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*Attorneys for Intervenor The True & Marjorie Kirk
Family Trust*

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH CENTRAL DIVISION**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

NATIONAL NOTE OF UTAH, LC, a Utah
Limited Liability Company and WAYNE
LaMAR PALMER, an individual;

Defendants.

And

THE TRUE & MARJORIE KIRK FAMILY
TRUST,

Intervenor.

COMPLAINT IN INTERVENTION

Case No. 2:12-CV-591 BSJ

Judge Bruce S. Jenkins

The True & Marjorie Kirk Family Trust ("Trust"), through its undersigned counsel of record, files this Complaint in Intervention and states as follows:

INTRODUCTION

The Trust brings this Complaint for the purposes of protecting and enforcing its rights and interest in the real property described herein.

PARTIES

1. True Kirk and Marjorie Kirk, the Trustees of the Trust, are residents of Colorado.
2. Plaintiff Securities and Exchange Commission ("SEC") is an agency of the United States government.
3. Defendant National Note of Utah, LC ("National Note") is a Utah limited liability company.
4. The Receiver was appointed pursuant to the order of the United States District Court for the District of Utah, Central Division, Judge Bruce S. Jenkins, dated June 25, 2012.

JURISDICTION AND VENUE

5. This Court has declared its jurisdiction of this matter in the Court's June 25, 2012 Order Appointing Receiver and Staying Litigation. (Doc. 9)
6. Venue is also proper in this Court as stated in the June 25, 2012 Order. (Doc. 9)

STATEMENT OF FACTS

7. The SEC began this action by filing a Complaint on June 25, 2012. (Doc. 1)

8. On the same date, the Court entered an Order Freezing Assets and Prohibiting Destruction of Documents (Doc. 8) which froze all assets held in the name of the Defendants, including National Note.

9. National Note is the record title owner of the following real property located at 580 North Main, Brigham City, Box Elder County, Utah ("Twin Pines Property"), which is more particularly described as follows:

BEGINNING AT THE NORTHWEST CORNER OF LOT 4, BLOCK 43, PLAT C, BRIGHAM CITY SURVEY, THENCE SOUTH 12 RODS, THENCE EAST 10 RODS, THENCE SOUTH 4 RODS, THENCE EAST 3 RODS, THENCE NORTH 10 RODS, THENCE WEST 105.5 FEET, THEN NORTH 6 RODS, THEN WEST 109 FEET TO THE POINT OF BEGINNING.

Tax ID No. 03-089-0035.

10. On August 10, 2011, National Note, as Trustor, executed a Deed of Trust for the Property ("Trust Deed") in favor of the Trust, as Beneficiary, which was recorded in the Box Elder County Recorder's Office on August 11, 2011 as Entry No. 304596. *See* Trust Deed attached hereto as Exhibit A.

11. The Trust Deed secures two Promissory Notes in favor of the Trust: a Promissory Note dated July 8, 2011 in the principal amount of \$100,000 and a Promissory Note dated August 10, 2011 in the principal amount of \$300,000 (collectively "Notes").

12. The Trust Deed is in first lien priority position on the Twin Pines Property.

13. Upon information and belief, there are no other liens or encumbrances on the Twin Pines Property.

14. The Notes and Trust Deed are currently in default and the amount due and owing thereunder as of December 1, 2012 is \$454,200.

15. The Twin Pines Property is under the control and authority of the Receiver.

16. The value of the Twin Pines Property has significantly decreased since the commencement of this action.

17. In July 2012, the Receiver obtained an appraisal of the Property which “outlines the severely deteriorated condition of the building, showing that it requires substantial repairs, including mold removal in some units, a new roof, and repairs to its brick exterior.” The Receiver “confirmed the condition of the Property by his personal inspection.” (Doc. 39).

18. In August 2012, the Trust and the Receiver reached a settlement related to the Trust Deed, which is set forth in the Settlement Agreement and Release (“Settlement Agreement”) attached hereto as Exhibit B.

19. In the Recitals, the Receiver acknowledges that the Trust has “demonstrated that it holds a first position secured deed of trust on the [Twin Pines Property] in the amount of \$400,000.”

20. The Receiver further acknowledges that the appraised value of the Twin Pines Property is approximately \$330,000, “significantly less” than the amount of the Trust’s first position security interest.

21. Given the appraised value of the Property, the severely deteriorated condition of the building, the substantial repairs required, and the expense and uncertainty of litigation, the Receiver agreed to transfer ownership of the Twin Pines Property to the Trust.

22. In reliance on the Settlement Agreement and with the Receiver's knowledge and consent, True Kirk assumed the responsibility for repairing the Property, including performing structural work, repairing the leaks in the roof and re-shingling a large portion of the roof, replacing the carpeting in several units, repairing the plumbing in several units, repainting all of the trim on the exterior of the building on the Property, repainting the interiors of several units, and repairing the boiler on the hot water system.

23. On August 13, 2012, the Receiver filed a motion seeking the Court's approval of the Settlement Agreement. (Doc. 38).

24. At the hearing on August 24, 2012, the Court stated that it was not prepared to deal with the Receiver's motion to approve the Settlement Agreement. (Doc. 53).

25. Although the Court did not deny the motion to approve the Settlement Agreement, the Receiver has recently informed the Trust that it was no longer willing to proceed with the Settlement Agreement and instead intends to challenge the validity of the Trust Deed.

FIRST CAUSE OF ACTION

(Declaratory Judgment – Trust Deed is First Priority Lien on Twin Pines Property)

26. The Trust incorporates by reference Paragraphs 1 through 25 herein.

27. By virtue of the Trust Deed, the Trust has a first priority security interest on the Twin Pines Property, which was recorded prior to the appointment of the Receiver or commencement of this action by the SEC.

28. A declaratory judgment is necessary to facilitate the Trust's foreclosure of the Twin Pines Property.

29. The Trust is entitled to a declaratory judgment finding the Trust Deed to be a valid first priority security interest in the Twin Pines Property and allowing the Trust to proceed with the foreclosure of the Twin Pines Property pursuant to the Trust Deed.

30. In the alternative to allowing the Trust to proceed with the foreclosure, the declaratory judgment should order the Receiver to disburse to the Trust the amount due and owing under the Trust Deed, including interest, late fees, costs, and attorney fees.

SECOND CAUSE OF ACTION

(Enforcement of Settlement Agreement)

31. The Trust incorporates by reference Paragraphs 1 through 30 herein.

32. The Trust and the Receiver have entered into a binding settlement agreement, subject only to the Court's approval.

33. At the hearing on August 24, 2012, the Court did not deny the motion to approve the Settlement Agreement. Rather, the Court stated it was not prepared to deal with the motion.

34. Thereafter and in breach of the Settlement Agreement, the Receiver has refused to seek approval of the Court.

35. Accordingly, the Trust is entitled to an order and judgment approving and enforcing the Settlement Agreement.

36. In the alternative, the Trust is entitled to an award of damages in amount to be determined at trial resulting from the Receiver's breach of the Settlement Agreement.

THIRD CAUSE OF ACTION

(Takings)

37. The Trust incorporates by reference Paragraphs 1 through 36 herein.

38. Pursuant to its status as a secured creditor of National Note and the Beneficiary under the Trust Deed, the Trust has a substantial ownership interest in the Twin Pines Property, which is currently under the control and authority of the Receiver.

39. The value of the Twin Pines Property has significantly decreased since the commencement of this action and will continue to decrease while this action is pending.

40. If the Trust is not allowed to foreclose upon or pursue its other rights and remedies with respect to the Twin Pines Property, it will have been deprived of its property rights without due process or just compensation.

41. As a result of the Receiver's control and possession of the Twin Pines Property, which has resulted in a takings of the Trust's property rights without just compensation, the Trust has been damaged in an amount to be determined at trial.

FOURTH CAUSE OF ACTION

(Unjust Enrichment)

42. The Trust incorporates by reference Paragraphs 1 through 41 herein.

43. The Receiver received the benefit of the Trust repairing the Property.

44. The Receiver had knowledge or an appreciation of the benefit of this work.

45. The Receiver knew that the Trust would have not performed this work but for the Receiver's agreement that he would transfer the Property to the Trust.

46. It would be unjust for the Receiver to retain the benefit of the work without paying the Trust for the value of such work.

47. The Trust is entitled to an award of damages in amount to be determined at trial resulting from the Receiver's unjust enrichment.

PRAYER FOR RELIEF

WHEREFORE, the Trust prays for relief as follows:

1. On all Causes of Action, for an order lifting the receivership as to the Trust's first priority security interest in the Twin Pines Property and directing the Receiver to execute all necessary documents to release control of the Twin Pines Property to the Trust, including but not limited to all documents that would allow the Trust to proceed with the foreclosure of the Twin Pines Property pursuant to the Trust Deed.

2. On its First Cause of Action, for an order and judgment declaring that the Trust Deed is a valid first priority security interest in the Twin Pines Property and that the Trust is allowed to proceed with foreclosure of the Twin Pines Property. In the alternative to foreclosure, an order and judgment directing the Receiver to disburse to the Trust the amount due and owing under the Trust Deed, including interest, late fees, costs, and attorney fees.

3. On its Second Cause of Action, for an order and judgment approving and enforcing the Settlement Agreement. In the alternative, for an award of damages in an amount to be determined at trial.

4. On its Third Cause of Action, for an award of damages in an amount to be determined at trial.

5. On its Fourth Cause of Action, for an award of damages in an amount to be determined at trial.

6. On all of its Causes of Action, for such other and further relief, including equitable relief, as the Court deems just and proper.

DATED this 24th day of January, 2013.

/s/ Laura S. S. Scott

LAURA S. SCOTT
PARSONS BEHLE & LATIMER
Attorneys for Intervenor True Kirk

CERTIFICATE OF SERVICE

I hereby certify that on January 24, 2013, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the following:

- **Jeffrey M. Armington**
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and

I hereby certify that I have mailed by United States Postal Service, the foregoing document to the following non-CM/ECF participant:

Wayne L. Palmer
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/s/ Laura S. S. Scott

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