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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

NATIONAL NOTES OF UTAH, LC, a Utah
Limited Liability Company and WAYNE
LaMAR PALMER, an individual,

Defendants.

**RECEIVER'S MOTION AND
MEMORANDUM IN SUPPORT
SEEKING AUTHORIZATION TO
SELL ALMOND HEIGHTS LOTS 19 &
20 FREE AND CLEAR OF
PURPORTED INTERESTS SUBJECT
TO HIGHER AND BETTER OFFERS**

Civil No. 2:12-00591

The Honorable Bruce S. Jenkins

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 Lots 19 & 20" 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
- “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

¹ Docket No. 9 (Receivership Order).

² See generally, *id.*

³ *Id.* at ¶ 7(A).

⁴ *Id.* at ¶ 7(B).

- “[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 Lots 19 & 20

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 this Motion are two parcels of real property with the following addresses and accompanying legal descriptions:

⁵ *Id.* at ¶ 7(D).

⁶ *Id.* at ¶ 19.

⁷ *Id.* at ¶ 37.

⁸ *Id.* at ¶ 38.

⁹ *Id.* at ¶ 39.

¹⁰ Receiver Declaration ¶ 4.

- 795 South Peachtree Drive, Toquerville, UT 84774; T-AHP-A-19 (“Lot 19”); and
- 805 South Peachtree Drive, Toquerville, UT 84774; T-AHP-A-20 (“Lot 20”).

These properties are part of the Almond Heights Park Subdivision, located in Toquerville, Utah (the “Almond Heights Properties”).¹¹

5. Almond Heights Lots 19 & 20 are titled in the name of NNU.¹²

Marketing Almond Heights Lots 19 & 20

6. On or about August 1, 2014, the Receiver caused all of the Almond Heights Properties, including Lots 19 & 20 to be listed for sale through Access Utah Realty (the “Realtor”).¹³ A copy of the Listing Agreement with addenda is attached as Exhibit C 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 Lots 19 & 20 for sale through his Realtor, including by listing the property on the Multiple Listing Service.¹⁷

¹¹ *Id.* at ¶¶ 4-5 & Exhs. A & B to the Receiver Declaration (Title Insurance Commitments).

¹² *Id.* ¶ 5 & Exhs. A & B to the Receiver Declaration (Title Insurance Commitments).

¹³ *Id.* ¶ 6.

¹⁴ *Id.* ¶ 7.

¹⁵ Docket No. 780.

¹⁶ Receiver Declaration ¶ 7.

¹⁷ *Id.* ¶ 8.

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 Lots 19 & 20.¹⁹ Morley, Williams, and Blake have provided the Receiver appraisals of the Almond Heights Properties, including Lots 19 & 20 (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 19 & 20 are attached to the Receiver Declaration as Exhibit D, Exhibit E, and Exhibit F.

11. Morley appraised Lot 19 at \$24,000.00.²⁰ Williams appraised Lot 19 at \$23,000.00.²¹ Blake appraised Lot 19 at \$22,000.00.²² The average appraised value of Lot 19 is \$23,000.00.

12. Morley appraised Lot 20 at \$24,000.00.²³ Williams appraised Lot 20 at \$20,000.00.²⁴ Blake appraised Lot 20 at \$20,000.00.²⁵ The average appraised value of Lot 20 is \$21,333.33.

¹⁸ Docket No. 780.

¹⁹ *Id.* at 1-2.

²⁰ Receiver Declaration, Exh. D (Morley Appraisal).

²¹ *Id.* at Exh. E (Williams Appraisal).

²² *Id.* at Exh. F (Blake Appraisal).

²³ *Id.* at Exh. D (Morley Appraisal).

²⁴ *Id.* at Exh. E (Williams Appraisal).

²⁵ *Id.* at Exh. F (Blake Appraisal).

13. The combined average appraised value of Almond Heights Lots 19 & 20 is \$44,333.33.

The Purchase Agreements

14. The Receiver has entered into purchase agreements to sell Almond Heights Lots 19 & 20. On or about November 10, 2015, the Receiver entered into a purchase agreement for Lot 19 (the "Lot 19 Purchase Agreement") on behalf of the Receivership Estate with Rebecca Bringhurst (the "Buyer") for a purchase price of \$16,800.00, subject to Court approval. A copy of the Lot 19 Purchase Agreement is attached to the Receiver Declaration as Exhibit G.²⁶

15. On or about July 6, 2015, the Receiver entered into a purchase agreement for Lot 20 (the "Lot 20 Purchase Agreement") on behalf of the Receivership Estate with the Buyer for a purchase price of \$16,800.00, subject to Court approval. A copy of the Lot 20 Purchase Agreement is attached to the Receiver Declaration as Exhibit H.²⁷

16. The combined purchase price for Lots 19 & 20 is \$33,600.00.

17. If the Court approves the sale of Lots 19 & 20 pursuant to the terms of the respective purchase agreements, 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.²⁸

18. Any other financial interests against Lots 19 & 20, 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

²⁶ *Id.* at ¶ 10.

²⁷ *Id.* at ¶ 11.

²⁸ *Id.* at ¶ 12.

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.²⁹

19. 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 19 & 20.³⁰

Free and Clear Sale

20. The Receiver proposes to sell Almond Heights Lots 19 & 20 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.³¹

21. To determine interests, if any against Almond Heights Lots 19 & 20, the Receiver obtained commitments for title insurance for Lots 19 & 20 (the “Lot 19 Title Insurance Commitment” and the “Lot 20 Title Insurance Commitment,” collectively, the “Title Insurance Commitments”). The Title Insurance Commitments are attached to the Receiver Declaration as Exhibit A (Lot 19 Title Insurance Commitment), and Exhibit B (Lot 20 Title Insurance Commitment).³²

22. From the Title Reports, the Receiver determined that property taxes on Lots 19 & 20 for the years 2011 through 2015 are liens that are due and payable.³³

23. From the Title Reports, the Receiver has identified one person/entity holding a

²⁹ *Id.* at ¶ 13.

³⁰ *Id.* at ¶ 14.

³¹ *Id.* at ¶ 15.

³² *Id.* at ¶¶ 5 & 16, Exhs. A & B (Title Reports).

³³ *See Id.* at ¶ 17 & Exhs. A & B (Title Reports).

purported interest, in the form of a deed of trust (the “Trust Deed”) against Lots 19 & 20 and four other Almond Heights Properties, one of which, Lot 17,³⁴ has been sold and another of which is pending sale.

24. The Trust Deed, in the amount of \$30,000.00, was recorded in the name of Kristine S. Olson Profit Sharing Plan (the “Trust Deed Holder”) and is undisputed. Because the net proceeds from the sales of the Almond Heights Properties, along with the net sale proceeds from the prior sale of Almond Heights Lot 17 will be sufficient to satisfy the Trust Deed, the Receiver proposes using the proceeds from the sale of Lots 19 & 20, along with a small amount of net proceeds from the sale of Lot 17 currently held in the Real Estate Holding Account to satisfy the Trust Deed and obtain a release of that Trust Deed. In so doing, three of the remaining Almond Heights Properties that the Receiver is marketing for sale will be unencumbered.³⁵

25. A copy of this Motion is being served on the relevant taxing authorities and the Trust Deed Holder.³⁶

Best Interests

26. The sales of Almond Heights Lots 19 & 20 as proposed is beneficial for and in the best interests of the Receivership Estate.³⁷

27. The proposed sales will result in cash based on the fair market value of Almond Heights Lots 19 & 20. The purchase price for Lot 19 is 73% of the average appraised value of

³⁴ See Docket No. 829 (Order approving sale of Lot 17).

³⁵ Receiver Declaration at ¶ 18.

³⁶ *Id.* at ¶ 20.

³⁷ *Id.* at ¶ 21.

Lot 19 and the purchase price for Lot 20 is 78.7% of the average appraised value of Lot 20. The combined purchase price for Almond Heights Lots 19 & 20 is 75.8% of the combined average appraised value of Almond Heights Lots 19 & 20.³⁸

28. The sale of Almond Heights Lots 19 & 20 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 Lots 19 & 20 by ending tax and maintenance obligations associated with the properties.³⁹

29. The sale to the Buyer proposed herein is subject to higher and better offers, after publication notice as provided for below.⁴⁰

Publication Notice

30. Contemporaneously herewith the Receiver is filing his *Ex Parte Motion and Memorandum in Support Seeking Approval of Proposed Method and Form of Publication Notice for Sale of Real Property (Almond Heights Lots 19 & 20)* (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).⁴¹

31. 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

³⁸ *Id.* at ¶ 22.

³⁹ *Id.* at ¶ 23.

⁴⁰ *Id.* at ¶ 24.

⁴¹ *Id.* at ¶ 25.

Court.⁴²

32. 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 sales 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.⁴³

III.

ARGUMENT

Based on the facts above, the Receiver respectfully requests authorization to sell Almond Heights Lots 19 & 20 pursuant to the terms of the Purchase Agreements and satisfaction of the Trust Deed. The sale will also be free and clear of any other liens and interests. Sale of Almond Heights Lots 19 & 20 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 Almond Heights Lots 19 & 20.⁴⁴

Sale of Almond Heights Lots 19 & 20 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

⁴² *Id.* at ¶ 26.

⁴³ *Id.* at ¶ 27.

⁴⁴ Receivership Order ¶ 38.

the true and proper value of such Receivership Property.”⁴⁵ Sale of Almond Heights Lots 19 & 20 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 Lots 19 & 20. Based on the Appraisals, Lot 19 will be sold for 73% of the average appraised value and Lot 20 will be sold for over 78% of the average appraised value. And combined, Almond Heights Lots 19 & 20 will be sold for over 75% of their average appraised value. The Appraisals have taken into consideration current market conditions, sales of comparable properties, and the particular nature of Almond Heights Lots 19 & 20.⁴⁶

Second, the sale of Almond Heights Lots 19 & 20 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.⁴⁷ Accordingly, the Receiver requests that the Court approve this sale under the terms outlined herein.

Request to Sell Almond Heights Lots 19 & 20 Free and Clear of Interests

As discussed above, the Receiver proposes to sell Almond Heights Lots 19 & 20 free and clear of any interests in the property after satisfaction of the Trust Deed and payment of property

⁴⁵ *Id.*

⁴⁶ The Buyer has informed the Receiver that the Buyer believes the size, shape, and slope of Lots 19 & 20 are such that neither one will be approved for construction of a home. The Buyer believes that by combining the two lots, the Buyer will end up with one buildable lot. The Receiver has been informed by his Realtor that the Buyer’s analysis is correct. The Buyer intends to build a home on the combined Lots 19 & 20. *Id.* at ¶ 22 n.3.

⁴⁷ *Id.* at ¶ 23.

taxes. The Court may order such a sale so long as parties with interests against the property are given proper notice. Based on the Title Insurance Commitments, the Receiver does not know of any parties holding interests in Lots 19 & 20 other than the Trust Deed Holder and the taxing authorities.

The Receiver will serve a copy of the Motion on the Trust Deed Holder and the relevant taxing authority.⁴⁸

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. § 2001.⁴⁹ 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.”⁵⁰ Here, the Receiver has complied with each of these factors.

Specifically, factor (1) is met in this case inasmuch as the individual purchase price for Lot 19 is 73% of the average appraised value, the purchase price for Lot 20 is over 78% of the average appraised value, and the combined purchase price for Almond Heights Lots 19 & 20 is

⁴⁸ *Id.* at ¶ 20.

⁴⁹ Receivership Order ¶ 39.

⁵⁰ 28 U.S.C. § 2001(b).

over 75% of the combined average appraised value, and therefore far exceed the 2/3 requirement.

Factor (2) is met because the Receiver has 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.⁵¹ 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 19 & 20 pursuant to the respective purchase agreements or to a higher and better offeror free and clear of purported interests.

DATED this 15th day of December, 2015.

DORSEY & WHITNEY, LLP

/s/ Peggy Hunt

⁵¹ Receiver Declaration ¶ 24.

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