

**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) Authorizing, Approving and Confirming Sale of Two Sod Parcels in Hurricane, Utah, Approving 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**

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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 TWO TURF SOD PARCELS IN
HURRICANE, UTAH, APPROVING
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**

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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 two parcels of real property located on Turf Sod Road in Hurricane, Utah consisting of
6 an approximate 5.11 acre parcel, Assessor’s Tax Id. No. H-4-2-10-223 and an approximate 19.9
7 acre parcel, Assessor’s Tax Id No. H-4-2-10-222 (“Two Turf Sod Parcels”) and authorizing and
8 confirming the sale of the Two Turf Sod Parcels on an “as is” basis more fully described in the
9 sale contract documents by private sale either (a) to Christopher Wyler (“Proposed Buyer”), an
10 arm’s length buyer, at a purchase price of \$225,000 pursuant to the Real Estate Purchase Contract
11 dated June 16, 2014, Addendum No. 1 and Counteroffer to Real Estate Purchase Contract dated
12 June 17, 2014, Addendum (As Is) and Additional Terms attachments attached thereto, Addendum
13 No. 2 to Real Estate Purchase Contract dated and accepted as of July 16, 2014, and Addendum
14 No. 3 to Real Estate Purchase Contract dated and accepted as of July 30, 2014, attached
15 collectively as Exhibit 2 to the Declaration of M. Val Miller in support of this Motion
16 (collectively “Proposed Purchase Agreement”), or (b) to such higher qualified overbidder who
17 hereafter submits the highest qualified overbid at a subsequent overbid session to be conducted
18 under the terms and conditions more fully set forth herein and approved by the Court, which sale
19 the Receiver requests be approved and confirmed without further notice, hearing or order. The
20 overbid procedures, terms and conditions for which the Receiver seeks approval include the
21 following:

22 A. The overbid session shall be conducted within 30 days of the date of entry of the
23 order granting this Motion. The overbid session will be conducted at the offices of NAI Utah
24 Southern Region, 243 East St. George Blvd., Suite 200, St. George, Utah 84770;

25 B. The Receiver will cause to be published a notice of the proposed sale of the Two
26 Turf Sod Parcels to a qualified bidder at the overbid session to be conducted under paragraph 1.A.
27 above, which notice shall state the date, time and place of the overbid session, the requirement for
28 pre-qualification by overbidders and the terms and conditions of the overbidding and sale of the

1 property, as described below (“Overbid Notice”). The Receiver will cause the Overbid Notice to
2 be published in The Spectrum newspaper one time at least ten days prior to the scheduled overbid
3 session date. The Spectrum is a daily newspaper of general circulation that covers Southern Utah
4 and specifically Hurricane where the Two Turf Sod Parcels are located.

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

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

24 E. The initial overbid shall be in the amount of \$247,500.00 (an amount that is
25 \$22,500, or 10%, higher than the purchase price under the Proposed Purchase Agreement), and all
26 subsequent overbids shall be in an amount at least \$10,000 higher than the preceding bid.

27 F. Pursuant to the Proposed Purchase Agreement and the Receiver’s listing
28 agreement with Jason Griffith and Meeja McAllister of Brokers Commercial, LLC dba NAI Utah

1 Southern Region ("Broker"), a sales commission in the amount of 6% of the purchase price paid
2 for the Two Turf Sod Parcels by the Proposed Buyer, or if a higher overbid is received and
3 accepted at the overbid session, by the winning overbidder, shall be paid from the proceeds of
4 sale of the Two Turf Sod Parcels at close of escrow and shall be paid to the Broker as listing
5 agent under the listing agreement, or if the winning overbidder is represented by a cooperating
6 broker, shall be divided and paid equally to the Broker as the listing agent and the buyer's
7 cooperating broker, under the terms of the listing agreement.

8 G. The sale of the Two Turf Sod Parcels by private sale to the Proposed Buyer under
9 the Proposed Purchase Agreement, or to the person who submits the highest qualified overbid at
10 the overbid session to be conducted pursuant to the foregoing procedures, will be deemed
11 confirmed by Order on this Motion without further notice or hearing and without the necessity of
12 any subsequent motion for confirmation of the sale;

13 2. An order authorizing the Receiver to execute all documents and instruments
14 necessary or convenient to complete, implement, effectuate and close the sale of the Two Turf
15 Sod Parcels to the purchaser, including but not limited to the deed conveying title to the Two Turf
16 Sod Parcels;

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

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

3 5. An order for such additional relief as may be necessary or appropriate to allow the
4 Receiver to effectuate the sale of the Two Turf Sod Parcels, including but not limited to, entry of
5 an order authorizing such sale in form acceptable to the title company insuring title in connection
6 with the sale of the Two Turf Sod Parcels.

7 This Motion is made pursuant to 28 U.S.C. § 2001 and 2002 and Local Civil Rules 66-5
8 and 66-10 and other applicable law and is based upon this Notice of Motion and Motion, the
9 separate Notice of Filing of the Motion served concurrently herewith, the accompanying
10 Memorandum of Points and Authorities, the Declaration of M. Val Miller filed in support hereof,
11 any reply, on all pleadings, records and files of the Court in this action of which the Receiver
12 requests judicial notice, and upon all other evidence and arguments of counsel as may be
13 presented to the Court by the Receiver in support of this Motion.

14
15 Dated: August 14, 2014

Respectfully submitted,

16 RANDOLPH L. HOWARD
17 KOLESAR & LEATHAM, CHTD.

18 MCKENNA LONG & ALDRIDGE LLP
19 GARY OWEN CARIS
20 LESLEY ANNE HAWES

21 By: /s/ Gary Owen Caris

22 Gary Owen Caris
23 Lesley Anne Hawes

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

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION AND 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
5 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. On March
8 25, 2013, the Court entered its Order granting the Receiver’s Motion for Order Clarifying
9 Preliminary Injunction Order and for Further Instructions Regarding Scope of Receivership
10 Defendants under Preliminary Injunction Order and Report of Receiver’s Financial
11 Reconstruction and Granting Relief from Local Rule 66-5 Pertaining to Notice to Creditors
12 (“Clarifying Order”) pursuant to which the Court confirmed the status of numerous entities and
13 properties as assets of the receivership estate and confirmed the status of various entities as
14 Receivership Defendants.

15 Under the Preliminary Injunction Order, the Receiver is directed to maintain and preserve
16 assets of the receivership estate. Prel. Inj. (Doc. 130), Section XV.E. In order to preserve the
17 value of the assets for the benefit of consumers and creditors, on August 21, 2013, the Receiver
18 filed a motion seeking authorization from the Court to list and market for sale various real
19 properties, including the Two Turf Sod Parcels (Doc. No. 1161), which motion was granted by
20 the Court’s Order entered on September 30, 2013 (Doc. No. 1178).

21 By this Motion, the Receiver seeks approval of a proposed sale of the Two Turf Sod
22 Parcels to an arm’s length third party buyer. The Two Turf Sod Parcels consist of two parcels of
23 adjacent raw land, one parcel approximately 5.11 acres and one parcel approximately 19.9 acres
24 for a total of approximately 25 acres and are unencumbered except for the senior lien for accrued
25 and accruing real property taxes. The Two Turf Sod Parcels are located in Hurricane, Utah and
26 were formerly titled to Kombi Capital LP (“Kombi”), a Todd Vowell entity. Kombi is a
27 Receivership Defendant under the Clarifying Order and its assets are receivership property. In
28 connection with the Receiver’s Court-approved settlement with the Todd Vowell Parties,

1 including Kombi, title to the Two Turf Sod Parcels and other properties was transferred to the
2 receivership estate to be held in the name of the receivership Qualified Settlement Fund ("QSF"),
3 specifically the I Works, Inc. Receivership QSF. A copy of the title policy issued by Meridian
4 Title Company after title to the Two Turf Sod Parcels was transferred to the estate is attached to
5 the supporting Declaration of M. Val Miller as Exhibit 3.¹

6 In October 2013, the Receiver entered into an exclusive right to sell listing agreement and
7 agency disclosure ("Listing Agreement") with Brokers Commercial, LLC dba NAI Utah Southern
8 Region ("Broker"), a true and correct copy of which is attached as Exhibit 1 to the Declaration of
9 M. Val Miller filed in support of this Motion. The Broker is experienced in the sale of
10 undeveloped land in Southern Utah.

11 The Two Turf Sod Parcels were formally listed for sale with an initial asking price of
12 \$61,320 for the 5.11 acre parcel and \$199,000 for the 19.9 acre parcel. The Broker listed the Two
13 Turf Sod Parcels on the Multiple Listing Service, Loopnet, and the NAI Hotsheets which is an
14 internal publication that circulates throughout the various NAI offices. The Two Turf Sod Parcels
15 were advertised on several real estate websites, and there was sale signage posted on the
16 properties and brochures prepared for the properties to give to potential buyers who inquired
17 about the parcels.

18 Access to water and sewer connections are typically important considerations in real
19 property in Utah, particularly undeveloped land. The Two Turf Sod Parcels do not have water
20 rights associated with the properties, and the nearest water and sewer utilities are located
21 approximately 4,000 feet from these parcels. While a septic system can be installed to address
22 the sewer issue, the solution to the water issue for these parcels pending long-term development
23 in the area would be acquiring water shares and drilling a water well, which can be expensive.
24 The lack of water rights associated with the properties proved to be a deterrent to many potential
25 purchasers who made inquiries regarding the parcels but failed to present offers for the properties
26 after obtaining further information regarding the parcels and the water and sewer access.

27 ¹ The title policy, Exhibit 3, also covers a third parcel of raw land in Hurricane, Utah which is not
28 subject to the pending sale and is still being marketed.

1 After approximately six months of marketing efforts, the Receiver lowered the asking
2 price for each property by 5% in April 2014. During the preceding six-month period, the
3 Receiver had obtained no offers at all for the 19.9 acre parcel and only one offer for the smaller
4 parcel alone which the Receiver rejected.

5 After reducing the asking price in April 2014, the Receiver obtained the estate's first offer
6 for both of the parcels. The first offer, however, failed during the contingency period because the
7 City of St. George would not approve the prospective buyer's proposed commercial use of the
8 property on a septic system. The only other offer received for the Two Turf Sod Parcels is the
9 offer from the Proposed Buyer.

10 On June 16, 2014, the Receiver received an all cash offer from Christopher Wyler (the
11 "Proposed Buyer") for \$198,000 without any financing contingency to purchase the Two Turf
12 Sod Parcels. The Receiver made a counteroffer to the Proposed Buyer for a purchase price of
13 \$225,000 on an "as is" basis, and the parties reached agreement for the sale of the Two Turf Sod
14 Parcels pursuant to the Real Estate Purchase Contract dated June 16, 2014, Addendum No. 1 and
15 Counteroffer to Real Estate Purchase Contract dated June 17, 2014, Addendum (As Is) and
16 Additional Terms attachments attached thereto, Addendum No. 2 to Real Estate Purchase
17 Contract dated and accepted as of July 16, 2014, and Addendum No. 3 to Real Estate Purchase
18 Contract dated and accepted as of July 30, 2014, attached collectively as Exhibit 2 to the
19 Declaration of M. Val Miller in support of this Motion (collectively the "Proposed Purchase
20 Agreement").

21 After the Clarifying Order was entered, the Receiver began evaluating the Two Turf Sod
22 Parcels and other real property assets to determine their value and proposed steps in their
23 administration to preserve value for the estate. The Receiver obtained a broker's opinion of value
24 as of June 12, 2013 by the Broker which reviewed available comparable sales of raw land and
25 sales price per acre for those properties. The Broker noted that the lack of culinary water rights
26 associated with the property would affect its value based on the comparable sales data and the
27 cost of obtaining water for the property. The Receiver listed the Two Turf Sod Parcels for sale in
28 October 2013 at a price consistent with the Broker's opinion of value as of June 12, 2013. The

1 Receiver obtained an independent appraisal of the Two Turf Sod Parcels by Christopher Isom of
2 Appraisals of Southcentral Utah, Inc. The October 30, 2013 appraisal valued the two properties
3 as of October 30, 2013 using the sales comparison approach at an amount for the two parcels
4 combined. The Receiver has obtained a third valuation of the Two Turf Sod Parcels by an
5 independent real estate broker, Kirch & Todd Real Estate LLC, which valued the properties as of
6 August 5, 2014. In light of the proposed overbid session with a published notice, the Receiver
7 has not disclosed the amount of these valuations of the property so as not to interfere with the
8 overbid process²; however, the purchase price of \$225,000.00 under the Proposed Purchase
9 Agreement substantially exceeds the minimum threshold for approval of a private sale of two-
10 thirds of the average of three appraisals of the property as required under 28 U.S.C. § 2001.

11 The Receiver seeks to sell the Two Turf Sod Parcels under the Proposed Purchase
12 Agreement to the Buyer, who is an unaffiliated, arm's length purchaser based on the Receiver's
13 investigation, subject to the Receiver's conduct of an overbid session after publication of notice to
14 provide an additional opportunity for interested purchasers to bid for the property. The Proposed
15 Purchase Agreement provides for an "as is," all cash sale with the closing to occur within 20 days
16 of Court approval and provides that the Receiver may seek Court approval of the sale procedures,
17 including overbid procedures, for the sale of the property.

18 The Receiver seeks approval of the Proposed Purchase Agreement and the sale of the Two
19 Turf Sod Parcels to the Proposed Buyer under the terms and conditions set forth therein. The
20 Receiver seeks approval to solicit overbids for the sale of the Two Turf Sod Parcels, as permitted
21 by the Proposed Purchase Agreement, and seeks an order on this Motion that confirms the sale of
22 the Two Turf Sod Parcels to the Proposed Buyer, or such higher qualified overbidder who may
23 make the highest overbid accepted by the Receiver at the overbid session to be conducted under
24 the proposed sale procedures set forth in this Motion. Under the circumstances, including the fact
25 the sale to the Proposed Buyer is non-contingent for an amount that significantly exceeds the
26 minimum two-thirds of the average of the three valuations obtained by the Receiver for the Two

27 ² The Receiver will submit copies of the valuations to the Court for *in camera* inspection if
28 requested by the Court.

1 Turf Sod Parcels, the terms and conditions of the Proposed Purchase Agreement that provide for
2 closing within 20 days, and the Receiver's desire to avoid unnecessary administrative expense
3 through multiple motions to conclude the sale, the Receiver requests that the Court approve the
4 following notice and overbid procedures, terms and conditions:

5 1. The overbid session shall be conducted within 30 days of the date of entry of the
6 order granting this Motion. The overbid session will be conducted at the offices of NAI Utah
7 Southern Region, 243 East St. George Blvd., Suite 200, St. George, Utah 84770;

8 2. The Receiver will cause to be published a notice of the proposed sale of the Two
9 Turf Sod Parcels to a qualified bidder at the overbid session to be conducted pursuant to
10 paragraph 1 above, which notice shall state the date, time and place of the overbid session, the
11 requirement for pre-qualification by overbidders and the terms and conditions of the overbidding
12 and sale of the property, as described below ("Overbid Notice"). The Receiver will cause the
13 Overbid Notice to be published in The Spectrum one time at least ten days prior to the scheduled
14 overbid session. The Spectrum is a daily newspaper of general circulation in the Santa Clara
15 area.³

16 3. Any person wishing to overbid at the overbid session shall be required to pre-
17 qualify with the Receiver no later than 10:00 a.m. two business days preceding the overbid
18 session by delivering to the Receiver's office located at 6037 S. Ft. Apache Road, Suite 130, Las
19 Vegas, Nevada 89148: (a) notice in writing of the prospective overbidder's intent to overbid
20 together with (b) written verification from a financial institution demonstrating to the Receiver's
21 satisfaction, in the Receiver's sole opinion and judgment, the prospective overbidder's ability to
22 complete and close a purchase of the Two Turf Sod Parcels through sufficient funds or credit
23 facilities within 20 days of the date of the overbid session, and (c) a cashier's check in the sum of
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25
26 ³ 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 \$10,000 payable to I Works, Inc. Receivership QSF, which cashier's check shall become non-
2 refundable upon acceptance of the overbidder's overbid at the conclusion of the overbid session.

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

12 5. The initial overbid shall be in the amount of \$247,500 (an amount that is \$22,500,
13 or 10%, higher than the purchase price under the Proposed Purchase Agreement), and all
14 subsequent overbids shall be in an amount at least \$10,000 higher than the preceding bid.

15 6. Pursuant to the Proposed Purchase Agreement and the Receiver's listing
16 agreement with his Broker, a sales commission in the amount of 6% of the purchase price paid for
17 the Two Turf Sod Parcels by the Proposed Buyer, or if a higher overbid is received and accepted
18 at the overbid session, by the winning overbidder, shall be paid from the proceeds of sale of the
19 Two Turf Sod Parcels at close of escrow and shall be paid to the Broker as listing agent under the
20 Listing Agreement and a cooperating broker representing the winning overbidder, if any, under
21 the terms of the Listing Agreement.

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

1 the property so long as they are qualified and meet the same all cash, as-is and twenty-day closing
2 terms of the Proposed Purchase Agreement. The Receiver recommends approval and
3 confirmation of the sale under the terms and conditions set forth in the Motion.

4 **II. THE SALE OF THE TWO TURF SOD PARCELS SHOULD BE APPROVED**
5 **AND CONFIRMED SUBJECT TO OVERBIDDING AS REQUESTED IN THIS**
6 **MOTION**

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

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

27 Under § 2001(b), in order for a sale to be approved, the minimum purchase price for the
28 property must exceed two-thirds of the average value in three appraisals of the property by

1 appraisers appointed by the court. The statute does not define what constitutes an “appraisal” for
2 the purpose of § 2001(b). The Receiver has obtained an appraisal of the Two Turf Sod Parcels
3 and two written broker's valuations, both of which are based on comparable sales data and other
4 market data similar to the appraisal. The Receiver has therefore complied with the valuation
5 evidence provisions of the statute. Further, any minor deviation from the statutory provision as to
6 appointment of three appraisers is warranted under the circumstances for several reasons,
7 including the inordinate expense associated with obtaining additional appraisals which is
8 burdensome to the estate under the circumstances; the fact that the valuations by both the local
9 real estate brokers and the appraiser are based on comparable sales data and the experience and
10 knowledge of the sales agents who actually deal in real estate in the local market and thus are
11 reliable indicators of the actual value likely to be realized from the marketing and sale of the
12 property; and the fact that the Two Turf Sod Parcels have been exposed to the marketplace itself
13 and will continue to be exposed to the public through the proposed overbid process to ensure the
14 value of the property is maximized for the estate. The sale to the Proposed Buyer at \$225,000
15 exceeds the minimum threshold for the price that must be achieved for a private sale in relation to
16 the valuations of the Two Turf Sod Parcels obtained by the Receiver. Therefore, this component
17 of the statute has been satisfied.

18 As the Ninth Circuit noted in *SEC v. Hardy*, 803 F. 2d 1034, 1037 (9th Cir. 1986): “A
19 district court’s power to supervise an equity receivership and to determine the appropriate action
20 to be taken in the administration of the receivership is extremely broad” and subject to review
21 under an abuse of discretion standard. *See also United States v. Branch Coal Corp.*, 390 F. 2d 7.

22 The Receiver’s proposed sale procedures include a provision for publication of a notice of
23 the opportunity for overbids to be made for the Two Turf Sod Parcels which will include a
24 description of the current purchase price and terms, which is cash to the receivership estate and a
25 closing to occur within 20 days after the overbid session concludes. The published notice will
26 also give notice of the terms and conditions for overbids to be made, such as pre-qualification of
27 overbidders. The Receiver proposes to publish the notice once at least ten days prior to the
28 overbid session. The ultimate sale of the Two Turf Sod Parcels will only be confirmed at the

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 Two
4 Turf Sod Parcels to the current Proposed Buyer at \$225,000 or if overbids are made at the overbid
5 session, to the highest bidder at the overbid session. Therefore, if no overbid is made that is 10
6 percent over the current offer of \$225,000 (in other words, a bid of \$247,500 which the Receiver
7 proposes as the initial overbid amount), the sale at \$225,000 to the Proposed Buyer can be
8 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 and on all
20 known non-consumer creditors of the estate and on known taxing authorities with a potential
21 claim in the receivership estate ("Notice Parties"), to provide them notice and an opportunity to
22 be heard concerning the Motion. This notice is consistent with notice previously approved by the
23 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
28

1 time. Given the Receiver's determination that more than \$332.5 million⁴ 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 ⁴ 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: August 14, 2014

RANDOLPH L. HOWARD
KOLESAR & LEATHAM, CHTD.

MCKENNA LONG & ALDRIDGE LLP
GARY OWEN CARIS
LESLEY ANNE HAWES

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17 By: /s/ Gary Owen Caris

Gary Owen Caris

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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 two parcels of real property

1 located on Turf Sod Road in Hurricane, Utah consisting of an approximate 5.11 acre parcel,
2 Assessor's Tax Id. No. H-4-2-10-223 and an approximate 19.9 acre parcel, Assessor's Tax Id No.
3 H-4-2-10-222 ("Two Turf Sod Parcels"). That motion was granted by the Court's Order entered
4 on September 30, 2013. The Two Turf Sod Parcels were formerly titled to Kombi Capital LP
5 ("Kombi"), a Todd Vowell entity. Kombi is a Receivership Defendant under the Clarifying
6 Order and its assets are receivership property. In connection with the Receiver's Court-approved
7 settlement with the Todd Vowell Parties, including Kombi, title to the Two Turf Sod Parcels and
8 other properties was transferred to the receivership estate to be held in the name of the
9 receivership Qualified Settlement Fund ("QSF"), specifically the I Works, Inc. Receivership QSF.

10 4. In October 2013, the Receiver entered into an exclusive right to sell listing
11 agreement and agency disclosure ("Listing Agreement") with Brokers Commercial, LLC dba
12 NAI Utah Southern Region ("Broker"), a true and correct copy of which is attached hereto as
13 Exhibit 1. The Broker is experienced in the sale of undeveloped land in Southern Utah.

14 5. The Two Turf Sod Parcels were formally listed for sale with an initial asking price
15 of \$61,320 for the 5.11 acre parcel and \$199,000 for the 19.9 acre parcel. The Broker listed the
16 Two Turf Sod Parcels on the Multiple Listing Service, Loopnet, and the NAI Hotsheets which is
17 an internal publication that circulates throughout the various NAI offices. The Two Turf Sod
18 Parcels were advertised on several real estate websites, and there was sale signage posted on the
19 properties and brochures prepared for the properties to give to potential buyers who inquired
20 about the parcels.

21 6. Access to water and sewer connections are typically important considerations in
22 real property in Utah, particularly undeveloped land. The Two Turf Sod Parcels do not have
23 water rights associated with the properties, and the nearest water and sewer utilities are located
24 approximately 4,000 feet from these parcels. While a septic system can be installed to address
25 the sewer issue, the solution to the water issue for these parcels pending long-term development
26 in the area would be acquiring water shares and drilling a water well, which can be expensive.

27 7. After approximately six months of marketing efforts, the Receiver lowered the
28 asking price for each property by 5% in April 2014. During the preceding six-month period, the

1 Receiver had obtained no offers at all for the 19.9 acre parcel and only one offer for the smaller
2 parcel only which the Receiver rejected.

3 8. After reducing the asking price in April 2014, the Receiver obtained the estate's
4 first offer for both of the parcels. The first offer, however, failed during the contingency period
5 because the City of St. George would not approve the prospective buyer's proposed commercial
6 use of the property on a septic system. The only other offer received for the Two Turf Sod
7 Parcels is the offer from the Proposed Buyer.

8 9. On June 16, 2014, the Receiver received an all cash offer from Christopher Wyler
9 (the "Proposed Buyer") for \$198,000 without any financing contingency to purchase the Two
10 Turf Sod Parcels. The Receiver made a counteroffer to the Proposed Buyer for a purchase price
11 of \$225,000 on an "as is" basis, and the parties reached agreement for the sale of the Two Turf
12 Sod Parcels pursuant to the Real Estate Purchase Contract dated June 16, 2014, Addendum No. 1
13 and Counteroffer to Real Estate Purchase Contract dated June 17, 2014, Addendum (As Is) and
14 Additional Terms attachments attached thereto, Addendum No. 2 to Real Estate Purchase
15 Contract dated and accepted as of July 16, 2014, and Addendum No. 3 to Real Estate Purchase
16 Contract dated and accepted as of July 30, 2014, true and correct copies of which are attached
17 hereto collectively as Exhibit 2 (collectively the "Proposed Purchase Agreement").

18 10. After the Clarifying Order was entered, the Receiver began evaluating the Two
19 Turf Sod Parcels and other real property assets to determine their value and proposed steps in
20 their administration to preserve value for the estate. I obtained a broker's opinion of value as of
21 June 12, 2013 by the Broker which reviewed available comparable sales of raw land and sales
22 price per acre for those properties. The Broker noted that the lack of culinary water rights
23 associated with the property would affect its value based on the comparable sales data and the
24 cost of obtaining water for the property.

25 11. The Receiver listed the Two Turf Sod Parcels for sale in October 2013 at a price
26 consistent with the Broker's opinion of value as of June 12, 2013. I also obtained an independent
27 appraisal of the Two Turf Sod Parcels by Christopher Isom of Appraisals of Southcentral Utah,
28 Inc. The October 30, 2013 appraisal valued the two properties as of October 30, 2013 using the

1 sales comparison approach at an amount for the two parcels combined. I have recently obtained a
2 third valuation of the Two Turf Sod Parcels by an independent real estate broker, Kirch & Todd
3 Real Estate LLC, which valued the properties as of August 5, 2014. In light of the proposed
4 overbid session with a published notice, the Receiver has not disclosed the amount of these
5 valuations of the property so as not to interfere with the overbid process; however, the purchase
6 price of \$225,000.00 under the Proposed Purchase Agreement exceeds the minimum threshold for
7 approval of a private sale of two-thirds of the average of three appraisals of the property as
8 required under 28 U.S.C. § 2001.

9 12. The Receiver seeks to sell the Two Turf Sod Parcels under the Proposed Purchase
10 Agreement to the Buyer, who is an unaffiliated, arm's length purchaser based on the Receiver's
11 investigation, subject to the Receiver's conduct of an overbid session after publication of notice to
12 provide an additional opportunity for interested purchasers to bid for the property as contemplated
13 by the Proposed Purchase Agreement. The Proposed Purchase Agreement provides for an "as is,"
14 all cash sale with the closing to occur within 20 days of Court approval and provides that the
15 Receiver shall seek Court approval of the sale procedures, including overbid procedure, for the
16 sale of the property. The purchase price of \$225,000.00 under the Proposed Purchase Agreement
17 far exceeds the minimum threshold for approval of a private sale of two-thirds of the average of
18 three appraisals of the property as required under 28 U.S.C. § 2001.

19 13. The Receiver has obtained a title report for the Two Turf Sod Parcels, a true and
20 correct copy of which is attached hereto as Exhibit 3. The title report reflects title in the I Works,
21 Inc. Receivership QSF based on the transfer of title to those properties from Kombi as part of the
22 Todd Vowell Parties Settlement.

23 14. The Receiver seeks an order authorizing and confirming the sale of the Two Turf
24 Sod Parcels on an "as is" basis by private sale either (a) to Christopher Wyler ("Proposed
25 Buyer"), an arm's length buyer unaffiliated with the defendants or the Receivership Defendants to
26 the best of the Receiver's information, knowledge and belief, at the purchase price of \$225,000
27 pursuant to the Proposed Purchase Agreement, or (b) to such higher qualified overbidder who
28 may hereafter submit the highest qualified overbid at a subsequent overbid session to be

1 conducted by the Receiver. The overbid procedures, terms and conditions for which the Receiver
2 seeks approval include the following:

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 NAI Utah
5 Southern Region, 243 East St. George Blvd., Suite 200, St. George, Utah 84770;

6 B. The Receiver will cause to be published a notice of the proposed sale of the Two
7 Turf Sod Parcels to a qualified bidder at the overbid session to be conducted pursuant to
8 paragraph A above, which notice shall state the date, time and place of the overbid session, the
9 requirement for pre-qualification by overbidders and the terms and conditions of the overbidding
10 and sale of the property, as described below ("Overbid Notice"). The Receiver will cause the
11 Overbid Notice to be published in The Spectrum one time at least ten days prior to the scheduled
12 overbid session. The Spectrum is a daily newspaper of general circulation in the Santa Clara
13 area. The Receiver also anticipates that the Broker will provide additional notice of the overbid
14 session through e-mail and/or the internet web sites where the property is listed.

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

25 D. Overbidders bidding at the overbid session will be deemed to have completed all
26 inspections of the Two Turf Sod Parcels and will be deemed to have waived and/or removed all
27 contingencies in favor of the buyer under the Proposed Purchase Agreement, including without
28 limitation any contingency pertaining to inspection of title, and will be required to complete a

1 cash purchase of the Two Turf Sod Parcels and close escrow for the purchase of the Two Turf
2 Sod Parcels within 20 days of the date of the overbid session. The successful overbidder will be
3 required to execute a purchase agreement for the Two Turf Sod Parcels substantially in the form
4 of the Proposed Purchase Agreement together with a waiver of all buyer contingencies promptly
5 after conclusion of the overbid session.

6 E. The initial overbid shall be in the amount of \$247,500.00 (an amount that is
7 \$22,500 higher than the purchase price under the Proposed Purchase Agreement), and all
8 subsequent overbids shall be in an amount at least \$10,000 higher than the preceding bid.

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

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

27 16. The Receiver requests that the Court approve notice of the filing of this Motion as
28 detailed in the Motion and supporting memorandum. The proposed notice is consistent with the

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notice of filing of a number of motions that the Court has previously found to be sufficient in this case.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed this 13 day of August 2014 at Las Vegas, Nevada.


M. VAL MILLER