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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.

**DECLARATION OF RECEIVER R.
WAYNE KLEIN IN SUPPORT OF
RECEIVER'S AMENDED MOTION
SEEKING APPROVAL OF (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**

(OVERLAND TRAILS)

Civil No. 2:12-00591

The Honorable Bruce S. Jenkins

I, R. Wayne Klein, being of lawful age, declare, certify, verify, and state as follows:

1. I am the Court-Appointed Receiver (the "Receiver") in the above-captioned case pursuant to the *Order Appointing Receiver and Staying Litigation* entered by the Court on June 25, 2012 [Docket No. 9] (the "Receivership Order").

2. I submit this Declaration in support of *Receiver's Amended Motion Seeking Approval of (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 (Overland Trails) (the “Amended Motion”).¹

3. Since my appointment, I have had custody and control of all known books and records of the Receivership Estate and I have engaged in an investigation of the assets and obligations of the Receivership Estate. I make all of the following statements based on my personal knowledge.

REAL PROPERTY TO BE SOLD AT AUCTION

Overland Trails

4. Since my appointment, I have identified numerous real properties as being part of the Receivership Estate, and where appropriate I have caused such properties to be listed for sale.

5. Relevant to the Amended Motion is a 12.24 acre parcel of undeveloped land in Eagle Mountain, Utah, identified more particularly in ¶ 4 of the Motion (the “Property”).

6. I have obtained a title report for the Property, a copy of which is attached hereto as **Exhibit A** (the “Title Report”).

Appraising and Marketing the Property

7. I obtained an appraisal of the Property from Nielsen and Company, MAI (the “Nielsen Appraisal”) on or about February 16, 2016. A true and correct copy of the Nielsen Appraisal is attached hereto as **Exhibit B**.

8. At the request of the Court, I also obtained an updated appraisal of the Property. I obtained approval to employ and received an appraisal from DH Group LLC (the “DHG Appraisal”) on or about July 18, 2018. A true and correct copy of the DHG Appraisal is attached

¹ All capitalized terms used herein but not defined shall have the meanings attributed to them in the Motion.

hereto as **Exhibit C**.

9. On or about August 21, 2012, I engaged a realtor, David R. Adams (the “Realtor”). A true and correct copy of the most recent renewal of the “Listing Agreement” with the Realtor is attached hereto as **Exhibit D**.

10. In the time since the Court instructed me to further market the Property, the Realtor has developed an aggressive two-stage plan to market the Property to potential buyers on an individual basis. The first stage of the marketing plan includes the following:

- a) The Realtor has placed a large “For Sale” sign on the Property which potential builders pass by on their way to view the site of Facebook’s new data center, which will be built near Eagle Mountain.
- b) The Realtor has placed color advertisements advertising the Property in the print and online editions of *The Salt Lake Tribune* and the *Deseret News*, newspapers with general circulation throughout Utah, and the *Daily Herald*, a newspaper with general circulation throughout Utah County. True and correct examples of these advertisements are attached hereto as **Exhibit E**.
- c) During September and October 2018, the Realtor personally contacted numerous builders, developers, and investors who he determined might have an interest in this Property, emphasizing the potential value of the Property.

11. Stage two of the marketing plan, which will commence approximately two weeks before the date of the Auction, will include the following:

- a) The Realtor will send full marketing packages to at least three dozen builders and developers operating in Utah County and Salt Lake County advertising the Property and inviting them to attend the Auction.

- b) The Realtor will publish color advertisements advertising the Property and the date of the Auction in the real estate sections of *The Salt Lake Tribune*, the *Deseret News*, and the *Daily Herald*. These advertisements will use marketing language and have pictures or maps of the property.
- c) The Realtor will also place color advertisements on ksl.com, one of the main websites for advertising real property in Utah, and dailydac.com, a website advertising bankruptcy sales.
- d) As required by 28 U.S.C. § 2002, I will also publish notice of the Auction in the legal notices section of *The Salt Lake Tribune* and the *Daily Herald* at least once a week for four weeks prior to the Auction.

Proposed Purchase Agreement and Stalking Horse Bid

12. I have received an offer from TNT Land and Holdings, LLC (the “TNT”) to purchase the Property for \$400,000.00, subject to higher and better offers and pursuant to the terms of a purchase agreement (the “Purchase Agreement”). A copy of the Purchase Agreement is attached hereto as **Exhibit F**. TNT is a company engaged in residential and commercial real estate development and is owned by Terry Messersmith of Nephi, Utah.

13. I negotiated the Purchase Agreement in good faith and at arms’ length.

14. I propose to use TNT’s offer as a stalking horse bid (the “Stalking Horse Bid”) at the public auction described in the Motion (the “Auction”). I will continue to market the Property according to the two-stage marketing plan described above until the deadline to qualify to bid at the Auction, as described in the Amended Motion. I received a second offer for the Property on October 27, 2018 from Lake Mountain Development, LLC, but rejected the offer because its \$360,000 offering price was below the TNT offer.

Sale Costs and Net Sale Proceeds

15. I anticipate paying at the time of closing of the sale of the Property outstanding property taxes and the ordinary costs of sale, including market-rate closing costs and a standard 8% realtor commission. The gross sale proceeds, less the costs of sale, taxes, and commission are referred to herein as the “Net Sale Proceeds.”

16. The realtor commission will be paid even if a higher and better offer is obtained at the Auction, inasmuch as the realtor brought the Stalking Horse Bid to me. However, the realtor commission will be based on the amount of the Stalking Horse Bid even if the Property sells for more than the Stalking Horse Bid.

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

18. I 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.

Free and Clear Sale

19. I propose 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, I am 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.

20. To determine interests, if any, against the Property, I obtained the Title Report and a delinquent tax summary for the Property from Utah County (the “Tax Summary”). A copy of the Tax Summary is attached hereto as **Exhibit G**.

21. From the Title Report and the Tax Summary, I determined that property taxes on

the Property for the years 2010 through 2017 are liens that are due and payable, and property taxes for 2018 are liens that are not yet due. The Title Report also lists trust deeds against the Property in the names of the H. Coleman Scheuller, Chad Timms, Brett and MaryAnn Falk Family Trust, American Pension Services, Inc. FUB Lynden Kit Wilson, David L. Flynn PLLC, Shauna R. Palmer, and Jacob P. Martin (the "Trust Deeds"). All of the Trusts Deeds have been assigned to me through prior Court-approved settlement agreements. Accordingly, the only known valid liens against the Property are unpaid property taxes.

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

23. I will serve a copy of the Amended Motion on the relevant taxing authorities.

Best Interests

24. I believe 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 amount of the Stalking Horse Bid, which was obtained through good faith and arms' length negotiations.

25. The Stalking Horse Bid is over 105% of the recent DHG Appraisal's appraised value of the Property. Through the proposed Auction, I will not sell the Property to anyone for less than the amount of the Stalking Horse Bid, and the Auction will likely increase the purchase price.

26. The real estate market in Eagle Mountain is particularly strong at this time since Facebook announced plans to build a data center there. I anticipate that selling the Property

through the auction process, which provides a hard deadline by which interested parties must make an offer, will generate active interest in the Property from builders currently too busy to focus on buying new properties or who have been slow to respond to the Realtor's previous marketing efforts. Other potential buyers have indicated to the Realtor that they may submit offers or participate in the Auction.

27. The Auction will be advertised according to the two-stage marketing strategy outlined above, with full color advertisements in the real estate sections of *The Salt Lake Tribune*, the *Deseret News*, the *Daily Herald*, on ksl.com, and on dailydac.com. In addition, notice of the Auction described below will be published in the legal notices sections of *The Salt Lake Tribune*, the *Daily Herald*, and will be posted on my website.

28. Upon completion of the sale and after the conclusion of the Auction, 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.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

DATED this 12th day of November, 2018.



R. Wayne Klein, Receiver

CERTIFICATE OF SERVICE

I hereby certify that on November 13, 2018, a true and correct copy of the foregoing 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 November 13, 2018, a true and correct copy of the foregoing was served upon the persons named below, at the addresses set out below by U.S. mail:

Kim T. Jackson
Treasurer, Utah County
100 East Center Street, Ste. 1200
Provo, UT 84606-3159

/s/ John J. Wiest _____