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6
7 Attorneys for James C. Sell, Receiver

8 SUPERIOR COURT OF ARIZONA
9 MARICOPA COUNTY


10 ARIZONA CORPORATION COMMISSION,
11 Plaintiff,
12 v.
13 AMERICAN NATIONAL MORTGAGE
14 PARTNERS, L.L.C., et al.
15 Defendants.

Case No: CV2003-005724
**MOTION TO APPROVE AUCTION
PROCEDURES**
(Assigned to the Honorable J. Richard Gama)

16 James C. Sell, the court appointed Receiver in the above-referenced matter, through
17 counsel of record undersigned, hereby requests that this Court enter an order authorizing the
18 Receiver to enter into an auction contract to help facilitate the sale of receivership assets; in this
19 case, real property located at 350 Forest Ave., Amsterdam, New York. A copy of the auction
20 contract is attached hereto as **Exhibit "A"** and incorporated herein by reference.

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

22 DATED this 30 day of April, 2004.

23 **JABURG & WILK, P.C.**
24 
25 _____
26 Lawrence E. Wilk
27 Attorneys for James C. Sell

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ATTORNEYS AT LAW
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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 74th 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 74TH 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.¹

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

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

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

27
28 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.

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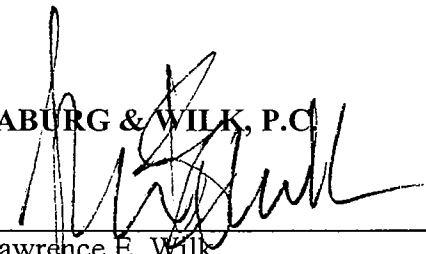
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7. In order to preserve the assets and avoid accruing interest on secured liens, taxes and depreciation, the Receiver requests authority to liquidate the assets to recover maximum proceeds and to satisfy secured debts. In order to do so, the Receiver believes that the most economic, and efficient manner for the liquidation may be through the auction process. Towards this end, the Receiver has entered into an auction contract with Auction Services, Inc., *dba* PGA, LLC, to serve as auctioneer to sell various properties. Initially, the Receiver has requested auctioneers to sell property located at 350 Forest Avenue, Amsterdam, New York.

8. The Receiver has inspected the subject property, and has determined a value for a reserve bid.

9. In furtherance of the auction contract, the auctioneer has commenced proceedings to allow for the sale of the property on May 12, 2004, at 3:00 p.m., subject to Court Order. In order to facilitate the sale, and to allow for the Buyer to have finality for the purchase, the Receiver respectfully requests that the Court issue an Order allowing the Receiver to enter into a binding auction contract with Auction Services, Inc., *dba* PGA, LLC, and to authorize the sale of the property located at 350 Forest Avenue, Amsterdam, New York subject to a reserve bid to be determined by the Receiver.

DATED this 30 day of April, 2004.

JABURG & WILK, P.C.

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

ORIGINAL filed and **COPY**
of the foregoing hand-delivered
this 30 day of April, 2004 to:

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

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PHOENIX, ARIZONA 85012

1 COPIES of the foregoing mailed
this 30th day of April, 2004 to:

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10 *Defendant pro per*

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Counsel for Taylor R. Coleman in related proceedings

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Kim E. Hutchinson Cahill, Esq.
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3 *Attorneys for Creditors Committee*

4 Col. William Edwards
P.O. Box 1272
5 Litchfield Park, AZ 85340-1272
Investor

6
7 COPY of the foregoing
hand-delivered and/or faxed this _ day
of April, 2004 to:

8
9 Lyman Davis
920 West Wagner Drive
Gilbert, AZ 85233
10 Facsimile (480) 545-8814
Chairman of Creditors Committee

11
12 James C. Sell
5045 N. 12th Street, #100
Phoenix, AZ 85014
13 Facsimile (602) 265-3622
Court Appointed Receiver

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15 _____

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EXHIBIT “A”

AUCTION CONTRACT - Revised

THIS AGREEMENT, made and entered into this 22 day of March 2004 by and between Auction Services, Inc. dba PGA, LLC referred to as AUCTIONEER, and James Sell, Trustee 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 12th day of MAY, 2004 or on such other date that may be substituted by mutual agreement. Description of property to be sold: One Amsterdam Place – 350 Forest Avenue – Amsterdam, NY 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: \$10,604.00 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 of delinquent real estate taxes plus buyer's premium. 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, except 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 shall be based on the sales price and the ten percent buyer's premium, payable at close of escrow. In the event another real estate agent secures an buyer at auction, the participating broker shall receive a three percent fee from the buyer's premium and auction coordinator (Karl Gustafson) shall receive two percent of the buyer's premium at close of escrow.. In the event a contract is acceptable to SELLER during the marketing period, seller may sell the real estate prior to the auction, pay the seven percent fee to auctioneer and any unspent marketing fees will be credited to seller at close of escrow.

Auction Services, Inc.

7 W. Cheryl Drive
Phoenix, AZ 85021

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

Dated: March 22, 2004

Signed: CK Kane

Trustee

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

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

Dated: 3-22-04

Signed: James C. Sell