

**ROBB EVANS OF
ROBB EVANS & ASSOCIATES LLC
Receiver of I Works, Inc., et al. and
the Assets of Jeremy Johnson**

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**Federal Trade Commission v. Jeremy Johnson, I Works, Inc., et al.
CASE No. 2:10-CV-02203-RLH-GWF**

Notice of Motion and Motion for Order:

- (1) Authorizing Receiver to List and Offer for Sale Multiple Real Properties;**
- (2) Authorizing Receiver to List and Offer for Sale Aircraft (Tail No. N13HG); and**
- (3) Granting Relief from Local Rule 66-5 Pertaining to Notice to Creditors**

**Memorandum of Points and Authorities in Support Thereof
Declaration of Kenton Johnson in Support Thereof**

Filed August 21, 2013

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11 **ROBB EVANS OF ROBB EVANS & ASSOCIATES**
12 **LLC**

13 **UNITED STATES DISTRICT COURT**

14 **DISTRICT OF NEVADA**

15
16 FEDERAL TRADE COMMISSION,

17 Plaintiff,

18 v.

19 JEREMY JOHNSON, etc., et al.,

20 Defendants.
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Case No. 2:10-CV-02203-MMD-GWF

NOTICE OF MOTION AND MOTION FOR ORDER: (1) AUTHORIZING RECEIVER TO LIST AND OFFER FOR SALE MULTIPLE REAL PROPERTIES; (2) AUTHORIZING RECEIVER TO LIST AND OFFER FOR SALE AIRCRAFT (TAIL NO. N13HG); AND (3) GRANTING RELIEF FROM LOCAL RULE 66-5 PERTAINING TO NOTICE TO CREDITORS; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

1 PLEASE TAKE NOTICE that Robb Evans of Robb Evans & Associates LLC
2 (“Receiver”), the Receiver pursuant to the Court’s Preliminary Injunction Order issued February
3 10, 2011, hereby moves the Court for an order for the following relief

4 A. An order authorizing the Receiver to engage local or regional real estate brokers
5 experienced in the sale of real property of the type the Receiver seeks to list and market (the
6 “Real Estate Agents”), as described in further detail below, and to enter into one or more written
7 exclusive listing agreements with such Real Estate Agents providing for ordinary and customary
8 terms and conditions for the listing of similar real property assets, including the payment of
9 ordinary and customary sales commissions for each of the real properties, providing for ordinary
10 and customary advertising expenses, and further providing that acceptance of offers and
11 completion of any sales of the real properties are subject to entry of an order of this Court
12 approving each such sale after notice and an opportunity for hearing;

13 B. An order authorizing the Receiver to list and market for sale through the Real
14 Estate Agents the following real properties: (1) a trailer park located at 3265 East Old Pioneer
15 Road, Beaver Dam, Arizona titled to New Horizon Finance, Inc., a Utah corporation dba
16 Horizon's Finance (“Beaver Dam Trailer Park”); (2) undeveloped real property located in Mt.
17 Carmel, Utah identified as Lots 6 and 16 Chamberlain Ranch, Kane County, Utah, with common
18 addresses of 6 Narrows Road, Mt. Carmel, Utah and 16 Narrows Road, Mt. Carmel, Utah titled to
19 Kombi Capital, LP (“Chamberlain Ranch Property”); (3) three parcels of undeveloped real
20 property located in Hurricane, Utah titled to Kombi Capital, LP, including an approximate 19.9
21 acre parcel, an approximate 5.11 acre parcel and an approximate 3.0 acre parcel (Tax Id. Nos. H-
22 4-1-222, H-4-2-1-223 and H-3-1-31-222, respectively, for reference) (collectively “Hurricane
23 Land”); (4) a condominium located at 5 South 500 West #1105, Salt Lake City, Utah titled to
24 Phoenix Rising, LLC (“Salt Lake Condo”); and (5) a single family residential property located at
25 647 Arrowhead Trail, Santa Clara, Utah titled to Triple Seven, LP, or Spyglass Enterprises LLC
26 (“Santa Clara Residence”);

27 C. An order authorizing the Receiver to list and market for sale that certain 1996
28 Robinson helicopter bearing Tail No. N13HG titled to Rotortrends, Inc. (the “N13HG

1 Helicopter"). In connection therewith, the Receiver seeks an order authorizing the Receiver to
2 enter into a written listing agreement ("Helicopter Listing Agreement") with Quantum
3 Helicopters as the Aircraft Broker which provides for payment of a sales commission of up to 6%
4 of the final gross sales price for the N13HG Helicopter payable at the closing of the sale and for
5 the Aircraft Broker to provide ordinary and customary advertising for the aircraft at the Aircraft
6 Broker's expense; and

7 D. An order deeming notice of this Motion to be sufficient under Local Civil Rule 66-
8 5 based on the service of a notice of the filing of this Motion and the Motion on all parties and
9 service of a notice of the filing of the Motion on all known non-consumer creditors of the estate
10 concurrent with the filing of this Motion with the Court, but not on the tens of thousands of
11 potential consumer creditors.

12 This Motion is made pursuant to 28 U.S.C. §§ 2001 and 2004 and Local Civil Rule 66-5
13 and other applicable law. The Motion is based upon this Motion, the separate Notice of Filing of
14 the Motion served concurrently herewith, the accompanying memorandum of points and
15 authorities, the Declaration of Kenton Johnson filed in support hereof, any reply, on the
16 pleadings, records and files of the Court in this receivership proceeding of which the Receiver
17 requests the Court take judicial notice, including without limitation the Preliminary Injunction
18 (Doc. No. 130), the Order Granting Motion for Order Clarifying Preliminary Injunction Order
19 and for Further Instructions Regarding Scope of Receivership Defendants under Preliminary
20 Injunction Order and Report of Receiver's Financial Reconstruction and Granting Relief from
21 Local Rule 66-5 Pertaining to Notice to Creditors After Hearing ("Clarifying Order") entered
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1 March 25, 2013, and on such further oral and documentary evidence and arguments of counsel as
2 may be presented at any hearing on this Motion.

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Dated: August 21, 2013

Respectfully submitted,

RANDOLPH L. HOWARD
KOLESAR & LEATHAM, CHTD.

MCKENNA LONG & ALDRIDGE LLP
GARY OWEN CARIS
LESLEY ANNE HAWES

By: /s/ Gary Owen Caris
Gary Owen Caris
Attorneys for Receiver
**ROBB EVANS OF ROBB EVANS &
ASSOCIATES LLC**

MEMORANDUM OF POINTS AND AUTHORITIES**I. SUMMARY OF RELEVANT FACTS**

On January 13, 2011, the Receiver was appointed Temporary Receiver over I Works, Inc. (“I Works”), numerous other Corporate Defendants as defined in the Temporary Restraining Order and over the assets of defendant Jeremy Johnson (collectively the “Receivership Defendants”). Pursuant to the Preliminary Injunction Order entered February 10, 2011, the Receiver was appointed permanent Receiver over the Receivership Defendants. On March 25, 2013, the Court entered its Order granting the Receiver’s Motion for Order Clarifying Preliminary Injunction Order and for Further Instructions Regarding Scope of Receivership Defendants under Preliminary Injunction Order and Report of Receiver’s Financial Reconstruction and Granting Relief from Local Rule 66-5 Pertaining to Notice to Creditors (“Clarifying Order”) pursuant to which the Court confirmed the status of numerous entities and properties as assets of the receivership estate, including those assets subject to this Motion.

Under the Preliminary Injunction Order, the Receiver is directed to maintain and preserve assets of the receivership estate. Prel. Inj. (Doc. 130), Section XV.E. In order to preserve the value of the assets for the benefit of consumers and creditors, by this Motion, the Receiver is requesting authority to list and market for sale the real properties and the aircraft described herein. The real estate assets all have senior liens for real estate taxes due that are accruing and eroding the equity in those assets for the estate. Most of the real property assets consist of raw land and produce no income, draining the estate's resources through taxes, other liens, and administrative expenses. The value of the aircraft is subject to diminution through market forces as well as insurance, and other administrative expenses that similarly erode the value of that asset for the estate. For the reasons set forth hereafter, the value of the estate's equity interest in these properties is at risk if the Receiver is not permitted to begin marketing these assets and to convert the assets into cash held by the Receiver.

The Receiver seeks authority of the Court to list the properties for sale at prices determined within the Receiver’s discretion and judgment and to enter into exclusive listing agreements with Real Estate Agents determined by the Receiver to have experience in the

1 marketing and sale of the real properties in the area where the properties are located, and with all
2 sales subject to Court approval based on a subsequent motion with notice and an opportunity for
3 hearing by the parties. The Receiver seeks the Court's authorization for the Receiver to engage
4 Quantum Helicopters ("Aircraft Broker") to list and market the N13HG Helicopter, the same
5 broker who has successfully sold several other helicopters in the case at excellent prices for the
6 estate. The following is a summary of the specific assets which the Receiver seeks authority to
7 market:

8 A. **Beaver Dam Trailer Park:** This property, with a common address of 3265 East
9 Old Pioneer Road, Beaver Dam, Arizona, is a trailer park with 27 rentable spaces, 21 of which are
10 currently rented. The gross monthly rental income for the trailer park is approximately \$6,000,
11 with approximately \$3,000 to \$3,500 per month in regular monthly expenses plus past due
12 monthly sewer charges of \$10,000 and a contested initial assessment for the sewer hookup of
13 \$25,000. The property is titled to New Horizons Finance, Inc., a Receivership Defendant under
14 the Clarifying Order. The property is subject to a deed of trust in favor of Paydirt, LP, an entity
15 that is also a Receivership Defendant under the Clarifying Order. The Receiver is not aware of
16 any other encumbrances except for the senior lien for accruing real property taxes. The Beaver
17 Dam Trailer Park is being administered by the Receiver, who has continued the services of the
18 prior on-site manager at the park. The Beaver Dam Trailer Park borders a river which is subject
19 to flooding, making the property subject to some physical deterioration. The Receiver has been
20 advised that within the last couple of years, flooding resulted in the trailer park losing two
21 rentable lots when part of the embankment bordering the property was washed away, and the
22 Receiver's inspection indicates another six spaces are potentially vulnerable to flooding. Without
23 taking into account accruing real property taxes and the costs of the Receiver's administration and
24 supervision of the park, the park operates with a very modest positive cash flow. When accruing
25 real property taxes, administrative expenses and losses resulting from potential vacancies and
26 non-payment of rent are taken into account, the property is losing money and is subject to market
27 and physical risks as a result of its condition and location. Based on these factors and the risks to

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1 the estate, the Receiver seeks leave to immediately begin marketing this property for sale to
2 liquidate the asset and preserve the value of the asset for the estate.

3 **B. Chamberlain Ranch Property:** This property includes two parcels of raw land
4 located on Narrows Road in Mt. Carmel, Kane County, Utah that are titled to Kombi Capital, LP
5 ("Kombi") which is a Receivership Defendant under the Clarifying Order. Mt. Carmel is located
6 near the junction of Highway 9 and Highway 89 in southern Utah near the eastern entrance to
7 Zions National Park. The Receiver has investigated the Chamberlain Ranch Property and
8 believes that the Chamberlain Ranch Property is unencumbered except for a lien for accruing real
9 property taxes, which have been delinquent since 2011. The value of the estate's interest is
10 eroding through the real property tax accruals, insurance and other administrative expenses
11 associated with the property.

12 **C. Hurricane Land:** The Hurricane Land is comprised of three separate parcels of
13 raw land which collectively include approximately 28 acres. Title to the Hurricane Land is also
14 held by Kombi. The Hurricane Land is subject to a lien for accruing real property taxes, which
15 are delinquent. The estate's interest is subject to diminishment through the accruing taxes,
16 insurance and other administrative expenses.

17 **D. Salt Lake Condo:** Title to the Salt Lake Condo was originally taken in the name
18 of Jason Vowell on November 17, 2010 and then transferred to Phoenix Rising, LLC by deed
19 dated November 23, 2010. The assets of Jason Vowell and Phoenix Rising, LLC constitute
20 Receivership Defendants and property subject to the receivership estate under the Clarifying
21 Order.¹ After entry of the Clarifying Order, the Receiver determined that Jason Vowell and/or
22 Todd Vowell had apparently created a lease for the Salt Lake Condo in favor of a third party,
23 unaffiliated tenant, a real estate broker. The lease was provided to the Receiver and contains an
24 unusual provision that appears to have been designed to force the receivership estate to incur the
25 burden and expense of removal and relocation of the tenant and to interfere with the Receiver

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27 ¹ Jason Vowell and the Jason Vowell Entities, including Phoenix Rising, LLC, did not appeal the
28 Clarifying Order, and that order is final as to the assets of Jason Vowell and the Jason Vowell
Entities.

1 obtaining exclusive possession and control of the property as receivership property under the
2 Clarifying Order since the lease was dated approximately three weeks after the Clarifying Order
3 was entered. The third party tenant under the lease has since agreed to a month-to-month tenancy
4 of the premises with the Receiver without any provision for the Receiver to pay relocation
5 expenses when the tenancy ends. The rental rate under the lease is \$600, which appears to be
6 close to market rent for the premises. The Salt Lake Condo is subject to a lien for accruing real
7 property taxes which have been delinquent since 2011, and there are monthly homeowners
8 association dues of approximately \$230. The Receiver's investigation of the market in the area
9 for this type of property indicates the market is fragile. The retention of the property without
10 liquidation leaves the estate's interest in the property vulnerable to interference by third parties,
11 such as already occurred after the Clarifying Order was entered, and to market forces, the risk of
12 non-payment by the tenant and the expense of administrative supervision and insurance of the
13 asset until the asset is converted to cash.

14 E. **Santa Clara Residence:** The Santa Clara Residence, with a common address of
15 647 Arrowhead Trail, Santa Clara, Utah, is a single family home. This property is subject to
16 accruing liens for real property taxes which have been delinquent since 2011. The Santa Clara
17 Residence is leased to a tenant whose lease on its face was executed shortly before the Clarifying
18 Order and expires May 31, 2014. The Receiver is in the process of evaluating the lease and
19 communicating with the tenant regarding the lease and the effect of the receivership on the
20 property. The estate's interest in this property is eroding through ongoing accrual of real property
21 taxes, and the estate continues to incur administrative expense in monitoring the lease of the
22 property. The Receiver believes the most effective way to maximize and preserve the value of
23 the estate's interest in the Santa Clara Residence and to avoid a risk of loss through changes in
24 what has been a volatile real estate market over the last several years is to monetize the estate's
25 interest in this property through liquidation.

26 F. **N13HG Helicopter:** This helicopter is a 1996 model titled to Rotortrends. The
27 helicopter is not presently in the Receiver's possession, despite demands having been made on
28 defendant Duane Fielding and on Rotortrends for turnover of this aircraft. The Receiver

1 continues to try to obtain possession and control of the N13HG Helicopter and seeks authority to
2 sell that aircraft to preserve the value of the aircraft for the estate. The estate is insuring the
3 helicopter, the helicopter is a deteriorating asset, and as reflected in the failure of Duane Fielding
4 or others in physical possession of the aircraft to turn it over to the Receiver, the estate's interest
5 is subject to risk of interference until the asset is liquidated and its value converted to cash.

6 If the Receiver is authorized to list for sale and market the properties as described herein,
7 the granting of this Motion will preclude any party with an asserted interest in those assets from
8 contesting the Receiver's right to liquidate the assets, although the party may object to the
9 specific terms and conditions of any future sale. The specific sales of these properties will be
10 addressed in one or more subsequent motions that will provide interested parties an opportunity to
11 be heard and object to the specific sale terms.

12 **II. THE COURT HAS AUTHORITY TO PERMIT THE RECEIVER TO MARKET**
13 **AND SELL RECEIVERSHIP ASSETS, SUBJECT TO SUBSEQUENT COURT**
14 **APPROVAL OF SPECIFIC SALES**

15 Title 28 U.S.C. § 2001 sets forth the procedures pertaining to the sale of real property.
16 Subsection (a) pertains to procedures for the public sale of real property and provides for the sale
17 of real property by public sale at the courthouse where the Receiver was first appointed, at the
18 courthouse where most of the property is located or at such other premises as the Court directs.
19 28 U.S.C. § 2001(a). Section 2001(b) of title 28 pertains to the sale of real property at private
20 sale and among other things provides for a private sale of real property after notice and a hearing
21 if the Court finds that it is in the best interests of the estate and sets a minimum price of two-
22 thirds of the appraised value for confirmation of a sale of real property by private sale. 28 U.S.C.
23 § 2001(b). As to sales of personal property, section 2004 of title 28 provides that "Any personal
24 property sold under order or decree of any court of the United States shall be sold in accordance
25 with Section 2001 of this title, unless the court orders otherwise."

26 By this Motion, the Receiver seeks the Court's authority to market the real property assets
27 and to conditionally accept the highest and best offers received for each of those assets, but not to
28 approve and confirm any specific sale. The Receiver also does not seek approval of specific sales

1 and sale procedures at this time in order to retain flexibility based on the response by the market
2 and potential buyers to these assets and so that the Receiver in consultation with his Real Estate
3 Agents and the Aircraft Broker can make specific recommendations for sale procedures based on
4 the nature and extent of the interest in the assets by prospective purchasers when specific offers
5 are received.

6 The District Court has wide latitude in adopting a procedure for the sale of property and
7 except in cases where abuse is shown, appellate courts will not disturb the exercise of the District
8 Court's discretion in setting the terms and conditions for a judicial sale or the confirmation
9 thereof. *See United States v. Branch Coal Corp.*, 390 F.2d 7 (3rd Cir. 1968) *cert. den. Sun*
10 *Protection Co. v. U.S.*, 391 U.S. 966, 88 S.Ct. 2034, 20 L. Ed. 2d 878 (1968). The discretion
11 granted in connection with sales of assets is consistent with the broad discretion accorded to the
12 Court sitting in equity in receivership proceedings to make orders concerning the administration
13 and supervision of the estate that will promote equity, efficiency and cost-effectiveness in the
14 estate's administration. *See generally Securities and Exchange Commission v. Hardy*, 803 F.2d
15 1034 (9th Cir. 1986); *Securities and Exchange Commission v. Black*, 163 F.3d 188, 199 (3rd Cir.
16 1998); *Securities and Exchange Commission v. Elliot*, 953 F.2d 1560 (11th Cir. 1992). The Court
17 has previously granted the Receiver authority to list and market for sale various assets, including
18 real property assets. (*See* Document 288).

19 **III. NOTICE OF THIS MOTION IS SUFFICIENT UNDER THE CIRCUMSTANCES**
20 **AND SHOULD BE APPROVED**

21 Local Civil Rule 66-5 provides for service of notice of the hearing on various motions by
22 a Receiver concerning the administration of the estate. That rule provides for service of the
23 notice of hearing on such motions on all creditors of the receivership estate.

24 No hearing has been set on this Motion and the provisions of Local Civil Rule 66-5 do not
25 specifically apply. Nevertheless, the Receiver has served a notice of filing of the Motion on the
26 parties and on all known non-consumer creditors of the estate and on known taxing authorities
27 with a potential claim in the receivership estate ("Notice Parties"), to provide them notice and an
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1 opportunity to be heard concerning the Motion. This notice is consistent with notice previously
2 approved by the Court in this case.

3 There are believed to be an extremely large number of potential consumer creditors who
4 may have claims against the Receivership Defendants arising out of the business operations of the
5 Receivership Defendants prior to the Receiver's appointment, although the precise number,
6 identity and location of such consumer creditors have not been determined by the Receiver at this
7 time. Given the Receiver's determination that more than \$332.5 million² in sales revenues were
8 generated by I Works and the related and affiliated entities, the number of consumer creditors is
9 likely in the tens of thousands. It is not realistically possible or beneficial to the estate and its
10 creditors for the Receiver to attempt to identify and serve the potential consumer creditors with
11 notice of this and other similar administrative motions, and the expense and burden on the estate
12 of attempting to effectuate such service would drain the estate's resources and cause undue
13 administrative expense.

14 To the extent that Local Rule 66-5 applies to this Motion, the Receiver seeks an order that
15 notice of this Motion is sufficient if notice of the filing of the Motion is given by serving copies
16 of all motion papers on the parties to the action and by serving copies of the notice of filing of the
17 motion on the Notice Parties. The Receiver submits that such service provides sufficient notice
18 and an opportunity for hearing to the interested parties and should be approved as adequate.

19 There is ample authority for approval of the scope and method of notice as set forth above.
20 This Court, as a court of equity supervising the receivership estate, may make appropriate
21 administrative orders governing the receivership, including limitations on and changes in notice
22 and other procedures. *See* F.R.Civ.P. 5(a) and (c) (authorizing the court to modify service
23 procedures when numerous defendants are involved in litigation). In addition, as set out above,
24 pursuant to Local Rule 66-10, a receiver is directed to administer receivership estates "as nearly
25 as may be in accordance with the practice in the administration of estates in Chapter 11
26 bankruptcy cases." Orders limiting notice when the Bankruptcy Code or Rules would otherwise

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28 ² This figure does not include tens of millions of dollars in additional revenues addressed by the
Receiver in the Report of Receiver's Financial Reconstruction filed on February 3, 2012.

1 require notice to all creditors are routinely granted in bankruptcy cases to promote the expeditious
 2 and economical administration of bankruptcy estates. *See In re First Alliance Mortgage Co.*, 269
 3 B.R. 428, 442 (C.D. Cal. 2001) (referencing in dicta in the court's recitation of facts the
 4 bankruptcy court's order limiting notice issued in that case); 11 U.S.C. section 102(1)(A)
 5 (defining the phrase "after notice and a hearing" to mean "after such notice as is appropriate in the
 6 particular circumstances, and such opportunity for hearing as is appropriate in the particular
 7 circumstances"); 11 U.S.C. section 105(a) and (d) (granting broad equitable powers to the court to
 8 issue orders "necessary or appropriate to carry out the provisions" of title 11 including
 9 "prescribing such limitations and conditions as the court deems appropriate to ensure the case is
 10 handled expeditiously and economically"); and F.R. Bankr. P. 2002(m) (authorizing the court to
 11 enter "orders designating the matters in respect to which, the entity to whom, and the form and
 12 manner in which notices shall be sent except as otherwise provided by these rules").

13 **IV. CONCLUSION**

14 For the foregoing reasons, it is respectfully requested that the Court grant relief as
 15 requested in the Motion.

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 17 Dated: August 21, 2013

RANDOLPH L. HOWARD
 KOLESAR & LEATHAM, CHTD.

MCKENNA LONG & ALDRIDGE LLP
 GARY OWEN CARIS
 LESLEY ANNE HAWES

21
 22 By: /s/ Gary Owen Caris
 Gary Owen Caris

23 Attorneys for Receiver
 24 **ROBB EVANS OF ROBB EVANS &**
 25 **ASSOCIATES LLC**

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10 Attorneys for Receiver
11 **ROBB EVANS OF ROBB EVANS & ASSOCIATES**
12 **LLC**

13 **UNITED STATES DISTRICT COURT**

14 **DISTRICT OF NEVADA**

16 FEDERAL TRADE COMMISSION,

17 Plaintiff,

18 v.

19 JEREMY JOHNSON, etc., et al.,

20 Defendants.
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Case No. 2:10-CV-02203-MMD-GWF

**DECLARATION OF KENTON
JOHNSON IN SUPPORT OF MOTION
FOR ORDER: (1) AUTHORIZING
RECEIVER TO LIST AND OFFER FOR
SALE MULTIPLE REAL PROPERTIES;
(2) AUTHORIZING RECEIVER TO
LIST AND OFFER FOR SALE
AIRCRAFT (TAIL NO. N13HG); AND
(3) GRANTING RELIEF FROM LOCAL
RULE 66-5 PERTAINING TO NOTICE
TO CREDITORS**

DECLARATION OF KENTON JOHNSON

I, Kenton Johnson, declare:

1. I am an Executive Vice President and a member of Robb Evans & Associates LLC and am a deputy to Robb Evans of Robb Evans & Associates LLC, appointed as Receiver in this case (“Receiver”). I am one of the deputies to the Receiver responsible for the day-to-day supervision of the receivership estate. If called upon to testify as to the facts set forth in this declaration, I could and would testify competently thereto as the facts are true and within my personal knowledge or I have gained knowledge of such facts from the books and records of the receivership proceeding, including the books and records of the entities subject to the receivership.

2. On January 13, 2011, the Receiver was appointed Temporary Receiver over I Works, Inc. (“I Works”), numerous other Corporate Defendants as defined in the Temporary Restraining Order and over the assets of defendant Jeremy Johnson (collectively the “Receivership Defendants”). Pursuant to the Preliminary Injunction Order entered February 10, 2011, the Receiver has been appointed permanent Receiver over the Receivership Defendants. On March 25, 2013, the Court entered its Order granting the Receiver’s Motion for Order Clarifying Preliminary Injunction Order and for Further Instructions Regarding Scope of Receivership Defendants under Preliminary Injunction Order and Report of Receiver’s Financial Reconstruction and Granting Relief from Local Rule 66-5 Pertaining to Notice to Creditors (“Clarifying Order”) pursuant to which the Court confirmed the status of numerous entities and properties as assets of the receivership estate.

3. I am one of the deputies to the Receiver who has been responsible for the supervision and administration of the receivership estate and for the Receiver’s review and investigation of assets and analysis of financial and business records relevant to the receivership and the Receiver’s exercise of his powers and duties under the Temporary Restraining Order and Preliminary Injunction Order. I participated in the preparation and review of the Receiver's initial Report of Temporary Receiver's Activities January 13, 2011 Through February 4, 2011 which was filed with the Court on February 8, 2011 (Doc. No. 127) (“Receiver’s First Report”) and the

1 Report of Receiver's Financial Reconstruction dated January 31, 2012 ("Second Report") filed
2 with the Court on February 3, 2012 along with four volumes of Appendices of Exhibits to the
3 Second Report (Doc. Nos. 464, 465-468). I participated in the review and evaluation of many of
4 the documents and records upon which the information contained in the Receiver's First Report
5 and Second Report are based. I was involved in the drafting and revision of the Second Report
6 and in the drafting, revisions or review of the more than 100 tabs (exhibits) to the Second Report.

7 4. Under the Preliminary Injunction Order, the Receiver is directed to maintain and
8 preserve assets of the receivership estate. As more fully set forth in the Motion which this
9 Declaration supports, in order to preserve the value of the assets for the benefit of consumers and
10 creditors, the Receiver is requesting authority to list and market the following assets: (a) a trailer
11 park located at 3265 East Old Pioneer Road, Beaver Dam, Arizona titled to New Horizon
12 Finance, Inc., a Utah corporation dba Horizon's Finance ("Beaver Dam Trailer Park"); (b)
13 undeveloped real property located in Mt. Carmel, Utah identified as Lots 6 and 16 Chamberlain
14 Ranch, Kane County, Utah, with common addresses of 6 Narrows Road, Mt. Carmel, Utah and 16
15 Narrows Road, Mt. Carmel, Utah titled to Kombi Capital, LP ("Chamberlain Ranch Property");
16 (c) three parcels of undeveloped real property located in Hurricane, Utah titled to Kombi Capital,
17 LP, including an approximate 19.9 acre parcel, an approximate 5.11 acre parcel and an
18 approximate 3.0 acre parcel (Tax Id. Nos. H-4-1-222, H-4-2-1-223 and H-3-1-31-222,
19 respectively, for reference) (collectively "Hurricane Land"); (d) a condominium located at 5
20 South 500 West #1105, Salt Lake City, Utah titled to Phoenix Rising, LLC ("Salt Lake Condo");
21 (e) a single family residential property located at 647 Arrowhead Trail, Santa Clara, Utah titled to
22 Triple Seven, LP, or Spyglass Enterprises LLC ("Santa Clara Residence"); and (f) that certain 1996
23 Robinson helicopter bearing Tail No. N13HG titled to Rotortrends, Inc. (the "N13HG Helicopter").

24 5. I am one of the deputies to the Receiver responsible for the investigation of the
25 foregoing assets, any liens encumbering them, expenses associated with the administration of the
26 properties and the value of the properties for the estate.

27 6. Pursuant to the Court's March 25, 2013 Clarifying Order, the titleholders of the
28 properties subject to the accompanying Motion constitute Receivership Defendants and their

1 assets are property of the receivership estate subject to the Receiver's administration, including
2 New Horizons Finance, Inc. ("New Horizons"), Kombi Capital, LP ("Kombi"), Phoenix Rising,
3 LLC ("Phoenix"), Triple Seven, LP ("Triple Seven"), Spyglass Enterprises, LLC ("Spyglass"),
4 and Rotortrends, Inc. ("Rotortrends"). The assets of Jason Vowell also constitute a Receivership
5 Defendant and property subject to the receivership estate under the Clarifying Order. Neither
6 Jason Vowell nor Phoenix have appealed the Clarifying Order.

7 7. The Receiver seeks authority of the Court to list the properties for sale at prices
8 determined within the Receiver's discretion and judgment and to enter into exclusive listing
9 agreements with real estate agents determined by the Receiver to have experience in the
10 marketing and sale of the real properties of the type the Receiver seeks to list and in the area
11 where the properties are located, and with all sales subject to Court approval based on a
12 subsequent motion with notice and an opportunity for hearing by the parties. The Receiver seeks
13 the Court's authorization for the Receiver to engage Quantum Helicopters ("Aircraft Broker") to
14 list and market the N13HG Helicopter, the same broker who has successfully sold several other
15 helicopters in the case at excellent prices for the estate. The Receiver anticipates the listing
16 agreement will provide for payment of a sales commission of up to 6% of the final gross sales
17 price for the N13HG Helicopter payable at the closing of the sale and for the Aircraft Broker to
18 provide ordinary and customary advertising for the aircraft at the Aircraft Broker's expense. The
19 following is a summary of the specific assets which the Receiver seeks authority to market:

20 A. **Beaver Dam Trailer Park:** This property, with a common address of 3265 East
21 Old Pioneer Road, Beaver Dam, Arizona, is a trailer park with 27 rentable spaces, 21 of which are
22 currently rented. The gross monthly rental income for the trailer park is approximately \$6,000,
23 with approximately \$3,000 to \$3,500 per month in regular monthly expenses plus past due
24 monthly sewer charges of \$10,000 and a contested initial assessment for the sewer hookup of
25 \$25,000. Based on the title report for this property obtained by the Receiver, the property is titled
26 to New Horizons Finance, Inc., a Receivership Defendant under the Clarifying Order. The
27 property is also subject to a deed of trust in favor of Paydirt, LP, an entity that is also a
28 Receivership Defendant under the Clarifying Order. The Beaver Dam Trailer Park is being

1 administered by the Receiver, who has continued the services of the prior on-site manager at the
2 park. The Receiver has been advised that the Beaver Dam Trailer Park borders a river which is
3 subject to flooding, making the property subject to some physical deterioration. The Receiver has
4 further been advised that within the last couple of years, flooding resulted in the trailer park
5 losing two rentable lots when part of the embankment bordering the property was washed away,
6 and the Receiver's inspection indicates another six spaces are potentially vulnerable to flooding.
7 Without taking into account accruing real property taxes and the costs of the Receiver's
8 administration and supervision of the park, the park operates with a very modest positive cash
9 flow. When accruing real property taxes, administrative expenses and losses resulting from
10 potential vacancies and non-payment of rent are taken into account, the property is losing money
11 and is subject to market and physical risks as a result of its condition and location.

12 **B. Chamberlain Ranch Property:** This property includes two parcels of raw land
13 located on Narrows Road in Mt. Carmel, Kane County, Utah that are titled to Kombi Capital, LP
14 ("Kombi") which is a Receivership Defendant under the Clarifying Order. Mt. Carmel is located
15 near the junction of Highway 9 and Highway 89 in southern Utah near the eastern entrance to
16 Zions National Park. Based on a review of the title report obtained by the Receiver for the
17 Chamberlain Ranch Property, the Receiver believes the Chamberlain Ranch Property is
18 unencumbered except for a lien for accruing real property taxes, which have been delinquent
19 since 2011. The value of the estate's interest is eroding through the real property tax accruals,
20 insurance and other administrative expenses associated with the property.

21 **C. Hurricane Land:** The Hurricane Land is comprised of three separate parcels of
22 raw land which collectively include approximately 28 acres. Based on the title report obtained by
23 the Receiver, title to the Hurricane Land is also held by Kombi. The Hurricane Land is subject to
24 a lien for accruing real property taxes, which are delinquent. The estate's interest is subject to
25 diminishment through the accruing taxes, insurance and other administrative expenses.

26 **D. Salt Lake Condo:** Based on the Receiver's investigation, including a review of
27 title and escrow records, title to the Salt Lake Condo was originally taken in the name of Jason
28 Vowell on November 17, 2010 and then transferred to Phoenix Rising, LLC by deed dated

1 November 23, 2010. After entry of the Clarifying Order, the Receiver determined that Jason
2 Vowell and/or Todd Vowell had apparently created a lease for the Salt Lake Condo in favor of a
3 third party, unaffiliated tenant, a real estate broker. The lease was provided to the Receiver and
4 contains an unusual provision that appears to have been designed to force the receivership estate
5 to incur the burden and expense of removal and relocation of the tenant and to interfere with the
6 Receiver obtaining exclusive possession and control of the property as receivership property
7 under the Clarifying Order since the lease was dated approximately three weeks after the
8 Clarifying Order was entered. A true and correct copy of the Salt Lake Condo lease is attached
9 hereto as Exhibit 1. The third party tenant under the lease has since agreed to a month-to-month
10 tenancy of the premises with the Receiver without any provision for the Receiver to pay
11 relocation expenses when the tenancy ends. The rental rate under the lease is \$600, which
12 appears to be close to market rent for the premises. The Salt Lake Condo is subject to a lien for
13 accruing real property taxes which have been delinquent since 2011, and there are monthly
14 homeowners association dues of approximately \$230. I have investigated the market in the area
15 for this type of property, which appears to be fragile. The retention of the property without
16 liquidation leaves the estate's interest in the property vulnerable to interference by third parties,
17 and to market forces, the risk of non-payment by the tenant and the expense of administrative
18 supervision and insurance of the asset until the asset is converted to cash.

19 E. **Santa Clara Residence:** The Santa Clara Residence, with a common address of
20 647 Arrowhead Trail, Santa Clara, Utah, is a single family home. Based on the Receiver's review
21 of the title report obtained for this property, the Santa Clara Residence is subject to accruing liens
22 for real property taxes which have been delinquent since 2011. The Santa Clara Residence is
23 leased to a tenant whose lease on its face was executed shortly before the Clarifying Order and
24 expires May 31, 2014. The Receiver is in the process of evaluating the lease and communicating
25 with the tenant regarding the lease and the effect of the receivership on the property. The estate's
26 interest in this property is eroding through ongoing accrual of real property taxes, and the estate
27 continues to incur administrative expense in monitoring the lease of the property. The Receiver
28 believes the most effective way to maximize and preserve the value of the estate's interest in the

1
2 Santa Clara Residence and to avoid a risk of loss through changes in what has been a volatile real
3 estate market over the last several years is to monetize the estate's interest in this property through
4 liquidation.

5 F. **N13HG Helicopter:** This helicopter is a 1996 model titled to Rotortrends. The
6 helicopter is not presently in the Receiver's possession, despite demands having been made on
7 defendant Duane Fielding and on Rotortrends for turnover of this aircraft. The Receiver
8 continues to try to obtain possession and control of the N13HG Helicopter and seeks authority to
9 sell that aircraft to preserve the value of the aircraft for the estate. The estate is insuring the
10 helicopter, the helicopter is a deteriorating asset, and as reflected in the failure of Duane Fielding
11 or others in physical possession of the aircraft to turn it over to the Receiver, the estate's interest
12 is subject to risk of interference until the asset is liquidated and its value converted to cash.

13 8. The Receiver will seek approval for specific sales of each of the foregoing assets
14 by motion and provide the interested parties with notice and an opportunity for hearing on those
15 specific asset sales. The Receiver believes that granting the Receiver authority to list and market
16 for sale the foregoing assets to allow the assets to be converted to cash is in the best interests of
17 the receivership estate and creditors given the risks to the assets and the Receiver's duty to
18 preserve the value of the property for the benefit of the estate.

19 9. The Receiver requests that the Court approve notice of this Motion as detailed in
20 the Motion and supporting memorandum. The proposed notice to the parties and to creditors is
21 consistent with the notice approved by the Court regarding numerous other motions filed in this
22 case.

23 I declare under penalty of perjury that the foregoing is true and correct and that this
24 declaration was executed this 19TH day of August 2013 at Sun Valley, California.

25
26 
27 KENTON JOHNSON
28