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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 SECOND MOTION
SEEKING APPROVAL OF (A)
PROPOSED AUCTION AGREEMENT
AND SALE PROCEDURES, (B)
PUBLIC SALE OF PROPERTY FREE
AND CLEAR OF INTERESTS, AND
(C) METHOD AND FORM OF
PUBLICATION NOTICE AND
MEMORANDUM IN SUPPORT
(ELKHORN RIDGE ESTATES)**

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”) requesting that the Court approve the auction agreement and sale procedures, including the form of publication notice, discussed below and authorize him to sell at public

auction certain real property of the Receivership Estate described below. For the reasons stated below, the Receiver respectfully submits that the Motion should be granted.

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

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
- “To take custody, control and possession of all Receivership Property and records . . . [.]”⁴

¹ Docket No. 9 (Receivership Order).

² See generally, *id.*

³ *Id.* at ¶ 7(A).

⁴ *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[.]”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

II. REAL PROPERTY TO BE SOLD AT AUCTION

A. Elkhorn Ridge Estates

3. In the seven and a half years since his appointment, the Receiver has identified and, with Court approval, sold numerous real properties of the Receivership Estate. At this time, the only real properties of the Receivership Estate left to be sold are 37 lots and related common property in the Elkhorn Ridge Estates subdivision near Malad, Oneida County, Idaho.¹⁰

⁵ *Id.* at ¶ 7(D).

⁶ *Id.* at ¶ 19.

⁷ *Id.* at ¶ 37.

⁸ *Id.* at ¶ 38.

⁹ *Id.* at ¶ 39.

¹⁰ Receiver Declaration ¶ 5.

4. Elkhorn Ridge Estates consists of 48 lots total. One lot was sold before the Receiver's appointment, and of the 47 lots which came into the Receivership Estate, the Receiver has sold 10—five lots in 2013, three lots in 2017, and two lots in 2018 (collectively, the “Previously Sold Properties”). A table showing the Previously Sold Properties is set forth in the Receiver's Declaration.¹¹

5. Through this Motion, the Receiver proposes to sell at public auction the remainder of the Receivership Estate's interests in Elkhorn Ridge Estates: 37 lots, the common roads, and the common open area. The following table shows the relevant information for each of the properties relevant to this Motion (collectively, the “Property”)¹²:

Elkhorn Ridge Estates, Malad ID			
Remaining receivership properties proposed to be sold at auction			
Lot Number	Tax Parcel ID Number	Acreage	Nelson¹³ Appraised Value
9	RP0281915	2.5 acres	\$14,000.00
10	RP0281916	2.5 acres	\$14,000.00
11	RP0281917	2.5 acres	\$14,000.00
12	RP0281918	2.5 acres	\$14,000.00
13	RP0281919	5 acres	\$14,000.00
14	RP0281920	5 acres	\$14,000.00
15	RP0281921	2.5 acres	\$14,000.00
16	RP0281922	2.5 acres	\$14,000.00
17	RP0281923	2.5 acres	\$14,000.00
18	RP0281924	2.5 acres	\$14,000.00
19	RP0281925	2.5 acres	\$14,000.00
20	RP0281926	2.5 acres	\$14,000.00
21	RP0281927	2.5 acres	\$14,000.00
23	RP0281929	2.7 acres	\$15,000.00
24	RP0281930	2.5 acres	\$15,000.00
26	RP0281932	3.8 acres	\$16,000.00

¹¹ *Id.* at ¶ 6.

¹² *Id.* at ¶ 7.

¹³ The values listed here are from the appraisal of Vernon Nelson dated May 10, 2019. The appraisal is discussed below.

27	RP0281933	2.5 acres	\$14,000.00
28	RP0281934	2.5 acres	\$14,000.00
29	RP0281935	2.8 acres	\$16,000.00
30	RP0281936	2.6 acres	\$15,000.00
31	RP0281937	2.8 acres	\$16,000.00
32	RP0281938	2.5 acres	\$14,000.00
33	RP0281939	2.5 acres	\$14,000.00
34	RP0281940	2.5 acres	\$14,000.00
35	RP0281941	2.5 acres	\$14,000.00
36	RP0281942	2.5 acres	\$14,000.00
37	RP0281943	2.5 acres	\$14,000.00
38	RP0281944	3.8 acres	\$16,000.00
39	RP0281945	3.8 acres	\$16,000.00
40	RP0281946	2.5 acres	\$14,000.00
41	RP0281947	2.5 acres	\$14,000.00
42	RP0281948	2.5 acres	\$14,000.00
43	RP0281949	2.5 acres	\$14,000.00
44	RP0281950	2.4 acres	\$14,000.00
45	RP0281951	2.5 acres	\$14,000.00
46	RP0281952	2.5 acres	\$14,000.00
47	RP0281953	2.5 acres	\$14,000.00
Roads, Open areas	RP0281906		

B. Past Efforts to Sell the Property

6. Since approximately October 2012, the Receiver marketed all Elkhorn Ridge Estates lots for sale through Idaho Real Estate Group pursuant to a listing agreement that has now expired.¹⁴

7. The Receiver's best efforts in marketing the Elkhorn Ridge Estates resulted in the sales of the Previously Sold Parcels—an average of 1.33 sales per year since the Receiver's appointment. The Receiver is informed that the slow sales are based on the saturation rate in the geographic region around the Property. Specifically, the county averages about five sales of

¹⁴ Receiver Declaration ¶ 8.

recreation property per year. The available lots of the Property added ten years of supply for the entire county. Moreover, the lots in the Property require owners to pay significant amounts to install septic tanks and drill wells for culinary water before any construction can occur. Given this slow rate of sale, and the fact that the Receiver has now disposed of all other properties of the Receivership Estate, in the exercise of his business judgment the Receiver has determined that it is in the best interest of the Receivership Estate to sell the Property at public auction.¹⁵

8. On January 31, 2019, the Receiver filed his first motion seeking authorization to sell all lots remaining in the Property at auction, the *Receiver's Motion Seeking Approval of (A) Public Sale of Property Free and Clear of Interests, (B) Method and Form of Publication Notice, (C) Auction Agreement, and (D) Related Relief and Memorandum in Support (Elkhorn Ridge Estates)* (the "First Motion").¹⁶

9. The Court denied the First Motion without prejudice at a hearing on February 21, 2019, and instructed the Receiver to find a way to auction the Property with fewer costs to the Receivership Estate and to obtain a new appraisal for the Property. Pursuant to these instructions from the Court, the Receiver files this Motion.¹⁷

C. The Updated Appraisal

10. Given the Court's direction in relation to the First Motion, the Receiver obtained an updated appraisal of the Property from Vernon L. Nelson ("Nelson"), who was appointed by the Court as an appraiser for Elkhorn Ridge Estates on April 2, 2019.¹⁸

¹⁵ *Id.* at ¶ 9.

¹⁶ Docket No. 1439.

¹⁷ Docket No. 1445.

¹⁸ Docket No. 1449; Receiver Declaration ¶ 10.

11. In Nelson's appraisal, dated May 10, 2019, a true and correct copy of which is attached to the Receiver Declaration as Exhibit 1, Nelson estimated the value of the Property as \$398,000 if the Property were sold together in bulk, and also assigned separate values to each individual lot if the lots were sold separately. The value for each individual lot of the Property is shown in the table in ¶ 5.¹⁹

12. In addition to appraisal information obtained from Nelson, the Receiver has investigated alternative methods of sale in light of the expiration of the Realtor's listing agreement and the Court's concerns raised in conjunction with the First Motion.²⁰

13. The Receiver has determined that at this time a public sale of the Property is the best way to efficiently and expeditiously obtain the highest and best price for the Property from a good faith purchaser. A public sale that is marketed and conducted by a seasoned auctioneer in accordance with 28 U.S.C. § 2001 will, in the Receiver's view, allow the Receivership Estate to obtain the best price the market will bear for the Property and will allow the Receiver to dispose of the final asset of the Receivership Estate so that he can make a final distribution and close this Receivership.²¹

D. Statewide Auction Company and the Proposed Auction Agreement

14. The Receiver has determined that Statewide Auction Company ("Statewide"), is the most qualified auctioneer to sell the Property at public auction, subject to Court approval.²²

15. Statewide is a licensed, bonded, and insured auctioneering firm based in Salt Lake City, Utah that serves as a standing auctioneer in the United States Bankruptcy Court for the

¹⁹ Receiver Declaration ¶ 10.

²⁰ *Id.* at ¶ 11.

²¹ *Id.* at ¶ 12.

²² *Id.* at ¶ 13.

District of Utah. It has wide experience liquidating various types of real and person property, including but not limited to residential and commercial real estate, vehicles, aircraft, jewelry, artwork, fine furnishings, firearms, heavy equipment, machinery, building materials, business equipment, and many other types of property.²³

16. Statewide has been a standing auctioneer in the District of Utah for over 13 years and has sold numerous real properties for bankruptcy trustees. In addition, Statewide has, pursuant to federal court order, provided its services in other states bordering Utah on various occasions. It is currently contracted to sell real property for the United States Department of Agricultural Rural Development. Statewide has sold real property for court-appointed receivers, trustees, and other fiduciaries in matters involving the SEC, the Federal Trade Commission, the State of Utah, the Utah Attorney General's Office, banks, credit unions, attorneys, businesses, and other real property owners. It has sold all types of real property, including commercial and industrial buildings, single-family homes (both complete and partially constructed), large-parcel developed or undeveloped vacant land, lots in subdivisions or planned communities, residential and commercial building lots, farms, ranches, and resort or vacation properties.²⁴

17. The Receiver has entered into an "Auction Agreement" with Statewide, subject to Court approval. The Receiver and Statewide negotiated the Auction Agreement in good faith and at arms' length. A true and correct copy of the Auction Agreement is attached to the Receiver Declaration as Exhibit 2, and a summary of its material terms are provided below.²⁵

²³ Shelton Declaration ¶ 4.

²⁴ *Id.* at ¶ 5.

²⁵ Receiver Declaration ¶ 14; Shelton Declaration ¶ 6.

1. The Proposed Marketing Plan

18. With input from the Receiver about the Property and his history marketing the Property, Statewide has developed an aggressive plan to market the Property and bring interested parties to the Auction. This marketing strategy is described in Section 4.1 of the Auction Agreement (the “Marketing Plan”).²⁶

19. As described in the Marketing Plan, Statewide will market the Property and Auction as follows:

a) Information Management. Statewide will obtain and organize information about the Property to provide to prospective bidders in a manner to be approved by the Receiver. This will include: (i) capturing photos and videos of the Property; (ii) obtaining information from the Receiver about the Property; and (iii) obtaining records and information about the Property from reliable third party sources, including but not limited to legal descriptions, plat maps, aerial/satellite photos, assessed values, and tax valuations (collectively, the “Property Information”)

b) Website: Statewide will advertise the Auction on its website, statewideauctionco.com, and include in the advertisement on its website (i) the Property Information, including video and photo galleries of the Property, and (ii) details about the Auction including the date, time, location, terms, bidding requirements, and procedures of the Auction. Statewide will prominently advertise the website and links to the Property Information and details about the Auction. In addition, Statewide’s website will also allow prospective buyers to access a custom integrated webpage where they can pre-qualify and register for the Auction and place bids online once the bidding period has opened. Statewide will make this page accessible nationwide through HiBid.com’s real estate auction online categories and pages.

c) Property Signs: Statewide will design, produce, and prominently place signs about the Auction on the Property. The signs will state the date, time, and location of the Auction, the website address where persons may learn more about the Auction, and Statewide’s contact information.

d) Telephone/Direct Mail Campaigns. Statewide will create (i) brochures and flyers about the Property and the Auction, and (ii) marketing lists of prospective buyers. After obtaining the Receiver’s approval, Statewide will use this information to conduct a sales campaign for the Property, including a telephone and direct mail campaign to prospective buyers.

²⁶ *Id.* at ¶ 16.

e) Email. Statewide will send email notifications advertising the Property and Auction to, among others, those persons (i) on Statewide's existing customer email distribution list, which consists of over 6,000 prior buyers that have requested notification of Statewide's upcoming auctions, (ii) on the marketing lists developed by Statewide pursuant to subparagraph (d) above, and (iii) who have previously expressed an interest in the Property to the Receiver. In addition, Statewide may personally contact prior customers who have bid on or purchased similar property at auction from Statewide to inform them of the Auction.

f) Advertisements and Social Media. Statewide will create, purchase, and post listings and advertisements about the Property and Auction (i) in newspapers and industry-specific periodicals within the local and regional area around the Property and in major markets in neighboring cities, counties, and states, (ii) on various classifieds websites, including but not limited to HiBid, AuctionFlip, LandFlip, LandWatch, AuctionZip, KSL, and Craigslist, and (iii) to specifically-targeted markets through social media such as Facebook, Instagram, and Twitter.

g) On-Site Visits. Statewide will accommodate and facilitate reasonable requests for inspection of the Property by interested parties prior to the Auction.²⁷

2. Auction Procedures

20. To maximize participation in the Auction and obtain the highest and best price for the Property, the Receiver and Statewide have agreed to conduct the Auction according to the procedures set forth in Sections 4.2-4.4 of the Auction Agreement (the "Auction Procedures").

21. In summary²⁸, the Auction Procedures provide that:

a) Qualified Bidders. Only "Qualified Bidders" may participate in the Auction. No person will be deemed to be a Qualified Bidder unless the person registers to participate in the Auction by either (i) registering through Statewide's online registration system prior to the Auction or (ii) registering in person at the Auction prior to the commencement of live bidding. As part of registration, whether online or in person, a bidder must provide a valid credit card number and information and agree to the terms of a "Deposit and Obligation Agreement," a sample copy of which is attached to the Receiver Declaration as Exhibit 3. The Deposit and Obligation Agreement requires bidders to agree to, among other things, the following:

²⁷ *Id.* at Ex. 2 (Auction Agreement).

²⁸ This summary is provided for the convenience of the Court only. In the event of a conflict between the summary of the Auction Agreement provided herein and the terms of the Auction Agreement itself, the Auction Agreement itself controls.

1) that in the event the bidder becomes the Successful Bidder (defined below), the Successful Bidder shall deliver a non-refundable “Deposit” in the amount of 10% of the successful bid and in the form of certified funds to Statewide within one (1) business day of the close of the Auction, and if the Successful Bidder fails to deliver the Deposit as agreed, Statewide may charge the Deposit plus a card processing fee equal to 4% of the Deposit to the Successful Bidder’s credit card;

2) that the bidder represents and warrants that bidder has the ability to perform at the Auction and, in the event the bidder becomes the Successful Bidder, has cash readily available to pay the amount of the successful bid, less the Deposit, within 30 days of close of the Auction;

3) that bidder agrees to be bound by any auction procedures approved by the Receiver that will be provided to the bidder prior to or contemporaneously with the Deposit and Obligation Agreement, including that any disputes related to any aspect of the Auction will be resolved by the Court;

4) that bidder understands that the sale of the Property is AS IS WHERE IS with no representations or warranties of any kind; and

5) that bidder agrees that bidder’s last offer made at each phase of the Auction is irrevocable, and that upon becoming the Successful Bidder or Back-Up Bidder (as defined below), the bid is irrevocable until the Sale Closing Date (as defined below).²⁹

b) Staffing. Statewide will provide experienced auction staff to conduct the Auction and related activities, including auctioneer and ringmen, who will conduct the sale under the supervision of the Receiver.

c) Terms of Sale. The Property will be sold “AS IS, WHERE IS,” without warranty or representation of any kind, expressed or implied. Pursuant to an *Order* granting this Motion, the sale of the Property will also be made free and clear of financial interests against the Property, with any financial interests attaching to the sale proceeds. The Receiver will deliver to the Successful Bidder a receiver’s deed to the Property, not a general warranty deed. Statewide will make these aspects of the sale clear in all pre-sale advertising and at the start of the Auction.

d) Auction. Based on the discretion of the Receiver, Statewide may conduct the Auction in either one or two phases that may include: (i) a “Bulk Sale,” in which case Statewide will obtain the highest and best bid for all of the Property as a whole; and/or (ii) a “Parcel Sale,” in which case Statewide will obtain the highest and best bid for each one of the 37 parcels of real property and related common roads and common open area parcels which comprise the Property, with each component of the Parcel Sale being subject to separate auction. For purposes of clarity, the term “Auction” means either a

²⁹ See Receiver Declaration Ex. 3 (Deposit and Obligation Agreement).

Bulk Sale or a Parcel Sale or any combination of both, through the close of the entire Auction.

e) Successful Bidders. Provided that a two-phase Auction occurs, Statewide will call the highest and best bid for the Bulk Sale at the conclusion of the Bulk Sale, and that bidder shall be registered as the holder of the “Successful Bulk Bid,” which Bid will be irrevocable. Statewide will call the highest and best bid made for each of the 37 parcels of real property and related common roads and common open area parcels which comprise the Property at the conclusion of each of the phases of the Parcel Sale, and each such bidder shall be registered as a holder of a “Successful Parcel Bid” for the relevant Parcel, which Bids will be irrevocable. At the close of the Auction the Receiver will determine, in his sole discretion, whether acceptance of the Successful Bulk Bid or acceptance of the various Successful Parcel Bids constitutes the highest and best offer(s) for the Property. The bidder(s) making the highest and best offer(s), as determined by the Receiver in his sole discretion, will be the “Successful Bidder(s).” If a two-phase Auction does not occur (i.e., if the Receiver elects in his sole discretion to only hold a Bulk Sale or a Parcel Sale, but not both), the Successful Bidder(s) will be the holder of the Successful Bulk Bid or the holders of the Successful Parcel Bids.

f) Close of Auction. Statewide will close the Auction after calling the Successful Bidder(s). In the event of a two-phase Auction, this will occur after (i) Statewide has registered the Successful Bulk Bid and the Successful Parcel Bids, and (ii) consulted with the Receiver as to which bids the Receiver deems, in his sole discretion, to be the highest and best offer(s).

g) Reserve Range. The sale of the Property at the Auction is contingent on the total sales price being within a “Reserve Range,” which Reserve Range will be known only to the Receiver, Receiver’s counsel, and the Court. If the total sales price for the Property is less than the Reserve Range, the Receiver may, in his sole discretion, cancel the Auction.

h) Back-Up Bids. Statewide may accept, with approval from the Receiver, a “Back-Up Bid” for the sale of the Property from a “Back-Up Bidder.” Each Back-Up Bid must be accompanied by a written agreement from the Back-Up Bidder:

- 1) Stating the amount of its Back-Up Bid, which shall not be less than the last bid the Back-Up Bidder made during the Auction;
- 2) Agreeing that its Back-Up Bid is irrevocable through the Sale Closing Date;
- 3) Agreeing that it shall deliver a Deposit to Statewide within one (1) business day of the close of the Auction to be held by Statewide pending the Sale Closing Date, and that the Deposit shall become non-refundable if the Back-Up Bidder becomes a Successful Bidder; and
- 4) Agreeing to be obligated in the event that the Auction to the Successful Bidder(s) does not close.

i) Closing. The date of closing of the sale(s), whether to the Successful Bidder(s) or to Back-Up Bidders, is the “Sale Closing Date,” and in the event that the Property is sold in parcels, the closing date of each Parcel Sale shall be the “Sale Closing Date.” In the event that the sale to the Successful Bidder(s) does not close, Statewide (i) shall deliver the Deposit(s) of the Successful Bidder(s) to the Receiver as damages, and (ii) declare the Back-Up Bidder(s) who made the next highest and best offer at the Auction as the Successful Bidder(s). If the Back-Up Bidder(s) that are registered are for a total sales price that is less than the Reserve Range, the Receiver may, in his sole discretion, cancel the sale.

j) Report of Auction. Within five (5) business days of the close of the Auction, Statewide will submit to the Receiver a written “Report of Auction,” which must include at least the following: (i) for each Successful Bidder(s), the name, address, and telephone number of the Bidder, the amount of the Deposit(s) collected, and the accepted bid amount(s); and (ii) the same information of each of the Back-Up Bidders.

k) Report of Sale. Within ten (10) business days of the Sale Closing Date, Statewide will submit to the Receiver any accounting necessary for the Receiver to make any necessary reports to the Court or to taxing authorities.³⁰

22. Given Statewide’s experience in selling real property, its strategy as outlined in the Marketing Plan, and the proposed Auction Procedures, the Receiver believes that adhering to the terms of the Auction Agreement will result in an expeditious sale of the Property for a fair and reasonable price to a good faith and arms’ length purchaser.³¹

E. Sale Costs and Net Sale Proceeds

23. 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 a commission to Statewide and ordinary costs associated with transferring title.³²

24. Under the Auction Agreement, at the closing of the sale Statewide will receive a commission of 6% of the purchase price. If the sale of the Property to the Successful Bidder does

³⁰ *Id.* at Ex. 2 (Auction Agreement)

³¹ *Id.* at ¶ 17.

³² *Id.* at ¶ 18.

not ultimately close or if the Auction is cancelled, Statewide will receive reimbursement for its actual, reasonable, and necessary out-of-pocket expenses related to the Auction.³³

25. The gross sale proceeds less taxes, closing costs, and Statewide's commission are referred to herein as the "Net Sale Proceeds."

26. The Receiver will file a *Notice of Auction Sale Results* with the Court upon close of the Auction.³⁴

27. The Receiver knows of no valid interests against the Property other than real property taxes. Assignments of Beneficial Interest ("ABIs") had been recorded against some of the lots in the Property, but all those ABIs have been previously released to the Receiver or judicially invalidated. True and correct tax summaries for the Property issued by Oneida County (the "Tax Summaries") are attached to the Receiver Declaration as Exhibit 4.³⁵

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

F. Best Interests

29. The Receiver believes that the sale of the Property at the Auction is beneficial for and in the best interests of the Receivership Estate.³⁶

30. Statewide's expertise in marketing and selling real estate like the Property, combined with its aggressive Marketing Plan, should lead to an Auction which will bring the best and highest price for the Property.³⁷

³³ *Id.* at Ex. 2 (Auction Agreement).

³⁴ *Id.* at ¶ 27.

³⁵ *Id.* at ¶ 19.

³⁶ *Id.* at ¶ 20.

³⁷ *Id.* at ¶ 21.

31. Statewide will advertise the Auction according to the Marketing Plan, and the Receiver will publish notice of the Auction on his website and in newspapers published and distributed in Salt Lake City, Utah, and Malad, Oneida County, Idaho.³⁸

32. Selling the Property at Auction will dispose of the last remaining property of the Receivership Estate in a timely manner. All of the Elkhorn Ridge Estates lots have been vigorously marketed for sale for over seven years, but only 10 lots have sold in that period of time—an average of 1.33 sales per year. At this rate of sale, it could take over 27 years for the remaining 37 lots to sell individually.³⁹

33. The Receiver has sold all other properties of the Receivership Estate and has completed collection of all of the Receivership Estate's other outstanding receivables. Disposing of the Property is the last significant event needed to allow a final distribution and termination of the receivership. Given these facts, the Receiver believes that liquidating the Estate's interest in the Property as a whole at this time would be more beneficial to the Estate than holding the receivership open for years to come to sell the Property as individual lots.⁴⁰

34. The SEC has informed the Receiver that it supports this proposed auction.⁴¹

III. APPLICABLE LAW

35. 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.⁴²

³⁸ *Id.* at ¶ 23.

³⁹ *Id.* at ¶ 24.

⁴⁰ *Id.* at ¶ 25.

⁴¹ *Id.* at ¶ 26.

⁴² *See supra* ¶¶ 1, 3.

36. 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.⁴³

37. 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 of the United States wherein the realty is situated.⁴⁴

IV. REQUESTED RELIEF

38. The Receiver requests that the Court enter the proposed Order attached hereto as **Exhibit A**, thus (a) approving the Auction Agreement attached to the Receiver Declaration as **Exhibit 1** and the Auction Procedures set forth in Sections 4.2 through 4.4 therein, (b) authorizing the public sale of the Property free and clear of interests, and (c) approving the form and method of publication notice as proposed herein.

A. Auction Agreement

39. The Receiver requests that the Court enter an Order approving the Auction Agreement attached to the Receiver Declaration as **Exhibit 1** and the Auction Procedures set forth in Sections 4.2 through 4.4 therein.

⁴³ 28 U.S.C. § 2001(a).

⁴⁴ 28 U.S.C. § 2002.

40. The Receiver believes that the combination of Statewide's experience in selling real property, the Marketing Plan outlined in the Auction Agreement and summarized in Section II.D.1 above, and the Auction Procedures outlined in the Auction Agreement and summarized in Section II.D.2 above will result in an expeditious sale of the Property for a fair and reasonable price to a good faith and arms' length purchaser.⁴⁵

41. The Auction Agreement and the Auction Procedures therein are calculated to maximize participation in the Auction and obtain the highest and best price for the Property.⁴⁶

42. The Receiver submits that the Auction Agreement and proposed Auction Procedures stated in Section 4.2 through 4.4 therein are permitted under 28 U.S.C. §§ 2001(a) and 2002 and, therefore, requests that the Court approve the Auction Agreement and the Auction Procedures stated therein.

B. Sale Free and Clear of Interests

43. 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.⁴⁷

44. 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.⁴⁸

⁴⁵ Receiver Declaration ¶ 17.

⁴⁶ *Id.* at ¶ 22.

⁴⁷ Receivership Order ¶ 38; Receiver Declaration ¶ 20.

⁴⁸ Receiver Declaration ¶ 27.

45. Upon completion of the sale and after the conclusion of the Auction, the Receiver will file with the Court a “Notice of Auction 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 Auction Sale Results will be served on those parties asserting interests in the Property, if any.⁴⁹

C. Proposed Publication Notice

46. 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.

47. Accordingly, the Receiver proposes that the following notice be published newspapers in Salt Lake City, Utah, and Malad, Oneida County, Idaho, once a week for a period of four weeks prior to the Auction (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 37 parcels of real property located at the Elkhorn Ridge Estates subdivision in Malad Summit, Oneida County, Idaho, with tax parcel numbers RP0281906, -15-27, -29-30, and -32-53, and related open space (the “Property”), through a public auction conducted by Statewide Auction Company (“Statewide”) to the highest bidder payable in lawful money of the United States on the ___ day of _____, 20__, at the hour of ___ at Statewide’s location, 155 N. 1000 W., Salt Lake City, UT 84116, or as may be continued from time to time by the Receiver and Statewide (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 Statewide’s auction procedures, which 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.

⁴⁹ *Id.*

48. 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.

V. CONCLUSION

49. Accordingly, for the reasons set forth herein, the Receiver requests that the Court enter the proposed Order attached hereto as **Exhibit A**, (a) approving the Auction Agreement attached to the Receiver Declaration as Exhibit 1 and the Auction Procedures set forth in Sections 4.2 through 4.4 therein, (b) authorizing the public sale of the Property free and clear of interests, and (c) approving the form and method of publication notice as proposed herein. The Receiver also requests any other relief appropriate under the circumstances.

DATED this 5th day of November, 2019.

DORSEY & WHITNEY, LLP

/s/ John J. Wiest

Peggy Hunt

John J. Wiest

Attorneys for Receiver

CERTIFICATE OF SERVICE

I hereby certify that on November 5, 2019, 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 5, 2019, 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:

Oneida County Tax Collector
10 Court Street
Malad, ID 83252

/s/ John J. Wiest

Exhibit A

Prepared and submitted by:

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John J. Wiest (Utah State Bar No. 15767)
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Attorneys for Court-Appointed Receiver R. Wayne Klein

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

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

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

Defendants.

**ORDER APPROVING (A) PROPOSED
AUCTION AGREEMENT AND SALE
PROCEDURES, (B) PUBLIC SALE OF
PROPERTY FREE AND CLEAR OF
INTERESTS, AND (C) METHOD AND
FORM OF PUBLICATION NOTICE**

(ELKHORN RIDGE ESTATES)

Civil No. 2:12-00591

The Honorable Bruce S. Jenkins

The matter before the Court is the *Receiver’s Second Motion Seeking Approval of (A) Proposed Auction Agreement and Sale Procedures, (B) Public Sale of Property Free and Clear of Interests, and (C) Method and Form of Publication Notice and Memorandum in Support (Elkhorn Ridge Estates)* (the “Motion”) filed by R. Wayne Klein, the Court-Appointed Receiver (the “Receiver”) in the above captioned case, related to the sale of 37 parcels of real property and related common property in the Elkhorn Ridge Estates subdivision near Malad, Oneida County, Idaho, with tax parcel ID numbers RP0281906, -15-27, -29-30, and -32-53 (the “Property”). In

support of the Motion, the Receiver filed the *Declaration of Receiver R. Wayne Klein* (“Receiver Declaration”) and the *Declaration of Aaron Shelton* (“Shelton Declaration”) concurrently therewith.

Through the Motion, the Receiver is seeking approval of (a) the Auction Agreement attached to the Receiver Declaration as Exhibit 1 and the Auction Procedures set forth in Sections 4.2 through 4.4 therein, (b) the public sale of the Property free and clear of interests, and (c) the form and method of publication notice as proposed in the Motion. The Receiver also requests any other relief appropriate under the circumstances

The Court has reviewed the Motion, Receiver Declaration, Shelton Declaration, together with all of the Exhibits attached thereto, all other papers filed related thereto, and applicable law. Based thereon, and for good cause appearing,

IT IS HEREBY ORDERED that:

1. The Motion is **GRANTED**;
2. The Auction Agreement attached to the Receiver Declaration as Exhibit 2 and the Auction procedures set forth in Sections 4.2 through 4.4 therein are **APPROVED**;
3. The sale of the Property free and clear of interests to the highest and best offeror at the Auction as set forth in the Motion is **APPROVED**; and
4. The method and form of the publication notice as set forth in the Motion are **APPROVED**. The following notice shall be published newspapers in Salt Lake City, Utah, and Malad, Oneida County, Idaho, once a week for a period of four weeks prior to the Auction:

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 37 parcels of real property located at the Elkhorn Ridge Estates subdivision in Malad Summit, Oneida County, Idaho,

with tax parcel numbers RP0281906, -15-27, -29-30, and -32-53, and related open space (the “Property”), through a public auction conducted by Statewide Auction Company (“Statewide”) to the highest bidder payable in lawful money of the United States on the ___ day of _____, 20___, at the hour of ____ at Statewide’s location, 155 N. 1000 W., Salt Lake City, UT 84116, or as may be continued from time to time by the Receiver and Statewide (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 Statewide’s auction procedures, which 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.

DATED this ___ day of _____, 2019.

BY THE COURT:

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