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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: right;">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: right;">Defendants.</p>	<p>DECLARATION OF R. WAYNE KLEIN IN SUPPORT OF RECEIVER'S MOTION SEEKING APPROVAL OF AGREEMENT TO CONDUCT DUE DILIGENCE OR REMEDATION INVESTIGATION OF EXPRESSWAY LAND AND MEMORANDUM IN SUPPORT</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, declare, certify, verify and state 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 by the Court on June 25, 2012 [Docket No. 9] (the "Receivership Order").
2. I submit this Declaration in support of *Receiver's Motion Seeking Approval of*

Agreement to Conduct Due Diligence or Remediation Investigation of Expressway Land and Memorandum in Support (the “Motion”).¹

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

THE EXPRESSWAY LAND

Land Description

4. The Receivership Estate includes land located at approximately 1130 North 1270 East in Spanish Fork, Utah (“Expressway Land”). The Expressway Land consists of 30.85 acres of land, divided into four parcels:

<u>Parcel No.</u>	<u>Size</u>	<u>Tax Serial Number</u>	<u>Appraised Value</u>
• Parcel 1	21.25 acres	27:010:0067	650,000.00
• Parcel 2	3.94 acres	27:010:0068	290,000.00
• Parcel 3	2.30 acres	27:010:0064	50,000.00
• Parcel 4	3.36 acres	38:400:0307-0326	325,000.00

5. The Expressway Land is primarily undeveloped land, but is more particularly described as follows:

- (a) Parcel 1 is all undeveloped land.

¹ All capitalized terms used herein but not defined shall have the meanings attributed to them in the Motion.

(b) Parcel 2 was preliminarily platted for 20 industrial condominium units and one building, and currently has some site improvements. The planned development on Parcel 2 has not been approved or recorded.

(c) Parcel 3 is all undeveloped land that has no right of way access apart from the other parcels.

(d) Parcel 4 includes 20 improved and recorded industrial condominium pads. Approval of the improvements has expired and would have to be brought to current building code requirements if the original development plan were pursued.

6. Based on my investigation, I have learned that most of the Expressway Land was operated for several decades as an unregulated landfill for Utah County and Spanish Fork City.

7. Spanish Fork City recently informed me that it will require that waste buried at the site be removed down to the native soil for areas that will be used for roads, utilities, and buildings. In addition, prior improvements made to the Expressway Land as noted above may need to be reconstructed to conform to current requirements.

8. Approximately one third of the Expressway Land has been preliminarily designated by the U.S. Army Corps of Engineers as wetlands, substantially impairing its potential for development for commercial use.

Prior Marketing Efforts by the Receiver

9. On August 23, 2012, I signed a listing agreement for the Expressway Land with a commercial real estate broker. The listing agreement included a listing price of \$3.5 million, a price recommended by the listing broker based on a market analysis of surrounding property, but without consideration of the full extent of environmental risks relating to the property—which

were not known at the time.

10. In February 2014, the listing broker informed me that the broker had received some expressions of interest in the Expressway Land, but the potential buyers had significant concerns about the Expressway Land having previously been a landfill. These buyers indicated that their bids were likely to be \$2 million or less, depending on their due diligence.

11. I expressed my intent to make the buyers' bids subject to higher and better offers, and the buyers informed me that they were reluctant to expend the time and money to conduct due diligence in the absence of a firm commitment from me that they would be the ultimate buyers at the end of the due diligence period.

12. Hoping to satisfy the buyers' concerns, I obtained an appraisal of the Expressway Land to determine the value of the property in light of the then-known environmental risks. On March 19, 2014, I obtained an appraisal of the Expressway Land ("Appraisal") from Merit Valuation LLC, excerpts of which are attached hereto as Exhibit A. I selected Merit Valuation LLC based on its experience in evaluating environmental hazards and wetlands limitations in valuing properties.

13. In April 2014, I began negotiating with a potential purchaser of the Expressway Land. A preliminary purchase agreement was signed on June 27, 2014, pursuant to which the buyer would pay \$1,250,000.00 for the Expressway Land, subject to the results of a 60-day due diligence review period. On August 26, 2014, the buyer canceled the purchase agreement citing the results of its due diligence investigation.

14. On October 10, 2014, I received an offer of \$1 million for the Expressway Land. This offer was subject to a 90-day due diligence period. I decided the offered price was too low

and did not sign a preliminary purchase agreement.

15. On October 22, 2014, I began negotiating a possible purchase of the Expressway Land by Pure Enviro Properties LC ("Pure Enviro"). A preliminary purchase agreement was signed on November 13, 2014. Under the agreement, Pure Enviro was given a 90-day period to conduct due diligence.

16. I understand that Pure Enviro engaged an engineering firm to conduct a wetlands analysis and an analysis of the location and extent of buried waste on the property. As a result of these analyses, Pure Enviro notified me on December 18, 2014 that it would not proceed with the purchase of the Expressway Land.

Proposed Agreement for Due Diligence and Possible Purchase of Expressway Land

17. In discussions I had with Pure Enviro relating to the reasons it was withdrawing its offer for the Expressway Land, Pure Enviro explained that while the possibility exists that the Expressway Land could be developed in a commercially viable manner, the possibility of creating value in the land depended on a variety of factors that would require extensive and expensive testing and remediation work. Due to the risk that environmental problems could not be remediated at an affordable price, Pure Enviro was unwilling to purchase the Expressway Property without knowing the extent of potential environmental damage on the property—regardless of the purchase price.

18. Since December 2014, I have engaged in discussions with Pure Enviro regarding the terms under which Pure Enviro would: (a) conduct the testing and measurements necessary to obtain a formal wetlands delineation for that portion of the Expressway Land subject to a preliminary wetlands determination, (b) identify other properties that potentially could be

purchased for a wetlands swap and determine the costs for such property, (c) investigate the geographic coverage of the former landfill and the depth of buried waste, (d) conduct the testing necessary to determine the extent to which the landfill waste contains contaminants that need to be removed, contained, or otherwise remediated, (e) determine the extent to which land on which waste is located can be approved for commercial development, (f) evaluate the costs of replacing or moving certain existing utility and sewer lines and the necessity of and cost for replacing other existing improvements on the property, and (g) determine what demand might exist for those portions of the Expressway Land that might be available for development.

19. I also understand that these testing, investigation, and remediation evaluations will take substantial time and I anticipate that Pure Enviro will incur significant expense. However, two factors make Pure Enviro unwilling to incur these costs under conditions imposed by me. First, I indicated my unwillingness to expend Receivership resources to conduct additional environmental testing or obtain formal wetlands delineation. If this additional testing and wetlands determination were not performed before the property purchase, Pure Enviro would be at risk of purchasing a property that was later determined to be of no commercial value or to have severe contamination problems that would result in Pure Enviro being held liable for cleanup costs beyond any amounts it paid for the property. Second, since I indicated that I would require that any offer to purchase the property be subject to public notice and an auction at which other bidders could bid for the property, if Pure Enviro performed and paid for the investigation work before making an offer, Pure Enviro would face the risk of having expended significant amounts of time and money to determine whether the property had value, only to have other buyers purchase the property with no compensation to Pure Enviro for the expenses it

has incurred.

20. To address these concerns, I have negotiated an agreement with Pure Enviro governing further due diligence investigation ("Agreement"), a copy of which is attached hereto as Exhibit B, in hopes of creating an incentive for Pure Enviro to expend time and its own funds to investigate the extent of wetlands limitation and environmental contamination before having title to the Expressway Land.

21. While this Agreement does not directly involve the sale of real property, I am seeking Court approval of this Agreement because this Agreement contains terms that may affect the terms of a future sale of the Expressway Land and contains some conditional obligations by me relating to the property.


22. I submit that this Agreement is fair, reasonable, and adequate for at least the following reasons: (a) an independent appraiser with experience in dealing with environmental contamination has determined that the Expressway Land is the subject of extensive environmental contamination that will be expensive to remediate, (b) despite aggressive marketing of the Expressway Land for two-and-a-half years, no buyer has been willing to purchase the property, (c) two potential buyers have withdrawn their preliminary offers after conducting due diligence on Expressway Land, (d) the Agreement was fairly and honestly negotiated at arm's length and in good faith by the parties, (e) I have not identified any other viable means of investigating the environmental risks of the Expressway Land without expending substantial Receivership Estate funds—which might not be recovered, and (f) the terms of the Agreement are fair and reasonable.

23. In light of these factors, I believe the Agreement is just, fair and beneficial to the

Receivership Estate.

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

DATED this 10th day of April, 2015.


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 APPROVAL OF AGREEMENT TO CONDUCT DUE DILIGENCE OR REMEDIATION INVESTIGATION OF EXPRESSWAY LAND AND MEMORANDUM IN SUPPORT was filed with the Court on this 13th day of April, 2015, and served via ECF on all parties who have requested notice in this case:

/s/ Sarah Goldberg

It is hereby certified that on the 13th day of April, 2015, the DECLARATION OF R. WAYNE KLEIN IN SUPPORT OF RECEIVER'S MOTION SEEKING APPROVAL OF AGREEMENT TO CONDUCT DUE DILIGENCE OR REMEDIATION INVESTIGATION OF EXPRESSWAY LAND AND MEMORANDUM IN SUPPORT was served on the following parties by U.S. Mail postage prepaid:

Wayne L. Palmer
8816 South 2240 West
West Jordan, UT 84088

/s/ Candy Long

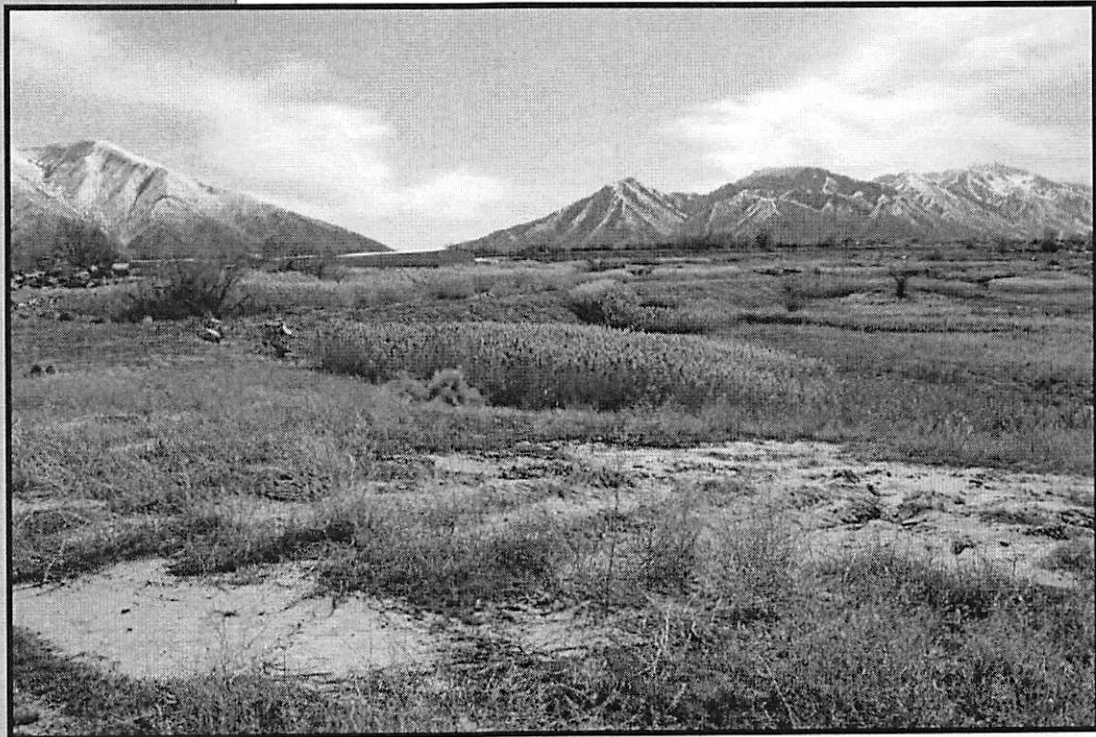
EXHIBIT A



**REAL ESTATE APPRAISAL
SUMMARY REPORT**

Expressway Lane Excess Land
1130 N 1270 E, Spanish Fork
Utah County, UT

As of
March 6, 2014



Prepared For
Mr. Wayne Klein
Klein and Associates
10 E Exchange Place, Suite 501
Salt Lake City, UT, 84111-2241

Prepared by
MERIT VALUATION LLC
Corrie Hoffmeier, MBA, MAI, UT-5499064-CG00
Brian Hoffmeier, Certified General, UT-5506769-CG00

File Name: 2014-117-C Expressway Lane

MERIT VALUATION LLC



PO 277
Mona, UT 84645

801-376-1343 or 801-367-0086
info@meritvaluationllc.com
www.meritvaluationllc.com

March 19, 2014

Mr. Wayne Klein
Klein and Associates
10 E Exchange Place, Suite 501
Salt Lake City, UT, 84111-2241

Re: Summary Report, Real Estate Appraisal
Expressway Lane Excess Land
1130 N 1270 E, Spanish Fork,
Utah County, UT, 84660

File Name: 2014-117-C Expressway Lane

Dear Mr. Klein:

At your request, we have prepared an appraisal for the above referenced property, which may be briefly described as follows:

Expressway Lane Excess Land and Finished Lots

Please reference page 35 of this report for important information regarding the scope of research and analysis for this appraisal, including property identification, inspection, highest and best use analysis and valuation methodology.

We certify that we have no present or contemplated future interest in the property beyond this estimate of value. The appraiser has not performed any prior services regarding the subject within the previous three years of the appraisal date. This report is prepared according to the standards of Klein and Associates, the Uniform Standards of Appraisal Practice, and the standards of the Appraisal Institute.



Mr. Klein
Klein and Associates
March 19, 2014
Page 2

Based on available information, the subject was operated as the old Utah County and Spanish Fork City landfill for several decades. In addition, it has areas that are potentially wetlands but have not yet been mapped. For various reasons, information that would typically be provided by a developer is limited. Thus, values are subject to review of the following:

- Current Environmental Impact Study
- Current Geotechnical Study
- Army Corps of Engineer Determination of Wetlands Area
- Engineer's Cost Estimates to Remove and Re-locate fill [including dump fees]

Your attention is directed to the Limiting Conditions and Assumptions section of this report (page 33). Acceptance of this report constitutes an agreement with these conditions and assumptions. In particular, we note the following:

Extraordinary Assumptions:

- Spanish Fork City has indicated they may seek reimbursement for monies they spent to install some improvements on the first phases of Expressway Plaza that were not covered by the bond. They did not have an exact amount due. In addition, there are delinquent taxes owing. Values assume that the subject is sold with a clear title.
- Spanish Fork City has indicated that in order to build, trash will have to be removed down to native soil from any proposed road (public or private), proposed building site, and utility trench. They have also indicated that for current site improvements to the subject lots, the roadways are buckling and utility improvements may not be complete. Thus, subdivision improvements may have to be re-done with the trash being re-located. Based on discussions with various parties, in order to avoid dump fees and transportation costs, other projects have benefitted from having receiving areas for trash on-site. Until further cost information is available, values assume that areas are designated as 'receiving' on the larger parcel of 21.25 acres and agreements are recorded for all parcels regarding trash removal.
- The reader will note that a very rough estimate of costs for removal of the landfill trash has been made by the appraiser. This was only done because a cost estimate from a qualified engineer was not available. Values are subject to revision based cost estimates done by qualified engineers based on current Geotech and Environmental Impact Studies. In addition, values are subject to Spanish Fork City's ultimate determination of what improvements need to be redone for the subject's current roadways and utilities in developed areas.



Mr. Klein
Klein and Associates
March 19, 2014
Page 3

Hypothetical Conditions:

- Parcel 3 is landlocked without a recorded ROW. It is financially feasible to the project as a whole to grant a ROW through Parcel 1 to Parcel 3. Values assuming a 30' ROW is granted and recorded.

Based on the appraisal described in the accompanying report, subject to the Limiting Conditions and Assumptions, Extraordinary Assumptions and Hypothetical Conditions (if any), we have made the following value conclusion(s):

Current As Is Bulk-Sale Market Value Project as a Whole:

The "As Is" bulk sale market value of the Fee Simple estate of the property, as of March 6, 2014, is

One Million Two Hundred Fifty Thousand Dollars (\$1,250,000)

The market exposure time¹ preceding March 6, 2014 would have been 12 months and the estimated marketing period² as of March 6, 2014 is 12 months.

¹ Exposure Time: see definition on page 9.

² Marketing Time: see definition on page 9.



Mr. Klein
Klein and Associates
March 19, 2014
Page 4

A number of value estimates were requested for the subject property. These are all subject to the Hypothetical Conditions and Extraordinary Assumptions above. They are summarized as follows:

VALUE INDICATIONS		
Land Values		
Land Value Parcel 1 21.25 Acres:	\$650,000	<i>Assumes 30' ROW granted to Parcel 3</i>
Land Value Parcel 2 3.94 Acres:	\$290,000	
Land Value Parcel 3 3.94 Acres:	\$50,000	<i>Assumes 30' ROW granted to Parcel 3</i>
Bulk Sale Value Parcels 1, 2, & 3:	\$990,000	
Lot Values		
20 Expressway Lots Individual Values	\$16,250	<i>\$35,000 retail value [after trash discount] discounted for holding period. No true benefit to selling condo pads individually, not market value as defined. [Development and management becomes more difficult.] See Income Approach, DCF section for discussion.</i>
Bulk Sale Value 20 Expressway Condo Lots	\$325,000	

Please feel free to call with questions.

Respectfully submitted,
Merit Valuation LLC

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For your benefit, this document is formatted as an Adobe PDF using the Table of Contents (TOC) and Thumbnail Images. Navigating your way through this document is much easier using these methods:

Table of Contents Navigation:

- 1) Go to the Table of Contents [Next page]
- 2) While in the Table of Contents, find the section of the report you would like to see.
- 3) Hover your cursor over the section title, the cursor will turn into a hand.
- 4) "Click" the title—it will take you directly there.

Thumbnail Images Navigation:

- 1) At the top-left of your screen, an icon with two pieces of paper is visible.
- 2) Click this icon. Thumbnail pictures of each of the pages will appear.
- 3) You can click on each of the thumbnails to go to the various pages. [Notice: You may also scroll through the document up and down through the thumbnails.]

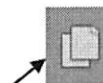


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Expressway Park Condo Lots & Land, Spanish Fork, UT File # 2014-117-C

Summary of Important Facts and Conclusions

GENERAL

Subject:	Expressway Lane Excess Land 1130 N 1270 E, Spanish Fork, Utah County, UT, 84660
	Expressway Lane Excess Land and Finished Lots
Owner:	Spanish Fork Development [Parcel 3] Expressway Business Park LLC [Remaining Parcels]
Legal Description:	Extensive retained in files
Date of Report:	March 19, 2014
Intended Use:	The intended use is for listing purposes for the receivership.
Intended User(s):	The Wayne Klein, Klein and Associates, the court.
Zoning:	Land Use Title 15.3.16.120 I-1 Light Industrial
Flood Zone:	4902410025A, February 19, 1986 Low Flood Risk
Highest and Best Use of the Site:	Holding for future development
Highest and Best Use as Improved:	Retain current improvements [sidewalks/roads/utilities]. Begin process of getting necessary tests to see if site improvements meet code.
Type of Value:	“As-is” Market Value

Expressway Park Condo Lots & Land, Spanish Fork, UT File # 2014-117-C

Land Summary						
Parcel ID	Gross Land Area (Acres)	Gross Land Area (Sq Ft)	Current Use	Land Units	Topography	Shape
Parcel 1	21.25	925,650	Large vacant land fronts HWY 51, Expressway Lane, and 1100 E. Portion includes fenced trailer storage area that was not approved.	0	Sloping topography w/ wetlands	Highly irregular
Parcel 2	3.94	171,626	Has site improvements and is preliminary platted for 20 industrial condo units and one building. Not approved or recorded and will have to meet current code. Has landfill mounding in vacant areas.	21	Varying topography, has been levelled in improved areas, but has mounding in landfill areas.	Rectangular
Parcel 3	2.30	100,188	Landfill area with significant variation in grades and mounding from landfill areas. Due to topography—some possible wetlands. Includes small portion of trailer storage area. Valued assuming 30' ROW across Parcel 1.	0	Significant variation	Highly irregular
Parcel 4	3.36	146,362	3.36 Acres total with 20 improved and recorded industrial condo pads. Approval of improvements has expired and may have to be brought to current code.	20	Minimal grade	Rectangular overall
Totals	30.85	1,343,826		41		

Expressway Park Condo Lots & Land, Spanish Fork, UT File # 2014-117-C

A number of value estimates were requested for the subject property. These are all subject to the Hypothetical Conditions and Extraordinary Assumptions and Limiting Conditions in this appraisal. They are summarized as follows:

VALUE INDICATIONS		
Land Values		
Land Value Parcel 1 21.25 Acres:	\$650,000	<i>Assumes 30' ROW granted to Parcel 3</i>
Land Value Parcel 2 3.94 Acres:	\$290,000	
Land Value Parcel 3 3.94 Acres:	\$50,000	<i>Assumes 30' ROW granted to Parcel 3</i>
Bulk Sale Value Parcels 1, 2, & 3:	\$990,000	
Lot Values		
20 Expressway Lots Individual Values	\$16,250	<i>\$35,000 retail value [after trash discount] discounted for holding period. No true benefit to selling condo pads individually, not market value as defined. [Development and management becomes more difficult.] See Income Approach, DCF section for discussion.</i>
Bulk Sale Value 20 Expressway Condo Lots	\$325,000	

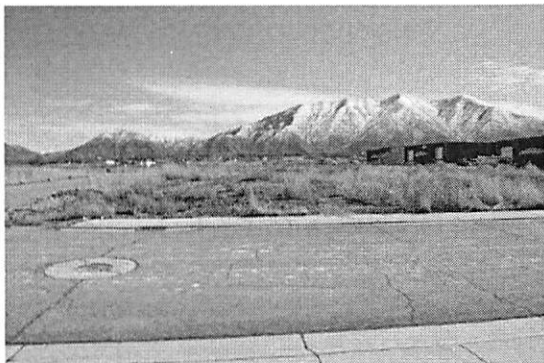
Reconciled Value:	As-Is Bulk Sale Value Parcels 1, 2, 3, & 20 Expressway Lots
Value Conclusion(s)	\$1,250,000
Effective Date(s)	March 6, 2014
Property Rights	Fee Simple

Note: The above values are subject to Hypothetical Conditions, Extraordinary Assumptions, and Limiting Conditions as outlined in a Summary Narrative Appraisal Report. It is considered a misrepresentation to present the above values independently from the attached report.

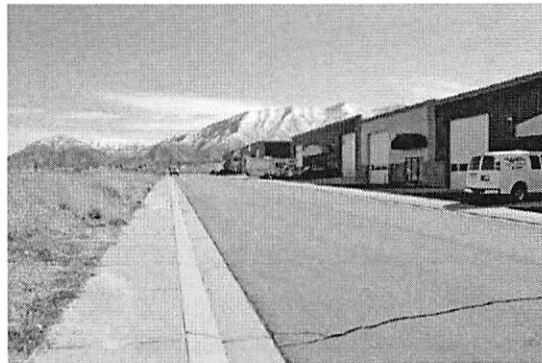
Expressway Park Condo Lots & Land, Spanish Fork, UT File # 2014-117-C

Subject Photos

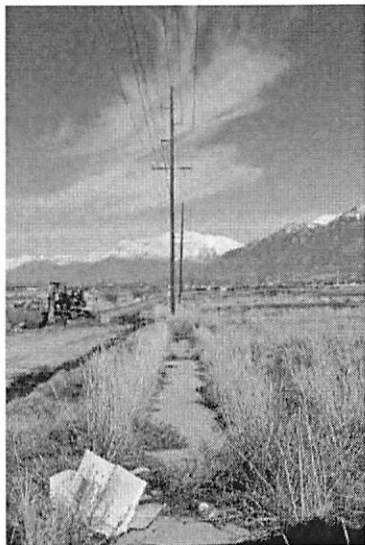
All subject photographs taken by the appraiser on the inspection date of March 6, 2014 with Nikon 3100 camera. These photos are intended to give a basic idea of the subject property. Additional photos will be presented throughout the report as various items are referenced.



Expressway 20 recorded and improved condo lots



Improvements 1060 N. Road in fairly good condition. Geotech indicates fill at left not very deep.

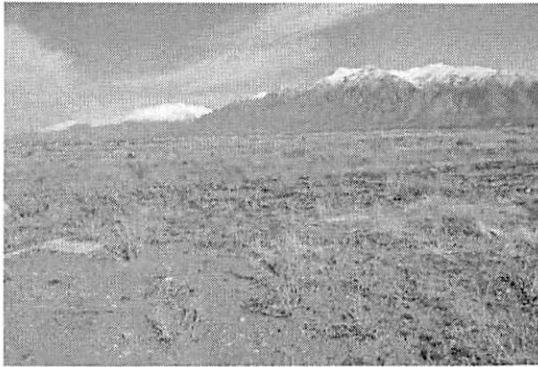


Improvements along 1100 E, Sidewalk, curb, gutter, mow strip. Power line easement. Road improvement construction under way for Canyon Creek.

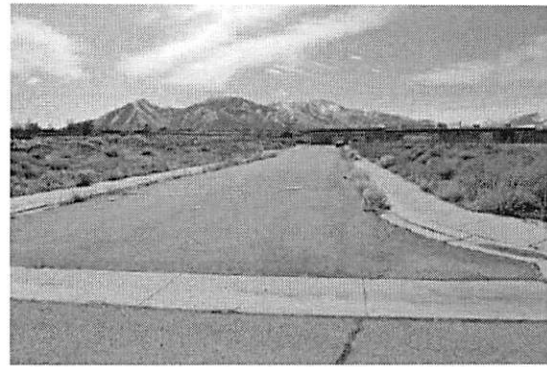


Improvements N side 1130 N. Sidewalk, curb, gutter, and some utilities. Lots platted but not recorded. Road cracking.

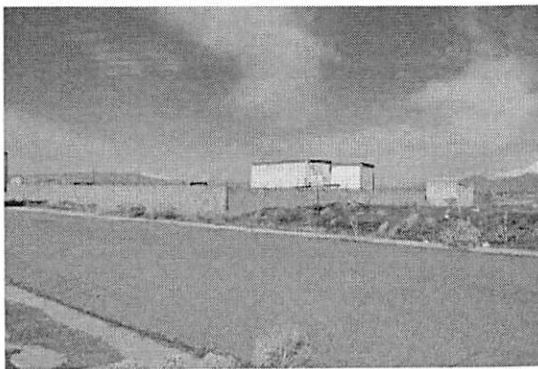
Expressway Park Condo Lots & Land, Spanish Fork, UT File # 2014-117-C



View looking north across subject lots and vacant land. Power lines in distance.



View looking S 1290 E. E. & W sides of road are improved.



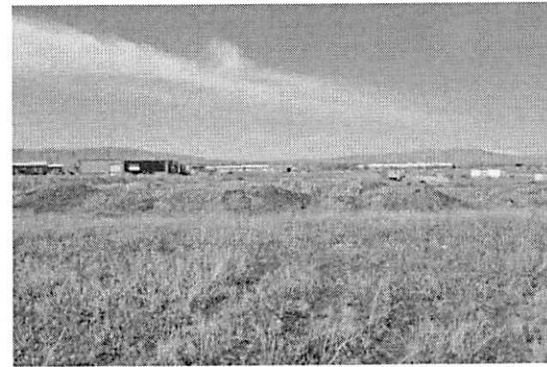
Parcel 3, Fenced trailer storage area.



Typical topography throughout subject property. Natural topography has been altered.



Typical topography throughout subject property. Natural topography has been altered.

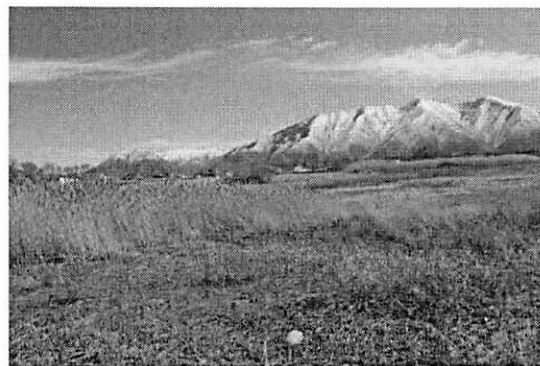


View looking west across Parcel 1. Mounding of landfill area in forefront.

Expressway Park Condo Lots & Land, Spanish Fork, UT File # 2014-117-C



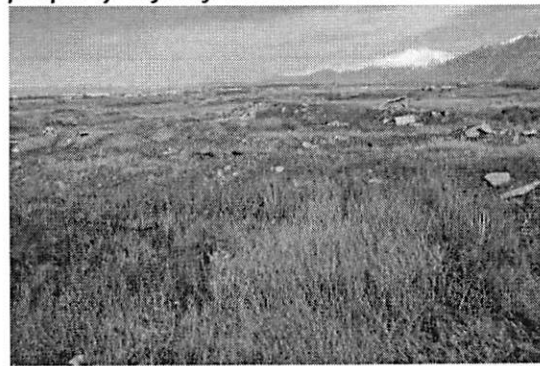
Example of water drainage across subject property in landfill area.



Example of wetlands vegetation on subject property in forefront and in distance.



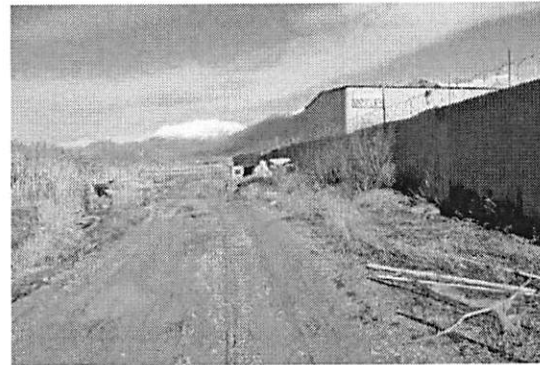
Another example of water drainage across subject property in landfill area.



Garbage scattered across subject. Typical.



Garbage.

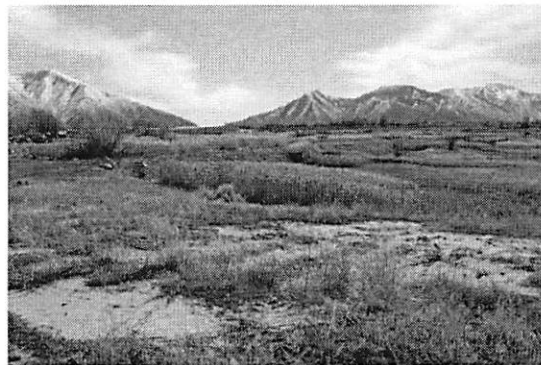


Northern gate on subject. Wrecking yard to right, wetland to left.

Expressway Park Condo Lots & Land, Spanish Fork, UT File # 2014-117-C



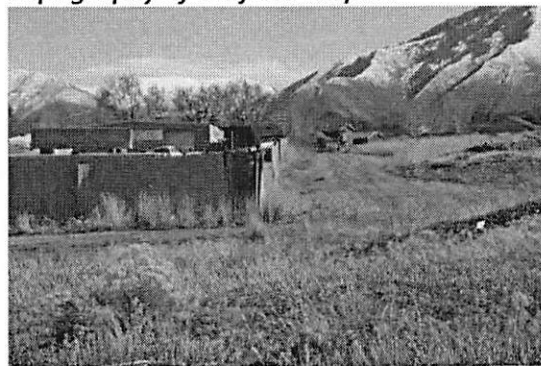
Garbage and tires.



Topography of subject. Slopes.



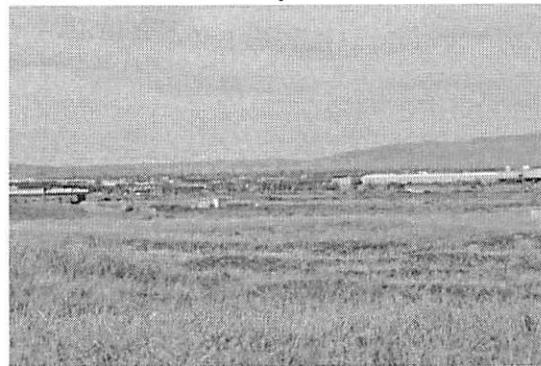
Cattails in forefront with landfill area in distance.



Roadway on subject, possible prescriptive ROW. Northern road paved.



View looking east to upper portion Parcel 1



View looking west across upper portion Parcel 1

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Subject History

The subject history is extensive. The following is a summary explanation.

Utah County Landfill Developed as Residential Subdivision

Originally, the property was operated as an unregulated landfill. Portions of the property were operated by Utah County and portions were operated by Spanish Fork City. Spanish Fork City provided an Environmental Site Assessment [EIS] Phase I and Limited Phase II done by RB & G Engineering in 1995. It appears that the majority of the subject grounds were operated as a landfill. Due to length, the EIS in its entirety is retained in our files, but is available on request. Excerpts of the EIS are presented throughout the report.

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- 
- E. Municipal waste associated with the old Utah County Landfill exists on all parcels, with exception of Parcel 1. Prior to 1969, the Municipal Waste was placed using area methods beginning at the southwest corner of the property and working in a northeasterly direction. In 1969, trenching methods were begun in which cells were excavated 10 to 15 feet in depth about 100 feet in width and 300 to 500 feet in length. Waste material was placed in the cells and mixed with the dredged soil. The site was not used for landfill operations after 1979. The results of the subsurface investigations indicate that the Municipal Waste extends from depths varying from 3 to 14.5 feet. The landfill was operated as an unregulated municipal landfill. The possibility exists that dumping of hazardous waste or toxic material took place at some time during the landfill operation. No visual evidence of hazardous waste or toxic materials was observed in the test pits and test borings during the subsurface investigation.

Spanish Fork City initially wanted to zone the area industrially, however, the former property owner's attorney, Mr. Alan Young, argued in favor of low-income residential development. According to an article by the Deseret News, Mr. Young said because of problems with methane gas, industrial use of the land would not be feasible. Young told the council the "property has no economic viability because of its prior use as a landfill." [City Council meeting September 4, 1996/ Deseret News, May 12, 2001, Page B2]. Thus, in 1999, Spanish Fork Ranch was recorded and developed by Ron Jones. Information on Utah County for Spanish Ranches is as follows:

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Utah County Online
The Official Web Site of
Utah County Government

DEVELOPMENT DETAIL

Number: 8272
Name: SPANISH FORK RANCH
Type: PLAT B
Subdivision

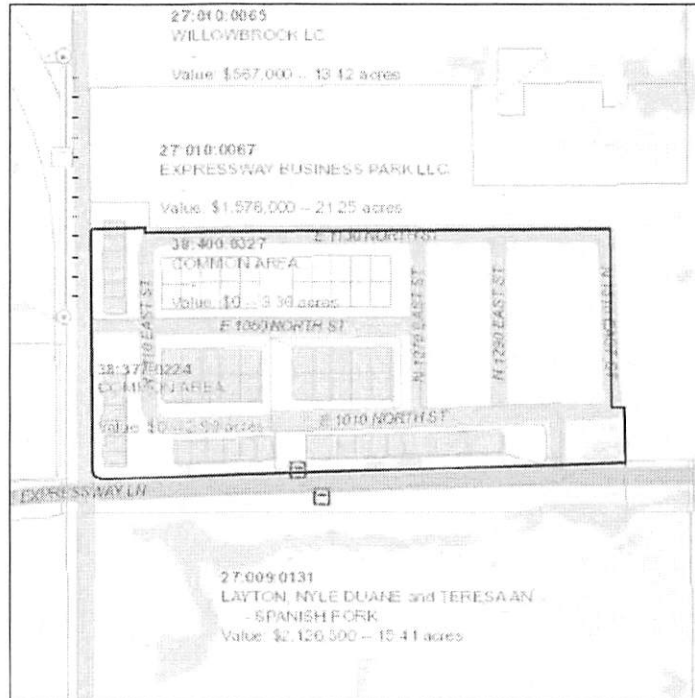
Recording Date: 10/18/1999
Instrument Date: 9/29/1999
Entry Number: 1589-
111734
Book/Page: 52 785
Section: 17
Location: 8 S. Range
3E
City: SPANISH
FORK
Tax District: 150 -
Arm: 95
Description: LOT 1

[Click here for recorded development images](#)

[Click here to search parcels in development \(subdivisions only\)](#)

[New Search](#)

[Main Menu](#)



The reader is referred to various articles in the addenda with interviews from residents. Residents complained of various symptoms they attributed to leaking methane gas. In addition, garbage was surfacing in yards and they were told not to water lawns because water drainage disturbed the methane. The Environmental Protection Agency as requested by the Utah County Health Department, did studies on the area and it was determined that the homes needed to be re-located. According to an article in the Deseret News dated November 5, 2011:

"It should be recognized that any dwelling placed on top of an active biological system, such as a landfill, is fraught with hazards," the report said. "Therefore, it is in better judgment that dwellings should be placed on such active biological systems only as a last resort."

The health board gave Spanish Fork Ranch until Dec. 1 to move the homes. The city took responsibility for moving the residents when officials recognized that Ron Jones, the St. George developer who started the housing project, wasn't financially able to do it.

➡ In short, based on available information Spanish Fork City reportably took financial responsibility for moving the residents homes.

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Expressway Plaza

Subsequently in approximately 2001 and 2002, Expressway Plaza [industrial office/warehouse project] was proposed, approved, and developed.


Based on minutes in the addenda, the approvals were subject to geotechnical technical studies and mitigation studies for the methane gas. Although requested from a number of sources, these studies are not currently available. Based on available information, approvals and site development took place for the subject lots in approximately this time period. These approvals have expired [Dave Anderson, Planning and Zoning].


Since that time, the Expressway Plaza property has been involved in fraud. The fraud included a Ponzi scheme wherein the improvements to the individual condo units were misrepresented [reported as finished when actually the floor was dirt, there were missing walls, and overall finishes were not complete].

In addition, investors were given falsified documents [leases] from which prices were established. Lastly, Spanish Fork City indicated that the improvements to the site were never truly completed and the bond did not cover the full costs of improvements. They indicated the City spent "approximately 3X the bond amount" on some improvements but they don't believe that all utilities, etc., are installed. Spanish Fork City anticipates being reimbursed for their bond from subsequent phases of Expressway, but don't have an exact amount.

Summary

In summary, the subject property suffers from stigma from this past. Residents associate it with a variety of problems from its history of a landfill, to houses being moved, to the Ponzi scheme, to bonds not being paid, to methane gas, to buckling roads, etc. It has received negative press over the years and this affects the psychological component of the market. There is a real sense that Spanish Fork City is less than anxious to repeat the problems of the past.

In a meeting with Mr. David Oyler, City Manager; David Anderson, Planning and Zoning; and Chris Thompson, Engineering, they indicated that any approvals for building on the subject have long since expired and any new development would have to meet current code. **This would likely include removing and relocating all garbage/trash that would underlie any building site, private or public roadway, and utility trench. This has been required of the Canyon Creek Development, and it is anticipated it would apply here.** 

Mr. Oyler indicated that the city's primary concerns are settling and methane gas migration, including along utility trenches. In addition, they noted that the current roads are buckling and may not meet current width requirements. **City officials indicate the roadways may have to removed and replaced.** 

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Sale History:

The subject has not sold in the last three years, according to information from Mr. Klein and discussions with Mr. James Yeates and Mr. Justin Irvine.

**Current
Listing/Contract(s):**



The subject was listed by Coldwell Banker Commercial Intermountain for \$3,500,000 approximately one year ago [Estimated March 2013].


The subject is currently listed on LoopNet by one of the predominant brokerages in Utah County. The list price equates to approximately \$2.68 psf.

Based on conversations with Mr. James Yeates and Mr. Justin Irvine, the listing agents, the subject is not under any options. Verbal interest has been in the \$1,500,000 to \$2,000,000 range, but then buyers leave because there are "other options out there".

Owner Names

The reader is referred to the subject listing below. The subject is currently recorded under two owner names. Parcel 3 is recorded under Spanish Fork Development. The remaining parcels are recorded under Expressway Business Park LLC.

Expressway Park Condo Lots & Land, Spanish Fork, UT File # 2014-117-C





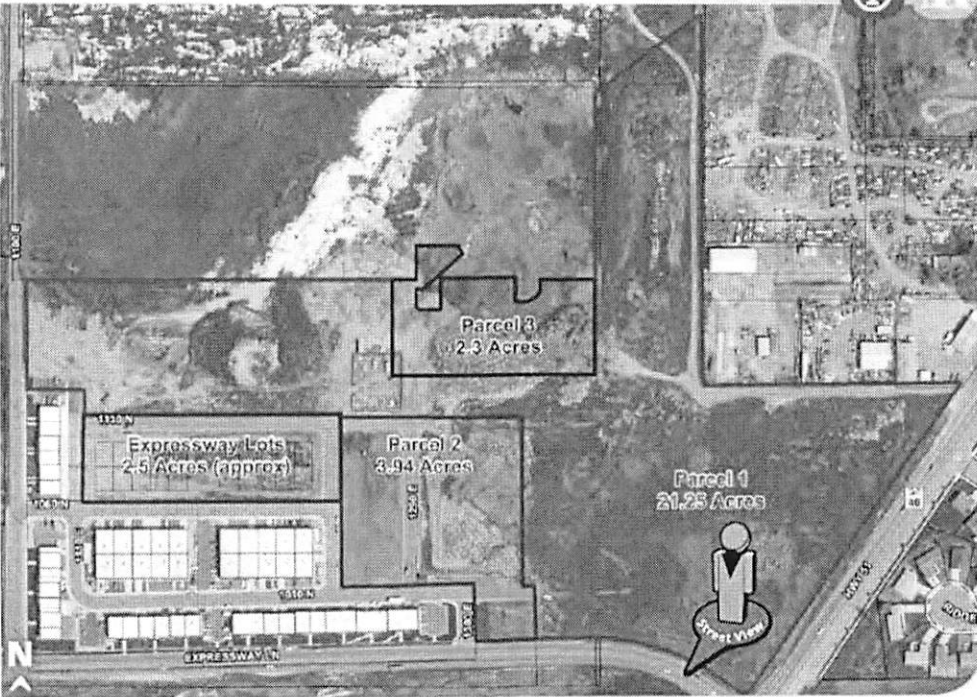
**COLDWELL
BANKER
COMMERCIAL**

**EXPRESSWAY BUSINESS
PARK EXCESS LAND**

Expressway Lane & Highway 51 Spanish Fork, Utah

Land
FOR
SALE








PROPERTY INFORMATION

- > Approx 30 acres
- > Parcel 1: 21.25 acres
- > Parcel 2: 3.94 acres
- > Parcel 3: 2.3 acres
- > Zoning: Light Industrial
- > Sales Price: \$3,500,000 (\$2.68 PSF)

View From Expressway Lane



LAND




JAMES YEATES

801.702.4687

james.yeates@coldwellutah.com

Market REPORTS



JUSTIN IRVINE

801.702.4686

justin.irvine@coldwellutah.com

www.coldwellutah.com

COLDWELL BANKER COMMERCIAL INTERMOUNTAIN | 825 EAST 1180 SOUTH, SUITE 300 | AMERICAN FORK, UT | (P) 801.947.8300 | (F) 801.947.8301

This statement with the information it contains is given with the understanding that all negotiations relating to the purchase, leasing, or financing of the property described should be conducted through this office.

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**EXPRESSWAY BUSINESS
PARK EXCESS LAND**

Expressway Lane & Highway 51 Spanish Fork, Utah

LAND
FOR
SALE





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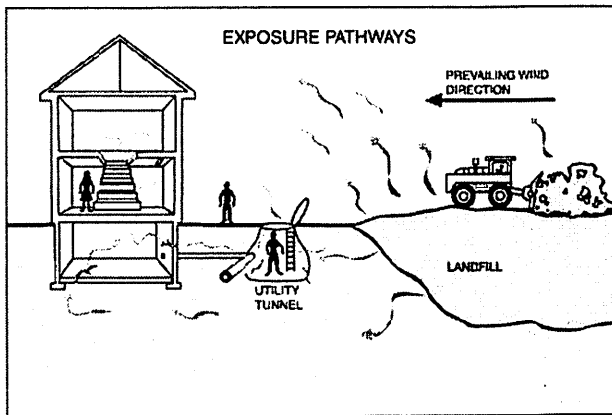
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Environmental Analysis

Environmental concerns affect the market value of real property. The subject property suffers environmental concerns. A general background will be discussed followed by recommendations from the EIS Phase 1

- Methane Gas Migration
- Instability of Soils
- Wetlands
- Valuation of Environmentally Distressed Properties

Methane Gas Migration



Methane gas is explosive and can migrate from one area to another. This migration can be windblown, from being "on top" of a landfill, or from migration through utility tunnels. According to the EIS Phase I, "When mixed with air, methane forms a mixture that can explode, given a source of ignition and suitable conditions, at concentrations from 5 to 15 percent."

Two test wells were dug to monitor methane on the subject. The results were 3.4 and 34 percent methane gas. Mr. Ron Tobler of the Utah County Health Department indicated the level of methane in one home that was on the subject was 14 percent—within the explosive range. Mr. Oyler, indicated this is a concern for the city. Thus, they are requiring that any trash be removed from utility trenches. They are concerned about migration of the gases into other buildings. In addition, Spanish Fork City is concerned about utility lines breaking from the instability of the trash. Mr. Ron Tobler indicated this had happened in the past with the residential subdivision and it was found that some lines were broken.

Residents that previously lived at Spanish Fork Ranch reported to the press headaches, hair falling out etc. In addition, the subject property was identified on a list by toxicsites.org in a list of "Cancer and Other Serious Illnesses in Communities Near Closed Dumps".

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Instability of Soils

Landfills also do not represent naturally compacted soils. This can affect the stability of the soils and their ability to support building, site, road, and other improvements. Spanish Fork City has noted the subject roadways have significant cracking. This not only affects the roads, but it can be an indicator of possible line breakage of utilities, and general instability for building.

In order to build, current geotechnical studies would have to be required. Mr. Ron Tobler indicated that Novell in Provo expanded its buildings onto landfill area. They were pursuing moving the trash and he reported the depth of the hole was approximately 2 to 3 stories down. This became a highly explosive situation as methane is a heavy gas and it has "nowhere to go". Ultimately, Novell built on pillars.

As mentioned, the City would also require removal of the garbage. It is unknown how deep the garbage may be [to native soil], conclusively, however, the EIS Phase 1 reported depths of 3 to 14.5 feet. As a note, Spanish Fork dump will not accept this fill and the garbage will have to be moved on-site or another location would have to be found. The City will require re-fill, compacting, and possible piercing of some buildings. This significantly increases development costs.

Wetlands

The subject has signs of wetlands and the EIS Phase 1 noted this. Wetland vegetation was observed on site as well as water running downhill and pooling. Frogs/toads were croaking at inspection. The land has been mapped by Spanish Fork as potentially having wetlands. We contacted Mr. Mike Pectol the Utah County Region Project Manager of the Army Corps of Engineers. He is over the subject area. He indicated that the subject area has not officially been mapped, however, that does not prevent it from being delineated as a jurisdictional wetland. He briefly reviewed Google Earth and said the subject has some preliminary signs of wetlands.

The Army Corp has limited staff and not all wetlands are mapped. This does not stop the Army Corps from being able to stop development, however. As an example, Mr. Oyler, City Manager, indicated construction on a trail was stopped because it was the potential habitat of an endangered bird. It is noted that water movement can affect methane gas migration.

Mr. Pectol was asked that considering the combination of a landfill and wetlands area, would a new owner be responsible to burden the costs of remediation. Mr. Pectol indicated that the Clean Water Act was established in 1972. According to Mr. Pectol, there is no recourse for activity that took place prior to that time. The subject was used as a landfill prior to 1969 [unregulated] and up until 1979 [regulated]. That said, it seems likely that if the subject has wetlands on it, it would affect its development potential at present. Thus, values are subject to wetlands determination.

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EIS Phase 1 Conclusions and Recommendations

Because of its importance in the developmental potential of the subject, Conclusions and Recommendations of the EIS Phase 1 are presented here. The study is older [1995] and considering the history of the subject should be re-done with an accompanying geotech with specific recommendations for building. Never-the-less, because this is what is available, it is presented.

6. CONCLUSIONS AND RECOMMENDATIONS

Based upon the information obtained during this study, the following summary and conclusions are made:

- A. There is no indication that commercial or industrial facilities which would use toxic materials in processing or as a by-product have been located on the property.
- B. There are no National Priority Listing (NPL) sites within a 1-mile radius of the property. The adjacent properties are not listed on State or Federal RCRA or CERCLA Lists. Furthermore, there are no sites identified on the EPA Superfund Cerclis list within a 1/2-mile radius of the property.
- C. No fuel storage tanks are located on the property, nor was there any indication that fuel storage tanks have been located on the property in the past.
- D. No potential Leaking Underground Storage Tank (LUST) sites were identified within a 1/2-mile radius of the property.

RB&G ENGINEERING INC.

Provo, Utah

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- E. Municipal waste associated with the old Utah County Landfill exists on all parcels, with exception of Parcel 1. Prior to 1969, the Municipal Waste was placed using area methods beginning at the southwest corner of the property and working in a northeasterly direction. In 1969, trenching methods were begun in which cells were excavated 10 to 15 feet in depth about 100 feet in width and 300 to 500 feet in length. Waste material was placed in the cells and mixed with the dredged soil. The site was not used for landfill operations after 1979. The results of the subsurface investigations indicate that the Municipal Waste extends from depths varying from 3 to 14.5 feet. The landfill was operated as an unregulated municipal landfill. The possibility exists that dumping of hazardous waste or toxic material took place at some time during the landfill operation. No visual evidence of hazardous waste or toxic materials was observed in the test pits and test borings during the subsurface investigation.
- F. Random samples from two test borings were tested for hazardous waste. Tests included metals, volatile organics, semi-volatile organics, pesticides and PCB's. Elevated levels of lead contamination were recorded from the refuse sample obtained from Drill Hole 9. All other tests were below regulatory levels.
- G. Covering of the landfill will limit the potential for exposure to lead or other hazardous materials which may be present in the landfill.
- H. Perched groundwater exists in the cells constructed using the trench method. The depth to groundwater is erratic through the old landfill. The underlying soils consist predominantly of low permeability clays, causing the perched water condition.
- I. The static groundwater level in this general area is within 6 feet of the ground surface. Sand lenses and layers deeper in the soil profile result in artesian conditions when borings extend through the surface clays.
- J. Samples of groundwater downgradient of the landfill showed values of total dissolved solids (TDS) 2.4 to 9 times higher than groundwater from the monitoring well upgradient of the landfill. The Utah State Dept. of Water Quality uses the criteria of not exceeding 1.25 times the background level of TDS

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to monitor currently operating facilities. This criteria does not apply to facilities which are closed and out of operation. The TDS does serve as an indicator of possible contamination.

K. No hazardous waste contamination of the groundwater was discovered from tests of the groundwater downgradient of the landfill.

L. Two monitoring wells placed in the landfill were tested to evaluate the methane gas concentration. A sample from one monitoring well had 3.4% methane gas, and the sample from the other well had 34% methane gas. Methane is a colorless, odorless gas which can be found where organic decay occurs in anaerobic conditions such as landfills. It is soluble in water, and lighter than air. When mixed with air, methane forms a mixture that can explode, given a source of ignition and suitable conditions, at concentrations from 5 to 15% methane by volume of air.

Remedial measures for dealing with landfill gasses fall under the headings of excavation, venting, barriers, and protection within the building. Clay barriers, 2 to 3 feet thick, have proved effective in controlling gas movement, but care must be taken to ensure the clay remains moist and does not dry-out, shrink, or crack. Gas wells require suction to ensure efficient venting of the gas, and thus this approach is an expensive option. The gasses can be vented from the side of the site through trenches, or from within the landfill site by vents. Trenches backfilled with coarse aggregate or rubble can be used to stop gas migration in an undesirable or dangerous direction. Care must be taken to ensure that the upper surface does not become blocked or clogged, and the vent must remain relatively dry in order to maintain its permeability to gasses.

M. Although wetlands were not specifically addressed during this study, it appears that portions of Parcel 1 may qualify as wetlands, and we recommend that the State and Federal agencies responsible for wetland classification be contacted to evaluate the area.

The extent of remedial work required for development on Parcels 2 through 6 will depend upon the intended use of the ground. It is our opinion that a drainage system should be designed and

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installed to dewater the landfill cells. This contaminated water may require treatment prior to release from the property. If the property is to be used for residential or light industry, venting of the gasses existing in the landfill will be required. We believe that this can best be accomplished by designing and constructing vent trenches in conjunction with the drainage trenches.

Differential settlement concerns must be considered if development plans call for structures, roadways, or sidewalks. In order to minimize differential settlement concerns, compaction of the waste fill may be required. It will be necessary to extend structural foundations below the waste fill or remove the refuse and replace it with structural fill.

Following completion of the drainage and venting of the fill, it is recommended that a liner be designed to cover the landfill. A drainage ditch should be designed and installed around the periphery of the landfill to collect all surface water and drain it away from the area.

In conclusion, we believe that the subject property can be developed as recreational (parks, golf course, etc.), industrial or residential; provided that the design include remedial actions as outlined above to mitigate the environmental issues. We appreciate the opportunity of performing this study for you. If there are any questions regarding the information contained herein, please call.

Sincerely,

RB&G ENGINEERING, INC.

Paul E. Wasser, Engineer

Bradford E. Price, P.E.
bep/jag

RB&G ENGINEERING INC.

Provo, Utah

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RB & G Geotechnical Study 2000

After the subject's residential lots were built and during the transition to an industrial property, RB & G did a geo-tech of the improved property. The reader is referred to the Site Improvements section of this report which shows the subject current plat and the area that was investigated by RB & G. **It would appear that the industrial subdivision was simply placed over the improved residential lots using the existing roadways, etc.** Based on discussions with various parties, there is not evidence at this time that substantial changes were made to the subdivision improvements after the residential homes were vacated. Certainly, values could be updated with more current information. Never-the-less, with what is available it would seem that RB & G's conclusions would apply to the subject lots.

6. CONCLUSIONS

This report deals mostly with the soil cover of the pads. The roadway and utility trenches appear to be constructed as recommended and appear to be successful since there is no noticeable settlement occurring within the roadway. As previously stated, time will tell if the roadway and utility trenches have been constructed properly. The gravel packing and vent pipes are evident at the manholes, therefore there was an effort to collect and exhaust the methane gas. All home sites were not investigated, but on the ones that were there was no gravel under the homes with a gravel trench encasing pipes for exhausting the methane gas. Observations with regard to the construction of the pads are as follows:

1. Many of the pad sites have 2 feet or more of soil cover.
2. There are areas in the Phase I development where the soil cover is lacking, especially the northern portion between 1060 North and 1130 North.
3. The utility trenches behind the sidewalk and services to the lots were backfilled with the excavated soil and trash material from the trench, and essentially have no clean soil cover.
4. The pads were not constructed with a concrete slab under the homes.

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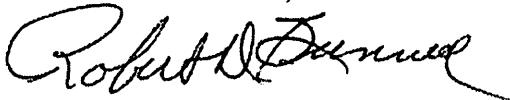
5. The recommended thickness of gravel and clay under the homes does not exist. Pads were prepared with clay and a layer of plastic with the manufactured home support structure directly on the plastic.
6. It is our opinion that the method suggested for use of the excavated trash material from utility trench excavation was used in some areas of the pad sites. That is, trash and soil were mixed and placed in layers and compacted. This might explain why the surface material above the obvious trash deposition contained some plastic and other trash material.
7. The evidence of trash material on the surface of the site is likely due to the utility trench construction methods or the method outlined in item 6. above, or other construction procedures that took place after the site had been graded .

It is not clear which recommendations for development of this site were finally approved. However, it does seem evident that the soil cover over a portion of the site is lacking, and the pad preparation under each home site was not as most consultants had recommended. Samples of the surface soils were tested for classification. The test results showed that all surface soils tested were clay and silt. (Refer to Summary of Test Data in Appendix of this report.)

It should be recognized that not all lot sites were investigated with an excavation, but it is our opinion that the sites that were excavated give an adequate representation of the construction that took place over the Phase I site.

Sincerely,

RB&G ENGINEERING, INC.



Robert D. Gunnell, P.E.

Spanish Fork City indicated that to get a building permit they would require trash removed from all utility trenches and out from under any building pads. It appears that the the subject was developed based on capping the trash.



Based on the conclusions above, it would appear the subject improvements would have to be substantially modified or re-done to meet current code.

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Valuation of Environmentally Distressed Properties

The valuation of environmentally distressed properties is difficult at best. Advisory Opinion 9 from the Uniform Standards of Appraisal Practice [USPAP] discusses valuation methods. These factors will be considered in the valuation.


The Advisory Opinion states:

“When the appraiser addresses the diminution in value of a contaminated property and/or its impaired value, the appraiser must recognize that the value of an interest in impacted or contaminated real estate may not be measurable simply by deducting the remediation or compliance cost estimate from the opinion of the value as if unaffected. *Rather, cost, use, and risk effects* can potentially impact the value of contaminated property.

Cost effects primarily represent deductions for costs to remediate a contaminated property. These costs are usually estimated by someone other than the appraiser and should include consideration of any increased operating costs due to property remediation

Use effects reflect impacts on the utility of the site as a result of the contamination. If the contamination and/or its cleanup rendered a portion of the site unusable, or limited the future highest and best use of the property.

Risk effects are typically estimated by the appraiser and often represent the most challenging part of the appraisal assignment. These effects are derived from the market’s perception of increased environmental risk and uncertainty.”



The reader will note that a very rough estimate of costs for removal of the landfill trash has been made by the appraiser. This was only done because a cost from a qualified engineer was not available. Values are subject to revision based cost estimates done by qualified engineers based on current Geotech and EIS.

Conclusion

The subject is a former landfill. This legitimate environmental concerns wherein the Utah County Health Department and the Environmental Protection Agency have become involved historically. According to Mr. Ron Tobler of Utah County Health, he indicated that in his personal opinion, it was “not the optimal place to build”. He cited leachate in the run-off water, the fact that Whole Environmental Tests [WET Tests] by the EPA showed that no matter how much the subjects run-off water was diluted that it didn’t pass LD [lethal death] levels of 50 percent for certain organisms, that utility lines had broken, that residents reported having patchy hair, etc. In total, at the development costs would be substantial to build on the subject and there will likely be some risk for the foreseeable future in building on the subject grounds. Even removal of trash is risky because methane levels vary and are unpredictable. Explosions can happen during removal. As reported, for the Novell site, removing trash became more dangerous than piercing through it.

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Definitions

Market Value

Per Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) of 1989. (Source: 12 C.F.R. Part 34.42(g); 55 Federal Register 34696, August 24, 1990, as amended at 57 Federal Register 12202, April 9, 1992; 59 Federal Register 29499, June 7, 1994.)

Market value means the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

1. Buyer and seller are typically motivated;
2. Both parties are well informed or well advised, and acting in what they consider their own best interests;
5. A reasonable time is allowed for exposure in the open market;
5. Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and
5. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

A Fee Simple estate is defined³ as:

Absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat.

³ Appraisal Institute, The Dictionary of Real Estate Appraisal, 5th ed. (Chicago: Appraisal Institute, 2010).

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A Leased Fee interest is defined³ as:

A freehold (ownership interest) where the possessory interest has been granted to another party by the creation of a contractual landlord-tenant relationship (i.e., a lease).

Marketing Time is defined³ as:

An opinion of the amount of time it might take to sell a real or personal property interest at the concluded market value level during the period immediately after the effective date of the appraisal.

Marketing time differs from exposure time, which is always presumed to precede the effective date of the appraisal.

Advisory Opinion 7 of the Appraisal Standards Board of The Appraisal Foundation and Statement on Appraisal Standards No. 6, "Reasonable Exposure Time in Real Property and Personal Property Market Value Opinions" address the determination of reasonable exposure and marketing time.

Exposure Time is defined³ as:

1. The time a property remains on the market.
2. The estimated length of time the property interest being appraised would have been offered on the market prior to the hypothetical consummation of a sale at market value on the effective date of the appraisal; a retrospective estimate based on an analysis of past events assuming a competitive and open market.

See Marketing Time, above.

Gross Building Area (GBA): Total floor area of a building, excluding unenclosed areas, measured from the exterior of the walls of the above-grade area. This includes mezzanines and basements if and when typically included in the region.³

As Is Market Value

The estimate of the market value of the real property in its current physical condition, use and zoning as of the appraisal date.³

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Limiting Conditions and Assumptions

Acceptance of and/or use of this report constitutes acceptance of the following limiting conditions and assumptions; these can only be modified by written documents executed by both parties.

This appraisal is to be used only for the purpose stated herein. While distribution of this appraisal in its entirety is at the discretion of the client, individual sections shall not be distributed; this report is intended to be used in whole and not in part.

No part of this appraisal, its value estimates or the identity of the firm or the appraiser(s) may be communicated to the public through advertising, public relations, media sales, or other media.

All files, work papers and documents developed in connection with this assignment are the property of Merit Valuation LLC. Information, estimates and opinions are verified where possible, but cannot be guaranteed. Plans provided are intended to assist the client in visualizing the property; no other use of these plans is intended or permitted.

No hidden or unapparent conditions of the property, subsoil or structure, which would make the property more or less valuable, were discovered by the appraiser(s) or made known to the appraiser(s). No responsibility is assumed for such conditions or engineering necessary to discover them. Unless otherwise stated, this appraisal assumes there is no existence of hazardous materials or conditions, in any form, on or near the subject property.

Unless otherwise stated in this report, the existence of hazardous substances, including without limitation asbestos, polychlorinated biphenyl, petroleum leakage, or agricultural chemicals, which may or may not be present on the property, was not called to the attention of the appraiser nor did the appraiser become aware of such during the appraiser's inspection. The appraiser has no knowledge of the existence of such materials on or in the property unless otherwise stated. The appraiser, however, is not qualified to test for such substances. The presence of such hazardous substances may affect the value of the property. The value opinion developed herein is predicated on the assumption that no such hazardous substances exist on or in the property or in such proximity thereto, which would cause a loss in value. No responsibility is assumed for any such hazardous substances, nor for any expertise or knowledge required to discover them.

Unless stated herein, the property is assumed to be outside of areas where flood hazard insurance is mandatory. Maps used by public and private agencies to determine these areas are limited with respect to accuracy. Due diligence has been exercised in interpreting these maps, but no responsibility is assumed for misinterpretation.

Good title, free of liens, encumbrances and special assessments is assumed. No responsibility is assumed for matters of a legal nature.

Expressway Park Condo Lots & Land, Spanish Fork, UT File # 2014-117-C

Necessary licenses, permits, consents, legislative or administrative authority from any local, state or Federal government or private entity are assumed to be in place or reasonably obtainable.

It is assumed there are no zoning violations, encroachments, easements or other restrictions which would affect the subject property, unless otherwise stated.

The appraiser(s) are not required to give testimony in Court in connection with this appraisal. If the appraisers are subpoenaed pursuant to a court order, the client agrees to pay the appraiser(s) Merit Valuation LLC's regular per diem rate plus expenses.

Appraisals are based on the data available at the time the assignment is completed. Amendments/modifications to appraisals based on new information made available after the appraisal was completed will be made, as soon as reasonably possible, for an additional fee.

Expressway Park Condo Lots & Land, Spanish Fork, UT File # 2014-117-C**Scope of Work**

According to the Uniform Standards of Professional Appraisal Practice, it is the appraiser's responsibility to develop and report a scope of work that results in credible results that are appropriate for the appraisal problem and intended user(s). Therefore, the appraiser must identify and consider:

- the client and intended users;
- the intended use of the report;
- the type and definition of value;
- the effective date of value;
- assignment conditions;
- typical client expectations; and
- typical appraisal work by peers for similar assignments.

This appraisal is prepared for Mr. Wayne Klein, Receiver for National Note Klein and Associates. The problem to be solved is to estimate the 'as is' market value of the subject property. The intended use is for listing purposes for the receivership. This appraisal is intended for the use of Wayne Klein, Klein and Associates, the court.

SCOPE OF WORK	
Report Type:	This is a Summary Report as defined by Uniform Standards of Professional Appraisal Practice under Standards Rule 2-2(b). This format provides a summary of the appraisal process, subject and market data and valuation analyses.
Property Identification:	The subject has been identified by the listing information [map], assessors' parcel numbers, and address.
Inspection:	A complete inspection of the subject property has been made with photographs taken.
Market Area and Analysis of Market Conditions:	A complete analysis of market conditions has been made. The appraiser maintains and has access to comprehensive databases for this market area and has reviewed the market for sales and listings relevant to this analysis.
Highest and Best Use Analysis:	A complete as vacant and as improved highest and best use analysis for the subject has been made. Physically possible, legally permissible and financially feasible uses were considered, and the maximally productive use was concluded.
Type of Value:	Market Value

EXHIBIT B

**AGREEMENT GOVERNING FURTHER DUE DILIGENCE
INVESTIGATION BY PURE ENVIRO RELATING TO POSSIBLE
PURCHASE OF EXPRESSWAY LAND**

This Agreement ("Agreement") is entered into this ____ day of March, 2015, by and between Pure Enviro LLC ("Pure Enviro") and R. Wayne Klein, as the duly appointed Receiver ("Receiver") for National Note of Utah, LC ("National Note"), related entities (collectively with National Note, the "Receivership Entities"), and the assets of Wayne Palmer ("Palmer") in the action styled as *SEC v. National Note of Utah, LC, et al.*, Case No. 2:12CV591 BSJ (the "Action") pending in the United States District Court for the District of Utah (the "Court"). Pure Enviro and the Receiver are collectively referred to as the "Parties."

RECITALS

WHEREAS, on June 25, 2012, the Securities and Exchange Commission commenced the Action against National Note and Palmer, and entered an Order appointing the Receiver and authorizing the Receiver to take certain actions on behalf of the "Receivership Estate," and

WHEREAS, one of the real properties in the Receivership Estate consists of three adjacent plots of land covering approximately 30 acres in Spanish Fork adjacent to the Expressway Business Park ("Expressway Land"); and

WHEREAS, the Expressway Land was appraised on March 19, 2014 for \$1,250,000. The appraisal noted significant environmental defects with the land as a result of its prior use as an unregulated landfill; and

WHEREAS, on June 27, 2014, a potential buyer ("First Offeror") made an offer to purchase the Expressway Land for \$1,250,000.00, subject to the results of additional due diligence to be performed by the First Offeror. On August 26, 2014, the First Offeror notified the Receiver that it was withdrawing its offer based on the results of its due diligence investigation on the land; and

WHEREAS, on November 12, 2014 Pure Enviro made an offer to purchase the Expressway Land, subject to the results of further due diligence investigation. On December 18, 2014 Pure Enviro withdrew its offer based on the results of its further due diligence investigation. As part of its due diligence investigation, Pure Enviro found that approximately 20 acres of the land was used as an unregulated landfill and that development of this land for commercial or industrial use would require removal of much or all the buried waste.

WHEREAS, in its due diligence investigation, Pure Enviro also found that approximately ten acres of this land has been preliminarily designated by the U.S. Army Corps of Engineers as wetlands. Formal delineation of the portion of the property constituting wetlands will require several months of analysis, delaying any decisions that can be made regarding possible commercial uses of the land; and

WHEREAS, the land that might be included in the formal wetlands designation must remain undeveloped or will require a swap involving the purchase of as much as three acres of land for each one acre of wetlands at Expressway Land; and

WHEREAS, total remediation costs for the landfill and wetlands delineation are expected to be between \$1.5 to \$2.0 million, such that the purchase price, remediation costs, and development expenses may exceed the market value of the property when developed. Further due diligence work that needs to be conducted on the property will be expensive and time-consuming, requiring environmental testing, wetlands analysis, and regulatory reviews; and

WHEREAS, based on the environmental liabilities associated with the former landfill, it is unlikely that any potential buyer will agree to purchase the property and take title to the land until the environmental risks have been completely analyzed; and

WHEREAS, the Receiver is unwilling to expend Receivership funds to conduct the due diligence and environmental testing necessary to determine the: i) extent of environmental damage, ii) costs of remediation for the environmental damage, iii) extent and nature of formal delineation for the wetlands area on the property, and iv) costs of substituting other wetlands areas necessary to obtain permission to commercially develop the land currently under a preliminary wetlands determination; and

WHEREAS, Pure Enviro is willing to conduct further due diligence necessary to determine the commercial viability of development of this land, including investing the time and extensive costs necessary to obtain formal delineation of the wetlands area, determine whether other qualifying wetlands areas can be purchased to allow commercial development of the wetlands area on the Expressway Land, determine the extent of environmental contamination from the landfill deposits, and evaluate the costs of remediating the landfill area, if Pure Enviro can be compensated for its work in the event the property is sold to another buyer after Pure Enviro has conducted this additional due diligence work.

AGREEMENT

NOW THEREFORE, in consideration of the mutual promises, covenants and agreements set forth in this Agreement, and based upon the foregoing recitals and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Court Approval; Best Efforts.** This Agreement is conditioned on and is subject to the Court's entry of an Order approving this Agreement. The Receiver will file a motion seeking Court approval of this Agreement (the "Approval Motion"), and the Parties each agree to use their best efforts to secure Court approval of this Agreement in accordance with all applicable law. This Agreement shall be effective on the date that the Court Order approving this Agreement becomes final and non-appealable (the "Final Order"). Neither Party shall have any obligations to the other until the Court has approved this Agreement.

2. **Additional Due Diligence Work by Pure Enviro.** Pure Enviro will conduct additional due diligence on the property that it reasonably believes is appropriate in determining the viability of commercial development of the property. This due diligence work may include

environmental assessments, studies necessary for wetlands delineation, drilling of wells or core samples, engineering analysis, and similar tasks. The expenses of this due diligence work shall be borne solely by Pure Enviro. Notwithstanding that Pure Enviro intends to conduct investigation and analysis of the Expressway Land, Pure Enviro shall not be obligated to conduct any particular due diligence or testing; Pure Enviro shall have discretion in determining what testing to conduct and how to conduct its due diligence investigation.

3. **Cooperation by the Receiver in the Investigation and Analysis.** The Receiver will cooperate with Pure Enviro in allowing access to the land by Pure Enviro or its contractors and in assisting Pure Enviro with obtaining any permits reasonably necessary for the investigation and remediation work it conducts.

4. **Work Product.** The results of testing and other investigation that Pure Enviro conducts on the Expressway Land shall be the proprietary property of Pure Enviro and will not be required to be shared with the Receiver or other buyers of Expressway Land. Provided, however, that if Pure Enviro seeks reimbursement of its costs from the Receiver in connection with the sale of all or a portion of Expressway Land, those results will become the property of the Receiver.

5. **Progress Reports to the Receiver.** On a periodic basis, but at least quarterly, Pure Enviro will report to the Receiver on the work performed since the prior report. Pure Enviro shall not be required to provide details of the work it has done, to the extent the work involves confidential, proprietary information or would provide a competitive advantage to other potential buyers of Expressway Land. These reports shall also summarize the expenses that have been incurred by Pure Enviro in its further due diligence investigation during the reporting period.

6. **Payment to Pure Enviro for Investigation and Remediation Costs in the Event of a Sale of Property.** In the event that all or any portion of the Expressway Land is proposed to be sold by the Receiver other than pursuant to the procedures described in Section 9 below, Pure Enviro shall be offered the opportunity to bid at any auction of the property being sold. In the event that the Pure Enviro elects not to bid or is not the high bidder and the property is sold to another bidder, the Receiver agrees to reimburse Pure Enviro, from the net sales proceeds, for the costs Pure Enviro has expended in its environmental investigation and remediation work along with an additional amount equal to 300% of the actual costs expended by Pure Enviro for the time expended by Pure Enviro. The reimbursement of 300% of costs to Pure Enviro, when added to the actual cost reimbursement shall not exceed 75% of the net proceeds from the sale of the property. This cost reimbursement shall be treated as an expense at closing and paid before net proceeds from the sale are paid to the Receivership Estate.

7. **No Payment Owed if Property is Not Sold.** Nothing in this agreement creates an obligation for the Receiver to make payments to Pure Enviro, except under the conditions specifically identified in this agreement. If the Receiver does not sell any of the Expressway Land, the Receiver will have no obligation to reimburse Pure Enviro for the investigative and remediation expenses it has incurred.

8. **Sale of Property to Pure Enviro.** At any time, Pure Enviro may make an offer to purchase all or any portion of the Expressway Land. Any such offer will be reflected in a

separate agreement, subject to approval by the Court overseeing the Receivership, and will be subject to bidding at auction, to determine whether any other buyers offer a higher price.

9. **Sale of Property at Pure Enviro's Request.**

a. **Sale in Whole.** Pure Enviro may at any time request the Receiver to accept an offer by Pure Enviro for the Expressway Land, either as a undivided property or as one of the three parcels into which the property is currently subdivided, and may participate in the marketing or activities involved with selling the property. The net proceeds from any sale of the Expressway Land (after payment of taxes owed, sales commissions, and closing costs) will be allocated as follows: i) the actual costs expended by Pure Enviro in investigating and remediating environmental problems and in developing and subdividing the Expressway Land will first be paid to Pure Enviro, ii) the Receivership will be paid the appraised value of the portion of the Expressway Land being sold,¹ and iii) the balance of the sales proceeds will be divided, with 25% being paid to the Receivership and 75% being paid to Pure Enviro. In any event, such sale shall be subject to approval by the Court overseeing the Receivership Estate.

b. **Sale in Part.** Pure Enviro may from time to time request the Receiver to accept an offer for the sale of a portion of the Expressway Land (a lesser included parcel) and thereby generate cash to be used by Pure Enviro for further investigation and remediation work on the remainder of the property. The net proceeds from the sale of any such parcel (after payment of taxes owed, sales commissions, and closing costs) will be allocated as follows: i) the actual costs expended by Pure Enviro in investigating and remediating environmental problems and in developing the Expressway Land will first be paid to Pure Enviro, ii) the Receivership will be paid a base value for the parcel, calculated as a proportionate share of the appraised value of the entire Expressway Land property, and iii) the balance of the sales proceeds ("Sales Proceeds Balance") will be divided, with 25% being paid to the Receivership and 75% being paid to Pure Enviro. Pure Enviro will use at least 50% of its share of the Sales Proceeds Balance for further investigation and remediation work on the remainder of the property. In any event, such sale shall be subject to approval by the Court overseeing the Receivership Estate.

c. In the event Pure Enviro requests that the Receiver accept a purchase offer that requires the Receiver to subdivide the land, the Receiver will pay or reimburse the out-of-pocket costs of surveys and legal expenses associated with subdividing the property. In any event, such sale shall be subject to approval by the Court overseeing the Receivership Estate.

10. **Continued Marketing of the Property.** During the time that Pure Enviro is conducting additional investigation and remediation on the property, the Receiver will continue to market the property and soliciting offers for the property from any serious buyers. The Receiver may continue to list the property with real estate marketing professionals or take other actions to market the property, subject to his obligations to Pure Enviro under this Agreement.

¹¹ The appraised value will be determined by the March 6, 2014 appraisal of the property by Merit Valuation, unless the parties to this agreement otherwise agree to obtain one or more new appraisals.

11. **No-Reserve Auction.** If the Receiver fails to obtain any bid for the property and determines that an offer is not likely to be made, he may seek Court approval to auction the property at a no-reserve auction. In that event, the amount of out-of-pocket expenses expended by Pure Enviro may be used as a credit-bid component of an auction offer by Pure Enviro.

12. **Abandonment of the Property.** If the Receiver determines for any reason that he is unlikely to find a buyer for the property at any price and determines to seek Court approval to disclaim any interest in the property, the due diligence and investigation work performed by Pure Enviro will be considered a claim on the property for purposes of abandonment of the property. In that event, the Receiver will inquire whether Pure Enviro has an interest in taking possession of the property. If so, the Receiver will seek Court permission to abandon or relinquish the property to Pure Enviro in satisfaction of the claims Pure Enviro might make against the Property for the due diligence investigation it performed. In that event, Pure Enviro will be responsible for unpaid taxes and other governmental liens. If the Receiver requests Court approval to abandon his interest in the property, he may request approval to abandon the property without retaining any interest in the property or retaining any responsibility for any expenses or costs owed or any claims against the property.

13. **Expiration of Agreement.** This Agreement shall expire three years from the date of Court approval of this Agreement, unless extended by the Parties. If no portion of the Expressway Land has sold to a buyer by the expiration of this Agreement, the Receiver shall have no further obligation to reimburse Pure Enviro for costs it has incurred in investigation and remediation. This Agreement can be terminated by agreement of the Parties at any time.

14. **Binding Effect.** This Agreement shall be binding upon each of the Parties, and their respective successors-in-interest, heirs and/or assigns. All representations and warranties made herein shall survive execution of this Agreement and shall at all times subsequent to the execution of this Agreement remain binding and fully enforceable.

15. **Voluntary Agreement.** This Agreement has been carefully read by the Parties and the Parties have been given an opportunity to consult with their respective legal counsel; the contents hereof are known and understood by the Parties; and each of the Parties acknowledges that such party is under no duress or undue influence and that each of the Parties executes this Agreement as its own free and voluntary act.

16. **Public Notice:** Pure Enviro acknowledge that a summary description of this Agreement will be included in the Approval Motion filed with the Court seeking approval of this Agreement, will be included on the website maintained by the Receiver for this Receivership Estate, and will be identified in status reports prepared by the Receiver and filed with the Court.

17. **Integration and Amendments.** This Agreement shall constitute the entire agreement and understanding of and between the Parties in relation to matters described herein, and no statements, representations, inducements or promises other than as expressly set forth herein have been given or received by any of the Parties (nor by their respective agents, employees, attorneys or representatives) in return for same. All negotiations, oral conversations, statements, representations and/or agreements leading up to the execution of this Agreement are merged herewith and shall not be the basis for any legal rights, claims or defenses in relation to any

any litigation or otherwise. No parole or extrinsic evidence may be used to contradict any of the terms of this Agreement. Any amendment to this Agreement must be in writing, signed by duly authorized representatives of the Parties hereto, and specifically state the intent of the Parties to amend this Agreement.

18. **Counterparts.** This Agreement may be executed by the Parties hereto in any number of identical counterparts, each of which, once executed and delivered in accordance with the terms of this Agreement, will be deemed an original with all such counterparts taken together constituting one and the same instrument. Delivery by facsimile, e-mail or e-mail file attachment of any such executed counterpart to this Agreement will be deemed the equivalent of the delivery of the original executed agreement or instrument.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date and year first above written.

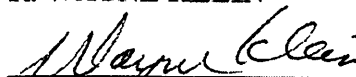
PURE ENVIRO

By:
Its:



CEO

R. WAYNE KLEIN



Receiver, National Note of Utah, LC and related entities