

1 DAVID R. ZARO (BAR NO. 124334)
2 NORMAN M. ASPIS (BAR NO. 313466)
3 ALLEN MATKINS LECK GAMBLE
4 MALLORY & NATSIS LLP
5 865 South Figueroa Street, Suite 2800
6 Los Angeles, California 90017-2543
7 Phone: (213) 622-5555
8 Fax: (213) 620-8816
9 E-Mail: dzaro@allenmatkins.com
10 naspis@allenmatkins.com

11 EDWARD G. FATES (BAR NO. 227809)
12 ALLEN MATKINS LECK GAMBLE
13 MALLORY & NATSIS LLP
14 One America Plaza
15 600 West Broadway, 27th Floor
16 San Diego, California 92101-0903
17 Phone: (619) 233-1155
18 Fax: (619) 233-1158
19 E-Mail: tfates@allenmatkins.com

20 Attorneys for Receiver
21 KRISTA FREITAG

22 UNITED STATES DISTRICT COURT
23 SOUTHERN DISTRICT OF CALIFORNIA

24 SECURITIES AND EXCHANGE
25 COMMISSION,

26 Plaintiff,

27 v.

28 GINA CHAMPION-CAIN and ANI
DEVELOPMENT, LLC,

Defendants,

AMERICAN NATIONAL
INVESTMENTS, INC.,

Relief Defendant.

Case No. 3:19-cv-01628-LAB-AHG

**NOTICE OF RECEIPT OF
QUALIFIED OVERBIDS
REGARDING MOTION FOR
APPROVAL OF SALE OF CROWN
POINT PROPERTY**

Date: June 24, 2020

Time: 2:00 p.m.

Courtroom: TBD

Mag. Judge: Hon. Allison H. Goddard

1 **TO THE HONORABLE COURT, ALL PARTIES, AND THEIR**
2 **COUNSEL OF RECORD:**

3 **PLEASE TAKE NOTICE** that Krista Freitag ("Receiver"), the Court-
4 appointed permanent receiver for Defendant ANI Development, LLC, Relief
5 Defendant American National Investments, Inc., and their subsidiaries and affiliates
6 ("Receivership Entities"), hereby submits this Notice of Receipt of Qualified
7 Overbids Regarding Motion for Approval of Sale of Crown Point Property
8 ("Motion").

9 In her Motion, the Receiver proposed a deadline for submission of qualified
10 overbids for the Crown Point Property no later than June 8, 2020. The Receiver
11 posted the sale motion on the receivership website, www.anireceivership.com,
12 published notice of the sale in the San Diego Union-Tribune as required by 28 U.S.C.
13 section 2002, and has, through her broker, continued to market the assets and notify
14 potential purchasers about the opportunity to submit an overbid and the proposed
15 deadline to do so. As a result, two qualified overbids were received.

16 The Receiver, through her broker, has obtained the consent of the original
17 buyer and each of the qualified overbidders to conduct the live auction via Zoom call
18 on June 11, 2020 at 10:30 am. The auction instructions attached hereto as Exhibit A
19 have been provided to each of qualified overbidders. Once the auction has been
20 completed, the Receiver will file a notice of the auction results, request that the sale
21 to the winning bidder be approved, and request that the sale to second highest bidder
22 (or back-up bidder) also be approved such that the Receiver can move swiftly to
23 close with the back-up bidder in the event the winning bidder fails to close the
24 transaction.

25 Dated: June 10, 2020

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

By: s/Edward G. Fates

EDWARD G. FATES
Attorneys for Receiver
KRISTA FREITAG

26
27
28

EXHIBIT INDEX

EXHIBIT NO.	DESCRIPTION	PAGE NO.
Exhibit A	Auction Instructions	4

EXHIBIT A

EXHIBIT A

FORMER SURF RIDER PIZZA - CROWN POINT PROPERTY (3445 INGRAHAM STREET)
AUCTION GENERAL INFORMATION & PROTOCOL
Circulated June 10, 2020

AUCTION LOCATION: Zoom Video Conference (in the event any of the Qualified Bidders or the Receiver or her Counsel experience technical difficulties which disrupt the process; the Receiver will make a determination to circulate a call-in number (to the email addresses provided for the authorized representative of each Qualified Bidders) to continue the auction via traditional conference call.

AUCTION TIME: Thursday, June 11, 2020 at 10:30 AM PDT – Please log in at 10:25 AM PDT.

ZOOM CALL LINK: **To be provided via email – note that if you are not the designated authorized spokesman, please be certain to mute your microphone and do not activate your video function.**

ACTION ITEM: A representative of each Qualified Bidder must designate one authorized representative (who will be the only spokesman for each Qualified Bidder during Auction) and must submit **names of all auction attendees** to Geno Rodriguez at grodriguez@ethreadvisors.com, on **Wednesday, June 10, 2020**.

SUBMISSION OF BIDS

Each interested party invited to the Auction has been deemed a Qualified Bidder as each has **a)** executed a confidentiality agreement, **b)** submitted a Qualified Bid PSA, such offer is irrevocable and enforceable unless the Qualified Bidder is not awarded the sale as the winning bidder or back-up bidder, **c)** funded into escrow its earnest monies – their Bid Deposit, and **d)** demonstrated and provided written evidence of its financial and legal ability to consummate the transaction.

It is important to note that the ultimate winning bidder and back-up bidder must meet the following “Qualified Bid” requirements. The winning and back-up bids must be:

- (1) free of all contingencies, including but not limited to due diligence or inspection contingencies.
- (2) As-Is, Where-Is.

THE AUCTION

Qualified Bidders, in order of earliest initial offer submission are identified as Greg R. Velasquez and Cynthia L. Velasquez, as Trustees of The C & G Velasquez Family Trust, Under Declaration of Trust Dated October 19, 2005, Quinn Myers/Jacob Spitzlberger and RSB Property Investors, LLC.

The following sets forth the proposed bidding and auction procedures (the "Auction Procedures") pursuant to which Krista Freitag ("Receiver") and her counsel, Allen Matkins Leck Gamble Mallory & Natsis LLP ("Allen Matkins") will solicit verbal bids for the purchase of the Real Property as defined in the Purchase and Sale Agreement, commonly known as the former Surf Rider Pizza – Crown Point (the "Property").

The only people who will be permitted to bid at the Auction are the designated authorized representatives of each Qualified Bidder – as noted above, such authorized representatives must be provided to Geno Rodriguez on Wednesday, June 10, 2020. Each bid submitted at the Auction must comply with the procedures set forth herein.

At the Auction, Receiver may: (i) determine, in her business judgment, which Qualified Bid, if any, is the highest or otherwise best Qualified Bid; and (ii) reject at any time before entry of an order of the Court approving a Qualified Bid, any bid that, in Receiver's reasonable discretion, is (a) inadequate or insufficient, (b) not in conformity with the terms and conditions of sale, or (c) contrary to the best interests of the receivership estate and its creditors.

AUCTION PROCEDURES

At the Auction, Qualified Bidders will be permitted to visibly show his/her hand, and verbally express his/her overbid price through stating his/her name. For a bid to be recognized, the designated, authorized representatives of each Qualified Bidder will be asked to show a hand and state his/her name. The Receiver will then repeat the bid price and acknowledged Qualified Bidder for the record and for everyone's benefit after each incremental price change. The bidding shall start at **\$540,000** and continue in increments of **\$5,000, until the highest bid has been received**. Note that once bidding stalls, the Receiver will set a timer for 45 seconds, announce the then highest bidder and price, and announce the then back-up/second highest bidder and price, allowing time for any further bidding to occur before closing the Auction; if an additional bid is received during this 45 second window, this process will repeat.

To facilitate deliberate and orderly consideration of the revised bids, the Receiver may recess, revise the bidding process if deemed necessary¹ or adjourn the Auction at any time and from time to time.

¹ If the Receiver deems there is an issue with open bidding (with the Qualified Bidders visibly showing hands/verbally confirming his/her name), the Receiver may switch to soliciting the incremental bid prices to each Qualified Bidder in the order of the initial offer submission date (i.e., the Qualified Bidder with the earliest date of purchase price will be asked first). Similarly, any tie in the final highest and/or back-up bid prices will go to the Qualified Bidder with the earliest date of offer submission.

At the Auction, at the conclusion of bidding, the Receiver shall notify (the "Winning Bidder") that such Qualified Bidder's offer has been determined by the Receiver to be a highest and best offer. The Receiver shall also notify (the "Back-Up Bidder") with the next highest or best offer. Receiver's counsel will draft amendments to each original contract for signature, and the Winning Bidder and Back-Up Bidders must submit their signed amendments reflecting the new Auction purchase price to the Receiver on or before Monday, June 15, 2020. Receiver's counsel will then submit the Winning Bidder and Back-Up Bidder offers, as amended, for Court Approval.

The Receiver shall not be deemed to have accepted any offer unless and until such offer and bid and the Receiver's acceptance thereof have been subsequently authorized by separate order (the Auction Confirmation Order) of the United States District Court (the "District Court").

No later than five (5) business days after Court approval of the Auction results, the Winning Bidder shall consummate the transaction.

If for any reason a Qualified Bidder submitting a final accepted offer fails to consummate the acquisition of the Property, including consummation of the transaction within five (5) business days after Court approval, the Qualified Bidder ("Back-Up Bidder") with the next highest or best bid will automatically be deemed to have submitted a final accepted offer, and the Receiver is authorized to effect the sale of the Property to such Bidder no later than 10 business days after Court approval of the Auction results, and without further order of the District Court. If such failure to consummate the purchase is the result of a breach by a Qualified Bidder submitting a final accepted offer, any earnest money deposit deposited by such Qualified Bidder with escrow shall be forfeited to the Receiver, except as otherwise set forth in the respective purchase and sale agreement.