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Lawrence E. Wilk, #006510  
**JABURG & WILK, P.C.**  
3200 North Central Avenue, Suite 2000  
Phoenix, Arizona 85012  
(602) 248-1000  
Attorneys for James C. Sell, Court appointed Receiver/Debtor

Steven J. Brown  
**STEVEN BROWN & ASSOCIATES, P.C.**  
1440 E. Missouri, #185  
Phoenix, AZ 85014-2412  
(602) 264-9224  
Attorney for Maureen Gaughan, Trustee

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF ARIZONA

In re: KENNETH MAGILL,  
Debtor.

In Proceedings Under  
Chapter 7  
Case No: 2-03-04095 ECF RJH

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

In Proceedings Under  
Chapter 11  
Case No: 03-03803 PHX RJH

\_\_\_\_\_  
In re:  
ANMP 74<sup>TH</sup> ST., LLC,  
Debtor.

In Proceedings Under  
Chapter 11  
Case No: 03-03799 PHX RJH

**JOINT MOTION TO AUTHORIZE  
SETTLEMENT REGARDING SALE  
PROCEEDS**

Maureen Gaughan, the Chapter 7 Trustee of Debtor’s estate (hereinafter “Trustee”) and James C. Sell, the Court appointed Receiver for American National Mortgage Partners, Inc. and related entities and bankruptcy estates, (hereinafter the “Receiver”), (collectively referred to as the “Parties”) jointly request the court’s authorization for the settlement between the respective estates of the disbursement of proceeds from the sale of the property located at 35824 N. Secluded Lane (hereinafter the “Secluded Lane Property”).

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

1       **I.       FACTUAL BACKGROUND**

2               On or about October 9, 1992, Kenneth Magill (hereinafter “Magill”) acquired title to the  
3       Secluded Lane property. On or about April 4, 2000, Magill executed a Note payable to First  
4       Bank of Arizona, which Note was subsequently assigned to First National Bank of Nevada, in the  
5       principal amount of \$1,866,000, which Note was secured by the Secluded Lane Property. On or  
6       about September 1, 2000, Magill executed a Note in the principal amount of \$274,622.00,  
7       payable to the CIT Group and secured by the Secluded Lane Property. On or about August 5,  
8       2002, Magill executed a Note in the principal amount of \$800,000.00, payable to 35824 N.  
9       Secluded Lane, LLC and North Secluded Lane, LLC, (entities subject to the Receivership Orders  
10      entered in Cause No. CV2003-005724, Maricopa County Superior Court) which Note is secured  
11      by the Secluded Lane Property. On August 13, 2002, Magill executed a Note in the principal  
12      amount of \$70,000.00 payable to David Sheppard, which Note was secured by the Secluded Lane  
13      Property.

14              On August 14, 2002, Magill transferred, by Warranty Deed, the Secluded Lane Property  
15      to American National Mortgage Partners, LLC, Trustee of the 35824 N. Secluded Lane Trust,  
16      dated June 21, 2002 (another entity subject to the Receivership Order). Title to the property  
17      remained in the name of the Trust prior to the filing of the above-referenced bankruptcies.  
18      Despite title being in the name of the Trust, Debtor listed the property as an asset of its estate, and  
19      the Trustee disputed the ownership. The Trustee contended the transfer was solely for purposes  
20      of granting a security interest in the property. Although the parties have not agreed as to the  
21      ownership of the property, the Trustee and Receiver believed it was in the best interest of their  
22      respective estates to liquidate the property and to contest the disbursement of the proceeds from  
23      the sale at a later date. By completing the sale, the parties stopped the accrual of interest on  
24      senior liens and alleviated the risk of a senior encumbrance foreclosing out any equity that would  
25      be recoverable by either estate.

26              As a result of the actions undertaken by the Estates, the property was auctioned, and the  
27      sale has resulted in net proceeds in excess of \$850,000.00.

1     **II.     SETTLEMENT AGREEMENT**

2             Pursuant to the prior Agreement by the Parties, the Parties reserved all claims and  
3 defenses they may have to the proceeds resulting from the sale of the Property. The Trustee  
4 challenged the validity of the Receivership Estate’s lien, claiming among other things that it could  
5 be avoided under the Trustee’s avoidance powers of 11 U.S.C. §544. Both estates have disclosed  
6 their respective positions and supporting case law and the Receiver and Trustee have determined,  
7 in their business judgment, that the settlement referenced herein is in the best interest of their  
8 respective estates. Rather than litigate the entitlement to proceeds which would dissipate the  
9 ultimate funds available for disbursement, and to alleviate the risk associated with litigation, the  
10 parties have agreed to a partial avoidance of the Receivership Estate’s lien, resulting in a  
11 distribution of the net proceeds from the sale of the Secluded Lane Property as follows:  
12

13                     Receivership Estate	85% of net proceeds
14                     Kenneth Magill Estate	15% of net proceeds

15 Under this arrangement, the Receivership Estate will receive a minimum of \$722,500 and the  
16 Kenneth Magill Estate will retain the avoided lien under §544 of the Code to the extent of 15% of  
17 the proceeds which will be a minimum of \$127,500<sup>1</sup>.  
18

19             Based on the foregoing, the parties respectfully request that this Court issue an Order  
20 Authorizing the Disbursement of the Sale Proceeds as set forth herein.

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22     ///

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27     <sup>1</sup> Attached hereto is the most recent closing statement from the title company regarding the sale of the property.  
28     Approximately \$18,000 is being retained as a hold back which should be subject to disbursal to either the Trustee or  
the Receiver, and will thereby increase the minimal amounts referenced herein.

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DATED this 23rd day of July, 2004.

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

/s/ #006510  
Lawrence E. Wilk, Esq.  
Attorneys for James C. Sell

**STEVE BROWN & ASSOCIATES, LLC**

/s/ #010792  
Steven Brown, Esq.  
Attorneys for Maureen Gaughan

COPY of the foregoing  
Mailed this 23rd day of  
July, 2004, to:

Shelton L. Freeman  
DeCONCINI, McDONALD,  
YETWIN & LACY  
2025 N. 3<sup>rd</sup> St., #230  
Phoenix, AZ 85004-1472  
Attorney for Debtor

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

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

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

Wendy L. Coy, Esq.  
Arizona Corporation Commission, Securities Division  
1300 West Washington, 3<sup>rd</sup> Floor  
Phoenix, Arizona 85007

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

Tonica R. Swan