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7 SUPERIOR COURT OF ARIZONA

8 MARICOPA COUNTY

9 ARIZONA STATE CORPORATION
10 COMMISSION,

11 Plaintiff

12 v.

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

15 Defendants

Case No: CV2003-005724

**MOTION TO ADOPT AND APPROVE
BANKRUPTCY COURT ORDER**

(Assigned to the Honorable J. Richard Gama)

16 James C. Sell, the Court appointed Receiver in the above-referenced matter,
17 through counsel of record undersigned, hereby requests that this Court enter an Order
18 Adopting and Approving the "Order Approving Stipulation" entered in the ANMP 74th
19 STREET, LLC and American National Mortgage Partners LLC's bankruptcy proceedings.
20 The Receiver's Motion is based upon the following Memorandum of Points and
21 Authorities.

22 DATED this 20 day of October, 2003.

23
24 **JABURG & WILK, P.C.**

25 

26 Lawrence E. Wilk
27 Attorneys for James C. Sell
28

1 MEMORANDUM OF POINTS AND AUTHORITIES

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

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

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

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

21 5. On or about March 3, 2003, Dexter Distributing Corporation, and
22 numerous related entities filed for relief under Chapter 11 of the U.S. Bankruptcy Code in
23 the District of Arizona, Cause No. 03-03546 PHX RJH, jointly administered (these
24 entities are collectively referred to as the Castle entities.)
25

26
27 _____
28 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. This Order does not affect the pending Motion

1 6. The Castle entities are borrowers of the receivership entities,
2 representing almost 50% of the outstanding loan balances owed to the receivership entities
3 (approximately \$15 - \$20 million dollars).

4 7. Paragraph 10 of the Receivership Order provides as follows:

5 ... the Receiver shall have the authority to contact and
6 negotiate with any creditors of the Receivership
7 Defendants, for the purpose of compromising or settling
8 any claim....

8 8. The Receiver and the Castle entities entered into negotiations to settle
9 the disputes between the parties, which negotiations culminated in the agreements set
10 forth in the "Stipulation in Aid of Confirmation"

11 9. On or about September 9, 2003, the Receiver entered into a "Stipulation
12 in Aid of Confirmation of Plan of Reorganization", a copy of which is attached hereto, as
13 Exhibit "A" and incorporated herein by reference.

14 10. On or about September 16, 2003, the Stipulation in Aid of Confirmation
15 was noticed out to all creditors in the Castle entities bankruptcy and the American
16 National Mortgage Partners and ANMP 74th ST bankruptcy proceedings. All investors in
17 ANMP 74th ST, LLC, American National Mortgage Partners, LLC, and the Receivership
18 entities were provided notice of the Stipulation in Aid of Confirmation, and given an
19 opportunity to object to the contents of the Stipulation.

20 11. On September 30, 2003, after notice to all interested parties, Judge
21 Randolph J. Hanes held an evidentiary hearing at which time evidence in support of the
22 Stipulation in Aid of Confirmation was presented. Parties were given an opportunity to
23 object and to appear at the hearing.

24 12. On September 30, 2003, Judge Hanes approved the Stipulation, as more
25 fully set forth in the Order Approving Stipulation which is attached hereto as Exhibit "B".

26 13. Due to the concurrent jurisdictional issues that may exist in this matter,
27 and pursuant to the Stipulation in Aid of Confirmation, the Receiver hereby requests the
28 Court adopt and approve the Order of the Bankruptcy Court which has authorized the

1 Receiver to enter into the Stipulation in Aid of Confirmation on behalf of the bankruptcy
2 entities.

3 CASE LAW

4 I. Standard of Review in the Bankruptcy Proceedings

5 On September 30, 2003, The Honorable Randolph J. Haines held an evidentiary
6 hearing to determine whether or not the Settlement Stipulation should be approved in the
7 bankruptcy proceedings of Castle entities and the American National Mortgage Partners,
8 LLC and ANMP 74TH ST. LLC, bankruptcy proceeding. In reviewing the proposed
9 Settlement Stipulation, the Court considered:

- 10 1. The probability of success in the litigation;
- 11 2. The difficulties, if any, to be encountered in the matter of collection;
- 12 3. The complexity of the litigation involved and the expense, inconvenience
13 and delay necessarily attending it;
- 14 4. The paramount interest of the creditors in proper deference to their
15 reasonable views and the premises.

16 See *Woodson v. Fireman's Funds Insurance, (In Re Woodson)*, 839 F.2d 610 (9th Cir.
17 1988) and *Martin v. Kane, (In re A&C Properties)*, 784 F.2d 1377 (9th Cir. 1986). Under
18 *Woodson*, the Bankruptcy Court has great latitude in approving compromise agreements.
19 839 F.2d at 620.

20 In considering the proposed settlement, the Bankruptcy Court need not decide
21 questions of law or fact raised in the controversies sought to be settled or determine that
22 the compromise presented is the best possible outcome. Rather, the Court need only
23 canvas the issues to determine whether the proposed settlement falls "below the lowest
24 point in the zone of reasonableness". *Newton v. Stein*, 464 F.2d 689, 693 (2nd Cir. 1972).
25 *In Re Pennsylvania Truck Lines, Inc.*, 150 BR 595, 598 (Bankr. Eastern District PA 1992).

26 Having considered the *Woodson* factors, the Court determined that the Stipulation
27 in Aid of Compromise was in the best interest of the various estates. The Settlement
28 Stipulation presented a reasonable resolution (or partial resolution) of a multiple of

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1 disputes between the Castle Debtors and the ANMP entities and ANMP investors.
2 including:

- 3 1. Ownership of real property;
- 4 2. The validity of secured claims of ANMP entities;
- 5 3. The ANMP claim, either as a secured or unsecured claim;
- 6 4. The amount of the ANMP claims;
- 7 5. The claims of the individual investors in the ANMP estate;
- 8 6. The treatment of those claims for purposes of repayment.

9 After providing testimony as to the nature of the claims, the disputes that exist, and
10 the costs that would be incurred in furthering those disputes, the Court determined that the
11 Settlement was in the best interest of the ANMP entities.

12 **II. Collateral Estoppel**

13 Collateral estoppel, or issue or fact preclusion, precludes relitigation of issues or
14 facts previously adjudicated in another or related proceeding. See 18 Charles Alan Wright
15 et al., *Federal Practice and Procedure*, §§ 4416-4426 (2d ed. 2002) ("*Wright*") (collecting
16 cases and authorities, and discussing relevant principles). Application depends on five
17 elements: (1) the issue was actually litigated; (2) there was a full and fair opportunity to
18 litigate the issue; (3) resolution of the issue was essential to the order or determination;
19 (4) there was a valid and final decision on the merits; and (5) there is common identity of
20 parties (if the parties are different). See *Campbell v. SZL Properties, Ltd.*, 204 Ariz. 221,
21 223, 62 P.3d 966, 968 (App. 2003); *Irbly Construction Co. v. Arizona Dep't of Revenue*,
22 184 Ariz. 105, 107, 907 P.2d 74, 76 (App. 1995). Principal reasons to apply collateral
23 estoppel are for judicial efficiency and economy, to prevent inconsistent rulings or
24 judgments, and to avoid needlessly taxing the court's time and resources by re-litigating
25 issues that have already been fully and fairly litigated. See *Wright*, § 4416 at 393-94.

26 Here, all elements exist. First, the issues related to entry of the Bankruptcy Court's
27 order were actually litigated through an exhaustive evidentiary hearing. The Bankruptcy
28 Court conducted a comprehensive evidentiary hearing to determine whether or not to

1 approve the Settlement Stipulation. After searching and careful review of all relevant
2 *Woodson* factors, the Bankruptcy Court concluded that, based on the record developed
3 during the evidentiary hearing, the Stipulation in Aid of Compromise should be approved.
4 Second, all interested parties received notice and had a full and fair opportunity to litigate
5 the relevant issues. All investors and creditors received notice of the Stipulation in Aid of
6 Confirmation and were given an opportunity to object to the contents of the Stipulation.
7 No objections were lodged. All interested parties were also given an opportunity to
8 appear at the evidentiary hearing and raise any objections that they wished at that time.
9 No one appeared to raised any objections. Third, resolution of the relevant issues was
10 critical to the Bankruptcy Court's determination. The Bankruptcy Court's order was
11 entered in reliance upon the *Woodson* factors previously discussed, and the relevant issues
12 relate to those factors. Fourth, there was a valid and final decision. In this respect, a
13 *Woodson* order is an immediately appealable order. *See In re Daley's Dump Truck*
14 *Services, Inc.*, 108 F.3d 213, 215-16 (9th Cir. 1997) (by implication). Therefore, it is a
15 "final determination" for purposes of collateral estoppel. *See* 18A Wright, § 4434 at 110-
16 131 (discussing "practical finalty"). Fifth and finally, there is common identity of all
17 interested parties.

18 Based on these circumstances, this court should approve and adopt the Bankruptcy
19 Court's Order Approving the Stipulation in Aid of Confirmation. Failure to approve and
20 adopt the Bankruptcy Court's order would needlessly tax the court's time and resources,
21 and force the parties to incur needless fees and costs because the relevant factors would
22 have to be re-litigated through another evidentiary hearing raising the same facts and legal
23 arguments.

24 The preceding conclusion is only further supported by reference to general
25 principles governing state-federal comity. Although no part of the present dispute
26 implicates abstention or other related doctrines of federalism and state-federal comity, this
27 court's interests would nevertheless be better served by exercising its discretion and
28 declining to re-hear matters already resolved by the Bankruptcy Court. The *Woodson*

1 hearing that the Bankruptcy Court conducted was a matter vested in its discretion and
2 expertise under Congress' Article I powers. It makes sense as a matter of policy,
3 efficiency, and state-federal comity to decline any invitation to disturb the Bankruptcy
4 Court's well-considered decision. See, e.g., *Noel v. Hull*, 341 F.3d 1148, 1155 (9th Cir.
5 2003) (discussing *Rooker-Feldman* exceptions, including Bankruptcy Court's power to
6 avoid, modify, or discharge state court judgments). State-federal comity principles have
7 been appropriately described as "complex and subtle." See *Noel*, 341 F.3d at 1160. A
8 full exploration of those principles is beyond the scope of this motion, and is not
9 necessary for the relief being sought. However, it would frustrate the Bankruptcy Court's
10 Congressional mandate to revisit an issue fully and fairly resolved under the Bankruptcy
11 Court's Article I powers.

12 Therefore, this Court should enter an Order Adopting and Approving the "Order
13 Approving Stipulation" entered in the ANMP 74TH STREET, LLC and American National
14 Mortgage Partners LLC's bankruptcy proceedings.

15 III. The Bankruptcy Court May Have Exclusive Jurisdiction Over All Claims

16 ANMP 74TH ST., LLC, the Debtor in the proceeding before Judge Haines, arguably
17 holds title to all of the Castle Entity properties. American National Mortgage Partners,
18 LLC, also a Debtor before Judge Haines, is the conduit by which almost all monies were
19 either disbursed, or collected, from the Castle entities, thereby being responsible for any
20 malfeasance which occurred in the distribution of funds. As a result, the Bankruptcy
21 Court's jurisdiction over these two entities may create exclusive jurisdiction in that Court
22 to authorize the Stipulation in Aid of Confirmation.

23 IV. Confirmation Requirement

24 The Stipulation in Aid of Confirmation is to be incorporated into the Castle
25 entities' Chapter 11 Plan of Reorganization, and can not be implemented until such time
26 as the Plan has been confirmed. To obtain confirmation, the Castle entities will need to
27 obtain the necessary votes required pursuant to the Bankruptcy Code. The investors of the
28

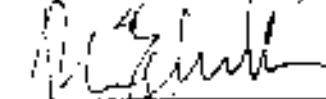
1 Receivership entities will be entitled to submit legal objections to the Plan and will be
2 entitled to vote for, or against the Plan. The implementation of the Plan is therefore
3 subject to investor approval.

4 In addition, the investors are entitled to opt out of the Plan, even if confirmed and
5 seek separate treatment as provided for in the Stipulation. Approval of the Stipulation
6 therefore does not prejudice the investors' rights.

7 Accordingly, in order to ensure that all jurisdictional issues have been dealt with,
8 the Receiver hereby requests that the Court enter an Order approving the Bankruptcy
9 Order and authorizing the Receiver to move forward with the Stipulation in Aid of
10 Confirmation, which has been entered into in the Bankruptcy proceedings

11
12 DATED this 20 day of October, 2003.

13
14 JABURG & WILK, P.C.

15 

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1 ORIGINAL filed and COPY
2 of the foregoing hand-delivered
3 this 20th day of October, 2003 to:

4 The Honorable Richard J. Gama
5 MARICOPA COUNTY SUPERIOR COURT
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**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA**

In re:
**DEXTER DISTRIBUTING
CORPORATION**, an Arizona
corporation, et al.

Debtors.

Case No. 03-03546-ECF-RJH

(Jointly Administered with Case Nos.
03-03548-PHX-RJH et al.)

THIS FILING APPLIES TO:

**STIPULATION IN AID OF
CONFIRMATION OF PLAN OF
REORGANIZATION**

- ALL DEBTORS
 SPECIFIED DEBTORS

STIPULATION

Case No. 03-03546-PHX-RJH

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1 THIS STIPULATION, entered into this 8th day of September, 2003, by and
2 among Dexter Distributing Corporation; Castle Megastore Corporation, 3270
3 Gateway Street, L.L.C.; 613 East Fairview Ave., L.L.C.; 300 East Camelback, L.L.C.,
4 222 N. 44th St., L.L.C.; Real Estate Holding Corporation; 117-Dunlap L.L.C.,
5 Silverdale Building, L.L.C.; East Sprague Avenue, L.L.C.; 1113 Progress Drive,
6 Medford, L.L.C.; 522 N. Columbia Center Blvd. L.L.C.; 9815 S.W. Capital Highway,
7 L.L.C.; Deer Valley/26th Avenue, L.L.C.; 1851 E. Fifth Ave., L.L.C.; 5110 Central
8 Avenue S.E., L.L.C.; 8315 East Apache Trail, L.L.C.; 6015 Tacoma Mall Blvd.,
9 L.L.C.; 7102 W. Roosevelt, L.L.C.; Internet Fulfillment, L.L.C.; and Adult Web
10 Fulfillment, L.L.C., the Debtors in the above-styled and numbered causes; Taylor R.
11 Coleman; the putative debtor in Case No. 03-04238-PHX-SSC; and James R. Sel,
12 as Receiver of American National Mortgage Partners, LLC and ANMP 74th St., L.L.C.,
13 and as Receiver for a number of affiliated entities subject to a receivership order
14 entered in a Maricopa County Superior Court proceeding, Case No. 2003-005724.
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18 RECITALS

19 Dexter Distributing Corporation; Castle Megastore Corporation; 3270
20 Gateway Street, L.L.C.; 613 East Fairview Ave., L.L.C.; 300 East Camelback, L.L.C.;
21 222 N. 44th St., L.L.C.; Real Estate Holding Corporation; 117-Dunlap L.L.C.;
22 Silverdale Building, L.L.C.; East Sprague Avenue, L.L.C.; 1113 Progress Drive,
23 Medford, L.L.C.; 522 N. Columbia Center Blvd., L.L.C.; 9815 S.W. Capital Highway,
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26 STIPULATION

Case No. 03-03546-PHX-RJH

440913v7

1 L.L.C.; Deer Valley/26th Avenue, L.L.C.; 185th E. Fifth Ave., L.L.C.; 5110 Central
2 Avenue S.E., L.L.C.; 8315 East Apache Trail, L.L.C.; 6015 Tacoma Mall Blvd.,
3 L.L.C.; 7102 W. Roosevelt L.L.C.; Internet Fulfillment, L.L.C.; and Adult Web
4 Fulfillment, L.L.C., collectively referred to herein as the "**Castle Debtors**," own and
5 operate adult product retail stores under the name "Castle." In connection with
6 these operations, certain of the Castle Debtors have acquired interests in real
7 property upon which are located certain of the stores, a prospective store location in
8 Alaska and a warehouse in Phoenix, Arizona, such real properties being collectively
9 referred to herein as the "**Castle Real Properties**." For purposes of identification,
10 each of the Castle Real Properties and the Castle Debtor that owns it are described
11 on Exhibit 1 attached hereto.

12
13 Coleman owns, directly or indirectly, all equity interests in the Castle Debtors
14 and also owns a residence and adjacent real property in Maricopa County, Arizona,
15 collectively referred to as the "**Coleman Real Property**."

16 **ANMP Loans**

17 Commencing in 1999 or 2000, American National Mortgage Properties, LLC
18 ("**ANMP**") arranged a number of loans to the Castle Debtors. For each of these
19 loans, ANMP caused to be formed a trust and/or a limited liability company
20 (collectively the "**ANMP Loan Entities**") to own the loan to Castle Debtors. ANMP
21 obtained most of the funds to make these loans through individual investors (the
22 "**ANMP Investors**"), who were sometimes designated by ANMP as beneficiaries
23 and/or members of the ANMP Loan Entities. In some instances, ANMP Investors

1 also received notes payable by one of the ANMP Loan Entities. In some instances,
2 ANMP investors also received notes (collectively, the "Investor Notes"); payable by
3 one or more of the Castle Debtors.

4 In connection with these loans, the Castle Debtors executed (i) promissory
5 notes, collectively referred to as the "ANMP Notes," and (ii) deeds of trust, security
6 agreements, quitclaim deeds, trust agreements and other documents collectively
7 referred to as the "ANMP Loan Documents," purporting to create a security interest
8 in the Castle Real Properties. Coleman also executed the ANMP Notes and ANMP
9 Loan Documents, personally, and on behalf of Castle Debtors. In connection with
10 certain of the loans to the Castle Debtors, Coleman executed notes and other
11 instruments (the "Coleman Loan Documents") purporting to grant a security
12 interest in the Coleman Real Property. Exhibit 2 attached hereto list each of the
13 ANMP Notes and identifies the amounts advanced to or for the benefit of the Castle
14 Debtors, and the amounts repaid, based upon ANMP's books and records.
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18 The Castle Debtors and Coleman dispute the validity and enforceability of the
19 ANMP Notes, the ANMP Loan Documents, the Investor Notes and the Coleman
20 Loan Documents. Notwithstanding these disputes, ANMP and its affiliates executed
21 and recorded various deeds purporting to convey some of the Castle Real
22 Properties to ANMP 74th Street, LLC ("ANMP 74th"); The Castle Debtors and
23 Coleman also dispute the validity and enforceability of these deeds.
24

ANMP Proceedings

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2 On March 10, 2003, voluntary chapter 11 cases were commenced for ANMP
3 (the "ANMP Chapter 11 Case") and ANMP 74" (the "ANMP 74" Chapter 11
4 Case"). On March 24, 2003, the Arizona Corporation Commission commenced
5 Case No. CV 2003-005724 (the "Receivership Action") in the Superior Court of
6 Maricopa County (the "Receivership Court") seeking the appointment of a receiver
7 of the ANMP Loan Entities. On April 2, 2003, James Sell (the "Receiver") was
8 appointed as Receiver of the ANMP Loan Entities. By subsequent order, the
9 Receivership estate was expanded to include ANMP and ANMP 74"

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11
12 After an extensive investigation of the books and records of ANMP and the
13 ANMP Loan Entities, the Receiver has reached the following conclusions regarding
14 the loans to the Castle Debtors:

15 1) ANMP did not advance the full amount of the loans to or for the benefit of
16 Castle Debtors

17 2) Funds of ANMP Investors were commingled so that it is not possible to
18 determine which investors provided the funding of which loans;

19 3) ANMP made improper distributions to ANMP Investors from the funds of
20 other ANMP Investors and others who were not ANMP investors.

21 4) ANMP did not, in some instances, take the necessary steps to perfect a
22 security interest in the Castle Real Properties.
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1 On July 11, 2003, the Castle Debtors filed a proposed plan of reorganization
2 (the "Existing Plan"). The Bankruptcy Court has established September 12, 2003
3 as the last date for the filing of proofs of claim, and has set a hearing to consider the
4 disclosure statement accompanying the Existing Plan for 1:30 P.M. on September
5 23, 2003.

6 The parties hereto recognize that there are many potential disputes among
7 themselves as well as the ANMP Investors and that litigation to resolve these
8 disputes would be time-consuming and expensive. Accordingly, the parties desire to
9 resolve their disputes on the terms and conditions stated herein, and to establish a
10 framework to resolve issues with ANMP Investors on the terms and conditions
11 stated herein.

12 **AGREEMENT**

13 In consideration of the premises, the parties stipulate and agree as follows:

14 **I. THE AGREEMENT.**

15 Subject to the terms and conditions set forth herein, the parties have agreed
16 that the amount and allowability of the ANMP Claims and the ANMP Investor Claims
17 (both as hereinafter defined) will be resolved on the terms set forth herein,
18 summarized as follows:
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1. **Plan of Reorganization.** The resolution of the Claims will occur solely in the context of the consummation of an Acceptable Plan of Reorganization for the Castle Debtors.

2. **Claim Amount.** Solely in the context of an Acceptable Plan of Reorganization, the Castle Debtors will stipulate and consent to the allowance of Claims against the Castle Debtors in the total amount of \$14,000,000, in full satisfaction of all Claims that could be asserted by ANMP, ANMP 74th, the ANMP Loan Entities and the ANMP Investors against any of the Castle Debtors. This amount may be adjusted under certain circumstances described herein.

3. **Payment of Claim.** The Plan will provide for payment of the Claim Amount in installments from Available Funds as provided in the Existing Plan.

4. **Management of Castle Debtors.** The Plan will provide that, until all payments provided in the Plan have been made, the Receiver and/or the ANMP Investors will participate in the management of the Castle Debtors.

5. **Clearance of Title.** Upon the Effective Date of the Plan, the Receiver shall take such steps as are necessary to re-convey title to the Castle Real Properties free and clear of the liens and encumbrances asserted by the ANMP Loan Entities and other parties affiliated with them.

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6. **Coleman Guarantee.** The obligation of the Castle Debtors to the Receiver will be guaranteed by Coleman pursuant to the terms of a plan of reorganization in the Coleman Bankruptcy Case.

7. **Participating ANMP Investors.** The Plan will provide a procedure by which ANMP Investors may elect to avoid litigation and participate equitably in distributions to be made by the Castle Debtors to the Receiver. The Plan will also provide that individual and direct claims asserted by ANMP Investors against the Castle Debtors will be opposed. The Plan will also provide that if, and to the extent, ANMP Investors Claims are allowed, the amount payable to the Receiver shall be reduced by the amounts payable on account of such ANMP Investor Claims.

The foregoing is intended solely as a summary and is not intended to alter or amend the interpretation of the balance of this agreement.

II. DEFINITIONS

A. DEFINED TERMS.

This Stipulation uses certain terms with the following meaning:

1. Acceptable Plan of Reorganization.

"Acceptable Plan of Reorganization" means a plan of reorganization in the Castle Chapter 11 Cases that is consistent with the provisions of section VI hereof.

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2. Affiliate.

An "Affiliate" of a Person means a person or entity that would be an "affiliate" of such Person under § 101(2) of the Bankruptcy Code, if such Person were a Debtor

3. ANMP.

"ANMP" shall have the meaning set forth on page 2 hereof.

4. ANMP 74th

"ANMP 74th" shall have the meaning set forth on page 3 hereof.

5. ANMP 74th Chapter 11 Case.

"ANMP 74th Chapter 11 Case" shall have the meaning set forth on page 4 hereof.

6. ANMP 74th Deed

"ANMP 74th Deed" means any deed in favor of ANMP 74th covering, or purporting to cover, any of the Castle Real Properties or the Coteman Real Property.

7. ANMP Approval Motion.

"ANMP Approval Motion" shall have the meaning set forth on page 19 hereof.

8. ANMP Approval Order.

"ANMP Approval Order" shall have the meaning set forth on page 19 hereof.

9. ANMP Chapter 11 Case

"ANMP Chapter 11 Case" shall have the meaning set forth on page 4 hereof.

1 **10. ANMP Claim.**

2 "ANMP Claim" means any (i) claim of any of the ANMP Loan Entities or any
3 Affiliate thereof may have against any of the Castle Debtors or Coleman, and (i)
4 claim arising out of or relating to the loans described in Exhibit 2 attached hereto.
5

6 **11. ANMP Claim Distributions.**

7 "ANMP Claim Distributions" shall have the meaning set forth on page 21
8 hereof.
9

10 **12. ANMP Insider/Affiliate**

11 "ANMP Insider/Affiliate" means any Insider or Affiliate of ANMP; ANMP 74th
12 Street; Corporate Fiducial Services, Inc.; Creative Financial Funding L.L.C.; Secura
13 Innovative Investment, Inc.; Secura Mortgage Management L.L.C.; Secura Fund
14 Arizona, L.L.C.; Corporate Management Solutions, Inc.; Guaranty Performance, Inc.;
15 Cash Flow University, Inc.; American Money Power, Inc. (d/b/a Money Power); or
16 Federal Capital, L.L.C.
17

18 **13. ANMP Investor.**

19 "ANMP Investor" shall have the meaning set forth on page 2 hereof

20 **14. ANMP Investor Claim.**

21 "ANMP Investor Claim" means a Claim of an ANMP Investor or an assignee
22 of an ANMP Investor.
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1 **15. ANMP Investor Election Notice**

2 "ANMP Investor Election Notice" means a notice in a form to be approved by
3 the Bankruptcy Court, that may be filed by a Participating ANMP Investor in
4 accordance with the provisions of section VI.F.1 hereof.

5 **16. ANMP Investor Secured Claim.**

6 "ANMP Investor Secured Claim" means a Secured Claim held by an ANMP
7 Investor or an assignee of an ANMP Investor.

8 **17. ANMP Investor Unsecured Claim.**

9 "ANMP Investor Unsecured Claim" means an ANMP Investor Claim other
10 than an ANMP Secured Claim.

11 **18. ANMP Liquidation Amount.**

12 "ANMP Liquidation Amount" means the amount determined by the
13 Bankruptcy Court for each Castle Debtor as the amount that would be distributed on
14 account of all ANMP Investor Unsecured Claims against such Debtor, if such Castle
15 Debtor were liquidated under Chapter 7 as of the Effective Date of the Plan.
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18 **19. ANMP Loan Documents.**

19 "ANMP Loan Documents" shall have the meaning set forth on page 3 hereof.

20 **20. ANMP Loan Entities.**

21 "ANMP Loan Entities" shall have the meaning set forth on page 2 hereof
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21. ANMP Notes.

"ANMP Notes" shall have the meaning set forth on page 3 hereof.

22. ANMP Receivership Order.

"ANMP Receivership Order" means the Order appointing a Receiver entered in the ANMP Receivership Action, as such order may be amended from time to time.

23. Available Funds.

"Available Funds" means New Castle's net income with the following adjustments: (1) Obligations payable by the Reorganized Debtors during the quarter on account of Secured Claims, other debt service, capital leases, and Tax Claims, including principal and interest, and obligations accrued during the quarter for real property maintenance, insurance, taxes, and capital improvements shall be treated as rental expenses. (2) Gain on the sale of property shall be calculated on the basis of the net proceeds from such sale less the principal amount of debt secured by such property, including any amounts payable on account of Secured Claims and taxes due by reason of the sale. If property is sold in exchange or partial exchange for deferred payments, gain shall be allocated among quarters based upon the percentage of the purchase price payable during such quarter.

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24. Avoidance Claim.

"Avoidance Claim" means a claim or cause of action to avoid transfers made by a debtor to the extent such claim arises under §§ 544-551 of the Bankruptcy Code.

25. Bankruptcy Court.

"Bankruptcy Court" shall have the meaning set forth on page 5 hereof.

26. Castle Approval Motion.

"Castle Approval Motion" shall have the meaning set forth on page 18 hereof.

27. Castle Approval Order.

"Castle Approval Order" shall have the meaning set forth on page 18 hereof.

28. Castle Debtors.

"Castle Debtors" shall have the meaning set forth on page 2 hereof.

29. Castle Real Properties.

"Castle Real Properties" shall have the meaning set forth on page 2 hereof.

30. Castle Realty.

"Castle Realty" means the entity that, on and after the Effective Date, will own the Castle Real Properties.

31. Claim.

"Claim" has the meaning set forth in § 101(5) of the Bankruptcy Code and shall also expressly include any amounts that could be asserted as an administrative claim against the Castle Debtors or Coleman.

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32. Class.

"Class" means a category or group of holders of Claims or Interests.

33. Coleman Loan Documents.

"Coleman Loan Documents" shall have the meaning set forth on page 3 hereof.

34. Coleman Real Property.

"Coleman Real Property" shall have the meaning set forth on page 2 hereof.

35. Confirmation.

"Confirmation" means the entry of the Confirmation Order.

36. Confirmation Date.

"Confirmation Date" means the date on which the Clerk of the Bankruptcy Court enters the Confirmation Order on the docket.

37. Confirmation Hearing.

"Confirmation Hearing" means the hearing conducted by the Bankruptcy Court to consider confirmation of the Plan, as such hearing may be continued from time to time.

38. Confirmation Order.

"Confirmation Order" means the order of the Bankruptcy Court confirming the Plan pursuant to § 1129 of the Bankruptcy Code.

39. Estate.

1 Person at least ten (10) days prior to the deadline for filing ballots on the Plan
2 submitted by the Castle Debtors.

3 **44. Insider.**

4 An "insider" of a Person shall mean a person or entity that would be an
5 "insider" of such Person under § 101(31) of the Bankruptcy Code, if such Person
6 were a Debtor.

7 **45. Investor Notes.**

8 "Investor Notes" shall have the meaning set forth on page 3 hereof.

9 **46. Net Investment Amount.**

10 "Net Investment Amount," for each Person who has invested in loans or other
11 investments through ANMP or any of the ANMP Loan Entities, means the aggregate
12 amount of all funds deposited by such Person with ANMP for investment in loans (to
13 Castle or any other borrower) less the amount of all funds received by such Person
14 on account of such investments.
15

16 **47. New Castle.**

17 "New Castle" means the entity that, on and after the Effective Date, shall own
18 all of the assets of the Castle Debtors except the Castle Real Properties.
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20 **48. Non-Participating ANMP Investor.**

21 "Non-Participating ANMP Investor" means an ANMP Investor that has not
22 elected to be a Participating ANMP Investor.
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49. Participating ANMP Investor.

"Participating ANMP Investor" means an ANMP Investor that elects to accept the treatment specified in section VI.F.1 hereof.

50. Person.

"Person" includes "person" as defined in § 101(41) of the Bankruptcy Code, and "governmental unit," as defined in § 101(27) of the Bankruptcy Code.

51. Receiver.

"Receiver" shall have the meaning set forth on page 4 hereof.

52. Receivership Action.

"Receivership Action" shall have the meaning set forth on page 4 hereof.

53. Receivership Court.

"Receivership Court" shall have the meaning set forth on page 4 hereof.

54. Receivership Motion.

"Receivership Motion" shall have the meaning set forth on page 19 hereof

55. Receivership Order.

"Receivership Order" shall have the meaning set forth on page 19 hereof.

56. Reorganized Debtors.

"Reorganized Debtors" means New Castle and Castle Realty.

57. Secured Claim.

"Secured Claim" means a Claim defined as a secured claim under § 506(a) of the Bankruptcy Code.

1 **III. APPROVALS.**

2 The parties acknowledge that the consummation of this Stipulation requires
3 various approvals and consents. By executing this Stipulation, each of the parties
4 hereto agrees to proceed with reasonable diligence and to use best efforts to obtain
5 the necessary approvals and consents in the manner set forth in this Section III.

6 **A. EXTENSION OF DEADLINE FOR FILING PROOFS OF CLAIM.**

7 Immediately upon the execution of this Stipulation by all parties hereto, the
8 Castle Debtors shall request the Bankruptcy Court to extend the deadline for filing
9 claims for the Receiver and for ANMP Investors until five (5) days after the
10 conclusion of the hearing on the Castle Approval Motion, as provided for below.

11 **B. CASTLE APPROVAL MOTION.**

12 Immediately upon the execution of this Stipulation by all parties hereto, the
13 Castle Debtors shall instruct counsel to file a motion (the "Castle Approval
14 Motion"), requesting the Bankruptcy Court to enter an order (the "Castle Approval
15 Order") which shall (i) authorize and direct the Castle Debtors to take necessary
16 actions to effectuate this Stipulation, (ii) approve the settlement of the ANMP Claims,
17 (iii) estimate, solely for purposes of an Acceptable Plan of Reorganization all such
18 claims in the amount of \$14,000,000, (iv) provide for an additional twenty (20) day
19 extension of the deadline for filing claims by Participating ANMP Investors and the
20 Receiver, and (v) approve the form of ANMP Investor Election Notice, as provided
21 for in section VI.F.1 hereof. Each of the parties hereto shall support the Castle
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1 Approval Motion and the entry of the Castle Approval Order and shall, at the request
2 of the Castle Debtors, be available to testify in support thereof at any hearing.

3 **C. ANMP APPROVAL MOTION.**

4 Immediately upon the execution of this Stipulation by all parties hereto, the
5 Receiver shall instruct counsel to file a motion (the "ANMP Approval Motion")
6 requesting the Bankruptcy Court to enter an order (the "ANMP Approval Order")
7 which shall (i) authorize and direct the Receiver to take necessary actions to
8 effectuate this Stipulation, and (ii) approve the settlement of the ANMP Claims.
9 Each of the parties hereto shall support the ANMP Approval Motion and the entry of
10 the ANMP Approval Order and shall, at the request of the Receiver, be available to
11 testify in support thereof at any hearing.
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13 **D. RECEIVERSHIP MOTION.**

14 Immediately upon the execution of this Stipulation by all parties hereto, the
15 Receiver shall instruct counsel to file a motion (the "Receivership Motion"),
16 requesting the Receivership Court to enter an order (the "Receivership Order")
17 which shall (i) authorize and direct the Receiver to take necessary actions to
18 effectuate this Stipulation, and (ii) approve the settlement of the ANMP Claims.
19 Each of the parties hereto shall support the Receivership Motion and the entry of the
20 Receivership Order and shall, at the request of the Receiver, be available to testify
21 in support thereof at any hearing.
22

1 **IV. AMENDED PLAN AND DISCLOSURE STATEMENT.**

2 On or before September 9, 2003, the Castle Debtors shall file an amended
3 plan of reorganization, which shall be an Acceptable Plan of Reorganization, and an
4 amended disclosure statement. Thereafter, the parties hereto shall support the
5 approval of the disclosure statement and plan and shall, at the request of the Castle
6 Debtors, be available to testify in support thereof at any hearing on the plan or
7 disclosure statement.

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9 **V. COLEMAN BANKRUPTCY CASE.**

10 Within ten (10) days after the last to occur of the entry of the Castle Approval
11 Order, the entry of the ANMP Approval Order and the Receivership Order, Coleman
12 shall seek (i) the conversion of the Coleman Bankruptcy Case to a voluntary Chapter
13 11 case, and (ii) the joint administration of the Coleman Bankruptcy Case with the
14 Castle Chapter 11 Cases. The parties hereto shall support the approval of these
15 steps.

16
17 **VI. PROVISIONS OF AN ACCEPTABLE PLAN.**

18 For the purposes of this Stipulation, an Acceptable Plan of Reorganization
19 shall contain provisions consistent with the following terms:

20 **A. CLASSIFICATION AND ALLOWANCE OF ANMP CLAIM.**

21 The Plan shall separately classify the ANMP Claim as an allowed Claim in the
22 amount of \$14,000,000. The allowed Claim shall be considered a claim in the case
23 of each Castle Debtor.

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B. TREATMENT OF ANMP CLAIM.

The Plan shall provide for payments (the "ANMP Claim Distributions") in instalments aggregating \$14,000,000, as provided for in section VI.C hereof, subject to adjustments, as provided in section VI.H hereof. The outstanding balance of the claim, as of the third (3rd) anniversary of the Effective Date of the Plan, shall bear interest at the rate of eight percent (8%) per annum.

C. INSTALLMENT PAYMENTS.

The holders of the ANMP Claims and General Claims will receive distributions from the Reorganized Debtors in quarterly instalments based upon the Available Funds of New Castle. The quarters shall be based on the fiscal year of New Castle, and will commence on January 1, April 1, July 1 and October 1 of each year. The first instalment shall be based on Available Funds for the first quarter of 2004, and each instalment thereafter shall be based on Available Funds for the next quarter. Each instalment shall be payable on or before the fifteenth (15th) day of the calendar month following the close of the quarter. The payment each quarter on account of the ANMP Claim and all General Claims shall be the greater of (i) an amount which, when added to all previous distributions, equals \$500,000 multiplied by the number of fiscal quarters after December 31, 2003, or (ii) sixty percent (60%) of Available Funds during the prior quarter.

1 **1. Election of Treatment; Election Notice.**

2 Each ANMP Investor shall be afforded the opportunity to elect to be a
3 Participating ANMP Investor under the Plan by filing an ANMP Investor Election
4 Notice in accordance with this section VI.F.1 within the time established by the
5 Bankruptcy Court.

6 The notice shall be in substantially the form of Exhibit 3 hereto, or in the form
7 approved by the Bankruptcy Court. A notice, once filed, may not be revoked without
8 the approval of the Bankruptcy Court. An ANMP Investor may elect to be a
9 Participating ANMP Investor after the deadline set by the Bankruptcy Court only with
10 the approval of the Castle Debtors and the Receiver or with the approval of the
11 Bankruptcy Court. The notice shall be deemed a proof of claim for an ANMP
12 Investor Claim in the Castle Debtors' cases in an amount equal to the Net
13 Investment Amount.
14

15 **2. Treatment of a Participating ANMP Investor.**

16 A Participating ANMP Investor will, solely for purposes of an Acceptable Plan
17 of Reorganization, (i) waive and release any Secured Claim against the Castle
18 Debtors, (ii) be deemed to have an Allowed ANMP Investor Claim against the Castle
19 Debtors in the amount of its Net Investment Amount, (iii) be released by the Castle
20 Debtors from any Avoidance Claims, (iv) be entitled to the release provided from the
21 Receiver provided for in section IX.B hereof, subject to the restrictions identified in
22 such section. A Participating ANMP Investor shall not receive distributions directly
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1 from the Reorganized Debtors but will be eligible for distributions from the Receiver
2 in accordance with section IX.A.

3 **3. Treatment of Non-Participating ANMP Investor.**

4 A Non-Participating ANMP Investor will (i) have its Claims challenged, (ii) be
5 subject to Avoidance Claims of the Castle Debtors, (iii) be subject to Avoidance
6 Claims in the ANMP Chapter 11 Case, and (iv) not be eligible for distributions from
7 the Receiver, as set forth in section IX.C hereof. Any Claim of a Non-Participating
8 ANMP Investor that is Allowed will receive the treatment set forth in sections
9 VI.F.3.a) and VI.F.3.b) hereof.

10 **a) Allowed ANMP Investor Secured Claim.**

11 A Non-Participating ANMP Investor who holds an Allowed ANMP Investor
12 Secured Claim shall receive payments in the amount Allowed as a Secured Claim, in
13 installments in accordance with the treatment of other Allowed Secured Claims
14 under the plan.

15 **b) Allowed ANMP Investor Unsecured Claim.**

16 A Non-Participating ANMP Investor who holds an Allowed ANMP Investor
17 Unsecured Claim Investor shall receive a share of the ANMP Liquidation Amount,
18 pro rated among all ANMP investors, which shall be payable in quarterly installments
19 based upon the percentage of the ANMP Claim paid during such quarter.
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1 **2. Adjustments Based Upon ANMP Investor Claims.**

2 The parties hereto recognize that ANMP Investors are entitled to file proofs of
3 claim in the Castle cases whether or not such claims are allowed. The following
4 provisions shall be applicable to all such claims:

5 **a) Duplicative Participating ANMP Investor Claim.**

6 Participating ANMP Investors may file proofs of claim in accordance with
7 section VI.F.1. To the extent that such claims are based upon investments in the
8 Castle loans identified on Exhibit 2 hereto, these claims are duplicative of the ANMP
9 Claim held by the Receiver. Accordingly, the Plan shall provide that these Claims
10 will be Allowed, the holder of such claims shall be treated in accordance with section
11 VI.F.2, hereof, and the ANMP Claims Distribution shall not be adjusted on account of
12 such claims.
13

14 **b) Non-Duplicative Participating ANMP Investor Claim.**

15 The parties believe that the investor funds reflected on Exhibit 2 include all of
16 the investment of ANMP Investors, including those who received Investor Notes, and
17 that each holder of an Investor Note has been credited with an interest in one of the
18 listed loans for such investment. If, after notice to the Debtors and the Receiver and
19 a hearing, the Bankruptcy Court determines that a Participating ANMP Investor who
20 holds an Investor Note provided the Castle Debtors with funds not reflected on
21 ANMP's books and records and not included in the investor funds referred to in
22 Exhibit 2, the ANMP Claim Distributions shall be increased by the amount of such
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1 funds, less any payments received by the investor not included within the funds
2 reflected on Exhibit 2.

3 **c) Claims of Non-Participating ANMP Investors.**

4 The parties have agreed to object to all claims of Non-Participating ANMP
5 Investors. If notwithstanding, any such claims are allowed, the amount of the
6 ANMP Claim Distributions payable to the Receiver will be reduced *pro tanto* by the
7 amount payable by the Reorganized Debtors on account of such allowed ANMP
8 Investor Claims.

9
10 **i. MANAGEMENT OF REORGANIZED DEBTORS.**

11 The Plan will provide that, until the ANMP Claim is paid in full, the
12 Reorganized Debtors shall be managed by a Management Board. Until the ANMP
13 Claim has been paid in full in accordance herewith, two members of the
14 Management Board shall be selected by the Receiver. Until all General Claims have
15 been paid in full, two members of the Management Board shall be selected by the
16 holders of General Claims. One additional member of the Management Board shall
17 be designated the Manager. The initial Manager shall be Vern Schweigert, and any
18 successor Manager shall be designated by Vern Schweigert subject to the approval
19 of either (i) the majority of the Management Board, or (ii) the Bankruptcy Court.
20

21
22 Unless there has been a default in the payment of the General Claims or the
23 ANMP Claim, the following actions shall require the affirmative vote of the Manager.
24

1 and the two members selected by the Receiver: (i) A sale of all or
2 substantially all of the assets of the Reorganized Debtors; (ii) the closing of any of
3 the existing stores; (iii) the sale, assignment, or pledge of the company's trademark
4 or trade name; (iv) the opening of a new store other than the Seattle store; (v) the
5 failure to make distributions required under the Plan; (vi) the making of distributions
6 in excess of the amounts required under the Plan; (vii) a reduction in the salary of
7 Coleman or Franks; (viii) the incurrence of debt for borrowed money, or (x) the re-
8 financing of any of the Castle Real Property for an amount in excess of the balance
9 of Secured Claims on such property.

10
11 **J. LIQUIDATION PREFERENCE**

12 The holder of the ANMP Claim shall be entitled to a liquidation preference
13 upon the sale of substantially all of the assets of the Reorganized Debtors in an
14 amount equal to the unpaid balance of the ANMP Claim. Such preference shall be
15 superior to any distributions on account of equity interests. The liquidation
16 preference for ANMP Claims shall be secured by a lien on the Castle Real
17 Properties, which, while no default exists under the Plan, shall be subject to partial
18 releases or subordination upon the sale or re-financing of any portion of the Castle
19 Real Properties.

20
21 **K. COLEMAN PLAN OF REORGANIZATION.**

22 As soon as possible after an order for relief is entered in the Coleman
23 Bankruptcy Case, Coleman shall propose a Plan of Reorganization in such case,
24 which shall provide that (i) Coleman shall be liable for the payments on account of

1 the ANMP Claim, and (ii) Coleman shall, on the Effective Date of a plan of
2 reorganization in the Coleman case, grant the Receiver a lien on the Coleman Real
3 Property to secure payments due under the Castle Debtors' Plan; (iii) in
4 consideration thereof, the Castle Debtors shall make any required payments to the
5 holders of existing liens (excluding any liens of ANMP Lending Entities) on the
6 Coleman Real Property when due; and (iv) upon payment in full of the ANMP Claim,
7 Coleman shall be released and discharged from any liabilities on account of the
8 ANMP Claim. The Castle Debtors and the Receiver shall support the confirmation of
9 such a Plan and shall vote any claims they may have in favor of such a plan.

10
11 **VII. ADMINISTRATIVE CLAIM.**

12 In recognition of the efforts of the Receiver and certain professionals in the
13 ANMP Chapter 11 Case to assist in the negotiation and confirmation of an
14 Acceptable Plan of Reorganization for the Castle Debtors, the Castle Debtors shall
15 support an application by the Receiver for compensation and reimbursement
16 pursuant to section 503(b)(3)(D) of the Bankruptcy Code, for the services of
17 professionals of the Receiver and/or professionals of the Investors' Committee in the
18 ANMP Chapter 11 Case, provided such application does not exceed \$100,000.

19
20
21 **VIII. RE-CONVEYANCE OF PROPERTIES.**

22 On the Effective Date of an Acceptable Plan of Reorganization, the Receiver
23 shall take all steps reasonably necessary to re-convey title to the Castle Real
24 Properties to Castle Realty, free and clear of all liens, claims and encumbrances of

1 ANMP, ANMP 74th, the ANMP Loan Entities and ANMP Investors and re-convey
2 title to the Coleman Real Properties to Coleman, free and clear of all liens, claims
3 and encumbrances of ANMP ANMP 74th St., the ANMP Loan Entities and ANMP
4 Investors.

5 **IX. RECEIVER'S TREATMENT OF ANMP INVESTORS.**

6 **A. RECEIVER DETERMINATION OF ANMP INVESTOR TREATMENT.**

7 Unless contrary to the specific provisions of this Stipulation, the treatment of ANMP
8 Investors in the ANMP Chapter 11 Case and the ANMP Receivership Action, and
9 the Receiver's distribution of the ANMP Claim Distributions shall be determined in
10 the ANMP Chapter 11 Case and/or the ANMP Receivership Action. Without limiting
11 the generality of the foregoing, the Receiver may or may not, propose that
12 distributions in the ANMP Chapter 11 Case will be based upon the net investments
13 of ANMP Investors. Additionally, the Receiver may, or may not, propose that
14 distributions from all sources in the ANMP Chapter 11 Case be determined based on
15 investors' Net Investment Amount or that distributions of the ANMP Claim
16 Distributions, only, shall be based on investors' Net Capital Investment Amount.
17

18
19
20 **B. RELEASE OF PARTICIPATING ANMP INVESTORS.**

21 On the Effective Date of an Acceptable Plan of Reorganization, ANMP,
22 ANMP 74th and the ANMP Loan Entities will release Avoidance Claims against
23 Participating ANMP Investors other than Ineligible Participating ANMP Investors,
24 who shall not be released. The release of such claims will not restrict the Receiver's
25

30

26 STIPULATION

Case No. 03-03546-PHX-RJK

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1 rights to determine the amounts to be distributed, from payments made by the
2 Reorganized Debtors or otherwise, to ANMP Investors on the basis upon which such
3 distributions are made.

4 **C. NO DISTRIBUTIONS TO NON-PARTICIPATING ANMP INVESTORS.**

5 Except as may be otherwise ordered by the Bankruptcy Court in the ANMP
6 Chapter 11 Case, the Receiver shall not make any distributions from payments
7 made by the Reorganized Debtors on account of the ANMP Claims to any Non-
8 Participating ANMP Investor.

9
10 **X. EARLY TERMINATION OF STIPULATION.**

11 **A. GROUNDS FOR TERMINATING STIPULATION.**

12 Any party hereto may, upon at least ten (10) days' notice to the other parties,
13 elect to terminate this Stipulation, if, notwithstanding their cooperation in seeking the
14 above-referenced approvals.

- 15 1. After October 15, 2003 if the Castle Approval Order and the
16 ANMP Order have not been entered;
- 17 2. After November 14, 2003, if the amended disclosure statement
18 has not been approved;
- 19 3. After December 31, 2003, if an Acceptable Plan of
20 Reorganization has not been confirmed.
- 21 4. After January 31, 2004, if an Acceptable Plan of Reorganization
22 has not been substantially consummated.

1 Notwithstanding the foregoing, each party shall be obligated to perform its
2 obligations under this section X after the dates specified above until the expiration of
3 the ten (10) days' notice period specified in this section X.

4 **B. EFFECT OF TERMINATION.**

5 Upon termination of this Stipulation pursuant to Section X, this Stipulation
6 shall become null and of no force and effect, and the parties will be entitled to the
7 restoration of the status quo as it existed prior to the execution of this Stipulation,
8 and any applicable statute of limitations shall be tolled from the date of this
9 Stipulation to the date of such termination.

10
11 **XI. MODIFICATION OF AGREEMENT.**

12 This Agreement is the complete and entire Agreement of the parties and may
13 not be modified, changed, contradicted, edited or altered in any way by any prior or
14 subsequent written or oral communications. This Agreement can only be modified in
15 a writing signed by all of the parties.

16 **XII. CHOICE OF LAW.**

17 This Agreement is to be interpreted in accordance with the law of the State of
18 Arizona, except to the extent that it may be governed by federal bankruptcy law.

19
20
21 **XIII. SUCCESSORS AND ASSIGNS.**

22 This Agreement shall inure to the benefit of the settling parties hereto and
23 their respective successors and assigns.

1 **XIV. HEADINGS.**

2 Any headings used in this Agreement are for convenience of reference only,
3 and shall not affect the construction or interpretation of this Agreement.

4 **XV. EXECUTION.**

5 This agreement may be executed in multiple counterparts, each one of which
6 shall constitute an original and all of which shall constitute one agreement.
7

8
9 DATED this 9th day of September, 2003.

10 Receiver:

11

12

/s/ James Sell

13

James Sell, as Receiver of ANMP,
ANMP 74th and the ANMP Loan
Entities

14

Castle Debtors:

15

16

/s/ Vern Schweigert

17

Vern Schweigert, Chief Restructuring
Officer of the Castle Debtors

18

19 Coleman:

20

21

/s/ Taylor Coleman

22

Taylor Coleman

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26 STIPULATION

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Exhibit (B)

IT IS HEREBY ADJUDGED
and DECREED this is SO
ORDERED.

The party obtaining this order is responsible for
noticing it pursuant to Local Rule 9022-1.

Dated: October 16, 2003



Randolph J. Haines

RANDOLPH J. HAINES
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

In re
DEXTER DISTRIBUTING
CORPORATION, et al.,
Debtors.

Chapter 11 Proceedings

Case No. 03-03546 ECF-RJH

Jointly Administered with Case Nos. 03-
03548-PHX-RJH and 03-04695 PHX-RJH
through 03-04710 PHX-RJH, 03-05427-
PHX-RJH, 03-11513-PHX-RJH and 03-
11515-PHX-RJH)

THIS FILING APPLIES TO:

ALL DEBTORS
 SPECIFIED DEBTORS

In re:
ANMP 1TH S1, LLC.
Debtor.

Case No. 03-03799-PHX-RJH

In re:
AMERICAN NATIONAL MORTGAGE
PARTNERS, LLC.
Debtor.

Case No. 03-03803-PHX-RJH

(Jointly Administered)

ORDER APPROVING STIPULATION

Hearing Date: September 30, 2003
Hearing Time: 9:00 a.m.

1 This matter came before the Court pursuant to the "Motion To Approve Stipulation
2 In Aid Of Confirmation Of Plan Of Reorganization" (the "Motion") filed by the above-
3 referenced debtors ("Debtors") and James R. Sell, Receiver of American National
4 Mortgage Partners, L.L.C. and ANMP 74th Street, LLC ("Receiver") (collectively,
5 "Movants"). Based upon the Motion and the entire record before this Court, the Court
6 hereby finds as follows:

7
8 1 The Motion requests approval of the "Stipulation In Aid Of Confirmation Of
9 Plan Of Reorganization" ("Stipulation") between Receiver, the Castle Debtors (as defined
10 in the Stipulation) and Mr. Coleman.

11
12 2. The Motion and the relief requested therein present "core" proceedings with
13 respect to which this Court may enter a final Order pursuant to 28 U.S.C. §§ 1334 and 157.
14 The Motion and the Court's hearing thereon have been duly and properly noticed to all
15 appropriate creditors and other parties in interest.

16
17 3. Objections to the Motion were filed by the Official Committee of Unsecured
18 Creditors (the "Committee"), Friends Investors, L.L.C., Monterey Capital Company, 4 D
19 International, LLC ("4 D"), Frack Caspare and Larry Dunning, M&M&M Group, LLC
20 (collectively the "Objecting Parties") and by Robert Delheim and Brianna Delheim, Ralph
21 Vesco, Rudolph A. Owens, and Pensco Pension Services FBO: Rudolph A. Owens IRA
22 (collectively the "Delheim Creditors"). The Delheim Creditors conditionally withdrew
23 their objection. The objections of 4 D, Friends Investors, and M&M&M were resolved by
24 stipulations between the parties.
25
26

1 4. All creditors and other parties in interest were provided with an opportunity
2 for a hearing as is appropriate in the particular circumstances. In connection therewith, a
3 hearing on the Motion was held on September 30, 2003. The Committee was not present
4 at the hearing.

5 5. At the hearing held on September 30, 2003, the Court entered its findings of
6 fact and conclusions of law as is set forth in the record.

7 6. The Court finds and concludes that the Debtors' responsible parties properly
8 concluded that the granting of the Motion and the entering of this Order are in the best
9 interests of each of the Debtors and their respective estates. The Court further finds and
10 concludes that the Stipulation is fair and equitable with respect to each of the Debtors and
11 their respective estates. Debtors' responsible parties have exercised reasonable business
12 judgment in consenting to the terms of the Stipulation, and Movants have satisfied all
13 requirements of FED. R. BANKR. P. 9019 and Woodson v. Fireman's Fund Ins. (In re
14 Woodson), 839 F.2d 610 (9th Cir. 1988).

15 IT IS HEREBY ORDERED as follows:

16 A. The Motion shall be, and hereby is, granted in its entirety and all objections
17 to the Motion are overruled in their entirety (to the extent not resolved by stipulation) as
18 set forth with more specificity in the findings set forth on the record, which are deemed
19 incorporated herein. Without limiting the generality of the foregoing, the settlement
20 among the Debtors, the Receiver and Mr. Coleman set forth in the Motion and the
21 Stipulation is approved by the Court and is binding and enforceable on the parties thereto
22
23
24
25
26

1 B. Debtors are hereby authorized to implement the Stipulation and to perform
2 their obligations thereunder subject to the terms and conditions thereof.

3 C. In accordance with section III.B(iii) and VI.A. of the Stipulation, the ANMP
4 Claim (as defined in the Plan) was agreed to by the parties in the amount of \$14,000,000,
5 and shall be allowed in such amount solely for purposes of an Acceptable Plan of
6 Reorganization, as defined in the Stipulation, subject to adjustments as set forth in the
7 Stipulation.

8
9 D. The time for filing proofs of claim for all creditors shall be extended to the
10 date ballots are first due on the Castle Debtors' proposed Plan of Reorganization (the
11 "Claims Deadline"). In accordance with section III B (v) of the Stipulation, the form of
12 notice and election set forth as Exhibit 3 to the Stipulation is hereby approved and Debtors
13 are authorized to provide such form to ANMP Investors (as defined in the Stipulation) in
14 connection with balloting on Debtors' proposed Plan of Reorganization. Such forms,
15 when completed and filed with the Court in accordance with the Stipulation, shall
16 constitute proofs of claim for Participating ANMP Investors. Non-Participating ANMP
17 Investors (as defined in the Stipulation) shall file a separate proof of claim by the Claims
18 Deadline.
19

20
21 F. Debtors are hereby authorized to extend, or not extend, the deadlines set
22 forth in the Stipulation, in their discretion and with the consent of the Receiver,
23 PROVIDED, that Debtors shall file a notice of any such extension, and provided, further,
24 that any party in interest may seek to restrict any extension granted, for good cause shown.
25
26

1 G. The approval of the Motion and Stipulation is subject to the stipulations
2 placed on the record at the September 29, 2003 pretrial conference and at the September
3 30, 2003 hearing on the Motion with respect to the objections and positions of secured
4 creditor 410 which are further set forth below:

5
6 1. With respect to paragraph VIII on page 31 of the Stipulation, the
7 parties agree this paragraph applies both to situations in which the ANMP Receiver has to
8 formally reconvey title to Castle Realty and to situations in which title to real property is
9 already in a Debtor entity and there is an ANMP-related lien, claim, or other issue which
10 can be cleared from title by the ANMP entities listed.

11
12 2. That the liquidation preference lien described in paragraph VI(j) on
13 page 29 of the Stipulation (the "Liquidation Preference Lien") is a lien on real property
14 only (although such lien will not be placed on the Debtor's Phoenix warehouse or
15 associated property); and

16
17 3. That the Liquidation Preference Lien will not be placed on the
18 Phoenix warehouse or the associated 33 acres of land at the Phoenix warehouse site, all of
19 which is owned by Debtor 1102 W. Roosevelt, LLC.

20 H. Nothing in this Order shall be deemed to be a waiver of any argument by any
21 party with respect to any disclosure statement and confirmation objections.

22 DATED this ____ day of October, 2003.

23
24 _____
25 HONORABLE RANDOLPH J. HAINES
26 UNITED STATES BANKRUPTCY JUDGE

1 KELLER ROHRBACK, P.L.L.C.

2
3 By /s/ Christopher Graver

Christopher Graver

4 Counsel for Debtors 300 East Camelback, L.L.C.; 222 N. 44th
5 St., L.L.C.; real Estate Holding Corporation; 117 Dunlap, L.L.C.;
6 Silverdale Building, L.L.C.; East Sprague Avenue, L.L.C.;
7 1113 Progress Drive, Medford, L.L.C.; 522 N. Columbia
8 Center Blvd., L.L.C.; 9815 S.W. Capital Highway, L.L.C.; Deer
9 Valley/26th Avenue, L.L.C.; 1851 E. Fifth Ave., L.L.C.; 5110
10 Central Avenue S.E., L.L.C.; 8315 East Apache Trail, L.L.C.;
11 5015 Tacoma Mall Blvd., L.L.C.; and 7102 W. Roosevelt, L.L.C.

12 OSBORN MALEDON P.A.

13
14 By /s/ Alan A. Meda

C. Taylor Ashworth,

Alan A. Meda

Warren J. Stapleton

15 Counsel for Dexter Distributing Corporation; Castle Megastore
16 Corporation; 3270 Gateway Street, L.L.C.; 613 East Fairview
17 Avenue, L.L.C.; Adult Web Fulfillment, L.L.C.; and Web
18 Fulfillment, L.L.C.

19 LAW OFFICES OF MICHAEL W. CARMEL

20
21 By /s/ Michael W. Carmel

Michael W. Carmel

22 Counsel for James R. Sell, Receiver of American National
23 Mortgage Partners, LLC, and ANMP 74th Street, LLC

24 JABURG & WILK

25
26 By /s/ Lawrence E. Wilk

Lawrence E. Wilk

Counsel for James R. Sell, Receiver of American National
Mortgage Partners, LLC, and ANMP 74th Street, LLC

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SCHIAN WALKER P.L.C.

By /s/ Dale C. Schian
Dale C. Schian
Counsel for Taylor Coleman

ROBBINS & GREEN, P.A.

By /s/ Bradley J. Stevens
Bradley J. Stevens
Paul G. Johnson
Counsel for 4 D International, L.L.C.

GRANTED