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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 HAWTHORNE LOT 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 the “Hawthorne Lot” 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

The Hawthorne Lot

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 the Hawthorne Lot, with the address of 325 South Hawthorne Drive, Middleton, Idaho, 83644 and the legal description of 07-4N-2W NE, 11243 IN SWNE. The Hawthorne Lot includes a residential home and is one of two properties in this area that are being rented by a professional property manager.¹¹

5. The Hawthorne Lot is titled in the name of Riverbend which, as discussed above, is one of the Palmer Entities subject to the Receivership Estate.¹²

Marketing the Hawthorne Lot

6. On or about September 12, 2014, the Receiver signed an agreement for the Hawthorne Lot to be listed for sale (the “Listing Agreement”) through the Woodhouse Group (the “Realtor”).¹³ 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.¹⁴

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

¹⁰ Receiver Declaration ¶ 4.

¹¹ *Id.* at ¶ 5.

¹² *Id.* at ¶ 6 & Exh. A (Title Report).

¹³ *Id.* at ¶ 7.

¹⁴ *Id.* at ¶ 8.

the opinion of his Realtor and obtained three appraisals of the Hawthorne Lot.¹⁵

9. The Receiver marketed the Hawthorne Lot through his Realtor, including by listing the property on the Multiple Listing Service.¹⁶

Court-Appointed Appraisers

10. On April 14, 2014, the Court entered an *Order Granting Receiver's Motion to Appoint Appraisers in Connection with Potential Private Sale of Middleton Idaho Homes*.¹⁷

11. Consequently, the Receiver obtained appraisals for the Hawthorne Lot 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").¹⁸ 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).

12. Fullmer appraised the Hawthorne Lot for a market value of \$105,000.00;¹⁹ Bell appraised the Hawthorne Lot for a market value of \$80,000.00;²⁰ and Brown appraised the

¹⁵ *Id.* at ¶ 9.

¹⁶ *Id.* at ¶ 10.

¹⁷ Docket No. 631.

¹⁸ Receiver Declaration at ¶ 11.

¹⁹ *Id.* at Exh. C (Fullmer Appraisal). Fullmer performed an exterior-only appraisal and did not enter the home. *Id.* at ¶ 12.

²⁰ *Id.* at Exh. D (Bell Appraisal).

Hawthorne Lot for a market value of \$78,000.00.²¹ Based on these values stated in the Appraisals, the average appraised value of the Hawthorne Lot is \$87,666.67.²²

The Purchase Agreement

13. On or about September 22, 2014, the Receiver entered into a purchase agreement (the “Purchase Agreement”) on behalf of the Receivership Estate with Dean Richtsmeier (the “Buyer”), agreeing to sell the Hawthorne Lot to the Buyer for a purchase price of \$76,000.00 subject to Court approval. A copy of the Purchase Agreement is attached to the Receiver Declaration as Exhibit F.²³

14. Under the Purchase Agreement, the sale to Buyer is subject to higher and better offers.²⁴

15. If the Court approves the sale pursuant to the terms of the Purchase Agreement, 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 the 6% commission to the Realtor.²⁵

16. Any other financial interests against the Hawthorne Lot, 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

²¹ *Id.* at Exh. E (Brown Appraisal).

²² *Id.* at ¶ 11.

²³ *Id.* at ¶ 13, Exh. F (Purchase Agreement).

²⁴ *Id.* at ¶ 14.

²⁵ *Id.* at ¶ 15.

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.²⁶

17. The Receiver will separately account for the Net Sale Proceeds pending resolution of any disputes related to interests that may exist against the Hawthorne Lot.²⁷

Free and Clear Sale

18. The Receiver proposes to sell the Hawthorne Lot 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 Hawthorne Lot or to the Net Sale Proceeds.²⁸

19. To determine interests, if any against the Hawthorne Lot, the Receiver obtained the Title Report attached as Exhibit A to the Receiver Declaration.²⁹

20. From the Title Report, the Receiver has identified one entity holding a purported interest, in the form of an Assignment of Beneficial Interest (the “ABI Holder”), against the Hawthorne Lot.³⁰ The ABI Holder, however, recently agreed to release its purported interest in the Hawthorne Lot and the parties anticipate executing an agreement related to the same.³¹ Accordingly, it is not anticipated that any person, other than taxing authorities, holds an interest

²⁶ *Id.* at ¶ 16.

²⁷ *Id.* at ¶ 17.

²⁸ *Id.* at ¶ 18.

²⁹ *Id.* at ¶ 6, Exh. A.

³⁰ *See id.* at Exh. A.

³¹ *Id.* at ¶ 19.

in the Hawthorne Lot.³²

21. Property taxes on the Hawthorne Lot from 2014 are now a lien that is not yet due. The Receiver proposes paying taxes from the sale proceeds at closing.³³

22. To facilitate the proposed sale of the Hawthorne Lot, the Receiver proposes allowing any interests in the Hawthorne Lot, including the identified and remaining interests asserted by the ABI Holder and other lien holders, to the extent they exist, to attach to the Net Sale Proceeds while a settlement is finalized or 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 the Hawthorne Lot or to the Net Sale Proceeds.³⁴

23. A copy of this Motion is being served on the relevant taxing authorities and the ABI Holder.

Best Interests

24. The sale of the Hawthorne Lot as proposed is beneficial for and in the best interests of the Receivership Estate.³⁵

25. The proposed sale will result in cash based on the fair market value of the Hawthorne Lot. As noted, the average appraised value of the Hawthorne Lot is \$87,666.67. The purchase price of \$76,000 is over 86% of the average appraised value of the Hawthorne Lot and

³² *Id.*

³³ *Id.* at ¶ 20.

³⁴ *Id.* at ¶ 21.

³⁵ *Id.* at ¶ 22.

is subject to higher and better offers.³⁶

26. Sale of the Hawthorne Lot 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 the Hawthorne Lot by ending tax and maintenance obligations associated with the property.³⁷

27. The sale to Buyer proposed herein is subject to higher and better offers, after publication notice as provided for below.³⁸

Publication Notice

28. Contemporaneously herewith the Receiver is filing his *Ex Parte Motion for Order Approving Method and Form of Publication Notice of Sale of Real Property (Hawthorne Lot)* (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).³⁹

29. 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.⁴⁰

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

³⁶ *Id.* at ¶ 23.

³⁷ *Id.* at ¶ 24.

³⁸ *Id.* at ¶ 25.

³⁹ *Id.* at ¶ 26.

⁴⁰ *Id.* at ¶ 27.

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.

III.

ARGUMENT

Based on the facts above, the Receiver respectfully requests authorization to sell the Hawthorne Lot 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 the Hawthorne Lot 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 Hawthorne Lot.⁴¹

Sale of the Hawthorne Lot 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."⁴² Sale of the Hawthorne Lot as

⁴¹ Receivership Order ¶ 38.

⁴² *Id.*

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 the fair market value of the Hawthorne Lot. The Hawthorne Lot was appraised by three separate appraisers. These appraisers each independently appraised the Hawthorne Lot, with the highest appraised value being \$105,000.00, and the average appraised value being \$87,666.67.⁴³ These appraisals have taken into consideration current market conditions, sales of comparable properties, and the particular nature of the Hawthorne Lot. The Hawthorne Lot will be sold for \$76,000.00, which is over 86% of the average appraised value and will be subject to higher and better offers.⁴⁴

Second, the sale of the Hawthorne Lot at this time as proposed will reduce, albeit slightly, the burden on the Receivership Estate and maximize the value of the property.⁴⁵ 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 the Hawthorne Lot Free and Clear of Interests

As discussed above, the Receiver proposes to sell the Hawthorne Lot free and clear of any interest 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

⁴³ Receiver Declaration ¶ 11.

⁴⁴ *Id.* at ¶ 23.

⁴⁵ *Id.* at ¶ 24.

notice. The ABI Holder and others who may claim an interest against the Hawthorne Lot will be served with the Motion. At this time, the ABI Holder and the taxing authority are the only entities with recorded interests against the Hawthorne Lot. The Receiver and the ABI Holder have entered into an agreement in principal on release of the ABI Holder's purported interest and taxing authorities will be paid from the sale proceeds at closing.

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. § 2001.⁴⁶ 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.”⁴⁷ Here, the Receiver has complied with each of these factors.

Specifically, factor (1) is met in this case inasmuch as the purchase price for the Hawthorne Lot is over 86% 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 the Hawthorne Lot

⁴⁶ Receivership Order ¶ 39.

⁴⁷ 28 U.S.C. § 2001(b).

from three experienced, third party appraisers, who were appointed by this Court.

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.⁴⁸ 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

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

DATED this 30th day of September, 2014.

DORSEY & WHITNEY LLP

/s/ Peggy Hunt

Peggy Hunt
Chris Martinez
Sarah Goldberg
Attorneys for Receiver

⁴⁸ Receiver Declaration ¶ 25.

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that the above **RECEIVER'S MOTION SEEKING AUTHORIZATION TO SELL THE HAWTHORNE LOT FREE AND CLEAR OF PURPORTED INTERESTS SUBJECT TO HIGHER AND BETTER OFFERS AND MEMORANDUM IN SUPPORT** was filed with the Court on this 30th day of September, 2014, and served via ECF on all parties who have requested notice in this case.

_____/s/ Sarah Goldberg_____

Furthermore, I certify that on the 30th day of September, 2014, the **RECEIVER'S MOTION SEEKING AUTHORIZATION TO SELL THE HAWTHORNE LOT 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

G&K Sudbury LP
2903 W 7085 S
West Jordan, UT 84084

_____/s/ Sarah Goldberg_____