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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 ALMOND HEIGHTS LOT 10 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 “Almond Heights Lot 10” 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 (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).

⁴ *Id.* at ¶ 7(B).

- “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

Almond Heights Lot 10

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

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 Almond Heights Lot 10, located at 705 South Peachtree Drive, Toquerville, UT 84774, T-AHP-A-10. Almond Heights Lot 10 is part of the Almond Heights Park Subdivision, located in Toquerville, Utah (the “Almond Heights Properties”).¹¹

5. Almond Heights Lot 10 is titled in the name of NNU.¹²

Marketing Almond Heights Lot 10

6. On or about August 1, 2014, the Receiver caused all of the Almond Heights Properties, including Almond Heights Lot 10 to be listed for sale through Access Utah Realty (the “Realtor”).¹³ A copy of the Listing Agreement with addenda is attached as Exhibit B to the Receiver Declaration.

7. To determine an offering price and comply with his duties, the Receiver obtained the opinion of his Realtor and one appraiser.¹⁴ The Court approved the use of the original appraiser and two additional appraisers on October 3, 2014.¹⁵ The Receiver has now received the second and third appraisals.¹⁶

8. The Receiver marketed Almond Heights Lot 10 for sale through his Realtor,

¹⁰ Receiver Declaration ¶ 4.

¹¹ *Id.* at ¶¶ 4-5 & Exh. A (Title Report).

¹² *Id.* ¶ 5 & Exh. A (Title Report).

¹³ *Id.* ¶ 6.

¹⁴ *Id.* ¶ 7.

¹⁵ Docket No. 780.

¹⁶ Receiver Declaration ¶ 7.

including by listing the property on the Multiple Listing Service.¹⁷

Court-Appointed Appraisers

9. On October 3, 2014, the Court entered an *Order Granting Receiver's Ex Parte Motion Seeking Appointment of Appraisers for Almond Heights Lots*.¹⁸

10. Consequently, Craig Morley ("Morley"), Steven R. Williams ("Williams"), and Kelly J. Blake ("Blake") were appointed as appraisers for the Almond Heights Properties, including Almond Heights Lot 10.¹⁹ Morley, Williams, and Blake have provided the Receiver appraisals of the Almond Heights Properties, including Almond Heights Lot 10 (the "Morley Appraisal," the "Williams Appraisal," and the "Blake Appraisal"). True and correct copies of the portions of the Morley Appraisal, Williams Appraisal, and Blake Appraisal that are relevant to Almond Heights Lots 10 are attached to the Receiver Declaration as Exhibit C, Exhibit D, and Exhibit E.²⁰

11. Morley appraised Almond Heights Lot 10 at \$41,000.00.²¹ Williams appraised Almond Heights Lot 10 at \$37,000.00.²² Blake appraised Almond Heights Lot 10 at \$38,000.00.²³ The average appraised value of Almond Heights Lot 10 is \$38,666.67.

¹⁷ *Id.* at ¶ 8.

¹⁸ Docket No. 780.

¹⁹ *Id.* at 1-2.

²⁰ Receiver Declaration ¶ 9.

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

²² *Id.* at Exh. D (Williams Appraisal).

²³ *Id.* at Exh. E (Blake Appraisal).

The Purchase Agreement

12. On or about January 27, 2015, the Receiver entered into a purchase agreement for Almond Heights Lot 10 (the “Purchase Agreement”) on behalf of the Receivership Estate with Kendall and Brandie Perry (the “Buyers”) for a purchase price of \$36,000.00 subject to Court approval. A copy of the Purchase Agreement is attached to the Receiver Declaration as Exhibit E.²⁴

13. If the Court approves the sale of Almond Heights Lot 10 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 a standard 7.00% realtor commission.²⁵

14. Any other financial interests against Almond Heights Lots 10, 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 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.²⁶

15. The Receiver will separately account for the Net Sale Proceeds pending resolution of any disputes related to interests that may exist against Almond Heights Lots 10.²⁷

²⁴ *Id.* at ¶ 10.

²⁵ *Id.* at ¶ 11.

²⁶ *Id.* at ¶ 12.

²⁷ *Id.* at ¶ 13.

Free and Clear Sale

16. The Receiver proposes to sell Almond Heights Lot 10 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 Almond Heights Lots or to the Net Sale Proceeds.²⁸

17. To determine interests, if any against Almond Heights Lot 10, the Receiver obtained a title report (the "Title Report"). The Title Report is attached to the Receiver Declaration as Exhibit A.²⁹

18. From the Title Report, the Receiver determined that property taxes on Almond Heights Lot 10 for the years 2011 through 2014 are liens that are due and payable. Property taxes on Almond Heights Lot 10 for the year 2015 are liens that are not yet due. The Receiver is not aware of any other person/entities holding purported interests in Almond Heights Lot 10.³⁰

19. Any other financial interests against Almond Heights Lot 10, 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 they exist and without any waiver of the Receiver or the Receivership Estate's right and defenses related thereto) will survive the sale and will attach to the Net Sale Proceeds, defined as the gross sale proceeds minus the costs paid at closing described above.³¹

²⁸ *Id.* at ¶ 14.

²⁹ *Id.* at ¶¶ 5 & 15, Exh. A (Title Report).

³⁰ *See Id.* at ¶ 16 & Exh. A (Title Report).

³¹ *Id.* ¶ 17.

20. A copy of this Motion is being served on the relevant taxing authorities.³²

Best Interests

21. The sale of Almond Heights Lot 10 as proposed is beneficial for and in the best interests of the Receivership Estate.³³

22. The proposed sale will result in cash based on the fair market value of Almond Heights Lot 10. The Purchase Price is over 93% of the average appraised value of Almond Heights Lot 10.³⁴

23. The sale of Almond Heights Lot 10 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 Almond Heights Lot 10 by ending tax and maintenance obligations associated with the property.³⁵

24. The sale to the Buyers proposed herein is subject to higher and better offers, after publication notice as provided for below.³⁶

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 (Almond Heights Lot 10)* (the "Publication Motion"), seeking the Court's approval of the method and form of

³² *Id.* ¶ 18.

³³ *Id.* at ¶ 19.

³⁴ *Id.* at ¶ 20.

³⁵ *Id.* at ¶ 21.

³⁶ *Id.* at ¶ 22.

proposed publication notice as required under 28 U.S.C. § 2001(b).³⁷

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 *St. George Spectrum*, a newspaper published in Washington County, Utah and distributed to Toquerville, Utah, using the method and form of notice approved by the Court.³⁸

27. In the event that the Receiver receives and accepts a higher and better offer, he proposes that this Motion and any Order authorizing these proposed sales 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.³⁹

III.

ARGUMENT

Based on the facts above, the Receiver respectfully requests authorization to sell Almond Heights Lot 10 pursuant to the terms of the Purchase Agreements 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 Almond Heights Lot 10 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

³⁷ *Id.* at ¶ 23.

³⁸ *Id.* at ¶ 24.

³⁹ *Id.* at ¶ 25.

Receivership Estate, and the sale serves the purposes of the receivership by providing a “realization of the true and proper value” of Almond Heights Lot 10.⁴⁰

Sale of Almond Heights Lot 10 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.”⁴¹ Sale of Almond Heights Lot 10 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 Almond Heights Lot 10. Based on the Appraisals, Almond Heights Lot 10 will be sold for over 93% of the average appraised value. The Appraisals have taken into consideration current market conditions, sales of comparable properties, and the particular nature of Almond Heights Lot 10.

Second, the sale of Almond Heights Lot 10 at this time as proposed will reduce, albeit slightly, the burden on the Receivership Estate and maximize the value of the property. 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

⁴⁰ Receivership Order ¶ 38.

⁴¹ *Id.*

sale under the terms outlined herein.

Request to Sell Almond Heights Lot 10 Free and Clear of Interests

As discussed above, the Receiver proposes to sell Almond Heights Lot 10 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.

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. § 2001.⁴² 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.”⁴³ Here, the Receiver has complied with each of these factors.

Specifically, factor (1) is met in this case inasmuch as the individual purchase prices for Almond Heights Lot 10 is over 93% of the appraised value, and therefore far exceeds the 2/3 requirement.

⁴² Receivership Order ¶ 39.

⁴³ 28 U.S.C. § 2001(b).

Factor (2) is met because the Receiver has obtained the Appraisals and has thus obtained appraisals from three experienced, third party appraisers who were appointed by this Court and provided the Court with the relevant portions of the Appraisals.

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.⁴⁴ 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 Almond Heights Lots 10 pursuant to the respective purchase agreements or to a higher and better offeror free and clear of purported interests.

DATED this 11th day of February 2015.

DORSEY & WHITNEY LLP

/s/ Peggy Hunt

Peggy Hunt

Chris Martinez

⁴⁴ Receiver Declaration ¶ 22.

Sarah Goldberg
Attorneys for Receiver

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the above **RECEIVER'S MOTION SEEKING AUTHORIZATION TO SELL ALMOND HEIGHTS LOT 10 FREE AND CLEAR OF PURPORTED INTERESTS SUBJECT TO HIGHER AND BETTER OFFERS AND MEMORANDUM IN SUPPORT** was filed with the Court on this 11th day of February, 2015, and served via ECF on all parties who have requested notice in this case:

/s/ Sarah Goldberg

It is hereby certified that on the 11th day of February, 2015, the **RECEIVER'S MOTION SEEKING AUTHORIZATION TO SELL ALMOND HEIGHTS LOT 10 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

Arthur L. Partridge
Washington County Assessor
87 North 200 East, Ste. 201
St. George, UT 84770

/s/ Sarah Goldberg