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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
CONFIRMING SALE OF
COTTONWOOD ROAD PROPERTY
TO THE HOLDER OF THE
WINNING BID AT AUCTION**

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 A**, approving the sale of the Cottonwood Road Property to the Successful Bidder, each as defined below. This Motion is supported by the

Declaration of R. Wayne Klein, Receiver (the “Receiver Declaration”).

MEMORANDUM OF SUPPORT

I.

BACKGROUND

Approval of the Auction Procedures and Sale Notice

1. On July 23, 2013, the Receiver filed a *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)* [Docket No. 382] (the “Auction Procedures Motion”) and the Receiver’s *Declaration* in support of the Auction Procedures Motion [Docket No. 383], seeking approval to sell by public auction 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”). Legal descriptions of the Real Property are contained in the Auction Procedures Motion.¹

2. On September 9, 2013, the Court held a hearing on the Auction Procedures Motion. Based on the Court’s comments at the hearing, the Receiver hired a second appraiser, J Martell Bodell II (“Bodell”), a certified residential appraiser in the State of Utah, to appraise the Real Property.²

¹ Receiver Declaration ¶ 4.

² *Id.* at ¶ 5.

3. On September 10, 2013, the Court entered an Order approving the Receiver's proposed auction procedures and authorizing the Receiver to publish notice of the auction, but requiring the Receiver to file a motion seeking approval of the sale of the Real Property following the auction [Docket No. 433] (the "Auction Procedures Motion Order").³

Appraisals of the Real Property

4. The Receiver hired both (a) Michael Junkins ("Junkins"), a certified residential appraiser in the State of Utah, and (b) Bodell to appraise the Real Property.⁴

5. On May 26, 2013, Junkins issued an appraisal valuing the Real Property at \$211,000.00 (the "Junkins Appraisal").⁵ A copy of the Junkins Appraisal is attached to the Receiver Declaration as Exhibit A.

6. On September 16, 2013, Bodell issued an appraisal valuing the Real Property at \$305,000.00 (the "Bodell Appraisal").⁶ A copy of the Bodell Appraisal is attached to the Receiver Declaration as Exhibit B.

Notice of the Auction and Auction Results

7. On or about July 5, 2013, the Receiver and Karl Sun ("Sun" or "Stalking Horse Bidder"), entered into a "Stalking Horse Purchase Agreement," which was attached to the Auction Procedures Motion Declaration as Exhibit C.⁷ The Stalking Horse Purchase Agreement

³ *Id.* at ¶ 6.

⁴ *Id.* ¶ 7.

⁵ *Id.* ¶ 8, & Exh. A, p. 2.

⁶ *Id.* ¶ 9, & Exh. B, p. 3.

⁷ *Id.* ¶ 10; Receiver's Declaration in Support of Auction Procedures Motion [Docket No. 383] (the "Auction Procedures Motion Declaration") at Exh. C.

was conditioned upon the outcome of a public auction.⁸

8. Pursuant to the Stalking Horse Purchase Agreement, Sun offered \$211,000.00 for the Real Property, the entire balance of which Sun paid to the Receiver for the benefit of the Receivership Estate as a down payment (the “Stalking Horse Bid”).⁹

9. After the Court entered its Auction Procedures Motion Order, the Receiver scheduled a public auction of the Real Property for October 17, 2013 at 9:00 a.m. at the site of the Real Property (the “Auction”), using the Stalking Horse Bid as the opening bid at the Auction.¹⁰

10. *The Salt Lake Tribune* published notice of the Auction once per week for four weeks from September 16, 2013 through October 6, 2013.¹¹

11. In addition, the Receiver posted notice of the Auction on his website, sent information about the Auction and the Real Property to ten additional potential bidders who had inquired about the Real Property, and notified First National Bank of Layton of the Auction.¹²

12. Three bidders, in addition to the Stalking Horse Bidder, pre-qualified to participate in the Auction and each submitted a bid deposit of \$211,000.00 in accordance with the Court-approved auction procedures. The Receiver is holding these bid deposits in a separate bank account pending the Court’s approval of this Motion and the closing of the sale to the holder of the Winning Bid described below. One additional bidder executed the Court-approved

⁸ *Id.* ¶ 11; Auction Procedures Motion Declaration at Exh. C.

⁹ *Id.* ¶ 12; Auction Procedures Motion Declaration at Exh. C.

¹⁰ *Id.* ¶ 13.

¹¹ Docket No. 483.

¹² Receiver Declaration ¶ 14.

Auction Procedures, but as discussed below, withdrew his bid prior to making a deposit.¹³

13. Prior to the Auction, the Stalking Horse Bidder obtained title reports which he provided to the Receiver. Those title reports indicated that a development agreement had been signed by Vision Land, LLC (an NNU affiliate) and Robert Grow (“Grow”) prior to the Receiver’s appointment (the “Development Agreement”). The Development Agreement may include certain covenants and restrictions on the Real Property, the validity and enforceability of which the Receiver has taken no position on.¹⁴

14. The Receiver does not know if the Development Agreement and related covenants and restrictions are valid. Nonetheless, the sale of the Real Property is AS IS, and therefore, the Receiver provided copies of the title reports to all bidders and informed the bidders that the Receiver expressed no opinion about the validity of the Development Agreement noted therein.¹⁵

15. A few days before the auction, the Receiver was informed that the Stalking Horse Bidder, Karl Sun, is the son-in-law of Grow, who is a party to the Development Agreement and a competing bidder for the Real Property. Also, prior to the Auction and after the Receiver disseminated the title reports provided to him by Sun, a person who had indicated an intent to bid and executed the Auction Procedures withdrew his bid. This bidder had not yet made his deposit related to the Auction.¹⁶

16. The Auction was conducted on October 17, 2013 at 9:00 a.m. on the Real

¹³ *Id.* ¶ 15.

¹⁴ *Id.* ¶16.

¹⁵ *Id.* ¶ 17.

¹⁶ *Id.* ¶ 18.

Property. Four bidders participated (including the Stalking Horse Bidder): Sun; Grow; Ivory Homes; and Will Lambert.¹⁷

17. Bidding at the Auction began with the \$211,000.00 Stalking Horse Bid and closed when the Receiver received a \$291,000.00 bid from the Stalking Horse Bidder (the “Winning Bid”).¹⁸

18. The Receiver now files this Motion seeking to consummate the sale to the Stalking Horse Bidder and to release the \$633,000.00 of bid deposits made by the other pre-qualified bidders upon the closing of the sale with Sun.¹⁹

Free and Clear Sale

19. The Proposed Order attached as **Exhibit A** would allow the Receiver to sell the Real Property free and clear of all interests therein, with any interests that may exist attaching to the Net Sale Proceeds or remaining with the Real Property to the extent that such interests run with the land. In so doing, the Receiver is in no way waiving any rights, claims, interests or defenses that are claimed to attach to the Net Sale Proceeds. In so doing, the Receiver notes that he is taking no position on whether the covenants or restrictions under the Development Agreement exist or are valid inasmuch as he is selling the Real Property on behalf of the Receivership Estate “AS IS.”²⁰

Best Interests

20. The Receiver believes that the sale of Real Property as proposed is beneficial for

¹⁷ *Id.* ¶ 19.

¹⁸ *Id.* ¶ 20.

¹⁹ *Id.* ¶ 21.

²⁰ *Id.* ¶ 22.

and in the best interests of the Receivership Estate based on the appraised values of the Real Property, which average \$258,000.00, and the amount of the \$291,000.00 Winning Bid.²¹

21. The Winning Bid is approximately 112% of the averaged appraised value of the Real Property and was obtained at the Auction after the Receiver complied with the notice provisions of Auction Procedures Motion Order.²²

III.

APPLICABLE LAW

22. 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.²³

23. 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.²⁴

24. 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.²⁵

25. For the reasons set forth herein, the sale complies with all applicable law. The

²¹ *Id.* ¶ 23.

²² *Id.* ¶ 24.

²³ *See supra* ¶¶ 1-2.

²⁴ 28 U.S.C. § 2001(a).

²⁵ 28 U.S.C. § 2002.

Receiver has complied with the terms of the Receivership Order, sections 2001(a) and 2002 of title 28 of the United States Code, and with prior Orders of this Court related to the procedural requirements necessary for this sale. Pursuant to this Court's prior Order, the Receiver now asks that the Court approve this sale.

IV.

REQUESTED RELIEF

26. The Receiver requests that the Court enter the proposed Order attached hereto authorizing the Receiver to consummate the sale of the Real Property to Sun, pursuant to the terms of the Winning Bid and to release the bid deposits submitted by the other bidders as soon as the sale closes to Sun.

CONCLUSION

The Receiver has complied with this Court's Auction Procedures Motion Order, the notice requirements imposed by 28 U.S.C. § 2002, and conducted the Auction in accordance with 28 U.S.C. § 2001(a) and all Orders of this Court. Accordingly, for the reasons set forth herein, the Receiver requests that the Court enter the proposed Order attached hereto as **Exhibit A**, authorizing the Receiver to consummate the sale of the Real Property to Sun, pursuant to the terms of the Winning Bid and to release the bid deposits.

DATED this 22nd day of October, 2013.

DORSEY & WHITNEY LLP

/s/ Peggy Hunt

Peggy Hunt
Chris Martinez
Jeffrey M. Armington
Attorneys for Receiver

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the above **RECEIVER'S MOTION AND MEMORANDUM IN SUPPORT REQUESTING ORDER CONFIRMING SALE OF COTTONWOOD ROAD PROPERTY TO THE HOLDER OF THE WINNING BID AT AUCTION** (the "Motion") was filed with the Court on this 22nd day of October, 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 22nd day of October, 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

1139 East 7625 South
Midvale, UT 84047

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

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

Burnett, J.W. or Yvonne
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Dimick, Larry D.
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South Jordan, UT 84095

Chien, Monica
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Reno, NV 89509

Dyke-LaBrie, Colleen Kay
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Nampa, ID 83686

Cole, Cliff & Ruth
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Bountiful, UT 84010

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

Dangerfield, Keith
Dangerfield Family Trust
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Magna, UT 84044

Frandsen, Lila
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Gardner, Darrell J. & Judy H.
(Darrell J. & Judy H. Gardner Family Trust)
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Diaz, Gladys

Gillam, Pama Lee
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Hahn, Robert D. or Phyllis S.
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Reno, NV 89509

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

Heaton, Sheldon J. or Jamie L.
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Murray, UT 84107

Janiga, Mark
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Keenan Soutiere, Zachary
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American Pension Services, Inc.
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Nelson, Edda I. or Nicole
& Don James Urquhart & Omari Gill
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Roy, UT 84067

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Wilkinson, Willard S. & Judith A.
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Winkler, Anna
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/s/ Jeffrey M. Armington

Furthermore, I certify that on the 22nd day of October, 2013, the Motion was served on the following parties by e-mail:

Robert Grow
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Karl Sun
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Will Lambert
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Ivory Homes
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Doug Back
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/s/ Jeffrey M. Armington