

1 “[s]uch a deed containing those recitals is conclusive against the unit’s former owner, his or her heirs and
2 assigns, and all other persons.”

3 At page 8 of its motion, plaintiff quotes the Nevada Supreme Court’s statement in Shadow Wood
4 that “in an appropriate case, a court can grant equitable relief from a defective HOA lien foreclosure
5 sale.” 366 P.3d at 1107. Later in the opinion, the Nevada Supreme Court reviewed the conclusive recital
6 language found in NRS 116.31166 and stated that “such recitals are ‘conclusive, in the absence of
7 grounds for equitable relief.’” 366 P.3d at 1112 (quoting Holland v. Pendleton Mortg. Co., 61 Cal. App.
8 2d 570, 143 P.2d 493, 496 (Cal. Ct. App.1943)). (emphasis in original) Because the foreclosure deed
9 contains each of the recitals required by NRS 116.31166, it is plaintiff’s burden to prove that it is entitled
10 to equitable relief from the “conclusive” foreclosure deed.

11 In Shadow Wood, the court also stated:

12 Consideration of harm to potentially innocent third parties is especially pertinent here
13 where NYCB did not use the legal remedies available to it to prevent the property
14 from being sold to a third party, such as by seeking a temporary restraining order
15 and preliminary injunction and filing a lis pendens on the property. See NRS 14.010;
16 NRS 40.060. Cf. Barkley's Appeal, Bentley's Estate, 2 Monag. 274, 277 (Pa.1888) (“In the
17 case before us, we can see no way of giving the petitioner the equitable relief she asks
18 without doing great injustice to other innocent parties who would not have been in a
19 position to be injured by such a decree as she asks if she had applied for relief at an earlier
20 day.”). (emphasis added)

21 366 P.3d at 1115, n.7.

22 Because plaintiff failed to take any action to prevent the Property from being sold to a bona fide
23 purchaser without notice of plaintiff’s unrecorded claim that the notice of default had been mailed to the
24 wrong address, 4254 Rolling Stone Dr Trust acquired title to the Property free of plaintiff’s subordinate
25 deed of trust.

26 **E. Even if the Property was sold for less than 20% of fair market value,
27 it does not satisfy the California rule adopted in Shadow Wood.**

28 At page 9 of its motion, plaintiff asserts that “[i]n Shadow Wood the Nevada Supreme Court
adopted the Restatement of Property Mortgages § 8.3 as the bench mark for gross inadequacy.” In
Shadow Wood, the Nevada Supreme Court instead applied the California rule that was first adopted by
the Nevada Supreme Court in Golden v. Tomiyasu, 79 Nev. 503, 387 P.2d 989 (1963). This is

1 appropriate because NRS 116.1108 states that “[t]he principles of law and equity, including . . . the law
2 of real property . . . supplement the provisions of this chapter, except to the extent inconsistent with this
3 chapter.”

4 Unlike the case law from Alaska, New Mexico, Oklahoma, West Virginia and Arizona cited at
5 pages 9 and 10 of plaintiff’s motion, the California rule adopted in Shadow Wood recognizes that a
6 grossly inadequate sale price does not justify relief from a foreclosure sale unless the grossly inadequate
7 sales price is caused by fraud, oppression or unfairness.

8 In Shadow Wood, there are three instances before the court refers to the Restatement where the
9 Court states, without contradiction or criticism, the standard that a foreclosure sale will not be set aside
10 absent fraud, oppression or unfairness which results in a grossly inadequate sales price.

11 The first citation to the fraud, oppression or unfairness standard specifically reaffirms the
12 standards as set forth in both the Long and Golden cases:

13 Shadow Wood and Gogo Way maintain that, under NRS 116.31166, recitals such as these
14 bar any post-sale challenge regardless of basis, whether it disputes the HOA’s compliance
15 with the statutory default, notice, and timing requirements or, as here, seeks to set aside
16 the sale for equity-based reasons. If true, this interpretation would call into question this
17 court’s statement in Long v. Towne, that **a common-interest community association’s
18 nonjudicial foreclosure sale may be set aside, just as a power-of-sale foreclosure sale
19 may be set aside, upon a showing of grossly inadequate price plus “fraud, unfairness,
20 or oppression.”** 98 Nev. at 13, 639 P.2d at 530 (citing Golden v. Tomiyasu, 79 Nev. 503,
21 514, 387 P.2d 989, 995 (1963) (stating that, while a power-of-sale foreclosure may not be
22 set aside for mere inadequacy of price, it may be **if the price is grossly inadequate and
23 there is “in addition proof of some element of fraud, unfairness, or oppression as
24 accounts for and brings about the inadequacy of price”** (internal quotation omitted))).
25 (emphasis added)

26 366 P.3d at 1110.

27 The second reference reaffirms the court’s equitable power to set aside a foreclosure sale in the
28 limited instances when an inadequate price is accompanied by fraud, oppression or unfairness, and cites
the Nevada and California cases that discuss these requirements:

While not directly addressing the preemption argument Shadow Wood and Gogo Way
make as to NRS 116.31166, our post-NRS 107.030(8) cases reaffirm that courts retain the
power, in an appropriate case, to set aside a defective foreclosure sale on equitable
grounds. *See Golden v. Tomiyasu*, 79 Nev. at 514, 387 P.2d at 995 (adopting the
California rule that “inadequacy of price, however gross, is not in itself a sufficient
ground for setting aside a trustee’s sale legally made; there must be in addition proof
of some element of fraud, unfairness, or oppression as accounts for and brings about

1 the inadequacy of price” (quoting *Oller v. Sonoma Cty. Land Title Co.*, 137 Cal.App.2d
2 633, 290 P.2d 880, 882 (Cal.Ct.App.1955)); *McLaughlin v. Mut. Bldg. & Loan Ass’n*, 57
3 Nev. 181, 191, 60 P.2d 272, 276 (1936) (noting that, in the context of an action to recover
4 possession of a property after a trustee sale, “[h]ad the conduct of the trustee and
5 respondent, in connection with the sale, been accompanied by any actual fraud, deceit, or
6 trickery, a more serious question would be presented”); see also *Nev. Land & Mortg. Co.
7 v. Hidden Wells Ranch, Inc.*, 83 Nev. 501, 504, 435 P.2d 198, 200 (1967) (“In the proper
8 case, the trial court may set aside a trustee’s sale upon the grounds of fraud or
9 unfairness.”). And, cases elsewhere to have addressed comparable conclusive-or
10 presumptive-effect recital statutes confirm that such recitals do not defeat equitable relief
11 in a proper case; rather, such recitals are “conclusive, in the absence of grounds for
12 equitable relief.” *Holland v. Pendleton Mortg. Co.*, 61 Cal.App.2d 570, 143 P.2d 493, 496
13 (Cal.Ct.App.1943) (emphasis added); see *Bechtel v. Wilson*, 18 Cal.App.2d 331, 63 P.2d
14 1170, 1172 (Cal.Ct.App.1936) (distinguishing between a challenge to the sufficiency
15 of pre-sale notice, which was precluded by the conclusive recitals in the deed, and
16 an equity-based challenge based upon the alleged unfairness of the sale); compare 1
17 Grant S. Nelson, *Real Estate Finance Law*, supra, § 7:23, at 986–87 (“After a defective
18 power of sale foreclosure has been consummated, mortgagors and junior lienholders in
19 virtually every state have an equitable action to set aside the sale.”) (footnotes omitted),
20 with *id.* § 7:22, at 980–82 (noting that “[m]any states have attempted to enhance the
21 stability of power of sale foreclosure titles by enacting a variety of presumptive statutes
22”), and 6 Baxter Dimaway, *Law of Distressed Real Estate*, § 64:161 (2015) (noting that
23 a trustee’s deed recital can be overcome on a showing of actual fraud). (emphasis added)

24 366 P.3d at 1110.

25 The third reference to the standard is in the paragraph immediately before the court mentions the
26 Restatement. The court, having twice stated the standard of an inadequate price as the result of fraud,
27 oppression and unfairness, then begins its review of these standards. The first element reviewed is the
28 standard for inadequate price, which contains a limited reference to the Restatement. The reference to the
Restatement must therefore be read in context with the prior paragraph which is the beginning of the
court’s analysis of each of the elements required for the court to invoke its equitable powers. The full,
two paragraph citation reads:

29 The question remains whether NYCB demonstrated sufficient grounds to justify the
30 district court in setting aside Shadow Wood’s foreclosure sale on NYCB’s motion for
31 summary judgment. *Brelant v. Preferred Equities Corp.*, 112 Nev. 663, 669, 918 P.2d
32 314, 318 (1996) (stating the burden of proof rests with the party seeking to quiet title in
33 its favor). As discussed above, demonstrating that an association sold a property at
34 its foreclosure sale for an inadequate price is not enough to set aside that sale; there
35 must also be a showing of fraud, unfairness, or oppression. *Long*, 98 Nev. at 13, 639
36 P.2d at 530.

37 NYCB failed to establish that the foreclosure sale price was grossly inadequate as a
38 matter of law. NYCB compares Gogo Way’s purchase price, \$11,018.39, to the amount
NYCB bought the property for at its foreclosure sale, \$45,900.00. Even using NYCB’s
purchase price as a comparator, and adding to that sum the \$1,519.29 NYCB admits

1 remained due on the superpriority lien following NYCB's foreclosure sale, Gogo Way's
2 purchase price reflects 23 percent of that amount and is therefore not obviously
3 inadequate. See Golden, 79 Nev. at 511, 387 P.2d at 993 (noting that even where a
4 property was "sold for a smaller proportion of its value than 28.5%," it did not justify
5 setting aside the sale); see also **Restatement (Third) of Prop.: Mortgages § 8.3 cmt. b**
6 **(1997) (stating that while "[g]ross inadequacy cannot be precisely defined in terms**
7 **of a specific percentage of fair market value[, g]enerally ... a court is warranted in**
8 **invalidating a sale where the price is less than 20 percent of fair market value and,**
9 **absent other foreclosure defects, is usually not warranted in invalidating a sale that**
10 **yields in excess of that amount").** (emphasis added)

11 366 P.3d at 1112.

12 An examination of the Restatement shows that the entirety of comment b to section 8.3 actually
13 favors the purchaser's position because it is specific to legal proceedings occurring post foreclosure when
14 a bona fide purchaser acquires title to the real property.

15 A portion of comment a to Section 8.3 notes that "close judicial scrutiny of the sale price is more
16 justifiable when the price is being employed to calculate the amount of a deficiency judgment context."

17 The "Reporters' Note" portion to comment b contained on page 590 states in part:

18 All jurisdictions take the position that mere inadequacy of the foreclosure sale price, not
19 accompanied by other defects in the foreclosure process, will not automatically invalidate
20 a sale. (case citations omitted)

21 The Shadow Wood case cites Golden v. Tomiyasu, 79 Nev. 503, 387 P.2d 989 (1963), where the
22 Nevada Supreme Court stated:

23 The court then referred to the inadequacy of the consideration and said: "However, even
24 assuming that the price was inadequate, that fact standing alone would not justify setting
25 aside the trustee's sale. 'In California, **it is a settled rule that inadequacy of price,**
26 **however gross, is not in itself a sufficient ground for setting aside a trustee's sale**
27 **legally made;** there must be in addition proof of some element of fraud, unfairness, or
28 oppression as accounts for and brings about the inadequacy of price.'" (emphasis added)

79 Nev. at 515, 387 P.2d at 995.

At page 10 of its motion, plaintiff cites the retrospective appraisal report attached as Exhibit 12
to its motion as proof that the fair market value of the Property on the date of the HOA foreclosure sale
was \$48,000.00. At the bottom of page #3 of the report, however, the report states:

The appraiser made an exterior only inspection which involves the use of an extraordinary
assumption that no adverse conditions exist that may affect the livability, soundness, or
structural integrity, and all subject data used from assessor records and MLS, which if
found to be false, could affect the appraisers opinion of value and conclusions.

1 Plaintiff's motion is not supported by any evidence proving that the "extraordinary assumption"
2 is true, so the retrospective appraisal report is not competent evidence of the fair market value of the
3 Property on the date of the HOA foreclosure sale.

4 The appraisal report also fails to mention the Detrimental Condition that distinguishes the
5 Property in the present case from the six comparable sales listed at pages 3 and 5 of the appraisal report.
6 Unlike the six comparable sales (3 traditional sales, 1 REO sale, 1 FHA foreclosure, 1 foreclosure), 4254
7 Rolling Stone Dr Trust did not receive insurable clear title to the Property because no title company in
8 Southern Nevada is willing to issue title insurance following an HOA foreclosure sale. The lack of
9 insurable clear title precludes traditional financing options to future buyers and adversely affects
10 Resources Group's right of disposition of the Property.

11 The Appraisal of Real Estate, 14th Edition, p. 406 (Chicago: Appraisal Institute, 2013) states:
12 "Before a comparable sale property can be used in sales comparison analysis, the appraiser must first
13 ensure that the sale price of the comparable property applies to **property rights that are similar** to those
14 being appraised." (emphasis added) Because the appraisal report offered by plaintiff violates this
15 standard, the value assigned to the Property by plaintiff's appraiser is merely hypothetical.

16 As proved by the appraisal review, dated August 31, 2016, prepared by Brunson Jiu LLC attached
17 hereto as Exhibit N, on the date of the foreclosure sale, the fee simple impaired value of the Property as
18 of January 25, 2012 was only \$5,300.

19 **F. Plaintiff's motion is not supported by the required evidence of fraud, unfairness,
20 or oppression "as accounts for and brings about the claimed inadequacy of price."**

21 At page 14 of its motion, plaintiff advances two "theories" to support its claim that unfairness is
22 present. First, plaintiff claims that the CC&Rs misrepresent the asset being sold because Article VI,
23 Section 11 of the CC&Rs states that "[t]he lien of the assessments provided for herein shall be
24 subordinate to the lien of any first mortgage." (Exhibit K attached)

25 As discussed at page 10 above, when Nevada adopted the UCIOA in Nevada in 1991, NRS
26 116.1206(1) expressly provided that the CC&Rs "shall be deemed to conform with those provisions by
27 operation of law, and any such declaration, bylaw or other governing document is not required to be

1 amended to conform to those provisions.” Likewise, in SFR Investments Pool 1, LLC v. U.S. Bank, N.A.,
2 130 Nev., Adv. Op. 75, 334 P.3d 408, 419 (2014), the Nevada Supreme Court held that NRS 116.1104
3 prevented any language in the CC&Rs from varying or waiving the HOA’s superpriority lien rights.
4 Plaintiff’s motion does not include any evidence proving that any person chose not to bid on the Property
5 because of the language in Article VI, Section 11 of the CC&Rs.

6 At the bottom of page 15 of its motion, plaintiff states: “U.S. Bank contends the bidding was
7 unintentionally chilled per the Restatement as adopted by *Shadow Wood*.” The foreclosure sale in the
8 present case took place on January 25, 2012, so the bidding could not have been influenced by the
9 reference to the Restatement made in Shadow Wood on January 28, 2016. On the other hand, Nevada’s
10 adoption of the California rule took place long before January 25, 2012.

11 At page 16 of its motion, plaintiff argues that “[t]he publically available documents, which are
12 subject to constructive notice, stated *publically* that this was a sale Subject to a mortgage.” No such
13 language appears in the notice of delinquent assessment (lien), the notice of default, or the notice of
14 trustee’s sale. Each of these notices stated “the total amount of the lien” as approved by the Nevada
15 Supreme Court in SFR Investments Pool 1, LLC v. U.S. Bank, N.A., 334 P.3d at 418.

16 At page 16 of its motion, plaintiff argues that fraud is present because Ryan Kerbow, “an
17 individual who conducted a sale” was “the *purchaser’s attorney*.” Plaintiff’s motion is not supported by
18 any evidence that Ryan Kerbow conducted the public auction held on January 25, 2012 or that Ryan
19 Kerbow represented Mr. Haddad or 5254 Rolling Stone Cr Trust on the date of the sale. In his deposition,
20 Mr. Haddad testified that he did not know when he first hired Ryan Kerbow to file quiet title actions or
21 when he stopped using Mr. Kerbow. (Exhibit 14 to plaintiff’s motion, pg. 49, ll. 3-18, and pg. 50, ll. 2-7)

22 Plaintiff also argues that “[t]he Notice of Default was not noticed on U.S. Bank, which is
23 completely undisputed.” To the contrary, Exhibit G proves that a copy of the notice of default was mailed
24 on April 5, 2014 to “US Recordings, 2925 Country Drive Ste 201, St. Paul, MN 55117,” which is the
25 mailing address listed as the “Return To (name and address)” in the upper left hand corner of the deed
26 of trust. (Exhibit C) Plaintiff’s motion is not supported by any evidence that plaintiff did not receive
27 mail directed to this publicly disclosed address.

1 Furthermore, Exhibit I proves that copies of the notice of foreclosure sale were timely mailed to
2 the same "Return To (name and address)" in the upper left hand corner of the deed of trust and also to
3 the address for U.S. Bank National Association ND, 4325 17th Avenue SW, Fargo, ND 58103 listed in
4 Paragraph 1 on page 1 of the deed of trust.

5 As a result, plaintiff's claim at page 16 of its motion that "[t]his is insider dealing at it's worst"
6 is not supported by competent evidence.

7 **G. Plaintiff has not produced any evidence proving that 4254 Rolling Stone Dr Trust**
8 **was not a bona fide purchaser.**

9 At page 16 of its motion, plaintiff asserts that "Resources has not met their burden of production
10 under Nevada law as bona fide purchaser status is their burden." To the contrary, because plaintiff is
11 seeking equitable relief from the "conclusive" foreclosure deed, it is plaintiff's burden to allege and prove
12 that 4254 Rolling Stone Dr Trust was not a bona fide purchaser.

13 In First Fidelity Thrift & Loan Ass'n v. Alliance Bank, 60 Cal. App. 4th 1433, 71 Cal. Rptr. 2d
14 295 (1998), the court recognized that where a party is seeking equitable relief, the burden is on the party
15 seeking equitable relief to allege and prove that the person holding legal title is not a bona fide purchaser:

16 **That Alliance had knowledge of First Fidelity's equitable claim for reinstatement of**
17 **its reconveyed deed of trust was an element of First Fidelity's case.** "The general rule
18 places the burden of proof upon a person claiming bona fide purchaser status to present
19 evidence that he or she acquired interest in the property without notice of the prior
20 interest. (Bell v. Pleasant (1904) 145 Cal. 410, 413-414, 78 P. 957; Alcorn v. Buschke
21 (1901) 133 Cal. 655, 657-658, 66 P. 15; Hodges v. Lochhead (1963) 217 Cal. App.2d 199,
22 203, 31 Cal. Rptr. 879; 2 Miller & Starr, Current Law of Cal. Real Estate [1977] § 11:28,
p. 51.) ... [¶] If the prior party claims an equitable rather than a legal title, however, the
23 burden of proof is upon the person asserting that title. (Bell v. Pleasant, supra, 145 Cal.
24 410, 414-415, 78 P. 957; Garber v. Gianella (1893) 98 Cal. 527, 529-530, 33 P. 458; 2
25 Miller & Starr, Current Law of Cal. Real Estate, supra, § 11:28, pp. 52-53.)" (Gates
26 Rubber Co. v. Ulman (1989) 214 Cal. App. 3d 356, 366, fn. 6, 262 Cal. Rptr. 630.) (2b)
27 **Showing that Alliance was not an innocent purchaser for value was hence an element**
28 **of First Fidelity's claim.** (Firato v. Tuttle, supra, 48 Cal.2d 136, 138, 308 P.2d 333.)
(emphasis added)

60 Cal. App. 4th at 1442, 71 Cal. Rptr. at 301.

24 At page 16 of its motion, plaintiff also asserts that "they had constructive notice of the defective
25 lien documents which resulted in chilled bidding." Plaintiff's motion is not supported by any evidence
26 proving this claim. At the bottom of page 17 of its motion, plaintiff cites Berge v. Fredericks, 95 Nev.

1 183, 591 P.2d 246 (1979), where the court reversed a summary judgment entered in favor of the
2 respondent (purchaser) because the respondent and the seller were intimately related and because the
3 respondent had actual notice of appellant's residence on the property being sold. The court quoted the
4 general rule that "open, notorious, and exclusive possession and occupation of lands by a stranger to a
5 vendor's title, as of record, at the time of a purchase" is sufficient to put a purchaser on inquiry as to the
6 legal or equitable rights of the party in possession. 591 P.2d at 249. No such evidence exists in the
7 present case.

8 In the last sentence on page 17 of its motion, plaintiff argues that "[t]he CC&R's disclaim
9 *everything*," (emphasis added). The exact opposite is true. Article VI in the CC&Rs expressly provides
10 that the HOA has the authority to record an assessment lien against the Property. NRS Chapter
11 116.3116(2) defined the superpriority portion of the lien. NRS 116.31162 to NRS 116.31168, and by
12 incorporation, NRS 107.090, defined the nonjudicial procedure used to foreclose the lien. NRS 116.1206
13 confirmed that the provisions of the CC&Rs would be deemed to conform with the provisions of NRS
14 Chapter 116 "by operation of law." NRS 116.1104 confirmed that the HOA's superpriority lien rights
15 could not be varied or waived by any language in the CC&Rs.

16 Consequently, absolutely nothing appeared in the public record that would charge 4254 Rolling
17 Stone Dr Trust with notice of any defect in the foreclosure of the HOA's superpriority lien and the
18 extinguishment of plaintiff's subordinate deed of trust.

19 **H. The foreclosure sale was not void.**

20 Based solely on plaintiff's contention that the foreclosure agent mailed the notice of default to
21 plaintiff at an incorrect address, plaintiff states at page 18 of its motion that "[t]his writer is of the opinion
22 that a foreclosure in this manner is not 'voidable' but 'void.'" None of the cases cited by plaintiff support
23 this conclusion.

24 In Ocwen Loan Servicing LLC v. Gonzalez Financial Holdings, Inc., 77 F. Supp. 3d 584 (S.D.
25 Tex. 2015), the holder of a tax lien failed to mail the notice of foreclosure sale to the assignee of record
26 of a deed of trust, and the court found that the lender's due process rights had been violated. In the
27

1 present case, due process is not an issue because no state actor participated in the nonjudicial foreclosure
2 of the HOA's superpriority lien. Lugar v. Edmondson Oil Co., Inc., 475 U.S. 922 (1982).

3 Moreover, it is undisputed that the foreclosure agent mailed the notice of default to the return to
4 address on the deed of trust (Exhibit G), and the foreclosure agent mailed the notice of trustee's sale to
5 both the return to address and the address listed in paragraph 1 of the deed of trust (Exhibit I). Plaintiff
6 has not produced any evidence proving that it did not receive both of the notices.

7 At page 19 of its motion, plaintiff cites Rosenberg v. Smidt, 727 P.2d 778 (Alaska 1986), where
8 the Alaska Supreme Court recognized that the failure to mail the notice of default to the publicly
9 disclosed address for the defaulting borrowers after the initial notice was returned "unclaimed" only made
10 the sale "voidable" and not "void":

11 First, the Smidts claim that the statute does not apply to void sales. They correctly state
12 the general rule that "[t]he doctrine of good faith purchaser for value without notice does
13 not apply to a purchaser at a void foreclosure sale." Henke v. First Southern Properties,
14 Inc., 586 S.W.2d 617, 620 (Tex. Civ. App. 1979). They misapply the rule, however, to
15 the sale by Alaska Title. They fail to distinguish "void" from "voidable" sales. *See Real*
16 *Estate Finance Law*, § 7.20 at 477-78. **Only substantial defects such as the lack of a**
17 **substantive basis to foreclose in the first place will make a sale void.** *Id.* at 477 & 7.21
18 at 489-90. *Henke* itself illustrates the most common basis for finding a void sale: the
19 absence of default. 586 S.W.2d at 620. Where a defect in a foreclosure sale makes it
20 merely voidable, however, sale to a bfp cuts off the trustor's ability to set aside the sale.
21 *See Swindell v. Overton*, 310 N.C. 707, 314 S.E.2d 512, 517 (1984); *Real Estate Finance*
22 *Law*, § 7.21 at 489. **Here, the alleged defect went not to the trustee's right to proceed**
23 **with foreclosure but only to "the mechanics of exercising the power."** *Id.* at 490.
24 Thus, if the Rosenbergs were bfp's, the Smidts cannot set aside what is not a void, but
25 a voidable, sale.

26 727 P.2d at 783-784.

27 In the present case, plaintiff is making the exact type of attack that the Alaska Supreme Court
28 recognized makes a sale "voidable" and not "void." The court in Rosenberg set the sale aside because
it found that the buyer was not a bona fide purchaser.

23 Sonderman v. Remington Construction Co., Inc., 127 N. J. 96, 603 A.2d 1 (1992), is unlike the
24 present case because it involved an in rem tax foreclosure judgment that was vacated by the court before
25 plaintiff purchased the property from the Township of Jackson at public auction. The court focused on
26 the record owner's failure to record the order vacating the judgment before the public auction was held.
27 The present case, on the other hand, involves a nonjudicial foreclosure sale,

1 In Fjeldsted v. Lien (In re Fjeldsted), 293 B.R. 12 (9th Cir. BAP 2003), the court reversed the
2 bankruptcy court's decision to annul the automatic stay retroactively in order to validate a postpetition
3 foreclosure sale of the debtor's residence. In the present case, the former owner did not file a bankruptcy
4 petition prior to the HOA foreclosure sale.

5 In Dimock v. Emerald Properties LLC, 81 Cal. App. 4th 868, 97 Cal. Rptr. 2d 255 (2000), the
6 trustee named in a deed of trust recorded a notice of default, and a second trustee recorded a substitution
7 of trustee and a second notice of default. The agent for the initial trustee recorded a notice of trustee's
8 sale and completed the sale of the property to Emerald Properties LLC. The trial court entered judgment
9 for the former owners because the initial trustee did not have authority to conduct the sale because of the
10 recorded substitution of trustee. 97 Cal. Rptr. at 260-261. No such facts exist in the present case.

11 In Dimrock, the court cited Little v. CFS Service Corp., 188 Cal. App. 3d 1354, 233 Cal. Rptr.
12 923 (1987), where the court found that when recitals of regularity appear in a deed, notice defects only
13 make the deed voidable, and that the trustor bears the burden of showing that there are grounds for
14 equitable relief from the deed, such as fraud or that the buyer was not a bona fide purchaser for value.
15 97 Cal. Rptr. at 261-262. This same distinction was recognized by the Nevada Supreme Court in section
16 II (B) of the Shadow Wood opinion quoted at pages 19 and 20 above.

17 In Bechtel v. Wilson, 18 Cal. App. 2d 331, 335, 63 P.2d 1170, 1172 (1936), which is cited by
18 Shadow Wood, the defendants objected that separate notices of sale were not posted on each of the lots
19 sold, but that the lots were grouped under one notice. The court stated that it need not consider the
20 conflicting evidence because **"the recitals in the trustee's deed of due and proper posting is made**
21 **conclusive evidence thereof by the deed of trust and this alone is sufficient to sustain the trial court's**
22 **findings on that issue."** (emphasis added)

23 The foreclosure deed in the present case recites: "All requirements of law regarding **the mailing**
24 **of copies of notices** and the posting and publication of the copies of the Notice of Sale have been
25 complied with." (emphasis added) As recognized in Shadow Wood, this recital is "conclusive" against
26 the plaintiff and cannot support a claim for relief against the purchaser, 4254 Rolling Stone Dr Trust, or
27 its successor, Resources Group.

1 **I. The HOA foreclosure sale was not a fraudulent transfer.**

2 At page 19 of its motion, plaintiff contends that “the HOA sale is void as a constructively
3 fraudulent transfer under NRS § 112.190(1).” The HOA foreclosure sale cannot be a fraudulent transfer,
4 however, because the Property is not an “asset” as defined by NRS 112.150(2) and because plaintiff has
5 not proved that George R. Edwards was insolvent.

6 NRS 112.190(1) provides: “A **transfer** made or obligation incurred by a debtor is fraudulent as
7 to a creditor whose claim arose before the **transfer** was made or the obligation was incurred if **the debtor**
8 **made the transfer** or incurred the obligation without receiving a reasonably equivalent value in exchange
9 for the **transfer** or obligation **and the debtor was insolvent** at that time or the debtor became insolvent
10 as a result of the **transfer** or obligation.” (emphasis added)

11 NRS 112.150(12) defines “transfer” as “every mode, direct or indirect, absolute or conditional,
12 voluntary or involuntary, of disposing of or parting with an **asset** or an interest in an **asset**, and includes
13 payment of money, release, lease and creation of a lien or other encumbrance.” (emphasis added)

14 NRS 112.150(2) defines the word “asset” and provides:

15 2. “Asset” means property of a debtor, **but the term does not include:**

- 16 (a) **Property to the extent it is encumbered by a valid lien;**
17 (b) **Property to the extent it is generally exempt under nonbankruptcy law;**
18 or
19 (c) **An interest in property held in tenancy by the entirety or as community**
20 **property to the extent it is not subject to process by a creditor holding a claim**
21 **against only one tenant. (emphasis added)**

22 In the present case, the Property does not constitute an “asset” under NRS 112.150 because at the
23 time of the HOA foreclosure sale, the Property was encumbered by valid liens. The principal amount of
24 the note secured by plaintiff’s deed of trust was \$50,000.00, and plaintiff claims that the Property was
25 worth only \$48,000.00 on January 25, 2012.

26 NRS 21.090(1)(l) also exempts from execution “[t]he homestead as provided for by law,” and
27 NRS 115.010(1) provides that “[t]he homestead is not subject to forced sale on execution or any final
28 process from any court, except as provided by subsections 2, 3 and 5, and NRS 115.090 and except as
otherwise required by federal law.” In Savage v. Pierson, 123 Nev. 86, 157 P.3d 697 (2007), the Nevada

1 Supreme Court recognized that “Nevada’s Constitution provides for a homestead exemption” and that
2 “[t]he Legislature enacted what is now NRS 21.090 to fulfill the mandate set forth in Nevada’s
3 Constitution.” The Court also stated that “the exemptions set forth in NRS 21.090 are ‘absolute and
4 unqualified,’ with few exceptions, ‘and [their] effect is to remove the property beyond the reach of legal
5 process.”

6 NRS 115.010(2) provides that the homestead exemption “extends only to that amount of equity
7 in the property held by the claimant which does not exceed \$550,00 in value” In the present case,
8 plaintiff has not proved that former owner held equity in the Property that exceeded the amount of
9 \$550,000 even if plaintiff’s extinguished deed of trust is not counted as a lien against the Property.
10 Consequently, the property sold at the HOA foreclosure sale was not an “asset” as required by NRS
11 112.150(2)(b).

12 Comment (2) to section 1 of the Uniform Fraudulent Transfer Act discusses the definition of the
13 word “asset” and recognizes:

14 Subparagraphs (i), (ii), and (iii) provide clarification by excluding from the term not only
15 generally exempt property but also an interest in a tenancy by the entirety in many states
16 and an interest **that is generally beyond reach by unsecured creditors because subject**
17 **to a valid lien.** This Act, like its predecessor and the Statute of 13 Elizabeth, declares
18 rights and provides remedies for unsecured creditors against transfers that impede them
19 in the collection of their claims. The laws protecting valid liens against impairment by
20 levying creditors, **exemption statutes**, and the rules restricting levyability of interest in
21 entireties property are limitations on the rights and remedies of unsecured creditors, and
22 **it is therefore appropriate to exclude property interests that are beyond the reach**
23 **of unsecured creditors from the definition of “asset” for the purposes of this Act.**
24 (emphasis added)

25 As revealed by this comment, the clear intent of the Uniform Fraudulent Transfer Act is to protect
26 “unsecured” creditors from having a debtor place **nonexempt** assets beyond their reach. No part of the
27 Act is intended to protect a “secured” creditor from losing its security when it allows a senior interest to
28 be foreclosed. Here, because plaintiff was a secured creditor, the statutes do not apply to the plaintiff.

At page 24 of its motion, plaintiff claims that the property was worth \$48,000.00 at the time of
the foreclosure sale. As discusses at pages 21 and 22 above, the fee simple impaired value of the Property
as of January 25, 2012 was only \$5,300.

1 NRS 112.190(1) also requires that plaintiff prove that “the debtor was insolvent at that time or
2 became insolvent as a result of the transfer or obligation.” At the bottom of page 25 of its motion,
3 plaintiff cites NRS 112.160(2) and claims that “all U.S. Bank need do it demonstrate that the Homeowner
4 was not paying his debts as they came due.” Plaintiff leaves out the word “generally” that is part of the
5 required showing: “A debtor who is **generally** not paying his or her debts as they become due is presumed
6 to be insolvent.” (emphasis added)

7 In the alternative, NRS 112.160(1) provides that “[a] debtor is insolvent if the sum of the debtor’s
8 debts is greater than all of the debtor’s assets at a fair valuation.”

9 Plaintiff’s motion is not supported by admissible evidence that would prove that the former owner
10 met the requirements of either NRS 112.160(1) or NRS 112.160(2).

11 The Nevada Supreme Court has repeatedly held that foreclosure of a senior lien extinguishes all
12 subordinate liens. McDonald v. D.P. Alexander & Las Vegas Boulevard, LLC, 121 Nev. 812, 818, 123
13 P.3d 748 (2005); Brunzell v. Lawyers Title Ins. Co., 101 Nev. 395, 705 P.2d 642 (1985); Aladdin
14 Heating Corp. v. Trustees of Central States, 93 Nev. 257, 563 P.2d 82 (1977); Erickson Construction Co.
15 v. Nevada National Bank, 89 Nev. 359, 513 P.2d 1236 (1973). The Nevada Supreme Court applied this
16 same rule in SFR Investments Pool 1, LLC v. U.S. Bank, N.A., 130 Nev., Adv. Op. 75, 334 P.3d 408,
17 419 (2014). No provision in the Uniform Fraudulent Transfer Act leads to a different result.

18 A provision which specifically applies to a given situation will take precedence over one that only
19 applies generally. Nevada Power Co. v. Haggerty, 115 Nev. 353, 364, 989 P.2d 870, 877 (1999); SIIS
20 v. Surman, 103 Nev. 366, 368, 741 P.2d 1357, 1359 (1987); Sierra Life Ins. Co. v. Rottman, 95 Nev. 654,
21 656, 601 P.2d 56, 57-58 (1979); W.R. Co. v. City of Reno, 63 Nev. 330, 172 P.2d 158 (1946). To allow
22 plaintiff to collaterally attack the “conclusive” HOA foreclosure deed based on general provisions in the
23 Uniform Fraudulent Transfer Act would violate this rule of statutory construction.

24 **J. The nonjudicial foreclosure sale did not violate the Eighth Amendment or the**
25 **Takings clauses of the United States and Nevada Constitutions.**

26 The Eighth Amendment prohibits the government from requiring excessive bail, imposing
27 excessive fines, or inflicting cruel and unusual punishment. The nonjudicial foreclosure sale in this case
28

1 involved no such conduct. BMW of North America, Inc. v. Gore, 517 U.S. 559, 584 (1996), involved
2 an award of punitive damages that exceeded the maximum statutory penalty authorized by the Alabama
3 Legislature for similar misconduct. No punitive damages were awarded by any court in the present case.

4 The HOA and its foreclosure agent also took no property “for public use” as required by the Fifth
5 Amendment to the United States Constitution or Article 1, Section 8 of the Nevada Constitution. At page
6 29 of its motion, plaintiff asserts that “[t]he Statute, enact by the Nevada Legislature, constitutes a
7 government ‘taking.’” At page 30 of its motion, plaintiff also asserts: “Make no mistake, NRS §
8 116.3116 *et seq* is government conduct.” As noted at pages 8 and 9 above, Lugar v. Edmondson Oil Co.,
9 Inc., 475 U.S. 922 (1982), instead states that the enactment of a statutory remedy cannot transform a
10 private party using the statutory remedy into a “state actor.”

11 CONCLUSION

12 Accordingly, it is respectfully requested that this Court enter an order denying plaintiff’s motion
13 for summary judgment.

14 DATED this 19th day of January, 2017

15 LAW OFFICES OF
16 MICHAEL F. BOHN, ESQ., LTD.

17 By: / s / Michael F. Bohn, Esq. /
18 Michael F. Bohn, Esq.
19 376 E. Warm Springs Road, Ste. 140
20 Las Vegas, Nevada 89119
21 Attorney for Resources Group, LLC
22
23
24
25
26
27
28

1 CERTIFICATE OF SERVICE

2 Pursuant to NRCP 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of Law
3 Offices of Michael F. Bohn., Esq., and on the 19th day of January, 2017, an electronic copy of the
4 RESOURCES GROUP, LLC'S OPPOSITION TO U.S. BANK'S MOTION FOR SUMMARY
5 JUDGMENT was served on opposing counsel via the Court's electronic service system to the following
6 counsel of record:

7 Kristin A. Schuler-Hintz, Esq.
8 Thomas N. Beckom, Esq.
9 McCarthy & Holthus, LLP
10 9510 W. Sahara Ave., Ste. 200
11 Las Vegas, NV 89117
12 Attorney for plaintiff/counterdefendant

13 /s/ Marc Sameroff
14 An Employee of the LAW OFFICES OF
15 MICHAEL F. BOHN, ESQ., LTD.
16
17
18
19
20
21
22
23
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25
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27
28

EXHIBIT A

EXHIBIT A

Inst #: 201205290002144

Fees: \$18.00 N/C Fee: \$0.00

RPTT: \$0.00 Ex: #007

05/29/2012 02:44:44 PM

Receipt #: 1178391

Requestor:

RESOURCE GROUP LLC

Recorded By: SCA Pgs: 3

DEBBIE CONWAY

CLARK COUNTY RECORDER

APN: 163-24-111-021

RECORDING REQUESTED BY:

**When Recorded Mail Document
and Tax Statement To:**

Bourne Valley Court Trust
900 S. Las Vegas Blvd #810
Las Vegas, NV 89101

RPTT: \$ EXEMPT 7

GRANT, BARGAIN, SALE DEED

THIS INDENTURE WITNESSETH: That Resources Group LLC, a Nevada Limited Liability Company, Trustee of the Rollingstone Drive Trust dated 01/25/2012 who acquired title as Rollingstone Drive Trust

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, do(es) hereby Grant, Bargain, Sell and

Convey to Resources Group LLC, a Nevada Limited Liability Company as Trustee of the Bourne Valley Court Trust dated 05/04/2012

all that real property situated in Clark County, State of Nevada, bounded and described as follows:

PARCEL I:

LOT NINETEEN (19) OF GLENVIEW WEST TOWNHOMES, 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.

PARCEL II:

AN EASEMENT FOR INGRESS AND EGRESS OVER THE COMMON AREA AND PRIVATE STREETS 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.

SUBJECT TO 1. Taxes for the fiscal year 2011-2012

2. Covenants, Conditions, Reservations, Rights, Rights of Way and Easements now of record.

Together with all and singular tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining.

DATED: May 29, 2012

STATE OF NV

COUNTY OF CLARK

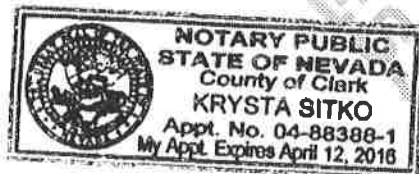
I, KRYSTA SITKO, a Notary Public of the
County and State first above written, do hereby
certify that Iyad Haddad personally appeared
before me this day and acknowledged the due
execution of the foregoing instrument.

Witness my hand and official seal, this the
29th day of May, 2012

Notary Public KRYSTA SITKO

My Commission Expires: 4/12/16

(SEAL)



Rollingstone Drive Trust dated 01/25/2012

By: Resources Group LLC, a Nevada Limited
Liability Company

BY: Iyad Haddad, Manager

**STATE OF NEVADA
DECLARATION OF VALUE**

1. Assessor Parcel Number(s)

- a) 163-24-111-021
b) _____
c) _____
d) _____

2. Type of Property:

- | | | | |
|-----------------------------|-----------------|--|------------------|
| a) <input type="checkbox"/> | Vacant Land | b) <input checked="" type="checkbox"/> | Single Fam. Res. |
| c) <input type="checkbox"/> | Condo/Townhouse | d) <input type="checkbox"/> | 2-4 Plex |
| e) <input type="checkbox"/> | Apt. Bldg. | f) <input type="checkbox"/> | Comm'l/Ind'l |
| g) <input type="checkbox"/> | Agricultural | h) <input type="checkbox"/> | Mobile Home |
| i) <input type="checkbox"/> | Other | | |

FOR RECORDERS OPTIONAL USE ONLY

Book: _____ Page: _____
Date of Recording: _____
Notes: _____

Cent of Trust sc

3. a) Total Value/Sales Price of Property \$ _____
b) Deed in Lieu of Foreclosure Only (value of property) \$ _____
c) Transfer Tax Value: \$ _____
d) Real Property Tax Due \$ 0.00

4. If Exemption Claimed:

- a) Transfer Tax Exemption, per NRS 375.090, Section: 7
b) Explain Reason for Exemption: TRUST TO TRUST
WITHOUT CONSIDERATION

5. Partial Interest: Percentage being transferred: 100.00%

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature: _____

Capacity: _____ Grantor

Signature: _____

Capacity: _____ Grantee

SELLER (GRANTOR) INFORMATION

BUYER (GRANTEE) INFORMATION

(Required)

(Required)

Print Name: Rollingstone Drive Trust dated
01/25/2012

Print Name: Bourne Valley Court Trust

Address: 900 S. Las Vegas Blvd #810

Address: 900 S. Las Vegas Blvd #810

City, State, Zip: Las Vegas, NV 89101

City, State, Zip: Las Vegas, NV 89101

COMPANY/PERSON REQUESTING RECORDING (required if not the seller or buyer)

Fidelity National Title Agency of Nevada, Inc.

Escrow #: FT13-FT00000442-LC

3100 W Sahara Avenue #115

Las Vegas, NV 89102

(AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED)

EXHIBIT B

EXHIBIT B

2-1

Inst #: 201201310001704
Fees: \$17.00 N/C Fee: \$0.00
RPTT: \$28.05 Ex: #
01/31/2012 09:09:48 AM
Receipt #: 1052023
Requestor:
ALESSI & KOENIG LLC (JUNES
Recorded By: DXI Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

When recorded mail to and
Mail Tax Statements to:
4254 Rolling Stone Dr Trust
PO Box 36208
Las Vegas, NV 89133

A.P.N. No.163-24-111-021

TS No. 24230-4254

TRUSTEE'S DEED UPON SALE

The Grantee (Buyer) herein was: 4254 Rolling Stone Dr Trust
The Foreclosing Beneficiary herein was: Glenview West Townhomes Association
The amount of unpaid debt together with costs (Real Property Transfer Tax Value): \$5,331.00
The amount paid by the Grantee (Buyer) at the Trustee's Sale: \$5,331.00
The Documentary Transfer Tax: \$28.05
Property address: 4254 ROLLINGSTONE DR, LAS VEGAS, NV 89103
Said property is in [] unincorporated area: City of LAS VEGAS
Trustor (Former Owner that was foreclosed on): EDWARDS GEORGE R TRUST

Alessi & Koenig, LLC (herein called Trustee), as the duly appointed Trustee under that certain Notice of Delinquent Assessment Lien, recorded January 4, 2011 as instrument number 0005412, in Clark County, does hereby grant, without warranty expressed or implied to: 4254 Rolling Stone Dr Trust (Grantee), all its right, title and interest in the property legally described as: LOT 19, as per map recorded in Book 30, Pages 65 as shown in the Office of the County Recorder of Clark County Nevada.

TRUSTEE STATES THAT:

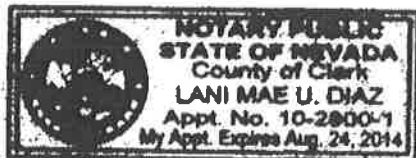
This conveyance is made pursuant to the powers conferred upon Trustee by NRS 116 et seq., and that certain Notice of Delinquent Assessment Lien, described herein. Default occurred as set forth in a Notice of Default and Election to Sell which was recorded in the office of the recorder of said county. All requirements of law regarding the mailing of copies of notices and the posting and publication of the copies of the Notice of Sale have been complied with. Said property was sold by said Trustee at public auction on January 25, 2012 at the place indicated on the Notice of Trustee's Sale.

Ryan Kerbow, Esq
Signature of AUTHORIZED AGENT for Glenview West Townhomes Association

State of Nevada)
County of Clark)

SUBSCRIBED and SWORN to before me Jan. 27, 2012

WITNESS my hand and official seal.
(Seal)



(Signature)

#APPT
* 10-2800-1

STATE OF NEVADA
DECLARATION OF VALUE

1. Assessor Parcel Number(s)

- a. 163-24-111-021
b. _____
c. _____
d. _____

2. Type of Property:

- a. ☐ Vacant Land b. ☐ Single Fam. Res.
c. ☒ Condo/Twnhse d. ☐ 2-4 Plex
e. ☐ Apt. Bldg f. ☐ Comm'l/Ind'l
g. ☐ Agricultural h. ☐ Mobile Home
 ☐ Other

FOR RECORDERS OPTIONAL USE ONLY

Book _____ Page: _____
Date of Recording: _____
Notes: _____

- 3.a. Total Value/Sales Price of Property \$ 5,331.00
b. Deed in Lieu of Foreclosure Only (value of property (_____)
c. Transfer Tax Value: \$ 5,331.00
d. Real Property Transfer Tax Due \$ 28.05

4. If Exemption Claimed:

- a. Transfer Tax Exemption per NRS 375.090, Section _____
b. Explain Reason for Exemption: _____

5. Partial Interest: Percentage being transferred: 100.00 %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature  Capacity: Grantor

Signature _____ Capacity: _____

SELLER (GRANTOR) INFORMATION
(REQUIRED)

Print Name: Alessi&Koenig, LLC
Address: 9500 W Flamingo # 205
City: Las Vegas
State: NV Zip: 89147

BUYER (GRANTEE) INFORMATION
(REQUIRED)

Print Name: 4254 Rolling Stooone Dr Trust
Address: PO Box 36208
City: Las Vegas
State: NV Zip: 89133

COMPANY/PERSON REQUESTING RECORDING (Required if not seller or buyer)

Print Name: Alessi&Koenig, LLC
Address: 9500 W Flamingo # 205
City: Las Vegas

Escrow # N/A Foreclosure
State: NV Zip: 89147

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

EXHIBIT C

EXHIBIT C

18

20090326-0003747

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



014560224-000028152

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

16:35:04

T20090104864

Requestor:

US RECORDINGS INC

Debbie Conway

STN

Clark County Recorder Pgs: 8

State of Nevada Space Above This Line For Recording Data

75536829-NBC
342628

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

NEVADA - HOME EQUITY LINE OF CREDIT DEED OF TRUST

(NOT FOR FNMA, FHLMC, FHA OR VA USE)

© 1994 Wolters Kluwer Financial Services - Bankers Systems™

Form USBTCP-DT-NV 9/7/2006

(page 1 of 7)

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.

(page 2 of 7)

WPE _____

- 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

(page 3 of 7)

DRE

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)

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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)

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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)

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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, COUNTY OF Clark
STATE OF, COUNTY OF
This instrument was acknowledged before me this 9th 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)

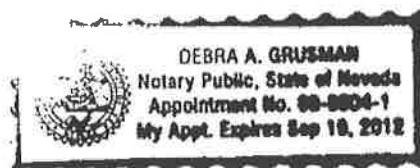


EXHIBIT "A" LEGAL DESCRIPTION

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 65, 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.

EXHIBIT D

EXHIBIT D

DAVID ALESSI*
THOMAS BAYARD*
ROBERT KOENIG**
RYAN KERHOW***

* Admitted to the California Bar

** Admitted to the California, Nevada
and Colorado Bar

*** Admitted to the Nevada and California Bar

ALESSI & KOENIG
A Multi-Jurisdictional Law Firm

9500 W. Flamingo Road, Suite 100
Las Vegas, Nevada 89147
Telephone: 702-222-4033
Facsimile: 702-222-4043
www.alessikoenig.com

ADDITIONAL OFFICES

AGOURA HILLS CA
PHONE: 818-735-9600

RENO NV
PHONE: 775-626-2323

DIAMOND BAR CA
PHONE: 909-861-8300

December 20, 2010

LIEN LETTER

VIA REGULAR AND CERTIFIED MAIL

EDWARDS GEORGE R TRUST
4254 ROLLINGSTONE DR
LAS VEGAS, NV 89103

Re: Glenview West Townhomes Association/4254 ROLLINGSTONE DR/HO #24230

Dear EDWARDS GEORGE R TRUST:

Our office has been retained by Glenview West Townhomes Association to collect the past due assessment balance on your account. Please find the enclosed Notice of Delinquent Assessment (Lien), signed and dated on behalf of Glenview West Townhomes Association on December 20, 2010. The total amount due by January 24, 2011 is \$2,460.00. Please note that the total amount due may differ from the amount shown on the enclosed lien. Please submit payment to our Nevada mailing address listed above by January 24, 2011. Payment must be in the form of a cashier's check or money order and made payable to Alessi & Koenig.

Unless you, within thirty days after receipt of this notice, dispute the validity of this debt, or any portion thereof, our office will assume the debt is valid. If you notify our office in writing within the thirty-day period that the debt, or any portion thereof, is disputed, we will obtain verification of the debt and a copy of such verification will be mailed to you. Upon receipt of your written request within the thirty-day period, we will provide you with the name and address of the original creditor, if different from the current creditor. Please note the law does not require me to wait until the end of the thirty-day period before proceeding to the next step in the collection process. If, however, you request proof of the debt or the name and address of the original creditor within the thirty-day period that begins to suspend my efforts to collect the debt until I mail to you have the right to inspect the association records.

In the event Alessi & Koenig, LLC does not incur costs of \$2,460.00 by January 24, 2011, a Notice of E-Recorder, resulting in additional fees and costs. Should ownership of your property.

Sinc

ALESSI & K

Please be advised that Alessi & Koenig, LLC is a debt collection agency and any information obtained will be used for that purpose.

U.S. Postal Service
CERTIFIED MAIL - RECEIPT
Domestic Mail Only: No Insurance Coverage Provided

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage	

EDWARDS GEORGE R TRUST
4254 ROLLINGSTONE DR.
LAS VEGAS, NV 89103

Sent To
By First Class or PO Box
On 12/20/10

A&K000016

EDWARD ALESSI
USB0046

When recorded return to:

ALESSI & KOENIG, LLC
9500 W. Flamingo Rd., Suite 100
Las Vegas, Nevada 89147
Phone: (702) 222-4033

A.P.N. 163-24-111-021

Trustee Sale # 24230-4254

NOTICE OF DELINQUENT ASSESSMENT (LIEN)

In accordance with Nevada Revised Statutes and the Association's Declaration of Covenants, Conditions and Restrictions (CC&Rs) of the official records of Clark County, Nevada, **Glenview West Townhomes Association** has a lien on the following legally described property.

The property against which the lien is imposed is commonly referred to as **4254 ROLLINGSTONE DR, LAS VEGAS, NV 89103** and more particularly legally described as: **LOT 19 Book 30 Page 65** in the County of Clark.

The owner(s) of record as reflected on the public record as of today's date is (are): **EDWARDS GEORGE R TRUST**

The mailing address(es) is: **4254 ROLLINGSTONE DR, LAS VEGAS, NV 89103**

The total amount due through today's date is: **\$2,330.00**. Of this total amount **\$2,280.00** represent Collection and/or Attorney fees, assessments, interest, late fees and service charges. **\$50.00** represent collection costs. Note: Additional monies shall accrue under this claim at the rate of the claimant's regular monthly or special assessments, plus permissible late charges, costs of collection and interest, accruing subsequent to the date of this notice.

Date: **December 20, 2010**

By:

Mary Indalecio - Legal Assistant

Alessi & Koenig, LLC on behalf of Glenview West Townhomes Association

State of Nevada

County of Clark

SUBSCRIBED and SWORN before me **December 20, 2010**

(Seal)

(Signature)

NOTARY PUBLIC

A&K000010

EDWARD ALESSI
USB0047

EXHIBIT E

EXHIBIT E

Inst #: 201101040005412
Fees: \$14.00
N/C Fee: \$0.00
01/04/2011 09:46:04 AM
Receipt #: 631834
Requestor:
ALESSI & KOENIG LLC (JUNES
Recorded By: BGN Pgs: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

When recorded return to:

ALESSI & KOENIG, LLC
9500 W. Flamingo Rd., Suite 100
Las Vegas, Nevada 89147
Phone: (702) 222-4033

A.P.N. 163-24-111-021

Trustee Sale # 24230-4254

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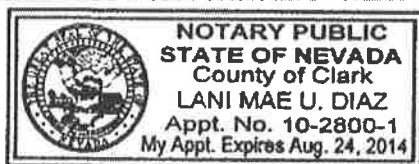
Date: **December 20, 2010**

By:


Mary Indalecio - Legal Assistant
Alessi & Koenig, LLC on behalf of **Glenview West Townhomes Association**

State of Nevada
County of Clark
SUBSCRIBED and SWORN before me ²⁶December 20, 2010

(Seal)



(Signature)


NOTARY PUBLIC

EXHIBIT F

EXHIBIT F

1 Q Do you have any reason to believe that U.S.
2 Recordings and U.S. Bank are the same entity?
3 A I have no idea. I have no reason to believe --
4 believe either way. They have different addresses.
5 Q As you review this, is it your opinion -- Well,
6 I guess let me go back a little bit.
7 You do a lot of -- Alessi & Koenig does a lot of
8 HOA foreclosure work; is that correct?
9 A Yes.
10 Q And you have a lot of experience in this field
11 of HOA foreclosures; is that correct?
12 A Yes.
13 Q In your opinion then do you think it was -- In
14 your opinion do you think it was correct to not mail the
15 Notice of Default to the lender in Fargo, North Dakota?
16 A I don't know. I would defer to a judicial body
17 to answer that question. I don't know -- I can testify
18 that our Nevada counsel felt that it was -- that it was
19 correct to mail the Notices the way they were mailed. I
20 would imagine that it would depend on what court you were
21 in.
22 Q If you were to conduct a foreclosure today,
23 Alessi & Koenig, would you allow a foreclosure to go
24 forward if a Notice of Default had not been mailed to the
25 lender at their address?

1 A That would be a question that I would defer to
2 our Nevada counsel. I would not be the one to make that
3 call. I believe that the statutes are much different now
4 than they were back in 2010. In 2015 there were
5 amendments to the statute changing the requirements for
6 mailing. I believe that the banks are required to list
7 their addresses on a specific Web site.
8 So I don't know that the answer now would be the
9 same as it was back in 2010. In any event I wouldn't be
10 the one at my office making that call. I don't know if
11 the mailing of the Notice of Default to the entity listed
12 on the Deed of Trust, that the document is to be returned
13 to, is sufficient to constitute notice to the lender. I
14 don't know the answer to that question.
15 Q Does Alessi & Koenig typically mail Notices of
16 Default to lenders?
17 A Well, as I said earlier, you know, the Notice of
18 Trustee's Sale was mailed to the lender. I can testify
19 that I wouldn't have minded seeing the Notice of Default
20 mailed to the lender. I just don't know the legal import
21 of it not being mailed to the lender at this time.
22 Q I don't think you answered my question. Does
23 Alessi & Koenig as a pattern and practice email -- or
24 mail Notices of Default to the lender?
25 A Our current policy, as I said, is not -- I

1 wouldn't think would be the same as it was back in 2010.
2 The laws have changed quite a bit since then in regard to
3 the mailing of the Notice of Default. You know, we are
4 going back six years. And I just don't know what the
5 answer is. I have done, as I said, 110 depositions. I
6 don't know what the import of the NOD being mailed to
7 U.S. Recordings would have on the effect of the
8 foreclosure. I just don't --
9 Q So Alessi & Koenig as a pattern and practice
10 does not mail the Notice of Default to the lender?
11 A Well, I mean, I don't know that you could say
12 that we did not mail the Notice of Default to the lender
13 in this case. That's the whole question, right, whether
14 or not mailing to U.S. Recordings constitutes notice to
15 the lender for purposes of this foreclosure pursuant to
16 this Deed of Trust. I'm sure that our Nevada counsel
17 would argue that we did mail notice to the lender. I'm
18 sure you would argue that we didn't.
19 Q I guess another question then. In 2009 was
20 Alessi & Koenig mailing Notices of Default for HOA
21 foreclosures to lenders in general?
22 A Yes.
23 Q And we can agree in a yes or no question that
24 U.S. Bank National Association was not mailed the Notice
25 of Default at their Fargo, North Dakota address for this

1 property?
2 A I would agree with you that they were not mailed
3 the Notice of Default at that Fargo, North Dakota
4 address. I wouldn't go so far as to agree with you that
5 the lender in this foreclosure was not given notice.
6 That would be above my pay grade. I would defer to a
7 court to answer that question.
8 MS. MIKRUT: And your answer actually obviates
9 my need for an objection, so thank you.
10 BY MR. BECKOM:
11 Q And we can also agree that U.S. Bank Trust
12 Company was not mailed the Notice of Default at their
13 Portland, Oregon address?
14 A That's correct. It does not look like they were
15 mailed a Notice of Default at their Portland, Oregon
16 address according to the list on A&K44.
17 Q Who is your attorney that reviewed this
18 foreclosure?
19 A I don't know. It was, as you know, a long time
20 ago. I did note that Ryan Kerbow signed the Notice of
21 Trustee's Sale, but I don't know that Ryan Kerbow was the
22 one who reviewed the NOD.
23 Q How long had Mr. -- So Mr. Kerbow was working
24 for you in 2009?
25 A I don't recall. I will say, though, that his

1 signing of the Notice of Trustee's Sale in September of
2 2011 would indicate that he did review all of the
3 mailings prior to authorizing the sale.

4 Q And so you believe that Mr. Kerbow most likely
5 reviewed the mailings for the Notice of Default, correct?

6 A Yes.

7 Q Okay. Let's move on because I know you're dying
8 to get to that Notice of Sale.

9 A&K43, what is that that we are looking at?

10 A I believe this is a ledger that was sent to us
11 by the management company. It does not look -- It's not
12 one of -- It is a ledger sent to us by the management
13 company. It's not one of our documents.

14 Q Okay. Number 44, which is -- A&K44 is your
15 mailings list for the Notice of Default, correct?

16 A Yes.

17 Q And then A&K46, is the Notice of Default you
18 were referring to?

19 A Yes.

20 Q Who is Mary Indalecio?

21 A She was a former legal assistant. She no longer
22 works for the company.

23 Q Is there any reason why she no longer works for
24 the company?

25 A Not in particular.

1 so I don't know the specific reasons. But again, it had
2 nothing to do with this file.

3 Q But she did have a history of -- I guess was
4 it -- Was Ms. Indalecio not performing according to
5 Alessi & Koenig's policies and procedures and that's why
6 she was terminated or was there some other reason?

7 A I don't recall the specific reason except to say
8 that it didn't -- it did not pertain to this file.

9 Q Did you ever have issues with Ms. Indalecio not
10 following the policies and procedures of Alessi & Koenig?

11 A I'm -- I'm -- I don't -- Not in any manner that
12 was relevant to this file, just in a normal performance
13 type of manner. But there is nothing that I would feel
14 comfortable disclosing as I don't feel it would be
15 relevant to this foreclosure.

16 Q So you're declining to answer?

17 A Well, I don't have an answer for you. I can
18 just tell you I prepared for this deposition. I didn't
19 prepare for questions about why an employee might have or
20 might not have been terminated on matters unrelated to
21 preparation of this deposition. So I know in preparation
22 for this deposition, there was nothing that I uncovered
23 that pertained to Ms. Indalecio's termination. That was
24 not part of the scope of what I was called to testify to.

25 Q But you do have a specific knowledge as to why

1 Q Was she terminated or did she resign?

2 A That was back in 2011. She was -- I believe she
3 was terminated.

4 Q What was the reason she was terminated?

5 A I don't know. She wasn't doing her job
6 adequate.

7 Q So you had issues with Mary Indalecio --

8 A Yeah. It was several years later. She wasn't
9 as a legal assistant. She had moved departments. She
10 wouldn't have been the one to make the call on the
11 mailings though.

12 Q How was she not doing her job correctly?

13 A She was -- I don't recall. I'm not the one that
14 terminated her. But it wasn't, I can tell you, in any
15 way relevant to this file.

16 Q Is that you know and you're refusing to testify
17 or that you don't know but you don't think it was
18 relevant to this foreclosure?

19 A I know that it wasn't relevant to this
20 foreclosure. I wasn't the one that made the call on
21 terminating her. It was not -- It did not have anything
22 to do with her performing as a legal assistant.

23 Q What did it have to do with?

24 A I think it was in her performance doing the
25 receivables and payables. But that wasn't my department,

1 Ms. Indalecio was terminated; do you not?

2 A No, not one that is -- I would feel -- I'm not
3 prepared to give. It was -- I know -- I can state it was
4 probably four years ago. We have had several dozens of
5 people working at Alessi & Koenig over the years. So the
6 reasons for her termination or not for her termination
7 are just not -- it's not an area that I'm prepared to
8 testify on today.

9 Q But can you testify?

10 A No, because I'm -- I wouldn't be able to give
11 you an answer that I would be comfortable with based upon
12 my recollection.

13 Q So --

14 A I would have go back and look at the records in
15 her file, see why she was terminated and get a -- You
16 know, I'm just not prepared to answer why this specific
17 employee was terminated, you know, several years ago.

18 Q I'm going to ask two more questions and we most
19 likely will move on.

20 So your testimony is you don't remember why Ms.
21 Indalecio was terminated over and above just misconduct?

22 MS. MIKRU: I just want to lodge an objection
23 for relevance.

24 THE WITNESS: Correct.

25 BY MR. BECKOM:

1 Q Is there someone in your organization that would
2 know why Ms. Indalecio was terminated?
3 MS. MIKRUT: Same objection.
4 THE WITNESS: I -- I don't know that anybody
5 there would know, but I can find out. It was several
6 years ago. Our Nevada counsel is different than it was
7 when she was terminated. So I would have to do some
8 research.
9 BY MR. BECKOM:
10 Q But you know it was for something to do with not
11 doing her job correctly?
12 A Well, I would imagine. That's why people get
13 terminated. I -- I don't -- Yeah, so I would say yes to
14 that.
15 Q Okay. Fair enough. I'm going to let you off
16 the hot seat on that one.
17 A Okay. Thank you.
18 Q Let's go to A&K number 49. Can you tell me what
19 it is that we are looking at?
20 A Yes. This is a Notice of Trustee's Sale dated
21 September 16, 2011. Behind it you will find on A&K50 the
22 NOTS list of mailings. Each of these parties on the list
23 were mailed the Notice of Trustee's Sale via certified
24 and regular mail.
25 Q Okay. Now, on this one -- I know you were dying

1 redaction log. I don't see anything in the status
2 report. I don't see anything in the Notices. So I don't
3 know why we mailed the NOTS to those entities and not the
4 NOD.
5 Q Is this something that you see a lot at Alessi &
6 Koenig where the Notice of Sale is mailed to more people
7 than the Notice of Default?
8 A Well, we always see that it's mailed to the
9 ombudsman in addition to the parties mailed the Notice of
10 Default. I wouldn't say I see it a lot. There are
11 Assignments of Deeds of Trusts oftentimes in files that I
12 have reviewed. We mail to prior parties in interest as
13 well as current parties in interest. So I have seen
14 where the list for the Notice of Trustee's Sale does
15 contain more entities, but I would not say that it is
16 common.
17 Q Let me just so I can get my head around it -- So
18 you're always going to see the ombudsman added on the
19 Notice of Trustee's Sale, correct?
20 A Correct.
21 Q And then from there, if there is an assignment
22 that has happened between the Notice of Default and the
23 Notice of Trustee's Sale, then that new entity that's
24 taking the assignment would be added on; is that correct?
25 A Yes.

1 to testify on this. On this one your testimony is that
2 you did mail it to U.S. Bank or at least the -- This is
3 for the Notice of Sale, correct?
4 A Yes.
5 Q How do you know that?
6 A U.S. Bank's address in Portland, Oregon and U.S.
7 Bank's address -- Well, one is U.S. Bank Trust Company in
8 Portland, Oregon and the other U.S. Bank National
9 Association in Fargo, North Dakota. Both of those
10 entities now appear on our list of parties that the
11 Notice was mailed to. So for that reason my testimony is
12 that they were mailed the Notice of Trustee's Sale. And
13 you have -- You can see on the attached A&K51 and 52
14 copies of the actual certified mail receipt to those
15 entities.
16 Q Is there any reason why you would have mailed it
17 to -- the Notice of Sale to more people than the Notice
18 of Default?
19 A Well, the Ombudsman's Office the Notice of
20 Trustee's Sale is required to be mailed to. The Notice
21 of Default is not. Why the U.S. Bank National
22 Association and U.S. Bank Trust Company were mailed the
23 Notice of Trustee's Sale and not the NOD, I don't have
24 any answer for that in the file. I don't see anything in
25 the notes. I don't see anything in the privileged and

1 Q But it is not common to see such a large
2 discrepancy between the Notice of Trustee's Sale and the
3 Notice of Default as is shown in this file?
4 A Correct. You see on A&K34 and 35 there is a
5 quitclaim deed. That is somewhat unusual. That
6 quitclaim deed resulted in us adding -- resulting in us
7 adding Robert Hazel to the mailing list. But that is not
8 very common that you see a quitclaim deed in a file.
9 Q Understood. And then on A&K51, these are
10 certified mail receipts?
11 A Yes. So we mailed the Notice of Trustee's Sale
12 certified and regular mail to each of these entities as
13 well as the entities on A&K52.
14 Q What's that stamp on those?
15 A That is a date stamp. The postman, post office
16 places that stamp -- That's my understanding -- on the
17 certified mail receipt. We don't have that stamp.
18 Q Now, how do you know if -- How do you know if
19 the Notice of -- Well, how do you know if the certified
20 mail is received? Do you have any record of that?
21 A We do. If the certified notice is signed for,
22 we retain the green cards in an off site storage
23 facility. My understanding is it's in chronological
24 order. But we have stacks, as you can imagine, of
25 thousands of them. We don't -- We didn't and we -- I

1 don't believe we do currently scan those green cards into
2 our program.

3 Q I see. I'm going to move over to A&K54. It
4 looks like this is a cashier's check from a Robert Hazel
5 to Alessi & Koenig for \$700.

6 Did you receive a cashier's check from Robert
7 Hazel for \$700?

8 A I believe so.

9 Q Do you know why he paid you \$700?

10 A I believe it was a partial payment. I don't
11 know the specific reason for it. But I was when I went
12 over the file this morning aware of this payment. I was
13 made aware of this payment.

14 Q Robert Hazel had received a quitclaim deed from
15 the George Edwards Trust at that time, correct?

16 A Correct.

17 Q And he attempted to pay you \$700, correct?

18 A I don't --

19 Q Or did he pay you \$700?

20 A I mean, I see we produced a copy of the
21 cashier's check inasmuch as it was saved into this file.
22 My understanding would be that that would have been a
23 payment from Mr. Hazel to our office November of 2011 for
24 \$700.

25 Q Did you -- Do you have any recollection or is

1 Mr. Hazel that the HOA sale would be postponed?

2 A I do not believe -- I did not see any such
3 communications with Mr. Hazel.

4 Q Did you agree to postpone the HOA sale in
5 exchange for the \$700 cashier's check?

6 A I don't know that the HOA sale was postponed.
7 Was it? Let's see. The property sold January 25th,
8 2012. It looks like it was in -- I don't know. It looks
9 like it may have been. The original date of the sale was
10 November 16, 2011. It looks like -- I can see now that
11 the -- Mr. Hazel brought in a check for \$700 at that
12 time. I don't know what discussions surrounded that
13 payment. But it does appear that that resulted in the
14 postponement of the sale for a couple of months.

15 Q Okay. Do you know who would?

16 A Who would know?

17 Q Uh-huh.

18 A We did -- No. Outside of these entries in the
19 status report, I doubt that anybody from my office would
20 have a specific recollection of the facts and
21 circumstances surrounding that payment.

22 Q Understood. Let's move on then to -- So I think
23 your records show that the HOA -- that you sold this
24 property on behalf of the HOA on January 25, 2012; is
25 that correct?

1 there anything in your file discussing any communications
2 with Mr. Hazel?

3 A I did not see any references in the file to
4 communications with Mr. Hazel other than the copy of the
5 cashier's check that we produced and a copy of the
6 receipt that we produced.

7 Q Okay. And it looks like going back to A&K1 and
8 2 that this payment was noted in your system; is that
9 correct?

10 A I see that there was a progress -- Yes. I see
11 that there was a progress payment cut to Glenview West
12 Townhomes on October 26, 2011 for \$414.40. My assumption
13 is that that would have been a portion of the \$700 that
14 was received and noted on 11-24-2011, a partial payment
15 received, a 10-day waiting period for the funds to clear.
16 So yes, those two entries at the top of A&K02 refer to
17 the \$700 payment.

18 Q And looking at -- It looks like the cashier's
19 check and your receipt is dated November 16 on A&K54.
20 Can we agree on that?

21 A Yes.

22 Q Why then on A&K1 and 2 is the partial payment
23 not inputted until eight days later, on November 24th?

24 A I don't -- I don't know.

25 Q Do you know if there was any communications with

1 A Yes.

2 Q Understood. All right. And then A&K55 shows --
3 It's two cashier's checks, one for \$5,000, one for
4 \$10,000, plus cash of \$460 from Resources Group, LLC.
5 Who is Resources Group, LLC?

6 A I am assuming it was the investor who purchased
7 the property at the sale.

8 Q Do you know who represented Resources Group, LLC
9 at the sale?

10 A I believe it was Eddie Haddad, but I don't have
11 a specific recollection of that. The reason I say that
12 is because Mr. Haddad's attorney is here at this
13 deposition, so that would be my assumption.

14 Q If I moved over to A&K60 and showed you a
15 cashier's check from Iyad Haddad -- or it says, "Pay to
16 the order of Iyad Haddad."

17 Would that refresh your recollection in terms of
18 Mr. Haddad being involved in this sale?

19 A No, but it would further bolster my assumption.
20 I don't have any specific recollection of this sale.

21 Q Fair enough. Let's go over to A&K57. Who is
22 Sin City Realty, LLC?

23 A That is an entity that we used, a third party,
24 to cry sales for a brief period of time during this time
25 period, January 2012.

1 Q Okay. So you used Sin City Realty, LLC to cry
2 this sale?
3 A Yes.
4 Q Did you use -- This document is signed by Matt
5 Mitchell down at the bottom. Did you use Matt Mitchell
6 to cry your sale?
7 A That would be my assumption.
8 Q Okay. At the time of the sale -- And you sold
9 it to the Resources Group, correct?
10 A It looks like it was sold to 4254 Rollingstone
11 Drive Trust.
12 Q Okay. And then who -- Iyad Haddad -- Why is
13 there a cashier's check at A&K60 to Iyad Haddad for
14 \$10,000?
15 A I don't know.
16 Q Did A&K process any refund to him?
17 A I'm sure that if there was a payment made to our
18 office above and beyond the successful bid amount, a
19 refund was processed, yes.
20 Q Are you aware of any relationship -- You said
21 Mr. Kerbow signed your Notice of Sale, correct?
22 A Correct.
23 Q And Mr. Kerbow would have reviewed the mailings
24 prior to the sale being conducted, correct?
25 A Yes.

1 Q Are you aware of any relationship between Mr.
2 Kerbow and Mr. Haddad?
3 A There -- No. There is none.
4 Q Has Mr. Kerbow ever performed legal work for Mr.
5 Haddad?
6 A I don't know. It is -- I believe that we have
7 performed legal work for investors on occasion. I don't
8 know if we have ever performed legal work for Mr. Haddad.
9 We may have. I know he has sued us quite a bit. I don't
10 know if we have ever represented him, but we may have on
11 some small issues.
12 Q Okay. Would you be surprised if I told you that
13 Mr. Haddad indicated that Mr. Kerbow represented him in
14 quiet title actions?
15 A I would not be shocked, no.
16 Q Why?
17 A As I said, we have represented investors in
18 quiet title actions before. It's not completely unusual.
19 We are -- consider ourselves to be experienced in the
20 field. I -- As I testified, I believe that we have
21 represented Mr. Haddad on occasion. I don't believe it
22 was that extensive. So it would not shock me.
23 MS. MIKRUT: Off the record just for a second.
24 (Off the record)
25 MR. BECKOM: We can go back on the record.

1 BY MR. BECKOM:
2 Q So Mr. Kerbow and Mr. Haddad, do you know if
3 they had any kind of attorney/client relationship at the
4 time of this sale?
5 A No. And when you say Mr. Kerbow represented Mr.
6 Haddad, I'm not sure if you mean Mr. Kerbow in his
7 capacity as an attorney for Alessi & Koenig or in a
8 separate capacity.
9 Q Did you know Mr. Kerbow to frequently moonlight?
10 A No. That's just --
11 Q Okay. So are you attempting to testify that
12 Alessi & Koenig at no point in time was retained by Iyad
13 Haddad?
14 A No. As I testified earlier, I believe that we
15 had been retained. I don't know if it was by Iyad
16 Haddad. I don't know if Iyad Haddad is the same as Eddie
17 Haddad, if it's the same person. But I do believe -- It
18 was my recollection, as I testified, that we had
19 represented Eddie on some matters. I don't know which
20 type of matters. You're telling me that we represented
21 him in quiet title action, at least one it appears. That
22 would not shock me.
23 Q When was the first that Alessi & Koenig
24 represented Eddie Haddad?
25 A I don't know.

1 Q Was it before 2013?
2 A I don't know.
3 Q Would it have been before 2012?
4 A I doubt it was before 2012 because my -- It may
5 have been 2011. It would be the earliest that I would
6 think we represented him, but I really have no specific
7 recollection.
8 Q Do you have any recollection about what you
9 represented Mr. Haddad in in 2011?
10 A I don't know that we did represent him in 2011.
11 My testimony would be that that's about as far back as I
12 would think we would have ever represented him. I don't
13 know what it would have been about. It doesn't surprise
14 me if there were -- if he retained us for an action to
15 quiet title. I don't -- I have no specific recollection
16 on what we were retained by Mr. Haddad to do or how often
17 except to say that it wasn't very often.
18 Q Understood. Would you be able to state with any
19 certainty that you had represented -- that Alessi &
20 Koenig had represented Mr. Haddad prior to January 2012?
21 A I wouldn't be able to state one way or another
22 with any certainty.
23 Q Okay. Did Alessi & Koenig represent Mr. Haddad
24 at the time of his HOA sale?
25 A I don't know.

1 Q Is there someone that would know?
2 A Mr. Haddad.
3 Q Okay. A&K number 62, it's another cashier's
4 check paid to the order of Iyad Haddad. Do you know what
5 this is?
6 A No.
7 Q Why did -- Are these cashier's checks coming
8 from your firm or are they coming from somewhere else?
9 A They're coming from our firm. They're Bates
10 stamped with our A&K stamp. So these could have either
11 been checks that were used to pay or checks used to
12 qualify as a bidder. I'm not sure.
13 Q But the sale didn't take place until January
14 25th, 2012, correct?
15 A I believe that's correct, yes.
16 Q And these checks are dated January 31st, 2012,
17 correct?
18 A Yes.
19 Q But hold on. Wait. I think you said you
20 thought that they may be used to qualify Mr. Haddad as a
21 bidder. Would Alessi & Koenig use their own funds to
22 qualify Mr. Haddad as a bidder?
23 A Not our own funds. I'm sorry. Let me see what
24 you're looking at. So investors have cashier's checks
25 made out to themselves that they bring to sales to show

1 what they are -- how much they are qualified to bid up
2 to. That's my understanding. I don't know what this
3 check relates to. Let's see.
4 Q Is this -- Was this issued by Alessi & Koenig?
5 A I don't believe so. I believe this was issued
6 by Haddad. And I think that the investor signs it over
7 to us on the back as payment. So this isn't a check --
8 A&K62 is not a payment from Alessi & Koenig to Haddad.
9 Q But this in no way could have been for this sale
10 because this cashier's check wasn't issued until five
11 days after the sale, correct?
12 A Correct. I don't know if it pertained to this
13 sale or not. \$5,331 was the successful amount.
14 Q Question though. It looks like your firm chose
15 to redact the bank account numbers at A&K number 60.
16 Would you be able to determine if this came from your
17 account or from Mr. Haddad's account if those bank
18 account numbers were unredacted?
19 A No. Just from all of my depositions and my
20 understanding of the business, this would not be a
21 cashier's check generated by our office.
22 Q So Alessi & Koenig doesn't generate cashier's
23 checks?
24 A Correct.
25 Q And why do you know that?

1 A Well, we -- You know, we collect our funds --
2 the funds into the client trust account and we pay the
3 funds out via checks. So normally when I see a cashier's
4 check like this, my inference is that this is a -- these
5 are funds that are used by the investor to purchase the
6 property or to qualify as an investor.
7 Q And you have no explanation then for why there
8 would have been copies of these checks five days after
9 the sale, dated five days after the sale in the file for
10 this property?
11 A No.
12 Q Is there any reason why you have a photocopy of
13 \$460 in cash at A&K61?
14 A My understanding is that would have been part of
15 the payment tendered to purchase the property. So we
16 would have received \$5,331. If we received more than
17 that, due to the increments of the cashier's checks, then
18 the balance would have been -- So my testimony would be
19 that the \$5,000 cashier's check on A&K62 plus the cash
20 shown on A&K61 were the funds used by Mr. Haddad to
21 purchase the property.
22 He may have had larger denominations at the sale
23 and asked us to -- so that he didn't have to wait for a
24 refund, asked us to allow him to pay to change the
25 denominations of the cashier's checks so that he did not

1 have to wait for a refund. I don't know. I don't know.
2 Q I'm looking at -- Let's go forward to A&K number
3 70.
4 A Yes.
5 Q This is another one of your activity screens.
6 What is this?
7 A Well, it appears to be a status report generated
8 subsequent to the sale. And I don't know why it's in
9 this -- in this production. Well, it's the same
10 association. I don't know if this was a subsequent
11 foreclosure activity on the same property against the
12 subsequent owner or if this was mistakenly placed in here
13 and this is for another property.
14 Q It mentions a Chapter 11 bankruptcy on that
15 status screen. Are you familiar with any Chapter 11
16 bankruptcy that was filed involving this property?
17 A Well, you can see that the sale took place
18 January 25, 2012. It looks like -- So this Chapter 11
19 bankruptcy which the status report says was filed July of
20 2012 doesn't appear to have been a bankruptcy that would
21 have affected this foreclosure. I don't know what this
22 document is.
23 Q Let's go forward to A&K85. In your file you
24 included a rather lengthy bankruptcy docket from a
25 Chapter 11 bankruptcy filed by Ryan Alexander. Do you

1 know who Mr. Alexander is?
2 A I believe he is a bankruptcy attorney.
3 Q How do you know Mr. Alexander?
4 A I don't know him. I believe I have met him.
5 Q In what capacity did you meet him?
6 A I believe he is a -- Steve Loizzi is an attorney
7 with our firm, who was a former bankruptcy attorney with
8 Haines & Krieger. I believe Steve knows Ryan from
9 those -- from his prior bankruptcy -- from his prior days
10 as a bankruptcy attorney.
11 Q And that's how you met Mr. Alexander was through
12 Steve Loizzi?
13 A Yes.
14 Q Have you ever retained Mr. Loizzi -- not Mr.
15 Loizzi, Mr. Alexander for any purpose?
16 A I have not, no.
17 Q And you have no I guess understanding or
18 testimony as to why your firm was tracking a Chapter 11
19 bankruptcy filed by the Resources Group on behalf of
20 Oliver Sagebrush Drive Trust? You have no understanding
21 about why your firm was tracking this bankruptcy?
22 A It looks like the entity may have -- It looks
23 like in August 2012 we initiated foreclosure proceedings
24 against Bourne Valley Court Trust. So I don't know if
25 there was a transfer between Rollingstone Drive Trust and

1 Q Would you be shocked at all if I told you that
2 Mr. Haddad placed this entity into bankruptcy in 2012?
3 A No.
4 Q Would you be shocked at all if I told you that
5 Mr. Haddad listed the property subject to the bank's
6 lien?
7 A Would I -- Yeah, I wouldn't --
8 MS. MIKRUT: Objection, calls for speculation,
9 so I object to that extent.
10 THE WITNESS: I don't know that I would be
11 shocked at that.
12 BY MR. BECKOM:
13 Q Why would you not be shocked at that?
14 A I don't -- Why would I? I guess I don't know
15 what -- I'm not a bankruptcy attorney. I don't know what
16 strategies Mr. Haddad was using in the filing of his
17 bankruptcy or why he would list the property subject to
18 the bank mortgage. So -- So I would therefore not be
19 shocked by it since I don't know what his strategy would
20 have been.
21 Q Now, we can agree -- So this sale took place in
22 January 2012.
23 MS. MIKRUT: Which sale?
24 MR. BECKOM: This one, on Rollingstone Drive,
25 the one we have been -- the foreclosure -- Sorry. I

1 Bourne Valley Trust on this property subject to January
2 2012, but it looks like at some point --
3 Q Did you ever assist in filing Chapter 11
4 bankruptcies for Mr. Haddad in 2012?
5 A No.
6 Q Did you ever provide -- So you would have no
7 knowledge -- You and no one at Alessi & Koenig would have
8 any knowledge of any Chapter 11 bankruptcy in 2012
9 involving Mr. Haddad?
10 A Well, as you can see, we produced these
11 documents that would indicate that we did have knowledge.
12 I don't know who Resources Group, LLC is. But we would
13 have had notice of that bankruptcy. As you can see, we
14 included it in our file.
15 Q Okay. Did you still represent Mr. Haddad or
16 would you have represented Mr. Haddad as of the middle
17 and latter part of 2012?
18 A I don't know. I don't know. We did not
19 represent him, as you can see, on this -- If this was him
20 filing bankruptcy, we would not have represented him in
21 this bankruptcy. I don't know whether we were
22 representing Mr. Haddad on any other matters in 2012.
23 Q Would you be shocked at all if I told you that
24 this entity Resources Group was controlled by Mr. Haddad?
25 A No.

1 guess he delineated there were two separate foreclosure
2 proceedings.
3 BY MR. BECKOM:
4 Q So the first sale to the Resources Group and to
5 the trust took place in January 2012 I believe; is that
6 correct?
7 A Yes.
8 Q Can we agree that's a pretty old sale for HOA
9 sales?
10 A Yes. January of 2012 would have been right
11 toward the beginning of the three-and-a-half, four-year
12 period of trustee sales. It would have been right toward
13 the beginning.
14 Q Okay. And I think you stated previously that
15 you would not have been surprised at all if Mr. Haddad
16 had stated this property was subject to a lien, correct?
17 MS. MIKRUT: I would just object again. It
18 calls for speculation to testify about that.
19 BY MR. BECKOM:
20 Q You can still answer.
21 A That is correct. I would not be shocked.
22 Q Okay. Did you ever go to any of these HOA sales
23 in January 2012 or was it just Matt Mitchell from Sin
24 City Realty?
25 A We did approximately 850 sales from end of 2011

1 through 2 -- through present. I would -- You know, we
2 did many of them in our conference room. I attended or
3 walked by a few. I have cried a few sales. I have no
4 specific knowledge of this sale. So I don't know -- I
5 doubt that I was there.

6 Q But did you -- But had you attended any sales in
7 let's say fourth quarter 2011, first quarter 2012?

8 A I'm not sure. I do recall one sale. I don't
9 know what year I attended it but that I did want to
10 attend. It involved the sale of 114 parcels at a
11 Southern Highlands master. It was a big deal. And I
12 know I wanted to be there for that one. But in general I
13 did not attend sales.

14 Q When did this sale take place?

15 A I don't remember if it was 2012 or not.

16 Q Was it one of your older sales?

17 A It was quite awhile ago. I would not be shocked
18 or surprised if it was 2012. I wouldn't be surprised if
19 it was 2013 either.

20 MR. BECKOM: Okay. Can we take a break for a
21 second?

22 (Recess taken from 2:33 p.m. through 2:39 p.m.)

23 BY MR. BECKOM:

24 Q All right. So let's go on. It looks like you
25 have some more bankruptcy information, A&K101. It looks

1 MS. MIKRUT: I'm going to have to object. I
2 don't think that he ever testified that there was a
3 casual friendship.

4 MR. BECKOM: He just testified. It's his answer
5 now. So he is allowed to answer however he wants. I
6 will speak slower if you want to get your objection on
7 the record.

8 MS. MIKRUT: You can't speak slower.

9 MR. BECKOM: Maybe if you're lucky.

10 BY MR. BECKOM:

11 Q Okay. And then over here it looks like there is
12 another -- A&K116 there is another ledger here that just
13 shows a bunch of -- It looks like it's dated January 9,
14 2014.

15 A Yes.

16 Q Do you have any idea about why you would have a
17 ledger or an auction -- or a ledger as of January 2014?

18 A No.

19 Q Okay. It looks like in the final document that
20 I have here, actually not the final document, is the
21 Declaration of Covenants, Conditions and Restrictions.
22 Have you seen this document before?

23 A I have seen a -- I don't know that I have seen
24 this specific document before, but I have seen documents
25 like this.

1 like an order submitted to Judge Beesley by McCarthy &
2 Holthus concerning this same bankruptcy.

3 And again, you have no recollection as to why
4 this case would have been dismissed and why you would
5 have been tracking that?

6 A I believe that we were tracking it because we
7 were doing a subsequent foreclosure against this entity,
8 and that is why we would have been tracking it.

9 Q Understood. You have another bankruptcy here at
10 A&K104. It looks like one for Saticoy Bay LLC Series
11 Bowman Lair. Do you have any idea about why you would
12 have been tracking this bankruptcy?

13 A No.

14 Q And I guess just to be clear, your testimony is
15 that Alessi & Koenig had no affiliation with the
16 bankruptcy of Saticoy Bay LLC Series Bowman Lair?

17 A Well, we may have represented the HOA on a claim
18 made, but we had no affiliation with the debtor.

19 Q Okay. And you had no affiliation with Ryan
20 Alexander other than --

21 A Correct.

22 Q -- a casual friendship of one of your employees?

23 A Correct. And the employee wasn't employed in
24 2013 by our office. So I did not meet Ryan Alexander
25 until I believe this year.

1 Q Why would Alessi & Koenig have a copy of this
2 document in their possession?

3 A We oftentimes have copies of the CC&Rs in our
4 possession. Oftentimes we do general counsel work for
5 associations. We don't always have the CC&Rs in the
6 file, but as can you see, we did on this one. I don't
7 know why we would have for this particular file.

8 Q Do you know if you did general counsel work for
9 the HOA?

10 A I do not.

11 Q Okay. Do you review the CC&Rs at all prior to
12 foreclosure?

13 A Sometimes. Most of the CC&Rs are pretty
14 generic. But I believe we do review the CC&Rs. We do
15 review the CC&Rs at times, again, not always.

16 Q Do you have any reason to believe that you had
17 reviewed the CC&Rs of this property prior to selling it
18 in January of 2012?

19 A I don't know.

20 Q Let's go to A&K133.

21 A Yes.

22 Q Section 11 where it says, "Subordination of the
23 lien to mortgages," did your firm review this at all
24 prior to selling the property?

25 A I don't know whether or not we reviewed this

1 specific provision. I can testify that we were aware of
2 these types of provisions.
3 Q You were aware of these types of provisions in
4 January 2012?
5 A Yes. Oftentimes they are called mortgagee
6 protection clauses.
7 Q Did you ever discuss these with any potential
8 purchasers?
9 A No.
10 Q Why?
11 A We just did not discuss these types of things
12 with investors.
13 Q Okay. So you were aware this was there prior to
14 the sale of this property?
15 A I don't know if we were aware that this
16 provision was in this specific CC&Rs on the sale of this
17 specific property. I can testify that we were aware of
18 mortgagee protection clauses within CC&Rs. I just don't
19 have any specific knowledge as to whether or not these
20 were reviewed five years ago.
21 Q Does Alessi & Koenig have a public position as
22 to the effect of a mortgage protection clause on an HOA
23 sale?
24 A That, again, would be a question that I would
25 defer to a court. Our -- My understanding from our

1 did testify to is that to the extent such a clause
2 conflicted with the statutes, if it did conflict with the
3 statutes, then our understanding would be that such a
4 provision would be void.
5 Q So you thought that you were selling these
6 properties subject to a lawsuit?
7 A Subject to a lawsuit?
8 MS. MIKRUT: I just object. That misstate his
9 earlier testimony.
10 THE WITNESS: I don't think we thought in those
11 terms. We were just selling the property pursuant to the
12 rights and duties that the board of directors and the
13 association had as outlined by NRS 116.
14 BY MR. BECKOM:
15 Q I'm confused.
16 A The effect of that sale was something that we
17 leave up to the courts.
18 Q You keep mentioning that, like we're going to
19 leave it up to the courts. We're going to leave it up to
20 the courts. All our sales are going to be left up to the
21 courts. Wouldn't that imply a lawsuit?
22 A No. If -- If there is a lawsuit. This
23 particular case, when we went -- when we went to sale, we
24 did not make any -- we did not offer any warranties to
25 the investors.

1 Nevada counsel is that any provisions contained within
2 the CC&Rs that conflict with the statutes is void. So to
3 the extent a mortgagee protection clause may or may not
4 conflict with the provisions of NRS 116, that provision
5 would be void.
6 Q Was that Alessi & Koenig's public position in
7 the beginning of 2012?
8 A We didn't have a public position. We
9 specifically stayed away from having those types of --
10 making those types of -- taking those types of positions.
11 We would defer to the courts on those types of matters.
12 Q But you were aware of mortgage protection
13 clauses?
14 A Yes.
15 Q And at no point -- And then also your Nevada
16 counsel had advised you that they conflicted with the
17 statute and were void?
18 A No. If they -- No. We didn't take
19 conclusory -- conclusory positions like that.
20 Q Conclusory.
21 A That was -- Thank you. As you know, the
22 investor takes up without warranties the effect of a
23 mortgagee protection clause on the sale. It was not
24 something that we were overly concerned about. That
25 would be a matter that the courts would decide. What I

1 Q But actions -- But like it was not your
2 responsibility to deal with things such as the mortgage
3 protection clause on A&K133 and you were going to leave
4 it up to the courts?
5 A No. I'm leaving that answer up -- You asked me
6 the question. I said I would defer that answer to the
7 courts. At the time of the sales, we did not think in
8 those terms, but we were just selling the properties, as
9 I said, pursuant to the duties and rights that the
10 association had under NRS 116. We didn't go any further
11 in our analysis of the effect of those sales. We were
12 busy selling the properties.
13 Q You know, one thing I found that was noticeably
14 absent from this sale, and this reminds me, is can you
15 show me in here where you published this sale to the
16 public?
17 A This sale -- There was an email to Nevada Legal
18 News. Yes, on A&K141 is the email between our office and
19 Nevada Legal News confirming that the sale was published.
20 Q Okay.
21 A If you were to go to those publications, I'm
22 sure you would find that.
23 Q Okay. Fair enough. We have an email from
24 Marquis Aurbach Coffing on Alessi & Koenig 139. Do you
25 know what that is?

1 A Yes, I saw that. Avece I believe is an HOA
2 attorney. She may have been general counsel for the
3 association at that time. So my guess, it would have
4 something to do with that.

5 Q Okay. Anything else you would like to add to
6 your testimony here today?

7 A No, sir.

8 MR. BECKOM: I believe I have no further
9 questions.

10 MS. MIKRUT: Let me just ask one quick question
11 on the record.

12 EXAMINATION

13 BY MS. MIKRUT:

14 Q Mr. Alessi, my name is Denise Mikrut. I
15 represent Resources Group in this matter.

16 If -- At any point between the time that the
17 Notice of Trustee's Sale was recorded and the trustee's
18 sale actually occurred, if you would have ever been
19 contacted by the lender, would that be reflected in your
20 screenshot notes that you provided?

21 A Yes.

22 Q To your knowledge did the lender or the
23 beneficiary to the Deed of Trust ever contact Alessi &
24 Koenig regarding the delinquency during that time frame?

25 A No.

1 Q To your knowledge did the beneficiary of the
2 Deed of Trust ever send or remit any payment to Alessi &
3 Koenig during that time frame?

4 A No.

5 MS. MIKRUT: All right. That's all I have.
6 Thank you.

7 (Concluded at 2:53 p.m.)
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1 CERTIFICATE OF REPORTER

2 STATE OF NEVADA
3 COUNTY OF CLARK

SS.

5 I, Joanne C. Williams, CCR No. 899, certify as
6 follows:

7 That I reported the taking of the deposition of
8 the witness, DAVID ALESSI, at the time and place
9 aforesaid.

10 That prior to being examined, the witness was by
11 me duly sworn to testify to the truth, the whole truth
12 and nothing but the truth.

13 That I thereafter transcribed my stenographic
14 notes into typewriting and that the transcript of said
15 deposition is a complete, true and accurate transcript of
16 said stenographic notes.

17 That transcript review pursuant to NRCF 30(e)
18 was waived.

19 I further certify that I am not a relative or
20 employee of any party involved in said action, nor a
21 person financially interested in the action.

22 Dated at Las Vegas, Nevada, this 30th day
23 of November, 2016.
24

25 Joanne C. Williams, RPR, CR, CCR No. 899

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EXHIBIT 17

EDWARDS GEORGE R TRUST
4254 ROLLINGSTONE DR
LAS VEGAS, NV 89103

REPUBLIC SERVICES
ACCT# 308
PO BOX 98606
LAS VEGAS, NV 89199-8606

US RECORDINGS
2025 COUNTRY DRIVE STE. 201
ST. PAUL, MN 55117

LAW OFFICE OF AJ KUM, LTD
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LAS VEGAS, NV 89101

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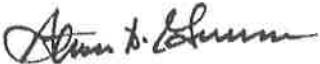
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7 Attorneys for defendant/counterclaimant Resources Group, LLC

8
9 DISTRICT COURT

10 CLARK COUNTY, NEVADA

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

13 Plaintiff,

14 vs.

15 GEORGE R. EDWARDS, an individual; ANY AND
16 ALL PERSONS UNKNOWN, CLAIMING TO BE
17 PERSONAL REPRESENTATIVES OF GEORGE
18 R. EDWARDS ESTATE, OR DULY APPOINTED,
19 QUALIFIED, AND ACTING EXECUTOR OF THE
20 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 inclusive; and
ROES 1 through 10 inclusive

21 Defendants.

22 RESOURCES GROUP, LLC,

23 Counter-claimant

24 vs

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

Counter-defendant

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

**RESOURCES GROUP, LLC'S
OPPOSITION TO U.S. BANK'S
MOTION FOR SUMMARY
JUDGMENT**

1 Defendant/counterclaimant, Resources Group, LLC, as Trustee for the Bourne Valley Court Trust
2 (hereinafter "Resources Group"), by and through its attorneys, Michael F. Bohn, Esq. and Adam R.
3 Trippiedi, Esq., submits the following points and authorities in response to the motion for summary
4 judgment filed by U.S. Bank National Association ND (hereinafter "plaintiff") on January 3, 2017.

5 **POINTS AND AUTHORITIES**

6 **FACTS**

7 Resources Group is the owner of the real property commonly known as 4254 Rollingstone Drive,
8 Las Vegas, Nevada (hereinafter "Property"). Resources Group acquired title to the Property from 4524
9 Rolling Stone Dr Trust by a grant, bargain, sale deed recorded with the Clark County Recorder on May
10 29, 2012. A copy of the grant, bargain, sale deed is Exhibit A.

11 4254 Rolling Stone Dr Trust acquired title to the Property by a foreclosure deed recorded with the
12 Clark County Recorder on January 31, 2012. A copy of the foreclosure deed is Exhibit B. The
13 foreclosure deed arises from a delinquency in assessments due from the George R. Edwards Trust
14 (hereinafter "former owner") to Glenview West Townhomes Association (hereinafter "HOA"), pursuant
15 to NRS Chapter 116.

16 Plaintiff is the beneficiary of a deed of trust that was recorded as an encumbrance against the
17 Property on March 26, 2009. A copy of the deed of trust is Exhibit C.

18 On December 20, 2010, Alessi & Koenig LLC (hereinafter "foreclosure agent") mailed a prelien
19 letter to the former owner and enclosed a copy of a notice of delinquent assessment (lien) for \$2,330.00.
20 A copy of the letter, notice of lien, and proof of mailing is Exhibit D.

21 On January 4, 2011, the foreclosure agent recorded the notice of lien. A copy of the recorded
22 notice is Exhibit E. As proved by the HOA's statement of financial transactions for the Property, as of
23 January 4, 2011, the former owner had failed to pay assessments of \$130.00 per month that fell due from
24 January 1, 2010 to December 1, 2010. A copy of the HOA's statement of financial transactions, dated
25 July 10, 2012, is Exhibit F.

26 On March 29, 2011, the foreclosure agent recorded the notice of default and election to sell. On
27 April 5, 2011, the foreclosure agent mailed copies of the notice to the former owner, to plaintiff, and to

1 other interested parties. A copy of the notice of default and proof of mailing is Exhibit G.

2 On October 13, 2011, the foreclosure agent recorded a notice of sale. A copy of the notice of sale
3 is Exhibit H.

4 The foreclosure agent also mailed copies of the notice of sale to the former owner, to plaintiff,
5 and to other interested parties. A copy of the proof of mailing is Exhibit I.

6 The authenticity of the business records attached as Exhibits E through I is verified by the affidavit
7 of custodian of records attached as Exhibit J.

8 As reflected by the recitals in the foreclosure deed, 4254 Rolling Stone Dr Trust appeared at the
9 public auction conducted on January 25, 2012, and entered the high bid of \$5,331.00 to purchase the
10 Property.

11 Legal Argument

12 **A. Plaintiff's Trust Deed has been Extinguished.**

13 In SFR Investments Pool 1, LLC v. U.S. Bank, N.A., 130 Nev., Adv. Op. 75, 334 P.3d 408
14 (2014), the Nevada Supreme Court stated:

15 NRS 116.3116(2) gives an HOA a true superpriority lien, proper foreclosure of which will
16 extinguish a first deed of trust. Because Chapter 116 permits nonjudicial foreclosure of
17 HOA liens, and because SFR's complaint alleges that proper notices were sent and
18 received, we reverse the district court's order of dismissal. In view of this holding, we
vacate the order denying preliminary injunctive relief and remand for further proceedings
consistent with this opinion.

19 334 P.3d at 419.

20 Because the facts in the present case are substantially the same as the facts in SFR Investments
21 Pool 1, LLC v. U.S. Bank, N.A., this Honorable Court should reach the same conclusion that the
22 nonjudicial foreclosure arising from the HOA's super priority lien extinguished the deed of trust held by
23 plaintiff on the date of sale.

24 **B. The majority opinion in Bourne Valley Court Trust v. Wells Fargo Bank, N.A. is not a binding interpretation of Nevada's HOA foreclosure statute.**

25 At page 6 of its motion, plaintiff argues that this court should adopt the ruling by the Ninth Circuit
26 court of appeals in Bourne Valley Court Trust v. Wells Fargo Bank, N.A., 832 F.3d 1154 (9th Cir. 2016),
27

1 and find that “NRS § 116.3116 *et seq* is unconstitutional in all respects due to the ‘opt in’ noticing as
2 outlined in the statute.” On the other hand, NRS 116.31168(1) expressly incorporates the notice
3 requirements in NRS 107.090(3)(b) and NRS 107.090(4) that require copies of the notice of default and
4 notice of foreclosure sale to be mailed to every holder of an interest subordinate to the assessment lien
5 being foreclosed.

6 **1. In SFR, the Nevada Supreme Court rejected the due process argument
that was adopted by the majority opinion in Bourne Valley.**

7 In SFR Investments Pool 1, LLC v. U.S. Bank, N.A., 130 Nev., Adv. Op. 75, 334 P.3d 408
8 (2014), the Nevada Supreme Court expressly rejected the lender’s argument that the statutory scheme
9 granting to the HOA its superpriority lien rights violated due process:

10 The contours of U.S. Bank’s **due process** argument are protean. **To the extent U.S. Bank**
11 **argues that a statutory scheme that gives an HOA a superpriority lien that can be**
12 **foreclosed nonjudicially, thereby extinguishing an earlier filed deed of trust, offends**
13 **due process, the argument is a nonstarter.** As discussed in 7912 Limbwood Court
14 Trust, 979 F. Supp. 2d at 1152’.

15 Chapter 116 was enacted in 1991, and thus [the lender] was on notice that
16 by operation of the statute, the [earlier recorded] CC & Rs might entitle
17 the HOA to a super priority lien at some future date which would take
18 priority over a [later recorded] first deed of trust.... **Consequently, the**
19 **conclusion that foreclosure on an HOA super priority lien**
20 **extinguishes all junior liens, including a first deed of trust recorded**
21 **prior to a notice of delinquent assessments, does not violate [the**
22 **lender’s] due process rights.**

23 *Accord* Nationstar Mtg., 2014 WL 3661398, at *3 (rejecting a due process
24 challenge to nonjudicial foreclosure of a superpriority lien). (emphasis added)
25 334 P.3d at 418.

26 In Nationstar Mortgage, LLC v. Rob and Robbie, LLC, 2014 WL 3661398 (D. Nev. July 23,
27 2014), the court stated:

28 The Court rejects Plaintiff’s due process arguments. The fact that Nevada has a race-notice
recording statute is no rebuttal to the argument that the HOA foreclosure statutes permit
an HOA foreclosure to extinguish a mortgage that was recorded after the CC & R
permitting HOA liens but after a particular HOA lien itself. As the Court has noted in
ruling that HOA foreclosures do not extinguish first mortgages, **the State of Nevada may**
structure its foreclosure and recording statutes as it sees fit. That is true whatever the
proper interpretation of the statutes. **The statutes governing HOA foreclosures were in**
place when Plaintiff gave the mortgage at issue. The recording statute provides a
general statutory exception to the first-in-time, first-in-right rule provided by the common
law. That is, under the recording statute, a person who records his deed may have priority

1 over another party who received a competing interest in the same property before the
2 recording party received his interest. **The HOA foreclosure statutes provide that**
3 **certain HOA liens are prior even to first mortgages so long as the CC & R**
4 **permitting foreclosure are recorded before the first mortgage. The recordation of the**
5 **CC & R puts a potential mortgagee on notice of the risk of a future HOA**
6 **foreclosure.** Plaintiff has long been on notice of the statutory scheme that would permit
7 its mortgage to potentially be extinguished by an HOA lien in some circumstances, and
8 it has been able to protect itself by periodically checking the postings at the front entrance
9 of the Washoe County Courthouse or the electronic records available online for free.
10 Plaintiff was on constructive notice of the CC & R permitting an HOA foreclosure
11 (recorded before the first mortgage), the notice of HOA lien, and the notice of sale. **The**
12 **fact that Plaintiff gave its mortgage at a time when no actual lien had been placed**
13 **against the Property does not matter. It is notice of the possibility of an action**
14 **against the security by a senior party that matters..** (emphasis added)

15 Id. at *3.

16 The Nevada Supreme Court therefore rejected the exact due process argument that was adopted
17 by the majority opinion in Bourne Valley. The misinterpretation of Nevada law by the majority opinion
18 in Bourne Valley is not a binding interpretation of the statute.

19 **2. Only the Nevada Supreme Court can authoritatively construe NRS Chapter 116.**

20 In California Teachers Association v. State Board of Education, 271 F.3d 1141 (9th Cir. 2001),
21 the court identified the following limits on a federal court's power to interpret state law:

22 We recognize that it is **solely within the province of the state courts to authoritatively**
23 **construe state legislation.** See United States v. Thirty-Seven (37) Photographs, 402 U.S.
24 363, 369, 91 S. Ct. 1400, 28 L. Ed. 2d 822 (1971). Nor are we authorized to rewrite the
25 law so it will pass constitutional muster. Virginia v. American Booksellers Ass'n, Inc.,
26 484 U.S. 383, 397, 108 S. Ct. 636, 98 L. Ed. 2d 782 (1988). A federal court's duty, when
27 faced with a constitutional challenge such as this one, is to employ traditional tools of
28 statutory construction to determine the statute's "allowable meaning." Grayned v. City of
Rockford, 408 U.S. 104, 110, 92 S. Ct. 2294, 33 L.Ed.2d 222 (1972); Stoianoff v.
Montana, 695 F.2d 1214, 1218 (9th Cir.1983). In doing so, **we look to the words of the**
statute itself as well as state court interpretations of the same or similar statutes.
Grayned, 408 U.S. at 109-10, 92 S. Ct. 2294. Moreover, before invalidating a state statute
on its face, a federal court **must determine whether the statute is "readily susceptible"**
to a narrowing construction by the state courts. American Booksellers, 484 U.S. at
397, 108 S. Ct. 636; Nunez v. City of San Diego, 114 F.3d 935, 942 (9th Cir.1997).
(emphasis added)

271 F.3d at 1146-1147.

In Arizonans for Official English v. Arizona, 520 U.S. 43, 48 (1997), the Supreme Court stated:

Federal courts lack competence to rule definitively on the meaning of state legislation,
see, e.g., Reetz v. Bozanich, 397 U.S. 82, 86-87 (1970), nor may they adjudicate
challenges to state measures absent a showing of actual impact on the challenger, see, e.g.,
Golden v. Zwickler, 394 U.S. 103, 110 (1969).

1 In United States ex rel. Lawrence v. Woods, 432 F.2d 1072, 1075 (7th Cir. 1970), the court stated:

2 The United States Supreme Court has final appellate jurisdiction over federal questions
3 arising either in state or federal proceedings, and by reason of the supremacy clause the
4 decisions of that court on national law have binding effect on all lower courts whether
5 state or federal.

6 In Bromley v. Crisp, 561 F.2d 1351, 1354 (10th Cir. 1977), cert. denied, 435 U.S. 908 (1978), the
7 court stated that “the Oklahoma Courts may express their differing views on the retroactivity problem or
8 **similar federal questions** until we are all guided by a binding decision of the Supreme Court.”
(emphasis added)

9 In Arizonans for Official English v. Arizona, 520 U.S. 43, 77 (1997), the Supreme Court stated
10 that “[a] more cautious approach was in order” and that “[t]hrough certification of novel or unsettled
11 questions of state law for authoritative answers by a State’s highest court, a federal court may save ‘time,
12 energy, and resources and hel[p] build a cooperative judicial federalism.’”

13 The court in Bourne Valley failed to follow this direction by the United States Supreme Court in
14 adopting an interpretation of the statute contrary to the interpretation adopted by the Nevada Supreme
15 Court in SFR Investments Pool 1, LLC v. U.S. Bank, N.A., 130 Nev., Adv. Op. 75, 334 P.3d 408 (2014).

16 **3. The HOA foreclosure sale could not violate due process because the statute
17 expressly incorporates the mandatory notices required by NRS 107.090.**

18 In SFR Investments Pool 1, LLC v. U.S. Bank, N.A., 130 Nev., Adv. Op. 75, 334 P.3d 408
(2014), the Nevada Supreme Court stated:

19 **In view of the fact that the “requirements of law” include compliance with NRS**
20 **116.31162 through NRS 116.31168 and by incorporation, NRS 107.090, see NRS**
21 **116.31168(1), we conclude that U.S. Bank’s due process challenge to the lack of adequate**
22 **notice fails, at least at this early stage in the proceeding. (emphasis added)**

23 334 P.3d at 418.

24 As provided by State v. Steven Daniel P. (In re Steven Daniel P.), 129 Nev., Adv. Op. 73, 309
25 P.3d 1041, 1046 (2013), the provisions of NRS 107.090 must be read as if they were “incorporated
26 bodily” into NRS Chapter 116.

27 The majority opinion in Bourne Valley refused to apply the Nevada Supreme Court’s
28 constitutional interpretation of the statute because it found that incorporating the mandatory notices

1 provided to holders of subordinate interests required by NRS 107.090(3)(b) and NRS 107.090(4) would
2 make the request for notice provisions in NRS 116.31163 and NRS 116.311635 “superfluous” and
3 “meaningless.”

4 On the other hand, the mandatory notices in NRS 107.090(3)(b) and NRS 107.090(4) are only
5 mailed to holders of interests **subordinate** to the association’s lien. The request for notice provisions in
6 NRS 116.31163 and NRS 116.311635 may be used by **any** holder of a recorded interest. Because more
7 persons qualify to use the request for notice provisions than are required to receive notice under NRS
8 107.090(3)(b) and NRS 107.090(4), the mandatory notice provisions do not make the request for notice
9 provisions “superfluous” or “meaningless.”

10 Due process, even if it applies, would not necessarily require notice to a senior lienholder whose
11 interest would not be affected by the sale. NRS 116.31163 and NRS 116.311635 provide senior
12 lienholders with a method to request that copies of the notice of default and notice of sale be mailed to
13 the address that each desires. The request for notice provisions also give “shadow owners” a method to
14 request notice when MERS is the named beneficiary identified in a deed of trust.

15 NRS 107.090 contains both a request for notice provision in NRS 107.090(2) and the mandatory
16 notice provisions in NRS 107.090(3)(b) and NRS 107.090(4) for holders of interests “subordinate” to the
17 deed of trust being foreclosed. If the analysis in Bourne Valley was correct, then every nonjudicial
18 foreclosure of a deed of trust in Nevada would also be unconstitutional because the mandatory notice
19 provision in NRS 107.090(3)(b) would make the request for notice provision in NRS 107.090(2)
20 superfluous.

21 **4. Due process does not apply to a nonjudicial foreclosure sale.**

22 The majority opinion in Bourne Valley also failed to recognize that the United States Supreme
23 Court requires that a “state actor” participate before due process must be provided.

24 In section A of the Bourne Valley opinion, the majority relied on three cases that involved judicial
25 remedies. Mennonite Bd. of Missions v. Adams, 462 U.S. 791 (1983), involved a tax sale conducted by
26 the county treasurer. Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950), involved the
27 notices provided for “judicial settlement of accounts by the trustee of a common trust fund established

1 under the New York Banking Law, Consol. Laws, c. 2.” Id. at 307. Small Engine Shop, Inc. v. Cascio,
2 878 F.2d 883 (5th Cir. 1989), involved a petition for foreclosure based on a confession of judgment that
3 waived the right to a routine adversary hearing and resulted in a sheriff’s sale conducted pursuant to a writ
4 of seizure and sale issued by the court. The court of appeals in Small Engine Shop, Inc. v. Cascio did not
5 hold that the statute was unconstitutional; it instead adopted a different interpretation of the statute than
6 the one used by the district court. Id. at 893.

7 Unlike the cases cited by the majority opinion in Bourne Valley, no “state actor” participates in
8 the nonjudicial foreclosure of an HOA lien. Furthermore, because NRS 107.090(3)(b) and NRS
9 107.090(4), as incorporated by NRS 116.31168(1), require that copies of the notice of default and the
10 notice of foreclosure sale be mailed to holders of interests subordinate to the HOA’s lien even if they do
11 not record or mail to the HOA a request for notice, Nevada’s statute is different from any of the statutes
12 in the cases cited by the majority opinion and by plaintiff.

13 **5. The Legislature’s enactment of NRS Chapter 116 does not constitute “state
14 action” for due process purposes.**

15 The decisions by the United States Supreme Court in Lugar v. Edmondson Oil Co., Inc., 475 U.S.
16 922 (1982), and Flagg Bros., Inc. v. Brooks, 436 U.S. 149 (1978), hold that due process is not an issue
17 unless a “state actor” participates in the challenged procedure.

18 In Lugar v. Edmondson Oil Co., Inc., the Supreme Court analyzed its decision in Flagg Bros., Inc.
19 v. Brooks and stated:

20 Plaintiffs’ case foundered on the first requirement. Because a due process violation was
21 alleged and **because the Due Process Clause protects individuals only from**
22 **governmental and not from private action**, plaintiffs had to demonstrate that the sale
23 of their goods was accomplished by state action. The Court concluded that **the sale,**
24 **although authorized by state law, did not amount to state action** under the Fourteenth
25 Amendment, and therefore set aside the Court of Appeals’ contrary judgment. (emphasis
26 added)

27 475 U.S. at 930.

28 The Supreme Court also explained why the state’s enactment of a statute did not make a private
party using the statutory remedy a “state actor”:

Second, the party charged with the deprivation must be a person who may fairly be said
to be a state actor. This may be because he is a state official, because he has acted

1 together with or has obtained significant aid from state officials, or because his conduct
2 is otherwise chargeable to the State. **Without a limit such as this, private parties could
3 face constitutional litigation whenever they seek to rely on some state rule governing
4 their interactions with the community surrounding them.** (emphasis added)

5 475 U.S. at 937.

6 In Charmicor v. Deaner, 572 F.2d 694 (9th Cir. 1978), the court found that the statutory source
7 of the power of sale in NRS 107.080 did not transform the private foreclosure into state action for due
8 process purposes:

9 Thus, the California statute confirms a contractual right; **the Nevada statute confers a
10 power of sale upon the trustee.**

11 **The statutory source of the Nevada power of sale, however, does not necessarily
12 transform a private, nonjudicial foreclosure into state action.** As this court said in
13 Melara v. Kennedy, 541 F.2d 802, 806 (9th Cir. 1976): "Further, the statute creates only
14 the right to act; it does not require that such action be taken."

15 Other recent cases which hold that the source of the right is not conclusive as to state
16 action include Adams v. Southern California First National Bank, 492 F.2d 324, 330 (9th
17 Cir. 1973), cert. denied, 419 U.S. 1006, 95 S.Ct. 325, 42 L.Ed.2d 282 (1974), and Kenly
18 v. Miracle Properties, 412 F.Supp. 1072, 1075 (D.Ariz.1976).(emphasis added)

19 572 F.2d at 695-696.

20 In Melara v. Kennedy, 541 F.2d 802 (9th Cir. 1976), the court rejected the plaintiff's argument
21 that state action existed because "the statute is the only source of the extra-judicial sale remedy" provided
22 by Cal. Commercial Code § 7210. The court stated that "the statute creates only the right to act; it does
23 not require that such action be taken." Id.

24 In Bourne Valley, the court of appeals incorrectly found that the "state action" requirement was
25 satisfied by the enactment of the HOA foreclosure statute:

26 But that the foreclosure sale itself is a private action is irrelevant to Wells Fargo's due
27 process argument. Rather than complaining about the foreclosure specifically, **Wells
28 Fargo contends -- and we agree -- that the enactment of the Statute
unconstitutionally degraded its interest in the Property. Absent operation of the
Statute, Wells Fargo would have had a fully secured interest in the Property. A
foreclosure by a homeowners' association would not have extinguished Wells Fargo's
interest. But with the Statute in place, Wells Fargo's interest was not secured. Instead, if
a homeowners' association foreclosed on a lien for unpaid dues, Wells Fargo would forfeit
all of its rights in the Property. In our view, the "state action" requirement is satisfied.
(emphasis added)**

832 F.3d at 1160.

1 As noted above, the controlling authority in Lugar v. Edmondson Oil Co., Inc. provides that the
2 enactment of the statutory remedy cannot transform a private party using the statutory remedy into a “state
3 actor.”

4 In the present case, the notice of delinquent assessment (lien) recorded on January 4, 2011
5 (Exhibit E attached) stated that the assessment lien was recorded “[i]n accordance with Nevada Revised
6 Statutes and the Association’s Declaration of Covenants, Conditions and Restrictions (CC&Rs) of the
7 official records of Clark County, Nevada . . .” A copy of the CC&Rs recorded on December 12, 1983
8 in Book 1845 as Instrument 1804064 is Exhibit K.

9 Because the CC&Rs were recorded prior to the adoption of the UCIOA in Nevada in 1991, the
10 CC&Rs do not expressly refer to the rights held by the HOA pursuant to NRS Chapter 116. NRS
11 116.1206(1) provides:

12 1. Any provision contained in a declaration, bylaw or other governing document of a
common-interest community that violates the provisions of this chapter:

13 (a) **Shall be deemed to conform with those provisions by operation of law, and**
14 **any such declaration, bylaw or other governing document is not required to be**
15 **amended to conform to those provisions.**

16 (b) Is superseded by the provisions of this chapter, regardless of whether the provision
contained in the declaration, bylaw or other governing document became effective before
the enactment of the provision of this chapter that is being violated. (emphasis added)

17 As a result, the CC&Rs recorded in 1983 are “deemed to conform” with the provisions of NRS
18 116.3116 “by operation of law,” including the provisions in NRS 116.3116(2) defining the HOA’s
19 superpriority lien rights.

20 As recognized by the Nevada Supreme Court in SFR Investments Pool I, LLC v. U.S. Bank, N.A.,
21 130 Nev., Adv. Op. 75, 334 P.3d 408, 419 (2014), NRS 116.1104 prevents that language in Article VI,
22 Section 11 of the CC&Rs from varying or waiving the HOA’s superpriority lien rights under NRS
23 116.3116(2).

24 At the time that plaintiff’s deed of trust was recorded on March 26, 2009, NRS 116.3116(5)
25 stated:

26 Recording of the declaration constitutes record notice and perfection of the lien.
27 No recordation of any claim of lien for assessment under this section is required.

1 As recognized by the Nevada Supreme Court in SFR Investments Pool I, LLC v. U.S. Bank, N.A.,
2 the CC&Rs recorded on December 12, 1983 and the statute enacted in 1991 provided plaintiff with notice
3 that its deed of trust was subordinate to the HOA's superpriority lien rights.

4 As noted at pages 5 and 6 above, it is "solely within the province of the state courts to
5 authoritatively construe state legislation." United States v. Thirty-Seven (37) Photographs, 402 U.S. 363,
6 369 (1971). In addition, "[f]ederal courts lack competence to rule definitively on the meaning of state
7 legislation." Arizonans for Official English v. Arizona, 520 U.S. 43, 48 (1997). As a result, this court
8 is not bound by the incorrect interpretation of the statute by the majority opinion in Bourne Valley. This
9 court is instead bound by the constitutional interpretation of the statute by the Nevada Supreme Court.

10 On December 13, 2016, the Nevada Legislature filed a motion for leave for late filing of amicus
11 curiae brief before the Nevada Supreme Court in Navy Federal Credit Union v. Saticoy Bay LLC Series
12 1916 Summer Point, Case No. 69308. This brief specifically addresses the Bourne Valley decision.
13 Copies of the motion and the proposed amicus curiae brief are attached as Exhibit L. As noted in the
14 Nevada Legislature's motion, the same amicus brief was filed with the Nevada Supreme Court in HSBC
15 Bank USA v. SFR Investments Pool I, Case No. 69437, on December 13, 2016.

16 **6. Even if this court agrees with the Bourne Valley decision that the version**
17 **of the statute adopted in 1993 violates due process, the return doctrine**
18 **requires that the court apply the version of the statute adopted in 1991.**

18 Under the Return Doctrine, "when a statute is declared unconstitutional, it has no effect and the
19 prior governing statute is revived." We the People Nev. ex rel. Angle v. Miller, 124 Nev. 874, 192 P.3d
20 1166, 1176 (2008)(citing Chicago, Ind. & L. Ry. Co. v. Hackett, 228 U.S. 599, 566 (1913)). Similarly,
21 in Finger v. State, 117 Nev. 548, 27 P.3d 66, 84 (2001), the court stated: "All prior versions of the statutes
22 amended or repealed by S.B. 314 remain in full force and effect." In Clark County Board of County
23 Comm'r v. City of Las Vegas, 97 Nev. 260, 628 P.2d 1120, 1123 (1981), the court stated: "Because these
24 specifications in the plan for apportionment of expenses, as amended, are unconstitutional, the law as it
25 existed prior to the amendments will be controlling." In Johnson v. Goldman, 94 Nev. 6, 575 P.2d 929,
26 930 (1978), the court stated "[b]ecause 1977 Nev. Stats. ch. 398, §2 (codified as NRS 1.240) is
27 unconstitutional, the procedures which previously governed judicial recusal by affidavit . . . and which
28

1 were purportedly repealed by 1977 Nev. Stats. ch. 398 remain in effect.”

2 The court of appeals for the Ninth Circuit has also recognized that it is a “fundamental principle
3 of statutory construction that ‘a void act cannot operate to repeal a valid existing statute . . .” United
4 States v. Tufti, 542 F.2d 1046, 1047 (9th Cir. 1976).

5 In Frost v. Corp. Comm’n of Oklahoma, 278 U.S. 515, 526 (1929), the United States Supreme
6 Court stated: “But since the amendment is void for unconstitutionality, it cannot be given that effect,
7 ‘because an existing statute cannot be recalled or restricted by anything short of a constitutional
8 enactment.’”

9 The court in Bourne Valley found that if NRS 116.31168(1) is interpreted to incorporate the
10 mandatory notice requirements in NRS 107.090(3)(b) and NRS 107.090(4), it renders the notice
11 provisions in NRS 116.31163 and NRS 116.31165 [actually, NRS 116.311635] “entirely superfluous.”
12 Prior to the 1993 amendment to NRS Chapter 116, the provisions in NRS 116.31163 and NRS
13 116.311635 did not exist. In addition, NRS 116.31168(1) included three sentences:

14 The provisions of NRS 107.090 apply to the foreclosure of an association’s lien as if a
15 deed of trust were being foreclosed. The request must identify the lien by stating the
16 names of the unit’s owner and the common-interest community. **The association must
also give reasonable notice of its intent to foreclose to all holders of liens in the unit
who are known to it.** (emphasis added)

17 Under this version of the statute, the foreclosing HOA was required to provide notice to every
18 holder of a lien against a property even if its lien was prior to the HOA lien being foreclosed. This
19 mandatory notice requirement in the 1991 version of the statute could not make the request for notice
20 provisions in NRS 116.31163 and NRS 116.311635 “superfluous” because those sections of the statute
21 did not exist.

22 Consequently, even if this court agrees that the 1993 amendment to NRS Chapter 116 created a
23 due process problem, the Return Doctrine requires that the court apply the 1991 version of the statute,
24 which did not include the “opt-in” notice scheme condemned by the majority in Bourne Valley.

25 **C. Resources Group is protected as the grantee of a bona fide purchaser.**

26 Plaintiff has identified no evidence that would have put 4254 Rolling Stone Dr Trust on notice
27 of any basis for plaintiff to dispute the extinguishment of its subordinate deed of trust. 4254 Rolling

1 Stone Dr Trust therefore qualifies as a bona fide purchaser for value.

2 Shadow Wood Homeowners Association v. New York Community Bancorp, Inc., 132 Nev. Adv.
3 Op 5, 366 P.3d 1105 (2016) (hereinafter "Shadow Wood"), discusses bona fide purchaser status in detail.
4 The many points contained in the decision can be summarized as:

5 1. A bona fide purchase is without notice of any **prior equity**.

6 2. "The decisions are uniform" that the title of a bona fide purchaser is not affected by any matter
7 of which he has no notice, actual or constructive.

8 3. The bona fide purchaser must pay **valuable** consideration, not "adequate" consideration.

9 4. The fact that the foreclosure price may be "low" is not sufficient to put the purchaser on notice
10 of any alleged defects with the sale.

11 5. The fact that the court retains equitable power to void the sale does not deprive the purchaser
12 of bona fide purchaser status.

13 6. The time to determine the status of bona fide purchaser is at the time of the sale.

14 In Shadow Wood, the court concluded its discussion regarding Gogo Way's status as a bona fide
15 purchaser by stating:

16 And NYCB points to no other evidence indicating that Gogo Way had notice before it
17 purchased the property, either actual, constructive, or inquiry, as to NYCB's attempts to
18 pay the lien and prevent the sale, or that Gogo Way knew or should have known that
19 Shadow Wood claimed more in its lien than it actually was owed, especially where the
20 record prevents us from determining whether that is true. ***Lennartz v. Quilty*, 191 Ill. 174,**
21 **60 N.E. 913, 914 (Ill.1901) (finding a purchaser for value protected under the**
22 **common law who took the property without record or other notice of an infirmity**
23 **with the discharge of a previous lien on the property).** Because the evidence does not
24 show Gogo Way had any notice of the pre-sale dispute between NYCB and Shadow
25 Wood, the potential harm to Gogo Way must be taken into account and further defeats
26 NYCB's entitlement to judgment as a matter of law.

27 366 P.3d at 1116 (emphasis added)

28 In the present case, plaintiff has likewise failed to identify any fact, recorded document or other
evidence showing that plaintiff held a latent equity in the Property of which 4254 Rolling Stone Dr Trust
knew or should have known.

As the grantee of a bona fide purchaser, Resources Group enjoys the same protections as 4254
Rolling Stone Dr Trust. "[A] title or lien held by a bona fide purchaser or encumbrancer can be conveyed

1 to a grantee or assignee free and clear of a prior unknown interest even if the grantee or assignee does not
2 fulfill the requirements of a bona fide purchaser or encumbrancer.” 5 Miller & Starr, Cal. Real Est. §
3 11:58 (3d ed.) (citing Jones v. Independent Title Co., 23 Cal. 2d 859 (1944)).

4 **D. Plaintiff is not entitled to equitable relief against Resources Group.**

5 At page 7 of plaintiff’s motion, plaintiff states that “U.S. Bank humbly comes to this Court, sitting
6 in Equity, for assistance.” Under both the Restatement and Nevada law, plaintiff is not entitled to
7 equitable relief against Resources Group because any damages which the plaintiff may have sustained
8 as a result of an alleged wrongful foreclosure can be compensated with money damages.

9 The decision in Shadow Wood has limited application because Shadow Wood dealt with title
10 divestment of the former owner. The present case, however, deals with the extinguishment of plaintiff’s
11 security interest in the Property.

12 In Shadow Wood, the Supreme Court referred to the Restatement (Third) of Prop.: Mortgages
13 § 8.3. Comment b to section 8.3 recognizes that where a property has been purchased by a bona fide
14 purchaser, “the real estate is unavailable” and that “price inadequacy” may be raised in a suit against the
15 foreclosing mortgagee for damages:

16 On the other hand, where foreclosure is by power of sale, judicial confirmation of the sale
17 is usually not required and the issue of price inadequacy will therefore arise only if the
18 party attacking the sale files an independent judicial action. Typically this will be an
19 action to set aside the sale; it may be brought by the mortgagor, junior lienholders, or the
20 holders of other junior interests who are prejudiced by the sale. **If the real estate is**
21 **unavailable because title has been acquired by a bona fide purchaser**, the issues of
22 price inadequacy may be raised by the mortgagor or a junior interest holder in a suit
23 against the foreclosing mortgagee for damages for wrongful foreclosure. **This latter**
24 **remedy, however, is not available based on gross price inadequacy alone.** In addition,
25 the mortgagee must be responsible for a defect in the foreclosure process of the type
26 described in Comment c of this section. (emphasis added)

27 A copy of Section 8.3 from the Restatement is Exhibit M.

28 This authority from the Restatement is consistent with Nevada law and the common law rule that
there is no equity jurisdiction when a party has available to itself an adequate remedy at law.

In 1868, in Sherman v. Clark, 4 Nev. 138, 141 (1868), the Nevada Supreme Court stated:

The writ is exclusively an equitable remedy. But equity is chary of its powers; it employs
them only when the impotent or tardy process of the law does not afford that complete and
perfect remedy or protection which the individual may be justly entitled to. **When**

1 therefore it is shown that there is a complete and adequate remedy at law, equity will
2 afford no assistance. "When a party has a remedy at law," says Mr. Hilliard, "he cannot
3 come into equity, unless from circumstances not within his control he could not avail
4 himself of his legal remedy." (Hill. Inj. sec. 23.) That full compensation can be had at law
5 is the great rule for withholding the strong arm of the chancellor," says Mr. Justice
6 Thompson, in Pusey v. Wright, (31 Penn. 396.) See also Thompson v. Matthews (2 Edw.
7 Ch. R. 213; 9 Page, 323.) **Before refusing its aid upon this ground, however, it must**
8 **appear that the legal remedy is complete and adequate to afford the complainant full**
9 **redress; but when that fact does appear, equity at once relinquishes all control over**
10 **the case, and leaves the party to pursue his legal remedy.** (Emphasis added)

11 The same rule was applied by the Nevada Supreme Court in State v. Second Judicial District
12 Court 49 Nev. 145, 241 P.317, 321-322, 43 A.L.R. 1331 (1925); Turley v. Thomas, 31 Nev. 181, 101 P.
13 568 (1909); and Conley v. Chedic, 6 Nev. 222, 224 (1870).

14 In County of Washoe v. City of Reno 77 Nev. 152, 360 P.2d 602, 604 (1961), the court held that
15 whether or not the judgment is collectable is not an issue to be considered. The court stated:

16 During oral argument, counsel for respondents suggested that an action at law would not
17 be adequate because it could not be enforced by a writ of execution against a county fund.
18 Whether this be true or not, it is hardly to be supposed that an execution would be
19 necessary in the event a judgment at law were obtained against the county in this type of
20 case any more than a contempt proceeding would be required in the event a peremptory
21 writ of mandamus were issued. **In answer to this suggestion however it is necessary to**
22 **say only that our concern is with the existence of a remedy and not whether it will**
23 **be unproductive in this particular case,** Hughes v. Newcastle Mutual Insurance Co., 13
24 U.C.Q.B. (Ont.) 153, or inconvenient, Gulf Research & Development Co. v. Harrison, 9
25 Cir., 185 F.2d 457, or ineffectual, United States ex rel. Crawford v. Addison, 22 How.
26 174, 63 U.S. 174, 16 L.Ed. 304.

27 In Stewart v. Manget, 132 Fla. 498, 181 So. 370, in affirming an order dismissing a bill
28 in equity on the ground that the plaintiff had an adequate remedy at law, the Florida
Supreme Court cited with approval the following language from Tampa & G. C. R. Co.
v. Mulhern, 73 Fla. 146, 74 So. 297, 299:

'The inadequacy of a remedy at law to produce money is not the test of the
applicability of the rule. **All remedies, whether at law or in equity,**
frequently fail to do that; and to make that the test of equity
jurisdiction would be substituting the result of a proceeding for the
proceeding which is invoked to produce the result. The true test is,
could a judgment be obtained in a proceeding at law, and not, would
the judgment procure pecuniary compensation.'

(Emphasis added)

In Shadow Wood, the court stated:

A subsequent purchaser is bona fide under common-law principles if it takes the property
"for a valuable consideration and without notice of the prior equity, and without notice
of facts which upon diligent inquiry would be indicated and from which notice would be

1 imputed to him, if he failed to make such inquiry.” *Bailey v. Butner*, 64 Nev. 1, 19, 176
2 P.2d 226, 234 (1947) (emphasis omitted); see also *Moore v. De Bernardi*, 47 Nev. 33, 54,
3 220 P. 544, 547 (1923) (“**The decisions are uniform that the bona fide purchaser of
4 a legal title is not affected by any latent equity founded either on a trust,
5 [e]ncumbrance, or otherwise, of which he has no notice, actual or constructive.**”).
6 Although, as mentioned, NYCB might believe that Gogo Way purchased the property for
7 an amount lower than the property’s actual worth, that Gogo Way paid “valuable
8 consideration” cannot be contested. *Fair v. Howard*, 6 Nev. 304, 308 (1871) (“The
9 question is not whether the consideration is adequate, but whether it is valuable.”); see
10 also *Poole v. Watts*, 139 Wash.App. 1018 (2007) (unpublished disposition) (stating that
11 **the fact that the foreclosure sale purchaser purchased the property for a “low price”
12 did not in itself put the purchaser on notice that anything was amiss with the sale.**
13 (emphasis added)

14 366 P.3d at 1115-1116.

15 Also noted in comment b to the Restatement, any claim the plaintiff may have is not against
16 Resources Group, but is against the foreclosure agent.

17 In *Moeller v. Lien*, 25 Cal. App. 4th 822, 30 Cal. Rptr. 2d 777 (1994), the respondent allowed
18 a trustee’s sale to go forward even though it had available cash deposits to pay off the loan. *Id.* at 828.
19 The trial court set aside the sale because “[t]he value of the property was four times the amount of the
20 debt/sales price.” *Id.* at 829. The court of appeals reversed the trial court’s order and stated:

21 Thus as a general rule, a trustor has no right to set aside a trustee’s deed as against
22 a bona fide purchaser for value by attacking the validity of the sale. (*Homestead
23 Savings v. Damiento*, supra, 230 Cal. App. 3d at p. 436.) The conclusive presumption
24 precludes an attack by the trustor on a trustee’s sale to a bona fide purchaser even though
25 there may have been a failure to comply with some required procedure which
26 deprived the trustor of his right of reinstatement or redemption. (4 Miller & Starr,
27 supra, § 9:141, p. 463; cf. *Homestead v. Damiento*, supra, 230 Cal. App. 3d at p. 436.)
28 The conclusive presumption precludes an attack by the trustor on the trustee’s sale to a
bona fide purchaser even where the trustee wrongfully rejected a proper tender of
reinstatement by the trustor. **Where the trustor is precluded from suing to set aside
the foreclosure sale, the trustor may recover damages from the trustee.** (*Munger v.
Moore* (1970) 11 Cal. App. 3d 1, 9, 11 [89 Cal. Rptr. 323].)

Id. at 831-832. (emphasis added)

At the time of the HOA foreclosure sale, NRS 116.31166(1) provided that the recitals in the
foreclosure deed were “conclusive proof” of default, mailing of the notice of delinquent assessment,
recording of the notice of default, the elapsing of the 90 days, and the giving of notice of sale. The
foreclosure deed (Exhibit B) includes each of the required recitals. NRS 116.31166(2) provided that

IN THE SUPREME COURT OF THE STATE OF NEVADA

Case No. 74575

U.S. BANK N.A. N.D. a foreign Corporation

Plaintiff and Appellant

v.

RESOURCES GROUP LLC, a Nevada limited liability company

Defendant and Respondent

**Appeal from a Judgment
Of the Eighth Judicial District Court, County of Clark
Hon. Timothy Williams**

**APPELLANT'S APPENDIX VOL. 5
PART 2**

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Electronically Filed
Apr 05 2018 02:33 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

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EXHIBIT 15

B6 Summary (Official Form 6 - Summary) (12/97)

United States Bankruptcy Court
District of Nevada

In re Bourne Valley Court Trust

Debtor

Case No. 12-16387Chapter 11

SUMMARY OF SCHEDULES

Indicate as to each schedule whether that schedule is attached and state the number of pages in each. Report the totals from Schedules A, B, D, E, F, I, and J in the boxes provided. Add the amounts from Schedules A and B to determine the total amount of the debtor's assets. Add the amounts of all claims from Schedules D, E, and F to determine the total amount of the debtor's liabilities. Individual debtors must also complete the "Statistical Summary of Certain Liabilities and Related Data" if they file a case under chapter 7, 11, or 13.

NAME OF SCHEDULE	ATTACHED (YES/NO)	NO. OF SHEETS	ASSETS	LIABILITIES	OTHER
A - Real Property	Yes	1	828,000.00		
B - Personal Property	Yes	3	0.00		
C - Property Claimed as Exempt	No	0			
D - Creditors Holding Secured Claims	Yes	3		0.00	
E - Creditors Holding Unsecured Priority Claims (Total of Claims on Schedule E)	Yes	1		0.00	
F - Creditors Holding Unsecured Nonpriority Claims	Yes	6		0.00	
G - Executory Contracts and Unexpired Leases	Yes	1			
H - Codebtors	Yes	1			
I - Current Income of Individual Debtor(s)	No	0			N/A
J - Current Expenditures of Individual Debtor(s)	No	0			N/A
Total Number of Sheets of ALL Schedules		16			
Total Assets			828,000.00		
Total Liabilities				0.00	

Form 6 - Statistical Summary (12/07)

United States Bankruptcy Court
District of Nevada

In re Bourne Valley Court Trust

Debtor

Case No. 12-16387Chapter 11

STATISTICAL SUMMARY OF CERTAIN LIABILITIES AND RELATED DATA (28 U.S.C. § 159)

If you are an individual debtor whose debts are primarily consumer debts, as defined in § 101(8) of the Bankruptcy Code (11 U.S.C. § 101(8)), filing a case under chapter 7, 11 or 13, you must report all information requested below.

- ☐ Check this box if you are an individual debtor whose debts are NOT primarily consumer debts. You are not required to report any information here.

This information is for statistical purposes only under 28 U.S.C. § 159.

Summarize the following types of liabilities, as reported in the Schedules, and total them.

Type of Liability	Amount
Domestic Support Obligations (from Schedule E)	
Taxes and Certain Other Debts Owed to Governmental Units (from Schedule E)	
Claims for Death or Personal Injury While Debtor Was Intoxicated (from Schedule E) (whether disputed or undisputed)	
Student Loan Obligations (from Schedule F)	
Domestic Support, Separation Agreement, and Divorce Decree Obligations Not Reported on Schedule E	
Obligations to Pension or Profit-Sharing, and Other Similar Obligations (from Schedule F)	
TOTAL	

State the following:

Average Income (from Schedule I, Line 16)	
Average Expenses (from Schedule J, Line 18)	
Current Monthly Income (from Form 22A Line 12; OR, Form 22B Line 11; OR, Form 22C Line 20)	

State the following:

1. Total from Schedule D, "UNSECURED PORTION, IF ANY" column		
2. Total from Schedule E, "AMOUNT ENTITLED TO PRIORITY" column		
3. Total from Schedule E, "AMOUNT NOT ENTITLED TO PRIORITY, IF ANY" column		
4. Total from Schedule F		
5. Total of non-priority unsecured debt (sum of 1, 3, and 4)		

B6A (Official Form 6A) (12/07)

In re Bourne Valley Court TrustCase No. 12-16387

Debtor

SCHEDULE A - REAL PROPERTY

Except as directed below, list all real property in which the debtor has any legal, equitable, or future interest, including all property owned as a cotenant, community property, or in which the debtor has a life estate. Include any property in which the debtor holds rights and powers exercisable for the debtor's own benefit. If the debtor is married, state whether husband, wife, both, or the marital community own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor holds no interest in real property, write "None" under "Description and Location of Property."

Do not include interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If an entity claims to have a lien or hold a secured interest in any property, state the amount of the secured claim. See Schedule D. If no entity claims to hold a secured interest in the property, write "None" in the column labeled "Amount of Secured Claim." If the debtor is an individual or if a joint petition is filed, state the amount of any exemption claimed in the property only in Schedule C - Property Claimed as Exempt.

Description and Location of Property	Nature of Debtor's Interest in Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption	Amount of Secured Claim
3171 Castle Canyon Henderson NV 89052 APN: 17735816027		~	135,000.00	Unknown
5332 La Quinta Hills St North Las Vegas, NV 89081 APN: 12435215124		~	85,000.00	Unknown
8129 Back Packer Court Las Vegas NV 89131 APN: 12516316038		~	75,000.00	Unknown
410 Horse Pointe Ave North Las Vegas, NV 89084 APN: 12422311021		~	70,000.00	Unknown
1452 Bourne Valley Court Las Vegas, NV 89123 APN: 17714214043		~	125,000.00	Unknown
3621 Wild Willow St Las Vegas NV 89129 APN: 13836803015		~	35,000.00	Unknown
4254 Rollingsstone Dr Las Vegas, NV 89103 APN: 16324111021		~	35,000.00	Unknown
4449 Laguna Garden Ave North Las Vegas NV 89115 APN: 12329210148		~	80,000.00	Unknown
5650 E Sahara Ave #1011 Las Vegas, NV 89142 APN: 16104816019		~	28,000.00	Unknown
5733 Larkdale St Las Vegas, NV 89120 APN: 16131513015		~	160,000.00	Unknown

Sub-Total > 828,000.00 (Total of this page)

Total > 828,000.00

0 continuation sheets attached to the Schedule of Real Property

(Report also on Summary of Schedules)

B6B (Official Form 6B) (12/07)

In re Bourne Valley Court TrustCase No. 12-16387

Debtor

SCHEDULE B - PERSONAL PROPERTY

Except as directed below, list all personal property of the debtor of whatever kind. If the debtor has no property in one or more of the categories, place an "X" in the appropriate position in the column labeled "None." If additional space is needed in any category, attach a separate sheet properly identified with the case name, case number, and the number of the category. If the debtor is married, state whether husband, wife, both, or the marital community own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor is an individual or a joint petition is filed, state the amount of any exemptions claimed only in Schedule C - Property Claimed as Exempt.

Do not list interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If the property is being held for the debtor by someone else, state that person's name and address under "Description and Location of Property." If the property is being held for a minor child, simply state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

Type of Property	N O N E	Description and Location of Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption
1. Cash on hand	X			
2. Checking, savings or other financial accounts, certificates of deposit, or shares in banks, savings and loan, thrift, building and loan, and homestead associations, or credit unions, brokerage houses, or cooperatives.	X			
3. Security deposits with public utilities, telephone companies, landlords, and others.	X			
4. Household goods and furnishings, including audio, video, and computer equipment.	X			
5. Books, pictures and other art objects, antiques, stamp, coin, record, tape, compact disc, and other collections or collectibles.	X			
6. Wearing apparel.	X			
7. Furs and jewelry.	X			
8. Firearms and sports, photographic, and other hobby equipment.	X			
9. Interests in insurance policies. Name insurance company of each policy and itemize surrender or refund value of each.	X			
10. Annuities. Itemize and name each issuer.	X			

Sub-Total > 0.00
(Total of this page)

2 continuation sheets attached to the Schedule of Personal Property

B6B (Official Form 6B) (12/07) - Cont.

In re Bourne Valley Court TrustCase No. 12-16387

Debtor

SCHEDULE B - PERSONAL PROPERTY
(Continuation Sheet)

Type of Property	N O N E	Description and Location of Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption
11. Interests in an education IRA as defined in 26 U.S.C. § 530(b)(1) or under a qualified State tuition plan as defined in 26 U.S.C. § 529(b)(1). Give particulars. (File separately the record(s) of any such interest(s). 11 U.S.C. § 521(c).)	X			
12. Interests in IRA, ERISA, Keogh, or other pension or profit sharing plans. Give particulars.	X			
13. Stock and interests in incorporated and unincorporated businesses. Itemize.	X			
14. Interests in partnerships or joint ventures. Itemize.	X			
15. Government and corporate bonds and other negotiable and nonnegotiable instruments.	X			
16. Accounts receivable.	X			
17. Alimony, maintenance, support, and property settlements to which the debtor is or may be entitled. Give particulars.	X			
18. Other liquidated debts owed to debtor including tax refunds. Give particulars.	X			
19. Equitable or future interests, life estates, and rights or powers exercisable for the benefit of the debtor other than those listed in Schedule A - Real Property.	X			
20. Contingent and noncontingent interests in estate of a decedent, death benefit plan, life insurance policy, or trust.	X			
21. Other contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights to setoff claims. Give estimated value of each.	X			

Sub-Total > 0.00
(Total of this page)

Sheet 1 of 2 continuation sheets attached
to the Schedule of Personal Property

B6B (Official Form 6B) (12/07) - Cont.

In re Bourne Valley Court TrustCase No. 12-16387

Debtor

SCHEDULE B - PERSONAL PROPERTY
(Continuation Sheet)

Type of Property	N O N E	Description and Location of Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property, without Deducting any Secured Claims or Exemption
22. Patents, copyrights, and other intellectual property. Give particulars.	X			
23. Licenses, franchises, and other general intangibles. Give particulars.	X			
24. Customer lists or other compilations containing personally identifiable information (as defined in 11 U.S.C. § 101(41A)) provided to the debtor by individuals in connection with obtaining a product or service from the debtor primarily for personal, family, or household purposes.	X			
25. Automobiles, trucks, trailers, and other vehicles and accessories.	X			
26. Boats, motors, and accessories.	X			
27. Aircraft and accessories.	X			
28. Office equipment, furnishings, and supplies.	X			
29. Machinery, fixtures, equipment, and supplies used in business.	X			
30. Inventory.	X			
31. Animals.	X			
32. Crops - growing or harvested. Give particulars.	X			
33. Farming equipment and implements.	X			
34. Farm supplies, chemicals, and feed.	X			
35. Other personal property of any kind not already listed. Itemize.	X			

Sub-Total > 0.00
(Total of this page)
Total > 0.00

Sheet 2 of 2 continuation sheets attached
to the Schedule of Personal Property

(Report also on Summary of Schedules)

B6D (Official Form 6D) (12/07)

In re Bourne Valley Court TrustCase No. 12-16387

Debtor

SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS

State the name, mailing address, including zip code, and last four digits of any account number of all entities holding claims secured by property of the debtor as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. List creditors holding all types of secured interests such as judgment liens, garnishments, statutory liens, mortgages, deeds of trust, and other security interests.

List creditors in alphabetical order to the extent practicable. If a minor child is a creditor, the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m). If all secured creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor." Include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether the husband, wife, both of them, or the marital community may be liable on each claim by placing an "H", "W", "J", or "C" in the column labeled "Husband, Wife, Joint, or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Total the columns labeled "Amount of Claim Without Deducting Value of Collateral" and "Unsecured Portion, if Any" in the boxes labeled "Totals" on the last sheet of the completed schedule. Report the total from the column labeled "Amount of Claim" also on the Summary of Schedules and, if the debtor is an individual with primarily consumer debts, report the total from the column labeled "Unsecured Portion" on the Statistical Summary of Certain Liabilities and Related Data.

☐ Check this box if debtor has no creditors holding secured claims to report on this Schedule D.

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	C O D E B T O R H W J C	Husband, Wife, Joint, or Community	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND VALUE OF PROPERTY SUBJECT TO LIEN	C O N T I N G E N T	U N L I Q U I D A T E D	D I S P U T E D	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
Account No.			First Mortgage					
American Home Mtg Srv PO Box 631730 Irving, TX 75063			5733 Larkdale St Las Vegas, NV 89120 APN: 16131513015			X		
			Value \$ 160,000.00				Unknown	Unknown
Account No.			First Mortgage					
Century 21 Mortgage 2001 Bishops Gate Blvd Mount Laurel, NJ 08054			3171 Castle Canyon Henderson NV 89052 APN: 17735816027			X		
			Value \$ 135,000.00				Unknown	Unknown
Account No.			First Mortgage					
Countrywide 450 American St #SV416 Simi Valley, CA 93065			5650 E Sahara Ave #1011 Las Vegas, NV 89142 APN: 16104816019			X		
			Value \$ 28,000.00				Unknown	Unknown
Account No.			First Mortgage					
Countrywide 450 American St #SV416 Simi Valley, CA 93065			1452 Bourne Valley Court Las Vegas, NV 89123 APN: 17714214043			X		
			Value \$ 125,000.00				Unknown	Unknown
Subtotal							0.00	0.00
(Total of this page)								

2 continuation sheets attached

86D (Official Form 6D) (12/07) - Cont.

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

Debtor

SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS
(Continuation Sheet)

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions.)	C O D E D E B T O R	H W J C	Jointly, With, Joint or Community DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND VALUE OF PROPERTY SUBJECT TO LIEN	C O N T I N G E N T	U N L I Q U I T A T E D	D I S P U T E D	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
Account No.			First Mortgage					
Fidelity National Title Agency 5737 Hedgeford Court Las Vegas, NV 89120			3621 Wild Willow St Las Vegas NV 89129 APN: 13836803015			X		
			Value \$ 35,000.00				Unknown	Unknown
Account No.			First Mortgage					
Mountain View Mortgage 7311 W Charleston Blvd #110 Las Vegas, NV 89117			4449 Laguna Garden Ave North Las Vegas NV 89115 APN: 12329210148			X		
			Value \$ 80,000.00				Unknown	Unknown
Account No.			First Mortgage					
Mountain View Mortgage 7311 W Charleston Blvd #110 Las Vegas, NV 89117			8129 Back Packer Court Las Vegas NV 89131 APN: 12516316038			X		
			Value \$ 75,000.00				Unknown	Unknown
Account No.			First Mortgage					
Plaza Home Mortgage 5090 Shoreham Place #109 San Diego, CA 92122			410 Horse Pointe Ave North Las Vegas, NV 89084 APN: 12422311021			X		
			Value \$ 70,000.00				Unknown	Unknown
Account No.			First Mortgage					
Southwest Financial Services 537 E Pete Rose Way #300 Cincinnati, OH 45202			4254 Rollingstone Dr Las Vegas, NV 89103 APN: 16324111021			X		
			Value \$ 35,000.00				Unknown	Unknown
Sheet 1 of 2 continuation sheets attached to Schedule of Creditors Holding Secured Claims							Subtotal (Total of this page)	0.00
							0.00	0.00

B6D (Official Form 6B) (12/07) - Cont.

In re Bourne Valley Court TrustCase No. 12-16387Debtor**SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS**
(Continuation Sheet)

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions.)	C O N T I N G E N T	H U S B A N D , W I F E , J O I N T , O R C O M M U N I T Y	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND VALUE OF PROPERTY SUBJECT TO LIEN	C O N T I N G E N T	D I S P U T E D	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
Account No. World Savings & Loan Attn: Bankruptcy 4101 Wiseman Blvd San Antonio, TX 78251			First Mortgage 5332 La Quinta Hills St North Las Vegas, NV 89081 APN: 12435215124 Value \$ 85,000.00		X	Unknown	Unknown
Account No. 			 Value \$				
Account No. 			 Value \$				
Account No. 			 Value \$				
Account No. 			 Value \$				
Account No. 			 Value \$				
Subtotal (Total of this page)						0.00	0.00
Total (Report on Summary of Schedules)						0.00	0.00

Sheet 2 of 2 continuation sheets attached to
Schedule of Creditors Holding Secured Claims

B6E (Official Form 6E) (4/10)

In re Bourne Valley Court TrustCase No. 12-16387Debtor**SCHEDULE E - CREDITORS HOLDING UNSECURED PRIORITY CLAIMS**

A complete list of claims entitled to priority, listed separately by type of priority, is to be set forth on the sheets provided. Only holders of unsecured claims entitled to priority should be listed in this schedule. In the boxes provided on the attached sheets, state the name, mailing address, including zip code, and last four digits of the account number, if any, of all entities holding priority claims against the debtor or the property of the debtor, as of the date of the filing of the petition. Use a separate continuation sheet for each type of priority and label each with the type of priority.

The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. If a minor child is a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. § 112 and Fed. R. Bankr. P. 1007(m).

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor." Include the entity on the appropriate schedule of creditors, and complete Schedule H-Creditors. If a joint petition is filed, state whether the husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of claims listed on each sheet in the box labeled "Subtotals" on each sheet. Report the total of all claims listed on this Schedule E in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules.

Report the total of amounts entitled to priority listed on each sheet in the box labeled "Subtotals" on each sheet. Report the total of all amounts entitled to priority listed on this Schedule E in the box labeled "Totals" on the last sheet of the completed schedule. Individual debtors with primarily consumer debts report this total also on the Statistical Summary of Certain Liabilities and Related Data.

Report the total of amounts not entitled to priority listed on each sheet in the box labeled "Subtotals" on each sheet. Report the total of all amounts not entitled to priority listed on this Schedule E in the box labeled "Totals" on the last sheet of the completed schedule. Individual debtors with primarily consumer debts report this total also on the Statistical Summary of Certain Liabilities and Related Data.

☒ Check this box if debtor has no creditors holding unsecured priority claims to report on this Schedule E.

TYPES OF PRIORITY CLAIMS (Check the appropriate box(es) below if claims in that category are listed on the attached sheets)

☐ **Domestic support obligations**

Claims for domestic support that are owed to or recoverable by a spouse, former spouse, or child of the debtor, or the parent, legal guardian, or responsible relative of such a child, or a governmental unit to whom such a domestic support claim has been assigned to the extent provided in 11 U.S.C. § 507(a)(1).

☐ **Extensions of credit in an involuntary case**

Claims arising in the ordinary course of the debtor's business or financial affairs after the commencement of the case but before the earlier of the appointment of a trustee or the order for relief. 11 U.S.C. § 507(a)(3).

☐ **Wages, salaries, and commissions**

Wages, salaries, and commissions, including vacation, severance, and sick leave pay owing to employees and commissions owing to qualifying independent sales representatives up to \$11,725* per person earned within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(4).

☐ **Contributions to employee benefit plans**

Money owed to employee benefit plans for services rendered within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(5).

☐ **Certain farmers and fishermen**

Claims of certain farmers and fishermen, up to \$5,775* per farmer or fisherman, against the debtor, as provided in 11 U.S.C. § 507(a)(6).

☐ **Deposits by individuals**

Claims of individuals up to \$2,600* for deposits for the purchase, lease, or rental of property or services for personal, family, or household use, that were not delivered or provided. 11 U.S.C. § 507(a)(7).

☐ **Taxes and certain other debts owed to governmental units**

Taxes, customs duties, and penalties owing to federal, state, and local governmental units as set forth in 11 U.S.C. § 507(a)(8).

☐ **Commitments to maintain the capital of an insured depository institution**

Claims based on commitments to the FDIC, RTC, Director of the Office of Thrift Supervision, Comptroller of the Currency, or Board of Governors of the Federal Reserve System, or their predecessors or successors, to maintain the capital of an insured depository institution. 11 U.S.C. § 507(a)(9).

☐ **Claims for death or personal injury while debtor was intoxicated**

Claims for death or personal injury resulting from the operation of a motor vehicle or vessel while the debtor was intoxicated from using alcohol, a drug, or another substance. 11 U.S.C. § 507(a)(10).

* Amount subject to adjustment on 4/1/11, and every three years thereafter with respect to cases commenced on or after the date of adjustment.

B6F (Official Form 6F) (12/07)

In re Bourne Valley Court TrustCase No. 12-16387

Debtor

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

State the name, mailing address, including zip code, and last four digits of any account number, of all entities holding unsecured claims without priority against the debtor or the property of the debtor, as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. If a minor child is a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. § 112 and Fed. R. Bankr. P. 1007(m). Do not include claims listed in Schedules D and E. If all creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor." Include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether the husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of all claims listed on this schedule in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules and, if the debtor is an individual with primarily consumer debts, report this total also on the Statistical Summary of Certain Liabilities and Related Data.

☐ Check this box if debtor has no creditors holding unsecured claims to report on this Schedule F.

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	CODEBTOR H W J C	Husband, Wife, Joint, or Community	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
Account No. Alessi & Koenig LLC 9500 W Flamingo #205 Las Vegas, NV 89147			Unpaid Lien 3621 Wild Willow			X	Unknown
Account No. Alessi & Koenig LLC 9500 W Flamingo #205 Las Vegas, NV 89147			Unpaid HOA 4254 Rollingstone Dr			X	Unknown
Account No. Angius & Terry Collections 1120 N Town Center Dr #260 Las Vegas, NV 89144			Unpaid HOA Lien 8129 Back Packer			X	Unknown
Account No. Angius & Terry Collections 1120 N Town Center Dr #260 Las Vegas, NV 89144			Unpaid HOA Lien 1452 Bourne Valley			X	Unknown
Subtotal (Total of this page)							0.00

5 continuation sheets attached

B6F (Official Form 6F) (12/07) - Cont.

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

Debtor

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	C O D E B Y C R E D I T O R	Husband, Wife, Joint, or Community	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM, IF CLAIM IS SUBJECT TO SETOFF, SO STATE	C O N T I N G E N T	U N L I Q U I T E D	D I S P U T E D	AMOUNT OF CLAIM
Account No. Angius & Terry Collections 1120 N Town Center Dr #260 Las Vegas, NV 89144			Unpaid HOA Lien 5733 Larkdale			X	Unknown
Account No. BAC Home Loans Servicing 450 American St. Simi Valley, CA 93065			5650 E Sahara Ave #1011 Lien			X	Unknown
Account No. Chase 2780 Lake Vista Dr Lewisville, TX 75067			Unpaid Lien 5733 Larkdale			X	Unknown
Account No. City of Henderson PO Box 52767 Phoenix, AZ 85072			Unpaid Utilities 3171 Castle Canyon			X	Unknown
Account No. City of North Las Vegas 2200 Civic Center Dr North Las Vegas, NV 89030			Unpaid Utilities 5332 La Quinta			X	Unknown
Sheet no. 1 of 5 sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims			Subtotal (Total of this page)			0.00	

B6F (Official Form 67) (12/07) - Cont.

In re Bourne Valley Court TrustCase No. 12-16387

Debtor

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	C R E D I T O R S T Y P E	H U S E H O L D E R	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	C O N T I N G E N T	D I S P U T E D	AMOUNT OF CLAIM
Account No. City of North Las Vegas 2200 Civic Center Dr North Las Vegas, NV 89030			Unpaid Utility Service 410 Horse Pointe		X	Unknown
Account No. City of North Las Vegas 2200 Civic Center Dr North Las Vegas, NV 89030			Unpaid Utility Service 4449 Laguna Garden		X	Unknown
Account No. Cortez Heights HOA PO Box 12117 Las Vegas, NV 89112			Unpaid HOA Lien 5332 La Quinta		X	Unknown
Account No. Dotson & Qualey 2320 Paseo Dr Prado #B205 Las Vegas, NV 89102			Judgement Lien 5650 E Sahara Ave #1101		X	Unknown
Account No. EMC Mortgage Corp 2780 Lake Vista Dr Lewisville, TX 75067			8129 Back Packer Lien		X	Unknown
Sheet no. <u>2</u> of <u>5</u> sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims					Subtotal (Total of this page)	0.00

B6F (Official Form 6F) (12/07) - Cont.

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

Debtor

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS, INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	C C R E D I T O R	H W J C	Husband, Wife, Joint, or Community DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	C O N T I N G E N T	U N L I Q U I T A T E D	D I S P U T E D	AMOUNT OF CLAIM
Account No. Hidden Crest Park Hurst HOA PO Box 12117 Las Vegas, NV 89112			Unpaid HOA Lien 1452 Bourne Valley			X	Unknown
Account No. Law Offices of Les Zieve 18377 Beach Blvd #210 Huntington Beach, CA 92648			Unpaid Lien 4254 Rollingstone Dr			X	Unknown
Account No. Leach Johnson Song & Gruchow 5495 S. Rainbow Blvd #202 Las Vegas, NV 89118			HOA Lien 3171 Castle Canyon			X	Unknown
Account No. Nevada Association Services TS #N67297 6224 W Desert Inn Rd #A Las Vegas, NV 89146			Unpaid HOA Lien 5650 E Sahara Ave #1101			X	Unknown
Account No. Quality Loan Service Corp 2141 5th Ave San Diego, CA 92101			Unpaid Lien 5733 Larkdale			X	Unknown
Subtotal (Total of this page)							0.00

Sheet no. 3 of 5 sheets attached to Schedule of
Creditors Holding Unsecured Nonpriority Claims

B6F (Official Form 6F) (12/02) - Cont.

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

Debtor

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	C O D E D E B T O R	H U S B A N D, W I F E, J O I N T, O R C O M M U N I T Y	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM, IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	C O N T I N G E N T	U N L I Q U I T A T E D	D I S P U T E D	AMOUNT OF CLAIM	
Account No. Republic Services 7 E. Sahara Ave Las Vegas, NV 89104			Unpaid Utility Service 1452 Bourne Valley			X	Unknown	
Account No. Republic Services 7 E. Sahara Ave Las Vegas, NV 89104			Unpaid Utility Service 3621 Wild Willow			X	Unknown	
Account No. Taylor Association Management 259 N Pecos Rd #100 Henderson, NV 89074			Unpaid HOA Lien 4449 Laguna Garden			X	Unknown	
Account No. The Parks HOA 2300 W Sahara Ave #1130 Box 33 Las Vegas, NV 89102			Unpaid HOA Lien 410 Horse Pointe			X	Unknown	
Account No. Trustee Corps 17100 Gillette Ave Irvine, CA 92614			Unpaid Lien 410 Horse Pointe			X	Unknown	
Sheet no. <u>4</u> of <u>5</u> sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims							Subtotal (Total of this page)	0.00

B6F (Official Form 6F) (12/07) - Cont.

In re Bourne Valley Court TrustCase No. 12-16387

Debtor

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	C O D E S T O R	H W J C	Husband, Wife, Joint, or Community DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	C O N T I N G E N T	U N L I Q U A T E D	D I S P U T E D	AMOUNT OF CLAIM
Account No. US Bank C/O First American Trustee Serv 6 Campus Circle 2nd Floor Roanoke, TX 76262			Unpaid Lien 3621 Wild Willow			X	Unknown
Account No.							
Account No.							
Account No.							
Account No.							

Sheet no. 5 of 5 sheets attached to Schedule of
Creditors Holding Unsecured Nonpriority ClaimsSubtotal
(Total of this page)

0.00

Total
(Report on Summary of Schedules)

0.00

B6G (Official Form 6C) (12/07)

In re Bourne Valley Court TrustCase No. 12-16387

Debtor

SCHEDULE G - EXECUTORY CONTRACTS AND UNEXPIRED LEASES

Describe all executory contracts of any nature and all unexpired leases of real or personal property. Include any timeshare interests. State nature of debtor's interest in contract, i.e., "Purchaser", "Agent", etc. State whether debtor is the lessor or lessee of a lease. Provide the names and complete mailing addresses of all other parties to each lease or contract described. If a minor child is a party to one of the leases or contracts, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

☐ Check this box if debtor has no executory contracts or unexpired leases.

Name and Mailing Address, Including Zip Code, of Other Parties to Lease or Contract	Description of Contract or Lease and Nature of Debtor's Interest. State whether lease is for nonresidential real property. State contract number of any government contract.
Great Bridge Properties 900 S Las Vegas Blvd #810 Las Vegas, NV 89101	Property Management Agreement for 3171 Castle Canyon
Great Bridge Properties 900 S Las Vegas Blvd #810 Las Vegas, NV 89101	Property Management Agreement for 5332 La Quinta Hills
Great Bridge Properties 900 S Las Vegas Blvd #810 Las Vegas, NV 89101	Property Management Agreement for 8129 Back Packer
Great Bridge Properties 900 S Las Vegas Blvd #810 Las Vegas, NV 89101	Property Management Agreement for 410 Horse Pointe
Great Bridge Properties 900 S Las Vegas Blvd #810 Las Vegas, NV 89101	Property Management Agreement for 1452 Bourne Valley
Great Bridge Properties 900 S Las Vegas Blvd #810 Las Vegas, NV 89101	Property Management Agreement for 3621 Wild Willow
Great Bridge Properties 900 S Las Vegas Blvd #810 Las Vegas, NV 89101	Property Management Agreement for 4254 Rollingstone Dr
Great Bridge Properties 900 S Las Vegas Blvd #810 Las Vegas, NV 89101	Property Management Agreement for 4449 Laguna Garden
Great Bridge Properties 900 S Las Vegas Blvd #810 Las Vegas, NV 89101	Property Management Agreement for 5650 E Sahara Ave #1101
Great Bridge Properties 900 S Las Vegas Blvd #810 Las Vegas, NV 89101	Property Management Agreement for 5733 Larkdale

9

Continuation sheets attached to Schedule of Executory Contracts and Unexpired Leases

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Best Case Bankruptcy

B6H (Official Form 6H) (12/07)

In re Bourne Valley Court TrustCase No. 12-16387Debtor**SCHEDULE H - CODEBTORS**

Provide the information requested concerning any person or entity, other than a spouse in a joint case, that is also liable on any debts listed by debtor in the schedules of creditors. Include all guarantors and co-signers. If the debtor resides or resided in a community property state, commonwealth, or territory (including Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, or Wisconsin) within the eight year period immediately preceding the commencement of the case, identify the name of the debtor's spouse and of any former spouse who resides or resided with the debtor in the community property state, commonwealth, or territory. Include all names used by the nondebtor spouse during the eight years immediately preceding the commencement of this case. If a minor child is a codebtor or a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

☒ Check this box if debtor has no codebtors.

NAME AND ADDRESS OF CODEBTOR

NAME AND ADDRESS OF CREDITOR

0

..... continuation sheets attached to Schedule of Codebtors

B6 Declaration (Official Form 6 - Declaration). (12/07)

United States Bankruptcy Court
District of Nevada

In re Bourne Valley Court Trust

Debtor(s)

Case No. 12-16387

Chapter 11

DECLARATION CONCERNING DEBTOR'S SCHEDULES

DECLARATION UNDER PENALTY OF PERJURY ON BEHALF OF CORPORATION OR PARTNERSHIP

I, the Registered Agent of the corporation named as debtor in this case, declare under penalty of perjury that I have read the foregoing summary and schedules, consisting of 18 sheets, and that they are true and correct to the best of my knowledge, information, and belief.

Date June 13, 2012

Signature /s/ Eddie Haddad
Eddie Haddad
Registered Agent

Penalty for making a false statement or concealing property: Fine of up to \$500,000 or imprisonment for up to 5 years or both.
18 U.S.C. §§ 152 and 3571.

B7 (Official Form 7) (04/10)

United States Bankruptcy Court
District of Nevada

In re Bourne Valley Court Trust

Debtor(s)

Case No. 12-16387Chapter 11

STATEMENT OF FINANCIAL AFFAIRS

This statement is to be completed by every debtor. Spouses filing a joint petition may file a single statement on which the information for both spouses is combined. If the case is filed under chapter 12 or chapter 13, a married debtor must furnish information for both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed. An individual debtor engaged in business as a sole proprietor, partner, family farmer, or self-employed professional, should provide the information requested on this statement concerning all such activities as well as the individual's personal affairs. To indicate payments, transfers and the like to minor children, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. § 112; Fed. R. Bankr. P. 1007(m).

Questions 1 - 18 are to be completed by all debtors. Debtors that are or have been in business, as defined below, also must complete Questions 19 - 25. If the answer to an applicable question is "None," mark the box labeled "None." If additional space is needed for the answer to any question, use and attach a separate sheet properly identified with the case name, case number (if known), and the number of the question.

DEFINITIONS

"In business." A debtor is "in business" for the purpose of this form if the debtor is a corporation or partnership. An individual debtor is "in business" for the purpose of this form if the debtor is or has been, within six years immediately preceding the filing of this bankruptcy case, any of the following: an officer, director, managing executive, or owner of 5 percent or more of the voting or equity securities of a corporation; a partner, other than a limited partner, of a partnership; a sole proprietor or self-employed full-time or part-time. An individual debtor also may be "in business" for the purpose of this form if the debtor engages in a trade, business, or other activity, other than as an employee, to supplement income from the debtor's primary employment.

"Insider." The term "insider" includes but is not limited to: relatives of the debtor; general partners of the debtor and their relatives; corporations of which the debtor is an officer, director, or person in control; officers, directors, and any owner of 5 percent or more of the voting or equity securities of a corporate debtor and their relatives; affiliates of the debtor and insiders of such affiliates; any managing agent of the debtor. 11 U.S.C. § 101.

1. Income from employment or operation of business

None



State the gross amount of income the debtor has received from employment, trade, or profession, or from operation of the debtor's business, including part-time activities either as an employee or in independent trade or business, from the beginning of this calendar year to the date this case was commenced. State also the gross amounts received during the two years immediately preceding this calendar year. (A debtor that maintains, or has maintained, financial records on the basis of a fiscal rather than a calendar year may report fiscal year income. Identify the beginning and ending dates of the debtor's fiscal year.) If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income of both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

AMOUNT

SOURCE

2. Income other than from employment or operation of business

None



State the amount of income received by the debtor other than from employment, trade, profession, or operation of the debtor's business during the two years immediately preceding the commencement of this case. Give particulars. If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income for each spouse whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

AMOUNT

SOURCE

3. Payments to creditors

None

Complete a. or b., as appropriate, and c.

a. *Individual or joint debtor(s) with primarily consumer debts.* List all payments on loans, installment purchases of goods or services, and other debts to any creditor made within 90 days immediately preceding the commencement of this case unless the aggregate value of all property that constitutes or is affected by such transfer is less than \$600. Indicate with an (*) any payments that were made to a creditor on account of a domestic support obligation or as part of an alternative repayment schedule under a plan by an approved nonprofit budgeting and credit counseling agency. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR	DATES OF PAYMENTS	AMOUNT PAID	AMOUNT STILL OWING
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None

b. *Debtor whose debts are not primarily consumer debts:* List each payment or other transfer to any creditor made within 90 days immediately preceding the commencement of the case unless the aggregate value of all property that constitutes or is affected by such transfer is less than \$5,850*. If the debtor is an individual, indicate with an asterisk (*) any payments that were made to a creditor on account of a domestic support obligation or as part of an alternative repayment schedule under a plan by an approved nonprofit budgeting and credit counseling agency. (Married debtors filing under chapter 12 or chapter 13 must include payments and other transfers by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR	DATES OF PAYMENTS/ TRANSFERS	AMOUNT PAID OR VALUE OF TRANSFERS	AMOUNT STILL OWING
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None

c. *All debtors:* List all payments made within one year immediately preceding the commencement of this case to or for the benefit of creditors who are or were insiders. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR AND RELATIONSHIP TO DEBTOR	DATE OF PAYMENT	AMOUNT PAID	AMOUNT STILL OWING
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4. Suits and administrative proceedings, executions, garnishments and attachments

None

a. List all suits and administrative proceedings to which the debtor is or was a party within one year immediately preceding the filing of this bankruptcy case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

CAPTION OF SUIT AND CASE NUMBER	NATURE OF PROCEEDING	COURT OR AGENCY AND LOCATION	STATUS OR DISPOSITION
---------------------------------	----------------------	------------------------------	-----------------------

None

b. Describe all property that has been attached, garnished or seized under any legal or equitable process within one year immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF PERSON FOR WHOSE BENEFIT PROPERTY WAS SEIZED	DATE OF SEIZURE	DESCRIPTION AND VALUE OF PROPERTY
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5. Repossessions, foreclosures and returns

None

List all property that has been repossessed by a creditor, sold at a foreclosure sale, transferred through a deed in lieu of foreclosure or returned to the seller, within one year immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR OR SELLER	DATE OF REPOSSESSION, FORECLOSURE SALE, TRANSFER OR RETURN	DESCRIPTION AND VALUE OF PROPERTY
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* Amount subject to adjustment on 4/01/13, and every three years thereafter with respect to cases commenced on or after the date of adjustment.

6. Assignments and receiverships

None



a. Describe any assignment of property for the benefit of creditors made within 120 days immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include any assignment by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF ASSIGNEE	DATE OF ASSIGNMENT	TERMS OF ASSIGNMENT OR SETTLEMENT
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None



b. List all property which has been in the hands of a custodian, receiver, or court-appointed official within one year immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CUSTODIAN	NAME AND LOCATION OF COURT CASE TITLE & NUMBER	DATE OF ORDER	DESCRIPTION AND VALUE OF PROPERTY
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7. Gifts

None



List all gifts or charitable contributions made within one year immediately preceding the commencement of this case except ordinary and usual gifts to family members aggregating less than \$200 in value per individual family member and charitable contributions aggregating less than \$100 per recipient. (Married debtors filing under chapter 12 or chapter 13 must include gifts or contributions by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF PERSON OR ORGANIZATION	RELATIONSHIP TO DEBTOR, IF ANY	DATE OF GIFT	DESCRIPTION AND VALUE OF GIFT
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8. Losses

None



List all losses from fire, theft, other casualty or gambling within one year immediately preceding the commencement of this case or since the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include losses by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

DESCRIPTION AND VALUE OF PROPERTY	DESCRIPTION OF CIRCUMSTANCES AND, IF LOSS WAS COVERED IN WHOLE OR IN PART BY INSURANCE, GIVE PARTICULARS	DATE OF LOSS
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9. Payments related to debt counseling or bankruptcy

None



List all payments made or property transferred by or on behalf of the debtor to any persons, including attorneys, for consultation concerning debt consolidation, relief under the bankruptcy law or preparation of the petition in bankruptcy within one year immediately preceding the commencement of this case.

NAME AND ADDRESS OF PAYEE	DATE OF PAYMENT, NAME OF PAYOR IF OTHER THAN DEBTOR	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY
The Firm, PC 200 E Charleston Blvd Las Vegas, NV 89104	5/30/12	\$6000.00

10. Other transfers

None



a. List all other property, other than property transferred in the ordinary course of the business or financial affairs of the debtor, transferred either absolutely or as security within two years immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include transfers by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF TRANSFEREE, RELATIONSHIP TO DEBTOR	DATE	DESCRIBE PROPERTY TRANSFERRED AND VALUE RECEIVED
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None ☒ b. List all property transferred by the debtor within ten years immediately preceding the commencement of this case to a self-settled trust or similar device of which the debtor is a beneficiary.

NAME OF TRUST OR OTHER DEVICE	DATE(S) OF TRANSFER(S)	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY OR DEBTOR'S INTEREST IN PROPERTY
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11. Closed financial accounts

None ☒ List all financial accounts and instruments held in the name of the debtor or for the benefit of the debtor which were closed, sold, or otherwise transferred within one year immediately preceding the commencement of this case. Include checking, savings, or other financial accounts, certificates of deposit, or other instruments; shares and share accounts held in banks, credit unions, pension funds, cooperatives, associations, brokerage houses and other financial institutions. (Married debtors filing under chapter 12 or chapter 13 must include information concerning accounts or instruments held by or for either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF INSTITUTION	TYPE OF ACCOUNT, LAST FOUR DIGITS OF ACCOUNT NUMBER, AND AMOUNT OF FINAL BALANCE	AMOUNT AND DATE OF SALE OR CLOSING
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12. Safe deposit boxes

None ☒ List each safe deposit or other box or depository in which the debtor has or had securities, cash, or other valuables within one year immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include boxes or depositories of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF BANK OR OTHER DEPOSITORY	NAMES AND ADDRESSES OF THOSE WITH ACCESS TO BOX OR DEPOSITORY	DESCRIPTION OF CONTENTS	DATE OF TRANSFER OR SURRENDER, IF ANY
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13. Setoffs

None ☒ List all setoffs made by any creditor, including a bank, against a debt or deposit of the debtor within 90 days preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR	DATE OF SETOFF	AMOUNT OF SETOFF
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14. Property held for another person

None ☒ List all property owned by another person that the debtor holds or controls.

NAME AND ADDRESS OF OWNER	DESCRIPTION AND VALUE OF PROPERTY	LOCATION OF PROPERTY
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15. Prior address of debtor

None ☒ If the debtor has moved within three years immediately preceding the commencement of this case, list all premises which the debtor occupied during that period and vacated prior to the commencement of this case. If a joint petition is filed, report also any separate address of either spouse.

ADDRESS	NAME USED	DATES OF OCCUPANCY
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16. Spouses and Former Spouses

None ☒ If the debtor resides or resided in a community property state, commonwealth, or territory (including Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, or Wisconsin) within eight years immediately preceding the commencement of the case, identify the name of the debtor's spouse and of any former spouse who resides or resided with the debtor in the community property state.

NAME

17. Environmental Information.

For the purpose of this question, the following definitions apply:

"Environmental Law" means any federal, state, or local statute or regulation regulating pollution, contamination, releases of hazardous or toxic substances, wastes or material into the air, land, soil, surface water, groundwater, or other medium, including, but not limited to, statutes or regulations regulating the cleanup of these substances, wastes, or material.

"Site" means any location, facility, or property as defined under any Environmental Law, whether or not presently or formerly owned or operated by the debtor, including, but not limited to, disposal sites.

"Hazardous Material" means anything defined as a hazardous waste, hazardous substance, toxic substance, hazardous material, pollutant, or contaminant or similar term under an Environmental Law

- None ☒ a. List the name and address of every site for which the debtor has received notice in writing by a governmental unit that it may be liable or potentially liable under or in violation of an Environmental Law. Indicate the governmental unit, the date of the notice, and, if known, the Environmental Law:

SITE NAME AND ADDRESS	NAME AND ADDRESS OF GOVERNMENTAL UNIT	DATE OF NOTICE	ENVIRONMENTAL LAW
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- None ☒ b. List the name and address of every site for which the debtor provided notice to a governmental unit of a release of Hazardous Material. Indicate the governmental unit to which the notice was sent and the date of the notice.

SITE NAME AND ADDRESS	NAME AND ADDRESS OF GOVERNMENTAL UNIT	DATE OF NOTICE	ENVIRONMENTAL LAW
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- None ☒ c. List all judicial or administrative proceedings, including settlements or orders, under any Environmental Law with respect to which the debtor is or was a party. Indicate the name and address of the governmental unit that is or was a party to the proceeding, and the docket number.

NAME AND ADDRESS OF GOVERNMENTAL UNIT	DOCKET NUMBER	STATUS OR DISPOSITION
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18. Nature, location and name of business

- None ☒ a. If the debtor is an individual, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was an officer, director, partner, or managing executive of a corporation, partner in a partnership, sole proprietor, or was self-employed in a trade, profession, or other activity either full- or part-time within six years immediately preceding the commencement of this case, or in which the debtor owned 5 percent or more of the voting or equity securities within six years immediately preceding the commencement of this case.

If the debtor is a partnership, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was a partner or owned 5 percent or more of the voting or equity securities, within six years immediately preceding the commencement of this case.

If the debtor is a corporation, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was a partner or owned 5 percent or more of the voting or equity securities within six years immediately preceding the commencement of this case.

NAME	LAST FOUR DIGITS OF SOCIAL SECURITY OR OTHER INDIVIDUAL TAXPAYER-I.D. NO. (ITIN)/ COMPLETE EIN	ADDRESS	NATURE OF BUSINESS	BEGINNING AND ENDING DATES
Bourne Valley Court Trust	45-5346162	C/O Resources Group LLC 900 Las Vegas Blvd S. #810 Las Vegas, NV 89107	Real Estate	5/1/2012-Current

None ☒ b. Identify any business listed in response to subdivision a., above, that is "single asset real estate" as defined in 11 U.S.C. § 101.

NAME

ADDRESS

The following questions are to be completed by every debtor that is a corporation or partnership and by any individual debtor who is or has been, within six years immediately preceding the commencement of this case, any of the following: an officer, director, managing executive, or owner of more than 5 percent of the voting or equity securities of a corporation; a partner, other than a limited partner, of a partnership; a sole proprietor, or self-employed in a trade, profession, or other activity, either full- or part-time.

(An individual or joint debtor should complete this portion of the statement *only* if the debtor is or has been in business, as defined above, within six years immediately preceding the commencement of this case. A debtor who has not been in business within those six years should go directly to the signature page.)

19. Books, records and financial statements

None ☒ a. List all bookkeepers and accountants who within two years immediately preceding the filing of this bankruptcy case kept or supervised the keeping of books of account and records of the debtor.

NAME AND ADDRESS
Rosie Bonilla
900 Las Vegas Blvd #810
Las Vegas, NV 89101

DATES SERVICES RENDERED
1/2012-Current

None ☒ b. List all firms or individuals who within the two years immediately preceding the filing of this bankruptcy case have audited the books of account and records, or prepared a financial statement of the debtor.

NAME

ADDRESS

DATES SERVICES RENDERED

None ☒ c. List all firms or individuals who at the time of the commencement of this case were in possession of the books of account and records of the debtor. If any of the books of account and records are not available, explain.

NAME

ADDRESS

None ☒ d. List all financial institutions, creditors and other parties, including mercantile and trade agencies, to whom a financial statement was issued by the debtor within two years immediately preceding the commencement of this case.

NAME AND ADDRESS

DATE ISSUED

20. Inventories

None ☒ a. List the dates of the last two inventories taken of your property, the name of the person who supervised the taking of each inventory, and the dollar amount and basis of each inventory.

DATE OF INVENTORY

INVENTORY SUPERVISOR

DOLLAR AMOUNT OF INVENTORY
(Specify cost, market or other basis)

None ☒ b. List the name and address of the person having possession of the records of each of the two inventories reported in a., above.

DATE OF INVENTORY

NAME AND ADDRESSES OF CUSTODIAN OF INVENTORY
RECORDS

21. Current Partners, Officers, Directors and Shareholders

None ☒ a. If the debtor is a partnership, list the nature and percentage of partnership interest of each member of the partnership.

NAME AND ADDRESS

NATURE OF INTEREST

PERCENTAGE OF INTEREST

None ☒ b. If the debtor is a corporation, list all officers and directors of the corporation, and each stockholder who directly or indirectly owns, controls, or holds 5 percent or more of the voting or equity securities of the corporation.

NAME AND ADDRESS	TITLE	NATURE AND PERCENTAGE OF STOCK OWNERSHIP
------------------	-------	--

22. Former partners, officers, directors and shareholders

None ☒ a. If the debtor is a partnership, list each member who withdrew from the partnership within one year immediately preceding the commencement of this case.

NAME	ADDRESS	DATE OF WITHDRAWAL
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None ☒ b. If the debtor is a corporation, list all officers, or directors whose relationship with the corporation terminated within one year immediately preceding the commencement of this case.

NAME AND ADDRESS	TITLE	DATE OF TERMINATION
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23. Withdrawals from a partnership or distributions by a corporation

None ☒ If the debtor is a partnership or corporation, list all withdrawals or distributions credited or given to an insider, including compensation in any form, bonuses, loans, stock redemptions, options exercised and any other perquisite during one year immediately preceding the commencement of this case.

NAME & ADDRESS OF RECIPIENT, RELATIONSHIP TO DEBTOR	DATE AND PURPOSE OF WITHDRAWAL	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY
---	--------------------------------	--

24. Tax Consolidation Group.

None ☒ If the debtor is a corporation, list the name and federal taxpayer identification number of the parent corporation of any consolidated group for tax purposes of which the debtor has been a member at any time within six years immediately preceding the commencement of the case.

NAME OF PARENT CORPORATION	TAXPAYER IDENTIFICATION NUMBER (EIN)
----------------------------	--------------------------------------

25. Pension Funds.

None ☒ If the debtor is not an individual, list the name and federal taxpayer-identification number of any pension fund to which the debtor, as an employer, has been responsible for contributing at any time within six years immediately preceding the commencement of the case.

NAME OF PENSION FUND	TAXPAYER IDENTIFICATION NUMBER (EIN)
----------------------	--------------------------------------

DECLARATION UNDER PENALTY OF PERJURY ON BEHALF OF CORPORATION OR PARTNERSHIP

I declare under penalty of perjury that I have read the answers contained in the foregoing statement of financial affairs and any attachments thereto and that they are true and correct to the best of my knowledge, information and belief.

Date June 13, 2012

Signature /s/ Eddie Haddad
Eddie Haddad
 Registered Agent

[An individual signing on behalf of a partnership or corporation must indicate position or relationship to debtor.]

Penalty for making a false statement: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571

United States Bankruptcy Court
District of Nevada

In re Bourne Valley Court Trust

Debtor(s)

Case No. 12-16387

Chapter 11

DISCLOSURE OF COMPENSATION OF ATTORNEY FOR DEBTOR(S)

1. Pursuant to 11 U.S.C. § 329(a) and Bankruptcy Rule 2016(b), I certify that I am the attorney for the above-named debtor and that compensation paid to me within one year before the filing of the petition in bankruptcy, or agreed to be paid to me, for services rendered or to be rendered on behalf of the debtor(s) in contemplation of or in connection with the bankruptcy case is as follows:

For legal services, I have agreed to accept	\$	<u>6,000.00</u>
Prior to the filing of this statement I have received	\$	<u>6,000.00</u>
Balance Due	\$	<u>0.00</u>

2. The source of the compensation paid to me was:

☒ Debtor ☐ Other (specify):

3. The source of compensation to be paid to me is:

☒ Debtor ☐ Other (specify):

4. ☒ I have not agreed to share the above-disclosed compensation with any other person unless they are members and associates of my law firm.

☐ I have agreed to share the above-disclosed compensation with a person or persons who are not members or associates of my law firm. A copy of the agreement, together with a list of the names of the people sharing in the compensation is attached.

5. In return for the above-disclosed fee, I have agreed to render legal service for all aspects of the bankruptcy case, including:

- Analysis of the debtor's financial situation, and rendering advice to the debtor in determining whether to file a petition in bankruptcy;
- Preparation and filing of any petition, schedules, statement of affairs and plan which may be required;
- Representation of the debtor at the meeting of creditors and confirmation hearing, and any adjourned hearings thereof;
- [Other provisions as needed]

Negotiations with secured creditors to reduce to market value; exemption planning; preparation and filing of reaffirmation agreements and applications as needed; preparation and filing of motions pursuant to 11 USC 522(f)(2)(A) for avoidance of liens on household goods.

6. By agreement with the debtor(s), the above-disclosed fee does not include the following service:

Representation of the debtors in any dischargeability actions, judicial lien avoidances, relief from stay actions or any other adversary proceeding.

CERTIFICATION

I certify that the foregoing is a complete statement of any agreement or arrangement for payment to me for representation of the debtor(s) in this bankruptcy proceeding.

Dated: June 13, 2012

/s/ Ryan Alexander

Ryan Alexander 10845

The Firm, PC

200 E Charleston Blvd

Las Vegas, NV 89104

(702) 222-3476 Fax: (702) 252-3476

ryan@thefirm-lv.com

United States Bankruptcy Court
District of Nevada

In re Bourne Valley Court Trust

Debtor

Case No. 12-16387

Chapter 11

LIST OF EQUITY SECURITY HOLDERS

Following is the list of the Debtor's equity security holders which is prepared in accordance with Rule 1007(a)(3) for filing in this chapter 11 case.

Name and last known address or place of business of holder	Security Class	Number of Securities	Kind of Interest
Eddie Haddad C/O Resources Group LLC 900 Las Vegas Blvd S. #810 Las Vegas, NV 89107			Owner

DECLARATION UNDER PENALTY OF PERJURY ON BEHALF OF CORPORATION OR PARTNERSHIP

I, the Registered Agent of the corporation named as the debtor in this case, declare under penalty of perjury that I have read the foregoing List of Equity Security Holders and that it is true and correct to the best of my information and belief.

Date June 13, 2012

Signature /s/ Eddie Haddad

Eddie Haddad
Registered Agent

Penalty for making a false statement or concealing property: Fine of up to \$500,000 or imprisonment for up to 5 years or both.
18 U.S.C §§ 152 and 3571.

0 continuation sheets attached to List of Equity Security Holders

United States Bankruptcy Court
District of Nevada

In re Bourne Valley Court Trust

Debtor(s)

Case No. 12-16387

Chapter 11

VERIFICATION OF CREDITOR MATRIX

I, the Registered Agent of the corporation named as the debtor in this case, hereby verify that the attached list of creditors is true and correct to the best of my knowledge.

Date: June 13, 2012

/s/ Eddie Haddad

Eddie Haddad/Registered Agent

Signer/Title

EXHIBIT 16

In The Matter Of:
U.S. Bank National Association vs.
George R. Edwards, et al.

30(b)(6) David Alessi
November 28, 2016



Min-U-Script® with Word Index

30(b)(6) David Alessi - November 28, 2016
U.S. Bank National Association vs. George R. Edwards, et al.

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IN THE EIGHTH JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA	1
IN AND FOR THE COUNTY OF CLARK	2
U.S. BANK NATIONAL ASSOCIATION, ND, A NATIONAL ASSOCIATION,	3
Plaintiff,	4
vs.) Case No. A-12-667656-C Dept. No. XVI	5
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; BOHN & through 10, inclusive, and ROES 1 through 10, inclusive,	6
Defendants.	7
And all related claims.	8
DEPOSITION OF DAVID ALESSI 30(b)(6) DEPONENT FOR ALESSI & KOENIG, LLC	9
Taken on November 28, 2016 at 1:11 p.m.	10
at 703 South 8th Street Las Vegas, Nevada	11
Reported By: Joanne C. Williams, RFR, CR CCR No. 899	12
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1 APPEARANCES:	1
2 For Plaintiff: McCarthy & Holthus, LLP	2
3 By: Thomas N. Beckom, Esq.	3
4 9510 West Sahara Avenue, Suite 200 Las Vegas, Nevada 89117	4
5 For Defendant Resources Group, LLC:	5
6 Law Offices of Michael P. Bohn	6
7 By: Denise Mikrut, Esq.	7
8 376 East Warm Springs Road, Suite 140 Las Vegas, Nevada 89119	8
9	9
10	10
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	Page 4
1 DAVID ALESSI,	1
2 having been first duly sworn, was examined and testified	2
3 as follows:	3
4 EXAMINATION	4
5 BY MR. BECKOM:	5
6 Q All right. Can you please state and spell your	6
7 name for the record.	7
8 A David Alessi, A-I-e-s-s-i.	8
9 Q Okay. And what brings you here -- I guess what	9
10 brings you here today, Mr. Alessi?	10
11 A I am the PMK for Alessi & Koenig. I'm here to	11
12 go over the foreclosure file with you.	12
13 Q Okay. Have you ever had your deposition taken	13
14 before?	14
15 A Yes, approximately 110 times this year.	15
16 Q Just this year, huh?	16
17 A Yes.	17
18 Q Well, a lot of this is going to seem like old	18
19 hat. The court reporter gave you an oath to tell the	19
20 truth in this matter. Please be advised that this is the	20
21 same kind of oath that you would give in a courtroom, so	21
22 the same penalties of perjury apply to any testimony you	22
23 give here today. Do you understand?	23
24 A Yes.	24
25 Q Okay. A couple of things don't transcribe well	25

1 on court transcripts, uh-huhs, uh-uhs, nods of the head.
2 I might understand you. Denise here might understand
3 you. But it will not reflect well on a court transcript.
4 So please try to avoid those kinds of gestures or
5 statements in response to questions. Do you understand?

6 A Yes.

7 Q Our court reporter has very many talents. One
8 of them is not transposing two people at the same time.
9 So please make sure that you wait for me to fully finish
10 my question before answering. Do you understand?

11 A Yes.

12 Q Have you had any alcohol or drugs or any other
13 substances in the last 24 hours that would affect your
14 ability to give testimony here today?

15 A No.

16 Q Is there any other reason why you can't give
17 your best testimony here today?

18 A No.

19 MR. BECKOM: And I guess let the record reflect
20 that Mr. Alessi is under a trial subpoena for another
21 matter. Should he be called away I guess, will you
22 stipulate to reschedule at an appropriate time?

23 MS. MIKRUT: Yes.

24 MR. BECKOM: Okay. So let the record reflect
25 that both parties to this action will stipulate to

1 get -- are they kept in any kind of system at all?

2 A Yes. We have an electronic program. One of the
3 tabs in the program is a letters and notices tab. That
4 is where the documents are saved or scanned into that
5 would constitute our file.

6 Q And then how do these documents get saved and
7 input into the file?

8 A They're either PDFed or scanned or just saved
9 directly from an email, or if we print a Notice of
10 Delinquent Assessment or Notice of Default, the program
11 automatically saves a copy of that Notice into the
12 letters and notices tab.

13 Q Who inputs these documents into your system?

14 A It depends on who the legal assistant is. At
15 the time it looks like there is a Mary Indalecio, I-n --
16 Sorry. Check that. Attorney Ryan Kerbow signed the
17 Notice of Trustee's Sale. Mary Indalecio,

18 I-n-d-a-l-e-c-i-o, signed the Notice of Default. So she
19 would have been the one to print it at that time.

20 Q And so they are input into your system at or
21 near the time that they are generated and/or received?

22 A Correct.

23 Q Okay. And you have no reason to believe that
24 the documents I have set before you -- And I guess your
25 office -- Let this reflect that these were documents

1 continue the deposition at an appropriate time in the
2 event Mr. Alessi is called away.

3 (Exhibit 1 marked)

4 BY MR. BECKOM:

5 Q Have you seen Exhibit 1 before?

6 A Yes.

7 Q Can you explain to me what it is that we are
8 looking at?

9 A There is an --

10 Q Go ahead.

11 A There is an affidavit from me as custodian of
12 records. And I believe this is also a copy of our file
13 on this matter.

14 Q And what do you mean by file? Are you referring
15 to the foreclosure file --

16 A Yes.

17 Q -- for 4254 Rollingstone Drive --

18 A Yes.

19 Q -- Las Vegas, Nevada 89103?

20 A Correct.

21 Q Okay. Can you take a minute and just kind of go
22 through this and let me know -- This is your entire
23 foreclosure file?

24 A Yes.

25 Q And is there any -- These documents, do they

1 produced to U.S. Bank pursuant to the subpoena and they
2 were Bates stamped by Alessi & Koenig as A&K000001
3 through A&K000144.

4 Do you have any reason to believe that there is
5 anything wrong with these documents?

6 A No.

7 Q Okay. Let's take a look at A&K000001. I guess
8 let's start with some foundation first.

9 What do you do at Alessi & Koenig?

10 A I do a lot of depositions. I'm one of the
11 founding members of the firm. I was previously an HOA
12 manager. So I have been in the HOA industry for
13 approximately 20 years now. I do marketing. I do not
14 practice law. As you know, I'm a California lawyer. I
15 do not practice law in Nevada. I don't, for that matter,
16 practice law in California either.

17 Q Is there a reason why you don't practice law in
18 California?

19 A I just choose not to.

20 Q Fair. And then how long -- You said you founded
21 Alessi & Koenig?

22 A I was one of the founding members, Robert Koenig
23 and myself, early 2000s.

24 Q How do you know Robert Koenig?

25 A I have known Robert Koenig since the late 1990s.

1 He is a friend of mine. We were -- are neighbors -- were
2 neighbors in southern California. I finished my last
3 year of law school or last semester of law school at
4 Pepperdine. He graduated from Pepperdine Law. We worked
5 together in Malibu, California before I moved to Las
6 Vegas. I have known Robert for quite a long time.

7 Q Okay. Let's go on to A&K -- I'm going to omit
8 the zeros and just go with A&K1.

9 A Okay. Yes. A&K1 is the -- what I call the back
10 end of the online status report. These are the data
11 fields that would be transposed into the online status
12 report that the HOA and the management company have
13 access to via a username and password 24/7. As you can
14 see on the left column, there are names. That would be
15 the names of the individuals who entered the information
16 underneath the heading Activity. The date I believe is
17 automatically populated the day that the entry is made.

18 Q Okay. So anytime an action is taken on a file
19 at Alessi & Koenig it would be input on this screen?

20 A Yes.

21 Q Okay. Would there be any activities that were
22 taken on this file that would not have been inputted on
23 the screen?

24 A Not that I can think of.

25 Q Okay. So let's start with -- Do you have a

1 the day-to-day activities of the file for the association
2 would be their -- the manager's primary contact. We
3 represent several dozen HOA management companies and
4 several hundred HOAs, so I don't have a specific
5 recollection. I believe the owner of Old West Realty was
6 Judy Fenner.

7 Q Judy Fenner?

8 A Fenner I believe.

9 Q But you have no specific recollection of your
10 interactions with Ms. Fenner?

11 A I don't know if -- I don't know that I ever
12 spoke to her. If I did, it may have been once or twice,
13 years and years ago.

14 Q Okay.

15 A I don't have any specific recollection.

16 Q Okay. Let's move on to A&K number 3. Can you
17 tell me what it is that we are looking at?

18 A A&K number 3 is a Real Property Parcel Record.
19 We pull this record at the beginning of the foreclosure
20 process when a file is opened.

21 Q Why do you pull this record at the beginning of
22 the foreclosure process when a file is opened?

23 A The record gives us the parcel number which we
24 will need for the foreclosure process. It also instructs
25 us as to whether or not there is an off site mailing

1 recollection about who you were conducting a foreclosure
2 sale on behalf of?

3 A Well, I had looked at a ledger in the file. I
4 believe the name of the association was Glenview West
5 Townhomes.

6 Q And then how do you know Glenview West
7 Townhomes?

8 A Well, I mean, I know them as one of our clients.
9 I don't have a specific knowledge of that association.

10 Q You have never spoken with any of their
11 community managers?

12 A I don't know if I have spent -- I believe I have
13 spoken with their community manager. I believe their
14 community manager was Old West Realty. I don't believe
15 that I have spoken to any of the board members at
16 Glenview. At least I have no recollection of having done
17 so.

18 Q Do you have any recollection about who the
19 specific person was at the management company that you
20 spoke with?

21 A No.

22 Q Okay. Do you know how many times you spoke with
23 this person? Do you recall?

24 A No. I don't -- I don't -- I wouldn't have been
25 the main contact person. The legal assistant handling

1 address for the homeowner as well as offering the legal
2 description of the property. It gives us the recorded
3 document number for the Deed of Trust or the Grant Deed.

4 Q Okay. So this is the document that you rely on
5 to get all your information for your foreclosure notices?

6 A Not -- Well, not all of it, but a starting
7 point.

8 Q Understood. Is there any other information you
9 get from this document other than the name of -- I guess
10 the legal description and the mailing address of the
11 homeowner?

12 A Well, we would have the recorded document number
13 for the last transfer of title. And we may
14 cross-reference that to pull that actual document.

15 Q Does your office analyze the form or the area
16 called real property assessed value at all during this
17 process?

18 A No. We wouldn't analyze that during this stage
19 of the process. There may be some reference to the
20 assessed value after the property sells, but I don't know
21 that it's altogether relevant at this stage of the
22 process.

23 Q So at no point in time do you take notice of the
24 total -- like the area in this document that says total
25 taxable value?

1 A I don't know if at no point in time. Like I
2 said, there were different recorders that were working at
3 the Clark County Recorder's Office between 2012 and 2015.
4 And as I testified before, my understanding is that one
5 of the recorders required that the document carry
6 transfer tax, be set at the assessed value of the
7 property. My understanding is that another recorder
8 required that that number be calculated based upon the
9 amount that the property sold at the trustee's sale. So
10 in that way the assessed value of the property became
11 somewhat relevant.

12 Q Understood. So let's move on then to A&K number
13 6.

14 A So A&K number 6 is a PACER -- what is titled a
15 PACER Case Locator. This is a document that we would
16 pull to discover whether or not the homeowner was in
17 bankruptcy.

18 Q And based on I guess your review of this
19 document, was the homeowner in bankruptcy at the time
20 this file was referred to you?

21 A The homeowner's name is George Edwards. It
22 looks like the property is held in a trust. I don't know
23 if I would be able to tell if the same George Edwards was
24 in bankruptcy simply by looking at this document. My
25 understanding is that there may have been a bankruptcy

1 Notice of Sale and shortly before the actual sale?

2 A Correct. And also when we open the file, but
3 generally at the Notice of Delinquent Assessment stage.

4 Q And there would be no other reason that you
5 would review for a bankruptcy?

6 A We would be looking for a bankruptcy -- We would
7 be looking to see if the delinquent homeowner has filed
8 bankruptcy to see whether or not the automatic stay is in
9 effect.

10 Q I believe you stated previously that A&K001,
11 that was a record of everything that had gone on on this
12 file, correct?

13 A Generally that is a record -- Well, I don't know
14 if it's everything that had gone on. I think your
15 question was all activities. And I actually thought to
16 ask you how you define that. But all relevant activities
17 that we would want to communicate to our client would be
18 on the status report.

19 I don't know if every interoffice note would be
20 there or non-relevant activities that the legal
21 assistant -- There may be certain -- When you said
22 activities, I took that to mean the steps in the
23 foreclosure process related to the file. Maybe you want
24 to define it.

25 Q It looks like -- I'm not seeing any notations

1 issue. But I don't see reference to any on the status
2 report.

3 Q Is there any other reason that you would review
4 bankruptcy records other than to determine if the
5 borrower was in bankruptcy?

6 A No. That would be the reason. As you know, if
7 a borrower is in bankruptcy, an automatic stay is
8 created. So we would want to know whether or not a
9 borrower or in our case a homeowner in the association
10 was in bankruptcy.

11 Q How many times do you review for bankruptcies
12 during the course of litigation -- not litigation,
13 foreclosure?

14 A We check for bankruptcies at each stage of the
15 process. So we would be looking -- so generally two,
16 three -- two or three times.

17 Q When do those two or three times happen?

18 A When we open the file, when a Notice of Default
19 is recorded and when a Notice of Trustee's Sale is
20 recorded. We would also check for a bankruptcy when
21 the -- shortly before the Notice of Trustee's Sale is
22 cried.

23 Q Okay. So --

24 A We could call that a sale date.

25 Q So it's before the Notice of Default and the

1 for bankruptcy searches. Is it fair to say that

2 bankruptcy searches are not indicated on your ledger,
3 A&K1 and 2?

4 A I see. That is correct. We would not make a
5 note in the status report that we did a PACER search.

6 Q Is there any reason why?

7 A No.

8 Q Okay. Let's go on to A&K8.

9 A A&K8 is a Notice of Intent to Lien dated
10 November 3rd, 2010. It shows that there is a certified
11 mail receipt copied onto the face of the document,
12 reflecting that the document was mailed certified
13 November 3rd, 2010. We also mailed this document regular
14 mail, regular First-Class Mail.

15 Q Who all do you mail this document to?

16 A We mail this document to the delinquent
17 homeowner only.

18 Q Why do you only mail it to the delinquent
19 homeowner?

20 A That's just our policy.

21 Q Why is that your policy?

22 A That is our Nevada counsel's opinion as to what
23 the statute requires and the association's collection
24 policy.

25 Q Understood. And I'm looking at A&K number 9.

1 That looks like a copy of the same thing as A&K number
2 10; is that correct?
3 A Correct.
4 Q Okay.
5 MS. MIKRUT: You mean number 8.
6 MR. BECKOM: I'm sorry. A&K number 8. Thank
7 you.
8 THE WITNESS: Correct.
9 MR. BECKOM: You're supposed to object to form.
10 MS. MIKRUT: That didn't have to be on the
11 record.
12 MR. BECKOM: No. That's fair.
13 THE WITNESS: And the accompanying five-page
14 ledger, A&K10 through 15, you can see that -- I'm
15 sorry -- 10 through 14. You see the handwritten
16 "Intent." There is also our trustee sale number or our
17 HO number. That's our internal fingerprint of the
18 property, "24230." So this ledger would have been what
19 we received when we opened the file.
20 BY MR. BECKOM:
21 Q So the HOA sends you this ledger?
22 A Correct.
23 Q Okay. Now, it says that \$1,855 was due as of
24 November 3rd, but in your ledger it shows that -- It
25 looks like it says -- On A&K14 it says \$1,310 was due.

1 Intent to Lien informing the homeowner that a lien is
2 being placed on the property.
3 This Notice is mailed certified and regular
4 mail, again, to the homeowner only. Again, the reason
5 for that is that that is what our Nevada attorneys feel
6 is consistent with the statute as well as the
7 association's governing documents and collection policy.
8 Q Okay. Let's go on to A&K number 17.
9 A So A&K number 17 is a Pre-Notice of Default.
10 This is sort of a last warning to the homeowner prior to
11 a Notice of Default being recorded. We warn them that
12 the next step involves substantial additional charges and
13 if they hope to avoid those charges, they need to contact
14 our office to bring the account current. This notice is
15 mailed to the delinquent homeowner only and it is mailed
16 regular mail.
17 Q Did you hear any response from the Edwards
18 George R. Trust in response to that?
19 A So I'm looking at A&K1, our online status
20 report. I note that there is an entry December 20, 2010,
21 "No contact from property owner," same entry February
22 2nd, 2011. So it does not appear that we received any
23 communication from the delinquent homeowner.
24 Q And so what's the next step in your process
25 after you send this Pre-Notice of Default letter?

1 And it looks like they added in another \$130 for a
2 November 2011 assessment for a total of \$1,440. Can we
3 agree on that point?
4 A Yes.
5 Q Where does the \$1,855 number come from then --
6 A It is the --
7 Q -- as shown in Exhibit A&K9?
8 A It is the \$1,440 amount plus the intent to lien
9 fee that's charged by our law firm. I believe it was
10 either a hundred -- I don't know what it was back in
11 2010, but it is I believe \$150. And then there is the
12 third fee which would be the management company audit
13 fee, which is currently set statutorily at \$200. That is
14 a fee that goes to the management company for the work
15 done when a file is turned over to collections. I don't
16 know what this management company charged in 2010, but it
17 would be the sum of those three numbers.
18 Q Understood. Let's go on to A&K number 15.
19 A So this --
20 Q Can you tell me what it is we are looking at?
21 A This is a lien letter dated December 20, 2010.
22 It shows that it was -- It's got a certified mail receipt
23 copied to the cover of it. And this is a cover letter
24 that we mailed to the delinquent homeowner after the
25 expiration of the due date pursuant to the Notice of

1 A The next step in the process is the Notice of --
2 If we are not -- If the homeowner does not contact us,
3 the next step in the process is the recording of a Notice
4 of Default.
5 Q Is it fair to say -- All of these documents you
6 produced to us, are they in chronological order?
7 A It looks like it.
8 Q Okay. So this next one here, it looks like
9 A&K18 through 22. What is it that we are looking at?
10 A So 18 is a copy of the title report that we
11 order from in this case First American Title. As you can
12 see on A&K19, there is a list of encumbrances that
13 show -- The document shows that U.S. Bank has a mortgage
14 on the property dated March 26, 2009 in the amount of
15 \$50,000 as well as a claim of lien by Republic Services.
16 The document also shows the lien that was
17 recorded by our office on behalf of Glenview West on
18 January 4th. This document is a document that we use to
19 obtain the parties that we mail the Notice of Default to.
20 Those parties include Republic Services in this case as
21 well as the first mortgage holder and the delinquent
22 homeowner.
23 Q Okay. So this is what you use to determine who
24 you mail to, correct?
25 A Correct.

1 Q Okay. A&K number 23, this looks like another
2 printout of the Assessor's Web site. Why would this be
3 in your file at this juncture?

4 A It looks like the legal assistant checked the
5 parcel record again to confirm ownership. It looks like
6 they also, as I stated earlier in my testimony, did pull
7 the Deed of -- the Deed of Trust. That's A&K26
8 through -- This goes on for several pages. There is also
9 a copy of the Notice of Default on A&K46 showing that the
10 Notice of Default was recorded March 29th, 2011.

11 Behind the Notice of Default on A&K47 are copies
12 of the Notice having been mailed to Republic Services as
13 well as the Law Office of A.J. Kun, K-u-n, Kun. A&K44
14 shows that the -- So A&K44 gives a list of the parties
15 that the Notice of Default was mailed to. The first
16 party being the delinquent homeowner. The Notice of
17 Default was mailed to the delinquent homeowner via
18 certified mail and then to all other parties via regular
19 mail.

20 Q Who is Robert Hazel? It's on A&K44.

21 A That's a good question. You can see that there
22 is on A&K34 a quitclaim deed requested by Robert Hazel.
23 And it gives an address in Fontana, California.

24 Q Understood. And where do you get these
25 addresses to perform your mailings from?

1 mailings and all that other good stuff?

2 A In the end that is who would be responsible. I
3 don't know that that is who made the determination on
4 this file. I don't have any specific knowledge of how
5 that determination was made. But an attorney does review
6 the -- all the foreclosure files prior to the properties
7 going to sale. And one of the important aspects of our
8 Nevada counsel's review of each file is that the mailings
9 were done properly.

10 Q Understood. I'm going to go back to A&K. number
11 26.

12 A Yes.

13 Q I would like you to go down to the bottom of the
14 page under where it says "Lender." It says, "U.S. Bank
15 National Association ND, a national banking association
16 organized under the laws of the United States, 4325 17th
17 Avenue Southwest, Fargo, North Dakota 58103."

18 Do you see what I'm referring to?

19 A Yes.

20 Q Now, flipping back to A&K number 44, can we
21 agree that no Notice and that there is not a mailing
22 address listed for U.S. Bank National Association in
23 Fargo, North Dakota?

24 A I do see that address listed on A&K50 and --

25 Q Well, let's stick with A&K44. So no -- So the

1 A From both our search of the public records -- We
2 have an in-house title researcher primarily -- and also
3 from the report that we get, the title report that we get
4 from in this case First American Title.

5 Q Fair enough. I'm going to go back to A&K26.

6 A Yes.

7 Q There is an address on here that says, "Prepared
8 by: Southwest Financial Services, Ltd., 537 East Pete
9 Rose Way, Suite 300, Cincinnati, Ohio 45202."

10 Do you see what I'm referring to?

11 A Give me a second. Yes.

12 Q Now I'm going to go back, flip back to A&K
13 number 44. I'm not seeing that address listed on your
14 mailings. Can we agree on that point?

15 A Correct.

16 Q Is there a reason why you did not mail the
17 Notice of Default to Southwest Financial Services?

18 A Our Nevada counsel felt that by mailing to U.S.
19 Recordings, the entity shown just below Southwest
20 Financial Services on that same Deed of Trust cover page,
21 was sufficient to meet the requirements of NRS 116. And
22 that address is U.S. Recordings, 2925 Country Drive,
23 Suite 201, St. Paul, Minnesota 55117.

24 Q So you would have had an attorney make the
25 determination about who should have received notice and

1 Notice of Default was not mailed to the address for the
2 lender. Can we agree on that?

3 A It does -- It appears that the Notice of Default
4 was not mailed to U.S. Bank National Association ND at
5 their Fargo, North Dakota address. It does, however,
6 appear that the Notice of Trustee's Sale was mailed to
7 that address.

8 Q Well, we will get to the Notice of Trustee's
9 Sale in just a second.

10 And then can we also agree that the Notice of --
11 Now, do you see where it says "Trustee" and it says, "U.S.
12 Bank Trust Company, National Association, a national
13 banking association organized under the laws of the
14 United States"? It says, "111 Southwest 5th Avenue,
15 Portland, Oregon 97204."

16 Do you see what I'm talking about on A&K26?

17 A Yes. And it does not, to answer your next
18 question, appear that the Notice of Default was mailed to
19 that address either.

20 Q Is A&K required to mail the Notice of Default to
21 the lender under a Deed of Trust?

22 A Our Nevada counsel analysis of this foreclosure
23 was must have been that by mailing to U.S. Recordings,
24 that was sufficient to give notice to the lender in this
25 case.