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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><b>RECEIVER’S MOTION SEEKING AUTHORIZATION TO SELL AUTUMN RIDGE LOT 3 FREE AND CLEAR OF PURPORTED INTERESTS SUBJECT TO HIGHER AND BETTER OFFERS AND MEMORANDUM IN SUPPORT</b></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 of record, hereby files this motion (the “Motion”), and respectfully requests that the Court authorize him to sell certain real property of the Receivership Estate, described more fully and defined in the Memorandum in Support as “Autumn Ridge Lot 3” subject to higher and better offers.

This Motion is supported by the Declaration of Receiver R. Wayne Klein (the “Receiver”

Declaration”), which has been filed concurrently herewith. A proposed Order is submitted herewith and attached hereto as Exhibit A.

## MEMORANDUM IN SUPPORT

### I.

#### FACTUAL BACKGROUND

1. On June 25, 2011, 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”).<sup>1</sup> Pursuant to the Receivership Order, the Receiver was appointed, and NNU, forty-one of its affiliated companies, including Homeland Holding Corporation (“Homeland”), one of NNU’s affiliates (the “Palmer Entities”) (collectively for purposes of this Motion, “NNU”), and all Palmer’s assets were placed in the Receiver’s control.<sup>2</sup>

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 . . . [.]”<sup>3</sup>
- “To take custody, control and possession of all Receivership Property and records . . . [.]”<sup>4</sup>
- “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[.]”<sup>5</sup>

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<sup>1</sup> Docket No. 9 (Receivership Order).

<sup>2</sup> See generally, *id.*

<sup>3</sup> *Id.* at ¶ 7(A).

<sup>4</sup> *Id.* at ¶ 7(B).

- “[T]o take immediate possession of all real property of the Receivership Defendants and the Palmer Entities . . . .”<sup>6</sup>
- “[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.”<sup>7</sup>
- “[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.”<sup>8</sup>
- “[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.”<sup>9</sup>

## II.

### **REAL PROPERTY TO BE SOLD**

#### **Autumn Ridge Lot 3**

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.<sup>10</sup>

4. Relevant to this Motion is one parcel of real property of the Receivership Estate with an address of 970 E Searle Lane, Eagle Mountain, Utah 84005 (“Autumn Ridge Lot 3”).

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<sup>5</sup> *Id.* at ¶ 7(D).

<sup>6</sup> *Id.* at ¶ 19.

<sup>7</sup> *Id.* at ¶ 37.

<sup>8</sup> *Id.* at ¶ 38.

<sup>9</sup> *Id.* at ¶ 39.

<sup>10</sup> Receiver Declaration ¶ 4.

Autumn Ridge Lot 3 is part of “Phase 1” of the Autumn Ridge Estates subdivision, located in Eagle Mountain, Utah (the “Autumn Ridge Properties”).<sup>11</sup>

5. Autumn Ridge Lot 3 is titled in the name of Homeland, which as discussed above, is one of the Palmer Entities subject to the Receivership Estate.<sup>12</sup>

6. On May 3, 2013, the Court entered an *Order Granting Receiver’s Motion Seeking Authorization to Sell Autumn Ridge Lots Free and Clear of Purported Interests*, approving the sale of seventeen lots in Phase 1 of the Autumn Ridge Properties,<sup>13</sup> but Autumn Ridge Lot 3 was not a part of that sale and remains property of the Receivership Estate.<sup>14</sup>

### **Marketing Autumn Ridge Lot 3**

7. On or about August 21, 2012, the Receiver caused all of Autumn Ridge Properties, including Autumn Ridge Lot 3 to be listed for sale through the Providence Realty Group (the “Realtor”).<sup>15</sup> A copy of the Listing Agreement with addenda is attached as Exhibit B to the Receiver Declaration.

8. To determine an offering price and comply with his duties, the Receiver obtained the opinion of his Realtor and three appraisals of all of the Autumn Ridge Properties in Phase 1, including Autumn Ridge Lot 3, by Court-appointed appraisers (see below).<sup>16</sup>

9. The Receiver marketed Autumn Ridge Lot 3 for sale through his Realtor,

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<sup>11</sup> *Id.* at ¶ 5.

<sup>12</sup> *Id.* ¶ 6 & Exh. A (Title Report).

<sup>13</sup> Docket No. 293.

<sup>14</sup> Receiver Declaration ¶ 7 & Order [Docket No. 293].

<sup>15</sup> *Id.* ¶ 9.

<sup>16</sup> *Id.* ¶ 10.

including by listing the property on the Multiple Listing Service.<sup>17</sup>

**Court-Appointed Appraisers**

10. 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 60 and (b) Autumn Ridge Phase II.*<sup>18</sup>

11. Consequently, Brent T. Clark and Stan C. Craft of Free & Associates (“Free”), Steven Nielsen at Nielsen and Company (“Nielsen”), and J. Allan Payne at Payne Appraisals (“Payne”) were appointed as appraisers for the Autumn Ridge Properties, including Autumn Ridge Lot 3,<sup>19</sup> and each provided the Receiver with an appraisal of the Autumn Ridge Properties, including Autumn Ridge Lot 3, being referred to herein respectively as the “Free Appraisal,” the “Nielsen Appraisal,” and the “Payne Appraisal” (collectively, the “Appraisals”).<sup>20</sup> True and correct copies of the portions of the Appraisals relevant to Autumn Ridge Lot 3 are attached to the Receiver Declaration as Exhibit C (Free Appraisal), Exhibit D (Nielsen Appraisal) and Exhibit E (Payne Appraisal).

12. Free appraised Autumn Ridge Lot 3 for a market value of \$35,200.00;<sup>21</sup> Nielsen appraised Autumn Ridge Lot 3 for a market value of \$34,500.00;<sup>22</sup> Payne appraised Autumn Ridge Lot 3 for a market value of \$33,000.00.<sup>23</sup> Based on the values stated in the Appraisals, the

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<sup>17</sup> *Id.* ¶ 11.

<sup>18</sup> Docket No. 121.

<sup>19</sup> *Id.* p. 1-2.

<sup>20</sup> Receiver Declaration, ¶ 12.

<sup>21</sup> *Id.* Exh. C (Free Appraisal, p. 48).

<sup>22</sup> *Id.* Exh. D (Nielsen Appraisal, p. 36).

<sup>23</sup> *Id.* Exh. E (Payne Appraisal, p. 45).

the average appraised value of Autumn Ridge Lot 3 is \$34,233.33.<sup>24</sup>

### **The Purchase Agreement**

13. On or about March 6, 2014, the Receiver entered into a purchase agreement (the “Purchase Agreement”) on behalf of the Receivership Estate with Robert and Kathleen Mancebo (“Buyer”) agreeing to sell the Autumn Ridge Lot 3 to Buyer for a purchase price of \$39,900.00 subject to Court approval. A copy of the Purchase Agreement is attached to the Receiver Declaration as Exhibit F.<sup>25</sup>

14. If the Court approves the sale pursuant to the terms of the Purchase Agreement, the Receiver anticipates paying at the time of closing of the sale outstanding property taxes and the ordinary costs of sale, including market-rate closing costs and a standard 8.00% realtor commission.<sup>26</sup>

15. Any other financial interests against Autumn Ridge Lot 3, other than property taxes and the closing costs, will not be paid at the time of closing of the sale. Rather, any such interests (to the extent that they exist and without any waiver of the Receiver or the Receivership Estate’s rights and defenses related thereto) will survive the sale and will attach to the “Net Sale Proceeds,” defined as the gross sale proceeds minus costs paid at closing described above.<sup>27</sup>

16. The Receiver will separately account for the Net Sale Proceeds pending resolution of any disputes related to interests that may exist against Autumn Ridge Lot 3.<sup>28</sup>

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<sup>24</sup> Receiver Declaration, ¶ 12.

<sup>25</sup> *Id.* at ¶ 12, Exh. F (Purchase Agreement).

<sup>26</sup> *Id.* at ¶ 13.

<sup>27</sup> *Id.* at ¶ 14.

<sup>28</sup> *Id.* at ¶ 15.

**Free and Clear Sale**

17. The Receiver proposes to sell Autumn Ridge Lot 3 free and clear of all interests therein, with any interests that may exist attaching to the Net Sale Proceeds. In so doing, the Receiver is not in any way waiving any rights, claims, interests or defenses to any claims or interests made against Autumn Ridge Lot 3 or to the Net Sale Proceeds.<sup>29</sup>

18. To determine interests, if any against Autumn Ridge Lot 3, the Receiver obtained the Title Report attached as Exhibit A to the Receiver Declaration.<sup>30</sup>

19. From the Title Report, the Receiver has identified 24 persons/entities holding purported interests, in the form of Assignments of Beneficial Interests (the "ABI Holders") against Autumn Ridge Lot 3. Eight of these ABI Holders have delivered releases to the Receiver, which will be filed with the county recorder at the time of closing of this property and another two ABIs were assigned to National Note before creation of the Receivership, which the Receiver will release and file with the county recorder at the time of closing of this property. This leaves 14 purported interests against the Autumn Ridge Properties. Other ABI Holders voluntarily released 15 of their purported interests against the Autumn Ridge Properties previously, along with the holders of two construction liens.<sup>31</sup>

20. Property taxes on Autumn Ridge Lot 3 from 2008 through the present have not been paid and will be paid as part of closing.<sup>32</sup>

21. To facilitate the proposed sale of Autumn Ridge Lot 3, the Receiver proposes allowing any interests in Autumn Ridge Lot 3, including the identified and remaining interests

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<sup>29</sup> *Id.* at ¶ 16.

<sup>30</sup> *Id.* at ¶ 6, Exh. A.

<sup>31</sup> *Id.* at ¶ 17, Exh. A.

<sup>32</sup> *Id.* Exh. A (Title Report, p. 5).

asserted by the ABI Holders and other lien holders, to attach to the Net Sale Proceeds while the validity of such interests is litigated. In so doing, the Receiver is in no way waiving any rights, claims, interests or defenses to any claims or interests made against Autumn Ridge Lot 3 or to the Net Sale Proceeds.<sup>33</sup>

22. A copy of this Motion is being served on the relevant taxing authorities, and each of the ABI Holders who have not executed releases of any recorded interests.

### **Best Interests**

23. The sale of Autumn Ridge Lot 3 as proposed is beneficial for and in the best interests of the Receivership Estate.<sup>34</sup>

24. The proposed sale will result in cash based on the fair market value of Autumn Ridge Lot 3. As noted, the average appraised value of Autumn Ridge Lot 3 is \$34,233.33. Thus, the purchase price of \$39,900.00 is over 116% of the average appraised value of Autumn Ridge Lot 3, and is greater than any of the values of the property set forth in the Appraisals of the Court-approved appraisers.<sup>35</sup>

25. Sale of Autumn Ridge Lot 3 at this time will also slightly reduce the burden to the Receivership Estate by reducing the time spent by the Receiver in managing the property and, more importantly, will maximize the value of Autumn Ridge Lot 3 by ending tax and maintenance obligations associated with the property.<sup>36</sup>

26. The sale to Buyer proposed herein is subject to higher and better offers, after

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<sup>33</sup> *Id.* at ¶ 18.

<sup>34</sup> *Id.* at ¶ 19.

<sup>35</sup> *Id.* at ¶ 20.

<sup>36</sup> *Id.* at ¶ 21.



publication notice as provided for below.<sup>37</sup>

### **Publication Notice**

27. Contemporaneously herewith the Receiver is filing his *Ex Parte Motion for Order Approving Method and Form of Publication Notice of Sale of Real Property (Autumn Ridge Lot 3)* (the "Publication Motion"), seeking the Court's approval of the method and form of proposed publication notice as required under 28 U.S.C. § 2001(b).

28. 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 and distributed to Eagle Mountain, Utah, using the method and form of notice approved by the Court.<sup>38</sup>

29. In the event that the Receiver receives and accepts a higher and better offer, he proposes that this Motion and any Order authorizing this proposed sale be deemed to apply to the higher and better offeror without further notice or hearing inasmuch as the sale will be appropriate for the reasons set forth below. In such event, the Receiver will file a notice of sale disclosing the sale to the higher and better offeror.

### **III.**

### **ARGUMENT**

Based on the facts above, the Receiver respectfully requests authorization to sell Autumn Ridge Lot 3 pursuant to the terms of the Purchase Agreement 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. Sale of Autumn Ridge Lot 3

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<sup>37</sup> *Id.* at ¶ 22.

<sup>38</sup> *Id.* at ¶ 23.

as proposed is within the scope of the Receiver's authority under the Receivership Order as quoted above and 28 U.S.C. § 2001(b), it is in the best interests of the Receivership Estate, and the sale serves the purposes of the receivership by providing a "realization of the true and proper value" of Autumn Ridge Lot 3.<sup>39</sup>

**Sale of Autumn Ridge Lot 3 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. 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."<sup>40</sup> Sale of Autumn Ridge Lot 3 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 the fair market value of Autumn Ridge Lot 3. Autumn Ridge Lot 3 was appraised by three separate Court-appointed appraisers. These appraisers each independently appraised the property, with the highest appraised value being \$35,200.00 and the average appraised value being \$34,233.33.<sup>41</sup> These appraisals have taken into consideration current market conditions, sales of comparable properties, and the particular nature of Autumn Ridge Lot 3. Autumn Ridge Lot 3 will be sold for \$39,900.00 which is greater than the highest appraised value, and just over 116% of the

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<sup>39</sup> Receivership Order ¶ 38.

<sup>40</sup> *Id.*

<sup>41</sup> Receiver Declaration ¶ 11 & Exh. C - E (Appraisals).

average appraised value.<sup>42</sup>

*Second*, the sale of Autumn Ridge Lot 3 at this time as proposed will reduce, albeit slightly, the burden on the Receivership Estate and maximize the value of the property.<sup>43</sup> The Receiver will no longer have to spend time managing the property, and the Receivership Estate will no longer have obligations related to paying taxes on and other maintenance and upkeep expenses related to the property. Accordingly, the Receiver requests that the Court approve this sale under the terms outlined herein.

**Request To Sell Autumn Ridge Lot 3 Free and Clear of Interests**

As discussed above, the Receiver proposes to sell Autumn Ridge Lot 3 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.

Each of the still-existing ABI Holders and others claiming an interest against Autumn Ridge Lot 3 will be served with the Motion. Failure to object to these terms will mean that the ABI Holders, as purported holders of an interest in Autumn Ridge Lot 3, consent to the relief sought herein, and may only look to the Net Sale Proceeds for any claim that he/she may eventually be held to have. This will allow for the proposed sale to close, and preserve the status quo as to any disputes as to any claimed interests Autumn Ridge Lot 3.

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<sup>42</sup> *Id.* at ¶ 20.

<sup>43</sup> *Id.* at ¶ 21.

**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.<sup>44</sup> 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.”<sup>45</sup> Here, the Receiver has complied with each of these factors.

Specifically, factor (1) is met in this case inasmuch as the purchase price for Autumn Ridge Lot 3 is over 116% of the average appraised value, and therefore far exceeds the 2/3 requirement.

Factor (2) is met because the Receiver has obtained the Appraisals of Autumn Ridge Lot 3 from three experienced, third party appraisers, who were appointed by this Court.

Factor (3) will be 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 as requested in the Publication Motion filed concurrently herewith.

30. Factor (4) also has been met, inasmuch as the Receiver understands that the sale will not be approved if he receives a higher and better offer that is in compliance with § 2001(b)

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<sup>44</sup> Receivership Order ¶ 39.

<sup>45</sup> 28 U.S.C. § 2001(b).

as quoted above and the sale is conditioned on this factor.<sup>46</sup> In the event that the Receiver receives and accepts a higher and better offer, he proposes that this Motion and any Order authorizing this proposed sale be deemed to apply to the higher and better offeror without further notice or hearing inasmuch as the sale will be appropriate for the reasons set forth below. In such event, the Receiver will file a notice of sale disclosing the sale to the higher and better offeror.

**CONCLUSION**

For the foregoing reasons, the Receiver requests that the Court grant the Motion, thus authorizing the sale of Autumn Ridge Lot 3 pursuant to the Purchase Agreement or to a higher and better offeror free and clear of purported interests.

DATED this 26th day of March, 2014.

**DORSEY & WHITNEY LLP**

*/s/ Peggy Hunt* \_\_\_\_\_

Peggy Hunt

Chris Martinez

Jeffrey M. Armington

*Attorneys for Receiver*

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<sup>46</sup> Receiver Declaration ¶ 22.

**CERTIFICATE OF SERVICE**

IT IS HEREBY CERTIFIED that service of the above **RECEIVER'S MOTION SEEKING AUTHORIZATION TO SELL AUTUMN RIDGE LOT 3 FREE AND CLEAR OF PURPORTED INTERESTS SUBJECT TO HIGHER AND BETTER OFFERS AND MEMORANDUM IN SUPPORT** was filed with the Court on this 26th day of March, 2014, and served via ECF on all parties who have requested notice in this case:

\_\_\_\_\_/s/ Candy Long\_\_\_\_\_

Furthermore, I certify that on the 26th day of March, 2014, the **RECEIVER'S MOTION SEEKING AUTHORIZATION TO SELL AUTUMN RIDGE LOT 3 FREE AND CLEAR OF PURPORTED INTERESTS SUBJECT TO HIGHER AND BETTER OFFERS AND MEMORANDUM IN SUPPORT** was served on the following parties by U.S. Mail postage prepaid:

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