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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, Receiver

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

ARIZONA CORPORATION COMMISSION,  
  
Plaintiff,  
  
v.  
  
AMERICAN NATIONAL MORTGAGE  
PARTNERS, L.L.C., et al.  
  
Defendants.

Case No: CV2003-005724

**MOTION TO AUTHORIZE  
SETTLEMENT WITH FLORA SCHULE**  
  
(Assigned to the Honorable J. Richard Gama)

James C. Sell, the court appointed Receiver in the above-referenced matter, through counsel of record undersigned, hereby requests that this Court enter an order authorizing the Receiver to enter into a Settlement Agreement as more fully set forth in the following Memorandum of Points and Authorities.

DATED this \_\_\_\_\_ day of October, 2004.

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

\_\_\_\_\_  
Lawrence E. Wilk  
Attorneys for James C. Sell

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

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 I. **Procedural Background**

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

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

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

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

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

22 6. Paragraph 18 of the Receivership Order provides as follows:

23 18. The Receiver is hereby authorized to institute, defend,  
24 compromise or adjust such actions or proceedings in state or  
25 federal courts now pending and hereafter instituted, as may  
26 in his discretion be advisable or proper for the protection of  
27 the Receivership Assets or proceeds therefrom, and to  
28 institute, prosecute, compromise or adjust such actions or  
proceedings in state or federal court as may in his judgment

1 be necessary or proper for the collection, preservation and  
2 maintenance of the Receivership Assets.

3 7. In pursuit of his duties under the terms of the Receivership Order, the Receiver has  
4 entered into a tentative agreement, subject to Court approval, with Flora Schule (“Schule”), an  
5 investor in American National Mortgage Partners and its related entities. The purpose of the  
6 agreement is to resolve the nature of Schule’s claim and to allow for her subsequent treatment  
7 under the terms of any future Court approved distribution.

8 II. Factual Background

9 1. On or about September 11, 2003, Schule filed a Proof of Claim in the Dexter  
10 Distributing Bankruptcy, and in 1851 E. Fifth Avenue, LLC. These related entities are more  
11 commonly referred to as the Castle Entities and will be collectively referred to as the Castle  
12 Entities herein. The claim asserts a principal amount owed of \$50,000, together with interest  
13 accruing at the rate of 5% per month from and after August 20, 2002. Schule also asserts that the  
14 claim is secured by a lien on the real property located at 1851 E. Fifth Avenue, Anchorage,  
15 Alaska (the “Alaska property”) and by a lien on property located at 8802 N. Black Canyon  
16 Highway, Phoenix, Arizona.

17  
18 2. On or about December 26, 2003, Schule filed a Motion for Relief from the  
19 Automatic Stay and for Adequate Protection in the Castle Entities bankruptcy proceedings (the  
20 “Stay Relief Motion”) seeking to lift the Automatic Stay to allow her to enforce her rights and  
21 remedies relative to the Alaska property.

22 3. The Castle entities filed their objections to the Stay Relief Motion.

23  
24 4. On or about February 4, 2004, the Court entered a Confirmation Order confirming  
25 the Castle Amended Plan of Reorganization (the “Plan”). The Plan went effective March 31,  
26 2004. Pursuant to the Plan, and the Stipulation in Support of the Plan which was approved by this  
27 Court, Schule was to be treated as a non-participating ANMP Investor.  
28



1 (a) The ANMP Receivership shall pay Schule the sum of Five Thousand  
2 Dollars (\$5,000) within ten (10) days of receiving all necessary Court approvals of this  
3 settlement; and

4 (b) The reorganized Castle Debtor shall pay to Schule the total sum of  
5 Fourteen Thousand, Sixty-Nine and 22/100 (\$14,069.22). Five Thousand Dollars (\$5,000.00)  
6 shall be paid on or before December 31, 2004; Five Thousand Dollars (\$5,000.00) shall be paid  
7 on or before April 15, 2005; and Four Thousand, Sixty-Nine and 22/100 Dollars (\$4,069.22) shall  
8 be paid on or before June 30, 2005.

9  
10 2. As a Participating ANMP Investor, Schule shall be deemed to have released all  
11 lien claims in accordance with Section 5.2.1 of the Castle Reorganized Debtor's Plan, including,  
12 without limitation, any lien claims to the Alaska property and the store located at 8802 N. Black  
13 Canyon Highway, Phoenix, Arizona, and shall be deemed to have an allowed ANMP Investor  
14 claim in the net investment amount set forth above in accordance with Section 5.2.2 of the Castle  
15 Reorganized Debtor's Plan, and shall be entitled to the releases as provided in Section 5.2.3 and  
16 5.2.4 of the Plan.

17  
18 3. The settlement reached with Schule results in the Receivership estate agreeing to  
19 pay Five Thousand Dollars (\$5,000), plus Ms. Schule's net investment amount (which payment  
20 shall be determined by an approved Plan of Distribution by this Court and/or the U.S. Bankruptcy  
21 Court).

22  
23 4. In evaluating the merits of this settlement, this Court is being requested to consider  
24 the cost of litigation versus reaching finality of the claims of Schule.

25  
26 5. Based upon the foregoing, the Receiver believes that it is in the best interest of the  
27 Receivership estate to authorize the payment of Five Thousand Dollars (\$5,000.00) to Schule by  
28

1 the Receivership estate, in consideration for Schule accepting treatment as a participating ANMP  
2 Investor under any future Plan of Distribution.

3 DATED this \_\_\_\_\_ day of October, 2004.

4  
5 **JABURG & WILK, P.C.**

6  
7 \_\_\_\_\_  
8 Lawrence E. Wilk  
9 Attorneys for James C. Sell, Receiver

10 **ORIGINAL** filed and **COPY**  
11 of the foregoing hand-delivered  
12 this \_\_\_\_\_ day of October, 2004 to:

13 The Honorable Richard J. Gama  
14 MARICOPA COUNTY SUPERIOR COURT  
15 101 West Jefferson, ECB 611  
16 Phoenix, Arizona 85003-2243

17 **COPIES** of the foregoing mailed  
18 this \_\_\_\_\_ day of October, 2004 to:

19 Wendy L. Coy, Esq.  
20 Arizona Corporation Commission, Securities Division  
21 1300 West Washington, 3<sup>rd</sup> Floor  
22 Phoenix, Arizona 85007

23 Ilene J. Lashinsky  
24 OFFICE OF THE UNITED STATES TRUSTEE  
25 P.O. Box 36170  
26 Phoenix, Arizona 85067-6170

27 Michael R. Palumbo, Esq.  
28 JENNINGS, STROUSS & SALMON, P.L.C.  
The Collier Center, 11<sup>th</sup> Floor  
201 East Washington Street  
Phoenix, Arizona 85004-2385

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

- 1 James P. Kneller  
2 7509 E. First Street  
3 Scottsdale, AZ 85251
- 4 Bryan F. Murphy  
5 BURCH & CRACCHIOLO, P.A.  
6 702 E. Osborn Rd., #200  
7 Phoenix, AZ 85014
- 8 Peter Michael Salcido, Esq.  
9 RENAUD, COOK AND DRURY, P.A.  
10 40 North Central Ave., Suite 1600  
11 Phoenix, Arizona 85004-4424
- 12 Donald M. Peters, Esq.  
13 Miller, LaSota & Peters, P.L.C.  
14 5225 North Central Ave., Suite 235  
15 Phoenix, Arizona 85012-1452
- 16 Mark D. Chester, Esq.  
17 CHESTER & SCHEIN, P.C.  
18 8777 North Gainey Center Drive, Suite 191  
19 Scottsdale, Arizona 85258
- 20 Dustin T. Dudley, Esq.  
21 ISRAEL AND GERITY, P.L.L.C.  
22 2375 East Camelback Rd., Suite 500  
23 Phoenix, Arizona 85016-0001
- 24 Eric Strasser  
25 2700 North Hayden Rd., #2013  
26 Scottsdale, Arizona 85262
- 27 Christopher T. Graver, Esq.  
28 KELLER, ROHRBACK, P.L.C.  
3101 North Central Ave., Suite 900  
Phoenix, Arizona 85012-2641
- Dale C. Schian, Esq.  
Mark C. Hudson, Esq.  
SCHIAN WALKER, P.L.C.  
3550 North Central Ave., Suite 1600  
Phoenix, Arizona 85012-2113
- Alan A. Meda, Esq.  
STINSON MORRISON HECKER  
1850 N. CENTRAL AVE., #2100  
Phoenix, Arizona 85067-6379

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28

Richard C. Gramlich, Esq.  
Kim E. Hutchinson Cahill, Esq.  
CARMICHAEL & POWELL, P.C.  
7301 North 16<sup>th</sup> Street, Suite #103  
Phoenix, Arizona 85020-5297

David Dow, Esq.  
MOHR HACKETT PEDERSON BLAKELEY & RANDOLPH  
2800 N. Central, #1100  
Phoenix, AZ 85004-1043

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

Lyman Davis  
920 West Wagner Drive  
Gilbert, AZ 85233

James C. Sell  
2222 E. Camelback Road, #110  
Phoenix, Arizona 85016

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