

Peggy Hunt (Utah State Bar No. 6060)
Chris Martinez (Utah State Bar No. 11152)
John Wiest (Utah State Bar No. 15767)
DORSEY & WHITNEY LLP
136 South Main Street, Suite 1000
Salt Lake City, UT 84101-1685
Telephone: (801) 933-7360
Facsimile: (801) 933-7373
Email: hunt.peggy@dorsey.com
martinez.chris@dorsey.com
wiest.john@dorsey.com

Attorneys for Court-Appointed Receiver R. Wayne Klein

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

SECURITIES AND EXCHANGE COMMISSION, <div style="text-align: right;">Plaintiff,</div> <div style="text-align: center;">v.</div> NATIONAL NOTE OF UTAH, LC, a Utah Limited Liability Company and WAYNE LaMAR PALMER, and individual, <div style="text-align: right;">Defendants.</div>	NOTICE OF SETTLEMENT AGREEMENT WITH KATY ATHAY, CO-OWNER OF 2351 GRANT AVE., OGDEN, UT, AND REQUEST FOR APPROVAL 2:12-cv-00591 BSJ The Honorable Bruce S. Jenkins
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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 (the “Receivership Estate”), by and through his counsel of record, hereby files this *Notice of Settlement Agreement with Katy Athay, Co-Owner of 2351 Grant Ave., Ogden, UT*, and respectfully requests that the Court approve the settlement agreement (the “Settlement”

Agreement”) attached here as **Exhibit A** as part of its consideration of the *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* [Docket No. 1029] (“Sale Motion”) currently scheduled for hearing tomorrow, November 17, 2015 at 1:20 p.m. In support hereof, the Receiver states as follows:

1. The Receivership Estate owns a 49.2% interest and Katy Athay (“Athay”) owns a 50.8% interest in certain real property located at 2351 Grant Ave., Ogden, UT (the “Property”).
2. Athay authorized the Receiver to market the Property for sale.
3. The Receiver has received an offer to purchase the Property for \$600,000 which is subject to this Court’s approval and higher and better offers.
4. In conjunction with that offer, on November 4, 2015, the Receiver filed the Sale Motion with this Court, seeking authorization of the sale, or in the event of higher and better offers, permission to conduct an auction and public sale of the Property. A hearing on the Sale Motion is scheduled for November 17, 2015, at 1:20 pm.
5. Athay consents to the Receiver’s sale of the Property, but desires to bid for the Property at auction using her ownership interest as a credit bid.
6. Athay has also submitted a proof of claim to the Receiver, asserting a claim against the Receivership Estate, and the Receiver asserts that he has claims against Athay. The mutual claims of the parties are outlined in the Settlement Agreement.
7. The Receiver and Athay have entered into the Settlement Agreement attached hereto as **Exhibit A** to (a) set procedures to apply to the auction, including the amount of

Athay's credit bid, and (b) resolve the parties' mutual claims against each other.

8. The Receiver and Athay request that the Court approve the Settlement Agreement in conjunction with the Sale Motion so as to allow Athay to participate at the auction.

DATED this 16th day of November, 2015.

DORSEY & WHITNEY LLP

/s/ Peggy Hunt

Peggy Hunt

Chris Martinez

John Wiest

Attorneys for Receiver

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 (2351 GRANT AVE., OGDEN, UT)** was filed with the Court on this 16th day of November, 2015, and served via ECF on all parties who have requested notice in this case:

/s/ Candy Long

It is hereby certified that on the 16th day of November, 2015, the **RECEIVER'S MOTION AND MEMORANDUM IN SUPPORT REQUESTING ORDER APPROVING (1) PUBLIC SALE OF PROPERTY FREE AND CLEAR OF INTERESTS, (2) METHOD AND FORM OF PUBLICATION NOTICE, AND (3) PUBLIC AUCTION PROCEDURES (2351 GRANT AVE., OGDEN, UT)** was served on the following parties by U.S. Mail postage prepaid:

Wayne L. Palmer
8816 South 2240 West
West Jordan, UT 84088

Rick Hatch
Weber County Clerk/Auditor
2380 Washington Blvd, Suite 320
Ogden, UT 84401

/s/ Candy Long

It is hereby certified that on the 16th day of November, 2015, the **RECEIVER'S MOTION AND MEMORANDUM IN SUPPORT REQUESTING ORDER APPROVING (1) PUBLIC SALE OF PROPERTY FREE AND CLEAR OF INTERESTS, (2) METHOD AND FORM OF PUBLICATION NOTICE, AND (3) PUBLIC AUCTION PROCEDURES (2351 GRANT AVE., OGDEN, UT)** was served on the following individuals via email:

Matthew Cox
Counsel for Katy Athay
pmc@scmlaw.com

Weber County Tax Assessor
BBaron@co.weber.ut.us

Buyer's agent
Nate Harbertson: nate@ppc-utah.com

/s/Candy Long

EXHIBIT A

SETTLEMENT AGREEMENT AND RELEASE: KATY ATHAY

This Settlement Agreement and Release ("Agreement") is entered into this 16th day of November, 2015, by and between Katy Athay aka Mary Kate Athay ("Athay") and Wayne Klein as the duly appointed Receiver ("Receiver") for National Note of Utah, LC ("National Note") and related entities (collectively, the "Receivership Entities"). Athay and the Receiver are collectively referred to as the "Parties."

RECITALS

WHEREAS, on June 25, 2012, the Securities and Exchange Commission filed a civil enforcement action against National Note and Wayne L. Palmer ("Palmer") in the U.S. District Court for the District of Utah (the "District Court"), asserting violations of numerous federal securities laws, captioned as *SEC v. National Note of Utah, LC et al*, Case No. 2:12CV591 BSJ (D. Utah) (the "Action"); and

WHEREAS, on June 25, 2012, the District Court entered an Order in the Action appointing the Receiver to take control of the Receivership Entities and the assets of Palmer; and

WHEREAS, commencing in approximately May 1997 through the commencement of the Action, National Note issued promissory notes to Athay for her investments in National Note, and National Note's books and records, now in the custody of the Receiver, show that Athay invested a total of \$840,000.00 with National Note and that National Note paid Athay distributions totaling at least \$370,000.00 (the "Note Investments"); and

WHEREAS, in addition to the Note Investments, in or about June 2006, Athay paid \$508,000.00 for a 50.8% interest in three parcels of land (01-029-0030, 01-029-0034, 01-029-0035) located at 2351 Grant Street, Ogden, Utah, which includes a commercial office building (collectively, the "Property") (the "Land Investment"); and

WHEREAS, one of the Receivership Entities, Presidential Utah Properties LLC ("PUP"), owns a 49.2% interest in the Property and that interest is held as a tenant in common with Athay's interest in the Property; and

WHEREAS, a *Memorandum of Agreement* was executed between Athay and PUP to document the Land Investment, pursuant to which PUP agreed to "lease back" the Property from Athay, "guaranteeing" Athay a net 8% per annum return on the cash purchase price, with said return being "payable in monthly installments of \$3,386.67 per month. . . ."; and

WHEREAS, between 2006 and 2012, Athay was paid a total of \$244,066.02 from National Note or PUP related to the Land Investment (the "Lease-Back Payments"); and

WHEREAS, between June 28, 2006 and the commencement of the Action, the Property incurred net losses of \$1,144,565.30, with 50.8% of these losses totaling \$581,439.17

(the "Pre Action Expenses"), none of which were paid by Athay based on National Note's books and records; and

WHEREAS, since the time the Receiver was appointed, operation of the Property has resulted in net losses of \$54,708.99 (the "Post-Action Expenses"); and

WHEREAS, property taxes on the Property are delinquent going back to 2008, with total property taxes owed as of the time of this Agreement totaling \$123,514.78 (the "Taxes"); and

WHEREAS, Athay authorized the Receiver to market the Property for sale; and

WHEREAS, the Receiver has received an offer to purchase the Property for \$600,000.00, and in conjunction therewith, on November 4, 2015, 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* [Docket No. 1029] ("Sale Motion") in the District Court, seeking authorization of the sale, or in the event of higher and better offers, permission to conduct an auction and public sale of the Property; and

WHEREAS, Athay has obtained bank financing to purchase the Property and desires to consent to the public sale of the Property by the Receiver and bid for the Property at auction; and

WHEREAS, Athay submitted a proof of claim to the Receiver that was received after the bar date set in the Action related to her investments with the Receivership Entities which has been designated as Claim No. 1456; and

WHEREAS, the Parties agree to compromise and settle all disputes between them related to the Receivership Entities and Palmer pursuant to the terms and conditions set forth herein.

AGREEMENT

NOW THEREFORE, in consideration of the mutual promises, covenants and agreements set forth in this Agreement, and based upon the foregoing recitals and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Court Approval; Best Efforts.** This Agreement is conditioned on and is subject to the District Court's entry of an order in the Action approving this Agreement. The Receiver will promptly seek Court approval of this Agreement, and the Parties each agree to use their best efforts to secure Court approval of this Agreement in accordance with all applicable law. This Agreement shall be effective on the date that the Court Order approving this Agreement becomes final and non-appealable (the "Final Order").

2. **Consent to Public Sale of the Property.** Athay consents to the sale of the Property (including her interest in the Property) by auction at public sale as proposed by the Receiver in the Sale Motion, regardless of whether her bid is the winning bid. By this Agreement, Athay is giving notice of her intent to bid at auction pursuant to the bid procedures set forth in the Sale Motion.

3. **Terms of Credit Bid Amount at the Auction.** The Parties agree that Athay may credit bid her 50.8% ownership interest in the Property at the auction, provided that she (a) agrees in writing to the approved Auction Procedures before the Bid Deadline as set forth in paragraph 43(c) of the Sale Motion and (b) gives the Receiver a third party commitment of funds in writing by no later than December 1, 2015, and that the amount of the credit bid shall be calculated as follows:

a. 50.8% of the highest bid amount at the auction after deduction of closing costs, Taxes, Post-Action Expenses, and sales commission, plus

b. \$18,288.00, which is 50.8% of the real estate commissions due at closing.¹

The amount of Athay's credit bid, together with a written third party commitment for funds, may be used to satisfy the Initial Deposit required under paragraph (e)(i) of the proposed Auction Procedures, attached to the Sale Motion as Exhibit B, and the 10% Deposit required under paragraph (j) of the proposed Auction Procedures.

4. **Treatment of Commission.** At closing, a real estate commission will be due to the listing agent based on a sales price of \$600,000.00. Athay shall have no obligation to share in the cost of the commission if her bid for the Property is accepted at the auction as the highest and best bid. This is reflected in the amount of her credit bid as calculated in paragraph 3 above. If the Property is sold to a third person, the amount of the commission shall be a cost of sale that shall be deducted from the gross sale proceeds prior to distribution of the net sale proceeds.

5. **Net Sales Proceeds After Sale.** Athay agrees that at the closing of the sale of the Property, the sales proceeds shall be distributed as follows:

a. First, for the payment of closing costs and sales commissions;

b. Second, for the payment of all Taxes and any other government assessments on the Property that have accrued prior to closing;

c. Third, for payment of the Post-Action Expenses in the amount of \$54,708.99 to the Receivership Estate;

¹ As an example, if the high bid for the building is \$610,000, the amount of credit bid Athay could use (before closing costs which are not being estimated for this example) would be \$219,342.34 (\$610,000.00 - \$123,514.78 - \$54,708.99 - \$36,000) x .508 + \$18,288.00).

d. Fourth, the remainder shall be divided 50.8% to Athay and 49.2% to the Receivership.

e. This sales proceeds allocation shall be the same whether Athay or some other bidder is the high bidder, except that Athay's obligation to deliver funds to the title company at closing shall be reduced by the amount of her credit bid as calculated in Paragraph 3.

6. **Release of Claims -- Against Receiver.** Effective upon the completion of the closing of the sale of the Property, Athay releases and forever discharges the Receiver, the Receivership Estate, and any one or all of the Receiver's affiliates, attorneys, agents and the employees, agents, attorneys, representatives, predecessors, successors and assigns thereof (collectively, the "Receiver Release Parties") from any and all manner of actions, causes of action in law or in equity, suits, debts, liens, contracts, liabilities, claims, demands, damages, losses, fees, costs, or expenses, set offs, or claims for recoupment, of any nature whatsoever, known or unknown, fixed or contingent that Athay may have against the Receiver Release Parties from the beginning of time to the date of this Agreement, or which may hereafter accrue against the Receiver Release Parties based upon any claims, acts or omissions occurring prior to the date of this Agreement relating to the Action including any claim that Athay has asserted or might assert against funds recovered by the Receiver for distribution to investors, and any other claim that Athay could have filed against the Receivership Estate, including but not limited to in Claim No. 1456.

7. **Release of Claims -- Against Athay.** Effective upon the completion of the closing of the sale of the Property, for and on behalf of the Receivership Estate, Receivership Entities and the Receiver Release Parties, the Receiver releases and forever discharges Athay, her heirs, devisees, personal representatives, successors, assigns, attorneys and any other person or entity claim by, through or under Athay ("Athay Release Parties") from any and all manner of actions, causes of action in law or in equity, suits, debts, liens, contracts, liabilities, claims, demands, damages, losses, fees, costs, or expenses, set offs, or claims for recoupment, of any nature whatsoever, known or unknown, fixed or contingent that the Receiver, the Receivership Estate, the Receivership Entities, or the Receiver Release Parties or any party claiming by or through any of them, may have against Athay from the beginning of time to the date of this Agreement, or which may hereafter accrue against Athay, or any party claiming by, through, or under Athay, based upon any claims, acts or omissions occurring prior to the date of this Agreement, including but not limited claims for the Pre-Action Expenses, the Post-Action Expenses, the Taxes, and any claims that the Receivership Estate could assert for the Leaseback Payments. Provided however, the release provided under this paragraph is not a release of any claims or causes of action arising or resulting from a default under or breach of this Agreement.

8. **Cooperation.** The Parties agree to cooperate in taking all actions to effectuate this Agreement. If the Receiver discovers any Assignments of Beneficial Interest or trust deeds against any property of the Receivership Estate in the name of Athay, Athay agrees to promptly release the interests by written agreement prepared by the Receiver.

9. **Representations and Warranties.** Athay represents and warrants that she has full power and authority to enter into this agreement on her behalf and on behalf of any entities she controls that might assert any interest in the Property.

10. **Receiver Representation.** The Receiver represents that, as the Court-authorized representative of the Receivership Estate, he has full power and authority to enter into this Agreement.

11. **Attorneys' Fees and Costs.** Each of the Parties shall bear its own respective attorneys' fees and costs incurred in connection with entering into and implementing this Agreement. However, in the event that any legal action is taken to enforce any term or provision of this Agreement, the Parties agree that the prevailing party shall be entitled to payment of its reasonable attorneys' fees, expenses and costs incurred to enforce the terms of this Agreement.

12. **Binding Effect.** This Agreement shall be binding upon each of the Parties, and their respective successors-in-interest, heirs and/or assigns. All representations and warranties made herein shall survive execution of this Agreement and shall at all times subsequent to the execution of this Agreement remain binding and fully enforceable.

13. **Voluntary Agreement.** This Agreement has been carefully read by the Parties and the Parties have consulted with their respective legal counsel; the contents hereof are known and understood by the Parties; and each of the Parties acknowledges that such party is under no duress or undue influence and that each of the Parties executes this Agreement as its own free and voluntary act.

14. **Integration and Amendments.** This Agreement shall constitute the entire agreement and understanding of and between the Parties in relation to matters described herein, and no statements, representations, inducements or promises other than as expressly set forth herein have been given or received by any of the Parties (nor by their respective agents, employees, attorneys or representatives) in return for same. All negotiations, oral conversations, statements, representations and/or agreements leading up to the execution of this Agreement are merged herewith and shall not be the basis for any legal rights, claims or defenses in relation to any litigation or otherwise. No parole or extrinsic evidence may be used to contradict any of the terms of this Agreement. Any amendment to this Agreement must be in writing, signed by duly authorized representatives of the Parties hereto, and specifically state the intent of the Parties to amend this Agreement.

15. **Counterparts.** This Agreement may be executed by the Parties hereto in any number of identical counterparts, each of which, once executed and delivered in accordance with the terms of this Agreement, will be deemed an original with all such counterparts taken together constituting one and the same instrument. Delivery by facsimile, encrypted e-mail or e-mail file attachment of any such executed counterpart to this Agreement will be deemed the equivalent of the delivery of the original executed agreement or instrument.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date and year first above written.

KATY ATHAY

Katy Athay
Mary de Athay

RECIEVER, R. WAYNE KLEIN

Wayne Klein
Receiver