

**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 Cedar City Land 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 January 28, 2015**

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18 **ROBB EVANS OF ROBB EVANS & ASSOCIATES**  
19 **LLC**

20 **UNITED STATES DISTRICT COURT**  
21 **DISTRICT OF NEVADA**

22 FEDERAL TRADE COMMISSION,  
23  
24 Plaintiff,  
25  
26 v.  
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28 JEREMY JOHNSON, etc., et al.,  
Defendants.

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

**NOTICE OF MOTION AND MOTION  
FOR ORDER (1) AUTHORIZING,  
APPROVING AND CONFIRMING SALE  
OF CEDAR CITY LAND AND FOR  
RELATED RELIEF; AND (2)  
GRANTING RELIEF FROM LOCAL  
RULE 66-5 PERTAINING TO NOTICE  
TO CREDITORS; MEMORANDUM OF  
POINTS AND AUTHORITIES;  
DECLARATION OF M. VAL MILLER  
IN SUPPORT THEREOF**

1 PLEASE TAKE NOTICE that Robb Evans of Robb Evans & Associates LLC  
2 (“Receiver”), the Receiver pursuant to the Court’s Preliminary Injunction Order issued February  
3 10, 2011, hereby moves the Court for the following relief:

4 1. An order authorizing the Receiver to sell the approximate 19.68 acre parcel of  
5 undeveloped land located in Cedar City, County of Iron, Utah (“Cedar City Property”) pursuant  
6 to the Receiver’s Exclusive Listing Agreement and Agency Disclosure, including an Addendum  
7 and Additional Terms with Kirch & Todd Real Estate and James Fales as agent (collectively  
8 “Broker”), as extended by that certain Addendum No. 1 to Exclusive Listing Agreement and  
9 Agency Disclosure dated January 16, 2015 (collectively, the “Listing Agreement”), a true and  
10 correct copy of which is attached as Exhibit 1 to the Declaration of M. Val Miller in support of  
11 this Motion, and to pay a sales commission to the Broker as provided for therein;

12 2. An order approving and confirming the Receiver’s proposed sale of the Cedar City  
13 Property to Greg Gillespie (“Proposed Buyer”) by private sale for the sum of \$40,000.00 pursuant  
14 to the terms of that certain Real Estate Purchase Contract for Land dated as of October 23, 2014  
15 with Addendum No. 1 to Real Estate Purchase Contract and the As-Is Purchase and Additional  
16 Terms (collectively the “Proposed Purchase Agreement”), attached collectively as Exhibit 2 to the  
17 Declaration of M. Val Miller, and without further notice, hearing, order or overbidding based on  
18 the circumstances concerning this property, including the lack of offers for the Cedar City  
19 property after approximately 10 months of marketing efforts, the limited value of the property and  
20 the lack of reasonable likelihood of alternative higher offers being made for the property. In  
21 connection therewith, the Receiver further seeks an order:

22 (a) Authorizing the Receiver to execute all documents and instruments  
23 necessary or convenient to complete, implement, effectuate and close the sale of the Cedar City  
24 Property to the Proposed Buyer, including but not limited to the deed conveying title to the Cedar  
25 City Property and a release and/or reconveyance of the lien of New Horizons Finance, Inc. dba  
26 Horizons Finance reflected in that certain deed of trust dated June 17, 2009 and recorded as Entry  
27 No. 590675 in Book 1168 at Page 9709 of the Official Records of Iron County, Utah on June 19,  
28 2009, based on the Court’s Order Granting Motion for Order Clarifying Preliminary Injunction

1 Order and for Further Instructions Regarding Scope of Receivership Defendants Under  
2 Preliminary Injunction Order and Report of Receiver's Financial Reconstruction and Granting  
3 Relief from Local Rule 66-5 Pertaining to Notice to Creditors After Hearing ("Clarifying Order")  
4 (Doc. No. 897/900) entered March 25, 2013;

5 (b) Authorizing the Receiver to permit and/or cause to be paid from the  
6 proceeds of sale of the Cedar City Property all ordinary and customary closing costs, all costs and  
7 expenses required to be paid under the terms of the Proposed Purchase Agreement by the seller  
8 from the proceeds of sale, all commissions provided for in the Proposed Purchase Agreement and  
9 the Listing Agreement, and prorated real property taxes due up to date of closing; and

10 (c) Authorizing the Receiver to complete the sale of the Cedar City Property  
11 without further notice, order or overbidding under the circumstances, including the absence of  
12 other offers after an extended marketing period and based on the fact that the proposed sale is a  
13 fair market value sale for a purchase price that equals or exceeds the average of the Receiver's  
14 three valuations and is a favorable sale;

15 3. An order deeming notice of this Motion to be sufficient under Local Civil Rule 66-  
16 5 based on the service of a notice of the filing of this Motion and the Motion on all parties and  
17 service of a notice of the filing of the Motion on all known non-consumer creditors of the estate  
18 and on all known taxing authorities with a potential claim in the receivership estate concurrent  
19 with the filing of this Motion with the Court, but not on the tens of thousands of potential  
20 consumer creditors; and

21 4. An order for such additional relief as may be necessary or appropriate to allow the  
22 Receiver to effectuate the sale of the Cedar City Property, including but not limited to, entry of an  
23 order authorizing such sale in form acceptable to the title company insuring title in connection  
24 with the sale of the Cedar City Property.

25 This Motion is made pursuant to 28 U.S.C. § 2001 and Local Civil Rules 66-5 and 66-10  
26 and other applicable law and is based upon this Notice of Motion and Motion, the separate Notice  
27 of Filing of the Motion served concurrently herewith, the accompanying Memorandum of Points  
28 and Authorities, the Declaration of M. Val Miller filed in support hereof, any reply, on all

1 pleadings, records and files of the Court in this action of which the Receiver requests judicial  
2 notice, and upon all other evidence and arguments of counsel as may be presented to the Court by  
3 the Receiver in support of this Motion.  
4

5 Dated: January 28, 2015

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

12 Gary Owen Caris  
13 Lesley Anne Hawes

14 Attorneys for Receiver  
15 **ROBB EVANS OF ROBB EVANS &  
16 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. One of the entities confirmed to be a Receivership Defendant under the  
15 Clarifying Order is New Horizons Finance, Inc. ("New Horizons").

16 Under the Preliminary Injunction Order, the Receiver is directed to maintain and preserve  
17 assets of the receivership estate. Prel. Inj. (Doc. 130), Section XV.E. In order to preserve the  
18 value of the assets for the benefit of consumers and creditors, the Receiver has previously sought  
19 and obtained approval from the Court through multiple motions to list and market for sale various  
20 receivership assets.

21 The property that is the subject of this Motion is an approximate 19.68 acre parcel of  
22 undeveloped land located in Cedar City, County of Iron, Utah ("Cedar City Property"). The  
23 Cedar City Property is zoned for agricultural and residential use and is surrounded by other  
24 parcels of undeveloped land. The Cedar City Property has no water rights associated with it.

25 The Cedar City Property was not taken into the Receiver's custody and control until late  
26 fall 2013 after the Receiver conducted an investigation into the property. The Receiver became  
27 aware at that time that defendant Andy Johnson, defendant Jeremy Johnson's brother and nominal  
28 officer or owner of New Horizons, had transferred title to the Cedar City Property to Ryan

1 Anderson in September 2013 after the Court's issuance of the Clarifying Order and in violation of  
2 that order. Ryan Anderson is the owner of Landtrends, a landscaping company that performed  
3 landscaping services for Jeremy and Sharla Johnson at Jeremy Johnson's residence at 529 South  
4 Woodsvew Circle and a close friend of both defendants Jeremy Johnson and his brother Andy  
5 Johnson. When the Receiver learned of the improper transfer of title to the Cedar City Property,  
6 the Receiver made demand on Andy Johnson to restore title to the Cedar City Property to New  
7 Horizons, which was accomplished in November 2013. The Receiver thereafter listed the Cedar  
8 City Property with Kirch & Todd Real Estate and James Fales as agent (collectively "Broker")<sup>1</sup>  
9 pursuant to the Receiver's Exclusive Listing Agreement and Agency Disclosure, including an  
10 Addendum and Additional Terms which has been extended by that certain Addendum No. 1 to  
11 Exclusive Listing Agreement and Agency Disclosure dated January 16, 2015 (collectively, the  
12 "Listing Agreement"). The Listing Agreement provides for a sales commission of 10% of the  
13 purchase price of the Cedar City Property, which is consistent with commission levels paid for  
14 property of this type and within the estimated value range for the property in the marketplace.

15 Liquidating the Cedar City Property is in the best interests of the receivership estate and  
16 creditors. The Cedar City Property is located approximately seven miles west of Cedar City in a  
17 rural area. Selling the Cedar City Property avoids the estate being subject to the market risks and  
18 fluctuating values, particularly in light of the limited demand for undeveloped land in the area.  
19 Cedar City is a much smaller city than St. George, Utah, roughly two-thirds of the population of  
20 St. George. There are other parcels of vacant land available for sale in the general area of this  
21 property, and records of sales show that vacant land may take many months of marketing before a  
22 buyer is located, as the marketing of this parcel demonstrates.

23  
24 <sup>1</sup> The Cedar City Property was subject to the Receiver's Listing Agreement with the Broker at the  
25 time defendant Jeremy Johnson filed a motion to order the Receiver to replace James Fales as a  
26 real estate agent for the receivership estate based on various allegations of purported misconduct  
27 in his personal life. *See* Motion to Replace Receiver's Agent James Fales (Doc. No. 1403) filed  
28 April 5, 2014. Consistent with the Receiver's response to that motion, the Receiver has not  
employed Fales as a real estate agent for any other new real property sales but maintained his  
status as sales agent for the Cedar City Property as it was listed and being marketed by Fales at  
the time of Johnson's motion.

1 New Horizons was a company formed primarily to make loans to friends and family of  
2 Jeremy Johnson with funds provided from the operations of I Works, Inc. ("I Works") and has no  
3 ongoing business. Records for the lending business of New Horizons turned over to the Receiver  
4 by Andy Johnson after entry of the Clarifying Order were incomplete. New Horizons holds title  
5 to only one other real estate asset, the trailer park in Beaver Dam, Arizona, which is the subject of  
6 a pending sale motion.

7 The Cedar City Property shows that it is encumbered by a deed of trust previously  
8 executed in its favor in the principal sum of \$150,000 by RAL Land Investments Inc. The  
9 Receiver's investigation of the title history of this property and this deed of trust indicate that New  
10 Horizons obtained title to the Cedar City Property through a deed in lieu of foreclosure by the  
11 obligor under the trust deed that provided the deed of trust lien was to remain of record on the  
12 property notwithstanding the deed in lieu. In connection with the sale of the Cedar City Property,  
13 the Receiver will reconvey or release the deed of trust in favor of New Horizons in its capacity as  
14 receiver of New Horizons in order to effectuate the transfer of title to the buyer at closing.

15 The Cedar City Property was listed for sale at an asking price of \$49,000. The Cedar City  
16 Property has been actively marketed for sale since January 2014 through its listing on the  
17 Multiple Listing Service, as well as other real estate websites, Hubzu.com and Realtor.com. The  
18 Broker also contacted other top selling agents for sales of raw land and the Broker's prior clients  
19 who had previously purchased undeveloped land in the area. During the approximate 10-month  
20 period from the date of the Listing Agreement to the date of the offer from the Proposed Buyer,  
21 the Receiver obtained only one other written offer for the property at \$25,000, approximately half  
22 the list price and far less than the current offer. The Receiver rejected that offer, and there has  
23 been little interest in the property from prospective buyers.

24 After approximately ten months, in October 2014, the Receiver obtained an offer to  
25 purchase the Cedar City Property for \$40,000 cash from Greg Gillespie ("Proposed Buyer")  
26 without any financing contingency. The Proposed Buyer is an unaffiliated, arm's length  
27 purchaser based on the Receiver's investigation. The offer has no contingencies. The purchase  
28 agreement, including the Real Estate Purchase Contract for Land dated as of October 23, 2014



1 with Addendum No. 1 to Real Estate Purchase Contract and the As-Is Purchase and Additional  
2 Terms (collectively the "Proposed Purchase Agreement"), is attached collectively as Exhibit 2 to  
3 the Declaration of M. Val Miller in support of this Motion. The Proposed Purchase Agreement  
4 provides for an "as is," all cash sale with the closing to occur within 15 days of Court approval.

5 The Receiver obtained an appraisal of the Cedar City Property valuing the property as of  
6 February 6, 2014 prepared by Chris Carpenter of Carpenter Appraisal in Cedar City, Utah (the  
7 "Carpenter Appraisal"). The Carpenter Appraisal valued the Cedar City Property based on  
8 market data using the sales comparison approach. The Receiver has also obtained two other  
9 valuations of the property, including a broker's opinion of value by the Broker dated as of January  
10 8, 2015 which also valued the property based on market data under the comparable sales  
11 approach. The third valuation of the Cedar City Property was made by Jesse Brown of Stratum  
12 Real Estate Group as of January 22, 2015 and also valued the property using market data under a  
13 comparable sales approach.

14 The proposed sales price for the Cedar City Property equals or exceeds the average of the  
15 three valuations for the property. The purchase price of \$40,000 under the Proposed Purchase  
16 Agreement thus substantially exceeds the minimum threshold for approval of a private sale of  
17 two-thirds of the average of three valuations of the property as required under 28 U.S.C. § 2001.

18 The Receiver requests approval and confirmation of the sale without the conduct of an  
19 overbid session and without further hearing or order. The Court has previously approved the  
20 sales of four other real properties without overbid sessions where the properties had been broadly  
21 exposed to the market, there were limited potential buyers, there was little or no reasonable  
22 likelihood of overbids of at least 10% more than the purchase price being obtained and/or the  
23 value of the property was very modest. *See* Order (Doc. No. 980) entered April 25, 2013  
24 approving sales of a commercial property in Ephraim and raw land in Beryl, Order (Doc. No.  
25 490) approving sale of the Richfield Property and Order (Doc. No. 753) approving sale of a  
26 residential property in Ephraim without further notice, hearing, order or overbidding. The  
27 Receiver believes the cost of publication and related expenses for the conduct of an overbid  
28 session will only reduce the net recovery to the estate with virtually no chance of an overbidder

1 seeking to purchase the property given the exposure of the property to the market over a period  
2 of almost one year as of the filing of this Motion. Taking into account the sales commission and  
3 other costs of sale, the Receiver estimates the net recovery to the estate from the sale to be  
4 approximately \$35,000.

5 The Proposed Purchase Agreement provides a favorable sale of the Cedar City Property to  
6 a qualified, independent all cash buyer on an "as is, where is" basis. The purchase price under the  
7 Proposed Purchase Agreement exceeds the two-thirds minimum of the average of the three  
8 valuations obtained by the Receiver for the property which is the minimum threshold price  
9 required to meet the terms of 28 U.S.C. section 2001. The Receiver recommends approval and  
10 confirmation of the sale under the terms and conditions set forth in the Motion.

11 **II. THE SALE OF THE CEDAR CITY PROPERTY SHOULD BE APPROVED**  
12 **AND CONFIRMED WITHOUT FURTHER NOTICE, HEARING OR**  
13 **OVERBIDDING**

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  
18 and the Court's discretion will not be disturbed on appeal except where abuse of discretion is  
19 shown. *United States v. Branch Coal Corp.*, 390 F. 2d 7 (3<sup>rd</sup> Cir. 1968), *cert. den. Sun Protection*  
20 *Co. v. 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.  
22 *See 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 Cedar City Property and  
10 two written broker's valuations, both of which are based on comparable sales data and other  
11 market data similar that in an 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  
16 real 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 commercial real estate and thus are reliable  
18 indicators of the actual value likely to be realized from the marketing and sale of the property;  
19 and the fact that the Cedar City Property has been exposed to the marketplace itself and will  
20 continue to be exposed to the public through the proposed overbid process to ensure the value of  
21 the property is maximized for the estate. The sale to the Proposed Buyer at \$40,000, exceeds the  
22 minimum threshold for the price that must be achieved for a private sale in relation to the  
23 valuations of the Cedar City Property obtained by the Receiver. Therefore, this component of the  
24 statute has been satisfied.

25 As the Ninth Circuit noted in *SEC v. Hardy*, 803 F. 2d 1034, 1037 (9<sup>th</sup> Cir. 1986): "A  
26 district court's power to supervise an equity receivership and to determine the appropriate action  
27 to be taken in the administration of the receivership is extremely broad" and subject to review  
28 under an abuse of discretion standard. *See also United States v. Branch Coal Corp.*, 390 F. 2d 7.

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

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

9 The terms and conditions of the judicial sale that the Court may adopt are based on the  
10 facts and circumstances of each case. The discretion granted in connection with sales of assets is  
11 consistent with the broad discretion accorded to the Court sitting in equity in receivership  
12 proceedings to make orders concerning the administration and supervision of the estate that will  
13 promote equity, efficiency and cost-effectiveness in the estate's administration. *See generally*  
14 *Securities and Exchange Commission v. Hardy*, 803 F.2d 1034 (9th Cir. 1986); *Securities and*  
15 *Exchange Commission v. Black*, 163 F.3d 188, 199 (3rd Cir. 1998); *Securities and Exchange*  
16 *Commission v. Elliot*, 953 F.2d 1560 (11th Cir. 1992).

17 Despite long-term exposure to the market, no other persons have expressed serious  
18 interest in the Cedar City Property at an amount close to the purchase price under the Proposed  
19 Purchase Agreement, making it a virtual certainty that an overbid at a price higher than the  
20 purchase price would be not received. The property is located in a small city of approximately  
21 30,000 residents with a limited pool of potential buyers and other available parcels of raw land for  
22 sale in the vicinity. The costs and delays associated with conducting what the Receiver believes  
23 would be a futile overbid session would only reduce the estate's recovery from this property with  
24 virtually no likelihood of the estate obtaining a higher or better offer.

25 No other persons have expressed any interest in the Cedar City Property. In fact, the  
26 Cedar City Buyer's offer is the *only* written offer the Receiver received after almost one year on  
27 the market. It is a virtual certainty that no overbid at a price higher than the purchase price would  
28 be received for the Cedar City Property. There are no water rights associated with the Cedar City

1 Property which also limits its value. A prompt approval without overbidding will allow the estate  
2 to make a positive recovery from the sale of the Cedar City Property.

3 The Receiver has caused a copy of this Motion to be posted to the Receiver's website, and  
4 notice of this Motion with the proposed sale terms has been served on all defendants. The  
5 Receiver contends that the sale of the Cedar City Property without publication and further  
6 overbids is warranted under the circumstances, including the expense associated with publishing  
7 notice of the sales or conducting overbid sessions, which would cause additional administrative  
8 and other expense and delay without any reasonable chance that a higher net recovery would be  
9 achieved for the estate given the fact that the Receiver is obtaining fair market value for the Cedar  
10 City Property. If the sale to Proposed Buyer is not approved, there is little chance other sales  
11 could be obtained that would produce a recovery for the estate.

12  
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 million<sup>2</sup> 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 by serving copies of the notice of filing of the  
11 motion on the Notice Parties identified above. The Receiver submits that such service provides  
12 sufficient notice and an opportunity for hearing to the interested parties and should be approved  
13 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 <sup>2</sup> 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: January 28, 2015

RANDOLPH L. HOWARD  
KOLESAR & LEATHAM, CHTD.

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14

MCKENNA LONG & ALDRIDGE LLP  
GARY OWEN CARIS  
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By: */s/ Gary Owen Caris*

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Attorneys for Receiver

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**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 estate, 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. One of the entities confirmed to be a Receivership Defendant under the Clarifying Order is New Horizons Finance, Inc. ("New Horizons"). New Horizons holds title to an



1 approximate 19.68 acre parcel of undeveloped land located in Cedar City, County of Iron, Utah  
2 ("Cedar City Property"). The Cedar City Property is zoned for agricultural and residential use  
3 and is surrounded by other parcels of undeveloped land. The Cedar City Property has no water  
4 rights associated with it.

5 4. The Receiver took custody and control of the Cedar City Property in late fall 2013.  
6 The Receiver became aware at that time that defendant Andy Johnson, defendant Jeremy  
7 Johnson's brother and nominal officer or owner of New Horizons, had transferred title to the  
8 Cedar City Property to Ryan Anderson in September 2013 after the Court's issuance of the  
9 Clarifying Order. Ryan Anderson is the owner of Landtrends, a landscaping company that  
10 performed landscaping services for Jeremy and Sharla Johnson at Jeremy Johnson's residence at  
11 529 South Woodsvie Circle and a close friend of both defendants Jeremy Johnson and his  
12 brother Andy Johnson.

13 5. When the Receiver learned of the improper transfer of title to the Cedar City  
14 Property, the Receiver made demand on Andy Johnson to restore title to the Cedar City Property  
15 to New Horizons, which was accomplished in November 2013. The Receiver thereafter listed the  
16 Cedar City Property with Kirch & Todd Real Estate and James Fales as agent (collectively  
17 "Broker") pursuant to the Receiver's Exclusive Listing Agreement and Agency Disclosure,  
18 including an Addendum and Additional Terms which has been extended by that certain  
19 Addendum No. 1 to Exclusive Listing Agreement and Agency Disclosure dated January 16, 2015  
20 (collectively, the "Listing Agreement"). A true and correct copy of the Listing Agreement is  
21 attached hereto as Exhibit 1. The Listing Agreement provides for a sales commission of 10% of  
22 the purchase price of the Cedar City Property, which is consistent with commission levels paid  
23 for property of this type and within the estimated value range for the property in the marketplace.  
24 The Cedar City Property was listed with the Broker when in April 2014 defendant Jeremy  
25 Johnson filed a motion to order the Receiver to replace James Fales as a real estate agent for the  
26 receivership estate based on various allegations of purported misconduct in his personal life.  
27 Consistent with the Receiver's response to that motion, the Receiver has not employed Fales as a  
28 real estate agent for any other new real property sales but maintained his status as sales agent for

1 the Cedar City Property as it was listed and being marketed by Fales at the time of Johnson's  
2 motion.

3 6. The Cedar City Property is located approximately seven miles west of Cedar City  
4 in a rural area. The Receiver believes selling the Cedar City Property is in the best interests of the  
5 receivership estate for several reasons. Selling the property avoids the estate being subject to the  
6 market risks and fluctuating values, particularly in light of the limited demand for undeveloped  
7 land in the area. Cedar City is a much smaller city than St. George, Utah, roughly two-thirds of  
8 the population of St. George. There are other parcels of vacant land available for sale in the  
9 general area of this property, and records of sales show that vacant land may take many months of  
10 marketing before a buyer is located, as the marketing of this parcel demonstrates.

11 7. In addition, New Horizons was a company formed primarily to make loans to  
12 friends and family of Jeremy Johnson with funds provided from the operations of I Works, Inc.  
13 ("I Works") and has no ongoing business. Records for the lending business of New Horizons  
14 turned over to the Receiver by Andy Johnson after entry of the Clarifying Order were incomplete.  
15 New Horizons holds title to only one other real estate asset, the trailer park in Beaver Dam,  
16 Arizona, which is the subject of a pending sale motion.

17 8. The Cedar City Property shows that it is encumbered by a deed of trust previously  
18 executed in its favor in the principal sum of \$150,000 by RAL Land Investments Inc. A true and  
19 correct copy of the Receiver's updated title report for the Cedar City Property is attached hereto as  
20 Exhibit 3. The Receiver's investigation of the title history of this property and this deed of trust  
21 indicate that New Horizons obtained title to the Cedar City Property through a deed in lieu of  
22 foreclosure by the obligor under the trust deed that provided the deed of trust lien was to remain  
23 of record on the property notwithstanding the deed in lieu. In connection with the sale of the  
24 Cedar City Property, the Receiver will reconvey or release the deed of trust in favor of New  
25 Horizons in its capacity as receiver of New Horizons in order to effectuate the transfer of title to  
26 the buyer at closing.

27 9. I have supervised and monitored the attempts to sell the Cedar City Property for  
28 the Receiver. The Cedar City Property was listed for sale at an asking price of \$49,000. The

1 Cedar City Property has been actively marketed for sale since January 2014 through its listing on  
2 the Multiple Listing Service, as well as other real estate websites, Hubzu.com and Realtor.com.  
3 The Broker also contacted other top selling agents for sales of raw land and the Broker's prior  
4 clients who had previously purchased undeveloped land in the area. During the approximate 10-  
5 month period from the date of the Listing Agreement to the date of the offer from the Proposed  
6 Buyer, the Receiver obtained only one other written offer for the property at \$25,000,  
7 approximately half the list price and far less than the current offer. The Receiver rejected that  
8 offer, and there has been little interest in the property from prospective buyers.

9 10. After approximately ten months, in October 2014, the Receiver obtained an offer  
10 to purchase the Cedar City Property for \$40,000 cash from Greg Gillespie ("Proposed Buyer")  
11 without any financing contingency. The Proposed Buyer is an unaffiliated, arm's length  
12 purchaser based on the Receiver's investigation. The offer has no contingencies. The purchase  
13 agreement, including the Real Estate Purchase Contract for Land dated as of October 23, 2014  
14 with Addendum No. 1 to Real Estate Purchase Contract and the As-Is Purchase and Additional  
15 Terms (collectively the "Proposed Purchase Agreement"), is attached hereto collectively as  
16 Exhibit 2. The Proposed Purchase Agreement provides for an "as is," all cash sale with the  
17 closing to occur within 15 days of Court approval.

18 11. I obtained and reviewed an appraisal of the Cedar City Property valuing the  
19 property as of February 6, 2014 prepared by Chris Carpenter of Carpenter Appraisal in Cedar  
20 City, Utah (the "Carpenter Appraisal"). The Carpenter Appraisal valued the Cedar City Property  
21 based on market data using the sales comparison approach. I have also obtained and reviewed  
22 two other valuations of the property, including a broker's opinion of value by the Broker dated as  
23 of January 8, 2015 which also valued the property based on market data under the comparable  
24 sales approach. The third valuation of the Cedar City Property was made by Jesse Brown of  
25 Stratum Real Estate Group as of January 22, 2015 and also valued the property using market data  
26 under a comparable sales approach. The proposed sales price for the Cedar City Property equals  
27 or exceeds the average of the three valuations for the property, and the purchase price of \$40,000  
28 under the Proposed Purchase Agreement substantially exceeds the minimum threshold for

1 approval of a private sale of two-thirds of the average of three valuations of the property as  
2 required under 28 U.S.C. § 2001.

3 12. The Receiver requests approval and confirmation of the sale without the conduct  
4 of an overbid session and without further hearing or order. The Court has previously approved  
5 the sales of four other real properties without overbid sessions where the properties had been  
6 broadly exposed to the market, there were limited potential buyers, there was little or no  
7 reasonable likelihood of overbids of at least 10% more than the purchase price being obtained  
8 and/or the value of the property was very modest, including (a) a commercial property in  
9 Ephraim, Utah, (b) raw land in Beryl, Utah, (c) the sale of a commercial property in Richfield,  
10 Utah, and (d) the sale of a residential property in Ephraim. The Receiver believes the cost of  
11 publication and related expenses for the conduct of an overbid session will only reduce the net  
12 recovery to the estate with virtually no chance of an overbidder seeking to purchase the property  
13 given the exposure of the property to the market over a period of almost one year as of the filing  
14 of this Motion. Taking into account the sales commission and other costs of sale, the Receiver  
15 estimates the net recovery to the estate from the sale of the Cedar City Property under the  
16 Proposed Purchase Agreement to be approximately \$35,000.

17 13. The Proposed Purchase Agreement provides a favorable sale of the Cedar City  
18 Property to a qualified, independent all cash buyer on an "as is, where is" basis. The Receiver  
19 recommends approval and confirmation of the sale under the terms and conditions set forth in the  
20 Motion.

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

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I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed this 27 day of January 2015 at Sun Valley, California.

  
M. VAL MILLER