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Attorneys for Court-Appointed Receiver R. Wayne Klein

**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**

(2351 GRANT AVE., OGDEN, UT)

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 of record, 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, 2011, 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. One of the Palmer Entities is Presidential Utah Properties LC (“PUP”).³

3. 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 . . . [.]”⁴

¹ Docket No. 9 (Receivership Order).

² *See generally, id.*

³ Receiver Declaration ¶ 4.

⁴ Receivership Order ¶ 7(A).

- “To take custody, control and possession of all Receivership Property and records . . . [.]”⁵
- “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[.]”⁶
- “[T]o take immediate possession of all real property of the Receivership Defendants and the Palmer Entities”⁷
- “[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.”⁸
- “[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.”⁹
- “[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.”¹⁰

⁵ *Id.* at ¶ 7(B).

⁶ *Id.* at ¶ 7(D).

⁷ *Id.* at ¶ 19.

⁸ *Id.* at ¶ 37.

⁹ *Id.* at ¶ 38.

¹⁰ *Id.* at ¶ 39.

II.

REAL PROPERTY TO BE SOLD AT AUCTION AND STALKING HORSE BID

2351 Grant Ave., Ogden, UT

4. Since his appointment, the Receiver has identified numerous real properties as being part of the Receivership Estate, and where appropriate has listed such property for sale.¹¹

5. This Motion concerns real property located at 2351 Grant Ave., Ogden, UT 84401 (“the Property”), consisting of three parcels with the following parcel tax ID numbers:

- Parcel # 01-029-0030
- Parcel # 01-029-0035
- Parcel # 01-029-0034.

6. The Receiver obtained a Commitment for Title Insurance for the Property, a copy of which is attached to the Receiver Declaration as **Exhibit A** (the “Insurance Commitment”). The Insurance Commitment lists two addresses for the Property, 2347 and 2351 Grant Ave., Ogden, UT 84401.¹² For purposes of the Motion, the Property will be identified as 2351 Grant Ave., Ogden, UT.

7. According to the Insurance Commitment, the Palmer Entity PUP has an undivided 49.2% interest and Mary Kate Athay has as to an undivided 50.8% interest in the Property.¹³

8. Since his appointment, the Receiver has maintained the Property for the benefit of the Receivership Estate. Upon information and belief, Ms. Athay has not contributed any money

¹¹ Receiver Declaration ¶ 5.

¹² *Id.* at Exh. A (Insurance Commitment at 1).

¹³ *Id.* at Exh. A (Insurance Commitment at 1).

toward the maintenance of the Property since the Receiver's appointment. Furthermore, upon review of the books and records of the Receivership Estate, it does not appear that Ms. Athay contributed any funds toward the maintenance of the Property prior to the Receiver's appointment. The Receiver maintains that the post-receivership property maintenance and repair costs are in the amount of \$86,458.99 and that the post-receivership revenue from the Property was in the amount of \$31,750.00, leaving net post-receivership expenses of \$54,708.99 (the "Property Costs").

Appraising and Marketing the Property

9. To determine an offering price for the Property and to comply with his duties, the Receiver obtained the opinion an appraiser as to the value of the Property.¹⁴

10. On September 2, 2014, the Receiver received an appraisal for the Property ("Appraisal") from Stan C. Craft of Free and Associates, Inc.¹⁵ A true and correct copy of the portions of the Appraisal that are relevant to the Property is attached to the Receiver Declaration as **Exhibit B**.

11. Free and Associates, Inc. appraised the "as is" market value of a fee simple interest in the Property at \$720,000 as of January 1, 2014 and \$760,000 as of August 15, 2014.¹⁶

12. On or about December 11, 2014, the Receiver caused the Property to be listed for sale through a "Listing Agreement" with Equity Real Estate (the "Realtor"). A copy of the current extension of the Listing Agreement with addenda is attached as **Exhibit C** to the

¹⁴ Receiver Declaration ¶ 9.

¹⁵ *Id.* at ¶ 10.

¹⁶ *Id.* at Exh. B (Appraisal).

Receiver Declaration.

13. The Receiver marketed the Property for sale through his Realtor, including by listing the property on the Multiple Listing Service.¹⁷

The Proposed Purchase Agreement and Stalking Horse Bid at Auction

14. The Receiver has received an offer to purchase the Property pursuant to the terms of the “Purchase Agreement,” which is bid in the amount of \$600,000.00, with a \$10,000.00 deposit, subject to higher and better offers.¹⁸ A copy of the Purchase Agreement is attached to the Receiver Declaration as **Exhibit D**.

15. The Purchase Agreement was negotiated by the Receiver and the prospective purchaser in good faith and at arms’ length.¹⁹

16. The Receiver proposes to use this offer as a stalking horse bid at the public auction described below (the “Stalking Horse Bid”).²⁰

17. In the event that a higher and better offer is accepted by the Receiver, the Receiver has agreed to pay the holder of the Stalking Horse Bid its costs to conduct an appraisal of the Property.²¹

Sale Costs and Net Sale Proceeds

18. The Receiver anticipates paying at the time of closing of the sale outstanding

¹⁷ *Id.* at ¶ 12; *see*, Exh. C. (Listing Agreement).

¹⁸ *Id.* at ¶ 13.

¹⁹ *Id.* at ¶ 14.

²⁰ *Id.* at ¶ 15.

²¹ *Id.* at Exh. D (Purchase Agreement Addendum ¶ 4).

property taxes and the ordinary costs of sale, including market-rate closing costs and a standard 6.00% realtor commission. 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.²²

19. The Receiver anticipates paying Ms. Athay her 50.8% share, less 50.8% of the Property Costs, out of the “Net Sale Proceeds,” defined as the gross sale proceeds minus costs paid at closing described above.²³

20. Any other interests (to the extent that they exist and without any waiver of the Receiver or the Receivership Estate’s rights and defenses related thereto) will survive the sale and will attach to the Net Sale Proceeds.²⁴

21. The Receiver will separately account for the Net Sale Proceeds pending resolution of any disputes related to interests that may exist against the Property, including, if necessary, the amount owed to Ms. Athay.²⁵

Free and Clear Sale

22. 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, except for property taxes and closing costs which will be paid at closing. 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

²² *Id.* at ¶ 16.

²³ *Id.* at ¶ 17.

²⁴ *Id.* at ¶ 18.

²⁵ *Id.* at ¶ 19.

Property or to the Net Sale Proceeds.²⁶

23. To determine interests, if any, against the Property, the Receiver obtained the Insurance Commitment.

24. As noted above, the Insurance Commitment shows that Ms. Athay has a 50.8% interest in the Property. Ms. Athay's ownership interest in the Property will be compensated from the Net Sale Proceeds, after deduction of her share of Property Costs.

25. The Receiver also obtained a Weber County 2015 Notice of Property Valuation and Tax Change and addenda ("Tax Notice") to determine tax liabilities on the Property.²⁷ The Tax Notice is attached to the Receiver Declaration as **Exhibit E**.

26. From the Tax Notice, the Receiver has determined that property taxes on the Property for the years 2008 through 2014 are due and payable. There may also be taxes that have accrued during the 2015 tax year that will need to be paid from the Net Sale Proceeds.²⁸

27. 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 or the Receivership Estate's right and defenses related thereto) will survive the sale and will attach to the Net Sale Proceeds, defined as the gross sale proceeds minus the costs paid at closing described above.²⁹

28. A copy of this Motion is being served on the relevant taxing authority and Ms.

²⁶ *Id.* at ¶ 20.

²⁷ *Id.* at ¶ 21.

²⁸ *Id.* at ¶ 22 and Exh. E (Tax Notice)

²⁹ *Id.* at ¶ 20.

Athay.³⁰

Best Interests

29. The Receiver believes that the sale of 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' length negotiations.³¹

30. The Stalking Horse Bid is 78.9% of the appraised value of the Property. Through the proposed auction, the purchase price cannot go lower and might increase.³²

31. 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 included in publication in newspapers in Salt Lake City, Utah, and Ogden, Utah, and will be posted on the Receiver's website.³³

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, if any other than Ms. Athay.³⁴

³⁰ *Id.* at ¶ 23.

³¹ *Id.* at ¶ 24.

³² *Id.* at ¶ 25.

³³ *Id.* at ¶ 26.

³⁴ *Id.* at ¶ 27.

III.

APPLICABLE LAW

33. 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

34. 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

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

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.³⁷

IV.

REQUESTED RELIEF

36. 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.

³⁵ See *supra* ¶¶ 1-2.

³⁶ 28 U.S.C. § 2001(a).

³⁷ 28 U.S.C. §2002.

Sale Free and Clear of Interests

37. 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 ¶¶ 34 and 35 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.³⁸

38. 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 be provided, with any interests that may ultimately be determined to exist attaching to the Net Sale Proceeds.³⁹

39. 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 ¶ 27 above.⁴⁰

Proposed Publication Notice

40. 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.

³⁸ Receivership Order ¶ 38; Receiver Declaration ¶ 25.

³⁹ Receiver Declaration ¶¶ 18, 20.

⁴⁰ *Id.* at ¶ 27.

41. 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 *Standard-Examiner*, a newspaper published in Ogden, 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 certain real property located at 2351 Grant Ave., Ogden, UT 84401, consisting of three parcels with the following parcel tax ID numbers: 01-029-0030, 01-029-0035, 01-029-0034 (the “Property”) through a public auction to the highest bidder payable in lawful money of the United States on the __ day of _____, 2015 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 \$600,000.00 together with a \$10,000.00 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 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.

42. 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

43. 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 certain real property located at 2351 Grant Ave., Ogden, UT 84401, consisting of three parcels with the following parcel tax ID numbers: 01-029-0030, 01-029-0035, 01-029-0034 (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 \$600,000.00 which includes a \$10,000.00 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 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 \$10,000.00 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.

44. 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.

V.

CONCLUSION

45. 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 4th 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 4th 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 4th 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 4th 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:

KatyAthay@msn.com

BBaron@co.weber.ut.us

/s/ John Wiest

EXHIBIT A

Prepared and submitted by:

Peggy Hunt (Utah State Bar No. 6060)\

Chris Martinez (Utah State Bar No. 11152)

John Wiest (Utah State Bar No. 15767)

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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 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)

2:12-cv-00591 BSJ

The Honorable Bruce S. Jenkins

The matter before the Court is 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)* (the "Motion") filed by R. Wayne Klein, the Court-Appointed Receiver (the "Receiver") in the above captioned case. Through the Motion, the Receiver is seeking approval to sell certain

real property located in Ogden, Utah (the “Property”) at public sale to the highest and best offer, using a bid made by a proposed buyer as a stalking horse bid. The real property is located at 2351 Grant Ave., Ogden, UT 84401 (“the Property”), consisting of three parcels with the following parcel tax ID numbers:

Parcel # 01-029-0030;

Parcel # 01-029-0035;

Parcel # 01-029-0034.

The sale is free and clear of all interests, with property taxes, and costs of closing to be paid at closing.

The Court has reviewed the Motion and the *Declaration of R. Wayne Klein, Receiver*, together with all of the Exhibits attached thereto, all other papers filed 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 the Property as set forth in the Motion to the proposed buyer or a higher and better offeror at auction is **APPROVED**.
3. The method and form of the publication notice as set forth in the Motion are **APPROVED**. The following notice shall be published in *The Salt Lake Tribune*, a newspaper published in Salt Lake City, Utah, and in the *Standard-Examiner*, a newspaper published in Ogden, 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 certain real property located at 2351 Grant Ave., Ogden, UT 84401, consisting of three parcels with the following parcel tax ID numbers: 01-029-0030, 01-029-0035, 01-029-0034 (the “Property”) through a public auction to the highest bidder payable in lawful money of the United States on the ____ day of _____, 2015 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 \$600,000.00 together with a \$10,000.00 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 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.

4. The Auction Procedures described in the Motion and attached to the Motion as Exhibit B are **APPROVED**.

DATED this ____ day of _____, 2015.

BY THE COURT:

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

EXHIBIT B

AUCTION PROCEDURES

SALE OF REAL ESTATE (BYRON WEST INDUSTRIAL PARK LOT 5 BLOCK 1)

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 certain real property located at 2351 Grant Ave., Ogden, UT 84401 (“the Property”), consisting of three parcels with the following parcel tax ID numbers: 01-029-0030, 01-029-0035, 01-029-0034 (the “Property”) on the ____ day of _____, 2015, 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 Receiver will conduct the Auction in accordance with the procedures listed below (collectively, the “Auction Procedures”):

- a. The Receiver may conduct an auction of certain real property located at 2351 Grant Ave., Ogden, UT 84401, consisting of three parcels with the following parcel tax ID numbers: 01-029-0030, 01-029-0035, 01-029-0034 (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 E to the Receiver Declaration, the Receiver has received an offer to purchase the Property for \$600,000.00 which includes a \$10,000.00 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 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 \$10,000.00 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 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.