

**UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

In re:

	§	
	§	
ADAM STUMP, SR. & ZANNA K STUMP,	§	CASE NO. 3:17-BK-00746
	§	
Debtors.	§	Chapter 11

**APPLICATION TO EMPLOY A&G REALTY PARTNERS,
AN UNRELATED COMMERCIAL SALES AGENCY**

NOW come the Debtors, (hereinafter “Movants”), by and through bankruptcy counsel, and moves the Court for permission to employ Mike Matlat of A&G Realty Partners (the “Firm”) as real estate marketing firm to market assets of the Debtor, and others, as set forth below pursuant to 11 U.S.C. § 328(a):

1.

Debtor has personally held farm land consisting of approximately: (a) the Home Place of 2.41 acres with residence, (b) the neighboring 232.582 acres with farm building, (c) the 43.558 acre “Murphy Farm”, (d) 179.125 acre near the home, (e) the 296.65 acres by the farm building, (f) 3.39 acres by the Murphy Farm, and (g) a remainder interest in the parent’s home, not yet listed, effective as of the filing date. Mr. Matlat has already expended time and energy on this matter for his firm.

2.

Debtors’ Home Place and almost 850 acres of unimproved property, some in the flood plain, is for sale.

3.

The Firm maintains offices worldwide with general firm information available at and with said local agent.

4.

Debtors selected the Firm because its members have extensive experience in matters relating to the marketing and sale of commercial real estate properties, with the required expertise to allow the Movants to sell assets effectively and prudently. Said firm is authorized to perform sales services in West Virginia, and all states, and has experience in handling large asset sales of this type. The Firm is well qualified to represent the Debtors.

5.

The Movants have negotiated a costs and contingency fee arrangement with The Firm. Under the proposed agreement, the Firm will receive 6% of any sale closed, and will receive up to \$10,000 for advertising and other expenses (as approved by Debtors) as an administrative expense. A copy of the proposed agreement is attached.

6.

The Firm has begun assessments and the Movants seek appointment by the Court, to be paid from gross sales.

7.

Accordingly, the Movants request that the Court approve the retention of the Firm as real estate agents as set forth above and for such other relief as is just.

WHEREFORE, application is made for the employment of A&G as herein set forth, upon the terms and conditions set forth, and as may be attached below, in this and any related bankruptcy case.

ADAM and ZANNA STUMP

DEBTORS, BY COUNSEL:

/s/ John F Wiley
John F Wiley WV 4039
PO Box 1381
Morgantown, WV 26507
(304) 906-7929

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

In re:

ADAM V STUMP, SR. and
ZANNA K STUMP,

Debtors.

§
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§
§
§

CASE NO. 3:17 - BK - 00746

Chapter 11

AFFIDAVIT OF ADAM STUMP

State of West Virginia,
County of Hampshire, to-wit:

The undersigned, being duly sworn states:

1. We are Adam V. Stump, Sr., and Zanna Stump, Debtors in the above proceedings;
2. Neither A&G Realty Partners (the "Firm") nor any employee thereof has ever represented Debtors prior to this case except to sell real estate of a wholly owned corporation, Riverside Mulch, with this Court's approval;
3. The Firm has no other connection with the Debtors, nor known connection to their respective creditors, any other parties in interest, their respective attorneys and accountants, the United States Trustee, or any person herein, and all parties are "disinterested persons" within the definition of the Bankruptcy Code on the matters for which it is to be engaged; and
4. Neither we nor entity above has any other interest in or relationship or kinship to the Firm other than above-stated, nor is any Debtor liable to it other than as set forth herein or in the original agreement or the within application to employ.

/s/ Adam Stump, Sr.

/s/ Zanna Stump

Subscribed, sworn to, and acknowledged before me by Adam Stump, Sr., and Zanna Stump both the Debtors abovesaid, on this date, 10 August 2017.

My commission expires: 2 November 2021.

/s/ John F. Wiley
Notary Public

(SEAL)

**UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

In re: §
ADAM STUMP, SR. & ZANNA K STUMP § CASE NO. 3:17-BK-00749
Debtors. § Chapter 11

**ORDER EMPLOYING A&G REALTY PARTNERS,
AN UNRELATED COMMERCIAL SALES AGENCY**

Upon the Motion of the Debtors, (hereinafter “Movants”), by and through bankruptcy counsel, for permission to employ Mike Matlat of A&G Realty Partners (the “Firm”) as real estate marketing firm to market assets of the Debtor, and others, as set forth below pursuant to 11 U.S.C. § 328(a), the Court finds, concludes and orders that:

1. Debtors have personally held farm land consisting of approximately: (a) the Home Place of 2.41 acres with residence, (b) the neighboring 232.582 acres with farm building, (c) the 43.558 acre “Murphy Farm”, (d) 179.125 acre near the home, (e) the 296.65 acres by the farm building, (f) 3.39 acres by the Murphy Farm, and (g) a remainder interest in the parent’s home, not yet listed, effective as of the filing date. Mr. Matlat has already expended time and energy on this matter for his firm.
2. Debtors’ Home Place and almost 850 acres of unimproved property, some in the flood plain, is for sale.

3. Debtors selected the Firm because its members have extensive experience in matters relating to the marketing and sale of commercial real estate properties, with the required expertise to allow the Movants to sell assets effectively and prudently. Said firm is authorized to perform sales services in West Virginia, and all states, and has experience in handling large asset sales of this type. The Firm is well qualified to represent the Debtors.
4. The Movants have negotiated a costs and contingency fee arrangement with The Firm. Under the proposed agreement, the Firm will receive 6% of any sale closed, and will receive up to \$10,000 for advertising and other expenses (as approved by Debtors) as an administrative expense. A copy of the proposed agreement is attached to the Motion.
5. The Firm has begun assessments and the Movants seek appointment by the Court, to be paid from gross sales.

Accordingly, the Court approves the retention of the Firm as real estate agents as follows:

ORDERED that, no objection being sustained to the relief requested, A&G and Michael Matlat be and they are employed upon terms and conditions as above set forth, and as may be later ruled.

Prepared by:

John F Wiley WV 4039
PO Box 1381
Morgantown, WV 26507
(304) 906-7929



**REAL ESTATE SERVICES
AGREEMENT WITH
RIVERSIDE MULCH, INC.**

No. 3:17-bk-00746 Doc 17-3 Filed 08/23/17 Entered 08/23/17 12:26:31 Page 2 of 2
This REAL ESTATE SERVICES AGREEMENT (the “**Agreement**”) is made as of this 6th day of July 2017 (the “**Agreement Date**”) by and between **A&G REALTY PARTNERS, LLC**, a New York limited liability Individuals (“**A&G**”) and **Adam & Zanna Stump**., including its affiliates and subsidiaries (collectively the “**Individuals**” and/or the “**Debtor**”) (each a “**Party**” and collectively the “**Parties**”).

WITNESSETH:

WHEREAS, the Debtor filed a voluntary petition in the United States Bankruptcy Court for the Northern District of West Virginia (“**Bankruptcy Court**”) seeking relief under Title 11 of the United States Code (“**Bankruptcy Code**”) (Docket no. 3:15-bk-01109) on November 13, 2015;

WHEREAS, the Debtor continues to operate its businesses and manage its Properties as “debtor-in-possession” under the jurisdiction of the Bankruptcy Court and in accordance with the applicable provisions of the Bankruptcy Code and orders of the Bankruptcy Court;

WHEREAS, the Debtor owns certain real Property located in Romney, WV consisting OF SEVEN PARCELS SET FORTH ON EXHIBIT A and Debtors’ residence (the “**Property**”);

WHEREAS, the Debtor desires to sell the Property (“**Property Sale**”); and

WHEREAS, the Debtor desires to retain A&G to provide the foregoing services and A&G is willing to provide such services under the terms and conditions contained herein.

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

i. Services to be Provided. In accordance with the terms and conditions of this Agreement, A&G will provide the following services (the “**Services**”):

- ii.
- a) consult with the Debtor to discuss the Debtor’s goals, objectives and financial parameters in relation to the Property;
 - b) market the sale of the Property;
 - c) negotiate with third parties on behalf of the Debtor in order assist the Debtor in obtaining a Property Sale; and
 - d) report periodically to the Debtor regarding the status of the Services.

i. Term of Agreement. Subject to Bankruptcy Court approval, this Agreement shall be for an initial term of one (1) year following the Agreement Date (the “**Initial Term**”) and thereafter shall continue on a month-to-month basis until cancelled by either party on thirty (30) days prior written

- ii. Compensation. The compensation payable to A&G for the Services is set forth on Schedule A, which is attached hereto and incorporated herein ("**Compensation**"), and is subject to Bankruptcy Court approval. The Debtor acknowledges that the calculations necessary to determine Compensation are predicated on Debtor Information (as that term is defined below) provided to A&G by the Debtor. Any discrepancies, inaccuracies or omissions in the Debtor Information discovered by A&G or the Debtor during the course of this Agreement will be referred to the Debtor for resolution and may affect the Compensation payable to A&G.
- iii. Additional Services. A&G may provide additional services requested by the Debtor that are not otherwise specifically provided for in this Agreement. Any additional services will be mutually agreed to by the Parties and documented in a separate agreement.
- iv. Recordkeeping. The Services to be provided by A&G pursuant to this Agreement are, in general, transactional in nature. Accordingly, A&G will not be billing the Debtor by the hour or maintaining time records. The Parties agree that A&G is not being requested or required to maintain time records under this Agreement and that its Compensation is fixed in accordance with the terms herein.
- v. Expenses and Disbursements. A&G shall not be responsible for any transactional costs and/or legal expenses incurred by it or the Debtor in connection with its retention and Services provided. The Debtor shall reimburse A&G for A&G's reasonable out-of-pocket expenses (including, but not limited to, legal, mailing, marketing and travel expenses) incurred in connection with its retention and provision of Services. Additionally, the Debtor shall provide A&G with up to ten thousand dollars (\$10,000) for marketing expenses approved by Debtors. The marketing expense cost may be paid upon commencement of this Agreement or may be used from the Gross Proceeds of the Property sale. Reimbursable expenses shall be paid by the Debtor within ten days of the receipt of an invoice.
- vi. Exclusive. During the duration of this Agreement, A&G shall have the sole and exclusive authority to perform the Services for the Property referenced herein. The Debtor agrees to forward all relevant inquiries regarding the Property made to the Debtor, its representatives or related parties to A&G. The Debtor acknowledges that A&G may be

engaged to provide the same or similar services as those referenced herein to other persons or entities, including but not limited to, purchasers of the Debtor, its assets, leases, properties and/or designation rights and that any such engagement shall not constitute or be deemed to be a violation of this Agreement provided that it is not contrary to the interests of the Debtor. A&G will notify the Debtor of any such potential conflicts as soon as reasonably practicable.

vii. Individuals's Representative. Adam Stump shall be the Debtor's representative ("**Debtor's Representative**") in dealing with A&G. The Individuals reserves the right, at any time and from time-to-time, upon written notice to A&G, to designate a successor representative or additional representatives and to limit the authority of the representative(s) in any respect. A&G shall report regularly to the Debtor's Representative in order to keep him/her fully apprised of A&G's performance. The designated principal representative for A&G shall be Emilio Amendola and Mike Matlat. If A&G seeks to change its principal representative, the Debtor shall reasonably consent to any proposed replacement.

viii. Individuals Cooperation. The Debtor shall make available to A&G all information concerning the Property necessary for the performance of A&G's obligations hereunder, including, but not limited to, all due diligence documents, an environmental survey, an ALTA survey, a Property condition report and a copy of the Property title. Additionally, the Debtor will provide any other information as A&G reasonably requests for the performance of their Services herein and will assist and cooperate with A&G by making the Debtor's personnel available to A&G for consultation.

ix. All information referred to above shall collectively be referred to herein as "**Debtor Information**". All Debtor Information provided by the Debtor shall be materially accurate and complete at the time it is furnished and the Debtor shall, as soon as it becomes aware of any inaccuracy or incompleteness in any Debtor Information then or later provided to A&G, promptly advise A&G in writing of such inaccuracy or incompleteness and correct the same. It is understood and agreed that A&G shall base its Services, performance and Compensation on the Debtor Information. Any inaccuracies, discrepancies or omissions in the Debtor Information provided by the Debtor to A&G may affect the Services provided and may lead to a delay in the provision of the Services.

x. Use of Individuals Name. A&G may use the Debtor's name and logo to identify the Debtor as one of A&G's clients.

- xi. No Authority to Execute Agreements. A&G shall have no right or power to enter into any agreement in the name of, or on behalf of the Debtor, or to otherwise obligate the Debtor in any manner unless authorized in writing by the Debtor.

- xii. Meetings and Written Reports. After the commencement of this Agreement, A&G shall meet with, in a manner agreed to by the Parties, the Debtor's Representative(s) to review the Debtor's goals, objectives and financial parameters. Thereafter, A&G shall meet with or participate in telephone conferences with the Debtor's Representative(s) regarding the status of the Services as mutually agreed to by the Parties.

- xiii. Disclosures/Reports. All information, advice, recommendations or other content of any reports, presentation or other communications that A&G provides under the terms of this Agreement are solely for the benefit of the Debtor and may not be disclosed to any other party without the prior written consent of A&G. All opinions and advice (written or oral) given by A&G to the Debtor in connection with this Agreement are intended solely for the benefit and use of the Debtor and no such opinion or advice shall be used for any other purpose, or reproduced, disseminated, quoted or referred to at any time in any manner or for any purpose, without the prior written consent of A&G.

- xiv. If the Debtor receives a subpoena, summons or court order by any federal, state or other regulatory agency having jurisdiction over the Debtor relating in any respect to A&G or its Services, the Debtor shall immediately notify A&G so that A&G may obtain a protective order for such information. If A&G is unable to obtain a protective order and the Debtor is required to provide information regarding A&G and/or the Services, the Debtor hereby agrees to provide only that information which is legally required.

- 2. Approval of Contracts. All of the terms and conditions of the Property Sale shall be subject to approval by the Debtor, which approval may be withheld in the Debtor's sole and absolute discretion.

- 3.

- 4. Independent Contractor. Both Parties acknowledge and agree that the arrangements contemplated herein are and will be for the provision of the Services and that nothing contained herein shall create or be construed as creating a contract or other arrangement of employment between the Debtor and A&G. A&G shall provide the Services as an independent contractor and not as an employee, agent, partner or joint venture of the Debtor.

- 5.

6. Early Termination. If either Party materially fails to perform its obligations in accordance with the terms hereof, and does not cure such failure within a reasonable period of time after written notice of such default, the other Party shall have the right to terminate this Agreement by notice of termination to the non-performing Party, effective ten (10) calendar days after the date of such notice. Additionally, if for any reason either Party becomes unable to perform its duties as a result of a legal, contractual or regulatory restriction, such Party shall have the right to terminate this Agreement. The terms of this Agreement and any rights or obligations incurred or accrued by either Party hereto prior to termination shall survive termination of this Agreement.

7.

8. Assignment. Neither Party may delegate or assign its rights and obligations under this Agreement in whole or in part to a third unaffiliated party without the prior written consent of the other Party.

9.

10. Notices. Unless otherwise expressly provided herein or waived in writing by the Party to whom notice is given, any notice or other communication required or permitted hereunder will be effective if given in writing: (i) when delivered by hand; (ii) three days after deposit in the United States mail by certified mail, return receipt requested; (iii) when delivered by electronic email communication to the email address set forth below and verified by confirmed receipt; or (iv) one day after delivery to a commercial overnight courier, and addressed to the parties as follows:

11.

12.

To the Debtor:	Adam and Zanna Stump. P.O. Box 1870 Romney, West Virginia 26757 Attention: Tel: Email:
To A&G:	A&G Realty Partners, LLC 445 Broadhollow Road Suite 410 Melville, New York 11747 Attn: Mike Matlat Tel: (631) 465-9508 Email: mike@agrealtypartners.com

13. Representations, Warranties and Covenants. Both Parties have all requisite power and authority to enter into this Agreement. This Agreement has been validly authorized by all necessary corporate action and constitutes a legal, valid and binding agreement of the Debtor and A&G. Both Parties represent that this Agreement does not and will not violate any applicable law or conflict with any agreement, instrument, judgment, order or decree to which it is a party or by which it is bound. Furthermore, both Parties represent and agree that they will comply with all applicable laws, rules, regulations, orders or decrees of any applicable jurisdiction during the term of this Agreement in performing its obligations hereunder. Both Parties represent that the person signing this Agreement on its behalf has the requisite authority to enter into this Agreement and can bind the respective Party. Furthermore, both Parties agree to deal with each other fairly and in good faith so as to allow each Party to perform their duties and earn the benefit of this Agreement. A&G agrees to utilize reasonable efforts and diligence to achieve the purpose of this Agreement.
14. Bankruptcy. Upon execution of this Agreement, the Debtor agrees to promptly apply to the Bankruptcy Court for an order, in a form acceptable to A&G, authorizing the Debtor to retain and pay A&G in accordance with the terms of this Agreement and to use its best efforts to obtain such order. The Debtor agrees to seek the hiring and retention of A&G under sections 327 and 328 of the Bankruptcy Code. The Debtor will provide A&G with a copy of the pleadings requesting retention of A&G prior to submission to the Bankruptcy Court and advise A&G of any objection or hearings pertaining to A&G's retention. The order authorizing A&G's retention must be acceptable to A&G and A&G's obligations hereunder are conditioned upon the grant of such order. Furthermore, if such order is not obtained within sixty days from the date in which it is filed, A&G shall have the right to terminate this Agreement at any time thereafter. If an acceptable order is not obtained authorizing A&G's services and fees as set forth herein, the Debtor agrees to amend the application in conjunction with and the approval of A&G and request a hearing to review the application. In the event that the Debtor is unable to obtain an acceptable order authorizing the hiring and retention of A&G under the terms of this Agreement and the Agreement is terminated, A&G reserves the right to seek a substantial contribution claim for any rights or obligations incurred or accrued prior to such termination.
15. Survival of Fee. In the event that following the termination of this Agreement, the Debtor, or its successors or assigns, enters into any transaction with a third party and A&G has performed the Services, the proximate cause of which is the transaction being entered into with such third party and the result of which would have entitled A&G to a fee pursuant to this Agreement, then in that event, A&G shall be entitled to and paid its fee pursuant to the terms of this Agreement notwithstanding the fact that the Agreement has terminated. The parties understand and agree that in the event that the Property is assigned, sold (whether in whole, part or sale of the designation rights) or transferred pursuant to section 363 of the Bankruptcy Code, A&G shall still be entitled to its fees hereunder from the Debtor.
16. Intellectual Property. A&G may use data, software, designs, utilities, tools, models, systems and other methodologies

that it owns or licenses in performing the Services hereunder. Notwithstanding the delivery of any reports to the Debtor by A&G, A&G shall retain all intellectual property rights in such materials (including any improvements or knowledge developed while performing the Services) and in any working papers compiled in connection with the Services.

17.

18. Indemnification. The Debtor hereby agrees to indemnify A&G and its respective affiliates, officers, directors, employees, agents and independent contractors, and hold each of them harmless from and against all claims, demands, penalties, losses, liability or damage, including, without limitation, reasonable attorneys' fees and expenses, asserted against, resulting from (directly or indirectly), or related to the Services or actions or omissions of A&G taken pursuant to this Agreement, (including, but not limited to, any covenants, representations or warranties contained herein) or in any written agreement entered into in connection herewith; except to the extent that such claims or liabilities arise as a direct result of A&G's gross negligence or willful misconduct in connection therewith.

19.

20. Limitation on Liability. A&G shall not be responsible for any indirect, incidental, consequential, exemplary, punitive or other special damages (including, but not limited to, loss of profits and damage to reputation or business) arising under or by reason of this Agreement or the Services or any act or omission hereunder. A&G shall not be liable to the Debtor if it is unable to perform its responsibilities hereunder as a result of events beyond its control. Furthermore, in no event shall A&G's liability for a default or breach of this Agreement exceed the amount of fees paid to A&G hereunder.

21.

22. Binding Effect. No Third Party Beneficiaries. This Agreement binds and inures to the benefit of the Parties hereto and their respective successors and permitted assigns, and except as expressly provided herein, is not intended to confer any rights or remedies upon any person not a party to this Agreement.

23.

24. Waivers and Amendments. Waiver by either Party of any default by the other Party shall not be deemed a waiver of any other default. This Agreement (including the Schedule(s) attached hereto) may not be waived, amended, or modified by either Party unless it is in writing and signed by both Parties.

25.
26. Severability. If any provision, or any portion of any provision, contained in this Agreement is held unenforceable, then it shall, to that extent alone, be deemed omitted and this Agreement shall be construed as if such unenforceable provision had never been contained herein.

27.
28. Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof. All prior agreements, representations, statements, negotiations, understandings, and undertakings are superseded by this Agreement.

29.
30. Counterpart Execution/Facsimile and Electronic Signatures. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original and all of which together shall constitute one document. Facsimile and electronic signatures on this Agreement and any document contemplated hereby shall be deemed to be original signatures.

31.
32. Governing Law. This Agreement shall be governed by the laws of the State of New York without reference to its conflict of laws rules.

33.
34. Waiver of Jury Trial. Each of the Parties unconditionally waives, to the extent legally permissible, the right to a jury trial in connection with any claim arising out of or related to this Agreement.

35.
36. Headings. The section headings and use of defined terms in the singular or plural tenses in this Agreement are solely for the convenience of the Parties.

37.
38. No Presumptions. This Agreement by shall be deemed drafted by both Parties and there shall be no presumption against either Party in the interpretation of this Agreement.

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IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized representatives effective as of the Agreement Date.

Adam & Zanna Stump.

By: /s/ Adam Stump
And /s/Zanna Stump.

A&G REALTY PARTNERS, LLC

By: /s/ Mike Matlat
Partner

Schedule(s)

SCHEDULE A
COMPENSATION

i. **A. Definitions**

ii.

“Document” means any agreement that relates to the Property, including but not limited to, a sale of all or part of the Property.

iii.

iv. “Gross Proceeds” means the total consideration paid by an investor, purchaser, buyer of designation rights or any other party to purchase the Property or any right related to the Property.

v.

vi.

B. Fees

A&G shall be compensated for the Services as follows:

1. Property Sale – For the Property Sale negotiated by A&G on behalf of the Individuals, A&G shall earn and be paid a fee of six percent (6%) of the Gross Proceeds of such sale. A&G shall be entitled to its fee upon the closing of the sale transaction.

C. Payment of Fees.

A&G shall provide the Debtor with a deal sheet for the proposed Property Sale. If the Debtor approves the proposed deal sheet and the purchaser provides a Document that accurately reflects the specific terms of the deal sheet, A&G shall be entitled to its Fees in accordance with Section B above. A&G shall be entitled to its Fees notwithstanding the fact that the Debtor later determines not to consummate the transaction.

The Individuals shall pay all fees to A&G in accordance with the terms herein and within ten (10) days of the receipt of an invoice therefore.