

Jonathan O. Hafen (6096) (jhafen@parrbrown.com)  
Jeffrey A. Balls (12437) (jballs@parrbrown.com)  
Michael S. Lehr (16496) (mlehr@parrbrown.com)  
**PARR BROWN GEE & LOVELESS, P.C.**  
101 South 200 East, Suite 700  
Salt Lake City, Utah 84111  
Telephone: (801) 532-7840  
Facsimile: (801) 532-7750

*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 APPRAISERS FOR ELK  
RIDGE, UTAH PROPERTY**

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 Michael Nyman (“Nyman”) of Lakeshore Appraisals, Kevin Cloward (“Cloward”) of KC Appraisals,

Inc., and Matt McKell (“McKell”) of McKell, Beeton & Winn as appraisers for real property of the receivership estate located at 87 Sky Hawk Way, Elk Ridge, Utah 84651 (the “Elk Ridge Property”).

The Receiver requests an order confirming the appointment of Nyman, Cloward, and McKell as required by 28 U.S.C. § 2001 to assist the Court and Receiver in valuing the Elk Ridge Property for a proposed 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.<sup>1</sup>

2. The Order lists various real property in which Defendants—or a spouse or affiliated entity—have a beneficial interest, including the Texas Property.<sup>2</sup>

3. The Elk Ridge Property is now an asset of IAS, having been acquired by foreclosure based on an unpaid promissory note owed to IAS by Blain and Lisa Phillips.<sup>3</sup>

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

- “[D]etermine the nature, location and value of all property interests of each of the Receivership Defendants . . . .”<sup>4</sup>
- “[T]ake custody, control, and possession of all Receivership Property and records . . . .”<sup>5</sup>

---

<sup>1</sup> See generally, Order, [Docket No. 491](#).

<sup>2</sup> *Id.* at ¶ 20.

<sup>3</sup> See Receiver’s Fifth Status Report, [Docket No. 852](#) at 7, filed January 30, 2020; see also Receiver’s Fourth Status Report, [Docket No. 794](#) at 13, filed November 5, 2019.

<sup>4</sup> Order at 7 ¶ 13(a).

<sup>5</sup> *Id.* at 7 ¶ 13(b).

- “[M]anage, control, operate, and maintain the Receivership Property and hold in his possession, custody, and control all Receivership Property, pending further order of this Court.”<sup>6</sup>
- “[T]ake immediate possession of all real property of the Receivership Defendants . . . .”<sup>7</sup>
- “[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.”<sup>8</sup>
- “[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.”<sup>9</sup>

## II. Appointment of Appraiser

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

6. To comply with this statutory provision and the Court’s instructions, the Receiver has obtained a bid from Nyman for a flat rate of \$425, a price of \$500 from Cloward, and a price of \$450 from McKell to appraise the Elk Ridge Property.

7. Nyman, Cloward, and McKell are all experienced appraisers. Attached hereto as Exhibit B are true and correct copies of information describing their qualifications.

---

<sup>6</sup> *Id.* at 7 ¶ 13(c).

<sup>7</sup> *Id.* at 12 ¶ 20.

<sup>8</sup> *Id.* at 32 ¶ 55.

<sup>9</sup> *Id.* at 33 ¶ 56.

8. Nyman, Cloward, and McKell are disinterested appraisers. If appointed, as part of their appraisals, they will each 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 Elk Ridge Property.

9. The Receiver expects to receive interest on the Elk Ridge Property as soon as it is listed for public sale. These appraisals will assist the Receiver in knowing whether to recommend an offer to the Court and will assist the Court in evaluating the appropriateness of any sale recommended by the Receiver. If this Motion is granted, the Receiver will notify Nyman, Cloward, and McKell of their 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 27<sup>th</sup> day of March, 2020.

**PARR BROWN GEE & LOVELESS, P.C.**

*/s/ Michael S. Lehr* \_\_\_\_\_

Jonathan O. Hafen

Jeffrey A. Balls

Michael S. Lehr

*Attorneys for R. Wayne Klein, Receiver*

**CERTIFICATE OF SERVICE**

I hereby certify that the above **RECEIVER'S MOTION FOR COURT TO APPOINT APPRAISERS FOR ELK RIDGE, UTAH PROPERTY** was filed with the Court on this 27th day of March, 2020, and served via ECF on all parties who have requested notice in this case.

*/s/ Michael S. Lehr*