

Peggy Hunt (Utah State Bar No. 6060)
Chris Martinez (Utah State Bar No. 11152)
Tyson C. Horrocks (Utah State Bar No. 12557)

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

martinez.chris@dorsey.com

horrocks.tyson@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>RECEIVER’S MOTION SEEKING AUTHORIZATION TO SELL MANHATTAN GRILLE CONDO FREE AND CLEAR OF PURPORTED INTERESTS AND MEMORANDUM IN SUPPORT</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”) of National Note of Utah, LC, its subsidiaries and affiliates, and the assets of Wayne LaMar Palmer, by and through his counsel, hereby files this Motion and Memorandum in Support (collectively, the “Motion”), and respectfully requests that the Court enter the proposed Order submitted herewith and attached hereto as **Exhibit A** authorizing him to sell Unit 206 of Manhattan Grille Condominium

located in Manhattan, Montana (the “Manhattan Grille Condo”) to LF Limited and /or assignees (“LF Limited”) free and clear of liens and interests described below pursuant to the sale procedures described herein. This Motion is supported by the *Declaration of Receiver R. Wayne Klein* (the “Receiver Declaration”) which has been filed concurrently herewith.

The Securities and Exchange Commission (the “SEC”) has informed the Receiver that it does not object to the sale as proposed. Accordingly, the Receiver hereby requests that the Court grant this Motion and authorize him to sell the Manhattan Grille Condo. In further support of this Motion the Receiver states as follows:

MEMORANDUM OF SUPPORT

I.

GENERAL BACKGROUND

1. On June 25, 2011, the above-captioned case was commenced by the SEC against Defendants National Note of Utah, LC (“NNU”) 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 NNU, and 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.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

¹ Docket No. 9 (Receivership Order).

² See generally, *id.*

Defendants and the Palmer Entities . . . [.]”³

- “To take custody, control and possession of all Receivership Property and records . . . [.]”⁴
- “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[.]”⁵
- “[T]o take immediate possession of all real property of the Receivership Defendants and the Palmer Entities”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
- “[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.”⁸
- “[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.”⁹

II.

REAL PROPERTY TO BE SOLD AND SALE PLAN

Manhattan Grille Condo and Marketing

3. Since his appointment, the Receiver has identified numerous real properties as

³ *Id.* at ¶ 7(A).

⁴ *Id.* at ¶ 7(B).

⁵ *Id.* at ¶ 7(D).

⁶ *Id.* at ¶ 19.

⁷ *Id.* at ¶ 37.

⁸ *Id.* at ¶ 38.

⁹ *Id.* at ¶ 39.

being part of the Receivership Estate, and where appropriate has listed such property for sale.¹⁰

4. Relevant to this Motion is Unit 206 of Manhattan Grille Condominium, referred to as the “Manhattan Grille Condo,” located at 122 East Main Street, Unit 206, Manhattan, Montana,¹¹ the legal description for which is as follows:

Unit 206 of Manhattan Grille Condominium, located on Lots 11 and 12 in Block 19 of the Original Plat of Manhattan, Gallatin County, Montana. Together with an undivided 5.7% interest in the common elements appertaining to said unit, the Declaration for which was recorded January 17, 2007 as Document No. 2254102 and Amendments recorded January 16, 2008 as Document No. 2289455 and April 14, 2008 as Document No. 2296988, records of Gallatin County, Montana. The use of the condominium shall be for residential purposes only.¹²

5. On or about August 20, 2012, the Receiver caused the Manhattan Grille Condo to be listed for sale through Realty Connection Montana with a listing price of \$49,000 (the “Listing Agreement”), a copy of the Listing Agreement is attached to the Receiver Declaration as Exhibit 1 for the Court’s review.¹³

6. The Manhattan Grille Condo has been marketed through the multiple listing service and has been actively marketed by the realtor.¹⁴

Appraisals

7. On January 18, 2013, the Court entered an *Order Appointing Appraisers for Manhattan Grille Condo* appointing Sidders Appraisals, Inc. as an appraiser of the Manhattan Grille Condo.¹⁵

8. On February 27, 2013, the Court entered an *Order Appointing Appraisers for Manhattan Grille Condo* appointing Northwest Appraisal Service, Inc. and Bishop Appraisal

¹⁰ Receiver Declaration ¶ 4.

¹¹ Receiver Declaration ¶ 5.

¹² See Receiver Declaration, Exh 6 (Title Report).

¹³ Receiver Declaration ¶ 6 & Exh. 1 (Listing Agreement).

¹⁴ Receiver Declaration ¶ 7.

¹⁵ Docket No. 128.

Service as appraisers of the Manhattan Grille Condo.¹⁶

9. The Receiver obtained an appraisal of the Manhattan Grille Condo on or about February 20, 2013 from M. Jared Zundel at Sidders Appraisal, Inc. (the “Sidder Appraisal”), a copy of the Sidder Appraisal is attached to the Receiver Declaration as Exhibit 2 for the Court’s review.¹⁷ The Sidder Appraisal values the Manhattan Grille Condo at \$44,000.¹⁸

10. The Receiver obtained an appraisal of the Manhattan Grille Condo on or about March 21, 2013 from Todd B. Olson at Northwest Appraisal Service, Inc. (the “Northwest Appraisal”), a copy of the Northwest Appraisal is attached to the Receiver Declaration as Exhibit 3 for the Court’s review.¹⁹ The Sidder Appraisal values the Manhattan Grille Condo at \$39,500.²⁰

11. The Receiver obtained an appraisal of the Manhattan Grille Condo on or about April 5, 2013 from Ellen J. Bishop at Bishop Appraisal Service (the “Bishop Appraisal”), a copy of the Bishop Appraisal is attached to the Receiver Declaration as Exhibit 4 for the Court’s review.²¹ The Bishop Appraisal values the real property as having a value of \$38,000.²²

12. Based on the approved appraisals, the average appraised value for the Manhattan Grille Condo “as is” is \$40,500.²³

¹⁶ Docket No. 180.

¹⁷ Receiver Declaration ¶ 8 & Exh. 2 (Sidder Appraisal).

¹⁸ Receiver Declaration, Exh. 2, p. 3.

¹⁹ Receiver Declaration ¶ 9 & Exh. 3 (Northwest Appraisal).

²⁰ Receiver Declaration, Exh. 3, p. 6.

²¹ Receiver Declaration ¶ 10 & Exh. 4 (Bishop Appraisal).

²² Receiver Declaration, Exh. 4, p. 1.

²³ See Receiver Declaration, Exhs. 2, 3 and 4 (Appraisals).

The Purchase Agreement and Material Terms of Sale

13. On February 25, 2013, after engaging in purchase discussions with multiple prospective purchasers, the Receiver entered into, subject to Court approval, a Purchase Agreement with LF Limited, a copy of which is attached as Exhibit 5 to the Receiver Declaration.²⁴

14. The Purchase Agreement was negotiated by the Receiver and LF Limited in good faith and at arms' length, and the sale is meant to maximize the value of the Manhattan Grille Condo for the benefit of the Receivership Estate.²⁵

15. LF Limited has agreed to purchase the Manhattan Grille Condo from the Receivership Estate free and clear of liens and interests for a purchase price in the amount of \$51,000.00, which exceeds the average appraised value set forth above.²⁶

16. The sale is subject to Court approval. However, closing is currently scheduled for April 25, 2013, and should the Receiver require any extension of time to accomplish the sale, LF Limited has the exclusive right to cancel for any reason, with no recourse to the Receiver, for a period of 7 days from the date of notification of an extension.²⁷

17. The proposed terms of the sale are intended to maximize the value of the Manhattan Grille Condo.²⁸

Sale Costs and Net Sale Proceeds

18. At the time of closing, the Receiver anticipates paying the ordinary costs of the

²⁴ Receiver Declaration ¶ 11 & Exh. 5 (Purchase Agreement).

²⁵ Receiver Declaration ¶ 12.

²⁶ Receiver Declaration ¶ 13 & Exh 5.

²⁷ Receiver Declaration ¶ 14 & Exh. 5.

²⁸ Receiver Declaration ¶ 15.

sale, including property taxes, market-rate closing costs and a 6.00% realtor commission, with the remaining sale proceeds being referred to herein as the “Net Sale Proceeds.”²⁹

19. The Receiver will separately account for the Net Sale Proceeds pending resolution of any disputes related to interests that may exist against the Manhattan Grille Condo.³⁰

Free and Clear Sale

20. To determine interests, if any, against the Manhattan Grille Condo, the Receiver obtained a commitment for title insurance with respect to the Manhattan Grille Condo (the “Title Report”) a copy of which is attached as Exhibit 6 to the Receiver Declaration.³¹

21. The Title Report identifies taxes owed for years 2010, 2011 and 2012.³²

22. To facilitate the proposed sale of the Manhattan Grille Condo, the Receiver proposes allowing any interests in the Manhattan Grille Condo to attach to the Net Sale Proceeds while he evaluates the validity of such interests.³³ In so doing, the Receiver is in no way waiving any rights, claims, interests or defenses to any claims or interests made against the Manhattan Grille Condo or to the Net Sale Proceeds.³⁴

23. As set forth in the Certificate of Service attached hereto, a copy of the Motion is being served on the relevant taxing authority.³⁵ A copy of the Receiver Declaration and attached exhibits will be posted on the Receiver’s website and will be available upon request.

Best Interests

24. The Receiver believes that the sale of the Manhattan Grille Condo to LF Limited

²⁹ Receiver Declaration ¶ 16.

³⁰ Receiver Declaration ¶ 17.

³¹ Receiver Declaration ¶ 18 & Exh. 6 (Title Report).

³² Receiver Declaration ¶ 19 & Exh. 6.

³³ Receiver Declaration ¶ 20.

³⁴ Receiver Declaration ¶ 21.

³⁵ Receiver Declaration ¶ 22.

as proposed is beneficial for and in the best interests of the Receivership Estate based on at least the following: (a) the purchase price to be obtained which exceeds the average appraised value of the Manhattan Grille Condo; (b) the terms of the sale aim to maximize the amount the estate realizes; and (c) the estate's receipt of cash through a cost efficient method of sale with each sale being obtained through good faith and arms' length negotiations.³⁶

25. The SEC has been informed of the material terms of the sales, and has no objection thereto.³⁷

Publication Notice

26. Contemporaneously herewith the Receiver filed his *Ex Parte Motion for Order Approving Method and Form of Publication Notice of Sale of Real Property*, seeking the Court's approval of the method and form of proposed publication notice.

27. Upon entry of an Order granting the Publication Motion, the Receiver shall publish notice of the proposed sale in *The Salt Lake Tribune*, a newspaper published in Salt Lake City, Utah, and the *Three Forks Herald*, a newspaper published in Gallatin County, Montana and distributed to Manhattan, Montana, using the method and form of notice approved by the Court.³⁸

III.

ARGUMENT

Based on the facts above, the Receiver respectfully requests authorization to sell the Manhattan Grille Condo pursuant to 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 and held

³⁶ Receiver Declaration ¶ 23.

³⁷ Receiver Declaration ¶ 24.

³⁸ Receiver Declaration ¶ 25.

by the Receiver pending resolution of any disputes related thereto. The sale of the Manhattan Grille Condo as proposed is (1) within the scope of the Receiver's authority under the Receivership Order as quoted above and 28 U.S.C. § 2001(b), (2) in the best interests of the Receivership Estate, and (3) serves the purposes of the receivership by providing a "realization of the true and proper value" of the Manhattan Grille Condo.³⁹

Sale of the Manhattan Grille Condo as Proposed is Beneficial to the Receivership Estate

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.⁴⁰ 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."⁴¹ The sale of the Manhattan Grille Condo as proposed herein is in the best interests of the Receivership Estate for several reasons, including at least the following.

First, the sale will result in cash for the Receivership Estate based on a fair market value of the Manhattan Grille Condo, and in an amount that is above the average appraised value of the property. The appraisals have taken into consideration current market conditions, sales of comparable properties, and the particular nature of the property. As evidenced by the purchase price for the Manhattan Grille Condo exceeding the average appraised value for the property, the Receiver's sale process will maximize the value of the Manhattan Grille Condo.

Second, the proposed sale of the Manhattan Grille Condo will increase the sums held in the Receivership Estate.

³⁹ Receivership Order ¶ 38.

⁴⁰ 28 USC § 2001(b).

⁴¹ Receivership Order ¶ 37.

Request To Sell the Manhattan Grille Condo Free and Clear of Interests

As discussed above, the Receiver proposes to sell the Manhattan Grille Condo free and clear of any interests in the property, with any such interest 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.

The relevant taxing authority claiming an interest against the Manhattan Grille Condo will be served with the Motion to be given notice of the relief sought herein.⁴² Failure to object to these terms will mean that the relevant taxing authority, as a purported holder of an interest in the Manhattan Grille Condo, consent to the relief sought herein, and may only look to the Net Sale Proceeds for any claim that he/she may eventually be held to have. This procedure will allow for the proposed sale to close, and preserve the status quo as to any disputes as claimed interests in the Manhattan Grille Condo.

Compliance With 28 U.S.C § 2001

The Receivership Order provides that the Court may require that the proposed sale of real property satisfy 28 U.S.C. § 2001.⁴³ 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 properties of different classes or situated in different localities[;]” (3) publication notice of the sale “at least ten days before confirmation[;]” and (4)

⁴² The Receiver Declaration and the Exhibits attached thereto are not being served so as to minimize expense and preserve the Receivership Estate. However, as noted above, the Receiver Declaration and the Exhibits are posted on the Receiver’s website at <http://www.kleinutah.com/index.php/receiverships/national-note-of-utah-lc> and all parties in interest who are served with this Motion may request a copy of the documents if desired from undersigned counsel.

⁴³ Receivership Order ¶ 39.

cancellation of the sale “if a bona fide offer is made, under conditions prescribed by the court, which guarantees at least a 10 per centum increase over the price offered in the private sale.”⁴⁴

Here, the Receiver has complied with each of these factors, to the extent that they exist.

Specifically, factor (1) is met in this case inasmuch as the purchase price for the Manhattan Grille Condo exceeds the average appraised value, and therefore far exceeds the 2/3 requirement. Factor (2) is met because the Court has reviewed and appointed each of the appraisers.⁴⁵ Factor (3) has been 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. Factor (4) also has been met, inasmuch as the Receiver understands that the sales as proposed herein will not be approved if he receives a higher and better offer for the property that is in compliance with § 2001(b) as quoted above and the sale is conditioned on this factor.⁴⁶ In determining whether an offer is a higher and better offer within the meaning of § 2001(b), the Receiver, in his sole discretion, will consider the purchase price offered and any other conditions requested by the potential purchaser.⁴⁷

⁴⁴ 28 U.S.C. § 2001(b).

⁴⁵ Docket Nos. 128 and 180.

⁴⁶ Receiver Declaration ¶ 26.

⁴⁷ Receiver Declaration ¶ 27.

CONCLUSION

For the foregoing reasons, the Receiver requests that the Court grant the Motion, thus authorizing the sale of the Manhattan Grille Condo pursuant to the Purchase Agreement free and clear of purported interests.

DATED this 5th day of April, 2013.

DORSEY & WHITNEY LLP

 /s/ Tyson C. Horrocks
Peggy Hunt
Chris Martinez
Tyson C. Horrocks
Attorneys for Receiver

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the above **RECEIVER'S MOTION SEEKING AUTHORIZATION TO SELL MANHATTAN GRILLE CONDO AND CLEAR OF PURPORTED INTERESTS AND MEMORANDUM OF SUPPORT** was filed with the Court on this 5th day of April, 2013, and served via ECF on all parties who have requested notice in this case.

_____/s/ Tyson C. Horrocks

Furthermore, I certify that on this 5th day of April, 2013, the **RECEIVER'S MOTION SEEKING AUTHORIZATION TO SELL MONTANA ONE FREE AND CLEAR OF PURPORTED INTERESTS AND MEMORANDUM OF SUPPORT** was served on the following parties by U.S. Mail postage prepaid:

Kimberly Buchanan
County Treasurer
311 West Main Street
Room 103
Bozeman, MT 59715

 /s/ Tyson C. Horrocks

