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6 Attorneys for James C. Sell, Conservator

7  
8 **SUPERIOR COURT OF ARIZONA**  
9 **MARICOPA COUNTY**

10 ARIZONA CORPORATION  
11 COMMISSION

12 Plaintiff,

13 v.

14 MATHON MANAGEMENT COMPANY,  
15 L.L.C., fka an Arizona limited liability  
16 company now dba a Delaware limited  
17 liability company, SLADE WILLIAMS AND  
18 ASSOCIATES, L.L.C., an Arizona limited  
19 liability company, MATHON FUND I,  
20 L.L.C., an Arizona limited liability company,  
21 MATHON FUND, L.L.C., fka an Arizona  
22 limited liability company now dba a  
23 Delaware limited liability company,  
24 INTEGRITY101, L.L.C., an Arizona limited  
25 liability company, INTEGRITY 201, L.L.C.,  
26 an Arizona limited liability company,  
27 INTEGRITY 301, L.L.C., and Arizona  
28 limited liability company, INTEGRITY401,  
L.L.C., an Arizona limited liability company,  
INTEGRITY 501, L.L.C., an Arizona limited  
liability company, INTEGRITY 601, L.L.C.,  
an Arizona limited liability company,  
INTEGRITY 701, L.L.C., an Arizona limited  
liability company, INTEGRITY 801, L.L.C.,  
an Arizona limited liability company,  
INTEGRITY 901, L.L.C., an Arizona limited  
liability company, ROUND VALLEY  
CAPITAL, L.L.C., an Arizona limited  
liability company, W.S.F. – WORLD  
SPORTS FANS, L.L.C., an Arizona limited  
liability company, MILL CREEK, L.L.C., an  
Arizona limited liability company,  
BELLEVUE HOLDINGS, L.L.C., an

Case No. CV 2005-005484

**AMENDED MOTION TO  
AUTHORIZE SETTLEMENT  
WITH TMC PARTNER, L.P.**

(Assigned to the Honorable  
Barry C. Schneider)

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

1 Arizona limited liability company, OAK  
2 HARBOR FINANCIAL, L.L.C., an Arizona  
3 limited liability company, SW STRATEGIC,  
4 WEALTH ADVISORS, L.L.C., an Arizona  
5 limited liability company, EVERETT  
6 CAPTIAL, L.L.C., an Arizona limited  
7 liability company, CRE CAPITAL, L.L.C.,  
8 an Arizona limited liability company,  
9 MEZZANINE MANAGEMENT, L.L.C., an  
10 Arizona limited liability company,  
11 MEZZANINE FUND I, L.L.C., an Arizona  
12 limited liability company, JONAS FUND I,  
13 L.L.C., an Arizona limited liability company,  
14 TEMPLAR FUND L.L.C., fka an Arizona  
15 limited liability company now dba a  
16 Delaware limited liability company,  
17 MERCER ISLAND, L.L.C., an Arizona  
18 limited liability company, CONNECTICUT  
19 PROPERTIES, L.L.C., an Arizona limited  
20 liability company, FIRST ATLANTA  
21 INVESTMENTS, L.L.C., a Georgia limited  
22 liability company, MM COLONIAL FUND,  
23 L.L.C., a Delaware limited liability company,  
24 SLADE CONSTRUCTION, L.L.C., an  
25 Arizona limited liability company,  
26  
27 DUANE SLADE and JENNIFER SLADE,  
28 husband and wife, GUY ANDREW  
WILLIAMS and LISA WILLIAMS, husband  
and wife,

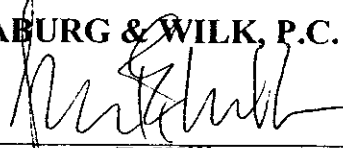
Defendants.

James C. Sell, the State Court appointed Conservator in the above-referenced matter, through counsel of record undersigned, hereby requests that this Court enter an order authorizing the Conservator to enter into a new Settlement Agreement, as more fully set forth in the transcript of hearing in Mathon Fund I, L.L.C., v. TMC Partner, L.P., et al., which is attached hereto as Exhibit "A" and incorporated herein in its entirety by reference.

This Motion is based upon the following Memorandum and Points and Authorities

1 DATED this 24 day of June, 2005.

2 JABURG & WILK, P.C.

3   
4 \_\_\_\_\_  
5 Lawrence E. Wilk  
6 Attorneys for James C. Sell

7 **MEMORANDUM OF POINTS AND AUTHORITIES**

8 I. Procedural Background

9  
10 1. On or about April 1, 2005, the Arizona Corporation Commission caused to  
11 be filed, in the Superior Court in and for the State of Arizona, a Verified Complaint in the  
12 above-captioned matter against numerous individual defendants and entities, seeking the  
13 appointment of a Receiver over the named Defendants.

14 2. On April 1, 2005, this Court issued its Order appointing James C. Sell  
15 Receiver for the approximately 30 entities named in the Receivership complaint.

16 3. Subsequently, after notice and hearing, the Court on April 14, 2005 issued  
17 its Order approving the Stipulation Regarding Order Appointing Conservator, in which  
18 the title of James C. Sell was changed from Receiver to Conservator (hereinafter, the  
19 "Conservatorship Order"). The rights and obligations of the Conservator remained  
20 identical to those of the Receiver.

21 4. A Preliminary Injunction Hearing was scheduled for June 7 and 8, 2005, at  
22 which time the Court was to consider whether the Conservator should remain in place.  
23 Pursuant to Stipulation of the parties, it was agreed that the Conservator should remain in  
24 place until further court order.

25 5. Paragraph 18 of the Conservatorship Order provides as follows:

26 18. The Conservator shall be authorized to compromise or  
27 adjust obligations which may be owed to the Conservatorship  
28 estate. The Conservator shall seek and obtain the approval of  
the Court for the proposed compromise or settlement. Court  
approval may be sought on an expedited basis.

1           6. Paragraph 19 of the Conservatorship Order provides as follows:

2                   19. The Conservator is authorized to liquidate Conservator-  
3 ship Assets, as may in his discretion be advisable. The  
4 Conservator shall first seek and obtain the approval of the  
5 Court for the proposed sale. Court approval may be sought on  
6 an expedited basis.

7           7. In pursuit of his duties under the terms of the Conservatorship Order, the  
8 Conservator had previously entered into a Court approved agreement with TMC Partners,  
9 L.P. The Court entered an Order approving the settlement, and requiring the closing and  
10 implementation of the settlement to occur on or before May 20, 2005.

11           8. TMC Partner, L.P., failed to comply with the terms of the prior settlement  
12 agreement.

13           9. Subsequently, the Court in Mathon Fund I, L.L.C., v. TMC Partner, L.P.,  
14 cause number CV2004-40025434S, in the State of Connecticut, Superior Court, Judicial  
15 District of New Britain at New Britain, (the "Connecticut proceeding") required a new  
16 settlement conference, at which time the parties entered into the revised settlement  
17 agreement, which is more fully set forth in the transcript attached hereto.

18           10. Pursuant to the settlement reached in the Connecticut proceeding, a new  
19 Court Order must be obtained in this proceeding.

20           II. Factual Background

21           1. On or about August 29, 2003, TMC Partner, L.P., David E. Baker, III,  
22 Richard J. Swartz, Richard J. Connell and TMC Development, Inc., (the "Borrowers"),  
23 entered into a Promissory Note in the amount of \$17,000,000, in favor of the  
24 Conservatorship Estate (the "Mathon Note"). TMC Partner, L.P. failed to pay in  
25 accordance with the terms of the Note. As of January 31, 2005, there is an outstanding  
26 balance of principal, interest and late fees of \$24,090,427.49. \$11,926,500 was actually  
27 funded to the borrower, exclusive of commissions and loan charges.  
28

1           2.     In order to enforce its claim, and prior to appointment of the Conservator,  
2 Mathon Fund I, L.L.C. initiated the Connecticut proceeding seeking strict foreclosure of  
3 its interest in certain real property securing the loan and comprised of 32.6 acres in  
4 Connecticut.  
5

6           3.     Prior to the appointment of the Conservator, the first settlement was  
7 negotiated. The settlement required the payment of \$150,000 on or before April 18<sup>th</sup> at 5  
8 p.m., which sum has been received by the Conservator.  
9

10          4.     The settlement further required that on or before May 20, 2005, the  
11 Borrowers were to pay the remaining balance of \$12,650,000 to fully satisfy the Note.  
12

13          5.     The Borrowers failed to perform pursuant to the terms of the prior  
14 settlement agreement.

15          6.     Pursuant to an agreement reached on June 15, 2005 in a subsequent  
16 settlement conference before Judge George Levine, Superior Court Judge for the Judicial  
17 District of New Britain at New Britain, the parties agreed to the following modified  
18 agreement.  
19

20               A.     Borrowers shall pay the sum of \$13,050,000 to either purchase the  
21 Note currently held by Mathon, or in full settlement of the amounts due under the  
22 Note;

23               B.     Payment shall be made on or before September 15, 2005, at 5 p.m.,  
24 MST.

25               C.     The borrowers shall deliver a \$75,000 deposit as part of the  
26 settlement agreement, which deposit shall be non-refundable, and will be credited  
27 against the purchase price at closing. Said funds shall be immediately paid to the  
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Conservator. Payment shall be received on or before July 1, 2005, or two business days following receipt of appropriate court approvals.

D. In addition to the credit of \$75,000 at closing, borrowers shall also be given credit for the \$150,000 previously paid by borrowers as part of the prior settlement.

E. Borrowers shall withdraw all defenses to the foreclosure action, waive their rights to appeal. The Borrowers shall waive their right to defend the foreclosure with special defenses of any kind, whether already raised, or to be raised in the future. This shall include any defense they may have to the previous disbursement of the \$150,000 paid pursuant to the prior settlement agreement.

F. Upon closing, there shall be a withdrawal of the pending case in the Connecticut Court.

G. Upon closing, in the event that the borrowers request an assignment of the Mathon Note, the Note shall be assigned without recourse. In the event the Note is determined to be paid in full, Mathon shall provide the original Note to borrowers marked "paid in full" and shall release its mortgage of record.

H. This agreement is subject to approval by the Arizona Court.

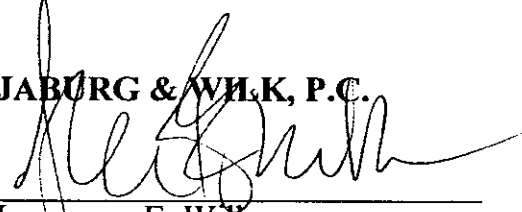
7. Having already obtained approval for settlement in the amount of \$12,800,000, the Conservator believes that the increased amount and additional terms as set forth in the new settlement agreement are in the best interests of the Conservatorship Estate, and its creditors.

WHEREFORE, the Conservator respectfully requests that this Court issue an Order authorizing the Conservator to enter into, and to execute all documents necessary to facilitate, the settlement set forth herein; including, but not limited to, such future

1 modifications which may be entered into by and between the parties which would result in  
2 a return equal to or greater than that previously approved by the Court.

3 DATED this 24 day of June, 2005.

4  
5 **JABURG & WILK, P.C.**

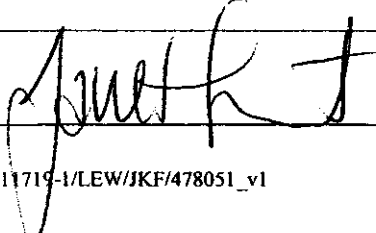
6   
7 Lawrence E. Wilk  
8 Attorneys for James C. Sell, Conservator

9 **ORIGINAL** filed and **COPY**  
10 of the foregoing hand-delivered this  
11 24th day of June, 2005 to:

12 The Honorable Barry C. Schneider  
13 MARICOPA COUNTY SUPERIOR COURT  
14 101 West Jefferson, CCB 13A  
15 Phoenix, Arizona 85003-2243

16 **COPIES** of the foregoing mailed  
17 this 24th day of June, 2005 to:

|   |  |
|---|--|
| 14 Wendy L. Coy, Esq.<br>ARIZONA CORPORATION COMMISSION<br>SECURITIES DIVISION<br>1300 West Washington, 3 <sup>rd</sup> Floor<br>Phoenix, Arizona 85007<br><i>Attorney for Plaintiff</i>                    | Keith Beauchamp, Esq.<br>LEWIS & ROCA, LLP<br>40 N. Central Avenue<br>Phoenix, Arizona 85004-4429<br><i>Attorney for Duane Slade and Guy Williams</i>      |
| 18 J. Grant Woods<br>GRANT WOODS P.C.<br>1726 N. Seventh Street<br>Phoenix, Arizona 85006-2200<br><i>Attorney for Duane and Jennifer Slade<br/>And Guy and Lisa Williams</i>                                | Gerald L. Shelley, Esq.<br>QUARLES & BRADY STREICH LANE<br>Two N. Central Avenue<br>Phoenix, Arizona 85004-2391<br><i>Attorney for Creditors Committee</i> |
| 22 John E. DeWulf, Esq.<br>ROSHKA HEYMAN & DEWULF PLC<br>400 E. Van Buren, Suite 800<br>Phoenix, Arizona 85004-2262   | Steven C. Mahaffy, Esq.<br>BEUS GILBERT PLLC<br>4800 N. Scottsdale Road, Suite 6000<br>Scottsdale, Arizona 85251-7630                                      |
| 24 Robert A. Shull, Esq.<br>MARISCAL, WEEKS, MCINTYRE<br>& FRIEDLANDER, P.A.<br>2901 N. Central Avenue, Suite 200<br>Phoenix, AZ 85012-2705<br><i>Attorney for Scott Johnson &amp; Ross Farnsworth, Jr.</i> | James C. Sell<br>2222 E. Camelback Road, Suite 110<br>Phoenix, Arizona 85016<br><i>Court Appointed Conservator</i>   |

27   
28 \_\_\_\_\_

**EXHIBIT "A"**

0001

1 No. CV04-4002534 S : STATE OF CONNECTICUT  
2 MATHON FUND I, LLC : SUPERIOR COURT  
3 v. : JUDICIAL DISTRICT OF  
4 TMC PARTNERS, LP et al : NEW BRITAIN AT NEW BRITAIN  
5 \_\_\_\_\_: June 15, 2005

6 B E F O R E:

7 The Honorable George Levine, Judge

8

9 A P P E A R A N C E S:

10 On behalf of the Plaintiff:

11 Cohen & Wolf, PC

12 P.O. Box 1821

13 Bridgeport, CT 06601

14 BY: Jonathan S. Bowman, Esquire

15 Also Present: Rachel Lieberfarb, Esquire,

16 Edward Standage, Asset Manager for Mathon,

17 Brian Sell, CPA, Conservator

18 On behalf of the Defendants:

19 Levy & Droney PC

20 74 Batterson Park Road

21 P.O. Box 887

22 Farmington, CT 06034

23 BY: Jeffrey J. Mirman, Esquire

24 Also Present: David Baker, President of TMC,

25 Christopher Thompson

26 DONNA L. PELUSO

27 COURT REPORTER/MONITOR

1 (In open court.)

2 \* \* \* \* \*

3 THE COURT: Excuse me. We'll go off the record.

4 (Off record).

5 \* \* \* \* \*

6 THE COURT: Good afternoon, everyone. We're here on  
7 the matter of Mathon Fund v. TMC Partners. It's  
8 CV04-4002534. Let's start with counsel. Will you  
9 identify yourselves.

10 MR. BOWMAN: Jonathan S. Bowman and Rachel  
11 Lieberfarb, for the plaintiff.

12 MR. MIRMAN: Jeffrey Mirman, for the defendants.

13 THE COURT: All right. Now, why don't the other  
14 people, who are here in connection with this matter,  
15 identify themselves for the record, as well as their  
16 connections to any parties.

17 MONITOR: And could they spell their name too, and  
18 come closer to the microphones.

19 THE COURT: Do you need the names of the lawyers  
20 spelled, or do you have them?

21 MONITOR: No, I have their names, Your Honor.

22 THE COURT: All right. Lets start with the  
23 plaintiffs.

24 MR. STANDAGE: Edward Standage, S-t-a-n-d-a-g-e.  
25 I'm an asset manager for Mathon.

26 MR. SELL: Brian Sell, S-e-l-l. I work for James  
27 E. Sell, CPA, conservator.

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1 THE COURT: Conservator of Mathon?

2 MR. SELL: Mathon.

3 THE COURT: Mathon. All right. Now, I understand  
4 that there's an agreement that's been struck. Is that  
5 correct?

6 MR. BOWMAN: Do you want to finish up? Isn't  
7 there another party you want to --

8 THE COURT: Oh, I'll get there.

9 (Simultaneous talking.)

10 MR. SELL: Yes.

11 MR. STANDAGE: Yes, there has been.

12 THE COURT: Well, sir, Mr. Standage, --

13 MR. STANDAGE: Yes.

14 (Simultaneous Talking).

15 THE COURT: -- do you have authority to enter into  
16 that agreement on behalf of -- is it a conservator --

17 MR. SELL: Yes.

18 MR. STANDAGE: Yes, I do --

19 THE COURT: -- that's been appointed --

20 MR. STANDAGE: -- subject to court approval, Your  
21 Honor.

22 THE COURT: Subject to court approval in Arizona?

23 MR. STANDAGE: Arizona. That's correct.

24 THE COURT: Well, let's just be clear. It's my  
25 understanding that an Arizona court initially appointed  
26 a receiver from Mathon, and, subsequently, converted  
27 that into a conservatorship, and is now a conservator

1 for Mathon. Is that correct?

2 MR. STANDAGE: That's correct. And I work for  
3 that.

4 THE COURT: You work for that conservator?

5 MR. STANDAGE: That's right.

6 THE COURT: And you also, Mr. Sell, work for that  
7 conservator?

8 MR. SELL: Yes.

9 THE COURT: Have you had any communication with  
10 him?

11 MR. STANDAGE: Yes.

12 THE COURT: You too, sir?

13 MR. SELL: Yes, sir.

14 THE COURT: Has he authorized both of you to enter  
15 into this agreement on his behalf, subject to court  
16 approval in Arizona?

17 MR. STANDAGE: Yes, sir.

18 MR. SELL: Yes.

19 THE COURT: All right. Now, Mr. Mirman.

20 MR. MIRMAN: With me, Your Honor is David Baker,  
21 both an individual defendant and --

22 (Simultaneous talking).

23 MR. BAKER: President --

24 MR. MIRMAN: -- President of TMC --

25 MR. BAKER: -- TMC Partners --

26 MR. MIRMAN: -- Partners.

27 THE COURT: All right. And?

1 MR. THOMPSON: And Christopher Thompson,  
2 T-h-o-m-p-s-o-n. I am a nonparty, and working with  
3 TMC.

4 THE COURT: Okay. Now, what's the agreement? And  
5 you've authorized this agreement that's going to be  
6 announced on the record, sir?

7 MR. BAKER: I'm going to wait to hear it  
8 announced, Your Honor. I think --

9 THE COURT: Oh --

10 MR. BAKER: -- I'm hoping, yes --

11 THE COURT: -- okay.

12 MR. BAKER: -- it will be what I'm expecting.

13 THE COURT: Let's go.

14 MR. BOWMAN: I'm hopeful to. ...

15 (Stopped Transcribing.)

16 \* \* \* \* \*

17 (Lunch recess).

18 THE COURT: Mr. Baker, I'm sorry. I tried.

19 MR. BAKER: That's all right, Your Honor. I think  
20 I've got a jet waiting for me very shortly.

21 THE COURT: Okay. I suspect we ought to start  
22 over. Right?

23 I mean, not good morning, what's this case about,  
24 but, rather, with the agreement.

25 MR. BOWMAN: Okay.

26 THE COURT: I just think it's going to be neater  
27 in the transcript.

1 MR. BAKER: I think you're right, Your Honor.

2 THE COURT: I take it you now have an agreement?

3 MR. BOWMAN: We have an agreement, yes.

4 THE COURT: Do I notice that Mr. Thompson is  
5 gone?

6 MR. BOWMAN: Mr. Thompson is gone.

7 MR. MIRMAN: Yes, Your Honor. He had another --

8 THE COURT: I hope you've got an agreement. All  
9 right. Let's go.

10 MR. BOWMAN: Okay. Point 1, the conservator will  
11 accept the sum of thirteen million fifty thousand  
12 dollars, which is referred to as the "settlement sum,"  
13 by way of either purchase of the note of TMC, or  
14 settlement of the amount due under that note --

15 THE COURT: For satisfaction, you mean, when you  
16 say --

17 MR. BOWMAN: Satisfaction. Correct.

18 THE COURT: Okay.

19 MR. BOWMAN: -- of that note. Which note is dated  
20 August 29, 2003, in the original sum of seventeen  
21 million dollars, together with the mortgage securing  
22 it.

23 Point 2, payment in full of the settlement sum in  
24 good funds or by wire transfer must be received by the  
25 conservator not later than 5 PM on September 15, 2005.

26 Point 3, TMC shall place a seventy-five thousand  
27 dollar nonrefundable deposit, as part of this

1 settlement agreement; that deposit, while  
2 nonrefundable, absent default by Mathon, will,  
3 nonetheless, be credible if the parties close.

4 THE COURT: It will be -- in other words, it's  
5 going to be paid to the conservator?

6 MR. BOWMAN: Yes.

7 THE COURT: And by when?

8 MR. BOWMAN: Payment of that is to be made by wire  
9 transfer not later than, the later to occur of, either  
10 July 1st, 2005, or two business days following receipt  
11 by TMC -- of course, if I could find it, I'd be all  
12 right here -- what? Yeah, approval by the Arizona  
13 Superior Court --

14 (Simultaneous talking.)

15 THE COURT: Receipt by TMC having notice --

16 (Simultaneous Talking.)

17 MR. BOWMAN: -- having jurisdiction.

18 THE COURT: -- receipt by TMC of notice of the  
19 approval by the Arizona court --

20 MR. BOWMAN: -- Arizona court, yes.

21 THE COURT: -- of this settlement agreement?

22 MR. BOWMAN: Correct.

23 THE COURT: Okay.

24 MR. BOWMAN: Let's see here. It's acknowledged  
25 that TMC will also receive credit for the hundred and  
26 fifty thousand dollar deposit, which it placed,  
27 pursuant to the stipulation of the parties in this

0008

1 court, on March 21, 2005.

2 THE COURT: That will be part of the purchase  
3 price or settlement figure of thirteen million fifty  
4 thousand dollars?

5 MR. BOWMAN: It is, and they get credit for it.

6 THE COURT: Okay.

7 MR. BOWMAN: Upon approval by the Arizona Superior  
8 Court having jurisdiction over Mathon -- I'm sorry.  
9 Let me, let me restate that.

10 Within two business days following receipt of  
11 notice of the -- following receipt of notice by TMC of  
12 the Arizona court approval of this settlement, TMC's  
13 counsel will file a written withdrawal of its defenses  
14 in this foreclosure.

15 All such defenses will be waived and withdrawn.  
16 Defendants will also waive their rights to appeal or  
17 reopen the judgment of foreclosure. The defendants  
18 also agree that they will not contest the amount of  
19 debt in accordance with Mathon's affidavit of debt.

20 THE COURT: All right. When you say they will  
21 withdraw, etc., what you mean is: By operation of law,  
22 upon the approval of the agreement by the Arizona  
23 court, those things automatically happen?

24 MR. BOWMAN: They do, but they also have to file a  
25 withdrawal: A piece of paper in this court --

26 THE COURT: Right. And they're --

27 MR. BOWMAN: -- evidencing that --

1 THE COURT: -- but their waiver is, means that  
2 they're not going to raise them again?

3 MR. BOWMAN: Correct.

4 THE COURT: Okay.

5 MR. MIRMAN: I contemplate that the piece of  
6 paper, that we file, will be a withdrawal of the  
7 special defenses that --

8 THE COURT: Right.

9 MR. MIRMAN: -- we've asserted.

10 THE COURT: And you're waiving any defense  
11 whatsoever to the note and mortgage. Is that right?

12 MR. MIRMAN: Correct.

13 THE COURT: All right.

14 MR. BOWMAN: Yeah, correct. And let's, let's put  
15 the point on that, as long as you were nice enough to  
16 raise that.

17 I mean, I also contemplate that they're going to  
18 file a withdrawal of the special defenses, but then the  
19 next day they're not going to go file another set of  
20 defenses. They're, they're waiving --

21 THE COURT: Well, that's why I say they're waiving  
22 their right to defend the foreclosure with any special  
23 defenses of any kind, whether already raised or whether  
24 they're not already raised. And they're waiving any  
25 appeal rights in the foreclosure action.

26 MR. MIRMAN: Correct, Your Honor.

27 THE COURT: By operation of law, upon the approval

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1 of the agreement. Is that correct?

2 MR. MIRMAN: Yes, Your Honor. That's correct.

3 THE COURT: Okay.

4 MR. BOWMAN: Okay. And just in case I didn't say  
5 this already, the defendants agree that their counsel  
6 will file a written withdrawal of the defenses within  
7 two business days following receipt of notice of the  
8 approval of this settlement by the Arizona court having  
9 jurisdiction over Mathon.

10 Each party -- Paragraph 5, each party agrees to  
11 release the other at closing, in accordance with the  
12 forms of releases already in their possession.

13 Separate and apart from anything else contained in  
14 this agreement, and without regard to the contingency  
15 for Arizona court approval referred to herein, TMC  
16 agrees to release Mathon now with respect to any claim  
17 for the return of the hundred and fifty thousand dollar  
18 deposit placed pursuant to the stipulation of the  
19 parties of March 21, 2005; or that the hundred and  
20 fifty thousand dollars was improperly released to  
21 Mathon; or that Mathon failed to provide documents or  
22 to certify documents; or as more particularly set forth  
23 in Jeffrey Mirman's letter to Jonathan Bowman of May  
24 20, 2005.

25 THE COURT: Now, that's effective immediately?

26 MR. BOWMAN: Yes.

27 MR. MIRMAN: Just so we're clear, what we are

1 releasing is any claim that Mr. Bowman improperly  
2 transferred the funds to Mathon, but in the event of  
3 default by Mathon --

4 THE COURT: Right.

5 MR. MIRMAN: -- we get the hundred and fifty back  
6 plus the seventy-five.

7 MR. BOWMAN: We'll agree to that.

8 THE COURT: All right. So, but in the event of  
9 default by TMC, then the hundred and fifty is the  
10 property of Mathon?

11 MR. MIRMAN: Correct, Your Honor.

12 THE COURT: All right.

13 MR. MIRMAN: As is the seventy-five.

14 THE COURT: As is the seventy-five.

15 MR. MIRMAN: Correct.

16 THE COURT: Okay.

17 THE COURT: Attorney Bowman, you're lucky Attorney  
18 Lieberfarb doesn't have a pencil. I think you'd be  
19 black and blue by now.

20 MR. BOWMAN: Mathon agrees not to pursue the  
21 foreclosure prior to closing, provided TMC shall not be  
22 in default of this agreement. And, additionally, it  
23 agrees not to pursue its foreclosure at any time after  
24 closing.

25 Mathon agrees that it will -- should it have to  
26 foreclose, it will take title to the property by way of  
27 strict foreclosure.

1 THE COURT: So when is this case going to be  
2 withdrawn, if I may presume to ask?

3 MR. BOWMAN: I'm not done yet, but it, we --

4 THE COURT: You have covered that, haven't you?

5 MR. BOWMAN: Yeah, I think maybe in --

6 MR. MIRMAN: September 15.

7 MR. BOWMAN: -- maybe in Paragraph 2. We're  
8 supposed to close not later than September 15, 2005.

9 THE COURT: All right. Upon the closing, there  
10 will be a withdrawal of this case.

11 MR. BOWMAN: I'm assigning my mortgage to them.  
12 It's going to be their business what they do with it.

13 THE COURT: Well, excuse me.

14 MR. BOWMAN: That's not a good answer.

15 THE COURT: I have specific orders from Judge  
16 Peck: Is there going to be a withdrawal of this case  
17 upon the closing?

18 MR. BOWMAN: As far as I'm concerned, there is.

19 THE COURT: Is that yes or no?

20 MR. BOWMAN: Yes.

21 THE COURT: Mr. Mirman?

22 MR. MIRMAN: Yes.

23 THE COURT: Thank you. That's good.

24 MR. BOWMAN: I think I do have a couple more  
25 points here.

26 Okay. Number 6, if closing takes place in  
27 accordance with the foregoing, Mathon will either

1 assign its note and mortgage without recourse, as TMC  
2 shall direct, or return the note marked paid in full  
3 and release its mortgage of record.

4 Number 7, except for the present release that  
5 Mathon referred to in Number 5 above, this settlement  
6 is contingent upon receipt of Arizona court approval of  
7 the settlement, if necessary. And we have reason to  
8 believe it may not be necessary, we will, nonetheless,  
9 attempt to obtain further documentation of that.

10 MR. MIRMAN: I'm sorry. I didn't understand that  
11 last part.

12 MR. BOWMAN: At lunch, I talked to the counsel,  
13 the Arizona counsel for the receiver, who thinks that  
14 we may not need to go back to court, but we're going to  
15 try to get you --

16 THE COURT: Well, how are you going to know  
17 that --

18 MR. MIRMAN: Yeah --

19 THE COURT: -- how are they going to know it?

20 MR. MIRMAN: -- right.

21 MR. BOWMAN: It's a fair question, and we're going  
22 to try to get it. We'll apply for it.

23 THE COURT: No, but what if, what if it's not  
24 necessary, how do they know that?

25 MR. BOWMAN: There is something in the existing  
26 order, which indicates, according to Arizona counsel,  
27 that it may not be necessary.

0014

1 THE COURT: So you'll get a certification from  
2 Arizona counsel if you don't get approval from the  
3 court.

4 MR. BOWMAN: Correct.

5 THE COURT: You get a certification saying that  
6 it's not necessary.

7 MR. BOWMAN: Yes. I'm not expecting anybody to  
8 take my word for it.

9 THE COURT: Mr. Mirman, that's good enough?

10 MR. MIRMAN: Well, frankly, Your Honor, although  
11 I'm sure Arizona counsel is competent and honorable, it  
12 doesn't give me the same warm and fuzzy feeling that a  
13 court order would, especially since, since our  
14 agreement is contingent upon --

15 THE COURT: Well, what if the court refuses to --  
16 I mean, he's agreed, they've agreed they're going to  
17 apply for approval.

18 MR. MIRMAN: Right.

19 THE COURT: What if the court -- and I remind you  
20 that it's your client who has to catch a plane but,  
21 nonetheless -- if, for whatever reason, the court finds  
22 it unnecessary, I assume you'll be satisfied with a  
23 certification from counsel of the conservator that it's  
24 not necessary.

25 MR. MIRMAN: Yes, as opposed to the court denying  
26 the application, which would be something different.

27 THE COURT: Of course.

1 MR. BOWMAN: Just to finish that last thought. We  
2 anticipate that approval, if it's going to be  
3 forthcoming, will be obtained within seven business  
4 days of submission to the court in Arizona of the  
5 transcript of these proceedings. The next point --

6 THE COURT: Excuse me one second.

7 MR. BOWMAN: Did they talk to you about an  
8 expedited transcript?

9 (Off record.)

10 MR. BOWMAN: Mathon agrees to cooperate with  
11 reasonable requests by TMC's lender, but it is  
12 acknowledged that this settlement is not contingent on  
13 TMC'S ability to get a mortgage.

14 MR. MIRMAN: My understanding is that Mathon will  
15 comply with any reasonable requests by any lender.

16 MR. BOWMAN: That's true.

17 THE COURT: Fine. Keep going.

18 MR. BOWMAN: Except as modified by this  
19 stipulation, the stipulation of March 21 of 2005  
20 remains in full force and effect.

21 THE COURT: All right. Is that the agreement?

22 MR. BOWMAN: I hope so.

23 THE COURT: Is that your agreement, Mr. Mirman?

24 MR. MIRMAN: Yeah, with one small addition, Your  
25 Honor, just so it's clear: When we use Mathon in this  
26 agreement, we are referring to the plaintiff in this  
27 action, to any assignees of the plaintiff --

0016

1 THE COURT: Whoever they may be.

2 MR. MIRMAN: Whoever they may be. -- and to the  
3 conservator.

4 THE COURT: All right.

5 MR. BOWMAN: All right. He's really saying to the  
6 extent that they may have an interest in the note and  
7 mortgage that are involved here, and that's, that's  
8 acceptable.

9 THE COURT: You're representing that you are  
10 authorized by every entity that could conceivably have  
11 an interest in the ownership of that mortgage?

12 MR. BOWMAN: What I'm representing is: If I'm  
13 not, we're going to go get it. We think we are.

14 THE COURT: Does that give you a warm and cozy  
15 feeling?

16 MR. BOWMAN: I know as a -- I know from the land  
17 records, we got everybody.

18 THE COURT: Okay. So the answer to my question is  
19 yes, Mr. Bowman?

20 MR. BOWMAN: Yes.

21 THE COURT: Now, that's the entire agreement?

22 MR. BOWMAN: I certainly hope so.

23 THE COURT: Mr. Mirman, is that the entire  
24 agreement?

25 MR. MIRMAN: Yes, Your Honor.

26 THE COURT: All right. Now, Mr. Standage --

27 MR. STANDAGE: Yes, sir.

0017

1 THE COURT: -- is that your agreement?

2 MR. STANDAGE: Yes, it is.

3 THE COURT: All right. And, Mr. Sell, is that  
4 your agreement?

5 MR. SELL: Yes, it is.

6 THE COURT: And, Mr. Baker, is it your agreement?

7 MR. BAKER: Yes, it is, Your Honor.

8 THE COURT: And all three of you have made that  
9 agreement voluntarily?

10 MR. BAKER: Yes.

11 MR. STANDAGE: Yes, sir.

12 MR. SELL: Yes.

13 THE COURT: And you've all -- you've all discussed  
14 it carefully with your attorneys?

15 MR. STANDAGE: Yes.

16 MR. SELL: Yes.

17 MR. BAKER: I have.

18 THE COURT: And you understand all the terms of  
19 the agreement?

20 MR. BAKER: I do.

21 MR. SELL: Yes.

22 MR. STANDAGE: Yes.

23 THE COURT: And, again, you represent that you  
24 have full authority to enter into this agreement on  
25 behalf of your principal?

26 MR. BAKER: Absolutely.

27 MR. STANDAGE: Yes.

0018

1 MR. SELL: Yes.

2 THE COURT: Any other canvass necessary, does  
3 anybody think?

4 MR. MIRMAN: No, Your Honor.

5 MR. BOWMAN: It sounds good to me.

6 THE COURT: All right. Then I will await your  
7 withdrawal of action. And, in the meantime, thank you  
8 for your cooperation.

9 MR. BOWMAN: Thank you, Your Honor.

10 THE COURT: And you are ordering a transcript, I  
11 take it?

12 MR. BOWMAN: Right this second, Your Honor.

13 THE COURT: All right. Then, of course, one copy  
14 will go in the court file.

15 MR. BAKER: Thank you so much.

16 THE COURT: Thank you very much for your  
17 cooperation.

18 MS. LIEBERFARB: Thank you.

19 (This matter concluded.)

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SUPERIOR COURT  
JUDICIAL DISTRICT OF NEW BRITIAN  
AT NEW BRITAIN

MATHON FUND I, LLC : CV04-4002534 S  
v. : June 15, 2005  
TMC PARTNERS LP, et al :  
\_\_\_\_\_ :

C E R T I F I C A T E

I, Donna L. Peluso, Court Reporter/Monitor, certify that the foregoing is, to the best of my ability, a true and accurate phonetic transcription of the proceedings had in the above-entitled case, before The Honorable George Levine, Judge.

This the 17th day of June, 2005.

\_\_\_\_\_  
Donna L. Peluso  
COURT REPORTER/MONITOR