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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: center;">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: center;">Defendants.</p>	<p style="text-align: center;">RECEIVER’S MOTION AND SUPPORTING MEMORANDUM TO ABANDON CERTAIN REAL PROPERTIES LOCATED IN TOLEDO, OHIO, CLEVELAND, OHIO AND CHICAGO, ILLINOIS</p> <p style="text-align: center;">2:12-cv-00591 BSJ</p> <p style="text-align: center;">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, and pursuant to 28 U.S.C. §§ 2001(a) and 2002 and the *Order Appointing Receiver and Staying Litigation*, respectfully requests that the Court enter the proposed Order, attached hereto as **Exhibit A**, authorizing the Receiver to abandon certain real properties located in Toledo, Ohio, Cleveland, Ohio and Chicago, Illinois. This Motion is supported by the Declaration of R. Wayne Klein, Receiver (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 (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”) and all Palmer’s assets were placed in the Receiver’s control.² For purposes of this Motion, NNU and the Palmer Entities will be referred collectively as NNU.

2. The Court has directed and authorized the Receiver to, among other things, take the following actions:

- “[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
- “[T]ake immediate possession of all real property of the Receivership Defendants and the Palmer Entities. . . .”⁵
- “[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

¹ Docket No. 9 (Receivership Order).

² See generally *id.*

³ *Id.* at ¶ 7(A).

⁴ *Id.* at ¶ 7(B).

⁵ *Id.* at ¶ 19.

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.”⁶

II.

REAL PROPERTY TO BE ABANDONED

3. Since his appointment, the Receiver has identified numerous real properties as being part of the Receivership Estate, and where appropriate, listed such properties for sale.⁷

4. In some instances, however, the Receiver has determined that properties have no equity and no benefit to the Receivership Estate. Relevant to the instant Motion are the following five real properties that the Receiver seeks to abandon (collectively, the “Properties”):

Name	Address	Owner	Identification
Toledo Home	3124 Scottwood Avenue, Toledo, Ohio	NPL America, LLC (“ <u>NPL</u> ”) ⁸	Parcel 03-23441; Assessor #02-263-024
Cleveland Home	3689 East 144th Street, Cleveland, Ohio	NPL	51 Greenleaf BLKA NP Parcel #139-09-125
Cleveland Lot	15109 Ohio Avenue, Cleveland, Ohio	NPL	Parcel #142-27-169
Chicago Home	10541 South Lafayette Avenue, Chicago, Illinois	NPL	Parcel #05-16-216-014-000
Chicago Lot	7718 South Trumbull Avenue, Chicago, Illinois	NPL	Parcel #19-26-408-060-0000

5. To the best of the Receiver’s knowledge, NNU has not granted any interest in any of the Properties to any person or entity.⁹

⁶ *Id.* at ¶ 37.

⁷ Receiver Declaration ¶ 4.

⁸ NPL is an affiliate of NNU.

⁹ Receiver Declaration ¶ 6.

III.

REASONS FOR ABANDONMENT

The Toledo Home

6. The Toledo Home was built in approximately 1902 and is located in a run-down section of Toledo, Ohio.¹⁰

7. In 2009, Lucas County, Ohio valued the property at \$19,250.00. A true and correct copy of the tax valuation is attached as Exhibit 1 to the Receiver Declaration.¹¹

8. On February 1, 2011, NPL purchased the home from Residential Distressed Asset Fund (“RDAF”) for \$2,402.41.¹²

9. NPL owes \$8,261.50 in property taxes for 2012, which taxes remain unpaid.¹³

10. Prior to the Receiver’s appointment, the property was in violation of various city ordinances for weeds, tree parts, and having an unsecured dwelling. Since the Receiver’s appointment, “Notices of Liability” and “Notices of Public Health Order” (together, the “Notices”) have been received, which Notices are dated June 27, 2012, August 21, 2012, September 19, 2012, October 12, 2012 and November 16, 2012. True and correct copies of the Notices are attached as Exhibit 2 to the Receiver Declaration.¹⁴

¹⁰ Receiver Declaration ¶ 7; *see generally* Exhibit 1.

¹¹ Receiver Declaration ¶ 8.

¹² Receiver Declaration ¶ 9; *see* Exhibit 1 at p. 2.

¹³ Receiver Declaration ¶ 10; Exhibit 1 at p. 2.

¹⁴ Receiver Declaration ¶ 11; *see generally* Exhibit 2.

11. The Notices state that failure to correct the violations will result in additional penalties, legal action, criminal prosecution and abatement by the City of Toledo at the expense of NPL.¹⁵

12. Further, the City of Toledo has undertaken corrective action regarding the property and has billed NPL \$1,127.88 for its work. True and correct copies of invoices from the City of Toledo are attached as Exhibit 3 to the Receiver Declaration.¹⁶

13. Moreover, the Receiver was contacted by Terra Firma, LLC (“Terra”), an entity specializing in distressed properties, expressing an interest in trying to sell the property. On January 4, 2013, the Receiver granted Terra an option to purchase the property for \$18,166.96. A true and correct copy of the Option Agreement is attached as Exhibit 4 to the Receiver Declaration.¹⁷ After the 120-day option period expired, Terra did not exercise its option.¹⁸

14. In sum, NPL owes \$8,261.50 in property taxes, \$1,127.88 in abatement assessments, and \$375.00 in fines relating to the property. In the Receiver’s opinion, these expenses are greater than any expected value of the property, especially after considering the expenses of sale (commissions, closing costs, etc.) and the time the Receiver would expend in seeking to market and sell the property. Accordingly, in the Receiver’s business judgment, abandonment of the Toledo Property is in the best interests of the Receivership Estate.¹⁹

¹⁵ Receiver Declaration ¶ 12; *see generally* Exhibit 2.

¹⁶ Receiver Declaration ¶ 13; *see generally* Exhibit 3.

¹⁷ Receiver Declaration ¶ 14; *see generally* Exhibit 4.

¹⁸ Receiver Declaration ¶ 14.

¹⁹ Receiver Declaration ¶ 15.

The Cleveland Home

15. In February 2011, NPL purchased the Cleveland Home from RDAF for \$3,942.00. A true and correct printout from the Cuyahoga County Office of the Auditor showing the purchase information is attached as Exhibit 5 to the Receiver Declaration.²⁰

16. The Cleveland Home was built in 1945 and is located in a distressed section of Cleveland, Ohio.²¹

17. On November 27, 2012, Cuyahoga County valued the property at \$38,100.00. A true and correct copy of the tax valuation is attached as Exhibit 6 to the Receiver Declaration.²²

18. On October 19, 2012, Cuyahoga County issued a “Delinquent Tax Notice” on the property showing taxes owed in the amount of \$7,315.26. A true and correct copy of the Delinquent Tax Notice is attached as Exhibit 7 to the Receiver Declaration.²³ To date, the property taxes remain unpaid.²⁴

19. NPL has also been assessed fees for work performed by the City of Cleveland for mowing weeds and removing debris from the property in the total amount of \$508.90. True and correct copies of invoices from the City of Cleveland showing the charges are attached as Exhibit 8 to the Receiver Declaration.²⁵

²⁰ Receiver Declaration ¶ 16; *see generally* Exhibit 5.

²¹ Receiver Declaration ¶ 17.

²² Receiver Declaration ¶ 18; *see generally* Exhibit 6.

²³ Receiver Declaration ¶ 19; *see generally* Exhibit 7.

²⁴ Receiver Declaration ¶ 19.

²⁵ Receiver Declaration ¶ 20; *see generally* Exhibit 8.

20. Additionally, the Receiver responded to an inquiry from a Cleveland broker regarding the property, and the Receiver requested that the broker make an offer for the property. After giving the address to the broker, however, the broker did not respond to the Receiver.²⁶

21. On January 4, 2013, the Receiver granted Terra an option to purchase the property for \$12,605.11. A true and correct copy of the Option Agreement is attached as Exhibit 9 to the Receiver Declaration.²⁷ The option period expired, and Terra did not exercise its option.²⁸

22. In sum, NPL owes \$7,315.26 in property taxes, as well as \$508.90 in fees relating to the property. Additionally, the property has been declined by two different specialists in distressed properties. In the Receiver's opinion, the expenses relating to the property are greater than any expected value of the property, especially after considering the expenses of sale and the time the Receiver would expend in seeking to market and sell the property. Accordingly, in the Receiver's business judgment, abandonment of the Cleveland Home is in the best interests of the Receivership Estate.²⁹

The Cleveland Lot

23. On February 22, 2011, NPL purchased the Cleveland Lot from RDAF for \$2,962.00. A true and correct printout from the Cuyahoga County Office of the Auditor showing the purchase information is attached as Exhibit 10 to the Receiver Declaration.³⁰

²⁶ Receiver Declaration ¶ 21.

²⁷ Receiver Declaration ¶ 22; *see generally* Exhibit 9.

²⁸ Receiver Declaration ¶ 22.

²⁹ Receiver Declaration ¶ 23.

³⁰ Receiver Declaration ¶ 24; *see generally* Exhibit 10.

24. The Cleveland Lot is located in a distressed section of Cleveland, Ohio, and the Receiver is informed that the home previously located on the lot was demolished by the City of Cleveland, which costs of demolition will be charged to NPL.³¹

25. In 2012, Cuyahoga County assessed a value for the lot in the amount of \$7,700.00. A true and correct copy of the valuation is attached as Exhibit 11 to the Receiver Declaration.³²

26. Additionally, delinquent taxes on the property for the years 2008 through 2011 are owing in the amount of \$3,706.04. A true and correct copy of the Delinquent Tax Notice is attached as Exhibit 12 to the Receiver Declaration.³³

27. Further, given the current state of the Cleveland Lot, Terra refused to make an offer for an option on the property.³⁴

28. In sum, the assessed value of the property is only \$4,738.00 more than NNU's purchase price for the property. Moreover, the Receiver understands that the City of Cleveland is going to charge NPL for the demolition costs of the home previously located on the property. In the Receiver's opinion, these expenses are greater than any expected value of the property, especially after considering the expenses of sale and the time the Receiver would expend in seeking to market and sell the property. Accordingly, in the Receiver's business judgment, abandonment of the Cleveland Lot is in the best interests of the Receivership Estate.³⁵

³¹ Receiver Declaration ¶ 25.

³² Receiver Declaration ¶ 26; *see generally* Exhibit 11.

³³ Receiver Declaration ¶ 27; *see generally* Exhibit 12.

³⁴ Receiver Declaration ¶ 28.

³⁵ Receiver Declaration ¶ 29.

The Chicago Home

29. The Chicago Home is a multifamily residence built prior to 1950. The Cook County Assessor lists the home as being owed by RDAF. A true and correct printout from the Cook County Assessor's Office showing the property in the name of RDAF is attached as Exhibit 13 to the Receiver Declaration.³⁶ The Receiver is informed, however, that some public records exist suggesting the property is owned by NPL.³⁷

30. In 2012, the property had a tax assessment by the Cook County Assessor's Office in the amount of \$8,746.00. A true and correct printout from the Cook County Assessor's Office showing the assessed value is attached as Exhibit 14 to the Receiver Declaration.³⁸

31. The Receiver is informed that there are unpaid taxes on the property in at least the amount of \$856.79.³⁹

32. The Receiver is informed that on November 13, 2012, an analyst employed by the Receiver spoke with Kevin Burke, a broker with REMAX brokerage in Chicago (collectively, "REMAX"). The Receiver asked REMAX to sell the property. REMAX informed the Receiver that the property was previously listed for sale for \$7,900.00, but the property did not sell at that price. REMAX also stated that the property is located in a bad drug neighborhood, and REMAX was unwilling to go into the neighborhood to market the property. REMAX then suggested abandoning the property to the City of Chicago.⁴⁰

³⁶ Receiver Declaration ¶ 30; *see generally* Exhibit 13.

³⁷ Receiver Declaration ¶ 30.

³⁸ Receiver Declaration ¶ 31.; *see also* Exhibit 13.

³⁹ Receiver Declaration ¶ 32; *see generally* Exhibit 14.

⁴⁰ Receiver Declaration ¶ 33.

33. On January 4, 2013, the Receiver granted Terra an option to purchase the property for \$45,963.21. A true and correct copy of the Option Agreement is attached as Exhibit 15 to the Receiver Declaration.⁴¹ The option period expired, and Terra did not exercise its option.⁴²

34. In sum, the Receiver does not know whether NPL actually owns the Chicago Home. If NPL does own the property, the Receiver is unaware whether a real estate agent would be willing to market and sell the property. Further, given the low assessed value of the property, the delinquent taxes on the property, and the fact that the property did not sell previously for the amount of \$7,900.00, the Receiver does not believe that the Receivership Estate is able to obtain any value from the property. Accordingly, in the Receiver's business judgment, abandonment of the Chicago Home is in the best interests of the Receivership Estate.⁴³

The Chicago Lot

35. The Cook County Assessor lists the Chicago Lot as being owed by Stephen J. Murphy, Jr. A true and correct printout from the Cook County Assessor's Office showing the property in the name of Stephen J. Murphy, Jr. is attached as Exhibit 16 to the Receiver Declaration.⁴⁴

36. In 2013, the property was assessed by the Cook County Assessor's Office to have a value in the amount of \$3,276.00. A true and correct printout from the Cook County

⁴¹ Receiver Declaration ¶ 34; *see generally* Exhibit 15.

⁴² Receiver Declaration ¶ 34.

⁴³ Receiver Declaration ¶ 35.

⁴⁴ Receiver Declaration ¶ 36; *see generally* Exhibit 16.

Assessor's Office showing the assessed value is attached as Exhibit 17 to the Receiver Declaration.⁴⁵

37. In December 2012, the City of Chicago cited NPL for code violations with the property, including for failing to install a fence around an open lot, failing to keep the lot free of waste, and not cutting weeds. A true and correct copy of the Administrative Notice of Ordinance Violation is attached to the Receiver Declaration as Exhibit 18.⁴⁶

38. On January 2, 2013, the Department of Administrative Hearings issued a judgment in the amount of \$1,840.00 relating to the property's code violations. A true and correct copy of the judgment is attached as Exhibit 19 to the Receiver Declaration.⁴⁷

39. Additionally, the Water Management operations of the City of Chicago engaged a law firm to collect \$623.99 that is supposedly owed by NPL on the property. A true and correct copy of the collection letter is attached as Exhibit 20 to the Receiver Declaration.⁴⁸

40. In sum, the Receiver does know whether NPL actually owns the Chicago Lot. Also, there is a judgment relating to the property in the amount of \$1,840.00 and an additional liability in the amount of \$623.99. Moreover, there may be unknown delinquent taxes on the property. In the Receiver's opinion, these expenses are greater than any expected value of the property, especially after considering the expenses of sale and the time the Receiver would

⁴⁵ Receiver Declaration ¶ 37; *see generally* Exhibit 17.

⁴⁶ Receiver Declaration ¶ 38; *see generally* Exhibit 18.

⁴⁷ Receiver Declaration ¶ 39; *see generally* Exhibit 19.

⁴⁸ Receiver Declaration ¶ 40; *see generally* Exhibit 20.

expend in seeking to market and sell the property. Accordingly, in the Receiver's business judgment, abandonment of the Chicago Lot is in the best interests of the Receivership Estate.⁴⁹

IV.

NOTICE OF THE MOTION

41. As set forth above, the Receiver does not believe that NNU granted any person or entity any interest in any of the Properties.⁵⁰

42. The Receiver will give notice of this Motion to all applicable taxing entities for the areas in which the Properties are located.⁵¹

43. The SEC has been informed of the Receiver's proposed abandonment of the Properties, and the Receiver does not believe is has objections thereto.⁵²

CONCLUSION

For the reasons set forth herein, the Receiver requests that the Court enter the proposed Order, attached hereto as **Exhibit A**, authorizing him to abandon the Receivership Estate's interest in the Properties because such Properties have no equity and no value to the Receivership Estate. The Receiver also requests any other relief that the Court deems appropriate under the circumstances.

⁴⁹ Receiver Declaration ¶ 41.

⁵⁰ Receiver Declaration ¶ 6.

⁵¹ Receiver Declaration ¶ 42.

⁵² Receiver Declaration ¶ 43.

DATED this 22nd day of August, 2013.

DORSEY & WHITNEY LLP

 /s/ Peggy Hunt
Peggy Hunt
Chris Martinez
Nathan S, Seim

CERTIFICATE OF SERVICE

I certify that on August 22, 2013, the foregoing **RECEIVER'S MOTION AND SUPPORTING MEMORANDUM TO ABANDON CERTAIN REAL PROPERTIES LOCATED IN TOLEDO, OHIO, CLEVELAND, OHIO AND CHICAGO, ILLINOIS** (the "Motion") was filed with the Court and served via ECF on all parties who have requested notice in this case.

I further certify that on August 22, 2013, the Motion was served on the following parties by U.S. First Class Mail, postage prepaid:

Lucas County Assessor's Office
One Government Center, Suite 600
Toledo, OH 43604

Lucas County Treasurer
One Government Center, Suite 500
Toledo, OH 43604

Lucas County Taxing Office
One Government Center, Suite 600
Toledo, OH 43604

City of Toledo Department of Inspection
One Government Center, Suite 1800
Toledo, OH 43604

Toledo-Lucas County Health Department
635 North Erie Street
Toledo, OH 43604

City of Toledo Commissioner of Treasury
One Government Center, Suite 2000
Toledo, OH 43604

Cuyahoga County Fiscal Office
1219 Ontario Street
Cleveland OH 44113

Cuyahoga County Treasurer's Office
1219 Ontario Street
Cleveland OH 44113

City of Cleveland
Department of Finance, Division of Assessments
601 Lakeside Avenue
Cleveland, OH 44114

Cook County Assessor's Office
118 North Clark Street
Third Floor, Room #320
Chicago, IL 60602

Cook County Treasurer's Office
118 North Clark Street, Room 112
Chicago, IL 60602

City of Chicago
Department of Street and Sanitation
121 N. LaSalle Street, Room 700
Chicago, IL 60602

Goldman & Grant
205 West Randolph Street, #1100
Chicago, IL 60606

/s/ Karen Bingham