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11 SUPERIOR COURT OF ARIZONA
12 MARICOPA COUNTY

13 ARIZONA CORPORATION COMMISSION,

Case No: CV2003-005724

14 Plaintiff,

**JOINT MOTION TO APPROVE
STIPULATION IN AID OF
CONFIRMATION OF PLAN
REGARDING TAYLOR COLEMAN
BANKRUPTCY**

15 v.

16 AMERICAN NATIONAL MORTGAGE
17 PARTNERS, L.L.C., et al.

(Assigned to the Honorable J. Richard Gama)

17 Defendants.

19 James C. Sell, the court appointed Receiver in the above-referenced matter ("Receiver"),
20 through counsel of record undersigned, and David W. Dow, attorney for the American National
21 Mortgage Partners' Creditor's Committee ("ANMP Creditor's Committee") in the American
22 National Mortgage Partners' and ANMP 74th Street bankruptcy proceedings ("ANMP
23 Bankruptcies"), hereby requests that this Court enter an Order authorizing the parties to enter
24 into and implement the Stipulation in Aid of Confirmation of Chapter 13 Plan of
25 Reorganization ("Stipulation") in the Taylor Coleman Bankruptcy proceeding, Case No.
26 03-04238 RJH ("Coleman"). The Stipulation will resolve the disputes between the
27 parties.
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This motion is based upon the following Memorandum of Points and Authorities.
DATED this 1 day of June, 2004.

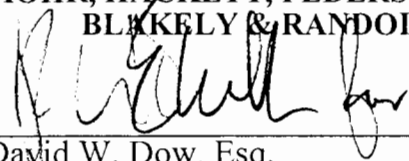
JABURG & WILK, P.C.



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

DATED this 1 day of June, 2004.

MOHR, HACKETT, PEDERSON
BLIKELY & RANDOLPH P.C.



David W. Dow, Esq.
Attorney for ANMP
Creditor's Committee

MEMORANDUM OF POINTS AND AUTHORITIES

I. Procedural Background

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

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

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

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

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

11 6. On or about August 22, 2003, the Court entered the Second Order Appointing
12 Receiver, which was entered for the specific purpose of naming additional parties.

13 7. Paragraph 18 of the Receivership Order provides as follows:

14 (18) The Receiver is hereby authorized to institute, defend,
15 compromise or adjust such actions or proceedings in state or
16 federal courts now pending and hereafter instituted, as may
17 in his discretion be advisable or proper for the protection of
18 the Receivership Assets or proceeds therefrom, and to
19 institute, prosecute, compromise or adjust such actions or
20 proceedings in state or federal court as may in his judgment
21 be necessary or proper for the collection, preservation and
22 maintenance of the Receivership Assets.

23 8. The Receiver held disputed claims in the Dexter Distributing Corporation
24 bankruptcy proceeding, Case No. 03-0546 RJH ("Castle Debtors") and Coleman bankruptcy
25 proceeding which were previously settled as a result of a Stipulation in Aid of Confirmation in
26 the Castle bankruptcies. This Stipulation was previously approved by this Court.

27 II. Settlement Terms

28 9. The Receiver, Coleman and the Castle Debtors previously entered into a
Stipulation in Aid of Confirmation of Plan of Reorganization, the terms of which were
incorporated in the Castle Debtors' Amended Joint Plan of Reorganization dated
September 9, 2003 (the "Castle Stipulation and "Castle Plan" respectively). Pursuant to

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the terms of the Castle Stipulation, certain investor claims that may be asserted against Coleman were deemed duplicative of claims that were compromised pursuant to the terms of the Castle Stipulation.

10. The parties anticipated that investors may have claims that were not duplicative of the claims settled in the Castle Stipulation. To address these claims, the Castle Stipulation specifically did not provide for a release of Coleman from liability for these purported claims. Although Coleman expressly denies the existence, validity and amount of any such claims, the Receiver and ANMP Creditors Committee, acting for the benefit of all American National Mortgage Partners' Investors ("ANMP Investors"), have negotiated a resolution of those claims in a manner that avoids significant litigation, including but not limited to the claim objection process, avoids the uncertainty attendant to all litigation, and will reduce the costs of administration and permit these proceedings to be concluded expeditiously.

11. Coleman, the Receiver and the ANMP Creditors' Committee have reached an agreement, the terms of which are set forth in the Stipulation in Aid of Confirmation of Chapter 13 Plan, a copy of which is attached hereto as **Exhibit "A"**. Pursuant to the agreement of the parties, the essential terms are as follows:

a. Coleman agrees that the Claim Amount, as defined in the Castle Stipulation, will be increased by an additional \$2 million (the "Coleman Payment").

b. The Coleman Payment shall be paid in accordance with the terms of the confirmed Castle Plan and all distributions otherwise payable to ANMP Investors by reasons of their claims against Coleman shall be satisfied in full by the Coleman Plan and will be paid to American National Mortgage Partners (by delivery to the Receiver) to be distributed by the Receiver in accordance with the anticipated American National Mortgage Partners' Plan of Reorganization, or a Plan of Distribution.

1 c. In consideration for the Stipulation, and payment of attorney fees paid to
2 Ralph Vescio and Rudy Ouwens/Pensco Pension, as more particularly set forth in the
3 Stipulation, the Dellheim Creditors have agreed to a) dismiss their pending appeal against
4 Castle Debtors, b) support Coleman's Chapter 13 Plan, c) waive claims for reimbursement
5 of any additional attorneys' fees and costs against Castle, Coleman, the ANMP
6 Bankruptcy Estates and the Receivership action; and d) not oppose the Receiver's
7 consolidation of the American National Mortgage Partners' entities into a single plan of
8 reorganization, not oppose the allegation of a Ponzi Scheme or the use of each investor's
9 "net investment amount" as an allocation mechanism for the payout, to the ANMP
10 investors, of sums recovered by the receiver and/or the ANMP Bankruptcies.
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14 **12. UNDER THE TERMS OF THE STIPULATION, THE ANMP**
15 **INVESTORS SHALL SHARE IN THE ADDITIONAL TWO MILLION DOLLARS**
16 **PAID BY COLEMAN. THE ANMP INVESTORS WILL BE BOUND BY THE**
17 **TERMS OF THE STIPULATION WHICH LIMITS THE AMOUNT OF THEIR**
18 **TOTAL CLAIMS TO THE AMOUNT OF THE ADDITIONAL TWO MILLION**
19 **DOLLARS BEING PAID THROUGH THE COLEMAN PLAN. APPROVAL OF**
20 **THE STIPULATION WILL RESULT IN THE COLEMAN PAYMENT BEING**
21 **CONSIDERED FULL AND FINAL SATISFACTION OF ALL ANMP INVESTOR**
22 **CLAIMS AGAINST COLEMAN.**

23 13. The Receiver and ANMP Creditors' Committee believe the proposed
24 Stipulation is in the best interest of the Receivership estate and ANMP investors.

25 WHEREFORE, the undersigned respectfully request that this court approve the
26 Stipulation in Aid of Confirmation of Chapter 13 Plan, to be filed in the Taylor Coleman
27 bankruptcy proceeding.

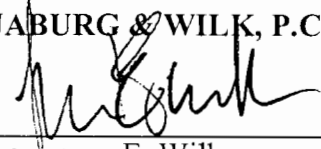
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DATED this \ day of June, 2004.

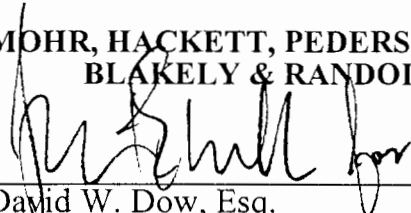
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DATED this \ day of June, 2004.

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David W. Dow, Esq.
Attorney for ANMP
Creditor's Committee

ORIGINAL filed and **COPY**
of the foregoing hand-delivered
this ~~1st~~ day of June, 2004 to:

Ind

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

COPIES of the foregoing mailed
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15 **UNITED STATES BANKRUPTCY COURT**

16 **THE DISTRICT OF ARIZONA**

17 In re:

18 DEXTER DISTRIBUTING CORPORATION, et
19 al.,

20 Debtors.

No. 2-03-03546-RJH

CHAPTER 11

(Jointly Administered With Case Nos. 03-03548-
PHX-RJH, 03-04238-PHX-RJH, 03-04695-
PHX-RJH through 03-04710-PHX-RJH, 03-
05427-PHX-RJH, 03-11513-PHX-RJH and 03-
11515-PHX-RJH)

22 THIS FILING APPLIES TO:

- 23 ALL DEBTORS
24 SPECIFIED DEBTOR

25 **STIPULATION IN AID OF
CONFIRMATION OF CHAPTER 13 PLAN**

DATE: June 21, 2004

TIME: 1:30 p.m.

LOCATION: 2929 North Central Avenue
Phoenix, Arizona
Courtroom 3, 11th Floor

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1 5. On March 5, 2004, the ANMP Committee filed its Joinder in Chapter 13 Trustee's
2 Motion to Reconvert Case for Ineligibility Under Chapter 13 (the "ANMP Joinder").

3 6. On March 22, 2004, Coleman filed his Response to Motion to Reconvert Case for
4 Ineligibility Under Chapter 13.

5 7. On March 23, 2004, Coleman filed his Response to Objections to Chapter 13
6 Plan.

7 8. On March 30, 2004, the Trustee filed his Chapter 13 Trustee's Recommendation
8 with respect to the Coleman Plan.

9 9. No other party has objected to Coleman's eligibility for relief under Chapter 13.

10 10. The dispute as to Coleman's eligibility for relief under Chapter 13 and the ANMP
11 Committee's and Dellheim Creditors' objections to the Coleman Plan are being resolved pursuant to this
12 Agreement, as are the matters addressed in the Trustee's recommendation.

13 11. The Dellheim Creditors have also filed an appeal of the Order Confirming Plan of
14 Reorganization, which appeal remains pending with the United States District Court for the District of
15 Arizona (the "Dellheim Appeal").

16 12. The obligations and agreements set forth herein, including but not limited to the
17 agreement of Coleman and the Castle Debtors to increase the amount of the ANMP Claim, the
18 withdrawal of objections and the Trustee's recommendation with respect to the Coleman Plan, and the
19 provisions related to the Dellheim Creditors and the treatment of their claim are expressly conditioned
20 upon the approval of this Agreement and confirmation of the Coleman Plan substantially in the form that
21 exists, except to the extent that it may be modified to incorporate the terms of this stipulation.

22 B. ANMP Stipulation.

23 1. Coleman, the Castle Debtors, and the ANMP Receiver entered into a Stipulation
24 in Aid of Confirmation of Plan of Reorganization (the "Stipulation"), a true and correct copy of which is
25 attached hereto and incorporated hereby by this reference, with respect to "ANMP," "ANMP Loan
26 Entities," "ANMP Investors," "ANMP Investor Notes," "ANMP Notes," "ANMP Loan Documents," and

1 "Coleman Loan Documents," all of which are defined in the Stipulation. Unless otherwise specified, all
2 terms used herein shall have the meaning ascribed to those terms in the Stipulation.

3 2. Pursuant to the terms of the Stipulation, as incorporated in the Castle Debtors'
4 Amended Plan of Reorganization (the "Castle Plan"), the Receiver, Castle Debtors, and Coleman
5 liquidated the ANMP Claim, provided a method by which adjustments may be made to the ANMP
6 Claim, provided for a method of payment for the adjusted ANMP Claim, and provided for the Coleman
7 guaranty of the ANMP Claim.

8 3. The Stipulation further provided that the parties to the Stipulation did not believe
9 that ANMP Investors have any allowable claims directly against the Castle Debtors or Coleman and that
10 any ANMP Investors' claims would be duplicative of the ANMP Claim provided for in the Stipulation.

11 4. The Stipulation further provided that ANMP Investors might elect to forego
12 distributions based upon the Stipulation and seek to assert claims directly against the Castle Debtors.
13 The Castle Debtors, Coleman and the Receiver agreed to cooperate in objecting to the allowance of any
14 such Claim, but agreed that the ANMP Claim would be reduced *pro tanto* in an amount payable by the
15 Castle Debtors on account of such Claims. To date, no ANMP Investors have established such a Claim
16 over the objection of the Receiver, the Castle Debtors and Coleman. Nevertheless, ANMP Investors
17 have asserted Claims in the Coleman Bankruptcy. Coleman asserts that these claims are entirely
18 duplicative of the ANMP Claim, but has negotiated the resolution herein described with the ANMP
19 Committee to resolve any Claim by any ANMP Investors that has been or could have been asserted by
20 the Receiver, ANMP, the ANMP Loan Entities, or ANMP Investors in the Coleman Bankruptcy and that
21 is not completely duplicative of the ANMP Claim (the "Additional Investor Claims").

22 C. Relationship Between Coleman Plan and Castle Plan.

23 1. Coleman was a guarantor or accommodation-maker for many or most of the
24 Claims against the Castle Debtors, including but not limited to those obligations to the Receiver under
25 the Stipulation.

1 2. Almost all of the Claims in the Coleman Bankruptcy were or could have been
2 asserted in the Castle Bankruptcy proceedings.

3 3. Both the Castle Plan and the Coleman Plan contemplate full payment of all
4 Allowed Claims.

5 4. Although the Claims may be asserted in both the Coleman Bankruptcy and the
6 Castle Bankruptcy, they are only entitled to a single satisfaction.

7 5. The Castle Debtors had the ability to fully satisfy Allowed Claims over time, but
8 required an infusion of funds to meet the obligations of the Castle Debtors under the Castle Plan.

9 6. On March 23, 2004, Coleman and the Castle Debtors filed their Joint Motion to
10 Approve Coleman Settlement and Authorize Taylor Coleman to Make the Agreed Upon Payment Called
11 for Under Castle Plan and ANMP Stipulation (the "Joint Motion").

12 7. Pursuant to the terms of the Joint Motion and the Coleman Plan, all Allowed
13 Claims in the Coleman Bankruptcy shall be conclusively determined to be obligations or co-obligations
14 of the Castle Debtors.

15 8. In consideration of the \$240,000 payment from Coleman to Castle, Coleman's
16 continuing guaranty of the obligations of the Castle Debtors as defined by the Castle Plan, and
17 Coleman's acceptance of the other terms and conditions of the Castle Plan, all Allowed Claims in the
18 Coleman Bankruptcy shall be allowed and paid in accordance with the Castle Plan on the same terms
19 and conditions as other Allowed Claims against the Castle Debtors.

20 9. The ANMP Investors and others entitled to receive payment from the ANMP
21 Claim pursuant to the Castle Plan were separately classified under the Castle Plan because the
22 distributions by reason of those claims are to be made to the Receiver and not to holders of individual
23 Claims.

24 10. Pursuant to the terms of this Agreement, the Coleman Payment will also be made
25 to the Receiver while all other Allowed Claims in the Coleman Bankruptcy shall be paid through the
26 Castle Plan in accordance with the treatment afforded those claims under the Castle Plan. Therefore, it

1 is necessary that the Coleman Plan be amended to provide for the Coleman Payment, to specify the
2 mechanism by which that payment will be made, and to specify the treatment that the Additional
3 Investor Claims that give rise to the Coleman Payment shall receive under the Coleman Plan.

4 AGREEMENT

5 Subject to the terms and conditions set forth herein, the parties have agreed that the
6 amount and allowability of the Additional Investor Claims will be resolved on the terms set forth herein,
7 summarized as follows:

8 A. Incorporation of Recitals. The foregoing recitals shall be incorporated as part of the
9 operative provisions of this agreement as though fully set forth herein.

10 B. Coleman Plan. The resolution of the Additional Investor Claims will occur solely in the
11 context of a confirmed Chapter 13 plan in the Coleman Bankruptcy.

12 C. Claim Amount. Solely in the context of confirmation of the Coleman Plan, the Castle
13 Debtors will stipulate and consent that the ANMP Claim (as defined in the Stipulation) may be increased
14 in an amount equal to \$2 million in full satisfaction of any Additional Investor Claims that have been or
15 could be asserted against Coleman.

16 D. Payment of Claim. The Coleman Payment shall be guaranteed by Coleman and paid on
17 the same terms and immediately after payment of the ANMP Claim in accordance with the Castle Plan.

18 E. Management of the Castle Debtors. All provisions of the Castle Plan related to the
19 management of the Castle Debtors shall remain in effect until the Coleman Payment has been paid.

20 F. Full Satisfaction and Release. The Coleman Payment paid in accordance with the terms
21 of this Agreement shall be agreed and adjudicated to be payment in full and final satisfaction of all
22 Additional Investor Claims that have been or could have been asserted against Coleman, which together
23 with all other Claims shall upon delivery of the Coleman Payment be forever released and discharged.
24 Except as may be otherwise ordered by the Bankruptcy Court in the ANMP Chapter 11 Case, Coleman
25 shall not make any distributions directly to any ANMP Investor or by reason of the ANMP Claim, any
26 ANMP Investor Claim or any Additional Investor Claim.

1 G. Treatment of Dellheim Creditors' Claims.

2 1. The Dellheim Creditors have incurred attorneys' fees and costs in the
3 Receivership Action, as defined in the Stipulation, in the ANMP jointly administered bankruptcy
4 proceedings that are pending as Cause No. 2-03-03799-RJH (the "ANMP Bankruptcy"), in the Castle
5 Bankruptcy, in the Coleman Bankruptcy, and in the appeal of the Castle Plan.

6 2. Subject to the foregoing, but in addition to whatever distributions the Dellheim
7 Creditors may be entitled to receive from the Receiver, whether by reason of the ANMP Claim, the
8 Coleman Payment, or otherwise, to partially compensate the Dellheim Creditors for the attorneys' fees
9 and costs expended in the aforementioned proceedings and to resolve the Dellheim Creditors' disputes,
10 the parties hereto agree that the Dellheim Creditors shall be allowed administrative claims in the ANMP
11 Bankruptcy, Castle Bankruptcy, and Coleman Bankruptcy solely to the extent set forth below, and
12 subject to the terms of payment herein set forth.

13 3. Except as set forth herein, the Dellheim Creditors waive any claims for
14 reimbursement of attorneys' fees and costs incurred, to date, that they have or could have asserted in the
15 Coleman Bankruptcy, the Castle Bankruptcy, the ANMP Bankruptcy, and the ANMP Receivership
16 Action.

17 4. Before the conclusion of the three-month period following full satisfaction of the
18 Coleman Payment, the Castle Debtors shall cause to be paid to Ralph Vescio and Rudolph
19 Ouwens/Pensco Pension the sum of \$50,000.00 in full and complete satisfaction of all disputes and
20 reimbursement to the Dellheim Creditors of their attorneys' fees and costs incurred.

21 5. Before the end of September 2004, the Castle Debtors shall cause to be paid to
22 Ralph Vescio and Rudolph Ouwens/Pensco Pension Services the sum of \$50,000.00 for and in complete
23 settlement of all disputes and reimbursement to the Dellheim Creditors of their attorneys' fees and costs
24 incurred.

25 6. Ralph Vescio and Rudolph Ouwens/Pensco Pension Services shall have an
26 Allowed Administrative Claim in the ANMP Bankruptcy to the extent of \$50,000.00, which

1 administrative claim shall be subordinate to all other administrative claims in the ANMP Bankruptcy
2 arising through May 1, 2004. Upon full payment of all administrative claims in the ANMP Bankruptcy
3 arising through May 1, 2004, the Ralph Vescio and Rudolph Ouwens/Pensco Pension Services
4 administrative claim shall be paid *pro rata* with other administrative expenses incurred in those
5 proceedings on and after May 1, 2004, but prior to any disbursements to ANMP Investors.

6 7. In consideration of the foregoing, the Dellheim Creditors will:

7 (a) Dismiss the Dellheim Appeal with prejudice, with all parties to bear their
8 own attorneys' fees and costs incurred, except as set forth above;

9 (b) Support confirmation of the Coleman Plan, withdraw their objection to
10 eligibility, and release any claims that they have against Coleman or the Coleman Bankruptcy, except as
11 set forth herein; and

12 (c) Not oppose the Receiver's proposed consolidation of the entities subject to
13 the ANMP Receivership Order into a single plan of reorganization, the allegations of a Ponzi Scheme
14 and the use of each investor's Net Investment Amount as the allocation mechanism for the payout to
15 ANMP Investors, provided however that the Dellheim Creditors' Net Investment Amount shall not be
16 reduced by the amounts paid to Robert and Brianna Dellheim, Ralph Vescio and Rudolph
17 Ouwens/Pensco Pension hereunder as reimbursement of their attorneys' fees and costs incurred. Any
18 other issues between the Dellheim Creditors and the ANMP Bankruptcy regarding the Dellheim
19 Creditors' claims or the adjustment of their Net Investment Amount are not being resolved herein.

20 H. The Coleman Plan and this Agreement are each set for hearing on June 21, 2004. In the
21 event that the Coleman Plan is not ultimately confirmed with, *inter alia*, provisions that incorporate the
22 terms of this Agreement, this Agreement shall be null and void and all parties to this stipulation shall be
23 entitled to pursue whatever rights and remedies they might otherwise have had as though this Agreement
24 had never been entered. In such event, neither the existence nor terms of this Agreement shall be
25 referred to or offered in evidence at any trial or proceeding.

26 . . .

1 I. Early Termination of Agreement.

2 1. Grounds for Terminating Agreement. Any party hereto may, upon at least ten
3 (10) days' notice to the other parties, elect to terminate this Agreement, if, notwithstanding their
4 cooperation in seeking the approval of this Agreement and the Coleman Plan, both have not been
5 approved by July 25, 2004. Notwithstanding the foregoing, each party shall be obligated to perform its
6 obligations under this section until the expiration of the ten (10) days notice period specified in this
7 section.

8 2. Effect of Termination. Upon termination of this Agreement, this Agreement shall
9 become null and of no force and effect, and the parties will be entitled to the restoration of the *status quo*
10 as it existed prior to the execution of this Agreement, and any applicable statute of limitations shall be
11 tolled from the date of this Agreement to the date of such termination.

12 J. Modification of Agreement.

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

16 K. Choice of Law.

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

19 L. Successors and Assigns.

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

22 M. Headings.

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

25 . . .

26 . . .

1 N. Execution.

2 This Agreement may be executed in multiple counterparts, each one of which shall
3 constitute an original and all of which shall constitute one Agreement.

4 DATED this 24th day of May, 2004.

5 SCHIAN WALKER, P.L.C.

6
7 By /s/ DALE C. SCHIAN, #010445
8 Dale C. Schian
Mark C. Hudson
Attorneys for Debtor Taylor R. Coleman

9 STINSON MORRISON HECKER, L.L.P.

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11 By /s/ DALE C. SCHIAN, For
12 C. Taylor Ashworth
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22 /s/ DALE C. SCHIAN, For
23 David W. Dow
Attorney for ANMP-Committee of
Unsecured Creditors and Davis Creditors

24
25 /s/ DALE C. SCHIAN, For
26 Michael W. Carmel
Attorney for James R. Sell, Receiver

1 COPY of the foregoing
2 e-mailed this 24th day
of May, 2004, to:

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/s/ DALE C. SCHIAN

Coleman\General\Invo\Plan\StipAidPlan-V3

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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:
 ALL DEBTORS
 SPECIFIED DEBTORS

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

STIPULATION

Case No. 03-03546-PHX-RJH

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1 L.L.C.; Deer Valley/26th Avenue, L.L.C.; 1851 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
24

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.

1 **ANMP Proceedings**

2 On March 10, 2003, voluntary chapter 11 cases were commenced for ANMP
3 (the "ANMP Chapter 11 Case") and ANMP 74th (the "ANMP 74th 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 74th.

10
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
18 2) Funds of ANMP Investors were commingled so that it is not possible to
19 determine which investors provided the funding of which loans;

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

22 4) ANMP did not, in some instances, take the necessary steps to perfect a
23 security interest in the Castle Real Properties.

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

13 **AGREEMENT**

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

15
16
17 **I. THE AGREEMENT.**

18 Subject to the terms and conditions set forth herein, the parties have agreed
19 that the amount and allowability of the ANMP Claims and the ANMP Investor Claims
20 (both as hereinafter defined) will be resolved on the terms set forth herein,
21 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 Coleman 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.

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10. ANMP Claim.

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

11. ANMP Claim Distributions.

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

12. ANMP Insider/Affiliate

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

13. ANMP Investor.

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

14. ANMP Investor Claim.

"ANMP investor Claim" means a Claim of an ANMP Investor or an assignee of an ANMP Investor.

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15. ANMP Investor Election Notice

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

16. ANMP Investor Secured Claim.

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

17. ANMP Investor Unsecured Claim.

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

18. ANMP Liquidation Amount.

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

19. ANMP Loan Documents.

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

20. ANMP Loan Entities.

"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.

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"Estate" means the estate created in each Castle Chapter 11 Case pursuant to § 541(a) of the Bankruptcy Code.

40. Existing Plan.

"Existing Plan" shall have the meaning set forth on page 6 hereof.

41. Final Order.

"Final Order" means an order, judgment or other decree of the Bankruptcy Court, including, without limitation, a stipulation or other agreement entered into that is "so ordered" by the Bankruptcy Court, the operation or effect of which has not been reversed or stayed and as to which order, judgment or other decree (or any revision, modification or amendment thereof) the time to appeal or seek review has expired, and as to which no appeal or petition for review or certiorari has been taken or is pending (or if such appeal or petition has been taken or granted, it has been finally decided).

42. General Claim.

"General Claim" means a Claim that is not a Priority Claim, a Secured Claim, an ANMP Claim, an ANMP Investor Claim, or an Inter-Company Claim.

43. Ineligible ANMP Investor.

"Ineligible ANMP Investor" means an ANMP Investor that is (i) an ANMP Insider/Affiliate, (ii) an Insider or Affiliate of a Castle Debtor, or (iii) a Person for whom, in the judgment of the Receiver, a release of ANMP Avoidance Claims would be inequitable to other creditors, provided that the Receiver shall notify each such

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 **47. New Castle.**

16 "New Castle" means the entity that, on and after the Effective Date, shall own
17 all of the assets of the Castle Debtors except the Castle Real Properties.

18 **48. Non-Participating ANMP Investor.**

19 "Non-Participating ANMP Investor" means an ANMP Investor that has not
20 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.

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III. APPROVALS.

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

A. EXTENSION OF DEADLINE FOR FILING PROOFS OF CLAIM.

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

B. CASTLE APPROVAL MOTION.

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

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.
12

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.

8
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 installments 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 installments 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 installment shall be based on Available Funds for the first quarter of 2004, and each installment thereafter shall be based on Available Funds for the next quarter. Each installment 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.

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D. ALLOCATION OF INSTALLMENTS.

Until General Claims have been paid in full, each quarterly installment shall be payable as follows: fifty-five percent (55%) on account of General Claims, and forty-five percent (45%) on account of the ANMP Claim. After all General Claims have been paid in full, the entire installment shall be payable on account of the ANMP Claim.

E. INITIAL PAYMENT ON ACCOUNT OF GENERAL CLAIMS.

Nothing in this Stipulation shall either require or restrict the Castle Debtors from making an initial payment of up to \$500,000, on or within ninety (90) days of the Effective Date, on account of General Claims only, or any sale or re-financing undertaken to fund such an initial payment. In addition, this Stipulation shall not restrict the Castle Debtors from returning goods to vendors for credit against the vendors' General Claims, provided such returns shall not exceed \$200,000.

F. TREATMENT OF ANMP INVESTOR CLAIMS.

The parties to this Stipulation believe that ANMP Investors do not have allowable claims directly against the Castle Debtors or Coleman and that any ANMP Investor Claims would be duplicative of the ANMP Claim provided for herein. ANMP Investors Claims shall nevertheless be separately classified and treated in accordance with the provisions of this Section VI.F:

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1. Election of Treatment; Election Notice.

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

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

2. Treatment of a Participating ANMP Investor.

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

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

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

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

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

17 A Non-Participating ANMP Investor who holds and Allowed ANMP Investor
18 Unsecured Claim Investor shall receive a share of the ANMP Liquidation Amount,
19 pro rated among all ANMP investors, which shall be payable in quarterly installments
20 based upon the percentage of the ANMP Claim paid during such quarter.
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G. RELEASE OF CASTLE DEBTORS' AVOIDANCE CLAIMS.

On the Effective Date of an Acceptable Plan of Reorganization, the Castle Debtors shall waive any claims they may have against ANMP, ANMP 74th and the ANMP Loan Entities, including any Avoidance Claims. Notwithstanding the foregoing, the Castle Debtors will not release, and shall be entitled to pursue, Avoidance Claims against Non-Participating ANMP Investors, including Avoidance Claims based on § 550 to avoid a transfer to such ANMP Investors from the ANMP Loan Entities.

H. POSSIBLE ADJUSTMENTS TO PAYMENTS FOR ANMP CLAIMS.

1. Certain Secured Claims.

The Receiver has preliminarily determined that two of the loans arranged by ANMP to Castle may have been fully segregated from other ANMP-arranged loans. Accordingly, the Receiver, in his sole discretion, may, prior to the conclusion of the hearing to consider approval of the disclosure statement, determine to treat either or both of these loans as non-ANMP loans. If the Receiver makes this election, (i) the plan shall provide that such claims shall be treated in the same fashion as other Allowed Secured Claims, and (ii) the amount of the ANMP Claim Distributions payable to the Receiver will be reduced *pro tanto* in the amount payable by the Reorganized Debtors on account of such Claims.

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 (ix) 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.

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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.
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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
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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 herelo 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.
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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 **XI. MODIFICATION OF AGREEMENT.**

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

15 **XII. CHOICE OF LAW.**

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

18 **XIII. SUCCESSORS AND ASSIGNS.**

19 This Agreement shall inure to the benefit of the settling parties hereto and
20 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.

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9 DATED this 9th day of September, 2003.

10 Receiver:

11
12 /s/ James Sell

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

15 Castle Debtors:

16
17 /s/ Vern Schweigert

18 Vern Schweigert, Chief Restructuring
Officer of the Castle Debtors

19 Coleman:

20
21 /s/ Taylor Coleman

22 Taylor Coleman

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26 STIPULATION

Case No. 03-03546-PHX-RJH

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