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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 THE GEORGIA PROPERTY 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 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 “Georgia 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, 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 ND 1, LLC, 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
- “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

¹ Docket No. 9 (Receivership Order).

² See generally, *id.*

³ *Id.* at ¶ 7(A).

⁴ *Id.* at ¶ 7(B).

⁵ *Id.* at ¶ 7(D).

- “[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

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

4. Relevant to the present Motion is certain real property of the Receivership Estate identified as a single family residence located at 154 Lakeridge Drive, Temple, Georgia 30179 (the “Georgia Property”), which is owned by ND 1, LLC, one of National Note of Utah, LC’s affiliates.¹¹

⁶ *Id.* at ¶ 19.

⁷ *Id.* at ¶ 37.

⁸ *Id.* at ¶ 38.

⁹ *Id.* at ¶ 39.

¹⁰ Receiver Declaration ¶ 4.

¹¹ *Id.* ¶ 5.

The Georgia Property

5. The legal description for the Georgia Property is:

ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING IN LAND LOTS 136, 137 AND 152 OF THE 6TH DISTRICT, CARROLL COUNTY, GEORGIA, BEING LOT 2, BLOCK B, PLANTATION AT LAKESHORE, PHASE 3, AS PER PLAT RECORDED IN PLAT BOOK 53, PAGES 290-291, CARROLL COUNTY, GEORGIA RECORDS, WHICH PLAT IS INCORPORATED HEREIN BY REFERENCE AND MADE A PART HEREOF.¹²

6. At the time the Receiver was appointed, the Georgia Property was being rented to tenants who subsequently fell behind on their rent payments and were evicted.¹³

7. The Receiver then arranged for contractors to make necessary repairs to the Georgia Property and perform landscaping work to prepare the property to be listed for sale.¹⁴

Marketing the Georgia Property

8. On or about December 3, 2012, the Receiver caused the Georgia Property to be listed for sale by Vycki Thompson of RE/Max United (the "Realtor").¹⁵ A copy of the Listing Agreement is attached as Exhibit A to the Receiver Declaration.

9. To determine an offering price and comply with his duties, the Receiver obtained three appraisals of the Georgia Property by Court appointed appraisers (see below), and the advice of his Realtor.¹⁶

10. The Georgia Property was listed for sale on the multiple listing service at an

¹² *Id.* at Exh. F.

¹³ *Id.* ¶ 6.

¹⁴ *Id.* ¶ 7.

¹⁵ *Id.* ¶ 8.

¹⁶ *Id.* ¶ 9.

offering price of \$135,000.00, and has been actively marketed by the Realtor.¹⁷

Court-Appointed Appraisers

11. On October 4, 2013, the Receiver caused to be filed a *Motion to Appoint Expert Appraisers* [Docket No. 464]. The Motion asked the Court to appoint three independent appraisers of the Georgia Property.

12. On October 7, 2013, the Court entered an Order approving (a) Joseph A. Bass of Appraisals and Consultation, Inc. (“Bass”); (b) Eli C. Rowell of Appraisal West, LLC (“Rowell”); and (c) Clint A. Duffey of Duffey Appraisals, Inc. (“Duffey” and together with Bass and Rowell, the “Appraisers”) as the Court-appointed appraisers of the Georgia Property [Docket No. 465].

13. The Bass Appraisal appraised the Georgia Property for a market value of \$123,000.00. A copy of the Bass Appraisal is attached to the Receiver Declaration as Exhibit B. The Rowell Appraisal appraised the Georgia Property for a market value of \$125,000.00. A copy of the Rowell Appraisal is attached to the Receiver Declaration as Exhibit C. The Duffey Appraisal appraised the Georgia Property for a market value of \$125,000.00. A copy of the Duffey Appraisal is attached to the Receiver Declaration as Exhibit D. Based upon these three appraisals, the average appraised value of the Georgia Property is \$124,333.33.¹⁸

The Purchase Agreement

14. On or about September 23, 2013, the Receiver entered into a purchase agreement (the “Purchase Agreement”) with Christopher Golphin (“Golphin”) agreeing to sell the Georgia Property to Golphin for a purchase price of \$125,000.00 subject to Court approval. A copy of

¹⁷ *Id.* ¶ 10.

¹⁸ *Id.* at ¶ 11.

the Purchase Agreement is attached to the Receiver Declaration as Exhibit E.¹⁹

15. If the Court approves the sale pursuant to the terms of the Purchase Agreement, the Receiver anticipates paying ordinary costs of sale, including market-rate closing costs and a standard 6% realtor commission at the time of closing of the sale.²⁰

16. Any interests against the Georgia Property, other than property taxes and the 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's rights and defenses related thereto) will survive the sale and will attach to the "Net Sale Proceeds," defined as the sale proceeds minus closing costs.²¹

17. The Receiver will separately account for the Net Sale Proceeds pending resolution of any disputes related to interests that may exist against the Georgia Property.²²

Free and Clear Sale

18. The Receiver proposes to sell the Georgia 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 Georgia Property or to the Net Sale Proceeds.²³

19. To determine interests, if any against the Georgia Property, the Receiver obtained a certificate of title with respect to this property (the "Title Report").²⁴ A copy of the Title

¹⁹ *Id.* at ¶ 12, Exh. E.

²⁰ *Id.* at ¶ 13.

²¹ *Id.* at ¶ 14.

²² *Id.* at ¶ 15.

²³ *Id.* at ¶ 16.

²⁴ *Id.* at ¶ 17, Exh. F.

Report is attached to the Receiver Declaration as Exhibit F.

20. According to the Title Report, the following exceptions to title exist: (a) property taxes for 2012 and 2013 in the total principal amount of \$4,656.30; and (b) three loan deeds recorded in the Carroll County, Georgia Records from Donald Stallworth and Easter N. Stallworth to: (i) Dina Holdings, LLC dated 04/12/06, in the original principal amount of \$2,914.00, filed for record at Deed Book 3533, Page 61; (ii) Dina Holdings, LLC dated 09/22/05, in the original principal amount of \$141,000.00, filed for record at Deed Book 3295, Page 221; and (iii) The Bankhead Group, Inc. c/o Horizon Investment Properties, Inc. dated 9/22/05, in the original principal amount of \$19,500.00, recorded in Deed Book 3295, Page 232 (collectively, the "Loan Deeds").²⁵

21. The Loan Deeds predate ND 1, LLC's, March 31, 2010, purchase of the Georgia Property from Dina Holdings, LLC by warranty deed. Thus, the Receiver believes that the Loan Deeds are invalid. However, to the extent that the Loan Deeds continue to be asserted, the Receiver proposes that the sale be allowed with any interest that may exist pursuant to such Loan Deeds, attaching to the Net Sale Proceeds of the Georgia Property.²⁶

Best Interests

22. The sale of the Georgia Property as proposed is beneficial for and in the best interests of the Receivership Estate.²⁷

23. The proposed sale will result in cash based on the fair market value of the Georgia Property. The average appraised value of the Georgia Property is \$124,333.33. Thus, the purchase price of \$125,000.00 is just over 100% of the average appraised value of the Georgia

²⁵ *Id.* at ¶ 18, Exh. F.

²⁶ *Id.* at ¶ 19.

²⁷ *Id.* at ¶ 20.

Property.²⁸

24. Sale of the Georgia Property will also slightly reduce the burden to the Receivership Estate by reducing the time spent by the Receiver in managing the property.²⁹

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 (Georgia Property)* (the "Publication Motion"), seeking the Court's approval of the method and form of proposed publication notice.³⁰

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 *Times Georgian*, a newspaper published in Carrollton, Georgia and distributed to Temple, Georgia, using the method and form of notice approved by the Court.³¹

III.

ARGUMENT

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

²⁸ *Id.* at ¶ 21.

²⁹ *Id.* at ¶ 22.

³⁰ *Id.* at ¶ 23.

³¹ *Id.* at ¶ 24.

Estate, and the sale serves the purposes of the receivership by providing a “realization of the true and proper value” of the Georgia Property.³²

Sale of the Georgia Property 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.” Sale of the Georgia Property 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 the fair market value of the Georgia Property. The Georgia Property was appraised by three separate court-appointed appraisers. These appraisers each independently appraised the property and their appraisals came in at \$123,000.00, \$125,000.00, and \$125,000.00, for an average appraised value of \$124,333.33. These appraisals have taken into consideration current market conditions, sales of comparable properties, and the particular nature of the Georgia Property. The Georgia Property will be sold for \$125,000.00 which is just over 100% of the average appraised value.

Second, the sale of the Georgia Property as proposed will reduce, albeit slightly, the burden on the Receivership Estate. 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.

³² Receivership Order ¶ 38.

Request To Sell the Georgia Property Free and Clear of Interests

As discussed above, the Receiver proposes to sell the Georgia Property 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.

At this time, there do not appear to be any valid interests against the property, but the holder of the Loan Deeds, will be served with the Motion to be given notice of the relief sought therein. Failure to object to these terms, will mean that the purported holders of interests consent to the relief sought herein, and that they may only look to the Net Sale Proceeds for any claim that they may eventually be held to have.

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. § 2001.³³ 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.”³⁴ 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 Georgia

³³ Receivership Order ¶ 39.

³⁴ 28 U.S.C. § 2001(b).

Property is over 100% of the average appraised value, and therefore far exceeds the 2/3 requirement.

Factor (2) is met because the Receiver has obtained appraisals of the Georgia Property 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.³⁵

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.³⁶

CONCLUSION

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

DATED this 8th day of November, 2013.

DORSEY & WHITNEY LLP

/s/ Peggy Hunt

Peggy Hunt

Chris Martinez

Jeffrey M. Armington

Attorneys for Receiver

³⁵ Receiver Declaration ¶ 24.

³⁶ *Id.* ¶ 25.

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the above **RECEIVER'S MOTION SEEKING AUTHORIZATION TO SELL THE GEORGIA PROPERTY FREE AND CLEAR OF PURPORTED INTERESTS AND MEMORANDUM IN SUPPORT** was filed with the Court on this 8th day of November, 2013, and served via ECF on all parties who have requested notice in this case:

_____/s/ Candy Long_____

Furthermore, I certify that on the 8th day of November, 2013, the **RECEIVER'S MOTION SEEKING AUTHORIZATION TO SELL THE GEORGIA PROPERTY FREE AND CLEAR OF PURPORTED INTERESTS AND MEMORANDUM IN SUPPORT** was served on the following parties by U.S. Mail postage prepaid:

Donald Stallworth
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Lithia Springs, GA 30211-2923

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_____/s/ Candy Long_____