

Peggy Hunt (Utah State Bar No. 6060)  
Jeffrey M. Armington (Utah State Bar No. 14050)  
**DORSEY & WHITNEY LLP**  
136 South Main Street, Suite 1000  
Salt Lake City, UT 84101-1685  
Telephone: (801) 933-7360  
Facsimile: (801) 933-7373  
Email: [hunt.peggy@dorsey.com](mailto:hunt.peggy@dorsey.com)  
[armington.jeff@dorsey.com](mailto:armington.jeff@dorsey.com)

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

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

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

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

Defendants.

**RECEIVER'S MOTION SEEKING  
AUTHORIZATION TO SELL 7800  
SOUTH OFFICE BUILDING FREE  
AND CLEAR OF PURPORTED  
INTERESTS AND MEMORANDUM  
OF SUPPORT**

2:12-cv-00591 BSJ

The Honorable Bruce S. Jenkins

R. Wayne Klein, the Court-Appointed Receiver (the "Receiver") of National Note of Utah, LC, its subsidiaries and affiliates, and the assets of Wayne LaMar Palmer, by and through his counsel, hereby files this motion (the "Motion") and memorandum in support of the motion (the "Memorandum"), and respectfully requests that the Court enter the proposed Order submitted herewith and attached hereto as Exhibit A authorizing him to sell certain real property of the Receivership Estate pursuant to the "Purchase Agreement" (as defined below) governing the sale of such property, described more fully and defined below in the *Memorandum of*

*Support* as the “7800 South Office Building” located at 1549 West 7800 South, West Jordan, Utah. This Motion is supported by the *Declaration of Receiver R. Wayne Klein* (the “Receiver Declaration”), which has been filed concurrently herewith.

At this time, the Receiver has identified one purported interest against the 7800 South Office Building, which may be a valid lien. In light of the interest asserted against the 7800 South Office Building, the Receiver is requesting that the proposed sale of the 7800 South Office Building be authorized free and clear of any purported interests, with any valid interests attaching to the “Net Sale Proceeds” as defined below.

The Securities and Exchange Commission has informed the Receiver that it does not object to the sales as proposed. Accordingly, the Receiver hereby requests that the Court grant this Motion and authorize him to sell the 7800 South Office Building as proposed. In further support of this Motion the Receiver states as follows:

### **MEMORANDUM OF SUPPORT**

#### **I.** **BACKGROUND**

1. On June 25, 2011, the above-captioned case was commenced by the Securities and Exchange Commission (the “SEC”) against Defendants National Note of Utah, LC (“NNU”) and Wayne LaMar Palmer (“Palmer”) (collectively, the “Receivership Defendants”), and in conjunction therewith the Court entered, in relevant part, an Order Appointing Receiver and Staying Litigation (the “Receivership Order”).<sup>1</sup> Pursuant to the Receivership Order, the Receiver was appointed, and NNU, and forty-one of its affiliated companies (the “Palmer Entities”) (collectively for purposes of this Motion, “NNU”), and all Palmer’s assets were placed

---

<sup>1</sup> Docket No. 9 (Receivership Order), *as amended*, Docket No. 50.

in the Receiver's control.<sup>2</sup>

2. The Court has directed and authorized the Receiver to, among other things, do the following:

- “[D]etermine the nature, location and value of all property interests of the Receivership Defendants and the Palmer Entities . . . [.]”<sup>3</sup>
- “To take custody, control and possession of all Receivership Property and records . . . [.]”<sup>4</sup>
- “To use Receivership Property for the benefit of the Receivership Estates and hold in his possession, custody and control all Receivership Property, pending further Order of this Court[.]”<sup>5</sup>
- “[T]o take immediate possession of all real property of the Receivership Defendants and the Palmer Entities . . . .”<sup>6</sup>
- “[T]ransfer, compromise, or otherwise dispose of any Receivership Property, other than real estate, in the ordinary course of business, on the terms and in the manner the Receiver deems most beneficial to the Receivership Estate, and with due regard to the realization of the true and proper value of such Receivership Property.”<sup>7</sup>
- “[L]ocate, list for sale or lease, engage a broker for sale or lease, cause the sale or lease, and take all necessary and reasonable actions to cause the sale or lease of all real property in the Receivership Estates, either at public or private sale, on terms and in the manner the Receiver deems most beneficial to the Receivership Estate, and with due regard to the realization of the true and proper value of such real property.”<sup>8</sup>
- “[S]ell, and transfer clear title to, all real property in the Receivership Estates” upon order of the Court “pursuant to procedures as may be required by this Court and additional authority such as 28 U.S.C. §§ 2001 and 2004.”<sup>9</sup>

## II. REAL PROPERTY TO BE SOLD

---

<sup>2</sup> See generally, *id.*

<sup>3</sup> *Id.* at ¶ 7(A).

<sup>4</sup> *Id.* at ¶ 7(B).

<sup>5</sup> *Id.* at ¶ 7(D).

<sup>6</sup> *Id.* at ¶ 19.

<sup>7</sup> *Id.* at ¶ 37.

<sup>8</sup> *Id.* at ¶ 38.

<sup>9</sup> *Id.* at ¶ 39.



3. Since his appointment, the Receiver has identified numerous real properties as being part of the Receivership Estate, and where appropriate has listed such property for sale.<sup>10</sup>

4. Relevant to the present Motion is a certain parcel of real property located in West Jordan, Utah.

#### **The 7800 South Office Building**

5. Through this Motion, the Receiver is seeking authority to sell a certain parcel of real property located at 1549 West 7800 South, West Jordan, Utah, 84088, which is the building where NNU and most of the other affiliated Receivership Entities operated their business (the “7800 South Office Building”).<sup>11</sup>

#### **Marketing of the 7800 South Office Building**

6. On or about August 31, 2012, the Receiver caused the 7800 South Office Building to be listed for sale through NAI West Commercial Real Estate (a d.b.a. for American Commercial Real Estate Specialists Group, LLC).<sup>12</sup> A copy of the Listing Agreement is attached as Exhibit 1 to the Receiver Declaration.

7. To determine an offering price and comply with his duties, the Receiver obtained three appraisals for the 7800 South Office Building by Court approved appraisers (see below), and the advice of his independent real estate professional.<sup>13</sup> Based on the appraisals, the 7800 South Office Building has a value of \$285,000, and copies of the appraisals are attached as Exhibit 2, Exhibit 3 and Exhibit 4 to the Receiver Declaration and incorporated herein.

8. The 7800 South Office Building was listed for sale on the multiple listing service,

---

<sup>10</sup> Receiver Declaration ¶ 4.

<sup>11</sup> Receiver Declaration ¶ 5.

<sup>12</sup> Receiver Declaration ¶ 6.

<sup>13</sup> Receiver Declaration ¶ 7.

and has been actively marketed by the realtor.<sup>14</sup>

### **The Purchase Agreement**

9. On or about October 3, 2012, the Receiver received a \$250,000 offer to purchase the 7800 South Office Building, which the Receiver countered on October 11, 2012, with an offer of \$285,000. The Receiver's counteroffer was accepted and an agreement was reached with the party who had submitted an offer to purchase 7800 South Office Building for a full appraised value of \$285,000, including all furniture, fixtures, and certain office equipment currently in the building (the "Purchase Agreement").<sup>15</sup> A copy of the Purchase Agreement is attached as Exhibit 5 to the Receiver Declaration.

10. The Purchase Agreement has been negotiated by the Receiver with the prospective purchaser in good faith and at arms' length.<sup>16</sup>

### **Material Terms of the Sale**

11. As proposed in the Purchase Agreement, the Receiver will sell the 7800 South Office Building to the purchaser, subject to Court approval, for a purchase price of \$285,000 including furniture, fixtures, and certain office equipment.<sup>17</sup>

12. An earnest money deposit of \$3,000 has been made by the proposed purchaser of the 7800 South Office Building, with such proposed sale being as is where is with no representations or warranties.<sup>18</sup>

13. The proposed purchaser was killed in an airplane accident on January 12, 2013. The contract for the purchase of the property provides that the sale will be to him "and or

---

<sup>14</sup> Receiver Declaration ¶ 8.

<sup>15</sup> Receiver Declaration ¶ 9, Exh. 5 (Purchase Agreement).

<sup>16</sup> Receiver Declaration ¶ 10.

<sup>17</sup> Receiver Declaration ¶ 11, Exh. 5 (Purchase Agreement).

<sup>18</sup> Receiver Declaration ¶ 12, Exh. 5 (Purchase Agreement).

Assigns.” The estate of the purchaser has informed the Receiver that the estate intends to proceed with the purchase of the 7800 South Office Building.<sup>19</sup>

**Sale Costs and Net Sale Proceeds**

14. The Receiver anticipates paying the ordinary costs of the sale, including market-rate closing costs and a standard 6.00% realtor commission at the time of closing of the sale of the 7800 South Office Building.<sup>20</sup>

15. Any interests against the 7800 South Office Building, other than closing costs and property taxes, will not be paid at the time of closing of the sale. Rather, as proposed, any such interests (to the extent that they exist and without any waiver of the Receiver’s rights and defenses related thereto) will survive the sale and will attach to the net sale proceeds, these being the sale proceeds, less the ordinary costs of sale (the “Net Sale Proceeds”).<sup>21</sup>

16. The Receiver will separately account for the Net Sale Proceeds pending resolution of any disputes related to interests that may exist against the 7800 South Office Building.<sup>22</sup>

**Free and Clear Sale**

17. The Receiver proposes to sell the 7800 South Office Building free and clear of all interests therein, with any interests that may exist attaching to the Net Sale Proceeds. In so doing, the Receiver is in no way waiving any rights, claims, interests or defenses to any claims or interests made against the 7800 South Office Building or to the Net Sale Proceeds.<sup>23</sup>

18. To determine interests, if any against the 7800 South Office Building, the Receiver obtained a preliminary title report with respect to the 7800 South Office Building (the

---

<sup>19</sup> Receiver Declaration ¶ 13.

<sup>20</sup> Receiver Declaration ¶ 14.

<sup>21</sup> Receiver Declaration ¶ 15.

<sup>22</sup> Receiver Declaration ¶ 16.

<sup>23</sup> Receiver Declaration ¶ 17.

“Title Report”).<sup>24</sup> A copy of the Title Report is attached to the Receiver Declaration as Exhibit 6.

19. According to the Title Report, the following exceptions to title exist: (a) property taxes in the total principal amount of \$16,801.17 for 2009-2012; (b) a Deed of Trust dated July 1, 2001 by and between The Property Company, LLC, as trustor, in favor of Landmark Title, as trustee, and Geraldine P. Barker (“Barker”), as beneficiary to secure an original indebtedness of \$198,000; and (c) a Deed of Trust dated March 3, 2009 by and between The Property Company, LLC, as trustor, in favor of Steven G. Stoker, attorney at law, as trustee, and Geraldine P. Barker, as beneficiary to secure an original indebtedness of \$100,000.<sup>25</sup>

20. To facilitate the proposed sale of the 7800 South Office Building, the Receiver proposes allowing Barker’s interest in the 7800 South Office Building to attach to the Net Sale Proceeds while he evaluates the validity of Barker’s interests.<sup>26</sup>

21. A copy of the Motion and the Receiver Declaration are being served on the relevant taxing authorities and Barker.

#### **Best Interests**

22. The Receiver believes that the sale of the 7800 South Office Building as proposed is beneficial for and in the best interests of the Receivership Estate based on the appraised value of the 7800 South Office Building and the purchase price obtained through good faith and arms’ length negotiations.<sup>27</sup>

23. Sale of the 7800 South Office Building as proposed for the full appraised value will also slightly reduce the burden to the Receivership Estate by reducing the time spent by the

---

<sup>24</sup> Receiver Declaration ¶ 18.

<sup>25</sup> Receiver Declaration Exh. 6 (Title Report).

<sup>26</sup> Receiver Declaration ¶ 19.

<sup>27</sup> Receiver Declaration ¶ 20.



Receiver in managing the 7800 South Office Building, as well as costs associated with the property.<sup>28</sup>

24. The SEC has been informed of the material terms of the sales, and has no objection thereto.<sup>29</sup>

#### **Order Appointing Appraisers**

25. On January 14, 2013, the Court entered an *Order Granting Receiver's Motion for Court to Appoint Appraisers for the 7800 South Office Building* [Docket No. 120].

26. Consequently, Brent T. Clark of Free & Associates, J. Philip Cook of Philip Cook & Associates, and Darin W. Liddell of Integra Realty Resources – Salt Lake City were appointed as appraisers of the 7800 South Office Building.<sup>30</sup>

27. The Appraisers have completed their appraisals and arrived that the following appraised values for the 7800 South Office Building: (a) \$285,000;<sup>31</sup> (b) \$285,000;<sup>32</sup> and (c) \$285,000;<sup>33</sup> yielding an average appraised value of \$285,000.

#### **Publication Notice**

28. Contemporaneously herewith the Receiver filed his *Ex Parte Motion for Order Approving Method and Form of Publication Notice of Sale of Real Property*, seeking the Court's approval of the method and form of proposed publication notice.

29. Upon entry of an Order granting the Publication Motion, the Receiver shall publish notice of the proposed sale in *The Salt Lake Tribune*, a newspaper published in Salt Lake

---

<sup>28</sup> Receiver Declaration ¶ 21.

<sup>29</sup> Receiver Declaration ¶ 22.

<sup>30</sup> Docket No. 120.

<sup>31</sup> See Receiver Declaration, Exh. 2 (Appraisal of Brent T. Clark).

<sup>32</sup> See *id.* at Exh. 3 (Appraisal of J. Philip Cook).

<sup>33</sup> See *id.* at Exh. 4 (Appraisal of Darrin W. Liddell).



City, Utah, using the method and form of notice approved by the Court.<sup>34</sup>

### III.

#### ARGUMENT

Based on the facts above, the Receiver respectfully requests authorization to sell the 7800 South Office Building pursuant to the Purchase Agreement free and clear of liens and interests, with any such interests, to the extent that they exist, attaching to the Net Sale Proceeds and held by the Receiver pending resolution of any disputes related thereto. Sale of the 7800 South Office Building as proposed is within the scope of the Receiver's authority under the Receivership Order as quoted above and 28 U.S.C. § 2001(b), it is in the best interests of the Receivership Estate, and the sale serves the purposes of the receivership by providing a "realization of the true and proper value" of the 7800 South Office Building.<sup>35</sup>

#### Sale of the 7800 South Office Building as Proposed is Beneficial to the Receivership Estate

Section 2001(b) of title 28 of the United States Code provides that the Court may authorize the sale of real property through private sale if such sale is in the "best interests" of the Receivership Estate. Furthermore, the Receivership Order authorizes the Receiver, subject to Court approval, to sell property of the Receivership Estate "with due regard to the realization of the true and proper value of such Receivership Property." Sale of the 7800 South Office Building as proposed herein is in the best interests of the Receivership Estate for several reasons, including at least the following.

*First*, the sale will result in cash for the Receivership Estate based on a fair market value of the 7800 South Office Building. Specifically, the 7800 South Office Building has been marketed at an offering price that is based on (a) the opinion of an experienced, third party

---

<sup>34</sup> Receiver Declaration ¶ 24.

<sup>35</sup> Receivership Order ¶ 38.

realtor, and (b) three independent appraisals of the property. The appraisals have taken into consideration current market conditions, sales of comparable properties, and the particular nature of the properties. The Purchase Agreement proposes a purchase price that is very close to the average appraised value, and based on input of the realtor, not a discounted or liquidation value of the property.

*Second*, the proposed sale for \$285,000 will increase the sums held in the Receivership Estate.

*Finally*, the sale of the 7800 South Office Building as proposed will reduce, albeit slightly, the burden on the Receivership Estate. The Receiver will no longer have to spend time managing the property, and the Receivership Estate will no longer have obligations related to paying taxes on and other maintenance and upkeep expenses related to the property.<sup>36</sup>

**Request To Sell the 7800 South Office Building Free and Clear of Interests**

As discussed above, the Receiver proposes to sell the 7800 South Office Building free and clear of any interests in the property, with any such interest attaching to the Net Sale Proceeds. The Court may order such a sale so long as parties with interests against the property are given proper notice.

Barker will be served with the Motion to be given notice of the relief sought therein. Failure to object to these terms, will mean that Barker as a purported holder of an interest in the 7800 South Office Building, consents to the relief sought herein, and may only look to the Net Sale Proceeds for any claim that she may eventually be held to have. This procedure will allow for the proposed sale to close, and preserve the status quo as to any disputes as to Barker's claimed interests in the 7800 South Office Building.

---

<sup>36</sup> Receiver Declaration ¶ 21.

**Compliance With 28 U.S.C § 2001**

The Receivership Order provides that the Court may require that the proposed sale of real property satisfy 28 U.S.C. § 2001.<sup>37</sup> Subsection (b) of § 2001 permits, with Court approval, a private sale of receivership property as proposed herein, but it conditions such sale on (1) obtaining a purchase price that is no less than two-thirds of the appraised value of the property; (2) appointing “three disinterested persons to appraise such property or different groups of three appraisers each to appraise properties of different classes or situated in different localities[;]” (3) publication notice of the sale “at least ten days before confirmation[;]” and (4) cancellation of the sale “if a bona fide offer is made, under conditions prescribed by the court, which guarantees at least a 10 per centum increase over the price offered in the private sale.”<sup>38</sup> Here, the Receiver has complied with each of these factors, to the extent that they exist.

Specifically, factor (1) is met in this case inasmuch as the purchase price for the 7800 South Office Building is nearly 100% of the average appraised value, and therefore far exceeds the 2/3 requirement.

Factor (2) is met because the Court has appointed the Appraisers. Based on three appraisals made by the Appraisers, the Purchase Agreement does not propose a sale that is at a price less than two-thirds of the appraised value.

Factor (3) has been met as the Receiver will publish notice of the proposed sale immediately upon the Court’s entry of an Order approving the method and form of such notice.

Factor (4) also has been met, inasmuch as the Receiver understands that the sale will not be approved if he receives a higher and better offer that is in compliance with § 2001(b) as quoted above and the sale is conditioned on this factor.

---

<sup>37</sup> Receivership Order ¶ 39.

<sup>38</sup> 28 U.S.C. § 2001(b).

**CONCLUSION**

For the foregoing reasons, the Receiver requests that the Court grant the Motion, thus authorizing the sale of the 7800 South Office Building pursuant to the Purchase Agreement free and clear of purported interests.

DATED this 18<sup>th</sup> day of January, 2013.

**DORSEY & WHITNEY LLP**

/s/ Jeffrey M. Armington  
Peggy Hunt  
Jeffrey M. Armington  
*Attorneys for Receiver*



**CERTIFICATE OF SERVICE**

IT IS HEREBY CERTIFIED that service of the above **RECEIVER'S MOTION SEEKING AUTHORIZATION TO SELL 7800 SOUTH OFFICE BUILDING FREE AND CLEAR OF PURPORTED INTERESTS AND MEMORANDUM OF SUPPORT** was filed with the Court on this 18th day of January, 2013, and served via ECF on all parties who have requested notice in this case and was served via email on this 18th day of January, 2013 on the following:

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

*Attorneys for Plaintiff Securities and Exchange Commission*

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

*Attorneys for Defendant Wayne Palmer*

/s/ Jeffrey M. Armington

Furthermore, I certify that on the 18th day of January, 2013, the **RECEIVER'S MOTION SEEKING AUTHORIZATION TO SELL 7800 SOUTH OFFICE BUILDING FREE AND CLEAR OF PURPORTED INTERESTS AND MEMORANDUM OF SUPPORT** was served on the following parties by U.S. Mail postage prepaid:

K. Wayne Cushing  
Salt Lake County Treasurer  
Salt Lake County Government Center  
2001 South State Street #N1200  
P.O. Box 410418  
Salt Lake City, Utah 84141-0418

*Tax Collector*

Ronald C. Barker  
Barker Law Office  
2870 South State Street  
Salt Lake City, Utah 84115-3624

*Attorney for Geraldine P. Barker*

/s/ Jeffrey M. Armington

Peggy Hunt (Utah State Bar No. 6060)  
Jeffrey M. Armington (Utah State Bar No. 14050)  
**DORSEY & WHITNEY LLP**  
136 South Main Street, Suite 1000  
Salt Lake City, UT 84101-1685  
Telephone: (801) 933-7360  
Facsimile: (801) 933-7373  
Email: [hunt.peggy@dorsey.com](mailto:hunt.peggy@dorsey.com)  
[armington.jeff@dorsey.com](mailto:armington.jeff@dorsey.com)

*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><b>DECLARATION OF RECEIVER R. WAYNE KLEIN IN SUPPORT OF RECEIVER'S MOTION SEEKING AUTHORIZATION TO SELL 7800 SOUTH OFFICE BUILDING FREE AND CLEAR OF PURPORTED INTERESTS AND MEMORANDUM OF SUPPORT</b></p> <p>2:12-cv-00591 BSJ</p> <p>The Honorable Bruce S. Jenkins</p>
--	--

I, R. Wayne Klein, being of lawful age, declares, certifies, verifies and states as follows:

1. I am the Court-Appointed Receiver (the "Receiver") in the above-captioned case pursuant to the *Order Appointing Receiver and Staying Litigation* entered on June 25, 2012

[Docket No. 9], as amended Docket No. 50 (the "Receivership Order").

2. I submit this Declaration in support of *Receiver's Motion for Authorization to Sell 7800 South Office Building Free and Clear of Purported Interests and Memorandum in Support* (the "Motion"), which has been filed concurrently herewith.

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

**The 7800 South Office Building**

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

5. Relevant to the present Motion is a certain parcel of real property located at 1549 West 7800 South, West Jordan, Utah, 84088, which is the building where NNU and most of the other affiliated Receivership Entities operated their business (the "7800 South Office Building").

**Marketing of the 7800 South Office Building**

6. On or about August 31, 2012, I caused the 7800 South Office Building to be listed for sale through NAI West Commercial Real Estate (a d.b.a. for American Commercial Real Estate Specialists Group, LLC). A copy of the Listing Agreement is attached hereto as **Exhibit 1**, and is incorporated herein.

7. To determine an offering price and comply with my duties, I consulted with my experienced independent real estate broker, and obtained three appraisals for the 7800 South Office Building, copies of which were attached hereto as **Exhibit 2**, **Exhibit 3** and **Exhibit 4**<sup>1</sup> and are incorporated herein.

8. The 7800 South Office Building was listed for sale on the multiple listing service, and has been actively marketed by the realtor.

---

<sup>1</sup> To minimize the length of the attachments to this Declaration, the Receiver has attached only the cover sheet identifying the appraiser and the page from the appraisal substantiating the appraised value of the 7800 South Office Building arrived at by each appraiser. The full appraisals were previously filed with the Court as Exhibits E, F, and G to the *Receiver's Motion for Court to Appoint Appraisers for the 7800 South Office Building and Memorandum in Support* [Docket No. 118].



**The Purchase Agreement**

9. On or about October 3, 2012, I received a \$250,000 offer to purchase the 7800 South Office Building, which I countered on October 11, 2012, with an offer of \$285,000. My counteroffer was accepted and an agreement was reached with the party who had submitted an offer to purchase 7800 South Office Building for the full appraised value of \$285,000, including all furniture, fixtures, and certain office equipment currently in the building (the "Purchase Agreement"). A copy of the Purchase Agreement is attached hereto as **Exhibit 5**, and is incorporated herein.

10. The Purchase Agreement has been negotiated by me with the prospective purchaser in good faith and at arms' length.

**Material Terms of Sale**

11. As proposed in the Purchase Agreement, I will sell the 7800 South Office Building to the purchaser, subject to Court approval, for a purchase price of \$285,000.

12. An earnest money deposit of \$3,000 has been made by the proposed purchaser of the 7800 South Office Building, with such proposed sale being as is where is with no representations or warranties.

13. The proposed purchaser was killed in an airplane accident on January 12, 2013. The contract for the purchase of the property provides that the sale will be to him "and or Assigns." The estate of the purchaser has informed the Receiver that the estate intends to proceed with the purchase of the 7800 South Office Building.

**Sale Costs and Net Sale Proceeds**

14. I anticipate paying the ordinary costs of the sale, including market-rate closing costs and a standard 6.00% realtor commission at the time of closing of the sale of the 7800

South Office Building.

15. Any interests against the 7800 South Office Building, other than the closing costs and property taxes, will not be paid at the time of closing of the sale. Rather, as proposed, any such interests (to the extent that they exist and without any waiver of my rights and defenses related thereto) will survive the sale and will attach to the net sale proceeds, these being the sale proceeds, less the ordinary costs of sale (the "Net Sale Proceeds").

16. I will separately account for the Net Sale Proceeds pending resolution of any disputes related to interests that may exist against the 7800 South Office Building.

**Free and Clear Sale**

17. I propose to sell the 7800 South Office Building free and clear of all interests therein, with any interests that may exist attaching to the Net Sale Proceeds. In so doing, I am in no way waiving any rights, claims, interests or defenses to any claims or interests made against the 7800 South Office Building or to the Net Sale Proceeds.

18. To determine interests, if any against the 7800 South Office Building, I obtained a preliminary title report with respect to the 7800 South Office Building, a copy of which is attached hereto as **Exhibit 6**, and incorporated herein by reference (the "Title Report").

19. To facilitate the proposed sale of the 7800 South Office Building, I propose allowing Geraldine P. Barker's ("Barker") interest in the 7800 South Office Building to attach to the Net Sale Proceeds while I evaluate the validity of Barker's interests.

**Best Interests**

20. I believe that the sale of the 7800 South Office Building as proposed is beneficial for and in the best interests of the Receivership Estate based on the appraised value of the 7800 South Office Building and the purchase price obtained through good faith and arms' length

negotiations.

21. Sale of the 7800 South Office Building as proposed for the full appraised value will also slightly reduce the burden to the Receivership Estate by reducing the time spent by me in managing the 7800 South Office Building, as well as costs associated with the property.

22. The SEC has been informed of the material terms of the sales, and has no objection thereto.

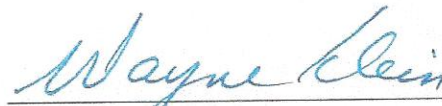
**Publication Notice**

23. Contemporaneously herewith I filed my *Ex Parte Motion for Order Approving Method and Form of Publication Notice of Sale of Real Property*, seeking the Court's approval of the method and form of proposed publication notice.

24. Upon entry of an Order granting the Publication Motion, I shall publish notice of the proposed sale in *The Salt Lake Tribune*, a newspaper published in Salt Lake City, Utah, using the method and form of notice approved by the Court.

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

DATED this 17<sup>th</sup> day of January, 2013.

A handwritten signature in blue ink that reads "Wayne Klein". The signature is written in a cursive, flowing style.

R. Wayne Klein, Receiver



**CERTIFICATE OF SERVICE**

IT IS HEREBY CERTIFIED that service of the above **DECLARATION** was filed with the Court on this 18th day of January, 2013, and served via ECF on all parties who have requested notice in this case and was served via email on this 18th day of January, 2013 on the following:

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

*Attorneys for Plaintiff Securities and Exchange Commission*

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

*Attorneys for Defendant Wayne Palmer*

\_\_\_\_\_  
/s/ Jeffrey M. Armington



Furthermore, I certify that on the 18th day of January, 2013, the **DECLARATION** was served on the following parties by U.S. Mail postage prepaid:

K. Wayne Cushing  
Salt Lake County Treasurer  
Salt Lake County Government Center  
2001 South State Street #N1200  
P.O. Box 410418  
Salt Lake City, Utah 84141-0418

*Tax Collector*

Ronald C. Barker  
Barker Law Office  
2870 South State Street  
Salt Lake City, Utah 84115-3624

*Attorney for Geraldine P. Barker*

/s/ Jeffrey M. Armington

Peggy Hunt (Utah State Bar No. 6060)  
Jeffrey M. Armington (Utah State Bar No. 14050)  
**DORSEY & WHITNEY LLP**  
136 South Main Street, Suite 1000  
Salt Lake City, UT 84101-1685  
Telephone: (801) 933-7360  
Facsimile: (801) 933-7373  
Email: [hunt.peggy@dorsey.com](mailto:hunt.peggy@dorsey.com)  
[armington.jeff@dorsey.com](mailto:armington.jeff@dorsey.com)

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

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

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

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

Defendants.

**RECEIVER'S *EX PARTE* MOTION  
AND MEMORANDUM IN SUPPORT  
OF ORDER APPROVING METHOD  
AND FORM OF PUBLICATION  
NOTICE OF SALE OF REAL  
PROPERTY (7800 SOUTH OFFICE  
BUILDING)**

2:12-cv-00591 BSJ

The Honorable Bruce S. Jenkins

R. Wayne Klein, the Court-Appointed Receiver (the "Receiver") of National Note of Utah, LC, its subsidiaries and affiliates, and the assets of Wayne LaMar Palmer, by and through his counsel and pursuant to 28 U.S.C. § 2001(b) and the *Order Appointing Receiver and Staying Litigation* entered by this Court in this case [Docket Nos. 9 & 50], respectfully requests that the Court enter the proposed Order attached hereto as **Exhibit A**, approving the method and form of publication notice for the sale of certain real property as more specifically described below.

### **BACKGROUND**

1. On June 25, 2011, the above-captioned case was commenced by the Securities and Exchange Commission against Defendants National Note of Utah, LC (“NNU”) and Wayne LaMar Palmer (“Palmer”) (collectively, the “Receivership Defendants”), and in conjunction therewith the Court entered, in relevant part, an *Order Appointing Receiver and Staying Litigation* (the “Receivership Order”).<sup>1</sup> Pursuant to the Receivership Order, the Receiver was appointed, and NNU, forty-one of its affiliated companies, and all Palmer’s assets were placed in the Receiver’s control.<sup>2</sup>

2. Since his appointment, the Receiver has identified numerous real properties as being part of the Receivership Estate, and where appropriate has listed such properties for sale.

3. Relevant to the present Motion is a certain parcel of real property located at 1549 West 7800 South, West Jordan, Utah, 84088, which is the building where NNU and most of the other affiliated Receivership Entities operated their business) (the “Property”).

4. The Receiver has marketed the Property for private sale through a third party agent, and he has received offers to purchase the Property. Contemporaneously herewith, the Receiver is filing a Motion seeking this Court’s authorization of the sale of the Property which sets forth why such sale is appropriate under applicable law together with a Declaration by the Receiver in support of the Motion.

5. The Receivership Order provides that the Court may require that the proposed sale of real property satisfy 28 U.S.C. § 2001.<sup>3</sup> The present Motion is meant to facilitate

---

<sup>1</sup> Docket No. 9 (Receivership Order), *as amended*, Docket No. 50.

<sup>2</sup> *See generally, id.*

<sup>3</sup> Receivership Order ¶ 39.

compliance with § 2001 and the Receivership Order.

**APPLICABLE LAW**

6. Section 2001(b) of title 28 of the United States Code permits, with Court approval, a private sale of receivership property, but it conditions such sale on, among other things, publishing notice of the sale.

7. Section 2001(b) states, in relevant part, that: “Before confirmation of any private sale, the terms thereof shall be published in such newspaper or newspapers of general circulation as the court directs at least ten days before confirmation.”<sup>4</sup>

**REQUESTED RELIEF**

8. To comply with the requirement of publication notice set forth in 28 U.S.C. § 2001(b), the Receiver files the present Motion, seeking approval of the method and form of publication notice of the proposed sale of the Property described above.

9. As to 7800 South Office Building, the Receiver proposes that the following notice be published in *The Salt Lake Tribune*, a newspaper published in Salt Lake City, Utah, for a period of one (1) day at least ten (10) days before the entry of any Order approving the proposed sale:

R. Wayne Klein, Receiver for National Note of Utah, LC and its affiliated entities in the civil case styled as *Securities and Exchange Comm. v. National Note of Utah, LC et al.*, Civ. Case No. 2:12-cv-00591 (“Civil Case”), gives notice of his intent to sell through private sale, and free of all liens and interests, certain real property located at 1549 West 7800 South, West Jordan, Utah, 84088, (the “Property”). The Receiver has accepted a cash offer of \$285,000.00, subject to approval by the U.S. District Court for the District of Utah in the Civil Case and higher and better offers as allowed pursuant to 28 U.S.C. § 2001. The Receiver has filed a motion seeking the District Court’s approval of the proposed sale. Any person objecting to the sale or wishing to submit a higher and better purchase offer, with such offer being at least 10% greater than the offer the Receiver has accepted, should present it in writing so that it is received no later than 10 days from the

---

<sup>4</sup> 28 U.S.C. § 2001(b).



date of this notice to the Receiver's counsel at: Dorsey & Whitney LLP, attn: Peggy Hunt, 136 South Main Street, Suite 1000, Salt Lake City, Utah 84101.

**CONCLUSION**

Accordingly, for the reasons set forth herein, the Receiver requests that the Court approve the publication notice proposed herein and grant the proposed Order attached hereto as **Exhibit A**.

DATED this 18<sup>th</sup> day of January, 2013.

**DORSEY & WHITNEY LLP**

/s/ Jeffrey M. Armington

Peggy Hunt

Jeffrey M. Armington

*Attorneys for Receiver*

**CERTIFICATE OF SERVICE**

IT IS HEREBY CERTIFIED that the above **MOTION AND MEMORANDUM** was filed with the Court on this 18<sup>th</sup> day of January, 2013, and served via ECF on all parties who have requested notice in this case.

/s/ Jeffrey M. Armington