

**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-MMD-GWF**

Emergency Motion for Order:

- (1) Approving and Confirming Sale of 2988 Kings Court Lane, Washington , 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

Declaration of Gary Owen Caris in Support Thereof

Filed February 13, 2014

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

12 **UNITED STATES DISTRICT COURT**
13 **DISTRICT OF NEVADA**

14
15 FEDERAL TRADE COMMISSION,
16 Plaintiff,
17 v.
18 JEREMY JOHNSON, etc., et al.,
19 Defendants.

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

**EMERGENCY MOTION FOR ORDER:
(1) APPROVING AND CONFIRMING
SALE OF 2988 KINGS COURT LANE,
WASHINGTON, 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 IN
SUPPORT THEREOF**

23
24 PLEASE TAKE NOTICE that Robb Evans of Robb Evans & Associates LLC
25 (“Receiver”), the Receiver pursuant to the Court’s Preliminary Injunction Order issued
26 February 10, 2011, hereby moves the Court for an order authorizing the Receiver to sell the single
27 family residence located at 2988 Kings Court Lane, Washington, Utah on the terms and conditions
28

1 more fully described below and for related relief on an emergency basis for the reasons detailed
2 below. The Receiver specifically seeks the following relief:

3 1. An order approving the Receiver’s proposed sale and overbid procedures for the
4 sale of the single family residence located at 2988 Kings Court Lane, Washington, Utah ("Kings
5 Court Property") and authorizing and confirming the sale of the Kings Court Property on an “as
6 is” basis more fully described in the sale contract documents by private sale either (a) for a
7 purchase price of \$265,000, all cash and without any financing contingency, to Deborah Mertons
8 (“Proposed Buyer”) pursuant to the Real Estate Purchase Contract dated as of December 9, 2013
9 together with related Addendum No. 1, Addendum No. 2, Multiple Offer Disclosure, Seller's
10 Notice to Buyers of Multiple Offers and Letter from James Fales (broker) to Buyer dated
11 November 26, 2013, Addendum No. 3, the "As-Is" Purchase and Additional Terms provisions
12 (collectively the “Proposed Purchase Agreement”), a true and correct copy of which Proposed
13 Purchase Agreement is attached as Exhibit 3 to the Declaration of M. Val Miller filed concurrently
14 herewith in support of the Motion, or (b) to such higher qualified overbidder who hereafter
15 submits the highest qualified overbid at a subsequent overbid session to be conducted under the
16 terms and conditions more fully set forth herein and approved by the Court, which sale the
17 Receiver requests be approved and confirmed without further notice, hearing or order. The
18 overbid procedures, terms and conditions for which the Receiver seeks approval include the
19 following:

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

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

1 session date. The Spectrum is a daily newspaper of general circulation that covers Southern Utah
2 and specifically Washington where the Kings Court Property is located.

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

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

22 E. The initial overbid shall be in the amount of \$291,500 (an amount that is \$26,500,
23 or 10%, higher than the purchase price under the Proposed Purchase Agreement), and all
24 subsequent overbids shall be in an amount at least \$10,000 higher than the preceding bid.

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

1 from the proceeds of sale of the Kings Court Property at close of escrow and shall be paid to the
2 Broker as listing agent under the listing agreement, or if buyer is represented by a cooperating
3 broker, shall be divided and paid equally to the Broker as the listing agent and the buyer's
4 cooperating broker, under the terms of the listing agreement.

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

10 2. In connection with the proposed sale of the Kings Court Property, the Receiver
11 further seeks the following relief:

12 A. An order authorizing the Receiver to execute all documents and instruments
13 necessary or convenient to complete, implement, effectuate and close the sale of the Kings Court
14 Property to the purchaser, including but not limited to the deed conveying title to the Kings Court
15 Property;

16 B. An order authorizing the Receiver to permit and/or cause to be paid from the
17 proceeds of sale all ordinary and customary closing costs, all costs and expenses required to be
18 paid under the terms of the Proposed Purchase Agreement by the seller from the proceeds of sale,
19 all commissions provided for in the Proposed Purchase Agreement, the Receiver's listing
20 agreement for the property attached as Exhibit 2 to the Declaration of M. Val Miller in support
21 hereof and this Motion, and all real property tax liens and prorated real property taxes due up to
22 the date of closing; and

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

EMERGENCY RELIEF

1
2 The Kings Court Property was acquired by the receivership estate when the receivership
3 estate was the successful bidder at a foreclosure sale on Receivership Defendant Elite Debit, Inc.'s
4 first deed of trust encumbering that property. At the time of Elite Debit, Inc.'s foreclosure, there
5 was a lien recorded against the Kings Court Property in favor of the Internal Revenue Service
6 ("IRS") for delinquent taxes owed by Loyd Johnston. Under applicable law, the IRS has an
7 opportunity to redeem the property from foreclosure sale for 120 days after the sale (through
8 February 11, 2014). The Receiver accordingly waited to seek approval of the proposed sale
9 pending determination as to whether the IRS would exercise its right of redemption, which it did
10 not.

11 The Proposed Buyer under the Proposed Purchase Agreement has identified the Kings
12 Court Property as the "downleg" of the Proposed Buyer's 1031 exchange. Although the Receiver
13 has expressly stated in the Proposed Purchase Agreement that the Receiver is not responsible in
14 any way for or a participant in the 1031 exchange by the Proposed Buyer, the Receiver
15 nevertheless understands that the Proposed Buyer needs to close the sale of the Kings Court
16 Property by no later than April 14, 2014 in order to timely complete the 1031 exchange. The
17 Proposed Purchase Agreement provides for the sale to be subject to overbidding, which requires
18 the Receiver to have approximately 30 days after the entry of the sale order to organize and
19 publish notice of the overbidding session and close escrow for the sale after completion of the
20 overbidding session. Given the time between the earliest date the Receiver could file this Motion
21 after expiration of the redemption period (February 12, 2014) and the deadline to close to the
22 Proposed Buyer in order to timely complete the 1031 exchange (April 14, 2014), there is
23 insufficient time to have the Motion submitted on regular notice, to resolve any objections, to have
24 the order entered if the sale is approved, to conduct the overbid session and to close escrow in time
25 to meet the Proposed Buyer's closing deadline.

26 Further good cause exists for the Motion to be determined on an emergency basis in that
27 the proposed sale is very favorable but still contemplates the conduct of an overbid session noticed
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1 to the public before the final sale is confirmed and closed. The overbid session provides further
2 protection to any interested party to ensure the value of this asset is maximized.

3 This Motion is made pursuant to 28 U.S.C. § 2001(b) and Local Civil Rules 7-5, 66-5 and
4 66-10 and other applicable law and is based upon this notice of motion and motion, the
5 accompanying memorandum of points and authorities and the Declaration of M. Val Miller filed
6 in support hereof, the separate notice of filing of this Motion, any reply, the pleadings, records and
7 files of this Court in this matter of which the Receiver requests the Court take judicial notice, and
8 upon all other pleadings, documentary evidence and argument as may be presented to the Court by
9 the Receiver.

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Dated: February 13, 2014

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**

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. SUMMARY OF RELEVANT FACTS**

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

13 Under the Preliminary Injunction Order, the Receiver is directed to "conserve, hold and
14 manage all assets of the Receivership Defendants" and to take all acts necessary or advisable to
15 preserve assets of the receivership estate. Prel. Inj. (Doc. 130), Section XV.E. Defendant Elite
16 Debit, Inc. ("Elite") is a named Corporate Defendant in the action and a named Receivership
17 Defendant under the Preliminary Injunction. When the receivership commenced, one of the assets
18 of Elite was a debt obligation secured by a first deed of trust against a single family residence
19 located at 2988 Kings Court Lane, Washington, Utah ("Kings Court Property"), the residence of
20 individual defendant Loyd Johnston. The Receiver has taken steps pursuant to the Preliminary
21 Injunction to manage this asset of Elite's by enforcing the estate's security interest in the Kings
22 Court Property, and the estate became the title holder on the property. The Receiver seeks an
23 order approving a sale of that property as part of the Receiver's management of Elite's asset as a
24 secured creditor.

25 **A. Foreclosure of the Kings Court Property**

26 At the inception of the receivership, Elite was the holder of a debt obligation in the
27 principal sum of \$308,000 secured by a first deed of trust against the Kings Court Property.
28 Despite repeated demands, no payments were made on the debt obligation. Defendant Johnston

1 filed a motion to remain at the residence for additional time, and the Receiver filed a response
2 advising that he would be willing to allow the Johnstons to remain at the residence until the end of
3 2012 so long as the Receiver could promptly foreclose thereafter. Pending a ruling by the Court
4 on that motion, the Receiver voluntarily deferred its foreclosure proceedings. On March 14, 2013,
5 the Court issued an order denying Johnston's motion as moot and ordering the Receiver and
6 Johnston to meet and confer and file a joint status report as to the next steps to be taken regarding
7 the debt (Doc. No. 873). The Receiver and Johnston reached an agreement allowing the Johnstons
8 to remain at the property through July 31, 2013 and for the Receiver to be able to proceed with its
9 foreclosure, with the sale not to occur until after July 31, 2013 (Doc. No. 912). Johnston made no
10 payments on the debt secured by the deed of trust, the Johnstons vacated the residence by July 31,
11 2013, and the Receiver completed foreclosure of the deed of trust on October 14, 2013.

12 At the foreclosure sale, the Receiver was the successful high bidder with a credit bid of
13 \$235,000. However, there was a junior tax lien in favor of the Internal Revenue Service ("IRS")
14 encumbering the property. The tax lien and the right of redemption in favor of the IRS is reflected
15 in the preliminary title report obtained by the Receiver after the sale. The right of redemption
16 expired on February 11, 2014, 120 days after the foreclosure sale, and the IRS did not exercise its
17 redemption rights.

18 The Receiver has obtained an appraisal of the Kings Court Property by Jim Allen of Allen
19 Appraisal Service valuing the property as of October 15, 2013. The Receiver also obtained
20 Comparable Market Analyses prepared by the Broker as of August 19, 2013 and by Jesse S.
21 Brown of Utah South Real Estate as of November 1, 2013. The Receiver has not filed these
22 valuations with the Court or disclosed the specific valuation amounts reflected in them in light of
23 the anticipated publicly noticed overbid session. The purchase price under the Proposed Purchase
24 Agreement is favorable for the estate and equals or exceeds the valuations, and therefore far
25 exceeds the minimum price threshold of two-thirds the average of the valuations required by 28
26 U.S.C. Section 2001(b).

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1 **B. Proposed Sale of the Kings Court Property**

2 After the Receiver completed the foreclosure of the Kings Court property, the Receiver
3 engaged the firm of Kirch and Todd Real Estate LLC and James Fales ("Broker") to market the
4 property pursuant to an Exclusive Right to Sell Listing Agreement dated as of November 6, 2013
5 ("Listing Agreement"). The Listing Agreement provides for a sales commission of 6 percent of
6 the sales price. The Receiver obtained multiple offers for the purchase of the property.

7 One of the offers was made by Deborah Mertons (the "Proposed Buyer") and was initially
8 in the amount of \$255,000 cash. The Receiver's Broker notified the prospective purchasers who
9 had submitted offers in writing that multiple offers had been received and conducted another
10 round of offers to obtain the highest and best offer from the prospective buyers. The highest and
11 best offer was submitted by the Proposed Buyer in the amount of \$265,000. The Receiver by this
12 Motion seeks approval and confirmation of the sale of the Kings Court Property to the Proposed
13 Buyer pursuant to the Real Estate Purchase Contract dated as of December 9, 2013 together with
14 related Addendum No. 1, Addendum No. 2, Multiple Offer Disclosure, Seller's Notice to Buyers
15 of Multiple Offers and Letter from James Fales (broker) to Buyer dated November 26, 2013,
16 Addendum No. 3, the "As-Is" Purchase and Additional Terms provisions (collectively the
17 "Proposed Purchase Agreement"), a true and correct copy of which is attached as Exhibit 3 to the
18 Declaration of M. Val Miller in support of the Motion, or to any higher qualified overbidder who
19 submits the successful high overbid at the overbid session.

20 The sale under the Proposed Purchase Agreement has no contingencies and provides for an
21 overbidding session to be conducted by the Receiver. The sale under the Proposed Purchase
22 Agreement is an all cash, "as is" sale. Bidders at the overbid session also must meet those terms
23 without contingencies. While the Receiver is not participating in the Proposed Buyer's 1031
24 exchange, the Receiver is attempting to obtain approval for the sale and to schedule the overbid
25 session in a time frame that will allow the Proposed Buyer to use funds from her 1031 exchange to
26 close the sale if she is the successful bidder.

27 The Receiver seeks approval to solicit overbids for the sale of the Kings Court Property, as
28 contemplated by the Proposed Purchase Agreement, and seeks an order on this Motion that

1 confirms the sale of the Kings Court Property to the Proposed Buyer, or such higher qualified
2 overbidder who may make the highest overbid accepted by the Receiver at the overbid session to
3 be conducted under the proposed sale procedures set forth in this Motion. Under the
4 circumstances, including the fact the sale to the Proposed Buyer is non-contingent for an amount
5 that substantially exceeds the minimum two-thirds of the average of the three valuations obtained
6 by the Receiver for the Kings Court Property, the terms and conditions of the Proposed Purchase
7 Agreement that provide for closing within 20 days, the Proposed Buyer's 1031 exchange timing
8 issues, and the Receiver's desire to avoid unnecessary administrative expense through multiple
9 motions to conclude the sale, the Receiver requests that the Court approve the following notice
10 and overbid procedures, terms and conditions:

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

14 2. The Receiver will cause to be published a notice of the proposed sale of the Kings
15 Court Property to a qualified bidder at the overbid session to be conducted under paragraph 1
16 above, which notice shall state the date, time and place of the overbid session, the requirement for
17 pre-qualification by overbidders and the terms and conditions of the overbidding and sale of the
18 property, as described below ("Overbid Notice"). The Receiver will cause the Overbid Notice to
19 be published in The Spectrum newspaper one time at least ten days prior to the scheduled overbid
20 session date. The Spectrum is a daily newspaper of general circulation that covers Southern Utah
21 and specifically Washington where the Kings Court Property is located.

22 3. Any person wishing to overbid at the overbid session shall be required to pre-
23 qualify with the Receiver no later than 10:00 a.m. two business days preceding the overbid session
24 by delivering to the Receiver's office located at 6037 S. Ft. Apache Road, Suite 130, Las Vegas,
25 Nevada 89148: (a) notice in writing of the prospective overbidder's intent to overbid together with
26 (b) written verification from a financial institution demonstrating to the Receiver's satisfaction, in
27 the Receiver's sole opinion and judgment, the prospective overbidder's ability to complete and
28 close a purchase of the Kings Court Property through sufficient funds or credit facilities within 20

1 days of the date of the overbid session, and (c) a cashier's check in the sum of \$5,000 payable to I
2 Works Inc. Receivership QSF, which cashier's check shall become non-refundable upon
3 acceptance of the overbidder's overbid at the conclusion of the overbid session.

4 4. Overbidders bidding at the overbid session will be deemed to have completed all
5 inspections of the Kings Court Property and will be deemed to have waived and/or removed all
6 contingencies in favor of the buyer under the Proposed Purchase Agreement, including without
7 limitation any contingency pertaining to inspection of title, and will be required to complete a cash
8 purchase of the Kings Court Property and close escrow for the purchase of the Kings Court
9 Property within 20 days of the date of the overbid session. The successful overbidder will be
10 required to execute a purchase agreement for the Kings Court Property substantially in the form of
11 the Proposed Purchase Agreement together with a waiver of all buyer contingencies promptly after
12 conclusion of the overbid session.

13 5. The initial overbid shall be in the amount of \$291,500 (an amount that is \$26,500,
14 or 10%, higher than the purchase price under the Proposed Purchase Agreement), and all
15 subsequent overbids shall be in an amount at least \$10,000 higher than the preceding bid.

16 6. Pursuant to the Proposed Purchase Agreement and the Receiver's listing agreement
17 with James Fales of Todd & Kirch Real Estate ("Broker"), a sales commission in the amount of
18 6% of the purchase price paid for the Kings Court Property by the Proposed Buyer, or if a higher
19 overbid is received and accepted at the overbid session, by the winning overbidder, shall be paid
20 from the proceeds of sale of the Kings Court Property at close of escrow and shall be paid to the
21 Broker as listing agent under the listing agreement, or if buyer is represented by a cooperating
22 broker, shall be divided and paid equally to the Broker as the listing agent and the buyer's
23 cooperating broker, under the terms of the listing agreement.

24 7. The sale of the Kings Court Property by private sale to the Proposed Buyer under
25 the Proposed Purchase Agreement, or to the person who submits the highest qualified overbid at
26 the overbid session to be conducted pursuant to the foregoing procedures, will be deemed
27 confirmed by Order on this Motion without further notice or hearing and without the necessity of
28 any subsequent motion for confirmation of the sale.

1 The Proposed Purchase Agreement provides a very favorable sale of the Kings Court
2 Property to a well-qualified, independent all cash buyer on an "as is, where is" basis. The
3 purchase price under the Proposed Purchase Agreement is well in excess of the two-thirds
4 minimum of the average of the three valuations obtained by the Receiver for the property which is
5 the minimum threshold price required to meet the terms of 28 U.S.C. section 2001. The Receiver
6 proposes that the Receiver conduct an overbid session pursuant to the terms set forth above which
7 will provide further assurance that interested buyers have notice and an opportunity to make a
8 higher bid to acquire the property so long as they are qualified and meet the same all cash, as-is
9 and twenty-day closing terms of the Proposed Purchase Agreement. The Receiver recommends
10 approval and confirmation of the sale under the terms and conditions set forth in the Motion.

11 **II. THE SALE OF THE KINGS COURT PROPERTY SHOULD BE APPROVED AND**
12 **CONFIRMED SUBJECT TO OVERBIDDING AS REQUESTED IN THIS**
13 **MOTION**

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

16 The time, manner, terms of sale and notice thereof are regulated by the court appointing
17 the receiver. Courts are granted discretion in setting the terms and conditions for judicial sales and
18 the Court's discretion will not be disturbed on appeal except where abuse of discretion is shown.
19 *United States v. Branch Coal Corp.*, 390 F. 2d 7 (3rd Cir. 1968), *cert. den. Sun Protection Co. v.*
20 *United States*, 391 U.S. 966, 88 S. Ct. 2034 (1968). The Court has substantial discretion in
21 receivership matters in setting the overbidding procedures applicable to sales of real property. *See*
22 *Pewabic Mining Co. v. Mason*, 145 U.S. 349, 356, 36 L.Ed. 732, 12 S.Ct. 887 (1891) (the
23 provisions for notice and other conditions shall be determined by the Court "as will in his
24 judgment best protect the rights of all interested, and make the sale most profitable to all"). *See*
25 *also Cumberland Lumber Co. v. Tunis Lumber Co.*, 171 F. 352 (4th Cir. 1909); *Bidwell v. Huff*,
26 176 F. 174 (5th Cir. 1909). The terms and conditions of the judicial sale that the Court may adopt
27 are based on the facts and circumstances of each case. The discretion granted in connection with
28 sales of assets is consistent with the broad discretion accorded to the Court sitting in equity in

1 receivership proceedings to make orders concerning the administration and supervision of the
2 estate that will promote equity, efficiency and cost-effectiveness in the estate's administration.
3 *See generally Securities and Exchange Commission v. Hardy*, 803 F.2d 1034 (9th Cir. 1986);
4 *Securities and Exchange Commission v. Black*, 163 F.3d 188, 199 (3rd Cir. 1998); *Securities and*
5 *Exchange Commission v. Elliot*, 953 F.2d 1560 (11th Cir. 1992).

6 Under § 2001(b), in order for a sale to be approved, the minimum purchase price for the
7 property must exceed two-thirds of the average value in three appraisals of the property by
8 appraisers appointed by the court. The statute does not define what constitutes an "appraisal" for
9 the purpose of § 2001(b). The Receiver has obtained an appraisal of the Kings Court Property and
10 two written broker's valuations, both of which are based on comparable sales data and other
11 market data similar to the appraisal. The Receiver has therefore complied with the valuation
12 evidence provisions of the statute. Further, any minor deviation from the statutory provision as to
13 appointment of three appraisers is warranted under the circumstances for several reasons,
14 including the inordinate expense associated with obtaining additional appraisals which is
15 burdensome to the estate under the circumstances; the fact that the valuations by both the local real
16 estate brokers and the appraiser are based on comparable sales data and the experience and
17 knowledge of the sales agents who actually deal in real estate in the local market and thus are
18 reliable indicators of the actual value likely to be realized from the marketing and sale of the
19 property; and the fact that the Kings Court Property has been exposed to the marketplace itself and
20 will continue to be exposed to the public through the proposed overbid process to ensure the value
21 of the property is maximized for the estate. The sale to the Proposed Buyer at \$265,000 exceeds
22 the minimum threshold for the price that must be achieved for a private sale in relation to the
23 valuations of the Kings Court Property obtained by the Receiver. Therefore, this component of
24 the statute has been satisfied.

25 The Receiver's proposed sale procedures include a provision for publication of a notice of
26 the opportunity for overbids to be made for the Kings Court Property which will include a
27 description of the current purchase price and terms. The published notice will also give notice of
28 the terms and conditions for overbids to be made, such as pre-qualification of overbidders. The

1 Receiver proposes to publish the notice once at least ten days prior to the overbid session. The
2 ultimate sale of the Kings Court Property will only be confirmed at the conclusion of the overbid
3 session, when it is determined if a higher, qualified overbid in excess of the original offer by the
4 Proposed Buyer has been submitted and accepted by the Receiver.

5 The Court is authorized to confirm the private sale so long as the Receiver sells the Kings
6 Court Property to the current Proposed Buyer at \$265,000 or if overbids are made at the overbid
7 session, to the highest bidder at the overbid session. Therefore, if no overbid is made that is 10
8 percent over the current offer of \$265,000 (in other words, a bid of \$291,500 which the Receiver
9 proposes as the initial overbid amount), the sale at \$265,000 to the Proposed Buyer will be
10 confirmed.

11 Potential bidders will have an opportunity to submit overbids, and the proposed procedures
12 and published notice of the overbid session will ensure that the value of this asset is maximized for
13 the benefit of the estate. The Receiver requests that the Court confirm the sale to the Proposed
14 Buyer, or alternatively to the successful overbidder at the overbid session pursuant to the order on
15 this Motion, and without further notice, hearing or order.

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

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

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

27 There are believed to be an extremely large number of potential consumer creditors who
28 may have claims against the Receivership Defendants arising out of the business operations of the

1 Receivership Defendants prior to the Receiver's appointment, although the precise number,
2 identity and location of such consumer creditors have not been determined by the Receiver at this
3 time. Given the Receiver's determination that more than \$332.5 million¹ in sales revenues were
4 generated by I Works and the related and affiliated entities, the number of consumer creditors is
5 likely in the tens of thousands. It is not realistically possible or beneficial to the estate and its
6 creditors for the Receiver to attempt to identify and serve the potential consumer creditors with
7 notice of this and other similar administrative motions, and the expense and burden on the estate
8 of attempting to effectuate such service would drain the estate's resources and cause undue
9 administrative expense.

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

15 There is ample authority for approval of the scope and method of notice as set forth above.
16 This Court, as a court of equity supervising the receivership estate, may make appropriate
17 administrative orders governing the receivership, including limitations on and changes in notice
18 and other procedures. *See* F.R.Civ.P. 5(a) and (c) (authorizing the court to modify service
19 procedures when numerous defendants are involved in litigation). In addition, as set out above,
20 pursuant to Local Rule 66-10, a receiver is directed to administer receivership estates "as nearly as
21 may be in accordance with the practice in the administration of estates in Chapter 11 bankruptcy
22 cases." Orders limiting notice when the Bankruptcy Code or Rules would otherwise require notice
23 to all creditors are routinely granted in bankruptcy cases to promote the expeditious and
24 economical administration of bankruptcy estates. *See In re First Alliance Mortgage Co.*, 269 B.R.
25 428, 442 (C.D. Cal. 2001) (referencing in dicta in the court's recitation of facts the bankruptcy
26 court's order limiting notice issued in that case); 11 U.S.C. section 102(1)(A) (defining the phrase
27

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

9 **IV. EMERGENCY RELIEF IS WARRANTED IN LIGHT OF THE PROPOSED**
10 **BUYER'S 1031 EXCHANGE TIMING ISSUES, THE PROTECTIONS OF THE**
11 **OVERBID SESSION AND THE FAVORABLE, ALL CASH PURCHASE TERMS**

12 Local Civil Rule 7-5(d) of the Rules for the United States District Court for the District of
13 Nevada addresses Emergency Motions. That rule provides that an emergency motion must be
14 supported by an affidavit containing the following information:

- 15 (1) The nature of the emergency;
16 (2) The office addresses and telephone numbers of movant and all
17 affected parties; and, (3) A statement of movant certifying that, after
18 personal consultation and sincere effort to do so, movant has been
19 unable to resolve the matter without Court action. The statement
20 also must state when and how the other affected party was notified
21 of the motion or, if the other party was not notified, why it was not
22 practicable to do so. . . .

23 This Emergency Motion complies with Local Rule 7-5(d). The Declaration of Gary Owen
24 Caris filed in support of this Motion explains why it is not practical for the Receiver to meet and
25 confer with all potentially affected parties regarding the relief sought in this Motion prior to filing.
26 Given the timing of filing the Motion, the urgent timing issues in establishing the overbid session
27 and closing the sale, and the number of potentially interested parties as reflected in the service list
28 for the notice of filing of the Motion, the cost and time involved in attempting to meet and confer

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prior to filing would have unduly burdened the estate with expense and was not a practical or efficient way to provide notice of the Receiver's request for relief.

V. CONCLUSION

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

Dated: February 13, 2014

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

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

12 **UNITED STATES DISTRICT COURT**
13 **DISTRICT OF NEVADA**

14
15 FEDERAL TRADE COMMISSION,
16 Plaintiff,
17 v.
18 JEREMY JOHNSON, etc., et al.,
19 Defendants.

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

**DECLARATION OF M. VAL MILLER IN
SUPPORT OF EMERGENCY MOTION
FOR ORDER: (1) APPROVING AND
CONFIRMING SALE OF 2988 KINGS
COURT LANE, WASHINGTON, UTAH
AND SALE AND OVERBID
PROCEDURES AND FOR RELATED
RELIEF; AND (2) GRANTING RELIEF
FROM LOCAL RULE 66-5 PERTAINING
TO NOTICE TO CREDITORS**

22
23 I, M. Val Miller, declare:

24 1. I am an Executive Vice President and a member of Robb Evans & Associates LLC
25 and am a deputy to Robb Evans of Robb Evans & Associates LLC, appointed as Receiver in this
26 case. I am one of the deputies to the Receiver responsible for the day-to-day supervision of the
27 receivership estate. If called upon to testify as to the facts set forth in this declaration, I could and
28 would testify competently thereto as the facts are true and within my personal knowledge or I have

1 gained knowledge of such facts from the books and records of the receivership proceeding,
2 including the books and records of the entities subject to the receivership.

3 2. On January 13, 2011, the Receiver was appointed Temporary Receiver over I
4 Works, Inc. ("I Works"), numerous other Corporate Defendants as defined in the Temporary
5 Restraining Order and over the assets of defendant Jeremy Johnson (collectively the "Receivership
6 Defendants"). Pursuant to the Preliminary Injunction Order entered February 10, 2011, the
7 Receiver has been appointed permanent Receiver over the Receivership Defendants. I am one of
8 the deputies to the Receiver responsible for the administration of the receivership estate, including
9 the investigation of assets and potential assets of the receivership estate, review of the books and
10 records of the receivership estate and the analysis of receivership assets, including the status of
11 loans encumbering those assets. I have been one of the Receiver's deputies responsible for the
12 marketing and sale of numerous real property assets.

13 3. One of the named Corporate Defendants in the action and named Receivership
14 Defendants under the Preliminary Injunction is Elite Debit, Inc. ("Elite"). When the receivership
15 commenced, one of the assets of Elite was a debt obligation in the principal sum of \$308,000
16 secured by a first deed of trust against a single family residence located at 2988 Kings Court Lane,
17 Washington, Utah ("Kings Court Property"), the residence of individual defendant Loyd Johnston
18 ("Johnston"). The Receiver has taken steps pursuant to the Preliminary Injunction to manage this
19 asset of Elite's by enforcing the estate's security interest in the Kings Court Property.

20 4. Johnston filed a motion to remain at the residence for additional time, and the
21 Receiver filed a response advising that he would be willing to allow the Johnstons to remain at the
22 residence until the end of 2012 so long as the Receiver could promptly foreclose thereafter.
23 Pending a ruling by the Court on that motion, the Receiver voluntarily deferred its foreclosure
24 proceedings. On March 14, 2013, the Court issued an order denying Johnston's motion as moot
25 and ordering the Receiver and Johnston to meet and confer and file a joint status report as to the
26 next steps to be taken regarding the debt (Doc. No. 873). The Receiver and Johnston reached an
27 agreement allowing the Johnstons to remain at the property through July 31, 2013 and for the
28 Receiver to be able to proceed with its foreclosure, with the sale not to occur until after July 31,

1 2013 (Doc. No. 912). Despite repeated demands, Johnston made no payments on the debt secured
2 by the deed of trust in favor of Elite, and the Johnstons vacated the residence by July 31, 2013.

3 5. On October 14, 2013, the Receiver conducted a foreclosure sale on the Kings Court
4 Property. The Receiver was the successful high bidder with a credit bid of \$235,000. However,
5 there was a junior tax lien in favor of the Internal Revenue Service ("IRS") encumbering the
6 property. The tax lien and the right of redemption in favor of the IRS is reflected in the
7 preliminary title report obtained by the Receiver after the sale, a true and correct copy of which is
8 attached hereto as Exhibit 1. The right of redemption expired on February 11, 2014, 120 days
9 after the foreclosure sale, and the IRS did not exercise its redemption rights.

10 6. After the Receiver completed the foreclosure of the Kings Court property, the
11 Receiver engaged the firm of Kirch and Todd Real Estate LLC and James Fales ("Broker") to
12 market the property pursuant to an Exclusive Right to Sell Listing Agreement dated as of
13 November 6, 2013 ("Listing Agreement"). The Listing Agreement provides for a sales
14 commission of 6 percent of the sales price. A true and correct copy of the Listing Agreement is
15 attached hereto as Exhibit 2.

16 7. The Receiver obtained multiple offers for the purchase of the property. One of the
17 offers was made by Deborah Mertons (the "Proposed Buyer") and was initially in the amount of
18 \$255,000 cash. The Receiver's Broker notified the prospective purchasers who had submitted
19 offers in writing that multiple offers had been received and conducted another round of offers to
20 obtain the highest and best offer from the prospective buyers. The highest and best offer was
21 submitted by the Proposed Buyer in the amount of \$265,000. The Receiver seeks approval and
22 confirmation of the sale of the Kings Court Property to the Proposed Buyer pursuant to the Real
23 Estate Purchase Contract dated as of December 9, 2013 together with related Addendum No. 1,
24 Addendum No. 2, Multiple Offer Disclosure, Seller's Notice to Buyers of Multiple Offers and
25 Letter from James Fales (broker) to Buyer dated November 26, 2013, Addendum No. 3, the "As-
26 Is" Purchase and Additional Terms provisions (collectively the "Proposed Purchase Agreement"),
27 a true and correct copy of which is attached hereto as Exhibit 3, or to any higher qualified
28 overbidder who submits the successful high overbid at the overbid session.

1 8. The sale under the Proposed Purchase Agreement has no contingencies and
2 provides for an overbidding session to be conducted by the Receiver. The sale under the Proposed
3 Purchase Agreement is an all cash, "as is" sale. Bidders at the overbid session also must meet
4 those terms without contingencies. While the Receiver is not participating in the Proposed Buyer's
5 1031 exchange, the Receiver is attempting to obtain approval for the sale and to schedule the
6 overbid session in a time frame that will allow the Proposed Buyer to use funds from her 1031
7 exchange to close the sale if she is the successful bidder.

8 9. The Receiver seeks approval to solicit overbids for the sale of the Kings Court
9 Property, as contemplated by the Proposed Purchase Agreement, and seeks an order that confirms
10 the sale of the Kings Court Property to the Proposed Buyer, or such higher qualified overbidder
11 who may make the highest overbid accepted by the Receiver at the overbid session to be
12 conducted under the proposed sale procedures set forth in the Motion.

13 10. On behalf of the Receiver, I have obtained an appraisal of the Kings Court Property
14 by Jim Allen of Allen Appraisal Service valuing the property as of October 15, 2013. The
15 Receiver also obtained Comparable Market Analyses prepared by the Broker as of August 19,
16 2013 and by Jesse S. Brown of Utah South Real Estate as of November 1, 2013. The Receiver has
17 not filed these valuations with the Court or disclosed the specific valuation amounts reflected in
18 them in light of the anticipated publicly noticed overbid session.

19 11. The sale to the Proposed Buyer is non-contingent for an amount that substantially
20 exceeds the minimum two-thirds of the average of the three valuations obtained by the Receiver
21 for the Kings Court Property. The terms and conditions of the Proposed Purchase Agreement
22 provide for a prompt closing within 20 days of the overbid session, and there are important timing
23 issues in approving the sale and conducting the overbid session because of the Proposed Buyer's
24 1031 exchange timing issues. The Receiver desires to avoid unnecessary administrative expense
25 through multiple motions to conclude the sale by seeking both approval of the sale and
26 confirmation of the sale subject to the results of the overbidding session through the Motion which
27 this declaration supports.

28

1 12. The Receiver requests that the Court approve the following notice and overbid
2 procedures, terms and conditions:

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

6 B. The Receiver will cause to be published a notice of the proposed sale of the Kings
7 Court Property to a qualified bidder at the overbid session to be conducted under paragraph A
8 above, which notice shall state the date, time and place of the overbid session, the requirement for
9 pre-qualification by overbidders and the terms and conditions of the overbidding and sale of the
10 property, as described below (“Overbid Notice”). The Receiver will cause the Overbid Notice to
11 be published in The Spectrum newspaper one time at least ten days prior to the scheduled overbid
12 session date. The Spectrum is a daily newspaper of general circulation that covers Southern Utah
13 and specifically Washington where the Kings Court Property is located.

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

24 D. Overbidders bidding at the overbid session will be deemed to have completed all
25 inspections of the Kings Court Property and will be deemed to have waived and/or removed all
26 contingencies in favor of the buyer under the Proposed Purchase Agreement, including without
27 limitation any contingency pertaining to inspection of title, and will be required to complete a cash
28 purchase of the Kings Court Property and close escrow for the purchase of the Kings Court

1 Property within 10 days of the date of the overbid session. The successful overbidder will be
2 required to execute a purchase agreement for the Kings Court Property substantially in the form of
3 the Proposed Purchase Agreement together with a waiver of all buyer contingencies promptly after
4 conclusion of the overbid session.

5 E. The initial overbid shall be in the amount of \$291,500 (an amount that is \$26,500,
6 or 10%, higher than the purchase price under the Proposed Purchase Agreement), and all
7 subsequent overbids shall be in an amount at least \$10,000 higher than the preceding bid.

8 F. Pursuant to the Proposed Purchase Agreement and the Receiver's listing agreement
9 with James Fales of Todd & Kirch Real Estate ("Broker"), a sales commission in the amount of
10 6% of the purchase price paid for the Kings Court Property by the Proposed Buyer, or if a higher
11 overbid is received and accepted at the overbid session, by the winning overbidder, shall be paid
12 from the proceeds of sale of the Kings Court Property at close of escrow and shall be paid to the
13 Broker as listing agent under the listing agreement, or if buyer is represented by a cooperating
14 broker, shall be divided and paid equally to the Broker as the listing agent and the buyer's
15 cooperating broker, under the terms of the listing agreement.

16 G. The sale of the Kings Court Property by private sale to the Proposed Buyer under
17 the Proposed Purchase Agreement, or to the person who submits the highest qualified overbid at
18 the overbid session to be conducted pursuant to the foregoing procedures, will be deemed
19 confirmed by the Order on the Motion without further notice or hearing and without the necessity
20 of any subsequent motion for confirmation of the sale.

21 13. The Receiver recommends approval of the sale and the overbid procedures. The
22 Proposed Purchase Agreement provides a very favorable sale of the Kings Court Property to a
23 well-qualified, independent all cash buyer on an "as is, where is" basis. The purchase price under
24 the Proposed Purchase Agreement is well in excess of the two-thirds minimum of the average of
25 the three valuations obtained by the Receiver for the property which is the minimum threshold
26 price required to meet the terms of 28 U.S.C. section 2001. The Receiver proposes that the
27 Receiver conduct an overbid session pursuant to the terms set forth above which will provide
28 further assurance that interested buyers have notice and an opportunity to make a higher bid to

1 acquire the property so long as they are qualified and meet the same all cash, as-is and twenty-day
2 closing terms of the Proposed Purchase Agreement.

3 14. The Receiver seeks an order authorizing and confirming the sale of the Kings Court
4 Property on an "as is" basis by private sale either (a) to the Proposed Buyer, an arm's length
5 buyer, at the purchase price of \$265,000 pursuant to the Proposed Purchase Agreement, or (b) to
6 such higher qualified overbidder who may hereafter submit the highest qualified overbid at a
7 subsequent overbid session to be conducted by the Receiver.

8 15. The Receiver requests that the Court approve notice of the filing of this Motion as
9 detailed in the Motion and supporting memorandum. The proposed notice is consistent with the
10 notice of filing of a number of motions that the Court has previously found to be sufficient in this
11 case.

12 I declare under penalty of perjury that the foregoing is true and correct and that this
13 declaration was executed this 12 day of February 2014 at Orem,
14 Utah.

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12 **UNITED STATES DISTRICT COURT**
13 **DISTRICT OF NEVADA**

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15 FEDERAL TRADE COMMISSION,
16 Plaintiff,
17 v.
18 JEREMY JOHNSON, etc., et al.,
19 Defendants.

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

**DECLARATION OF GARY OWEN
CARIS IN SUPPORT OF EMERGENCY
MOTION FOR ORDER: (1) APPROVING
AND CONFIRMING SALE OF 2988
KINGS COURT LANE, WASHINGTON,
UTAH AND SALE AND OVERBID
PROCEDURES AND FOR RELATED
RELIEF; AND (2) GRANTING RELIEF
FROM LOCAL RULE 66-5 PERTAINING
TO NOTICE TO CREDITORS**

22
23 I, Gary Owen Caris, declare:

24 1. I am an attorney at law duly licensed to practice before all courts of the State of
25 California and I have been admitted to practice *pro hac vice* before the United States District
26 Court for the District of Nevada in the subject litigation. I am a partner in the firm of McKenna
27 Long & Aldridge LLP (“McKenna Firm”) and am one of the attorneys primarily responsible for
28 representing Robb Evans of Robb Evans & Associates LLC, the Receiver in this matter

1 ("Receiver"). I have personal knowledge of the matters set forth in this declaration and if I were
2 called upon to testify in these matters, I could and would competently testify thereto.

3 2. This declaration is in support of the Receiver's Emergency Motion to approve and
4 confirm the sale of the real property located at 2988 Kings Court Lane, Washington, Utah ("Kings
5 Court Property"). Because of the existence of a right of redemption by the Internal Revenue
6 Service ("IRS") based on a tax lien recorded against the Kings Court Property, the Receiver
7 deferred filing a motion for approval of the sale of the Kings Court Property until the redemption
8 date passed without action by the IRS. The deadline for the IRS to exercise the right of
9 redemption was February 11, 2014.

10 4. There is insufficient time for this Motion to be determined on regular notice
11 because of the proposed buyer's pending 1031 deadline to close this sale of April 14, 2014. The
12 Receiver will need time to arrange for publication of the notice of the overbidding session and to
13 schedule the session after the Court enters an order approving the sale, and the successful buyer is
14 given up to 20 days after the overbid session to close the sale. If any party responds to or opposes
15 the Motion, there will be insufficient time for the Receiver to file a reply and have the Court
16 determine the matter in order to have the order entered at least 35 to 40 days prior to April 14,
17 2014, the time frame needed to publish the notice of the overbid session, conduct the overbid
18 session and close the sale. The Receiver therefore seeks a determination of the Motion on an
19 emergency basis to ensure any disputes can be resolved by the Court and an order entered
20 sufficiently in advance of the April 14, 2014 date.

21 5. My firm has not attempted to contact all of the potentially interested parties in
22 advance of filing this Emergency Motion. There are numerous defendants in the action
23 represented by multiple different counsel, and the Receiver regularly serves dozens of taxing
24 agencies and creditors with notice of his sale approval motions pursuant to the Local Rules and the
25 practice established for notice in this case. It would not be practical to attempt to provide advance
26 notice of the relief to be sought and the grounds prior to filing the Motion to determine the
27 position these many potentially interested parties may have. The notice of filing of the Motion
28 which is served on all parties and those other potentially interested parties provides the most

1 complete notice of the relief sought by the Motion and is the most efficient way for the estate to
2 communicate the nature of the relief sought and the reasons why relief should be granted and to
3 advise those persons of their right to be heard on the Motion. For these reasons and the
4 circumstances set forth in the Motion and supporting Declaration of M. Val Miller, the Receiver
5 requests that the Court consider the Motion on an emergency basis.

6 I declare under penalty of perjury that the foregoing is true and correct and that this
7 declaration was executed this 13th day of February 2014 at Los Angeles, California.

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9 /s/ Gary Owen Caris
10 GARY OWEN CARIS

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