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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
REQUESTING ORDER APPROVING
SALE OF BYRON BLOCK 1 LOT 4
FREE AND CLEAR OF INTERESTS
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 and pursuant to 28 U.S.C. §§ 2001(a) and 2002 and the *Order Appointing Receiver and Staying Litigation* entered by this court in this case [Docket No. 9] (the “Receivership Order”), hereby files this “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.”

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

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

Byron Block 1 Lot 4

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

⁵ *Id.* at ¶ 7(D).

⁶ *Id.* at ¶ 19.

⁷ *Id.* at ¶ 37.

⁸ *Id.* at ¶ 38.

⁹ *Id.* at ¶ 39.

¹⁰ Receiver Declaration ¶ 5.

4. Relevant to this Motion is a parcel of real property known as Block 1 Lot 4 of the Byron West Industrial Park in Byron, Olmsted County, Minnesota (“the Property”), with tax parcel number 75.31.23.068511.

5. The Receiver obtained a Title Report for the Property, a copy of which is attached to the Receiver Declaration as Exhibit A (the “Title Report”).¹¹ According to the Title Report, the Property is titled in the name of DPLM LLC, one of the Palmer Entities.

Valuation and Encumbrances

6. To determine an offering price and comply with his duties, the Receiver obtained the opinion of his Realtor and three appraisers.¹²

7. On or about June 4, 2014, the Receiver obtained an appraisal for the Property (the “Blekre Appraisal”) from Blekre Appraisal Services, LLC (“Blekre”). A true and correct copy of the Blekre Appraisal is attached to the Receiver Declaration as Exhibit B.¹³

8. Blekre valued the Property at \$392,000.00.¹⁴

9. On or about September 19, 2014, the Receiver obtained an appraisal for the Property (the “Thorkelson Appraisal”) from Thorkelson Services, Inc. (“Thorkelson”). A true and correct copy of the relevant portions of the Thorkelson Appraisal is attached to the Receiver Declaration as Exhibit C.¹⁵

10. Thorkelson valued the Property at \$31,300.¹⁶

¹¹ *Id.* at ¶ 7.

¹² *Id.* at ¶ 8.

¹³ *Id.* at ¶ 9.

¹⁴ *Id.* at Exh. B (Blekre Appraisal).

¹⁵ *Id.* at ¶ 10.

¹⁶ *Id.* at Exh. C (Thorkelson Appraisal).

11. Because Blekre and Thorkelson gave such divergent values for the Property, the Court instructed the Receiver to obtain a third appraisal on November 24, 2014. On or about December 19, 2014, the Receiver obtained an appraisal for the Property (the “Integra Appraisal”) from Integra Realty Resources (“Integra”). A true and correct copy of the relevant portions of the Integra Appraisal is attached to the Receiver Declaration as Exhibit D.¹⁷

12. Integra valued the Property at \$174,000.00.¹⁸

13. The average appraised value of the Property is \$191,100.00.

14. From the Title Report, the Receiver determined that the Property is encumbered by unpaid current and delinquent property taxes and assessments from 2009 through 2017 totaling over \$278,000.00 (the “Taxes and Assessments”), and no other interests or liens attach to the Property.¹⁹

Marketing the Property

15. On or about October 6, 2014, the Receiver caused the Property to be listed for sale through Braasch Commercial Real Estate (the “Realtor”). A copy of the “Listing Agreement” is attached to the Receiver Declaration as Exhibit E.²⁰

16. The Receiver marketed the Property for sale through the Realtor, including by listing the Property on the Multiple Listing Service.²¹

¹⁷ *Id.* at ¶ 11.

¹⁸ *Id.* at Exh. D (Integra Appraisal).

¹⁹ *Id.* at ¶ 12.

²⁰ *Id.* at ¶ 13.

²¹ *Id.* at ¶ 14.

The Purchase Agreement

17. On or about January 26, 2018, the Receiver entered into an agreement relating to the Property (the “Purchase Agreement”) on behalf of the Receivership Estate with the City of Byron, Minnesota (“Byron City”) and Dodge County Wind, LLC (“Dodge County Wind”). The Purchase Agreement is subject to Court approval. A true and correct copy of the Purchase Agreement is attached to the Receiver Declaration as Exhibit F.²²

18. Under the terms of the Purchase Agreement, the Receiver will transfer the Property to Byron City, and Byron City will then grant an easement on the Property to Dodge County Wind. As consideration for the various elements of the Purchase Agreement:

a. Byron City will waive all assessments imposed by it on the Property, which were in the approximate amount of \$138,000 as of December 14, 2017, and the assessment amounts which continue to accrue;

b. Dodge County Wind will pay all property taxes owed on the Property, which were in the approximate amount of \$141,000 as of December 14, 2017, and the property tax amounts which continue to accrue;

c. Dodge County Wind will pay all costs related to the sale closing, including surveying costs, title report costs, and other closing costs; and

d. Dodge County Wind will pay the Receiver \$10,000.00.²³

19. The Purchase Agreement was negotiated by the Receiver, Byron City, and Dodge County Wind in good faith and at arms’ length.²⁴

²² *Id.* at ¶ 15.

²³ *Id.* at Exh. F (Purchase Agreement).

²⁴ *Id.* at ¶ 16.

Sale Costs and Net Sale Proceeds

20. From the \$10,000.00 gross sale proceeds the Receivership Estate will receive under the Purchase Agreement, the Receiver anticipates paying the Realtor a \$1,000 commission at the close of the sale. The gross sale proceeds less the realtor commission, totaling \$9,000.00, are referred to herein as the “Net Sale Proceeds.”²⁵

21. Any other financial interests against the Property (to the extent 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.²⁶

22. To the extent that other liens or financial interests against the Property are discovered or asserted, the Receiver will separately account to the Court for the Net Sale Proceeds pending resolution of any disputes related to such other interests that may exist against the Property.²⁷

Free and Clear Sale

23. 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 the Net Sale Proceeds.²⁸

24. As stated above in Paragraph 14, the Title Report shows unpaid property taxes and assessments on the Property for the years 2009 through 2017 and that no other interests or

²⁵ *Id.* at ¶ 17.

²⁶ *Id.* at ¶ 18.

²⁷ *Id.* at ¶ 19.

²⁸ *Id.* at ¶ 20.

liens attach to the Property. Under the terms of the Purchase Agreement, Byron City will waive all assessments it has imposed on the Property (including assessments that accrue after the date of the Purchase Agreement) and Dodge County Wind will pay all property taxes on the Property (including taxes that accrue after the date of the Purchase Agreement) at the close of the sale.²⁹

25. Any other financial interests against the Property, other than the realtor commission, will not be paid by the Receiver at the close 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.³⁰

26. A copy of this Motion is being served on the relevant taxing authority.³¹

Best Interests

27. The Receiver believes that the sale of the Property as proposed is beneficial for and in the best interests of the Receivership Estate.³²

28. In exchange for transferring the Property under the Purchase Agreement, the Receivership Estate will receive consideration worth at least \$288,520.00 plus closing costs and the amount of property taxes and assessments accruing after December 14, 2017 (the "Total Consideration"), comprised of: (a) \$10,000.00 cash; (b) waiver of all assessments on the property imposed by Byron City, valued at approximately \$138,000.00 (plus assessments that have accrued since December 14, 2017); (c) payment of all property taxes by Dodge County Wind,

²⁹ *Id.* at Exh. A (Title Report) and Exh. F (Purchase Agreement).

³⁰ *Id.* at ¶ 21.

³¹ *Id.* at ¶ 22.

³² *Id.* at ¶ 23.

valued at approximately \$141,000.00 (plus property taxes that have accrued since December 14, 2017); and (d) payment of all closing costs by Dodge County Wind, which the Receiver estimates will be approximately \$2,000.00.³³

29. The Total Consideration is over 150% of the average appraised value for the Property.³⁴ This reflects the true situation of the Property, where the accrued taxes and assessments are greater than the market value of the Property.

30. The Purchase Agreement allows the Receivership Estate to net \$9,000.00 on the sale of the Property in spite of the fact that the Property value is under water.³⁵

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

32. The sale proposed herein will not be approved if the Receiver receives higher and better offers that are in compliance with 28 U.S.C. § 2001(b), and the sale is conditioned on this factor.³⁷

Publication Notice

33. 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 (Byron Block 1 Lot 4)* (the "Publication Motion"), seeking the Court's

³³ *Id.* at ¶ 24 and Exh. F (Purchase Agreement).

³⁴ *Id.* at ¶ 25.

³⁵ *Id.* at ¶ 26.

³⁶ *Id.* at ¶ 27.

³⁷ *Id.* at ¶ 28.

approval of the method and form of proposed publication notice as required under 28 U.S.C. § 2001(b).³⁸

34. Upon entry of an Order granting the Publication Motion, the Receiver will publish notice of the sale in newspapers in Salt Lake City, Utah, and Byron, Minnesota, using the method and form of notice approved by the Court.³⁹

35. In the event that the Receiver receives and accepts a qualifying 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.⁴⁰

III.

APPLICABLE LAW

36. 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 held by the Receiver pending resolution of any disputes related thereto. The 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.

³⁸ *Id.* at ¶ 29.

³⁹ *Id.* at ¶ 30.

⁴⁰ *Id.* at ¶ 31.

Sale of the Property as Proposed is Beneficial to the Receivership Estate

37. 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 the Property as proposed herein is in the best interests of the Receivership Estate for several reasons, including at least the following.

38. *First*, the sale will result in cash for the Receivership Estate based on the fair market value of the Property. Based on the Appraisals, the Property will be sold for over 150% of its average appraised value, and the Receivership Estate will net \$9,000 in spite of the fact that the Property value is under water.

39. *Second*, the 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 or marketing 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.

⁴¹ Receivership Order ¶ 38.

Request to Sell Byron Block 1 Lot 4 Free and Clear of Interests

40. As discussed above, the Receiver proposes to sell the Property free and clear of any interests, with any such interests 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.

41. The Receiver will serve a copy of the Motion on the relevant taxing authority.⁴²

42. The Receivership Order provides that the Court may require that the proposed sale of real property satisfy 28 U.S.C. § 2001.⁴³ 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 property 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.”⁴⁴ Here, the Receiver has complied with each of these factors.⁴⁵

43. Specifically, factor (1) is met in this case inasmuch as the Total Consideration for the Property is over 150% of the average appraised value, and therefore exceeds the 2/3 requirement.

⁴² Receiver Declaration ¶ 22.

⁴³ Receivership Order ¶ 39.

⁴⁴ 28 U.S.C. § 2001(b).

⁴⁵ 28 U.S.C. § 2001(a).

44. Factor (2) is met because the Receiver has obtained appraisals from three independent appraisers who were appointed by this Court, and the Receiver has provided the Court with the appraisals.

45. 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.

46. 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. 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

Accordingly, for the reasons set forth herein, the Receiver requests that the Court enter the proposed Order attached hereto as **Exhibit A**, thus authorizing the sale of the Property free and clear of interests pursuant to the Purchase Agreements or to a higher and better offeror free and clear of purported interests.

DATED this 29th day of January, 2018.

DORSEY & WHITNEY, LLP

/s/ Peggy Hunt

Peggy Hunt

John J. Wiest

Attorneys for Receiver

CERTIFICATE OF SERVICE

I hereby certify that on the January 29, 2018, a true and correct copy of the foregoing was filed with the Court and served via ECF on all parties who have requested notice in this case.

/s/ John J. Wiest

I hereby certify that on the January 29, 2018, a true and correct copy of the foregoing was served upon the persons named below, at the addresses set out below by U.S. mail:

Property Records and Licensing
Olmsted County Government Center
151 4th Street SE
Rochester, MN 55904

Boulevard Associates, LLC
Attn: Land Services
700 Universe Blvd.
Juno Beach, FL 33408

Boulevard Associates, LLC
Attn: Seth Sheitelman
700 Universe Blvd. (LAW/JB)
Juno Beach, FL 33408

Byron City Office
Attn: Mary Blair-Hoeft, City Administrator
680 Byron Main Court NE
Byron, MN 55920

/s/ Karen Bingham