

Peggy Hunt (Utah State Bar No. 6060)  
John J. Wiest (Utah State Bar No. 15767)

**DORSEY & WHITNEY LLP**

Kearns Building  
136 South Main Street, Suite 1000  
Salt Lake City, UT 84101-1685  
Telephone: (801) 933-7360  
Facsimile: (801) 933-7373  
[hunt.peggy@dorsey.com](mailto:hunt.peggy@dorsey.com)  
[wiest.john@dorsey.com](mailto:wiest.john@dorsey.com)

*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.

**RECEIVER'S MOTION FOR COURT  
TO APPOINT APPRAISER FOR  
EXPRESSWAY BUSINESS PARK  
LAND AND MEMORANDUM IN  
SUPPORT**

Civil No. 2:12-00591

The Honorable Bruce S. Jenkins

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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 of record, hereby files this motion (the "Motion"), requesting that the Court appoint Steven Nielsen of Nielsen and Company as an appraiser for certain real property of the Receivership Estate known as the "Expressway Business Park" land (the "Property").

A proposed Order is attached hereto as **Exhibit A**.

**MEMORANDUM IN SUPPORT**

**I.**

**BACKGROUND**

*The Receivership Order*

1. On June 25, 2012, the above-captioned case was commenced by the Securities and Exchange Commission against Defendants National Note of Utah, LC (“NNU”) and 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 (the “Palmer Entities”) (collectively for purposes of this Motion, “NNU”), and all Palmer’s assets were placed 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>

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<sup>1</sup> Docket No. 9 (Receivership Order).

<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).

- “[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>

*Past Efforts to Sell the Property*

3. On May 6, 2016, the Receiver filed a *Motion Requesting Authorization Regarding Method of Disposition of Expressway Business Park Land and Memorandum in Support*<sup>10</sup> (the “Disposition Motion”) asking the Court to authorize the Receiver to dispose of the Property under one of three proposed plans.

4. The Court held a hearing on the Disposition Motion on June 8, 2016, at which the Court instructed the Receiver to obtain additional information about the Property and file a supplemental submission with the findings. The Receiver did so and filed a *Supplement*<sup>11</sup> to the Disposition Motion (the “Supplement”) on August 16, 2016.

5. On February 27, 2017, the Court held a second hearing on the Disposition Motion

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<sup>6</sup> *Id.* at ¶ 19.

<sup>7</sup> *Id.* at ¶ 37.

<sup>8</sup> *Id.* at ¶ 38.

<sup>9</sup> *Id.* at ¶ 39.

<sup>10</sup> Docket No. 1131

<sup>11</sup> Docket No. 1189

at which the Court denied the Disposition Motion, instructed the Receiver the continue marketing the Property and investigate other issues, and granted leave for the Receiver to file an amended motion.<sup>12</sup>

*Appointment of an Appraiser*

6. To comply with the Court’s instructions and to assist him in marketing the Property, the Receiver has looked for an appraiser to provide him an updated appraisal of the Property. The Receiver received a bid to appraise the Property for \$3,500.00 from Steven Nielsen (“Nielsen”) of Nielsen and Company.

7. Nielsen is an experienced appraiser who has appraised a number of other Receivership Estate properties. Attached hereto as **Exhibit B** is a true and correct copy of information pertaining to Nielsen’s qualifications and his Utah Certified General Appraiser license.

8. As the Court is aware, the Property has some specific issues—possible wetlands determination, remediation of buried waste—which have complicated the Receiver’s efforts to sell the Property. Nielsen has informed the Receiver that he is aware of a number of comparable properties with the same issues that will aid him in his appraisal.

9. If appointed, as part of his appraisal, Nielsen will sign an Appraiser’s Certification affirming that he is not biased, has not based his appraisal on a predetermined value, and has no present or prospective interest in the Property. Further, if this Motion is granted, the Receiver will notify Nielsen of his appointment by the Court.

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<sup>12</sup> See Docket No. 1266 (Order denying Disposition Motion).

**II.**

**ARGUMENT**

The Receivership Order vests the Receiver with authority to sell the Property upon order of the Court. Pursuant to 28 U.S.C. § 2001(b), prior to confirmation of any private sale of real property, this Court shall appoint three disinterested persons to appraise the Property. The Receiver asks that the Court appoint Nielsen as a Court-appointed appraiser of the Property. Nielsen is a certified appraiser and is disinterested in the sale of the Property. Nielsen's appraisal will assist the Trustee in appropriately marketing the Property to secure the best possible sale of the Property for the benefit of the Receivership Estate.

**III.**

**CONCLUSION**

Accordingly, for the reasons set forth herein, the Receiver requests that the Court grant this Motion and enter the Order attached hereto as Exhibit A.

DATED this 20th day of April, 2017.

**DORSEY & WHITNEY, LLP**

*/s/ Peggy Hunt*

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Peggy Hunt

John Wiest

*Attorneys for Receiver*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 20th day of April, 2017, the foregoing **RECEIVER'S MOTION FOR COURT TO APPOINT APPRAISER FOR EXPRESSWAY BUSINESS PARK LAND AND MEMORANDUM IN SUPPORT** was filed with the Court and served via ECF on all parties who have requested notice in this case.

*/s/ John J. Wiest*

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