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Attorneys for Court-Appointed Receiver R. Wayne Klein

**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 AND MARJORIE KIRK)
FAMILY TRUST;)
)
Intervenor.)
)

**ANSWER TO THE TRUE AND
MARJORIE KIRK FAMILY TRUST’S
COMPLAINT IN INTERVENTION,
AFFIRMATIVE DEFENSES, AND
COUNTERCLAIMS**

Case No. 2:12-CV-591 BSJ

Judge Bruce S. Jenkins

Receiver R. Wayne Klein (the “Receiver”), for his answer to The True and Marjorie Kirk Family Trust’s (the “Kirk Trust”) Complaint in Intervention (the “Complaint”), states as follows:

PARTIES

1. The Receiver lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 1 of the Complaint, and therefore denies those allegations.
2. The Receiver admits the allegations of Paragraph 2 of the Complaint.
3. The Receiver admits the allegations of Paragraph 3 of the Complaint.
4. The Receiver admits the allegations contained in Paragraph 4 of the Complaint.

JURISDICTION AND VENUE

5. The Receiver states that whether this Court has jurisdiction over this matter is a legal conclusion to which no response is necessary. To the extent a response is required, the Receiver admits the allegations of Paragraph 5 of the Complaint.

6. The Receiver states that whether venue is proper in this Court is a legal conclusion to which no response is necessary. To the extent a response is required, the Receiver denies the allegations contained in Paragraph 6 of the Complaint for the reasons set forth in the Receiver's memorandum in opposition to the Kirk Trust's Motion to Intervene.

STATEMENT OF FACTS

7. The Receiver admits the allegations of Paragraph 7 of the Complaint.
8. With respect to the allegations in Paragraph 8, the Receiver admits that the Court entered an Order Freezing Assets and Prohibiting Destruction of Documents on or about June 25, 2012. The Receiver denies any allegation that is inconsistent with the terms of that Order.
9. The Receiver admits the allegations of Paragraph 9 of the Complaint.

10. With respect to the allegations in Paragraph 10, the Receiver admits a Deed of Trust was filed against the property at issue in the Box Elder County Recorder's Office on or about August 11, 2011 and states that the Deed of Trust speaks for itself.

11. The Receiver denies that any promissory notes between National Note and the Kirk Trust are secured by any real property owned by National Note.

12. The Receiver denies the allegations of Paragraph 12 of the Note.

13. The Receiver lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 13 of the Complaint, and therefore denies those allegations.

14. With respect to the allegations in Paragraph 14, the Receiver admits only that National Note has not made all payments owed on the promissory notes referred to in paragraph 11 of the Complaint (the "Notes"). The Receiver lacks knowledge or information sufficient to admit or deny the remaining allegations of Paragraph 14 of the Complaint, and therefore denies those allegations.

15. The Receiver admits the allegations contained in Paragraph 15 of the Complaint.

16. The Receiver denies the allegations of Paragraph 16 of the Complaint.

17. With respect to the allegations in Paragraph 17, the Receiver denies he obtained an appraisal of the property defined as the "*Twin Pines Property*" in Paragraph 9 of the Complaint. The Receiver states that the appraisal was obtained by Intervenor and that the appraisal speaks for itself. The Receiver admits that he has personally inspected the Twin Pines Property.

18. The Receiver denies the allegations of Paragraph 18 of the Complaint and the Receiver states that the Trust and the Receiver did not reach a settlement because no settlement could be reached absent court approval of any purported settlement agreement.

19. With respect to the allegations in Paragraph 19, the Receiver states that the settlement agreement attached as Exhibit B to the Complaint (the "Purported Agreement") speaks for itself and the Receiver denies that any statement made therein qualifies as an admission of any kind. The Receiver states that the Purported Agreement expressly provides that it does not constitute an "admission of any liability, fact, claim, or defense."

20. With respect to the allegations in Paragraph 20, the Receiver states that the Purported Agreement speaks for itself and the Receiver denies that any statement made therein qualifies as an admission of any kind. The Receiver states that the Purported Agreement expressly provides that it does not constitute an "admission of any liability, fact, claim, or defense."

21. The Receiver denies the allegations of Paragraph 21 of the Complaint and the Receiver states that the Trust and the Receiver did not reach a settlement because no settlement could be reached absent court approval of any purported settlement agreement.

22. The Receiver admits that True Kirk has worked on or provided services to the Twin Pines Property. The Receiver states that some of the work described in Paragraph 22 was performed while the Receiver had control of the property and was paid for by the Receiver from proceeds of the rents received from the property. The Receiver lacks knowledge or information sufficient to admit or deny the remaining allegations of Paragraph 22 of the Complaint, and therefore denies those allegations.

23. The Receiver admits the allegations of Paragraph 23 of the Complaint.

24. With respect to the allegations in Paragraph 24, the Receiver admits that a hearing was held on August 24, 2012 and that the Court did not approve any agreement between the Kirk Trust and the Receiver. To the extent this Paragraph attempts to construe, characterize or otherwise interpret that hearing, the Receiver denies those allegations.

25. The Receiver admits that it contests the validity of any claim the Kirk Trust makes against any real property controlled by the Receiver, including the Twin Pines Property. The Receiver denies the remaining allegations of Paragraph 25 of the Complaint.

FIRST CAUSE OF ACTION

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

26. The Receiver repeats and incorporates herein all other paragraphs of this Answer.

27. The Receiver denies the allegations of Paragraph 27 of the Complaint.

28. The Receiver denies the allegations of Paragraph 28 of the Complaint.

29. The Receiver denies the allegations of Paragraph 29 of the Complaint.

30. The Receiver denies the allegations of Paragraph 30 of the Complaint.

SECOND CAUSE OF ACTION

(Enforcement of Settlement Agreement)

31. The Receiver repeats and incorporates herein all other paragraphs of this Answer.

32. The Receiver denies that the Kirk Trust and the Receiver entered into a binding settlement agreement.

33. With respect to the allegations in Paragraph 24, the Receiver admits that a hearing was held on August 24, 2012 and that the Court did not approve any agreement between the Kirk

Trust and the Receiver. To the extent this Paragraph attempts to construe, characterize or otherwise interpret that hearing, the Receiver denies those allegations.

34. The Receiver denies that it is in breach of any purported agreement between the Receiver and the Kirk Trust. The Receiver admits that since the August 24, 2012 hearing, the Receiver has not moved the Court to approve any purported agreement between the Receiver and the Kirk Trust.

35. The Receiver denies the allegations of Paragraph 35 of the Complaint.

36. The Receiver denies the allegations of Paragraph 36 of the Complaint.

THIRD CAUSE OF ACTION
(Takings)

37. The Receiver repeats and incorporates herein all other paragraphs of this Answer.

38. The Receiver admits that it has control and authority over the Twin Pines Property. The Receiver denies all other allegations of Paragraph 38 of the Complaint.

39. The Receiver denies the allegations of Paragraph 39 of the Complaint.

40. The Receiver denies the allegations of Paragraph 40 of the Complaint.

41. The Receiver denies the allegations of Paragraph 41 of the Complaint.

FOURTH CAUSE OF ACTION
(Unjust Enrichment)

42. The Receiver repeats and incorporates herein all other paragraphs of this Answer.

43. The Receiver lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 43 of the Complaint, and therefore denies those allegations.

44. The Receiver lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 44 of the Complaint, and therefore denies those allegations.

45. The Receiver denies the allegations of Paragraph 45 of the Complaint.

46. The Receiver denies the allegations of Paragraph 46 of the Complaint.

47. The Receiver denies the allegations of Paragraph 47 of the Complaint.

GENERAL DENIAL

48. The Receiver specifically denies all allegations not otherwise specifically admitted in the numbered paragraphs above.

49. The Receiver denies the Kirk Trust is entitled to any of the damages or any other relief requested in the Kirk Trust's Prayer for Relief.

AFFIRMATIVE DEFENSES

The Receiver asserts the following additional and affirmative defenses, reserving the right to assert additional defenses when and if they become appropriate:

First Affirmative Defense

The Kirk Trust's Complaint fails to state a claim on which relief can be granted.

Second Affirmative Defense

The Kirk Trust's claims are barred because the contracts that are the subject matter of this dispute are void and invalid.

Third Affirmative Defense

The Kirk Trust's claims are barred by the Utah Fraudulent Transfer Act.

Fourth Affirmative Defense

The Kirk Trust's claims are barred due to a lack of consideration.

Fifth Affirmative Defense

The Kirk Trust's claims may be barred because the contract that is the subject matter of this dispute is voidable as a matter of public policy.

Sixth Affirmative Defense

The True Kirk Trust's claims are barred because the Kirk Trust has failed to allege facts necessary to sustain a claim for equitable or declaratory relief, and should therefore be denied these forms of relief.

Seventh Affirmative Defense

The harm to the Kirk Trust was proximately caused by conditions over which the Receiver had no responsibility, and by the negligence or intentional acts of Defendants or third parties.

Eighth Affirmative Defense

The Kirk Trust's claims may be barred by their failure to mitigate damages, if any.

Ninth Affirmative Defense

The Kirk Trust's claims are barred by statute, including, but not limited to, Utah Code Annotated Sections 70A-9a-109; 70A-3-203; and 70A-9a-312.

Tenth Affirmative Defense

The Kirk Trust's claims fail because the Assignment of Beneficial Interests executed in favor of the Kirk Trust did not transfer any interest in any real or personal property, any notes, any choses in action, or any security instruments, of any kind, that belonged to or benefitted the Receivership entities.

Eleventh Affirmative Defense

The Kirk Trust's claims fail because the Kirk Trust failed to perfect the purported interest, if any, that the Kirk Trust had in any Receivership property.

Twelfth Affirmative Defense

The Kirk Trust's claims are barred by the Statute of Frauds.

Thirteenth Affirmative Defense

The Kirk Trust's claims fail because the purported transactions at issue were not supported by a contemporary exchange of reasonably equivalent value.

Fourteenth Affirmative Defense

The Receiver designates all of its denials of material allegations as defenses to the extent necessary to provide a complete defense.

Fifteenth Affirmative Defense

The Receiver has, or may have, further and additional affirmative defenses that are not yet known to the Receiver, but that may become known through future discovery. The Receiver asserts each and every affirmative defense as it may be ascertained through future discovery.

WHEREFORE, the Receiver prays that judgment in his favor be granted as follows:

1. That the Complaint be dismissed with prejudice;
2. That the Receiver be awarded attorneys' fees and costs necessitated by this action to the extent authorized by law; and
3. That the Receiver be granted such further relief as the Court deems appropriate.

COUNTERCLAIM AGAINST THE KIRK TRUST

Receiver R. Wayne Klein hereby counterclaims against the Kirk Trust as follows:

PARTIES

1. On information and belief, the trustees of the True & Marjorie Kirk Family Trust (the “Kirk Trust”) are True Kirk and Marjorie Kirk. On information and belief, True Kirk and Marjorie Kirk are residents of Colorado.

2. Defendant National Note of Utah, L.C. (“National Note”) is a Utah limited liability company.

3. R. Wayne Klein was appointed the Receiver over National Note and its affiliated entities pursuant to this Court’s June 25, 2010 *Order Appointing Receiver and Staying Litigation* (the “Receivership Order”).

4. The Receivership Order charged the Receiver with, among other things, the power to “bring such legal actions based on law or equity . . . as the Receiver deems necessary or appropriate in discharging his duties as Receiver” and to “pursue . . .all suits, actions, claims and demands . . . which may be brought by or asserted against” the Receivership estate.¹ The Receivership Order further provides that the Receiver is “authorized, empowered and directed to investigate, prosecute, defend, intervene in or otherwise participate in, compromise, and/or adjust actions . . . of any kind as may . . . be advisable or proper to recover and/or conserve Receivership Property.”²

¹ See Receivership Order at ¶¶ 7.I and J.

² *Id.* at ¶ 42.

JURISDICTION AND VENUE

5. Jurisdiction over this Counterclaim is proper pursuant to the Receivership Order, the Court's Order granting the Kirk Trust's Motion to Intervene, and 28 U.S.C. §§ 1367 and 754.

6. Venue is proper pursuant to 28 U.S.C. §§ 754 and 1692.

FACTUAL BACKGROUND

National Note's Operation as an Alleged Ponzi Scheme

7. On June 25, 2012, the Securities & Exchange Commission filed a complaint (the "SEC Complaint") against National Note in Case No. 2:12-cv-00591. Docket No. 1.

8. The SEC Complaint alleges that Defendant Wayne Palmer ("Palmer") operated National Note as a "Ponzi scheme" and asserts various causes of action for securities fraud.

9. Specifically, the SEC Complaint states that from at least 2004, Palmer solicited and raised more than \$100 million from over 600 "investors." SEC Complaint ¶ 1.

10. Additionally, the SEC Complaint states that Palmer represented to investors that National Note purchased and sold collateralized loans, as well as funded, managed and sold real property, and due to National Note's expertise and knowledge in these areas, the company was able to generate significant returns and guarantee investors at least a 12% return. *Id.* ¶ 2.

11. According to the SEC Complaint, however, at all times relevant hereto, National Note was insolvent and unable to make investor payments according to its contractual terms. As such, National Note paid investors from the investment funds of new investors. *Id.* ¶ 4.

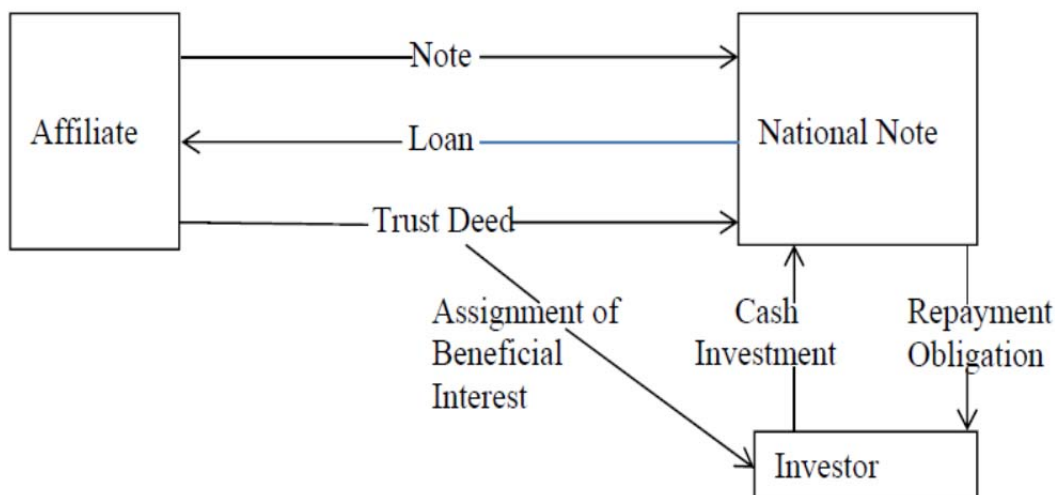
National Note's Investment Scheme

12. National Note represented to investors that their investment in National Note would be secured by real property. National Note did not own real property sufficient to secure

these investments. Accordingly, National Note devised a scheme pursuant to which National Note would purport to grant security to investors, when in truth, National Note would take investors' money and give them no security in return. National Note's scheme relevant herein was as follows.

13. First, National Note would lend money to an affiliated entity (the "Affiliate"). The Affiliate would enter into a promissory note, pursuant to which it agreed to repay the loan to National Note (the "Affiliate Note"). The Affiliate Note would then be secured by a Trust Deed executed by the Affiliate in favor of National Note (the "Affiliate Trust Deed").

14. National Note then solicited money from investors by promising that their investment would be secured by Assignments of Beneficial Interest in Trust Deed (the "ABIs"). The ABIs purported to assign National Note's "right, title and interest" in the Affiliate Trust Deed. National Note did not assign its interest in the Affiliate Note to the investors. The following diagram shows National Note's scheme:



15. The investors purportedly received an assignment of National Note's secured interest in real property. This secured interest gave National Note the right to foreclose on the underlying real property if the Affiliate defaulted on the Affiliate Note. If, however, the Affiliate never defaulted and the Affiliate Note was paid, the Affiliate Trust Deed was cancelled and the secured interest went away.

16. The Affiliate was not a party to any of the ABIs and there was no privity of contract between the Affiliate and the investors. Accordingly, there was no contract pursuant to which the Affiliate was obligated to pay the Affiliate Note payments to the investors instead of National Note. Moreover, the ABI did not assign National Note's rights under the Affiliate Note to the investors. Accordingly, the ABI did not give the Investor the right to demand payment under the Affiliate Note.

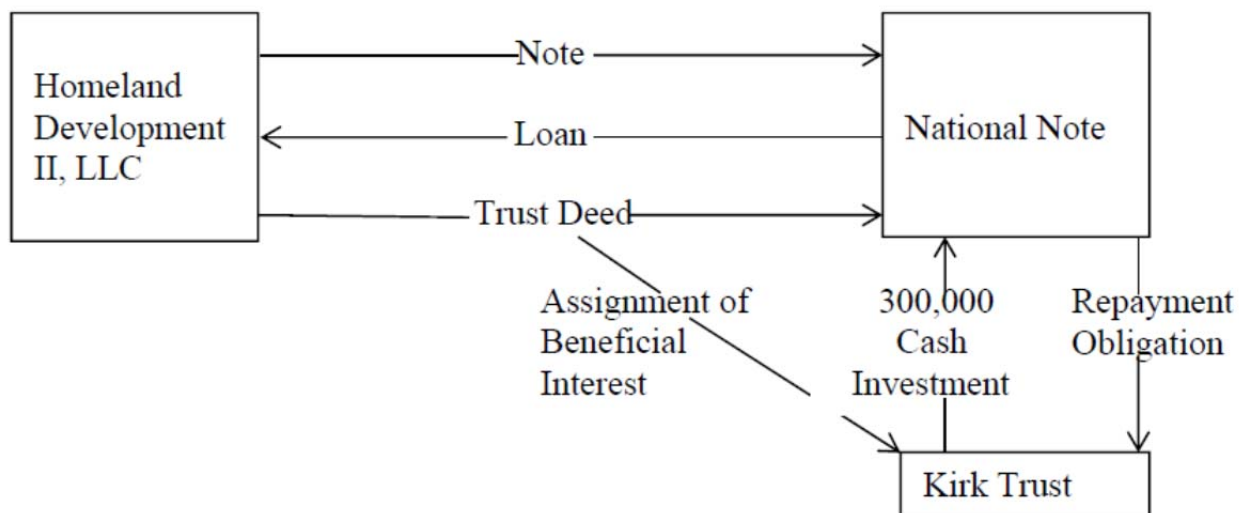
17. The end result of this scheme was that the investors received no security at all. If National Note breached its agreement with the investor, the investor had no foreclosure rights as a result of the assignment of National Note's interest in the Affiliate Deed of Trust, because the Affiliate Deed of Trust was security for the Affiliate Note, not the agreement between National Note and the investors.

National Note Borrows \$300,000 From the Kirk Trust

18. In April of 2009, the Kirk Trust lent \$300,000.00 to National Note. This agreement was documented in a Promissory Note, dated April 30, 2009 (the "First Arizona Note").

19. Consistent with the financing scheme outlined above, the First Arizona Note was not secured by a deed of trust. Instead, on April 30, 2009, National Note executed an

Assignment of Beneficial Interest in Trust Deed in favor of the True Kirk Trust (the “Arizona ABI”). The Arizona ABI purported to assign National Note’s interest in a Trust Deed for real property in Arizona (the “Homeland Property”). This Trust Deed was executed by Homeland Development II, LLC in favor of National Note (the “Homeland Trust Deed”). The Homeland Trust Deed was security for a multi-million dollar Promissory Note between Homeland Development II, LLC and National Note (the “Homeland Note”). National Note did not assign its beneficial interest in the Homeland Note to the Kirk Trust. The following diagram illustrates the transactions:



20. National Note did not execute a trust deed for the Homeland Property in favor of the Kirk Trust. Moreover, Homeland Development II, LLC is not a party to the Arizona ABI. Indeed, there is no privity of contract between Homeland Development II, LLC and the Kirk Trust. Finally, the Arizona ABI did not assign National Note’s rights under the Homeland Note to the Kirk Trust. Accordingly, the Arizona ABI did not give the Kirk Trust the right to demand payment under the Homeland Note.

21. All that the Kirk Trust purported to receive through the Arizona ABI was an assignment of National Note's security interest in the Homeland Trust Deed. National Note's security interest merely gave National Note the right to foreclose on the Homeland Property if Homeland Development II, LLC defaulted on the Homeland Note. If, however, Homeland Development II, LLC never defaulted and the Note was paid, the Homeland Trust Deed was cancelled and the secured interest went away, regardless of whether National Note breached the First Arizona Note, or not.

22. Conversely, the Arizona ABI gave the Kirk Trust no right to foreclose on the Homeland Property, had National Note defaulted on the First Arizona Note. This is because the Homeland Trust Deed did not secure the First Arizona Note. Accordingly, as a matter of law and fact, the Arizona ABI gave no security to the Kirk Trust. The First Arizona Note was nothing more than an unsecured note.

23. On August 1, 2009, National Note executed another promissory note, pursuant to which National Note agreed to pay the Kirk Trust \$300,000 (the "Second Arizona Note"). Pursuant to its terms, the Second Arizona Note satisfied in full the First Arizona Note. Specifically, the Second Arizona Note states that it "pays in full, by renewal," the First Arizona Note.

24. The First Arizona Note was purportedly secured by the Arizona ABI, which as explained above was an invalid security agreement. Regardless, when the First Arizona Note was satisfied by the Second Arizona Note, this satisfied, in full, the Arizona ABI. National Note did not execute a new Assignment of Beneficial Interest in favor of the Kirk Trust to secure the

Second Arizona Note. In fact, there was no security agreement of any kind executed as security for the Second Arizona Note. Accordingly, the Second Arizona Note was unsecured.

25. On July 1, 2011, National Note executed another promissory note, pursuant to which National Note agreed to pay the Kirk Trust \$300,000 (the "Third Arizona Note"). The Third Arizona Note states that it "pays in full, by renewal," the Second Arizona Note. National Note did not execute a new Assignment of Beneficial Interest in favor of the Kirk Trust to secure the Third Arizona Note. Accordingly, the Third Arizona Note was unsecured.

26. On August 10, 2011, National Note executed another promissory note, pursuant to which National Note agreed to pay the Kirk Trust \$300,000 (the "Fourth Arizona Note"). The Kirk Trust did not give National Note \$300,000 in August of 2011. Instead, the Fourth Arizona Note states that it "pays in full, by renewal," the Third Arizona Note, and the \$300,000 owed by National Note was simply refinanced through this Fourth Arizona Note.

27. Notwithstanding that there was no new value provided to National Note in August of 2011, for the first time, National Note secured the \$300,000 loan with real property.

28. National Note is the record title owner of real property with an apartment building constructed thereon, located at 580 North Main, Brigham City, Box Elder County, Utah (the "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, THENS SOUTH 12 RODS, THENCE EAST 10 RODS, THENCE SOUTH 4 RODS, THENCE EAST 3 RODS, THENCE NORTH 10 RODS, THENCE WEST 105.5 FEET, THE NORTH 6 RODS, THEN WEST 109 FEET TO THE POINT OF BEGINNING

Tax ID No. 03-089-0035.

29. Although the Kirk Trust did not provide an additional \$300,000 to National Note in August of 2011, National Note, as Trustor, executed a Deed of Trust for the Twin Pines Property (the “Twin Pines Trust Deed”) in favor of the Kirk Trust. A copy of the Twin Pines Trust Deed is attached as Exhibit A of the Kirk Trust’s complaint. The Twin Pines Trust Deed purports to secure the Fourth Arizona Note.

30. The Twin Pines Trust Deed is a fraudulent transfer. In August of 2011, The Kirk Trust received, for the first time, a secured interest in real property, notwithstanding the fact that the Kirk Trust did not give any new value to National Note in exchange for this secured interest in the Twin Pines Property.

31. In August of 2011, National Note was insolvent.

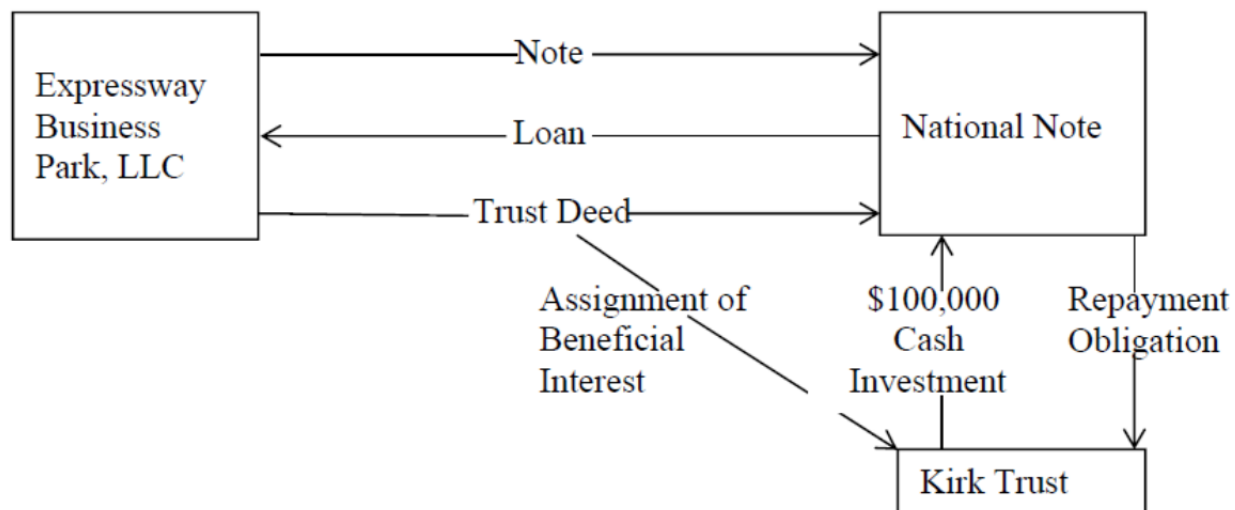
32. The Court should enter an Order and Judgment avoiding the Twin Pines Trust Deed as a fraudulent transfer.

National Note Borrows \$100,000 From the Kirk Trust

33. In July of 2011, the Kirk Trust lent \$100,000.00 to National Note. This agreement was documented in a Promissory Note, dated July 8, 2011 (the “First Spanish Fork Note”).

34. The First Spanish Fork Note was not secured by a deed of trust. Instead, on July 7, 2011, National Note executed an Assignment of Beneficial Interest in Trust Deed in favor of the Kirk Trust (the “Spanish Fork ABI”). The Spanish Fork ABI purports to assign National Note’s interest in a Trust Deed for real property in Spanish Fork (the “Spanish Fork Property”). This Trust Deed was executed by Expressway Business Park, LLC in favor of National Note (the “Expressway Trust Deed”). The Expressway Trust Deed was security for a Promissory Note

between Expressway Business Park, LLC and National Note (the “Expressway Note”). National Note did not assign its beneficial interest in the Expressway Note to the Kirk Trust. The following diagram illustrates the transactions:



35. National Note did not execute a trust deed for the Spanish Fork Property in favor of the Kirk Trust. Moreover, Expressway Business Park, LLC is not a party to the Spanish Fork ABI. There is no privity of contract between Expressway Business Park, LLC and the Kirk Trust. Finally, the Spanish Fork ABI did not assign National Note’s rights under the Expressway Note to the Kirk Trust. Accordingly, the Spanish Fork ABI did not give the Kirk Trust the right to demand payment under the Expressway Note.

36. The Spanish Fork ABI gave the Kirk Trust no right to foreclose on the Spanish Fork Property, had National Note defaulted on the First Spanish Fork Note. This is because the Expressway Trust Deed did not secure the First Spanish Fork Note. Accordingly, as a matter of law and fact, the Spanish Fork ABI gave no security to the Kirk Trust. The First Spanish Fork Note was nothing more than an unsecured note.

37. On August 10, 2011, National Note executed another promissory note, pursuant to which National Note agreed to pay the Kirk Trust \$100,000 (the “Second Spanish Fork Note”). The Kirk Trust did not give National Note an additional \$100,000 on August 10, 2011. Instead, the Second Spanish Fork Note states that it “pays in full, by renewal,” the First Spanish Fork Note, and the \$100,000 owed by National Note was simply refinanced through this Second Spanish Fork Note.

38. Notwithstanding that there was no new value provided to National Note in August of 2011, National Note secured the Second Spanish Fork Note with real property. On August 20, 2011, National Note, as Trustor, executed a Deed of Trust for the Property (the “Twin Pines Trust Deed”) in favor of the Kirk Trust. The Twin Pines Trust Deed purports to secure the Second Spanish Fork Note.

39. The Twin Pines Trust Deed is a fraudulent transfer. In August of 2011, The Kirk Trust received, for the first time, a secured interest in real property, notwithstanding the fact that the Kirk Trust did not give any new value to National Note in exchange for this secured interest in the Twin Pines Property.

40. In August of 2011, National Note was insolvent.

41. The Court should enter an Order and Judgment avoiding the Twin Pines Trust Deed as a fraudulent transfer.

FIRST CAUSE OF ACTION
(Declaratory Judgment)

42. The Receiver incorporates by reference herein all previous paragraphs of this Answer and Counterclaim.

43. An actual controversy has arisen between the Receiver and the Kirk Trust regarding the enforceability of the Twin Pines Deed of Trust.

44. The Receiver is entitled to a declaratory judgment that:

- a. The Arizona ABI is invalid and never gave the Kirk Trust any security for its \$300,000 loan to National Note.
- b. The Spanish Fork ABI is invalid and never gave the Kirk Trust any security for its \$100,000 loan to National Note.
- c. The Twin Pines Trust Deed is void as a fraudulent transfer.

45. A judicial declaration is necessary and appropriate at this time under the circumstances in order that the respective rights and duties of the parties may be determined.

SECOND CAUSE OF ACTION
(Fraudulent Transfer – Utah Code Annotated § 25-6-5(1)(a))

46. The Receiver incorporates by reference herein all previous paragraphs of this Answer and Counterclaim.

47. The SEC Complaint states that National Note was operated with the characteristics of a Ponzi scheme.

48. At all relevant times hereto, National Note had at least one general unsecured creditor.

49. National Note issued the Twin Pines Trust Deed in favor of the Kirk Trust in August of 2011 with actual intent to hinder, delay or defraud creditors.

50. The issuance of the Twin Pines Trust Deed was a fraudulent transfer.

51. Pursuant to Utah Code Ann. § 25-6-5(1)(a), the Receiver is entitled to a Judgment and Order avoiding the Twin Pines Trust Deed.

THIRD CAUSE OF ACTION
(Fraudulent Transfer – Utah Code Annotated § 25-6-5(1)(b))

52. The Receiver incorporates by reference herein all previous paragraphs of this Answer and Counterclaim.

53. The SEC Complaint states that National Note was operated with the characteristics of a Ponzi scheme.

54. At all relevant times hereto, National Note had at least one general unsecured creditor.

55. National Note issued the Twin Pines Trust Deed in favor of the Kirk Trust in August of 2011.

56. National Note did not receive reasonable equivalent value from the Kirk Trust in exchange for the Twin Pines Trust Deed. In fact, there was no contemporaneous exchange of any value from the Kirk Trust to National Note for the Twin Pines Trust Deed.

57. At the time National Note issued the Twin Pines Trust Deed, National Note (a) was engaged or was about to be engaged in a business or transaction for which the remaining assets of National Note were unreasonably small in relation to the business or transaction; or (b) intended to incur, or believed or reasonably should have believed that it would incur, debts beyond its ability to pay as such debts became due.

58. Pursuant to Utah Code Ann. § 25-6-5(1)(b), the Receiver is entitled to a Judgment and Order avoiding the Twin Pines Trust Deed.

FOURTH CAUSE OF ACTION
(Fraudulent Transfer – Utah Code Annotated § 25-6-6(1))

59. The Receiver incorporates by reference herein all previous paragraphs of this Answer and Counterclaim.

60. The SEC Complaint states that National Note was operated with the characteristics of a Ponzi scheme.

61. At all relevant times hereto, National Note had at least one general unsecured creditor.

62. National Note issued the Twin Pines Trust Deed in favor of the Kirk Trust in August of 2011.

63. National Note did not receive reasonable equivalent value from the Kirk Trust in exchange for the Twin Pines Trust Deed. In fact, there was no contemporaneous exchange of any value from the Kirk Trust to National Note for the Twin Pines Trust Deed.

64. National Note was insolvent at the time it executed the Twin Pines Trust Deed or became insolvent as a result of the issuance of the Twin Pines Trust Deed.

65. Pursuant to Utah Code Ann. § 25-6-6(1), the Receiver is entitled to a Judgment and Order avoiding the Twin Pines Trust Deed.

FIFTH CAUSE OF ACTION
(Unjust Enrichment)

66. The Receiver incorporates by reference herein all previous paragraphs of this Answer and Counterclaim.

67. The Twin Pines Trust Deed constituted property of National Note as a result of National Note's operations as a Ponzi scheme.

68. National Note's issuance of the Twin Pines Trust Deed conferred a benefit upon the Kirk Trust.

69. The Kirk Trust knowingly benefited from National Note's issuance of the Twin Pines Trust Deed.

70. Allowing the Kirk Trust to retain the Twin Pines Trust Deed would unjustly enrich it and would be inequitable to other creditors and investors in this receivership.

71. Absent return of the Twin Pines Trust Deed, the receivership and its creditors will be damaged by the True Kirk's unjust enrichment and may have no adequate remedy at law.

72. The Receiver is entitled to a Judgment and Order avoiding the Twin Pines Trust Deed.

PRAYER FOR RELIEF

WHEREFORE, the Receiver prays for relief as follows:

1. On its First Cause of Action, for an Order and Judgment declaring that:
 - a. The Arizona ABI is invalid and never gave the Kirk Trust any security for its \$300,000 loan to National Note.
 - b. The Spanish Fork ABI is invalid and never gave the Kirk Trust any security for its \$100,000 loan to National Note.
 - c. The Twin Pines Trust Deed is void.
2. On its Second Cause of Action, for an Order and Judgment avoiding the Twin Pines Trust Deed as a fraudulent transfer pursuant to Utah Code Ann. § 25-6-5(1)(a).
3. On its Third Cause of Action, for an Order and Judgment avoiding the Twin Pines Trust Deed as a fraudulent transfer pursuant to Utah Code Ann. § 25-6-5(1)(b).
4. On its Fourth Cause of Action, for an Order and Judgment avoiding the Twin Pines Trust Deed as a fraudulent transfer pursuant to Utah Code Ann. § 25-6-6(1).

5. On its Fifth Cause of Action, for an Order and Judgment avoiding the Twin Pines Trust Deed as such deed would unjustly enrich the Kirk Trust to the detriment of all other creditors in the receivership.

6. On all causes of action, for such other and further relief as the Court deems just and proper.

DATED this 27th day of February, 2013.

DORSEY & WHITNEY LLP

 /s/ Chris Martinez
Peggy Hunt
Chris Martinez
Nathan Seim
Attorneys for Receiver

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the above **RECEIVER'S ANSWER, AFFIRMATIVE DEFENSES, AND COUNTERCLAIMS** was filed with the Court on this 27th day of February, 2013, and served via ECF on all parties who have requested notice in this case and was served via email on this 27th day of February, 2013 on the following:

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/s/ Chris Martinez