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

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

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

Defendants.

**RECEIVER'S MOTION SEEKING
APPROVAL OF SETTLEMENT
AGREEMENT WITH STAR POINTE
DEVELOPMENT, LLC AND STAR
POINTE PARTNERS, LLC AND
MEMORANDUM OF LAW IN
SUPPORT**

Civil No. 2:12-00591

The Honorable Bruce S. Jenkins

R. Wayne Klein, as receiver (the "Receiver") for Defendant National Note of Utah, LC, and the assets of Defendant Wayne LaMar Palmer, by and through his counsel of record, respectfully requests that the Court enter an Order granting this Motion and approving the Settlement Agreement discussed below that the Receiver has entered in to, subject to Court approval, with Star Pointe Development, LLC and Star Pointe Partners, LLC. This Motion is supported by the *Memorandum of Law* contained herein and the *Declaration of R. Wayne Klein*,

Receiver (the “Receiver Declaration”) attached hereto as **Exhibit A**. A proposed form of Order is attached hereto as **Exhibit B**.

MEMORANDUM OF LAW

PROCEDURAL BACKGROUND

1. On June 25, 2012, the above-captioned case was commenced by the Securities and Exchange Commission against Defendants National Note of Utah, LC (“NNU”) and Wayne LaMar Palmer (“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”; with NNU for purposes of this Motion, “NNU”), and all of 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:

- a. “[D]etermine the nature, location and value of all property interests of the Receivership Defendants and the Palmer Entities . . . [.]”³
- b. “[T]ake custody, control and possession of all Receivership Property and records. . . [.]”⁴
- c. “[M]anage, control, operate and maintain 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).

⁵ *Id.* at ¶ 7(C).

- d. “[U]se Receivership Property for the benefit of the Receivership Estates, making payments and disbursements and incurring expenses as may be necessary or advisable in the ordinary course of business in discharging his duties as Receiver[.]”⁶
- e. “[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
- f. “[P]ursue, resist and defend all suits, actions, claims and demands which may now be pending or which may be brought by or asserted against the Receivership Estates[.]”⁸

FACTUAL BACKGROUND

The Morse Loan

3. Prior to the Receiver’s appointment, National Note loaned approximately \$282,000 to James Morse. In addition, Morse was a National Note investor.

4. On or about January 21, 2009, Morse assigned to National Note a 32% interest in Star Pointe Development, LLC (“SPD”) as partial satisfaction of his loan debt to National Note.

Star Pointe Development and the Prior Court Approved Settlement

5. SPD’s primary asset was real estate (“Property”) located in South Jordan, Utah. The Property was encumbered by a lien held by American West Bank (“AWB”).

6. After the commencement of this case, AWB commenced foreclosure proceedings related to the Property. The Receiver notified AWB of the Receivership’s interest in SPD and asserted that this interest prohibited AWB from foreclosing on the Property without approval from this Court.

⁶ *Id.* at ¶ 7(D).

⁷ *Id.* at ¶ 37.

⁸ *Id.* at ¶ 7(J).

7. Pursuant to a settlement agreement, AWB paid \$70,000.00 to the Receiver for the benefit of the Receivership Estate on January 27, 2014 in exchange for the Estate's release of potential claims on the Property. That agreement was approved by the Court on February 28, 2014.⁹

The Interpleaded Tax Increment Payments and Lawsuit

8. In 2016, the Receiver learned that the South Jordan Redevelopment Agency had interpleaded tax increment payments related to the Property in the Third District Court of Utah (the "Interpleaded Funds") in the approximate amount of \$88,664.00. *See The Redevelopment Agency of South Jordan City v. 106th South Business Park, et al.*, Case No. 150904301.

9. At that time, the Receiver discovered that extensive litigation had been ongoing between various entities and persons claiming interests in the Interpleaded Funds, including at least the following: SPD, the entity in which the estate holds a 32% ownership interest; Star Pointe Partners, LLC; Carole Jardine, a person involved with Star Pointe Partners, LLC; MFG Trust, a trust controlled by Julie Jardine; and Julie Jardine. The Receivership Estate does not have an interest in Star Pointe Partners, LLC or the MFG Trust.

The Results of the Receiver's Investigation of the Interpleaded Funds

10. After investigating the very complicated history of the Property and the web of interconnected companies and persons who were making a claim to the Interpleaded Funds, the Receiver has determined that (a) engaging in the ongoing litigation related to the Interpleaded Funds would be time-consuming and costly for numerous reasons, including the contentiousness

⁹ Docket No. 608.

of the parties already engaged in the litigation; and (b) proving up a claim to the Interpleaded Funds on behalf of the Receivership Estate could be difficult because, among other things—

- (i) Documents relating to rights to the Interpleaded Funds are sparse and inconsistent;
- (ii) Some documents indicate an intent for the Interpleaded Funds to be paid to the Star Pointe Partners, an entity in which the Receivership has no ownership interest;
- (iii) Although contested, the manager of SPD made inconsistent assignments of the Interpleaded Funds which are contested; and
- (iv) Even if it is determined that SPD holds an interest in the Interpleaded Funds, the Receivership Estate only has a 32% equity interest in the entity and, therefore, it is very possible that the Receivership Estate would recover little or nothing. SPD has no assets aside from a possible claim to the Interpleaded Funds, and thus, any recovery by the Receivership Estate would come only after satisfaction of creditor's claims and be limited to a 32% share.¹⁰

11. As a result of the fact that the Receivership Estate's interest in the Interpleaded Funds is limited to its 32% membership interest in SPD, as well as the factors listed above, the Receiver determined that he should not appear in the Interpleaded Funds action, but rather attempt to settle claims that the Receivership Estate has in the Interpleaded Funds.¹¹

¹⁰ Ex. A (Receiver Declaration), ¶ 5.

¹¹ *Id.* at ¶ 6.

The Settlement

12. The Receiver, on the one hand, and SPD and Star Pointe Partners, LLC (collectively the “Star Pointe Parties”) on the other hand, engaged in arms’ length and good faith negotiations related to the Receivership Estate’s claim to the Interpleaded Funds.¹²

13. As a result of these good faith negotiations, the Receiver has entered into a Settlement Agreement with the Star Pointe Parties, subject to Court approval.¹³

14. Under the Settlement Agreement, the Star Pointe Parties will pay \$10,000.00 to the Receivership Estate from the Interpleaded Funds, upon the release of the Interpleaded Funds by the Third District Court. The agreement provides that the parties will release each other from claims relating to the Interpleaded Funds upon payment of the \$10,000.

APPLICABLE LAW AND ANALYSIS

15. The Receiver requests that the Court approve the Settlement Agreement. In support hereof, the Receiver provides the following analysis.

16. Courts recognize that a “receiver has the power, when so authorized by the court, to compromise claims either for or against the receivership and whether in suit or not in suit.”¹⁴

17. “In determining whether to approve a proposed settlement, the cardinal rule is that the District Court must find that the settlement is fair, adequate and reasonable and is not the product of collusion between the parties.”¹⁵ The Tenth Circuit has explained:

¹² *Id.* at ¶ 7.

¹³ *Id.* at ¶ 8.

¹⁴ *Sec. & Exch. Comm’n v. Credit Bankcorp, Ltd.*, No. 99 CIV. 11395, 2001 WL 1658200, at *2 (S.D.N.Y. Dec. 27, 2001) (quoting 3 Ralph Ewing Clark, *A Treatise on the Law and Practice of Receivers*, § 770 (3d Ed. 1959)).

In assessing whether the settlement is fair, reasonable and adequate the trial court should consider: (1) whether the proposed settlement was fairly and honestly negotiated; (2) whether serious questions of law and fact exist, placing the ultimate outcome of the litigation in doubt; (3) whether the value of an immediate recovery outweighs the mere possibility of future relief after protracted and expensive litigation; and (4) the judgment of the parties that the settlement is fair and reasonable.¹⁶

18. Here, the Settlement Agreement is fair, reasonable, and adequate for at least the following reasons: (a) it was fairly and honestly negotiated at arm's length and in good faith by the parties; (b) the litigation related to the Interpleaded Funds is contentious and the outcome is unknown at this time; (c) the Receivership Estate's claim to a share of the Interpleaded Funds and, more importantly, its ability to collect on any claim it may be found to have is not at all certain; (d) the value of an immediate recovery from the Star Pointe Parties outweighs the mere possibility of future relief after the conclusion of litigation which is likely to be protracted and expensive; (e) the Receiver has obtained \$10,000.00 on account of claims that would have entitled the Receivership Estate to, at most, 32% of the total \$89,000.00 in Interpleaded Funds; and (f) in the Receiver's business judgment, the terms of the proposed Settlement Agreement are fair and reasonable.¹⁷

19. The Settlement Agreement is beneficial to the Receivership Estate.¹⁸

20. In light of these factors, the Receiver respectfully submits that the Settlement Agreement should be approved by the Court.

¹⁵ *Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir. 1977); *see also Jones v. Nuclear Pharmacy, Inc.*, 741 F.2d 322, 324 (10th Cir. 1984).

¹⁶ *Jones*, 741 F.2d at 324.

¹⁷ Ex. A (Receiver Declaration), at ¶ 9.

¹⁸ *Id.* at ¶ 10.

CONCLUSION

For the reasons stated herein, the Receiver requests that the Court enter the proposed Order attached hereto as **Exhibit B**, approving the Settlement Agreement with the Star Pointe Parties.

DATED this 7th day of June, 2017.

DORSEY & WHITNEY LLP

/s/ Peggy Hunt _____
Peggy Hunt
John J. Wiest
Attorneys for Receiver

