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4 Attorneys for James C. Sell, Conservator
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6
7 **SUPERIOR COURT OF ARIZONA**

8 **MARICOPA COUNTY**

9 **ARIZONA CORPORATION**
10 **COMMISSION**

11 Plaintiff,

12 v.

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

Case No. CV 2005-005484

**MOTION TO AUTHORIZE
CONSERVATOR TO SELL
AND ASSIGN THE
CONSERVATORSHIP'S
INTERESTS IN NEW STANSBURY
LOAN**

(Assigned to the Honorable
Barry C. Schneider)

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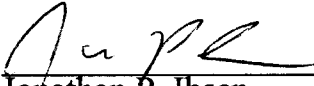
1 HARBOR FINANCIAL, L.L.C., an Arizona
2 limited liability company, SW STRATEGIC,
3 WEALTH ADVISORS, L.L.C., an Arizona
4 limited liability company, EVERETT
5 CAPTIAL, L.L.C., an Arizona limited
6 liability company, CRE CAPITAL, L.L.C.,
7 an Arizona limited liability company,
8 MEZZANINE MANAGEMENT,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

Defendants.

James C. Sell, the court appointed Conservator in the above referenced matter, through counsel of record undersigned, hereby requests authorization of this court to sell and assign the interests of the Conservatorship Estate in the \$3,846,154 loan between New Stansbury Coal Company, L.L.C. ("NSCC") and Mathon Fund, L.L.C., ("New Stansbury Loan") as more fully set forth in the basis of offer which is attached hereto as Exhibit "A". (the "Robson Offer").

DATED this 12th day of August, 2005.

JABURG & WILK, P.C.


Jonathan P. Ibsen
Lawrence E. Wilk
Attorneys for James C. Sell

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 I. **Procedural Background**

3
4 1. On or about April 1, 2005, the Arizona Corporation Commission caused to
5 be filed, in the Superior Court in and for the State of Arizona, a Verified Complaint in the
6 above-captioned matter against numerous individual defendants and entities, seeking the
7 appointment of a Receiver over the named Defendants.

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

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

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

19 5. Paragraph 19 of the Stipulation regarding Order Appointing Conservator
20 provides as follows:

21 19. The Conservator is authorized to liquidate
22 Conservatorship Assets, as may in his discretion be advisable.
23 The Conservator shall first seek and obtain the approval of this
24 Court for the proposed sale. Court approval may be sought on
25 an expedited basis.

26 II. **Factual Background**

27 1. On or about July 23, 2004, New Stansbury Coal Company, L.L.C. borrowed
28 the sum of \$3,846,154 from Mathon Fund, L.L.C., and secured the transaction by various
coal leases and equipment.

1 2. The New Stansbury Loan is currently in default. Little, if any, mining is
2 being performed on the property.

3 3. Based upon information and belief, the value of the equipment collateral
4 securing the loan is approximately \$500,000, or less.

5 4. The remaining collateral value depends upon whether mining processes can
6 commence immediately; thereby preserving the licenses and leases in a non-default status.
7 At the present time, the Conservatorship Estate has neither the funds available, nor the
8 expertise necessary, to continue the mining operation.

9 5. Although the Note is currently in default, the interests of the
10 Conservatorship Estate have not yet been foreclosed.

11 6. NSCC has entered into a tentative agreement with Steve Robson, or his
12 related entities, which would allow for Robson to fund the amounts, as more fully set
13 forth in the basis of the offer, allowing for mining operations to commence shortly,
14 thereby preserving the leases in place.

15 7. As part of the agreement with NSCC, Robson is required to purchase the Note and
16 security documentation (hereinafter "Loan Documentation") held by Mathon Fund, L.L.C.
17 The terms for the purchase of the Conservatorship's interests in the New Stansbury Loan
18 are as follow:

19 **Offering Price:** \$3,050,000 for Mathon's interest in the New
20 Stansbury Coal Company, LLC, ("NSCC") Note.

21 **Good Faith Deposit:** \$500,000, in cash or kind

22 **Terms:**

23 **Down Payment:** \$500,000

24 The balance of the payments will be paid as a "Royalty
25 Payment", based upon production as follows:

26 **Initial Payment:** \$850,000 plus 6% interest

27 **Second Payment:** \$850,000 plus 6% interest

28 **Third Payment:** \$850,000 plus 6% interest

Robson has a right to accelerate in part or in full the payment
schedule.

Due Diligence Period: 60 Days, starting from the Court
Approval of this **OFFER**. If Robson has not asked in writing
for the return of the good faith deposit before the end of the 60

1 day period, it is considered to be the Down Payment. Three
2 (3) additional 30 day periods will be allowed, upon payment
by Robson to Mathon of \$10,000 for each period taken.

3 **Due Diligence Information:** Should Robson ask for the
4 return of the Good Faith Deposit, he will share any
information, reports, etc. with Mathon.

5 **Security Interest:** Seller will have a security interest in the
6 NSCC, LLC.

7 **Benchmarks for Action:**

- 8 • End of Due diligence period-5 months, (\$500,000 is then
9 non-refundable)
- 10 • Commencement of the Permit Process- 12 Months
- 11 • Release of Security interest: The Security interest will be
12 released once Robson has invested \$2,000,000, (\$500,000
13 Down Payment plus \$1,500,000 direct investment in NSCC),
during the first 24 months.
- 14 • Payments: The Initial Payment must be "Booked" by the
15 end of the fourth year; the Second Payment by the end of the
16 fifth year; and the third payment by the end of the sixth year.
- 17 • Timeline: All dates are based upon or commence from the
18 date of Court approval.

19 **Royalty Payments:** The royalty payments to Mathon will be
20 based upon production. The initial payment will assessed
21 during the first full year of production. Payments will be
22 based upon net profit of coal mined. The royalty payment will
23 be cancelled after the investors have received at least
24 \$2,550,000 plus interest. (Exclusive of the \$500,000 down
25 payment).

26 **Accounting for the Royalty Payments:** Within thirty days
27 after the end of the first quarter of the fiscal year following the
28 year for which the Royalty payment is being paid, Robson will
issue a royalty check to Mathon.

Confidentiality: Provided the parties are diligently pursuing
this transaction, neither party will contact, correspond or
negotiate with other parties.

8. The Conservator believes that the offer is the best interest of the Estate and
should be accepted for the following reasons:

- A. The sale avoids protracted litigation with NSCC;
- B. The sale avoids substantial environmental exposure that exists on the
property;


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- C. The sale provides for return of the approximate net amount funded plus interest at 6%;
- D. The sale provides for a 20% down payment on the amount financed to the borrower;
- E. The buyer holds various land credits obtained from the Bureau of Land Management which may be traded for additional coal property to help facilitate additional mining and payment of the royalties;
- F. Time is of the essence to this transaction to ensure that the licenses and leases remain in place;
- G. Due diligence on the buyer has established that the buyer is a viable purchaser who is willing to make a substantial investment in the property;
- H. Although the down payment is only \$500,000, under the agreement, the buyer shall fund \$2,000,000 towards the startup of the operation, and is required to commence the necessary permitting process within one year. Until initial funding has been complied with, the Estate retains a security interest in the project.
- I. In the event that Robson chooses not to move forward with the transaction, he is required to turnover all "work product" which is produced during his due diligence period.

WHEREFORE, the Conservator requests that this Court issue an Order authorizing the sale and assignment of the New Stansbury Loan to Steve Robson or his affiliated entity, pursuant to the terms of the Robson offer.

DATED this 12th day of August, 2005.

JABURG & WILK, P.C.

Jonathan P. Ibsen
Lawrence E. Wilk
Attorneys for James C. Sell, Conservator

James C. Sell as Conservator

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James C. Sell

James C. Sell as Conservator

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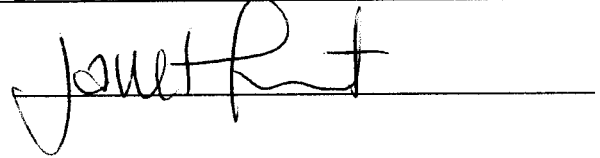
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ORIGINAL filed and **COPY**
of the foregoing faxed this
12th day of August, 2005 to:

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

COPIES of the foregoing mailed and
emailed this 12th day of August, 2005 to:

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J. Grant Woods GRANT WOODS P.C. 1726 N. Seventh Street Phoenix, Arizona 85006-2200 <i>Attorney for Duane and Jennifer Slade And Guy and Lisa Williams</i> gw@grantwoodspc.net	Robert A. Shull, Esq. MARISCAL, WEEKS, MCINTYRE & FRIEDLANDER, P.A. 2901 N. Central Avenue, Suite 200 Phoenix, AZ 85012-2705 <i>Attorney for Scott Johnson & Ross Farnsworth, Jr.</i> rob.shull@mwmf.com
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Exhibit “A”

Offer for Mathon's Interest in the New Stansbury Coal Company

Basis of Offer

Value of present investment

- **Liquidated value** of the New Stansbury Coal Company ("NSCC") Mine equipment is approximately **\$500,000** or less
- Value of the ongoing operation, as a start up, is approximately \$1,800,000
- Net amount funded by Mathon was approximately \$2,500,000

Logistics

- Permits needed for the surface mining operation. (The initial coal sales and profit projections are predicated upon surface mining).
- The **cost** of these **permits** may range from **\$200,000 to \$500,000**.
- The **time** to obtain these permits may be in **excess of two years**
- The **\$12,000,000 IRB Financing Plan from the State will not happen**. Replacement money needs to be identified, obtained and invested as debt and/or equity.
- The favorable terms offered by the State will not be duplicated in the open market.

Equipment

- Equipment must be refurbished.
- New equipment must be obtained in a "tight" market due to expansion of mining operations worldwide.
- The **cost for equipment is expected to exceed \$12 to 14 Million**
- The load-out and rail spur need to be repaired: Cost \$1,300,000.
- Agreements with the railroad need to be put into place.

Economics

- The **lease** with coal lessor, Anadarko, D/B/A Rock Springs Realty needs to be renegotiated. It is **untenable with its current economic and business terms**.
- The license agreement needs to be modified/renegotiated
- There is **no formalized agreement with a buyer for the coal**. A letter from Aquila Power, for approximately 100,000 Tons per year has lapsed. (If it were in effect, it would only be 4% of a full year's operation).
- While the current "spot" price of coal makes this mine economically feasible today, **there is no assurance that the price of coal will be stable**. This mine was closed by a major producer, (Arch) in 1996 as it was not economically viable.

Timing

- The **timing of additional funds** to the NSCC operation **is critical**. The Borrower to date has put together a tenuous network of the operation. Time and money are the critical components that are missing.
- The additional equity money that Mathon had promised to provide last August, 2004 has not been delivered, as paid for.

In summary, a significant amount of money, time and effort must be put at risk before even one shovel of coal can be produced. Steve Robson has spent at least \$65,000 on due diligence work to date and expects to spend another \$150,000, (not including Permits, etc.) to assess the viability of NSCC during the due diligence phase.

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OFFER

Buyer: An entity owned or controlled by Steve Robson

Seller: Mathon, LLC,

Offering Price: \$3,050,000 for Mathon's interest in the New Stansbury Coal Company, LLC, ("NSCC") Note.

Good Faith Deposit: \$500,000, in cash or kind

Terms:

Down Payment: \$500,000

The balance of the payments will be paid as a "Royalty Payment", based upon production as follows:

~~Year 1~~ **Initial Payment:** \$850, 000 plus 6% interest

~~Year 2~~ **Second Payment:** \$850, 000 plus 6% interest

~~Year 3~~ **Third Payment:** \$850, 000 plus 6% interest

Robson has a right to accelerate in part or in full the payment schedule.

Due Diligence Period: 60 Days, starting from the ~~acceptance~~ Court Approval of this **OFFER**. ~~by Mathon and the Court.~~ If Robson has not asked in writing for the return of the good faith deposit before the end of the 60 day period, it is considered to be the ~~down~~ Down ~~payment~~ Payment. Three (3) additional 30 day periods will be allowed, upon payment by Robson to Mathon of \$10,000 for each period taken.

Due Diligence Information: Should Robson ask for the return of the Good Faith Deposit, he will share any information, reports, etc. with Mathon.

Security Interest: Seller will have a security interest in the NSCC, LLC.

Benchmarks for Action:

- End of Due diligence period-5 months, (\$500,000 is then non-refundable)

- Commencement of the Permit Process- 12 Months
- Release of Security interest: The Security interest will be released once Robson has invested \$2,000,000, (\$500,000 Down Payment plus \$1,500,000 direct investment in NSCC), during the first 24 months.
- Payments: The Initial Payment must be "Booked" by the end of the fourth year; the Second Payment by the end of the fifth year; and the third payment by the end of the sixth year.
- Timeline: All dates are based upon or commence from the date of Court approval

Royalty Payments: The royalty payments to Mathon will be based upon production. The initial payment will be assessed during the first full year of production. Payments will be based upon net profit of coal mined. The royalty payment will be cancelled after the investors have received at least \$2,550,000 plus interest.

Accounting for the Royalty Payments: Within thirty days after the end of the first quarter of the fiscal year following the year for which the Royalty payment is being paid, Robson will issue a royalty check to Mathon.

Confidentiality: Provided the parties are diligently pursuing this transaction, neither party will contact, correspond or negotiate with other parties.