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

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 (ELK RIDGE, UTAH
HOME)**

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

District Judge David Nuffer

Pursuant to 28 U.S.C. §§ 2001(a) and 2002 and the *Corrected Receivership Order* (“Receivership Order”),¹ Court-Appointed Receiver R. Wayne Klein (the “Receiver”) hereby files this *ex parte* 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.

¹[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 Order.² Pursuant to the Receivership Order, the Receiver was appointed, and all of the Receivership Defendants' assets were placed in the Receiver's control.³

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 87 West Skyhawk Way, Elk Ridge, Utah, which property was obtained by the Receiver through foreclosure proceedings) (the "Property").

4. The Receiver has marketed the Property for private sale through a third-party agent, and he has received an offer 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 together with a Declaration by the Receiver in support of the Motion.

5. The Receivership Order provides that the Court may require that the proposed sale of real property satisfy 28 U.S.C. § 2001.⁴ The present Motion is meant to facilitate compliance with § 2001 and the Receivership Order.

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

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

⁴Corrected Receivership Order ¶ 56.

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.

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.”⁵

REQUESTED RELIEF

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

9. As to Elk Ridge 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 87 West Skyhawk Way, Elk Ridge, UT 84651 (the “Property”). The Receiver has accepted a cash offer of \$429,000, 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. Any person objecting to the sale or wishing to submit a higher and better purchase offer,

⁵28 U.S.C. § 2001(b).

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.

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 22nd day of July 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 July 22, 2020, which sent notice of the electronic filing to all counsel of record.

/s/ Wendy V. Tuckett