

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

11450 Sheldon Street
Sun Valley, California 91352-1121
Telephone No.: (818) 768-8100
Facsimile No.: (818) 768-8802

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

Notice of Motion and Motion for Order:

- (1) Authorizing, Approving and Confirming Sale of 647 Arrowhead Trail, Santa Clara, Utah and Sale and Overbid Procedures and for Related Relief; and**
- (2) Granting Relief from Local Rule 66-5 Pertaining to Notice to Creditors;**

Memorandum of Points and Authorities;

Declaration of M. Val Miller Kane in Support Thereof

Filed December 4, 2013

1 RANDOLPH L. HOWARD (Nev. SBN 006688)
rhoward@klnevada.com
2 KOLESAR & LEATHAM, CHTD.
3 400 South Rampart Boulevard, Suite 400
Las Vegas, NV 89145
4 Telephone: (702) 362-7800
Facsimile: (702) 362-9472
5

6 GARY OWEN CARIS (Cal. SBN 088918)
gcaris@mckennalong.com
7 LESLEY ANNE HAWES (Cal. SBN 117101)
lhawes@mckennalong.com
8 MCKENNA LONG & ALDRIDGE LLP
300 South Grand Avenue, 14th Floor
9 Los Angeles, CA 90071-3124
Telephone: (213) 688-1000
10 Facsimile: (213) 243-6330

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

14 **UNITED STATES DISTRICT COURT**
15 **DISTRICT OF NEVADA**
16

17 FEDERAL TRADE COMMISSION,

18 Plaintiff,

19 v.

20 JEREMY JOHNSON, etc., et al.,

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

**NOTICE OF MOTION AND MOTION
FOR ORDER (1) AUTHORIZING,
APPROVING AND CONFIRMING SALE
OF 647 ARROWHEAD TRAIL, SANTA
CLARA, UTAH AND SALE AND
OVERBID PROCEDURES AND FOR
RELATED RELIEF; AND (2)
GRANTING RELIEF FROM LOCAL
RULE 66-5 PERTAINING TO NOTICE
TO CREDITORS; MEMORANDUM OF
POINTS AND AUTHORITIES;
DECLARATION OF M. VAL MILLER
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 the following relief:

4 1. An order approving the Receiver’s proposed sale and overbid procedures for the
5 sale of the real property located at 647 Arrowhead Trail, Santa Clara, Utah 84765 (“Arrowhead
6 Trail Property”) and authorizing and confirming the sale of the Arrowhead Trail Property on an
7 “as is” basis more fully described in the sale contract documents by private sale either (a) to Title
8 Solutions (“Proposed Buyer”), an arm’s length buyer, at a purchase price of \$390,000 pursuant to
9 the Real Estate Purchase Contract dated October 23, 2013, Addendum No. 1 to Real Estate
10 Purchase Contract, Addendum No. 2 to Real Estate Purchase Contract/Counteroffer dated
11 October 31, 2013 and accepted November 1, 2013, and the Additional Terms and As Is Purchase
12 attachments attached collectively as Exhibit 2 to the Declaration of M. Val Miller in support of
13 this Motion (collectively “Proposed Purchase Agreement”), or (b) to such higher qualified
14 overbidder who hereafter submits the highest qualified overbid at a subsequent overbid session to
15 be conducted under the terms and conditions more fully set forth herein and approved by the
16 Court, which sale the Receiver requests be approved and confirmed without further notice,
17 hearing or order. The overbid procedures, terms and conditions for which the Receiver seeks
18 approval include the following:

19 A. The overbid session shall be conducted within 30 days of the date of entry of the
20 order granting this Motion. The overbid session will be conducted at the offices of Kirch & Todd
21 Real Estate, 43 South 100 East, Suite 200, St. George, Utah 84770;

22 B. The Receiver will cause to be published a notice of the proposed sale of the
23 Arrowhead Trail Property to a qualified bidder at the overbid session to be conducted under
24 paragraph 1.A. above, which notice shall state the date, time and place of the overbid session, the
25 requirement for pre-qualification by overbidders and the terms and conditions of the overbidding
26 and sale of the property, as described below (“Overbid Notice”). The Receiver will cause the
27 Overbid Notice to be published in The Spectrum newspaper one time at least ten days prior to the
28 scheduled overbid session date. The Spectrum is a daily newspaper of general circulation that

1 covers Southern Utah and specifically Santa Clara where the Arrowhead Trail Property is located.

2 C. Any person wishing to overbid at the overbid session shall be required to pre-
3 qualify with the Receiver no later than 10:00 a.m. two business days preceding the overbid
4 session by delivering to the Receiver's office located at 6037 S. Ft. Apache Road, Suite 130, Las
5 Vegas, Nevada 89148: (a) notice in writing of the prospective overbidder's intent to overbid
6 together with (b) written verification from a financial institution demonstrating to the Receiver's
7 satisfaction, in the Receiver's sole opinion and judgment, the prospective overbidder's ability to
8 complete and close a purchase of the Arrowhead Trail Property through sufficient funds or credit
9 facilities within 10 days of the date of the overbid session, and (c) a cashier's check in the sum of
10 \$20,000 payable to I Works Inc. Receivership QSF, which cashier's check shall become non-
11 refundable upon acceptance of the overbidder's overbid at the conclusion of the overbid session.

12 D. Overbidders bidding at the overbid session will be deemed to have completed all
13 inspections of the Arrowhead Trail Property and will be deemed to have waived and/or removed
14 all contingencies in favor of the buyer under the Proposed Purchase Agreement, including
15 without limitation any contingency pertaining to inspection of title, and will be required to
16 complete a cash purchase of the Arrowhead Trail Property and close escrow for the purchase of
17 the Arrowhead Trail Property within 10 days of the date of the overbid session. The successful
18 overbidder will be required to execute a purchase agreement for the Arrowhead Trail Property
19 substantially in the form of the Proposed Purchase Agreement together with a waiver of all buyer
20 contingencies promptly after conclusion of the overbid session.

21 E. The initial overbid shall be in the amount of \$429,000.00 (an amount that is
22 \$39,000, or 10%, higher than the purchase price under the Proposed Purchase Agreement), and all
23 subsequent overbids shall be in an amount at least \$10,000 higher than the preceding bid.

24 F. Pursuant to the Proposed Purchase Agreement and the Receiver's listing
25 agreement with James Fales of Todd & Kirch Real Estate ("Broker"), a sales commission in the
26 amount of 6% of the purchase price paid for the Arrowhead Trail Property by the Proposed
27 Buyer, or if a higher overbid is received and accepted at the overbid session, by the winning
28 overbidder, shall be paid from the proceeds of sale of the Arrowhead Trail Property at close of

1 escrow and shall be paid to the Broker as listing agent under the listing agreement, or if buyer is
2 represented by a cooperating broker, shall be divided and paid equally to the Broker as the listing
3 agent and the buyer's cooperating broker, under the terms of the listing agreement.

4 G. The sale of the Arrowhead Trail Property by private sale to the Proposed Buyer
5 under the Proposed Purchase Agreement, or to the person who submits the highest qualified
6 overbid at the overbid session to be conducted pursuant to the foregoing procedures, will be
7 deemed confirmed by Order on this Motion without further notice or hearing and without the
8 necessity of any subsequent motion for confirmation of the sale;

9 2. An order authorizing the Receiver to execute all documents and instruments
10 necessary or convenient to complete, implement, effectuate and close the sale of the Arrowhead
11 Trail Property to the purchaser, including but not limited to the deed conveying title to the
12 Arrowhead Trail Property;

13 3. An order authorizing the Receiver to permit and/or cause to be paid from the
14 proceeds of sale all ordinary and customary closing costs, all costs and expenses required to be
15 paid under the terms of the Proposed Purchase Agreement by the seller from the proceeds of sale,
16 all commissions provided for in the Proposed Purchase Agreement, the Receiver's listing
17 agreement for the property attached as Exhibit 1 to the Declaration of M. Val Miller in support of
18 this Motion and this Motion, and all real property tax liens and prorated real property taxes due
19 up to the date of closing;

20 4. An order deeming notice of this Motion to be sufficient under Local Civil Rule 66-
21 5 based on the service of a notice of the filing of this Motion and the Motion on all parties and
22 service of a notice of the filing of the Motion on all known non-consumer creditors of the estate
23 concurrent with the filing of this Motion with the Court, but not on the tens of thousands of
24 potential consumer creditors; and

25 5. An order for such additional relief as may be necessary or appropriate to allow the
26 Receiver to effectuate the sale of the Arrowhead Trail Property, including but not limited to, entry
27 of an order authorizing such sale in form acceptable to the title company insuring title in
28 connection with the sale of the Arrowhead Trail Property..

1 This Motion is made pursuant to 28 U.S.C. § 2001 and 2002 and Local Civil Rules 66-5
2 and 66-10 and other applicable law and is based upon this Notice of Motion and Motion, the
3 separate Notice of Filing of the Motion served concurrently herewith, the accompanying
4 Memorandum of Points and Authorities, the Declaration of M. Val Miller filed in support hereof,
5 any reply, and upon all other pleadings and documentary evidence as may be presented to the
6 Court by the Receiver in support of this Motion.

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Dated: December 4, 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. INTRODUCTION AND 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 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 and confirmed the status of various entities as Receivership Defendants.

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 21, 2013, the Receiver filed a motion seeking authorization from the Court to list and market for sale various real properties, including the Arrowhead Trail Property (Doc. No. 1161), which motion was granted by the Court's Order entered on September 30, 2013 (Doc. No. 1178).

By this Motion, the Receiver seeks approval of a proposed sale of the Arrowhead Trail Property pursuant to an arm's length third party buyer. The Arrowhead Trail Property is a single family home title to which is held in the name of Spyglass Enterprises, LLC, a Jason Vowell entity. Spyglass Enterprises, LLC did not appeal the Clarifying Order, and the Clarifying Order is final as to that entity. The property is subject to accruing liens for real property taxes which have been delinquent since 2011, as reflected in a recent title report obtained for the property by the Receiver, a copy of which is attached as Exhibit 3 to the Declaration of M. Val Miller. The

1 residence was leased to a tenant when the Receiver initially took control of the Arrowhead Trail
2 Property, but the tenant has since vacated the premises and the property is vacant.

3 In October 2013, the Receiver entered into an exclusive right to sell listing agreement and
4 agency disclosure ("Listing Agreement") with Kirch & Todd Real Estate LLC ("Broker"), a true
5 and correct copy of which is attached as Exhibit 1 to the Declaration of M. Val Miller filed in
6 support of this Motion. The Broker is experienced in the sale of residential real estate in Southern
7 Utah.

8 The Arrowhead Trail Property was formally listed for sale with a listing price of
9 \$439,000.00. The Arrowhead Trail Property was listed on the Washington County Multiple
10 Listing Service. In listing the Arrowhead Trail Property for sale, the Receiver relied on a
11 broker's opinion of value obtained by the Receiver in April 2013 and the Receiver's Broker's
12 analysis of and recommendations regarding a listing price for the Arrowhead Trail Property.
13 After the initial broker's opinion of value was obtained, the Arrowhead Trail Property sustained
14 certain water damage in the garage.

15 On October 23, 2013, the Receiver received an all cash offer from Title Solutions (the
16 "Proposed Buyer") for \$390,000.00 without any financing contingency to purchase the
17 Arrowhead Trail Property. The Receiver exchanged counteroffers with the Proposed Buyer and
18 the parties reached agreement for the sale of the Arrowhead Trail Property pursuant to the Real
19 Estate Purchase Contract dated October 23, 2013, Addendum No. 1 to Real Estate Purchase
20 Contract, Addendum No. 2 to Real Estate Purchase Contract/Counteroffer dated October 31, 2013
21 and accepted November 1, 2013, and the Additional Terms and As Is Purchase attachments
22 attached collectively as Exhibit 2 to the Declaration of M. Val Miller in support of this Motion
23 (collectively the "Proposed Purchase Agreement").

24 The Receiver has obtained an independent appraisal of the Arrowhead Trail Property
25 valuing the property as of October 10, 2013 as well as a broker's opinion of value by Todd &
26 Kirch Real Estate and the broker's opinion of value dated April 8, 2013, which was made prior to
27 the water damage at the property. In light of the proposed overbid session with a published
28 notice, the Receiver has not disclosed the amount of these valuations of the property so as not to

1 interfere with the overbid process¹; however, the purchase price of \$390,000.00 under the
2 Proposed Purchase Agreement far exceeds the minimum threshold for approval of a private sale
3 of two-thirds of the average of three appraisals of the property as required under 28 U.S.C. §
4 2001. The Receiver seeks to sell the Arrowhead Trail Property under the Proposed Purchase
5 Agreement to the Buyer, who is an unaffiliated, arm's length purchaser based on the Receiver's
6 investigation, subject to the Receiver's conduct of an overbid session after publication of notice to
7 provide an additional opportunity for interested purchasers to bid for the property. The Proposed
8 Purchase Agreement provides for an "as is," all cash sale with the closing to occur within 10 days
9 of Court approval and provides that the Receiver shall seek Court approval of the sale procedures,
10 including overbid procedure, for the sale of the property.

11 The Receiver seeks approval of the Proposed Purchase Agreement and the sale of the
12 Arrowhead Trail Property to the Proposed Buyer under the terms and conditions set forth therein.
13 The Receiver seeks approval to solicit overbids for the sale of the Arrowhead Trail Property, as
14 contemplated by the Proposed Purchase Agreement, and seeks an order on this Motion that
15 confirms the sale of the Arrowhead Trail to the Proposed Buyer, or such higher qualified
16 overbidder who may make the highest overbid accepted by the Receiver at the overbid session to
17 be conducted under the proposed sale procedures set forth in this Motion. Under the
18 circumstances, including the fact the sale to the Proposed Buyer is non-contingent for an amount
19 that substantially exceeds the minimum two-thirds of the average of the three valuations obtained
20 by the Receiver for the Arrowhead Trail Property, the terms and conditions of the Proposed
21 Purchase Agreement that provide for closing within 10 days, and the Receiver's desire to avoid
22 unnecessary administrative expense through multiple motions to conclude the sale, the Receiver
23 requests that the Court approve the following notice and overbid procedures, terms and
24 conditions:

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27 ¹ The Receiver will submit copies of the valuations with the Court for *in camera* inspection if
28 requested by the Court.

1 1. The overbid session shall be conducted within 30 days of the date of entry of the
2 order granting this Motion. The overbid session will be conducted at the offices of Todd & Kirch
3 Real Estate located at 43 South 100 East, Suite 200, St. George, Utah 84770;

4 2. The Receiver will cause to be published a notice of the proposed sale of the
5 Arrowhead Trail Property to a qualified bidder at the overbid session to be conducted pursuant to
6 paragraph 1 above, which notice shall state the date, time and place of the overbid session, the
7 requirement for pre-qualification by overbidders and the terms and conditions of the overbidding
8 and sale of the property, as described below (“Overbid Notice”). The Receiver will cause the
9 Overbid Notice to be published in The Spectrum one time at least ten days prior to the scheduled
10 overbid session. The Spectrum is a daily newspaper of general circulation in the Santa Clara
11 area.²

12 3. Any person wishing to overbid at the overbid session shall be required to pre-
13 qualify with the Receiver no later than 10:00 a.m. two business days preceding the overbid
14 session by delivering to the Receiver’s office located at 6037 S. Ft. Apache Road, Suite 130, Las
15 Vegas, Nevada 89148: (a) notice in writing of the prospective overbidder’s intent to overbid
16 together with (b) written verification from a financial institution demonstrating to the Receiver’s
17 satisfaction, in the Receiver’s sole opinion and judgment, the prospective overbidder’s ability to
18 complete and close a purchase of the Arrowhead Trail Property through sufficient funds or credit
19 facilities within 10 days of the date of the overbid session, and (c) a cashier’s check in the sum of
20 \$20,000 payable to I Works, Inc. Receivership QSF, which cashier’s check shall become non-
21 refundable upon acceptance of the overbidder’s overbid at the conclusion of the overbid session.

22 4. Overbidders bidding at the overbid session will be deemed to have completed all
23 inspections of the Arrowhead Trail Property and will be deemed to have waived and/or removed
24 all contingencies in favor of the buyer under the Proposed Purchase Agreement, including
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26 ² The foregoing publication provision meets the publication requirements for a private sale under
27 28 U.S.C. section 2001(b) discussed hereafter. However, the Receiver also anticipates that the
28 Broker will provide additional notice of the overbid session through e-mail and/or the internet
web sites where the property is listed.

1 without limitation any contingency pertaining to inspection of title, and will be required to
2 complete a cash purchase of the Arrowhead Trail Property and close escrow for the purchase of
3 the Arrowhead Trail Property within 10 days of the date of the overbid session. The successful
4 overbidder will be required to execute a purchase agreement for the Arrowhead Trail Property
5 substantially in the form of the Proposed Purchase Agreement together with a waiver of all buyer
6 contingencies promptly after conclusion of the overbid session.

7 5. The initial overbid shall be in the amount of \$429,000.00 (an amount that is
8 \$39,000, or 10%, higher than the purchase price under the Proposed Purchase Agreement), and all
9 subsequent overbids shall be in an amount at least \$10,000 higher than the preceding bid.

10 6. Pursuant to the Proposed Purchase Agreement and the Receiver's listing
11 agreement with his Broker, a sales commission in the amount of 6% of the purchase price paid for
12 the Arrowhead Trail Property by the Proposed Buyer, or if a higher overbid is received and
13 accepted at the overbid session, by the winning overbidder, shall be paid from the proceeds of
14 sale of the Arrowhead Trail Property at close of escrow and shall be paid to the Broker as listing
15 agent under the Listing Agreement and a cooperating broker representing the buyer, if any, under
16 the terms of the Listing Agreement.

17 The Proposed Purchase Agreement provides a very favorable sale of the Arrowhead Trail
18 Property to a well-qualified, independent all cash buyer on an "as is, where is" basis. The
19 purchase price under the Proposed Purchase Agreement is well in excess of the two-thirds
20 minimum of the average of the three valuations obtained by the Receiver for the property which
21 is the minimum threshold price required to meet the terms of 28 U.S.C. section 2001. The
22 Receiver proposes that the Receiver conduct an overbid session pursuant to the terms set forth
23 above which will provide further assurance that interested buyers have notice and an opportunity
24 to make a higher bid to acquire the property so long as they are qualified and meet the same all
25 cash, as-is and ten-day closing terms of the Proposed Purchase Agreement. The Receiver
26 recommends approval and confirmation of the sale under the terms and conditions set forth in the
27 Motion.

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1 **II. THE SALE OF THE ARROWHEAD TRAIL PROPERTY SHOULD BE**
2 **APPROVED AND CONFIRMED SUBJECT TO OVERBIDDING AS**
3 **REQUESTED IN THIS MOTION**

4 Title 28 U.S.C. § 2001 sets forth the procedures pertaining to the sale of real property.
5 Section § 2001(b) of title 28 pertains to the sale of real property at private sale.

6 The time, manner, terms of sale and notice thereof are regulated by the court appointing
7 the receiver. Courts are granted discretion in setting the terms and conditions for judicial sales
8 and the Court's discretion will not be disturbed on appeal except where abuse of discretion is
9 shown. *United States v. Branch Coal Corp.*, 390 F. 2d 7 (3rd Cir. 1968), *cert. den. Sun Protection*
10 *Co. v. United States*, 391 U.S. 966, 88 S. Ct. 2034 (1968). The Court has substantial discretion in
11 receivership matters in setting the overbidding procedures applicable to sales of real property.
12 *See Pewabic Mining Co. v. Mason*, 145 U.S. 349, 356, 36 L.Ed. 732, 12 S.Ct. 887 (1891) (the
13 provisions for notice and other conditions shall be determined by the Court “as will in his
14 judgment best protect the rights of all interested, and make the sale most profitable to all”). *See*
15 *also Cumberland Lumber Co. v. Tunis Lumber Co.*, 171 F. 352 (4th Cir. 1909); *Bidwell v. Huff*,
16 176 F. 174 (5th Cir. 1909). The terms and conditions of the judicial sale that the Court may adopt
17 are based on the facts and circumstances of each case. The discretion granted in connection with
18 sales of assets is consistent with the broad discretion accorded to the Court sitting in equity in
19 receivership proceedings to make orders concerning the administration and supervision of the
20 estate that will promote equity, efficiency and cost-effectiveness in the estate’s administration.
21 *See generally Securities and Exchange Commission v. Hardy*, 803 F.2d 1034 (9th Cir. 1986);
22 *Securities and Exchange Commission v. Black*, 163 F.3d 188, 199 (3rd Cir. 1998); *Securities and*
23 *Exchange Commission v. Elliot*, 953 F.2d 1560 (11th Cir. 1992).

24 Under § 2001(b), in order for a sale to be approved, the minimum purchase price for the
25 property must exceed two-thirds of the average value in three appraisals of the property by
26 appraisers appointed by the court. The statute does not define what constitutes an “appraisal” for
27 the purpose of § 2001(b). The Receiver has obtained an appraisal of the Arrowhead Trail
28 Property and two written broker's valuations, both of which are based on comparable sales data

1 and other market data similar to the appraisal. The Receiver has therefore complied with the
2 valuation evidence provisions of the statute. Further, any minor deviation from the statutory
3 provision as to appointment of three appraisers is warranted under the circumstances for several
4 reasons, including the inordinate expense associated with obtaining additional appraisals which is
5 burdensome to the estate under the circumstances; the fact that the valuations by both the local
6 real estate brokers and the appraiser are based on comparable sales data and the experience and
7 knowledge of the sales agents who actually deal in real estate in the local market and thus are
8 reliable indicators of the actual value likely to be realized from the marketing and sale of the
9 property; and the fact that the Arrowhead Trail Property has been exposed to the marketplace
10 itself and will continue to be exposed to the public through the proposed overbid process to
11 ensure the value of the property is maximized for the estate. The sale to the Proposed Buyer at
12 \$390,000 exceeds the minimum threshold for the price that must be achieved for a private sale in
13 relation to the valuations of the Arrowhead Trail Property obtained by the Receiver. Therefore,
14 this component of the statute has been satisfied.

15 As the Ninth Circuit noted in *SEC v. Hardy*, 803 F. 2d 1034, 1037 (9th Cir. 1986): “A
16 district court’s power to supervise an equity receivership and to determine the appropriate action
17 to be taken in the administration of the receivership is extremely broad” and subject to review
18 under an abuse of discretion standard. *See also United States v. Branch Coal Corp.*, 390 F. 2d 7
19 (3rd Cir. 1968) (courts granted discretion in setting the terms and conditions for judicial sales and
20 the court's discretion will not be disturbed on appeal except absent abuse of discretion).

21 The Receiver’s proposed sale procedures include a provision for publication of a notice of
22 the opportunity for overbids to be made for the Arrowhead Trail Property which will include a
23 description of the current purchase price and terms, which is cash to the receivership estate and a
24 closing to occur within 10 days after the overbid session concludes. The published notice will
25 also give notice of the terms and conditions for overbids to be made, such as pre-qualification of
26 overbidders. The Receiver proposes to publish the notice once at least ten days prior to overbid
27 session. The ultimate sale of the Arrowhead Trail Property will only be confirmed at the
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1 conclusion of the overbid session, when it is determined if a higher, qualified overbid in excess of
2 the original offer by the Proposed Buyer has been submitted and accepted by the Receiver.

3 The Court is authorized to confirm the private sale so long as the Receiver sells the
4 Arrowhead Trail Property to the current Proposed Buyer at \$390,000 or if overbids are made at
5 the overbid session, to the highest bidder at the overbid session. Therefore, if no overbid is made
6 that is 10 percent over the current offer of \$390,000 (in other words, a bid of \$429,000 which the
7 Receiver proposes as the initial overbid amount), the sale at \$390,000 to the Proposed Buyer can
8 be confirmed.

9 Potential bidders will have an opportunity to submit overbids, and the proposed
10 procedures and published notice of the overbid session will ensure that the value of this asset is
11 maximized for the benefit of the estate. The Receiver requests that the Court confirm the sale to
12 the Proposed Buyer, or alternatively to the successful overbidder at the overbid session.

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

15 Local Civil Rule 66-5 provides for service of notice of the hearing on various motions by
16 a Receiver concerning the administration of the estate. That rule provides for service of the
17 notice of hearing on such motions on all creditors of the receivership estate. No hearing has been
18 set on this Motion and the provisions of Local Civil Rule 66-5 do not specifically apply.
19 Nevertheless, the Receiver has served a notice of filing of the Motion on the parties, the affected
20 lienholders, and on all known non-consumer creditors of the estate and on known taxing
21 authorities with a potential claim in the receivership estate (“Notice Parties”), to provide them
22 notice and an opportunity to be heard concerning the Motion. This notice is consistent with
23 notice previously approved by the Court in this case.

24 There are believed to be an extremely large number of potential consumer creditors who
25 may have claims against the Receivership Defendants arising out of the business operations of the
26 Receivership Defendants prior to the Receiver’s appointment, although the precise number,
27 identity and location of such consumer creditors have not been determined by the Receiver at this
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1 time. Given the Receiver's determination that more than \$332.5 million³ in sales revenues were
2 generated by I Works and the related and affiliated entities, the number of consumer creditors is
3 likely in the tens of thousands. It is not realistically possible or beneficial to the estate and its
4 creditors for the Receiver to attempt to identify and serve the potential consumer creditors with
5 notice of this and other similar administrative motions, and the expense and burden on the estate
6 of attempting to effectuate such service would drain the estate's resources and cause undue
7 administrative expense.

8 To the extent that Local Rule 66-5 applies to this Motion, the Receiver seeks an order that
9 notice of this Motion is sufficient if notice of the filing of the Motion is given by serving copies
10 of all motion papers on the parties to the action and the affected lienholders and by serving copies
11 of the notice of filing of the motion on the Notice Parties identified above. The Receiver submits
12 that such service provides sufficient notice and an opportunity for hearing to the interested parties
13 and should be approved as adequate.

14 There is ample authority for approval of the scope and method of notice as set forth above.
15 This Court, as a court of equity supervising the receivership estate, may make appropriate
16 administrative orders governing the receivership, including limitations on and changes in notice
17 and other procedures. *See* F.R.Civ.P. 5(a) and (c) (authorizing the court to modify service
18 procedures when numerous defendants are involved in litigation). In addition, pursuant to Local
19 Rule 66-10, a receiver is directed to administer receivership estates "as nearly as may be in
20 accordance with the practice in the administration of estates in Chapter 11 bankruptcy cases."
21 Orders limiting notice when the Bankruptcy Code or Rules would otherwise require notice to all
22 creditors are routinely granted in bankruptcy cases to promote the expeditious and economical
23 administration of bankruptcy estates. *See In re First Alliance Mortgage Co.*, 269 B.R. 428, 442
24 (C.D. Cal. 2001) (referencing in *dicta* in the court's recitation of facts the bankruptcy court's order
25 limiting notice issued in that case); 11 U.S.C. section 102(1)(A) (defining the phrase "after notice
26 and a hearing" to mean "after such notice as is appropriate in the particular circumstances, and

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

1 such opportunity for hearing as is appropriate in the particular circumstances"); 11 U.S.C. section
2 105(a) and (d) (granting broad equitable powers to the court to issue orders "necessary or
3 appropriate to carry out the provisions" of title 11 including "prescribing such limitations and
4 conditions as the court deems appropriate to ensure the case is handled expeditiously and
5 economically"); and F.R. Bankr. P. 2002(m) (authorizing the court to enter "orders designating
6 the matters in respect to which, the entity to whom, and the form and manner in which notices
7 shall be sent except as otherwise provided by these rules").

8 **IV. CONCLUSION**

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

11
12 Dated: December 4, 2013

RANDOLPH L. HOWARD
KOLESAR & LEATHAM, CHTD.

MCKENNA LONG & ALDRIDGE LLP
GARY OWEN CARIS
LESLEY ANNE HAWES

17 By: /s/ Gary Owen Caris

18 Gary Owen Caris

19 Attorneys for Receiver
20 **ROBB EVANS OF ROBB EVANS &
ASSOCIATES LLC**

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DECLARATION OF M. VAL MILLER

I, M. Val Miller, 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. 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 and confirmed the status of various entities as Receivership Defendants. I am one of the deputies to the Receiver responsible for the administration of the receivership estate, including the investigation of assets and potential assets of the receivership estate, review of the books and records of the receivership estate and the analysis of receivership assets, including the status of loans encumbering those assets. I have been one of the Receiver’s deputies responsible for the marketing and sale of numerous real property assets.

3. On August 21, 2013, the Receiver filed a motion seeking authorization from the Court to list and market for sale various real properties, including the real property located at 647

1 Arrowhead Trail, Santa Clara, Utah 84765 (“Arrowhead Trail Property”) That motion was
2 granted by the Court's Order entered on September 30, 2013.

3 4. The Arrowhead Trail Property is a single family home title to which is held in the
4 name of Spyglass Enterprises, LLC, a Jason Vowell entity. Spyglass Enterprises, LLC is an
5 entity identified as a Receivership Defendant under the Preliminary Injunction Order and the
6 Clarifying Order, and the Clarifying Order was not appealed by that entity.

7 5. In October 2013, the Receiver entered into an exclusive right to sell listing
8 agreement and agency disclosure (“Listing Agreement”) with James Fales of Kirch & Todd Real
9 Estate LLC (“Broker”), a true and correct copy of which is attached hereto as Exhibit 1. The
10 Broker is experienced in the sale of residential real estate in Southern Utah.

11 6. The Arrowhead Trail Property was formally listed for sale with a listing price of
12 \$439,000.00. The Arrowhead Trail Property was listed on the Washington County Multiple
13 Listing Service. In listing the Arrowhead Trail Property for sale, the Receiver relied on a
14 broker’s opinion of value obtained by the Receiver in April 2013 and the Receiver's Broker's
15 analysis of and recommendations regarding a listing price for the Arrowhead Trail Property.
16 After the Receiver obtained the April 2013 broker's opinion of value, the Arrowhead Trail
17 Property suffered some water damage in the garage.

18 7. The Receiver has obtained an independent appraisal of the Arrowhead Trail
19 Property valuing the property as of October 10, 2013 as well as a broker's opinion of value by
20 Todd & Kirch Real Estate. The Receiver also considered the prior broker's opinion of value
21 dated April 8, 2013 obtained by the Receiver, which was made prior to the water damage at the
22 property.

23 8. On October 23, 2013, the Receiver received an all cash offer from Title Solutions
24 (the “Proposed Buyer”) for \$390,000.00 without any financing contingency to purchase the
25 Arrowhead Trail Property. The Receiver exchanged counteroffers with the Proposed Buyer and
26 the parties reached agreement for the sale of the Arrowhead Trail Property pursuant to the Real
27 Estate Purchase Contract dated October 23, 2013, Addendum No. 1 to Real Estate Purchase
28 Contract, Addendum No. 2 to Real Estate Purchase Contract/Counteroffer dated October 31, 2013

1 and accepted November 1, 2013, and the Additional Terms and As Is Purchase attachments
2 attached hereto collectively as Exhibit 2 (collectively the “Proposed Purchase Agreement”).

3 9. The Receiver seeks to sell the Arrowhead Trail Property under the Proposed
4 Purchase Agreement to the Buyer, who is an unaffiliated, arm’s length purchaser based on the
5 Receiver’s investigation, subject to the Receiver's conduct of an overbid session after publication
6 of notice to provide an additional opportunity for interested purchasers to bid for the property as
7 contemplated by the Proposed Purchase Agreement. The Proposed Purchase Agreement provides
8 for an “as is,” all cash sale with the closing to occur within 10 days of Court approval and
9 provides that the Receiver shall seek Court approval of the sale procedures, including overbid
10 procedure, for the sale of the property. The purchase price of \$390,000.00 under the Proposed
11 Purchase Agreement far exceeds the minimum threshold for approval of a private sale of two-
12 thirds of the average of three appraisals of the property as required under 28 U.S.C. § 2001.

13 10. The Receiver has obtained a title report for the Arrowhead Trail Property, a true
14 and correct copy of which is attached hereto as Exhibit 3. As indicated in the title report, the real
15 property taxes secured by a senior lien on the Arrowhead Trail Property are delinquent for 2011
16 to the present. The Receiver intends to cause the delinquent real estate taxes to be paid from the
17 proceeds of the sale of the Arrowhead Trail Property.

18 11. The Receiver seeks an order authorizing and confirming the sale of the Arrowhead
19 Trail Property on an “as is” basis by private sale either (a) to Title Solutions (“Proposed Buyer”),
20 an arm’s length buyer, at the purchase price of \$390,000 pursuant to the Proposed Purchase
21 Agreement”), or (b) to such higher qualified overbidder who may hereafter submit the highest
22 qualified overbid at a subsequent overbid session to be conducted by the Receiver. The overbid
23 procedures, terms and conditions for which the Receiver seeks approval include the following:

24 A. The overbid session shall be conducted within 30 days of the date of entry of the
25 order granting this Motion. The overbid session will be conducted at the offices of Todd & Kirch
26 Real Estate located at 43 South 100 East, Suite 200, St. George, Utah 84770;

27 B. The Receiver will cause to be published a notice of the proposed sale of the
28 Arrowhead Trail Property to a qualified bidder at the overbid session to be conducted pursuant to

1 paragraph A above, which notice shall state the date, time and place of the overbid session, the
2 requirement for pre-qualification by overbidders and the terms and conditions of the overbidding
3 and sale of the property, as described below (“Overbid Notice”). The Receiver will cause the
4 Overbid Notice to be published in The Spectrum one time at least ten days prior to the scheduled
5 overbid session. The Spectrum is a daily newspaper of general circulation in the Santa Clara
6 area. The Receiver also anticipates that the Broker will provide additional notice of the overbid
7 session through e-mail and/or the internet web sites where the property is listed.

8 C. Any person wishing to overbid at the overbid session shall be required to pre-
9 qualify with the Receiver no later than 10:00 a.m. two business days preceding the overbid
10 session by delivering to the Receiver’s office located at 6037 S. Ft. Apache Road, Suite 130, Las
11 Vegas, Nevada 89148: (a) notice in writing of the prospective overbidder’s intent to overbid
12 together with (b) written verification from a financial institution demonstrating to the Receiver’s
13 satisfaction, in the Receiver’s sole opinion and judgment, the prospective overbidder’s ability to
14 complete and close a purchase of the Arrowhead Trail Property through sufficient funds or credit
15 facilities within 10 days of the date of the overbid session, and (c) a cashier’s check in the sum of
16 \$20,000 payable to I Works, Inc. Receivership QSF, which cashier’s check shall become non-
17 refundable upon acceptance of the overbidder’s overbid at the conclusion of the overbid session.

18 D. Overbidders bidding at the overbid session will be deemed to have completed all
19 inspections of the Arrowhead Trail Property and will be deemed to have waived and/or removed
20 all contingencies in favor of the buyer under the Proposed Purchase Agreement, including
21 without limitation any contingency pertaining to inspection of title, and will be required to
22 complete a cash purchase of the Arrowhead Trail Property and close escrow for the purchase of
23 the Arrowhead Trail Property within 10 days of the date of the overbid session. The successful
24 overbidder will be required to execute a purchase agreement for the Arrowhead Trail Property
25 substantially in the form of the Proposed Purchase Agreement together with a waiver of all buyer
26 contingencies promptly after conclusion of the overbid session.

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1 E. The initial overbid shall be in the amount of \$429,000.00 (an amount that is
2 \$39,000 higher than the purchase price under the Proposed Purchase Agreement), and all
3 subsequent overbids shall be in an amount at least \$10,000 higher than the preceding bid.

4 F. Pursuant to the Proposed Purchase Agreement and the Receiver's listing
5 agreement with his Broker, a sales commission in the amount of 6% of the purchase price paid for
6 the Arrowhead Trail Property by the Proposed Buyer, or if a higher overbid is received and
7 accepted at the overbid session, by the winning overbidder, shall be paid from the proceeds of
8 sale of the Arrowhead Trail Property at close of escrow and shall be paid to the Broker as listing
9 agent under the Listing Agreement and a cooperating broker representing the buyer, if any, under
10 the terms of the Listing Agreement.

11 12. The Receiver recommends approval and confirmation of the proposed sale to the
12 Proposed Buyer under the terms of the Proposed Purchase Agreement, subject to overbidding as
13 requested in the Motion. The Proposed Purchase Agreement provides a very favorable sale of the
14 Arrowhead Trail Property to a well-qualified, independent all cash buyer on an "as is, where is"
15 basis. The purchase price under the Proposed Purchase Agreement is well in excess of the two-
16 thirds minimum of the average of the three valuations obtained by the Receiver for the property
17 which is the minimum threshold price required to meet the terms of 28 U.S.C. section 2001. The
18 Receiver proposes that the Receiver conduct an overbid session pursuant to the terms set forth
19 above which will provide further assurance that interested buyers have notice and an opportunity
20 to make a higher bid to acquire the property so long as they are qualified and meet the same all
21 cash, as-is and ten-day closing terms of the Proposed Purchase Agreement.

22 13. The Receiver requests that the Court approve notice of the filing of this Motion as
23 detailed in the Motion and supporting memorandum. The proposed notice is consistent with the
24 notice of filing of a number of motions that the Court has previously found to be sufficient in this
25 case.

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I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed this 4th day of December 2013 at Las Vegas, Nevada.


M. VAL MILLER