

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

**DORSEY & WHITNEY LLP**  
111 South Main Street, 21st Floor  
Salt Lake City, UT 84111-2176  
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  
REQUESTING ORDER APPROVING  
SALE OF ELKHORN LOTS 9 & 10  
FREE AND CLEAR OF INTERESTS  
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 and pursuant to 28 U.S.C. §§ 2001(b) and the *Order Appointing Receiver and Staying Litigation* entered by this court in this case, hereby files this “Motion” and respectfully requests that the Court authorize him to sell certain real property of the Receivership Estate, described more fully and defined in the Memorandum in Support as the “Property.”

This Motion is supported by the Declaration of Receiver R. Wayne Klein (the “Receiver Declaration”), which has been filed concurrently herewith. A proposed “Order” is submitted herewith and attached hereto as **Exhibit A**.

**MEMORANDUM IN SUPPORT**

**I.**

**FACTUAL BACKGROUND**

1. On June 25, 2012, the above-captioned case was commenced by the Securities and Exchange Commission (the “SEC”) 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).

<sup>6</sup> *Id.* at ¶ 19.

- “[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>

## II.

### **REAL PROPERTY TO BE SOLD**

#### **Elkhorn Lot 9 & 10**

3. Since his appointment, the Receiver has identified numerous real properties as being part of the Receivership Estate, and where appropriate has listed such properties for sale.<sup>10</sup>

4. Relevant to this Motion are two 2.5-acre parcels of real property identified as Lots 9 and 10 in the Elkhorn Ridge Estates subdivision in Malad, Oneida County, Idaho, with tax parcel numbers RP0281915 and RP0281916 (the “Property”).

5. The Receiver obtained a Title Report for the Property, a copy of which is attached to the Receiver Declaration as Exhibit A (the “Title Report”).<sup>11</sup> According to the Title Report,

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<sup>7</sup> *Id.* at ¶ 37.

<sup>8</sup> *Id.* at ¶ 38.

<sup>9</sup> *Id.* at ¶ 39.

<sup>10</sup> Receiver Declaration ¶ 5.

<sup>11</sup> *Id.* at ¶ 6.

the Property is titled in the name of Elkhorn Ridge, LLC, which is one of the Palmer Entities.

### **Marketing the Property**

6. On or about October 10, 2012, the Receiver caused the Property (along with other lots in the Elkhorn Ridge Estates subdivision) to be listed for sale through Idaho Real Estate Group (the “Realtor”). On or about October 11, 2017, the Receiver executed an Addendum to the “Listing Agreement” with the Realtor.<sup>12</sup> A copy of the Listing Agreement with addenda is attached to the Receiver Declaration as Exhibit B.

7. The Receiver marketed the Property for sale through the Realtor, including by listing the Property on the Multiple Listing Service.<sup>13</sup>

### **Court-Appointed Appraisers and Valuation**

8. To determine an offering price and comply with his duties, the Receiver obtained the opinion of his Realtor and three court-appointed appraisers.<sup>14</sup>

9. On December 4, 2013, the Court entered an *Order* appointing Jordan Jensen (“Jensen”) and Angela Bair (“Bair”) as appraisers for the Elkhorn Ridge Estates properties.<sup>15</sup>

10. On April 1, 2014, the Court entered an *Order* appointing Allen E. Burris (“Burris”) as an appraiser for Elkhorn Ridge Estates properties.<sup>16</sup>

11. Consequently, Jensen, Bair, and Burris (collectively, the “Appraisers”) provided the Receiver with appraisals of the Property. True and correct copies of the “Jensen Appraisal,” the “Bair Appraisal,” and the “Burris Appraisal” (collectively, the “Appraisals”) are attached to

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<sup>12</sup> *Id.* at ¶ 7.

<sup>13</sup> *Id.* at ¶ 8.

<sup>14</sup> *Id.* at ¶ 9.

<sup>15</sup> Docket No. 550.

<sup>16</sup> Docket No. 626.

the Receiver Declaration as Exhibits C, D, and E, respectively.<sup>17</sup>

12. Jensen appraised Lots 9 and 10 at \$33,000.00 each, for a total appraised value of \$66,000.00 for the Property.<sup>18</sup>

13. Bair appraised all 2.5 acre lots in the Elkhorn Ridge Estates subdivision, including the Lots 9 and 10, at \$23,000.00, for a total appraised value of \$50,000.00 for the Property.<sup>19</sup>

14. Burris appraised all 2.5 acre lots in the Elkhorn Ridge Estates subdivision, including Lots 9 and 10, at \$33,000.00, for a total appraised value of \$66,000.00 for Property.<sup>20</sup>

15. The average appraised value of the Property is \$60,666.67.

### **The Purchase Agreement**

16. The Receiver has entered into a "Purchase Agreement" to sell the Property. On or about July 6, 2018, the Receiver entered into an agreement on behalf of the Receivership Estate to sell the Property to Woodrow S. and Kristi J. Barnett (the "Buyers") for \$44,000.00, subject to (i) Court approval and (ii) the Buyers obtaining a conventional home loan to finance the purchase of the Property. A true and correct copy of the Purchase Agreement is attached to the Receiver Declaration as Exhibit F.<sup>21</sup>

17. The Purchase Agreement was negotiated by the Receiver and the Buyers in good faith and at arms' length.<sup>22</sup>

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<sup>17</sup> Receiver Declaration ¶ 10.

<sup>18</sup> *Id.* at Exh. C (Jensen Appraisal).

<sup>19</sup> *Id.* at Exh. D (Bair Appraisal).

<sup>20</sup> *Id.* at Exh. E (Burris Appraisal).

<sup>21</sup> *Id.* at ¶ 11.

<sup>22</sup> *Id.* at ¶ 12.

**Sale Costs and Net Sale Proceeds**

18. The Receiver anticipates paying at the time of the closing of the sale of the Property outstanding Property taxes and the ordinary costs of sale, including market-rate closing costs and a standard 10.00% realtor commission. The gross sale proceeds, less the costs of sale, taxes, and commission are referred to herein as the “Net Sale Proceeds.”<sup>23</sup>

19. Any other financial interests against the Property (to the extent they exist and without any waiver of the Receiver’s or the Receivership Estate’s rights and defenses related thereto) will survive the sale and will attach to the Net Sale Proceeds.<sup>24</sup>

20. The Receiver will separately account to the Court for the Net Sale Proceeds pending resolution of any disputes related to interests that may exist against the Property.<sup>25</sup>

**Free and Clear Sale**

21. The Receiver proposes to sell the Property free and clear of all interests therein, with any interests that may exist attaching to the Net Sale Proceeds. In so doing, the Receiver is not in any way waiving any rights, claims, interests or defenses to any claims or interests made against the Property or the Net Sale Proceeds.<sup>26</sup>

22. To determine interests, if any, against the Property, the Receiver obtained the Title Report and a tax notice for the Property from Oneida County (the “Tax Notice”). A true and correct copy of the Tax Notice is attached to the Receiver Declaration as Exhibit G.<sup>27</sup>

23. From the Title Report and the Tax Notice, the Receiver determined that property

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<sup>23</sup> *Id.* at ¶ 13.

<sup>24</sup> *Id.* at ¶ 14.

<sup>25</sup> *Id.* at ¶ 15.

<sup>26</sup> *Id.* at ¶ 16.

<sup>27</sup> *Id.* at ¶¶ 6 and 17.

taxes for the Property are current, and that no other liens or interests attach to the Property. The Title Report lists assignments of beneficial interest of deed of trust (“ABIs”) to Barry and Rachanee Gordon on both Lots 9 and 10, but the ABIs were released to the Receivership Estate on October 10, 2014, and no longer attach to the Property.<sup>28</sup>

24. Any other financial interests against the Property, other than closing costs, will not be paid at the time of closing of the sale. Rather, any such interests (to the extent they exist and without any waiver of the Receiver’s or the Receivership Estate’s right and defenses related thereto) will survive the sale and will attach to the Net Sale Proceeds.<sup>29</sup>

25. A copy of this Motion is being served on the relevant taxing authority.<sup>30</sup>

**Best Interests**

26. The Receiver believes that the sale of the Property as proposed is beneficial for and in the best interests of the Receivership Estate.<sup>31</sup>

27. The proposed sale will result in cash based on the fair market value of the Property. The purchase price for the Property is 72.5% of the average appraised value of the Property.<sup>32</sup>

28. The sale of the Property at this time will also reduce slightly the burden to the Receivership Estate by reducing time spent by the Receiver in managing and marketing the Property and, more importantly, will maximize the value of the Property by ending tax and

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<sup>28</sup> *Id.* at ¶ 18, Exh. A (Title Report), and Exh. G (Tax Notice).

<sup>29</sup> *Id.* at ¶ 19.

<sup>30</sup> *Id.* at ¶ 20.

<sup>31</sup> *Id.* at ¶ 21.

<sup>32</sup> *Id.* at ¶ 22.

maintenance obligations associated with them.<sup>33</sup>

29. The sale to the Buyers proposed herein is subject to higher and better offers, after publication notice as provided for below.<sup>34</sup>

**Publication Notice**

30. Contemporaneously herewith the Receiver is filing his *Ex Parte Motion Seeking Approval of Proposed Method and Form of Publication Notice for Sale of Real Property and Memorandum in Support (Elkhorn Lots 9 & 10)* (the “Publication Motion”), seeking the Court’s approval of the method and form of proposed publication notice as required under 28 U.S.C. § 2001(b).<sup>35</sup>

31. Upon entry of an Order granting the Publication Motion, the Receiver shall publish notice of the sale in newspapers in Salt Lake City, Utah, and Malad, Oneida County, Idaho, using the method and form of notice approved by the Court.<sup>36</sup>

32. In the event that the Receiver receives and accepts a qualifying higher and better offer, he proposes that this Motion and any Order authorizing this proposed sale be deemed to apply to the higher and better offeror without further notice or hearing inasmuch as the sale will be appropriate for the reasons set forth below. In such event, the Receiver will file a notice of sale disclosing the sale to the higher and better offeror.<sup>37</sup>

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<sup>33</sup> *Id.* at ¶ 23.

<sup>34</sup> *Id.* at ¶ 24.

<sup>35</sup> *Id.* at ¶ 25.

<sup>36</sup> *Id.* at ¶ 26.

<sup>37</sup> *Id.* at ¶ 27.



**III.**  
**ARGUMENT**

33. Based on the facts above, the Receiver respectfully requests authorization to sell the Property pursuant to the terms of the Purchase Agreement free and clear of liens and interests, with any such interests, to the extent that they exist, attaching to the Net Sale Proceeds held by the Receiver pending resolution of any disputes related thereto. The sale of the Property as proposed is within the scope of the Receiver's authority under the Receivership Order as quoted above and 28 U.S.C. § 2001(b), it is in the best interests of the Receivership Estate, and the sale serves the purposes of the receivership by providing a "realization of the true and proper value" of the Property.<sup>38</sup>

**Sale of the Property as Proposed is Beneficial to the Receivership Estate**

34. Section 2001(b) of title 28 of the United States Code provides that the Court may authorize the sale of real Property through private sale if such sale is in the "best interests" of the Receivership Estate. Furthermore, the Receivership Order authorizes the Receiver, subject to Court approval, to sell Property of the Receivership Estate "with due regard to the realization of the true and proper value of such Receivership Property."<sup>39</sup> Sale of the Property as proposed herein is in the best interests of the Receivership Estate for several reasons, including at least the following.

35. *First*, the sale will result in cash for the Receivership Estate based on the fair market value of the Property. Based on the Appraisals, the Property will be sold for 72.5% of its average appraised value.

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<sup>38</sup> Receivership Order ¶ 38.

<sup>39</sup> *Id.*

36. *Second*, the sale of the Property at this time as proposed will reduce, albeit slightly, the burden on the Receivership Estate and maximize the value of the Property. The Receiver will no longer have to spend time managing or marketing the Property, and the Receivership Estate will no longer have obligations related to paying taxes on and other maintenance and upkeep expenses related to the Property. Accordingly, the Receiver requests that the Court approve this sale under the terms outlined herein.

**Request to Sell Elkhorn Lot 22 Free and Clear of Interests**

37. As discussed above, the Receiver proposes to sell the Property free and clear of any interests, with any such interests attaching to the Net Sale Proceeds. The Court may order such a sale so long as parties with interests against the Property are given proper notice.

38. The Receiver will serve a copy of the Motion on the relevant taxing authority.<sup>40</sup>

**Compliance With 28 U.S.C § 2001**

39. The Receivership Order provides that the Court may require that the proposed sale of real property satisfy 28 U.S.C. § 2001.<sup>41</sup> Subsection (b) of § 2001 permits, with Court approval, a private sale of receivership property as proposed herein, but it conditions such sale on (1) obtaining a purchase price that is no less than two-thirds of the appraised value of the property; (2) appointing “three disinterested persons to appraise such property or different groups of three appraisers each to appraise property of different classes or situated in different localities[;]” (3) publication notice of the sale “at least ten days before confirmation[;]” and (4) cancellation of the sale “if a bona fide offer is made, under conditions prescribed by the court,

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<sup>40</sup> Receiver Declaration ¶ 20.

<sup>41</sup> Receivership Order ¶ 39.

which guarantees at least a 10 per centum increase over the price offered in the private sale.”<sup>42</sup>

Here, the Receiver has complied with each of these factors.

40. Specifically, factor (1) is met in this case inasmuch as the purchase price for the Property is 72.5% of the average appraised value, and therefore exceeds the 2/3 requirement.

41. Factor (2) is met because the Receiver has obtained appraisals from three experienced, third-party appraisers who were appointed by this Court, and the Receiver has provided the Court with the appraisals.

42. Factor (3) will be met as the Receiver will publish notice of the proposed sale immediately upon the Court’s entry of an Order approving the method and form of such notice as requested in the Publication Motion filed concurrently herewith.

43. Factor (4) also has been met, inasmuch as the Receiver understands that the sale will not be approved if he receives a higher and better offer that is in compliance with § 2001(b) as quoted above and the sale is conditioned on this factor.<sup>43</sup> In the event that the Receiver receives and accepts a higher and better offer, he proposes that this Motion and any Order authorizing this proposed sale be deemed to apply to the higher and better offeror without further notice or hearing inasmuch as the sale will be appropriate for the reasons set forth below. In such event, the Receiver will file a notice of sale disclosing the sale to the higher and better offeror.

### **CONCLUSION**

Accordingly, for the reasons set forth herein, the Receiver requests that the Court enter the proposed Order attached hereto as **Exhibit A**, thus authorizing the sale of the Property free

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<sup>42</sup> 28 U.S.C. § 2001(b).

<sup>43</sup> Receiver Declaration ¶ 24.

and clear of interests pursuant to the Purchase Agreements or to a higher and better offeror free and clear of purported interests.

DATED this 18th day of July, 2018.

**DORSEY & WHITNEY, LLP**

*/s/ Peggy Hunt*

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Peggy Hunt

John J. Wiest

*Attorneys for Receiver*

**CERTIFICATE OF SERVICE**

I hereby certify that on July 18, 2018, a true and correct copy of the foregoing was filed with the Court and served via ECF on all parties who have requested notice in this case.

\_\_\_\_\_  
*/s/ John J. Wiest*

I hereby certify that on July 18, 2018, a true and correct copy of the foregoing was served upon the persons named below, at the addresses set out below by U.S. mail:

Oneida County Tax Collector  
10 Court Street  
Malad, ID 83252

\_\_\_\_\_  
*/s/ Erin Johnson*