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*Attorneys for Court-Appointed Receiver R. Wayne Klein*

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

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

Defendants.

**DECLARATION OF R. WAYNE  
KLEIN IN SUPPORT OF  
RECEIVER'S MOTION SEEKING  
AUTHORIZATION TO SELL  
AUTUMN RIDGE PHASE II FREE  
AND CLEAR OF PURPORTED  
INTERESTS AND MEMORANDUM  
OF SUPPORT**

2:12-cv-00591 BSJ

The Honorable Bruce S. Jenkins

I, R. Wayne Klein, being of lawful age, declares, certifies, verifies and states as follows:

1. I am the Court-Appointed Receiver (the "Receiver") in the above-captioned case pursuant to the Order Appointing Receiver and Staying Litigation entered on June 25, 2012 [Docket No. 9], as amended Docket No. 50 (the "Receivership Order").

2. I submit this Declaration in support of Receiver's Motion Seeking Authorization

to Sell Autumn Ridge Phase II Free and Clear of Purported Interests and Memorandum in Support (the "Motion"), which has been filed concurrently herewith.

3. Since my appointment, I have engaged in an investigation of the assets and obligations of the Receivership Estate, and I make all of the following statements based on my personal knowledge.

**REAL PROPERTY TO BE SOLD AND SALE PLAN**

**Autumn Ridge Phase II and Marketing**

4. I have identified numerous real properties as being part of the Receivership Estate, and where appropriate have listed such property for sale.

5. Relevant to this Motion is a partially developed parcel of real property, referred to as "Phase II" of the Autumn Ridge Estates subdivision located in Eagle Mountain, Utah, referenced collectively herein as the "Autumn Ridge Phase II."

6. While some development of Autumn Ridge Phase II had commenced prior to my appointment (*i.e.* utilities, sidewalks, curb, gutter, etc.), no structures had been built.

7. On or about August 21, 2012, I caused Autumn Ridge Phase II to be listed for sale through the Providence Realty Group. A true and correct copy of the Listing Agreement is attached hereto as Exhibit 1.

8. My initial plan was to list and sell Autumn Ridge Phase II after all of the lots in a related property, Autumn Ridge Phase I, had been completed. However, I received an offer from Wren Holdings, LLC ("Wren") and reviewed and accepted the offer in satisfaction of my duties to act in the best interest of the Receivership Estate.

**Sale Price and Appraisals**

9. Copies of the appraisals for Autumn Ridge Phase II are attached as Exhs. E-G to *Receiver's Motion For Court to Appoint Appraisers for (a) Autumn Ridge Phase I Lot Nos. 2, 3, 4, 6, 7, 8, 11, 16, 21, 30, 33, 39, 40, 41, 51, 52, 54, 55, and 60, and (b) Autumn Ridge Phase II*, Docket No. 120, and are incorporated herein by reference.

**The Purchase Agreement and Material Terms of Sale**

10. On February 7, 2013, after engaging in purchase discussions with multiple developers and/or builders, I entered into, subject to Court approval, a Purchase Agreement with Wren (the "Purchase Agreement"). A true and correct copy of the Purchase Agreement is attached hereto as Exhibit 2.

11. The Purchase Agreement was negotiated by me and Wren in good faith and at arms' length, and the sale is meant to maximize the value of Autumn Ridge Phase II for the benefit of the Receivership Estate.

12. Wren has agreed to purchase Autumn Ridge Phase II from the Receivership Estate free and clear of liens and interests for a purchase price in the amount of \$538,000.00, which exceeds the average appraised value of Autumn Ridge Phase II.

13. In addition, as part of this transaction, the estate will purchase from Cedar Valley Land and Water Company, 58.42 acre feet of water at a price of \$9,500.00 per acre foot, for a total cost of \$554,990.00, and these water rights will be transferred to Wren at closing. In addition to the purchase price, Wren will pay \$554,990.00 for the water rights to me as Receiver for the benefit of the Receivership Estate.

14. I believe that purchasing the water shares and then selling them to Wren at closing will realize a greater value to the Receivership Estate for Autumn Ridge Phase II. At this time, it is uncertain whether any purchaser would acquire Autumn Ridge Phase II without water rights,

and if it did, I believe that the purchase price would likely be less than would be realized from the proposed sale.

15. The sale is subject to Court approval. In the event the Court does not approve the sale within 30 days of the acceptance of the Purchase Agreement by me, Wren or I may terminate the Purchase Agreement and neither party shall have further obligation one to another.

16. The proposed terms of the sale are intended to maximize the value of Autumn Ridge Phase II.

#### **Sale Costs and Net Sale Proceeds**

17. At the time of closing, I anticipate paying the ordinary costs of the sale, including property taxes, market-rate closing costs and a discounted 6.00% realtor commission, with the remaining sale proceeds being referred to herein as “Net Sale Proceeds.”

18. I will separately account for the Net Sale Proceeds pending resolution of any disputes related to the ABI Holders’ claimed interests, or other lien holders, in Autumn Ridge Phase II.

#### **Free and Clear Sale**

19. To determine interests, if any, against Autumn Ridge Phase II, I obtained a preliminary title report with respect to Autumn Ridge Phase II (the “Title Report”). A true and correct copy of the Title Report is attached hereto as Exhibit 3.

20. From this Title Report, the Receiver has identified approximately thirty-three persons/entities holding thirty-nine purported interests (the “ABI Holders”). However, a total of fourteen ABI Holders have now provided the Receiver with voluntary releases of eighteen of these purported interests, thus leaving approximately nineteen lienholders holding twenty-one purported ABI interests in Autumn Ridge Phase II. True and correct copies of the Releases of Liens are attached hereto as Exhibit 4.

21. In addition, the Title Report identifies two purported lien holders, and taxes owed.

22. To facilitate the proposed sale of Autumn Ridge Phase II, I propose allowing any interests in Autumn Ridge Phase II, including the identified and remaining interests asserted by the ABI Holders and other lien holders, to attach to the Net Sale Proceeds while I evaluate the validity of such interests.

23. In so doing, I am in no way waiving any rights, claims, interests or defenses to any claims or interests made against Autumn Ridge Phase II or to the Net Sale Proceeds.

#### **Best Interests**

24. I believe that the sale of Autumn Ridge Phase II to Wren as proposed is beneficial for and in the best interests of the Receivership Estate based on at least the following: (a) the purchase price to be obtained which exceeds the average appraised values of the Autumn Ridge Phase II; (b) the terms of the sale aim to maximize the amount the estate realizes— which amount is, in my opinion, greater than I would receive if the property could be sold without water rights; and (c) the estate's receipt of cash through a cost efficient method of sale with each sale being obtained through good faith and arms' length negotiations.

25. The SEC has been informed of the material terms of the sales, and has no objection thereto.

#### **Publication Notice**

26. Upon entry of an Order granting the Publication Motion, I shall publish notice of the proposed sale in The Salt Lake Tribune, a newspaper published in Salt Lake City, Utah, and the Provo Daily Herald, a newspaper published in Utah County, Utah and distributed to Eagle Mountain, Utah, using the method and form of notice approved by the Court.

27. I understand that the sale will not be approved if I receive a higher and better offer that is in compliance with 28 U.S.C. § 2001(b) as quoted above and the sale is conditioned on

this factor.

28. In determining whether an offer is a higher and better offer within the meaning of 28 U.S.C. § 2001(b), I, in my sole discretion, will consider the purchase price offered and any other conditions requested by the potential purchaser, including but not limited to water share acquisition.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

DATED this 14<sup>th</sup> day of May, 2013.

  
R. Wayne Klein, Receiver

**CERTIFICATE OF SERVICE**

IT IS HEREBY CERTIFIED that service of the above **DECLARATION OF R. WAYNE KLEIN IN SUPPORT OF RECEIVER'S MOTION SEEKING AUTHORIZATION TO SELL AUTUMN RIDGE PHASE II FREE AND CLEAR OF PURPORTED INTERESTS AND MEMORANDUM OF SUPPORT** was filed with the Court on this 15<sup>th</sup> day of May, 2013, and served via ECF on all parties who have requested notice in this case and via U.S. Mail postage prepaid to the following:

Wayne Palmer  
8816 South 2240 West  
West Jordan, Utah 84088  
*Defendant*

/s/ Tyson C. Horrocks