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

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

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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.

**NOTICE OF APPRAISAL AND  
REQUEST TO SUBMIT RENEWED  
MOTION TO APPROVE AGREEMENT  
BETWEEN THE RECEIVER AND  
BARCLAY ASSOCIATES LLC**

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, respectfully submits this *Notice of Appraisal and Request to Submit Renewed Motion to Approve Agreement Between the Receiver and Barclay Associates LLC*.

**DISCUSSION**

Prior to the Receiver’s appointment, Barclay Associates LLC (“Barclay”) lent \$3.7 million to Riverbend Estates, LC (“Riverbend”), one of the Receivership Entities. Riverbend

used the loan proceeds towards the purchase price of certain real property located in Middleton, Idaho, referred to as the “Middleton Property.” Barclay’s loan to Riverbend is secured by a recorded Mortgage, Assignment of Rents, and Security Agreement (the “Mortgage”). Riverbend defaulted on its repayment obligations to Barclay and currently owes over \$5 million to Barclay. The Middleton Property, however, is worth far less than this sum. Because Riverbend owes more than what the Middleton Property is worth, the Receiver entered into an agreement with Barclay, subject to this Court’s approval, to convey, without warranty, any interest the Receivership Estate has in the Middleton Property to Barclay.

On April 24, 2013, the Receiver filed a *Motion to Approve Agreement between Receiver and Barclay Associates LLC and Memorandum in Support* [Docket No. 278] and a *Declaration in Support* [Docket No. 279]. A hearing on the Motion was held on June 7, 2013, at which time the Court requested that the Receiver provide it with further information about the basis for the Agreement in question, as well as to clarify that the Receiver was “conveying” the property in question, not abandoning it.

On June 13, 2013, the Receiver filed a *Renewed Motion to Approve Agreement Between the Receiver and Barclay Associates LLC and Memorandum in Support* [Docket No. 339] (the “Motion”). The Receiver also filed a *Declaration in Support* of the Motion [Docket no. 340].

On July 2, 2013, one day prior to the hearing on the Motion, and despite numerous meetings with the Receiver prior to this time related to the Middleton Property, a group self-identified as the National Note Investor Committee (the “Investors”) filed an objection to the Motion [Docket No. 353].<sup>1</sup> The basis for the objection was based in large part on the Investors’ refusal to believe that the Middleton Property has no value for the Receivership Estate. Prior to

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<sup>1</sup> That same day, the Investors filed a Motion to Intervene [Docket No. 352], which the Investors withdrew on August 1, 2013 after it was opposed by the Receiver in a pleading joined by the Securities and Exchange Commission [Docket No. 379].

this time the Receiver had met with representatives of the Investors and their counsel and had had numerous conversations with some of the Investors related to alternatives for the Middleton Property. In these conversations, the Receiver has expressed his opinion regarding the Middleton Property and the lack of equity in that property for the Receivership Estate. Certain of the Investors communicated further with the Receiver and, upon information and belief, independently with Barclay about the Middleton Property. These individuals expressed frustration that a property, touted to be worth \$35 million prior to the Receiver's appointment, had an appraised value of \$1 million. The Receiver indicated to members of the Investor Committee independently and in a meeting attended by their counsel that if they believed that there was profit to be had from the development of the Middleton Property, they should attempt to do that, and that the Receiver would support such an effort. At no time have the Investors brought any alternative deal or workout arrangement to the table.

At the July 3, 2013 hearing, the Court did not grant nor deny the Motion. Instead, the Court instructed the Receiver to obtain a new appraisal of the Middleton Property that took into account relevant facts concerning the Middleton Property and development work supposedly done on that Property.

On July 3, 2013, the Receiver sent a letter (the "Letter") to potential appraisers asking for their services. The Letter asked the appraisers to take into consideration the fact that the "City of Middleton, in conjunction with the Idaho Department of Transportation, plans a significant roadway through a portion of the land". The Letter also provided contact information for individuals who have knowledge about the property, its development potential, and the development work done on the property. A copy of the Letter is attached hereto as **Exhibit A**.

Williams Research, Inc. (the "Appraiser") responded to the Letter and indicated that it

would appraise the Middleton Property. On July 17, 2013, the Receiver filed a *Motion to Appoint Appraiser* [Docket No. 374], asking the Court to approve the Appraiser. On July 18, 2013, the Court entered an Order granting the motion and approving the appraiser [Docket No. 376].

On July 31, 2013, after the Court had entered the Order granting the Motion to Appoint Appraiser, Defendant Wayne Palmer filed a response to the Receiver's Motion to Appoint Appraiser [Docket No. 392] (the "Response"). In the Response, Mr. Palmer indicated his desire to meet with the Receiver to discuss the Middleton Property and the information the Appraiser would need to perform an accurate appraisal. Mr. Palmer also indicated that he was attempting to locate one or more developers willing to submit a higher bid.

On August 15, 2013, the Receiver, the Receiver's counsel, Mr. Palmer, Mr. Palmer's counsel, Lyle Peterson (a claimed representative of the Investors), and counsel for the Investors met to discuss facts relevant to the appraisal and disposition of the Middleton Property. At the meeting, the Receiver again invited any offer from any buyer interested in the Middleton Property who is able to secure the release of the Mortgage. To date, no such offer has been made to the Receiver.

After the August 15, 2013 meeting, Lyle Peterson sent an e-mail (the "E-mail") to the Receiver in which he provided (1) the names of people that the Appraiser could contact for additional information about the Middleton Property; and (2) eighteen factors that the Appraiser should consider in performing the appraisal. A copy of Mr. Peterson's e-mail is attached hereto as **Exhibit B**. The Receiver forwarded the E-mail to the Appraiser that same day.

On August 30, 2013, the Appraiser sent a Summary Appraisal Report (the "Appraisal") to the Receiver. A copy of the Appraisal is attached hereto as **Exhibit C**. In the Appraisal, the

Appraiser details the information he considered, including information about the development potential for the Middleton Property, the Development Agreement with the city of Middleton, the possibility of the roadway through the Middleton Property, and other relevant facts. The Appraiser determined the “As Is” market value of the Middleton Property to be \$1.2 million.

As noted above and explained in the Motion, the principal amount owed Barclay is \$2.5 million more than the Middleton Property is worth and the principal and interest owed to Barclay is nearly \$4 million more than the Middleton Property is worth. Accordingly, the Receiver asks that the Motion be submitted for decision and respectfully renews his request that the Court grant the Motion and approve the Agreement to convey the Middleton Property to Barclay.<sup>2</sup>

RESPECTFULLY SUBMITTED this 11<sup>th</sup> day of September, 2013.

DORSEY & WHITNEY LLP

/s/ Peggy Hunt

Peggy Hunt

Chris Martinez

Jeffrey M. Armington

*Attorneys for Receiver*

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<sup>2</sup> Notwithstanding that Barclay has a valid lien, the Investors have argued that Barclay should not be allowed to take possession of the Middleton Property. In support of this argument the Investors cite to *SEC v. Vescor Capital Corp.*, 599 F.3d 1189, 1195 (10<sup>th</sup> Cir. 2010). *Vescor* rejects the Investors’ argument. In *Vescor*, the Tenth Circuit Court of Appeals agreed that the “general rule of law is that appointment of a receiver does not determine any rights nor destroy any liens.” The Court then explained that while an investor may not foreclose on receivership property, the same restrictions do not apply to an entity, like Barclay, that loans money in an arms-length transaction under terms that are commercially reasonable. *Id.* (explaining that district court did not err by allowing receiver’s relinquishment of property that was encumbered by U.S. Bank’s security interest); *see also SEC v. Madison Real Estate Group, LLC*, 647 F.Supp.2d 1271 (D. Utah 2009) (when the receivership owns property subject to a valid security interest, the receiver can only retain property as long as the corresponding note is paid, otherwise the “Receiver must relinquish the property and allow it to proceed to foreclosure”).

**CERTIFICATE OF SERVICE**

IT IS HEREBY CERTIFIED that service of the above **NOTICE OF APPRAISAL AND REQUEST TO SUBMIT RENEWED MOTION TO APPROVE AGREEMENT BETWEEN RECEIVER AND BARCLAY ASSOCIATES LLC AND MEMORANDUM IN SUPPORT** was filed with the Court on this 11th day of September, 2013, and served via ECF on all parties who have requested notice in this case.

/s/ Heidi Daniels  
Heidi Daniels

Furthermore, I certify that on the 11th day of September, 2013, the **NOTICE OF APPRAISAL AND REQUEST TO SUBMIT RENEWED MOTION TO APPROVE AGREEMENT BETWEEN RECEIVER AND BARCLAY ASSOCIATES LLC AND MEMORANDUM IN SUPPORT** was served on the following parties by U.S. Mail postage prepaid:

Steve Zimmerman  
Barclay Associates, LLC/President  
999 Fifth Ave.  
Suite 250  
San Rafael, CA 94901

/s/ Heidi Daniels

Heidi Daniels