

**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**

**Notice of Motion and Motion for Order:**

- (1) Approving and Confirming Sale of 1749 Boulder Mountain Road, St. George, Utah 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**

**Filed February 20, 2014**

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

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

15 FEDERAL TRADE COMMISSION,

16 Plaintiff,

17 v.

18 JEREMY JOHNSON, etc., et al.,

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

**NOTICE OF MOTION AND MOTION  
FOR ORDER: (1) APPROVING AND  
CONFIRMING SALE OF 1749  
BOULDER MOUNTAIN ROAD, ST.  
GEORGE, UTAH 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**

22  
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 1749  
27 Boulder Mountain Road, St. George, Utah ("Boulder Mountain Property") on the terms and  
28 conditions more fully described below and for related relief, including without limitation for

1 modification of the sale procedures of 28 U.S.C. section 2001 in connection therewith. The  
2 Receiver specifically seeks the following relief:

3           1.       An order approving and confirming the Receiver's proposed sale of the Boulder  
4 Mountain Property for a purchase price of \$410,000 to JLand ZDW Painter Irrevocable Trust  
5 ("Buyer") pursuant to the Real Estate Purchase Contract dated as of January 24, 2014 together  
6 with Addendum No. 1 with the Additional Terms provisions and "As-Is" Sale Attachments thereto  
7 and Addendum No. 2 (collectively the "Purchase Agreement"). A true and correct copy of the  
8 Purchase Agreement is attached as Exhibit 2 to the Declaration of M. Val Miller filed concurrently  
9 herewith in support of the Motion. In connection with the sale, the Receiver further seeks an  
10 order:

11                   A.       Authorizing the Receiver to execute all documents and instruments  
12 necessary or convenient to complete, implement, effectuate and close the sale to the Buyer  
13 pursuant to the terms and conditions of the Purchase Agreement and the order to be entered on the  
14 Motion, including but not limited to authorizing the Receiver to execute the deed conveying title  
15 to the Boulder Mountain Property to the Buyer;

16                   B.       Authorizing the Receiver to permit and/or cause to be paid from the  
17 proceeds of sale of the Boulder Mountain Property all ordinary and customary closing costs, all  
18 costs and expenses required to be paid under the terms of the Purchase Agreement by the seller  
19 from the proceeds of sale, all commissions provided for in the Exclusive Right to Sell Listing  
20 Agreement and the Purchase Agreement attached as Exhibits 1 and 2, respectively, to the  
21 Declaration of M. Val Miller filed in support of the Motion, the balance due under the first deed of  
22 trust encumbering the Boulder Mountain Property in favor of Academy Mortgage as disclosed by  
23 the title policy pertaining to the Boulder Mountain Property, a true and correct copy of which is  
24 attached as Exhibit 3 to the Declaration of M. Val Miller in support of the Motion, and all real  
25 property taxes due up to date of closing;

26                   C.       Authorizing the Receiver to complete the sale of the Boulder Mountain  
27 Property without further notice, order or overbidding under the circumstances, including the  
28 failure of the Buyer to agree to the sale subject to overbidding, the fact the Buyer is a well-

1 qualified, all cash buyer, the fact that the estate is obligated to continue to pay debt service on the  
2 property until it is sold and the proposed purchase price equals the appraised value of the property  
3 such that any additional potential recovery from an overbid is unlikely and would not warrant the  
4 Receiver incurring additional expenses for publication and related administrative expenses;

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

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

18  
19 Dated: February 20, 2014

Respectfully submitted,  
RANDOLPH L. HOWARD  
KOLESAR & LEATHAM, CHTD.  
MCKENNA LONG & ALDRIDGE LLP  
GARY OWEN CARIS  
LESLEY ANNE HAWES

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25 By: /s/ Gary Owen Caris  
Gary Owen Caris  
Lesley Anne Hawes

26  
27 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 including without limitation, the assets of Todd Vowell and Sheree Vowell (the “Vowells”) and  
14 the entity Chateau Circle LLC.

15 The Boulder Mountain Property was nominally titled to Chateau Circle LLC and later  
16 transferred to the name of Sheree Vowell prior to the date the Clarifying Order was entered.  
17 Pursuant to the Court-approved settlement with the Vowells and various entities nominally owned  
18 or managed by Todd Vowell (collectively with the Vowells, the “Todd Vowell Parties”), the Todd  
19 Vowell Parties have waived and relinquished any interest they may have had in the Boulder  
20 Mountain Property and title to the Boulder Mountain Property was transferred to the receivership  
21 estate in connection with the implementation of the Todd Vowell Parties Settlement.

22 Under the Preliminary Injunction Order, the Receiver is directed to maintain and preserve  
23 assets of the receivership estate. Prel. Inj. (Doc. 130), Section XV.E. In the Receiver's motion  
24 seeking approval of the Todd Vowell Parties Settlement, the Receiver also sought and obtained  
25 approval for the Receiver to list and market the Boulder Mountain Property. See Order entered  
26 December 11, 2013, Doc. No. 1303.

27 The Receiver has located a qualified, all cash buyer for the Boulder Mountain Property at a  
28 price equal to the appraised value of the property and higher than the values in two Comparable

1 Market Analyses prepared by two different brokers. The Receiver recommends approval of the  
2 sale without further notice, hearing or overbidding under the circumstances.

3 **A. The Boulder Mountain Property**

4 The Boulder Mountain Property is a five bedroom, three and a half bath single family  
5 residence with approximately 4,728 square feet of gross living area. The residence is located in  
6 the Boulders subdivision of St. George, Utah.

7 The Boulder Mountain Property is encumbered by a first deed of trust in favor of Academy  
8 Mortgage in the original principal amount of \$238,000 placed on the property in 2012. Under the  
9 Todd Vowell Parties Settlement, the Receiver has agreed to continue to make the regular mortgage  
10 payments on the encumbrance and to pay off that mortgage from the proceeds of sale of the  
11 property.

12 After the Court granted the Receiver's motion to approve the Todd Vowell Parties  
13 Settlement and to list and market the Boulder Mountain Property, the Receiver listed the Boulder  
14 Mountain Property with Kirch & Todd Real Estate with James Fales as the listing agent  
15 ("Broker"). The Receiver obtained a formal appraisal which valued the Boulder Mountain  
16 Property as of January 3, 2014 at \$410,000. The appraisal was prepared by Jim Allen of Allen  
17 Appraisal Service, a Certified Appraiser. The Receiver has also obtained two comparable  
18 sale/comparable market analyses of the Boulder Mountain Property, one prepared by an  
19 independent broker, Jesse S. Brown of Utah South Real Estate and one by the Broker, both of  
20 whom are familiar with and experienced in evaluating and marketing residential real estate in the  
21 area and with recent closed sales of comparable properties. The purchase price under the Purchase  
22 Agreement equals the appraised value, and exceeds both of the Comparable Market Analyses  
23 recommended listing prices.

24 The Receiver believes any additional expenditures associated with the sale of the Boulder  
25 Mountain Property for publication and a further, formal overbidding session are unlikely to result  
26 in a higher purchase price, and any increase in the purchase price would likely result in no  
27 additional recovery to the estate when the delays, costs of publication and additional  
28 administrative expenses that would be incurred are taken into account. For these reasons, and

1 based on the price achieved in the proposed sales given the valuations for the property, the  
2 Receiver strongly recommends approval of the Purchase Agreement and the sale without further  
3 notice, hearing or overbidding.

4 **B. Proposed Sale of the Boulder Mountain Property**

5 The Receiver entered into the listing agreement with his real estate broker dated  
6 January 14, 2014. The Receiver originally listed the Boulder Mountain Property for sale at an  
7 asking price of \$399,000. The Receiver obtained an offer from the Buyer with all cash terms in  
8 amount of "\$400,000 firm." The Receiver made a counteroffer to the Buyer at the appraised value  
9 of the property at \$410,000 notwithstanding the Buyer's "firm" position, and the Buyer accepted  
10 the counteroffer. The Purchase Agreement dated January 24, 2014 calls for the sale to close  
11 within seven days after Court approval. The Buyer's contingency/inspection period has passed,  
12 and the Receiver therefore seeks approval of the sale. The Buyer is an arm's length buyer and  
13 unaffiliated with the defendants or Receivership Defendants to the best of the Receiver's  
14 knowledge and belief.

15 The Purchase Agreement does not provide for any overbidding. The Buyer was unwilling  
16 to agree to allow the Receiver to conduct an overbidding session based on the Buyer's purchase  
17 offer at full appraised value with no financing contingency. The Receiver has had no other offers  
18 for the property.

19 **II. THE SALE OF THE BOULDER MOUNTAIN PROPERTY UNDER THE TERMS**  
20 **AND CONDITIONS OF THE PURCHASE AGREEMENT SHOULD BE**  
21 **APPROVED UNDER 28 U.S.C. § 2001 AND RECEIVERSHIP LAW**

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

24 After a hearing, of which notice to all interested parties shall be  
25 given by publication or otherwise as the court directs, the court may  
26 order the sale of such realty or interest therein by private sale for  
27 cash or other consideration and upon such terms and conditions as  
28 the court approves, if it finds that the best interests of the estate will



1 be served thereby.

2 The time, manner, terms of sale and notice thereof are regulated by the court appointing  
3 the receiver. As noted above, courts are granted discretion in setting the terms and conditions for  
4 judicial sales and the Court's discretion will not be disturbed on appeal except where abuse of  
5 discretion is shown. *United States v. Branch Coal Corp.*, 390 F.2d 7 (3<sup>rd</sup> Cir. 1968) *cert. den.* *Sun*  
6 *Protection Co. v. U.S.*, 391 U.S. 966, 88 S.Ct. 2034, 20 L.Ed. 2d 878 (1968). The terms and  
7 conditions of the judicial sale that the Court may adopt are based on the facts and circumstances of  
8 each case. The discretion granted in connection with sales of assets is consistent with the broad  
9 discretion accorded to the Court sitting in equity in receivership proceedings to make orders  
10 concerning the administration and supervision of the estate that will promote equity, efficiency  
11 and cost-effectiveness in the estate's administration. *See generally Securities and Exchange*  
12 *Commission v. Hardy*, 803 F.2d 1034 (9th Cir. 1986); *Securities and Exchange Commission v.*  
13 *Black*, 163 F.3d 188, 199 (3rd Cir. 1998); *Securities and Exchange Commission v. Elliot*, 953 F.2d  
14 1560 (11th Cir. 1992).

15 There are four general components for the approval of a private sale under § 2001(b),  
16 including (1) three appraisals valuing the property, (2) a minimum sale price of two-thirds of the  
17 average value of the three appraisals, (3) publication of notice ten days prior to confirmation, and  
18 (4) a provision that a private sale cannot be confirmed if there is an overbid at least 10 percent  
19 higher than the proposed sale price under the private sale. As set forth above, the Receiver has  
20 obtained an appraisal and two other valuations of the Boulder Mountain Property. Particularly  
21 given the purchase price under the Purchase Agreement, the costs associated with conducting what  
22 the Receiver believes would be a futile overbid session would only reduce the estate's recovery  
23 from this property without the estate obtaining higher or better offers for the property. The  
24 administrative expenses associated with obtaining additional formal appraisals and administering  
25 and publishing notice of an overbid session in addition to the sales commissions, additional  
26 mortgage payment expense, and the accruing real estate taxes would reduce the recovery to the  
27 estate from any overbid, and it is highly unlikely that an overbidder would appear that would be  
28 willing to bid an amount 10% higher than the current offer given the comparable sales, the



1 appraised value and other valuations. The Receiver has attempted to balance various factors,  
2 including the financial and administrative considerations regarding the Boulder Mountain Property  
3 which include payment of the mortgage, the qualifications of the Buyer and terms of sale, and  
4 concluded that the estate should accept the proposed Purchase Agreement. Under the  
5 circumstances, the Receiver recommends approval of the proposed Purchase Agreement as  
6 presented without further notice or further overbidding.

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

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

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

18 There are believed to be an extremely large number of potential consumer creditors who  
19 may have claims against the Receivership Defendants arising out of the business operations of the  
20 Receivership Defendants prior to the Receiver’s appointment, although the precise number,  
21 identity and location of such consumer creditors have not been determined by the Receiver at this  
22 time. Given the Receiver’s determination that more than \$332.5 million<sup>1</sup> in sales revenues were  
23 generated by I Works and the related and affiliated entities, the number of consumer creditors is  
24 likely in the tens of thousands. It is not realistically possible or beneficial to the estate and its  
25 creditors for the Receiver to attempt to identify and serve the potential consumer creditors with  
26 notice of this and other similar administrative motions, and the expense and burden on the estate  
27

28 <sup>1</sup> 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 of attempting to effectuate such service would drain the estate's resources and cause undue  
2 administrative expense.

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

8 There is ample authority for approval of the scope and method of notice as set forth above.  
9 This Court, as a court of equity supervising the receivership estate, may make appropriate  
10 administrative orders governing the receivership, including limitations on and changes in notice  
11 and other procedures. *See* F.R.Civ.P. 5(a) and (c) (authorizing the court to modify service  
12 procedures when numerous defendants are involved in litigation). In addition, as set out above,  
13 pursuant to Local Rule 66-10, a receiver is directed to administer receivership estates "as nearly as  
14 may be in accordance with the practice in the administration of estates in Chapter 11 bankruptcy  
15 cases." Orders limiting notice when the Bankruptcy Code or Rules would otherwise require notice  
16 to all creditors are routinely granted in bankruptcy cases to promote the expeditious and  
17 economical administration of bankruptcy estates. *See In re First Alliance Mortgage Co.*, 269 B.R.  
18 428, 442 (C.D. Cal. 2001) (referencing in dicta in the court's recitation of facts the bankruptcy  
19 court's order limiting notice issued in that case); 11 U.S.C. section 102(1)(A) (defining the phrase  
20 "after notice and a hearing" to mean "after such notice as is appropriate in the particular  
21 circumstances, and such opportunity for hearing as is appropriate in the particular  
22 circumstances"); 11 U.S.C. section 105(a) and (d) (granting broad equitable powers to the court to  
23 issue orders "necessary or appropriate to carry out the provisions" of title 11 including  
24 "prescribing such limitations and conditions as the court deems appropriate to ensure the case is  
25 handled expeditiously and economically"); and F.R. Bankr. P. 2002(m) (authorizing the court to  
26 enter "orders designating the matters in respect to which, the entity to whom, and the form and  
27 manner in which notices shall be sent except as otherwise provided by these rules").  
28

1 **IV. CONCLUSION**

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

4  
5 Dated: February 20, 2014

Respectfully submitted,

6 RANDOLPH L. HOWARD  
7 KOLESAR & LEATHAM, CHTD.

8 MCKENNA LONG & ALDRIDGE LLP  
9 GARY OWEN CARIS  
10 LESLEY ANNE HAWES

11 By: /s/ Gary Owen Caris

Gary Owen Caris

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

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

13 **UNITED STATES DISTRICT COURT**

14 **DISTRICT OF NEVADA**

16 FEDERAL TRADE COMMISSION,

17 Plaintiff,

18 v.

19 JEREMY JOHNSON, etc., et al.,

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

**DECLARATION OF M. VAL MILLER  
IN SUPPORT OF MOTION FOR  
ORDER: (1) APPROVING AND  
CONFIRMING SALE OF 1749  
BOULDER MOUNTAIN ROAD, ST.  
GEORGE, UTAH AND FOR RELATED  
RELIEF; AND (2) GRANTING RELIEF  
FROM LOCAL RULE 66-5  
PERTAINING TO NOTICE TO  
CREDITORS**

1 I, M. Val Miller, declare:

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

10 2. On January 13, 2011, the Receiver was appointed Temporary Receiver over I  
11 Works, Inc. (“I Works”), numerous other Corporate Defendants as defined in the Temporary  
12 Restraining Order and over the assets of defendant Jeremy Johnson (collectively the  
13 “Receivership Defendants”). Pursuant to the Preliminary Injunction Order entered February 10,  
14 2011, the Receiver has been appointed permanent Receiver over the Receivership Defendants.  
15 On March 25, 2013, the Court entered its Order granting the Receiver’s Motion for Order  
16 Clarifying Preliminary Injunction Order and for Further Instructions Regarding Scope of  
17 Receivership Defendants under Preliminary Injunction Order and Report of Receiver’s Financial  
18 Reconstruction and Granting Relief from Local Rule 66-5 Pertaining to Notice to Creditors  
19 (“Clarifying Order”) pursuant to which the Court confirmed the status of numerous entities and  
20 properties as assets of the receivership estate, including the assets of Todd Vowell and Sheree  
21 Vowell (the “Vowells”) and the entity Chateau Circle LLC.

22 3. I am one of the deputies to the Receiver who has been responsible for the  
23 supervision and administration of the receivership estate and for the Receiver’s review,  
24 administration and disposition of various receivership assets since the inception of the case. I  
25 have specifically investigated, reviewed the status and valuations of and supervised the listing and  
26 proposed sale of 1749 Boulder Mountain Road, St. George, Utah (“Boulder Mountain Property”).  
27 The facts set forth in this declaration regarding the Boulder Mountain Property have been  
28 obtained through my investigation and with the assistance of the Receiver's agents, including the

1 Receiver's real estate agent for this proposed transaction, Kirch & Todd Real Estate with James  
2 Fales as the listing agent ("Broker").

3 4. The Boulder Mountain Property was nominally titled to Chateau Circle LLC and  
4 later transferred to the name of Sheree Vowell prior to the date the Clarifying Order was entered.  
5 Pursuant to the Court-approved settlement with the Vowells and various entities nominally owned  
6 or managed by Todd Vowell (collectively with the Vowells, the "Todd Vowell Parties"), the  
7 Todd Vowell Parties have waived and relinquished any interest they may have had in the Boulder  
8 Mountain Property and title to the Boulder Mountain Property was transferred to the receivership  
9 estate in connection with the implementation of the Todd Vowell Parties Settlement. In the  
10 Receiver's motion seeking approval of the Todd Vowell Parties Settlement, the Receiver also  
11 sought and obtained approval for the Receiver to list and market the Boulder Mountain Property.  
12 *See* Order entered December 11, 2013, Doc. No. 1303.

13 5. The Boulder Mountain Property is a five bedroom, three and a half bath single  
14 family residence with approximately 4,728 square feet of gross living area. The residence is  
15 located in the Boulders subdivision of St. George, Utah.

16 6. After the Court granted the Receiver's motion to approve the Todd Vowell Parties  
17 Settlement and to list and market the Boulder Mountain Property, the Receiver listed the Boulder  
18 Mountain Property with Kirch & Todd Real Estate with James Fales as the listing agent  
19 ("Broker"). The Receiver obtained a formal appraisal which valued the Boulder Mountain  
20 Property as of January 3, 2014 at \$410,000. The appraisal was prepared by Jim Allen of Allen  
21 Appraisal Service, a Certified Appraiser. The Receiver has also obtained two comparable  
22 sale/comparable market analyses of the Boulder Mountain Property, one prepared by an  
23 independent broker, Jesse S. Brown of Utah South Real Estate and one by the Broker, both of  
24 whom are familiar with and experienced in evaluating and marketing residential real estate in the  
25 area and with recent closed sales of comparable properties. The purchase price under the  
26 Purchase Agreement equals the appraised value, and exceeds both of the Comparable Market  
27 Analyses recommended listing prices.

28 7. The Receiver entered into the listing agreement with his real estate broker dated

1 January 14, 2014. The Receiver originally listed the Boulder Mountain Property for sale at an  
2 asking price of \$399,000. The Receiver obtained an offer from the Buyer with all cash terms in  
3 amount of "\$400,000 firm." The Receiver made a counteroffer to the Buyer at the appraised  
4 value of the property at \$410,000 notwithstanding the Buyer's "firm" position, and the Buyer  
5 accepted the counteroffer. The Purchase Agreement dated January 24, 2014 calls for the sale to  
6 close within seven days after Court approval. The Buyer's contingency/inspection period has  
7 passed, and the Receiver therefore seeks approval of the sale. The Buyer is an arm's length buyer  
8 and unaffiliated with the defendants or Receivership Defendants to the best of the Receiver's  
9 knowledge and belief.

10 8. The Purchase Agreement does not provide for any overbidding. The Buyer was  
11 unwilling to agree to allow the Receiver to conduct an overbidding session based on the Buyer's  
12 purchase offer at full appraised value with no financing contingency. The Receiver has had no  
13 other offers for the property.

14 9. The Boulder Mountain Property is encumbered by a first deed of trust in favor of  
15 Academy Mortgage in the original principal amount of \$238,000 placed on the property in 2012.  
16 Under the Todd Vowell Parties Settlement, the Receiver has agreed to continue to make the  
17 regular mortgage payments on the encumbrance and to pay off that mortgage from the proceeds  
18 of sale of the property. Pursuant to the Todd Vowell Parties Settlement, Sheree Vowell executed  
19 a warranty deed transferring title to the Boulder Mountain Property to the receivership estate in  
20 conjunction with the implementation of the settlement with the Receiver. The Receiver obtained  
21 a title policy insuring the estate's interest in the Boulder Mountain Property, a true and correct  
22 copy of which is attached hereto as Exhibit 3. The title policy shows the first deed of trust  
23 encumbering the Boulder Mountain Property in favor of Academy Mortgage securing a debt in  
24 the original principal sum of \$238,000.

25 10. The sale under the Purchase Agreement has no further contingencies and provides  
26 for a closing of the sale within seven days after the Court's entry of an order approving the sale.  
27 The Purchase Agreement does not provide for any overbidding. Given the appraised value and  
28 other valuations, the Receiver believes the expenses of conducting an overbid session with



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publication costs and the delay involved, commissions, and other sale expenses, any such overbid session is unlikely to produce any qualified overbidder and any additional net proceeds for the estate.

11. The Receiver believes any additional expenditures associated with the sale of the Boulder Mountain Property for publication and a further, formal overbidding session are unlikely to result in a higher purchase price, and any increase in the purchase price would likely result in no additional recovery to the estate when the delays, costs of publication and additional administrative expenses that would be incurred are taken into account. For these reasons, and based on the price achieved in the proposed sales given the valuations for the property, the Receiver strongly recommends approval of the Purchase Agreement and the sale without further notice, hearing or overbidding.

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

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed this 20<sup>th</sup> day of February 2014 at Las Vegas, Nevada.

  
M. VAL MILLER