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6 Attorneys for James C. Sell, Receiver

7 SUPERIOR COURT OF ARIZONA

8 MARICOPA COUNTY

9 ARIZONA CORPORATION COMMISSION,

Case No: CV2003-005724

10 Plaintiff,

**MOTION TO AUTHORIZE  
SETTLEMENT REGARDING TONY  
LUNGARO AND TN CORPORATION**

11 v.

(Assigned to the Honorable J. Richard Gama)

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

14 Defendants.

15 James C. Sell, the court appointed Receiver in the above-referenced matter, through  
16 counsel of record undersigned, hereby requests that this Court enter an order authorizing the  
17 Receiver to settle a claim against Tony Lungaro and TN Corporation, creditors of 3303 Medina  
18 Road Trust dated March 15, 2002 and American National Mortgage Partners ("ANMP").

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

20 **MEMORANDUM OF POINTS AND AUTHORITIES**

21 I. Procedural Background

22 1. On or about March 24, 2003, the Arizona Corporation Commission caused to be  
23 filed, in the Superior Court in and for the State of Arizona, a Complaint in the above-captioned  
24 matter against numerous individual defendants and entities, seeking the appointment of a  
25 Receiver over the named Defendants.  
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1           2.       After notice and hearing, the Court, on April 2, 2003, issued its Order Appointing  
2 Receiver, appointing James C. Sell as Receiver for the approximately 100 entities named in the  
3 Receivership Complaint.

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

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

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

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

17                   18.   The Receiver is hereby authorized to institute, defend,  
18                   compromise or adjust such actions or proceedings in state or  
19                   federal courts now pending and hereafter instituted, as may  
20                   in his discretion be advisable or proper for the protection of  
21                   the Receivership Assets or proceeds therefrom, and to  
22                   institute, prosecute, compromise or adjust such actions or  
23                   proceedings in state or federal court as may in his judgment  
24                   be necessary or proper for the collection, preservation and  
25                   maintenance of the Receivership Assets.

23       II.       Settlement Terms

24           1.       On or about February 28, 2002, Tony Lungaro, individually and as President of  
25 TN Corporation, (collectively "Lungaro") executed a Promissory Note in the original principal  
26 amount of \$415,000.00 in favor of David Stocker as Trustee of the 3303 Medina Road Trust  
27 dated March 15, 2002, ("Note A"). The principal balance on Note A is currently \$415,000.00.  
28

1           2.     Lungaro and TN Corporation secured repayment of Note A by executing a  
2 mortgage from TN Corporation to David Stocker, Trustee on real property located in Medina,  
3 Ohio (the "Ohio Property).

4           3.     On or about November 6, 2002, Tony Lungaro, individually and on behalf of TN  
5 Corporation, (collectively "Lungaro") executed a Promissory Note in the original principal  
6 amount of \$60,000.00 in favor of American National Mortgage Partners, L.L.C. ("Note B"). The  
7 principal balance on Note A is currently \$60,000.00.

8           4.     Note B is secured by a second mortgage from TN Corporation on the Ohio  
9 Property.

10          5.     Receiver holds Notes A and B for purposes of collection.

11          6.     Lungaro has failed to make payments on Note A and Note B, but disputes that he  
12 is in default. The principal balance due on Notes A and B is \$475,000.00. Interest and late  
13 charges have accrued and continue to accrue.

14          7.     In pursuit of his duties under the terms of the Receivership Order, the Receiver as  
15 Receiver for the 3303 Medina Road Trust dated March 18, 2002 and ANMP, and Lungaro have  
16 been negotiating to resolve this matter. To that end, the parties have agreed to the following  
17 settlement, which is more particularly set forth in the Settlement Agreement attached hereto,  
18 subject to court approval.

19          8.     The Receiver has, subject to court approval, agreed to accept a lump sum cash  
20 settlement payment in the amount of \$400,000.00 (the "Settlement Sum") in full and final  
21 settlement of Notes A and B, if said sum is received on or before April 30, 2004 or within 10 days  
22 of Court approval by the State Court and Bankruptcy Court, whichever is later (the "Payment  
23 Date").

24          9.     In consideration of receiving the \$400,000.00 Settlement Sum by the Payment  
25 Date, the Receiver has, subject to court approval, agreed to waive a portion of the principal  
26 amount due together with interest and late fees which could have been charged under Notes A  
27 and B and has further agreed to release the two mortgages recorded against the Ohio Property to  
28 secure payment of the Notes A and B.

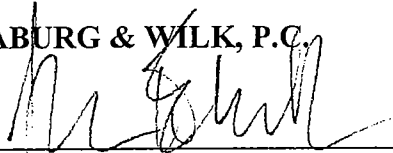
1           10.     The property securing payment of Note A and Note B is located in the State of  
2 Ohio and Lungaro has expressed an intent to assert defenses to enforcement of Note A and Note  
3 B. The Receiver believes it is in the best interest of the Receivership Estate to settle this matter as  
4 set forth herein since such settlement will result in immediate resolution of this matter and will  
5 result in the Receiver's collection of \$400,000.00. Further, settlement will avoid the necessity of  
6 retaining Ohio counsel and initiating foreclosure proceedings in Ohio and will alleviate the  
7 necessity of litigating any defenses which could be asserted by Lungaro.

8           11.     Based upon the foregoing, the Receiver believes that it is in the best interest of the  
9 Receivership Estate to authorize the Receiver to accept \$400,000.00 as a lump sum settlement  
10 payment paid on or before the Payment Date in full and final settlement of the Lungaro Note A  
11 and Note B.

12           WHEREFORE, the Receiver respectfully requests that the Court approve the  
13 settlement as set forth herein.

14           DATED this 27 day of April, 2004.

JABURG & WILK, P.C.

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

19     **ORIGINAL** filed and **COPY**  
20 of the foregoing hand-delivered  
this 27<sup>th</sup> day of April, 2004 to:

21     The Honorable Richard J. Gama  
22     MARICOPA COUNTY SUPERIOR COURT  
23     101 West Jefferson, ECB 611  
Phoenix, Arizona 85003-2243

24     **COPIES** of the foregoing mailed  
this 27<sup>th</sup> day of April, 2004 to:

25     Wendy L. Coy, Esq.  
26     Arizona Corporation Commission, Securities Division  
27     1300 West Washington, 3<sup>rd</sup> Floor  
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*Investor*  
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12 *Chairman of Creditors Committee*

13 James C. Sell  
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16 Facsimile (602) 265-3622  
17 *Court Appointed Receiver*

18 *Jonica R. Swan*

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# **EXHIBIT “A”**

## MUTUAL RELEASE AND SETTLEMENT AGREEMENT

**THIS MUTUAL RELEASE AND SETTLEMENT AGREEMENT** ("Agreement") is entered into this 20<sup>th</sup> day of April, 2004, by JAMES C. SELL, as Receiver for 3303 MEDINA ROAD TRUST DATED MARCH 15, 2002 (the "Trust"), 3303 OHIO PROPERTY, L.L.C. (the "Ohio L.L.C.") and AMERICAN NATIONAL MORTGAGE PARTNERS., L.L.C. ("ANMP"), and the persons or entities identified in Exhibit "A" attached hereto (the "Receivership Defendants") ("Receiver") and TONY LUNGARO ("Lungaro") and TN CORPORATION ("Corporation"). Receiver, Lungaro and Corporation are sometimes referred to herein individually as a "Party" and collectively as "Parties."

### RECITALS

A. 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 "State Court Action"). The Receiver Order empowers Receiver to take possession of and control assets of the Trust, the Ohio L.L.C., ANMP and the Receivership Defendants. ANMP is currently the Chapter 11 Debtor in a bankruptcy proceeding pending in United States Bankruptcy Court for the District of Arizona (03-03803 PHX RJH) (the "Bankruptcy Court Action"). Subject to Court approval in the State Court Action and the Bankruptcy Court Action, the Receiver is also empowered to settle any actual or potential disputes between the Trust, ANMP, the Ohio L.L.C. and the Receivership Defendants on the one hand, and Lungaro and/or Corporation on the other hand.

B. On or about February 28, 2002, Lungaro, individually and as President of TN Corporation, executed a Promissory Note in the original principal amount of \$415,000.00 in favor of David Stocker as Trustee of the Trust, ("Note A").

C. Lungaro and TN Corporation secured repayment of Note A by executing a mortgage from TN Corporation to David Stocker, Trustee on certain real property located in Medina, Ohio more particularly described on Exhibit "B" attached hereto (the "Ohio Property").

D. On or about November 6, 2002, Tony Lungaro, individually and on behalf of TN Corporation, (collectively "Lungaro") executed a Promissory Note in the original principal amount of \$60,000.00 in favor of ANMP, FBO 3303 Ohio Property L.L.C. ("Note B").

E. Lungaro and TN Corporation secured repayment of Note B by executing a subsequent mortgage from TN Corporation to Paul Meka, Trustee, on the Ohio Property.

F. Certain disputes have arisen between the Receiver, Lungaro and Corporation concerning, among other things, the Trust, ANMP, Note A, Note B and the mortgages executed with respect to Note A and Note B. Among other things, the parties dispute whether Lungaro

and/or Corporation are in default with respect to either Note A or Note B, and the enforceability of Note A and Note B.

G. In pursuit of his duties under the terms of the Receivership Order, the Receiver holds Notes A and B.

H. The Receiver, Lungaro and Corporation have been negotiating with each other in good faith to resolve any and all disputes, controversies or claims to payment between the Parties in connection with, arising out of, concerning or in any other way relating to Note A, Note B, the Ohio Property, the Trust, the Ohio L.L.C., ANMP and the mortgages executed with respect to Notes A or Note B, regardless of whether such disputes controversies or claims are currently known or unknown, absolute or contingent, real or potential, or now existing or hereafter arising, from the beginning of time to the date of this Agreement.

I. Based upon the foregoing, the Receiver believes that it is in the best interest of the Receivership Estate to authorize the Receiver to accept a lump sum payment of \$400,000.00 (the "Settlement Sum") in full and final settlement of any and all disputes controversies or claims to payment between the Parties, as specified in Recital H above, if and only if the Settlement Sum is delivered to the Receiver on or before April 30, 2004 (or such later date as specified below) (as further defined below, the "Payment Date").

J. Based upon the foregoing, Lungaro and Corporation each believes that is in the best interest of Lungaro and Corporation to pay Receiver the Settlement Sum on or before the Payment Date in full and final settlement of any and all disputes controversies or claims to payment between the Parties, as specified in Recital H above, if and only if the Settlement Sum is delivered to the Receiver on or before the Payment Date.

K. The Parties understand that this settlement and the releases provided herein are wholly contingent upon the Receiver's receipt of the Settlement Sum on or before the Payment Date. In the event that, for whatever reason, Lungaro and/or Corporation are unable to deliver the Settlement Sum to the Receiver by the Payment Date, then, in such event, the covenants, promises and releases contained in this Agreement shall have no further force and effect. Subject to the above provision, the Parties each enter into this Agreement in order to fully, finally and forever settle any and all disputes, controversies or claims to payment between the Parties in connection with, arising out of, concerning or in any other way relating to Note A, Note B, the Ohio Property, the Trust, ANMP and the mortgages executed with respect to Note A or Note B, regardless of whether such disputes, controversies or claims are currently known or unknown, absolute or contingent, real or potential, in tort or in contract, or now existing or hereafter arising, from the beginning of time to the date of this Agreement.

## **AGREEMENT**

**NOW 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. Recitals. The above Recitals are hereby incorporated by reference into the terms and substance of his Agreement, each as if fully rewritten herein.

2. Settlement Sum and Release of Mortgages. The Receiver has, subject to Court approval in the State Court Action and the Bankruptcy Court Action, agreed to accept a lump sum cash settlement payment in the amount of \$400,000.00 (the "Settlement Sum") in full and final settlement of Notes A and B, if said sum is received by the Receiver on or before the Payment Date, as that term is defined herein. The payment of the Settlement Sum shall be in full and final settlement of all claims to payment which the Receiver, the Trust, the Ohio L.L.C., ANMP and any of the Receivership Defendants may have against either Lungaro or Corporation with respect to either Note A or Note B, and all claims of any type by the Receiver, the Trust, the Ohio L.L.C., ANMP and any of the Receivership Defendants with respect to the Ohio Property or the mortgages on the Ohio Property. The Settlement Sum shall be paid to the Receiver upon the later of the following dates: a) April 30, 2004; or b) ten business days following issuance of Court approval by the State Court and the Bankruptcy Court for this Agreement (the later of a) or b) being the "Payment Date").

In consideration of receiving the Settlement Sum on or before the Payment Date, the Receiver has, subject to Court approval in the State Court Action and the Bankruptcy Court Action, agreed to waive all claims to any amounts which may be due and owing from Lungaro and/or Corporation under either Note A or Note B (including, without limitation, all claims to any interest, late charges, penalties or fees which could have been charged under either Note A or Note B).

In further consideration of receiving the Settlement Sum on or before the Payment Date, the Receiver has, subject to Court approval in the State Court Action and the Bankruptcy Court Action, agreed to release the Ohio Property from the liens of the two mortgages which secure repayment of Notes A and B, provided that no release of the mortgages shall be issued by the Receiver until and unless the full Settlement Sum has been received by the Receiver by the Payment Date.

3. Mutual Release of Claims. Subject to Court approval in the State Court Action and the Bankruptcy Court Action, upon the timely consummation of the transactions contemplated in Paragraph 2 above, each Party hereby fully and forever releases each other party, in perpetuity, from and with respect to any and all disputes, controversies or claims for compensation or payment in connection with, arising out of, concerning or in any other way relating to Note A or Note B, the Ohio Property, the Trust, the Ohio L.L.C., ANMP and the mortgages executed with respect to Note A or Note B, regardless of whether such disputes, controversies or claims are currently known or unknown, absolute or contingent, real or potential, in tort or in contract, or now existing or hereafter arising, from the beginning of time to the date of this Agreement. The Receiver acknowledges and agrees that he is executing this Release with respect to Lungaro and Corporation on behalf of the Trust, the Ohio L.L.C., ANMP and the Receivership Defendants, and further represents and warrants that he has the authority to

bind the Trust, the Ohio L.L.C., ANMP and the Receivership Defendants to the terms and provisions of this Agreement, pursuant to the Receivership Order and any additional Court Order.

4. Binding Effect/Court Approvals. Subject to Court approval in the State Court Action and the Bankruptcy Court Action, this Agreement and all of the provisions therein shall be binding upon and inure to the benefit of the Parties, their respective heirs, personal representatives, officers, directors, owners, agents, employees, successors and assigns. It is specifically understood by each Party that the terms of this Agreement shall not be binding upon any Party until such time as all appropriate approvals have been entered by the Courts having jurisdiction over these matters.

5. Counterparts/Facsimile Signatures. 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. Facsimile signatures shall be considered an original signature hereto.

6. Headings. All headings and captions in this Agreement are for convenience only and shall not be interpreted to enlarge or restrict the provisions of the Agreement.

7. Waiver/Modification. Except as otherwise provided herein, the failure of any Party to insist, in any one or more instances, upon the strict performance of any of the covenants in this Agreement shall not be considered a waiver, modification or relinquishment of such covenant, but the same shall continue in full force and effect.

8. Further Necessary Actions. To the extent that the execution of any document or the performance of any action by any Party is reasonably necessary to effectuate the transactions contemplated by this Agreement, such Party shall promptly execute such document or perform such action (as appropriate) upon the request of any other Party.

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. Choice of Law. Jurisdiction and choice of law shall be governed by the jurisdiction and choice of law provisions applicable to Note A and Note B.

11. 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.

12. 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.

**SIGNED** as of the date first set forth above.

**RECEIVER:**

\_\_\_\_\_  
JAMES C. SELL, Receiver for 3303 Medina Road Trust dated March 15, 2002, for 3303 Ohio Property, L.L.C., 3303 Medina Road Trust Dated March 15, 2002, ANMP and the Receivership Defendants defined above and referred to in Exhibit "A" to this Agreement

\_\_\_\_\_  
**TONY LUNGARO**

**TN CORPORATION:**

By \_\_\_\_\_  
Tony Lungaro, President

**EXECUTION COPY**

12. 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.

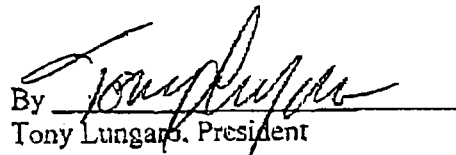
**SIGNED** as of the date first set forth above.

**RECEIVER:**

JAMES C. SELL, Receiver for 3303 Medina Road Trust dated March 15, 2002, for 3303 Ohio Property. I.L.C., 3303 Medina Road Trust Dated March 15, 2002, ANMP and the Receivership Defendants defined above and referred to in Exhibit "A" to this Agreement

  
TONY LUNGARO

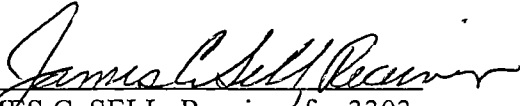
**TN CORPORATION:**

By   
Tony Lungaro, President

12. 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.

SIGNED as of the date first set forth above.

RECEIVER:

  
\_\_\_\_\_  
JAMES C. SELL, Receiver for 3303 Medina Road Trust dated March 15, 2002, for 3303 Ohio Property, L.L.C., 3303 Medina Road Trust Dated March 15, 2002, ANMP and the Receivership Defendants defined above and referred to in Exhibit "A" to this Agreement

\_\_\_\_\_  
TONY LUNGARO

TN CORPORATION:

By \_\_\_\_\_  
Tony Lungaro, President

**EXHIBIT "A"**

Medina Properties, LLC

T. Lungaro, LLC

**EXHIBIT "B"**

**LEGAL DESCRIPTION OF THE OHIO PROPERTY**

Being that certain parcel of real property with permanent parcel no. 026-06D-34-001, also known as 3303 Medina Road, Medina, Ohio, 44256, situated in the Township of Medina, County of Medina and State of Ohio and known as being part of Township Lot 74 and part of a record 5.00 acre parcel conveyed to the TN Corporation on March 19, 2002 by instrument recorded in Document No. 2002OR011283 of the Medina County Recorder's Office, and more fully described as follows: beginning in the center lies of the Akron-Medina Road at a point which is South 89 degrees 23 minutes East 174.57 feet from the Southwest corner of said Lot No. 74; thence South 89 degrees 23 minutes East along said road center 174.57 feet; thence North 1 degree no minutes East 1247.66 feet to an iron pipe; thence 89 degrees 23 minutes West, 174.57 feet to an iron pipe; thence South 1 degree no minutes West 1247.66 feet to the place of beginning and containing, as surveyed December 12, 1931, by S.G. Swigart and Son, Five (5) acres of land, be the same more or less, but subject to all legal highways and easements of record.

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