

1 Lawrence E. Wilk, # 006510
2 **JABURG & WILK, P.C.**
3 3200 North Central Avenue, Suite 2000
4 Phoenix, Arizona 85012
5 (602) 248-1000

6 Attorneys for James C. Sell, Receiver

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 TO AUTHORIZE
SETTLEMENT WITH
ESTRELLA DRILLING FUND, L.P.;
SMOOTH OPERATOR, INC.;
DAVID MITCHELL SIMS; AND
TATIANA GOLIVINA**

(Assigned to the Honorable
Barry C. Schneider)

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

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

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

Defendants.

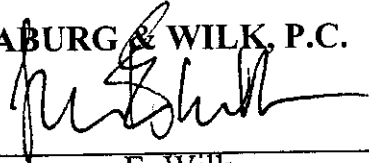
20 James C. Sell, the State Court appointed Conservator in the above-referenced
21 matter, through counsel of record undersigned, hereby requests that this Court enter an
22 order authorizing the Conservator to enter into the Settlement Agreement, as more fully
23 set forth in the Agreement of Settlement and Release, which is attached hereto as Exhibit
24 “A” and incorporated herein in its entirety by reference (the “Settlement”).

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

27 ...

1 DATED this 10 day of May, 2005.

2 JABURG & WILK, P.C.

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

7 **MEMORANDUM OF POINTS AND AUTHORITIES**

8 I. Procedural Background

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

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

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

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

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

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

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

1 6. In pursuit of his duties under the terms of the Conservatorship Order, the
2 Conservator has reviewed agreements that were entered into by previous management,
3 and has determined that certain agreements should be ratified, and that Court Orders be
4 obtained to facilitate these agreements.

5 7. The Conservator requests authority to enter into, and consummate, the
6 Settlement with Estrella Drilling Funds, L.P., Smooth Operator, Inc., David Michael
7 Sims, and Tatiana Golivina, (hereinafter collectively referred to as "Released Parties") as
8 more fully set forth hereinafter.

9 II. Factual Background

10 1. On or about April 8, 2004, Estrella Drilling Fund, L.P., and David Michael
11 Sims entered into a Promissory Note in the amount of \$15,000,000, in favor of the
12 Conservatorship Estate. Previous notes were executed by the Released Parties and the
13 amounts were consolidated into the \$15,000,000 note. Released Parties failed to pay in
14 accordance with the terms of the Notes. \$3,220,000 was actually funded to the borrower,
15 exclusive of commissions and loan charges.

16 2. In order to enforce its claim, and prior to the appointment of the
17 Conservator, Mathon Fund I, L.L.C. initiated an action in the United States District Court
18 for the Southern District of Texas, Houston Division, Civil Action No. H-04-4226,
19 Mathon Fund I, L.L.C., v. Estrella Drilling Funds, L.P., Smooth Operator, Inc., David
20 Michael Sims and Tatiana Golivina.
21
22

23 3. Subsequent to the appointment of the Conservator, a settlement was
24 negotiated, as more fully set forth in detail in Exhibit "A" attached hereto. The settlement
25 requires the payment of \$6,000,000, with interest, on or before November 31, 2005.
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27
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JABURG & WILK, P.C.
ATTORNEYS AT LAW
3200 NORTH CENTRAL AVENUE
SUITE 2000
PHOENIX, ARIZONA 85012

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4. The settlement amount shall be secured by shares of TexEn Oil & Gas stock, in an amount sufficient to cover the balance owed. The stock is currently in the possession of the Conservator.

5. The Released Parties dispute the amounts that are owing. The Conservator and Released Parties have agreed to attempt to resolve the disputes by entering into the settlement as set forth herein. In the event that Released Parties fail to comply with the terms of the settlement, the Conservator's remedies shall be limited to suit for the amounts owed pursuant to the Settlement, and recovery shall be solely from the stock and assets of David Michael Sims. Upon default, the Conservator shall be entitled to liquidate the collateral within his possession and/or sue for the outstanding balance.

6. Assuming compliance with the settlement agreement, payment of \$6,000,000 together with interest will be received on or before November 31, 2005.

7. After reviewing the records of the Conservatorship Estate, the Conservator believes it is in the best interest of the Estate, its investors and creditors to enter into the proposed agreement.

WHEREFORE, the Conservator respectfully requests that this Court issue an Order authorizing the Conservator to enter into, and to execute all documents necessary to facilitate, the settlement set forth herein.

DATED this 10 day of May, 2005.

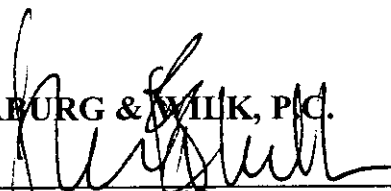

JABURG & WILK, P.C.

Lawrence E. Wilk
Attorneys for James C. Sell

James C. Sell, Conservator

EXHIBIT “A”

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MATHON FUND I, L.L.C.

VS.

ESTRELLA DRILLING FUND, L.P.,
SMOOTH OPERATOR, INC.,
DAVID MICHAEL SIMS, AND
TATIANA GOLIVINA

CIVIL ACTION NO. H-04-4226

AGREEMENT OF SETTLEMENT AND RELEASE

I.

INTRODUCTION

THIS AGREEMENT is entered into by and between MATHON FUND I, L.L.C., by and through its conservator acting as its legal representative, (referred to as "Plaintiff") and ESTRELLA DRILLING FUND, L.P., SMOOTH OPERATOR, INC., TATIANA GOLIVINA, DAVID MICHAEL SIMS, AND TEXEN OIL & GAS, INC.(referred to as "Released Parties"). Plaintiff has claims which are being asserted against Released Parties. Recognizing that bona fide disputes and controversies exist as to the claims against, and the liability of both parties the undersigned have entered into this Agreement of Settlement and Release ("Release") in order that each and every aspect of such disputes and controversies can be resolved between the parties to this Release and the risk of litigation forever avoided.

II.

PLAINTIFF'S RELEASE OF RELEASED PARTIES

Plaintiff, acting for itself, conservator, legal representatives, successors, agents, servants, employees, corporate parents, or subsidiaries, affiliates, divisions, general contractors, independent contractors, managers, shareholders, directors, officers, parties and assigns, for the consideration

stated below, do finally and completely RELEASE, ACQUIT, and FOREVER DISCHARGE the following:

ESTRELLA DRILLING FUND, L.P., SMOOTH OPERATOR, INC., TATIANA GOLIVINA, DAVID MICHAEL SIMS, AND TEXEN OIL & GAS, INC. their agents, servants, employees, representatives, insurers, corporate parents or subsidiaries, or affiliates, corporate divisions, general contractors, independent contractors, subcontractors, officers, shareholders, and directors and its past and present owners, officers, administrators, managers, directors, trustees, shareholders, agents, servants, employees, insurance funds, associates, partners, joint venturers, agents, servants, employees, representatives, attorneys, corporate parents, subsidiaries, affiliates, corporate divisions, general contractors, independent contractors, subcontractors, officers, shareholders, directors, and all others for whom the released parties herein may be vicariously or otherwise liable;

From any and all claims, causes of action, liabilities, obligations and damages of every kind, of whatsoever nature, known and unknown, accrued or which may ever accrue, whether based in contract, tort or statute, arising out of, resulting from, or in any manner relating to:

- 1) Civil Action No. H-04-4226; *Mathon Fund I, L.L.C. vs. Estrella Drilling Fund, L.P., Smooth Operator, Inc., David Michael Sims, and Tatiana Golivina*; In the United States District Court for the Southern District of Texas, Houston Division; and
- 2) Any and all claims Plaintiff is asserting, or could have asserted against any Defendant or party in the above entitled and numbered cause of action.

This Release extends to and includes, but is not limited to, all claims or causes of action of every kind, including, but not limited to, negligence, gross negligence, fraud, breach of contract, breach of express or implied warranty, breach of fiduciary duty, breach of the duty of good faith and fair dealing, violations of any state, federal or other governmental statute or ordinance, occurring both in the past and which may occur in the future. This release extends to all damages which have been asserted or could have been asserted, in this lawsuit by Plaintiff, including but not limited to, damages based on or relating to past and future pecuniary losses, loss of services; attorney's fees; compensatory damages; incidental damages; consequential damages; punitive damages; interest, past

due principal; court costs; and pre-judgment and post-judgment interest.

III.
RELEASED PARTIES' OF RELEASE OF PLAINTIFF

Released Parties acting for itself, legal representatives, successors, agents, servants, employees, corporate parents, or subsidiaries, affiliates, divisions, general contractors, independent contractors, managers, shareholders, directors, officers, parties and assigns, for the consideration stated below, do finally and completely RELEASE, ACQUIT, and FOREVER DISCHARGE the following:

Mathon Fund I, L.L.C., its conservator, agents, servants, employees, representatives, insurers, corporate parents or subsidiaries, or affiliates, corporate divisions, general contractors, independent contractors, subcontractors, officers, shareholders, and directors and its past and present owners, officers, administrators, managers, directors, trustees, shareholders, agents, servants, employees, insurance funds, associates, partners, joint venturers, agents, servants, employees, representatives, attorneys, corporate parents, subsidiaries, affiliates, corporate divisions, general contractors, independent contractors, subcontractors, officers, shareholders, directors, and all others for whom the released parties herein may be vicariously or otherwise liable;

From any and all claims, causes of action, liabilities, obligations and damages of every kind, of whatsoever nature, known and unknown, accrued or which may ever accrue, whether based in contract, tort or statute, arising out of, resulting from, or in any manner relating to:

- 1) Civil Action No. H-04-4226; *Mathon Fund I, L.L.C. vs. Estrella Drilling Fund, L.P., Smooth Operator, Inc., David Michael Sims, and Tatiana Golivina*; In the United States District Court for the Southern District of Texas, Houston Division; and
- 2) Any and all claims Released Parties are asserting, or could have asserted against Plaintiff or party in the above entitled and numbered cause of action.

This Release extends to and includes, but is not limited to, all claims or causes of action of every kind, including, but not limited to, negligence, gross negligence, fraud, breach of contract,

breach of express or implied warranty, breach of fiduciary duty, breach of the duty of good faith and fair dealing, violations of any state, federal or other governmental statute or ordinance, occurring both in the past and which may occur in the future. This release extends to all damages which have been asserted or could have been asserted, in this lawsuit by Released Parties, including but not limited to, damages based on or relating to past and future pecuniary losses, loss of services; attorney's fees; compensatory damages; incidental damages; consequential damages; punitive damages; interest, past due principal; court costs; and pre-judgment and post-judgment interest.

IV. CONSIDERATION

The consideration for this Release is as follows:

1. The release of all claims by one another of one another;
2. Execution by David Michael Sims of a note bearing interest at the rate of one percent (1.0%) per month payable to Mathon Fund I, L.L.C. in the principal amount of Six Million and no/100 dollars (6,000,000.00) which shall be payable on or before November 30, 2005. In the event the note is not paid in full by November 30, 2005, said note shall bear a default rate of interest in the amount of two percent (2.0%) per month;
3. Mathon Fund I, L.L.C., subject to the terms and conditions set out below, maintains possession of and its interest in all shares of stock of TexEn Oil & Gas, Inc. currently being held by the same as collateral for the original obligations made the basis of Civil Action No. H-04-4226; *Mathon Fund I, L.L.C. vs. Estrella Drilling Fund, L.P., Smooth Operator, Inc., David Michael Sims, and Tatiana Golivina*; In the United States District Court for the Southern District of Texas, Houston Division;
4. Mathon Fund I, L.L.C. grants to David Michael Sims an exclusive right, up to and including November 30, 2005, to find a buyer for all of the stock of the TexEn Oil & Gas, Inc. referenced above in Paragraph 3 herein with all proceeds of such sale being herein assigned to, and owned by, Mathon Fund, L.L.C. to satisfy the note referenced above in Paragraph 2 herein until such time as the note is satisfied in full. Mathon Fund I, L.L.C. shall not unreasonably refuse to sell the stock to such buyers with the proceeds of the sale going to pay off the note reference above in Paragraph 2 herein until such time as the note is satisfied in full;
5. In the event that David Michael Sims does not satisfy the note described above in Paragraph 2 herein by November 30, 2005, Mathon Fund I, L.L.C.'s sole remedy is to

bring suit against David Michael Sims for breach of this settlement agreement and recover the balance of the note. In the event Mathon Fund I, L.L.C. brings such a suit, David Michael Sims shall still be permitted to continue locating buyers for the stock and Mathon Fund I, L.L.C. shall not unreasonably refuse to sell the stock to such buyers with the proceeds of the sale going to pay off the note reference above in Paragraph 2 herein until such time as the note is satisfied in full;

6. In the event David Michael Sims satisfies the note described above in Paragraph 2 herein in accordance with the terms of this agreement and there are still remaining shares of stock in TexEn Oil & Gas, Inc. which have not been sold, the remaining shares shall be transferred free and clear to Tatiana Golivina;
7. Mathon Fund I, L.L.C. shall dismiss with prejudice against refiling the same all claims and causes of action against all parties in Civil Action No. H-04-4226; *Mathon Fund I, L.L.C. vs. Estrella Drilling Fund, L.P., Smooth Operator, Inc., David Michael Sims, and Tatiana Golivina*; In the United States District Court for the Southern District of Texas, Houston Division; and
8. The terms of this agreement are only binding upon the parties and effective upon approval of the Court in Cause No.: CV2005-005484 in the Maricopa County Superior Court. Mathon Fund I, L.L.C. shall recommend approval of this to the Court.

V.
DENIAL OF LIABILITY

It is understood and agreed that payment of the consideration expressed above is not an express or implied admission of negligence, misconduct, responsibility or liability on the part of the Released Parties or of anyone else, and that the Released Parties expressly and specifically deny all such claims and liability asserted by the other; but rather, such consideration is being exchanged in order to compromise disputed claims so that the parties may forever avoid the expense, uncertainties and hazards of litigation.

VI.
ADEQUACY OF CONSIDERATION

The consideration expressed above is hereby accepted in satisfaction of all damages sustained or ever to be sustained, and in full and complete discharge of the Released Parties for the damages arising out of, resulting from, or in any manner relating to:

- 1) Civil Action No. H-04-4226; *Mathon Fund I, L.L.C. vs. Estrella Drilling Fund, L.P., Smooth Operator, Inc., David Michael Sims, and Tatiana Golivina*; In the United States District Court for the Southern District of Texas, Houston Division; and
- 2) Any and all claims any party is asserting, or could have asserted against any other party in the above entitled and numbered cause of action.

VII.

REPRESENTATIONS AND WARRANTIES

Plaintiff and Released Parties expressly warrant and represent that:

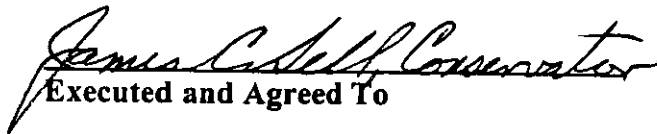
1. They are legally competent to execute this Release and have the authority to do so.
2. They had the benefit of professional advice of attorneys of their own choosing, and are fully satisfied with that advice, and have relied solely and completely upon their own judgment, together with that of professional advice.
3. With the benefit of such professional advice, they have received full knowledge of the legal consequences of damage claims, and are cognizant of all claims and causes of action that may be asserted on its behalf as a consequence thereof.
4. With the benefit of such professional advice, they have fully informed themselves of the contents, terms, conditions, and effects of this Release, having read and understood this document and having had it explained by its respective attorneys and understand the same.
5. They have not assigned, pledged, or otherwise in any manner, sold, or transferred, by instrument in writing or otherwise, any right, title, interest or claim which they have, or may have, by reason of the incident(s) made the basis of this suit, and/or resulting damages, except in connection with the employment of their respective attorneys.
6. No promises or representations of any kind have been expressed or implied to by the other or by anyone acting for them, except as is expressly stated in this Release.
7. They understand that this is a final release of the other and that no sums of money, except as expressed herein, will ever be paid to claimants by the other, or anyone on its behalf, as a result of the conduct, conditions, events, injuries, and damages listed above.

8. They have read, had explained by their attorney to their satisfaction, and understand a dismissal with prejudice is to be entered by the court in the above-captioned lawsuit, and has authorized its entry as to one another.

VII.
GOVERNING LAW AND COUNTERPARTS

The laws of the State of Arizona shall apply to interpretation of this agreement and venue for all disputes arising out of this Agreement shall be in the State of Arizona. This Release may be executed in multiple counterparts. Any facsimile signature or other electronic copy of any original signature shall be treated as an original signature.

REPRESENTATIVE OF MATHON FUND I, L.L.C.


Executed and Agreed To

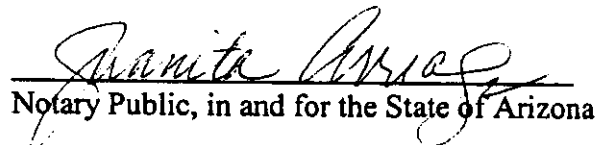
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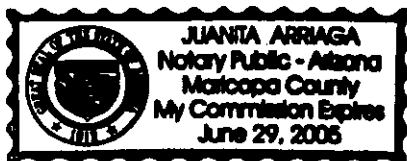
STATE OF ARIZONA

COUNTY OF MARICOPA

BEFORE ME, the undersigned authority, on this day personally appeared JAMES C. SELL, Representative of Mathon Fund I, L.L.C. known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that they have executed the same in the capacities and for the purposes and considerations therein expressed.

GIVEN UNDER my hand and seal of office this 5 day of May, 2005.


Notary Public, in and for the State of Arizona



DAVID MICHAEL SIMS

[Signature]
Executed and Agreed To

MAY 5, 2005
Date

STATE OF ARIZONA

COUNTY OF MARICOPA

BEFORE ME, the undersigned authority, on this day personally appeared David Michael Sims, Individually and on behalf of Estrella Drilling Fund, L.P., and Smooth Operator, Inc. known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that they have executed the same in the capacities and for the purposes and considerations therein expressed.

GIVEN UNDER my hand and seal of office this 5 day of May, 2005.



[Signature]
Notary Public, in and for the State of Arizona

REPRESENTATIVE OF TEXEN OIL & GAS, INC.

[Signature]
Executed and Agreed To

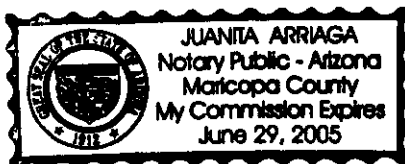
5/5/05
Date

STATE OF ARIZONA

COUNTY OF MARICOPA

BEFORE ME, the undersigned authority, on this day personally appeared DOUGLAS ELROY PIMRITE, a representative of TexEn Oil & Gas, Inc. known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that they have executed the same in the capacities and for the purposes and considerations therein expressed.

GIVEN UNDER my hand and seal of office this 5 day of May, 2005.



[Signature]
Notary Public, in and for the State of Arizona

TATIANA GOLIVINA

Executed and Agreed To

Date

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