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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 SEEKING
AUTHORIZATION TO SELL
TOQUERVILLE LOT A-2 AND TWO
ATTACHED PARCELS FREE AND
CLEAR OF PURPORTED INTERESTS
SUBJECT TO HIGHER AND BETTER
OFFERS AND MEMORANDUM IN
SUPPORT**

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 “the Property,” 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, 2012, 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
- “[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

Toquerville Lot A-2 and Two Attached Parcels

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

4. Relevant to this Motion is a 5.07 acre parcel of real property, Lot A-2, located in Toquerville, Utah (“Lot A-2”). Attached to Lot A-2 are two smaller parcels of real property relevant here: Lot C, a wedge-shaped, landlocked .04 acre parcel adjacent to the northeast corner of Lot A-2 (“Lot C”); and a small strip of land running along the southwest boundary of Lot A-2 and adjacent to Westfield Road, which was abandoned and conveyed to NNU by Toquerville

⁶ *Id.* at ¶ 19.

⁷ *Id.* at ¶ 37.

⁸ *Id.* at ¶ 38.

⁹ *Id.* at ¶ 39.

¹⁰ Receiver Declaration ¶ 4.

City in 2008 (the “Westfield Strip”) (collectively, “the Property”).¹¹ Lot A-2 is identified as T-138-A-2-A, Lot C is identified as T-138-C, and the Westfield Strip does not appear to have a separate parcel number.¹²

5. The Property is titled in the name of NNU.¹³

Marketing the Property

6. On or about July 27, 2015, the Receiver caused the Property to be listed for sale through Access Utah Realty (the “Realtor”).¹⁴ A copy of the Listing Agreement 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.¹⁵ The Court approved the use of the original appraiser and two additional appraisers on October 3, 2014.¹⁶ The Receiver has now received the second and third appraisals.¹⁷

8. The Receiver marketed the Property for sale through his Realtor, including by listing the Property on the Multiple Listing Service.¹⁸

Court-Appointed Appraisers and Valuation

9. On October 3, 2014, the Court entered an *Order Granting Receiver’s Ex Parte*

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

¹² *Id.*

¹³ *Id.*

¹⁴ Receiver Declaration ¶ 6.

¹⁵ *Id.* at ¶ 7.

¹⁶ Docket No. 780.

¹⁷ Receiver Declaration ¶ 7.

¹⁸ *Id.* at ¶ 8.

*Motion Seeking Appointment of Appraisers for Almond Heights Lots.*¹⁹

10. Consequently, Craig Morley (“Morley”), Steven R. Williams (“Williams”), and Kelly J. Blake (“Blake”) were appointed as appraisers for the Receivership Estate’s Toquerville properties, including the Property relevant to this motion (collectively, the “Appraisers”).²⁰ The Appraisers have provided the Receiver with appraisals of the Receivership Estate’s Toquerville properties, including the Property relevant to this motion (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 the Property are attached to the Receiver Declaration as Exhibit C, Exhibit D, and Exhibit E, respectively.

11. Morley appraised Lot A-2 at \$178,000.00.²¹ Williams appraised Lot A-2 and Lot C together at \$140,000.00.²² Blake appraised Lot A-2 and Lot C together at \$150,000.00.²³ The average appraised value of the Property is \$156,000.00.

The Purchase Agreements

12. On or about September 25, 2015 the Receiver entered into a purchase agreement for the Property (the “Purchase Agreement”) on behalf of the Receivership Estate with Rural Housing Development Corporation (the “Buyer”) for a purchase price of \$148,200.00, subject to Court approval. A copy of the Purchase Agreement with addenda is attached to the Receiver Declaration as Exhibit F.²⁴

13. If the Court approves the sale of the Property pursuant to the terms of the

¹⁹ Docket No. 780.

²⁰ *Id.* at 1-2.

²¹ Receiver Declaration, Exh. C (Morley Appraisal).

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

²³ *Id.* at Exh. E (Blake Appraisal).

²⁴ *Id.* at ¶ 10.

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.²⁵

14. Any other financial interests against the Property 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's 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 the Property.²⁷

Free and Clear Sale

16. The Receiver proposes to sell the 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 Property or to the Net Sale Proceeds.²⁸

17. To determine interests, if any, against the Property, the Receiver obtained a title report for the Property, a copy of which is attached the Receiver Declaration as Exhibit A ("Title Report").²⁹

18. From the Title Report the Receiver determined that property taxes on the Property

²⁵ *Id.* at ¶ 11.

²⁶ *Id.* at ¶ 12.

²⁷ *Id.* at ¶ 13.

²⁸ *Id.* at ¶ 14.

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

for the years 2009 through 2015 are liens that are due and payable.³⁰

19. From the Title Report the Receiver has determined that no liens or interests, other than the tax liens identified above, attach to the Property.³¹

20. Any other financial interests against the Property, 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's 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.³²

21. A copy of this Motion is being served on the relevant taxing authority.³³

Best Interests

22. Sale of the Property as proposed is beneficial for and in the best interests of the Receivership Estate.³⁴

23. The proposed sale will result in cash based on the fair market value of the Property. The purchase price is 95% of the average appraised value of the Property.³⁵

24. Sale of the Property at this time will also slightly reduce the burden to the Receivership Estate by reducing the time spent by the Receiver in managing it and, more importantly, will maximize the value of the Property by ending tax and maintenance obligations associated with it.³⁶

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

³¹ *Id.* at ¶ 17.

³² *Id.* at ¶ 18.

³³ *Id.* at ¶ 19.

³⁴ *Id.* at ¶ 20.

³⁵ *Id.* at ¶ 21.

³⁶ *Id.* at ¶ 22.

25. The sale to the Buyer proposed herein is subject to higher and better offers, after publication notice as provided for below.³⁷

Publication Notice

26. Contemporaneously herewith the Receiver is filing his *Ex Parte Motion Seeking Approval of Proposed Method and Form of Publication Notice for Sale of Real Property and Memorandum in Support (Toquerville Lot A-2 and Two Attached Parcels)* (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).³⁸

27. 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.³⁹

28. 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.⁴⁰

³⁷ *Id.* at ¶ 23.

³⁸ *Id.* at ¶ 24.

³⁹ *Id.* at ¶ 25.

⁴⁰ *Id.* at ¶ 26.

III.

ARGUMENT

Based on the facts above, the Receiver respectfully requests authorization to sell the 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 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 Estate, and the sale serves the purposes of the receivership by providing a "realization of the true and proper value" of the Property.⁴¹

Sale of the 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."⁴² Sale of the 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 Property. The purchase price is 95% of the average appraised value.⁴³ The Appraisals have taken into consideration current market conditions, sales of comparable

⁴¹ Receivership Order ¶ 38.

⁴² *Id.*

⁴³ Receiver Declaration at ¶ 21.

properties, and the particular nature of the Property.

Second, sale of the Property 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.⁴⁴ Accordingly, the Receiver requests that the Court approve this sale under the terms outlined herein.

Request to Sell the Property Free and Clear of Interests

As discussed above, the Receiver proposes to sell the 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.

The Receiver will serve a copy of the Motion on the relevant taxing authority.⁴⁵

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)

⁴⁴ *Id.* at ¶ 29.

⁴⁵ *Id.* at ¶ 19.

⁴⁶ Receivership Order ¶ 39.

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 Property is 95% of the average appraised value, far exceeding the 2/3 requirement.

Factor (2) is met because the Receiver has obtained the Appraisals from three experienced, third-party appraisers who were appointed by this Court and has 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.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 herein. 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 Property pursuant to the Purchase Agreement or to a higher and better offeror free and clear of purported interests.

⁴⁷ 28 U.S.C. § 2001(b).

⁴⁸ Receiver Declaration ¶ 23.

DATED this 10th day of February, 2015.

DORSEY & WHITNEY, LLP

/s/ Peggy Hunt

Peggy Hunt

Chris Martinez

John Wiest

Attorneys for Receiver

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of February, 2016 a true and correct copy of the foregoing **RECEIVER'S MOTION SEEKING AUTHORIZATION TO SELL TOQUERVILLE LOT A-2 AND TWO ATTACHED PARCELS FREE AND CLEAR OF PURPORTED INTERESTS SUBJECT TO HIGHER AND BETTER OFFERS AND MEMORANDUM IN SUPPORT** was served upon the persons named below, at the addresses set out below by U.S. mail:

Wayne L. Palmer
8816 South 2240 West
West Jordan, UT 84088

David Whitehead
Washington County Treasurer
197 E. Tabernacle
St. George, UT 84770

/s/ John Wiest
