

Peggy Hunt (Utah State Bar No. 6060)
Megan K. Baker (Utah State Bar No. 15086)
DORSEY & WHITNEY LLP
111 South Main Street, 21st Floor
Salt Lake City, UT 84111
Telephone: (801) 933-7360
Facsimile: (801) 933-7373
hunt.peggy@dorsey.com
baker.megan@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, an individual,</p> <p style="text-align: right;">Defendants.</p>	<p style="text-align: center;">RECEIVER’S MOTION SEEKING APPROVAL OF SETTLEMENT AGREEMENTS RELATING TO LIENS ON OVERLAND TRAILS PROPERTY AND MEMORANDUM IN SUPPORT</p> <p style="text-align: center;">(H. Coleman Scheuller, Brett and MaryAnn Falk Family Trust, Lynden Kit Wilson, David L. Flynn, and Jacob P. Martin)</p> <p style="text-align: center;">2:12-cv-00591 BSJ</p> <p style="text-align: center;">The Honorable Bruce S. Jenkins</p>
---	--

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 the *Order Appointing Receiver and Staying Litigation* entered by this Court in this case, respectfully requests that the Court enter the proposed Order, attached hereto as **Exhibit A**, approving the below-described Settlement Agreements and Releases entered into by the Receiver. This Motion is supported by the *Memorandum of Law* contained herein and the

Declaration of R. Wayne Klein, Receiver, filed concurrently herewith (the “Receiver Declaration”).

MEMORANDUM OF SUPPORT

I.

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 (“National Note”) 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”).¹ Pursuant to the Receivership Order, the Receiver was appointed, and National Note, and forty-one of its affiliated companies (the “Palmer Entities” and collectively with National Note for purposes of this Motion, “National Note”), and all Palmer’s assets were placed in the Receiver’s control.²

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 . . . [.]”³
- “[T]ake custody, control and possession of all Receivership Property and records. . . [.]”⁴

¹ Docket No. 9 (Receivership Order).

² *See generally, id.*

³ *Id.* at ¶ 7(A).

⁴ *Id.* at ¶ 7(B).

- “[M]anage, control, operate and maintain the Receivership Estates and hold in his possession, custody and control all Receivership Property, pending further Order of this Court[.]”⁵
- “[U]se Receivership Property for the benefit of the Receivership Estates, making payments and disbursements and incurring expenses as may be necessary or advisable in the ordinary course of business in discharging his duties as Receiver[.]”⁶
- “[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.”⁷
- “[P]ursue, resist and defend all suits, actions, claims and demands which may now be pending or which may be brought by or asserted against the Receivership Estates[.]”⁸

II.

THE SETTLEMENT AGREEMENTS AND RELEASES

Overland Trails Property

3. The Receivership Estate includes a 12.24-acre parcel of unimproved land located in Eagle Mountain, Utah, known as Overland Trails (“Overland Trails” or the “Property”).⁹

4. After consulting with a real estate broker having substantial experience in the Eagle Mountain area, the Receiver listed the Property for sale in August 2013 at a price of \$260,000.¹⁰

⁵ *Id.* at ¶ 7(C).

⁶ *Id.* at ¶ 7(D).

⁷ *Id.* at ¶ 37.

⁸ *Id.* at ¶ 7(J).

⁹ Receiver Declaration ¶ 3.

¹⁰ Receiver Declaration ¶ 4.

5. Because the Receiver had not obtained any reasonable offers to purchase the Property between the listing date and the end of 2015, the Receiver obtained an appraisal of the Property. An appraisal by Nielsen and Company, dated February 4, 2016, appraised the Property at a higher value, \$340,000.¹¹

6. To date, the Receiver has not received any offers on the Property at or near the listing price.¹²

Liens on the Property

7. Prior to the Receiver's appointment, certain liens, in the form of deeds of trust, were recorded on the Property in favor of certain National Note investors (collectively, the "Trust Deed Lienholders") as follows:

Name	Amount	Date Recorded
H. Coleman Scheuller	\$95,000.00	4/7/06
Chad A. Timms	\$20,400.00	12/14/06
Brett & MaryAnn Fam. Trust	\$44,271.67	2/9/07
Lynden K. Wilson	\$16,000.00	4/6/07
David L. Flynn	\$44,000.00	6/27/07
Shauna R. Palmer	\$20,000.00	8/20/07
Jacob P. Martin	\$7,000.00	10/4/07
Total	\$246,671.67	

8. In addition, as of December 31, 2017, there were approximately \$25,386 in unpaid property taxes on the Property.

¹¹ Receiver Declaration ¶¶ 5-6.

¹² Receiver Declaration ¶ 7.

9. Including the trust deed liens and unpaid property taxes, the total liens on the property exceed \$273,000. The Receiver estimates that the Property would need to sell for more than \$300,000.00 in order for the Receivership Estate to realize any equity in the Property after payment of the trust deed liens, taxes, and costs of sale.¹³

10. However, to date, the Receiver has not received any acceptable offers on the Property.

Negotiations for Lien Releases

11. In light of the continuing lack of offers to purchase the Property at a price that would provide equity for the Receivership Estate, the Receiver concluded that unless interests against the Property were released for amounts significantly below their face amounts, the Receiver would recommend that the Property be abandoned as lacking net value for the Receivership Estate.¹⁴

12. Before recommending abandonment, the Receiver sought to negotiate settlements with the Trust Deed Lienholders, to determine whether the liens could be released for amounts sufficient to likely create equity for the Receivership Estate.¹⁵

13. The Receiver has now negotiated settlement agreements with all of the Trust Deed Lienholders to obtain releases of the liens at amounts discounted from the face amounts of the trust deeds. The negotiated amounts vary for each releasing Trust Deed Lienholder depending on several factors, including the respective priorities of the liens, the amount of each Lienholder's net

¹³ Receiver Declaration ¶¶ 8-9.

¹⁴ Receiver Declaration ¶ 10.

¹⁵ Receiver Declaration ¶ 11.

principal investment lost in the investment scheme, the amounts of each Lienholder's investment made contemporaneously with the granting of the lien, and expected litigation costs to contest the validity of each of the liens.¹⁶

14. Each Settlement Agreement and Release (a) has been negotiated at arm's length and in good faith by the Receiver and the respective parties, (b) will avoid the expense, delay and inherent risks of possible litigation over the validity and amount of the lien, and (c) will result in the release of liens that are expected to result in the Property having equity for the benefit of the Receivership Estate, as well as the release of any other claims the lienholders might otherwise assert against Receivership assets.¹⁷

Settlement Agreements

15. The Settlement Agreements and Releases that are the subject of the present Motion, are described as follows:

a. Coleman Scheuller ("Scheuller"): Scheuller has a first position trust deed against the Property in the amount of \$95,000 that was recorded on April 7, 2006. Scheuller invested a total of \$340,000 with National Note. He received \$179,540.27 in distributions, resulting in a net principal investment amount of \$160,459.73. In addition to the Overland Trails trust deed, Scheuller was given Assignments of Beneficial Interest on Expressway Business Park in the amount of \$60,000 and the Fairfield property in amounts totaling \$65,000, which were subsequently invalidated by a default judgment entered against Scheuller on February 20, 2015. On January 4, 2018, the Receiver entered into a Settlement Agreement and Release with Coleman,

¹⁶ Receiver Declaration ¶ 12.

¹⁷ Receiver Declaration ¶ 13.

subject to Court approval. Under the Agreement, the Receiver has agreed to pay Scheuller \$80,000. For his part, Scheuller has assigned to the Receiver his trust deed in the Property and released all claims he has or might have against the Receivership Estate. This settlement represents payment to Scheuller of less than 50% of his net principal investment losses.

b. Chad A. Timms (“Timms”): Timms has a second position trust deed against the Property in the amount of \$22,400 which was recorded on December 14, 2006. Timms invested \$29,600 with National Note. He received \$30,659.07 in distributions, resulting in a net principal overpayment of \$1,059.07. When Timms withdrew his investment and interest from National Note, National Note failed to obtain and record a release of the trust deed. On April 27, 2018, the Receiver entered into a Settlement Agreement and Release with Timms, pursuant to which the Receiver has agreed to pay Timms \$1,000 for a release of the trust deed recorded in his favor. Timms also released all claims he has or might have against Receivership Estate.

c. Brett and MaryAnn Falk Family Trust (“Falk”): Falk has a third position trust deed against the Property in the amount of \$44,271.67 which was recorded on February 9, 2007. Falk invested a total of \$132,942.40 with National Note, and received \$61,427.33 in distributions, resulting in a net principal investment amount of \$71,515.07. Falk initially filed two claims in connection with the claims process, but withdrew the claims based on a decision to rely on the trust deed in the Property rather than participating in the claims process. The Receiver asserted that the trust deed could be enforced only for a maximum of \$9,000 because that was the amount that Falk actually invested contemporaneously with the granting of the lien. On April 17, 2018, the Receiver entered into a Settlement Agreement and Release with Falk, subject to Court approval. Under the Agreement, the Receiver will pay Falk \$9,000. For its part, Falk has assigned

to the Receiver its trust deed in the Property and released all claims it has or might have against Receivership assets or recoveries. This settlement represents payment to Falk of approximately 13% of its net principal investment losses.

d. Lynden Kit Wilson (“Wilson”): Wilson has a fourth position trust deed against the Property in the amount of \$16,000, which was recorded on April 7, 2007. Wilson invested a total of \$19,368.48 with National Note, and received no distributions. Wilson initially filed a claim in connection with the claims process, but withdrew the claim based on a decision to rely on the trust deed in the Property rather than participating in the claims process. On May 1, 2018, the Receiver entered into a Settlement Agreement and Release with Wilson, subject to Court approval. Under the Agreement, the Receiver has agreed to pay Wilson \$6,400. For his part, Wilson has assigned to the Receiver his trust deed in the Property and released all claims he has or might have against Receivership Estate. This settlement represents payment to Wilson of approximately 33% of his net principal investment losses.

e. David L. Flynn (“Flynn”): Flynn has a fifth position trust deed against the Property in the amount of \$44,000 which was recorded on June 27, 2007. Flynn invested a total of \$134,500 with National Note, and he received \$37,814.26 in distributions, resulting in a net principal investment amount of \$96,685.74. Flynn initially filed a claim in connection with the claims process, but withdrew the claim based on a decision to rely on the trust deed in the Property rather than participating in the claims process. On April 10, 2018, the Receiver entered into a Settlement Agreement and Release with Flynn, subject to Court approval. Under the Agreement, the Receiver has agreed to pay Wilson \$11,000. For his part, Flynn has assigned to the Receiver his trust deed in the Property and released all claims he has or might have against Receivership

Estate. This settlement represents payment to Flynn of approximately 12% of his net principal investment losses.

f. Shauna R. Palmer (“S. Palmer”): The sixth position trust deed against the Property was held by S. Palmer. S. Palmer was an overpaid investor and assigned her trust deed to the Receiver on April 7, 2014 pursuant to a settlement agreement approved by the Court on June 16, 2014.¹⁸

g. Jacob P. Martin (“Martin”): Martin has a seventh position trust deed against the Property in the amount of \$7,000 which was recorded on October 4, 2007. Martin invested a total of \$6,714.19 with National Note, he received \$2,153.14 in distributions, resulting in a net principal investment amount of \$4,561.05. On May 10, 2018, the Receiver entered into a Settlement Agreement and Release with Martin, subject to Court approval. Under the Agreement, the Receiver has agreed to pay Martin \$2,500. For his part, Martin has assigned to the Receiver his trust deed in the Property and released all claims he has or might have against Receivership Estate. This settlement represents payment to Martin of approximately 55% of his net principal investment losses. The Receiver has also agreed to make a contingent payment of \$2,100 to Martin if he brings to the Receiver a buyer for the Property or the Elkhorn Ridge property.

III.

APPLICABLE LAW AND ANALYSIS

16. The Receiver requests that the Court approve the above-described Settlement Agreements and Releases. In support hereof, the Receiver provides the following analysis.

¹⁸ Docket No. 673.

17. 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.”¹⁹

18. “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.”²⁰ The Tenth Circuit has explained:

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.²¹

19. Here, each Settlement Agreement and Release is fair, reasonable and adequate for at least the following reasons: (a) they were fairly and honestly negotiated at arm’s length and in good faith by the parties; (b) they represent substantial discounts from the face value of the recorded lien interests; (c) they avoid the prospect of litigation over the validity and value of these liens against the Property; (d) the amounts are fair to the Trust Deed Lienholders inasmuch as the Lienholders will receive more than they would have received in the claims process, but also fair to the Receivership Estate inasmuch as the Receivership Estate will pay less than the amount of

¹⁹ *Sec. & Exch. Comm’n v. Credit Bankcorp, Ltd.*, No. 99 CIV. 11395, 2001 WL 1658200, at *2 (S.D.N.Y. Dec. 27, 2001) (quoting 3 Ralph Ewing Clark, *A Treatise on the Law and Practice of Receivers*, § 770 (3d Ed. 1959)).

²⁰ *Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir. 1977); *see also Jones v. Nuclear Pharmacy, Inc.*, 741 F.2d 322, 324 (10th Cir. 1984).

²¹ *Jones*, 741 F.2d at 324.

the recorded liens; and (e) the Receivership Estate will be much more likely to have significant equity in the Property.²²

20. The Settlement Agreements will result in the following payments by the Receivership Estate:

Lienholder	Payment Amount
Coleman Scheuller	\$80,000.00
Chad Timms	\$1,000.00
Brett and MaryAnn Falk Fam. Trust	\$9,000.00
Lynden Kit Wilson	\$6,400.00
David L. Flynn	\$11,000.00
Jacob P. Martin	\$2,500.00
Total	\$109,900.00

21. In exchange, the Receiver will eliminate the liens against the Property in the amount of \$246,671.67.

22. The \$109,900 required to clear the trust deed liens would become the cost basis of the Receivership Estate in this Property, reducing the current cost basis by \$136,771.67. With accrued property taxes and interest of approximately \$25,386,²³ the Receivership Estate's cost basis would be approximately \$134,300. The Receiver believes that, given this reduction in cost basis, and including the costs of sale, any sales price in excess of approximately \$155,000 would represent net amounts available for the Receivership Estate.²⁴

23. While there are no assurances that the Property will sell for more than \$155,000, the Receiver believes—after consultation with the real estate broker who is marketing the

²² Receiver Declaration ¶ 14.

²³ This amount is as of December 31, 2018. Property taxes are approximately \$2,300.00 annually.

²⁴ Receiver Declaration ¶ 15.

Property—that the Property likely will sell for an amount significantly greater than \$155,000. The ultimate selling price of the Property will be influenced by the Receiver’s success in obtaining an easement across adjacent property in order to connect to municipal sewer lines. If such an easement is obtained, the marketability and value of the Property will be expected to increase.²⁵

24. The Receivership Estate is assuming risk with this proposal. The risk is that the Property will not sell for greater than \$155,000. The Receivership Estate’s assumption of this risk is part of the reason the Receiver has been able to negotiate significant discounts from the Trust Deed Lienholders in exchange for the assignments of their trust deeds.

25. Each of the Settlement Agreements, which were all negotiated in good faith and at arms’ length, are beneficial to the Receivership Estate. There has been no collusion between the parties.²⁶

26. In light of these factors, the Receiver believes each Settlement Agreement and Release is just, fair and beneficial to the Receivership Estate. Accordingly, the Settlement Agreements and Releases should be approved.²⁷

IV.

CONCLUSION

Accordingly, for the reasons set forth herein, the Receiver requests that the Court enter the proposed Order attached hereto as Exhibit A, approving each Settlement Agreements and Releases described above.

²⁵ Receiver Declaration ¶ 16.

²⁶ Receiver Declaration ¶ 17.

²⁷ Receiver Declaration ¶ 18.

DATED this 15th day of May, 2018.

DORSEY & WHITNEY LLP

/s/ Peggy Hunt

Peggy Hunt

Megan K. Baker

Attorneys for Receiver

CERTIFICATE OF SERVICE

I hereby certify that the above **RECEIVER'S MOTION SEEKING APPROVAL OF SETTLEMENT AGREEMENTS AND MEMORANDUM IN SUPPORT** (the "Motion") was filed with the Court on this 15th day of May, 2018, and served via ECF on all parties who have requested notice in this case.

Furthermore, I certify that on the 15th day of May, 2018, the Motion was served on the following parties by electronic mail or US Mail:

Coleman Scheuller
cscheuller@gmail.com

Chad A. Timms
chadatimms@gmail.com

Brett and MaryAnn Falk Family Trust
Makaleka96@comcast.net

Lynden Kit Wilson
Vectorking55@att.net.

David L. Flynn
Davidflynn2000@yahoo.com

Jacob P. Martin
jacob@greenpoweredolutions.com

/s/ Candy Long

EXHIBIT A

Prepared and Submitted By:

Peggy Hunt (Utah State Bar No. 6060)
Megan K. Baker (Utah State Bar No. 15086)
DORSEY & WHITNEY LLP
111 South Main Street, 21st Floor
Salt Lake City, UT 84111
Telephone: (801) 933-7360
Facsimile: (801) 933-7373
Email: hunt.peggy@dorsey.com
baker.megan@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, an individual,</p> <p style="text-align: right;">Defendants.</p>	<p>ORDER GRANTING RECEIVER'S MOTION SEEKING APPROVAL OF SETTLEMENT AGREEMENTS RELATING TO LIENS ON OVERLAND TRAILS PROPERTY</p> <p style="text-align: center;">2:12-cv-00591 BSJ</p> <p style="text-align: center;">The Honorable Bruce S. Jenkins</p>
---	---

The matter before the Court is the *Receiver's Motion Seeking Approval of Settlement Agreements Relating to Liens on Overland Trails Property and Memorandum in Support* (the "Motion") filed by R. Wayne Klein, the Court-Appointed Receiver (the "Receiver") in the above

captioned case. The Court has reviewed the Motion, the *Declaration of R. Wayne Klein, Receiver* (the "Receiver Declaration") in support of the Motion, the record in this case, and applicable law. Based thereon, and for good cause appearing,

IT IS HEREBY ORDERED that:

- (1) The Motion is **GRANTED**; and
- (2) The Settlement Agreements and Releases relating to the liens on the Overland Trails Property, as set forth in the Motion, are **APPROVED**.

DATED this _____ day of May, 2018

BY THE COURT:

The Honorable Bruce S. Jenkins
United States District Court