

1 DENNIS K. BURKE
United States Attorney
2 District of Arizona
Two Renaissance Square
3 40 North Central, Suite 1200
Phoenix, Arizona 85004-4408

4 CHARLES M. DUFFY
5 Trial Attorney, Tax Division
U.S. Department of Justice
6 P.O. Box 683
Ben Franklin Station
7 Washington, D.C. 20044-0683
Telephone: (202) 307-6406
8 Email: charles.m.duffy@usdoj.gov

9 *Attorneys for the United States of America*

10
11 IN THE UNITED STATES DISTRICT COURT
12 DISTRICT OF ARIZONA

13 UNITED STATES OF AMERICA,

14 Plaintiff,

15 v.

16 JOSEPH J. LIPARI, EILEEN H. LIPARI and
EXETER TRINITY PROPERTIES, L.L.C.,

17 Defendants.
18
19

Civ. No. 10-CV-08142-JWS

**UNITED STATES' NOTICE OF TAKING
DEPOSITIONS AND REQUEST FOR
PRODUCTION OF DOCUMENTS
REGARDING DEFENDANT EXETER
TRINITY PROPERTIES AND NON-
PARTIES ELMER VILD, JIMMY
CHISUM AND TERRY MAJOR**

20
21 Pursuant to Federal Rule of Civil Procedure Rules 30 and 34, the United States gives notice
22 that it will take the depositions of Defendant Exeter Trinity Properties, L.L.C. (hereafter "Exeter")
23 and non-parties Elmer Vild (aka Phillip O'Neil) (hereafter "Vild/O'Neil"), Jimmy Chisum and Terry
24 Major and will examine and copy documents as described below.

25 **SECTION A: DEFINITIONS**

26 1. The "real property" is meant to refer to the residence and property described in
27 paragraph 8 of the complaint filed herein and located at 1001 S. 6th Street, Cottonwood, Arizona and
28 which bears the following legal description:

1 The West one-half of the West one-half of Lot 9, VERDE PALISADES, PLAT 2,
2 according to the plat of record on file in the office of the County Recorder of Yavapai
County, Arizona, in Book 7 of Maps, page 31.

3 Except all oil, minerals, ores and metals of every kind, as reserved in Deed recorded
4 in Book 187, page 331, records of Yavapai County, Arizona.

5 2. "The Ponderosa Trust" is meant to refer to the Ponderosa Trust with Donna Chisum
6 as Trustee.

7 3. "The Liparis" is meant to refer to defendants Joseph and Eileen Lipari.

8 **SECTION B: NOTICE OF DEPOSITIONS UNDER**

9 **FEDERAL RULE OF CIVIL PROCEDURE 30**

10 The United States of America gives notice that it will take the following depositions:

11 1. **TERRY MAJOR.** Mr. Major has been subpoenaed to appear for his deposition as
12 follows:

13 **DATE/TIME:** September 20, 2011, at 1:00 p.m. (continuing on September 21,
2011 at 8:30 a.m. if not completed).

14 **LOCATION:** The United States Attorney's Office
15 Two Renaissance Square,
40 N. Central Avenue (Suite 1200)
16 Phoenix, Arizona 85004

17 A copy of the subpoena served on Mr. Major is included in Exhibit A attached hereto.

18 2. **EXETER.**

19 **DATE/TIME:** September 21, 2011, at 8:30 a.m. (or immediately following the
20 completion of Terry Major's deposition if it continues to
September 21, 2011).

21 **LOCATION:** The United States Attorney's Office
22 Two Renaissance Square,
40 N. Central Avenue (Suite 1200)
Phoenix, Arizona 85004

23 Exeter should designate one or more individuals - pursuant to Federal Rule of Civil Procedure
24 30(b)(6) - to appear on/at the referenced date, time and location and give testimony concerning the
25 following matters:

26 a. The purported transfer of the real property on or about September 1, 1999 to Exeter
27 from the Ponderosa Trust;

- 1 b. whether Exeter paid the real estate taxes, utilities, upkeep and other expenses
- 2 incurred with respect to the real property from September 1, 1999 to the present;
- 3 c. whether Exeter authorized the Liparis to claim deductions regarding the real
- 4 property on their personal returns filed for the years 1999 through 2007;
- 5 d. whether the Liparis paid rent (or gave other consideration) to Exeter from
- 6 September, 1999 through 2007;
- 7 e. Exeter's relationship and dealings with the DD Trust subsequent to September 1,
- 8 1999;
- 9 f. the Notice to have Someone Pay or Vacate executed by Phillip O'Neil on or about
- 10 November 5, 2007 and the matters and documents referenced therein;
- 11 g. the Notice to Pay or Vacate executed by Phillip O'Neil on or about November 5,
- 12 2007 and the matters and documents referenced therein;
- 13 h. the Notice to Vacate issued to the Liparis on or about August 22, 2007 and the
- 14 matters and documents referenced therein;
- 15 i. the Breach of Contract executed by Phillip O'Neil on or about August 11, 2007 and
- 16 the matters and documents referenced therein;
- 17 j. the documents filed by Exeter with the State of Arizona Corporation Commission
- 18 in 1999 and thereafter (annual and/or otherwise);
- 19 k. how Terry Major and Vild/O'Neil obtained authority to take actions on behalf of
- 20 Exeter;
- 21 l. the decision to replace Hunter King, L.L.C. as a member of Exeter;
- 22 m. Any and all federal tax returns filed by Exeter regarding its 1999-2010 tax years;
- 23 n. Exeter's responses to the United States' Interrogatories and Request for Admissions
- 24 in this case;
- 25 o. the documents produced (and hereafter produced) by Exeter to the United States
- 26 in this case;
- 27 p. all decisions made by or on behalf of Exeter regarding the real property;
- 28

1 q. Exeter's checking account and/or how Exeter paid its bills/obligations in and after
2 1999; and

3 r. Whether Exeter had/has an Employer Identification Number (EIN) with the IRS.

4 **3. VILD/O'NEIL.** Vild/O'Neil will be subpoenaed to appear for his deposition as
5 follows:

6 **DATE/TIME:** September 21 2011, at 1:00 p.m. (continuing on September 22
7 2011 at 8:30 a.m. if not completed).

8 **LOCATION:** The United States Attorney's Office
9 Two Renaissance Square,
40 N. Central Avenue (Suite 1200)
10 Phoenix, Arizona 85004

11 A copy of the subpoena that will be served on Vild/O'Neil is included in Exhibit A attached
12 hereto.

13 **4. JIMMY CHISUM.** Mr. Chisum has been subpoenaed to appear for his deposition as
14 follows:

15 **DATE/TIME:** September 22, 2011, at 9:00 a.m.

16 **LOCATION:** The United States Attorney's Office
17 Two Renaissance Square,
40 N. Central Avenue (Suite 1200)
Phoenix, Arizona 85004

18 A copy of the subpoena served on Mr. Chisum is included in Exhibit A attached hereto.

19 The depositions described above will be taken by stenographic means.

20 **SECTION C: REQUESTS FOR DOCUMENT PRODUCTION**

21 **UNDER FEDERAL RULE OF CIVIL PROCEDURE 34**

22 **1. TERRY MAJOR AND VILD/O'NEIL.** Terry Major and Vild/O'Neil have been
23 subpoenaed to produced documents to the United States as follows:

24 **DATE/TIME:** September 20, 2011, at 9:30 a.m.

25 **LOCATION:** The United States Attorney's Office
26 Two Renaissance Square,
40 N. Central Avenue (Suite 1200)
27 Phoenix, Arizona 85004

1 The documents that Major and Vild/O'Neil were subpoenaed to produce are described in the
2 attachments to their subpoenas, copies of which are in Exhibit A.

3 **2. EXETER.** Exeter is requested to produce the documents described in Exhibit B attached
4 hereto on/at the following date, time and location.

5 **DATE/TIME:** September 20, 2011, at 9:00 a.m.

6 **LOCATION:** The United States Attorney's Office
7 Two Renaissance Square,
8 40 N. Central Avenue (Suite 1200)
9 Phoenix, Arizona 85004

10 **3. JIMMY CHISUM.** Jimmy Chisum has been subpoenaed to produced documents to the
11 United States as follows:

12 **DATE/TIME:** September 22, 2011, at 8:30 a.m.

13 **LOCATION:** The United States Attorney's Office
14 Two Renaissance Square,
15 40 N. Central Avenue (Suite 1200)
16 Phoenix, Arizona 85004

17 The documents that Chisum was subpoenaed to produce are described in the attachment to
18 his subpoena, a copy of which is in Exhibit A.

19 DATED this 11th day of August, 2011.

20 DENNIS K. BURKE
21 United States Attorney

22 /s/ Charles M. Duffy
23 CHARLES M. DUFFY
24 Trial Attorney, Tax Division
25 U.S. Department of Justice
26 *Attorneys for the United States of America*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of August, 2011, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system and mailed by U.S. Postal Service to the foregoing:

Joseph J. Lipari
Eileen H. Lipari
1001 S. 6th Street
Cottonwood, AZ 86326

John Friedeman, P.C.
5103 E. Thomas Road
Phoenix, Arizona 85018

Joseph J. Lipari
Eileen H. Lipari
156 Johnson Hill Drive
Waynesville, NC 28786

/s/ Charles M. Duffy
Charles M. Duffy
Trial Attorney, Tax Division
U.S. Department of Justice

United States District Court

United States District Court

DISTRICT OF

Arizona

United States

SUBPOENA IN A CIVIL CASE

CASE NUMBER: 3:10-cv-08142 JWS

PLAINTIFF

v.

Joseph Lipari, et al.,

DEFENDANTS



TO: Elmer Vild aka Phillip O'Neil

YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

| | |
|--------------------|---------------|
| PLACE OF TESTIMONY | COURTROOM |
| | DATE AND TIME |

YOU ARE COMMANDED to appear at the place, date, and time specified below at the taking of a deposition in the above case.

| | |
|--|---|
| PLACE OF DEPOSITION: United States Attorney's Office Two Renaissance Square, 40 N. Central Avenue (Suite 1200) Phoenix, AZ 85004-4408 | DATE AND TIME September 21, 2011 @ 1:00 p.m. (continuing on Sept. 22 nd @ 8:30 a.m. if not completed) |
|--|---|


YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):
SEE ATTACHMENT

| | |
|---|---|
| PLACE United States Attorney's Office Two Renaissance Square, 40 N. Central Avenue (Suite 1200) Phoenix, AZ 85004-4408 | DATE AND TIME September 20, 2011 @ 9:30 a.m. |
|---|---|

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

| | |
|----------|---------------|
| PREMISES | DATE AND TIME |
|----------|---------------|

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

| | |
|--|------------------------|
| ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)  (Attorney for Plaintiff) | DATE August 2, 2011 |
| ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER Charles M. Duffy, U.S. DOJ Tax Division, P.O.Box 683, Ben Franklin Sta., Washington D.C. 20044 (202) 307-6406 | |

PROOF OF SERVICE

DATE

PLACE

SERVED

SERVED ON (PRINT NAME)

MANNER OF SERVICE

SERVED BY (PRINT NAME)

TITLE

DECLARATION OF SERVICE

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____ DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Parts C & D:

(c) Protecting a Person Subject to a Subpoena.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney’s fees — on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply: (i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection. (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party’s officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the issuing court must quash or modify a subpoena that: (i) fails to allow a reasonable time to comply; (ii) requires a person who is neither a party nor a party’s officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held; (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or (iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires: (i) disclosing a trade secret or other confidential research, development, or commercial information; (ii) disclosing an unretained expert’s opinion or information that does not describe specific occurrences in dispute and results from the expert’s study that was not requested by a party; or (iii) a person who is neither a party nor a party’s officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party: (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and (ii) ensures that the subpoenaed person will be reasonably compensated.

(d) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must: (i) expressly make the claim; and (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**ATTACHMENT TO DEPOSITION SUBPOENA
TO ELMER VILD AKA PHILLIP O'NEIL**

At the date, time and location referenced in the Subpoena, the following documents (or copies thereof) should be produced:

1. The "original agreement" that is referenced in the first paragraph of the document titled Breach of Contract that was sent to Joseph & Eileen Lipari (hereafter "the Liparis") and signed by Elmer Vild aka Phillip O'Neil (hereafter "Vild/O'Neil") on August 11, 2007. (A copy of the Breach of Contract was produced by Exeter Trinity Properties, L.L.C. - hereafter "Exeter" - to the United States.)
2. The "original contract," "rental agreement" and "original rental agreement" that are referenced in the document titled Notice to Vacate that was sent to the Liparis on or about August 11, 2007. (A copy of the Notice was produced by Exeter.)
3. The "[p]ast due bills" in the amount of \$4,720.00 that are referenced in the first sentence of the Notice to Have Someone Pay or Vacate that was signed on or about November 5, 2007 by Vild/O'Neil. (A copy of the Notice was produced by Exeter.)
4. The "agreement relayed to [Exeter]" that is referenced in the 3rd paragraph of the Notice to Have Someone Pay or Vacate that was signed on or about November 5, 2007 by Vild/O'Neil.
5. All agreements or documents that entitled Exeter to rent or other consideration from the Liparis in exchange for them living in the residence at 1001 S. 6th Street, Cottonwood, Arizona (hereafter "the residence") in 1999 and thereafter.
6. All agreements or documents which limit or address what Exeter (or any of its officers or members) can do with proceeds that might hereafter be received from any future sale

of the residence.

7. All documents that evidence who has/had the authority to sign checks on behalf of Exeter since 1999.

8. All documents that evidence that Exeter paid the utilities (*e.g.*, water, gas, electric), upkeep and real estate taxes relating to the residence from 1999 through 2007.

9. All documents that define or explain what value or consideration was given by Exeter to Donna Chisum as Trustee for Ponderosa Trust in return for the transfer of the residence, as set forth in the subject Warranty Deed filed with the Yavapai County (Arizona) Recorder on or about September 1, 1999.

10. All documents that evidence whether Exeter authorized the Liparis to take deductions relating to the residence (*e.g.*, real estate taxes) on their 1999 through 2007 federal income tax returns.

11. All documents that address or relate to how Vild/O'Neil became authorized or empowered to sign, submit and/or file documents on behalf of Exeter in 2008 and thereafter.

12. All documents that address or relate to how Vild/O'Neil became authorized or empowered to sign, submit and/or file documents on behalf of DD Trust in 1997 and thereafter.

13. All documents that address or relate to how Terry Major became authorized or empowered to sign, submit and/or file documents on behalf of Exeter in 2008 and thereafter.

14. All documents and agreements that gave Terry Major the right to live in the residence at any time after 1999.

15. All documents that evidence whether Terry Major paid rent to Exeter as consideration for living in the residence (to the extent that he lived in the residence after 1999).

16. All documents that evidence what individual(s) acting on behalf of Exeter made

the decision to replace Hunter King, LLC as a member of Exeter.

17. All documents that served as the basis, or were relied upon, to remove Hunter King, LLC as a member of Exeter.

18. All communications between Exeter and one or both of the Liparis (paper, electronic or otherwise) regarding the residence.

19. All communications between Vild/O'Neil and one or both of the Liparis (paper, electronic or otherwise) regarding the residence.

20. All communications between Terry Major and one or both of the Liparis (paper, electronic or otherwise) regarding the residence.

21. All communications (paper, electronic or otherwise) between Terry Major and Vild/O'Neil regarding the residence.

22. All communications (paper, electronic or otherwise) between Jimmy Chisum aka J. C. Chisum and Vild/O'Neil regarding the residence.

23. All communications (paper, electronic or otherwise) between Jimmy Chisum aka J. C. Chisum and Exeter regarding the residence.

24. All communications (paper, electronic or otherwise) between Jimmy Chisum aka J. C. Chisum and Terry Major regarding the residence.

United States District Court

DISTRICT OF

Arizona

United States

SUBPOENA IN A CIVIL CASE

CASE NUMBER: 3:10-cv-08142 JWS

PLAINTIFF

v.

Joseph Lipari, et al.,

DEFENDANTS

TO: Jimmy Chisum aka J. C. Chisum

YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

| | |
|--------------------|---------------|
| PLACE OF TESTIMONY | COURTROOM |
| | DATE AND TIME |

YOU ARE COMMANDED to appear at the place, date, and time specified below at the taking of a deposition in the above case.

| | |
|--|---|
| PLACE OF DEPOSITION: United States Attorney's Office Two Renaissance Square, 40 N. Central Avenue (Suite 1200) Phoenix, AZ 85004-4408 | DATE AND TIME September 22, 2011 @ 9:00 a.m. |
|--|---|

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):
SEE ATTACHMENT

| | |
|---|---|
| PLACE United States Attorney's Office Two Renaissance Square, 40 N. Central Avenue (Suite 1200) Phoenix, AZ 85004-4408 | DATE AND TIME September 22, 2011@ 8:30 a.m. |
|---|---|

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

| | |
|----------|---------------|
| PREMISES | DATE AND TIME |
|----------|---------------|

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

| | |
|--|------------------------|
| ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT) <i>Charles M. Duffy</i> (Attorney for Plaintiff) | DATE August 2, 2011 |
|--|------------------------|

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER Charles M. Duffy, U.S. DOJ Tax Division, P.O.Box 683, Ben Franklin Sta. Washington D.C. 20044 (202) 307-6406

PROOF OF SERVICE

DATE

PLACE

SERVED

SERVED ON (PRINT NAME)

MANNER OF SERVICE

SERVED BY (PRINT NAME)

TITLE

DECLARATION OF SERVICE

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____

DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Parts C & D:**(c) Protecting a Person Subject to a Subpoena.**

(1) **Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) **Appearance Not Required.** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) **Objections.** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply: (i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection. (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) **When Required.** On timely motion, the issuing court must quash or modify a subpoena that: (i) fails to allow a reasonable time to comply; (ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held; (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or (iv) subjects a person to undue burden.

(B) **When Permitted.** To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires: (i) disclosing a trade secret or other confidential research, development, or commercial information; (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or (iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) **Specifying Conditions as an Alternative.** In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party: (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and (ii) ensures that the subpoenaed person will be reasonably compensated.

(d) Duties in Responding to a Subpoena.

(1) **Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

(A) **Documents.** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) **Form for Producing Electronically Stored Information Not Specified.** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) **Electronically Stored Information Produced in Only One Form.** The person responding need not produce the same electronically stored information in more than one form.

(D) **Inaccessible Electronically Stored Information.** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) **Information Withheld.** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must: (i) expressly make the claim; and (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) **Information Produced.** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has, must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

ATTACHMENT TO SUBPOENA TO JIMMY CHISUM AKA J. C. CHISUM

At the date, time and location referenced in the Subpoena, the following documents (or copies thereof) should be produced: All documents in your possession relating to Exeter Trinity Properties, L.L.C., the DD Trust and the residence at 1001 S. 6th Street, Cottonwood, Arizona.

United States District Court

DISTRICT OF

Arizona

United States

SUBPOENA IN A CIVIL CASE

CASE NUMBER: 3:10-cv-08142 JWS

PLAINTIFF

v.

Joseph Lipari, et al.,

DEFENDANTS

TO: Terry Major

YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below at the taking of a deposition in the above case.

PLACE OF DEPOSITION:

United States Attorney's Office
Two Renaissance Square, 40 N. Central Avenue (Suite 1200)
Phoenix, AZ 85004-4408

DATE AND TIME

September 20, 2011 @ 1:00
p.m. (continuing on Sept. 21st
@ 8:30 a.m. if not completed)

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):
SEE ATTACHMENT

PLACE

United States Attorney's Office
Two Renaissance Square, 40 N. Central Avenue (Suite 1200)
Phoenix, AZ 85004-4408

DATE AND TIME

September 20, 2011 @
9:30 a.m.

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

(Attorney for Plaintiff)

DATE

August 2, 2011

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER Charles M. Duffy, U.S. DOJ Tax Division, P.O.Box 683, Ben Franklin Sta. Washington D.C. 20044 (202) 307-6406

PROOF OF SERVICE

DATE

PLACE

SERVED

SERVED ON (PRINT NAME)

MANNER OF SERVICE

SERVED BY (PRINT NAME)

TITLE

DECLARATION OF SERVICE

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____

DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Parts C & D:

(c) Protecting a Person Subject to a Subpoena.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply: (i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection. (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the issuing court must quash or modify a subpoena that: (i) fails to allow a reasonable time to comply; (ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held; (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or (iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires: (i) disclosing a trade secret or other confidential research, development, or commercial information; (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or (iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party: (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and (ii) ensures that the subpoenaed person will be reasonably compensated.

(d) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must: (i) expressly make the claim; and (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

ATTACHMENT TO DEPOSITION SUBPOENA TO TERRY MAJOR

At the date, time and location referenced in the Subpoena, the following documents (or copies thereof) should be produced:

1. The “original agreement” that is referenced in the first paragraph of the document titled Breach of Contract that was sent to Joseph & Eileen Lipari (hereafter “the Liparis”) and signed by Elmer Vild aka Phillip O’Neil (hereafter “Vild/O’Neil”) on August 11, 2007. (A copy of the Breach of Contract was produced by Exeter Trinity Properties, L.L.C. - hereafter “Exeter” - to the United States.)
2. The “original contract,” “rental agreement” and “original rental agreement” that are referenced in the document titled Notice to Vacate that was sent to the Liparis on or about August 11, 2007. (A copy of the Notice was produced by Exeter.)
3. The “[p]ast due bills” in the amount of \$4,720.00 that are referenced in the first sentence of the Notice to Have Someone Pay or Vacate that was signed on or about November 5, 2007 by Vild/O’Neil. (A copy of the Notice was produced by Exeter.)
4. The “agreement relayed to [Exeter]” that is referenced in the 3rd paragraph of the Notice to Have Someone Pay or Vacate that was signed on or about November 5, 2007 by Vild/O’Neil.
5. All agreements or documents that entitled Exeter to rent or other consideration from the Liparis in exchange for them living in the residence at 1001 S. 6th Street, Cottonwood, Arizona (hereafter “the residence”) in 1999 and thereafter.
6. All agreements or documents which limit or address what Exeter (or any of its officers or members) can do with proceeds that might hereafter be received from any future sale of the residence.

7. All documents that evidence who has/had the authority to sign checks on behalf of Exeter since 1999.

8. All documents that evidence that Exeter paid the utilities (*e.g.*, water, gas, electric), upkeep and real estate taxes relating to the residence from 1999 through 2007.

9. All documents that define or explain what value or consideration was given by Exeter to Donna Chisum as Trustee for Ponderosa Trust in return for the transfer of the residence, as set forth in the subject Warranty Deed filed with the Yavapai County (Arizona) Recorder on or about September 1, 1999.

10. All documents that evidence whether Exeter authorized the Liparis to take deductions relating to the residence (*e.g.*, real estate taxes) on their 1999 through 2007 federal income tax returns.

11. All documents that address or relate to how Vild/O'Neil became authorized or empowered to sign, submit and/or file documents on behalf of Exeter in 2008 and thereafter.

12. All documents that address or relate to how Vild/O'Neil became authorized or empowered to sign, submit and/or file documents on behalf of DD Trust in 1997 and thereafter.

13. All documents that address or relate to how Terry Major became authorized or empowered to sign, submit and/or file documents on behalf of Exeter in 2008 and thereafter.

14. All documents and agreements that gave Terry Major the right to live in the residence at any time after 1999.

15. All documents that evidence whether Terry Major paid rent to Exeter as consideration for living in the residence (to the extent that he lived in the residence after 1999).

16. All documents that evidence what individual(s) acting on behalf of Exeter made the decision to replace Hunter King, LLC as a member of Exeter.

17. All documents that served as the basis, or were relied upon, to remove Hunter King, LLC as a member of Exeter.
18. All communications between Exeter and one or both of the Liparis (paper, electronic or otherwise) regarding the residence.
19. All communications between Vild/O'Neil and one or both of the Liparis (paper, electronic or otherwise) regarding the residence.
20. All communications between Terry Major and one or both of the Liparis (paper, electronic or otherwise) regarding the residence.
21. All communications (paper, electronic or otherwise) between Terry Major and Vild/O'Neil regarding the residence.
22. All communications (paper, electronic or otherwise) between Jimmy Chisum aka J. C. Chisum and Vild/O'Neil regarding the residence.
23. All communications (paper, electronic or otherwise) between Jimmy Chisum aka J. C. Chisum and Exeter regarding the residence.
24. All communications (paper, electronic or otherwise) between Jimmy Chisum aka J. C. Chisum and Terry Major regarding the residence.

**DOCUMENTS TO BE PRODUCED BY EXETER TRINITY
PROPERTIES, L.L.C. ON SEPTEMBER 20, 2011 (9:30 A.M.) AT
THE UNITED STATES ATTORNEY'S OFFICE IN PHOENIX, ARIZONA**

Exeter should produce the following documents:

**Government
Exhibit**

B

1. The “original agreement” that is referenced in the second sentence of the first paragraph of the document titled **BREACH OF CONTRACT** that was sent to Joseph & Eileen Lipari and signed by Elmer Vild aka Phillip O’Neil (hereafter “Vild/O’Neil”) on August 11, 2007. (A copy of the Breach of Contract was produced by Exeter Trinity Properties, L.L.C., hereafter “Exeter” to the United States.)
2. The “original contract” and “rental agreement” that are referenced in the first sentence of the first paragraph document titled **NOTICE TO VACATE** that was sent to Joseph & Eileen Lipari on or about August 11, 2007. (A copy of the Notice was produced by Exeter.)
3. The “original rental agreement” that is referenced in the first sentence of the second paragraph of the document titled **NOTICE TO VACATE** that was sent to Joseph & Eileen Lipari on or about August 11, 2007. (A copy of the Notice was produced by Exeter.)
4. The “[p]ast due bills” in the aggregate amount of \$4,720.00 that are referenced in the first sentence of the **NOTICE TO HAVE SOMEONE PAY OR VACATE** that was signed on or about November 5, 2007 by Vild/O’Neil. (A copy of the Notice was produced by Exeter.)
5. The “agreement relayed to [Exeter]” that is referenced in the 3rd paragraph of the **NOTICE TO HAVE SOMEONE PAY OR VACATE** that was signed on or about November 5, 2007 by Vild/O’Neil. (A copy of the Notice was produced by Exeter.)
6. All agreements or other documents that entitled Exeter to rent or other consideration from Joseph & Eileen Lipari (hereafter “the Liparis”) in exchange for them living

in the residence at 1001 S. 6th Street, Cottonwood, Arizona (hereafter “the residence”) in 1999 and thereafter.

7. All agreements or other documents which limit or address what Exeter (or any of its officers or members) can do with proceeds that might hereafter be received from a future sale of the residence.

8. All documents that evidence who has had the authority to sign checks on behalf of Exeter since 1999.

9. All documents that evidence that Exeter paid the utilities (water, gas, electric), upkeep and real estate taxes relating to the residence from 1999 through 2007.

10. All documents that define or explain “value” as that term is referenced in the Warranty Deed filed with the Yavapai County Recorder on September 1, 1999 regarding the residence.

11. All documents that evidence whether Exeter authorized one or both of the Liparis to take deductions relating to the residence (*e.g.*, real estate taxes and depreciation) on their federal income tax returns filed for their 1999 through 2007 tax years.

12. All documents that relate to how Vild/O’Neil and Terry Major became authorized or empowered to sign, submit and/or file documents on behalf of Exeter in 2008 and thereafter.

13. All documents and agreements that gave Terry Major the right to live in the residence located at 1001 S. 6th Street, Cottonwood, Arizona at any time after 1999.

14. All documents that evidence whether Terry Major paid rent to Exeter as consideration for living in the residence (to the extent that he lived in the residence after 1999).

15. All documents that evidence what individual(s) acting on behalf of Exeter made the decision to replace Hunter King, LLC as a member of Exeter.

16. All communications between Exeter and one or both of the Liparis (paper, electronic or otherwise) regarding the residence.

17. The federal tax returns (income or otherwise) that Exeter filed with the IRS regarding its 1999 to 2007 tax years.

18. Documents that evidence that Exeter has a federal Employer Identification Number ("EIN").

19. The documents filed by Exeter with the State of Arizona Corporation Commission in 1999 and thereafter (annual and/or otherwise).