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**UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION**

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UNITED STATES OF AMERICA,

Plaintiff,

v.

RAPOWER-3, LLC; INTERNATIONAL  
AUTOMATED SYSTEMS, INC.; LTB1,  
LLC; R. GREGORY SHEPARD; NELDON  
JOHNSON; and ROGER FREEBORN,

Defendants.

**RECEIVER’S *EX PARTE* MOTION AND  
MEMORANDUM IN SUPPORT OF  
ORDER APPROVING METHOD AND  
FORM OF PUBLICATION NOTICE OF  
SALE OF REAL PROPERTY (PAYSON,  
UTAH HOME)**

Civil No. 2:15-cv-00828-DN

District Judge David Nuffer

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Pursuant to 28 U.S.C. §§ 2001(b) and the *Corrected Receivership Order* (“Receivership Order”),<sup>1</sup> Court-Appointed Receiver R. Wayne Klein (the “Receiver”) hereby files this motion (the “Motion”) requesting that the Court enter the proposed Order attached hereto as **Exhibit A**, approving the method and form of publication notice for the sale of certain real property as more specifically described below.

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<sup>1</sup>[Docket No. 491](#), filed November 1, 2018.

## **I. FACTUAL BACKGROUND**

1. On October 31, 2018, the Receivership Estate was created with the entry of the Receivership Order.<sup>2</sup> Pursuant to the Receivership Order, the Receiver was appointed, and all of the Receivership Defendants' assets were placed in the Receiver's control.<sup>3</sup>

2. Since his appointment, the Receiver has identified numerous real properties as being part of the Receivership Estate, and where appropriate has listed such properties for sale.

3. Relevant to the present Motion is a home located at 11404 South 5825 West, Payson, Utah (the "Property"), which property was turned over to the Receiver by Glenda Johnson as a result of the Turnover Order.<sup>4</sup>

4. The Receiver has marketed the Property for private sale through a third-party agent, and he has received offers to purchase the Property. Contemporaneously herewith, the Receiver is filing a Motion seeking this Court's authorization of the sale of the Property which sets forth why such sale is appropriate under applicable law.

5. The Receivership Order provides that the Court may require that the proposed sale of real property satisfy 28 U.S.C. § 2001.<sup>5</sup> The present Motion is meant to facilitate compliance with § 2001 and the Receivership Order.

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<sup>2</sup>[Docket No. 490](#). The Corrected Receivership Order was filed on November 1, 2018. *See* [Docket No. 491](#).

<sup>3</sup>See generally, *id.* On May 3, 2019, the Receivership Estate was expanded to include 13 affiliated entities. *See* [Docket No. 636](#).

<sup>4</sup>Docket No. 1007, filed September 15, 2020.

<sup>5</sup>Corrected Receivership Order ¶ 56.

## II. APPLICABLE LAW

6. Section 2001(b) of title 28 of the United States Code permits, with Court approval, a private sale of receivership property, but it conditions such sale on, among other things, publishing notice of the sale and the Court holding a hearing to approve the sale after publication of the notice.

7. Section 2001(b) states, in relevant part, that: “Before confirmation of any private sale, the terms thereof shall be published in such newspaper or newspapers of general circulation as the court directs at least ten days before confirmation.”<sup>6</sup>

## III. REQUESTED RELIEF

8. To comply with the requirement of publication notice set forth in 28 U.S.C. § 2001(b), the Receiver seeks approval of the method and form of publication notice of the proposed sale of the Property described above.

9. As to the Payson home, the Receiver proposes that the following notice be published in *The Daily Herald*, a newspaper published in Utah County, Utah, for a period of one (1) day at least ten (10) days before the entry of any Order approving the proposed sale:

R. Wayne Klein, the court-appointed receiver (“Receiver”) for RaPower-3, LLC, International Automated Systems, Inc., and LTB1, LLC, as well as certain of their subsidiaries and affiliates, and the assets of Neldon Johnson and R. Gregory Shepard, in the civil case (“Case”) styled *United States v. RaPower-3, LLC*, No. 2:15-cv-00828-DN (D. Utah) gives notice of his intent to sell through private sale, and free of all liens and interests, certain real property located at 11404 South 5825 West, Payson, UT 84651 (the “Property”). The Receiver has accepted a cash offer of \$950,000, subject to approval by the U.S. District Court in the Case and higher and better offers as allowed pursuant to 28 U.S.C. § 2001. The Receiver has filed a motion seeking the District Court’s approval of the proposed sale. This motion for approval will come for a hearing before the Honorable David Nuffer at 351

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<sup>6</sup>28 U.S.C. § 2001(b).

South West Temple, Salt Lake City, Utah on \_\_\_\_\_, 2021 at \_\_:\_\_ in Room \_\_\_\_ [*or via virtual means at \_\_\_\_\_*]. Any person objecting to the sale or wishing to submit a higher and better purchase offer, with such offer being at least 10% greater than the offer the Receiver has accepted, should present it in writing so that it is received no later than 10 days from the date of this notice to the Receiver's attorney Michael S. Lehr, Parr Brown Gee & Loveless, 101 S. 200 E., Ste. 700, Salt Lake City, Utah 84111, mlehr@parrbrown.com.

#### **IV. CONCLUSION**

Accordingly, for the reasons set forth herein, the Receiver requests that the Court approve the publication notice proposed herein and grant the proposed Order attached hereto as **Exhibit**

**A.**

DATED this 11th day of December 2020.

**PARR BROWN GEE & LOVELESS**

*/s/ Jeffery A. Balls*

Jonathan O. Hafen

Jeffery A. Balls

Michael S. Lehr

*Attorneys for Receiver*

**CERTIFICATE OF SERVICE**

IT IS HEREBY CERTIFIED that service of the foregoing was electronically filed with the Clerk of the Court through the CM/ECF system on December 11th, 2020, which sent notice of the electronic filing to all counsel of record.

*/s/ Jeffery A. Balls* \_\_\_\_\_