

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:19-cv-02594-RM-SKC

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

MEDIATRIX CAPITAL INC., et al.,

Defendants,

And

MEDIATRIX CAPITAL FUND LTD., et al.,

Relief Defendants.

**UNOPPOSED MOTION FOR ORDER APPROVING AND CONFIRMING SALE OF
REAL PROPERTY COMMONLY KNOWN AS 1201 LLOYDS ROAD, OAK POINT,
TEXAS AND APPROVING PUBLICATION AND OVERBID PROCEDURES;
MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF
[SUPPORTING DECLARATION OF KENTON JOHNSON FILED CONCURRENTLY
HEREWITH]**

Brick Kane of Robb Evans & Associates LLC (“Receiver”), the receiver appointed pursuant to the Order Appointing Receiver (Doc. 153) (“Receiver Order”), hereby moves the Court for an order providing the following relief (**which Motion is unopposed**):

1. Authorizing and confirming the sale of the real property commonly known 1201 Lloyds Road, Oak Point, Texas, being approximately 19.46 acres in Oak Point ETJ¹, Texas, and legally described in Exhibit 1 to the Declaration of Kenton Johnson (“Johnson Declaration”)

¹ ETJ stands for Extraterritorial Jurisdiction.

filed concurrently herewith in support of this Motion (“1201 Lloyds Property”)², on an “as is” basis, without any warranties or representations, with all faults known and unknown, as more fully described in the sale contract documents, by private sale either to (a) YingLam Yip and Monica YuenWah Chan, or their assignees (collectively, “Proposed Buyer”), an arm’s length buyer, at a purchase price of \$3,550,000, pursuant to the One to Four Family Residential Contract (Resale), together with the various informational attachments, Amendment, Addendum, Maintenance Agreement, Agricultural Land Lease and Pollinator Agreement (collectively, the “Proposed Sale Contract”), and subject to the side letter agreement amending the Agricultural Land Lease (“Side Letter”), which together with the Proposed Sale Contract are collectively attached as Exhibit 2 to the Johnson Declaration; or (b) to such higher qualified overbidder who hereafter submits the highest qualified overbid at a subsequent overbid session to be conducted under the terms and conditions more fully set forth herein and approved by the Court pursuant to this Motion, which sale the Receiver requests be approved and confirmed without further notice, hearing or Court order. The overbid procedures, terms and conditions for which the Receiver seeks approval include the following:

A. The overbid session shall be conducted within 25 days of the date of entry of the order granting this Motion. The overbid session will be conducted at the offices of ACR Realty, Inc. (“ACR Realty”), 2220 Coit Road, Suite 360, Plano, Texas 75075.

B. The Receiver shall cause to be published a notice of the proposed sale of the 1201 Lloyds Property to the Proposed Buyer or a qualified bidder at the overbid session to be conducted as set forth in the prior paragraph, which notice shall state the date, time and place of

² The Receiver refers to the property by its numerical address to avoid any confusion, because another parcel of property commonly described as 1197 Lloyds Road is also property of the receivership estate and being marketed for sale.

the overbid session, the requirement for pre-qualification by overbidders and the terms and conditions of the overbidding and sale of the property, as described below (“Overbid Notice”). The Receiver shall cause the Overbid Notice to be published in the Dallas Star News two times prior to the date of the overbid session, with the first publication to be at least ten days prior to the date of the overbid session. The Dallas Star News is a daily newspaper of general circulation. Dallas is in close proximity to Oak Point and the Dallas Star News is a newspaper in which legal notices, including sale notices, are commonly published.

C. Any interested party wishing to overbid at the overbid session shall be required to pre-qualify with the Receiver not less than four business days before the overbid session by delivering to the Receiver’s counsel, Barnes & Thornburg LLP, Attention: Gary Owen Caris, at 2029 Century Park East, Suite 300, Los Angeles, California 90067: (a) notice in writing of the prospective overbidder’s intent to overbid; (b) written verification from a financial institution demonstrating to the Receiver’s satisfaction, in his sole and absolute opinion and judgment, the prospective overbidder’s ability to complete and close a purchase of the 1201 Lloyds Property through sufficient funds and/or credit facilities within 20 days of the overbid session; and (c) a cashier’s check in the sum of \$36,500 payable to “SEC v. MEDIATRIX CAPITAL et al Receivership QSF Brick Kane of Robb Evans & Associates LLC, Receiver,”³ which cashier’s check shall become nonrefundable upon acceptance of the overbidder’s overbid at the conclusion of the overbid session.

D. Overbidders shall be deemed to have completed all inspections of the 1201 Lloyds Property and shall be deemed to have waived and/or removed all contingencies in

³ The Receiver has established a Qualified Settlement Fund to hold the proceeds from the liquidation of receivership assets, designated in this manner.

favor of the Proposed Buyer under the Proposed Sale Contract, including without limitation any contingency pertaining to inspection of title, and will be required to complete a cash purchase of the 1201 Lloyds Property and close escrow for the purchase of the 1201 Lloyds Property within 20 days of the date of the overbid session. The successful overbidder will be required to execute a purchase agreement for the 1201 Lloyds Property substantially in the form of the Proposed Sale Contract and subject to the Side Letter, together with a waiver of all buyer contingencies promptly after conclusion of the overbid session, and to otherwise generally perform in the manner provided in the Proposed Sale Contract, and shall be required to deposit an additional \$500,000 into escrow within five days after the conclusion of the overbid session.

E. The initial overbid shall be in the amount of \$3,650,000, representing an amount that is \$100,000 (2.82%) higher than the purchase price under the Proposed Sale Contract, and all subsequent overbids shall be in an amount at least \$50,000 higher than the preceding bid.

2. Pursuant to the Proposed Sale Contract and the Receiver's Residential Real Estate Listing Agreement Exclusive Right to Sell ("Listing Agreement") with its broker ACR Realty and agent James Hankins ("Hankins"), a copy of which is attached as Exhibit 3 to the Johnson Declaration, payment of a sales commission in the amount of 6% of the purchase price paid by the Proposed Buyer, or if a higher overbid is received and accepted at the overbid session, by the successful overbidder, shall be paid from the proceeds of the sale at close of escrow, and no other sales commission shall be paid from the proceeds of the sale or shall be paid by or be the responsibility of the Receiver under any circumstances.

3. Providing that the sale of the 1201 Lloyds Property by private sale to the Proposed Buyer under the Proposed Sale Contract, or to the highest qualified overbidder at the

overbid session pursuant to the procedures set forth herein, shall be deemed confirmed by Order pursuant to this Motion without further notice, hearing or additional order, and without the necessity of any subsequent motion for confirmation of the sale.

4. Authorizing the Receiver to execute all documents and instruments necessary or appropriate to complete, implement, effectuate and close the sale of the 1201 Lloyds Property to the Proposed Buyer or to the highest qualified overbidder, including but not limited to the deed conveying title to the 1201 Lloyds Property as provided herein.

5. Authorizing the Receiver to permit and/or cause to be paid from the proceeds of sale all ordinary and customary closing costs, all costs and expenses required to be paid pursuant to the terms of the Proposed Sale Contract by the Receiver from the proceeds of sale, the sales commission described above at paragraph 2 and all real property tax liens and prorated real property taxes due up to the date of closing.

6. Providing all net proceeds from the sale of the 1201 Lloyds Property, after payment of the valid liens and encumbrances and costs of sale as set forth in the prior paragraph, shall be paid to the Receiver on behalf of the receivership estate.

7. Providing that the sale of the 1201 Lloyds Property to the Proposed Buyer or any successful overbidder is being sold in an “as is” condition, without any warranties or representations, with all faults known and unknown, as more particularly set forth in the Proposed Sale Contract.

8. Providing that a sale to the Proposed Buyer or to any successful overbidder is an arm’s length transaction and the purchase price is fair and reasonable.

9. Providing that any licensed title insurer, the Proposed Buyer and any successful overbidder may rely on said order as authorizing the Receiver to transfer legal title to the 1201 Lloyds Property free and clear of all liens and encumbrances.

10. Providing for such additional relief as may be necessary or appropriate to allow the Receiver to effectuate the sale of the 1201 Lloyds Property, including without limitation the entry of an order authorizing such sale in form acceptable to the title company insuring title in connection with the sale of the 1201 Lloyds Property.

This Motion is made pursuant to 28 U.S.C. § 2001 and the Receiver Order.

STATEMENT REGARDING DUTY TO CONFER PURSUANT TO D.C. COLO. LCivR

7.1(a)

Receiver's counsel communicated several times with Vivian Drohan, counsel for Defendant Bryant Sewall, the beneficial owner of the 1201 Lloyds Property⁴ and his spouse, Relief Defendant Hanna Ohonkova Sewall, (as well as Defendant Michael Stewart and several of the other Relief Defendants), most recently on July 16, 2021, regarding the substance of this Motion. **These defendants have no objection to the relief sought in this Motion.**

Counsel for the United States Securities and Exchange Commission ("SEC") advised the Receiver's counsel on July 15, 2021 that the SEC has no objection to the relief sought herein.

Counsel for Defendant Michael Young and Relief Defendant Maria Young advised the Receiver's counsel on July 26, 2021 that the Youngs have no objection to the relief sought herein.

⁴ While the property is in the name of Relief Defendant DCC Islands Foundation, Bryant Sewall and Hanna Ohonkova are the beneficial owners of the 1201 Lloyds Road property. *See* Accounting of Bryant Sewall and Hanna Ohonkova filed October 2, 2019 (Doc. 28-1).

Based on the foregoing, **this Motion is unopposed.**

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND STATEMENT OF FACTS

A. Background Facts

On September 11, 2020, the Court entered the Receiver Order, appointing Brick Kane of Robb Evans & Associates LLC as Receiver over the (1) Entity Defendants; (2) the Receivership Assets of the Individual Defendants; and (3) the Recoverable Assets of the Receivership Relief Defendants, as those terms are defined therein. (*Id.* at p. 2.) The Receiver Order provides that “[t]he Receiver shall have all powers, authorities, rights and privileges heretofore possessed by the officers, directors, managers and general and limited partners of the Receivership Defendants and the Receivership Relief Defendants under applicable state and federal law, by the governing charters, by-laws, articles and/or agreements in addition to all powers and authority of a receiver at equity, and all powers conferred upon a receiver by the provisions of 28 U.S.C. §§ 754, 959 and 1692, and Federal Rule of Civil Procedure 66.” (*Id.* at ¶ 1.)

The Receiver Order further provides: “[s]ubject to Paragraph 32 [*sic*], immediately below, the Receiver is authorized to locate, 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 Estate, 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 true and proper value of such real property.” (*Id.* at ¶30). Additionally, the Receiver Order provides that: “[u]pon further Order of this Court, pursuant to such procedures as may be required by this Court and additional authority such as 28 U.S.C. §§ 2001 and 2004, the Receiver

will be authorized to sell, and transfer clear title to, all real property in the Receivership Estate.”
(*Id.* at ¶31).

As described above, the 1201 Lloyds Property is owned by Relief Defendant DCC Islands Foundation and is beneficially owned by Defendant Bryant Sewall and Relief Defendant Hanna Ohonkova. Therefore, pursuant to the Receiver Order, the Receiver has marketed the 1201 Lloyds Property through ACR Realty, an affiliate of ASG Real Estate Company. The ASG group of companies is active in the Dallas-Ft. Worth area, specializing in residential and commercial real estate brokerage, development and property management. The Receiver has entered into the Proposed Sale Contract with an arm’s length buyer at a price which is highly beneficial to the receivership estate. Below, the Receiver describes his successful efforts in locating the Proposed Buyer and his compliance with 28 U.S.C. §2001.

B. Description of the 1201 Lloyds Property

The 1201 Lloyds Property is approximately 19.46 acres in size, located in the ETJ of Oak Point, in Denton County, Texas. Oak Point is a small rural town of approximately 4,000 residents approximately 40 minutes from the Dallas-Ft. Worth area. The property has approximately 2,550 feet of lake frontage on Lewisville Lake. The property includes a two-story home with approximately 2,588 square feet and another small single family home of approximately 780 square feet. Both homes were constructed in 1996.

The property is located off of a dead end on Lloyds Road. Access to the property is through a controlled access gate shared with other adjacent property owners, over a dedicated six-party access easement. While much of the interest acquiring the 1201 Lloyds Property centered around its acquisition as an investment for subdivision into multiple home sites, the

property faces several unique development challenges. Notably, the Proposed Buyer intends on utilizing the 1201 Lloyds Property as a private residence for his family.

C. Challenges to Development, Valuing the Property, Marketing the Property and Sale Agreement with the Proposed Buyer

Given the size of the 1201 Lloyds Property and its lakefront location, at first blush its “highest and best use” and maximum value would appear to be as a development investment for potential subdivision into several home sites or for multi-family housing. However, there are numerous challenges and obstacles for any developer.

Among other things, the 1201 Lloyds Property has no city or local water supply available. The Receiver has been advised that the local water provider, the Mustang Special Utility District, has no plans in the next five-year capital budget to extend water lines to the property unless paid for by a developer. The property has no sewer service. The closest sewer service is approximately one mile away. Because of the topography, there is no natural fall to accommodate sewer service without installing a large grind pump station on the property. The Receiver is advised that unless a developer is willing to invest the capital to bring water and sewer service to the property, any developer would be limited to two-acre parcels to accommodate installation of a water well and septic system to service each home site.

Further, while the 1201 Lloyds Property is considered lakefront property, the Receiver has learned that in actuality the U.S. Army Corps of Engineers (“Corps”) owns the property between the property line and the lake level. Landowners adjacent to the Corps’ property are subject to many guidelines, rules and regulations. Additionally, the Corps has a flood easement up to a pool elevation of 537 feet. While the property is over 19 acres in size, the Receiver has

been advised that only 10.92 acres lie outside the easement, leaving 8.52 acres subject to restrictions that may further impede the ability to develop multiple home sites.

Finally, the 1201 Lloyds Property has no direct access to a public road. Access is subject to a six-party access easement agreement across adjacent property owned by other landowners, which further complicates the potential for development, due to restrictions imposed by Denton County regarding fire and safety access to multiple homes or businesses unless all parties to the access easement come to an agreement.

In order to value the 1201 Lloyds Property for the purpose of marketing and selling it, the Receiver obtained two formal appraisals on the property and a Broker's Price Opinion. It was appraised as of December 7, 2020 by Jason Secrest, MAI, of Pyles Whatley Real Estate Services ("Pyles Whatley appraisal"). It was also appraised as of January 15, 2021 by Stephen T. Crosson, MAI, SRA and a Certified General Real Estate Appraiser, and Tyler M. Cooper, Certified General Real Estate Appraiser, of Integra Realty Resources-Dallas ("Integra appraisal"). The Broker's Price Opinion, dated November 16, 2020, was prepared by Hankins of ACR Realty. Hankins and ACR Realty eventually became the listing agent and broker, respectively, for the 1201 Lloyds Property. Importantly, the purchase price in the Proposed Sale Contract equals or exceeds the valuations set forth in the two appraisals and the Broker's Price Opinion.⁵

⁵ The Receiver has not filed these documents or disclosed the valuations in this Motion. Given the pending status of the sale and the fact that there will be an overbid session, there is a need to keep these valuations confidential. If the Court requires the documents to be presented, the Receiver would request that the documents be presented to the Court alone for *in camera* inspection or filed under seal. However, the key fact is that the purchase price under the Proposed Sale Contract equals or exceeds the valuations in the two appraisals and Broker's Price Opinion.

The unique challenges to the 1201 Lloyds Property are reflected in the divergent analyses in the two appraisals. The Pyles Whatley appraisal concluded that the highest and best use of the property was to continue to use the larger home as a rural residence and to use the smaller residence as a rural residence, but to raze the improvements comprising the smaller home and construct a larger rural residence “as demand emerges.” The Integra appraisal determined that the highest and best use was as a single-family residential subdivision. However, it is noteworthy that the appraised value in the Pyles Whatley appraisal was higher in its current status as two “rural residential” homes than the appraised value in the Integra appraisal, which envisioned development as a residential subdivision.

The Receiver next determined to retain a real estate listing broker, concluding that the best way to maximize value for the 1201 Lloyds Property was to sell it at private sale using an established brokerage firm, subject to the establishment of an overbidding procedure. Hankins was recommended to the Receiver by the title lawyer being utilized by the Receiver in connection with this property. Hankins is the Senior Vice President of Development at ASG Real Estate Company and a real estate agent with its affiliate, ACR Realty. Hankins has over 35 years of experience in the Dallas-Ft. Worth area in commercial and residential real estate. He is a certified commercial and residential real estate executive, developer, and sales agent. He has earned the prestigious Certified Commercial Investment Member (“CCIM”) designation. Hankins also lives in close proximity to the 1201 Lloyds Property, is well known in the local community and currently serves on the City of Oak Point’s Economic Development Committee, Board of Adjustments and Comprehensive Planning Committee.

In January 2021, the Receiver entered into the Listing Agreement with ACR Realty and Hankins. The Listing Agreement provides for an aggregate 6% commission as is typical for residential real estate in Texas, and is attached as Exhibit 3 to the Johnson Declaration.

The Receiver, in consultation with Hankins and after substantial research undertaken by Hankins, determined to list the 1201 Lloyds Property at \$3,400,000. The Listing Agreement was entered into as of January 18, 2021. The property was immediately posted on the Metro Texas Association of Realtors MLS system, through the North Texas Real Estate Information (“NTREIS”) system. Once the listing was activated, information concerning the listing was displayed on the MLS system and disseminated to nearly every real estate brokerage website in the area and on the major real estate search apps and websites. Based on NTREIS prospect results, as of May 7, 2021 the listing was observed by 433 prospective purchasers and viewed by at least 195 agents. Those agents forwarded the listing to at least 93 of their clients. There were eleven actual showings, limited to financially pre-qualified buyers.

As a result of these marketing efforts, the Receiver was presented with three other serious purchase offers besides the original offer presented by the Proposed Buyer. Each of the other purchase offers were less desirable than the final agreement struck with the Proposed Buyer for various reasons. One of these prospective purchasers required a 30-day option period plus an unlimited time frame to reach a development agreement related to the access easement. A second prospective purchaser also required time to consider the likelihood of developing the property and needed a 30-day option period. A third prospective purchaser planned to pool personal funds and secure financing.

On the other hand, the Proposed Buyer required no option period and is prepared to purchase the property on an all-cash, no-financing basis. The Proposed Buyer also increased

their original offer on 1201 Lloyds Road. The Receiver has determined that the Proposed Buyer is financially well qualified and has provided earnest money of \$35,500 into escrow. The Proposed Buyer apparently intends to presently use the 1201 Lloyds Property for private purposes without considering immediate development. Given the amount of the offer and the absence of any contingencies or uncertainties, the Receiver entered into the Sale Contract, Exhibit 2 to the Johnson Declaration.

D. Proposed Sale Approval, Confirmation and Overbid Session Procedures, Terms and Conditions

Given the value of the 1201 Lloyds Road Property and the expressions of interest and offers received from several other interested potential buyers and in order to maximize value for the receivership estate, the Receiver requests that the Court approve the following notice and overbid procedures, terms and conditions:

1. The overbid session shall be conducted within 25 days of the date of entry of the order granting this Motion. The overbid session will be conducted at the offices of ACR Realty, 2220 Coit Road, Suite 360, Plano, Texas 75075.

2. The Receiver shall cause to be published a notice of the proposed sale of the 1201 Lloyds Property to the Proposed Buyer or a qualified bidder at the overbid session to be conducted as set forth in the prior paragraph, which notice shall state the date, time and place of the overbid session, the requirement for pre-qualification by overbidders and the terms and conditions of the overbidding and sale of the property, as described below. The Receiver shall cause the Overbid Notice to be published in the Dallas Star News two times prior to the date of the overbid session, with the first publication to be at least ten days prior to the date of the overbid session. The Dallas Star News is a daily newspaper of general circulation. Dallas is in

close proximity to Oak Point and the Dallas Star News is a newspaper in which legal notices, including sale notices, are commonly published.

3. Any interested party wishing to overbid at the overbid session shall be required to pre-qualify with the Receiver not less than four business days before the overbid session by delivering to the Receiver's counsel, Barnes & Thornburg LLP, Attention: Gary Owen Caris, at 2029 Century Park East, Suite 300, Los Angeles, California 90067: (a) notice in writing of the prospective overbidder's intent to overbid; (b) written verification from a financial institution demonstrating to the Receiver's satisfaction, in his sole and absolute opinion and judgment, the prospective overbidder's ability to complete and close a purchase of the 1201 Lloyds Property through sufficient funds and/or credit facilities within 20 days of the overbid session; and (c) a cashier's check in the sum of \$36,500 payable to "SEC v. MEDIATRIX CAPITAL et al Receivership QSF Brick Kane of Robb Evans & Associates LLC, Receiver," which cashier's check shall become nonrefundable upon acceptance of the overbidder's overbid at the conclusion of the overbid session.

4. Overbidders shall be deemed to have completed all inspections of the 1201 Lloyds Property and shall be deemed to have waived and/or removed all contingencies in favor of the Proposed Buyer under the Proposed Sale Contract, including without limitation any contingency pertaining to inspection of title, and will be required to complete a cash purchase of the 1201 Lloyds Property and close escrow for the purchase of the 1201 Lloyds Property within 20 days of the date of the overbid session. The successful overbidder will be required to execute a purchase agreement for the 1201 Lloyds Property substantially in the form of the Proposed Sale Contract together with a waiver of all buyer contingencies promptly after conclusion of the overbid session and to otherwise generally perform in the manner provided in the Proposed Sale

Contract, and will be required to deposit depositing an additional \$500,000 into escrow within five days after the conclusion of the overbid session.

5. The initial overbid shall be in the amount of \$3,650,000, representing an amount that is \$100,000 (2.82%) higher than the purchase price under the Proposed Sale Contract, and all subsequent overbids shall be in an amount at least \$50,000 higher than the preceding bid.

6. Pursuant to the Listing Agreement with his broker, ACR Realty, and agent, Hankins, a sales commission in the amount of 6% of the purchase price paid by the Proposed Buyer, or if a higher overbid is received and accepted at the overbid session, by the successful overbidder, shall be paid from the proceeds of the sale at close of escrow, and no other sales commission shall be paid from the proceeds of the sale or shall be paid by or be the responsibility of the Receiver under any circumstances.

7. The sale of the 1201 Lloyds Property by private sale to the Proposed Buyer under the Proposed Sale Contract, or to the highest qualified overbidder at the overbid session pursuant to the procedures set forth herein, shall be deemed confirmed by Order pursuant to this Motion without further notice, hearing or additional order, and without the necessity of any subsequent motion for confirmation of the sale.

II. THE SALES OF THE 1201 LLOYDS ROAD PROPERTY SHOULD BE APPROVED AND CONFIRMED UNDER 28 U.S.C. §2001, THE RECEIVER ORDER AND APPLICABLE RECEIVERSHIP LAW

Title 28 U.S.C. § 2001 sets forth the procedures pertaining to the sale of real property. Subsection (a) pertains to procedures for the public sale of real property and provides for the sale of real property by public sale at the courthouse where the Receiver was first appointed, at the

courthouse where most of the property is located or at such other premises as the Court directs.

28 U.S.C. § 2001(a). Section § 2001(b) of Title 28 pertains to the sale of real property at private sale. That statute provides, in part:

After a hearing, of which notice to all interested parties shall be given by publication or otherwise as the court directs, the court may order the sale of such realty or interest therein by private sale for cash or other consideration and upon such terms and conditions as the court approves, if it finds that the best interests of the estate will be served thereby.

The time, manner, terms of sale and notice thereof are regulated by the court appointing the receiver. Courts are granted discretion in setting the terms and conditions for judicial sales and the Court's discretion will not be disturbed on appeal except where abuse of discretion is shown. *United States v. Branch Coal Corp.*, 390 F. 2d 7 (3rd Cir. 1968), *cert. den. Sun Protection Co. v. United States*, 391 U.S. 966, 88 S. Ct. 2034 (1968). The Court has substantial discretion in receivership matters in setting the overbidding procedures applicable to sales of real property. *See Pewabic Mining Co. v. Mason*, 145 U.S. 349, 356 (1891) (the provisions for notice and other conditions shall be determined by the Court "as will in his judgment best protect the rights of all interested, and make the sale most profitable to all"); *see also Breeding Motor Freight Lines v. R.F.C.*, 172 F.2d 416, 422 (10th Cir. 1949); *Cumberland Lumber Co. v. Tunis Lumber Co.*, 171 F. 352 (4th Cir. 1909); *Bidwell v. Huff*, 176 F. 174 (5th Cir. 1909). The terms and conditions of the judicial sale that the Court may adopt are based on the facts and circumstances of each case. The discretion granted in connection with sales of assets is consistent with the broad discretion accorded to the Court sitting in equity in receivership

proceedings to make orders concerning the administration and supervision of the estate that will promote equity, efficiency and cost-effectiveness in the estate's administration. *See generally, Broadbent v. Advantage Software, Inc.*, 415 F. App'x 73, 78 (10th Cir. 2011); *Securities and Exchange Commission v. Hardy*, 803 F.2d 1034 (9th Cir. 1986); *Securities and Exchange Commission v. Black*, 163 F.3d 188, 199 (3rd Cir. 1998); *Securities and Exchange Commission v. Elliot*, 953 F.2d 1560 (11th Cir. 1992).

There are four components for the approval of a private sale under §2001(b). First, the property is to be appraised by three appraisers. The statute does not define what constitutes an "appraisal" for the purpose of §2001. Here, the Receiver has obtained two appraisals and a detailed Broker Price Opinion from Hankins, who spent considerable time investigating and evaluating the subject property and the issues confronting the property. Given the price obtained for the 1201 Lloyds Road Property and the fact that the Receiver will test the marketplace further with an overbid session, those three valuations should be sufficient and provide ample assurance to the Court that the best price for the property is being realized.

Second, a private sale must be for a price at least two-thirds the amount of the average of the appraised values, or approximately 67% of the appraised value. Here, the \$3,550,000 sale price equals or exceeds each of the appraisals and the Broker Price Opinion. Therefore, the Proposed Sale Contract is for a sale price at or above 100% of the appraised value.

The third provision calls for publication of the terms of the sale in a newspaper of general circulation at least ten days before sale. The Receiver's sale procedures include a provision for publication of a notice of the opportunity for overbids to be made, which expressly includes a description of the current purchase price and terms, which is all cash to the receivership estate and a closing to occur within 20 days after the overbid session concludes. The published notice

will also give notice of the terms and conditions for overbids to be made, such as pre-qualification of overbidders. The Receiver proposes to publish notice two times in the Dallas Star News, a large local newspaper of general circulation, with the first notice to be published more than ten days prior to the overbid session. The sale will only be confirmed at the conclusion of the overbid session, when it is determined if a higher, qualified overbid in excess of the original offer by the Proposed Buyer has been submitted and accepted by the Receiver. Thus this component of the statute is satisfied.

The final provision provides that the private sale shall not be confirmed if a bona fide offer is made under conditions prescribed by the Court which guarantees at least a 10% increase over the price offered in the private sale. The effect of this provisions is that the Court is authorized to confirm the sale to the Proposed Buyer unless an overbid is made that is 10% over the current offer of \$3,550,000 (in other words, a bid of \$3,905,000). However, under the Receiver's proposed sale procedures, which are designed to maximize the recovery to the estate, the highest qualified bidder will be able to make an initial overbid of \$3,650,000, which is \$100,000 more than the current price under the Proposed Sale Contract and represents an increase of 2.82% over the current price. This benefits the estate by maximizing the sale price without requiring an artificially high 10% overbid. Nothing in the statute precludes the Court from confirming an overbid lower than 10% in excess over the price negotiated with the Proposed Buyer. Therefore, this component of the statute is also satisfied.

Potential bidders will have an opportunity to submit overbids and the proposed procedures and published notice of the overbid session will ensure that the value of this property is maximized for the benefit of the estate. The Receiver requests that the Court confirm the sale to the Proposed Buyer or alternatively to the successful overbidder at the overbid session.

III. CONCLUSION

Based on this Motion, supporting memorandum of points and authorities and the accompanying Johnson Declaration and exhibits attached thereto, it is respectfully requested that the Court grant the relief requested in the Motion and enter the proposed order submitted herewith.

DATED: August 2, 2021

/s/ Gary Owen Caris
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*Attorneys for Brick Kane of Robb Evans &
Associates LLC, Receiver*

**IN THE UNITED STATES DISTRICT COURT
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**DECLARATION OF KENTON JOHNSON IN SUPPORT OF MOTION FOR ORDER
APPROVING AND CONFIRMING SALE OF REAL PROPERTY COMMONLY KNOWN
AS 1201 LLOYDS ROAD, OAK POINT, TEXAS AND APPROVING PUBLICATION AND
OVERBID PROCEDURES**

I, Kenton Johnson, declare:

1. I am an Asset Manager for Robb Evans & Associates LLC and a Deputy to the Receiver, Brick Kane of Robb Evans & Associates LLC (“Receiver”). As an Asset Manager and Deputy to the Receiver, I have been directly involved in all aspects of the evaluation, marketing and negotiations for the sale of the real property commonly known as 1201 Lloyds Road, Oak Point ETJ (short for Extraterritorial Jurisdiction), Texas and legally described on Exhibit 1, attached hereto (“1201 Lloyds Property”). I have over 20 years experience in the marketing and sale of real and personal property in the possession of Court-appointed receivers and have been directly responsible for overseeing the marketing and sale of hundreds of pieces of commercial

and residential real estate throughout the United States. This declaration is filed in support of the Motion to approve the sale of the 1201 Lloyds Property to either to (a) YingLam Yip and Monica YuenWah Chan, or their assignees (collectively, “Proposed Buyer”), who we have determined to be an arm’s length buyer, at a purchase price of \$3,550,000, pursuant to the One to Four Family Residential Contract (Resale), together with the various informational attachments, Amendment, Addendum, Maintenance Agreement, Agricultural Land Lease and Pollinator Agreement (collectively, the “Proposed Sale Contract”), and subject to the side letter agreement amending the Agricultural Land Lease (“Side Letter”); or (b) to such higher qualified overbidder who hereafter submits the highest qualified overbid at a subsequent overbid session to be conducted under the terms and conditions more fully set forth described herein. A true and correct copy of the Proposed Sale Contract and Side Letter are attached collectively hereto as Exhibit 2. When referring to the “Receiver” or using the pronoun “we” in this declaration, I am referring to work performed by me or the Receiver or one of his other deputies from Robb Evans & Associates LLC, of which I have direct knowledge. I have personal knowledge of the matters set forth in this declaration or I have gained knowledge of these matters based on information which has been obtained by the Receiver or one of his other deputies during the administration of this receivership estate. If I were called upon to testify to these matters I could and would competently testify thereto.

2. The Receiver determined that one of the assets of the receivership estate under the Receiver Order is the 1201 Lloyds Property. We determined that the 1201 Lloyds Property is vested in the name of the Relief Defendant DCC Islands Foundation. Defendant Bryant Sewall and Relief Defendant Hanna Ohonkova are the beneficial owners of the 1201 Lloyds Property, as disclosed in their accounting which they filed in this action.

3. The 1201 Lloyds Property is approximately 19.46 acres in size, located in the ETJ of Oak Point, in Denton County, Texas. Oak Point is a small rural town of approximately 4,000 residents approximately 40 minutes from the Dallas-Ft. Worth area. The property has approximately 2,550 feet of lake frontage on Lewisville Lake. The property includes a two-story home with approximately 2,588 square feet and another small single family home of approximately 780 square feet. Both homes were constructed in 1996.

4. The property is located off of a dead end on Lloyds Road. Access to the property is through a controlled access gate shared with other adjacent property owners, over a dedicated six-party access easement. While much of the interest acquiring the 1201 Lloyds Property centered around its acquisition as an investment for subdivision into multiple home sites, the property faces several unique development challenges. I am advised that the Proposed Buyer intends on utilizing the 1201 Lloyds Property as a private residence for his family.

5. Given the size of the 1201 Lloyds Property and its lakefront location, it would appear that its “highest and best use” and maximum value would be as a development investment for potential subdivision into several home sites or for multi-family housing. However, there are numerous challenges and obstacles for any developer.

6. Among other things, the 1201 Lloyds Property has no city or local water supply available. We have been advised that the local water provider, the Mustang Special Utility District, has no plans in the next five-year capital budget to extend water lines to the property unless paid for by a developer. The property has no sewer service. The closest sewer service is approximately one mile away. Because of the topography, there is no natural fall to accommodate sewer service without installing a large grind pump station on the property. The Receiver is advised that unless a developer is willing to invest the capital to bring water and

sewer service to the property, any developer would be limited to two-acre parcels to accommodate installation of a water well and septic system to service each home site.

7. While the 1201 Lloyds Property is considered lakefront property, the Receiver has learned that in actuality the U.S. Army Corps of Engineers (“Corps”) owns the property between the property line and the lake level. Landowners adjacent to the Corps’ property are subject to many guidelines, rules and regulations. Additionally, the Corps has a flood easement up to a pool elevation of 537 feet. While the property is over 19 acres in size, the Receiver has been advised that only 10.92 acres lie outside the easement, leaving over eight acres subject to restrictions that may further impede the ability to develop multiple home sites.

8. The 1201 Lloyds Property has no direct access to a public road. Access is subject to a six-party access easement agreement across adjacent property owned by other landowners, which further complicates the potential for development, due to restrictions imposed by Denton County regarding fire and safety access to multiple homes or businesses unless all parties to the access easement come to an agreement.

9. In order to value the 1201 Lloyds Property for the purpose of marketing and selling it, the Receiver obtained two formal appraisals on the property and a Broker’s Price Opinion. It was appraised as of December 7, 2020 by Jason Secrest, MAI, of Pyles Whatley Real Estate Services (“Pyles Whatley appraisal”). It was also appraised as of January 15, 2021 by Stephen T. Crosson, MAI, SRA and a Certified General Real Estate Appraiser, and Tyler M. Cooper, Certified General Real Estate Appraiser, of Integra Realty Resources-Dallas (“Integra appraisal”). The Broker’s Price Opinion, dated November 16, 2020, was prepared by James Hankins (“Hankins”) of ACR Realty, Inc. (“ACR Realty”). Hankins and ACR Realty eventually became the listing agent and broker, respectively, for the 1201 Lloyds Property. The purchase

price in the Proposed Sale Contract equals or exceeds the valuations set forth in the two appraisals and the Broker's Price Opinion. The Receiver has not filed or disclosed these appraisals or valuations. Given the pending status of the sale and the fact that there will be an overbid session, there is a need to keep these valuations confidential.

10. The unique challenges to the 1201 Lloyds Property are reflected in the divergent analyses in the two appraisals. The Pyles Whatley appraisal concluded that the highest and best use of the property was to continue to use the larger home as a rural residence and to use the smaller residence as a rural residence, but to raze the improvements comprising the smaller home and construct a larger rural residence "as demand emerges." The Integra appraisal determined that the highest and best use was as a single-family residential subdivision. However, it is noteworthy that the appraised value in the Pyles Whatley appraisal was higher in its current status as two "rural residential" homes than the appraised value in the Integra appraisal, which envisioned development as a residential subdivision.

11. The Receiver next determined to retain a real estate listing broker, concluding that the best way to maximize value for the 1201 Lloyds Property was to sell it at private sale using an established brokerage firm, subject to the establishment of an overbidding procedure. Hankins was recommended to the Receiver by the title lawyer being utilized by the Receiver in connection with this property. Hankins is the Senior Vice President of Development at ASG Real Estate Company and a real estate agent with its affiliate, ACR Realty. Hankins has over 35 years of experience in the Dallas-Ft. Worth area in commercial and residential real estate. He is a certified commercial and residential real estate executive, developer, and sales agent. He has earned the Certified Commercial Investment Member ("CCIM") designation. I learned that Hankins also lives in close proximity to the 1201 Lloyds Property, is well known in the local

community and currently serves on the City of Oak Point's Economic Development Committee, Board of Adjustments and Comprehensive Planning Committee.

12. In January 2021, the Receiver entered into the Residential Real Estate Listing Agreement Exclusive Right to Sell ("Listing Agreement") with ACR Realty and Hankins. The Listing Agreement provides for an aggregate 6% commission as is typical for residential real estate in Texas, a true and correct copy of which is attached hereto as Exhibit 3.

13. The Receiver, in consultation with Hankins and after substantial research undertaken by Hankins, determined to list the 1201 Lloyds Property at \$3,400,000. The Listing Agreement was entered into as of January 18, 2021. The property was immediately posted on the Metro Texas Association of Realtors MLS system, through the North Texas Real Estate Information ("NTREIS") system. Once the listing was activated, information concerning the listing was displayed on the MLS system and disseminated to nearly every real estate brokerage website in the area and on the major real estate search apps and websites. Based on NTREIS prospect results, as of May 7, 2021 the listing was observed by 433 prospective purchasers and viewed by at least 195 agents. Those agents forwarded the listing to at least 93 of their clients. There were eleven showings of the property, limited to those prospective purchasers who were determined in advance to be financially qualified to purchase the property.

14. As a result of these marketing efforts, the Receiver was presented with three other serious purchase offers besides the original offer presented by the Proposed Buyer. Each of the other purchase offers were less desirable than the final agreement struck with the Proposed Buyer for various reasons. One of these prospective purchasers required a 30-day option period plus an unlimited time frame to reach a development agreement related to the access easement. A second prospective purchaser also required time to consider the likelihood of developing the

property and needed a 30-day option period. A third prospective purchaser planned to pool personal funds and secure financing.

15. On the other hand, the Proposed Buyer required no option period and is prepared to purchase the property on an all-cash, no-financing basis. The Proposed Buyer also increased their original offer on 1201 Lloyds Road. We determined that the Proposed Buyer is an arm's length buyer and financially well qualified and has provided earnest money of \$35,500 into escrow. I understand that the Proposed Buyer intends to presently use the 1201 Lloyds Property for private purposes without considering immediate development. Given the amount of the offer and the absence of any contingencies or uncertainties, the Receiver entered into the Sale Contract, Exhibit 2 hereto.

16. Given the value of the 1201 Lloyds Road Property and the expressions of interest and offers received from several other interested potential buyers and in order to maximize value for the receivership estate, the Receiver requests that the Court approve the following notice and overbid procedures, terms and conditions:

(1) The overbid session will be conducted within 25 days of the date of entry of the order granting this Motion. The overbid session will be conducted at the offices of ACR Realty, 2220 Coit Road, Suite 360, Plano, Texas 75075.

(2) The Receiver will cause to be published a notice of the proposed sale of the 1201 Lloyds Property to the Proposed Buyer or a qualified bidder at the overbid session to be conducted as set forth in the prior paragraph, which notice shall state the date, time and place of the overbid session, the requirement for pre-qualification by overbidders and the terms and conditions of the overbidding and sale of the property, as described below. The Receiver shall cause the Overbid Notice to be published in the Dallas Star News two times prior to the date of

the overbid session, with the first publication to be at least ten days prior to the date of the overbid session. The Dallas Star News is a daily newspaper of general circulation. Dallas is in close proximity to Oak Point and the Dallas Star News is a newspaper in which legal notices, including sale notices, are commonly published.

(3) Any interested party wishing to overbid at the overbid session shall be required to pre-qualify with the Receiver not less than four business days before the overbid session by delivering to the Receiver's counsel, Barnes & Thornburg LLP, Attention Gary Owen Caris, at 2029 Century Park East, Suite 300, Los Angeles, California 90067: (a) notice in writing of the prospective overbidder's intent to overbid; (b) written verification from a financial institution demonstrating to the Receiver's satisfaction, in his sole and absolute opinion and judgment, the prospective overbidder's ability to complete and close a purchase of the 1201 Lloyds Property through sufficient funds and/or credit facilities within 20 days of the overbid session; and (c) a cashier's check in the sum of \$36,500 payable to "SEC v. MEDIATRIX CAPITAL et al Receivership QSF Brick Kane of Robb Evans & Associates LLC, Receiver," which cashier's check shall become nonrefundable upon acceptance of the overbidder's overbid at the conclusion of the overbid session.

(4) Overbidders shall be deemed to have completed all inspections of the 1201 Lloyds Property and shall be deemed to have waived and/or removed all contingencies in favor of the Proposed Buyer under the Proposed Sale Contract, including without limitation any contingency pertaining to inspection of title, and will be required to complete a cash purchase of the 1201 Lloyds Property and close escrow for the purchase of the 1201 Lloyds Property within 20 days of the date of the overbid session. The successful overbidder will be required to execute a purchase agreement for the 1201 Lloyds Property substantially in the form of the Proposed

Sale Contract together with a waiver of all buyer contingencies promptly after conclusion of the overbid session and to otherwise generally perform in the manner provided in the Proposed Sale Contract, and to deposit an additional \$500,000 into escrow within five days after the conclusion of the overbid session.

(5) The initial overbid shall be in the amount of \$3,650,000, representing an amount that is \$100,000 (2.82%) higher than the purchase price under the Proposed Sale Contract, and all subsequent overbids shall be in an amount at least \$50,000 higher than the preceding bid.

(6) Pursuant to the Listing Agreement with his broker, ACR Realty, and agent, Hankins, a sales commission in the amount of 6% of the purchase price paid by the Proposed Buyer, or if a higher overbid is received and accepted at the overbid session, by the successful overbidder, shall be paid from the proceeds of the sale at close of escrow, and no other sales commission shall be paid from the proceeds of the sale or shall be paid by or be the responsibility of the Receiver under any circumstances.

(7) The sale of the 1201 Lloyds Property by private sale to the Proposed Buyer under the Proposed Sale Contract, or to the highest qualified overbidder at the overbid session pursuant to the procedures set forth herein, shall be deemed confirmed by Order pursuant to this Motion without further notice, hearing or additional order, and without the necessity of any subsequent motion for confirmation of the sale.

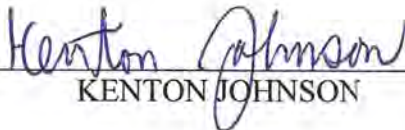
17. The Receiver requests approval of the Proposed Sale Contract and the sale of the 1201 Lloyds Property to the Proposed Buyer under the terms and conditions set forth therein. The Proposed Buyer has removed all contingencies and has elected to proceed with the transaction upon Court approval.

18. The Receiver also requests approval to solicit overbids for the sale of the 1201

Lloyds Property, as contemplated by the Proposed Sale Contract, and an order that confirms the sale of the 1201 Lloyds Property to the Proposed Buyer, or to any successful overbidder to be conducted under the proposed sale procedures set forth in the Motion and this declaration.

19. In summary, the Proposed Buyer has made a full-price offer that equals or exceeds all of the valuations obtained by the Receiver. Therefore, I believe it is appropriate for the Court to approve the sale to the Proposed Buyer or such successful overbid as may be generated at an overbid session conducted pursuant to the procedures outlined above and that the sale is in the best interests of the receivership estate.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on July 30, 2021 at Oceanside, California.


KENTON JOHNSON