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

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

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

Defendants.

**RECEIVER'S MOTION
REQUESTING ORDER APPROVING
(1) PUBLIC SALE OF PROPERTY
FREE AND CLEAR OF INTERESTS,
(2) METHOD AND FORM OF
PUBLICATION NOTICE, AND (3)
PUBLIC AUCTION PROCEDURES
AND MEMORANDUM IN SUPPORT

(EXPRESSWAY 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 and pursuant to 28 U.S.C. §§ 2001(a) and 2002 and the *Order Appointing Receiver and Staying Litigation* entered by this court in this case, hereby files this motion (the "Motion") and respectfully requests that the Court authorize him to sell at public auction certain real property of the Receivership Estate, described more fully and defined in the Memorandum

in Support as “the Property.”

This Motion is supported by the Declaration of Receiver R. Wayne Klein (the “Receiver Declaration”), which has been filed concurrently herewith. A proposed “Order” is submitted herewith and attached hereto as **Exhibit A**.

MEMORANDUM IN SUPPORT

I.

FACTUAL BACKGROUND

1. On June 25, 2012, the above-captioned case was commenced by the Securities and Exchange Commission (the “SEC”) against Defendants National Note of Utah, LC (“NNU”) and Palmer (collectively, the “Receivership Defendants”), and in conjunction therewith the Court entered, in relevant part, an Order Appointing Receiver and Staying Litigation (the “Receivership Order”).¹ Pursuant to the Receivership Order, the Receiver was appointed, and NNU, forty-one of its affiliated companies (the “Palmer Entities”) (collectively for purposes of this Motion, “NNU”), and all Palmer’s assets were placed in the Receiver’s control.²

2. The Court has directed and authorized the Receiver to, among other things, do the following:

- “[D]etermine the nature, location and value of all property interests of the Receivership Defendants and the Palmer Entities . . . [.]”³

¹ Docket No. 9 (Receivership Order).

² *See generally, id.*

³ *Id.* at ¶ 7(A).

- “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
- “[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

⁴ *Id.* at ¶ 7(B).

⁵ *Id.* at ¶ 7(D).

⁶ *Id.* at ¶ 19.

⁷ *Id.* at ¶ 37.

⁸ *Id.* at ¶ 38.

⁹ *Id.* at ¶ 39.

II.

REAL PROPERTY TO BE SOLD AT AUCTION

Expressway Business Park

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 Spanish Fork, Utah, consisting of a total of 30.07 acres of land (the “Property”). The Property has the following tax parcel numbers:

- “Parcel 1”: 27:010:0067—21.25 acre undeveloped lot;
- “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 -0326—20 zoned condominium lots, totaling 2.58 acres.

5. The Receiver obtained a Title Report for the Property, a copy of which is attached to the Receiver Declaration as Exhibit A (the “Title Report”).¹¹ According to the Title Reports the Parcels are titled in the names of Palmer Entities and are property of the Receivership Estate. Parcels 1-3 are titled in the name of Expressway Business Park, LLC, and Parcel 4 is titled in the name of Spanish Fork Development, L.L.C.¹²

¹⁰ Receiver Declaration ¶ 5.

¹¹ Receiver Declaration ¶ 6.

¹² Receiver Declaration, Exh. A (Title Report).

Appraising and Marketing the Property

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

7. To determine an offering price and comply with his duties, the Receiver initially obtained the opinion of his Realtor. Based on that opinion, the property was first listed at a price of \$3.5 million. No offers were received while the property was listed at this offering price. On March 19, 2014, the Receiver obtained an appraisal which valued the property at \$1.25 million and the listing price was reduced to \$1.25 million. The Receiver received several offers subsequent to March 2014, but the cash offers were substantially below the appraised value and offers at a higher amount were the subject of numerous conditions and contingencies.¹⁴ The Court denied a motion by the Receiver to dispose of the Property using one of three alternative approaches.¹⁵

8. In April 2017, the Court approved the appointment of Steve Nielsen of Nielsen and Company (the “Appraiser”) to perform a new appraisal of the property.¹⁶ On or about July 12, 2017, the Appraiser delivered an appraisal of the Property (the “Appraisal”) to the Receiver.¹⁷ A true and correct copy of the Appraisal is attached to the Receiver Declaration as Exhibit C.

¹³ Receiver Declaration ¶ 7.

¹⁴ *Id.* at ¶ 8.

¹⁵ Docket No. 1266.

¹⁶ Docket No. 1275 (Order Appointing Appraiser for Expressway Business Park Land).

¹⁷ Receiver Declaration ¶ 9.

9. The Appraiser valued the Property at \$600,000.00.¹⁸

10. The Receiver continued marketing the Property for sale through the Realtor, including by listing the Property on the Multiple Listing Service and providing a copy of the Appraisal to parties who had previously expressed an interest in the Property.¹⁹

Proposed Purchase Agreement and Stalking Horse Bids

11. The Receiver has received an offer to purchase the Property as a whole from WoodSprings, LLC, for \$601,000.00 (the “WoodSprings Offer”), subject to higher and better offers and pursuant to the terms of a purchase agreement (the “WoodSprings Purchase Agreement”).²⁰ A copy of the WoodSprings Purchase Agreement is attached to the Receiver Declaration as Exhibit D.

12. The Receiver has also received an offer from John and Brenda R. Cutler (the “Cutlers”) to purchase individual parcels, pursuant to the terms of a purchase agreement (the “Cutler Purchase Agreement”), a copy of which is attached to the Receiver Declaration as Exhibit E. The Cutlers have offered to purchase Parcel 1 for \$130,000.00 (“Cutler Offer A”), *or* Parcel 4 for \$125,000.00 (“Cutler Offer B”), *or* a 3.5 acre portion of Parcel 1 for \$85,000.00 (“Cutler Offer C”). All of these offers are subject to higher and better offers.²¹

13. The WoodSprings Purchase Agreement and the Cutler Purchase Agreement were negotiated by the Receiver and each prospective purchaser in good faith and at arms’ length.²²

¹⁸ *Id.* at Exh. C (Appraisal).

¹⁹ *Id.* at ¶ 10.

²⁰ *Id.* at ¶ 11.

²¹ *Id.* at ¶ 12.

²² *Id.* at ¶ 13.

14. The Receiver proposes to use the WoodSprings Offer and Cutler Offers A-C as stalking horse bids at the public auction described below.²³

Sale Costs and Net Sale Proceeds

15. The Receiver anticipates paying at the time of the closing of the sale of the Property outstanding property taxes and the ordinary costs of sale, including market-rate closing costs and a standard 6% realtor commission. The gross sale proceeds, less the ordinary costs of sale, taxes, and commission are referred to herein as the “Net Sale Proceeds.”²⁴

16. The realtor commission will be paid even if a higher and better offer is obtained at auction, inasmuch as the realtor brought the various stalking horse bids to the Receiver. However, because under the proposed auction procedures the Receiver will not sell the Property, either in parts or as a whole, for less than the amount of the WoodSprings Offer, the realtor commission will be based on the amount of the WoodSprings Offer.²⁵

17. Any other financial interests against the Property (to the extent they exist and without any waiver of the Receiver’s or the Receivership Estate’s rights and defenses related thereto) will survive the sale and will attach to the Net Sale Proceeds.²⁶

18. The Receiver will separately account to the Court for the Net Sale Proceeds pending resolution of any disputes related to interests that may exist against the Property.²⁷

²³ *Id.* at ¶ 14.

²⁴ *Id.* at ¶ 15.

²⁵ *Id.* at ¶ 16.

²⁶ *Id.* at ¶ 17.

²⁷ *Id.* at ¶ 18.

Free and Clear Sale

19. 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. In so doing, the Receiver is not in any way waiving any rights, claims, interests or defenses to any claims or interests made against the Property or the Net Sale Proceeds.²⁸

20. To determine interests, if any, against the Property, the Receiver obtained the Title Reports and tax notices for the Property from Utah County (the “Tax Notices”).²⁹ A copy of the Tax Notices is attached to the Receiver Declaration as Exhibit F.

21. From the Title Report and the Tax Notices, the Receiver determined that property taxes on the Property for the years 2009 through 2016 are liens that are due and payable, and taxes for 2017 are liens that not yet due and payable. Additional liens asserted against the property are: i) a lien by Westar Equities on Parcel 3; ii) a trust deed granted to Jeff Sessions on Parcels 1 & 2 in an unspecified amount; iii) a trust deed granted to Evolution Holdings for Parcels 1 & 2 in an unspecified amount; and iv) ABI claims by Kristine S. Olson in the amount of \$450,000 and by The Kristine S. Olson Profit Sharing Plan in the amount of \$300,000, both against Parcels 1, 2, and 4. ABIs noted in the Title Report in addition to the noted ABIs have been determined to be invalid or have been released.³⁰

²⁸ *Id.* at ¶ 19.

²⁹ *Id.* at ¶¶ 6 & 20.

³⁰ *Id.* at ¶ 21, Exh. A (Title Report), and Exh. F (Tax Notice). The Westar Equities lien is shown on the Title Report as being in excess of \$100,000, *see* Exh. A, but at this time, the amount owing is \$9,634.34, plus interest. Receiver Declaration ¶ 21. The Title Report also shows the notice of interest that Leon Harward filed against the Property after this case was commenced in violation of this Court’s Receivership Order. The Court denied Mr. Harward’s request to intervene in this case, finding that Mr. Harward had not established that he held an interest in

22. Any other financial interests against the Property, other than property taxes, closing costs, and the lien of Westar Equities will not be paid at the time of closing of the sale. Rather, any such interests (to the extent they exist and without any waiver of the Receiver's or the Receivership Estate's right and defenses related thereto) will survive the sale and will attach to the Net Sale Proceeds.³¹

23. A copy of this Motion is being served on the relevant taxing authority.³²

Best Interests

24. The Receiver believes that the sale of the Property at public auction is beneficial for and in the best interests of the Receivership Estate based on the appraised value of the Property and the amounts of the stalking horse bids, which were obtained through good faith and arms' length negotiations.³³

25. The WoodSprings Offer is over 100% of the appraised value. Through the proposed auction described below, the Receiver will not sell the Property to anyone for less than the amount of the WoodSprings Offer, and the auction may increase the purchase price.³⁴

26. Notice of the auction described below will be served on all persons asserting an interest in the Property and others who have expressed interest to the Receiver, will be published in newspapers in Salt Lake City, Utah, and Utah County, Utah, and will be posted on the

Expressway Business Park, LLC. *See* Docket Nos. 529, 565, 576, 577, and 603. The notice of interest is invalid.

³¹ Receiver Declaration ¶ 22.

³² *Id.* at ¶ 23.

³³ *Id.* at ¶ 24.

³⁴ *Id.* at ¶ 25.

Receiver's website.³⁵

27. 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.³⁶

III.

APPLICABLE LAW

28. 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.³⁷

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

at public sale in the district wherein such receiver was first appointed, at the courthouse of the county, parish, or city situated therein in which the greater part of the property in such district is located, or on the premises or some parcel thereof located in such county, parish, or city, as such court directs. Such sale shall be upon such terms and conditions as the Court directs.³⁸

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

once a week for at least four weeks prior to the sale in at least one newspaper regularly issued and of general circulation in the county, state, or judicial district

³⁵ *Id.* at ¶ 26.

³⁶ *Id.* at ¶ 27.

³⁷ *See supra* ¶¶ 1, 3.

³⁸ 28 U.S.C. § 2001(a).

of the United States wherein the realty is situated.³⁹

IV.

REQUESTED RELIEF

31. The Receiver requests that the Court enter the proposed Order attached as **Exhibit A**, thus (a) authorizing the sale of the Property free and clear of interests; (b) approving the form and method of publication notice as proposed herein; and (c) approving the proposed “**Auction Procedures**” described below and attached as **Exhibit B**.

Sale Free and Clear of Interests

32. Sale of the Property as proposed is within the scope of the Receiver’s authority under the Receivership Order and 28 U.S.C. §§ 2001(a) and 2002, 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.⁴⁰

33. 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.⁴¹

34. 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

³⁹ 28 U.S.C. § 2002.

⁴⁰ Receivership Order ¶ 38; Receiver Declaration ¶ 24.

⁴¹ Receiver Declaration ¶ 26.

sale. This Notice of Sale Results will be served on those parties asserting interests in the Property noted in ¶ 21 above.⁴²

Proposed Publication Notice

35. 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.

36. 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 Daily Herald*, a newspaper published in Utah County, Utah, with general circulation throughout the county, 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 1100 North Market Place Drive, Spanish Fork, UT, with tax parcel numbers 27:010:0067, 27:010:0068, 27:010:0064, and 38:400:0307 -0326 (the “Property”) through a public auction to the highest bidder payable in lawful money of the United States on the __ day of _____, 2017 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. 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: John J. Wiest, 111 South Main Street, 21st Floor, Salt Lake City, Utah 84111; wiest.john@dorsey.com.

37. 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.

⁴² *Id.* at ¶ 27.

Proposed Auction Procedures

38. The Receiver requests that the Court enter an Order approving the following proposed procedures to govern the public sale (collectively, or as may be amended by the Court's Order, the "Auction Procedures"), a copy of which is attached hereto as **Exhibit B**:

- A. The Receiver may conduct an auction of certain real property located at 1100 North Market Place Drive, Spanish Fork, UT, with tax parcel numbers 27:010:0067, 27:010:0068, 27:010:0064, and 38:400:0307 -0326 (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. The Receiver has received the following offers to purchase parts of the Property or the Property as a whole:
 - i. WoodSprings, LLC, has offered to purchase the Property as a whole for \$601,000.00 (the "WoodSprings Offer"), subject to higher and better offers and pursuant to the terms of a purchase agreement (the "WoodSprings Purchase Agreement"), a copy of which is attached to the Receiver Declaration as Exhibit D.
 - ii. John and Brenda ("the Cutlers") have offered to purchase Parcel 1 for \$130,000.00 ("Cutler Offer A"), *or* Parcel 4 for \$125,000.00 ("Cutler Offer B"), *or* a 3.5 acre portion of Parcel 1 for \$85,000.00 ("Cutler Offer C"), pursuant to the terms of a purchase agreement (the "Cutler Purchase Agreement"), a copy of which is attached to the Receiver Declaration as Exhibit E. All of these offers are subject to higher and better offers.
- D. To participate in the Auction, the potential purchaser must be a "Qualified Bidder." Each of the parties identified in Section C above is a Qualified Bidder and may bid on any individual parcel or the Property as a whole.
- E. No other 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 being collectively, the "Initial Deposit"), by no later than 5:00 p.m. Mountain Time at least seven 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. The Receiver will conduct the Auction in two stages. Stage One shall proceed as follows:
- i. The Receiver will conditionally auction the individual parcels in the following order:
 - a) Parcels 1 & 3 (combined). The Receiver is treating Cutler Offer A as the opening bid for Parcels 1 & 3 combined.
 - b) Parcel 2.
 - c) Parcel 4. The Receiver is treating Cutler Offer B as the opening bid for Parcel 4.

The auction of each parcel shall proceed in rounds. Bidding shall begin with an initial minimum overbid of the opening bid for each parcel 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 opening bid for each parcel (the stalking horse bidder) will be allowed to match any bid made by another 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 parcel, at which time he will close the auction of that parcel, with the person making the last bid prior to the Receiver’s close of the auction of that parcel bound to purchase the parcel pursuant to the terms of the approved Auction Procedures (the “Successful Parcel Bidder”).

- ii. If the combined sale price of the parcels obtained in Stage One exceeds \$601,000.00, the Receiver shall cancel the remainder of the Auction and confirm the auction results of Stage One as follows:
 - a) Each Qualified Bidder agrees that its last offer made on each parcel is irrevocable until the date that sale of that respective parcel closes to the respective Successful Parcel Bidder (the "Parcel Sale Closing Date").
 - b) Each Initial Deposit shall be retained by the Receiver until each respective Parcel Sale Closing Date. On each Parcel Sale Closing Date, the Initial Deposit of the respective Successful Parcel Bidder will be applied to the purchase price accepted at Auction by the Receiver. Within ten business days of each respective Parcel Sale Closing Date, the Receiver shall return all other Initial Deposits. In the event that the Successful Parcel Bidder's sale does not close, the Receiver (i) shall retain the Initial Deposit of the Successful Parcel Bidder as damages, and (ii) the Qualified Bidder who made the next highest and best offer at Auction for that parcel (the "Back-Up Bid") shall be deemed the Successful Parcel 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.
 - c) Immediately upon the close of the Auction, each Successful Parcel Bidder must (i) sign a purchase agreement on terms materially similar to the terms of sale stated in the purchase agreement associated with the opening bid of that particular parcel; 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 Parcel Sale Closing Date does not occur for the Successful Parcel Bidder, the Successful Parcel Bidder's Initial Deposit and this 10% Deposit will be retained by the Receiver as damages.
- iii. If the combined sales price of the parcels obtained in Stage One does not exceed \$601,000.00, the Receiver will void the auction results of Stage One and proceed to Stage Two.

G. Stage Two shall proceed as follows:

- i. The Receiver will auction the Property as a whole. Stage Two shall proceed in rounds. Bidding shall begin with an initial minimum overbid of the WoodSprings Offer in an amount of \$5,000.00 in cash, and shall subsequently continue in \$5,000.00 minimum cash overbid increments. However, WoodSprings will be allowed to match any bid made by another 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").
- ii. Each Qualified Bidder agrees that its last offer made on the Property as a whole is irrevocable until the date that sale of the Property closes to Successful Bidder (the "Sale Closing Date").
- iii. 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 Stage Two of the 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.
- iv. 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 the WoodSprings Purchase 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.

39. The Receiver submits that the proposed Auction Procedures are permitted under 28 U.S.C. §§ 2001(a) and 2002 and, therefore, requests that the Court approve the same.

CONCLUSION

Accordingly, for the reasons set forth herein, the Receiver requests that the Court enter the proposed Order attached hereto as Exhibit A, thus (a) authorizing the sale of the Property free and clear of interests; (b) approving the form and method of publication notice as proposed herein; and (c) approving the proposed Auction Procedures attached hereto at Exhibit B. The Receiver also requests any other relief appropriate under the circumstances.

DATED this 16th day of August, 2017.

DORSEY & WHITNEY, LLP

/s/ Peggy Hunt

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