

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

<p style="text-align: center;">UNITED STATES OF AMERICA,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>RAPOWER-3, LLC; INTERNATIONAL AUTOMATED SYSTEMS, INC.; LTB1, LLC; R. GREGORY SHEPARD; NELDON JOHNSON; and ROGER FREEBORN,</p> <p style="text-align: center;">Defendants.</p>	<p>ORDER APPROVING (1) PUBLIC SALE OF PROPERTY FREE AND CLEAR OF INTERESTS, (2) METHOD AND FORM OF PUBLICATION NOTICE, AND (3) PUBLIC AUCTION PROCEDURES (DOC. NO. 1211)</p> <p>Case No. 2:15-cv-00828</p> <p>Judge David Nuffer</p> <p>Magistrate Judge Daphne A. Oberg</p>
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R. Wayne Klein, the court-appointed receiver, has filed a Second 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, (“Mot.,” Doc. No. 1211). The motion relates to the sale of certain real property located in Millard County, Utah (the “Property”), identified by parcel number DO-4568-1 and described as follows:

Commencing at a point located north 89°33’23.5” east 1080.19 feet along the quarter section line from the west quarter corner of section 34, township 17 south, range 7 west, salt lake base and meridian; thence north 00°41’09.5: east 77.73 feet; thence north 36°08’16” east 161.44 feet; thence north 69°36’58” east 49.80 feet; thence north 34°49’13.5” east 67.18 feet to an existing fence line; thence north 65°24’28” east 195.30 feet along an existing fence line; thence north 67°05’16” east 90.54 feet along an existing fence line; thence south 30°31’07” east 1000.20 feet; thence south 25°26’12” west 234.94 feet to the north shoulder of an existing county road; thence north 77°51’02” west 12.17 feet along said north shoulder of the existing county road; thence along a curve to the left 22.87 feet with a radius of 43.026 feet and a chord bearing and distance of south 86°55’28.5” west 22.60 feet along said north shoulder of the existing county road; thence south 71°41’59” west 41.15 feet along said north shoulder of the existing county road to the west right-of-way line of the Union Pacific railroad; thence south 25°26’12” west 94.045 feet along said Union Pacific right-of-way to quarter section line; thence south 25°26’12” west 362.64 feet along said Union Pacific railroad right-of-way; thence

along a curve to the left 351.22 feet with a radius of 706.78 feet and a chord bearing and distance of north 20°37'37" west 347.618 feet to the quarter section line and the point of beginning.

Excepting: any portion within the boundary of the county road right-of-way and the Union Pacific right-of-way.

* * * * reserving unto the grantor any and all water rights * * * *

(*Id.* at 3–4.)

The court previously approved the sale of this property. (*See* Order, Doc. No. 1119.) However, the contemplated sale and another sale ultimately failed. (Mot. 5, Doc. No. 1211.) After the two failed sales, two other, potential buyers expressed interest in the Property, but neither buyer submitted an offer. (*Id.* at 5–6.) The receiver has now obtained a new, but lower, offer to purchase the Property. (*Id.* at 6.) The receiver seeks to use this offer as the “stalking horse bid” at a public auction. (*Id.*) Based on the numerous showings, failed and withdrawn offers, and responses from potential buyers, the receiver believes no better offers will be made on the Property in the near future. (*Id.*) The receiver believes it is in the best interest of the receivership estate to sell this Property at a public action, using the new offer as the “stalking horse bid.” (*Id.* at 7.)

Accordingly, the receiver seeks (1) authorization to sell the Property at public sale to the highest and best offeror, free and clear of all interests, (2) approval of the form and method of publication notice, and (3) approval of the proposed auction procedures. No opposition to the receiver’s motion was filed. For good cause appearing, the court ORDERS:

1. The motion is GRANTED;
2. The sale of the Property free and clear of interests as set forth in the motion, to the proposed buyer or a higher and better offeror at auction, is APPROVED.

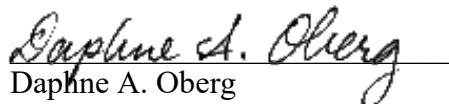
3. The method and form of the publication notice as set forth in the motion are APPROVED. The following notice shall be published in the Millard County Chronicle Progress, a newspaper of general circulation throughout Millard County, Utah, once a week for a period of four weeks prior to the public sale:

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 certain real property (“Property”) constituting a warehouse and 3.46 acres located in Millard County, UT, with parcel number DO-4568-1 through a public auction (“Auction”) to the highest bidder payable in lawful money of the United States on _____, 2022, 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 has accepted an initial bid of \$215,000.00 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 Jeffery A. Balls, Parr Brown Gee & Loveless, 101 S. 200 E., Ste. 700, Salt Lake City, Utah 84111, jballs@parrbrown.com

4. The auction procedures described in the motion and attached to the motion as Exhibit C are APPROVED.

DATED this 14th day of June, 2022.

BY THE COURT:


Daphne A. Oberg
United States Magistrate Judge