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

<p>SECURITIES AND EXCHANGE COMMISSION,</p> <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>NATIONAL NOTE OF UTAH, LC, a Utah Limited Liability Company and WAYNE LaMAR PALMER, and individual,</p> <p style="text-align: right;">Defendants.</p>	<p>RECEIVER'S MOTION SEEKING APPROVAL OF THE SALE PROCESS FOR AUTUMN RIDGE PHASE I LOTS FREE AND CLEAR OF PURPORTED INTERESTS AND MEMORANDUM IN SUPPORT</p> <p>2:12-cv-00591 BSJ</p> <p>The Honorable Bruce S. Jenkins</p>
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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, hereby files this Motion and Memorandum in Support (collectively, the "Motion"), and respectfully requests that the Court enter the proposed Order submitted herewith and attached hereto as **Exhibit A** authorizing him to sell nineteen lots within "Phase 1" of the Autumn Ridge Subdivision, Eagle Mountain, Utah (collectively, the "Autumn Ridge Properties")

to either one of two “Builders” (as defined below) pursuant to the sale procedures described herein. This Motion is supported by the *Declaration of Receiver R. Wayne Klein* (the “Receiver Declaration”) which has been filed concurrently herewith.

The Receiver has identified approximately thirty-three persons/entities holding thirty-nine purported interests (the “ABI Holders”) and two potential lien holders against the Autumn Ridge Properties. Previously two ABI Holders voluntarily released four of their purported interests against the Autumn Ridge Properties. At this time, an additional twelve ABI Holders have voluntarily released fourteen of their alleged interests in the Autumn Ridge Properties by executing Releases of Lien,¹ leaving approximately twenty-three purported interests in the Autumn Ridge Properties. In light of these remaining alleged interests, the Receiver is requesting that the sale method proposed herein be authorized as a sale free and clear of these purported interests, with interests, if any, attaching to the “Net Sale Proceeds” from each sale as defined below. The Securities and Exchange Commission (the “SEC”) has informed the Receiver that it does not object to the method of sale as proposed. Accordingly, the Receiver hereby requests that the Court grant this Motion and authorize him to sell the lots within the Autumn Ridge Property pursuant to the method described below. In further support of this Motion the Receiver states as follows:

MEMORANDUM OF SUPPORT

I.

GENERAL BACKGROUND

1. On June 25, 2011, the above-captioned case was commenced by the SEC against Defendants National Note of Utah, LC (“NNU”) and Wayne LaMar Palmer (“Palmer”)

¹ See Receiver Declaration ¶ 23 & Exh. 7 (Releases of Lien).

(collectively, the “Receivership Defendants”), and in conjunction therewith the Court entered, in relevant part, an Order Appointing Receiver and Staying Litigation (the “Receivership Order”).² Pursuant to the Receivership Order, the Receiver was appointed, and NNU, and 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.³

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 . . . [.]”⁴
- “To take custody, control and possession of all Receivership Property and records . . . [.]”⁵
- “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[.]”⁶
- “[T]o take immediate possession of all real property of the Receivership Defendants and the Palmer Entities”⁷
- “[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.”⁸
- “[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.”⁹

² Docket No. 9 (Receivership Order).

³ See generally, *id.*

⁴ *Id.* at ¶ 7(A).

⁵ *Id.* at ¶ 7(B).

⁶ *Id.* at ¶ 7(D).

⁷ *Id.* at ¶ 19.

⁸ *Id.* at ¶ 37.

⁹ *Id.* at ¶ 38.

- “[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.”¹⁰

II.

REAL PROPERTY TO BE SOLD AND SALE PLAN

3. Since his appointment, the Receiver has identified numerous real properties as being part of the Receivership Estate, and where appropriate has listed such property for sale.¹¹

4. Relevant to this Motion are nineteen parcels of real property each located in “Phase 1” of the Autumn Ridge Estates subdivision located in Eagle Mountain, Utah, referenced collectively herein as the “Autumn Ridge Properties.”¹²

5. As of the date of the Receiver’s appointment, construction on approximately 2/3 of the lots within Phase 1 had been completed.¹³

6. While development was started on the remaining nineteen lots in Phase I (i.e. utilities, sidewalks, etc.), no structures have been built on the Autumn Ridge Properties¹⁴

7. Through this Motion, the Receiver is seeking authority to sell the nineteen parcels of real property remaining in Phase 1 and more accurately described as:

Lot 2, Phase I, AUTUMN RIDGE SUBDIVISION, Eagle Mountain, Utah, according to the official plat thereof on file in the office of the Utah County Recorder, State of Utah, recorded on July 27, 2007 as instrument number 108734:2007 (“Autumn Ridge Lot # 2”);

Lot 3, Phase I, AUTUMN RIDGE SUBDIVISION, Eagle Mountain, Utah, according to the official plat thereof on file in the office of the Utah County Recorder, State of Utah, recorded on July 27, 2007 as instrument number 108734:2007 (“Autumn Ridge Lot # 3”); and

¹⁰ *Id.* at ¶ 39.

¹¹ Receiver Declaration ¶ 4.

¹² Receiver Declaration ¶ 5.

¹³ Receiver Declaration ¶ 6.

¹⁴ Receiver Declaration ¶ 7.

Lot 4, Phase I, AUTUMN RIDGE SUBDIVISION, Eagle Mountain, Utah, according to the official plat thereof on file in the office of the Utah County Recorder, State of Utah, recorded on July 27, 2007 as instrument number 108734:2007 ("Autumn Ridge Lot # 4").

Lot 6, Phase I, AUTUMN RIDGE SUBDIVISION, Eagle Mountain, Utah, according to the official plat thereof on file in the office of the Utah County Recorder, State of Utah, recorded on July 27, 2007 as instrument number 108734:2007 ("Autumn Ridge Lot # 6");

Lot 7, Phase I, AUTUMN RIDGE SUBDIVISION, Eagle Mountain, Utah, according to the official plat thereof on file in the office of the Utah County Recorder, State of Utah, recorded on July 27, 2007 as instrument number 108734:2007 ("Autumn Ridge Lot # 7"); and

Lot 8, Phase I, AUTUMN RIDGE SUBDIVISION, Eagle Mountain, Utah, according to the official plat thereof on file in the office of the Utah County Recorder, State of Utah, recorded on July 27, 2007 as instrument number 108734:2007 ("Autumn Ridge Lot # 8").

Lot 11, Phase I, AUTUMN RIDGE SUBDIVISION, Eagle Mountain, Utah, according to the official plat thereof on file in the office of the Utah County Recorder, State of Utah, recorded on July 27, 2007 as instrument number 108734:2007 ("Autumn Ridge Lot # 11");

Lot 16, Phase I, AUTUMN RIDGE SUBDIVISION, Eagle Mountain, Utah, according to the official plat thereof on file in the office of the Utah County Recorder, State of Utah, recorded on July 27, 2007 as instrument number 108734:2007 ("Autumn Ridge Lot # 16"); and

Lot 21, Phase I, AUTUMN RIDGE SUBDIVISION, Eagle Mountain, Utah, according to the official plat thereof on file in the office of the Utah County Recorder, State of Utah, recorded on July 27, 2007 as instrument number 108734:2007 ("Autumn Ridge Lot # 17").

Lot 30, Phase I, AUTUMN RIDGE SUBDIVISION, Eagle Mountain, Utah, according to the official plat thereof on file in the office of the Utah County Recorder, State of Utah, recorded on July 27, 2007 as instrument number 108734:2007 ("Autumn Ridge Lot # 30");

Lot 33, Phase I, AUTUMN RIDGE SUBDIVISION, Eagle Mountain, Utah, according to the official plat thereof on file in the office of the Utah County Recorder, State of Utah, recorded on July 27, 2007 as instrument number 108734:2007 ("Autumn Ridge Lot # 33"); and

Lot 39, Phase I, AUTUMN RIDGE SUBDIVISION, Eagle Mountain, Utah, according to the

official plat thereof on file in the office of the Utah County Recorder, State of Utah, recorded on July 27, 2007 as instrument number 108734:2007 ("Autumn Ridge Lot # 39").

Lot 40, Phase I, AUTUMN RIDGE SUBDIVISION, Eagle Mountain, Utah, according to the official plat thereof on file in the office of the Utah County Recorder, State of Utah, recorded on July 27, 2007 as instrument number 108734:2007 ("Autumn Ridge Lot # 40");

Lot 41, Phase I, AUTUMN RIDGE SUBDIVISION, Eagle Mountain, Utah, according to the official plat thereof on file in the office of the Utah County Recorder, State of Utah, recorded on July 27, 2007 as instrument number 108734:2007 ("Autumn Ridge Lot # 41"); and

Lot 51, Phase I, AUTUMN RIDGE SUBDIVISION, Eagle Mountain, Utah, according to the official plat thereof on file in the office of the Utah County Recorder, State of Utah, recorded on July 27, 2007 as instrument number 108734:2007 ("Autumn Ridge Lot # 51").

Lot 52, Phase I, AUTUMN RIDGE SUBDIVISION, Eagle Mountain, Utah, according to the official plat thereof on file in the office of the Utah County Recorder, State of Utah, recorded on July 27, 2007 as instrument number 108734:2007 ("Autumn Ridge Lot #52");

Lot 54, Phase I, AUTUMN RIDGE SUBDIVISION, Eagle Mountain, Utah, according to the official plat thereof on file in the office of the Utah County Recorder, State of Utah, recorded on July 27, 2007 as instrument number 108734:2007 ("Autumn Ridge Lot # 54"); and

Lot 55, Phase I, AUTUMN RIDGE SUBDIVISION, Eagle Mountain, Utah, according to the official plat thereof on file in the office of the Utah County Recorder, State of Utah, recorded on July 27, 2007 as instrument number 108734:2007 ("Autumn Ridge Lot # 55").

Lot 60, Phase I, AUTUMN RIDGE SUBDIVISION, Eagle Mountain, Utah, according to the official plat thereof on file in the office of the Utah County Recorder, State of Utah, recorded on July 27, 2007 as instrument number 108734:2007 ("Autumn Ridge Lot # 60").¹⁵

Marketing of the Autumn Ridge Properties

8. On or about August 21, 2012, the Receiver caused the Autumn Ridge Properties

¹⁵ Receiver Declaration ¶ 8.

to be listed for sale through the Providence Realty Group.¹⁶

9. After consulting with his independent realtor and considering the nature of the property and the present market and economic conditions in Utah County, the Receiver has decided that marketing each of the Autumn Ridge Properties to separate buyers would not maximize the value of the Autumn Ridge Properties for the benefit of the Receivership Estate.¹⁷

10. Rather, the Receiver has determined that the Autumn Ridge Properties should be marketed for sale to home builders who would commit to buying and building homes on all of the remaining nineteen lots in Phase 1.¹⁸ The Receiver thus requests authorization of the method of sale of these lots as proposed herein.

The Purchase Agreements

11. After engaging in purchase discussions with several builders, the Receiver has entered into, subject to Court approval, purchase agreements with two home builders, Hallmark Homes and Development, Inc. (“Hallmark”) and Merit Homes, LLC (“Merit” and collectively the “Builders”).¹⁹ As proposed, the Builders have each agreed to purchase at least one lot in the Autumn Ridge Properties and build a home on the lot. As these homes sell, the Builders will purchase additional lots and construct homes on the terms and conditions described in purchase agreements,²⁰ and subsequent addendums,²¹ executed by Hallmark (the “Hallmark Purchase Agreement”) and Merit (the “Merit Purchase Agreement” and collectively the “Purchase Agreements”).²²

12. The Purchase Agreements have been negotiated by the Receiver with the Builders

¹⁶ Receiver Declaration ¶ 9 & Exh. 1 (Listing Agreement)

¹⁷ Receiver Declaration ¶ 10.

¹⁸ Receiver Declaration ¶ 11.

¹⁹ Receiver Declaration ¶ 12.

²⁰ Receiver Declaration ¶ 13 & Exh. 2 (Hallmark Purchase Agreement), and Exh. 3 (Merit Purchase Agreement).

²¹ Id. & Exh. 4 (Hallmark Addendum), and Exh. 5 (Merit Addendum).

²² Id.

in good faith and at arms' length, and the method of sale is meant to maximize the value of the Autumn Ridge Properties for the benefit of the Receivership Estate.²³

Material Terms of the Sale Process

13. As proposed in the Purchase Agreements, the Receiver will give the Builders a joint exclusive right to serially purchase the lots comprising the Autumn Ridge Properties at the prices listed on the "Lot Pricing Schedule" attached as Exhibit A the Purchase Agreements.²⁴

14. The following is a description of the sale process the Receiver will employ if this Motion is granted:

- Both Merit and Hallmark shall purchase one lot of their choosing at the sale price for such lot listed on Exhibit A to each Purchase Agreement within 30 days of the Court's approval of this Motion;
- After purchasing the initial lot, the Builders must construct either a "model home" to be used to market the other lots, or a "spec home" to be sold to a prospective home purchaser, which conforms to the building standards prevalent in the Subdivision so as to maintain the value of the Subdivision;
- Both Merit and Hallmark must maintain an active marketing program, which includes (a) maintaining signage on the property and signage directing potential buyers of homes to the property, (b) advertising homes for sale on the property, and (c) constructing or maintaining a model home or a spec home on the property;
- In addition to their respective purchases of at least the first lot, Merit and Hallmark will have an option to purchase any of the remaining Autumn Ridge Properties and will be in competition to purchase the individual lots, build homes thereon, and sell them to buyers;
- Purchase of any lot will not require further Court approval, provided that the Builders purchase any additional lot in an amount that is not below the amount of the sale price for that lot listed on Exhibit A to the Purchase Agreement.
- Either Hallmark or Merit can place a "hold" on an individual lot for a period of 10 days by submitting a \$500 earnest money deposit to secure such Builder's right to purchase such lot;

²³ Receiver Declaration ¶ 14.

²⁴ Receiver Declaration ¶ 15 & Exh. 2 and 3 (Purchase Agreements).

- The Purchase Agreements can be terminated by the Receiver if the Builder fails to maintain an active marketing program. Otherwise, the Purchase Agreements will terminate nine (9) months after approval of this Motion, or may be renewed without further court approval provided that the terms remain materially the same as those set forth herein; and
- The Builders may only build on the lots that they purchase pursuant to the terms herein and in the Purchase Agreements and may not sell any purchased but unbuilt lot to any third-party without the Receiver's prior written consent.
- If the Receiver determines that he needs to reduce the price of any one of the lots listed on Exhibit A to the Purchase Agreement, and the reduced sale price is a reduction of more than 10% of the sales price listed on Exhibit A to the Purchase Agreement, the Receiver will seek authorization of the sale of that lot from the Court after notice and hearing.²⁵

15. This proposed method of sale is intended to maximize the value of the Autumn Ridge Properties by, among other things, ensuring that the quality of the subdivision is maintained and to allow the Builders to serially purchase and build on the lots as they receive monies from the buyers of each lot.²⁶

16. Selling the lots to the Builders as homes are constructed, instead of in bulk, will realize a greater value to the Receivership Estate. At this time, it is uncertain that a purchaser of the lots in bulk could be obtained, and if it were, the Receiver believes that it would be less than would be realized from the sale of the lots as proposed.²⁷

Sale Price and Appraisals

17. On January 14, 2013, the Court entered an *Order Appointing Appraisers for (a) Autumn Ridge Phase I Lot Nos., 2, 3, 4, 6, 7, 8, 11, 16, 21, 30, 33, 39, 40, 41, 51, 52, 54, 55 and*

²⁵ Receiver Declaration ¶ 16 & Exh. 2, 3, 4, and 5 (Purchase Agreements).

²⁶ Receiver Declaration ¶ 17.

²⁷ Receiver Declaration ¶ 18; see also the Nielsen Appraisal attached the Motion to Appoint Appraisers as Exhibit F (Docket No. 120) at pg 51.

60 and (b) Autumn Ridge Phase II.²⁸

18. Consequently, Brent T. Clark of Free & Associates, Steven Nielsen at Nielsen and Company, Stan C. Craft at Free & Associates, and J. Allan Payne at Payne Appraisals were appointed as appraisers of the Autumn Ridge Properties.²⁹

19. Based on the appraisals, the average appraised value for each of the Autumn Ridge Properties is as follows:

Autumn Ridge Lot # 2: average appraised value of \$33,066.67;
Autumn Ridge Lot # 3: average appraised value of \$34,233.33;
Autumn Ridge Lot # 4: average appraised value of \$32,600.00;
Autumn Ridge Lot # 6: average appraised value of \$32,833.33;
Autumn Ridge Lot # 7: average appraised value of \$32,833.33;
Autumn Ridge Lot # 8: average appraised value of \$32,833.33;
Autumn Ridge Lot # 11: average appraised value of \$32,833.33;
Autumn Ridge Lot # 16: average appraised value of \$33,100.00;
Autumn Ridge Lot # 21: average appraised value of \$34,933.33;
Autumn Ridge Lot # 30: average appraised value of \$32,833.33;
Autumn Ridge Lot # 33: average appraised value of \$34,033.33;
Autumn Ridge Lot # 39: average appraised value of \$33,733.33;
Autumn Ridge Lot # 40: average appraised value of \$33,500.00;
Autumn Ridge Lot # 41: average appraised value of \$33,466.67;
Autumn Ridge Lot # 51: average appraised value of \$33,100.00;
Autumn Ridge Lot # 52: average appraised value of \$33,100.00;

²⁸ Docket No. 121.

²⁹ Id.

Autumn Ridge Lot # 54: average appraised value of \$33,866.67;

Autumn Ridge Lot # 55: average appraised value of \$35,400.00; and

Autumn Ridge Lot # 60: average appraised value of \$36,833.33.³⁰

20. The Builders have agreed to purchase the individual Autumn Ridge Properties at the prices listed on the "Lot Pricing Schedule" attached as Exhibit A the Purchase Agreements as follows, with each of these prices exceeding the average appraised value set forth above:

Autumn Ridge Lot # 2: purchase price of \$35,900.00;

Autumn Ridge Lot # 3: purchase price of \$35,900.00;

Autumn Ridge Lot # 4: purchase price of \$35,900.00;

Autumn Ridge Lot # 6: purchase price of \$35,900.00;

Autumn Ridge Lot # 7: purchase price of \$35,900.00;

Autumn Ridge Lot # 8: purchase price of \$35,900.00;

Autumn Ridge Lot # 11: purchase price of \$35,900.00;

Autumn Ridge Lot # 16: purchase price of \$35,900.00;

Autumn Ridge Lot # 21: purchase price of \$37,900.00;

Autumn Ridge Lot # 30: purchase price of \$37,900.00;

Autumn Ridge Lot # 33: purchase price of \$37,900.00;

Autumn Ridge Lot # 39: purchase price of \$36,900.00;

Autumn Ridge Lot # 40: purchase price of \$37,900.00;

Autumn Ridge Lot # 41: purchase price of \$37,900.00;

Autumn Ridge Lot # 51: purchase price of \$35,900.00;

Autumn Ridge Lot # 52: purchase price of \$35,900.00;

³⁰ See Docket No. 120 & Exhs. E, F and G (the Appraisals).

Autumn Ridge Lot # 54: purchase price of \$36,900.00;

Autumn Ridge Lot # 55: purchase price of \$37,900.00; and

Autumn Ridge Lot # 60: purchase price of \$38,900.00.³¹

Sale Costs and Net Sale Proceeds

21. The Receiver anticipates paying the ordinary costs of the sale, including market-rate closing costs and a discounted 8.00% realtor commission at the time of closing of the sale of each of the Autumn Ridge Properties and property taxes, with the remaining sale proceeds being referred to herein as the “Net Sale Proceeds.”³²

22. The Receiver will separately account for the Net Sale Proceeds pending resolution of any disputes related to the ABI Holders’ claimed interests, or other lien holders, in the Autumn Ridge Properties.³³

Free and Clear Sale

23. To determine interests, if any, against the Autumn Ridge Properties, the Receiver obtained a preliminary title report with respect to the Autumn Ridge Properties (the “Title Report”).³⁴

24. From this Title Report, the Receiver has identified approximately thirty-three persons/entities holding thirty-nine purported interests (the “ABI Holders”) and two potential lien holders against the Autumn Ridge Properties. Previously two ABI Holders voluntarily released four of their purported interests against the Autumn Ridge Properties. At this time, an additional twelve ABI Holders have voluntarily released fourteen of their alleged interests in the

³¹ Receiver Declaration ¶ 19 & Exh 2 and 3 (Purchase Agreements, Exhibit A).

³² Receiver Declaration ¶ 20.

³³ Receiver Declaration ¶ 21.

³⁴ Receiver Declaration ¶ 22 & Exh. 6 (Title Report).

Autumn Ridge Properties by executing Releases of Lien, leaving approximately twenty-three purported interests in the Autumn Ridge Properties.³⁵

25. To facilitate the proposed sales of the Autumn Ridge Properties, the Receiver proposes allowing any interests in the Autumn Ridge Properties, including the identified and remaining interests asserted by the ABI Holders and other lien holders, to attach to the Net Sale Proceeds while he evaluates the validity of such interests.³⁶ In so doing, the Receiver is in no way waiving any rights, claims, interests or defenses to any claims or interests made against the Autumn Ridge Properties or to the Net Sale Proceeds.³⁷

26. A copy of the Motion and the Receiver Declaration are being served on the relevant taxing authorities, each of the ABI Holders, and other lienholders.

Best Interests

27. The Receiver believes that the serial sale of the Autumn Ridge Properties to Merit and/or Hallmark as proposed is beneficial for and in the best interests of the Receivership Estate based on at least the following: (a) the purchase price to be obtained which exceeds the average appraised values of the Autumn Ridge Properties; (b) the sale plan which allows the quality of the Subdivision to be maintained by requiring the Builders to conform to the building standards prevalent in the Subdivision so as to maintain the value of the Subdivision; (c) a method of sale that aims to maximize the amount the estate realizes for each of the lots—which amount is, in the Receiver's opinion, greater than he would receive if the lots could be and were sold in bulk; and (d) the estate's receipt of cash through a cost efficient method of sale with each sale being

³⁵ Receiver Declaration ¶ 23 & Exhibit 7 (Releases of Lien).

³⁶ Receiver Declaration ¶ 24.

³⁷ Receiver Declaration ¶ 25.

obtained through good faith and arms' length negotiations.³⁸

28. The SEC has been informed of the material terms of the sales, and has no objection thereto.³⁹

Publication Notice

29. Contemporaneously herewith the Receiver filed his *Ex Parte Motion for Order Approving Method and Form of Publication Notice of Sale of Real Property*, seeking the Court's approval of the method and form of proposed publication notice.

30. Upon entry of an Order granting the Publication Motion, the Receiver shall publish notice of the proposed sale in *The Salt Lake Tribune*, a newspaper published in Salt Lake City, Utah, and the *Provo Daily Herald*, a newspaper published in Utah County, Utah and distributed to Eagle Mountain, Utah, using the method and form of notice approved by the Court.⁴⁰

III.

ARGUMENT

Based on the facts above, the Receiver respectfully requests authorization to sell the Autumn Ridge Properties pursuant to the Purchase Agreements free and clear of liens and interests, with any such interests, to the extent that they exist, attaching to the Net Sale Proceeds and held by the Receiver pending resolution of any disputes related thereto. The sale of the Autumn Ridge Properties as proposed is (1) within the scope of the Receiver's authority under the Receivership Order as quoted above and 28 U.S.C. § 2001(b), (2) in the best interests of the Receivership Estate, and (3) serves the purposes of the receivership by providing a "realization

³⁸ Receiver Declaration ¶ 26.

³⁹ Receiver Declaration ¶ 27.

⁴⁰ Receiver Declaration ¶ 28.

of the true and proper value” of the Autumn Ridge Properties.⁴¹

Sale of the Autumn Ridge Properties as Proposed is Beneficial to the Receivership Estate

Section 2001(b) of title 28 of the United States Code provides that the Court may authorize the sale of real property through private sale if such sale is in the “best interests” of the Receivership Estate.⁴² Furthermore, the Receivership Order authorizes the Receiver, subject to Court approval, to sell property of the Receivership Estate “with due regard to the realization of the true and proper value of such Receivership Property.”⁴³ The sale of the Autumn Ridge Properties as proposed herein is in the best interests of the Receivership Estate for several reasons, including at least the following.

First, the sale will result in cash for the Receivership Estate based on a fair market value of the Autumn Ridge Properties, and in an amount that is above the average appraised value of the each of the lots. Specifically, the Autumn Ridge Properties have been marketed at an offering price that is based on (a) the opinion of an experienced, third party realtor, and (b) three independent appraisals of the property done by Court approved appraisers. The appraisals have taken into consideration current market conditions, sales of comparable properties, and the particular nature of the properties. Further, the Autumn Ridge Properties are the remaining buildable lots in a subdivision that is about two-thirds completed; therefore, the buyers for these lots are likely to be builders, not individuals. However, in today’s market, few builders can afford to buy up large blocks of building lots at one time, and those builders who do purchase large blocks of building lots at a time are demanding, and receiving, large discounts on the purchase price. As evidenced by the purchase prices on all of the Autumn Ridge Properties

⁴¹ Receivership Order ¶ 38.

⁴² 28 USC § 2001(b).

⁴³ Receivership Order ¶ 37.

exceeding the average appraised value for each lot, the Receiver's sale process will maximize the value of the Autumn Ridge Properties.

Second, the total proposed sale of the Autumn Ridge Properties, which may yield as much as \$699,000,⁴⁴ will increase the sums held in the Receivership Estate. The Receiver's plan to sequentially sell the Autumn Ridge Properties in the method proposed maximizes this value by efficiently and economically providing for the sale of the Autumn Ridge Properties. If the Receiver determines that he needs to reduce the price of any one of the lots as listed on Exhibit A to the Purchase Agreement, and the sale price requires a reduction of more than 10% of the sales price listed on Exhibit A to the Purchase Agreement, the Receiver will seek authorization of the sale of that lot from the Court after notice and hearing.⁴⁵

Request To Sell the Autumn Ridge Properties Free and Clear of Interests

As discussed above, the Receiver proposes to sell the Autumn Ridge Properties free and clear of any interests in the property, with any such interest attaching to the Net Sale Proceeds. The Court may order such a sale so long as parties with interests against the property are given proper notice.

The relevant taxing authorities, each of the ABI Holders, and other lienholders still claiming an interest against the Autumn Ridge Properties will be served with the Motion to be given notice of the relief sought herein.⁴⁶ Failure to object to these terms will mean that the relevant taxing authorities, each of the ABI Holders, and other lienholders, as purported holders of an interest in the Autumn Ridge Properties, consent to the relief sought herein, and may only

⁴⁴ See Receiver Declaration Exh 2 and 3 (Purchase Agreements, Exhibit A).

⁴⁵ Receiver Declaration ¶ 16.

⁴⁶ The Exhibits to the Receiver's Declaration were not provided to the lienholders at this time in order to keep costs down and preserve the Receivership Estate. However, the lienholders were provided with instructions stating that they could obtain the Exhibits, if they desired, by contacting the Receiver's counsel.

look to the Net Sale Proceeds for any claim that he/she may eventually be held to have. This procedure will allow for the proposed sale to close, and preserve the status quo as to any disputes as to the ABI Holders' claimed interests in the Autumn Ridge Properties.

Compliance With 28 U.S.C § 2001

The Receivership Order provides that the Court may require that the proposed sale of real property satisfy 28 U.S.C. § 2001.⁴⁷ Subsection (b) of § 2001 permits, with Court approval, a private sale of receivership property as proposed herein, but it conditions such sale on (1) obtaining a purchase price that is no less than two-thirds of the appraised value of the property; (2) appointing “three disinterested persons to appraise such property or different groups of three appraisers each to appraise properties of different classes or situated in different localities[;]” (3) publication notice of the sale “at least ten days before confirmation[;]” and (4) cancellation of the sale “if a bona fide offer is made, under conditions prescribed by the court, which guarantees at least a 10 per centum increase over the price offered in the private sale.”⁴⁸ Here, the Receiver has complied with each of these factors, to the extent that they exist.

Specifically, factor (1) is met in this case inasmuch as the purchase price for each of the Autumn Ridge Properties exceeds the average appraised value, and therefore far exceeds the 2/3 requirement. Factor (2) is met because the Court has reviewed and appointed each of the appraisers.⁴⁹ Factor (3) has been met as the Receiver will publish notice of the proposed sale immediately upon the Court's entry of an Order approving the method and form of such notice. Factor (4) also has been met, inasmuch as the Receiver understands that the sales as proposed herein will not be approved if he receives a higher and better offer for any one of the lots that is

⁴⁷ Receivership Order ¶ 39.

⁴⁸ 28 U.S.C. § 2001(b).

⁴⁹ Docket No. 121

in compliance with § 2001(b) as quoted above and the sale is conditioned on this factor.⁵⁰ In determining whether an offer is a higher and better offer within the meaning of § 2001(b), the Receiver, in his sole discretion, will consider the purchase price offered and whether the proposed purchaser agrees to the terms agreed to by the Builders outlined above.

CONCLUSION

For the foregoing reasons, the Receiver requests that the Court grant the Motion, thus authorizing the sale of the Autumn Ridge Properties pursuant to the Purchase Agreement free and clear of purported interests.

DATED this 6th day of February, 2013.

DORSEY & WHITNEY LLP

/s/ Tyson C. Horrocks
Peggy Hunt
Chris Martinez
Tyson C. Horrocks
Attorneys for Receiver

⁵⁰ Receiver Declaration ¶ 29.

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the above **RECEIVER'S MOTION SEEKING AUTHORIZATION TO SELL AUTUMN RIDGE PHASE I LOTS FREE AND CLEAR OF PURPORTED INTERESTS AND MEMORANDUM OF SUPPORT** was filed with the Court on this 6th day of February, 2013, and served via ECF on all parties who have requested notice in this case and was served via email on this 6th day of February, 2013 on the following:

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Furthermore, I certify that on this 6th day of February, 2013, the **RECEIVER'S MOTION SEEKING AUTHORIZATION TO SELL AUTUMN RIDGE PHASE I LOTS FREE AND CLEAR OF PURPORTED INTERESTS AND MEMORANDUM OF SUPPORT** was served on the following parties by U.S. Mail postage prepaid:

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