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*Attorneys for Court-Appointed Receiver R. Wayne Klein*

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

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SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

vs.

NATIONAL NOTES OF UTAH, LC, a Utah  
Limited Liability Company and WAYNE  
LaMAR PALMER, an individual,

Defendants.

**RECEIVER’S MOTION SEEKING  
AUTHORIZATION TO SELL FIVE  
TOQUERVILLE PROPERTIES FREE  
AND CLEAR OF PURPORTED  
INTERESTS SUBJECT TO HIGHER  
AND BETTER OFFERS AND  
MEMORANDUM IN SUPPORT**

**(C-2, F-3, ALMOND HEIGHTS 14, 15,  
& 18)**

Civil No. 2:12-00591

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, by and through his counsel of record, hereby files this motion (the “Motion”), and respectfully requests that the Court authorize him to sell certain real property of the Receivership Estate, described more fully and defined in the Memorandum in Support as “the Properties” subject to higher and better

offers.

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”).<sup>1</sup> 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.<sup>2</sup>

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 . . . [.]”<sup>3</sup>
- “To take custody, control and possession of all Receivership Property and records . . . [.]”<sup>4</sup>

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<sup>1</sup> Docket No. 9 (Receivership Order).

<sup>2</sup> See generally, *id.*

<sup>3</sup> *Id.* at ¶ 7(A).

<sup>4</sup> *Id.* at ¶ 7(B).

- “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[.]”<sup>5</sup>
- “[T]o take immediate possession of all real property of the Receivership Defendants and the Palmer Entities . . . .”<sup>6</sup>
- “[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.”<sup>7</sup>
- “[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.”<sup>8</sup>
- “[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.”<sup>9</sup>

## II.

### **REAL PROPERTY TO BE SOLD**

#### **Lots C2, F3, and Almond Heights 14, 15, & 18**

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.<sup>10</sup>

4. Relevant to this Motion are five parcels of real property in Toquerville, Utah, with

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<sup>5</sup> *Id.* at ¶ 7(D).

<sup>6</sup> *Id.* at ¶ 19.

<sup>7</sup> *Id.* at ¶ 37.

<sup>8</sup> *Id.* at ¶ 38.

<sup>9</sup> *Id.* at ¶ 39.

<sup>10</sup> Receiver Declaration ¶ 4.

the following addresses and accompanying legal descriptions:

- 746 South Peachtree Drive, Toquerville, UT 84774; T-138-C-2 (“Lot C-2”);
- 736 South Peachtree Drive, Toquerville, UT 84774; T-138-F-3 (“Lot F-3”);
- 745 South Peachtree Drive, Toquerville, UT 84774; T-AHP-A-14 (“Almond Heights 14”);
- 755 South Peachtree Drive, Toquerville, UT 84774; T-AHP-A-15 (“Almond Heights 15”); and
- 785 South Peachtree Drive, Toquerville, UT 84774; T-AHP-A-18 (“Almond Heights 18”).

Lots C-2 and F-3 are metes and bounds lots within Toquerville city limits, and Almond Heights 14, 15, and 18 are part of the Almond Heights Park subdivision located in Toquerville (collectively, “the Properties”).<sup>11</sup>

5. The Properties are titled in the name of NNU.<sup>12</sup>

#### **Marketing the Properties**

6. On or about August 1, 2014, the Receiver caused the Properties, along with others in the Almond Heights subdivision, to be listed for sale through Access Utah Realty (the “Realtor”).<sup>13</sup> A copy of the Listing Agreement with addenda is attached as Exhibit F to the Receiver Declaration.

7. To determine an offering price and comply with his duties, the Receiver obtained

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<sup>11</sup> *Id.* at ¶¶ 4-5 & Exhs. A-E to the Receiver Declaration (Title Reports).

<sup>12</sup> *Id.* at ¶ 5 & Exhs. A-E to the Receiver Declaration (Title Reports).

<sup>13</sup> *Id.* at ¶ 6.

the opinion of his Realtor and one appraiser.<sup>14</sup> The Court approved the use of the original appraiser and two additional appraisers on October 3, 2014.<sup>15</sup> The Receiver has now received the second and third appraisals.<sup>16</sup>

8. The Receiver marketed the Properties for sale through his Realtor, including by listing the property on the Multiple Listing Service.<sup>17</sup>

### **Court-Appointed Appraisers and Valuation**

9. On October 3, 2014, the Court entered an *Order Granting Receiver's Ex Parte Motion Seeking Appointment of Appraisers for Almond Heights Lots*.<sup>18</sup>

10. Consequently, Craig Morley ("Morley"), Steven R. Williams ("Williams"), and Kelly J. Blake ("Blake") were appointed as appraisers for the Receivership Estate's Toquerville properties, including the Properties relevant to this motion (collectively, the "Appraisers").<sup>19</sup> The Appraisers have provided the Receiver with appraisals of the Receivership Estate's Toquerville properties, including the Properties relevant to this motion (the "Morley Appraisal," the "Williams Appraisal," and the "Blake Appraisal"). True and correct copies of the portions of the Morley Appraisal, Williams Appraisal, and Blake Appraisal that are relevant to the Properties are attached to the Receiver Declaration as Exhibit G, Exhibit H, and Exhibit I, respectively.

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<sup>14</sup> *Id.* at ¶ 7.

<sup>15</sup> Docket No. 780.

<sup>16</sup> Receiver Declaration ¶ 7.

<sup>17</sup> *Id.* at ¶ 8.

<sup>18</sup> Docket No. 780.

<sup>19</sup> *Id.* at 1-2.

11. Morley appraised Lot C-2 at \$37,000.00.<sup>20</sup> Williams appraised Lot C-2 at \$19,000.00.<sup>21</sup> Blake appraised Lot C-2 at \$34,000.00.<sup>22</sup> The average appraised value of Lot C-2 is \$30,000.00.

12. Morley appraised Lot F-3 at \$37,000.00.<sup>23</sup> Williams appraised Lot F-3 at \$29,000.00.<sup>24</sup> Blake appraised Lot F-3 at \$34,500.00.<sup>25</sup> The average appraised value of Lot F-3 is \$33,500.00.

13. Morley appraised Almond Heights 14 at \$37,000.00.<sup>26</sup> Williams appraised Almond Heights 14 at \$20,000.00.<sup>27</sup> Blake appraised Almond Heights 14 at \$35,000.00.<sup>28</sup> The average appraised value of Almond Heights 14 is \$30,666.67.

14. Morley appraised Almond Heights 15 at \$35,000.00.<sup>29</sup> Williams appraised Almond Heights 15 at \$28,000.00.<sup>30</sup> Blake appraised Almond Heights 15 at \$34,000.00.<sup>31</sup> The average appraised value of Almond Heights 15 is \$32,333.33.

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<sup>20</sup> Receiver Declaration, Exh. G (Morley Appraisal).

<sup>21</sup> *Id.* at Exh. H (Williams Appraisal).

<sup>22</sup> *Id.* at Exh. I (Blake Appraisal).

<sup>23</sup> *Id.* at Exh. G (Morley Appraisal).

<sup>24</sup> *Id.* at Exh. H (Williams Appraisal).

<sup>25</sup> *Id.* at Exh. I (Blake Appraisal).

<sup>26</sup> *Id.* at Exh. G (Morley Appraisal).

<sup>27</sup> *Id.* at Exh. H (Williams Appraisal).

<sup>28</sup> *Id.* at Exh. I (Blake Appraisal).

<sup>29</sup> *Id.* at Exh. G (Morley Appraisal).

<sup>30</sup> *Id.* at Exh. H (Williams Appraisal).

<sup>31</sup> *Id.* at Exh. I (Blake Appraisal).

15. Morley appraised Almond Heights 18 at \$32,000.00.<sup>32</sup> Williams appraised Almond Heights 18 at \$28,000.00.<sup>33</sup> Blake appraised Lot 20 at \$30,000.00.<sup>34</sup> The average appraised value of Lot 20 is \$30,000.00.

16. The combined average appraised value of the Properties is \$156,500.00. The following table summarizing the Appraisals is provided for the convenience of the Court.

	Morley	Williams	Blake	Average
Lot C-2	\$37,000.00	\$19,000.00	\$34,000.00	\$30,000.00
Lot F-3	\$37,000.00	\$29,000.00	\$34,500.00	\$33,500.00
AH 14	\$37,000.00	\$20,000.00	\$35,000.00	\$30,666.67
AH 15	\$35,000.00	\$28,000.00	\$34,000.00	\$32,333.33
AH 18	\$32,000.00	\$28,000.00	\$30,000.00	\$30,000.00
Total				\$156,500.00

### **The Purchase Agreements**

17. The Receiver has entered into purchase agreements to sell the Properties. On or about July 13, 2015, the Receiver entered into a purchase agreement for Lot C-2 (the “Lot C-2 Purchase Agreement”) on behalf of the Receivership Estate with Rural Housing Development Corporation (the “Buyer”) for a purchase price of \$30,780.00, subject to Court approval. A copy of the Lot C-2 Purchase Agreement is attached to the Receiver Declaration as Exhibit J.<sup>35</sup>

<sup>32</sup> *Id.* at Exh. D (Morley Appraisal).

<sup>33</sup> *Id.* at Exh. E (Williams Appraisal).

<sup>34</sup> *Id.* at Exh. F (Blake Appraisal).

<sup>35</sup> *Id.* at ¶ 10.

18. On or about July 13, 2015, the Receiver entered into a purchase agreement for Lot F-3 (the “Lot F-3 Purchase Agreement”) on behalf of the Receivership Estate with the Buyer for a purchase price of \$31,635.00, subject to Court approval. A copy of the Lot F-3 Purchase Agreement is attached to the Receiver Declaration as Exhibit K.<sup>36</sup>

19. On or about July 13, 2015, the Receiver entered into a purchase agreement for Almond Heights 14 (the “Almond Heights 14 Purchase Agreement”) on behalf of the Receivership Estate with the Buyer for a purchase price of \$31,635.00, subject to Court approval. A copy of the Almond Heights 14 Purchase Agreement is attached to the Receiver Declaration as Exhibit L.<sup>37</sup>

20. On or about July 13, 2015, the Receiver entered into a purchase agreement for Almond Heights 15 (the “Almond Heights 15 Purchase Agreement”) on behalf of the Receivership Estate with the Buyer for a purchase price of \$29,925.00, subject to Court approval. A copy of the Almond Heights 15 Purchase Agreement is attached to the Receiver Declaration as Exhibit M.<sup>38</sup>

21. On or about July 13, 2015, the Receiver entered into a purchase agreement for Almond Heights 18 (the “Almond Heights 18 Purchase Agreement”) on behalf of the Receivership Estate with the Buyer for a purchase price of \$27,360.00, subject to Court approval. A copy of the Almond Heights 18 Purchase Agreement is attached to the Receiver Declaration as Exhibit N.<sup>39</sup>

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<sup>36</sup> *Id.* at ¶ 11.

<sup>37</sup> *Id.* at ¶ 12.

<sup>38</sup> *Id.* at ¶ 13.

<sup>39</sup> *Id.* at ¶ 14.



22. The combined purchase price for the Properties is \$151,335.00.

23. Two of the properties, Lot C-2 and Almond Heights 14, are currently encumbered by power poles owned by Rocky Mountain Power but used by CenturyLink and another telecommunications provider. The Receiver has entered into an agreement with CenturyLink (which owns the wires) to relocate the utility lines underground along the edge of the Properties, and the relocation is expected to be completed by February 12, 2016. The Buyer's duty to close the purchase of these two lots is conditioned on completion of the utility relocation. Should Rocky Mountain Power or the other telecommunications provider fail to cooperate in the utility relocation, the Receiver may ask the Court's assistance to complete the relocation, thus allowing the sales to close.<sup>40</sup>

24. If the Court approves the sale of the Properties pursuant to the terms of the respective purchase agreements, the Receiver anticipates paying at the time of closing of the sales the amount owed to the Stensland Trust Deed holder (as discussed below), outstanding property taxes, and the ordinary costs of sale, including market-rate closing costs and a standard 7.00% realtor commission.<sup>41</sup>

25. Any other financial interests against the Properties will not be paid at the time of closing of the sales. Rather, any such interests (to the extent that 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," defined as the gross sale proceeds minus costs paid at closing described above.<sup>42</sup>

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<sup>40</sup> *Id.* at ¶ 15.

<sup>41</sup> *Id.* at ¶ 16.

<sup>42</sup> *Id.* at ¶ 17.

26. The Receiver will separately account for the Net Sale Proceeds pending resolution of any disputes related to interests that may exist against the Properties.<sup>43</sup>

**Free and Clear Sale**

27. The Receiver proposes to sell the Properties 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 not in any way waiving any rights, claims, interests or defenses to any claims or interests made against the Properties or to the Net Sale Proceeds.<sup>44</sup>

28. To determine interests, if any, against the Properties, the Receiver obtained Title Reports for the Properties, copies of which are attached the Receiver Declaration as Exhibit A (“Lot C-2 Title Report”), Exhibit B (“Lot F-3 Title Report”), Exhibit C (“Almond Heights 14 Title Report”), Exhibit D (“Almond Heights 15 Title Report”), and Exhibit E (“Almond Heights 18 Title Report”) (collectively, the “Title Reports”).<sup>45</sup>

29. From the Title Reports, the Receiver determined that property taxes on Lots C-2 and F-3 for the years 2009 through 2015 are liens that are due and payable. The Receiver also determined that property taxes on Almond Heights 14, 15, and 18 for the years 2011 through 2015 are liens that are due and payable.<sup>46</sup>

30. From the Title Reports for Lots C-2 and F-3 the Receiver has determined that no liens or interests, other than the tax liens identified above, attach to those properties.<sup>47</sup>

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<sup>43</sup> *Id.* at ¶ 18.

<sup>44</sup> *Id.* at ¶ 19.

<sup>45</sup> *Id.* at ¶¶ 5 & 20, Exhs. A-E (Title Reports).

<sup>46</sup> *See Id.* at ¶ 21 & Exhs. A-E (Title Reports).

<sup>47</sup> *Id.* at ¶ 22.

31. From the Title Reports for Almond Heights 14 and 15 the Receiver has identified one person/entity holding a purported interest in the form of a deed of trust against those two properties. The trust deed was recorded in the name of Robert Stensland (the “Stensland Trust Deed”), with whom the Receiver has previously signed a Court-approved settlement agreement. Pursuant to the settlement agreement, the Receiver proposes to pay Stensland 75% of the Net Sale Proceeds from the sales of Almond Heights 14 and 15 to satisfy the Stensland Trust Deed, and to retain the remaining 25% for the Receivership Estate. The Court has previously approved this formula and method in the sales of Almond Heights 11-13.<sup>48</sup>

32. From the Title Report for Almond Heights 18, the Receiver has identified one person/entity holding a purported interest in the form of a deed of trust against Almond Heights 18 and five other Almond Heights Properties. One of these properties, Almond Heights 17, has already been sold, and the sales of two others, Almonds Heights 19 and 20, will be the subject of a hearing on January 15, 2016 and, if approved by the Court, will be closing soon. The trust deed, in the amount of \$30,000.00, was recorded in the name of Kristine S. Olson Profit Sharing Plan (the “Olson Trust Deed”). The Receiver will be using the proceeds from the sales of Almond Heights 19 and 20, along with a small amount of the net proceeds currently held in the Real Estate Holding Account from the sale of Lot 17, to satisfy the Olson Trust Deed. Thus, Almond Heights 18 should be free and clear of liens by the time the sale of the Properties closes, and the Receiver proposes to sell it as such.<sup>49</sup>

33. Any other financial interests against the Properties, other than the Stensland Trust Deed, property taxes, and closing costs will not be paid at the time of closing of the sales. Rather,

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<sup>48</sup> *Id.* at ¶ 23.

<sup>49</sup> *Id.* at ¶ 24.

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, defined as the gross sale proceeds minus the costs paid at closing described above.<sup>50</sup>

34. A copy of this Motion is being served on the relevant taxing authorities and holders of the Stensland Trust Deed and the Olson Trust Deed.<sup>51</sup>

**Best Interests**

35. Sale of the Properties as proposed is beneficial for and in the best interests of the Receivership Estate.<sup>52</sup>

36. The proposed sales will result in cash based on the fair market value of the Properties. The purchase prices are 90% of the list prices and range from 91% to 103% of the average appraised values.<sup>53</sup>

37. Sale of the Properties at this time will also slightly reduce the burden to the Receivership Estate by reducing the time spent by the Receiver in managing them and, more importantly, will maximize the value of the Properties by ending tax and maintenance obligations associated with them.<sup>54</sup>

38. The sales to the Buyer proposed herein are subject to higher and better offers,

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<sup>50</sup> *Id.* at ¶ 25.

<sup>51</sup> *Id.* at ¶ 26.

<sup>52</sup> *Id.* at ¶ 27.

<sup>53</sup> *Id.* at ¶ 28.

<sup>54</sup> *Id.* at ¶ 29.

after publication notice as provided for below.<sup>55</sup>

**Publication Notice**

39. Contemporaneously herewith the Receiver is filing his *Ex Parte Motion and Memorandum in Support Seeking Approval of Proposed Method and Form of Publication Notice for Sale of Real Property (C-2, F-3, Almond Heights 14, 15, & 18)* (the “Publication Motion”), seeking the Court’s approval of the method and form of proposed publication notice as required under 28 U.S.C. § 2001(b).<sup>56</sup>

40. Upon entry of an Order granting the Publication Motion, the Receiver shall publish notice of the proposed sale in *The Salt Lake Tribune*, a newspaper published in Salt Lake City, Utah, and the *St. George Spectrum*, a newspaper published in Washington County, Utah and distributed to Toquerville, Utah, using the method and form of notice approved by the Court.<sup>57</sup>

41. In the event that the Receiver receives and accepts a higher and better offer, he proposes that this Motion and any Order authorizing these proposed sales be deemed to apply to the higher and better offeror without further notice or hearing inasmuch as the sales will be appropriate for the reasons set forth below. In such event, the Receiver will file a notice of sale disclosing the sale to the higher and better offeror.<sup>58</sup>

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<sup>55</sup> *Id.* at ¶ 30.

<sup>56</sup> *Id.* at ¶ 31.

<sup>57</sup> *Id.* at ¶ 32.

<sup>58</sup> *Id.* at ¶ 33.

### III.

#### **ARGUMENT**

Based on the facts above, the Receiver respectfully requests authorization to sell the Properties pursuant to the terms of the Purchase Agreements free and clear of liens and interests, with any such interests, to the extent that they exist, attaching to the Net Sale Proceeds and held by the Receiver pending resolution of any disputes related thereto. Sale of the Properties as proposed is within the scope of the Receiver's authority under the Receivership Order as quoted above and 28 U.S.C. § 2001(b), it is in the best interests of the Receivership Estate, and the sale serves the purposes of the receivership by providing a "realization of the true and proper value" of the properties.<sup>59</sup>

#### **Sale of the Properties as Proposed is Beneficial to the Receivership Estate**

Section 2001(b) of title 28 of the United States Code provides that the Court may authorize the sale of real property through private sale if such sale is in the "best interests" of the Receivership Estate. Furthermore, the Receivership Order authorizes the Receiver, subject to Court approval, to sell property of the Receivership Estate "with due regard to the realization of the true and proper value of such Receivership Property."<sup>60</sup> Sale of the Properties as proposed herein is in the best interests of the Receivership Estate for several reasons, including at least the following.

*First*, the sales will result in cash for the Receivership Estate based on the fair market value of the Properties. The purchase prices are 90% of the list prices and range from 91% to

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<sup>59</sup> Receivership Order ¶ 38.

<sup>60</sup> *Id.*

103% of the average appraised values.<sup>61</sup> The Appraisals have taken into consideration current market conditions, sales of comparable properties, and the particular nature of the Properties.

*Second*, sale of the Properties at this time as proposed will reduce, albeit slightly, the burden on the Receivership Estate and maximize the value of the property. The Receiver will no longer have to spend time managing the property, and the Receivership Estate will no longer have obligations related to paying taxes on and other maintenance and upkeep expenses related to the Properties.<sup>62</sup> Accordingly, the Receiver requests that the Court approve these sales under the terms outlined herein.

**Request to Sell the Properties Free and Clear of Interests**

As discussed above, the Receiver proposes to sell the Properties free and clear of any interests in the property, with any such interest attaching to the Net Sale Proceeds. The Court may order such a sale so long as parties with interests against the property are given proper notice.

The Receiver will serve a copy of the Motion on the Stensland Trust Deed holder, the Olson Trust Deed holder, and the relevant taxing authority.<sup>63</sup> Failure to object to these terms will mean that the holders of the Stensland Trust Deed and/or the Olson Trust Deed consent to the relief sought herein, and may only look to the Net Sale Proceeds for any claim they may eventually be held to have. This will allow for the proposed sales to close, and preserve the status quo as to any disputes regarding claimed interests in the Properties.

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<sup>61</sup> Receiver Declaration at ¶ 28.

<sup>62</sup> *Id.* at ¶ 29.

<sup>63</sup> *Id.* at ¶ 20.

**Compliance With 28 U.S.C § 2001**

The Receivership Order provides that the Court may require that the proposed sale of real property satisfy 28 U.S.C. § 2001.<sup>64</sup> Subsection (b) of § 2001 permits, with Court approval, a private sale of receivership property as proposed herein, but it conditions such sale on (1) obtaining a purchase price that is no less than two-thirds of the appraised value of the property; (2) appointing “three disinterested persons to appraise such property or different groups of three appraisers each to appraise properties of different classes or situated in different localities[;]” (3) publication notice of the sale “at least ten days before confirmation[;]” and (4) cancellation of the sale “if a bona fide offer is made, under conditions prescribed by the court, which guarantees at least a 10 per centum increase over the price offered in the private sale.”<sup>65</sup> Here, the Receiver has complied with each of these factors.

Specifically, factor (1) is met in this case inasmuch as the individual purchase prices for the Properties are as follows: Lot C-2 is 102.6% of the average appraised value; Lot F-3 is 94.4% of the average appraised value; Almond Heights 14 is 103.2% of the average appraised value; Almond Heights 15 is 92.6% of the average appraised value; and Almond Heights 18 is 91.2% of the average appraised value. Combined, the Properties will be sold for over 96% of their average appraised value, far exceeding the 2/3 requirement.

Factor (2) is met because the Receiver has the Appraisals and has thus obtained appraisals from three experienced, third-party appraisers who were appointed by this Court and provided the Court with the relevant portions of the Appraisals.

Factor (3) will be met as the Receiver will publish notice of the proposed sale

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<sup>64</sup> Receivership Order ¶ 39.

<sup>65</sup> 28 U.S.C. § 2001(b).



immediately upon the Court's entry of an Order approving the method and form of such notice as requested in the Publication Motion filed concurrently herewith.

Factor (4) also has been met, inasmuch as the Receiver understands that the sale will not be approved if he receives a higher and better offer that is in compliance with § 2001(b) as quoted above and the sale is conditioned on this factor.<sup>66</sup> In the event that the Receiver receives and accepts a higher and better offer, he proposes that this Motion and any Order authorizing this proposed sale be deemed to apply to the higher and better offeror without further notice or hearing inasmuch as the sale will be appropriate for the reasons set forth herein. In such event, the Receiver will file a notice of sale disclosing the sale to the higher and better offeror.

### **CONCLUSION**

For the foregoing reasons, the Receiver requests that the Court grant the Motion, thus authorizing the sale of Lots C-2, F-3, Almond Heights 14, 15, and 18, pursuant to the respective purchase agreements or to a higher and better offeror free and clear of purported interests.

DATED this 31st day of December, 2015.

**DORSEY & WHITNEY, LLP**

*/s/ Peggy Hunt*

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Peggy Hunt

Chris Martinez

John Wiest

*Attorneys for Receiver*

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<sup>66</sup> Receiver Declaration ¶ 24.

**CERTIFICATE OF SERVICE**

I hereby certify that on the 31st day of December 2015, a true and correct copy of the foregoing **RECEIVER'S MOTION SEEKING AUTHORIZATION TO SELL FIVE TOQUERVILLE PROPERTIES FREE AND CLEAR OF PURPORTED INTERESTS SUBJECT TO HIGHER AND BETTER OFFERS AND MEMORANDUM IN SUPPORT (C-2, F-3, ALMOND HEIGHTS 14, 15, & 18)** was served upon the persons named below, at the addresses set out below by U.S. mail:

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

David Whitehead  
Washington County Treasurer  
197 E. Tabernacle  
St. George, UT 84770

*/s/ John Wiest*

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I hereby certify that on the 31st day of December 2015, a true and correct copy of the foregoing **RECEIVER'S MOTION SEEKING AUTHORIZATION TO SELL FIVE TOQUERVILLE PROPERTIES FREE AND CLEAR OF PURPORTED INTERESTS SUBJECT TO HIGHER AND BETTER OFFERS AND MEMORANDUM IN SUPPORT (C-2, F-3, ALMOND HEIGHTS 14, 15, & 18)** was served upon the persons named below, at the addresses set out below either by email:

Robert Stensland  
bstensland@comcast.net

Kristine Olson, Trustee  
Kristine S. Olson Profit Sharing Plan  
KOlson@realtytrust.com

*/s/ John Wiest*

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