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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 RECEIVER
TO ABANDON PROPERTY**

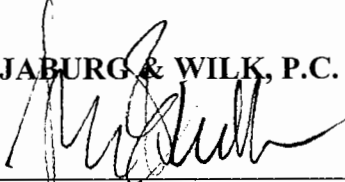
(COLONIAL VILLAGE APARTMENTS)

(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 abandon property of the estate.

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

DATED this 15 day of June, 2004.

JABURG & WILK, P.C.


Lawrence E. Wilk
Attorneys for James C. Sell

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ATTORNEYS AT LAW
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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 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 10 of the Receivership Order provides as follows:

23 10. . . . To this purpose, in those instances in which Receivership
24 Assets serve as collateral to secured creditors, the Receiver
25 may surrender such assets to secured creditors. . .

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1 II. Relief Requested

2 1. On or about March 27, 2002, Colonial Exeter, LLC and Merrill Lynch Mortgage
3 entered into a Note, in the principal amount of \$9,000,000.00, secured by a Multi-Family
4 Mortgage, Security Agreement, Assignment of Leases and Rents and Fixtures Filing on the real
5 property legally described in **Exhibit "A"**, attached hereto and incorporated herein by reference.
6 The property is located at 1256 Rand Avenue, Franklin County, Ohio (the "Property").

7 2. The Receivership claims an interest in the property as a result of a Note in the
8 principal amount of \$800,000.00, and Mortgage entered into between Colonial Exeter LLC, and
9 Colonial Village, LLC (the "receivership entity").

10 3. Colonial Exeter defaulted on its obligations to Merrill Lynch Mortgage, and
11 LaSalle Bank National Association as Trustee under certain pooling and servicing agreements
12 dated as of July 10, 2002, for the certificate holders of Merrill Lynch Mortgage Investors, Inc.,
13 Commercial Mortgage Pass Through Certificate Series 2002-MW1 (hereinafter "LaSalle").
14 LaSalle initiated foreclosure proceedings on March 21, 2003. At the time of filing its foreclosure
15 lawsuit, LaSalle was not aware, nor did it have notice, of the claimed interest of the receivership
16 entity due to the previous receivership entities' management's failure to record the Mortgage
17 documents. LaSalle obtained a foreclosure judgment in excess of \$12,000,000.00 against
18 Colonial Exeter, LLC.

19 4. The Receiver has reviewed several appraisals, and has personally inspected the
20 property, and has determined that the value of the property is substantially less than the amount
21 owed to LaSalle.

22 5. The Receivership estate will not recognize any equity by retaining jurisdiction
23 over the subject property.

24 Based upon the foregoing facts, the Receiver respectfully requests this Court to
25 issue an Order Authorizing the Receiver to Abandon its Interest in the Subject Property.

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1 DATED this 15 day of June, 2004.

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

3 
4 Lawrence E. Wilk
5 Attorneys for James C. Sell, Receiver

6
7 **ORIGINAL** filed and **COPY**
8 of the foregoing hand-delivered
9 this ~~15~~¹⁵ day of June, 2004 to:

10 The Honorable Richard J. Gama
11 MARICOPA COUNTY SUPERIOR COURT
12 101 West Jefferson, ECB 611
13 Phoenix, Arizona 85003-2243

14 **COPIES** of the foregoing mailed
15 this ~~15~~¹⁵ day of June, 2004 to:

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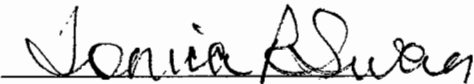
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9 Litchfield Park, AZ 85340-1272
Investor

10 Lyman Davis
11 920 West Wagner Drive
Gilbert, AZ 85233
12 Facsimile (480) 545-8814
Chairman of Creditors Committee

13 James C. Sell
14 5045 N. 12th Street, #100
Phoenix, AZ 85014
15 Facsimile (602) 265-3622
Court Appointed Receiver

16 Andrew W. Owen
17 BUCKINGHAM, DOOLITTLE & BURROUGHS
191 W. Nationwide Blvd.
18 P.O. Box 151120
Columbus, OH 43215-8120

19 Barbara Ross
20 2700 N. Central Avae., #850
Phoenix, AZ 85004-0001

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THENCE South 34 degrees 37 minutes 00 seconds East, with the southwesterly line of said Reserve "D", a distance of 116.88 feet to an iron pin at the northwesterly corner of Lot No. 15;

THENCE South 3 degrees 30 minutes 00 seconds West, with the westerly line of Lot Nos. 15 through 23, inclusive, a distance of 537.68 feet to an iron pin at the northerly right-of-way line of Livingston Avenue;

THENCE North 86 degrees 30 minutes 00 seconds West, with the northerly right-of-way line of said Livingston Avenue, a distance of 525.01 feet to an iron pin in the easterly right-of-way line of Rand Avenue, as the same is shown upon the recorded plat of "Dedication of Rand Avenue and Allendale Drive", of record in Plat Book 32, Page 104;

THENCE with easterly right-of-way lines of said Rand Avenues and the southerly right-of-way line of said Allendale Drive, the following courses and distances:

North 3 degrees 30 minutes 00 seconds East, a distance of 116.64 feet to an iron pin at an angle point;

North 6 degrees 30 minutes 00 seconds West, a distance of 28.79 feet to an iron pin at an angle point;

North 3 degrees 30 minutes 00 seconds East, a distance of 55.00 feet to an iron pin at a point of curvature;

Northwardly, with the arc of a curve to the left (Radius = 230.00 feet; Delta = 24 degrees 34 minutes 00 seconds), the chord of which bears North 8 degrees 47 minutes 00 seconds West, a chord distance of 97.86 feet to an iron pin at a point of reverse curvature;

Northwardly, with the arc of a curve to the right (Radius = 170.00 feet; Delta = 25 degrees 00 minutes 30 seconds), the chord of which bears North 8 degrees 33 minutes 45 seconds West, a chord distance of 73.61 feet to an iron pin at a point of tangency;

North 3 degrees 56 minutes 30 seconds East, a distance of 374.01 feet to an iron pin at a point of curvature;

Northeastwardly, with the arc of a curve to the right (Radius = 10.00 feet; Delta = 89 degrees 48 minutes 00 seconds), the chord of which bears North 48 degrees 50 minutes 30 seconds East, a chord distance of 14.12 feet to an iron pin at the point of tangency; and,

South 86 degrees 15 minutes 30 seconds East, a distance of 314.15 feet to the place of BEGINNING, containing 8.751 acres of land, more or less.

TRACT THREE:

Situated in the State of Ohio, County of Franklin, City of Columbus, being located in Section 17, Township 12, Range 21, Refugee lands, and being all of that tract of land as conveyed to Berwick Arms Co., by deed of record in Deed Book 2598, Page 33, all references being to

records of the Recorder's Office, Franklin County, Ohio, and being more particularly bounded and described as follows:

BEGINNING at an iron pin in the northerly right-of-way line of Allendale Drive at the southwesterly corner of Lot No. 11, as the same is shown upon the recorded plat of "Berwick Arms", of record in Plat Book 34, Page 79;

THENCE North 86 degrees 15 minutes 30 seconds West, with the northerly right-of-way line of Allendale Drive as the same is shown upon the recorded plat of "Dedication of Rand Avenue and Allendale Drive", of record in Plat Book 32, Page 104, a distance of 258.73 feet to an iron pin a point of curvature;

THENCE Northwestwardly, with the arc of a curve to the right (Radius = 10.00 feet; Delta = 90 degrees 12 minutes 00 seconds), the chord of which bears North 41 degrees 09 minutes 30 seconds West, a chord distance of 14.17 feet to an iron pin at the point of tangency;

THENCE North 3 degrees 56 minutes 30 seconds East, with the easterly right-of-way line of Rand Avenue, a distance of 109.97 feet to an iron pin at the southwesterly corner of Lot No. 49 of "Barnett Heights Amended", of record in Plat Book 27, Page 74;

THENCE South 86 degrees 15 minutes 30 seconds East, with the southerly line of said Lot Nos. 49 and 42; a distance of 268.25 feet to an iron pin at the northwesterly corner of said Lot No. 11;

THENCE South 3 degrees 42 minutes 00 seconds West, with the westerly line of said Lot No. 11, a distance of 120.00 feet to the place of BEGINNING, containing 0.739 acre of land, more or less.

TRACT FOUR:

Situated in the State of Ohio, County of Franklin, City of Columbus, and being Reserve "D" of "Berwick Arms", as the same is numbered and delineated upon the recorded plat thereof, of record in Plat Book 34, Page 79, and conveyed to Berwick Arms Co., by deed of record in Deed Book 2598, Page 31, all references being to records in the Recorder's Office, Franklin County, Ohio, containing 0.395 acre of land, more or less.

TRACT FIVE:

Situated in the State of Ohio, County of Franklin, City of Columbus, and being Lot Nos. 1 through 11, inclusive, together with Reserve "B" and Reserve "C" of "Berwick Arms", as the same is numbered and delineated upon the recorded plat thereof, of record in Plat Book 34, Page 79, and conveyed to Regency Homes, Inc., by deed of record Lot Nos. 1 and 2, Deed Book 2429, Page 395; Lot Nos. 3 and 4, Deed Book 2429, Page 397; Lot Nos. 5 and 6, Deed Book 2429, Page 399; Lot Nos. 7 and 8, Deed Book 2429, Page 405; Lot Nos. 9 and 10, Deed Book 2429, Page 403; Lot Nos. 11, Deed Book 2429, Page 401; Reserve "B", Deed Book 2445, Page 650 and Reserve "C", Deed Book 2445, Page 652, all references being to records of the Recorder's Office, Franklin County, Ohio.

TRACT SIX:

Situated in the State of Ohio, County of Franklin, City of Columbus, and Being Lot Nos. 12 through 23, inclusive of "Berwick Arms", of record in Plat Book 34, Page 79 and conveyed to Regency Homes, Inc., by deeds of record, Lot No. 12, Deed Book 2439, Page 262; Lot Nos. 13 and 14, Deed Book 2439, Page 258; Lot Nos. 15 and 16, Deed Book 2439, Page 254; Lot Nos. 17 and 18, Deed Book 2439, Page 256; Lot Nos. 19 and 20., Deed Book 2439, Page 252; Lots Nos. 21 and 22, Deed Book 2439, Page 250 and Lot Nos. 23, Deed Book 2439, Page 260, all references being to Records of the Recorder's Office, Franklin County, Ohio.

TRACT SEVEN:

Situated in the County of Franklin, City of Columbus, State of Ohio, and is identified as follows:

Being Reserve "A" of "Berwick Arms", as the same is numbered and delineated upon the recorded plat thereof, of record in Plat Book 34, Page 79, and conveyed to Real Estates Services, Inc., by deed of record in Deed Book 2961, Page 264, all references being to Records of the Recorder's Office, Franklin County, Ohio, containing 0.616 acre of land, more or less.