

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

**Receiver of I Works, Inc., et al. and
the Assets of Jeremy Johnson**

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

Notice of Motion and Motion for Order:

- (1) Approving and Confirming Sale of 3 Acre Parcel in Hurricane, Utah Without Further Notice or Overbidding 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 August 5, 2016

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

16 FEDERAL TRADE COMMISSION,
 17 Plaintiff,
 18 v.
 19 JEREMY JOHNSON, individually, as officer
 of Defendants I Works, Inc., etc., et al.,
 20 Defendants.
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Case No. 2:10-CV-02203-MMD-GWF

**NOTICE OF MOTION AND MOTION
 FOR ORDER (1) APPROVING AND
 CONFIRMING SALE OF 3 ACRE
 PARCEL IN HURRICANE, UTAH
 WITHOUT FURTHER NOTICE OR
 OVERBIDDING AND FOR RELATED
 RELIEF; AND (2) GRANTING RELIEF
 FROM LOCAL RULE 66-5 PERTAINING
 TO NOTICE TO CREDITORS;
 MEMORANDUM OF POINTS AND
 AUTHORITIES AND 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 enter into that certain Right of Way Contract
5 (“UDOT Contract”) between the Receiver and the Utah Department of Transportation (“Utah
6 DOT”) attached as Exhibit 2 to the Declaration of M. Val Miller in support of this Motion and
7 pursuant thereto, to sell and transfer to the Utah DOT that certain approximate 3-acre parcel of
8 undeveloped land located in the Elim Valley area of Hurricane, Washington County, Utah (“3
9 Acre Property”) more fully described in Exhibit 1 to the UDOT Contract, in exchange for a cash
10 payment to the receivership estate of \$75,000.00, with the 3 Acre Property sold and transferred “as
11 is, where is, with all faults,” and without representations or warranties of any kind or nature as
12 more fully set forth in the UDOT Contract, and without further notice, hearing, order or
13 overbidding, and in connection therewith:

14 (a) Authorizing the Receiver to execute all documents and instruments necessary or
15 convenient to complete, implement, effectuate and close the sale of the 3 Acre Property to UDOT
16 pursuant to the terms of the UDOT Contract, including but not limited to a special warranty deed
17 conveying title to the 3 Acre Property;

18 (b) Authorizing the Receiver to permit and/or cause to be paid from the proceeds of
19 sale of the 3 Acre Property any ordinary and customary closing costs and expenses required to be
20 paid under the terms of the UDOT Contract by the grantor from the proceeds of sale, all sales
21 commissions owing in connection with the sale of the 3 Acre Property, including specifically a
22 sales commission of 6% of the gross sales price pursuant to the Exclusive Listing Agreement &
23 Agency Disclosure between the Receiver and Brokers Commercial, LLC dba NAI Utah Southern
24 Region ("Broker") dated May 15, 2015 as extended by the Listing Agreement Addendum/Change
25 Form dated April 19, 2015 (collectively “Listing Agreement”) attached as Exhibit 1 to the
26 Declaration of M. Val Miller in support of this Motion, and all real property tax liens outstanding
27 and prorated real property taxes due up to the date of closing;

1 (c) Authorizing the Receiver to complete the sale of the 3 Acre Property without
2 further notice, hearing, order or overbidding in that 3 Acre Property is landlocked without
3 easements or other access to roads, the 3 Acre Property has been marketed and listed for sale by
4 the Receiver for over two and one-half years without any buyers or interest in the property other
5 than the Utah DOT, and in that the UDOT Contract provides for a sale price that equals or exceeds
6 appraised valuations of the property;

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

13 3. An order for such additional relief as may be necessary or appropriate to allow the
14 Receiver to effectuate the sale of the 3 Acre Property, including but not limited to entry of an
15 order granting this Motion and authorizing the sale of the 3 Acre Property in form acceptable to
16 the title company insuring title in connection with the sale of the foregoing property.

17 This Motion is made pursuant to 28 U.S.C. § 2001(b) and Local Civil Rules 7-2 and 66-5
18 and other applicable law and is based upon this notice of motion and motion, the separate notice of
19 filing of the Motion served concurrently herewith, the accompanying memorandum of points and
20 authorities and the Declaration of M. Val Miller filed in support hereof, any reply, and upon all
21 other pleadings and documentary evidence as may be presented to the Court by the Receiver.

22 Dated: August 5, 2016

DIAMOND McCARTHY LLP

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By: /s/ Gary Owen Caris
GARY OWEN CARIS
LESLEY ANNE HAWES
Attorneys for Receiver
**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 Order
5 and over the assets of defendant Jeremy Johnson (collectively the “Receivership Defendants”).
6 Pursuant to the Preliminary Injunction Order entered February 10, 2011, the Receiver has been
7 appointed permanent Receiver over the Receivership Defendants. On March 25, 2013, on motion
8 of the Receiver, the Court entered its Order Granting Motion for Order Clarifying Preliminary
9 Injunction Order and for Further Instructions Regarding Scope of Receivership Defendants under
10 Preliminary Injunction Order and Report of Receiver’s Financial Reconstruction and Granting
11 Relief from Local Rule 66-5 Pertaining to Notice to Creditors (“Clarifying Order”) pursuant to
12 which the Court confirmed the status of numerous entities and properties as assets of the
13 receivership estate and confirmed the status of various entities as Receivership Defendants. One
14 of the entities confirmed to be an entity subject to the receivership estate under the Clarifying
15 Order was Kombi Capital, L.P. (“Kombi”).

16 The Receiver’s Administration of the 3 Acre Property

17 Under the Preliminary Injunction Order, the Receiver is directed to maintain and preserve assets of
18 the receivership estate. Prel. Inj. (Doc. 130), Section XV.E. In order to preserve the value of the
19 assets for the benefit of consumers and creditors, on August 21, 2013, the Receiver filed a motion
20 seeking authorization from the Court to list and market for sale various real properties, including
21 three parcels of raw, undeveloped land in Hurricane, County of Washington, Utah. In August
22 2013, the Receiver filed a motion for authorization to list and market for sale various real property
23 assets that were part of the receivership based on the Clarifying Order (Doc. No. 1161), which
24 motion was granted by the Court's Order entered on September 30, 2013 (Doc. No. 1178) (“Sale
25 Authorization Order”). A year later, in August 2014, the Receiver sought and obtained approval
26 from the Court to sell two of the parcels, referred to as the Two Turf Sod parcels, which had total
27 acreage of approximately 19.9 acres, leaving the remaining parcel referred to herein as the 3 Acre
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1 Property unsold.

2 The 3 Acre Property is a landlocked parcel surrounded largely by other vacant land. There
3 are no utilities to the site, and the nearest utility service is approximately one-half mile from the
4 property. The 3 Acre Property has no associated water rights for the property. In October 2013,
5 the Receiver obtained an independent appraisal of the 3 Acre Property by Christopher Isom of
6 Appraisals of Southcentral Utah, Inc. which valued the 3 Acre Property at \$35,000, citing
7 numerous issues with the property including those noted above, the real estate market at the time
8 and the lack of any recent sales of undeveloped land near the site. The property nevertheless had
9 an assessed value of \$120,000, and the Receiver listed the 3 Acre Property for sale initially at
10 \$135,000 in October 2013. In the summer of 2014, the Receiver was able to locate a buyer for the
11 Two Turf Sod parcels, but that buyer was not interested in also acquiring the 3 Acre Property.
12 The Receiver periodically lowered the asking price for the 3 Acre Property, and the Receiver has
13 been actively marketing this property for sale for an extended period over more than two years
14 without any serious interest from buyers other than the Utah DOT.

15 In May 2015, the Receiver entered into the Exclusive Listing Agreement & Agency
16 Disclosure with Brokers Commercial, LLC dba NAI Utah Southern Region ("Broker") and in
17 April 2016, the Receiver extended the listing pursuant to the Listing Agreement
18 Addendum/Change Form (collectively the "Listing Agreement"), true and correct copies of which
19 are attached collectively as Exhibit 1 to the Declaration of M. Val Miller filed in support of this
20 Motion. The Broker is experienced in the sale of undeveloped land in Southern Utah.

21 By this Motion, the Receiver seeks approval of a proposed sale of the 3 Acre Property to
22 the Utah DOT. Kombi, which previously held title to the 3 Acre Property, was nominally a Todd
23 Vowell entity. In connection with the Receiver's Court-approved settlement with the Todd Vowell
24 Parties, including Kombi, title to the 3 Acre Property was transferred to the receivership estate to
25 be held in the name of a receivership Qualified Settlement Fund ("QSF"), specifically the I Works,
26 Inc. Receivership QSF. A copy of a current title policy concerning the 3 Acre Property is attached
27 to the supporting Declaration of M. Val Miller as Exhibit 3.
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1 Proposed UDOT Contract

2 After more than two years of marketing efforts with no offers or expressions of interest
3 from any buyers at all, the Receiver began negotiating for the sale of the 3 Acre Property with the
4 Utah DOT. The Utah DOT had previously purchased undeveloped land from the receivership
5 estate in 2012. After weeks of negotiation, the Receiver entered into a Right-of-Way Purchase
6 Contract with the Utah DOT dated June 30, 2016 (the "UDOT Contract"). The UDOT Contract
7 provides for a cash sale of the 3 Acre Property for \$75,000. That price is the same as the valuation
8 of the property under the independent appraisal of the property conducted for the Utah DOT
9 valuing the property at \$75,000 as of April 15, 2016.

10 The sale of the 3 Acre Property to the Utah DOT represents a very favorable disposition of
11 this asset under the circumstances. The proposed sale price represents fair market value for the
12 property based on the current independent appraisal obtained by the Utah DOT. The Receiver is
13 convinced that the proposed sale represents the highest conceivable price that might be achieved
14 for the property and that it is a virtual certainty that the property could not be sold for a higher
15 price to a third party at this time, given the years of unsuccessful marketing efforts. The Receiver
16 strongly recommends approval of the proposed UDOT Contract without any further notice,
17 overbidding or order given the relatively modest value of the property, the long-term marketing
18 efforts to sell the property and the lack of interest in the property by buyers other than the Utah
19 DOT.

20 **II. THE UDOT CONTRACT AND THE SALE OF THE 3 ACRE PROPERTY**
21 **SHOULD BE APPROVED WITHOUT FURTHER NOTICE, HEARING OR**
22 **OVERBIDDING UNDER THE CIRCUMSTANCES**

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

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

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

22 There are four general components for the approval of a private sale under § 2001(b),
23 including (1) three appraisals to value the property, (2) a minimum sale price of two-thirds of the
24 average value of the three appraisals, (3) publication of notice ten days prior to confirmation, and
25 (4) a provision that a private sale cannot be confirmed if there is an overbid at least 10 percent
26 higher than the proposed sale price under the private sale. The Receiver submits that Court
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1 approval of this sale is appropriate without strict adherence to the four components of section
2 2001(b) in light of the circumstances of the 3 Acre Property and the proposed sale.

3 The 3 Acre Property is a relatively small property with modest value. The estate has
4 diligently marketed the property for well over two years with virtually no interest being shown by
5 buyers. The Utah DOT has been the only entity that has expressed any interest in acquiring the
6 property, and it has agreed to pay the fair market value of the property based on the Utah DOT
7 independent appraisal from April 2016. That appraised value is more than two times the value at
8 which the property was valued under the Receiver's October 2013 appraisal. The Receiver has no
9 reason to believe that publishing notice and conducting an overbid session would produce any
10 other interested buyers, and certainly not for an amount above appraised value, making any
11 overbid or further notice or hearing a waste of estate resources that will only diminish the estate's
12 recovery. The Receiver therefore strongly recommends that the Court approve the proposed sale
13 of the 3 Acre Property under the UDOT Contract.

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

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

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

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

15 There is ample authority for approval of the scope and method of notice as set forth above.
16 This Court, as a court of equity supervising the receivership estate, may make appropriate
17 administrative orders governing the receivership, including limitations on and changes in notice
18 and other procedures. *See* F.R.Civ.P. 5(a) and (c) (authorizing the court to modify service
19 procedures when numerous defendants are involved in litigation). In addition, pursuant to Local
20 Rule 66-10, a receiver is directed to administer receivership estates "as nearly as may be in
21 accordance with the practice in the administration of estates in Chapter 11 bankruptcy cases."
22 Orders limiting notice when the Bankruptcy Code or Rules would otherwise require notice to all
23 creditors are routinely granted in bankruptcy cases to promote the expeditious and economical
24 administration of bankruptcy estates. *See In re First Alliance Mortgage Co.*, 269 B.R. 428, 442
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26 ¹ This figure does not include tens of millions of dollars in additional sales revenues addressed by
27 the Receiver in the Report of Receiver's Financial Reconstruction filed on February 3, 2012.
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1 (C.D. Cal. 2001) (referencing in dicta in the court's recitation of facts the bankruptcy court's
2 orderlimiting notice issued in that case); 11 U.S.C. section 102(1)(A) (defining the phrase "after
3 notice and a hearing" to mean "after such notice as is appropriate in the particular circumstances,
4 and such opportunity for hearing as is appropriate in the particular circumstances"); 11 U.S.C.
5 section 105(a) and (d) (granting broad equitable powers to the court to issue orders "necessary or
6 appropriate to carry out the provisions" of title 11 including "prescribing such limitations and
7 conditions as the court deems appropriate to ensure the case is handled expeditiously and
8 economically"); and F.R. Bankr. P. 2002(m) (authorizing the court to enter "orders designating the
9 matters in respect to which, the entity to whom, and the form and manner in which notices shall be
10 sent except as otherwise provided by these rules").

11 **IV. CONCLUSION**

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

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15 Dated: August 5, 2016

DIAMOND McCARTHY LLP

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17 By: /s/ Gary Owen Caris
18 GARY OWEN CARIS
19 LESLEY ANNE HAWES
20 Attorneys for Receiver
21 ROBB EVANS OF ROBB EVANS &
22 ASSOCIATES LLC
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DECLARATION OF M. VAL MILLER

I, M. Val Miller, declare:

1. I am a member and Executive Vice President 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 that certain Order Granting 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. One of the entities confirmed to be an entity subject to the receivership estate under the Clarifying Order was Kombi Capital, L.P. ("Kombi").

3. 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 the deputy to the Receiver who has been primarily responsible for supervising the marketing and sale of the three

1 parcels of undeveloped land located in Hurricane, Utah that were formerly titled to Kombi, two of
2 which (the "Two Turf Sod parcels") were previously sold with Court approval and the third being
3 an approximate 3-acre parcel that is the subject of this Motion (the "3 Acre Property").

4 4. After the Clarifying Order was entered, the Receiver sought and obtained approval
5 by the Court to list and market for sale various properties titled to Kombi and other entities that
6 were subject to the Clarifying Order which were determined to be subject to the receivership
7 pursuant to the Court's Order entered on September 30, 2013 (the "Sale Authorization Order").
8 Pursuant to the Sale Authorization Order, the Receiver engaged a real estate broker and began
9 marketing the 3 Acre Property for sale through the multiple listing service and advertising on other
10 internet sites on October 15, 2013. The 3 Acre Property has been listed for sale more or less
11 continuously on the multiple listing service since that time and was advertised on internet sites
12 periodically for approximately two and a half years prior to the Receiver entering into the
13 proposed agreement for the sale of the property to the Utah Department of Transportation ("Utah
14 DOT").

15 5. Prior to listing the 3 Acre Property for sale, the Receiver obtained an appraisal of
16 the 3 Acre Property by Christopher Isom of Appraisals of Southcentral Utah, Inc. as of October
17 30, 2013 which valued the property at only \$35,000. The tax assessor's assessed value of the 3
18 Acre Property is \$120,000. Based on the tax-assessed value and on recommendation from its
19 Broker, the Receiver listed the property for sale for \$135,000. The asking price has periodically
20 been reduced since that time.

21 6. In May 2015, the Receiver entered into an Exclusive Listing Agreement & Agency
22 Disclosure dated May 15, 2015 with NAI Utah Southern Region as broker ("Broker"), and with
23 Jason Griffith as agent ("Agent"), which provides for a sales commission of 6% of the sales price.
24 The Receiver continued to list the 3 Acre Property through the Broker and Agent after the initial
25 listing expired in September 2015, and the Receiver formally extended the listing by the Listing
26 Agreement Addendum/Change Form dated April 19, 2016. True and correct copies of the
27 Exclusive Listing Agreement as extended by the Listing Agreement Addendum are attached
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1 hereto collectively as Exhibit 1. In April 2016, the Utah DOT obtained a lengthy formal appraisal
2 of the 3 Acre Property which valued the property at \$75,000 and which provided the basis for the
3 purchase price in its offer to acquire the 3 Acre Property. That appraisal was performed by an
4 independent appraiser, Eric J. Van Drimmelen, MAI. That appraised value is more than twice the
5 value of the property under the Receiver's October 2013 appraisal.

6 7. In the approximate time of two and half years the 3 Acre Property was listed and
7 marketed for sale, the Receiver obtained no offers for the property and no expressions of interest
8 in the property other than from the Utah DOT. In June 2016, the Receiver entered into that certain
9 Right-of-Way Purchase Contract with the Utah DOT dated as of June 30, 2016 for the sale of the 3
10 Acre Property to the Utah DOT for \$75,000 cash (the "UDOT Contract"). A true and correct copy
11 of the UDOT Contract is attached hereto as Exhibit 2. The UDOT Contract and sale of the 3 Acre
12 Property are subject to approval of the Court.

13 8. The Receiver seeks Court approval to sell the 3 Acre Property to Utah DOT
14 pursuant to the UDOT Contract by private sale for the amount of \$75,000.00. The sale of the 3
15 Acre Property to Utah DOT is "as is, where is, with all faults," and without representations or
16 warranties of any kind or nature as more fully set forth in the UDOT Contract and without further
17 notice, hearing, order or overbidding. The purchase price of \$75,000 under the UDOT Contract
18 equals its appraised value under the Utah DOT appraisal and is more than two times the amount of
19 the appraised value of the property under the Receiver's prior appraisal. The proposed sale price
20 will be paid in cash, and the Receiver expects the sale to close promptly after it is approved.

21 9. The Receiver has a current title report for the 3 Acre Property, a true and correct
22 copy of which is attached hereto as Exhibit 3. The 3 Acre Property is unencumbered other than by
23 the lien for accruing real property taxes.

24 10. The Receiver believes the sale price equals or exceeds the fair market value for the
25 3 Acre Property. The 3 Acre Property is raw, undeveloped land in Hurricane. It is landlocked and
26 does not have utility service. The nearest utility service is approximately one-half mile from the
27 property. The 3 Acre Property has no associated water rights for the property. Most important,
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1 the Receiver has diligently attempted to market and sell the 3 Acre Property for well over two
2 years without interested buyers coming forth, other than the Utah DOT. The Receiver believes the
3 sale of the property to the Utah DOT is in the best interests of the estate and provides for a
4 disposition of the property for its fair market value based on the Utah DOT appraisal. The
5 Receiver does not believe any overbidding or publication of notice of the sale is likely to result in
6 any other buyer coming forward, particularly one who would offer to pay more than the purchase
7 price in the UDOT Contract, based on the marketing history of the property and the Utah DOT
8 appraisal. The Receiver therefore strongly recommends approval of the UDOT Contract and sale
9 without further notice, hearing or overbidding.

10 I declare under penalty of perjury that the foregoing is true and correct and that this
11 declaration was executed this 1st day of August 2016 at Las Vegas, Nevada.

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13 M. VAL MILLER
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