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

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

<p>SECURITIES AND EXCHANGE COMMISSION,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>NATIONAL NOTE OF UTAH, LC, a Utah Limited Liability Company and WAYNE LaMAR PALMER, and individual,</p> <p style="text-align: center;">Defendants.</p>	<p><b>DECLARATION OF RECEIVER R. WAYNE KLEIN IN SUPPORT OF RECEIVER'S MOTION SEEKING AUTHORIZATION TO SELL ELKHORN RIDGE LOTS NOS. 4, 5 AND 48 FREE AND CLEAR OF PURPORTED INTERESTS AND MEMORANDUM IN SUPPORT</b></p> <p>2:12-cv-00591 BSJ</p> <p>The Honorable Bruce S. Jenkins</p>
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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 Lots Nos. 4, 5 and 48 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.

**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 (the "Cabin Lots") of the forty-seven remaining 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 and incorporated herein. The fence has now been constructed and the other conditions are close to being met, but the sale of additional lots is conditioned on the approval of the Zoning Commission.

#### **Marketing of the Properties**

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 Properties at issue herein, through Idaho Real Estate Group. A copy of the Listing Agreements are attached hereto as Exhibit 2 and Exhibit 3 and are incorporated herein.

10. To determine an offering price for each of the Properties and to comply with my duties, I consulted with my experienced independent real estate broker, and obtained appraisals for each of the Properties, copies of which are attached hereto as Exhibit 4 (Lot #4), Exhibit 5 (Lot #5), Exhibit 6 (2<sup>nd</sup> appraisal of Lot #5) and Exhibit 7 (Lot #48) respectively, and incorporated herein. In addition, I am in the process of obtaining additional appraisals which I will have copies of at the time of any hearing on this matter.

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

#### **The Properties to Be Sold and the Purchase Agreements**

12. On or about November 2, 2012, I reached an agreement with a party who had

submitted an offer to purchase Elkhorn Ridge Lot # 48 for the full appraised value of \$80,000 (the "Lot # 48 Purchase Agreement"), a copy of which is attached hereto as Exhibit 8, and is incorporated herein.

13. On or about November 18, 2012, I reached an agreement with a party who had submitted an offer to purchase Elkhorn Ridge Lot # 4 for \$35,000 (the "Lot # 4 Purchase Agreement"), which represents approximately 93% of Lot #4's appraised value of \$37,500.00. A copy of the Lot #4 Purchase Agreement is attached hereto as Exhibit 9, and it is incorporated herein.

14. On or about December 27, 2012, I reached an agreement with a party who had submitted an offer to purchase Elkhorn Ridge Lot # 5 for \$80,000.00 (the "Lot # 5 Purchase Agreement" and together with the Lot #48 and Lot #4 Purchase Agreements, the "Purchase Agreements"), a copy of which is attached hereto as Exhibit 10 and is incorporated herein. Based on the appraised values of this Lot #5 from the appraisals obtained to date, *see* Exhibit 5 and Exhibit 6, the average appraised value of Lot #5 is approximately \$88,000.00. I thus have accepted an offer that is approximately 90% of Lot #5's average appraised value.

15. The Purchase Agreements have been negotiated by me, either personally or through my agent, with the respective prospective purchasers in good faith and at arms' length.

16. I have received earnest money deposits in the amount of \$500.00 for each of the Properties from the potential purchasers, and the sale is whereis, as is, with no representations or warranties.

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

17. I anticipate paying ordinary costs of sale, including taxes, market-rate closing costs and a standard commission at the time of closing of the sale for each of the Properties.

18. Furthermore, as discussed above, my ability to sell the Properties is conditioned, in part, on compliance with the Zoning Commission's variance. Under that variance, I am required to use sale proceeds to pay for the installation of the perimeter fence and back taxes for the subdivision. At this time, I believe that these conditions have been met, but I am still waiting on formal approval from the Zoning Commission to sell the Properties.

19. Any interests against the Properties, other than the closing costs and any additional costs to comply with variance, 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 any costs associated with the variance (collectively, the net sale proceeds of each of the Properties are the "Net Sale Proceeds").

20. I will separately account for the Net Sale Proceeds pending resolution of any disputes related to interests claimed against the respective Properties.

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

21. I propose to sell the Properties free and clear of all interests therein, with any interests that may exist attaching to each Property's 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 the Properties or to the Net Sale Proceeds from each sale.

22. To determine interests, if any, against the Properties, I obtained preliminary title reports for each of the Properties, copies of which are attached hereto as Exhibit 11 (Lot #4), Exhibit 12 (Lot #5) and Exhibit 13 (Lot #48) and are incorporated herein (the "Title Reports").

23. I do not believe that the ABI interests (as defined in the Motion) held by those

persons described in the Motion, all of whom are NNU investors, are valid or have any effect as a matter of law, but to the extent that they continue to be asserted, I propose that the sale of the Properties be allowed with any interests that may exist pursuant to the ABIs, attaching to the Net Sale Proceeds from the relevant sale.

24. As set forth in the Motion, Kay or Sharon Butters (“Butters”) show on the Title Report as having an ABI interest (defined in the Motion) against Elkhorn Ridge Lot # 4. Records in my possession show that Butters had fourteen different promissory note investments with NNU, and was paid amounts in excess of the principal amount of each of those fourteen promissory notes. Based on this fact and that none of the ABIs issued are of any legal affect, I do not believe that Butters has any interest in Elkhorn Ridge Lot # 4 or is entitled to any of the Lot # 4 Net Sale Proceeds. Nonetheless, to facilitate the proposed sale, I am agreeing to allow Butters’ alleged interest to attach to the Lot # 4 Net Sale Proceeds until such time as any disputes can be resolved.

#### **Best Interests**

25. I believe that the sales of Properties as proposed are beneficial for and in the best interests of the Receivership Estate.

26. The sales of the Properties as proposed will result in the completion of two additional cabins and more firmly establish residency in the subdivision, which it is hoped in turn will facilitate the sale of the other lots in the Elkhorn Ridge subdivision. 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.

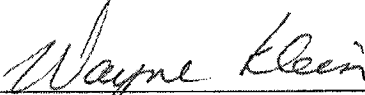
27. The proposed sales will slightly reduce the burden to the Receivership Estate by reducing the time spent by me in managing the lot, as well as costs associated with the property.

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

29. Upon entry of an Order granting the Publication Motion, as that term is defined in the Motion, I shall publish notice of the proposed sales in *The Idaho Enterprise*, a newspaper published in Malad City, Idaho, using the method and form of notice approved by the Court

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

DATED this 28<sup>th</sup> day of December, 2012.

  
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R. Wayne Klein, Receiver

**CERTIFICATE OF SERVICE**

I hereby certify that the above **DECLARATION OF RECEIVER** was filed with the Court on this 28th day of December, 2012, and served via ECF on the following:

Thomas M. Melton  
Daniel J. Wadley  
Paul N. Feindt  
Alison J. Okinaka  
SECURITIES AND EXCHANGE COMMISSION  
15 W. South Temple, Suite 1800  
Salt Lake City, UT 84101  
[meltont@sec.gov](mailto:meltont@sec.gov)  
[wadleyd@sec.gov](mailto:wadleyd@sec.gov)  
[feindtp@sec.gov](mailto:feindtp@sec.gov)  
[okinakaa@sec.gov](mailto:okinakaa@sec.gov)

*Attorneys for Plaintiff Securities and Exchange Commission*

Brennan Moss  
Pia Anderson Dorius Reynard Moss  
222 South Main, Suite 1830  
Salt Lake City, UT 84101

*Attorneys for Defendant Wayne Palmer*

Furthermore, I certify that the **DECLARATION** was served on the above parties and the following by e-mail:

R. Wayne Klein  
KLEIN & ASSOCIATES, PLLC  
299 S. Main Street, Suite 1300  
Salt Lake City, UT 84111  
[wklein@kleinutah.com](mailto:wklein@kleinutah.com)

*Court-Appointed Receiver*

\_\_\_\_\_  
/s/ Peggy Hunt



Furthermore, I certify that on the 28<sup>th</sup> day of December, 2012, the **DECLARATION** was served on the following parties by U.S. Mail postage prepaid:

Dianne B. Pett  
Oneida County Tax Collector  
10 Court Street  
Malad, Idaho 83252

Harvest Time Ministries  
Bert Van Komen  
1145 McLean Road  
Fallon, NV 89406

John Huestis  
563 Koru Street  
S. Lake Tahoe, CA 96150-5347

Kay or Sharon Butters  
914 Arlington Way  
Bountiful, UT 84010

Darlene G. Ellefsen  
10149 South 1300 West  
South Jordan, UT 84095

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/s/ Peggy Hunt