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*Attorneys for Court-Appointed Receiver R. Wayne Klein*

**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 16 &amp; 39 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 Lots 16 & 39” 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>

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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).

- “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>
- “[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 Lots 16 & 39**

3. Since his appointment, the Receiver has identified numerous real properties as

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<sup>4</sup> *Id.* at ¶ 7(B).

<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.

being part of the Receivership Estate, and where appropriate has listed such property for sale.<sup>10</sup>

4. Relevant to this Motion are two parcels of real property of the Receivership Estate with the addresses of 1148 E. Searle Lane, Eagle Mountain, Utah 84005 (“Autumn Ridge Lot 16”) and 1067 E. Searle Lane, Eagle Mountain, Utah 84005 (“Autumn Ridge Lot 39”). Autumn Ridge Lots 16 & 39 are 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 Lots 16 & 39 are 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 Lots 16 & 39 were not a part of that sale and remain property of the Receivership Estate.<sup>14</sup>

#### **Marketing Autumn Ridge Lots 16 & 39**

7. On or about August 21, 2012, the Receiver caused all of Autumn Ridge Properties, including Autumn Ridge Lots 16 & 39 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.

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

<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.* ¶ 8.

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 Lots 16 & 39, by Court-appointed appraisers (see below).<sup>16</sup>

9. The Receiver marketed Autumn Ridge Lots 16 & 39 for sale through his Realtor, 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 Lots 16 & 39,<sup>19</sup> and each provided the Receiver with an appraisal of the Autumn Ridge Properties, including Autumn Ridge Lot 16 & 39, 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 Lots 16 & 39 are attached to the Receiver Declaration as Exhibit C (Free Appraisal),

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<sup>16</sup> *Id.* ¶ 9.

<sup>17</sup> *Id.* ¶ 10.

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

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

<sup>20</sup> Receiver Declaration, ¶ 11.

Exhibit D (Nielsen Appraisal) and Exhibit E (Payne Appraisal).

12. Free appraised Autumn Ridge Lot 16 for a market value of \$34,800.00;<sup>21</sup> Nielsen appraised Autumn Ridge Lot 16 for a market value of \$34,500.00;<sup>22</sup> and Payne appraised Autumn Ridge Lot 16 for a market value of \$30,000.00.<sup>23</sup> Based on these values stated in the Appraisals, the average appraised value of Autumn Ridge Lot 16 is \$33,100.00.<sup>24</sup>

13. Free appraised Autumn Ridge Lot 39 for a market value of \$35,700.00;<sup>25</sup> Nielsen appraised Autumn Ridge Lot 39 for a market value of \$35,500.00;<sup>26</sup> and Payne appraised Autumn Ridge Lot 39 for a market value of \$30,000.00.<sup>27</sup> Based on the values stated in the Appraisals, the average appraised value of Autumn Ridge Lot 3 is \$33,733.33.<sup>28</sup>

#### **The Purchase Agreement**

14. On or about June 2, 2014, the Receiver entered into a purchase agreement (the “Purchase Agreement”) on behalf of the Receivership Estate with Sunstone (“Buyer”) agreeing to sell the Autumn Ridge Lots 16 & 39 to Buyer for a combined purchase price of \$79,800.00 subject to Court approval. A copy of the Purchase Agreement is attached to the Receiver

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<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).

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

<sup>25</sup> *Id.* Exh. C (Free Appraisal, p. 48).

<sup>26</sup> *Id.* Exh. D (Nielsen Appraisal, p. 36).

<sup>27</sup> *Id.* Exh. E (Payne Appraisal, p. 46).

<sup>28</sup> Receiver Declaration, ¶ 11.

Declaration as Exhibit F.<sup>29</sup>

15. 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>30</sup>

16. Any other financial interests against Autumn Ridge Lots 16 & 39, 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>31</sup>

17. The Receiver will separately account for the Net Sale Proceeds pending resolution of any disputes related to interests that may exist against Autumn Ridge Lots 16 & 39.<sup>32</sup>

**Free and Clear Sale**

18. The Receiver proposes to sell Autumn Ridge Lots 16 & 39 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

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<sup>29</sup> *Id.* at ¶ 12, Exh. F (Purchase Agreement).

<sup>30</sup> *Id.* at ¶ 13.

<sup>31</sup> *Id.* at ¶ 14.

<sup>32</sup> *Id.* at ¶ 15.

claims or interests made against Autumn Ridge Lots 16 & 39 or to the Net Sale Proceeds.<sup>33</sup>

19. To determine interests, if any against Autumn Ridge Lots 16 & 39, the Receiver obtained the Title Report attached as Exhibit A to the Receiver Declaration.<sup>34</sup>

20. From the Title Report, the Receiver has identified ten persons/entities holding purported interests, in the form of Assignments of Beneficial Interests (the “ABI Holders”) against Autumn Ridge Lots 16 & 39. The Receiver currently has suits against all of the ABI Holders. As one of the ABI Holders holds two interests, this leaves 11 purported interests against the Autumn Ridge Properties.<sup>35</sup>

21. Property taxes on Autumn Ridge Lots 16 & 39 from 2014 are now a lien that is not yet due.<sup>36</sup>

22. To facilitate the proposed sale of Autumn Ridge Lots 16 & 39, the Receiver proposes allowing any interests in Autumn Ridge Lots 16 & 39, including the identified and remaining interests 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 Lots 16 & 39 or to the Net Sale Proceeds.<sup>37</sup>

23. 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.

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<sup>33</sup> *Id.* at ¶ 16.

<sup>34</sup> *Id.* at ¶ 6, Exh. A.

<sup>35</sup> *Id.* Exh. A (Title Report p. 7-9).

<sup>36</sup> *Id.* Exh. A (Title Report, p. 5).

<sup>37</sup> *Id.* at ¶ 18.



**Best Interests**

24. The sale of Autumn Ridge Lots 16 & 39 as proposed is beneficial for and in the best interests of the Receivership Estate.<sup>38</sup>

25. The proposed sale will result in cash based on the fair market value of Autumn Ridge Lots 16 & 39. As noted, the average appraised value of Autumn Ridge Lot 16 is \$33,100.00, the average appraised value of Autumn Ridge Lot 39 is \$33,733.33, and the combined average appraised value of Autumn Ridge Lots 16 & 39 is \$66,833.33. Thus, the combined purchase price of \$79,800.00 is over 119% of the combined average appraised value of Autumn Ridge Lots 16 & 39, and is greater than any of the values of the property set forth in the Appraisals of the Court-approved appraisers.<sup>39</sup>

26. Sale of Autumn Ridge Lots 16 & 39 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 Lots 16 & 39 by ending tax and maintenance obligations associated with the property.<sup>40</sup>

27. The sale to Buyer proposed herein is subject to higher and better offers, after publication notice as provided for below.<sup>41</sup>

**Publication Notice**

28. Contemporaneously herewith the Receiver is filing his *Ex Parte Motion for Order*

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<sup>38</sup> *Id.* at ¶ 19.

<sup>39</sup> *Id.* at ¶ 20.

<sup>40</sup> *Id.* at ¶ 21.

<sup>41</sup> *Id.* at ¶ 22.

*Approving Method and Form of Publication Notice of Sale of Real Property (Autumn Ridge Lots 16 & 39)* (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).<sup>42</sup>

29. 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>43</sup>

30. 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 Lots 16 & 39 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 Lots 16 & 39 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

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<sup>42</sup> *Id.* at ¶ 23.

<sup>43</sup> *Id.* at ¶ 24.

Receivership Estate, and the sale serves the purposes of the receivership by providing a “realization of the true and proper value” of Autumn Ridge Lots 16 & 39.<sup>44</sup>

**Sale of Autumn Ridge Lots 16 & 39 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>45</sup> Sale of Autumn Ridge Lots 16 & 39 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 Lots 16 & 39. Autumn Ridge Lots 16 & 39 were appraised by three separate Court-appointed appraisers. These appraisers each independently appraised the properties, with the highest combined appraised value being \$70,500.00 and the average combined appraised value being \$66,833.33.<sup>46</sup> These appraisals have taken into consideration current market conditions, sales of comparable properties, and the particular nature of Autumn Ridge Lots 16 & 39. Autumn Ridge Lots 16 & 39 will be sold for \$79,800.00 which is greater than the highest appraised value, and over 119% of the average appraised value.<sup>47</sup>

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<sup>44</sup> Receivership Order ¶ 38.

<sup>45</sup> *Id.*

<sup>46</sup> Receiver Declaration ¶ 11 & Exh. C - E (Appraisals).

<sup>47</sup> *Id.* at ¶ 20.

*Second*, the sale of Autumn Ridge Lots 16 & 39 at this time as proposed will reduce, albeit slightly, the burden on the Receivership Estate and maximize the value of the property.<sup>48</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 Lots 16 & 39 Free and Clear of Interests**

As discussed above, the Receiver proposes to sell Autumn Ridge Lots 16 & 39 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 Lots 16 & 39 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 Lots 16 & 39, 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 Lots 16 & 39.

**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>49</sup> Subsection (b) of § 2001 permits, with Court approval, a

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<sup>48</sup> *Id.* at ¶ 21.

<sup>49</sup> Receivership Order ¶ 39.

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>50</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 Lots 16 & 39 is over 119% 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 Lots 16 & 39 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.

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) as quoted above and the sale is conditioned on this factor.<sup>51</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

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<sup>50</sup> 28 U.S.C. § 2001(b).

<sup>51</sup> Receiver Declaration ¶ 22.

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 Lots 16 & 39 pursuant to the Purchase Agreement or to a higher and better offeror free and clear of purported interests.

DATED this 11th day of June, 2014.

**DORSEY & WHITNEY LLP**

*/s/ Peggy Hunt*

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Peggy Hunt

Chris Martinez

Sarah Goldberg

*Attorneys for Receiver*

**CERTIFICATE OF SERVICE**

IT IS HEREBY CERTIFIED that service of the above **RECEIVER'S MOTION SEEKING AUTHORIZATION TO SELL AUTUMN RIDGE LOTS 16 & 39 FREE AND CLEAR OF PURPORTED INTERESTS SUBJECT TO HIGHER AND BETTER OFFERS AND MEMORANDUM IN SUPPORT** was filed with the Court on this 11th day of June, 2014, and served via ECF on all parties who have requested notice in this case:

\_\_\_\_\_/s/ Sarah Goldberg\_\_\_\_\_

Furthermore, I certify that on the 11th day of June, 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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/s/ Sarah Goldberg