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

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

NATIONAL NOTE OF UTAH, LC, a Utah
Limited Liability Company and WAYNE
LaMAR PALMER, and individual,

Defendants.

**DECLARATION OF RECEIVER R.
WAYNE KLEIN IN SUPPORT OF
RECEIVER'S MOTION AND
MEMORANDUM IN SUPPORT
REQUESTING ORDER APPROVING
(1) PUBLIC SALE OF PROPERTY
FREE AND CLEAR OF INTERESTS,
(2) METHOD AND FORM OF
PUBLICATION NOTICE, AND (3)
PUBLIC AUCTION PROCEDURES**

**(BYRON WEST INDUSTRIAL PARK
LOT 5 BLOCK 1)**

2:12-cv-00591 BSJ

The Honorable Bruce S. Jenkins

I, R. Wayne Klein, being of lawful age, declare, certify, verify and state as follows:

1. I am the Court-Appointed Receiver (the "Receiver") in the above-captioned case pursuant to the *Order Appointing Receiver and Staying Litigation* entered on June 25, 2012

[Docket No. 9] (the “Receivership Order”).

2. I submit this Declaration in support of the *Receiver’s Motion and Memorandum in Support Requesting Order Approving (1) Public Sale of Property Free and Clear of Interests, (2) Method and Form of Publication Notice, and (3) Public Auction Procedures (Byron West Industrial Park Lot 5 Block 1)* (the “Motion”).

3. Since my appointment, I have engaged in an investigation of the assets and obligations of the Receivership Estate, and I make all of the following statements based on my personal knowledge.

The Property

4. Since my appointment, I have identified numerous real properties as being part of the Receivership Estate, and where appropriate have listed such properties for sale.

5. Relevant to the present Motion is real property located at 1419 Voll Dr. NW Byron, Minnesota 55920 (the “Property”). The Property is part of a 14-lot industrial park in Byron, Minnesota (the “Byron West Industrial Park”).

Value and Marketing of the Property

6. I obtained an appraisal of the Property on or about June 4, 2014 from Charles P. Blekre of Blekre Appraisal Services, LLC, relevant excerpts of which are attached hereto as **Exhibit A**. I obtained a second appraisal from Lance Thorkelson of Thorkelson Service, Inc. on or about August 15, 2014, relevant excerpts of which are attached hereto as **Exhibit B**. After holding a hearing on motions to sell two separate lots in the Byron West Industrial Park on November 24, 2014, the Court instructed me to obtain a third appraisal. Pursuant to the Court’s request, I obtained a third appraisal from Michael F. Amundson of Integra Realty Resources on or

about December 26, 2014, relevant excerpts of which are attached hereto as **Exhibit C**.

7. On or about October 6, 2014, I caused the Property to be listed for sale through Braasch Commercial Real Estate (the "**Listing Agent**") for \$305,117.00. A copy of the Listing Agreement is attached hereto as **Exhibit D**.

8. The Property has been marketed through the multiple listing service and has been actively marketed by the realtor and myself.

The Proposed Purchase Agreement and Stalking Horse Bid at Auction

9. I have received an offer to purchase the Property pursuant to the terms of the "**Purchase Agreement**" attached hereto as **Exhibit E**, which is bid in the amount of \$235,000.00, with a \$5,000.00 deposit, subject to higher and better offers.

10. To facilitate the purchase and as a condition of the Purchase Agreement, the City of Byron has agreed to waive approximately \$50,000.00 in accrued assessments on the Property. The final waiver amount might be higher if necessary to account for property taxes that became due in November 2014 and interest that has continued to accrue. Byron City has indicated to me its willingness to grant waivers sufficient to allow this sale to proceed in a manner that will provide approximately \$10,000.00 in net sales proceeds to the Receivership.

11. The Purchase Agreement has been negotiated by me with the prospective purchaser and the City of Byron in good faith and at arms' length.

12. I propose to use this offer as a stalking horse bid at the public auction described below (the "**Stalking Horse Bid**").

Sale Costs and Net Sale Proceeds

13. I anticipate paying the ordinary costs of the sale, including market-rate closing costs

and a standard 6% realtor commission at the time of closing of the sale of the Property. The realtor commission will be paid even if a higher and better offer is obtained at auction, inasmuch as the realtor brought the Stalking Horse Bid to me; however, the commission will be capped at the amount of the Stalking Horse Bid.

14. Six of the 14 lots in the Byron West Industrial Park are subject to a bond in the amount of \$571,046.73 (the "Bond"). The Bond assessments and property taxes tied to this property are approximately \$250,905.00. Other than the Bond assessments and property taxes, I do not know of any interests against the Property. To the extent they are asserted, however, any such interests (without any waiver of my rights and defenses related thereto) will survive the sale and will attach to the net sale proceeds, these being the sale proceeds, less the ordinary costs of sale (the "Net Sale Proceeds") and will be separately accounted for by me.

Free and Clear Sale

15. I propose to sell the Property free and clear of all interests therein, with any interests that may exist attaching to the Net Sale Proceeds, except for property taxes and bond assessments owed, which will be paid at closing. In so doing, I am in no way waiving any rights, claims, interests or defenses to any claims or interests made against the Property or to the Net Sale Proceeds.

16. To determine interests, if any against the Property, I obtained a preliminary title report (the "Title Report"), a copy of which is attached hereto as **Exhibit F**.

17. According to the Title Report, current 2014 property taxes, including penalties and interest are now due. Additionally, past-due taxes, including penalties and interest for the years 2009-2013 are due.

18. A copy of the Motion and this Receiver Declaration are being served on the relevant taxing authorities and the City of Byron.

Best Interests

19. I believe that the sale of Property as proposed is beneficial for and in the best interests of the Receivership Estate based on the appraised value of the Property and the amount of the Stalking Horse Bid, which was obtained through good faith and arms' length negotiations.

20. The Stalking Horse Bid is 84.6% of the average appraised value of the Property. It is significantly greater than the Thorkelson appraised value and \$10,000.00 greater than the Amundson appraised value and the assessed value of the Property. Through the proposed auction, the purchase price cannot go lower and might increase.

21. Notice of the auction will be served on all persons who submitted offers to purchase the Property during my initial marketing of the Property, will be included in publication in newspapers in Salt Lake City, Utah and Byron, Minnesota, and will be posted on my website.

22. Upon completion of the sale and after the conclusion of the public auction discussed below, I will file with the Court a "Notice of Sale Results," stating the purchase price that was obtained at public auction and reporting on the Net Sale Proceeds of the sale. This Notice of Sale Results will be served on those parties asserting interests in the Property.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

DATED this 7th day of January, 2015.

A handwritten signature in blue ink that reads "Wayne Klein". The signature is written in a cursive style and is positioned above a solid horizontal line.

R. Wayne Klein, *Receiver*

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the above **DECLARATION OF RECEIVER R. WAYNE KLEIN IN SUPPORT OF RECEIVER'S MOTION AND MEMORANDUM IN SUPPORT REQUESTING ORDER APPROVING (1) PUBLIC SALE OF PROPERTY FREE AND CLEAR OF INTERESTS, (2) METHOD AND FORM OF PUBLICATION NOTICE, AND (3) PUBLIC AUCTION PROCEDURES (BYRON WEST INDUSTRIAL PARK LOT 5 BLOCK 1)** was filed with the Court on this 7th day of January, 2015, and served via ECF on all parties who have requested notice in this case and was served via mail on this 7th day of January, 2015, on the following:

Wayne Palmer
8816 South 2240 West
West Jordan, UT 84088

Olmstead County Property Records
151 4th St. SE
Rochester, MN 55904

Mary Blair-Hoeft
City Administrator
P.O. Box 1137
680 Byron Main Court N.E.
Byron, MN 55920

/s/ Sarah Goldberg