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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
SUPPORTING MEMORANDUM
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
(85.57 ACRES OF FAIRFIELD
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*, respectfully requests that the Court enter the proposed Order, attached hereto as **Exhibit A**, approving (1) the public sale of certain real property described below, free

and clear of interests; (2) the Receiver's proposed method and form of publication notice for the public sale; and (3) the Receiver's proposed auction procedures governing the public sale as 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") and all Palmer's assets were placed in the Receiver's control.² For purposes of this Motion, NNU and the Palmer Entities will be referred collectively as NNU.

2. The Court has directed and authorized the Receiver to, among other things, take the following actions:

- "[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."³

¹ Docket No. 9 (Receivership Order).

² See generally *id.*

³ *Id.* at ¶ 38.

- “[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.”⁴

II.

REAL PROPERTY TO BE SOLD AT AUCTION AND STALKING HORSE BID

The Property

3. Since his appointment, the Receiver has identified numerous real properties as being part of the Receivership Estate, and where appropriate, listed such properties for sale.⁵

4. Relevant to the present Motion is approximately 85.57 acres of real property located at 1260 North 18150 West, Fairfield, Utah 84013, Tax ID Nos. 59:065:0001 and 59:065:0040 (the “Property”).⁶

Value and Marketing of the Property

5. On approximately August 21, 2012, the Receiver entered into an Exclusive Right to Sell Listing Agreement & Agency Disclosure with David Adams and Providence Realty Group (together, “Providence”), a copy of which is attached to the Receiver’s Declaration as Exhibit A (the “Listing Agreement”). Since that time, Providence has actively marketed the Property pursuant to industry standards.⁷

6. To determine an offering price and comply with his duties, the Receiver obtained an appraisal of the Property dated January 21, 2013 from Steven Nielsen, MAI, of Nielsen and Company, a copy of which is attached to the Receiver Declaration as Exhibit B (the

⁴ *Id.* at ¶ 39.

⁵ Receiver Declaration ¶ 5.

⁶ *Id.* at ¶ 6.

⁷ *Id.* at ¶ 7.

“Appraisal”).⁸ The Appraisal—which includes an additional 8-acre parcel that has been approved for auction by the Court in connection with a separate motion filed by the Receiver—values the Property in its current condition (including the additional 8-acre parcel) at 280,000.00.⁹

The Purchase Agreement and Stalking Horse Bid at Auction

7. On September 18, 2013, the Receiver entered into a Real Estate Purchase Contract for Land with Mark and Hayden Miner (together, “Miner”) for the sale of the Property, which Purchase Contract, including all addendums thereto, is attached to the Receiver Declaration as Exhibit C (the “Purchase Agreement”). Pursuant to the Purchase Agreement, Miner has offered to purchase the Property “AS IS” and “WHERE IS” for \$251,000.00. The Miners will make a \$5,000.00 earnest money deposit, will obtain a loan in the amount of \$221,000.00, and will pay the remaining balance of \$25,000.00 at closing.¹⁰

8. Additionally, the Miner’s offer to purchase the Property is contingent upon (a) the Miner’s receiving a loan in the amount of \$221,000.00; and (b) the City of Fairfield approving a zoning exception for the business planned by Miner, which zoning exception the Receiver will cooperate in obtaining as representative of the entity owning the Property.¹¹ At present, the

⁸ *Id.* at ¶ 8 & Exh. B (Appraisal). Because the Receiver proposes a public sale, appointment of three appraisers by the Court is not required. *See* 28 U.S.C. § 2001(a). But, the Receiver has provided the Court with a copy of the Appraisal that he obtained for review.

⁹ *Id.* at ¶ 8 & Exh. B (Appraisal) at p. 3. At present, the Receiver has an offer to purchase the 8-acre parcel for \$25,000.00, and a similar motion seeking Court approval of the public sale and auction procedures relating to the 8-acre parcel was recently filed by the Receiver [Docket No. 451], which the Court granted on September 25, 2013 [Docket No. 458].

¹⁰ *Id.* at ¶ 9 & Exh. C (Purchase Agreement).

¹¹ *Id.* at ¶ 10 & Exh. C (Purchase Agreement).

Receiver has executed an application for a conditional use permit relating to the Property, which is attached to the Receiver Declaration as Exhibit D.

9. The Purchase Agreement has been negotiated by the Receiver and Miner, through their respective agents, in good faith and at arms' length.¹²

10. The Receiver proposes to use Miner's offer as a stalking horse bid at the public auction described below (the "Stalking Horse Bid").¹³

Sale Costs and Net Sale Proceeds

11. Pursuant to the Listing Agreement, the Receivership Estate will pay Providence eight percent of the Property's sale price.¹⁴

12. Any interests against the Property, other than closing costs, will not be paid at the time of the sale's closing. Rather, as proposed, any interests (to the extent they exist and without waiving any of the Receiver's rights and defenses related thereto) will survive the sale and will attach to the sale proceeds, less the costs of sale (the "Net Sale Proceeds").¹⁵

13. The Receiver will separately account for the Net Sale Proceeds pending resolution of any disputes related to interests that may exist against the Property.¹⁶

Free and Clear Sale

14. 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

¹² *Id.* at ¶ 11.

¹³ *Id.* at ¶ 12.

¹⁴ *Id.* at ¶ 13 & Exh. A (Listing Agreement).

¹⁵ *Id.* at ¶ 14.

¹⁶ *Id.* at ¶ 15.

in no way waiving any rights, claims, interests or defenses to any claims or interests made against the Property or to the Net Sale Proceeds.¹⁷

15. To determine interests, if any against the Property, the Receiver obtained a preliminary title report, a copy of which is attached as Exhibit E to the Receiver Declaration (the “Title Report”).¹⁸

16. According to the Title Report, the following purported interests against the Property exist:

(a) A Deed of Trust by and between Homeland Funding Corp., a Receivership Defendant, as Trustor, in favor of Security Title and Abstract Company, as Trustee, and National Note of Utah, LC, as Beneficiary (the “Deed of Trust”), including the below, purported assignments of beneficial interest under the Deed of Trust:

- A Beneficial Interest under the Deed of Trust assigned to Mary Lou Williams;
- A Beneficial Interest under the Deed of Trust assigned to Willard Tate *et al.*;
- A Beneficial Interest under the Deed of Trust assigned to Jay B. Wilson *et al.*;
- A Beneficial Interest under the Deed of Trust assigned to Rose Staten;
- A Beneficial Interest under the Deed of Trust assigned to K. Burgoyne;
- A Beneficial Interest under the Deed of Trust assigned to MKE Holdings;
- A Beneficial Interest under the Deed of Trust assigned to American Pension Services;
- A Beneficial Interest under the Deed of Trust assigned to Larry L. Adams;
- A Beneficial Interest under the Deed of Trust assigned to Stephanie Phunghiphadhana;
- A Beneficial Interest under the Deed of Trust assigned to Michael James *et al.*;
- A Beneficial Interest under the Deed of Trust assigned to Entrust Administration;
- A Beneficial Interest under the Deed of Trust assigned to Blue Diamond Investments;
- A Beneficial Interest under the Deed of Trust assigned to Jon M. Baird;
- A Beneficial Interest under the Deed of Trust assigned to Robert W. Matlosz;
- A Beneficial Interest under the Deed of Trust assigned to Ken Lynn Heaton;
- A Beneficial Interest under the Deed of Trust assigned to Jane Lash *et al.*;
- A Beneficial Interest under the Deed of Trust assigned to Timothy F. Keeton;

¹⁷ *Id.* at ¶ 16.

¹⁸ *Id.* at ¶ 17 & Exh. E (Title Report).

- A Beneficial Interest under the Deed of Trust assigned to American Pension Services;
- A Beneficial Interest under the Deed of Trust assigned to American Pension Services;
- A Beneficial Interest under the Deed of Trust assigned to American Pension Services;
- A Beneficial Interest under the Deed of Trust assigned to American Pension Services;
- A Beneficial Interest under the Deed of Trust assigned to American Pension Services;
- A Beneficial Interest under the Deed of Trust assigned to Entrust Administration;
- A Beneficial Interest under the Deed of Trust assigned to Brett and Mary Ann Falk Family Trust;
- A Beneficial Interest under the Deed of Trust assigned to Timothy F. Keeton, Trustee;
- A Beneficial Interest under the Deed of Trust assigned to Barry Tova, Trustee;
- A Beneficial Interest under the Deed of Trust assigned to American Pension Services;
- A Beneficial Interest under the Deed of Trust assigned to Scott T. Young;
- A Beneficial Interest under the Deed of Trust assigned to Ken Falk *et al.*;
- A Beneficial Interest under the Deed of Trust assigned to Jones Family Trust;
- A Beneficial Interest under the Deed of Trust assigned to Tamara Lynn King;
- A Beneficial Interest under the Deed of Trust assigned to Susan L. Worley;
- A Beneficial Interest under the Deed of Trust assigned to Sarah Mortensen;
- A Beneficial Interest under the Deed of Trust assigned to Barry Roseman, Trustee *et al.*;
- A Beneficial Interest under the Deed of Trust assigned to David S. Paul, Trustee *et al.*;
- A Beneficial Interest under the Deed of Trust assigned to Christian Mortensen;
- A Beneficial Interest under the Deed of Trust assigned to Tim Turner *et al.*;
- A Beneficial Interest under the Deed of Trust assigned to M&M Andreasen Investments;
- A Beneficial Interest under the Deed of Trust assigned to H. Coleman Scheuller;
- A Beneficial Interest under the Deed of Trust assigned to Dan M. Ainsworth;
- A Beneficial Interest under the Deed of Trust assigned to Entrust Mid South;
- A Beneficial Interest under the Deed of Trust assigned to Ryan Grant;
- A Beneficial Interest under the Deed of Trust assigned to American Pension Services;
- A Beneficial Interest under the Deed of Trust assigned to Michael A. Hall;
- A Beneficial Interest under the Deed of Trust assigned to Cristin C. Longhurst;
- A Beneficial Interest under the Deed of Trust assigned to Scott Young;
- A Beneficial Interest under the Deed of Trust assigned to NNU;
- A Beneficial Interest under the Deed of Trust assigned to Blue Diamond Investments;
- A Beneficial Interest under the Deed of Trust assigned to Coleman Scheuller;
- A Beneficial Interest under the Deed of Trust assigned to Clarence Ellefsen;
- A Beneficial Interest under the Deed of Trust assigned to NNU;
- A Beneficial Interest under the Deed of Trust assigned to NNU;
- A Beneficial Interest under the Deed of Trust assigned to NNU;
- A Beneficial Interest under the Deed of Trust assigned to NNU;
- A Beneficial Interest under the Deed of Trust assigned to NNU;
- A Beneficial Interest under the Deed of Trust assigned to NNU;
- A Beneficial Interest under the Deed of Trust assigned to R'Lene Hoggan;

- A Beneficial Interest under the Deed of Trust assigned to Entrust Administration;
- A Beneficial Interest under the Deed of Trust assigned to Chad Palmer;
- A Beneficial Interest under the Deed of Trust assigned to Chad Palmer;
- A Beneficial Interest under the Deed of Trust assigned to American Pension Services;
- A Beneficial Interest under the Deed of Trust assigned to NNU; and
- A Beneficial Interest under the Deed of Trust assigned to Jacqueline F. Christensen.¹⁹

17. A copy of the Motion and a copy of the Receiver Declaration (without exhibits)²⁰ will be served on the holders of these purported interests, other than those holders who are Receivership Defendants.²¹

Best Interests

18. The Receiver believes the sale of the Property as proposed is beneficial for, and in the best interests of, the Receivership Estate based on his knowledge of the Property, including his review of the Appraisal and his discussions with Providence, as well as the amount of the Stalking Horse Bid, which was obtained through good faith and arms' length negotiations.²²

19. Additionally, the Receiver believes that Miner's offer is fair and reasonable because, based on the Appraisal, the Property plus the eight acres not subject to this sale is worth approximately \$3,000.00 an acre. Thus, based on the Appraisal, the Property—the 85.57 acres subject to this Motion—is worth approximately \$256,710.00. Accordingly, the purchase price

¹⁹ *Id.* at ¶ 18 & Exh. E (Title Report).

²⁰ Any party that wants a copy of the exhibits to the Receiver Declaration may obtain such documents by requesting them from the Receiver's counsel at (801) 933-8956 or seim.nathan@dorsey.com.

²¹ Receiver Declaration at ¶ 19.

²² *Id.* at ¶ 20.

offered by Miner, which will be used as a stalking horse bid at auction, is approximately 98% of the appraised value of the Property.²³

20. Notice of the auction described below will be published in a local newspaper of general circulation and will be posted on the Receiver's website.²⁴

21. The SEC has been informed of the material terms of the sale, and has made no objections thereto.²⁵

III.

APPLICABLE LAW

22. The Receivership Order anticipates the relief sought by the Receiver herein and is within the scope of his duties under that Order.²⁶

23. 28 U.S.C. § 2001(a) allows 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.²⁷

24. 28 U.S.C. § 2002 requires that notice of such public sale be published, in relevant part, as follows:

²³ *Id.* at ¶ 21. Additionally, if the \$25,000.00 offer for the 8-acre parcel is included, then the Receiver will be selling the Property, including the 8-acre parcel, for the combined amount of \$276,000.00, which amount is approximately 98.6% of the appraised value of both parcels.

²⁴ *Id.* at ¶ 22.

²⁵ *Id.* at ¶ 23.

²⁶ *See supra* ¶¶ 1-2.

²⁷ 28 U.S.C. § 2001(a).

[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.²⁸

IV.

REQUESTED RELIEF

25. The Receiver requests that the Court enter the proposed Order, attached hereto as **Exhibit A**, thereby (a) authorizing the sale of the 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

26. Sale of the Property as proposed is within the scope of the Receiver’s authority under the Receivership Order and 28 U.S.C. §§ 2001(a) and 2002. Additionally, in the Receiver’s business judgment, the proposed sale of the Property is in the best interests of the Receivership Estate and will allow the Receivership Estate to realize a fair and proper value for the Property.²⁹

27. The Court may order a sale of the Property free and clear of interests, provided that parties claiming interests against the Property are given proper notice. Here, notice will be provided, with interests that may ultimately be determined attaching to the Net Sale Proceeds.³⁰

28. Upon completion of the sale and conclusion of the public auction discussed below, the Receiver will file with the Court a “Notice of Sale Results,” stating the purchase price

²⁸ 28 U.S.C. § 2002.

²⁹ Receiver Declaration at ¶ 24.

³⁰ *Id.* at ¶¶ 14, 19.

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 all parties asserting interests in the Property.³¹

Proposed Publication Notice

29. 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.

30. Accordingly, the Receiver proposes that the following notice be published in (a) *The Salt Lake Tribune*, a newspaper generally circulated in Salt Lake City, Utah; and (b) *The Daily Herald*, a newspaper generally circulated in Utah County, 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 approximately 85.57 acres of real property located at 1260 North 18150 West, Fairfield, Utah 84013, Tax ID Nos. 59:065:0001 and 59:065:0040 (the "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 ____ on the Property at the above stated address, or as may be continued from time to time by the Receiver (the "Auction"). The 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 \$251,000.00 to act as the opening 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 upon request to the Receiver's counsel at: Dorsey & Whitney LLP, Attn: Nathan Seim, 136 South Main Street, Suite 1000, Salt Lake City, Utah 84101, or seim.nathan@dorsey.com.

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

³¹ *Id.* at ¶ 25.

Proposed Auction Procedures

32. 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 B**:

- a. The Receiver may conduct an auction of approximately 85.57 acres of real property located at 1260 North 18150 West, Fairfield, Utah 84013, Tax ID Nos. 59:065:0001 and 59:065:0040 (the "Property") at the conclusion of the Publication Notice Time (the "Auction") pursuant to these Auction Procedures.
- b. The Receiver will facilitate reasonable requests for inspections of the 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 Property for \$251,000.00, subject to higher and better bids at the Auction. The Receiver is treating the offer in the Purchase 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 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 \$5,000.00 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 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 Property to the holder of the Stalking Horse Bid pursuant to the terms of the Purchase Agreement, and such sale shall be deemed to be a sale of the Property at public auction under all applicable law.
- g. If the Auction is conducted, the Auction shall proceed in rounds. Bidding at the Auction shall begin with an initial minimum overbid of the Stalking Horse Bid in the 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 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 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 their last offer made is irrevocable until the date that the sale of the Property closes to the Successful Bidder (the "Sale Closing Date").
- i. Each Initial Deposit shall be retained by the Receiver until the 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 the Sale Closing Date, the Receiver shall return all other Initial Deposits. In the event 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 (i) sign a purchase agreement on terms materially similar to the terms of sale stated in the Purchase Agreement; and (ii) must deliver to the Receiver a non-refundable deposit of 10% of the purchase price accepted at Auction (the "10% Deposit"). In

CERTIFICATE OF SERVICE

I certify that on October 3, 2013, the foregoing **RECEIVER'S MOTION AND SUPPORTING MEMORANDUM 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 (85.57 ACRES OF FAIRFIELD PROPERTY)** (the "Motion") was filed with the Court and served via ECF on all parties who have requested notice in this case.

I further certify that on October 3, 2013, the Motion was served on the following parties by U.S. First Class Mail, postage prepaid:

Larry L. Adams
1925 Powerhouse Road
Spanish Fork, UT 84660

Dan M. Ainsworth
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Murray, UT 84157

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M&M Andreasen Investments
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Evan or Mary Kay Dale (MKE Holdings)
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Clarence Ellefsen
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Ken & Joan Falk
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Sarah Mortensen
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EXHIBIT A

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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.

**ORDER GRANTING RECEIVER'S
MOTION AND SUPPORTING
MEMORANDUM 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
(85.57 ACRES OF FAIRFIELD
PROPERTY)**

2:12-cv-00591 BSJ

The Honorable Bruce S. Jenkins

The matter before the Court is the *Receiver's Motion and Supporting Memorandum 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 (85.57 acres of Fairfield Property)* (the "Motion"), filed by R. Wayne Klein, the Court-Appointed Receiver (the

“Receiver”) in the above-captioned case. The Court has reviewed the Motion, the *Declaration of R. Wayne Klein in Support of the Motion*, including all Exhibits and papers related thereto, and applicable law. Based thereon, and for good cause appearing,

IT IS HEREBY ORDERED THAT:

1. The Motion is **GRANTED**.
2. The sale of approximately 85.57 acres of real property located at 1260 North 18150 West, Fairfield, Utah 84013, Tax ID Nos. 59:065:0001 and 59:065:0040 (the “Property”) is **APPROVED** free and clear of all liens against such Property, with valid liens attaching to the Property’s sale proceeds.
3. The method and form of the publication notice set forth in the Motion are **APPROVED**. The following notice shall be published in (a) *The Salt Lake Tribune*, a newspaper generally circulated in Salt Lake City, Utah; and (b) *The Daily Herald*, a newspaper generally circulated in Utah County, Utah, once a week for a period of four weeks prior to the public sale:

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 approximately 85.57 acres of real property located at 1260 North 18150 West, Fairfield, Utah 84013, Tax ID Nos. 59:065:0001 and 59:065:0040 (the “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 ____ on the Property at the above stated address, or as may be continued from time to time by the Receiver (the “Auction”). The 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 \$251,000.00 to act as the opening 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 upon request to the Receiver’s counsel at: Dorsey & Whitney LLP, Attn: Nathan Seim, 136 South Main Street, Suite 1000, Salt Lake City, Utah 84101, or seim.nathan@dorsey.com.

4. The Auction Procedures, attached to the Motion as Exhibit B, are **APPROVED**.

DATED this ___ day of _____, 2013.

BY THE COURT:

Honorable Bruce S. Jenkins
U.S. District Court Judge

EXHIBIT B

AUCTION PROCEDURES

SALE OF REAL PROPERTY (85.57 ACRES OF FAIRFIELD PROPERTY)

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 in the case styled *Securities and Exchange Commission v. National Note of Utah, LC et al*, Case No. 2:12-cv-00591 BSJ, in the United States District Court for the District of Utah (the “Civil Case”) will conduct a public auction of approximately 85.57 acres of real property located at 1260 North 18150 West, Fairfield, Utah 84013, Tax ID Nos. 59:065:0001 and 59:065:0040 (the “Property”) on the th day of _____, 2013 at the hour of ____ .m. (Mountain Time) on the Property at the above stated address, or as may be continued from time to time by the Receiver (the “Auction”).

The Receiver will conduct the Auction in accordance with the procedures listed below (collectively, the “Auction Procedures”):

- a. The Receiver will facilitate reasonable requests for inspections of the Property by interested parties prior to the “Bid Deadline” (defined below).
- b. Pursuant to the Purchase Agreement, attached as Exhibit C to the Receiver Declaration [Civil Case Docket No. ____], the Receiver has received an offer to purchase the Property for \$251,000.00, subject to higher and better bids at the Auction (the “Purchase Agreement”). The Receiver is treating the offer in the Purchase Agreement as the opening bid at Auction and is referred to herein as the “Stalking Horse Bid.”
- c. To participate in the Auction, the potential purchaser must be a “Qualified Bidder.”
- d. No person will be deemed 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 \$5,000.00 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 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.
- e. 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 Property to the holder of the Stalking Horse Bid pursuant to the terms of the Purchase Agreement, and such sale shall be deemed to be a sale of the Property at public auction under all applicable law.
- f. If the Auction is conducted, 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 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 Property pursuant to the terms of the approved Auction Procedures (the “Successful Bidder”).
- g. Each Qualified Bidder and the holder of the Stalking Horse Bid agree that their last offer made is irrevocable until the date that the sale of the Property closes to the Successful Bidder (the “Sale Closing Date”).
- h. Each Initial Deposit shall be retained by the Receiver until the 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 the Sale Closing Date, the Receiver shall return all other Initial Deposits. In the event 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.

- i. Immediately upon the close of the Auction, the Successful Bidder must (i) sign a purchase agreement on terms materially similar to the terms of sale stated in the Purchase Agreement; and (ii) must deliver to the Receiver a non-refundable deposit of 10% of the purchase price accepted at Auction (the “10% Deposit”). In the event the Sale Closing Date does not occur for the Successful Bidder, the Successful Bidder’s Initial Deposit and this 10% Deposit will be retained by the Receiver as damages.

AGREED TO BY: _____