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

Defendants.

**RECEIVER’S MOTION FOR COURT  
TO APPOINT APPRAISERS FOR  
TEXAS PROPERTY OF N.P.  
JOHNSON FAMILY LIMITED  
PARTNERSHIP**

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 LTBI, LLC (“LTBI”), 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 Victor Roy Probandt (“Probandt”) of Stribling-Probandt Appraisals, Clint W. Bumguardner

(“Bumguardner”) of WT Appraisal, Inc., and Bill S. Beam (“Beam”) of Western Appraisal, LLC as appraisers for the following real property of the receivership estate located in Howard County, Texas (the “Texas Property”):

- (1) Howard County parcel number RP000046407 (608 acres);<sup>1</sup>
- (2) Howard County parcel number RP000046408 (18 acres).<sup>2</sup>

The Receiver requests an order confirming the appointment of Probandt, Bumguardner, and Beam as required by 28 U.S.C. § 2001 to assist the Court and Receiver in valuing the Texas Property for a proposed sale. A proposed Order is attached hereto as Exhibit A.

## **MEMORANDUM**

### **I. The Receivership Order**

1. On November 1, 2018, the Court entered the Corrected Receivership Order, Docket No. 491 (the “Order”). Pursuant to this Order, the Receiver was appointed and all of Defendants’ assets were placed in the Receiver’s control.<sup>3</sup>

2. The Order lists various real property in which Defendants—or a spouse or affiliated entity—have a beneficial interest, including the Texas Property.<sup>4</sup>

3. The Texas Property is an asset of N.P. Johnson Family Limited Partnership, which was made part of the Receivership Estate pursuant to the *Memorandum Decision and Order on Receiver’s Motion to Include Affiliates and Subsidiaries in Receivership*.<sup>5</sup>

4. The Court has directed and authorized the Receiver to, among other things:

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<sup>1</sup> See [Docket No. 491](#) at ¶ 19(cc) for legal description.

<sup>2</sup> *Id.* at ¶ 20(dd) for legal description.

<sup>3</sup> See generally, *id.*

<sup>4</sup> *Id.* at ¶ 20.

<sup>5</sup> [Docket No. 636](#), filed May 3, 2019.

- “[D]etermine the nature, location and value of all property interests of each of the Receivership Defendants . . . .”<sup>6</sup>
- “[T]ake custody, control, and possession of all Receivership Property and records . . . .”<sup>7</sup>
- “[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>8</sup>
- “[T]ake immediate possession of all real property of the Receivership Defendants . . . .”<sup>9</sup>
- “[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>10</sup>
- “[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>11</sup>

## II. Appointment of Appraiser

5. 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.

6. To comply with this statutory provision and the Court’s instructions, the Receiver has obtained a bid from Probandt for a flat rate of \$4,000, a bid of \$6,000 from Bumguardner, and a bid of \$6,000 from Beam to appraise the Texas Property.

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<sup>6</sup> Order, [Docket No. 491](#) at 7 ¶ 13(a).

<sup>7</sup> *Id.* at 7 ¶ 13(b).

<sup>8</sup> *Id.* at 7 ¶ 13(c).

<sup>9</sup> *Id.* at 12 ¶ 20.

<sup>10</sup> *Id.* at 32 ¶ 55.

<sup>11</sup> *Id.* at 33 ¶ 56.

7. Probandt, Bumguardner, and Beam are all experienced appraisers. Attached hereto as Exhibit B are true and correct copies of information describing their qualifications.<sup>12</sup>

8. Probandt, Bumguardner, and Beam 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 predetermined value, and has no present or prospective interest in the Texas Property.

9. The Receiver has preliminarily accepted an offer to purchase the Texas property. These appraisals will assist the Receiver in knowing whether to recommend the sale to the Court and will assist the Court in evaluating the appropriateness of the sale. If this Motion is granted, the Receiver will notify Probandt, Bumguardner, and Beam of their appointment 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 30th day of December, 2019.

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

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

Jonathan O. Hafen

Michael S. Lehr

*Attorneys for R. Wayne Klein, Receiver*

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<sup>12</sup> Probandt's qualifications are attached as Exhibit B-1, Bumguardner's qualifications are attached as Exhibit B-2, and Beam's qualifications are attached as Exhibit B-3.

**CERTIFICATE OF SERVICE**

I hereby certify that the above **RECEIVER'S MOTION FOR COURT TO APPOINT APPRAISERS FOR TEXAS PROPERTY OF THE N.P. JOHNSON FAMILY LIMITED PARTNERSHIP** was filed with the Court on this 30th day of December, 2019, and served via ECF on all parties who have requested notice in this case.

*/s/ Michael S. Lehr*

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