

ROBB EVANS & ASSOCIATES LLC

Receiver of

White Pine Trust Corporation

Richard R. Matthews, Jr.

11450 Sheldon Street

Sun Valley, California 91352-1121

Telephone No.: (818) 768-8100

Facsimile No.: (818) 768-8802

**Commodity Futures Trading Commission v. White Pine Trust Corporation, Inc, et al.
CASE No. 04-CV-2093 J (NLS)**

**Notice of Motion and Motion of Receiver for (1) Order Authorizing and
Confirming Sale of Real Property; and (2) Approving Procedure for
Limited Notice Thereof;
Declaration of Brick Kane in Support Thereof**

**Memorandum of Points and Authorities in Support of Receiver's Motion
for Order Confirming Sale of Real Property**

Dated October 24, 2006

1 LINDA J. CANDLER, ESQ. [State Bar No. 181805]
2 ROBB EVANS & ASSOCIATES LLC
3 11450 SHELDON STREET
4 SUN VALLEY, CA 91352
5 TELEPHONE: (818) 768-8100
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8 ATTORNEY FOR ROBB EVANS & ASSOCIATES LLC,
9 PERMANENT RECEIVER

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

WHITE PINE TRUST CORPORATION,
a California corporation, RICHARD
MATTHEWS, an individual, and
STEPHAN BAERE, an individual.

Defendants.

LUCIA MATTHEWS, an individual,

Relief Defendant.

CASE NO. 04cv2093-J (NLS)

NOTICE OF MOTION AND MOTION OF
RECEIVER FOR (1) ORDER AUTHORIZ-
ING AND CONFIRMING SALE OF REAL
PROPERTY, AND (2) APPROVING
PROCEDURE FOR LIMITED NOTICE
THEREOF; DECLARATION OF BRICK
KANE IN SUPPORT THEREOF

[Real Property: 12 Acre Island in Belize

Date: December 18, 2006

Time: 10:30 A.M.

Place: Courtroom 12

940 Front Street

San Diego, CA 92101-8900

(Hon. Napoleon A. Jones, Jr.)

[ORAL ARGUMENT NOT REQUESTED]

TO THE HONORABLE NAPOLEON A. JONES, JR., UNITED STATES
DISTRICT JUDGE, AND TO ALL PARTIES IN INTEREST:

PLEASE TAKE NOTICE that on December 18, 2006, at 10:30 a.m. in Courtroom
12 of the United States District Court for the Southern District of California located at 940
Front Street, San Diego, California 92101, Robb Evans & Associates LLC, Receiver in the
above-captioned case, will and does hereby move the Court for an Order authorizing and
confirming the sale of certain real property consisting of a 12-acre island situated in the

1 Stann Creek District of Belize known as “Southern Mojo Caye”. The Receiver seeks
2 approval to sell the island at a price of not less than \$2,050,000.00, which exceeds the
3 appraised value of the property.

4 PLEASE TAKE FURTHER NOTICE that this Motion is made pursuant to 28
5 U.S.C. § 2001, Local Civil Rule 66.1(f)(2), and this Court’s Order Granting in Part Receiver’s
6 Motion for Order Approving Sale of Real and Personal Property; Granting in Part
7 Receiver’s Motion to Modify Statutory Sale Procedures and Approving Procedure for
8 Limited Notice Thereof, entered on May 4, 2005.

9 The Receiver’s Motion is based on this Notice of Motion, the Memorandum of
10 Points and Authorities; the Declaration of Brick Kane annexed hereto, and the Court’s
11 records and pleadings on file in this action, and all other evidence, both oral and
12 documentary, as may be presented at the time of hearing, if one occurs. The Receiver
13 respectfully submits that this matter does not require oral argument, unless opposition to the
14 Motion is subsequently submitted to the Court.

15 Any person or entity opposing this Motion must timely file with the Court and serve
16 upon the Receiver a written opposition which complies in all respects with the
17 rules of this Court. Failure to timely file an opposition may be deemed by the Court to be
18 consent to the granting of the Receiver’s Motion.

19 PLEASE TAKE FURTHER NOTICE that this Motion is posted on the Receiver’s
20 website at <http://www.robbevans.com/html/whitepine.html>, where it may be reviewed in
21 its entirety. A copy of this Motion will be provided to any interested party upon receipt of a
22 request therefore which may be directed to: Robb Evans & Associates LLC, Attn: Cherrie
23 Eustaquio, 11450 Sheldon Street, Sun Valley, CA 91352 telephone: (818) 768-8100,
24 facsimile: (818) 768-8802.

25 Dated: October 24, 2006

ROBB EVANS & ASSOCIATES LLC

27 By: 
28 LINDA J. CANDLER, ESQ.
ATTORNEY FOR RECEIVER

1 I.

2 **INTRODUCTION**

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4 On October 21, 2004, Robb Evans & Associates LLC (“REA” or “Receiver”) was
5 appointed as Temporary Receiver in the within action pursuant to an “*Ex Parte* Statutory
6 Restraining Order; Order Permitting Expedited Discovery, the Appointment of a Receiver
7 and Other Equitable Relief”. Thereafter, on October 28, 2004, the Court entered an Order
8 of Preliminary Injunction (“Order”). Pursuant to the terms of the Order, REA was
9 appointed as Receiver for Defendants White Pine Trust Corporation and Richard Matthews,
10 and all of the funds, properties, premises, accounts and other assets directly or indirectly
11 owned, beneficially or otherwise, by them with the full powers of an equity Receiver. The
12 Order states that the Receiver shall be the agent of the Court in acting as Receiver under the
13 Order, and charges the Receiver with managing the assets of Receivership Defendants for
14 the purpose of preserving the interests of, and preventing any loss, damage or injury to,
15 customers or clients of Receivership Defendants. On November 18, 2004, the CFTC filed
16 an Amended Complaint which added Lucia Matthews as a Relief Defendant and Stephan
17 Baere as a Receivership Defendant. On February 23, 2005, the Receiver filed a Motion for
18 Order Approving the Sale of Real and Personal Property and Modifying the Procedures for
19 Sale. (Docket Entry 46). The Defendant, Richard Matthews, and the Plaintiff, CFTC, filed
20 Notices of Non-Opposition (Docket Entry 44; Docket Entry 54).

21 On May 4, 2005, this Court entered an Order: (1) Granting in Part Receiver’s Motion
22 for Order Approving Sale of Real and Personal Property; (2) Granting in Part Receiver’s
23 Motion to Modify Statutory Sale Procedures; and (3) Approving Procedure for Limited
24 Notice Thereof (“May 4, 2005 Order”), which authorized the Receiver to sell real property
25 of the Receivership Estate by private sale. (Docket Entry 66). The May 4, 2005 Order
26 directed the Receiver to ask the Court by motion to confirm each real property sale in
27 accordance with the requirements of 28 U.S.C. § 2001(b).

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1 **II.**

2 **PROPOSED SALE**

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4 Among the assets of the Receivership Estate is certain real property consisting of an
5 island of approximately 12 acres in size located in Belize, Central America, in the Stann
6 Creek District, known as "Southern Mojo Caye". The Receiver is informed and believes
7 that the Property was originally purchased by Receivership Defendant Richard Matthews on
8 September 6, 2004 for the sum of \$1,905,000.00. The property was purchased in the name
9 of Lucia Lopez Blackmore Tovar, Mr. Matthews' wife. Matthews made a \$500,000 cash
10 down payment and Mrs. Matthews signed a contract of sale with the seller of the island.
11 The sales contract calls for monthly payments of \$17,797.95, and carries a 9% rate of
12 interest. To prevent foreclosure by the seller, the Receiver has continued to make the
13 monthly mortgage payments of \$17,797.95.

14 Shortly after the Receiver's appointment, Mr. and Mrs. Matthews executed Power of
15 Attorney Forms transferring their interest in this property to the Receiver. Those Power of
16 Attorney forms have been duly registered in Belize. This gave the Receiver the legal
17 authority to sell the property. The Receiver interviewed several real estate brokers and
18 since May, 2005, the property has been listed for sale with real estate agent Bill Wilkinson of
19 Seven Seas Real Estate. At the time of the Receiver's appointment, the island was listed
20 for \$2.9 million. There were no offers at that price. The listing price was reduced to \$2.65
21 million in November 2005. There were no offers at that price. The Receiver's Deputy,
22 Brick Kane, met with Mr. Wilkinson and based on current appraisals, the price was reduced
23 to \$2 million in April 2006. This sales price of two million fifty thousand dollars is a full
24 price offer.

25 Pursuant to the terms of a signed sales contract dated July 21, 2006, an earnest money
26 deposit of \$205,000 has been paid. The seller will assume the balance due on a sales
27 contract and promissory note between Lester Langdon and J&L Limited and Caye Villa
28 Development Limited and Lucia Lopez Blackmore Tovar made on the 6th day of September

1 2004. The amount due as of July 1, 2006 was \$1,232,039.50. The closing will occur six
2 months from the date the court approves the sale, and the purchasers will deposit the sum
3 of \$106,787.70 (six months payments) with the Receiver for the purpose of paying the
4 existing note during this six-month period.

5 Attached as Exhibit "A" to the Declaration of Brick Kane are three appraisals for the
6 island obtained by the Receiver. As outlined in Mr. Kane's Declaration, the Receiver has
7 complied with the procedures set forth in 28 U.S.C. Section 2001 (b) and by the Court in its
8 Order of May 4, 2005; specifically:

9 A. Three appraisals by disinterested persons were obtained. By this Motion, the
10 Receiver seeks this Court's appointment and confirmation of these appraisers.

11 B. As set out in the appraisals, the purchase price of \$2,050,000.00 exceeds the
12 average value of the three appraisals, and thus meets the requirements of 28
13 U.S.C. Section 2001 (b).

14 C. Notice of the proposed sale will be published in a newspaper of general
15 circulation in Belize, as required by 28 U.S.C. 2001 (b).

16 III.

17 **THE RECEIVER REQUESTS APPROVAL OF THE PROCEDURE FOR** 18 **LIMITED NOTICE OF THIS MOTION**

19 Pursuant to Local Rule 66.1(f)(2), the Receiver is required to give at least ten days
20 notice to all interested parties of the time and place for hearings on Receiver's petitions for
21 confirmation of sales of real property. The Receiver has served the parties by mail. The
22 Receiver proposes to serve all investors and potential creditors of the estate by posting a
23 copy of the motion and exhibits on the Receiver's website, and by serving Notice of Motion
24 on each investor by mail. There are approximately 260 known investors and approximately
25 25 known creditors, and it is more cost-effective to serve the Motion and all accompanying
26 exhibits by posting on the website. The Receiver will also provide a written copy of the
27 Motion to any investor or creditor, upon request. The expense associated with copying
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1 and serving this Motion on all such parties would be unduly burdensome and expensive, and
2 service by posting on the website will save costs for the receivership estate.

3 This Court, as a court of equity supervising the receivership estate, may make
4 appropriate administrative orders governing the receivership, including limitations on and
5 changes in notice and other procedures. See F.R. Civ. P. 5(a) and (c) (authorizing the court
6 to modify service procedures when numerous defendants are involved in litigation). Orders
7 limiting notice when the Bankruptcy Code or Rules would otherwise require notice to all
8 creditors are routinely granted in bankruptcy cases to promote the expeditious and
9 economical administration of bankruptcy estates. See In re First Alliance Mortgage Co., 269
10 B.R. 428, 442 (C.D. Cal. 2001) (referencing in dicta in the court's recitation of facts the
11 bankruptcy court's order limiting notice issued in that case); 11 U.S.C. § 102(1)(A) (defining
12 the phrase "after notice and a hearing" to mean "after such notice as is appropriate in the
13 particular circumstances, and such opportunity for hearing as is appropriate in the particular
14 circumstances"); 11 U.S.C. § 105(a) and (d) (granting broad equitable powers to the court to
15 issue orders "necessary or appropriate to carry out the provisions" of title 11 including
16 "prescribing such limitations and conditions as the court deems appropriate to ensure the
17 case is handled expeditiously and economically").

18 In light of the fact that the Motion is being served on the parties to the action
19 and will be posted on the Receiver's website, the Receiver submits that it is reasonable and
20 cost-effective to serve all creditors/investors of the Receivership entities by posting the
21 Motion on the Receiver's website and by serving the Notice of Motion and instructions for
22 requesting a written copy on all known investors by mail. Parties may request the motion
23 and supporting declaration by directing a request to: Robb Evans & Associates LLC, Attn:
24 Cherrie Eustaquio, 11450 Sheldon Street, Sun Valley, CA 91352 telephone: (818) 768-8100,
25 facsimile: (818) 768-8802; and The Motion will be posted on the Receiver's website at the
26 following address: <http://www.robbevans.com/html/whitepine.html>.

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IV.

CONCLUSION

WHEREFORE, Robb Evans & Associates LLC, Receiver, prays that this Court enter an Order:

1. Confirming the appointment of the three disinterested appraisers;
 2. Authorizing the sale of the island in Belize at a price of \$2,050,000.00, which exceeds the average appraised value of the island.
 3. Authorizing and instructing the Receiver to execute all documents and/or instruments, and to do all of the acts necessary to effect the sale and transfer of the Property;
 4. Approving the procedures for limited notice of this Motion described herein;
- and
5. For such other and further relief as the Court may deem just and proper.

Dated: October 24, 2006

ROBB EVANS & ASSOCIATES LLC

By: 
LINDA J. CANDLER, ESQ.
ATTORNEY FOR RECEIVER

DECLARATION OF BRICK KANE

I, BRICK KANE, declare as follows:

1. I am the Chief Operating Officer for the Receiver, Robb Evans & Associates LLC. I have personal knowledge of the matters set forth in this declaration or have gained knowledge of these matters based upon my supervision of other members and staff of Robb Evans & Associates LLC who assist in the day-to-day management of this Receivership Estate. If called upon to testify as to these matters, I could and would competently testify thereto.

2. This Declaration is made in support of the Receiver’s Motion for an Order authorizing the sale and confirming the procedures for sale of certain real property consisting of a 12-acre island in the Stann Creek District of Belize known as “Southern Mojo Caye.” The Receiver is informed and believes that the Property was originally purchased by Receivership Defendant Richard Matthews in the name of his wife, Lucia Lopez Blackmore Tovar, on September 6, 2004 for the sum of US\$1,905,000.00 and that there is currently one Sale and Purchase Agreement executed to the seller of the island by Lucia Lopez Blackmore Tovar for monthly payments of \$17,797.95 from the date of purchase until paid. The Sale and Purchase Agreement carries an interest rate of 9% per annum.

3. Documents reviewed by the Receiver and his staff show that Mr. Matthews and Mrs. Matthews, with funds from White Pine Trust Corporation, made a \$500,000 down payment and the remaining purchase price was financed under the terms outlined above.

4. At the time of the Receiver’s appointment, the property for sale at an initial listing price was \$2,900,000.00. There were no offers at this price. The sales price was reduced to \$2.65 million in November, 2005. There were no offers at this price. I met with Bill Wilkinson, the real estate agent hired by the Receiver to sell this property. Mr. Wilkinson is an experienced real estate broker and property manager in Belize. He had received numerous inquiries about this property, but there had been no reasonable offer at or near the listing price. Based on my discussions with Mr. Wilkinson, I determined it was

1 in the best interests of the receivership to list the property at a lower price to ensure a quick
2 sale and to minimize the continued expense to the receivership of maintaining this property
3 pending sale. The price was reduced to \$2 million in April 2006 and the Receiver has now
4 received an offer to purchase the property at a price of \$2,050,000.00. Accordingly, the
5 Receiver now seeks this Court's authorization to sell the property at that price, and to
6 confirm the appraisers who have appraised the property.

7 5. The Receiver has taken the following steps regarding the listing and sale of
8 said property.

9 A. Three appraisals by disinterested persons were obtained. All three appraisals
10 were performed by duly qualified appraisers within Belize. The appraisals are attached
11 hereto as Exhibit "A" to this Declaration. By this Motion, the Receiver seeks this Court's
12 approval and confirmation of these appraisers. The proposed sales price exceeds the
13 average value of the three appraisals.

14 B. I have arranged for notice of the proposed sale to be published in a newspaper
15 of general circulation in Belize at least ten days prior to the completion of the sale. The
16 Receiver will advise the potential purchasers that the Receiver is obligated to seek and obtain
17 overbids for the Property.

18 6. The Receiver's terms of sale are as follows: An earnest money deposit of
19 \$205,000.00 has been paid. The purchaser will make monthly payments due on the contract
20 between Lester Langdon and J&L Limited and Caye Villa Development Limited and Lucia
21 Lopez Blackmore Tovar in the sum of \$17,797.95 and will assume the balance due on this
22 contract, currently \$1,232,039.50 as of July 1, 2006. Closing will be delayed for six months
23 pending court approval and the purchaser will deposit the sum of \$106,787.70 with the
24 Receiver to be applied toward the monthly mortgage payments of \$17,797.95 during this six
25 month period. A copy of the Purchase Agreement is attached hereto as "Exhibit B."

26 7. Based on the foregoing, the Receiver believes that the proposed sale conforms
27 with the provisions of 28 U.S.C. § 2001, as well as with this Court's Order of May 4, 2005
28 regarding sale procedures for real property of the Receivership Estate.

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 24th day of October, 2006, at Sun Valley, California.

BRICK KANE

1 LINDA J. CANDLER, ESQ. [State Bar No. 181805]
2 ROBB EVANS & ASSOCIATES LLC
3 11450 SHELDON STREET
4 SUN VALLEY, CA 91352
5 TELEPHONE: (818) 768-8100
6 FACSIMILE: (818) 768-8802

7 ATTORNEY FOR ROBB EVANS & ASSOCIATES LLC,
8 PERMANENT RECEIVER

9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 COMMODITY FUTURES TRADING
12 COMMISSION,

13 Plaintiff,

14 v.

15 WHITE PINE TRUST CORPORATION,
16 a California corporation, and RICHARD
17 MATTHEWS, an individual,

18 Defendants.

CASE NO. 04cv2093-J (NLS)

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
RECEIVER'S MOTION FOR ORDER
CONFIRMING SALE OF REAL
PROPERTY

[Real Property]: Island in Belize

Date: December 18, 2006

Time: 10:30 A.M.

Place: Courtroom 12

940 Front Street

San Diego, CA 92101-8900

(Hon. Napoleon A. Jones, Jr.)

[ORAL ARGUMENT NOT REQUIRED]

19
20 **I.**

21 **THE RECEIVER'S PROPOSED SALE OF THE PROPERTY**
22 **COMPLIES WITH 28 U.S.C. § 2001(b) AND THE COURT'S ORDER**
23 **OF MAY 4, 2005**

24 On May 4, 2005, this Court entered an Order: (1) Granting in Part Receiver's Motion
25 for Order Approving Sale of Real and Personal Property; (2) Granting in Part Receiver's
26 Motion to Modify Statutory Sale Procedures; and (3) Approving Procedure for Limited
27 Notice Thereof ("May 4, 2005 Order"). This Order authorized the Receiver to sell real
28 property of the Receivership Estate by private sale. The May 4, 2005 Order directed the

1 Receiver to ask the Court by motion to confirm each sale in accordance with the
2 requirements provided by 28 U.S.C. § 2001(b). The Receiver now has a purchase offer and
3 sales contract for the sale of an island in the Stann Creek District of Belize known as
4 “Southern Mojo Caye”. The Receiver seeks approval to sell the island at a price of not less
5 than \$2,050,000.00, and seeks this Court’s confirmation of the sale.

6 28 U.S.C. § 2001(b) pertains to the sale of real property at private sale and states:
7 After a hearing, of which notice to all interested parties shall be given by publication
8 or otherwise as the court directs, the court may order the sale of such realty or
9 interest or any part thereof at private sale for cash or other consideration and upon
10 such terms and conditions as the court approves, if it finds that the best interest of
11 the estate will be conserved thereby. Before confirmation of any private sale, the
12 court shall appoint three disinterested persons to appraise such property or different
13 groups of three appraisers each to appraise properties of different classes or situated
14 in different localities. No private sale shall be confirmed at a price less than two-
15 thirds of the appraised value. Before confirmation of any private sale, the terms
16 thereof shall be published in such newspaper or newspapers of general circulation as
17 the court directs at least ten days before confirmation. The private sale shall not be
18 confirmed if a bona fide offer is made, under conditions prescribed by the court,
19 which guarantees at least a ten percent increase over the price offered in the private
20 sale. 28 U.S.C. § 2001(b).

21 Courts have given receivers much discretion to propose the marketing procedures of
22 the sale of receivership assets, so long as a receiver seeks to maximize the value of the
23 receivership assets. 2 Clark on Receivers (3rd Ed.1992) § 515 p.827, notes the following:

24 In authorizing the sale of property by receivers, courts of equity are vested with a
25 broad discretion as to price and terms. It is the duty of the receiver to realize for the
26 property the largest possible amount regardless of the ultimate disposition of the
27 proceeds which the court thereafter directs. If the court is advised at the time of
28 making the order of sale as to enable it to fairly judge the probable value of the
property, it may fix a minimum bid below which bids will not be accepted by the
receiver.

Here, the Receiver has vigorously sought to receive the maximum value for the
property, and the sales price is in excess of all three independent appraisals. The Receiver
will also take the necessary steps to publish the terms of sale in a newspaper of general
circulation in Belize at least ten days prior to the sales date. Given the value of the

1 property and the fact that the Receiver has located a buyer at a sales price that meets or
2 exceeds the appraised value for the property, the Receiver's sales efforts fall within the
3 parameters of the case law cited above and the Court's wide discretion to implement
4 efficient and flexible procedures to maximize value for the estate with a minimum amount
5 of expense. As the Ninth Circuit articulated in *SEC v. Hardy*, 803 F.2d 1034, 1037-1038 (9th
6 Cir. 1986):

7 First, a district court's power to supervise an equity receivership and to determine the
8 appropriate action to be taken in the administration of the receivership is extremely
9 broad.... The basis for broad deference to the district court's supervisory role in
10 equity receiverships arises out of the fact that most receiverships involve multiple
11 parties and complex transactions.

12 Secondly, we have acknowledged that a primary purpose of equity receiverships is to
13 promote orderly and efficient administration of the estate by the district court for the
14 benefit of creditors. [Citations omitted.] Accordingly, we generally uphold
15 reasonable procedures instituted by the district court that serve this purpose.
16 {Citations omitted.] *SEC v. Hardy, supra*, at 1037-1038.

17 This Court, as a court of equity overseeing the efforts of the Court-Appointed
18 Receiver, "has broad powers and wide discretion to determine appropriate relief in equity
19 receiverships." *SEC v. American Capital Invest., Inc.* 98 F.3d 1133, 1144 (9th Cir. 1996). See
20 also *Gockstetter v. Williams*, 9 F.2d 354, 357 (9th Cir. 1925) ("In authorizing the sale of
21 property by receivers, courts of equity are vested with broad discretion as to price and
22 terms.") As the United States Supreme Court has held, the provisions for conditions of sale
23 shall be determined by the court "as will in his judgment best protect the rights of all
24 interested, and make the sale most profitable to all." *Pewabic Mining Co. v. Mason*, 145 U.S.
25 349, 356, 36 L.Ed. 732, 12 S. Ct. 887 (1891).

26 II.

27 CONCLUSION

28 The sale of the island in Belize property for \$2,050,000.00 is fair and reasonable, and
is the result of substantial sales efforts, which successfully maximized value for the
receivership estate. It is in the best interests of the receivership estate, as required by 28
U.S.C. § 2001(b). The Receiver respectfully requests that the Court enter an Order

1 authorizing and confirming the sale of the Property and confirming the appointment of
2 three disinterested appraisers, as identified in the Declaration of Brick Kane, attached to the
3 Receiver's Motion.


4

5 Dated: October 24, 2006

ROBB EVANS & ASSOCIATES LLC

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By: 

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LINDA J. CANDLER, ESQ.
ATTORNEY FOR RECEIVER

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