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

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

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

Defendants.

**DECLARATION OF R. WAYNE
KLEIN IN SUPPORT OF
RECEIVER'S MOTION AND
MEMORANDUM IN SUPPORT
REQUESTING ORDER APPROVING
(1) PUBLIC SALE OF PROPERTY
FREE AND CLEAR OF INTERESTS,
(2) METHOD AND FORM OF
PUBLICATION NOTICE, AND (3)
PUBLIC AUCTION PROCEDURES**

**(COTTONWOOD ROAD
PROPERTY)**

2:12-cv-00591 BSJ

The Honorable Bruce S. Jenkins

I, R. Wayne Klein, being of lawful age, declare, certify, verify and state as follows:

1. I am the Court-Appointed Receiver (the "Receiver") in the above-captioned case pursuant to the *Order Appointing Receiver and Staying Litigation* entered on June 25, 2012 [Docket No. 9] (the "Receivership Order").

2. I submit this Declaration in support of the *Receiver's Motion and Memorandum in Support Requesting Order Approving (1) Public Sale of Property Free and Clear of Interests, (2) Method and Form of Publication Notice, and (3) Public Auction Procedures (Cottonwood Road Property)* (the "Motion").

3. Since my appointment, I have engaged in an investigation of the assets and obligations of the Receivership Estate, and I make all of the following statements based on my personal knowledge.

The Property

4. Since my appointment, I have identified numerous real properties as being part of the Receivership Estate, and where appropriate have listed such properties for sale.

5. Relevant to the present Motion is approximately .96 acres of real property made up of five parcels of land located at: (a) 3711 E. Little Cottonwood Road, Sandy, Utah 84092 ("3711"); (b) 3725 E. Little Cottonwood Road, Sandy, Utah 84092 ("3725"); (c) 3731 E. Little Cottonwood Road, Sandy, Utah 84092 ("3731"); (d) 9767 Little Cottonwood Place, Sandy, Utah 84092 ("9767"); and (e) 9778 South Mountain Valley Way, Sandy, Utah 84092 ("9778") and together with 3711, 3725, 3731, and 9767, the "Real Property").

6. 3725 contains a vacant and unlivable home and the other 4 parcels of Real Property are vacant land.

Marketing of the Real Property

7. I hired Michael Junkins ("Junkins"), a certified residential appraiser in the State of Utah to appraise the Real Property.

8. On May 26, 2013, Junkins issued an appraisal valuing the Real Property at \$211,000.00 (the "Appraisal"). A copy of the Appraisal is attached hereto as **Exhibit A**.

9. I received offers from two different parties to purchase the Real Property. I ultimately decided that the “Stalking Horse Bid” described below is the highest and best bid at this time, and that I would sell the Real Property at a public sale.

The Purchase Agreement and Stalking Horse Bid at Auction

10. On or about July 3, 2013, Karl Sun (“Sun”), sent me a letter (the “Letter”) offering to purchase the Real Property for \$211,000.00, the full appraised value of the Real Property. A copy of the Letter is attached hereto as **Exhibit B**.

11. On or about July 5, 2013, Sun and I entered into a “Purchase Agreement,” which is attached hereto as **Exhibit C**.

12. The Purchase Agreement is conditioned upon the outcome of a public auction.

13. Pursuant to the Purchase Agreement, Sun has offered \$211,000.00 for the Real Property, the entire balance of which Sun has paid to me as a down payment. I am holding the down payment in separate bank account pending the results of the auction.

14. I am selling the Real Property “as is” and I have notified Sun about certain environmental concerns related to the Real Property.

15. The Purchase Agreement has been negotiated by me with the holder of the Stalking Horse Bid in good faith and at arms’ length.

16. I propose to use the offer made by the holder of the Stalking Horse Bid as the opening bid at the public auction described below (the “Stalking Horse Bid”).

Sale Costs and Net Sale Proceeds

17. I did not retain a broker and did not list the Real Property. Thus, I will not pay any broker fees related to the sale of the Real Property and I anticipate paying only the ordinary costs of the sale including market-rate closing costs and delinquent property taxes at the time of

closing of the sale of the Real Property.

18. Any interests against the Real Property, other than closing costs and property taxes, will not be paid at the time of closing of the sale. Rather, as proposed, any such interests (to the extent that they exist and without any waiver of the my rights and defenses related thereto) will survive the sale and will attach to the net sale proceeds, these being the sale proceeds, less the ordinary costs of sale (the "Net Sale Proceeds").

19. I will separately account for the Net Sale Proceeds pending resolution of any disputes related to interests that may exist against the Real Property.

Free and Clear Sale

20. I propose to sell the Real Property free and clear of all interests therein, with any interests that may exist attaching to the Net Sale Proceeds. In so doing, I am in no way waiving any rights, claims, interests or defenses to any claims or interests made against the Real Property or to the Net Sale Proceeds.

21. To determine interests, if any against the Real Property, I obtained a preliminary title report (the "Title Report"), a copy of which is attached hereto as **Exhibit D**.

22. I have also identified approximately 46 persons/entities holding Assignments of Beneficial Interest in the Real Property (the "ABI Holders"). To facilitate the proposed sale of the Real Property, I propose allowing any interests in the Real Property, including the identified and remaining interests asserted by the ABI Holders, to attach to the Net Sale Proceeds while I evaluate the validity of such interests. In so doing, I am in no way waiving any rights, claims, interests or defenses to any claims or interests made against the Real Property or to the Net Sale Proceeds.

23. As set forth in the Certificate of Service attached to the Motion, a copy of the

Motion is being served on the relevant taxing authorities and each of the ABI Holders. A copy of this Receiver Declaration and attached exhibits will be posted on my website and will be available upon request.

Best Interests

24. I believe that the sale of Real Property as proposed is beneficial for and in the best interests of the Receivership Estate based on the appraised value of the Real Property and the amount of the Stalking Horse Bid, which was obtained through good faith and arms' length negotiations.

25. The Stalking Horse Bid is equal to the appraised value, and through the proposed auction, the purchase price cannot go lower and might increase.

26. Notice of the auction described below will be published and will be posted on my website.

27. The SEC has been informed of the material terms of the sale, and has no objection thereto.

28. Upon completion of the sale and after the conclusion of the public auction discussed below, I will file with the Court a "Notice of Sale Results," stating the purchase price that was obtained at public auction and reporting on the Net Sale Proceeds of the sale. This Notice of Sale Results will be served on those parties asserting interests in the Real Property.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

DATED this 23rd day of July, 2013.



R. Wayne Klein, *Receiver*

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the above **DECLARATION OF RECEIVER R. WAYNE KLEIN IN SUPPORT OF RECEIVER'S MOTION AND MEMORANDUM IN SUPPORT REQUESTING ORDER APPROVING (1) PUBLIC SALE OF PROPERTY FREE AND CLEAR OF INTERESTS, (2) METHOD AND FORM OF PUBLICATION NOTICE, AND (3) PUBLIC AUCTION PROCEDURES (COTTONWOOD ROAD PROPERTY)** was filed with the Court on this 23rd day of July, 2013, and served via ECF on all parties who have requested notice in this case.

/s/ Jeffrey M. Armington