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Lawrence E. Wilk, #006510
JABURG & WILK, P.C.
3200 North Central Avenue, Suite 2000
Phoenix, Arizona 85012
(602) 248-1000
e-mail lew@jaburgwilk.com

Michael Carmel, Esq. #007356
Law Offices of MICHAEL W. CARMEL, LTD
80 East Columbus Avenue
Phoenix, Arizona 85012-2334
(602) 264-4965
e-mail michael@mcarmellaw.com

Co Counsel for James C. Sell, Court appointed Receiver/Debtor

UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA

In re:

AMERICAN NATIONAL MORTGAGE
PARTNERS, LLC,

Debtor.

In re:

ANMP 74TH ST., LLC,

Debtor.

In Proceedings Under
Chapter 11

Case Nos: 03-03803 PHX RJH
03-03799 PHX RJH

**MOTION TO APPROVE AUCTION
PROCEDURES**

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

James C. Sell, the Court appointed Receiver for American National Mortgage Partners, the above-referenced Debtor, and related entities in State Court Action No. CV2003-005724 (hereinafter the "State Court Action") hereby requests that this Court enter an order authorizing the Receiver to enter into an auction contract to help facilitate the sale of receivership assets; in this case, real property located at 2302 N. 36th Street, Phoenix, Arizona. A copy of the auction contract is attached hereto as **Exhibit "A"** and incorporated herein by reference.

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

///

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

1 DATED this 23rd day of July, 2004.

JABURG & WILK, P.C.

2
3 /s/ 006510

4
5 _____
6 Lawrence E. Wilk

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9 I. Procedural Background

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

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

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

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

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

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

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

5 II. Relief Requested

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

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

10 1st Deed of Trust – First International Bank and Trust - \$375,000.00

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

13 10. In order to preserve the asset and avoid a diminution of value due to accruing
14 interest on secured liens, taxes and depreciation, the Receiver requests authority to liquidate the
15 asset to recover maximum proceeds and to satisfy secured debts. In order to do so, the Receiver
16 believes that the most economic, and efficient manner for the liquidation may be through the
17 auction process. Towards this end, the Receiver has entered into an auction contract with Auction
18 Services, Inc., *dba* PGA, LLC, to serve as auctioneer to sell various properties. This Court has
19 previously approved the retention of Auction Services, Inc. *dba* PGA, LLC pursuant to the Order
20 entered on May 17, 2004, which allowed for the sale of the property located at 350 Forest
21 Avenue, Amsterdam, New York.

22 11. The Receiver has inspected the subject property, has discussed its value with
23 various parties with knowledge of the value of properties similarly situated, and has determined
24 the value for a reserve bid.

25 12. The Receiver has filed a similar motion in the Maricopa County Superior Court
26 before Judge Richard Gama, requesting State Court approval for the auction process.

27 13. In order to facilitate the sale, and to allow for the buyer to have finality for the
28 purchase, the Receiver respectfully requests that this Court, together with the State Court, issue

1 Orders allowing the Receiver to enter into a binding auction contract with Auction Services, Inc.
2 dba PGA, LLC and to authorize the sale of the property located at 2302 N. 36th Street, Phoenix,
3 Arizona.

4 DATED this 23rd day of July, 2004.

JABURG & WILK, P.C.

/s/ 006510
Lawrence E. Wilk

5
6 COPY of the foregoing
7 Mailed this 23rd day of
8 July, 2004.

9 Michael W. Carmel
80 E. Columbus Ave.
Phoenix, AZ 85012-4965

10 Stanford E. Lerch, Esq.
11 Anthony E. DePrima, Esq.
12 LERCH & DEPRIMA, P.L.C.
13 1700 East Thomas Road, Suite B
Phoenix, Arizona 85016-0001

14 Trudy A. Nowak
Office of the U.S. Trustee
15 P.O. Box 36170
Phoenix, AZ 85067-6170

16 Wendy L. Coy, Esq.
Arizona Corporation Commission, Securities Division
17 1300 West Washington, 3rd Floor
18 Phoenix, Arizona 85007

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

21 Tonica R. Swan
22

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

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