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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
AUTHORIZATION REGARDING
METHOD OF DISPOSITION OF
EXPRESSWAY BUSINESS PARK
LAND**

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, hereby files this motion (the "Motion"), requesting that the Court authorize the Receiver to dispose of certain real property of the Receivership Estate known as the "Expressway Business Park" land.

This Motion is supported by the *Declaration of Receiver R. Wayne Klein* (the "Receiver Declaration"), which has been filed concurrently herewith. Given the nature of the Motion, the Receiver is not submitting a proposed Order at this time. He will do so promptly after being so

directed by the Court.

MEMORANDUM IN SUPPORT

I.

BACKGROUND

The Receivership Order

1. On June 25, 2012, the above-captioned case was commenced by the Securities and Exchange Commission 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).

⁵ *Id.* at ¶ 7(D).

- “[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

Description of Relevant 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 are four parcels of real property that are part of the property known in this case as the “Expressway Business Park,” located in the Spanish Fork, Utah, consisting of a total of 29.99 acres of land (the “Property”).¹¹ The Property has the following tax parcel numbers:

- “Parcel 1”: 27:010:0067--21.25 acre undeveloped lot;

⁶ *Id.* at ¶ 19.

⁷ *Id.* at ¶ 37.

⁸ *Id.* at ¶ 38.

⁹ *Id.* at ¶ 39.

¹⁰ Receiver Declaration ¶ 3.

¹¹ The Receiver has previously sold, with Court approval, certain other portions of the Expressway Business Park that had business condominiums built on them.

- “Parcel 2”: 27:010:0068--3.94 acre undeveloped lot;
- “Parcel 3”: 27:010:0064--2.3 acre undeveloped lot; and
- “Parcel 4”: 38:-400-0307 through -0327--20 zoned condominium lots, totaling 2.5 acres.

Title Reports and Asserted Interests

5. The Receiver obtained Title Reports for each Parcel, copies of which are attached to the Receiver Declaration as **Exhibit A** (the “Title Reports”).¹² According to the Title Reports the Parcels are titled in the names of Palmer Entities and are property of the Receivership Estate. Parcels 1, 2, and 4 are titled in the name of Expressway Business Park, LLC, and Parcel 3 is titled in the name of Spanish Fork Development, L.L.C.¹³

6. Because the Property was once part of an unregulated landfill, the City of Spanish Fork has informed the Receiver’s appraiser and several potential buyers that at this time it will require that much of the waste buried on the property must be removed as part of any development of the Property. The extent and type of waste present on the Property are unknown.¹⁴

7. The Receiver has been informed that as of this time the U.S. Army Corps of Engineers has preliminarily determined that the Property may contain wetlands. It is expected to take at least one year of study to make a final determination in this regard.¹⁵

8. Parcels 1 and 2 are currently encumbered by contested trust deeds in unspecified

¹² Receiver Declaration ¶ 5.

¹³ Receiver Declaration, Exh. A (Title Reports at p. 2).

¹⁴ Receiver Declaration ¶ 6.

¹⁵ *Id.* ¶ 7.

amounts held by Jeff Sessions (“Sessions”) and Evolution Holdings (“Evolution”).¹⁶ The Receiver maintains that the “Sessions Trust Deed” and the “Evolution Trust Deed” are unenforceable for several reasons.¹⁷

9. An uncontested “Westar Trust Deed” in the name of Westar Equities Corporation (“Westar”) is recorded against Parcel 3, with a stated remaining amount of \$9,634.34, which is comprised of principal and interest.¹⁸ True and correct copies of the Sessions, Evolution, and Westar Trust Deeds are attached to the Receiver Declaration as **Exhibit B**.

10. Four unresolved Assignments of Beneficial Interests (“ABIs”) have also been asserted against Parcels 1, 2, and 4.¹⁹ The Receiver maintains that these ABIs are not valid or enforceable.²⁰

11. In addition to the Title Reports, the Receiver obtained 2016 tax notices for each of the Parcels from Utah County (the “Tax Notices”).²¹ Copies of the relevant portions of the Tax Notices are attached to the Receiver Declaration as **Exhibit C**. The taxes on each of the Parcels as of December 31, 2015 are set forth in the chart in paragraph 18 below.

12. A copy of this Motion is being served on the Utah County taxing authority, as well as on Sessions, Evolution, Westar, and on the holders of the ABIs asserted against the Property.

¹⁶ Receiver Declaration, Exh. A (Title Reports).

¹⁷ Receiver Declaration ¶ 8.

¹⁸ Receiver Declaration ¶ 8, Exh. A (Title Reports).

¹⁹ Receiver Declaration, Exh. A (Title Reports).

²⁰ Receiver Declaration ¶ 9, Exh. A (Title Reports). These ABIs are additionally asserted against \$112,965.27 in net sale proceeds from the sale of Expressway Business Park Lot 215 currently being held in the Receivership Estate’s Real Estate Account.

²¹ Receiver Declaration ¶ 10.

Marketing and Property Valuation

13. The Receiver has marketed the Property for sale since January 2014 through Coldwell Banker Commercial (the “Realtor”).²² A copy of the “Listing Agreement” is attached to the Receiver Declaration as **Exhibit D**.

14. To determine an offering price, the Receiver obtained the opinion of his Realtor and an appraiser.²³

15. On or about March 19, 2014, the Receiver obtained an appraisal for the Property (the “Appraisal”) from Merit Valuation LLC.²⁴ A true and correct copy of the relevant portions of the Appraisal is attached to the Receiver Declaration as **Exhibit E**. According to the Appraisal, the Property is valued as whole at \$1,250,000.00, which it states takes into account the City of Spanish Fork issues and the potential wetlands issue described above.²⁵

16. The Receiver first marketed the Property for sale at an asking price of \$3,500,000.00. At this time, it is marketed for sale at \$1,250,000.00.²⁶

17. The Property has been vigorously marketed for sale for several years. The Receiver has had three serious potential buyers for the Property, all of whom terminated their respective potential deals after conducting due diligence and, the Receiver is informed, due to the uncertainty of the issues posed by the landfill and potential wetlands described above.

Accordingly, the Receiver does not believe that the Property will draw the value assigned to it in

²² *Id.* at ¶ 11.

²³ *Id.* at ¶ 12.

²⁴ *Id.* at ¶ 13.

²⁵ Receiver Declaration, Exh. E (Appraisal p. 3).

²⁶ Receiver Declaration ¶ 14.

the Appraisal at this time or in its current state.²⁷

18. For the convenience of the Court, the Receiver provides the following table summarizing the appraised value and interests against each of the Parcels:

	Tax Id No.	Acres	Trust Deed	ABI	Property Taxes	Appraised Value
Parcel 1	27:010:0067	21.25	Sessions; Evolution; unstated amount	Yes	\$156,660.67	\$650,000.00
Parcel 2	27:010:0068	3.94	Sessions; Evolution; unstated amount	Yes	\$32,550.20	\$290,000.00
Parcel 3	27:010:0064	2.3	Westar: \$9,634.34	No	\$7,628.25	\$50,000.00
Parcel 4	38:400:0307- 326	2.5	No	Yes	\$102,687.60	\$325,000.00
Total ²⁸		29.99			\$299,526.72	\$1,315,000.00

II.

SALE OPTIONS

19. The Receiver has been presented with three options for disposition of the Property (the “Options”), each with pros and cons for the Receivership Estate. Each Option is described immediately below. To most efficiently and fairly dispose of this Property, the Receiver presents each of the Options to the Court, with notice to all persons who potentially have an interest in the disposition of the Property, and requests that the Court authorize the Receiver to act on one of the three Options. For the reasons set forth in Part III below, the Receiver believes that Option 2 is in the best interests of the Receivership Estate and recommends and requests that the Court

²⁷ *Id.* at ¶ 15.

²⁸ This total reflects the sum of the valuation of each parcel separately. If the entire property were sold together, the appraised value is \$1,250,000.00.

authorize him to execute Option 2.²⁹

Option 1—Cash Sale

20. The first Option (“Option 1”) is to sell Parcels 1, 2, and 3 (not 4) free and clear of interests at public sale outright for cash pursuant to 28 U.S.C. §§ 2001 and 2002 as described below.

21. The Receiver has received an offer from Woodsprings, LLC (“Woodsprings”), to purchase Parcels 1, 2, and 3 pursuant to the terms of the “Purchase Agreement,” which is in the amount of \$250,000.00, subject to higher and better offers.³⁰ A copy of the Purchase Agreement is attached to the Receiver Declaration as **Exhibit F**.

22. The Purchase Agreement was negotiated by the Receiver and Woodsprings in good faith and at arms’ length.³¹

23. In the event Option 1 is authorized, the Receiver proposes to use this offer as a stalking horse bid at public auction (the “Option 1 Stalking Horse Bid”).

Free and Clear Sale

24. Under Option 1, the Receiver proposes to sell Parcels 1, 2, and 3 free and clear of all interests thereon, with the interests outlined above that may exist against these Parcels attaching to the Option 1 Net Sale Proceeds as defined below. In so doing, the Receiver is not in any way waiving any rights, claims, interests or defenses to any claims or interests made against Parcels 1, 2, and 3 or the Option 1 Net Sale Proceeds.

25. The Receiver would pay at closing the following: outstanding property taxes on Parcels 1, 2, and 3; the ordinary costs of sale, including market-rate closing costs and a standard

²⁹ Receiver Declaration ¶ 16.

³⁰ *Id.* at ¶ 17.

³¹ *Id.* at ¶ 18.

6.00% realtor commission limited to calculation based on the \$250,000.00 bid; and \$9,634.34 based on Westar's interest.³² The gross sale proceeds, less the costs of sale, taxes, commission and Westar debt are referred to herein as the "Option 1 Net Sale Proceeds."

26. Any other alleged financial interests against Parcels 1, 2, and 3 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 rights and defenses related thereto) will survive the sale and will attach to the Option 1 Net Sale Proceeds.

27. As noted above, a copy of this Motion is being served on all persons who have asserted interests against these Parcels.

28. Should Option 1 be authorized, the Receiver requests that he be permitted to sell the Property at public sale pursuant to the bidding procedures and notice typically approved in this case under 28 U.S.C. §§ 2001 and 2002. In this instance, the Receiver will submit the bidding procedures and proposed publication notice to the Court for approval.

Benefits of Option 1

29. Under Option 1, the Receivership Estate will relatively quickly liquidate this Property for at least \$250,000.00, and possibly more after a public auction. Taxes will cease accruing and the Receivership Estate may still obtain value from a future sale of Parcel 4.³³

30. The Receivership Estate would receive Option 1 Net Sale Proceeds of approximately \$26,000.00, after payment of taxes, closing costs, and satisfying the Westar Trust Deed. These proceeds would be deposited into the Receivership Estate's Real Estate Account pending resolution of the contested Sessions and Evolution Trust Deeds and the ABIs.³⁴

³² *Id.* at ¶ 19.

³³ *Id.* at ¶ 20(a).

³⁴ *Id.* at ¶ 20(b).

Drawbacks of Option 1

31. The Option 1 Stalking Horse Bid is only 25.25% of the appraised value of individual Parcels 1, 2, and 3.³⁵

32. Parcel 4, which includes 2.5 acres with twenty condominium lots, will be left with the Receivership Estate and the Receiver will be required to continue to maintain and market the Property.³⁶

33. The Property will continue to accrue taxes.³⁷

Option 2—Land Purchase Agreement

34. The second option (“Option 2”) is to sell all four Parcels free and clear of interests to a developer who will pay the full appraised value, \$1,250,000.00, over 8 years.

35. The Receiver has entered into a land purchase agreement (the “Land Purchase Agreement”), subject to Court approval, with Providence Development Group, L.C. (“Providence”).³⁸ A true and correct copy of the Land Purchase Agreement is attached to the Receiver Declaration as **Exhibit G**. Under the Land Purchase Agreement, Providence will purchase the Property for the full appraised value, \$1,250,000.00 (the “Purchase Amount”), according to the following terms:

- Providence will sign a promissory note agreeing to pay the Purchase Amount for the property (the “Promissory Note”). The Promissory Note will have a maturity date of 8 years. It will bear no interest for the first two years, pay interest at 4% for years 3-5, and 8% interest for amounts unpaid

³⁵ *Id.* at ¶ 21(a).

³⁶ *Id.* at ¶ 21(b).

³⁷ *Id.* at ¶ 21(c).

³⁸ *Id.* at ¶ 22.

after 5 years. At least \$500,000.00 of the Purchase Amount must be paid before the end of year 5, with the full amount due by the end of year 8.³⁹

- As part of the Purchase Amount, Providence will make a \$5,000.00 earnest money deposit (the “Earnest Money”).⁴⁰
- Also, in addition to the Purchase Amount, Providence will deposit \$100,000.00 into an escrow account (the “Escrow Account”) to be used exclusively for development, entitlements, and remediation of the Property. The Receiver will approve all expenditures of funds from the Escrow Account.⁴¹

36. To protect the interests of the Receivership Estate, the Receivership Estate will retain a first deed of trust on the Property. If Providence fails to make payments when due, Providence will return title on the Property to the Receiver or the Receiver may foreclose. Should title be returned to the Receiver, the Receivership Estate will be entitled to retain any payments received from Providence, any money remaining in the Escrow Account, and any improvements to or entitlements on the Property.⁴²

37. The Receiver must consent to any subdivisions of the Property into smaller parcels or subordination of the Receivership Estate’s first position trust deed for any construction loan.⁴³

38. The Receiver must approve all property sales. Property sales would also be

³⁹ Receiver Declaration, Exh. G (Land Purchase Agreement ¶ 3).

⁴⁰ *Id.* at ¶ 3.

⁴¹ *Id.* at ¶ 4.

⁴² *Id.* at ¶ 3-4.

⁴³ *Id.* at ¶ 3.

subject to the Court's approval.⁴⁴

39. Providence will immediately pay 50% of any revenue it receives from the Property to the Receivership Estate for the purpose of satisfying the Promissory Note. If any portions of the Property are sold to third party purchasers before the Promissory Note is paid, Providence will pay the Receiver at least 120% of the sold land's appraised value, based on the Appraisal, for credit towards the Promissory Note.⁴⁵

40. The Purchase Agreement provides that the Receiver may release a portion of the deed of trust if a portion of the Property is sold, or may subordinate the deed of trust to the interests of a third party lender providing funds to the buyer to construct improvements on the Property.⁴⁶

41. Because the maturity date of the Promissory Note will be beyond the time of the expected termination of the Receivership Estate, at the time the Receivership Estate is terminated the Receiver anticipates recommending the creation of a liquidating trust to hold the deed of trust and perform remaining tasks related to the Property.⁴⁷

42. The Realtor brought the Land Purchase Agreement to the Receiver, and the Land Purchase Agreement was negotiated by the Receiver and Providence in good faith and at arms' length. The dealings between the Realtor and Providence have also been in good faith and at arms' length.⁴⁸

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Receiver Declaration ¶ 23.

⁴⁸ *Id.* at ¶ 24.

Free and Clear Sale

43. Under Option 2, the Receiver proposes to sell the Property free and clear of all interests thereon, with the interests outlined above that may exist attaching to the Option 2 Net Sale Proceeds as defined below. 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 Option 2 Net Sale Proceeds.

44. The Receiver would pay at closing the following: outstanding property taxes (some of the funds for which would need to be advanced by the Receivership Estate – see paragraph 53 below); ordinary costs of sale, including market-rate closing costs; and \$9,634.34 to Westar (which also would need to be advanced by the Receivership Estate). The Realtor would not be paid at time of closing, but rather the standard commission calculated on the Land Purchase Agreement sale price will be paid by the Receiver to the Realtor as payments are received by the Receiver in the future.⁴⁹ The gross sale proceeds anticipated to be received based on the Land Purchase Agreement, less the costs of sale, taxes, commission, and Westar debt are referred to herein as the “Option 2 Net Sale Proceeds.”

45. Any other alleged financial interests against the Property 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 rights and defenses related thereto) will survive the sale and will attach to the Option 2 Net Sale Proceeds as those Proceeds are received by the Receivership Estate.

46. Should Option 2 be authorized, the Receiver requests that he be permitted to sell the Property to Providence pursuant to the Land Purchase Agreement at public sale pursuant to

⁴⁹ *Id.* at ¶ 25.

the bidding procedures and notice typically approved in this case under 28 U.S.C. §§ 2001 and 2002. In this instance, the Receiver will submit the bidding procedures and proposed publication notice to the Court for approval.

Benefits of Option 2

47. Option 2 would allow the Receivership Estate to realize the Property's full appraised value, \$1,250,000.00, albeit over the 8 years.⁵⁰

48. All four Parcels will be disposed of, relieving the Receivership Estate of the burden of continuing to market any portion of the Property.⁵¹

49. The Property will be sold, and after closing, the Receivership Estate will not continue to be responsible for future real property taxes.⁵²

50. The Receiver has done due diligence on Option 2. Based on this due diligence The Receiver believes that Option 2 is viable and provides the Receivership Estate with protections in the event that Providence defaults. A summary of the Receiver's due diligence is as follows:

- Providence is managed by David R. Adams ("Adams"). Adams is an experienced property developer and real estate agent, and Adams is informed of the issues with the Property outlined above. A copy of Adams's resume has been attached to the Receiver Declaration as **Exhibit H.**
- Adams has a proven track record with the Receiver. He has been engaged by the Receivership Estate to sell the Autumn Ridge subdivision lots in

⁵⁰ *Id.* at ¶ 26(a).

⁵¹ *Id.* at ¶ 26(b).

⁵² *Id.* at ¶ 26(c).

Eagle Mountain, Utah, and the land owned by the Receivership Estate in Fairfield, Utah. Many of these properties have been sold.

- Adams has worked with the City of Spanish Fork for more than 10 years, including work on properties that have needed significant remediation. The Receiver believes that Adams's experience and credibility with the City of Spanish Fork increase the chances that a master development plan will be approved for the Property in spite of the environmental encumbrances.
- Providence's development team consists of a seasoned real estate broker/developer, a licensed engineer/surveyor, and an excavating contractor. Providence is currently developing a 41-lot residential subdivision on another property in Spanish Fork that, like the Property at issue here, was an unlicensed construction and debris landfill. Providence secured development approval for that project from the City of Spanish Fork, and may do the same for the Property.
- Providence has informed the Receiver that it believes the Property will have a gross market value of \$8 million when remediation work is completed and a master development plan is obtained. Providence has committed to spending \$100,000.00 of its own money to develop the Property, even if the development is ultimately unsuccessful.⁵³

51. The Receiver understands that the time afforded by Option 2 is necessary to obtain the full appraised value of the Property. Other potential buyers have passed on a purchase

⁵³ *Id.* at ¶ 26(d).

of the Property primarily because of the time and expense required to investigate and attend to the unique challenges presented by the Property. By structuring the Land Purchase Agreement as proposed, the Receiver has obtained what he believes is a viable option for the Receivership Estate inasmuch as it will increase the likelihood that Providence will be able to develop the Property successfully and the Receivership Estate will maximize the value of the Property for the benefit of investors.⁵⁴

52. As proposed, the Land Purchase Agreement provides protections to the Receivership Estate in the event that Providence defaults. In short, in the event of default, the Receivership Estate will receive the Property back with the benefit of the work done by Providence. Any improvements made by Providence will benefit the Property should it revert back to the Receivership Estate. Providence is also giving the Receiver control over all expenditures from the Escrow Account.

Drawbacks of Option 2

53. It is possible that Providence could spend the entire Escrow Account attempting to develop the Property only to conclude that it cannot be done. Should this happen, however, the Receivership Estate will get the Property back from Providence and retain the Earnest Money and the benefits of any remediation, development, or entitlement work done by Providence.⁵⁵

54. Under Option 2, the Receivership Estate will need to use some funds of the Receivership Estate over and above the Option 2 Net Sale Proceeds to pay the past due property taxes in estimated the total amount of \$299,526.72, and the Westar trust deed in the total amount of \$9,634.34. Based on the deposit being made, it is anticipated that the Receivership Estate will need to advance a total of \$304,161.06. However, the property taxes will need to be paid

⁵⁴ *Id.* at ¶ 26(e).

⁵⁵ *Id.* at ¶ 27(a).

whenever the Property is sold, and they will only continue to increase as time goes on.

Providence, as the Property owner after closing, will be responsible for future property taxes.⁵⁶

55. It will take 8 years for the Receivership Estate to be fully paid for the Property under Option 2, thus delaying any recovery to the claimants from the disposition of this asset. Additionally, after the Receivership Estate is dissolved, the Receiver anticipates the creation of a liquidating trust to administer the Land Purchase Agreement. A liquidating trust would have ongoing operating costs which would diminish any recovery from disposition of the Property. However, the Receiver believes that the benefits of eventually receiving the full appraised value of the Property significantly outweigh any concerns over operating a liquidating trust.⁵⁷

Option 3—Joint Venture Agreement

56. The third option (“Option 3”) involves a joint development venture between the Receivership Estate and Providence (the “Joint Venture Agreement”). A new entity would be created, Expressway Joint Ventures (“EJV”), with the Receiver and Providence as members.⁵⁸ All decisions would require the consent of both members, and any disagreement between them (as members) would be resolved by the Court. Providence would manage the operations of EJV. A proposed Joint Venture Agreement is attached to the Receiver Declaration as **Exhibit I**.

Terms of the Joint Venture Agreement

57. Under the Joint Venture Agreement, the Receivership will convey the Property to EJV. Providence will provide the first \$100,000.00 of funds necessary to conduct environmental testing, perform wetlands analysis, obtain entitlements, and construct improvements. The \$100,000.00 of initial funds committed by Providence will be deposited into an escrow

⁵⁶ *Id.* at ¶ 27(b).

⁵⁷ *Id.* at ¶ 27(c).

⁵⁸ *Id.* at ¶ 28.

account.⁵⁹

58. The Joint Venture Agreement specifically states that the objectives of EJV are obtaining entitlements from the City of Spanish Fork, remediation of buried waste, improvements on the land, selling specific parcels of land or subdivided parcels, and constructing buildings as rental properties. The Receiver understands that Providence is considering constructing rental properties on the Parcel 4 condominium lots.⁶⁰

59. The Receiver will receive regular reports on the progress of EJV, and his advance approval will be required for all debts incurred by the joint venture, all expenditures over \$5,000 of escrowed funds, and all testing, remediation, and development work.⁶¹

60. Providence must obtain approval for a master development plan before the Receiver will approve the creation of any liens on the property to secure construction loans. The Receiver must consent to any subdivisions of the Property into smaller parcels.⁶²

61. The Receiver must approve all property sales. Property sales would also be subject to the Court's approval.⁶³

62. All revenue from property sales or rentals will be split 40% to the Receivership Estate and 60% to Providence.⁶⁴ Providence will receive no compensation, including no management fees, other than its 60% share of net sales and net rental proceeds.⁶⁵

⁵⁹ Receiver Declaration, Exh. I (Joint Venture Agreement, Schedules A, B).

⁶⁰ *Id.* at Schedule B.

⁶¹ *Id.* at § 4.14.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.* at Schedule A.

⁶⁵ *Id.* at § 5.17.

63. EJV must sell all the land within 10 years of its creation.⁶⁶

64. Because the execution of the Joint Venture Agreement is expected to last beyond the time of the expected termination of the Receivership Estate, at the time the Receivership Estate is terminated the Receiver anticipates recommending the creation of a liquidating trust to assume the Receivership Estate's obligations under the Joint Venture Agreement.⁶⁷

65. The Receivership Estate's share of EJV's revenues (the "Option 3 Revenues") received from the Property will be deposited by the Receiver into the Real Estate Holding Account pending resolution of disputed interests against the Property, and after resolution of all disputed interests, the Option 3 Revenues would be deposited into the Operating Account of the Receivership Estate until the closing of the Estate. Thereafter the Option 3 Revenues would be property of the liquidating trust.

66. The Realtor brought the Joint Venture Agreement to the Receiver, and the Joint Venture Agreement was negotiated by the Receiver and Providence in good faith and at arms' length. The dealings between the Realtor and Providence have also been in good faith and at arms' length.⁶⁸

Free and Clear Sale

67. Under Option 3, the Receiver proposes to sell the Property free and clear of all interests thereon, with the interests outlined above that may exist attaching to the Option 3 Net Revenues as defined below. 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 Option 3 Net Revenues.

⁶⁶ *Id.* at Schedule B.

⁶⁷ Receiver Declaration ¶ 29.

⁶⁸ *Id.* at ¶ 30.

68. The Receiver would pay from the Receivership Estate the following at closing: outstanding property taxes; market-rate closing costs; and \$9,634.34 to Westar. The Realtor would not be paid at time of closing, but rather the standard commission based on sales proceeds paid to the Receivership Estate will be paid from the Option 3 Revenues upon receipt by the Receiver, who will pay the contracted commission rate to the Realtor out of actual proceeds received.⁶⁹ The Option 3 Revenues anticipated to be received, less the costs of sale, taxes, commission, and Westar debt are referred to herein as the “Option 3 Net Revenues.”

69. The Receiver proposes to sell the Property free and clear of all interests therein, with any interests that may exist attaching to the Option 3 Net Revenues. 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 Option 3 Net Revenues.

70. Should Option 3 be authorized, the Receiver requests that he be permitted to sell the Property at public sale pursuant to the bidding procedures and notice typically approved in this case under 28 U.S.C. §§ 2001 and 2002. In this instance, the Receiver will submit the bidding procedures and proposed publication notice to the Court for approval.

Benefits of Option 3

71. The Receiver estimates that, if EJVs remediation and development of the Property is successful, the Receivership Estate could receive significantly more for the Property than its current appraised value. Providence estimates that if developed, the Property will yield between \$2.5 million and \$3 million for the Receivership Estate in the next 10 years.⁷⁰

72. Option 3 disposes of the entire Property.⁷¹

⁶⁹ *Id.* at ¶ 31.

⁷⁰ *Id.* at ¶ 32(a).

⁷¹ *Id.* at ¶ 32(b).

73. The experience of Providence and Adams as outlined above makes the EJV a viable Option.⁷²

74. The Joint Venture Agreement gives Providence the time to solve the Property's unique problems and provides a way for the Receivership Estate to realize significant value from the Property.⁷³

75. The Receivership Estate is protected in the event that the Property cannot be developed through EJV. Specifically, the Estate will retain an interest in the Property through its membership in the EJV and will receive a portion of the proceeds if the Property is sold. The Receiver believes that if EJV determines it cannot develop the Property, the Property will be improved based on Providence's \$100,000.00 investment related to entitling and remediating the Property.⁷⁴

Drawbacks of Option 3

76. In the Receiver's opinion, Option 3 is the most risky Option and, therefore, he does not favor this Option.⁷⁵

77. It is possible that Providence could spend its initial \$100,000.00 investment attempting to develop the Property only to conclude that it cannot be done. While the Receivership Estate is protected by its continued interest in EJV and, thus the Property, and the Property could be enhanced in value, the Receivership Estate will have some risk.⁷⁶

78. Should Option 3 be authorized, the Receivership Estate will need to advance

⁷² *Id.* at ¶ 32(c).

⁷³ *Id.* at ¶ 32(d).

⁷⁴ *Id.* at ¶ 32(e).

⁷⁵ *Id.* at ¶ 33(a).

⁷⁶ *Id.* at ¶ 33(b).

funds to pay the past due property taxes in the amount of \$299,526.72, ordinary and customary closing costs estimated not to exceed \$3,000, and the Westar debt in the amount of \$9,634.34.⁷⁷

79. The Receivership Estate will maintain an interest in EJV which will require continued management. Although Adams will manage the operations of EJV, with notice to the Receiver, the fact remains that this will be an asset that will continue to require Receivership Estate resources.⁷⁸

80. The timing of the project brings the same disadvantages outlined in paragraphs 52-54 above related to Option 2.⁷⁹

III.

REQUEST FOR RELIEF AND RECEIVER'S RECOMMENDATION

81. Based on the above, the Receiver requests that the Court authorize him to dispose of the Property pursuant to one of the three Options outlined above.

82. After analyzing each of the Options, the Receiver requests that the Court authorize him to pursue Option 2, authorize the sale of the Property free and clear of interests to Providence pursuant to the Land Purchase Agreement attached to the Receiver Declaration as **Exhibit G**, and approve the Land Purchase Agreement.

83. Weighing all of the benefits and disadvantages outlined above, the Receiver believes that Option 2 provides the most efficient way to maximize the value of the Property for the Receivership Estate with relatively limited risk to the Estate.⁸⁰

⁷⁷ *Id.* at ¶ 33(c).

⁷⁸ *Id.* at ¶ 33(d).

⁷⁹ *Id.* at ¶ 33(e).

⁸⁰ *Id.* at ¶ 34.

IV.

CONCLUSION

Accordingly, for the reasons set forth herein, the Receiver requests that the Court grant this Motion and (a) authorize the Receiver to exercise Option 2, (b) authorize the sale of the Property to Providence at public sale, free and clear of interests, as outlined above, (c) authorize the Receiver to make the payments at closing outlined in paragraph 43, and (d) approve the Land Purchase Agreement attached to the Receiver Declaration as **Exhibit G**. The Receiver also requests any other relief appropriate under the circumstances.

DATED this 6th day of May, 2016.

DORSEY & WHITNEY, LLP

/s/ Peggy Hunt

Peggy Hunt

John Wiest

Attorneys for Receiver

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of May, 2016, the foregoing **RECEIVER'S MOTION REQUESTING AUTHORIZATION REGARDING METHOD OF DISPOSITION OF EXPRESSWAY BUSINESS PARK LAND** was filed with the Court and served via ECF on all parties who have requested notice in this case.

/s/ John J. Wiest

I hereby certify that on the 6th day of May, 2016, a true and correct copy of the foregoing **RECEIVER'S MOTION REQUESTING AUTHORIZATION REGARDING METHOD OF DISPOSITION OF EXPRESSWAY BUSINESS PARK LAND** 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

Kim T. Jackson
Utah County Treasurer
100 E. Center Street, Suite 1200
Provo, UT 84606

Kimberly Brasher
4225 Roundup Road
Edmond, OK 73013

Jeff Sessions
6608 Benecia Drive
Salt Lake City, UT 84121

Evolution Holdings
521 N. Bald Mountain Drive
Alpine, UT 84004

/s/ Suanna Armitage

I hereby certify that on the 6th day of May, 2016, a true and correct copy of the foregoing **RECEIVER'S MOTION REQUESTING AUTHORIZATION REGARDING METHOD OF DISPOSITION OF EXPRESSWAY BUSINESS PARK LAND** was served upon the persons named below, at the addresses set out below by email:

Woodsprings, LLC
David Simpson
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/s/ John J. Wiest