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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 MOTION REQUESTING
ORDER APPROVING (1) PUBLIC SALE
OF PROPERTY FREE AND CLEAR OF
INTERESTS, (2) METHOD AND FORM
OF PUBLICATION NOTICE, AND (3)
PUBLIC AUCTION PROCEDURES**

**(Shepard Home at 858 W. Clover Meadow
Drive, Murray, UT)**

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 motion (the “Motion”) requesting that the Court authorize him to sell at public auction certain real property of the Receivership Estate. A proposed order (“Sale Order”) is submitted herewith and attached hereto as Exhibit A.

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 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
- “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

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](#).

⁴[Docket No. 491](#) at ¶ 13(a).

⁵*Id.* at ¶ 13(b).

⁶*Id.* at ¶ 13(c).

⁷*Id.* at ¶ 20.

⁸*Id.* at ¶ 55.

- “[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 TO BE SOLD AT AUCTION AND STALKING HORSE BID

Description of Property

3. The Receivership Order identifies and makes numerous real properties owned by Receivership Defendants part of the Receivership Estate.¹⁰

4. Relevant to this Motion is the home titled in the name of the Diana C. Shepard Revocable Trust, Dated May 5, 1998. The home is located at 858 West Clover Meadow Drive, Murray, UT 84123 (“Property”). The Property is identified by parcel number 21-11-278-006-0000, and also described as follows:

The following tract of land in Salt Lake County, State of Utah, to wit: Lot 112 Misty Meadows Subdivision No. 2, according to the official plat thereof recorded in the office of the county recorder, county of Salt Lake, State of Utah.

5. The Property was brought into the Receivership Estate as a result of a sequence of events. On December 7, 2020, the Court found that a one-half interest in the Property was a Receivership asset and that the property should be sold by the Receiver, with half the net proceeds being paid to the Receivership Estate.¹¹ On January 28, 2021, the Receiver and the Shepards signed a settlement agreement (“Agreement”) pursuant to which the Receiver agreed to grant time to the Shepards to pay to the Receiver an amount equal to one half the equity in the home. The Court approved the Agreement in February.¹² Under the Agreement, if the Shepards

⁹*Id.* at ¶ 56.

¹⁰*Id.* at ¶ 20.

¹¹Docket no. 1029, filed December 7, 2020.

¹²Docket no. 1089, filed February 16, 2021.

did not pay the requisite amount to the Receiver by March 31, 2021, the Shepards would vacate the home and cooperate with the Receiver in selling it. In that event, the net proceeds would be split, with the Receivership Estate receiving 60% and the Shepards receiving 40%. The required amount was not paid by the deadline, nor by the expiration of two extensions of the deadline. Those extensions resulted in the Shepards agreeing that the Receiver would receive an additional \$10,000 from the net sale proceeds. The Shepards vacated the home on May 3, 2021.

Appraising the Property

6. In connection with the Agreement, the Receiver obtained two appraisals of the Property. On January 28, 2021, Cory Larsen, of CGL Appraisals, issued a report appraising the Property at \$580,000. On February 2, 2021, John Ward delivered an appraisal report valuing the Property at \$610,000. Copies of the two appraisals are attached hereto as Exhibit B.

Stalking Horse Bid

7. With the cooperation of the Shepards, on May 13, 2021 the Receiver entered into a listing agreement with Matt Ulrich of Ulrich Realtors (the “Broker”) to assist with the marketing and sale of the Property.

8. On the advice of the Broker and again with the cooperation of the Shepards, repairs were made to the home, abandoned furniture and other items were removed from the home, general cleaning was done, and landscaping care was arranged. The home was listed on the multiple listing service around June 14, 2021.

9. As a result of these marketing efforts, three offers were received for the property within a few days of the listing. The highest of these offers was from Red Rock Residential LLC (the “Buyer”) for \$660,009.00.

10. Because the proposed sale price was approximately 110% of the average appraised value of the Property and the Receiver, the Broker, and the Shepards believe this offer likely represents the best offer that will be received in the near future for this Property, the Receiver entered into a conditional Real Estate Purchase Contract (“Purchase Agreement”) with the Buyer on or about June 30, 2021, subject to Court approval and higher or better offers.

11. The Receiver proposes to use this offer as a stalking horse bid (the “Stalking Horse Bid”) at the public auction described below.

Sales Costs and Net Sale Proceeds

12. The Receiver anticipates paying at the time of the Property’s closing the outstanding amount of the Chase Bank mortgage on the Property, ordinary costs of sale, including market-rate closing costs and a below-market 5% real estate commission to the Broker.¹³ The gross sale proceeds, less the mortgage, costs of sale, and taxes are referred to herein as the “Net Sale Proceeds.”

13. Any other financial interests against the Property (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.

14. The Net Sale Proceeds will be allocated and disbursed as follows:

a. Actual, out of pocket expenses relating to repairs, maintenance, lawn care, and utilities paid by the Receiver since May 4, 2021 will be deducted from the Net Sales Proceeds and paid to the Receiver at closing;

¹³2020 property taxes have been paid. The Receiver will pay a pro-rata share of 2021 property taxes.

b. The \$10,000 due to the Receiver pursuant to the Agreement will be deducted from the Net Sales Proceeds and paid to the Receiver at closing;

c. The balance of the Net Sales Proceeds will be divided, with 40% being paid to the Diana C. Shepard Revocable Trust and 60% being paid to the Receiver.

15. After closing, the Receiver will prepare a report to the Court accounting for disposition of the Net Sale Proceeds including the amount paid to the Receivership Estate, pending resolution of any disputes related to interests that may exist against the Property.

Free and Clear Sale

16. The Receiver proposes to sell the Property free and clear of all interests therein—except for the amounts to be paid to Chase Bank to satisfy the outstanding mortgage and amounts to be paid to the Diana C. Shepard Revocable Trust (as described above)—with any remaining interests that may exist against the Property 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.

17. Any other financial interests against the Property, other than the Chase Bank mortgage amount, amounts due to the Diana C. Shepard Trust, 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 Receiver's share of the Net Sale Proceeds.

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

Best Interests

19. The Receiver believes that the sale of the Property at public auction with the Stalking Horse Bid is beneficial for and in the best interests of the Receivership Estate based on the appraised value of the Property and the amount of the Stalking Horse Bid, which was obtained through good faith and arms' length negotiations.

20. The Stalking Horse Bid is for 110% of the average appraised value of the Property. Through the proposed auction, the purchase price cannot go lower but may increase.

21. Notice of the auction described below will be published in the Salt Lake Tribune, a newspaper with regular weekly circulation in Salt Lake County, Utah, published online at www.utahlegals.com, 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.

22. Upon completion of the sale and after the conclusion of the public auction discussed below, the 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.

III. APPLICABLE LAW

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

24. 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.

25. 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

26. The Receiver requests that the Court enter the proposed Sale Order attached 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” described below and attached as Exhibit C.

Sale Free and Clear of Interests

27. 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.¹⁴

28. 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.

¹⁴See [Docket No. 491](#), Corrected Receivership Order, ¶ 55.

Proposed Publication Notice

29. 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.

30. Accordingly, the Receiver proposes that the following notice be published in the *Salt Lake Tribune*, which is a publication of general circulation in Salt Lake County, Utah, once a week for a period of four weeks prior to the public sale (the “Publication Notice Time”):¹⁵

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 home located in Murray, Salt Lake County, UT, with an address of 858 West Clover Meadow Drive, Murray, UT 84123 and parcel number 21-11-278-006-0000 through a public auction (“Auction”) to the highest bidder payable in lawful money of the United States on _____, 2021, at ____:____.m. at the Property, 858 West Clover Meadow Drive, Murray, 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 has accepted an initial bid of \$660,009.00 to act as the opening “Stalking Horse Bid” at Auction. 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 & Loveless, 101 S. 200 E., Ste. 700, Salt Lake City, Utah 84111, mlehr@parrbrown.com.

31. 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.

¹⁵By publishing notice in the *Salt Lake Tribune*, the notice will also be available on www.utahlegals.com.

Proposed Auction Procedures

32. 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 at 858 West Clover Meadow Drive, in Murray, Salt Lake County, UT, identified by parcel number 21-11-278-006 (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 the Property for \$660,009.00, 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 \$6,600.00 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 sell the Property to the holder of the Stalking Horse Bid. 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 Property, 858 Clover Meadow Drive, Murray, UT, 84123.
- h. The Receiver will conduct the Auction. The Auction shall proceed in rounds. Bidding at the Auction shall begin with an initial minimum overbid of the Stalking Horse Bid in an amount of \$5,000.00 in cash, and shall subsequently continue in \$5,000.00 minimum cash overbid increments. However, the holder of the Stalking Horse Bid will be allowed to match any bid made by a Qualified Bidder without increasing such bid by the \$5,000.00 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").
- i. Each Qualified Bidder and the holder of the Stalking Horse Bid agree that its last offer made is irrevocable until the date that sale of the Property closes to the Successful Bidder (the "Sale Closing Date").
- j. 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.
- k. 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.

33. 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.

34. Counsel for the United States has informed the Receiver that it does not oppose the Receiver's plans to sell this Property at auction.

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 other than those described herein; (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 21st day of July 2021.

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 21, 2021, which sent notice of the electronic filing to all counsel of record.

Notice also was sent by U.S. mail to:

Salt Lake County Auditor
2001 State Street, #N3300
Salt Lake City, UT 84190

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

Neldon Johnson
PO Box 95332
South Jordan, UT 84095

/s/ Wendy V. Tuckett
