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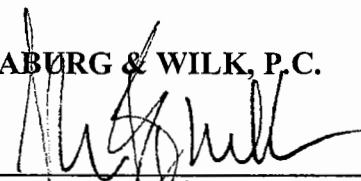
SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

ARIZONA CORPORATION COMMISSION,  
  
Plaintiff,  
  
v.  
  
AMERICAN NATIONAL MORTGAGE  
PARTNERS, L.L.C., et al.  
  
Defendants.

Case No: CV2003-005724  
  
**MOTION TO AUTHORIZE  
SETTLEMENT REGARDING PROPERTY  
AT 35824 N. SECLUDED LANE**  
  
(Assigned to the Honorable J. Richard Gama)

James C. Sell, the Court appointed Receiver in the above-referenced matter, through counsel of record undersigned, hereby requests that this Court enter an Order authorizing the Receiver to enter into an agreement whereby the proceeds from the sale of the property located at 35824 N. Secluded Lane, Carefree, Arizona (hereinafter the "Secluded Lane Property"), be divided between the Trustee of the Kenneth Magill Bankruptcy and the Receivership in accordance with the terms as more fully set forth herein..

DATED this 19 day of July, 2004.

**JABURG & WILK, P.C.**  
  
\_\_\_\_\_  
Lawrence E. Wilk  
Attorneys for James C. Sell

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///

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 I. **Procedural Background**

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

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

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

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

20 5. Paragraph 18 of the Receivership Order provides as follows:

21 18. The Receiver is hereby authorized to institute, defend,  
22 compromise or adjust such actions or proceedings in state or  
23 federal courts now pending and hereafter instituted, as may  
24 in his discretion be advisable or proper for the protection of  
25 the Receivership Assets or proceeds therefrom, and to  
26 institute, prosecute, compromise or adjust such actions or  
27 proceedings in state or federal court as may in his judgment

28 <sup>1</sup> 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 be necessary or proper for the collection, preservation and  
2 maintenance of the Receivership Assets.

3 II. Factual Background

4 1. On or about October 9, 1992, Kenneth Magill acquired title to the Secluded Lane  
5 Property.

6 2. On or about April 4, 2000, Magill executed a Note payable to the First Bank of  
7 Arizona, which Note was subsequently assigned to First National Bank of Nevada in the principal  
8 amount of \$1,866,000, which Note was secured by the Secluded Lane Property.

9 3. On or about August 5, 2002, Magill executed a Note in the principal amount of  
10 \$800,000, payable to 35824 N. Secluded Lane, LLC and North Secluded Lane, LLC (entities  
11 subject to the Receivership Orders entered in the above-captioned cause) which Note is secured  
12 by the Secluded Lane Property.

13 4. On August 14, 2002, Magill transferred, by Warranty Deed, the Secluded Lane  
14 property to American National Mortgage Partners, LLC, Trustee of 35824 N. Secluded Lane  
15 Trust, dated June 21, 2002 (another entity subject to the Receivership Order). Title to the  
16 property remained in the name of the Trust prior to the filing of Kenneth Magill's Chapter 7  
17 Bankruptcy Proceeding, Case No. 2-03-04095 ECF RJH.

18 5. Maureen Gaughn was appointed the Trustee for the Kenneth Magill Estate. The  
19 Trustee contended that the transfer was solely for the purpose of granting a security interest in the  
20 property and suggested that title to the property remained in the name of the Bankruptcy Estate.  
21 In addition, the Trustee asserted various defenses to the outstanding obligation, asserting that the  
22 American National Mortgage Partnership Receivership Estate may not be entitled to any proceeds  
23 due pursuant to its claimed interest in the property.

24 6. Although the parties disagree as to the ownership of the property, the Trustee and  
25 Receiver believed it was in the best interest of the respective estates to liquidate the real property  
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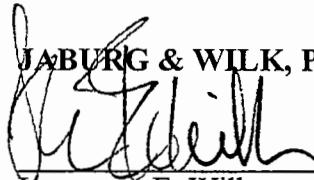
1 and to contest the disbursement of the proceeds from the Sale at a later date. As a result, the  
2 parties agreed that the property should be transferred to the Magill Estate for the purpose of  
3 facilitating the eventual auction and sale of the subject property. The parties would reserve their  
4 rights as to disbursement of any proceeds obtained from the sale of the property.  
5

6 7. Pursuant to this Court's prior Orders, the subject property was put up for auction,  
7 and as a result of the auction process, the real property netted in excess of \$850,000 in sale  
8 proceeds<sup>2</sup>.

9 8. Rather than litigate the entitlement to the proceeds which would dissipate the  
10 ultimate proceeds available for distribution, and to alleviate the risk associated with litigation, the  
11 parties have agreed that the Receivership Estate shall receive 85% of all net proceeds available  
12 for distribution. The remaining 15% shall be distributed to the Bankruptcy Estate of Kenneth  
13 Magill.  
14

15 WHEREFORE, the Receiver respectfully requests that the Court enter an Order  
16 Authorizing the Settlement as set forth herein above allowing for 85% of the net proceeds from  
17 the sale of the property to be disbursed to the Receivership Estate, with the remaining 15% being  
18 distributed to the Kenneth Magill Bankruptcy Estate.  
19

20 DATED this 20 day of July, 2004.

21 **JABURG & WILK, P.C.**  
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23 \_\_\_\_\_  
24 Lawrence E. Wilk  
25 Attorneys for James C. Sell  
26

27 \_\_\_\_\_  
28 <sup>2</sup> Attached hereto as the most recent closing statement from the title company regarding the sale of the  
property. Approximately \$18,000 is being retained as a hold back which should be subject to disbursal to either the  
Trustee or the Receiver.

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

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