

1 EDWARD E. HALE, ESQ.
2 KAREN D. DENNISON, ESQ.
3 R. CRAIG HOWARD
4 GREGG W. ZIVE, ESQ.
5 ROBERT DAMON SPITZER
6 50 West Liberty Street, Suite 650
7 P.O. Box 3237
8 Reno, Nevada 89505
9 (702) 786-7900

FILED

JUN 15 1983

Clerk, United States Bankruptcy Court
Eastern District of Calif.

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

10 In Re:)
11)
12 CAPITAL MORTGAGE & LOAN)
13 INC., a California)
14 corporation,)
15 Debtor.)

CHAPTER 11
Case No. 281-03865D
Adversary Proceedings
No.: 281-127ID-11

15 LAUELLE M. BANNER, as)
16 Executrix of the Estate of)
17 Joseph T. Banner, deceased;)
18 FRANK C. BOSLER, and FIRST)
19 INTERSTATE BANK OF LARAMIE)
20 (formerly known as First)
21 National Bank of Laramie),)
22 a national banking)
23 association,)
24 Plaintiffs.)

STIPULATION
AND ORDER

21 vs.)
22)
23 CAPITAL MORTGAGE & LOAN,)
24 INC., a California)
25 corporation, and)
26 MELVYN J. COBEN, trustee,)
27 Defendants.)

26 COME NOW plaintiffs, Lauvella M. Banner, as Executrix of
27 the Estate of Joseph T. Banner, deceased ("Banner"); Frank C.
28

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1 Bosler ("Bosler"); and First Interstate Bank of Laramie ("First
2 Interstate"); by and through their attorney, Gregg W. Zive,
3 Esq.; and Capital Mortgage and Loan, Inc., a California
4 corporation ("Capital Mortgage"), and Melvyn J. CoBen, trustee,
5 by and through their attorney Gregg A. Eichler, Esq., and
6 hereby enter into the following written stipulation which
7 conforms with the oral stipulation of the parties entered into
8 in open court on May 17, 1983, and approved by the court at
9 that time:

10 1. The automatic stay with respect to the enforcement of
11 the obligation of Horizon Land, Inc., a Nevada corporation
12 ("Horizon") evidenced by its note dated October 3, 1980, in the
13 original principal amount of \$1,080,132.07 and the foreclosure
14 under the deed of trust securing such note (which deed of trust
15 was recorded on October 6, 1980, in the office of the County
16 Recorder of Douglas County, Nevada, herein "the Deed of
17 Trust"), be vacated and terminated pursuant to 11 U.S.C.
18 §362(d), and such stay shall have no further force and effect.

19 2. Plaintiffs shall, prior to the trustee's sale
20 below-described, deliver to the trustee under the Deed of Trust
21 written authorization instructing the trustee to reconvey from
22 the encumbrance of the Deed of Trust the land described in
23 Exhibit "A" hereto, being approximately 280 acres. The land
24 which is encumbered by the Deed of Trust after the reconveyance
25 of the above described 280 acres is herein referred to as "the
26 Encumbered Land". All remaining land which was sold by Banner
27 and Bosler to Horizon, and either not encumbered by the Deed of
28

1 Trust or subsequently released from the encumbrance thereof, is
2 herein referred to as "the Released Land".

3 3. Plaintiffs agree to cause to be released from the
4 encumbrance of the Deed of Trust, 25% of the water rights which
5 are filed under the following described certificates:

6 Water Right Certificate No. 4927 on file at Book 14,
7 Page 4927, under Application No. 12885 with the State
of Nevada, Department of Water Resources; and

8 Water Right Certificate No. 4834 on file at Book 14,
9 Page 4834, under Application No. 12884 with the State
of Nevada, Department of Water Resources; and

10 Water Right Certificate No. 4928 on file at Book 14,
11 Page 4928, under Application No. 13013 with the State
of Nevada, Department of Water Resources; (herein
12 collectively "the Water Rights").

13 Plaintiffs further agree to execute any and all documents, and
14 do any and all acts, necessary to accomplish a transfer of 25%
15 of the Water Rights to defendants, or to defendants' nominee,
16 on or before August 15, 1983. Defendants shall bear the cost
17 of preparation of documentation and any filing and recording
18 fees which are incurred in connection with the transfer of such
19 25% interest in the Water Rights. Defendants shall execute a
20 quitclaim deed, in a form acceptable to plaintiffs,
21 transferring and releasing to the successful bidder at the
22 below described trustee's sale ("the Trustee's Sale Purchaser")
23 any and all claim or interest which defendants may possess in
24 the remaining 75% of the Water Rights. Defendants agree to
25 cooperate with Trustee's Sale Purchaser in changing the point
26 of diversion of any Water Rights, which are appurtenant to, or
27 used in connection with, the Released Land and which are in
28 excess of 25% of the Water Rights released to defendants

1 hereunder; provided that the Trustee's Sale Purchaser
2 cooperates with defendants in changing the point of diversion
3 of any Water Rights belonging to defendants which are
4 appurtenant to or used in connection with, the Encumbered Land.
5 Further, plaintiffs and defendants agree to refrain from
6 entering a protest regarding any application by the other made
7 to the State Water Engineer with respect to such Water Rights.

8 4. Plaintiffs shall instruct the trustee under the Deed
9 of Trust to notice, pursuant to the trustee's power of sale and
10 in conformance with Nevada law, a sale of the Encumbered Land
11 (excluding the 280 acres reconveyed in accordance with
12 paragraph 2 above and 25% of the Water Rights), which sale
13 shall be held on July 1, 1983.

14 5. The fund held by Title Insurance and Trust, Reno,
15 Nevada, in the approximate amount of \$15,600.00, representing
16 sale proceeds from its escrow no. 139351-SB which were
17 impounded to pay deferred tax liens resulting from the
18 agricultural use assessment of the Encumbered Land and the
19 Released Land shall be disbursed as follows:

20 75% to Banner and Bosler; and

21 25% to Melvyn J. CoBen, as
22 trustee for Capital Mortgage
and Loan.

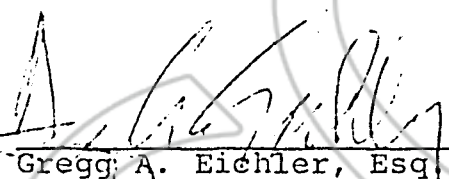
23
24 6. Plaintiffs and defendants hereby agree to waive any
25 rights which they may possess to a trial de novo in any United
26 States District Court, any rights of appeal to any court or
27 appellate panel, and any right to invoke the jurisdiction of
28 any court to reinstate the automatic stay; and to refrain from

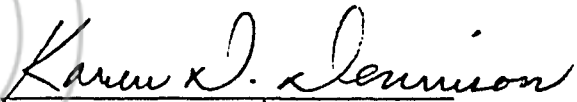
1 in any manner obstructing or preventing the sale of the
2 Encumbered Land and 75% of the Water Rights on July 1, 1983.
3 In the event the Chapter 11 Petition of Capital Mortgage is
4 dismissed, and either Capital Mortgage, Horizon, or any related
5 or affiliated entity, or alter ego files another petition or is
6 subject to an involuntary petition under any state or federal
7 law for the relief of debtors, then the terms and conditions of
8 this stipulation shall remain in full force and effect with
9 respect to any such proceeding.

10 7. Plaintiffs and defendants agree that the court above-
11 entitled may retain jurisdiction of this matter solely for the
12 purpose of enforcing the terms and provisions of this
13 stipulation.

14 8. Plaintiffs and Defendants agree to execute any and all
15 documents, and perform any and all acts, which are necessary to
16 carry out the terms and provisions and the intent of this
17 stipulation.

18
19 Dated this 17th day of June, 1983.

20
21 
22 Gregg A. Eichler, Esq.
23 Capitol Towers
24 636 N Street
25 Sacramento, CA. 95814
26 Attorney for Capital
27 Mortgage & Loan, Inc.
28


Karen D. Dennison, Esq.
Hale, Lane, Peek, Dennison
and Howard
50 West Liberty Street,
Suite 650
P.O. Box 3237
Reno, Nevada 89505
Attorneys for Lauvella M.
Banner as Executrix of the
Estate of Joseph T. Banner,
deceased; Frank Bosler; and
First Interstate Bank of
Laramie; Creditors

1 The foregoing Stipulation is hereby approved.

2
3 Dated: 6/14/83

[Signature]
Melvyn J. CoBen, Trustee

4
5 Dated: _____

Lauvella M. Banner
Lauvella M. Banner, as
Executrix of the Estate of
Joseph T. Banner, deceased

6
7
8 Dated: _____

[Signature]
Frank C. Bosler

FIRST INTERSTATE BANK
OF LARAMIE

9
10
11
12 Dated: _____

by [Signature]
E.J. Haines, President

13
14 IT IS SO ORDERED.

15 Dated this 15 day of June, 1983.

[Signature]
LOREN S. DAHL
Bankruptcy Judge

16
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24
25 SEAL

**I hereby certify that the annexed
instrument is a true and correct copy
of the original filed in the office of
the Clerk U. S. Bankruptcy Court.**

By [Signature]
Deputy Clerk

EXHIBIT "A"

All that certain real property situate in the County of Douglas, State of Nevada, which is described as follows:

The South one-half (S 1/2) of the South one-half (S 1/2) of Section 5, Township 9 North, Range 23 East, M.D.B. & M. (approximately 160 acres);

The Southeast one-quarter (SE 1/4) of the Southwest one-quarter (SW 1/4) of Section 8, Township 10 North, Range 23 East, M.D.B. & M. (approximately 40 acres);

The Northwest one-quarter (NW 1/4) of the Northeast one-quarter (NE 1/4) of Section 17, Township 10 North, Range 23 East M.D.B. & M. (approximately 40 acres);

Southeast one-quarter (SE 1/4) of the Northwest one-quarter (NW 1/4) of Section 17, Township 10 North, Range 23 East, M.D.B. & M. (approximately 40 acres);

Excepting and reserving, therefrom however, the following easements which shall remain encumbered by the above-described deed of trust:

(1) Non-exclusive easements of a width required by the County of Douglas for an approved subdivision, over, across and through the above described real property ("the Released Land"), the centerline of which easements shall be the centerline of any and all roadways on the Released Land which may now or hereafter exist, which non-exclusive easements shall be for the purposes of pedestrian and vehicular ingress and egress to and from the remaining property which is encumbered by the deed of trust above described ("the Remaining Property"), and the installation and maintenance of all pipes, poles, lines and other equipment necessary to provide utility services to the Remaining Property;

(2) The non-exclusive right to use any and all easements which may be hereafter acquired by Trustor and which are appurtenant to the Released Land or any part thereof which easements shall be appurtenant to and for the benefit of the Remaining Property; and

(3) The non-exclusive right to use those certain easements evidenced by the following described recorded maps: (a) a map entitled "Record of Survey for the Estate of Joseph T. Banner...and Frank C. Bosler" recorded on June 7, 1977, in the office of the County Recorder of Douglas County, Nevada, under File No. 33203, official records, and (b) a map entitled "A Map for Application to the Bureau of Land Management for Right of Way in Section 3, Township 10 North, Range 23 East, M.D.B. & M., filed in the office of the Bureau of Land Management under File No. N-25706(2800), official records.

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COPY

REQUESTED BY
FIRST NEVADA TITLE COMPANY
IN OFFICIAL RECORDS OF
BUSINESS OF NEVADA

JUL 10 1987

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SUZANNE JEANOREAU
RECORDER

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