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

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

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

Defendants.

**DECLARATION OF RECEIVER R.
WAYNE KLEIN IN SUPPORT OF
RECEIVER'S MOTION SEEKING
APPROVAL OF (A) PUBLIC SALE
OF PROPERTY FREE AND CLEAR
OF INTERESTS, (B) METHOD AND
FORM OF PUBLICATION NOTICE,
(C) AUCTION AGREEMENT, AND
(D) RELATED RELIEF AND
MEMORANDUM IN SUPPORT**

(ELKHORN RIDGE ESTATES)

Civil No. 2:12-00591

The Honorable Bruce S. Jenkins

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 (A) Public Sale of Property Free and Clear of Interests, (B) Method and Form of Publication Notice, (C) Auction Agreement, and (D) Related Relief 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.

4. I make all of the following statements based on my personal knowledge.

I. REAL PROPERTY TO BE SOLD AT AUCTION

A. Elkhorn Ridge Estates

5. In the six and a half years since my appointment, I have identified and, with Court approval, sold numerous real properties of the Receivership Estate. At this time, the only real properties of the Receivership Estate left to be sold are 37 lots and related common property in the Elkhorn Ridge Estates subdivision near Malad, Oneida County, Idaho.

6. Elkhorn Ridge Estates consists of 48 lots total. One lot was sold before my appointment, and of the 47 lots which came into the Receivership Estate, I have sold 10—five lots in 2013, three lots in 2017, and two lots in 2018 (collectively, the "Previously Sold Properties"). The following table shows the relevant information regarding the sales of the Previously Sold Properties:

Elkhorn Ridge Estates, Malad ID						
Receivership properties sold as of January 2019						
Lot Number	Tax Parcel ID Number	Acreage	Listing Price	Sale Price	Order Approving Sale	Sale Closed Date
1	RB0281907	2.5 acres	\$135,000.00	\$155,000.00	Docket No. 419	8/29/2013

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

2	RB0281908	2.5 acres	\$35,000.00	\$31,500.00	Docket No. 492	12/6/2013
3	RB0281909	2.5 acres	\$35,000.00	\$22,000.00	Docket No. 1261	1/31/2017
4	RB0281910	2.5 acres	\$35,000.00	\$35,000.00	Docket No. 231	4/26/2013
5	RB0281911	2.5 acres	\$80,000.00	\$80,000.00	Docket No. 231	4/8/2013
6	RB0281912	2.5 acres	\$35,000.00	\$22,000.00	Docket No. 1295	6/9/2017
7	RB0281913	2.5 acres	\$35,000.00	\$22,000.00	Docket No. 1295	6/9/2017
22	RB0281928	2.5 acres		\$22,000.00	Docket No. 1364	4/2/2018
25	RB0281931	3.8 acres		\$25,200.00	Docket No. 1341	1/29/2018
48	RB0281954	2.5 acres	\$80,000.00	\$80,000.00	Docket No. 231	4/9/2013

7. Through the Motion, I propose to sell at public auction the remainder of the Receivership Estate's interests in Elkhorn Ridge Estates: 37 lots, the common roads, and the common open area. The following table shows the relevant information for each of the properties relevant to the Motion (collectively, the "Property"):

Elkhorn Ridge Estates, Malad ID			
Remaining receivership properties proposed to be sold at auction			
Lot Number	Tax Parcel ID Number	Acreage	Bair Appraised Value
9	RP0281915	2.5 acres	\$23,000.00
10	RP0281916	2.5 acres	\$23,000.00
11	RP0281917	2.5 acres	\$23,000.00
12	RP0281918	2.5 acres	\$23,000.00
13	RP0281919	5 acres	\$45,500.00
14	RP0281920	5 acres	\$45,500.00
15	RP0281921	2.5 acres	\$23,000.00
16	RP0281922	2.5 acres	\$23,000.00
17	RP0281923	2.5 acres	\$23,000.00
18	RP0281924	2.5 acres	\$23,000.00
19	RP0281925	2.5 acres	\$23,000.00
20	RP0281926	2.5 acres	\$23,000.00
21	RP0281927	2.5 acres	\$23,000.00

23	RP0281929	2.7 acres	\$25,000.00
24	RP0281930	2.5 acres	\$23,000.00
26	RP0281932	3.8 acres	\$35,000.00
27	RP0281933	2.5 acres	\$23,000.00
28	RP0281934	2.5 acres	\$23,000.00
29	RP0281935	2.8 acres	\$25,500.00
30	RP0281936	2.6 acres	\$24,000.00
31	RP0281937	2.8 acres	\$25,500.00
32	RP0281938	2.5 acres	\$23,000.00
33	RP0281939	2.5 acres	\$23,000.00
34	RP0281940	2.5 acres	\$23,000.00
35	RP0281941	2.5 acres	\$23,000.00
36	RP0281942	2.5 acres	\$23,000.00
37	RP0281943	2.5 acres	\$23,000.00
38	RP0281944	3.8 acres	\$35,000.00
39	RP0281945	3.8 acres	\$35,000.00
40	RP0281946	2.5 acres	\$23,000.00
41	RP0281947	2.5 acres	\$23,000.00
42	RP0281948	2.5 acres	\$23,000.00
43	RP0281949	2.5 acres	\$23,000.00
44	RP0281950	2.4 acres	\$22,000.00
45	RP0281951	2.5 acres	\$23,000.00
46	RP0281952	2.5 acres	\$23,000.00
47	RP0281953	2.5 acres	\$23,000.00
Roads, Open areas	RP0281906		

B. Past Efforts to Sell the Property

8. I have marketed all Elkhorn Ridge Estates lots for sale since October 2012 through Idaho Real Estate Group (the “Realtor”) pursuant to a “Listing Agreement,” a copy of which is attached to hereto as **Exhibit A**.

9. To determine an offering price for the Elkhorn Ridge Estates lots, I obtained the opinion of my Realtor and appraiser Angela Bair (“Bair”), who was appointed by the Court as an appraiser for Elkhorn Ridge Estates on December 4, 2013.

10. In Bair's appraisal, a true and correct copy of which is attached hereto as **Exhibit B**, she gave an estimated value of \$9,100 per acre for all of the Elkhorn Ridge Estates lots. This value is shown for each individual lot of the Property in the table in ¶ 7.

11. The Realtor's best efforts in marketing the Elkhorn Ridge Estates have resulted in the sales of the Previously Sold Parcels as shown above in ¶ 6—an average of 1.66 sales per year since my appointment. Given this slow rate of sale, and the fact that I have now disposed of all other properties of the Receivership Estate, I feel that it is in the best interest of the Receivership Estate to sell the Property at public auction.

C. The Auction Agreement and Marketing Plan

12. I have entered into an agreement (the "Auction Agreement") with Braunco Inc. ("Braun") to sell the Property at public auction (the "Auction"). A true and correct copy of the Auction Agreement is attached to the Motion as Exhibit 2, and a summary of the material terms of the Auction Agreement is provided in the Motion.

13. I negotiated negotiated the Auction Agreement with Braun in good faith and at arms' length.

14. Braun has developed an aggressive plan to market the Property and bring interested parties to the Auction. This marketing strategy is described in the "Marketing Plan" which I received from Braun, a true and correct copy of which is attached hereto as **Exhibit C**, and a description of which is provided in the Motion.

15. Braun believes that marketing the Property as a whole will bring the highest and best value for the Property and that allowing me to continue selling the various lot individually before the Auction would dissuade potential bidders from participating in the Auction for the Property as a whole. Accordingly, if the Court approves the Auction Agreement, Braun will have

exclusive rights to sell Property, and I will not be able to accept offers for the individual lots thereafter.

16. Given Braun's experience in marketing hard-to-sell properties like the Property, and its extensive list of contacts who are interest in purchasing such properties, I believe that adhering to the terms of the Auction Agreement and the Marketing Plan will result in the most favorable possible sale of the Property.

D. Sale Costs and Net Sale Proceeds

17. I anticipate paying at the time of the closing of the sale of the Property outstanding property taxes and the ordinary costs of sale, including market-rate closing costs and commissions to Braun and the Realtor.

18. Under the Auction Agreement, at the closing of the sale Braun will receive a commission of 10% of the purchase price; if the Successful Bidder employs an agent, that agent will receive a commission of 3% of the purchase price and Braun's commission will be 7% of the purchase price. If the sale of the Property to the Successful Bidder does not ultimately close, Braun will receive 25% of the Purchase Deposit in lieu of the commission it would have received if the sale had closed. In any event, Braun will also be reimbursed for the \$15,000 it invests in marketing the Property under the Marketing Plan.

19. Under the Listing Agreement, at the closing of the sale the Realtor will receive a commission of 7% of the purchase price, equal to that which Braun will receive in the event that the Successful bidder employs an agent.

20. The gross sale proceeds, less the costs of sale, taxes, reimbursement of marketing costs, and commission are referred to herein as the "Net Sale Proceeds."

21. Any other financial interests against the Property (to the extent they exist and without any waiver of my or the Receivership Estate's rights and defenses related thereto) will survive the sale and will attach to the Net Sale Proceeds.

22. I will separately account to the Court for the Net Sale Proceeds pending resolution of any disputes related to interests that may exist against the Property.

E. Free and Clear Sale

23. I propose to sell the Property free and clear of all interests therein, with any interests that may exist attaching to the Net Sale Proceeds. In so doing, I am not in any way waiving any rights, claims, interests or defenses to any claims or interests made against the Property or the Net Sale Proceeds.

24. To determine interests, if any, against the Property, I obtained tax summaries for the Property from Oneida County (the "Tax Summaries"). A copy of the Tax Summaries is attached hereto as **Exhibit D**.

25. From the Tax Summaries, I determined that property taxes on the Property for the year 2018 are liens that are due and payable.

26. Any other financial interests against the Property, other than property taxes and closing costs, will not be paid at the time of closing of the sale. Rather, any such interests (to the extent they exist and without any waiver of my or the Receivership Estate's right and defenses related thereto) will survive the sale and will attach to the Net Sale Proceeds.

27. A copy of this Motion is being served on the relevant taxing authority.

F. Best Interests

28. I believe that the sale of the Property at the Auction is beneficial for and in the best interests of the Receivership Estate.

29. Braun's expertise in marketing and selling specialized real estate like the Property combined with its extensive stable of clients who buy these types of properties should lead to a lively Auction which will bring the best and highest price for the Property.

30. Braun will advertise the Auction according to the Marketing Plan, and I will publish notice of the Auction on the Receivership website and in newspapers published and distributed in Salt Lake City, Utah, and Malad, Oneida County, Idaho.

31. Selling the Property at Auction will dispose of the last remaining property of the Receivership Estate in a timely manner. All of the Elkhorn Ridge Estates lots have been vigorously marketed for sale for over six years, but only 10 lots have sold in that period of time—an average of 1.66 sales per year. At this rate of sale, it could take over 22 years for the remaining 37 lots to sell individually.

32. I have sold all other properties of the Receivership Estate and almost completed collection of the Receivership Estate's outstanding receivables. Disposing of the Property is the last significant event in the receivership. Given these facts, I believe that liquidating the Estate's interest in the Property as a whole at this time would be more beneficial to the Estate than holding the receivership open for years to come to sell the Property as individual lots.

33. Upon completion of the sale and after the conclusion of the Auction, I will file with the Court a "Notice of Sale Results," stating the purchase price that was obtained at the Auction and reporting on the Net Sale Proceeds of the sale. This Notice of Sale Results will be served on those parties asserting interests in the Property, if any.

34. The SEC has informed me that it supports this proposed auction.

G. Realtor Participation in the Auction

35. I believe that the Realtor is one of the most knowledgeable real estate professionals in Oneida, and I would like to encourage the Realtor and its principals to bid at the auction if they so choose in order to generate more interest in the Property and the Auction.

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

DATED this 30th day of January, 2019.



R. Wayne Klein, *Receiver*

CERTIFICATE OF SERVICE

I hereby certify that on January 31, 2019, a true and correct copy of the foregoing was filed with the Court and served via ECF on all parties who have requested notice in this case.

/s/ John J. Wiest _____

I hereby certify that on January 31, 2019, a true and correct copy of the foregoing was served upon the persons named below, at the addresses set out below by U.S. mail:

Oneida County Tax Collector
10 Court Street
Malad, ID 83252

/s/ John J. Wiest _____