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

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SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

vs.

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

Defendants.

**JOINT MOTION AND MEMORANDUM  
IN SUPPORT TO APPROVE  
AGREEMENT BETWEEN THE  
RECEIVER AND FIRST NATIONAL  
BANK OF LAYTON RELATED TO  
CERTAIN PROPERTY LOCATED IN  
SALT LAKE COUNTY, UTAH AND  
COMPLAINT IN INTERVENTION**

Case No: 2:12-CV-591 BSJ  
Judge Bruce S. Jenkins

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R. Wayne Klein, as receiver (the “Receiver”) for Defendant National Note of Utah, LC and the assets of Defendant Wayne LaMar Palmer, on the one hand, and First National Bank of

Layton, intervening Defendant (“FNB”) on the other hand (collectively, “Movants”), respectfully submit this *Joint Motion and Memorandum in Support to Approve Agreement Between the Receiver and First National Bank of Layton Related to Certain Real Property Located in Salt Lake County, Utah and Complaint in Intervention* (the “Joint Motion”). The Joint Motion is also supported by the *Declaration of R. Wayne Klein, Receiver* (the “Receiver Declaration”) and the *Declaration of Rick Hill* (the “Bank Declaration”) filed concurrently herewith.

### **RELIEF SOUGHT**

The Movants jointly seek an order from the Court (1) authorizing the Receiver to immediately relinquish, disclaim, and abandon all of the interest of the receivership estate in two contiguous parcels of real property located at 3601 and 3611 East Little Cottonwood Road, Salt Lake City, Utah, consisting of a total of approximately 3.94 acres (the “Salt Lake Property”), legal descriptions for which are set forth in greater detail in the Joint Motion and below, (2) lifting the stay of litigation to allow FNB to exercise its foreclosure remedies with regard to the Salt Lake Property, and (3) approving the terms of the Movants’ Agreement set forth below.

### **STIPULATED STATEMENT OF FACTS**

#### **A. THE RECEIVER AND THE RECEIVERSHIP ESTATE**

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>

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

2. Pursuant to the Receivership Order, the Receiver was appointed, and NNU, forty-one of its affiliated companies (the “Palmer Entities”), including Vision Land, LLC (“Vision Land”), and all of Palmer’s assets were placed in the Receiver’s control.<sup>2</sup>

3. The Court has directed and authorized the Receiver to, among other things, manage the assets of the receivership estates, including 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 manage, control, operate and maintain the Receivership Estates and hold in his possession, custody and control all Receivership Property pending further Order of this Court;<sup>5</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>6</sup>
- “[T]o take immediate possession of all real property of the Receivership Defendants and the Palmer Entities . . . .”<sup>7</sup>
- “[T]ransfer, compromise, or otherwise dispose of any Receivership Property . . . 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” after Court approval.<sup>8</sup>

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<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(C).

<sup>6</sup> *Id.* at ¶7(D).

<sup>7</sup> *Id.* at ¶19.

<sup>8</sup> *Id.* at ¶37.

- “[T]ake 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>9</sup>
- “[T]ransfer clear title to[] all real property in the Receivership Estates” upon order of the Court.<sup>10</sup>

4. The Receivership Order further provides for a stay of all litigation, enjoins acts that will interfere with, among other things, the Receiver’s control of property of the receivership estate, and enjoins all actions with respect to property of the receivership estate, including the Salt Lake Property described in detail below.<sup>11</sup>

**B. THE SALT LAKE PROPERTY AND INTERESTS AGAINST THE PROPERTY**

5. On or about April 18, 2002, FNB lent C.T. Investment, LLC (“CTI”) \$1,900,000 pursuant to a Promissory Note, a copy of which is attached to the Bank Declaration as **Exhibit 1** (the “CTI Loan”).

6. By Deed of Trust executed on April 25, 2002, a copy of which is attached as **Exhibit 2** to the Bank Declaration (the “FNB First Deed of Trust”), CTI provided FNB, among other things, interests to secure the CTI Loan against the 2 parcels of real property defined above as the “Salt Lake Property,” the legal descriptions for which are as follows:

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<sup>9</sup> *Id.* at ¶38.

<sup>10</sup> *Id.* at ¶39.

<sup>11</sup> *Id.* ¶¶3, 29, 32-34.

PARCEL 1: ID No. 28-12-152-019

Beginning at a point which is South 98.96 feet and East 667.80 feet from the West Quarter corner of Section 12, Township 3 South, Range 1 East, Salt Lake Base and Meridian; and running thence North 10°20'00" East 255.17 feet; thence North 89°22'36" West 372.52 feet; thence South 86°01'13" West 24.169 feet; thence South 0°21'10" West 127.468 feet; thence North 87°36'00" East 35.04 feet; thence South 0°21'10" West 151.62 feet to a point on the North right-of-way line of Little Cottonwood Creek Road; thence Easterly along a 560.87 foot radius curve to the right 57.837 feet (chord bears North 83°13'03" East 57.81 feet); thence North 86°10'40" East 260.72 feet to the point of beginning.

PARCEL 2: ID No. 28-12-152-021

Beginning at a point which is South 98.96 feet and East 667.80 feet from the West Quarter corner of Section 12, Township 3 South, Range 1 East, Salt Lake Base and Meridian; and running thence North 10°20'00" East 255.17 feet, more or less, to the South boundary of Little Cottonwood Subdivision; thence along said boundary South 89°22'36" East 144.51 feet; thence South 53°25'20" East 9.17 feet; thence South 70°48'00" East 12.33 feet; thence South 51°08'00" East 70.60 feet; thence South 75°38'00" East 61.20 feet; thence North 89°40'00" East 84.62 feet; thence leaving said South boundary South 01°53'55" East 153.41 feet, more or less, to the North line of Little Cottonwood Road; thence along said road South 89°10'40" West 414.18 feet to the point of beginning.<sup>12</sup>

7. The FNB First Deed of Trust was duly recorded as Entry 8217197 with the Salt Lake County Recorder on April 26, 2002.<sup>13</sup>

8. Upon information and belief, in or about June 2003, CTI borrowed money from Kang Sik Park pursuant to a promissory note (the "Park Loan"), which Park Loan was secured by a Deed of Trust against the Salt Lake Property, recorded in the Office of the Salt Lake County Recorder on June 26, 2003, as Entry No. 8706726, in Book 8826, at Page 8433 (the "Second Deed of Trust").<sup>14</sup>

9. Upon information and belief, in or about 2005, CTI defaulted on the Park Loan,

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<sup>12</sup> Bank Declaration ¶3 & Exh. 2, at Exhibit A.

<sup>13</sup> *Id.* ¶4 & Exh. 2, p. 1. FNB also obtained an Assignment of Lease, recorded in the Salt Lake County Recorder's Office on the same day, and Commercial Guaranty Agreements from Talbot H. Lloyd and James A. Morse as additional security. *Id.* & Exhs. 3-5.

<sup>14</sup> See Bank Declaration ¶¶5-7 & Exh. 6 (Trustee's Deed at p. 1 (describing loan)).

and a foreclosure sale was noticed based on Kang Sik Park's interest in the Salt Lake Property pursuant to the Second Deed of Trust.<sup>15</sup>

**C. VISION LAND'S PURCHASE OF THE SALT LAKE PROPERTY AND NNU'S OBLIGATION TO FNB**

10. On November 3, 2005, a Trustee's Deed was recorded with the Salt Lake County Recorder, as Entry No. 95544203, Book 9213, Pages 1878-1879, a copy of which is attached to the Bank's Declaration as **Exhibit 6**, showing that Vision Land—one of the Palmer Entities—took title to the Salt Lake Property at the Park Loan foreclosure sale.<sup>16</sup>

11. At this time or thereafter, CTI was in default under its CTI Loan with FNB.<sup>17</sup>

12. On or about September 23, 2008, NNU entered into a Modification and Assumption Agreement, a copy of which is attached to the Bank Declaration as **Exhibit 7**, with NNU assuming CTI's obligations to FNB connected to the CTI Loan (the "Loan Assumption").<sup>18</sup>

13. Thereafter, NNU defaulted under the Loan Assumption.<sup>19</sup>

14. On May 23, 2012, FNB caused a Notice of Default to be recorded on the Salt Lake Property as Entry No. 11396395, a copy of which is attached to the Bank Declaration as **Exhibit 8**. More than three (3) months have elapsed since the recording of the Notice of Default. FNB has been unable to proceed with the foreclosure as a result of the entry of the Court's June 25, 2012 Receivership Order.

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<sup>15</sup> *Id.*

<sup>16</sup> *Id.* ¶7.

<sup>17</sup> *Id.* ¶8.

<sup>18</sup> *Id.* ¶9.

<sup>19</sup> *Id.* ¶10.

**D. INTERVENTION ACTION**

15. On July 9, 2012, FNB filed a Motion to Intervene in the above-captioned case, which was opposed by the SEC and the Receiver.<sup>20</sup>

16. The Court granted FNB's Motion to Intervene by Order entered on September 6, 2012.<sup>21</sup>

17. On or about September 20, 2012, FNB filed its Complaint in Intervention (the "FNB Action").<sup>22</sup>

18. By Order entered on October 11, 2012, the deadline for the Receiver to answer FNB's Complaint in Intervention was extended to November 30, 2012. Pursuant to the Agreement set forth herein, the Complaint in Intervention would be dismissed without prejudice as to the Salt Lake Property, and the relief FNB sought in the Complaint in Intervention with respect to the property located at 1286 South Knoll Avenue, Kanab, Utah 84741 (the "Kanab Parcel") would be granted with some modification.

**E. EQUITY ANALYSIS AND RECEIVER INVESTIGATION**

19. FNB acquired an appraisal from Van Drimmelen & Associates, Inc. on the Salt Lake Property dated June 25, 2012, a copy of which is attached to the Bank Declaration as **Exhibit 9**, which values the Salt Lake Property at \$1,100,000.00 (the "FNB Appraisal").<sup>23</sup>

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<sup>20</sup> Docket Nos. 23, 30, 31 & 37.

<sup>21</sup> Docket No. 51.

<sup>22</sup> Docket No. 66.

<sup>23</sup> *Id.* ¶12.

20. As of January 1, 2013, NNU owes FNB \$1,699,022.08.<sup>24</sup>

21. The Receiver has investigated the Receivership Estate's interest in the Salt Lake Property, including by conducting a legal analysis of FNB's interest therein, an evaluation of the debt owed to FNB, and the nature and value of the Salt Lake Property.<sup>25</sup> In so doing, based on the FNB Appraisal as well as the broker's opinion of a realtor familiar with the Salt Lake Property, the Receiver has determined that there is no equity in the Salt Lake Property for the benefit of the Receivership Estate.<sup>26</sup>

22. In addition, the Receiver has determined that the Salt Lake Property is related to another parcel of real property located near and related to the Salt Lake Property which is not subject to FNB's interest (the "NNU Cottonwood Lot").<sup>27</sup>

23. The Receiver is currently intending to list the NNU Cottonwood Lot for sale through his independent real estate agent, but has determined that the value of the NNU Cottonwood Lot will be maximized for the benefit of the Receivership Estate if it is marketed with, and potentially sold in conjunction with the Salt Lake Property.<sup>28</sup>

24. FNB's loan to National Note in connection with the Kanab Parcel was in the principal amount of \$152,664.62 (the "Kanab Loan") and the balance as of January 30, 2013 is \$168,867.36. The promissory note provides that normal interest accrued at the rate of eight percent (8%) per annum and, after default, at the rate of thirteen percent (13%) per annum.

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<sup>24</sup> *Id.* ¶13.

<sup>25</sup> Receiver Declaration ¶4.

<sup>26</sup> *Id.*

<sup>27</sup> Receiver Declaration ¶5.

<sup>28</sup> Receiver Declaration ¶6.



Based on the principal balance, interest continues to accrue at \$55.25 per diem.

**PROPOSED AGREEMENT**

25. To resolve issues related to the FNB Action discussed above, the Receiver and FNB have entered into good faith and arms length negotiations,<sup>29</sup> and have entered into the following agreement (the “Agreement”), subject to approval of this Court:

- a. The Receiver agrees to abandon the Receivership Estate’s interest in the Salt Lake Property.
- b. The Movants will work together informally to market and attempt to sell the Salt Lake Property and the NNU Cottonwood Lot, if feasible.
- c. FNB agrees to waive any and all claims that it might have related to the CTI Loan and the Loan Assumption as against the Receiver and/or the Receivership Estate with regard to the Salt Lake Property, and agrees that it will receive no distribution from the Receivership Estate with respect to the Salt Lake Property.
- d. With respect to the Kanab Parcel, the Receiver and FNB agree that FNB has a first priority security interest in the Kanab Parcel securing a loan to National Note in the principal amount of \$155,200 (the “Kanab Loan”), which was recorded prior to the appointment of the Receiver or the commencement of this action by the SEC, as pleaded in the Complaint in Intervention.
- e. Because it appears the Kanab Parcel presently has some equity, this property should not be abandoned but should be retained for the Receiver to attempt to market. If the Kanab Parcel is sold the proceeds should be applied first to pay to FNB the

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<sup>29</sup> Receiver Declaration ¶7.

balance of the Kanab Loan with applicable interest, fees, and costs as provided in the loan documents.

f. The parties acknowledge, however, that the continued accrual of interest on the Kanab Loan will eventually eliminate the equity in the Kanab Parcel. Therefore, the parties agree that Kanab Parcel will be appraised every 6 months following the Court's approval of this agreement, either by the Receiver or by FNB as the parties may agree, with the parties to share the cost of the appraisals equally. If after any subsequent appraisal the balance of the Kanab Loan exceeds the appraised value of the Kanab Parcel, FNB may petition the Court for abandonment of the Kanab Parcel.

g. The Movants agree to mutually release each other, their owners, employees, officers, directors, agents, servants and affiliates, and in the case of FNB, the Receivership Estate from any and all past, present or future claims, demands, obligations, actions, causes of action, rights, damages, costs, losses of services, expenses and compensation of any nature whatsoever which may accrue or otherwise be acquired on account of or which in any way may have grown out of, or which are the subject of the loans referenced herein or the FNB Complaint in Intervention, except the right to enforce this agreement as approved by the Court.

h. No later than five days after the entry of an Order approving this Motion, FNB will file appropriate papers to dismiss without prejudice all claims in its Complaint in Intervention with regard to the Salt Lake Property. In the event that this Joint Motion is not approved, the Receiver shall have an additional twenty (20) days to answer the Complaint in Intervention.

### ARGUMENT

The Movants request that the Court grant this Joint Motion thus, (a) authorizing the Receiver to abandon the Salt Lake Property, (b) lifting the stay of litigation imposed by the Receivership Order and allowing FNB to exercise its rights with regard to the Salt Lake Property, and (c) approving the terms of the Agreement set forth above. For the reasons set forth below, the Court has the discretion to grant the requested relief, and given the facts of this case, such relief is appropriate.

First, this Court has broad equitable discretion to permit the Receiver to relinquish property of the Receivership Estate if there is no equity in the property and to approve agreements related to property of the Receivership Estate.<sup>30</sup> Here, the Receiver, acting within his authority under the Receivership Order discussed in ¶ 3 above, has conducted an investigation of the Salt Lake Property and the interests of FNB in that Property, and has determined that FNB's interests in the Salt Lake Property appear to be valid and perfected, and given that interest and the value of the Salt Lake Property, there does not appear to be equity in the Salt Lake Property that would benefit the Receivership Estate.<sup>31</sup> Thus, the Receiver has determined that it would be in the best interests of the Receivership Estate to abandon any interest that the Estate has in the Salt Lake Property to FNB and to enter into the Agreement set forth above related thereto.<sup>32</sup> The

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<sup>30</sup> See *SEC v. Vescor Capital Corp.*, 599 F.3d 1189, 1194 (10th Cir. 2010) (“[T]he district court has broad powers and wide discretion to determine . . . relief in an equity receivership”); 65 Am. Jur. 2d RECEIVERS §156 (2012) (“If a receiver determines that a particular asset has so little value as to make its administration unprofitable, the receiver may petition the court for an instruction to abandon the asset as worthless”); cf. 11 U.S.C. §554(a) (trustee in bankruptcy may abandon property of the estate that is burdensome or that is of inconsequential value and benefit to the estate).

<sup>31</sup> Receiver Declaration ¶4.

<sup>32</sup> Receiver Declaration ¶8.

Agreement has the additional benefit of obtaining a release and waiver of claims by FNB, dismissal of the FNB Action related to the Salt Lake Property, and the opportunity to potentially maximize the value of the NNU Cottonwood Lot through joint marketing and sale agreements with FNB.<sup>33</sup>

Second, the Court has the power to lift its stay of litigation and any freeze of assets.<sup>34</sup> In determining whether a stay should be lifted, the Court considers four factors set out in *Securities & Exchange Commission v. Wencke*:<sup>35</sup> (1) if FNB will suffer substantial injury if not permitted to proceed; (2) if the Receiver has had sufficient time to organize and understand the assets under his control; (3) whether FNB's interest in the Salt Lake Property has merit; and (4) the interests of the parties. Here, based on the facts submitted, each of these factors has been met and, thus, the Movants have agreed to file this Joint Motion. FNB will suffer substantial injury if it is not permitted to proceed inasmuch as the CTI Loan has been in default and FNB has not been able to proceed against its collateral as a result of this case, the Receiver has had sufficient time to investigate the Salt Lake Property and FNB's interest therein, and the Receiver has determined from his investigation that there is no equity in the Salt Lake Property that would benefit the Receivership Estate.<sup>36</sup>

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<sup>33</sup> Receiver Declaration ¶9.

<sup>34</sup> See *Vescor*, 599 F.3d at 1196 (Noting the purpose of imposing a stay on litigation is to allow the receiver an opportunity to marshal and untangle assets without being forced into court.); *SEC v. Madison Real Estate Group, LLC*, 647 F. Supp.2d 1271, 1275 (D. Utah 2009).

<sup>35</sup> 742 F.2d 1230, 1231 (9th Cir. 1984); see *Vescor*, 599 F.3d at 1196.

<sup>36</sup> Receiver Declaration ¶4; Bank Declaration ¶13.

**CONCLUSION**

For all of the reasons stated herein and as supported by the Receiver Declaration and the Bank Declaration, the Movants respectfully request that the Court grant Joint Motion, thus authorizing the Receiver's abandonment of any interest that the Receivership Estate may have in the Salt Lake Property, lifting the stay of litigation to allow FNB to proceed with its remedies in relation to the Salt Lake Property, and approving the Agreement set forth herein.

RESPECTFULLY SUBMITTED this 31st day of January, 2013.

RICHARDS BRANDT MILLER NELSON

/s/ Matthew C. Barneck  
MATTHEW C. BARNECK  
WAYNE Z. BENNETT  
*Attorneys for First National Bank of Layton*

DORSEY & WHITNEY LLP

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

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on January 31, 2013, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which sent notification of such filing to the following:

|   |   |
|---|---|
| Daniel Wadley, Esq.<br>Thomas M. Melton, Esq.<br>Securities & Exchange Commission<br>15 West South Temple, Suite 1800<br>Salt Lake City, UT 84101<br>wadleyd@sec.gov<br>meltont@sec.gov<br><i>Attorneys for Plaintiff</i> | Peggy Hunt, Esq.<br>Jeffrey M. Armington, Esq.<br>Dorsey & Whitney, LLP<br>136 South Main Street, Suite 1000<br>Salt Lake City, UT 84101<br><a href="mailto:Hunt.peggy@dorsey.com">Hunt.peggy@dorsey.com</a><br><a href="mailto:Armington.jeff@dorsey.com">Armington.jeff@dorsey.com</a><br><i>Attorneys for Court-Appointed Receiver</i> |
| All other persons or entities entitled to receive notice through PACER, pursuant to Fed. R. Civ. P. 5(b)(3) and D.U.Civ.R. 79-1.  |   |

And

I HEREBY CERTIFY that a true and correct copy of the foregoing instrument was mailed, first class, postage prepaid, on this 31<sup>st</sup> day of January, 2013, to the following:

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

/s/ Matthew C. Barneck