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16 UNITED STATES BANKRUPTCY COURT
17 DISTRICT OF ARIZONA

18 In re:
19 MATHON FUND, L.L.C., et al,
20 Debtors.

21 Chapter 11 Proceedings
22 Case No: 05-27993 PHX GBN
23 (Jointly Administered with Case Nos.
24 05-27994 PHX-SSC and
25 05-27995 PHX- JMM)

26 THIS FILING APPLIES TO:

- 27 ALL DEBTORS
- 28 SPECIFIED DEBTORS

29 **MOTION TO AUTHORIZE SALE OF**
30 **BIDDLE ASHLAND PROPERTY**
31 **PURSUANT TO 11 U.S.C. §363**
32 **(3501 E. BIDDLE STREET, 4100 ASHLAND**
33 **AVENUE, BALTIMORE, MARYLAND)**

34 Mathon Fund I, the Debtor in the above-referenced matter, through counsel of record
35 undersigned hereby requests that this Court enter an Order authorizing the Debtor to enter into the
36 agreement of sale, a copy of which is attached hereto as Exhibit "A", and incorporated herein in
37 its entirety by reference. The Motion is based upon the following the Memorandum of Points and
38 Authorities.

39 DATED this 20th day of January, 2006.

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

41 /s/ 006510

42 _____
43 Lawrence E. Wilk
44 Special Counsel for Debtor

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 be
5 filed, in the Superior Court in and for the State of Arizona, a Verified Complaint in the above-
6 captioned matter against numerous individual defendants and entities, seeking the appointment of
7 a Receiver over the named Defendants.

8 2. On April 5, 2005, this Court issued its Order appointing James C. Sell Receiver for
9 the approximately 30 entities named in the Receivership complaint.

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

15 4. Paragraph 19 of the Conservatorship Order provides as follows:

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

21 5. In pursuit of his duties under the terms of the Conservatorship Order, the
22 Conservator has entered into the Agreement of Sale, a copy of which is attached hereto, subject to
23 Court approval.

24 6. Pursuant to an Order entered in the State Court proceeding on October 25, 2005,
25 that Court authorized the filing of bankruptcy for three Conservatorship Entities, Mathon Fund I,
26 LLC, Mathon Fund, LLC and W.S.F. – World Sports Fans, LLC.

27 7. On January 12, 2006, this Court entered an Order allowing for the Joint
28 Administration of the three bankruptcy estates referenced in paragraph 6, hereof. This Motion is
filed in the Mathon Fund LLC jointly administered case in accordance with the Court’s prior Joint
Administration Order. The assets being sold is an asset of the jointly administered Debtors.

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1 8. The Property being sold is located at 3501 East Biddle Street and 4100 Ashland
2 Avenue, Baltimore, Maryland. The Property consists of 650,000 +/- square feet, a former
3 specialty steel manufacturing and distribution facility, located on 36.6 +/- acres. An adjacent
4 non-contiguous 4 +/- acre employee parking lot is included in the Property (hereinafter
5 collectively referred to as the "Property"). The Property served as security for a \$6,410,000
6 Promissory Note executed by Biddle Ashland I, L.L.C., Biddle Ashland II, L.L.C., and Paul V.
7 Palitti, payable to Mathon Fund, I, L.L.C. which loan has been foreclosed upon with title to the
8 Property now vested in Mathon I, L.L.C.

9 II. Factual Background

10 1. On or about August 25, 2005, James C. Sell, on behalf of the Conservatorship
11 Estate entered into an Agreement of Sale for the purchase of the subject Property, for a purchase
12 price of \$4,000,000. At the time of execution of the Agreement, the Agreement was subject to
13 State Court approval. Subsequently, as a result of the above-referenced bankruptcy proceedings,
14 the Agreement is now subject to the jurisdiction of this Court, and shall require the approval of
15 this Court.

17 2. Upon execution of the Agreement, the borrowers provide a \$40,000 down
18 payment, which has been provided and has been in the possession of the Debtor. Thirty days
19 after the contract is ratified by the Court, buyer shall deliver an additional \$25,000.

20 3. Buyer shall have a period sixty days in which to complete his due diligence. At
21 the end of sixty days, in the event the contract is not cancelled, buyer agrees to fund an additional
22 \$50,000 earnest money deposit.

23 4. In the event that buyer shall terminate the contract prior to the expiration of the
24 investigative period, the earnest money on deposit shall be forfeited to the seller in consideration
25 for removing the Property from the marketplace for the investigative period.

26 5. Closing shall occur on or before ninety days after ratification of the contract.
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6. The Purchaser under the contract is Larry Cunningham, located at 823 Park Avenue, Baltimore, Maryland 21201.

7. The foregoing represents a portion of the material terms of the contract. The full contract is attached hereto as Exhibit "A".

8. Buyer has agreed, upon ratification of the contract by the Court, to incur future insurance premiums for the subject Property, and be responsible for the clean up of the Property.

9. The Debtor has inspected the Property, and has sought further information regarding the value of the Property.

10. Based upon the current condition of the Property, potential environmental risk, and continuing marketing efforts, the Debtor believes that the value set forth in the Agreement of Sale represents a fair value for the Property, and that it is in the best interest of the Debtor's Estate to complete the sale.

III. Legal Argument

11 U.S.C. 363 provides as follows:

(b)(1) the Trustee, after noticing hearing, may use, sell or lease, other than in the ordinary course of business, property of the Estate.

The Property sought to be sold was collateral for the prior loan of the Debtor Entity. After foreclosure, the Debtor now holds title to the subject Property, and seeks Court approval to sell the Property. In compliance with 11 U.S.C. § 363 of the Bankruptcy Code, the Debtor is seeking Court approval to allow for the transfer of the Property in accordance with the applicable law.

The sale shall be subject to higher and better offers.

DATED this 20th day of January, 2006.

JABURG & WILK, P.C.

/s/ 006510

Lawrence E. Wilk
Jonathan P. Ibsen
Special Counsel for Debtor

1 COPY of the foregoing mailed
2 this 20th day of January, 2006.

3 Michael W. Carmel 80 E. Columbus Ave. Phoenix, AZ 85012-4965 4 <i>Counsel for Debtor</i>	OFFICE OF THE U.S. TRUSTEE 230 N. 1 st Avenue, Suite 204 Phoenix, AZ 85003-1725 <i>U.S. Trustee</i>
5 Keith L. Beauchamp, Esq. Bret A. Maidman, Esq. 6 LEWIS & ROCA, LLP 40 N. Central Avenue, Suite 1900 7 Phoenix, AZ 85004-4429 8 <i>Attorney for Duane Slade and Guy Williams</i>	Wendy L. Coy, Esq. ARIZONA CORPORATION COMMISSION, SECURITIES DIVISION 1300 West Washington, 3 rd Floor Phoenix, Arizona 85007 <i>Counsel for Arizona Corporation Commission</i>
9 Robert A. Shull, Esq. MARISCAL, WEEKS, MCINTYRE & FRIEDLANDER, P.A. 10 2901 N. Central Avenue, Suite 200 Phoenix, AZ 85012-2705 11 <i>Attorney for Scott Johnson & Ross Farnsworth, Jr.</i>	Taylor Ashworth Alan A. Meda STINSON, MORRISON & HECKER, LLP 1850 N. Central Avenue, Suite 2100 Phoenix, Arizona 85004-4584 <i>Attorneys for the Official Creditor's Committee</i>
12 Thomas J. Salerno, Esq. SQUIRE, SANDERS & DEMPSEY, LLP 13 Two Renaissance Square 40 N. Central Avenue, Suite 2700 14 Phoenix, AZ 85004	Merwin D. Grant, Esq. GRANT & VAUGHN, PC 6225 N. 24 th Street, Suite 125 Phoenix, Arizona 85016 <i>Attorney for Dr. Glauser, Larry Pew & Rich Stewart</i>
15 Charles L. Firestein, P.C. CHARLES L. FIRESTEIN, P.C. 16 1300 E. Missouri Avenue, Suite D-200 Phoenix, AZ 85014	Scheer & Imfeld, LLP 100 Smith Ranch Road, Suite 306 San Rafael, CA 94903
17 Barry Bursley BURSLEY & ASSOCIATES, P.C. 18 3561 E. Sunrise Drive, Suite 225 Tucson, AZ 85718 19 <i>Attorney for R&A CPAs</i>	Robert B. Lochhead PARR WADDOUPS BROWN GEE & LOVELESS 185 S. State Street, Suite 1300 Salt Lake City, UT 84111 <i>Attorney for O & A Development</i>
20 James C. Sell 2222 E. Camelback Road, #110 21 Phoenix, Arizona 85016 22 <i>Court Appointed Receiver</i>	James R. Devaney, II FRANCOMANO & KARPOOK, P.A. 20 South Charles Street, 4 th Floor Baltimore, Maryland 21201-3217

23 And all creditors on the Master Mailing List.

24 /s/Janet Forster
25 _____
26
27
28

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

Exhibit "A"

AGREEMENT OF SALE

THIS AGREEMENT OF SALE (this "Agreement") is made this 16th day of August, 2005 (the "Agreement Date") by and between JAMES C. SELL, Conservator for MATHON FUND I, LLC, an Arizona limited liability company having an address of 2222 E. Camelback Road, Suite 110, Phoenix, Arizona 85016 (hereinafter called "Seller") and LARRY CUNNINGHAM, having an address of 823 Park Avenue (hereinafter called "Buyer").
Baltimore, MD. 21201

WITNESSETH:

WHEREAS, Seller desires to sell and convey to Buyer, who desires to purchase, all those certain lots, pieces and parcels of ground consisting of (i) the approximately thirty six (36.0) acre parcel of land designated and known as 3501 Biddle Street, Baltimore City, Maryland, 21223 and (ii), the approximately four (4.0) acre parcel of land designated as 4100 Ashland Street, Baltimore City, Maryland, 21223 (collectively, the "Land"), together with the improvements located thereon consisting of 642,000 square feet, more or less, of office space and warehouse facilities (the "Improvements"), as more particularly described on Exhibit "A" attached hereto and made a part hereof (the Land and the Improvements are collectively referred to as the "Property").

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties hereto, intending to be legally bound hereby, agree as follows:

1. PURCHASE PRICE. Seller shall sell and convey to Buyer and Buyer shall purchase the Property upon the terms and conditions contained in this Agreement. The total consideration and purchase price (the "Purchase Price") which Buyer agrees to pay to Seller and which Seller agrees to accept for the Property is Four Million Dollars (\$4,000,000.00), subject to the adjustments, apportionments and other provisions of this Agreement payable as follows:

(a) Upon execution of this Agreement by Buyer, Buyer shall deliver to Francomano & Karpook, P.A., 20 S. Charles St. 4th Floor, Baltimore, MD. 21201 a cashier's or certified check as an initial deposit under this Agreement in the sum of Forty Thousand Dollars (\$40,000.00) (the "First Deposit") payable to the order of James C. Sell, conservator for Mathon Fund I LLC. Said check will be released by Francomano & Karpook to Seller upon the ratification of this agreement as provided in paragraph 6(n). Thirty days after this contract is ratified in accordance with paragraph 6(n), Buyer shall deliver to Seller a cashier's or certified check as a further deposit under this Agreement in the sum of Twenty Five Thousand Dollars (\$25,000.00) as an increase to the First Deposit payable to the order of James C. Sell, conservator for Mathon Fund I LLC. Hereafter the First Deposit shall include both amounts referenced in this paragraph 1(a) and the Second Addendum to this Agreement.

(b) Unless, in accordance with Section 3, Buyer notifies Seller in writing prior to the expiration of the Investigation Period that the conditions as to the Property are not satisfactory to Buyer and Buyer terminates this Agreement, Buyer, within two (2) days after expiration of the Investigation Period, shall pay to Seller, an additional deposit in the sum of

Fifty Thousand Dollars (\$50,000) (the "Second Deposit") (the First Deposit and the Second Deposit, together with any and all interest accrued thereon, shall be collectively referred to herein as the "Deposit").

(c) At Closing (as that term is hereinafter defined), the Deposit shall be applied by Seller in partial payment of the Purchase Price.

(d) At Closing, Buyer shall pay to Seller the entire Purchase Price (less the amount of the Deposit, if theretofore paid to Seller), subject to any adjustments to the Purchase Price set forth in this Agreement, by a title insurance company check or wired funds sent to the account of Seller in accordance with Seller's written wiring instructions.

2. **DEPOSIT.** If this Agreement is terminated by Buyer prior to the expiration of the Investigation Period, then the First Deposit shall be retained by the Seller in consideration of the Seller removing the Property from the market during the Investigation Period. If this Agreement is not terminated by Buyer pursuant to the provisions of Section 3 prior to the expiration of the Investigation Period but, thereafter, either Seller or Buyer defaults in the performance of any of the terms and conditions of this Agreement and/or fails to complete Closing hereunder, then the default provisions of Section 12 shall apply.

3. **INVESTIGATION PERIOD.** Buyer shall have a period until **Sixty (60) days from contract ratification**, which means the date on which Court approval of this Agreement as provided in paragraph 6(n) is obtained, (the "Investigation Period"), in which to evaluate the environmental, structural and other conditions of the Property that Buyer, in its sole discretion, deems necessary or advisable. If Buyer determines, in its sole discretion, that such conditions are not satisfactory, then Buyer shall so notify Seller in writing prior to the expiration of the Investigation Period. In such event, this Agreement shall automatically terminate. Thereafter neither party shall have any rights as against or owe any further liability or obligation to the other. All costs and expenses incurred by Buyer in connection with its investigation of the Property and Buyer's inspection of Seller's information and records shall be paid for solely by Buyer.

4. **CLOSING.**

(a) The settlement of the purchase and sale of the Property hereunder ("Closing") shall take place at 10:00 a.m. on or before **Ninety days from date of Contract ratification**, subject to the provisions of Section 3 above, in the offices of Buyer's counsel or settlement agent selected by Buyer and at any other time or place in the Baltimore metropolitan area as agreed upon in writing by the parties hereto) (hereafter "Closing Date") all provided that each condition precedent set forth in the provisions of Section 8 has been satisfied or the satisfaction thereof waived in writing by Buyer.

(b) At Closing, Seller shall deliver to Buyer the documents described in Section 17 below and Seller will be responsible for paying the following settlement costs:

(i) the Broker's Commission, if any, (described in Section 10 below);

(ii) one-half of the transfer, recordation and documentary stamps and taxes described in Section 5(g) below; and

(iii) the cost to record the Release of the existing Deed of Trust which constitutes a lien on the Property.

Except as otherwise specifically provided for in this Agreement or as hereafter agreed to by the parties in writing, all other costs of settlement to be paid at or with respect to the Closing shall be paid by Buyer.

(c) Buyer, by its acceptance of the Deed at Closing, acknowledges and agrees that Buyer accepts the Property in its then AS-IS condition.

5. APPORTIONMENTS.

(a) Real estate taxes (on the basis of the actual fiscal years for which such taxes are assessed) on the Property, minimum water and sewer rentals, rents, including without limitation expense pass through, and other sums paid by tenants, licensees and concessionaires under the Tenant Leases (as hereafter defined), if any, shall be apportioned pro rata between Seller and Buyer on a per diem basis as of the Closing Date. If Buyer discovers at any time after the Closing Date that any tenants have prepaid rents or other charges which were not credited to Buyer at Closing as required by this Section, Seller shall pay such sums to Buyer upon notice from Buyer.

(b) All rents and other sums collected by Buyer after the Closing Date (the "Post-Closing Rental Payments") will also be apportioned pro rata between Seller and Buyer on a per diem basis as of the Closing Date. All Post-Closing Rental Payments paid to Buyer shall first be applied to the oldest rentals then owed under the Tenant Leases. Buyer shall pay to Seller its pro rata share of the Post-Closing Rental Payments within thirty (30) days following Buyer's receipt of such rental payments. At Closing, Seller shall identify all tenants which are in arrears in the payment of rent on the Closing Date. Seller reserves the right to bring such action as may be available to Seller to collect rents owing to Seller.

(c) The dollar amount of all real estate taxes on the Property for the fiscal year beginning July 1, 2005 and ending June 30, 2006 has been established by the State of Maryland and the City of Baltimore. All such taxes shall be apportioned as of the Closing Date and paid thereafter by Buyer.

(d) If, at Closing, the Real Property or any part thereof is affected by an assessment which is payable in installments of which the first installment is then a charge or lien, or has been paid, then all unpaid installments of such assessments, including those which are to become due and payable after Closing, shall be apportioned as of the Closing Date and assumed and paid thereafter by Buyer whether or not assessments have been levied at Closing.

(e) Intentionally left blank.

(f) Seller shall obtain readings of the electric, water and sewer meters servicing the Property (other than meters measuring exclusively utility consumption which is to be paid in full by tenants under Tenant Leases) to a date no sooner than five (5) days prior to the Closing Date. At Closing, Seller shall pay all utility charges assessed against the Property, including those based upon such meter readings, adjusted to include a reasonable estimate of the additional charges due for the period from the dates of the respective readings until the Closing Date. If Seller is unable to obtain readings of any meters prior to the Closing Date, Closing shall be completed without such readings and upon the obtaining thereof, Seller shall pay the charges incurred prior to the Closing Date as reasonably determined by Buyer and Seller.

(g) Seller and Buyer shall each pay at Closing one-half of all transfer, recordation and documentary stamps and taxes imposed or assessed in order to record the Deed conveying the Property from Seller to Buyer as contemplated by this Agreement. Buyer acknowledges that the Property is owned by the Seller as a result of Seller's purchase of the Property at a foreclosure sale on January 6, 2005, and Buyer agrees that it will pay half of all transfer and recording taxes required to convey the Property to Buyer from Seller. Seller and Buyer shall use their best efforts to structure the transaction for the sale and transfer of the Property to minimize transfer and recording taxes. The understanding of the parties is that the property will be conveyed by John R. Francomano, as Trustee, to a limited liability company owned by Seller or as the parties may agree and that Buyer will buy the membership interest in said limited liability companies at closing.

6. **SELLER'S REPRESENTATIONS AND WARRANTIES.** Seller, to induce Buyer to enter into this Agreement and to complete Closing, makes the following representations and warranties to Buyer, which representations and warranties are, to the best of Seller's knowledge, true and correct in all material respects as of the date of this Agreement, and shall be true and correct in all material respects at and as of the Closing Date as though such representations and warranties were made both at and as of the date of this Agreement and at and as of the Closing Date. Any and all Schedules required to be delivered by this Section shall be delivered by Seller to Buyer on or before the date of ratification of this agreement as provided in paragraph 6(n).

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED FOR HEREIN. THE PROPERTY IS BEING SOLD AND CONVEYED TO BUYER IN ITS "AS-IS" CONDITION.

(a) Schedule "B-I" to this Agreement is a complete and correct list of all of the leases, tenancies, licenses and other agreements for the use or occupancy of any portion of the Property in effect on the date of this Agreement (the "Tenant Leases").

(b) Each of the Tenant Leases is valid and subsisting and in full force and effect and the tenant thereunder is in actual possession of the leased premises and neither the tenant nor the landlord is in default under the Tenant Lease.

(c) The copies of the Tenant Leases to be delivered by Seller to Buyer within ten (10) days after execution of this Agreement are true and complete copies of such Tenant Leases and the same have not been further amended, modified, or supplemented. No tenant

thereunder has any right to extend or renew the term thereof except as expressly set forth in its Tenant Lease.

(d) The rents and other payments set forth on the Rent Roll attached hereto as Schedule "B-2" are the actual rents, income and charges presently being collected by Seller under the Tenant Leases, all minimum rent is payable monthly in advance.

(e) Except as set forth in the Tenant Leases, no tenant under any of the Tenant Leases is entitled to any concession, allowance, rebate or refund.

(f) Except as set forth on Schedule B-2, no tenant under any of the Tenant Leases has prepaid any rent or other charges for more than the current month.

(g) Intentionally left blank.

(h) No security deposits have been paid by tenants under the Tenant Leases which have not previously been returned to the tenants, except as listed on Schedule "B-3",

(i) No brokerage or leasing commissions or other compensation is due or payable to any party ("Lease Broker") with respect to or on account of the occupancy by any tenant of any portion of the Property during the current lease term under any of the Tenant Leases.

(j) No tenant under any of the Tenant Leases has any right or option to acquire the Property or any portion thereof and there are no outstanding agreements with any other party granting any right or creating any obligation to acquire the Property or any portion thereof or any interest therein.

(k) Seller has no obligation to pay rent or satisfy any other obligation of any tenant under any Tenant Lease for space in any other building, or to purchase any tenant's leasehold estate in any other building, or to contribute to any tenant for unfinished tenant leasehold improvements.

(l) There are no management, service, equipment, supply, security, maintenance, construction, concession or other agreements with respect to or affecting the Property, except for the agreements listed on Schedule "B-4" to this Agreement (collectively, the "Service Agreements"); and, if requested in writing by Buyer prior to the expiration of the Investigation Period, each of the Service Agreements shall be terminated by Seller at or prior to Closing and all sums due thereunder paid in full by Seller.

(m) Intentionally left blank

(n) To the knowledge of Seller, there are no proceedings pending or threatened against or affecting Seller or the Property or any portion thereof or any of the Tenant Leases or Service Agreements or relating to or arising out of the ownership, management or operation of the Property, or the violation of any applicable law, ordinance, code, rule or regulation, in any court or before or by any federal, state, county or municipal

department, commission, board, bureau or agency or other governmental instrumentality. Buyer acknowledges that the Superior Court for Maricopa County, Arizona, appointed a conservator for the assets of Mathon Fund I LLC, the purchaser at the foreclosure sale held on January 6, 2005, and that Court or such other court as may retain jurisdiction over the conservatorship assets must approve the sale contemplated by this Agreement.

(o) Except as identified in Schedule B-5, Seller has not received any notice of any condemnation proceeding or other proceedings in the nature of eminent domain ("Taking") in connection with the Property, and to Seller's knowledge no Taking has been threatened.

(p) Buyer agrees that it shall be responsible for the costs of clean up of construction and demolition waste and debris which was improperly stored in the building designated as the Band Saws Building on the Property or any other conditions at the Property relative to the disposal of waste or debris dumped on the property. It is the expressed purpose of this provision to transfer the risk and cost of property clean-up to Buyer at Buyer's cost and expense.

(q) All contractors, subcontractors and other persons or entities furnishing work, labor, materials or supplies for the development and construction of the Property have been paid in full and there are no claims against Seller or the Property in connection therewith.

(r) Mathon Fund I LLC was duly organized as a limited liability company.

(s) Seller must obtain the approval of this contract of sale from the Circuit Court for Maricopa County, Arizona, and will promptly obtain that approval. However, this agreement is not binding on the Seller until ratified by said Court.

7. **OPERATIONS PRIOR TO CLOSING.** Between the date of the execution of this Agreement and Closing:

(a) After the signing of the Agreement (i) Seller shall not enter into any new Service Agreement or any contract for or on behalf of or affecting the Property which cannot be terminated upon no more than thirty (30) days prior notice; and (ii) Seller shall not execute any new lease or any lease extension for a term exceeding ninety (90) days for any portion of the Property without giving prior written notice to Buyer.

(b) Buyer, its attorneys, accountants, architects, engineers and other representatives shall be afforded access to the Property and to all books, records and files relating thereto from time to time prior to Closing at such times as are acceptable to Seller and Seller's tenants and in such manner so that such access does not unreasonably interfere with the business operations of Seller or Seller's tenants in the Property. Buyer, its attorneys, accountants and other representatives, shall be permitted to make and are authorized to make any searches of governmental records as they deem necessary with respect to the Property; and Seller agrees to cooperate with Buyer and its attorneys and other representatives in this regard and to issue any consents or authorizations required therefor.

To the extent any of Buyer's investigative or evaluation procedures or studies cause any damage to or alteration of the Property, Buyer agrees, at its own cost, to promptly restore the Property to its original condition. Buyer agrees to indemnify and hold Seller harmless from all liability, claims, losses, damages, costs and expenses, including attorney fees, arising out of or resulting from the performance of any such testing or studies by Buyer or its agents. In the event this Agreement is terminated and the Property is not conveyed to Buyer as contemplated hereunder, Buyer shall deliver to Seller full and complete copies of all reports, studies, surveys and other documentation obtained by Buyer with respect to the Property subsequent to the date of this Agreement. Neither Buyer nor anyone acting on Buyer's behalf shall be entitled to conduct any soil borings or monitor any water underneath the Property without first obtaining Seller's written consent as to the location and methodology of such testing and the use and disclosure of the information obtained from such testing. A copy of each environmental report hereafter obtained by Buyer with respect to the Property shall be delivered to Seller within seven (7) days of Buyer's receipt of such report.

(c) Notices. Promptly after receipt thereof by Seller, Seller will exercise reasonable diligence in delivering to Buyer the following:

(i) a copy of any notice of default given or received under any existing mortgage, the Tenant Leases or the Service Agreements;

(ii) a copy of any tax bill, notice or statement of value, or notice of change in a tax rate affecting or relating to the Property;

(iii) a copy of any notice of an actual or alleged Violation; and

(iv) a copy of any notice of Taking.

8. **CONDITION PRECEDENT.** The obligations of Buyer under this Agreement are subject to the satisfaction at the time of Closing of each of the following conditions (anyone of which may be waived in whole or in part in writing by Buyer at or prior to Closing):

(a) all of the representations and warranties by Seller set forth in this Agreement shall be true and correct at and as of the Closing Date in all material respects as though such representations and warranties were made both at and as of the date of this Agreement and at and as of the Closing Date;

(b) no representation or warranty by Seller contained in this Agreement shall contain any untrue statement or shall omit a material fact necessary to make the statement of fact therein recited not misleading; and

(c) Seller shall have performed all covenants, agreements and conditions required by this Agreement to be performed by Seller prior to or as of the Closing Date.

In the event any of the conditions set forth in this Section 8 are not satisfied as of the Closing Date, Buyer shall have the right (in addition to all other rights and remedies available to Buyer under this Agreement), at Buyer's sole option (by written notice to Seller) to (i) terminate

Buyer's obligations under this Agreement and receive a refund of the Deposit, or (ii) complete Closing notwithstanding the unsatisfied condition, or (iii) adjourn the Closing to a date not later than thirty (30) days after the date originally scheduled for Closing hereunder, during which period Seller shall endeavor to satisfy any unsatisfied conditions within Seller's power to satisfy.

9. TITLE, CONVEYANCE AND COSTS.

(a) Title to the Property shall be conveyed in fee simple by special warranty deed. Title shall be good and marketable and such as will be insured at regular rates by the Title Company and shall be free and clear of all liens, encumbrances, and easements, excepting those shown on the title report mentioned hereafter unless objected to by Buyer as herein provided, and any easements granted to public and private utility companies and municipal authorities for facilities (including access, expansion and maintenance of facilities) in or along streets or roads abutting the Property. Seller agrees to deliver to Buyer a copy of Seller's existing title insurance policy or a marked-up title commitment, for the information of Buyer. Buyer shall order a report of title from a title insurance company of its choice promptly after the Agreement Date and advise Seller within five days after Buyer's receipt of said title report or _____, whichever is earlier, if it has any objections to any exceptions shown on said report. Any items such as mortgages, liens, etc. requiring a payment of money shall be satisfied by Seller at or prior to Closing. Any other objections are waived unless Buyer notifies Seller on or before June 30, 2005.

(b) The Buyer will pay the premium for its title search and insurance or the fee for cancellation of same, if any and all of Buyer's settlement costs.

(c) Any survey or land development plan which may be required by the title insurance company or the abstracting attorney, for the preparation of an adequate legal description of the Property (or the correction thereof) shall be provided by Buyer at no cost to Seller.

(d) In the event that Seller is unable to give a good and marketable title and such as will be insured by a reputable title insurance company, subject to aforesaid, Buyer shall have the option of taking such title as Seller can give without abatement of the Purchase Price or terminating this Agreement and being repaid the Deposit, and there shall be no further liability or obligation on either of the parties hereto and this Agreement shall become null and void. This paragraph 9(d) shall be Buyer's sole remedy in the event Seller is unable to convey good and marketable title to the property.

10. **BROKERS.** Each party hereto represents to the other that it has not authorized any broker or finder to act on its behalf in connection with the sale and purchase hereunder and that such party has not dealt with any broker or finder purporting to act on behalf of any other party in such a manner as to cause a claim for commission to arise. Each party hereto shall indemnify, defend and hold harmless the other party from and against any and all claims, losses, damages, liabilities, cost or expenses of any kind or character arising out of or resulting from any agreement, arrangement or understanding alleged to have been made by such party

or on its behalf with any broker or finder in connection with this Agreement or the transaction contemplated hereby other than the Broker.

11. **MAINTENANCE AND RISK OF LOSS.**

(a) Seller shall maintain the Property to the date and time of Closing in its present condition, normal wear and tear excepted.

(b) Intentionally left blank.

12. **DEFAULT.** If Buyer defaults in the performance of any of the terms and conditions of this Agreement and fails to complete Closing hereunder, Seller shall be entitled to accept forfeiture of the Deposit under this Agreement as liquidated damages and as Seller's sole and exclusive remedy hereunder. Upon Buyer's default, this Agreement shall be deemed null and void and of no further force or effect and neither party shall thereafter have any rights as against or owe any obligation to the other. If there has been a breach of Seller's representations or other obligations hereunder, or if Seller shall fail to proceed to Closing, then Buyer shall be entitled to, as its sole remedies, immediate refund of the Deposit and/or an action for specific performance of this Agreement.

13. **RECORDING.** Neither this Agreement of Sale, nor any copy or memorandum hereof, shall be filed or recorded in any public office.

14. **INTERPRETATION.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Maryland.

15. **BINDING EFFECTS.** This Agreement shall be binding upon Buyer and Seller and their respective successors and assigns.

16. **TIME OF ESSENCE.** Time is of the essence in the performance of all the terms, covenants, conditions and obligations of this Agreement.

17. **SELLER'S DELIVERIES AT CLOSING.**

At Closing, Seller shall deliver to Buyer the following:

(a) **Deed.** A special warranty deed for the Property, duly executed by Seller. Legal title to the Property shall be delivered to Buyer on the date of Closing, subject to the Tenant Leases.

(b) **Assignment of Tenant Leases.** An Assignment of the Tenant Leases.

(c) **Bill of Sale and Assignment.** A bill of sale and assignment, duly executed and acknowledged by Seller, of (and delivery to Buyer or originals or copies of) the any equipment and personal property located at the Property to which Seller has title.

(d) Resolutions, Title Company Affidavits, etc. Such resolutions and certificates as the Title Company shall require to evidence the due authorization of the execution and performance of this Agreement and the documents to be delivered pursuant hereto required by the Title Company to permit it to issue to Buyer the Owner's Policy of Title Insurance required pursuant to Section 9 of this Agreement.

18. CONFIDENTIALITY. Buyer covenants and agrees to (a) keep confidential and not to disclose to any third party (or permit the disclosure of) (i) any and all information provided to Buyer by Seller and Seller's agents pursuant to this Agreement and (ii) any and all information and reports pertaining to the Property obtained by Buyer; and (b) use all information and reports on the Property which hereafter come into Buyer's possession for the sole purpose of analyzing the transaction provided for in this Agreement. The parties agree to protect the confidentiality of the transaction contemplated hereby and their negotiations with respect thereto. The parties further agree not to disclose the transaction contemplated hereby and their negotiations with respect thereto to any third party, except their lawyers, accountants and agents retained by them in connection with this transaction. All information provided by Seller or Seller's agents to Buyer or Buyer's agents shall be treated as confidential, and will be returned to Seller should Buyer not purchase the Property. All third party studies conducted by Buyer shall be confidential and shall be delivered to Seller in the event Buyer does not acquire the Property. The confidentiality obligations of Seller and Buyer under this Section 18 shall survive the Closing and termination of this Agreement by either party for any reason.

19. NOTICES. Any notices required or permitted hereunder shall be deemed delivered if addressed to the parties at the addresses stated below (i) on the date of personal delivery to a party, (ii) on any business day if sent by facsimile transmission, (iii) two (2) business days following the date on which such notices were deposited in the United States Mail with first class postage prepaid, or (iv) one (1) business day following the day sent via a reputable overnight courier service if:

To Seller: James C. Sell, Conservator for Mathon Fund I LLC
2222 E. Camelback Rd., Suite 110
Phoenix, AZ. 85016

With a copy to: Lawrence E. Wilk, Esq.
Jaburg & Wilk, P.C.
3200 N. Central Ave, Suite 2000
Phoenix, AZ. 85012

To Buyer: *Larry Cunningham*
823 Park Avenue
Baltimore, MD. 21201

20. ESCROW AGENT. Buyer acknowledges that any deposits made under this agreement will be paid directly to Seller and no escrow is created for such deposit under this Agreement.

21. **ASSIGNMENT.** Buyer shall not before Closing assign any or all of its rights under this Agreement without first obtaining Seller's express, written consent thereto; provided, that anything contained in the foregoing provisions of this Section to the contrary notwithstanding, Buyer may make any such assignment to any corporation, general or limited partnership, or limited liability company, if both at the time of such assignment and thereafter until Closing Buyer (or the person or group of persons who on the date hereof own a majority of the partnership interests in or common stock of Buyer) has an ownership interest in such assignee. Subject to the operation and effect of the foregoing provisions of this Section 21, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns in interest hereunder.

22. **ENTIRE AGREEMENT.** This Agreement represents the entire agreement between Buyer and Seller and supersedes all prior oral and written proposals, communications and agreements regarding the Property. Neither Buyer nor Seller shall be bound by any understanding, agreement, promise, representation or stipulation, whether oral or written, expressed or implied, not specified in this Agreement.

23. **DELIVERY FOR EXAMINATION. DELIVERY OF THIS AGREEMENT TO SELLER SHALL NOT BIND BUYER IN ANY MANNER, AND NO OBLIGATIONS OF BUYER OR SELLER SHALL ARISE UNLESS AND UNTIL THIS INSTRUMENT IS SIGNED BY A DULY AUTHORIZED REPRESENTATIVE OF BOTH SELLER AND BUYER.**

24. **COUNTERPARTS.** This Agreement and any other documents or instruments required under this Agreement may be executed in counterparts, each of which shall for all purposes be deemed an original and all of which together shall constitute one and the same agreement, document or instrument.

IN WITNESS WHEREOF, the parties intending to be legally bound hereby have executed this Agreement as of the day and year shown above:

WITNESS:

SELLER:

By: James C. Kelly, Conservator
Mathon Fund I, LLC

BUYER:

Andrea K. Kokkalis
SANDRA K. KOKKALIS

Dave Cunningham
Harry Cunningham

LIST OF EXHIBITS AND SCHEDULES TO AGREEMENT OF SALE
dated _____ between
MATHON FUND I, LLC ("Seller") and
_____ ("Buyer").

EXHIBITS

- A - Legal Description of Property
- B - Form of Assignment and Assumption of Tenant Leases

SCHEDULES

- B-1 - List of Tenant Leases
- B-2 - Rent Roll
- B-3 - Security Deposits
- B-4 - List of Service Agreements

FIRST ADDENDUM TO THE AGREEMENT OF SALE

THIS FIRST ADDENDUM TO THE AGREEMENT OF SALE dated this 16th day of August, 2005, executed by James C. Sell, Conservator for MATHON FUND I, LLC, an Arizona, an Arizona limited liability Company ("Seller") and LARRY CUNNINGHAM, on his assignee ("Buyer") (the "Purchase Agreement") is dated effective as of August 16, 2005.

The terms of the Purchase Agreement are modified and supplemented as follows:

1. Unless otherwise defined herein, all capitalized terms in this Addendum shall have the meaning set forth in the Purchase Agreement.

2. Paragraph 6 of the Purchase Agreement is supplemented to clarify that Seller has not had possession of or use of the Property, and has no personal knowledge as to the condition of the Property or any violations of City, County, State or Federal building, zoning, environmental, fire or health laws, codes, statutes, ordinances or regulations pertaining to the Land. Accordingly, Seller is making no representations or warranties concerning the condition or value of the Property. **BUYER CONFIRMS THAT THE PROPERTY IS BEING SOLD AND CONVEYED TO BUYER IN ITS "AS-IS" CONDITION.**

3. The Seller represents, warrants and agrees as follows:

3.1 Definitions. As used in this Addendum, the following terms shall have the following meanings:

(a) "CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended from time to time (42U.S.C. 9601 et seq.)

(b) "Environment" means any water including but not limited to surface water and ground water or water vapor, any land, including land surface or subsurface, stream sediments, air, fish, wildlife, plants, biota and all other natural resources or environmental media.

(c) "Environmental Laws" mean all federal, state and local environmental, land use, zoning, health, chemical use, safety and sanitation laws, statutes, ordinances, regulations, codes and rules relating to the protection of the Environment and/or governing the use, storage, treatment, generation, transportation, processing, handling, production or disposal of Hazardous Substances and the rules, regulations, ordinances, bylaws, policies, guidelines, procedures, interpretations, decisions, orders and directives of federal, state and local governmental agencies and authorities with respect thereto.

(d) "Environmental Permits" mean all permits, licenses, approvals, authorizations, consents or registrations required by any applicable Environmental Law in connection with the ownership, lease, purchase, transfer, closure, use and/or operation of the Property, and/or operation of the Property for the storage, treatment, generation,

transportation, processing, handling, production or disposal of Hazardous Substances.

(e) "Hazardous Substance" means, without limitation, *any* flammable explosives, radon, radioactive materials, asbestos, urea formaldehyde foam insulation, polychlorinated byphenyls, petroleum and petroleum products, methane, hazardous materials, hazardous wastes, hazardous or toxic substances and any other material defined as a hazardous substance in the CERCLA; the Hazardous Materials Transportation Act, as amended, 49 U.S.C. Sections 1801, et. seq.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Sections 6901, et. seq.; Maryland State Law or any other federal, state or local law, regulation, rule, ordinance; bylaw, policy, guideline, procedure, interpretation, decision, order or directive, whether existing as of the date hereof, previously enforced or subsequently enacted.

(f) "Release" has the same meaning as given to that term in CERCLA.

3.2 Indemnification. Buyer hereby covenants and agrees, at its sole cost and expense, to indemnify, protect, defend and save harmless Seller from and against any and all damages, losses, charges, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, actions, proceedings, costs, disbursements and/or expenses, including, without limitation, all reasonable attorneys' and experts' fees, costs of investigation, monitoring, remedial response, removal, restoration or permit acquisition of any kind whatsoever, which may now or in the future be undertaken, suffered, paid, awarded, assessed, imposed, asserted or otherwise incurred by Seller or any other person or entity relating to, resulting from or arising out of any of the following which occurred or may have occurred prior to Seller's acquisition of the Property:

(a) The use of the Property for the storage, treatment, generation, transportation, processing, handling, production or disposal of any Hazardous Substance or as a landfill or other waste disposal site or for military, manufacturing or industrial purposes or for the storage of petroleum or petroleum based Products;

(b) The presence of any Hazardous Substance or a Release or the threat of a Release of any Hazardous Substance on, at or from the Property;

(c) The failure to promptly undertake and diligently pursue to completion all necessary, appropriate and legally authorized investigative, containment, removal, clean up and other remedial actions with respect to a Release or the threat of a Release of any Hazardous Substance on, at or from the Property;

(d) Human exposure to any Hazardous Substance, noises, noxious fumes, vibrations or nuisances of whatever kind to the extent the same arise from the condition of the Premises or the ownership, use, operation, sale, transfer or conveyance thereof;

(e) A violation of any applicable Environmental Law;

(f) Non-compliance with any Environmental Permit; or

(g) A material misrepresentation or inaccuracy in any representation or warranty or a material breach of or failure to perform any covenant made by Buyer under this Addendum (collectively, the "Indemnified Matters").

3.3 Insurance on Property. Buyer shall *name* Seller as an additional insured on any comprehensive general liability insurance policy with respect to such Indemnified Matters relating to the Property, and shall furnish Seller with such certificates or endorsements evidencing proof of such insurance. Certificates furnished by Buyer shall contain a clause requiring that Seller be notified in writing at least thirty (30) days prior to cancellation or any material changes in the policies.

3.4 Environmental Reports. Buyer shall deliver to the Seller, promptly following discovery of or receipt of notice of any violation of Environmental Laws, any notices, correspondence or statements concerning such violation, and shall cause Seller to be copied and covered as a third party beneficiary by any environmental reports and remediation with respect to the Property.

4. Paragraph 12 is modified to provide that if there has been a breach of Seller's representations or other obligations under the Purchase Agreement, or if Seller shall fail to proceed to Closing, then Buyer shall be entitled, as its sole remedy, immediate refund of the Deposit.

5. The Purchase Agreement, as modified and supplemented by this Addendum, constitutes the entire agreement between the parties, superseding all prior agreements, oral or written. In the event of conflict between the Purchase Agreement and this Addendum, this Addendum shall govern and control.

6. This Addendum may be executed in counterpart by Buyer and Seller, all of which shall be deemed to constitute an original.

IN WITNESS WHEREOF the parties have executed this Agreement as of the dates set forth below.

BUYER:

LARRY CUNNINGHAM

BY: *Larry Cunningham*

Its: _____

Dated: 8-16-05

SELLER:

MATHON FUND I, LLC,
an Arizona limited liability Company

BY: *James C. Bell*

Its: *Conservator*

Dated: 8-25-05


**SECOND ADDENDUM TO AGREEMENT OF SALE
JAMES C. SELL, CONSERVATOR FOR MATHON FUND I, LLC AND
LARRY B. CUNNINGHAM, BUYER FOR HIS ASSIGNEE**

From the date that this Contract is executed by both parties and Buyer delivers its deposit under paragraph 1(a), Seller will authorize Buyer at Buyer's sole cost and expense to provide security for access to the property and perform maintenance, work, stabilization and clean up (including conversion of debris to CR6 product) at the property upon providing Seller three (3) days written notice of the scope of work intended to be performed by Buyer and obtaining Seller's authorization. Seller's consent to such work shall not be unreasonably withheld.

Buyer will indemnify and hold Seller harmless from any claim for broker's fees or commissions associated with the purchase of the property by Buyer from Seller.

Seller, James C. Sell, Conservator for Mathon Fund I, LLC, shall immediately seek ratification of the Contract aforesaid, by Maricopa County Arizona Court and notify Buyer within thirty (30) days of said Conservator's receipt of this Addendum and the Contract of Sale.

Time is of the Essence of the aforementioned Contract and this Addendum.



Larry Cunningham, Buyer

James C. Sell, Conservator for
Mathon Fund I, LLC, Seller

DATE: 8-16-05