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**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 RIVERBEND LOT 6 FREE AND CLEAR OF PURPORTED INTERESTS SUBJECT TO HIGHER AND BETTER OFFERS 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 of record, hereby files this motion (the “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 “Riverbend Lot 6” subject to higher and better offers.

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, 2011, 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”).¹ Pursuant to the Receivership Order, the Receiver was appointed, and NNU, forty-one of its affiliated companies, including Riverbend Estates, LC (“Riverbend”), one of NNU’s affiliates (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 Defendants and the Palmer Entities . . . [.]”³
- “To take 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).

- “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

Riverbend Lot 6

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

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 a parcel of real property of the Receivership Estate referred to as Riverbed Lot 6, with the address of 420 South 1st Avenue, Middleton, Idaho, 83644.¹¹ Riverbed Lot 6 includes a residential home and is one of two properties in this area that are being rented by a professional property manager.¹²

5. Riverbed Lot 6 is titled in the name of Riverbed which, as discussed above, is one of the Palmer Entities subject to the Receivership Estate.¹³

Marketing Riverbed Lot 6

6. On or about June 3, 2014, the Receiver signed an agreement for Riverbed Lot 6 to be listed for sale (the "Listing Agreement") through the Woodhouse Group (the "Realtor").¹⁴ A copy of the Listing Agreement is attached as Exhibit B to the Receiver Declaration.

7. Under the Listing Agreement, the Receiver agreed to pay the Realtor a standard commission of 6% of the contract purchase price.¹⁵

8. To determine an offering price and comply with his duties, the Receiver obtained

¹⁰ Receiver Declaration ¶ 4.

¹¹ The legal description of Riverbed Lot 6 is: Lot 6 in Block 1 of Viking Park Subdivision No. 1. *Id.* at Exh. A (Title Report). Despite the legal description of the property as being included in the Viking Park Subdivision, the Receiver refers to the property in this Motion, the Publication Motion (as defined below), and the supporting documents as Riverbed Lot 6.

¹² *Id.* at ¶ 5.

¹³ *Id.* at ¶ 6 & Exh. A (Title Report).

¹⁴ *Id.* at ¶ 7.

¹⁵ *Id.* at ¶ 8.

the opinion of his Realtor and obtained three appraisals of Riverbend Lot 6.¹⁶

9. Before the Realtor listed Riverbend Lot 6 on the Multiple Listing Service, the current tenants of Riverbend Lot 6 expressed an interest in purchasing Riverbend Lot 6.¹⁷ Accordingly, Riverbend Lot 6 was not listed on the Multiple Listing Service and the Listing Agreement was cancelled.¹⁸ The Receiver has agreed to pay the Realtor a total of \$1,000 for preliminary work done in valuing and marketing the property for sale.¹⁹

Appraisers

10. The Receiver obtained appraisals for Riverbend Lot 6 from Adam Fullmer of Adams Residential Services LLC (“Fullmer”), Richard Bell of Richard Bell Appraisal Services & Consulting, Inc. (“Bell”), and Christopher A. Brown of Apex Appraisal Services (“Brown”), being referred to herein respectively as the “Fullmer Appraisal,” the “Bell Appraisal,” and the “Brown Appraisal (collectively, the “Appraisals”).²⁰ True and correct copies of the relevant portions of the Appraisals are attached to the Receiver Declaration as Exhibit C (Fullmer Appraisal), Exhibit D (Bell Appraisal), and Exhibit E (Brown Appraisal).

11. Fullmer appraised Riverbed Lot 6 for a market value of \$115,000.00;²¹ Bell

¹⁶ *Id.* at ¶ 9.

¹⁷ *Id.* at ¶ 10.

¹⁸ *Id.* at ¶ 11.

¹⁹ *Id.* at ¶ 12.

²⁰ *Id.* at ¶ 13.

²¹ *Id.* at Exh. C (Fullmer Appraisal).

appraised Riverbed Lot 6 for a market value of \$112,000.00;²² and Brown appraised Riverbed Lot 6 for a market value of \$120,000.00.²³ Based on these values stated in the Appraisals, the average appraised value of Riverbend Lot 6 is \$115,666.67.²⁴

The Purchase Agreement

12. On or about June 2, 2014, the Receiver entered into a purchase agreement (the “Purchase Agreement”) on behalf of the Receivership Estate with Mitch and Nicole Eckhardt (“Buyers”), the current tenants of Riverbend Lot 6, agreeing to sell Riverbend Lot 6 to Buyers for a purchase price of \$105,000.00 subject to Court approval. A copy of the Purchase Agreement is attached to the Receiver Declaration as Exhibit F.²⁵

13. Under the Purchase Agreement, the sale to Buyers is subject to higher and better offers.²⁶ The Purchase Agreement provides that should the Receiver receive a higher or better offer, the Buyers shall have an opportunity to offer a price that is \$1,000.00 higher than the new offer.²⁷ The Receiver may then continue to receive bids from the Buyers and any other potential bidders.²⁸

14. If the Court approves the sale pursuant to the terms of the Purchase Agreement,

²² *Id.* at Exh. D (Bell Appraisal).

²³ *Id.* at Exh. E (Brown Appraisal).

²⁴ *Id.* at ¶ 13.

²⁵ *Id.* at ¶ 14, Exh. F (Purchase Agreement).

²⁶ *Id.* at ¶ 15.

²⁷ *Id.*

²⁸ *Id.*

the Receiver anticipates paying at the time of closing of the sale outstanding property taxes and the ordinary costs of sale, including market-rate closing costs and a \$1,000.00 commission to the Realtor.²⁹

15. Any other financial interests against Riverbend Lot 6, other than property taxes and closing costs, will not be paid at the time of closing of the sale. Rather, any such interests (to the extent that they exist and without any waiver of the Receiver or the Receivership Estate's rights and defenses related thereto) will survive the sale and will attach to the "Net Sale Proceeds," defined as the gross sale proceeds minus costs paid at closing described above.³⁰

16. The Receiver will separately account for the Net Sale Proceeds pending resolution of any disputes related to interests that may exist against Riverbend Lot 6.³¹

Free and Clear Sale

17. The Receiver proposes to sell Riverbend Lot 6 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 Riverbend Lot 6 or to the Net Sale Proceeds.³²

18. To determine interests, if any against Riverbed Lot 6, the Receiver obtained the Title Report attached as Exhibit A to the Receiver Declaration.³³

²⁹ *Id.* at ¶ 16.

³⁰ *Id.* at ¶ 17.

³¹ *Id.* at ¶ 18.

³² *Id.* at ¶ 19.

³³ *Id.* at ¶ 6, Exh. A.

19. From the Title Report, the Receiver has identified no persons/entities holding purported interests in Riverbed Lot 6.³⁴ Property taxes on Riverbend Lot 6 from 2014 are now a lien that is not yet due.³⁵ Thus, the Receiver proposes depositing the Net Sale Proceeds in the Receivership Estate's operating account upon closing.³⁶

20. In the event that any interests are asserted in Riverbend Lot 6 after service of this Motion, the Receiver proposes allowing any interest in Riverbend Lot 6 to attach to the Net Sale Proceeds while the validity of such interests is litigated. In so doing, the Receiver is in no way waiving any rights, claims, interests, or defenses to any claims or interests made against Riverbend Lot 6 or to the Net Sale Proceeds.³⁷

Best Interests

21. The sale of Riverbed Lot 6 as proposed is beneficial for and in the best interests of the Receivership Estate.³⁸

22. The proposed sale will result in cash based on the fair market value of Riverbed Lot 6. As noted, the average appraised value of Riverbed Lot 6 is \$115,666.67. The purchase price of \$105,000.00 is over 90% of the average appraised value of Riverbend Lot 6.³⁹ Other

³⁴ See *Id.* at Exh. A.

³⁵ *Id.* at ¶ 20.

³⁶ *Id.*

³⁷ *Id.* at ¶ 21.

³⁸ *Id.* at ¶ 22.

³⁹ *Id.* at ¶ 23.

than the \$1,000.00 paid to the Realtor, the 6% proposed commission will be saved.⁴⁰

23. Sale of Riverbend Lot 6 at this time will also slightly reduce the burden to the Receivership Estate by reducing the time spent by the Receiver in managing the property and, more importantly, will maximize the value of Riverbend Lot 6 by ending tax and maintenance obligations associated with the property.⁴¹

24. The sale to Buyer proposed herein is subject to higher and better offers, after publication notice as provided for below.⁴²

Publication Notice

25. Contemporaneously herewith the Receiver is filing his *Ex Parte Motion for Order Approving Method and Form of Publication Notice of Sale of Real Property (Riverbend Lot 6)* (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).⁴³

26. 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 *Idaho Press Tribune*, a newspaper published in Canyon County and distributed to Middleton, Idaho, using the method and form of notice approved by the Court.⁴⁴

27. In the event that the Receiver receives and accepts a higher and better offer, he

⁴⁰ *Id.*

⁴¹ *Id.* at ¶ 24.

⁴² *Id.* at ¶ 25.

⁴³ *Id.* at ¶ 26.

⁴⁴ *Id.* at ¶ 27.

proposes that this Motion and any Order authorizing this proposed sale be deemed to apply to the higher and better offeror or to the Buyers' higher offer, 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 offer.

III.

ARGUMENT

Based on the facts above, the Receiver respectfully requests authorization to sell Riverbend Lot 6 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 and held by the Receiver pending resolution of any disputes related thereto. Sale of Riverbend Lot 6 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 Riverbend Lot 6.⁴⁵

Sale of Riverbend Lot 6 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. 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."⁴⁶ Sale of Riverbend Lot 6 as proposed

⁴⁵ Receivership Order ¶ 38.

⁴⁶ *Id.*

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 the fair market value of Riverbend Lot 6. Riverbend Lot 6 was appraised by three separate appraisers. These appraisers each independently appraised Riverbend Lot 6, with the highest appraised value being \$120,000.00, and the average appraised value being \$115,666.67.⁴⁷ These appraisals have taken into consideration current market conditions, sales of comparable properties, and the particular nature of Riverbend Lot 6. Riverbend Lot 6 will be sold for \$105,000.00, which is over 90% of the average appraised value.⁴⁸ Other than \$1,000.000, no sales commission is being paid.⁴⁹

Second, the sale of Riverbend Lot 6 at this time as proposed will reduce, albeit slightly, the burden on the Receivership Estate and maximize the value of the property.⁵⁰ The Receiver will no longer have to spend time managing 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 Riverbend Lot 6 Free and Clear of Interests

As discussed above, the Receiver proposes to sell Riverbend Lot 6 free and clear of any interest in the property, with any such interest attaching to the Net Sale Proceeds. The Court

⁴⁷ Receivership Declaration, at ¶ 13.

⁴⁸ *Id.* at ¶ 23.

⁴⁹ *Id.* at ¶¶ 16 & 23.

⁵⁰ *Id.* at ¶ 24.

may order such a sale so long as parties with interests against the property are given proper notice. The Receiver has not located any individual or entity with a purported interest in Riverbend Lot 6.⁵¹ The 2014 property taxes on Riverbend Lot 6 are now a lien, but the lien is not yet due.⁵² The tax obligations will be paid from the sale proceeds and be extinguished.

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. § 2001.⁵³ 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) 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.”⁵⁴ Here, the Receiver has complied with each of these factors.

Specifically, factor (1) is met in this case inasmuch as the purchase price for Riverbend Lot 6 is over 90% of the average appraised value, and therefore far exceeds the 2/3 requirement.

Factor (2) is met because the Receiver has obtained the Appraisals of Riverbend Lot 6

⁵¹ *Id.* at ¶ 20.

⁵² *Id.*

⁵³ Receivership Order ¶ 39.

⁵⁴ 28 U.S.C. § 2001(b).

from three experienced, third party appraisers.

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.

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.⁵⁵ 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 or the Buyers' higher offer 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 or to the Buyers for a higher offer.

CONCLUSION

For the foregoing reasons, the Receiver requests that the Court grant the Motion, thus authorizing the sale of Riverbend Lot 6 pursuant to the Purchase Agreement or to a higher and better offeror free and clear of purported interests.

DATED this 26th day of June, 2014.

DORSEY & WHITNEY LLP

/s/ Peggy Hunt

Peggy Hunt
Chris Martinez
Sarah Goldberg
Attorneys for Receiver

⁵⁵ Receiver Declaration ¶ 25.

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the above **RECEIVER'S MOTION SEEKING AUTHORIZATION TO SELL RIVERBEND LOT 6 FREE AND CLEAR OF PURPORTED INTERESTS SUBJECT TO HIGHER AND BETTER OFFERS AND MEMORANDUM IN SUPPORT** was filed with the Court on this 26th day of June, 2014, and served via ECF on all parties who have requested notice in this case:

/s/ Sarah Goldberg

Furthermore, I certify that on the 26th day of June, 2014, the **RECEIVER'S MOTION SEEKING AUTHORIZATION TO SELL RIVERBEND LOT 6 FREE AND CLEAR OF PURPORTED INTERESTS SUBJECT TO HIGHER AND BETTER OFFERS AND MEMORANDUM IN SUPPORT** was served on the following parties by U.S. Mail postage prepaid:

Wayne L. Palmer
8816 South 2240 West
West Jordan, UT 84088

Gene T. Kuehn
Canyon County Assessor
1115 Albany St.
Rm. 343
Caldwell, Idaho 83605

/s/ Sarah Goldberg