

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.; LTB1,
LLC; R. GREGORY SHEPARD; NELDON
JOHNSON; and ROGER FREEBORN,

Defendants.

**RECEIVER’S MOTION REQUESTING
ORDER APPROVING (1) PUBLIC SALE
OF PROPERTIES AND GRANT OF
PURCHASE OPTION, FREE AND
CLEAR OF INTERESTS, (2) METHOD
AND FORM OF PUBLICATION
NOTICE, AND (3) PUBLIC AUCTION
PROCEDURES**

**(Millard County Properties: HD-3511 (600
Acres), HD-3511-1 (40 Acres), and MA-
2662-B (360 Acres))**

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

District Judge David Nuffer
Magistrate Judge Daphne A. Oberg

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 motion (“Motion”) requesting that the Court authorize him to sell at public auction

¹ [Docket No. 491](#), filed November 1, 2018.

certain real property of the Receivership Estate. A proposed order (“Sale Order”) is submitted herewith and attached hereto as Exhibit A.

This proposed property disposition is unusual. Unlike other properties the Receiver has sold in the past, the Receiver seeks approval to grant a purchase option to the buyer, giving the buyer up to four years to decide whether to exercise the option and purchase the property. In the interim, the buyer will make annual option payments to the Receiver. The Receiver is proposing to provide public notice of the terms of the intended option and purchase agreement and conduct an auction to allow other bidders to indicate an interest in paying a higher price for the property—either pursuant to an outright purchase of the property or an option purchase agreement.

I. FACTUAL BACKGROUND

1. On October 31, 2018, the Receivership Estate was created with the entry of the Receivership 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. The Court has directed and authorized the Receiver to do, among other things, the following:

- “[D]etermine the nature, location and value of all property interests of each of the Receivership Defendants”⁴
- “To take custody, control and possession of all Receivership Property and records. . . .”⁵

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

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

⁴ [Docket No.491](#) at ¶ 13(a).

⁵ *Id.* at ¶ 13(b).

- “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.”⁶
- [T]o take immediate possession of all real property of the Receivership Defendants”⁷
- “[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.”⁸
- “[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.”⁹

II. REAL PROPERTY FOR WHICH PURCHASE OPTION IS PROPOSED

Description of Property

3. The Receivership Order identifies and makes numerous real properties owned by Receivership Defendants part of the Receivership Estate.¹⁰ The Turnover Order¹¹ brought additional real properties into the Receivership Estate, including the three properties subject to the instant Motion.¹²

4. Relevant to this Motion are three unimproved parcels of real property located in Millard County, Utah, recently transferred into the Receivership Estate by Glenda Johnson:

⁶ *Id.* at ¶ 13(c).

⁷ *Id.* at ¶ 20.

⁸ *Id.* at ¶ 55.

⁹ *Id.* at ¶ 56.

¹⁰ *Id.* at ¶ 20.

¹¹ *Memorandum Decision and Order Granting Turnover Motion; Denying Motion to Strike; Overruling Objection to Authentication of Exhibits; and Overruling Objection to Rejection of Reputed Contract*, Docket No. 1007, filed September 15, 2020.

¹² *Id.* at 47-48.

a. A 600-acre parcel ("3511 Property"), identified by parcel number HD-3511, and also described as follows:

Section 16, Township 16 South, Range 8 West, Salt Lake Base and Meridian.

Less: Beginning at the Southwest Corner of Section 16, Thence North 1320 Feet; Thence East 1320 Feet; Thence South 1320 Feet; Thence West 1320 Feet to the Point of Beginning.

Subject to a 30 Foot Easement Around the Perimeter of Said Property. (HD-3511)¹³

b. A 40-acre parcel ("3511-1 Property"), identified by parcel number HD-3511-1, and also described as follows:

Beginning at the Southwest Corner of Section 16, Township 16 South, Range 8 West, Salt Lake Base and Meridian; Thence North 1320 Feet; Thence East 1320 Feet; Thence South 1320 Feet; Thence West 1320 Feet to the Point of Beginning. (HD-3511-1)¹⁴

c. A 360-acre parcel ("2662 Property"), identified by parcel number MA-2662-B, and also described as follows:

The Southeast Quarter and the North Half of the Southwest Quarter and the Southeast Quarter of the Southwest Quarter and the South Half of the Northwest Quarter of Section 27, Township 15 South, Range 8 West, Salt Lake Base and Meridian. (MA-2662-B)

Excepting Therefrom: That Portion Within the Boundary of the Millard County Road Right-of-Way.¹⁵

¹³ *Id.* at ¶ 20(l).

¹⁴ *Id.* at ¶ 20(m).

¹⁵ *Id.* at ¶ 20(x).

Appraising the Property

5. On May 13, 2020, the Receiver filed a motion seeking to appoint an appraiser for the Property.¹⁶ The Court granted the motion and approved the appointment of Thomas V. Boyer of TVB Management Company (“Appraiser”).¹⁷

6. The Appraiser completed and submitted his appraisal of the Property (the “Appraisal”) to the Receiver, excerpts of which are attached hereto as Exhibit B. The Appraiser valued the 3511 Property at \$210,000, 3511-1 Property at \$17,000, and the 2662 Property at \$103,680. Together, the three parcels appraised at \$330,680, or about \$330.00 per acre.¹⁸

Proposal for Purchase Option

7. As part of his diligence into a potential sale of the Property, the Receiver contacted a local real estate broker about the Property.

8. On October 14, 2020, the Receiver entered into a listing agreement with Lauri Mathews of Signature Real Estate Services (the “Broker”) to assist with the marketing and sale of the Property.

9. Before Glenda Johnson had turned over the Property to the Receiver, the Receiver was contacted by an agent for 8minutenergy US Solar LLC (“8Minute”), expressing an interest in purchasing an option on the Property. 8Minute is pursuing plans to develop a ground mounted solar energy facility in Millard County, Utah, similar to operating projects it has developed in California, Nevada, and Texas.¹⁹ The Receiver initially declined to pursue discussions with

¹⁶ Docket No. 922, filed May 13, 2020.

¹⁷ Docket No. 963, filed on April 9, 2019.

¹⁸ See Appraisal Report, Ex. B, at 2. Millard County’s 2020 assessed value for the 3511 Property is \$120,000, the 3511-1 Property is \$9,000, and the 2662 Property is \$72,000, for a total of \$201,000.

¹⁹ Information regarding 8Minute’s solar energy facilities can be found at <https://www.8minute.com/solar-projects/>.

8Minute because of the long-term nature of the requested option. After Glenda Johnson turned over the Property to the Receiver, 8Minute renewed its expression of interest and the Receiver discussed with the United States whether it was willing to agree to sell a four-year purchase option. When the United States indicated it was interested in selling a purchase option, the Receiver entered into a Letter of Intent with 8Minute.

10. According to its website, 8Minute has executed over two dozen power purchase agreements across California, Texas and the Southwest, including multiple projects with the largest utilities in California and Nevada. It has 2,000 megawatts of solar energy currently in operation, 4,900 megawatts under contract, and is developing another 18,000 megawatts.²⁰

11. The Letter of Intent (“LOI”), executed by 8Minute on March 1, 2021, contains the following principal terms:

a. For a 60-day period following the execution of the LOI, the Receiver agrees to negotiate exclusively with 8Minute regarding the sale of the Property. This period is designed to allow the Receiver and 8Minute to negotiate the terms of an Option-and-Purchase Agreement (“Option Agreement”). Accordingly, the Receiver has withdrawn the Property from the multiple listing service. 8Minute has paid the Receiver \$1,000 in consideration for this exclusive negotiation period. During this period, 8Minute can decline to enter into an Option Agreement.

b. If an Option Agreement is signed, 8Minute will have a 120-day period to conduct due diligence on the Property, to verify the Receiver’s title and the feasibility of

²⁰ See <https://www.8minute.com/about-us/>.

the Property for 8Minute's solar project. During this due diligence period, 8Minute can terminate the Option Agreement without cause.

c. If 8Minute elects to commence the option period, it will pay the Receiver option fees of \$40 per acre for the first year, \$45 per acre for the second year, \$50 per acre for the third year, and \$55 per acre for the fourth year.

d. In the event 8Minute commences the option period, the Receiver will terminate the listing agreement he has with the Broker and pay the Broker the agreed-upon 6% of the listing price of the Property. In the event 8Minute declines to sign an Option Agreement or terminates the Option Agreement during the due diligence period, the Receiver will resume the public marketing of the Property through the Broker.

e. 8Minute may exercise the purchase option at any time during this four-year period. If it does so, it will pay the Receiver \$1,500 per acre for the property. All option payments it has made will count towards the \$1,500 per acre purchase price of the Property.²¹

12. If 8Minute terminates the Option Agreement at any time during the four-year period by failing to pay the annual option fee, the Receiver expects to engage a real estate agent to re-market the properties. In that event, the Receivership Estate will still have earned more from option fees than it will pay for the cancelation of the current listing agreement. Moreover, even if 8Minute does not exercise its option to purchase the Property, all option fees earned

²¹ A copy of the LOI is attached hereto as Exhibit D. If the purchase option is exercised during the third year, the purchase price will be \$1,550 per acre. If the option is exercised during the fourth year, the purchase price will be \$1,625 per year.

during all or part of the four-year period will serve as supplements to the amounts the Receiver will earn from the subsequent sale of the Property.

13. If 8Minute signs the Option Agreement and eventually exercises the option, the Receivership Estate will receive at least 450% of the appraised value of the Property, albeit at a delayed disposition date.

Sales Costs, Holding Costs, and Net Sale Proceeds

14. As noted above, if the Option Agreement is signed and 8Minute affirms the Option Agreement at the end of the due diligence period, the Receiver will pay the Broker the agreed-upon standard 6% real estate commission.

15. During the option period, the Receiver expects to continue paying property taxes for the Property. The 2020 property taxes for the Property totaled \$248.57. However, the Millard County Assessor has notified the Receiver that it intends to remove the Property from “greenbelt” valuation, as the property is not being used for agricultural purposes. The Receiver notified the Millard County Assessor that the Receivership Estate does not have a basis for claiming a reduced greenbelt valuation. As a result, the Receiver expects to pay a rollback tax on the property²² and to pay higher property taxes going forward. The Receiver estimates annual property taxes on the Property will be approximately \$8,000.00.

16. If 8Minute exercises the option to purchase the property, the Receivership Estate will incur minimal or no closing costs. There will not be another real estate commission to be paid upon the exercise of the option.

²² The five-year rollback tax would be assessed regardless of the disposition of the Property as Glenda Johnson had improperly claimed the property was being used for agricultural purposes.

17. The gross sale proceeds at closing, less any costs of sale and taxes are referred to herein as the “Net Sale Proceeds.”

18. Any other financial interests claimed against the Property by others (to the extent they exist and without any waiver of the Receiver’s or the Receivership Estate’s rights and defenses related thereto) will survive the sale and will attach to the Net Sale Proceeds.

19. The Receiver will separately account to the Court for the Net Sale Proceeds pending resolution of any disputes related to interests that may be claimed against the Property.

Free and Clear Sale

20. If 8Minute exercises the option, the Receiver proposes to sell the Property free and clear of all interests therein, with any interests that may exist attaching to the Net Sale Proceeds. In so doing, the Receiver is not in any way waiving any rights, claims, interests or defenses to any claims or interests made against the Property or the Net Sale Proceeds.

21. Any other financial interests claimed against the Property, other than property taxes and closing costs, will not be paid at the time of closing. Rather, any such interests (to the extent they exist and without any waiver of the Receiver’s or the Receivership Estate’s right and defenses related thereto) will survive the sale and will attach to the Net Sale Proceeds.

22. A copy of this Motion is being served on the relevant taxing authority.

Best Interests

23. The Receiver believes that the disposition of the Property through granting a purchase option is beneficial for and in the best interests of the Receivership Estate based on the appraised value of the Property and the high purchase price, in the event the option is exercised. In the event the option is not exercised, the Receivership Estate still would have earned one to

four years of option fees and would be able to re-market the Property and receive its then fair market value, which is likely to be higher than its current value. The LOI has been obtained through good faith and arms' length negotiations.

24. The option price will be at least 450% of the appraised value of the Property and will be higher if the option is exercised in years three or four.

25. The Receiver proposes to treat 8Minute's LOI as a stalking horse bid and hold an auction to determine whether any other potential buyers are willing to pay more than \$1.5 million for the Property or offer option terms that are more favorable than offered by 8Minute.

26. In evaluating any other option proposal, the Receiver will take into account not only the amount of option payments, the length of the option term, and the amount of the option purchase price, but also the financial stability of the bidder, its progress in seeking and obtaining approvals for the venture it proposes, and the likelihood that the bidder will exercise the option.

27. Notice of the auction described below will be published in the Millard County Chronicle Progress, a newspaper with regular circulation in Millard County, Utah, posted on the Receiver's website, provided to Defendants via the Court's electronic filing system, and sent by the Receiver to persons who the Receiver has identified as potentially having an interest in the Property.

28. At the conclusion of the sale, whether a near-term sale to a bidder for a cash price higher than offered by 8Minute or a purchase option granted to a buyer, Receiver will file with the Court a "Notice of Sale Results," stating the purchase price that was obtained at public auction and reporting on the Net Sale Proceeds of the sale. This Notice of Sale Results will be served on those parties asserting an interest in the Property, if any.

29. The Receiver recognizes that the four-year term of the option and the possibility of his needing to sell the Property if the option is not exercised may delay termination of the Receivership Estate beyond when it otherwise might close. If all other Receivership matters are resolved before the purchase option is exercised, the Receiver will continue managing the Receivership Estate in a narrow scope, limited to managing the Property, waiting for the exercise of the option, submitting brief status report, and preparing tax returns. The Receiver believes this risk of keeping the Receivership Estate open beyond the time it otherwise could close is justified by the potential recovery from the exercise of the option.

III. APPLICABLE LAW

30. The Receivership Order, as set forth above, anticipates the relief sought by the Receiver herein and this proposed disposition is within the scope of his duties under that Order.

31. Section 2001(a) of title 28 of the United States Code permits the Receiver to sell property of the Receivership Estate:

at public sale in the district wherein such receiver was first appointed, at the courthouse of the county, parish, or city situated therein in which the greater part of the property in such district is located, or on the premises or some parcel thereof located in such county, parish, or city, as such court directs. Such sale shall be upon such terms and conditions as the Court directs.

32. Section 2002 of title 28 of the United States Code requires that notice of such public sale be published, in relevant part:

once a week for at least four weeks prior to the sale in at least one newspaper regularly issued and of general circulation in the county, state, or judicial district of the United States wherein the realty is situated.

IV. REQUESTED RELIEF

33. The Receiver requests that the Court enter the proposed Sale Order attached as Exhibit A, thus (a) authorizing the sale of the Property for cash or pursuant to an option agreement, free and clear of interests; (b) approving the form and method of publication notice as proposed herein; and (c) approving the proposed “Auction Procedures” described below and attached as Exhibit C.

Sale Free and Clear of Interests

34. Sale of the Property as proposed is within the scope of the Receiver’s authority under the Receivership Order as quoted in Paragraph 2 above and 28 U.S.C. §§ 2001(a) and 2002. The sale is also in the best interest of the Receivership Estate, and the sale serves the Estate’s purposes by providing a “realization of the true and proper value” of the Property and the potential of realizing an amount more than four times the appraised value.²³

35. The Court may order a sale of the Property free and clear of interests, provided that parties claiming an interest against the Property are given proper notice. Here, such notice will be provided, with any interests that may ultimately be determined to exist attaching to the Net Sale Proceeds.

Proposed Publication Notice

36. To comply with the requirement of publication notice for public sales as set forth in 28 U.S.C. § 2002, the Receiver seeks approval of the method and form of publication notice of the proposed public sale.

²³ See [Docket No. 491](#), Corrected Receivership Order, ¶ 55.

37. Accordingly, the Receiver proposes that the following notice be published in the *Millard County Chronicle Progress*, which is a publication of general circulation in Millard County, Utah, once a week for a period of four weeks prior to the public sale (the “Publication Notice Time”):²⁴

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 certain real property (“Property”) constituting a total of 1,000 acres located in Millard County, UT, including 600 acres with parcel number HD-3511, 40 acres with parcel number HD-3511-1, and 360 acres with parcel number MA-2662-B. The intended sale of the Property is in the form of granting an option to purchase the Property. The Receiver has accepted an initial bid (“Stalking Horse Bid”) to sell to the Stalking Horse Bidder a four-year option to purchase the Property. The Stalking Horse Bidder will pay \$40 per acre option fees in the first year, \$45 per acre for the second year, \$50 per acre for the third year, and \$55 per acre for the fourth year. If the Stalking Horse Bidder exercises the purchase option, the purchase price will be \$1,500 per acre (and higher if the option is exercised in years three or four). The Receiver will conduct a public auction (“Auction”) to determine whether any other bidder will pay a higher cash price for the property or an option purchase proposal more favorable than proposed by the Stalking Horse Bidder. The auction will be held on _____, 2021, at ___:___ .m. at the Fourth Judicial District Court in Millard County, 765 S. Highway 99, Ste. 6, Fillmore, UT, or as may be continued from time to time by the Receiver. The Property will be sold at the Auction free and clear of all interests, “as is,” with no representations or warranties. The Receiver invites any bids at the auction for the Property for cash purchase or an option purchase agreement that is more favorable than that of the Stalking Horse Bidder. Only “Qualified Bidders” may participate in the Auction. To be a Qualified Bidder, you must, at least five business days before the Auction, comply with the “Auction Procedures” that have been approved in the Case, which Auction Procedures may be obtained upon request made to attorney Michael S. Lehr, Parr Brown Gee &

²⁴ By publishing notice in the *Millard County Chronicle Progress*, the notice will also be available on www.utahlegals.com.

Loveless, 101 S. 200 E., Ste. 700, Salt Lake City, Utah 84111,
mlehr@parrbrown.com.

38. The Receiver maintains that the above proposed method and form of publication notice is in accordance with 28 U.S.C. §§ 2001(a) and 2002 and, therefore, should be approved.

Proposed Auction Procedures

39. The Receiver requests that the Court enter a Sale Order approving the following proposed procedures to govern the public sale (collectively, or as may be amended by the Court's Sale Order, the "Auction Procedures"), a copy of which is attached hereto as Exhibit C:

- a. The Receiver may conduct an auction of certain real property located in Millard County, UT, identified by parcel numbers HD-3511, HD-3511-1, and MA-2662-B (the "Property") at the conclusion of the Publication Notice Time (the "Auction") in accordance with these Auction Procedures.
- b. The Receiver will facilitate reasonable requests for inspections of the Property by interested parties prior to the "Bid Deadline" (defined below).
- c. The Receiver has received an offer to purchase an option for the Property with annual option payments of \$40 per acre for the first year, \$45 per acre for the second year, \$50 per acre for the third year, and \$55 per acre for the fourth year, with an option exercise price of \$1,500.00 per acre (and higher if the option is exercised in years three or four). The Receiver's acceptance of the offer is subject to higher and better bids at the Auction. The Receiver is treating the offer as the opening bid at Auction and is referred to herein as the "Stalking Horse Bid."
- d. To participate in the Auction, the potential purchaser must be a "Qualified Bidder."
- e. No person will be deemed to be a Qualified Bidder unless the person:
 - i. Delivers to the Receiver for the benefit of the Receivership Estate cash or a cashier's check in the amount of \$10,000.00 as an initial deposit (all such deposits being collectively, the "Initial Deposit"), by no later than 5:00 p.m. Mountain Time at least five business days prior to the date set for the Auction (the "Bid Deadline");

- ii. Agrees in writing that its Initial Deposit is non-refundable pending the Sale Closing Date (defined below) and will be applied as set forth in these Auction Procedures;
 - iii. Agrees in writing to the approved Auction Procedures;
 - iv. Represents and warrants in writing that it has the ability to perform at Auction and on the Sale Closing Date (defined below);
 - v. Agrees in writing that the sale of the Property is “AS IS” with no representations and warranties; and
 - vi. Appears in person or through a qualified agent at the Auction and performs at Auction, as determined in the sole discretion of the Receiver, as provided in these Auction Procedures.
- f. If no Qualified Bidders exist on the expiration of the Bid Deadline, the Receiver, in his sole discretion, need not conduct the Auction and may grant a purchase option for the Property to the Stalking Horse Bidder. Such sale shall be deemed to be a sale of the Property at public auction under all applicable law.
- g. The Auction will take place at the Fourth District Court in Millard County, 765 South Highway 99, Suite 6, Fillmore, UT 84631.
- h. The Receiver will conduct the Auction. The Auction shall proceed in rounds.
- i. If another Qualified Bidder proposes to purchase the Property for cash, bidding at the Auction shall begin with an initial minimum overbid of the Stalking Horse Bid in an amount of \$100.00 per acre in cash, and shall subsequently continue in \$100.00 per acre minimum cash overbid increments. However, the Stalking Horse Bidder will be allowed to match any bid made by a Qualified Bidder without increasing such bid by the \$100.00 per acre minimum cash overbid amount. Bidding will continue until the Receiver determines that he has received the highest and best offer for the Property, at which time he will close the Auction, with the person making the last bid prior to the Receiver’s close of the Auction bound to purchase the Property pursuant to the terms of the approved Auction Procedures (the “Successful Bidder”).
 - ii. If another Qualified Bidder proposes to purchase the Property pursuant to an option agreement:
 - A. Bidding at the Auction shall begin with an initial minimum

overbid of the annual option fee offered by the Stalking Horse Bidder in an amount of \$2.00 per acre and shall subsequently continue in \$2.00 per acre minimum cash overbid increments. However, the Stalking Horse Bidder will be allowed to match any bid made by a Qualified Bidder without increasing such bid by the \$2.00 per acre minimum cash overbid amount. Bidding will continue until the Receiver determines that he has received the highest and best offer for the annual option fee for the Property.

- B. Bidding at the Auction shall then turn to the option purchase price for the Property. Bidding at the Auction shall begin with an initial minimum overbid of the Stalking Horse Bid in an amount of \$100.00 per acre and shall subsequently continue in \$100.00 per acre minimum overbid increments. However, the Stalking Horse Bidder will be allowed to match any bid made by a Qualified Bidder without increasing such bid by the \$100.00 per acre minimum overbid amount. Bidding will continue until the Receiver determines that he has received the highest and best offer for the Property, at which time he will close the Auction.
- C. At the conclusion of the Auction pursuant to a Qualified Bidder's proposal to purchase an option for the Property, the Receiver will determine which option purchase proposal is the highest and best offer for the Property, taking into account the annual option fee, the exercise price, the length of the option period, the likelihood of the winning bidder exercising the option, the financial ability of the winning bidder to pay the annual option fee and the exercise price, and the progress of the winning bidder's proposal to develop the Property. That bidder will be deemed the "Successful Bidder."
- D. If the Stalking Horse Bidder or any Qualified Bidder objects to the Receiver's designation of the Successful Bidder ("Objector") at the conclusion of the Auction, the Objector shall immediately notify the Receiver of the objection ("Objection") and, within 24 hours, provide written notice to the Receiver of the nature of the Objection. In the event the Receiver receives an oral Objection followed within 24 hours by a written

Objection, the Receiver shall refrain from closing on the sale to the Successful Bidder until the Objection has been ruled on by the Court.

- i. If one or more Qualified Bidders indicate an intent to bid on only one or two of the parcels, the Receiver will conduct two provisional auctions, using the procedures outlined above. In the first provisional auction, he will solicit bids for each parcel separately and determine the high bid for each parcel. In the second provisional auction, he will solicit bids for the three parcels together and determine the high bid for all three parcels as a single lot. The Receiver will then determine which provisional auction results in the highest overall price for the three parcels and declare that provisional auction the final, confirmed sale.
- j. Each Qualified Bidder agrees that if the Property is sold for cash (as opposed to an option purchase agreement) the Qualified Bidder's last offer made is irrevocable until the date that sale of the Property closes to the Successful Bidder (the "Sale Closing Date").
- k. If the Property is sold for cash, each Initial Deposit shall be retained by the Receiver until the Sale Closing Date. On the Sale Closing Date, the Initial Deposit of the Successful Bidder will be applied to the purchase price accepted at Auction by the Receiver. Within ten business days of the Sale Closing Date, the Receiver shall return all other Initial Deposits. In the event that the Successful Bidder's sale does not close, the Receiver (i) shall retain the Initial Deposit of the Successful Bidder as damages, and (ii) the Qualified Bidder who made the next highest and best offer at Auction (the "Back-Up Bid") shall be deemed the Successful Bidder. The Initial Deposit of the Qualified Bidder with the Back-Up Bid shall be applied by the Receiver to the purchase offer made at Auction. The Receiver may repeat the same Back-Up Bid procedure provided herein to each Qualified Bidder, in the order of the highest and best offers received at Auction.
- l. If the property is sold for cash, immediately upon the close of the Auction, the Successful Bidder must (i) sign a purchase agreement on terms materially similar to the terms of sale stated in the Stalking Horse Bid; and (ii) must deliver to the Receiver an additional non-refundable deposit of 50% of the purchase price accepted at Auction (the "50% Deposit"). In the event that the Sale Closing Date does not occur for the Successful Bidder, the Successful Bidder's Initial Deposit and this 50% Deposit will be retained by the Receiver as damages.

40. The Receiver submits that the proposed Auction Procedures are permitted under

28 U.S.C. §§ 2001(a) and 2002 and, therefore, requests that the Court approve the same.

41. Counsel for the United States has informed the Receiver that it does not oppose the Receiver's plans to grant an option to purchase this Property.

V. CONCLUSION

For the reasons set forth herein, the Receiver requests that the Court enter the proposed Sale Order attached hereto as Exhibit A, thus (a) authorizing the sale of the Property free and clear of interests; (b) approving the form and method of publication notice as proposed herein; and (c) approving the proposed Auction Procedures attached hereto at Exhibit C. The Receiver also requests any other relief appropriate under the circumstances.

DATED this 23rd day of March 2021.

PARR BROWN GEE & LOVELESS

/s/ Michael S. Lehr _____
Jonathan O. Hafen
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 March 23, 2021, which sent notice of the electronic filing to all counsel of record. A copy was also sent to:

Millard County Auditor
50 South Main Street
Fillmore, UT 84631

Neldon Johnson
PO BOX 95332
SOUTH JORDAN, UT 84095

R. Gregory Shepard
858 CLOVER MEADOW DR
MURRAY, UT 84123

/s/ Michael S. Lehr