DA 25-0343

IN THE SUPREME COURT OF THE STATE OF MONTANA

2026 MT 33

BLUEBIRD PROPERTY RENTALS, LLC
and ALAINA GARCIA,

Plaintiffs and Appellees,

v.

WORLD BUSINESS LENDERS, LLC;
WBL SPO I, LLC; and WBL SPO II, LLC,

Defendants and Appellants.

APPEAL FROM: District Court of the Eighteenth Judicial District,
In and For the County of Gallatin, Cause No. DV-23-201
Honorable Andrew Breuner, Presiding Judge

COUNSEL OF RECORD:

For Appellants:

Martin S. King, Worden Thane, P.C., Missoula, Montana

For Appellees:

Frederick P. Landers, Axilon Law, Bozeman, Montana

Submitted on Briefs: January 21, 2026

Decided: February 24, 2026

Filed:

Clerk

Justice Laurie McKinnon delivered the Opinion of the Court.

¶1 Appellants World Business Lenders (collectively, WBL) appeals from a decision of the Eighteenth Judicial District Court denying WBL's motion to compel arbitration based on arbitration provisions in loan documents between WBL and Appellees Bluebird Property Rentals, LLC and Alaina Garcia, (collectively, Bluebird). The District Court found that the arbitration provisions in the loan documents were unenforceable because they were buried in fine print and were in direct conflict with the bold, capitalized language that Bluebird was waiving her right to trial by jury, thus rendering the loan documents ambiguous and unenforceable. For the reasons set forth below, we affirm the District Court.

¶2 We restate the dispositive issue on appeal:

> *Whether the District Court erred when it determined arbitration was not enforceable because the language of the Loan Documents was ambiguous.*

FACTUAL AND PROCEDURAL BACKGROUND

¶3 WBL and its subsidiaries are alleged in Bluebird's complaint to be New York LLCs that are registered in Montana. Bluebird is a Montana limited liability company with Garcia as its sole member. In December 2020, Bluebird received a loan from WBL of $450,000, using its real property in Gallatin County as collateral to secure it. The payment schedule of the loan provided for 103 payments of $8,874.58, followed by a single payment of $8,873.34. If paid to maturity the annual percentage rate of the loan was 84.57% making the total repayment amount $922,953.98 on the $450,000 loan.

¶4 In agreeing to the loan, Bluebird signed a "Business Promissory Note and Security Agreement" (Agreement), a "Continuing Guaranty, Personal" (Guaranty), and a "Note and Deed of Trust" (Deed of Trust) (collectively, the Loan Documents). While Bluebird only dealt with WBL in negotiating the loan, the Loan Documents list Axos Bank as the lender. Around six months after signing the Agreement, Axos assigned the Agreement and Deed of Trust to WBL, and WBL subsequently assigned them multiple times between its subsidiaries. The Agreement and Guaranty both contained provisions relating to arbitration (collectively, Arbitration Provisions) and waiver of the right to trial by jury.

¶5 The relevant portion of the Agreement, contained within a section titled "Miscellaneous[,]" provides:

> Any of the Borrower, Lender or a Guarantor may choose to arbitrate any or all disputes and claims arising out of or relating to this Loan Agreement, the Guaranty or any other related document. A claim includes matters arising as an initial claim, counter-claim, cross-claim, third-party claim, or otherwise. If the Borrower, Lender or a Guarantor chooses to litigate any dispute or claim arising out of or relating to this Loan Agreement, the Guaranty or any related document through a judicial action, the decision to litigate shall not be deemed a waiver of arbitration, and if such judicial action is contested, any party may thereafter invoke its arbitration rights at any time before any discovery is taken in the judicial action. If the Borrower, Lender or a Guarantor seeks to have a dispute resolved by arbitration, that party must first send to the other party(ies) by certified mail, a written Notice of Intent to Arbitrate. If Borrower, Lender or a Guarantor do not reach an agreement to resolve the claim within 10 days after the Notice is received, any party may commence an arbitration proceeding with the American Arbitration Association ("AAA").
>
> . . .
>
> TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW, BORROWER AND LENDER AGREE THAT BY ENTERING INTO THIS LOAN AGREEMENT, EACH IS WAIVING THEIR RIGHT TO A TRIAL

> BY JURY OF ANY CLAIM OR CAUSE OF ACTION BASED UPON, ARISING OUT OF OR RELATED TO THIS LOAN AGREEMENT AND ALL OTHER DOCUMENTATION EVIDENCING THE OBLIGATIONS, IN ANY LEGAL ACTION OR PROCEEDING. BORROWER AND LENDER MAY BRING CLAIMS AGAINST ANY OTHER PARTY ONLY IN THEIR INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF REPRESENTATIVE OR CLASS MEMBER IN ANY PURPORTED REPRESENTATIVE OR CLASS PROCEEDING; PROVIDED, THAT, BORROWER MAY BRING A CLAIM FOR PUBLIC INJUNCTIVE RELIEF TO THE EXTENT REQUIRED BY APPLICABLE LAW.

(Emphasis in original.)

¶6 The Guaranty contained a similar provision, however this time proceeded by the header "**Arbitration**[,]" which provided:

> Any of the Borrower, Lender or a Guarantor may choose to arbitrate any or all disputes and claims arising out of or relating to this Loan Agreement, the Guaranty or any other related document. A claim includes matters arising as an initial claim, counter-claim, cross-claim, third-party claim, or otherwise. If the Borrower, Lender or a Guarantor chooses to litigate any dispute or claim arising out of or relating to this Loan Agreement, the Guaranty or any related document through a judicial action, the decision to litigate shall not be deemed a waiver of arbitration, and if such judicial action is contested, any party may thereafter invoke its arbitration rights at any time before any discovery is taken in the judicial action. If the Borrower, Lender or a Guarantor seeks to have a dispute resolved by arbitration, that party must first send to the other party(ies) by certified mail, a written Notice of Intent to Arbitrate. If Borrower, Lender or a Guarantor do not reach an agreement to resolve the claim within 10 days after the Notice is received, any party may commence an arbitration proceeding with the American Arbitration Association ("AAA").
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> . . .
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> TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW, BORROWER AND LENDER AGREE THAT BY ENTERING INTO THIS LOAN AGREEMENT, EACH IS WAIVING THEIR RIGHT TO A TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION BASED UPON, ARISING OUT OF OR RELATED TO THIS LOAN AGREEMENT AND ALL OTHER DOCUMENTATION EVIDENCING THE OBLIGATIONS,

> IN ANY LEGAL ACTION OR PROCEEDING. BORROWER AND LENDER MAY BRING CLAIMS AGAINST ANY OTHER PARTY ONLY IN THEIR INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF REPRESENTATIVE OR CLASS MEMBER IN ANY PURPORTED REPRESENTATIVE OR CLASS PROCEEDING.

(Emphasis in original.)

¶7 The Guaranty additionally required, on a single page devoted to the right to trial by jury, that Bluebird sign a "Jury Waiver" provision acknowledging that Bluebird knowingly and voluntarily was waiving its right to trial by jury. The text of the provision states:

> **GUARANTOR KNOWINGLY AND VOLUNTARILY WAIVES TRIAL BY JURY IN ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM BASED UPON, ARISING OUT OF OR IN ANY WAY RELATING TO THIS GUARANTY, THE OBLIGATIONS GUARANTEED BY THIS GUARANTY OR ANY CONDUCT, ACT OR OMISSION OF LENDER, AND AGREES AND CONSENTS THAT ANY SUCH ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM SHALL BE DECIDED BY TRIAL TO THE COURT WITHOUT A JURY. GUARANTOR ACKNOWLEDGES AND UNDERSTANDS THAT THIS WAIVER AND CONSENT CONSTITUTES A MATERIAL INDUCEMENT TO LENDER TO ENTER INTO THE TRANSACTION WITH THE BORROWER.**
>
> **Guarantor** Alaina Marie Garcia
>
> X: _[DocuSigned by Garcia]_

(Emphasis in original.)

¶8 Bluebird DocuSigned[1] the Loan Documents on the same day she received them. As a condition of the loan, WBL required Bluebird to obtain an opinion letter from an attorney

[1] DocuSign is a software company which offers users an "electronic signature" or "eSignature" product, allowing users to send and sign documents electronically.

regarding the loan documents. Bluebird hired an attorney, who issued a letter to WBL dated December 22, 2020, which was four days after Bluebird signed the loan documents.

¶9 Bluebird fell behind on payments and WBL declared Bluebird in default, resulting in the sale of the collateral property in October 2022. Ultimately, in the two-year period that followed the agreement, Bluebird alleges to have paid $945,990.39 on the $450,000 loan.

¶10 Bluebird then brought the instant suit against WBL. Bluebird's prayer for relief requests a declaration that WBL be recognized as the true lender, not Axos Bank, and that WBL is subject to Montana's usury law as an unregulated, private, non-bank lender. Bluebird alleges that WBL's engagement with Axos, a federal lender, is an attempt to evade Montana's usury laws in a "rent-a-bank" scheme, and Axos's involvement is nominal.[2] Bluebird also seeks double the interest paid above the maximum allowable 15% under Montana law pursuant to the usury penalty provided by § 31-1-108, MCA.

¶11 WBL previously appealed the District Court's denial of their first Rule 12(b)(1) motion to dismiss for lack of subject matter jurisdiction in this litigation. The District Court held Montana law determines whether the arbitration and choice-of-law provisions

[2] According to Adam J. Levitin, *Rent-A-Bank: Bank Partnerships and the Evasion of Usury Laws*, 71 Duke L.J. 329, 333 (2021), in a "renta-a-bank" scheme a nonbank entity designs a high-cost loan product and engages a bank to originate loans to the nonbank's specifications. The bank's role is to fund and appear as the lender of record, while the nonbank handles marketing, underwriting services, and holds most of the risk. The nonbank claims the bank's federal exemption from state usury and other consumer protection laws, as well as the benefit of the choice-of-law provisions applicable to the bank. In exchange for offering the non-bank entity protection, the bank collects a fee.

are enforceable. We affirmed the decision on appeal. *See Bluebird Prop. Rentals, LLC v. World Bus. Lenders, LLC*, 2024 MT 279, ¶ 20, 419 Mont. 181, 559 P.3d 834.

¶12 WBL then filed the instant Motion to Dismiss and Compel Arbitration under Mont. R. Civ. Pro. 12(b)(1) and 12(b)(6) and the terms of the Loan Documents. Bluebird opposed the motion, arguing that the Arbitration Provisions are unenforceable due to a lack of knowing, voluntary, and intelligent waiver of Bluebird's Montana constitutional right of access to the courts. The District Court concluded the Loan Documents were ambiguous and considered extrinsic evidence in the form of Garcia's Declaration to ascertain the parties' intent at the time of signing. The District Court found that Bluebird was only aware of the waiver of jury trial and had not intended to agree to waive its access to the judicial system.[3] In determining the drafter's intent, the District Court held that the construction of the documents lends itself to the conclusion that it was intended to be inherently misleading. The District Court therefore denied WBL's Motion, finding that Bluebird had not knowingly, voluntarily, and intelligently waived its right to access the court. WBL appeals.

STANDARD OF REVIEW

¶13 We review a district court ruling on motions to compel arbitration de novo for correctness under the governing standards of either the Federal Arbitration Act (FAA) or the Montana Uniform Arbitration Act. *Lenz v. FSC Sec. Corp.*, 2018 MT 67, ¶ 12, 391 Mont. 84, 414 P.3d 1262 (citations omitted). When the district court considers matters

[3] This finding was premised upon Garcia's Declaration, thereby converting WBL's motion to a motion for summary judgment pursuant to 12(d) Mont. R. Civ. P.

outside the pleadings in ruling on a motion to compel arbitration brought under Rule 12(b)(6), the motion is converted to a motion for summary judgment. M. R. Civ. P. 12(d), 56; *Augustine v. Simonson*, 283 Mont. 259, 263, 940 P.2d 116, 118 (1997).[4] "We review a district court's grant of summary judgment de novo, using the criteria established by M. R. Civ. P. 56(c)." *Montana Petroleum Tank Release Comp. Bd. v. Crumleys, Inc.*, 2008 MT 2, ¶ 52, 341 Mont. 33, 174 P.3d 948 (citations omitted). "The moving party bears the burden of proving that no genuine issues of material fact exist, and as a result, that they are entitled to judgment as a matter of law." *Montana Petroleum Tank Release Comp. Bd.*, ¶ 52 (citations omitted).

¶14 Interpretation of an ambiguous contract term is "a question of fact regarding the intent of the parties to the contract." *Riehl v. Cambridge Ct. GF, LLC*, 2010 MT 28, ¶ 26, 355 Mont. 161, 226 P.3d 581 (citations omitted). "Findings of fact are clearly erroneous only if not supported by substantial evidence, the court misapprehended the effect of the evidence, or review of the record leaves the Supreme Court with a definite and firm conviction that the court was mistaken." *Lenz*, ¶ 12.

DISCUSSION

¶15 Arbitration agreements involving interstate commerce are subject to the FAA and courts must stay litigation and compel arbitration on all claims subject to a valid and

[4] Consistent with M. R. Civ. P. 12(d), once converted by consideration of matters outside the pleadings all parties must be given a reasonable opportunity to present all the material that is pertinent to the motion. A review of the court's Order Setting the Hearing, as well as transcript of the April 16, 2025 hearing does not reflect notice was provided to the parties. However, neither party raise this on appeal.

enforceable arbitration agreement. *Lenz,* ¶ 14 (citations omitted). Montana and Federal law look to substantive arbitrability as a threshold issue, which considers two distinct questions, first, "whether the parties formed a valid and enforceable agreement to arbitrate," and second, whether the scope of an arbitration agreement encompasses the disputed subject. *Peeler v. Rocky Mountain Log Homes Canada, Inc.*, 2018 MT 297, ¶ 15, 393 Mont. 396, 431 P.3d 911. The enforceability of arbitration agreements governed by the FAA are subject to all state law and constitutional standards that are generally applicable to contracts. *Lenz*, ¶¶ 16, 19 (citations omitted).

¶16 WBL correctly observes that the FAA encourages doubt regarding the scope of arbitrable issues be resolved in favor of arbitration. *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24–25, 103 S. Ct. 927, 941 (1983). This presumption only affects the second prong of the threshold question and Bluebird does not dispute that should the Arbitration Agreements be enforceable the matter would be substantively arbitrable. The issue on appeal, therefore, solely turns on whether Montana law recognizes the Arbitration Agreements as enforceable.

¶17 "All contracts require four essential elements: (1) identifiable parties capable of contracting; (2) consent of the parties; (3) a lawful object; and (4) consideration." *Lenz*, ¶ 18 (citations omitted); § 28-2-102, MCA. "Contract formation is based on the consent of the parties and arbitration is a matter of consent." *Lenz,* ¶ 18; *accord Volt Information Sciences, Inc. v. Board of Trustees of Leland Stanford Junior Univ.*, 489 U.S. 468, 479, 109 S. Ct. 1248, 1256 (1989). Consent "must be free, mutual, and communicated to each other." *In re Est. of Kindsfather*, 2005 MT 51, ¶ 31, 326 Mont. 192, 200, 108 P.3d 487,

493; §§ 28-2-102, -301, MCA. Contract terms lacking mutual assent are invalid and unenforceable against the non-assenting party. *Lenz*, ¶ 18 (citations omitted); §§ 28-2-102(2), -301, -303, and -401, MCA (mutual assent standards).

¶18 Arbitration agreements necessarily cause a party to waive their Montana constitutional right to full legal redress and jury trial, two fundamental rights, and are therefore subject to the highest level of constitutional scrutiny and protection. *Lenz*, ¶ 19 (citations omitted). "A waiver of fundamental Montana constitutional rights is valid only if made knowingly, voluntarily, and intelligently under the totality of circumstances." *Lenz*, ¶ 19 (citation omitted). The requirement that constitutional rights be knowingly, voluntarily, and intelligently waived is not specific to arbitration agreements but applies to any type of contract waiver of a fundamental Montana constitutional right. *Lenz*, ¶ 19.

¶19 "Whether an ambiguity exists in a contract is a question of law." *AWIN Real Estate, LLC v. Whitehead Homes, Inc.*, 2020 MT 225, ¶ 13, 401 Mont. 218, 472 P.3d 165 (*citing Mary J. Baker Revocable Tr. v. Cenex Harvest States, Coops., Inc.*, 2007 MT 159, ¶ 19, 338 Mont. 41, 164 P.3d 851). "An ambiguity exists if the contract language, taken as a whole, is susceptible to at least two reasonable but conflicting meanings." *Richards v. JTL Grp., Inc*., 2009 MT 173, ¶ 26, 350 Mont. 516, 212 P.3d 264*; accord AWIN Real Estate*, ¶ 13; *Mary J. Baker Revocable Tr.*, ¶ 20 (citations omitted).

¶20 To the extent "ascertainable and lawful," courts must construe contracts to affect the mutual intent of the parties at the time of contracting. *Mary J. Baker Revocable Tr.*, ¶ 21; § 28-3-301, MCA. When assessing intent, Montana follows a hierarchical framework, where the court first looks to the writing to determine if the intention of the

parties can be determined without reference to outside evidence. *Mary J. Baker Revocable Tr.*, ¶ 21; § 28–3–303, MCA ("When a contract is reduced to writing, the intention of the parties is to be ascertained from the writing alone, if possible, subject, however, to the other provisions of this chapter.") The whole contract is to be considered together to give effect to every part as far as is reasonably practicable, with "each clause helping to interpret the other." Section 28-3-202, MCA; *see Brandt v. R&R Mountain Escapes, LLC*, 2025 MT 155, ¶ 13, 423 Mont. 100, 572 P.3d 809.

¶21 When the text of the contract is unable to resolve the ambiguity, the court may turn to "objective evidence" of the circumstances under which an instrument was made and the subject matter of the agreement. *Mary J. Baker Revocable Tr*, ¶ 53; *Brandt*, ¶ 16 (citations omitted). "'Objective' evidence is evidence of an ambiguity . . . that can be supplied by disinterested third parties . . . ." *Mary J. Baker Revocable Tr*, ¶ 53. Conversely, "'[s]ubjective' evidence of ambiguity is the testimony of the parties themselves," and their understanding of the mutual intent at the time of contracting. *Mary J. Baker Revocable Tr*, ¶ 53 (citations omitted). The latter form of evidence "is invariably self-serving, inherently difficult to verify and thus, inadmissible . . . ." *Mary J. Baker Revocable Tr*, ¶ 53 (citations omitted). Consideration of the circumstances and subject matter should not vary or contradict the terms of the agreement. *Mary J. Baker Revocable Tr.*, ¶ 21; § 28–2–904, MCA. "The purpose of the extrinsic evidence is limited to ascertaining the circumstances surrounding the making of the instrument." *Brandt*, ¶ 16. If, following consideration of the covenant's language as written and extrinsic evidence of the circumstances surrounding

its making, the court determines there remains an ambiguity, then it is to be interpreted "'most strongly' against the party who drafted it." *Riehl*, ¶ 26.

¶22 WBL argues the District Court erred because the Loan Documents' Arbitration Provisions do not contain language susceptible to two different interpretations. It maintains there is only one reasonable interpretation: that in the event of a dispute, that dispute will be tried to a court sitting without a jury *unless* any party properly requests arbitration. WBL also maintains that even if there is an ambiguity in the Loan Documents, under the FAA, it must be resolved in favor of arbitration.

¶23 Although the Arbitration Provisions in isolation may be reasonably clear, the ambiguity arises when the permissive nature of the Arbitration Provisions is construed in conjunction with another dispute resolution provision providing that trials will be nonjury only. Looking at the Guaranty, the Arbitration Provision states the parties "*may* choose to arbitrate . . . ." (Emphasis added.) As Bluebird argues, this permissive language, which is buried in the fine print of the contract itself, is inconsistent with the bold, capitalized Jury Waiver provision positioned on a separate page of the Guaranty and requiring a signature specific to its provision. Moreover, this is the second time within the Guaranty that the debtor is advised, through capitalized print, that the debtor has waived trial by jury. The Jury Waiver states the Guarantor waives a trial by jury in any action and consents that "ANY SUCH ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM SHALL BE DECIDED BY TRIAL TO THE COURT WITHOUT A JURY." (Emphasis in original.) Hence, the jury trial waiver mandates that disputes between the parties must be resolved through a bench trial and is thus misleading and in direct conflict with the Arbitration

Provisions that are permissive in nature but also is a method for resolving disputes. It is not clear that arbitration takes priority over a bench trial and that a lender could prevent a trial before a judge by selecting arbitration as the method of dispute resolution. Because these two interpretations are both reasonable but conflicting, an ambiguity exists as to the meaning of the Arbitration Provisions.

¶24 The same conflict is emblematic of the Agreement, except that the jury waiver is not set forth twice; it is capitalized, but not in bold print; and does not require a signature specific to its provisions on a specially designated page. Nonetheless, the loan documents must be construed consistently together. *Great W. Oil Co. v. Lewistown Oil & Ref. Co.*, 91 Mont. 146, 155, 6 P.2d 863, 866 (1932) (citations omitted); § 28-3-203 MCA ("Several contracts relating to the same matters, between the same parties, and made as parts of substantially one transaction are to be taken together.") Again, the debtor is told that disputes must be resolved by a judge without a jury, while also being told disputes *may* be resolved through arbitration. WBL argues that the only "reasonable meaning" is that the dispute will be tried without a jury unless any party requests arbitration. This language, however, is not contained within the Loan Documents which unequivocally mandate that disputes be resolved by a judge and permissively allow arbitration.

¶25 Because the text of the Guaranty alone cannot eliminate the ambiguities, the District Court correctly moved forward in Montana's hierarchy of contractual principles to determine the parties' intent through looking to outside evidence. The District Court incorrectly utilized, though, the subjective evidence of Bluebird's declaration to determine their intent, and lack of awareness of the Arbitration Provisions. As explained above,

subjective evidence of what a party intended in hindsight is not appropriate extrinsic evidence to consider in determining whether there was mutual assent.

¶26 The conflicting language across the provisions of the Loan Documents alongside the drafters selectively making the choice of law provisions and the jury trial waiver language conspicuous, without the same attempt to draw the debtor's attention to the Arbitration Agreement, is sufficient evidence for the District Court to have determined that the Loan Documents were ambiguous and that there was not mutual assent by Bluebird to arbitrate their dispute. As the District Court noted, the result was confusion and obfuscation over the choice between a nonjury trial or arbitration. While the Loan Documents strongly suggest that what the debtor is waiving is a right to jury, what they are really waiving is right to trial altogether. We agree with the District Court that the mandatory "non-jury trial" provisions in the Loan Documents are false because there is no non-jury trial if the Lender elects to proceed with arbitration, and the mandatory non-jury trial language makes no reference to the arbitration provisions. This Court has refused to enforce arbitration provisions when they conflict with other provisions in the same contract, concluding that there was no mutual assent between the parties as to the arbitration provisions. *See Riehl* ¶¶ 26-30. Consistent with Montana precedent, the ambiguity must be resolved in favor of the non-drafting party's interpretation, interpreting the Loan Documents to default to a bench trial. *Lewis & Clark Cnty. v. Wirth*, 2022 MT 105, ¶ 19, 409 Mont. 1, 510 P.3d 1206 (citations omitted); AWIN *Real Estate*, ¶ 13 (citations omitted). Lastly, that Bluebird received an opinion letter from an attorney does

not render the terms of the Loan Documents unambiguous. The Loan Documents speak for themselves.

CONCLUSION

¶27 The District Court did not err in denying WBL's motion to dismiss Bluebird's complaint and compel arbitration. A review of the filings and record shows the Loan Documents were ambiguous. It was not clearly erroneous for the District Court to make such a finding and resolve the ambiguity in favor of Bluebird. As a result, the Arbitration Provisions are unenforceable as the ambiguity in the Loan Documents prevented Bluebird from consenting knowingly, voluntarily, and intelligently under the totality of circumstances to a waiver of their fundamental Montana constitutional right.

¶28 Affirmed.

/S/ LAURIE McKINNON

We Concur:

/S/ JAMES JEREMIAH SHEA
/S/ KATHERINE M. BIDEGARAY
/S/ BETH BAKER
/S/ INGRID GUSTAFSON