

FILED  
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MICHAEL K. JEANES, Clerk  
By S. Muhammad  
Deputy

1 Lawrence E. Wilk, #006510  
2 **JABURG & WILK, P.C.**  
3 3200 North Central Avenue, Suite 2000  
4 Phoenix, Arizona 85012  
5 (602) 248-1000

6 Attorneys for James C. Sell, Receiver

**CERTIFIED COPY**

7 SUPERIOR COURT OF ARIZONA

8 MARICOPA COUNTY

9 ARIZONA CORPORATION COMMISSION,

Case No: CV2003-005724

10 Plaintiff,

**ORDER AUTHORIZING SETTLEMENT  
REGARDING 998 E. INDIAN SCHOOL  
TRUST**

11 v.

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

(Assigned to the Honorable J. Richard Gama)

14 Defendants.

15 The Court having considered the motion by James C. Sell, the Court appointed Receiver  
16 in the above-referenced matter ("Receiver"), for an order authorizing the Receiver to enter into  
17 the Settlement Agreement with Jerry Grossman, as Trustee of the Grossman Family Trust dated  
18 June 5, 1990 ("Grossman") and Richard Gordon, as Trustee of the Gordon Family Revocable  
19 Trust dated October 13, 1999 (Gordon"), and good cause appearing

20 IT IS HEREBY ORDERED:

21 A. That the Settlement Agreement attached as **Exhibit "A"** and incorporated herein  
22 by this reference is approved.

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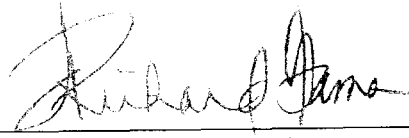
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JABURG & WILK, P.C.  
ATTORNEYS AT LAW  
3200 NORTH CENTRAL AVENUE  
SUITE 2000  
PHOENIX, ARIZONA 85012

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B. That Receiver is authorized to execute the Settlement Agreement, and such other documents as may be necessary to implement the terms of the Settlement Agreement, as the Court appointed Receiver on behalf of 998 E. Indian School Trust.

DONE IN OPEN COURT this 11 day of March, 2004.



Honorable J. Richard Gama  
Maricopa County Superior Court

The foregoing instrument is a full, true and correct copy of the original document.

Attest Michael K. Jeanes 2004

MICHAEL K. JEANES, Clerk of the Superior Court of the State of Arizona, in and for the County of Maricopa.

By Michael K. Jeanes Deputy

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

## 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.

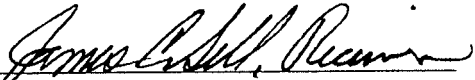
10. Attorneys Fees. In the event of litigation or arbitration proceedings brought by any Party to enforce the terms of this Agreement or otherwise relating directly or indirectly to the transactions and agreements reflected herein, the prevailing Party, in addition to any and all other rights and remedies, 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:**

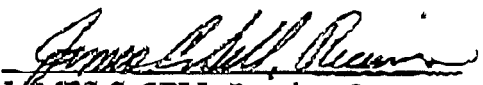
Gordon Family Revocable Trust dated  
October 13, 1999

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

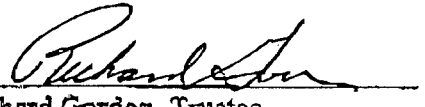
GROSSMAN:

GROSSMAN FAMILY TRUST dated  
June 5, 1990

By   
 Jerry Grossman, Trustee

GORDON:

Gordon Family Revocable Trust dated  
October 13, 1999

By   
 Richard Gordon, Trustee