

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed  
Dec 26 2017 08:16 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

INDICATE FULL CAPTION:

U.S. Bank National Association

Appellant

v.

Resources Group, LLC

Respondent

No. 74575

DOCKETING STATEMENT  
CIVIL APPEALS

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Department 16  
County Clark Judge Timothy Williams  
District Ct. Case No. A-12-667690-C

**2. Attorney filing this docketing statement:**

Attorney Thomas Beckom Telephone 702-685-0329

Firm McCarthy Holthus LLP

Address 9510 West Sahara Ave. Suite 200  
Las Vegas, NV 89117

Client(s) U.S. Bank N.A.

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

**3. Attorney(s) representing respondents(s):**

Attorney Richard Vilkin Telephone 702-476-3211

Firm Geisendor & Vilkin

Address 1286 Crimson Sage Ave.  
Henderson, Nevada 89012

Client(s) Resources Group LLC

Attorney \_\_\_\_\_ Telephone \_\_\_\_\_

Firm \_\_\_\_\_

Address \_\_\_\_\_

Client(s) \_\_\_\_\_

(List additional counsel on separate sheet if necessary)

**4. Nature of disposition below (check all that apply):**

- |  |   |
|--|---|
| <input checked="" type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal:                                     |
| <input type="checkbox"/> Judgment after jury verdict           | <input type="checkbox"/> Lack of jurisdiction                           |
| <input type="checkbox"/> Summary judgment                      | <input type="checkbox"/> Failure to state a claim                       |
| <input type="checkbox"/> Default judgment                      | <input type="checkbox"/> Failure to prosecute                           |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief     | <input type="checkbox"/> Other (specify): _____                         |
| <input type="checkbox"/> Grant/Denial of injunction            | <input type="checkbox"/> Divorce Decree: _____                          |
| <input type="checkbox"/> Grant/Denial of declaratory relief    | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination        | <input type="checkbox"/> Other disposition (specify): _____             |

**5. Does this appeal raise issues concerning any of the following?**

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

**6. Pending and prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

The Appellant is unaware of any pending or prior Nevada Supreme Court cases relating to this instant matter.

**7. Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

Bankruptcy Case No. In re Bourne Valley Court Trust 12-16387-BTB

This Bankruptcy was dismissed on December 4, 2012 by order of the Bankruptcy Court.

**8. Nature of the action.** Briefly describe the nature of the action and the result below:

This action involves a judicial foreclosure as well as a related Quiet Title Action stemming from a foreclosure by a Homeowners Association under NRS 116.3116 et seq.

**9. Issues on appeal.** State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

1. Did the District Court err when it determined that the Notice of Default filed by the Homeowners Association in this instance did not need to be mailed to U.S. Bank, N.A. the beneficiary under the Deed of Trust?
2. Did the District Court abuse their discretion when it determined that mailing to U.S. Recordings, an unrelated title company, was sufficient for due process purposes when U.S. Bank had listed a separate mailing address on their Deed of Trust?
3. Did the District Court err when it determined that there was no fraud, unfairness, or oppression in this sale despite the undisputed fact that (1) U.S. Bank did not receive the Notice of Default, (2) the collection agent for the HOA was also the attorney for the purchaser, and (3) the purchase price was "obviously inadequate"?
4. Did the District Court err in failing to Grant Judgment under Nevada's Uniform Fraudulent Transfer Act?

**10. Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

There are numerous HOA related cases, although U.S. Bank is unaware of any case involving a finding that there is no need to mail a Notice of Default to a Deed of Trust beneficiary.



**11. Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

**12. Other issues.** Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☒ A substantial issue of first impression

☒ An issue of public policy

☒ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain:

**13. Assignment to the Court of Appeals or retention in the Supreme Court.** Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This matter involves a foreclosure by a homeowners association and the trial court ruled that the foreclosure wiped out U.S. Bank's Deed of Trust. Of particular significance is the finding of the Trial Court that the Notice of Default by the Homeowners Association did not need to be mailed to U.S. Bank and the Notice of Default was in fact not mailed to U.S. Bank. Under NRAP 17(b) this does not appear to be presumptively assigned to the Court of Appeals. In addition there appears to be an inconsistency (potentially) in that the 9th Circuit Court of Appeals relied on the lack of required notice to a beneficiary of a Deed of Trust in this manner when they ruled that the foreclosure statute was unconstitutional in *Bourne Valley Court Tr. v. Wells Fargo Bank N.A.* 832 F.3d 1154 (9th Cir. 2016).

**14. Trial.** If this action proceeded to trial, how many days did the trial last? 2

Was it a bench or jury trial? Bench

**15. Judicial Disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?  
U.S. Bank has no intention to file such a motion.

## TIMELINESS OF NOTICE OF APPEAL

**16. Date of entry of written judgment or order appealed from** November 1, 2017

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review: .

**17. Date written notice of entry of judgment or order was served** November 1, 2017

Was service by:

☐ Delivery

☒ Mail/electronic/fax

**18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCp 50(b), 52(b), or 59)**

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCp 50(b)      Date of filing NA

☐ NRCp 52(b)      Date of filing NA

☐ NRCp 59      Date of filing NA

NOTE: Motions made pursuant to NRCp 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. \_\_\_, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion NA

(c) Date written notice of entry of order resolving tolling motion was served NA

Was service by:

☐ Delivery

☐ Mail

**19. Date notice of appeal filed** November 22, 2017

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:  
NA

**20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other**

NRAP 4(a)

### **SUBSTANTIVE APPEALABILITY**

**21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:**

(a)

☒ NRAP 3A(b)(1)

☐ NRS 38.205

☐ NRAP 3A(b)(2)

☐ NRS 233B.150

☐ NRAP 3A(b)(3)

☐ NRS 703.376

☐ Other (specify) \_\_\_\_\_

(b) Explain how each authority provides a basis for appeal from the judgment or order:

U.S. Bank lost their security interest due to an order from a Bench Trial. This order was certified as final pursuant to NRCP 54(b) and as such provides jurisdiction to this Court.

**22. List all parties involved in the action or consolidated actions in the district court:**

(a) Parties:

U.S. Bank N.A.; George R. Edwards, Any and All Persons Unknown claiming to Be Personal Representatives of George R. Edwards Estate or Duly Appoint Qualified and Acting Executor of the Will of the Estate of George R. Edwards, Resources Group, LLC; Glenview West Townhomes Association

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, e.g., formally dismissed, not served, or other:

No one appeared in this action other than U.S. Bank and Resources Group. Glenview West Townhomes Association did appear at some point however at that time they were defaulted and had been defaulted for several years.

**23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.**

U.S. Bank- Judicial Foreclosure  
Resources Group- Quiet Title and Declaratory Relief

All Claims were disposed of by the November 1, 2017 order from the bench trial.

**24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?**

☒ Yes

☐ No

**25. If you answered "No" to question 24, complete the following:**

(a) Specify the claims remaining pending below:



(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☒ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☒ Yes

☐ No

**26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):**

**27. Attach file-stamped copies of the following documents:**

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order


### VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

U.S. Bank N.A.  
Name of appellant

Thomas Beckom, Esq  
Name of counsel of record

12/22/2017  
Date

  
Signature of counsel of record

Clark County, Nevada  
State and county where signed

### CERTIFICATE OF SERVICE

I certify that on the 22nd day of December, 2017, I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Richard J. Vilkin, Esq  
1286 Crimson Sage Ave  
Henderson, NV 89012

Dated this 22nd day of December, 2017

  
Signature

## CIVIL COVER SHEET

A-12-667690-C

Clark County, Nevada

Case No. \_\_\_\_\_

XVIII

(Assigned by Clerk's Office)

**I. Party Information***Plaintiff(s) (name/address/phone):*U.S. BANK NATIONAL ASSOCIATION, ND,  
a national association,*Attorney (name/address/phone):*LAW OFFICES OF LES ZIEVE  
Grace M. Kim, Esq. (NV Bar 9268)  
Benjamin D. Petiprin, Esq. (NV Bar 11681)  
3753 Howard Hughes Parkway, Suite 200  
Las Vegas, Nevada 89169  
Tel: (702) 948-856 Fax: (702) 446-9898*Defendant(s) (name/address/phone):*GEORGE R. EDWARDS, an individual; LAURA B. FITZPATRICK, tax receiver  
and treasurer of the COUNTY OF CLARK, STATE OF NEVADA; REPUBLIC  
SILVER STATE DISPOSAL, INC. dba REPUBLIC SERVICES, a Nevada  
corporation; DOES 1 through 10, inclusive, and DOES 1 through 10, inclusive,*Attorney (name/address/phone):***II. Nature of Controversy** (Please check applicable bold category and  
applicable subcategory, if appropriate)☐ Arbitration Requested**Civil Cases**

Real Property	Torts	
<input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input checked="" type="checkbox"/> Title to Property <input checked="" type="checkbox"/> Foreclosure <input type="checkbox"/> Liens <input type="checkbox"/> Quiet Title <input type="checkbox"/> Specific Performance <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property <input type="checkbox"/> Partition <input type="checkbox"/> Planning/Zoning	<b>Negligence</b> <input type="checkbox"/> Negligence -- Auto <input type="checkbox"/> Negligence -- Medical/Dental <input type="checkbox"/> Negligence -- Premises Liability (Slip/Fall) <input type="checkbox"/> Negligence -- Other	<input type="checkbox"/> Product Liability <input type="checkbox"/> Product Liability/Motor Vehicle <input type="checkbox"/> Other Torts/Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Torts/Defamation (Libel/Slander) <input type="checkbox"/> Interfere with Contract Rights <input type="checkbox"/> Employment Torts (Wrongful termination) <input type="checkbox"/> Other Torts <input type="checkbox"/> Anti-trust <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Insurance <input type="checkbox"/> Legal Tort <input type="checkbox"/> Unfair Competition
<b>Probate</b> Estimated Estate Value: _____ <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside Estates <input type="checkbox"/> Trust/Conservatorships <input type="checkbox"/> Individual Trustee <input type="checkbox"/> Corporate Trustee <input type="checkbox"/> Other Probate	<b>Other Civil Filing Types</b> <input type="checkbox"/> Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> General <input type="checkbox"/> Breach of Contract <input type="checkbox"/> Building & Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Other Contracts/Acct/Judgment <input type="checkbox"/> Collection of Actions <input type="checkbox"/> Employment Contract <input type="checkbox"/> Guarantee <input type="checkbox"/> Sale Contract <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Civil Petition for Judicial Review <input type="checkbox"/> Foreclosure Mediation <input type="checkbox"/> Other Administrative Law <input type="checkbox"/> Department of Motor Vehicles <input type="checkbox"/> Worker's Compensation Appeal	
	<input type="checkbox"/> Appeal from Lower Court (also check applicable civil case box) <input type="checkbox"/> Transfer from Justice Court <input type="checkbox"/> Justice Court Civil Appeal <input type="checkbox"/> Civil Writ <input type="checkbox"/> Other Special Proceeding <input type="checkbox"/> Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Conversion of Property <input type="checkbox"/> Damage to Property <input type="checkbox"/> Employment Security <input type="checkbox"/> Enforcement of Judgment <input type="checkbox"/> Foreign Judgment -- Civil <input type="checkbox"/> Other Personal Property <input type="checkbox"/> Recovery of Property <input type="checkbox"/> Stockholder Suit <input type="checkbox"/> Other Civil Matters	

**III. Business Court Requested** (Please check applicable category; for Clark or Washoe Counties only.)

- |   |  |   |
|---|--|---|
| <input type="checkbox"/> NRS Chapters 78-88   | <input type="checkbox"/> Investments (NRS 104 Art. 8)        | <input type="checkbox"/> Enhanced Case Mgmt/Business  |
| <input type="checkbox"/> Commodities (NRS 90) | <input type="checkbox"/> Deceptive Trade Practices (NRS 598) | <input type="checkbox"/> Other Business Court Matters |
| <input type="checkbox"/> Securities (NRS 90)  | <input type="checkbox"/> Trademarks (NRS 600A)               |   |

August 30, 2012  
Date/s/ Benjamin D. Petiprin  
Signature of initiating party or representative

**COMP**

LAW OFFICES OF LES ZIEVE

Grace M. Kim, Esq. (NV Bar 9268).

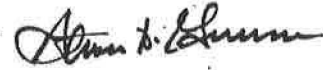
Benjamin D. Petiprin, Esq. (NV Bar 11681)

3753 Howard Hughes Parkway, Suite 200.

Las Vegas, Nevada 89169

Tel: (702) 948-8565

Fax: (702) 446-9898



CLERK OF THE COURT

Attorneys for plaintiff U.S. Bank National Association, ND

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

U.S. BANK NATIONAL ASSOCIATION ND,  
a national association,

Plaintiff,

vs.

GEORGE R. EDWARDS, an individual;  
LAURA B. FITZPATRICK, tax receiver and  
treasurer of the COUNTY OF CLARK,  
STATE OF NEVADA; REPUBLIC SILVER  
STATE DISPOSAL, INC. dba REPUBLIC  
SERVICES, a Nevada corporation; DOES 1  
through 10, inclusive, and ROES 1 through 10,  
inclusive.

Defendants.

**CASE NO.:** A-12-667690-C

**DEPT. NO.:** XVIII

**COMPLAINT FOR JUDICIAL  
FORECLOSURE OF DEED OF TRUST**

*Exempt from Arbitration  
Action Involves Real Property*

COMES NOW Plaintiff, U.S. Bank National Association, ND, a national association  
("Plaintiff"), and alleges as follows:

1. Plaintiff is, and at all times herein mentioned, a national association duly  
authorized to transact business in the State of Nevada.

2. This action concerns real property located in the City of Las Vegas, County of  
Clark, State of Nevada, and is legally described as set forth in **Exhibit "1"** attached hereto, and



1 incorporated herein by this reference. The property is commonly known as: 4254 Rollingstone  
2 Drive, Las Vegas, NV 89103 (the "Subject Property"), Clark County Assessor's Parcel Number  
3 163-24-111-021.

4 3. Plaintiff is informed and believes that George R. Edwards ("Borrower") is an  
5 individual, residing in the City of Fontana, County of San Bernardino, State of California and is  
6 the record owner of the Subject Property. The Borrower has a present ownership interest in or to  
7 the Subject Property.

8 4. Plaintiff is informed and believes that Laura B. Fitzpatrick is tax receiver and  
9 treasurer of the County of Clark, State of Nevada ("Clark County Treasurer") and has an interest  
10 in the Subject Property or some part of it by reason of a tax lien, which interest is subsequent to  
11 and subject to that of Plaintiff.

12 5. Plaintiff is informed and believes that Republic Silver State Disposal, Inc. dba  
13 Republic Services ("Republic") is a Nevada corporation, and has an interest in the Subject  
14 Property or some part of it by reason of a service lien, which interest is subsequent to and subject  
15 to that of Plaintiff.

16 6. Plaintiff is ignorant of the true names and capacities of individual defendants sued  
17 herein as DOES 1 through 10, inclusive, and corporations, partnerships or other business entities  
18 sued herein as ROES 1 through 10, inclusive, and therefore sues these defendants by such  
19 fictitious names. Plaintiff is informed and believes that defendants named herein as DOES 1  
20 through 10 and ROES 1 through 10 have, or may claim to have, some right, title or interest in  
21 and to the Subject Property, the exact nature of which is unknown to Plaintiff and Plaintiff will  
22 seek leave to amend this complaint ("Complaint") to allege their true names and capacities when  
23 and as ascertained, and will further ask leave to join said defendants in these proceedings.

24 7. On June 11, 2004, defendant Clark County Treasurer recorded a Treasurer's  
25 Certificate for Holding Delinquent Real Property Parcels ("Tax Lien") for delinquent taxes for  
26  
27  
28



1 the fiscal year of 2003-2004 in the amount of \$6.92 in book number 20040611 as instrument  
2 number 0000916 in the Official Records of the Clark County Recorder's Office ("Official  
3 Records"). A true and correct copy of the Tax Lien is attached hereto, marked as **Exhibit "2"**  
4 and incorporated herein by this reference.

5 8. On or about March 3, 2009, for valuable consideration, the Borrower made,  
6 executed and delivered to Plaintiff that certain U.S. Bank Equine Agreement dated March 3,  
7 2009 (the "Note") evidencing a loan to the Borrower in the original principal amount of  
8 \$50,000.00 ("Loan"). A true and correct copy of the Note is attached hereto, marked as **Exhibit**  
9 **"3"** and incorporated herein by this reference.

10 9. To secure payment of the principal sum and interest provided in the Note, as part  
11 of the same transaction, Borrower executed and delivered to Plaintiff, as beneficiary, a Deed of  
12 Trust (With Future Advance Clause) (hereinafter the "Deed of Trust") dated March 3, 2009. A  
13 true and correct copy of the Deed of Trust is attached hereto, marked as **Exhibit "4"** and  
14 incorporated herein by this reference. The Deed of Trust was recorded in book number  
15 20090326 as instrument number 0003747 in the Official Records on March 26, 2009.

16 10. On Septemeber 17, 2010, defendant Republic recorded a Notice of Claim of Lien  
17 for Solid Waste Service ("Service Lien") for the amount of \$159.73 in book number 20100917  
18 as instrument number 0001706 of the Official Records. On April 8, 2011, defendant Republic  
19 recorded a Notice of Claim of Lien for Solid Waste Service ("Service Lien 2") for the amount of  
20 \$85.14 in book number 20110408 as instrument number 0002551 of the Official Records. On  
21 December 19, 2011, defendant Republic recorded a Notice of Claim of Lien for Solid Waste  
22 Service ("Service Lien 3") for the amount of \$128.61 in book number 20111219 as instrument  
23 number 0000447 of the Official Records. True and correct copies of the Service Lien, Service  
24 Lien 2 and Service Lien 3 are attached hereto as **Exhibit "5"** and incorporated herein by this  
25 reference.  
26  
27  
28

1           11. Plaintiff is informed and believes, that on November 2, 2011, a default occurred  
2 under the terms of the Note, in that the Borrower failed to make the regular monthly installment  
3 payment due on that date and all subsequent payments in the approximate amount of \$201.09.

4           12. The subject Note provides that, if the payor defaults in payment of any installment  
5 when due, or in the performance of any agreement in the subject Deed of Trust securing payment  
6 of the subject Note, the entire principal and interest will become immediately due and payable at  
7 the option of the noteholder. The subject Deed of Trust provides that, if the trustor defaults in  
8 paying any indebtedness secured by the subject Deed of Trust, or in the performance of any  
9 agreement in the subject Note or Deed of Trust, the entire principal and interest secured by the  
10 subject Deed of Trust will, at the option of the beneficiary, become immediately due and  
11 payable.  
12

13           13. The Deed of Trust further provides that in the event of a default, the lender may  
14 invoke the power of sale and after the required notices and time frames, sell the Subject Property  
15 at a public auction.

16           14. By the terms of the subject Note, the Borrower promised and agreed to pay to  
17 Plaintiff monthly installments of \$201.09, principal and interest, beginning March 3, 2009. The  
18 Borrower has wholly failed, neglected and refused to pay the installment that was due on  
19 November 2, 2011 and the subsequent months, up to and including the date of this Complaint.  
20 The total of the monthly payments in default including interest is approximately \$1,692.43. For  
21 such failure and default under the subject Note and Deed of Trust, Plaintiff has elected to declare  
22 the entire remaining sum of principal and interest immediately due and payable. Additional  
23 interest will accrue at the rate of \$6.48 per day for each additional day from November 2, 2011 to  
24 the date of entry of judgment in this action.  
25

26           15. By terms of the subject Deed of Trust, the Borrower agreed to pay before  
27 delinquency all general and special city and county taxes affecting the Subject Property.  
28

1 Borrower failed and refused to pay the general and special taxes for the fiscal year of July 1,  
2 2011 through June 30, 2012. The total amount of taxes now in default and delinquent is \$868.13,  
3 which is the total amount necessary to redeem as of the date on which this Complaint is filed.

4 16. Plaintiff may hereafter be required to expend additional sums to protect its  
5 security in the Subject Property. In the subject Deed of Trust, the Borrower agreed to pay any  
6 sums expended by Plaintiff. Plaintiff will amend this Complaint to allege the nature and  
7 amounts of such sums if Plaintiff is required to make the additional expenditures.

8  
9 17. Under the subject Note and Deed of Trust, the Borrower, agreed that, if any action  
10 were instituted on the Note or Deed of Trust, he, as defendant, would pay the sum fixed by the  
11 Court as Plaintiff's attorneys' fees and that these charges would also become a lien against the  
12 Subject Property. Because of the above-described defaults, it has become necessary for Plaintiff  
13 to employ an attorney to commence and prosecute this foreclosure action. The reasonable value  
14 of services of counsel in this action shall be proved at or after trial in this action.

#### 15 FIRST CAUSE OF ACTION

#### 16 (For Judicial Foreclosure of Deed of Trust, Against all Defendants)

17 18. Plaintiff realleges and incorporates herein by reference each and every allegation  
18 set forth in Paragraphs 1 through 17 of the Complaint as though set forth in full.

19 19. Despite Plaintiff's demands for payment under the Note and Deed of Trust,  
20 Borrower has failed and refused to pay Plaintiff its indebtedness due, and Borrower is now in  
21 default under the Note and Deed of Trust.

22 20. As a result of the default under the Note as secured by the Deed of Trust, Plaintiff  
23 seeks to exercise its right under the Deed of Trust to foreclose on the Subject Property. And  
24 Plaintiff seeks a Judgment of this Court foreclosing said Deed of Trust with the Court to award  
25 Judgment for any deficiency which may remain after applying all proceeds of the sale of the  
26 Subject Property applicable to the Judgment procured hereunder. The filing of this action does  
27  
28



1 not constitute a waiver of Plaintiff's right to proceed with a non-judicial foreclosure if it so  
2 elects.

3 21. The Note and Deed of Trust provide that in the event of default thereunder by the  
4 Borrowers, Plaintiff is entitled to recover its costs, including reasonable attorneys' fees, incurred  
5 in enforcement thereof. Plaintiff has employed Benjamin D. Petiprin of the Law Offices of Les  
6 Zieve, licensed and practicing attorney in the State of Nevada, for the purpose of instituting and  
7 prosecuting the within action. Attorneys' fees have been, and continue to be incurred in an  
8 amount to be proven at trial.  
9

10 22. As a result of Borrower's default and breach, Plaintiff has been damaged in the  
11 amount of the principal balance of the loan, accrued interest, late charges, advances, expenses  
12 and attorneys' fees and costs which remain due under the Note and Deed of Trust.

13 WHEREFORE, Plaintiff prays for relief as follows:  
14

15 **As to the First Cause of Action**

16 1. That the Court enter a money judgment against Borrower defendant *only*:

17 a. The sum of \$49,982.72 principal, together with interest as allowed at the  
18 Note rate currently at 4.75% from November 2, 2011, to the date of judgment, according to  
19 proof;

20 b. The additional sum of \$868.13 for special and general taxes for the fiscal  
21 year July 1, 2011 through June 30, 2012;

22 c. Costs of this action and reasonable attorneys' fees;

23 d. Additional sums, if any, that Plaintiff hereafter expends to protect its  
24 interest in the Subject Property, together with interest, according to proof.

25 2. That the Court adjudge the rights, claims, ownership, liens, titles and demands of  
26 defendants are subject, subordinate and subsequent to Plaintiff's Deed of Trust;

27 3. That the Court order, adjudge, and decree that the Subject Deed of Trust be  
28

1 foreclosed and that the usual Judgment be made for the sale of the Subject Property, according to  
2 law, by the Sheriff of the County of Clark, or by a levying officer to be appointed by the Court;  
3 that the proceeds of the sale be applied in payment of the amounts due to Plaintiff; that  
4 defendants and all persons claiming under them subsequent to the execution of said Deed of  
5 Trust, either as lien claimants, judgment creditors, claimants under a junior trust deed,  
6 purchasers, encumbrances and otherwise, be barred and foreclosed from all rights, claims,  
7 interest or equity of redemption of the Subject Property and every part of the Subject Property  
8 when the time for redemption has lapsed;

9 4. That the Court award Plaintiff judgment and execution against Borrower  
10 defendant *only* for any deficiency that may remain after applying all proceeds of the sale of the  
11 Subject Property duly applicable to satisfy the amounts by the Court under paragraph 1 of this  
12 demand for judgment;

13 5. That the Court permit Plaintiff or any other party to this suit, to become  
14 purchasers at the foreclosure sale; that when the time for redemption has lapsed, the levying  
15 officer or Sheriff, as the case may be, shall execute a deed to the purchaser of the Subject  
16 Property at the sale; and that the purchaser be given possession of the Subject Property upon  
17 production of the levying officer's or Sheriff's Deed;

18 6. For attorneys' fees according to proof in an amount the Court deems reasonable;

19 7. That the Court award all other appropriate and just relief.

20 8. For costs of suit incurred herein; and

21 9. For such other and further relief as the Court may deem just and proper.

22 DATED: August 30, 2012

LAW OFFICES OF LES ZIEVE

23  
24 By: /s/ Benjamin D. Petiprin  
25 Grace M. Kim, Esq.  
26 Benjamin D. Petiprin, Esq.  
27 Attorneys for Plaintiff  
28 U.S. Bank National Association, ND



## EXHIBIT 1

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## EXHIBIT 1

**LEGAL DESCRIPTION**

LOT NINETEEN (19) OF GLENVIEW WEST TOWNHOME, AS SHOWN BY MAP  
THEREOF ON FILE IN BOOK 30 OF PLATS, PAGE 65, IN THE OFFICE OF THE COUNTY  
RECORDER OF CLARK COUNTY, NEVADA.

## EXHIBIT 2

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## EXHIBIT 2

APN: 163-23-112-006

Page 1091 thru 1100 of Annual Treasurer's Certificate.

When Recorded Mail To:

Clark County Treasurer  
500 S. Grand Central Parkway  
Las Vegas NV 89106

20040611-0000916  
Fee \$0.00  
06/11/2004 08:01:18 T20040037863  
Rev CC TREASURER  
Frandes Deans  
Clark County Recorder '99 '02

**OFFICE OF THE TREASURER AND EX-OFFICIO  
TAX RECEIVER OF CLARK COUNTY,  
STATE OF NEVADA**

**TREASURER'S CERTIFICATE FOR HOLDING  
DELINQUENT REAL PROPERTY PARCELS**

**DELINQUENT TAXES FOR THE FISCAL YEAR 2003-2004**

I, Laura B. Fitzpatrick, the Ex-Officio Tax Receiver of the County of Clark, State of Nevada, pursuant to Nevada Revised Statutes (NRS) 361.570, do hereby issue to Laura B. Fitzpatrick, the Treasurer of Clark County, as Trustee for the State and County, a certificate for each of the real properties described in Exhibit "A" attached hereto and by this reference made a part hereof.

A certificate is issued for each property on which all or a portion of the real property taxes levied for the current fiscal year 2003-2004 had not been paid by 5 p.m. on the first Monday in June, i.e. the 7<sup>th</sup> day of June 2004. The certificate authorizes the County Treasurer to hold the property for the period of two (2) years after the first Monday in June of the year the certificate is dated, unless sooner redeemed by payment of the taxes and accruing taxes, penalties and costs, together with interest on the taxes at the rate of ten percent (10%) per annum from the date due until paid.

The title to each property not redeemed by the expiration of the period of redemption will vest in the County for the benefit of the State and County.

Parcel	Owner Name Legal Description	Tax Amount	Penalty Amount	Cost	Interest Amount	Total Amount
163-23-712-071	OJEDA EDUARDO GABINO ASSESSOR DESCRIPTION: FIRST NEVADA UNIT #2 PLAT BOOK 16 PAGE 19 LOT 11 BLOCK 9 GEOID: PT NE4 SE4 SEC 23 21 60	\$1,081.19	\$162.18	\$7.00	\$67.57	\$1,317.94
163-23-801-008	WESTERN TRUST 1901 ASSESSOR DESCRIPTION: PARCEL MAP FILE 64 PAGE 32 LOT 2 GEOID: PT SE4 SE4 SEC 23 21 60	\$2,154.08	\$323.13	\$7.00	\$134.63	\$2,618.84
163-24-111-021	EDWARDS GEORGE R TRUST ASSESSOR DESCRIPTION: GLENVIEW WEST TWNHS PLAT BOOK 30 PAGE 65 LOT 19 GEOID: PT NE4 NW4 SEC 24 21 60	\$6.92	\$0.26	\$7.00	\$0.23	\$14.43
163-24-111-039	SALMI ROBERT C ASSESSOR DESCRIPTION: GLENVIEW WEST TWNHS PLAT BOOK 30 PAGE 65 LOT 7 GEOID: PT NE4 NW4 SEC 24 21 60	\$6.67	\$0.33	\$0.00	\$0.22	\$7.22
163-24-112-022	LEWIS RAYNA L ASSESSOR DESCRIPTION: CASA MESA 1 CONDO AMD PLAT BOOK 30 PAGE 8 UNIT B BLDG 6 GEOID: PT NE4 NW4 SEC 24 21 60	\$304.40	\$21.31	\$7.00	\$12.68	\$345.39
163-24-112-040	IZAKELLIAN VATCHIE & OVSANNA A ASSESSOR DESCRIPTION: CASA MESA 1 CONDO AMD PLAT BOOK 30 PAGE 8 UNIT D BLDG 10 GEOID: PT NE4 NW4 SEC 24 21 60	\$310.56	\$21.73	\$7.00	\$12.94	\$352.23
163-24-112-172	WILSON SHIRLEY J & SHIRLEY ASSESSOR DESCRIPTION: CASA MESA 1 CONDO AMD PLAT BOOK 30 PAGE 8 UNIT D BLDG 43 GEOID: PT NE4 NW4 SEC 24 21 60	\$315.38	\$22.07	\$7.00	\$13.14	\$357.59
163-24-113-112	4250 S JONES L L C ASSESSOR DESCRIPTION: RITZ 1 PLAT BOOK 63 PAGE 27 UNIT 256 BLDG 12 GEOID: PT N2 NW4 SEC 24 21 60	\$151.79	\$7.81	\$7.00	\$5.15	\$171.75

Run: 6/8/2004 4:44:59 PM

NV2335 (clark\_prod1)

Page 1009



APN: 163-23-112-006

If the property is not redeemed, title will vest in the County for benefit of the State and County.

Given under my hand this 10<sup>th</sup> day of June 2004.

CLARK COUNTY, NEVADA

CLARK COUNTY, NEVADA

  
LAURA B. FITZPATRICK, Treasurer  
Ex-Officio Tax Receiver

  
KATHERINE A. HARTIG  
Assistant Treasurer

STATE OF NEVADA)

SS.

COUNTY OF CLARK)

This instrument was acknowledged before me on the 10<sup>th</sup> day of June 2004 by LAURA B. FITZPATRICK as County Treasurer of Clark County, Nevada or Katherine A. Hartig, Assistant Treasurer of Clark County, Nevada.

Witness my hand and official seal.

  
Cheryl L. Thecnick  
Notary Public



## EXHIBIT 3

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## EXHIBIT 3

GEORGE A. EDWARDS  
 4154 HOL LINGSTONE DR  
 LAS VEGAS NV  
 89103-0000

U.S. Bank National Association ND

**Borrower's Name and Address**  
 "You" means each borrower above, jointly and severally.

**Lender's Name**  
 "We" or "us" means the lender named above.

Account # 3000706195	Draw Period 15 years	Maturity Date 03/02/2034
Date 03/03/2009	Repayment Period 10 years	Billing Cycle monthly
Trans. Acct. #		Payment Date 2nd
Line of Credit \$ 50,000.00		of every month

#### U.S. BANK EQUILINE AGREEMENT

**GENERALLY:** This is an agreement about your home equity line of credit. Many of the terms we use in this agreement have special meanings. The term "**Loan Account Balance**" means the sum of the unpaid principal of loans made under this plan, plus unpaid but earned finance charges, plus any credit insurance premiums that are due. "**Transaction Account**" means a deposit account you carry with U.S. Bank, N.A. The number of this account is listed near the top of the form on the line labeled "Trans. Acct. #." "**Line of Credit**" means the maximum amount of principal we will ordinarily allow you to owe us under this plan at any time.

In addition, we will use the following terms for this home equity plan: "**Draw Period**" is the time during the plan that you may request advances and will make payments on your loan account balance. The "**Repayment Period**" is the time during the plan that you must repay your loan account balance but cannot get further advances. Except where otherwise indicated, the disclosures contained in this agreement apply to both the draw and repayment periods.

If any term of this agreement violates any law or for some other reason is not enforceable, that term will not be part of this agreement.

**TAX DEDUCTIBILITY:** We make home equity "EQUILINE" loans where the line of credit ceiling can be (when combined with other liens) up to 100% of the value of the property. We want to make sure you are aware that interest may not be deductible to the extent (for that portion of your indebtedness) that the residence does not adequately secure the loan. This is true when (and to the extent) total liens on the property exceed its fair market value. You should consult a tax advisor regarding the deductibility of interest and charges under this home equity plan.

**REQUESTING A LOAN:** You request a loan under this plan whenever you:

- Write a check using one of the special checks you have for that purpose.
- Use the VISA® credit card we supply you to make purchases or receive cash loan advances.
- You may also choose to attach this Line of Credit to your Transaction Account with our affiliate U.S. Bank, N.A. If you "overdraw" the Transaction Account, by any method allowed for withdrawal from that account, you will get an advance on this Line of Credit, up to your credit limit. (If you attach this Line of Credit to your Transaction Account, when you "overdraw" the deposit account and an advance can be made from your Line of Credit, you will not be charged an overdraft charge on your Transaction Account if you have not thereby exceeded your credit limit under this plan. If you elect this feature, then the Transaction Account to which this Line of Credit is attached will be listed above on the line labeled "Trans. Acct. #".)

However, we will not ordinarily grant any request for a loan which would cause the unpaid principal of your loan account balance to be greater than the Line of Credit listed in this agreement. We may, at our option, grant such a request without obligating ourselves to do so in the future.

**TRANSACTION LIMITATIONS:** There are a few "indirect" limitations on the transactions you can make to this account. These are not limitations on this account, but limitations that are part of an access method. For example, if you attach this account to your transaction account (overdraft protection) and if you have an ATM card or debit card that can access that transaction account, then the electronic funds transfer limitations that are part of your ATM or debit card are "indirect" limits on the number and dollar amount of your access to this account per day by those methods. These are not really limits on the amount or number of advances you can get from this account, but are limits inherent in ATM and debit card transactions. Also, if you attach this account to your deposit account, then advances from this account arising from "overdrafts" will occur, once a day, in multiples of \$100.

**FIXED RATE OPTION:** At any time during the Draw Period you may convert the interest rate and repayment schedule, for up to the amount of the then outstanding credit line balance (not including any previously locked principal balance), subject to the following conditions:

- The Fixed Rate Option period will be for a term that you select, with a maximum term of (a) 20 years or (b) the then remaining term of the draw and repayment period, whichever is less.
- The term cannot be less than 12 months.
- The minimum amount is \$2,000.
- You can have no more than 3 Fixed Rate Options in effect at any one time. The fee for each will be \$50.
- The unpaid principal balance is part of your maximum credit limit, and a principal portion of each payment amount will replenish your credit limit as of the date a payment is posted.
- You cannot add an amount to a Fixed Rate Option after it is established; each is a separate event.

**Rate.** The fixed simple interest rate will be determined by reference to The Wall Street Journal Prime Rate in effect on the date of the Fixed Rate Option plus (or minus) a margin. A new margin is established for the Fixed Rate Option; this margin is not the same as the one used for the variable rate portion of your Line of Credit. You can call us to learn our current rates for Fixed Rate Options.

**Payment.** You have two choices of payment for Fixed Rate Option:

A) Interest-Only payment amounts where each Fixed Rate Option will have its own payment amount equal to the amount of the accrued finance charges outstanding on the last day of the billing cycle. The term is at the discretion of the bank and may be less than 20 years. Under this payment choice the outstanding principal balance of the Fixed Rate Option will not be reduced and the entire principal balance will revert back to the variable portion of the line at the end of the Fixed Rate Option term and be subject to terms and conditions listed in this agreement.

B) Fixed payment amounts where each Fixed Rate Option will have its own payment amount, determined by applying the rate to the amount of the Fixed Rate Option for the term of the Option, and producing equal monthly payments of principal and interest over the term of the Fixed Rate Option.

**Minimum Payment.** Your minimum payment each month will be determined by adding the scheduled Fixed Rate Option payment(s) to the minimum payment amount determined under the "HOW YOU REPAY YOUR LOAN" section of this agreement with respect to the revolving portion of your outstanding balance. You may repay the amount in whole or in part, but any prepayment will not excuse any later scheduled Fixed Rate Option payment until it is paid in full.

**Method.** You can establish a Fixed Rate Option by contacting us. A full disclosure of all terms will be provided to you at the time the Fixed Rate Option is established.

**HOW FINANCE CHARGES ARE COMPUTED:** To calculate the actual daily balance, take the loan account balance at the beginning of the day and subtract any accrued but unpaid finance charges and insurance premiums (if any). Next, add all new loans posted to the account that day and subtract the portion of any payments or credits received that day which apply to the repayment of the loans.

The average daily balance is determined by taking the sum of all the actual daily balances divided by the number of days in the billing cycle.

Finance charges will begin to accrue immediately when a loan is advanced. To calculate the finance charge for a billing cycle, apply the daily periodic rate of finance charge to the average daily balance of the loan account times the number of days in the billing cycle.

If the daily periodic rate varies during the billing cycle, the finance charge will be calculated by applying each daily periodic rate of finance charge to the average daily balance of the loan account times the number of days the rate was in effect. The sum of these products is the finance charge.



**INITIAL RATE:** The initial daily periodic rate of **FINANCE CHARGE** is .01301 %, which corresponds to an **ANNUAL PERCENTAGE**

**RATE** of 4.75000 %. The annual percentage rate includes interest and not other costs.

**Disclosures:** The disclosures of initial daily periodic rate of **FINANCE CHARGE** and **ANNUAL PERCENTAGE RATE** in the previous paragraph, and in the next paragraph, (if it is checked and completed) are based on rates and conditions as of 3/03/2009.

☐ The **INITIAL RATE** above will remain fixed until Beginning on that day, the daily rate and the corresponding annual percentage rate will be the sum of the index and margin, and can change as provided below in the paragraph titled **VARIABLE RATE**. After that day the rates will be subject to further adjustments and limitations, and produce the effects described below.

This initial rate represents a discount from the rate that will apply. If this discount were not in effect, then the daily periodic rate of

**FINANCE CHARGE** would have been %, which would correspond to an **ANNUAL PERCENTAGE RATE** of %.

**VARIABLE RATE:** The annual percentage rate may change, and will be 1.500 ABOVE (This amount is known as the "margin.") the following "base rate": the highest rate on corporate loans at large U.S. money center commercial banks that The Wall Street Journal publishes as the Prime Rate.

If this base rate increases (after any fixed initial rate period, if so provided), the annual percentage rate will increase. An increase will take effect on the day the base rate changes. An increase in the base rate, and an increase in the rate caused by the loss of a preferential rate (such as that made to a customer who arranges for electronic payments) will result in an increase in the finance charge and may have the effect of increasing your minimum monthly payment amount (depending on the payment option you chose and the amount of the increase). A decrease in the base rate will have the opposite effect on your required minimum monthly payment.

The annual percentage rate will not increase more often than once a day. A decrease will have the opposite effect of an increase disclosed above.

The "annual percentage rate" referred to in this section is the annual rate which corresponds to the periodic rate applied to the balance as described above. This corresponding **ANNUAL PERCENTAGE RATE** will never exceed 25%. The annual percentage rate will also never exceed the highest allowable rate for this type of agreement as determined by applicable state or federal law.

The **ANNUAL PERCENTAGE RATE** will never decrease below 3.99 %.

☐ **TERMS:** If checked, terms provided reflect an adjustment to the lowest annual percentage rate available for this loan product. This adjustment reflects a higher rate of interest or finance charge due to information contained in a consumer credit report. We obtained this report from, and you may obtain a free copy of it by contacting:

**REPORTS TO CREDIT BUREAUS:** We may report information about your account to credit bureaus. Late payments, missed payments, or other defaults on your account may be reflected in your credit report.

**HOW YOU REPAY YOUR LOANS - DRAW PERIOD:** In addition to the payment due under your fixed rate option, if any, on or before your payment date during the Draw Period, you agree to make a minimum payment. The minimum payment is:

- (a) ☒ the accrued finance charges and credit insurance premiums (if any) on the last day of the billing cycle.
- (b) ☐ 1% of your account's principal outstanding balance and credit insurance premiums (if any) on the last day of the billing cycle, or \$50.00, or the accrued finance charges and credit insurance premiums (if any), whichever is greater.
- (c) ☐ 2% of your account's principal outstanding balance and credit insurance premiums (if any) on the last day of the billing cycle, or \$50.00, or the accrued finance charges and credit insurance premiums (if any), whichever is greater.

If the interest accrued and credit insurance premiums (if any) on the last day of the billing cycle is greater than your selected payment, you will be billed (or have automatically withdrawn) the greater amount.

All payments due under this agreement will have the same due date.

**PRINCIPAL REDUCTION:** Under option (a) above, during the Draw Period the minimum payment on the revolving portion of the loan will not reduce the principal outstanding on your line. Under both options (b) and (c), during the Draw Period the minimum payment may not fully repay the principal that is outstanding on your line.

**HOW YOU REPAY YOUR LOANS - REPAYMENT PERIOD:** In addition to the payment due under your fixed rate option, if any, on or before each payment date during the repayment period, you agree to make a minimum payment to reduce your debt. The minimum payment amount is the greater of \$100.00, or the amount of the accrued finance charges plus 0.83333% of the principal loan balance on the last day of the Draw Period.

**ADDITIONAL REPAYMENT TERMS:** If your loan account balance on a payment date is less than the minimum payment amount, you must pay only the loan account balance.

You can pay off all or part of what you owe at any time. However, so long as you owe any amount you must continue to make your periodic minimum payment.

The amounts you pay will be applied first to credit insurance premiums that are due (if any), then to any finance charges that are due, then to principal, and finally to any other charges that you owe. If the minimum payment amount is not met, the payment will be applied equally to any principal owed on the locked loan(s) and to the Line of Credit.

**FINAL PAYMENT:** At the end of the repayment period listed in this agreement, you must pay the amount of any remaining loan account balance outstanding. The minimum payments may not be sufficient to fully repay the principal that is outstanding on your line. If they are not, you will be required to pay the entire outstanding balance in a single balloon payment.

We are not obligated to refinance your loan at that time, but will consider your request to do so. If you refinance this account at maturity, you may have to pay some or all of the closing costs normally associated with a new loan even if you obtain financing from us.

**NEGATIVE AMORTIZATION:** In the event that the minimum payment (described in this agreement) does not equal or exceed the amount of any credit insurance premiums and accrued finance charges, the unpaid portion will be carried over to subsequent billing periods and payments made for those periods will first be applied to the carryover amount, then to the current billing cycle fees, charges and principal. This is called negative amortization. Negative amortization will increase the amount you owe us and reduce the equity in your home.

**AUTOMATIC WITHDRAWAL:** You authorize us to automatically withdraw your payment from your Transaction Account on each payment date. If your loan account balance is less than the minimum payment amount, we will withdraw only the amount necessary to reduce your loan account balance to zero. If you choose automatic payments, the payments may end because there is not enough money in the deposit account to cover the minimum payment. They may also end if the account is closed, or if you cancel the automatic payments.

You ☐ do ☒ do not want Automatic Withdrawal.

Account number for automatic payment:

X Signature

X Signature

**FIVE STAR PERSONAL BANKING PACKAGE PREFERRED RATE:** A preferred interest rate and annual percentage rate is available if you have a Five Star Personal Banking Package with a U.S. Bank checking account. If you terminate all or part of the package, or no longer qualify for the package, your interest rate and annual percentage rate will be increased within 30 days if eligibility is not restored. This increase will be in the amount of 0.25% if you close the U.S. Bank Checking account and 0.25% if you terminate the U.S. Bank Five Star Package. (Your "margin" that is, the amount added to the base rate to get to your interest rate, will be increased by this amount if you lose this preference).



**SECURITY:** We have secured your obligations under this plan by taking a security interest (by way of a separate security agreement, mortgage or other instrument) in the following property, described by item or type:

4254 ROLLINGSTONE DR

LAS VEGAS, NV 89103

Collateral securing other loans you may have with us may also secure this loan.

**Property Insurance is required.** You may buy property insurance from anyone you want who is acceptable to us. You are not required to purchase insurance from us (the Bank), or any affiliated insurance agency. Insurance is available through other agents and your choice of insurance provider will not affect our (the Bank's) credit decision or any credit terms in any way.

**ASSUMPTION:** Someone buying your house cannot assume the remainder of the mortgage on the original terms.

**CREDIT INSURANCE:** Credit life, credit accident and sickness (disability) insurance coverage quoted below, are not required to obtain credit and we will not provide them unless you sign and agree to pay the additional premium. If you want such insurance, we will obtain it for you (if you qualify for coverage). Your signature(s) below means you want the coverage(s) signed for, and ONLY those coverage(s). The rates (per \$100) listed below are applied to the outstanding balance of your credit line plus any outstanding locked balance to determine the premium you owe for one billing cycle.

**CREDIT LIFE:**

☐ **Single:** Premium: \$ \_\_\_\_\_ Birthdate \_\_\_\_\_  
Insured: \_\_\_\_\_

X \_\_\_\_\_ Date \_\_\_\_\_

☐ **Joint:** Premium: \$ \_\_\_\_\_ Birthdate \_\_\_\_\_  
1st Insured: \_\_\_\_\_

X \_\_\_\_\_ Date \_\_\_\_\_

2nd Insured: \_\_\_\_\_ Birthdate \_\_\_\_\_

X \_\_\_\_\_ Date \_\_\_\_\_

**CREDIT DISABILITY:**

☐ **Single:** Premium: \$ \_\_\_\_\_ Birthdate \_\_\_\_\_  
Insured: \_\_\_\_\_

X \_\_\_\_\_ Date \_\_\_\_\_

**NONE:** YOU do NOT desire credit insurance of any kind on this account.  
(All borrowers/debtors sign below)

X Bong Redward Date 3/3/09

X \_\_\_\_\_ Date \_\_\_\_\_

**SECURITY INTEREST IN DEPOSIT ACCOUNTS AT U.S. BANK, N.A.**

Governing law: For purposes of this security interest, we agree that the law of the state of North Dakota will control as to the creation, perfection, and effect of perfection of the interest granted in this paragraph. (Technically speaking, we are agreeing that North Dakota is your jurisdiction, as provided in N.D. Stat. § 41-9-24.)

Grant: You grant to us a security interest in any and all deposit accounts (demand, time, savings, passbook, and specifically including but not limited to any certificated time accounts) you currently have or hereafter create with U.S. Bank, N.A. (our affiliate).

Exception: This grant does not apply to accounts that constitute a part of any qualified retirement plan (such as an Individual Retirement Account), any retail repurchase agreement, or any account where your only right is clearly and solely in a representative capacity.

**Secures:** This security interest secures the payment of this debt and any other debt you may owe us, now or hereafter.

**Usage:** You give us the right to direct the U.S. Bank, N.A. to restrict or prohibit further withdrawals from your accounts, and to comply with our instructions directing disposition of funds in your accounts, including but not limited to, the right to apply such funds toward payment of the secured debts. While we have the right to do this at any time, and without notice, it is our present intention to exercise these rights only in the event of your default on this or any other secured obligation, and to provide notice to you.

U.S. Bank, N.A. agrees to comply with our instructions for disposition of funds in your accounts without first obtaining your consent (other than the consent contained and expressed in this agreement). You understand that U.S. Bank, N.A. is our affiliate.

**Setoff:** You also acknowledge that U.S. Bank, N.A. has a right of setoff in the event you owe money to U.S. Bank, N.A. This right of setoff, in the event of a conflict with the security interest granted here, will be subordinate to this security interest.

**Priority:** The residence that secures this loan is the primary security. The security interest granted herein (in deposit accounts) will be resorted to only in the event of a deficiency in the equity of the residence.

**CHARGES OTHER THAN YOUR PERIODIC FINANCE CHARGES ("OTHER CHARGES"):** You agree to pay the following additional charges:

♦ **Annual Fee:** A non-refundable annual fee of \$ 90.00. For plans with an annual fee, we waive this fee for the first year of a plan and we charge the fee to the account on the first anniversary of the plan and each year thereafter, including the repayment period.

♦ **Prepayment Penalty:** A prepayment penalty of 1% of the Line of Credit (with a minimum of \$250 and a maximum of \$500) if you prepay in full and close this Line of Credit within 3 years from today's date.

♦ **Cash Advance Fee:** 2% of each cash advance using a VISA Gold Card issued on this account. The minimum fee for each advance is \$1.50. The maximum is \$10.00.

♦ **Late Charge:** If any payment is not made within 5 days after its due date, you agree to pay a late payment fee of \$29.00.

♦ **Stop Payment:** If you issue a stop payment order on any check written against the Account, you will pay us a fee of \$25.00.

♦ **Returned Payment:** If you pay us with a check or an ACH payment which is returned to us unpaid by the payor, you agree to pay us a returned check fee of \$25.00.

♦ **Overline Fee:** If you borrow an amount against the Account in excess of your Line of Credit, you agree to pay us an Overline fee of \$25.00. This fee will apply each day we pay an advance and you are over your credit line at the end of that day.

♦ **Returned Advance Request:** If we return any checks that would, if paid, cause you to exceed your Line of Credit, you agree to pay us a Returned Advance Request fee of \$25.00 per check.

Points	\$ _____
Origination Fee	\$ _____
Appraisal	\$ _____
Official Fees	\$ _____
Title Insurance	\$ _____
Title Search	\$ _____
Flood Zone Search	\$ _____
Broker Fee	\$ _____
Document Preparation Fee	\$ _____
Title Service Fee	\$ _____

_____	\$ _____
_____	\$ _____
_____	\$ _____

**COSTS OF COLLECTION:** You agree to pay the costs we incur to collect this debt and realize on any collateral in the event of your default.

In the event of your bankruptcy, and without regard to your state of residence, these costs will include your reasonable attorney's fees for an attorney who is not our salaried employee in the bankruptcy proceedings.



The following additional fees and issues will depend on whether we have to collect this loan in a listed state:

In Alabama if the unpaid balance is more than \$300, these costs will include our reasonable attorney's fees (for an attorney who is not our salaried employee) if it is necessary to bring suit, up to 15% of the amount due and payable under this note.

In Arizona, California, Illinois, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Montana, Nevada, New Mexico, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Utah, Vermont, Virginia, and Washington these costs will include our reasonable attorney's fees (for an attorney who is not our salaried employee).

In Arkansas these costs will include our reasonable attorney's fees (for an attorney who is not our salaried employee) not to exceed 10% of the amount of principal and accrued interest.

In Colorado, North Carolina, and South Carolina these costs will include our reasonable attorney's fees (for an attorney who is not our salaried employee) not to exceed 15% of the unpaid debt after default.

In Delaware, these costs will include costs of alternative dispute resolution, or other collection costs actually incurred by us should you be in default, including reasonable attorney's fees when the attorney is not a regularly salaried employee of ours, and including fees and charges of collection agencies.

In Florida these costs will include reasonable attorney's fees that we incur in legal proceedings to collect or enforce this debt should you be in default.

In Georgia, these costs include attorney's fees of 15% of the principal and interest then owed. You waive and renounce any exemption you may be entitled to under Georgia law as to any property that secures this debt. You assign any such exemption to us.

In Idaho these costs will include our reasonable attorney's fees (for an attorney who is not our salaried employee). This provision for attorney's fees does not apply if this loan is a consumer loan with a principal amount of \$1,000.00 or less.

In Indiana, these costs will include our reasonable attorney's fees (for an attorney who is not our salaried employee); and in any collection efforts, you waive any relief you might be entitled to from evaluation and appraisal.

In Iowa, if the credit limit is greater than \$25,000 then these costs include our reasonable attorney's fees to collect this note, including such fees on appeal.

In Louisiana, these costs include our reasonable attorney's fees not to exceed 25% of the unpaid debt after default and referral to an attorney for collection.

In Maine, Nebraska, North Dakota, Ohio and West Virginia these costs will not include attorney's fees.

In Kansas these costs will include our reasonable attorney's fees or collection agency fees, up to 15% of the unpaid amount due and payable under this note. We are entitled to the collection of attorneys' fees or collection agency fees, but not both. This provision is applicable only if collection is handled by someone other than a salaried employee of ours.

In Missouri these costs will include our reasonable attorney's fees (for an attorney who is not our salaried employee) if it is necessary to bring suit up to 15% of the amount due and payable under this note.

In New Hampshire, this includes our reasonable attorneys' fees. If you successfully assert a partial defense or set-off, recoupment or counterclaim to an action we bring, the court may reduce the amount of attorneys' fees that we may recover from you. If you prevail in an action or defense against us, you may recover the amount of your reasonable attorney's fees.

In Oklahoma these costs will include our reasonable attorney's fees (for an attorney who is not our salaried employee) not to exceed 15% of the unpaid debt after default; this provision for attorney's fee does not apply to certain supervised loans as provided in Okla. Statutes 14A § 3-514.

In no state or event do we intend to claim or collect attorney's fees in circumstances when we are not entitled to do so.

**CHANGING THE TERMS OF THIS AGREEMENT:** Generally, we may not change the terms of this agreement. However, we may change the terms in the following circumstances:

- If this is a variable rate plan, we may change the index and margin if the original index described in this agreement becomes unavailable. Any new index will have a historical movement similar to the original, and, together with a new margin, will produce a similar interest rate.
- We may make changes that you have agreed to in writing.
- We may make changes that unequivocally benefit you.

If we are required to send notice of a change in terms, we will send the notice to your address listed in this agreement. (You should inform us of any change in address.)

**DEFAULT:** You will be in default on this agreement if any of the following occur:

- (1) You engage in fraud or material misrepresentation, by your actions or failure to act, in connection with any phase of this home equity Line of Credit (except in Iowa, Missouri, and Kansas, though such fraud may cause or contribute to a default under paragraph 3 of this section);
- (2) Subject to any right to cure you may have, if any, you do not meet the repayment terms or otherwise fail to perform any obligation under this Agreement or any other agreement you have with us (In Iowa, this means, as to payments, failure to make a payment within 10 days of when it is due.);
- (3) Your action or inaction adversely affects the collateral or our rights in the collateral, including but not limited to: (a) failure to maintain required insurance on the dwelling; (b) your transfer of the property; (c) failure to maintain the property or use of it in a destructive manner; (d) commission of waste; (e) failure to pay taxes on the property or otherwise fail to act and thereby cause a lien to be filed against the property that is senior to our lien; (f) death; (g) the property is taken through eminent domain; (h) a judgment is filed against you and subjects you and the property to action that adversely affects our interest; or (i) a prior lien holder forecloses on the property and as a result, our interest is adversely affected.
- (4) You become an Executive Officer of Bank or a related company.

**COLLATERAL PROTECTION INSURANCE:** Unless you provide us with evidence of the insurance coverage required by your agreement with us, we may purchase insurance at your expense to protect our interests in your collateral. This insurance may, but need not, protect your interests. The coverage that we purchase may not pay any claim that you make or any claim that is made against you in connection with the collateral. You may later cancel any insurance purchased by us, but only after providing us with evidence that you have obtained insurance as required by our agreement. If we purchase insurance for the collateral, you will be responsible for the costs of that insurance, including interest and any other charges we may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to your total outstanding balance of obligation. The costs of the insurance may be more than the cost of insurance you may be able to obtain on your own.

**CASH ADVANCES:** Cash advances may be obtained with your VISA® CARD at most FastBANK®, PLUS® SYSTEM, and UBANK® automated teller (ATM) locations. ATM transactions for your card are limited to \$1,000.00 per day. Cash advances are also limited by your Credit limit. Each ATM has a minimum withdrawal amount. Cash advances from a teller must be at least \$50.00. See the "EXPANDED ACCOUNT ACCESS" section about other cash advances.

**LIMITS ON LIABILITY FOR VISA® CARD:** Unless you have been grossly negligent or engaged in fraud, you will not be liable for any unauthorized transactions using your lost or stolen card.

**REMEDIES:** The exercise of our remedies is subject to (a) any cure, reinstatement and redemption rights you may have; and (b) any notice of such rights to which you are entitled, as provided by state law. We will provide these rights, and notice of them, as required.

We may terminate your account, require you to pay the entire outstanding balance in one payment and charge you fees related to the collection of the amount owing, if you are in default in any manner described above. In that instance, we may take other action short of termination, such as charging you a fee if you fail to maintain required property insurance and we purchase insurance.

In the event that we terminate your account, we will send you notice of our decision at the address listed on the front of this agreement. (You should inform us of any change in your address.)

Even if we choose not to use one of our remedies when you default, we do not forfeit our right to do so if you default again. If we do not use a remedy when you default, we can still consider your actions as a default in the future.

**SUSPENSION OF CREDIT AND REDUCTION OF CREDIT LIMIT:** We may temporarily prohibit you from obtaining additional extensions of credit, or reduce your credit limit if:

- (1) The value of the dwelling securing this home equity Line of Credit declines significantly below its appraised value for purposes of this line;
- (2) We reasonably believe you will not be able to meet the repayment requirements due to a material change in your financial circumstances;
- (3) You are in default of a material obligation of this agreement, which shall include, but is not limited to, your ongoing obligation to supply us with information we feel we need to assess your financial condition;
- (4) A governmental action prevents us from imposing the annual percentage rate provided for in this agreement;



- (5) The action of a governmental body adversely affects our security interest to the extent that the value of the security interest is less than 120% of the home equity line;
- (6) The annual percentage rate corresponding to the periodic rate reaches the maximum rate allowed under this plan (if provided for in this agreement);
- (7) A regulatory agency has notified us that continued advances would constitute an unsafe business practice; or
- (8) After a payment has been made, we reserve the right to withhold available advances in the amount of the principal portion of the payment up to 7 business days from the date we receive the payment. Any credit available before the payment is received will continue to be available for advances during this time.

In the event that we suspend your right to additional advances or reduce your credit line, we will send you notice of our decision at the address listed in this agreement. (You should inform us of any change in your address.) If we have based our decision to suspend or reduce your credit privileges on an assessment of your financial condition or performance under this plan, and you believe that your situation has changed, you must request that we re-evaluate your situation, and reinstate your credit privileges.

**JOINT ACCOUNTS:** If this is a joint account, each of you will be jointly and severally liable for all amounts due under the account. Upon request by either party to the Account or upon receipt of inconsistent instructions, we may, at our option and without notice to the other party, follow the instructions of either party, honor any Check, refuse to pay any Check, or refuse any other request with respect to the Account.

**CREDIT INFORMATION:** You agree to supply us with whatever information we reasonably feel we need to decide whether to continue this plan. We agree to make requests for this information without undue frequency, and to give you reasonable time in which to supply the information.

You authorize us to make or have made any credit inquiries we feel are necessary. You also authorize the persons or agencies to whom we make these inquiries to supply us with the information we request.

#### YOUR BILLING RIGHTS

##### KEEP THIS NOTICE FOR FUTURE USE

This notice contains important information about your rights and our responsibilities under the Fair Credit Billing Act.

#### Notify Us in Case of Errors or Questions About Your Bill

If you think your bill is wrong, or if you need more information about a transaction on your bill, write us at the address listed on your bill. Write to us as soon as possible. We must hear from you no later than 60 days after we sent you the first bill on which the error or problem appeared. You can telephone us, but doing so will not preserve your rights. In your letter, give us the following information:

- ♦ Your name and account number.
- ♦ The dollar amount of the suspected error.
- ♦ Describe the error and explain, if you can, why you believe there is an error. If you need more information, describe the item you are not sure about.

If you have authorized us to pay your bill automatically from your savings, checking or other account, you can stop the payment on any amount you think is wrong. To stop the payment your letter must reach us three business days before the automatic payment is scheduled to occur.

#### Your Rights and Our Responsibilities After We Receive Your Written Notice

We must acknowledge your letter within 30 days, unless we have corrected the error by then. Within 90 days, we must either correct the error or explain why we believe the bill was correct.

After we receive your letter, we cannot try to collect any amount you question, or report you as delinquent. We can continue to bill you for the amount you question, including finance charges, and we can apply any unpaid amount against your credit limit. You do not have to pay any questioned amount while we are investigating, but you are still obligated to pay the parts of your bill that are not in question.

If we find that we made a mistake on your bill, you will not have to pay any finance charges related to any questioned amount. If we didn't make a mistake, you may have to pay finance charges, and you will have to make up any missed payments on the questioned amount. In either case, we will send you a statement of the amount you owe and the date that it is due.

If you fail to pay the amount that we think you owe, we may report you as delinquent. However, if our explanation does not satisfy you and you write to us within ten days telling us that you still refuse to pay, we must tell anyone we report you to that you have a question about your bill. And, we must tell you the name of anyone we reported you to. We

must tell anyone we report you to that the matter has been settled between us when it finally is.

If we don't follow these rules, we can't collect the first \$50 of the questioned amount, even if your bill was correct.

**Special Rule for Credit Card Purchases:** If you have a problem with the quality of property or services that you purchased with a credit card, and you have tried in good faith to correct the problem with the merchant, you may have the right not to pay the remaining amount due on the property or services. There are two limitations on this right:

- (a) You must have made the purchase in your home state or, if not within your home state, within 100 miles of your current mailing address; and
- (b) The purchase price must have been more than \$50.

These limitations do not apply if we own or operate the merchant, or if we mailed you the advertisement for the property or services.

#### EXPANDED ACCOUNT ACCESS

This is to advise you that, with U.S. Bank, N.A. and its affiliates:

- ♦ Any card or PIN issued to or selected by you under this agreement will access multiple checking, savings, Line of Credit and credit card account(s) in your name at Bank or any of its affiliates; and
- ♦ Your Account under this agreement may be accessed by any card(s) or PIN(s) that you have selected or that has been issued to you or may in the future be selected by you or issued to you by Bank or any of its affiliates.

"Access" means use of a card or account number and PIN to conduct a transaction or obtain information at ATMs or via telephone, personal computer banking, or any other available method. There are no additional fees or charges for multiple account access. The fees and terms disclosed for each account apply. You understand that at UBank ATMs this multiple account access may be available for up to five checking, five savings, and five Line of Credit or credit card accounts. At other ATMs and with other methods of access, other limitations may apply.

You can, if you wish change this access and restrict the accounts that may be accessed by your card code or pin number.

**ARBITRATION:** You agree that if a dispute of any kind arises out of this agreement, either you or we can choose to have that dispute resolved by binding arbitration. If arbitration is chosen by any party, neither you nor we will have the right to litigate that claim in court or to have a jury trial on that claim, or to engage in pre-arbitration discovery, except as provided for in the arbitration rules. In addition, you will not have the right to participate as a representative or member of any class of claimants pertaining to any claim subject to arbitration. The Arbitrator's decision will generally be final and binding. Other rights that you would have if you went to court may also not be available in arbitration. It is important that you read this entire Arbitration Provision carefully before accepting the terms of this agreement. Any claim, dispute or controversy (whether in contract, regulatory, tort, or otherwise, whether pre-existing, present or future and including constitutional, statutory, common law, intentional tort and equitable claims) arising from or relating to (a) the credit or services offered or provided to you, (b) the actions of you, us or third parties or (c) the validity of this arbitration provision (individually and collectively, a "Claim") must, after an election by you or us, be resolved by binding arbitration in accordance with this arbitration provision and the Commercial Arbitration Rules of the American Arbitration Association ("AAA") in effect when the Claim is filed (or, in the event this arbitrator or these arbitration rules are no longer available, then a comparable substitute arbitration procedure and/or arbitration organization that does business on a nationwide basis). There shall be no authority for any Claims to be arbitrated on a class action basis. An arbitration can only decide our or your Claim and may not consolidate or join the claims of other persons who may have similar claims. You may obtain rules and forms by calling the AAA at 800-778-7879. Any arbitration hearing that you attend will take place in the federal judicial district where you reside. At your request, we will advance the first \$250 of the filing and hearing fees for any Claim you may file against us; the arbitrator will decide whether we or you will ultimately pay those fees. The arbitrator shall apply applicable substantive law consistent with the Federal Arbitration Act and applicable statutes of limitations, and shall honor claims of privilege recognized at law. Judgment upon the award rendered by the arbitrator may be entered by any court having jurisdiction. This Arbitration Provision shall survive repayment of your extension of credit and termination of this account. This arbitration provision shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1, et seq. If any provision of this Section is ruled invalid or unenforceable, this Section shall be rendered null and void in its entirety.



To Residents of Missouri specifically, and residents of other states generally.

Oral agreements or commitments to loan money, extend credit or to forbear from enforcing repayment of a debt including promises to extend or renew such debt are not enforceable. To protect you (borrower(s)) and us (creditor) from misunderstanding or disappointment, any agreements we reach covering such matters are contained in this writing, which is the complete and exclusive statement of the agreement between us, except as we may later agree in writing to modify it.

This note is a "transferable record" as defined in applicable law relating to electronic transactions. Therefore, the holder of this note may, on behalf of the maker of this note, create a microfilm or optical disk or other electronic image of this note that is an authoritative copy as defined in such law. The holder of this note may store the authoritative copy of such note in its electronic form and then destroy the paper original as part of the holder's normal business practices. The holder, on its own behalf, may control and transfer such authoritative copy as permitted by such law.

**SIGNATURES:** By signing below, you understand we are a national banking association located in North Dakota and the interest rate and related charges are pursuant to the law of North Dakota and federal law. The law of the state where you are located and of the state where the property is located may apply to other issues. In addition, you agree to the terms on all pages of this agreement and you promise to pay any amounts you owe under this agreement. You also state that you received a completed copy of the agreement on today's date.

**CAUTION - IT IS IMPORTANT THAT YOU THOROUGHLY READ THE CONTRACT BEFORE YOU SIGN IT.**

Signature

*George Richards*

Signature

By

**AUTHENTICATION BY U.S. BANK, N.A.:**

U.S. Bank, N.A. affiliate of and agent for the lender on this loan, acknowledges and agrees to the control agreement contained in the Security Interest in deposit accounts, and the subordination of its right of setoff to this security interest if and to the extent of a conflict. This is intended as an authentication.  
U.S. BANK, N.A.



## EXHIBIT 4

18

20090326-0003747

Prepared By:  
Southwest Financial Services, Ltd.  
537 E Pete Rose Way, STE 300  
Cincinnati, OH 45202



Return To (name and address):  
US Recordings  
2925 Country Drive STE 201  
St. Paul, MN 55117

Assessor's Parcel Number: 163-24-111-021,EN

Fee: \$21.00  
N/C Fee: \$25.00

03/26/2009 15:35:04

T20090104854

Requestor:  
US RECORDINGS INC

Debbie Conway STN  
Clark County Recorder Pgs: 9

State of Nevada Space Above This Line For Recording Data

75536829-NBC  
312628

**DEED OF TRUST**  
(With Future Advance Clause)

☐ Master Mortgage

Recorded By .....

By .....

By .....  
(Signature) (Date)

1. **DATE AND PARTIES.** The date of this Deed of Trust (Security Instrument) is ...03/03/2009...  
..... The parties and their addresses are:

GRANTOR:  
GEORGE R. EDWARDS, UNMARRIED

163-24-111-021,ENTIRE PROPERTY

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

TRUSTEE:  
U.S. Bank Trust Company, National Association,  
a national banking association organized under the laws of the United States  
111 SW Fifth Avenue  
Portland, OR 97204

LENDER:  
U.S. Bank National Association ND,  
a national banking association organized under the laws of the United States  
4325 17th Avenue SW  
Fargo, ND 58103

one

2. **CONVEYANCE.** For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debt (defined on page 2) and Grantor's performance under this Security Instrument, Grantor irrevocably grants, bargains, conveys and sells to Trustee, in trust for the benefit of Lender, with power of sale, the following described property (if property description is in metes and bounds the name and mailing address of the person who prepared the legal description must be included) :  
See attached Exhibit "A"

The property is located in ..CLARK COUNTY..... at .....  
(County)  
..4254.ROLLINGSTONE DR.,LAS VEGAS....., Nevada ..89103-3407...  
(Address) (City) (ZIP Code)

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

3. **MAXIMUM OBLIGATION LIMIT.** The total principal amount secured by this Security Instrument at any one time shall not exceed \$ ..50,000.00..... This limitation of amount does not include interest and other fees and charges validly made pursuant to this Security Instrument. Also, this limitation does not apply to advances made under the terms of this Security Instrument to protect Lender's security and to perform any of the covenants contained in this Security Instrument.
4. **SECURED DEBT AND FUTURE ADVANCES.** The term "Secured Debt" is defined as follows:
- A. Debt incurred under the terms of all promissory note(s), contract(s), guaranty(ies) or other evidence of debt described below and all their extensions, renewals, modifications or substitutions. (You must specifically identify the debt(s) secured and you should include the final maturity date of such debt(s).)  
Borrower(s): GEORGE R. EDWARDS  
Principal/Maximum Line Amount: 50,000.00  
Maturity Date: 03/02/2034  
Note Date: 03/03/2009
- B. All future advances from Lender to Grantor or other future obligations of Grantor to Lender under any promissory note, contract, guaranty, or other evidence of debt executed by Grantor in favor of Lender after this Security Instrument whether or not this Security Instrument is specifically referenced. If more than one person signs this Security Instrument, each Grantor agrees that this Security Instrument will secure all future advances and future obligations that are given to or incurred by any one or more Grantor, or any one or more Grantor and others. Future advances are contemplated and are governed by the provisions of NRS 106.300 to 106.400, inclusive. All future advances and other future obligations are secured by this Security Instrument even though all or part may not yet be advanced. All future advances and other future obligations are secured as if made on the date of this Security Instrument. Nothing in this Security Instrument shall constitute a commitment to make additional or future loans or advances in any amount. Any such commitment must be agreed to in a separate writing.

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- C. All other obligations Grantor owes to Lender, which may later arise, to the extent not prohibited by law, including, but not limited to, liabilities for overdrafts relating to any deposit account agreement between Grantor and Lender.
- D. All additional sums advanced and expenses incurred by Lender for insuring, preserving or otherwise protecting the Property and its value and any other sums advanced and expenses incurred by Lender under the terms of this Security Instrument.

In the event that Lender fails to provide any required notice of the right of rescission, Lender waives any subsequent security interest in Grantor's principal dwelling that is created by this Security Instrument.

5. **DEED OF TRUST COVENANTS.** Grantor agrees that the covenants in this section are material obligations under the Secured Debt and this Security Instrument. If Grantor breaches any covenant in this section, Lender may refuse to make additional extensions of credit and reduce the credit limit. By not exercising either remedy on Grantor's breach, Lender does not waive Lender's right to later consider the event a breach if it happens again.

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

**Prior Security Interests.** With regard to any other mortgage, deed of trust, security agreement or other lien document that created a prior security interest or encumbrance on the Property, Grantor agrees to make all payments when due and to perform or comply with all covenants. Grantor also agrees not to allow any modification or extension of, nor to request any future advances under any note or agreement secured by the lien document without Lender's prior written approval.

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

**Property Condition, Alterations and Inspection.** Grantor will keep the Property in good condition and make all repairs that are reasonably necessary. Grantor shall not commit or allow any waste, impairment, or deterioration of the Property. Grantor agrees that the nature of the occupancy and use will not substantially change without Lender's prior written consent. Grantor will not permit any change in any license, restrictive covenant or easement without Lender's prior written consent. Grantor will notify Lender of all demands, proceedings, claims, and actions against Grantor, and of any loss or damage to the Property.

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

**Authority to Perform.** If Grantor fails to perform any duty or any of the covenants contained in this Security Instrument, Lender may, without notice, perform or cause them to be performed. Grantor appoints Lender as attorney in fact to sign Grantor's name or pay any amount necessary for performance. Lender's right to perform for Grantor shall not create an obligation to perform, and Lender's failure to perform will not preclude Lender from exercising any of Lender's other rights under the law or this Security Instrument.

**Leaseholds; Condominiums; Planned Unit Developments.** Grantor agrees to comply with the provisions of any lease if this Security Instrument is on a leasehold. If the Property includes a unit in a condominium or a planned unit development, Grantor will perform all of Grantor's duties under the covenants, by-laws, or regulations of the condominium or planned unit development.

**Condemnation.** Grantor will give Lender prompt notice of any pending or threatened action, by private or public entities to purchase or take any or all of the Property through condemnation, eminent domain, or any other means. Grantor authorizes Lender to intervene in Grantor's name in any of the above described actions or claims. Grantor assigns to Lender the proceeds of any

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award or claim for damages connected with a condemnation or other taking of all or any part of the Property. Such proceeds shall be considered payments and will be applied as provided in this Security Instrument. This assignment of proceeds is subject to the terms of any prior mortgage, deed of trust, security agreement or other lien document.

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

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

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

**Financial Reports and Additional Documents.** Grantor will provide to Lender upon request, any financial statement or information Lender may deem reasonably necessary. Grantor agrees to sign, deliver, and file any additional documents or certifications that Lender may consider necessary to perfect, continue, and preserve Grantor's obligations under this Security Instrument and Lender's lien status on the Property.

6. **WARRANTY OF TITLE.** Grantor warrants that Grantor is or will be lawfully seized of the estate conveyed by this Security Instrument and has the right to irrevocably grant, bargain, convey and sell the Property to Trustee, in trust, with power of sale. Grantor also warrants that the Property is unencumbered, except for encumbrances of record.
7. **DUE ON SALE.** Lender may, at its option, declare the entire balance of the Secured Debt to be immediately due and payable upon the creation of, or contract for the creation of, a transfer or sale of all or any part of the Property. This right is subject to the restrictions imposed by federal law (12 C.F.R. 591), as applicable.
8. **DEFAULT.** Grantor will be in default if any of the following occur:
  - Fraud.** Any Consumer Borrower engages in fraud or material misrepresentation in connection with the Secured Debt that is an open end home equity plan.
  - Payments.** Any Consumer Borrower on any Secured Debt that is an open end home equity plan fails to make a payment when due.
  - Property.** Any action or inaction by the Borrower or Grantor occurs that adversely affects the Property or Lender's rights in the Property. This includes, but is not limited to, the following:
    - (a) Grantor fails to maintain required insurance on the Property;
    - (b) Grantor transfers the Property;
    - (c) Grantor commits waste or otherwise destructively uses or fails to maintain the Property such that the action or inaction adversely affects Lender's security;
    - (d) Grantor fails to pay taxes on the Property or otherwise fails to act and thereby causes a lien to be filed against the Property that is senior to the lien of this Security Instrument;
    - (e) a sole Grantor dies;
    - (f) if more than one Grantor, any Grantor dies and Lender's security is adversely affected;
    - (g) the Property is taken through eminent domain;
    - (h) a judgment is filed against Grantor and subjects Grantor and the Property to action that adversely affects Lender's interest; or
    - (i) a prior lienholder forecloses on the Property and as a result, Lender's interest is adversely affected.

(page 4 of 7)



**Executive Officers.** Any Borrower is an executive officer of Lender or an affiliate and such Borrower becomes indebted to Lender or another lender in an aggregate amount greater than the amount permitted under federal laws and regulations.

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

At the option of the Lender, all or any part of the agreed fees and charges, accrued interest and principal shall become immediately due and payable, after giving notice if required by law, upon the occurrence of a default or anytime thereafter. Lender shall be entitled to, without limitation, the power to sell the Property.

If there is a default, Trustee shall, at the request of Lender, advertise and sell the Property as a whole or in separate parcels at public auction to the highest bidder for cash and convey absolute title free and clear of all right, title and interest of Grantor at such time and place as Trustee designates. Trustee shall give notice of sale, including the time, terms and place of sale and a description of the Property to be sold as required by the applicable law.

Upon the sale of the Property and to the extent not prohibited by law, Trustee shall make and deliver a deed to the Property sold which conveys absolute title to the purchaser, and after first paying all fees, charges, and costs, shall pay to Lender all moneys advanced for repairs, taxes, insurance, liens, assessments and prior encumbrances and interest thereon, and the principal and interest on the Secured Debt, paying the surplus, if any, to Grantor. Lender may purchase the Property. The recitals in any deed of conveyance shall be prima facie evidence of the facts set forth therein.

The acceptance by Lender of any sum in payment or partial payment on the Secured Debt after the balance is due or is accelerated or after foreclosure proceedings are filed shall not constitute a waiver of Lender's right to require complete cure of any existing default. By not exercising any remedy on Grantor's default, Lender does not waive Lender's right to later consider the event a default if it happens again.

10. **EXPENSES; ADVANCES ON COVENANTS; ATTORNEYS' FEES; COLLECTION**

**COSTS.** If Grantor breaches any covenant in this Security Instrument, Grantor agrees to pay all expenses Lender incurs in performing such covenants or protecting its security interest in the Property. Such expenses include, but are not limited to, fees incurred for inspecting, preserving, or otherwise protecting the Property and Lender's security interest. These expenses are payable on demand and will bear interest from the date of payment until paid in full at the highest rate of interest in effect as provided in the terms of the Secured Debt. Grantor agrees to pay all costs and expenses incurred by Lender in collecting, enforcing or protecting Lender's rights and remedies under this Security Instrument. This amount may include, but is not limited to, attorneys' fees, court costs, and other legal expenses. To the extent permitted by the United States Bankruptcy Code, Grantor agrees to pay the reasonable attorneys' fees Lender incurs to collect the Secured Debt as awarded by any court exercising jurisdiction under the Bankruptcy Code. This Security Instrument shall remain in effect until released. Grantor agrees to pay for any recordation costs of such release.

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

(page 5 of 7)

*me*

Grantor represents, warrants and agrees that:

- A. Except as previously disclosed and acknowledged in writing to Lender, no Hazardous Substance is or will be located, stored or released on or in the Property. This restriction does not apply to small quantities of Hazardous Substances that are generally recognized to be appropriate for the normal use and maintenance of the Property.
  - B. Except as previously disclosed and acknowledged in writing to Lender, Grantor and every tenant have been, are, and shall remain in full compliance with any applicable Environmental Law.
  - C. Grantor shall immediately notify Lender if a release or threatened release of a Hazardous Substance occurs on, under or about the Property or there is a violation of any Environmental Law concerning the Property. In such an event, Grantor shall take all necessary remedial action in accordance with any Environmental Law.
  - D. Grantor shall immediately notify Lender in writing as soon as Grantor has reason to believe there is any pending or threatened investigation, claim, or proceeding relating to the release or threatened release of any Hazardous Substance or the violation of any Environmental Law.
12. **ESCROW FOR TAXES AND INSURANCE.** Unless otherwise provided in a separate agreement, Grantor will not be required to pay to Lender funds for taxes and insurance in escrow.
13. **JOINT AND INDIVIDUAL LIABILITY; CO-SIGNERS; SUCCESSORS AND ASSIGNS BOUND.** All duties under this Security Instrument are joint and individual. If Grantor signs this Security Instrument but does not sign an evidence of debt, Grantor does so only to mortgage Grantor's interest in the Property to secure payment of the Secured Debt and Grantor does not agree to be personally liable on the Secured Debt. If this Security Instrument secures a guaranty between Lender and Grantor, Grantor agrees to waive any rights that may prevent Lender from bringing any action or claim against Grantor or any party indebted under the obligation. These rights may include, but are not limited to, any anti-deficiency or one-action laws. The duties and benefits of this Security Instrument shall bind and benefit the successors and assigns of Grantor and Lender.
14. **SEVERABILITY; INTERPRETATION.** This Security Instrument is complete and fully integrated. This Security Instrument may not be amended or modified by oral agreement. Any section in this Security Instrument, attachments, or any agreement related to the Secured Debt that conflicts with applicable law will not be effective, unless that law expressly or impliedly permits the variations by written agreement. If any section of this Security Instrument cannot be enforced according to its terms, that section will be severed and will not affect the enforceability of the remainder of this Security Instrument. Whenever used, the singular shall include the plural and the plural the singular. The captions and headings of the sections of this Security Instrument are for convenience only and are not to be used to interpret or define the terms of this Security Instrument. Time is of the essence in this Security Instrument.
15. **SUCCESSOR TRUSTEE.** Lender, at Lender's option, may from time to time remove Trustee and appoint a successor trustee without any other formality than the designation in writing. The successor trustee, without conveyance of the Property, shall succeed to all the title, power and duties conferred upon Trustee by this Security Instrument and applicable law.
16. **NOTICE.** Unless otherwise required by law, any notice shall be given by delivering it or by mailing it by first class mail to the appropriate party's address on page 1 of this Security Instrument, or to any other address designated in writing. Notice to one grantor will be deemed to be notice to all grantors.
17. **WAIVERS.** Except to the extent prohibited by law, Grantor waives all appraisal and homestead exemption rights relating to the Property.
18. **LINE OF CREDIT.** The Secured Debt includes a revolving line of credit. Although the Secured Debt may be reduced to a zero balance, this Security Instrument will remain in effect until released.

(page 6 of 7)

*PRE*



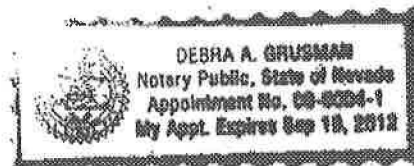
19. **APPLICABLE LAW:** This Security Instrument is governed by the laws as agreed to in the Secured Debt, except to the extent required by the laws of the jurisdiction where the Property is located, and applicable federal laws and regulations.
20. **RIDERS:** The covenants and agreements of each of the riders checked below are incorporated into and supplement and amend the terms of this Security Instrument.  
[Check all applicable boxes]  
☐ Assignment of Leases and Rents ☐ Other .....
21. ☐ **ADDITIONAL TERMS.**

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

George R. Edwards 3/3/09  
(Signature) GEORGE R. EDWARDS (Date) (Signature) (Date)

**ACKNOWLEDGMENT:** Nevada STATE OF Clark COUNTY OF  
This instrument was acknowledged before me this 4th day of March, 2009  
(Individual) by GEORGE R. EDWARDS, UNMARRIED  
My commission expires: Sept. 19, 2012

Debra A. Grusman  
(Notary Public)  
Customer Service Manager  
(Title and Rank)





Handwritten text, possibly a signature or date, appearing in the center of the page.

DEBRA A. GRUBMAN  
Notary Public, State of Nevada  
Appointment No. 00-0004-1  
My Appl. Expires Sep 18, 2015

**EXHIBIT "A" LEGAL DESCRIPTION**

Account #: 14560224  
Order Date : 02/27/2009  
Reference : 20090581626510  
Name : GEORGE R. EDWARDS  
Deed Ref : 20020712928

Index #:

Parcel #: 163-24-111-021

---

**SITUATED IN THE STATE OF NEVADA, COUNTY OF CLARK:**

**LOT NINETEEN (19) OF GLENVIEW WEST TOWNHOME, AS SHOWN BY MAP THEREOF ON  
FILE IN BOOK 30 OF PLATS, PAGE 63, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK  
COUNTY, NEVADA.**

**SUBJECT TO ALL EASEMENTS, COVENANTS, CONDITIONS, RESERVATIONS, LEASES AND  
RESTRICTIONS OF RECORD, ALL LEGAL HIGHWAYS, ALL RIGHTS OF WAY, ALL ZONING,  
BUILDING AND OTHER LAWS, ORDINANCES AND REGULATIONS, ALL RIGHTS OF TENANTS IN  
POSSESSION, AND ALL REAL ESTATE TAXES AND ASSESSMENTS NOT YET DUE AND PAYABLE.**

**BEING THE SAME PROPERTY CONVEYED BY DEED RECORDED IN DOCUMENT NO. 20020712928,  
OF THE CLARK COUNTY, NEVADA RECORDS.**



0100542628

6612 3/19/2009 75536829/1

## EXHIBIT 5

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## EXHIBIT 5



**NOTICE OF CLAIM OF LIEN  
FOR SOLID WASTE SERVICE**

PARCEL# 163-24-111-021  
Account # 620-2221308

NOTICE IS HEREBY GIVEN that:  
REPUBLIC SERVICES

hereby claims a lien pursuant to:

NEVADA REVISED STATUTES  
CHAPTER 444.520

in the amount of \$159.73, on and against the real property  
of: EDWARDS-GEORGE R TRUST

said property being legally described as follows:

GLENVIEW WEST TWNHS  
PLAT BOOK 30 PAGE 65  
LOT 19

and commonly known as: 4254 ROLLINGSTONE DR, LAS VEGAS NV 89103-3407  
Clark County, Las Vegas, Nevada 891033407

The lien claimed against the interest of: EDWARDS GEORGE R TRUST as owner of the  
above-described property is for solid waste collection, charges, fees and penalties charged by:  
REPUBLIC SERVICES

as contractor of CLARK COUNTY for the period from 1/22/2010 to 9/30/2010

That the record owner of the property was given written notice of delinquency at his last address shown by the  
records of the County Assessor and that after the expiration of fifteen (15) days of said notice, the said record  
owner has failed and neglected to pay the amount of the charges, fees and penalties due as aforesaid.

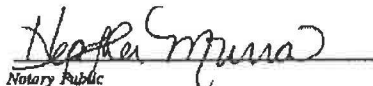
STATE OF NEVADA )

COUNTY OF CLARK )


CAROLYN PAIGE, being first duly sworn according to law, deposes and says:

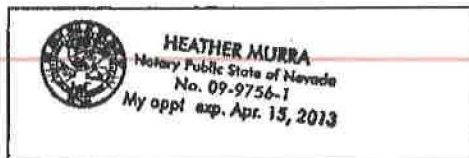
ss: That she is the Representative of the Lien claimant herein; and that she has read the  
above and foregoing Notice of Claim of Lien and knows the contents thereof, and that the  
statement and averments of facts therein contained are true and of her own knowledge  
and belief, except as to those statements made upon information and belief, and as to those  
she believes them to be true.

SUBSCRIBED and SWORN to before me  
this 20th day of August, 2010

  
Notary Public

By:

  
Carolyn Paige  
Representative of the Lien Claimant  
Republic Silver State Disposal, Inc., DBA Republic Services



WHEN RECORDED, RETURN TO:  
REPUBLIC SERVICES  
P.O. BOX 98508  
LAS VEGAS, NEVADA 89193-8508

# NOTICE OF CLAIM OF LIEN FOR SOLID WASTE SERVICE

PARCEL# 163-24-111-021  
Account # 620-2221308

NOTICE IS HEREBY GIVEN that: Clark County on behalf of  
or in the name of lien claimant Republic Silver State Disposal, Inc.,  
DBA Republic Services hereby claims a lien pursuant to:  
NEVADA REVISED STATUTES  
CHAPTER 444.320

in the amount of \$85.14 , on and against the real property  
of: EDWARDS GEORGE R TRUST

**said property being legally described as follows:**  
**GLENVIEW WEST TWNHS**  
**PLAT BOOK 30 PAGE 65**  
**LOT 19**

and commonly known as: 4254 ROLLINGSTONE DR, LAS VEGAS NV 89103-3407  
Clark County, Las Vegas, Nevada 891033407

The lien claimed against the interest of: **EDWARDS GEORGE R TRUST** as owner of the above-described property is for solid waste collection, charges, fees and penalties charged by: **REPUBLIC SERVICES**

as contractor of CLARK COUNTY for the period from 10/01/2010 to 3/31/2011

That the record owner of the property was given written notice of delinquency at his last address shown by the records of the County Assessor and that after the expiration of fifteen (15) days of said notice, the said record owner has failed and neglected to pay the amount of the charges, fees and penalties due as aforesaid.

STATE OF NEVADA ) CAROLYN PAIGE, being first duly sworn according to law, deposes and says:  
 ) ss: That she is the Representative of the Lien claimant herein; and that she has read the above  
COUNTY OF CLARK) and foregoing Notice of Claim of Lien and knows the contents thereof, and that the  
statement and averments of facts therein contained are true and of her own knowledge  
and belief, except as to those statements made upon information and belief, and as to those  
she believes them to be true.

SUBSCRIBED and SWORN to before me  
this 1st day of April, 2011

*[Signature]*  
Notary Public

By: Carolyn Paige  
 Carolyn Paige  
 Representative of the Lien Claimant  
 Republic Silver State Disposal, Inc., DBA Republic Services



• WHEN RECORDED, RETURN TO:  
REPUBLIC SERVICES  
P.O. BOX 98508  
LAS VEGAS, NEVADA 89193-8508

2/6

**NOTICE OF CLAIM OF LIEN  
FOR SOLID WASTE SERVICE**PARCEL# 163-24-111-021  
Account # 620-2221308NOTICE IS HEREBY GIVEN that:  
Republic Silver State Disposal, Inc.,  
DBA Republic Services hereby claims a lien pursuant to:  
NEVADA REVISED STATUTES  
CHAPTER 444:520in the amount of \$128.61, on and against the real property  
of: EDWARDS GEORGE R TRUSTsaid property being legally described as follows:  
GLENVIEW WEST TWNHS  
PLAT BOOK 30 PAGE 65  
LOT 19and commonly known as: 4254 ROLLINGSTONE DR, LAS VEGAS NV 89103-3407  
Clark County, Las Vegas, Nevada 891033407The lien claimed against the interest of: EDWARDS GEORGE R TRUST as owner of the  
above-described property is for solid waste collection, charges, fees and penalties charged by:  
REPUBLIC SERVICES

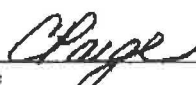
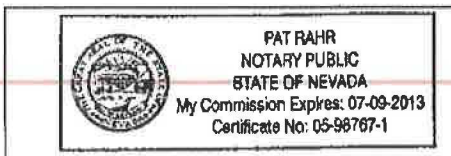
as contractor of CLARK COUNTY for the period from 4/01/2011 to 12/31/2011

That the record owner of the property was given written notice of delinquency at his last address shown by the  
records of the County Assessor and that after the expiration of fifteen (15) days of said notice, the said record  
owner has failed and neglected to pay the amount of the charges, fees and penalties due as aforesaid.

STATE OF NEVADA ) CAROLYN PAIGE, being first duly sworn according to law, deposes and says:  
                          ) ss: That she is the Representative of the Lien claimant herein; and that she has read the  
COUNTY OF CLARK ) above and foregoing Notice of Claim of Lien and knows the contents thereof, and that the  
                          ) statement and averments of facts therein contained are true and of her own knowledge  
                          ) and belief, except as to those statements made upon information and belief, and as to those  
                          ) she believes them to be true.

SUBSCRIBED and SWORN to before me  
this 24th day of November, 2011

Notary Public

By:   
Carolyn Paige  
Representative of the Lien Claimant  
Republic Silver State Disposal, Inc., DBA Republic ServicesWHEN RECORDED, RETURN TO:  
REPUBLIC SERVICES  
P.O. BOX 98508  
LAS VEGAS, NEVADA 89193-8508

Inst #: 201112190000447

Fees: \$17.00

N/C Fee: \$0.00

12/19/2011 09:23:15 AM

Receipt #: 1011001

Requestor:

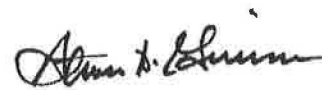
REPUBLIC SERVICES

Recorded By: GDE Pgs: 1

DEBBIE CONWAY

CLARK COUNTY RECORDER





CLERK OF THE COURT

1 AMEN

2 LAW OFFICES OF LES ZIEVE

3 Grace M. Kim, Esq. (NV Bar 9268)

4 Benjamin D. Petiprin, Esq. (NV Bar 11681)

5 3753 Howard Hughes Parkway, Suite 200

6 Las Vegas, Nevada 89169

7 Tel: (702) 948-8565

8 Fax: (702) 446-9898

9 Attorneys for plaintiff U.S. Bank National Association, ND

10  
11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 U.S. BANK NATIONAL ASSOCIATION  
14 ND, a national association,

15 Plaintiff,

16 vs.

CASE NO.: A-12-667690-C

DEPT. NO.: XVIII

AMENDMENT TO COMPLAINT

17 GEORGE R. EDWARDS, an individual;  
18 LAURA B. FITZPATRICK, tax receiver  
19 and treasurer of the COUNTY OF CLARK,  
20 STATE OF NEVADA; REPUBLIC  
21 SILVER STATE DISPOSAL, INC. dba  
22 REPUBLIC SERVICES, a Nevada  
23 corporation; ANY AND ALL PERSONS  
24 UNKNOWN, CLAIMING TO BE  
25 PERSONAL REPRESENTATIVES OF  
26 GEORGE R. EDWARDS ESTATE, OR  
27 DULY APPOINTED, QUALIFIED, AND  
28 ACTING EXECUTOR OF THE WILL OF  
THE ESTATE OF GEORGE R.  
EDWARDS; DOES 2 through 10, inclusive,  
and ROES 1 through 10, inclusive.

Defendants.

1       Upon the filing of the Complaint, plaintiff U.S. Bank National Association, ND  
2 ("Plaintiff"), being ignorant of the true name of the defendant and having designated the  
3 defendant in the Complaint by the fictitious name of Doe 1, and having discovered the true  
4 name of the defendant Doe 1 to be **any and all persons unknown, claiming to be personal**  
5 **representatives of George R. Edwards' estate, or duly appointed, qualified, and acting**  
6 **executor of the will of the estate of George R. Edwards,** amends the Complaint by  
7 substituting the true name for the fictitious name wherever it appears in the Complaint.  
8

9 DATED: November 16, 2012

LAW OFFICES OF LES ZIEVE

11 By: /s/ Benjamin D. Petiprin  
12 Grace M. Kim, Esq.  
13 Benjamin D. Petiprin, Esq.  
14 Attorneys for Plaintiff  
U.S. Bank National Association, ND  
15  
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**CERTIFICATE OF MAILING**

I HEREBY CERTIFY that I am an employee of the Law Offices of Les Zieve, and not a party to nor interested in the within matter; that on the 16<sup>th</sup> day of November 2012, service of the **AMENDMENT TO COMPLAINT** was made:

- ( ) by serving the following parties electronically through CM/ECF as set forth below;
- ( ) by faxing a copy to the numbers below;
- (X) by depositing a copy in the United States Mail postage prepaid to the parties listed below:

Maria Toto, Esq.  
Fennemore Craig Jones Vargas  
Suite 1400 Bank of America Plaza  
300 South Fourth Street  
Las Vegas, NV 89101  
*Attorney for Defendant Republic Silver State  
Disposal, Inc. dba Republic Services*

George R. Edwards  
4254 Rollingstone Drive  
Las Vegas, NV 89103  
*Defendant*

Glenview West Townhomes association  
c/o Leach Johnson Song & Gruchow  
5495 S. Rainbow Blvd. Suite 202  
Las Vegas, NV 89103  
*Defendant*

George R. Edwards Trust  
c/o Robert Hazell  
14983 Mammoth Place  
Fontana, CA 92336  
*Defendant*

/s/ Michèle Dapello

Michele Dapello, an employee of  
Law Offices of Les Zieve



  
CLERK OF THE COURT

1 AACC  
MICHAEL F. BOHN, ESQ.  
2 Nevada Bar No.: 1641  
[mbohn@bohnlawfirm.com](mailto:mbohn@bohnlawfirm.com)  
3 JEFF ARLITZ, ESQ.  
Nevada Bar No.: 6558  
4 [jarlitz@bohnlawfirm.com](mailto:jarlitz@bohnlawfirm.com)  
LAW OFFICES OF  
5 MICHAEL F. BOHN, ESQ., LTD.  
376 E. Warm Springs Rd., Ste. 140  
6 Las Vegas, Nevada 89119  
(702) 642-3113/ (702) 642-9766 FAX

7 Attorney for defendant Resources Group, LLC  
8

9 DISTRICT COURT  
10 CLARK COUNTY, NEVADA  
11

12 U.S. BANK NATIONAL ASSOCIATION, ND, a  
13 national association

14 Plaintiff,

15 vs.

16 GEORGE R. EDWARDS, an individual; ANY  
17 AND ALL PERSONS UNKNOWN, CLAIMING  
18 TO BE PERSONAL REPRESENTATIVES OF  
19 GEORGE R. EDWARDS ESTATE, OR DULY  
20 APPOINTED, QUALIFIED, AND ACTING  
EXECUTOR OF THE WILL OF THE ESTATE  
21 OF GEORGE R. EDWARDS; RESOURCES  
GROUP, LLC, a Nevada Limited Liability  
22 Company; GLENVIEW WEST TOWNHOMES  
ASSOCIATION, a Nevada non-profit corporation;  
23 DOES 4 through inclusive; and ROES 1 through  
24 10 inclusive

25 Defendants.  
26

27 RESOURCES GROUP, LLC,  
28

Counter-claimant

vs

U.S. BANK NATIONAL ASSOCIATION, ND, a  
national association

Counter-defendant

CASE NO.: A667690  
DEPT NO.: XVIII

ANSWER AND COUNTERCLAIM

1 Defendant, Resources Group, LLC, as trustee of the Bourne Valley Court Trust, by and through  
2 its attorney, Jeff Arlitz, Esq., answers the plaintiff's Complaint for Judicial Foreclosure of Deed of Trust,  
3 Amendment to Complaint and Second Amendment to Complaint as follows:

- 4 1. Answering defendant admits the allegations contained in paragraphs 1, 2, 7, 8,9, and 10.  
5 2. Answering defendant is without sufficient information upon which to admit or deny the  
6 allegations contained in paragraphs 6,11 12, 14 and 15 and, upon that basis, denies the same.  
7 3. Answering defendant denies the allegations contained in paragraphs 5, 16 and 17.  
8 4. Answering paragraph 3, defendant is without sufficient information upon which to admit or  
9 deny the allegation as to the borrower's address, and upon that basis, denies the same. Defendant denies  
10 the remaining allegations.  
11 5. Answering paragraph 4, defendant admits that Laura B. Fitzpatrick is tax receiver and treasurer  
12 of the County of Clark, State of Nevada, but denies the remaining allegations.

13 **FIRST CAUSE OF ACTION**

- 14 6. Answering defendant repeats its responses to the allegations in paragraphs 1 through 17.  
15 7. Answering paragraph 19, this allegation is not directed at this answering defendant. To the  
16 extent it is directed at this answering defendant, and to the extent the allegation suggests remaining  
17 interest in the subject property, this answering defendant denies the allegation.  
18 8. Answering defendant denies the allegations in paragraphs 20, 21 and 22.

19 **AFFIRMATIVE DEFENSES**

20 **FIRST AFFIRMATIVE DEFENSE**

21 Plaintiffs' Complaint fails to state a claim against this answering defendant.

22 **SECOND AFFIRMATIVE DEFENSE**

23 The plaintiffs' damages, if any were caused by their own acts or omissions

24 **THIRD AFFIRMATIVE DEFENSE**

25 Plaintiff's damages, if any, were caused by third persons over whom this answering defendant  
26 has not control.

27 **FOURTH AFFIRMATIVE DEFENSE**

28 Plaintiff is guilty of laches and unclean hands.

1 FIFTH AFFIRMATIVE DEFENSE

2 Plaintiff is barred from recovery by virtue of the doctrine of equitable estoppel.

3 SIXTH AFFIRMATIVE DEFENSE

4 The plaintiff has failed to mitigate its damages.

5 WHEREFORE, answering defendant prays as follows:

- 6 1. That the plaintiff takes nothing by way of its Complaint on file herein;  
7 2. For costs and attorney's fees incurred herein; and  
8 3. For such other and further relief as this Court may deem just and proper..

9 COUNTERCLAIM

10 Defendant/counterclaimant Resources Group, LLC, as trustee of the Bourne Valley Court  
11 Trust, by and through its attorney, Jeff Arlitz, Esq. alleges its counterclaim against plaintiff U.S.  
12 Bank National Association, ND as follows:

- 13 1. Resources Group, LLC, as trustee of the Bourne Valley Court Trust, is the owner of the  
14 real property commonly known as 4254 Rollingstone Drive , Las Vegas, Nevada  
15 2. Resources Group, LLC, as trustee of the Bourne Valley Court Trust obtained title from  
16 Resources Group LLC, a Nevada Limited Liability Company, Trustee of the Rollingstone Drive  
17 Trust, by way of a Grant, Bargain, Sale Deed recorded May 29, 2012. The 4254 Rollingstone Drive  
18 Trust obtained title by way of a foreclosure deed recorded January 31, 2012.  
19 3. Resources Group, LLC, as trustee of the Bourne Valley Court Trust, title stems from a  
20 foreclosure deed arising from a delinquency in assessments due from the former owner to the  
21 Glenview West Townhomes Association, pursuant to NRS Chapter 116.  
22 6. The interest of the plaintiff has been extinguished by reason of the foreclosure sale  
23 resulting from a delinquency in assessments due from the former owners to the Glenview West  
24 Townhomes Association, pursuant to NRS Chapter 116.  
25 7. Resources Group, LLC, as trustee of the Bourne Valley Court Trust, is entitled to a  
26 determination from this court, pursuant to NRS 40.010 that the Resources Group, LLC, as trustee of  
27 the Bourne Valley Court Trust, is the rightful owner of the property and that the counterdefendant has  
28 no right, title, interest or claim to the subject property.



1 8. Resources Group, LLC, as trustee of the Bourne Valley Court Trust, is entitled to an award  
2 of attorneys fees and costs.

3 **SECOND CLAIM FOR RELIEF**

4 9. Resources Group, LLC, as trustee of the Bourne Valley Court Trust, repeats the allegations  
5 contained in paragraphs 1 through 8.

6 10. Resources Group, LLC, as trustee of the Bourne Valley Court Trust seeks a declaration  
7 from this court, pursuant to NRS 40.010, that title in the property is vested in Resources Group, LLC,  
8 as trustee of the Bourne Valley Court Trust, free and that the plaintiff herein has no estate, right, title  
9 or interest in the property, and that plaintiffs are forever enjoined from asserting any estate, title, right,  
10 interest, or claim to the subject property adverse to the, Resources Group, LLC, as trustee of the  
11 Bourne Valley Court Trust.

12 11. The defendant/counterclaimant, Resources Group, LLC, as trustee of the Bourne Valley  
13 Court Trust is entitled to an award of attorneys fees and costs.

14 WHEREFORE, defendant Resources Group, LLC, as trustee of the Bourne Valley Court  
15 Trust, prays for Judgment as follows:

16 1. For a determination and declaration that defendant/counterclaimant, Resources Group,  
17 LLC, as trustee of the Bourne Valley Court Trust, is the rightful holder of title to the property, free  
18 and clear of all liens, encumbrances, and claims of the plaintiffs.

19 2. For a determination and declaration that the plaintiffs have no estate, right, title, interest or  
20 claim in the property.

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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of LAW OFFICES OF MICHAEL F. BOHN, ESQ., and on the 16<sup>th</sup> day of July, 2014, an electronic copy of **ANSWER AND COUNTERCLAIM** was served on opposing counsel via the Court's electronic service system to the following counsel of record:

Benjamin D. Petiprin, Esq.  
Law Offices of Les Zieve, LLP  
3753 Howard Hughes Parkway, Ste. 200  
Las Vegas, NV 89169

/s/ /Marc Sameroff /  
An employee of the LAW OFFICES  
OF MICHAEL F. BOHN, ESQ., LTD.



1 **IAFD**

2 MICHAEL F. BOHN, ESQ.

3 Nevada Bar No.: 1641

4 mbohn@bohnlawfirm.com

5 JEFF ARLITZ, ESQ.

6 Nevada Bar No. 6558

7 jarlitz@bohnlawfirm.com

8 LAW OFFICES OF

9 MICHAEL F. BOHN, ESQ., LTD.

10 376 E. Warm Springs Rd., Ste. 140

11 Las Vegas, Nevada 89119

12 (702) 642-3113/ (702) 642-9766 FAX

13 Attorney for defendant, Resources Group, LLC

14 DISTRICT COURT

15 CLARK COUNTY, NEVADA

16 U.S. BANK NATIONAL ASSOCIATION, ND, a  
17 national association

CASE NO.: A667690

DEPT NO.: XVIII

18 Plaintiff,

19 vs.

20 GEORGE R. EDWARDS, an individual; ANY  
21 AND ALL PERSONS UNKNOWN, CLAIMING  
22 TO BE PERSONAL REPRESENTATIVES OF  
23 GEORGE R. EDWARDS ESTATE, OR DULY  
24 APPOINTED, QUALIFIED, AND ACTING  
25 EXECUTOR OF THE WILL OF THE ESTATE  
26 OF GEORGE R. EDWARDS; RESOURCES  
27 GROUP, LLC, a Nevada Limited Liability  
28 Company; GLENVIEW WEST TOWNHOMES  
ASSOCIATION, a Nevada non-profit corporation;  
DOES 4 through inclusive; and ROES 1 through  
10 inclusive

Defendants.

INITIAL APPEARANCE FEE DISCLOSURE

Pursuant to NRS Chapter 19, filing fees are submitted for the party appearing in the above.

///

///

1 entitled action as indicated below:

2 || RESOURCES GROUP, LLC, defendant

**\$223.00**


3 TOTAL REMITTED:

**\$223.00**

4 DATED this 16<sup>th</sup> day of July 2014.

**LAW OFFICES OF  
MICHAEL F. BOHN, ESQ., LTD.**

By: /Michael F. Bohn/  
MICHAEL F. BOHN, ESQ.  
376 E. Warm Springs Rd., Ste. 140  
Las Vegas, Nevada 89119  
Attorney for defendant

  
CLERK OF THE COURT

**McCARTHY & HOLTHUS, LLP**  
Kristin A. Schuler-Hintz (NSB# 7171)  
Thomas N. Beckom, Esq (NSB# 12554)  
9510 West Sahara Avenue, Suite 200  
Las Vegas, NV 89117  
Telephone: (702) 685-0329  
Facsimile: (866) 339-5691

Attorneys for *U.S. BANK*

**IN THE EIGHTH JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF CLARK**

U.S. BANK NATIONAL ASSOCIATION ND,  
A NATIONAL ASSOCIATION

Case No. A-12-667690-C

Dept. No. XVI

Plaintiff,

v.

**FIRST AMENDED ANSWER TO THE  
COUNTERCLAIM**

GEORGE R. EDWARDS, an individual, ANY  
AND ALL PERSON UNKNOWN,  
CLAIMING TO BE PERSONAL  
REPRESENTATIVES OF GEORGE R.  
EDWARDS ESTATE OR DULY  
APPOINTED, QUALIFIED, AND ACTING  
EXECUTOR OF THE WILL OF THE  
ESTATE OF GEORGE R. EDWARDS;  
RESOURCES GROUP, LLC a Nevada  
Limited-Liability Company; GLENVIEW  
WEST TOWNHOMES ASSOCIATION, a  
Nevada non-profit corporation; DOES 4  
through 10, inclusive, and ROES 1 through 10,  
inclusive

Defendants.

COMES NOW U.S. BANK NATIONAL ASSOCIATION ND, A NATIONAL  
ASSOCIATION ("U.S. BANK") by and through its attorney of record Thomas N. Beckom, Esq  
and Kristin A. Schuler-Hintz, Esq of the law firm of McCarthy Holthus LLP and hereby files this  
answer to the counterclaim



1. This answering Defendant DENIES the allegations in paragraph 1.
2. This answering Defendant does not have sufficient information to either admit or deny the and on this basis DENIES the allegations in paragraph 2.
3. This answering Defendant is without sufficient information to either admit or deny the allegations contained in paragraph 3 and therefore DENIES the allegations contained in paragraph 3.
- [sic] 6. The answering Defendant DENIES the allegations in paragraph 6.
7. This answering Defendant DENIES the allegations in paragraph 7.
8. This answering Defendant DENIES the allegations in paragraph 8.

**SECOND CLAIM FOR RELIEF**

9. This answering Defendant incorporates it's answers to paragraphs 1 through 8 as if fully set forth herein.
10. This answering Defendant DENIES the allegations in paragraph 10.
11. This answering Defendant DENIES the allegations in paragraph 11.

**AFFIRMATIVE DEFENSES**

U.S. Bank asserts the following additional defenses. Discovery and investigation of this case is not yet complete, and U.S. Bank reserves the right to amend this Answer by adding, deleting, or amending defenses as may be appropriate. Any allegations not specifically admitted are denied. U.S. Bank further expressly incorporates all affirmative defenses delineated in Nev. R. Civ. Pro 8. In further answer to the Complaint, and by way of additional defenses U.S. Bank avers as follows:

**FIRST AFFIRMATIVE DEFENSE**

Plaintiff has failed to state facts sufficient to constitute any cause of action against U.S. Bank.

**SECOND AFFIRMATIVE DEFENSE**

To the extent that Plaintiff's interpretation of NRS 116.3116 is accurate, the statute, and Chapter 116 are void for vagueness as applied to this matter.

**THIRD AFFIRMATIVE DEFENSE**

The super-priority lien was satisfied prior to the homeowners' association foreclosure under the doctrines of tender, estoppels, laches, or waiver.

**FOURTH AFFIRMATIVE DEFENSE**

The homeowners' association foreclosure sale was not commercially reasonable and the circumstances of sale of the property violated the homeowners' association's obligation of good faith under NRS §116.1113 and duty to act in a commercially reasonable manner.

**FIFTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred in whole or in part because of its failure to take reasonable steps to mitigate its damages, if any.

**SIXTH AFFIRMATIVE DEFENSE**

The Plaintiff lacks standing to bring some or all of their claims and causes of action.

**SEVENTH AFFIRMATIVE DEFENSE**

Plaintiff has cited no rule and/ or statute to override the American Rule regarding attorney fee shifting.

**EIGHTH AFFIRMATIVE DEFENSE**

The sale of the property is unconstitutional pursuant to Federal Law, the due process clause of the 14<sup>th</sup> amendment of the United States Constitution, and Article 1 Sec. 8 of the Nevada Constitution.

**NINTH AFFIRMATIVE DEFENSE**

The Plaintiff received a deed which was void and/ or voidable pursuant to NRS Chapter 112.

**TENTH AFFIRMATIVE DEFENSE**

U.S. Bank avers the affirmative defense of unclean hands.

**ELEVENTH AFFIRMATIVE DEFENSE**

U.S. Bank denies that the Plaintiff is entitled to any relief for which it prays.

**TWELETH AFFIRMATIVE DEFENSE**

U.S. Bank avers the affirmative defense of failure to do equity.

**THIRTEENTH AFFIRMATIVE DEFENSE**

The homeowners' association did not provide proper notice of the "superpriority" assessment amount and the homeowners' association foreclosure sale, and any such notice failed to comply with the statutory and common law requirements of Nevada and with state and federal constitutional law.

**FOURTEENTH AFFIRMATIVE DEFENSE**

The homeowner's association foreclosure sale is void for failure to comply with the provisions of NRS Chapter 116, and other provisions of law.

**FIFTEENTH AFFIRMATIVE DEFENSE**

U.S. Bank is entitled to an offset of some, if not all, of the Plaintiffs alleged damages, if any.

**SIXTEENTH AFFIRMATIVE DEFENSE**

The Plaintiff assumed the risk in taking the actions they now aver caused them damage.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

NRS 116.3116 *et seq* violates the 5<sup>th</sup> amendment takings clause.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

NRS 116.3116 *et seq* violates U.S. Bank's Substantive Due Process Right and Fundamental rights under the Nevada and Federal Constitution



**NINETEENTH AFFIRMATIVE DEFENSE**

The foreclosure sale price is low, the sale is the result of oppression, fraud, and unfairness, and further the Plaintiff is not a bona fide purchaser.

**TWENTIETH AFFIRMATIVE DEFENSE**

This entire action is barred by the statute of limitations.

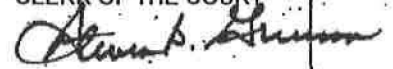
WHEREFORE the Counter Plaintiff prays to this Honorable Court that the Court:

1. Void the Sale under NRS Chapter 112;
2. In the alternative, enter judgment against LVRR #77 in an amount equal to U.S. Bank's interest in the property.
3. In the alternative, Quiet Title in the name of the Homeowner;
4. Issue an order declaring that the HOA sale did not comply with NRS Chapter 116 and is void or voidable;
5. Use the Equitable Powers of this Court to Void the Sale
6. Issue an order declaring the sale unconstitutional under the United States Constitution;
7. Any other relief which is just and proper.

DATED: January 20, 2017

McCarthy & Holthus, LLP

By: /s/ Thomas N. Beckom Esq  
Thomas N. Beckom, Esq



1 FFCL

2  
3  
4 **DISTRICT COURT**  
5 **CLARK COUNTY, NEVADA**

6 U.S. BANK NATIONAL ASSOCIATION, ND, A  
7 NATIONAL ASSOCIATION,

8 Plaintiff,

9 vs.

CASE NO.: A-12-667690-C  
DEPT. NO.: XVI

10 GEORGE R. EDWARDS, an individual, ANY  
11 ALL PERSON UNKOWN CLAIMING TO BE  
12 PERSONAL REPRESENTATIVES OF GEORGE  
13 R.EDWARDS ESTATE OR DULY APPOINTED,  
14 QUALIFIED, AND ACTING EXECUTOR OF  
15 THE WILL OF THE ESTATE OF GEORGE R.  
16 EDWARDS; RESOURCES GROUP, LLC, a  
Nevada limited liability company; GENVIEW  
WEST TOWNHOMES ASSOCIATION, a Nevada  
non-profit corporation; DOES 4 through 10,  
inclusive, and ROES 1 through 10, inclusive

17 Defendants.  
18

19 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

20 The above-entitled case, having come on for bench trial on October 2 and 3, 2017,  
21 before Department XVI of the Eighth Judicial District Court, in and for Clark County,  
22 Nevada, with the Honorable Timothy C. Williams presiding. Priscilla L. Baker, Esq. and  
23 Thomas N. Beckom, Esq., of the law firm of McCarthy & Holthus appearing for Plaintiff,  
24 U.S. Bank National Association, ND, a National Association; Charles L. Geisendorf,  
25 Esq., and Richard J. Vilkin, Esq., of the law firm of Geisendorf & Vilkin, appearing for  
26 Defendant Resources Group, LLC.  
27 ...  
28

1 This Court, after having reviewed the papers, pleadings, and briefs on file herein,  
2 hearing testimony of witnesses and oral argument of counsel, the Court hereby makes the  
3 following Findings of Fact and Conclusions of Law:  
4

5 **FINDINGS OF FACT**

- 6 1. On March 26, 2009, a Deed of Trust as to the subject property was recorded in  
7 Clark County, Nevada listing the grantor as George R. Edwards and the lender as  
8 U.S. Bank National Association ND, a national banking association organized  
9 under the laws of the United States. The subject property was legally described as  
10 Lot Nineteen (19) of Glenview West Townhome, as shown by Map thereof on file  
11 in Book 30 of Plats, Page 65, in the Office of the County Recorder of Clark  
12 County. The subject property was also described as Assessor's Parcel Number  
13 163-24-111-021. (The "subject property.")  
14  
15 2. The Deed of Trust stated the address of U.S. Bank to be: US Recordings, 2925  
16 Country Drive STE 201, ST. Paul, MN 55117.  
17  
18 3. On January 4, 2011, a Notice of Delinquent Assessment Lien was recorded on the  
19 subject property in Clark County, Nevada by Alessi & Koenig, LLC on behalf of  
20 Glenview West Townhouses Association. A non-recorded copy of that Notice of  
21 Delinquent Assessment Lien had previously been mailed to the grantor and owner  
22 of the subject property, George R. Edwards, at the subject property street address  
23 of 4254 Rollingstone Drive, Las Vegas, NV 89103 on December 20, 2010.  
24  
25 4. George R. Edwards first became delinquent in his payment of homeowner  
26 monthly assessments on November 1, 2009. He remained delinquent on all  
27 monthly assessments between November 1, 2009, and the date of foreclosure sale  
28



- 1 on January 25, 2012, with the exception of one payment of \$414 made in  
2 December 2011. The monthly assessment amount was \$130.
- 3 5. On March 29, 2011, a Notice of Default and Election to Sell was recorded against  
4 the subject property by Alessi & Koenig, LLC on behalf of Glenview West  
5 Townhouses Association ("HOA").
- 6 6. On April 5, 2011, a copy of the Notice of Default and Election to Sell was mailed  
7 by Alessi & Koenig, the agent for the HOA, to U.S. Bank at US Recordings, 2925  
8 Country Drive STE 201, ST. Paul, MN 55117.
- 9 7. On October 13, 2011, a copy of the Notice of Sale was recorded in Clark County,  
10 Nevada.
- 11 8. On or soon after September 16, 2011, a non-recorded copy of the Notice of Sale  
12 was mailed by Alessi & Koenig LLC to U.S. Bank at US Recordings, 2925  
13 Country Drive STE 201, ST. Paul, MN 55117.
- 14 9. On January 25, 2011, Alessi & Koenig sold the subject property at public auction  
15 to 4254 Rollingstone Avenue Trust for the high bid price of \$5,331.
- 16 10. The Trustee's Deed Upon Sale states in part:
- 17 This conveyance is made pursuant to the powers conferred  
18 on Trustee by NRS 116 et seq., and that certain Notice of  
19 Delinquent Assessment Lien, described herein [recorded  
20 January 4, 2011]. Default occurred as set forth in a Notice  
21 of Default and Election to Sell which was recorded in the  
22 office of the recorder of said county. All requirements of  
23 law regarding the mailing of copies of notices and the  
24 posting and publication of the copies of the Notice of Sale  
25 have been complied with.
- 26 11. On January 25, 2012, Iyad Eddie Haddad appeared at the public auction and was  
27 the high bidder for a price of \$5,331 which he paid in cash that day.
- 28

1 12. Mr. Haddad instructed that the property be vested in 4254 Rollingstone Avenue  
2 Trust.

3 13. Prior to the sale, Mr. Haddad had no information about the property other than  
4 what was contained in the recorded documents, including no information as to  
5 any dispute as to title. He received no information from the HOA or its trustee  
6 about the property prior to sale, other than it was going to be sold at public  
7 auction.  
8

9 14. The sales trustee Alessi & Koenig paid to the HOA from the proceeds of the sale  
10 the total amount of \$2995.60 to cover all past due assessments dating back to  
11 November 1, 2009, with the exception of the \$414 payment made in December  
12 2011.

13 15. The nine months of assessments from April 4, 2010, to January 4, 2011, remained  
14 unpaid throughout the foreclosure, up to and including the date of sale, and were  
15 paid in full to the HOA from the proceeds of the sale in the amount of \$1,170 (9  
16 months X \$130 per month = \$1,170).  
17

18 16. On May 29, 2012, a Grant Bargain Sale Deed was recorded in Clark County,  
19 Nevada in which 4254 Rollingstone Avenue Trust transferred and conveyed the  
20 subject property to Resources Group, LLC as trustee for the Bourne Valley Court  
21 Trust dated 5/4/2012.  
22

23 17. The subject property was included in a Chapter 11 bankruptcy case in 2012 and  
24 2013. However, in that Chapter 11 bankruptcy case, captioned *In re: Saticoy Bay*  
25 *LLC Series Bowman Lair, Debtor* (Case No. 13-12463-btb, District of Nevada),  
26 the court ordered the petition dismissed without taking any action as to the  
27 petition or granting any relief.  
28

## CONCLUSIONS OF LAW

1. In Nevada, a homeowners association ("HOA") has a lien for delinquent assessments, a portion of which has priority over a first deed of trust. NRS 116.3116(2); *SFR Investments Pool 1, LLC v. U.S. Bank, N.A.*, 130 Nev. \_\_\_, \_\_\_, 334 P.3d 408, 419 (2014). When the HOA forecloses on its lien, this extinguishes all inferior liens. *Ibid*.
2. When an HOA forecloses on its lien for delinquent assessments, the purchaser at the foreclosure sale receives a "deed without warranty which conveys to the grantee all title of the unit's owner to the unit [.]” NRS 116.31164(3)(a).
3. The Nevada Supreme Court has affirmed that deed recitals are "conclusive" to the matters recited in NRS 116.31166 "in the absence of grounds for equitable relief." *Shadow Wood Homeowners Assn., Inc. v. New York Comm. Bancorp, Inc.*, 132 Nev. \_\_\_, \_\_\_, 366 P.3d 1105, 1111-1112 (2016).
4. NRS 116.31164 concerns mailing of the Notice of Default and Election to Sell and the recording of same, the elapsing of 90 days, and the giving of Notice of Sale. Such a deed containing those recitals is conclusive against the unit's former owner, his or her heirs and assigns, and all other persons....” NRS 116.31166(1)-(2); *Shadow Wood v. New York Comm., supra*, at 1110.
5. Given the recitals' conclusive effects, a party contesting the sale has the burden to overcome these conclusive presumptions. "A presumption not only fixes the burden of going forward with evidence, but it also shifts the burden of proof." *Yeager v. Harrah's Club, Inc.*, 111 Nev. 830, 834, 897 P.2d 1093, 1095 (1995).
6. At the time of the foreclosure in this case, there was no requirement under Nevada law that a holder of a first deed of trust be mailed the Notice of Default unless that



holder gave notice to the association of the existence of its secured interest at least 30 days prior to the recordation of the Notice of Default. NRS 116.31163(2).

7. At the time of the foreclosure in this case, there was no requirement under Nevada law that a holder of a first deed of trust be mailed the Notice of Sale unless that holder gave notice to the association of the existence of its secured interest prior to the recordation of the Notice of Sale. NRS 116.311635(1)(b)(2).

8. U.S. Bank did not make the notifications to the HOA of its secured interest as required by NRS 116.31163(2) and NRS 116.31165(1)(b)(2).

9. The conclusive effects of the Trustee's Deed Upon Sale have not been overcome in this case.

10. In addition, the facts proved show that Alessi & Koenig, LLC complied with all requirements of law in conducting this non-judicial foreclosure pursuant to NRS 116.3116 et seq..

11. Alessi & Koenig timely and properly served the Notice of Default and the Notice of Sale on U.S. Bank as if U.S. Bank had made the notification specified in NRS 116.31163(2) and NRS 311635(1)(b)(2).

12. The Uniform Fraudulent Transfer Act (NRS 112.140 et seq.) has no application to the foreclosure and sale in the case at bar. For one, the subject property is not subject to the Act because the property was encumbered by a lien (the HOA lien), which is excluded under the Act. NRS 112.150(2)(a)). Second, the Act was designed to protect unsecured creditors (and not secured mortgage holders) and not to interfere with or displace the separate statutory requirements of NRS 116.3116 et seq.

13. The doctrine of judicial estoppel has as its purpose to prevent a party from taking

1 inconsistent positions that arise from intentional wrongdoing or an attempt to  
2 obtain an unfair advantage. *Marcuse v. Del Webb Communities, Inc.*, 123 Nev.  
3 278, 163 P.3d 462, 468-469 (2007). The doctrine does not preclude changes in  
4 position that are not intended to sabotage the judicial process. *Ibid.*

5 14. There are five requirements to invoke the doctrine of judicial estoppel: "1) the  
6 same party has taken two positions; (2) the positions were taken in judicial or  
7 quasi-judicial administrative proceedings; (3) the party was successful in asserting  
8 the first position (i.e., the tribunal adopted the position or accepted it as true); (4)  
9 the two positions are totally inconsistent; and (5) the first position was not taken  
10 as a result of ignorance, fraud, or mistake." *Marcuse v. Del Webb Communities,*  
11 *Inc., supra*, 163 P.3d at 468-469.

12  
13 15. The doctrine of judicial estoppel does not apply in this case for three separate and  
14 independent reasons: 1) Defendant and Counterclaimant's affiliate was not  
15 successful in asserting any position as to the first deed of trust in the bankruptcy  
16 proceedings as the bankruptcy court did not adopt the affiliate's position and in  
17 fact dismissed the affiliated party's Chapter 11 petition with no action taken in  
18 an Order filed as Doc 76 entered 10/03/2013 (*In re Saticoy Bay LLC Series*  
19 *Bowman Lair*, Debtor (Case 13-12463-btb)); 2) the two positions taken in the  
20 bankruptcy court and the instant court are not totally inconsistent; and 3) the  
21 conduct did not sabotage the judicial process.

22  
23  
24 16. Plaintiff U.S. Bank had numerous options to avoid the foreclosure on its first deed  
25 of trust which it did not utilize. It could have tendered and/or paid off the super-  
26 priority portion of the lien prior to the sale. It could have also, as stated by the  
27 Nevada Supreme Court, paid off the entire HOA lien or established an escrow  
28

1 account for such payments. It could also have filed a court action to enjoin the  
2 sale and recorded a lis pendens on the subject property. Thus, the inequity of  
3 which U.S. Bank complains is "of its own making." See *SFR Investments Pool 1,*  
4 *LLC v. U.S. Bank, N.A.*, 130 Nev. \_\_\_\_, \_\_\_\_, 334 P.3d 408, 414 (2014).

5  
6 17. Because U.S. Bank did not pursue any of its legal remedies to stop the sale or  
7 inform potential purchasers prior to the sale as to a dispute as to title, it is not  
8 entitled to equitable relief. *Davenport v. State Farm*, 81 Nev. 361, 404 P.2d 10, 14  
9 (1965); 19 Am Jur., Equity, Sec. 107, p. 107 and Sec. 119, pp. 120-121.

10 18. With regard to the issue of commercial reasonableness of the sale, an allegation of  
11 inadequate purchase price alone is insufficient to set aside a foreclosure sale,  
12 "there must also be a showing of fraud, unfairness, or oppression." *Shadow Wood*  
13 *v. New York Comm.*, *supra*, 366 P.3d at 1110. See also, *Golden v. Tomiyasu*, 79  
14 Nev. 503, 387 P.2d 989, 995 (1963) ("inadequacy of price, however gross, is not  
15 in itself a sufficient ground for setting aside a trustee's sale legally made, there  
16 must be in addition proof of some element of fraud, unfairness or oppression as  
17 accounts for and brings about the inadequacy of price" (internal citations  
18 omitted) (emphasis added)).

19  
20 19. In this case, the subject property sold for \$5,331. There has been no showing to  
21 prove fraud, unfairness or oppression leading to this sales price.

22  
23 20. Defendant and Counterclaimant's predecessor, 4254 Rollingstone Avenue Trust,  
24 was a bona fide purchaser for value, at the HOA foreclosure sale, without notice,  
25 actual or constructive or inquiry, of any defects in the sale or any pre-sale dispute  
26 as to title. There is nothing in law or equity that should prevent Defendant and  
27 Counterclaimant Resources Group LLC as trustee for the Bourne Valley Court  
28



1 Trust dated 5/4/2012 from having clear and unencumbered title to the subject  
2 property.

3 21. The holding of the Nevada Supreme Court *SFR Investments Pool 1, LLC v. U.S.*  
4 *Bank, N.A.*, 130 Nev. \_\_\_, \_\_\_, 334 P.3d 408 (2014) that foreclosure on a  
5 homeowner's lien extinguishes a first deed of trust is retroactive. *K&P Homes v.*  
6 *Christiana Trust*, 133 Nev., Advance Opinion 51 (filed July 27, 2017, Nevada  
7 Supreme Court Case No. 69966).

8  
9 22. It was proper for Alessi & Koenig to include "the total amount of the lien"—and  
10 not just the super-priority amount—in its recorded notices. *SFR Investments Pool*  
11 *1, LLC v. U.S. Bank, N.A.*, 130 Nev. \_\_\_, \_\_\_, 334 P.3d 408, 418 (2014).

12 23. The mortgage protection clause in the HOA's CC&Rs does not protect U.S. Bank.  
13 The Nevada Supreme Court expressly rejected that argument in the *SFR* decision.  
14 The Court stated: "NRS 116.1104 defeats this argument. It states that Chapter  
15 116's 'provisions may not be varied by agreement, and rights conferred by it may  
16 not be waived...[e]xcept as expressly provided in' Chapter 116. (Emphasis  
17 added.) 'Nothing in [NRS] 116.3116 expressly provides for a waiver of the  
18 HOA's right to a priority position for the HOA's super priority lien.'" *SFR*  
19 *Investments Pool 1 v. U.S. Bank, supra*, 334 P.3d at 419 (case quoted omitted).

20  
21 24. It is ordered that title is quieted in the subject property in Defendant and  
22 Counterclaimant Resources Group, LLC as trustee for the Bourne Valley Court  
23 Trust dated 5/4/2012, free and clear of all liens and encumbrances by, and forever  
24 enjoining, Defendant U.S. Bank National Association ND from asserting any  
25 estate, title, right, interest, or claim to the subject property adverse to Defendant  
26 and Counterclaimant Resources Group, LLC as trustee of the Bourne Valley  
27  
28

1 Court Trust dated 5/4/2012.

2 25. The Court directs that this is a final judgment as between Defendant and  
3 Counterclaimant Resources Group, LLC as trustee of the Bourne Valley Court  
4 Trust dated 5/4/2012 on the one hand and Defendant U.S. Bank National  
5 Association ND on the other hand, pursuant to NRCP 54(b), as there is no just  
6 reason for delay of entry of judgment and the court directs entry of final judgment  
7 as between these parties.  
8

9 IT IS SO ORDERED AND ADJUDGED this 31<sup>st</sup> day of October, 2017.

10  
11   
12 DISTRICT COURT JUDGE  
13

14 **CERTIFICATE OF SERVICE**

15 I hereby certify that on the date filed, this document was electronically served to  
16 all registered parties for case number A667690 as follows:

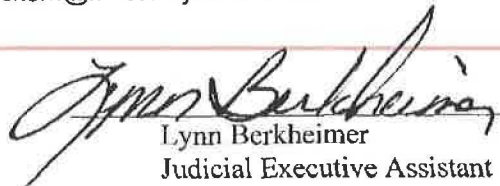
17  
18 Benjamin D. Petiprin, Esq. [bpetiprin@zievelaw.com](mailto:bpetiprin@zievelaw.com)

19 Amber Geiman [ageiman@lawhjc.com](mailto:ageiman@lawhjc.com)

20 Kristin Schuler-Hintz [dcnv@mccarthyholthus.com](mailto:dcnv@mccarthyholthus.com)

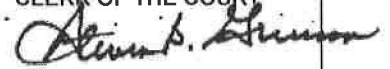
21 Stuart Taylor [staylor@lawhjc.com](mailto:staylor@lawhjc.com)

22 Thomas N. Beckom [tbeckom@mccarthyholthus.com](mailto:tbeckom@mccarthyholthus.com)  
23

24   
25 Lynn Berkheimer  
26 Judicial Executive Assistant  
27  
28

GEISENDORF & VILKIN, PLLC  
2470 St. Rose Parkway, Suite 309 Henderson, Nevada 89074  
Phone: 702.873.5868 § Fax: 702.548.6335

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11/1/2017 2:19 PM  
Steven D. Grierson  
CLERK OF THE COURT



Richard Vilkin  
Nevada Bar No. 8301  
Geisendorf & Vilkin, PLLC  
2470 St. Rose Parkway, Suite 309  
Henderson, Nevada 89074  
Direct Dial: (702) 476-3211  
Office phone: (702) 873-5868  
Email: Richard@gvattorneys.com  
*Attorneys for defendant and counterclaimant*  
*Resources Group, LLC*

DISTRICT COURT

CLARK COUNTY, NEVADA

U.S. BANK NATIONAL ASSOCIATION ND, A  
NATIONAL ASSOCIATION,

Plaintiff,

v.

GEORGE R. EDWARDS, an individual, ANY AND  
ALL PERSON UNKNOWN CLAIMING TO BE  
PERSONAL REPRESENTATIVES OF GEORGE  
R. EDWARDS ESTATE OR DULY APPOINTED,  
QUALIFIED, AND ACTING EXECUTOR OF  
THE WILL OF THE ESTATE OF GEORGE R.  
EDWARDS; RESOURCES GROUP, LLC, a  
Nevada limited liability company; GENVIEW  
WEST TOWNHOMES ASSOCIATION, a Nevada  
non-profit corporation; DOES 4 through 10,  
inclusive, and ROES 1 through 10, inclusive,

Defendants.

RESOURCES GROUP, LLC,

Counter-claimant,

v.

U.S. BANK NATIONAL ASSOCIATION, ND,

Counter-claimant.

Case No.: A-12-667690-C

Dept. No.: XVI

NOTICE OF ENTRY OF FINDINGS  
OF FACT AND CONCLUSIONS OF  
LAW AND FINAL JUDGMENT  
PURSUANT TO NRCP 54(b)  
BETWEEN RESOURCES GROUP,  
LLC AND U.S. BANK NATIONAL  
ASSOCIATION, ND



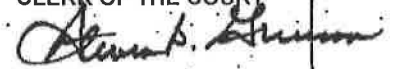
1 TO ALL PARTIES AND ATTORNEYS:

2 PLEASE TAKE NOTICE that the court has signed and filed on October 31, 2017 its  
3 Findings of Fact and Conclusions of Law in this case as between Resources Group, LLC and  
4 U.S. Bank National Association, ND, pursuant to NRCP 54(b). A true copy of said document is  
5 attached.  
6

7 Date: November 1, 2017

GEISENDORF & VILKIN, PLLC

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9  
10 By: /s/ Richard J. Vilkin  
11 Richard J. Vilkin, Esq. (8301)  
12 2470 St. Rose Parkway, Suite 309  
13 Henderson, Nevada 89074  
14 *Attorneys for defendant and*  
15 *counterclaimant Resources Group,*  
16 *LLC*  
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5 **DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

6 U.S. BANK NATIONAL ASSOCIATION, ND, A  
7 NATIONAL ASSOCIATION,

8 Plaintiff,

9 vs.

CASE NO.: A-12-667690-C  
DEPT. NO.: XVI

10 GEORGE R. EDWARDS, an individual, ANY  
11 ALL PERSON UNKOWN CLAIMING TO BE  
12 PERSONAL REPRESENTATIVES OF GEORGE  
13 R.EDWARDS ESTATE OR DULY APPOINTED,  
14 QUALIFIED, AND ACTING EXECUTOR OF  
15 THE WILL OF THE ESTATE OF GEORGE R.  
16 EDWARDS; RESOURCES GROUP, LLC, a  
Nevada limited liability company; GENVIEW  
WEST TOWNHOMES ASSOCIATION, a Nevada  
non-profit corporation; DOES 4 through 10,  
inclusive, and ROES 1 through 10, inclusive

17 Defendants.  
18

19 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

20 The above-entitled case, having come on for bench trial on October 2 and 3, 2017,  
21 before Department XVI of the Eighth Judicial District Court, in and for Clark County,  
22 Nevada, with the Honorable Timothy C. Williams presiding. Priscilla L. Baker, Esq. and  
23 Thomas N. Beckom, Esq., of the law firm of McCarthy & Holthus appearing for Plaintiff,  
24 U.S. Bank National Association, ND, a National Association; Charles L. Geisendorf,  
25 Esq., and Richard J. Vilkin, Esq., of the law firm of Geisendorf & Vilkin, appearing for  
26 Defendant Resources Group, LLC.  
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1 This Court, after having reviewed the papers, pleadings, and briefs on file herein,  
2 hearing testimony of witnesses and oral argument of counsel, the Court hereby makes the  
3 following Findings of Fact and Conclusions of Law:  
4

5 **FINDINGS OF FACT**

- 6 1. On March 26, 2009, a Deed of Trust as to the subject property was recorded in  
7 Clark County, Nevada listing the grantor as George R. Edwards and the lender as  
8 U.S. Bank National Association ND, a national banking association organized  
9 under the laws of the United States. The subject property was legally described as  
10 Lot Nineteen (19) of Glenview West Townhome, as shown by Map thereof on file  
11 in Book 30 of Plats, Page 65, in the Office of the County Recorder of Clark  
12 County. The subject property was also described as Assessor's Parcel Number  
13 163-24-111-021. (The "subject property.")  
14  
15 2. The Deed of Trust stated the address of U.S. Bank to be: US Recordings, 2925  
16 Country Drive STE 201, ST. Paul, MN 55117.  
17  
18 3. On January 4, 2011, a Notice of Delinquent Assessment Lien was recorded on the  
19 subject property in Clark County, Nevada by Alessi & Koenig, LLC on behalf of  
20 Glenview West Townhouses Association. A non-recorded copy of that Notice of  
21 Delinquent Assessment Lien had previously been mailed to the grantor and owner  
22 of the subject property, George R. Edwards, at the subject property street address  
23 of 4254 Rollingstone Drive, Las Vegas, NV 89103 on December 20, 2010.  
24  
25 4. George R. Edwards first became delinquent in his payment of homeowner  
26 monthly assessments on November 1, 2009. He remained delinquent on all  
27 monthly assessments between November 1, 2009, and the date of foreclosure sale  
28



1 on January 25, 2012, with the exception of one payment of \$414 made in  
2 December 2011. The monthly assessment amount was \$130.

3 5. On March 29, 2011, a Notice of Default and Election to Sell was recorded against  
4 the subject property by Alessi & Koenig, LLC on behalf of Glenview West  
5 Townhouses Association ("HOA").

6 6. On April 5, 2011, a copy of the Notice of Default and Election to Sell was mailed  
7 by Alessi & Koenig, the agent for the HOA, to U.S. Bank at US Recordings, 2925  
8 Country Drive STE 201, ST. Paul, MN 55117.

9 7. On October 13, 2011, a copy of the Notice of Sale was recorded in Clark County,  
10 Nevada.

11 8. On or soon after September 16, 2011, a non-recorded copy of the Notice of Sale  
12 was mailed by Alessi & Koenig LLC to U.S. Bank at US Recordings, 2925  
13 Country Drive STE 201, ST. Paul, MN 55117.

14 9. On January 25, 2011, Alessi & Koenig sold the subject property at public auction  
15 to 4254 Rollingstone Avenue Trust for the high bid price of \$5,331.

16 10. The Trustee's Deed Upon Sale states in part:

17 This conveyance is made pursuant to the powers conferred  
18 on Trustee by NRS 116 et seq., and that certain Notice of  
19 Delinquent Assessment Lien, described herein [recorded  
20 January 4, 2011]. Default occurred as set forth in a Notice  
21 of Default and Election to Sell which was recorded in the  
22 office of the recorder of said county. All requirements of  
23 law regarding the mailing of copies of notices and the  
24 posting and publication of the copies of the Notice of Sale  
have been complied with.

25 11. On January 25, 2012, Iyad Eddie Haddad appeared at the public auction and was  
26 the high bidder for a price of \$5,331 which he paid in cash that day.

1 12. Mr. Haddad instructed that the property be vested in 4254 Rollingstone Avenue  
2 Trust.

3 13. Prior to the sale, Mr. Haddad had no information about the property other than  
4 what was contained in the recorded documents, including no information as to  
5 any dispute as to title. He received no information from the HOA or its trustee  
6 about the property prior to sale, other than it was going to be sold at public  
7 auction.  
8

9 14. The sales trustee Alessi & Koenig paid to the HOA from the proceeds of the sale  
10 the total amount of \$2995.60 to cover all past due assessments dating back to  
11 November 1, 2009, with the exception of the \$414 payment made in December  
12 2011.

13 15. The nine months of assessments from April 4, 2010, to January 4, 2011, remained  
14 unpaid throughout the foreclosure, up to and including the date of sale, and were  
15 paid in full to the HOA from the proceeds of the sale in the amount of \$1,170 (9  
16 months X \$130 per month = \$1,170).  
17

18 16. On May 29, 2012, a Grant Bargain Sale Deed was recorded in Clark County,  
19 Nevada in which 4254 Rollingstone Avenue Trust transferred and conveyed the  
20 subject property to Resources Group, LLC as trustee for the Bourne Valley Court  
21 Trust dated 5/4/2012.  
22

23 17. The subject property was included in a Chapter 11 bankruptcy case in 2012 and  
24 2013. However, in that Chapter 11 bankruptcy case, captioned *In re: Saticoy Bay*  
25 *LLC Series Bowman Lair, Debtor* (Case No. 13-12463-btb, District of Nevada),  
26 the court ordered the petition dismissed without taking any action as to the  
27 petition or granting any relief.  
28

## CONCLUSIONS OF LAW

1. In Nevada, a homeowners association ("HOA") has a lien for delinquent assessments, a portion of which has priority over a first deed of trust. NRS 116.3116(2); *SFR Investments Pool 1, LLC v. U.S. Bank, N.A.*, 130 Nev. \_\_\_, \_\_\_, 334 P.3d 408, 419 (2014). When the HOA forecloses on its lien, this extinguishes all inferior liens. *Ibid.*
2. When an HOA forecloses on its lien for delinquent assessments, the purchaser at the foreclosure sale receives a "deed without warranty which conveys to the grantee all title of the unit's owner to the unit [.]" NRS 116.31164(3)(a).
3. The Nevada Supreme Court has affirmed that deed recitals are "conclusive" to the matters recited in NRS 116.31166 "in the absence of grounds for equitable relief." *Shadow Wood Homeowners Assn., Inc. v. New York Comm. Bancorp, Inc.*, 132 Nev. \_\_\_, \_\_\_, 366 P.3d 1105, 1111-1112 (2016).
4. NRS 116.31164 concerns mailing of the Notice of Default and Election to Sell and the recording of same, the elapsing of 90 days, and the giving of Notice of Sale. Such a deed containing those recitals is conclusive against the unit's former owner, his or her heirs and assigns, and all other persons...." NRS 116.31166(1)-(2); *Shadow Wood v. New York Comm., supra*, at 1110.
5. Given the recitals' conclusive effects, a party contesting the sale has the burden to overcome these conclusive presumptions. "A presumption not only fixes the burden of going forward with evidence, but it also shifts the burden of proof." *Yeager v. Harrah's Club, Inc.*, 111 Nev. 830, 834, 897 P.2d 1093, 1095 (1995).
6. At the time of the foreclosure in this case, there was no requirement under Nevada law that a holder of a first deed of trust be mailed the Notice of Default unless that



holder gave notice to the association of the existence of its secured interest at least 30 days prior to the recordation of the Notice of Default: NRS 116.31163(2).

7. At the time of the foreclosure in this case, there was no requirement under Nevada law that a holder of a first deed of trust be mailed the Notice of Sale unless that holder gave notice to the association of the existence of its secured interest prior to the recordation of the Notice of Sale. NRS 116.311635(1)(b)(2).

8. U.S. Bank did not make the notifications to the HOA of its secured interest as required by NRS 116.31163(2) and NRS 116.31165(1)(b)(2).

9. The conclusive effects of the Trustee's Deed Upon Sale have not been overcome in this case.

10. In addition, the facts proved show that Alessi & Koenig, LLC complied with all requirements of law in conducting this non-judicial foreclosure pursuant to NRS 116.3116 et seq..

11. Alessi & Koenig timely and properly served the Notice of Default and the Notice of Sale on U.S. Bank as if U.S. Bank had made the notification specified in NRS 116.31163(2) and NRS 311635(1)(b)(2).

12. The Uniform Fraudulent Transfer Act (NRS 112.140 et seq.) has no application to the foreclosure and sale in the case at bar. For one, the subject property is not subject to the Act because the property was encumbered by a lien (the HOA lien), which is excluded under the Act. NRS 112.150(2)(a)). Second, the Act was designed to protect unsecured creditors (and not secured mortgage holders) and not to interfere with or displace the separate statutory requirements of NRS 116.3116 et seq.

13. The doctrine of judicial estoppel has as its purpose to prevent a party from taking

1 inconsistent positions that arise from intentional wrongdoing or an attempt to  
2 obtain an unfair advantage. *Marcuse v. Del Webb Communities, Inc.*, 123 Nev.  
3 278, 163 P.3d 462, 468-469 (2007). The doctrine does not preclude changes in  
4 position that are not intended to sabotage the judicial process. *Ibid.*

5 14. There are five requirements to invoke the doctrine of judicial estoppel: "1) the  
6 same party has taken two positions; (2) the positions were taken in judicial or  
7 quasi-judicial administrative proceedings; (3) the party was successful in asserting  
8 the first position (i.e., the tribunal adopted the position or accepted it as true); (4)  
9 the two positions are totally inconsistent; and (5) the first position was not taken  
10 as a result of ignorance, fraud, or mistake." *Marcuse v. Del Webb Communities,*  
11 *Inc., supra*, 163 P.3d at 468-469.

12 15. The doctrine of judicial estoppel does not apply in this case for three separate and  
13 independent reasons: 1) Defendant and Counterclaimant's affiliate was not  
14 successful in asserting any position as to the first deed of trust in the bankruptcy  
15 proceedings as the bankruptcy court did not adopt the affiliate's position and in  
16 fact dismissed the affiliated party's Chapter 11 petition with no action taken in  
17 an Order filed as Doc 76 entered 10/03/2013 (*In re Saticoy Bay LLC Series*  
18 *Bowman Lair*, Debtor (Case 13-12463-btb)); 2) the two positions taken in the  
19 bankruptcy court and the instant court are not totally inconsistent; and 3) the  
20 conduct did not sabotage the judicial process.

21 16. Plaintiff U.S. Bank had numerous options to avoid the foreclosure on its first deed  
22 of trust which it did not utilize. It could have tendered and/or paid off the super-  
23 priority portion of the lien prior to the sale. It could have also, as stated by the  
24 Nevada Supreme Court, paid off the entire HOA lien or established an escrow  
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1 account for such payments. It could also have filed a court action to enjoin the  
2 sale and recorded a lis pendens on the subject property. Thus, the inequity of  
3 which U.S. Bank complains is "of its own making." See *SFR Investments, Pool 1,*  
4 *LLC v. U.S. Bank, N.A.*, 130 Nev. \_\_\_, \_\_\_, 334 P.3d 408, 414 (2014).

5 17. Because U.S. Bank did not pursue any of its legal remedies to stop the sale or  
6 inform potential purchasers prior to the sale as to a dispute as to title, it is not  
7 entitled to equitable relief. *Davenport v. State Farm*, 81 Nev. 361, 404 P.2d 10, 14  
8 (1965); 19 Am Jur., Equity, Sec. 107, p. 107 and Sec. 119, pp. 120-121.  
9

10 18. With regard to the issue of commercial reasonableness of the sale, an allegation of  
11 inadequate purchase price alone is insufficient to set aside a foreclosure sale,  
12 "there must also be a showing of fraud, unfairness, or oppression." *Shadow Wood*  
13 *v. New York Comm.*, *supra*, 366 P.3d at 1110. See also, *Golden v. Tomiyasu*, 79  
14 Nev. 503, 387 P.2d 989, 995 (1963) ("inadequacy of price, however gross, is not  
15 in itself a sufficient ground for setting aside a trustee's sale legally made, there  
16 must be in addition proof of some element of fraud, unfairness or oppression as  
17 accounts for and brings about the inadequacy of price" (internal citations  
18 omitted) (emphasis added)).  
19

20 19. In this case, the subject property sold for \$5,331. There has been no showing to  
21 prove fraud, unfairness or oppression leading to this sales price.  
22

23 20. Defendant and Counterclaimant's predecessor, 4254 Rollingstone Avenue Trust,  
24 was a bona fide purchaser for value, at the HOA foreclosure sale, without notice,  
25 actual or constructive or inquiry, of any defects in the sale or any pre-sale dispute  
26 as to title. There is nothing in law or equity that should prevent Defendant and  
27 Counterclaimant Resources Group LLC as trustee for the Bourne Valley Court  
28



1 Trust dated 5/4/2012 from having clear and unencumbered title to the subject  
2 property.

3 21. The holding of the Nevada Supreme Court *SFR Investments Pool 1, LLC v. U.S.*  
4 *Bank, N.A.*, 130 Nev. \_\_\_, \_\_\_, 334 P.3d 408 (2014) that foreclosure on a  
5 homeowner's lien extinguishes a first deed of trust is retroactive. *K&P Homes v.*  
6 *Christiana Trust*, 133 Nev., Advance Opinion 51 (filed July 27, 2017, Nevada  
7 Supreme Court Case No. 69966).

8  
9 22. It was proper for Alessi & Koenig to include "the total amount of the lien"—and  
10 not just the super-priority amount—in its recorded notices. *SFR Investments Pool*  
11 *1, LLC v. U.S. Bank, N.A.*, 130 Nev. \_\_\_, \_\_\_, 334 P.3d 408, 418 (2014).


12 23. The mortgage protection clause in the HOA's CC&Rs does not protect U.S. Bank.  
13 The Nevada Supreme Court expressly rejected that argument in the *SFR* decision.  
14 The Court stated: "NRS 116.1104 defeats this argument. It states that Chapter  
15 116's 'provisions may not be varied by agreement, and rights conferred by it may  
16 not be waived...[e]xcept as expressly provided in' Chapter 116. (Emphasis  
17 added.) 'Nothing in [NRS] 116.3116 expressly provides for a waiver of the  
18 HOA's right to a priority position for the HOA's super priority lien.'" *SFR*  
19 *Investments Pool 1 v. U.S. Bank, supra*, 334 P.3d at 419 (case quoted omitted).

20  
21 24. It is ordered that title is quieted in the subject property in Defendant and  
22 Counterclaimant Resources Group, LLC as trustee for the Bourne Valley Court  
23 Trust dated 5/4/2012, free and clear of all liens and encumbrances by, and forever  
24 enjoining, Defendant U.S. Bank National Association ND from asserting any  
25 estate, title, right, interest, or claim to the subject property adverse to Defendant  
26 and Counterclaimant Resources Group, LLC as trustee of the Bourne Valley  
27  
28

1 Court Trust dated 5/4/2012.

2 25. The Court directs that this is a final judgment as between Defendant and  
3 Counterclaimant Resources Group, LLC as trustee of the Bourne Valley Court  
4 Trust dated 5/4/2012 on the one hand and Defendant U.S. Bank National  
5 Association ND on the other hand, pursuant to NRCP 54(b), as there is no just  
6 reason for delay of entry of judgment and the court directs entry of final judgment  
7 as between these parties.  
8

9 IT IS SO ORDERED AND ADJUDGED this 31<sup>st</sup> day of October, 2017.

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11  
12   
13 DISTRICT COURT JUDGE

14 **CERTIFICATE OF SERVICE**

15 I hereby certify that on the date filed, this document was electronically served to  
16 all registered parties for case number A667690 as follows:

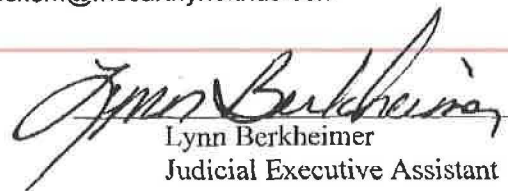
17  
18 Benjamin D. Petiprin, Esq. [bpetiprin@zievelaw.com](mailto:bpetiprin@zievelaw.com)

19 Amber Geiman [ageiman@lawhjc.com](mailto:ageiman@lawhjc.com)

20 Kristin Schuler-Hintz [dcnv@mccarthyholthus.com](mailto:dcnv@mccarthyholthus.com)

21 Stuart Taylor [staylor@lawhjc.com](mailto:staylor@lawhjc.com)

22 Thomas N. Beckom [tbeckom@mccarthyholthus.com](mailto:tbeckom@mccarthyholthus.com)  
23

24  
25   
26 Lynn Berkheimer  
27 Judicial Executive Assistant  
28

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**Certificate of E-Service**

I hereby certify that on November 1, 2017, I served the following document(s):

A copy of the preceding NOTICE OF ENTRY OF FINDINGS OF FACT AND  
CONCLUSIONS OF LAW AND FINAL JUDGMENT PURSUANT TO NRCP 54(b)  
BETWEEN RESOURCES GROUP, LLC AND U.S. BANK NATIONAL ASSOCIATION, ND.

- By Electronic Transmission: by transmitting the document to the parties  
registered to received service for this case via this Court's mandatory e-service  
system.
- By Mail: by placing the document(s) listed above in a sealed envelope, postage  
prepaid, in the US Mail, addressed as set forth below.

George R. Edwards Trust  
c/o Robert Hazell  
14983 Mammoth Place  
Fontana, CA 92336  
***Defendant***

ANY AND ALL PERSONS UNKNOWN  
CLAIMING TO BE PERSONAL REPRESENTATIVES  
OF GEORGE R. EDWARDS ESTATE, OR  
DULY APPOINTED, QUALIFIED, AND ACTING  
EXECUTOR OF THE WILL OF THE ESTATE OF  
GEORGE R. EDWARDS  
14983 Mammoth Place  
Fontana, CA 92336  
***Defendant***

/s/ Stacie Geisendorf  
an employee of Geisendorf & Vilkin, PLLC