

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WISCONSIN

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In Re The Matter:

In Bankruptcy No:

Northwestern Stone, LLC

10-19137

Debtor.

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**STIPULATION REGARDING EMPLOYMENT OF REAL ESTATE BROKER**

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WHEREAS the debtor has applied to the Court for an Order Approving the Employment of Konrad C. Opitz of Opitz Realty, Inc. for the purpose of listing for sale the debtor's Middleton Quarry, and

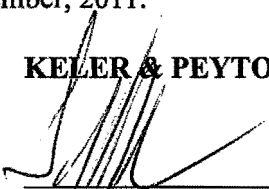
WHEREAS the McFarland State Bank ( McFarland ) has filed a limited objection to that application, and

WHEREAS the debtor and the McFarland wish to avoid additional costs associated with the delayed listing of the property and have come to an agreement addressing McFarland's ank's limited objection,

IT IS HEREBY STIPULATED AND AGREED McFarland has no objection to the Court entering an Order authorizing the employment of Konrad C. Opitz and Opitz Realty, Inc. for the purpose of providing broker service to sell real estate located at 4373 Pleasantview Road, Middleton, Wisconsin pursuant to the terms and conditions of the Commercial Listing Contract- Exclusive Right to Sell attached hereto.

Dated this 11<sup>th</sup> day of September, 2011.

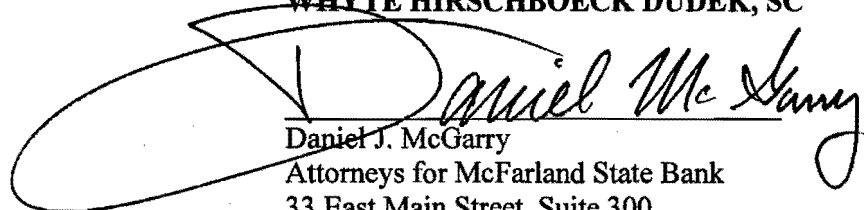
**KELER & PEYTON**



Timothy J. Peyton  
Attorneys for Debtor-in-Possession  
634 W. Main St. Suite 202  
Madison, WI 53703  
(608) 257-5424

Dated this 14<sup>th</sup> day of September, 2011.

**WHYTE HIRSCHBOECK DUDEK, SC**



Daniel J. McGarry  
Attorneys for McFarland State Bank  
33 East Main Street, Suite 300  
Madison, WI 53703-4655



55 Seller shall pay Broker's commission, which shall be earned, if, during the term of this Listing:

- 56 1) Seller sells or accepts an offer which creates an enforceable contract for the sale of all or any part of the Property;
- 57 2) Seller grants an option to purchase all or any part of the Property which is subsequently exercised;
- 58 3) Seller exchanges or enters into a binding exchange agreement on all or any part of the Property;
- 59 4) A transaction occurs which causes an effective change in ownership or control of all or any part of the Property; or
- 60 5) A buyer is procured for the Property by Broker, by Seller, or by any other person, at no less than the price and on

61 substantially the same terms set forth in this Listing and in the standard provisions of the current WB-15  
 62 **COMMERCIAL OFFER TO PURCHASE**, even if Seller does not accept this buyer's offer. (See lines 209-212  
 63 regarding procurement.)

64 A percentage commission, if applicable, shall be calculated based on the purchase price if commission is earned under 1)  
 65 or 2) above, or calculated based on the list price under 3), 4) or 5). A percentage commission shall be calculated on the  
 66 fair market value of the Property exchanged under 3) if the exchange involves less than the entire Property or on the fair  
 67 market value of the Property to which an effective change in ownership or control takes place, under 4) if the transaction  
 68 involves less than the entire Property. Once earned, Broker's commission is due and payable in full at the earlier of closing  
 69 or the date set for closing, unless otherwise agreed in writing. Broker's commission shall be earned if, during the term of  
 70 the Listing, one owner of the Property sells, conveys, exchanges or options an interest in all or any part of the Property to  
 71 another owner, except by divorce judgment.

72 **NOTE:** A sale, option, exchange or procurement of a buyer for a portion of the Property does not terminate the Listing as to  
 73 any remaining Property.

74 ■ **EXTENSION OF LISTING:** The Listing term is extended for a period of one year as to any Protected Buyer. Upon  
 75 receipt of a written request from Seller or a broker who has listed the Property, Broker agrees to promptly deliver to  
 76 Seller a written list of those buyers known by Broker to whom the extension period applies. Should this Listing be  
 77 terminated by Seller prior to the expiration of the term stated in this Listing, this Listing shall be extended for Protected  
 78 Buyers, on the same terms, for one year after the Listing is terminated.

79 ■ **TERMINATION OF LISTING:** Neither Seller nor Broker has the legal right to unilaterally terminate this Listing absent a  
 80 material breach of contract by the other party. Seller understands that the parties to the Listing are Seller and the Broker  
 81 (firm). Agents (salespersons) for Broker (firm) do not have the authority to enter into a mutual agreement to terminate the  
 82 Listing, amend the commission amount or shorten the term of this Listing, without the written consent of the agent(s)  
 83 supervising broker. Seller and Broker agree that any termination of this Listing by either party before the date stated on  
 84 line 282 shall be indicated to the other party in writing and shall not be effective until delivered to the other Party in  
 85 accordance with lines 188-193. **CAUTION:** Early termination of this Listing may be a breach of contract, causing the  
 86 terminating party to potentially be liable for damages.

87 ■ **SELLER COOPERATION WITH MARKETING EFFORTS:** Seller agrees to cooperate with Broker in Broker's  
 88 marketing efforts and to provide Broker with all records, documents and other material in Seller's possession or control  
 89 which are required in connection with the sale. Seller authorizes Broker to do those acts reasonably necessary to  
 90 effect a sale and Seller agrees to cooperate fully with these efforts which may include use of a multiple listing service,  
 91 Internet advertising or a lockbox system on Property. Seller shall promptly notify Broker in writing of any potential buyers  
 92 with whom Seller negotiates during the term of this Listing and shall promptly refer all persons making inquiries  
 93 concerning the Property to Broker.

94 ■ **LEASED PROPERTY:** If Property is currently leased and lease(s) will extend beyond closing, Seller shall assign  
 95 Seller's rights under the lease(s) and transfer all security deposits and prepaid rents (subject to agreed upon prorations)  
 96 thereunder to buyer at closing. Seller acknowledges that Seller remains liable under the lease(s) unless released by  
 97 tenant(s). **CAUTION:** Seller should consider obtaining an indemnification agreement from buyer for liabilities under the  
 98 lease(s) unless released by tenants.

99 ■ **BROKER DISCLOSURE TO CLIENTS:**

100 **UNDER WISCONSIN LAW, A BROKER OWES CERTAIN DUTIES TO ALL PARTIES TO A TRANSACTION:**

- 101 (a) The duty to provide brokerage services to you fairly and honestly.
- 102 (b) The duty to exercise reasonable skill and care in providing brokerage services to you.
- 103 (c) The duty to provide you with accurate information about market conditions within a reasonable time if you request  
 104 it, unless disclosure of the information is prohibited by law.
- 105 (d) The duty to disclose to you in writing certain material adverse facts about a property, unless disclosure of the  
 106 information is prohibited by law. (See Lines 205-208)
- 107 (e) The duty to protect your confidentiality. Unless the law requires it, the broker will not disclose your confidential  
 108 information or the confidential information of other parties. (See Lines 159-177)
- 109 (f) The duty to safeguard trust funds and other property the broker holds.
- 110 (g) The duty, when negotiating, to present contract proposals in an objective and unbiased manner and disclose the  
 111 advantages and disadvantages of the proposals.

112 ■ **BECAUSE YOU HAVE ENTERED INTO AN AGENCY AGREEMENT WITH A BROKER, YOU ARE THE  
 113 BROKER'S CLIENT. A BROKER OWES ADDITIONAL DUTIES TO A CLIENT:**

- 114 (a) The broker will provide, at your request, information and advice on real estate matters that affect your transaction,  
 115 unless you release the broker from this duty.
- 116 (b) The broker must provide you with all material facts affecting the transaction, not just adverse facts.
- 117 (c) The broker will fulfill the broker's obligations under the agency agreement and fulfill your lawful requests that are  
 118 within the scope of the agency agreement.
- 119 (d) The broker will negotiate for you, unless you release the broker from this duty.
- 120 (e) The broker will not place the broker's interests ahead of your interests. The broker will not, unless required by law, give

121. information or advice to other parties who are not the broker's clients, if giving the information or advice is contrary to  
122 your interests.

123 (f) If you become involved in a transaction in which another party is also the broker's client (a "multiple representation  
124 relationship"), different duties may apply.

125 ■ **MULTIPLE REPRESENTATION RELATIONSHIPS AND DESIGNATED AGENCY:**

126 ■ A multiple representation relationship exists if a broker has an agency agreement with more than one client who is a  
127 party in the same transaction. In a multiple representation relationship, if all of the broker's clients in the transaction  
128 consent, the broker may provide services to the clients through designated agency.

129 ■ Designated agency means that different salespersons employed by the broker will negotiate on behalf of you and the  
130 other client or clients in the transaction, and the broker's duties will remain the same. Each salesperson will provide  
131 information, opinions, and advice to the client for whom the salesperson is negotiating, to assist the client in the  
132 negotiations. Each client will be able to receive information, opinions, and advice that will assist the client, even if the  
133 information, opinions, or advice gives the client advantages in the negotiations over the broker's other clients. A  
134 salesperson will not reveal any of your confidential information to another party unless required to do so by law.

135 ■ If a designated agency relationship is not in effect you may authorize or reject a multiple representation relationship.  
136 If you authorize a multiple representation relationship the broker may provide brokerage services to more than one  
137 client in a transaction but neither the broker nor any of the broker's salespersons may assist any client with  
138 information, opinions, and advice which may favor the interests of one client over any other client. If you do not  
139 consent to a multiple representation relationship the broker will not be allowed to provide brokerage services to more  
140 than one client in the transaction.

141 **INITIAL ONLY ONE OF THE THREE LINES BELOW:**

142 \_\_\_\_\_ consent to designated agency.

143 \_\_\_\_\_ consent to multiple representation relationships, but I do not consent to designated agency.

144 \_\_\_\_\_ reject multiple representation relationships.

145 **NOTE: YOU MAY WITHDRAW YOUR CONSENT TO DESIGNATED AGENCY OR TO MULTIPLE  
146 REPRESENTATION RELATIONSHIPS BY WRITTEN NOTICE TO THE BROKER AT ANY TIME. YOUR BROKER IS  
147 REQUIRED TO DISCLOSE TO YOU IN YOUR AGENCY AGREEMENT THE COMMISSION OR FEES THAT YOU  
148 MAY OWE TO YOUR BROKER. IF YOU HAVE ANY QUESTIONS ABOUT THE COMMISSION OR FEES THAT YOU  
149 MAY OWE BASED UPON THE TYPE OF AGENCY RELATIONSHIP YOU SELECT WITH YOUR BROKER YOU  
150 SHOULD ASK YOUR BROKER BEFORE SIGNING THE AGENCY AGREEMENT.**

151 ■ **SUBAGENCY:** The broker may, with your authorization in the agency agreement, engage other brokers who assist your  
152 broker by providing brokerage services for your benefit. A subagent will not put the subagent's own interests ahead of your  
153 interests. A subagent will not, unless required by law, provide advice or opinions to other parties if doing so is contrary to  
154 your interests.

155 **PLEASE REVIEW THIS INFORMATION CAREFULLY.** A broker or salesperson can answer your questions about  
156 brokerage services, but if you need legal advice, tax advice, or a professional home inspection, contact an attorney, tax  
157 advisor, or home inspector. This disclosure is required by section 452.135 of the Wisconsin statutes and is for information  
158 only. It is a plain language summary of a broker's duties to you under section 452.133 (2) of the Wisconsin statutes.

159 ■ **CONFIDENTIALITY NOTICE TO CLIENTS:** Broker will keep confidential any information given to Broker in  
160 confidence, or any information obtained by Broker that he or she knows a reasonable person would want to be kept  
161 confidential, unless the information must be disclosed by law or you authorize Broker to disclose particular information.  
162 Broker shall continue to keep the information confidential after Broker is no longer providing brokerage services to you.  
163 The following information is required to be disclosed by law:

164 1) Material adverse facts, as defined in section 452.01 (5g) of the Wisconsin statutes (lines 205-208).

165 2) Any facts known by the Broker that contradict any information included in a written inspection report on the  
166 property or real estate that is the subject of the transaction.

167 To ensure that the Broker is aware of what specific information you consider confidential, you may list that information  
168 below (see lines 170-173). At a later time, you may also provide the Broker with other information you consider to be  
169 confidential.

170 **CONFIDENTIAL INFORMATION:** None

171 \_\_\_\_\_  
172 \_\_\_\_\_  
173 \_\_\_\_\_

174 **NON-CONFIDENTIAL INFORMATION (The following may be disclosed by Broker):** None

175 \_\_\_\_\_  
176 \_\_\_\_\_  
177 \_\_\_\_\_

178 ■ **DEFINITIONS:**

179 **ADVERSE FACT:** An "adverse fact" means any of the following:

180 (a) A condition or occurrence that is generally recognized by a competent licensee as doing any of the following:

- 181 1) Significantly and adversely affecting the value of the Property;
- 182 2) significantly reducing the structural integrity of improvements to real estate; or
- 183 3) presenting a significant health risk to occupants of the Property.

184 (b) information that indicates that a party to a transaction is not able to or does not intend to meet his or her  
185 obligations under a contract or agreement made concerning the transaction.

186 **DEADLINES – DAYS:** Deadlines expressed as a number of "days" from an event are calculated by excluding the day the  
 187 event occurred and by counting subsequent calendar days.

188 **DELIVERY:** Delivery of documents or written notices related to this Listing may only be accomplished by:

189 1) giving the document or written notice personally to the party;

190 2) depositing the document or written notice postage or fees prepaid or charged to an account in the U.S. Mail or a  
 191 commercial delivery system, addressed to the party, at the party's address (See lines 288, 294 and 300.);

192 3) electronically transmitting the document or written notice to the party's fax number (See lines 290, 296 and 302.); or,

193 4) as otherwise agreed in additional provisions on lines 258-270 or in an addendum to this Listing.

194 **FIXTURES:** A "fixture" is an item of property which is physically attached to or so closely associated with land or  
 195 buildings so as to be treated as part of the real estate, including, without limitation, physically attached items not easily  
 196 removable without damage to the premises, items specifically adapted to the premises, and items customarily treated  
 197 as fixtures, including, but not limited to, all: garden bulbs; plants; shrubs and trees; screen and storm doors and  
 198 windows; electric lighting fixtures; window shades; curtain and traverse rods; blinds and shutters; central heating and  
 199 cooling units and attached equipment; water heaters and treatment systems; sump pumps; attached or fitted floor  
 200 coverings; awnings; attached antennas, garage door openers and remote controls; installed security systems; central  
 201 vacuum systems and accessories; in-ground sprinkler systems and component parts; built-in appliances; ceiling fans;  
 202 fences; storage buildings on permanent foundations and docks/piers on permanent foundations. A "fixture" does not  
 203 include trade fixtures owned by tenants of the Property. **CAUTION: Exclude fixtures not owned by Seller such as**  
 204 **rented fixtures and tenant's trade fixtures.**

205 **MATERIAL ADVERSE FACT:** A "material adverse fact" means an adverse fact that a party indicates is of such  
 206 significance, or that is generally recognized by a competent licensee as being of such significance to a reasonable  
 207 party, that it affects or would affect the party's decision to enter into a contract or agreement concerning a transaction  
 208 or affects or would affect the party's decision about the terms of such a contract or agreement.

209 **PROCURE:** A buyer is procured when, during the term of the Listing, an enforceable contract of sale is entered into  
 210 between the Seller and the buyer or when a ready, willing and able buyer submits to the Seller or the Listing Broker a written  
 211 offer at the price and on substantially the terms specified in this Listing. A buyer is ready, willing and able when the buyer  
 212 submitting the written offer has the ability to complete the buyer's obligations under the written offer. (See lines 60-63)

213 **PROPERTY:** Unless otherwise stated, "Property" means the real estate described at lines 2-4.

214 **PROTECTED BUYER:** Means a buyer who personally, or through any person acting for such buyer: 1) delivers to Seller or  
 215 Broker a written offer to purchase, exchange or option on the Property during the term of this Listing; 2) negotiates directly  
 216 with Seller by discussing with Seller the potential terms upon which buyer might acquire an interest in the Property; or 3)  
 217 attends an individual showing of the Property or discusses with Broker or cooperating brokers the potential terms upon  
 218 which buyer might acquire an interest in the Property, but only if Broker delivers the buyer's name to Seller, in writing, no  
 219 later than three days after the expiration of the Listing. The requirement in 3), to deliver the buyer's name to Seller in writing,  
 220 may be fulfilled as follows: a) if the Listing is effective only as to certain individuals who are identified in the Listing, by the  
 221 identification of the individuals in the Listing; or, b) if a buyer has requested that the buyer's identity remain confidential, by  
 222 delivery of a written notice identifying the broker with whom the buyer negotiated and the date(s) of any showings or other  
 223 negotiations.

224 ■ **NON-DISCRIMINATION:** Seller and Broker agree that they will not discriminate against any prospective  
 225 buyer on account of race, color, sex, sexual orientation as defined in Wisconsin Statutes, Section 111.32  
 226 (13m), disability, religion, national origin, marital status, lawful source of income, age, ancestry, familial  
 227 status, or in any other unlawful manner.

228 ■ **EARNEST MONEY:** If Broker holds trust funds in connection with the transaction, they shall be retained by Broker in  
 229 Broker's trust account. Broker may refuse to hold earnest money or other trust funds. Should Broker hold the earnest money,  
 230 Seller authorizes Broker to disburse the earnest money as directed in a written earnest money disbursement agreement  
 231 signed by or on behalf of all parties having an interest in the trust funds. If the transaction fails to close and the earnest  
 232 money is disbursed to Seller, then upon disbursement to Seller the earnest money shall be paid first to reimburse Broker for  
 233 cash advances made by Broker on behalf of Seller and one half of the balance, but not in excess of the agreed commission,  
 234 shall be paid to Broker as Broker's full commission in connection with said purchase transaction and the balance shall belong  
 235 to Seller. This payment to Broker shall not terminate this Listing.

236 ■ **SELLER'S DISCLOSURE REPORT:** Wisconsin Administrative Code Chapter RL 24 requires listing brokers to  
 237 make inquiries of the Seller on the condition of the Property and to request that Seller provide a written response to  
 238 Broker's inquiry. Seller agrees to complete a seller's disclosure report to the best of Seller's knowledge. Seller agrees  
 239 to amend the report should Seller learn of any defect(s) after completion of the report but before acceptance of a buyer's  
 240 offer to purchase. Seller authorizes Broker to distribute the report to all interested parties and their agents inquiring  
 241 about the Property and acknowledges that Broker has a duty to disclose all material adverse facts as required by law.

242 ■ **SELLER REPRESENTATIONS REGARDING DEFECTS:** Seller represents to Broker that as of the date of this  
 243 Listing, if a seller's disclosure report or other form of written response to Broker's inquiry regarding the condition of the  
 244 Property has been made by the Seller, the Seller has no notice or knowledge of any defects affecting the Property other  
 245 than those noted on Seller's disclosure report or written response.

246 **WARNING: IF SELLER REPRESENTATIONS ARE INCORRECT OR INCOMPLETE, SELLER MAY BE LIABLE**  
 247 **FOR DAMAGES AND COSTS.**

248 ■ **OPEN HOUSE AND SHOWING RESPONSIBILITIES:** Seller is aware that there is a potential risk of injury, damage  
 249 and/or theft involving persons attending an "individual showing" or an "open house." Seller accepts responsibility for  
 250 preparing the Property to minimize the likelihood of injury, damage and/or loss of personal property. Seller agrees to  
 251 hold Broker harmless for any losses or liability resulting from personal injury, property damage, or theft occurring  
 252 during "individual showings" or "open houses" other than those caused by Broker's negligence or intentional  
 253 wrongdoing. Seller acknowledges that individual showings and open houses may be conducted by licensees other

254 than Broker, that appraisers and inspectors may conduct appraisals and inspections without being accompanied by  
 255 Broker or other licensees, and that buyers or licensees may be present at all inspections and testing and may  
 256 photograph or videotape Property unless otherwise provided for in additional provisions at lines 258-270 or in an  
 257 addendum per lines 271-277.

258 ■ **ADDITIONAL PROVISIONS:**

259 The parcel is made up of three tax parcels: 0708-103-9000-8, 0708-103-8660-2, and  
 260 0708-103-8190-1.

261  
 262 There are a couple of leases and land leases on the property.

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271 ■ **ADDENDA:** The attached addenda None

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is/are made part of this Listing.

278 ■ **NOTICE ABOUT SEX OFFENDER REGISTRY:** You may obtain information about the sex offender registry and  
 279 persons registered with the registry by contacting the Wisconsin Department of Corrections on the Internet at  
 280 <http://www.widocoffenders.org> or by telephone at (608)240-5830.

281 ■ **TERM OF THE CONTRACT:** From the 7th day of September, 2011  
 282 up to and including midnight of the 7th day of September, 2012

283 ■ **READING/RECEIPT: BY SIGNING BELOW, SELLER ACKNOWLEDGES RECEIPT OF A COPY OF THIS**  
 284 **LISTING CONTRACT AND THAT HE/SHE HAS READ ALL FIVE PAGES AS WELL AS ANY ADDENDA AND ANY**  
 285 **OTHER DOCUMENTS INCORPORATED INTO THE LISTING.**

286 (x)

287 Seller's Signature ▲ Print Name Here: ▲ Date ▲

288

289 Seller's Address ▲ Seller's Phone # ▲

290

291 Seller's Fax # ▲ Seller's E-Mail Address ▲

292 (x)

293 Seller's Signature ▲ Print Name Here: ▲ Date ▲

294

295 Seller's Address ▲ Seller's Phone # ▲

296

297 Seller's Fax # ▲ Seller's E-Mail Address ▲

298 (x)

299 Agent for Broker: ▲ Konrad C. Opitz Print Name Here: ▲ OPITZ REALTY, INC. Broker/Firm Name ▲ Date ▲

300 502 N. Eau Claire Avenue, Madison WI 53705 608/257-0111 ext. 107

301 Broker/Firm Address ▲ Broker/Firm Phone # ▲

302 608/273-8504 kc@opitzrealty.com

303 Broker/Firm Fax # ▲ Broker/Firm E-Mail Address ▲