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**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 RECEIVER R.
WAYNE KLEIN IN SUPPORT OF
RECEIVER'S MOTION FOR
AUTHORIZATION TO SELL
ELKHORN RIDGE CABIN LOT
FREE AND CLEAR OF PURPORTED
INTERESTS**

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 for Authorization to Sell Elkhorn Ridge Cabin Lot Free and Clear of Purported Interests* (the "Motion"), which together with a *Memorandum in Support* 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.

The Elkhorn Ridge Subdivision

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

5. Relevant to the present Motion is certain real property of the Receivership Estate identified as the "Elkhorn Ridge" subdivision, located in Oneida County, near Malad, Idaho. This subdivision contains forty-eight lots that were in process of being developed by National Note of Utah, LC or an affiliated entity (collectively, "NNU") prior to my appointment. As of the time of my appointment, one of the lots had been sold, but all development efforts had ceased. Roads had been built as well as entrance structures, and cabin construction had started on three of the forty-seven remaining lots (the "Cabin Lots"), but all lot construction on such Cabin Lots that had commenced was unfinished when I was appointed. None of the lots have water or sewer connections, meaning that purchasers of the lots will need to install wells and septic tanks.

6. As part of my investigation of this subdivision, I have discovered that a pre-condition to the sale of the Elkhorn Ridge lots required the resolution of certain zoning issues with the Oneida County Planning and Zoning Commission (the "Zoning Commission"), including NNU's construction of a fence around the entire subdivision. Until those issues were resolved, no lots could be sold.

7. Accordingly, I met with the Zoning Commission and requested a variance to allow the sale of one of the lots so as to allow the Receivership Estate to obtain funds sufficient to comply with the zoning issues.

8. The Zoning Commission has conditionally granted the variance, allowing one lot to be sold, but prohibiting the sale of any other lots until the perimeter fence is constructed and past due property taxes for the subdivision are paid. A copy of the Oneida County Variance Application, with approval noted thereon, is attached hereto as Exhibit 1.

Marketing of the Property

9. On or about October 11, 2012, after obtaining the variance from the Zoning Commission, I caused certain lots in the Elkhorn Ridge subdivision to be listed for sale, including the property at issue herein as described below, through Idaho Real Estate Group.

10. To determine an offering price for the properties in question and comply with my duties, I obtained an appraisal of the three Cabin Lots and one of the empty lots, a copy of the relevant appraisal being attached hereto as Exhibit 2 and incorporated herein, and obtained the advice of my independent real estate agent.

11. The properties were listed for sale on the multiple listing service, and were actively marketed by the realtor.

The Property to Be Sold, the Purchase Agreement and the Alternative Back Up Offer

12. I have received two offers to purchase one of the three Cabin Lots, identified in the Memorandum in Support of the Motion "Elkhorn Ridge Lot #1". Elkhorn Ridge Lot #1 has a partially-built cabin and an outbuilding that was designed as a garage, but upon information and belief, had been used by NNU as a sales office for the subdivision.

13. On or about October 16, 2012, I received the first offer to purchase Elkhorn Ridge Lot #1, and after consulting with my realtor, I made a counteroffer and ultimately reached agreement related to this offer (the "Purchase Agreement"). A copy of the Purchase Agreement is attached hereto as Exhibit 3, and is incorporated herein.

14. On or about October 26, 2012, I received a second offer to purchase Elkhorn Ridge Lot #1, which offer is being held as a back up offer (the "Back Up Offer"). A copy of the Back Up Offer is attached hereto as Exhibit 4, and is incorporated herein.

15. Although I have no reason to believe that the sale contemplated by the Purchase Agreement will not be consummated, in the event that it is not, I am alternatively seeking approval of the Back Up Offer.

16. Both the Purchase Agreement and the Back Up Offer have been negotiated by me, either personally or through my agent, with the respective prospective purchasers in good faith and at arms' length.

Material Terms of Sale

17. As proposed in the Purchase Agreement, as Receiver, I will sell Elkhorn Ridge Lot #1 to the purchaser, subject to Court approval, for a purchase price of \$130,000.00.

18. An earnest money deposit in the amount of \$500.00 has been made by the potential purchaser, and the sale is whereis, as is, with no representations or warranties.

19. The terms of the Back Up Offer are materially similar to the Purchase Agreement described above, except the purchase price is in the amount of \$135,00.00.

Sale Costs and Net Sale Proceeds

20. I anticipate paying ordinary costs of sale, including market-rate closing costs and a standard 6.9% realtor commission at the time of closing of the sale.

21. Furthermore, as discussed above, my ability to sell Elkhorn Ridge Lot #1 on behalf of the Receivership Estate is conditioned, in part, on compliance with the Zoning Commission's variance. Under that variance, I am required to use proceeds of the sale to pay for the installation of the perimeter fence and back taxes for the subdivision. At this time, I estimate,

based on third party bids obtained, that the fence will cost no more than \$15,000.00 to build, and that property taxes for the subdivision will be no more than \$3,000.00 (collectively, the "Variance Costs").

22. Any interests against Elkhorn Ridge Lot #1, other than the closing costs and Variance Costs described above, will not be paid at the time of closing of the sale. Rather, as proposed, any such interests (to the extent that they exist and without any waiver of my or the estate's rights and defenses related thereto) will survive the sale and will attach to the net sale proceeds, these being the sale proceeds, less the ordinary costs of sale and the Variance Costs (the "Net Sale Proceeds").

23. I will separately account for the Net Sale Proceeds pending resolution of any disputes related to interests that may exist against Elkhorn Ridge Lot #1.

Free and Clear Sale

24. I propose to sell Elkhorn Ridge Lot #1 free and clear of all interests therein, with any interests that may exist attaching to the Net Sale Proceeds. In so doing, I am in no way waiving any rights, claims, interests or defenses to any claims or interests made against Elkhorn Ridge Lot #1 or to the Net Sale Proceeds.

25. To determine interests, if any against Elkhorn Ridge Lot #1, I obtained a preliminary title report with respect to this property, a copy of which is attached hereto as Exhibit 5 (the "Title Report").

26. According to the Title Report, the following exceptions to title exist: (a) property taxes in the total principal amount of \$218.54 for 2010-2011, with 2012 showing as due and owing as well; (b) a Deed of Trust, copy of which is attached hereto as Exhibit 6, recorded by Entity Elkhorn Ridge, LLC, a NNU affiliate which is one of the Palmer Entities included in the

Receivership Order (the “Insider Deed of Trust”); (c) an “Assignment of Beneficial Interest in Trust Deed for Security” (“ABI”) issued to investors Sherman and Carla Mehlhoff (“Melhoffs”), purporting to provide the Melhoffs a beneficial interest in the Insider Deed of Trust to secure their investment with NNU, a copy of which is attached hereto as Exhibit 7; and (d) an ABI issued to investor Peter Moritz (“Moritz”), purporting to provide Moritz a beneficial interest in the Insider Deed of Trust to secure his investment with NNU, attached hereto as Exhibit 8.

27. I do not believe that these ABI interests are valid, but to the extent that they continue to be asserted, I propose that the sale be allowed with any interest that may exist pursuant to such ABIs, attaching to the Net Sale Proceeds thereof.

28. According to the records attached as Exhibit 9, Moritz’s promissory note has been paid in full, and Moritz has informed me that he will execute a release of his ABI and not claim an interest in Elkhorn Ridge Lot #1 or the Net Sale Proceeds thereof.

29. Mehlhoff’s ABI was issued in conjunction with a December 2005 NNU promissory note. Like the Moritz ABI, according to records in my control, copies of which are attached hereto as Exhibit 10, there is no basis for Mehlhoff’s ABI because his promissory note was paid in full in July 2007. I have requested that Mehlhoff agree to release his ABI, but as of this time, Mehlhoff has not done so. But, based on these facts, as well as issues related to the legal validity of any ABI, I do not believe that Mehlhoff has any interest in the Elkhorn Ridge Lot #1 or to the Net Sale Proceeds thereof. Nonetheless, to facilitate the proposed sale, I agree to allow Mehlhoff’s alleged interest to attach to the Net Sale Proceeds until such time as any disputes between us can be resolved.

Best Interests

30. I believe that the sale of Elkhorn Ridge Lot # 1 as proposed, or alternatively,

pursuant to the Back Up Offer, is in beneficial for and in the best interests of the Receivership Estate.

31. The proposed sale will result in cash based on the fair market value of Elkhorn Ridge Lot #1. Specifically, the appraised value of the Elkhorn Ridge Lot #1 is \$135,000.00. The proposed purchaser initially offered to purchase Elkhorn Ridge Lot #1 for \$120,000.00, and after good faith and arm's length negotiations and my counteroffer, the Purchase Agreement was entered into, proposing a purchase price of \$130,000.00. Thus, the purchase price is 96.2% of the appraised value of Elkhorn Ridge Lot #1.

32. Sale of Elkhorn Ridge Lot #1 as proposed will result in the completion of one cabin and establish residency in the subdivision, which it is hoped in turn will facilitate the sale of the other forty-six lots. It is anticipated that there will be a boost in sales of the other lots in the subdivision and reduce the chance of vandalism on the remaining property that is being marketed by the Receivership Estate.

33. The sale I propose will provide sufficient proceeds to satisfy conditions set by the Zoning Commission for final approval of the subdivision, thus allowing me to proceed with marketing and selling the forty-six additional lots in the subdivision for the benefit of the Receivership Estate.

34. Sale of Elkhorn Ridge Lot #1 will slightly reduce the burden to the Receivership Estate by reducing the time spent by me in managing the lot, as well as costs associated with the property.

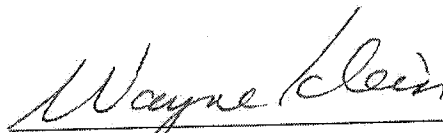
35. Requiring three appraisals of Elkhorn Ridge Lot #1 and publication notice of the sale would be unduly burdensome to the Receivership Estate and may jeopardize the proposed sale. I estimate that the costs associated with obtaining additional appraisals and publishing

notice of the sale will cost not less than \$1,500.00, and this expense is not justified in light of the nature of the sale, and the fact that as a result of the sale process described herein, the chance of receiving a higher and better offer for the property in question is doubtful. Accordingly, I am asking the Court to waive any requirement that I obtain an additional two appraisals and provide publication notice of the sale.

36. The SEC has been informed of the material terms of the sale, and has no objection thereto.

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

DATED this 13th day of November, 2012.



R. Wayne Klein, Receiver

CERTIFICATE OF SERVICE

I hereby certify that the above **DECLARATION OF RECEIVER** was filed with the Court on this 14th day of November, 2012, and served via ECF on all parties who have requested notice in this case including:

Thomas M. Melton
Daniel J. Wadley
Paul N. Feindt
Alison J. Okinaka
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Salt Lake City, UT 84101

Attorneys for Defendant Wayne Palmer

Furthermore, I certify that on the 14th day of November, 2012, the **DECLARATION** was served on the following parties by e-mail:

R. Wayne Klein
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Court-Appointed Receiver

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Attorneys for Plaintiff Securities and Exchange Commission

Furthermore, I certify that on the 14th day of November, 2012, the **DECLARATION** was served on the following parties by U.S. Mail postage prepaid:

Dianne B. Pett
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Malad, Idaho 83252

Oneida County Tax Collector

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Sherman and Carla Mehlhoff

Peter Moritz
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Peter Moritz

/s/ Peggy Hunt