

**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.

**MOTION FOR ORDER APPROVING AND CONFIRMING
SALE OF REAL PROPERTY COMMONLY KNOWN AS
1197 LLOYDS ROAD, OAK POINT, TEXAS AND
APPROVING PUBLICATION AND OVERBID PROCEDURES INCLUDING
MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF**

CERTIFICATION UNDER D.C. COLO. LCivR 7.1(a)

In accordance with D.C. Col. LCivR 7.1(a), counsel for the Receiver communicated with: (1) counsel for the Securities and Exchange Commission (“SEC”) who represented that the SEC does not oppose this motion; (2) counsel for all Defendants, including Michael S. Young and Bryant Sewall, various entity defendants, and (3) *pro se* Defendant Michael S. Stewart and Relief Defendant Victoria Stewart. Counsel for Defendants Sewall, Young and various entity defendants, have represented that they do not oppose this motion.

Mark B. Conlan (“Receiver”), the receiver appointed pursuant to the Order Appointing Receiver [ECF No. 284], hereby moves the Court for an order approving the private sale of real property pursuant to 28 U.S.C. § 2001(b) (the “Motion”), which Motion is unopposed by any Plaintiff or individual defendant, including Bryant Sewall who is the fee owner of the land.

1. The Motion seeks entry of an order authorizing and confirming the sale of the real property commonly known 1197 Lloyds Road, Oak Point, Texas, being approximately 1.0 acre in Oak Point ETJ¹, Texas, and legally described in Exhibit 1 to the Declaration of David N. Crapo, Esq. (“Crapo Declaration”) filed concurrently herewith in support of this Motion (“1197 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) Andra Williams and Ralph Williams, or their assignees (collectively, “Proposed Buyers”), an arm’s length buyer, at a purchase price of \$230,000, pursuant to the Farm and Ranch Contract (Resale), together with an Amendment thereto, and a survey (collectively, the “Proposed Sale Contract”), which together with the Proposed Sale Contract are collectively attached as Exhibit 2 to the Crapo 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

¹ ETJ stands for Extraterritorial Jurisdiction.

² The Receiver refers to the property by its numerical address to avoid any confusion, because other parcels of property commonly described on Lloyds Road have also been property of the receivership estate that were marketed for sale and subject to prior Sale Motions [ECF 120; 261].

order. The overbid procedures, terms and conditions for which the Receiver seeks approval include the following:

- a. In the event that a *bona fide* offer is made that is at least \$7,000 higher than the current \$230,000 offer, an 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 1197 Lloyds Property to the Proposed Buyers 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 (“Overbid Notice”). The Receiver shall cause the Overbid Notice to be published in the Dallas Morning 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 Morning News is a daily newspaper of general circulation. Dallas is in close proximity to Oak Point and the Dallas Morning 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, Gibbons P.C.,

Attention: David N. Crapo, at One Gateway Center, Newark, NJ 07102:
(1) notice in writing of the prospective overbidder's intent to overbid; (2) 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 1197 Lloyds Property through sufficient funds and/or credit facilities within 20 days of the overbid session; and (3) a cashier's check in the sum of \$23,000 payable to "SEC v MEDIATRIX CAPITAL et al Receivership QSF Mark B. Conlan, 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 1197 Lloyds Property and shall be deemed to have waived and/or removed all contingencies in favor of the Proposed Buyers 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 1197 Lloyds Property and close escrow for the purchase of the 1197 Lloyds Property within 20 days of the date of the overbid session.
- e. The successful overbidder will be required to execute a purchase agreement for the 1197 Lloyds Property substantially in the form of the Proposed Sale Contract, together with a waiver of all buyer contingencies promptly after

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

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 \$23,700 into escrow within five days after the conclusion of the overbid session.

- f. The initial overbid shall be in the amount of \$237,000, representing an amount that is at least \$7,000 (3.043480%) higher than the purchase price under the Proposed Sale Contract, and all subsequent overbids shall be in an amount at least \$3,500 higher than the preceding bid.

2. Authorizing and approving Receiver's retention of James Hankins ("Hankins"), the Senior Vice President of Development at ASG Real Estate Company and a real estate agent with its affiliate, ACR Realty to market the 1197 Lloyds Road Property, retroactively to December 21, 2021, the date of the Receiver's listing agreement with Mr. Hankins and approving the adequacy of the actions Mr. Hankins took in marketing the 1197 Lloyds Road Property.

3. Authorizing and approving the Receiver's retention of Jason Secrest, MAI, of Pyles Whatley Real Estate Services, retroactively to January 26, 2022, the date of his retention.

4. Authorizing and approving the Receiver's retention of Robert W. Snyder, MAI, RWA, R/W—AC of Lowry Property Advisors, retroactively to February 7, 2022, the date of his engagement, to appraise the 1197 Lloyds Road Property.

5. Authorizing and approving the Receiver's retention of Mike Tobin of Bluebonnet Home Group, retroactively to February 17, 2022, the date of his retention, to provide a broker's price opinion with respect to the 1197 Lloyds Road Property.

6. 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 Hankins, a copy of which is attached as Exhibit 3 to the Crapo Declaration, payment of a sales commission in the amount of 6% of the purchase price paid by the Proposed Buyers, 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. Providing that the sale of the 1197 Lloyds Property by private sale to the Proposed Buyers 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.

8. Authorizing the Receiver to execute all documents and instruments necessary or appropriate to complete, implement, effectuate and close the sale of the 1197 Lloyds Property to the Proposed Buyers or to the highest qualified overbidder, including but not limited to the deed conveying title to the 1197 Lloyds Property as provided herein.

9. Authorizing the Receiver to permit and/or cause to be paid from the proceeds of sale all ordinary and customary closing costs, including all utility charges, 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 6 and all real property tax liens and prorated real property taxes due up to the date of closing.

10. Providing all net proceeds from the sale of the 1197 Lloyds Property, after payment of the valid liens and encumbrances and costs of sale as set forth in the prior paragraphs, shall be paid to the Receiver on behalf of the receivership estate.

11. Providing that the sale of the 1197 Lloyds Property to the Proposed Buyers 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.

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

13. Providing that any licensed title insurer, the Proposed Buyers and any successful overbidder may rely on said order as authorizing the Receiver to transfer legal title to the 1197 Lloyds Property free and clear of all liens, claims and encumbrances.

14. Providing for such additional relief as may be necessary or appropriate to allow the Receiver to effectuate the sale of the 1197 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 1197 Lloyds Property.

This Motion is made pursuant to 28 U.S.C. § 2001 and the Receiver Order (as defined below).

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND STATEMENT OF FACTS

A. Background Facts

On September 11, 2020, the Court entered the Order Appointing Receiver (Brick Kane) that laid out in detail the General Powers and Duties of the Receiver in this case; the Receiver's Access to Information as well as Books, Records and Accounts and to Real and Personal Property among other things [ECF 153] (the "Receiver Order"). On October 20, 2021, a docket order [ECF 284] (the "Docket Order") was entered substituting Mark B. Conlan as substitute Receiver in the above-captioned case. The Docket Order specified that the Receiver was to function under the terms and conditions of the original Receiver Order. Therefore, the receivership estate is 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.)

Further, the Receiver Order 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).

The 1197 Lloyds Property is owned by Defendant Bryant Sewall. Pursuant to the Receiver Order, the Receiver marketed the 1197 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 that is highly beneficial to the receivership estate. Below, the Receiver describes his successful efforts in locating the Proposed Buyers and his compliance with 28 U.S.C. § 2001.

B. Description of the 1197 Lloyds Property

The 1197 Lloyds Property is approximately 1.0 acre 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. Although located in the ETJ of Oak Point, the address associated with the property is 1197 Lloyds Road, Little Elm, Denton County, Texas. The property is located on Lloyds Road, near the terminus of Lloyds Road to the west of Lake Lewisville.

The property is predominantly vacant land improved with an 1,873 sq.’ metal warehouse building with four bays. The Denton County real property records reflect that the warehouse

building was constructed in 2012. The warehouse building is of average quality in construction and has been maintained in average condition.

The property also contains a 40 sq.' pump house for a water well that previously served a single-family residence that has been demolished, with the resulting debris removed. The water well is no longer functional and has been abandoned and the related piping and wiring have been removed.

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

Given the size of the 1197 Lloyds Property, at first blush its “highest and best use” and maximum value would appear to be as development for a single family dwelling. However, three major obstacles currently preclude such development.

First, public water and sewer services are not provided to the 1197 Lloyds Property by any municipality and no co-op water or sewer is currently available. A two-acre minimum size requirement imposed by Denton County currently precludes the use of either a water well or a septic system on the property. The area in which the 1197 Lloyds Property is located is not served by any city water /sewer district. It is served by Mustang Special Utility District (<https://www.mustangwater.com>). However, the closest water line or sewer line are about a mile away. According to the Mustang Special Utility District, its five-year capital plan does not include the extension of a water line down Lloyds Road unless a developer pays for it. The cost of such a project is estimated to be at least \$800,000 to potentially over \$1 million. The extension of a sewer line is not very likely at all due to topography without building expensive pump stations along the way. In sum, the 1197 Lloyds Property’s current lack of access to water and sewer utilities significantly limits its functional and developmental potential.

The second challenge is that the 1197 Lloyds Property also lacks 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.

Finally, an overhead utility line and easement runs through the center of the 1197 Lloyds Property, providing a third obstacle to development.

As noted above, in connection with the marketing and sale of the 1197 Lloyds Property, the Receiver obtained two formal appraisals. He obtained appraisals from Jason Secrest, MAI, of Pyles Whatley Real Estate Services (“Pyles Whatley Appraisal”) and Robert W. Snider, MAI, RWA, R/W-AC of Lowery Property Advisors, LLC (“LPA Appraisal”). Mr. Secrest has been an appraiser of real property for 18 years and has extensive experience in appraising complex and commercial properties, as well as property for development. Mr. Secrest is licensed Texas and Oklahoma and has been an appraiser for 18 years. Mr. Snider has been an appraiser since 2014 and, like Mr. Secrest has extensive experience in appraising commercial and complex properties. Mr. Secrest is licensed in Texas, Arizona and New Mexico. The unique challenges to the use and development of the 1197 Lloyd Property are addressed in both the Pyles Whatley and LPA appraisals. It is important to note, however, that the purchase price in the Proposed Sale Contract equals or exceeds the valuations set forth in the either of the Pyles Whatley or LPA Appraisals or the BPO.⁴

⁴ The Receiver has not filed either the appraisals or the broker price opinion with this Motion; nor has he disclosed the conclusions the appraisers and the broker reached as to the value of the 1197 Lloyds Property. Given the pending status of the sale and the fact that there will be an overbid session, there is a need to keep these documents confidential. If the Court requires the documents to be presented, the Receiver would request that the documents be presented to

In addition to the two appraisals, the Receiver also obtained a Residential Broker Price Opinion (“BPO”) from Mike Tobin of Blue Bonnet Home Group. The purchase price in the Proposed Sale contract equals or exceeds Mr. Tobin’s price opinion.

Before obtaining the appraisals and the broker price opinion, the Receiver retained James Hankins as a real estate listing broker, concluding that the best way to maximize value for the 1197 Lloyds Property was to sell it at private sale using an established brokerage firm, subject to the establishment of an overbidding procedure. Hankins had previously listed the 1197 Lloyds Property for the prior receiver. 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 1197 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 December 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 Crapo Declaration.

The Receiver, in consultation with Hankins and after substantial research undertaken by Hankins, determined to list the 1197 Lloyds Property at \$169,900. The Listing Agreement period

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 exceeds the valuations in the two appraisals and the broker price opinion.

initially began on January 3, 2022. 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.

According to Hankins, there were 639 agent views of the listing. Those agents shared the listing with 599 clients. 326 clients actually opened the listing. A one-week paid campaign subscription push of the listing to other sites and to social media resulted in 6,048 views. 242 viewers opened the listing. Since June 24, 2022 alone, approximately 26 agents contacted Mr. Hankins directly with additional questions about the 1197 Lloyds Property. Of those 11 agents requested a viewing of the property.

As a result of these marketing efforts, by July 8, 2022, the Receiver had been presented with five serious purchase offers ranging from \$171,000 to \$205,000 for the 1197 Lloyds Property. Mr. Hankins contacted the offerors and requested that they present their best and final offers by July 11, 2022. Three of the offerors presented offers ranging from \$175,100 to \$230,000.

The Proposed Buyers require no option period and are prepared to purchase the 1197 Lloyds Property on an all-cash, no-financing basis. The Proposed Buyers had also increased their original offer on 1197 Lloyds Property to \$230,000. The Receiver has determined that the Proposed Buyers are financially well qualified and have deposited of \$23,000 in earnest money into escrow. The Proposed Buyers apparently intend to use the 1197 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 Proposed Sale Contract subject to Court Approval. See Exhibit 2 to the Crapo Declaration.

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

Given the value of the 1197 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. In the event that a *bona fide* offer is made that is at least \$7,000 higher than the current \$230,000 offer, an 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 1197 Lloyds Property to the Proposed Buyers, 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.

3. The Receiver shall cause the Overbid Notice to be published in the Dallas Morning 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 Morning News is a daily newspaper of general circulation. Dallas is in close proximity to Oak Point and the Dallas Morning News is a newspaper in which legal notices, including sale notices, are commonly published.

4. 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, Gibbons P.C., Attention: David N. Crapo, at One Gateway Center, Newark, NJ 07102: (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 1197 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 \$23,700 payable to "SEC v MEDIATRIX CAPITAL et al Receivership QSF Mark Conlan of Gibbons P.C., as Receiver," which cashier's check shall become nonrefundable upon acceptance of the overbidder's overbid at the conclusion of the overbid session.

5. Overbidders shall be deemed to have completed all inspections of the 1197 Lloyds Property and shall be deemed to have waived and/or removed all contingencies in favor of the Proposed Buyers 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 1197 Lloyds Property and close escrow for the purchase of the 1197 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 1197 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 an additional \$23,700 into escrow within five days after the conclusion of the overbid session.

6. The initial overbid shall be in the amount of \$237,000, representing an amount that is at least \$7,000 (3.043480%) higher than the purchase price under the Proposed Sale Contract, and all subsequent overbids shall be in an amount at least \$3,500 higher than the preceding bid.

7. 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 Buyers, 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 1197 Lloyds Property by private sale to the Proposed Buyers 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 SALE OF THE 1197 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 relevant 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 section 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 section 2001. However, the Receiver has obtained two formal appraisals and a broker price opinion, given the price obtained for the 1197 Lloyds Road Property and the fact that the Receiver will test the marketplace further with notice of an overbid session, the appraisals and the broker price opinion should be sufficient under any definition of the term “appraisal,” 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 \$230,000 sale price well exceeds the both the appraised and listed values. Therefore, the Proposed Sale Contract is for a sale price at or above 67% of the appraised value.

The third provision calls for publication of the terms of the sale in a newspaper of general circulation at least 10 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 provide 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 Morning 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 Buyers 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 provision is that the Court is authorized to confirm the sale to the Proposed Buyers unless an overbid is made that is 10% over the current offer of \$230,000 (in other words, a bid of \$253,000). 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 \$237,000, which is \$7,000 more than the current price under the Proposed Sale Contract and represents an increase of 3.043480% over the current price. This benefits the estate by maximizing the sale price without requiring an artificially high 10% overbid, which could have the effect of chilling the bidding. Nothing in the statute precludes the Court from confirming an overbid lower than 10% in excess over the price negotiated with the Proposed Buyers. 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 Buyers 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 Crapo 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: July 19, 2022

GIBBONS P.C.

By: /s/ David N. Crapo

David N. Crapo
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Newark, NJ 07102
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Email: dcrapo@gibbonslaw.com

Counsel to Mark B. Conlan, as Receiver

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of July 2022, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to parties or counsel registered through ECF.

Further, I certify that a copy of the foregoing together with Crapo Declaration and Proposed Order was served via email upon the following:

Mark L. Williams
U.S. SECURITIES & EXCHANGE COMMISSION
1961 Stout Street, Suite 1700
Denver, CO 80294-1961
williamsm@sec.gov

Attorneys for Plaintiff

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In addition, I hereby certify that I served the foregoing document or paper to the following non-CM/ECF participants in the manner indicated by the non-participant's name:

Via U.S. Mail

Aaron Stewart
23800 North 73rd Place
Scottsdale, AZ 85255

Via U.S. Mail

Andra and Ralph Williams
1201 Lloyds Road
Oak Point, Texas 75068

By: /s/ David N. Crapo
David N. Crapo

**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.

**DECLARATION OF DAVID N. CRAPO, ESQ., RECEIVER'S COUNSEL, IN
SUPPORT OF THE MOTION FOR ORDER APPROVING AND CONFIRMING SALE
OF REAL PROPERTY COMMONLY KNOWN AS
1197 LLOYDS ROAD, OAK POINT, TEXAS AND APPROVING PUBLICATION
AND OVERBID PROCEDURES INCLUDING MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT THEREOF**

I, David N. Crapo, declare:

1. I am Counsel with the firm of Gibbons P.C. ("Gibbons") and counsel to Mark B. Conlan, as receiver (the "Receiver") in the above-captioned case pursuant to the Court's Orders entered on October 20, 2021 [ECF No. 284] and November 1, 2021 [ECF No. 291]. I have personal knowledge of the matters set forth in this declaration and if I were called upon to testify as to these matters I could and would competently testify thereto.

2. This Declaration is submitted in support of the *Motion for Order Approving and Confirming Sale of Real Property Commonly Known as 1197 Lloyds Road, Oak Point, Texas and Approving Publication and Overbid Procedures Including Memorandum of Points and Authorities in Support Thereof* (the “1197 Lloyds Sale Motion”).

3. Attached hereto as Exhibit 1 is a true and correct copy of the legal description of the 1197 Lloyds Property¹.

4. Attached hereto as Exhibit 2 is a true and correct copy of the Proposed Sale Contract and Addendum thereto.

5. Attached hereto as Exhibit 3 is a true and correct copy of the Listing Agreement.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on July 19, 2022 at Newark, New Jersey.

By: /s/ David N. Crapo, Esq.
David N. Crapo, Esq.

¹ Capitalized terms not otherwise defined herein shall have the definition ascribed to them in the 1197 Lloyds Sale Motion.

EXHIBIT 1

Tract ~~1~~ 1

BEING a tract of land situated in the John McNeil Survey, Abstract No. 884, conveyed to KBR Cape Cod LTD under CC File No. 2017-24921 of the Deed Records of Denton County, Texas, being more particularly described by metes and bounds as follows:

BEGINNING at a fence post found for corner, being the Northeast corner of a tract of land conveyed to Max Alva Daniel III under CC File No. 2017-138256 of the Deed Records of Denton County, Texas, being the Westernmost Southwest corner of said KBR Cape Cod LTD tract, and being a Southeast corner of a tract of land conveyed to Kenneth Riney as recorded in Instrument File No. 2008-25012 of the Deed Records of Denton County, Texas;
THENCE North 00 degrees 49 minutes 17 seconds East, a distance of 40.76 feet to a 1 inch iron pipe found for corner;
THENCE South 84 degrees 54 minutes 06 seconds East, along a South line of said Riney tract, a distance of 230.06 feet to a 1 inch iron rod found for corner;
THENCE South 00 degrees 09 minutes 39 seconds West (directional control), along a West line of said Riney tract, a distance of 179.82 feet to a fence post found for corner, being the Southernmost Southwest corner of said Riney tract and being a point in the North line of a tract of land conveyed to Theresa Daniel as recorded in Instrument File No. 2006-12277 of the Deed Records of Denton County, Texas;
THENCE South 87 degrees 36 minutes 50 seconds West, a distance of 14.07 feet to a 1 inch iron pipe found for corner;
THENCE North 00 degrees 06 minutes 55 seconds West, a distance of 160.95 feet to a 1 inch iron pipe found for corner;
THENCE South 89 degrees 46 minutes 19 seconds West, a distance of 215.50 feet to the PLACE OF BEGINNING and containing 9,170 square feet or 0.211 of an acre of land.

Tract ~~2~~ 2

BEING a tract of land situated in the John McNeil Survey, Abstract No. 884, conveyed to KBR Cape Cod LTD under CC File No. 2010-119608 of the Deed Records of Denton County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING at a fence post found for corner, being the Northeast corner of a tract of land conveyed to Max Alva Daniel III under CC File No. 2017-138256 of the Deed Records of Denton County, Texas, and being the Western Southeast corner of a tract of land conveyed to Kenneth Riney as recorded in Instrument File No. 2008-25012 of the Deed Records of Denton County, Texas;
THENCE North 89 degrees 46 minutes 19 seconds East, a distance of 215.50 feet to a 1 inch iron pipe found for corner;
THENCE South 00 degrees 06 minutes 55 seconds West, a distance of 160.95 feet to a 1 inch iron pipe found for corner, said point being in the North line of a tract of land conveyed to Theresa Daniel as recorded under File No. 2006-12277 of the Deed Records of Denton County, Texas;
THENCE North 89 degrees 35 minutes 44 seconds West, a distance of 215.21 feet to a 1 inch iron rod found for corner, being the Southeast corner of said Max Alva Daniel II tract;

EXHIBIT ² "A"

THENCE North 00 degrees 00 minutes 45 seconds East, a distance of 158.57 feet to the PLACE OF BEGINNING and containing 34,405 square feet or 0.790 of an acre of land.

Tract ~~4~~³: (EASEMENT)

Easement for Access created in instrument executed by Jack Lively and others dated February 24, 1971, filed March 2, 1971, recorded in Volume 617, Page 61, Deed Records, Denton County, Texas, affected by Revised, Amended and Restated Agreement for Access Easement and Road and Gate Agreement filed November 9, 2017, recorded under Clerk's File No. 2017-138989, Real Property Records, Denton County, Texas.

Tract ~~5~~⁴: (EASEMENT)

Easement for Access created in instrument executed by Kenneth B. Riney to KBR Cape Cod, Ltd., dated October 23, 2017, filed November 13, 2017, recorded under Clerk's File No. 2017-139487, Real Property Records, Denton County, Texas.

EXHIBIT 2

Authentisign ID: 5D4E3808-A616-424A-A5DF-9A942D7AE32A



PROMULGATED BY THE TEXAS REAL ESTATE COMMISSION (TREC)
FARM AND RANCH CONTRACT

11-08-2021



- 1. PARTIES: The parties to this contract are SEC v Mediatrrix Cap Inc et al., Mark Conlan of Gibbons P.C. (Seller) and Andra Williams, Ralph Williams et al /assigns (Buyer). Seller agrees to sell and convey to Buyer and Buyer agrees to buy from Seller the Property defined below.
2. PROPERTY: The land, improvements, accessories and crops except for the exclusions and reservations, are collectively referred to as the Property (Property).
A. LAND: The land situated in the County of Denton, Texas, described as follows: 2 parcels being A0884A, J.MCNEIL, TR 8A, .791 Acres and A0884A, J.MCNEIL, TR 7B .209 acres for a total of 1 Acre or as described on attached exhibit, also known as 1197 Lloyds Rd., Oak Point ETJ, Tx 75068 (address/zip code), together with all rights, privileges, and appurtenances pertaining thereto, including but not limited to: water rights, claims, permits, strips and gores, easements, and cooperative or association memberships.
B. IMPROVEMENTS: (1) FARM AND RANCH IMPROVEMENTS: The following permanently installed and built-in items, if any: windmills, tanks, barns, pens, fences, gates, sheds, outbuildings, and corrals. (2) RESIDENTIAL IMPROVEMENTS: The house, garage, and all other fixtures and improvements attached to the above-described real property, including without limitation, the following permanently installed and built-in items, if any: all equipment and appliances, valances, screens, shutters, awnings, wall-to-wall carpeting, mirrors, ceiling fans, attic fans, mail boxes, television antennas, mounts and brackets for televisions and speakers, heating and air-conditioning units, security and fire detection equipment, wiring, plumbing and lighting fixtures, chandeliers, water softener system, kitchen equipment, garage door openers, cleaning equipment, shrubbery, landscaping, outdoor cooking equipment, and all other property attached to the above described real property.
C. ACCESSORIES: (1) FARM AND RANCH ACCESSORIES: The following described related accessories: (check boxes of conveyed accessories) [] portable buildings [] hunting blinds [] game feeders [] livestock feeders and troughs [] irrigation equipment [] fuel tanks [] submersible pumps [] pressure tanks [] corrals [] gates [] chutes [] other: (2) RESIDENTIAL ACCESSORIES: The following described related accessories, if any: window air conditioning units, stove, fireplace screens, curtains and rods, blinds, window shades, draperies and rods, door keys, mailbox keys, above ground pool, swimming pool equipment and maintenance accessories, artificial fireplace logs, security systems that are not fixtures, and controls for: (i) garage doors, (ii) entry gates, and (iii) other improvements and accessories. "Controls" includes Seller's transferable rights to the (i) software and applications used to access and control improvements or accessories, and (ii) hardware used solely to control improvements or accessories.
D. CROPS: Unless otherwise agreed in writing, Seller has the right to harvest all growing crops until delivery of possession of the Property.
E. EXCLUSIONS: The following improvements, accessories, and crops will be retained by Seller and must be removed prior to delivery of possession: None
F. RESERVATIONS: Any reservation for oil, gas, or other minerals, water, timber, or other interests is made in accordance with an attached addendum.
3. SALES PRICE: A. Cash portion of Sales Price payable by Buyer at closing \$ 230,000.00 B. Sum of all financing described in the attached: [] Third Party Financing Addendum, [] Loan Assumption Addendum, [] Selier Financing Addendum. \$ C. Sales Price (Sum of A and B) \$ 230,000.00 D. The Sales Price [] will [X] will not be adjusted based on the survey required by Paragraph 6C. If the Sales Price is adjusted, the Sales Price will be calculated on the basis of \$ per acre. If the Sales Price is adjusted by more than 10%, either party may terminate this contract by providing written notice to the other party within days after the terminating party receives the survey. If neither party terminates this contract or if the variance is 10% or less, the adjustment will be made to the amount in [] 3A [] 3B [] proportionately to 3A and 3B.
4. LEASES Except as disclosed in this contract, Seller is not aware of any leases affecting the Property. After the Effective Date, Seller may not, without Buyer's written consent, create a new lease, amend any existing lease, or convey any interest in the Property. (Check all applicable boxes) [] A. RESIDENTIAL LEASES: The Property is subject to one or more residential leases and the Addendum Regarding Residential Leases is attached to this contract. [] B. FIXTURE LEASES: Fixtures on the Property are subject to one or more fixture leases (for example, solar panels, propane tanks, water softener, security system) and the Addendum Regarding Fixture Leases is attached to this contract. [] C. NATURAL RESOURCE LEASES: "Natural Resource Lease" means an existing oil and gas, mineral, water, wind, or other natural resource lease affecting the Property to which Seller is a party.

TXR 1701

Initialed for identification by Buyer [AW] [RW] and Seller [MBC]

TREC NO. 25-14

(Address of Property)

- (1) Seller has delivered to Buyer a copy of all the Natural Resource Leases.
- (2) Seller has not delivered to Buyer a copy of all the Natural Resource Leases. Seller shall provide to Buyer a copy of all the Natural Resource Leases within 3 days after the Effective Date. Buyer may terminate the contract within _____ days after the date the Buyer receives all the Natural Resource Leases and the earnest money shall be refunded to Buyer.

5. EARNEST MONEY AND TERMINATION OPTION:

- A. DELIVERY OF EARNEST MONEY AND OPTION FEE: Within 3 days after the Effective Date, Buyer must deliver to Fidelity National Title Company, as escrow agent, at 5339 Spring Valley Rd, Dallas, TX 75254-3009 (address): \$ 23,000.00 as earnest money and \$ _____ as the Option Fee. The earnest money and Option Fee shall be made payable to escrow agent and may be paid separately or combined in a single payment.
 - (1) Buyer shall deliver additional earnest money of \$ _____ to escrow agent within _____ days after the Effective Date of this contract.
 - (2) If the last day to deliver the earnest money, Option Fee, or the additional earnest money falls on a Saturday, Sunday, or legal holiday, the time to deliver the earnest money, Option Fee, or the additional earnest money, as applicable, is extended until the end of the next day that is not a Saturday, Sunday, or legal holiday.
 - (3) The amount(s) escrow agent receives under this paragraph shall be applied first to the Option Fee, then to the earnest money, and then to the additional earnest money.
 - (4) Buyer authorizes escrow agent to release and deliver the Option Fee to Seller at any time without further notice to or consent from Buyer, and releases escrow agent from liability for delivery of the Option Fee to Seller. The Option Fee will be credited to the Sales Price at closing.
- B. TERMINATION OPTION: For nominal consideration, the receipt of which Seller acknowledges, and Buyer's agreement to pay the Option Fee within the time required, Seller grants Buyer the unrestricted right to terminate this contract by giving notice of termination to Seller within 0 days after the Effective Date of this contract (Option Period). Notices under this paragraph must be given by 5:00 p.m. (local time where the Property is located) by the date specified. If Buyer gives notice of termination within the time prescribed: (i) the Option Fee will not be refunded and escrow agent shall release any Option Fee remaining with escrow agent to Seller; and (ii) any earnest money will be refunded to Buyer.
- C. FAILURE TO TIMELY DELIVER EARNEST MONEY: If Buyer fails to deliver the earnest money within the time required, Seller may terminate this contract or exercise Seller's remedies under Paragraph 15, or both, by providing notice to Buyer before Buyer delivers the earnest money.
- D. FAILURE TO TIMELY DELIVER OPTION FEE: If no dollar amount is stated as the Option Fee or if Buyer fails to deliver the Option Fee within the time required, Buyer shall not have the unrestricted right to terminate this contract under this Paragraph 5.
- E. TIME: **Time is of the essence for this paragraph and strict compliance with the time for performance is required.**

6. TITLE POLICY AND SURVEY:

- A. TITLE POLICY: Seller shall furnish to Buyer at Seller's Buyer's expense an owner policy of title insurance (Title Policy) issued by: Fidelity National Title (Title Company) in the amount of the Sales Price, dated at or after closing, insuring Buyer against loss under the provisions of the Title Policy, subject to the promulgated exclusions (including existing building and zoning ordinances) and the following exceptions:
 - (1) The standard printed exception for standby fees, taxes and assessments.
 - (2) Liens created as part of the financing described in Paragraph 3.
 - (3) Reservations or exceptions otherwise permitted by this contract or as may be approved by Buyer in writing.
 - (4) The standard printed exception as to marital rights.
 - (5) The standard printed exception as to waters, tidelands, beaches, streams, and related matters.
 - (6) The standard printed exception as to discrepancies, conflicts, shortages in area or boundary lines, encroachments or protrusions, or overlapping improvements:
 - (i) will not be amended or deleted from the title policy; or
 - (ii) will be amended to read, "shortages in area" at the expense of Buyer Seller.
 - (7) The exception or exclusion regarding minerals approved by the Texas Department of Insurance.
- B. COMMITMENT: Within 20 days after the Title Company receives a copy of this contract, Seller shall furnish to Buyer a commitment for title insurance (Commitment) and, at Buyer's expense, legible copies of restrictive covenants and documents evidencing exceptions in the Commitment (Exception Documents) other than the standard printed exceptions. Seller authorizes the Title Company to deliver the Commitment and Exception Documents to Buyer at Buyer's address shown in Paragraph 21. If the Commitment and Exception Documents are not delivered to Buyer within the specified time, the time for delivery will be automatically extended up to 15 days or 3 days before the Closing Date, whichever is earlier. If the Commitment and Exception Documents are not delivered within the time required, Buyer may terminate this contract and the earnest money will be refunded to Buyer.

(Address of Property)

- C. SURVEY: The survey must be made by a registered professional land surveyor acceptable to the Title Company and Buyer's lender(s). (Check one box only):
- (1) Within 10 days after the Effective Date of this contract, Seller shall furnish to Buyer and Title Company Seller's existing survey of the Property and a Residential Real Property Affidavit promulgated by the Texas Department of Insurance (T-47 Affidavit). **If Seller fails to furnish the existing survey or affidavit within the time prescribed, Buyer shall obtain a new survey at Seller's expense no later than 3 days prior to Closing Date.** The existing survey will will not be recertified to a date subsequent to the Effective Date of this contract at the expense of Buyer Seller. If the existing survey is not approved by the Title Company or Buyer's lender(s), a new survey will be obtained at the expense of Buyer Seller no later than 3 days prior to Closing Date.
 - (2) Within _____ days after the Effective Date of this contract, Buyer shall obtain a new survey at Buyer's expense. Buyer is deemed to receive the survey on the date of actual receipt or the date specified in this paragraph, whichever is earlier.
 - (3) Within _____ days after the Effective Date of this contract, Seller, at Seller's expense shall furnish a new survey to Buyer.
 - (4) No survey is required.
- D. OBJECTIONS: Buyer may object in writing to (i) defects, exceptions, or encumbrances to title disclosed on the survey other than items 6A(1) through (5) above; or disclosed in the Commitment other than items 6A(1) through (7) above; (ii) any portion of the Property lying in a special flood hazard area (Zone V or A) as shown on the current Federal Emergency Management Agency map; or (iii) any exceptions which prohibit the following use or activity: _____

Buyer must object the earlier of (i) the Closing Date or (ii) 10 days after Buyer receives the Commitment, Exception Documents, and the survey. Buyer's failure to object within the time allowed will constitute a waiver of Buyer's right to object; except that the requirements in Schedule C of the Commitment are not waived by Buyer. Provided Seller is not obligated to incur any expense, Seller shall cure any timely objections of Buyer or any third party lender within 15 days after Seller receives the objections (Cure Period) and the Closing Date will be extended as necessary. If objections are not cured within the Cure Period, Buyer may, by delivering notice to Seller within 5 days after the end of the Cure Period: (i) terminate this contract and the earnest money will be refunded to Buyer; or (ii) waive the objections. If Buyer does not terminate within the time required, Buyer shall be deemed to have waived the objections. If the Commitment or Survey is revised or any new Exception Document(s) is delivered, Buyer may object to any new matter revealed in the revised Commitment or Survey or new Exception Document(s) within the same time stated in this paragraph to make objections beginning when the revised Commitment, Survey, or Exception Document(s) is delivered to Buyer.

- E. EXCEPTION DOCUMENTS: Prior to the execution of the contract, Seller has provided Buyer with copies of the Exception Documents listed below or on the attached exhibit. Matters reflected in the Exception Documents listed below or on the attached exhibit will be permitted exceptions in the Title Policy and will not be a basis for objection to title:

Document	Date	Recording Reference
_____	_____	_____
_____	_____	_____

- F. SURFACE LEASES: Prior to the execution of the contract, Seller has provided Buyer with copies of written leases and given notice of oral leases (Leases) listed below or on the attached exhibit. The following Leases will be permitted exceptions in the Title Policy and will not be a basis for objection to title: _____

- G. TITLE NOTICES:
- (1) ABSTRACT OR TITLE POLICY: Broker advises Buyer to have an abstract of title covering the Property examined by an attorney of Buyer's selection, or Buyer should be furnished with or obtain a Title Policy. If a Title Policy is furnished, the Commitment should be promptly reviewed by an attorney of Buyer's choice due to the time limitations on Buyer's right to object.
 - (2) STATUTORY TAX DISTRICTS: If the Property is situated in a utility or other statutorily created district providing water, sewer, drainage, or flood control facilities and services, Chapter 49, Texas Water Code, requires Seller to deliver and Buyer to sign the statutory notice relating to the tax rate, bonded indebtedness, or standby fee of the district prior to final execution of this contract.
 - (3) TIDE WATERS: If the Property abuts the tidally influenced waters of the state, §33.135, Texas Natural Resources Code, requires a notice regarding coastal area property to be included in the contract. An addendum containing the notice promulgated by TREC or required by the parties must be used.
 - (4) ANNEXATION: If the Property is located outside the limits of a municipality, Seller notifies Buyer under §5.011, Texas Property Code, that the Property may now or later be included in

(Address of Property)

the extraterritorial jurisdiction of a municipality and may now or later be subject to annexation by the municipality. Each municipality maintains a map that depicts its boundaries and extraterritorial jurisdiction. To determine if the Property is located within a municipality's extraterritorial jurisdiction or is likely to be located within a municipality's extraterritorial jurisdiction, contact all municipalities located in the general proximity of the Property for further information.

- (5) PROPERTY LOCATED IN A CERTIFICATED SERVICE AREA OF A UTILITY SERVICE PROVIDER: Notice required by §13.257, Water Code: The real property, described in Paragraph 2, that you are about to purchase may be located in a certificated water or sewer service area, which is authorized by law to provide water or sewer service to the properties in the certificated area. If your property is located in a certificated area there may be special costs or charges that you will be required to pay before you can receive water or sewer service. There may be a period required to construct lines or other facilities necessary to provide water or sewer service to your property. You are advised to determine if the property is in a certificated area and contact the utility service provider to determine the cost that you will be required to pay and the period, if any, that is required to provide water or sewer service to your property. The undersigned Buyer hereby acknowledges receipt of the foregoing notice at or before the execution of a binding contract for the purchase of the real property described in Paragraph 2 or at closing of purchase of the real property.
- (6) PUBLIC IMPROVEMENT DISTRICTS: If the Property is in a public improvement district, Seller must give Buyer written notice as required by §5.014, Property Code. An addendum containing the required notice shall be attached to this contract.
- (7) TEXAS AGRICULTURAL DEVELOPMENT DISTRICT: The Property is is not located in a Texas Agricultural Development District. For additional information contact the Texas Department of Agriculture.
- (8) TRANSFER FEES: If the Property is subject to a private transfer fee obligation, §5.205, Property Code, requires Seller to notify Buyer as follows: The private transfer fee obligation may be governed by Chapter 5, Subchapter G of the Texas Property Code.
- (9) PROPANE GAS SYSTEM SERVICE AREA: If the Property is located in a propane gas system service area owned by a distribution system retailer, Seller must give Buyer written notice as required by §141.010, Texas Utilities Code. An addendum containing the notice approved by TREC or required by the parties should be used.
- (10) NOTICE OF WATER LEVEL FLUCTUATIONS: If the Property adjoins an impoundment of water, including a reservoir or lake, constructed and maintained under Chapter 11, Water Code, that has a storage capacity of at least 5,000 acre-feet at the impoundment's normal operating level, Seller hereby notifies Buyer: "The water level of the impoundment of water adjoining the Property fluctuates for various reasons, including as a result of: (1) an entity lawfully exercising its right to use the water stored in the impoundment; or (2) drought or flood conditions."

7. PROPERTY CONDITION:

A. ACCESS, INSPECTIONS AND UTILITIES: Seller shall permit Buyer and Buyer's agents access to the Property at reasonable times. Buyer may have the Property inspected by inspectors selected by Buyer and licensed by TREC or otherwise permitted by law to make inspections. Any hydrostatic testing must be separately authorized by Seller in writing. Seller at Seller's expense shall immediately cause existing utilities to be turned on and shall keep the utilities on during the time this contract is in effect.

NOTICE: Buyer should determine the availability of utilities to the Property suitable to satisfy Buyer's needs.

B. SELLER'S DISCLOSURE NOTICE PURSUANT TO §5.008, TEXAS PROPERTY CODE (Notice):

- (Check one box only)
- (1) Buyer has received the Notice
 - (2) Buyer has not received the Notice. Within _____ days after the Effective Date of this contract, Seller shall deliver the Notice to Buyer. If Buyer does not receive the Notice, Buyer may terminate this contract at any time prior to the closing and the earnest money will be refunded to Buyer. If Seller delivers the Notice, Buyer may terminate this contract for any reason within 7 days after Buyer receives the Notice or prior to the closing, whichever first occurs, and the earnest money will be refunded to Buyer.
 - (3) The Texas Property Code does not require this Seller to furnish the Notice.

C. SELLER'S DISCLOSURE OF LEAD-BASED PAINT AND LEAD-BASED PAINT HAZARDS is required by Federal law for a residential dwelling constructed prior to 1978.

D. ACCEPTANCE OF PROPERTY CONDITION: "As Is" means the present condition of the Property with any and all defects and without warranty except for the warranties of title and the warranties in this contract. Buyer's agreement to accept the Property As Is under Paragraph 7D (1) or (2) does not preclude Buyer from inspecting the Property under Paragraph 7A, from negotiating repairs or treatments in a subsequent amendment, or from terminating this contract during the Option Period, if any.

- (Check one box only)
- (1) Buyer accepts the Property As Is.
 - (2) Buyer accepts the Property As Is provided Seller, at Seller's expense, shall complete the following specific repairs and treatments: _____

(Do not insert general phrases, such as "subject to inspections," that do not identify specific repairs and treatments.)

E. COMPLETION OF REPAIRS: Unless otherwise agreed in writing: (i) Seller shall complete all agreed repairs and treatments prior to the Closing Date; and (ii) all required permits must be obtained, and repairs and treatments must be performed by persons who are licensed to provide such repairs or treatments or, if no license is required by law, are commercially engaged in the trade of providing such repairs or treatments. At Buyer's election, any transferable warranties received by Seller with respect to the repairs will be transferred to Buyer at Buyer's expense.

If Seller fails to complete any agreed repairs prior to the Closing Date, Buyer may exercise remedies under Paragraph 15 or extend the Closing Date up to 5 days if necessary for Seller to complete repairs.

- F. LENDER REQUIRED REPAIRS AND TREATMENTS: Unless otherwise agreed in writing, neither party is obligated to pay for lender required repairs, which includes treatment for wood destroying insects. If the parties do not agree to pay for the lender required repairs or treatments, this contract will terminate and the earnest money will be refunded to Buyer. If the cost of lender required repairs and treatments exceeds 5% of the Sales Price, Buyer may terminate this contract and the earnest money will be refunded to Buyer.
- G. ENVIRONMENTAL MATTERS: Buyer is advised that the presence of wetlands, toxic substances, including asbestos and wastes or other environmental hazards, or the presence of a threatened or endangered species or its habitat may affect Buyer's intended use of the Property. If Buyer is concerned about these matters, an addendum promulgated by TREC or required by the parties should be used.
- H. SELLER'S DISCLOSURES: Except as otherwise disclosed in this contract, Seller has no knowledge of the following:
 - (1) any flooding of the Property which has had a material adverse effect on the use of the Property;
 - (2) any pending or threatened litigation, condemnation, or special assessment affecting the Property;
 - (3) any environmental hazards that materially and adversely affect the Property;
 - (4) any dumpsite, landfill, or underground tanks or containers now or previously located on the Property;
 - (5) any wetlands, as defined by federal or state law or regulation, affecting the Property; or
 - (6) any threatened or endangered species or their habitat affecting the Property.
- I. RESIDENTIAL SERVICE CONTRACTS: Buyer may purchase a residential service contract from a residential service company. If Buyer purchases a residential service contract, Seller shall reimburse Buyer at closing for the cost of the residential service contract in an amount not exceeding \$ _____. Buyer should review any residential service contract for the scope of coverage, exclusions and limitations. **The purchase of a residential service contract is optional. Similar coverage may be purchased from various companies authorized to do business in Texas.**
- J. GOVERNMENT PROGRAMS: The Property is subject to the government programs listed below or on the attached exhibit:

Seller shall provide Buyer with copies of all governmental program agreements. Any allocation or proration of payment under governmental programs is made by separate agreement between the parties which will survive closing.

8. BROKERS AND SALES AGENTS:

- A. BROKER OR SALES AGENT DISCLOSURE: Texas law requires a real estate broker or sales agent who is a party to a transaction or acting on behalf of a spouse, parent, child, business entity in which the broker or sales agent owns more than 10%, or a trust for which the broker or sales agent acts as a trustee or of which the broker or sales agent or the broker or sales agent's spouse, parent or child is a beneficiary, to notify the other party in writing before entering into a contract of sale. Disclose if applicable: **Andra Williams is a licensed Realtor.**
- B. BROKERS' FEES: All obligations of the parties for payment of brokers' fees are contained in separate written agreements.

9. CLOSING:

- A. The closing of the sale will be on or before See addendum, or within 7 days after objections made under Paragraph 6D have been cured or waived, whichever date is later (Closing Date). If either party fails to close the sale by the Closing Date, the non-defaulting party may exercise the remedies contained in Paragraph 15.
- B. At closing:
 - (1) Seller shall execute and deliver a general warranty deed conveying title to the Property to Buyer and showing no additional exceptions to those permitted in Paragraph 6, an assignment of Leases, and furnish tax statements or certificates showing no delinquent taxes on the Property.
 - (2) Buyer shall pay the Sales Price in good funds acceptable to the escrow agent.
 - (3) Seller and Buyer shall execute and deliver any notices, statements, certificates, affidavits, releases, loan documents and other documents reasonably required for the closing of the sale and the issuance of the Title Policy.
 - (4) There will be no liens, assessments, or security interests against the Property which will not be satisfied out of the sales proceeds unless securing the payment of any loans assumed by Buyer and assumed loans will not be in default.

10. POSSESSION:

- A. BUYER'S POSSESSION: Seller shall deliver to Buyer possession of the Property in its present or required condition, ordinary wear and tear excepted: upon closing and funding according to a temporary residential lease form promulgated by TREC or other written lease required by the parties. Any possession by Buyer prior to closing or by Seller after closing which is not authorized by a written lease will establish a tenancy at sufferance relationship between the parties. **Consult your insurance agent prior to change of ownership and possession because insurance coverage may be limited or terminated. The absence of a written lease or appropriate insurance coverage may expose the parties to economic loss.**

B. SMART DEVICES: "Smart Device" means a device that connects to the internet to enable remote use, monitoring, and management of: (i) the Property; (ii) items identified in any Non-Realty Items Addendum; or (iii) items in a Fixture Lease assigned to Buyer. At the time Seller delivers possession of the Property to Buyer, Seller shall:

- (1) deliver to Buyer written information containing all access codes, usernames, passwords, and applications Buyer will need to access, operate, manage, and control the Smart Devices; and
- (2) terminate and remove all access and connections to the improvements and accessories from any of Seller's personal devices including but not limited to phones and computers.

11. SPECIAL PROVISIONS: (Insert only factual statements and business details applicable to the sale. TREC rules prohibit license holders from adding factual statements or business details for which a contract addendum or other form has been promulgated by TREC for mandatory use.)

See all addendums and amendments.

12. SETTLEMENT AND OTHER EXPENSES:

A. The following expenses must be paid at or prior to closing:

(1) Expenses payable by Seller (Seller's Expenses):

- (a) Releases of existing liens, including prepayment penalties and recording fees; release of Seller's loan liability; tax statements or certificates; preparation of deed; one-half of escrow fee; and other expenses payable by Seller under this contract.
- (b) Seller shall also pay an amount not to exceed \$ _____ to be applied in the following order: Buyer's Expenses which Buyer is prohibited from paying by FHA, VA, Texas Veterans Land Board or other governmental loan programs, and then to other Buyer's Expenses as allowed by the lender.

(2) Expenses payable by Buyer (Buyer's Expenses) Appraisal fees; loan application fees; origination charges; credit reports; preparation of loan documents; interest on the notes from date of disbursement to one month prior to dates of first monthly payments; recording fees; copies of easements and restrictions; loan title policy with endorsements required by lender; loan-related inspection fees; photos; amortization schedules; one-half of escrow fee; all prepaid items, including required premiums for flood and hazard insurance, reserve deposits for insurance, ad valorem taxes and special governmental assessments; final compliance inspection; courier fee; repair inspection; underwriting fee; wire transfer fee; expenses incident to any loan; Private Mortgage Insurance Premium (PMI), VA Loan Funding Fee, or FHA Mortgage Insurance Premium (MIP) as required by the lender; and other expenses payable by Buyer under this contract.

B. If any expense exceeds an amount expressly stated in this contract for such expense to be paid by a party, that party may terminate this contract unless the other party agrees to pay such excess. Buyer may not pay charges and fees expressly prohibited by FHA, VA, Texas Veterans Land Board or other governmental loan program regulations.

13. PRORATIONS AND ROLLBACK TAXES:

A. PRORATIONS: Taxes for the current year, interest, maintenance fees, assessments, dues and rents will be prorated through the Closing Date. The tax proration may be calculated taking into consideration any change in exemptions that will affect the current year's taxes. If taxes for the current year vary from the amount prorated at closing, the parties shall adjust the prorations when tax statements for the current year are available. If taxes are not paid at or prior to closing, Buyer shall pay taxes for the current year. Rentals which are unknown at time of closing will be prorated between Buyer and Seller when they become known.

B. ROLLBACK TAXES: If this sale or Buyer's use of the Property after closing results in the assessment of additional taxes, penalties or interest (Assessments) for periods prior to closing, the Assessments will be the obligation of Buyer. If Assessments are imposed because of Seller's use or change in use of the Property prior to closing, the Assessments will be the obligation of Seller. Obligations imposed by this paragraph will survive closing.

14. CASUALTY LOSS: If any part of the Property is damaged or destroyed by fire or other casualty after the Effective Date of this contract, Seller shall restore the Property to its previous condition as soon as reasonably possible, but in any event by the Closing Date. If Seller fails to do so due to factors beyond Seller's control, Buyer may (a) terminate this contract and the earnest money will be refunded to Buyer, (b) extend the time for performance up to 15 days and the Closing Date will be extended as necessary or (c) accept the Property in its damaged condition with an assignment of insurance proceeds, if permitted by Seller's insurance carrier, and receive credit from Seller at closing in the amount of the deductible under the insurance policy. Seller's obligations under this paragraph are independent of any other obligations of Seller under this contract.

- 15. **DEFAULT:** If Buyer fails to comply with this contract, Buyer will be in default, and Seller may (a) enforce specific performance, seek such other relief as may be provided by law, or both, or (b) terminate this contract and receive the earnest money as liquidated damages, thereby releasing both parties from this contract. If Seller fails to comply with this contract for any other reason, Seller will be in default and Buyer may (a) enforce specific performance, seek such other relief as may be provided by law, or both, or (b) terminate this contract and receive the earnest money, thereby releasing both parties from this contract.
- 16. **MEDIATION:** It is the policy of the State of Texas to encourage resolution of disputes through alternative dispute resolution procedures such as mediation. Any dispute between Seller and Buyer related to this contract which is not resolved through informal discussion will be submitted to a mutually acceptable mediation service or provider. The parties to the mediation shall bear the mediation costs equally. This paragraph does not preclude a party from seeking equitable relief from a court of competent jurisdiction.
- 17. **ATTORNEY'S FEES:** A Buyer, Seller, Listing Broker, Other Broker, or escrow agent who prevails in any legal proceeding related to this contract is entitled to recover reasonable attorney's fees and all costs of such proceeding.
- 18. **ESCROW:**
 - A. **ESCROW:** The escrow agent is not (i) a party to this contract and does not have liability for the performance or nonperformance of any party to this contract, (ii) liable for interest on the earnest money and (iii) liable for the loss of any earnest money caused by the failure of any financial institution in which the earnest money has been deposited unless the financial institution is acting as escrow agent. Escrow agent may require any disbursement made in connection with this contract to be conditioned on escrow agent's collection of good funds acceptable to escrow agent.
 - B. **EXPENSES:** At closing, the earnest money must be applied first to any cash down payment, then to Buyer's Expenses and any excess refunded to Buyer. If no closing occurs, escrow agent may: (i) require a written release of liability of the escrow agent from all parties; and (ii) require payment of unpaid expenses incurred on behalf of a party. Escrow agent may deduct authorized expenses from the earnest money payable to a party. "Authorized expenses" means expenses incurred by escrow agent on behalf of the party entitled to the earnest money that were authorized by this contract or that party.
 - C. **DEMAND:** Upon termination of this contract, either party or the escrow agent may send a release of earnest money to each party and the parties shall execute counterparts of the release and deliver same to the escrow agent. If either party fails to execute the release, either party may make a written demand to the escrow agent for the earnest money. If only one party makes written demand for the earnest money, escrow agent shall promptly provide a copy of the demand to the other party. If escrow agent does not receive written objection to the demand from the other party, If escrow agent does not receive written objection to the demand from the other party within 15 days, escrow agent may disburse the earnest money to the party making demand reduced by the amount of unpaid expenses incurred on behalf of the party receiving the earnest money and escrow agent may pay the same to the creditors. If escrow agent complies with the provisions of this paragraph, each party hereby releases escrow agent from all adverse claims related to the disbursement of the earnest money.
 - D. **DAMAGES:** Any party who wrongfully fails or refuses to sign a release acceptable to the escrow agent within 7 days of receipt of the request will be liable to the other party for (i) damages; (ii) the earnest money; (iii) reasonable attorney's fees; and (iv) all costs of suit.
 - E. **NOTICES:** Escrow agent's notices will be effective when sent in compliance with Paragraph 21. Notice of objection to the demand will be deemed effective upon receipt by escrow agent.
- 19. **REPRESENTATIONS:** All covenants, representations and warranties in this contract survive closing. If any representation of Seller in this contract is untrue on the Closing Date, Seller will be in default. Unless expressly prohibited by written agreement, Seller may continue to show the Property and receive, negotiate and accept back up offers.
- 20. **FEDERAL TAX REQUIREMENTS:** If Seller is a "foreign person," as defined by Internal Revenue Code and its regulations, or if Seller fails to deliver an affidavit or a certificate of non-foreign status to Buyer that Seller is not a "foreign person," then Buyer shall withhold from the sales proceeds an amount sufficient to comply with applicable tax law and deliver the same to the Internal Revenue Service together with appropriate tax forms. Internal Revenue Service regulations require filing written reports if currency in excess of specified amounts is received in the transaction.

AW

RWC

21. **NOTICES:** All notices from one party to the other must be in writing and are effective when mailed to, hand-delivered at, or transmitted by fax or electronic transmission as follows:

To Buyer at: <u>1201 Lloyds Rd.</u>	To Seller at: <u>Gibbons P.C. at One Gateway Center,</u>
<u>Oak Point, Tx 75068</u>	<u>Newark, NJ 07102</u>
Phone: <u>(254)289-8200</u>	Phone: <u>(214)549-1122</u>
E-mail/Fax: _____	E-mail/Fax: _____
E-mail/Fax: <u>andrawilliams1518@gmail.com</u>	E-mail/Fax: <u>jhankins@aishallgroup.com</u>

22. **AGREEMENT OF PARTIES:** This contract contains the entire agreement of the parties and cannot be changed except by their written agreement. Addenda which are a part of this contract are (check all applicable boxes):

- | | |
|---|--|
| <input type="checkbox"/> Third Party Financing Addendum | <input type="checkbox"/> Environmental Assessment, Threatened or Endangered Species and Wetlands Addendum |
| <input type="checkbox"/> Seller Financing Addendum | <input type="checkbox"/> Seller's Temporary Residential Lease |
| <input type="checkbox"/> Addendum for Property Subject to Mandatory Membership in a Property Owners Association | <input type="checkbox"/> Short Sale Addendum |
| <input type="checkbox"/> Buyer's Temporary Residential Lease | <input type="checkbox"/> Addendum for Property Located Seaward of the Gulf Intracoastal Waterway |
| <input type="checkbox"/> Loan Assumption Addendum | <input type="checkbox"/> Addendum for Seller's Disclosure of Information on Lead-based Paint and Lead-based Paint Hazards as Required by Federal Law |
| <input type="checkbox"/> Addendum for Sale of Other Property by Buyer | <input type="checkbox"/> Addendum for Property in a Propane Gas System Service Area |
| <input type="checkbox"/> Addendum for "Back-Up" Contract | Addendum Regarding Residential Leases |
| <input type="checkbox"/> Addendum for Coastal Area Property | Addendum Regarding Fixture Leases |
| <input type="checkbox"/> Addendum for Authorizing Hydrostatic Testing | <input checked="" type="checkbox"/> Other (list): <u>See all Amendments and addendums</u> |
| <input type="checkbox"/> Addendum Concerning Right to Terminate Due to Lender's Appraisal | _____ |
| <input type="checkbox"/> Addendum for Reservation of Oil, Gas and Other Minerals | _____ |
| <input type="checkbox"/> Addendum containing Notice of Obligation to Pay Improvement District Assessment | _____ |

23. **CONSULT AN ATTORNEY BEFORE SIGNING:** TREC rules prohibit real estate license holders from giving legal advice. READ THIS CONTRACT CAREFULLY.

Buyer's Attorney is: _____	Seller's Attorney is: <u>David Crapo</u>
Phone: _____	Phone: <u>(973)596-4523</u>
Fax: _____	Fax: <u>(973)639-6244</u>
E-mail: _____	E-mail: <u>dCrapo@gibbonslaw.com</u>

EXECUTED the _____ day of _____, _____ (Effective Date).
(BROKER: FILL IN THE DATE OF FINAL ACCEPTANCE.)

Authentisign
Andra Williams
Buyer **Andra Williams**

Mark B. Conlan
Seller **SEC V Mediatrix Capital Inc., et al., Mark Conlan of Gibbons P.C., Receiver**

Authentisign
Ralph Williams et al., and or assigns
Buyer **Ralph Williams et al., and or assigns**

Seller _____



The form of this contract has been approved by the Texas Real Estate Commission. TREC forms are intended for use only by trained real estate license holders. No representation is made as to the legal validity or adequacy of any provision in any specific transactions. It is not intended for complex transactions. Texas Real Estate Commission, P.O. Box 12188, Austin, TX 78711-2188, (512) 936- 3000 (<http://www.trec.texas.gov>) TREC NO. 25-14. This form replaces TREC NO. 25-13.

Authentign ID: 5D4E3808-A616-424A-A5DF-9A942D7AE32A
 Contract Concerning

1197 Lloyds Rd, Oak Point ETJ, Tx 75068
 (Address of Property)

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RATIFICATION OF FEE

Listing Broker has agreed to pay Other Broker _____ of the total Sales Price when Listing Broker's fee is received. Escrow Agent is authorized and directed to pay Other Broker from Listing Broker's fee at closing.

Other Broker:
 By: _____

Listing Broker:
 By: _____

BROKER INFORMATION AND AGREEMENT FOR PAYMENT OF BROKERS' FEES

Fry Realty 485498
 Other Broker License No.

Andra Williams 0335464
 Associate's Name License No.

Team Name _____
 Associate's Email Address andrawilliams1518@gmail.com (254)289-0585 Phone
 Licensed Supervisor of Associate **Thomas Fry** 0485498 License No.
 Other Broker's Office Address 6804 Crooked Ln Phone
 City Flowermound State TX Zip 75022

represents Buyer only as Buyer's agent
 Seller as Listing Broker's subagent

ACR Realty Inc 440422
 Listing Broker Firm License No.

James Hankins 0350168
 Listing Associate's Name License No.

Team Name _____
 Listing Associate's Email Address jhankins@alshallgroup.com (214)549-1122 Phone
 Licensed Supervisor of Listing Associate **Samer Keilani** 0426211 License No.
 Listing Broker's Office Address 2220 Colt Rd #360 (214)394-4545 Phone
 City Plano State TX Zip 75075

James Hankins
 Selling Associate's Name License No.

Team Name _____
 Selling Associate's Email Address jhankins@alshallgroup.com (214)390-1900 Phone
 Licensed Supervisor of Selling Associate _____ License No.
 Selling Associate's Office Address 2220 Colt Rd
 City Plano State TX Zip 75075-3797

represents Seller Only
 Buyer Only
 Seller and Buyer as an intermediary

Upon closing of the sale by Seller to Buyer of the Property described in the contract to which this fee agreement is attached: (a) Seller Buyer will pay Listing/Principal Broker a cash fee of \$ _____ or 4.000 % of the total Sales Price; and (b) Seller Buyer will pay Other Broker a cash fee of \$ _____ or 2.000 % of the total Sales Price. Seller/Buyer authorizes and directs Escrow Agent to pay the brokers from the proceeds at closing.

Brokers' fees are negotiable. Brokers' fees or the sharing of fees between brokers are not fixed, controlled, recommended, suggested or maintained by the Texas Real Estate Commission.

Mark B. Conlan
 Seller **SEC V Mediatrix Capital Inc., at al., Mark Conlan of Gibbons P.C., Receiver**

Andra Williams
 Buyer **Andra Williams**

Ralph Williams et al., and assigns
 Buyer **Ralph Williams et al., or assigns**

Do not sign if there is a separate written agreement for payment of Brokers' fees.

OPTION FEE RECEIPT

Receipt of \$ _____ (Option Fee) in the form of _____
is acknowledged.

Escrow Agent **Fidelity National Title Company** _____ Date _____

EARNEST MONEY RECEIPT

Receipt of **\$23,000.00** Earnest Money in the form of _____
is acknowledged.

Fidelity National Title _____ **nppdallas@aol.com** _____
Escrow Agent Received by Email Address Date/Time

5339 Spring Valley Rd _____ **(972)248-7992** _____
Address Phone

Dallas TX 75254 (972)248-3751 _____
City State Zip Fax

CONTRACT RECEIPT

Receipt of the Contract is acknowledged.

Fidelity National Title _____ **nppdallas@aol.com** _____
Escrow Agent Received by Email Address Date

5339 Spring Valley Rd _____ **(972)248-7992** _____
Address Phone

Dallas TX 75254 (972)248-3751 _____
City State Zip Fax

ADDITIONAL EARNEST MONEY RECEIPT

Receipt of \$ _____ additional Earnest Money in the form of _____
is acknowledged.

Escrow Agent _____ Received by _____ Email Address _____ Date/Time _____

Address _____ Phone _____

City _____ State _____ Zip _____ Fax _____

EXHIBIT 3



RESIDENTIAL REAL ESTATE LISTING AGREEMENT EXCLUSIVE RIGHT TO SELL

USE OF THIS FORM BY PERSONS WHO ARE NOT MEMBERS OF THE TEXAS ASSOCIATION OF REALTORS®, INC. IS NOT AUTHORIZED.
©Texas Association of REALTORS®, Inc. 2021

1. PARTIES: The parties to this agreement (this Listing) are:

Seller: **SEC vs Mediatrix Capital Inc., Mark Conlan of Gibbons P.C., Receiver**

Address: **One Gateway Center**

City, State, Zip: **Newark, NJ 07102-5310**

Phone: **(973)596-4545**

Fax: **(973)639-6356**

E-Mail: **mconlan@gibbonslaw.com**

Broker: **ACR Realty Inc**

Address: **2220 Coit Rd Ste 360**

City, State, Zip: **Plano, TX 75075**

Phone: **(214)390-1900**

Fax:

E-Mail: **jhankins@alshallgroup.com**

Seller appoints Broker as Seller's sole and exclusive real estate agent and grants to Broker the exclusive right to sell the Property.

2. PROPERTY: "Property" means the land, improvements, and accessories described below, except for any described exclusions.

A. Land: Lot **TR 7B & 8A**, Block **J.MCNEIL-A884A-000-0008-00A and A0884-00-0007-000B**, Addition, City of **Oak Point ETJ**, in **Denton** County, Texas known as **1197 Lloyds Rd 75086** (address/zip code), or as described on attached exhibit. (If Property is a condominium, attach Condominium Addendum.)

B. Improvements: ~~The house, garage and all other fixtures and improvements attached to the above-described real property, including without limitation, the following permanently installed and built-in items, if any: all equipment and appliances, valances, screens, shutters, awnings, wall to wall carpeting, mirrors, ceiling fans, attic fans, mail boxes, television antennas, mounts and brackets for televisions and speakers, heating and air conditioning units, security and fire detection equipment, wiring, plumbing and lighting fixtures, chandeliers, water softener system, kitchen equipment, garage door openers, cleaning equipment, shrubbery, landscaping, outdoor cooking equipment, and all other property attached to the above-described real property.~~

C. Accessories: ~~The following described related accessories, if any: window air conditioning units, stove, fireplace screens, curtains and rods, blinds, window shades, draperies and rods, door keys, mailbox keys, above-ground pool, swimming pool equipment and maintenance accessories, artificial fireplace logs, security systems that are not fixtures, and controls for: (i) garage doors, (ii) entry gates, and (iii) other improvements and accessories. "Controls" includes Seller's transferable rights to the (i) software and applications used to access and control improvements or accessories, and (ii) hardware used solely to control improvements or accessories.~~

D. Exclusions: The following improvements and accessories will be retained by Seller and must be removed prior to delivery of possession: **None**

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1197 Lloyds Rd

Oak Point ETJ, TX 75068-2625

Residential Listing concerning _____

E. Owners' Association: The Property is is not subject to mandatory membership in a property owners' association.

3. **LISTING PRICE:** Seller instructs Broker to market the Property at the following price: \$ 169,900.00 (Listing Price). Seller agrees to sell the Property for the Listing Price or any other price acceptable to Seller. Seller will pay all typical closing costs charged to sellers of residential real estate in Texas (seller's typical closing costs are those set forth in the residential contract forms promulgated by the Texas Real Estate Commission).

4. **TERM:**

A. This Listing begins on January 3, 2022 and ends at 11:59 p.m. on December 31, 2022.

B. If Seller enters into a binding written contract to sell the Property before the date this Listing begins and the contract is binding on the date this Listing begins, this Listing will not commence and will be void.

5. **BROKER COMPENSATION:**

A. When earned and payable, Seller will pay Broker:

(1) 6.000 % of the sales price.

(2) _____

B. ~~Earned~~: ~~Broker's compensation is earned when any one of the following occurs during this Listing:~~

- ~~(1) Seller sells, exchanges, options, agrees to sell, agrees to exchange, or agrees to option the Property to anyone at any price on any terms;~~
- ~~(2) Broker individually or in cooperation with another broker procures a buyer ready, willing, and able to buy the Property at the Listing Price or at any other price acceptable to Seller; or~~
- ~~(3) Seller breaches this Listing.~~

C. Payable: ~~Once earned~~, Broker's compensation is payable either during this Listing or after it ends at the earlier of:

- (1) the closing and funding of any sale or exchange of all or part of the Property;
- (2) ~~Seller's refusal to sell the Property after Broker's compensation has been earned;~~
- (3) ~~Seller's breach of this Listing;~~ or
- (4) at such time as otherwise set forth in this Listing.

Broker's compensation is not payable if a sale of the Property does not close or fund as a result of: (i) Seller's failure, without fault of Seller, to deliver to a buyer a deed or a title policy as required by the contract to sell; (ii) loss of ownership due to foreclosure or other legal proceeding; or (iii) Seller's failure to restore the Property, as a result of a casualty loss, to its previous condition by the closing date set forth in a contract for the sale of the Property.

D. Other Compensation:

(1) Breach by Buyer Under a Contract: If Seller collects earnest money, the sales price, or damages by suit, compromise, settlement, or otherwise from a buyer who breaches a contract for the sale of the Property entered into during this Listing, Seller will pay Broker, after deducting attorney's fees and collection expenses, an amount equal to the lesser of one-half of the amount collected after deductions or the amount of the Broker's Compensation stated in Paragraph 5A. Any amount paid under this Paragraph 5D(1) is in addition to any amount that Broker may be entitled to receive for subsequently selling the Property.

(2) Service Providers: If Broker refers Seller or a prospective buyer to a service provider (for example, mover, cable company, telecommunications provider, utility, or contractor) Broker may receive a fee from the service provider for the referral. Any referral fee Broker receives under this Paragraph 5D(2) is in addition to any other compensation Broker may receive under this Listing.

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Residential Listing concerning 1197 Lloyds Rd
Oak Point ETJ, TX 75068-2625

(3) Other Fees and/or Reimbursable Expenses: See Amendment

E. Protection Period:

- (1) "Protection period" means that time starting the day after this Listing ends and continuing for 90 days. "Sell" means any transfer of any fee simple interest in the Property whether by oral or written agreement or option.
- (2) Not later than 10 days after this Listing ends, Broker may send Seller written notice specifying the names of persons whose attention was called to the Property during this Listing. If Seller agrees to sell the Property during the protection period to a person named in the notice or to a relative of a person named in the notice, Seller will pay Broker, upon the closing of the sale, the amount Broker would have been entitled to receive if this Listing were still in effect.
- (3) This Paragraph 5E survives termination of this Listing. This Paragraph 5E will not apply if:
 - (a) Seller agrees to sell the Property during the protection period;
 - (b) the Property is exclusively listed with another broker who is a member of Texas REALTORS® at the time the sale is negotiated; and
 - (c) Seller is obligated to pay the other broker a fee for the sale.

F. County: All amounts payable to Broker are to be paid in cash in Collin County, Texas.

G. Escrow Authorization: Seller authorizes, and Broker may so instruct, any escrow or closing agent authorized to close a transaction for the purchase or acquisition of the Property to collect and disburse to Broker all amounts payable to Broker under this Listing.

6. **LISTING SERVICES:**

Notice Regarding Public Marketing: If the Property is publicly marketed, MLS rules require that Broker file this Listing with the Multiple Listing Services (MLS) within one (1) business day. Public marketing includes, but is not limited to, fliers displayed in the windows, yard signs, digital marketing on public-facing websites, brokerage website displays (including IDX and VOW), digital communications marketing (email blasts), multi-brokerage listing sharing networks, and other applications available to the general public.

A. Filing: Seller instructs Broker as follows: *(Check 1 or 2 only.)*

- (1) Broker will file this Listing with one or more Multiple Listing Services (MLS) according to the following: *(Check only one box.)*
 - (a) Broker will file this Listing with one or more Multiple Listing Services (MLS) by the earlier of the time required by MLS rules or 5 days after the date this Listing begins. Seller authorizes Broker to submit information about this Listing and the sale of the Property to the MLS.
 - (b) Seller instructs Broker not to file this Listing with one or more Multiple Listing Services (MLS) until _____ days after the date this Listing begins for the following purpose(s): _____

(NOTE: Do not check if prohibited by Multiple Listing Service(s).)

Notice Regarding MLS Rules: MLS rules require Broker to accurately and timely submit all information the MLS requires including final closing of sales and sales prices. MLS rules may require that the

Residential Listing concerning 1197 Lloyds Rd
Oak Point ETJ, TX 75068-2625

information be submitted to the MLS throughout the time the Listing is in effect. Subscribers to the MLS and appraisal districts may use the information for market evaluation or appraisal purposes. Subscribers are other brokers, agents, and real estate professionals such as appraisers. Any information filed with the MLS becomes the property of the MLS for all purposes. **Submission of information to MLS ensures that persons who use and benefit from the MLS also contribute information.**

- (2) Broker will not file this Listing with any Multiple Listing Services (MLS) or other listing service.

Seller acknowledges and understands that if this option is checked: (1) the Property will not be publicly marketed; (2) the Property will not be included in the MLS database available to real estate agents and brokers from other real estate offices who subscribe to and participate in the MLS, and their buyer clients may not be aware that the Property is offered for sale; (3) the Property will not be included in the MLS's download to various real estate Internet sites that are used by the public to search for property listings; and (4) real estate agents, brokers, and members of the public may be unaware of the terms and conditions under which Seller is marketing the Property. Seller further acknowledges and understands that if this option is checked, and the Property is publicly marketed by anyone, including Seller, MLS rules require that Broker file this Listing with the MLS within one (1) business day.

B. Listing Content: If Broker files this Listing under Paragraph 6A, the parties agree to the following:

(1) Definitions:

- (a) "Listing Content" means all photographs, images, graphics, video recordings, virtual tours, drawings, written descriptions, remarks, narratives, pricing information, and other copyrightable elements relating to the Property.
- (b) "Seller Listing Content" means Listing Content provided by Seller to Broker or Broker's associates.
- (c) "Broker Listing Content" means Listing Content that is otherwise obtained or produced by Broker or Broker's associates in connection with this Listing.

(2) Seller grants Broker a non-exclusive, irrevocable, worldwide, royalty-free license to use, sublicense through multiple tiers, publish, display, and reproduce the Seller Listing Content, to prepare derivative works of the Seller Listing Content, and to distribute the Seller Listing Content, including any derivative works of the Seller Listing Content. This Paragraph 6B(2) survives termination of this Listing.

(3) All Broker Listing Content is owned exclusively by Broker, and Seller has no right, title or interest in or to any Broker Listing Content.

(4) Seller understands and agrees that both the Seller Listing Content and Broker Listing Content, including any changes to such content, may be filed with the MLS, included in compilations of listings, and otherwise distributed, publicly displayed and reproduced.

7. ACCESS TO THE PROPERTY:

A. Authorizing Access: Authorizing access to the Property means giving permission to another person to enter the Property, disclosing to the other person any security codes necessary to enter the Property, and lending a key to the other person to enter the Property, directly or through a keybox. To facilitate the showing and sale of the Property, Seller instructs Broker to:

- (1) access the Property at reasonable times;
- (2) authorize other brokers, their associates, inspectors, appraisers, and contractors to access the Property at reasonable times; and
- (3) duplicate keys to facilitate convenient and efficient showings of the Property.

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Residential Listing concerning _____

B. Scheduling Companies: Broker may engage the following companies to schedule appointments and to authorize others to access the Property: None

C. Keybox: A keybox is a locked container placed on the Property that holds a key to the Property. A keybox makes it more convenient for brokers, their associates, inspectors, appraisers, and contractors to show, inspect, or repair the Property. The keybox is opened by a special combination, key, or programmed device so that authorized persons may enter the Property, even in Seller's absence. Using a keybox will probably increase the number of showings, but involves risks (for example, unauthorized entry, theft, property damage, or personal injury). Neither the Association of REALTORS® nor MLS requires the use of a keybox.

(1) Broker is is not authorized to place a keybox on the Property.

(2) If a tenant occupies the Property at any time during this Listing, Seller will furnish Broker a written statement (for example, TXR No. 1411), signed by all tenants, authorizing the use of a keybox or Broker may remove the keybox from the Property.

D. Liability and Indemnification: When authorizing access to the Property, Broker, other brokers, their associates, any keybox provider, or any scheduling company are not responsible for personal injury or property loss to Seller or any other person. Seller assumes all risk of any loss, damage, or injury. **Except for a loss caused by Broker, Seller will indemnify and hold Broker harmless from any claim for personal injury, property damage, or other loss.**

8. **COOPERATION WITH OTHER BROKERS**: Broker will allow other brokers to show the Property to prospective buyers. Broker will offer to pay the other broker a fee as described below if the other broker procures a buyer that purchases the Property.

A. MLS Participants: If the other broker is a participant in the MLS in which this Listing is filed, Broker will offer to pay the other broker:

(1) if the other broker represents the buyer: 2.000 % of the sales price or \$ _____ ; and
(2) if the other broker is a subagent: 2.000 % of the sales price or \$ _____ .

B. Non-MLS Brokers: If the other broker is not a participant in the MLS in which this Listing is filed, Broker will offer to pay the other broker:

(1) if the other broker represents the buyer: 2.000 % of the sales price or \$ _____ ; and
(2) if the other broker is a subagent: 2.000 % of the sales price or \$ _____ .

9. **INTERMEDIARY**: (Check A or B only.)

A. Intermediary Status: Broker may show the Property to interested prospective buyers who Broker represents. If a prospective buyer who Broker represents offers to buy the Property, Seller authorizes Broker to act as an intermediary and Broker will notify Seller that Broker will service the parties in accordance with one of the following alternatives.

(1) If a prospective buyer who Broker represents is serviced by an associate other than the associate servicing Seller under this Listing, Broker may notify Seller that Broker will: (a) appoint the associate then servicing Seller to communicate with, carry out instructions of, and provide opinions and advice during negotiations to Seller; and (b) appoint the associate then servicing the prospective buyer to the prospective buyer for the same purpose.

(2) If a prospective buyer who Broker represents is serviced by the same associate who is servicing Seller, Broker may notify Seller that Broker will: (a) appoint another associate to communicate with, carry out instructions of, and provide opinions and advice during negotiations to the prospective buyer; and (b) appoint the associate servicing the Seller under this Listing to the Seller for the same purpose.

(TXR-1101) 03-01-2021 Initialed for Identification by Broker/Associate [Signature] and Seller _____ , _____

1197 Lloyds Rd

Oak Point ETJ, TX 75068-2625

Residential Listing concerning _____

(3) Broker may notify Seller that Broker will make no appointments as described under this Paragraph 9A and, in such an event, the associate servicing the parties will act solely as Broker's intermediary representative, who may facilitate the transaction but will not render opinions or advice during negotiations to either party.

B. No Intermediary Status: Seller agrees that Broker will not show the Property to prospective buyers who Broker represents.

Notice: If Broker acts as an intermediary under Paragraph 9A, Broker and Broker's associates:

- # may not disclose to the prospective buyer that Seller will accept a price less than the asking price unless otherwise instructed in a separate writing by Seller;
- # may not disclose to Seller that the prospective buyer will pay a price greater than the price submitted in a written offer to Seller unless otherwise instructed in a separate writing by the prospective buyer;
- # may not disclose any confidential information or any information Seller or the prospective buyer specifically instructs Broker in writing not to disclose unless otherwise instructed in a separate writing by the respective party or required to disclose the information by the Real Estate License Act or a court order or if the information materially relates to the condition of the property;
- # may not treat a party to the transaction dishonestly; and
- # may not violate the Real Estate License Act.

10. CONFIDENTIAL INFORMATION: During this Listing or after it ends, Broker may not knowingly disclose information obtained in confidence from Seller except as authorized by Seller or required by law. Broker may not disclose to Seller any confidential information regarding any other person Broker represents or previously represented except as required by law.

11. BROKER'S AUTHORITY:

A. Broker will use reasonable efforts and act diligently to market the Property for sale, procure a buyer, and negotiate the sale of the Property.

B. If box 6A(1) is checked, Broker is authorized to display this Listing on the Internet without limitation unless one of the following is checked:

- (1) Seller does not want this Listing to be displayed on the Internet.
- (2) Seller does not want the address of the Property to be displayed on the Internet.

Notice: Seller understands and acknowledges that, if box 11B(1) is checked, consumers who conduct searches for listings on the Internet will not see information about this Listing in response to their search.

C. Broker is authorized to market the Property with the following financing options:

- | | |
|--|---|
| <input checked="" type="checkbox"/> (1) Conventional | <input checked="" type="checkbox"/> (5) Texas Veterans Land Program |
| <input checked="" type="checkbox"/> (2) VA | <input type="checkbox"/> (6) Owner Financing |
| <input checked="" type="checkbox"/> (3) FHA | <input type="checkbox"/> (7) Other |
| <input checked="" type="checkbox"/> (4) Cash | |

D. In accordance with applicable MLS rules as outlined in Paragraph 6; Broker may:

- (1) advertise the Property by means and methods as Broker determines, including but not limited to creating and placing advertisements with interior and exterior photographic and audio-visual images of the Property and related information in any media and the Internet;
- (2) place a "For Sale" sign on the Property and remove all other signs offering the Property for sale or lease;

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Residential Listing concerning 1197 Lloyds Rd
Oak Point ETJ, TX 75068-2625

- (3) furnish comparative marketing and sales information about other properties to prospective buyers;
- (4) disseminate information about the Property to other brokers and to prospective buyers, including applicable disclosures or notices that Seller is required to make under law or a contract;
- (5) obtain information from any holder of a note secured by a lien on the Property;
- (6) accept and deposit earnest money in trust in accordance with a contract for the sale of the Property;
- (7) disclose the sales price and terms of sale to other brokers, appraisers, or other real estate professionals;
- (8) in response to inquiries from prospective buyers and other brokers, disclose whether the Seller is considering more than one offer (Broker will not disclose the terms of any competing offer unless specifically instructed by Seller);
- (9) advertise, during or after this Listing ends, that Broker "sold" the Property; and
- (10) place information about this Listing, the Property, and a transaction for the Property on an electronic transaction platform (typically an Internet-based system where professionals related to the transaction such as title companies, lenders, and others may receive, view, and input information).

E. Broker is not authorized to execute any document in the name of or on behalf of Seller concerning the Property.

12. SELLER'S REPRESENTATIONS: Except as provided by Paragraph 15, Seller represents that:

- A. Seller has fee simple title to and peaceable possession of the Property and all its improvements and fixtures, unless rented, and the legal capacity to convey the Property;
- B. Seller is not bound by a listing agreement with another broker for the sale, exchange, or lease of the Property that is or will be in effect during this Listing;
- C. any pool or spa and any required enclosures, fences, gates, and latches comply with all applicable laws and ordinances;
- D. no person or entity has any right to purchase, lease, or acquire the Property by an option, right of refusal, or other agreement;
- E. Seller is current and not delinquent on all loans and all other financial obligations related to the Property, including but not limited to mortgages, home equity loans, home improvement loans, homeowner association fees, and taxes, except Property is in receivership. See all addendums & amendments _____;
- F. Seller is not aware of any liens or other encumbrances against the Property, except See all addendums & amendments _____;
- G. the Property is not subject to the jurisdiction of any court;
- H. all information relating to the Property Seller provides to Broker is true and correct to the best of Seller's knowledge;
- I. the name of any employer, relocation company, or other entity that provides benefits to Seller when selling the Property is: none _____; and
- J. the Seller Listing Content, and the license granted to Broker for the Seller Listing Content, do not violate or infringe upon the rights, including any copyright rights, of any person or entity.

13. SELLER'S ADDITIONAL PROMISES: Seller agrees to:

- A. cooperate with Broker to facilitate the showing, marketing, and sale of the Property;
- B. not rent or lease the Property during this Listing without Broker's prior written approval;
- C. not negotiate with any prospective buyer who may contact Seller directly, but refer all prospective buyers to Broker;
- D. not enter into a listing agreement with another broker for the sale, exchange, lease, or management of the Property to become effective during this Listing without Broker's prior written approval;
- E. if box 6A(2) is checked, promptly inform Broker in the event Seller becomes aware that the Property has been publicly marketed;
- F. maintain any pool and all required enclosures in compliance with all applicable laws and ordinances;

(TXR-1101) 03-01-2021 Initialed for Identification by Broker/Associate  and Seller _____

1197 Lloyds Rd

Residential Listing concerning _____

Oak Point ETJ, TX 75068-2625

- G. provide Broker with copies of any leases or rental agreements pertaining to the Property and advise Broker of tenants moving in or out of the Property;
- H. complete any disclosures or notices required by law or a contract to sell the Property; and
- I. amend any applicable notices and disclosures if any material change occurs during this Listing.

14. LIMITATION OF LIABILITY:

- A. If the Property is or becomes vacant during this Listing, Seller must notify Seller's casualty insurance company and request a "vacancy clause" to cover the Property. Broker is not responsible for the security of the Property nor for inspecting the Property on any periodic basis.
- B. **Broker is not responsible or liable in any manner for personal injury to any person or for loss or damage to any person's real or personal property resulting from any act or omission not caused by Broker's negligence, including but not limited to injuries or damages caused by:**
 - (1) other brokers, their associates, inspectors, appraisers, and contractors who are authorized to access the Property;
 - (2) other brokers or their associates who may have information about the Property on their websites;
 - (3) acts of third parties (for example, vandalism or theft);
 - (4) freezing water pipes;
 - (5) a dangerous condition on the Property;
 - (6) the Property's non-compliance with any law or ordinance; or
 - (7) Seller, negligently or otherwise.
- C. **Seller agrees to protect, defend, indemnify, and hold Broker harmless from any damage, costs, attorney's fees, and expenses that:**
 - (1) are caused by Seller, negligently or otherwise;
 - (2) arise from Seller's failure to disclose any material or relevant information about the Property; or
 - (3) are caused by Seller giving incorrect information to any person.

15. SPECIAL PROVISIONS:

See all addendums & amendments

- 16. ~~DEFAULT: If Seller breaches this Listing, Seller is in default and will be liable to Broker for the amount of the Broker's compensation specified in Paragraph 5A and any other compensation Broker is entitled to receive under this Listing. If a sales price is not determinable in the event of an exchange or breach of this Listing, the Listing Price will be the sales price for purposes of computing compensation. If Broker breaches this Listing, Broker is in default and Seller may exercise any remedy at law.~~
- 17. ~~MEDIATION: The parties agree to negotiate in good faith in an effort to resolve any dispute related to this Listing that may arise between the parties. If the dispute cannot be resolved by negotiation, the dispute will be submitted to mediation. The parties to the dispute will choose a mutually acceptable mediator and will share the cost of mediation equally.~~
- 18. **ATTORNEY'S FEES:** If Seller or Broker is a prevailing party in any legal proceeding brought as a result of a dispute under this Listing or any transaction related to or contemplated by this Listing, such party will be entitled to recover from the non-prevailing party all costs of such proceeding and reasonable attorney's fees.

(TXR-1101) 03-01-2021 Initialed for Identification by Broker/Associate  and Seller _____, _____

Residential Listing concerning 1197 Lloyds Rd
Oak Point ETJ, TX 75068-2625

19. ADDENDA AND OTHER DOCUMENTS: Addenda that are part of this Listing and other documents that Seller may need to provide are:

- A. Information About Brokerage Services;
- B. Seller Disclosure Notice (§5.008, Texas Property Code);
- C. Addendum for Seller's Disclosure of Information on Lead-Based Paint and Lead-Based Paint Hazards (required if Property was built before 1978);
- D. Residential Real Property Affidavit (T-47 Affidavit; related to existing survey);
- E. MUD, Water District, or Statutory Tax District Disclosure Notice (Chapter 49, Texas Water Code);
- F. Request for Information from an Owners' Association;
- G. Request for Mortgage Information;
- H. Information about Mineral Clauses in Contract Forms;
- I. Information about On-Site Sewer Facility;
- J. Information about Property Insurance for a Buyer or Seller;
- K. Information about Special Flood Hazard Areas;
- L. Condominium Addendum to Listing;
- M. Keybox Authorization by Tenant;
- N. Seller's Authorization to Release and Advertise Certain Information; and
- O. **See Amendment 1&2 and addendum No 1 additional term and AS Is Purchase**

20. AGREEMENT OF PARTIES:

- A. **Entire Agreement:** This Listing is the entire agreement of the parties and may not be changed except by written agreement.
- B. **Assignability:** Neither party may assign this Listing without the written consent of the other party.
- C. **Binding Effect:** Seller's obligation to pay Broker earned compensation is binding upon Seller and Seller's heirs, administrators, executors, successors, and permitted assignees.
- D. **Joint and Several:** All Sellers executing this Listing are jointly and severally liable for the performance of all its terms.
- E. **Governing Law:** Texas law governs the interpretation, validity, performance, and enforcement of this Listing.
- F. **Severability:** If a court finds any clause in this Listing invalid or unenforceable, the remainder of this Listing will not be affected and all other provisions of this Listing will remain valid and enforceable.
- G. **Notices:** Notices between the parties must be in writing and are effective when sent to the receiving party's address, fax, or e-mail address specified in Paragraph 1.

21. ADDITIONAL NOTICES:

- A. **Broker's compensation or the sharing of compensation between brokers is not fixed, controlled, recommended, suggested, or maintained by the Association of REALTORS®, MLS, or any listing service.**
- B. **In accordance with fair housing laws and the National Association of REALTORS® Code of Ethics, Broker's services must be provided and the Property must be shown and made available to all persons without regard to race, color, religion, national origin, sex, disability, familial status, sexual orientation, or gender identity. Local ordinances may provide for additional protected classes (for example, creed, status as a student, marital status, or age).**

(TXR-1101) 03-01-2021 Initialed for Identification by Broker/Associate  and Seller _____, _____

Residential Listing concerning 1197 Lloyds Rd
Oak Point ETJ, TX 75068-2625

- C. Broker advises Seller to contact any mortgage lender or other lien holder to obtain information regarding payoff amounts for any existing mortgages or liens on the Property.
- D. Broker advises Seller to review the information Broker submits to an MLS or other listing service.
- E. Broker advises Seller to remove or secure jewelry, prescription drugs, other valuables, firearms and any other weapons.
- F. Broker advises Seller to consult an attorney before using any type of surveillance device in the Property to record or otherwise monitor prospective buyers without their knowledge or consent. Seller should be aware that a prospective buyer might photograph or otherwise record the Property without Seller's knowledge or consent.
- G. Statutes or ordinances may regulate certain items on the Property (for example, swimming pools and septic systems). Non-compliance with the statutes or ordinances may delay a transaction and may result in fines, penalties, and liability to Seller.
- H. If the Property was built before 1978, Federal law requires the Seller to: (1) provide the buyer with the federally approved pamphlet on lead poisoning prevention; (2) disclose the presence of any known lead-based paint or lead-based paint hazards in the Property; (3) deliver all records and reports to the buyer related to such paint or hazards; and (4) provide the buyer a period up to 10 days to have the Property inspected for such paint or hazards.
- I. If Seller is a "foreign person" as defined by federal law, a buyer may be required to withhold certain amounts from the sales proceeds and deliver the same to the Internal Revenue Service to comply with applicable tax law. A "foreign person" is a: (1) nonresident alien individual; (2) foreign corporation that has not made an election under section 897(i) of the Internal Revenue Code to be treated as a domestic corporation; or (3) foreign partnership, trust, or estate. The definition does not include a resident alien individual. Seller notifies Broker that Seller is is not a "foreign person" as defined by federal law. If Seller is unsure whether Seller qualifies as a "foreign person" under federal law, Broker advises Seller to consult a tax professional or an attorney.
- J. Broker advises Seller to refrain from transmitting personal information, such as bank account numbers or other financial information, via unsecured email or other electronic communication to reduce risk of wire fraud.
- K. Broker cannot give legal advice. READ THIS LISTING CAREFULLY. If you do not understand the effect of this Listing, consult an attorney BEFORE signing.

ACR Realty Inc
 Broker's Printed Name 440422 License No.
James Hankins 12-21-2021
 Broker's Signature Date
 Broker's Associate's Signature, as an authorized agent of Broker

SEC vs Mediatrx Capital Inc., Mark Conlan of Gibbons P.C., Receiver
 Seller's Printed Name
Mark Conlan, as Receiver 12/23/21
 Seller's Signature Date

James Hankins
 Broker's Associate's Printed Name, if applicable

Mark Conlan
 Seller's Printed Name

 Seller's Signature Date



AMENDMENT TO LISTING

USE OF THIS FORM BY PERSONS WHO ARE NOT MEMBERS OF THE TEXAS ASSOCIATION OF REALTORS®, INC. IS NOT AUTHORIZED.
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AMENDMENT TO LISTING AGREEMENT BETWEEN THE UNDERSIGNED PARTIES CONCERNING THE PROPERTY AT 1197 Lloyds Rd, Oak Point ETJ, Tx 75068

"Owner" means the seller or landlord of the above-referenced Property.

Effective January 3, 2022, Owner and Broker amend the above-referenced Listing as follows:

- A. The Listing Price in Paragraph 3 of the Listing is changed to: \$ _____.
- B. The date the Listing ends in Paragraph 4 of the Listing is changed to: _____.
- C. Owner instructs Broker to cease marketing the Property on _____ and to resume marketing the Property on: (1) receipt of further instructions from Owner; or (2) _____.

The Listing is not terminated and remains in effect for all other purposes.

- D. Paragraph(s) see below are changed as follows:
5.C.(5) insert; All Parties understand and agree that the Orders of the US District Court for the District of Colorado must be followed, and that the property sale is expressly conditioned upon District Court's approval. The Parties further agree that if (A) the Seller fails to obtain District Court approval for the sale, (B) such event shall not constitute a breach of the agreement by Seller, and no broker commission shall be paid.

5.D(3) Should Seller or Court refuse to sign a viable contract of Sale or unable to approve a sale and close, then Seller agrees to reimburse Agent for its time and effort plus all out of pocket expenses such as sign, photos, marketing material, millage provided that such reimbursement may not exceed the compensation over that would have been payable to the agent under section 5 (a) and (c) of this agreement

12.G. Seller, Realtors, and Purchaser submit and consent to personal jurisdiction in the US District Court for the District of Colorado for the enforcement and interpretation of this contract and waive any and all rights under the laws of any state or the United States of America to object to jurisdiction in the US District Court for the District of Colorado.

16. DEFAULT :If Seller breaches this listing, Seller is in default and Broker may exercise any remedy at law Continued... See Addendum Necessary Changes 1

ACR Realty Inc
Broker's (Company's) Printed Name 440422 License No.

Mark Conlan, as Receiver 12/23/21
Seller or Landlord Date
SEC v mediatrix Capital Inc., Mark Conlan of Gibbons P.C., Receiver

By: James Hankins 12-21-21
Broker's Associate's Signature Date
James Hankins

Seller or Landlord Date

ADDENDUM

PROPERTY: 1197 Lloyds Rd, Oak Point ETJ, Tx 75068

1) Necessary Changes

within the jurisdiction of the US District Court for the District of Colorado. If Broker breaches this listing, broker is in default and Seller may exercise any remedy at law within the jurisdiction of the US District Court for the District of Colorado

17.MEDIATION: The parties agree to negotiate in good faith in an effort to resolve any dispute related to this Listing that may arise between the parties. If the dispute cannot be resolved by negotiation, the parties hereto agree that any dispute regarding this contract and any litigation pertaining to the enforcement or interpretation hereof properly belongs in and should be heard by the US District Court for the District of Colorado.

Multiple horizontal lines for additional text or signatures.

Date: 12-21-2021

[Signature]
Signature

Date: _____

Signature

Date: 12/23/21

[Signature]
Signature

Date: _____

Signature

Addendum



AMENDMENT TO LISTING

USE OF THIS FORM BY PERSONS WHO ARE NOT MEMBERS OF THE TEXAS ASSOCIATION OF REALTORS®, INC. IS NOT AUTHORIZED ©Texas Association of REALTORS®, Inc. 2004

AMENDMENT TO LISTING AGREEMENT BETWEEN THE UNDERSIGNED PARTIES CONCERNING THE PROPERTY AT 1197 Lloyds Rd, Oak Point ETJ, Tx 75068

"Owner" means the seller or landlord of the above-referenced Property.

Effective January 3, 2022, Owner and Broker amend the above-referenced Listing as follows:

- A. The Listing Price in Paragraph 3 of the Listing is changed to: \$
B. The date the Listing ends in Paragraph 4 of the Listing is changed to:
C. Owner instructs Broker to cease marketing the Property on and to resume marketing the Property on: (1) receipt of further instructions from Owner; or (2)

The Listing is not terminated and remains in effect for all other purposes.

- D. Paragraph(s) see below are changed as follows: 20.E. Governing Law :Under jurisdiction of the US District Court for the District of Colorado Texas law governs the interpretation, validity, performance, and enforcement of this Listing .

Other Special conditions as follows ;

Addendum No 1

There are three (3) addenda to the Residential Real Estate Listing Agreement (RRELA) as follows: (I) this "Addendum No. 1", (II) the "Additional Terms Addendum", and (III) the "AS-IS" Purchase Addendum, which shall be collectively referred to herein as the "Seller's Addenda."

All terms and conditions set forth in Seller's Addenda are incorporated into Residential Real Estate Listing Agreement (RRELA) between Seller and ACR Realty, Inc. dated December 13, 2021 and shall supersede any and all conflicting terms and conditions contained in the Residential Real Estate Listing Agreement (RRELA) and accompanying documents. By accepting Seller's Addenda, ACR Realty, Inc. expressly agrees to the terms and conditions of all Seller's Addenda and hereby specifically acknowledge the receipt of the same.

All Parties understand and agree that the Orders of the US District Court for the District of Colorado must be followed, and that the property sale is expressly conditioned upon District Court's approval. The Continued... See Addendum Necessary Changes 1

ACR Realty Inc

Broker's (Company's) Printed Name 440422 License No.

MARK CONLAN, as RECEIVER Seller or Landlord Date SEC v mediatrix Capital Inc., Mark Conlan of Gibbons P.C., Receiver

By: James Hankins Broker's Associate's Signature

12-21-21 Date

Mark Conlan, as Receiver 12/23/21 Seller or Landlord Date

ADDENDUM

PROPERTY: 1197 Lloyds Rd, Oak Point ETJ, Tx 75068

1) Necessary Changes

Parties further agree that if (A) the Seller fails to obtain District Court approval for the sale, (B) such event shall not constitute a breach of the agreement by Seller, and no broker commission shall be paid.

Lined area for additional text or signatures.

Date: 12-21-2021

[Signature]
Signature

Date: _____

Signature

Date: 12/23/21

Mark Conlan, as Receiver
Signature

Date: _____

Signature

Addendum

ADDITIONAL TERMS: (Attach to Listing Agreement)

Governing Law

This contract shall be governed by and construed and enforced in accordance with the laws of the State of Texas

Consent to Jurisdiction

This contract is entered into by Mark Conlan of Gibbons P.C., Receiver in his capacity as Receiver of the assets of Mediatrix Capital Inc., including the property which is the subject matter of this contract, all pursuant to the authority vested in it under an Order of the US District Court for the District of Colorado. The parties hereto agree that any dispute regarding this contract and any litigation pertaining to the enforcement or interpretation hereof properly belongs in and should be heard by the US District Court for the District of Colorado. Seller, Realtors and Purchaser submit and consent to personal jurisdiction in the US District Court for the District of Colorado for the enforcement and interpretation of this contract and waive any and all rights under the laws of any state or the United States of America to object to jurisdiction in the US District Court for the District of Colorado.


Right to Seek and Obtain Overbids

In order for Mark Conlan of Gibbon P.C., Receiver to faithfully discharge its duties as Receiver, it is understood and agreed by the parties hereto that Brick Kane of Robb Evans & Associates LLC may seek and obtain overbids for the property, even if the executed contract is at or above listing price, in a manner to be determined by Court Order.

In the event the property is sold pursuant to overbid, Broker agrees that any commission to which it is entitled shall be limited to the commission due, if any, on account of the consummated overbid sale.

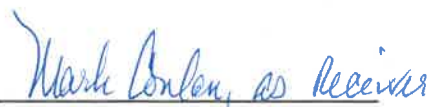
REAL ESTATE BROKER:

ACR Realty, Inc.
2220 Coit Rd Ste. 360
Plano Tx. 75075


By: James Hankins Agent
Date: 12-21-2021

SELLER:

SEC Vs MEDIATRIX CAPITAL Inc. Mark Conlan of Gibbons P.C., Receiver

By: 
Mark Conlan
Receiver
December 23, 2021

**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.

**ORDER GRANTING MOTION FOR ORDER APPROVING AND CONFIRMING SALE
OF REAL PROPERTY COMMONLY KNOWN AS
1197 LLOYDS ROAD, OAK POINT, TEXAS AND APPROVING PUBLICATION AND
OVERBID PROCEDURES INCLUDING MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Before the Court is the *Motion for Order Approving and Confirming Sale of Real Property Commonly Known as 1197 Lloyds Road, Oak Point, Texas and Approving Publication and Overbid Procedures Including Memorandum of Points and Authorities in Support Thereof* (“1197 Lloyds Sale Motion”). The Court, having reviewed and considered the 1197 Lloyds Sale Motion and all pleadings and evidence filed in support of the 1197 Lloyds Sale Motion, having noted that there is no opposition to the 1197 Lloyds Sale Motion, and good cause appearing therefore, it is

ORDERED that:

1. The 1197 Lloyds Sale Motion is granted in full and the Receiver is authorized to proceed in accordance with the Receiver's sale procedures as detailed in the 1197 Lloyds Sale Motion;

2. The Receiver is authorized to sell the real property commonly known as 1197 Lloyds Road, Little Elm, Texas consisting of approximately 1 acre in Oak Point ETJ, Denton County, Texas and legally described on Exhibit 1 attached hereto ("1197 Lloyds Property"), and discharge the proceeds in accordance with applicable law and the orders of this Court, including without limitation this Order. The Sale of the 1197 Lloyds Property is hereby confirmed under 28 U.S.C. § 2001(b).

3. The Receiver is authorized to complete the sale of the 1197 Lloyds Property on an "as is" basis more fully described in Proposed Sale Contract (as defined below) by private sale to either (i) Andra Williams and Ralph Williams or their designees or assignees ("Proposed Buyers"), who are arm's length buyers, at a purchase price of \$230,000, pursuant to that certain Farm and Ranch Contract and the Amendment thereto (collectively, "Proposed Sale Contract"), which together are attached as Exhibit 2 to the Declaration of David N. Crapo ("Crapo Decl.") which is filed in support of the Motion; or (b) to such higher qualified arm's length overbidder who hereafter submits the highest qualified overbid session to be conducted under the terms and conditions more fully set forth herein. The sale of the 1197 Lloyds Property is hereby authorized subject to the following overbid procedures terms and conditions:

- a. In the event that a *bona fide* offer is made that is at least \$7,000 higher than the current \$230,000 offer, an overbid session with respect to the 1197 Lloyds Property shall be conducted within 25 days of the date of entry of the order

granting 1197 Lloyds Sale Motion at the offices of 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 1197 Lloyds Property to the Proposed Buyers, or a qualified overbidder at an overbid session to be conducted as set forth in sub-paragraph (a) immediately above, 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 (“Overbid Notice”).
- c. The Receiver shall cause the Overbid Notice to be published in the *Dallas Morning 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 Morning News* is a daily newspaper of general circulation. Dallas is in close proximity to the Oak Point ETJ, in which the 1197 Lloyds Property is located and the *Dallas Morning News* is a newspaper in which legal notices, including sale notices, are commonly published.
- d. 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, Gibbons P.C., Attention: David N. Crapo, at One Gateway Center, Newark, NJ 07102: (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 1197 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 \$23,700 payable to "SEC v MEDIATRIX CAPITAL et al Receivership QSF Mark Conlan of Gibbons P.C., as Receiver," which cashier's check shall become nonrefundable upon acceptance of the overbidder's overbid at the conclusion of the overbid session.

- e. Overbidders shall be deemed to have completed all inspections of the 1197 Lloyds Property and shall be deemed to have waived and/or removed all contingencies in favor of the Proposed Buyers 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 1197 Lloyds Property and close escrow for the purchase of the 1197 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 1197 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 an additional \$23,700 into escrow within five days after the conclusion of the overbid session.

f. The initial overbid shall be in the amount of \$237,000, representing an amount that is \$7,000 (approximately 3%) higher than the purchase price under the Proposed Sale Contract, and all subsequent overbids shall be in an amount at least \$3,500 higher than the preceding bid.

4. Pursuant to the listing agreement (“Listing Agreement”) with his broker, ACR Realty, and agent, James Hankins, a sales commission in the amount of 6% of the purchase price paid by the Proposed Buyers, 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.

5. The sale of the 1197 Lloyds Property by private sale to the Proposed Buyers 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.

6. The Receiver is authorized to execute all documents and instruments necessary or appropriate to complete, implement, effectuate and close the sale of the 1197 Lloyds Property to the Proposed Buyers or to the highest qualified overbidder, including but not limited to the deed conveying title to the 1197 Lloyds Property as provided herein.

7. The receiver is authorized to permit and/or cause to be paid from the proceeds of sale all ordinary and customary closing costs, including all utility charges, 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 4 and all real property tax liens and prorated real property taxes due up to the date of closing.

8. The net proceeds from the sale of the 1197 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.

9. The sale of the 1197 Lloyds Property to the Proposed Buyers or any successful overbidder is 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.

10. The sale of the 1197 Lloyds Property to either the Proposed Buyers or to any successful qualified overbidder was through an arm’s length transaction and the purchase price is fair and reasonable.

11. Any licensed title insurer, the Proposed Buyers or any successful qualified overbidder may rely on this Order as authorizing the Receiver to transfer legal title to the 1197 Lloyds Property free and clear of all liens, claims and encumbrances.

12. The Receiver’s retention of James Hankins as listing agent to market the 1197 Lloyds Property, is hereby approved retroactively to December 21, 2021 and the Court finds the actions of the actions Mr. Hankins has taken in marketing the 1197 Lloyds Road Property to are reasonable and adequate.

13. The Receiver’s retention of Jason Secrest, MAI, of Pyles Whatley Real Estate Services to appraise the 1197 Lloyds Property is approved retroactively to January 26, 2022.

14. The Receiver's retention of Robert W. Snyder, MAI, RWA, R/W—AC of Lowry Property Advisors to appraise the 1197 Lloyds Property is approved, retroactively to February 7, 2022.

15. The Receiver's retention of Mike Tobin of Bluebonnet Home Group to provide a broker's price opinion with respect to the 1197 Lloyds Property, is approved retroactively to February 17, 2022.

16. This Court shall retain the jurisdiction to interpret and enforce the terms of this Order.

Dated:

RAYMOND P. MOORE
United States District Judge