

IN THE DISTRICT COURT OF OKLAHOMA COUNTY  
STATE OF OKLAHOMA

JUN - 2-2010

PATRICIA PRESLEY, COURT CLERK  
by \_\_\_\_\_  
DEPUTY

OKLAHOMA DEPARTMENT OF SECURITIES )  
ex rel. IRVING L. FAUGHT, Administrator, )  
 )  
Plaintiff, )  
v. )  
 )  
THE ESTATE OF BRYAN DAVID ROARK, )  
 )  
Defendant. )

Case No. CJ-2009-10905

**RECEIVER'S APPLICATION FOR APPROVAL TO SELL REAL PROPERTY AND  
EMPLOY AUCTION COMPANY**

COMES NOW Douglas L. Jackson, as the Court-Appointed Receiver for the Assets of the Estate of Bryan David Roark, and makes application to the Court for approval to sell real property being transferred from Christiana K. Roark, individually and as personal representative of the estate of Bryan David Roark, to the Receiver as part of a settlement agreement entered into between the parties and currently pending approval by this Court. In addition, the Receiver makes application to the Court for approval of his employment of Lippard Auctioneers, Inc. on the terms described below to advertise and settle at public auction the same real property. In support of his application, the Receiver would show the Court as follows:

1. The Receiver has entered into a settlement agreement with Christiana K. Roark, Craig Roark and Chad Roark, which provides, among other things, that Christiana K. Roark waives all right, title and interest in eight tracts of agricultural real estate and transfers same to the Receiver. See legal descriptions of agricultural real estate attached as *Exhibit A*.

2. The settlement agreement between these parties is being submitted to the Court for approval contemporaneously with this Application.

3. The agricultural real estate that the Receiver is to obtain pursuant to the settlement agreement needs to be sold before it gets too hot and dry in order to obtain the best possible price for the property.

4. As such, the Receiver has contacted Lippard Auctioneers, Inc., to view the property and prepare to sell that property at public auction pending the Court's approval of the settlement agreement between the Roarks, the Receiver and the Oklahoma Department of Securities.

5. Lippard Auctioneers, Inc. has considerable experience in auctioning agricultural real estate, among other things, and has agreed to sell the eight tracts of agricultural real estate identified on *Exhibit A* for a 4% sales commission with the Receiver paying all expenses, including advertising. A copy of the proposed contract between Lippard Auctioneers, Inc. and the Receiver is attached hereto as *Exhibit B*.

6. The public auction for the agricultural real property that the Receiver is to obtain pursuant to the settlement agreement has tentatively been scheduled for Thursday, July 22, 2010 at 10:00 a.m.

7. The Receiver is seeking the Court's contingent approval of his employment of Lippard Auctioneers, Inc. to conduct this public auction so that the sale will not be delayed in the event the court does approve the settlement agreement entered into the between the Roarks, the Receiver and the Oklahoma Department of Securities.

8. The Receiver seeks authorization from the Court to sell all of the agricultural real estate identified on *Exhibit A* at public auction to the highest bidder or bidders, except for 40 acres to be carved out of the property identified as Tract 1 on *Exhibit A*. The Receiver seeks the approval of this Court to sell this 40 acre tract to David Roark, who already owns the adjoining

10 acres, at a price that is \$100 per acre more than the price per acre the remaining 50 acres of Tract 1 brings at public auction.

9. The Receiver fully understands and acknowledges that should the Court not approve the settlement agreement between the parties, then any Order entered granting the instant Application will be moot and void.

WHEREFORE, premises considered, the Receiver respectfully requests that the Court grant this Application and authorize him to: (1) sell the agricultural real estate identified on *Exhibit A* attached hereto at public auction to the highest bidder or bidders, except for 40 acres that is part of Tract 1 identified on *Exhibit A*; (2) sell the 40-acre tract that is part of Tract 1 on *Exhibit A* to David Roark at a price that is \$100 per acre more than the per acre price the remaining 50 acres of Tract 1 brings at auction; and, (3) employ Lippard Auctioneers, Inc. pursuant to the terms in the contract attached hereto as *Exhibit B*, all with the express understanding that any Order entered pursuant to this Application will become moot and void should the Court not approve the settlement agreement between the Roarks, the Receiver and the Oklahoma Department of Securities.

Respectfully submitted,



Bradley E. Davenport, OBA #18687  
GUNGOLL, JACKSON, COLLINS, BOX & DEVOLL, P.C.  
3030 Chase Tower  
100 N. Broadway Ave.  
Oklahoma City, OK 73102  
Ph. (405) 272-4710 / Fax (405) 272-5141  
Attorney for Receiver, Douglas L. Jackson

**CERTIFICATE OF SERVICE**

I do hereby certify that on this 2<sup>nd</sup> day of June, 2010 I mailed a true and correct copy of the above and foregoing document by placing same in the United States mails, postage prepaid, to:

Jennifer Shaw  
Amanda Cornmesser  
Oklahoma Department of Securities  
120 N. Robinson, Suite 860  
Oklahoma City, OK 73102  
Attorneys for Plaintiff

Clell I. Cunningham, III  
Dunn, Swan & Cunningham, P.C.  
210 Park Avenue  
Suite 2800  
Oklahoma City, OK 73102  
Attorney for Intervenors, Christy Roark,  
Craig Roark and Chad Roark

Patrick M. Ryan  
Ryan, Whaley, Coldiron, Shandy  
900 Robinson Renaissance  
119 N. Robinson  
Oklahoma City, OK 73102  
Attorneys for Interested Party,  
Morgan Stanley

Clyde A. Muchmore  
Crowe & Dunlevy  
20 N. Broadway  
Suite 1800  
Oklahoma City, OK 73102  
Attorney for Landmark Bank

Galvin Family, LLC  
c/o Barbara Moon  
902 Arlington Center, PMB 149  
Ada, OK 74820

Donald Brooks  
Route 1  
Box 276  
Allen, OK 74825

Barbara Jean Moon  
1925 E. 18<sup>th</sup> Street  
Ada, OK 74820

Christopher Ryan Hoover  
826 E. 7th  
Ada, OK 74820

Betty Bryant  
12266 Highway 177  
Stratford, OK 74872

Kyle Lackey  
1331 Alvera Lane  
Wynnewood, OK 73098

Kurtis Ward  
3232 W. Britton  
Suite 170  
Oklahoma City, OK 73120  
Attorney for David Roark

  
Bradley E. Davenport

## Legal Descriptions

### Ag Real Estate

Tract 1: The E/2 E/2 NE/4 and E/2 W/2 E/2 NE/4 and E/2 NE/4 SE/4 and E/2 2/W NE/4 SE/4 and NE/4 SE/4 SE/4, all in Section 11, Township 2 North, Range 5 East, containing 100 acres, more or less

**LESS AND EXCEPT** a tract beginning at the NE Corner of said Section 11, thence South 00°01'00" East along the East line of the NE/4 of said Section 11 a distance of 1015.59 feet; thence North 89°55'00" West a distance of 428.91 feet; thence North 00°01'00" West a distance of 1015.59 feet, to the North line of Section 11; thence South 89°55'00" East along said North line, a distance of 428.91 feet, to the point of beginning, containing 10 acres, more or less.

Tract 2: S/2 NE/4 SW/4 SW/4, Section 13, Township 2 North Range 5 East;

SE/4,  
E/2 SW/4  
S/2 SW/4 SW/4  
SE/4 SW/4 SW/4, Section 13, Township 2 North, Range 5 East;

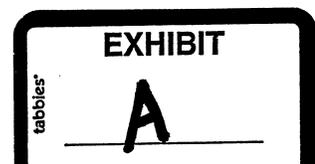
NE/4 SW/4 SW/4,  
West 16 acres of Lot 4, Section 18, Township 2 North, Range 6 East;

Lots 2 and 3,  
SE/4 NW/4  
NE/4 SW/4, Section 18, Township 2 North, Range 6 East; and

NE/4 NE/4, Section 24, Township 2 North, Range 5 East

Tract 3: S/2 SW/4 NW/4,  
E/2 NW/4,  
W/2 NE/4,  
W/2 SE/4 NE/4, Section 24, Township 2 North, Range 5 East, containing 200 acres, more or less.

Tract 4: A part of the E/2 of Section 30, Township 2 North, Range 6 East, more particularly described as follows: beginning at the Northeast corner of said Section 30; thence S 00° 25'15" E a distance of 5292.39 feet to the Southeast corner of Section 30; thence N 89°59'30" W along the South



line of said Section 30 a distance of 2551.65 feet; thence N 00°4'23" W a distance of 2545.48 feet; thence North 49°46'53" W a distance of 165.70 feet; thence N 00°3'19" E a distance of 2639.42 feet to the North quarter corner of said Section 30; thence N 90°00'00" E along the North line of said Section 30 a distance of 2640.00 feet to the point of beginning, containing 315.688 acres, more or less

- Tract 5: N/2 NW/4 and SW/4 NW/4 and N/2 SE/4 NW/4 and N/2 NW/4 SW/4 and NW/4 NE/4 SW/4 of Section 23, Township 2 North, Range 5 East
- Tract 6: The NW/4 of NW/4 and N/2 of SW/4 of NW/4 of Section 24, Township 2 North, Range 5 East, LESS AND EXCEPT the following described tract: A tract of land located in the NW/4 of Section 24, Township 2 North, Range 5 East, Pontotoc County, Oklahoma, more particularly described as follows: Beginning at the Northwest Corner of said Section 24; thence North 89°33'18" East along the North line of said Section 24 a distance of 1328.0 feet; thence South 00°41'00" East a distance of 328.0 feet; thence South 89°33'18" West a distance of 1328.0 feet to a point on the West line of said Section 24; thence North 00°41'00" West a distance of 328.0 feet to the point of beginning, containing 10.0 acres, more or less
- Tract 7: N/2 NW/4 NW/4 NW/4 and N/2 NE/4 NW/4 NW/4 of Section 24, Township 2 North, Range 5 East, **SURFACE INTEREST ONLY**
- Tract 8: The SW/4 of SE/4 of NW/4 of Section 23, Township 2 North, Range 5 East, SURFACE INTEREST ONLY



Lippard Auctioneers, Inc.

1102 W. Broadway Ave.

Enid, OK 73703

(580)237-7174 \*(580)234-7800 Fax

(866)874-7100 Toll Free

Lippard@suddenlink.net

REAL ESTATE LISTING CONTRACT

This is an agreement entered into this 1st Day of June 2010

I/We hereby grant United Country Lippard Auctioneers, Inc. the exclusive right and authority to sell at Public Auction the following:

Auction Date: July 22, 2010

Time: 10am

Auction Location: on site

Property: The property is described as land in 18-2N-6, 30-2N-6, 13.2N-6, 24-2N-6 & 23-2N-6 EIM County, Oklahoma, which street address is: Pontotoc County OK (zip code), together with all Seller's right, title, interest and estate in and to oil, gas, and other minerals in and under such real estate, if any, not previously reserved or conveyed of record; improvements and appurtenances, if any, and the following items, if any: curtains and rods, draperies and rods, valances, blinds, window shades, screens, shutters, awnings, wall to wall carpeting, bathroom mirrors, shower heads, ceiling fans, attic fans, mail boxes, water well equipment, television antennas and satellite dish system with controls and equipment, permanently installed heating and air conditioning units, window air conditioning units, built in and owned security and fire protection equipment, plumbing and lighting fixtures including chandeliers, owned-water softeners and filters, stove, built in kitchen equipment, garage door openers with fixed and remote controls, built in cleaning equipment, also any pool equipment, cover and maintenance accessories, shrubbery, landscaping, permanently installed outdoor cooking equipment, built in fireplace screen, artificial fireplace logs and all other property owned by Seller and attached to the above-described real property except the following property which is not included:

(If farm ground only is being sold, you can take out everything after improvements and appurtenances in the paragraph above)

Terms: Buyer will be responsible for placing Ten Percent (10%) of the Purchase Price into escrow day of the auction, with balance due in full at closing.

Seller's Commission 4 % Buyer's Premium 0 Home Warranty at buyers expense

Liens on Property: with

Pass Fee: 0 If property has reserve: \$ Advertising \$ 13,000.00 estimate

Buyer's Premium: An advertised percentage of the high bid or flat fee added to the high bid to determine the total contract price to be paid by the Buyer.

Absolute Auction: An auction where the property is sold to the highest qualified bidder with no limiting conditions or amount. The Seller may not bid personally or through an agent. Also known as an auction without reserve.

Special Conditions:

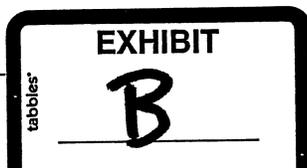
Seller acknowledged that seller has read the forgoing contract and agrees to all the conditions contained in it, and further acknowledges receipt of this contract.

Listing Associate: Troy Lippard

Disclosures Required by Seller.

(a) Seller will deliver to United Country Lippard Auctioneers, Inc. ("Auctioneer") the disclosures and notices as required by law. Seller must complete the required disclosures or notices to the best of Seller's knowledge and belief. Seller authorizes Auctioneer to furnish prospective buyers and other brokers with copies of all required disclosures or notices. (b) Seller shall promptly amend the applicable disclosures and notices (i) which become out-dated or inaccurate, (ii) if Seller becomes aware of any defect in closing without limitation, any defect known after an inspection period. (c) Seller acknowledges that Auctioneer has the duty to disclose to any Buyer any defects in the property actually known to Auctioneer, which are not included in the Residential Property Condition Disclosure statement. (d) Seller will protect, defend, indemnify and hold Auctioneer and Auctioneer's associated associates harmless from any and all damages, costs, attorney fees or expenses arising from Seller's failure to disclose any defects of which Seller has actual knowledge or information as required by law or communication of any incorrect information to Auctioneer or Auctioneer's associated associates or prospective buyers.

Seller's Representations. Seller represents that:



(a) Seller has fee simple title to and possession of the Property and all its improvements and fixtures thereon, unless rented, and the legal capacity to convey the property. (b) Seller is not now a party to a listing agreement with another broker for the sale, exchange or lease of the Property. © No person or entity has any right to purchase, lease or acquire the Property by virtue of an option, right of first refusal or other agreement. (d) The Property (check one)  is not subject to a mandatory homeowner's association, or  is subject to a mandatory homeowner's association with annual dues payable in the amount of \$\_\_\_\_\_ per \_\_\_\_\_. (e) The Property (check one)  is not subject to a special assessment, or  is subject to a special assessment of which \$\_\_\_\_\_ is unpaid. (f) The Property (check one)  is, or  is not in a historical preservation district. (g) There are no delinquencies or defaults under any mortgage or any other encumbrance on the Property. (h) The Property is not subject to probate proceedings, foreclosure, divorce proceedings or the jurisdiction of any court. (i) Seller expressly disclaims knowledge of any environmental damages or hazards on the Property or any adjacent property. (j) All information relating to the Property provided herewith or which may be provided to Auctioneer by Seller is true and correct, and Seller will notify Auctioneer in the event of any changes to these representations.

**Seller's Additional Promises.** Seller agrees to:

(a) Cooperate fully in good faith with Auctioneer to facilitate the showing and marketing of the Property; (b) Not negotiate with any prospective buyer who may contact Seller directly; and (c) Provide Auctioneer with copies of all leases or rental agreements, if any, pertaining to the Property and advise Auctioneer moving in or out of the Property.

**Default.** If Seller breaches this listing contract (including but not limited to sale of the Property without Auctioneer's knowledge and consent), Seller is in default and will be liable to Auctioneer for an amount equal to five percent (5%) of the appraised value of the Property as liquidated damages, plus payment of all expenses Auctioneer has incurred to date for the advertising, promotion and the conditions made in preparation for the public auction. If Auctioneer breaches this listing agreement, Auctioneer is in default and Seller may exercise any remedy available to it at law.

**Attorneys' Fees.** If Seller or Auctioneer is a prevailing party in any legal proceeding brought as a result of a dispute under this listing contract, such party will be entitled to recover from the non-prevailing party all costs of such proceeding, including a reasonable attorneys' fee.

**Agreement of Parties.**

(a) Entire Agreement. This listing contract and any attachments or exhibits hereto contains the entire agreement between the parties and may not be changed except by written agreement. Seller acknowledges receipt of a copy of this listing contract and any attachments or exhibits referenced herein and made a part hereof. (b) Assignability. This listing agreement may not be assigned by either party without the written approval of the other party. (c) Binding Effect. This listing agreement is binding upon and inures to the benefit of the parties hereto, their respective personal representatives, heirs, successors and permitted assigns. (d) Joint and Several. All Sellers executing this listing contract are jointly and severally liable for the performance of all its terms. (e) Governing law. The laws of the State of Oklahoma govern the interpretation of the validity, performance and enforcement of this contract. (f) Severability. If any clause in this listing contract is found to be invalid or unenforceable by a court of law, the remainder of this listing contract will not be affected and all other provisions of this agreement will remain valid and enforceable.

**Counterparts.** If more than one person is named as Seller herein, this listing contract may be executed by each Seller individually, and when so executed, such copies taken together shall be deemed to be a full and complete agreement between the parties.

**Additional Notices.**

(a) Fair Housing laws require the Property to be shown and made available for sale to all persons without regard to age, race, color, religion, sex, handicapped, familial status or national origin. (b) Seller agrees that upon acceptance of a bid at auction by Seller, Auctioneers have no duty thereafter to submit subsequent written bona fide offers for the purchase of the Property, if any, unless the terms of the auction specifically provide otherwise or the transaction made upon acceptance of a bid at the auction does not close. (c) Auctioneer cannot give legal advice. This is intended to be a legally binding contract. READ IT CAREFULLY. If you do not understand the effect of this listing contract, consult your attorney. BEFORE signing.

**Advertising Cost:** The Seller agrees that all expenses incurred for the advertising, promotion, and conditions of said auction shall be first paid at closing from the proceeds realized from said auction before the payment and satisfaction of any liens or encumbrances. It is further mutually agreed that Auctioneer may deduct their fee at the set rate from the gross receipts resulting from said auction. The Buyer default on the purchase and forfeit any earnest money deposit, said earnest money shall be divided between the Seller and Auctioneer as follows: United County Lippard Auctioneers, Inc. shall receive an amount equal to fifty percent (50%) of the earnest money not to exceed the amount they would have received as a commission or premium on the sale, and the balance shall be paid to the Seller.

**Failure to Accept Bid Amount at Auction.** In the event Seller does not accept the high bid amount on the day of the public auction, United Country Lippard Auctioneers, Inc. will have the right to list the Property with the exclusive right to sell the Property for ninety (90) days from the date of auction. United Country Lippard Auctioneers, Inc.'s exclusive right to sell will be governed by the terms of the exclusive-right-to- sale or lease listing agreement attached as Exhibit A and made a part hereof, which Seller will be obligated to sign and agrees to sign if Seller does not accept the high bid on the day of auction.

**Executed on the date first written above.**

**CONSENT FOR RELEASE OF FSA RECORDS UNDER THE PRIVACY ACT**

**Certification of Identity of Person Whose Records Are Being Requested**

(Must be completed if request for records is not made in person.)

**Authorization to Release Information to Another Person**

This form is also to be completed by a requester who is authorizing information relating to himself or herself to be released to another person. Further, pursuant to 5 U.S.C. 552a(b), I authorize the U.S. Department of Agriculture to release any and all information relating to me to: United Country Lippard Auctioneers, Inc.

Signature X \_\_\_\_\_ Date \_\_\_\_\_  
**FAX INFO REQUESTED TO UNITED COUNTRY LIPPARD AUCTIONEERS 580-234-7800**  
Legal: see above PLEASE PROVIDE BASE ACRES \_\_\_\_\_ CROP ACRES \_\_\_\_\_ YIELD ACRES \_\_\_\_\_

X \_\_\_\_\_  
SELLER SIGNATURE

\_\_\_\_\_  
SELLER SIGNATURE

\_\_\_\_\_  
SELLER ADDRESS

\_\_\_\_\_  
SELLER PHONE

\_\_\_\_\_  
E-MAIL ADDRESS

**Troy D. Lippard, C.A.I. Broker/Auctioneer**  
1102 W. Broadway, Enid, OK  
580-237-7174  
580-234-7800 Fax

