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

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

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

Defendants.

**DECLARATION OF RECEIVER R.
WAYNE KLEIN IN SUPPORT OF
RECEIVER'S MOTION
REQUESTING ORDER APPROVING
SALE OF BYRON BLOCK 1 LOT 4
FREE AND CLEAR OF INTERESTS
AND MEMORANDUM IN SUPPORT**

Civil No. 2:12-00591

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 by the Court on June 25, 2012 [Docket No. 9] (the "Receivership Order").

2. I submit this Declaration in support of *Receiver's Motion Requesting Order Approving Sale Byron Block 1 Lot 4 Free and Clear of Interests and Memorandum in Support*

(the "Motion").¹

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

4. One of the Palmer Entities that is under my control pursuant to the Receivership Order is DPLM LLC ("DPLM").

REAL PROPERTY TO BE SOLD

Byron Block 1 Lot 4

5. 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.

6. Relevant to the Motion is a parcel of real property in Byron, Olmsted County, Minnesota, identified more particularly in ¶ 4 of the Motion (the "Property").

7. I obtained a Title Report for the Property, a copy of which is attached to hereto as **Exhibit A** (the "Title Report").

Valuation and Encumbrances

8. To determine an offering price and comply with my duties, I obtained the opinion of my Realtor and three appraisers.

9. On or about June 4, 2014, I obtained an appraisal for the Property (the "Blekre Appraisal") from Blekre Appraisal Services, LLC ("Blekre"). A true and correct copy of the

¹ All capitalized terms used herein but not defined shall have the meanings attributed to them in the Motion.

Blekre Appraisal is attached hereto as **Exhibit B**.

10. On or about September 19, 2014, I obtained an appraisal for the Property (the "Thorkelson Appraisal") from Thorkelson Services, Inc. ("Thorkelson").² A true and correct copy of the relevant portions of the Thorkelson Appraisal is attached hereto as **Exhibit C**.

11. Because Blekre and Thorkelson gave such divergent values for the Property, the Court instructed me to obtain a third appraisal on November 24, 2014. On or about December 19, 2014, I obtained an appraisal for the Property (the "Integra Appraisal") from Integra Realty Resources ("Integra").³ A true and correct copy of the Integra Appraisal is attached hereto as **Exhibit D**.

12. From the Title Report, I determined that the Property is encumbered by unpaid current and delinquent property taxes and assessments from 2009 through 2017 totaling over \$278,000.00 (the "Taxes and Assessments"), and no other interests or liens attach to the Property.

Marketing the Property

13. On or about October 6, 2014, I caused the Property to be listed for sale through Braasch Commercial Real Estate (the "Realtor"). A copy of the "Listing Agreement" is attached hereto as **Exhibit E**.

14. I marketed the Property for sale through the Realtor, including by listing the Property on the Multiple Listing Service.⁴

² *Id.* at ¶ 8

³ *Id.* at ¶ 8

⁴ *Id.* at ¶ 9.

The Purchase Agreement

15. On or about January 26, 2018, I entered into an agreement relating to the Property (the "Purchase Agreement") on behalf of the Receivership Estate with the City of Byron, Minnesota ("Byron City") and Dodge County Wind, LLC ("Dodge County Wind"). The Purchase Agreement is subject to Court approval. A true and correct copy of the Purchase Agreement is attached hereto as **Exhibit F**.

16. The Purchase Agreement was negotiated by me, Byron City, and Dodge County Wind in good faith and at arms' length.

Sale Costs and Net Sale Proceeds

17. From the \$10,000.00 gross sale proceeds the Receivership Estate will receive under the Purchase Agreement, I anticipate paying the Realtor a \$1,000 commission at the close of the sale. The gross sale proceeds less the realtor commission, totaling \$9,000.00, are referred to herein as the "Net Sale Proceeds."

18. Any other financial interests against the Property (to the extent they exist and without any waiver of my or the Receivership Estate's rights and defenses related thereto) will survive the sale and will attach to the Net Sale Proceeds.

19. To the extent that other liens or financial interests against the Property are discovered or asserted, I will separately account to the Court for the Net Sale Proceeds pending resolution of any disputes related to such other interests that may exist against the Property.

Free and Clear Sale

20. 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. In so doing, I am not in any way

waiving any rights, claims, interests, or defenses to any claims or interests made against the Property or the Net Sale Proceeds.

21. Any other financial interests against the Property, other than the realtor commission, will not be paid by me at the close of the sale. Rather, any such interests (to the extent they exist and without any waiver of my or the Receivership Estate's right and defenses related thereto) will survive the sale and will attach to the Net Sale Proceeds.

22. A copy of the Motion is being served on the relevant taxing authority.

Best Interests

23. I believe that the sale of the Property as proposed is beneficial for and in the best interests of the Receivership Estate.

24. In exchange for transferring the Property under the Purchase Agreement, the Receivership Estate will receive consideration worth at least \$288,520.00 plus closing costs and the amount of property taxes and assessments accruing after December 14, 2017 (the "Total Consideration"), comprised of: (a) \$10,000.00 cash; (b) waiver of all assessments on the property imposed by Byron City, valued at approximately \$138,000.00 (plus assessments that have accrued since December 14, 2017); (c) payment of all property taxes by Dodge County Wind, valued at approximately \$141,000.00 (plus property taxes that have accrued since December 14, 2017); and (d) payment of all closing costs by Dodge County Wind, valued at an estimated \$2,000.00.

25. The Total Consideration is over 150% of the average appraised value for the Property. This reflects the true situation of the Property, where the accrued taxes and assessments are greater than the market value of the Property.

26. The Purchase Agreement allows the Receivership Estate to net \$9,000.00 on the sale of the Property in spite of the fact that the Property value is under water.

27. The sale of the Property at this time will also reduce slightly the burden to the Receivership Estate by reducing time I have to spend managing and marketing the Property and, more importantly, will maximize the value of the Property by ending tax and maintenance obligations associated with it.

28. I understand that the sale proposed in the Motion will not be approved if I receive higher and better offers that are in compliance with 28 U.S.C. § 2001(b) and that the sale is conditioned on this factor.

Publication Notice

29. Contemporaneously with the Motion, I will file the *Ex Parte Motion Seeking Approval of Proposed Method and Form of Publication Notice for Sale of Real Property and Memorandum in Support (Byron Block 1 Lot 4)* (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).

30. Upon entry of an Order granting the Publication Motion, I will publish notice of the sale in newspapers in Salt Lake City, Utah, and Byron, Minnesota, using the method and form of notice approved by the Court.

31. In the event I receive and accept a qualifying higher and better offer, I propose 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 in the Motion.

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

DATED this 29th day of January, 2018.

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

R. Wayne Klein, Receiver

CERTIFICATE OF SERVICE

I hereby certify that on the January 29, 2018, a true and correct copy of the foregoing was filed with the Court and served via ECF on all parties who have requested notice in this case.

/s/ John J. Wiest

I hereby certify that on the January 29, 2018, a true and correct copy of the foregoing was served upon the persons named below, at the addresses set out below by U.S. mail:

Property Records and Licensing
Olmsted County Government Center
151 4th Street SE
Rochester, MN 55904

Boulevard Associates, LLC
Attn: Land Services
700 Universe Blvd.
Juno Beach, FL 33408

Boulevard Associates, LLC
Attn: Seth Sheitelman
700 Universe Blvd. (LAW/JB)
Juno Beach, FL 33408

Byron City Office
Attn: Mary Blair-Hoeft, City Administrator
680 Byron Main Court NE
Byron, MN 55920

/s/ Karen Bingham