

1 MICHAEL F. BOHN, ESQ.  
Nevada Bar No.: 1641  
2 [mbohn@bohnlawfirm.com](mailto:mbohn@bohnlawfirm.com)  
LAW OFFICES OF  
3 MICHAEL F. BOHN, ESQ., LTD.  
2260 Corporate Circle, Suite 480  
4 Henderson, Nevada 89074  
(702) 642-3113 / (702) 642-9766 FAX  
5 Attorney for defendant/appellant

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Elizabeth A. Brown  
Clerk of Supreme Court

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8 SUPREME COURT  
9 STATE OF NEVADA

10 RESOURCES GROUP, LLC, a Nevada  
11 Limited Liability Company,

CASE NO.: 84992

12 Appellant,

13 vs.

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

16 Respondent.

17  
18 **JOINT APPENDIX VOLUME 9**

19  
20 Michael F. Bohn, Esq.  
Law Office of Michael F. Bohn, Esq., Ltd.  
2260 Corporate Circle, Suite 140  
21 Henderson, Nevada 89074  
(702) 642-3113/ (702) 642-9766 FAX  
22 Attorney for Defendant/Appellant

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20				
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1           *U.S. Bank* highlights four, separate facts that discredit Resource Groups bona fide  
2 purchaser status. They are 1) Resources' principal's, Eddie Haddad, real estate sophistication; 2)  
3 Resources was the only person/entity that appeared for the continued sale; 3) Eddie Haddad's  
4 close relationship with Alessi & Koenig; 4) Eddie Haddad's acknowledgement, in a bankruptcy  
5 proceeding, that title to the property was contested. *U.S. Bank* (supra), at 207.

7           The purpose of the bona fide purchaser doctrine is to protect innocent third parties against  
8 harm. To qualify, Resource must show that it purchased the property "(i) for value; and (ii)  
9 *without notice of a competing or superior interest in the same property.*" *Berge v. Fredericks*,  
10 95 Nev. 183, 185, 591 P.2d 246, 247 (Nev., 1979) (emphasis added). Furthermore, Resource has  
11 the burden to show that it lacked notice. *Hewitt v. Glaser Lane & livestock Co.*, 97 Nev. 207,  
12 208, 626 P.2d 268, 268-269 (Nev., 1981). A subsequent purchaser is bona fide under common-  
13 law principles if it takes the property "for a valuable consideration and without notice of the prior  
14 equity, and without notice of facts which upon diligent inquiry would be indicated and from  
15 which notice would be imputed to him, if he failed to make such inquiry." *Shadow Wood*  
16 (supra), at 64. *Shadow Wood* went on to state that:

20           NYCB points to *no other evidence* indicating that Gogo Way had notice before it  
21 purchased the property, *either actual, constructive, or inquiry*, as to NYCB's attempts to  
22 pay the lien and prevent the sale....

23 *Id.*

24           Here, we have "other evidence." In *Blevins v. Boyd*, this court stated,

25           *a party may not qualify as a bona fide purchaser if the party is under a duty of inquiry*  
26 *prior to the payment of consideration and transfer of legal title. This duty arises when the*  
27 *circumstances are such that a purchaser is in possession of facts which would lead a*  
28 *reasonable man in his position to make an investigation* that would advise him of the  
29 existence of prior unrecorded rights. He is said to have constructive notice of their  
existence *whether he does or does not make the investigation*. The authorities are  
unanimous in holding that he has notice of whatever the search would disclose.

1 *Blevins v. Boyd*, 623 F.Supp. 863, 866, 1985 U.S. Dist. LEXIS 13380, \*\*7 (D. Nev.. 1985);  
2 citing *Berge v. Fredericks*, 95 Nev. 183, 591 P.2d 246 (1979); *Allison Steel Mfg. Co. v.*  
3 *Bentonite, Inc.*, 86 Nev. 494, 498, 471 P.2d 666, 668 (1970) (emphasis added).

4  
5 Resources cannot meet its burden. The four facts mentioned in *U.S. Bank* add up to Mr.  
6 Haddad, and thereby Resources, having inquiry notice of US Bank's deed of trust (a "competing  
7 interest").

8  
9 The facts are that Resources took no effort to discover the circumstances surrounding the  
10 HOA lien. Resources makes it a business practice to avoid inquiring further.

11 Even assuming the issue were whether SFR had notice not only of the fact of a competing  
12 interest but also of the legal possibility that the DOT might survive the CHOA  
13 foreclosure sale, SFR was not an innocent purchaser in that regard. The law was not clear  
14 at the time of the sale that the CHOA sale would extinguish the DOT, **and a**  
**reasonable purchaser therefore would have perceived a serious risk that it would not.**

15 *Nationstar Mortgage, LLC v. SFR Invs. Pool 1, LLC*, 184 F. Supp. 3d 853, 860, 2016 U.S. Dist.  
16 LEXIS 57964, at \*\*15 (D. Nev., 2016) (emphasis added). Resources choice to avoid conducting  
17 any meaningful due diligence destroys any presumption, and certainly an affirmative finding,  
18 that Resources is a bona fide purchaser for value.

19  
20 Moreover, a foreclosure sale purchaser has constructive knowledge of a deed of trust and  
21 its holder's interest if the deed of trust or an assignment is recorded. *Fed. Nat'l. Mortg. Ass'n. v.*  
22 *SFR Invs. Pool I, LLC*, 2:14-cv-040246-JAD-PAL, 2015 U.S. Dist. LEXIS 133254 \*10 (D. Nev.,  
23 Sept. 28, 2015) ("The 2011 recording of Fannie Mae's assignment of the deed of trust put the  
24 purchaser on constructive notice of Fannie Mae's interest and prevents the purchaser from  
25 claiming BFP status in this case.") In this case, US Bank's deed of trust has been on record since  
26 2009. In addition to inquiry notice, Resource Group had notice of US Bank's "competing  
27  
28  
29



1 interest.” A finding that Resources is a bona fide purchaser flies directly in the face of the  
2 doctrine’s purpose of protecting innocent purchasers, and is inconsistent with Nevada HOA law.

3  
4 Resources experience purchasing properties at Nevada foreclosure sales also eliminates  
5 any bona fide purchaser argument. *See, e.g. Yates v. West End Fin. Corp.*, 25 Cal. App. 4th 511,  
6 523 (1994) (buyer's experience relevant in assessing *bona fide* purchaser claim); *Countrywide*  
7 *Home Loans, Inc. v. United States*, No. CV F 02 6405 AWI SMS, 2007 WL 87827, \*12 (E.D.  
8 Cal. Jan. 9, 2007) (extensive real estate experience a factor against the buyer's claims to *bona*  
9 *fide* purchaser status).

11 Eddie Haddad is the principal of Resource and other HOA investor entities such as  
12 Saticoy Bay, LLC. He admits to attending HOA sales “five days a week, 52 weeks a year.”  
13 **Exhibit 6**, at 156:8-13; 185:17-22; 187:7-12. He is not a passive investor nor an individual  
14 purchasing one or two properties. Much of Nevada’s NRS Chapter 116 case law, as it relates to  
15 HOA liens, is the direct result of Mr. Haddad’s real estate purchases. And he was fully aware of  
16 the need to litigation the Property following the HOA Sale. Exhibit 6, at 190: 10-23; Exhibit 9, at  
17 19:12-15; **Exhibit 12** and **Exhibit 13**. And the need for litigation was necessitated by the fact  
18 that he knew the Property was encumbered by US Bank’s DOT. **Exhibit 6**, at 173:16-21;  
19 **Exhibit 9**, at 19:12-15. Additionally, Resources filed a bankruptcy petition to protect itself from  
20 creditors it claims to have had no knowledge of their interest in the Property. **Exhibit 14**.

21  
22 This is not unique testimony of Mr. Haddad. He testified in a different action he was  
23 aware that mortgagees tendered nine months of assessment before purchasing properties at  
24 foreclosure sales. **Exhibit 12** (Deposition of Eddie Haddad – 30(b)(6) Representative for Saticoy  
25 Bay LLC Series 6709 Brick House), at 105-106. Mr. Haddad believes these superpriority  
26 tenders extinguish a superpriority lien, testifying the holder of "First Deed of Trust has a right to  
27  
28  
29

1 protect themselves by tendering a payment equivalent to nine months." *Id.*, at 68-69. Further, he  
2 testified in a different action that, at the time of the sale that he understood banks continued to  
3 defend their deeds of trust after foreclosure. **Exhibit 13** (Deposition of Eddie Haddad, at 17:15–  
4 25.) When asked whether Saticoy "purchase[d] the property with the understanding that there  
5 would be ensuing litigation over the property," Saticoy's representative responded, "Absolutely."  
6  
7 (*Id.*)

8  
9 Allowing Saticoy to claim *bona fide* purchaser status would turn the entire concept on its  
10 head. As Judge Jones ruled in another case involving a foreclosure purchaser with similar  
11 experience:

12 Even assuming the issue were whether [purchaser] had notice not only of the fact of a  
13 competing interest but also of the legal possibility that the DOT might survive the [HOA]  
14 foreclosure sale, [purchaser] was not an innocent purchaser in that regard. The law was  
15 not clear at the time of the sale that the [HOA] sale would extinguish the DOT, and a  
reasonable purchaser would have perceived a serious risk that it would not.

16 *Nationstar Mortgage v. SFR Invs. Pool 1, LLC*, No. 2:15-cv-00583-RCJ-PAL, 2016 WL  
17 1718374, \*5 (D. Nev. April 29, 2016).

## 18 **VI. CONCLUSION**

19  
20 This HOA Sale must be set aside. First, it is void due to A&K's failure to send the HOA  
21 NOD to US Bank. US Bank did not have actual knowledge of the HOA Sale, and was  
22 prejudiced as a result. Had US Bank become aware of the HOA Sale, it would have paid the  
23 superpriority portion of the HOA Lien. Under U.S. Bank, preventing US Bank that opportunity  
24 is prejudicial. But even if this Court finds that the HOA Sale is not void, the HOA Sale was  
25 voidable. First, the Property sold for a grossly inadequate price. Second, sufficient fraud,  
26 oppression, or unfairness exists. Again, it is uncontroverted fact that A&K did not send the  
27 HOA NOD to US Bank. If this were not enough, the unnatural relationship between A&K,  
28  
29

1 Eddie Haddad and Resources creates fraud, oppression, or unfairness sufficient to set the sale  
2 aside. Finally, Resources is not a bona fide purchaser.

3 Since remand, Resources has done no additional fact finding that has resulted in evidence  
4 favoring its position. It did not depose witness, and issued only limited written discovery. All  
5 evidence in this matter is already in the Court record, following trial and an appeal. On that  
6 basis, summary judgment is appropriate. And US Bank respectfully requests that this Court  
7 enter summary judgment in favor of US Bank and against Resources based on the facts in record,  
8 and the arguments set forth herein.  
9

10 Respectfully submitted.

11  
12  
13 Dated: March 16, 2022

14  
15 **McCARTHY & HOLTHUS, LLP**

16 /s/ Shane P. Gale  
17 Kristin A. Schuler-Hintz, Esq.  
18 Nevada Bar No. 7171  
19 Shane P. Gale, Esq.  
20 Nevada Bar No. 12967  
21 9510 West Sahara Avenue, Suite 200  
22 Las Vegas, Nevada 89117  
23 *Attorneys for Plaintiff:*  
24 *U.S. Bank, National Association, ND*  
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**CERTIFICATE OF SERVICE**

I certify that on March 16, 2022 I served the foregoing documents described as **U.S. BANK  
NATIONAL ASSOCIATION N.D.’s MOTION FOR SUMMARY JUDGMENT** ; as follows:  
VIA ELECTRONIC SERVICE THROUGH THE EIGHTH JUDICIAL DISTRICT’S EFILE  
AND ESERVE SYSTEM.

Law Offices of Michael F. Bohn, Esq.  
Michael F. Bohn, Esq.  
mbohn@bohnlawfirm.com  
*Attorneys for Resources Group, LLC*

/s/ Shane P. Gale  
An Employee of McCarthy &  
Holthus, LLP

# EXHIBIT 1

# EXHIBIT 1

18

20090326-0003747

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



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

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

Fee: \$21.00  
N/C Fee: \$25.00  
03/26/2009 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  
312628  
**DEED OF TRUST**  
(With Future Advance Clause)

☐ Master Mortgage

Recorded By .....

By .....

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

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

GRANTOR:  
GEORGE R. EDWARDS, UNMARRIED

163-24-111-021,ENTIRE PROPERTY  
☐ If checked, refer to the attached Addendum incorporated herein, for additional Grantors,  
their signatures and acknowledgments.

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

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

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 USBOCP-DT-NV 9/7/2006

(page 1 of 7)  
ME

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)

*DPE* \_\_\_\_\_

- 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.

**Leasholds; 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)

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

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

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

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

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

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

(page 4 of 7)

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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 appraisalment 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. Grubman  
(Notary Public)  
Customer Service Manager  
(Title and Rank)



DEBRA A. CHUBMAN  
Notary Public, State of Kansas  
Appointment No. 00-0000-1  
My Appl. Expires Sep 18, 2012

# **EXHIBIT "A" LEGAL DESCRIPTION**

Account #: 14560224

Index #:

Order Date : 02/27/2009

Reference : 20090581626510

Parcel #: 163-24-111-021

Name : GEORGE R. EDWARDS

Deed Ref : 20020712928

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**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.**



000542628

6612 3/19/2009 75536829/1

# EXHIBIT 2

# EXHIBIT 2

**AFFIDAVIT OF DAVID ALESSI, ESQ. AS CUSTODIAN OF RECORDS FOR  
ALESSI & KOENIG, LLC**

STATE OF NEVADA     )  
                                  ) ss:  
COUNTY OF CLARK    )

NOW COMES, DAVID ALESSI, ESQ., who after first being duly sworn, deposes and says:

1. That Affiant is the Managing Partner of Alessi & Koenig, LLC and in his capacity as Managing Partner is a Custodian of the Records of Alessi & Koenig, LLC.

2. That Alessi & Koenig, LLC is licensed to do business as a law firm in the State of Nevada.

3. That on the 14th day October, 2015, Affiant was served with a Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in connection with the case entitled *U.S. BANK NATIONAL ASSOCIATION ND v. GEORGE R. EDWARDS*; *et al.* (case no. A-12-667690-C), calling for the production of records pertaining to:

1. Copies of any and all documents in your possession concerning or relating to the real property commonly known as 4254 Rollingstone Drive, Las Vegas, NV 89103 (APN #163-24-111-021) (the "Property") from January 1, 2011 to present.

2. Copies of any and all documents in your possession concerning or relating to the foreclosure sale of the Property conducted by you on behalf of Glenview West Townhomes Association, which occurred on or about January 25, 2012.

3. Copies of any and all documents in your possession concerning or relating to any and all notices of delinquent assessment lien prepared, recorded, or mailed by you on the behalf of Glenview West Townhomes Association concerning the Property from January 1, 2011, to the present. This includes but is not limited to books, records, and



1 other tangible things which demonstrate an accounting of the purported unpaid debt on  
2 the Property from January 1, 2011 to present, including the nature of the assessments, fines,  
3 and penalties which make up this amount.

4 4. Copies of any and all documents in your possession concerning or relating  
5 to any and all notices of default prepared, recorded, or mailed by you on the behalf of  
6 Glenview West Townhomes Association, concerning the Property from January 1, 2011, to  
7 the present. This includes but is not limited to books, records, and other tangible things which  
8 demonstrate an accounting of the purported unpaid debt on the Property from January 1,  
9 2011 to present, including the nature of the assessments, fines, and penalties which make up  
10 the amount purportedly in default.  
11

12 5. Copies of any and all documents in your possession concerning or relating  
13 to any and all notices of sale prepared, recorded, or mailed by you on the behalf of  
14 Glenview West Townhomes Association concerning the Property from January 1, 2011, to  
15 the present. This includes but is not limited to books, records, and other tangible things  
16 which demonstrate an accounting of the purported unpaid debt on the Property from  
17 January 1, 2011 to present, including the nature of the assessments, fines, and penalties  
18 which make up the amount  
19  
20

21 6. Copies of any and all documents evidencing correspondence between you  
22 and Glenview West Townhomes Association, concerning the Property from January 1, 2011,  
23 to the present. This includes but is not limited to letters, emails, and transcribed telephone  
24 calls.  
25

26 7. Copies of any and all documents evidencing your compliance with  
27 preparing and adopting a periodic budget pursuant to NRS 116.3115 from January 1, 2011, to  
28

1 the present.

2 8. Copies of any and all documents evidencing your compliance with  
3 preparing and adopting a periodic budget pursuant to NRS 116.31151 from January 1,  
4 2011, to the present.

5 9. Copies of any and all documents evidencing correspondence between you  
6 and any mortgage lender or servicer concerning the Property from January 1, 2011, to the  
7 present. This includes but is not limited to letters, emails, and transcribed telephone calls.

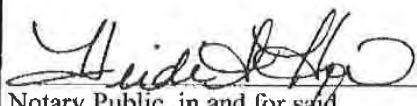
8 4. That Affiant has examined the original of those records and has made or caused to be  
9 made a true and exact copy of them and that the reproduction of them attached hereto is true and  
10 complete, except for those records which are subject to attorney-client privilege and/or other  
11 valid privilege or objection.  
12

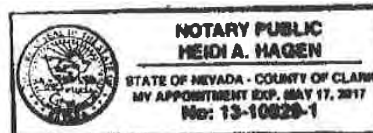
13 5. That the original of those records was made at or near the time of the act, event,  
14 condition, opinion or diagnosis recited therein by or from information transmitted by a person  
15 with knowledge, in the course of a regularly conducted activity of Affiant or Alessi & Koenig,  
16 LLC.  
17

18 FURTHER AFFIANT SAYETH NAUGHT.  
19

20  
21   
22 DAVID ALESSI, ESQ.,  
Affiant

23 SUBSCRIBED AND SWORN before me  
24 this 19th day of November, 2015.

25  
26   
27 Notary Public, in and for said  
28 County and State.



DAVID ALESSI\*  
THOMAS BAYARD \*  
ROBERT KOENIG\*\*  
RYAN KERBOW\*\*\*

\* Admitted to the California Bar  
\*\* Admitted to the California, Nevada  
and Colorado Bars  
\*\*\* Admitted to the Nevada and California Bar



*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](http://www.alessikoenig.com)

ADDITIONAL OFFICES

AGOURA HILLS, CA  
PHONE: 818-735-9600

RENO NV  
PHONE: 775-626-2123  
&  
DIAMOND BAR CA  
PHONE: 909-861-8300

November 3, 2010

**NOTICE OF INTENT TO LIEN**  
**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. The total amount due by **December 8, 2010** is **\$1,855.00**. Any statements or invoices you receive from **Glenview West Townhomes Association**, or its managing agent, will not reflect the total amount due. **Payment must be in the form of a cashiers check or money order, made payable to the Alessi & Koenig at the above listed NEVADA address.**

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 be advised that you have the right to inspect the association records. 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 with your receipt of this letter, the law requires me to suspend my efforts to collect the debt until I mail the requested information to you.

In the event Alessi & Koenig, LLC does not receive payment of your unpaid assessments, fees and costs of **\$1,855.00 by December 8, 2010**, a Notice of Delinquent Assessment (Lien) will be recorded in the office of the County Recorder; resulting in additional fees and costs. Should you fail to reinstate your account, you could lose ownership of your property.

Very truly yours,

ALESSI & KOENIG, LLC  
Mary Indalecio, Legal Assistant

Please be advised that Alessi & Koenig, LLC is a debt collector that is attempting to collect a debt and any information obtained will be used for that purpose.

A&K000009

USB0040

APP001977

# EXHIBIT 3

# EXHIBIT 3

When recorded return to:

ALESSI & KOENIG, LLC  
9500 W. Flamingo Rd., Suite 100  
Las Vegas, Nevada 89147  
Phone: (702) 272-4033

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&K000016

USB0047

APP001979

# EXHIBIT 4

# EXHIBIT 4

Inst #: 201103290002690  
Fees: \$14.00  
N/C Fee: \$0.00  
03/29/2011 09:54:46 AM  
Receipt #: 720898  
Requestor:  
ALESSI & KOENIG LLC (JUNES  
Recorded By: EAH Pgs: 1  
DEBBIE CONWAY  
CLARK COUNTY RECORDER

When recorded mail to:

THE ALESSI & KOENIG, LLC  
9500 West Flamingo Rd., Ste 100  
Las Vegas, Nevada 89147  
Phone: 702-222-4033

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

Trustee Sale No. 24230-4254

**NOTICE OF DEFAULT AND ELECTION TO SELL UNDER HOMEOWNERS ASSOCIATION LIEN**

**WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE!** You may have the right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account. The sale may not be set until ninety days from the date this notice of default recorded, which appears on this notice. The amount due is \$3,800.00 as of March 2, 2011 and will increase until your account becomes current. To arrange for payment to stop the foreclosure, contact: Glenview West Townhomes Association, c/o Alessi & Koenig, 9500 W. Flamingo Rd, Ste 100, Las Vegas, NV 89147.

THIS NOTICE pursuant to that certain Assessment Lien, recorded on January 4, 2011 as document number 0005412, of Official Records in the County of Clark, State of Nevada. Owner(s): EDWARDS GEORGE R TRUST, of LOT 19, as per map recorded in Book 30, Pages 65, as shown on the Plan, Recorded on as document number as shown on the Subdivision map recorded in Maps of the County of Clark, State of Nevada. PROPERTY ADDRESS: 4254 ROLLINGSTONE DR, LAS VEGAS, NV 89103. If you have any questions, you should contact an attorney. Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure. REMEMBER YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION. NOTICE IS HEREBY GIVEN THAT The Alessi & Koenig is appointed trustee agent under the above referenced lien, dated January 4, 2011, executed by Glenview West Townhomes Association to secure assessment obligations in favor of said Association, pursuant to the terms contained in the Declaration of Covenants, Conditions, and Restrictions (CC&Rs). A default in the obligation for which said CC&Rs has occurred in that the payment(s) have not been made of homeowners assessments due from and all subsequent assessments, late charges, interest, collection and/or attorney fees and costs.

Dated: March 2, 2011

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

A&K000046

USB0077

APP001981

# EXHIBIT 5

# EXHIBIT 5



When recorded mail to:  
Alessi & Koenig, LLC  
9500 West Flamingo Rd., Suite 205  
Las Vegas, NV 89147  
Phone: 702-222-4033

APN: 163-24-111-021

TSN 24230-4254

### NOTICE OF TRUSTEE'S SALE

**WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE THE SALE DATE. IF YOU HAVE ANY QUESTIONS, PLEASE CALL The Alessi & Koenig at 702-222-4033. IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION, AT 1-877-829-9907 IMMEDIATELY.**

**NOTICE IS HEREBY GIVEN THAT:**

On November 16, 2011, Alessi & Koenig as duly appointed Trustee pursuant to a certain lien, recorded on January 4, 2011, as instrument number 0003412, of the official records of Clark County, Nevada, WILL SELL THE BELOW MENTIONED PROPERTY TO THE HIGHEST BIDDER FOR LAWFUL MONEY OF THE UNITED STATES, OR A CASHIERS CHECK at: 4:00 P.M. at 930 S. 4th Street, Las Vegas Nevada 89101.

The street address and other common designation, if any, of the real property described above is purported to be: 4254 ROLLINGSTONE DR, LAS VEGAS, NV 89103. The owner of the real property is purported to be: EDWARDS GEORGE R TRUST

The undersigned Trustee disclaims any liability for any incorrectness of the street address and other common designations, if any, shown herein. Said sale will be made, without covenant or warranty, expressed or implied, regarding title, possession or encumbrances, to pay the remaining principal sum of a note, homeowner's assessment or other obligation secured by this lien, with interest and other sum as provided therein: plus advances, if any, under the terms thereof and interest on such advances, plus fees, charges, expenses, of the Trustee and trust created by said lien. The total amount of the unpaid balance of the obligation secured by the property to be sold and reasonable estimated costs, expenses and advances at the time of the initial publication of the Notice of Sale is \$5,370.00. Payment must be in cash, a cashier's check drawn on a state or national bank, a check drawn by a state bank or federal credit union, or a check drawn by a state or federal savings and loan association, savings association, or savings bank specified in section 5102 of the Financial Code and authorized to do business in this state.

Date: September 16, 2011

*Ryan Kerbow*

By: Ryan Kerbow, Esq on behalf of Glenview West Townhomes Association

A&K000053

USB0084

APP001983

# EXHIBIT 6

# EXHIBIT 6

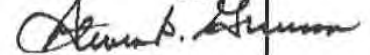
OCTOBER 2, 2017

US BANK V. EDWARDS

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Steven D. Grierson  
CLERK OF THE COURT



1 CASE NO. A-12-667690-C

2 DOCKET U

3 DEPT. XVI

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6

DISTRICT COURT

7

CLARK COUNTY, NEVADA

8

\* \* \* \* \*

9 U S BANK NATIONAL ASSOCIATION, )

10 Plaintiff, )

11 vs. )

12 GEORGE EDWARDS, )

13 Defendant. )

14

15

REPORTER'S TRANSCRIPT  
OF  
BENCH TRIAL

16

17

18

BEFORE THE HONORABLE JUDGE TIMOTHY C. WILLIAMS

19

DISTRICT COURT JUDGE

20

21

DATED TUESDAY, OCTOBER 2, 2017

22

23

24

REPORTED BY: PEGGY ISOM, RMR, NV CCR #541,

25

Peggy Isom, CCR 541, RMR

(702) 671-4402 - CROERT48@GMAIL.COM

Pursuant to NRS 239.053, illegal to copy without payment.

EDWARD APPENDIX 1643

Case Number: A-12-667690-C

APP001985

1 APPEARANCES:

2 FOR THE PLAINTIFF US BANK:

3

4 MCCARTHY HOLTHUS LLP

5 BY: THOMAS BECKOM, ESQ.

6 BY: PRISCILLA BAKER, ESQ.

7 9510 W SAHARA AVENUE

8 SUITE 200

9 LAS VEGAS, NV 89117

10 (702) 685-0329

11 (702) 866-339-5691 Fax

12 NO EMAIL PROVIDED

13

14

15 FOR RESOURCES GROUP LLC:

16

17 LAW OFFICES OF RICHARD VILKIN, P.C.

18 BY: RICHARD J. VILKIN, ESQ.

19 1286 CRIMSON SAGE AVENUE

20 HENDERSON, NV 89012

21 (702) 476-3211

22 (702) 476-3212 Fax

23 RICHARD@VILKINLAW.COM

24

25

Peggy Isom, CCR 541, RMR

(702) 671-4402 - CROERT48@GMAIL.COM

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EDWARD APPENDIX 1644

1 APPEARANCES CONTINUED:

2

3

GEISENDORF LAW OFFICE

4

BY: CHARLES L. GEISENDORF, ESQ.

5

2470 ST. ROSE PARKWAY

6

SUITE 309

7

HENDERSON, NV 89074

8

(702) 873-5868

9

10

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Peggy Isom, CCR 541, RMR

(702) 671-4402 - CROERT48@GMAIL.COM

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## EXHIBITS

EXHIBIT	DESCRIPTION	MARKED	RECEIVED
3	Equiline Agreement		21
17A	Document		34
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\* \* \* \* \*

1 LAS VEGAS, NEVADA, TUESDAY, OCTOBER 2, 2017

2 9:55 A.M.

3 P R O C E E D I N G S

4 \* \* \* \* \*

09:48:14 5

6 THE COURT: All right. Good morning.

7 MR. VILKIN: Good morning, your Honor.

8 THE COURT: And let's go ahead and note our  
9 appearances on the record.

09:55:33 10 MR. VILKIN: Richard Vilkin for defendant and  
11 counter-claimant Resources Group LLC as trustee.

12 MR. GEISENDORF: Charles Geisendorf for  
13 Resources Group.

14 THE COURT: All right. Has everybody noted  
09:55:47 15 their appearance?

16 MR. BECKOM: Thomas Beckom on behalf of US  
17 Bank and with me here is Priscilla Baker also from  
18 McCarthy Holthus as well as Bryan Heifner on behalf of  
19 US Bank.

09:55:57 20 MR. VILKIN: Also with us, your Honor, is  
21 Eddie Haddad, the manager of Resources Group.

22 MR. HADDAD: Good morning, your Honor.

23 THE COURT: Good morning. So anyway, at this  
24 time are we ready to proceed?

09:56:07 25 MR. VILKIN: Yes, your Honor.



09:56:08 1 THE COURT: Okay.

2 MR. VILKIN: But --

3 THE COURT: From a witness perspective, how

4 many witnesses do you anticipate calling?

09:56:13 5 MR. BECKOM: We're hoping to -- we have six

6 witnesses total for this entire case. We're hoping to

7 get -- knock out the four fact witnesses and take

8 experts tomorrow is my understanding.

9 THE COURT: I understand.

09:56:22 10 MR. VILKIN: Your Honor, we do have some

11 logistical issues that I'd like to present to the

12 Court. We've got two witnesses that have other

13 obligations this afternoon. Our plan was to take the

14 bank's witness first. That should be relatively short.

09:56:39 15 Then we have the sales trustee who will be somewhat

16 lengthy. He's supposed to testify in another matter at

17 1:00 o'clock.

18 There's also an HOA witness who just told me

19 that she has to be somewhere else at a board meeting at

09:56:54 20 2:00 o'clock.

21 So in talking to counsel beforehand, we're not

22 sure we can get done, we can get all those done by --

23 to accommodate all these witnesses.

24 THE COURT: I understand.

09:57:07 25 MR. VILKIN: So we're open to --

09:57:08 1 THE COURT: I'm not really concerned about  
2 that, and I'll tell you why. That's one of the  
3 beauties of a bench trial. Right? I only become  
4 concerned with witness availability in a jury trial  
09:57:21 5 setting. We'll get this case done. If we don't get it  
6 done exactly when we plan to get it done, we'll get it  
7 done within the next week or so. So I'm not worried  
8 about it. I'll get a chance to work with all the  
9 witnesses, and so on. We'll work with the  
09:57:35 10 availability.

11 MR. VILKIN: All right. Thank you, your  
12 Honor.

13 THE COURT: So that should be a nonissue.

14 MR. BECKOM: And one pragmatic thing I would  
09:57:39 15 request is that Mr. Heifner here was staying at  
16 Tropicana last night.

17 THE COURT: I heard about that, yes.

18 MR. BECKOM: Yes. We would ask respectfully  
19 that after he gives his testimony this morning, if we  
09:57:49 20 could just let him go. He's had very little sleep over  
21 the last 24 hours just because of some of the incidents  
22 that happened down on the strip.

23 MR. VILKIN: Would he be available tomorrow if  
24 needed? He's leaving today?

09:58:07 25 MR. BECKOM: He's leaving tomorrow at

09:58:07 1 10:00 a.m.

2 MR. VILKIN: All right.

3 THE COURT: Yeah. I mean, hypothetically, I

4 mean, I don't know exactly what's going to happen, but

09:58:18 5 I do understand probably the necessity for him to leave

6 today. I have no problem with that. If for whatever

7 reason he needs to be recalled, we can handle that

8 telephonically. I mean, think about it. I will have a

9 chance to have met him live. If there's anything

09:58:32 10 additional we need, I can do it telephonically.

11 MR. VILKIN: That would be great, your Honor.

12 THE COURT: I don't see where there's an issue

13 because it -- these are very unfortunate times, right?

14 MS. BAKER: True.

09:58:42 15 THE COURT: Probably the best way to say it.

16 So, okay, opening statements.

17 MS. BAKER: Yes, your Honor.

18 THE COURT: And, ma'am, you need the lectern.

19 Let's see if we can get her set up,

09:58:55 20 Mr. Marshal, if she needs.

21 THE MARSHAL: Your Honor.

22 THE COURT: Yes, a lectern.

23 THE MARSHAL: The lectern. Yes, your Honor.

24 Excuse me. Ladies and gentlemen, will this suffice or

09:59:06 25 do you want that big beast out in the hallway?

09:59:10 1 MR. VILKIN: No.

2 THE MARSHAL: I have to ask, so ...

3 MS. BAKER: That's fine.

4 Good morning, your Honor.

09:59:28 5 THE COURT: Good morning --

6 MS. BAKER: This case is regarding property

7 located at 4254 Rolling Stone Drive, Las Vegas, Nevada,

8 89103.

9 When plaintiff US Bank first became involved

09:59:39 10 in this property, the owner of the property was George

11 Edwards. He entered into an agreement with US Bank on

12 a home equity line of credit. He signed a note on

13 March 3, 2009, for credit of \$50,000. It was secured

14 by a future advances deed of trust that was recorded

09:59:59 15 against the property. The monthly payments were

16 201-dollar -- \$201.09.

17 Mr. Edwards became in default on the note and

18 the deed of trust in November 2, 2001 (sic). During

19 about that time, the borrower also passed away, but US

10:00:22 20 Bank wanted to keep or work with the heirs and the

21 borrower to keep the property with them. However,

22 there was a hitch in the plan. The borrower also

23 became delinquent in the HOA assessments.

24 The delinquency began in February 2010.

10:00:44 25 Glenview West Townhome Associations, which is the

10:00:48 1 defendants herein placed a lien on the property in  
2 January 14, 2011. The HOA assessments were \$130 a  
3 month. So the property ended up being sold in January  
4 25th, 2012, for \$5,331. The value of the property is  
10:01:11 5 estimated anywhere between \$35,000 and \$48,000 at that  
6 time, which was about 11 percent of the fair market  
7 value.

8 Before going to sale, after the lien was  
9 recorded, Robert Hazel, as part of the estate,  
10:01:32 10 attempted to make a part -- well, made a partial  
11 payment on the HOA liens for about \$700, which only  
12 delayed the sale from November 2011, the HOA sale to  
13 January 25th, 2012.

14 The HOA recorded a notice of default in March  
10:01:54 15 2011, however, the evidence will show that US bank was  
16 not served notice of the notice of default. They were  
17 served notice of the sale, which were sent to two  
18 different addresses which were on the deed of trust  
19 listed.

10:02:12 20 Pursuant to NRS 106 there was a requirement  
21 that if US Bank wanted to get notice anywhere other  
22 than what was addressed in the recordings of the notice  
23 of default, it would have had to record a new -- record  
24 notice that it wanted to be at a different address,  
10:02:29 25 which it did not do. US Bank wanted to be served where

10:02:33 1 it was stated in the notice of default. Which was also  
2 shown and the notice of sale was actually served at the  
3 two addresses that were used in the notice -- or in the  
4 deed of trust.

10:02:47 5 The evidence will also show that there were no  
6 bidders at the sale. It was sold back to the trust --  
7 a trust, as well as the CC&Rs had a subordination  
8 agreement putting people on notice that the lien would  
9 have been subordinate to the first deed of trust

10:03:08 10 regardless.

11 The evidence will also show that Resources  
12 Group is not a bona fide purchaser because the deed of  
13 trust put everybody on notice that there was a lien  
14 against the property, the sale was prior to SFR as well  
10:03:28 15 as Bourne Valley, which was then deeded the property in  
16 May 2012. Listed this property in the bankruptcy  
17 subject to the deed of trust. And that's where the  
18 Bourne Valley put a value of the property at \$35,000,  
19 signed under penalty of perjury.

10:03:56 20 Based on the situation, US Bank now seeks a  
21 judicial foreclosure. And evidence will show that US  
22 Bank isn't entitled to the judicial foreclosure --  
23 entitled to enforce the note, and they're the current  
24 beneficiary of the deed of trust. Thank you.

10:04:18 25 THE COURT: Thank you, ma'am.

10:04:20 1 MR. VILKIN: Good morning, your Honor. On  
2 behalf of defendant and counter-claimant Resources  
3 Group LLC as trustee for the Bourne Valley Court Trust,  
4 the current defendant, my client, obtained the property  
10:04:37 5 after the sale by way of grant, bargain and sale deed.  
6 But at the sale, Eddie Haddad was the person who  
7 appeared at the sale and purchased the property for,  
8 counsel is correct, \$5,331.

9 This was a public auction. It was advertised  
10:04:59 10 in the Nevada Legal News and posted around town, so it  
11 conformed to all the requirements of the sale.

12 And Mr. Haddad was the high bidder at the sale  
13 and paid cash that day and had title vested in an  
14 entity known at 4254 Rolling Stone Drive Trust, and  
10:05:19 15 Resources Group was the trustee of that trust and later  
16 transferred the property to the current plaintiff  
17 Bourne Valley Court Trust.

18 So at the time of the sale Mr. Haddad had no  
19 information about any allegations that you'll hear in  
10:05:43 20 this case concerning alleged defects in the sale. He  
21 knew nothing about it. The only thing he knew at the  
22 time of sale was what was contained in the recorded  
23 documents on the property. And there's nothing in any  
24 of the recorded documents that talk about any of the  
10:06:02 25 alleged defects that the bank is going to focus on.

10:06:06 1 And, in fact, you just heard in argument that  
2 the fact that the first deed of trust was recorded on  
3 the property was enough to destroy his status as a bona  
4 fide purchaser, however, that is not the law in this  
10:06:19 5 state. And the Shadow Wood case, the Nevada Supreme  
6 Court said the fact that a holder of a first deed of  
7 trust may bring an action of quiet title is not  
8 sufficient to destroy bona fide purchaser status.

9 So we believe the evidence is going to show  
10:06:36 10 that our client was a bona fide purchaser without  
11 notice of any defect in title or anything else that  
12 should prevent him from quieting title in this action.  
13 Because this is a quiet title action and both parties  
14 have alleged quiet title against each other.

10:06:54 15 The Court will hear evidence that the sale was  
16 not commercially reasonable because the price was  
17 approximately 10 percent of the alleged value at the  
18 time of the sale. However, in order to be commercially  
19 unreasonable, there also needs to be evidence of fraud,  
10:07:13 20 oppression, or unfairness leading to the lower price.  
21 And we don't believe there's any such evidence that's  
22 going to be presented to the Court.

23 With regard to the notice issue, your Honor,  
24 the first and most important part of this is that in  
10:07:33 25 order to be entitled to notice under NRS 116 at the



10:07:38 1 time of the sale in January of 2012, the bank was  
2 required to notify the association of its secured  
3 interest. Otherwise, it wasn't entitled to notice.  
4 This is the so-called opt-in aspect of Nevada law which  
10:07:56 5 the Nevada Supreme Court has ruled is constitutional.  
6 So there was no requirement that the bank get any of  
7 the notices in this case.

8           However, they, in fact, did get the notices.  
9 But it was voluntary. And what happened was -- even  
10:08:14 10 though counsel has told you they didn't get notice,  
11 what happened was they recorded a deed of trust, your  
12 Honor, which had three addresses on it. And the Court  
13 will get to see that document. And at the top of the  
14 document it had a name and an address of where to mail  
10:08:31 15 the recorded deed of trust. And that is the address  
16 that the sales trustee used in mailing out the notices  
17 in this case.

18           There were in addition two other addresses  
19 that the bank included in that deed of trust, but the  
10:08:48 20 bank said nothing in the document about where to send  
21 the notices. And so the bank created the confusion by  
22 having the three addresses, but not saying where they  
23 wanted the notices or where they wanted any information  
24 sent.

10:09:03 25           Finally, with regard to the superpriority lien

10:09:13 1 issues in this case. As the Court knows, the  
2 superpriority lien consists of nine months of  
3 assessments immediately proceeding the institution of  
4 an action to enforce the lien.

10:09:24 5 In this case the institution of the action  
6 began in January of 2011 when the notice of delinquent  
7 assessment lien was recorded. So the superpriority  
8 lien consisted of nine months of assessments prior to  
9 that dating back to April of 2013. The evidence is  
10:09:43 10 going to show that when this sale occurred, the  
11 association was paid assessments actually going back  
12 two months earlier, and so the nine months calculated  
13 out to about \$1170. There was a partial payment for  
14 \$414. But it still wasn't sufficient to pay off the  
10:10:09 15 superpriority lien. And the HOA was, in fact, paid off  
16 its superpriority lien, and the evidence is going to  
17 show that's, in fact, what was foreclosed on at this  
18 sale. So we're going to ask the Court at the end to  
19 quiet title in the name of defendant. And thank you.

10:10:28 20 THE COURT: Thank you, sir.

21 Anything else from the defense? Is that it?

22 MR. GEISENDORF: That's it.

23 THE COURT: Okay.

24 MR. BECKOM: US Bank would call as their first  
10:10:36 25 witness Bryan Heifner, corporate representative of US

Peggy Isom, CCR 541, RMR

(702) 671-4402 - CROERT48@GMAIL.COM

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2 required to notify the association of its secured  
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19 quiet title in the name of defendant. And thank you.

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21 Anything else from the defense? Is that it?

22 MR. GEISENDORF: That's it.

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10:10:36 25 witness Bryan Heifner, corporate representative of US

Peggy Isom, CCR 541, RMR  
(702) 671-4402 - CROERT48@GMAIL.COM

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10:10:41 1 Bank.

2 BRYAN HEIFNER,  
3 having been first duly sworn to testify to the truth,  
4 the whole truth and nothing but the truth, was examined  
10:11:01 5 and testified as follows:

6 THE COURT CLERK: Please be seated. And if  
7 you will state and spell your name for the record,  
8 please.

9 THE WITNESS: Bryan, B-R-Y-A-N. Heifner.  
10:11:13 10 H-E-I-F-N-E-R.

11

12 DIRECT EXAMINATION

13 BY MR. BECKOM:

14 Q. Good morning, Mr. Heifner.

10:11:23 15 A. Good morning.

16 Q. As a predicate matter, why don't you tell us  
17 what you do for a living.

18 A. I am a litigation analyst for US Bank National  
19 Association.

10:11:32 20 Q. Okay. And you were here today on behalf of  
21 the US Bank National Association?

22 A. Yes.

23 Q. Okay. And can you tell me what a litigation  
24 analyst for US Bank National Association does?

10:11:48 25 A. I prepare for testimonies at any depositions,

10:11:53 1 litigations, trials. I also appear at mediations and  
2 settlement conferences as well.

3 Q. Okay. And I believe you said you were  
4 employed by US Bank; correct?

10:12:04 5 A. Yes.

6 Q. What does US Bank do?

7 A. US Bank -- US Bank National Association, the  
8 division I work for originates, holds, services, and  
9 sometimes owns mortgages.

10:12:20 10 Q. Okay. And did you originate a mortgage on  
11 behalf of -- or for George Edwards?

12 A. US Bank National Association did originate a  
13 mortgage on behalf of Mr. Edwards.

14 Q. Okay. Let's go ahead. Do we have an exhibit  
10:12:35 15 binder up there for you?

16 THE COURT CLERK: It's behind him.

17 MR. BECKOM: Okay.

18 BY MR. BECKOM:

19 Q. Why don't we go ahead and grab that exhibit  
10:12:45 20 binder. And I would direct you to -- its right there  
21 in the big binder. I would direct you to Exhibit 3 of  
22 that binder.

23 A. Okay.

24 Q. You've seen this document before, Mr. Heifner?

10:13:19 25 A. No. The US Bank equity line agreement, that's

10:13:22 1 what we're looking at, correct?

2 Q. Okay.

3 A. There's three.

4 Q. And then, I believe, on the bottom right-hand  
10:13:26 5 corner there's a series of numbers, USB005, and then a  
6 document ends in USB0010. Do you have five pages of  
7 this document as well?

8 A. I do.

9 Q. Okay. Have you seen this document before,  
10:13:44 10 Mr. Heifner?

11 A. Yes.

12 Q. Okay. And what is this document that we're  
13 looking at?

14 A. This is the equiline agreement or also the  
10:13:53 15 note.

16 Q. And this was the note that US Bank -- or the  
17 agreement that US Bank entered into with Mr. Edwards  
18 for the home equiline agreement, correct?

19 A. Yes.

10:14:06 20 Q. Okay. And you have no reason to believe that  
21 this is -- this is a true and correct version of the  
22 note that US Bank has with Mr. Edwards, correct?

23 A. Yes.

24 Q. Now, it was my understanding that this note,  
10:14:23 25 that this note is kept in electronic form only;

Peggy Isom, CCR 541, RMR

(702) 671-4402 - CROERT48@GMAIL.COM

Pursuant to NRS 239.053, illegal to copy without payment.

EDWARD APPENDIX 1661

10:14:26 1 correct?

2 A. That is correct.

3 Q. Can you tell me the name of the system that  
4 this form -- that this note is kept within?

10:14:32 5 A. Yeah. Typically, refer to the system by  
6 letters. LDRS, which stands for Lender Document  
7 Retrieval System.

8 Q. Okay. And in your experience with dealing  
9 with LDRS, this is a reliable system for the retrieval  
10:14:53 10 of documents such as Exhibit 3?

11 A. Yes.

12 Q. Okay. And in this system, LDRS, there's only  
13 one authoritative company of your equiline agreement  
14 with Mr. Edwards?

10:15:07 15 A. Yes.

16 Q. Okay. Now, on this document I would direct  
17 you over to USB0010. That's the very last page.

18 Do you see in the bottom -- I guess, in the  
19 middle of page on the bottom left-hand corner where it  
10:15:31 20 says this note is a transferable record?

21 A. Yes.

22 Q. What is your understandings of this provision  
23 of the equiline agreement?

24 A. That we would keep an electronic copy of the  
10:15:44 25 record and force and service it based on that



10:15:47 1 electronic copy.

2 Q. Okay.

3 A. And in many cases or the most cases the  
4 original will be destroyed, and we would enforce it

10:15:55 5 based on the copy.

6 Q. Based on the electronic copy?

7 A. Yes.

8 Q. Okay.

9 MR. BECKOM: I would, therefore, move to admit  
10:16:01 10 Exhibit 3 to the extent it was not admitted already?

11 MR. VILKIN: No objection.

12 MR. BECKOM: Okay.

13 THE COURT: Okay. It will be admitted.

14 So admitted.

10:16:10 15 (Exhibit 3 admitted)

16 BY MR. BECKOM:

17 Q. On what bank -- on what date did US Bank enter  
18 into this agreement with Mr. Edwards?

19 A. March 3, 2009.

10:16:46 20 Q. Okay.

21 A. On this one, yes.

22 Q. Okay. And where -- are you basing your  
23 testimony off of, like, the top left-hand corner of the  
24 first page?

10:16:56 25 A. I was referring to the signature date.

10:16:58 1 Q. Okay.

2 A. Which is the same as the top left-hand corner.

3 Q. Now what amount of money did US Bank agree to

4 lend to Mr. Edwards?

10:17:10 5 A. The line of credit was up to \$50,000.

6 Q. \$50,000. And what was the purpose that

7 Mr. Edwards was taking out this loan for?

8 A. This was -- the reasoning behind this was

9 medical bills. And I believe some of them may have

10:17:32 10 paid off a prior line of credit.

11 Q. Okay. Let's go over to USB0006 which is the

12 second page of Exhibit 3. Do you see on the top

13 left-hand corner where it says initial rate?

14 A. Yes.

10:17:52 15 Q. Okay. Is it your understanding that this loan

16 had an initial rate of 4.75 percent?

17 A. Yes.

18 Q. Okay. And then down in the middle of the page

19 where it says annual percentage rate. It also had an

10:18:09 20 annual percentage rate of 3.99 percent?

21 A. Yes. That's the lowest -- it will never

22 decrease below 3.99.

23 Q. Okay. Or it would not decrease below 3.99?

24 A. Yeah, 3.99.

10:18:25 25 Q. Okay. Let's go to USB0007. Do you see in the

10:18:34 1 top left-hand corner of Exhibit 3 where it says  
2 security?

3 A. Yes.

4 Q. Is it your understanding that US Bank took out  
10:18:43 5 a security interest in the real property commonly known  
6 as 4254 Rolling Stone Drive, Las Vegas, Nevada, 89103?

7 A. Yes.

8 Q. Okay. Moving down, I guess, down this  
9 document where it says assumption. It sues someone  
10:19:04 10 buying your house cannot assume the remainder of the  
11 mortgage on the original terms. Is it your  
12 understanding that this document bars a transfer of  
13 interest in the property from Mr. Edwards to any other  
14 entity?

10:19:17 15 A. Yes.

16 Q. Okay. And would a transfer of interest to any  
17 other entity either involuntary or voluntary result in  
18 a breach of this loan agreement?

19 A. Yes.

10:19:27 20 Q. Okay. I'm going to direct you over then to  
21 the left column of USB0007. Do you see the portion  
22 that says priority?

23 A. You said left side, right?

24 Q. I apologize. Right side.

10:19:53 25 A. Okay. Yes.

10:19:57 1 Q. Okay. This portion of Exhibit 3 says the  
2 residence that secures this loan is the primary  
3 security, and the security interest granted herein will  
4 be resorted to only in the event of a deficiency in the  
10:20:16 5 equity of the residence. Do you see what I'm talking  
6 about?

7 A. Yes, I do.

8 Q. Again, that is your understanding that US Bank  
9 had a security interest in this property pursuant to  
10:20:23 10 this loan noted Exhibit 3?

11 A. Yes.

12 Q. Okay. On the very bottom of the right-hand  
13 column on USB0007, do you see where it says cost of the  
14 collection?

10:20:39 15 A. Yes.

16 Q. Okay. And it says you agree to pay the costs  
17 we incur to collect this debt and realize on any  
18 collateral in the event of your default, do you see  
19 that provision?

10:20:51 20 A. I do.

21 Q. Is it your understanding that Mr. Edwards had  
22 agreed to US Bank that the -- in the event of a default  
23 under this loan note, that costs of collection  
24 including attorney's fees and other provisions would be  
10:21:05 25 paid by the borrower pursuant to this agreement?

10:21:08 1 A. Yes.

2 Q. Okay. Let's move over to USB0008. In the  
3 right-hand column where it says default. Let me know  
4 when you get there.

10:21:22 5 A. Yes, I'm there.

6 Q. Okay. Under default it says you'll be  
7 defaulted on this agreement if any of the following  
8 occur. Subsection 2 says subject to any right to cure  
9 you may have, if any, if you do not meet the repayment  
10 terms or otherwise fail to perform any obligation under  
11 this agreement; do you see what I'm talking about?

12 A. Yes.

13 Q. And so if Mr. Edwards failed to make payments  
14 under this equiline agreement, would that be a breach  
10:21:49 15 in the agreement?

16 A. Yes.

17 Q. Okay. Subsection 3 of that same provision  
18 says, Your action or inaction adversely affects it's --  
19 let me come at that a different way.

10:22:07 20 It says that you will be defaulted under this  
21 agreement if any of the following occur. Subsection 3  
22 says, your action or inaction adversely affects the  
23 collateral or our rights in the collateral including  
24 but not limited to failure to maintain property  
10:22:21 25 insurance on the dwelling, the transfer of the

10:22:24 1 property, failure to maintain the property, or use it  
2 in destructive manner in the commission of waste,  
3 failure to pay taxes on the property, otherwise fail to  
4 act and thereby cause a lien to be filed against the  
10:22:36 5 property that is senior to our lien.

6 And then after that it also discusses the  
7 death of the borrower; do you see what I'm discussing?

8 A. Yes.

9 Q. Okay. So if there was a senior lien filed  
10:22:48 10 against this property that adversely affected US Bank's  
11 rights in the 4254 Rolling Stone Drive property, US  
12 Bank's understanding of this agreement would be that  
13 that would be a breach of the agreement between US Bank  
14 and Mr. Edwards?

10:23:02 15 A. Yes.

16 Q. Okay. And in addition, if the borrower died,  
17 that would also be a breach under this agreement; is  
18 that your understanding as well?

19 A. Yes.

10:23:15 20 Q. Okay. So you've reviewed US Bank's records in  
21 regards to this property today; correct?

22 A. Yes.

23 Q. What is your understanding about the current  
24 status of Mr. Edwards?

10:23:30 25 A. Mr. Edwards is deceased.

10:23:32 1 Q. Mr. Edwards is deceased? How were you able to  
2 come to that determination?

3 A. We were notified by, initially by his son --

4 Q. Okay.

10:23:41 5 A. -- who sent us the executor of the estate  
6 information so that we could speak to him in regards to  
7 the payments. And he proceeded to make payments on the  
8 account for some time.

9 Q. Okay. But it's your understanding that,  
10:23:54 10 though, that Mr. Edwards is no longer with us today?

11 A. That is correct.

12 Q. And according to US Bank's understanding of  
13 this agreement that would be a breach under the  
14 equiline agreement between US Bank and Mr. Edwards;  
10:24:04 15 correct?

16 A. Correct.

17 Q. Okay. And, I guess, seems slightly redundant,  
18 but we'll go down this route anyway. US Bank's  
19 understanding is US Bank aware of an HOA foreclosure on  
10:24:20 20 this property?

21 A. Now we are, yes.

22 Q. Now you are. Okay.

23 And your understanding of this agreement is  
24 that if there was a senior HOA lien filed against this  
10:24:30 25 property due to the inaction of Mr. Edwards that that

10:24:32 1 would be a breach under this equiline agreement?

2 A. Yes.

3 Q. Okay. Mr. Edwards, I believe you said that  
4 the executor of his estate was paying for some time and  
10:24:49 5 then Mr. Edwards -- and then they stopped paying. Did  
6 you mention that earlier?

7 A. Yes. There was a prior -- we had a prior sale  
8 scheduled just before I think it was in 2011. We had a  
9 prior sale scheduled, and we had to cancel that sale  
10:25:07 10 because the day before was reinstated by Mr. Hazel who  
11 I believe is the son of Mr. Edwards.

12 Q. Okay.

13 A. Or the executor of the estate which stopped  
14 the prior sale that we had scheduled for the  
10:25:16 15 foreclosure.

16 Q. It might take a minute to get over here, but  
17 let's move over to Exhibit 17. This is USB0308.

18 Let me know when you get there.

19 A. You said 17, right?

10:25:58 20 Q. Exhibit 17, USB0308 is the Bates No. in the  
21 lower right-hand corner.

22 MR. VILKIN: I'm sorry. What was the Bates?

23 MR. BECKOM: 0308.

24 BY MR. BECKOM:

10:26:22 25 Q. Have you seen this document before,



10:26:24 1 Mr. Heifner? Oh, are you not -- are you still getting  
2 there?

3 A. You said 0308?

4 Q. Yes, sir.

10:26:29 5 A. All right. I had to flip a little bit past  
6 there. If I'm on the correct page, it would be a  
7 screenshot of our system; is that correct?

8 Q. Yes. I mean, it's --

9 A. 03.

10:26:42 10 Q. Have you seen this document before?

11 A. Yes.

12 Q. Okay. What is it that we're looking at?

13 A. This is a direct screenshot of our servicing  
14 system.

10:26:50 15 Q. Okay. And what does this document tell you  
16 based on your review?

17 A. This is giving me the loan information: Name,  
18 address, dates and amounts in regards to the line of  
19 credit.

10:27:06 20 Q. Okay. Does this also demonstrate the past due  
21 amount as well as the date of first delinquency?

22 A. Yes, it does.

23 Q. Okay. And this is kept in the ordinary course  
24 of your -- this is kept in US Bank's system; correct?

10:27:23 25 A. That's correct, yes.

10:27:23 1 Q. And the data that the system would rely on  
2 would be inputted as the delinquency occurs; correct?

3 A. Yes.

4 Q. Okay.

10:27:30 5 MR. BECKOM: On that basis I would move to  
6 admit Exhibit 17 USB0308 into evidence, your Honor.

7 MR. VILKIN: I'm going to object as lack of  
8 foundation. We don't know. No information has been  
9 provided as to who input this information, what sort of  
10:27:48 10 safeguards were used in order to check and determine  
11 the accuracy of the information. And I just think  
12 foundation is lacking.

13 MR. BECKOM: Mr. Heifner has testified he's  
14 competent as US Bank's corporate witness. He's  
10:28:04 15 identified this document as directly coming from their  
16 system. The default would be clearly relevant in this  
17 scenario, and it would be a business record that he has  
18 testified as being entered into.

19 THE COURT: Why is all this relevant, his  
10:28:15 20 testimony?

21 MR. BECKOM: This is a judicial foreclosure  
22 action and so --

23 THE COURT: No. I understand that. But, I  
24 mean, at the end of the day it seems to me that today's  
10:28:23 25 trial will focus primarily on the three issues. One

10:28:26 1 would be the notice and whether it was required to the  
2 bank. Two would be the BFP status. And number three,  
3 the commercial reasonableness of the transaction.

4 MR. BECKOM: We still --

10:28:36 5 THE COURT: There's no tender, right?

6 MR. VILKIN: Correct.

7 THE COURT: Yes.

8 MR. BECKOM: We still -- we still, I guess --  
9 and I might be wrong in this regard, but it's my

10:28:44 10 understanding that we still have to prove up --  
11 ultimately, we're asking for a judicial foreclosure  
12 judgment against, you know, possibly Resources Group  
13 depending on the outcome of this action if the property  
14 has been held subject to the deed of trust.

10:28:57 15 We will need to establish sufficient default  
16 on that basis in order to establish that we have the  
17 ability to foreclose based on the breach of contract  
18 claim, the underlying breach of contract between US  
19 Bank and Mr. Edwards. And so that's why, I would

10:29:11 20 contend anyway, that that's relevant. While it might  
21 not be relevant for the Shadow Wood factors, I guess,  
22 we would respectfully argue that is relevant in terms  
23 of establishing breach in order to foreclose.

24 THE COURT: Anything you want to add to that?

10:29:26 25 MR. VILKIN: Nothing further, your Honor.

10:29:27 1 THE COURT: Okay. So, but, I mean, my  
2 ultimate decision is going to make a determination as  
3 to whether or not the HOA sale resulted in an  
4 extinguishment of the first deed of trust pursuant to

10:29:44 5 SFR: Right? So why does it matter?

6 Because one of two things will happen: Either  
7 the defendant takes free and clear or they don't;  
8 right? So I'm trying to figure out why all this  
9 information is really and truly necessary.

10:29:59 10 MR. BECKOM: My understanding of a judicial  
11 foreclosure action is that we would get a judicial  
12 foreclosure judgment against both Resources Groups as  
13 trustee for the Bourne Valley Trust as well as all the  
14 other subordinate lienholders and Mr. Edwards and his  
10:30:14 15 estate.

16 From there we would need a writ of execution  
17 in order to have a sheriff sale after the one  
18 year right of redemption from the judicial foreclosure.  
19 We'd need the breach to be incorporated into whatever  
10:30:28 20 judgment the Court issues here today. Because we will  
21 be unable to sell the property at a sheriff sale as to  
22 all parties if we cannot read into the record the  
23 default which has occurred.

24 THE COURT: So, I guess, that's contingent  
10:30:41 25 upon what my ultimate decision would be --

10:30:43 1 MR. BECKOM: Yes.

2 THE COURT: -- as it relates to the notice  
3 issue, the BFP issue, and the commercial reasonableness  
4 of the sale.

10:30:49 5 MR. BECKOM: Yes. I mean, obviously, like, we  
6 can establish a breach all day long, but if we don't  
7 have a security interest, there's not a lot to  
8 foreclose on.

9 But it's our position, anyway, that we would  
10:30:59 10 still establish the breach, and then also continue to  
11 establish all the factors under Shadow Wood as well as  
12 the mechanical defects of the sale.

13 THE COURT: No. I understand that.

14 Anything else I need to know?

10:31:10 15 MR. BECKOM: Um.

16 THE COURT: I'll overrule.

17 MR. BECKOM: Overrule?

18 THE COURT: Yeah.

19 MR. BECKOM: Okay.

10:31:19 20 THE COURT: So we got a breach. Now what?

21 THE COURT CLERK: I need to clarify, does that  
22 mean that the exhibit is admitted.

23 THE COURT: Yes, it's admitted.

24 THE COURT CLERK: Okay. So I need to --

10:31:28 25 THE COURT: What exhibit number is that?

10:31:29 1 MR. BECKOM: That is Exhibit 17. Just Bates  
2 No. USB0308.  
3 THE COURT CLERK: So we'll call it 17A.  
4 MR. BECKOM: Sounds like a plan to me.  
10:31:37 5 Whatever makes it easier for the Court.  
6 THE COURT CLERK: Thank you.  
7 (Exhibit 17A admitted)  
8 THE COURT: So we have a breach. Maybe it  
9 would be breaches, right?  
10:31:51 10 MR. HADDAD: Stack them up.  
11 MR. BECKOM: Breaches all over the place, your  
12 Honor.  
13 BY MR. BECKOM:  
14 Q. We've got a -- we've got a deceased borrower,  
10:31:56 15 and we've got a transfer of property, and then also  
16 Mr. Heifner. So this is -- so according to this  
17 printout from US Bank's system, do you see where it  
18 says first DELQ date?  
19 A. (No audible response.)  
10:32:19 20 Q. On the bottom left-hand corner.  
21 A. Yes, I just looked at this earlier. Yes, I  
22 see that now. Yes. Correct. First delinquency date,  
23 DELQ date of December 2011.  
24 Q. Okay. And what does that information tell you  
10:32:32 25 in regards to Mr. Edwards' payment on the loan note?

10:32:37 1 A. That would indicate that December of 2011  
2 payment was not made.

3 Q. Okay. To the best of your knowledge has he  
4 made -- did he make any payments since December of 2011  
10:32:47 5 towards the US Bank equiline agreement?

6 A. No.

7 Q. Are you able to tell from this document the  
8 amount currently in default to US Bank as far as  
9 payments go?

10:32:59 10 A. As far as payments the -- at the time that  
11 this document was printed, the payments were due at  
12 \$4,662. The balance was 60 -- be \$4,000.

13 Q. Okay. And so that would be the amount at the  
14 time this document was printed that was owed to US  
10:33:20 15 Bank, correct?

16 A. Correct.

17 Q. Okay. I believe you stated earlier that this  
18 note was secured against the property 4254 Rolling  
19 Stone Drive, correct?

10:33:32 20 A. Yes.

21 Q. How does US Bank typically secure their loan  
22 agreements in Nevada?

23 A. Deed of trust.

24 Q. Okay. I can direct you to Exhibit 4. Now,  
10:34:21 25 just to be -- oh, take your time.

10:34:23 1 A. I'm there.

2 Q. Now, just to be clear, my Exhibit 4 is showing  
3 as USB0011, and then ends at USB0019. Is that what  
4 your document is showing as well?

10:34:43 5 A. Yes.

6 Q. And what is this document that we are looking  
7 at here today, Mr. Heifner?

8 A. This is a recorder copy of the deed of trust  
9 between US Bank National Association, ND and Mr. George  
10 R. Edwards.

11 Q. So this is the deed of trust that secured the  
12 agreement between your employer US Bank and  
13 Mr. Edwards, correct?

14 A. Yes.

10:35:05 15 Q. Okay.

16 MR. BECKOM: On that basis I would move to  
17 admit Exhibit 4 for all purposes?

18 MR. VILKIN: No objection.

19 THE COURT: So admitted.

10:35:17 20 (Exhibit 4 admitted)

21 BY MR. BECKOM:

22 Q. I'm going to go over a couple pages to  
23 USB0017.

24 A. Okay.

10:35:48 25 Q. Do you see where it's circled and says



10:35:52 1 signatures?

2 A. I do see the signatures.

3 Q. Okay. Is your understanding that this is  
4 Mr. Edwards' signature on this document?

10:36:01 5 A. Yes.

6 Q. Okay. And it appears that he executed this  
7 document on March the 3rd, 2009; is that correct?

8 A. Yes.

9 Q. Okay. And so US Bank's and your understanding  
10:36:15 10 of this is that this is the agreement to secure 4254  
11 Rolling Stone Drive or to secure the note that we  
12 discussed earlier against 4254 Rolling Stone Drive;  
13 correct?

14 A. Yes.

10:36:27 15 Q. Okay. Let's go back to the first page. I  
16 want to take a look at a couple of the entities here  
17 that you listed under the deed of trust with a future  
18 advance clause. Would you be able to take a moment for  
19 me and identify where US Bank, who you are here  
10:37:04 20 representing today, where they are listed on this deed  
21 of trust for the Court and for all the parties present?

22 A. Yeah. It's near the bottom of the page under  
23 the bold title lender.

24 Q. Okay. And so that is who you are here on  
10:37:21 25 behalf of today, US Bank National Association, ND;

10:37:25 1 correct?

2 A. Yes.

3 Q. There's an address below 4325, 17th Avenue  
4 Southwest, Fargo, North Dakota, 58103. Do you see what

10:37:37 5 I'm talking about?

6 A. Yes.

7 Q. Is that the address for US Bank?

8 A. That would be one of the addresses for US  
9 Bank. For this loan in question, that would be the

10:37:45 10 address.

11 Q. So if I wanted to send correspondence to US  
12 Bank, I could send it to this address?

13 A. Yes.

14 Q. Okay. Now, let's go up and talk about some of  
10:37:57 15 the other entities here on US Bank's deed of trust. Do  
16 you see in the upper left-hand corner where it says  
17 Southwest Financial Services Ltd?

18 A. Yes.

19 Q. Do you know who Southwest Financial Services  
10:38:13 20 Ltd is?

21 A. I do not.

22 Q. Okay. Are they in any way affiliated with US  
23 Bank?

24 A. Not to my knowledge.

10:38:23 25 Q. Okay. So if I sent a letter or any kind of

10:38:26 1 correspondence to Southwest Financial at their 537 East  
2 Pete Rose Way, Suite 300, Cincinnati, Ohio, would that  
3 reach US Bank?

4 A. No.

10:38:40 5 Q. Okay. Let's go down to the next one where it  
6 says return to. Do you see what I'm talking about?

7 A. Yes.

8 Q. Okay. Are you familiar with the entity US  
9 Recordings?

10:38:53 10 A. I am not.

11 Q. Okay. Is US recordings in any way affiliated  
12 with US Bank?

13 A. Not to my knowledge.

14 Q. If I sent mail to 2925 Country Drive, Suite  
10:39:06 15 201, St. Paul, Minnesota, 55117, would that reach US  
16 Bank?

17 A. No.

18 Q. Okay. And so -- and does US Bank place their  
19 address in this deed of trust in order to get notice?

10:39:25 20 A. Yes.

21 Q. Okay. And it was US Bank's understanding that  
22 they wished to receive notice at 4325 17th Avenue  
23 Southwest, Fargo, North Dakota, 58103?

24 A. Yes.

10:39:40 25 Q. Okay. And if it was sent to any of the other

10:39:49 1 addresses on the first deed of trust, it is US  
2 Bank's -- your understanding that US Bank would not  
3 have received that notice?

4 A. That is correct.

10:39:56 5 Q. And also is it your understanding that US Bank  
6 did not indicate they wanted to receive notices there  
7 under this deed of trust?

8 A. That is correct.

9 Q. Okay. And they -- and did US Bank  
10:40:06 10 specifically file this document in the property records  
11 to delineate an address for service on to US Bank?

12 A. Yes.

13 Q. Okay. Over on to USB0013. Under where it  
14 says payments; do you see what I'm talking about?

10:40:37 15 A. Yes.

16 Q. And then it says grantor agrees that all  
17 payments under the secured debt will be paid when due,  
18 correct?

19 A. Yes.

10:40:43 20 Q. That is just one more indication that an  
21 agreement between Mr. Edwards and US Bank that US Bank  
22 would be paid; correct?

23 A. That is correct.

24 Q. Okay. Let's go down to where it says claims  
10:41:00 25 against title.

10:41:11 1           So let's take a look at this one. It says  
2 grantor will pay all taxes, assessments, liens,  
3 encumbrances, lease payments, ground rents, utilities  
4 and other charges relating to the property when due.

10:41:26 5 Lender may require grantor to provide lender copies of  
6 all notices that such amounts are due and the receipt  
7 evidencing grantor's payment.

8           Grantor will defend title to the property  
9 against any claims that would impair the lien of this  
10:41:39 10 security interest. Grantor agrees to assign to lender  
11 as requested by lender any rights, claims, or defenses  
12 grantor may have against parties who supply labor and  
13 materials to maintain or improve the property. Do you  
14 see what I'm talking about?

10:41:57 15       A.    Yes.

16       Q.    Okay. Is it your understanding that  
17 Mr. Edwards was supposed to discharge liens that became  
18 superior to US Bank's deed of trust?

19       A.    Yes. He's to -- well, first to prevent any  
10:42:12 20 liens from occurring. Second to satisfy those liens or  
21 notify us of those liens so that we may do so.

22       Q.    I understand.

23           Did Mr. Edwards notify US Bank of any superior  
24 liens on the property?

10:42:25 25       A.    No.

10:42:25 1 Q. Okay. Was US Bank, when you review there --  
2 well, actually did you review the internal systems, US  
3 Bank's internal system prior to coming here today?

4 A. Yes.

10:42:39 5 Q. Did you see any indication whatsoever in US  
6 Bank's file that they received any foreclosure notices  
7 from any kind of homeowners association associated with  
8 4254 Rolling Stone Drive at all?

9 A. Not at all.

10:43:00 10 Q. Let me ask you this. Are you familiar with US  
11 Bank's policies and procedures in regard to superior  
12 liens?

13 A. Yes.

14 Q. If US Bank had received a notice from a  
10:43:10 15 homeowners association regarding a homeowners  
16 association foreclosure, can you explain to the Court  
17 and all the parties here what US Bank would have done?

18 A. Yes. I actually worked in our collection  
19 department in 2011. I was trained then specifically on  
10:43:26 20 states such as Nevada in what to do if we were notified  
21 of a lien by the actual borrower.

22 And US Bank received notice or notified of  
23 that would request contact information, payoff  
24 information, or would pay the lien off if we received  
10:43:42 25 the notice of default in order to protect our interest

10:43:46 1 in states where we would need to do so.

2 Q. So US Bank's policies and procedures is if  
3 they had received the notice of default, they would  
4 have paid off the lien, correct?

10:43:55 5 A. Yes.

6 Q. Was there an available -- was there -- I  
7 believe you stated this is a home equity line of  
8 credit, correct?

9 A. Yes.

10:44:04 10 Q. And so they, Mr. Edwards just withdraws money  
11 from the line of credit and then there's still  
12 additional money available on that line of credit,  
13 correct?

14 A. Yes.

10:44:14 15 Q. Okay. Was there an available -- was there  
16 available credit on the line of credit to discharge the  
17 entirety -- to discharge any kind of superior  
18 homeowners association lien in 2011?

19 A. Depending on the amount, I believe there would  
10:44:30 20 have been. There was some available credit there, and  
21 upon reading the deed of trust along with the notes, it  
22 does state that that would be a possibility, or that  
23 would be our right to do so to protect our interest  
24 would be to pull from that line of credit to satisfy  
10:44:49 25 any liens.

10:44:51 1 Q. So to be -- just to be clear then, we  
2 discussed on the first page of the deed of trust that  
3 there is a Fargo, North Dakota, address that US Bank  
4 has delineated as their address for service, correct?

10:45:06 5 A. Yes.

6 Q. And if US Bank had received a notice of  
7 default for a homeowners association to that address,  
8 your company's policies and procedures were to pay that  
9 lien off in full?

10:45:20 10 A. Yes.

11 Q. Okay. And then you did not receive or you can  
12 find no record in US Bank's systems of ever receiving a  
13 notice of default on this property at all?

14 A. Yes. We've searched our records. I've  
10:45:35 15 actually read all the notes in the account. When they  
16 searching for records when we were noticed of this  
17 case, we have no record of our legal system -- or our  
18 legal addresses receiving any notice of default. And  
19 all of our documents received are scanned into our  
10:45:48 20 document retrieval system. And I've looked through  
21 every document on there as well, and there's no  
22 documents that would indicate so.

23 Q. Okay.

24 MR. BECKOM: I don't believe I have any  
10:46:13 25 further questions for this witness.



10:46:14 1 THE COURT: All right. Cross-examination.

2 MR. VILKIN: Thank you, your Honor.

3

4

CROSS-EXAMINATION

10:46:16 5 BY MR. VILKIN:

6 Q. Mr. Heifner, good morning.

7 A. Good morning.

8 Q. You've testified that in 2011 you worked in,  
9 was it the collection department?

10:46:29 10 A. Yes.

11 Q. And you were trained to do that work, is that  
12 correct?

13 A. We were trained to fill -- when speaking to  
14 our customers to notify certain departments or open  
10:46:43 15 certain tasks if we were advised by the borrower that  
16 there was a lien or an HOA foreclosure proceeding of  
17 any type so that we can notify that department  
18 verbally.

19 Q. Were you trained as to what the law was in  
10:46:56 20 Nevada in terms of whether a bank was required to be  
21 given notice of default?

22 A. As a collection representative, no. We  
23 typically aren't trained, or in most cases need to try  
24 to analyze the law in any way or make any type of  
10:47:19 25 speculation in regards to the law. That's why we have

10:47:21 1 counsel, and legal counsel and corporate counsel that  
2 helps make our policies and relate it to law.

3 Q. Well, do you know whether a bank such as yours  
4 in 2011 was required to be given a notice of default if  
10:47:33 5 it had not notified the homeowners association of its  
6 secured interest in the property?

7 MR. BECKOM: Objection. He's asking for a  
8 legal conclusion of my witness which is not a fact  
9 relevant -- he's not listing facts. He's listing  
10:47:50 10 conclusions of law.

11 THE COURT: I'll sustain. You can reframe it.  
12 BY MR. VILKIN:

13 Q. Well, your job was to try and protect the  
14 interests of the bank, correct, in the collection  
10:47:59 15 department?

16 A. Yes.

17 Q. And would you consider significant to know  
18 whether or not a bank was required to be given notice  
19 of default if it had not notified a homeowners  
10:48:13 20 association of its secured interest?

21 MR. BECKOM: Same objection. He's still  
22 asking for conclusions of law.

23 THE COURT: Overrule.

24 THE WITNESS: In my position at that time, I  
10:48:23 25 would have followed our policies and procedures which

10:48:26 1 would have been put in place by our legal team who  
2 would specialize in that.

3 BY MR. VILKIN:

4 Q. Well, was there a policy in place that  
10:48:36 5 required your bank to give notice to a homeowners  
6 association of its secured interest in the property  
7 once it obtained that secured interest?

8 A. My role then wouldn't -- wouldn't have had  
9 anything to do with that. I wouldn't -- the policies  
10:48:50 10 and procedures that I would have been following in my  
11 role would be how to handle and field calls in related  
12 to loans in default or when notified of any HOA sale or  
13 any HOA default and who to notify of that.

14 Q. Is the answer is you don't know?

10:49:06 15 A. I don't know in regards to your question and  
16 the law around that, no.

17 Q. Okay. Now, you said that you reviewed all of  
18 the documents that your bank has concerning this loan;  
19 correct?

10:49:21 20 A. Yes.

21 Q. And did you see in there any notice that the  
22 bank gave to the Glenview -- I'm sorry, Glenview West  
23 Townhomes Association of its secured interest in the  
24 property at any time?

10:49:42 25 A. Not to my knowledge.

10:49:44 1 Q. Take a look if you would at Exhibit 17.  
2 You don't have to look through it right now.  
3 I'm going to ask my question, and then you can look  
4 through it.

10:50:17 5 A. Okay.

6 Q. My question is, sir, if you could look through  
7 there and tell me if you see in there any document that  
8 could be considered a notice from your bank to the  
9 Glenview West Townhomes Association of its secured  
10:50:31 10 interest in the property? Take as much time as you  
11 need.  
12 A. Your question was specifically related to us  
13 giving notice to?  
14 Q. Right. To the Glenview West Townhomes  
10:52:05 15 Association of its secured interest in the property?  
16 A. Well, our secured interest in the property  
17 would have been indicated when the deed of trust was  
18 recorded on March 26, 2009, to my knowledge.  
19 Q. Well, I understand that. What I'm asking is  
10:52:25 20 did your bank ever give a notice to the association  
21 that it had a secured interest in the property?  
22 A. And when you're asking of notice are you  
23 referring to us directly sending something to the  
24 association ourselves?

10:52:43 25 Q. Yes.

10:52:43 1 A. Or not to my knowledge. I don't know of us  
2 sending anything directly to them.

3 Q. Okay. Could you just look through all those  
4 documents in Exhibit 17 and tell us whether or not  
10:52:52 5 there's anything in there that you would consider a  
6 notice sent from US Bank to the Glenview West Townhomes  
7 Association notifying them of their secured interest.

8 THE COURT: I would anticipate if US Bank had  
9 requested notice, that document would have been  
10:59:48 10 produced; right?

11 MR. VILKIN: Yes, your Honor. That is what  
12 he's examining, though, the response to the request.

13 THE COURT: I understand.

14 MR. VILKIN: Yeah.

11:02:11 15 THE WITNESS: I do not see a document sent  
16 directly to owner other than the deed of trust  
17 recorded, advising that.

18 BY MR. VILKIN:

19 Q. Advising what?

11:02:25 20 A. Advising of your question a document sent  
21 directly to the HOA requesting notice other than the  
22 deed of trust which is recorded.

23 Q. And no document advising the HOA that you had  
24 a security interest in the property; correct?

11:02:41 25 A. The deed of trust.

11:02:42 1 Q. Other than the deed of trust, correct?

2 A. In that stack, I did not see anything. I know  
3 there was a prior sale. I don't know if -- how or if  
4 any type of notice would have been with that in regards  
11:02:57 5 to that prior sale that was occurring. And then didn't  
6 occur just months prior to the HOA sale.

7 Q. Well, you keep talking about the deed of  
8 trust. Did you see anything there where US Bank sent  
9 any kind of communications to the HOA enclosing the  
11:03:16 10 deed of trust?

11 A. Not to my knowledge.

12 MR. VILKIN: Your Honor, I move to admit  
13 Exhibit 17.

14 MR. BECKOM: It's our document. So no  
11:03:29 15 objection.

16 THE COURT: So admitted.

17 (Exhibit 17 admitted)

18 BY MR. VILKIN:

19 Q. Okay. Mr. Heifner, if you would, I want to  
11:03:36 20 ask you some questions about the notice of sale in this  
21 case. You told us -- you told the Court earlier that  
22 you had reviewed US Bank's complete file in this  
23 matter, correct?

24 A. Yes.

11:03:47 25 Q. Is it your testimony that you have no record

11:03:51 1 of ever receiving the notice of sale?

2 A. I -- prior to the sale or around the time of  
3 the sale there are no records. I mean, they even  
4 searched after the sale had taken place to see if we  
11:04:08 5 received it, and there was still no -- no record of  
6 receiving that at our addresses that we would receive  
7 those documents at.

8 Q. Well, I'm not asking about anything about  
9 addresses. All I'm asking is in the record you  
11:04:23 10 reviewed did you see any indication that US Bank had  
11 received the notice of sale prior to the sale date of  
12 January 25th, 2012?

13 A. No. I did not see it myself either.

14 Q. But it's your testimony that if you had  
11:04:46 15 received the notice of sale prior to the actual sale  
16 date that it was the policy of the company to find out  
17 what the payoff amount was and pay it off, correct?

18 A. It would be our policy to pay it off, yes.

19 Q. Take a look if you would again at Exhibit 4.

11:05:49 20 A. I'm there.

21 Q. You're there at Exhibit 4?

22 A. Yes.

23 Q. That's a deed of trust, correct?

24 A. Yes.

11:05:54 25 Q. And correct me if I'm wrong, but I believe you

11:05:59 1 testified that the company US Recordings in the upper  
2 left-hand corner, you don't believe has any affiliation  
3 with US Bank; correct?

4 A. No. Not to my knowledge.

11:06:11 5 Q. Okay. Why would this document -- this  
6 document was prepared on behalf of US Bank; would you  
7 agree with that?

8 A. It was prepared by Southwest Financial  
9 Service. The document was prepared by them.

11:06:24 10 Q. Well, do you think this document was prepared  
11 on behalf of US Bank?

12 A. It was prepared -- I mean, in all of my  
13 recollection of dealing with mortgages and deeds of  
14 trusts, a lot of times the title company, the mortgage  
11:06:41 15 broker information who is actually closing the loan,  
16 the information at times, or who's that information is  
17 up there. I'm not familiar with the company that's up  
18 there. I don't -- to my knowledge they're not  
19 affiliated with US Bank.

11:06:56 20 Q. Well, this -- you would agree with me, would  
21 you not, that this deed of trust is for the benefit of  
22 US Bank; correct?

23 A. Yes. It's a lender US Bank National  
24 Association.

11:07:06 25 Q. And US Bank, obviously, after the document is



11:07:10 1 executed and recorded is going to want a copy of it;  
2 correct?

3 A. Yes.

4 Q. And on this document, the direction is to  
11:07:23 5 return to US Recordings, correct?

6 A. US Recordings is who recorded it. So the  
7 recording was requested by US Recordings. Doesn't say  
8 that they received it after it was recorded.

9 Q. Well, but the upper left-hand corner it says  
11:07:39 10 return to name and address. You see that?

11 A. Correct. But the closing company or whoever  
12 was handling that, I would say was Southwest Financial  
13 Services would have had it, I'm assuming, recorded  
14 using the recording company who requested the recording  
11:07:52 15 and then we would have received the document to hold  
16 and own after that in our system.

17 Q. So are you telling me that US Recordings would  
18 have sent it to US Bank?

19 A. Yes.

11:08:06 20 MR. BECKOM: Objection, argumentative?

21 THE COURT: Overruled.

22 THE WITNESS: Yes.

23 BY MR. VILKIN:

24 Q. Now how many addresses does this deed of trust  
11:08:13 25 have on it?

11:08:19 1 A. On the face of it the first page there are --  
2 the deed of trust contains --

3 Q. I'm just asking how many addresses.

4 A. -- four complete addresses I believe.

11:08:30 5 Q. Okay. And why doesn't this document say who  
6 documents concerning this deed of trust should be  
7 mailed to?

8 A. I didn't create the document. All I can  
9 attest to is the information in the document. I can't  
11:08:54 10 state why or why not someone -- why it wouldn't say  
11 something.

12 Q. Well --

13 A. I could state what it does say or does not.

14 Q. Would you agree with me that somebody not  
11:09:03 15 associated with US Bank looking at this recorded  
16 document might have confusion over where to send  
17 documents concerning this deed of trust given that  
18 there's four addresses on it?

19 MR. BECKOM: Objection, argumentative.

11:09:13 20 THE COURT: Overruled.

21 THE WITNESS: If I were a homeowners  
22 association or an attorney, I -- I mean, being that I'm  
23 not, I would -- if just me, I would note to contact the  
24 lender who would be the person that would -- I mean, I  
11:09:28 25 wouldn't contact a recording company. I mean, and I'm

11:09:30 1 not an attorney.

2 BY MR. VILKIN:

3 Q. Did I ask you what you would do?

4 A. You asked if it would be -- if it's obvious,  
11:09:38 5 and I'm just stating I think it's obvious to myself --

6 Q. Okay.

7 A. -- that to notify the lender.

8 Q. What about somebody who's not somebody at a  
9 title company that is searching records? How would  
11:09:52 10 they know which address to send it to if the document  
11 doesn't tell them?

12 A. You just asked how the title company know?

13 Q. Yeah, a title company, correct?

14 A. They're very well knowledgeable in those  
11:10:08 15 procedures, title companies are.

16 Q. Well, wouldn't it have been better if US Bank  
17 had been specific on this document and said we want all  
18 notices concerning this deed of trust to go to whatever  
19 address they wanted instead of putting -- allowing four  
11:10:22 20 different addresses to be on it and creating confusion?

21 MR. BECKOM: Objection. Calls for a  
22 conclusion.

23 THE COURT: I'll sustain.

24 BY MR. VILKIN:

11:10:35 25 Q. Well, do you know why the document does not

11:10:37 1 specify which of the four addresses US Bank wants  
2 notices to be sent to?

3 A. The only answer to your question that I could  
4 give you would be that lender -- assumably suffice in  
11:10:58 5 that question being that the lender would be who's  
6 lending the funds --

7 Q. Okay.

8 A. -- in securing the property.

9 Q. My question is: Do you know why it doesn't  
11:11:07 10 specify which of the four addresses it wants notices  
11 sent to?

12 A. No. I mean as I stated earlier I can't really  
13 attest to why the document may not be -- may not  
14 contain that. I could just say why I believe that.  
11:11:20 15 And if that's what you're asking, I can say that  
16 because most people, I would assume, would understand  
17 that the lender is the company securing and lending the  
18 money against the property.

19 MR. VILKIN: Nothing further, your Honor.

11:11:41 20 Thank you.

21 THE COURT: Anything else, sir?

22 MR. BECKOM: One thing.

23

24 REDIRECT EXAMINATION

25 \\\

11:11:46 1 BY MR. BECKOM:

2 Q. Mr. Heifner, can you direct your attention to  
3 Exhibit 4 USB0016.

4 A. Yes.

11:12:05 5 Q. Can you go down to Section 16 that's entitled  
6 Notice?

7 A. Yes.

8 Q. Says:

9 Unless otherwise required by law any notice  
11:12:15 10 shall be given by delivering it to or by  
11 mailing it by First Class Mail to the  
12 appropriate party's address on page 1 of this  
13 security instrument or any other address  
14 designated in writing.

11:12:28 15 Do you see what I'm talking about?

16 A. Yes.

17 Q. Is it your understanding that that provision  
18 is just -- that's directing every -- like, direct  
19 everyone who reads this deed of trust that they need to  
11:12:40 20 send it to the correct address that's listed on that  
21 first page of the deed of trust?

22 A. Yes.

23 Q. Okay. And then going back to USB0011, the  
24 address delineated for US Bank National Association, ND  
11:12:57 25 again is the 4325 17th Avenue, Southwest, Fargo, North

11:13:02 1 Dakota, 58103.

2 Is that your understanding?

3 A. Yes.

4 Q. Okay. And so this deed of trust actually does  
11:13:10 5 direct parties to notice US Bank in Fargo, South  
6 Dakota? Or is that your understanding?

7 A. It is. And also it goes on to say that notice  
8 to one is not notice to all so an error of caution.

9 Q. Okay.

11:13:24 10 A. Notice to each address.

11 Q. So US Bank actually does request notice in  
12 Fargo, South Dakota under this deed of trust?

13 A. Yes.

14 Q. And is that deed of trust was filed in the  
11:13:34 15 property records on March 28, 2009, correct?

16 A. Yeah. I think there was a prior recording  
17 that we refinanced. There was a prior deed of trust on  
18 the property through US Bank with the same borrower  
19 that was refinanced advancing additional funds --

11:13:51 20 Q. So US Bank --

21 A. -- dating back longer than that. So this one  
22 would be the most -- the latest deed of trust recorded  
23 by US Bank.

24 Q. Fair enough. And so by the latest recording  
11:13:59 25 in the property records prior to, let's say, 2012, US

11:14:03 1 Bank had indicated to everyone on the property records  
2 that they wanted to be served process in Fargo, North  
3 Dakota?

4 A. Yes.

11:14:11 5 Q. Okay.

6 MR. BECKOM: I don't think I have anything  
7 further from this witness, your Honor.

8 THE COURT: Anything else, sir?

9 MR. VILKIN: Yes, your Honor, a couple.

11:14:20 10

11 RECROSS-EXAMINATION

12 BY MR. VILKIN:

13 Q. Mr. Heifner, with regard to Exhibit 4,  
14 paragraph 16, it's talking about notice, correct?

11:14:33 15 A. Yes.

16 Q. Do you know whether that's notice between the  
17 parties to the agreement or notice to parties not part  
18 of the agreement?

19 A. Without making a legal speculation, I would  
11:15:00 20 say any parties given that it's any notice shall be  
21 given -- any notice shall be given by delivering it by  
22 mailing it first class mail. I would say the  
23 indication of any party. Any party involved in the  
24 contract will be noticed by this method.

11:15:22 25 Q. Any party involved in this --

11:15:23 1 A. So if anyone --

2 Q. -- contract; correct?

3 A. If you wanted to notice someone within these  
4 parties, this is how you would notice them.

11:15:29 5 Q. Okay. 16 also talks about sending it to the  
6 appropriate party; correct?

7 A. Yes.

8 Q. Okay. How is someone not a party to this  
9 agreement supposed to know who the appropriate party is  
10 based on the four addresses on page 1 of Exhibit 4?

11 A. The document --

12 MR. BECKOM: Objection. Calls for  
13 speculation.

14 THE WITNESS: -- will --

11:15:52 15 MR. VILKIN: It's their document, your Honor.  
16 They're saying they should have got notice. I'm asking  
17 how somebody is supposed to know where to send it.

18 THE COURT: I'll overrule.

19 MR. VILKIN: Thank you.

11:16:07 20 THE WITNESS: My -- the document is recorded.  
21 And it also goes on to state that notice of one grantor  
22 will not be notice to all. So this would be a public  
23 record.

24 BY MR. VILKIN:

11:16:18 25 Q. So in your view if you sent the notice to one



11:16:19 1 of the four it would be deemed notice to all, correct?

2 A. No. It specifically states that notice to one  
3 is not notice to all.

4 Q. It says -- in item 16?

11:16:30 5 A. I believe so.

6 Q. Take a look at the last sentence. Is that  
7 what you're talking about?

8 A. Yes. Notice to one is notice to all.

9 MR. VILKIN: Thank you. Nothing further.

11:16:39 10 MR. BECKOM: I have one further clarification  
11 I'd like to make, your Honor.

12

13 FURTHER REDIRECT EXAMINATION

14 BY MR. BECKOM:

11:16:44 15 Q. It says -- now going back to Section 16 of the  
16 notice provision. I believe my colleague here is  
17 discussing the sentence that says notice to one grantor  
18 will be deemed notice to all grantors. Do you see what  
19 I'm talking about?

11:16:57 20 A. Yes.

21 Q. Let's go back to page 1 of the deed of trust.  
22 Who is listed as a grantor under this document?

23 A. The unmarried man of George R. Edwards.

24 Q. Okay. And then your understanding was US

11:17:13 25 Bank. US Bank's understanding is that they are not a

11:17:16 1 grantor under this document?

2 A. That is correct.

3 Q. Okay.

4 MR. BECKOM: Nothing further.

11:17:22 5 MR. VILKIN: I have nothing further, your  
6 Honor.

7 THE COURT: Okay. Will there be any need to  
8 call this witness back? Are we finished?

9 MR. VILKIN: I don't intend to, your Honor.

11:17:30 10 THE COURT: All right.

11 MR. BECKOM: I can talk to him whenever I  
12 want.

13 THE COURT: But as far as calling him back.

14 MR. BECKOM: I don't believe so. If anything  
11:17:36 15 changes, I have his cell phone number, and we can get  
16 him back here on pretty short order on the phone.

17 THE COURT: Sir, you're released. Thank you.

18 THE WITNESS: Thank you, your Honor.

19 THE MARSHAL: Please watch your step as you  
11:17:47 20 step down.

21 MR. VILKIN: Thank you, your Honor. If I may  
22 just have a moment with counsel on planning here.

23 THE COURT: You sure can.

24 MR. VILKIN: Your Honor, addressing the issue  
11:18:06 25 we raised earlier, we've got two witnesses. One

11:18:09 1 witness will be relatively short. She has a 2:00 p.m.  
2 appointment. The other witness has a 1:00 p.m. other  
3 testimony. If we started him after the short witness,  
4 we probably wouldn't get done. But if the Court is  
11:18:21 5 willing to finish him at another time, no problem.

6 THE COURT: Okay.

7 MR. BECKOM: Probably. You think it's going  
8 to be an issue?

9 THE COURT: I want to take the short witness.  
11:18:30 10 Are we going to take him right now, right? Take a  
11 quick break and then take a short witness.

12 MR. VILKIN: Yes.

13 THE COURT: And then -- and the longer  
14 witness, what's anticipated? What do you anticipate to  
11:18:44 15 add to the case?

16 MR. BECKOM: Mr. Alessi is the corporate  
17 witness for Alessi & Koenig.

18 THE COURT: Okay.

19 MR. BECKOM: Who is the trust deed that  
11:18:52 20 conducted the sale. We, at least US Bank, expects  
21 extensive testimony from Mr. Alessi regarding the sale.

22 MR. VILKIN: And as do we, your Honor. He's  
23 going to be longest witness of the case.

24 THE COURT: Okay. So what do you want to do  
11:19:04 25 with him?

11:19:06 1 MR. VILKIN: Well --

2 MR. BECKOM: We can call -- if he's got a

3 trial at 1:00, I have no objection to --

4 THE COURT: He's busy, huh.

11:19:11 5 MR. BECKOM: Pretty busy.

6 MR. GEISENDORF: Maybe we can check and see if

7 he's being called at 1:00 or 3:00 or 4:00.

8 MR. VILKIN: He's very busy.

9 THE COURT: What I'll do, we'll step down for

11:19:20 10 15.

11 MR. VILKIN: Okay.

12 THE COURT: You have one short witness, right?

13 MR. VILKIN: Right.

14 THE COURT: We can bring him in after this,

11:19:25 15 and we will deal with him when we have to deal with

16 him.

17 MR. VILKIN: Okay.

18 MR. BECKOM: Sounds good, your Honor.

19 -o0o-

(Recess)

11:19:29 20 -o0o-

21 THE COURT: All right. We can go back on the

22 record.

23 MR. BECKOM: We have one minor housekeeping

24 matter. I guess, we briefly talked before we recessed.

11:48:43 25 I was talking to Mr. Vilkin about this that Mr. Alessi

11:48:47 1 is actually under a trial subpoenaed right next door in  
2 Courtroom 12C with Judge Miley at 1:00. We're trying  
3 to figure out the best way to handle getting him in. I  
4 think we're taking a short witness now, but we do  
11:48:59 5 expect --

6 THE COURT: I mean, it's one of those things  
7 where it would be nice if we could get him in today. I  
8 don't know if we can or not, but I'm willing to work  
9 with whatever availability we have. If we can get him  
11:49:11 10 done today, I think we can make fairly significant  
11 inroads into the trial.

12 MR. BECKOM: No. Agreed. So we'll try to get  
13 him in?

14 THE COURT: Might be 2:30; right? Could be.

11:49:21 15 MR. VILKIN: What, until we finish with him?

16 THE COURT: No. I mean, when we start with  
17 him.

18 MR. VILKIN: Yeah. Could be.

19 MR. GEISENDORF: The door was locked.

11:49:28 20 MR. VILKIN: Right. We went and checked in  
21 the Department 23 to see if we could find out anything.  
22 But the door is locked.

23 THE COURT: Is the door locked? Are they in  
24 session next door; do you know?

11:49:40 25 Mike, are they in session next door?

11:49:44 1 THE MARSHAL: No, your Honor, they were not.  
2 But I can check on them again for you. They had a  
3 hearing or calendar earlier.  
4 THE COURT: So they might be starting. Find  
11:49:50 5 out real quick if they're in session next.  
6 THE MARSHAL: Who's the person we're looking  
7 for?  
8 MR. VILKIN: David Alessi.  
9 MR. BECKOM: He's under a trial subpoena for  
11:50:00 10 both. This department, as well as --  
11 THE COURT: Just find out if they're going to  
12 start trial at 1:00 o'clock.  
13 THE MARSHAL: Yes, sir.  
14 THE COURT: I guess, we can bring -- how long  
11:50:08 15 is this next witness going to take?  
16 MR. BECKOM: Not long.  
17 MR. VILKIN: 15, 20 minutes hopefully.  
18 THE COURT: Okay. Let's see if we can get it  
19 done.  
11:50:17 20 MR. BECKOM: You want to call him.  
21 MS. BAKER: Yeah. Are we ready?  
22 THE COURT: Yeah.  
23 MS. BAKER: I'd like to call the  
24 representative for Glenview West Townhomes Association.  
11:50:27 25 We have to wait for the Marshal to get her.

11:50:30 1 THE COURT: You can get her.

2 MS. BAKER: Okay. I'm going to set up the ...

3 KIM KALLFELZ,

4 having been first duly sworn to testify to the truth,

11:50:37 5 the whole truth and nothing but the truth, was examined

6 and testified as follows:

7 THE COURT CLERK: Please be seated. And if

8 you will state and spell your name for the record;

9 please.

11:51:36 10 THE WITNESS: Kim Kallfelz. First name Kim,

11 K-I-M. Last name Kallfelz, K-A-L-L-F-E-L-Z.

12

13 DIRECT EXAMINATION

14 BY MR. BECKOM:

11:51:48 15 Q. Good morning, Kim. Can you please tell me

16 what your occupation is?

17 A. I own HOA Management.

18 Q. Okay. And how are you affiliated with

19 Glenview West Townhomes Association?

11:52:01 20 A. August 1st of 2017 I became their community

21 manager.

22 Q. Okay. So you've been just recently?

23 THE MARSHAL: They had morning trial calendar.

24 It's all done. But they do have something at 1300

11:52:15 25 that's a civil bench trial.

11:52:17 1 THE COURT: That's 1:00 o'clock?

2 THE MARSHAL: Yes, sir. Nobody could say

3 anything specific about Brian Alessi.

4 MR. VILKIN: David Alessi.

11:52:24 5 THE MARSHAL: David, David. They couldn't say

6 specifically about him. But at 1300, they do have a

7 trial if it's the same person.

8 THE COURT: We'll find out.

9 MR. VILKIN: Yeah. And he may not be

11:52:35 10 scheduled to go first too, so.

11 THE COURT: I understand.

12 Okay. Continue on, ma'am.

13 MS. BAKER: Thank you.

14 BY MS. BAKER:

11:52:43 15 Q. So you're a manager, and you manage -- you own

16 your own company, is that -- I'm just understanding

17 what's going on.

18 A. Correct.

19 Q. Recapping. And then you're hired by Glenview

11:52:55 20 to do what?

21 A. To be their community manager.

22 Q. Okay. And what are the duties of the

23 community manager?

24 A. Well, we handle all of the financial vendors,

11:53:08 25 collection of dues, payment of -- payments every month.



11:53:14 1 Basically --

2 Q. Okay.

3 A. -- it's a corporation. We take care of all of  
4 the parts of the corporation.

11:53:18 5 Q. Okay. And how many homes are in this  
6 association?

7 A. Fifty.

8 Q. All right. And are you familiar with the  
9 account for 4254 Rolling Stone Drive?

11:53:31 10 A. Well, I am familiar with that address, yes.  
11 It's part.

12 Q. You're familiar with the address?

13 A. Yes.

14 Q. Have you had a chance to review the records  
11:53:39 15 for this property?

16 A. I have to a very limited degree.

17 Q. Okay. There's an exhibit book in front of  
18 you. I'm going to have you open it to Exhibit Tab 7.  
19 Starts on page USB0154. It's on the bottom. You can  
11:54:02 20 see they're numbered. You want to go to 0154.

21 So the document I'm referring to goes through?

22 A. 054 or 45?

23 Q. 54.

24 A. Okay.

11:54:33 25 Q. And the document ends at USB0169. Do you have

11:54:37 1 all those pages in between?

2 A. I do, yes.

3 Q. Okay. And is this the declaration of  
4 covenants, conditions, and restrictions for the HOA?

11:54:48 5 A. It looks like it, yes.

6 Q. And it looks like a true and correct copy and  
7 we're going to call it CC&Rs?

8 A. Okay. That's correct.

9 Q. Okay. And this CC&R, what is this? What are  
11:55:01 10 CC&Rs?

11 A. These are the governing documents of the  
12 association.

13 Q. And does this document put everyone on notice,  
14 potential buyers or anybody that this is what the  
11:55:12 15 duties of the HOA and what homeowner's responsibilities  
16 are?

17 A. Yes.

18 Q. Okay. And homeowners need to pay a monthly  
19 due?

11:55:25 20 A. Correct.

21 Q. And how much are the monthly dues?

22 A. \$130 right now.

23 Q. Okay. And is that was the same in 2011, 2010?

24 A. I don't know.

11:55:35 25 Q. Okay. And in looking at the CC&Rs, I'm going

11:55:42 1 to have you look at -- let's see, USB0164. Or actually  
2 can I admit --

3 MS. BAKER: I'm going to admit the CC&Rs into  
4 evidence.

11:55:55 5 MR. VILKIN: No objection.

6 THE COURT: So admitted. What exhibit is  
7 that, ma'am?

8 MS. BAKER: This is under Exhibit 7.

9 MR. VILKIN: Your Honor, I believe we have a  
11:56:06 10 stipulation that all of Exhibit 7 is admitted.

11 THE COURT: Okay.

12 MR. BECKOM: I believe that is correct.

13 BY MS. BAKER:

14 Q. But specifically, let's look at page USB164.

11:56:22 15 Let's see. The article starts on actually on USB0160.

16 Can you -- what's the title of this article? I'm  
17 saying Article 5, association members voting rights, is  
18 that correct?

19 A. Correct. Section 1 Article 4.

11:56:48 20 Q. Okay. Sorry.

21 A. 5, I meant.

22 Q. Sorry. Let's go USB0161. Article 6 is  
23 covenant for maintenance assessments, is that correct?

24 A. Yes, it is.

11:57:03 25 Q. Okay. And then Section 11 is within that

11:57:06 1 article. It's on USB164?

2 A. Correct.

3 Q. Okay. And Section 11 is a subordination of  
4 the lien to mortgages, is that correct?

11:57:17 5 A. Correct.

6 Q. Okay. And this states that the lien of the  
7 assessments provided herein shall be subordinate to the  
8 lien of any first mortgage, is that correct?

9 A. That's what it says.

11:57:32 10 Q. Okay. So what is the HOA's stance in how --  
11 is it -- let me question this.

12 Is it the HOA's policy to subordinate their  
13 lien to the first mortgages based on these CC&Rs?

14 A. Well, of course, the CC&Rs are subject to  
11:57:53 15 NRS statutes and changes.

16 Q. I understand that. But this, I'm looking  
17 at --

18 A. So they supersede this number 11.

19 Q. I'm not asking what per the statute. I'm  
11:58:03 20 asking what these CC&Rs state. These CC&Rs, the  
21 interpretation here is that it subordinates the lien;  
22 is that correct?

23 A. Well, I would say that it's correct as these  
24 words are, but it's not correct in practice.

11:58:20 25 Q. Okay. But it was the HOA's intent to

11:58:29 1 subordinate the lien per these CC&Rs, is that correct?

2 A. I'd say, yes, but --

3 Q. Okay.

4 A. -- back when this was --

11:58:36 5 Q. And then?

6 A. -- record --

7 Q. That's fine.

8 THE COURT: One at a time. Thank you.

9 BY MS. BAKER:

11:58:41 10 Q. And then let's go further into this. The last  
11 sentence is: No sale or transfer shall relieve said  
12 lot from liability for assessments therein becoming  
13 due -- or sorry, is that correct? That's what it says?

14 A. That's correct what it says.

11:59:03 15 Q. Okay.

16 A. Yes.

17 Q. And then the sentence before that says:

18 However, the sale or transfer of any lot purchase or

19 mortgage foreclosure or any proceeding in lieu thereof

11:59:13 20 shall extinguish the lien of such assessments as to any  
21 payments which became due prior to the sale or  
22 transfer?

23 A. That's what it says.

24 Q. Okay. Okay. And then let's go to page --

11:59:37 25 it's page 14 of the CC&Rs, but it's USB0168. Under

11:59:48 1 Article 11, General Provisions. Section 3 is  
2 Amendment. So what is your understanding of how -- how  
3 to amend these CC&Rs?

4 A. Well, in Section 11 it says that if there is  
12:00:13 5 an amendment to the CC&Rs, then they would need a  
6 75 percent vote of the lot owners.

7 Q. Okay. Well, in Section 3 of the amendment it  
8 says, Not less than 90 percent of the lot owners or --  
9 let's see.

12:00:41 10 For the first 30-year -- for the first 30  
11 years, is that correct? And then after that it's 75?

12 A. Yes. That's correct.

13 Q. And how many board members are there? Or lot  
14 owners? You said there's 50 lot owners, correct?

12:00:56 15 A. Um-hum, correct.

16 Q. And how many board members?

17 A. Five board members.

18 Q. Okay. And do you have regular contact with  
19 the board members?

12:01:06 20 A. Yes, I do.

21 Q. All right. And you speak to them regularly?

22 A. Yes, I do.

23 Q. Okay. And so it's -- to amend the CC&Rs  
24 it's -- it's pretty easy to amend the CC&Rs based on if  
12:01:20 25 there's a provision that gives the availability to

12:01:24 1 amend?

2 A. It is never easy to amend CC&Rs.

3 Q. Okay. But there is a provision to amend the  
4 CC&Rs?

12:01:33 5 A. There is.

6 Q. Okay. And what is the HOA's collection  
7 policy?

8 A. Currently?

9 Q. In 2011 and 2012.

12:01:48 10 A. I do not know.

11 Q. What is currently the collection policy?

12 A. What is the collection policy currently?

13 Well, I don't have it with me, so I can't tell you  
14 verbatim, but it's pretty much that after 60 days, a

12:02:06 15 letter can be sent to the delinquent homeowner with --  
16 they have four or five things that they can have as  
17 options. They can pay it in full. They can get into a  
18 payment plan. They can have a hearing, or if they  
19 don't respond within 30 days, they can be sent to  
12:02:30 20 collections.

21 Q. Going back to the amendment of the CC&Rs, to  
22 your understanding has the CC&Rs been amended at all?

23 A. Not to my knowledge.

24 Q. Okay. Has there been any attempt to amend the  
12:02:48 25 CC&Rs?

12:02:48 1 A. I do not know.

2 Q. Okay. So your question is it's never -- it's  
3 not easy to amend. How do you know it's not easy to  
4 amend the CC&Rs?

12:02:56 5 A. Well, I've been in business 18 years.

6 Q. Okay.

7 A. And in order to get an amendment to the CC&Rs,  
8 it's very difficult to get the percentage you need of  
9 owners to amend CC&Rs.

12:03:11 10 Q. All right. But there's only 50 owners;  
11 correct?

12 A. Correct.

13 Q. And you'd only need 75 percent. But if you  
14 got 75 percent, you were able to amend the CC&Rs; is

12:03:28 15 that correct?

16 A. That's correct.

17 Q. Okay. Going back to collection, you said the  
18 policy is to send out a letter. And then you said the  
19 efforts to work out a resolution with a delinquent

12:03:43 20 homeowner would be to pay in full or a payment plan.

21 Is there any other options?

22 A. Yes. They can have a hearing. Right now  
23 currently?

24 Q. Yes.

12:03:53 25 A. They can have a hearing in front of the board.



12:03:55 1 Q. And if they wanted to challenge, say, the  
2 amount owed, they don't believe the amount owed is  
3 accurate, they would ask for a hearing?

4 A. They could do that. I mean, you know, the  
12:04:09 5 amount owed is generally done in a ledger so that it's  
6 pretty clear.

7 Q. Okay.

8 A. But certainty anybody can say it's wrong.

9 Q. Okay. Have you looked at the accounting of  
12:04:20 10 this property at 4254 Rolling Stone Drive?

11 A. Yes.

12 Q. Okay. And how -- what was the accounting like  
13 in 2010, 2011?

14 A. I do not know.

12:04:34 15 Q. But you reviewed the records?

16 A. I know. But I reviewed my records, and the  
17 records of Pinnacle.

18 Q. Okay. What about the records prior to  
19 Pinnacle?

12:04:44 20 A. I do not have any records prior to Pinnacle.

21 MS. BAKER: Nothing further at this time.

22

23

CROSS-EXAMINATION

24 BY MR. VILKIN:

12:04:57 25 Q. Good afternoon, or good morning, ma'am.

12:04:59 1 A. Good afternoon.

2 Q. I'll try to be brief. If you could look at  
3 Exhibit 8 page 207. Are you there?

4 A. Yes, I am.

12:05:28 5 Q. Okay. So if you could just look at pages 207  
6 through 212. And my question is what is that?

7 A. This looks like a ledger of the county for  
8 4254 Rolling Stone Drive.

9 Q. And do you know who prepared this?

12:05:54 10 A. No, I do not.

11 Q. Does this look like something -- well, back in  
12 2012 was your company the manager for Glenwest?

13 A. No, it was not.

14 Q. Glenview, I'm sorry. So when did you become  
12:06:08 15 manager?

16 A. August 1st, 2017.

17 MR. VILKIN: Nothing further, your Honor.

18 THE COURT: Okay. Anything else?

19 MS. BAKER: Yes.

12:06:20 20

21 REDIRECT EXAMINATION

22 BY MS. BAKER:

23 Q. So prior to you taking over as manager for  
24 Glenview, there was -- do you know the person by the

12:06:36 25 name of George -- or sorry, Ronald Stevenson.

12:06:40 1 A. I did not know him.  
2 Q. Okay. Did you know of him?  
3 A. I know that he worked for Pinnacle.  
4 Q. Okay.  
12:06:51 5 A. And he was their manager I think.  
6 Q. Okay.  
7 A. For a while.  
8 Q. So he was a manager for a while for the HOA?  
9 A. Yes.  
12:06:59 10 Q. Do you know why he's no longer the manager?  
11 A. Well, Pinnacle no longer manages --  
12 Q. Okay.  
13 A. -- Glenview West, but I think Ronny Stevenson  
14 is deceased.  
12:07:15 15 Q. Okay. Would you be -- you would not be  
16 surprised if he was called as a witness for a  
17 deposition for this matter?  
18 A. No, I would not.  
19 Q. Okay.  
12:07:28 20 MS. BAKER: Your Honor, I do have a copy of --  
21 a certified copy of the deposition transcript of Ronald  
22 Stevenson. I'd like to admit it as evidence being that  
23 he is deceased.  
24 THE COURT: To have it admitted as evidence,  
12:07:43 25 you have to have it published --

12:07:44 1 MS. BAKER: Or published.  
2 THE COURT: -- first and foremost.  
3 And number two, if you want portions of the  
4 deposition transcript read into the record, they have  
12:07:52 5 to be designated. The other side gets an opportunity  
6 to designate. And then we make a determination as to  
7 whether -- what portions of the record are going to be  
8 read in -- I mean, the deposition are going to be read  
9 into the record. So I -- it's not admitted.  
12:08:07 10 MR. VILKIN: I was not aware of this.  
11 MS. BAKER: Okay.  
12 THE COURT: There's a specific rule --  
13 MS. BAKER: Yes.  
14 THE COURT: -- on uses of deposition at the  
12:08:12 15 time of trial. Right? Am I missing something?  
16 MS. BAKER: No. I'll withdraw it. Thank you.  
17 THE COURT: All right. Anything else of this  
18 witness?  
19 MS. BAKER: No. Nothing further.  
12:08:25 20 MR. VILKIN: Nothing, your Honor.  
21 THE COURT: Okay. Thank you, ma'am.  
22 THE WITNESS: Thank you, sir.  
23 THE MARSHAL: Please watch your step, ma'am.  
24 THE COURT: So when is a good time to meet for  
12:08:51 25 this afternoon? 2:00 o'clock, do you think?

12:08:54 1 MR. VILKIN: Court's preference, your Honor.  
2 Whatever.

3 THE COURT: How is 2:00 o'clock? And we'll  
4 know. Because tomorrow we have two experts; right?

12:09:02 5 MR. VILKIN: Correct.

6 THE COURT: Okay.

7 MR. VILKIN: We do have Mr. Haddad.

8 THE COURT: Okay.

9 MR. VILKIN: Also which could be any time  
12:09:10 10 today.

11 THE COURT: All right. Well, we'll try -- I  
12 think what we'll do then, so would you call Mr. Haddad  
13 out of order? Is that fine?

14 MR. VILKIN: Do you want to call him right  
12:09:23 15 now? Or after lunch.

16 THE COURT: No, no. We got to go to lunch.

17 MR. VILKIN: Okay.

18 THE COURT: Right. I'm just trying to -- how  
19 about -- okay, this is what we can do. Because we want  
12:09:31 20 to be efficient. We'll break now until 1:30. And then  
21 if -- we'll know specifically, I would anticipate, the  
22 whereabouts of the other witness. And if he -- if he's  
23 not available, maybe we can call Mr. Haddad for about a  
24 hour or so.

12:09:47 25 MR. VILKIN: That's fine, your Honor, as long

12:09:48 1 as I have the ability to call Mr. Haddad after  
2 Mr. Alessi should something come up.

3 THE COURT: You can call him for redirect.

4 MR. VILKIN: Okay.

12:09:56 5 THE COURT: Any objection to that?

6 MR. BECKOM: We'll talk to whoever wants to  
7 talk whenever they want to talk, so we have no  
8 objection.

9 THE COURT: That's the beauty of a bench  
12:10:02 10 trial. Okay. So we will be in recess for lunch.

11 MR. VILKIN: Thank you, your Honor.

12 -oOo-  
(Lunch Recess)  
13 -oOo-

14 THE COURT: All right. Good afternoon.

01:34:43 15 MR. VILKIN: Afternoon.

16 MR. BECKOM: Afternoon.

17 THE COURT: Let's go ahead and note our  
18 appearances for the record.

19 MR. BECKOM: Thomas Beckom, Priscilla Baker on  
01:34:49 20 behalf of US Bank.

21 MR. VILKIN: Richard Vilkin, Charles  
22 Geisendorf and Eddie Haddad for the defendant.  
23 Mr. Haddad representing the client.

24 THE COURT: All right. So how are we going to  
01:35:01 25 proceed this afternoon?

01:35:05 1 MR. BECKOM: I think US Bank would like to  
2 call David Alessi to the stand. My understanding is  
3 that his trial this afternoon has been canceled.

4 THE COURT: So he's here.

01:35:12 5 MR. VILKIN: He's here. We're ready to go.

6 THE COURT: So I timed that perfectly.

7 MR. HADDAD: Yes, nicely done.

8 THE COURT: Okay.

9 THE MARSHAL: Yes, your Honor.

01:35:38 10 DAVID ALESSI,  
11 having been first duly sworn to testify to the truth,  
12 the whole truth and nothing but the truth, was examined  
13 and testified as follows:

14 THE COURT CLERK: Please be seated. And if  
01:35:55 15 you will state and spell your name for the record,  
16 please.

17 THE WITNESS: David Alessi. A-L-E-S-S-I.

18 THE COURT: Okay, sir, you have the floor.

19 MR. BECKOM: Thank you.

01:36:17 20  
21 DIRECT EXAMINATION

22 BY MR. BECKOM:

23 Q. Good morning, Mr. Alessi. And thank you for  
24 being here today.

01:36:27 25 A. Good morning.

01:36:28 1 Q. Why don't you tell everyone here in the court  
2 what you do for a living?

3 A. Well, I currently do a lot of depositions and  
4 trial testimony as a 30(b)(6) PMK for Alessi Koenig.

01:36:44 5 I'm a California attorney.

6 Q. And can you explain to me why -- so you do a  
7 lot of depositions then, correct?

8 A. Hundreds and hundreds.

9 Q. Sounds like a lot of fun.

01:36:57 10 A. It's --

11 Q. What were you doing in 2010 and 2011?

12 A. I was part of a firm called Alessi Koenig. We  
13 were an HOA assessment collection law firm. We also  
14 perform general counsel services.

01:37:12 15 Q. Okay. And you said you had a law degree,  
16 right?

17 A. Yes. I'm a California lawyer.

18 Q. California lawyer.

19 Where did you go to school at, sir?

01:37:23 20 A. I -- law school or undergraduate?

21 Q. Law school is fine.

22 A. The University of La Verne. And then I  
23 finished up my last year at Pepperdine.

24 Q. Okay. So you were working at the law firm  
01:37:35 25 Alessi & Koenig in 2010 and 2011, correct?