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Co Counsel for James C. Sell, Court appointed Receiver

UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA

In re:

AMERICAN NATIONAL MORTGAGE
PARTNERS, LLC,

Debtor.

In re:

ANMP 74TH ST., LLC,

Debtor.

In Proceedings Under
Chapter 11

Case Nos: 03-03803 PHX RJH
03-03799 PHX RJH

**MOTION TO AUTHORIZE
SETTLEMENT WITH FLORA SCHULE**

James C. Sell, the State Court appointed Receiver in the above-referenced matter, through counsel of record undersigned, hereby requests that this Court enter an order authorizing the Receiver on behalf of American National Mortgage Partners and ANMP 74th St., LLC, 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.

/s/006510
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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 (hereafter the “Court”), a Complaint in
5 the above-captioned matter against numerous individual defendants and entities, seeking the
6 appointment of a 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 74th 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, the Court issued its First Amended Order
16 Appointing Receiver for the sole purpose of including American National Partners, LLC and
17 ANMP 74TH ST., LLC as additional parties subject to the Receivership Order. James C. Sell was
18 appointed under the First Amended Order as Receiver for these two entities, and was to serve as
19 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

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

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

II. Factual Background

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

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

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

4. On or about February 4, 2004, the Court entered a Confirmation Order confirming the Castle Amended Plan of Reorganization (the “Plan”). The Plan went effective March 31,

1 2004. Pursuant to the Plan, and the Stipulation in Support of the Plan which was approved by this
2 Court, Schule was to be treated as a non-participating ANMP Investor.

3 5. On or about June 29, 2004, the Castle Reorganized Debtor filed an Omnibus
4 Objection to Claims of Non-Participating ANMP Investors. Specifically, the Castle Reorganized
5 Debtor objected to the Claim of Schule.

6 6. On or about July 11, 2004, Schule filed a Motion to Consolidate the Castle
7 Reorganized Debtor's Omnibus Objection to Claims of Non-Participating ANMP Investors with
8 Claimant's Motion to Lift the Automatic Stay. The Motion was granted by the Bankruptcy Court
9 at the preliminary stay hearing held on August 23, 2004.

10 7. The property in which Flora Schule claims an interest is subject to the Castle
11 Debtor's Plan of Reorganization, and is subject to the "blanket lien" in favor of the Receivership.

12 8. In the event that Flora Schule is successful on her claims, the result would be a
13 significantly larger return on her investment than that of the other Investors in the Receivership
14 proceeding.

15 9. The Receiver asserted in the pending proceeding that Schule's interest is similar to
16 all other Investors of the Receivership proceeding, and therefore should be entitled solely to a
17 return based upon "net investment."

18 10. In order to avoid the cost of litigation, and provide an equitable result, the parties
19 have entered into the settlement which is more fully set forth hereinafter.

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23 III. The Material Terms of Settlement

24 1. The reorganized Castle Debtor, the ANMP Receiver and Schule have settled their
25 disputes. In connection therewith, the parties have agreed that for all purposes under the
26 Reorganized Debtor's Plan, Schule shall now be treated as a "Participating ANMP Investor" with
27

1 the net investment amount of \$15,930.78. In addition to the foregoing, Schule shall be paid the
2 following amounts:

3 (a) The ANMP Receivership shall pay Schule the sum of Five Thousand
4 Dollars (\$5,000) within ten (10) days of receiving all necessary Court approvals of this
5 settlement; and
6

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

12 2. As a Participating ANMP Investor, Schule shall be deemed to have released all
13 lien claims in accordance with Section 5.2.1 of the Castle Reorganized Debtor's Plan, including,
14 without limitation, any lien claims to the Alaska property and the store located at 8802 N. Black
15 Canyon Highway, Phoenix, Arizona, and shall be deemed to have an allowed ANMP Investor
16 claim in the net investment amount set forth above in accordance with Section 5.2.2 of the Castle
17 Reorganized Debtor's Plan, and shall be entitled to the releases as provided in Section 5.2.3 and
18 5.2.4 of the Plan.
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20 3. The settlement reached with Schule results in the Receivership estate agreeing to
21 pay Five Thousand Dollars (\$5,000), plus Ms. Schule's net investment amount (which payment
22 shall be determined by an approved Plan of Distribution by this Court and/or the U.S. Bankruptcy
23 Court).
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25 4. In evaluating the merits of this settlement, this Court is being requested to consider
26 the cost of litigation versus reaching finality of the claims of Schule.
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