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4 Phoenix, Arizona 85012
5 (602) 248-1000
6 Attorneys for James C. Sell, Receiver

6 SUPERIOR COURT OF ARIZONA
7 MARICOPA COUNTY

8 ARIZONA CORPORATION COMMISSION,

Case No: CV2003-005724

9 Plaintiff,

**MOTION TO AUTHORIZE
SETTLEMENT REGARDING 998 E.
INDIAN SCHOOL TRUST**

10 v.

11 AMERICAN NATIONAL MORTGAGE
12 PARTNERS, L.L.C., et al.

(Assigned to the Honorable J. Richard Gama)

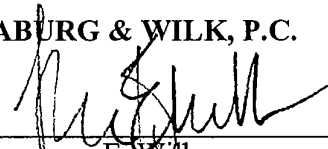
13 Defendants.

14 James C. Sell, the court appointed Receiver in the above-referenced matter, through
15 counsel of record undersigned, hereby requests that this Court enter an order authorizing the
16 Receiver to enter into the Settlement Agreement which is attached hereto as Exhibit "A" and
17 incorporated herein in its entirety by reference (the "Settlement Agreement").
18

19 This motion is based upon the following Memorandum of Points and Authorities.

20 DATED this 5 day of February, 2004.

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

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23 _____
24 Lawrence E. Wilk
25 Attorneys for James C. Sell

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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, 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 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, this Court issued its First Amended
16 Order Appointing Receiver for the sole purpose of including American National Partners, LLC
17 and ANMP 74TH 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 5 of the Receivership Order provides as follows:

23 5. All persons, including Defendants and their officers, agents,
24 servants, employees, attorneys, and all persons in active
25 concert or participation with them, who receive actual notice
26 of this Order by personal service or otherwise, are enjoined
27 from in any way interfering with the operation of the
28 Receivership or in any way disturbing the receivership assets
and from filing or prosecuting any actions or proceedings
which involve the Receiver or which affect the Receivership

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Assets, specifically including any proceeding initiated pursuant to the United States Bankruptcy Code, except with the prior permission of this Court or the Bankruptcy Court as appropriate. Any actions so authorized to determine disputes relating to Receivership Assets shall be filed in this Court or the Bankruptcy Court as appropriate..

7. In pursuit of his duties under the terms of the Receivership Order, on or about February 3, 2004, the Receiver as Receiver for Western + Gulf Capital, Inc., as Trustee of the 998 E. Indian School Trust dated September 22, 1999 (hereinafter collectively referred to as "998 E. Indian School Trust") entered into a Settlement Agreement with Jerry Grossman, as Trustee of the Grossman Family Trust dated June 5, 1990 ("Grossman") and Richard Gordon, as Trustee of the Gordon Family Revocable Trust dated October 13, 1999 ("Gordon"). The purpose of the Agreement is to resolve issues regarding rents received under a lease entered into by 998 E. Indian School Trust as Landlord and Wave Management, Inc. ("Wave Management").

II. Factual Background

1. On or about September 28, 1999, 998 E. Indian School Trust acquired the real property more specifically described on the attached Exhibit "B", and commonly known as 998 E. Indian School Road, Phoenix, Arizona (the "Property"). On December 3, 2000, 998 E. Indian School Trust and Wave Management entered into a Lease-Option Agreement ("Lease-Option"). The Lease is for a term of five (5) years, and grants Wave Management an option to purchase the Property or at an adjusted purchase price if the option was exercised from 2003 through 2005.

2. On or about February 21, 2002, 998 E. Indian School Trust conveyed the Property to Robert Rehm ("Rehm"). Thereafter Rehm obtained a loan from Grossman and Gordon in the principal amount of \$400,000 (the "Grossman/Gordon Loan"). A Deed of Trust was recorded against the Property in favor of Grossman and Gordon to secure the Grossman/Gordon Loan.

3. Wave Management has paid rents under the Lease to Receiver. The rents received by Receiver from Wave Management total \$70,480.36 ("Rents").

1 4. Rehm is in default under the Grossman/Gordon Loan. Grossman and Gordon
2 initiated a Trustee's Sale of the property pursuant to their Deed of Trust.

3 5. The Receivership Order enjoins creditors from prosecuting any action which
4 involves the Receiver or which affects the Receivership Assets. The Receivership has an interest
5 in the Property. The Grossman/Gordon Trustee's Sale of the Property affects the Receiver's
6 interest and, therefore, the Trustee's Sale cannot proceed without Court approval.

7
8 6. Receiver, Grossman and Gordon have entered into the Settlement Agreement to
9 settle claims asserted by each of them by reason of the Property and Rents, and to allow
10 Grossman/Gordon's Trustee's Sale to go forward.

11 III. Summary of Settlement Provisions¹

12 Under the terms of the Settlement Agreement, Receiver will not oppose the Trustee's Sale
13 to enforce Grossman/Gordon's Deed of Trust on the Property and agrees that the injunctive relief
14 as to the Property be lifted for this purpose. Gordon and Grossman agree not to assert any claims
15 against Receiver for the Rents and agree that the Receiver may retain all Rents paid to or
16 collected by the Receivership through November 3, 2003. Receiver agrees that any rents due by
17 the tenant under the Lease-Option after November 3, 2003, shall be collected by Grossman and
18 Gordon, and Receiver further agrees to transfer to Grossman and Gordon any rents received by
19 Receiver from Wave Management under the Lease-Option for any rent due after November 3,
20 2003. Grossman and Gordon further agree to indemnify and hold Receiver and the Receivership
21 harmless from any claim resulting or arising from the Lease-Option or Wave Management Rents.

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¹ The following represents a summary of the settlement terms. For a more detailed understanding of the terms of the settlement, refer to Exhibit "A".

1 Based upon the foregoing, the Receiver believes that it is in the best interest of the
2 Receivership Estate to authorize the Receiver to enter into the Settlement Agreement.

3 DATED this 5 day of February, 2004.

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

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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 6th day of February, 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 6th day of February, 2004 to:

19 Wendy L. Coy, Esq.
20 Arizona Corporation Commission, Securities Division
21 1300 West Washington, 3rd Floor
22 Phoenix, Arizona 85007
23 Facsimile: (602) 594-7418
24 *Attorney for Plaintiff*

25 Trudy Nowack
26 OFFICE OF THE UNITED STATES TRUSTEE
27 2929 North Central Ave., Suite 700
28 Phoenix, Arizona 85067
Facsimile: (602) 640-2217

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Robert K. Rehm, Frank and Gail Caspare, and Susan Rutledge*

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Mark C. Hudson, Esq.
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Col. William Edwards
P.O. Box 1272
Litchfield Park, AZ 85340-1272
Investor

Michael E. Neumann
HAHN, HOWARD & GREEN
3200 n. Central Ave., #1560
Phoenix, AZ 85012-2435
Attorney for Gordon and Grossman

COPY of the foregoing
hand-delivered and/or faxed this 6th day
of February, 2004 to:

Lyman Davis
920 West Wagner Drive
Gilbert, AZ 85233
Facsimile (480) 545-8814
Chairman of Creditors Committee

James C. Sell
5045 N. 12th Street, #100
Phoenix, AZ 85014
Facsimile (602) 265-3622
Court Appointed Receiver

Lonica R. Swas

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (the "Agreement") is entered into this 3 day of February, 2004, by JAMES C. SELL, as Receiver for WESTERN + GULF CAPITAL, INC., as Trustee of the 998 E. Indian School Trust dated September 22, 1999, JERRY GROSSMAN, as Trustee of the Grossman Family Trust dated June 5, 1990, ("Grossman") and RICHARD GORDON, as Trustee of the Gordon Family Revocable Trust dated October 13, 1999 ("Gordon"). Receiver, Grossman and Gordon are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS

A. On or about September 28, 1999, Western + Gulf Capital, Inc. ("Western Gulf"), as Trustee of the 998 E. Indian School Trust dated September 22, 1999 (the "998 Indian School Trust") acquired the real property more specifically described on the attached Exhibit "A", and commonly known as 998 East Indian School Road, Phoenix, Arizona (the "Property").

B. On or about December 3, 2000, the 998 Indian School Trust as Landlord and Wave Management, L.L.C. ("Wave Management") as Tenant entered into a Lease-Option Agreement ("Lease-Option"), wherein Wave Management agreed to rent the Property for a period of five (5) years, and was granted an option to purchase the Property for the purchase price of \$385,000 if the option to purchase was exercised on or before December 1, 2002, or at an adjusted purchase price if the option was exercised from 2003 through 2005.

C. On or about February 21, 2002, the 998 Indian School Trust conveyed the Property to Robert Rehm ("Rehm") by Warranty Deed. Rehm then obtained a loan from Grossman and Gordon in the principal amount of \$400,000.00 (the "Grossman/Gordon Loan"). A Deed of Trust was recorded against the Property in favor of Grossman and Gordon to secure payment of the Grossman/Gordon Loan.

D. Receiver was appointed pursuant to an order dated April 2, 2003, as amended on May 13, 2003 ("Receiver Order"), entered by the Maricopa County Superior Court in Case No. CV2003-005724. The Receiver Order empowers Receiver to take possession of and control assets of Western Gulf and the 998 Indian School Trust.

E. Receiver has received a total of \$ 70,480.36 from Wave Management for rent due under the Lease-Option.

F. Rehm is in default under the Grossman/Gordon Loan. Grossman and Gordon initiated a Trustee's Sale of the Property pursuant to the Deed of Trust; however, the Trustee's Sale cannot proceed due to the stay imposed by the Receiver Order. The 998 Indian School Trust has an interest in the Property by virtue of the Lease-Option.

G. The Parties enter into this Agreement to settle the claims asserted by each of them by reason of the parties' respective interests in the Property.

AGREEMENT

THEREFORE, in consideration of the mutual agreements of the Parties and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, it is agreed as follows:

1. Consent to Trustee's Sale. Receiver agrees not to oppose any action by Grossman and/or Gordon to foreclose upon the Property or otherwise enforce the Deed of Trust, and specifically agrees that Grossman and Gordon may proceed with the pending Trustee's Sale of the Property.

2. Assignment of Claims and Rights to Rents. Grossman and Gordon agree, consent, and hereby assign to Receiver all of their right, title and interest in, or claim to, any and all of the Wave Management Rents received by Receiver from 4/17, 2003 through November 3, 2003. Receiver agrees, consents and hereby assigns to Grossman and Gordon all of Receiver's right, title and interest in, or claim to, any and all rents due under the Lease-Option after November 3, 2003. Receiver agrees to transfer to Grossman and Gordon any rents received by Receiver from Wave Management under the Lease-Option for any rent due after November 3, 2003.

3. Assignment of Lease. The parties agree that by entering into this Agreement, Grossman and Gordon are not immediately accepting an Assignment of the Lease. Grossman and Gordon agree, that upon completion of their pending foreclosure (provided that they are the purchaser at sale) they will immediately accept an Assignment of the Lease, and shall release and hold harmless the Receiver from any liability after the date of assignment. Grossman and Gordon shall complete the foreclosure within three (3) days after Court Order approving this Agreement. If, for any reason, the Sale is not completed within this timeframe, after the expiration of three (3) days from the date of the Order, Grossman and Gordon will unconditionally accept an Assignment of the Lease.

4. Release by Grossman and Gordon. Grossman and Gordon, individually and on behalf of their respective agents, employees, heirs, personal representatives, successors and assigns, hereby fully release and forever discharge Receiver and its respective agents, employees, heirs, personal representatives, successors and assigns, with the exception of Mr. Robert Rehm (all of the foregoing persons and entities, except Mr. Robert Rehm, are referred to in this Paragraph 4 as the "Released Parties" and are intended beneficiaries of this Agreement) with respect to the Property. Grossman and Gordon further agree that the Release contained in this Paragraph 4 specifically includes any claim that may arise in favor of Gordon and Grossman and against any of the Released Parties arising from Wave Management exercising, or attempting to exercise, the option to purchase the property contained in the Lease; including, but not limited to, any claim for additional funds to satisfy the Grossman and Gordon loan. To the extent that Wave Management asserts that monies

received by the Receiver should be credited to their account, payments received, and retained, by the Receiver shall be deemed to have been received by Grossman and Gordon.

5. Release by the Receiver. The Receiver, individually and on behalf of his agents, employees, heirs, personal representatives, successors and assigns, hereby fully releases and forever discharges Grossman and Gordon and their respective agents, employees, heirs, personal representatives, successors and assigns (all of the foregoing persons and entities are referred to in this Paragraph 5 as the "Released Parties" and are intended beneficiaries of this Agreement) with respect to the Property.

6. Binding Effect/Court Approvals. This Agreement and all of the provisions thereof will be binding upon and inure to the benefit of the Parties, their respective heirs, personal representatives, successors and assigns. Notwithstanding the foregoing, the terms of this Agreement shall not be binding upon the Receiver or the Receivership Estate until such time as all appropriate approvals have been entered by the appropriate Courts having jurisdiction over these matters.

7. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument, and any Party may execute this Agreement by signing any such counterpart.

8. Governing Law; Venue. This Agreement was made and is to be performed in the State of Arizona. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona applicable to contracts made and to be performed entirely within that State, and any suit to enforce this Agreement or to assert any right or remedy under this Agreement shall be brought in any state or federal court sitting in Maricopa County, Arizona which shall be the exclusive venue for, and which Courts shall have exclusive jurisdiction with respect to, any such suit.

9. Entire Agreement. This Agreement collectively sets forth the entire agreement between the Parties as to the subject matter of this Agreement, and is subject to no promise, warranty or representation not expressly set forth or referred to herein. This Agreement may not be modified except by an instrument in writing signed by the Party to be bound.

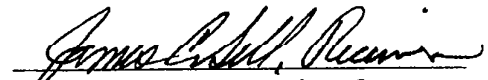
10. Attorneys Fees. In the event of litigation or arbitration proceedings brought by any Party to enforce the terms of this Agreement or otherwise relating directly or indirectly to the transactions and agreements reflected herein, the prevailing Party, in addition to any and all other rights and remedies, will be entitled to recover all of its costs of litigation or arbitration, including but not limited to all reasonable attorneys' fee and taxable costs. Attorneys fees claimed under this Section shall be awarded without reference to A.R.S. §12-341.01.

11. Remedies. In the event of a Party's breach of any of the representations, warranties, covenants and obligations under this Agreement, the non-breaching Party may elect to exercise its rights and remedies, at law or in equity, available under this Agreement or cancel this Agreement and exercise its rights and remedies, at law or in equity, with respect to the circumstances giving rise to this Agreement.

[SIGNATURES ON FOLLOWING PAGE]

SIGNED as of the date first set forth above.

RECEIVER:



JAMES C. SELL, Receiver for
Western + Gulf Capital, Inc., as
Trustee of the 998 E. Indian School
Trust dated September 22, 1999

GROSSMAN:

GROSSMAN FAMILY TRUST dated
June 5, 1990

By _____
Jerry Grossman, Trustee

GORDON:

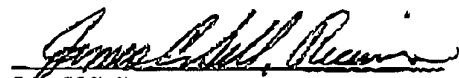
Gordon Family Revocable Trust dated
October 13, 1999

By _____
Richard Gordon, Trustee

[SIGNATURES ON FOLLOWING PAGE]

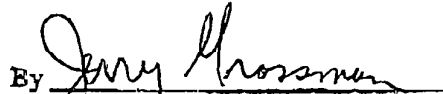
SIGNED as of the date first set forth above.

RECEIVER:


JAMES C. SELL, Receiver for
Western + Gulf Capital, Inc., as
Trustee of the 998 E. Indian School
Trust dated September 22, 1999

GROSSMAN:

GROSSMAN FAMILY TRUST dated
June 5, 1990

By 
Jerry Grossman, Trustee

GORDON:

Gordon Family Revocable Trust dated
October 13, 1999

By 
Richard Gordon, Trustee