

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

In re CFO MANAGEMENT HOLDINGS, LLC, <i>et al.</i> ¹ <p style="text-align: center;">Debtors.</p>	§ § § § § § § § § §	Chapter 11 Case No. 19-40426 Jointly Administered
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**CHAPTER 11 TRUSTEE’S MOTION FOR AN ORDER AUTHORIZING THE
RETENTION OF REAL ESTATE BROKERS**

NOTICE UNDER COMPLEX CASE ORDER [DOCKET NO. 41]:

A HEARING WILL BE CONDUCTED ON THIS MATTER ON MAY 28, 2019 AT 2:30 PM IN THE UNITED STATES BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF TEXAS, 660 NORTH CENTRAL EXPRESSWAY, SUITE 300B, PLANO, TEXAS 75074.

IF YOU OBJECT TO THE RELIEF REQUESTED, YOU MUST RESPOND IN WRITING, SPECIFICALLY ANSWERING EACH PARAGRAPH OF THIS PLEADING. UNLESS OTHERWISE DIRECTED BY THE COURT, YOU MUST FILE YOUR RESPONSE WITH THE CLERK OF THE BANKRUPTCY COURT WITHIN TWENTY-THREE (23) DAYS FROM THE DATE YOU WERE SERVED WITH THIS PLEADING. YOU MUST SERVE A COPY OF YOUR RESPONSE ON THE PERSON WHO SENT YOU THE NOTICE; OTHERWISE, THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF REQUESTED.

David Wallace, Chapter 11 Trustee (the “**Trustee**”) for the above-captioned bankruptcy cases of CRO Management Holdings, LLC and its co-debtors (the “**Debtors**”), files this *Motion*

¹ The Debtors in these chapter 11 cases are as follows: Carter Family Office, LLC, EIN# XX-XXX1652, Case No. 19-40432; CFO Management Holdings, LLC, EIN# XX-XXX6987, Case No. 19-40426; Christian Custom Homes, LLC, EIN# XXXXX4648, Case No. 19-40431; Double Droptine Ranch, LLC, EIN# XX-XXX7134, Case No. 19-40429; Frisco Wade Crossing Development Partners, LLC, # XX-XXX4000, Case No. 19-40427; Kingswood Development Partners, LLC, EIN# XX-XXX1929, Case No. 19-40434; McKinney Executive Suites at Crescent Parc Development Partners, LLC, EIN# XX XXX2042, Case No. 19-40428; North-Forty Development LLC, EIN# XX-XXX5532, Case No. 19-40430; and West Main Station Development, LLC, EIN# XX-XXX7210, Case No. 19-40433. The following mailing address can be used for each of the Debtors with respect to these cases: c/o David Wallace, Chapter 11 Trustee, 4131 North Central Expressway, Suite 775, Dallas, Texas 75204.



for an Order Authorizing the Retention of Real Estate Brokers (the “**Motion**”), and respectfully represent as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this Motion under 28 U.S.C. § 1334(b). This Court can hear and determine this matter in accordance with 28 U.S.C. § 157 and the standing order of reference of bankruptcy cases and proceedings in this District. This matter is a core proceeding, and venue for this Motion is proper in this district under 28 U.S.C. §§ 1408 and 1409

2. The statutory and procedural bases for the relief requested herein are §§ 105(a), 327, and 363 of title 11 of the United States Code (the “**Bankruptcy Code**”) and Rule 2014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”).

BACKGROUND

I. General Background

3. On February 17, 2019 (the “**Petition Date**”), the Debtors each commenced a case under chapter 11 of the Bankruptcy Code (collectively, the “**Bankruptcy Cases**”).

4. On February 28, 2019, the Office of the United States Trustee formed an Official Unsecured Creditors’ Committee (the “**Committee**”), appointing five members to serve. See Docket No. 48.

5. On April 4, 2019, the Court entered an order requiring that a chapter 11 trustee be appointed in the Bankruptcy Cases. See Docket No. 140. On April 10, 2019, the United States Trustee for the Bankruptcy Cases filed a notice of the appointment of David Wallace as Chapter 11 Trustee for the Debtors’ estates. See Docket No. 143. On April 24, 2019, the Court entered its order granting the United States Trustee’s application to approve the appointment of David Wallace as Chapter 11 Trustee. See Docket No. 153.

II. Estate Properties

6. The Debtors have been in the business of developing and selling residential and commercial real estate in the Collin and Denton Counties in North Texas and own and manage a wild game ranch in Southern Oklahoma. General descriptions of such properties (the “**Properties**”) based on the Trustee’s current understanding and the Debtors’ previous reporting in the Bankruptcy Cases are as follows:

- Frisco Wade Crossing. Debtor Frisco Wade Crossing Development Partners, LLC owns a substantially completed retail development located at 5855 Preston Rd, Frisco, Texas 75034. This Debtor’s schedules estimate the value of this asset at \$18.5 million.
- Crescent Parc. Debtor McKinney Executive Suites at Crescent Parc Development Partners, LLC owns a partially constructed office development located at 1400 Coit Rd., McKinney Texas 75071. This Debtor’s schedules estimate the value of this asset at \$22 million.
- Starling House. Debtor Christian Custom Homes, LLC owns a luxury 8,036 square foot home built in 2018 and located at 4009 Starling Dr., Frisco, Texas 75034. This Debtor’s schedules estimate the value of this asset at \$4.5 million.
- Ranch. Debtor Double Droptine Ranch LLC owns a hunting ranch located on Duncan Road in Ringling, Oklahoma. This Debtor’s schedules estimate the value of this asset at \$4.5 million.
- Raw Land. Debtor West Main Station Development, LLC owns approximately 9.4 acres of commercial raw land located at the southwest corner of Main and Majestic Gardens Dr. in Frisco, Texas. This Debtor’s schedules estimate the value of this asset at \$5.2 million.
- Single-Family Residences. Debtor Kingswood Development Partners, LLC owns four single-family residence properties located at 1781 and 1786 Courtland Drive and 1756 and 1784 Hidalgo Lane, respectively, in Frisco, Texas.² This Debtor’s schedules estimate the value of these assets at \$2 million, collectively.

² The Trustee currently does not intend to retain a Broker with respect to these single-family residences, as the sale of such Properties is the subject of another motion to be filed with the Court.

III. Brokers and Terms of Retention

7. Companies in the real estate development business, such as the Debtors, customarily retain the services of various real estate brokers to market and assist in the sale of real estate assets. Similarly, the Trustee contemplates that he will need to retain several brokers (the “**Brokers**”) during his process of marketing and evaluating options with respect to the Properties. The variety in the types of the Properties warrants the retention of several different Brokers, each with expertise and experience applicable to the particular type of property involved. A list of the Brokers the Trustee currently contemplates retaining is attached as **Exhibit A** to this Motion.

8. The Trustee intends to retain each Broker on terms standard (or more favorable) in the real estate industry. The standard terms of such agreements (the “**Standard Terms**”) shall be follows:

- No more than 6% commission;
- Trustee can terminate with 30-days’ notice; and
- No commission shall be paid unless the sale closes or, with respect to leases, the lease is fully executed with all lease contingencies waived.

Further, payment of any such commission shall be subject to Court approval at approval of the resulting sale or lease.

9. Engaging the Brokers to represent the Trustee in marketing the Properties for lease and/or sale is necessary in these Bankruptcy Cases to ultimately, through such transactions to be later submitted for Court approval, bring funds into the estates that will support the repayment of creditors under a chapter 11 plan. All creditors and parties in interest stand to benefit from the efficient sale of the Properties. The Brokers bring needed expertise, skills, and bandwidth to assist the Trustee in accomplishing these tasks in a cost-effective manner.

RELIEF REQUESTED

10. The Trustee seeks the entry of an order authorizing but not directing the Trustee to enter into agreements with the Brokers under sections 105(a), 327, and 363 of the Bankruptcy Code and Bankruptcy Rule 2014 for the listing of the Debtors properties under Standard Terms or terms more favorable to the Debtors' estates, without the necessity of a separate, formal retention application approved by this Court for each Broker and with compensation to each Broker, if applicable, to be approved in connection with the approval of the applicable sale of a Property.

I. Scope of Services to be Provided

11. The Trustee seeks to enter into agreements with the Brokers in preparation for potential lease and/or sale of each of the Properties. In his role of managing the Debtors' real estate development business, the Trustee needs both information regarding the potential market value of the properties and buyer prospects as the Trustee transitions into the stage of selling and possibly leasing Properties, including individual units of the Debtors' larger developments.

II. Broker Terms and Compensation

12. The Trustee seeks authority to enter into agreements with Brokers under terms standard and customary in the real estate development industry, as described above. Any commission or other compensation ultimately paid to a Broker would be subject to approval through the Court's approval of the sale of the particular Property at issue.

III. Additional Brokers

13. In addition to the Brokers listed on Exhibit A, the Trustee seeks the authority to enter into agreements with additional Brokers, under terms standard and customary in the real estate development industry, as necessary, in the ordinary course of the Debtors' business (a) similarly without the need to file individual retention applications, to the extent applicable, and

(b) without the need for any further hearing or notice to any other party, by filing with the Court a supplement to **Exhibit A** and serving such supplement upon (i) the U.S. Trustee, (ii) the Committee, and (iii) the most recent consolidated creditor list available in the Bankruptcy Cases (the “**Notice Parties**”).

14. The Trustee proposes that the Notice Parties be given 15 days after service of each supplement to Exhibit A to object to the agreement with and retention of the additional Broker(s) identified in such supplement. The Trustee proposes that objections, if any, to an additional Broker retention should be filed with the Court and served upon (a) the Notice Parties, and (b) Trustee’s counsel, so as to be actually received by such parties on or before the 15th day following service of the applicable Exhibit A supplement. If an objection is timely submitted and such objection cannot be resolved within 15 days of service, the Court would schedule the matter for a hearing. Whereas if no objection is submitted pursuant to these objection procedures, the Trustee shall be authorized to retain such Broker in accordance with the same requirements provided herein.

BASIS FOR RELIEF

I. Given the nature of the Debtors’ businesses, Brokers are not the type of professionals for which court-approved retention is required under § 327 of the Bankruptcy Code.

15. Because the Brokers’ retention relates to the Debtors’ customary business outside of the bankruptcy context, because the Brokers are afforded limited discretion in performing their work and are retained for a limited purpose, and because the Brokers will not be involved in administering the Bankruptcy Cases, the Trustee does not believe that the Brokers are “professionals” within the meaning of § 327 of the Bankruptcy Code, whose retention must be approved by the Court. *See, e.g., Comm. of Asbestos-Related Litigants v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 619 (Bankr. S.D.N.Y. 1986) (“[T]he phrase ‘professional persons,’ as used in § 327(a), is a term of art reserved for those persons who play an

intimate role in the reorganization of a debtor's estate."); *In re Madison Mgmt. Grp., Inc.*, 137 B.R. 275, 283 (Bankr. N.D. Ill. 1992) (explaining that retention and court approval under § 327 is only required for professionals whose occupation plays a central role in the administration of the bankruptcy case); *In re Sieling Assocs. Ltd. P'ship*, 128 B.R. 721, 723 (Bankr. E.D. Va. 1991) ("It is only those who deal with the actual reorganization of the debtor (rather than the ongoing business of the debtor) who are required to be employed under § 327 and whose applications for payment must be approved by the Court.") (quoting *Johns-Manville Corp.*, 60 B.R. at 619); *In re D'Lites of Am., Inc.*, 108 B.R. 352, 355 (Bankr. N.D. Ga. 1989) (finding that § 327 approval is not necessary for a professional person "who provides services to debtor that are necessary regardless of whether petition was filed").

16. While any sales of the Properties will be the subject of further motions submitted to this Court, the use of Brokers is customary in the Debtors' business and would normally take place in the ordinary course. Retention of the Brokers simply provides a means of providing the Trustee with more information and options with respect to the Properties, without the requirement that the Trustee finalize and lease or sale of the Properties, as the Trustee will seek Court approval for such actions beyond what is sought in this Motion. Nevertheless, out of an abundance of caution, the Trustee seeks the relief requested in this Motion to avoid any controversy regarding the retention of Brokers during the pendency of the Bankruptcy Cases.

II. Under § 363 of the Bankruptcy Code, the Trustee is permitted to enter into agreements with the Brokers.

17. Section 363(c)(1) of the Bankruptcy Code provides the following:

If the business of the debtor is authorized to be operated under section 721, 1108, 1203, 1204, or 1304 of this title and unless the court orders otherwise, the trustee may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.

18. The retention of a real estate broker is a transaction that takes place in the ordinary course of the Debtors' real estate development business. Therefore, § 363 authorizes the Trustee to enter into agreements with the Brokers with respect to the Debtors' Properties. Similarly, the Trustee is seeking Court approval for such retention out of an abundance of caution within the context of the Bankruptcy Cases and intends to seek further approval from the Court for any sale and lease transactions that may be contemplated as a result of the Brokers' efforts with respect to the Properties.

III. Retention of the Brokers is in the best interests of the Debtors' estates and creditors.

19. The Trustee submits that the retention of the Brokers under terms standard in the industry (or more favorable) is in the best interests of the Debtors' estates and creditors. While the Trustee has extensive experience and knowledge in the real estate development market, he requires the assistance of the Brokers in the marketing of the Properties, each of which require expertise and experience specific to the type of Property at issue. The Trustee believes that the Brokers listed on Exhibit A have the qualifications necessary to fulfill the roles indicated and that, therefore, the Debtors' estates will benefit from the knowledge and networks available through such Brokers. Further, given the nature of the services they provide and the number of Properties at issue, the Trustee believes that it is impractical and inefficient for the Trustee and this Court to address the proposed retention of each Broker on an individual basis.

WAIVER OF BANKRUPTCY RULES 6004(a) and (h)

20. To implement the foregoing successfully, the Trustee seeks a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the 14-day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h), to the extent that such rules might be applicable.

WHEREFORE, the Trustee respectfully requests entry of an order (i) authorizing but not directed the Trustee to enter into retention agreements with the Brokers, subject to the limitations set forth above, without the necessity of a separate, formal retention application approved by this Court for each Broker, and (ii) granting such other and further relief as is just and proper.

Dated: May 3, 2019

By: /s/ Frances A. Smith
Judith W. Ross, State Bar No. 21010670
Frances A. Smith, State Bar No. 24033084
Eric Soderlund, State Bar No. 24037525
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**PROPOSED COUNSEL TO
CHAPTER 11 TRUSTEE DAVID WALLACE**

CERTIFICATE OF SERVICE

I certify that on May 3, 2019, I served or caused to be served a copy of the foregoing document (i) electronically on the Electronic Case Filing System for the United States Bankruptcy Court for the Eastern District of Texas, (ii) by first-class mail through the Trustee's noticing agent on the parties listed on the most recent Consolidated Service List filed in the Bankruptcy Cases [Docket No. 120] and other parties requesting notice, as provided on the certificate to be separately filed with the Court, and (iii) by email on the parties listed below:

For the Committee:
Larry Levick, levick@singerlevick.com

For the U.S. Trustee:
Tim O'Neal, Timothy.W.O'Neal@usdoj.gov
John Vardeman, John.M.Vardeman@usdoj.gov

/s/ Jessica Lewis
Jessica Lewis

EXHIBIT A

Real Estate Brokers

Company Name/Information	Individual	Applicable Property	Key Specific Terms (if known)
The Associates Realty (http://theassociatesrealty.com/)	Brandon Meek	Starling	6% commission
CBRE (http://www.cbre.us/real-estate-services/real-estate-industries/land)	—	Raw Land	6% of the first \$2,000,000 in gross sales price and 3% of the remainder of gross sales price per transaction
ICON Global (http://www.icon.global/)	Tyler Thomas	Ranch	6% commission
Edge (http://edge-re.com/)	Dan Avnery	Frisco Wade Crossing	4% of lease term up to 10 years if direct, 6% if co-brokered; ½ of commission upon full execution of lease and all lease contingencies waived and ½ upon tenant opening for business
NAI Global (http://www.naiglobal.com/)	Eric Ver Duin	Frisco Wade Crossing	4% of lease term up to 10 years if direct, 6% if co-brokered; ½ of commission upon full execution of lease and all lease contingencies waived and ½ upon tenant opening for business
Legacy Commercial Realty (http://www.lcrtexas.com/)	Joe Martinez	Crescent Parc	6% commission for current as well as future sale contracts in place

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

	§	
In re	§	Chapter 11
CFO MANAGEMENT HOLDINGS, LLC,	§	Case No. 19-40426
<i>et al.</i> ¹	§	
Debtors.	§	Jointly Administered
	§	

**ORDER GRANTING CHAPTER 11 TRUSTEE’S MOTION FOR AN ORDER
AUTHORIZING THE RETENTION OF REAL ESTATE BROKERS**

On the *Motion for an Order Authorizing the Retention of Real Estate Brokers* (the “**Motion**”)² filed by David Wallace, Chapter 11 Trustee (the “**Trustee**”) for the above-captioned bankruptcy cases of CRO Management Holdings, LLC and its co-debtors (the “**Debtors**”), requesting an order (i) authorizing the Trustee to enter into retention agreements with the Brokers, under certain standard and customary terms, without the necessity of a separate, formal retention application approved by this Court for each Broker, all as more fully set forth in the Motion; and the Court finds the following:

- (a) The Court has jurisdiction over this matter under 28 U.S.C. § 1334;
- (b) The Court can hear and determine the Motion in accordance with 28 U.S.C. § 157 and the District Court’s standing order of reference;

¹ The Debtors in these chapter 11 cases are as follows: Carter Family Office, LLC, EIN# XX-XXX1652, Case No. 19-40432; CFO Management Holdings, LLC, EIN# XX-XXX6987, Case No. 19-40426; Christian Custom Homes, LLC, EIN# XXXXX4648, Case No. 19-40431; Double Droptine Ranch, LLC, EIN# XX-XXX7134, Case No. 19-40429; Frisco Wade Crossing Development Partners, LLC, # XX-XXX4000, Case No. 19-40427; Kingswood Development Partners, LLC, EIN# XX-XXX1929, Case No. 19-40434; McKinney Executive Suites at Crescent Parc Development Partners, LLC, EIN# XX XXX2042, Case No. 19-40428; North-Forty Development LLC, EIN# XX-XXX5532, Case No. 19-40430; and West Main Station Development, LLC, EIN# XX-XXX7210, Case No. 19-40433. The following mailing address can be used for each of the Debtors with respect to these cases: c/o David Wallace, Chapter 11 Trustee, 4131 North Central Expressway, Suite 775, Dallas, Texas 75204.

² Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Motion.

- (c) This is a core proceeding under 28 U.S.C. § 157(b);
- (d) Venue of this proceeding and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409;
- (e) The relief requested in the Motion is in the best interest of the Debtors estates, their creditors, and other parties in interest;
- (f) The Debtors have provided adequate notice of the Motion and the opportunity for hearing on the Motion under the circumstances and for the purpose of the relief requested, and no other or further notice is required beyond what is required by this Order; and
- (g) The legal and factual bases set forth in the Motion establish just cause for the relief granted herein.

Having reviewed the Motion and heard the statements in support of the relief requested therein at a hearing, if any, before the Court, and after due deliberation and sufficient cause appearing therefor, IT IS HEREBY ORDERED THAT:

- (1) The Trustee is hereby authorized and empowered, but not directed, to retain the Brokers listed on the attached **Exhibit A** under the Standard Terms or terms more favorable to the Debtors' estates.
- (2) The Trustee is authorized, but not directed, to enter into agreements with additional Brokers, under the Standard Terms or terms more favorable to the Debtors' estates, as necessary, in the ordinary course of the Debtors' business provided that (a) the Trustee files with the Court a supplement to Exhibit A including such additional Brokers; (b) serves such supplement upon (i) the U.S. Trustee, (ii) the Committee, and (iii) the most recent consolidated creditor list available in the Bankruptcy Cases

(the “**Notice Parties**”); and (c) no objection to the additional retention is submitted or otherwise remains unresolved by the 15th day following service of such supplement; at such time, such retention shall be deemed approved.

- (3) Objections, if any, to an additional Broker retention shall be filed with the Court and served upon (a) the Notice Parties and (b) the Trustee’s counsel, as provided in the Motion, so as to be actually received by such parties on or before the 15th day following service of the applicable Exhibit A supplement. If an objection is timely submitted according to these procedures and such objection cannot be resolved within 15 days of service, the Court will schedule the matter for a hearing.
- (4) The Trustee is authorized and empowered to take all actions necessary to implement the relief granted in this Order.
- (5) This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation and/or enforcement of this order.
- (6) Nothing in this order or the Motion shall be deemed to constitute the postpetition assumption or adoption of any agreement pursuant to section 365 of the Bankruptcy Code.
- (7) Notwithstanding any applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

EXHIBIT A

Real Estate Brokers

Company Name/Information	Individual	Applicable Property	Key Specific Terms (if known)
The Associates Realty (http://theassociatesrealty.com/)	Brandon Meek	Starling	6% commission
CBRE (http://www.cbre.us/real-estate-services/real-estate-industries/land)	—	Raw Land	6% of the first \$2,000,000 in gross sales price and 3% of the remainder of gross sales price per transaction
ICON Global (http://www.icon.global/)	Tyler Thomas	Ranch	6% commission
Edge (http://edge-re.com/)	Dan Avnery	Frisco Wade Crossing	4% of lease term up to 10 years if direct, 6% if co-brokered; ½ of commission upon full execution of lease and all lease contingencies waived and ½ upon tenant opening for business
NAI Global (http://www.naiglobal.com/)	Eric Ver Duin	Frisco Wade Crossing	4% of lease term up to 10 years if direct, 6% if co-brokered; ½ of commission upon full execution of lease and all lease contingencies waived and ½ upon tenant opening for business
Legacy Commercial Realty (http://www.lcrtexas.com/)	Joe Martinez	Crescent Parc	6% commission for current as well as future sale contracts in place