

**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) Approving and Confirming Sales of Three Woodsvie Properties and for Related Relief; and**
- (2) Granting Relief from Local Rule 66-5 Pertaining to Notice to Creditors**

**Memorandum of Points and Authorities in Support Thereof
Declaration of M. Val Miller in Support Thereof**

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LLC**

12
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

**NOTICE OF MOTION AND MOTION
FOR ORDER: (1) APPROVING AND
CONFIRMING SALES OF THREE
WOODSVIEW PROPERTIES AND FOR
RELATED RELIEF; AND
(2) 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 authorizing the Receiver to sell the three
4 Woodsvew Properties on the terms and conditions more fully described belowand for related
5 relief, including without limitation for modification of the sale procedures of 28 U.S.C. section
6 2001 in connection therewith. The Receiver seeks an order approving such sales in order for the
7 sales to be completed and the deeds of trust in favor of Billy's Limited, LLC ("Billy's Limited")
8 encumbering such properties satisfied timely at the agreed discounted payoff by the deadline of
9 December 15, 2013. The Receiver specifically seeks the following relief:

10 **SALE OF LOT 5 PROPERTY**

11 1. An order approving and confirming the Receiver's proposed sale of the vacant land
12 identified as Lot 5, The Woods at Valley View Subdivision, St. George, Utah title to which is
13 held by Kombi Capital LP (“Lot 5 Property”) for a purchase price of \$199,000, all cash and
14 without any financing contingency, to Dixiliken Investments, LLC ("Lot 5 Buyer") pursuant to
15 the Real Estate Purchase Contract for Land dated as of September 4, 2013 together with related
16 Addendum No. 1, the "As-Is Purchase" and Additional Terms provisions (collectively the "Lot 5
17 Purchase Agreement") (the foregoing sale is referred to herein for convenience as the "Lot 5
18 Sale"). A true and correct copy of the Lot 5 Purchase Agreement is attached as Exhibit 2 to the
19 Declaration of M. Val Miller filed concurrently herewith in support of the Motion. In connection
20 with the Lot 5 Sale, the Receiver further seeks an order:

21 A. Authorizing the Receiver to execute all documents and instruments
22 necessary or convenient to complete, implement, effectuate and close the Lot 5 Sale of the Lot 5
23 Buyer pursuant to the terms and conditions of the Lot 5 Purchase Agreement and the order to be
24 entered on the Motion, including but not limited to the deed conveying title to the Lot 5 Property;

25 B. Authorizing the Receiver to permit and/or cause to be paid from the
26 proceeds of sale of the Lot 5 Property all ordinary and customary closing costs, all costs and
27 expenses required to be paid under the terms of the Lot 5 Purchase Agreement by the seller from
28 the proceeds of sale, all commissions provided for in the Exclusive Right to Sell Listing

1 Agreement and the Lot 5 Purchase Agreement attached as Exhibits 1 and 2, respectively, to the
2 Declaration of M. Val Miller filed in support of the Motion, all real property taxes due up to date
3 of closing and the deed of trust in favor of Billy's Limited encumbering the Lot 5 Property;

4 C. Authorizing the Receiver to complete the sale of the Lot 5 Property without
5 further notice, order or overbidding under the circumstances, including the benefits to the
6 receivership estate of satisfying the deed of trust encumbering the Lot 5 Property in favor of
7 Billy's Limited at a discounted amount by the December 15, 2013 deadline under the Receiver's
8 agreement with Billy's Limited, the favorable terms of the Lot 5 Sale, the purchase price achieved
9 for the Lot 5 Sale which equals or exceeds the average of the three recent valuations for the Lot 5
10 Property, and the status of the Lot 5 Buyer, who is well-qualified and is the proposed purchaser of
11 the Lot 7 Property and is affiliated with the proposed purchasers of 505 Woodsvie as set forth
12 hereafter;

13 **SALE OF LOT 7 PROPERTY**

14 2. An order approving and confirming the Receiver's proposed sale of the vacant land
15 identified as Lot 7, The Woods at Valley View Subdivision, St. George, Utah title to which is
16 held by Kombi Capital LP ("Lot 7 Property") for a purchase price of \$85,000, all cash and
17 without any financing contingency, to Dixiliken Investments, LLC ("Lot 7 Buyer") pursuant to
18 the Real Estate Purchase Contract for Land dated as of September 4, 2013 together with related
19 Addendum No. 1, the "As-Is Purchase" and Additional Terms provisions (collectively the "Lot 7
20 Purchase Agreement") (the foregoing sale is referred to herein for convenience as the "Lot 7
21 Sale"). A true and correct copy of the Lot 7 Purchase Agreement is attached as Exhibit 4 to the
22 Declaration of M. Val Miller filed concurrently herewith in support of the Motion. In connection
23 with the Lot 7 Sale, the Receiver further seeks an order:

24 A. Authorizing the Receiver to execute all documents and instruments
25 necessary or convenient to complete, implement, effectuate and close the Lot 7 Sale of the Buyer
26 pursuant to the terms and conditions of the Lot 7 Purchase Agreement and the order to be entered
27 on the Motion, including but not limited to the deed conveying title to the Lot 7 Property;

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1 B. Authorizing the Receiver to permit and/or cause to be paid from the
2 proceeds of sale of the Lot 7 Property all ordinary and customary closing costs, all costs and
3 expenses required to be paid under the terms of the Lot 7 Purchase Agreement by the seller from
4 the proceeds of sale, all commissions provided for in the Exclusive Right to Sell Listing
5 Agreement and the Lot 7 Purchase Agreement attached as Exhibits 3 and 4, respectively, to the
6 Declaration of M. Val Miller filed in support of the Motion, all real property taxes due up to date
7 of closing and the deed of trust in favor of Billy's Limited encumbering the Lot 7 Property;

8 C. Authorizing the Receiver to complete the sale of the Lot 7 Property without
9 further notice, order or overbidding under the circumstances, including the benefits to the
10 receivership estate of satisfying the deed of trust encumbering the Lot 7 Property in favor of
11 Billy's Limited at a discounted amount by the December 15, 2013 deadline under the Receiver's
12 agreement with Billy's Limited, the favorable terms of the Lot 7 Sale, the purchase price achieved
13 for the Lot 7 Sale which equals or exceeds the average of the three recent valuations for the Lot 7
14 Property, and the status of the Lot 7 Buyer, who is well-qualified and is the proposed purchaser of
15 the Lot 5 Property and is affiliated with the proposed purchasers of 505 Woodsvie as set forth
16 hereafter;

17 **SALE OF 505 WOODSVIEW**

18 3. An order approving and confirming the Receiver's proposed sale of the single
19 family residence located at 505 S. Woodsvie Circle, St. George, Utah title to which is held by
20 Woodsvie Holdings, LLC ("505 Woodsvie") for a purchase price of \$725,000, all cash and
21 without any financing contingency, to Ken and Lisa McBride ("505 Woodsvie Buyers")
22 pursuant to the Real Estate Purchase Contract for Land dated as of September 11, 2013 together
23 with related Addendum No. 1, the "As-Is Purchase" and Additional Terms provisions
24 (collectively the "505 Woodsvie Purchase Agreement") (the foregoing sale is referred to herein
25 for convenience as the "505 Woodsvie Sale"). A true and correct copy of the 505 Woodsvie
26 Purchase Agreement is attached as Exhibit 6 to the Declaration of M. Val Miller filed
27 concurrently herewith in support of the Motion. In connection with the 505 Woodsvie Sale, the
28 Receiver further seeks an order:

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A. Authorizing the Receiver to execute all documents and instruments necessary or convenient to complete, implement, effectuate and close the 505 Woodsvie Sale to the 505 Woodsvie Buyers pursuant to the terms and conditions of the 505 Woodsvie Purchase Agreement and the order to be entered on the Motion, including but not limited to the deed conveying title to 505 Woodsvie;

B. Authorizing the Receiver to permit and/or cause to be paid from the proceeds of sale of 505 Woodsvie all ordinary and customary closing costs, all costs and expenses required to be paid under the terms of the 505 Woodsvie Purchase Agreement by the seller from the proceeds of sale, all commissions provided for in the Exclusive Right to Sell Listing Agreement and the 505 Woodsvie Purchase Agreement attached as Exhibits 5 and 6 to the Declaration of M. Val Miller filed in support of the Motion, all real property taxes due up to date of closing and the deed of trust in favor of Billy's Limited encumbering 505 Woodsvie;

C. Authorizing the Receiver to complete the sale of 505 Woodsvie without further notice, order or overbidding under the circumstances, including the benefits to the receivership estate of satisfying the deed of trust encumbering 505 Woodsvie in favor of Billy's Limited at a discounted amount by the December 15, 2013 deadline under the Receiver's agreement with Billy's Limited, the favorable terms of the 505 Woodsvie Sale, the purchase price achieved for the 505 Woodsvie Sale which equals or exceeds the average of the three recent valuations for the 505 Woodsvie Property, and the status of the 505 Woodsvie Buyers, who are well-qualified and are affiliated with the proposed purchasers of the Lot 5 Property and Lot 7 Property as set forth hereafter; and

OTHER RELIEF

4. An order deeming notice of the Motion to be sufficient under Local Civil Rule 66-5 based on the service of a notice of the filing of the Motion and the Motion on all parties and the affected lienholders, and service of a notice of the filing of the Motion on all known non-consumer creditors of the estate, and on all known taxing authorities with a potential claim in the receivership estate concurrent with the filing of the Motion with the Court, but not on the tens of thousands of potential consumer creditors.

1 This Motion is made pursuant to 28 U.S.C. § 2001 and Local Civil Rules 66-5 and 66-10
2 and other applicable law and is based upon this notice of motion and motion, the accompanying
3 memorandum of points and authorities and the Declaration of M. Val Miller filed in support
4 hereof, the separate notice of filing of this Motion, any reply, and upon all other pleadings,
5 documentary evidence and argument as may be presented to the Court by the Receiver.

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Dated: October 3, 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
Lesley Anne Hawes

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 without limitation, the entities Kombi Capital, L.P. ("Kombi") and Woodsvew Holdings, LLC ("Woodsvew Holdings") and the Lot 7 Property, the Lot 5 Property and 505 Woodsvew¹ which are the subject of this Motion. Pursuant to the Court's March 25, 2013 Clarifying Order, Kombi Capital LP ("Kombi") and Woodsvew Holdings, LLC ("Woodsvew Holdings") constitute Receivership Defendants and their assets constitute receivership property. Kombi and Woodsvew Holdings are entities referred to in this case as part of the "Todd Vowell Entities" in that these entities are nominally owned and controlled by Todd Vowell and have been represented by the same counsel representing Todd Vowell in connection with the proceedings related to the Clarifying Order.

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, on August 7, 2013, the Receiver filed an Emergency Motion seeking authority for the Receiver to list and market for sale the Three Woodsvew Properties (Doc. No. 1137) ("Woodsvew Sale Authorization Motion"). The

¹ The Lot 5 Property, Lot 7 Property and 505 Woodsvew are referred to collectively for convenience as the "Three Woodsvew Properties."

1 Receiver had conferred with Todd Vowell, the nominal owner and manager of Kombi and
2 Woodsviw Holdings, regarding the relief sought in the Woodsviw Sale Authorization Motion
3 prior to the Receiver's filing the motion, and he had no objection to the relief sought by the
4 Receiver so long as the proceeds of the sale of the Three Woodsviw Properties would be used to
5 satisfy the debt to Billy's Limited. The Court granted the Woodsviw Sale Authorization Motion
6 by Order entered on August 7, 2013 (Doc. No. 1139). The Receiver has located well-qualified
7 buyers for the Three Woodsviw Properties at excellent purchase prices with all cash terms and
8 with purchase agreements providing for prompt closing of the sales upon Court approval.

9 **A. The Three Woodsviw Properties and the Billy's Limited Deeds of Trust**

10 The Lot 5 Property and the Lot 7 Property are vacant lots on Woodsviw Circle. Based
11 on the Receiver's experience in selling other raw land in Utah over the two and one-half years of
12 this receivership, there is a limited pool of buyers for undeveloped land in the area. The Lot 7
13 Property in particular is a relatively small property (.35 acres) compared to other properties on the
14 street, including the other two Woodsviw Properties which are approximately one acre in size.
15 The Receiver's appraiser has specifically noted as of September 2013, there was a seven and a
16 half-month supply of vacant land in the Central St. George area where these two lots are located.
17 The property at 505 Woodsviw is an approximate 7,000 square-foot single family residence on a
18 1.1 acre lot with five bedrooms, four bathrooms, a pool and spa. The home is currently rented to
19 a month-to-month tenant.

20 The Three Woodsviw Properties are encumbered by deeds of trust in favor of Billy's
21 Limited securing a note ("Billy's Limited Note") with an outstanding balance due in a sum in
22 excess of \$875,000 as of January 10, 2013² and which has been in default for more than one year.
23 The Receiver investigated the debt to Billy's Limited and determined that it constitutes a bona
24 fide obligation encumbering the Three Woodsviw Properties.³ In June 2013, the Receiver

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26 ² A balance of \$875,301 was owed as of January 10, 2013, including legal fees incurred by
27 Billy's Limited title insurer, which fees would be added to the total indebtedness at the time of
any foreclosure in accordance with the subrogation provision of the title policy.

28 ³ The debt owed to Billy's Limited is also secured by another single family residence located at
573 S. Woodsviw Circle, St. George, Utah, which is the residence of Jason Vowell ("Jason

1 entered into a settlement agreement with Billy's Limited whereby Billy's Limited agreed to
2 accept a discounted payoff of its note in the amount of \$800,000 plus interest accruing at 4.5%
3 per annum from March 1, 2013 if the discounted payoff is received by Billy's Limited by
4 December 15, 2013. However, under the settlement agreement, on November 1, 2013, Billy's
5 Limited may commence its foreclosure proceedings on its deeds of trust against the Three
6 Woodsvie Properties and the Jason Vowell Residence, and Billy's Limited may conduct its
7 foreclosure sales on or after December 16, 2013, if it does not receive the discounted payoff by
8 December 15, 2013.

9 Neither the Lot 5 Property, nor the Lot 7 Property, which are titled to Kombi, generate any
10 income for the receivership estate. The 505 Woodsvie property, titled to Woodsvie Holdings,
11 is currently rented on a month-to-month tenancy and producing modest income for the
12 receivership estate; however, the rental income is insufficient to service the amount due under the
13 Billy's Limited Note as well as accruing real property taxes on the Three Woodsvie Properties.
14 Therefore, the value of the estate's equity interest in the properties is eroding until the Receiver
15 can complete a sale of the properties, and the estate's interest in the properties is at risk in light of
16 the impending payoff deadline under the settlement with Billy's Limited.

17 **B. Marketing and Proposed Sales of the Three Woodsvie Properties**

18 After the Clarifying Order was entered on March 25, 2013, the Receiver began
19 investigating the status, condition and value of the assets which were to be turned over for the
20 Receiver's administration under the Preliminary Injunction, including the Three Woodsvie
21 Properties. The Receiver contacted real estate brokers in the area and obtained informal
22 valuations and potential listing price ranges for various assets, including the Three Woodsvie
23 Properties. St. George, Utah is a relatively small city, and based on word of mouth information
24 regarding the Court's issuance of the Clarifying Order and the Receiver's contact with the real
25 estate brokers, the fact that the Receiver was administering the Three Woodsvie Properties
26 became fairly common knowledge in the real estate community in the area, particularly in light of

27
28 Vowell Residence"), whose assets are also part of the receivership estate under the Clarifying
Order. The Receiver has not sought to market or list the Jason Vowell Residence yet.

1 the proximity of the properties to Jeremy Johnson's mansion which is located on the same street.
2 In addition, notices of default had been recorded on these properties by Billy's Limited, and the
3 real estate community was therefore aware that these properties might come on the market either
4 through a foreclosure by the lienholder or through the receivership for several months prior to the
5 Receiver's formal listing of the properties for sale in August 2013. The Receiver's real estate
6 broker formally issued listing agreements for the properties on August 12, 2013.

7 The proposed buyers of the Lot 5 Property and Lot 7 Property are the same entity,
8 Dixiliken Investments, LLC. That entity is owned and controlled by Ken McBride, and he and
9 his wife Lisa McBride, are the proposed buyers of 505 Woodsvew. The listing agent is also the
10 agent for the buyers.

11 1. Lot 5 Listing, Valuation and Purchase Agreement

12 The Receiver obtained an initial broker's opinion regarding the value and price range for
13 any listing in July 2013, and the Receiver listed the Lot 5 Property for \$199,000. After the
14 Receiver was authorized by the Court to market the Lot 5 Property, the Receiver obtained
15 additional current valuations of the Lot 5 Property in light of the Receiver's goal of completing a
16 sale within the time period remaining to satisfy the Billy's Limited Note at a discount under the
17 settlement. The Receiver obtained an appraisal and a formal valuation ("Comparable Market
18 Analysis" or "CMA") by an independent real estate broker familiar with and knowledgeable
19 regarding sales and listings of comparable properties in the Southern Utah area where the
20 property is located.

21 The purchase price under the Lot 5 Purchase Agreement is a full-price, all cash offer by a
22 financially substantial and well-qualified buyer.⁴ The price achieved by the Receiver under the

23
24 ⁴ As in the case of other sales, the Receiver represents to the Court that the purchase price under
25 the Lot 5 Purchase Agreement equals or exceeds the average of the three valuations obtained for
26 the Lot 5 Property, but the Receiver has not filed these valuations in support of this Motion or the
27 valuations of the other properties subject to this Motion. The Receiver has not filed or served the
28 valuations to avoid the valuations becoming publicly available and adversely affecting the
Receiver's ability to maximize value for the properties in the event that the Court does not
approve the proposed sales or in the event the proposed sales do not close for any reason. In
addition, there are special considerations with respect to the Three Woodsvew Properties in
protecting the valuation documents and details from public disclosure in that the Receiver may in
the future be seeking to sell the Jason Vowell Residence and potentially at some time the Jeremy

1 Lot 5 Purchase Agreement equals or exceeds the average of the three valuations obtained by the
2 Receiver for the Lot 5 Property. The sale has no contingencies and provides for a prompt closing
3 of the sale upon the Court's entry of an order approving the sale. The Lot 5 Buyer was unwilling
4 to include a provision for overbidding in light of its cash, non-contingent offer at the full asking
5 price for the property.

6 2. Lot 7 Listing, Valuation and Purchase Agreement

7 The Receiver obtained an initial broker's opinion regarding the value and price range for
8 any listing in July 2013, and the Receiver listed the Lot 7 Property for \$75,000. After the
9 Receiver was authorized by the Court to market the Lot 7 Property, the Receiver obtained
10 additional current valuations of the Lot 7 Property in light of the Receiver's goal of completing a
11 sale within the time period remaining to satisfy the Billy's Limited Note at a discount under the
12 settlement. The Receiver obtained an appraisal and a Comparable Market Analysis by an
13 independent real estate broker familiar with and knowledgeable regarding sales and listings of
14 comparable properties in the Southern Utah area where the property is located.

15 The purchase price under the Lot 7 Purchase Agreement of \$85,000 in fact exceeds the
16 listing price for the Lot 7 Property by \$10,000 and is an all cash offer by a financially substantial
17 and well-qualified buyer. The price achieved by the Receiver under the Lot 7 Purchase
18 Agreement equals or exceeds the average of the three valuations obtained by the Receiver for the
19 Lot 7 Property. The sale has no contingencies and provides for a prompt closing of the sale upon
20 the Court's entry of an order approving the sale. The Lot 7 Buyer was unwilling to include a
21 provision for overbidding in light of its cash, non-contingent offer at a price in excess of the
22 asking price for the property.

23 3. 505 Woodsvew Listing, Valuation and Purchase Agreement

24 The Receiver obtained an initial broker's opinion regarding the value and price range for
25 any listing in April 2013. The range of prices and listing suggestion was significant, with roughly
26 a 30% difference between the high and low end of the range, and the initial broker's opinion
27 Johnson residence, both of which are in close proximity on the same street. The public disclosure
28 of the valuation information could also adversely affect the ability to maximize value for those
other properties.

1 assumed a longer marketing period than would be available to the Receiver to sell in light of the
2 deadline to satisfy the Billy's Limited Note at a discount. The Receiver listed 505 Woodsviw at
3 an initial asking price of \$999,000, the highest amount in the range. After the Receiver was
4 authorized by the Court to market 505 Woodsviw, the Receiver obtained additional current
5 valuations of 505 Woodsviw in light of the Receiver's goal of completing a sale within the time
6 period remaining to satisfy the Billy's Limited Note at a discount under the settlement. The
7 Receiver obtained an appraisal and two Comparable Market Analyses, including one by an
8 independent real estate broker.

9 The purchase price under 505 Woodsviw Purchase Agreement of \$725,000 is an all cash
10 offer by a financially substantial and well-qualified buyer. The price achieved by the Receiver
11 under 505 Woodsviw Purchase Agreement equals or exceeds the average of the three valuations
12 obtained by the Receiver for 505 Woodsviw. The sale has no contingencies and provides for a
13 prompt closing of the sale upon the Court's entry of an order approving the sale. The 505
14 Woodsviw Buyers were unwilling to include a provision for overbidding in light of their all-
15 cash, non-contingent offer, their purchase of the two other Woodsviw Properties, and the price
16 offered for the property with an immediate closing and no financing contingency.

17 The proposed sales of the Three Woodsviw Properties will produce sufficient net
18 proceeds after payment of commissions and anticipated closing costs and other costs of sale to
19 satisfy the Billy's Limited Note at the discounted payoff amount and bring in additional funds for
20 the receivership estate. The approval of the sales with the payoff of the Billy's Limited Note will
21 result in a reconveyance of the Billy's Limited deed of trust on the Jason Vowell Residence,
22 leaving that property unencumbered other than by a lien for ordinary accruing real property taxes.

23 The proposed sales of the Three Woodsviw Properties represent an outstanding result for
24 the receivership estate, not only because of the timeliness of the sales which will allow the Billy's
25 Limited Note to be paid at a discount but also because of the prices achieved. The purchase
26 prices equal or exceed the average of the three valuations obtained by the Receiver for each of the
27 three properties, far beyond the minimum threshold for approval of the sales under the statute
28 which requires only that the sale prices be at least two-thirds of the average of the three appraised

1 values. Under the circumstances, the Receiver seeks and recommends to the Court immediate
2 approval of the sales based on the substantial benefits to the estate and all interested parties that
3 will be obtained through these sales.

4 **II. THE SALE OF THE THREE WOODSVIEW PROPERTIES UNDER THE**
5 **TERMS AND CONDITIONS OF THE PURCHASE AGREEMENTS SHOULD BE**
6 **APPROVED UNDER 28 U.S.C. § 2001 AND RECEIVERSHIP LAW**

7 Section § 2001(b) of title 28 pertains to the sale of real property at private sale. That
8 statute provides in part:

9 After a hearing, of which notice to all interested parties shall be
10 given by publication or otherwise as the court directs, the court may
11 order the sale of such realty or interest therein by private sale for
12 cash or other consideration and upon such terms and conditions as
13 the court approves, if it finds that the best interests of the estate will
14 be served thereby.

15 The time, manner, terms of sale and notice thereof are regulated by the court appointing
16 the receiver. As noted above, courts are granted discretion in setting the terms and conditions for
17 judicial sales and the Court's discretion will not be disturbed on appeal except where abuse of
18 discretion is shown. *United States v. Branch Coal Corp.*, 390 F.2d 7 (3rd Cir. 1968) *cert. den.*
19 *Sun Protection Co. v. U.S.*, 391 U.S. 966, 88 S.Ct. 2034, 20 L.Ed. 2d 878 (1968). The terms and
20 conditions of the judicial sale that the Court may adopt are based on the facts and circumstances
21 of each case. The discretion granted in connection with sales of assets is consistent with the
22 broad discretion accorded to the Court sitting in equity in receivership proceedings to make
23 orders concerning the administration and supervision of the estate that will promote equity,
24 efficiency and cost-effectiveness in the estate's administration. *See generally Securities and*
25 *Exchange Commission v. Hardy*, 803 F.2d 1034 (9th Cir. 1986); *Securities and Exchange*
26 *Commission v. Black*, 163 F.3d 188, 199 (3rd Cir. 1998); *Securities and Exchange Commission v.*
27 *Elliot*, 953 F.2d 1560 (11th Cir. 1992).

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1 There are four general components for the approval of a private sale under § 2001(b),
2 including (1) three appraisals valuing the property, (2) a minimum sale price of two-thirds of the
3 average value of the three appraisals, (3) publication of notice ten days prior to confirmation, and
4 (4) a provision that a private sale cannot be confirmed if there is an overbid at least 10 percent
5 higher than the proposed sale price under the private sale. As set forth above, the Receiver has
6 obtained three valuations for each of the Three Woodsvew Properties. The prices achieved in
7 these sales far exceed the minimum statutory value threshold, as the sales prices equals or
8 exceeds the average of the three valuations for each of the properties. As to the publication of
9 notice of the sale, the Three Woodsvew Properties have all been listed for sale on the multiple
10 listing service for approximately 45 days, and notice that these properties are available for sale
11 has been well-known in the St. George real estate community for many months before that. The
12 offers by these buyers are the only offers received to date and are exceptional prices with
13 exceptional terms for the estate based on the all-cash, non-contingent terms and proposed closing
14 dates shortly following entry of an order approving the sales. The Receiver believes there is no
15 reasonable likelihood of higher and better offers being obtained for these three properties, much
16 less offers that are at least 10 percent higher than the purchase prices in the three current purchase
17 agreements. The Receiver believes that there is also substantial risk of losing these beneficial
18 sales if an overbid session were required, jeopardizing the estate's ability to promptly satisfy the
19 Billy's Limited Note by December 15, 2013. Further, the costs and delays associated with
20 conducting what the Receiver believes would be a futile overbid session would only reduce the
21 estate's recovery from this property without the estate obtaining higher or better offers for these
22 properties that would be more beneficial to the estate than the current proposed purchase
23 agreements. The Receiver strongly recommends approval of the proposed sales of the Three
24 Woodsvew Properties.

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

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

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

12 There are believed to be an extremely large number of potential consumer creditors who
13 may have claims against the Receivership Defendants arising out of the business operations of the
14 Receivership Defendants prior to the Receiver’s appointment, although the precise number,
15 identity and location of such consumer creditors have not been determined by the Receiver at this
16 time. Given the Receiver’s determination that more than \$332.5 million⁵ in sales revenues were
17 generated by I Works and the related and affiliated entities, the number of consumer creditors is
18 likely in the tens of thousands. It is not realistically possible or beneficial to the estate and its
19 creditors for the Receiver to attempt to identify and serve the potential consumer creditors with
20 notice of this and other similar administrative motions, and the expense and burden on the estate
21 of attempting to effectuate such service would drain the estate’s resources and cause undue
22 administrative expense.

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

3 There is ample authority for approval of the scope and method of notice as set forth above.
4 This Court, as a court of equity supervising the receivership estate, may make appropriate
5 administrative orders governing the receivership, including limitations on and changes in notice
6 and other procedures. *See* F.R.Civ.P. 5(a) and (c) (authorizing the court to modify service
7 procedures when numerous defendants are involved in litigation). In addition, as set out above,
8 pursuant to Local Rule 66-10, a receiver is directed to administer receivership estates “as nearly
9 as may be in accordance with the practice in the administration of estates in Chapter 11
10 bankruptcy cases.” Orders limiting notice when the Bankruptcy Code or Rules would otherwise
11 require notice to all creditors are routinely granted in bankruptcy cases to promote the expeditious
12 and economical administration of bankruptcy estates. *See In re First Alliance Mortgage Co.*, 269
13 B.R. 428, 442 (C.D. Cal. 2001) (referencing in dicta in the court's recitation of facts the
14 bankruptcy court's order limiting notice issued in that case); 11 U.S.C. section 102(1)(A)
15 (defining the phrase "after notice and a hearing" to mean "after such notice as is appropriate in the
16 particular circumstances, and such opportunity for hearing as is appropriate in the particular
17 circumstances"); 11 U.S.C. section 105(a) and (d) (granting broad equitable powers to the court to
18 issue orders "necessary or appropriate to carry out the provisions" of title 11 including
19 "prescribing such limitations and conditions as the court deems appropriate to ensure the case is
20 handled expeditiously and economically"); and F.R. Bankr. P. 2002(m) (authorizing the court to
21 enter "orders designating the matters in respect to which, the entity to whom, and the form and
22 manner in which notices shall be sent except as otherwise provided by these rules").

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1 **IV. CONCLUSION**

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

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Dated: October 3, 2013

RANDOLPH L. HOWARD
KOLESAR & LEATHAM, CHTD.

MCKENNA LONG & ALDRIDGE LLP
GARY OWEN CARIS
LESLEY ANNE HAWES

By: /s/ Gary Owen Caris
Gary Owen Caris

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

12 **UNITED STATES DISTRICT COURT**

13 **DISTRICT OF NEVADA**

14 FEDERAL TRADE COMMISSION,

15 Plaintiff,

16 v.

17 JEREMY JOHNSON, etc., et al.,

18 Defendants.

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

**DECLARATION OF M. VAL MILLER
IN SUPPORT OF MOTION FOR
ORDER: (1) APPROVING AND
CONFIRMING SALE OF THREE
WOODSVIEW PROPERTIES; AND
(2) GRANTING RELIEF FROM LOCAL
RULE 66-5 PERTAINING TO NOTICE
TO CREDITORS**

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DECLARATION OF M. VAL MILLER

I, M. Val Miller, declare:

1. I am an Executive Vice President 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, including without limitation, Kombi Capital, LP (“Kombi”) and Woodsvew Holdings, LLC (“Woodsvew Holdings”) and the real properties which are the subject of this Emergency Motion.

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, administration and disposition of various receivership assets since the inception of the case. I have specifically investigated and reviewed the status and valuations of the following properties:
(a) vacant land identified as Lot 5, The Woods at Valley View Subdivision, St. George, Utah title

1 to which is held by Kombi ("Lot 5 Property"); (b) vacant land identified as Lot 7, The Woods at
2 Valley View Subdivision, St. George, Utah title to which is held by Kombi ("Lot 7 Property"),
3 and (c) a single family residence located at 505 South Woodsvie Circle, St. George, Utah title to
4 which is held by Woodsvie Holdings ("505 Woodsvie") (the Lot 5 Property, Lot 7 Property
5 and 505 Woodsvie are referred to collectively herein as the "Three Woodsvie Properties"). I
6 am the deputy to the Receiver who has been primarily responsible for the marketing and proposed
7 sale of the Three Woodsvie Properties which this Declaration supports.

8 4. The Three Woodsvie Properties are encumbered by deeds of trust in favor of
9 Billy's Limited, LLC ("Billy's Limited") securing a note ("Billy's Limited Note") with an
10 outstanding principal balance of \$700,000. The Billy's Limited Note has been in default for more
11 than one year. Billy's Limited advised the Receiver, through counsel, that a balance of \$875,301
12 was owed as of January 10, 2013, including legal fees incurred by Billy's Limited title insurer,
13 which fees would be added to the total indebtedness at the time of any foreclosure in accordance
14 with the subrogation provision of the title policy. The debt owed to Billy's Limited is also
15 secured by another single family residence on Woodsvie Circle located at 573 S. Woodsvie
16 Circle, St. George, Utah, which is the residence of Jason Vowell ("Jason Vowell Residence"),
17 whose assets are also part of the receivership estate under the Clarifying Order. However, the
18 Receiver has not sought to market or list the Jason Vowell Residence for sale as of this date.

19 5. In June 2013, the Receiver entered into a settlement agreement with Billy's
20 Limited whereby Billy's Limited agreed to accept a discounted payoff of its note in the amount of
21 \$800,000 plus interest accruing at 4.5% per annum from March 1, 2013 if the discounted payoff
22 is received by Billy's Limited by December 15, 2013. However, under the settlement agreement,
23 on November 1, 2013, Billy's Limited may commence its foreclosure proceedings on its deeds of
24 trust against the Three Woodsvie Properties and the Jason Vowell Residence, and Billy's
25 Limited may conduct its foreclosure sales on or after December 16, 2013, if it does not receive
26 the discounted payoff by December 15, 2013.

27 6. The Lot 5 Property and the Lot 7 Property are vacant lots on Woodsvie Circle.
28 Based on the Receiver's experience in selling other raw land in Utah over the two and one-half

1 years of this receivership, there is a limited pool of buyers for undeveloped land in the area. The
2 Lot 7 Property in particular is a relatively small property (.35 acres) compared to other properties
3 on the street, including the other two Woodsvew Properties which are approximately one acre in
4 size. The Receiver's appraiser has specifically noted as of September 2013, there was a seven and
5 a half-month supply of vacant land in the Central St. George area where these two lots are
6 located. The property at 505 Woodsvew is an approximate 7,000 square-foot single family
7 residence on a 1.1 acre lot with five bedrooms, four bathrooms, a pool and spa. The home is
8 currently rented to a month-to-month tenant.

9 7. Neither the Lot 5 Property, nor the Lot 7 Property, which are titled to Kombi,
10 generate any income for the receivership estate. The 505 Woodsvew property, titled to
11 Woodsvew Holdings, is currently rented on a month-to-month tenancy and producing modest
12 income for the receivership estate; however, the rental income is insufficient to service the
13 amount due under the Billy's Limited Note as well as accruing real property taxes on the Three
14 Woodsvew Properties. Therefore, the value of the estate's equity interest in the properties is
15 eroding until the Receiver can complete a sale of the properties, and the estate's interest in the
16 properties is at risk in light of the impending payoff deadline under the settlement with Billy's
17 Limited.

18 8. After the Clarifying Order was entered on March 25, 2013, the Receiver began
19 investigating the status, condition and value of the assets which were to be turned over for the
20 Receiver's administration under the Preliminary Injunction, including the Three Woodsvew
21 Properties. The Receiver contacted real estate brokers in the area and obtained informal
22 valuations and potential listing price ranges for various assets, including the Three Woodsvew
23 Properties. St. George, Utah is a relatively small city, and based on word of mouth information
24 regarding the Court's issuance of the Clarifying Order and the Receiver's contact with the real
25 estate brokers, the fact that the Receiver was administering the Three Woodsvew Properties
26 became fairly common knowledge in the real estate community in the area, particularly in light of
27 the proximity of the properties to Jeremy Johnson's mansion which is located on the same street.
28 In addition, notices of default had been recorded on these properties by Billy's Limited, and the

1 real estate community was therefore aware that these properties might come on the market either
2 through a foreclosure by the lienholder or through the receivership for several months prior to the
3 Receiver's formal listing of the properties for sale in August 2013. The Receiver's real estate
4 broker formally issued listing agreements for the properties on August 12, 2013.

5 9. The proposed buyers of the Lot 5 Property and Lot 7 Property are the same entity,
6 Dixiliken Investments, LLC. That entity is owned and controlled by Ken McBride, and he and
7 his wife Lisa McBride, are the proposed buyers of 505 Woodsvew. The listing agent is also the
8 agent for the buyers.

9 10. The Receiver obtained an initial broker's opinion regarding the value and price
10 range for any listing in July 2013, and the Receiver listed the Lot 5 Property for \$199,000. After
11 the Receiver was authorized by the Court to market the Lot 5 Property, the Receiver obtained
12 additional current valuations of the Lot 5 Property in light of the Receiver's goal of completing a
13 sale within the time period remaining to satisfy the Billy's Limited Note at a discount under the
14 settlement. The Receiver obtained an appraisal and a formal valuation ("Comparable Market
15 Analysis" or "CMA") by an independent real estate broker familiar with and knowledgeable
16 regarding sales and listings of comparable properties in the Southern Utah area where the
17 property is located.

18 11. The purchase price under the Lot 5 Purchase Agreement is a full-price, all cash
19 offer by a financially substantial and well-qualified buyer. The price achieved by the Receiver
20 under the Lot 5 Purchase Agreement equals or exceeds the average of the three valuations
21 obtained by the Receiver for the Lot 5 Property. The sale has no contingencies and provides for a
22 prompt closing of the sale upon the Court's entry of an order approving the sale. The Lot 5 Buyer
23 was unwilling to include a provision for overbidding in light of its cash, non-contingent offer at
24 the full asking price for the property.

25 12. The Receiver obtained an initial broker's opinion regarding the value and price
26 range for any listing in July 2013, and the Receiver listed the Lot 7 Property for \$75,000. After
27 the Receiver was authorized by the Court to market the Lot 7 Property, the Receiver obtained
28 additional current valuations of the Lot 7 Property in light of the Receiver's goal of completing a

1 sale within the time period remaining to satisfy the Billy's Limited Note at a discount under the
2 settlement. The Receiver obtained an appraisal and a Comparable Market Analysis by an
3 independent real estate broker familiar with and knowledgeable regarding sales and listings of
4 comparable properties in the Southern Utah area where the property is located.

5 13. The purchase price under the Lot 7 Purchase Agreement of \$85,000 in fact
6 exceeds the listing price for the Lot 7 Property by \$10,000 and is an all cash offer by a financially
7 substantial and well-qualified buyer. The price achieved by the Receiver under the Lot 7
8 Purchase Agreement equals or exceeds the average of the three valuations obtained by the
9 Receiver for the Lot 7 Property. The sale has no contingencies and provides for a prompt closing
10 of the sale upon the Court's entry of an order approving the sale. The Lot 7 Buyer was unwilling
11 to include a provision for overbidding in light of its cash, non-contingent offer at a price in excess
12 of the asking price for the property.

13 14. With respect to 505 Woodsvew, the Receiver obtained an initial broker's opinion
14 regarding the value and price range for any listing in April 2013. The range of prices and listing
15 suggestion was significant, with roughly a 30% difference between the high and low end of the
16 range, and the initial broker's opinion assumed a longer marketing period than would be available
17 to the Receiver to sell in light of the deadline to satisfy the Billy's Limited Note at a discount.
18 The Receiver listed 505 Woodsvew at an initial asking price of \$999,000, the highest amount in
19 the range. After the Receiver was authorized by the Court to market 505 Woodsvew, the
20 Receiver obtained additional current valuations of 505 Woodsvew in light of the Receiver's goal
21 of completing a sale within the time period remaining to satisfy the Billy's Limited Note at a
22 discount under the settlement. The Receiver obtained an appraisal and two Comparable Market
23 Analyses, including one by an independent real estate broker.

24 15. The purchase price under 505 Woodsvew Purchase Agreement of \$725,000 is an
25 all cash offer by a financially substantial and well-qualified buyer. The price achieved by the
26 Receiver under 505 Woodsvew Purchase Agreement equals or exceeds the average of the three
27 valuations obtained by the Receiver for 505 Woodsvew. The sale has no contingencies and
28 provides for a prompt closing of the sale upon the Court's entry of an order approving the sale.

1 The 505 Woodsvew Buyers were unwilling to include a provision for overbidding in light of
2 their all-cash, non-contingent offer, their purchase of the two other Woodsvew Properties, and
3 the price offered for the property with an immediate closing and no financing contingency.

4 16. The proposed sales of the Three Woodsvew Properties will produce sufficient net
5 proceeds after payment of commissions and anticipated closing costs and other costs of sale to
6 satisfy the Billy's Limited Note at the discounted payoff amount and bring in additional funds for
7 the receivership estate. The approval of the sales with the payoff of the Billy's Limited Note will
8 result in a reconveyance of the Billy's Limited deed of trust on the Jason Vowell Residence,
9 leaving that property unencumbered other than by a lien for ordinary accruing real property taxes.

10 17. The Receiver has not filed or served the valuations of the Three Woodsvew
11 Properties in support of his Motion to avoid the valuations becoming publicly available and
12 adversely affecting the Receiver's ability to maximize value for the properties in the event that the
13 Court does not approve the proposed sales or in the event the proposed sales do not close for any
14 reason. In addition, there are special considerations with respect to the Three Woodsvew
15 Properties in protecting the valuation documents and details from public disclosure in that the
16 Receiver may in the future be seeking to sell the Jason Vowell Residence and potentially at some
17 time the Jeremy Johnson residence, both of which are in close proximity on the same street. The
18 public disclosure of the valuation information could also adversely affect the ability to maximize
19 value for those other properties.

20 18. The Receiver believes the proposed sales of the Three Woodsvew Properties
21 represent an outstanding result for the receivership estate, not only because of the timeliness of
22 the sales which will allow the Billy's Limited Note to be paid at a discount but also because of the
23 prices achieved. The purchase prices equal or exceed the average of the three valuations obtained
24 by the Receiver for each of the three properties, far beyond the minimum threshold for approval
25 of the sales under the statute which requires only that the sale prices be at least two-thirds of the
26 average of the three appraised values. Under the circumstances, the Receiver seeks and
27 recommends to the Court immediate approval of the sales based on the substantial benefits to the
28 estate and all interested parties that will be obtained through these sales.

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

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed this 1st day of October 2013 at Las Vegas, Nevada.


M. VAL MILLER