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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 MOTION FOR COURT  
TO APPOINT APPRAISERS FOR  
FOURTEEN PROPERTIES IN  
MILLARD COUNTY, UT; UTAH  
COUNTY, UT; AND LOS ANGELES  
COUNTY, CA**

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

District Judge David Nuffer

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R. Wayne Klein, the Court-Appointed Receiver (the “Receiver”) for RaPower-3, LLC (“RaPower”), International Automated Systems, Inc. (“IAS”), and LTB1, LLC (“LTB1”), 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 appraisers for properties located in Millard County, UT, Utah County, UT, and Los Angeles County, CA.

### **BACKGROUND, PROPERTIES TO BE APPRAISED**

On April 23, 2020, the Court indicated an intent<sup>1</sup> to grant the Receiver's Motion for Order Directing Turnover and Transfer of Real Properties Titled in the Name of Glenda Johnson and Funds in Accounts Controlled by Glenda Johnson ("Turnover Motion").<sup>2</sup> The Receiver is preparing a proposed order for the Court's review.

In anticipation that the Court will sign an order transferring the 14 properties identified in the Turnover Motion to the Receiver, the Receiver wants to be prepared to begin marketing those properties as soon as he has control over them. Accordingly, the Receiver is seeking this advance appointment by the Court of the recommended appraisers. The Receiver will have the appraisers commence their inspections after the Receiver has control over the properties.

The properties to be appraised are:

#### **Millard County Properties**

There are 11 properties in Millard County, Utah that are the subject of the Turnover Motion ("Millard County Properties"). Eight of these are primarily agricultural properties. One of the properties is a warehouse and two are residences. Several are part of groups of related property parcels. The Receiver proposes having a single appraiser appraise these properties.<sup>3</sup> The 11 Millard County Properties are:

- Tax parcel numbers 4805, 4806-A, and 4806-B, having 1,120 acres of agricultural land;
- Tax parcel number DO-4568-1, a warehouse and 3.46 acres of land;

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<sup>1</sup> Docket Text Order, Docket No. 916, filed April 23, 2020.

<sup>2</sup> The Receiver's Turnover Motion is [Docket No. 757](#), filed August 30, 2019.

<sup>3</sup> In doing so, these properties will need to be sold at a "public sale" under 28 U.S.C. § 2001(a) or two additional appraisals will need to be obtained before seeking approval of a private sale.

- Tax parcel number DO-SS-136&137, a residential home in Delta;
- Tax parcel numbers HD-3511 and HD-3511-1, 640 acres of agricultural land and outbuildings;
- Tax parcel numbers HD-4606-2 and HD-4606-2-1, 72.5 acres of land that includes a residence;<sup>4</sup>
- Tax parcel number HD-4648, 80 acres of agricultural land; and
- Tax parcel number MA-2662-B, 360 acres of agricultural land.

### **Utah County Properties**

There are two properties in Utah County, Utah that are included in the Turnover Motion (“Utah County Properties”): a condominium in Payson, Utah, and a large home in West Mountain, Utah situated on 5.25 acres. The Receiver seeks approval to appoint three residential appraisers for these properties.

### **Los Angeles County Property**

A condominium in Newhall, California is included in the Turnover Motion (“California Condominium”). The Receiver seeks appointment of three appraisers for this property.

The Receiver requests an order confirming the appointment of these seven appraisers as required by 28 U.S.C. § 2001, to assist the Court and Receiver in valuing the Millard County Properties, the Utah County Properties, and the California Condominium for proposed sale. A proposed Order is attached hereto as Exhibit A.

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<sup>4</sup> The Receiver believes Glenda Johnson is not collecting rent on this residence. The Receiver does not know if it is occupied.

## MEMORANDUM

### I. The Receivership Order

1. Pursuant to the Corrected Receivership Order,<sup>5</sup> the Receiver was appointed and all of Defendants' assets were placed in the Receiver's control.<sup>6</sup>
2. The CRO lists various real property in which Defendants—or a spouse or affiliated entity—have a beneficial interest, including the Millard County Property, the Utah County Property, and the California Condominium.<sup>7</sup>
3. The Court has directed and authorized the Receiver to, among other things:
  - a. “[D]etermine the nature, location and value of all property interests of each of the Receivership Defendants . . . .”<sup>8</sup>
  - b. “[T]ake custody, control, and possession of all Receivership Property and records . . . .”<sup>9</sup>
  - c. “[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>10</sup>
  - d. “[T]ake immediate possession of all real property of the Receivership Defendants . . . .”<sup>11</sup>
  - e. “[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>12</sup>

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<sup>5</sup> Corrected Receivership Order (“CRO”), [Docket No. 491](#), filed November 1, 2018.

<sup>6</sup> See generally, *id.*

<sup>7</sup> *Id.* at ¶ 20.

<sup>8</sup> *Id.* at 7 ¶ 13(a).

<sup>9</sup> *Id.* at 7 ¶ 13(b).

<sup>10</sup> *Id.* at 7 ¶ 13(c).

<sup>11</sup> *Id.* at 12 ¶ 20.

<sup>12</sup> *Id.* at 32 ¶ 55.

- f. “[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>13</sup>

## II. Appointment of Appraisers

4. 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. While public sales of property, under 28 U.S.C. § 2001(a) do not require appraisals, the sales are subject to Court approval and the Receiver intends to obtain at least one appraisal of each property before recommending a public sale.

5. To comply with this statutory provision and the Court’s instructions in the Corrected Receivership Order, the Receiver asks the Court to appoint Thomas V. Boyer of TVB Management Company to appraise the 11 Millard County Properties. Boyer has submitted a bid of \$10,000 to perform the appraisals. Boyer is an experienced appraiser for this type of property. Boyer’s appraisal will include the valuation of water rights associated with the properties. The Court previously appointed Boyer to appraise five IAS-owned properties in Millard County.<sup>14</sup> Attached hereto as Exhibit B is a copy of information describing Boyer’s qualifications.

6. Because the Receiver believes it is in the best interest of the Receivership Estate to sell the Utah County Properties pursuant to 28 U.S.C. § 2001(b), the Receiver asks the Court to appoint three appraisers for the two Utah County Properties: Cory Larsen of CGL Appraisals, Vern Meyer of Accurity, and Michael Nyman of Lakeshore

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<sup>13</sup> *Id.* at 33 ¶ 56.

<sup>14</sup> [Docket No. 607](#), filed April 9, 2019.

Appraisals. They are all experienced appraisers. The Court previously approved the appointment of Michael Nyman as an appraiser for the Elk Ridge property being marketed by the Receiver.<sup>15</sup> Vern Meyer lives in close proximity to the West Mountain home. After discussion with Mr. Meyer, the Receiver believes there is no conflict that should prevent him from providing an unbiased appraisal report. Attached hereto as Exhibit C are copies of information describing the qualifications of these proposed appraisers. The rates they have agreed to charge are listed in the table below.

<b>Appraiser</b>	<b>Payson Condo</b>	<b>West Mtn. Home</b>
Cory Larsen	\$450.00	\$650.00
Vern Meyer	\$600.00	\$750.00
Michael Nyman	\$400.00	\$750.00

7. Because the Receiver believes it is in the best interest of the Receivership Estate to sell the California Condominium pursuant to 28 U.S.C. § 2001(b), the Receiver asks the Court to appoint three appraisers for the California Condominium: Anthony Barrett, of SCV Appraisal Service (who will charge \$425), Jose Cubas, of JP Cubas Appraisal Services (who will charge \$500), and Paul Biddle (who will charge \$375). All three are experienced appraisers in the geographic area where the California Condominium is located. Attached hereto as Exhibit D are copies of information describing the qualifications of these proposed appraisers.

8. All seven appraisers recommended by the Receiver 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

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<sup>15</sup> See [Docket No. 921](#), filed May 5, 2020.

predetermined value, and has no present or prospective interest in the properties being appraised.

9. The Receiver has previously received expressions of interest in purchasing some of these properties. These appraisals will assist the Receiver in knowing what price to set when listing the properties for sale and evaluating offers he expects to receive. If this Motion is granted, the Receiver will notify the recommended appraisers of their appointments 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 13th day of May, 2020.

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

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

Jonathan O. Hafen

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 FOURTEEN PROPERTIES IN MILLARD COUNTY, UT; UTAH COUNTY, UT; AND LOS ANGELES COUNTY, CA** was filed with the Court on this 13th day of May, 2020, and served via ECF on all parties who have requested notice in this case.

*/s/ Michael S. Lehr*

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