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Counsel for Highland Capital Management, L.P.

## IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

HIGHLAND CAPITAL MANAGEMENT, L.P.,	§ §	
Plaintiff,	§ 8	
vs.	ş Ş	Adv. Proc. No. 21-03003-sgj
JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST,	§ § §	Case No. 3:21-cv-01010-E
Defendants.	§ § 8	



HIGHLAND CAPITAL MANAGEMENT, L.P.,	§ §
Plaintiff,	<pre> § § Adv. Proc. No. 21-3004-sgj § </pre>
vs.	§ 8
HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.,	<pre>§ Case No. 3:21-cv-00881-X § § § § § § §</pre>
Defendant.	\$ \$ \$ \$
HIGHLAND CAPITAL MANAGEMENT, L.P.,	\$ \$
Plaintiff,	§ § Adv. Proc. No. 21-3005-sgj
vs.	§ §
NEXPOINT ADVISORS, L.P., JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST,	<pre>§ Case No. 3:21-cv-01378-N § §</pre>
Defendants.	§
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§ §
Plaintiff,	§ Adv. Proc. No. 21-3006-sgj
VS.	§ §
HIGHLAND CAPITAL MANAGEMENT SERVICES, INC., JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST,	<pre></pre>
Defendants.	

HIGHLAND CAPITAL MANAGEMENT, L.P.,	ş ş	
Plaintiff,	§ § §	Adv. Proc. No. 21-3007-sgj
VS.	§	
	§	Case No. 3:21-cv-01379-X
HCRE PARTNERS, LLC (n/k/a NexPoint	§	
Real Estate Partners, LLC), JAMES	§	
DONDERO, NANCY DONDERO, AND	§	
THE DUGABOY INVESTMENT TRUST,	§	
	8	
	8	
Defendants.	ş	

# HIGHLAND CAPITAL MANAGEMENT, L.P.'S MOTION TO CONSOLIDATE NOTES ACTIONS

Highland Capital Management, L.P., the reorganized debtor ("<u>Highland</u>" or "<u>Plaintiff</u>"), hereby files this *Motion to Consolidate Notes Actions* (the "<u>Motion</u>") requesting that this Court consolidate the five (5) above-captioned cases (collectively, the "<u>Adversary Proceedings</u>" or the "<u>Notes Actions</u>") under Case No. 3:21-cv-1010, the first-docketed Adversary Proceeding. In support of its Motion, Plaintiff states as follows:

# JURISDICTION AND VENUE

1. This Court has jurisdiction over the Motion pursuant to section 1331 and 1367 of title 11 of the United States Code (the "Bankruptcy Code").

2. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1409.

# **RELIEF REQUESTED**

3. Plaintiff requests that this Court issue the proposed form of order attached as **Exhibit A** (the "<u>Proposed Order</u>") hereto.

4. For the reasons set forth more fully in *Highland Capital Management, L.P.'s* Memorandum of Law in Support of Motion to Consolidate Notes Actions (the "Memorandum of

#### Case 3:21-cv-01010-E Document 10 Filed 12/07/21 Page 4 of 6 PageID 237

<u>Law</u>") filed contemporaneously with this Motion, Plaintiff requests that the Court: (a) consolidate the Notes Actions under Case No. 3:21-1010 and (b) grant Plaintiff such other and further relief as the Court deems just and proper under the circumstances.

5. In accordance with Rule 7.1 of the Local Civil Rules of the United States District Court for the Northern District of Texas (the "Local Rules"), contemporaneously herewith and in support of this Motion, Plaintiff is filing: (a) its Memorandum of Law, and (b) the Appendix in Support of Highland Capital Management L.P.'s Motion to Consolidate Notes Actions (the "Appendix") together with the exhibits annexed thereto.

6. Based on the exhibits annexed to the Appendix, and the arguments contained in the Memorandum of Law, Plaintiff is entitled to the relief requested herein as set forth in the Proposed Order.

7. Notice of this Motion has been provided to all parties. Plaintiff submits that no other or further notice need be provided.

WHEREFORE, Plaintiff respectfully requests that the Court (i) enter the Proposed Order substantially in the formed annexed hereto as **Exhibit A** granting the relief requested herein, and (ii) grant Plaintiff such other and further relief as the Court may deem proper.

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Dated: December 7, 2021

## PACHULSKI STANG ZIEHL & JONES LLP

Jeffrey N. Pomerantz (CA Bar No. 143717) John A. Morris (NY Bar No. 266326) Gregory V. Demo (NY Bar No. 5371992) Hayley R. Winograd (NY Bar No. 5612569) 10100 Santa Monica Blvd., 13th Floor Los Angeles, CA 90067 Telephone: (310) 277-6910 Facsimile: (310) 201-0760 Email: jpomerantz@pszjlaw.com jmorris@pszjlaw.com gdemo@pszjlaw.com

-and-

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/s/ Zachery Z. Annable Melissa S. Hayward Texas Bar No. 24044908 MHayward@HaywardFirm.com Zachery Z. Annable Texas Bar No. 24053075 ZAnnable@HaywardFirm.com 10501 N. Central Expy, Ste. 106 Dallas, Texas 75231 Tel: (972) 755-7100 Fax: (972) 755-7110

Counsel for Highland Capital Management, L.P.

## **CERTIFICATE OF CONFERENCE**

The undersigned hereby certifies that, between December 2 and December 7, 2021, counsel for Highland communicated with counsel for the Defendants in the Notes Actions regarding the relief requested in the foregoing Motion. The parties were unable to reach an agreement on the relief requested in the foregoing Motion; accordingly, the Motion is opposed.

<u>/s/ Zachery Z. Annable</u> Zachery Z. Annable Case 3:21-cv-01010-E Document 10-1 Filed 12/07/21 Page 1 of 4 PageID 240

# EXHIBIT A

# IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

HIGHLAND CAPITAL MANAGEMENT, L.P.,	§ 0
Plaintiff,	<pre>§ Adv. Proc. No. 21-03003-sgj</pre>
vs.	<pre>§ Case No. 3:21-cv-01010-E</pre>
JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST,	\$ \$ \$ \$
Defendants.	\$ \$ \$
HIGHLAND CAPITAL MANAGEMENT, L.P.,	\$ \$
Plaintiff,	§ Adv. Proc. No. 21-3004-sgj
riamuni,	<pre>§ § Case No. 3:21-cv-00881-X</pre>
VS.	
HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.,	\$ \$ \$ \$ \$
Defendant.	8 § §
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§
Plaintiff,	§ Adv. Proc. No. 21-3005-sgj §
Themeni,	
vs.	<pre>§ Case No. 3:21-cv-01378-N § §</pre>
NEXPOINT ADVISORS, L.P., JAMES	\$ \$
DONDERO, NANCY DONDERO, AND	§
THE DUGABOY INVESTMENT	§ °
TRUST,	\$ \$ \$
Defendants.	s §

HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	Adv. Proc. No. 21-3006-sgj
Plaintiff,	§	
	§	Case No. 3:21-cv-01378-N
VS.	§	
	§	
HIGHLAND CAPITAL MANAGEMENT	§	
SERVICES, INC., JAMES DONDERO,	Ş	
NANCY DONDERO, AND THE	§	
DUGABOY INVESTMENT TRUST,	§	
,	§	
Defendants.	Ş	
	ş	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	8	
, , ,	ş	Adv. Proc. No. 21-3007-sgj
Plaintiff,	ş	
vs.	ş	Case No. 3:21-cv-01379-X
	ş	
HCRE PARTNERS, LLC (n/k/a NexPoint	8	
Real Estate Partners, LLC), JAMES	ş	
DONDERO, NANCY DONDERO, AND	ş	
THE DUGABOY INVESTMENT		
TRUST,	§ §	
	ş	
Defendants.	3	

## ORDER GRANTING MOTION TO CONSOLIDATE NOTES ACTIONS

Before the Court is *Highland Capital Management L.P.'s Motion to Consolidate Notes Actions* [Docket No. \_] (the "<u>Motion</u>").<sup>1</sup> Having considered: (a) the Motion; (b) *Highland Capital Management, L.P.'s Memorandum of Law in Support of Motion to Consolidate Notes Actions* [Docket No. \_] (the "<u>Memorandum of Law</u>"); and (c) the *Appendix in Support of Highland Capital Management's Motion to Consolidate Notes Actions* [Docket No. \_] (the "<u>Appendix</u>") and the exhibits annexed thereto; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1331; and this Court having found that venue of this proceeding and the

<sup>&</sup>lt;sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Memorandum of Law.

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Motion in this District is proper pursuant to 28 U.S.C. §§ 1391; and this Court having found that consolidation of the Notes Actions is warranted under Rule 42(a) of the Federal Rules of Civil Procedure because: (i) the Notes Actions involve common questions of law and fact; (ii) the Notes Actions involve common parties; (iii) the Notes Actions are pending before the same court; (iv) there is no meaningful risk of prejudice to Defendants arising from consolidation, and any such risk is far outweighed by the risk of inconsistent rulings in five separate proceedings; and (v) consolidation will conserve judicial resources and would prevent unnecessary costs and delays that would result from having the Notes Actions determined in five separate proceedings; and this Court having found that Highland's notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and that no other notice need be provided; and this Court having determined that the legal and factual bases set forth in the Motion establish good cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor and for the reasons set forth in the record on this Motion, it is **HEREBY ORDERED THAT**:

- 1. The Motion is **GRANTED** as set forth herein.
- 2. The Notes Actions are consolidated under this Court, Case No. 3:21-cv-1010.

**It is so ordered** this \_\_\_\_\_\_ day of \_\_\_\_\_\_, 202\_.

The Honorable Ada Brown United States District Judge