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Attorneys for Court-Appointed Receiver R. Wayne Klein

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

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

Defendants.

**RECEIVER’S MOTION FOR COURT
TO APPOINT APPRAISER FOR
MILLARD COUNTY PROPERTIES
OF INTERNATIONAL AUTOMATED
SYSTEMS, INC.**

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

District Judge David Nuffer

R. Wayne Klein, the Court-Appointed Receiver (the “Receiver”) for RaPower-3, LLC (“RaPower”), International Automated Systems, Inc. (“IAS”), and LTBI, LLC (“LTBI”), as well as certain of their subsidiaries and affiliates and the assets of Neldon Johnson and R. Gregory Shepard (collectively “Receivership Defendants” or “Defendants”), by and through his counsel of record, hereby submits this motion (the “Motion”), requesting that the Court appoint Thomas V. Boyer (“Boyer”) of TVB Management Company as an appraiser for the following real

property of the receivership estate located in Millard County, Utah (the “Millard Properties of IAS”):

- (1) Millard County parcel number HD-4609;¹
- (2) Millard County parcel number HD-4612;²
- (3) Millard County parcel number HD-4654;³
- (4) Millard County parcel number HD-4657;⁴
- (5) Millard County parcel number HD-4658-1.⁵

The Receiver requests an order confirming the appointment of Boyer as required by 28 U.S.C. § 2001 to assist the Court and Receiver in valuing the Millard Properties of IAS for potential sale.

A proposed Order is attached hereto as Exhibit A.

MEMORANDUM

I. The Receivership Order

1. On November 1, 2018, the Court entered the Corrected Receivership Order, Docket No. 491 (the “Order”). Pursuant to this Order, the Receiver was appointed and all of Defendants’ assets were placed in the Receiver’s control.⁶

2. The Order lists various real property in which Defendants—or a spouse or affiliated entity—have a beneficial interest, including the Millard Properties of IAS.⁷

3. The Millard Properties of IAS are assets of IAS alone.

¹ See Docket No. 491 at ¶ 19(q) for legal description.

² Id. at ¶ 20(r) for legal description.

³ Id. at ¶ 20(t) for legal description.

⁴ Id. at ¶ 20(u) for legal description.

⁵ Id. at ¶ 20(w) for legal description.

⁶ See generally, id.

⁷ Id. at ¶ 20.

4. The Court has directed and authorized the Receiver to, among other things, to do the following:

- “[D]etermine the nature, location and value of all property interests of each of the Receivership Defendants”⁸
- “To take custody, control, and possession of all Receivership Property and records”⁹
- “To manage, control, operate, and maintain the Receivership Property and hold in his possession, custody, and control all Receivership Property, pending further order of this Court.”¹⁰
- “[T]o take immediate possession of all real property of the Receivership Defendants”¹¹
- “[L]ocate, list for sale or lease, engage a broker to sell or lease, cause the sale or lease, and take all necessary and reasonable actions to cause the sale or lease of all real property in the receivership estate, either at public or private sale, on terms and in the manner the Receiver deems most beneficial to the receivership estate and with due regard to the realization of the true and proper value of such real property.”¹²
- “[S]ell and transfer clear title to all real property in the receivership estate,” upon order of the Court “in accordance with such procedures as may be required by this Court and additional authority, such as 28 U.S.C. §§ 2001 and 2002.”¹³

II. Appointment of Appraiser

5. Pursuant to 28 U.S.C. § 2001(b), prior to confirmation of any private sale of real property, this Court shall appoint three disinterested persons to appraise such property.

⁸ *Id.* at 7 ¶ 13(a).

⁹ *Id.* at 7 ¶ 13(b).

¹⁰ *Id.* at 7 ¶ 13(c).

¹¹ *Id.* at 12 ¶ 20.

¹² *Id.* at 32 ¶ 55.

¹³ *Id.* at 33 ¶ 56.

6. To comply with this statutory provision and the Court's instructions, the Receiver has obtained a bid from Thomas V. Boyer ("Boyer") of TVB Management Company to appraise the Millard Properties of IAS for a flat rate of \$8,500.¹⁴

7. Boyer is an experienced appraiser. Attached hereto as Exhibit C is a true and correct copy of information pertaining to Boyer's qualifications and his Utah Certified General Appraisal license.

8. Boyer is also a disinterested appraiser. If appointed, as part of his appraisal, Boyer will sign an Appraiser's Certification affirming that he is not biased, has not based his appraisal on a predetermined value, and has no present or prospective interest in the Millard Properties of IAS.

9. Boyer's appraisal will assist the Receiver in appropriately marketing the Millard Properties of IAS. Therefore, if this Motion is granted, the Receiver will notify Boyer of his appointment by the Court.

CONCLUSION

Accordingly, for the reasons set forth herein, the Receiver requests that the Court grant this Motion and enter the Order attached hereto as Exhibit A.

DATED this 21st day of March, 2019.

PARR BROWN GEE & LOVELESS, P.C.

/s/ Michael S. Lehr

Jonathan O. Hafen

Michael S. Lehr

Attorneys for R. Wayne Klein, Receiver

¹⁴ See Exhibit B.

CERTIFICATE OF SERVICE

I hereby certify that the above **RECEIVER'S MOTION FOR COURT TO APPOINT APPRAISER FOR MILLARD COUNTY PROPERTIES OF INTERNATIONAL AUTOMATED SYSTEMS, INC.** was filed with the Court on this 21st day of March, 2019, and served via ECF on all parties who have requested notice in this case.

I also certify that, on the same date, by U.S. Mail, first-class, postage pre-paid, I caused to be served the same documents upon the following persons:

Neldon Johnson
2730 W 4000 South, Oasis, UT 84624

R. Gregory Shepard
858 Clover Meadow Dr., Murray, Utah 84123

Pro se Defendants

/s/ Michael S. Lehr
