



**SAMPLE ONLY** *GE Energy Financial Services*

**PURCHASE AND SALE AGREEMENT**

Between

---

as Seller

and

---

as Buyer

Dated

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## PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT dated \_\_\_\_\_, 200\_\_, is made by and between \_\_\_\_\_, a \_\_\_\_\_ (“Seller”), and OIL AND GAS LIMITED PARTNERSHIP, a \_\_\_\_\_ (“Buyer”).

### WITNESSETH:

WHEREAS, Seller desires to sell, bargain, assign, transfer and convey to Buyer, and Buyer desires to purchase and accept, certain oil and gas properties and related assets listed on Exhibit A; and

WHEREAS, Seller and Buyer deem it in their mutual best interests to execute and deliver this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, Seller and Buyer do hereby agree as follows:

### Article I Definitions and References

**Section 1.1 Certain Defined Terms.** When used in this Agreement, the following terms shall have the respective meanings assigned to them in this **Section 1.1** or in the section, subsections or other subdivisions referred to below:

“**Adjusted Purchase Price**” shall have the meaning assigned to such term in **Section 3.1.**

“**Affiliates**” shall have the meaning assigned to such term in **Section 11.4(a)(i).**

“**Agreement**” shall mean this Agreement, as hereafter changed, amended or modified in accordance with the terms hereof.

“**Allocated Values**” shall have the meaning assigned to such term in **Section 6.5.**

“**Applicable Environmental Laws**” shall have the meaning assigned to that term in **Section 4.12.**

“**Asserted Defects**” shall have the meaning assigned to such term in **Section 7.1(a).**

“**Basic Documents**” shall have the meaning assigned to such term in **Section 4.7.**

“**Buyer’s Losses**” shall have the meaning assigned to such term in **Section 11.1(a).**

“**Claims**” shall have the meaning assigned to such term in **Section 4.6.**



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“Closing” and “Closing Date” shall have the meanings assigned to such terms in **Section 9.1**.

“Code” shall mean the Internal Revenue Code, of 1986, as amended from time to time, and any successor statute thereto.

“Consent” shall have the meaning assigned to such term in **Section 4.4**.

“Consolidated Net Worth” shall mean, at any time, (a) the total assets of Seller and its subsidiaries which would be shown as assets on a consolidated balance sheet of Seller and its subsidiaries as of such time prepared in accordance with generally accepted accounting principles minus (b) the total liabilities of Seller and its subsidiaries which would be shown as liabilities on a consolidated balance sheet of Seller and its subsidiaries as of such time prepared in accordance with generally accepted accounting principles.

“Conveyance” shall have the meaning assigned to such term in **Section 9.2(a)**.

“Defects” shall have the meaning assigned to such term in **Section 7.1(b)**.

“Disbursement Properties” shall have the meaning assigned to such term in **Section 4.24**.

“Effective Date” shall have the meaning assigned to such term in **Section 9.2(a)**.

“Electing Party” shall have the meaning assigned to such term in **Section 15.4**.

“Excluded Properties” shall have the meaning assigned to such term in **Section 2.2**.

“Governmental Consents” shall mean approvals required to be obtained from governmental entities who are lessors under leases forming a part of the Oil and Gas Properties (or who administer such leases on behalf of such lessors) which are customarily obtained post-closing and which Seller has no reason to believe cannot be obtained.

“Indemnification Claim” shall have the meaning assigned to such term in **Section 11.2(a)**.

“Indemnification Period” shall have the meaning assigned to such term in **Section 15.1**.

“Indemnitee” shall have the meaning assigned to such term in **Section 11.2**.

“Intermediary” shall have the meaning assigned to such term in **Section 15.4**.

“Knowledge” shall mean the knowledge of the current officers, directors or managers of such Seller, after due inquiry and investigation.

“Non-Compete Area” shall have the meaning assigned to such term in **Section 11.4(a)**.



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“**non-operators**” shall have the meaning assigned to such term in **Section 4.24**.

“**Oil and Gas Properties**” shall have the meaning assigned to such term in **Article II**.

“**Operating Agreement Properties**” shall have the meaning assigned to such term in **Section 4.24**.

“**Operational Contracts**” shall have the meaning assigned to such term in **Section 4.7**.

“**Other Parties**” shall have the meaning assigned to such term in **Section 11.4(a)(ii)**.

“**Preferential Rights**” shall have the meaning assigned to such term in **Section 4.4**.

“**Production Sales Contracts**” shall mean any production sales contract for the sale of production from the Oil and Gas Properties.

“**Properties**” shall have the meaning assigned to such term in **Article II**.

“**Purchase Price**” shall have the meaning assigned to such term in **Article III**.

“**Representatives**” shall have the meaning assigned to such term in **Section 6.1**.

“**Reserve Report**” shall have the meaning assigned to such term in **Section 4.15**.

“**Response Period**” shall have the meaning assigned to such term in **Section 11.2(b)**.

“**Securities Act**” shall mean the Securities Act of 1933, as amended, and all rules and regulations under such Act.

“**Seller’s Losses**” shall have the meaning assigned to such term in **Section 11.1(b)**.

“**Seller’s Representations**” shall have the meaning assigned to such term in **Section 4.25**.

“**Third Party Claim**” shall have the meaning assigned to such term in **Section 11.2(a)**.

### **Section 1.2 References, Titles and Construction.**

(a) All references in this Agreement to articles, sections, subsections and other subdivisions refer to corresponding articles, sections, subsections and other subdivisions of this Agreement unless expressly provided otherwise.

(b) Titles appearing at the beginning of any of such subdivisions are for convenience only and shall not constitute part of such subdivisions and shall be disregarded in construing the language contained in such subdivisions.



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(c) The words “this Agreement”, “this instrument”, “herein”, “hereof”, “hereby”, “hereunder” and words of similar import refer to this Agreement as a whole and not to any particular subdivision unless expressly so limited.

(d) Words in the singular form shall be construed to include the plural and vice versa, unless the context otherwise requires. Pronouns in masculine, feminine and neuter genders shall be construed to include any other gender.

(e) Unless the context otherwise requires or unless otherwise provided herein, the terms defined in this Agreement which refer to a particular agreement, instrument or document also refer to and include all renewals, extensions, modifications, amendments or restatements of such agreement, instrument or document, provided that nothing contained in this subsection shall be construed to authorize such renewal, extension, modification, amendment or restatement.

(f) Examples shall not be construed to limit, expressly or by implication, the matter they illustrate.

(g) The word “or” is not intended to be exclusive and the word “includes” and its derivatives means “includes, but is not limited to” and corresponding derivative expressions.

(h) No consideration shall be given to the fact or presumption that one party had a greater or lesser hand in drafting this Agreement.

(i) All references herein to “\$” or “dollars” shall refer to U.S. Dollars.

(j) The Exhibits listed in the Table of Exhibits are attached hereto. Each such Exhibit is incorporated herein by reference for all purposes and references to this Agreement shall also include such Exhibit unless the context in which used shall otherwise require.

**[(k) For Monetization consideration: There is an Agreement of Limited Partnership, dated of even date herewith and anything contemplated, permitted or done pursuant to the terms of such partnership agreement shall not be a breach of any representation or warranty contained herein.]**

### **Article II**

#### **Property to be Sold and Purchased**

**Section 2.1 Property to be Sold and Purchased.** Seller agrees to sell and Buyer agrees to purchase, for the consideration hereinafter set forth, and subject to the terms and provisions herein contained, the following described properties, rights and interests:

(a) The properties described in **Exhibit A** attached hereto and made a part hereof for all purposes;



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(b) Without limitation of the foregoing, all other right, title and interest (of whatever kind or character, whether legal or equitable, and whether vested or contingent) of Seller in and to the oil, gas and other minerals in and under or that may be produced from the lands, leases, and wells described in **Exhibit A** (including interests in oil, gas and/or mineral leases covering such lands and wells, overriding royalties, production payments and net profits interests in such lands, such leases and wells, and fee mineral interests, fee royalty interests and other interests in such oil, gas and other minerals) whether such lands be described in a description set forth in such **Exhibit A**, or be described in such **Exhibit A** by reference to another instrument (and without limitation by any depth limitations that may be set forth in such **Exhibit A** or in any such instrument so referred to for description), even though Seller's interest in such oil, gas and other minerals may be incorrectly described in, or omitted from, such **Exhibit A**;

(c) All rights, titles and interests of Seller in and to, or otherwise derived from, all presently existing and valid oil, gas and/or mineral unitization, pooling, and/or communitization agreements, declarations and/or orders including those set forth on **Exhibit A** and in and to the properties covered and the units created thereby (including all units formed under orders, rules, regulations, or other official acts of any federal, state, or other authority having jurisdiction, voluntary unitization agreements, designations and/or declarations) relating to the properties described in **paragraphs (a) and (b)** above;

(d) All rights, titles and interests of Seller in and to all presently existing and valid production sales (and sales related) contracts, operating agreements, and other agreements and contracts which are set forth on **Exhibit A** and which relate to any of the properties described in **paragraphs (a), (b) and (c)** above, or which relate to the exploration, development, operation, or maintenance thereof or the treatment, storage, transportation or marketing of production therefrom (or allocated thereto);

(e) All rights, titles and interests of Seller in and to all materials, supplies, machinery, equipment, improvements and other personal property and fixtures (including but not by way of limitation, all wells, wellhead equipment, pumping units, flowlines, tanks, buildings, injection facilities, saltwater disposal facilities, compression facilities, gathering systems, and other equipment), and all easements, rights-of-way, surface leases and other surface rights, all permits and licenses, and all other appurtenances being used or held for use in connection with, or otherwise related to, the exploration, development, operation or maintenance of any of the properties described in **paragraphs (a), (b) and (c)** above, or the treatment, storage, transportation or marketing of production therefrom (or allocated thereto); and

(f) All of Seller's lease files, abstracts and title opinions, production records, well files, accounting records (but not including general tax and general financial accounting records), seismic records and surveys, gravity maps, electric logs, geological or geophysical data and records, and other files, documents and records of every kind and description which relate to the properties described above.



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The properties and interests specified in the foregoing paragraphs (a), (b) and (c), [IF APPLICABLE except for the Excluded Properties,] are herein sometimes collectively called the “Oil and Gas Properties,” and the properties and interests specified in the foregoing paragraphs (a), (b), (c), (d), (e) and (f), [IF APPLICABLE except for the Excluded Properties,] are herein sometimes collectively called the “Properties”.

**Section 2.2 Excluded Properties.** Excluded from the Properties is the undivided working and net revenue interest therein in excess of the undivided interest set forth on **Exhibit A** (“Excluded Properties”). [For Monetizations Only]

### **Article III** **Purchase Price**

**Section 3.1 Purchase Price.** In consideration of the sale of the Properties by Seller to Buyer, Buyer shall pay to Seller at Closing cash in the amount of \$\_\_\_\_\_ (“Purchase Price”). The Purchase Price shall be adjusted as provided in **Sections 6.5, 7.2 and 12.1** (the Purchase Price, as so adjusted, and as the same may be otherwise adjusted by the mutual agreement of the parties, being called the “Adjusted Purchase Price”).

**Section 3.2 Deposit.** Contemporaneously with the execution of this Agreement, Buyer has paid to \_\_\_\_\_ as Escrow Agent (the “Fundholder”), a deposit in the amount of \$\_\_\_\_\_ (such amount being herein called the “Deposit”). In connection with this Deposit, Buyer, Seller and Fundholder shall enter in the Escrow Fund Agreement attached hereto as **Exhibit 3.2**. In the event the transaction contemplated hereby is consummated in accordance with the terms hereof, the Deposit (plus any interest earned therein pursuant to the terms of the Escrow Fund Agreement and as noted below) shall be applied to the Purchase Price to be paid by Buyer at the Closing. If both parties are in breach of this Agreement and any party terminates this Agreement as a result thereof, Fundholder shall return the Deposit to Buyer. In the event this Agreement is terminated by Buyer or Seller in accordance with **Section 8.1 or 8.2** below, the Deposit shall be returned to Buyer or paid to Seller by Fundholder as provided in such Sections. The Deposit shall bear interest, and the funds and interest shall be paid by Fundholder pursuant to the terms of the Escrow Fund Agreement including that the interest earned shall be paid along with the Deposit. For federal income tax purposes, the interest earned on the Deposit shall be reported by Buyer, if the Deposit is applied to the Purchase Price or returned to Buyer, and by Seller, if the Deposit is retained by Seller in accordance with Section 8.2. THE PARTIES HEREBY ACKNOWLEDGE THAT THE EXTENT OF DAMAGES TO SELLER OCCASIONED BY THE FAILURE OF THIS TRANSACTION TO BE CONSUMMATED WOULD BE IMPOSSIBLE OR EXTREMELY DIFFICULT TO ASCERTAIN AND THAT THE AMOUNT OF THE DEPOSIT IS A FAIR AND REASONABLE ESTIMATE OF SUCH DAMAGES UNDER THE CIRCUMSTANCES AND DOES NOT CONSTITUTE A PENALTY AND SELLER AGREE THAT THE DEPOSIT IS ITS SOLE AND EXCLUSIVE REMEDY AGAINST BUYER THEREFOR.

**Section 3.3 Purchase Price Allocation.** Seller and Buyer agree that they shall allocate the Purchase Price among the Properties for tax purposes in a manner consistent with



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Section 1060 of the Internal Revenue Code and the Treasury Regulations promulgated thereunder, based upon the fair market values of the Properties. If Seller and Buyer cannot agree on the purchase price allocation, they shall appoint an independent accounting firm to make such allocation. The costs of such accounting firm shall be shared equally by Seller and Buyer. The Purchase Price allocation shall be agreed upon before the earliest due date of the tax returns of Seller and Buyer for the year in which the Closing Date occurs. Seller and Buyer agree to file all information reports and tax returns (including IRS Form 8594 and any amended tax returns or claims for refund) in a manner consistent with the Purchase Price allocation agreed upon under this **Section 3.3**.

### **Article IV** **Representations and Warranties of Seller**

Seller represents to Buyer, as of the date of this Agreement and as of the date of the Closing, that:

**Section 4.1 Organization and Existence.** Seller is a [\_\_\_\_\_/corporation] duly organized, validly existing, and in good standing under the laws of the State of \_\_\_\_\_. Seller is duly qualified to transact business and is in good standing in the state(s) described on **Exhibit A**. Seller is not a non-resident alien, foreign corporation, foreign partnership, foreign trust or foreign estate (as those terms are defined in the Code and in the regulations promulgated pursuant thereto). Seller is an experienced operator who is familiar with the operations of the Properties and familiar with the customs and practices in the oil and gas industry.

**Section 4.2 Power and Authority.** Seller has all necessary and appropriate authority to execute, deliver, and perform this Agreement and each other agreement, instrument, or document executed or to be executed by Seller in connection with the transactions contemplated hereby to which it is a party and to consummate the transactions contemplated hereby and thereby. The execution, delivery, and performance by Seller of this Agreement and each other agreement, instrument, or document executed or to be executed by Seller in connection with the transactions contemplated hereby to which it is a party, and the consummation by it of the transactions contemplated hereby and thereby, have been duly authorized by all necessary action of Seller. Except for the sale of production from the Properties in the ordinary course of business, since the effective date of the Reserve Report, has not assigned, transferred or conveyed any interest in the Properties.

**Section 4.3 Valid and Binding Agreement.** This Agreement has been duly executed and delivered by Seller and constitutes, and each other agreement, instrument, or document executed or to be executed by Seller in connection with the transactions contemplated hereby to which it is a party has been, or when executed will be, duly executed and delivered by Seller and constitutes, or when executed and delivered will constitute, a valid and legally binding obligation of Seller, enforceable against it in accordance with their respective terms, except that such enforceability may be limited by (a) applicable bankruptcy, insolvency, reorganization, moratorium, and similar laws affecting creditors' rights generally and (b) equitable principles



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which may limit the availability of certain equitable remedies (such as specific performance) in certain instances.

**Section 4.4 Non-Contravention.** Other than requirements (if any) that there be obtained consents to assignment (“**Consents**”) or waivers of preferential rights to purchase (“**Preferential Rights**”) from third parties and Governmental Consents, neither the execution, delivery, and performance by Seller of this Agreement and each other agreement, instrument, or document executed or to be executed by Seller in connection with the transactions contemplated hereby to which it is a party nor the consummation by it of the transactions contemplated hereby and thereby do and will (a) conflict with or result in a violation of any provision of any governing instruments of Seller, (b) conflict with or result in a violation of any provision of, or constitute (with or without the giving of notice or the passage of time or both) a default under, or give rise (with or without the giving of notice or the passage of time or both) to any right of termination, cancellation, or acceleration under, any bond, debenture, note, mortgage or indenture, or any material lease, contract, agreement, or other instrument or obligation to which Seller is a party or by which Seller or any of its properties may be bound (except for liens released at Closing), (c) result in the creation or imposition of any lien or other encumbrance upon the properties of Seller, or (d) violate any applicable law, rule or regulation binding upon Seller or the Properties.

**Section 4.5 Approvals.** Other than requirements (if any) that there be obtained Consents or waivers of Preferential Rights from third parties and Governmental Consents, no consent, approval, order, or authorization of, or declaration, filing, or registration with, any court or governmental agency or of any third party is required to be obtained or made by Seller in connection with the execution, delivery, or performance by Seller of this Agreement, each other agreement, instrument, or document executed or to be executed by Seller in connection with the transactions contemplated hereby to which it is a party or the consummation by it of the transactions contemplated hereby and thereby.

**Section 4.6 Pending Litigation.** Except as set forth on **Exhibit 4.6**, there are no pending suits, actions, notices of violations, or other proceedings or claims (collectively, “**Claims**”) or to Seller’s Knowledge, any such threatened Claims in which (a) Seller is or may be a party which relate to the Properties (including, without limitation, Claims pursuant to Applicable Environmental Laws, as defined herein, and Claims challenging or pertaining to the title to Seller’s Properties), or (b) that affect the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby.

### **Section 4.7 Basic Documents.**

(a) To Seller’s Knowledge,

(i) the following documents are in full force and effect and constitute valid and binding obligations of the parties thereto:



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(A) the oil, gas and/or mineral leases which are included as part of the Oil and Gas Properties;

(B) all contracts and agreements, licenses, permits and easements, rights-of-way and other rights-of-surface use comprising any part of or otherwise relating to the Properties; and

(C) all contracts and agreements (“**Operational Contracts**”) that are reasonably necessary to own, explore, develop, operate, maintain or use the Oil and Gas Properties:

(1) in the manner in which they are currently being owned, explored, developed, operated, maintained or used, and

(2) in accordance with the prudent practices of the oil and gas industry.

The leases, contracts, agreements, licenses, permits, easements, rights-of-way and other rights-of-surface use which are described in (A), (B) and (C) above are herein called the “**Basic Documents**”; and

(ii) all contracts and agreements which are Basic Documents are disclosed on **Exhibit A**;

(b) To Seller’s Knowledge, (i) Seller is not in breach or default (and no situation exists which with the passing of time or giving of notice would create a breach or default) of its obligations under any Basic Documents, and (ii) no breach or default by any third party (or situation which with the passage of time or giving of notice would create a breach or default) exists under any Basic Documents, to the extent such breach or default (whether by Seller or such a third party) could reasonably be expected to materially adversely affect the ownership, exploration, development, operation, maintenance, value or use of any of the Properties after the Effective Date;

(c) To Seller’s Knowledge, (i) all payments (including all delay rentals, royalties, shut-in royalties and valid calls for payment or prepayment under operating agreements) owing under Basic Documents have been and are being made (timely, and before the same became delinquent) by Seller in all material respects, and (ii) such payments have been and are being made by third parties where the non-payment of same by a third party could materially and adversely affect the ownership, exploration, development, operation, maintenance, value or use of any of the Oil and Gas Properties after the Effective Date;

(d) Except as set forth on **Exhibit 4.7**, no Basic Document involves an assumption by Buyer or its successors of any pre-Closing liabilities or claims; and



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(e) None of the Basic Documents or other contracts or agreements that comprise part of the Properties contain terms, or conditions that are not customary in the oil and gas industry or that would reduce the value to Buyer of any individual item of the Properties or the value of the Properties, in the aggregate, by more than \_\_\_\_\_.

For the purposes of the representations contained in this Section (and without limitation of such representations), the non-payment of an amount, or non-performance of an obligation, where such non-payment, or non-performance, could result in the forfeiture or termination of rights of Seller under a Basic Document, shall be considered material.

**Section 4.8 Commitments, Abandonments or Proposals.** Except as set forth in **Exhibit 4.8:** (a) Seller has incurred no expenses, and has made no commitments to make expenditures (including Seller has not entered into any agreements that would obligate Buyer to make expenditures), in connection with (and no other obligations or liabilities have been incurred which would adversely affect) the ownership or operation of the Properties after the Effective Date, other than routine expenses incurred in the normal operation of existing wells on the Oil and Gas Properties; (b) Seller has not abandoned any wells (or removed any material items of equipment, except those replaced by items of materially equal suitability) on the Oil and Gas Properties since the Effective Date; and (c) no proposals in excess of \$25,000 are currently outstanding (whether made by Seller or by any other party) to drill additional wells, or to deepen, plug back, or rework existing wells, or to conduct other operations for which consent is required under the applicable operating agreement, or to conduct any other operations, or to abandon any wells, on the Oil and Gas Properties.

**Section 4.9 Production Sales Contracts.** There exist no agreements or arrangements for the sale of production from the Oil and Gas Properties (including calls on, or other rights to purchase, production, whether or not the same are currently being exercised) other than (a) Production Sales Contracts disclosed in **Exhibit 4.9** or (b) agreements or arrangements which are cancelable on 90 days notice or less without penalty or detriment. Seller is presently receiving payment for all production from (or attributable to) each Oil and Gas Property covered by a Production Sales Contract which is computed in accordance with the terms of such contract, and is not having deliveries of gas from any Oil and Gas Property subject to a Production Sale Contract curtailed substantially below such property's delivery capacity.

**Section 4.10 Area of Mutual Interest and Other Agreements; Tax Partnerships.** No Oil and Gas Property is subject to (or has related to it) any area of mutual interest agreements. No Oil and Gas Property is subject to (or has related to it) any farm-out or farm-in agreement under which any party thereto is entitled to receive assignments not yet made, or could earn additional assignments after the Effective Date. No Oil and Gas Property is subject to (or has related to it) any tax partnership.

**Section 4.11 Payment of Expenses.** All expenses (including all bills for labor, materials and supplies used or furnished for use in connection with the Properties, and all severance, production, ad valorem, windfall profit and other similar taxes) relating to the



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ownership or operation of the Properties, have been, and are being, paid (timely, and before the same become delinquent) by Seller, except such expenses and taxes as are disputed in good faith by Seller and for which an adequate accounting reserve has been established by Seller.

### **Section 4.12 Compliance with Laws.**

(a) To Seller's Knowledge, the ownership and operation of those Properties has been in conformity, in all material respects, with all applicable laws, rules, regulations guidelines and orders of all governmental agencies having jurisdiction, relating to the Properties;

(b) Without in any way limiting the foregoing representations, to Seller's Knowledge, the Properties operated by Seller, and the Properties operated by others, are not in any material violation [**Consider a \$\$ value here or have one definition of material that is tied to \$\$.**] of (or subject to) (i) any existing, pending or, threatened, judicial, administrative or arbitral proceeding or any investigation or inquiry by any governmental authority, or (ii) any remedial obligations under any and all applicable laws, rules, regulations, statutes, ordinances, guidelines, codes or other legally enforceable requirements (including, without limitation, common law) of any governmental authority regulating, relating to or imposing liability or standards of conduct concerning protection of the environment, natural resources, or human health and safety or orders pertaining to health or the environment (hereinafter sometimes collectively called "**Applicable Environmental Laws**");

(c) Seller undertook, at the times of its respective acquisitions of the Properties, all appropriate inquiry into the previous ownership and uses of the Properties consistent with good commercial or customary practice, and Seller has taken all steps necessary to determine and has determined that no hazardous substances or solid wastes (as defined in the Applicable Environmental Laws) (i) have been disposed of or released on or onto the Properties, (ii) or, if generated, on the Properties have been disposed of offsite in violation of Applicable Environmental Laws;

(d) Without limitation of the foregoing, as to all Properties, to Seller's Knowledge, there are no underground storage tanks, polychlorinated biphenyls, products containing polychlorinated biphenyls, asbestos or asbestos containing materials;

(e) To Seller's Knowledge, all oil and gas wells comprising a part of the Properties have been drilled and completed within the boundaries of the applicable leases or within limits otherwise permitted by a valid and enforceable pooling, unit, or other agreement or contract or by applicable law; and

(f) To Seller's Knowledge, no well comprising a part of the Properties is or was subject to any penalty on allowables after the Effective Date because of any over-production (or any other judgments, orders or decrees of any court or governmental authority or agency) which would (or did) prevent such well from being entitled to its full



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legal and regular allowable (as prescribed by any court or governmental body or agency) from and after the Effective Date.

**Section 4.13 Plugging Obligations.** Except for wells listed on **Exhibit 4.13**, or that have been properly plugged and abandoned, there are no dry holes, or shut in or otherwise inactive wells, located on the Oil and Gas Properties or on lands pooled or unitized therewith. All wells that are shut in or temporarily inactive are in compliance with all applicable regulations, laws or rules for which Seller plans (in good faith) to use such well in the future.

**Section 4.14 Governmental Permits.** Seller has all governmental licenses, filings and permits (including, without limitation, permits, licenses, approval registrations, notifications, exemptions and any other authorizations pursuant to Applicable Environmental Laws) necessary or appropriate to own and operate the Properties as presently being owned and operated, and such licenses, filings and permits are in full force and effect (and, except for those permits listed on **Exhibit 4.14**, are transferable to Buyer), and Seller, it has not received written notice of any violations in respect of any such licenses or permits.

**Section 4.15 Reserve Report and Other Information.** Except with respect to reserve projections and the pricing values assigned to any such estimates or projection to which Seller makes no representation, to Seller's Knowledge, all information furnished by Seller, or its Representatives, to Buyer or its representatives including in connection with the preparation of a reserve report with respect to the Oil and Gas Properties dated \_\_\_\_\_ ("**Reserve Report**") and all information set forth on the Exhibits hereto are true and correct in all material respects and production has not decreased other than normal decline in production rates over time, individually, on a property-by-property or well-by-well basis or in the aggregate, from the production information furnished to Buyer or its Representatives.

**Section 4.16 State of Repair; Equipment.** To the Seller's Knowledge, the Properties have been maintained in a state of repair so as to be reasonably adequate for normal operations. To Seller's Knowledge, the equipment constituting a part of the Properties is adequate for the operation of the Properties consistent with past practices.

**Section 4.17 No Alienation.** Within 120 days of the date hereof, Seller has not sold, assigned, conveyed, or transferred or contracted to sell, assign, convey or transfer any right or title to, or interest in, the Oil and Gas Properties other than (a) production sold in the ordinary course of Seller's business and (b) equipment which was worthless, obsolete or replaced by equipment of equal suitability and value.

**Section 4.18 Information.** To Seller's Knowledge, all of the information (written or oral) heretofore or hereafter furnished by Seller with respect to the Properties is true and correct in all material respects, and, to Seller's Knowledge, does not omit any information that is necessary to prevent such information from being misleading in any material respect.

**Section 4.19 No Oral Contracts.** Seller has not entered into any material oral contract with respect to the Properties which is still in force and effect.



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**Section 4.20 No Seller's Losses.** To Seller's Knowledge, there are no Seller's Losses and no condition exists which, with the passage of time, may reasonably be expected to give rise to any Seller's Losses.

**Section 4.21 Preferential Rights and Consents to Assign.** To Seller's Knowledge, **Exhibit 4.21** is a complete and accurate list of the Oil and Gas Properties that require any Consent or waiver of a Preferential Right from third parties in order for Seller to consummate the transactions contemplated by this Agreement without violating or breaching a duty or obligation of Seller, or (b) causing a forfeiture or termination of any right or interest of Seller in the Properties, or the transfer of such right or interest to Buyer, or giving any person a right (whether conditional or otherwise) to cancel or void any right or interest of Seller in the Properties or the transfer of such right or interest to Buyer.

**Section 4.22 Defects and Title.** Except as set forth on **Exhibit 4.22**, to Seller's Knowledge, there are no Defects (as defined below) relating to the Properties.

**Section 4.23 Well and PUD Locations.** The location of each well and PUD (if drilled) listed on **Exhibit 7.1(b)(i)** or **Exhibit 7.2** complies with (or in the case of a PUD would comply) with all applicable laws and all applicable rules, regulations and orders of governmental agencies having jurisdiction.

**Section 4.24 Accounting of Funds.** Seller has listed in **Part One of Exhibit 4.25** attached hereto all of the Oil and Gas Properties where (i) parties other than Seller own working interests in the lands and depths covered by such Oil and Gas Properties (or in the units in which such Oil and Gas Properties participate) and (ii) Seller serves as operator, for itself and such Other Parties (herein sometimes called "**non-operators**"), of such lands and depths (or units) (such lands and depths, and units, are herein called the "**Operating Agreement Properties**"). All bills to non-operators for reimbursement of operating expenses incurred with respect to the Operating Agreement Properties are being rendered, and (except for amounts totaling less than \$ \_\_\_\_\_) paid, on a current basis; Seller has made no advance billings to non-operators for estimated costs which have not heretofore been reconciled to actual costs with full credit having been given for funds advanced (and Seller, therefore, holds no funds advanced by a non-operator as pre-payment of estimated future costs). Seller has listed in **Part Two of Exhibit 4.25** attached hereto all wells and units with respect to which it is disbursing proceeds of production to third parties owning interests in the production from such wells or units (the "**Disbursement Properties**"). All of such proceeds of production being so accounted for (except proceeds, aggregating less than \$ \_\_\_\_\_, attributable to interests being held in suspense in accordance with prudent industry practice) have been, and are being, accounted for under appropriate division orders, transfer orders or similar documents signed by, or otherwise clearly binding on, the parties receiving such proceeds and reflecting, as to each party, the decimal interest such party is being paid upon; to Seller's Knowledge, Seller has been correctly accounting to such third parties for such proceeds of production.

**Section 4.25 Disclaimer of Warranties.** Other than those representations and warranties expressly set out in this Agreement and the Conveyance to be delivered at Closing,



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(collectively “**Seller’s Representations**”), Seller hereby expressly disclaims any and all representations or warranties with respect to the Properties or the transaction contemplated hereby, and Buyer agrees that the Properties are being sold by Seller “where is” and “as is”, with all faults. Specifically as a part of (but not in limitation of) the foregoing, Buyer acknowledges that, other than Seller’s Representations, Seller has not made, and Seller hereby expressly disclaims, any representation or warranty (express, implied, under common law, by statute or otherwise) as to the condition of the Properties (INCLUDING WITHOUT LIMITATION, SELLER DISCLAIMS ANY IMPLIED OR EXPRESS WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR CONFORMITY TO MODELS OR SAMPLES OF MATERIALS). All of the disclaimers of representations, warranties or other matters in this Agreement are subject to Seller’s Representations and are not meant to constitute a waiver or limitation of any claim against Seller for fraud or misrepresentation if Seller knows of matters which could make any material or information in Seller’s files false or misleading.

### **Article V** **Representations and Warranties of Buyer**

Buyer represents to Seller, as of the date of this Agreement and as of the date of the Closing, that:

**Section 5.1 Organization and Existence.** Buyer is a limited partnership duly organized and legally existing under the laws of its state of formation, and after Closing, will promptly become qualified to do business in the states where the Properties are located (if the laws of such state require such qualification to do business).

**Section 5.2 Power and Authority.** Buyer has all necessary and appropriate authority to execute, deliver, and perform this Agreement and each other agreement, instrument, or document executed or to be executed by Buyer in connection with the transactions contemplated hereby to which it is a party and to consummate the transactions contemplated hereby and thereby. The execution, delivery, and performance by Buyer of this Agreement and each other agreement, instrument, or document executed or to be executed by Buyer in connection with the transactions contemplated hereby to which it is a party, and the consummation by it of the transactions contemplated hereby and thereby, have been duly authorized by all necessary action of Buyer.

**Section 5.3 Valid and Binding Agreement.** This Agreement has been duly executed and delivered by Buyer and constitutes, and each other agreement, instrument, or document executed or to be executed by Buyer in connection with the transactions contemplated hereby to which it is a party has been, or when executed will be, duly executed and delivered by Buyer and constitutes, or when executed and delivered will constitute, a valid and legally binding obligation of Buyer, enforceable against it in accordance with their respective terms, except that such enforceability may be limited by (a) applicable bankruptcy, insolvency, reorganization, moratorium, and similar laws affecting creditors’ rights generally and (b) equitable principles



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which may limit the availability of certain equitable remedies (such as specific performance) in certain instances.

**Section 5.4 Non-Contravention.** The execution, delivery, and performance by Buyer of this Agreement and each other agreement, instrument, or document executed or to be executed by Buyer in connection with the transactions contemplated hereby to which it is a party and the consummation by it of the transactions contemplated hereby and thereby do not and will not (a) conflict with or result in a violation of any provision of any governing instruments of Buyer, (b) conflict with or result in a violation of any provision of, or constitute (with or without the giving of notice or the passage of time or both) a default under, or give rise (with or without the giving of notice or the passage of time or both) to any right of termination, cancellation, or acceleration under, any bond, debenture, note, mortgage, indenture, lease, contract, agreement, or other instrument or obligation to which Buyer is a party or by which Buyer or any of its properties may be bound, (c) result in the creation or imposition of any lien or other encumbrance upon the properties of Buyer, or (d) violate any applicable law, rule or regulation binding upon Buyer.

**Section 5.5 Approvals.** No consent, approval, order, or authorization of, or declaration, filing, or registration with, any court or governmental agency or of any third party is required to be obtained or made by Buyer in connection with the execution, delivery, or performance by Buyer of this Agreement and each other agreement, instrument, or document executed or to be executed by Buyer in connection with the transactions contemplated hereby to which it is a party or the consummation by it of the transactions contemplated hereby and thereby.

**Section 5.6 Pending Litigation.** There are no pending suits, actions, or other proceedings in which Buyer is a party which affect the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby.

### **Article VI**

#### **Certain Covenants of Seller Pending Closing**

From the date hereof until Closing,

**Section 6.1 Access to Files.** Seller will give Buyer, its employees and agents, and the attorneys, Thompson & Knight, L.L.P., and other representatives (the “**Representatives**”), access at all reasonable times during normal business hours, and upon reasonable advance notice, to the Properties and to any contract files, land, lease or other title files, marketing files, production files, well files, accounting records, environmental analyses and assessments and reviews and other files prepared by or on behalf of Seller or Seller’s lenders pertaining to the ownership and/or operation of the Properties, or to any liability or obligations assumed by Buyer, in connection with the transactions contemplated by this Agreement and Seller will use its best efforts to arrange for Buyer and its Representatives, to have access to any such files in the office of Seller. In addition, Buyer and Representatives may conduct an independent investigation including a Phase I Environmental Site Assessment in accordance with the American Society for Testing and Materials of the nature and extent of the Properties to satisfy itself as to their



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physical and environmental condition. Buyer agrees to give Seller at least 48 hours notice before conducting any sampling or other invasive inspections of the Properties. Seller shall not be obligated to provide Buyer and its Representatives with access to any records or data which Seller cannot provide to Buyer and its Representatives without, in its reasonable opinion, breaching confidentiality agreements with other parties. If Seller fails to provide any records or data because of any such confidentiality agreements, Seller shall identify, in writing, the information not provided to the extent it may do so without violating such agreement and identify the person or persons whose consent is necessary in order for Seller to disclose such records and data. All information obtained by Buyer and its Representatives shall be maintained in strict confidence, for use solely in connection with its evaluation of the Properties, and shall not be disclosed to any other party without Seller's prior written consent.

**Section 6.2 Conduct of Operations.** Seller, or its designee, will (a) continue the routine operation of the Properties in the ordinary course of business as would a prudent operator, (b) in all material respects, operate the Properties in conformity with all applicable laws, and all applicable rules, regulations and orders of all governmental agencies having jurisdiction, (c) in all material respects, act in conformity with all oil, gas and/or mineral leases, and in conformity with all Basic Documents, and (d) in all material respects, fulfill all obligations (including without limitation all obligations to make payments under leases or other Basic Documents) under such leases, and under such other Basic Documents and under such laws, rules, regulations and orders (without limitation of the foregoing, the failure to perform an obligation, when such failure could result in forfeiture or termination of rights of Seller under a Basic Document, shall be considered material).

**Section 6.3 Restrictions on Certain Actions.** Seller will not, without Buyer's prior consent:

(a) expend any funds, or make any commitments to expend funds (including entering into new agreements which would obligate Seller to expend funds), or otherwise incur any other obligations or liabilities, in connection with the ownership or operation of the Properties after the Effective Date, other than routine expenses incurred in the normal operation of the existing wells on the Oil and Gas Properties, except in the event of an emergency requiring immediate action to protect life or preserve the Properties;

(b) except where necessary to prevent the termination of an oil and gas lease or other material agreement governing Seller's interest in the Properties,

(i) propose the drilling of any additional wells, or propose the deepening, plugging back or reworking of any existing wells, or

(ii) propose the conducting of any other operations which require consent under the applicable operating agreement, or

(iii) propose the conducting of any other operations other than the normal operation of the existing wells on the Oil and Gas Properties, or



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(iv) propose the abandonment of any wells on the Oil and Gas Properties

(and Seller agrees that it will advise Buyer of any such proposals made by third parties and will respond to each such proposal made by a third party in the manner requested by Buyer);

(c) sell, transfer or abandon any portion of the Properties other than (i) items of materials, supplies, machinery, equipment, improvements or other personal property or fixtures forming a part of the Properties (and then only if the same is replaced with an item of substantially equal suitability, free of liens and security interests, which replacement item will then, for the purposes of this Agreement, become part of the Properties), or (ii) oil or gas produced from Oil and Gas Properties; or

(d) release (or permit to terminate), or modify or reduce its rights under, any oil, gas and/or mineral lease forming a part of the Oil and Gas Properties, or any other Basic Document, or enter into any new agreements which would be Basic Documents, or modify any existing Production Sales Contracts or enter into any new Production Sales Contracts, except contracts terminable by Seller with notice of sixty (60) days or less.

**Section 6.4 Payment of Expenses.** Seller will cause all expenses (including all bills for labor, materials and supplies used or furnished for use in connection with the Property and all severance, production, windfall profit and similar taxes) relating to the ownership or operation of the Properties prior to the date of Closing to be promptly paid and discharged, except for expenses disputed in good faith as set forth on **Exhibit 4.6**.

**Section 6.5 Preferential Rights and Third Party Consents.** Seller will request, from the appropriate parties (and in accordance with the documents creating such rights and/or requirements), waivers of the Preferential Rights to purchase, or requirements that consent to assignment be obtained, which are identified in **Exhibit 4.21**. Seller shall have no obligation hereunder other than to so request such waivers (i.e., Seller shall have no obligation to assure that such waivers are obtained), Buyer and Seller have allocated an amount of the Purchase Price to each Property as shown on **Exhibit 7.2**. (such allocated amounts on **Exhibit 7.2** being hereinafter referred to as the “**Allocated Values**”). If a party that has a Preferential Right exercises such Preferential Right prior to the Closing, the Property affected by such Preferential Right shall be excluded and the Purchase Price shall be reduced by an amount calculated in the manner provided in **Section 7.2**. If a party that has a Preferential Right does not exercise such Preferential Right or does not give a waiver of such Preferential Right at least ten (10) days before Closing, and the period of time to exercise such Preferential Right does not expire before such date, Buyer may elect, at any time prior to the earlier of (a) the expiration of the period of time to exercise such Preferential Right or (b) the Closing, to exclude the Property affected by such Preferential Right and to reduce the Purchase Price by an amount calculated in the manner provided in **Section 7.2**. If Buyer does not so exclude the Property affected by such Preferential Right, then, upon the exercise of any Preferential Right after the Closing, Buyer will tender the required interest in the Property affected by such unwaived Preferential Right, at the Allocated



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Values for such affected Property (or portion thereof) to the holder, or holders, of such right. In return for tendering the Property to such holder(s), Buyer shall collect and retain such amount from such purchaser. If Buyer does exclude the Property affected by such Preferential Right, then if the holder of the Preferential Right fails to exercise such right or exercises such right but fails to close, Seller will tender Property to Buyer for purchase pursuant to the terms hereof at the price by which the Purchase Price was reduced as provided in this Section 6.5 and the Buyer shall purchase Property on all such terms.

**Section 6.6 Liens to be Released.** Seller will cause all liens set forth on **Exhibit 4.22** insofar as such liens encumber the Properties to be released before or at Closing in a form of release satisfactory to Buyer.

**Section 6.7 No Negotiation.** Until this Agreement is terminated pursuant to its provisions, Seller will not directly or indirectly solicit, initiate or encourage any inquiries or proposals from, discuss or negotiate with, provide any nonpublic information to or entertain or consider the merits of or accept any inquiries or proposals from any person (other than Buyer) relating to any sale of any of the Properties or any similar transaction or arrangement involving any of the Properties. Seller shall notify Buyer of any such inquiry or proposal within twenty-four (24) hours of receipt or awareness of the same by Seller.

**Section 6.8 Notification of Certain Matters.** Each party shall give prompt notice to the other party of (i) the discovery of any fact, information or circumstance which would be likely to cause any representation or warranty of such party contained in this Agreement to be untrue or inaccurate in any material respect and (ii) any material failure of such party to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by it hereunder. Such notice shall expressly disclose, if such discovery of any additional fact, information or circumstance would have required disclosure on any Exhibit, that it was known as of the date of this Agreement. The delivery of any notice pursuant to this Section shall not be deemed to (i) modify the representations or warranties hereunder of the party delivering such notice, (ii) modify the conditions set forth in **Article VIII**, or (iii) limit or otherwise affect the remedies available hereunder to the party receiving such notice.

### **Article VII**

#### **Due Diligence Examination**

##### **Section 7.1 Inspection and Assertion of Defects.**

(a) Seller shall make available to Buyer and its Representatives all title opinions, supplemental title opinions and other title information in the possession of the Seller and relating to the Oil and Gas Properties and access to all Properties. Buyer may, to the extent it deems appropriate, conduct, at its sole cost, such title examination or other investigation as it may choose to conduct with respect to the Properties including a Phase I Environmental Site Assessment. Should, as a result of such examination and investigation, or otherwise, matters come to Buyer's attention which would constitute "Defects" (as below defined), and should there be one or more of such Defects which



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Buyer determines it is unwilling to waive and close the transaction contemplated hereby notwithstanding the fact that such Defects exist, Buyer shall or cause its Representatives to, notify Seller in writing of such Defects at least ten (10) business days prior to the Closing. Such Defects of which Buyer so provides notice are herein called “**Asserted Defects**” (including the furnishing of additional information). In the event that Buyer notifies Seller of Asserted Defects, Seller shall have the right (but not the obligation) to attempt to cure such Asserted Defects to the reasonable satisfaction of Buyer, and for the purpose of curing such Asserted Defects, Seller may on written notice to Buyer elect to delay Closing for a period not to exceed 14 days or may request a Closing as to the Properties not affected by any uncured Asserted Defect, and the Purchase Price for such partial Closing will be reduced by the Allocated Values for the excluded Properties affected by any Asserted Defects. As to any Properties affected by an Asserted Defect and withheld from Closing by such agreement of the parties, Seller shall have 120 days to cure such Defect to Buyer’s satisfaction. Upon acceptance of the cure, Closing shall occur as to such Property. If the Asserted Defects are not so cured within such 120 days, then the Seller shall retain the Properties which were withheld.

(b) The term “**Defect**” as used in this Section shall mean the following:

(i) NRI or WI Variances. Seller’s ownership of the Properties is such that, with respect to a well, PUD location or unit listed on **Exhibit 7.1(b)(i)** hereto (it is the intent of the parties that the interests and wells on **Exhibit 7.1(b)(i)** are those reflected on the Reserve Report and in the event of conflict between the two, Buyer in its sole discretion, may use those reflected in the Reserve Report for all purposes of this **Article VII**), it (A) entitles Seller, at any time during the production life of the Oil and Gas Property involved, to receive a percentage share of the oil, gas and other hydrocarbons produced from, or allocated to, such well, PUD location or unit which is less than the percentage share set forth on **Exhibit 7.1(b)(i)** in connection with such well, PUD location or unit in the column headed “NRI” or (B) causes Seller to be obligated, at any time during the production life of the Oil and Gas Property involved, to bear a percentage share of the cost of operation of such well, PUD location or unit greater than the percentage share set forth on **Exhibit 7.1(b)(i)** in connection with such well, PUD location or unit in the column headed “WI” (unless the share of production from such well, PUD location or unit to which Seller is entitled is proportionately larger than the “NRI” shown for such well on **Exhibit 7.1(b)(i)**); or

(ii) Lien. Seller’s ownership of the Properties is subject to a lien other than (A) a lien for taxes not yet delinquent, or (B) a mechanic’s or materialmen’s lien (or other similar lien), or a lien under an operating agreement or similar agreement, to the extent the same relates to expenses incurred which are not yet due; or (C) the liens to be released by Closing pursuant to **Section 6.6**; or

(iii) Imperfections in Title. Seller’s ownership of an Oil and Gas Property is subject to an imperfection in title which, if asserted, would cause a



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Defect, of the type described in **paragraph (i)** above, to exist, and such imperfection in title is not such as would normally be waived by attorneys engaged in the preparation of oil and gas division order title opinions; or

(iv) Production Prepayments. An Oil and Gas Property is subject to a makeup obligation to satisfy take-or-pay payments or other prepayments for production previously received by Seller; or

(v) Imbalances. Seller is in an overproduced position with respect to an Oil and Gas Property (e.g., Seller and/or its predecessors in title have taken more gas than their ownership in such Oil and Gas Property would entitle them to take), and such overproduced position is greater than that shown on **Exhibit 7.1(b)(v)** as of the date or dates noted on such Exhibit; or

(vi) Environmental Matters. A Property is in violation of any Applicable Environmental Laws in any respect or there is present upon or under such property a condition which requires or with the passage of time could require investigation or remediation under Applicable Environmental Laws or could result in liability to third parties and such violation or condition is not such as would normally be accepted by persons engaged in the oil and gas business when purchasing producing properties; or

(vii) Necessary Operational Contracts. An Operational Contract does not exist or is not in full force and effect and valid and binding or a party to the Operational Contract is in breach or default (or a situation exists that with passage of time or giving of notice would reasonably be expected to create a breach or default) and such breach or default could reasonably be expected (A) to prevent or interfere with the ownership, exploration, development, operation, maintenance or use of any of the Oil and Gas Properties (1) in the manner in which such Oil and Gas Property is currently being owned, explored, developed, operated, maintained or used, or (2) in accordance with the prudent practice of the oil and gas industry, or (B) cause a Defect, of the type described in **paragraph (i)** above, to exist; or

(viii) Insufficient Information. Insufficient detail or information, determined solely at Buyer's discretion, exists or has not been provided to Buyer to determine if any of the other Defects in this **Section 7.1** exist; or

(ix) Third Party Elections. Seller's ownership of a Oil and Gas Property is subject to a right (whether absolute, conditional, contingent or otherwise) that could reasonably be expected to (A) cause a Defect, of the type described in **paragraph (i)** above to exist during the productive life of such Oil and Gas Property, or (B) to give rise to any third party's right to operate any Oil and Gas Property (which is currently operated by Seller ) without due election by majority ownership of the working interest owners of said Oil and Gas Property; or



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(x) Undesirable Contracts. An Oil and Gas Property includes, is subject to or affected by a contract or agreement that contains terms and conditions that are not customary in the oil and gas industry or that would reduce the value to Buyer of such Oil and Gas Property by more than \$25,000; or

(xi) Plugging Obligations. Except for wells that are listed on **Exhibit 4.13** or that that been properly plugged and abandoned, there are dry holes, or shut in or otherwise inactive wells, located on the Oil and Gas Properties or on lands pooled or unitized therewith.

### **Section 7.2** **Certain Price Adjustments**

(a) In the event that Asserted Defects are presented to Seller and Seller is unable (or unwilling) to cure such Asserted Defects prior to the Closing, then:

(i) Buyer and Seller shall, with respect to each Property affected by one or more Asserted Defects, attempt to agree upon an appropriate adjustment to the Purchase Price to account for such Asserted Defects; and

(ii) with respect to each Property as to which Buyer and Seller are unable to agree upon an appropriate adjustment with respect to all Asserted Defects affecting such Property, such Property will be excluded from the transaction contemplated hereby, and the Purchase Price will be reduced by the Allocated Values for such excluded Property; provided further Buyer shall be under no obligation to agree to an appropriate adjustment as to any Asserted Defect as defined in 7.1(b)(vii).

(b) Notwithstanding anything herein to the contrary, Buyer may elect to specify as an appropriate adjustment to the Purchase Price

(i) for an Asserted Defect of the type which is specified in **Sections 7.1(b)(i), or (iii)**, and which affects the NRI specified on **Exhibit 7.1(b)(i)**, for the remaining production life of the Oil and Gas Property involved, an amount equal to the Allocated Values for such Oil and Gas Property multiplied by the proportionate reduction in such NRI (e.g., the amount by which the share of production to which Seller is actually entitled is less than the NRI specified for such Oil and Gas Property on **Exhibit 7.1(b)(i)**, divided by such NRI specified on **Exhibit 7.1(b)(i)**), or

(ii) for a Defect of the type specified in **Sections 7.1(b)(ii),(iv) or (v)**, the amount required to discharge such lien, or the amount represented by the loss of volumes required to discharge such make up obligation or overproduced position, which amounts shall, in the case of a make up obligation or overproduced position, be the discounted present value of the volumes required to discharge such obligation, determined by using a 10% discount rate and assuming



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the same would be discharged as promptly as possible (under the terms of applicable agreements) after the Closing Date assuming production occurs at the same rate as projected in projections of production furnished by Buyer as (and represented by Buyer to be) its projections used in making its decision to purchase (and valuing such production using prices for production utilized in such projections). If Buyer elects to specify an adjustment pursuant to this **Section 7.2(b)**, such adjustment will be deemed an adjustment mutually agreed to under Error! Reference source not found. above subject to **Section 7.2(d)**.

(c) Should Seller determine (or should Buyer, in the course of its due diligence review contemplated by **Section 7.1**, determine) that the ownership of the Properties by Seller entitles Seller to a share of the production from a well listed on **Exhibit 7.1(b)(i)** greater than the share shown for such well under the column headed “NRI” on **Exhibit 7.1(b)(i)**, or that Seller is in an underproduced position with respect to an Oil and Gas Property (e.g., Seller and/or its predecessors in title have taken less gas than their ownership in such Oil and Gas Property would entitle them to take), or is in an overproduced position less than that shown on **Exhibit 7.1(b)(v)**, then Seller shall be entitled to an upward adjustment to the Purchase Price to account for such fact, in which case such adjustment shall be handled in a similar manner as provided above with respect to adjustments for Asserted Defects; provided that the party making such determination shall notify the other party of the proposed upward adjustment at or prior to Closing.

(d) Notwithstanding the anything to the contrary, as to any Asserted Defect asserted by Buyer under **Section 7.2(b)(vi)** for which Buyer and Seller do not reach agreement, within five (5) days after the commencement of negotiations pursuant to **Section 7.2(a)** above, on the existence of such Asserted Defect, or the Defect Amount attributable to such Asserted Defect, Buyer may, in its sole discretion and upon written notice to the Seller, elect to exclude the affected Property (and as to Properties affected by a Defect of the type described in **Section 7.1(b)(vi)**, the entire unit or JOA Contract Area which the affected Property is part of) from the transaction contemplated hereby, and the Purchase Price will be reduced by the Allocated Value of the excluded Property.

**Section 7.3 Waiver.** Without limiting **Section 7.1** and notwithstanding anything else herein to the contrary, all Defects of the type described in **Sections 7.1(b)(i), (ii) and (v)** which are not timely asserted pursuant to **Section 7.1(a)** shall be waived by Buyer as a Defect, and all proposed upward adjustments not raised by Seller within the time period specified in **Section 7.2(c)** shall be waived by Seller for all purposes.

### **Article VIII**

#### **Conditions Precedent to the Obligations of the Parties to Close**

**Section 8.1 Conditions Precedent to the Obligations of Buyer to Close.** The obligations of Buyer to consummate the transactions contemplated this Agreement are subject to each of the following conditions being met:



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(a) Except for representations qualified by “material” or “materiality” in which case such representations must be true and accurate in all respects when made and at Closing when serving as a condition to Close, each and every representation of Seller under this Agreement shall be true and accurate in all material respects as of the date when made and, for the purposes of serving as a condition to Close, shall be true and accurate in all material respects at and as of the time of Closing, as if it had been made again at and as of the time of Closing.

(b) Except for covenants, agreements and conditions qualified by “material” or “materiality” in which case compliance must be performed and complied with in all respects by Seller prior to or at the Closing, Seller shall have performed and complied in all material respects with (or compliance therewith shall have been waived by Buyer) each and every covenant, agreement and condition required by this Agreement to be performed or complied with by Seller prior to or at the Closing.

(c) Seller shall have delivered a certificate executed by an authorized representative of Seller dated the Closing Date, representing and certifying in such detail as Buyer may reasonably request that the conditions set forth in **paragraphs (a) and (b)** above have been fulfilled.

(d) No suit, action or other proceedings shall, on the date of Closing, be pending or threatened before any court or governmental agency seeking to restrain, prohibit, or obtain damages or other relief in connection with the consummation of the transactions contemplated by this Agreement.

(e) The aggregate downward adjustments to the Purchase Price pursuant to **Article VII and Article XII, [except for adjustments for Defects of the type specified in Section 7.1(b)(i)(A) [net revenue interest deficiencies], Section 7.1(b)(ii), [Liens], Section 7.1(b)(iv) [Production Payments] or Section 7.1(b)(v), [Imbalances],]** do not exceed \$ \_\_\_\_\_, provided Buyer has the right until Closing to waive, by notice to Seller, any Asserted Defects and any Asserted Defects waived by Buyer shall also be excluded in the calculation aggregate adjustments for purposes of this **paragraph (e)**.

If any such condition on the obligations of Buyer under this Agreement is not met as of the Closing Date, or in the event the Closing does not occur on or before the Closing Date, and (in either case) Buyer is not in breach of its obligations hereunder, this Agreement may, at the option of Buyer, be terminated, in which case the parties shall have no further obligations to one another hereunder (other than the obligations under **Article XIV and Section 15.6**, which will survive such termination).

**[If deposit used:]** If any such condition on the obligations of Buyer under this Agreement is not met as of the Closing Date, or in the event the Closing does not occur on or before the Closing Date, and (in either case) Buyer is not in breach of its obligations hereunder, this Agreement may, at the option of Buyer, be terminated, in which case the parties shall have no further obligations to one another hereunder (other than the obligations under **Article XIV**



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and **Section 15.6**, which will survive such termination, and the release of the Deposit as set forth in **Section 3.2** or this section). In the event of such a termination by Buyer, the Deposit will be refunded to Buyer by Fundholder.

**Section 8.2 Conditions Precedent to the Obligations of Seller to Close.** The obligations of Seller to consummate the transactions contemplated by this Agreement are subject to each of the following conditions being met:

(a) Except for representations qualified by “material” or “materiality” in which case such representations must be true and accurate in all respects when made and at Closing when serving as a condition to Close, each and every representation of Buyer under this Agreement shall be true and accurate in all material respects as of the date when made and, for the purposes of serving as a condition to Close, shall be true and accurate in all material respects at and as of the time of Closing as if it had been made again at and as of the time of Closing.

(b) Except for covenants, agreements and conditions qualified by “material” or “materiality” in which case compliance must be performed and complied with in all respects by Buyer prior to or at the Closing, Buyer shall have performed and complied in all material respects with (or compliance therewith shall have been waived by Seller) each and every covenant, agreement and condition required by this Agreement to be performed or complied with by Buyer prior to or at the Closing.

(c) No suit, action or other proceedings shall, on the date of Closing, be pending or threatened before any court or governmental agency seeking to restrain, prohibit, or obtain damages or other relief in connection with the consummation of the transactions contemplated by this Agreement.

(d) The aggregate downward adjustments to the Purchase Price pursuant to **Article VII** and **Article XII**, [except for adjustments for Defects of the type specified in **Section 7.1(b)(i)(A)** [net revenue interest deficiencies], **Section 7.1(b)(ii)**, [Liens], **Section 7.1(b)(iv)** [Production Payments] or **Section 7.1(b)(v)** [Imbalances],] do not exceed \$\_\_\_\_\_, provided Buyer has the right until Closing to waive, by notice to Seller, any Asserted Defects and any Asserted Defects waived by Buyer shall also be excluded in the calculation aggregate adjustments for purposes of this **paragraph (d)**.

If any such condition on the obligations of Seller under this Agreement is not met as of the Closing Date, or in the event the Closing does not occur on or before the Closing Date, and (in either case) Seller is not in breach of its obligations hereunder, this Agreement may, at the option of Seller, be terminated, in which case the parties shall have no further obligations to one another hereunder (other than the obligations under **Article XIV** and **Section 15.6**, which will survive such termination).

**[If deposit used:]** If any such condition on the obligations of Seller under this Agreement is not met as of the Closing Date, or in the event the Closing does not occur on or



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before the Closing Date, and (in either case) Seller is not in breach of its obligations hereunder in the absence of Buyer also being in breach of its obligations hereunder, this Agreement may, at the option of Seller, be terminated, in which case the parties shall have no further obligations to one another hereunder (other than the obligations under **Article XIV** and **Section 15.6**, which will survive such termination, and the release of the Deposit as set forth in **Section 3.2** or this section). In the event of such a termination by Seller, the Deposit will be refunded to Buyer by Fundholder, unless (i) the conditions which are not met include condition (a) or (b) above, or (ii) Buyer shall otherwise have breached this Agreement, in which event the Deposit shall be paid to Seller by Fundholder.

### **Article IX** **Closing of Transaction**

**Section 9.1 The Closing.** The closing (herein called the “**Closing**”) of the transaction contemplated hereby shall take place in the offices of Thompson & Knight L.L.P., at 1722 Routh Street, Suite 1500, Dallas, Texas, 75201, at 10:00 a.m. Central Time, on \_\_\_\_\_, or at such other date and time as the Buyer and Seller may mutually agree upon (such date and time being herein called the “**Closing Date**”).

**Section 9.2 Seller’s Closing Obligations.** At the Closing, Seller shall:

(a) execute, acknowledge and deliver to Buyer a conveyance of the Properties (the “**Conveyance**”), in the form attached hereto as **Exhibit 9.2(a)**, effective as to runs of oil and deliveries of gas as of 9:00 o’clock a.m., Local Time for the appropriate Properties on \_\_\_\_\_ (the “**Effective Date**”);

(b) deliver a copy of the resolutions adopted by the board of directors of Seller authorizing Seller to execute and deliver this Agreement and all related documents and instruments and to perform its obligations hereunder and thereunder, which copy shall be certified by the secretary or assistant secretary of Seller;

(c) deliver to Buyer a certificate of existence and good standing issued by the Secretary of State of \_\_\_\_\_ and dated no earlier than five business days prior to the Closing Date;

(d) to the extent requested by Buyer, execute and deliver to Buyer (i) letters in lieu of transfer orders (or similar documentation), in form acceptable to both parties, and, (ii) an affidavit or other certification (as permitted by the Code) that Seller is not a “foreign person” within the meaning of Section 1445 (or similar provisions) of the Code (i.e., Seller is not a non-resident alien, foreign corporation, foreign partnership, foreign trust or foreign estate as those terms are defined in the Code and regulations promulgated thereunder in the form attached hereto as **Exhibit 9.2(d)**);

(e) execute and deliver the necessary documents to release the Deposit to Seller; and



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[ALTERNATE IF LIEN.] (f) deliver original, executed releases for the liens described in **Section 6.6** with an adequate number of counterparts for recording said release.

**Section 9.3 Buyer's Closing Obligations.** At the Closing, Buyer shall:

(a) deliver to the Seller, by wire transfer to an account designated by Seller in a bank located in the United States, an amount equal to the Adjusted Purchase Price (as adjusted by **Section 10.2(a)**) which shall include executing the necessary documents to release the Deposit to Seller.

**Section 9.4 Delivery of Files.** No later than 5 business days after the Closing, Seller shall deliver to Buyer such of Seller's contract files, lease and other title files, production files, well files and other files pertaining to the ownership and/or operation of the Properties as Buyer may request including without limitation the information set forth in **Section 2.1(f)**.

### **Article X**

#### **Certain Accounting Adjustments**

**Section 10.1 Adjustments.** Appropriate adjustments shall be made between Buyer and Seller so that (a) all expenses (including all drilling costs, all capital expenditures, and all overhead charges under applicable operating agreements, and all other overhead charges actually charged by third parties) which are incurred in the operation of the Properties on or after the Effective Date will be borne by Buyer, and all proceeds (net of applicable production, severance, and similar taxes) from the sale of oil, gas and/or other minerals produced from the Oil and Gas Properties on or after the Effective Date will be received by Buyer, and (b) all expenses which are incurred in the operation of the Properties before the Effective Date will be borne by Seller and all proceeds (net of applicable production, severance, and similar taxes) from the sale of oil, gas and/or other minerals produced therefrom before the Effective Date will be received by Seller. It is agreed that, in making such adjustments, all oil and all other hydrocarbons which were produced from the Oil and Gas Properties and which were, on the Effective Date, stored in tanks located on the Oil and Gas Properties and above pipeline connections shall be deemed to have been produced before the Effective Date (it is recognized that such tanks may not have been gauged on the Effective Date for the purposes of this Agreement and that determination of the volume of such oil in storage will be based on the best available data, which may include estimates). It is agreed that on \_\_\_\_\_, the parties shall measure the oil tanks of the Oil and Gas Properties. Seller shall retain the proceeds of sale for the oil as measured on [\_\_\_\_\_], less one foot (which is deemed equivalent to all the oil above the pipeline connection). Seller shall measure all oil removed from the tanks after [\_\_\_\_\_], which oil, less oil in tanks referred to in the preceding sentence, shall be credited to Buyer at Closing at the rate of the actual sale price for such oil. Ad valorem taxes assessed with respect to a period which the Effective Date splits shall be prorated based on the number of days in such period which fall on each side of the Effective Date (with the day on which the Effective Date falls being counted in the period after the Effective Date), and (iii) no consideration shall be given to the local, state or federal income tax liabilities of any party.



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[ Use this language for Colorado and Wyoming properties: (iii) with respect to the Properties located in Colorado and Wyoming, any ad valorem taxes required to be paid for tax year 2006, regardless of the period of oil and gas production from the Properties used to calculate such taxes, shall be prorated between Buyer and Seller based on the number of days during the year on which the sale occurs that fall on each side of the Effective Date (with the day on which the Effective Date falls being counted in the period after the Effective Date) with Seller being responsible for the prorated portion of such taxes prior to the Effective Date and Buyer being responsible for the prorated portion of such taxes after the Effective Date.]

### **Section 10.2 Closing and Post-Closing Accounting Settlements**

(a) At or before Closing, the parties shall determine, based upon the best information reasonably available to them, the amount of the adjustments provided for in **Section 10.1**. If the amount of adjustments so determined which would result in a credit to Buyer exceed the amount of adjustments so determined which would result in a credit to Seller, Buyer shall receive a credit, for the amount of such excess, against the Purchase Price to be paid at Closing, and, if the converse is true, Buyer shall pay to Seller, at Closing (in addition to amounts otherwise then owed), the amount of such excess.

(b) On or before 90 days after Closing, Buyer and Seller shall review any additional information which may then be available pertaining to the adjustments provided for in **Section 10.1**, shall determine if any additional adjustments (whether the same be made to account for expenses or revenues not considered in making the adjustments made at Closing, or to correct errors made in such adjustments) should be made beyond those made at Closing, and shall make any such adjustments by appropriate payments from Seller to Buyer or from Buyer to Seller.

(c) Should any additional items which would be the subject of adjustments provided for in **Section 10.1** above come to the attention of Buyer or Seller after such adjustments under **paragraph (b)** above are concluded, such adjustments shall be made by appropriate payments from Buyer to Seller or from Seller to Buyer.

**Section 10.3 No Sales Taxes.** No sales, transfer or similar tax will be collected at Closing from Buyer in connection with this transaction. If, however, this transaction is later deemed to be subject to sales, transfer or similar tax, at any time, for any reason, Seller agrees to be solely responsible, and shall indemnify and hold Buyer and its Affiliates, and its and their directors, officers, employees, attorneys, contractors and agents harmless, for any and all sales, transfer or other similar taxes (including related penalty, interest or legal costs) due by virtue of this transaction on the Properties transferred pursuant hereto and the Seller shall remit such taxes at that time. Seller and Buyer agree to cooperate with each other in demonstrating that the requirements for any exemption from such taxes have been met.

### **Article XI** **Post Closing Obligations**



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### **Section 11.1 Indemnification Obligations**

(a) Seller shall, on the date of Closing, agree (and, upon delivery to Buyer of the Conveyance, shall be deemed to have agreed), subject to the limitations and procedures contained in this **Section 11.1**, and in **Sections 11.2, 11.3, and 15.1**, following the Closing, remain responsible for and indemnify, defend and hold Buyer harmless from and against any and all claims, obligations, actions, liabilities, damages, expenses (including, without limitation, court costs and consultants' and attorneys' fees) or losses (collectively, "**Buyer's Losses**") arising out of, relating to or caused by (i) any misrepresentation or breach of any warranty, covenant or agreement of Seller contained in this Agreement or any certificate delivered by Seller at the Closing, provided that solely for purposes of Seller's indemnity obligation under this Section any materiality limitation contained in any such warranty, covenant or agreement of Seller shall be disregarded and shall not apply, (ii) the ownership or operation of the Properties before the Effective Date, (iii) any personal injury (including death) or property damage sustained on or in connection with the Properties prior to the Closing, (iv) the employment relationship between Seller and any of Seller's present or former employees or the termination of any such employment relationship, or (v) the Excluded Properties.

(b) Buyer shall, on the date of Closing, agree (and, upon delivery to Buyer of the Conveyance, shall be deemed to have agreed), subject to the limitations and procedures contained in this **Section 11.1**, and in **Sections 11.2, 11.3, and 15.1**, following the Closing, to indemnify and hold Seller harmless from and against any and all claims, obligations, actions, liabilities, damages, costs, expenses (including, without limitation, court costs and consultants' and attorneys' fees), or losses (collectively, "**Seller's Losses**") arising out of, relating to or caused by (i) any misrepresentation or breach of any warranty, covenant or agreement of Buyer contained in this Agreement, or (ii) the ownership or operation of the Properties after the Effective Date, provided that Buyer shall not be obligated to indemnify or hold Seller harmless for any of Buyer's Losses.

(c) Nothing in **paragraphs (a) and (b)** above shall be construed as overriding the adjustment procedure provided for in **Article X**.

### **Section 11.2 Indemnification Procedures**

(a) If indemnification pursuant to **Sections 11.1(a)** (or **11.1(b)**) is sought, the party seeking indemnification (the "**Indemnitee**") shall give written notice to the indemnifying party of an event giving rise to the obligation to indemnify, describing in reasonable detail the factual basis for such claim ("**Indemnification Claim**"), and shall allow the indemnifying party to assume and conduct the defense of the claim or action with counsel reasonably satisfactory to the Indemnitee, and cooperate with the indemnifying party in the defense thereof, provided that the omission to give such notice to the indemnifying party shall not relieve the indemnifying party from any liability which it may have to the Indemnitee, except to the extent that the Indemnification Claim



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arises from a third party claim (“**Third Party Claim**”) against Indemnitee and the indemnifying party proves it was materially prejudiced by the failure to give such notice.

(b) Within fifteen (15) business days (“**Response Period**”) of receipt of an Indemnification Claim, the indemnifying party shall notify Indemnitee in writing whether or not it disputes that it is obligated to indemnify the Indemnitee as set forth in the Indemnification Claim. Further, if such Third Party Claim is undisputed by the indemnifying party, the indemnifying party shall, within the Response Period, assume and conduct the defense of the Third Party Claim with counsel reasonably satisfactory to the Indemnitee. The Indemnitee shall have the right to employ separate counsel to represent the Indemnitee if the Indemnitee is advised by counsel that an actual conflict of interest makes it advisable for the Indemnitee to be represented by separate counsel and the reasonable expenses and fees of such separate counsel shall be paid by the indemnifying party. The indemnifying party shall not control (but may participate at its own expense in the defense of), and the Indemnitee shall be entitled to have sole control over, the defense or settlement, compromise, admission or acknowledgment of any Third Party Claim (i) as to which the Indemnitee fails to assume the defense within the Response Period or (ii) to the extent the Third Party Claim seeks an order, injunction or other equitable relief against the Indemnitee which, if successful, would adversely affect the business, operations, assets, or financial condition of the Indemnitee

(c) The indemnifying party shall obtain the prior written approval of the Indemnitee, which approval shall not be unreasonably withheld, before making any settlement, compromise, admission, or acknowledgment of the validity of any Third Party Claim or any liability in respect thereof if, pursuant to or as a result of such settlement, compromise, admission, or acknowledgment, injunctive or other equitable relief would be imposed against the Indemnitee or if, in the opinion of the Indemnitee, such settlement, compromise, admission, or acknowledgment could have an adverse effect on its business, operations, assets or financial condition. No indemnifying party shall consent to the entry of any judgment or enter into any settlement that does not include as an unconditional term thereof the giving by each claimant or plaintiff to each Indemnitee of a full and unconditional release from all liability in respect of such Third Party Claim.

**Section 11.3 Plugged Wells.** Notwithstanding any provisions in this Agreement to the contrary, Seller shall retain all liability and indemnify and hold Buyer harmless from and against any and all claims, obligations, actions, liabilities, damages or expenses arising out of or relating to inactive and plugged wells not listed on **Exhibit 4.13.**

### **Section 11.4 Area of Non-Compete.**

(a) For a period of two (2) years following Closing, Seller and its affiliates agree not to compete with Buyer within (x) the area depicted on the map attached hereto as **Exhibit 11.4**, or (y) a two (2) mile radius from the outside boundaries of the lands covered by any of the Oil and Gas Properties ((x) and (y) are collectively herein called



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the “**Non-Compete Area**”) by retaining, buying, exchanging, acquiring or otherwise owning, directly or indirectly, either

(i) for itself or as principal, agent, consultant, employer, employee, shareholder, interest holder, partner, member, officer, director, licensor, lender, lessor or in any other individual or representative capacity (collectively “**Affiliates**”), or

(ii) through any affiliate, broker, family member or other representative or related party (collectively “**Other Parties**”),

any, oil, gas and/or mineral lease, option, farm-in or other interest in oil, gas and/or other minerals or the right to explore for, acquire and/or produce same within the Non-Compete Area. For purposes of this Agreement, “oil, gas and/or other minerals” shall include, without limitation, coal, coalbed methane gas and other gas associated with coal.

(b) In the event Seller or any of its Affiliates or other parties (directly or indirectly as set forth above) owns or acquires any interest in oil, gas and/or other minerals in the Non-Compete Area in derogation hereof, the interest so owned or acquired shall, at Buyer’s option and without limitation of any other remedies Buyer may have at law or in equity, be conveyed by such breaching party or parties to Buyer (or if held by an Affiliate, or Other Parties, the breaching party or parties shall cause such interest to be conveyed to Buyer), at the actual and reasonable direct cost and without creation of additional burdens for the benefit of any Seller, Affiliates, or other parties, or any other third party (except the royalty to the lessor or lessors of each such lease conveyed).

(c) The non-compete obligations under this **Section 11.4** shall not terminate after Closing.

(d) Seller agrees to execute and deliver any further documentation to effectuate **Section 11.4**, and provide notice to others, and bind Seller thereto. Further, Seller and its Affiliates agree to provide any information requested by Buyer so that Buyer can verify Seller’s compliance with this **Section 11.4**.

**[Note: Additional language for Operated Properties:]**

**Section 11.5 Operational Transition** Buyer desires to succeed Seller at Closing, or as soon thereafter as possible, as the operator of the Operating Agreement Properties, and (ii) Buyer will succeed Seller as the operator of those of the Oil and Gas Properties which represent the entire working interest in the lands and depths covered thereby (the “100% Owned Properties”). In addition, Buyer shall, as soon as possible, succeed Seller as the collector and disbursing of proceeds of production attributable to the interests of Seller and third parties in the Disbursement Properties. It is understood and agreed that instead of Buyer succeeding Seller as operator, or disbursing of proceeds, as provided above, Buyer



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may, in some or all cases, designate an affiliate of Buyer to so succeed Seller (references herein to Buyer in the context of succession as operator or disbursing officer of proceeds of production shall be considered to include such designees). Seller shall cooperate fully in order to facilitate an orderly and expeditious transfer of operations with respect to the Operating Agreement Properties and the 100% Owned Properties, and to facilitate an orderly and expeditious transfer of disbursement responsibilities with respect to the Disbursement Properties. Specifically in connection with (but not in limitation of) the foregoing, Buyer and Seller expressly agree as set forth in Sections 11.6 and 11.7 below.

**Section 11.6 Operating Agreement Property** Seller shall, as soon as practicable after the execution of this Agreement, obtain, and shall thereafter use its best efforts to obtain (prior to Closing if possible), consent from all non-operators for the Buyer to become the operator of each Operating Agreement Property if and when (or as soon as practicable after) Closing occurs. With respect to each Operating Agreement Property, between the date hereof and the date on which Buyer succeeds Seller as operator (or it is determined that Buyer will not be permitted to succeed Seller as operator and another party is selected and succeeds Seller as operator), Seller shall (unless removed) continue to serve as Operator under the applicable operating agreement relating to such Operating Agreement Property in the manner provided by such operating agreement (but in no event shall Seller propose the conduct of any operations which, under the terms of such operating agreement, would require the consent of other parties to such operating agreement to conduct). With respect to each Operating Agreement Property where Buyer succeeds Seller as operator, Buyer and Seller (as between themselves) agree that (i) in serving as operator, as contemplated by (and for the period specified in) the preceding sentence, Seller shall pay all expenses which the operator is to pay under the applicable operating agreement which are actually billed to it prior to the end of such period and shall be responsible for collecting reimbursement of such expenses from third parties owing reimbursement of same to the operator. Buyer agrees to provide assistance in such collection, so long as the costs of such assistance is insubstantial, and agrees to turn over to Seller any reimbursement amounts which should have been paid to Seller but which were paid to Buyer instead. (Seller shall also be entitled to include in billings to third parties, and to retain for its own account, any overhead charges which it would be entitled to collect from such third parties for such period under the applicable operating agreement) and any payment of any such expenses which are actually billed to the operator after the end of such period shall promptly immediately furnish the statements rendered to Seller for same) be the responsibility of Buyer. Collection of any reimbursements for the same shall be the responsibility of Buyer, although Seller agrees to provide assistance in such collection, so long as the cost of such assistance is insubstantial, and agrees to turn over to Buyer any reimbursement amounts which should have been paid to Buyer but which were paid to Seller instead). With respect to each Operating Agreement Property where Buyer does not succeed Seller as operator, Seller shall be solely responsible for arranging the transition with the new operator.



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**Section 11.7 Disbursement Property.** With respect to each Disbursement Property, Seller shall continue to collect proceeds of production during the month in which Closing occurs and shall be responsible for making disbursements, in accordance with its normal procedures (and at normal times) of such proceeds of production so collected to the parties entitled to same, with any proceeds of production thereafter collected by Seller to be promptly forwarded to Buyer (who shall thereafter account for same to the parties entitled thereto). In addition, Seller shall, as promptly as possible after Closing, deliver to Buyer (A) its “pay list” for each such Disbursement Property (which pay list shall include the name, address, social security number and applicable share of proceeds of production for each party to whom Seller is disbursing proceeds of production with respect to such property), and (B) a list of all parties for whom it is holding in “legal” suspense Proceeds of Runs, together with an explanation for each such party of why it is holding the same in suspense (or a file for such party, or the affected Disbursement Property, which would contain such an explanation), and (C) a check (which shall be delivered within 30 days after the close of the month in which Closing occurs) in an amount equal to all suspended funds. Seller does not represent or warrant to Buyer the accuracy of the “pay lists” so delivered, except that it does represent and warrant that, except as to parties for whom funds are held in suspense, it has not received any claim or demand which would indicate that such pay lists are inaccurate. If, for any reason, Buyer is unable to so succeed to Seller as disburser of proceeds of production with respect to a Disbursement Property (A) the procedure provided for in clause (i) above shall be continued (from month to month), and the procedures provided for herein above shall be deferred with respect to such Disbursement Property until such succession can be arranged, if it can be arranged within a reasonable time, or (ii) if such succession cannot be arranged within a reasonable time, Seller shall be responsible for arranging the transition to another succeeding party.

**Section 11.8 Continuing Net Worth.** So long as Seller has any indemnification obligations under this Agreement, Seller will not, at any time, permit its Consolidated Net Worth to be less than \$\_\_\_\_\_.

### **Article XII** **Casualty Loss**

**Section 12.1 Casualty Loss.** In the event of damage by fire or other casualty to the Properties after the Effective Date and prior to the Closing, then (a) this Agreement shall remain in full force and effect and (b) the Purchase Price shall be reduced by the amount necessary to restore the damaged Property to at least its prior condition or, if such Property cannot be so restored, by an amount equal to the replacement value of such Property so damaged. The Purchase Price shall also be reduced by the amount of revenue lost as result of damage by fire or other Casualty to the Properties after the Effective Date and prior to Closing. Seller shall be entitled to retain any and all insurance proceeds paid in connection with such fire or other casualty to be used to restore the Properties as above provided.



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## Article XIII Notices

**Section 13.1 Notices.** All notices and other communications required under this Agreement shall (unless otherwise specifically provided herein) be in writing and be delivered personally, by recognized commercial courier or delivery service (which provides a receipt), by telecopier (with receipt acknowledged), or by registered or certified mail (postage prepaid), at the following addresses:

If to Seller: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Fax No.: \_\_\_\_\_

If to Buyer: \_\_\_\_\_ [ \_\_\_\_\_ ]  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Fax No.: \_\_\_\_\_

With a copy to: Oil and Gas Section  
Thompson & Knight L.L.P.  
1722 Routh Street, Suite 1500  
Dallas, TX 75201  
Phone No.: (214) 969-1700  
Fax No.: (214) 969-1751

and shall be considered delivered on the date of receipt. Either Buyer or Seller may specify as its proper address any other post office address within the continental limits of the United States by giving notice to the other party, in the manner provided in this Article, at least ten (10) days prior to the effective date of such change of address.

## Article XIV Commissions

### Section 14.1 Commissions

(a) Seller agrees to indemnify and hold harmless Buyer from and against any and all claims, obligations, actions, liabilities, losses, damages, costs or expenses (including court costs and attorneys fees) of any kind or character arising out of or resulting from any agreement, arrangement or understanding alleged to have been made by, or on behalf of, Seller with any broker or finder in connection with this Agreement or the transaction contemplated hereby.



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(b) Buyer agrees to indemnify and hold harmless Seller from and against any and all claims, obligations, actions, liabilities, losses, damages, costs or expenses (including court costs and attorneys fees) of any kind or character arising out of or resulting from any agreement, arrangement or understanding alleged to have been made by, or on behalf of, Buyer with any broker or finder in connection with this Agreement or the transaction contemplated hereby.

### **Article XV** **Miscellaneous Matters**

**Section 15.1 Survival of Provisions.** All representations, warranties and covenants of Seller or Buyer contained in this Agreement, any Exhibit or in any certificate delivered at the Closing shall survive the Closing, except for the representations and warranties of Seller set forth in **Sections 4.6 through 4.10, Sections 4.12 through 4.19, and Sections 4.21, 4.23 and 4.24** which shall only survive for a period beginning on the Closing Date and ending on the fifth annual anniversary of the Closing Date (the “**Indemnification Period**”). Any claim for indemnification for a breach of representation or warranty of Seller set forth in **Sections 4.6 through 4.10, 4.12 through 4.19, 4.21, 4.23 and 4.24** must be made prior to the expiration of the Indemnification Period. Notwithstanding the foregoing, the obligation of each party hereto to indemnify any other party hereto shall continue after the expiration of the Indemnification Period with respect to any matter of which the party seeking indemnity hereunder shall have given the other party written notice as provided herein prior to the expiration of the Indemnification Period.

**Section 15.2 Further Assurances.** This transaction constitutes a [**partial**] assignment of the Seller’s interests in Oil and Gas Properties and all related property. However, as to those assets described in **Exhibit A**, Seller intended to convey each property described therein subject to the excluded interests set forth in **Section 2.2** even though Seller’s interest in such oil, gas and other minerals may be incorrectly described in, or omitted from, such **Exhibit A**. Seller intended to convey all properties set forth on the Reserve Report including the wells, PUD locations, and any other properties described therein whether or not such properties are listed on **Exhibit A** or reserved through **Exhibit A**. In order to effectuate and provide Buyer with the benefits of the transactions contemplated hereby, after the Closing, Seller shall execute and deliver, and shall otherwise cause to be executed and delivered, from time to time, such further instruments, notices, division orders, transfer orders and other documents, and do such other and further acts and things, as may be reasonably necessary to more fully and effectively grant, convey and assign the Properties to Buyer. Seller shall use its commercially reasonable efforts to pursue all claims for insurance (and the proceeds related thereto) relating to **Section 11.1(b)** and to the extent legally and contractually able to do so, assign all rights and claims for such insurance or the proceeds thereof to Buyer.

**Section 15.3 Binding Effect; Successors and Assigns.** The Agreement shall be binding on the parties hereto and their respective successors and permitted assigns. Neither party shall have the right to assign its rights under this Agreement, without the prior written consent of



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the other party first having been obtained. [optional: ; provided, however, Seller hereby consents to Buyer's assignment of \_\_\_% to \_\_\_\_\_.]

**Section 15.4 Like-Kind Exchange.** The Seller may structure all or a portion of the transaction contemplated in this Agreement as a like-kind exchange under Section 1031 of the Code in accordance with this **Section 15.4** (Seller, if it so elects, herein called the “**Electing Party**”). Such transfer shall be effectuated by mutually acceptable instruments, including without limitation, an exchange agreement and related assignments and consents to assignment. If Electing Party elects to structure the transaction as a like-kind exchange, the Electing Party shall substitute a third party, qualified intermediary (the “**Intermediary**”) as the Seller of all or a portion of the Properties. The Intermediary shall be designated in writing by the Electing Party prior to Closing. The Electing Party is and shall remain primarily liable for the full and timely performance of each and every one of the representations, warranties, indemnities, obligations, and undertakings ascribed to the Electing Party under this Agreement, notwithstanding its substitution of the Intermediary, and in the event of a breach by either Buyer, Seller, or the Intermediary, then Buyer or Seller may proceed directly against the other without the need to join the Intermediary as a party to any action. Buyer shall not incur any additional costs expenses, fees, or liabilities as a result of or connected with expenses incurred in connection with the exercise of the rights under this **Section 15.4**. THE ELECTING PARTY SHALL PROTECT, INDEMNIFY, AND HOLD HARMLESS BUYER FROM ANY LIABILITY, DAMAGES, OR COSTS, INCLUDING REASONABLE ATTORNEYS' FEES, COURT COSTS, AND RELATED EXPENSES, THAT MAY ARISE IN CONNECTION WITH ITS SECTION 1031 EXCHANGE UNDER THIS SECTION.

**Section 15.5 Imbalances.** On the date of Closing (and, upon the delivery to Buyer of the Conveyances), Buyer shall succeed to the position of Seller with respect to all gas imbalances. As a result of such succession Buyer shall (i) be entitled to receive any and all benefits, including payments of proceeds of production in excess of amounts which it would otherwise be entitled to produce and receive by virtue of ownership of the Oil and Gas Properties, which Seller would have been entitled to receive by virtue of such positions and (ii) shall be obligated to suffer any detriments (whether the same be in the form of obligations to deliver production which would have otherwise been attributable to its ownership of the Oil and Gas Properties without receiving full payment therefor, or be in the form of the obligation to make payment in cash) which Seller would have been obligated to suffer by virtue of such positions.

**Section 15.6 Expenses.** Each party shall bear and pay all expenses incurred by it in connection with the transaction contemplated by this Agreement and Buyer shall be responsible for all Conveyance recording fees and related costs and expenses.

**Section 15.7 Entire Agreement - Time of the Essence.** This Agreement [and the Commitment Letter, which contains certain obligations of Seller for indemnity and reimbursement for fees and expenses] contains the entire understanding of the parties hereto with respect to subject matter hereof and supersedes all prior agreements, understandings,



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negotiations, and discussions among the parties with respect to such subject matter. Time is of the essence in this Agreement.

**Section 15.8 Public Statements.** Seller and Buyer shall consult with each other with regard to all publicity and other releases at or prior to Closing concerning this Agreement and the transactions contemplated hereby and, except as required by applicable law or the applicable rules or regulations of any governmental body or stock exchange, neither party shall issue any publicity or other release without the prior consent of the other party.

**Section 15.9 Injunctive Relief.** The parties hereto acknowledge and agree that irreparable damage would occur in the event any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties shall be entitled to an injunction or injunctions to prevent breaches of the provisions of this Agreement, and shall be entitled to enforce specifically the provisions of this Agreement, in any court of the United States or any state thereof having jurisdiction, in addition to any other remedy to which the parties may be entitled under this Agreement or at law or in equity.

**Section 15.10 Amendments.** This Agreement may be amended, modified, supplemented, restated or discharged (and provisions hereof may be waived) only by an instrument in writing signed by the party against whom enforcement of the amendment, modification, supplement, restatement or discharge (or waiver) is sought.

**Section 15.11 Governing Law and Venue.** This Agreement shall be governed by and construed in accordance with the internal laws of the State of Texas applicable to a contract executed and performed in such State, without giving effect to conflicts of laws principles requiring the application of the law of another State, except that, to the extent that the law of a state in which a portion of the Properties is located (or which is otherwise applicable to a portion of the Properties) necessarily governs, the law of such state shall apply as to that portion of the property located in (or otherwise subject to the laws of) such state. EACH PARTY HERETO WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY ACTION, SUIT OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT. Each of the parties hereby (a) irrevocably submits to the exclusive jurisdiction of the state and federal courts of Dallas County, Texas, for the purposes of any suit, action or proceeding arising out of or relating to this Agreement, and (b) waives, and agrees not to assert in any such suit, action or proceeding, any claim that (i) it is not personally subject to the jurisdiction of such court or of any other court to which proceedings in such court may be appealed; (ii) such suit, action or proceeding is brought in an inconvenient forum; or, (iii) the venue of such suit, action or proceeding is improper.

**Section 15.12 Multiple Counterparts; Fax.** This instrument may be executed in a number of identical counterparts, each of which for all purposes is to be deemed an original, and all of which constitute collectively, one instrument. It is not necessary that each party hereto execute the same counterpart so long as identical counterparts are executed by each such party



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hereto. This instrument may be validly executed and delivered by facsimile or other electronic transmission.

**Section 15.13 Confidentiality.** From and after the Closing, Seller shall keep all information related to the Properties in strict confidence. Seller shall not disclose such information to any person except to their accountants, attorneys and other representatives and the extent such disclosure is required by applicable law and shall not use such information to its competitive advantage when in competition with Buyer.

**[Note: Post Close Termination & Unwind Clause If Defect Deadline is After The Closing:]**

**Section 15.14 No Waiver.** The failure of either party to insist upon strict performance of any provision hereof shall not constitute a waiver of, or estoppel against asserting, the right to require such performance in the future, nor shall a waiver or estoppel in any one instance constitute a waiver or estoppel with respect to a later breach of a similar nature or otherwise.

### **Section 15.15 Right of Post Closing Termination.**

(a) Following the Closing, if the “Unwind Threshold” (as hereinafter defined) is met with respect to a particular party, such party may elect, upon written notice to the other party, to terminate this Agreement without any liability as to either party. If such election is made, then all of the Properties which have been conveyed by Seller to Buyer pursuant to this Agreement shall be reconveyed to Seller, pursuant to **Exhibit 9.2(a)**; and Seller shall refund to Buyer the Adjusted Purchase Price as adjusted and paid to Seller under **Section 3.1** (with interest thereon at the rate of \_\_\_\_\_% per annum to Buyer).

The intent of the parties is, after such election, to place Seller and Buyer in the same position as if the transaction had never taken place. In this regard, Buyer shall execute any other documents necessary to effectuate the reversioning unto Seller of the Properties and any rights to receive proceeds therefrom, including, without limitation, letters in lieu. Subject to the terms hereof and except to the extent same have already been taken into account as an adjustment to the Purchase Price, all monies, proceeds, receipts, credits, and income, and all costs, payables, debits and expenses, accruing to the Properties for the period from the Effective Date to the date of reconveyance by Buyer to Seller, shall be the sole property and entitlement, and the sole responsibility, of Seller and, to the extent received or paid by Buyer, Buyer shall fully disclose, account for, and promptly transmit to Seller, or Seller shall promptly transmit to Buyer, as the case may be.

(b) In the event of the termination of this Agreement by one of the parties hereto in accordance with this **Section 15.15**, such party shall have no liability hereunder of any nature whatsoever to the other party, including any liability for damages.

(c) For purposes of this section, the “Unwind Threshold” is met with respect to a particular party when that party’s “Threshold Amount” exceeds



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\_\_\_\_\_ Dollars (\$\_\_\_\_\_). The “Threshold Amount” for each particular party is calculated as follows:

(i) with respect to the Seller, an amount equal to the aggregate sum of Asserted Defects, amounts due by Buyer for a breach of the Agreement, and the Allocated Value of any Property excluded due to any Defect; and

(ii) with respect to the Buyer, an amount equal to the aggregate sum of Asserted Defects, the Allocated Value of any Property excluded due to any Defect and amounts due by Seller for a breach of this Agreement.



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IN WITNESS WHEREOF, this Agreement is executed by the parties hereto on the date set forth above.

**SELLER:**

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**BUYER:**

[\_\_\_\_\_]

[By: \_\_\_\_\_]

[General Partner]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_



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## **EXHIBIT A**

**[If Monetization, insert 95.9596% of WI/NRI here or appropriate %]**

*SAMPLE ONLY*



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## Exhibit 9.2(a)

**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER. [ Required in TX for conveyances executed after 1/1/2003 to or from individuals]**

### CONVEYANCE

\_\_\_\_\_ (herein called "**Grantor**"), for Ten Dollars and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), does hereby GRANT, BARGAIN, SELL, CONVEY, ASSIGN, TRANSFER, SET OVER, and DELIVER unto \_\_\_\_\_ (herein called "**Grantee**"), whose address is \_\_\_\_\_ the following described properties, rights and interests:

(a) The properties described in **Exhibit A** attached hereto and made a part hereof for all purposes;

(b) Without limitation of the foregoing, all other right, title and interest (of whatever kind or character, whether legal or equitable, and whether vested or contingent) of Grantor in and to the oil, gas and other minerals in and under or that may be produced from the lands, leases and wells described in **Exhibit A** (including interests in oil, gas and/or mineral leases covering such lands and wells, overriding royalties, production payments and net profits interests in such lands, such leases and wells, and fee mineral interests, fee royalty interests and other interests in such oil, gas and other minerals) whether such lands be described in a description set forth in such **Exhibit A** or be described in such **Exhibit A** by reference to another instrument (and without limitation by any depth limitations that may be set forth in such **Exhibit A** or in any such instrument so referred to for description), even though Grantor's interest in such oil, gas and other minerals may be incorrectly described in, or omitted from, such **Exhibit A**;

(c) All rights, titles and interests of Grantor in and to, or otherwise derived from, all presently existing and valid oil, gas and/or mineral unitization, pooling, and/or communitization agreements, declarations and/or orders including those set forth on **Exhibit A** and in and to the properties covered and the units created thereby (including all units formed under orders, rules, regulations, or other official acts of any federal, state, or other authority having jurisdiction, voluntary unitization agreements, designations and/or declarations) relating to the properties described in **paragraphs (a) and (b)** above;

(d) All rights, titles and interests of Grantor in and to all presently existing and valid production sales (and sales related) contracts, operating agreements, and other agreements and contracts which are set forth on **Exhibit A** and which relate to any of the properties described in **paragraphs (a), (b) and (c)** above, or which relate to the exploration, development, operation, or maintenance thereof or the treatment, storage, transportation or marketing of production therefrom (or allocated thereto);



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(e) All rights, titles and interests of Grantor in and to all materials, supplies, machinery, equipment, improvements and other personal property and fixtures (including but not by way of limitation, all wells, wellhead equipment, pumping units, flowlines, tanks, buildings, injection facilities, saltwater disposal facilities, compression facilities, gathering systems, and other equipment), and all easements, rights-of-way, surface leases and other surface rights, all permits and licenses, and all other appurtenances being used or held for use in connection with, or otherwise related to, the exploration, development, operation or maintenance of any of the properties described in **paragraphs (a), (b) and (c)** above, or the treatment, storage, transportation or marketing of production therefrom (or allocated thereto); and

(f) All of Grantor's lease files, abstracts and title opinions, production records, well files, accounting records (but not including general tax or general financial accounting records), seismic records and surveys, gravity maps, electric logs, geological or geophysical data and records, and other files, documents and records of every kind and description which relate to the properties described above.

The properties, rights and interests specified in the foregoing subparagraphs (a), (b), (c), (d), (e) and (f), exclusive of the properties, rights and interests reserved below, are herein sometimes collectively called the "Subject Properties".

Excluded from the Properties is the undivided working and net revenue interest therein in excess of the undivided interest set forth on **Exhibit A** (the "**Excluded Properties**").

Grantee shall not be responsible for, and Grantor expressly retain, all liabilities related to the Excluded Properties, whether such liabilities arise before or after the Effective Date.

TO HAVE AND TO HOLD the Subject Properties unto Grantee, and assigns, forever.

**GRANTOR AGREES TO WARRANT AND FOREVER DEFEND TITLE TO THE SUBJECT PROPERTIES UNTO GRANTEE, ITS SUCCESSORS AND ASSIGNS, AGAINST THE CLAIMS AND DEMANDS OF ALL PERSONS CLAIMING, OR TO CLAIM THE SAME, OR ANY PART THEREOF, BY, THROUGH OR UNDER GRANTOR, BUT NOT OTHERWISE. [Drafting Note: Not useable with language limiting interest transferred to all of Grantor's right, title and interest.]**

**OTHER THAN THOSE REPRESENTATIONS AND WARRANTIES EXPRESSLY SET OUT IN THE PURCHASE AND SALE AGREEMENT (DESCRIBED BELOW) AND THIS CONVEYANCE, GRANTOR HEREBY EXPRESSLY DISCLAIMS ANY AND ALL REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE SUBJECT PROPERTIES OR THE TRANSACTION CONTEMPLATED HEREBY, AND GRANTEE AGREES THAT THE SUBJECT PROPERTIES ARE BEING SOLD BY GRANTOR "WHERE IS" AND "AS IS", WITH ALL FAULTS. SPECIFICALLY AS A PART OF (BUT NOT IN LIMITATION OF) THE FOREGOING, GRANTEE ACKNOWLEDGES THAT, OTHER THAN THOSE REPRESENTATIONS AND WARRANTIES EXPRESSLY SET OUT IN THE PURCHASE AND SALE**



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AGREEMENT AND THIS CONVEYANCE, GRANTOR HAS NOT MADE, AND GRANTOR HEREBY EXPRESSLY DISCLAIMS, ANY REPRESENTATION OR WARRANTY (EXPRESS, IMPLIED, UNDER COMMON LAW, BY STATUTE OR OTHERWISE) AS TO THE CONDITION OF THE SUBJECT PROPERTIES (INCLUDING WITHOUT LIMITATION, GRANTOR DISCLAIMS ANY IMPLIED OR EXPRESS WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR CONFORMITY TO MODELS OR SAMPLES OF MATERIALS).

Grantor agrees to execute and deliver to Grantee, from time to time, such other and additional instruments, notices, division orders, transfer orders and other documents, and to do all such other and further acts and things as may be necessary to more fully and effectively grant, convey and assign to Grantee the Subject Properties.

This Conveyance is being executed in several counterparts all of which are identical. All of such counterparts together shall constitute one and the same instrument.

This Conveyance is made subject to that certain Purchase and Sale Agreement between Grantor and Grantee dated \_\_\_\_\_, 200\_. Such Agreement contains certain representations, warranties, covenants and agreements between the parties, which survive the delivery of this Conveyance, as more particular provided for therein, but third parties may conclusively rely on this Conveyance to vest title to the Subject Properties in Grantee.

IN WITNESS WHEREOF this Conveyance has been executed by Grantor on the date of its acknowledgment effective as to runs of oil and deliveries of gas, and for all other purposes, as of 9:00 a.m. Local Time of the applicable Properties on \_\_\_\_\_, 200\_

“GRANTOR”

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF TEXAS )

)

COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_, by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public in and for the State of Texas



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## Exhibit 9.2(d)

### AFFIDAVIT OF NON-FOREIGN STATUS

Section 1445 of the Internal Revenue Code of 1986, as amended, provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. To inform the transferee that withholding of tax is not required upon the disposition of a U.S. real property interest by \_\_\_\_\_ (hereinafter "A \_\_\_\_\_"), the undersigned hereby certifies the following on behalf of \_\_\_\_\_:

1. \_\_\_\_\_ is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);
2. \_\_\_\_\_'s U.S. employer identification number is \_\_\_\_\_ and,
3. \_\_\_\_\_'s office address is \_\_\_\_\_.

\_\_\_\_\_ understands that this certification may be disclosed to the Internal Revenue Service by transferee and that any false statement contained herein could be punished by fine, imprisonment or both.

Under penalties of perjury, I declare that I have examined this certification and to the best of my knowledge and belief it is true, correct and completed, and I further declare that I have authority to sign this document on behalf of \_\_\_\_\_.

WITNESS my hand and the seal of this Corporation this \_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_