

(d) Condition of Personal or Movable Property. The equipment, inventory, improvements, fixtures, goods and other tangible personal/movable property forming a part of the Mortgaged Properties are and will remain in good repair and condition and are and will be adequate for the normal operation of the Mortgaged Properties in accordance with prudent industry standards; all of such Mortgaged Property is, and will remain, located on the Mortgaged Properties, except for that portion thereof which is or shall be located elsewhere (including that usually located on the Mortgaged Properties but temporarily located elsewhere) in the course of the normal operation of the Mortgaged Properties.

(e) Operation of Mortgaged Properties. The Mortgaged Properties (and properties unitized therewith) are being (and, to the extent the same could adversely affect the ownership or operation of the Mortgaged Properties after the date hereof, have in the past been), and hereafter will be, maintained, operated and developed in a good and workmanlike manner, in accordance with prudent industry standards and in conformity with all applicable laws and all rules, regulations and orders of all duly constituted authorities having jurisdiction and in conformity with all oil, gas and/or other mineral leases and other contracts and agreements forming a part of the Mortgaged Properties and in conformity with the Permitted Encumbrances; specifically in this connection, none of the wells located on the Mortgaged Properties (or properties unitized therewith) are or will be deviated from the vertical more than the maximum permitted by applicable laws, regulations, rules and orders, and such wells are, and will remain, bottomed under and producing from, with the well bores wholly within, the Mortgaged Properties (or, in the case of wells located on properties unitized therewith, such unitized properties). There are no dry holes, or otherwise inactive wells, located on the Mortgaged Properties or on lands pooled or unitized therewith, with respect to which Mortgagor has failed to comply with applicable laws, regulations, rules and orders relating to the proper plugging and abandonment thereof. Mortgagor has, and will have in the future, all governmental licenses and permits necessary or appropriate to own and operate the Mortgaged Properties; Mortgagor has not received notice of any material violations in respect of any such licenses or permits.

(f) Ad Valorem and Severance Taxes. Mortgagor has paid and discharged, and will continue to pay and discharge, all ad valorem taxes assessed against the Mortgaged Properties or any part thereof and all production, severance and other taxes assessed against, or measured by, the Production or the value, or proceeds, of the Production.

(g) Suits and Claims. There are no material suits, actions, claims, investigations, inquiries, proceedings or demands pending (or, to Mortgagors' knowledge, threatened) which affect the Mortgaged Properties (including, without limitation, any which challenge or otherwise pertain to Mortgagors' title to the Mortgaged Properties) and, except as disclosed in the Collateral Agency and Intercreditor Agreement or could not reasonably be expected to have a material adverse effect on (a) the business, property, operations, condition (financial or otherwise), results of operations of Mortgagor or prospects of Mortgagor or (b) the validity or enforceability of this Mortgage or any other Transaction Document or the rights and remedies of



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Mortgagee or any holder of any secured obligation, no judicial or administrative actions, suits or proceedings pending (or, to Mortgagors' knowledge, threatened) against Mortgagor.

(h) Environmental. The Mortgaged Properties and Mortgagor are not in violation of Applicable Environmental Laws (below defined), or subject to any existing, pending or, to the best knowledge of Mortgagor, threatened investigation or inquiry by any governmental authority or any other person under or with respect to Applicable Environmental Laws, or subject to any remedial obligations under Applicable Environmental Laws, and are in compliance with all permits and licenses required under Applicable Environmental Laws. "Applicable Environmental Laws" shall mean any applicable laws, orders, rules, or regulations pertaining to safety, health or the environment, as such laws, orders, rules or regulations now exist or are hereafter enacted and/or amended. The "Associated Property" (as such term is hereinafter defined) is not in violation of any Applicable Environmental Laws for which Mortgagor or its predecessors in the Property would be responsible. The term "Associated Property" as used in this Mortgage shall mean any and all interests in and to (and or carved out of) the lands which are described or referred to in Exhibit A hereto, or which are otherwise described in any of the oil, gas and/or mineral leases or other instruments described in or referred to in such Exhibit A, whether or not such property interests are owned by Mortgagor. Mortgagor will not cause or permit the Mortgaged Properties or the Associated Property or Mortgagor to be in violation of, or do anything or permit anything to be done or fail to do anything which will subject the Mortgaged Properties or the Associated Property to any remedial obligations under, or result in noncompliance with applicable permits and licenses under, any Applicable Environmental Laws, assuming disclosure to the applicable governmental authorities of all relevant facts, conditions and circumstances, if any, pertaining to the Mortgaged Properties or the Associated Property. Mortgagor will take all steps necessary to determine that no hazardous substances or solid wastes have been disposed of or otherwise released on or to the Mortgaged Properties or the Associated Property. Mortgagor will not cause or permit the disposal or other release of any hazardous substance or solid waste at, into, upon or under the Mortgaged Properties or the Associated Property and covenants and agrees to keep or cause the Mortgaged Properties and/or the Associated Property to be kept free of any hazardous substance or solid waste (except such use, and temporary storage in anticipation of use, as is required in the ordinary course of business, all while in compliance with Applicable Environmental Laws), and to remove the same (or if removal is prohibited by law, to take whatever action is required by law), promptly upon discovery at its sole expense.

(i) Not Abandon Wells; Participate in Operations. Mortgagor will not, except in accordance with prudent operations of the Mortgaged Properties, abandon, or consent to the abandonment of, any well producing from the Mortgaged Properties (or properties unitized therewith) so long as such well is capable (or is subject to being made capable through drilling, reworking or other operations which it would be commercially feasible to conduct) of producing oil, gas, or other hydrocarbons or other minerals in commercial quantities (as determined without considering the effect of this Mortgage).



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(j) Defense of Mortgage. If the validity or priority of this Mortgage or of any rights, titles, liens, privileges or security interests created or evidenced hereby with respect to the Mortgaged Properties or any part thereof or the title of Mortgagor to the Mortgaged Properties shall be endangered or questioned or shall be attacked directly or indirectly or if any legal proceedings are instituted against Mortgagor with respect thereto, Mortgagor will give prompt written notice thereof to Mortgagee and at Mortgagors' own cost and expense will diligently endeavor to cure any defect that may be developed or claimed, and will take all necessary and proper steps for the defense of such legal proceedings, including, but not limited to, the employment of counsel, the prosecution or defense of litigation and the release or discharge of all adverse claims, and Mortgagee and Trustee, or either of them, (whether or not named as a party to legal proceedings with respect thereto), is hereby authorized and empowered to take such additional steps as in their judgment and discretion may be necessary or proper for the defense of any such legal proceedings or the protection of the validity or priority of this Mortgage and the rights, titles, privileges, liens and security interests created or evidenced hereby, including but not limited to the employment of independent counsel, the prosecution or defense of litigation, the compromise or discharge of any adverse claims made with respect to the Mortgaged Properties, the purchase of any tax title and the removal of prior liens or security interests, and all expenditures so made of every kind and character shall be a demand obligation (which obligation Mortgagor hereby expressly promises to pay) owing by Mortgagor to Mortgagee or Trustee (as the case may be) and shall bear interest from the date expended until paid at the rate described in Section 2.3 hereof, and the party incurring such expenses shall be subrogated to all rights of the person receiving such payment.

(k) Fees and Expenses; Indemnity. Mortgagor will reimburse Mortgagee, Trustee and each Holder (for purposes of this paragraph, the terms "Mortgagee", "Trustee" and "Holder" shall include the directors, officers, partners, employees and agents of Mortgagee, Trustee or any Holder, respectively, and any persons or entities owned or controlled by or affiliated with Mortgagee, Trustee or any Holder, respectively) for all expenditures, including reasonable attorneys' fees and expenses, incurred or expended in connection with (i) the breach by Mortgagor of any covenant, agreement or condition contained herein or in any other Transaction Document, (ii) the exercise of any rights and remedies hereunder or under any other Transaction Document, and (iii) the protection of the Mortgaged Properties and/or liens and security interests therein. Mortgagor will indemnify and hold harmless Mortgagee, Trustee and each Holder from and against (and will reimburse such indemnified parties for) all claims, demands, liabilities, losses (other than losses that arise from the position taken by a Holder under a Secured Commodity Hedge (as defined in the Collateral Agency and Intercreditor Agreement or other liabilities and obligations of a Holder under the Transaction Documents)), damages, excluding consequential damages, causes of action, judgments, penalties, costs, fees and expenses (including without limitation reasonable attorneys' fees and expenses) which may be imposed upon, asserted against or incurred or paid by the Mortgagee, Trustee or any Holder on account of, in connection with, or arising out of (A) any bodily injury or death or natural resource, human health or property damage occurring in, at, into, under or upon or in the vicinity of the Mortgaged Properties through any cause whatsoever, (B) any act performed or omitted to be performed hereunder or



  
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under any other Transaction Document or the breach of any representation or warranty herein or in any other Transaction Document, (C) the exercise of any rights and remedies hereunder or under any other Transaction Document, (D) any transaction, act, omission, event or circumstance arising out of or in any way connected with the Mortgaged Properties or with Mortgagors' obligations under this Mortgage or any other Transaction Document, (E) any violation on or prior to the Release Date (as herein defined) of any Applicable Environmental Law, (F) any act, omission, event or circumstance existing or occurring on or prior to the Release Date (including without limitation the presence on or under the Mortgaged Properties or the Associated Property or release at, into, upon, under or from the Mortgaged Properties or the Associated Property of hazardous substances or solid wastes disposed of or otherwise released) resulting from or in connection with the ownership, construction, occupancy, operation, use and/or maintenance of the Mortgaged Properties or the Associated Property, regardless of whether the act, omission, event or circumstance constituted a violation of any Applicable Environmental Law at the time of its existence or occurrence, and (G) any and all claims or proceedings (whether brought by private party or governmental agencies) for human health, bodily injury, property damage, abatement or remediation, environmental damage, cleanup, mitigation, removal, natural resource damage or impairment or any other injury or damage resulting from or relating to any hazardous or toxic substance, solid waste or contaminated material located upon or migrating into, from or through the property or the Associated Property (whether or not the release of such materials was caused by Mortgagor, a tenant or subtenant or a prior owner or tenant or subtenant on the Mortgaged Properties or the Associated Property and whether or not the alleged liability is attributable to the use, treatment, handling, storage, generation, transportation, removal or disposal of such substance, waste or material or the mere presence of such substance, waste or material on or under the Mortgaged Properties or the Associated Property), which Mortgagee, Trustee, and/or any Holder may have liability due to the entering into of Secured Commodity Hedges (as defined in the Collateral Agency and Intercreditor Agreement) under the Collateral Agency and Intercreditor Agreement or any Secured Commodity Hedge or Debt Agreement, the granting of this Mortgage, the exercise of any rights under the Transaction Documents, or otherwise. Mortgagee shall have the right to compromise and adjust any such claims, actions and judgments, and in addition to the rights to be indemnified as herein provided, all amounts paid in compromise, satisfaction or discharge of any such claim, action or judgment, and all court costs, attorneys fees and other expenses of every character expended by Mortgagee, Trustee or any Holder pursuant to the provisions of this Section shall be a demand obligation (which obligation Mortgagor hereby expressly promises to pay) owing by Mortgagor to the applicable party or parties. The "Release Date" as used herein shall mean the earlier of the following two dates: (i) the date of the termination or expiration of the Collateral Agency and Intercreditor Agreement and all Transaction Documents and the payment or repayment of all amounts owing by the Mortgagor thereunder and on which date this Mortgage shall be released of record, or (ii) the date on which the lien of this Mortgage is foreclosed or a deed in lieu of such foreclosure is fully effective and recorded. **WITHOUT LIMITATION, IT IS THE INTENTION OF MORTGAGOR AND MORTGAGOR AGREES THAT THE FOREGOING INDEMNITIES SHALL APPLY TO EACH INDEMNIFIED PARTY WITH RESPECT TO CLAIMS, DEMANDS,**



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LIABILITIES, LOSSES (OTHER THAN LOSSES THAT ARISE FROM THE POSITION TAKEN BY A HOLDER UNDER A SECURED COMMODITY HEDGE (AS DEFINED IN THE COLLATERAL AGENCY AND INTERCREDITOR AGREEMENT) OR OTHER LIABILITIES AND OBLIGATIONS OF A HOLDER UNDER THE TRANSACTION DOCUMENTS), DAMAGES, CAUSES OF ACTION, JUDGMENTS, PENALTIES, COSTS, FEES AND EXPENSES (INCLUDING WITHOUT LIMITATION REASONABLE ATTORNEYS' FEES) WHICH IN WHOLE OR IN PART ARE CAUSED BY OR ARISE OUT OF THE NEGLIGENCE OF SUCH (AND/OR ANY OTHER) INDEMNIFIED PARTY. However, such indemnities shall not apply to any particular indemnified party (but shall apply to the other indemnified parties) to the extent the subject of the indemnification is caused by or arises out of the gross negligence or willful misconduct of such particular indemnified party. The foregoing indemnities shall not terminate upon the Release Date or upon the release, foreclosure or other termination of this Mortgage but will survive the Release Date, foreclosure of this Mortgage or conveyance in lieu of foreclosure, and the repayment of the secured obligations and the discharge and release of this Mortgage and the other documents evidencing and/or securing the secured obligations and the registration or removal of the Mortgagee. Any amount to be paid hereunder by Mortgagor to Mortgagee, Trustee and/or any Holder shall be a demand obligation owing by Mortgagor to the applicable party or parties and shall be subject to and covered by the provisions of Section 2.3 hereof.

(l) Insurance. Mortgagor will maintain with financially sound and reputable insurance companies insurance on all of the Mortgaged Properties in at least such amounts and against at least such risks (but including in any event general liability) as are usually insured against in the same general area by companies engaged in the same or a similar business and in any case no less comprehensive in scope than that maintained by the Mortgagor and its affiliates as of the date hereof and naming the Mortgagee as additional insured. In the event of any loss under any insurance policies so carried by Mortgagor, during the continuance of a default hereunder Mortgagee shall have the right (but not the obligation) to make proof of loss and collect the same, and all amounts so received shall be applied toward costs, charges and expenses (including reasonable attorneys' fees), if any, incurred in the collection thereof, then to the payment of the secured obligations then due, and any balance remaining shall be subject to the order of Mortgagor. During the continuance of a default hereunder Mortgagee is hereby authorized but not obligated to enforce in its name or in the name of Mortgagor payment of any or all of said policies or settle or compromise any claim in respect thereof, and to collect and make receipts for the proceeds thereof and Mortgagee is hereby appointed Mortgagors' agent and attorney-in-fact to endorse any check or draft payable to Mortgagor in order to collect the proceeds of insurance. In the event of foreclosure of this Mortgage, or other transfer of title to the Mortgaged Properties in extinguishment in whole or in part of the secured obligations, all right, title and interest of Mortgagor in all proceeds payable thereunder shall thereupon vest in the purchaser at such foreclosure or other transferee in the event of such other transfer of title.

(m) Eminent Domain. In the event that any proceeding or action is commenced for the taking of the Mortgaged Properties, or any part thereof or interest

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therein, for public or quasi-public use under the power of eminent domain, condemnation or otherwise, or if the same is taken or damaged by reason of any public improvement or condemnation proceeding, or in any other manner, or should Mortgagor receive any notice or other information regarding such proceeding, action, taking or damage (including, without limitation, a proposal to purchase the Mortgaged Properties or some portion thereof in lieu of condemnation), Mortgagor shall, during the continuance of a default hereunder, give prompt written notice thereof to Mortgagee (and to Trustee with respect to the Deed of Trust Mortgaged Properties). During the continuance of a default hereunder Mortgagee shall be entitled, at Mortgagee's option, and without any obligation, without regard to the adequacy of its security, to investigate and negotiate with the condemnor concerning the proposed taking, and with or without Trustee to commence, appear in and prosecute in its own name any such action or proceeding. During the continuance of a default hereunder Mortgagee shall also be entitled, but not obligated to make any compromise or settlement in connection with such taking or damage with or without the consent of Mortgagor; provided, however, Mortgagor shall also be entitled to participate in any negotiations, discussions or proceedings relating to any such compromise or settlement. During the continuance of a default hereunder all compensation, awards, damages, rights of action and proceeds awarded to Mortgagor by reason of any such taking or damage (the "Condemnation Proceeds") are hereby assigned to Mortgagee and Mortgagor agrees to execute such further assignments of the Condemnation Proceeds as Mortgagee or Trustee may require. Unless a default (as defined in Section 4.1) has occurred and is continuing at the time of any such taking or damage or at the time of application of the Condemnation Proceeds, such Condemnation Proceeds (after deducting therefrom all costs and expenses (regardless of the particular nature thereof and whether incurred with or without suit), including attorneys' fees and expenses incurred by Mortgagee or Trustee in connection with any such action or proceeding) shall be applied to restoration of such Mortgaged Property in a manner that will make the fair market value of such Mortgaged Property subsequent to such restoration equal or exceed the fair market value of such Mortgaged Property immediately prior to such taking or damage, and any balance of such proceeds shall be paid over to Mortgagor. If notwithstanding the foregoing: (a) any default has occurred and, at the time of such taking or damage or at the time of the application of the Condemnation Proceeds, is continuing, (b) said Condemnation Proceeds (after any claim thereto by the holder of a lien on said property prior to this Mortgage) are not sufficient, as determined by the Required Secured Parties, for repair or restoration of said property, or (c) the damage or taking will materially affect or require change in the contemplated use and operation of the Mortgaged Property then, unless Mortgagor cures such default or Mortgagor provides to Mortgagee for completion of such repair or restoration or Mortgagee consents to the contemplated modification or change to the use and operation of the Mortgaged Property, whichever is applicable, Mortgagee shall have the option (at the written request of the Required Secured Parties), (i) to apply all or any portion of such proceeds to any of the secured obligations in such order as Mortgagee may determine, notwithstanding that such secured obligations may not be due according to the terms hereof or thereof, or (ii) to apply all or any portion of such proceeds to the repair or restoration of said Mortgaged Property, subject to such conditions as Mortgagee shall determine, or (iii) to deliver all or any portion of such proceeds to Mortgagor. Nothing



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herein contained shall be deemed to excuse Mortgagor from repairing or maintaining the Mortgaged Property as provided in Section 2.1(d) and (e) hereof or restoring all damage or destruction to the Mortgaged Property, regardless of whether or not there are Condemnation Proceeds available to Mortgagor or whether any such proceeds are sufficient in amount. The application or release of the Condemnation Proceeds as provided herein shall not cure or waive any default or notice of default hereunder or under any other Transaction Document or invalidate any act done pursuant to such notice.

(n) Further Assurances. Mortgagor will, on request of Mortgagee, acting upon the written direction of the Required Secured Parties, (i) promptly correct any defect, error or omission which may be discovered in the contents of this Mortgage, or in any other Transaction Document, or in the execution or acknowledgment of this Mortgage or any other Transaction Document; (ii) execute, acknowledge, deliver and record and/or file such further instruments (including, without limitation, further deeds of trust, mortgages, security agreements, financing statements, continuation statements, and assignments of production, accounts, funds, contract rights, general intangibles, and proceeds) and do such further acts as may be necessary, desirable or proper to carry out more effectively the purposes of this Mortgage and the other Transaction Documents and to more fully identify and subject to the liens and security interests hereof any property intended to be covered hereby, including specifically, but without limitation, any renewals, additions, substitutions, replacements, or appurtenances to the Mortgaged Properties; and (iii) execute, acknowledge, deliver, and file and/or record any document or instrument (including specifically any financing statement) reasonably requested by a Secured Party to protect the lien or the security interest hereunder against the rights or interests of third persons. Mortgagor shall pay all costs and expenses connected with any of the foregoing.

(o) Name, Place of Business, and Taxpayer I.D. Number. Mortgagor will not cause or permit any change to be made in its name, identity, state of formation or corporate, limited liability or partnership structure, or its federal employer identification number unless Mortgagor shall have notified Mortgagee in writing of such change at least thirty (30) days prior to the effective date of such change, and shall have first taken all action reasonably requested by any Secured Party for the purpose of further perfecting or protecting the liens and security interests in the Mortgaged Properties created hereby. Mortgagors' exact name is the name set forth in this Mortgage. The last four digits of the Mortgagors' taxpayer identification number is as set forth in this Mortgage. Mortgagor is a registered organization which is organized under the laws of one of the states comprising the United States (e.g. corporation, limited partnership, registered limited liability partnership or limited liability company). Mortgagor is located (as determined pursuant to the UCC) in the state under which it is organized. The type of registered organization and the jurisdiction of organization are as set forth in Section 1.1 hereof. Mortgagors' principal place of business and chief executive office, and the place where Mortgagor keeps its books and records concerning the Mortgaged Properties (including, particularly, the records with respect to "Production Proceeds", as defined in Section 3.1 hereof, from the Mortgaged Properties) has for the preceding four months, been, and will continue to be (unless Mortgagor notifies Mortgagee of any change in writing at least

thirty (30) days prior to the date of such change), the address set forth on the signature page of this Mortgage.

(p) Not a Foreign Person. Mortgagor is not a "foreign person" within the meaning of the Internal Revenue Code of 1986, as amended (hereinafter called the "Code"), Sections 1445 and 7701 (*i.e.* Mortgagor is not a non-resident alien, foreign corporation, foreign partnership, foreign trust or foreign estate as those terms are defined in the Code and any regulations promulgated thereunder).

(q) Compliance with Laws and Agreements. Mortgagor is in compliance with all governmental requirements applicable to it or its property, including, without limitation, all Applicable Environmental Laws, all FERC regulations and the USA Patriot Act, and all indentures, agreements and other instruments binding upon it or its property. None of the execution and performance of this Mortgage, will violate the Trading with the Enemy Act, as amended, any of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) or any enabling legislation or executive order relating thereto, the Executive Order referred to in the following sentence or the U.S. Bank Secrecy Act (31 U.S.C. §§ 5311 *et seq.*). No Mortgagor is a Person described by Section 1 of Executive Order 13224 of September 24, 2001 entitled Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit or Support Terrorism, 66 Fed. Reg. 49,079 (2001), as amended, and no Mortgagor engages in any transactions or dealings, or is otherwise associated with any such Persons. No Mortgagor is bound by any agreement, document, instrument, judgment, decree, order, statute, law, rule or regulation that limits or could reasonably be expected to limit its performance under any Transaction Document to which Mortgagor is a party.

Section 2.2 Compliance by Operator. As to any part of the Mortgaged Properties which is not a working interest, Mortgagor agrees to take all such action and to exercise all rights and remedies as are available to Mortgagor to cause the owner or owners of the working interest in such properties to comply with the covenants and agreements contained herein; and as to any part of the Mortgaged Properties which is a working interest but which is operated by a party other than Mortgagor, Mortgagor agrees to take all such action and to exercise all rights and remedies as are available to Mortgagor (including, but not limited to, all rights under any operating agreement) to cause the party who is the operator of such property to comply with the covenants and agreements contained herein.

Section 2.3 Performance on Mortgagors' Behalf. Mortgagor agrees that, if Mortgagor fails to perform any act or to take any action which hereunder Mortgagor is required to perform or take, or to pay any money which hereunder Mortgagor is required to pay promptly after demand by Mortgagee, Mortgagee, in Mortgagors' name or its own name, may, but shall not be obligated to, perform or cause to be performed such act or take such action or pay such money, and any expenses so incurred by Mortgagee and any money so paid by Mortgagee shall be a demand obligation owing by Mortgagor to Mortgagee (which obligation Mortgagor hereby expressly promises to pay) and Mortgagee, upon making such payment, shall be subrogated to all of the rights of the person, corporation or body politic receiving such payment. Each amount due and owing by Mortgagor to Mortgagee, Trustee, and/or any Holder pursuant to this Mortgage



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shall bear interest from the date of such expenditure or payment until paid, at a rate equal to the "Default Rate", as such term or a similar term is defined in the applicable Commodity Hedge Agreement (as defined in the Collateral Agency and Intercreditor Agreement) or other Debt Agreement (as defined in the Collateral Agency and Intercreditor Agreement); provided that, should applicable law provide for a maximum permissible rate of interest on such amounts, such rate shall not be greater than such maximum permissible rate; all such amounts, together with such interest thereon, shall be a part of the secured obligations and shall be secured by this Mortgage.

### ARTICLE III.

#### Assignment of Production, Accounts, and Proceeds

Section 3.1 Assignment of Production. Mortgagor does hereby absolutely and unconditionally assign, transfer and set over to Mortgagee all Production which accrues to Mortgagors' interest in the Mortgaged Properties, all proceeds of such Production and all Payments in Lieu of Production (herein collectively referred to as the "Production Proceeds"), together with the immediate and continuing right to collect and receive such Production Proceeds. Mortgagor shall never require Mortgagee to institute legal proceedings of any kind whatsoever to enforce the provisions of this Assignment and transfer and hereby, to the extent legally permitted, waives any rights to require such proceedings. Mortgagor directs and instructs any and all purchasers of any Production to pay to Mortgagee all of the Production Proceeds accruing to Mortgagors' interest until such time as such purchasers have been furnished with evidence that all secured obligations has been paid and that this Mortgage has been released. Mortgagor agrees that no purchasers of the Production shall have any responsibility for the application of any funds paid to Mortgagee.

Section 3.2 Effectuating Payment of Production Proceeds to Mortgagee. Independent of the foregoing provisions and authorities herein granted, Mortgagor agrees to execute and deliver any and all transfer orders, division orders and other instruments that may be requested by Mortgagee, acting upon the written direction of the Required Secured Parties, or that may be required by any purchaser of any Production for the purpose of effectuating payment of the Production Proceeds to Mortgagee. If under any existing sales agreements, other than division orders or transfer orders, any Production Proceeds are required to be paid by the purchaser to Mortgagor so that under such existing agreements payment cannot be made of such Production Proceeds to Mortgagee, Mortgagors' interest in all Production Proceeds under such sales agreements and in all other Production Proceeds which for any reason may be paid to Mortgagor shall, when received by Mortgagor, constitute trust funds in Mortgagors' hands and shall be immediately paid over to Mortgagee. Without limitation upon any of the foregoing, Mortgagor hereby constitutes and appoints Mortgagee as Mortgagors' special attorney-in-fact (with full power of substitution, either generally or for such periods or purposes as Mortgagee may from time to time prescribe) in the name, place and stead of Mortgagor to do any and every act and exercise any and every power that Mortgagor might or could do or exercise personally with respect to all Production and Production Proceeds (the same having been assigned by Mortgagor to Mortgagee pursuant to Section 3.1 hereof), expressly inclusive, but not limited to, the right, power and authority to:



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(a) Execute and deliver in the name of Mortgagor any and all transfer orders, division orders, letters in lieu of transfer orders, indemnifications, certificates and other instruments of every nature that may be requested or required by any purchaser of Production from any of the Mortgaged Properties for the purposes of effectuating payment of the Production Proceeds to Mortgagee or which Mortgagee may otherwise deem necessary or appropriate to effect the intent and purposes of the assignment contained in Section 3.1; and

(b) If under any product sales agreements other than division orders or transfer orders, any Production Proceeds are required to be paid by the purchaser to Mortgagor so that under such existing agreements payment cannot be made of such Production Proceeds to Mortgagee, to make, execute and enter into such sales agreements or other agreements as are necessary to direct Production Proceeds to be payable to Mortgagee;

giving and granting unto said attorney-in-fact full power and authority to do and perform any and every act and thing whatsoever necessary and requisite to be done as fully and to all intents and purposes, as Mortgagor might or could do if personally present; and Mortgagor shall be bound thereby as fully and effectively as if Mortgagor had personally executed, acknowledged and delivered any of the foregoing certificates or documents. The powers and authorities herein conferred upon Mortgagee may be exercised by Mortgagee through any person who, at the time of the execution of the particular instrument, is an officer of Mortgagee. The power of attorney herein conferred is granted for valuable consideration and hence is coupled with an interest and is irrevocable so long as the secured obligations, or any part thereof, shall remain unpaid. All persons dealing with Mortgagee or any substitute shall be fully protected in treating the powers and authorities conferred by this paragraph as continuing in full force and effect until advised by Mortgagee that all the secured obligations is fully and finally paid. Mortgagee may, but shall not be obligated to, take such action as it deems appropriate in an effort to collect the Production Proceeds and any reasonable costs and expenses (including reasonable attorney's fees and expenses) so incurred by Mortgagee shall be a demand obligation of Mortgagor and shall be part of the secured obligations, and shall bear interest each day, from the date of such expenditure or payment until paid, at the rate described in Section 2.3 hereof.

Section 3.3 Change of Purchaser. To the extent a default has occurred hereunder and is continuing, should any person now or hereafter purchasing or taking Production fail to make payment promptly to Mortgagee of the Production Proceeds, Mortgagee shall, subject to then existing contractual prohibitions, have the right (but not the obligation) to make, or to require Mortgagor to make, a change of purchaser, and the right to designate or approve the new purchaser, and Mortgagee shall have no liability or responsibility in connection therewith so long as ordinary care is used in making such designation.

Section 3.4 Application of Production Proceeds. Notwithstanding anything to the contrary in this Article III, so long as no default has occurred hereunder, the Production Proceeds will continue to be paid directly to Mortgagor. After a default hereunder has occurred, and so long as such default is continuing, all Production Proceeds from time to time in the hands of Mortgagee shall be applied to the payment of the secured obligations at such times and in such manner and order as contemplated in the Collateral Agency and Intercreditor Agreement.

Section 3.5 Release from Liability; Indemnification. Mortgagee and its successors and assigns are hereby released and absolved from all liability for failure to enforce collection of the Production Proceeds and from all other responsibility in connection therewith, except the responsibility of each to account to Mortgagor for funds actually received by each. Mortgagor agrees to indemnify and hold harmless Mortgagee (for purposes of this paragraph, the term "Mortgagee" shall include the directors, officers, partners, employees and agents of Mortgagee and any persons or entities owned or controlled by or affiliated with Mortgagee) from and against all claims, demands, liabilities, losses, damages (including without limitation consequential damages), causes of action, judgments, penalties, costs and expenses (including without limitation reasonable attorneys' fees and expenses) imposed upon, asserted against or incurred or paid by Mortgagee by reason of the assertion that Mortgagee received, either before or after payment in full of the secured obligations, funds from the production of oil, gas, other hydrocarbons or other minerals claimed by third persons (and/or funds attributable to sales of Production which (i) were made at prices in excess of the maximum price permitted by applicable law or (ii) were otherwise made in violation of laws, rules, regulations and/or orders governing such sales), and Mortgagee shall have the right to defend against any such claims or actions, employing attorneys of its own selection, and if not furnished with indemnity or security satisfactory to it, Mortgagee shall have the right to compromise and adjust any such claims, actions and judgments, and in addition to the rights to be indemnified as herein provided, all amounts paid by Mortgagee in compromise, satisfaction or discharge of any such claim, action or judgment, and all court costs, attorneys' fees and other expenses of every character expended by Mortgagee pursuant to the provisions of this Section shall be a demand obligation (which obligation Mortgagor hereby expressly promises to pay) owing by Mortgagor to Mortgagee and shall bear interest, from the date expended until paid, at the rate described in Section 2.3 hereof. The foregoing indemnities shall not terminate upon the Release Date or upon the release, foreclosure or other termination of this Mortgage but will survive the Release Date, foreclosure of this Mortgage or conveyance in lieu of foreclosure, and the repayment of the secured obligations and the discharge and release of this Mortgage and the other documents evidencing and/or securing the secured obligations and the resignation or removal of the Mortgagee. **WITHOUT LIMITATION, IT IS THE INTENTION OF MORTGAGOR AND MORTGAGOR AGREES THAT THE FOREGOING RELEASES AND INDEMNITIES SHALL APPLY TO EACH INDEMNIFIED PARTY WITH RESPECT TO ALL CLAIMS, DEMANDS, LIABILITIES, LOSSES, DAMAGES (INCLUDING WITHOUT LIMITATION CONSEQUENTIAL DAMAGES), CAUSES OF ACTION, JUDGMENTS, PENALTIES, COSTS AND EXPENSES (INCLUDING WITHOUT LIMITATION REASONABLE ATTORNEYS' FEES AND EXPENSES) WHICH IN WHOLE OR IN PART ARE CAUSED BY OR ARISE OUT OF THE NEGLIGENCE OF SUCH (AND/OR ANY OTHER) INDEMNIFIED PARTY.** However, such indemnities shall not apply to any particular indemnified party (but shall apply to the other indemnified parties) to the extent the subject of the indemnification is caused by or arises out of the gross negligence or willful misconduct of such particular indemnified party.

Section 3.6 Mortgagors' Absolute Obligation to Pay Obligations under the Transaction Documents. Nothing herein contained shall detract from or limit the obligations of Mortgagor to make prompt payment of the Obligations (as defined in the Collateral Agency and Intercreditor Agreement) under the Collateral Agency and Intercreditor Agreement, and any and all other secured obligations, at the time and in the manner provided herein and in the Collateral



Agency and Intercreditor Agreement, regardless of whether the Production and Production Proceeds herein assigned are sufficient to pay same, and the rights under this Article III shall be cumulative of all other rights under the Transaction Documents.

#### ARTICLE IV.

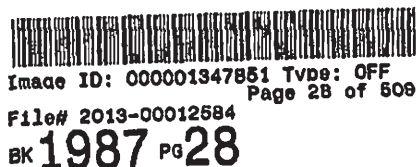
##### Remedies Upon Default

Section 4.1 Default. The term "default" as used in this Mortgage shall mean the occurrence of any of the following events:

(a) the occurrence of an "Enforcement Event" as defined in the Collateral Agency and Intercreditor Agreement ; or

(b) the failure of Mortgagor to pay over to Mortgagee any Production Proceeds which are receivable by Mortgagee under this Mortgage but which are paid to Mortgagor rather than Mortgagee.

Section 4.2 Pre-Foreclosure Remedies. Upon the occurrence of a default, Mortgagee is authorized, prior or subsequent to the institution of any foreclosure proceedings, to enter upon the Mortgaged Properties, or any part thereof, and to take possession of the Mortgaged Properties and all books and records relating thereto, and to exercise without interference from Mortgagor any and all rights which Mortgagor has with respect to the management, possession, operation, protection or preservation of the Mortgaged Properties. If necessary to obtain the possession provided for above, Mortgagee may invoke any and all remedies to dispossess Mortgagor, including, but not limited to, summary proceeding or restraining order. Mortgagor agrees to peacefully surrender possession of the Mortgaged Properties upon default, if requested. All costs, expenses and liabilities of every character incurred by Mortgagee in managing, operating, maintaining, protecting or preserving the Mortgaged Properties shall constitute a demand obligation (which obligation Mortgagor hereby expressly promises to pay) owing by Mortgagor to Mortgagee and shall bear interest from date of expenditure until paid at the rate described in Section 2.3 hereof, all of which shall constitute a portion of the secured obligations and shall be secured by this Mortgage and by any other instrument securing the secured obligations. In connection with any action taken by Mortgagee pursuant to this Section 4.2, **MORTGAGEE SHALL NOT BE LIABLE FOR ANY LOSS SUSTAINED BY MORTGAGOR RESULTING FROM ANY ACT OR OMISSION OF MORTGAGEE (INCLUDING MORTGAGEE'S OWN NEGLIGENCE) IN MANAGING THE MORTGAGED PROPERTIES UNLESS SUCH LOSS IS CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF MORTGAGEE**, nor shall Mortgagee be obligated to perform or discharge any obligation, duty or liability of Mortgagor arising under any agreement forming a part of the Mortgaged Properties or arising under any Permitted Encumbrance or otherwise arising. Mortgagor hereby assents to, ratifies and confirms any and all actions of Mortgagee with respect to the Mortgaged Properties taken under this Section 4.2.



Section 4.3 Foreclosure.

(a) Upon the occurrence of a default, this Mortgage may be foreclosed as to the Mortgaged Properties, or any part thereof, in any manner permitted by applicable law, including as specified in clauses (d) and (e) of this Section 4.3.

(b) Upon the occurrence of a default, Mortgagee or Trustee may exercise its rights of enforcement with respect to the Mortgage Collateral under the UCC, or under any other statute in force in any state to the extent the same is applicable law. Cumulative of the foregoing and the other provisions of this Section 4.3.

(i) To the extent permitted by law, Mortgagee or Trustee may enter upon the Mortgaged Properties or otherwise upon Mortgagors' premises to take possession of, assemble and collect the Mortgage Collateral or to render it unusable;

(ii) Mortgagee or Trustee may require Mortgagor to assemble the Mortgage Collateral and make it available at a place Mortgagee designates which is mutually convenient to allow Mortgagee to take possession or dispose of the Mortgage Collateral;

(iii) written notice mailed to Mortgagor as provided herein at least five (5) days prior to the date of public sale of the Mortgage Collateral or prior to the date after which private sale of the Mortgage Collateral will be made shall constitute reasonable notice;

(iv) in the event of a foreclosure of the liens, privileges and/or security interests evidenced hereby, the Mortgage Collateral, or any part thereof, and the Mortgaged Properties, or any part thereof, may, at the option of Mortgagee, be sold, as a whole or in parts, together or separately (including, without limitation, where a portion of the Mortgaged Properties is sold, the Mortgage Collateral related thereto may be sold in connection therewith);

(v) the expenses of sale provided for in clause of FIRST Section 4.5 shall include the reasonable expenses of retaking the Mortgage Collateral, or any part thereof, holding the same and preparing the same for sale or other disposition;

(vi) should, under this subsection, the Mortgage Collateral be disposed of other than by sale, any proceeds of such disposition shall be treated under Section 4.5 as if the same were sales proceeds; and

(vii) upon the occurrence and during the continuance of a default, Mortgagee or Trustee may, to the extent permitted under applicable law, elect to treat the fixtures included in the Mortgage Collateral either as real property or as personal property, or both, and proceed to exercise such rights as apply thereto. With respect to any sale of real property included in the Mortgaged Properties made under the powers of sale herein granted and conferred, Mortgagee or



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Trustee may, to the extent permitted by applicable law, include in such sale any personal property and fixtures included in the Mortgage Collateral and relating to such real property.

(c) To the extent permitted by applicable law, the sale hereunder of less than the whole of the Mortgaged Properties shall not exhaust the powers of sale herein granted or the right to judicial foreclosure, and successive sale or sales may be made until the whole of the Mortgaged Properties shall be sold, and, if the proceeds of such sale of less than the whole of the Mortgaged Properties shall be less than the aggregate of the obligations secured hereby and the expense of conducting such sale, this Mortgage and the liens, privileges and security interests hereof shall remain in full force and effect as to the unsold portion of the Mortgaged Properties just as though no sale had been made; provided, however, that Mortgagor shall never have any right to require the sale of less than the whole of the Mortgaged Properties. In the event any sale hereunder is not completed or is defective, such sale shall not exhaust the powers of sale hereunder or the right to judicial foreclosure, and Mortgagee shall have the right (but not the obligation) to cause a subsequent sale or sales to be made. Any sale may be adjourned by announcement at the time and place appointed for such sale without further notice except as may be required by law. Mortgagee or Trustee acting under power of sale, may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by it (including, without limitation, the posting of notices and the conduct of sale), and such appointment need not be in writing or recorded. Any and all statements of fact or other recitals made in any deed or deeds, or other instruments of transfer, given in connection with a sale as to nonpayment of the secured obligations or as to the occurrence of any default, or as all of the secured obligations having been declared to be due and payable, or as to the request to sell, or as to notice of time, place and terms of sale and the properties to be sold having been duly given or, with respect to any sale by the Trustee, as to the refusal, failure or inability to act of Trustee or the appointment of any substitute or successor trustee, or as to any other act or thing having been duly done, shall be taken as prima facie evidence of the truth of the facts so stated and recited. Notwithstanding any reference herein to the Collateral Agency and Intercreditor Agreement, any Secured Commodity Hedge, any Debt Agreement or any other Transaction Document, all persons dealing with the Mortgaged Properties shall be entitled to rely on any document, or certificate, of Mortgagee as to the occurrence of a default, and shall not be charged with or forced to review any provision of any other document to determine the accuracy thereof. With respect to any sale held in foreclosure of the liens and/or security interests covered hereby, it shall not be necessary for the Mortgagee, Trustee, any public officer acting under execution or order of the court or any other party to have physically present or constructively in his/her or its possession, either at the time of or prior to such sale, the Mortgaged Properties or any part thereof.

(d) Foreclosure on Deed of Trust Mortgaged Properties. Upon the occurrence of a default, Trustee is authorized and empowered and it shall be Trustee's special duty at the request of Mortgagee (acting upon the written direction of the Required Secured Parties) to sell the Deed of Trust Mortgaged Properties, or any part thereof, as an entirety or in parcels as Mortgagee may elect (acting upon the written direction of the Required Secured Parties), at such place or places and otherwise in the manner and upon such





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notice as may be required by law or, in the absence of any such requirement, as Trustee may deem appropriate. If Trustee shall have given notice of sale hereunder, any successor or substitute Trustee thereafter appointed may complete the sale and the conveyance of the Deed of Trust Mortgaged Properties pursuant thereto as if such notice had been given by the successor or substitute Trustee conducting the sale.

(i) A POWER OF SALE HAS BEEN GRANTED IN THIS MORTGAGE. A POWER OF SALE MAY ALLOW TRUSTEE TO TAKE THE MORTGAGED PROPERTIES AND SELL THEM WITHOUT GOING TO COURT IN A FORECLOSURE ACTION UPON DEFAULT BY MORTGAGOR UNDER THIS MORTGAGE.

(ii) *West Virginia Specific Provisions.* Cumulative of the foregoing and the other provisions of this Section 4.3 as to any portion of the Deed of Trust Mortgaged Properties located in the State of West Virginia, it shall be the duty of the Trustee, at the written request of the Mortgagee (which request shall be presumed) to enforce this trust and to sell any of the Deed of Trust Mortgaged Properties as an entirety or in parcels, by one sale or by several sales, held at one time or at different times, all as the Trustee acting may elect. The Trustee shall publish a notice of such sale or sales as a Class II legal advertisement in compliance with the provisions of Article 3 of Chapter 59 of the West Virginia Code (being herein referred to as the "West Virginia Code"), in the county or counties where such property is located, and the Trustee shall give notice to Mortgagor and, at least twenty (20) days in advance, shall give notice to any subordinate lienholder who has previously notified the primary lienholder by certified mail of the existence of a subordinate lien, and no other notice of such sale shall be required. Such notice shall include, with respect to the county or counties where such notice is to be given, the time and place of the sale, the names of the parties to this Mortgage, the date of this Mortgage, the office and book in which this Mortgage is recorded, the quantity and description of the land and other property in such county or counties conveyed by this Mortgage and the terms of sale, which terms shall be cash in hand on the day of sale and any other terms as the Trustee shall determine. At any sale, the Trustee may act through an agent or attorney and any sale hereunder may be adjourned from time to time, without notice other than oral proclamation of such adjournment at the time and place of sale, or at the time and place of any adjourned sale. To the extent allowed by applicable law, the Mortgagor hereby waives service of notice of such sale as provided by West Virginia Code § 38-1-4. The Mortgagor authorizes and empowers the Trustee to sell any of the Deed of Trust Mortgaged Properties in lots or parcels or in its entirety and on any terms, both as the Trustee shall deem expedient, and to execute and deliver to the purchaser or purchasers thereof good and sufficient deeds of conveyance thereto by quitclaim deed without any warranty, express or implied. Where portions of the Deed of Trust Mortgaged Properties lie in different counties, sales in such counties may be conducted in any order that the Trustee may deem expedient, and one or more such sales may be conducted in the same month or in successive or different months as the Trustee may deem expedient. Except as otherwise expressly provided herein, any notice