

## DEPOSIT AND OBLIGATION AGREEMENT

### Seller

R. WAYNE KLEIN in his capacity as court-appointed receiver of National Note of Utah, LC, its subsidiaries and affiliates, and the assets of Wayne LaMar Palmer in the case styled as *Securities and Exchange Commission v. National Note of Utah, LC, et al.*, Case No. 2:12-cv-00591 (D. Utah 2012)

### Bidder (All information is required)

Name: \_\_\_\_\_  
Street Address: \_\_\_\_\_  
City: \_\_\_\_\_  
State: \_\_\_\_\_  
Zip Code: \_\_\_\_\_  
Telephone No.: \_\_\_\_\_  
E-mail: \_\_\_\_\_

This *Deposit and Obligation Agreement* (“Agreement”) is made and entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the Seller and the Bidder stated above, and together the Seller and Bidder are the “Parties.” This Agreement governs the public sale of the real property described below (the “Auction”) being conducted by Statewide Auction Company (“Statewide”).

### RECITALS

A. Seller has engaged Statewide to sell by public auction 37 parcels of real property and related common roads and common open area in the Elkhorn Ridge Estates subdivision located near Malad, Oneida County, Idaho (the “Property”). The Property is more particularly described by Seller and acknowledged by Statewide in the document attached hereto as **Exhibit 1**.

B. Seller is the court-appointed receiver of National Note of Utah, LC, its subsidiaries and affiliates, and the assets of Wayne LaMar Palmer (the “Receivership Estate”) in the case styled as *Securities and Exchange Commission v. National Note of Utah, LC, et al.*, Case No. 2:12-cv-00591 (the “Receivership Case”), currently pending in the United States District Court for the District of Utah (the “Court”). In the *Order Appointing Receiver and Staying Litigation* [Receivership Case Docket No. 9] entered by the Court on June 25, 2012, the Court appointed the Receiver and placed the Receivership Estate in the Receiver’s control for the purpose of liquidating the assets of the Receivership Estate, including the Property.

C. On November 7, 2019, the Court entered its *Order* (the “Order”) authorizing the Receiver to sell the Property to the highest and best bidder at public auction. The Property shall be sold “AS IS, WHERE IS,” without warranty or representation of any kind, expressed or implied. Pursuant to the Order, the sale of the Property is also being made free and clear of financial interests against the Property, with any financial interests attaching to the sale proceeds. The Receiver shall deliver to the Successful Bidder (as defined below) a receiver’s deed to the Property, not a general warranty deed.

D. Pursuant to the Order, only “Qualified Bidders” may be bidders at the Auction. To be a Qualified Bidder, the Bidder must provide a valid credit card number and information (the “Credit Card Information”) to Statewide, and execute this Agreement prior to the Auction.

E. The bidder at the Auction submitting the highest and best bid, in the sole discretion of the Seller, is the “Successful Bidder.”

### AGREEMENT

**NOW THEREFORE**, in consideration of the mutual promises, covenants, and agreements set forth in this Agreement, and based upon the foregoing recitals and for other good and valuable

consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**1. Representations and Warranties of Bidder.** The Bidder represents and warrants as follows:

- 1.1. The contact information provided by the Bidder above is true and correct;
- 1.2. The Bidder has provided the Credit Card Information to Statewide;
- 1.3. The Bidder has the ability to perform at the Auction;
- 1.4. The Bidder will not make any bid that is greater than the amount the Bidder has the ability to pay in cash, less the Deposit (as defined below), within 30 days of the Auction;
- 1.5. The Bidder has the ability to pay in cash any bid made by the Bidder at the Auction, less the Deposit (as defined below), within 30 days of the Auction, and that any documents provided by the Bidder to the Seller to prove ability to pay, if requested, are true and correct; and
- 1.6. The Bidder understands that the Property is being sold "AS IS WHERE IS" with no representations or warranties of any kind, and Bidder has done any and all due diligence Bidder has deemed necessary related to the Property prior to the Auction.

**2. Representations and Warranties of Person Executing Agreement.** If the Bidder is not an individual, the person executing this Agreement represents and warrants that he/she (i) has authority to enter into this Agreement on behalf of the Bidder, (ii) has personal knowledge of the Bidder's ability to pay as set forth in paragraph 1 above, and (iii) has authority to make a bid at the Auction on behalf of the Bidder.

**3. Deposit.** Bidder agrees that if the Bidder is the Successful Bidder, the Successful Bidder shall deliver a "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. In the event the Successful Bidder fails to deliver the Deposit as set forth herein, the Successful Bidder agrees that Statewide may charge the Deposit plus a card processing fee equal to 4% of the Deposit to the Successful Bidder's credit card using the Credit Card Information. The Successful Bidder agrees that the Deposit is non-refundable and will be applied to the purchase price of the Property.

**4. Auction Procedures.** Bidder agrees to the terms of the procedures for the Auction and closing included herein and any further terms that may be provided to Bidder at the Auction.

**4.1. 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 shall obtain the highest and best bid for all of the Property as a whole; and/or (ii) a "Parcel Sale," in which case Statewide shall 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 Bulk Sale or a Parcel Sale or any combination of both, through the close of the entire Auction as discussed in subsection 4.3 below.

**4.2. Successful Bidders.** Provided that a two-phase Auction occurs, Statewide shall 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 shall be irrevocable. Statewide shall 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 shall be irrevocable. At the close of the Auction as provided for in subsection 4.3 below, the Receiver shall 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, shall 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) shall be the holder of the Successful Bulk Bid or the holders of the Successful Parcel Bids.

**4.3. Close of Auction.** Subject only to subsection 4.4 below, Statewide shall 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).

**4.4. 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 shall 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.

**4.5. 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: 4.5.1. 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;

4.5.2. Agreeing that its Back-Up Bid is irrevocable through the Sale Closing Date;

4.5.3. 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

4.5.4. Agreeing to be obligated in the event that the Auction to the Successful Bidder(s) does not close.

**5. Acknowledgement.** Bidder agrees that to be a valid Successful Bidder or Back-Up Bidder, the Bidder must sign the "Bidder Acknowledgement" attached hereto as **Exhibit 2**.

**6. Closing.** The Successful Bidder must pay the purchase price, less the amount of its Deposit, to the Seller in cash within 30 days of the close of the Auction. The date of the closing of the purchase of the Property 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." The Sale Closing Date must take place within 30 days of the close of the Auction at the time and place to be designated by the Parties, unless that deadline is extended by the Seller in writing, which the Seller has no obligation to do and may decline to do in Seller's sole discretion.

**7. Title.** Title to Property shall transfer to the Successful Bidder upon payment of the purchase price at the closing on the Sale Closing Date. Pursuant to the Order, Seller shall transfer title, free and clear of all financial interests against the Property, by receiver's deed, not general warranty deed. The

Seller shall provide a title insurance policy to the Successful Bidder(s). The Seller shall only provide a basic policy, with the Successful Bidder(s) assuming responsibility for any policy upgrades.

**8. Taxes and Costs.** Taxes on the Property for 2019 shall be pro-rated, with the Seller paying all taxes accrued as of the Sale Closing Date, and the Successful Bidder paying all taxes thereafter. In the event the Sale Closing Date occurs after January 1, 2020, taxes on the Property for 2020 shall be pro-rated, with the Seller paying all taxes accrued as of the Sale Closing Date, and the Successful Bidder paying all taxes thereafter. Seller shall pay Statewide's fee. Any incidental costs of closing shall be split by the Seller and the Successful Bidder(s).

**9. Breach.** Bidder is in material breach of this Agreement if any of the following occur: (i) Bidder's representations and warranties in Section 1 above are not true and correct; or (b) Bidder, as a Successful Bidder, fails to pay to the Seller in cash the full purchase price in the amount of the Successful Bidder's bid at Auction within 30 days of the close of the Auction. In the event of breach of this Agreement, the Seller shall cancel the auction sale as to the breaching party immediately, and that party's non-refundable Deposit will be forfeited to the Seller. The Deposit may be deemed a reasonable estimate of damages and Seller may, at Seller's option, accept the Deposit as Seller's sole right to damages. If a claim is made as a result of the Bidder's breach and the Seller prevails, the Seller shall be entitled to reasonable attorney fees and costs.

**10. Jurisdiction.** Any claims or causes of action, whether legal or equitable, arising out of or based upon this Agreement or related documents, including but not limited to the interpretation and/or enforcement of this Agreement, shall be commenced in the Court. The Parties hereby consent to the jurisdiction, venue, and process of the Court.

**11. Governing Law.** This Agreement is made pursuant to, and shall be governed by, the laws of the State of Utah.

**12. Construction of Agreement.** This Agreement shall be construed as a whole in accordance with its fair meaning and in accordance with governing law. This Agreement has been negotiated by each of the Parties (or their respective counsel), and the language of this Agreement shall not be construed for or against any particular party. The headings to the sections of this Agreement are solely for the convenience of the Parties, and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this Agreement.

**13. Voluntary Agreement.** This Agreement has been carefully read by the Parties and has been reviewed by the Parties' respective legal counsel (or, if not represented, such Parties had the opportunity to engage counsel to review this Agreement); the contents hereof are known and understood by the Parties; and each of the Parties acknowledges that such Party is under no duress or undue influence and that each of the Parties executes this Agreement as its own free and voluntary act.

**14. Integration and Amendments.** This Agreement shall constitute the entire agreement and understanding of and between the Parties in relation to matters described herein, and no statements, representations, inducements, or promises other than as expressly set forth herein have been given or received by any of the Parties (nor by their respective agents, employees, attorneys, or representatives) in return for the same. All negotiations, oral conversations, statements, representations, and/or agreements prior to the execution of this Agreement are merged herewith and shall not be the basis for any legal rights, claims, or defenses in relation to any litigation or otherwise. No parole or extrinsic evidence may be used to contradict any of the terms of this Agreement. Any

amendment to this Agreement must be in writing, signed by duly authorized representatives of the Parties hereto, and specifically state the intent of the Parties to amend this Agreement.

15. **Severability.** To the extent that any portion of this Agreement is held unenforceable by a court, tribunal, or arbiter of competent jurisdiction, the remainder of this Agreement shall remain binding and enforceable, provided that the primary purposes of this Agreement are not frustrated.

16. **Counterparts.** This Agreement may be executed by the Parties hereto in any number of identical counterparts, each of which, once executed and delivered in accordance with the terms of this Agreement, shall be deemed an original, with all such counterparts taken together constituting one and the same instrument. Delivery by facsimile, encrypted email, or email file attachment of any such executed counterpart to this Agreement shall be deemed the equivalent of the delivery of the original executed agreement or instrument.

*[Remainder of page intentionally left blank.]*

**IN WITNESS WHEREOF**, the Parties  
hereto have executed this Agreement as of  
the date and year first above written.

**SELLER**

R. Wayne Klein, Receiver

**BIDDER**

By:

Name:

Its:

**EXHIBIT 1 Elkhorn Ridge Estates, Malad ID**  
**Receivership properties to be sold at auction**

| <b>Lot Number</b> | <b>Tax Parcel ID Number</b> | <b>Acreage</b> |
|-------------------|-----------------------------|----------------|
| 9                 | RP0281915                   | 2.5 acres      |
| 10                | RP0281916                   | 2.5 acres      |
| 11                | RP0281917                   | 2.5 acres      |
| 12                | RP0281918                   | 2.5 acres      |
| 13                | RP0281919                   | 5 acres        |
| 14                | RP0281920                   | 5 acres        |
| 15                | RP0281921                   | 2.5 acres      |
| 16                | RP0281922                   | 2.5 acres      |
| 17                | RP0281923                   | 2.5 acres      |
| 18                | RP0281924                   | 2.5 acres      |
| 19                | RP0281925                   | 2.5 acres      |
| 20                | RP0281926                   | 2.5 acres      |
| 21                | RP0281927                   | 2.5 acres      |
| 23                | RP0281929                   | 2.7 acres      |
| 24                | RP0281930                   | 2.5 acres      |
| 26                | RP0281932                   | 3.8 acres      |
| 27                | RP0281933                   | 2.5 acres      |
| 28                | RP0281934                   | 2.5 acres      |
| 29                | RP0281935                   | 2.8 acres      |
| 30                | RP0281936                   | 2.6 acres      |
| 31                | RP0281937                   | 2.8 acres      |
| 32                | RP0281938                   | 2.5 acres      |
| 33                | RP0281939                   | 2.5 acres      |
| 34                | RP0281940                   | 2.5 acres      |
| 35                | RP0281941                   | 2.5 acres      |
| 36                | RP0281942                   | 2.5 acres      |
| 37                | RP0281943                   | 2.5 acres      |
| 38                | RP0281944                   | 3.8 acres      |
| 39                | RP0281945                   | 3.8 acres      |
| 40                | RP0281946                   | 2.5 acres      |
| 41                | RP0281947                   | 2.5 acres      |
| 42                | RP0281948                   | 2.5 acres      |
| 43                | RP0281949                   | 2.5 acres      |
| 44                | RP0281950                   | 2.4 acres      |
| 45                | RP0281951                   | 2.5 acres      |
| 46                | RP0281952                   | 2.5 acres      |
| 47                | RP0281953                   | 2.5 acres      |
| Roads, Open areas | RP0281906                   |                |

**EXHIBIT 2**

Bidder acknowledges the information below is true, correct and accurate:

**I. SUCCESSFUL BIDDER ACKNOWLEDGMENT**

I have been called at the close of Auction as the Successful Bidder, as that term is defined in the Deposit and Obligation Agreement. The Property for which I am the Successful Bidder and my Successful Bid amount are as stated below.

SUCCESSFUL BULK BID: (Yes \_\_\_/No \_\_\_)

SUCCESSFUL PARCEL BID FOR PARCEL NO'S: \_\_\_\_\_

SUCCESSFUL BID AMOUNT: \$ \_\_\_\_\_

Date:

BIDDER

By:

Name:

Its:

OR

**II. BACK-UP BIDDER ACKNOWLEDGEMENT**

I agree to be a Back-Up Bidder, as that term is defined in the Deposit and Obligation Agreement. The Property for which I am the Back-Up Bidder and my Back-Up Bid amount are stated below.

BACK-UP BULK BID: (Yes \_\_\_/No \_\_\_)

BACK-UP PARCEL BID FOR PARCEL NO'S: \_\_\_\_\_

BACK-UP BID AMOUNT: \$ \_\_\_\_\_

Date:

BIDDER

By:

Name:

Its: