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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 (1) PUBLIC
SALE OF PROPERTY FREE AND
CLEAR OF INTERESTS, (2) METHOD
AND FORM OF PUBLICATION
NOTICE, AND (3) PUBLIC AUCTION
PROCEDURES AND MEMORANDUM
IN SUPPORT**

(ELKHORN PROPERTY)

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, hereby files this motion (the “Motion”) and respectfully requests that the Court authorize him to sell at public auction 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
- “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

¹ Docket No. 9 (Receivership Order).

² See generally, *id.*

³ *Id.* at ¶ 7(A).

⁴ *Id.* at ¶ 7(B).

- “[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 AT AUCTION AND STALKING HORSE BID

Elkhorn 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 this Motion is a 217-acre parcel of real property located near Malad City, in Oneida County, Idaho (“the Property”), identified by tax parcel numbers T-5776, -5777, -5778, and -5779.

5. The Receiver obtained a Title Report for the Property, a copy of which is attached

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.

to the Receiver Declaration as Exhibit A (the “Title Report”).¹¹ According to the Title Report, the Property is titled in the Receiver’s name as Receiver for NNU.

Appraising and Marketing the Property

6. On or about February 8, 2016, the Receiver caused the Property to be listed for sale through Idaho Real Estate Group (the “Realtor”).¹² A copy of the “Listing Agreement” is attached to the Receiver Declaration as Exhibit B.

7. To determine an offering price and comply with his duties, the Receiver obtained the opinion of his Realtor and an appraiser. On or about April 4, 2016, the Receiver obtained an appraisal (the “Appraisal”) of the Property from Bear River Appraisals (the “Appraiser”).¹³ A true and correct copy of the relevant portions of the Appraisal is attached to the Receiver Declaration as Exhibit C.

8. The Appraiser valued the Property at \$260,000.00.¹⁴

9. The Receiver marketed the Property for sale for \$250,000.00 through the Realtor, including by listing the Property on the Multiple Listing Service.¹⁵

Proposed Purchase Agreement and Stalking Horse Bid

10. The Receiver has received an offer to purchase the Property pursuant to the terms of the “Purchase Agreement,” which bid is in the amount \$240,000.00, subject to higher and better offers.¹⁶ A copy of the Purchase Agreement is attached to the Receiver Declaration as Exhibit D.

¹¹ *Id.* at ¶ 6.

¹² *Id.* at ¶ 7.

¹³ *Id.* at ¶ 8.

¹⁴ *Id.* at Exh. C (Appraisal).

¹⁵ *Id.* at ¶ 9.

¹⁶ *Id.* at ¶ 10.

11. The Purchase Agreement was negotiated by the Receiver and the prospective purchaser in good faith and at arms' length.¹⁷

12. The Receiver proposes to use this offer as a stalking horse bid at the public auction described below (the "Stalking Horse Bid").¹⁸

Sale Costs and Net Sale Proceeds

13. The Receiver anticipates paying at the time of the closing of the sale of the Property outstanding property taxes and the ordinary costs of sale, including market-rate closing costs and a standard 5.00% realtor commission. The gross sale proceeds, less the costs of sale, taxes, and commission are referred to herein as the "Net Sale Proceeds."¹⁹

14. The realtor commission will be paid even if a higher and better offer is obtained at auction, inasmuch as the realtor brought the Stalking Horse Bid to the Receiver; however, the commission will be based on the amount of the Stalking Horse Bid.²⁰

15. 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.²¹

16. The Receiver will separately account to the Court for the Net Sale Proceeds pending resolution of any disputes related to interests that may exist against the Property.²²

Free and Clear Sale

17. The Receiver proposes to sell the Property free and clear of all interests therein,

¹⁷ *Id.* at ¶ 11.

¹⁸ *Id.* at ¶ 12.

¹⁹ *Id.* at ¶ 13.

²⁰ *Id.* at ¶ 14.

²¹ *Id.* at ¶ 15.

²² *Id.* at ¶ 16.

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.²³

18. To determine interests, if any, against the Property, the Receiver obtained the Title Report and tax notices for the Property from Oneida County (the “Tax Notices”).²⁴ A copy of the Tax Notices is attached to the Receiver Declaration as Exhibit E.

19. From the Title Report and the Tax Notices, the Receiver determined that property taxes for 2016 are liens that not yet due and payable, and that no other liens or interests attach to the Property.²⁵

20. Any other financial interests against the Property, other than property taxes and closing costs, will not be paid at the time of closing 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.²⁶

21. A copy of this Motion is being served on the relevant taxing authority.²⁷

Best Interests

22. The Receiver believes that the sale of the Property as proposed is beneficial for and in the best interests of the Receivership Estate based on the appraised value of the Property and the amount of the Stalking Horse Bid, which was obtained through good faith and arms’

²³ *Id.* at ¶ 17.

²⁴ *Id.* at ¶¶ 6 & 18.

²⁵ *Id.* at ¶ 19, Exh. A (Title Report), and Exh. E (Tax Notice).

²⁶ *Id.* at ¶ 20.

²⁷ *Id.* at ¶ 21.

length negotiations.²⁸

23. The Stalking Horse Bid is over 92% of the appraised value of the Property and 96% of the asking price. Through the proposed auction, the purchase price cannot go lower and might increase.²⁹

24. Notice of the auction described below will be served on all persons who submitted offers to purchase the Property during the initial marketing of the Property, will be published in newspapers in Salt Lake City, Utah, and Malad City, Oneida County, Idaho, and will be posted on the Receiver's website.³⁰

25. 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 Property, if any.³¹

III.

APPLICABLE LAW

26. 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.³²

27. Section 2001(a) of title 28 of the United States Code permits the Receiver to sell property of the Receivership Estate:

²⁸ *Id.* at ¶ 22.

²⁹ *Id.* at ¶ 23.

³⁰ *Id.* at ¶ 24.

³¹ *Id.* at ¶ 25.

³² *See supra* ¶¶ 1, 3.

at 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.³³

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

once 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.³⁴

IV.

REQUESTED RELIEF

29. The Receiver requests that the Court enter the proposed Order attached as **Exhibit A**, thus (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 and attached as **Exhibit B**.

Sale Free and Clear of Interests

30. Sale of the Property as proposed is within the scope of the Receiver’s authority under the Receivership Order as quoted in ¶ 2 above and 28 U.S.C. §§ 2001(a) and 2002 both quoted in ¶¶ 27 and 28 above, it is in the best interests of the Receivership Estate, and the sale serves the purposes of the Receivership Estate by providing a “realization of the true and proper value” of the Property.³⁵

31. 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, such notice will

³³ 28 U.S.C. § 2001(a).

³⁴ 28 U.S.C. §2002.

³⁵ Receivership Order ¶ 38; Receiver Declaration ¶ 22.

be provided, with any interests that may ultimately be determined to exist attaching to the Net Sale Proceeds.³⁶

32. 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 Property noted in ¶ 25 above.³⁷

Proposed Publication Notice

33. 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.

34. Accordingly, the Receiver proposes that the following notice be published in *The Salt Lake Tribune*, a newspaper published in Salt Lake City, Utah, and in *The Idaho Enterprise*, a weekly newspaper published in Malad City, Oneida County, Idaho, 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 certain real property comprised of 217 acres near Elkhorn Ridge in Malad, Oneida County, ID, with tax parcel numbers T-5776, -5777, -5778, and -5779 (the “Property”) through a public auction to the highest bidder payable in lawful money of the United States on the ___ day of _____, 2016 at the hour of ____ on the Property at the above stated location, 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 \$240,000.00 including a \$5,000.00 deposit to act as the opening “Stalking Horse Bid” at Auction. Only “Qualified Bidders” may participate in the

³⁶ Receiver Declaration ¶ 20.

³⁷ *Id.* at ¶ 25.

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 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.

35. 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

36. 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 is attached hereto as **Exhibit B**:

- a. The Receiver may conduct an auction of certain real property comprised of 217 acres near Elkhorn Ridge in Malad, Oneida County, ID, with tax parcel numbers T-5776, -5777, -5778, and -5779 (the “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 Property by interested parties prior to the “Bid Deadline” (defined below).
- c. Pursuant to the Purchase Agreement attached as Exhibit D to the Receiver Declaration, the Receiver has received an offer to purchase the Property for \$240,000.00 including a \$5,000.00 deposit, 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 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 \$5,000.00 as an initial deposit (all such deposits and the deposit posted in conjunction with the Stalking Horse Bid, being collectively, the “Initial Deposit”), by no later than 5:00 p.m. Mountain Time at least five 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 SH Agreement and such sale shall be deemed to be a sale of the 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 \$5,000.00 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 its last offer made is irrevocable until the date that sale of the 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 (i) sign a purchase agreement on terms materially similar to the terms of sale stated in SH Agreement; and (ii) must deliver to the Receiver an additional non-refundable deposit of 10% of the purchase price accepted at Auction (the “10% Deposit”). In the event that 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.

37. 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.

CONCLUSION

Accordingly, for the reasons set forth herein, the Receiver requests that the Court enter the proposed Order attached hereto as Exhibit A, thus (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 attached hereto at Exhibit B. The Receiver also requests any other relief appropriate under the circumstances.

DATED this 20th day of July, 2016.

DORSEY & WHITNEY, LLP

/s/ Peggy Hunt

Peggy Hunt
John J. Wiest
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