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SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

ARIZONA CORPORATION COMMISSION,

Case No: CV2003-005724

Plaintiff,

**ORDER SETTING CONSOLIDATED HEARING**

v.

(Assigned to the Honorable J. Richard Gama)

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

Defendants.

*DLE / JRS*

PLEASE TAKE NOTICE that a hearing will be held on the 17<sup>th</sup> day of Dec.

10:30 am, 2003, before the Honorable J. Richard Gama, Maricopa County

Superior Court, 101 W. Jefferson, Courtroom 611, Phoenix, AZ 85003, at which time the

Court will consider the following motions:

- (1) *Motion for Order Establishing Official Service List and Motion to Limit Notice;*
- (2) *Motion to Authorize Settlement Regarding 36<sup>th</sup> Street and Oak Street Property;*
- (3) *Motion for Order Authorizing Receiver to Obtain Secured Credit on Secluded Lane Property; and*
- (4) *Motion to Authorize Settlement Regarding Pontchartrain Realty Fund, Inc and Pontchartrain Realty Fund, LLC.*

The motions and their exhibits are quite voluminous. To avoid excessive expense to the Receivership estate, these motions are on file with the Court and can be viewed at:

[www.americannationalreceivership.com](http://www.americannationalreceivership.com)

The following represents a brief summary of each motion:

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(1) Motion for Order Establishing Official Service List and Motion to Limit Notice:

This motion requests the Court to enter an Order limiting notice to pleadings to those individuals and entities who have noted an appearance in the ACC proceeding, the creditors committee in the American National Mortgage Partners bankruptcy, the U.S. Trustee's Office, and those people who request notice, in writing. All pleadings will continue to be posted on the internet site of the Receiver.

(2) Motion to Authorize Settlement Regarding 36<sup>th</sup> Street and Oak Street Property:

This settlement involves American National Mortgage Partners, LLC, as Trustee of the 36<sup>th</sup> Street & Oak Trust and Oak Commons, LLC, under the terms of the settlement, the property is to be deeded back to the Receivership from its current owner and the property liquidated. Herb Fisher has given a release of liability (subject to the veracity of statements he has made as to his financial condition) and a six month listing agreement shall be given to him to sell the property.

(3) Motion for Order Authorizing Receiver to Obtain Secured Credit on Secluded Lane Property:

This motion requests Court authorization to allow the Debtor to incur \$80,000 in secured debt against the Secluded Lane Property. The debt is being incurred for the purpose of retaining Sheldon Good & Co., a national auction company, to conduct the sale of the property.

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///

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PHOENIX, ARIZONA 85012

**COPY**

DEC - 3 2003



MICHAEL K. JEANES CLERK  
S. HOPKINS  
DEPUTY CLERK

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

7 SUPERIOR COURT OF ARIZONA  
8 MARICOPA COUNTY

9 ARIZONA CORPORATION COMMISSION,

Case No: CV2003-005724

10 Plaintiff,

**MOTION TO AUTHORIZE  
SETTLEMENT REGARDING 36<sup>TH</sup>  
STREET & OAK STREET PROPERTY**

11 v.

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

(Assigned to the Honorable : Richard Gama)

14 Defendants.

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

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 enter into the Settlement Agreement and Limited Release which is attached hereto as  
18 Exhibit "A" and incorporated herein in its entirety by reference (the "Settlement Agreement")

19 The motion is based upon the following memorandum of points and authorities.

20 DATED this 21 day of November, 2003.

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

Lawrence E. Wilk  
Attorneys for James C. Sell

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JANIELLE WILSON, P.C.  
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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. Procedural Background**

1. On or about March 24, 2003, the Arizona Corporation Commission caused to be filed, in the Superior Court in and for the State of Arizona, a Complaint in the above-captioned matter against numerous individual defendants and entities, seeking the appointment of a Receiver over the named Defendants.

2. After notice and hearing, the Court, on April 2, 2003, issued its Order Appointing Receiver, appointing James C. Sell as Receiver for the approximately 100 entities named in the Receivership Complaint.

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

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

5. Paragraph 18 of the Receivership Order provides as follows:

18. The Receiver is hereby authorized to institute, defend, compromise or adjust such actions or proceedings in state or federal courts now pending and hereafter instituted, as may in his discretion be advisable or proper for the protection of the Receivership Assets or proceeds therefrom, and to institute, prosecute, compromise or adjust such actions or proceedings in state or federal court as may in his judgment

On or about August 22, 2003, the Court entered the Second Order Appointing Receiver, which was entered for the specific purpose of naming additional parties. The terms of this Order do not affect the pending Motion.

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

6 In pursuit of his duties under the terms of the Receivership Order, on or about November 14, 2003, the Receiver on behalf of American National Mortgage Partners, LLC, as Trustee of the 36<sup>th</sup> Street & Oak Trust dated November 8, 2002 and as Receiver for Oak Commons, LLC (hereinafter collectively referred to as "the Receivership entities") entered into a Settlement Agreement with Herbert J. Fisher individually and *dba* Fisher Properties (hereinafter "Fisher") and 2302 N 36<sup>th</sup> Street, LLC. The Agreement resolves issues which have arisen regarding certain real property more particularly described as:

The South 300 feet of the East 181.5 feet of the Northwest quarter of Section 36, Township 2 North, Range 3 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona,

EXCEPT the South 40 feet; and also

EXCEPT the East 40 feet; and also

EXCEPT the following described parcel:

BEGINNING at the intersection of the West line of the East 40 feet of said quarter with the North line of the South 40 feet of said Northwest quarter;

Thence West, along said North line, a distance of 10 feet;

Thence Northeasterly to a point on said West line which is 10 feet North of the Point of Beginning;

Thence South, along said West line, a distance of 10 feet to the POINT OF BEGINNING.

2302 N 36<sup>th</sup> Street, LLC (the "Property").

II. Factual Background

1 On or about March 5, 2001, Western Gulf Capital, Inc. ("Western Gulf") acquired the real property more specifically described on the attached Exhibit A and commonly known as 2302 North 36<sup>th</sup> Street, Phoenix, Arizona (the "Property"). Thereafter Western Gulf conveyed the Property to Corporate Fiducial Services ("CFS") as Trustee of the 2302 N. 36<sup>th</sup> Street Trust (the

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36<sup>th</sup> Street Trust") on March 21, 2001. Western Gulf retained a beneficial interest in the Property as the first beneficiary of the Trust.

2. On or about May 1, 2001, Western Gulf as Landlord and Fisher as Tenant entered into a Lease-Option Agreement ("Lease"), wherein Fisher 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 \$395,000 if the option to purchase was exercised on or before December 1, 2002.

3. On or about May 25, 2001, Western Gulf and Fisher entered into a Purchase Agreement wherein Fisher purportedly exercised his option to purchase the Property in accordance with the Lease. Said Purchase Agreement also provided for a \$200,000 loan from Creative Financial Funding, to be secured by a Deed of Trust on the Property with Gordon Family Trust as beneficiary (the "Gordon Loan")

4. On June 8, 2001, 36<sup>th</sup> Street Trust, the record owner of the Property, conveyed the Property to Fisher, and Fisher executed a Deed of Trust in favor of the Gordon Family Trust to secure the Gordon Loan. However, no funds or other consideration were exchanged for the purchase price of the Property.

5. On or about November 8, 2002, Fisher obtained a loan in the principal amount of \$384,000 from Oak Commons, L.L.C., (the "Oak Commons Loan") to be used to construct improvements on the Property. Fisher executed a Warranty Deed conveying the Property to American National Mortgage Partners ("ANMP") as Trustee of the 36<sup>th</sup> Street and Oak Trust dated November 8, 2002, and executed a Deed of Trust in favor of Oak Commons, L.L.C. to secure the payment of the Oak Commons Loan. The Oak Commons Loan was not fully funded, and Fisher received \$213,853.75. The Warranty Deed and Deed of Trust were never recorded. Fisher obtained an additional loan in the amount of \$21,200 on July 25, 2001.

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6. In addition, Fisher diverted proceeds in the amount of \$100,000 from a loan that was secured by the Property and never used for the benefit of the Property to a Castle entity.

7. On or about February 5, 2003, Fisher conveyed the Property to Robert Rehm ("Rehm"), by Special Warranty Deed. Robert Rehm obtained a loan from First International Bank & Trust ("First International") in the principal amount of \$375,000 (the "First International Loan"). A portion of the First International Loan was used to satisfy the outstanding Gordon Loan. A Deed of Trust was recorded against the Property in favor of First International to secure payment of the First International Loan. Because security documents for the Oak Commons Loan were never recorded, First International became the first lienholder on the Property

8. After the recordation of the First International Deed of Trust, Rehm conveyed the Property to Fisher

9. Rehm and Fisher subsequently formed 36<sup>th</sup> Street LLC, and on or about March 4, 2003, Fisher conveyed the Property to 36<sup>th</sup> Street LLC.

10. 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 ANMP and Oak Commons. Receiver filed an action in Maricopa County Superior Court in Case No. CV2003-009720 against Fisher and 36<sup>th</sup> Street LLC to protect and enforce the provisions of the Oak Commons Loan (the "Action").

11. Fisher is in default under the Oak Commons Loan. The parties agree the total outstanding principal balance of all indebtedness owed by Fisher and/or 36<sup>th</sup> Street LLC to ANMP or subsidiaries is \$630,053.75, plus accrued interest.

12. Title to the property is currently vested in 2302 N. 36<sup>th</sup> Street, LLC.

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SUITE 7000  
PHOENIX, ARIZONA 85028

1     III     Summary of Settlement Provisions<sup>2</sup>

2             Under the terms of the Settlement Agreement, 2303 N 36<sup>th</sup> Street, LLC has executed and  
3 delivered a Warranty Deed transferring title to the property back to American National Mortgage  
4 Partners, subject to all existing liens and encumbrances. In consideration for the transfer, the  
5 Receiver has agreed to provide Fisher with a six (6) month listing agreement for the sale of the  
6 property and a limited release of liability on the loan obligations between Fisher and the  
7 Receivership entities.<sup>3</sup>

9             By entering into the Settlement Agreement, the Receiver receives the immediate transfer  
10 of title to the property to the Receivership to allow for its immediate liquidation. The transfer  
11 allows for all valid, enforceable liens to be satisfied quickly from the sale of the property, without  
12 the accrual of additional interest, costs and fees. In addition, by obtaining title, and having the  
13 ability to sell the property, the Receiver will be able to attempt to protect the property from the  
14 risk of foreclosure by senior debt. The Settlement further avoids the Receivership estate from  
15 incurring additional fees in litigating the disputed issues in the pending lawsuit.

17             With reference to the borrower, the Receiver has analyzed the potential liability of Fisher  
18 to the estate on the debt obligations. The Receiver has determined that the pursuit of this debt is  
19 not economical nor efficient to the interests of the estate based upon the financial status of the  
20 borrower. The release of the borrower is based upon material representations made by the  
21 borrower as to his financial condition. If the statements are incorrect, the release is void. Finally,  
22 the Receiver has made a concession to Fisher by agreeing to enter into a six (6) month listing  
23 agreement which provides for a standard commission. This concession was agreed to by the  
24 Receiver based upon two considerations. First, the Settlement facilitates the immediate turnover

27             <sup>2</sup>     The following represents a summary of the settlement terms. For a more detailed understanding of the terms  
of the settlement, refer to Exhibit "A".

28             <sup>3</sup>     The Release is based upon a financial statement provided by Fisher and may be revoked if the financial  
information contained therein is incorrect.

1 of the property. Second, Fisher is intimately familiar with the property and may be in the best  
2 position to facilitate a sale.

3 Based upon the foregoing, the Receiver believes that it is in the best interest of the estate  
4 to authorize the Receiver to enter into the Settlement Agreement

5 DATED this 21 day of November, 2003.

7 JABURG & WILK, P.C.

8 

9 Lawrence E. Wilk  
10 Attorneys for James C. Sell

11 ORIGINAL filed and COPY  
12 of the foregoing hand-delivered  
13 this 3rd day of ~~November~~, 2003 to:

14 *December*  
The Honorable Richard J. Gama  
MARICOPA COUNTY SUPERIOR COURT  
101 West Jefferson, ECB 611  
Phoenix, Arizona 85003-2243

15 COPIES of the foregoing mailed  
16 this 3rd day of ~~November~~, 2003 to:

17 *December*  
Wendy L. Coy, Esq  
Arizona Corporation Commission, Securities Division  
1300 West Washington, 3<sup>rd</sup> Floor  
Phoenix, Arizona 85007  
Facsimile: (602) 594-7418  
*Attorney for Plaintiff*

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23 Stanford E. Lerch, Esq.  
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*Larry William Dunning and Sheila Dunning, Phil and Tricia Vigarino,*  
*Robert K. Rehm, Frank and Gail Caspare, and Susan Rutledge*

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JL  
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*Attorneys for Dellheim, Vescio and Owens in related proceedings*

*Jonathan R. Swan*

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 SUITE 2000  
 PHOENIX, ARIZONA 85017

## SETTLEMENT AGREEMENT AND LIMITED RELEASE

THIS SETTLEMENT AGREEMENT AND LIMITED RELEASE (the "Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2003, by JAMES C. SELL, as Receiver for AMERICAN NATIONAL MORTGAGE PARTNERS, L.L.C., as Trustee of the 36<sup>th</sup> STREET AND OAK TRUST dated November 8, 2002, and as Receiver for OAK COMMONS, L.L.C. ("Receiver"), HERBERT J FISHER, individually and dba FISHER PROPERTIES, ("Fisher") and 2302 N. 36<sup>th</sup> STREET, L.L.C. ("36<sup>th</sup> Street LLC"). Receiver, Fisher and 36<sup>th</sup> Street LLC are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

### RECITALS

A. On or about March 5, 2001, Western Gulf Capital, Inc. ("Western Gulf") acquired the real property more specifically described on the attached Exhibit A and commonly known as 2302 North 36<sup>th</sup> Street, Phoenix, Arizona (the "Property"). Thereafter Western Gulf conveyed the Property to Corporate Fiducial Services ("CFS") as Trustee of the 2302 N. 36<sup>th</sup> Street Trust (the "36<sup>th</sup> Street Trust") on March 21, 2001. Western Gulf retained a beneficial interest in the Property as the first beneficiary of the Trust.

B. On or about May 1, 2001, Western Gulf as Landlord and Fisher as Tenant entered into a Lease-Option Agreement ("Lease"), wherein Fisher 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 \$395,000 if the option to purchase was exercised on or before December 1, 2002.

C. On or about May 25, 2001, Western Gulf and Fisher entered into a Purchase Agreement wherein Fisher purportedly exercised his option to purchase the Property in accordance with the Lease. Said Purchase Agreement also provided for a \$200,000 loan from Creative Financial Funding, to be secured by a Deed of Trust on the Property with Gordon Family Trust as beneficiary (the "Gordon Loan").

D. On June 8, 2001, 36<sup>th</sup> Street Trust, the record owner of the Property, conveyed the Property to Fisher, and Fisher executed a Deed of Trust in favor of the Gordon Family Trust to secure the Gordon Loan. However, no funds or other consideration were exchanged for the purchase price of the Property.

E. On or about November 8, 2002, Fisher obtained a loan in the principal amount of \$384,000 from Oak Commons, L.L.C., (the "Oak Commons Loan") to be used to construct improvements on the Property. Fisher executed a Warranty Deed conveying the Property to American National Mortgage Partners ("ANMP") as Trustee of the 36<sup>th</sup> Street and Oak Trust dated November 8, 2002, and executed a Deed of Trust in favor of Oak Commons, L.L.C. to secure the payment of the Oak Commons Loan. The Oak Commons Loan was not fully funded, and Fisher received \$213,833.75. The Warranty Deed and Deed of Trust were never recorded.

F. Fisher obtained an additional loan in the amount of \$21,200 on July 25, 2001.

G. In addition, Fisher diverted proceeds in the amount of \$100,000 from a loan that was secured by the Property and never used for the benefit of the Property to a Castle entity.

H. On or about February 5, 2003, Fisher conveyed the Property to Robert Rehm ("Rehm"), by Special Warranty Deed. Robert Rehm obtained a loan from First International Bank & Trust ("First International") in the principal amount of \$375,000 (the "First International Loan"). A portion of the First International Loan was used to satisfy the outstanding Gordon Loan. A Deed of Trust was recorded against the Property in favor of First International to secure payment of the First International Loan. Because security documents for the Oak Commons Loan were never recorded, First International became the first lienholder on the Property.

I. After the recordation of the First International Deed of Trust, Rehm conveyed the Property to Fisher.

J. Rehm and Fisher subsequently formed 36<sup>th</sup> Street LLC, and on or about March 4, 2003, Fisher conveyed the Property to 36<sup>th</sup> Street LLC.

K. 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 ANMP and Oak Commons. Receiver filed an action in Maricopa County Superior Court in Case No. CV2003-009720 against Fisher and 36<sup>th</sup> Street LLC to protect and enforce the provisions of the Oak Commons Loan (the "Action").

L. Fisher is in default under the Oak Commons Loan. The parties agree the total outstanding principal balance of all indebtedness owed by Fisher and/or 36<sup>th</sup> Street LLC to ANMP or subsidiaries is \$630,053.75, plus accrued interest.

M. In order to avoid the further expense of litigation, the Parties enter into this Agreement to settle the claims asserted in the Action.

**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. Transfer of Property. In settlement of certain claims of Receiver against Fisher and 36<sup>th</sup> Street LLC as more fully set forth herein, 36<sup>th</sup> Street LLC, as the current record owner of the Property, shall convey the Property to Receiver, together with all improvements thereto and all personal property used on or in connection with the Property. It is the intention of the Parties that the conveyance of the Property shall be in fee simple and shall be without condition or reservation of any kind, except that the Parties acknowledge that the Property shall be subject to the First International Deed of Trust. The conveyance shall be by the execution and delivery of a Warranty Deed and Bill

of Sale in the form attached hereto as Exhibit B and Exhibit C, respectively, which shall be delivered to Receiver at Closing, as hereinafter defined.

2 Assignment of Claims, Rights and Interests. Fisher and 36<sup>th</sup> Street LLC agree and consent to, and hereby assign to Receiver absolutely and unconditionally, all of their right, title and interest in, or claim to, any and all of the following described categories of claims, rights, and interests related to the Property. Receiver shall have the right to reject any or all assignment within sixty (60) business days of the execution of this Agreement. The following claims, rights and interests are assigned pursuant to this paragraph:

2.1 All contracts, construction contracts, subcontracts, bonds, assurances, labor and materialmen's bonds, performance and payment bonds, plans and specifications, engineering surveys, plats, architectural drawings, renderings and models, business records, files and correspondence, claims, rights or interests of any type, nature of kind, of, with, or against any and all persons, entities, and parties relating to or arising out of the acquisition, development, construction, or sale and disposition, in whole or in part, of the Property;

2.2 All right, title and interest in and to any claims, causes of action, or rights to recovery, settlement proceeds, or rights to settlement proceeds relating thereto, or in any way relating to, connected with, or arising from the Property against any subcontractors who worked on or who provided goods or services to the Property;

2.3 All plans, permits, building permits, licenses, zoning rights applications, approvals of any type or nature, with supporting documentation, required of any developer or required by any governmental agency in connection with the acquisition, development, construction, or sale and disposition of the Property;

2.4 All documents, sale brochures, displays, models, and other materials, documents or forms, with supporting documentation, which the Fisher and/or 36<sup>th</sup> Street LLC have prepared in connection with the sale or disposition of the Property;

2.5 All right, title and interest in and to any insurance award, proceeds, remuneration, settlements or compensation heretofore made or hereafter to be made under all policies of insurance to 36<sup>th</sup> Street LLC and/or Fisher;

2.6 All books, plans, drawings, specifications, plats, records of accounts, bank records, studies, engineering reports, well-logs, surveys, appraisals, market studies, estimations of cost to complete, feasibility studies, business records, and other materials prepared by or prepared for 36<sup>th</sup> Street LLC and/or Fisher in connection with the proposed or the ongoing development, construction, disposition, or sale of the Property;

2.7 All appraisals, real estate tax records, including assessments, payment records, and any documentary materials which tend to show or to establish the value of the Property in whole or in part, such as comparables or estimates to replace,

2.8 All right, title and interest in and to any award, proceeds, remuneration, condemnation, settlements or compensation heretofore made or hereafter to be made by any governmental authority to 36<sup>th</sup> Street LLC and/or Fisher or subsequent owner of the Property, buildings, fixtures or personality;

2.9 All existing and future leases, sub-leases, assignments of leases, rents, issues and profits, security and other tenant deposits, including but not limited to leases, subleases, assignments of leases, tenant estoppels, subordinations or attornment agreements;

2.10 All operating and management or supervision agreements;

2.11 All utility, servicing, security and other deposits, whether made or given to secure utility or other servicing,

2.12 Any title insurance or similar policies or coverage, including but not limited to any of the foregoing in any way connected with the Property or any construction development, or marketing and sales thereof,

2.13 All rights, privileges, tenements, hereditaments, rights-of-way, easements, conditions, covenants, reservations, licenses, profits, rents, issues, appendages and appurtenances in any manner appertaining or incident thereto, and all right, title and interest in and to any public or private streets, ways, alleys or strips of land adjoining the Property or any part thereof, and all water and water rights, well and well rights, canal and canal rights, air and air rights, development rights, common elements, limited common elements, special declarant rights, unit rights, allocated interest, association rights, and all oil, gas and mineral rights and any royalties, leases or leasehold interests in any of them, and all right, title and interest of 36<sup>th</sup> Street LLC and/or Fisher in all stock or interests in all public or private utilities, water, mining, irrigation, ditch, telephone, gas, sewer, electric or cable companies in any way connected with the Property.

3. Permitted Encumbrances. As a condition precedent to this Agreement, Fisher and 32<sup>nd</sup> Street LLC agree to convey or cause to be conveyed to Receiver the Property free and clear of all liens, claims, interests, encumbrances and taxes except subject only to the First International Deed of Trust, and any other matters of record approved by Receiver.

4. Escrow. The Parties shall open an escrow with Land America ("Closing Agent") by depositing with Closing Agent the fully executed Agreement, or executed counterparts thereof. The escrow instructions shall incorporate this Agreement as part thereof and shall contain such other standard and usual provisions as may be required by Closing Agent, provided, however, that in the event there is a conflict between any such standard or usual provisions and the provisions of this Agreement, the provisions of this Agreement shall control unless otherwise expressly agreed to in writing by Buyer and Seller.

5. Title Insurance. Receiver shall obtain from Land America its standard Owner's Title Insurance Property with respect to its acquisition of the Property contemplated by this Agreement, in

the amount of \$900,000, together with such endorsements as Receiver shall deem to be necessary and appropriate

6. Closing. The closing of the transaction hereunder (the "Closing") shall occur upon execution of this Agreement and all closing documents by the Parties (the "Closing Date"). At the Closing, 32<sup>nd</sup> Street LLC and/or Fisher shall deliver a Warranty Deed and Bill of Sale in the form attached hereto as Exhibit B and Exhibit C, respectively, conveying the Property to Receiver. The Parties agree to execute and deliver any additional instruments and agreements and take such other actions as may be necessary to carry out the terms of this Agreement.

7. No New Contracts. From the date of execution of this Agreement to the date of recordation of the Warranty Deed, 36<sup>th</sup> Street LLC and Fisher agree not to enter into any contracts, leases or instruments relating to the Property, cause any lien or encumbrance to be recorded against the Property, or modify or amend any existing contracts, leases or instruments, including contracts that would increase the obligations of Receiver, unless such contracts have the prior written approval of Receiver.

8. Risk of Loss. 36<sup>th</sup> Street LLC and Fisher agree to assume any and all risk of loss to the Property prior to the Closing.

9. Limited Release by Receiver. Subject to the conditions set forth in this Section 9, Receiver, individually and on behalf of his respective agents, employees, heirs, personal representatives, successors and assigns, hereby releases and forever discharges Fisher and 36<sup>th</sup> Street LLC, and its respective agents, employees, heirs, personal representatives, successors and assigns (all of the foregoing persons and entities are referred to in this Section 9 as the "Released Parties" and are intended beneficiaries of this Agreement) from and against any monetary claim for non-payment of monies owed under any agreements, loans or notes made to or obligation owed Receiver in connection with the Property. The Parties acknowledge and agree that the foregoing release shall be effective so long as 36<sup>th</sup> Street LLC and Fisher perform their obligations under this Agreement, and that there are no material misstatements or omissions contained in the financial statement dated September 1, 2003, provided by Fisher to Receiver (the "Financial Statement"). Upon breach by 36<sup>th</sup> Street LLC and/or Fisher of any obligation under this Agreement, or if Receiver discovers there are any material misstatements or omissions contained in the Financial Statement, the foregoing release shall be null and void and of no further force and effect, and Receiver may exercise any all rights and remedies available to it to protect its interests and collect any amounts owing under any agreements, loans or notes made to or obligations owed to Receiver by 36<sup>th</sup> Street LLC and/or Fisher in connection with the Property. For purposes of this Agreement "material" shall be defined as any misstatement or omission in the Financial Statement that would cause an increase in the net worth of Fisher of \$40,000 or more. This release is limited to amounts owed on the loans referenced in this Agreement which are related to the subject Property.

10. Release by Fisher and 36<sup>th</sup> Street LLC. Fisher and 36<sup>th</sup> Street LLC, individually and on behalf of their respective agents, employees, heirs, personal representatives, successors and assigns, hereby fully releases and forever discharges Receiver and its respective agents, employees,

heirs, personal representatives, successors and assigns (all of the foregoing persons and entities are referred to in this Section 10 as the "Released Parties" and are intended beneficiaries of this Agreement) and agrees to indemnify and hold Released Parties harmless from and against any and all claims, rights, demands, suits, causes of action, damages, penalties, costs, fees, expenses, and liabilities of any nature, known and unknown (including without limitation any contract and tort claims) (all of the foregoing, "Claims") arising out of any act, omission, transaction, occurrence, circumstance or fact occurring or existing on or prior to the date of this Agreement, including without limitation, any claims, counterclaims, demands, causes of action and damages of every kind whatsoever, that were, or could have been, asserted in the Action.

11. Listing Agreement Receiver agrees enter into a listing agreement with Fisher for the marketing and sale of the Property upon terms agreed upon by Receiver and Fisher ("Listing Agreement"). The Listing Agreement shall be for a period of six (6) months. If Receiver determines, in Receiver's sole discretion, that Fisher is not diligently marketing the Property in a commercially reasonable manner for properties of a similar type in comparable markets, Receiver shall have the option to terminate the Listing Agreement and Fisher shall forfeit all rights to any commissions agreed upon in the Listing Agreement.

12. Dismissal of Action. Upon the Closing, Receiver, through counsel, shall execute and cause to be filed a Stipulation for Dismissal, without prejudice, of the Action, in the form attached hereto as Exhibit D ("Dismissal")

13. Representations and Warranties of Fisher and 36<sup>th</sup> Street LLC. Fisher and 36<sup>th</sup> Street LLC hereby jointly and severally covenant, represent and warrant as follows

13.1 36<sup>th</sup> Street LLC is a limited liability company duly formed and validly existing under laws of the State of Arizona

13.2 Each person executing this Agreement on behalf of 36<sup>th</sup> Street LLC and Fisher has full right power and authority to do so.

13.3 All authorizations, approvals and consents necessary for the execution and delivery by the 36<sup>th</sup> Street LLC and Fisher of this Agreement, and the consummation of the transactions contemplated hereby have been given.

13.4 Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby will constitute or result in the breach or violation of the formation documents of any Party or any provision of any judgment, order or decree of any governmental instrumentality or court having jurisdiction over any Party, or any contract or agreement to which a Party is bound or which may otherwise be binding upon a Party.

13.5 The Financial Statement is true, accurate and correct.

13.6 As of the Closing, no change, condition or event of any character having a material adverse effect on the Property has occurred, and, to the best knowledge of Fisher and 36<sup>th</sup>

Street LLC, no fact or condition exists or is contemplated or threatened which might cause such a change in the future

13.7 To the best of their knowledge, Fisher and 36<sup>th</sup> Street LLC have complied with all laws and building codes relating to any improvements constructed on the Property. Fisher and 36<sup>th</sup> Street LLC do not know or have reasonable grounds to know of any noncompliance or facts which could reasonably give rise to a claim of noncompliance of any applicable law or building code, which may affect the improvements constructed on the Property.

13.8 There are no pending or threatened suits, actions, claims or investigations, or legal, administrative or arbitration proceedings pending or threatened against or affecting Fisher and/or 36<sup>th</sup> Street LLC affecting the Property except for the Action

14 Representations and Warranties of Receiver Receiver covenants, represents and warrants as follows:

14.1 Receiver has full authority and power to enter into this Agreement

14.2 Receiver is accepting the Property AS IS.

15. Binding Effect/Court Approvals. Except as otherwise set forth herein, this Agreement is personal to the Parties and none of the Parties will have the right or power to assign or delegate any of such Party's rights or obligations hereunder. Subject to the foregoing, 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

16. Differences in Fact. The Parties fully understand and agree that the assumptions and perceived circumstances upon which this Agreement is executed may be mistaken or otherwise in error. With such understanding and agreement, the Parties expressly accept and assume the risk of facts being other than or different from its or their assumptions or perceptions as of any date prior to and including the date hereof; the Parties fully agree that this Agreement shall be in all respects effective, and shall not be subject to termination, rescission, or modification by reason of any mistake or erroneous assumption of perceived circumstances

17. 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.

18. 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.

19. 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.

20. 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.

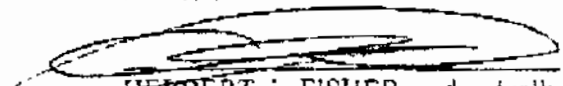
21. Remedies. In the event of a Party's breach of any of the representations, warranties, covenants and obligations under this Agreement, the non-breaching Party may elect to exercise its rights and remedies, at law or in equity, available under this Agreement or cancel this Agreement and exercise its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

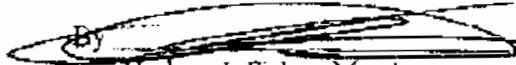
\_\_\_\_\_  
JAMES C. SELL, Receiver for  
American National Mortgage Partners  
L.L.C., as Trustee of the 36<sup>TH</sup> Street  
And Oak Trust dated November 8,  
2002, and as Receiver for Oak  
Commons, L.L.C.

**FISHER:**

  
\_\_\_\_\_  
HERBERT J. FISHER, individually  
and d/b/a Fisher Properties

36<sup>TH</sup> STREET LLC:

2303 N 36<sup>TH</sup> STREET, L.L.C., an  
Arizona limited liability company

By   
Herbert J. Fisher, Member

By \_\_\_\_\_  
Robert Rehm, Member

36<sup>TH</sup> STREET LLC:

2303 N 36<sup>TH</sup> STREET, L.L.C., an  
Arizona limited liability company

By \_\_\_\_\_  
Herbert J Fisher, Member

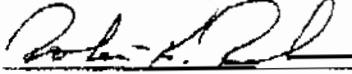
By  \_\_\_\_\_  
Robert Rehm, Member

EXHIBIT A

**Legal Description**

**EXHIBIT A**

**Legal Description**

The South 300 feet of the East 181.5 feet of the Northwest quarter of Section 36, Township 2 North, Range 3 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

EXCEPT the South 40 feet; and also

EXCEPT the East 40 feet; and also

EXCEPT the following described parcel

BEGINNING at the intersection of the West line of the East 40 feet of said quarter with the North line of the South 40 feet of said Northwest quarter;

Thence West, along said North line, a distance of 10 feet;

Thence Northeasterly to a point on said West line which is 10 feet North of the Point of Beginning.

Thence South, along said West line, a distance of 10 feet to the POINT OF BEGINNING

EXHIBIT B

Warranty Deed

When Recorded Mail To:  
Lawrence E. Wilk, Esq.  
JABURG & WILK, P.C.  
3200 N. Central Avenue, #2000  
Phoenix, Arizona 85012

**WARRANTY DEED**

For and in consideration of TEN AND NO/100 DOLLARS, and other valuable considerations, 2302 N. 36<sup>TH</sup> STREET, L.L.C., an Arizona limited liability company (the "Grantor") does hereby convey to JAMES C. SELL, Receiver for AMERICAN NATIONAL MORTGAGE PARTNERS, L.L.C. (the "Grantee"), all of the Grantor's interest in and to that certain real property situated in Maricopa County, Arizona more particularly described as follows:

**SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF**

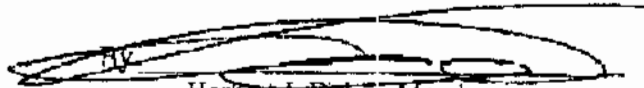
**SUBJECT TO:** Existing mortgages, taxes, assessments, reservations in patents, encumbrances, covenants, conditions, restrictions, rights-of-way, and easements, as may appear of record.

And the Grantor binds itself and its successors to warrant the title against all persons whomsoever, subject to the matters above set forth.

Exempt from filing Affidavit of Value pursuant to A.R.S. §11-1134(B)(1)

DATED: October 31, 2003.

2302 N. 36<sup>TH</sup> STREET, L.L.C., an Arizona  
limited liability company



Herbert J. Fisher, Member

By 

Robert Rehm, Member

STATE OF ARIZONA )  
 ) ss  
County of Maricopa )

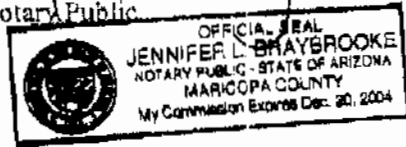
The foregoing instrument was acknowledged before me on October 31, 2003, by Herbert J. Fisher, as a member of 2302 N. 36<sup>TH</sup> STREET, L.L.C., an Arizona limited liability company.

Jennifer L. Braybrooke  
Notary Public

My commission expires:

12-26-04

STATE OF ARIZONA )  
 ) ss  
County of Maricopa )



The foregoing instrument was acknowledged before me on November 5, 2003, by Robert Rehm, as a member of 2302 N. 36<sup>TH</sup> STREET, L.L.C., an Arizona limited liability company.

Joan C. Coombs  
Notary Public

My commission expires:

\_\_\_\_\_

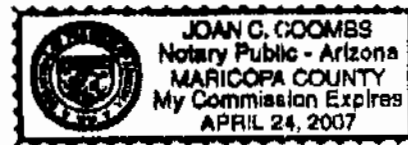


EXHIBIT C

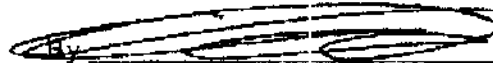
**Bill of Sale**

**BILL OF SALE AND ASSIGNMENT**

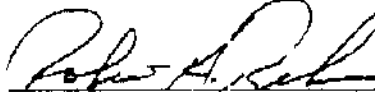
FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which is acknowledged, 2302 N. 36<sup>TH</sup> STREET, L.L.C., an Arizona limited liability company ("Grantor"), sells, transfers, conveys and assigns to JAMES C. SELL, as Receiver for AMERICAN NATIONAL MORTGAGE PARTNERS, L.L.C., ("Grantee") all right, title and interest of Grantor in and to all personal property used on or in connection with the real property more specifically described on the attached Exhibit A (the "Property"), and all claims, rights and interests related to the Property, as more specifically set forth on the attached Exhibit B.

And for the same consideration, Grantor, for itself, its successors and assigns, covenants with and warrants to Grantee, its successors and assigns, that Grantor is the lawful owner of the Property, including all claims, rights and interests related thereto; and that Grantor has good and marketable title to Grantor's interest in the Property, free and clear of any liens and encumbrances of any kind, character or nature, except as disclosed to Grantee and which Grantee is assuming, and Grantor, and its successors and assigns will forever warrant and defend the same against all lawful claims and demands whatsoever.

2302 N. 36<sup>TH</sup> STREET, L.L.C., an Arizona  
limited liability company



Herbert J. Fisher, Member

By 

Robert Rchm, Member

**EXHIBIT B****Claims, Rights and Interests Relating to Property**

1. All contracts, construction contracts, subcontracts, bonds, assurances, labor and materialmen's bonds, performance and payment bonds, plans and specifications, engineering surveys, plats, architectural drawings, renderings and models, business records, files and correspondence, claims, rights or interests of any type, nature of kind, of, with, or against any and all persons, entities, and parties relating to or arising out of the acquisition, development, construction, or sale and disposition, in whole or in part, of the Property;

2. All right, title and interest in and to any claims, causes of action, or rights to recovery, settlement proceeds, or rights to settlement proceeds relating thereto, or in any way relating to, connected with, or arising from the Property against any subcontractors who worked on or who provided goods or services to the Property;

3. All plans, permits, building permits, licenses, zoning rights applications, approvals of any type or nature, with supporting documentation, required of any developer or required by any governmental agency in connection with the acquisition, development, construction, or sale and disposition of the Property;

4. All documents, sale brochures, displays, models, and other materials, documents or forms, with supporting documentation, which the Fisher and/or 36<sup>th</sup> Street LLC have prepared in connection with the sale or disposition of the Property;

5. All right, title and interest in and to any insurance award, proceeds, remuneration, settlements or compensation heretofore made or hereafter to be made under all policies of insurance to 36<sup>th</sup> Street LLC and/or Fisher;

6. All books, plans, drawings, specifications, plats, records of accounts, bank records, studies, engineering reports, well-logs, surveys, appraisals, market studies, estimations of cost to complete, feasibility studies, business records, and other materials prepared by or prepared for 36<sup>th</sup> Street LLC and/or Fisher in connection with the proposed or the ongoing development, construction, disposition, or sale of the Property;

7. All appraisals, real estate tax records, including assessments, payment records, and any documentary materials which tend to show or to establish the value of the Property in whole or in part, such as comparables or estimates to replace;

8. All right, title and interest in and to any award, proceeds, remuneration, condemnation, settlements or compensation heretofore made or hereafter to be made by any governmental authority to 36<sup>th</sup> Street LLC and/or Fisher or subsequent owner of the Property, buildings, fixtures or personality;

9. All existing and future leases, sub-leases, assignments of leases, rents, issues and profits, security and other tenant deposits, including but not limited to leases, subleases, assignments of leases, tenant estoppels, subordinations or attornment agreements;

10. All operating and management or supervision agreements;

11. All utility, servicing, security and other deposits, whether made or given to secure utility or other servicing;

12. Any title insurance or similar policies or coverage, including but not limited to any of the foregoing in any way connected with the Property or any construction development, or marketing and sales thereof;

13. All rights, privileges, tenements, hereditaments, rights-of-way, easements, conditions, covenants, reservations, licenses, profits, rents, issues, appendages and appurtenances in any manner appertaining or incident thereto, and all right, title and interest in and to any public or private streets, ways, alleys or strips of land adjoining the Property or any part thereof, and all water and water rights, well and well rights, canal and canal rights, air and air rights, development rights, common elements, limited common elements, special declarant rights, unit rights, allocated interest, association rights, and all oil, gas and mineral rights and any royalties, leases or leasehold interests in any of them, and all right, title and interest of 36<sup>th</sup> Street LLC and/or Fisher in all stock or interests in all public or private utilities, water, mining, irrigation, ditch, telephone, gas, sewer, electric or cable companies in any way connected with the Property.

EXHIBIT D

**Stipulation for Dismissal**

1 Lawrence E. Wilk, #006510  
 2 Lauren L. Garner, #019475  
 3 **JABURG & WILK, P.C.**  
 3200 North Central Avenue, Suite 2000  
 4 Phoenix, Arizona 85012  
 (602) 248-1000  
 5 *Attorneys for Plaintiff*

7 SUPERIOR COURT OF ARIZONA  
 8 MARICOPA COUNTY

9 JAMES C. SELL, as Receiver for  
 10 American National Mortgage Partners,  
 L.L.C., Trustee of the 36<sup>th</sup> Street and Oak  
 11 Trust dated November 8, 2002 and as  
 Receiver for Oak Commons, L.L.C.,

Case No: CV 2003-009720

**STIPULATION FOR DISMISSAL  
 WITHOUT PREJUDICE**

12 Plaintiff,

(Assigned to  
 The Honorable Margaret H. Downie)

13 v.

14 HERBERT J. FISHER, individually and  
 15 d/b/a FISHER PROPERTIES; JANE DOE  
 FISHER; 2302 N. 36<sup>th</sup> STREET, L.L.C.,  
 16 an Arizona limited liability company;  
 17 JOHN DOE I-V; JANE DOE I-V; XYZ  
 CORPORATION I-V; ABC  
 18 PARTNERSHIP I-V,

19 Defendants.

JABURG & WILK, P.C.  
 ATTORNEYS AT LAW  
 1200 NORTH CENTRAL AVENUE  
 SUITE 2000  
 PHOENIX, ARIZONA 85012

20  
 21 Plaintiff, James C. Sell, as Receiver for American National Mortgage Partners,  
 22 LLC, Trustee of the 36<sup>th</sup> Street and Oak Trust dated November 8, 2002, and as Receiver  
 23 for Oak Commons, LLC, and Defendant, Herbert J. Fisher, individually and *dba* Fisher  
 24 Properties, and 2302 N. 36<sup>th</sup> Street, L.L.C., hereby stipulate that this matter has been  
 25 resolved as to all issues and claims between them, and that this action may be dismissed in  
 26 its entirety, without prejudice.

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IT IS FURTHER STIPULATED AND AGREED that each party shall bear its own attorneys' fees and costs.

DATED this \_\_\_\_\_ day of October, 2003.

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

\_\_\_\_\_  
Lawrence E. Wilk  
Lauren L. Garner  
Attorneys for Plaintiff, James C. Sell

\_\_\_\_\_  
Herbert J. Fisher, Defendant  
Individually and *aba* Fisher Properties

2503 N. 36<sup>th</sup> STREET, L.L.C.

\_\_\_\_\_  
By: Herbert J. Fisher, President

JABURG & WILK, P.C.  
ATTORNEYS AT LAW  
5100 NORTH CENTRAL AVENUE  
SUITE 2808  
PHOENIX, ARIZONA 85012

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IT IS FURTHER STIPULATED AND AGREED that each party shall bear its own attorneys' fees and costs.

DATED this \_\_\_\_\_ day of October, 2003.

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

\_\_\_\_\_  
Lawrence E. Wilk  
Lauren L. Garner  
Attorneys for Plaintiff, James C. Sell

\_\_\_\_\_  
Herbert J. Fisher, Defendant  
Individually and *dba* Fisher Properties

2303 N. 36<sup>th</sup> STREET, L.L.C.

\_\_\_\_\_  
By: Herbert J. Fisher, President

JABURG & WILK, P.C.  
ATTORNEYS AT LAW  
3100 NORTH CENTRAL AVENUE  
SUITE 2008  
PHOENIX, ARIZONA 85012