

**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.

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**MOTION FOR ORDER APPROVING AND CONFIRMING SALE OF REAL PROPERTY  
COMMONLY KNOWN AS 12088 TETZEL AVENUE, PORT CHARLOTTE, FLORIDA  
AND SALE AND OVERBID PROCEDURES; MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT THEREOF [SUPPORTING DECLARATION OF BRICK  
KANE FILED CONCURRENTLY HEREWITH]**

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

1. Authorizing and confirming the sale of the real property commonly known as 12088 Tetzels Avenue, Port Charlotte, Florida (“Tetzels Property”), Assessor’s Parcel Id: 41-21-06-352-001, and legally described as:

Lots 1, 2, 3 and 4, Block 3834, Port Charlotte Subdivision Section  
Seventy Two, according to the map or plat thereof as recorded in  
Plat Book 6, Page 28, of the Public Records of Charlotte County,

Florida

on an “as is” basis as more fully described in the sale contract documents by private sale to (a) Ryan E. Skaggs (“Proposed Buyer”), an arm’s length buyer, at a purchase price of \$48,000, pursuant to the Vacant Land Contract, Seller’s Addenda, Counter Offer Number One Dated January 7, 2021, “AS-IS” Purchase and Additional Terms, Addendum to Contract No. 1 and Addendum to Contract No. 2, (collectively, the “Proposed Sale Contract”), collectively attached as Exhibit 1 to the accompanying declaration of Brick Kane (“Kane Declaration”) filed in support of this Motion; or (b) prospective overbidder Steve Minger or any entity owned or controlled by Minger (individually and collectively, “Minger”), also a proposed arm’s length buyer, at a subsequent overbid session to be conducted under the terms and conditions more fully set forth herein and approved by the Court, which sale the Receiver requests be approved and confirmed without further notice, hearing or order. The overbid procedures, terms and conditions for which the Receiver seeks approval include the following:

A. The overbid session shall be conducted within 30 days of the date of entry of the order granting this Motion. The overbid session will be conducted by the Receiver using remote video technology in light of travel and other restrictions imposed as a result of the COVID-19 pandemic.

B. If Minger wishes to overbid, he shall be required to pre-qualify with the Receiver no later than 10:00 a.m. three business days preceding the overbid session by delivering to the Receiver's office located at 11450 Sheldon Street, Sun Valley CA 91352: (a) notice in writing of his intent to overbid together with (b) written verification from a financial institution demonstrating to the Receiver's satisfaction, in the Receiver's sole opinion and judgment, the prospective overbidder's ability to complete and close a purchase

of the Tetzal Property through sufficient funds or credit facilities within 10 days of the date of the overbid session, and (c) a cashier's check in the sum of \$32,000 payable to SEC v MEDIATRIX CAPITAL et al Receivership QSF Brick Kane of Robb Evans & Associates LLC, Receiver, which cashier's check shall become non-refundable upon acceptance of Minger's overbid at the conclusion of the overbid session.

C. If Skaggs (the Proposed Buyer) wishes to overbid, he shall be required to pre-qualify with the Receiver no later than 10:00 a.m. three business days preceding the overbid session by delivering to the Receiver's office at the address set forth in the prior sub-paragraph written verification from a financial institution demonstrating to the Receiver's satisfaction, in the Receiver's sole opinion and judgment, the Proposed Buyer's ability to complete and close a purchase of the Tetzal Property following competitive bidding through sufficient funds or credit facilities within 10 days of the date of the overbid session.

D. Minger will be deemed to have completed all inspections of the Tetzal Property and undertaken all due diligence with respect to the Tetzal Property and will be deemed to have waived and/or removed all contingencies in favor of the buyer under the Proposed Sale Contract, including without limitation any contingency pertaining to inspection of title, and will be required to complete a cash purchase of the Tetzal Property and close escrow for the purchase of the Tetzal Property within 10 days of the date of the overbid session. If he is the successful overbidder, Minger will be required to execute a purchase agreement for the Tetzal 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.

E. The initial overbid shall be in the amount of \$64,000 (an amount that is \$18,000, or 33.3%, higher than the purchase price under the Proposed Sale Contract, an amount that Minger has indicated he will pay to acquire the Tetzal Property), and all subsequent overbids by the Proposed Buyer or Minger shall be in an amount at least \$3,000 higher than the preceding bid.

2. Authorizing that, pursuant to the Exclusive Right of Sale Listing Agreement (“Listing Agreement”) attached as Exhibit 2 to the Kane Declaration, a sales commission in the amount of 8% of the purchase price paid by the successful bidder shall be paid from the proceeds of the sale at close of escrow, and providing that no other sales commission shall be paid from the proceeds of the sale or shall be paid by or be the responsibility of the Receiver under any circumstances.

3. Providing that the sale of the Tetzal Property by private sale to the Proposed Buyer under the Proposed Sale Contract, or to the person who submits the highest qualified overbid at the overbid session to be conducted pursuant to the foregoing procedures, whether it be the Proposed Buyer or Minger, will be deemed approved and confirmed by said order without further notice, hearing or additional order and without the necessity of any subsequent motion for confirmation of the sale.

4. Authorizing the Receiver to sell and convey the Tetzal Property and to execute all documents and instruments necessary or appropriate to complete, implement, effectuate and close the sale of the Tetzal Property to the Proposed Buyer or Minger if he is the successful overbidder.

5. Directing that Defendant Michael Young and Relief Defendant Maria C. Young (collectively, the “Youngs”) execute a deed to the Proposed Buyer or Minger if he is the successful overbidder, as shall be approved by the licensed title insurer which is insuring title in

favor of the buyer.

6. Providing that the sale of the Tetzal Property to the Proposed Buyer or Minger if he is the 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.

7. Providing that any licensed title insurer and the buyer may rely on said order as authorizing the Receiver to transfer legal title to the Tetzal Property free and clear of all liens and encumbrances.

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

9. Providing that, after payment of the sums set forth above at paragraph 8, all net proceeds from the sale of the Tetzal Property shall be disbursed to the Receiver and be the sole and exclusive property of the receivership estate, free and clear of all other liens and encumbrances, if any exist.<sup>1</sup>

10. Providing that a sale to the Proposed Buyer or to Minger, if he is the successful overbidder, is an arm’s length transaction and the purchase price is fair and reasonable.

The Receiver seeks such additional relief as may be necessary or appropriate to allow the Receiver to effectuate the sale of the Tetzal Property, including without limitation the entry of

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<sup>1</sup> The Receiver has established a Qualified Settlement Fund to hold the proceeds from the liquidation of receivership assets designated as SEC v MEDIATRIX CAPITAL et al Receivership QSF Brick Kane of Robb Evans & Associates LLC, Receiver.

any modified, supplemental or additional order authorizing such sale in form acceptable to the title company insuring title in connection with the sale of the Tetzal Property.

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

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

**7.1(a)**

Commencing on February 26, 2021 the Receiver's counsel communicated with Tracy Ashmore, counsel for the Youngs, Steven McKenna and Mark Williams, counsel for the United States Securities and Exchange Commission ("SEC") and Vivian Drohan, counsel for defendants Michael Stewart and Bryant Sewall and their spouses who are Relief Defendants, and indicated the Receiver's intent to seek approval to sell the Tetzal Property to the Proposed Buyer for \$48,000. Coincidentally, at about the same time that the Receiver was contacting counsel, Michael Young indicated that he had been approached by another person interested in acquiring the Tetzal Property. That same day, counsel for the Youngs advised that the interested party was willing to pay \$72,000 for the Tetzal Property. That interested party turned out to be Minger. Counsel for the Youngs opposed a sale of the Tetzal Property for \$48,000 and also indicated that she opposed any sale of the Tetzal Property at this time before judgment as being premature, despite the clear language in the Receiver Order. Counsel for the SEC had no objection to the Receiver's prospective sale motion, provided that the Receiver permit the interested overbidder to be given the opportunity to buy the property if such an interested party actually existed. Counsel for Defendants Stewart and Sewall had no objection to the Receiver's prospective sale motion.

Subsequently, the Receiver conferred with Minger and determined that he was legitimately interested in overbidding for the Tetzal Property, however he was only prepared to make his initial overbid at \$64,000. Nevertheless, the Receiver determined that given these new

facts and circumstances, it was appropriate to seek Court approval of the sale to the Proposed Buyer, subject to Minger's right to participate in an overbid session as more particularly described herein which calls for an initial overbid at \$64,000.

## MEMORANDUM OF POINTS AND AUTHORITIES

### I. INTRODUCTION AND STATEMENT OF FACTS

#### A. Background Facts

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

The Receiver Order further provides: “[s]ubject to Paragraph 32 [*sic*], immediately below, the Receiver is authorized to locate, list for sale or lease, engage a broker for sale or lease, cause the sale or lease, and take all necessary and reasonable actions to cause the sale or lease of all real property in the Receivership Estate, either at public or private sale, on terms and in the manner the Receiver deems most beneficial to the Receivership Estate, and with due regard to the true and proper value of such real property.” (*Id.* at ¶30). Additionally, the Receiver Order provides that: “[u]pon further Order of this Court, pursuant to such procedures as may be required by this Court and additional authority such as 28 U.S.C. §§ 2001 and 2004, the Receiver will be authorized to sell, and transfer clear title to, all real property in the Receivership Estate. (*Id.* at ¶31).

The Youngs acquired the Tetzal Property in September 2019 for \$40,000. It is property of the Receivership Estate and may be sold under the provisions set forth in the Receiver Order. Pursuant to the Receiver Order, the Receiver has marketed the Tetzal Property through a national real estate firm pursuant to the Listing Agreement and entered into the Proposed Sale Contract. Below, the Receiver describes his successful efforts in locating the Proposed Buyer, the circumstances surrounding the proposed overbidder, and the Receiver's compliance with 28 U.S.C. §2001.

B. Description of the Tetzal Property

The Tetzal Property is comprised of four contiguous unimproved lots comprising 1.02 acres of vacant land in Port Charlotte, Florida. Port Charlotte is located in Charlotte County, in southwestern Florida. The property is a non-waterfront property and does not have views of the water. The assessor's office has advised the Receiver that the lots are "tied," and therefore may not be sold separately at the present time. The Tetzal Property is zoned to permit a single family residence or multi-family residential use.

C. Valuing the Property, Marketing the Property, Sale Agreement with the Proposed Buyer, and Overbidding Procedures

In order to value the Tetzal Property for the purpose of marketing and selling it, the Receiver obtained two appraisals on the property. It was appraised as of November 21, 2020 by James Vredevoogd, Certified General Appraiser, of Action Appraisal. It was appraised as of December 3, 2020 by Sandra K. Adomatis, SRA, Certified General Real Estate Appraiser, of Adomatis Appraisal Service. The Vredevoogd appraisal concluded that the maximally productive use for the property is as a single family residence. The Adomatis appraisal concluded that the property's maximally productive use is as multifamily sites for future development. A broker's opinion of value also was obtained in November 2020 From Cheryl

Culpan, a real estate agent who ultimately listed the property for the Receiver. Importantly, the purchase price obtained for the property, \$48,000, equals or exceeds the valuations of the two appraisals and the broker's opinion of value.<sup>2</sup>

The Receiver next determined to retain a real estate listing broker, concluding that the best way to maximize value for the Tetzal Property, given its limited value, was to sell it at private sale using an established brokerage firm which would advertise the property using a multiple listing service. The Receiver entered into the Listing Agreement with ERA Advantage Realty, Inc. ("ERA"), using Cheryl Culpan as the listing agent, who has been acting as a listing agent for nearly eight years in Charlotte County and Sarasota County, Florida. ERA is part of a national real estate brokerage firm. ERA is a well regarded brokerage firm with extensive experience and expertise marketing Port Charlotte property. While the Receiver was advised that it is common for real estate brokers in Florida to charge a 10% commission for the sale of vacant land of modest value, at the Receiver's request ERA agreed to charge an 8% commission.

The Receiver, in consultation with Culpan, decided to list the Tetzal Property at \$48,000, which was a listing price that equals or exceeds both of the appraisals and the broker's opinion of value. The Listing Agreement was entered into on December 17, 2020. It is attached to the Kane Declaration as Exhibit 2. Thereafter, the Tetzal Property was listed in the Stellar Multiple Listing Service ("MLS"). ERA also advertised the Tetzal Property in various on-line real estate websites, including Trulia, Zillow, Redfin and FaceBook. The MLS listing was also distributed

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<sup>2</sup> The Receiver has not filed or disclosed these valuations to the Court in this Motion. Given the pending status of the sale, there is a need to keep these valuations confidential should the sale fail to close for any reason. If the Court requires the valuations to be presented, the Receiver would request that the valuations be presented to the Court alone for *in camera* inspection or filed under seal. However, the key fact is that the \$48,000 purchase price under the proposed sale equals or exceeds the value determined by the two appraisals and the broker's opinion of value.

on-line to websites Homes.com, HomeSnap, International MLS and Realtor.com. ERA provided the Receiver a report showing how often the listing was viewed by brokers, agents and prospective purchasers. The report indicates that it was viewed several hundred times on the MLS service, as well as real estate websites such as Trulia and Zillow.

On January 4, 2021 the Receiver obtained an arm's length, full price offer from the Proposed Buyer. On January 11, 2021 the Proposed Buyer agreed to the Receiver's counteroffer, which contained several non-monetary changes to the Proposed Buyer's offer, most importantly a broad "as is" provision clearly setting forth that the property is being sold "as is" without any warranties or representations, and with all faults known and unknown. Pursuant to Addendum No. 1, the Proposed Buyer removed all contingencies to the Sale Contract on January 29, 2021. Addendum No. 2, pertaining to the title commitment, was executed by the Proposed Buyer on February 6, 2021. The Receiver obtained one other written offer on the Tetzal Property subsequent to the offer received from the Proposed Buyer, but it did not contain a verification of funds sufficient to complete a cash sale. In light of the modest value of the Tetzal Property, the all-cash \$48,000 offer from the Proposed Buyer which equals or exceeds all property valuations, and the fact that the Proposed Buyer's offer exceeded the amount paid by the Youngs for the property just one year before by 20%, the Receiver did not initially believe it to be cost effective or worthwhile to seek any formal overbids.

However, as described above, on February 26, 2021 the Receiver and its counsel were both advised that another person was interested in acquiring the Tetzal Property at an amount significantly more than the \$48,000 purchase price in the Proposed Sale Contract. That interested party turned out to be Minger. Minger advised counsel for the Receiver that he was extremely familiar with the Tetzal Property and did not need to do any further due diligence on the property. He further advised the Receiver's counsel that he was prepared to make an all-cash

offer of \$64,000 for the Tetzal Property without any contingencies, without further inspecting the property and without undertaking any further due diligence. He asserted that he already expended certain funds in connection with a potential acquisition of the Tetzal Property, so he was offering \$64,000 instead of \$72,000. However, the Receiver concluded that an overbid session was warranted because Minger was offering to pay 33.3% more than the Proposed Buyer's offer and Minger preliminarily demonstrated to the Receiver his financial ability to close the transaction.

The Proposed Sale Contract consists of the Vacant Land Contract, Seller's Addenda, Counter Offer Number One Dated January 7, 2021, "AS-IS" Purchase and Additional Terms, Addendum to Contract No. 1 and Addendum to Contract No. 2, attached as Exhibit 1 to the Kane Declaration. All contingencies have been removed and the Proposed Buyer has elected to proceed with the transaction upon Court approval. The deposit of \$2,400, 5% of the purchase price, will become property of the receivership estate should the Court grant the Motion and the Proposed Buyer successfully acquire the property at the overbid session but fail to close escrow for any reason not the fault of the Receiver.

The Receiver seeks approval of the Proposed Sale Contract and the sale of the Tetzal Property to the Proposed Buyer under the terms and conditions set forth therein. The Receiver also seeks approval to solicit overbids for the sale of the Tetzal Property, as contemplated by the Proposed Sale Contract, and seeks an order on this Motion that confirms the sale of the Tetzal Property to the Proposed Buyer, or to Minger if he qualifies as an overbidder and makes the highest overbid at the overbid session to be conducted under the proposed sale procedures set forth in this Motion. The Receiver requests that the Court approve the following notice and overbid procedures, terms and conditions:

A. The overbid session shall be conducted within 30 days of the date of entry of the order granting this Motion. The overbid session will be conducted by the

Receiver using remote video technology in light of travel and other restrictions imposed as a result of the COVID-19 pandemic.

B. If Minger wishes to overbid, he shall be required to pre-qualify with the Receiver no later than 10:00 a.m. three business days preceding the overbid session by delivering to the Receiver's office located at 11450 Sheldon Street, Sun Valley CA 91352 : (a) notice in writing of his intent to overbid together with (b) written verification from a financial institution demonstrating to the Receiver's satisfaction, in the Receiver's sole opinion and judgment, the prospective overbidder's ability to complete and close a purchase of the Tetzal Property through sufficient funds or credit facilities within 10 days of the date of the overbid session,<sup>3</sup> and (c) a cashier's check in the sum of \$32,000 payable to SEC v MEDIATRIX CAPITAL et al Receivership QSF Brick Kane of Robb Evans & Associates LLC, Receiver, which cashier's check shall become non-refundable upon acceptance of Minger's overbid at the conclusion of the overbid session.

C. If Skaggs (the Proposed Buyer) wishes to overbid, he shall be required to pre-qualify with the Receiver no later than 10:00 a.m. three business days preceding the overbid session by delivering to the Receiver's office at the address set forth in the prior sub-paragraph written verification from a financial institution demonstrating to the Receiver's satisfaction, in the Receiver's sole opinion and judgment, the Proposed Buyer's ability to complete and close a purchase of the Tetzal Property following competitive bidding through sufficient funds or credit facilities within 10 days of the date of the overbid session.

D. Minger will be deemed to have completed all inspections of the Tetzal Property and undertaken all due diligence with respect to the Tetzal Property and will be

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<sup>3</sup> Minger has already preliminarily demonstrated to the Receiver the financial capacity to close this transaction.

deemed to have waived and/or removed all contingencies in favor of the buyer under the Proposed Sale Contract, including without limitation any contingency pertaining to inspection of title, and will be required to complete a cash purchase of the Tetzal Property and close escrow for the purchase of the Tetzal Property within 10 days of the date of the overbid session. If he is the successful overbidder, Minger will be required to execute a purchase agreement for the Tetzal 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.

E. The initial overbid shall be in the amount of \$64,000 (an amount that is \$18,000, or 33.3%, higher than the purchase price under the Proposed Sale Contract), an amount that Minger has indicated he will pay to acquire the Tetzal Property, and all subsequent overbids made by the Proposed Buyer or Minger shall be in an amount at least \$3,000 higher than the preceding bid.

**II. THE SALE OF THE TETZEL PROPERTY SHOULD BE APPROVED AND CONFIRMED UNDER 28 U.S.C. §2001, THE RECEIVER ORDER AND APPLICABLE RECEIVERSHIP LAW**

Title 28 U.S.C. § 2001 sets forth the procedures pertaining to the sale of real property. Subsection (a) pertains to procedures for the public sale of real property and provides for the sale of real property by public sale at the courthouse where the Receiver was first appointed, at the courthouse where most of the property is located or at such other premises as the Court directs. 28 U.S.C. § 2001(a). Section § 2001(b) of Title 28 pertains to the sale of real property at private sale. That statute provides, in part:

After a hearing, of which notice to all interested parties shall be given by publication or otherwise as the court directs, the court may order the sale of such realty or interest therein by private sale

for cash or other consideration and upon such terms and conditions as the court approves, if it finds that the best interests of the estate will be served thereby.

The time, manner, terms of sale and notice thereof are regulated by the court appointing the receiver. Courts are granted discretion in setting the terms and conditions for judicial sales and the Court's discretion will not be disturbed on appeal except where abuse of discretion is shown. *United States v. Branch Coal Corp.*, 390 F. 2d 7 (3rd Cir. 1968), *cert. den. Sun Protection Co. v. United States*, 391 U.S. 966, 88 S. Ct. 2034 (1968). The Court has substantial discretion in receivership matters in setting the overbidding procedures applicable to sales of real property. *See Pewabic Mining Co. v. Mason*, 145 U.S. 349, 356 (1891) (the provisions for notice and other conditions shall be determined by the Court "as will in his judgment best protect the rights of all interested, and make the sale most profitable to all"); *see also Breeding Motor Freight Lines v. R.F.C.*, 172 F.2d 416, 422 (10th Cir. 1949); *Cumberland Lumber Co. v. Tunis Lumber Co.*, 171 F. 352 (4th Cir. 1909); *Bidwell v. Huff*, 176 F. 174 (5th Cir. 1909). The terms and conditions of the judicial sale that the Court may adopt are based on the facts and circumstances of each case. The discretion granted in connection with sales of assets is consistent with the broad discretion accorded to the Court sitting in equity in receivership proceedings to make orders concerning the administration and supervision of the estate that will promote equity, efficiency and cost-effectiveness in the estate's administration. *See generally, Broadbent v. Advantage Software, Inc.*, 415 F. App'x 73, 78 (10th Cir. 2011); *Securities and Exchange Commission v. Hardy*, 803 F.2d 1034 (9th Cir. 1986); *Securities and Exchange Commission v. Black*, 163 F.3d 188, 199 (3rd Cir. 1998); *Securities and Exchange Commission v. Elliot*, 953 F.2d 1560 (11th Cir. 1992).

There are four components for the approval of a private sale under §2001(b). First, the property is to be appraised by three appraisers. The statute does not define what constitutes an “appraisal” for the purpose of §2001. Here, the Receiver has obtained two appraisals and one broker’s opinion of value. Given the modest value of the Tetzal Property, the fact that the Youngs only paid \$40,000 for the property in September 2019, and the fact that the sale price to be paid by the Proposed Buyer equals or exceeds the two appraisals and one broker’s opinion of value, those valuations should be sufficient.

Second, a private sale must be for a price at least two-thirds the amount of the average of the appraised values. In this case, the sale price equals or exceeds each of the three Tetzal Property valuations obtained by the Receiver, which is far in excess of the two-thirds threshold.

The third and fourth provisions call for publication of the terms of the sale in a newspaper of general circulation at least ten days before sale, with the private sale to be confirmed unless an overbidder bids at least 10% more than the price offered. Here, the Receiver has crafted an overbid procedure whereby an interested overbidder brought to the Receiver by Defendant Michael Young has indicated a willingness to overbid by 33.3% over a full value offer of \$48,000. The expense and delay attendant to strict compliance with the newspaper publication provision therefore outweighs any possible benefit to the receivership estate. As set forth above, the Tetzal Property was listed for sale in the Stellar Multiple Listing Service which was already published to a large number of real estate agents and prospective purchasers. It was also promoted online on numerous real estate websites. This generated two separate written purchase offers, one of which was a full-price offer from the Proposed Buyer that equals or exceeds all of the valuations obtained by the Receiver and is 20% greater than the purchase price paid by the

Youngs only one year earlier and the other of which did not provide verification of funds sufficient to complete the transaction. Subsequently, the Receiver has been presented with significant interest from Minger, brought to the Receiver by Defendant Michael Young, who has expressed a willingness to pay \$64,000 all-cash for the property.

The Receiver believes that no further publication is necessary or appropriate and that the time and expense of entering into a formal publication process or a generalized bid process is not warranted. There are several reasons for this. First, the Proposed Buyer has made a full-price offer that equals or exceeds all of the valuations obtained by the Receiver. Second, the purchase price exceeds by 20% the price paid by the Youngs a year earlier. Third, Defendant Michael Young himself has presented a prospective overbidder who has preliminarily demonstrated the financial ability to acquire the property and indicated a willingness to overbid by 33.3% over the Proposed Buyer's full price offer. Fourth, given the property's modest value and the prospective overbid by Minger, any additional publication is highly unlikely to generate overbidding sufficient to justify the additional expense.

Therefore, it is appropriate for the Court to approve the sale to the Proposed Buyer or such higher successful bid as may be generated between the Proposed Buyer and Minger without the need for further publication or overbidding.

**III. CONCLUSION**

Based on this motion, supporting memorandum of points and authorities and the accompanying declaration of Brick Kane 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: March 8, 2021

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

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**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,

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v.

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**DECLARATION OF BRICK KANE IN SUPPORT OF MOTION FOR ORDER  
APPROVING AND CONFIRMING SALE OF REAL PROPERTY COMMONLY KNOWN  
AS 12088 TETZEL AVENUE, PORT CHARLOTTE, FLORIDA AND SALE AND  
OVERBID PROCEDURES**

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I, Brick Kane, declare:

1. I am the President of Robb Evans & Associates LLC. I have been appointed Receiver in this action pursuant to the Order Appointing Receiver (“Receiver Order”) entered in this action on September 11, 2020. As Receiver, I have had primary responsibility for the supervision and management of this receivership estate, and have been one of the members of Robb Evans & Associates LLC actively involved in the administration of the receivership. I was principally responsible for the preparation of the Report of Receiver’s Activities From September 11, 2020 Through December 31, 2020 (“Receiver’s First Report”) which was filed on January 29, 2020 and which describes in detail the primary work undertaken by me and my

deputies at Robb Evans & Associates LLC for the period from the inception of the receivership estate on September 11, 2020 through December 31, 2020. Deputies at Robb Evans & Associates LLC under my supervision have assisted me in discharging my duties under the Receiver Order, including steps to take possession and control of real property which is property of the receivership estate and marketing such real property for sale pursuant to subsequent Court approval. Hereafter, I sometimes refer to “Receiver” or “we” in this declaration when describing services performed by my deputies and/or performed by me. I have personal knowledge of the matters set forth in this declaration or I have gained knowledge of these matters based on information which has been obtained by my deputies or me during the course of my administration of this receivership estate. If I were called upon to testify to these matters I could and would competently testify thereto.

2. The Receiver determined that one of the assets of the receivership estate under the Receiver Order is the real property commonly known as 12088 Tetzal Avenue, Port Charlotte, Florida (“Tetzal Property”). We determined that the Tetzal Property is vested in the name of Defendant Michael Young and Relief Defendant Maria C. Young (collectively, the “Youngs”). I determined that the Youngs acquired the Tetzal Property in September 2019 for \$40,000.

3. The Tetzal Property is comprised of four contiguous unimproved lots comprising 1.02 acres of vacant land in Port Charlotte, Florida. Port Charlotte is located in Charlotte County, in southwestern Florida. The property is a non-waterfront property and does not have views of the water. The assessor’s office has advised the Receiver that the lots are “tied,” and therefore may not be sold separately at the present time. The Tetzal Property is zoned to permit a single family residence or multi-family residential use.

4. In order to value the Tetzal Property for the purpose of marketing and selling it, we obtained two appraisals on the property. It was appraised as of November 21, 2020 by James Vredevoogd, Certified General Appraiser, of Action Appraisal. It was appraised as of December 3, 2020 by Sandra K. Adomatis, SRA, Certified General Real Estate Appraiser, of Adomatis Appraisal Service. The Vredevoogd appraisal concluded that the maximally productive use for the property is as a single family residence. The Adomatis appraisal concluded that the property's maximally productive use is as multifamily sites for future development. A broker's opinion of value also was obtained in November 2020 From Cheryl Culpan, a real estate agent who ultimately listed the property for the Receiver. Importantly, the purchase price obtained for the property, \$48,000, equals or exceeds the valuations of the two appraisals and the broker's opinion of value. The Receiver has not filed or disclosed these valuations to the Court. Given the pending status of the sale, there is a need to keep these valuations confidential should the sale fail to close for any reason.

5. I determined to retain a real estate listing broker, concluding that the best way to maximize value for the Tetzal Property, given its limited value, was to sell it at private sale using an established brokerage firm which would advertise the property using a multiple listing service. The Receiver entered into the Exclusive Right of Sale Listing Agreement ("Listing Agreement") with ERA Advantage Realty, Inc. ("ERA"), a true and correct copy of which is attached hereto as Exhibit 2. We used Cheryl Culpan as the listing agent, who has been acting as a listing agent for nearly eight years in Charlotte County and Sarasota County, Florida. ERA is part of a national real estate brokerage firm. ERA is a well regarded brokerage firm with extensive experience and expertise marketing Port Charlotte property. We were advised that it is common for real estate brokers in Florida to charge a 10% commission for the sale of vacant

land of modest value, but at our request ERA agreed to charge an 8% commission.

6. In consultation with Culpan, we decided to list the Tetzal Property at \$48,000, which was a listing price that equals or exceeds both of the appraisals and the broker's opinion of value. The Listing Agreement was entered into on December 17, 2020. The Receiver was advised that thereafter, the Tetzal Property was listed in the Stellar Multiple Listing Service ("MLS"). We were also advised that ERA advertised the Tetzal Property in various on-line real estate websites, including Trulia, Zillow, Redfin and FaceBook. The MLS listing was also distributed on-line to websites Homes.com, HomeSnap, International MLS and Realtor.com. ERA provided the Receiver a report showing how often the listing was viewed by brokers, agents and prospective purchasers. The report indicates that it was viewed several hundred times on the MLS service, as well as real estate websites such as Trulia and Zillow.

7. On January 4, 2021 the Receiver obtained an arm's length, full price offer from Ryan E. Skaggs ("Proposed Buyer"). On January 11, 2021 the Proposed Buyer agreed to the Receiver's counteroffer, which contained several non-monetary changes to the Proposed Buyer's offer, most importantly a broad "as is" provision clearly setting forth that the property is being sold "as is" without any warranties or representations, and with all faults known and unknown. The contract to purchase the Tetzal Property is set forth in the Vacant Land Contract, Seller's Addenda, Counter Offer Number One Dated January 7, 2021, "AS-IS" Purchase and Additional Terms, Addendum to Contract No. 1 and Addendum to Contract No. 2, (collectively, the "Proposed Sale Contract"), a true and correct copy of which is attached hereto as Exhibit 1. Pursuant to Addendum No. 1, the Proposed Buyer removed all contingencies to the Sale Contract on January 29, 2021. Addendum No. 2, pertaining to the title commitment, was executed by the Proposed Buyer on February 6, 2021. The Receiver obtained one other offer on the Tetzal

Property subsequent to the offer received from the Proposed Buyer, but no verification of funds was provided demonstrating the ability to complete a cash sale.

8. In light of the modest value of the Tetzal Property, receipt of an all-cash \$48,000 offer from the Proposed Buyer which equals or exceeds all property valuations, and the fact that the Proposed Buyer's offer exceeded the amount paid by the Youngs for the property just one year before by 20%, I originally did not believe it to be cost effective or worthwhile to expend receivership estate funds publishing the terms of the sale in a newspaper or seeking overbids.

9. However, on February 26, 2021 my counsel and I were advised by Defendant Michael Young and his counsel that another person was interested in acquiring the Tetzal Property at an amount significantly more than the \$48,000 purchase price in the Proposed Sale Contract. We were advised that the third party was willing to pay \$72,000 for the Tetzal Property. That interested party turned out to be Steve Minger, who indicated he would likely acquire it in the name of one of the entities he owns or controls (individually and collectively, "Minger"). Minger advised my attorney that he already was extremely familiar with the Tetzal Property and did not need to do any further due diligence on the property. He further advised the Receiver's counsel that he was prepared to make an all-cash offer of \$64,000 for the Tetzal Property without any contingencies, without further inspecting the property and without undertaking any further due diligence. He asserted that he already expended certain funds in connection with a potential acquisition of the Tetzal Property, so he was offering \$64,000 instead of \$72,000. However, I concluded that an overbid session was warranted because Minger was offering to pay 33.3% more than the Proposed Buyer's offer and Minger has preliminarily demonstrated his financial ability to close the transaction. I believe that if he chooses to go forward and acquire the property, Minger would be an arm's length buyer.

10. Therefore, I request approval of the Proposed Sale Contract and the sale of the Tetzal Property to the Proposed Buyer under the terms and conditions set forth therein. The Proposed Buyer has removed all contingencies and has elected to proceed with the transaction upon Court approval. The deposit of \$2,400, 5% of the purchase price, will become property of the receivership estate should the Court grant the Motion and the Proposed Buyer fail to close escrow for any reason not the fault of the Receiver.

11. I also seek approval to solicit overbids for the sale of the Tetzal Property, as contemplated by the Proposed Sale Contract, and an order that confirms the sale of the Tetzal Property to the Proposed Buyer, or to Minger if he qualifies as an overbidder and makes the highest overbid at the overbid session to be conducted under the proposed sale procedures set forth in the Motion. The Receiver requests that the Court approve the following notice and overbid procedures, terms and conditions:

A. The overbid session shall be conducted within 30 days of the date of entry of the order granting the Motion. I will conduct the overbid session by means of remote video technology in light of travel and other restrictions imposed as a result of the COVID-19 pandemic.

B. If Minger wishes to overbid, he shall be required to pre-qualify no later than 10:00 a.m. three business days preceding the overbid session by delivering to the Receiver's office in Sun Valley, California a notice in writing of his intent to overbid, together with a written verification from a financial institution demonstrating to my satisfaction his ability to complete and close a purchase of the Tetzal Property through sufficient funds or credit facilities within 10 days of the date of the overbid session. Minger has already preliminarily demonstrated to the Receiver the financial capacity to close this

transaction. At the same time, he would be required to deliver a cashier's check in the sum of \$32,000 payable to SEC v MEDIATRIX CAPITAL et al Receivership QSF Brick Kane of Robb Evans & Associates LLC, Receiver, which cashier's check shall become non-refundable upon acceptance of Minger's overbid at the conclusion of the overbid session. This represents half of the minimum required overbid.

C. If Skaggs (Proposed Buyer) wishes to overbid, he shall be required to deliver to the Receiver's office in Sun Valley, California, no later than 10:00 a.m. three business days preceding the overbid session, a written verification from a financial institution demonstrating to my satisfaction his ability to complete and close a purchase of the Tetzal Property following competitive bidding through sufficient funds or credit facilities within 10 days of the date of the overbid session.

D. Minger will be deemed to have completed all inspections of the Tetzal Property and to have undertaken all due diligence with respect to the Tetzal Property and will be deemed to have waived and/or removed all contingencies in favor of the buyer under the Proposed Sale Contract, including without limitation any contingency pertaining to inspection of title. Minger will be required to complete a cash purchase of the Tetzal Property and close escrow for the purchase of the Tetzal Property within 10 days of the date of the overbid session. If he is the successful overbidder, Minger will be required to execute a purchase agreement for the Tetzal 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.

E. The initial overbid shall be in the amount of \$64,000, an amount that is \$18,000, or 33.3%, higher than the purchase price under the Proposed Sale Contract.

Minger has indicated that he is prepared to pay this sum to acquire the Tetzal Property. All subsequent overbids by the Proposed Buyer or Minger shall be in an amount at least \$3,000 higher than the preceding bid.

12. The proposed overbid procedure enables Minger, an interested prospective purchaser brought to the Receiver by Defendant Michael Young, to make an initial overbid of \$64,000, the amount he has indicated he is willing to pay for the Tetzal Property. This represents an overbid by 33.3% over the full value offer of \$48,000 from the Proposed Buyer. As set forth above, the Tetzal Property was listed for sale in the Stellar Multiple Listing Service which was already published to a large number of real estate agents and prospective purchasers. It was also promoted online on numerous real estate websites. This generated two separate written purchase offers, one of which was a full-price offer from the Proposed Buyer that equals or exceeds all of the valuations obtained by the Receiver and is 20% greater than the purchase price paid by the Youngs only one year earlier and the other of which did not provide verification of funds sufficient to complete the transaction. Subsequently, I was advised of Minger's significant interest in the property, who was brought to the Receiver by Defendant Michael Young, and who has expressed a willingness to pay \$64,000 all-cash. Under these circumstances, I believe that no further publication is necessary or appropriate and that the time and expense of entering into a formalistic publication process or a generalized bid process is unwarranted and would not justify the additional expense.

13. In summary, the Proposed Buyer has made a full-price offer that equals or exceeds all of the valuations obtained by the Receiver. The \$48,000 purchase price exceeds by 20% the price paid by the Youngs a year earlier. Defendant Michael Young has presented a prospective buyer to the Receiver who has preliminarily demonstrated the financial ability to

acquire the property and indicated a willingness to make an overbid of \$64,000, which is 33.3% over the Proposed Buyer's full price offer. Therefore, I believe it is appropriate for the Court to approve the sale to the Proposed Buyer or such higher successful bid as may be generated between the Proposed Buyer and Minger without the need for further publication or overbidding.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on March 8, 2021 at Alhambra, California.



BRICK KANE

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