

ORIGINAL



0000130624

BEFORE THE ARIZONA CORPORATION COMMISSION

2011 OCT 20 P 4:12

COMMISSIONERS

GARY PIERCE, Chairman  
BOB STUMP  
SANDRA D. KENNEDY  
PAUL NEWMAN  
BRENDA BURNS

AZ CORP COMMISSION  
DOCKET CONTROL

In the matter of:

DOCKET NO. S-20814A-11-0313

DAVID PAUL SMOOT and MARIE  
KATHLEEN SMOOT (a.k.a. "KATHY  
SMOOT"), husband and wife,

**NOTICE OF OPPORTUNITY FOR HEARING  
REGARDING PROPOSED ORDER TO  
CEASE AND DESIST, ORDER FOR  
RESTITUTION, ORDER FOR  
ADMINISTRATIVE PENALTIES AND  
ORDER FOR OTHER AFFIRMATIVE  
ACTION**

NATIVE AMERICAN WATER, L.L.C.  
(d.b.a. "NATAWA"), an Arizona limited  
liability company,

NATAWA CORPORATION (d.b.a.  
"NATAWA"), a Delaware corporation with a  
revoked authorization to conduct business in  
Arizona as a foreign corporation,

AMERICAN INDIAN TECHNOLOGIES  
INTERNATIONAL, L.L.C. (a.k.a. "AITI"),  
an Arizona limited liability company,

Respondents.

Arizona Corporation Commission

**DOCKETED**

OCT 20 2011

DOCKETED BY

**NOTICE: EACH RESPONDENT HAS 10 DAYS TO REQUEST A HEARING**

**EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER**

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") alleges that Respondents DAVID PAUL SMOOT, NATIVE AMERICAN WATER, L.L.C. (d.b.a. "NATAWA"), NATAWA CORPORATION (d.b.a. "NATAWA"), and AMERICAN INDIAN TECHNOLOGIES INTERNATIONAL, L.L.C. (a.k.a. "AITI"), have engaged in acts, practices, and transactions that constitute violations of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act").

**I. JURISDICTION**

1  
2       1.     The Commission has jurisdiction over this matter pursuant to Article XV of the  
3 Arizona Constitution and the Securities Act.

**II. RESPONDENTS**

4  
5       2.     At all relevant times, Respondent DAVID PAUL SMOOT ("SMOOT") has been a  
6 married man and an Arizona resident. At all relevant times, SMOOT offered and sold the debenture,  
7 limited liability company membership interests, stock and promissory note investments discussed  
8 below within and from Arizona in his individual capacity and on behalf of Respondents: (a)  
9 NATIVE AMERICAN WATER, L.L.C. (d.b.a. "NATAWA") ("NATAWA") as its founder and  
10 managing member; (b) NATAWA CORPORATION (d.b.a. "NATAWA") ("NATAWA-CORP")  
11 as its founder, president, chief executive officer and director; and (c) AMERICAN INDIAN  
12 TECHNOLOGIES INTERNATIONAL, L.L.C. (a.k.a. "AITI") ("AITI"), as its founder and sole  
13 managing member. In these capacities, SMOOT promoted, controlled and bore responsibility for  
14 NATAWA, NATAWA-CORP and AITI's investor solicitation activities. SMOOT has not been  
15 registered by the Commission as a securities salesman or dealer.

16       3.     NATAWA was organized by SMOOT as a manager-managed Arizona limited liability  
17 company on or about January 17, 2003. At all relevant times, NATAWA issued and sold the  
18 debentures, limited liability company membership interests and promissory notes discussed below  
19 within or from Arizona. At all relevant times, NATAWA maintained its principal place of business in  
20 Arizona. NATAWA has not been registered by the Commission as a securities dealer.

21       4.     NATAWA-CORP was incorporated by SMOOT as a Delaware corporation on or  
22 about August 24, 2005. On or about June 8, 2006, the Corporations Division of the Commission  
23 granted NATAWA-CORP's application for authority to transact business in Arizona as a foreign  
24 corporation. Due to NATAWA-CORP's failure to file its 2007 annual report, NATAWA-CORP's  
25 status as a foreign corporation was revoked by the Corporations Division on or about March 28, 2008.  
26 NATAWA-CORP was reinstated as a foreign corporation authorized to conduct business in Arizona

1 by the Corporations Division on or about April 16, 2008. Due to NATAWA-CORP's failure to file its  
2 2010 Annual Report, NATAWA-CORP's status as a foreign corporation was revoked by the  
3 Corporations Division on or about June 7, 2011. At all relevant times, NATAWA-CORP issued and  
4 sold the debentures, limited liability company membership interests and promissory notes discussed  
5 below within or from Arizona. At all relevant times, NATAWA-CORP maintained its principal place  
6 of business in Arizona. NATAWA-CORP has not been registered by the Commission as a securities  
7 dealer.

8 5. In 2005 and 2006, SMOOT took steps to merge NATAWA into NATAWA-CORP,  
9 and convert equity investments in NATAWA to those in NATAWA-CORP (the "Merger").  
10 NATAWA-CORP was intended to be the Merger's surviving entity.

11 6. NATAWA-CORP filed a "CERTIFICATE OF MERGER OF DOMESTIC  
12 CORPORATION AND FOREIGN LIMITED LIABILITY COMPANY" with the Delaware  
13 Secretary of State on or about September 5, 2006, stating that NATAWA had merged with  
14 NATAWA-CORP. However, Respondents later claimed the merger was never completed in  
15 accordance with Arizona law. As stated in a January 2009 "Investor Update" prepared and  
16 provided by SMOOT to actual and potential investors:

17 In 2003, Native American Water, L.L.C. was formed and investors invested in this  
18 LLC through 2005. In December 2005 it was recommended by an outside legal  
19 consultant to form Natawa Corporation (a C-Corp) and merge the LLC into the  
20 Corporation. From 2006 until the present, investors invested in Natawa Corporation  
21 and all prior LLC investors were issued new stock certificates in Natawa  
22 Corporation based on their percentage ownership in Native American Water, LLC.  
The above transaction assumed the merger went through; however, the merger,  
fortunately, was never legally completed in the state of Arizona. Management, in  
consultation with its tax advisors, determined that this failure was fortuitous in that  
it is preferable from a tax perspective to retain Native American Water, LLC as an  
active operational entity...

23 7. AITI was organized by SMOOT as a manager-managed Arizona limited liability  
24 company on or about February 10, 2004. At all relevant times, AITI issued and sold the debentures  
25 and limited liability company membership interests discussed below within or from Arizona. At all  
26

1 relevant times, AITI maintained its principal place of business in Arizona. AITI has not been  
2 registered by the Commission as a securities dealer.

3 8. NATAWA, NATAWA-CORP and AITI may also be collectively referred to as the  
4 “COMPANIES” or individually as a “COMPANY.”

5 9. SMOOT and the COMPANIES may be collectively referred to as “Respondents” or  
6 individually as a “Respondent.”

7 10. Respondent MARIE KATHLEEN SMOOT (a.k.a. “KATHY SMOOT”)  
8 (“Respondent Spouse”) was at all relevant times SMOOT’s spouse. Respondent Spouse is joined in  
9 this action under A.R.S. § 44-2031(C) solely for purposes of determining the liability of the marital  
10 community.

11 11. At all times relevant, SMOOT was acting for his own benefit and for the benefit or in  
12 furtherance of SMOOT and Respondent Spouse’s marital community.

### 13 III. FACTS

#### 14 A. Respondents’ Utility Business

15 12. At all relevant times, Respondents represented to offerees and investors that  
16 Respondents were primarily engaged in the business of financing, developing, building and  
17 operating water, waste water, and fiber optic utilities (“Utility(ies)”) for residential and commercial  
18 real estate developers (the “Business”).

19 13. As explained on the homepage of Respondents’ website at [www.natawa.com](http://www.natawa.com) at all  
20 relevant times (the “Website”):

21 Through industry-leading partnerships, Natawa finances, constructs, owns, and  
22 manages advanced water, wastewater, and fiber optic utilities – making them  
23 revenue-generating assets for developers, cost effective benefits for municipalities,  
and valuable services for residents.

24 Natawa’s innovative, 100% financed water and wastewater solutions provide an  
25 efficient and far-reaching answer to water and sewer problems, while  
26 simultaneously conserving the land’s most precious resource.

1 And Natawa's quality telecommunications systems bring fiber directly to the home,  
2 so community residents can enjoy faster Internet connections, enhanced  
entertainment options, and other exciting services - conveniently and affordably.

3 14. Respondents further describe the scope of Respondents' Utilities Business on the  
4 "FAQ" or frequently asked questions page of the Website as follows:

5 **What size developments work best with Natawa Utilities?**

6 Natawa and its partners have the experience and expertise to work with  
developments of almost any size, from a few hundred homes to well into the ten-  
7 thousands. The ideal development size is 1,000 homes or more for water and  
wastewater utilities and 500 plus for fiber utilities.

8 **Can Natawa provide utilities for commercial developments?**

9 Yes, Natawa can provide utilities for commercial properties, such as resorts, condo  
complexes, and multiplex developments.

10 **Who operates the utilities financed and constructed by Natawa?**

11 Natawa and our partners will operate the utility... (emphasis in original)

12 15. At all relevant times, Respondents represented to offerees and investors both  
13 verbally and in writing that real estate developers selected Respondents' Utilities Business for their  
14 often massively scaled real estate developments because Respondents: (a) pay for the development  
15 and installation of the Utilities up-front, with no initial cost to developers; (b) own and operate the  
16 Utilities for the life of the real estate development, with little to no overhead or administrative cost  
17 to developers; and (c) share a portion of the resulting Utilities Business profits with developers.

18 16. For example, the FAQ page of the Website states that:

19 In a development of 10,000 homes, for example, a [real estate] developer can expect  
20 a \$40 million positive cash flow [using Respondents' Utilities Business]. Compare  
that with a \$43 million negative cash flow under the current way of doing things  
[i.e., real estate developers paying for and/or installing utilities themselves].

21 The "About" us page of Respondents' Website further states that:

22 Developers who partner with Natawa share in the profits of the utilities in their  
23 communities, and enjoy the additional advantages of no upfront costs, smoother  
relationships with government agencies, and better solutions for community  
24 residents.

25 17. With respect to the benefits of Respondents' water and waste water Utilities, the  
26 "Water Technologies" page of the Website states in part as follows:

1 By partnering with Natawa, developers enjoy numerous benefits:

- 2 • Positive cash flow - for years after the development sells out
- 3 • No out-of-pocket costs: projects are 100% financed by Natawa
- 4 • Lower project costs overall
- 5 • Less involvement with government agencies, as Natawa manages all "wet utility" approvals
- 6 • Faster approval times for surveys, permits, and inspections

7 **Natawa is the only utilities company in the country that shares a large equity stake in its utilities with developers.** Through a generous ownership share, developers can benefit from long-term, sustainable income streams. (emphasis in original).

8 **B. The Unregistered Investments**

9 18. At all relevant times, Respondents represented to offerees and investors that  
10 Respondents were raising capital to operate the Business and develop and/or construct Utilities by  
11 issuing, offering and selling:

- 12 a. debentures ("Debenture(s)") entitling investors to either earn interest on their  
13 principal investments, or convert their outstanding principal investments and  
14 accrued but unpaid interest into limited liability company membership unit interests  
15 in NATAWA ("NATAWA Unit(s)"), shares of NATAWA-CORP stock  
16 ("NATAWA-CORP Stock"), or limited liability company membership unit interests  
17 in AITI (the "AITI Unit(s)");
- 18 b. NATAWA Units outright, or apart from the Debentures;
- 19 c. NATAWA-CORP Stock outright, or apart from the Debentures;
- 20 d. AITI Units outright, or apart from the Debentures; and
- 21 e. promissory notes made and executed by SMOOT in his individual capacity, and on  
22 behalf of NATAWA and NATAWA-CORP (the "Note(s)").

23 19. The Debentures, NATAWA Unit, NATAWA-CORP Stock, AITI Unit and Note  
24 investments may be referred to collectively as the "Investment(s)."

25 20. The Investments have not been registered with the Commission as securities to be  
26 offered or sold within or from Arizona.

1           C.     Summary of Respondents' Investment Offering

2           21.     From on or about March 1, 2003 to October 11, 2010, Respondents issued and sold  
3 approximately one hundred fifty-nine Investments totaling \$6,795,500 to seventy widely disbursed  
4 investors residing throughout Arizona and other states.

5           22.     Of this amount: (a) \$6,795,000 was issued, offered and sold by SMOOT in his  
6 individual capacity and on behalf of the COMPANIES; (b) \$5,085,500 was issued, offered and sold  
7 by NATAWA and NATAWA-CORP; and (c) \$1,710,000 was issued, offered and sold by AITI.

8           23.     At all relevant times, Respondents represented to offerees and investors that  
9 Respondents would share with investors the cash profits realized from Respondents' Utilities  
10 Business through dividend and/or net profit distributions including, without limitation, those  
11 derived from: (a) monthly usage fees paid by Utility customers for their access and use of the  
12 Utilities, to be distributed to investors on a pro-rata basis depending on their percentage ownership  
13 interests in the COMPANIES; and (b) other fees earned by Respondents, including those related to  
14 Respondents' Utilities "engineering work," and/or "General Contracting" fees totaling  
15 approximately ten percent of the total Utilities project budget amount, payable to Respondents from  
16 the purported third-party financing loans discussed further below.

17           24.     At all relevant times, Respondents further represented to offerees and investors that  
18 COMPANIES were, or would soon become extremely profitable and, as a result, the Investments  
19 would provide investors with outstanding equity investment returns in the form of, for example, an:  
20 (a) increase in the COMPANIES' assets; and/or (b) corresponding decreases in Respondents'  
21 liabilities.

22           25.     A NATAWA "Newsletter and Update" prepared and delivered by Respondents to  
23 actual and potential investors on or about February 22, 2005, states that:

24           The tides are changing at NATAWA. Three [Utilities development] contracts are in  
25 the process of being signed and at least three more in the works for March. This is  
26 big news for the company as it pushes **the profitability of the deals signed to well  
over \$150,000,000.00 pre tax...We wanted you to know that the company's  
future is on solid ground**, so you're getting a little advance notice of significant  
occurrences. In addition to the contracts already signed, these contracts bring an

1 additional 10,000 homes to the company's portfolio for controlling fiber optics  
2 and/or wastewater **and over \$100,000,000.00 to the bottom line...Cash [profits]**  
3 **should start about Q2 to come into NATAWA.** This of course is from our fees as  
4 the General Contractor and [or third-party lender or] financing fees...**The cash**  
5 **position of the company is** and will remain to be **very strong** in a very short time.  
6 We have come a long way and the fruits of **our efforts will soon pay off...**For  
7 investors on the mailing list, we appreciate you being patient, as it is finally really  
8 happening...**Your confidence in NATAWA will be well rewarded. NATAWA,**  
9 **its investors and partners...have a very bright future together.** (emphasis  
10 added)

11 26. SMOOT provided existing or potential investors with a thirteen-page NATAWA-  
12 CORP Stock prospectus that similarly touted the Investments' projected cash profits in or about  
13 December 2007 that stated that:

14 NATAWA has obtained five contracts to build either water, wastewater and/or fiber  
15 utility services for **a total build-out commitment of approximately 86,000 homes**  
16 **in Arizona and California.** These contracts represent significant revenues and  
17 **free cash flow for NATAWA** and its [real estate development] partners. Over the  
18 first ten years of these agreements, **during the build-out of the subdivisions,**  
19 **combined revenues will have been over \$900.4 million and free cash available**  
20 **for distribution [to investors] will have been over \$90.3 million. In the eleventh**  
21 **year of the contracts, the combined utilities will have annual revenues of \$200.9**  
22 **million, and have \$23 million annually available for distribution to**  
23 **shareholders for the remaining life of the utility, upwards of 20 years.**  
24 **NATAWA is [also] in early discussions involving over 500,000 additional**  
25 **homes, and are in the final stages of negotiating an additional 70,000 homes.**  
26 (emphasis added, and in original)

27 27. At all relevant times, Respondents also often attached spreadsheets to Investment  
28 offering materials regarding NATAWA and/or NATAWA-CORP's pending Utilities projects that  
29 stated, for example, that: (a) Respondents had six "Signed" Utilities development contracts  
30 covering 20,700 homes that would provide Respondents with revenues of \$1,073,472,000 over  
31 thirty years, and resulting income to be distributed to Investment investors totaling \$184,381,876,  
32 or \$7,991,684 per year; and (b) thirty-two anticipated Utilities development contracts covering  
33 156,600 homes that would provide Respondents with revenues of \$8,842,670,250 over thirty years,  
34 and resulting income to be distributed to Investment investors totaling \$1,679,457,533, or  
35 \$72,657,131 per year.

36 28. Respondents further represented to offerees and investors both verbally and in  
writing that the COMPANIES had and/or were on the verge of having assets totaling tens of



1 millions of dollars. For instance, and without limitation, a thirteen page prospectus titled  
2 "NATAWA Investment Opportunity", dated December 1, 2005, prepared and distributed by  
3 SMOOT to actual and potential Debenture investors explained that NATAWA-CORP would have a  
4 post-Merger valuation of "\$10 million dollars." Respondents similarly provided actual and  
5 potential investors with an "Executive Summary" in or about 2006 and 2007 that stated that, "In as  
6 little as five years, NATAWA and [their real estate] Developer[s] will co-own utilities worth  
7 millions and possibly hundreds of millions, of dollars."

8 29. Respondents represented to offerees and investors in or about 2007 that the  
9 Investments would also provide increased equity profits because, without limitation: (a) the  
10 COMPANIES would eventually "go public" or undertake "an initial public offering" within five  
11 years due to the anticipated "rapid growth" of Respondents' Utilities Business; and (b) the  
12 COMPANIES' "Cash, Assets and Long Term Recurring Revenues are exponentially going to grow  
13 rapidly as the company adds utility installations over the next several years."

14 30. Regarding AITI profits, an AITI Unit prospectus prepared and provided by SMOOT  
15 to offerees and investors in or about 2008 and/or 2009 similarly stated that: (a) SMOOT and AITI  
16 were seeking a "\$3,000,000.00 Investment" and/or bridge loans; (b) AITI would have revenues for  
17 the years 2011 through 2016 totaling approximately \$268,056,000, and "Net Income" for that time  
18 period totaling approximately \$96,537,556 for distribution to investors; and (c) AITI would have  
19 net assets of approximately \$57,500,000 in 2010, which assets would increase each year to  
20 \$346,537,556 by 2016.

### 21 The Debentures

22 31. SMOOT, NATAWA, NATAWA-CORP, and AITI, issued, offered and sold  
23 approximately fifty-nine Debentures.

24 32. The written Debenture contracts were titled "10% CONVERTIBLE,  
25 SUBORDINATED DEBENTURE..." and included the name of the Debenture issuing COMPANY.

1 The Debentures were often prepared and signed by SMOOT in his capacities as "CEO" of  
2 NATAWA-CORP, and as managing member of NATAWA and AITI.

3 33. The terms of the Debentures varied, but generally included one year maturity dates  
4 and ranged in price from approximately \$7,500 to \$200,000 each.

5 34. The Debentures offered two repayment options. Respondents first promised to pay  
6 Debenture investors interest on their principal investments, most often at the rate of ten percent per  
7 year, with the principal and accrued interest repaid only at the conclusion of the Debenture term.

8 35. Second, the Debentures provided that in lieu of receiving back the principal  
9 investment amounts along with accrued but unpaid interest, Debenture investors could "convert"  
10 the Debentures into shares of either NATAWA-CORP Stock or NATAWA and AITI Units.

11 36. Regardless of the principal investment amount, the majority of the Debentures  
12 allowed investors to convert their principal and accrued but unpaid interest into ownership interests  
13 at the rate of \$100,000 per each one percent ownership interest in the issuing COMPANY. For  
14 example, a NATAWA issued Debenture purchased by an Oregon investor for \$7,500 on or about  
15 March 20, 2005, provided that the investor could convert her principal and accrued but unpaid  
16 interest into NATAWA Unit Investments at the rate of \$7,500 per each ".075% (Seventy-Five  
17 Thousands of one percent)" ownership interest in NATAWA.<sup>1</sup> Some investors, however, were  
18 offered more favorable conversion rates. For instance, one investor who purchased four \$50,000  
19 NATAWA issued Debentures for a total Investment of \$200,000, was entitled to convert his  
20 principal and accrued but unpaid interest into NATAWA Units at the rate of \$50,000 "per each 1%  
21 (one percent)" ownership interest in NATAWA.

22 37. Similarly: (a) a NATAWA-CORP issued Debenture purchased by a Colorado  
23 resident for \$50,000 on or about March 18, 2008, provided that the investor could convert her  
24 principal Investment and accrued but unpaid interest into "Class A shares" of NATAWA Stock  
25

26 <sup>1</sup> This Oregon investor elected to convert her Debenture into an equity ownership interest, and given the  
Merger discussed above, she ultimately received a NATAWA-CORP Stock certificate stating that the  
investor owned "ONE AND 82/100" shares of NATAWA-CORP Stock.

1 “outstanding” at the rate of \$50,000 per each “1/4% (one-fourth percent)” NATAWA-CORP  
2 ownership interest; and (b) an AITI issued Debenture purchased by an Arizona resident for \$50,000  
3 on or about July 9, 2009, provided that the investor could convert her principal Investment and  
4 accrued but unpaid interest into AITI Units at the rate of \$50,000 “per each 1/2% (one half percent)  
5 of the outstanding [AITI] Units.”

6 38. Given the eventual lack of any legitimate Utilities Business revenues realized by  
7 Respondents and resulting shortage of cash on hand discussed further below, Respondents often  
8 persuaded Debenture investors to convert their principal Investments and accrued but unpaid  
9 interest into NATAWA or AITI Units, and NATAWA-CORP Stock at the conclusion of the  
10 Investments.

11 39. Given the Merger discussed above, investors that chose the conversion option  
12 received shares of NATAWA-CORP Stock, despite the fact they had purchased a Debenture issued  
13 by NATAWA. For instance, an Arizona investor who purchased a Debenture issued by NATAWA  
14 on or about May 31, 2005, for \$150,000 elected to convert his Debenture, and he received a  
15 certificate for “THIRTY-EIGHT AND 43/100” shares of NATAWA-CORP Stock.

16 40. To date, many of the non-converting Debenture investors have received no  
17 repayments on their Investments (*i.e.*, principal Investments plus 10% interest).

#### 18 NATAWA Units

19 41. SMOOT and NATAWA also issued and/or sold NATAWA Units (*i.e.*, NATAWA  
20 LLC membership interests) separate and apart from the Debenture Investments.

21 42. These sales of NATAWA Units were often documented by written agreements  
22 titled, for example, “Agreement of Sale”, “Subscription Agreement”, and “Membership Purchase”  
23 signed by SMOOT in his capacity as the managing member of NATAWA.

24 43. The terms of NATAWA Unit purchases varied. Pursuant to a NATAWA  
25 “Subscription Agreement” dated March 3, 2003, executed by SMOOT in his capacity as  
26

1 NATAWA's "Manager," for example, SMOOT sold five NATAWA Units to a California investor  
2 for a total of \$125,000, or \$25,000 per NATAWA Unit.

3 44. Purchases of NATAWA Unit Investments were also sometimes acknowledged via a  
4 "UNIT HOLDER SIGNATURE PAGE" signed by SMOOT.

5 **NATAWA-CORP Stock**

6 45. SMOOT and NATAWA-CORP sometimes issued and sold shares of NATAWA-  
7 CORP Stock separate and apart from the NATAWA-CORP Debenture Investments.

8 46. At all relevant times, NATAWA-CORP has been authorized to issue 5,000 shares of  
9 NATAWA-CORP Stock, including 4,500 "common-voting class A" ("Class A") shares and 500  
10 "common-nonvoting class B" ("Class B") shares.

11 47. NATAWA-CORP's 2009 "Annual Report" filed with the Corporations Division of  
12 the Commission on October 22, 2009, states that NATAWA-CORP had actually issued or sold  
13 2,626.14 shares of Class A Stock, and no shares of Class B Stock.

14 48. Respondents' sales of NATAWA Stock were often documented by written contracts  
15 titled "AGREEMENT OF SALE" prepared and signed by SMOOT in his individual capacity and  
16 on behalf of NATAWA-CORP as its CEO (the "NATAWA Stock Contracts").

17 49. The terms and/or price of NATAWA Stock sold by Respondents under the  
18 NATAWA Stock Contracts varied. For instance, a Michigan investor purchased NATAWA Stock  
19 "representing One-Fourth of One Percent (1/4 %)" of the outstanding shares of NATAWA-CORP  
20 for \$50,000 under a NATAWA Stock Contract prepared and signed by SMOOT and the investor on  
21 or about June 17, 2007.

22 **AITI's Various Businesses and AITI Units**

23 50. From approximately September 18, 2008, to April 23, 2010, SMOOT and AITI  
24 issued, offered and sold approximately fifteen AITI Debentures and/or Units (*i.e.*, AITI LLC  
25 membership interests) totaling \$1,710,000 to six investors residing in Arizona and Illinois.  
26

1           51.     The price of the AITI Units varied. In one case, SMOOT and AITI sold to an  
2 Illinois investor a ten percent ownership interest in AITI in exchange for \$400,000 on or about  
3 September 15, 2008, via an AITI "MEMBERSHIP INTEREST AGREEMENT" signed by  
4 SMOOT in his capacity as AITI's manager.

5           52.     SMOOT and AITI alternatively represented to offerees and investors that AITI was  
6 engaged in three types of business endeavors including: (a) military defense contracting and/or  
7 consulting; (b) alternative energy development projects; and (c) Respondents' Utilities Business.

8           53.     Regarding AITI's military business, SMOOT prepared and delivered to offerees and  
9 investors an "Investment Offering" package in 2007 that states that AITI had partnered with a U.S.  
10 Department of Defense ("DoD") contractor that had an \$11,800,000 contract with the DoD to  
11 develop and/or produce unmanned aerial vehicles via a project called SnowGoose. These offering  
12 materials further stated that AITI Units equaling a five percent ownership interest in AITI could be  
13 purchased for \$300,000, and that the investment would provide an investor with an annual return  
14 on the investment of twenty-eight percent, or \$85,000 per year, with an additional return of over  
15 forty percent per year over a six year period.

16           54.     Similarly, SMOOT caused to be prepared and delivered to "Potential Investors" an  
17 AITI Unit prospectus in or about 2008 and 2009 that states that: (a) AITI "is a Native American  
18 owned and operated minority business enterprise" that had been "awarded an exclusive contract to  
19 act as Prime Contractor on sales of SnowGoose, an unmanned aerial vehicle..."; (b) SMOOT was  
20 offering an AITI Unit Investment for sale for \$250,000; and (c) in return, an investor could choose  
21 one of two repayment options including: (i) the right to be paid back the principal investment when  
22 the second SnowGoose order was "received" "no later than Q2 of 2007" plus a ten percent equity  
23 interest in AITI, "making 10% of the gross profits forever"; or (ii) the investor could receive a  
24 fifteen percent ownership interest in AITI, "making 15% of the gross profit of the company  
25 forever."  
26

1           55.     Regarding AITI's alternative or green energy business, SMOOT caused to be  
2 prepared and delivered to NATAWA, NATAWA-CORP and/or AITI investors an "Investor  
3 Update" dated January 2009, and signed by SMOOT in his capacities as "CEO and Manager" of  
4 the COMPANIES stating that: (a) "Natawa [LLC and/or CORP] plans to offer 'Alternative  
5 Energy' products such as technologies in the wind turbine and wind generation field"; and (b) that  
6 AITI would share ten to fifty percent of the net income realized by AITI from its alternative energy  
7 business with NATAWA and/or NATAWA-CORP investors.

8           56.     In or about 2009, SMOOT similarly prepared and provided to AITI Unit offerees  
9 and investors a forty-eight page AITI Unit "Comprehensive Business Plan" that states that AITI  
10 would co-develop, build and operate, "clean electrical power generation plants using biomass fuel  
11 and coal in a gasification process," including a twenty megawatt power generating plant located in  
12 Maryland that would use renewable, green biomass technology with a patented emission reformer  
13 "and wet scrubber that minimizes carbon emissions" (the "BIO Mass Plant"). In an AITI Unit  
14 "Investment Summary" attached to the Comprehensive Business Plan, SMOOT represented to  
15 offerees and investors that AITI's BIO Mass Plant project would result in total revenues of  
16 \$268,056,000 for the years 2011 through 2016, and resulting "Net Income" of \$96,537,556 for the  
17 same time period. The Comprehensive Business Plan further states that the AITI Units could  
18 provide investors with "potentially \$ billions in guaranteed ROIs [*i.e.*, return on investments]."

19           57.     With respect to Respondents' Utilities Business, SMOOT caused AITI and  
20 NATAWA-CORP to execute a "CONSULTING SERVICES AGREEMENT" on or about  
21 September 15, 2006 (the "AITI Consulting Agreement"). According to the AITI Consulting  
22 Agreement, AITI "is in the government relations and government contracting businesses, and  
23 pursues contracts with governmental entities as a qualified minority-owned business enterprise."

24           58.     According to the AITI Consulting Agreement, AITI was also created by SMOOT to  
25 assist NATAWA-CORP with its Utilities Business, and to:  
26

1 represent Natawa [CORP] and/or its affiliates before federal, state and local  
2 government agencies and departments in connection with licensing, permitting, land  
3 use approvals and other agency actions which Natawa [CORP] requires in order to  
4 pursue its business objectives...[and] serve as prime contractor for one or more  
5 phases of construction projects which Natawa [CORP] is obligated to undertake  
6 pursuant to agreements with its customers, including cities and municipalities.

#### 4 Note Investments

5 59. SMOOT and each of the COMPANIES issued, offered and sold approximately  
6 thirty-one Note Investments totaling approximately \$1,324,000. The Notes were made and  
7 executed by SMOOT in his individual capacity, and as the manager or CEO of the COMPANIES.

8 60. The terms of the Note Investments varied. Most Notes were unsecured and had  
9 maturity dates ranging from approximately six months to one year. For example, an Illinois  
10 investor purchased an unsecured Note Investment from SMOOT on or about February 24, 2005, for  
11 \$25,000. The Note Investment was documented by a "PROMISSORY CONVERTIBLE NOTE"  
12 made and executed by SMOOT in his individual capacity in which SMOOT promised to repay the  
13 Illinois investor his principal investment with interest thereon at the rate of seven percent per year,  
14 for a term of at least three hundred and sixty days, for a total Note Investment return of \$35,000.  
15 Similar to the Debenture Investments, this Note Investment provided that, in lieu of receiving back  
16 his principal Investment with accrued but unpaid interest at the conclusion of the investment, the  
17 Illinois investor could receive a one-half percent ownership interest in NATAWA.

18 61. In another case, SMOOT made and executed a "PROMISSORY NOTE" Investment  
19 on behalf of NATAWA dated April 20, 2004, that promised the Arizona investor the return of his  
20 \$50,000 principal Investment plus interest thereon at the rate of ten percent per year, with the  
21 principal and unpaid interest due in approximately one year on April 19, 2005. This Note  
22 investors' Investment provided that in lieu of receiving back his principal and accrued but unpaid  
23 interest, the Note investor would receive a return in the form of ten percent of "the net profits of  
24 any one contract to develop wastewater plants signed prior to the date of this agreement, for the life  
25 of the utility," and the Note agreement states that two such California Utility development  
26 agreements had already been signed by Respondents and the developers.

1           62.     Alternatively, some Notes provided for only ten percent per annum interest to be  
2     paid to the investor and, on at least one instance, a Note issued by SMOOT and NATAWA on or  
3     about August 20, 2004 provided that the investor would be repaid that interest amount at such time  
4     as SMOOT and NATAWA had raised an additional \$300,000 from selling Debenture Investments.

5           63.     Respondents sometimes repaid Note investors with ownership or equity interests in  
6     the COMPANIES (*i.e.*, NATAWA Stock Investments, etc.), which as discussed below, have little  
7     to no value.

8           **D.     General Investment Allegations**

9           64.     At all relevant times, Respondents represented to offerees and investors that  
10    Respondents would manage the essential elements of the Utilities and other businesses (*i.e.*,  
11    military contracting and alternative energy projects) on behalf of investors and, without limitation:  
12    (a) negotiate and execute contracts with real estate developers and contractors for the installation  
13    and/or operation of Utilities; (b) procure third-party financing from commercial bankers and  
14    venture capital firms necessary to develop and construct Utilities for large developments; and (c)  
15    operate and/or arrange for the management of the Utilities including, without limitation, the  
16    collection and distribution of related customer use fees.

17          65.     At all relevant times, Respondents represented to investors both verbally and in  
18    writing that Respondents' ability to repay investors their principal Investments and/or promised  
19    profits was interwoven with and primarily dependent on SMOOT's Utilities and other business  
20    experience and expertise, and Respondents' ability to profitably develop, construct and operate the  
21    Utilities, and AITI's alternative energy and military contracting businesses.

22          66.     The "Leadership" page of the Website further emphasizes SMOOT's education and  
23    general business experience and states, in part that SMOOT: (a) is "a successful entrepreneur" who  
24    has "built a professional portfolio with sweeping scope"; (b) served as president of a leasing  
25    company that had purchased his start-up software-only leasing company; (c) served as president of  
26    a leasing company, and a different financial services company "where he became an expert in



1 leasing and funding Native American transactions; (d) was twice named as an "Entrepreneur-of –  
2 the-Year" finalist by a major accounting firm and business magazine; and (e) founder of an  
3 organization that provides scholarships for Native American youth.

4 **E. Respondents' "Signed" Contracts**

5 67. At all relevant times, Respondents represented to offerees and investors, both  
6 verbally and in writing, that Respondents had millions of dollars of assets, and that they had and/or  
7 were developing and/or installing Utilities on a massive scale across the U.S. and abroad.

8 68. To support these representations, SMOOT represented to offerees and investors that  
9 Respondents had a large number of contracts executed by both:

- 10 a. real estate developers for the development and installation of Utilities (the "Signed  
11 Development Contract(s)"); and  
12 b. third-party lenders, finance and/or private equity companies who would provide the  
13 majority of the money required to construct the Utilities ("Funding Company(ies)")  
14 (the "Signed Funding Contract(s)").

15 69. SMOOT prepared and distributed to offerees and investors via email a written  
16 summary of the status of Respondents' Signed Development and Funding Contracts in February  
17 2008 stating that Respondents:

- 18 a. had twelve Signed or about to be Signed Development Contracts with Utilities  
19 construction costs totaling approximately \$475,000,000, and related third-party  
20 Signed Funding Contracts providing Utilities Construction financing totaling  
21 approximately \$750,000,000; and  
22 b. that the Signed Development and Funding Contracts would result in Utilities  
23 Business profits for Respondents and investors totaling approximately \$45,000,000  
24 in the first quarter of 2008, and about \$1,000,000,000 in total revenues over a thirty-  
25 year period.  
26

1           70.     Regarding AITI Debenture and Unit Investments, SMOOT similarly represented to  
2 offerees and investors that AITI had “signed” agreements with respect to AITI’s military  
3 contracting and alternative energy development businesses. For instance, with respect to AITI’s  
4 BIO Mass Plant, SMOOT prepared and delivered to offerees and investors an email dated July 3,  
5 2010 that states that “AITI was successful in obtaining permanent financing” for its BIO Mass  
6 Plant project totaling “\$68 million,” and that the BIO Mass Plant financing would occur in “90 to  
7 120 days.” SMOOT further represented that if the lender was for some reason unable to provide  
8 the \$68,000,000, the lender would guarantee an AITI bridge or operating loan totaling \$3,300,000  
9 to keep the BIO Mass Plant project moving forward, such that there had been an “elimination of  
10 risk” in the project. SMOOT further stated that Finders could earn a “good commission” for letting  
11 SMOOT know about any person who was “interested now” in purchasing an AITI Investment.

12           71.     Regarding AITI’s military contracting business and the “SnowGoose” project  
13 discussed above, SMOOT provided offerees and investors with a 2007 AITI Unit prospectus that  
14 stated that and AITI “has successfully penetrated [*i.e.*, contracted with] the Air National Guard in  
15 Florida, with a \$1.4 million phase 1 order pending and due this month, and a \$10 million phase 2  
16 add on within 5 months; after the first [SnowGoose] delivery is tested” and that the purchase  
17 contracts were being finalized “NOW” such that AITI would be a “very profitable venture” for  
18 potential investors.

19           72.     As set forth above, SMOOT further represented to offerees and investors at all  
20 relevant times that Respondents had built and/or were on the verge of actually building the Utilities  
21 and procuring the related third-party financing, and Respondents’ receipt of substantial cash profits  
22 from Utilities Business operations was imminent such that they could be soon distributed to  
23 Investment investors.

24           73.     For example, in or about 2005, Respondents’ Website included an “Established  
25 Projects” page indicating and/or advertising that Respondents had in fact installed Utilities for large  
26

1 residential developments encompassing 40,000 total homes. Similarly, the FAQ page of  
2 Respondents' Website presently states, in part, as follows:

3 **How many utilities has Natawa built?**

4 Natawa's corporate partners have financed, built and maintained hundreds of water,  
5 wastewater, and fiber optic utilities. **Natawa is beginning to finance and  
construct several utilities under its own name**, and has agreements to build more  
in the next two years. (emphasis in original)

6 74. These material representations were made by Respondents throughout the  
7 Investment offering period. For example, a detailed, sixty-seven page prospectus with attachments  
8 titled "NATAWA Investment Opportunity" dated December 1, 2005, prepared and distributed by  
9 SMOOT to actual and potential investors explained that:

10 NATAWA has obtained five contracts to build either water, wastewater and/or fiber  
11 utility services for a total build-out commitment of approximately 50,000 homes in  
12 Arizona and California. **These contracts represent significant revenues and free  
cash flow for NATAWA** and its [real estate development] partners...NATAWA  
13 will have a lower volatility in earning and revenue performance, as once we have  
signed a [development] contract with a developer, NATAWA is the exclusive utility  
14 provider for the selected developments...**NATAWA expects to close a significant  
portion of these [Signed Development Contract] transactions in the third and  
fourth quarter of 2005. NATAWA will also be funding a minimum of one  
transaction in early first quarter 2006 for our project in Casa Grande, AZ.  
15 This project will provide NATAWA with General Contracting fees of \$460,000  
upon funding.** (emphasis added)

16 75. In a another email prepared and sent to an investor dated August 1, 2006, in which  
17 SMOOT asked for a \$15,000 bridge loan, SMOOT represented that:

18 [a person] will be here tomorrow to verify our contracts with developers and  
19 partners and then we move on to the money. I'll pay you back 17K [in one week on  
the \$15,000 loan]. We start funding this month on the engineering...we've earned  
20 over 500K so far in contracts for 3.5 million. This is just engineering money we  
make 15% of the total billing [from the Signed Funding Contracts]. We go into the  
21 ground [*i.e.*, start construction of Utilities on a real estate development]...in Sept.  
[2006] and one in Eloy...in Oct. [2006]. At least two other [real estate  
22 developments] will fund this year minimum. Those first two will fund by Sept.  
[2006] which will put us in the black forever.

23 76. In 2007, SMOOT similarly prepared and/or caused to be distributed to actual or  
24 potential investors a nine-page NATAWA Investment prospectus with twelve pages of attachments  
25 including an "Executive Summary" (the "2007 Investment Prospectus") that states, in part:  
26

1       **Describe your [i.e., Respondents'] revenue growth and how close are you to**  
2       **profitability.**

3       Natawa is in the last stages of finalizing four contracts with several developers who  
4       are prepared to start building almost immediately. When these contracts are  
5       completed, we expect to fund the transactions and begin construction in July, 2007,  
6       generating a construction management fee of several million dollars. Revenues will  
7       increase on a going forward basis as homes are sold to customers who will begin  
8       using Natawa's services. There are many more contracts that will then begin going  
9       in quarterly from contracts currently signed by the company [i.e., NATAWA and/or  
10       NATAWA-CORP]. (emphasis in original)

11       77. In a December 10, 2007, letter prepared by SMOOT on NATAWA letterhead and  
12       sent to "Natawa Shareholders," SMOOT represented that Respondents had both Signed  
13       Development and Funding Contracts totaling tens of millions of dollars and, as a result, "The value  
14       of the company [NATAWA and/or NATAWA-CORP] just skyrocketed like we've been  
15       anticipating and stating. It will be a good Xmas." In this letter, SMOOT further represented that,  
16       as a result of the Signed Development and Funding Contracts, the COMPANIES would own  
17       Utilities and/or assets worth up to \$400,000,000 outright, or with no encumbrances.

18       78. In another case, SMOOT caused to be prepared and delivered to "Natawa Investors"  
19       a written update dated January 16, 2008, stating that: (a) Respondents had delivered Signed  
20       Development Contracts totaling \$170,000,000 to their "Funding Partner" (i.e., lender), with another  
21       \$150,000,000 worth of Signed Development Contracts to be submitted to the lender in "the next  
22       couple of weeks" or "by the middle of February [2008] or sooner"; (b) that their lender had  
23       provided Respondents with "signed commitment letter[s]" totaling approximately \$110,000,000,  
24       and that approximately \$260,000,000 worth of Signed Funding Contracts would be executed within  
25       a week; and (c) that Respondents were "optimistic" that the lender would actually provide the  
26       \$110,000,000 to Respondents by at least June 2008.

27       79. The Signed Development Contracts often provided that the real estate developers  
28       would pay money to Respondents in the form of "lot," "tap" or "connection fees" when the  
29       developers would actually sell a home for which Respondents had provided Utilities. Respondents  
30       represented to offerees and investors that Respondents would use these fees, and actual Utilities

1 usage fees to repay the annual debt service (principle and interest) on the related loans provided by  
2 the third-party lenders and/or financing companies, resulting in a "wholly owned and debt-free  
3 utility at the end of 6-8-10 years" to be owned by Respondents and the real estate developers.

4 80. The Signed Development Contracts also provided that Respondents would be paid a  
5 "General Contracting Fee of Ten Percent (10%)" of the cost of the Utilities as additional payment  
6 for its Utilities Business services. This ten-percent general contracting fee was to be immediately  
7 received by Respondents from the third-party financing funds, discussed further below.

8 81. SMOOT procured numerous Signed Development Contracts. However,  
9 unbeknownst to Investment offerees and investors, the Signed Development Contracts were  
10 tantamount to unenforceable and/or non-binding letters-of-intent. For instance, the Signed  
11 Development Contracts did not provide that the real estate developers would pay Respondents any  
12 stipulated or liquidated damages<sup>2</sup> or similar termination fees in the event the developers did not or  
13 were unable to begin or complete construction of the developments.

14 82. Unbeknownst to offerees and investors, real estate developers who executed Signed  
15 Development Contracts contacted by the Division stated, without limitation, that construction of the  
16 real estate developments was subject to numerous contingencies such as, without limitation: (a) the  
17 outcome of further project feasibility and environmental impact studies, and extensive government  
18 entitlement and permitting processes; and (b) actual procurement of third-party financing funds  
19 identified, in part, in the Signed Funding Contracts.

20 83. As a result, the real estate developers further stated that actual construction of their  
21 real estate developments could often not even have begun for time periods up to five years after  
22 execution of the Signed Development Contracts. The real estate developers further stated that  
23 although they liked Respondents' generous Utilities Business model, in theory: (a) the Signed  
24 Development Contracts were tantamount to non-binding, preliminary outlines of how the parties  
25

---

26 <sup>2</sup> Generally, liquidated damages are a predetermined dollar amount and/or a estimation of damages that contracting parties agree will be paid by one of them in the event of breach or nonperformance.

1 could possibly conduct business in the future; and (b) that Respondents' real estate development  
2 projections and timelines were unrealistic.

3 84. SMOOT even acknowledged the non-binding nature of the Signed Development  
4 Contracts on at least one occasion in a November 28, 2006, email he sent to three NATAWA-  
5 CORP board members that stated, in part, that:

6 We have requested...[our attorney] to build us a new document that will allow the  
7 signature of developers to occur immediately, with less restraint on their part, sort of  
8 a "letter of intent"...I have talked to four developers that said they will sign a  
"letter of intent" or "letter-of-agreement", for the lack of a better term, covering all  
of their deals...

9 85. Regardless, as set forth above, Respondents repeatedly represented to actual and  
10 potential investors that the contingent, hypothetical, future or potential value of the Signed  
11 Development Contracts were: (a) presently worth tens of millions of dollars; and/or (b) current  
12 and/or actual assets of the COMPANIES.

13 86. At all relevant times, Respondents represented to offerees and investors that they  
14 had procured Signed Funding Contracts from third-party lenders, investment banks, finance or  
15 private equity companies and "Funding Partner[s]" to finance the construction of the Utilities  
16 totaling tens of millions of dollars.

17 87. Unbeknownst to offerees and investors, however, and similar to the Signed  
18 Development Contracts, the Signed Funding Contracts were tantamount to non-binding, conditional  
19 and/or unenforceable letters of intent. For instance, the Funding Commitment Letters did not  
20 provide that the lenders would pay Respondents any stipulated or liquidated damages or similar  
21 termination fees in the event the lenders did not or were unable to actually fund the development  
22 and construction of the Utilities.

23 88. To the contrary, at least one Signed Funding Contract provided that Respondents  
24 were obligated to pay the potential lender a termination fee of \$20,000 in the event that  
25 Respondents terminated the agreement.  
26

1           89.     Importantly, the Signed Funding Contracts included multiple conditions precedent to  
2 be satisfied by Respondents before the lenders were obligated to pay any funds to Respondents.  
3 For instance, a private equity firm wrote an email dated May 18, 2007, stating that, before it could  
4 even begin to underwrite a loan for a Utilities project, it would need Respondents and/or their  
5 agents to provide a feasibility study, marketing plan, permits and approvals for the Utilities,  
6 construction contracts and information regarding other required financing and available project  
7 cash.

8           90.     Similarly, one potential third-party lender wrote an email to SMOOT and/or real  
9 estate developers on December 6, 2007, stating that, before funding, the potential lender would  
10 require Respondents to submit financial statements audited by a licensed certified public accountant  
11 (“CPA”), along with an audit letter for each year of business “that opines that each of the financial  
12 statements were prepared in accordance with GAAP,” or generally accepted accounting principles  
13 (“GAAP”).

14           **F.     The Failure of Respondents’ Utilities and Other Business Endeavors**

15           91.     Respondents have never received audited financial statements of their Utilities  
16 Business prepared according to GAAP, nor have they satisfied the myriad of conditions precedent  
17 for them to obtain the funds necessary to develop and construct the Utilities as required by the  
18 Signed Funding Contracts.

19           92.     As a result, Respondents failed to procure the substantial amounts of third-party  
20 financing needed to construct any Utilities.

21           93.     As a result, Respondents failed to even begin construction of a single Utility for any  
22 real estate development and, for the reasons discussed further below, Respondents’ investors have  
23 lost millions of dollars.

24           94.     Respondents’ Utilities Business operations failed to generate any significant revenue  
25 from the sale of any goods or services. Rather, at all relevant times, Respondents’ primary source  
26 of operating funds were Investment funds, which are now exhausted.

1           95. To date, AITI has also failed to generate any revenue from its purported military  
2 contracting, or alternative energy businesses. Apart from the AITI's Consulting Agreement with  
3 NATAWA discussed further below, AITI has never generated any revenue from the sale of any  
4 goods or services. Rather, at all times relevant, AITI's primary source of revenue has been from  
5 AITI Unit and/or Debenture investor funds.

6           96. SMOOT expressly acknowledged the failure of Respondents to generate any  
7 Utilities Business revenues from the Signed Development and Funding Contracts on at least one  
8 occasion in an "Investor Update" prepared and provided by SMOOT to actual and potential  
9 investors in 2009 that stated, in part:

10           Also, to clarify any confusion as to current planned projects and potential sources of  
11 funding, Native American Water, L.L.C. has not yet received any income from its  
12 planned projects...The reason the Company still exists and is able to continue  
13 working toward project financing today is due to investors continuing to invest in  
14 the Company...Each time a new investor has invested (whether a direct investment  
15 in equity or converting their debentures into equity), new membership interests have  
16 been issued. This has had the effect of diluting prior investors, but it has been  
17 necessary to keep the Company operating and moving toward project financing.

18           \*\*\*

19           For Natawa to continue to survive, we need money for immediate needs until we  
20 receive project financing. If, and when, one of the development deals funds, this  
21 issue will be moot. We have not had any operational/project income to-date, we  
22 have few meaningful assets as the assets we contemplate building will be utilities,  
23 and we are in arrears on paying some of our consultants and some ongoing  
24 bills...[Nevertheless] we are cautiously optimistic that at least one of these three  
25 [pending Utilities development] projects will be successful in being funded in the  
26 first half of 2009...

27           **G. Respondents' Use of Investor Funds**

28           97. Investors made their Investment checks, cashier's checks, money orders and/or wire  
29 transfers payable to Respondents, and they sent the payments to Respondents in Arizona.

30           98. SMOOT caused the Investment funds to be deposited into at least nine separate  
31 Arizona bank accounts owned and controlled by Respondents (the "Bank Accounts"). SMOOT  
32 was the sole, authorized signer for the majority of the Bank Accounts.



1           99.     SMOOT pooled, commingled and/or combined Investment funds together, in part,  
2 by transferring such funds to and from the various Bank Accounts.

3           100.   Unbeknownst to offerees and investors, SMOOT claims to have been authorized by  
4 the COMPANIES to receive salaries of approximately \$180,000 to \$240,000 per year.

5           101.   Unbeknownst to offerees and investors, SMOOT used Investment funds to pay for  
6 expenses unrelated to Respondents' Utilities Business. These personal expenditures totaled  
7 hundreds of thousands of dollars and included, without limitation, expenditures for things like  
8 cigars, mortgage payments, utilities, golf expenses, car payments, gasoline and service station  
9 purchases, restaurants, groceries, travel and hotel expenses, retail store purchases from, for  
10 instance, Target and Costco, clothes, shoes and apparel, charitable donations, medical expenses,  
11 health and beauty spas, travel clubs and/or timeshares, movie theaters and rentals, Bank Account  
12 checks written to cash and automatic teller machine withdrawals, various credit card purchases and  
13 various "educational and living expenses," and payments to title, home equity line of credit lenders  
14 and debt collection companies.

15           102.   SMOOT initially transferred Investment funds from the COMPANIES' Bank  
16 Accounts into his personal accounts from which he paid for his personal expenses. Later on, as  
17 investors eventually became aware of his use of Investment funds for unintended purposes,  
18 SMOOT paid for personal expenses with checks drawn directly from, for example, an AITI Bank  
19 Account.

20           103.   A group of investors attempted to address Respondents' failure to produce and/or  
21 inability to obtain acceptable audited financial statements regarding Respondents' Utilities  
22 Business.

23           104.   On at least one occasion, SMOOT acknowledged the negative impact that his  
24 personal expenditures of Investment funds would have on an "audit" in a November 28, 2006,  
25 email that SMOOT wrote to three investors stating, in part, as follows:  
26

1       **the issue of Expenses spent by me has...[an investor] scared that we may not**  
2       **pass an Audit...**from the Shareholder's perspective, it's always been discussed that  
3       I would pay this expense back once we fund a deal and I get a bonus allowing me to  
4       do so. [SMOOT's purchases of] Cigars, clothes and such are what we're talking  
5       about. I have a buyer for some of my stock which will cover these expenses, since  
6       we haven't...[obtained any third-party financing] yet. (emphasis in original)

7       105. As a result, the investors provided SMOOT with three acceptable, independent  
8       certified public accountants ("CPA"), who could provide Respondents and the investors with an  
9       audit of Respondents' Utilities Business and use of Investment funds pursuant to GAAP. However,  
10      Respondents ultimately failed to either retain an independent and/or licensed CPA to conduct the  
11      audit or prepare an accounting conforming to GAAP.

12      106. Further, SMOOT's idea to generate the funds required to repay his personal use of  
13      Investment funds was to sell additional Investments, which he did. For example, and without  
14      limitation, in the November 28, 2006, email discussed above, SMOOT stated as follows:

15               **The issues of debt to pay back immediately, to investors that loaned us money**  
16               **in contemplation of closing deals** – This huge issue I am working on personally to  
17               rectify immediately...it's truly my fault, so I am taking care of it, even if it means I  
18               give up some of my stock to do it and close the investments. I have the investors  
19               that are interested. (emphasis in original)

20      107. Finally, the AITI Consulting Agreement discussed above required NATAWA-  
21      CORP to pay AITI a "monthly retainer" totaling \$5,000 for the purported Utilities Business  
22      services that AITI was to provide to NATAWA-CORP. Unbeknownst to offerees and investors,  
23      SMOOT caused NATAWA-CORP to pay AITI the monthly retainer fees totaling approximately  
24      \$60,000, despite the fact that AITI apparently did not actually provide any services to NATAWA-  
25      CORP and Respondents never did actually construct any Utilities.

26      108. As a result, on or about September 18, 2008, the some investors and/or board  
members persuaded SMOOT to agree to "retroactively" amend the "monthly retainer" provision in  
the AITI Consulting Agreement to an "Actual Loan Provision" whereby AITI would repay all  
monies it received from NATAWA-CORP with interest at the rate of six percent per annum.  
Unbeknownst to offerees and investors, however, SMOOT only caused AITI to repay  
approximately \$5,000 to NATAWA-CORP.

1           **H. Respondents' Additional Misrepresentations and Omissions of Material Fact**

2           109. Respondents represented to offerees and investors that Respondents would use their  
3 Investment funds to operate Respondents' Utilities Business. Unbeknownst to offerees and  
4 investors, however, Respondents also used their Investment funds, in part, to repay other and/or  
5 previous investors. For example, SMOOT wrote an email dated November 2, 2007, to two Note  
6 Investment investors who invested approximately \$114,000 stating, in part, that, "We will pay you  
7 both back with the next investment into the Company that has enough money in it to allow the  
8 payback."

9           110. To date, Respondents have repaid investors approximately \$846,290.

10          111. Investors purchased their Investments based on SMOOT's representations that he  
11 was an able, experienced and "successful entrepreneur" who has "built a professional portfolio  
12 with sweeping scope" who would manage the Investment funds to provide investors with the  
13 passive cash and increased equity profits.

14          112. SMOOT further failed to disclose to offerees and investors his previous failed  
15 business and/or financial mismanagement.

16          113. Without limitation, SMOOT borrowed \$50,000 from an Arizona resident on or  
17 about January 1, 2002. SMOOT further borrowed \$100,000 from the same Arizona resident on  
18 January 1, 2002, to support a company called American Indian Mall, L.L.C. ("AI Mall") that  
19 SMOOT organized to sell Native American art via teepee-shaped kiosks at venues like the 2002  
20 Winter Olympics held in Salt Lake City, Utah.<sup>3</sup> Both loans made to AI Mall by the Arizona  
21 resident and other AI Mall lenders were documented by promissory notes. AI Mall and SMOOT's  
22 art business endeavor failed and SMOOT failed to repay the Arizona resident as promised.  
23 Ultimately, SMOOT was only able to repay the Arizona resident approximately \$20,000 in March  
24 2004, which fact forced the Arizona resident to file a civil lawsuit against SMOOT in Maricopa  
25 County Superior Court on August 3, 2004, for the balance owed. (See, CV2004-092038).

26           <sup>3</sup> American Indian Mall investors lost their principal investments and, as a result, SMOOT "gifted" to them NATATAWA-CORP Stock and/or NATAWA Units.

1           114. Further, SMOOT used approximately \$147,440 of Investment funds to repay the  
2 Arizona resident: (a) despite the fact that the funds loaned to SMOOT by the Arizona resident had  
3 nothing to do with Respondents' Utilities Business; and (b) contrary to SMOOT's representations  
4 to offerees and investors that the Arizona resident "Loans [had been] taken out by David Smoot to  
5 benefit AITI/Natawa Members/Shareholders."

6           115. Without limitation, SMOOT also obtained an unsecured personal line of credit from  
7 Wells Fargo Bank, N.A. on or about January 19, 2000, in the amount of \$150,000, of which  
8 SMOOT used and spent approximately \$125,000. SMOOT was again unable to repay the Wells  
9 Fargo loan when it came due, and Wells Fargo was forced to file a civil lawsuit against SMOOT in  
10 Maricopa County Superior court on February 20, 2008 (*See*, CV2008-004031). Thereafter,  
11 SMOOT and Respondent Spouse stipulated to the entry of a final judgment against them on  
12 February 26, 2008, in the amount of \$123,512.86 for unpaid principal, \$75,570 in unpaid interest  
13 on the loan, and over \$5,000 in other loan related fees. SMOOT used approximately \$170,000 of  
14 Investment funds to make payments towards satisfying the Wells Fargo judgment.

15           116. Respondents' investors purchased their Investments primarily based on SMOOT's  
16 representations that Respondents were able and experienced Utilities Business operators who had  
17 already actually installed, and/or were on the verge of installing Utilities for real estate developers  
18 on a large scale. For instance, a written NATAWA "Executive Summary" provided by SMOOT to  
19 potential and actual investors beginning in February 2008 states that, "NATAWA and their  
20 preferred list of regional and national partners have constructed and operated hundreds of utilities  
21 infrastructures across the U.S. and Mexico." As discussed above, however, Respondents have not  
22 actually constructed any Utilities and/or successfully concluded a Utilities Business deal with either  
23 real estate developers and/or third-party financing companies or lenders.

24           117. Unbeknownst to offerees and investors, Respondents' primary source of revenue  
25 from approximately 2003 to the present has been investor funds, rather than from the successful  
26 development, construction and operation of Utilities.

1 118. SMOOT represented to several offerees and investors that Respondents needed their  
2 Investment funds to build and, in fact, would use the Investment funds, in part, to build Utilities.  
3 As discussed above, however, Respondents never built any Utilities.

4 **IV. VIOLATION OF A.R.S. § 44-1841**

5 **(Offer or Sale of Unregistered Securities)**

6 119. From about March 2003 to October 2010, Respondents offered or sold securities in the  
7 form of debentures, stock, investment contracts and notes, within or from Arizona.

8 120. The securities referred to above were not registered pursuant to Articles 6 or 7 of the  
9 Securities Act.

10 121. This conduct violates A.R.S. § 44-1841.

11 **V. VIOLATION OF A.R.S. § 44-1842**

12 **(Transactions by Unregistered Dealers or Salesmen)**

13 122. Respondents offered or sold securities within or from Arizona while not registered as  
14 dealers or salesmen pursuant to Article 9 of the Securities Act.

15 123. This conduct violates A.R.S. § 44-1842.

16 **VI. VIOLATION OF A.R.S. § 44-1991**

17 **(Fraud in Connection with the Offer or Sale of Securities)**

18 124. In connection with the offer or sale of securities within or from Arizona, Respondents  
19 directly or indirectly: (i) employed a device, scheme, or artifice to defraud; (ii) made untrue statements  
20 of material fact or omitted to state material facts that were necessary in order to make the statements  
21 made not misleading in light of the circumstances under which they were made; or (iii) engaged in  
22 transactions, practices, or courses of business that operated or would operate as a fraud or deceit upon  
23 offerees and investors. Respondents' conduct includes, but is not limited to, the following:

- 24 a. Misrepresenting to offerees and investors that the COMPANIES were, or were  
25 imminently about to become profitable, and that the Investments would provide  
26 investors with cash profits totaling tens of millions of dollars, while Respondents

1 had no reasonable basis for making such representations, in part, because: (i)  
2 Respondents had not developed or installed any Utilities; (ii) at all relevant times,  
3 Respondents' primary revenue source was Investment funds; and (iii) the so-called  
4 "Signed" Development and Funding Contracts were non-binding, unenforceable,  
5 contingent and, therefore, financially valueless;

6 b. Representing to offerees and investors that the COMPANIES had and/or were on the  
7 verge of having assets totaling tens of millions of dollars, and that the Investments  
8 would provide investors with substantial equity profits, despite the fact that  
9 Respondents had no reasonable basis for making such representations, in part,  
10 because: (i) Respondents had not developed or installed any Utilities; (ii) at all  
11 relevant times, Respondents' primary revenue source was Investment funds; and (iii)  
12 the so-called "Signed" Development and Funding Contracts were non-binding, and  
13 unenforceable, contingent and legally valueless;

14 c. Representing to offerees and investors that Respondents would use Investment funds  
15 to operate Respondents' Utilities Business and/or develop and build Utilities, while  
16 further failing to disclose to them that Respondents would use their Investment  
17 funds, in part, to repay other and/or previous investors and to pay for personal  
18 expenses unrelated to Respondents' Utilities Business;

19 d. Representing to offerees and investors that the Investments would provide Investors  
20 with substantial cash and/or equity profits, in part, because SMOOT was an able,  
21 experienced and "successful entrepreneur" and businessman, while further failing to  
22 disclose to them the existence of SMOOT's previous failed business and financial  
23 mismanagement including, without limitation, SMOOT's failed AI Mall teepee-  
24 shaped art kiosk business, and inability to repay the amount owed on his line of  
25 credit to Wells Fargo; and  
26

1 e. Representing to offerees and investors that the NATAWA issued Debentures and  
2 Units, and NATAWA-CORP issued Debentures and Units would provide Investors  
3 with substantial amounts of cash and/or equity profits, while further failing to  
4 disclose to them that SMOOT would pay AITI approximately \$60,000 from  
5 NATAWA and NATAWA-CORP Investment funds, despite the fact that AITI did  
6 not actually provide any services to NATAWA or NATAWA-CORP and  
7 Respondents never did actually construct any Utilities.

8 125. This conduct violates A.R.S. § 44-1991.

9 126. SMOOT directly or indirectly controlled NATAWA, NATAWA-CORP and AITI,  
10 within the meaning of A.R.S. § 44-1999. As a result, SMOOT is jointly and severally liable with, and  
11 to the same extent as NATAWA, NATAWA-CORP and AITI for their violations of the anti-fraud  
12 provisions of the Securities Act set forth above.

### 13 **VII. REQUESTED RELIEF**

14 The Division requests that the Commission grant the following relief:

15 1. Order Respondents to permanently cease and desist from violating the Securities Act  
16 pursuant to A.R.S. § 44-2032;

17 2. Order Respondents to take affirmative action to correct the conditions resulting from  
18 Respondents' acts, practices, or transactions, including a requirement to make restitution pursuant to  
19 A.R.S. § 44-2032;

20 3. Order Respondents to pay the state of Arizona administrative penalties of up to five  
21 thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036;

22 4. Order that the marital community of SMOOT and Respondent Spouse be subject to  
23 any order of restitution, rescission, administrative penalties, or other appropriate affirmative action  
24 pursuant to A.R.S. § 25-215; and

25 5. Order any other relief that the Commission deems appropriate.  
26

## VIII. HEARING OPPORTUNITY

Each Respondent including Respondent Spouse may request a hearing pursuant to A.R.S. § 44-1972 and A.A.C. R14-4-306. **If a Respondent or a Respondent Spouse requests a hearing, the requesting respondent must also answer this Notice.** A request for hearing must be in writing and received by the Commission within 10 business days after service of this Notice of Opportunity for Hearing. The requesting respondent must deliver or mail the request to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007. Filing instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at <http://www.azcc.gov/divisions/hearings/docket.asp>.

If a request for a hearing is timely made, the Commission shall schedule the hearing to begin 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the parties, or ordered by the Commission. If a request for a hearing is not timely made the Commission may, without a hearing, enter an order granting the relief requested by the Division in this Notice of Opportunity for Hearing.

Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format, by contacting Shaylin A. Bernal, ADA Coordinator, voice phone number 602/542-3931, e-mail [sabernal@azcc.gov](mailto:sabernal@azcc.gov). Requests should be made as early as possible to allow time to arrange the accommodation. Additional information about the administrative action procedure may be found at <http://www.azcc.gov/divisions/securities/enforcement/AdministrativeProcedure.asp>

## IX. ANSWER REQUIREMENT

Pursuant to A.A.C. R14-4-305, if a Respondent or a Respondent Spouse requests a hearing, the requesting respondent must deliver or mail an Answer to this Notice of Opportunity for Hearing to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007, within 30 calendar days after the date of service of this Notice. Filing instructions may be



1 obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site  
2 at <http://www.azcc.gov/divisions/hearings/docket.asp>.


3 Additionally, the answering respondent must serve the Answer upon the Division. Pursuant  
4 to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-delivering a  
5 copy of the Answer to the Division at 1300 West Washington, 3<sup>rd</sup> Floor, Phoenix, Arizona, 85007,  
6 addressed to Mike Dailey.

7 The Answer shall contain an admission or denial of each allegation in this Notice and the  
8 original signature of the answering respondent or respondent's attorney. A statement of a lack of  
9 sufficient knowledge or information shall be considered a denial of an allegation. An allegation not  
10 denied shall be considered admitted.

11 When the answering respondent intends in good faith to deny only a part or a qualification  
12 of an allegation, the respondent shall specify that part or qualification of the allegation and shall  
13 admit the remainder. Respondent waives any affirmative defense not raised in the Answer.

14 The officer presiding over the hearing may grant relief from the requirement to file an  
15 Answer for good cause shown.

16 Dated this 20 day of October, 2011.

17  
18   
19 Matthew J. Neubert  
20 Director of Securities  
21  
22  
23  
24  
25  
26