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3 3200 North Central Avenue, Suite 2000
4 Phoenix, Arizona 85012
5 (602) 248-1000

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

MOTION FOR:
(1) AUTHORIZATION TO ENTER
INTO DEED OF LIEU WITH THE
RESERVE SPA, INC., AND
(2) AUTHORIZATION TO SELL
REAL PROPERTY

(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, AGC SECURITIES,
21 L.L.C., an unincorporated entity, ASPEN
22 GROVE CAPITAL GROUP, L.L.C., an
23 unincorporated entity,

24 DUANE SLADE and JENNIFER SLADE,
25 husband and wife, GUY ANDREW
26 WILLIAMS and LISA WILLIAMS, husband
27 and wife,

28
Defendants.

18 James C. Sell, the court appointed Conservator in the above-referenced matter,
19 through counsel of record undersigned, hereby requests that this Court enter an order
20 authorizing the Conservator to accept a Deed in Lieu of Foreclosure from The Reserve
21 Spa, L.L.C., and then enter into a subsequent sale of the real property subject to the Deed
22 in Lieu, (more particularly described in Exhibit "A") (the "Real Property") as more fully
23 set forth in the following Memorandum and Points of Authorities.

24 DATED this 29 day of April, 2005.

JABURG & WILK, P.C.



Lawrence E. Wilk
Attorneys for James C. Sell

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 I. **Procedural Background**

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

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

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

13 4. Paragraph 18 of the Conservatorship Order provides as follows:

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

19 5. Paragraph 19 of the Conservatorship Order provides as follows:

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

25 6. In pursuit of his duties under the terms of the Conservatorship Order, the
26 Conservator has reviewed agreements that were entered into by previous management,
27 and has determined that certain agreements with reference to the Real Property should be
28 ratified, and that Court Orders be obtained to facilitate the sale of the Real Property.

II. **Factual Background**

1. On or about October 14, 2003, Mathon Fund I, L.L.C., a Conservatorship
entity, entered into a loan transaction with The Reserve Spa, Inc. In addition to the

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1 execution of Promissory Note, The Reserve Spa, Inc., executed a Deed of Trust securing
2 the obligation of \$3,475,000 by the Real Property.

3 2. The borrower, The Reserve Spa, Inc., subsequently defaulted under the
4 terms of the Note prior to the appointment of the Conservator.

5 3. Prior the appointment of the Conservator, the then existing management
6 entered into an agreement whereby Mathon Fund I L.L.C. would accept a Deed in Lieu of
7 Foreclosure in order to obtain the immediate return of the Real Property.

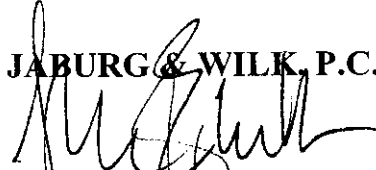
8 4. Prior to the appointment of the Conservator, the then existing management
9 entered into a purchase and sale contract, a copy of which is attached hereto as Exhibit
10 "B", which provided for the subsequent sale of the Real Property to R.T.S. Limited,
11 and/or its assigns, for a sale price of \$3,900,000. Under the terms of the real estate
12 purchase contract, closing is to occur on or before April 28, 2005.

13 5. The Conservator has reviewed these transactions and has determined that it
14 is the best interest of the investors for these transactions to be consummated.

15 6. The Conservator has confirmed with prior management and their counsel
16 that the sale is in the best interests of the investors, and the Conservatorship Estate, and
17 will maximize the return available to investors from the asset.

18 WHEREFORE, having discussed these issues in some detail with prior
19 management and employees, the Conservator believes that it is in the best interest of the
20 estate to consummate the prior agreements; and therefore respectfully requests that the
21 court enter orders approving (1) the acceptance of the Deed in Lieu from The Reserve
22 Spa, Inc., and (2) the subsequent sale of the property pursuant to the real estate purchase
23 contract entered into with R.T.S. Limited and/or its assigns.

24 DATED this 15 day of April, 2005.

25 JABURG & WILK, P.C.
26 
27 Lawrence E. Wilk
28 Attorneys for James C. Sell, Conservator

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ORIGINAL filed and **COPY**
of the foregoing faxed this
25th day of April, 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
this 25th day of April, 2005 to:

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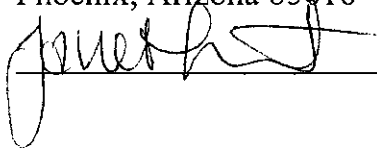


EXHIBIT "A"

Parcel 1:

Beginning at the West 1/4 Corner of Section 33, Township 41 South, Range 13 West, Salt Lake Base & Meridian, and running thence North 0°04'05" East, along the Section Line, 560.90 feet; thence South 89°47'55" East 367.00 feet to a point on the West right-of-way line of a Public Street, designated as 2170 West Street; thence along said right-of-way line, through the following 5 courses: South 0°04'05" West 41.44 feet to the point of curvature of a tangent curve, concave to the Northwest, having a radius of 368.50 feet and a central angle of 38°26'48"; thence Southwesterly, to the right, along the arc of said curve, 247.28 feet; thence South 38°30'53" West 107.19 feet to the point of curvature of a tangent curve, concave to the Southeast, having a radius of 331.26 feet and a central angle of 38°26'48"; thence Southwesterly to the left, along the arc of said curve 222.28 feet to a point on the 1/4 Section Line; thence North 89°45'37" West, along the 1/4 Section Line, 148.63 feet to the Point of Beginning.

Parcel 2:

Commencing at the West 1/4 Corner of Section 33, Township 41 South, Range 13 West Salt Lake Base & Meridian, and running thence South 89°45'34" East, along the 1/4 Section Line,

214.63 feet to a point on the East right-of-way line of a Public Street, designated as 2170 West Street; thence North $0^{\circ}04'05''$ East, along said right-of-way line, 0.20 feet to the beginning of a 265.26 foot radius curve, concave to the East; thence Northeast, to the right, along the arc of said curve, 30.01 feet, through a central angle of $6^{\circ}28'52''$, to the True Point of Beginning; thence continuing along the arc of said curve, 147.99 feet, through a central angle of $31^{\circ}57'56''$; thence North $38^{\circ}30'53''$ East 107.19 feet to the beginning of a tangent curve, concave to the Northwest, having a radius of 434.50 feet and a central angle of $15^{\circ}58'25''$, thence Northeasterly, to the left, along the arc of said curve, 121.13 feet; thence South $0^{\circ}04'05''$ West 328.45 feet; thence North $89^{\circ}47'55''$ West 155.01 feet; thence North $0^{\circ}12'05''$ East 5.00 feet; thence North $89^{\circ}47'55''$ West 28.67 feet to the True Point of Beginning.

Parcel 3:

Beginning at a point South $89^{\circ}45'34''$ East, along the 1/4 Section Line, 214.63 feet from the West 1/4 Corner of Section 33, Township 41 South, Range 13 West, Salt Lake Base & Meridian, and running thence North $0^{\circ}04'05''$ East 0.20 feet to the point of curvature of a tangent curve, concave to the East, having a radius of 265.26 feet and a central angle of $6^{\circ}28'52''$; thence Northeasterly, to the right, along the arc of said curve, 30.01 feet; thence South $89^{\circ}47'55''$ East 28.67 feet; thence South $0^{\circ}12'05''$ West 5.00 feet; thence South $89^{\circ}47'55''$ East 155.01 feet; thence South $0^{\circ}04'05''$ West 0.19 feet to the Southwest Corner of the Johnson property (Tax ID No. H-3-1-33-4401); thence South $89^{\circ}45'37''$ East, along the South boundary line of said parcel, 375.00 feet to the Southeast Corner of said parcel; thence North $0^{\circ}04'05''$ East, along the East boundary line of said parcel, 581.25 feet to the Northeast Corner of said parcel; thence North $89^{\circ}47'55''$ West, along the North boundary line of said parcel, 2.58 feet to the Southeast Corner of the Ketter property (Tax ID No. H-3-1-33-4335); thence along the East boundary line of the Ketter parcel through the following 3 courses: North $26^{\circ}28'05''$ East 284.38 feet to the point of curvature of a tangent curve, concave to the West, having a radius of 160.00 feet and a central angle of $67^{\circ}39'00''$, thence Northwesterly, to the left, along the arc of said curve, 188.91 feet; thence North $41^{\circ}10'55''$ West 125.00 feet to the Southeast Corner of the Assetto property (Tax ID No. H-3-1-33-4435); thence along the East boundary line of the Assetto parcel and the Barker parcel (Tax ID No. H-3-1-33-4420), through the following 2 courses: North $1^{\circ}47'55''$ West 410.00 feet; thence North $5^{\circ}12'05''$ East 564.44 feet to the Northeast Corner of the Barker parcel; thence South $89^{\circ}29'55''$ East 177.08 feet; thence North $0^{\circ}04'05''$ East 403.65 feet to a point on the South boundary line of the Hurricane City property (Tax ID No. H-3-1-33-1445); thence South $89^{\circ}49'59''$ East, along said boundary line, 341.74 feet to a point on a property line common to the Murie and Anderson parcels, Anderson Tax ID No. H-3-1-33-2446; thence along the boundary lines common to said parcels through the following 6 Courses: South $14^{\circ}11'15''$ East 372.77 feet; thence South $26^{\circ}41'15''$ East 300.00 feet; thence South $51^{\circ}26'15''$ East 200.00 feet; thence South $14^{\circ}07'15''$ East 263.40 feet; thence South $46^{\circ}16'15''$ East 374.60 feet; thence South $10^{\circ}07'15''$ East 456.00 feet to the Southeast Corner of the Anderson parcel; thence South $32^{\circ}54'37''$ West 40.42 feet to the Northeast Corner of the Hinton property, Document No. 403505, Book 651, Page 530; thence along the Westerly boundary of said parcel through the following 4 courses; South $43^{\circ}41'38''$ West 685.00 feet; thence South $45^{\circ}26'38''$ West 213.00 feet; thence South $21^{\circ}10'11''$ East 351.40 feet; thence South $0^{\circ}37'38''$ West 229.66 feet to a point on the North right-of-way line of Highway U-9; thence South $89^{\circ}52'57''$ West, along said right-of-way line, 223.43 feet; thence North $0^{\circ}01'07''$ East 446.53 feet to a point on the 1/4 Section Line; thence North $89^{\circ}45'34''$ West 1189.47 feet to the Point of Beginning.

Parcel 4:

EXHIBIT "B"



COMMERCIAL - INDUSTRIAL - INVESTMENT REAL ESTATE PURCHASE CONTRACT

P.5



THE BUYER RIS LTD and or partners **EARNEST MONEY RECEIPT**
 Harvest Money Deposit \$ 500,000 offers to purchase the Property described below and delivers as
 the Enclosure, to be deposited within three business days after Acceptance of this Offer to Purchase by all parties.
 the Title Insurance Company identified below.
 Received by First American Title Address 1240 East 100 South Ave 100
 Title/Insurance Company for deposit no later than (date) (date) Please Number
Harvest Money will be deposited within 3 business days after acceptance.

1. PROPERTY: OFFER TO PURCHASE
 Address 62 1/2 acres located in Hurricane, UT
 City Hurricane County Washington State/Prov.
 For legal description, see attached Addendum # preliminary title report when available as provided below.

1.1 INCLUDED ITEMS: Unless excluded herein, this note shall include all fixtures presently attached to the Property. The following personal property shall also be included in this sale as provided in this note:
1.2 EXCLUDED ITEMS: These items are excluded from this sale: N/A

2. PURCHASE PRICE AND FINANCING: Buyer agrees to pay for the Property as follows:
 \$ 5,000,000 Earnest Money Deposit
 \$ 1,793,000.00 Loan Proceeds
 Representing the liability to be assumed by Buyer under an existing assumed loan (with without Seller being released of liability) in this approximate amount with Buyer Seller agreeing to pay any loan transfer and assumption fees. Any net difference between the approximate balance of the loan shown above and the actual balance at Closing shall then be adjusted in cash check.
 From new institutional financing on terms no less favorable to the Buyer than the following: most favorable to Buyer
 (interest rate for three period prime adjustment, if any): _____ (amortization period): _____
 From seller-held financing, as described in the attached Seller Financing Addendum.
 Other: _____

\$ 2,008,000.00 Balance of Purchase Price to cash at closing
 \$ 1,600,000.00 TOTAL PURCHASE PRICE

3. CLOSING: This transaction shall be closed on or before May 26, 2005. Closing shall occur when: (a) Buyer and Seller have signed and delivered to each other (or to the escrow title company), all documents required by this Contract, by the Lender, by written escrow instructions signed by the Buyer and the Seller, and by applicable law; (b) the escrow company to be held under these documents have been delivered to the escrow title company in the form of cash or cleared funds; and (c) the deed which the Seller has agreed to deliver under Section 6 has been recorded. Seller and Buyer shall each pay one-half of the escrow Closing fee, unless otherwise agreed by the parties in writing. Taxes and assessments for the current year, rent, and interest on assumed obligations shall be prorated, as set forth in this Section. All deposits on inspection shall be transferred to Buyer at Closing. Provisions set forth in this Section shall be made as of date of Closing; date of possession; other _____.

4. POSSESSION: Seller shall deliver possession to Buyer within 24 hours after Closing.
5. CONFIRMATION OF AGENCY DISCLOSURE: At the signing of this Contract the Listing Agent John Country represents Seller Buyer. Buyer and Seller confirm that prior to signing this Contract written disclosure of the agency relationship was provided to the Buyer.

6. TITLE TO PROPERTY AND TITLE INSURANCE: (a) Seller has, or shall have at Closing, free title to the Property and agrees to convey such title to Buyer by general special warranty deed, free of financial encumbrances as excepted under Section 6.6; (b) Seller agrees to pay for, and furnish Buyer at Closing with, a current standard form Owner's policy of title insurance in the amount of the Total Purchase Price; (c) the title policy shall contain with Seller's obligations under Subsections (a) and (b). (Unless otherwise agreed under Section 6.4, the commitment shall contain with the title insurance commitment provided under Section 6.4.)
 The Buyer elects to obtain a full-coverage standard ALTA policy of title insurance under 6(b). The cost of this coverage, above that of a standard Owner's policy shall be paid for by the Buyer Seller. Also, the cost of a full-coverage ALTA survey, shall be paid for by the Buyer Seller.

7.3 SELLER DISCLOSURES: The Seller will deliver to the Buyer the following Seller Disclosures no later than the number of calendar days indicated below which shall be done after Acceptance:
 (a) a Seller Property Condition Disclosure for the Property, signed and dated by Seller; _____ (days)
 (b) a commitment for the policy of title insurance required under Section 6, to be funded by the title insurance company _____ (days)
 (c) a copy of all loan documents relating to any loan now existing which will encumber the Property after Closing; _____ (days)
 (d) a copy of all leases and rental agreements now in effect with regard to the Property together with a current and true and correct copy of the financial statements of the Property for the last _____ full fiscal years of operation plus the current fiscal year through _____ certified by the Seller or by an independent auditor.
 (e) tenant stopgap agreements.

Seller agrees to pay any change in the cost of the title commitment provided under subsection (b).
 If Seller does not provide any of the Seller Disclosures within the time specified above, the Buyer may either waive the particular Seller Disclosure requirement by taking no timely action or the Buyer may notify the Seller in writing within _____ calendar days after the expiration of the particular disclosure time period that the Seller is in Default under this Contract and that the amount under Section 10.4 be at the Buyer's disposal. The holder of the Earnest Money Deposit shall, upon receipt of a copy of Seller's written notice, return to the Buyer the Earnest Money Deposit without the requirement of further written authorization from the Seller.

7.1 BUYER UNDERTAKINGS: The Buyer agrees to:
 (a) Apply for approval of the assumption or funding of the loan proceeds described in Section 2 by completing, signing and delivering to the Lender the initial loan application and documentation required by the Lender and by paying all fees as required by the Lender (including approval fee) no later than _____ calendar days after Acceptance; and
 (b) No later than _____ calendar days after Acceptance, advise from the Lender to whom application is made under subsection (a) a written commitment to approve the assumption of the existing loan or to fund the new loan subject only to changes of conditions in Buyer's credit worthiness and to normal loan closing procedures; or, if Buyer elects, providing the Seller with blanket assurance, within the same time frame, that the proceeds required for funding the Total Purchase Price are available.
 Then Buyer Under-takings are if the sole express of the Buyer and are material elements of this Contract for the benefit of both the Buyer and the Seller. If Buyer does not initiate any Buyer Undertaking and provide Seller with written confirmation to the time agreed above, the Seller may either waive the particular Buyer Undertaking requirement by taking no timely action or the Seller may notify the Buyer in writing within _____ calendar days of the expiration of the particular undertaking time period that the Buyer is in Default under this Contract and that the amount under Section 10.4 be at the Seller's disposal. The holder of the Earnest Money Deposit shall, upon receipt of a copy of Seller's written notice, deliver to the Seller the Earnest Money Deposit without the requirement of further written authorization from the Buyer.

7.3 ADDITIONAL DUE DILIGENCE: The Buyer shall undertake the following Additional Due Diligence elements at its own expense and for its own benefit for the purpose of complying with the Contingencies under Section 6:
 (a) Ordering and obtaining an appraisal of the Property if one is not otherwise required under Section 7.3;
 (b) Ordering and obtaining a survey of the Property if one is not otherwise required under Section 6;
 (c) Ordering and obtaining any environmentally related study of the Property;
 (d) Ordering and obtaining a physical inspection report regarding, and completing a personal inspection of, the Property;
 (e) Requesting and obtaining verification that the Property complies with all applicable federal, state, and local laws, ordinances, and regulations with regard to zoning and permissible use of the Property.
 Seller agrees to cooperate fully with Buyer's completing these Due Diligence matters and to make the Property available as reasonable and necessary for this purpose.

10.4 This form produced by First American Real Estate Form Software 800-338-1047
 This contract is for use by Mr. George and Toni Houto 240 South Main Street Suite 200, or by any other party to 412921 and void in all other cases.
 Page 1 of 2
 [Signatures]

the same.

9. CONTINGENCIES. This offer is subject to the Buyer's approval in its own discretion of the Seller's disclosures, the Buyer's Underwriting, and Additional Due Diligence matters in Section 7. However, the Buyer's obligation in approving the terms of the loan under subsection 7.2 (b) is subject to Buyer's covenant with regard to ultimately acceptable financing terms under Section 7.

9.1 Buyer shall have 15 calendar days after the date specified in Section 7.1 and 7.2 for receipt of Seller's disclosures and for completion of Buyer's Underwriting to review the contents of the disclosures and the contents of the underwriting. The latest applicable date under Section 7.1 and 7.2 applies for completing a review of Additional Due Diligence matters under Section 7.1.

9.2 If Buyer does not deliver a written objection to either regarding a Seller's Disclosures, Buyer's Underwriting, or Due Diligence matter within the time provided in Section 9.1, that item will be deemed approved by Buyer.

9.3 If Buyer objects, Buyer and Seller shall have 15 calendar days after receipt of the objections to resolve Buyer's objections. Seller may, but shall not be required to, resolve Buyer's objections. Likewise, the Buyer is under no obligation to accept any resolution proposed by the Seller. If Buyer's objections are not resolved within the stated time, Buyer may void this Contract by providing written notice to Seller within the same stated time. The holder of the Earnest Money Deposit shall, upon receipt of a copy of Buyer's written notice, return to Buyer the Earnest Money Deposit without the requirement of any further written authorization from Seller. If this Contract is not voided by Buyer, Buyer's objection is deemed to have been waived. However, this waiver does not affect warranties under Section 10.

9.4 Resolution of Buyer's objections under Section 9.1 shall be in writing and shall become part of this Contract.

10. SPECIAL CONTINGENCIES. This offer is made subject to:
 The terms of attached Addendum 1 are incorporated into this Contract by this reference.

10.1. SELLER'S LIMITED WARRANTIES. Seller's warranties to Buyer regarding the Property are limited to the following:
 10.1.1 When Seller delivers possession of the Property to Buyer, it will be brown-stem and free of debris and personal belongings.
 10.1.2 Seller will deliver possession of the Property to Buyer with the plumbing, electrical, heating, cooling, ventilating, electrical and telephone (honor and outside) systems, appliances and equipment in working order.
 10.1.3 Seller will deliver possession of the Property to Buyer with the roof and foundation free of leaks known to Seller.
 10.1.4 Seller will deliver possession of the Property to Buyer with any private well or septic tank serving the Property in working order and in compliance with governmental regulations.
 10.1.5 Seller will be responsible for repairing any of Seller's moving-related damage to the Property.
 10.1.6 At Closing, Seller will bring current all financial obligations encumbering the Property which are assumed in writing by Buyer and will discharge all such obligations. Where Buyer has not so assumed,
 10.1.7 As of Closing, Seller has no knowledge of any claim or violation of an environmental, building or zoning code violation regarding the Property which has not been reported.

11. VERIFICATION OF WARRANTIES AND INCLUDED ITEMS. After all contingencies have been removed and before Closing, the Buyer may conduct a "walk-through" inspection of the Property to determine whether or not items warranted by Seller in Section 10.1, 10.2, 10.3 and 10.4 are in the warranted condition and to verify that items included in Section 1.1 are present on the Property. If any item is not in the warranted condition, Seller will correct, repair or replace it as necessary or, with the consent of Buyer, and (if required) Lender, enclose an amount at Closing to provide for such repair or replacement. The Buyer's failure to conduct a "walk-through" inspection, or to state during the "walk-through" inspection that the Property does not include all items referenced in Section 1.1 or to put in the conditions warranted in Section 10, shall constitute a waiver of Buyer's rights under Section 1.1 and of the warranties contained in Section 10.

12. CHANGES DURING TRANSACTION. Seller agrees that no changes in any existing leases shall be made, no new leases entered into, and no substantial alterations or improvements to the Property shall be undertaken without the written consent of the Buyer.

13. AUTHORITY OF SIGNERS. If Buyer or Seller is a corporation, partnership, trust, estate or other entity, the person signing this Contract on its behalf warrants to be or has authority to do so and to bind Buyer or Seller and to hold in remission in interest to Buyer and Seller. If the Seller is not the vested Owner of the Property but has control over the vested Owner's disposition of the Property, the Seller agrees to execute this contract and deliver this under this Contract as if it had been signed by the vested Owner.

14. COMPLETE CONTRACT. This instrument together with its Addendum, any attached Exhibits, and Seller's Disclosures constitute the entire Contract between the parties and supersede all prior dealings between the parties. This Contract cannot be changed except by written agreement of the parties.

15. DISPUTE RESOLUTION. The parties agree that any dispute or claim relating to this Contract, including but not limited to the disposition of the Earnest Money Deposit, and the breach or termination of this Contract, shall first be submitted to mediation in accordance with the Utah Real Estate Buyer/Seller Mediation Rules of the American Arbitration Association. Each party agrees to bear its own costs of mediation. Any Agreement signed by the parties pursuant to the mediation shall be binding. If mediation fails, the procedures applicable and remedies available under this Contract shall apply. Nothing in this Section shall prohibit the Buyer from seeking specific performance by the Seller by filing a complaint with the court, serving it on the Seller by means of summons or an otherwise authorized by law, and requesting a WARRANTY with regard to the action provided that the Buyer permits the Seller to obtain such necessary court orders, pending mediation. Also, the parties may agree in writing to waive mediation.

16. DEFAULT. If Buyer defaults, Seller may elect to either retain the Earnest Money Deposit as liquidated damages or to return the Earnest Money Deposit and advise Buyer to enforce Seller's rights. If Seller defaults, in addition to return of the Earnest Money Deposit, Buyer may elect to either accept from Seller an amount of liquidated damages, or sue Seller to enforce Seller's rights. In addition to return of the Earnest Money Deposit, Buyer may elect to either accept from Seller the amount of liquidated damages, or sue Seller to enforce Seller's rights. When a Section of this Contract provides a specific remedy, the parties intend that the remedy shall be exclusive regardless of rights which might otherwise be available under common law.

17. ATTORNEY'S FEES. In any action arising out of this Contract, the prevailing party shall be entitled to costs and reasonable attorney's fees.

18. DISPOSITION OF EARNEST MONEY. The Earnest Money Deposit shall not be returned unless it is authorized by (a) Section 7.1, 7.2 and 9.1, (b) separate written agreement of the parties, including an agreement under Section 10 if (a) does not apply, or (c) court order.

19. ABBREVIATION. Except for express notation made in this Contract, the provisions of this Contract shall not apply after Closing.

20. RISK OF LOSS. All risk of loss or damage to the Property shall be borne by Seller until Closing.

21. TIME IS OF THE ESSENCE. Time is of the essence regarding the time set forth in this transaction. Extensions must be agreed to in writing by all parties. Performance under each Section of this Contract which requires a date shall be required absolutely by 5:00 P.M., Mountain Time on the stated date.

22. COUNTERPARTS AND FACSIMILE (FAX) DOCUMENTS. This Contract may be signed in counterparts, and each counterpart bearing an original signature shall be considered one document with all others bearing original signatures. Also, facsimile transmission of any signed original document and re-transmission of any signed facsimile transmission shall be the same as delivery of an original.

23. ACCEPTANCE. Acceptance occurs when Seller or Buyer, responding to an offer or counteroffer of the other: (a) signs the offer or counteroffer where noted to indicate acceptance; and (b) communicates to the other party or the other party's agent that the offer or counteroffer has been signed as required.

24. OFFER AND TIME FOR ACCEPTANCE. Buyer's offer in writing on the Property on the above terms and conditions. If Seller does not accept this offer by 5:00 AM MT Mountain Time, February 10, 2005, this offer shall lapse, and the holder of the Earnest Money Deposit shall return it to BE Buyer.

Buyer's Signature: [Signature] (Buyer's Signature)
 Buyer's Name (please print): RTR LTD
 (Notice Address)
 (Phone): 2/7/05 (Offer Reference Date)

ACCEPTANCE/REJECTION/COUNTER OFFER

Acceptance of Offer: Seller Accepts the foregoing offer on the terms and conditions specified above.
 Seller's Signature: [Signature] (Seller's Signature)
 Seller's Name (please print): MATHON FUND I, LLC
 (Notice Address): 6816 E. BROWN ROAD, MESA, AZ 85207
 (Phone): 480-558-8400

2-23-05 (Date) 2:23 (Time)

Rejection: Seller Rejects the foregoing offer.
 (Seller's Initials) _____ (Date) _____ (Time) _____

Counter Offer: Seller presents for Buyer's Acceptance the terms of Buyer's offer subject to the exceptions or modifications as specified in the attached Counter Offer # _____

**ADDENDUM NO. 1
TO
REAL ESTATE PURCHASE CONTRACT**

THIS IS AN ADDENDUM COUNTEROFFER to that REAL ESTATE PURCHASE CONTRACT (the "REPC") with an Offer Reference Date of February 7th 2005, including all prior addenda and counteroffers, between RTS, LTD as Buyer, and MATHON FUND I LLC as Seller, regarding the Property located at 62+/- Acres in Henrieville. The following terms are hereby incorporated as part of the REPC:

- (1) Purchase price to be \$3,900,000.
- (2) Due Diligence dead line to be April ¹⁵ 2005.
- (3) Closing dead line to be April ²⁸ 2005.
- (4) Earnest money to be \$25,000 and held in escrow at First American Title Located int St. George Utah.
- (5) All other terms are accepted and or remain the same.
- (6) SELLER SHALL HAVE UNTIL FEBRUARY 24, 2005 TO ACCEPT BUYERS OFFER.

BUYER AND SELLER AGREE THAT THE CONTRACT DEADLINES REFERENCED IN SECTION 24 OF THE REPC (CHECK APPLICABLE BOX: REMAIN UNCHANGED ARE CHANGED AS FOLLOWS: Stated above

To the extent the terms of this ADDENDUM modify or conflict with any provisions of the REPC, including all prior addenda and counteroffers, these terms shall control. All other terms of the REPC, including all prior addenda and counteroffers, not modified by this ADDENDUM shall remain the same. Seller Buyer shall have until 2-23-05 AM PM Mountain Time on 2-23-05 (Date), to accept the terms of this ADDENDUM in accordance with the provisions of Section 23 of the REPC. Unless so accepted, the offer as set forth in this ADDENDUM shall lapse.

<input checked="" type="checkbox"/> Buyer	<input checked="" type="checkbox"/> Seller	<u>[Signature]</u>	(Date)	<u>2-23-05</u>	(Time)	<input type="checkbox"/> Buyer	<input type="checkbox"/> Seller	<u>[Signature]</u>	(Date)	(Time)
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ACCEPTANCE/COUNTEROFFER/REJECTION

CHECK ONE:

ACCEPTANCE: Seller Buyer hereby accepts the terms of this ADDENDUM.

COUNTEROFFER: Seller Buyer presents as a counteroffer the terms of attached ADDENDUM NO. _____

<u>[Signature]</u>	(Date)	(Time)	<u>[Signature]</u>	(Date)	(Time)
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REJECTION: Seller Buyer rejects the foregoing ADDENDUM.

(Signature)	(Date)	(Time)	(Signature)	(Date)	(Time)
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THIS FORM APPROVED BY THE UTAH REAL ESTATE COMMISSION AND THE OFFICE OF THE UTAH ATTORNEY GENERAL, EFFECTIVE AUGUST 5, 2003. IT REPLACES AND SUPERSEDES ALL PREVIOUSLY APPROVED VERSIONS OF THIS FORM.

This contract is to be used by St. George Utah Real Estate, 1461 South Main Street, Suite 100, St. George, Utah 84770. Use by any other party is illegal and voids the contract.

ONE PARTY LISTING AGREEMENT

SELLER: *Mathon*

BUYER: *RTS, LTD AND OR ASSIGNS*

SUBJECT PROPERTY: *62+/- Acres in Hurricane, UT*

TERMS OF AGREEMENT:

It is understood and agreed that in the event the above-named buyer shall purchase at any price and to terms to which I (SELLER) may agree in writing, the subject property (above), then Seller shall pay ~~10~~ *6%* % (percent) of gross sales price, due and payable in cash at closing.

I hereby warrant that I have marketable title or an otherwise established right to sell, lease, or exchange sold property. I agree to execute the necessary documents of conveyance or lease to prorate general taxes, insurance, rents, interest, and other expenses affecting said property to agreed date of possession. I also agree to furnish a good and marketable title with abstract to date, or at my option, a policy of title insurance in the amount of the purchase price and in the name of the purchaser. In the event of sale or lease of other than real property, I agree to provide proper conveyance and acceptable evidence of title of right to sell, lease, or exchange.

The contract is entered into this 7 day of 2, 2005.

The contract expires on the 14 day of 7, 2005.

[Signature]

SELLER

SELLER

Luke Godfrey

SALESPERSON

Craig Holkinson
ST. GEORGE GMAC REAL ESTATE
1060 South Main, Suite #200
St. George, UT 84770



LIMITED AGENCY CONSENT AGREEMENT

This is a legally binding document. If it is not understood, consult with legal counsel.



Name of Buyer(s): RTS LTD AND/OR ASSIGNS Name of Seller(s): Mathon Fund I, LLC
 Agent representing Buyer: Craig Hopkinson Agent representing Seller: Luke Godfrey
 Name of Brokerage: St. George Co. M.A.C. (the "Company").

The Buyer and the Seller are both presently using the services of the Company in a possible real estate transaction involving real property located at:
62 1/2 Acres in Hurricane (referred to below as the "Property").

AS THE BUYER AND THE SELLER PROCEED WITH THIS TRANSACTION IT IS IMPORTANT THAT THEY EACH UNDERSTAND THEIR PROFESSIONAL RELATIONSHIP WITH THE REAL ESTATE AGENT(S) AND WITH THE COMPANY. WHAT FOLLOWS IS A BRIEF BUT VERY IMPORTANT EXPLANATION OF THE NATURE OF AGENCY RELATIONSHIPS BETWEEN THE BUYER, THE SELLER, THE COMPANY, AND THE REAL ESTATE AGENTS WORKING IN THIS TRANSACTION.

- 1. Principal or Branch Broker.** Every real estate agent must affiliate with a real estate broker. The broker is referred to as a Principal Broker or a Branch Broker (if the brokerage has a branch office). The broker is responsible for operation of the brokerage and for the professional conduct of all agents.
- 2. Right of Agents to Represent Seller and/or Buyer.** An agent may represent, through the brokerage, a seller who wants to sell property or a buyer who wants to buy property. On occasion, an agent will represent both seller and buyer in the same transaction. When an agent represents a seller, the agent is a "Seller's Agent"; when representing a buyer, the agent is a "Buyer's Agent"; and when representing both seller and buyer, the agent is a "Limited Agent".
- 3. Seller's Agent.** A Seller's Agent works to assist the seller in locating a buyer and in negotiating a transaction suitable to the seller's specific needs. A Seller's Agent has fiduciary duties to the seller which include loyalty, full disclosure, confidentiality, diligence, obedience, reasonable care, and holding safe monies entrusted to the agent.
- 4. Buyer's Agent.** A Buyer's Agent works to assist the buyer in locating and negotiating the acquisition of a property suitable to that buyer's specific needs. A Buyer's Agent has the same fiduciary duties to the buyer that the Seller's Agent has to the Seller.
- 5. Limited Agent.** A Limited Agent represents both seller and buyer in the same transaction and works to assist in negotiating a mutually acceptable transaction. A Limited Agent has fiduciary duties to both seller and buyer. However, those duties are "limited" because the agent cannot provide to both parties undivided loyalty, full confidentiality and full disclosure of all information known to the agent. For this reason, a Limited Agent must remain neutral in the representation of a seller and buyer, and may not disclose to either party information likely to weaken the bargaining position of the other; such as, the highest price the buyer will pay or the lowest price the seller will accept. A Limited Agent must, however, disclose to both parties material information known to the Limited Agent regarding a defect in the Property and/or the ability of each party to fulfill agreed upon obligations, and must disclose information given to the Limited Agent in confidence, by either party, if the failure to disclose would be a material misrepresentation regarding the Property.
- 6. In-House Sale.** If the buyer and the seller are both represented by one or more agents in the same brokerage, that transaction is commonly referred to as an "In-House Sale". Consequently, most In-House Sales involve limited agency because seller and buyer are represented by the same brokerage.
- 7. Conflicts with the In-House Sale.** There are conflicts associated with an In-House Sale; for example, agents affiliated with the same brokerage discuss with each other the needs of their respective buyers or sellers. Such discussions could inadvertently compromise the confidentiality of information provided to those agents. For that reason, the Company has policies designed to protect the confidentiality of discussions between agents and access to confidential client and transaction files.

8. Authorization for Limited Agency. The Seller and Buyer are advised that they are not required to accept a limited agency situation in the Company and that Buyer and Seller are each entitled to be represented by their own agent. However, it is the business practice of the Company to participate in In-House Sales. By signing this agreement, Buyer and Seller consent to a limited agency within the Company as provided below: (Initial applicable box)

- A. One Agent. The Buyer and the Seller consent to _____ (name of Agent); and the Principal/Branch Broker representing both the Buyer and the Seller as a Limited Agent as described above.
- B. Two Agents. The Buyer and the Seller consent to Luke Godfrey (Seller's Agent) continuing to represent the Seller; and Craig Hopkinson (Buyer's Agent) continuing to represent the Buyer; and the Principal/Branch Broker acting as a Limited Agent as described above.
- C. All Agents. The Buyer and Seller consent to all agents in the Company, including the Principal/Branch Broker, representing both the Seller and the Buyer as Limited Agents.

Buyer _____	Date _____	Seller _____	Date _____
Buyer _____	Date _____	Seller _____	Date _____
The Company by: <u>[Signature]</u> (Authorized Agent)	<u>2-23-05</u> Date		

