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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.

**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

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 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, respectfully requests that the Court enter the proposed Order attached hereto as **Exhibit B**, approving (1) the public sale of certain real property described below pursuant to public sale free and clear of interests; (2) the Receiver's proposed method and form of publication notice for the public sale; and (3) approving the Receiver's proposed auction procedures governing such public sale set forth below. This Motion is supported by the Declaration of R. Wayne Klein, Receiver (the "Receiver Declaration").

MEMORANDUM OF SUPPORT

I.

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 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, and 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:

¹ Docket No. 9 (Receivership Order).

² See generally, *id.*

- “[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
- “[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

³ *Id.* at ¶ 7(A).

⁴ *Id.* at ¶ 7(B).

⁵ *Id.* at ¶ 7(D).

⁶ *Id.* at ¶ 19.

⁷ *Id.* at ¶ 37.

⁸ *Id.* at ¶ 38.

⁹ *Id.* at ¶ 39.

II.

REAL PROPERTY TO BE SOLD AT AUCTION

The Property

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 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”).¹¹ The Real Property is more particularly described as:

a. 3711: Parcel 28-12-178-025-0000 - .19 acres

BEGINNING AT THE SOUTHWEST CORNER OF LOT 10, MOUNTAIN VALLEY SUBDIVISION, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE WITH THE OFFICE OF THE SALT LAKE COUNTY RECORDER, SAID POINT OF BEGINNING BEING REPORTED ON SAID PLAT TO BE NORTH 89°50'31" EAST ALONG THE QUARTER-SECTION LINE 1314.08 FEET FROM THE WEST QUARTER CORNER OF SECTION 12, TOWNSHIP 3 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN; THENCE ALONG THE SOUTH LINE OF SAID LOT 10, AND IT'S EXTENSION, NORTH 89°50'31" EAST 113.47 FEET; THENCE SOUTH 6°10'00" WEST 99.27 FEET, MORE OR LESS, TO THE CENTER LINE OF UTILE COTIONWOOD CREEK ROAD; THENCE SOUTH 86°43'00" WEST 107.25 FEET ALONG THE CENTER LINE OF LITTLE COTIONWOOD CREEK ROAD; THENCE NORTH 00°00'00" EAST 45.53 FEET TO THE MOST SOUTHERLY AND EASTERLY CORNER OF LOT 22, LITTLE COTIONWOOD, A SUBDIVISION, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE WITH

¹⁰ Receiver Declaration ¶ 4.

¹¹ *Id.* ¶ 5.

THE OFFICE OF THE SALT LAKE COUNTY RECORDER; THENCE ALONG THE EAST LINE OF SAID LOT 22, NORTH 4°08'10" EAST 59.15 FEET TO THE POINT OF BEGINNING.

LESS AND EXCEPTING THEREFROM ANY PORTION LYING WITHIN THE BOUNDS OF LITTLE COTIONWOOD ROAD.

b. 3725: Parcel 28-12-178-007-0000 - .39 acres

BEGINNING AT A POINT WHICH IS EAST 1418.55 FEET AND SOUTH 54.88 FEET FROM THE WEST QUARTER CORNER OF SECTION 12, TOWNSHIP 3 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN; AND RUNNING THENCE NORTH 6°10' EAST 223.73 FEET; THENCE SOUTH 82°39'40" EAST 103.32 FEET; THENCE SOUTH 6°10' WEST 198.15 FEET; THENCE SOUTH 83°22' WEST 105.93 FEET TO THE POINT OF BEGINNING.

LESS AND EXCEPTING THE FOLLOWING DESCRIBED PROPERTY:

BEGINNING AT A POINT WHICH IS EAST 1418.55 FEET AND SOUTH 54.88 FEET FROM THE WEST QUARTER CORNER OF SECTION 12, TOWNSHIP 3 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN, AND RUNNING THENCE NORTH 6°10' EAST 55.8 FEET; THENCE EAST 105.25 FEET, THENCE SOUTH 6°10' WEST 42.55 FEET; THENCE SOUTH 83°22' WEST 105.93 FEET TO BEGINNING.

c. 3731: Parcel 28-12-326-001-0000 - .12 acres

BEGINNING AT A POINT WHICH IS EAST 1418.55 FEET AND SOUTH 54.88 FEET FROM THE WEST QUARTER CORNER OF SECTION 12, TOWNSHIP 3 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN, AND RUNNING THENCE NORTH 6°10' EAST 55.8 FEET; THENCE EAST 105.25 FEET; THENCE SOUTH 6°10' WEST 42.55 FEET; THENCE SOUTH 83°22' WEST 105.93 FEET TO THE POINT OF BEGINNING.

LESS STREET.

d. 9767: Parcel 28-12-178-022-0000 - .09 acres

BEGINNING AT THE SOUTHEAST CORNER OF LOT 22 OF LITTLE COTTONWOOD SUBDIVISION, RECORDED AS ENTRY NO. 3157447 IN BOOK 78-8 AT PAGE 235 IN THE OFFICE OF THE SALT LAKE RECORDER, SAID POINT BEING EAST 516.21 FEET AND NORTH 246.21 FEET FROM THE STREET MONUMENT LOCATED IN ALTA RIDGE CIRCLE AND QUIET RIDGE CIRCLE, SAID MONUMENT BEING NORTH 89°50'31" EAST 792.36 FEET AND SOUTH 320.98 FEET FROM THE WEST QUARTER CORNER OF SECTION 12, TOWNSHIP

3 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN; AND RUNNING THENCE SOUTH 86°43'00" WEST 20.04 FEET; THENCE NORTH 01 °31'34" WEST 150.05 FEET; THENCE SOUTH 85°49'06" EAST 34.64 FEET; THENCE SOUTH 04°07'26" WEST 146.71 FEET TO THE POINT OF BEGINNING.

e. **9778:** Parcel 28-12-178-024-0000 - .17 acres

BEGINNING AT THE SOUTHWEST CORNER OF LOT 10 OF MOUNTAIN VALLEY SUBDIVISION, RECORDED AS ENTRY NO. 33203350 IN BOOK 78-11 AT PAGE 319 IN THE OFFICE OF THE SALT LAKE RECORDER, SAID POINT BEING EAST 521.72 FEET AND NORTH 322.70 FEET FROM THE STREET MONUMENT LOCATED IN ALTA RIDGE CIRCLE AND QUIET RIDGE CIRCLE, SAID MONUMENT BEING NORTH 89°50'31" EAST 792.36 FEET AND SOUTH 320.98 FEET FROM THE WEST QUARTER CORNER OF SECTION 12, TOWNSHIP 3 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN; AND RUNNING THENCE NORTH 04°07'26" EAST 70.02 FEET; THENCE SOUTH 85°49'06" EAST 112.34 FEET; THENCE SOUTH 06°09'16" WEST 61.67 FEET; THENCE SOUTH 89°49'47" WEST 110.47 FEET TO THE POINT OF BEGINNING.

5. 3725 contains a vacant and unlivable home and the other 4 parcels of Real Property are vacant land.¹²

Marketing of the Real Property

6. The Receiver hired Michael Junkins ("Junkins"), a certified residential appraiser in the State of Utah to appraise the Real Property.¹³

7. On May 26, 2013, Junkins issued an appraisal valuing the Real Property at \$211,000.00 (the "Appraisal").¹⁴ A copy of the Appraisal is attached to the Receiver Declaration as Exhibit A.

8. The Receiver received offers from two different parties to purchase the Real Property. The Receiver ultimately decided that the "Stalking Horse Bid" described below is the

¹² *Id.* ¶ 6.

¹³ *Id.* ¶ 7.

¹⁴ *Id.* ¶ 8, & Exh. A, p. 2.

highest and best bid at this time, and that he would sell the Real Property at a public sale.¹⁵

The Purchase Agreement and Stalking Horse Bid at Auction

9. On or about July 3, 2013, Karl Sun (“Sun”), sent the Receiver 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 to the Receiver Declaration as Exhibit B.¹⁶

10. On or about July 5, 2013, the Receiver and Sun entered into a “Purchase Agreement,” which is attached to the Receiver Declaration as Exhibit C.¹⁷ The Purchase Agreement is conditioned upon the outcome of a public auction.¹⁸

11. Pursuant to the Purchase Agreement, Sun has offered \$211,000.00 for the Real Property, the entire balance of which Sun has paid to the Receiver as a down payment. The Receiver is holding the down payment in separate bank account pending the results of the auction.¹⁹

12. The Receiver is selling the Real Property “as is” and the Receiver has notified Sun about certain environmental concerns related to the Real Property.²⁰

13. The Purchase Agreement has been negotiated by the Receiver with the holder of the Stalking Horse Bid in good faith and at arms’ length.²¹

14. The Receiver proposes to use the offer made by the holder of the Stalking Horse

¹⁵ Receiver Declaration ¶ 9.

¹⁶ *Id.* ¶ 10 & Exh. B.

¹⁷ *Id.* ¶ 11 & Exh. B.

¹⁸ *Id.* ¶ 12 & Exh. C.

¹⁹ *Id.* ¶ 13.

²⁰ *Id.* ¶ 14.

²¹ *Id.* ¶ 15.

Bid as the opening bid at the public auction described below (the “Stalking Horse Bid”).²²

Sale Costs and Net Sale Proceeds

15. The Receiver did not retain a broker and did not list the Real Property. Thus, the Receiver will not pay any broker fees related to the sale of the Real Property and he anticipates 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.²³

16. 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 Receiver’s 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”).²⁴

17. The Receiver will separately account for the Net Sale Proceeds pending resolution of any disputes related to any claimed interest in the Real Property.²⁵

Free and Clear Sale

18. The Receiver proposes 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, the Receiver is 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.²⁶

²² *Id.* ¶ 16.

²³ *Id.* ¶ 17.

²⁴ *Id.* ¶ 18.

²⁵ *Id.* ¶ 19.

²⁶ *Id.* ¶ 20.

19. To determine interests, if any against the Real Property, the Receiver obtained a preliminary title report (the “Title Report”),²⁷ a copy of which is attached as Exhibit D to the Receiver Declaration.

20. According to the Title Report, the following exceptions to title exist: (a) property taxes for 2011 and 2012; (b) various delinquent assessment certifications; (c) a certificate of non-compliance detailing building code violations against 3725 recorded June 21, 2013 as Entry No. 11669221 in Book 10152, Page 986 of the records of Salt Lake County, Utah; and (d) a deed of trust dated January 26, 2006, executed by Vision Land, LLC (the Palmer Entity which held title to the Real Property) to National Note as beneficiary, to secure the payment of \$900,000.00, and interest, recorded February 1, 2006, as Entry No. 9626476, in Book 9250, Page 7258, of the records of Salt Lake County, Utah.²⁸

21. The Receiver has 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, the Receiver proposes 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 he evaluates the validity of such interests. In so doing, the Receiver is 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.²⁹

22. As set forth in the Certificate of Service attached hereto, a copy of the Motion is being served on the relevant taxing authorities and each of the ABI Holders. A copy of the

²⁷ *Id.* ¶ 21 & Exh. D..

²⁸ *See id.* & Exh. D.

²⁹ *Id.* ¶ 22.

Receiver Declaration and attached exhibits will be posted on the Receiver's website and will be available upon request.³⁰

Best Interests

23. The Receiver believes 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.³¹

24. The Stalking Horse Bid is equal to the appraised value, and through the proposed auction, the purchase price cannot go lower and might increase.³²

25. Notice of the auction described below will be published and will be posted on the Receiver's website.³³

26. The SEC has been informed of the material terms of the sale, and has no objection thereto.³⁴

III.

APPLICABLE LAW

27. The Receivership Order, as set forth above anticipates the relief sought by the Receiver herein and is within the scope of his duties under that Order.³⁵

³⁰ *Id.* ¶ 23.

³¹ *Id.* ¶ 24.

³² *Id.* ¶ 25.

³³ *Id.* ¶ 26.

³⁴ *Id.* ¶ 27.

³⁵ *See supra* ¶¶ 1-2.

28. Section 2001(a) of title 28 of the United States Code permits the Receiver to sell property of the receivership estate:

[A]t public sale in the district wherein such receiver was first appointed, at the courthouse of the county, parish, or city situated therein in which the greater part of the property in such district is located, or on the premises or some parcel thereof located in such county, parish, or city, as such court directs. Such sale shall be upon such terms and conditions as the Court directs.³⁶

29. Section 2002 of title 28 of the United States Code requires that notice of such public sale be published, in relevant part, as follows:

[O]nce a week for at least four weeks prior to the sale in at least one newspaper regularly issued and of general circulation in the county, state, or judicial district of the United States wherein the realty is situated.³⁷

IV.

REQUESTED RELIEF

30. The Receiver requests that the Court enter the proposed Order attached hereto, thus (a) authorizing the sale of the Real Property free and clear of interests; (b) approving the form and method of publication notice as proposed herein; and (c) approving the proposed “Auction Procedures” described below.

Sale Free and Clear of Interests

31. Sale of the Real Property as proposed is within the scope of the Receiver’s authority under the Receivership Order as quoted in paragraph 2 above and 28 U.S.C. §§ 2001(a) and 2002 both quoted in paragraphs 29 and 30 above, it is in the best interests of the Receivership Estate, and the sale serves the purposes of the receivership by providing a

³⁶ 28 U.S.C. § 2001(a).

³⁷ 28 U.S.C. § 2002.

“realization of the true and proper value” of the Real Property.³⁸

32. The Court may order a sale of the Real Property free and clear of interests, provided that parties claiming interests against the property are given proper notice. Here, such notice will be provided, with any interests that may ultimately be determined to exist attaching to the Net Sale Proceeds.³⁹

33. Upon completion of the sale and after the conclusion of the public auction discussed below, the Receiver 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 noted in paragraphs 20 and 21 above.⁴⁰

Proposed Publication Notice

34. To comply with the requirement of publication notice for public sales set forth in 28 U.S.C. § 2002, the Receiver seeks approval of the method and form of publication notice of the proposed public sale.

35. Accordingly, the Receiver proposes that the following notice be published in *The Salt Lake Tribune*, a newspaper published in Salt Lake City, Utah, once a week for a period of four weeks prior to the public sale (the “Publication Notice Time”):

R. Wayne Klein, Receiver for National Note of Utah, LC and its affiliated entities (the “Receiver”) in the civil case styled as *Securities and Exchange Comm. v. National Note of Utah, LC et al.*, Civ. Case No. 2:12-cv-00591 (D. Utah) (“Civil Case”), gives notice of his intent to sell .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

³⁸ Receivership Order ¶ 38; Receiver Declaration ¶ 24.

³⁹ Receiver Declaration ¶ 23.

⁴⁰ Receiver Declaration ¶ 28.

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”), through a public auction to the highest bidder payable in lawful money of the United States on the ___ day of _____, 2013 at the hour of ____ at 3725 E. Little Cottonwood Road, Sandy, Utah 84092, or as may be continued from time to time by the Receiver (the “Auction”). The Real Property will be sold at the Auction free and clear of all interests, “as is” with no representations and warranties. The Receiver has accepted an initial bid of \$211,000.00 with a \$211,000.00 escrow deposit to act as the opening “Stalking Horse Bid” at Auction. Only “Qualified Bidders” may participate in the Auction. To be a Qualified Bidder, you must comply with the “Auction Procedures” that have been approved in the Civil Case, which Auction Procedures may be obtained on the Receiver’s website (<http://www.kleinutah.com/index.php/receiverships/national-note-of-utah-lc>) or upon request made to the Receiver’s counsel at: Dorsey & Whitney LLP, attn: Michelle Montoya, 136 South Main Street, Suite 1000, Salt Lake City, Utah 84101; montoya.michelle@dorsey.com. The deadline for Qualified Bidders to submit bids, or the “Bid Deadline,” is 5:00 p.m. (Mountain), _____, 2013.

36. The Receiver maintains that the above proposed method and form of publication notice is in accordance with 28 U.S.C. §§ 2001(a) and 2002 and, therefore, should be approved.

Proposed Auction Procedures

37. The Receiver requests that the Court enter an Order approving the following proposed procedures to govern the public sale (collectively, or as may be amended by the Court’s Order, the “Auction Procedures”), a copy of which are attached hereto as **Exhibit A**:

- a. The Receiver may conduct an auction of 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”) at the conclusion of the Publication Notice Time (the “Auction”) in accordance with these Auction Procedures.
- b. The Receiver will facilitate reasonable requests for inspections of the Real Property by interested parties prior to the “Bid Deadline” (defined below).

- c. Pursuant to the Purchase Agreement attached as Exhibit C to the Receiver Declaration, the Receiver has received an offer to purchase the Real Property for \$211,000.00 which includes a \$211,000.00 down payment, subject to higher and better bids at the Auction (the "SH Agreement"). The Receiver is treating the offer in the SH Agreement as the opening bid at Auction and is referred to herein as the "Stalking Horse Bid."
- d. To participate in the Auction, the potential purchaser must be a "Qualified Bidder."
- e. No person will be deemed to be a Qualified Bidder unless the person:
 - i. Delivers to the Receiver for the benefit of the Receivership Estate cash or a cashier's check in the amount of \$211,000.00 as an initial deposit (all such deposits being collectively, the "Initial Deposit"), by no later than 5:00 p.m. Mountain Time at least two business days prior to the date set for the Auction (the "Bid Deadline");
 - ii. Agrees in writing that its Initial Deposit is non-refundable pending the Sale Closing Date (defined below) and will be applied as set forth in these Auction Procedures;
 - iii. Agrees in writing to the approved Auction Procedures;
 - iv. Represents and warrants in writing that it has the ability to perform at Auction and on the Sale Closing Date (defined below);
 - v. Agrees in writing that the sale of the Real Property is "AS IS" with no representations and warranties; and
 - vi. Appears in person or through a qualified agent at the Auction and performs at Auction, as determined in the sole discretion of the Receiver, as provided in these Auction Procedures.
- f. If no Qualified Bidders exist on the expiration of the Bid Deadline, the Receiver, in his sole discretion, need not conduct the Auction and may sell the Real Property to the holder of the Stalking Horse Bid pursuant to the terms of the SH Agreement and such sale shall be deemed to be a sale of the Real Property at public auction under all applicable law.
- g. The Receiver will conduct the Auction. The Auction shall proceed in rounds. Bidding at the Auction shall begin with an initial minimum overbid of the Stalking Horse Bid in an amount of \$5,000.00 in cash, and shall subsequently continue in \$5,000.00 minimum cash overbid increments. However, the holder of

the Stalking Horse Bid will be allowed to match any bid made by a Qualified Bidder without increasing such bid by the \$5,000 minimum cash overbid amount. Bidding will continue until the Receiver determines that he has received the highest and best offer for the Real Property, at which time he will close the Auction, with the person making the last bid prior to the Receiver's close of the Auction bound to purchase the Real Property pursuant to the terms of the approved Auction Procedures (the "Successful Bidder").

- h. Each Qualified Bidder and the holder of the Stalking Horse Bid agree that its last offer made is irrevocable until the date that sale of the Real Property closes to the Successful Bidder (the "Sale Closing Date").
 - i. Each Initial Deposit shall be retained by the Receiver until Sale Closing Date. On the Sale Closing Date, the Initial Deposit of the Successful Bidder will be applied to the purchase price accepted at Auction by the Receiver. Within ten business days of Sale Closing Date, the Receiver shall return all other Initial Deposits. In the event that the Successful Bidder's sale does not close, the Receiver (i) shall retain the Initial Deposit of the Successful Bidder as damages, and (ii) the Qualified Bidder who made the next highest and best offer at Auction (the "Back-Up Bid") shall be deemed the Successful Bidder. The Initial Deposit of the Qualified Bidder with the Back-Up Bid shall be applied by the Receiver to the purchase offer made at Auction. The Receiver may repeat the same Back-Up Bid procedure provided herein to each Qualified Bidder, in the order of the highest and best offers received at Auction.
 - j. Immediately upon the close of the Auction, the Successful Bidder must sign a purchase agreement on terms materially similar to the terms of sale stated in SH Agreement. In the event that the Sale Closing Date does not occur for the Successful Bidder, the Successful Bidder's Initial Deposit will be retained by the Receiver as damages.
38. The Receiver submits that the proposed Auction Procedures are permitted under 28 U.S.C. §§ 2001(a) and 2002 and, therefore, requests that the Court approve the same.

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the above **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") 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

Furthermore, I certify that on the 23rd day of July, 2013, the Motion was served on the following parties by U.S. Mail postage prepaid:

Adamson, Sadee Dawn or Jenny
1412 West River Ridge Drive
West Jordan, UT 84088

Burnett, J.W. (APS)
American Pension Services, Inc.
Custodian FBO for J.W. Burnett
4168 West 12600 South, Ste 300
Riverton, UT 84096

Burnett, J.W. or Yvonne
1895 West Guard Court
West Jordan, UT 84088

Chien, Monica
320 West Arroyo Street
Reno, NV 89509

Cole, Cliff & Ruth
945 East 75 North0
Bountiful, UT 84010

Dangerfield, Keith
Dangerfield Family Trust
8332 West Powell Avenue
Magna, UT 84044

Diaz, Gladys
1139 East 7625 South
Midvale, UT 84047

Dillard, Mackeal S. & Merilu
Mackeal S. & Merilu Dillard Family Trust dtd
228 LaPorte Road
Quincy, CA 95971

Dimick, Larry D.
9891 South Westley Park Circle
South Jordan, UT 84095

Dyke-LaBrie, Colleen Kay
836 West Greenhurst Road
Nampa, ID 83686

Fletcher, Joan
7 Navaho Road
East Hartford, CT 06118-2566

Frandsen, Lila
2091 West Coventry Cove, #115
Riverton, UT 84065

Gardner, Darrell J. & Judy H.
(Darrell J. & Judy H. Gardner Family Trust)
4229 South Mark Read Street
West Valley, UT 84119

Gillam, Pama Lee
4185 Borealis Drive
Sparks, NV 89436

Hahn, Robert D. or Phyllis S.
3330 Sunnyvale Avenue
Reno, NV 89509

Hall, Michael A.
2557 Rampart Terrace
Reno, NV 89509

Heaton, Sheldon J. or Jamie L.
6527 South Jefferson Street
Murray, UT 84107

Janiga, Mark
5327 190th Lane NE
Wyoming, MN 55092

Keenan Soutiere, Zachary
(Anne Keenan Custodian)
7546 North Outlook Lane
Prescott Valley, AZ 86314

LaBonty, Carrie L. or George John
8747 South 2240 West
West Jordan, UT 84088

American Pension Services, Inc.
Custodian FBO for Jane Lash
4168 West 12600 South, Ste 300
Riverton, UT 84096

Lash, Jane (APS)
2006 South Holly Stra
Tucson, AZ 85713

Lawrence, Raynor E. or Lois M.
9088 Julie Ann Way
West Jordan, UT 84088

American Pension Services, Inc.
Custodian FBO for Denise D. Lewis
4168 West 12600 South, Ste 300
Riverton, UT 84096

Lewis, Denise D. (APS)
10222 South 1040 West
South Jordan, UT 84095

Mahal Kita, Inc.
12919 South Zuni Drive
Riverton, UT 84065

American Pension Services, Inc.
Custodian FBO for George Matsuoka
4168 West 12600 South, Ste 300
Riverton, UT 84096

Nelson, Edda I. or Nicole
& Don James Urquhart & Omari Gill
281 Brayden Way
Draper, UT 84020

Packer, Murland R.
5947 South 3650 West
Roy, UT 84067

Palmer, Chad
7141 Cottage Point Drive
West Jordan, UT 84081-5704

American Pension Services, Inc.
Custodian FBO for Adrienne Perry
4168 West 12600 South, Ste 300
Riverton, UT 84096

Perry, Adrienne (APS)
2006 South Holly Stravenue
Tucson, AZ 85713

Entrust Administration Inc.
Custodian FBO for David J. Reyes
555-12th Street, #1250
Oakland, CA 94607

Reyes, David J. (Entrust)
6626 Brennan Avenue
West Hills, CA 91307

American Pension Services, Inc.
Custodian FBO for Douglas Schmidt
4168 West 12600 South, Ste 300
Riverton, UT 84096

Schmidt, Douglas (APS)
2896 West 7085 South
West Jordan, UT 84084

Slaughter, Wayne (Cheltenham, LLC)
1354 South Willow Wood Way
Eagle, ID 83616

Squires, Katherine & Michael W.
687 E. Winchester Street
Murray, UT 84107

American Pension Services, Inc.
Custodian FBO for Katherine Squires
4168 West 12600 South, Ste 300
Riverton, UT 84096

American Pension Services, Inc.
Custodian FBO for Michael W. Squires
4168 West 12600 South, Ste 300
Riverton, UT 84096

Stoddard, Larry B.
1042 E. Fort Union Blvd., Ste 501
Midvale, UT 84047

American Pension Services, Inc.
Custodian FBO for John Stoker
4168 West 12600 South, Ste 300
Riverton, UT 84096

Stoker, John (APS)
1805 East Cranberry Way
Springville, UT 84663

Van Den Berghe, John & MaryAnne
13034 South Galloway Cove
Riverton, UT 84065

Wilkinson, Willard S. & Judith A.
165 Cottontail Lane
Carson City, NV 89706

Winkler, Anna
59 Belleau Wood Court
Pensacola, FL 32506

/s/ Jeffrey M. Armington