

1 Lawrence E. Wilk, #006510
2 **JABURG & WILK, P.C.**
3 3200 North Central Avenue, Suite 2000
4 Phoenix, Arizona 85012
5 (602) 248-1000

6 Attorneys for James C. Sell, Receiver

7 SUPERIOR COURT OF ARIZONA

8 MARICOPA COUNTY

9 ARIZONA CORPORATION COMMISSION,

Case No: CV2003-005724

10 Plaintiff,

**MOTION TO APPROVE AUCTION
PROCEDURES**

11 v.

**(FOR SALE OF 2302 N. 36TH STREET,
PHOENIX, ARIZONA)**

12 AMERICAN NATIONAL MORTGAGE
13 PARTNERS, L.L.C., et al.

(Assigned to the Honorable J. Richard Gama)

14 Defendants.

15 James C. Sell, the court appointed Receiver in the above-referenced matter, through
16 counsel of record undersigned, hereby requests that this Court enter an order authorizing the
17 Receiver to enter into an auction contract to help facilitate the sale of receivership assets; in this
18 case, real property located at 2302 N. 36th Street, Phoenix, Arizona.

19 This motion is based upon the following Memorandum of Points and Authorities.

20 DATED this 9 day of July, 2004.

21 **JABURG & WILK, P.C.**

22 

23 _____
24 Lawrence E. Wilk
25 Attorneys for James C. Sell

26 ///

27 ///

28 ///

JABURG & WILK, P.C.
ATTORNEYS AT LAW
3200 NORTH CENTRAL AVENUE
SUITE 2000
PHOENIX, ARIZONA 85012

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

MEMORANDUM OF POINTS AND AUTHORITIES

I. Procedural Background

1. On or about March 24, 2003, the Arizona Corporation Commission caused to be filed, in the Superior Court in and for the State of Arizona, a Complaint in the above-captioned matter against numerous individual defendants and entities, seeking the appointment of a Receiver over the named Defendants.

2. After notice and hearing, the Court, on April 2, 2003, issued its Order Appointing Receiver, appointing James C. Sell as Receiver for the approximately 100 entities named in the Receivership Complaint.

3. American National Mortgage Partners, LLC and ANMP 74th ST., LLC were specifically excluded from the Order due to the filing of Chapter 11 bankruptcy proceedings initiated in the United States Bankruptcy Court for the District of Arizona, on behalf of each entity, Cause Nos. 03-03803 PHX RJH and 03-03799 PHX RJH respectively.

4. On or about May 15, 2003, after having obtained Orders Lifting the Automatic Stay of 11 U.S.C. § 362 in the Bankruptcy Proceedings, this Court issued its First Amended Order Appointing Receiver for the sole purpose of including American National Partners, LLC and ANMP 74TH ST., LLC as additional parties subject to the Receivership Order. James C. Sell was appointed under the First Amended Order as Receiver for these two entities, and was to serve as the responsible party for these entities in the pending bankruptcy proceedings.¹

5. The intent of the Receivership Order was to allow for the Receiver to marshal and to protect the assets of the Receivership Estate and to preserve their value for the benefit of the investors.

6. Paragraph 2 of the Receivership Order provides as follows:

5. . . . until further Order of this Court, the Receiver shall have complete and exclusive control, possession, and custody of all receivership assets.

¹ On or about August 22, 2003, the Court entered the Second Order Appointing Receiver, which was entered for the specific purpose of naming additional parties. The terms of this Order do not affect the pending Motion.

1 II. Relief Requested

2 7. In order to preserve the assets and avoid accruing interest on secured liens, taxes
3 and depreciation, the Receiver requests authority to liquidate the assets to recover maximum
4 proceeds and to satisfy secured debts. In order to do so, the Receiver believes that the most
5 economic, and efficient manner for the liquidation may be through the auction process. Towards
6 this end, the Receiver has entered into an auction contract with Auction Services, Inc., *dba* PGA,
7 LLC, to serve as auctioneer to sell various properties. This Court has previously approved the
8 retention of Auction Services, Inc. *dba* PGA, LLC pursuant to the Order entered on May 12,
9 2004, which allowed for the sale of the property located at 350 Forest Avenue, Amsterdam, New
10 York.

11 8. On December 17, 2003, this Court approved an Order Authorizing Settlement
12 regarding 36th St. & Oak St. Property. Pursuant to this Court's Order, the Receiver obtained title
13 to the real property which is the subject matter of this Motion.

14 9. The real property is subject to the following liens:

15 1st Deed of Trust – First International Bank and Trust - \$375,000.00

16 10. The Receiver has inspected the subject property, has discussed its value with
17 various parties with knowledge of the value of properties similarly situated, and has determined
18 the value for a reserve bid.

19 11. The Receiver has attempted to market and sell the property, having entered into a
20 listing agreement with Herb Fisher, and to date has been unsuccessful.

21 12. In order to facilitate the sale, and to allow for the buyer to have finality for the
22 purchase, the Receiver respectfully requests that this Court issue an Order allowing the Receiver
23 to enter into a binding auction contract with Auction Services, Inc. *dba* PGA, LLC and to
24 authorize the sale of the property located at 2302 N. 36th Street, Phoenix, Arizona.

25 ///
26 ///
27 ///
28 ///

JABURG & WILK, P.C.
ATTORNEYS AT LAW
3200 NORTH CENTRAL AVENUE
SUITE 2000
PHOENIX, ARIZONA 85012

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DATED this 19 day of July, 2004.

JABURG & WILK, P.C.



Lawrence E. Wilk
Attorneys for James C. Sell, Receiver

ORIGINAL filed and **COPY**
of the foregoing hand-delivered
this 20th day of July, 2004 to:

The Honorable Richard J. Gama
MARICOPA COUNTY SUPERIOR COURT
101 West Jefferson, ECB 611
Phoenix, Arizona 85003-2243

COPIES of the foregoing mailed
this 20th day of July, 2004 to:

Wendy L. Coy, Esq.
Arizona Corporation Commission, Securities Division
1300 West Washington, 3rd Floor
Phoenix, Arizona 85007
Facsimile: (602) 594-7418
Attorney for Plaintiff

Trudy Nowack
OFFICE OF THE UNITED STATES TRUSTEE
2929 North Central Ave., Suite 700
Phoenix, Arizona 85067
Facsimile: (602) 640-2217

Michael R. Palumbo, Esq.
JENNINGS, STROUSS & SALMON, P.L.C.
The Collier Center, 11th Floor
201 East Washington Street
Phoenix, Arizona 85004-2385
Attorneys for Dan Walen and Dass W L.L.C.

Stanford E. Lerch, Esq.
Anthony E. DePrima, Esq.
LERCH & DEPRIMA, P.L.C.
1700 East Thomas Road, Suite B
Phoenix, Arizona 85016-0001
Facsimile: (602) 393-0490
*Attorneys for Defendants American National Mortgage Partners, L.L.C.
Phil and Tricia Vigarino, Robert K. Rehm, Frank and Gail Caspare, and Susan Rutledge*

1 Bryan F. Murphy
BURCH & CRACCHIOLO, P.A.
2 702 E. Osborn Rd., #200
Phoenix, AZ 85014
3 Facsimile (602) 234-0341
Larry William Dunning and Sheila Dunning

4
5 Peter Michael Salcido, Esq.
RENAUD, COOK AND DRURY, P.A.
40 North Central Ave., Suite 1600
6 Phoenix, Arizona 85004-4424
Facsimile: (602) 307-5853
7 *Co-counsel for Frank and Gail Caspare*

8 Donald M. Peters, Esq.
Miller, LaSota & Peters, P.L.C.
9 5225 North Central Ave., Suite 235
Phoenix, Arizona 85012-1452
10 Facsimile: (602) 248-2999
Attorney for Defendants Paul and Carol Meka

11
12 Mark D. Chester, Esq.
CHESTER & SCHEIN, P.C.
8777 North Gainey Center Drive, Suite 191
13 Scottsdale, Arizona 85258
Facsimile: (480) 922-3969
14 *Attorney for Defendant Mark Kesler*

15 Dustin T. Dudley, Esq.
ISRAEL AND GERITY, P.L.L.C.
16 2375 East Camelback Rd., Suite 500
Phoenix, Arizona 85016-0001
17 Facsimile: (602) 387-5001
Attorneys for David and Karyn Stocker
18 *and Doug Baxter*

19 Eric Strasser
2700 North Hayden Rd., #2013
20 Scottsdale, Arizona 85262
21 *Defendant pro per*

22 Christopher T. Graver, Esq.
KELLER, ROHRBACK, P.L.C.
3101 North Central Ave., Suite 900
23 Phoenix, Arizona 85012-2641
Facsimile: (602) 248-2822
24 *Attorney for Castle Real Property Entities*

25
26
27 ///

28 ///

JABURG & WILK, P.C.
ATTORNEYS AT LAW
3200 NORTH CENTRAL AVENUE
SUITE 2000
PHOENIX, ARIZONA 85012

- 1 Dale C. Schian, Esq.
Mark C. Hudson, Esq.
2 SCHIAN WALKER, P.L.C.
3550 North Central Ave., Suite 1600
3 Phoenix, Arizona 85012-2113
Facsimile: (602) 234-0419
4 *Counsel for Taylor R. Coleman in related proceedings*

- 5 Alan A. Meda, Esq.
STINSON MORRISON HECKER
6 1850 N. CENTRAL AVE., #2100
Phoenix, Arizona 85067-6379
7 *Attorney for Dexter Distributing Corp. in related proceedings*

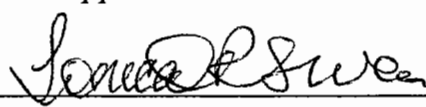
- 8 Richard C. Gramlich, Esq.
Kim E. Hutchinson Cahill, Esq.
9 CARMICHAEL & POWELL, P.C.
7301 North 16th Street, Suite #103
10 Phoenix, Arizona 85020-5297
Facsimile: (602) 870-0296
11 *Attorneys for Dellheim, Vescio and Owens in related proceedings*

- 12 David Dow, Esq.
MOHR HACKETT PEDERSON BLAKELEY & RANDOLPH
13 2800 N. Central, #1100
Phoenix, AZ 85004-1043
14 *Attorneys for Creditors Committee*

- 15 Col. William Edwards
P.O. Box 1272
16 Litchfield Park, AZ 85340-1272
17 *Investor*

- 18 Lyman Davis
920 West Wagner Drive
Gilbert, AZ 85233
19 *Chairman of Creditors Committee*

- 20 James C. Sell
5045 N. 12th Street, #100
21 Phoenix, AZ 85014
22 *Court Appointed Receiver*

23 
24
25
26
27
28

AUCTION CONTRACT - Revised

THIS AGREEMENT, made and entered into this ___ day of _____ by and between Auction Services, Inc. dba PGA, LLC referred to as AUCTIONEER, and James Sell, Receiver referred to as SELLER, WITNESSETH: WHEREAS, SELLER is the owner of certain property described below, or in the list attached hereto and made a part hereof, which property SELLER desires to sell, and WHEREAS, Seller wishes to employ the auction services of AUCTIONEER to effect the sale of said property. NOW, THEREFORE, in consideration of the mutual promises contained herein, IT IS AGREED:

1. AUCTIONEER will sell said property at Public Auction on the 9th day of SEPTEMBER 2004 or on such other date that may be substituted by mutual agreement. Description of property to be sold: 2302 N. 36TH Street, Phoenix, AZ Tax Assessors #'s 120-06-195B & 120-06-195C Together with all improvements. Complete legal description in Escrow. The Auction to be held at 3:00 pm (ON-SITE).
2. AUCTIONEER hereby agrees to use his professional skills, knowledge and experience to the best advantage of both parties in preparing for and conducting the sale.
3. AUCTIONEER shall otherwise advertise the auction sale of the Seller's property, as per agreement between the parties. Auction Marketing Fee estimated at: \$7,500.00 subject to Seller & Auctioneer approval.
4. SELLER shall maintain, at Seller's sole expense, Comprehensive General Liability and Fire Insurance on the property to be auctioned, through the auction date and until title, possession or ownership has been completed.
5. The AUCTIONEER shall represent and conduct the auction sale as an auction with a reserve price plus buyer's premium. The auction may be conducted in a way such that each individual parcel may be sold separately or together in any combination. However, AUCTIONEER does not guarantee a sale and AUCTIONEER is not responsible in the event of non-delivery of property by SELLER to buyer, or in the event the property is subsequently determined to be other than as represented by SELLER.
6. AUCTIONEER acknowledges that the real estate shall be sold "AS IS" and "WHERE-IS" and WITH ALL FAULTS, for cash or other consideration as agreed to by the SELLER.
7. SELLER warrants that he has the authority to employ the auctioneer, subject to court confirmation, and that he will furnish all titles and signs the necessary instruments conveying the property, free from all encumbrances, accept those known by buyer or of public record.
8. This agreement and all suits and special proceedings hereunder shall be governed by and construed under the laws of the State of ARIZONA in any action, special proceeding or any other proceeding that may be brought arising out, in connection with or by reason of, this agreement, the laws of the State of ARIZONA shall be applicable, without regard to the jurisdiction in which any such action may be instituted. Failure to enforce any of the provisions of this agreement shall not be construed as a waiver to those, or any other, provisions.
9. Each party agrees to indemnify and hold harmless the other party, and warrants to protect it from any and all claims whatsoever, arising from the auction and this Agreement which are not the fault of the indemnified party.

10. **ADDITIONAL PROVISIONS & AUCTIONEER'S COMPENSATION:** The Real Estate Auction fee of seven (7) percent and a Buyer Premium of five (5) percent as per the auction terms & conditions of sale to be approved by SELLER. The buyer at the closing will pay buyer's Premium. The Buyer's Premium is defined as a Buyer cost to defray auction expenses and a possible cooperating broker commission. In the event SELLER is presented with a purchase contract for any or all of the parcels included in this contract prior to the auction date, SELLER MAY CANCEL THE AUCTION AT ITS SOLE AND ABSOLUTE DISCRETION. In the event the auction is canceled by the SELLER per the terms of this contract, or the property is sold prior to or after the auction event and within the exclusive period as defined above, compensation to AUCTIONEER shall be seven percent (7%) of contract price paid by SELLER at the closing.

11. SELLER GRANTS UNTO auctioneer the exclusive right to sell said real estate for a period of 60 days after the auction event, if an acceptable selling price has not been obtained at auction, and shall be so compensated under the auction contract terms and conditions.

12. AUCTIONEER hereby represents that is has and will maintain during the term of the contract the necessary or required state, federal, and local licenses to fulfill its obligations (including advertising, marketing, brokerage and sale) under this agreement and all other agreements between the parties.

Auction Services, Inc.

7 W. Cheryl Drive
Phoenix, AZ 85021

(602) 944-5600
Email: kipkane@qwest.net

Dated: _____

Signed: _____

Trustee

James C. Sell
5045 N. 12th Street #100
Phoenix, AZ 85014

(602) 265-3519
Email: jsellsprint@earthlink.net

Dated: _____

Signed: _____