mailing
☐ Hand Delivery
☒ Facsimile
☐ Overnight Mail

Kirk Bybee
P.O. Box 4169
Pocatello, ID 83205

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☐ Overnight Mail

Brent T. Robinson
ROBINSON & ASSOCIATES
P.O. Box 396
Rupert, ID 83350-0396

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☐ Overnight Mail

A. Bruce Larson
ABLE LAW, PC
P.O. Box 6369
Pocatello, ID 83205-6369

☒ Mailing
☐ Hand Delivery
☒ Facsimile
☐ Overnight Mail

CLERK OF THE COURT

By: 

Deputy

LABTT\0260.455\Decree of Foreclosure Order of Sale.wpd

DECREE OF FORECLOSURE AND ORDER OF SALE - 4

11-9

J9793

LEGAL DESCRIPTION
Exhibit "A"

Real property in the County of Bannock, State of Idaho, described as follows:

PARCEL 1:

A TRACT OF LAND IN THE SOUTH HALF OF SECTION 9, TOWNSHIP 7 SOUTH, RANGE 35 EAST, BOISE MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTH QUARTER CORNER OF SECTION 9, TOWNSHIP 7 SOUTH, RANGE 35 EAST, BOISE MERIDIAN, THE SAME BEING THE SOUTHEAST CORNER OF SOUTH VALLEY VIEW ESTATES, A SUBDIVISION RECORDED IN THE RECORDS OF BANNOCK COUNTY AS INSTRUMENT 373461; THENCE NORTH $00^{\circ}15'43''$ EAST FOR A DISTANCE OF 1320.91 FEET TO A FOUND $\frac{3}{4}$ INCH DIAMETER IRON PIN ACCEPTED AS THE NORTHEAST CORNER OF SOUTH VALLEY VIEW ESTATES, THENCE NORTH $89^{\circ}50'47''$ WEST ALONG THE NORTH BOUNDARY LINE OF SOUTH VALLEY VIEW ESTATES FOR A DISTANCE OF 659.93 FEET; THENCE NORTH $00^{\circ}06'14''$ EAST ALONG THE WEST BOUNDARY LINE OF THE EAST HALF OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 9 FOR A DISTANCE OF 1315.23 FEET TO A POINT ON THE LATITUDINAL CENTERLINE OF SECTION 9; THENCE SOUTH $88^{\circ}55'17''$ EAST ALONG THE LATITUDINAL CENTERLINE OF SECTION 9 FOR A DISTANCE OF 1976.72 FEET TO THE EAST $\frac{1}{16}$ TH CORNER ON SAID CENTERLINE; THENCE SOUTH $00^{\circ}05'41''$ WEST FOR A DISTANCE OF 2638.63 FEET TO THE EAST $\frac{1}{16}$ TH CORNER ON THE SOUTH LINE OF SECTION 9; THENCE NORTH $88^{\circ}51'13''$ WEST FOR A DISTANCE OF 1320.88 FEET TO THE POINT OF BEGINNING.

PARCEL 2:

A TRACT OF LAND IN THE NORTH HALF OF THE NORTHWEST QUARTER, THE NORTHEAST QUARTER AND THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 16, TOWNSHIP 7 SOUTH, RANGE 35 EAST BOISE MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SECTION 16, TOWNSHIP 7 SOUTH, RANGE 35 EAST, BOISE MERIDIAN, THENCE SOUTH $88^{\circ}50'35''$ EAST ALONG THE NORTH LINE OF SECTION 16 FOR A DISTANCE OF 800.00 FEET TO THE NORTHEAST CORNER OF PIEDMONT ACRES, A SUBDIVISION RECORDED IN THE RECORDS OF BANNOCK COUNTY AS INSTRUMENT 601980; THENCE SOUTH $00^{\circ}46'58''$ WEST ALONG THE EAST SIDE OF PIEDMONT ACRES FOR A DISTANCE OF 25.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE SOUTH $88^{\circ}50'35''$ EAST ALONG THE SOUTH RIGHT OF WAY LINE OF PIEDMONT ROAD FOR A DISTANCE OF 519.31 FEET TO THE WEST $\frac{1}{16}$ TH LINE OF SECTION, THENCE NORTH $00^{\circ}37'47''$ EAST FOR A DISTANCE OF 25.00 FEET TO THE WEST $\frac{1}{16}$ TH CORNER ON THE NORTH LINE OF SECTION 16, THENCE SOUTH $88^{\circ}50'35''$ EAST FOR A DISTANCE OF 1319.24 FEET TO THE NORTH QUARTER CORNER OF SECTION 16, THENCE SOUTH $88^{\circ}51'13''$ EAST FOR A DISTANCE OF 2641.77 FEET TO THE NORTHEAST CORNER OF SECTION 16, THENCE SOUTH $00^{\circ}32'19''$ WEST ALONG THE EAST LINE OF SECTION 16 FOR A DISTANCE OF 2091.20 FEET TO THE NORTHEAST CORNER OF THE LAND DESCRIBED IN INSTRUMENT 788114; THENCE NORTH $89^{\circ}20'56''$ WEST FOR A DISTANCE OF 1046.00 FEET TO THE NORTHWEST CORNER OF THE SAID LAND; THENCE SOUTH $00^{\circ}32'19''$ WEST FOR A DISTANCE OF 500.00 FEET TO THE SOUTHWEST CORNER OF THE SAID LAND; THENCE SOUTH $89^{\circ}20'56''$ EAST ALONG THE SOUTH LINE OF SAID LAND, THE SAME BEING THE LATITUDINAL CENTERLINE OF SECTION 16 FOR A DISTANCE OF 56.81 FEET; THENCE SOUTH $00^{\circ}33'48''$ WEST FOR A DISTANCE OF 528.00 FEET; THENCE NORTH $89^{\circ}20'55''$ WEST FOR A DISTANCE OF 329.11 FEET TO A POINT ON THE EAST $\frac{1}{16}$ TH LINE OF SECTION 16; THENCE NORTH $00^{\circ}29'48''$ EAST FOR A DISTANCE OF 528.00 FEET TO THE EAST $\frac{1}{16}$ TH CORNER ON THE LATITUDINAL CENTERLINE OF SECTION 16; THENCE NORTH $89^{\circ}20'56''$ WEST ALONG THE SAID LATITUDINAL CENTERLINE FOR A DISTANCE OF 1023.90 FEET TO THE SOUTHEAST CORNER OF THE LAND DESCRIBED IN INSTRUMENT 93021655; THENCE NORTH $00^{\circ}27'19''$ EAST FOR A DISTANCE OF 320.00 FEET TO THE NORTHEAST CORNER OF THE LAND DESCRIBED IN INSTRUMENT 93021655; THENCE NORTH $89^{\circ}20'56''$ WEST FOR A

11 10

DISTANCE OF 2,000 FEET TO THE NORTHWEST CORNER OF THE SAID LAND; THENCE NORTH 00°27'19" EAST ALONG THE MERIDIONAL CENTERLINE OF SECTION 16 FOR A DISTANCE OF 1236.51 FEET TO A POINT IS MARKED WITH A FOUND 1/2 INCH DIAMETER IRON PIN ACCEPTED AS THE NORTHEAST CORNER OF THE LAND DESCRIBED IN INSTRUMENT 473513; THENCE FOLLOWING THE BOUNDARY LINES OF THE LAND DESCRIBED IN INSTRUMENT 621688 FOR THE NEXT FIVE (5) COURSES: (1) SOUTH 89°06'35" EAST FOR A DISTANCE OF 260.00 FEET; THENCE (2) NORTH 14°06'45" EAST FOR A DISTANCE OF 140.00 FEET; THENCE (3) NORTH 41°32'41" EAST FOR A DISTANCE OF 450.00 FEET; THENCE (4) NORTH 41°17'29" WEST FOR A DISTANCE OF 180.00 FEET; THENCE (5) SOUTH 48°42'31" WEST FOR A DISTANCE OF 907.24 FEET TO A POINT ON THE NORTH BOUNDARY LINE OF THE LAND DESCRIBED IN INSTRUMENT 473513; THENCE NORTH 88°35'51" WEST ALONG THE SAID NORTH BOUNDARY LINE FOR A DISTANCE OF 490.35 FEET TO A POINT IS MARKED WITH A FOUND 1/2 INCH DIAMETER IRON PIN ACCEPTED AS THE NORTHWEST CORNER OF THE LAND DESCRIBED IN INSTRUMENT 473513; THENCE NORTH 00°37'47" EAST ALONG THE EAST BOUNDARY LINE OF THE LAND DESCRIBED IN INSTRUMENT 675569 FOR A DISTANCE OF 435.85 FEET; THENCE NORTH 88°37'03" WEST FOR A DISTANCE OF 264.18 FEET; THENCE NORTH 00°37'47" EAST FOR A DISTANCE OF 66.00 FEET; THENCE NORTH 88°37'03" WEST FOR A DISTANCE OF 360.03 FEET TO A POINT ON THE WEST 1/16TH LINE OF SECTION 16, SAID POINT IS MARKED WITH A FOUND 1/2 INCH DIAMETER IRON PIN ACCEPTED AS THE NORTHWEST CORNER OF THE LAND DESCRIBED IN INSTRUMENT 95003247; THENCE SOUTH 00°37'47" WEST ALONG THE WEST 1/16TH LINE FOR A DISTANCE OF 302.77 FEET; THENCE NORTH 88°37'03" WEST FOR A DISTANCE OF 790.30 FEET; THENCE SOUTH 00°37'47" WEST FOR A DISTANCE OF 423.23 FEET TO A POINT ON THE NORTH RIGHT OF WAY LINE OF KATSILOMETES ROAD; THENCE NORTH 88°37'03" WEST ALONG THE NORTH RIGHT OF WAY LINE OF KATSILOMETES ROAD FOR A DISTANCE OF 193.21 FEET TO A POINT ON A CURVE IN THE EAST RIGHT OF WAY LINE OF OLD US HIGHWAY 30; THENCE NORTHWESTERLY ALONG THE SAID RIGHT OF WAY LINE, FOLLOWING A 5769.58 FOOT RADIUS CURVE, CONCAVE TO THE SOUTHWEST, THROUGH A CENTRAL ANGLE OF 05°02'19" AND AN ARC DISTANCE OF 507.38 FEET TO A POINT ON THE WEST LINE OF SECTION 16, THE CHORD OF THE AFORE DESCRIBED CURVE BEARS NORTH 41°10'59" WEST A DISTANCE OF 507.21 FEET; THENCE NORTH 00°46'58" EAST ALONG THE SAID WEST LINE FOR A DISTANCE OF 218.97 FEET TO THE SOUTHWEST CORNER OF PIEDMONT ACRES; THENCE SOUTH 88°50'35" EAST FOR A DISTANCE OF 800.00 FEET TO THE SOUTHEAST CORNER OF PIEDMONT ACRES; THENCE NORTH 00°46'58" EAST ALONG THE EAST BOUNDARY LINE OF PIEDMONT ACRES FOR A DISTANCE OF 653.40 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM:

A PARCEL OF LAND IN THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 16, TOWNSHIP 7 SOUTH, RANGE 35 EAST, BOISE MERIDIAN, BEING THAT PARCEL OF LAND DESCRIBED IN INSTRUMENT 634749 OF THE RECORDS OF BANNOCK COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER QUARTER CORNER OF SECTION 16, TOWNSHIP 7 SOUTH, RANGE 35 EAST, BOISE MERIDIAN; THENCE SOUTH 89°20'56" EAST ALONG THE LATITUDINAL CENTERLINE OF SECTION 16 FOR A DISTANCE OF 294.26 FEET; THENCE NORTH 53°40'56" EAST FOR A DISTANCE OF 459.93 FEET; THENCE NORTH 48°49'49" WEST 50.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING NORTH 48°49'49" WEST FOR A DISTANCE OF 208.71 FEET; THENCE SOUTH 53°40'56" WEST FOR A DISTANCE OF 213.80 FEET; THENCE SOUTH 48°49'49" EAST FOR A DISTANCE OF 208.71 FEET; THENCE NORTH 53°40'56" EAST FOR A DISTANCE OF 213.80 FEET TO THE POINT OF BEGINNING.

PARCEL 3:

L.M. [Signature]

11-11
LOT 1, BLOCK 1; LOTS 1 THROUGH 7 AND 9 THROUGH 11, BLOCK 2, LOTS 1 THROUGH 12 AND 15 THROUGH 18, BLOCK 3; LOTS 1 THROUGH 11 AND 13 THROUGH 15, BLOCK 4; LOTS 1 THROUGH 9, BLOCK 5; LOTS 1 AND 2, BLOCK 6; LOTS 1, 3, 4, 7 THROUGH 11 AND 14 THROUGH 36, BLOCK 7; LOTS 2 THROUGH 20, BLOCK 8; LOTS 1 THROUGH 7, BLOCK 9, ALL LOCATED IN SOUTH VALLEY VIEW ESTATES SUBDIVISION, BANNOCK COUNTY, IDAHO, AS THE SAME APPEARS ON THE OFFICIAL PLAT THEREOF, RECORDED OCTOBER 16, 1961 AS INSTRUMENT NO. 373461.

PARCEL 4:

LOT ALL, BLOCK ALL, EIGHTY ACRES, INC. SUBDIVISION, BANNOCK COUNTY, IDAHO, AS THE SAME APPEARS ON THE OFFICIAL PLAT THEREOF, RECORDED FEBRUARY 28, 1950 AS INSTRUMENT NO. 271259.

EXCEPTING THEREFROM:

LOTS 1, 2, 3, 4, 5, 6, 7, 8, 9, AND 10, BLOCK 2 AND LOTS 1, 2, 3, 4, 5, 6, 7, 8, AND 9, BLOCK 3, EIGHTY ACRES, INC. SUBDIVISION, BANNOCK COUNTY, IDAHO, AS THE SAME APPEARS ON THE OFFICIAL PLAT THEREOF, RECORDED FEBRUARY 28, 1950 AS INSTRUMENT NO. 271259.

LSM *LSM*

Filed
BANNOCK COUNTY
CLERK
2012 APR 19 AM 11:19
DEPUTY CLERK

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

THE BANK OF COMMERCE, an Idaho
banking corporation,

Plaintiffs,

vs.

JEFFERSON ENTERPRISES, LLC, an
Idaho limited liability company, DUSTIN
MORRISON and SONYA KIDD aka
SONYA MORRISON, THE CITY OF
POCATELLO, an Idaho municipality,

Defendants.

Case No. CV-2008-4231-OC

JUDGMENT

RE: ATTORNEY FEES & COSTS

DUSTIN MORRISON and SONYA KIDD
aka SONYA MORRISON, and
JEFFERSON ENTERPRISES, LLC, an
Idaho limited liability company,

Counterclaimants,

vs.

THE BANK OF COMMERCE, an Idaho
banking corporation,

Counterdefendant.

JUDGMENT

Re: Attorney Fees & Costs
Case No. CV-2008-4231-OC

Pursuant to this Court's Memorandum Decision and Order, the Plaintiff was deemed to be the prevailing party in this matter, entitled to an award of costs as a matter of right in the total amount of **\$8,376.76**. This Court has additionally determined that pursuant to Idaho Code §12-120(3) and Idaho Rule of Civil Procedure 54 Plaintiff is entitled to receive an award of attorney fees in the amount of **\$46,522.00**.

THEREFORE IT IS HEREBY ORDERED AND ADJUDGED that the Plaintiff be awarded and recover from Defendant, Jefferson Enterprises, LLC, the total amount of **\$54,898.76**.

IT IS SO ORDERED.

Dated this 19 day of April, 2012.



ROBERT C. NAFTZ
District Judge

Copies to:

Kirk Bybee
Brent T. Robinson
A. Bruce Larson
Brian T. Tucker

JUDGMENT

Re: Attorney Fees & Costs
Case No. CV-2008-4231-OC

A. Bruce Larson ISB #2093
Michael J. Morrissey ISB #7481
ABLE LAW PC
Attorneys at Law
155 South Second Ave.
P.O. Box 6369
Pocatello, ID 83205-6369

Telephone (208) 478-7600
Facsimile (208) 478-7602

Attorney for Defendants/Counterclaimants

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

THE BANK OF COMMERCE, an Idaho)	Case No. CV-2008-4231-OC
banking corporation,)	
)	
Plaintiff/Respondent,)	
)	
vs.)	NOTICE OF APPEAL
)	
JEFFERSON ENTERPRISES, LLC, an Idaho)	
limited liability company)	
)	
Defendant /Appellant.)	
)	
)	
)	
)	

**TO: THE ABOVE-NAMED RESPONDENT, THE BANK OF COMMERCE, AND ITS
COUNSEL OF RECORD, DOUGLAS R. NELSON AND BRIAN T. TUCKER, NELSON
HALL PARRY TUCKER, P.A, AND THE CLERK OF THE ABOVE-ENTITLED
COURT;**

NOTICE IS HEREBY GIVEN THAT:

1. Designation of Appeal: That the above-named Appellant, Jefferson Enterprises,
an Idaho limited liability company, appeal against the above-named Respondent to the Idaho
Supreme Court from the following appealable judgments and orders issued by the District Court

in this matter pursuant to I.A.R. 11(a): January 17, 2012, Memorandum Decision and Order; January 17, 2012, Judgment; April 19, 2012, Memorandum Decision and Order on Motion to Reconsider; April 19, 2012, Decree of Foreclosure and Order of Sale; April 19, 2012, Memorandum Decision and Order on Attorney Fees and Costs; April 19, 2012, Judgment Re: Attorney Fees & Costs.

2. Issues:

a. Whether the District Court erred in granting summary judgment to the Plaintiff/Respondent, dismissing Defendants'/Appellants' Amended Counterclaim and in issuing its subsequent orders referenced hereinabove.

b. The District Court erred in granting Plaintiff Motion for Summary Judgment dismissing the Counterclaim of Jefferson Enterprises in that there are disputed material issues of fact and issues of law that: (i) show the Plaintiff breached its contract with Jefferson; (ii) show the Plaintiff intentionally interfered with a prospective economic advantage of Jefferson; (iii) show the Plaintiff committed fraud and misrepresentation; (iv) show the Plaintiff's action was barred by the doctrine of promissory estoppel; and, (v) show that Jefferson was damaged.

c. The District Court's determinations on the Plaintiff's Motion for Summary judgment were not based upon substantial undisputed evidence.

d. The District Court erred in determining that the Plaintiff's Mortgage should be foreclosed in that there are disputed materials of fact that would have precluded the entry of summary judgment allowing the foreclosure.

3. Jurisdictional Statement: Under and pursuant to I.A.R. 11, Appellant has the right to appeal to the Idaho Supreme Court the aforementioned appealable orders under and pursuant to I.A.R. 11(a).

4. Transcript: There was no trial or recorded testimony and, therefore, Appellant does not request a reporter's transcript any court proceedings.

5. Record: The documents to be included in the clerk's record in addition to those automatically included pursuant to I.A.R. 28 are:

- a. Plaintiff's Motion for Summary Judgment and Supporting Memorandum
- b. Plaintiff's Affidavits and affidavit exhibits filed in support of the motion for summary judgment.
- b. Counterclaimants Memorandum in opposition to Summary Judgment.
- c. Counterclaimant's Affidavits and affidavit exhibits filed in opposition to the motion for summary judgment


6. Exhibits: No exhibits were offered or admitted.

7. No order has been entered sealing any part of the record or transcript.

8. I hereby certify that:

- a. A copy of this Notice of Appeal has been served on the Court Reporter of these proceedings, **no reporter's transcript has been requested;**
- b. The Clerk of the District Court has been paid the estimated fee for the preparation of the reporter's transcript pursuant to I.A.R. 24;
- c. The estimated fee for the preparation of the Clerk's record has been paid;
- d. That all appellate filing fees have been paid; and
- e. That service has been made upon all parties required to be served pursuant to I.A.R. 20.

DATED this 31st day of May, 2012.

A handwritten signature in black ink, appearing to read 'A. Bruce Larson', written over a horizontal line.

A. Bruce Larson, Attorney for Appellant
Jefferson Enterprises, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 31st day of May, 2012, a true and correct copy of the within and foregoing document was served upon:

Douglas R. Nelson
Brian T. Tucker
NELSON HALL PARRY TUCKER, P.A.
490 Memorial Drive
P.O. Box 51630
Idaho Falls, ID 83405-1630

☒ U.S. Mail
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☐ Hand Delivery
☐ Overnight Delivery
☐ Email

Brent T. Robinson
ROBINSON & ASSOCIATES
P.O. Box 396
Rupert, ID 83350-0396

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☐ Overnight Delivery
☐ Email

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Pocatello, ID 83205

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☐ Facsimile: 208-239-6986
☐ Hand Delivery
☐ Overnight Delivery
☐ Email

Stephanie Davis
Court Reporter
624 E. Center, Room 220
Pocatello, ID 83201

☒ U.S. Mail
☐ Facsimile: 208-436-6804
☐ Hand Delivery
☐ Overnight Delivery
☐ Email



A. Bruce Larson, Attorney at Law

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

THE BANK OF COMMERCE, an Idaho
banking corporation,

Plaintiff-Respondent,

vs.

JEFFERSON ENTERPRISES, LLC, an
Idaho limited liability company,

Defendant-Appellant,

Supreme Court No. 40034

CLERK'S CERTIFICATE

OF
APPEAL

Appealed from: Sixth Judicial District, Bannock County

Honorable Judge Robert C. Naftz presiding

Bannock County Case No: CV-2008-4231-OC

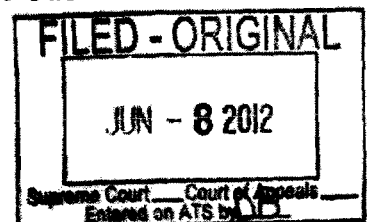
Order of Judgment Appealed from: Memorandum Decision and Order filed the 17th day of January, 2012, Judgment filed the 17th day of January, 2012, Memorandum Decision and Order on Motion to Reconsider filed the 19th day of April, 2012, Decree of Foreclosure and Order of Sale filed the 19th day of April, 2012, Memorandum Decision and Order on Attorney Fees and Costs filed the 19th day of April, 2012 and Judgment Re: Attorney Fees and Costs filed the 19th day of April, 2012.

Attorney for Appellant: A. Bruce Larson, Attorney, ABLE LAW PC, Pocatello

Attorney for Respondent: Douglas R. Nelson and Brian T. Tucker, Attorneys,
NELSON HALL PARRY TUCKER, P.A.

Appealed by: Jefferson Enterprises, LLC, an Idaho limited liability company

Appealed against: The Bank of Commerce, an Idaho banking corporation



Notice of Appeal filed: May 31, 2012

Notice of Cross-Appeal filed: No

Appellate fee paid: Yes

Request for additional records filed: No

Request for additional reporter's transcript filed: No

Name of Reporter: N/A

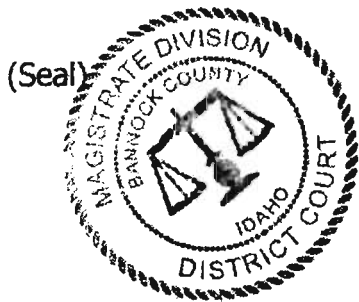
Was District Court Reporter's transcript requested? No

Estimated Number of Pages: N/A

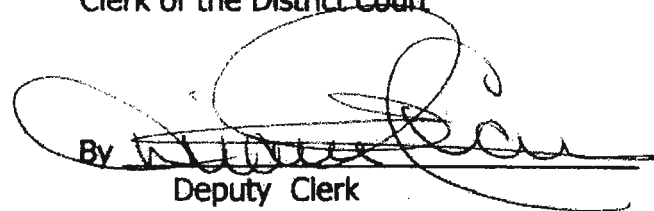
Dated

June 7, 2012

DALE HATCH,
Clerk of the District Court



By



Deputy Clerk

Brian T. Tucker
Wiley R. Dennert
NELSON HALL PARRY TUCKER, P.A.
490 Memorial Drive
Post Office Box 51630
Idaho Falls, Idaho 83405-1630
Telephone (208) 522-3001
Fax (208) 523-7254
Attorney for The Bank of Commerce
Idaho State Bar Numbers 5236 & 6216

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[Handwritten signature]

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

THE BANK OF COMMERCE, an Idaho
banking corporation,

Plaintiff,

v.

JEFFERSON ENTERPRISES, LLC, an Idaho
limited liability company, DUSTIN
MORRISON and SONYA KIDD aka SONYA
MORRISON, THE CITY OF POCA TELLO,
an Idaho municipality,

Defendants.

DUSTIN MORRISON and SONYA KIDD aka
SONYA MORRISON, and JEFFERSON
ENTERPRISES, LLC, an Idaho limited
liability company,

Counterclaimants,

vs.

THE BANK OF COMMERCE, an Idaho
banking corporation,

Counterdefendant.

Case No. CV-08-4231-OC

**REQUEST FOR ADDITIONAL
CLERK'S RECORD**

REQUEST FOR ADDITIONAL CLERK'S RECORD - 1

COMES NOW Respondent The Bank of Commerce (the "Bank"), through counsel of record, and requests that the following documents be added to the Clerk's record for purposes of the appeal:

1. Motion for Summary Judgment, filed November 14, 2011;
2. Memorandum in support of motion for summary judgment, filed November 14, 2011.
3. Affidavit of Thomas J Romrell, filed November 14, 2011;
4. Affidavit of Steve Worton, filed November 14, 2011;
5. Affidavit of A Michael Morrison, filed November 14, 2011;
6. Affidavit of Brian Tucker, filed November 14, 2011;
7. Reply Memorandum in Support of Motion for Summary Judgment, filed December 13, 2011;
8. Motion For Award of Attorney's Fees, filed January 30, 2012;
9. Affidavit of Brian T. Tucker in Support of Motion for Award of Attorney's Fees and Costs, filed January 30, 2012;
10. Memorandum in Support of Motion for Award of Attorney's Fees and Costs. filed January 30, 2012;
11. Memorandum of Attorney's Fees and Costs, filed January 30, 2012;
12. Objection to Motion to Reconsider; filed March 12, 2012;

DATED this 12 day of June, 2012.



Brian T. Tucker

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I served a true copy of the foregoing document upon the following this 12 day of June, 2012, by hand delivery, mailing with the necessary postage affixed thereto, facsimile, or overnight mail.

Kirk Bybee
P.O. Box 4169
Pocatello, ID 83205

☒ Mailing
☐ Hand Delivery
☐ Facsimile: (208) 239-6986
☐ Overnight Mail

Brent T. Robinson
ROBINSON & ASSOCIATES
P.O. Box 396
Rupert, ID 83350-0396

☒ Mailing
☐ Hand Delivery
☐ Facsimile: (208) 436-6804
☐ Overnight Mail

A. Bruce Larson
ABLE LAW, PC
P.O. Box 6369
Pocatello, ID 83205-6369

☒ Mailing
☐ Hand Delivery
☐ Facsimile: (208) 478-7602
☐ Overnight Mail


Brian T. Tucker

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IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

THE BANK OF COMMERCE, an Idaho)	
Banking corporation,)	
)	Supreme Court No. 40034-2012
Plaintiff-Respondent,)	
vs.)	CLERK'S CERTIFICATE
)	
JEFFERSON ENTERPRISES, LLC, an)	
Idaho limited liability company,)	
)	
Defendant-Appellant,)	
_____)	

I, DALE HATCH, Clerk of the District Court of the Sixth Judicial District, of the State of Idaho, in and for the County of Bannock, do hereby certify that the above and foregoing record in the above-entitled cause was compiled and bound under my direction as, 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.

I do further certify that there were no exhibits marked for identification or admitted into evidence during the course of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Pocatello, Idaho, this 20th day of July, 2012.

(Seal)

DALE HATCH,
Clerk of the District Court
Bannock County, Idaho Supreme Court

By [Signature]
Deputy Clerk

CLERK'S CERTIFICATE

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

THE BANK OF COMMERCE, an Idaho)	
Banking corporation,)	
)	Supreme Court No. 40034-2012
Plaintiff-Respondent,)	
)	
vs.)	CERTIFICATE OF SERVICE
)	
JEFFERSON ENTERPRISES, LLC, an)	
Idaho limited liability company,)	
)	
Defendant-Appellant.)	
_____)	

I, DALE HATCH, Clerk of the District Court of the Sixth Judicial District, of
the State of Idaho, in and for the County of Bannock, do hereby certify that I
have personally served or mailed, by United States mail, one copy of the
CLERK'S RECORD to each of the Attorneys of Record in this cause as follows:

A. Bruce Larson
ABLE LAW PC
Post Office Box 6369
Pocatello, Idaho 83201

Brian T. Tucker
NELSON HALL PARRY TUCKER, P.A.
Post Office Box 51630
Idaho Falls, Idaho 83405-1630

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal
of said Court at Pocatello, Idaho, this 10 day of August 2012.

(Seal)

DALE HATCH,
Clerk of the District Court
Bannock County, Idaho Supreme Court

By [Signature]
Deputy Clerk