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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 FOR ORDER AUTHORIZING  
RECEIVER TO OBTAIN SECURED  
CREDIT ON SECLUDED LANE  
PROPERTY**

11 v.

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

(Assigned to the Honorable J. Richard Gama)

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 authorize the Receiver to enter into  
17 a loan, in the amount of \$80,000, to be secured by certain property of the estate, more particularly  
18 referred to as "the Secluded Lane Property".

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

20 DATED this 1 day of December, 2003.

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



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24 Lawrence E. Wilk  
25 Attorneys for James C. Sell  
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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 (the "Arizona Corporation Commission proceeding").

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. 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.

6. Paragraph 17 of the Receivership Order provides as follows:

The Receiver is hereby authorized and directed to receive and collect any and all sums of money due or owing to the Receivership Defendants, whether the same are now due or shall hereafter become due and payable, and is authorized to incur such reasonable expenses and make such disbursements as are necessary and proper for the collection, preservation, maintenance and operation of the Receivership Assets.

1           7.     The Receivership estate claims an interest in the real property more  
2 particularly described in Exhibit "A" attached hereto, and hereinafter referred to as the  
3 "Secluded Lane Property".

4           **II.     Factual Background**

5           1.     On or about October 9, 1991, Kenneth Magill (hereinafter "Magill")  
6 acquired title to the Secluded Lane Property.

7           2.     On or about April 4, 2000, Magill executed a Note payable to First Bank of  
8 Arizona, which Note was subsequently assigned to First National Bank of Nevada, in the  
9 principal amount of \$1,866,000, which Note was secured by the Secluded Lane Property.

10          3.     On or about September 1, 2000, Magill executed a Note in the principal  
11 amount of \$274,622, payable to the CIT Group and secured by the Secluded Lane  
12 Property.

13          4.     On or about August 5, 2002, Magill executed a Note in the principal amount  
14 of \$800,000, payable to 35824 N. Secluded Lane, LLC and North Secluded Lane, LLC  
15 (entities subject to the Receivership Order), which Notes were secured by the Secluded  
16 Lane Property.

17          5.     On August 13, 2002, Magill executed a Note in the principal amount of  
18 \$70,000 payable to David Shephard, which Note was secured by the Secluded Lane  
19 Property.

20          6.     On or about August 14, 2002, Magill transferred, by Warranty Deed, the  
21 Secluded Lane Property to an American National Partners, LLC, Trustee of the 35824 N.  
22 Secluded Lane Trust, Dated June 21, 2002. Title to the property remains in the name of  
23 the Trust.

24          7.     Magill subsequently filed a Chapter 7 bankruptcy proceeding, and Maureen  
25 Gaughan has been appointed the Chapter 7 Trustee, and asserts ownership to the real  
26 property.

27          8.     Although the Receivership estate and Trustee have not reached an  
28 agreement as to ownership of the property, the Trustee and Receiver believe it is in the

1 best interest of the respective estates to liquidate the property and to contest the  
2 disbursement of the proceeds from the sale at a later date. By completing the sale, the  
3 parties will be able to stop the accrual of interest on senior liens and alleviate the risk of a  
4 senior encumbrance foreclosing out any equity that would be recoverable by either estate.

5 9. In order to conduct the sale of the property, the estate has agreed to retain  
6 Sheldon Good & Company, a national auction company, to sell the property. In order to  
7 accomplish this sale, Sheldon Good & Company have developed a marketing and auction  
8 plan that is anticipated to cost up to \$65,000, including all closing costs. In addition, it is  
9 anticipated that maintenance of the property through the date of sale may require up to an  
10 additional \$15,000, including past due homeowner association dues, in order to keep  
11 water and utility services running.

12 10. Neither the Trustee, nor the Receivership estate currently has funds in its  
13 possession which would provide the payment of the necessary fees in order to complete  
14 the auction process.

15 11. The parties have agreed to enter into a loan transaction with Sternberg  
16 Enterprises Profit Sharing Plan. Said loan in the amount of \$80,000 is to be secured by a  
17 first lien on the Secluded Lien Property. In order to facilitate the lien position required by  
18 Sternberg Enterprises Profit Sharing Plan, the Receiver and Trustee have filed a motion  
19 pursuant to 11 U.S.C. §364(d) requesting that the Bankruptcy Court issue an order  
20 allowing for a "priming lien". A full copy of the motion, and the loan documentation is  
21 attached hereto as Exhibit "B".

22 12. Since the Secluded Lane Property is currently in the name of the  
23 Receivership, the Receiver hereby requests authorization from this Court to allow for the  
24 execution of the Security documents in the event that the Bankruptcy Court issues an  
25 Order authorizing the Debtor's estate to incur secured credit pursuant to 11 U.S.C.  
26 §364(d).

27 13. The Receiver believes that the auction process will provide the most  
28 expedient method for liquidating the asset and recovering any equity which may exist.



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Exhibit

A

EXHIBIT "A"

PARCEL NO. 1:

A PORTION OF THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 5 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTH QUARTER CORNER OF SAID SECTION 3, THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION;

THENCE SOUTH 00 DEGREES 13 MINUTES 52 SECONDS EAST, 427.00 FEET ALONG THE NORTH-SOUTH QUARTER LINE OF SAID SECTION 3;

THENCE SOUTH 89 DEGREES 46 MINUTES 08 SECONDS WEST, 170.93 FEET;

THENCE NORTH 23 DEGREES 10 MINUTES 00 SECONDS WEST, 172.21 FEET TO THE NORTHERLY LINE OF A 32 FOOT PRIVATE ROADWAY EASEMENT;

THENCE THE FOLLOWING TEN COURSES ALONG THE NORTHERLY LINE OF SAID 32 FOOT WIDE PRIVATE ROADWAY:

1. ALONG A CURVE TO THE LEFT, 104.20 FEET, SAID CURVE HAVING A RADIUS OF 40.00 FEET AND A CENTRAL ANGLE OF 149 DEGREES 14 MINUTES 57 SECONDS;
2. ALONG A CURVE TO THE RIGHT, 25.61 FEET, SAID CURVE HAVING A RADIUS OF 30.00 FEET AND A CENTRAL ANGLE OF 48 DEGREES 55 MINUTES 04 SECONDS;
3. ALONG A CURVE TO THE LEFT, 84.77 FEET, SAID CURVE HAVING A RADIUS OF 161.00 FEET AND A CENTRAL ANGLE OF 30 DEGREES 10 MINUTES 00 SECONDS;
4. SOUTH 86 DEGREES 20 MINUTES 00 SECONDS WEST, 321.36 FEET;
5. ALONG A CURVE TO THE LEFT, 92.78 FEET, SAID CURVE HAVING A RADIUS OF 191.00 FEET AND A CENTRAL ANGLE OF 27 DEGREES 50 MINUTES 00 SECONDS;
6. SOUTH 58 DEGREES 30 MINUTES 00 SECONDS WEST, 39.72 FEET;
7. ALONG A CURVE TO THE RIGHT, 83.08 FEET, SAID CURVE HAVING A RADIUS OF 84.00 FEET AND A CENTRAL ANGLE OF 56 DEGREES 40 MINUTES 00 SECONDS;
8. NORTH 64 DEGREES 50 MINUTES 00 SECONDS WEST, 133.08 FEET;
9. ALONG A CURVE TO THE RIGHT, 16.68 FEET, SAID CURVE HAVING A RADIUS OF 30.00 FEET AND A CENTRAL ANGLE OF 31 DEGREES 51 MINUTES 40 SECONDS; AND
10. ALONG A CURVE TO THE LEFT, 39.78 FEET, SAID CURVE HAVING A RADIUS OF 40.00 FEET AND A CENTRAL ANGLE OF 57 DEGREES 06 MINUTES 34 SECONDS;

THENCE NORTH 0 DEGREES 04 MINUTES 50 SECONDS WEST, 177.24 FEET;

THENCE NORTH 89 DEGREES 55 MINUTES 10 SECONDS EAST, 1079.66 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL NO. 2:

AN EASEMENT FOR ROADWAY APPURTENANT TO PARCEL NO. 1, AS SET FORTH IN INSTRUMENT RECORDED IN DOCUMENT NO. 83-521213, RECORDS OF MARICOPA COUNTY, ARIZONA, OVER A PORTION OF THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 5 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTH QUARTER CORNER OF SAID SECTION 3;

THENCE SOUTH 00 DEGREES 13 MINUTES 52 SECONDS EAST, 1177.22 FEET ALONG THE NORTH-SOUTH QUARTER LINE OF SAID SECTION 3;

THENCE SOUTH 89 DEGREES 55 MINUTES 10 SECONDS WEST, 287.48 FEET ALONG THE NORTH LINE OF CAREFREE GRAND VIEW ESTATES UNIT 1;

THENCE NORTH 00 DEGREES 13 MINUTES 52 SECONDS WEST, 358.29 FEET;

THENCE NORTH 35 DEGREES 21 MINUTES 11 SECONDS WEST, 324.91 FEET;

THENCE SOUTH 84 DEGREES 06 MINUTES 55 SECONDS WEST, 214.05 FEET TO THE TRUE POINT OF BEGINNING;

THENCE SOUTH 51 DEGREES 50 MINUTES 00 SECONDS WEST, 32.00 FEET TO A POINT ON THE WESTERLY LINE OF A 32 FOOT WIDE PRIVATE ROADWAY FOR UTILITIES EASEMENT AND PERMANENT ACCESS FOR OWNERS;

THENCE THE FOLLOWING ELEVEN COURSES ALONG SAID WESTERLY 32 FOOT WIDE PRIVATE ROADWAY:

1. NORTH 38 DEGREES 10 MINUTES 00 SECONDS WEST, 22.44 FEET;
2. ALONG A CURVE TO THE RIGHT, 47.48 FEET, SAID CURVE HAVING A RADIUS OF 106.00 FEET AND A CENTRAL ANGLE OF 25 DEGREES 20 MINUTES 00 SECONDS;
3. NORTH 12 DEGREES 30 MINUTES 00 SECONDS WEST, 71.46 FEET;
4. ALONG A CURVE TO THE LEFT, 94.13 FEET, SAID CURVE HAVING A RADIUS OF 69.00 FEET AND A CENTRAL ANGLE OF 78 DEGREES 10 MINUTES 00 SECONDS;
5. SOUTH 89 DEGREES 20 MINUTES 00 SECONDS WEST, 71.47 FEET;
6. ALONG A CURVE TO THE RIGHT, 96.20 FEET, SAID CURVE HAVING A RADIUS OF 156.00 FEET AND A CENTRAL ANGLE OF 35 DEGREES 20 MINUTES 00 SECONDS;
7. NORTH 55 DEGREES 20 MINUTES 00 SECONDS WEST, 81.73 FEET;
8. ALONG A CURVE TO THE RIGHT, 89.05 FEET, SAID CURVE HAVING A RADIUS OF 121.00 FEET AND A CENTRAL ANGLE OF 42 DEGREES 10 MINUTES 0 SECONDS;
9. NORTH 13 DEGREES 10 MINUTES 00 SECONDS WEST, 20.33 FEET;
10. ALONG A CURVE TO THE LEFT, 8.81 FEET, SAID CURVE HAVING A RADIUS OF 30.00 FEET AND A CENTRAL ANGLE OF 16 DEGREES 50 MINUTES 06 SECONDS; AND
11. ALONG A CURVE TO THE RIGHT, 83.72 FEET, SAID CURVE HAVING A RADIUS OF 40.00 FEET AND A CENTRAL ANGLE OF 119 DEGREES 55 MINUTES 12 SECONDS;

THENCE THE FOLLOWING TEN COURSES ALONG THE NORTHERLY LINE OF SAID 32 FOOT WIDE PRIVATE ROADWAY:

1. ALONG A CURVE TO THE RIGHT, 39.87 FEET, SAID CURVE HAVING A RADIUS OF 40.00 FEET AND A CENTRAL ANGLE OF 57 DEGREES 06 MINUTES 34 SECONDS;
2. ALONG A CURVE TO THE LEFT, 16.68 FEET, SAID CURVE HAVING A RADIUS OF 30.00 FEET AND A CENTRAL ANGLE OF 31 DEGREES 51 MINUTES 40 SECONDS;
3. SOUTH 64 DEGREES 50 MINUTES 00 SECONDS EAST, 133.08 FEET;
4. ALONG A CURVE TO THE LEFT, 83.08 FEET, SAID CURVE HAVING A RADIUS OF 84.00 FEET AND A CENTRAL ANGLE OF 56 DEGREES 40 MINUTES 00 SECONDS;
5. NORTH 58 DEGREES 30 MINUTES 00 SECONDS EAST, 39.72 FEET;
6. ALONG A CURVE TO THE RIGHT, 92.78 FEET, SAID CURVE HAVING A RADIUS OF 191.00 FEET AND A CENTRAL ANGLE OF 27 DEGREES 50 MINUTES 00 SECONDS;
7. NORTH 86 DEGREES 20 MINUTES 00 SECONDS EAST, 321.36 FEET;
8. ALONG A CURVE TO THE RIGHT, 84.77 FEET, SAID CURVE HAVING A RADIUS OF 161.00 FEET AND A CENTRAL ANGLE OF 30 DEGREES 10 MINUTES 00 SECONDS;
9. ALONG A CURVE TO THE LEFT, 25.61 FEET, SAID CURVE HAVING A RADIUS OF 30.00 FEET AND A CENTRAL ANGLE OF 48 DEGREES 55 MINUTES 04 SECONDS; AND
10. ALONG A CURVE TO THE RIGHT, 104.20 FEET, SAID CURVE HAVING A RADIUS OF 40.00 FEET AND A CENTRAL ANGLE OF 149 DEGREES 14 MINUTES 57 SECONDS;

THENCE THE FOLLOWING EIGHT COURSES ALONG THE SOUTHERLY LINE OF SAID 32 FOOT WIDE PRIVATE ROADWAY:

1. ALONG A CURVE TO THE RIGHT, 89.77 FEET, SAID CURVE HAVING A RADIUS OF 40.00 FEET AND A CENTRAL ANGLE OF 128 DEGREES 35 MINUTES 10 SECONDS;
2. ALONG A CURVE TO THE LEFT, 25.61 FEET, SAID CURVE HAVING A RADIUS OF 30.00 FEET AND A CENTRAL ANGLE OF 48 DEGREES 55 MINUTES 04 SECONDS;
3. ALONG A CURVE TO THE LEFT, 67.92 FEET, SAID CURVE HAVING A RADIUS OF 129.00 FEET AND A CENTRAL ANGLE OF 30 DEGREES 10 MINUTES 00 SECONDS;
4. SOUTH 86 DEGREES 20 MINUTES 00 SECONDS WEST, 321.36 FEET;
5. ALONG A CURVE TO THE LEFT, 77.24 FEET, SAID CURVE HAVING A RADIUS OF 159.00 FEET AND A CENTRAL ANGLE OF 27 DEGREES 50 MINUTES 00 SECONDS;
6. SOUTH 58 DEGREES 30 MINUTES 00 SECONDS WEST, 39.72 FEET;
7. ALONG A CURVE TO THE RIGHT, 114.73 FEET, SAID CURVE HAVING A RADIUS OF 116.00 FEET AND A CENTRAL ANGLE OF 56 DEGREES 40 MINUTES 00 SECONDS; AND
8. NORTH 64 DEGREES 50 MINUTES 00 SECONDS WEST, 133.08 FEET;

THENCE THE FOLLOWING NINE COURSES ALONG THE EASTERLY LINE OF SAID 32 FOOT WIDE PRIVATE ROADWAY:

1. ALONG A CURVE TO THE LEFT, 44.80 FEET, SAID CURVE HAVING A RADIUS OF 20.00 FEET AND A CENTRAL ANGLE OF 128 DEGREES 20 MINUTES 00 SECONDS;
2. ALONG A CURVE TO THE LEFT, 65.50 FEET, SAID CURVE HAVING A RADIUS OF 89.00 FEET AND A CENTRAL ANGLE OF 42 DEGREES 10 MINUTES 00 SECONDS;
3. SOUTH 55 DEGREES 20 MINUTES 00 SECONDS EAST, 81.73 FEET;
4. ALONG A CURVE TO THE LEFT, 76.47 FEET, SAID CURVE HAVING A RADIUS OF 124.00 FEET AND A CENTRAL ANGLE OF 35 DEGREES 20 MINUTES 00 SECONDS;
5. NORTH 89 DEGREES 20 MINUTES 00 SECONDS EAST, 71.47 FEET;
6. ALONG A CURVE TO THE RIGHT, 137.79 FEET, SAID CURVE HAVING A RADIUS OF 101.00 FEET AND A CENTRAL ANGLE OF 78 DEGREES 10 MINUTES 00 SECONDS;
7. SOUTH 12 DEGREES 30 MINUTES 00 SECONDS EAST, 71.46 FEET;

8. ALONG A CURVE TO THE LEFT, 33.15 FEET, SAID CURVE HAVING A RADIUS OF 74.00 FEET AND A CENTRAL ANGLE OF 25 DEGREES 40 MINUTES 00 SECONDS; AND

9. SOUTH 38 DEGREES 10 MINUTES 00 SECONDS EAST, 22.44 FEET TO THE TRUE POINT OF BEGINNING.

Exhibit

B

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13 UNITED STATES BANKRUPTCY COURT  
14 DISTRICT OF ARIZONA

15 In re: KENNETH MAGILL,  
16 Debtor.

17 In Proceedings Under  
18 Chapter 7

19 Case No: 2-03-04095 ECF RJH

20 **JOINT MOTION FOR AUTHORIZATION  
21 TO OBTAIN SECURED CREDIT  
22 PURSUANT TO 11 U.S.C. § 364(d)**

23 Maureen Gaughan, the Chapter 7 Trustee of Debtor's estate (hereinafter "Trustee") and  
24 James C. Sell, the Court appointed Receiver for American National Mortgage Partners, Inc. and  
25 related entities, (hereinafter the "Receiver"), jointly request court authorization to obtain secured  
26 credit from Sternberg Enterprises Profit Sharing Plan (hereinafter "Sternberg") pursuant to 11  
27 U.S.C. §364(d) of the U.S. Bankruptcy Code. It is necessary for the Debtor to obtain immediate  
28 funds in order to conduct an auction to facilitate the sale of the property known as Secluded Lane,  
which property is more particularly described in Exhibit "A" (hereinafter the "Secluded Lane  
Property").

**I. FACTUAL BACKGROUND**

On or about October 9, 1992, Kenneth Magill (hereinafter "Magill") acquired title to the  
Secluded Lane property. On or about April 4, 2000, Magill executed a Note payable to First  
Bank of Arizona, which Note was subsequently assigned to First National Bank of Nevada, in the  
principal amount of \$1,866,000, which Note was secured by the Secluded Lane Property. On or

1 about September 1, 2000, Magill executed a Note in the principal amount of \$274,622.00,  
2 payable to the CIT Group and secured by the Secluded Lane Property. On or about August 5,  
3 2002, Magill executed a Note in the principal amount of \$800,000.00, payable to 35824 N.  
4 Secluded Lane, LLC and North Secluded Lane, LLC, (entities subject to the Receivership Orders  
5 entered in Cause No. CV2003-005724, Maricopa County Superior Court) which Note is secured  
6 by the Secluded Lane Property. On August 13, 2002, Magill executed a Note in the principal  
7 amount of \$70,000.00 payable to David Sheppard, which Note was secured by the Secluded Lane  
8 Property.

9 On August 14, 2002, Magill transferred, by Warranty Deed, the Secluded Lane Property  
10 to American National Mortgage Partners, LLC, Trustee of the 35824 N. Secluded Lane Trust,  
11 dated June 21, 2002 (another entity subject to the Receivership Order). Title to the property  
12 remains in the name of the Trust. Despite title being in the name of the Trust, Debtor lists the  
13 property as an asset of it's estate, and the Trustee disputes the ownership. The Trustee contends  
14 the transfer was solely for purposes of granting a security interest in the property. Although the  
15 parties have not agreed as to the ownership of the property, the Trustee and Receiver believe it is  
16 in the best interest of their respective estates to liquidate the property and to contest the  
17 disbursement of the proceeds from the sale at a later date. By completing the sale, the parties stop  
18 the accrual of interest on senior liens and alleviate the risk of a senior encumbrance foreclosing  
19 out any equity that would be recoverable by either estate.

20 In order to conduct a sale of the property, the estates have agreed to retain Sheldon Good  
21 & Company, a national auction company, to sell the property. In order to accomplish the sale,  
22 Sheldon Good & Company has developed a marketing and auction plan that is anticipated to cost  
23 up to \$65,000 including all closing costs. In addition, it is anticipated that maintenance of the  
24 property through the date of sale may require up to an additional \$15,000, including paying past  
25 due Homeowner's Association dues in order to keep water and utility services running.

26 Debtor and Receiver have requested that the senior lienholder fund the costs required at a  
27 less expensive interest rate in order to complete the sale; but to date, the senior lienholder has  
28

1 refused. Debtor's and Receiver's estates do not have readily available funds to pay these  
2 expenses and have therefore sought outside financing. Having located outside financing, the  
3 parties now request the Court enter an order pursuant to 11 U.S.C. §364(d) allowing for the  
4 financing to be consummated and a senior lien placed on the property.

5 **II. STATUS OF HOUSE**

6 **A. COMPLETION AND SALE**

7 The property consists of a house and adjacent lot situated on the highest buildable  
8 elevation in Maricopa County, Arizona. The house has been maintained and is ready for sale.

9 **B. VALUE**

10 Several appraisals have been obtained referencing the value of the property. On May 9,  
11 2002, an appraisal was prepared by J.A. Josephs, CR #20573, which appraisal valued the lot at  
12 \$750,000.00. A summary appraisal of the property was obtained on April 13, 2002, by Bobick &  
13 Associates, Ltd., and valued the house at \$3 million dollars. In furtherance of its lift stay  
14 proceeding, First National Bank of Nevada obtained its own appraisal which appraisal established  
15 substantial equity in the property, and precluded the lender from obtaining relief from the stay.

16 **C. CURRENT DEBT**

17 As set forth previously, four loans appear against the property as follows:

18	1. First National Bank of Nevada	\$1,866,000.00
19	2. CIT	\$ 274,622.00
20	3. 35824 N. Secluded Lane, LLC and North Secluded Lane, LLC	\$ 800,000.00
21	4. David Sheppard	\$ 70,000.00

22 **III. THE STERNBERG LOAN**

23 Sternberg Enterprises Profit Sharing Plan has agreed to loan the Debtor and/or American  
24 National Mortgage Partners as Trustee for the 35824 N. Secluded Lane Trust, dated June 21,  
25 2002, up to the amount of \$80,000.00 secured by a first lien position on the property (See **Exhibit**  
26 **"B"**). The term of the loan is for twelve months. Interest is at 12% per annum and accrues until  
27  
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1 either (1) the sale of the property or (2) the maturity date of the loan. Notwithstanding the  
2 foregoing, lender is guaranteed at least one year's interest.

3 **IV. PRIMING LIEN AND ADEQUATE PROTECTION**

4 The Sternberg loan would be secured by a first lien on the Secluded Lane Property and all  
5 other liens with the exception of real estate taxes will be subordinate. Upon consummation of this  
6 transaction, the total amount of the debt will be approximately \$3,000,000.00. The Secluded  
7 Lane Property was appraised at \$3,750,000.00. Exclusive of the claim of the receivership  
8 entities, the property leaves an equity cushion of \$1,550,000.00, or over 41%.

9 Interest payments on the Sternberg loan will accrue at 12% and will total \$9,600.00.  
10 Accordingly, the equity in the property will not substantially change due to the increased interest  
11 accrual on the \$80,000.00 amount financed by Sternberg.  
12

13 **V. POINTS & AUTHORITIES**

14 Section 364(d)1 provides as follows:

15 The court, after notice and a hearing, may authorize the obtaining of  
16 credit or the incurring of debt secured by a senior or equal lien on  
17 property of the estate that is subject to a lien only if - (A) the  
18 trustee is unable to obtain such credit otherwise; and (B) there is  
19 adequate protection of the interest of the holder of the lien on the  
20 property of the estate on which such senior or equal lien is proposed  
21 to be granted.

22 In this case, the Debtor will be able to demonstrate that it has attempted to obtain  
23 unsecured, administrative, and subordinate secured credit to complete the Secluded Lane Property  
24 but has been unsuccessful. No lender has been willing to lend unless it could obtain a first lien  
25 position. It is necessary that funds be obtained immediately to allow for the sale of the property  
26 and to protect the equity which exists in the property. Sternberg is willing to provide immediate  
27 funding on terms which are short term, which will have minimal impact on the value of the  
28

1 property, and are reasonable under these circumstances. Thus, the Trustee has shown that the  
2 Sternberg loan is appropriate and was warranted and should be approved by the Court.

3 **VI. CONCLUSION**

4 The Trustee and Receiver request this Court to approve the Sternberg loan under Section  
5 364(d)1 of the Code as outlined in the motion and to grant such other relief as is just and proper.  
6

7 DATED this \_\_\_\_\_ day of November, 2003.

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

9  
10 

11 \_\_\_\_\_  
12 Lawrence E. Wilk, Esq.  
13 Attorneys for James C. Sell

14 **STEVE BROWN & ASSOCIATES, LLC**

15 \_\_\_\_\_  
16 Steven Brown, Esq.  
17 Attorneys for Maureen Gaughan

18 **COPY** of the foregoing mailed  
19 this \_\_\_\_\_ day of November, 2003 to:

20 All Parties on the Attached Exhibit "C"  
21  
22  
23  
24  
25  
26  
27  
28

JABURG & WILK, P.C.  
ATTORNEYS AT LAW  
3700 NORTH CENTRAL AVENUE  
SUITE 2000  
PHOENIX, ARIZONA 85012

EXHIBIT A

EXHIBIT "A"

PARCEL NO. 1:

A PORTION OF THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 5 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTH QUARTER CORNER OF SAID SECTION 3, THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION;

THENCE SOUTH 00 DEGREES 13 MINUTES 52 SECONDS EAST, 427.00 FEET ALONG THE NORTH-SOUTH QUARTER LINE OF SAID SECTION 3;

THENCE SOUTH 89 DEGREES 46 MINUTES 08 SECONDS WEST, 170.93 FEET;

THENCE NORTH 23 DEGREES 10 MINUTES 00 SECONDS WEST, 172.21 FEET TO THE NORTHERLY LINE OF A 32 FOOT PRIVATE ROADWAY EASEMENT;

THENCE THE FOLLOWING TEN COURSES ALONG THE NORTHERLY LINE OF SAID 32 FOOT WIDE PRIVATE ROADWAY:

1. ALONG A CURVE TO THE LEFT, 104.20 FEET, SAID CURVE HAVING A RADIUS OF 40.00 FEET AND A CENTRAL ANGLE OF 149 DEGREES 14 MINUTES 57 SECONDS;
2. ALONG A CURVE TO THE RIGHT, 25.61 FEET, SAID CURVE HAVING A RADIUS OF 30.00 FEET AND A CENTRAL ANGLE OF 48 DEGREES 55 MINUTES 04 SECONDS;
3. ALONG A CURVE TO THE LEFT, 84.77 FEET, SAID CURVE HAVING A RADIUS OF 161.00 FEET AND A CENTRAL ANGLE OF 30 DEGREES 10 MINUTES 00 SECONDS;
4. SOUTH 86 DEGREES 20 MINUTES 00 SECONDS WEST, 321.36 FEET;
5. ALONG A CURVE TO THE LEFT, 92.78 FEET, SAID CURVE HAVING A RADIUS OF 191.00 FEET AND A CENTRAL ANGLE OF 27 DEGREES 50 MINUTES 00 SECONDS;
6. SOUTH 58 DEGREES 30 MINUTES 00 SECONDS WEST, 39.72 FEET;
7. ALONG A CURVE TO THE RIGHT, 83.08 FEET, SAID CURVE HAVING A RADIUS OF 84.00 FEET AND A CENTRAL ANGLE OF 56 DEGREES 40 MINUTES 00 SECONDS;
8. NORTH 64 DEGREES 50 MINUTES 00 SECONDS WEST, 133.08 FEET;
9. ALONG A CURVE TO THE RIGHT, 16.68 FEET, SAID CURVE HAVING A RADIUS OF 30.00 FEET AND A CENTRAL ANGLE OF 31 DEGREES 51 MINUTES 40 SECONDS; AND
10. ALONG A CURVE TO THE LEFT, 39.78 FEET, SAID CURVE HAVING A RADIUS OF 40.00 FEET AND A CENTRAL ANGLE OF 57 DEGREES 06 MINUTES 34 SECONDS;

THENCE NORTH 0 DEGREES 04 MINUTES 50 SECONDS WEST, 177.24 FEET;

THENCE NORTH 89 DEGREES 55 MINUTES 10 SECONDS EAST, 1079.66 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL NO. 2:

AN EASEMENT FOR ROADWAY APPURTENANT TO PARCEL NO. 1, AS SET FORTH IN INSTRUMENT RECORDED IN DOCUMENT NO. 83-521213, RECORDS OF MARICOPA COUNTY, ARIZONA, OVER A PORTION OF THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 5 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTH QUARTER CORNER OF SAID SECTION 3;

THENCE SOUTH 00 DEGREES 13 MINUTES 52 SECONDS EAST, 1177.22 FEET ALONG THE NORTH-SOUTH QUARTER LINE OF SAID SECTION 3;

THENCE SOUTH 89 DEGREES 55 MINUTES 10 SECONDS WEST, 287.48 FEET ALONG THE NORTH LINE OF CAREFREE GRAND VIEW ESTATES UNIT 1;

THENCE NORTH 00 DEGREES 13 MINUTES 52 SECONDS WEST, 358.29 FEET;

THENCE NORTH 35 DEGREES 21 MINUTES 11 SECONDS WEST, 324.91 FEET;

THENCE SOUTH 84 DEGREES 06 MINUTES 55 SECONDS WEST, 214.05 FEET TO THE TRUE POINT OF BEGINNING;

THENCE SOUTH 51 DEGREES 50 MINUTES 00 SECONDS WEST, 32.00 FEET TO A POINT ON THE WESTERLY LINE OF A 32 FOOT WIDE PRIVATE ROADWAY FOR UTILITIES EASEMENT AND PERMANENT ACCESS FOR OWNERS;

THENCE THE FOLLOWING ELEVEN COURSES ALONG SAID WESTERLY 32 FOOT WIDE PRIVATE ROADWAY:

1. NORTH 38 DEGREES 10 MINUTES 00 SECONDS WEST, 22.44 FEET;
2. ALONG A CURVE TO THE RIGHT, 47.48 FEET, SAID CURVE HAVING A RADIUS OF 106.00 FEET AND A CENTRAL ANGLE OF 25 DEGREES 20 MINUTES 00 SECONDS;
3. NORTH 12 DEGREES 30 MINUTES 00 SECONDS WEST, 71.46 FEET;
4. ALONG A CURVE TO THE LEFT, 94.13 FEET, SAID CURVE HAVING A RADIUS OF 69.00 FEET AND A CENTRAL ANGLE OF 78 DEGREES 10 MINUTES 00 SECONDS;
5. SOUTH 89 DEGREES 20 MINUTES 00 SECONDS WEST, 71.47 FEET;
6. ALONG A CURVE TO THE RIGHT, 96.20 FEET, SAID CURVE HAVING A RADIUS OF 156.00 FEET AND A CENTRAL ANGLE OF 35 DEGREES 20 MINUTES 00 SECONDS;
7. NORTH 55 DEGREES 20 MINUTES 00 SECONDS WEST, 81.73 FEET;
8. ALONG A CURVE TO THE RIGHT, 89.05 FEET, SAID CURVE HAVING A RADIUS OF 121.00 FEET AND A CENTRAL ANGLE OF 42 DEGREES 10 MINUTES 0 SECONDS;
9. NORTH 13 DEGREES 10 MINUTES 00 SECONDS WEST, 20.33 FEET;
10. ALONG A CURVE TO THE LEFT, 8.81 FEET, SAID CURVE HAVING A RADIUS OF 30.00 FEET AND A CENTRAL ANGLE OF 16 DEGREES 50 MINUTES 06 SECONDS; AND
11. ALONG A CURVE TO THE RIGHT, 83.72 FEET, SAID CURVE HAVING A RADIUS OF 40.00 FEET AND A CENTRAL ANGLE OF 119 DEGREES 55 MINUTES 12 SECONDS;

THENCE THE FOLLOWING TEN COURSES ALONG THE NORTHERLY LINE OF SAID 32 FOOT WIDE PRIVATE ROADWAY:

1. ALONG A CURVE TO THE RIGHT, 39.87 FEET, SAID CURVE HAVING A RADIUS OF 40.00 FEET AND A CENTRAL ANGLE OF 57 DEGREES 06 MINUTES 34 SECONDS;
2. ALONG A CURVE TO THE LEFT, 16.68 FEET, SAID CURVE HAVING A RADIUS OF 30.00 FEET AND A CENTRAL ANGLE OF 31 DEGREES 51 MINUTES 40 SECONDS;
3. SOUTH 64 DEGREES 50 MINUTES 00 SECONDS EAST, 133.08 FEET;
4. ALONG A CURVE TO THE LEFT, 83.08 FEET, SAID CURVE HAVING A RADIUS OF 84.00 FEET AND A CENTRAL ANGLE OF 56 DEGREES 40 MINUTES 00 SECONDS;
5. NORTH 58 DEGREES 30 MINUTES 00 SECONDS EAST, 39.72 FEET;
6. ALONG A CURVE TO THE RIGHT, 92.78 FEET, SAID CURVE HAVING A RADIUS OF 191.00 FEET AND A CENTRAL ANGLE OF 27 DEGREES 50 MINUTES 00 SECONDS;
7. NORTH 86 DEGREES 20 MINUTES 00 SECONDS EAST, 321.36 FEET;
8. ALONG A CURVE TO THE RIGHT, 84.77 FEET, SAID CURVE HAVING A RADIUS OF 161.00 FEET AND A CENTRAL ANGLE OF 30 DEGREES 10 MINUTES 00 SECONDS;
9. ALONG A CURVE TO THE LEFT, 25.61 FEET, SAID CURVE HAVING A RADIUS OF 30.00 FEET AND A CENTRAL ANGLE OF 48 DEGREES 55 MINUTES 04 SECONDS; AND
10. ALONG A CURVE TO THE RIGHT, 104.20 FEET, SAID CURVE HAVING A RADIUS OF 40.00 FEET AND A CENTRAL ANGLE OF 149 DEGREES 14 MINUTES 57 SECONDS;

THENCE THE FOLLOWING EIGHT COURSES ALONG THE SOUTHERLY LINE OF SAID 32 FOOT WIDE PRIVATE ROADWAY:

1. ALONG A CURVE TO THE RIGHT, 89.77 FEET, SAID CURVE HAVING A RADIUS OF 40.00 FEET AND A CENTRAL ANGLE OF 128 DEGREES 35 MINUTES 10 SECONDS;
2. ALONG A CURVE TO THE LEFT, 25.61 FEET, SAID CURVE HAVING A RADIUS OF 30.00 FEET AND A CENTRAL ANGLE OF 48 DEGREES 55 MINUTES 04 SECONDS;
3. ALONG A CURVE TO THE LEFT, 67.92 FEET, SAID CURVE HAVING A RADIUS OF 129.00 FEET AND A CENTRAL ANGLE OF 30 DEGREES 10 MINUTES 00 SECONDS;
4. SOUTH 86 DEGREES 20 MINUTES 00 SECONDS WEST, 321.36 FEET;
5. ALONG A CURVE TO THE LEFT, 77.24 FEET, SAID CURVE HAVING A RADIUS OF 159.00 FEET AND A CENTRAL ANGLE OF 27 DEGREES 50 MINUTES 00 SECONDS;
6. SOUTH 58 DEGREES 30 MINUTES 00 SECONDS WEST, 39.72 FEET;
7. ALONG A CURVE TO THE RIGHT, 114.73 FEET, SAID CURVE HAVING A RADIUS OF 116.00 FEET AND A CENTRAL ANGLE OF 56 DEGREES 40 MINUTES 00 SECONDS; AND
8. NORTH 64 DEGREES 50 MINUTES 00 SECONDS WEST, 133.08 FEET;

THENCE THE FOLLOWING NINE COURSES ALONG THE EASTERLY LINE OF SAID 32 FOOT WIDE PRIVATE ROADWAY:

1. ALONG A CURVE TO THE LEFT, 44.80 FEET, SAID CURVE HAVING A RADIUS OF 20.00 FEET AND A CENTRAL ANGLE OF 128 DEGREES 20 MINUTES 00 SECONDS;
2. ALONG A CURVE TO THE LEFT, 65.50 FEET, SAID CURVE HAVING A RADIUS OF 89.00 FEET AND A CENTRAL ANGLE OF 42 DEGREES 10 MINUTES 00 SECONDS;
3. SOUTH 55 DEGREES 20 MINUTES 00 SECONDS EAST, 81.73 FEET;
4. ALONG A CURVE TO THE LEFT, 76.47 FEET, SAID CURVE HAVING A RADIUS OF 124.00 FEET AND A CENTRAL ANGLE OF 35 DEGREES 20 MINUTES 00 SECONDS;
5. NORTH 89 DEGREES 20 MINUTES 00 SECONDS EAST, 71.47 FEET;
6. ALONG A CURVE TO THE RIGHT, 137.79 FEET, SAID CURVE HAVING A RADIUS OF 101.00 FEET AND A CENTRAL ANGLE OF 78 DEGREES 10 MINUTES 00 SECONDS;
7. SOUTH 12 DEGREES 30 MINUTES 00 SECONDS EAST, 71.46 FEET;

8. ALONG A CURVE TO THE LEFT, 33.15 FEET, SAID CURVE HAVING A RADIUS OF 74.00 FEET AND A CENTRAL ANGLE OF 25 DEGREES 40 MINUTES 00 SECONDS; AND

9. SOUTH 38 DEGREES 10 MINUTES 00 SECONDS EAST, 22.44 FEET TO THE TRUE POINT OF BEGINNING.

**EXHIBIT B**

**PROMISSORY NOTE**  
Installments

\$80,000.00

October \_\_\_\_\_, 2003  
Phoenix, Arizona

FOR VALUE RECEIVED, AMERICAN NATIONAL MORTGAGE PARTNERS, L.L.C., Trustee of the 35824 N. Secluded Lane Trust dated June 21, 2002 ("Maker"), promises to pay to STERNBERG ENTERPRISES PROFIT SHARING PLAN, or order ("Lender"), the principal sum of Eighty Thousand Dollars (\$80,000.00) (the "Principal Sum"), together with interest as set forth herein.

1. **Interest.** The unpaid balance of the Principal Sum shall bear interest at the rate of twelve percent (12%) per annum from the date of this Promissory Note ("Note") until fully paid; provided, however, Maker shall be entitled to a minimum return guarantee of Eight Thousand Dollars (\$8,000.00) in the event the Principal Sum is repaid prior to the due date specified in Section 2. In the event Lender elects to accelerate the unpaid balance of this Note upon or following an Event of Default, the unpaid balance of the Principal Sum shall bear interest at the rate of fifteen percent (15%) per annum from the date of the Event of Default until fully paid. All interest under this Note shall accrue on the basis of a 365-day year and actual days elapsed.

2. **Due Date.** The Principal Sum and interest due under this Note shall be due and payable upon sale of the real property securing this Note or October \_\_\_\_\_, 2004, whichever occurs first.

3. **Prepayment.** Maker may prepay this Note at any time, in whole or in part, without penalty.

4. **Application of Payments.** Payments on this Note will be applied to pay the following in the order stated: (i) costs of collection, (ii) interest, including default interest and (iii) the unpaid Principal Sum.

5. **Events of Default.** Each of the following will constitute an event of default ("Event of Default") under this Note:

A. Maker's failure to pay the Principal Sum and all accrued and unpaid interest when due.

B. The occurrence of an Event of Default under the Deed of Trust (as defined herein) or any instrument at any time securing the obligations of Maker under this Note.

6. **Acceleration Upon Default.** During the continuance of an Event of Default, Lender may, at its option, without notice, declare the entire unpaid Principal Sum, all accrued interest, and all other amounts owing by Maker to Lender under this Note immediately due and payable.

7. **Security**. This Note is secured by a Deed of Trust and Assignment of Rents dated of even date herewith ("Deed of Trust").

8. **Nonrecourse Note**. Notwithstanding anything to the contrary contained herein, by acceptance of this Note, Lender agrees that this Note shall be a nonrecourse note and that the liability of Maker for the payment of the indebtedness or performance of the obligations evidenced by, created by or arising under this Note, the Deed of Trust, or any other document evidencing or securing the loan evidenced by this Note, shall be limited to the real property encumbered by the Deed of Trust.

9. **General Provisions**.

A. **Applicable Law**. This Note is governed by the laws of the State of Arizona.

B. **Costs of Collection**. Maker agrees to pay Lender all costs and expenses, including without limitation all reasonable attorney's fees incurred, in the enforcement or collection of this Note or any judgment obtained thereon.

C. **Limitation on Interest**. Notwithstanding any provision herein to the contrary, Lender shall never be entitled to receive or collect interest hereunder, nor shall or may amounts received hereunder be credited to interest hereunder, so that Lender shall receive or be paid interest exceeding the maximum amount permitted by applicable law.

D. **Modification**. This Note may not be modified except by an instrument in writing and signed by Lender.

E. **Non-Waiver**. Failure or delay in exercising any right or portion hereunder given to Lender will not constitute a waiver of any such right or option or waiver of any other right or option under this Note.

F. **Severability**. If at any time any provision of this Note is or becomes illegal, invalid or unenforceable in any respect, the legality, validity and enforceability of the remaining provisions of this Note will not be affected and such remaining provisions will remain in full force and effect.

G. **Successor and Assigns**. This Note will be binding upon and inure to the benefit of Lender, Maker and their respective successors, assigns, executors, heirs, devisees and beneficiaries.

H. **Time of Essence**. Time is of the essence with regard to each and every term, condition and obligation of the Maker of this Note.

I. **Waiver of Maker's Rights**. Maker and any guarantors of this Note hereby expressly waive demand, presentment for payment, protest, notice of protest and diligence in

collection, and consent to the time said payment or any part thereof is to be made and may be extended by the Lender.

10. **Notices.** Any notice or communications given or required under the terms of this Note shall be in writing and shall be effective upon personal delivery, if hand delivered (including by overnight mail or courier service) or, mailed by certified mail, return receipt requested, postage prepaid to the recipient at the address set forth in the Deed of Trust.

AMERICAN NATIONAL MORTGAGE  
PARTNERS, L.L.C., Trustee of the 35824  
N. Secluded Lane Trust dated June 21, 2002

By \_\_\_\_\_  
\_\_\_\_\_, its \_\_\_\_\_

When Recorded Mail To:

\_\_\_\_\_

\_\_\_\_\_

Attention: \_\_\_\_\_

**DEED OF TRUST AND ASSIGNMENT OF RENTS**

**DATE:** October \_\_\_\_\_, 2003

**TRUSTOR:** AMERICAN NATIONAL MORTGAGE PARTNERS, L.L.C., Trustee of  
the 35824 N. Secluded Lane Trust dated June 21, 2002

\_\_\_\_\_  
\_\_\_\_\_

**BENEFICIARY:** STERNBERG ENTERPRISES PROFIT SHARING PLAN  
5730 Echo Canyon Drive  
Phoenix, Arizona 85018

**TRUSTEE:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Obligation Secured:** (1) Payment and performance of Trustor's obligations as Maker under that certain Promissory Note dated October \_\_\_\_\_, 2003; and (2) performance of each agreement of Trustor contained in this Deed of Trust.

Subject Real Property in Maricopa County, State of Arizona, described as:

See Exhibit A attached hereto.

**THIS DEED OF TRUST**, made on the above date between and among the Trustor, Trustee and Beneficiary above-named,

**WITNESSETH**

1. **Conveyance.** Trustor irrevocably grants and conveys to Trustee in trust, with power of sale, the Subject Real Property, subject to covenants, conditions, restrictions rights of way and easements of record, to be held as security for the payment by Trustor of the Obligation Secured and for the performance of other obligations of Trustor as set forth in this Deed of Trust. This Deed of Trust has been executed pursuant to 11 U.S.C. § 364(d)(1) and the loan represented by the Note and security of this Deed of Trust are to be considered a super-priority lien in first position on the Subject Real Property as more specifically set forth in the Order attached hereto as Exhibit B.

2. **Appurtenances.** Trustor grants, together with the Subject Real Property, all buildings and improvements now or hereafter erected thereon and all fixtures attached to or used in connection with the Subject Real Property (including, without limiting the generality of the foregoing, all ventilating, heating, air conditioning, refrigeration, plumbing and lighting fixtures), together with all leases, rents, issues, profits or income therefrom (hereinafter "Property Income"), subject, however, to the right, power and authority hereinafter given to Beneficiary to collect and apply such Property Income.

3. **Taxes, Assessments and Trust Expenses.** Trustor shall pay before delinquent all taxes and assessments affecting the Subject Real Property; all encumbrances, charges and liens, when due, with interest, on Subject Real Property or any part thereof, which appear to be prior or superior hereto; all costs, fees and expenses of this trust and all lawful charges, costs and expenses of any reinstatement of this Deed of Trust following a default.

4. **Fire Insurance.** Trustor shall, at Trustor's expense, maintain in force fire and extended coverage insurance in any amount of not less than the full replacement value of any buildings which may exist on the Subject Real Property with loss payable to Beneficiary. Trustor shall provide fire insurance protection on its furniture, fixtures and other personal property on the Subject Real Property in an amount equal to the full insurable value thereof and promises that any insurance coverage in this regard will contain a waiver of the insurer's right of subrogation against Beneficiary.

5. **Liability Insurance.** Trustor shall, at Trustor's expense, maintain in force policies of liability insurance, with Beneficiary as an additional insured thereunder, insuring Trustor against any claims resulting from the injury to or the death of any person or the damage to or the destruction of any property belonging to any person by reason of Beneficiary's interest hereunder or the use and occupancy of Subject Real Property by Trustor.

6. **Indemnification of Trustee and Beneficiary.** Trustor shall hold Trustee and Beneficiary harmless from and indemnify them for any and all claims raised by any third party against Trustee or Beneficiary resulting from their interests hereunder or the acts of Trustor. Such indemnification shall include reasonable attorneys' fees and costs, including cost of evidence of title.

7. **Right of Beneficiary or Trustee to Pay Obligations of Trustor.** If Trustor fails or refuses to pay any sums due to be paid by it under the provisions of this Deed of Trust, or fails or refuses to take any action as herein provided, then Beneficiary or Trustee shall have the right to pay any such sum due to be paid by Trustor and to perform any act necessary. The amount of such sums paid by Beneficiary or Trustee for the account of Trustor and the cost of any such action, together with interest thereon at the maximum legal contractual rate per annum, from the date of payment until satisfaction, shall be added to the Obligation Secured. The payment by Beneficiary or Trustee of any such sums or the performance of any such action shall be prima facie evidence of the necessity therefor.

8. **Condemnation.** Any award of damages in connection with any condemnation or injury to any of the Subject Real Property by reason of public use or for damages for private trespass or injury thereto are assigned in full and shall be paid to Beneficiary, who shall apply them to the payment of the principal of the Obligation Secured, the interest thereon, and any other charges and amounts secured hereby in such manner as Beneficiary may elect. Any remaining balance shall be paid to Trustor. Beneficiary may, at Beneficiary's option, appeal from any such award in the name of Trustor. Unless Trustor and Beneficiary otherwise agree in writing, any application of such proceeds to principal shall not extend or postpone the due dates of any installment payments of the Obligation Secured or change the amount of such payments.

9. **Care of Property.** Trustor shall take reasonable care of the Subject Real Property and the buildings thereon and shall maintain them in good repair and condition as at the original date of this Deed of Trust, ordinary depreciation excepted. Trustor shall commit or permit no waste and do no act that will unduly impair or depreciate the value of the Subject Real Property as security or affect its insurability. If Trustor fails to maintain the Subject Real Property as required, then Beneficiary or Trustee, at their option, may make necessary repairs and add the cost thereof to the Obligation Secured. Trustor shall purchase and use on the Subject Real Property the amount of water to which it is or shall be entitled and shall not abandon any water rights, power rights or any rights of whatever nature which are appurtenant to the Subject Real Property.

10. **Right to Inspect Subject Real Property.** At all convenient and reasonable times, upon prior notice to Trustor, Beneficiary or Trustee shall have the right and license to go on and into the Subject Real Property to inspect it in order to determine whether the provisions of this Deed of Trust are being kept and performed.

11. **Event of Default.** Subject to any applicable notice and right to cure set forth under Section 12 below, each of the following shall be considered an event of default of this Deed of Trust: (a) the failure of Trustor to make any payment hereunder or under the Obligation Secured on or before the due date thereof; (b) the failure of Trustor to perform any duty required by this Deed of Trust; (c) the removal or attempted removal by Trustor of any property included in the Subject Real Property without the consent of Beneficiary; (d) the Abandonment of the Subject Real Property by Trustor; or (e) the filing, execution or occurrence of: (1) a petition in bankruptcy by or against Trustor if such petition or proceeding has not been dismissed within ninety (90) days of the filing thereof, (2) a petition or answer seeking a reorganization, composition, readjustment, liquidation, dissolution or other relief of the same or different kind under any provision of the Bankruptcy Act if such petition or proceeding has not been dismissed within ninety (90) days of the filing thereof, (3) the adjudication of Trustor as a bankrupt or insolvent, or insolvency in the bankruptcy equity sense, (4) an assignment by Trustor for the benefit of creditors, whether by trust, mortgage or otherwise, which is not reversed or removed within ninety (90) days of such occurrence, (5) a petition or other proceedings by or against Trustor for the appointment of a trustee, receiver, guardian, conservator or liquidator of Trustor with respect to all or substantially all its property if any such petition or proceeding has not been dismissed within ninety (90) days of the filing thereof, (6) Trustor's dissolution or liquidation or the taking of possession of Trustor's property by any governmental authority in connection with dissolution or liquidation.

12. **Notice of Default.** Other than as specifically set forth herein, in the event of default by Trustor, Beneficiary or Trustee shall deliver written notice to the Trustor setting forth the nature of the default. Trustor shall have ten (10) days from receipt of such Notice if the default is monetary in nature, or thirty (30) days from receipt of such Notice if the default is non-monetary in nature, in which to cure the default. If default is not cured within the specified time limit, Beneficiary may elect to cause the Subject Real Property to be sold under this Deed of Trust or exercise any other remedies set forth in this Deed of Trust or under Arizona law.

13. **Acceleration.** In the event of default by Trustor, Beneficiary may, but shall not be required to, declare all sums secured hereby immediately due and payable, without notice to Trustor.

14. **Trustee's Sale.** Beneficiary may deliver written notice to Trustee of the default by Trustor, setting forth the nature thereof and of Beneficiary's election to cause the Subject Real Property to be sold under this Deed of Trust. Upon receipt of Beneficiary's notice of election to cause the Subject Real Property to be sold, Trustee shall, in accordance with all provisions of law, give notice of Trustee's Sale and, after the lapse of the required amount of time, sell the Subject Real Property at public auction, at the time and place specified in the Notice of Trustee's Sale, to the highest bidder for cash in lawful money of the United States, payable at the time provided in A.R.S. §33-811. Any persons, including Trustor, Trustee or Beneficiary may purchase at the Trustee's Sale. Trustee may postpone or continue the sale by giving notice of postponement or continuance by public declaration at the time and place last appointed for sale. Upon sale, Trustee shall deliver to the purchaser a Trustee's Deed conveying the Subject Real Property, but without any covenant or warranty, expressed or implied.

15. **Proceeds of Trustee's Sale.** After deducting all costs, fees and expenses of Trustee and of this trust, including the cost of evidence of title in connection with the sale and reasonable attorneys' fees, Trustee shall apply the proceeds of sale to payment of all sums then secured hereby and all other sums due under the terms hereof, with accrued interest, and the remainder, if any, to the persons legally entitled thereto or as provided by A.R.S. §33-812.

16. **Foreclosure and Other Remedies.** In lieu of sale pursuant to the power of sale conferred hereby, this Deed of Trust may be foreclosed in the same manner provided by law for the foreclosure of mortgages on real property. Beneficiary shall also have all other rights and remedies available hereunder and at law or in equity. All rights and remedies shall be cumulative.

17. **Assignment of Property Income.** As additional security, Trustor hereby gives Beneficiary the right, power and authority, during the continuance of this Trust, to collect the property income, reserving to Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such property income as it becomes due and payable. Upon any such default, Beneficiary may at any time, without notice, either in person, by agent or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of the Subject Real Property or any part thereof; in its own name sue

for or otherwise collect such property income, including that past due and unpaid; and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of the Subject Real Property, the collection of such property income and the application thereof, shall not cure or waive any default or notice of Trustee's Sale hereunder or invalidate any act done pursuant to such notice.

18. **Acts of Trustee Affecting Subject Real Property.** At any time, without notice, upon written request of Beneficiary and presentation of this Deed of Trust and the Obligation Secured for endorsement, Trustee may, without liability, release and reconvey all or any part of the Subject Real Property; consent to the making and recording, or either, of any map or plat of all or any part of the Subject Real Property; join in granting any easement thereon; join in or consent to any extension agreement or any agreement subordinating the lien, encumbrance or charge hereof. Any such action by Trustee may be taken without affecting the personal liability of any person for payment of the indebtedness secured hereby, without affecting the security hereof for the full amount secured hereby on all property remaining subject hereto, and without the necessity that any sum representing the value or any portion thereof of the property affected by Trustee's action be credited on the indebtedness.

19. **Satisfaction of the Obligation.** Upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed of Trust and the Obligation Secured to Trustee for cancellation, and upon payment of Trustee's fees, Trustee shall release and reconvey, without covenant or warranty, express or implied, the Subject Real Property held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

20. **Due On Sale.** If the Subject Real Property, or any part thereof, is sold, without the consent of the Beneficiary, which consent shall not unreasonably be withheld, then the entire unpaid principal balance and all accrued and unpaid interest shall, at the option of the Beneficiary, become immediately due and payable. For purposes hereof, the word "sold" shall mean the sale, transfer, hypothecation, assignment or encumbrance, whether voluntary, involuntary, or by operation of law, of all or any part of the real property, legal or equitable, located in Maricopa County, Arizona, that is the subject of this Deed of Trust.

21. **Notices.** Copies of all notices and communications concerning this Deed of Trust shall be mailed to the parties at the addresses specified in this Deed of Trust. Any change of address shall be communicated to the other parties in writing. Any documents which may adversely affect the rights of any party to this Deed of Trust shall be given by certified or registered mail, return receipt requested, postage prepaid and any notice shall be deemed to have been given three (3) days after mailing.

22. **Headings.** The marginal or topical headings of the provisions herein are for convenience only and do not define, limit or construe the contents of these provisions.

23. **Interpretation.** In this Deed of Trust, whenever the context so requires, masculine gender includes the feminine and neuter, and the singular includes the plural and vice versa.

24. **Applicable Law.** This Deed of Trust shall be subject to and governed by the laws of the State of Arizona, regardless of the fact that one or more parties now is or may become a resident of a different state.

25. **Waiver.** Any waiver by any party of a breach of any provision of this Deed of Trust shall not operate or be construed as a waiver of any subsequent breach hereof.

26. **Succession of Benefits.** The provisions of this Deed of Trust shall inure to the benefit of and be binding upon the parties hereto, their heirs, personal representatives, conservators and permitted assigns.

27. **Successor Trustee.** Beneficiary may appoint a Successor Trustee by delivering written notice of such appointment to the Successor Trustee, or in the manner prescribed by law. A Successor Trustee herein shall, without conveyance from the predecessor Trustee, succeed to all the predecessor's title, estate, rights, powers and duties. Trustee may resign by mailing or delivering notice thereof to Beneficiary and Trustor.

28. **Entire Agreement.** The terms of this Deed of Trust constitute the entire agreement among the parties, and the parties represent that there are no collateral or side agreements not otherwise provided for within the terms of this Deed of Trust.

29. **Time of Essence.** Time is of the essence in this Deed of Trust and every term, condition, covenant and provision hereof.

30. **Modification.** No modification of this Deed of Trust shall be binding unless evidenced by an agreement in writing and signed by all parties.

31. **Partial Invalidity.** If any provision of this Deed of Trust is held to be invalid or unenforceable, all the remaining provisions shall nevertheless continue in full force and effect.

AMERICAN NATIONAL MORTGAGE  
PARTNERS, L.L.C., Trustee of the 35824  
N. Secluded Lane Trust dated June 21, 2002

By \_\_\_\_\_,  
\_\_\_\_\_, its \_\_\_\_\_

STATE OF ARIZONA        )  
  ) ss.  
County of Maricopa        )

The foregoing instrument was acknowledged before me on this \_\_\_\_\_ day of October, 2003, by \_\_\_\_\_, as \_\_\_\_\_ of AMERICAN NATIONAL MORTGAGE PARTNERS, L.L.C., Trustee of the 35824 N. Secluded Lane Trust dated June 21, 2002.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

**EXHIBIT A**

**Subject Real Property Description**

**EXHIBIT B**

**Order**

EXHIBIT C

BANK ONE, NA  
SANTIN POLI & BALL, PLC  
LISA S. KASS, ESQ.  
2999 N. 44TH STREET  
SUITE 500  
PHOENIX, AZ 85018

DAIMLERCHRYSLER SERVICES  
NORTH AMERICA L.L.C.  
2999 N. 44TH STREET  
SUITE 500  
PHOENIX, AZ

FIRST NATIONAL BANK OF NEVADA  
GERARD R. O'MEARA  
1 SOUTH CHURCH AVENUE  
SUITE 800  
TUCSON, AZ 85701

TEXTRON FINANCIAL CORPORATION

NATIONAL TURF, INC.  
NATIONAL TURF, INC.  
C/O JAMES J. PALECEK  
HUNSAKER & PALECEK, PLLC  
5050 E. THOMAS RD.  
PHOENIX, AZ 85018

U.S. BANKRUPTCY COURT, ARIZONA  
P.O. BOX 34151  
PHOENIX, AZ 85067-4151

35824 N. SECLUDED LANE LLC  
C/O AMERICAN NATIONAL  
MORTGAGE  
15021 N. 74TH ST., #100  
SCOTTSDALE, AZ 85260

A-BEAR-ICA  
1225 W. ARROWHEAD ROAD  
DULUTH, MN 55811

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MALVERN PA 19355-0701

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BKTCY & LITIGATION  
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AMERICAN NATIONAL MORTGAGE  
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SCOTTSDALE, AZ 85260

AMERICAN NATIONAL MORTGAGE  
PARTNERS  
15021 N. 74TH STREET  
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