

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  
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>MEMORANDUM IN SUPPORT OF RECEIVER'S MOTION (1) TO RELEASE ENTITIES FROM RECEIVERSHIP, AND (2) TO APPROVE SETTLEMENT AGREEMENTS</b></p> <p>2:12-cv-00591 BSJ</p> <p>The Honorable Bruce S. Jenkins</p>
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R. Wayne Klein, the Court-Appointed Receiver (the "Receiver") in this matter, by and through his counsel of record, submits this Memorandum in support of his *Motion (1) to Release Entities From Receivership and (2) to Approve Settlement Agreements*. In support hereof, the Receiver states as follows.

**BACKGROUND**

On June 25, 2011, the Securities and Exchange Commission ("SEC") commenced the above-captioned case against National Note of Utah, LC ("National Note") and Wayne LaMar Palmer ("Palmer") (collectively, the "Receivership Defendants"), and in conjunction therewith

the Court entered an *Order Appointing Receiver and Staying Litigation* (the “Receivership Order”) (Docket No. 9), along with other Orders, including an *Order Freezing Assets and Prohibiting Destruction of Documents* (the “Asset Freeze Order”) (Docket No. 8). The Receivership Order places National Note, forty one affiliated entities (defined in the Receivership Order as the “Palmer Entities”), and all the assets of Palmer under the control of the Receiver. *See generally id.* Some of the Palmer Entities included within “Receivership Property” and “Receivership Assets” in the Receivership Order are Top Flight, LLC (“Top Flight”), Expressway Business Park Owners Organization, LLC (“EBPOO”), and Farrell Business Park Association (“FBPA”) (collectively, the “Entities”). *Id.* at ¶ 1.

In the Receivership Order, the Court directed and authorized the Receiver to “determine the nature, location and value of all property interests of the Receivership Defendants and the Palmer Entities.” *Id.* at ¶ 7A. In carrying out his responsibilities, the Receiver was directed “[t]o 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.” *Id.* at ¶ 7C.

The Receiver has investigated the Entities and, as discussed below, has determined that these Entities should not be included as part of the Receivership Estate. Furthermore, the Receiver has investigated the Receivership Estate’s interest in certain real property located in Brigham City, Utah, known as “Twin Pines,” and as discussed in further detail below, has determined that it would be in the best interests of the Receivership Estate to enter into a Settlement Agreement with an entity that claims an interest in Twin Pines.

The SEC has been consulted about the proposed release of the Entities and the Settlement Agreement, and it has no objection to the relief requested by the Receiver in the Motion.

**ENTITIES PROPOSED TO BE RELEASED FROM THE RECEIVERSHIP ESTATE**

As a result of the investigation conducted to date, the Receiver has determined that Top Flight, EBPOO and FBPA should not be included as part of the Receivership Estate. Each is discussed below.

*Top Flight, LLC*

Top Flight is an entity over which Palmer asserted a limited degree of control prior to commencement of this case. Specifically, Palmer was the Registered Agent for the company, controlled a bank account in its name, and leased an airplane owned by the company. But, based on the Receiver's review of Top Flight's Operating Agreement and the Receiver's agreement with Top Flight's principals (the "Owners") in which they represent that Palmer has no ownership interest or profit sharing interest in Top Flight, it appears that Top Flight is in fact owned by Owners who are unaffiliated with the Receivership Defendants and the Palmer Entities. Therefore, Top Flight should not be included as one of the Palmer Entities in the Receivership Order, and the Receiver has entered into an agreement with the Owners to seek authorization to release Top Flight from the Receivership Estate.

Furthermore, releasing Top Flight from the Receivership Estate will avoid significant costs that would be incurred if Top Flight continued to be included as one of the Palmer Entities under the Receivership Order. Specifically, the Receiver would be required to pay the monthly lease payments from the assets of the Receivership Estate to Top Flight, and incur the costs of insuring and storing the airplane (which costs the Owners of Top Flight have agreed to pay as of June 25, 2012). As a result, keeping this asset in the Receivership Estate would be a significant net drain on the Receivership Estate, drawing money away from the investors.



The Top Flight Owners have agreed to relinquish any interest that Top Flight may have in the bank account in Top Flight's name which was controlled by Palmer, although the balance of that account as of the date of the commencement of this case was only \$8.12. They have also agreed to assist the Receiver in the event he needs information regarding the use of the aircraft by Palmer. Finally, Top Flight has agreed that it will release the Receiver and the Receivership Estate from any liability relating to the airplane. The Receiver and the Owners have agreed that Top Flight may be entitled to assert a claim against the Receivership Estate for monies the Owners assert are due under the lease agreement if the bases for the claim arose before June 25, 2012, but the Owners acknowledge that the Receiver has made no determination about the validity of such a claim.

Accordingly, for the reasons stated, the Receiver believes Top Flight and the airplane, should be released as Receivership Assets included as part of from the Receivership Estate, and that his agreement with the Owners described herein should be approved.

*Expressway Business Park Owners Organization LLC*

Expressway Business Park, commercial real property that was developed by Palmer, one of the Palmer Entities or a person affiliated therewith, is located in Spanish Fork, Utah. The Receiver has determined that almost all of the units in the Expressway Business Park were sold by the Receivership Defendants to non-affiliated buyers.

The EBPOO is an owners' association related to Expressway Business Park. At the time of the commencement of this case and the entry of the Asset Freeze Order, Palmer controlled a bank account belonging to the EBPOO (the "EBPOO Account"), which Account had a balance of \$3,006.84, and managed the Expressway Business Park through the EBPOO. The Receiver

understands that the EBPOO Account exists to manage the common areas of the property and the portions of the building exteriors controlled by the EBPOO, that EBPOO dues were deposited into the EBPOO Account, and that funds from this Account were used for the upkeep of the common areas of the property.

The Receiver has attempted to minimize the impact of the Receivership on the innocent owners of units at Expressway Business Park. He has temporarily retained control over the EBPOO by collecting dues, depositing the dues in the EBPOO Account, and paying expenses therefrom related for common area upkeep and other services provided to owners. But, the Receiver intends to turn over control of the EBPOO to the owners on September 30, 2012, provided that an Order is entered by the Court granting his current Motion inasmuch as the Receiver does not want to expend Receivership Assets continuing to manage the EBPOO. National Note still owns four of the forty-eight units at the Expressway Business Park, and the Receiver will rely on the EBPOO through its new management to control the upkeep of the property.

The Receiver has met with the EBPOO president, notifying him that the association will need to be ready to assert complete control over the common areas and other functions that have been being provided by the Receiver or one of the Receivership Entities since the commencement of the case. Furthermore, the Receiver has set a meeting with the owners on August 21, 2012 to explain his plan to turn control of the EBPOO over to the owners.

As part of his plan to relinquish control over the EBPOO, the Receiver plans to deliver to the EBPOO net funds on deposit in the EBPOO Account no later than September 30, 2012. The Receiver has found no indication that monies of the Receivership Defendants were commingled

with funds in the EBPOO Account, or that any investor monies were used to subsidize operations of the EBPOO. Furthermore, the \$3,006.84 balance in the EBPOO Account that was frozen by the Court is consistent with the amount of dues paid by owners, and appears to have come entirely from dues paid by owners at Expressway Business Park and not from the Receivership Defendants or National Note investors.

Farrell Business Park Association

Farrell Business Park, is a commercial real property located in Gilbert, Arizona that was developed by Palmer, one of the Palmer Entities or a person affiliated therewith. Like the EBPOO, the FBPA is an owners' association affiliated with this property, which has had a bank account into which owners' dues are deposited and from which expenses are paid for upkeep of the property. For the same reasons discussed above related to the EBPOO, the FBPA should be released as one of the Palmer Entities that is included in as part of the Receivership Estate.

Unlike the EBPOO, the Receiver has not assumed any duties in connection with this owners association. Furthermore, the Receiver is unaware of any bank account for Farrell Business Park or the FBPA that was controlled by the Palmer Entities and is unaware of any funds on deposit on the date that this case was commenced and the Asset Freeze Order was entered. Releasing FBPA from the Receivership Estate will allow the owners to establish their own bank account to serve their common needs, without any constraints existing from in involvement in this case.

**REQUEST FOR APPROVAL OF SETTLEMENT AGREEMENT**

One of the properties owned by National Note is a 20-unit apartment building located in Brigham City, Utah, known as "Twin Pines." Twin Pines was built in the 1940s as a motel and



was subsequently converted into apartments catering to lower income tenants. National Note's ownership of Twin Pines is subject to a recorded Deed of Trust held by the True & Marjorie Kirk Family Trust (the "Trust"), which was recorded in Box Elder County on or about August 11, 2011. The Deed of Trust states that it secures a debt in the principal amount of \$400,000.00. It was given by National Note to the Trust as security for the Trust's \$400,000.00 in investments as evidenced by certain promissory notes with National Note. At the time of the commencement of this case, the Trust had received interest in the approximate amount of \$135,000.00 on its National Note promissory notes.

The Receiver has determined that Twin Pines has a value of between \$315,000, based on a 2012 Notice of Property Valuation provided by Box Elder County—a copy of which is attached hereto as Exhibit 1, and \$330,000 "as is," based on an appraisal of the property dated July 23, 2012, excerpts of which are attached hereto as Exhibit 2. The appraisal contains a general description of the property, and outlines the severely deteriorated condition of the building, showing that it requires substantial repairs, including mold removal in some units, a new roof, and repairs to its brick exterior. See Exhibit 2 (Twin Pines Appraisal). Also, the Receiver has confirmed the condition of the property by his personal inspection.

The Receiver has evaluated the Trust Deed, the obligations it secures and payments that have been received by the Trust, the fact that the Trust may seek relief from the stay of litigation to allow it to exercise its claimed rights of foreclosure, the value of Twin Pines, potential litigation risks and costs, and the Receivership Estate's interest in Twin Pines. Based thereon, the Receiver has determined that, although he may have valid claims in relationship to these matters, settlement of any and all disputes with the Trust pursuant to the terms of the Settlement

Agreement, is in the best interest of the Receivership Estate.

Under the proposed Settlement Agreement, (the "Settlement Agreement"), the Receiver will transfer ownership of Twin Pines and any interest that the Receivership Estate may have in any leasehold interests to the Trust after entry of an Order authorizing him to do so. In return, the Trust, including any persons affiliated with the Trust, release the Receiver and the Receivership Estate and otherwise waive any and all claims that they might have against the Receivership Estate, including any and all assets that are recovered by the Receiver for the benefit of the Receivership Estate. In addition, the Trust will pay all property taxes that are owed on this property and any costs associated with the property transfer. At this time, it appears that the 2012 property taxes are in the amount of \$2,558.85, and National Note may owe at least \$110.30 for past taxes. See Exhibit 3.

It should be noted that Twin Pines Property, LC ("TPP") is one of the Palmer Entities included with the Receivership Estate. Nothing in the proposed Settlement Agreement effects the Receivership Estate's interest in TPP, and therefore, \$5.05 on deposit in TPP's bank account on the date of the entry of the Asset Freeze Order will remain property of the Receivership Estate, and the Trust has agreed that the Receivership Estate shall have a right to retain all rents collected from Twin Pines' tenants through the end of the month in which an Order is entered approving the Settlement Agreement.

The Receiver has negotiated with the Trust at arm's length and in good faith, and as discussed in further detail below, believes that the proposed Settlement Agreement is fair, adequate and reasonable, as well as in the best interest of the Receivership Estate.



## ANALYSIS

### **I. Release of Entities From the Receivership Estate is Appropriate Under the Circumstances**

Based on the facts set forth above, and after due deliberation, the Receiver requests that the Court release the Entities from the Receivership Estate, including by recognizing that as of the date of the entry of an Order granting this Motion, the Palmer Entities identified in the Receivership Order shall not include any one of the three Entities and that the Asset Freeze Order shall not apply to these Entities.

Furthermore, to the extent necessary and for the same reasons discussed below, the Agreement with the Owners of Top Flight described above should be approved inasmuch as it is the result of arm's length and good faith negotiations between the Owners and the Receiver, it is adequate, fair and reasonable given the circumstances in this case, and it is the best interests of the Receivership Estate.

### **II. Approval of the Settlement Agreement with the Trust is Appropriate**

Courts recognize that a "receiver has the power, when so authorized by the court, to compromise claims either for or against the receivership and whether in suit or not in suit."<sup>1</sup> "In determining whether to approve a proposed settlement, the cardinal rule is that the District Court must find that the settlement is fair, adequate and reasonable and is not the product of collusion between the parties."<sup>2</sup> In *Jones v. Nuclear Pharmacy, Inc.*,<sup>3</sup> the Court of Appeals for the Tenth

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<sup>1</sup> *SEC v. Bancorp*, 2001 WL 1658200 \*2 (S.D.N.Y. 2001) (quoting 3 Ralph Ewing Clark, *A Treatise on the Law and Practice of Receivers*, § 770 (3d Ed. 1959).

<sup>2</sup> *Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir. 1977); see also *Jones v. Nuclear Pharmacy, Inc.*, 741 F.2d 322, 325 (10th Cir. 1984).

<sup>3</sup> *Id.*

Circuit has stated:

In assessing whether the settlement is fair, reasonable and adequate the trial court should consider: (1) whether the proposed settlement was fairly and honestly negotiated; (2) whether serious questions of law and fact exist, placing the ultimate outcome of the litigation in doubt; (3) whether the value of an immediate recovery outweighs the mere possibility of future relief after protracted and expensive litigation; and (4) the judgment of the parties that the settlement is fair and reasonable.<sup>4</sup>

Each of these factors has been met in the current case.

The Settlement Agreement with the Trust is “fair, adequate, and reasonable.” It negotiated in good faith between disinterested parties and at arm’s length. As discussed above, while the Receiver may have valid claims related to the Trust’s claim and Deed of Trust that could be the subject of litigation either in the context of a request for relief by the Trust to exercise foreclosure rights or otherwise, litigation of these claims likely would be costly and the outcome would not be certain. Furthermore, and most importantly, given the value of the property, including as established by a current appraisal by an independent professional appraiser, there does not appear to be significant worth in the asset that would be recovered, especially with consideration of the risks and costs of litigation. Indeed, Twin Pines is worth between \$70,000.00 and \$87,000 less than the amount of the principal debt secured by the Trust’s Deed of Trust, thus giving rise to potential foreclosure by the Trust, and issues related to viability of claims of the Receivership Estate related to the validity and avoidability of the Deed of Trust likely would be contested by the Trust. Accordingly, given the apparent lack of equity in Twin Pines, the costs associated with maintaining, marketing and sale of this deteriorated property and the litigation risks associated with any claims that the Receiver may have related to

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<sup>4</sup> *Id.*

the Deed of Trust or amounts due under the promissory notes, it is unlikely the Receiver would be able to realize any "equity" in this property for the benefit of investors.

Additionally, the Settlement Agreement is reasonable and the Receivership Estate will receive some immediate recovery inasmuch as the Trust has agreed to relinquish any right that it may have in rents as set forth above which will offset some of the costs of associated with this matter, and the Trust nor any of its affiliates will make any claim against the Receivership Estate. The Settlement Agreement also avoids the expenditure of any administrative costs by the Receiver and his professionals that otherwise might be incurred in maintaining the property or in responding to any motion by the Trust seeking the Court's permission to foreclose on the property. Finally, the prompt transfer of Twin Pines to the Trust as proposed in the Settlement Agreement will maximize its current value for the benefit of all parties inasmuch as the property is currently diminishing in value and the Receiver is not in a position to make the necessary and significant repairs.<sup>5</sup>

In light of all of the representations made herein and the applicable law, the Receiver submits that the Settlement Agreement is fair, adequate and reasonable and, therefore, should be approved by the Court.

#### CONCLUSION

For the foregoing reasons, the Receiver asks the Court to enter an Order granting this Motion, thus (1) releasing Top Flight, EBPOO and FBPA from the Receivership Estate, and (2)

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<sup>5</sup> The Receiver has approved work to repair an existing leak in one of the units, to prevent further water damage.



authorizing the Receiver to enter into the Settlement Agreements described in this Memorandum.

DATED this 13th day of August, 2012.

**DORSEY & WHITNEY LLP**

*/s/ Peggy Hunt*

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Peggy Hunt  
Jeffrey M. Armington  
*Attorneys for Receiver*

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the above **MEMORANDUM IN SUPPORT OF RECEIVER'S MOTION TO (1) RELEASE ENTITIES FROM RECEIVERSHIP, AND TO (2) APPROVE SETTLEMENT AGREEMENT (the "Memorandum")** was filed with the Court on this 13th day of August 2012 and was served on all parties who have requested service through the Court via ECF/CM.

In addition on this 13th day of August, 2012, the Memorandum was served on the by e-mail on the following parties:

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*

R. Wayne Klein  
KLEIN & ASSOCIATES, PLLC  
299 S. Main Street, Suite 1300  
Salt Lake City, UT 84111  
[wklein@kleinutah.com](mailto:wklein@kleinutah.com)  
*Court-Appointed Receiver*

Top Flight Al Williams:  
[al\\_kodiak\\_ent@yahoo.com](mailto:al_kodiak_ent@yahoo.com).

True & Marjorie Kirk Family Trust  
[truekirk@durangolive.net](mailto:truekirk@durangolive.net).

Expressway Owners Association  
Jason Crowther  
[Jason@freedomsteel.org](mailto:Jason@freedomsteel.org)

Finally, on this 13th day of August, 2012, the Memorandum was served by U.S. First Class mail, postage pre-paid, on the following:

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

Randall Mackey  
MACKEY PRICE  
57 W. 200 S., #350  
Salt Lake City, Utah 84101  
*Attorney for Defendant*

*/s/ Peggy Hunt*



# EXHIBIT 1

PLEASE SEE IMPORTANT EXPLANATIONS & INSTRUCTIONS ON REVERSE SIDE

NOTICE OF PROPERTY VALUATION AND TAX



Tom Kotter  
Box Elder County Auditor  
One South Main  
Brigham City, UT 84302

2012

ACCOUNT NUMBER	PARCEL NUMBER	ACRES	TAX AREA
R0011731	03-089-0035	0.82	103

PARTIAL LEGAL DESCRIPTION FOR TAX IDENTIFICATION ONLY  
 BEG AT NW COR OF LOT 4, BLK 43, PLAT C, BRIGHAM CITY SURVEY, TH S 12 RDS, TH E 10 RDS, TH S 4 RDS, TH E 3 RDS, TH N 10 RDS, TH W 105.5 FT TH N 6 RDS, TH W 10...

PROPERTY ADDRESS  
580 N MAIN ST

OWNER  
NATIONAL NOTE OF UTAH LC

**RECEIVED**  
 JUL 27 2012  
 BY: \_\_\_\_\_

MAILING ADDRESS

R0011731 03-089-0035 10392  
 NATIONAL NOTE OF UTAH LC  
 1549 W 7800 S  
 WEST JORDAN, UT 84088

MARKET VALUE OF YOUR PROPERTY		
Property Type	Last Year's Market Value	This Year's Market Value
PRIMARY IMPROVED PROPERTY	315,000	315,000
<b>Total Property Value</b>	<b>315,000</b>	<b>315,000</b>

CURRENT & PROPOSED TAXES						THESE VALUES DO NOT INCLUDE PERSONAL PROPERTY
Taxing Entities	Taxes Last Year	Tax This Year if No Budget Change	Tax if Proposed Budget Approved	Change in Taxes	Change in %	A Public Tax Increase Hearing Will Be Held
BOX ELDER SCHOOL DISTRICT	1,186.94	1,225.57	1,225.57	0.00	0%	
BRIGHAM CITY	395.36	424.98	424.98	0.00	0%	
BOX ELDER COUNTY	385.83	394.84	394.84	0.00	0%	
BASIC SCHOOL LEVY	275.64	286.04	286.04	0.00	0%	
LOCAL ASSESSING & COLLECT	54.05	55.25	43.30	-11.95	-21.6%	
Box Elder Mosquito Abatem	35.34	36.04	36.04	0.00	0%	
BEAR RIVER WATER CONSV DI	34.65	34.65	34.65	0.00	0%	
MULTI-COUNTY ASSNG & COLL	29.80	29.11	29.11	0.00	0%	
<b>Total Property Tax</b>	<b>2,397.61</b>	<b>2,486.48</b>	<b>2,474.53</b>	<b>-11.95</b>	<b>-0.5%</b>	

**THIS IS NOT A BILL. DO NOT PAY ----- THIS IS NOT A BILL. DO NOT PAY**

County Board of Equalization Information

Appeals of value must be filed with the County Auditor no later than September 17, 2012. Appeals received after 5:00 pm MDT on this date will not be considered. Appeal forms are available in the Auditor's office at One South Main, Brigham City, Utah, by calling 435-734-3388, toll-free 877-390-2326, or on-line at [www.boxeldercounty.org](http://www.boxeldercounty.org), on the Auditor page.

Owners may also speak with a county representative at an informal hearing on any of the following days: August 27, 10 am to 12pm; August 30, 2 pm to 4 pm; September 6, 2p m to 4 pm; September 14, 10 am to 12 pm.

Abatements

Abatement programs are available which may reduce your property tax if you qualify. Please contact the Auditor's office at 435-734-3388, toll-free 877-390-2326. Additional information on the abatement programs is also available at [www.boxeldercounty.org](http://www.boxeldercounty.org), on the Auditor page.

**THIS DOES NOT INCLUDE TAX CREDITS, CIRCUIT BREAKERS, OR ABATEMENTS**

# EXHIBIT 2



File #COM230-BRIG

## APPRAISAL REPORT

### **Summary Report**

**Known As:**

**20-Unit Apartment Building**

**Location:**

580 North Main Street  
Brigham City, Box Elder County, Utah

AP #03-089-0035

**Owned By:**

National Note of Utah, LC  
1549 West 7800 South  
West Jordan, Utah 84088

**Prepared For:**

True Kirk  
Homestead Realty of Durango CO  
106 Linds Court  
Durango, Colorado 81301

**Effective Date:**

July 16, 2012

**Report Date:**

July 23, 2012

**J. Allan Payne, MAI, SRA, R/W-AC**  
**PAYNE APPRAISAL & CO, INC.**

**8553 Sugarloaf Lane**

**Sandy, Utah 84093**

**(801) 942-0598**

**Allan@PayneAppraisal.com**

Letter of Transmittal Page 1

**J ALLAN PAYNE MAI, SRA, R/W-AC**

*Real Estate Valuation Analysts*

*Payne Appraisal & Company, Inc.  
P.O. Box 900685, Sandy, UT 84090  
8553 S. Sugarloaf Lane  
Sandy, UT 84093*

*Web Site: <http://www.PayneAppraisal.com>  
E-Mail: [Allan@PayneAppraisal.com](mailto:Allan@PayneAppraisal.com)  
Phone (801) 942-0598  
FAX (801) 942-1094*

**Letter of Transmittal**

July 23, 2012

True Kirk  
Homestead Realty of Durango CO  
106 Linds Court  
Durango, Colorado 81301  
Office: 970-247-4595  
Cell: 970-749-0752

RE: Appraisal of 20-Unit Apartment Building, 580 North Main Street, Brigham City, Utah

Dear True Kirk,

At your request and pursuant to the phone conversation we had on July 9, 2012, I have prepared the following appraisal report on the property located at 580 North Main Street, Brigham City, Utah. This is a 20-unit apartment complex which was converted from a motel that includes three buildings.

The property consists of one parcel of land with parcel ID # 03-089-0035. The appraisal is of the real estate only. The business and the personal property are not included.

It is my understanding that this property is going into receivership and that you will become the owner due to your financial position and that the purpose of this appraisal is to facilitate you making investment decisions regarding the property. Therefore, the report prepared is a narrative summary (with imbedded charts and grids from the Fannie Mae 71-b form report).

The accompanying appraisal report contains a more complete description and identification of the subject property, together with the definitions, assumptions, limiting conditions, and certifications



*Practice emphasizes the appraisal of land, commercial, and residential properties.*

Letter of Transmittal Page 2

pertaining to the value. The report also contains the market data and analysis leading to the final opinion of value. The effective date of the value estimate is July 16, 2012, which was the date of my inspection.

The report is written to conform with Title 2, Federal Institution Reform and Recovery Enforcement Act of 1989 (FIRREA), the current or most recent Uniform Standards of Professional Appraisal Practice (USPAP) of the Appraisal Foundation, and the Standards of Professional Appraisal Practice of the Appraisal Institute. However, no other specific instructions were provided to the appraiser.

The appraisal has been prepared specifically for you, as the intended user and the report is considered to be a complete appraisal, summary report.

There are no extraordinary assumptions or hypothetical conditions associated with the appraisal and all the typical assumptions and limiting conditions are disclosed in the report.

I personally inspected the subject property on Monday, July 16, 2012, in the presence of Rigo Velestc (435-230-5295), the on-site manager.



Letter of Transmittal Page 3

I am herewith submitting the accompanying report and note that, after completing my analysis, it has become my opinion that the market value of the subject property, as defined and described in the accompanying report, *in "as is" condition*, in "fee simple" interest, and as of July 16, 2012, is:

THREE HUNDRED THIRTY THOUSAND DOLLARS

(\$330,000)

I trust that this report and my analysis meet with your needs and I thank you for the opportunity to be of service.

Respectfully,



\_\_\_\_\_  
J. Allan Payne, MAI, SRA, R/W-AC

\_\_\_\_\_  
July 23, 2012

Date

Utah State-Certified General Appraiser  
Certificate 5450904-CG00 Expires 6-30-2013

## SUMMARY OF SALIENT FACTS AND CONCLUSIONS

## D. SUMMARY OF SALIENT FACTS AND CONCLUSIONS

<b>Apartment Building</b> <b>580 North Main Street, Brigham City, Utah</b> <b>AP #s 03-089-0035</b>	
Owned by:	National Note of Utah, LC, 1549 West 7800 South, West Jordan, Utah
Prepared for:	True Kirk, Homestead Realty of Durango CO, 106 Linds Court, Durango, Colorado 81301
Prepared by:	J. Allan Payne, MAI, SRA, R/W-AC, 8553 South Sugarloaf Lane, Sandy, Utah 84093, 801-942-0598
Property Type:	Apartment Building
Size:	0.82 Acres
Use (Type):	Commercial Property
Improvements:	20-Unit Apartment Building
Building Size:	11,241 Square Feet, with 20 Units
Year Built:	1945
Shape:	Irregular
Use:	Month-to-Month Rental
Topography:	Generally Level
Street :	Four-Lane Street with Curb, Gutter, and Sidewalk
Frontage:	198 Lineal Feet
Zoning:	GC, General Commercial District
Flood Zone:	Zone "X", Areas of 0.2% annual chance flood; areas of 1% chance flood with average depths of less than 1 foot or with drainage areas less than 1 square mile; and areas protected by levees from 1% annual chance flood. Map 49003C1819D, Dated September 29, 2010
Tax ID Number(s):	03-089-0035
Property Rights:	"Fee Simple"
Effective Date:	July 16, 2012
Date of Report:	July 23, 2012
Highest & Best Use:	General Commercial
Report Type:	Complete Appraisal, Summary Report



Appraisal Report, Apartment Building  
AP #03-089-0035, Report Date July 23, 2012  
580 North Main Street, Brigham City, Utah

SUMMARY OF SALIENT FACTS AND CONCLUSIONS

<i>Final Value</i>	
Final Reconciled Value, Assuming Good Condition .....	\$600,000
Estimate of Needed Repairs and Updates .....	(\$270,859)
<b><i>Final "As Is" Indicated Value Rounded to</i></b>	<b><i>\$330,000</i></b>





## RECONCILIATION AND FINAL VALUE ESTIMATE

**E. RECONCILIATION AND FINAL VALUE ESTIMATE**

It has been the purpose of this appraisal to estimate the "market value" of the subject property in its "as is" condition, in "fee simple" estate, as identified, described, and defined in the body of this narrative report, with the effective date of July 16, 2012.

To accomplish this, the Direct Sales Comparison Approach was performed, concluding with a value of \$550,000. The Income Approach was developed, concluding with a value of \$645,000.

Based on the data available in these two approaches, they both have a high level of credibility. Therefore, a conclusion in the middle, at \$600,000 is considered to be reasonable, with the caveat that the condition of the units becomes average, or similar to the four comparables which were used in the Direct Sales Comparison Approach. This is not the subject's "as is" case.

Therefore, the final step in this analysis, is to estimate the cost of repairs and make a deduction. This has been done as follows:

Estimate of Needed Repairs and Updates			
<u>Exterior</u>			
New Roof	11,241 SF	x \$5.00/SF	= \$56,205
Replace Windows	50 Windows	x \$350 Per	= \$17,500
Paint Exterior	6,440 SF	x \$2.00/SF	= \$12,880
Cap Asphalt & Landscaping	15,000 SF	x \$1.00/SF	= <u>\$15,000</u>
		Total Exterior Repairs	\$101,585
<u>Interior</u>			
Carpet & Floor Covering	11,241 SF	x \$2.50/SF	= \$28,103
Kitchen Remodels	20 Units	x \$1,500	= \$30,000



RECONCILIATION AND FINAL VALUE ESTIMATE

Appliances	20 Units x \$1,000	=	\$20,000
Update Bathrooms	20 Units x \$500/Bath	=	\$10,000
Paint Walls	45 Rooms x \$500/Rm	=	\$22,500
Window Coverings	45 Rooms x \$100/Rm	=	\$4,500
			Total Interior Repairs \$115,103
Total Interior & Exterior Repairs .....			\$216,688
Miscellaneous Contingency at 10% .....			\$21,669
Entrepreneurial Incentive 15% .....			<u>\$32,503</u>
<b>Appraiser's Estimated Cost to Repair and Update .....</b>			<b>\$270,859</b>

Appraiser's Final Estimate of Value (Including Repairs Updating)	
Indicated Value When Updated	\$600,000
Appraiser's Estimated Cost to Repair & Update	<u>(\$270,859)</u>
Final Value Estimate	\$329,141
<b>Rounded to</b>	<b>\$330,000</b>



RECONCILIATION AND FINAL VALUE ESTIMATE

It is my opinion that the "market value" of the subject property, in "as is" condition, in "fee simple" estate, and as identified and described in the body of this appraisal report, as of the effective date of July 16, 2012, is:

THREE HUNDRED THIRTY THOUSAND DOLLARS

\$330,000



\_\_\_\_\_  
J. Allan Payne, MAI, SRA, R/W-AC

\_\_\_\_\_  
July 23, 2012

Date

Utah State-Certified General Appraiser  
Certificate 5450904-CG00 Expires 6-30-2013





EXHIBITS AND ADDENDA

Statement of Taxes Due

**STATEMENT OF TAXES DUE**  
 BOX ELDER COUNTY TREASURER  
 1 SOUTH MAIN STREET  
 BRIGHAM CITY, UT 84302  
 (435) 734-3385

Report Date: 07/16/2012 14:07 PM

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Account No: R0011731      PARCEL: 030890935      ACRES 0.82      TAX DIST 103

SITUS ADD: 580 N MAIN ST

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ASSESSED TO:  
 NATIONAL NOTE OF UTAH LC  
 1549 W 7800 S  
 WEST JORDAN, UT 84088

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LEGAL DESCRIPTION:  
 BEG AT NW COR OF LOT 4, BLK 43, PLAT C, BRIGHAM CITY SURVEY, TH S 12 RDS, TH E 10 RDS, TH S 4 RDS, TH E 3 RDS, TH N 10 RDS, TH W 105.5 FT TH N 6 RDS, TH W 109 FT TO BEG.

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Year	AD VAL TAX / SPEC TAX	PENALTY	INTEREST	TOTAL
2000	\$11.42	\$0.00	\$0.58	\$12.00
2011	\$2,297.61	\$50.94	\$101.30	\$2,558.85

GRAND TOTAL DUE AS OF 07/31/2012      \$2,570.85

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Assessor Property Code	Market Value	Taxable Value
1	43,100	23,705
78	271,900	149,545



Appraisal Report, Apartment Building  
 AP #03-089-0035, Report Date July 23, 2012  
 580 North Main Street, Brigham City, Utah

Addendum 3

# EXHIBIT 3

STEPHEN R. HADFIELD  
COUNTY ATTORNEY  
KIRK M. MORGAN  
CHIEF DEPUTY  
BRANDON J. MAYNARD  
CHIEF CRIMINAL DEPUTY



JULIE JACOBSEN  
VICTIM SERVICES COORDINATOR  
LOREEN D. HENRY  
OFFICE MANAGER  
JULIA A. WARDLE  
JUVENILE/JUSTICE COURT  
COORDINATOR

OFFICE OF THE COUNTY ATTORNEY

July 12, 2012

7/19/12

National Note of Utah  
1549 West 7800 South  
West Jordan, UT 84088

Re: Delinquent Property Taxes Account #P0000885

Dear Property Owner;

Your overdue personal property tax account with Box Elder County has been assigned to this office for collection. A copy of the most recent notice is enclosed. The taxes on your business personal property were due 7/2/2012.

The County has the authority to seize your business personal property(s) immediately. In addition, the County has the authority to sell your business personal property(s) within 30 days after sending you notice by mail. These measures are authorized by Utah State laws because of the government's interest in maintaining the tax base and funding vital public services like education and law enforcement.

Because of these vital interests, the County is prepared at this time to proceed with seizure as soon as possible. To prevent the start of this process, you are required within ten business days from the date of this letter to call me at (435) 734-3336 to verify that you received a notice of delinquent taxes and that you will pay this by 7/27/2012.

If your payment of \$110.30 plus interest is not received in the County Assessor's office by 7/27/2012, seizure and sale will commence.

Yours truly,

A handwritten signature in cursive script that reads "Stephen R. Hadfield".

Stephen R. Hadfield  
Box Elder County Attorney

Enc.  
cc: County Assessor's Office