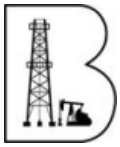
UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-Q

x Quarterly Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934
For the quarterly period ended **June 30, 2008**
oTransition Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934
For the transition period from __to ___
Commission file number **1-9735**



BERRY PETROLEUM COMPANY

(Exact name of registrant as specified in its charter)

DELAWARE	**77-0079387**
(State of incorporation or organization)	(I.R.S. Employer Identification Number)

1999 Broadway, Suite 3700
Denver, Colorado 80202
(Address of principal executive offices, including zip code)

Registrant's telephone number, including area code: **(303) 999-4400**

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. YES x NO o

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See definitions of “large accelerated filer,” “accelerated filer” and “smaller reporting company” in Rule 12b-2 of the Exchange Act.
Large accelerated filerx Accelerated filero Non-accelerated filero Smaller reporting companyo

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). YES o NO x

As of July 14, 2008, the registrant had 42,716,259 shares of Class A Common Stock ($.01 par value) outstanding. The registrant also had 1,797,784 shares of Class B Stock ($.01 par value) outstanding on July 14, 2008 all of which is held by an affiliate of the registrant.

BERRY PETROLEUM COMPANY
SECOND QUARTER 2008 FORM 10-Q
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BERRY PETROLEUM COMPANY
Unaudited Condensed Balance Sheets
(In Thousands, Except Share Information)

	June 30, 2008	December 31, 2007
ASSETS		
Current assets:		
Cash and cash equivalents	$ 5,583	$ 316
Short-term investments	65	58
Accounts receivable	143,423	117,038
Deferred income taxes	107,965	28,547
Fair value of derivatives	-	2,109
Assets held for sale	-	1,394
Prepaid expenses and other	13,835	11,557
Total current assets	270,871	161,019
Oil and gas properties (successful efforts basis), buildings and equipment, net	1,405,560	1,275,091
Other assets	73,885	15,996
	$ 1,750,316	$ 1,452,106
LIABILITIES AND SHAREHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	$ 134,872	$ 90,354
Revenue and royalties payable	30,242	47,181
Accrued liabilities	21,443	21,653
Line of credit	-	14,300
Income taxes payable	7,661	2,591
Fair value of derivatives	301,776	95,290
Total current liabilities	495,994	271,369
Long-term liabilities:		
Deferred income taxes	87,858	128,824
Long-term debt	511,000	445,000
Abandonment obligation	40,051	36,426
Unearned revenue	57	398
Other long-term liabilities	4,801	1,657
Fair value of derivatives	322,560	108,458
	966,327	720,763
Shareholders' equity:		
Preferred stock, $.01 par value, 2,000,000 shares authorized; no shares outstanding	-	-
Capital stock, $.01 par value:		
Class A Common Stock, 100,000,000 shares authorized; 42,716,259 shares issued and outstanding (42,583,002 in 2007)	426	425
Class B Stock, 3,000,000 shares authorized; 1,797,784 shares issued and outstanding (liquidation preference of $899) (1,797,784 in 2007)	18	18
Capital in excess of par value	75,075	66,590
Accumulated other comprehensive loss	(386,637)	(120,704)
Retained earnings	599,113	513,645
Total shareholders' equity	287,995	459,974
	$ 1,750,316	$ 1,452,106

The accompanying notes are an integral part of these financial statements.

BERRY PETROLEUM COMPANY
Unaudited Condensed Statements of Income
Three Month Periods Ended June 30, 2008 and 2007
(In Thousands, Except Per Share Data)

	Three months ended June 30, 2008	2007
REVENUES AND OTHER INCOME ITEMS		
Sales of oil and gas	$ 185,332	$ 113,426
Sales of electricity	16,979	13,867
Gas marketing	11,531	-
Gain on sale of assets	-	50,400
Interest and other income, net	1,564	1,536
	215,406	179,229
EXPENSES		
Operating costs - oil and gas production	55,185	35,725
Operating costs - electricity generation	15,515	11,083
Production taxes	7,481	4,139
Depreciation, depletion & amortization - oil and gas production	29,073	23,397
Depreciation, depletion & amortization - electricity generation	652	961
Gas marketing	11,071	-
General and administrative	11,160	9,651
Interest	3,951	4,976
Commodity derivatives	59	-
Dry hole, abandonment, impairment and exploration	3,464	3,519
	137,611	93,451
Income before income taxes	77,795	85,778
Provision for income taxes	28,654	33,821
Net income	$ 49,141	$ 51,957
Basic net income per share	$ 1.10	$ 1.18
Diluted net income per share	$ 1.08	$ 1.16
Dividends per share	$ .075	$ .075
Weighted average number of shares of capital stock outstanding used to calculate basic net income per share	44,478	44,029
Effect of dilutive securities:		
Equity based compensation	1,003	751
Director deferred compensation	127	115
Weighted average number of shares of capital stock used to calculate diluted net income per share	45,608	44,895

Unaudited Condensed Statements of Comprehensive (Loss) Income
Three Month Periods Ended June 30, 2008 and 2007
(In Thousands)

Net income	$ 49,141	$ 51,957
Unrealized gains (losses) on derivatives, net of income tax benefits of ($162,792) and ($4,395), respectively	(260,225)	(6,593)
Reclassification of realized gains (losses) on derivatives included in net income, net of income taxes (benefit) of $21,898 and ($697), respectively	37,268	(1,045)
Comprehensive (loss) income	$ (173,816)	$ 44,319

The accompanying notes are an integral part of these financial statements.

BERRY PETROLEUM COMPANY
Unaudited Condensed Statements of Income
Six Month Periods Ended June 30, 2008 and 2007
(In Thousands, Except Per Share Data)

	Six months ended June 30, 2008	2007
REVENUES AND OTHER INCOME ITEMS		
Sales of oil and gas	$ 349,827	$ 215,200
Sales of electricity	32,906	28,463
Gas marketing	14,762	-
Gain on sale of assets	414	50,398
Interest and other income, net	2,893	2,647
	400,802	296,708
EXPENSES		
Operating costs - oil and gas production	96,814	69,335
Operating costs - electricity generation	31,914	25,254
Production taxes	13,448	7,954
Depreciation, depletion & amortization - oil and gas production	56,148	42,122
Depreciation, depletion & amortization - electricity generation	1,345	1,723
Gas marketing	14,053	-
General and administrative	22,543	19,958
Interest	7,689	9,267
Commodity derivatives	767	-
Dry hole, abandonment, impairment and exploration	7,590	4,168
	252,311	179,781
Income before income taxes	148,491	116,927
Provision for income taxes	56,319	46,115
Net income	$ 92,172	$ 70,812
Basic net income per share	$ 2.07	$ 1.61
Diluted net income per share	$ 2.03	$ 1.58
Dividends per share	$ .15	$ .15
Weighted average number of shares of capital stock outstanding used to calculate basic net income per share	44,435	43,973
Effect of dilutive securities:		
Equity based compensation	924	668
Director deferred compensation	124	113
Weighted average number of shares of capital stock used to calculate diluted net income per share	45,483	44,754

Unaudited Condensed Statements of Comprehensive (Loss) Income
Six Month Periods Ended June 30, 2008 and 2007
(In Thousands)

Net income	$ 92,172	$ 70,812
Unrealized gains (losses) on derivatives, net of income tax benefits of ($203,141) and ($12,457), respectively	(320,748)	(18,685)
Reclassification of realized gains (losses) on derivatives included in net income, net of income taxes (benefit) of $33,596 and ($882), respectively	54,815	(1,323)
Comprehensive (loss) income	$ (173,761)	$ 50,804

The accompanying notes are an integral part of these financial statements.

BERRY PETROLEUM COMPANY
Unaudited Condensed Statements of Cash Flows
Six Month Periods Ended June 30, 2008 and 2007
(In Thousands)

	Six months ended June 30,	
	2008	2007
Cash flows from operating activities:		
Net income	$ 92,172	$ 70,812
Depreciation, depletion and amortization	57,493	43,845
Dry hole and impairment	5,332	3,547
Commodity derivatives	(257)	675
Stock-based compensation expense	4,412	3,779
Deferred income taxes	39,030	39,695
Unrealized loss on ineffective hedges	751	-
Gain on sale of oil and gas properties	(414)	(50,398)
Other, net	689	415
Change in book overdraft	13,075	(4,060)
Cash paid for abandonment	(2,127)	(625)
Increase in current assets other than cash and cash equivalents	(29,294)	(5,066)
Increase (decrease) in current liabilities other than book overdraft, line of credit and fair value of derivatives	12,952	(14,635)
Net cash provided by operating activities	193,814	87,984
Cash flows from investing activities:		
Exploration and development of oil and gas properties	(168,382)	(148,452)
Property acquisitions	(380)	(56,106)
Additions to vehicles, drilling rigs and other fixed assets	(3,201)	(2,052)
Deposit on potential acquisition	(59,000)	-
Proceeds from sale of assets	1,809	61,258
Capitalized interest	(8,463)	(8,365)
Net cash used in investing activities	(237,617)	(153,717)
Cash flows from financing activities:		
Proceeds from issuances on line of credit	187,100	203,800
Payments on line of credit	(201,400)	(210,300)
Proceeds from issuance of long-term debt	286,300	179,300
Payments on long-term debt	(220,300)	(104,300)
Dividends paid	(6,705)	(6,678)
Proceeds from stock option exercises	2,640	2,595
Excess tax benefit and other	1,435	1,215
Net cash provided by financing activities	49,070	65,632
Net increase (decrease) in cash and cash equivalents	5,267	(101)
Cash and cash equivalents at beginning of year	316	416
Cash and cash equivalents at end of period	$ 5,583	$ 315

The accompanying notes are an integral part of these financial statements.

1. General

All adjustments which are, in the opinion of management, necessary for a fair statement of Berry Petroleum Company's (the "Company") financial position at June 30, 2008 and December 31, 2007 and results of operations and comprehensive (loss) income and cash flows for the three month and six month periods ended June 30, 2008 and 2007 have been included. All such adjustments, except as described below, are of a normal recurring nature. The results of operations and cash flows are not necessarily indicative of the results for a full year.

The accompanying unaudited condensed financial statements have been prepared on a basis consistent with the accounting principles and policies reflected in the December 31, 2007 financial statements. The December 31, 2007 Form 10-K/A should be read in conjunction herewith. The year-end condensed Balance Sheet was derived from audited financial statements, but does not include all disclosures required by accounting principles generally accepted in the United States of America.

Our cash management process provides for the daily funding of checks as they are presented to the bank. Included in accounts payable at June 30, 2008 and December 31, 2007 is $20.8 million and $7.8 million, respectively, representing outstanding checks in excess of the bank balance (book overdraft).

Certain reclassifications have been made to prior period financial statements to conform them to the current year presentation. Specifically, the change in book overdraft line in the Statements of Cash Flows is classified as an operating activity to reflect the use of these funds in operations, rather than their prior year classification as a financing activity.

In March 2008, we determined there was an error in computing royalties payable in prior years, accumulating to $10.5 million as of December 31, 2007. We concluded the error was not material to any individual prior interim or annual period (or to the projected earnings for 2008) and, therefore, the error was corrected during the first quarter of 2008, with the effect of increasing our sales of oil and gas and accounts receivable by $10.5 million and $2.4 million, respectively, and reducing our royalties payable by $8.1 million.

In December 2007, we entered into a second long-term (ten year) firm transportation contract for our Colorado natural gas production. This contract is for 25,000 MMBtu/D on the Rockies Express (REX) pipeline for gas production in the Piceance basin. We have a total of 35,000 MMBtu/D contracted on the REX pipeline. We pay a demand charge for this capacity and our own production did not fill that capacity. To maximize the utilization of our firm transportation, we bought our partners' share of the gas produced in the Piceance basin at the market rate for that area and used our excess transportation to move this gas to the sales point. The net of our gas marketing revenue and our gas marketing expense in the Statements of Income is $.7 million for the six month period ended June 30, 2008.

In addition, Berry has signed a binding precedent agreement with El Paso Corporation for an average of 35,000 MMBtu/d of firm transportation on the proposed Ruby Pipeline from Opal, WY to Malin, OR. While it is not certain that this new line will be constructed, the expectation is that the project will proceed and be in service by 2011. As part of this agreement, we also secured firm transportation from the Piceance basin to Opal.

In the first six months of 2008, we recorded a total of $7.6 million in dry hole, abandonment, impairment and exploration expense. Charges of $2.7 million and $2.6 million were recorded during the first and second quarters of 2008, respectively, for technical difficulties that were encountered on four wells in the Piceance basin before reaching total depth. These holes were abandoned in favor of drilling to the same bottom hole location by drilling new wells. In addition, $2.3 million of exploration expense was recorded for exploration activities which were primarily 3-D seismic activity in the DJ basin.

The price sensitive royalty that burdens our Formax property in the South Midway Sunset field has changed. We previously paid a royalty equal to 75% of the amount of the heavy oil posted above a price of $16.11. This price escalates at 2% annually. Effective January 1, 2008, the royalty rate is reduced from 75% to 53% as long as we maintain a minimum steam injection level, which we expect to meet, that reduces over time. Current net production from this property is approximately 2,300 Bbl/D.

During the second quarter of 2008, Berry signed a Purchase and Sale Agreement for the acquisition of certain interests in natural gas producing properties on 4,500 net acres in Limestone and Harrison Counties of East Texas for an initial purchase price of $622 million, subject to normal closing adjustments. Berry paid $59 million to the seller upon signing the agreement as a deposit on the purchase price which is included with Other Assets in the Balance Sheet as of June 30, 2008. See the discussion of the acquisition closing in Footnote 9 of these financial statements.

1. General (Cont'd)

Proceeds from the first quarter 2008 sale of our Prairie Star assets were $1.8 million and are reflected in the Statements of Cash Flows. The gain from that sale is $.4 million and is reflected in the Statements of Income for the six month period ended June 30, 2008.

2. Recent Accounting Developments

In December 2007, the Financial Accounting Standards Board (FASB) issued Statement of Financial Accounting Standard (SFAS) No. 160, *Noncontrolling Interests in Consolidated Financial Statements*. SFAS 160 was issued to establish accounting and reporting standards for the noncontrolling interest in a subsidiary (formerly called minority interests) and for the deconsolidation of a subsidiary. We do not expect the adoption of SFAS 160 to have a material effect on our financial statements and related disclosures. The effective date of this Statement is the same as that of the related Statement 141(R).

In December 2007, the FASB issued SFAS No. 141(R), *Business Combinations*, which expands the information that a reporting entity provides in its financial reports about a business combination and its effects. This Statement establishes principles and requirements for how the acquirer recognizes and measures in its financial statements the identifiable assets acquired, the liabilities assumed, and any noncontrolling interest in the acquiree, recognizes and measures the goodwill acquired in the business combination or a gain from a bargain purchase, and determines what information to disclose to enable users of the financial statements to evaluate the nature and financial effects of the business combination. This Statement applies prospectively to business combinations for which the acquisition date is on or after the beginning of the first annual reporting period beginning on or after December 15, 2008. An entity may not apply the principle before that date. We may experience a financial statement impact depending on the nature and extent of any new business combinations entered into after the effective date of SFAS No. 141(R).

In March 2008, the FASB issued SFAS No. 161, *Disclosures about Derivative Instruments and Hedging Activities—an amendment of FASB Statement No. 133*, which changes the disclosure requirements for derivative instruments and hedging activities. Expanded disclosures are required to provide information about (a) how and why an entity uses derivative instruments, (b) how derivative instruments and related hedged items are accounted for under Statement 133 and its related interpretations, and (c) how derivative instruments and related hedged items affect an entity's financial position, financial performance, and cash flows. This Statement is effective for financial statements issued for fiscal years and interim periods beginning after November 15, 2008, with early application encouraged. This Statement will require us to provide the additional disclosures described above.

In May 2008, the FASB issued SFAS No. 162, *The Hierarchy of Generally Accepted Accounting Principles*, which identifies the sources of accounting principles and the framework for selecting the principles used in the preparation of financial statements of nongovernmental entities that are presented in conformity with generally accepted accounting principles (GAAP) in the United States of America (the GAAP hierarchy). This Statement is effective 60 days following the SEC's approval of the Public Company Accounting Oversight Board amendments to AU Section 411, *The Meaning of Present Fairly in Conformity with Generally Accepted Accounting Principles.* We do not expect the adoption of SFAS 162 to have a material effect on our financial statements or related disclosures.

3. Fair Value Measurement

In September 2006, SFAS No. 157, *Fair Value Measurements* was issued by the FASB. This statement defines fair value, establishes a framework for measuring fair value and expands disclosures about fair value measurements. We adopted this Statement as of January 1, 2008.

Determination of fair value

We have established and documented a process for determining fair values. Fair value is based upon quoted market prices, where available. We have various controls in place to ensure that valuations are appropriate. These controls include: identification of the inputs to the fair value methodology through review of counterparty statements and other supporting documentation, determination of the validity of the source of the inputs, corroboration of the original source of inputs through access to multiple quotes, if available, or other information and monitoring changes in valuation methods and assumptions. The methods described above may produce a fair value calculation that may not be indicative of future fair values. Furthermore, while we believe these valuation methods are appropriate and consistent with that used by other market participants, the use of different methodologies, or assumptions, to determine the fair value of certain financial instruments could result in a different estimate of fair value.

3. Fair Value Measurement (Cont'd)

Valuation hierarchy

SFAS 157 establishes a three-level valuation hierarchy for disclosure of fair value measurements. The valuation hierarchy is based upon the transparency of inputs to the valuation of an asset or liability as of the measurement date. The three levels are defined as follows.

- Level 1 - inputs to the valuation methodology that are quoted prices (unadjusted) for identical assets or liabilities in active markets.
- Level 2 - inputs to the valuation methodology that include quoted prices for similar assets and liabilities in active markets, and inputs that are observable for the asset or liability, either directly or indirectly, for substantially the full term of the financial instrument.
- Level 3 - inputs to the valuation methodology that are unobservable and significant to the fair value measurement.

A financial instrument's categorization within the valuation hierarchy is based upon the lowest level of input that is significant to the fair value measurement.

Our oil swaps, natural gas swaps and interest rate swaps are valued using the counterparties' mark-to-market statements which are validated by our internally developed models and are classified within Level 2 of the valuation hierarchy. The observable inputs include underlying commodity and interest rate levels and quoted prices of these instruments on actively traded markets. Derivatives that are valued based upon models with significant unobservable market inputs (primarily volatility), and that are normally traded less actively are classified within Level 3 of the valuation hierarchy. Level 3 derivatives include oil collars, natural gas collars and natural gas basis swaps.

Assets and liabilities measured at fair value on a recurring basis

June 30, 2008 (in millions)	Total carrying value on the condensed Balance Sheet	Level 2	Level 3
Commodity derivatives	$619.5	$49.9	$569.6
Interest rate swaps	4.8	4.8	-
Total liabilities at fair value	$624.3	$54.7	$569.6

Changes in Level 3 fair value measurements

The table below includes a rollforward of the Balance Sheet amounts (including the change in fair value) for financial instruments classified by us within Level 3 of the valuation hierarchy. When a determination is made to classify a financial instrument within Level 3 of the valuation hierarchy, the determination is based upon the significance of the unobservable factors to the overall fair value measurement. Level 3 financial instruments typically include, in addition to the unobservable or Level 3 components, observable components (that is, components that are actively quoted and can be validated to external sources).

(in millions)	Three months ended June 30, 2008	Six months ended June 30, 2008
Fair value, beginning of period	$243.9	$ 194.3
Total realized and unrealized gains and (losses) included in sales of oil and gas	326.1	401.6
Purchases, sales and settlements, net	(.4)	(26.3)
Transfers in and/or out of Level 3	-	-
Fair value, June 30, 2008	$569.6	$569.6
Total unrealized gains and (losses) included in income related to financial assets and liabilities still on the condensed balance sheet at June 30, 2008	$ -	$-

In February of 2007, the FASB issued SFAS 159, which is effective for fiscal years beginning after November 15, 2007. SFAS 159 provides an option to elect fair value as an alternative measurement for selected financial assets and financial liabilities not previously carried at fair value. We adopted this statement at January 1, 2008, but did not elect fair value as an alternative for any financial assets or liabilities.

4. Hedging

The related cash flow impact of all of our hedges is reflected in cash flows from operating activities. At June 30, 2008, our net fair value of derivatives liability was $624.3 million as compared to $201.6 million at December 31, 2007 which reflects increases in commodity prices in the period. Based on NYMEX strip pricing as of June 30, 2008, we expect to make hedge payments under the existing derivatives of $303.9 million during the next twelve months. At June 30, 2008, Accumulated Other Comprehensive Loss consisted of $386.6 million, net of tax, of unrealized losses from our crude oil and natural gas swaps and collars that qualified for hedge accounting treatment at June 30, 2008. Deferred net losses recorded in Accumulated Other Comprehensive Loss at June 30, 2008 and subsequent mark-to-market changes in the underlying hedging contracts are expected to be reclassified to earnings over the life of these contracts.

We entered into the following natural gas hedges during the three months ended March 31, 2008:

- Swaps on 15,400 MMBtu/D at $8.50 for the full year of 2009 and basis swaps on the same volumes for average prices of $1.17, $1.12, $.97, and $1.05 for each of the four quarters of 2009, respectively.

These hedges have been designated as cash flow hedges in accordance with SFAS No. 133, *Accounting for Derivative Instruments and Hedging Activities.* These swaps were not highly effective at inception, so we subsequently entered into basis swaps and established effectiveness at that time. We did not enter into any hedges during the three months ended June 30, 2008. In 2007, we entered into natural gas swap contracts that were not highly effective. We recognized an unrealized net loss of approximately $.1 million and $.8 million on the income statement under the caption “Commodity derivatives” in the three and six months ended June 30, 2008, respectively.

5. Asset Retirement Obligations

Inherent in the fair value calculation of the asset retirement obligation (ARO) are numerous assumptions and judgments including the ultimate settlement amounts, inflation factors, credit adjusted discount rates, timing of settlement, and changes in the legal, regulatory, environmental and political environments. To the extent future revisions to these assumptions impact the fair value of the existing ARO liability, a corresponding adjustment is made to the oil and gas property balance.

Under SFAS 143, the following table summarizes the change in abandonment obligation for the six months ended June 30, 2008 (in thousands):

Beginning balance at January 1	$	36,426
Liabilities incurred		2,102
Liabilities settled		(2,127)
Revisions in estimated liabilities		2,006
Accretion expense		1,644
Ending balance at June 30	$	40,051

6. Income Taxes

The effective tax rate was 37% for the second quarter of 2008 compared to 39% for the first quarter of 2008 and 39% for the second quarter of 2007. The lower rate in the second quarter reflects changes in our state income apportionment which includes the projected income from our East Texas acquisition. Our rate differs from the combined federal and state statutory tax rate (net of the federal benefit), primarily due to certain business incentives.

As of June 30, 2008, we had a gross liability for uncertain tax benefits of $12.9 million of which $10.5 million, if recognized, would affect the effective tax rate. There were no significant changes to the calculation since year end 2007.

Due to the uncertainty about the periods in which examinations will be completed and limited information related to current audits, we are not able to make reasonably reliable estimates of the periods in which cash settlements will occur with taxing authorities for the noncurrent liabilities.

7. Long-term and Short-term Debt Obligations

Short-term debt

In 2005, we completed an unsecured uncommitted money market line of credit (Line of Credit). Borrowings under the Line of Credit may be up to $30 million for a maximum of 30 days. The Line of Credit may be terminated at any time upon written notice by either us or the lender. At June 30, 2008 the outstanding balance under this Line of Credit was zero. Interest on amounts borrowed is charged at LIBOR plus a margin of approximately 1%. The weighted average interest rate on outstanding borrowings on the Line of Credit at June 30, 2008 was 3.4%.

Long-term debt

In 2006, we issued in a public offering $200 million of 8.25% senior subordinated notes due 2016 (the Notes). The deferred costs of approximately $5 million associated with the issuance of this debt are being amortized over the ten year life of the Notes.

We have a senior unsecured bank credit facility agreement (the Agreement) with a banking syndicate through June 30, 2011. The Agreement is a revolving credit facility for up to $750 million. In 2007, we increased our borrowing base to $550 million and in the second quarter of 2008, we increased our annual borrowing base to $650 million with a funding commitment from our banking
syndicate to $600 million. The outstanding Line of Credit reduces our borrowing capacity available under the Agreement. We amended this facility in July 2008 (see footnote 9 Subsequent Events in these financial statements).

The total outstanding debt at June 30, 2008 under the credit facility and the short-term Line of Credit was $311 million and zero, respectively, leaving $339 million in borrowing capacity available. Interest on amounts borrowed under this debt is charged at LIBOR plus a margin of 1.00% to 1.75% or the prime rate, with margins on the various rate options based on the ratio of credit outstanding to the borrowing base. We are required under the Agreement to pay an annual commitment fee of .25% to .375% on the unused portion of the credit facility.

The maximum amount available is subject to an annual redetermination of the borrowing base in accordance with the lender's customary procedures and practices. Both we and the banks have bilateral rights to one additional redetermination each year.

The Agreement contains restrictive covenants which, among other things, require us to maintain a certain debt to EBITDA ratio and a minimum current ratio, as defined. The $200 million Notes are subordinated to our credit facility indebtedness. As long as the interest coverage ratio (as defined) is met, we may incur additional debt. We were in compliance with all covenants as of June 30, 2008. The weighted average interest rate on total outstanding borrowings at June 30, 2008 was 5.6%.

Additionally, in 2006 we entered into five year interest rate swaps for a fixed rate of approximately 5.5% on $100 million of our outstanding borrowings under our credit facility for five years. These interest rate swaps have been designated as cash flow hedges.

8. Contingencies and Commitments

We have no accrued environmental liabilities for our sites, including sites in which governmental agencies have designated us as a potentially responsible party, because it is not probable that a loss will be incurred and the minimum cost and/or amount of loss cannot be reasonably estimated. However, because of the uncertainties associated with environmental assessment and remediation activities, future expense to remediate the currently identified sites, and sites identified in the future, if any, could be incurred. Management believes, based upon current site assessments, that the ultimate resolution of any matters will not result in substantial costs incurred. We are involved in various other lawsuits, claims and inquiries, most of which are routine to the nature of our business. In the opinion of management, the resolution of these matters will not have a material effect on our financial position, or on the results of operations or liquidity.

In February 2007, we entered into a multi-staged crude oil sales contract with a refiner for our Uinta basin light crude oil. Under the agreement, the refiner began purchasing 3,200 Bbl/D in July 2007. The refiner has increased its total purchase volume capacity to 5,000 Bbl/D as provided in our contract. The differential under the contract, which includes transportation and gravity adjustments, is linked to WTI and would range from $20 to $30 per barrel at WTI prices between $80 and $120 per barrel. Gross oil production averaged approximately 4,000 BOE/D in the quarter ended June 30, 2008.

9. Subsequent Events

On July 15, 2008, we closed on the previously announced acquisition of certain interests in natural gas producing properties on 4,500 net acres in Limestone and Harrison Counties of East Texas. The acquisition adds approximately 32 million cubic feet equivalent per day to our production from approximately 100 producing wells. The adjusted purchase price is $653 million, including closing adjustments of $32 million based on the effective date of February 1, 2008. The acquisition was initially financed by bank borrowings under the Company's amended and restated credit agreement.

Also, on July 15, 2008, we entered into a five-year amended and restated credit agreement (the "Credit Agreement") with Wells Fargo Bank, N.A as administrative agent and a syndicate of other lenders. The secured revolving credit facility amends and restates our previous credit agreement dated as of April 28, 2006, as amended. The Credit Agreement is a $1.5 billion revolving facility with an initial borrowing base of $1 billion. Interest on amounts borrowed under this debt is charged at either LIBOR plus a margin of 1.125% to 1.875% or the prime rate plus a margin with margins on the various rate options based on the ratio of credit outstanding to the borrowing base. Additionally, an annual commitment fee of .25% to .375% is charged on the unused portion of the credit facility. Borrowings under the Credit Agreement are secured by various of our assets and the Credit Agreement and related documents contain customary covenants similar to our previous credit facility and restrictions on the secured assets. The Credit Agreement matures on July 15, 2013. In conjunction with securing our credit facility we also secured our Line of Credit.

On July 15, 2008, we borrowed approximately $594 million under the Credit Agreement to pay the remaining consideration due for the East Texas acquisition. As of July 15, 2008, we had approximately $75 million available to be drawn under our $1 billion credit facility.

Additionally, we entered into a commitment letter with certain lenders to execute a $100 million senior unsecured revolving credit facility. The execution of definitive documentation of the unsecured credit facility is subject to completion of due diligence by the Lenders and is expected to occur no later than July 31, 2008. The unsecured credit facility is expected to mature on December 31, 2008 and will have usual and customary conditions, representations and warranties.

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

General. The following discussion provides information on the results of operations for the three and six month periods ended June 30, 2008 and 2007 and our financial condition, liquidity and capital resources as of June 30, 2008. The financial statements and the notes thereto contain detailed information that should be referred to in conjunction with this discussion.

The profitability of our operations in any particular accounting period will be directly related to the realized prices of oil, gas and electricity sold, the type and volume of oil and gas produced and electricity generated and the results of development, exploitation, acquisition, exploration and hedging activities. The realized prices for natural gas and electricity will fluctuate from one period to another due to regional market conditions and other factors, while oil prices will be predominantly influenced by global supply and demand. The aggregate amount of oil and gas produced may fluctuate based on the success of development and exploitation of oil and gas reserves pursuant to current reservoir management. The cost of natural gas used in our steaming operations and electrical generation, production rates, labor, equipment costs, maintenance expenses, and production taxes are expected to be the principal influences on operating costs. Accordingly, our results of operations may fluctuate from period to period based on the foregoing principal factors, among others.

Overview. We seek to increase shareholder value through consistent growth in our production and reserves, both through the drill bit and acquisitions. We strive to operate our properties in an efficient manner to maximize the cash flow and earnings of our assets. The strategies to accomplish these goals include:

- Developing our existing resource base
- Acquiring additional assets with significant growth potential
- Utilizing joint ventures with respected partners to enter new basins
- Accumulating significant acreage positions near our producing operations
- Investing our capital in a disciplined manner and maintaining a strong financial position

Notable Second Quarter Items.

- Achieved record production averaging 29,000 BOE/D, up 7% from the second quarter of 2007 and up 3% from the first quarter of 2008
- Increased Piceance net average production to 20.8 MMcf/D in the month of June, up 24% from the first quarter of 2008
- Increased Diatomite net production to an average of 1,700 BOE/D, up 24% from the first quarter of 2008
- Production at Poso Creek averaged 3,200 Bbl/D, up 19% from the first quarter of 2008
- Achieved a production exit rate of 30,000 BOE/D
- Completed relocation of our corporate headquarters from Bakersfield, California to Denver, Colorado
- Announced that David D. Wolf would join the Company as Executive Vice President and Chief Financial Officer

Notable Items and Expectations for the Third Quarter of 2008.

- Closed on the acquisition of 4,500 acres in Limestone and Harrison Counties of East Texas on July 15, 2008, adding an estimated 32 MMcf/D to production
- Increased our 2008 capital budget by $75 million to $370 million to fund the development of our East Texas acquisition
- Entered into an amended and restated secured credit facility with a $1 billion borrowing base
- Targeting a production average of approximately 35,000 BOE/D in the third quarter and a 2008 exit rate of between 39,000 and 40,000 BOE/D

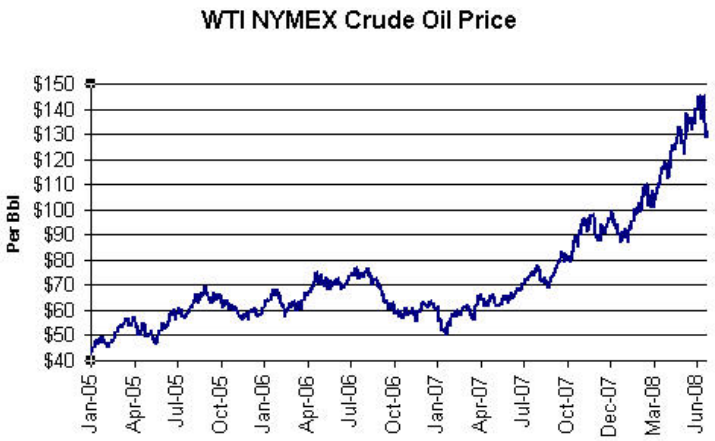
Overview of the Second Quarter of 2008. We had net income of $49 million, or $1.08 per diluted share and net cash from operations was $107 million. We drilled 120 gross wells and capital expenditures, excluding property acquisitions, totaled $95 million. We achieved average production of 29,000 BOE/D in the second quarter of 2008, up 3% from an average of 28,066 BOE/D in the first quarter of 2008.

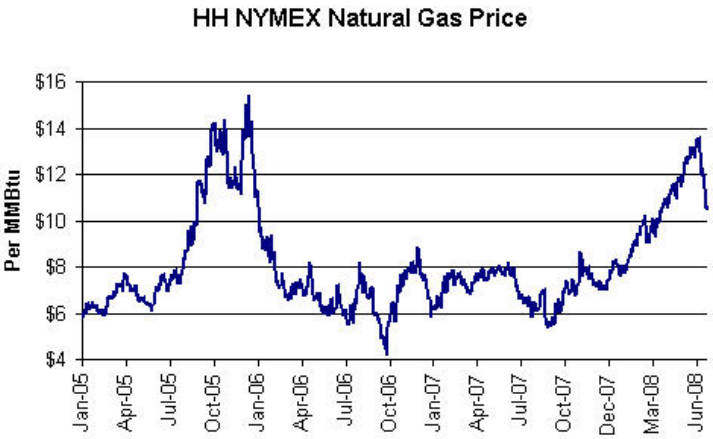
Results of Operations. The following companywide results are in millions (except per share data) for the three months ended:

	June 30, 2008 (2Q08)	June 30, 2007 (2Q07)	2Q08 to 2Q07 Change	March 31, 2008 (1Q08)	2Q08 to 1Q08 Change
Sales of oil	$ 146	$ 94	55%	$ 131	11%
Sales of gas	39	19	105%	33	19%
Total sales of oil and gas	$ 185	$ 113	64%	$ 164	13%
Sales of electricity	17	14	21%	16	6%
Gain on sale of assets	-	50	-%	-	-%
Other revenues	13	2	550%	5	160%
Total revenues and other income	$ 215	$ 179	20%	$ 185	16%
Net income	$ 49	$ 52	(6%)	$ 43	14%
Earnings per share (diluted)	$ 1.08	$ 1.16	(7%)	$ .95	14%

Our revenues may vary significantly from period to period as a result of changes in commodity prices and/or production volumes. Crude oil sales in the three months ended June 30, 2008 were 11% higher than the three months ended March 31, 2008 resulting from price increases of 6% and sales volume increases of 5%. Gas sales in the three months ended June 30, 2008 were 19% higher than the three months ended March 31, 2008 resulting from production increases of 3% and a price increase of 16%. Net income decreased 6% from the second quarter of 2007 to the second quarter of 2008 in part due to the $50.4 million pretax gain on the sale of assets during the second quarter of 2007.

In the first quarter of 2008, we determined there was an error in computing royalties payable in prior years, accumulating to $10.5 million as of December 31, 2007. We concluded the error was not material to any individual prior interim or annual period (or to the projected earnings for 2008) and, therefore, this error was corrected during the first quarter of 2008, with the effect of increasing our sales of oil and gas by $10.5 million and reducing our royalties payable.



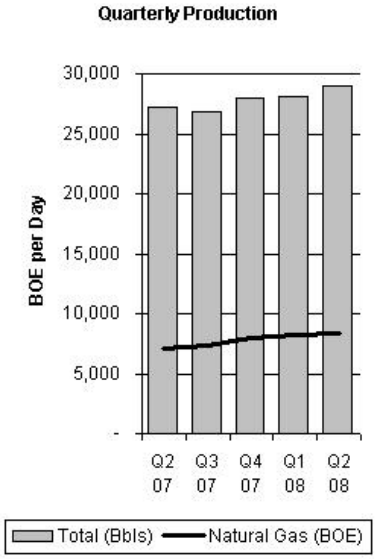


Operating data. The following table is for the three months ended:

	June 30, 2008	%	June 30, 2007	%	March 31, 2008	%
Heavy Oil Production (Bbl/D)	16,888	58	16,129	59	16,375	58
Light Oil Production (Bbl/D)	3,723	13	4,034	15	3,510	13
Total Oil Production (Bbl/D)	20,611	71	20,163	74	19,885	71
Natural Gas Production (Mcf/D)	50,339	29	42,193	26	49,086	29
Total (BOE/D)	29,000	100	27,195	100	28,066	100
Oil and gas, per BOE:						
Average sales price before hedging	$ 91.89		$ 44.72		$ 71.67	
Average sales price after hedging	69.77		45.43		60.43	
Oil, per Bbl:						
Average WTI price	$ 123.80		$ 65.02		$ 97.82	
Price sensitive royalties	(5.92)		(4.20)		(4.47)	
Quality differential and other	(11.52)		(9.24)		(10.78)	
Crude oil hedges	(29.37)		(.52)		(15.60)	
Correction to royalties payable	-		-		5.85	
Average oil sales price after hedging	$ 76.99		$ 51.06		$ 72.82	
Natural gas price:						
Average Henry Hub price per MMBtu	$ 10.93		$ 7.55		$ 8.05	
Conversion to Mcf	.55		.38		.40	
Natural gas hedges	(.69)		.71		(.12)	
Location, quality differentials and other	(2.15)		(3.53)		(.90)	
Average gas sales price after hedging	$ 8.64		$ 5.11		$ 7.43	

Operating data. The following table is for the six months ended:

	June 30, 2008	%	June 30, 2007	%
Heavy Oil Production (Bbl/D)	16,631	58	16,112	61
Light Oil Production (Bbl/D)	3,617	13	3,643	14
Total Oil Production (Bbl/D)	20,248	71	19,755	75
Natural Gas Production (Mcf/D)	49,712	29	39,463	25
Total (BOE/D)	28,534	100	26,332	100
Oil and gas, per BOE:				
Average sales price before hedging	$ 84.02		$ 44.25	
Average sales price after hedging	67.23		44.72	
Oil, per Bbl:				
Average WTI price	$ 111.12		$ 61.68	
Price sensitive royalties	(5.21)		(3.97)	
Quality differential and other	(11.15)		(9.01)	
Crude oil hedges	(22.66)		(.24)	
Correction to royalties payable	2.85		-	
Average oil sales price after hedging	$ 74.95		$ 48.46	
Natural gas price:				
Average Henry Hub price per MMBtu	$ 9.49		$ 7.16	
Conversion to Mcf	.47		.36	
Natural gas hedges	(.41)		.44	
Location, quality differentials and other	(1.50)		(2.12)	
Average gas sales price after hedging	$ 8.05		$ 5.84	



Gas Basis Differential. The basis differential between Henry Hub (HH) and Colorado Interstate Gas (CIG) index narrowed due to the increased take away capacity added by the start up of the Rockies Express Pipeline (REX) in January. However, the differential widened again in the second quarter. In the first quarter of 2008, the CIG basis differential per MMBtu, based upon first-of-month values, averaged $1.07 below HH and ranged from $.91 to $1.19 below HH. For the second quarter, the differential averaged $2.46 with the range going from $1.78 at the start of the quarter to $3.24 below HH at the end of the quarter. We have contracted a total of 35,000 MMBtu/D on the REX pipeline under two separate transactions to provide firm transportion for our Piceance basin gas production. After the REX startup in 2008, all of the Piceance basin gas was sold at mid-continent (ANR, NGPL or PEPL) indexes which averaged approximately $.70 above the CIG index pricing before the cost of transportation.

Gas from the Uinta basin sold for approximately $.03 below CIG pricing before deducting the cost of pipeline transport. A portion of the Uinta gas is priced on the Questar index while the remainder is based upon the CIG or NWPL index.

DJ Basin gas is priced using one of two indices. Approximately two-thirds of our volume from our DJ natural gas properties is tied to the Panhandle Eastern Pipeline (PEPL) index for pricing and the remaining volume to CIG pricing. For that portion of the production with firm transportation on either the Cheyenne Plains Pipeline or the KMIGT pipeline, pricing is based upon the PEPL index which averaged approximately $1.84 below the HH index during the second quarter, before the cost of transportation. The remainder of the DJ Basin gas is sold slightly above the CIG index price.

Gas Marketing. In December 2007, we entered into a second long-term (ten year) firm transportation contract for our Colorado natural gas production. This contract is for 25,000 MMBtu/D on the REX pipeline for gas production in the Piceance basin. We pay a demand charge for this capacity and our own production did not fill that capacity. In order to maximize our firm transportation capacity, we bought our partners' share of the gas produced in the Piceance at the market rate for that area. We then used our excess transportation to move this gas to where it was eventually sold. The net of our gas marketing revenue and our gas marketing expense in the Statements of Income is $.7 million in the six month period ended June 30, 2008. We expect our production will reach our firm transportation contract volume during 2009.

Oil Contracts. Utah - In February 2007, we entered into a multi-staged crude oil sales contract with a refiner for our Uinta basin light crude oil. Under the agreement, the refiner began purchasing 3,200 Bbl/D in July 2007. The refiner has increased its total capacity to 5,000 Bbl/D as provided in our contract. As operator we deliver all produced volumes under our sales contracts, although our working interest partners or royalty owners may take their respective volumes in kind and market their own volumes. Gross oil production averaged approximately 4,000 BOE/D in the quarter ended June 30, 2008. The differential under the contract, which includes transportation and gravity adjustments, is linked to WTI and would range from $20 to $30 per barrel at WTI prices between $80 and $120. This contract provides us an outlet to sell all of our current oil production in the Uinta basin.

Hedging. See Note 4 to the unaudited condensed financial statements and Item 3. Quantitative and Qualitative Disclosures about Market Risk.

Electricity. We consume natural gas as fuel to operate our three cogeneration facilities which are intended to provide an efficient and secure long-term supply of steam necessary for the cost-effective production of heavy oil in California. We sell our electricity to utilities under standard offer contracts based on "avoided cost" or SRAC pricing approved by the California Public Utilities Commission (CPUC) and under which our revenues are currently linked to the cost of natural gas. Natural gas index prices are the primary determinant of our electricity sales price based on the current pricing formula under these contracts. The correlation between electricity sales and natural gas prices allows us to manage our cost of producing steam more effectively.

In 2007, our electricity operations improved partially from the lower cost of our firm transportation natural gas compared to California prices which are used to determine our electricity payment. We purchase and transport 12,000 MMBtu/D on the Kern River Pipeline under our firm transportation contract and use this gas to produce conventional and cogeneration steam in the Midway-Sunset field. The differential between Rocky Mountain gas prices and Southern California Border prices increased during 2007 allowing us to purchase a portion of our gas at a discount to the Southern California Border price. As our electricity revenue is linked to Southern California Border prices, the fuel we purchased at lower Rocky Mountain prices was the primary contributor to the increase in our electricity margin in 2007. We purchased approximately 38,000 MMBtu/D as fuel for use in our cogeneration facilities in the year ended December 31, 2007. Rockies natural gas differentials have stabilized near their historical levels and we do not expect to have significant positive electricity margins in 2008. We expect to have small gains or losses on electricity on a quarterly basis which depends on seasonality as we receive improved pricing during the summer months. On September 20, 2007, the CPUC issued a decision (SRAC Decision) that changes the way SRAC energy prices will be determined for existing and new Standard Offer (SO) contracts and revises the capacity prices paid under current SO1 contracts. Based on our preliminary analysis, we do not believe that the proposed pricing changes will materially affect us in 2008.

The following table is for the three months ended:

	June 30, 2008	June 30, 2007	March 31, 2008
Electricity			
Revenues (in millions)	$ 17.0	$ 13.9	$ 15.9
Operating costs (in millions)	$ 15.5	$ 11.1	$ 16.4
Electric power produced - MWh/D	1,919	2,060	2,152
Electric power sold - MWh/D	1,724	1,819	1,959
Average sales price/MWh	$ 108.21	$ 84.13	$ 90.48
Fuel gas cost/MMBtu (including transportation)	$ 10.01	$ 6.46	$ 7.94

Oil and Gas Operating, Production Taxes, G&A and Interest Expenses. The following table presents information about our operating expenses for each of the three month periods ended:

	Amount per BOE			Amount (in thousands)		
	June 30, 2008	June 30, 2007	March 31, 2008	June 30, 2008	June 30, 2007	March 31, 2008
Operating costs – oil and gas production	$ 20.91	$ 14.44	$ 16.30	$ 55,185	$ 35,725	$ 41,629
Production taxes	2.83	1.67	2.34	7,481	4,139	5,967
DD&A – oil and gas production	11.02	9.45	10.60	29,073	23,397	27,076
G&A	4.23	3.90	4.46	11,160	9,651	11,383
Interest expense	1.50	2.01	1.46	3,951	4,976	3,738
Total	$ 40.49	$ 31.47	$ 35.16	$ 106,850	$ 77,888	$ 89,793

Our total operating costs, production taxes, DD&A, G&A and interest expenses for the three months ended June 30, 2008, stated on a unit-of-production basis, increased 29% over the three months ended June 30, 2007 and increased 15% as compared to the three months ended March 31, 2008. The changes were primarily related to the following items:

- Operating costs: The majority of the increase in our operating costs was due to higher steam costs resulting from higher fuel costs. The following table presents steam information:

	June 30, 2008 (2Q08)	June 30, 2007 (2Q07)	2Q08 to 2Q07 Change	March 31, 2008 (1Q08)	2Q08 to 1Q08 Change
Average volume of steam injected (Bbl/D)	97,853	84,032	16%	91,326	7%
Fuel gas cost/MMBtu (including transportation)	$ 10.01	$ 6.46	55%	$ 7.94	26%
Approximate net fuel gas volume consumed in steam generation (MMBtu/D)	27,382	22,559	21%	21,634	27%

Our total cost to purchase fuel for our steam operations increased by $2.07 per MMBtu or 26% in the three months ended June 2008 compared to the three months ended March 2008 as the SoCal border natural gas price increased over this time period. We consumed an additional 5,750 MMBtu/D in the second quarter of 2008 when compared to the first quarter of 2008 primarily related to increased conventional steam generation consumption and seasonal changes in the price received for our electricity which is used to allocate our cogeneration fuel gas volumes between electricity costs and steam costs. The increase in natural gas prices and our overall consumption accounted for approximately $10 million of the $13.6 million increase in operating costs between the first and second quarters of 2008. We plan to increase our fuel gas consumption by 4,000 MMBtu/D in the fourth quarter of 2008 as we add additional steam generation capacity at Poso Creek and the Diatomite.

During 2008, we generally expect a small change in our net income due to a change in natural gas prices as an increase in our steam costs is offset by revenue from our gas production and payments under our hedges. However, our gas long position can be impacted by volatility in the differential between the SoCal border price where we purchase the majority of our natural gas for steam generation and the Rockies prices at which we sell our produced volumes. Our realized price from the sale of natural gas increased $1.21/Mcf from the first quarter of 2008 as compared to the second quarter of 2008 while the cost of fuel purchased to generate steam and electricity increased $2.07/MMBtu over the same period.

- Production taxes: Our production taxes have increased compared to the second quarter of 2007 and the first quarter of 2008 as commodity prices and thus the values of our oil and natural gas has increased. Severance taxes paid in Utah and Colorado, are directly related to the field sales price of the commodity. In California, our production is burdened with ad valorem taxes on our total proved reserves. We expect production taxes to track oil and gas prices generally.

- Depreciation, depletion and amortization: DD&A increased per BOE by 17% and 4% in the second quarter of 2008 as compared to the second quarter of 2007 and as compared to the first quarter of 2008, respectively, due to an increase in the contribution of our development properties with higher drilling and leasehold acquisition costs, which is in line with our expectations.

- General and administrative: Approximately 70% of our G&A is related to compensation. The primary reason for the increase in G&A during the second quarter of 2008 as compared to the second quarter of 2007 was primarily due to an increase in the number of employees from 243 as of June 30, 2007 to 274 as of June 30, 2008.

- Interest expense: Our total outstanding borrowings were approximately $511 million at June 30, 2008 compared to $475 million and $455 million at June 30, 2007 and March 31, 2008, respectively. For the three months ended June 30, 2008, $4 million of interest cost has been capitalized and we expect to capitalize approximately $20 million of interest cost during the full year of 2008.

Estimated 2008 and Actual Six Months Ended June 30, 2008 and 2007 Oil and Gas Operating, G&A and Interest Expenses. We estimate our average 2008 production volume will range between 32,500 BOE/D and 33,500 BOE/D. Based on actual first six months and the remainder of 2008 at NYMEX WTI crude oil price of $100 per barrel and NYMEX HH natural gas price of $10.00 per MMBtu, we expect our expenses to be within the following ranges:

	Anticipated range in 2008 per BOE	Six months ended June 30, 2008	Six months ended June 30, 2007
Operating costs-oil and gas production *(1)*	$ 18.50 to 20.50	$ 18.64	$ 14.55
Production taxes	2.20 to 2.70	2.59	1.67
DD&A – oil and gas production	10.00 to 11.00	10.81	8.84
G&A	4.00 to 4.50	4.34	4.19
Interest expense	1.50 to 2.00	1.48	1.94
Total	$ 36.20 to 40.70	$ 37.86	$ 31.19

(1) We expect operating costs to increase in 2008 as compared to 2007 due to higher projected natural gas costs.

Our total operating costs, production taxes, DD&A, G&A and interest expenses for the six months ended June 30, 2008, stated on a unit-of-production basis, increased 21% over the six months ended June 30, 2007. The changes were primarily related to the following items:

- Operating costs: The majority of the increase in our operating costs was due to higher steam costs resulting from higher fuel costs. The following table presents steam information:

	Six months ended June 30, 2008	Six months ended June 30, 2007	Change
Average volume of steam injected (Bbl/D)	94,589	85,076	11%
Fuel gas cost/MMBtu (including transportation)	$ 8.98	$ 6.58	37%
Approximate net fuel gas volume consumed in steam generation (MMBtu/D)	24,536	21,022	17%

Our total cost to purchase fuel for our steam operations increased by $2.40 per MMBtu or 37% in the six months ended June 2008 compared to the six months ended June 2007 as the SoCal border natural gas price increased over this time period. We consumed an additional 3,510 MMBtus per day in the first six months of 2008 when compared to the first six months of 2007 primarily related to increased conventional steam generation consumption and seasonal changes in the price received for our electricity which is used to allocate our cogeneration fuel gas volumes.

- Production taxes: Production taxes per BOE in the six months ended June 30, 2008 were 55% higher than the comparable period in 2007 as commodity prices and thus the values of our oil and natural gas has increased. Severance taxes paid in Utah and Colorado, are directly related to the field sales price of the commodity. In California, our production is burdened with ad valorem taxes on our total proved reserves. We expect production taxes to track oil and gas prices generally.

- Depreciation, depletion and amortization: DD&A per BOE were 22% higher in the six months ended June 30, 2008 compared to the same period in the prior year due to an increase in the contribution of our development properties with higher drilling and leasehold acquisition costs, which is in line with our expectations.

- General and administrative: G&A per BOE increased by 4% in the six months ended June 30, 2007 compared to the same period in the prior year due to additional staffing and higher overall compensation costs associated with our growth activities.

- Interest expense: Our outstanding borrowings, including our senior unsecured money market line of credit and senior subordinated notes, was approximately $511 million at June 30, 2008 compared to approximately $475 million at June 30, 2007. For the six months ended June 30, 2008, $8 million of interest cost has been capitalized.

Royalties. The price sensitive royalty that burdens our Formax property in the South Midway Sunset field has changed. We previously paid a royalty equal to 75% of the amount of the heavy oil posted above a price of $16.11. This price escalates at 2% annually. Effective January 1, 2008, the royalty rate is reduced from 75% to 53% as long as we maintain a minimum steam injection level, which we expect to meet, that reduces over time. Current net production from this property is approximately 2,300 Bbl/.

Dry Hole, Abandonment, impairment and exploration. In the first six months of 2008, we recorded a total of $7.6 million in dry hole, abandonment, impairment and exploration expense. Charges of $2.7 million and $2.6 million were recorded during the first and second quarters of 2008, respectively for technical difficulties that were encountered on four wells in the Piceance basin before reaching total depth. These holes were abandoned in favor of drilling to the same bottom hole location by drilling new wells. In addition, $2.3 million of exploration expense was recorded for exploration activities which were primarily 3-D seismic activity in the DJ basin.

Income Taxes. We experienced an effective tax rate of 37% and 39% in the three months ended June 30, 2008 and June 30, 2007, respectively. The lower rate in the second quarter of 2008 when compared to the same period in the prior year reflects changes in our state income apportionment which includes the projected income from our East Texas acquisition. Our rate differs from the combined federal and state statutory tax rate (net of the federal benefit), primarily due to certain business incentives. See Note 6 to the unaudited condensed financial statements.

Development, Exploitation and Exploration Activity. We drilled 120 gross (112 net) wells during the second quarter of 2008. As of June 30, 2008, we have 4 rigs drilling on our properties under long-term contracts and 4 more under short term contracts.

Drilling Activity. The following table sets forth certain information regarding drilling activities (including operated and non-operated wells):

	Three months ended June 30, 2008		Six months ended June 30, 2008	
	Gross Wells	Net Wells	Gross Wells	Net Wells
S. Midway	34	34	57	57
N. Midway	33	33	69	69
S. Cal	4	4	25	25
Piceance	20	12	39	21
Uinta	20	20	29	29
DJ	9	9	46	39
Totals	**120**	**112**	**265**	**240**

Properties

We have six asset teams as follows: South Midway-Sunset (S. Midway), North Midway-Sunset including diatomite (N. Midway), Southern California including Poso Creek and Placerita (S. Cal), Piceance, Uinta and DJ.

S. Midway – During the three months ended June 30, 2008, production averaged approximately 9,100 Bbl/D compared to approximately 9,700 Bbl/D and 9,200 Bbl/D during the three month periods ended June 30, 2007 and March 31, 2008, respectively. We will invest $31 million on our S. Midway properties in 2008 to drill additional deeper horizontal wells along the cold, unswept flanks of the reservoir. Additional vertical wells will also be drilled to provide steam support for these horizontal wells. Sixteen horizontal wells plus the vertical steam support wells have been drilled and are performing as expected. We plan to drill the remaining six horizontal wells during the last half of the year. In 2008, we also began developing the Monarch reservoir on our Ethel D property. We drilled 24 wells in the Monarch in the first six months of the year and production averaged 900 Bbl/D using cyclic steam injection. We believe that production can be further enhanced through a steamflood and we will be expanding the pilot we began in 2007 later this year.

N. Midway – During the three months ended June 30, 2008, production from the area averaged approximately 2,600 Bbl/D compared to approximately 2,100 Bbl/D and 2,400 Bbl/D during the three month periods ended June 30, 2007 and March 31, 2008, respectively. In October 2007, we embarked on a full-scale, continuous development program of the Diatomite and we expect to drill non-stop over the next four years. Over 83 new producers have been drilled since October 2007. We are bringing these wells on production as the necessary infrastructure is installed to steam and produce these wells. We will nearly triple our producing well count this year from 80 wells at the end of 2007 to approximately 240 wells by year end 2008 and increase our steam generation capacity from 10,000 BSPD at the end of 2007 to 25,000 BSPD by the end of 2008. The additional wells, steam and supporting infrastructure should enable us to increase production of the Diatomite which averaged 1,700 BOE/D during the second quarter of 2008 to over 3,000 BOE/D by year end 2008. Additionally, we have drilled 6 delineation wells on the northern portion of our property and have identified significant additional resource potential that we will be evaluating during the remainder of the year.

S. Cal – During the three months ended June 30, 2008, production averaged approximately 5,300 Bbl/D compared to approximately 4,100 Bbl/D and 4,800 Bbl/D during the three month periods ended June 30, 2007 and March 31, 2008, respectively. This year's plans at Poso Creek call for further expansion including the addition of a fourth steam generator, which we brought on line in February, drilling 28 producers and expanding the steam flood. As of June 2008, all 28 planned producers have been drilled and Poso Creek production is currently over 3,300 BOE/D. During the remainder of 2008, additional steam injectors will be drilled and a fifth steam generator will be installed to further increase our production from this asset.

Piceance – During the three months ended June 30, 2008, production from the Piceance basin averaged 16.6 MMcf/D. Of the Berry operated wells, we drilled 18 gross wells (12 net) during the second quarter of 2008. We are currently drilling our 36th well of the year and the 108th well since we acquired our original Piceance basin acreage in early 2006. We continue to operate four drilling rigs and see further efficiencies with repeated drilling times of 12 to 15 days for a mesa well. Late in the second quarter of 2008, we began realizing increased production as we moved into the summer completion season with current production now over 22 MMcf/D. Initial production rates from these wells have been in line with our expectations.

Uinta – Average daily production during the three months ended June 30, 2008 from all Uinta basin assets was approximately 6,100 net BOE/D. During the three months ended June 30, 2008, we accelerated our drilling program with an additional rig but plan to return to a one rig program for the remainder of 2008. The development at Brundage Canyon continues to be focused on drilling high potential areas in the core of the field where we drilled 20 wells in the second quarter of 2008. Evaluating the waterflood feasibility at Brundage Canyon has progressed and we have begun the permitting process, with first injection expected by year end 2008. Late in the second quarter of 2008, we further delineated the Ashley Forest by drilling two wells under our current environmental approvals and we anticipate drilling four to six additional wells during the last half of 2008. We continue to optimize and pace our Uinta drilling program while the Ashley Forest Development EIS progresses towards its anticipated approval in early 2009.

DJ – During the three months ended June 30, 2008, we drilled 8 successful gross Niobrara development wells in Yuma County, Colorado, with a 100% success rate. Average daily production in the DJ basin for the three months ended June 30, 2008 was 19.6 net MMcf/D and we had $.3 million of exploration expense in the second quarter related to our seismic surveys. During the second quarter we completed the interpretation of an additional 75 square miles of 3-D seismic that we acquired over the winter and expect to replenish our low risk repeatable drilling inventory.

Financial Condition, Liquidity and Capital Resources. Substantial capital is required to replace and grow reserves. We achieve reserve replacement and growth primarily through successful development and exploration drilling and the acquisition of properties. Fluctuations in commodity prices, production rates and operating expenses have been the primary reason for changes in our cash flow from operating activities.

We had a senior unsecured revolving bank credit facility agreement (the Agreement) with a banking syndicate through June 30, 2011. The Agreement was a revolving credit facility for up to $750 million with a borrowing base as of June 30, 2008 of $600 million. As of June 30, 2008, we had total borrowings under the Agreement and Line of Credit of $311 million and $200 million under our senior subordinated ten year notes.

On July 15, 2008, we entered into a five-year amended and restated credit agreement with Wells Fargo Bank, N.A as administrative agent and other lenders. The secured revolving credit facility amends and restates the Company's previous credit agreement dated as of April 28, 2006, as amended. The Credit Agreement is a $1.5 billion revolving facility with an initial borrowing base of $1 billion. On July 15, 2008, we borrowed approximately $594 million under the Credit Agreement to pay the remaining consideration due in the East Texas acquisition. As of July 15, 2008, we had approximately $75 million available to be drawn under our $1 billion credit facility. This agreement matures on July 15, 2013. In conjunction with securing our credit facility we also secured our Line of Credit.

Additionally, we entered into a commitment letter with certain lenders to execute a $100 million senior unsecured revolving credit facility. The execution of definitive documentation of the unsecured credit facility is subject to completion of due diligence by the Lenders and is expected to occur no later than July 31, 2008. The unsecured credit facility is expected to mature on December 31, 2008 and will have usual and customary conditions, representations and warranties.

Capital Expenditures. We establish a capital budget for each calendar year based on our development opportunities and the expected cash flow from operations for that year. Acquisitions are typically debt financed. We may revise our capital budget during the year as a result of acquisitions and/or drilling outcomes or significant changes in cash flows.

In 2008, we had an original capital program of approximately $295 million, excluding acquisitions. The capital development program was increased by $75 million during the second quarter of 2008 in conjunction with our Texas acquisition to a total of $370 million. We may revise our capital budget during the year as a result of acquisitions and/or drilling outcomes or significant changes in cash flows. Excess cash generated from operations is expected to be applied toward acquisitions, debt reduction or other corporate purposes.

Our 2008 expenditures will be directed toward developing reserves, increasing oil and gas production and exploration opportunities. For 2008, we plan to invest approximately $118 million, or 32%, in our heavy crude oil assets, $175 million, in our base natural gas and light oil assets and $75 million in the development of our East Texas acquisition. Capital expenditures, excluding property acquisitions, totaled $95 million and $172 million during the three and six months ended June 30, 2008, respectively.

Working Capital and Cash Flows. Cash flow from operations is dependent upon the price of crude oil and natural gas and our ability to increase production and manage costs. Crude oil and gas sales in the three months ended June 30, 2008 were 13% higher than the three months ended March 31, 2008 resulting from a 6% increase in oil prices (see graphs on page 14) and a 16% increase in gas prices (see graphs on page 14) and production increases in oil and natural gas. Proceeds from the sale of our Prairie Star assets are $1.8 million in the Statements of Cash Flows and the gain from that sale is $.4 million in the Statements of Income in the six months ended June 30, 2008.

Our working capital balance fluctuates as a result of the amount of borrowings and the timing of repayments under our credit arrangements. We use our long-term borrowings under our credit facility primarily to fund property acquisitions. Generally, we use excess cash to pay down borrowings under our credit arrangement. As a result, we often have a working capital deficit or a relatively small amount of positive working capital.

The table below compares financial condition, liquidity and capital resources changes for the three month periods ended (in millions, except for production and average prices):

	June 30, 2008 (2Q08)	June 30, 2007 (2Q07)	2Q08 to 2Q07 Change	March 31, 2008 (1Q08)	2Q08 to 1Q08 Change
Average production (BOE/D)	29,000	27,195	7%	28,066	3%
Average oil and gas sales prices, per BOE after hedging	$ 69.77	$ 45.43	54%	$ 60.43	15%
Net cash provided by operating activities *(1)*	$107	$ 81	32%	$ 87	23%
Working capital	$ (225)	$ (39)	(464)%	$ (123)	(79)%
Sales of oil and gas	$185	$113	64%	$ 164	13%
Total debt	$511	$475	8%	$ 455	12%
Capital expenditures, including acquisitions and deposits on acquisitions	$154	$131	18%	$ 77	100%
Dividends paid	$3.4	$ 3.4	-%	$ 3.3	3%

(1) The change in the book overdraft line in the Statements of Cash Flows is classified as an operating activity to reflect the use of these funds in operations, rather than their prior year classification as a financing activity.

Contractual Obligations. Our contractual obligations as of June 30, 2008 are as follows (in millions):

	Total	2008	2009	2010	2011	2012	Thereafter
Total debt and interest	$ 687.4	$ 14.3	$ 28.5	$ 28.6	$ 333.5	$ 16.5	$ 266.0
Abandonment obligations	40.0	.7	1.4	1.4	1.5	1.5	33.5
Operating lease obligations	17.0	1.2	2.2	2.1	2.1	2.1	7.3
Drilling and rig obligations	55.9	12.8	16.3	7.4	19.4	-	-
Firm natural gas transportation contracts	165.7	7.7	19.5	19.5	19.5	19.1	80.4
Total	$ 966.0	$ 36.7	$ 67.9	$ 59.0	$ 376.0	$ 39.2	$ 387.2

Drilling obligations - - Under our June 2006 joint venture agreement in the Piceance basin we are required to have 120 wells drilled by February 2011 to avoid penalties of $.2 million per well or a maximum of $24 million. As of June 30, 2008 we have drilled 23 of these wells and we expect to meet our obligation to have the remaining wells drilled by February 2011.

Other Obligations - We adopted the provisions of FIN No. 48 on January 1, 2007 and recognized no material adjustment to retained earnings. As of June 30, 2008, we had a gross liability for uncertain tax benefits of $12.9 million of which $10.5 million, if recognized, would affect the effective tax rate.

In February 2007, we entered into a multi-staged crude oil sales contract with a refiner for our Uinta basin light crude oil. Under the agreement, the refiner began purchasing 3,200 Bbl/D in July 2007, as provided in our contract. The refiner has increased its total purchase capacity to 5,000 Bbl/D as provided in our contract. The differential under the contract, which includes transportation and gravity adjustments, is linked to WTI and would range from $20 to $30 per barrel at WTI prices between $80 and $120. Gross oil production averaged approximately 4,000 BOE/D in the quarter ended June 30, 2008.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

As discussed in Note 4 to the unaudited condensed financial statements, to minimize the effect of a downturn in oil and gas prices and protect our profitability and the economics of our development plans, we enter into crude oil and natural gas hedge contracts from time to time. The terms of contracts depend on various factors, including management's view of future crude oil and natural gas prices, acquisition economics on purchased assets and our future financial commitments. This price hedging program is designed to moderate the effects of a severe crude oil and natural gas price downturn while allowing us to participate in some commodity price increases. In California, we benefit from lower natural gas pricing as we are a consumer of natural gas in our operations and elsewhere, we benefit from higher natural gas pricing. We have hedged, and may hedge in the future, both natural gas purchases and sales as determined appropriate by management. Management regularly monitors the crude oil and natural gas markets and our financial commitments to determine if, when, and at what level some form of crude oil and/or natural gas hedging and/or basis adjustments or other price protection is appropriate in accordance with policy established by our board of directors.

Currently, our hedges are in the form of swaps and collars. However, we may use a variety of hedge instruments in the future to hedge WTI or the index gas price. We have crude oil sales contracts in place which are priced based on a correlation to WTI. Natural gas (for cogeneration and conventional steaming operations) is purchased at the SoCal border price and we sell our produced gas in Colorado and Utah at various index prices.

The following table summarizes our hedge position as of June 30, 2008:

Term	Average Barrels Per Day	Floor/Ceiling Prices	Term	Average MMBtu Per Day	Average Price
Crude Oil Sales (NYMEX WTI) Collars			**Natural Gas Sales (NYMEX HH TO CIG) Basis Swaps**		
Full year 2008	10,000	$47.50 / $70.00	3rd Quarter 2008	19,000	$1.40
Full year 2009	10,000	$47.50 / $70.00	4th Quarter 2008	21,000	$1.46
Full year 2009	295	$80.00 / $91.00			
Full year 2010	1,000	$60.00 / $80.00	**Natural Gas Sales (NYMEX HH TO PEPL) Basis Swaps**		
Full year 2010	1,000	$55.00 / $76.20	1st Quarter 2009	15,400	$1.17
Full year 2010	1,000	$55.00 / $77.75	2nd Quarter 2009	15,400	$1.12
Full year 2010	1,000	$55.00 / $77.70	3rd Quarter 2009	15,400	$0.97
Full year 2010	1,000	$55.00 / $83.10	4th Quarter 2009	15,400	$1.05
Full year 2010	1,000	$60.00 / $75.00			
Full year 2010	1,000	$65.50 / $78.50	**Natural Gas Sales (NYMEX HH) Swaps**		
Full year 2010	280	$80.00 / $90.00	3rd Quarter 2008	16,200	$8.04
Full year 2011	270	$80.00 / $90.00	4th Quarter 2008	16,200	$8.04
			Full year 2009	15,400	$8.50
Crude Oil Sales (NYMEX WTI) Swaps					
Full year 2008	335	$92.00	**Natural Gas Sales (NYMEX HH) Collars**		Floor/Ceiling Prices
Full year 2009	240	$71.50	3rd Quarter 2008	2,800	$7.50 / $8.50
			4th Quarter 2008	4,800	$8.00 / $9.50

The collar strike prices will allow us to protect a significant portion of our future cash flow if 1) oil prices decline below our floor prices which range from $47.50 to $80.00 per barrel while still participating in any oil price increase up to the ceiling prices which range from $70.00 to $91.00 per barrel on the volumes indicated above, and if 2) gas prices decline below our floor prices which range from $7.50 to $8.00 per MMBtu while still participating in any gas price increase up to the ceiling prices, which range from $8.40 to $9.50 per MMBtu on the respective volumes. These hedges improve our financial flexibility by locking in significant revenues and cash flow upon a substantial decline in crude oil or natural gas prices, including certain basis differentials. It also allows us to develop our long-lived assets and pursue exploitation opportunities with greater confidence in the projected economic outcomes and allows us to borrow a higher amount under our credit facility.

While we have designated our hedges as cash flow hedges in accordance with SFAS No. 133, *Accounting for Derivative Instruments and Hedging Activities*, it is possible that a portion of the hedge related to the movement in the WTI to California heavy crude oil price differential may be determined to be ineffective. Likewise, we may have some ineffectiveness in our natural gas hedges due to the movement of HH pricing as compared to actual sales points. If this occurs, the ineffective portion will directly impact net income rather than being reported as Other Comprehensive Income (Loss). If the differential were to change significantly, it is possible that our hedges, when mark-to-market, could have a material impact on earnings in any given quarter and, thus, add increased volatility to our net income. The mark-to-market values reflect the liquidation values of such hedges and not necessarily the values of the hedges if they are held to maturity.

In November 2007 we entered into natural gas swaps at an index that did not correlate with the index at which the gas is sold and therefore those 2008 gas hedges are not highly effective. In January 2008 we entered into natural gas swaps which were not highly effective at inception, so we subsequently entered into basis swaps and established effectiveness at that time. Thus, we recognized unrealized net losses of approximately $.1 million and $.8 million in the Statements of Income under the caption “Commodity derivatives” for the three months ended June 30, 2008 and for the six months ended June 30, 2008, respectively.

Additionally, in 2006 we entered into five year interest rate swaps for a fixed rate of approximately 5.5% on $100 million of our outstanding borrowings under our credit facility. These interest rate swaps have been designated as cash flow hedges.

The related cash flow impact of all of our derivative activities are reflected as cash flows from operating activities. Irrespective of the unrealized gains reflected in Other Comprehensive Income (Loss), the ultimate impact to net income over the life of the hedges will reflect the actual settlement values. All of these hedges have historically been deemed to be cash flow hedges and are booked at fair value.

Based on average NYMEX futures prices as of June 30, 2008 (WTI $139.01; HH $12.82) for the term of our hedges we would expect to make pretax future cash payments or to receive payments over the remaining term of our crude oil and natural gas hedges in place as follows:

	June 30, 2008 NYMEX Futures	Impact of percent change in futures prices on pretax future cash (payments) and receipts			
		-20%	-10%	+ 10%	+ 20%
Average WTI Futures Price (2008 – 2011)	$ 139.01	$ 111.21	$ 125.11	$ 152.91	$ 166.82
Average HH Futures Price (2008 – 2009)	12.82	10.26	11.55	14.11	15.39
Crude Oil gain/(loss) (in millions)	$ (604.8)	$ (350.0)	$ (477.4)	$ (732.2)	$ (859.6)
Natural Gas gain/(loss) (in millions)	(30.2)	(10.1)	(22.1)	(46.1)	(58.1)
Total	$ (635.0)	$ (360.1)	$ (499.5)	$ (778.3)	$ (917.7)
Net pretax future cash (payments) and receipts by year (in millions) based on average price in each year:					
2008 (WTI $140.73; HH $13.54)	$ (157.4)	$ (91.2)	$ (126.2)	$ (196.2)	$ (231.2)
2009 (WTI $140.88; HH $12.47)	(291.1)	(168.8)	(229.9)	(352.3)	(413.5)
2010 (WTI $138.51)	(181.9)	(98.2)	(140.1)	(223.8)	(265.6)
2011 (WTI $136.79)	(4.6)	(1.9)	(3.3)	(6.0)	(7.4)
Total	$ (635.0)	$ (360.1)	$ (499.5)	$ (778.3)	$ (917.7)

Interest Rates. Our exposure to changes in interest rates results primarily from long-term debt. In October 2006, we issued $200 million of 8.25% senior subordinated notes due 2016 in a public offering. Total long-term debt outstanding including our short-term Line of Credit, at June 30, 2008 was $311 million. Interest on amounts borrowed under our credit facility is charged at LIBOR plus 1.0% to 1.75%, with the exception of the $100 million of principal for which we have hedged the interest rate at approximately 5.5% plus the credit facility's margin through June 30, 2011. Based on June 30, 2008 credit facility borrowings, a 1% change in interest rates would have an annual $1.3 million after tax impact on our financial statements.

Item 4. Controls and Procedures

As of June 30, 2008, we have carried out an evaluation under the supervision of, and with the participation of, our management, including our Chief Executive Officer and Chief Financial Officer, of the effectiveness of the design and operation of our disclosure controls and procedures pursuant to Rule 13a-15 under the Securities Exchange Act of 1934, as amended.

Based on their evaluation as of June 30, 2008, our Chief Executive Officer and Chief Financial Officer have concluded that our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e)) under the Securities Exchange Act of 1934) are effective to ensure that the information required to be disclosed by us in the reports that we file or submit under the Securities Exchange Act of 1934 is recorded, processed, summarized and reported within the time periods specified in SEC rules and forms.

There was no change in our internal control over financial reporting that occurred during the three months ended June 30, 2008 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting. We may make changes in our internal control procedures from time to time in the future.

Forward Looking Statements

"Safe harbor under the Private Securities Litigation Reform Act of 1995:" Any statements in this Form 10-Q that are not historical facts are forward-looking statements that involve risks and uncertainties. Words such as "plan," "will," "intend," "continue," "target(s)," "expect," "achieve," "future," "may," "could," "goal(s)," "anticipate," or other comparable words or phrases, or the negative of those words, and other words of similar meaning indicate forward-looking statements and important factors which could affect actual results and will not complete such actions on the timetable indicated. Forward-looking statements are made based on management's current expectations and beliefs concerning future developments and their potential effects upon Berry Petroleum Company. These items are discussed at length in Part I, Item 1A on page 14 of our Form 10-K/A filed with the Securities and Exchange Commission, under the heading "Risk Factors" and all material changes are updated in Part II, Item 1A within this Form 10-Q.

PART II. OTHER INFORMATION

Item 1. Legal Proceedings

None.

Item 1A. Risk Factors

None.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds

None.

Item 3. Defaults Upon Senior Securities

None.

Item 4. Submission of Matters to a Vote of Security Holders

At the annual meeting, which was held at the Four Points Sheraton Hotel, Bakersfield, California, on May 14, 2008, ten incumbent directors were re-elected. The results of voting as reported by the inspector of elections are noted below:

1. There were 44,408,401 shares of our capital stock issued, outstanding and generally entitled to vote as of the record date, March 17, 2008.

2. There were present at the meeting, in person or by proxy, the holders of 41,055,321 shares, representing 92.45% of the total number of shares outstanding and entitled to vote at the meeting, such percentage representing a quorum.

PROPOSAL ONE: Election of ten Directors

NOMINEE	VOTES CAST FOR	PERCENTAGE OF QUORUM VOTES CAST	AUTHORITY WITHHELD
Joseph H. Bryant	40,792,588	99.36%	262,733
Ralph B. Busch, III	40,623,215	98.95%	432,106
William E. Bush, Jr	40,615,502	98.93%	439,819
J. Herbert Gaul, Jr.	40,894,023	99.61%	161,298
Thomas J. Jamieson	40,615,672	98.93%	439,649
Ronald J. Robinson	40,793,243	99.36%	262,078
Martin H. Young, Jr	40,901,003	99.62%	154,318
Stephen L. Cropper	40,894,899	99.61%	160,422
Robert F. Heinemann	40,610,077	98.92%	445,244
J. Frank Keller	40,790,643	99.36%	264,678

Percentages are based on the shares represented and voting at the meeting in person or by proxy.

PROPOSAL TWO: Ratification of the appointment of PricewaterhouseCoopers LLP as the Independent Registered Public Accounting Firm (Independent Auditors).

	For	Against	Abstentions	Broker Non-Votes
Shares	40,705,860	348,595	866	-

Item 5. Other Information

None.

Item 6. Exhibits

Exhibit No.	Description of Exhibit
10.1	Amended and Restated Credit Agreement, dated as of July 15, 2008 by and between the Registrant and Wells Fargo Bank, N.A. and other financial institutions.
10.2	Purchase and Sale Agreement Between O'Brien Resources, LLC, Sepco II, LLC, Liberty Energy, LLC, Crow Horizons Company and O'Benco II LP collectively as Seller and Berry Petroleum Company as Purchaser, dated as of June 10, 2008.
10.3	Overriding Royalty Purchase Agreement between O'Brien Resources, LLC, as Seller, and Berry Petroleum Company, as Purchaser, dated as of June 10, 2008.
31.1	Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2	Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1	Certification of Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
32.2	Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereto duly authorized.

BERRY PETROLEUM COMPANY

/s/ Shawn M. Canaday
Shawn M. Canaday
Vice President and Controller
(Principal Accounting Officer)

Date: July 25, 2008

EXECUTION

AMENDED AND RESTATED CREDIT AGREEMENT

BERRY PETROLEUM COMPANY

and

WELLS FARGO BANK, NATIONAL ASSOCIATION
as Administrative Agent, Lead Arranger, Swing Line Lender and Joint Book Runner

SOCIÉTÉ GÉNÉRALE and BNP PARIBAS
as Joint Book Runners and Co-Syndication Agents

JPMORGAN CHASE BANK, N.A.. and THE ROYAL BANK OF SCOTLAND plc
as Co-Documentation Agents

and

CERTAIN FINANCIAL INSTITUTIONS
as Lenders

July 15, 2008

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Schedules and Exhibits:

AMENDED AND RESTATED CREDIT AGREEMENT

THIS AMENDED AND RESTATED CREDIT AGREEMENT is made as of July 15, 2008, by and among BERRY PETROLEUM COMPANY, a Delaware corporation (herein called "Borrower"), WELLS FARGO BANK, NATIONAL ASSOCIATION, individually and as Administrative Agent (herein called "Administrative Agent"), and the Lenders referred to below. In consideration of the mutual covenants and agreements contained herein the parties hereto agree as follows:

WHEREAS, Borrower, certain of the Lenders, and Administrative Agent are parties to the Existing Credit Agreement (as defined below), pursuant to which the Lenders have made revolving credit loans to Borrower and have issued or participated in letters of credit for the account of Borrower; and

WHEREAS, Borrower has requested that (i) the Loans outstanding under the Existing Credit Agreement and the Existing Letters of Credit (as defined below) outstanding under the Existing Credit Agreement be continued as Loans and Letters of Credit under this Agreement, the proceeds of which are to be used by Borrower for the purposes described hereinbelow, and (ii) the Existing Credit Agreement otherwise be amended and restated in its entirety as set forth below in this Agreement; and

WHEREAS, the Lenders are willing, on and subject to the terms and conditions set forth in this Agreement, to amend and restate the terms of the Existing Credit Agreement and to extend credit under this Agreement as more particularly hereinafter set forth.

ACCORDINGLY, in consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

ARTICLE I - - - Definitions and References

Section 1.1. Defined Terms. As used in this Agreement, each of the following terms has the meaning given to such term in this Section 1.1 or in the sections and subsections referred to below:

"Acquisition Documents" means (a) Purchase And Sale Agreement Between O'Brien Resources, LLC, Sepco II, LLC, Liberty Energy, LLC, Crow Horizons Company and O'Benco II, LP, collectively, as Seller, and Berry Petroleum Company, as Purchaser dated as of June 10, 2008, (b) the Assignment of Bill and Sale by such seller in favor of Borrower, and (c) all other agreements or instruments delivered in connection therewith to consummate the acquisition contemplated thereby.

"Adjusted Base Rate" means, for any day, the Base Rate plus the Base Rate Margin for such day, provided that the Adjusted Base Rate charged by any Person shall never exceed the Highest Lawful Rate.

"Adjusted EBITDAX" means, for any period, EBITDAX for such period adjusted (a) as permitted and in accordance with Article 11 of Regulation S-X promulgated by the SEC, and (b) to give effect to any acquisition or divestiture made by Borrower or any of its Consolidated subsidiaries during such period as if such transactions had occurred on the first day of such period, regardless of whether the effect is positive or negative.

"Adjusted Eurodollar Rate" means, for any Eurodollar Loan for any day during any Interest Period therefor, the rate per annum equal to the sum of (a) the Eurodollar Margin for such day plus (b) the rate per annum (rounded upwards, if necessary, to the nearest 1/100 of 1%) determined by Administrative Agent to be equal to the quotient obtained by dividing (i) the Eurodollar Rate for such Eurodollar Loan for such Interest Period by (ii) 1 minus the Reserve Requirement for such Eurodollar Loan for such Interest Period, provided that no Adjusted Eurodollar Rate charged by any Person shall ever exceed the Highest Lawful Rate. The Adjusted Eurodollar Rate for any Eurodollar Loan shall change whenever the Eurodollar Margin or the Reserve Requirement changes.

"Administrative Agent" means Wells Fargo, as Administrative Agent hereunder, and its successors in such capacity.

"Administrative Questionnaire" means an Administrative Questionnaire in a form supplied by Administrative Agent.

"Affiliate" means, as to any Person, each other Person that directly or indirectly (through one or more intermediaries or otherwise) controls, is controlled by, or is under common control with, such Person. A Person shall be deemed to be "controlled by" any other Person if such other Person possesses, directly or indirectly, power

(a) to vote 10% or more of the Equity Interests in such Person (on a fully diluted basis) having ordinary voting power for the election of directors or similar managing group; or

(b) to direct or cause the direction of the management and policies of such Person whether by contract or otherwise.

"Aggregate Commitment" means the aggregate amount of the Commitments of the Lenders; provided that in no event shall the Aggregate Commitment exceed the Maximum Credit Amount.

"Agreement" means this Credit Agreement.

"Applicable Lending Office" means, with respect to each Lender, such Lender's Domestic Lending Office in the case of Base Rate Loans and such Lender's Eurodollar Lending Office in the case of Eurodollar Loans.

"Approved Fund" means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

"Assignment and Assumption" means an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 10.5), and accepted by Administrative Agent, in substantially the form of Exhibit F or any other form approved by Administrative Agent.

"Availability" means on any day during the Commitment Period, the unused portion of the Borrowing Base, determined for such day by deducting from such lesser amount at the end of such day, the Facility Usage.

"Base Rate" means, for any day, the rate per annum equal to the higher of (a) the Federal Funds Rate for such day plus one-half of one percent (.5%) and (b) the Prime Rate for such day. Any change in the Base Rate due to a change in the Prime Rate or the Federal Funds Rate shall be effective on the effective date of such change in the Prime Rate or Federal Funds Rate. As used in this definition, "Prime Rate" means, at any time, the per annum rate of interest most recently announced within Wells Fargo at its principal office in San Francisco as its Prime Rate, with the understanding that Wells Fargo's Prime Rate is one of its base rates and serves as the basis upon which effective rates of interest are calculated for those loans making reference thereto, and is evidenced by the recording thereof after its announcement in such internal publication or publications as Wells Fargo may designate. Each change in the Prime Rate will be effective on the day the change is announced within Wells Fargo.

"Base Rate Loan" means a Loan which does not bear interest at the Adjusted Eurodollar Rate.

"Base Rate Margin" means, on any day, the following percentages per annum based on the Utilization Percentage as set forth below:

	Utilization Percentage	Base Rate Margin
Level 1	< 50%	0.125%
Level 2	≥ 50% but < 75%	0.125%
Level 3	≥ 75% but < 90%	0.375%
Level 4	≥ 90%	0.625%

"Borrowing" means a borrowing of new Revolving Loans of a single Type, and in the case of Eurodollar Loans, with the same Interest Period, pursuant to Section 2.2, a Continuation or Conversion of existing Loans into a single Type (and, in the case of Eurodollar Loans, with the same Interest Period) pursuant to Section 2.3, or a borrowing of a Swing Line Loan pursuant to Section 2.17 as the context may require.

"Borrowing Base" means, at the particular time in question, either the amount provided for in Section 2.8 or the amount determined by Administrative Agent and Required Lenders (or in the case of an increase in the Borrowing Base, all Lenders) in accordance with the provisions of Section 2.9; provided, however, that in no event shall the Borrowing Base ever exceed the Aggregate Commitment.

"Borrowing Base Deficiency" has the meaning given to such term in Section 2.7(a).

"Borrowing Notice" means a written or telephonic request, or a written confirmation, made by Borrower which meets the requirements of Section 2.2.

"Borrowing Base Properties" means the Mineral Interests evaluated by Lenders for purposes of establishing the Borrowing Base.

"Business Day" means a day, other than a Saturday or Sunday, on which commercial banks are open for business with the public in Denver, Colorado. Any Business Day in any way relating to Eurodollar Loans (such as the day on which an Interest Period begins or ends) must also be a day on which, in the judgment of Administrative Agent, significant transactions in dollars are carried out in the interbank eurocurrency market.

"Capital Lease" means a lease with respect to which the lessee is required concurrently to recognize the acquisition of an asset and the incurrence of a liability in accordance with GAAP.

"Capital Lease Obligation" means, with respect to any Person and a Capital Lease, the amount of the obligation of such Person as the lessee under such Capital Lease which should, in accordance with GAAP, appear as a liability on the balance sheet of such Person.

"Cash Equivalents" means Investments in:

(a) marketable obligations, maturing within twelve months after acquisition thereof, issued or unconditionally guaranteed by the United States of America or an instrumentality or agency thereof and entitled to the full faith and credit of the United States of America;

(b) demand deposits, and time deposits (including certificates of deposit) maturing within twelve months from the date of deposit thereof, with any office of any Lender or with a domestic office of any national or state bank or trust company which is organized under the Laws of the United States of America or any state therein, which has capital, surplus and undivided profits of at least $500,000,000, and whose long term certificates of deposit are rated at least A2 by Moody's or A by S & P;

(c) repurchase obligations with a term of not more than seven days for underlying securities of the types described in subsection (a) above entered into with any commercial bank meeting the specifications of subsection (b) above;

(d) open market commercial paper, maturing within 270 days after acquisition thereof, which are rated at least P-1 by Moody's or A-1 by S & P; and

(e) money market or other mutual funds substantially all of whose assets comprise securities of the types described in subsections (a) through (d) above.

"Change in Law" means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof by any Governmental Authority or (c) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority.

"Change of Control" means the occurrence of either of the following events: (a) any Person or two or more Persons acting as a group shall acquire beneficial ownership (within the meaning of Rule 13d-3 of the SEC under the Securities Act of 1934, as amended, and including holding proxies to vote for the election of directors other than proxies held by Borrower's management or their designees to be voted in favor of Persons nominated by Borrower's Board of Directors) of 30% or more of the outstanding voting securities of Borrower, measured by voting power (including both common stock and any preferred stock or other equity securities entitling the holders thereof to vote with the holders of common stock in elections for directors of Borrower) or (b) one-third or more of the directors of Borrower shall consist of Persons not nominated by Borrower's Board of Directors (not including as Board nominees any directors which the Board is obligated to nominate pursuant to shareholders agreements, voting trust arrangements or similar arrangements).

"Closing Date" means the date on which all of the conditions precedent set forth in Section 4.1 and Section 4.2 shall have been satisfied or waived.

"Collateral" means all property of any kind which is subject to a Lien in favor of Lenders (or in favor of Administrative Agent for the benefit of Lenders) or which, under the terms of any Security Document, is purported to be subject to such a Lien, in each case that secures the Secured Obligations.

"Commitment" means, for each Lender, the obligation of such Lender to make Loans to, and participate in Letters of Credit issued upon the application of, Borrower in an aggregate amount not exceeding the amount set forth on the Lenders Schedule or as set forth in any Assignment and Assumption relating to any assignment that has become effective pursuant to Section 10.5, as such amount may be modified from time to time pursuant to the terms hereof; provided that no Lender's Commitment shall ever exceed such Lender's Percentage Share of the Aggregate Commitment.

"Commitment Fee Rate" means, on any day, the following percentages per annum based on the Utilization Percentage set forth below; provided that the outstanding Swing Line Loans shall be excluded for purposes of calculating the Commitment Fee Rate:

	Utilization Percentage	Commitment Fee
Level 1	< 50%	0.25%
Level 2	≥ 50% but < 75%	0.30%
Level 3	≥ 75% ut < 90%	0.375%
Level 4	≥ 90%	0.375%

"Commitment Period" means the period from and including the Closing Date until the Maturity Date (or, if earlier, the day on which the obligations of Lenders to make Loans hereunder and the obligations of LC Issuer to issue Letters of Credit hereunder have been terminated or the Notes first become due and payable in full).

"Consolidated" refers to the consolidation of any Person, in accordance with GAAP, with its properly consolidated subsidiaries. References herein to a Person's Consolidated financial statements, financial position, financial condition, liabilities, etc. refer to the consolidated financial statements, financial position, financial condition, liabilities, etc. of such Person and its properly consolidated subsidiaries.

"Continuation" shall refer to the continuation pursuant to Section 2.3 hereof of a Eurodollar Loan as a Eurodollar Loan from one Interest Period to the next Interest Period.

"Continuation/Conversion Notice" means a written or telephonic request, or a written confirmation, made by Borrower which meets the requirements of Section 2.3.

"Conversion" shall refer to a conversion pursuant to Section 2.3 or ARTICLE III - of one Type of Loan into another Type of Loan.

"Core Acquisitions and Investments" means (i) acquisitions of Mineral Interests and acquisitions of assets used in the producing, drilling, transportation, processing, refining or marketing of petroleum products that are related to Borrower's producing Mineral Interests, and (ii) acquisitions of or Investments in Persons engaged primarily in the business of acquiring, developing and producing Mineral Interests or transporting, processing, refining or marketing petroleum products that are related to Borrower's producing Mineral Interests; provided that with respect to any acquisition or Investment described in this clause (ii), either (A) immediately after making such acquisition or Investment, Borrower shall own at least fifty-one percent (51%) of the Equity Interests of such Person, measured by voting power, or (B) such Person shall not be a publicly traded entity and such acquisition or Investment shall be related to the business and operations of Borrower or one of its Subsidiaries.

"Current Assets" means the sum of the current assets of Borrower and its Consolidated Subsidiaries at such time, plus the Availability at such time, but excluding, for purposes of this definition any non-cash gains for any Hedging Contract resulting from the requirements at such time of SFAS 133 or any replacement accounting standard.

"Current Liabilities" means the current liabilities of Borrower and its Consolidated Subsidiaries at such time, but excluding for purposes of this definition, (i) any non-cash losses or charges on any Hedging Contract resulting from the requirement at such time of SFAS 133 or any replacement accounting standard and (ii) current maturities of the Obligations.

"Default" means any Event of Default and any default, event or condition which would, with the giving of any requisite notices and the passage of any requisite periods of time, constitute an Event of Default.

"Default Rate" means, at the time in question (a) with respect to any Base Rate Loan and any Swing Line Loan, the rate per annum equal to three percent (3%) above the Adjusted Base Rate then in effect and (b) with respect to any Eurodollar Loan, the rate per annum equal to three percent (3%) above the Adjusted Eurodollar Rate then in effect for such Loan, provided in each case that no Default Rate charged by any Person shall ever exceed the Highest Lawful Rate.

"Determination Date" has the meaning given to such term in Section 2.9.

"Disclosure Letter" means the letter of even date with the Agreement from Borrower to the Agent.

"Disclosure Report" means either a notice given by Borrower under Section 6.4 or a certificate given by Borrower's Chief Financial Officer under Section 6.2(a).

"Dividend" means any dividend or other distribution made by a Restricted Person on or in respect of any stock, partnership interest, or other equity interest in such Restricted Person or any other Restricted Person (including any option or warrant to buy such an equity interest), excluding Stock Repurchases.

"Domestic Lending Office" means, with respect to any Lender, the office of such Lender specified as its "Domestic Lending Office" below its name on the Lenders Schedule, or such other office as such Lender may from time to time specify to Borrower and Administrative Agent; with respect to LC Issuer, the office, branch, or agency through which it issues Letters of Credit; and, with respect to Administrative Agent, the office, branch, or agency through which it administers this Agreement.

"Domestic Subsidiary" means any Subsidiary that is organized under the laws of any political subdivision of the United States.

"EBITDAX" means, for any period, the sum of (without duplication, and without giving effect to any extraordinary losses or gains during such period) the following determined on a Consolidated basis (1) Net Income during such period, plus (2) all interest paid or accrued during such period on Indebtedness (including amortization of original issue discount and the interest component of any deferred payment obligations and capital lease obligations) which was deducted in determining such Net Income, plus (3) all income taxes which were deducted in determining such Net Income, plus (4) all depreciation, amortization (including amortization of goodwill and debt issue costs), depletion, accretion and other non-cash charges (including any provision for the reduction in the carrying value of assets recorded in accordance with GAAP) which were deducted in determining such Net Income, plus (5) all exploration expenses which were deducted in determining such Net Income, minus (6) all non-cash items of income which were included in determining such Net Income.

"Eligible Assignee" means (a) a Lender, (b) an Affiliate of a Lender, (c) an Approved Fund, and (d) any other Person (other than a natural person), approved by (i) Administrative Agent, (ii) in the case of any assignment of a Commitment, the LC Issuer, and (iii) unless a Default has occurred and is continuing, Borrower (each such approval not to be unreasonably withheld or delayed); provided that notwithstanding the foregoing, "Eligible Assignee" shall not include Borrower or any of Borrower's Affiliates or Subsidiaries.

"Engineering Report" means the Initial Engineering Report and each engineering report delivered pursuant to Section 6.2.

"Environmental Laws" means any and all Laws relating to the environment or to emissions, discharges, releases or threatened releases of pollutants, contaminants, chemicals, or industrial, toxic or hazardous substances or wastes into the environment including ambient air, surface water, ground water, or land, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of pollutants, contaminants, chemicals, or industrial, toxic or hazardous substances or wastes.

"Equity Interest" means (i) with respect to any corporation, the capital stock of such corporation, (ii) with respect to any limited liability company, the membership interests in such limited liability company, (iii) with respect to any partnership or joint venture, the partnership or joint venture interests therein, and (iv) with respect to any other legal entity, the ownership interests in such entity.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time, and any successor statutes or statute, together with all rules and regulations promulgated with respect thereto.

"ERISA Affiliate" means each Restricted Person and all members of a controlled group of corporations and all trades or businesses (whether or not incorporated) under common control that, together with such Restricted Person, are treated as a single employer under Section 414 of the Internal Revenue Code.

"ERISA Plan" means any employee pension benefit plan subject to Title IV of ERISA maintained by any ERISA Affiliate with respect to which any Restricted Person has a fixed or contingent liability.

"Eurodollar Lending Office" means, with respect to any Lender, the office of such Lender specified as its "Eurodollar Lending Office" below its name on the Lenders Schedule (or, if no such office is specified, its Domestic Lending Office), or such other office of such Lender as such Lender may from time to time specify to Borrower and Administrative Agent.

"Eurodollar Loan" means a Loan that bears interest at the Adjusted Eurodollar Rate.

"Eurodollar Margin" means, on any day, the following percentages per annum based on the Utilization Percentage as set forth below:

	Utilization Percentage	Eurodollar Margin
Level 1	< 50%	1.125%
Level 2	≥ 50% but < 75%	1.375%
Level 3	≥ 75% but < 90%	1.625%
Level 4	≥ 90%	1.875%

"Eurodollar Rate" means, for any Eurodollar Loan within a Borrowing and with respect to the related Interest Period therefor, (a) the interest rate per annum (carried out to the fifth decimal place) equal to the applicable London interbank offered rate for deposits in the requested currency appearing on the Reuters Reference LIBOR01 page for such currency as of 11:00 a.m. (London time) two Business Days prior to the first day of such Interest Period, or (b) in the event the rate referenced in the preceding subsection (a) does not appear on such page or service or such page or service shall cease to be available, the rate per annum (carried out to the fifth decimal place) equal to the rate determined by Administrative Agent to be the offered rate on Page BBAM of the Bloomberg Financial Market Information Service as of 11:00 a.m. (London time) two Business Days prior to the first day of such Interest Period, or (c) in the event the rates referenced in the preceding subsections (a) and (b) are not available, the rate per annum determined by Administrative Agent as the rate of interest at which deposits in U.S. dollars (for delivery on the first day of such Interest Period) in same day funds in the approximate amount of the applicable Eurodollar Loan and with a term equivalent to such Interest Period would be offered by Wells Fargo or one of its Affiliate banks to major banks in the London interbank market at their request at approximately 11:00 a.m. (London time) two Business Days prior to the first day of such Interest Period.

"Event of Default" has the meaning given to such term in Section 8.1.

"Excluded Property" has the meaning given to such term in the Security Documents.

"Excluded Taxes" means, with respect to Administrative Agent, any Lender, LC Issuer or any other recipient of any payment to be made by or on account of any obligation of Borrower hereunder, (a) taxes imposed on or measured by its overall net income (however denominated), and franchise taxes imposed on it (in lieu of net income taxes), by the jurisdiction (or any political subdivision thereof) under the laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its Applicable Lending Office is located, (b) any branch profits taxes imposed by the United States of America or any similar tax imposed by any other jurisdiction in which Borrower is located; and (c) in the case of a Foreign Lender (other than an assignee pursuant to a request by Borrower under Section 3.7(b), any withholding tax that is imposed on amounts payable to such Foreign Lender at the time such Foreign Lender becomes a party hereto (or designates a new lending office) or is attributable to such Foreign Lender's failure or inability (other than as a result of a Change in Law) to comply with Section 3.5(e), except to the extent that such Foreign Lender (or its assignor, if any) was entitled, at the time of designation of a new lending office (or assignment), to receive additional amounts from Borrower with respect to such withholding tax pursuant to Section 3.5(a).

"Existing Credit Agreement" means that certain Credit Agreement dated as of April 28, 2006, among Borrower, Wells Fargo Bank, National Association, as Administrative Agent, and a syndicate of Lenders as amended by the First Amendment to Credit Agreement dated as of May 14, 2007, and as amended by the Second Amendment to Credit Agreement dated as of April 29, 2008, among Borrower, Wells Fargo Bank, National Association, as Administrative Agent and a syndicate of Lenders.

"Existing Credit Documents" means the Existing Credit Agreement, together with the promissory notes made by Borrower thereunder and all other agreements, certificates, documents, instruments and writings at any time delivered in connection therewith.

"Existing Indebtedness" means all Indebtedness outstanding under the Existing Credit Agreement on the date hereof.

"Existing Letters of Credit" means the letters of credit issued pursuant to the Existing Credit Agreement.

"Facility Usage" means, at the time in question, the aggregate principal amount of outstanding Loans and existing LC Obligations at such time.

"Federal Funds Rate" means, for any day, the rate per annum (rounded upwards, if necessary, to the nearest 1/100th of one percent) equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day, provided that (a) if the day for which such rate is to be determined is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if such rate is not so published for any day, the Federal Funds Rate for such day shall be the average rate quoted to Administrative Agent on such day on such transactions as determined by Administrative Agent.

"Fiscal Quarter" means a three-month period ending on March 31, June 30, September 30 or December 31 of any year.

"Fiscal Year" means a twelve-month period ending on December 31 of any year.

"Foreign Lender" means any Lender that is organized under the laws of a jurisdiction other than that in which Borrower is resident for tax purposes. For purposes of this definition, the United States of America, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

"Foreign Subsidiary" means any Subsidiary of Borrower that is not a Domestic Subsidiary.

"Four-Quarter Period" means any period of four consecutive Fiscal Quarters.

"Fund" means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business.

"GAAP" means those generally accepted accounting principles and practices which are recognized as such by the Financial Accounting Standards Board (or any generally recognized successor) and which, in the case of Borrower and its Consolidated Subsidiaries, are applied for all periods after the date hereof in a manner consistent with the manner in which such principles and practices were applied to the audited Initial Financial Statements. If any change in any accounting principle or practice is required by the Financial Accounting Standards Board (or any such successor) in order for such principle or practice to continue as a generally accepted accounting principle or practice, all reports and financial statements required hereunder with respect to Borrower or with respect to Borrower and its Consolidated Subsidiaries shall be prepared in accordance with such change, which change shall be disclosed to Administrative Agent on the next date on which financial statements are required to be delivered to Lenders pursuant to Section 6.2(a); provided that, unless the Majority Lenders shall otherwise agree in writing, no such change shall modify or affect the manner in which compliance with the covenants contained in Article VII are computed such that all such computations shall be conducted utilizing financial information presented consistently with prior periods.

"Governmental Authority" means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

"Guarantor" means any Person who has guaranteed some or all of the Secured Obligations pursuant to a guaranty listed on the Security Schedule or any other Person who has guaranteed some or all of the Secured Obligations and who has been accepted by Administrative Agent as a Guarantor or any Subsidiary of Borrower which now or hereafter executes and delivers a guaranty to Administrative Agent pursuant to Section 6.15.

"Hazardous Materials" means any substances regulated under any Environmental Law, whether as pollutants, contaminants, or chemicals, or as industrial, toxic or hazardous substances or wastes, or otherwise.

"Hedging Contract" means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a "Master Agreement"), including any such obligations or liabilities under any Master Agreement.

"Highest Lawful Rate" means, with respect to each Lender Party to whom Obligations are owed, the maximum nonusurious rate of interest that such Lender Party is permitted under applicable Law to contract for, take, charge, or receive with respect to such Obligations. All determinations herein of the Highest Lawful Rate, or of any interest rate determined by reference to the Highest Lawful Rate, shall be made separately for each Lender Party as appropriate to assure that the Loan Documents are not construed to obligate any Person to pay interest to any Lender Party at a rate in excess of the Highest Lawful Rate applicable to such Lender Party.

"Indebtedness" of any Person means Liabilities in any of the following categories (without duplication):

(a) Liabilities for borrowed money,

(b) Liabilities constituting an obligation to pay the deferred purchase price of property or services,

(c) Liabilities evidenced by a bond, debenture, note or similar instrument,

(d) Liabilities which (i) would under GAAP be shown on such Person's balance sheet as a liability, and (ii) are payable more than one year from the date of creation thereof (other than reserves for taxes and reserves for contingent obligations),

(e) Liabilities arising under Hedging Contracts,

(f) Liabilities constituting principal under leases capitalized in accordance with GAAP,

(g) Liabilities arising under conditional sales or other title retention agreements,

(h) Liabilities owing under direct or indirect guaranties of Liabilities of any other Person or otherwise constituting obligations to purchase or acquire or to otherwise protect or insure a creditor against loss in respect of Liabilities of any other Person (such as obligations under working capital maintenance agreements, agreements to keep-well, or agreements to purchase Liabilities, assets, goods, securities or services), but excluding endorsements in the ordinary course of business of negotiable instruments in the course of collection,

(i) Liabilities (for example, repurchase agreements, mandatorily redeemable preferred stock and sale/leaseback agreements) consisting of an obligation to purchase or redeem securities or other property, if such Liabilities arises out of or in connection with the sale or issuance of the same or similar securities or property,

(j) Liabilities with respect to letters of credit or applications or reimbursement agreements therefor;

(k) Liabilities with respect to payments received in consideration of oil, gas, or other minerals yet to be acquired or produced at the time of payment (including obligations under "take-or-pay" contracts to deliver gas in return for payments already received and the undischarged balance of any production payment created by such Person or for the creation of which such Person directly or indirectly received payment),

(l) Liabilities with respect to other obligations to deliver goods or services in consideration of advance payments therefor; or

(m) Liabilities with respect to bankers acceptances, provided, however, that the "Indebtedness" of any Person shall not include Liabilities that were incurred by such Person on ordinary trade terms to vendors, suppliers, or other Persons providing goods and services for use by such Person in the ordinary course of its business which are paid as required by Section 6.7.

"Indemnified Taxes" means Taxes other than Excluded Taxes.

"Independent Engineers" means an independent petroleum engineering firm chosen by Borrower and acceptable to Administrative Agent.

"Initial Borrowing Base" has the meaning given to such term in Section 2.8.

"Initial Engineering Report" means the engineering reports concerning Mineral Interests of Restricted Persons, including the Mineral Interests being acquired pursuant to the Acquisition Documents, prepared by Degolyer and MacNaughton as of January 1, 2008 and Ryder Scott Company as of February 1, 2008.

"Initial Financial Statements" means the audited annual financial statements of Borrower dated as of December 31, 2007 and the quarterly unaudited financial statements of Borrower dated as of March 31, 2008.

"Insolvent" means with respect to any Person, that such Person (a) is insolvent (as such term is defined in the United States Bankruptcy Code, Title 11 U.S.C., as amended (the "Bankruptcy Code"), and with all terms used in this Section that are defined in the Bankruptcy Code having the meanings ascribed to those terms in the text and interpretive case law applicable to the Bankruptcy Code), or (b) the sum of such Person's debts, including absolute and contingent liabilities, the Obligations or guarantees thereof, exceeds the value of such Person's assets, at a fair valuation, and (c) such Person's capital is unreasonably small for the business in which such Person is engaged and intends to be engaged. Such Person has incurred (whether under the Loan Documents or otherwise), or intends to incur debts which will be beyond its ability to pay as such debts mature. In determining whether a Person is "Insolvent" all rights of contribution of each Restricted Party against other Restricted Parties under the Guaranty, at law, in equity or otherwise shall be taken into account.

"Insurance Schedule" means Schedule 2 attached hereto.

"Interest Payment Date" means (a) with respect to each Base Rate Loan, the last day of each Fiscal Quarter, (b) with respect to each Eurodollar Loan, the last day of the Interest Period that is applicable thereto and, if such Interest Period is six, nine or twelve months in length, each date specified by Administrative Agent which is approximately three, six or nine months after such Interest Period begins, and (c) with respect to each Swing Line Loan, the fifth and the twentieth day of each calendar month.

"Interest Period" means, with respect to each particular Eurodollar Loan in a Borrowing, the period specified in the Borrowing Notice or Continuation/Conversion Notice applicable thereto, beginning on and including the date specified in such Borrowing Notice or Continuation/Conversion Notice (which must be a Business Day), and ending one, two, three, or six months and, if available, nine or twelve months thereafter, as Borrower may elect in such notice; provided that: (a) any Interest Period which would otherwise end on a day which is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day; (b) any Interest Period which begins on the last Business Day in a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day in a calendar month; and (c) notwithstanding the foregoing, any Interest Period which would otherwise end after the last day of the Commitment Period shall end on the last day of the Commitment Period (or, if the last day of the Commitment Period is not a Business Day, on the next preceding Business Day).

"Internal Revenue Code" means the United States Internal Revenue Code of 1986, as amended from time to time and any successor statute or statutes, together with all rules and regulations promulgated with respect thereto.

"Investment" means any investment, made directly or indirectly, in any Person or any property, whether by purchase, acquisition of shares of capital stock, indebtedness or other obligations or securities or by loan, advance, capital contribution or otherwise and whether made in cash, by the transfer of property, or by any other means.

"Law" means any statute, law, regulation, ordinance, rule, treaty, judgment, order, decree, permit, concession, franchise, license, agreement or other governmental restriction of the United States or any state or political subdivision thereof or of any foreign country or any department, province or other political subdivision thereof. Any reference to a Law includes any amendment or modification to such Law, and all regulations, rulings, and other Laws promulgated under such Law.

"LC Application" means any application for a Letter of Credit hereafter made by Borrower to LC Issuer.

"LC Collateral" has the meaning given to such term in Section 2.16(a).

"LC Conditions" has the meaning given to such term in Section 2.11.

"LC Issuer" means Wells Fargo in its capacity as the issuer of Letters of Credit hereunder, and its successors in such capacity. Administrative Agent may, with the consent of Borrower and the Lender in question, appoint any Lender hereunder as an LC Issuer in place of or in addition to Wells Fargo.

"LC Obligations" means, at the time in question, the sum of all Matured LC Obligations plus the maximum amounts which LC Issuer might then or thereafter be called upon to advance under all Letters of Credit then outstanding.

"LC Sublimit" means $100,000,000.

"Lender Counterparties" means each Lender and each Affiliate of a Lender to whom Lender Hedging Obligations are owed.

"Lender Hedging Obligations" means all obligations arising from time to time under Hedging Contracts entered into from time to time between Borrower or any Guarantor and a Lender Counterparty; provided that if such Lender Counterparty ceases to be a Lender hereunder or an Affiliate of a Lender hereunder, Lender Hedging Obligations shall only include such obligations to the extent arising from transactions entered into at the time such counterparty was a Lender hereunder or an Affiliate of a Lender hereunder.

"Lender Parties" means Administrative Agent, LC Issuer, and all Lenders.

"Lenders" means each signatory hereto (other than Borrower and any Restricted Person that is a party hereto), including Wells Fargo in its capacity as a Lender and the Swing Line Lender hereunder rather than as Administrative Agent or LC Issuer, and the successors of each such party as holder of a Note.

"Lenders Schedule" means Schedule 1 hereto.

"Letter of Credit" means any standby letter of credit issued by LC Issuer hereunder at the application of Borrower and shall include the Existing Letters of Credit.

"Letter of Credit Termination Date" means the date which is seven (7) days prior to the Maturity Date or if such day is not a Business Day, the next preceding Business Day.

"Liabilities" means, as to any Person, all indebtedness, liabilities and obligations of such Person, whether matured or unmatured, liquidated or unliquidated, primary or secondary, direct or indirect, absolute, fixed or contingent, and whether or not required to be considered pursuant to GAAP.

"Lien" means, with respect to any property or assets, any right or interest therein of a creditor to secure Liabilities owed to it or any other arrangement with such creditor which provides for the payment of such Liabilities out of such property or assets or which allows such creditor to have such Liabilities satisfied out of such property or assets prior to the general creditors of any owner thereof, including any lien, mortgage, security interest, pledge, deposit, production payment, rights of a vendor under any title retention or conditional sale agreement or lease substantially equivalent thereto, tax lien, mechanic's or materialman's lien, or any other charge or encumbrance for security purposes, whether arising by Law or agreement or otherwise, but excluding any right of offset which arises without agreement in the ordinary course of business. "Lien" also means any filed financing statement, any registration of a pledge (such as with an issuer of uncertificated securities), or any other arrangement or action which would serve to perfect a Lien described in the preceding sentence, regardless of whether such financing statement is filed, such registration is made, or such arrangement or action is undertaken before or after such Lien exists.

"Liquidity Bridge Facility" means an unsecured revolving credit facility in an aggregate principal amount not to exceed $100,000,000 at any time outstanding made available to Borrower by SG and certain other financial institutions, which has a maturity date of December 31, 2008.

"Loan" means an extension of credit by a Lender to Borrower under Article II in the form of a Revolving Loan or a Swing Line Loan.

"Loan Documents" means this Agreement, the Notes, the Security Documents, the Letters of Credit, the LC Applications, and all other agreements, certificates, documents, instruments and writings at any time delivered in connection herewith or therewith (exclusive of term sheets and commitment letters).

"Majority Lenders" means two or more Lenders whose aggregate Percentage Shares equal or exceed fifty-one percent (51%).

"Material Adverse Change" means a material and adverse change, from the state of affairs presented in the Initial Financial Statements or as represented or warranted in any Loan Document, to (a) Borrower's Consolidated financial condition, (b) Borrower's Consolidated operations, properties or prospects, considered as a whole, (c) Borrower's ability to timely pay the Obligations, (d) the enforceability of the material terms of any Loan Documents, or (e) the rights and remedies of Administrative Agent or Lenders under the Loan Documents.

"Material Subsidiary" means a Subsidiary of Borrower that (a) owns assets representing five percent (5%) of the market value of Borrower's Consolidated assets or (b) has EBITDAX for the Four-Quarter Period most recently ended that equals or exceeds five percent (5%) of Borrower's Consolidated EBITDAX for such period.

"Matured LC Obligations" means all amounts paid by LC Issuer on drafts or demands for payment drawn or made under or purported to be drawn on or made under any Letter of Credit and all other amounts due and owing to LC Issuer under any LC Application for any Letter of Credit, to the extent the same have not been repaid to LC Issuer (with the proceeds of Loans or otherwise).

"Maturity Date" means July15, 2013.

"Maximum Drawing Amount" means at the time in question the sum of the maximum amounts which LC Issuer might then or thereafter be called upon to advance under all Letters of Credit which are then outstanding.

"Maximum Credit Amount" means $1,500,000,000.

"Mineral Interests" means rights, estates, titles, and interests in and to oil, gas, sulfur, or other mineral leases and any mineral interests, royalty and overriding royalty interest, production payment, net profits interests, mineral fee interests, and other rights therein, including, without limitation, any reversionary or carried interests relating to the foregoing, together with rights, titles, and interests created by or arising under the terms of any unitization, communization, and pooling agreements or arrangements, and all properties, rights and interests covered thereby, whether arising by contract, by order, or by operation of Law, which now or hereafter include all or any part of the foregoing.

"Minimum Collateral Amount" means Mineral Interests representing eighty percent (80%) of the Present Value of the Proved Reserves properly attributed to the Borrowing Base Properties or such higher percentage of the Borrowing Base Properties that may be designated by Administrative Agent.

"Money Market Facility" means a credit facility which (a) is evidenced by a bond, debenture, note or similar instrument, (b) has financial covenants that are not more restrictive with respect to the Restricted Persons than the financial covenants under this Agreement and has other covenants and events of default governing the Indebtedness evidenced by such credit facility that are not materially more restrictive with respect to the Restricted Persons than the covenants and Events of Default under this Agreement, and (c) the Indebtedness of which is not subordinated to any other Indebtedness of the Restricted Persons.

"Moody's" means Moody's Investors Service, Inc. or its successor.

"Net Income" means, for any period, the net income (or loss) of Borrower and its properly consolidated Subsidiaries for such period, calculated on a consolidated basis.

"Net Worth" of any Person means, as of any date, the remainder of all Consolidated assets of such Person minus such Person's Consolidated liabilities, each as determined by GAAP, but excluding, for purposes of this definition any assets and liabilities for any Hedging Contract resulting from the requirements of SFAS 133 at such time.

"Non-Core Acquisitions and Investments" means acquisitions and Investments that are not Core Acquisitions and Investments.

"Note" has the meaning given to such term in Section 2.1.

"Obligations" means all Liabilities from time to time owing by any Restricted Person to any Lender Party under or pursuant to any of the Loan Documents, including all LC Obligations. "Obligation" means any part of the Obligations.

"Organization Documents" means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

"Other Taxes" means all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or under any other Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Loan Document.

"Participant" has the meaning assigned to such term in clause (d) of Section 10.5.

"Percentage Share" means, with respect to any Lender, the percentage set forth below such Lender's name on Lenders Schedule or as set forth in any Assignment and Assumption relating to any assignment that has become effective pursuant to Section 10.5, as such amount may be modified from time to time pursuant to the terms hereof. Notwithstanding the foregoing, if the Commitments of the Lenders have been terminated or have expired, "Percentage Share" shall mean with respect to any Lender, the percentage obtained by dividing (i) the sum of the unpaid principal balance of such Lender's Loans at the time in question plus the Matured LC Obligations which such Lender has funded pursuant to Section 2.13(c) plus the portion of the Maximum Drawing Amount which such Lender might be obligated to fund under Section 2.13(c), by (ii) the sum of the aggregate unpaid principal balance of all Loans at such time plus the aggregate amount of LC Obligations outstanding at such time.

"Permitted Investments" means (a) Cash Equivalents, (b) property of the Restricted Persons used in the ordinary course of business of the Restricted Persons, (c) current assets arising from the sale or lease of goods and services in the ordinary course of business by the Restricted Persons or from sales permitted under Section 7.5, (d) investments, in an aggregate amount not to exceed $4,000,000, in a Person engaged in the sole business of ownership and operation of drilling rigs, and (e) sales or leases permitted under Section 7.5.

"Permitted Liens" means:

(a) statutory Liens for taxes, assessments or other governmental charges or levies which are not yet delinquent or which are being contested in good faith by appropriate action and for which adequate reserves have been maintained in accordance with GAAP;

(b) landlords', operators', carriers', warehousemen's, repairmen's, mechanics', materialmen's, or other like Liens which do not secure Indebtedness, in each case only to the extent arising in the ordinary course of business and only to the extent securing obligations which are not delinquent or which are being contested in good faith by appropriate proceedings and for which adequate reserves have been maintained in accordance with GAAP;

(c) minor defects and irregularities in title to any property, so long as such defects and irregularities neither secure Indebtedness nor materially impair the value of such property or the use of such property for the purposes for which such property is held;

(d) deposits of cash or securities to secure the performance of bids, acquisition agreements, trade contracts, leases, statutory obligations and other obligations of a like nature (excluding appeal bonds) incurred in the ordinary course of business;

(e) Liens under the Security Documents;

(f) easements, restrictions, servitudes, permits, conditions, covenants, exceptions or reservations in any property of Borrower or any of its Subsidiaries for the purpose of roads, pipelines, transmission lines, transportation lines, distribution lines for the removal of gas, oil, coal or other minerals or timber, and other like purposes, or for the joint or common use of real estate, rights of way, facilities and equipment, that do not secure any monetary obligations and that do not materially interfere with the future development of such property or with cash flow from such property as reflected in the most recent Engineering Report;

(g) Liens under joint operating agreements, pooling or unitization agreements, partnership agreements, oil and gas leases, farm-out agreements, division orders, contracts for the sale, purchase, transportation, processing or exchange of oil, gas or other hydrocarbons, unitization and pooling declarations and agreements, area of mutual interest agreements, development agreements, joint ownership arrangements or similar contractual arrangements arising in the ordinary course of the business of Borrower or its Subsidiaries to secure amounts owing under such agreements and contracts, which amounts are not more than 90 days past due or are being contested in good faith by appropriate proceedings, if such reserve as may be required by GAAP shall have been made therefor;

(h) (i) Liens on fixed or capital assets acquired, constructed or improved by Borrower or its Subsidiaries; provided, that (A) such Liens secure Indebtedness permitted under Section 7.1, (B) such Liens and the Indebtedness secured thereby are incurred substantially simultaneously with the acquisition, construction or improvement of such fixed or capital assets or within 180 days thereafter, (C) such Liens do not at any time encumber any property other than the property financed by such Indebtedness and (D) the amount of Indebtedness secured thereby is not more than 100% of the purchase price, and (ii) Liens in the nature of precautionary financing statements filed against leased property by lessors holding Capital Lease Obligations included in Indebtedness permitted under Section 7.1;

(i) all lessors' royalties, overriding royalties, net profits interests, carried interests, production payments that do not constitute Indebtedness, reversionary interests and other burdens on or deductions from the proceeds of production with respect to each Mineral Interest (in each case) that do not operate to reduce the net revenue interest for such Mineral Interest (if any) as reflected in any Security Document or Engineering Report or increase the working interest for such Mineral Interest (if any) as reflected in any Security Document or Engineering Report without a corresponding increase in the corresponding net revenue interest; .

(j) rights of first refusal, purchase options and similar rights granted pursuant to joint operating agreements, joint ownership agreements, stockholders agreements, organic documents and other similar agreements and documents which are described in the Disclosure Letter;

(k) pre-judgment Liens and judgment Liens provided no Event of Default has occurred under Section 8.1;

(l) customary Liens for the fees, costs and expenses of trustees and escrow agents pursuant to the indenture, escrow agreement or other similar agreement establishing such trust or escrow arrangement;

(m) Liens pursuant to merger agreements, stock purchase agreements, asset sale agreements and similar agreements (i) limiting the transfer of properties and assets pending consummation of the subject transaction and (ii) in respect of earnest money deposits, good faith deposits, purchase price adjustment escrows and similar deposits and escrow arrangements made or established thereunder; and

(n) rights reserved to or vested in any municipality or governmental, statutory or public authority by the terms of any right, power, franchise, grant, license or permit, or by any provision of law, to terminate such right, power, franchise, grant, license or permit or to purchase, condemn, expropriate or recapture or to designate a purchaser of any of the property of such Person; rights reserved to or vested in any municipality or governmental, statutory or public authority to control or regulate any property of such Person, or to use such property in a manner which does not materially impair the use of such property for the purposes for which it is held by such Person; and any obligation or duties affecting the property of such Person to any municipality or governmental, statutory or public authority with respect to any franchise, grant, license or permit.

"Permitted Subordinated Debt" means Indebtedness in respect of subordinated notes issued by Borrower from time to time, that complies with all of the following requirements:

(a) such Indebtedness is and shall remain unsecured at all times;

(b) no payment of principal of such Indebtedness is due on or before the Maturity Date as in effect on the date such Indebtedness is issued (in this definition called the "Date of Issuance");

(c) the financial covenants are no more restrictive with respect to the Restricted Persons than the financial covenants under this Agreement and all of the covenants and events of default governing such Indebtedness are not, taken as a whole, materially more restrictive with respect to the Restricted Persons than the covenants and Events of Default under this Agreement;

(d) on the Date of Issuance and after giving effect to such Indebtedness (i) Borrower is in compliance on a pro forma basis with Section 7.11 and Section 7.12 of this Agreement, calculated for the most recent Four-Quarter Period for which the financial statements described in Section 6.2(b) are available to Lender;

(e) no Default or Event of Default exists on the Date of Issuance or will occur as a result of the issuance of the subordinated notes evidencing such Indebtedness;

(f) the payment of such Indebtedness is subordinated to payment of the Obligations pursuant to a written agreement (whether contained in the applicable indenture or a separate subordination agreement) in form and substance acceptable to Administrative Agent, in its sole discretion; and

(g) Borrower shall have delivered to Administrative Agent a certificate in reasonable detail reflecting compliance with the foregoing requirements.

"Person" means an individual, corporation, partnership, limited liability company, association, joint stock company, trust or trustee thereof, estate or executor thereof, unincorporated organization or joint venture, Governmental Authority or any other legally recognizable entity.

"Present Value" of any Mineral Interest means the present value of the future net revenues attributed to such Mineral Interest in the most recent Engineering Report using a discount rate of ten percent (10%).

"Prescribed Forms" means such duly executed forms or statements, and in such number of copies, which may, from time to time, be prescribed by Law and which, pursuant to applicable provisions of (a) an income tax treaty between the United States and the country of residence of the Lender Party providing the forms or statements, (b) the Internal Revenue Code, or (c) any applicable rules or regulations thereunder, permit Borrower to make payments hereunder for the account of such Lender Party free of such deduction or withholding of income or similar taxes.

"Projected Gas Production" means the projected production of gas (measured by BTU equivalent, not sales price) for the term of the contracts or a particular month, as applicable, from properties and interests owned by any Restricted Person which are located in or offshore of the United States and which have attributable to them Proved Developed Producing Reserves, as such production is projected in the most recent report delivered pursuant to Section 6.2(d) or (e), after deducting projected production from any properties or interests sold or under contract for sale that had been included in such report and after adding projected production from any properties or interests that had not been reflected in such report but that are reflected in a separate or supplemental report meeting the requirements of such Section 6.2(d) or (e) above and otherwise are satisfactory to Administrative Agent.

"Projected NGL Production" means the projected production of natural gas liquids (measured by volume unit, not sales price) for the term of the contracts or a particular month, as applicable, from properties and interests owned by any Restricted Person which are located in or offshore of the United States and which have attributable to them Proved Developed Producing Reserves, as such production is projected in the most recent report delivered pursuant to Section 6.2(d) or (e), after deducting projected production from any properties or interests sold or under contract for sale that had been included in such report and after adding projected production from any properties or interests that had not been reflected in such report but that are reflected in a separate or supplemental report meeting the requirements of such Section 6.2(d) or (e) above and otherwise are satisfactory to Administrative Agent.

"Projected Oil Production" means the projected production of oil or gas (measured by volume unit , not sales price) for the term of the contracts or a particular month, as applicable, from properties and interests owned by any Restricted Person which are located in or offshore of the United States and which have attributable to them Proved Developed Producing Reserves, as such production is projected in the most recent report delivered pursuant to Section 6.2(d) or (e), after deducting projected production from any properties or interests sold or under contract for sale that had been included in such report and after adding projected production from any properties or interests that had not been reflected in such report but that are reflected in a separate or supplemental report meeting the requirements of such Section 6.2(d) or (e) above and otherwise are satisfactory to Administrative Agent.

"Proved Reserves" means "Proved Reserves" as defined in Definitions for Oil and Gas Reserves (in this paragraph, the "Definitions") promulgated by the Society for Petroleum Engineers (or any generally recognized successor) as in effect at the time in question. "Proved Developed Producing Reserves" are Proved Reserves, which are categorized as both "Developed" and "Producing" in the Definitions.

"Rating Agency" means either S & P or Moody's.

"Redetermination" means a Scheduled Redetermination or a Special Redetermination.

"Regulation D" means Regulation D of the Board of Governors of the Federal Reserve System as from time to time in effect.

"Related Parties" means, with respect to any Person, such Person's Affiliates and the partners, directors, officers, employees, agents and advisors of such Person and of such Person's Affiliates.

"Required Lenders" means two or more Lenders whose aggregate Percentage Shares equal or exceed sixty-six and two-thirds percent (66 2/3%).

"Reserve Requirement" means, at any time, the maximum rate at which reserves (including any marginal, special, supplemental, or emergency reserves) are required to be maintained under regulations issued from time to time by the Board of Governors of the Federal Reserve System (or any successor) by member banks of the Federal Reserve System against "Eurocurrency liabilities" (as such term is used in Regulation D). Without limiting the effect of the foregoing, the Reserve Requirement shall reflect any other reserves required to be maintained by such member banks with respect to (a) any category of liabilities which includes deposits by reference to which the Adjusted Eurodollar Rate is to be determined, or (b) any category of extensions of credit or other assets which include Eurodollar Loans.

"Responsible Officer" means, with respect to Borrower, the Chief Executive Officer, President, Chief Operating Officer, or Chief Financial Officer of Borrower, and with respect to any other Restricted Person, if such Restricted Person is a limited liability company, a Manager of such Restricted Person, and if such Restricted Person is a corporation, the President or Chief Financial Officer of such Restricted Person.

"Restricted Person" means any of Borrower and each Subsidiary of Borrower.

"Revolving Loans" has the meaning given to such term in Section 2.1.

"SG" means Société Générale in its capacity as the lender under the SG Money Market Facility and not as a Lender hereunder.

"SG Money Market Facility" means the Money Market Facility in the amount of $30,000,000 made available to Borrowers by SG pursuant to a Letter Agreement between Borrower and SG.

"SG Obligations" means the Indebtedness arising under the SG Money Market Facility in an aggregate principal amount not to exceed $30,000,000, plus all interest accrued thereon all and fees, expenses and other Liabilities payable with respect thereto.

"S & P" means Standard & Poor's Ratings Services (a division of The McGraw-Hill Companies), or its successor.

"Scheduled Redetermination" means any redetermination of the Borrowing Base pursuant to Section 2.9(a).

"SEC" means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

"Secured Obligations" means all Obligations, all Lender Hedging Obligations and the SG Obligations.

"Security Documents" means all security agreements, deeds of trust, mortgages, chattel mortgages, pledges, guaranties, financing statements, continuation statements, extension agreements, subordination agreements, intercreditor agreements, and other agreements or instruments now, heretofore, or hereafter delivered by any Restricted Person to Administrative Agent in connection with this Agreement or any transaction contemplated hereby to secure or guarantee the payment of any part of the Secured Obligations.

"Security Schedule" means Schedule 3 hereto.

"Special Redetermination" means any redetermination of the Borrowing Base pursuant to Section 2.9(b) or Section 2.9(c).

"Staff Engineers" means petroleum engineers who are employees of Borrower or of a staffing company that provides its employees to Borrower.

"Stock Repurchase" means any payment made by a Restricted Person to purchase, redeem, acquire or retire any Equity Interest in such Restricted Person or any other Restricted Person (including any option or warrant to purchase such an Equity Interest).

"Subsidiary" means, with respect to any Person, any corporation, association, partnership, limited liability company, joint venture, or other business or corporate entity, enterprise or organization which is directly or indirectly (through one or more intermediaries) controlled by or owned fifty percent or more by such Person, provided that associations, joint ventures or other relationships (a) which are established pursuant to a standard form operating agreement or similar agreement or which are partnerships for purposes of federal income taxation only, (b) which are not corporations or partnerships (or subject to the Uniform Partnership Act) under applicable state Law, and (c) whose businesses are limited to the exploration, development and operation of oil, gas or mineral properties and interests owned directly by the parties in such associations, joint ventures or relationships, shall not be deemed to be "Subsidiaries" of such Person.

"Swing Line Borrowing" means a borrowing of a Swing Line Loan pursuant to Section 2.17.

"Swing Line Lender" means Wells Fargo, in its capacity as provider of Swing Line Loans, or any successor swing line lender hereunder.

"Swing Line Loan" has the meaning given to such term in Section 2.17.

"Swing Line Loan Notice" means a notice of a Swing Line Borrowing pursuant to Section 2.17, which, if in writing, shall be substantially in the form of Exhibit B-2.

"Swing Line Sublimit" means an amount equal to $100,000,000. The Swing Line Sublimit is part of, and not in addition to, the Aggregate Commitment.

"Taxes" means all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

"Termination Event" means (a) the occurrence with respect to any ERISA Plan of (i) a reportable event described in Section 4043(b)(5) or (6) of ERISA or (ii) any other reportable event described in Section 4043(b) of ERISA other than a reportable event not subject to the provision for 30-day notice to the Pension Benefit Guaranty Corporation pursuant to a waiver by such corporation under Section 4043(a) of ERISA, or (b) the withdrawal of any ERISA Affiliate from an ERISA Plan during a plan year in which it was a "substantial employer" as defined in Section 4001(a)(2) of ERISA, or (c) the filing of a notice of intent to terminate any ERISA Plan or the treatment of any ERISA Plan amendment as a termination under Section 4041 of ERISA, or (d) the institution of proceedings to terminate any ERISA Plan by the Pension Benefit Guaranty Corporation under Section 4042 of ERISA, or (e) any other event or condition which might constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any ERISA Plan.

"Total Funded Debt" means all Liabilities of the Restricted Persons of the types described in clauses (a), (b), (c), (d), (f), (h), (j) of the definition of Indebtedness.

"Type" means, with respect to any Loans, the characterization of such Loans as either Base Rate Loans or Eurodollar Loans.

"UCC" means the Uniform Commercial Code in effect in the State of California from time to time.

"Utilization Percentage" means, for any day, the Facility Usage (excluding Swing Line Loans) for such day, divided by the lesser of (i) the Borrowing Base in effect on such day or (ii) the Aggregate Commitments in effect on such day, in each case expressed as a percentage.

"Wells Fargo" means Wells Fargo Bank, National Association.

Section 1.2. Exhibits and Schedules; Additional Definitions. All Exhibits and Schedules attached to this Agreement are a part hereof for all purposes. Reference is hereby made to the Security Schedule for the meaning of certain terms defined therein and used but not defined herein, which definitions are incorporated herein by reference.

Section 1.3. Amendment of Defined Instruments. 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 and restatements of such agreement, instrument or document, provided that nothing contained in this section shall be construed to authorize any such renewal, extension, modification, amendment or restatement.

Section 1.4. References and Titles. All references in this Agreement to Exhibits, Schedules, articles, sections, subsections and other subdivisions refer to the Exhibits, Schedules, articles, sections, subsections and other subdivisions of this Agreement unless expressly provided otherwise. Exhibits and Schedules to any Loan Document shall be deemed incorporated by reference in such Loan Document. References to any document, instrument, or agreement (a) shall include all exhibits, schedules, and other attachments thereto, and (b) shall include all documents, instruments, or agreements issued or executed in replacement thereof. Titles appearing at the beginning of any subdivisions are for convenience only and do not constitute any part of such subdivisions and shall be disregarded in construing the language contained in such subdivisions. 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. The phrases "this section" and "this subsection" and similar phrases refer only to the sections or subsections hereof in which such phrases occur. The word "or" is not exclusive, and the word "including" (in its various forms) means "including without limitation". Pronouns in masculine, feminine and neuter genders shall be construed to include any other gender, and words in the singular form shall be construed to include the plural and vice versa, unless the context otherwise requires. Accounting terms have the meanings assigned to them by GAAP, as applied by the accounting entity to which they refer. References to "days" shall mean calendar days, unless the term "Business Day" is used. Unless otherwise specified, references herein to any particular Person also refer to its successors and permitted assigns.

Section 1.5. Calculations and Determinations. All calculations under the Loan Documents shall be made on the basis of actual days elapsed (including the first day but excluding the last) and a year of 360 days. Each determination by a Lender Party of amounts to be paid under Article III or any other matters which are to be determined hereunder by a Lender Party (such as any Eurodollar Rate, Adjusted Eurodollar Rate, Business Day, Interest Period, or Reserve Requirement) shall, in the absence of manifest error, be conclusive and binding. Unless otherwise expressly provided herein or unless Majority Lenders otherwise consent all financial statements and reports furnished to any Lender Party hereunder shall be prepared and all financial computations and determinations pursuant hereto shall be made in accordance with GAAP.

Section 1.6. Joint Preparation; Construction of Indemnities and Releases. This Agreement and the other Loan Documents have been reviewed and negotiated by sophisticated parties with access to legal counsel and no rule of construction shall apply hereto or thereto which would require or allow any Loan Document to be construed against any party because of its role in drafting such Loan Document. All indemnification and release provisions of this Agreement shall be construed broadly (and not narrowly) in favor of the Persons receiving indemnification or being released.

ARTICLE II - - The Loans and Letters of Credit

Section 2.1. Commitments to Lend; Notes. Subject to the terms and conditions hereof, each Lender agrees to make loans to Borrower (herein called such Lender's "Revolving Loans") upon Borrower's request from time to time during the Commitment Period, provided that (a) subject to Section 3.3, Section 3.4, and Section 3.6, all Lenders are requested to make Revolving Loans of the same Type in accordance with their respective Percentage Shares and as part of the same Borrowing, and (b) after giving effect to such Revolving Loans (i) the sum of the Facility Usage and the principal amount of SG Obligations then outstanding does not exceed (ii) the Borrowing Base determined as of the date on which the requested Revolving Loans are to be made. The aggregate amount of all Revolving Loans in any Borrowing of Base Rate Loans must be greater than or equal to $500,000 or a higher integral multiple of $100,000 or must equal the remaining Availability, and the aggregate amount of all Revolving Loans in any Borrowing of Eurodollar Loans must be greater than or equal to $3,000,000 or any higher integral multiple of $1,000,000 or must equal the remaining Availability. Borrower may have no more than ten Borrowings of Eurodollar Loans outstanding at any time. The obligation of Borrower to repay to each Lender the aggregate amount of all Loans made by such Lender, together with interest accruing in connection therewith, shall be evidenced by a single promissory note (herein called such Lender's "Note") made by Borrower payable to the order of such Lender in the form of Exhibit A with appropriate insertions. The amount of principal owing on any Lender's Note at any given time shall be the aggregate amount of all Loans theretofore made by such Lender minus all payments of principal theretofore received by such Lender on such Note. Interest on each Note shall accrue and be due and payable as provided herein and therein. Each Note shall be due and payable as provided herein and therein, and shall be due and payable in full on the Maturity Date. Subject to the terms and conditions hereof, Borrower may borrow, repay, and reborrow hereunder.

Section 2.2. Requests for New Revolving Loans. Borrower must give to Administrative Agent written or electronic notice (or telephonic notice promptly confirmed in writing) of any requested Borrowing of new Revolving Loans to be advanced by Lenders. Each such notice constitutes a "Borrowing Notice" hereunder and must:

(a) specify (i) the aggregate amount of any such Borrowing of new Base Rate Loans and the date on which such Base Rate Loans are to be advanced, or (ii) the aggregate amount of any such Borrowing of new Eurodollar Loans, the date on which such Eurodollar Loans are to be advanced (which shall be the first day of the Interest Period which is to apply thereto), and the length of the applicable Interest Period; and

(b) be received by Administrative Agent not later than 11:00 a.m., Denver, Colorado time on, (i) the day on which any such Base Rate Loans are to be made, or (ii) the third Business Day preceding the day on which any such Eurodollar Loans are to be made.

Each such written request or confirmation must be made in the form and substance of the "Borrowing Notice" attached hereto as Exhibit B-1, duly completed. Each such telephonic request shall be deemed a representation, warranty, acknowledgment and agreement by Borrower as to the matters which are required to be set out in such written confirmation. Upon receipt of any such Borrowing Notice, Administrative Agent shall give each Lender prompt notice of the terms thereof. If all conditions precedent to such new Revolving Loans have been met, each Lender will on the date requested promptly remit to Administrative Agent at Administrative Agent's office in Denver, Colorado the amount of such Lender's new Revolving Loan in immediately available funds, and upon receipt of such funds, unless to its actual knowledge any conditions precedent to such Revolving Loans have been neither met nor waived as provided herein, Administrative Agent shall promptly make such Revolving Loans available to Borrower. Unless Administrative Agent shall have received prompt notice from a Lender that such Lender will not make available to Administrative Agent such Lender's new Revolving Loan, Administrative Agent may in its discretion assume that such Lender has made such Revolving Loan available to Administrative Agent in accordance with this section and Administrative Agent may if it chooses, in reliance upon such assumption, make such Revolving Loan available to Borrower. In such event, if a Lender has not in fact made its share of the applicable Revolving Loan available to Administrative Agent, then the applicable Lender and Borrower severally agree to pay to Administrative Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to Borrower to but excluding the date of payment to Administrative Agent, at (i) in the case of a payment to be made by such Lender, the greater of the Federal Funds Rate and a rate determined by Administrative Agent in accordance with banking industry rules on interbank compensation and (ii) in the case of a payment to be made by Borrower, the interest rate applicable to Base Rate Loans. If Borrower and such Lender shall pay such interest to Administrative Agent for the same or an overlapping period, Administrative Agent shall promptly remit to Borrower the amount of such interest paid by Borrower for such period. If such Lender pays its share of the applicable Borrowing to Administrative Agent, then the amount so paid shall constitute such Lender's Revolving Loan included in such Borrowing. Any payment by Borrower shall be without prejudice to any claim Borrower may have against a Lender that shall have failed to make such payment to Administrative Agent.

Section 2.3. Continuations and Conversions of Existing Loans. Borrower may make the following elections with respect to Revolving Loans already outstanding: to convert Base Rate Loans to Eurodollar Loans, to convert Eurodollar Loans to Base Rate Loans on the last day of the Interest Period applicable thereto, and to continue Eurodollar Loans beyond the expiration of such Interest Period by designating a new Interest Period to take effect at the time of such expiration. In making such elections, Borrower may combine existing Revolving Loans made pursuant to separate Borrowings into one new Borrowing or divide existing Revolving Loans made pursuant to one Borrowing into separate new Borrowings, provided that Borrower may have no more than ten Borrowings of Eurodollar Loans outstanding at any time. To make any such election, Borrower must give to Administrative Agent written notice (or telephonic notice promptly confirmed in writing) of any such Conversion or Continuation of existing Revolving Loans, with a separate notice given for each new Borrowing. Each such notice constitutes a "Continuation/Conversion Notice" hereunder and must:

(a) specify the existing Revolving Loans which are to be Continued or Converted;

(b) specify (i) the aggregate amount of any Borrowing of Base Rate Loans into which such existing Revolving Loans are to be continued or converted and the date on which such Continuation or Conversion is to occur, or (ii) the aggregate amount of any Borrowing of Eurodollar Loans into which such existing Revolving Loans are to be continued or converted, the date on which such Continuation or Conversion is to occur (which shall be the first day of the Interest Period which is to apply to such Eurodollar Loans), and the length of the applicable Interest Period; and

(c) be received by Administrative Agent not later than 11:00 a.m., Denver, Colorado time, on (i) the day on which any such Continuation or Conversion to Base Rate Loans is to occur, or (ii) the third Business Day preceding the day on which any such Continuation or Conversion to Eurodollar Loans is to occur.

Each such written request or confirmation must be made in the form and substance of the "Continuation/Conversion Notice" attached hereto as Exhibit C, duly completed. Each such telephonic request shall be deemed a representation, warranty, acknowledgment and agreement by Borrower as to the matters which are required to be set out in such written confirmation. Upon receipt of any such Continuation/Conversion Notice, Administrative Agent shall give each Lender prompt notice of the terms thereof. Each Continuation/Conversion Notice shall be irrevocable and binding on Borrower. During the continuance of any Default, Borrower may not make any election to convert existing Revolving Loans into Eurodollar Loans or continue existing Revolving Loans as Eurodollar Loans. If (due to the existence of a Default or for any other reason) Borrower fails to timely and properly give any Continuation/Conversion Notice with respect to a Borrowing of existing Eurodollar Loans at least three days prior to the end of the Interest Period applicable thereto, such Eurodollar Loans shall automatically be converted into Base Rate Loans at the end of such Interest Period. No new funds shall be repaid by Borrower or advanced by any Lender in connection with any Continuation or Conversion of existing Revolving Loans pursuant to this section, and no such Continuation or Conversion shall be deemed to be a new advance of funds for any purpose; such Continuations and Conversions merely constitute a change in the interest rate applicable to already outstanding Revolving Loans. Notwithstanding anything to the contrary herein, a Swing Line Loan may not be converted to a Eurodollar Loan.

Section 2.4. Use of Proceeds. Borrower shall use all Loans to refinance Existing Indebtedness of Borrower including existing indebtedness under the Existing Credit Documents, to make acquisitions permitted by this Agreement, to finance capital expenditures, to refinance Matured LC Obligations, and provide working capital for its operations and for other general business purposes. Borrower shall use all Letters of Credit for its general corporate purposes. In no event shall the funds from any Loan or any Letter of Credit be used directly or indirectly by any Person for personal, family, household or agricultural purposes or for the purpose, whether immediate, incidental or ultimate, of purchasing, acquiring or carrying any "margin stock" (as such term is defined in Regulation U promulgated by the Board of Governors of the Federal Reserve System) or to extend credit to others directly or indirectly for the purpose of purchasing or carrying any such margin stock. Borrower represents and warrants that Borrower is not engaged principally, or as one of Borrower's important activities, in the business of extending credit to others for the purpose of purchasing or carrying such margin stock.

Section 2.5. Interest Rates and Fees.

(a) Base Rate Loans. So long as no Event of Default has occurred and is continuing, all Base Rate Loans (exclusive of any past due principal or interest) from time to time outstanding shall bear interest on each day outstanding at the Adjusted Base Rate in effect on such day. If an Event of Default has occurred and is continuing, all Base Rate Loans (exclusive of any past due principal or interest) from time to time outstanding shall bear interest on each day outstanding at the applicable Default Rate in effect on such day. On each Interest Payment Date Borrower shall pay to the holder hereof all unpaid interest which has accrued on the Base Rate Loans to but not including such Interest Payment Date.

(b) Eurodollar Loans. So long as no Event of Default has occurred and is continuing, each Eurodollar Loan (exclusive of any past due principal or interest) shall bear interest on each day during the related Interest Period at the related Adjusted Eurodollar Rate in effect on such day. If an Event of Default has occurred and is continuing, all Eurodollar Loans (exclusive of any past due principal or interest) from time to time outstanding shall bear interest on each day outstanding at the applicable Default Rate in effect on such day. On each Interest Payment Date relating to such Eurodollar Loan, Borrower shall pay to the holder hereof all unpaid interest which has accrued on such Eurodollar Loan to but not including such Interest Payment Date.

(c) Swing Line Loans. Each Swing Line Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Adjusted Base Rate. If an Event of Default has occurred and is continuing, all Swing Line Loans (exclusive of any past due principal or interest) from time to time outstanding shall bear interest on each day outstanding at the applicable Default Rate in effect on such day. On each Interest Payment Date Borrower shall pay to the holder hereof all unpaid interest which has accrued on the Swing Line Loans to but not including such Interest Payment Date.

(d) Past Due Principal and Interest. All past due principal of and past due interest on the Loans shall bear interest on each day outstanding at the Default Rate in effect on such day, and such interest shall be due and payable daily as it accrues.

(e) Commitment Fees. In consideration of each Lender's commitment to make Loans, Borrower will pay to Administrative Agent for the account of each Lender a commitment fee determined on a daily basis by applying the Commitment Fee Rate to such Lender's Percentage Share of the Availability (calculated excluding outstanding Swing Line Loans) each day during the Commitment Period. This commitment fee shall be due and payable in arrears on the last day of each Fiscal Quarter and at the end of the Commitment Period.

(f) Administrative Agent's Fees. In addition to all other amounts due to Administrative Agent under the Loan Documents, Borrower will pay fees to Administrative Agent as described in a Fee Letter dated June 10, 2008 between Administrative Agent and Borrower.

Section 2.6. Optional Prepayments.

(a) Borrower may from time to time and without premium or penalty prepay the Notes, in whole or in part, so long as the aggregate amount of Base Rate Loans prepaid at any time must be equal to $500,000 or a higher integral multiple of $100,000, and the aggregate amount of Eurodollar Loans prepaid at any time must be equal to $3,000,000 or any higher integral multiple of $1,000,000, provided that if Borrower prepays any Base Rate Loan, it shall give notice to Administrative Agent at least one Business Day's prior notice to the date such prepayment is made and further provided that if Borrower prepays any Eurodollar Loan, it shall give notice to Administrative Agent at least three Business Days' prior to the date such prepayment is made and pay to Lenders any amounts due under Section 3.5.

(b) Borrower may, upon notice to the Swing Line Lender (with a copy to Administrative Agent), prepay Swing Line Loans in whole or in part without premium or penalty; provided that (A) such notice must be received by the Swing Line Lender and Administrative Agent not later than 2:00 p.m. Denver, Colorado time on the date of the prepayment, and (B) any such prepayment shall be in a minimum principal amount of $100,000. Each such notice shall specify the date and amount of such prepayment. If such notice is given by Borrower, Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein.

Section 2.7. Mandatory Prepayments.

(a) If at any time the sum of the Facility Usage and the principal amount of SG Obligations then outstanding is in excess of the Borrowing Base (such excess being herein called a "Borrowing Base Deficiency"), Borrower shall within 30 days after Administrative Agent gives notice to Borrower of such Borrowing Base Deficiency elect to take either of the following actions or a combination thereof (i) prepay the SG Obligations and/or the principal of the Obligations in an aggregate amount at least equal to such Borrowing Base Deficiency in two equal installments, one being due and payable on the 90th day after the date on which Administrative Agent gives notice of such Borrowing Base Deficiency to Borrower and the other being payable on the 180th day after the date on which such notice is given to Borrower (or, if the Loans have been paid in full, pay to LC Issuer LC Collateral as required under Section 2.16(a)), or (ii) give notice to Administrative Agent that Borrower desires to provide (or cause to be provided by other Restricted Persons) Administrative Agent with deeds of trust, mortgages, chattel mortgages, security agreements, financing statements and other security documents in form and substance similar to the Security Documents previously delivered to Administrative Agent (with any changes required to conform to changes in Law or changes in the type of collateral covered thereby), and otherwise reasonably satisfactory to Administrative Agent, granting, confirming, and perfecting first and prior liens or security interests in collateral acceptable to all Lenders subject to no liens other than Permitted Liens, to the extent needed to allow all Lenders to increase the Borrowing Base (as they in their reasonable discretion deem consistent with prudent oil and gas banking industry lending standards at the time) to an amount which eliminates such Borrowing Base Deficiency, and such Security Documents shall be executed and delivered to Administrative Agent within thirty days after Administrative Agent confirms to Borrower what collateral shall be required. If, prior to any such specification by Administrative Agent, Required Lenders determine that the giving of such Security Documents will not serve to eliminate such Borrowing Base Deficiency, then, within five Business Days after receiving notice of such determination from Administrative Agent, Borrower will elect to make, and will thereafter make, the prepayments specified in the preceding subsection (i) of this subsection (a).

(b) Immediately upon the reduction of the Borrowing Base pursuant to Section 7.5, Borrower shall make a mandatory prepayment on the Loans in an amount, if any, required to eliminate any Borrowing Base Deficiency.

(c) Each prepayment of principal under this section shall be accompanied by all interest then accrued and unpaid on the principal so prepaid and any amounts due under Section 3.4. Any principal or interest prepaid pursuant to this section shall be in addition to, and not in lieu of, all payments otherwise required to be paid under the Loan Documents at the time of such prepayment.

Section 2.8. Initial Borrowing Base. During the period from the date hereof to the first Determination Date the Borrowing Base shall be $1,000,000,000.

Section 2.9. Subsequent Redeterminations of Borrowing Base.

(a) Scheduled Determinations of Borrowing Base. By March 15 and September 15 of each year Borrower shall furnish to each Lender all information, reports and data which Administrative Agent has then requested concerning Restricted Persons' businesses and properties (including their Mineral Interests and the reserves and production relating thereto), together with the Engineering Report described in Section 6.2(d) or 6.2(e), as applicable. Within forty-five days after receiving such information, reports and data, or as promptly thereafter as practicable, Required Lenders shall agree upon an amount for the Borrowing Base (provided that all Lenders must agree to any increase in the Borrowing Base) and Administrative Agent shall by notice to Borrower designate such amount as the new Borrowing Base available to Borrower hereunder, which designation shall take effect immediately on the date such notice is sent (herein called a "Determination Date") and shall remain in effect until but not including the next date as of which the Borrowing Base is redetermined. If Borrower does not furnish all such information, reports and data by the date specified in the first sentence of this section, Administrative Agent may nonetheless designate the Borrowing Base at any amount which Required Lenders determine and may redesignate the Borrowing Base from time to time thereafter (provided that all Lenders must agree to any increase in the Borrowing Base) until each Lender receives all such information, reports and data, whereupon Required Lenders shall designate a new Borrowing Base as described above. Required Lenders shall determine the amount of the Borrowing Base in their sole discretion consistent with normal and customary oil and gas lending practice of the Lenders based upon the loan collateral value which they in their discretion assign to the various Mineral Interests of Restricted Persons at the time in question and based upon such other credit factors (including without limitation the assets, liabilities, cash flow, hedged and unhedged exposure to price, foreign exchange rate, and interest rate changes, business, properties, prospects, management and ownership of Borrower and its Affiliates) as they in their discretion deem significant. It is expressly understood that Lenders and Administrative Agent have no obligation to agree upon or designate the Borrowing Base at any particular amount, whether in relation to the Maximum Credit Amount or otherwise, and that Lenders' commitments to advance funds hereunder is determined by reference to the Borrowing Base from time to time in effect.

(b) Lenders' Special Redeterminations of Borrowing Base . In addition to Scheduled Redeterminations, Required Lenders shall be permitted to make a Special Redetermination of the Borrowing Base once between each two consecutive Scheduled Redeterminations. Any request by Required Lenders pursuant to this Section 2.9(b) shall be submitted to Administrative Agent and Borrower. As soon as reasonably possible, Borrower shall deliver to Administrative Agent and Lenders an Engineering Report prepared as of a date which is no more than thirty (30) days prior to the date of such request.

(c) Borrower's Special Redetermination of Borrowing Base. In addition to Scheduled Redeterminations, Borrower shall be permitted to request a Special Redetermination of the Borrowing Base once between each two consecutive Scheduled Redeterminations. Such request shall be submitted to Administrative Agent and Lenders and at the time of such request Borrower shall (i) deliver to Administrative Agent and each Lender an Engineering Report prepared as of a date which is no more than thirty (30) days prior to the date of such request and (ii) notify Administrative Agent and each Lender of the Borrowing Base requested by Borrower in connection with such Special Redetermination.

(d) Procedures for Special Redeterminations. Any Special Redetermination shall be made by Lenders in accordance with the procedures and standards set forth in Section 2.9(a).

(e) Reduction of Borrowing Base in Connection with Asset Sales. In addition to Scheduled Redeterminations and Special Redeterminations, the Borrowing Base may be reduced from time to time as provided in Section 7.5.

Section 2.10. Decrease in Aggregate Commitment. Borrower may at any time reduce the Aggregate Commitment in whole, or in part ratably among the Lenders in the amount of $5,000,000 or any higher integral multiple of $1,000,000, upon at least three Business Days' written notice to the Administrative Agent, which notice shall specify the amount of any such reduction, provided, however, that the amount of the Aggregate Commitment may not be reduced below the Facility Usage and may not be reinstated.

Section 2.11. Letters of Credit. Subject to the terms and conditions hereof, Borrower may during the Commitment Period request LC Issuer to issue, increase the amount of or otherwise amend or extend one or more Letters of Credit, provided that, after taking such Letter of Credit into account:

(a) the sum of the Facility Usage and the principal amount of the SG Obligations then outstanding does not exceed the Borrowing Base determined as of the date on which the requested Letter of Credit is to be issued;

(b) the aggregate amount of LC Obligations at such time does not exceed the LC Sublimit; and

(c) the expiration date of such Letter of Credit (as extended if applicable) is prior to the Letter of Credit Termination Date.

and further provided that:

(d) such Letter of Credit is to be used for general corporate purposes of Restricted Persons;

(e) such Letter of Credit is not directly or indirectly used to assure payment of or otherwise support any Indebtedness of any Person except Indebtedness of Restricted Persons;

(f) the issuance of such Letter of Credit will be in compliance with all applicable governmental restrictions, policies, and guidelines and will not subject LC Issuer to any cost which is not reimbursable under Article III;

(g) the form and terms of such Letter of Credit are acceptable to LC Issuer in its sole and absolute discretion; and

(h) all other conditions in this Agreement to the issuance of such Letter of Credit have been satisfied.

LC Issuer will honor any such request if the foregoing conditions (a) through (h) (in the following Section 2.12 called the "LC Conditions") have been met as of the date of issuance of such Letter of Credit. LC Issuer may choose to honor any such request for any other Letter of Credit but has no obligation to do so and may refuse to issue any other requested Letter of Credit for any reason which LC Issuer in its sole discretion deems relevant. All Existing Letters of Credit shall be deemed to have been issued pursuant hereto and, from and after the date hereof, shall be subject to and governed by the terms and conditions hereof.

Section 2.12. Requesting Letters of Credit.

(a) Borrower must make written application for any Letter of Credit or amendment or extension of any Letter of Credit at least five Business Days before the date on which Borrower desires for LC Issuer to issue such Letter of Credit. By making any such written application Borrower shall be deemed to have represented and warranted that the LC Conditions described in Section 2.11 will be met as of the date of issuance of such Letter of Credit. Each such written application for a Letter of Credit must be made in writing in the form customarily used by LC Issuer, the terms and provisions of which are hereby incorporated herein by reference (or in such other form as may mutually be agreed upon by LC Issuer and Borrower).

(b) If Borrower so requests in any applicable LC Application, the LC Issuer may, in its sole and absolute discretion, agree to issue a Letter of Credit that has automatic extension provisions (each, an "Auto-Extension Letter of Credit"); provided that any such Auto-Extension Letter of Credit must permit the LC Issuer to prevent any such extension at least once in each twelve-month period (commencing with the date of issuance of such Letter of Credit) by giving prior notice to the beneficiary thereof not later than a day (the "Non-Extension Notice Date") in each such twelve-month period to be agreed upon at the time such Letter of Credit is issued. Unless otherwise directed by the LC Issuer, Borrower shall not be required to make a specific request to the LC Issuer for any such extension. Once an Auto-Extension Letter of Credit has been issued, the Lenders shall be deemed to have authorized (but may not require) the LC Issuer to permit the extension of such Letter of Credit at any time to an expiry date not later than the Letter of Credit Expiration Date; provided, however, that the LC Issuer shall not permit any such extension if (A) the LC Issuer has determined that it would not be permitted, or would have no obligation at such time to issue such Letter of Credit in its revised form (as extended) under the terms hereof (by reason of the provisions of Section 2.10 or otherwise), or (B) it has received notice (which may be by telephone or in writing) on or before the day that is five Business Days before the Non-Extension Notice Date (1) from Administrative Agent that the Required Lenders have elected not to permit such extension or (2) from Administrative Agent, any Lender or Borrower that one or more of the applicable conditions specified in Section 4.2 is not then satisfied, and in each such case directing the LC Issuer not to permit such extension.

(c) Two Business Days after the LC Conditions for a Letter of Credit have been met as described in Section 2.11 (or if LC Issuer otherwise desires to issue such Letter of Credit), LC Issuer will issue such Letter of Credit at LC Issuer's office in San Francisco, California. If any provisions of any LC Application conflict with any provisions of this Agreement, the provisions of this Agreement shall govern and control.

Section 2.13. Reimbursement and Participations.

(a) Reimbursement by Borrower. Each Matured LC Obligation shall constitute a loan by LC Issuer to Borrower. Borrower promises to pay to LC Issuer, or to LC Issuer's order, on demand, the full amount of each Matured LC Obligation, together with interest thereon at the Default Rate applicable to Base Rate Loans.

(b) Letter of Credit Loans. If the beneficiary of any Letter of Credit makes a draft or other demand for payment thereunder, then Borrower may, during the interval between the making thereof and the honoring thereof by LC Issuer, request Lenders to make Revolving Loans to Borrower in the amount of such draft or demand, which Revolving Loans shall be made concurrently with LC Issuer's payment of such draft or demand and shall be immediately used by LC Issuer to repay the amount of the resulting Matured LC Obligation. Such a request by Borrower shall be made in compliance with all of the provisions hereof, provided that for the purposes of the first sentence of Section 2.1, the amount of such Revolving Loans shall be considered, but the amount of the Matured LC Obligation to be concurrently paid by such Revolving Loans shall not be considered.

(c) Participation by Lenders. LC Issuer irrevocably agrees to grant and hereby grants to each Lender, and -- to induce LC Issuer to issue Letters of Credit hereunder -- each Lender irrevocably agrees to accept and purchase and hereby accepts and purchases from LC Issuer, on the terms and conditions hereinafter stated and for such Lender's own account and risk, an undivided interest equal to such Lender's Percentage Share of LC Issuer's obligations and rights under each Letter of Credit issued hereunder and the amount of each Matured LC Obligation paid by LC Issuer thereunder. Each Lender unconditionally and irrevocably agrees with LC Issuer that, if a Matured LC Obligation is paid under any Letter of Credit for which LC Issuer is not reimbursed in full by Borrower in accordance with the terms of this Agreement and the related LC Application (including any reimbursement by means of concurrent Loans or by the application of LC Collateral), such Lender shall (in all circumstances and without set-off or counterclaim) pay to LC Issuer on demand, in immediately available funds at LC Issuer's address for notices hereunder, such Lender's Percentage Share of such Matured LC Obligation (or any portion thereof which has not been reimbursed by Borrower). Each Lender's obligation to pay LC Issuer pursuant to the terms of this subsection is irrevocable and unconditional. If any amount required to be paid by any Lender to LC Issuer pursuant to this subsection is paid by such Lender to LC Issuer within three Business Days after the date such payment is due, LC Issuer shall in addition to such amount be entitled to recover from such Lender, on demand, interest thereon calculated from such due date at the Federal Funds Rate. If any amount required to be paid by any Lender to LC Issuer pursuant to this subsection is not paid by such Lender to LC Issuer within three Business Days after the date such payment is due, LC Issuer shall in addition to such amount be entitled to recover from such Lender, on demand, interest thereon calculated from such due date at the Default Rate applicable to Base Rate Loans.

(d) Distributions to Participants. Whenever LC Issuer has in accordance with this section received from any Lender payment of such Lender's Percentage Share of any Matured LC Obligation, if LC Issuer thereafter receives any payment of such Matured LC Obligation or any payment of interest thereon (whether directly from Borrower or by application of LC Collateral or otherwise, and excluding only interest for any period prior to LC Issuer's demand that such Lender make such payment of its Percentage Share), LC Issuer will distribute to such Lender its Percentage Share of the amounts so received by LC Issuer; provided, however, that if any such payment received by LC Issuer must thereafter be returned by LC Issuer, such Lender shall return to LC Issuer the portion thereof which LC Issuer has previously distributed to it.

(e) Calculations. A written advice setting forth in reasonable detail the amounts owing under this section, submitted by LC Issuer to Borrower or any Lender from time to time, shall be conclusive, absent manifest error, as to the amounts thereof.

Section 2.14. Letter of Credit Fees. In consideration of LC Issuer's issuance of any Letter of Credit, Borrower agrees to pay (a) to Administrative Agent, for the account of all Lenders in accordance with their respective Percentage Shares, a letter of credit issuance fee at a rate equal to the Eurodollar Margin then in effect, and (b) to such LC Issuer for its own account, a letter of credit fronting fee at a rate equal to one-eighth of one percent (0.125%) per annum, but in no event less than $500 per annum. Each such fee will be calculated based on the face amount of all Letters of Credit outstanding on each day at the above applicable rate and will be payable at the end of each Fiscal Quarter in arrears. In addition, Borrower will pay to LC Issuer the LC Issuer's customary fees for administrative issuance, amendment and drawing of each Letter of Credit.

Section 2.15. No Duty to Inquire.

(a) Drafts and Demands. LC Issuer is authorized and instructed to accept and pay drafts and demands for payment under any Letter of Credit without requiring, and without responsibility for, any determination as to the existence of any event giving rise to said draft, either at the time of acceptance or payment or thereafter. LC Issuer is under no duty to determine the proper identity of anyone presenting such a draft or making such a demand (whether by tested telex or otherwise) as the officer, representative or agent of any beneficiary under any Letter of Credit, and payment by LC Issuer to any such beneficiary when requested by any such purported officer, representative or agent is hereby authorized and approved. Borrower releases each Lender Party from, and agrees to hold each Lender Party harmless and indemnified against, any liability or claim in connection with or arising out of the subject matter of this section, which indemnity shall apply whether or not any such liability or claim is in any way or to any extent caused, in whole or in part, by any negligent act or omission of any kind by any Lender Party, provided only that no Lender Party shall be entitled to indemnification for that portion, if any, of any liability or claim which is proximately caused by its own individual gross negligence or willful misconduct, as determined in a final judgment.

(b) Extension of Maturity. If the maturity of any Letter of Credit is extended by its terms or by Law or governmental action, if any extension of the maturity or time for presentation of drafts or any other modification of the terms of any Letter of Credit is made at the request of any Restricted Person, or if the amount of any Letter of Credit is increased at the request of any Restricted Person, this Agreement shall be binding upon all Restricted Persons with respect to such Letter of Credit as so extended, increased or otherwise modified, with respect to drafts and property covered thereby, and with respect to any action taken by LC Issuer, LC Issuer's correspondents, or any Lender Party in accordance with such extension, increase or other modification.

(c) Transferees of Letters of Credit. If any Letter of Credit provides that it is transferable, LC Issuer shall have no duty to determine the proper identity of anyone appearing as transferee of such Letter of Credit, nor shall LC Issuer be charged with responsibility of any nature or character for the validity or correctness of any transfer or successive transfers, and payment by LC Issuer to any purported transferee or transferees as determined by LC Issuer is hereby authorized and approved, and Borrower releases each Lender Party from, and agrees to hold each Lender Party harmless and indemnified against, any liability or claim in connection with or arising out of the foregoing, which indemnity shall apply whether or not any such liability or claim is in any way or to any extent caused, in whole or in part, by any negligent act or omission of any kind by any Lender Party, provided only that no Lender Party shall be entitled to indemnification for that portion, if any, of any liability or claim which is proximately caused by its own individual gross negligence or willful misconduct, as determined in a final judgment.

Section 2.16. LC Collateral.

(a) LC Obligations in Excess of Borrowing Base. If, after the making of all mandatory prepayments required under Section 2.7, the sum of the outstanding LC Obligations and the outstanding principal amount of the SG Obligations will exceed the lesser of Borrowing Base or the Aggregate Commitment, then Borrower will immediately pay to LC Issuer an amount equal to such excess. LC Issuer will hold such amount as security for the remaining LC Obligations (all such amounts held as security for LC Obligations being herein collectively called "LC Collateral") and the other Obligations, and such collateral may be applied from time to time to any Matured LC Obligations or other Obligations which are due and payable. Neither this subsection nor the following subsection shall, however, limit or impair any rights which LC Issuer may have under any other document or agreement relating to any Letter of Credit, LC Collateral or LC Obligation, including any LC Application, or any rights which any Lender Party may have to otherwise apply any payments by Borrower and any LC Collateral under Section 3.1.

(b) Acceleration of LC Obligations. If the Obligations or any part thereof become immediately due and payable pursuant to Section 8.1 then, unless Majority Lenders otherwise specifically elect to the contrary (which election may thereafter be retracted by Majority Lenders at any time), all LC Obligations shall become immediately due and payable without regard to whether or not actual drawings or payments on the Letters of Credit have occurred, and Borrower shall be obligated to pay to LC Issuer immediately an amount equal to the aggregate LC Obligations which are then outstanding, which amount shall be held by LC Issuer as LC Collateral securing the remaining LC Obligations and the other Obligations, and such LC Collateral may be applied from time to time to any Matured LC Obligations or any other Obligations which are due and payable.

(c) Investment of LC Collateral. Pending application thereof, all LC Collateral shall be invested by LC Issuer in such Investments as LC Issuer may choose in its sole discretion. All interest on (and other proceeds of) such Investments shall be reinvested or applied to Matured LC Obligations or other Obligations which are due and payable. When all Obligations have been satisfied in full, including all LC Obligations, all Letters of Credit have expired or been terminated, and all of Borrower's reimbursement obligations in connection therewith have been satisfied in full, LC Issuer shall release any remaining LC Collateral. Borrower hereby assigns and grants to LC Issuer a continuing security interest in all LC Collateral paid by it to LC Issuer, all Investments purchased with such LC Collateral, and all proceeds thereof to secure its Matured LC Obligations and its Obligations under this Agreement, each Note, and the other Loan Documents and Borrower agrees that such LC Collateral, Investments and proceeds shall be subject to all of the terms and conditions of the Security Documents. Borrower further agrees that LC Issuer shall have all of the rights and remedies of a secured party under the UCC with respect to such security interest and that an Event of Default under this Agreement shall constitute a default for purposes of such security interest.

(d) Payment of LC Collateral. When Borrower is required to provide LC Collateral for any reason and fails to do so on the day when required, LC Issuer may without notice to Borrower or any other Restricted Person provide such LC Collateral (whether by transfers from other accounts maintained with LC Issuer or otherwise) using any available funds of Borrower or any other Person also liable to make such payments. Any such amounts which are required to be provided as LC Collateral and which are not provided on the date required shall, for purposes of each Security Document, be considered past due Obligations owing hereunder.

Section 2.17. Swing Line Loans.

(a) The Swing Line. Subject to the terms and conditions set forth herein, the Swing Line Lender agrees, in reliance upon the agreements of the other Lenders set forth in this Section 2.17, to make loans (each such loan, a "Swing Line Loan") to Borrower from time to time on any Business Day during the Commitment Period in an aggregate amount not to exceed at any time outstanding the amount of the Swing Line Sublimit, notwithstanding the fact that such Swing Line Loans, when aggregated with the Swing Line Lender's Percentage Share of the outstanding principal balance of Swing Line Lender's Revolving Loans, may exceed the amount of the Swing Line Lender's Commitment; provided, however, that after giving effect to any Swing Line Loan, the sum of the Facility Usage and the principal amount of the SG Obligations then outstanding does not exceed the Borrowing Base; and provided further that Borrower shall not use the proceeds of any Swing Line Loan to refinance any outstanding Swing Line Loan. Within the foregoing limits, and subject to the other terms and conditions hereof, Borrower may borrow under this Section 2.17, prepay under Section 2.6 and reborrow under this Section 2.17. Each Swing Line Loan shall bear interest at the Adjusted Base Rate and all outstanding Swing Line Loans shall be due and payable in full on the fifth and the twentieth day of each calendar month. Immediately upon the making of a Swing Line Loan, each Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the Swing Line Lender a risk participation in such Swing Line Loan in an amount equal to the product of such Lender's Percentage Share times the amount of such Swing Line Loan.

(b) Borrowing Procedures. Each Swing Line Borrowing shall be made upon Borrower's irrevocable notice to the Swing Line Lender and Administrative Agent, which may be given by telephone. Each such notice must be received by the Swing Line Lender and Administrative Agent not later than 1:00 p.m., Denver, Colorado time, on the requested borrowing date, and shall specify (i) the amount to be borrowed, which shall be a minimum of $100,000, and (ii) the requested borrowing date, which shall be a Business Day. Each such telephonic notice must be confirmed promptly by delivery to the Swing Line Lender and Administrative Agent of a written Swing Line Loan Notice appropriately completed. Promptly after receipt by the Swing Line Lender of any telephonic Swing Line Loan Notice, the Swing Line Lender will confirm with Administrative Agent (by telephone or in writing) that Administrative Agent has also received such Swing Line Loan Notice and, if not, the Swing Line Lender will notify Administrative Agent (by telephone or in writing) of the contents thereof. Unless the Swing Line Lender has received notice (by telephone or in writing) from Administrative Agent (including at the request of any Lender) prior to 2:00 p.m., Denver, Colorado time, on the date of the proposed Swing Line Borrowing (A) directing the Swing Line Lender not to make such Swing Line Loan as a result of the limitations set forth in the first proviso to the first sentence of Section 2.17(a), or (B) that one or more of the applicable conditions specified in Article IV is not then satisfied, then, subject to the terms and conditions hereof, the Swing Line Lender will, not later than 3:00 p.m., Denver, Colorado time, on the borrowing date specified in such Swing Line Loan Notice, make the amount of its Swing Line Loan available to Borrower at its office by crediting the account of Borrower on the books of the Swing Line Lender in immediately available funds.

(c) Refinancing of Swing Line Loans.

(i) The Swing Line Lender at any time in its sole and absolute discretion may request, on behalf of Borrower (which hereby irrevocably authorizes the Swing Line Lender to so request on its behalf), that each Lender make a Revolving Loan in an amount equal to such Lender's Percentage Share of the amount of Swing Line Loans then outstanding. Such request shall be made in writing (which written request shall be deemed to be a Borrowing Notice for purposes hereof) and in accordance with the requirements of Section 2.2, without regard to the minimum and multiples specified therein for the principal amount of Revolving Loans, but subject to the unutilized portion of the Aggregate Commitments and the conditions set forth in Section 4.2. The Swing Line Lender shall furnish Borrower with a copy of the applicable Borrowing Notice promptly after delivering such notice to Administrative Agent. Each Lender shall make an amount equal to its Percentage Share of the amount specified in such Borrowing Notice available to Administrative Agent in immediately available funds for the account of the Swing Line Lender at Administrative Agent's office not later than 1:00 p.m., Denver, Colorado time, on the day specified in such Borrowing Notice, whereupon, subject to Section 2.17(c)(ii), each Lender that so makes funds available shall be deemed to have made a Revolving Loan to Borrower in such amount. Administrative Agent shall remit the funds so received to the Swing Line Lender.

(ii) If for any reason any Swing Line Loan cannot be refinanced by such a Revolving Loan in accordance with Section 2.17(c), the request for Revolving Loans submitted by the Swing Line Lender as set forth herein shall be deemed to be a request by the Swing Line Lender that each of the Lenders fund its risk participation in the relevant Swing Line Loan and each Lender's payment to Administrative Agent for the account of the Swing Line Lender pursuant to Section 2.17(c)(i) shall be deemed payment in respect of such participation.

(iii) If any Lender fails to make available to Administrative Agent for the account of the Swing Line Lender any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.17(c) by the time specified in 2.17(c)(i), the Swing Line Lender shall be entitled to recover from such Lender (acting through Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the Swing Line Lender at a rate per annum equal to the greater of the Federal Funds Rate and a rate determined by the Swing Line Lender in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by the Swing Line Lender in connection with the foregoing. If such Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Lender's Revolving Loan included in the relevant Swing Line Loan or funded participation in the relevant Swing Line Loan as the case may be. A certificate of the Swing Line Lender submitted to any Lender (through Administrative Agent) with respect to any amounts owing under this clause (iii) shall be conclusive absent manifest error.

(iv) Each Lender's obligation to make Revolving Loans or to purchase and fund risk participations in Swing Line Loans pursuant to this Section 2.17(c) shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against the Swing Line Lender, Borrower or any other Person for any reason whatsoever, (B) the occurrence or continuation of a Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided, however, that each Lender's obligation to make Revolving Loans pursuant to this Section 2.17(c) is subject to the conditions set forth in Section 4.2. No such funding of risk participations shall relieve or otherwise impair the obligation of Borrower to repay Swing Line Loans, together with interest provided herein.

(d) Repayment of Participations.

(i) At any time after any Lender has purchased and funded a risk participation in a Swing Line Loan, if the Swing Line Lender receives any payment on account of such Swing Line Loan, the Swing Line Lender will distribute to such Lender its Percentage Share thereof in the same funds as those received by the Swing Line Lender.

(ii) If any payment received by the Swing Line Lender in respect of principal or interest on any Swing Line Loan is required to be returned by the Swing Line Lender under any of the circumstances described in Section 9.6 (including pursuant to any settlement entered into by the Swing Line Lender in its discretion), each Lender shall pay to the Swing Line Lender its Percentage Share thereof on demand of Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned, at a rate per annum equal to the Federal Funds Rate. Administrative Agent will make such demand upon the request of the Swing Line Lender. The obligations of the Lenders under this clause shall survive payment in full of the Obligations and the termination of this Agreement.

(e) Interest Account of Swing Line Lender. The Swing Line Lender shall be responsible for invoicing Borrower for interest on the Swing Line Loans. Until each Lender funds its Revolving Loan or risk participation pursuant to this Section 2.17 to refinance such Lender's Percentage Share of any Swing Line Loan, interest in respect of such Percentage Share shall be solely for the account of the Swing Line Lender.

(f) Payments Directly to Swing Line Lender. Borrower shall make all payments of principal and interest in respect of the Swing Line Loans directly to the Swing Line Lender.

Section 2.18. Obligations of Lenders Several. The obligations of the Lenders hereunder to make Loans, to fund participations in Letters of Credit and Swing Line Loans, and to make payments pursuant to Section 2.2 are several and not joint. The failure of any Lender to make any Loan; to fund any such participation or to make any payment under Section 10.4(b) on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Committed Loan, to purchase its participation or to make its payment under Section 10.4(b).

ARTICLE III - - Payments to Lenders

Section 3.1. General Procedures. Borrower will make each payment which it owes under the Loan Documents to Administrative Agent for the account of the Lender Party to whom such payment is owed, in lawful money of the United States of America, without set-off, deduction or counterclaim, and in immediately available funds. Each such payment must be received by Administrative Agent not later than 11:00 a.m., Denver, Colorado time, on the date such payment becomes due and payable. Any payment received by Administrative Agent after such time will be deemed to have been made on the next following Business Day. Should any such payment become due and payable on a day other than a Business Day, the maturity of such payment shall be extended to the next succeeding Business Day, and, in the case of a payment of principal or past due interest, interest shall accrue and be payable thereon for the period of such extension as provided in the Loan Document under which such payment is due. Each payment under a Loan Document shall be due and payable at the place set forth for Administrative Agent on the Lenders Schedule. When Administrative Agent collects or receives money on account of the Obligations, Administrative Agent shall distribute all money so collected or received, and each Lender Party shall apply all such money so distributed, as follows (except as otherwise provided in Section 8.3):

(a) first, for the payment of all Obligations which are then due (and if such money is insufficient to pay all such Obligations, first to any reimbursements due to Administrative Agent under Section 6.9 or 10.4 and then to the partial payment of all other Obligations then due in proportion to the amounts thereof, or as Lender Parties shall otherwise agree);

(b) then for the prepayment of amounts owing under the Loan Documents (other than principal on the Notes) if so specified by Borrower;

(c) then for the prepayment of principal on the Notes, together with accrued and unpaid interest on the principal so prepaid; and

(d) last, for the payment or prepayment of any other Obligations.

All payments applied to principal or interest on any Note shall be applied first to any interest then due and payable, then to principal then due and payable, and last to any prepayment of principal and interest in compliance with Sections 2.6 and 2.7. All distributions of amounts described in any of subsections (b), (c) or (d) above shall be made by Administrative Agent pro rata to each Lender Party then owed Obligations described in such subsection in proportion to all amounts owed to all Lender Parties which are described in such subsection; provided that if any Lender then owes payments to LC Issuer for the purchase of a participation under Section 2.13(c) or to Administrative Agent under Section 10.4(b), any amounts otherwise distributable under this section to such Lender shall be deemed to belong to LC Issuer, or Administrative Agent, respectively, to the extent of such unpaid payments, and Administrative Agent shall apply such amounts to make such unpaid payments rather than distribute such amounts to such Lender.

Section 3.2. Increased Costs.

(a) Increased Costs Generally. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any reserve requirement reflected in the Adjusted Eurodollar Rate) or LC Issuer;

(ii) subject any Lender or LC Issuer to any Tax of any kind whatsoever with respect to this Agreement, any Letter of Credit, any participation in a Letter of Credit or any Eurodollar Loan made by it, or change the basis of taxation of payments to such Lender or LC Issuer in respect thereof (except for Indemnified Taxes or Other Taxes covered by Section 3.5 and the imposition of, or any change in the rate of, any Excluded Tax payable by such Lender or LC Issuer); or

(iii) impose on any Lender or LC Issuer or the London interbank market any other condition, cost or expense affecting this Agreement or Eurodollar Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Eurodollar Loan (or of maintaining its obligation to make any such Loan), or to increase the cost to such Lender or LC Issuer of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender or LC Issuer hereunder (whether of principal, interest or any other amount) then, upon request of such Lender or LC Issuer, Borrower will pay to such Lender or LC Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or LC Issuer, as the case may be, for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender or LC Issuer determines that any Change in Law affecting such Lender or LC Issuer or any lending office of such Lender or such Lender's or LC Issuer's holding company, if any, regarding capital requirements has or would have the effect of reducing the rate of return on such Lender's or LC Issuer's capital or on the capital of such Lender's or LC Issuer's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by, or participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by LC Issuer, to a level below that which such Lender or LC Issuer or such Lender's or LC Issuer's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or LC Issuer's policies and the policies of such Lender's or LC Issuer's holding company with respect to capital adequacy), then from time to time Borrower will pay to such Lender or LC Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or LC Issuer or such Lender's or LC Issuer's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender or LC Issuer setting forth the amount or amounts necessary to compensate such Lender or LC Issuer or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section and delivered to Borrower shall be conclusive absent manifest error. Borrower shall pay such Lender or LC Issuer, as the case may be, the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender or LC Issuer to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's or LC Issuer's right to demand such compensation, provided that Borrower shall not be required to compensate a Lender or LC Issuer pursuant to this Section for any increased costs incurred or reductions suffered more than nine months prior to the date that such Lender or LC Issuer, as the case may be, notifies Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or LC Issuer's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

Section 3.3. Illegality. If any Change in Law after the date hereof shall make it unlawful for any Lender Party to fund or maintain Eurodollar Loans, then, upon notice by such Lender Party to Borrower and Administrative Agent, (a) Borrower's right to elect Eurodollar Loans from such Lender Party shall be suspended to the extent and for the duration of such illegality, (b) all Eurodollar Loans of such Lender Party which are then the subject of any Borrowing Notice and which cannot be lawfully funded shall be funded as Base Rate Loans of such Lender Party, and (c) all Eurodollar Loans of such Lender Party shall be converted automatically to Base Rate Loans on the respective last days of the then current Interest Periods with respect to such Loans or within such earlier period as required by Law. If any such conversion of a Eurodollar Loan occurs on a day which is not the last day of the then current Interest Period with respect thereto, Borrower shall pay to such Lender Party such amounts, if any, as may be required pursuant to Section 3.4.

Section 3.4. Funding Losses. In addition to its other obligations hereunder, Borrower will indemnify each Lender Party against, and reimburse each Lender Party on demand for, any loss or expense incurred or sustained by such Lender Party (including any loss or expense incurred by reason of the liquidation or reemployment of deposits or other funds acquired by a Lender Party to fund or maintain Eurodollar Loans), as a result of (a) any payment or prepayment (whether authorized or required hereunder or otherwise) of all or a portion of a Eurodollar Loan on a day other than the day on which the applicable Interest Period ends, (b) any payment or prepayment, whether required hereunder or otherwise, of a Loan made after the delivery, but before the effective date, of a Continuation/Conversion Notice requesting the continuation of outstanding Eurodollar Loans as, or the conversion of outstanding Base Rate Loans to, Eurodollar Loans, if such payment or prepayment prevents such Continuation/ Conversion Notice from becoming fully effective, (c) the failure of any Revolving Loan to be made or of any Continuation/Conversion Notice requesting the continuation of outstanding Eurodollar Loans as, or the conversion of outstanding Base Rate Loans to, Eurodollar Loans to become effective due to any condition precedent not being satisfied or due to any other action or inaction of any Restricted Person, (d) any Conversion (whether authorized or required hereunder or otherwise) of all or any portion of any Eurodollar Loan into a Base Rate Loan or into a different Eurodollar Loan on a day other than the day on which the applicable Interest Period ends, or (e) any assignment of a Eurodollar Loan on a day other than the last day of the Interest Period therefor as a result of a request by Borrower pursuant to Section 3.7(b). Such indemnification shall be on an after-tax basis.

Section 3.5. Taxes.

(a) Payment Free of Taxes. Any and all payments by or on account of any obligation of Borrower hereunder or under any other Loan Document shall be made free and clear of and without reduction or withholding for any Indemnified Taxes or Other Taxes, provided that if Borrower shall be required by applicable law to deduct any Indemnified Taxes (including any Other Taxes) from such payments, then (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section) Administrative Agent, Lender or LC Issuer, as the case may be, receives an amount equal to the sum it would have received had no such deductions been made, (ii) Borrower shall make such deductions and (iii) Borrower shall timely pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law.

(b) Payment of Other Taxes by Borrower. Without limiting the provisions of paragraph (a) above, Borrower shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) Indemnification by Borrower. Borrower shall indemnify Administrative Agent, each Lender and LC Issuer, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) paid by Administrative Agent, such Lender or LC Issuer, as the case may be, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to Borrower by a Lender or LC Issuer (with a copy to Administrative Agent), or by Administrative Agent on its own behalf or on behalf of a Lender or LC Issuer, shall be conclusive absent manifest error.

(d) Evidence of Payments. As soon as practicable after any payment of Indemnified Taxes or Other Taxes by Borrower to a Governmental Authority, Borrower shall deliver to Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to Administrative Agent.

(e) Status of Lenders. Any Foreign Lender that is entitled to an exemption from or reduction of withholding tax under the law of the jurisdiction in which Borrower is resident for tax purposes, or any treaty to which such jurisdiction is a party, with respect to payments hereunder or under any other Loan Document shall deliver to Borrower (with a copy to Administrative Agent), at the time or times prescribed by applicable law or reasonably requested by Borrower or Administrative Agent, such properly completed and executed documentation prescribed by applicable law as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if requested by Borrower or Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by Borrower or Administrative Agent as will enable Borrower or Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements.

Without limiting the generality of the foregoing, in the event that Borrower is resident for tax purposes in the United States of America, any Foreign Lender shall deliver to Borrower and Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the request of Borrower or Administrative Agent, but only if such Foreign Lender is legally entitled to do so), whichever of the following is applicable:

(i) duly completed copies of Internal Revenue Service Form W-8BEN claiming eligibility for benefits of an income tax treaty to which the United States of America is a party,

(ii) duly completed copies of Internal Revenue Service Form W-8ECI,

(iii) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under section 881(c) of the Code, (x) a certificate to the effect that such Foreign Lender is not (A) a “bank” within the meaning of section 881(c)(3)(A) of the Internal Revenue Code, (B) a “10 percent shareholder” of Borrower within the meaning of section 881(c)(3)(B) of the Internal Revenue Code, or (C) a “controlled foreign corporation” described in section 881(c)(3)(C) of the Internal Revenue Code and (y) duly completed copies of Internal Revenue Service Form W-8BEN, or

(iv) any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in United States Federal withholding tax duly completed together with such supplementary documentation as may be prescribed by applicable law to permit Borrower to determine the withholding or deduction required to be made.

(f) Treatment of Certain Refunds. If Administrative Agent, a Lender or LC Issuer receives a refund of any Taxes or Other Taxes as to which it has been indemnified by Borrower or with respect to which Borrower has paid additional amounts pursuant to this Section, it shall pay to Borrower an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by Borrower under this Section with respect to the Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses of Administrative Agent, such Lender or LC Issuer, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that Borrower, upon the request of Administrative Agent, such Lender or LC Issuer, agrees to repay the amount paid over to Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to Administrative Agent, such Lender or LC Issuer in the event Administrative Agent, such Lender or LC Issuer is required to repay such refund to such Governmental Authority. This subsection shall not be construed to require Administrative Agent, any Lender or LC Issuer to make available its tax returns (or any other information relating to its taxes that it deems confidential) to Borrower or any other Person.

Section 3.6. Alternative Rate of Interest. If prior to the commencement of any Interest Period for a Borrowing of Eurodollar Loans:

(a) Administrative Agent determines that adequate and reasonable means do not exist for ascertaining the Eurodollar Rate for such Interest Period (any such determination shall be conclusive absent manifest error); or

(b) Administrative Agent is advised by Required Lenders that the Eurodollar Rate for such Interest Period will not adequately and fairly reflect the cost to such Lenders of making or maintaining their Loans included in such Borrowing for such Interest Period;

then Administrative Agent shall give notice thereof to Borrower and Lenders by telephone or facsimile as promptly as practicable thereafter and, until Administrative Agent notifies Borrower and Lenders that the circumstances giving rise to such notice no longer exist, (i) any Continuation/Conversion Notice that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Borrowing of Eurodollar Loans shall be ineffective and shall be deemed a request to continue such Borrowing as a Borrowing of Base Rate Loans and (ii) if any Borrowing Notice requests a Borrowing of Eurodollar Loans, such Borrowing shall be made as a Borrowing of Base Rate Loans. Upon receipt of such notice, Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of Eurodollar Loans.

Section 3.7. Mitigation Obligations; Replacement of Lenders

(a) Designation of a Different Lending Office. If any Lender requests compensation under Section 3.2, or requires Borrower to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.5, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.2 or 3.5, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 3.2, or if any Lender gives notice to Borrower under Section 3.3 that it is unlawful for such Lender to fund or maintain Eurodollar Loans, or if Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.5, or if any Lender defaults in its obligation to fund Loans hereunder, or if any Lender fails to consent to any increase in the Borrowing Base proposed by Administrative Agent, or if any Lender has been deemed insolvent or becomes the subject of a bankruptcy or insolvency proceeding, or if, in connection with any consent or approval of any proposed amendment, modification, waiver, or consent that requires consent of each Lender, the consent of Required Lenders shall have been obtained but any Lender has not so consented or approved (any such Lender, a "Non-Consenting Lender"), then Borrower may, at its sole expense and effort, upon notice to such Lender and Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10.5), all of its interests, rights and obligations under this Agreement and the related Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that:

(i) Borrower shall have paid to Administrative Agent the assignment fee specified in Section 10.5;

(ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and participations in Matured LC Obligations, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.4) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or Borrower (in the case of all other amounts);

(iii) (A) in the case of any such assignment resulting from a Lender becoming a Non-Consenting Lender, the applicable assignees shall have agreed to, and shall be sufficient (together with all other consenting Lenders) to cause the adoption of, the applicable departure, waiver or amendment of the Loan Documents and (B) in the case of any such assignment resulting from a claim for compensation under Section 3.2 or payments required to be made pursuant to Section 3.5, such assignment will result in a reduction in such compensation or payments thereafter and (C) in the case of any assignment due to illegality, such assignee can fund and maintain Eurodollar Loans; and

(iv) such assignment does not conflict with applicable law.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling Borrower to require such assignment and delegation cease to apply. In connection with any such replacement, if any such Lender does not execute and deliver to Administrative Agent a duly executed assignment specified in Section 10.5 reflecting such replacement within five (5) Business Days of the date on which the assignee Lender executes and delivers such assignment to such Lender, then such Lender shall be deemed to have executed and delivered such assignment without any action on the part of such Lender.

ARTICLE IV - - Conditions Precedent to Lending

Section 4.1. Documents to be Delivered. No Lender has any obligation to make its first Loan, and LC Issuer has no obligation to issue the first Letter of Credit, under this Agreement, and the effectiveness of the amendment and restatement of the Existing Credit Agreement shall not be effective, unless Administrative Agent shall have received all of the following, at Administrative Agent's office in Denver, Colorado, duly executed and delivered and in form, substance and date satisfactory to Administrative Agent:

(a) Loan Documents. Administrative Agent shall have received counterparts of each Loan Document originally executed and delivered by each applicable Restricted Person and Lenders and in such numbers as Administrative Agent or its counsel may reasonably request.

(b) Organizational Documents; Incumbency. Administrative Agent shall have received (i) copies of each Organizational Document executed and delivered by each Restricted Person, as applicable, and, to the extent applicable, certified as of a recent date by the appropriate governmental official, each dated the Closing Date or a recent date prior thereto; (ii) signature and incumbency certificates of the officers of such Person executing the Loan Documents to which it is a party; (iii) resolutions of the Board of Directors or similar governing body of each Restricted Person approving and authorizing the execution, delivery and performance of this Agreement and the other Loan Documents to which it is a party or by which it or its assets may be bound as of the Closing Date, certified as of the Closing Date by an Responsible Officer as being in full force and effect without modification or amendment; (iv) an existence and good standing certificate from the applicable Governmental Authority of each Restricted Person's jurisdiction of incorporation, organization or formation and in each jurisdiction in which it owns real property Collateral, each dated a recent date prior to the Closing Date; and (v) such other documents as Administrative Agent may reasonably request.

(c) Closing Certificate. Administrative Agent shall have received a "Closing Certificate" of a Responsible Officer of Borrower, of even date with this Agreement, in which such officer certifies to the satisfaction of each of the conditions set out in Section 4.1 and Section 4.2.

(d) Governmental Authorizations and Consents. Each Restricted Person shall have obtained all Governmental Authorizations and all consents of other Persons, in each case that are necessary or advisable in connection with the transactions contemplated by the Loan Documents and each of the foregoing shall be in full force and effect and in form and substance reasonably satisfactory to Administrative Agent. All applicable waiting periods shall have expired without any action being taken or threatened by any competent authority which would restrain, prevent or otherwise impose adverse conditions on the transactions contemplated by the Loan Documents or the financing thereof and no action, request for stay, petition for review or rehearing, reconsideration, or appeal with respect to any of the foregoing shall be pending, and the time for any applicable agency to take action to set aside its consent on its own motion shall have expired.

(e) Environmental Reports. Administrative Agent shall have received reports and other information, in form, scope and substance reasonably satisfactory to Administrative Agent, regarding environmental matters relating to Borrower's material real property assets.

(f) Evidence of Insurance. Administrative Agent shall have received a certificate from Borrower's insurance broker or other evidence reasonably satisfactory to it that all insurance required to be maintained pursuant to Section 6.8 is in full force and effect and that Administrative Agent had been named as additional insured and loss payee thereunder as its interests may appear and to the extent required under Section 6.8.

(g) Opinions of Counsel. Administrative Agent shall have received originally executed copies of the favorable written opinions of (i) Musick, Peeler & Garrett LLP, counsel to Restricted Persons, in the form of Exhibit E and opining as to such other matters as Administrative Agent may reasonably request at least three days prior to the Closing Date, dated as of the Closing Date and otherwise in form and substance reasonably satisfactory to Administrative Agent (and each Restricted Person hereby instructs such counsel to deliver such opinions to Administrative Agent and Lenders), and (ii) Jeffer Mangels Butler & Marmaro LLP, California local counsel to Administrative Agent, opining as to such matters as Administrative Agent may reasonably request, dated as of the Closing Date and otherwise in form and substance reasonably satisfactory to Administrative Agent.

(h) Fees. Administrative Agent shall have received all commitment, facility, agency, recording, filing, and other fees required to be paid to Administrative Agent or any Lender pursuant to any Loan Documents or any commitment agreement heretofore entered into.

(i) Financial Statements. Lenders shall have received the Initial Financial Statements, which shall be in form and substance reasonably satisfactory to Administrative Agent, together with a certificate by an Responsible Officer certifying the Initial Financial Statements.

(j) Initial Engineering Report. Lenders shall have received the Initial Engineering Report, which shall be in form and substance reasonably satisfactory to Administrative Agent.

(k) Title. Administrative Agent shall have received title reports, title opinions and other title information in form, substance and authorship reasonably satisfactory to Administrative Agent, with respect to the Borrowing Base Properties that are subject to the Security Documents on the Closing Date.

(l) Acquisition. Administrative Agent shall have received a copy of each Acquisition Document, duly executed and delivered by each party thereto, together with a pro forma balance sheet reflecting assets and liabilities of Borrower immediately after consummation of the Acquisition contemplated by the Acquisition Documents. Simultaneously with making of the Loans on the date hereof, the transactions contemplated by the Acquisition Documents to be consummated on the date hereof shall contemporaneously be consummated in compliance with the terms and conditions of the Acquisition Documents and all conditions precedent to such consummation will be fully satisfied.

(m) No Litigation. There shall not exist any action, suit, investigation, litigation or proceeding or other legal or regulatory developments, pending or threatened in any court or before any arbitrator or Governmental Authority that, in the reasonable opinion of Administrative Agent, singly or in the aggregate, materially impairs the financing hereunder or any of the other transactions contemplated by the Loan Documents, or that could reasonably be expected to cause a Material Adverse Change.

(n) Completion of Proceedings. All partnership, corporate and other proceedings taken or to be taken in connection with the transactions contemplated hereby and all documents incidental thereto not previously found acceptable by Administrative Agent and its counsel shall be reasonably satisfactory in form and substance to Administrative Agent and such counsel, and Administrative Agent and such counsel shall have received all such counterpart originals or certified copies of such documents as Administrative Agent may reasonably request.

(o) Material Adverse Change. No event or circumstance shall have occurred or be continuing since the date of the Initial Financial Statements that has had, or could be reasonably expected to cause, either individually or in the aggregate, a Material Adverse Change.

(p) Due Diligence. Administrative Agent and Lenders shall have completed satisfactory due diligence review of the assets, liabilities, business, operations and condition (financial or otherwise) of the Restricted Persons, including, a review of their Mineral Interests and all legal, financial, accounting, governmental, environmental, tax and regulatory matters, and fiduciary aspects of the proposed financing.

(q) Other Documentation. Administrative Agent shall have received all documents and instruments which Administrative Agent has then reasonably requested, in addition to those described in this Section 4.1. All such additional documents and instruments shall be reasonably satisfactory to Administrative Agent in form, substance and date. For purposes of determining compliance with the conditions specified in this Section 4.1, each Lender that has executed and delivered this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

Section 4.2. Additional Conditions Precedent. No Lender has any obligation to make any Loan (including its first), and LC Issuer has no obligation to issue any Letter of Credit (including its first), unless the following conditions precedent have been satisfied:

(a) All representations and warranties made by any Restricted Person in any Loan Document shall be true and correct in all material respects on and as of the date of such Loan or the date of issuance of such Letter of Credit as if such representations and warranties had been made as of the date of such Loan or the date of issuance of such Letter of Credit, except to the extent that such representation or warranty was made as of a specific date or updated, modified or supplemented as of a subsequent date with the consent of Required Lenders and Administrative Agent, in which cases such representations and warranties shall have been true and correct in all material respects on and of such earlier date.

(b) No Default shall exist at the date of such Loan or the date of issuance of such Letter of Credit.

(c) No Material Adverse Change shall have occurred to, and no event or circumstance shall have occurred that could reasonably be expected to cause a Material Adverse Change to, Borrower's Consolidated financial condition or businesses since the date of the Initial Financial Statements.

(d) Each Restricted Person shall have performed and complied with all agreements and conditions required in the Loan Documents to be performed or complied with by it on or prior to the date of such Loan or the date of issuance of such Letter of Credit.

(e) The making of such Loan or the issuance of such Letter of Credit shall not be prohibited by any Law and shall not subject any Lender or any LC Issuer to any penalty or other onerous condition under or pursuant to any such Law.

(f) Administrative Agent shall have received all documents and instruments which Administrative Agent has then reasonably requested, in addition to those described in Section 4.1 (including opinions of legal counsel for Restricted Persons and Administrative Agent; corporate documents and records; documents evidencing governmental authorizations, consents, approvals, licenses and exemptions; and certificates of public officials and of officers and representatives of Borrower and other Persons), as to (i) the accuracy and validity of or compliance with all representations, warranties and covenants made by any Restricted Person in this Agreement and the other Loan Documents, (ii) the satisfaction of all conditions contained herein or therein, and (iii) all other matters pertaining hereto and thereto. All such additional documents and instruments shall be reasonably satisfactory to Administrative Agent in form, substance and date.

ARTICLE V - - - Representations and Warranties

To confirm each Lender's understanding concerning Restricted Persons and Restricted Persons' businesses, properties and obligations and to induce each Lender to enter into this Agreement and to extend credit hereunder, Borrower represents and warrants to each Lender that:

Section 5.1. No Default. No event has occurred and is continuing which constitutes a Default.

Section 5.2. Organization and Good Standing. Each Restricted Person is duly organized, validly existing and in good standing under the Laws of its jurisdiction of organization, having all powers required to carry on its business and enter into and carry out the transactions contemplated hereby. Each Restricted Person is duly qualified, in good standing, and authorized to do business in all other jurisdictions within the United States wherein the character of the properties owned or held by it or the nature of the business transacted by it makes such qualification necessary. Each Restricted Person has taken all actions and procedures customarily taken in order to enter, for the purpose of conducting business or owning property, each jurisdiction outside the United States wherein the character of the properties owned or held by it or the nature of the business transacted by it makes such actions and procedures desirable.

Section 5.3. Authorization. Each Restricted Person has duly taken all action necessary to authorize the execution and delivery by it of the Loan Documents to which it is a party and to authorize the consummation of the transactions contemplated thereby and the performance of its obligations thereunder. Borrower is duly authorized to borrow funds hereunder.

Section 5.4. No Conflicts or Consents. The execution and delivery by the various Restricted Persons of the Loan Documents to which each is a party, the performance by each of its obligations under such Loan Documents, and the consummation of the transactions contemplated by the various Loan Documents, do not and will not (a) conflict with any provision of (i) any Law, (ii) the organizational documents of any Restricted Person, or (iii) any agreement, judgment, license, order or permit applicable to or binding upon any Restricted Person in any material respect, (b) result in the acceleration of any Indebtedness owed by any Restricted Person, or (c) result in or require the creation of any Lien upon any assets or properties of any Restricted Person except as expressly contemplated or permitted in the Loan Documents. Except as expressly contemplated in the Loan Documents no consent, approval, authorization or order of, and no notice to or filing with, any Governmental Authority or third party is required in connection with the execution, delivery or performance by any Restricted Person of any Loan Document or to consummate any transactions contemplated by the Loan Documents.

Section 5.5. Enforceable Obligations. This Agreement is, and the other Loan Documents when duly executed and delivered will be, legal, valid and binding obligations of each Restricted Person which is a party hereto or thereto, enforceable in accordance with their terms except as such enforcement may be limited by bankruptcy, insolvency or similar Laws of general application relating to the enforcement of creditors' rights.

Section 5.6. Initial Financial Statements. Borrower has heretofore delivered to each Lender true, correct and complete copies of the Initial Financial Statements. The Initial Financial Statements fairly present Borrower's Consolidated financial position at the respective dates thereof and the Consolidated results of Borrower's operations and Borrower's Consolidated cash flows for the respective periods thereof. Since the date of the annual Initial Financial Statements no Material Adverse Change has occurred, except as reflected in the quarterly Initial Financial Statements or in Section 5.6 of the Disclosure Letter. All Initial Financial Statements were prepared in accordance with GAAP.

Section 5.7. Other Obligations and Restrictions. No Restricted Person has any outstanding Liabilities of any kind (including contingent obligations, tax assessments, and unusual forward or long-term commitments) which are, in the aggregate, material to Borrower or material with respect to Borrower's Consolidated financial condition and not shown in the Initial Financial Statements or disclosed in Section 5.7 of the Disclosure Letter or a Disclosure Report. Except as shown in the Initial Financial Statements or disclosed in Section 5.7 of the Disclosure Letter or a Disclosure Report, no Restricted Person is subject to or restricted by any franchise, contract, deed, charter restriction, or other instrument or restriction which could reasonably be expected to cause a Material Adverse Change.

Section 5.8. Full Disclosure. No certificate, statement or other information delivered herewith or heretofore by any Restricted Person to any Lender in connection with the negotiation of this Agreement or in connection with any transaction contemplated hereby (excluding projections, estimates and Engineering Reports) contains any untrue statement of a material fact or omits to state any material fact known to any Restricted Person (other than industry-wide risks normally associated with the types of businesses conducted by Restricted Persons) necessary to make the statements contained herein or therein not misleading as of the date made or deemed made; provided that, with respect to the estimates, projections and pro forma financial information contained in the materials referenced above, Borrower only represents that they are based upon good faith estimates and assumptions believed by management of Borrower to be reasonable at the time made, it being recognized by the Lenders that such financial information as it relates to future events is not to be viewed as fact and that actual results during the period or periods covered by such financial information may differ from the projected results set forth therein by a material amount. There is no fact known to any Restricted Person (other than industry-wide risks normally associated with the types of businesses conducted by Restricted Persons) that has not been disclosed to each Lender in writing which could reasonably be expected to cause a Material Adverse Change. There are no statements or conclusions in any Engineering Report which are based upon or include misleading information or fail to take into account material information regarding the matters reported therein, it being understood that each Engineering Report is necessarily based upon professional opinions, estimates and projections and that Borrower does not warrant that such opinions, estimates and projections will ultimately prove to have been accurate. Borrower has heretofore delivered to each Lender true, correct and complete copies of the Initial Engineering Report.

Section 5.9. Litigation. Except as disclosed in the Initial Financial Statements or in Section 5.9 of the Disclosure Letter: (a) there are no actions, suits or legal, equitable, arbitrative or administrative proceedings pending, or to the knowledge of any Restricted Person threatened, against any Restricted Person or affecting any Collateral (including any which challenge or otherwise pertain to any Restricted Person's title to any Collateral) before any Governmental Authority which could reasonably be expected to cause a Material Adverse Change, (b) there are no outstanding judgments, injunctions, writs, rulings or orders by any such Governmental Authority against any Restricted Person or any Restricted Person's stockholders, partners, directors or officers or affecting any Collateral or any of its material assets or property which could reasonably be expected to cause a Material Adverse Change, and (c) there are no cease and desist, noncompliance orders or notices from the California Division of Oil, Gas and Geothermal Resources or other Governmental Authorities which could reasonably be expected to cause a Material Adverse Change.

Section 5.10. Labor Disputes and Acts of God. Except as disclosed in Section 5.10 of the Disclosure Letter or a Disclosure Report, neither the business nor the properties of any Restricted Person has been affected by any fire, explosion, accident, strike, lockout or other labor dispute, drought, storm, hail, earthquake, embargo, act of God or of the public enemy or other casualty (whether or not covered by insurance), which could reasonably be expected to cause a Material Adverse Change.

Section 5.11. ERISA Plans and Liabilities. All currently existing ERISA Plans are listed in Section 5.11 of the Disclosure Letter or a Disclosure Report. Except as disclosed in the Initial Financial Statements or in Section 5.11 of the Disclosure Letter or a Disclosure Report, no Termination Event has occurred with respect to any ERISA Plan and all ERISA Affiliates are in compliance with ERISA in all material respects. No ERISA Affiliate is required to contribute to, or has any other absolute or contingent liability in respect of, any "multiemployer plan" as defined in Section 4001 of ERISA. Except as set forth in Section 5.11 of the Disclosure Letter or a Disclosure Report: (a) no "accumulated funding deficiency" (as defined in Section 412(a) of the Internal Revenue Code) exists with respect to any ERISA Plan, whether or not waived by the Secretary of the Treasury or his delegate, and (b) the current value of each ERISA Plan's benefits does not exceed the current value of such ERISA Plan's assets available for the payment of such benefits by more than $500,000.

Section 5.12. Environmental and Other Laws. Except as disclosed in Section 5.12 of the Disclosure Letter or a Disclosure Report: (a) Restricted Persons are conducting their businesses in material compliance with all applicable Laws, including Environmental Laws, and have and are in compliance with all material licenses, permits and bonds required under any such Laws; (b) none of the operations or properties of any Restricted Person is the subject of federal, state or local investigation evaluating whether any material remedial action is needed to respond to a release of any Hazardous Materials into the environment or to the improper storage or disposal (including storage or disposal at offsite locations) of any Hazardous Materials; (c) no Restricted Person (and to the best knowledge of Borrower, no other Person) has filed any notice under any Law indicating that any Restricted Person is responsible for the improper release into the environment, or the improper storage or disposal, of any material amount of any Hazardous Materials or that any Hazardous Materials have been improperly released, or are improperly stored or disposed of, upon any property of any Restricted Person; (d) no Restricted Person has transported or arranged for the transportation of any Hazardous Material to any location which is (i) listed on the National Priorities List under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, listed for possible inclusion on such National Priorities List by the Environmental Protection Agency in its Comprehensive Environmental Response, Compensation and Liability Information System List, or listed on any similar state list or (ii) the subject of federal, state or local enforcement actions or other investigations which may lead to claims against any Restricted Person for clean-up costs, remedial work, damages to natural resources or for personal injury claims (whether under Environmental Laws or otherwise); and (e) no Restricted Person otherwise has any known material contingent liability under any Environmental Laws or in connection with the release into the environment, or the storage or disposal, of any Hazardous Materials. Each Restricted Person undertook, at the time of its acquisition of each of its material properties, all appropriate inquiry into the previous ownership and uses of the Property and any potential environmental liabilities associated therewith.

Section 5.13. Names and Places of Business. No Restricted Person has, during the preceding five years, had, been known by, or used any other trade or fictitious name, except as disclosed in Section 5.13 of the Disclosure Letter or a Disclosure Report. Except as otherwise indicated in Section 5.13 of the Disclosure Letter or a Disclosure Report, the chief executive office and principal place of business of each Restricted Person are (and for the preceding five years have been) located at the address of Borrower set out on the signature pages hereto. Except as indicated in Section 5.13 of the Disclosure Letter or a Disclosure Report, no Restricted Person has any other office or place of business.

Section 5.14. Borrower's Subsidiaries. Borrower does not presently have any Subsidiary or own any stock in any other corporation or association except those listed in Section 5.14 of the Disclosure Letter or a Disclosure Report. Neither Borrower nor any Restricted Person is a member of any general or limited partnership, joint venture or association of any type whatsoever except those listed in Section 5.14 of the Disclosure Letter or a Disclosure Report, and associations, joint ventures or other relationships (a) which are established pursuant to a standard form operating agreement or similar agreement or which are partnerships for purposes of federal income taxation only, (b) which are not corporations or partnerships (or subject to the Uniform Partnership Act) under applicable state Law, and (c) whose businesses are limited to the exploration, development and operation of oil, gas or mineral properties and interests owned directly by the parties in such associations, joint ventures or relationships. Except as otherwise revealed in a Disclosure Report, Borrower owns, directly or indirectly, the Equity Interest in each of its Subsidiaries which is indicated in Section 5.14 of the Disclosure Letter.

Section 5.15. Government Regulation. Neither Borrower nor any other Restricted Person owing Obligations is subject to regulation under the Federal Power Act, the Investment Company Act of 1940 (as any of the preceding acts have been amended) or any other Law which regulates the incurring by such Person of Indebtedness, including Laws relating to common contract carriers or the sale of electricity, gas, steam, water or other public utility services.

Section 5.16. Solvency. Upon giving effect to the issuance of the Notes, the execution of the Loan Documents by Borrower and each Guarantor and the consummation of the transactions contemplated hereby, no Restricted Person will be Insolvent.

Section 5.17. Title to Properties; Licenses. Except for those Mineral Interests disposed of in accordance with this Agreement and oil and gas leases that have expired in accordance with their terms, each Restricted Person has (a) good and defensible title to, or valid leasehold interests in, all of the Mineral Interests covered by the most recently delivered Engineering Report, free and clear of all Liens, encumbrances, or adverse claims other than Permitted Liens; and (b) good and valid title to, or valid leasehold interests in, licenses of, or rights to use, all other Collateral owned or leased by such Restricted Person, free and clear of all Liens, encumbrances, or adverse claims other than Permitted Liens, except in the case of clauses (a) and (b) of this section, defects in title or adverse claims which could not reasonably be expected to cause a Material Adverse Change; provided that no representation or warranty is made in this section with respect to any Mineral Interest to which no Proved Reserves are properly attributed. Other than changes which arise pursuant to non-consent provisions of operating agreements or other agreements (if any) described in Exhibit A to any Security Document and except for properties disposed of in compliance with this Agreement or leases that have expired in accordance with their terms: (x) each Restricted Person owns the net interests in production attributable to the wells and units of such Restricted Person evaluated in the most recently delivered Engineering Report subject to Permitted Liens and (y) the ownership of such properties does not in the aggregate in any material respect obligate such Restricted Person to bear the costs and expenses relating to the maintenance, development and operations of such properties in an amount materially in excess of the working interest of such properties set forth in such Engineering Report. Upon delivery of each Engineering Report furnished to the Lenders pursuant to Sections 6.2(d) and (f), the statements made in the preceding sentences of this section and in Section 5.8 shall be true with respect to such Engineering Report. Each Restricted Person possesses all licenses, permits, franchises, or otherwise has valid rights, rights to use all patents, copyrights, trademarks and trade names, and other intellectual property (or otherwise possesses the right to use such intellectual property without violation of the rights of any other Person) which are necessary to carry out its business as presently conducted and as presently proposed to be conducted hereafter, and no Restricted Person is in violation in any material respect of the terms under which it possesses such intellectual property or the right to use such intellectual property.

Section 5.18. Leases and Contracts; Performance of Obligations. Except for those Mineral Interests disposed of in accordance with this Agreement and oil and gas leases that have expired in accordance with their terms, the leases, contracts, servitudes and other agreements forming a part of the Mineral Interests of the Restricted Persons covered by the most recently delivered Engineering Report are in full force and effect unless (i) disputed in good faith by appropriate proceedings and for which adequate reserves have been maintained in accordance with GAAP, or (ii) the failure to be in full force and effect could not reasonably be expected to cause a Material Adverse Change. All rents, royalties and other payments due and payable under such leases, contracts, servitudes and other agreements, or under any Permitted Liens, or otherwise attendant to the ownership or operation of any Mineral Interests covered by the most recently delivered Engineering Report, have been properly and timely paid or will be paid prior to deliquency unless (i) disputed in good faith by appropriate proceedings and for which adequate reserves have been maintained in accordance with GAAP or (ii) the failure to pay could not reasonably be expected to cause a Material Adverse Change. No Restricted Person is in default with respect to its obligations (and no Restricted Person is aware of any default by any third party with respect to such third party's obligations) under any such leases, contracts, servitudes and other agreements, or under any Permitted Liens, or otherwise attendant to the ownership or operation of any part of the Mineral Interests covered by the Engineering Report, where such failure could reasonably be expected to cause a Material Adverse Change. No Restricted Person is currently accounting for any royalties, or overriding royalties or other payments out of production, on a basis (other than delivery in kind) less favorable to such Restricted Person than proceeds received by such Restricted Person (calculated at the well) from sale of production, and no Restricted Person has any liability (or alleged liability) to account for the same on any such less favorable basis.

Section 5.19. Gas Imbalances, Prepayments. Except as listed on the Disclosure Letter, on a net basis there are no gas imbalances, take or pay or other prepayments (excluding firm transportation contracts entered into in the ordinary course of business) which would require the Borrower or any of its Subsidiaries to deliver Mineral Interests produced from the Oil and Gas Properties at some future time without then or thereafter receiving full payment therefor exceeding 1 Bcf of gas or the energy equivalent for oil in the aggregate. Except for contracts listed in the Disclosure Letter or included in the most recently delivered Engineering Report (with respect to all of which contracts the Borrower represents that it or its Subsidiaries are receiving a price for all production sold thereunder which is computed substantially in accordance with the terms of the relevant contract and are not having deliveries curtailed substantially below the subject property's delivery capacity except as disclosed in the Disclosure Letter or the most recently delivered Engineering Report), no material agreements exist which are not cancelable on 120 days notice or less without penalty or detriment for the sale of production from the Borrower's or its Subsidiaries' Mineral Interests (including, without limitation, calls on or other rights to purchase, production, whether or not the same are currently being exercised) that (a) pertain to the sale of production at a fixed price and (b) have a maturity or expiry date of longer than six (6) months.

Section 5.20. Operation of Mineral Interests. Except for those Mineral Interests disposed of in accordance with this Agreement and oil and gas leases that have expired in accordance with their terms, the Mineral Interests covered by the most recently delivered Engineering Report (and all properties unitized therewith) are being (and, to the extent the same could adversely affect the ownership or operation of the Mineral Interests covered by the most recently delivered Engineering Report after the date hereof, have in the past been) maintained, operated and developed in a good and workmanlike manner, in accordance with prudent industry standards and in conformity with all applicable Laws and in conformity with all oil, gas or other mineral leases and other contracts and agreements forming a part of the Mineral Interest covered by the most recently delivered Engineering Report and in conformity with the Permitted Liens except where the failure to do so could not reasonably be expect to have a Material Adverse Change. No Mineral Interest covered by the most recently delivered Engineering Report is subject to having allowable production after the date hereof reduced below the full and regular allowable (including the maximum permissible tolerance) because of any overproduction (whether or not the same was permissible at the time) prior to the date hereof and none of the wells located on the Mineral Interests covered by the most recently delivered Engineering Report (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 bottomed under and producing from, with the well bores wholly within, the Mineral Interests covered by the most recently delivered Engineering Report (or, in the case of wells located on properties unitized therewith, such unitized properties) except where such matter could not reasonably be expect to have a Material Adverse Change. Each Restricted Person has all governmental licenses, permits and bonds necessary or appropriate to own and operate its Mineral Interests covered by the most recently delivered Engineering Report, and no Restricted Person has received notice of any violations in respect of any such licenses or permits, except where the failure to do, or any such violation, so could not reasonably be expect to have a Material Adverse Change.

Section 5.21. Regulation U. None of Borrower and its Subsidiaries are engaged in the business of extending credit for the purpose of purchasing or carrying margin stock, and no proceeds of any Loans will be used for a purpose which violates Regulation U.

ARTICLE VI - - Affirmative Covenants of Borrower

To conform with the terms and conditions under which each Lender is willing to have credit outstanding to Borrower, and to induce each Lender to enter into this Agreement and extend credit hereunder, Borrower warrants, covenants and agrees that until the full and final payment of the Obligations and the termination of this Agreement, unless Majority Lenders have previously agreed otherwise:

Section 6.1. Payment and Performance. Borrower will pay all amounts due under the Loan Documents in accordance with the terms thereof and will observe, perform and comply with every covenant, term and condition expressed or implied in the Loan Documents. Borrower will cause each other Restricted Person to observe, perform and comply with every such term, covenant and condition in any Loan Document.

Section 6.2. Books, Financial Statements and Reports. Each Restricted Person will at all times maintain full and accurate books of account and records. Borrower will maintain and will cause its Subsidiaries to maintain a standard system of accounting, will maintain its Fiscal Year, and will furnish the following statements and reports to each Lender Party at Borrower's expense:

(a) As soon as available, and in any event within ninety (90) days after the end of each Fiscal Year, complete Consolidated and consolidating financial statements of Borrower together with all notes thereto, prepared in reasonable detail in accordance with GAAP, together with an unqualified opinion, based on an audit using generally accepted auditing standards, by independent certified public accountants selected by Borrower and acceptable to Majority Lenders, stating that such Consolidated financial statements have been so prepared. These financial statements shall contain a Consolidated and consolidating balance sheet as of the end of such Fiscal Year and Consolidated and consolidating statements of earnings, of cash flows, and of changes in owners' equity for such Fiscal Year, each setting forth in comparative form the corresponding figures for the preceding Fiscal Year.

(b) As soon as available, and in any event within forty-five (45) days after the end of the first three Fiscal Quarters in each Fiscal Year, Borrower's Consolidated and consolidating balance sheet as of the end of such Fiscal Quarter and Consolidated and consolidating statements of Borrower's earnings and cash flows for the period from the beginning of the then current Fiscal Year to the end of such Fiscal Quarter, all in reasonable detail and prepared in accordance with GAAP, subject to changes resulting from normal year-end adjustments. In addition Borrower will, together with each such set of financial statements and each set of financial statements furnished under subsection (a) of this section, furnish a certificate in the form of Exhibit D signed by the Chief Financial Officer or the Treasurer of Borrower stating that such financial statements are accurate and complete (subject to normal year-end adjustments), stating that he has reviewed the Loan Documents, containing calculations showing compliance (or non-compliance) at the end of such Fiscal Quarter with the requirements of Section 7.11 and Section 7.12 and stating that no Default exists at the end of such Fiscal Quarter or at the time of such certificate or specifying the nature and period of existence of any such Default.

(c) As soon as available, and in any event within fifteen (15) days after the date required to be delivered to the SEC, Borrower will deliver copies of all financial statements, reports, notices and proxy statements sent by any Restricted Person to its stockholders and all registration statements, periodic reports and other statements and schedules filed by any Restricted Person with any securities exchange, the SEC or any similar governmental authority. Documents required to be delivered pursuant to Section 6.2(a), (b) or (c) (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which Borrower posts such documents, or provides a link thereto, on Borrower's website on the Internet at the website address listed in the Disclosure Letter; or (ii) on which such documents are posted on Borrower's behalf on IntraLinks/IntraAgency or another relevant website, if any, including, but not limited to any filings made on EDGAR to which each Lender and Administrative Agent have access (whether a commercial, third-party website or whether sponsored by Administrative Agent); provided that: (x) Borrower shall deliver paper copies of such documents to Administrative Agent or any Lender that requests Borrower to deliver such paper copies until a written request to cease delivering paper copies is given by Administrative Agent or such Lender and (y) Borrower shall notify (which may be by facsimile or electronic mail) Administrative Agent and each Lender of the posting of any such documents and provide to Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents. Notwithstanding anything contained herein, in every instance Borrower shall be required to provide paper copies of the Compliance Certificates required by Section 6.2(b) to Administrative Agent and each of the Lenders. Except for such Compliance Certificates, Administrative Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by Borrower with any such request for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

(d) By March 15 of each year, Borrower will deliver an Engineering Report prepared by Independent Engineers as of January 1 of such year, concerning all oil and gas properties and interests owned by any Restricted Person which are located in or offshore of the United States and which have attributable to them Proved Reserves. This report shall be satisfactory to Administrative Agent, shall contain sufficient information to enable Borrower to meet the reporting requirements concerning oil and gas reserves contained in Regulations S-K and S-X promulgated by the SEC and shall contain information and analysis comparable in scope to that contained in the Initial Engineering Report. This report shall distinguish (or shall be delivered together with a certificate from an appropriate officer of Borrower which distinguishes) those properties treated in the report which are Collateral from those properties treated in the report which are not Collateral.

(e) By September 15 of each year, commencing September 15, 2008, and promptly following notice of a Special Redetermination under Section 2.9 Borrower will deliver an engineering report prepared by Staff Engineers consistent in form and scope of the Engineering Reports described in (d) above, as of July 1 of such year in the case of Scheduled Redeterminations and as of the date specified in Section 2.9(c) in the case of Special Redeterminations.

(f) Together with each Engineering Report required under Section 2.9(d) and each Engineering Report required under Section 2.9(e), Borrower will furnish lease operating statements for twelve consecutive calendar months then ended, which include lease operating statements for such period and for each month during such period, for properties covered by such Engineering Report.

(g) Together with each set of financial statements furnished under subsections (a) and (b) of this section, Borrower will furnish a report (in form reasonably satisfactory to Administrative Agent) of all Hedging Contracts of Borrower and each of its Subsidiaries, setting forth the type, term, effective date, termination date and notional amounts or volumes and the counterparty to each such agreement.

(h) As soon as available, and in any event within forty-five (45) days after the end of each calendar quarter, Borrower will deliver a report describing by lease or unit the gross volume of production and sales attributable to production during such quarter from the properties described in the most recent Engineering Report and describing the related severance taxes, other taxes, leasehold operating expenses and capital costs attributable thereto and incurred during such quarter.

(i) When Borrower or a Consolidated subsidiary of Borrower acquires assets during a Four-Quarter Period and such assets are included in the calculation of Adjusted EBITDAX for such Four-Quarter Period, Borrower shall deliver to Administrative Agent and Lenders, together with the financial statements described in Section 6.2(b), pro forma financial statements of Borrower for such period prepared on a Consolidated basis as if such assets had been acquired by Borrower or such subsidiary on the first day of such Four-Quarter Period.

(j) Concurrently with the reports referred to in Section 6.2(d), Borrower will deliver a report describing material gas imbalances and curtailments of production for the Collateral.

Section 6.3. Other Information and Inspections. Each Restricted Person will furnish to each Lender any information which Administrative Agent may from time to time reasonably request concerning any provision of the Loan Documents, any Collateral, or any matter in connection with Restricted Persons' businesses, properties, prospects, financial condition and operations. Each Restricted Person will permit representatives appointed by Administrative Agent (including independent accountants, auditors, Administrative Agents, attorneys, appraisers and any other Persons) to visit and inspect during normal business hours any of such Restricted Person's property, including its books of account, other books and records, and any facilities or other business assets, and to make extra copies therefrom and photocopies and photographs thereof, and to write down and record any information such representatives obtain, and each Restricted Person shall permit Administrative Agent or its representatives to investigate and verify the accuracy of the information furnished to Administrative Agent or any Lender in connection with the Loan Documents and to discuss all such matters with its officers, employees and representatives.

Section 6.4. Notice of Material Events and Change of Address. Borrower will promptly notify each Lender in writing, stating that such notice is being given pursuant to this Agreement, of:

(a) occurrence of any Material Adverse Change,

(b) the occurrence of any Default,

(c) the acceleration of the maturity of any Indebtedness owed by any Restricted Person or of any default by any Restricted Person under any indenture, mortgage, agreement, contract or other instrument to which any of them is a party or by which any of them or any of their properties is bound, if such acceleration or default could cause a Material Adverse Change,

(d) the occurrence of any Termination Event,

(e) any claim of $10,000,000 or more, any notice of potential liability under any Environmental Laws which might exceed such amount, or any other material adverse claim asserted against any Restricted Person or with respect to any Restricted Person's properties, and

(f) the filing of any suit or proceeding against any Restricted Person in which an adverse decision could reasonably be expected to cause a Material Adverse Change.

Upon the occurrence of any of the foregoing Restricted Persons will take all necessary or appropriate steps to remedy promptly any such Material Adverse Change, Default, acceleration, default or Termination Event, to protect against any such adverse claim, to defend any such suit or proceeding, and to resolve all controversies on account of any of the foregoing. Borrower will also notify Administrative Agent and Administrative Agent's counsel in writing at least twenty Business Days prior to the date that any Restricted Person changes its name or the location of its chief executive office or principal place of business or the place where it keeps its books and records, furnishing with such notice any necessary financing statement amendments or requesting Administrative Agent and its counsel to prepare the same.

Section 6.5. Maintenance of Properties. Each Restricted Person will maintain, preserve, protect, and keep all Collateral and all other property used or useful in the conduct of its business in good condition and in compliance with all applicable Laws in all material respects, and will from time to time make all repairs, renewals and replacements needed to enable the business and operations carried on in connection therewith to be promptly and advantageously conducted at all times.

Section 6.6. Maintenance of Existence and Qualifications. Each Restricted Person will maintain and preserve its existence and its rights and franchises in full force and effect and will qualify to do business in all states or jurisdictions where required by applicable Law, except where the failure so to qualify will not cause a Material Adverse Change. The foregoing shall not restrict (i) any merger or consolidation permitted by Section 7.4 or (ii) the liquidation or dissolution of any Subsidiary if Borrower determines in good faith that such liquidation or dissolution is in the best interests of Borrower and is not materially disadvantageous to the Lenders.

Section 6.7. Payment of Trade Liabilities, Taxes, etc. Each Restricted Person will (a) timely file all required tax returns; (b) timely pay all taxes, assessments, and other governmental charges or levies imposed upon it or upon its income, profits or property; (c) pay all Liabilities owed by it on ordinary trade terms to vendors, suppliers and other Persons providing goods and services used by it in the ordinary course of its business within a period of time after the invoice date that is customary in the oil and gas industry; (d) pay and discharge when due all other Liabilities now or hereafter owed by it; and (e) maintain appropriate accruals and reserves for all of the foregoing in accordance with GAAP. Each Restricted Person may, however, delay paying or discharging any of the foregoing so long as (i) it is in good faith contesting the validity thereof by appropriate proceedings and has set aside on its books adequate reserves therefor or (ii) the nonpayment or nondischarge could not reasonably be expected to cause a Material Adverse Change.

Section 6.8. Insurance.

(a) Each Restricted Person shall at all times maintain (at its own expense) insurance for its property in accordance with the Insurance Schedule in at least such amounts, with at least such limitations on deductibles, and against such risks, in such form and with such financially sound and reputable insurers as shall be reasonably satisfactory to Administrative Agent from time to time. Each Restricted Person shall at all times maintain insurance against its liability for injury to persons or property in accordance with the Insurance Schedule, which insurance shall be by financially sound and reputable insurers.

(b) All insurance policies shall be modified or endorsed as necessary to (A) name the Administrative Agent as loss payee on policies insuring loss or damage of Collateral and as additional insured on policies insuring against liability for injury to persons or property, and (B) prevent any expiration, or cancellation of the coverage provided by such policies without at least thirty (30) days prior written notice to Administrative Agent by the insurer. Each Restricted Person shall, if so requested by Administrative Agent, deliver to Administrative Agent original or duplicate policies of such insurance and, as often as Administrative Agent may reasonably request, a report of a reputable insurance broker with respect to such insurance. Administrative Agent shall, upon the occurrence and during the continuance of an Event of Default, have the right to collect and Borrower hereby assigns to Administrative Agent for the benefit of Lenders (and hereby agrees to cause each other Restricted Person to assign), any and all moneys that may become payable under any such policies of insurance by reason of damage, loss or destruction of any of the Collateral or any part thereof and to apply such moneys to the payment of the Obligations as herein provided. Reimbursement under any liability insurance maintained by Restricted Persons pursuant to this Section 6.8 may be paid directly to the Person who has incurred the liability covered by such insurance.

Section 6.9. Performance on Borrower's Behalf. If any Restricted Person fails to pay any taxes, insurance premiums, expenses, attorneys' fees or other amounts it is required to pay under any Loan Document, Administrative Agent may pay the same. Borrower shall immediately reimburse Administrative Agent for any such payments and each amount paid by Administrative Agent shall constitute an Obligation owed hereunder which is due and payable on the date such amount is paid by Administrative Agent.

Section 6.10. Interest. Borrower hereby promises to each Lender Party to pay interest at the Default Rate applicable to Base Rate Loans on all Obligations (including Obligations to pay fees or to reimburse or indemnify any Lender) which Borrower has in this Agreement promised to pay to such Lender Party and which are not paid when due. Such interest shall accrue from the date such Obligations become due until they are paid.

Section 6.11. Compliance with Agreements and Law. Each Restricted Person will perform all material obligations it is required to perform under the terms of each indenture, mortgage, deed of trust, security agreement, lease, franchise, agreement, contract or other instrument or obligation to which it is a party or by which it or any of its properties is bound, except when failure to do so could not reasonably be expected to cause a Material Adverse Change. Each Restricted Person will conduct its business and affairs in compliance with all Laws applicable thereto and will maintain in good standing all licenses that may be necessary or appropriate to carry on its business.

Section 6.12. Environmental Matters; Environmental Reviews

(a) Except in each case where failure to do so could not reasonably be expected to cause a Material Adverse Change, each Restricted Person will comply in all material respects with all Environmental Laws now or hereafter applicable to such Restricted Person, as well as all contractual obligations and agreements with respect to environmental remediation or other environmental matters, and shall obtain, at or prior to the time required by applicable Environmental Laws, all environmental, health and safety permits, licenses and other authorizations necessary for its operations and will maintain such authorizations in full force and effect. Except in each case where failure to do so could not reasonably be expected to cause a Material Adverse Change, no Restricted Person will do anything or permit anything to be done which will subject any of its properties to any remedial obligations under, or result in noncompliance with applicable permits and licenses issued under, any applicable Environmental Laws, assuming disclosure to the applicable governmental authorities of all relevant facts, conditions and circumstances. Upon Administrative Agent's reasonable request, at any time and from time to time, Borrower will provide at its own expense an environmental inspection of any of the Restricted Persons' material real properties and audit of their environmental compliance procedures and practices, in each case from an engineering or consulting firm reasonably acceptable to Administrative Agent. Administrative Agent and Lenders will use their best efforts to protect any attorney client privilege that exists with respect to reports or audits prepared by such engineers or consultants.

(b) Borrower will promptly furnish to Administrative Agent all written notices of violation, orders, claims, citations, complaints, penalty assessments, suits or other proceedings received by any Restricted Person, or of which Borrower otherwise has notice, pending or threatened against any Restricted Person by any Governmental Authority with respect to any alleged violation of or non-compliance with any Environmental Laws or relating to potential responsibility with respect to any investigation or clean-up of Hazardous Material at any location, in each case which involves a claim or liability in excess of $10,000,000.

Section 6.13. Evidence of Compliance. Each Restricted Person will furnish to each Lender at such Restricted Person's or Borrower's expense all evidence which Administrative Agent from time to time reasonably requests in writing as to the accuracy and validity of or compliance with all representations, warranties and covenants made by any Restricted Person in the Loan Documents, the satisfaction of all conditions contained therein, and all other matters pertaining thereto.

Section 6.14. Bank Accounts; Offset. To secure the repayment of the Obligations Borrower hereby grants to each Lender and LC Issuer a security interest, a lien, and a right of offset, each of which shall be in addition to all other interests, liens, and rights of any Lender at common Law, under the Loan Documents, or otherwise, and each of which shall be upon and against (a) any and all moneys, securities or other property (and the proceeds therefrom) of Borrower now or hereafter held or received by or in transit to any Lender or LC Issuer from or for the account of Borrower, whether for safekeeping, custody, pledge, transmission, collection or otherwise, (b) any and all deposits (general or special, time or demand, provisional or final) of Borrower with any Lender or LC Issuer, and (c) any other credits and claims of Borrower at any time existing against any Lender or LC Issuer, including claims under certificates of deposit. At any time and from time to time after the occurrence of any Default, each Lender and LC Issuer is hereby authorized to foreclose upon, or to offset against the Obligations then due and payable (in either case without notice to Borrower), any and all items hereinabove referred to. The remedies of foreclosure and offset are separate and cumulative, and either may be exercised independently of the other without regard to procedures or restrictions applicable to the other.

Section 6.15. Guaranties of Borrower's Subsidiaries. Each Domestic Subsidiary of Borrower that is a Material Subsidiary now existing or created, acquired or coming into existence after the date hereof shall, promptly upon request by Administrative Agent, execute and deliver to Administrative Agent an absolute and unconditional guaranty of the timely repayment of the Obligations and the due and punctual performance of the obligations of Borrower hereunder, which guaranty shall be satisfactory to Administrative Agent in form and substance. Each such Domestic Subsidiary of Borrower that is a Material Subsidiary existing on the date hereof shall duly execute and deliver such a guaranty prior to the making of any Loan hereunder. Borrower will cause each such Domestic Subsidiary to deliver to Administrative Agent, simultaneously with its delivery of such a guaranty, written evidence satisfactory to Administrative Agent and its counsel that such Domestic Subsidiary has taken all company action necessary to duly approve and authorize its execution, delivery and performance of such guaranty and any other documents which it is required to execute.

Section 6.16. Pledge of Stock of Foreign Subsidiaries. Borrower shall execute and deliver to Administrative Agent (and shall cause each Restricted Person to execute and deliver to Administrative Agent) a pledge agreement covering sixty-six percent (66%) of its Equity Interest in each Foreign Subsidiary of Borrower that is a Material Subsidiary now existing or created, acquired or coming into existence after the date hereof and securing the Obligations, in form and substance acceptable to Administrative Agent. Borrower shall also deliver to Administrative Agent all certificates (or other evidence acceptable to Administrative Agent) evidencing Borrower's Equity Interest in such Foreign Subsidiary which shall be duly endorsed or accompanied by stock powers executed in blank (as applicable) as Administrative Agent shall deem necessary or appropriate to grant, evidence and perfect a first priority Lien in Borrower's Equity Interest in such Foreign Subsidiary.

Section 6.17. Collateral.

(a) At all times the Secured Obligations shall be secured by first and prior Liens (subject only to Permitted Liens) covering and encumbering (i) not less than the Minimum Collateral Amount, and all cogeneration facilities and transportation and gathering systems owned by any Restricted Person used in connection with the production and development of the Mineral Interests included therein, and (ii) all of the issued and outstanding Equity Interest of each Subsidiary of Borrower owned by Restricted Person subject to the limitation with respect to Foreign Subsidiaries set forth in Section 6.16, and (iii) all other personal property of the Restricted Persons that can be perfected by the filing of a financing statement under the UCC (excluding filings in the real property records), except for the Excluded Property. On the Closing Date, Borrower and its Subsidiaries shall deliver to Administrative Agent for the ratable benefit of each Lender and SG, Security Documents covering the foregoing, each in form and substance acceptable to Administrative Agent.

(b) To the extent necessary to comply with the first sentence of Section 6.17(a), (i) within 30 days after each Determination Date, Borrower and its Subsidiaries shall execute and deliver to Administrative Agent, for the ratable benefit of each Lender and SG, deeds of trust, mortgages, chattel mortgages, security agreements and financing statements in form and substance acceptable to Administrative Agent and duly executed by Borrower and any such Subsidiary (as applicable) together with such other assignments, conveyances, amendments, agreements and other writings (each duly authorized and executed) as Administrative Agent shall deem necessary or appropriate to grant, evidence and perfect the Liens required by this Section 6.17.

(c) Borrower also agrees to deliver favorable title information, title opinions or updates of title opinions in form, substance and authorship reasonable satisfactory to Administrative Agent with respect to the properties described in subsection (b) immediately above and confirming that such Restricted Person has good and defensible title to such properties and interests, free and clear of all Liens other than Permitted Liens.

Section 6.18. Agreement to Deliver Security Documents. Borrower agrees to deliver and to cause each other Restricted Person to deliver to further secure the Secured Obligations, whenever requested by Administrative Agent in its reasonable discretion, deeds of trust, mortgages, chattel mortgages, security agreements, financing statements and other Security Documents in form and substance satisfactory to Administrative Agent for the purpose of (i) granting, confirming, and perfecting first and prior liens or security interests in any real or personal property which is at such time Collateral or which was required or intended to be Collateral pursuant to this Agreement or any Security Document previously executed and not then released by Administrative Agent, and (ii) maintaining compliance with all applicable Laws, including those of any applicable Indian tribe, the Bureau of Indian Affairs, and the U.S. Bureau of Land Management. Each Restricted Person hereby authorizes Administrative Agent to file one or more financing or continuation statements, and amendments thereto, relative to all or any part of the collateral describing the Collateral as “all assets” without the signature of any Restricted Person. Furthermore, Borrower agrees to deliver and to cause each other Restricted Person to deliver, whenever requested by Administrative Agent upon the occurrence and during the continuance of an Event of Default, transfer orders or letters in lieu thereof with respect to the production and proceeds of production from the Collateral, in form and substance satisfactory to Administrative Agent.

Section 6.19. Production Proceeds. Notwithstanding that, by the terms of the various Security Documents, Restricted Persons are and will be assigning to Administrative Agent and Lenders all of the "Production Proceeds" (as defined therein) accruing to the property covered thereby, so long as no Event of Default has occurred Restricted Persons may continue to receive from the purchasers of production all such Production Proceeds, subject, however, to the Liens created under the Security Documents, which Liens are hereby affirmed and ratified. Upon the occurrence of an Event of Default, Administrative Agent and Lenders may exercise all rights and remedies granted under the Security Documents subject to the terms thereof, including the right to obtain possession of all Production Proceeds then held by Restricted Persons or to receive directly from the purchasers of production all other Production Proceeds. In no case shall any failure, whether intentioned or inadvertent, by Administrative Agent or Lenders to collect directly any such Production Proceeds constitute in any way a waiver, remission or release of any of their rights under the Security Documents, nor shall any release of any Production Proceeds by Administrative Agent or Lenders to Restricted Persons constitute a waiver, remission, or release of any other Production Proceeds or of any rights of Administrative Agent or Lenders to collect other Production Proceeds thereafter.

Section 6.20. Mortgaged Property Covenants. Each Restricted Person will carry out its sales of production, will operate the Mineral Interests, and will otherwise deal with the Mineral Interests and the production therefrom, in such a way that the representations and warranties in Section 5.18 through 5.20 remain true and correct at, and as of, all times that this Agreement is in effect (and not just at, and as of, the times such representations and warranties are made).

Section 6.21. Post-Closing Obligations. Borrower shall deliver to Administrative Agent within ninety (90) days after the Closing Date, the title reports and information described in Schedule 4 hereto.

ARTICLE VII - - Negative Covenants of Borrower

To conform with the terms and conditions under which each Lender is willing to have credit outstanding to Borrower, and to induce each Lender to enter into this Agreement and make the Loans, Borrower warrants, covenants and agrees that until the full and final payment of the Obligations and the termination of this Agreement, unless Majority Lenders have previously agreed otherwise:

Section 7.1. Indebtedness. No Restricted Person will in any manner owe or be liable for Indebtedness except:

(a) the Obligations;

(b) Liabilities for taxes and governmental assessments in the ordinary course of business that are not yet due;

(c) Indebtedness arising under Hedging Contracts permitted under Section 7.3;

(d) Liability for that certain royalty associated with production from Borrower's Formax properties;

(e) Permitted Subordinated Debt;

(f) SG Obligations;

(g) intercompany Indebtedness arising from loans made by (i) Borrower to its wholly-owned Subsidiaries that are Guarantors, or (ii) any Subsidiary of Borrower to Borrower; provided, however that upon the request of Administrative Agent at any time, any such Indebtedness shall be evidenced by promissory notes having terms reasonably satisfactory to Administrative Agent, and the sole originally executed counterparts of which shall be pledged and delivered to Administrative Agent, for the benefit of Administrative Agent and Lenders, as security for the Obligations;

(h) Indebtedness arising under the Liquidity Bridge Facility; and

(i) miscellaneous items of Indebtedness not described in subsections (a) through (h) the outstanding amount of which does not in the aggregate (taking into account all such Indebtedness of all Restricted Persons) exceed at any one time an amount equal to five percent (5%) of the Net Worth of Borrower at such time.

Section 7.2. Limitation on Liens. Except for Permitted Liens, no Restricted Person will create, assume or permit to exist any Lien upon any of the properties or assets which it now owns or hereafter acquires.

Section 7.3. Hedging Contracts. No Restricted Person will be a party to or in any manner be liable on any Hedging Contract except:

(a) Oil. Contracts entered into with the purpose and effect of fixing prices on oil expected to be produced, sold or transported by Restricted Persons from its oil and gas properties, provided that at all times: (i) no such contract fixes a price for a term of more than 60 months except (x) contracts that are directly hedged to offset a longer term fixed rate contract and (y) contracts covering oil and gas properties in the Midway-Sunset Field which have a term not to exceed 84 months; (ii) the aggregate monthly production covered by all such contracts (determined, in the case of contracts that are not settled on a monthly basis, by a monthly proration acceptable to Administrative Agent) for any single month does not in the aggregate exceed 90% of Restricted Persons' aggregate Projected Oil Production anticipated to be sold in the ordinary course of Restricted Persons' businesses for such month, and the aggregate monthly production covered by all such contracts having a term of more than 60 months but not more than 84 months shall not in the aggregate exceed 60% of the Restricted Persons' aggregate Projected Oil Production from the Midway-Sunset Field anticipated to be sold in the ordinary course of such Persons' business for such month, (iii) except for letters of credit and the Collateral under the Security Documents with respect to Lender Hedging Obligations, no such contract requires any Restricted Person to put up money, assets or other security against the event of its nonperformance prior to actual default by such Restricted Person in performing its obligations thereunder, and (iv) each such contract is with a counterparty or has a guarantor of the obligation of the counterparty who (unless such counterparty is a Lender or one of its Affiliates) at the time the contract is made has long-term obligations rated A1 by Moody's or A+ by S & P, or better, respectively, by either Rating Agency.

(b) Gas. Contracts entered into with the purpose and effect of fixing prices on gas expected to be produced, sold or transported by Restricted Persons from its oil and gas properties or gas expected to be purchased by Restricted Persons for use in oil production by such Restricted Persons, provided that at all times: (i) no such contract fixes a price for a term of more than 60 months except contracts that are directly hedged to offset a longer term fixed rate contract; (ii) the aggregate monthly production or purchase volume, respectively, covered by all such contracts (determined, in the case of contracts that are not settled on a monthly basis, by a monthly proration acceptable to Administrative Agent) for any single month does not exceed 90% of Restricted Persons' aggregate Projected Gas Production anticipated to be sold in the case of contracts on gas sales volumes, or 90% of Restricted Persons' aggregate volume of projected gas purchases anticipated in the ordinary course of Restricted Persons' businesses for such month, (iii) except for letters of credit and the Collateral under the Security Documents with respect to Lender Hedging Obligations, no such contract requires any Restricted Person to put up money, assets or other security against the event of its nonperformance prior to actual default by such Restricted Person in performing its obligations thereunder, and (iv) each such contract is with a counterparty or has a guarantor of the obligation of the counterparty who (unless such counterparty is a Lender or one of its Affiliates) at the time the contract is made has long-term obligations rated A1 by Moody's or A+ by S & P, or better, respectively, by either Rating Agency.

(c) NGL. Contracts entered into with the purpose and effect of fixing prices on natural gas liquids expected to be produced, sold or transported by Restricted Persons from its oil and gas properties, provided that at all times: (i) no such contract fixes a price for a term of more than 60 months except contracts that are directly hedged to offset a longer term fixed rate contract; (ii) the aggregate monthly production covered by all such contracts (determined, in the case of contracts that are not settled on a monthly basis, by a monthly proration acceptable to Administrative Agent) for any single month does not in the aggregate exceed 90% of Restricted Persons' aggregate Projected NGL Production anticipated to be sold in the ordinary course of Restricted Persons' businesses for such month, (iii) except for letters of credit and the Collateral under the Security Documents with respect to Lender Hedging Obligations, no such contract requires any Restricted Person to put up money, assets or other security against the event of its nonperformance prior to actual default by such Restricted Person in performing its obligations thereunder, and (iv) each such contract is with a counterparty or has a guarantor of the obligation of the counterparty who (unless such counterparty is a Lender or one of its Affiliates) at the time the contract is made has long-term obligations rated A1 by Moody's or A+ by S & P, or better, respectively, by either Rating Agency.

(d) Interest Rates. Contracts entered into by a Restricted Person with the purpose and effect of fixing or capping interest rates on a principal amount of indebtedness of such Restricted Person that is accruing interest at a variable rate, provided that (i) the aggregate notional amount of such contracts never exceeds eighty percent (80%) of the anticipated outstanding principal balance of the indebtedness to be hedged by such contracts or an average of such principal balances calculated using a generally accepted method of matching interest hedging contracts to declining principal balances, (ii) the floating rate index of each such contract generally matches the index used to determine the floating rates of interest on the corresponding indebtedness to be hedged by such contract, (iii) except for letters of credit and the Collateral under the Security Documents with respect to Lender Hedging Obligations, no such contract requires any Restricted Person to put up money, assets or other security against the event of its nonperformance prior to actual default by such Restricted Person in performing its obligations thereunder, and (iv) each such contract is with a counterparty or has a guarantor of the obligation of the counterparty who (unless such counterparty is a Lender or one of its Affiliates) at the time the contract is made has long-term obligations rated A1 by Moody's or A+ by S & P, or better.

(e) Electricity. Contracts entered into with the purpose and effect of fixing prices on electricity expected to be produced or sold by Restricted Persons, provided that at all times: (i) no such contract fixes a price for a term of more than sixty (60) months, (ii) the aggregate monthly production covered by all such contracts (determined, in the case of contracts that are not settled on a monthly basis, by a monthly proration acceptable to Administrative Agent) for any single month does not in the aggregate exceed ninety percent (90%) of Restricted Persons' aggregate Projected Electricity Production anticipated to be sold in the ordinary course of Restricted Persons' businesses for such month, (iii) except for letters of credit and Collateral under the Security Documents with respect to Lender Hedging Obligations, no such contract requires any Restricted Person to put up money, assets or other security against the event of its nonperformance prior to actual default by such Restricted Person in performing its obligations thereunder, and (iv) each such contract is with a counterparty or has a guarantor of the obligation of the counterparty who (unless such counterparty is a Lender or one of its Affiliates) at the time the contract is made has long-term obligations rated A1 by Moody's or A+ by S&P, or better, respectively, by either Rating Agency. As used in this subsection, the term "Projected Electricity Production" means the projected production of electricity (measured by volume unit or megawatt per hour equivalent, not sales price) for the term of the contracts or a particular month, as applicable, from generating facilities owned by any Restricted Person which are located in the United States and projected by Restricted Persons.

(f) Put Options; Cap Transactions. Notwithstanding the foregoing provisions of this Section 7.3, there shall be no limitations on the purchase by the Restricted Persons of put options or floor transactions with respect to oil, gas, natural gas liquids or electricity produced by, call options or cap transactions with respect to gas expected to be purchased by, or cap transactions with respect to principal balances of indebtedness of, the Restricted Person; provided, however, that any such put or call options or cap or floor transactions shall be solely for hedging, and not for speculative purposes, and the Restricted Person shall have no obligations thereunder other than payment of the applicable premium for any such put or call options or cap or floor transactions.

Section 7.4. Limitation on Mergers, Issuances of Securities. No Restricted Person will merge or consolidate with or into any other Person; provided that so long as no Default has occurred and is continuing or will occur as a result thereof (a) Borrower may merge or consolidate with another Person so long as Borrower is the surviving business entity, (b) any wholly-owned Subsidiary of Borrower may be merged into or consolidated with another Person so long as Borrower or a wholly-owned Subsidiary of Borrower is the surviving business entity, and (c) any Subsidiary of Borrower may merge or consolidate with another Person so long as Borrower or a Subsidiary of Borrower is the surviving business entity. Borrower will not issue any securities other than shares of its common stock and any options or warrants giving the holders thereof only the right to acquire such shares. No Subsidiary of Borrower will issue any additional shares of its capital stock or other securities or any options, warrants or other rights to acquire such additional shares or other securities except to Borrower and only to the extent not otherwise forbidden under the terms hereof.

Section 7.5. Limitation on Sales of Property. No Restricted Person will sell, transfer, lease, exchange, alienate or dispose of any of its material assets or properties or any material interest therein or portions thereof, or discount, sell, pledge or assign any notes payable to it, accounts receivable or future income, except, to the extent not otherwise forbidden under the Security Documents:

(a) equipment which is worthless or obsolete or which is replaced by equipment of equal suitability and value;

(b) inventory (including oil and gas sold as produced and seismic data) which is sold in the ordinary course of business on ordinary trade terms;

(c) capital stock of any of Borrower's Subsidiaries which is transferred to Borrower or a wholly owned Subsidiary of Borrower;

(d) interests in oil and gas properties or portions thereof, to which no Proved Reserves of oil, gas or other liquid or gaseous hydrocarbons are properly attributed;

(e) leases of drilling rigs in the ordinary course of business and sales of drilling rigs that are under options for sale on the Closing Date which are described in Schedule 4;

(f) exchanges of (i) Restricted Persons' oil and gas leasehold interests in non-producing zones, to which no Proved Reserves of oil, gas or other liquid or gaseous hydrocarbons are properly attributed, whether or not such interests are subject to Liens in favor of Administrative Agent, for (ii) other oil and gas leasehold interests in producing or non-producing zones owned by other Persons;

(g) exchanges and transfers of Mineral Interests located in the DJ Basin in Colorado owned by Restricted Persons (in this Section called the "Berry DJ Properties") for Mineral Interests located therein by Rosewood Resources (in this Section called "Rosewood DJ Properties"); provided that the aggregate amount of Rosewood DJ Properties received in exchange for Berry DJ Properties shall have a value equivalent to the Berry DJ Properties so exchanged;

(h) transfers among Borrower and Guarantors;

(i) sales and dispositions of other property for a purchase price paid in cash or Mineral Interests in an amount at least equal to the fair market value thereof; provided that if the aggregate sales price for all such property sold during any period of twelve (12) consecutive calendar months exceeds five percent (5%) of the Present Value of the Borrowing Base Properties, the Borrowing Base shall be reduced effective immediately upon such sale or disposition by an amount equal to the value, if any, assigned to such property in the most recently delivered Engineering Report.

Section 7.6. Limitation on Dividends, Stock Repurchases and Subordinated Debt.

(a) No Restricted Person will declare or make any Dividends or Stock Repurchases other than (i) Dividends payable to Borrower or Subsidiaries of Borrower, (ii) Stock Repurchases by Borrower; provided that the aggregate amount paid by Borrower in connection therewith does not exceed $35,000,000 during any Four-Quarter Period, (iii) so long as no Default has occurred and is continuing or will occur as a result thereof, Dividends payable to Borrower's shareholders, to the extent that the aggregate value of all such Dividends made during any Four-Quarter Period does not exceed the greater of $20,000,000 or seventy-five percent (75%) of Net Income for such Four-Quarter Period, and (iv) Dividends and Stock Repurchases made with the net cash proceeds received from a substantially concurrent issue of new shares of its common stock or other common Equity Interests.

(b) No Restricted Person shall make any payment of principal, interest or fees on Permitted Subordinated Debt, except to the extent expressly permitted by the applicable subordination agreement with Administrative Agent.

Section 7.7. Limitation on Acquisitions, Investments; and New Businesses. Except as expressly permitted by this section, no Restricted Person will make any acquisitions of, or capital contributions to, or other Investments in any Person or property; provided that the Restricted Persons (i) may make Permitted Investments and Core Acquisitions and Investments without limitation, and (ii) may make Non-Core Acquisitions and Investments so long as the aggregate amount expended on Non-Core Acquisitions and Investments during the period from the date hereof until the Maturity Date never exceeds 10% of Borrower's Net Worth at any time during such period. No Restricted Person will engage directly or indirectly in any business or conduct any operations except in connection with or incidental to its present businesses and operations, and (iii) transactions permitted by Section 7.8.

Section 7.8. Limitation on Credit Extensions. Except for Permitted Investments, no Restricted Person will extend credit, make advances or make loans other than normal and prudent extensions of credit to customers buying goods and services in the ordinary course of business, which extensions shall not be for longer periods than those extended by similar businesses operated in a normal and prudent manner.

Section 7.9. Transactions with Affiliates. Neither Borrower nor any of its Subsidiaries nor any Guarantor will engage in any material transaction with any of its Affiliates on terms which are less favorable to it than those which would have been obtainable at the time in arm's-length dealing with Persons other than such Affiliates, provided that such restriction shall not apply to transactions among Borrower and its wholly owned Subsidiaries.

Section 7.10. Prohibited Contracts.

(a) Except as expressly provided for in the Loan Documents, no Restricted Person will, directly or indirectly, enter into, create, or otherwise allow to exist any contract or other consensual restriction on (i) the ability of any Subsidiary of Borrower to (1) pay dividends or make other distributions to Borrower, (2) to redeem equity interests held in it by Borrower, (3) to repay loans and other indebtedness owing by it to Borrower, or (4) to transfer any of its assets to Borrower or (ii) on the ability of any Restricted Person to grant to Agent and Lenders Liens on its assets , except:

(A) any customary encumbrance or restriction with respect to a Subsidiary imposed pursuant to a merger agreement or an agreement entered into for the sale or disposition of all or substantially all the capital stock or assets of such Subsidiary pending the closing of such sale or disposition; and

(B) with respect to the above clauses (i)(4) and (ii) only,

(i) any such encumbrance or restriction consisting of customary nonassignment provisions (including provisions forbidding subletting or sublicensing) in agreements, leases governing leasehold interests and licenses to the extent such provisions restrict the transfer of the agreement, lease or license or the property leased, or licensed thereunder;

(ii) customary restrictions contained in asset sale agreements limiting the transfer of such assets pending the closing of such sale;

(iii) restrictions in the instruments creating a Permitted Lien described in clause (d) or (h) of the definition of Permitted Lien, limiting Liens on the property subject to such Permitted Lien;

(iv) restrictions on Equity Interests constituting minority Investments permitted by Section 7.7;

(v) existing restrictions with respect to a Person acquired by Borrower or any of its Subsidiaries (except to the extent such restrictions were put in place in connection with or in contemplation of such acquisition), which restrictions are not applicable to any Person, or the properties or assets of any Person other than the Person, or the property or assets of the Person, so acquired; and

(vi) customary supermajority voting provisions and other customary provisions with respect to the disposition or distribution of assets, each contained in corporate charters, bylaws, stockholders' agreements, limited liability company agreements, partnership agreements, joint venture agreements and other similar agreements entered into in the ordinary course of business of Borrower and its Subsidiaries.

(b) Except as permitted by Section 5.19, no Restricted Person will enter into any "take-or-pay" contract or other contract or arrangement for the purchase of goods or services which obligates it to pay for such goods or services regardless of whether they are delivered or furnished to it, excluding firm transportation contracts entered into in the ordinary course of business. No Restricted Person will amend or permit any amendment to any contract or lease which releases, qualifies, limits, makes contingent or otherwise detrimentally affects the rights and benefits of Administrative Agent or any Lender under or acquired pursuant to any Security Documents. No ERISA Affiliate will incur any obligation to contribute to any "multiemployer plan" as defined in Section 4001 of ERISA.

Section 7.11. Current Ratio. Beginning with the Fiscal Quarter ending September 30, 2008, the ratio of Borrower's Current Assets to Borrower's Current Liabilities will never be less than 1.0 to 1.0.

Section 7.12. EBITDAX to Total Funded Debt Ratio. Beginning with the Fiscal Quarter ending September 30, 2008, the ratio of (a) Total Funded Debt to (b) Adjusted EBITDAX for the Four-Quarter Period then ended, will not be greater than 3.5 to 1.0 at the end of any Fiscal Quarter.

ARTICLE VIII - - Events of Default and Remedies

Section 8.1. Events of Default. Each of the following events constitutes an Event of Default under this Agreement:

(a) Any Restricted Person fails to pay any principal component of any Obligation (including but not limited to any Borrowing Base Deficiency) when due and payable, whether at a date for the payment of a fixed installment or as a contingent or other payment becomes due and payable or as a result of acceleration or otherwise;

(b) Any Restricted Person fails to pay any Obligation (other than the Obligations in subsection (a) above) when due and payable, whether at a date for the payment of a fixed installment or as a contingent or other payment becomes due and payable or as a result of acceleration or otherwise, within three Business Days after the same becomes due;

(c) Any "default" or "event of default" occurs under any Loan Document which defines either such term, and the same is not remedied within the applicable period of grace (if any) provided in such Loan Document;

(d) Any Restricted Person fails to duly observe, perform or comply with any covenant, agreement or provision of Section 6.4 or Article VII;

(e) Any Restricted Person fails (other than as referred to in subsections (a), (b), (c) or (d) above) to duly observe, perform or comply with any covenant, agreement, condition or provision of any Loan Document, and such failure remains unremedied for a period of thirty (30) days after notice of such failure is given by Administrative Agent to Borrower;

(f) Any representation or warranty previously, presently or hereafter made in writing by or on behalf of any Restricted Person in connection with any Loan Document shall prove to have been false or incorrect in any material respect on any date on or as of which made, or any Loan Document at any time ceases to be valid, binding and enforceable as warranted in Section 5.5 for any reason other than its release or subordination by Administrative Agent;

(g) Any Restricted Person (i) fails to pay any portion, when such portion is due, (A) of any of its Indebtedness owing under the SG Money Market Facility or under the Liquidity Bridge Facility, or (B) any of its other Indebtedness in excess of $25,000,000, or (ii) breaches or defaults in the performance of any agreement or instrument by which the SG Money Market Facility, the Liquidity Bridge Facility or any such other Indebtedness in excess of $25,000,000 is issued, evidenced, governed, or secured, and any such failure, breach or default continues beyond any applicable period of grace provided therefor;

(h) Either (i) any "accumulated funding deficiency" (as defined in Section 412(a) of the Internal Revenue Code) in excess of $5,000,000 exists with respect to any ERISA Plan, whether or not waived by the Secretary of the Treasury or his delegate, or (ii) any Termination Event occurs with respect to any ERISA Plan and the then current value of such ERISA Plan's benefit liabilities exceeds the then current value of such ERISA Plan's assets available for the payment of such benefit liabilities by more than $5,000,000 (or in the case of a Termination Event involving the withdrawal of a substantial employer, the withdrawing employer's proportionate share of such excess exceeds such amount);

(i) Any Change of Control occurs; and

(j) Any Restricted Person:

(i) suffers the entry against it of a judgment, decree or order for relief by a Governmental Authority of competent jurisdiction in an involuntary proceeding commenced under any applicable bankruptcy, insolvency or other similar Law of any jurisdiction now or hereafter in effect, including the federal Bankruptcy Code, as from time to time amended, or has any such proceeding commenced against it which remains undismissed for a period of sixty days; or

(ii) commences a voluntary case under any applicable bankruptcy, insolvency or similar Law now or hereafter in effect, including the federal Bankruptcy Code, as from time to time amended; or applies for or consents to the entry of an order for relief in an involuntary case under any such Law; or makes a general assignment for the benefit of creditors; or fails generally to pay (or admits in writing its inability to pay) its debts as such debts become due; or takes corporate or other action to authorize any of the foregoing; or

(iii) suffers the appointment of or taking possession by a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official of all or a substantial part of its assets in a proceeding brought against or initiated by it, and such appointment or taking possession is neither made ineffective nor discharged within sixty days after the making thereof, or such appointment or taking possession is at any time consented to, requested by, or acquiesced to by it; or

(iv) suffers the entry against it of a final judgment for the payment of money in excess of $5,000,000 (not covered by insurance satisfactory to Administrative Agent in its discretion), unless the same is discharged within sixty days after the date of entry thereof or an appeal or appropriate proceeding for review thereof is taken within such period and a stay of execution pending such appeal is obtained; or

(v) suffers a writ or warrant of attachment or any similar process to be issued by any Governmental Authority against all or any substantial part of its assets, and such writ or warrant of attachment or any similar process is not stayed or released within sixty days after the entry or levy thereof or after any stay is vacated or set aside.

Upon the occurrence of an Event of Default described in subsection (j)(i), (j)(ii) or (j)(iii) of this section with respect to Borrower, all of the Obligations shall thereupon be immediately due and payable, without demand, presentment, notice of demand or of dishonor and nonpayment, protest, notice of protest, notice of intention to accelerate, declaration or notice of acceleration, or any other notice or declaration of any kind, all of which are hereby expressly waived by Borrower and each Restricted Person who at any time ratifies or approves this Agreement. Upon any such acceleration, any obligation of any Lender to make any further Loans and any obligation of LC Issuer to issue Letters of Credit hereunder to make any further Loans shall be permanently terminated. During the continuance of any other Event of Default, Administrative Agent at any time and from time to time may (and upon written instructions from Majority Lenders, Administrative Agent shall), without notice to Borrower or any other Restricted Person, do either or both of the following: (1) terminate any obligation of Lenders to make Loans hereunder, and any obligation of LC Issuer to issue Letters of Credit hereunder, and (2) declare any or all of the Obligations immediately due and payable, and all such Obligations shall thereupon be immediately due and payable, without demand, presentment, notice of demand or of dishonor and nonpayment, protest, notice of protest, notice of intention to accelerate, declaration or notice of acceleration, or any other notice or declaration of any kind, all of which are hereby expressly waived by Borrower and each Restricted Person who at any time ratifies or approves this Agreement.

Section 8.2. Remedies. If any Default shall occur and be continuing, each Lender Party may protect and enforce its rights under the Loan Documents by any appropriate proceedings, including proceedings for specific performance of any covenant or agreement contained in any Loan Document, and each Lender Party may enforce the payment of any Obligations due it or enforce any other legal or equitable right which it may have. All rights, remedies and powers conferred upon Lender Parties under the Loan Documents shall be deemed cumulative and not exclusive of any other rights, remedies or powers available under the Loan Documents or at Law or in equity.

Section 8.3. Application of Proceeds After Acceleration. After the exercise of remedies provided for in Section 8.2 (or after the Loans have automatically become immediately due and payable and the LC Obligations have automatically been required to be cash collateralized as set forth in Section 2.13), any amounts received on account of the Secured Obligations shall be applied by Administrative Agent in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to Administrative Agent (including fees and time charges for attorneys who may be employees of Agent) and amounts payable under Article III) payable to Administrative Agent in its capacity as such;

Second, to payment of that portion of the Secured Obligations constituting fees, indemnities and other amounts (other than principal, interest and Letter of Credit Fees) payable to Lenders, the LC Issuer and SG (including fees, charges and disbursements of counsel to the respective Lenders, the LC Issuer and SG and amounts payable under Article III), ratably among them in proportion to the respective amounts described in this clause Second payable to them and the Lender;

Third, to payment of that portion of the Secured Obligations constituting accrued and unpaid Letter of Credit Fees and interest on the Loans, the Lender Hedging Obligations and the SG Obligations, ratably among Lenders, the LC Issuer, the Lender Counterparties and SG, in proportion to the respective amounts described in this clause Third payable to them;

Fourth, to payment of that portion of the Secured Obligations constituting unpaid principal of the Loans, obligations to deliver cash collateral for LC Obligations pursuant to Section 2.13, settlements under Hedging Contracts and the unpaid principal of the SG Obligations, ratably among Lenders, the LC Issuer, the Lender Counterparties and SG in proportion to the respective amounts described in this clause Fourth held by them; and

Last, the balance, if any, after all of the Secured Obligations have been indefeasibly paid in full, to Borrower or as otherwise required by Law.

Subject to Section 2.12, amounts used to cash collateralize the aggregate undrawn amount of Letters of Credit pursuant to clause Fourth above shall be applied to satisfy drawings under such Letters of Credit as they occur. If any amount remains on deposit as cash collateral after all Letters of Credit have either been fully drawn or expired, such remaining amount shall be applied to the other Secured Obligations, if any, in the order set forth above.

Administrative Agent shall have no responsibility to determine the existence or amount of Lender Hedging Obligations and may reserve from the application of amounts under this Section amounts distributable in respect of Lender Hedging Obligations until it has received evidence satisfactory to it of the existence and amount of such Lender Hedging Obligations.

ARTICLE IX - - Administrative Agent

Section 9.1. Appointment and Authority. Each of the Lenders, LC Issuer and SG hereby irrevocably appoints Wells Fargo to act on its behalf as Administrative Agent hereunder and under the other Loan Documents and authorizes Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of Administrative Agent, the Lenders, LC Issuer and SG, and neither Borrower nor any other Restricted Person shall have rights as a third party beneficiary of any of such provisions.

Section 9.2. Exculpation Provisions. Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, Administrative Agent:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of Lenders as shall be expressly provided for herein or in the other Loan Documents), provided that Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose Administrative Agent to liability or that is contrary to any Loan Document or applicable law; and

(c) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as Administrative Agent or any of its Affiliates in any capacity.

Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 10.1 and 8.2) or (ii) in the absence of its own gross negligence or willful misconduct. Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given to Administrative Agent by Borrower, a Lender or LC Issuer.

Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or (v) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to Administrative Agent.

Section 9.3. Reliance by Administrative Agent. Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or LC Issuer, Administrative Agent may presume that such condition is satisfactory to such Lender or LC Issuer unless Administrative Agent shall have received notice to the contrary from such Lender or LC Issuer prior to the making of such Loan or the issuance of such Letter of Credit. Administrative Agent may consult with legal counsel (who may be counsel for Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

Section 9.4. Non-Reliance on Administrative Agent and Other Lenders. Each Lender and LC Issuer and SG acknowledges that it has, independently and without reliance upon Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender and LC Issuer also acknowledges that it will, independently and without reliance upon Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

Section 9.5. Rights as Lender. The Person serving as Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not Administrative Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with Borrower or any Subsidiary or other Affiliate thereof as if such Person were not Administrative Agent hereunder and without any duty to account therefor to the Lenders.

Section 9.6. Sharing of Set-Offs and Other Payments. Each Lender Party agrees that if it shall, whether through the exercise of rights under Security Documents or rights of banker's lien, set off, or counterclaim against Borrower or otherwise, obtain payment of a portion of the aggregate Obligations owed to it, taking into account all distributions made by Administrative Agent under Section 3.1, and such payment causes such Lender Party to have received more than it would have received had such payment been received by Administrative Agent and distributed pursuant to Section 3.1, then (a) it shall be deemed to have simultaneously purchased and shall be obligated to purchase interests in the Obligations as necessary to cause all Lender Parties to share all payments as provided for in Section 3.1, and (b) such other adjustments shall be made from time to time as shall be equitable to ensure that Administrative Agent and all Lender Parties share all payments of Obligations as provided in Section 3.1; provided, however, that nothing herein contained shall in any way affect the right of any Lender Party to obtain payment (whether by exercise of rights of banker's lien, set-off or counterclaim or otherwise) of indebtedness other than the Obligations. Borrower expressly consents to the foregoing arrangements and agrees that any holder of any such interest or other participation in the Obligations, whether or not acquired pursuant to the foregoing arrangements, may to the fullest extent permitted by Law exercise any and all rights of banker's lien, set-off, or counterclaim as fully as if such holder were a holder of the Obligations in the amount of such interest or other participation. If all or any part of any funds transferred pursuant to this section is thereafter recovered from the seller under this section which received the same, the purchase provided for in this section shall be deemed to have been rescinded to the extent of such recovery, together with interest, if any, if interest is required pursuant to the order of a Governmental Authority order to be paid on account of the possession of such funds prior to such recovery.

Section 9.7. Investments. Whenever Administrative Agent in good faith determines that it is uncertain about how to distribute to Lender Parties any funds which it has received, or whenever Administrative Agent in good faith determines that there is any dispute among Lender Parties about how such funds should be distributed, Administrative Agent may choose to defer distribution of the funds which are the subject of such uncertainty or dispute. If Administrative Agent in good faith believes that the uncertainty or dispute will not be promptly resolved, or if Administrative Agent is otherwise required to invest funds pending distribution to Lender Parties, Administrative Agent shall invest such funds pending distribution; all interest on any such Investment shall be distributed upon the distribution of such Investment and in the same proportion and to the same Persons as such Investment. All moneys received by Administrative Agent for distribution to Lender Parties (other than to the Person who is Administrative Agent in its separate capacity as a Lender Party) shall be held by Administrative Agent pending such distribution solely as Administrative Agent for such Lender Parties, and Administrative Agent shall have no equitable title to any portion thereof.

Section 9.8. Resignation of Administrative Agent. Administrative Agent may at any time give notice of its resignation to the Lenders, LC Issuer, SG and Borrower. Upon receipt of any such notice of resignation, Required Lenders shall have the right, in consultation with Borrower, to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may on behalf of the Lenders and LC Issuer, appoint a successor Administrative Agent meeting the qualifications set forth above provided that if Administrative Agent shall notify Borrower and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (1) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any Collateral held by Administrative Agent on behalf of the Lenders or LC Issuer under any of the Loan Documents, the retiring Administrative Agent shall continue to hold such Collateral until such time as a successor Administrative Agent is appointed) and (2) all payments, communications and determinations provided to be made by, to or through Administrative Agent shall instead be made by or to each Lender and LC Issuer directly, until such time as Required Lenders appoint a successor Administrative Agent as provided for above in this Section. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Administrative Agent, and the retiring Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between Borrower and such successor. After the retiring Administrative Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article and Section 10.4 shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Administrative Agent was acting as Administrative Agent.

Any resignation by Wells Fargo as Administrative Agent pursuant to this Section shall also constitute its resignation as Issuer and Swing Line Lender. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, (i) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring LC Issuer and Swing Line Lender, (ii) the retiring LC Issuer and Swing Line Lender shall be discharged from all of their respective duties and obligations hereunder or under the other Loan Documents, and (iii) the successor LC Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to the retiring LC Issuer to effectively assume the obligations of the retiring LC Issuer with respect to such Letters of Credit.

Section 9.9. Delegation of Duties. Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by Administrative Agent. Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent

Section 9.10. No Other Duties, etc. Anything herein to the contrary notwithstanding, none of the Joint Bookrunners, the Co-Syndication Agents or the Co-Documentation Agents listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as Administrative Agent, a Lender or LC Issuer hereunder.

Section 9.11. Administrative Agent May File Proofs of Claim. In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to any Restricted Person, Administrative Agent (irrespective of whether the principal of any Loan or LC Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether Administrative Agent shall have made any demand on Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, LC Obligations and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of Lenders, the LC Issuer and Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of Lenders, the LC Issuer and Administrative Agent and their respective agents and counsel and all other amounts due Lenders, the LC Issuer and Administrative Agent under Section 2.5 and 10.4) allowed in such judicial proceeding; and

(b) to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and the LC Issuer to make such payments to Administrative Agent and, in the event that Administrative Agent shall consent to the making of such payments directly to Lenders and the LC Issuer, to pay to Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of Administrative Agent and its agents and counsel, and any other amounts due Administrative Agent under Sections 2.5 and 10.4. Nothing contained herein shall be deemed to authorize Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender or the LC Issuer any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or to authorize Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

Section 9.12. Guaranty Matters. Each Lender and the LC Issuer hereby irrevocably authorizes Administrative Agent, at its option and in its discretion, to release any Guarantor from its obligations under the Subsidiary Guaranty if such Person ceases to be a Subsidiary as a result of a transaction permitted hereunder. Upon request by Administrative Agent at any time, each Lender and the LC Issuer will confirm in writing Administrative Agent's authority to release any Guarantor from its obligations under the Subsidiary Guaranty pursuant to this Section 9.12.

Section 9.13. Collateral Matters.

(a) Each Lender, the LC Issuer and SG hereby irrevocably authorizes and directs Administrative Agent to enter into the Security Documents for the benefit of such Lender, the LC Issuer and SG. Each Lender, the LC Issuer and SG hereby agrees, and each holder of any Note by the acceptance thereof will be deemed to agree, that, except as otherwise set forth in Section 10.1, any action taken by the Required Lenders, in accordance with the provisions of this Agreement or the Security Documents, and the exercise by the Required Lenders of the powers set forth herein or therein, together with such other powers as are reasonably incidental thereto, shall be authorized and binding upon all of Lenders, the LC Issuer and SG. Administrative Agent is hereby authorized (but not obligated) on behalf of all of Lenders, the LC Issuer and SG, without the necessity of any notice to or further consent from any Lender, the LC Issuer or SG from time to time prior to, an Event of Default, to take any action with respect to any Collateral or Security Documents which may be necessary to perfect and maintain perfected the Liens upon the Collateral granted pursuant to the Security Documents.

(b) Each Lender, the LC issuer and SG hereby irrevocably authorize Administrative Agent, at its option and in its discretion,

(i) to release any Lien on any property granted to or held by Administrative Agent under any Loan Document (A) upon termination of each Lender's Commitment and payment in full of all Obligations (other than contingent indemnification obligations) and the expiration or termination of all Letters of Credit, except as otherwise provided in the Security Documents, (B) that is sold or to be sold as part of or in connection with any sale permitted hereunder or under any other Loan Document, (C) subject to Section 10.1, if approved, authorized or ratified in writing by the Required Lenders, or (D) in connection with any foreclosure sale or other disposition of Collateral after the occurrence of an Event of Default; and

(ii) to subordinate any Lien on any property granted to or held by Administrative Agent under any Loan Document to the holder of any Lien on such property that is permitted by this Agreement or any other Loan Document.

Upon request by Administrative Agent at any time, each Lender and the LC Issuer will confirm in writing Administrative Agent's authority to release or subordinate its interest in particular types or items of Collateral pursuant to this Section 9.13.

(c) Subject to (b) above, Administrative Agent shall and is hereby irrevocably authorized by each Lender, the LC Issuer and SG, to execute such documents as may be necessary to evidence the release or subordination of the Liens granted to Administrative Agent for the benefit of Administrative Agent and Lenders and the LC Issuer herein or pursuant hereto upon the applicable Collateral; provided that (i) Administrative Agent shall not be required to execute any such document on terms which, in Administrative Agent's opinion, would expose Administrative Agent to or create any liability or entail any consequence other than the release or subordination of such Liens without recourse or warranty and (ii) such release or subordination shall not in any manner discharge, affect or impair the Obligations or any Liens upon (or obligations of Borrower or any other Restricted Person in respect of) all interests retained by Borrower or any other Restricted Person, including the proceeds of the sale, all of which shall continue to constitute part of the Collateral. In the event of any sale or transfer of Collateral, or any foreclosure with respect to any of the Collateral, Administrative Agent shall be authorized to deduct all expenses reasonably incurred by Administrative Agent from the proceeds of any such sale, transfer or foreclosure.

(d) Administrative Agent shall have no obligation whatsoever to any Lender, the LC Issuer, SG or any other Person to assure that the Collateral exists or is owned by Borrower or any other Restricted Person or is cared for, protected or insured or that the Liens granted to Administrative Agent herein or in any of the Security Documents or pursuant hereto or thereto have been properly or sufficiently or lawfully created, perfected, protected or enforced or are entitled to any particular priority, or to exercise or to continue exercising at all or in any manner or under any duty of care, disclosure or fidelity any of the rights, authorities and powers granted or available to Administrative Agent in this Section 9.13 or in any of the Security Documents, it being understood and agreed that in respect of the Collateral, or any act, omission or event related thereto, Administrative Agent may act in any manner it may deem appropriate, in its sole discretion, given Administrative Agent's own interest in the Collateral as one of Lenders and that Administrative Agent shall have no duty or liability whatsoever to Lenders, the LC Issuer or SG.

(e) Each Lender, the LC Issuer and SG hereby appoints each other Lender as agent for the purpose of perfecting Lenders' and the LC Issuer's security interest in assets which, in accordance with Article 9 of the UCC can be perfected only by possession. Should any Lender or the LC Issuer (other than Administrative Agent) obtain possession of any such Collateral, such Lender or the LC Issuer shall notify Administrative Agent thereof, and, promptly upon Administrative Agent's request therefor shall deliver such Collateral to Administrative Agent or in accordance with Administrative Agent's instructions.

Section 10.1. Waivers and Amendments; Acknowledgments.

(a) Waivers and Amendments. No failure or delay (whether by course of conduct or otherwise) by any Lender in exercising any right, power or remedy which such Lender Party may have under any of the Loan Documents shall operate as a waiver thereof or of any other right, power or remedy, nor shall any single or partial exercise by any Lender Party of any such right, power or remedy preclude any other or further exercise thereof or of any other right, power or remedy. No waiver of any provision of any Loan Document and no consent to any departure therefrom shall ever be effective unless it is in writing and signed as provided below in this section, and then such waiver or consent shall be effective only in the specific instances and for the purposes for which given and to the extent specified in such writing. No notice to or demand on any Restricted Person shall in any case of itself entitle any Restricted Person to any other or further notice or demand in similar or other circumstances. This Agreement and the other Loan Documents set forth the entire understanding between the parties hereto with respect to the transactions contemplated herein and therein and supersede all prior discussions and understandings with respect to the subject matter hereof and thereof, and no waiver, consent, release, modification or amendment of or supplement to this Agreement or the other Loan Documents shall be valid or effective against any party hereto unless the same is in writing and signed by (i) if such party is Borrower, by Borrower, (ii) if such party is Administrative Agent, the Swing Line Lender or LC Issuer, by such party, and (iii) if such party is a Lender, by such Lender or by Administrative Agent on behalf of Lenders with the written consent of Majority Lenders (which consent has already been given as to the termination of the Loan Documents as provided in Section 10.9. Notwithstanding the foregoing or anything to the contrary herein, Administrative Agent shall not, without the prior consent of each individual Lender, execute and deliver on behalf of such Lender any waiver or amendment which would: (1) waive any of the conditions specified in Section 4.1 (provided that Administrative Agent may in its discretion withdraw any request it has made under Section 4.1(q)), (2) increase the maximum amount which such Lender is committed hereunder to lend, (3) reduce any fees payable to such Lender hereunder, or the principal of, or interest on, such Lender's Note, (4) postpone any date fixed for any payment of any such fees, principal or interest, (5) amend the definition herein of "Majority Lenders" or "Required Lenders" or otherwise change the aggregate amount of Percentage Shares which is required for Administrative Agent, Lenders or any of them to take any particular action under the Loan Documents, (6) amend the definition of "Maximum Credit Amount" to mean an amount higher than $1,500,000,000, (7) release Borrower from its obligation to pay such Lender's Note, or any Guarantor from its guaranty of such payment, (8) release all or substantially all of the Collateral, except for such releases relating to sales or dispositions of property permitted by the Loan Documents, or (9) amend this Section 10.1(a). Notwithstanding the foregoing or anything to the contrary herein, Administrative Agent shall not, without the prior consent of SG, execute and deliver on behalf of SG or any of the Lenders any waiver or amendment which would cause the SG Money Market Facility to cease to constitute Secured Obligations or would otherwise cause the Indebtedness evidenced by such SG Money Market Facility to no longer receive the benefit of the Liens granted in the Collateral pursuant to the Security Documents on the priority basis set forth in Section 8.3 or would change the order of payment set forth in Section 8.3. SG shall be an intended third party beneficiary of the provisions of the preceding sentence and shall be entitled to enforce such provisions hereunder.

(b) Acknowledgments and Admissions. Borrower hereby represents, warrants, acknowledges and admits that (i) it has been advised by counsel in the negotiation, execution and delivery of the Loan Documents to which it is a party, (ii) it has made an independent decision to enter into this Agreement and the other Loan Documents to which it is a party, without reliance on any representation, warranty, covenant or undertaking by Administrative Agent or any Lender, whether written, oral or implicit, other than as expressly set out in this Agreement or in another Loan Document delivered on or after the date hereof, (iii) there are no representations, warranties, covenants, undertakings or agreements by any Lender as to the Loan Documents except as expressly set out in this Agreement or in another Loan Document delivered on or after the date hereof, (iv) no Lender has any fiduciary obligation toward Borrower with respect to any Loan Document or the transactions contemplated thereby, (v) the relationship pursuant to the Loan Documents between Borrower and the other Restricted Persons, on one hand, and each Lender, on the other hand, is and shall be solely that of debtor and creditor, respectively, (vi) no partnership or joint venture exists with respect to the Loan Documents between any Restricted Person and any Lender, (vii) Administrative Agent is not Borrower's Administrative Agent, but Administrative Agent for Lenders, (viii) should a Default occur or exist, each Lender will determine in its sole discretion and for its own reasons what remedies and actions it will or will not exercise or take at that time, (ix) without limiting any of the foregoing, Borrower is not relying upon any representation or covenant by any Lender, or any representative thereof, and no such representation or covenant has been made, that any Lender will, at the time of a Default, or at any other time, waive, negotiate, discuss, or take or refrain from taking any action permitted under the Loan Documents with respect to any such Default or any other provision of the Loan Documents, and (x) all Lender Parties have relied upon the truthfulness of the acknowledgments in this section in deciding to execute and deliver this Agreement and to become obligated hereunder.

(c) Joint Acknowledgment. **THIS WRITTEN AGREEMENT AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES.**

THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

Section 10.2. Survival of Agreements; Cumulative Nature. All of Restricted Persons' various representations, warranties, covenants and agreements in the Loan Documents shall survive the execution and delivery of this Agreement and the other Loan Documents and the performance hereof and thereof, including the making or granting of the Loans and the delivery of the Notes and the other Loan Documents, and shall further survive until all of the Obligations are paid in full to each Lender Party and all of Lender Parties' obligations to Borrower are terminated. All statements and agreements contained in any certificate or other instrument delivered by any Restricted Person to any Lender Party under any Loan Document shall be deemed representations and warranties by Borrower or agreements and covenants of Borrower under this Agreement. The representations, warranties, indemnities, and covenants made by Restricted Persons in the Loan Documents, and the rights, powers, and privileges granted to Lender Parties in the Loan Documents, are cumulative, and, except for expressly specified waivers and consents, no Loan Document shall be construed in the context of another to diminish, nullify, or otherwise reduce the benefit to any Lender Party of any such representation, warranty, indemnity, covenant, right, power or privilege. In particular and without limitation, no exception set out in this Agreement to any representation, warranty, indemnity, or covenant herein contained shall apply to any similar representation, warranty, indemnity, or covenant contained in any other Loan Document, and each such similar representation, warranty, indemnity, or covenant shall be subject only to those exceptions which are expressly made applicable to it by the terms of the various Loan Documents.

Section 10.3. Notices; Effectiveness; Electronic Communication.

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile as follows and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to Borrower or any other Restricted Person, Administrative Agent or LC Issuer; to the address, facsimile number, electronic mail address or telephone number specified for such person on the signature pages hereto;

(ii) if to any other Lender Party, to it at its address, facsimile number, electronic mail address or telephone number as specified on the Lenders Schedule.

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient). Notices delivered through electronic communications to the extent provided in subsection (b) below, shall be effective as provided in said subsection (b).

(b) Electronic Communications. Notices and other communications to the Lenders and the LC Issuer hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by Administrative Agent, provided that the foregoing shall not apply to notices to any Lender or LC Issuer pursuant to Article II if such Lender or LC Issuer, as applicable, has notified Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. Administrative Agent or Borrower or any other Restricted Person may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

Unless Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(c) Change of Address, Etc. Each of Borrower, any other Restricted Person, Administrative Agent and LC Issuer may change its address, facsimile or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender Party may change its address, facsimile or telephone number for notices and other communications hereunder by notice to Borrower, Administrative Agent and LC Issuer.

Section 10.4. Payment of Expenses; Indemnity.

(a) Payment of Expenses. Whether or not the transactions contemplated by this Agreement are consummated, Borrower will promptly (and in any event, within 30 days after any invoice or other statement or notice) pay: (i) all transfer, stamp, documentary or other similar taxes, assessments or charges levied by any governmental or revenue authority in respect of this Agreement or any of the other Loan Documents or any other document or transaction referred to herein or therein, (ii) all reasonable costs and expenses incurred by or on behalf of Administrative Agent (including without limitation attorneys' fees and engineering fees, travel costs and miscellaneous expenses) in connection with (1) the negotiation, preparation, execution and delivery of the Loan Documents, and any and all consents, waivers or other documents or instruments relating thereto, (2) the borrowings hereunder and other action reasonably required in the course of administration hereof, (3) monitoring or confirming (or preparation or negotiation of any document related to) any Restricted Person's compliance with any covenants or conditions contained in this Agreement or in any Loan Document, and (iii) all reasonable costs and expenses incurred by or on behalf of any Lender Party (including without limitation attorneys' fees, consultants' fees and accounting fees) in connection with the preservation of any rights under the Loan Documents or the defense or enforcement of any of the Loan Documents (including this section), any attempt to cure any breach thereunder by any Restricted Person, or the defense of any Lender Party's exercise of its rights thereunder. In addition to the foregoing, until all Obligations have been paid in full, Borrower will also pay or reimburse Administrative Agent for all reasonable out-of-pocket costs and expenses of Administrative Agent or its Administrative Agents or employees in connection with the continuing administration of the Loans and the related due diligence of Administrative Agent, including reasonable travel and miscellaneous expenses and fees and expenses of Administrative Agent's outside counsel, reserve engineers and consultants engaged in connection with the Loan Documents.

(b) Reimbursement by Lenders. To the extent that Borrower for any reason fails to indefeasibly pay any amount required under paragraph (a) or (b) of this Section to be paid by it to Administrative Agent (or any sub-agent thereof), LC Issuer or any Related Party of any of the foregoing, each Lender severally agrees to pay to Administrative Agent (or any such sub-agent), LC Issuer or such Related Party, as the case may be, such Lender's Percentage Share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount, provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against Administrative Agent (or any such sub-agent) or LC Issuer in its capacity as such, or against any Related Party of any of the foregoing acting for Administrative Agent (or any such sub-agent) or LC Issuer in connection with such capacity. The obligations of the Lenders under this paragraph (c) are subject to the provisions of Section 2.18.

(c) **Indemnity. Borrower agrees to indemnify each Lender Party, upon demand, from and against any and all liabilities, obligations, broker's fees, claims, losses, damages, penalties, fines, actions, judgments, suits, settlements, costs, expenses or disbursements (including reasonable fees of attorneys, accountants, experts and advisors) of any kind or nature whatsoever (in this section collectively called "liabilities and costs") which to any extent (in whole or in part) may be imposed on, incurred by, or asserted against such Lender Party growing out of, resulting from or in any other way associated with the Loan Documents and the transactions and events (including the enforcement or defense thereof) at any time associated therewith or contemplated therein (whether arising in contract or in tort or otherwise). Among other things, the foregoing indemnification covers all liabilities and costs incurred by any Lender Party related to any breach of a Loan Document by a Restricted Person, any bodily injury to any Person or damage to any Person's property, or any violation or noncompliance with any Environmental Laws by any Lender Party or any other Person or any liabilities or duties of any Lender Party or any other Person with respect to Hazardous Materials found in or released into the environment.**

THE FOREGOING INDEMNIFICATION SHALL APPLY WHETHER OR NOT SUCH LIABILITIES AND COSTS ARE IN ANY WAY OR TO ANY EXTENT OWED, IN WHOLE OR IN PART, UNDER ANY CLAIM OR THEORY OF STRICT LIABILITY OR CAUSED, IN WHOLE OR IN PART BY ANY NEGLIGENT ACT OR OMISSION OF ANY KIND BY ANY LENDER PARTY,

provided only that no Lender Party shall be entitled under this section to receive indemnification for that portion, if any, of any liabilities and costs which is proximately caused by its own individual gross negligence or willful misconduct, as determined in a final judgment. If any Person (including Borrower or any of its Affiliates) ever alleges such gross negligence or willful misconduct by any Lender Party, the indemnification provided for in this section shall nonetheless be paid upon demand, subject to later adjustment or reimbursement, until such time as a court of competent jurisdiction enters a final judgment as to the extent and effect of the alleged gross negligence or willful misconduct. As used in this section the term "Lender Party" shall refer not only to each Person designated as such in Section 1.1 but also to each director, officer, Administrative Agent, agent, advisor, trustee, attorney, employee, representative and Affiliate of or for such Person.

Section 10.5. Successors and Assigns; Assignments.

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that neither Borrower nor any other Restricted Person may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of Administrative Agent and each Lender, and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Eligible Assignee in accordance with the provisions of paragraph (b) of this Section, (ii) by way of participation in accordance with the provisions of paragraph (d) of this Section or (iii) by way of pledge or assignment of a security interest subject to the restrictions of paragraph (f) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in paragraph (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans (including for purposes of this Section 10.5(b), participations in LC Obligations and in Swing Line Loans) at the time owing to it); provided that

(i) except in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and the Loans at the time owing to it or in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund with respect to a Lender, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the applicable Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date) shall not be less than $5,000,000;

(ii) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loan or the Commitment assigned;

(iii) any assignment of a Commitment must be approved by Administrative Agent, the Swing Line Lender and the LC Issuer unless the Person that is the proposed assignee is itself a Lender with a Commitment (whether or not the proposed assignee would otherwise qualify as an Eligible Assignee); and

(iv) the parties to each assignment shall execute and deliver to Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of $3,000, and the Eligible Assignee, if it shall not be a Lender, shall deliver to Administrative Agent an Administrative Questionnaire.

Subject to acceptance and recording thereof by Administrative Agent pursuant to paragraph (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the Eligible Assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Article III and Section 10.4 and Section 10.12 with respect to facts and circumstances occurring prior to the effective date of such assignment. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this paragraph shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (d) of this Section.

(c) Register. Administrative Agent, acting solely for this purpose as an agent of Borrower, shall maintain at one of its offices a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, and Borrower, Administrative Agent and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, Borrower or Administrative Agent, sell participations to any Person (other than a natural person or Borrower or any of Borrower's Affiliates or Subsidiaries) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) Borrower, Administrative Agent and the Lenders and LC Issuer shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement.

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the fifth sentence of Section 10.1(a) that affects such Participant. Subject to paragraph (e) of this Section, Borrower agrees that each Participant shall be entitled to the benefits of Article III to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 6.14 as though it were a Lender, provided such Participant agrees to be subject to Section 9.6 as though it were a Lender.

(e) Limitations upon Participant Rights. A Participant shall not be entitled to receive any greater payment under Article III than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with Borrower's prior written consent. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 3.5 unless Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of Borrower, to comply with Section 3.5(e) as though it were a Lender.

(f) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

Section 10.6. Confidentiality. Administrative Agent and each Lender (each, a "Lending Party") agrees to keep confidential any information furnished or made available to it by any Restricted Person pursuant to this Agreement that is marked confidential; provided that nothing herein shall prevent any Lending Party from disclosing such information (a) to any other Lending Party or any Affiliate of any Lending Party, or any officer, director, employee, Administrative Agent, or advisor of any Lending Party or Affiliate of any Lending Party, (b) to any other Person if reasonably incidental to the administration of the credit facility provided herein, (c) as required by any Law, (d) upon the order of any court or administrative agency, (e) upon the request or demand of any Governmental Authority, (f) that is or becomes available to the public or that is or becomes available to any Lending Party other than as a result of a disclosure by any Lending Party prohibited by this Agreement, (g) in connection with any litigation to which such Lending Party or any of its Affiliates may be a party; provided that such Lending Party makes reasonable efforts to obtain from the applicable court protective orders or similar confidential procedures protecting such confidential information, (h) to the extent necessary in connection with the exercise of any right or remedy under this Agreement or any other Loan Document, and (i) subject to provisions substantially similar to those contained in this section, to (1) any actual or proposed participant or assignee or (2) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to Borrower and its obligations.

Section 10.7. Governing Law; Submission to Process. Except to the extent that the law of another jurisdiction is expressly elected in a Loan Document, the Loan Documents shall be deemed contracts and instruments made under the laws of the State of California and shall be construed and enforced in accordance with and governed by the laws of the State of California and the laws of the United States of America, without regard to principles of conflicts of law. Borrower hereby irrevocably submits itself to the non-exclusive jurisdiction of the state and federal courts sitting in the Northern District of California for the United States District Court and agrees and consents that service of process may be made upon it in any legal proceeding relating to the Loan Documents or the Obligations by any means allowed under California or federal law.

Section 10.8. Limitation on Interest. Lender Parties, Restricted Persons and the other parties to the Loan Documents intend to contract in strict compliance with applicable usury Law from time to time in effect. In furtherance thereof such persons stipulate and agree that none of the terms and provisions contained in the Loan Documents shall ever be construed to provide for interest in excess of the maximum amount of interest permitted to be contracted for, charged, or received by applicable Law from time to time in effect. Neither any Restricted Person nor any present or future guarantors, endorsers, or other Persons hereafter becoming liable for payment of any Obligation shall ever be liable for unearned interest thereon or shall ever be required to pay interest thereon in excess of the maximum amount that may be lawfully contracted for, charged, or received under applicable Law from time to time in effect, and the provisions of this section shall control over all other provisions of the Loan Documents which may be in conflict or apparent conflict herewith.

Section 10.9. Termination; Limited Survival. In its sole and absolute discretion Borrower may at any time that no Obligations are owing elect in a written notice delivered to Administrative Agent to terminate this Agreement. Upon receipt by Administrative Agent of such a notice, if no Obligations are then owing, this Agreement and all other Loan Documents shall thereupon be terminated and the parties thereto released from all prospective obligations thereunder, except as otherwise provided in such Loan Documents. Notwithstanding the foregoing or anything herein to the contrary, any waivers or admissions made by any Restricted Person in any Loan Document, any Obligations under Sections 3.2 through Section 3.5, any obligations which any Person may have to indemnify or compensate any Lender Party and the provisions of Article IX and Section 10.1(a) with respect to any Security Documents which remain in effect after the termination of this Agreement, shall survive any termination of this Agreement or any other Loan Document. At the request and expense of Borrower, Administrative Agent shall prepare and execute all necessary instruments to reflect and effect such termination of the Loan Documents. Administrative Agent is hereby authorized to execute all such instruments on behalf of all Lenders, without the joinder of or further action by any Lender.

Section 10.10. Severability. If any term or provision of any Loan Document shall be determined to be illegal or unenforceable all other terms and provisions of the Loan Documents shall nevertheless remain effective and shall be enforced to the fullest extent permitted by applicable Law.

Section 10.11. Counterparts; Fax. This Agreement may be separately executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to constitute one and the same Agreement. This Agreement and the Loan Documents may be validly executed and delivered by facsimile or other electronic transmission.

SECTION 10.12. WAIVER OF JURY TRIAL, PUNITIVE DAMAGES, ETC. BORROWER AND EACH LENDER PARTY HEREBY KNOWINGLY, VOLUNTARILY, INTENTIONALLY, AND IRREVOCABLY (A) WAIVES, TO THE MAXIMUM EXTENT NOT PROHIBITED BY LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR DIRECTLY OR INDIRECTLY AT ANY TIME ARISING OUT OF, UNDER OR IN CONNECTION WITH THE LOAN DOCUMENTS OR ANY TRANSACTION CONTEMPLATED THEREBY OR ASSOCIATED THEREWITH, BEFORE OR AFTER MATURITY; (B) WAIVES, TO THE MAXIMUM EXTENT NOT PROHIBITED BY LAW, ANY RIGHT IT MAY HAVE TO CLAIM OR RECOVER IN ANY SUCH LITIGATION ANY “SPECIAL DAMAGES”, AS DEFINED BELOW, (C) CERTIFIES THAT NO PARTY HERETO NOR ANY REPRESENTATIVE OR ADMINISTRATIVE AGENT OR COUNSEL FOR ANY PARTY HERETO HAS REPRESENTED, EXPRESSLY OR OTHERWISE, OR IMPLIED THAT SUCH PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVERS, AND (D) ACKNOWLEDGES THAT IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT, THE OTHER LOAN DOCUMENTS AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS CONTAINED IN THIS SECTION. AS USED IN THIS SECTION, “SPECIAL DAMAGES” INCLUDES ALL SPECIAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES (REGARDLESS OF HOW NAMED), BUT DOES NOT INCLUDE ANY PAYMENTS OR FUNDS WHICH ANY PARTY HERETO HAS EXPRESSLY PROMISED TO PAY OR DELIVER TO ANY OTHER PARTY HERETO. NO “ADMINISTRATIVE AGENT” REFERRED TO IN 10.4 ABOVE, AND NO “LENDER PARTY” REFERRED TO IN SECTION 10.4 ABOVE, SHALL BE LIABLE FOR ANY DAMAGES ARISING FROM THE USE BY UNINTENDED RECIPIENTS OF ANY INFORMATION OR OTHER MATERIALS DISTRIBUTED BY IT THROUGH TELECOMMUNICATIONS, ELECTRONIC OR OTHER INFORMATION TRANSMISSION SYSTEMS IN CONNECTION WITH THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

Section 10.13. Ratification of Agreements. This Agreement amends and restates in its entirety the Existing Credit Agreement, together with the promissory notes made by Borrower thereunder. Borrower hereby agrees that the Indebtedness outstanding under the Existing Credit Documents and all accrued and unpaid interest thereon and all accrued and unpaid fees under the Existing Credit Documents shall be deemed to be outstanding under and governed by this Agreement.

Section 10.14. Amendment and Restatement. This Agreement amends and restates in its entirety the Existing Credit Agreement, and from and after the date hereof, the terms and provisions of the Existing Credit Agreement shall be superseded by the terms and provisions of this Agreement. Borrower hereby agrees that the Existing Indebtedness, all accrued and unpaid interest thereon, and all accrued and unpaid fees under the Existing Credit Agreement shall be deemed to be Indebtedness of Borrower outstanding under and governed by this Agreement.

IN WITNESS WHEREOF, this Agreement is executed as of the date first written above.

BERRY PETROLEUM COMPANY,
Borrower

By: _____
Shawn M. Canaday
Vice President

Address:

1999 Broadway, Suite 3700
Denver, Colorado 80202
Attention: Shawn Canaday

Telephone: 403/999-4000
Fax: 403/999-4100
Email: smc@bry.com

WELLS FARGO BANK, NATIONAL ASSOCIATION, Administrative Agent, LC Issuer and Lender

By: _____

Guy C. Evangelista
Vice President

BNP PARIBAS, Lender

By: _____
Name:
Title:

By: _____
Name:
Title:

SOCIÉTÉ GÉNÉRALE, Lender

By: _____
Name:
Title:

JPMORGAN CHASE BANK, N.A., Lender

By: _____

Name:
Title:

THE ROYAL BANK OF SCOTLAND plc, Lender

By: _____

Name:
Title:

THE BANK OF NOVA SCOTIA, Lender

By: _____

Name:
Title:

WACHOVIA BANK, N.A., Lender

By: _____

Name:
Title:

UNION BANK OF CALIFORNIA, N.A., Lender

By: _____

Name:

Title:

COMPASS BANK, Lender

By: _____

Name:
Title:

U.S. BANK NATIONAL ASSOCIATION, Lender

By: _____

Name:
Title:

CREDIT SUISSE, CAYMAN ISLANDS BRANCH, Lender

By: _____
Name:
Title:

BANK OF SCOTLAND plc, Lender

By: _____

Name:
Title:

NATIXIS, Lender

By: _____
Name:
Title:

BANK OF OKLAHOMA N.A., Lender

By: _____

Name:
Title:

RAYMOND JAMES BANK, FSB, Lender

By: _____

Name:
Title:

GUARANTY BANK AND TRUST COMPANY, Lender

By: _____

Name:
Title:

DZ BANK AG
DEUTSCHE ZENTRAL – GENOSSENSCHAFTSBANK FRANKFURT aur MAIN, NEW YORK BRANCH, Lender

By: _____
Name:
Title:

CITIBANK, N.A., Lender

By: _____

Name:

Title:

LENDERS SCHEDULE

LENDER	PERCENTAGE SHARE	PERCENTAGE SHARE OF BORROWING BASE IN EFFECT ON CLOSING DATE	COMMITMENT AMOUNT*
Wells Fargo Bank, National Association	12.50000000000 %	$ 125,000,000	$ 187,500,000
Societe Generale	10.00000000000 %	$ 100,000,000	$ 150,000,000
BNP Paribas	10.00000000000 %	$ 100,000,000	$ 150,000,000
JPMorgan Chase Bank, N.A.	10.00000000000 %	$ 100,000,000	$ 150,000,000
The Royal Bank of Scotland	10.00000000000 %	$ 100,000,000	$ 150,000,000
The Bank of Nova Scotia	5.70000000000 %	$ 57,000,000	$ 85,500,000
Wachovia Bank, N.A.	5.70000000000 %	$ 57,000,000	$ 85,500,000
Union Bank of California, N.A.	5.70000000000 %	$ 57,000,000	$ 85,500,000
Citibank, N.A.	5.00000000000 %	$ 50,000,000	$ 75,000,000
Compass Bank	4.00000000000 %	$ 40,000,000	$ 60,000,000
U.S. Bank National Association	4.00000000000 %	$ 40,000,000	$ 60,000,000
Credit Suisse, Cayman Islands Branch	3.50000000000 %	$ 35,000,000	$ 52,500,000
Bank of Scotland plc	3.00000000000 %	$ 30,000,000	$ 45,000,000
DZ Bank	3.00000000000 %	$ 30,000,000	$ 45,000,000
Natixis	2.00000000000 %	$ 20,000,000	$ 30,000,000
Bank of Oklahoma N.A.	2.00000000000 %	$ 20,000,000	$ 30,000,000
Raymond James Bank, FSB	2.00000000000 %	$ 20,000,000	$ 30,000,000
Guaranty Bank and Trust Company	1.90000000000 %	$ 19,000,000	$ 28,500,000
TOTAL	100.00000000000 %	$ 1,000,000,000	$ 1,500,000,000

* Each Lender’s Commitment Amount is equal to such Lender’s Percentage Share of the Aggregate Commitment; provided that the Facility Usage cannot exceed the Borrowing Base and any increase in the Borrowing Base must be approved by all Lenders.

INSURANCE SCHEDULE

SECURITY SCHEDULE

1. Security Agreement of even date herewith from Borrower to Administrative Agent for the benefit of Lenders (the "Security Agreement")

2. Deed of Trust Assignment, Security Agreement, Fixture Filing and Financing Statement of even date herewith from Borrower to Administrative Agent for the benefit of Lenders covering properties located in California (the "California Deed of Trust")

3. Deed of Trust Assignment, Security Agreement, Fixture Filing and Financing Statement of even date herewith from Borrower to Administrative Agent for the benefit of Lenders covering properties located in Texas (the "Texas Deed of Trust")

4. Deed of Trust Assignment, Security Agreement, Fixture Filing and Financing Statement of even date herewith from Borrower to Administrative Agent for the benefit of Lenders covering properties located in Utah (the "Utah Deed of Trust")

POST–CLOSING OBLIGATIONS

1. Within ninety (90) days after the Closing, Borrower shall deliver to Agent either (i) supplemental title opinions reflecting Borrower's ownership interest in the Brundage Canyon properties or (ii) runsheets listing all documents recorded in Duchesne County, Utah since the date of the last title opinion that affect Borrower's interest in the Brundage Canyon properties, together with copies of all such documents

2. Within fifteen (15) days after the Closing, Borrower shall deliver to Agent title materials prepared by Petru Corporation for the Kennedy-NRC properties in the Placerita field in Los Angeles County, California that reflect Borrower's ownership interest in such properties.

3. Within ninety (90) days after the Closing, Borrower shall use commercially reasonable efforts to deliver to Administrative Agent consents to the assignment of the following contracts to Administrative Agent:

(a) Carry and Earning Agreement, dated June 7, 2006, between Registrant and EnCana Oil & Gas (USA), Inc.

(b) Crude oil purchase contract, dated November 14, 2005 between Registrant and Big West of California, LLC.

(c) Crude Oil Supply Agreement between the Registrant and Holly Refining and Marketing Company - Woods Cross.

(d) Standard Offer 2 Power Purchase Agreement by and between Southern California Edison Company and Borrower, as amended. (QFID 2206).

(e) Reformed Standard Offer 1 Power Purchase Agreement by and between Southern California Edison Company and Borrower, as amended (QFID 2224).

(f) Standard Offer # 2 Power Purchase Agreement by and between Pacific Gas and Electric Company and Borrower, as reinstated and amended (PG&E Log # 25C151EO1).

(g) Uniform Standard Offer 1 Power Purchase Agreement by and between Pacific Gas and Electric Company and Borrower, as reinstated and amended (PG&E Log # 25C099EO1).

ADDRESSES OF LENDERS FOR NOTICES

WELLS FARGO BANK, NATIONAL ASSOCIATION
1700 Lincoln St.
Denver, Colorado 80203
Attention: Guy C. Evangelista
Tel: 303.863.5793
Fax: 303.863.5196
Email: guy.c.evangelista@wellsfargo.com

BNP PARIBAS
1200 Smith Street
Suite 3100
Houston, Texas 77002
Attention: Robert J. Long
Tel: 713.982.1165
Fax: 713.659.6915
Email: robert.j.long@americas.bnpparibas.com

SOCIÉTÉ GÉNÉRALE
1111 Bagby, Suite 2020
Houston, Texas 77002
Attention: Josh Rogers
Tel: 713.759.6315
Fax: 713.650.0824
Email: josh.rogers@us.socgen.com

JPMORGAN CHASE BANK, N.A.
[10 South Dearborn, Floor 19
IL1-0010
Chicago, Illinois 60603-2003
Attention: Yuvette Owens]
Tel: [312.385.7021]
Fax: [312.385.7103]
Email: [yuvette.owens@jpmchase.com]

THE ROYAL BANK OF SCOTLAND plc
101 Park Avenue – 6th Floor
New York, New York 10178
Attention: Claudio R. Truglia
Tel: 203.971.7658
Fax: 212.401.1494
Email: claudio.truglia@rbs.com

600 Travis Street, Suite 6500
Houston, TX 77002
Attention: Mark Lumpkin, Jr.
Tel: 713.221.2419
Fax: 713.221.2428
Email: mark.lumpkin@RBS.com

THE BANK OF NOVA SCOTIA
711 Louisiana, 14th Floor
Houston, Texas 77002
Attention: Alan Dawson
Tel: 713.759.3445
Fax: 713.752.2425
Email: alan_dawsoon@scotiacapital.com

WACHOVIA BANK, N.A.
_____
_____
Attention: _____
Tel:
Fax:
Email:

UNION BANK OF CALIFORNIA, N.A.
500 N. Akard, Suite 4200
Dallas, Texas 75201
Attention: Douglas Gale
Tel: 214.922.4200
Fax: 214.922.4209
[dustin.gaspari@uboc.com]

COMPASS BANK
_____
_____
Attention: _____
Tel:
Fax:
Email:

U.S. BANK NATIONAL ASSOCIATION
950 17th Street, DNCOT8E
Denver, CO 80202
Attention: Justin Alexander
Telephone: 303.585.4201
Fax: 303.585.4362
Email: Justin.alexander@usbank.com

CREDIT SUISSE, CAYMAND ISLANDS BRANCH
Eleven Madison Avenue
New York, New York 10010
Attention: Vanessa Gomez
Tel: 212.528.2993
Fax: 212.448.3755
Email: Vanessa.gomez@credit-suisse.com

BANK OF SCOTLAND plc
One City Centre
1021 Main Street, Suite 1370
Houston, Texas 77002
Attention: Trudy Nelson
Tel: 713.651.0840
Fax: 713.651.9714
Email: trudynelson@bankofscotlandusa.com

NATIXIS
333 Clay Street, Suite 4340
Houston, Texas 77002
Attention: Liana Tchernysheva
Tel: 713.759.9404
Fax: 713.571.6167
Email:

BANK OF OKLAHOMA N.A.
1675 Broadway, Suite 1650
Denver, Colorado 80202
Attention: Thomas M. Foncannon
Tel: 303.864.7341
Fax: 303.864.7349
Email: tfoncannon@bokf.com

RAYMOND JAMES BANK, FSB
710 Carillon Parkway
St. Petersburg, Florida 33716
Attention: Garrett T. McKinnon
Tel: 727.567.4324
Fax: 727.567.8830
Email: garrett.mckinnon@raymondjames.com

GUARANTY BANK AND TRUST COMPANY
1331 17th Street
Denver, Colorado 80202
Attention: Gail J. Nofsinger
Tel: 303.293.5521
Fax: 303.675.1130
Email: gail.nofsinger@guarantybankco.com

DZ BANK
609 Fifth Avenue
New York, New York 10017
Attention: Daria A. Pishko
Tel: 212.745.1545
Fax: 212.745.1552
Email: daria.pishko@dzbank.de

CITIBANK, N.A.
333 Clay St., Suite 3700
Houston, Texas 77002
Attention: David E. Hunt
Tel: 713.654.2829
Fax: 713.481.0255
Email: david.e.hunt@citi.com

EXHIBIT A

PROMISSORY NOTE

[_____], 2008

FOR VALUE RECEIVED, the undersigned, Berry Petroleum Company, a Delaware corporation (herein called "Borrower"), hereby promises to pay to the order of [_____] (herein called "Lender"), the principal sum equal to the amount of such Lender's Commitment, or, if greater or less, the aggregate unpaid principal amount of the Loans made under this Note by Lender to Borrower pursuant to the terms of the Credit Agreement (as hereinafter defined), together with interest on the unpaid principal balance thereof as hereinafter set forth, both principal and interest payable as herein provided in lawful money of the United States of America at the offices of Administrative Agent under the Credit Agreement, 1740 Broadway, 4th Floor, Denver, Colorado 80274, or at such other place as from time to time may be designated by the holder of this Note.

This Note (a) is issued and delivered under that certain Credit Agreement of even date herewith among Borrower, Wells Fargo Bank, National Association, as Administrative Agent, and the lenders (including Lender) referred to therein (herein, as from time to time supplemented, amended or restated, called the "Credit Agreement"), and is a "Note" as defined therein, (b) is subject to the terms and provisions of the Credit Agreement, which contains provisions for payments and prepayments hereunder and acceleration of the maturity hereof upon the happening of certain stated events, and (c) is secured by and entitled to the benefits of certain Security Documents (as identified and defined in the Credit Agreement). Payments of principal and interest on this Note shall be made and applied as provided herein and in the Credit Agreement. Reference is hereby made to the Credit Agreement for a description of certain rights, limitations of rights, obligations and duties of the parties hereto and for the meanings assigned to terms used and not defined herein and to the Security Documents for a description of the nature and extent of the security thereby provided and the rights of the parties thereto.

The principal amount of this Note, together with all interest accrued hereon, shall be due and payable in full on the Maturity Date.

If this Note is placed in the hands of an attorney for collection after default, or if all or any part of the indebtedness represented hereby is proved, established or collected in any court or in any bankruptcy, receivership, debtor relief, probate or other court proceedings, Borrower and all endorsers, sureties and guarantors of this Note jointly and severally agree to pay reasonable attorneys' fees and collection costs to the holder hereof in addition to the principal and interest payable hereunder.

Borrower and all endorsers, sureties and guarantors of this Note hereby severally waive demand, presentment, notice of demand and of dishonor and nonpayment of this Note, protest, notice of protest, notice of intention to accelerate the maturity of this Note, declaration or notice of acceleration of the maturity of this Note, diligence in collecting, the bringing of any suit against any party and any notice of or defense on account of any extensions, renewals, partial payments or changes in any manner of or in this Note or in any of its terms, provisions and covenants, or any releases or substitutions of any security, or any delay, indulgence or other act of any trustee or any holder hereof, whether before or after maturity.

This Note and the rights and duties of the parties hereto shall be governed by the Laws of the State of California (without regard to principles of conflicts of law), except to the extent the same are governed by applicable federal Law.

BERRY PETROLEUM COMPANY

By: _____

Name:
Title:

BORROWING NOTICE

Reference is made to that certain Credit Agreement dated as of _____, 2008 (as from time to time amended, the "Agreement"), by and among Berry Petroleum Company ("Borrower"), Wells Fargo Bank, National Association, as Administrative Agent, and certain financial institutions ("Lenders"). Terms which are defined in the Agreement are used herein with the meanings given them in the Agreement. Pursuant to the terms of the Agreement Borrower hereby requests a Borrowing of new Loans to be advanced pursuant to Section 2.2(a) of the Agreement as follows:

Aggregate amount of Borrowing:	$ _____
Type of Loans in Borrowing:	_____
Date on which Loans are to be advanced:	_____
Length of Interest Period for Eurodollar Loans (1, 2, 3, 6, 9 or 12 months):	_____ months

If combined with existing Loans
see attached Continuation/Conversion Notice.

To induce Lenders to make such Loans, Borrower hereby represents, warrants, acknowledges, and agrees to and with Administrative Agent and each Lender that:

(a) The officer of Borrower signing this instrument is the duly elected, qualified and acting officer of Borrower as indicated below such officer's signature hereto having all necessary authority to act for Borrower in making the request herein contained.

(b) The representations and warranties of Borrower set forth in the Agreement and the other Loan Documents are true and correct in all material respects on and as of the date hereof as if such representations and warranties have been made as of the date hereof, except to the extent that such representations or warranties were made as of a specific date or updated, modified or supplemented as of a subsequent date with the consent of Required Lenders and Administrative Agent, in which case such representations and warranties shall have been true and correct in all material respects on and of such date.

(c) There does not exist on the date hereof any condition or event which constitutes a Default which has not been waived in writing as provided in Section 10.1(a) of the Agreement; nor will any such Default exist upon Borrower's receipt and application of the Loans requested hereby. Borrower will use the Loans hereby requested in compliance with Section 2.4 of the Agreement.

(d) Except to the extent waived in writing as provided in Section 10.1(a) of the Agreement, Borrower has performed and complied with all agreements and conditions in the Agreement required to be performed or complied with by Borrower on or prior to the date hereof, and each of the conditions precedent to Loans contained in the Agreement remains satisfied.

(e) The Facility Usage, after the making of the Loans requested hereby, will not be in excess of the Borrowing Base on the date requested for the making of such Loans.

(f) The Loan Documents have not been modified, amended or supplemented by any unwritten representations or promises, by any course of dealing, or by any other means not provided for in Section 10.1(a) of the Agreement. The Agreement and the other Loan Documents are hereby ratified, approved, and confirmed in all respects.

The officer of Borrower signing this instrument hereby certifies that, to the best of his knowledge after due inquiry, the above representations, warranties, acknowledgments, and agreements of Borrower are true, correct and complete.

IN WITNESS WHEREOF, this instrument is executed as of _____, 20__.

BERRY PETROLEUM COMPANY

By: _____

Name:
Title:

SWING LINE LOAN NOTICE

Reference is made to that certain Amended and Restated Credit Agreement dated as of July 15, 2008 (as from time to time amended, the "Agreement"), by and among Berry Petroleum Company ("Borrower"), Wells Fargo Bank, National Association, as Administrative Agent, and certain financial institutions ("Lenders"). Terms which are defined in the Agreement are used herein with the meanings given them in the Agreement. Pursuant to the terms of the Agreement Borrower hereby requests a Borrowing of Swing Line Loans to be advanced pursuant to Section 2.17 of the Agreement as follows:

Aggregate amount of Borrowing: $ _____

Date on which Swing Line Loan is to be advanced: _____

To induce Swing Line Lender to make such Loans, Borrower hereby represents, warrants, acknowledges, and agrees to and with Administrative Agent and Swing Line Lender that:

(a) The officer of Borrower signing this instrument is the duly elected, qualified and acting officer of Borrower as indicated below such officer's signature hereto having all necessary authority to act for Borrower in making the request herein contained.

(b) The representations and warranties of Borrower set forth in the Agreement and the other Loan Documents are true and correct in all material respects on and as of the date hereof as if such representations and warranties have been made as of the date hereof, except to the extent that such representations or warranties were made as of a specific date or updated, modified or supplemented as of a subsequent date with the consent of Required Lenders and Administrative Agent, in which case such representations and warranties shall have been true and correct in all material respects on and of such date.

(c) There does not exist on the date hereof any condition or event which constitutes a Default which has not been waived in writing as provided in Section 10.1(a) of the Agreement; nor will any such Default exist upon Borrower's receipt and application of the Swing Line Loan requested hereby. Borrower will use the Swing Line Loans hereby requested in compliance with Section 2.4 of the Agreement.

(d) Except to the extent waived in writing as provided in Section 10.1(a) of the Agreement, Borrower has performed and complied with all agreements and conditions in the Agreement required to be performed or complied with by Borrower on or prior to the date hereof, and each of the conditions precedent to Loans contained in the Agreement remains satisfied.

(e) The Facility Usage, after the making of the Loans requested hereby, will not be in excess of the Borrowing Base on the date requested for the making of such Loans.

(f) The Loan Documents have not been modified, amended or supplemented by any unwritten representations or promises, by any course of dealing, or by any other means not provided for in Section 10.1(a) of the Agreement. The Agreement and the other Loan Documents are hereby ratified, approved, and confirmed in all respects.

The officer of Borrower signing this instrument hereby certifies that, to the best of his knowledge after due inquiry, the above representations, warranties, acknowledgments, and agreements of Borrower are true, correct and complete.

IN WITNESS WHEREOF, this instrument is executed as of _____, 20__.

BERRY PETROLEUM COMPANY

By: _____

Name:
Title:

EXHIBIT C

CONTINUATION/CONVERSION NOTICE

Reference is made to that certain Credit Agreement dated as of _____, 2008 (as from time to time amended, the "Agreement"), by and among Berry Petroleum Company ("Borrower"), Wells Fargo Bank, National Association, as Administrative Agent, and the lenders referred to therein ("Lenders"). Terms which are defined in the Agreement are used herein with the meanings given them in the Agreement.

Borrower hereby requests a Conversion or Continuation of existing Loans into a new Borrowing pursuant to Section 2.3 of the Agreement as follows:

Existing Borrowing(s) to be continued or converted:

$_____ of Eurodollar Loans with Interest Period ending _____

$_____ of Base Rate Loans

If being combined with new Loans, $_____ of new Loans to be advanced on _____

Aggregate amount of Borrowing: $_____

Type of Loans in new Borrowing: _____

Date of Continuation or Conversion: _____

Length of Interest Period for Eurodollar Loans (1, 2, 3, 6, 9 or 12 months): _____ months

To meet the conditions set out in the Agreement for such conversion/continuation, Borrower hereby represents, warrants, acknowledges, and agrees to and with Administrative Agent and each Lender that:

(a) The officer of Borrower signing this instrument is the duly elected, qualified and acting officer of Borrower as indicated below such officer's signature hereto having all necessary authority to act for Borrower in making the request herein contained.

(b) There does not exist on the date hereof any condition or event which constitutes a Default which has not been waived in writing as provided in Section 10.1(a) of the Agreement.

(c) The Loan Documents have not been modified, amended or supplemented by any unwritten representations or promises, by any course of dealing, or by any other means not provided for in Section 10.1(a) of the Agreement. The Agreement and the other Loan Documents are hereby ratified, approved, and confirmed in all respects.

The officer of Borrower signing this instrument hereby certifies that, to the best of his knowledge after due inquiry, the above representations, warranties, acknowledgments, and agreements of Borrower are true, correct and complete.

IN WITNESS WHEREOF this instrument is executed as of _____.

BERRY PETROLEUM COMPANY

By: _____
Name:
Title:

EXHIBIT D

CERTIFICATE ACCOMPANYING
FINANCIAL STATEMENTS

Reference is made to that certain Credit Agreement dated as of _____, 2008 (as from time to time amended, the "Agreement"), by and among Berry Petroleum Company ("Borrower"), Wells Fargo Bank, National Association, as Administrative Agent, and certain financial institutions ("Lenders"), which Agreement is in full force and effect on the date hereof. Terms which are defined in the Agreement are used herein with the meanings given them in the Agreement.

This Certificate is furnished pursuant to Section 6.2(b) of the Agreement. Together herewith Borrower is furnishing to Administrative Agent and each Lender Borrower's * [audited/unaudited] financial statements (the "Financial Statements") as at _____ (the "Reporting Date"). Borrower hereby represents, warrants, and acknowledges to Administrative Agent and each Lender that:

(a) the officer of Borrower signing this instrument is the duly elected, qualified and acting _____ of Borrower and as such is Borrower's Chief Financial Officer;

(b) the Financial Statements are accurate and complete and satisfy the requirements of the Agreement;

(c) attached hereto is a schedule of calculations showing Borrower's compliance as of the Reporting Date with the requirements of Sections 7.11 and 7.12 of the Agreement *[and Borrower's non-compliance as of such date with the requirements of Section(s) _____ of the Agreement];

(d) on the Reporting Date Borrower was, and on the date hereof Borrower is, in full compliance with the disclosure requirements of Section 6.4 of the Agreement, and no Default otherwise existed on the Reporting Date or otherwise exists on the date of this instrument *[except for Default(s) under Section(s) _____ of the Agreement, which *[is/are] more fully described on a schedule attached hereto].

(e) *[Unless otherwise disclosed on a schedule attached hereto,] The representations and warranties of Borrower set forth in the Agreement and the other Loan Documents are true and correct in all material respects on and as of the date hereof as if such representations and warranties have been made as of the date hereof, except to the extent that such representations or warranties were made as of a specific date or updated, modified or supplemented as of a subsequent date with the consent of Required Lenders and Administrative Agent, in which case such representations and warranties shall have been true and correct in all material respects on and of such date.

The officer of Borrower signing this instrument hereby certifies that he has reviewed the Loan Documents and the Financial Statements and has otherwise undertaken such inquiry as is in his opinion necessary to enable him to express an informed opinion with respect to the above representations, warranties and acknowledgments of Borrower and, to the best of his knowledge, such representations, warranties, and acknowledgments are true, correct and complete.

IN WITNESS WHEREOF, this instrument is executed as of _____, 20__.

BERRY PETROLEUM COMPANY

By: _____

Name:

Title:

OPINION OF COUNSEL FOR RESTRICTED PERSONS

ASSIGNMENT AND ASSUMPTION

This Assignment and Assumption (this "Assignment and Assumption") is dated as of the Effective Date set forth below and is entered into by and between [*Insert name of Assignor*] (the "Assignor") and [*Insert name of Assignee*] (the "Assignee"). Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement identified below (as from time to time amended, the "Credit Agreement"), receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions attached hereto as Annex 1 and the Credit Agreement, as of the Effective Date inserted by Administrative Agent as contemplated below (i) all of the Assignor's rights and obligations in its capacity as a Lender under the Credit Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of the Assignor under the respective facilities identified below (including, without limitation, the Letters of Credit or guarantees included in such facilities) and (ii) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and any other right of the Assignor (in its capacity as a Lender) against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including, but not limited to, contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned pursuant to clauses (i) and (ii) above being referred to herein collectively as, the "Assigned Interest"). Such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by the Assignor.

1. Assignor: _____

2. Assignee: _____ [and is an Affiliate/Approved Fund of [*identify Lender*]]

3. Borrower: Berry Petroleum Company

4. Administrative Agent: Wells Fargo Bank, National Association, as Administrative Agent under the Credit Agreement

5. Credit Agreement: Credit Agreement dated as of _____, 2008, by and among Borrower, Administrative Agent, and certain financial institutions ("Lenders")

6. Assigned Interest:

Aggregate Amount of Commitment/Loans for all Lenders*	Amount of Commitment/Loans Assigned	Percentage Assigned of Commitment/Loans
$_____	$_____	_____%
$_____	$_____	_____%
$_____	$_____	_____%

[7. Trade Date: _____]

Effective Date: _____, 20__ [TO BE INSERTED BY ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]

The terms set forth in this Assignment and Assumption are hereby agreed to:

ASSIGNOR
[NAME OF ASSIGNOR]

By: _____
Name:
Title:

ASSIGNEE
[NAME OF ASSIGNEE]

By: _____
Name:
Title:

[Consented to and] Accepted:

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Administrative Agent

By: _____
Name:
Title:

[Consented to:]

By: _____
Name:
Title:

STANDARD TERMS AND CONDITIONS FOR
ASSIGNMENT AND ASSUMPTION

1. Representations and Warranties.

1.1. Assignor. The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of Borrower, any of its Subsidiaries or Affiliates or any other Person obligated in respect of any Loan Document or (iv) the performance or observance by Borrower, any of its Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Loan Document.

1.2. Assignee. The Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it meets all requirements of an Eligible Assignee under the Credit Agreement (subject to receipt of such consents as may be required under the Credit Agreement), (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of the Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it has received a copy of the Credit Agreement, together with copies of the most recent financial statements delivered pursuant to Section 6.2(a) and (b) thereof, as applicable, and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest on the basis of which it has made such analysis and decision independently and without reliance on Administrative Agent or any other Lender, and (v) if it is a Foreign Lender, attached to the Assignment and Assumption is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by the Assignee; and (b) agrees that (i) it will, independently and without reliance on Administrative Agent, the Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

2. Payments. From and after the Effective Date, Administrative Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) to the Assignor for amounts which have accrued to but excluding the Effective Date and to the Assignee for amounts which have accrued from and after the Effective Date.

3. General Provisions. This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by telecopy shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be governed by, and construed in accordance with, the law of the State of California.

Execution Version

PURCHASE AND SALE AGREEMENT

BETWEEN

O'BRIEN RESOURCES, LLC

SEPCO II, LLC

LIBERTY ENERGY, LLC

CROW HORIZONS COMPANY

AND

O'BENCO II, LP

COLLECTIVELY, AS SELLER,

AND

BERRY PETROLEUM COMPANY,

AS PURCHASER,

DATED AS OF JUNE 10, 2008

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PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement (this "Agreement"), is dated as of June 10, 2008, by and between O'Brien Resources, LLC, a Texas limited liability company, O'BENCO II, LP, a Delaware limited partnership, Liberty Energy, LLC, a Massachusetts limited liability company, Crow Horizons Company, a Louisiana general partnership, and Sepco II, LLC a Louisiana limited liability company (collectively, the "Seller," and each a "Seller Party"), and Berry Petroleum Company, a Delaware corporation ("Purchaser"). Seller and Purchaser are sometimes referred to herein collectively as the "Parties" and individually as a "Party."

RECITALS:

Seller desires to sell and Purchaser desires to purchase those certain interests in oil and gas properties, rights and related assets that are defined and described as "Assets" herein; and

It is the intent of the Seller to transfer, and the intent of Purchaser to acquire, subject to the Excluded Assets and the further terms and conditions of this Agreement, all other leases, lands, surface interests, and other assets owned by Seller and located, as of the Effective Date or as of the Closing Date, on the lands highlighted in yellow on the plat attached hereto as Exhibit A-5, whether or not such leases, lands, surface interests, or other assets are described on Exhibits A-1 through A-4 hereto.

NOW, THEREFORE, in consideration of the premises and of the mutual promises, representations, warranties, covenants, conditions, and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE I
PURCHASE AND SALE

Section 1.1 **Purchase and Sale**. On the terms and conditions contained in this Agreement, Seller agrees to sell to Purchaser and Purchaser agrees to purchase, accept, and pay for the Assets.

Section 1.2 **Certain Definitions**. As used herein:

(a) "Assets" means all of Seller's right, title, and interest in and to the following:

(i) The oil and gas leases, oil, gas, and mineral leases and subleases described on Exhibit A-1 (the "Leases") together with the lands covered thereby (the "Lands"), and all rights to production after the Effective Date relating to the Leases and the Lands, including, without limitation, all royalties, overriding royalties, net profits interests, mineral fee interests, carried interests, and, without limiting the foregoing, other rights (of whatever character, whether legal or equitable, and whether vested or contingent) in and to the oil, gas, and other minerals in, on, under, and that may be produced from, the Leases and the Lands;

(ii) Any and all oil, gas, water, CO_2, or injection wells thereon or on pooled, communitized, or unitized acreage that includes all or any part of the Leases, including, without limiting the foregoing, the interests in the wells shown on Exhibit A-2 attached hereto, whether producing, non-producing, permanently or temporarily plugged and abandoned, and whether or not fully described (the "Wells");

(iii) All pooled, communitized, or unitized acreage which includes all or part of any Leases (the "Units"), and all tenements, hereditaments, and appurtenances belonging thereto;

(iv) The gas processing plants, gas gathering systems, pipelines, drip stations, and other mid-stream equipment described on Exhibit A-3 (the "Midstream Assets" and, together with the Leases, Wells, and Units, the "Properties");

(v) All currently existing contracts, agreements, and instruments with respect to the Properties, to the extent applicable to the Properties, including, without limitation, operating agreements, unitization, pooling, and communitization agreements, declarations and orders, area of mutual interest agreements, joint venture agreements, farmin and farmout agreements, exchange agreements, transportation agreements, agreements for the sale and purchase of Hydrocarbons, and processing agreements; provided, however, that the term "Contracts" shall not include (A) any contracts, agreements, and instruments included within the definition of "Excluded Assets," and (B) the Leases and other instruments constituting Seller's chain of title to the Leases (subject to such exclusion and proviso, the "Contracts");

(vi) All surface fee interests, easements, permits, licenses, servitudes, rights-of-way, surface leases, and other rights to use the surface appurtenant to, and used or held for use primarily in connection with, the Properties, but excluding any permits and other appurtenances included within the definition of "Excluded Assets" (subject to such exclusions, and including without limitation those rights-of-way and other surface rights listed on Exhibit A-3, the "Surface Rights");

(vii) All equipment, machinery, fixtures, and other tangible personal property and improvements located on the Properties or used or held for use primarily in connection with the operation of the Properties or the production of Hydrocarbons from the Properties, the material items of which are described on Exhibit A-4, including, without limitation, the tubular inventory located on the Oakes Field yard in Limestone County, Texas and in the Blocker Field location in Harrison County, Texas and specifically described on Exhibit A-4, but excluding items included within the definition of "Excluded Assets" (subject to such exclusions, the "Equipment");

(viii) All Hydrocarbons produced from, or directly attributable to, the Leases, Units, or Wells after the Effective Date; all Hydrocarbon inventories from the Properties in storage as of the end of the Effective Date; and, to the extent related to the Properties, all production, plant, and transportation imbalances as of the Effective Date (provided, however, that Purchaser's rights to the Assets described in this subsection (viii) shall be satisfied solely pursuant to Section 2.3); and

(ix) The data and records of Seller, to the extent directly relating to the Properties, excluding, however:

(A) all corporate, financial, Tax, and legal data and records of Seller that relate to Seller's business generally (whether or not relating to the Assets) or to Seller's business and operations not otherwise expressly included in this Agreement;

(B) any data, software, and records (including, without limitation, the licenses or other agreements granting the right to use the same) to the extent disclosure or transfer is prohibited or subjected to payment of a fee or other consideration by any license agreement or other agreement with a Person other than Affiliates of Seller, or by applicable Law, and for which no consent to transfer has been received or for which Purchaser has not agreed in writing to pay the fee or other consideration, as applicable;

(C) all legal records and legal files of Seller including all work product of and attorney-client communications with Seller's legal counsel (other than Leases, title opinions, and Contracts);

(D) data and records relating to the sale of the Assets, including, without limitation, communications with the advisors or representatives of any Seller Party or communications and arrangements among the Seller Parties and bids received from, and records of negotiations with, third Persons;

(E) any data and records relating to the other Excluded Assets; and

(F) original data and records retained by Seller pursuant to Section 13.6.

(Clauses (A) through (F) shall hereinafter be referred to as the "Excluded Records" and subject to such exclusions, the data, software and records described in this Section 1.2(a)(ix) shall hereinafter be referred to as the "Records.").

(b) "Affiliate" means, with respect to any Person, a Person that directly or indirectly controls, is controlled by, or is under common control with, such Person, with control in such context meaning the ability to direct the management or policies of a Person through ownership of voting shares or other securities, pursuant to a written agreement, or otherwise.

(c) "Agreed Rate" means the lesser of (i) the one month London Inter-Bank Offered Rate, as published on Page BBAM of the Bloomberg Financial Markets Information Service on the last Business Day prior to the Effective Date plus three percentage points (LIBOR +3%) and (ii) the maximum rate allowed by applicable Laws.

(d) "Business Day" means any day other than a Saturday, a Sunday, or a day on which banks are closed for business in New York, New York or Shreveport, Louisiana, United States of America.

(e) "Code" means the United States Internal Revenue Code of 1986, as amended.

(f) "Cut-Off Date" means five o'clock local time at the location of the Properties on a date that is the later to occur of (i) One-Hundred Eighty (180) days after the Closing Date and (ii) December 31, 2008.

(g) "Effective Date" means 12:00 a.m. Central Time on February 1, 2008.

(h) "Governmental Authority" means any national government and/or government of any political subdivision, and departments, courts, commissions, boards, bureaus, ministries, agencies, or other instrumentalities of any of them.

(i) "Hart-Scott-Rodino Act" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

(j) "Hydrocarbons" means crude oil, gas, casinghead gas, condensate, natural gas liquids, and other gaseous or liquid hydrocarbons (including, without limitation, ethane, propane, iso-butane, nor-butane, gasoline, and scrubber liquids) of any type and chemical composition.

(k) "Laws" means all laws, statutes, rules, regulations, ordinances, orders, decrees, requirements, judgments, and codes of Governmental Authorities.

(l) "Lowest Cost Response" means, with respect to any Environmental Defect, the response required or allowed under Environmental Laws that addresses such Environmental Defect to the extent required by applicable Environmental Laws at the lowest cost (considered as a whole taking into consideration any material negative impact such response may have on the operations of the relevant Assets and any potential material additional costs or liabilities that may likely arise as a result of such response) as compared to any other response that is required or allowed under Environmental Laws.

(m) "Material Adverse Effect" means a material adverse effect (i) on the ownership or operation of the Assets, taken as a whole, or (ii) on the ability of Seller to perform its obligations under this Agreement to the extent such obligations are to be performed prior to Closing or to consummate the transactions contemplated hereby; provided, however, that Material Adverse Effect shall not include material adverse effects resulting from general changes in oil and gas prices; general changes in industry, economic or political conditions, or markets; changes in condition or developments generally applicable to the oil and gas industry in any area or areas where the Assets are located; acts of God, including hurricanes and storms; acts or failures to act of Governmental Authorities (where not caused by the willful or negligent acts of Seller); civil unrest or similar disorder; terrorist acts; changes in Laws; effects or changes that are cured or that no longer exist by the earlier of the Closing and the termination of this Agreement pursuant to Article 11; and changes resulting from the announcement of the transactions

contemplated hereby or the performance of the covenants set forth in Article 7 or Section 9.4(e) hereof.

(n) "Material Contract" means, to the extent binding on the Properties after Closing:

(i) any farm-out agreements, participation, exploration, or other similar upstream agreements, joint operating agreements, unit agreements, AMI agreements, communitization agreements, pooling agreements, processing agreements, transportation agreements, and water disposal agreements;

(ii) any Contract for the sale of Hydrocarbons produced or to be produced from the Properties that is not terminable by Seller or its successors without penalty on no more than ninety (90) days notice;

(iii) any Contract that can reasonably be expected to result in aggregate payments by any Seller Party or Purchaser of more than Two-Hundred Thousand dollars ($200,000) during the current or any subsequent fiscal year;

(iv) any Contract that can reasonably be expected to result in revenues to any Seller Party or Purchaser of more than Two-Hundred Thousand dollars ($200,000) during the current or any subsequent fiscal year;

(v) any Contract that constitutes a lease under which Seller is the lessor or lessee of real or personal property which lease (A) cannot be terminated by Seller without penalty upon sixty (60) days or less notice and (B) pursuant to which Seller pays or receives an annual base rental of more than One-Hundred Thousand dollars ($100,000);

(vi) any Contract with any Affiliate of any Seller Party, except to the extent that the obligations of Seller in and to the same will be merged or otherwise cease to exist at Closing;

(vii) any Contract pending for the acquisition or disposition, directly or indirectly (by merger or otherwise), of Assets with a value in excess of Two-Hundred Thousand dollars ($200,000) (other than sales of Hydrocarbons in the ordinary course of business);

(viii) Any Contract for the purchase of tubular or similar goods; and

(ix) any Contract pending for the acquisition or disposition (by merger or otherwise) of all or any part of the Properties, including, without limitation, farm-out agreements, participation, exploration, or other similar agreements, and area of mutual interest agreements, but excluding rights of reassignment upon intent to abandon a Property.

(o) "Person" means any individual, corporation, partnership, limited liability company, trust, estate, Governmental Authority, or any other entity.

(p) "Property Costs" means all operating expenses (including without limitation costs of insurance, rentals, shut-in payments, title examination and curative actions, production and similar Taxes measured by units of production, and severance Taxes, attributable to production of Hydrocarbons from the Assets, but excluding Seller's other Taxes) and capital expenditures (including without limitation bonuses, broker fees, and other Lease acquisition costs, costs of drilling and completing wells, and costs of acquiring equipment) incurred in the ownership and operation of the Assets in the ordinary course of business, general and administrative costs with respect to the Assets, and overhead costs charged to the Assets under the applicable operating agreement or, if none, charged to the Assets on the same basis as charged on the date of this Agreement (provided that, where Seller or its Affiliates operate a Well and there is no applicable operating agreement, such overhead costs shall be Nine-Thousand dollars ($9,000) per Well per month in the event that a Well is being drilled, reworked, sidetracked, plugged and abandoned (whether permanently or temporarily), or otherwise actively modified (provided that such operations are in the ordinary course of business), or Nine-Hundred dollars ($900) per Well per month for all other Wells, in either case, proportionately reduced to Seller's working interest in any such Well), but excluding without limitation liabilities, losses, costs, and expenses attributable to:

(i) claims, investigations, administrative proceedings, arbitration, or litigation directly or indirectly arising out, of or resulting from, actual or claimed personal injury, illness, or death; property damage; environmental damage or contamination; other torts; private rights of action given under any Law; or violation of any Law;

(ii) obligations to plug wells, dismantle facilities, close pits and clear the site and/or restore the surface or seabed around such wells, facilities, and pits;

(iii) obligations to remediate actual or claimed contamination of groundwater, surface water, soil, or Equipment;

(iv) title and environmental claims (including claims that Leases have terminated);

(v) claims of improper calculation or payment of royalties (including overriding royalties and other burdens on production) related to deduction of post-production costs or use of posted or index prices or prices paid by Affiliates;

(vi) gas balancing and other production balancing obligations;

(vii) casualty and condemnation; and

(viii) any claims for indemnification, contribution, or reimbursement from any third Person with respect to liabilities, losses, costs, and expenses of the type described in preceding clauses (i) through (vii), whether such claims are made pursuant to contract or otherwise.

(q) "Reserve Report" means that certain report dated February 1, 2008 from Ryder Scott & Company entitled "Estimated Future Reserves and Income Attributable to Certain Working Interests of the Consolidated Selling Interests Including Liberty Energy, LLC."

(r) "Tax" means all taxes, including any foreign, federal, state, or local income tax, surtax, remittance tax, presumptive tax, net worth tax, special contribution, production tax, pipeline transportation tax, freehold mineral tax, value added tax, withholding tax, gross receipts tax, windfall profits tax, profits tax, severance tax, personal property tax, real property tax, sales tax, goods and services tax, service tax, transfer tax, use tax, excise tax, premium tax, stamp tax, motor vehicle tax, entertainment tax, insurance tax, capital stock tax, franchise tax, occupation tax, payroll tax, employment tax, unemployment tax, disability tax, alternative or add-on minimum tax, and estimated tax, imposed by a Governmental Authority together with any interest, fine, or penalty thereon.

Section 1.3 **Excluded Assets**. Notwithstanding anything to the contrary in Section 1.2 or elsewhere in this Agreement, the "Assets" shall not include any rights with respect to the Excluded Assets. "Excluded Assets" shall mean the following:

(a) the Excluded Records;

(b) copies of other Records retained by Seller pursuant to Section 13.6;

(c) Assets excluded from this Agreement pursuant to Section 3.6;

(d) all claims against insurers and other third Persons pending on or prior to the Effective Date;

(e) all trademarks, trade names, and other intellectual property;

(f) all futures, options, swaps, and other derivatives, and all software used for trading, hedging, and credit analysis;

(g) all of Seller's interests in office leases, buildings and other real property unless expressly identified in Section 1.2(a)(i), Section 1.2(a)(iii), Section 1.2(a)(vi), or on Exhibit A-3;

(h) any leased equipment and other leased personal property to the extent the lease is not transferable without payment of a fee or other consideration, subject, however, to Section 3.6;

(i) all office equipment, computers, software, cell phones, pagers, and other hardware, personal property, and equipment, and contracts related thereto that: (A) do not relate solely and exclusively to the Properties or relate to Seller's business generally or to other businesses or assets of Seller and its Affiliates, except to the extent the same are expressly identified on Exhibit A-3 or (B) are set forth on Schedule 1.3 (even if relating solely and exclusively to the Assets);

(j) any Tax refund (whether by payment, credit, offset, or otherwise, and together with any interest thereon) in respect of any Taxes for which Seller is liable for payment or required to indemnify Purchaser under Section 10.1;

(k) refunds relating to severance Tax abatements (whether by payment, credit, offset, or otherwise, and together with any interest thereon) with respect to all taxable periods or portions thereof ending on or prior to the Effective Date, whether received before, on, or after the Effective Date (including, without limitation, refunds relating to the designation by the Railroad Commission of Texas of any Well or Unit as "High Cost" pursuant to the terms of 16 Tex. Admin. Code Sec.3.101);

(l) all indemnities and other claims against Persons (even if between the Seller Parties or their respective Affiliates) for Taxes for which Seller or its Affiliates is liable for payment or required to indemnify Purchaser under Section 10.1;

(m) claims against insurers under policies held by Seller or its Affiliates;

(n) costs and revenues associated with all joint interest audits and other audits of Property Costs covering periods for which Seller is in whole or in part responsible for the Assets;

(o) any royalty, overriding royalty, net profits interest, volumetric production payment, or other such interest reserved by, or conveyed to, any Seller Party prior to the Closing Date, including, without limitation, (i) the interests set forth on Schedule 1.3, and (ii) any overriding royalty interest reserved by, or conveyed to, O'Brien Resources, LLC prior to the Closing Date; and

(p) any other assets, contracts, equipment, accounts, or other rights or properties described on Schedule 1.3.

ARTICLE II
PURCHASE PRICE

Section 2.1 **Purchase Price**. The purchase price for the Assets (the "Purchase Price") shall be Five -Hundred Ninety Million dollars ($590,000,000) (the "Unadjusted Purchase Price"), adjusted as provided in Section 2.3. Contemporaneously with the execution and delivery of this Agreement, Purchaser has delivered or caused to be delivered to the Shreveport branch of Capital One, N.A. (the "Escrow Agent"), a wire transfer in the amount equal to ten percent (10%) of the Unadjusted Purchase Price in same-day funds (the "Deposit") to be held, invested, and disbursed in accordance with the terms of an escrow agreement of even date herewith among Seller, Purchaser, and Escrow Agent (the "Escrow Agreement"). The Deposit and all income earned thereon shall be distributed in accordance with the terms of this Agreement and the Escrow Agreement.

Section 2.2 **Allocation of Purchase Price**.

(a) At least ten (10) Business Days prior to the Target Closing Date, Seller shall prepare and deliver to Purchaser, using and based upon the best information available to Seller, a schedule (the "Seller's Proposed Allocation Schedule") setting forth the following items:

(i) the Unadjusted Purchase Price as set forth in Section 2.1;

(ii) the liabilities associated with the Assets as of the Closing that are taken into account for purposes of Section 1060 of the Code with respect to the cost basis of the Assets as of Closing; and

(iii) an allocation of the sum of (A) the Unadjusted Purchase Price under clause (i) and (B) the aggregate amount of liabilities under clause (ii) that are includable in the Purchaser's tax basis in the Assets among the classes of the Assets (but not the specific Assets) as of the Closing, which allocations shall be made in accordance with Section 1060 of the Code and the Treasury Regulations promulgated thereunder, but which need not be consistent with the Allocated Values established pursuant to Section 3.4.

Seller shall, at Purchaser's request, make reasonable documentation available to support the proposed allocations provided in Seller's Proposed Allocation Schedule. As soon as reasonably practicable, but not later than five (5) Business Days following receipt of Seller's Proposed Allocation Schedule, Purchaser shall deliver to Seller a written report setting forth any changes that Purchaser proposes to be made to Seller's Proposed Allocation Schedule (which report shall specify the reasons for any such changes in reasonable detail and shall include true and complete copies of any supporting documentation pursuant to which such changes are proposed). The Parties shall undertake to agree on a final schedule no later than two (2) Business Days prior to the Closing Date. In the event the Parties cannot reach agreement by that date, the allocations set forth in Seller's Proposed Allocation Schedule shall be used pending adjustment under the following paragraph. Notwithstanding anything to the contrary contained in this Agreement, the allocations of value to Assets other than the Leases, Wells, and Units (including, without limitation the Midstream Assets), if any, shall not exceed twenty-five million dollars ($25,000,000), whether by the initial allocation of value, any adjustments thereto, or otherwise; provided, however, that to the extent that any adjustment to the Unadjusted Purchase Price would cause the Allocated Value of such other Assets to exceed twenty-five million dollars ($25,000,000), the amount of such excess shall be allocated to the Wells and Units.

(b) Within thirty (30) days after the determination of the Purchase Price under Section 9.4(b), Seller's Proposed Allocation Schedule shall be amended by Seller and delivered to Purchaser to reflect the Purchase Price following final adjustments. Purchaser shall cooperate with Seller in the preparation of such amended schedule. If the Seller's amendments to Seller's Proposed Allocation Schedule are not objected to by Purchaser (by written notice to Seller specifying the reasons therefor in reasonable detail) within thirty (30) days after delivery of Seller's adjustments to such schedule, it shall be deemed agreed upon by the Parties. In the event that the Parties cannot reach an agreement within twenty (20) days after Seller receives notice of any objection by Purchaser, then (i) Purchaser shall be entitled to report its allocation of the Purchase Price for Tax purposes, (ii) each Seller Party shall be entitled to report its respective allocation of the Purchase Price for Tax purposes, and (iii) as between Purchaser and the Seller Parties collectively, such separate reports as filed and reported for Tax purposes need not be consistent.

Section 2.3 **Adjustments to Purchase Price**. The Unadjusted Purchase Price shall be adjusted as follows:

(a) Increased or decreased, as appropriate, in accordance with Section 3.5 and Section 4.4 (whether before or after the Closing);

(b) Decreased as a consequence of Assets excluded from this transaction as a consequence of the exercise of preferential rights to purchase or the existence of a Casualty Loss, as described in Section 3.6 or Section 12.4, respectively;

(c) Except with respect to amounts relating to item 1 on Schedule 5.2, decreased by the amount of royalty, overriding royalty, and other burdens payable out of production of Hydrocarbons from the Leases and Units or the proceeds thereof to third Persons but held in suspense by Seller at the Closing, and any interest accrued in escrow accounts for such suspended funds, to the extent such funds are not transferred to Purchaser's control at the Closing;

(d) Increased or decreased, as applicable, for the value of net underproduction or net overproduction, if any, of gas from Seller's interest in the Properties as a result of pipeline or other imbalances as of the Effective Date, based upon the amount of the net imbalance in MMBtu multiplied by Inside FERC's Gas Market Report Index price for East Texas, Houston Ship Channel as in effect on the first day of the month of the Target Closing Date; provided, however that:

(i) Notwithstanding anything to the contrary contained in this Agreement, there shall be no adjustment to the Purchase Price for imbalances between the Seller Parties to the extent that any claim with respect to any such imbalance is assigned to Purchaser; and

(ii) Except with respect to breaches of the representation set forth in Section 5.7 , the adjustment to the Purchase Price set forth in this Section 2.3(d) shall be in full settlement of all imbalances of any type, and, at Closing, Purchaser shall assume Seller's proportionate share of any imbalance with respect to the Properties, including, without limitation, the responsibility for the payment of royalties with respect to such imbalance and any obligation to balance, whether in cash or in kind.

(e) Increased by the aggregate amount of Hydrocarbon inventories from the Properties in storage on the Effective Date and produced for the account of Seller with respect to the Properties on or prior to the Effective Date, multiplied by the Contract price therefor, or, if there is no applicable Contract, ninety dollars ($90.00) per barrel;

(f) Except to the extent that such prepaid Taxes are included within the definition of the "Excluded Assets," increased by the net amount of all prepaid expenses (including prepaid Taxes, bonuses, rentals, cash calls to third Person operators, and scheduled payments) less all third Person cash call payments received by Seller as operator to the extent applying to the operation of the Assets after the Effective Date; and

(g) Adjusted for proceeds and other income attributable to the Assets, Property Costs, and certain other costs attributable to the Assets as follows:

(i) Decreased by an amount equal to the aggregate amount of the following proceeds received by Seller or any of its Affiliates:

(A) amounts earned from the sale, during the period from and including the Effective Date through but excluding the Closing Date (such period being referred to as the "Adjustment Period"), of oil, gas, and other Hydrocarbons produced from or attributable to the Properties (net of any (x) royalties, overriding royalties, and other burdens payable out of production of oil, gas, or other Hydrocarbons or the proceeds thereof that are not included in Property Costs; (y) gathering, processing, and transportation costs paid in connection with sales of oil, gas, or other Hydrocarbons that are not included as Property Costs under Section 2.3(g)(ii); and (z) production Taxes, other Taxes measured by units of production, severance Taxes and any other Property Costs, that in any such case are deducted by the purchaser of production, and excluding the effects of any futures, options, swaps, or other derivatives), and

(B) other income earned with respect to the Assets during the Adjustment Period (provided that for purposes of this Section 2.3(g), no adjustment shall be made for funds received by Seller for the account of third Persons, and excluding any income earned from futures, options, swaps, or other derivatives); and

(ii) Increased by an amount equal to the amount of all Property Costs, and other amounts (including those Taxes and other amounts expressly excluded from the definition of Property Costs) which are incurred in the ownership and operation of the Assets during the Adjustment Period but paid by or on behalf of Seller or any of its Affiliates, except in each case (A) any costs already deducted in the determination of proceeds in Section 2.3(g)(i), (B) Taxes (other than production Taxes and other Taxes measured by units of production and severance Taxes), which are addressed in Section 10.1, and (C) costs attributable to futures, options, swaps or other derivatives, or the elimination of the same pursuant to Section 7.9.

The amount of each adjustment to the Unadjusted Purchase Price described in Section 2.3(f) and Section 2.3(g) shall be determined in accordance with the United States generally accepted accounting principles (the "Accounting Principles").

Section 2.4 Ordinary Course Pre-Effective Date Costs Paid and Revenues Received Post-Closing.

(a) With respect to any revenues earned or Property Costs incurred with respect to the Assets on or prior to the Effective Date but received or paid after the Closing Date:

(i) Seller shall be entitled to all amounts earned from the sale, during the period up to but excluding the Effective Date, of oil, gas, and other Hydrocarbons produced from or attributable to the Properties, which amounts are received after Closing (net of any (A) royalties, overriding royalties, and other burdens payable out of production of oil, gas, or other Hydrocarbons or the proceeds thereof that are not included in Property Costs; (B) gathering, processing, and transportation costs paid in connection with sales of oil, gas, and other Hydrocarbons that are not included as Property Costs under Section 2.4(a)(ii); and (C) production Taxes, other Taxes measured by units of production, severance Taxes, and other Property Costs, that in any such case are deducted by the purchaser of production), and to all other income earned with respect to the Assets up to but excluding the Effective Date and received after Closing; and

(ii) Seller shall be responsible for (and entitled to any refunds and indemnities with respect to) all Property Costs incurred up to but excluding the Effective Date that are paid after the Closing.

(b) Without duplication of any adjustments made pursuant to Section 2.3(g), should any Party or its Affiliates receive after Closing any proceeds or other income to which the other Party is entitled under Section 2.4(a), such Party shall fully disclose, account for, and promptly remit the same to such other Party.

(c) Without duplication of any adjustments made pursuant to Section 2.3(g), should any Party pay after Closing any Property Costs for which the other Party is responsible under Section 2.4(a), such Party shall reimburse the other Party promptly after receipt of such other Party's invoice, accompanied by copies of the relevant vendor or other invoice and proof of payment.

(d) Without limiting the foregoing, Purchaser shall fully disclose, account for, and promptly remit to Seller any amounts relating to item 1 on Schedule 5.2 until such time as, in the opinion of Seller (in the exercise of its sole discretion), it is no longer necessary to hold such amounts in suspense.

"Earned" and "incurred," as used in this Section and Section 2.3, shall be interpreted in accordance with accounting recognition guidance under the Accounting Principles.

Section 2.5 Procedures.

(a) For purposes of allocating production (and accounts receivable with respect thereto), under Section 2.3 and Section 2.4, (i) liquid Hydrocarbons shall be deemed to be "from or attributable to" the Properties when they pass through the pipeline connecting into the storage facilities into which they are run or, if there are no such storage facilities, when they pass through the LACT units or similar meters at the point of entry into the pipelines through which they are transported from the applicable Lease or Unit, and (ii) gaseous Hydrocarbons shall be deemed to be "from or attributable to" the Properties when they pass through the delivery point sales meters or similar meters at the point of entry into the pipelines through which they are transported. Seller shall utilize reasonable interpolative procedures to arrive at an allocation of production when exact meter readings are not available.

Surface use fees, insurance premiums, and other Property Costs that are paid periodically shall be prorated based on the number of days in the applicable period falling on or before, or after, the Effective Date. Production Taxes and similar Taxes measured by units of production, and severance Taxes, shall be prorated based on the amount of Hydrocarbons actually produced, purchased or sold, as applicable, on or before, and after, the Effective Date.

(b) After Closing, Purchaser shall handle all joint interest audits and other audits of Property Costs covering periods for which Seller is in whole or in part responsible under Section 2.4. Purchaser shall not agree to any adjustments to previously assessed costs for which Seller is liable, or any compromise of any audit claims to which Seller would be entitled, without the prior written consent of Seller, which consent shall not be unreasonably withheld. Purchaser shall provide Seller with a copy of all applicable audit reports and written audit agreements received by Purchaser and relating to periods for which Seller is responsible.

ARTICLE III
TITLE MATTERS

Section 3.1 Seller's Title.

(a) Subject to Section 13.18, Seller represents and warrants to Purchaser that Seller's title to the Units and Wells shown on Exhibit A-2 and the proved non-producing, undeveloped, probable, and possible locations shown on Exhibit A-2 and depicted on Exhibit A-5 (the "Undeveloped Locations") is (and as of the Closing Date shall be) Defensible Title as defined in Section 3.2. This representation and warranty provides Purchaser's exclusive remedy with respect to any Title Defects.

(b) The Assignment and Bill of Sale to be delivered by Seller to Purchaser at Closing (the "Assignment and Bill of Sale") shall be in form identical to the assignment attached hereto as Exhibit B and shall contain a special warranty of title to the Leases shown on Exhibit A-1 by, through, and under each Seller Party severally and not jointly, but not otherwise, subject to the Permitted Encumbrances. Purchaser shall not be entitled to protection under Seller's special warranty of title in the Assignment and Bill of Sale against any Title Defect reported by Purchaser to Seller pursuant to this Article 3 or to the extent the same has been cured or removed pursuant to Section 3.5(b).

(c) With respect to each Undeveloped Location, Purchaser shall not be entitled to protection under Seller's representation in Section 3.1(a) against any Title Defect to the extent based upon, or arising out of, (i) Purchaser's change in the surface or bottom hole location of such Undeveloped Location (or the path of the borehole thereof) (A) to or across a location wholly or partially outside of the applicable Unit (or, with respect to Undeveloped Locations located within the Alton Sims lease, the applicable Lease), (B) to or across a location which is not in all respects in compliance with any applicable Laws (including, without limitation, density and spacing rules of the Texas Railroad Commission), or (C) to or across all or any portion of the "Exclusion Acreage" described on Schedule 3.1; or (ii) the completion of any Undeveloped Location at depths deeper than the depth limitations applicable to such Undeveloped Location, if any, described on Exhibit A-1 (collectively, the "Undeveloped Assumption Data").

Section 3.2 Definition of Defensible Title.

(a) As used in this Agreement, the term "Defensible Title" means that title of the Seller Parties which, subject to the Permitted Encumbrances:

(i) Entitles all of the Seller Parties, collectively, to receive (after satisfaction of all royalties, overriding royalties, nonparticipating royalties, net profits interests, or other similar burdens on or measured by production of oil and gas), not less than the "net revenue interest" share shown in Exhibit A-2 of all oil, gas, and other minerals produced, saved, and marketed from such Unit, Well, or Undeveloped Location, except decreases in connection with those operations in which any Seller Party may be a nonconsenting co-owner (provided that, in the event of a decrease due to an actual election of non-consent by a Seller Party in which a third Person is entitled to all or a portion of such Seller Party's interests, such decrease is reflected on Exhibit A-2) decreases resulting from reversion of interest to co-owners with respect to operations in which such co-owners elected not to consent (to the extent reflected in Exhibit A-2), decreases resulting from the establishment or amendment of pools or units, decreases required to allow other working interest owners to make up past underproduction or pipelines to make up past under deliveries, and except as otherwise stated in Exhibit A-2;

(ii) Obligates all of the Seller Parties, collectively, to bear a percentage of the costs and expenses for the maintenance and development of, and operations relating to, any Unit, Well, or Undeveloped Location not greater than the "working interest" shown in Exhibit A-2, except as stated in Exhibit A-2 and except increases resulting from contribution requirements with respect to defaulting or non-consenting co-owners under applicable operating agreements or applicable Law and increases that are accompanied by at least a proportionate increase in Seller's net revenue interest; and

(iii) Is free and clear of liens, encumbrances, obligations, or defects, other than Permitted Encumbrances.

(b) As used in this Agreement, the term "Title Defect" means any lien, charge, encumbrance, obligation, or defect, including, without limitation, a discrepancy in net revenue interest or working interest that causes a breach of Seller's representation and warranty in Section 3.1.

Section 3.3 Definition of Permitted Encumbrances. As used herein, the term "Permitted Encumbrances" means any or all of the following:

(a) Lessors' royalties and any overriding royalties, reversionary interests, back-in interests, and other burdens to the extent that they do not, individually or in the aggregate, reduce Seller's net revenue interest below that shown in Exhibit A-2 or increase Seller's working interest above that shown in Exhibit A-2 without a corresponding increase in the net revenue interest;

(b) All leases, unit agreements, pooling agreements, operating agreements, production sales contracts, division orders, farmouts, exploration agreements, carried interests, sales agreements, royalty or overriding royalty agreements, and other contracts, agreements, and instruments applicable to the Assets, including provisions for penalties, suspensions, or forfeitures contained therein, to the extent that they do not, individually or in the aggregate, reduce Seller's net revenue interest below that shown in Exhibit A-2 or increase Seller's working interest above that shown in Exhibit A-2 without a corresponding increase in the net revenue interest;

(c) Subject to Section 3.6, rights of first refusal, preferential rights to purchase, and similar rights with respect to the Assets;

(d) Third-party consent requirements and similar restrictions (i) which are not applicable to the sale of the Assets contemplated by this Agreement, (ii) with respect to which waivers or consents are obtained from the appropriate Persons prior to the Closing Date, (iii) with respect to which the appropriate time period for asserting the right has expired, (iv) which need not be satisfied prior to a transfer, (v) which are not Material Consents, or (vi) which relate to Excluded Records;

(e) Liens for Taxes or assessments not yet delinquent or, if delinquent, being contested in good faith by appropriate actions;

(f) Materialman's, mechanic's, repairman's, employee's, contractor's, operator's, and other similar liens or charges arising in the ordinary course of business for amounts not yet delinquent (including any amounts being withheld as provided by Law), or if delinquent, being contested in good faith by appropriate actions;

(g) All rights to consent, by required notices to, filings with, or other actions by Governmental Authorities in connection with the sale or conveyance of oil and gas leases or rights or interests therein if they are customarily obtained subsequent to the sale or conveyance;

(h) Rights of reassignment arising upon final intention to abandon or release the Assets, or any of them;

(i) Easements, rights-of-way, covenants, servitudes, permits, surface leases, and other rights in respect of surface operations to the extent that they do not reduce Seller's net revenue interest below that shown on Exhibit A-2 or increase Seller's working interest beyond that shown on Exhibit A-2 without a corresponding increase in net revenue interest;

(j) Any actual or asserted termination of Seller's title to any Lease held by production as a consequence of the failure to conduct operations, cessation of production, or insufficient production over any period prior to the Closing Date unless the lessor thereunder has asserted that such Lease has terminated, whether by direct communication, refusal to accept payment of royalty, shut-in royalty, or other amounts calculable as a share of production from such Lease, or otherwise;

(k) All rights reserved to or vested in any Governmental Authorities to control or regulate any of the Assets in any manner or to assess Tax with respect to the Assets, the ownership, use or operation thereof, or revenue, income, or capital gains with respect thereto, and all obligations and duties under all applicable Laws of any such Governmental Authority or under any franchise, grant, license, or permit issued by any Governmental Authority;

(l) The liens and encumbrances set forth on Schedule 3.3, and any other lien, charge, or other encumbrance on or affecting the Assets which is expressly waived, assumed, bonded, or paid by Purchaser at or prior to Closing or which is discharged by Seller at or prior to Closing;

(m) Any lien or trust arising in connection with workers' compensation, unemployment insurance, pension, or employment laws or regulations;

(n) Assertions that Seller's files lack information (including, without limitation, title opinions);

(o) Failure to recite marital status in a document or omissions of successors or heirship or estate proceedings, unless Purchaser provides affirmative evidence that such failure or omission has resulted in another Person's actual and superior claim of title to the relevant Property and either (i) such other Person has asserted an actual and superior claim of title to the relevant Property or (ii) less than two (2) years have elapsed since the date of such document;

(p) Lack of a survey, unless a survey is required by applicable Law;

(q) Lack of corporate or other entity authorization absent reasonable evidence of an actual claim of superior title from a third Person attributable to such alleged lack of authorization;

(r) Failure to record assignments of any Property between any Seller Parties in the county in which such Property is located;

(s) Matters for which the applicable statue of limitations for assertion thereof has expired (including, without limitation, title by limitations or adverse possession);

(t) Matters cured by the acquisition by Purchaser of all right, title, and interest of all Seller Parties in and to the Assets (including requirements for stipulations between the Seller Parties or their respective predecessors in interest) to the extent that the same do not, individually or in the aggregate, reduce Seller's collective net revenue interest below that shown in Exhibit A-2 or increase Seller's collective working interest above that shown in Exhibit A-2 without a corresponding increase in the net revenue interest;

(u) Unreleased instruments (including leases covering oil, gas, and other minerals), absent specific evidence that such instruments continue in force and effect and constitute a superior claim of title with respect to the Wells, Units, or Undeveloped Locations shown on Exhibit A-2;

(v) Leases or other instruments entitling a third Person to the rights to coal, lignite, sulphur, uranium, or any other mineral, and operations (including, without limitation, reclamation operations) conducted by third Persons pursuant thereto absent specific evidence that existence thereof, and operations currently being conducted pursuant thereto, materially interfere with operations (i) currently being conducted by Seller or (ii) for which Seller has specific plans existing as of the date hereof with respect to the Wells and Units shown on Exhibit A-2;

(w) Depth severances or any other change in the working interest or net revenue interest of Seller with depth to the extent that they do not reduce Seller's net revenue interest below that shown on Exhibit A-2 or increase Seller's working interest beyond that shown on Exhibit A-2 without a corresponding increase in net revenue interest;

(x) Any matters reflected on Exhibit A-2 or Schedule 3.3; and

(y) Any other liens, charges, encumbrances, defects, or irregularities which do not, individually or in the aggregate, materially detract from the value of or materially interfere with the use or ownership of the Assets subject thereto or affected thereby (as currently used or owned) and which would be accepted by a reasonably prudent purchaser engaged in the business of owning and operating oil and gas properties, including, without limitation, the absence of any lease amendment or consent by any royalty interest or mineral interest holder authorizing the pooling of any leasehold interest, royalty interest, or mineral interest, matters for which Seller owns a protection or top lease or other instrument, and the failure of Exhibits A-1 and A-2 to reflect any lease or any unleased mineral interest where the owner thereof was treated as a non-participating co-tenant during the drilling of any well.

Section 3.4 **Allocated Values**. Schedule 3.4 sets forth the agreed allocation of the Unadjusted Purchase Price among the Properties for purposes of Seller's title representation in this Article 3. The "Allocated Value" for any Well, Unit, or Undeveloped Location equals the portion of the Unadjusted Purchase Price that is allocated to such Well, Unit, or Undeveloped Location on Schedule 3.4, increased or decreased by a share of each adjustment to the Unadjusted Purchase Price under Section 2.3(c), (d), (e), (f), and (g). The share of each adjustment allocated to a particular Well, Unit, or Undeveloped Location shall be obtained by allocating that adjustment among the various Assets on a pro-rata basis in proportion to the Unadjusted Purchase Price allocated to each such Asset on Schedule 3.4. Seller has accepted such Allocated Values for purposes of this Article 3, but otherwise makes no representation or warranty as to the accuracy of such values. Notwithstanding anything to the contrary contained in this Agreement, the Allocated Value of the Assets other than the Leases, Wells, and Units (including, without limitation the Midstream Assets) if any, shall not exceed twenty-five million dollars ($25,000,000), whether by the initial allocation of value made pursuant to this Section 3.4, any adjustments thereto, or otherwise; provided, however, that to the extent that any adjustment to the Unadjusted Purchase Price would cause the Allocated Value of such other Assets to exceed twenty-five million dollars ($25,000,000), the amount of such excess shall be allocated to each of the other Wells, Units, and Undeveloped Locations to which a portion of the Unadjusted Purchase Price was allocated in proportion to the relationship that the Allocated Value for such Well, Unit, or Undeveloped Location bears to the aggregate Allocated Values of such Wells, Units, and Undeveloped Locations.

Section 3.5 **Notice of Title Defects; Defect Adjustments**.

(a) To assert a claim arising out of a breach of Section 3.1, Purchaser must deliver a defect claim notice or notices to Seller on or before the Cut-Off Date; provided, however, that Purchaser shall use its commercially reasonable efforts to deliver a defect claim notice with respect to a specific alleged Title Defect on or before five (5) Business Days after Purchaser obtains knowledge of the existence of such Title Defect, even if the date of delivery of such defect claim notice is prior to the Cut-Off Date. Each such notice shall be in writing and shall include:

(i) a description of the alleged Title Defect(s);

(ii) the Units, Wells, or Undeveloped Locations affected;

(iii) the Allocated Values of the Units, Wells, or Undeveloped Locations subject to the alleged Title Defect(s);

(iv) true and complete copies of any documentation supporting the existence, nature, and basis of the alleged Title Defect(s); and

(v) the amount by which Purchaser reasonably believes the Allocated Values of those Units, Wells, or Undeveloped Locations are reduced by the alleged Title Defect(s) and the computations and information upon which Purchaser's belief is based.

PURCHASER SHALL BE DEEMED TO HAVE WAIVED ALL BREACHES OF SECTION 3.1 OF WHICH SELLER HAS NOT BEEN GIVEN NOTICE ON OR BEFORE THE CUT-OFF DATE.

(b) Seller shall have the right, but not the obligation, to attempt, at Seller's sole cost, to cure or remove on or before sixty (60) days after the Cut-Off Date any Title Defects of which Seller has been advised by Purchaser. No reduction shall be made in the Unadjusted Purchase Price with respect to a Title Defect if Seller has provided notice at least five (5) Business Days after the Cut-Off Date of Seller's intent to attempt to cure the Title Defect. If the Title Defect is not cured at the end of the sixty (60) day period, the adjustment required under this Article 3 shall be made pursuant to Section 2.3(a). Seller's election to attempt to cure a Title Defect shall not constitute a waiver of any rights of Seller under this Article 3, including, without limitation, Seller's right to dispute the existence, nature or value of, or cost to cure, the Title Defect.

(c) With respect to each Unit, Well, or Undeveloped Location affected by Title Defects reported under Section 3.5(a), the Unit, Well, or Undeveloped Location shall be assigned at Closing, subject to all uncured Title Defects, and, subject to Seller's election under Section 3.5(b), the Unadjusted Purchase Price shall be reduced by an amount (the "Title Defect Amount") equal to the reduction in the Allocated Value for such Unit, Well, or Undeveloped Location caused by such Title Defects, as determined pursuant to Section 3.5(e). Notwithstanding the foregoing provisions of this Section 3.5(c), no reduction shall be made in the Unadjusted Purchase Price with respect to any Title Defect for which Seller at its election executes and delivers to Purchaser a written indemnity agreement, in form and substance reasonably satisfactory to Purchaser, under which Seller agrees to fully, unconditionally, and irrevocably indemnify and hold harmless Purchaser and its successors and assigns from any and all Damages (irrespective of any limitation on amount contained in Section 12.2(d)(iii)) arising out of or resulting from such Title Defect.

(d) **SECTION 3.5(C) SHALL, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, BE THE EXCLUSIVE RIGHT AND REMEDY OF PURCHASER WITH RESPECT TO SELLER'S BREACH OF ITS WARRANTY AND REPRESENTATION IN SECTION 3.1. EXCEPT AS SPECIFICALLY PROVIDED IN SECTION 3.5(C) AND THE ASSIGNMENT AND BILL OF SALE, PURCHASER RELEASES, REMISES, AND FOREVER DISCHARGES EACH SELLER PARTY AND ITS RESPECTIVE AFFILIATES AND ALL SUCH PARTIES' MEMBERS, PARTNERS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, ADVISORS, AND REPRESENTATIVES FROM ANY AND ALL SUITS, LEGAL OR ADMINISTRATIVE PROCEEDINGS, CLAIMS, DEMANDS, DAMAGES, LOSSES, COSTS, LIABILITIES, INTEREST, OR CAUSES OF ACTION WHATSOEVER, IN LAW OR IN EQUITY, KNOWN OR UNKNOWN, WHICH PURCHASER MIGHT NOW OR SUBSEQUENTLY MAY HAVE, BASED ON, RELATING TO OR ARISING OUT OF, ANY TITLE DEFECT.**

(e) The Title Defect Amount resulting from a Title Defect shall be determined as follows:

(i) if Purchaser and Seller agree on the Title Defect Amount, that amount shall be the Title Defect Amount;

(ii) if the Title Defect is a lien, encumbrance, or other charge which is undisputed and liquidated in amount, then the Title Defect Amount shall be the amount necessary to be paid to remove the Title Defect from Seller's interest in the affected Unit, Well, or Undeveloped Location;

(iii) if the Title Defect represents a discrepancy between (A) the net revenue interest for any Unit, Well, or Undeveloped Location and (B) the net revenue interest or percentage stated on Exhibit A-2, then the Title Defect Amount shall be the product of the Allocated Value of such Unit, Well, or undeveloped location multiplied by a fraction, the numerator of which is the net revenue interest or percentage ownership decrease and the denominator of which is the net revenue interest or percentage ownership stated on Exhibit A-2, provided that if the Title Defect does not affect the Unit, Well, or Undeveloped Location throughout its entire productive life, or, with respect to a Undeveloped Location, if the Hydrocarbons (if any) attributable to such Undeveloped Location would not be produced until a future date, the Title Defect Amount determined under this Section 3.5(e)(iii) shall be reduced to take into account the applicable time period only;

(iv) if the Title Defect represents an obligation, encumbrance, burden, or charge upon or other defect in title to the affected Unit, Well, or Undeveloped Location of a type not described in subsections (i), (ii), or (iii) above, the Title Defect Amount shall be determined by taking into account the Allocated Value of the Unit, Well, or Undeveloped Location so affected, the portion of Seller's interest in the Unit, Well, or Undeveloped Location affected by the Title Defect, the legal effect of the Title Defect, the potential economic effect of the Title Defect over the life of the affected Unit, Well, or Undeveloped Location, the values placed upon the Title Defect by Purchaser and Seller, and such other factors as are necessary to make a proper evaluation;

(v) notwithstanding anything to the contrary in this Article 3, (A) an individual claim for a Title Defect for which a claim notice is given prior to the Cut-Off Date shall only generate an adjustment to the Unadjusted Purchase Price under this Article 3 if the Title Defect Amount with respect thereto exceeds Two-Hundred Thousand dollars ($200,000), (B) the aggregate Title Defect Amounts attributable to the effects of all Title Defects upon any given Unit, Well, or Undeveloped Location shall not exceed the Allocated Value of such Unit, Well, or Undeveloped Location and (C) there shall be no adjustment to the Unadjusted Purchase Price for Title Defects unless and until the aggregate Title Defect Amounts that are entitled to an adjustment under Section 3.5(e)(v)(A) and for which claim notices were timely delivered in accordance with the requirements of this Article 3 exceed Two Million dollars ($2,000,000), after which the Unadjusted Purchase Price may be adjusted for all Title Defect Amounts that are entitled to an adjustment under Section 3.5(e)(v)(A);

(vi) if a Title Defect is reasonably susceptible of being cured, the Title Defect Amount determined under subsections (iii) or (iv) above shall not be greater than the reasonable cost and expense of curing such Title Defect; and

(vii) the Title Defect Amount with respect to a Title Defect shall be determined without duplication of any costs or losses (A) included in another Title Defect Amount hereunder or (B) for which Purchaser otherwise receives credit in the calculation of the Purchase Price.

(f) If Seller and Purchaser are unable to agree upon a Title Defect Amount (or the adjustment to the Unadjusted Purchase Price to be made pursuant thereto) on or before the Cut-Off Date, then, subject to Section 3.5(b), Seller's good faith estimate shall be used to determine the Title Defect Amount pending resolution of the dispute pursuant to this Section 3.5(f), and the Title Defect Amounts in dispute shall be exclusively and finally resolved by arbitration pursuant to this Section 3.5(f) (subject to Section 3.5(b)). During the 10-day period following the Cut-Off Date, Title Defect Amounts in dispute shall be submitted to a title attorney with at least 10 years' experience in oil and gas titles in Texas as selected by mutual agreement of Purchaser and Seller, or, absent such agreement during the 10-day period, by the Houston office of the American Arbitration Association (the "Title Arbitrator"). Likewise, if by the end of the sixty (60) day cure period under Section 3.5(b), Seller has failed to cure any Title Defects which it provided notice that it would attempt to cure, and Seller and Purchaser have been unable to agree on the Title Defect Amounts for such Title Defects (or their existence), the Title Defect Amounts in dispute shall be submitted to the Title Arbitrator. The Title Arbitrator shall not have worked as an employee or outside counsel for any Party or its Affiliates during the five (5) year period preceding the arbitration or have any financial interest in the dispute. The arbitration proceeding shall be held in Houston, Texas and shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association, to the extent such rules do not conflict with the terms of this Section. The Title Arbitrator's determination shall be made within forty-five (45) days after submission of the matters in dispute and shall be final and binding upon the Parties, without right of appeal. In making his determination, the Title Arbitrator shall be bound by the rules set forth in Section 3.5(e) and may consider such other matters as in the opinion of the Title Arbitrator are necessary or helpful to make a proper determination. Additionally, the Title Arbitrator may consult with and engage disinterested third Persons to advise the arbitrator, including title attorneys from other states and petroleum engineers. The Title Arbitrator shall act as an expert for the limited purpose of determining the specific disputed Title Defect Amounts submitted by any Party and may not award damages, interest, or penalties to any Party with respect to any matter. Seller and Purchaser shall each bear its own legal fees and other costs of presenting its case. Purchaser shall bear one-half of the costs and expenses of the Title Arbitrator and Seller shall be responsible for the remaining one-half of the costs and expenses.

Section 3.6 **Consents to Assignment and Preferential Rights to Purchase**.

(a) Promptly after the date hereof, Seller shall prepare and send (i) notices to the holders of any required consents to assignment that are set forth on Schedule 5.8 requesting consents to the transactions contemplated by this Agreement and (ii) notices to the holders of any applicable preferential rights to purchase or similar rights that are set forth on Schedule 5.8 in compliance with the terms of such rights and requesting waivers of such rights. Any preferential purchase right must be exercised subject to all terms and conditions set forth in this Agreement, including the successful Closing of this Agreement pursuant to Article 9. The consideration payable under this Agreement for any particular Asset for purposes of preferential purchase right notices shall be the Allocated Value for such Asset. Seller shall use commercially reasonable efforts to cause such consents to assignment and waivers of preferential rights to purchase or similar rights (or the exercise thereof) to be obtained and delivered prior to Closing, provided that Seller shall not be required to make payments or undertake obligations to or for the benefit of the holders of such rights in order to obtain the required consents and waivers. Purchaser shall cooperate with Seller in seeking to obtain such consents to assignment and waivers of preferential rights.

(b) In no event shall there be transferred at Closing any Asset (i) for which a consent requirement providing that transfer of the Asset without the consent will result in a termination or other material impairment of any rights in relation to the Asset pursuant to the express terms of the instrument containing such restriction without the consent, or (ii) that is a Lease if a consent to assign requirement contained in such Lease has not been satisfied (in the case of either (i) or (ii), above, a "Material Consent"); provided, however, that restrictions upon the pledge, mortgage, or other granting of a lien or security interest on an Asset shall not be considered to be a Material Consent. In cases in which the Asset subject to such a Material Consent is a Contract and Purchaser is assigned the Lease(s) or other Asset(s) to which the Contract relates, but the Contract is not transferred to Purchaser due to the unwaived Material Consent requirement, Purchaser shall continue after Closing to use commercially reasonable efforts to obtain the consent so that such Contract can be transferred to Purchaser upon receipt of the consent, the Contract shall be held by Seller for the benefit of Purchaser, Purchaser shall pay all amounts due thereunder, and Purchaser shall be responsible for the performance of any obligations under such Contract to the extent that Purchaser has been transferred the Assets necessary to perform under such Contract until such consent is obtained. In cases in which the Asset subject to such a Material Consent is a Lease and the third Person consent to the transfer of the Lease is not obtained by Closing, Purchaser may elect to treat the unsatisfied Material Consent requirements as a Title Defect (without regard to the limitations set forth in Section 3.5(e)(v) and receive the appropriate adjustment to the Unadjusted Purchase Price under Section 2.3 by giving Seller written notice thereof in accordance with Section 3.5(a), except that such notice may be given on or before six (6) days prior to the Target Closing Date. If an unsatisfied Material Consent requirement with respect to which an adjustment to the Unadjusted Purchase Price is made under Section 3.5 is subsequently satisfied prior to the date of the final adjustment to the Unadjusted Purchase Price under Section 9.4(b), Seller shall be reimbursed in that final adjustment for the amount of any previous deduction from the Unadjusted Purchase Price, the Lease, if not previously transferred to Purchaser, shall be transferred, and the provisions of this Section 3.6 shall no longer apply to such Material Consent requirement.

(c) If any preferential right to purchase any Assets is exercised prior to Closing, the Purchase Price shall be decreased by the Allocated Value for such Assets, the affected Assets shall not be transferred at Closing, and the affected Assets shall be deemed to be deleted from Exhibits A-1 through A-4 to this Agreement, as applicable, for all purposes.

(d) Should a third Person fail to exercise or waive its preferential right to purchase as to any portion of the Assets prior to Closing and the time for exercise or waiver has not yet expired, then subject to the remaining provisions of this Section 3.6, such Assets shall be included in the transaction at Closing, there shall be no adjustment to the Purchase Price at Closing with respect to such preferential right to purchase, and Seller shall, at its sole expense, continue to use commercially reasonable efforts to obtain the waiver of the preferential purchase rights and shall continue to be responsible for the compliance therewith.

(e) Should the holder of the preferential purchase right validly exercise same (whether before or after Closing), then:

(i) Seller shall convey the affected Assets to the holder on the terms and provisions set out in the applicable preferential right provision. If the affected Assets were previously transferred to Purchaser at Closing, Purchaser agrees to transfer the affected Assets back to Seller on the terms and provisions set out herein to permit Seller to comply with this obligation (or, if Seller so requests, shall transfer the affected Assets directly to the holder on the terms and provisions set out in the applicable preferential purchase right provision);

(ii) Pursuant to Section 2.3(b), Seller shall credit Purchaser with the Allocated Value of any Asset transferred pursuant to Section 3.6(e)(i);

(iii) Seller shall be entitled to the consideration paid by such holder;

(iv) If the affected Assets were previously transferred to Purchaser at Closing, Purchase Price adjustments calculated in the same manner as the adjustments in Section 2.3(g) shall be calculated for the period from the Closing Date to the date of the reconveyance and the net amount of such adjustment, if positive, shall be paid by Purchaser to Seller and, if negative, by Seller to Purchaser; and

(v) If the affected Assets were previously transferred to Purchaser at Closing, Seller shall assume all obligations assumed by Purchaser with respect to such Assets under Section 12.1, and shall indemnify, defend, and hold harmless Purchaser from all Damages incurred by Purchaser caused by or arising out of or resulting from the ownership, use, or operation of such Asset from the Closing Date to the date of the reconveyance, excluding, however, any such Damages (irrespective of any limitation on amount contained in Section 12.2(d)(iii)) resulting from any violation of any Law caused by the actions of, or implementation of policies or procedures of, Purchaser, breach of any contract by Purchaser after Closing, or gross negligence or willful misconduct of Purchaser after Closing.

(f) If any Material Consent requirement that is unsatisfied as of the Closing Date is not subsequently satisfied prior to the date of the final adjustment to the Unadjusted Purchase Price under Section 9.4(b) and has not otherwise been transferred to Purchaser, Purchaser may, by giving Seller written notice thereof on or before five (5) Business Days prior to the date of the final adjustment to the Unadjusted Purchaser Price under Section 9.4(b), elect (i) to treat the Asset subject to such unsatisfied Material Consent requirement as an Excluded Asset (whereupon such Asset shall be deemed to have been included in the definition of the term "Excluded Asset," and the terms and provisions of this Section 3.6 shall no longer apply to such Asset), or (ii) to cause Seller to assign the Asset subject to such unsatisfied Material Consent requirement to Purchaser notwithstanding the unsatisfied Material Consent requirement, subject, however, to the agreement of Purchaser to save, indemnify, and hold harmless Seller Group under Section 12.2(a) from and against any Damages (excluding, however, the application of Section 12.2(d)(ii) and Section 12.2(d)(iii)) incurred or suffered by Seller Group caused by, arising out of, or resulting from, the transfer of such Asset without consent, in which case the amount of any downward adjustment to the Unadjusted Purchase Price made pursuant to Section 3.6(b) shall be credited to Seller pursuant to Section 9.4(b).

Section 3.7 **Limitations on Applicability**. The representation and warranty in Section 3.1 shall terminate as of the Cut-Off Date and shall have no further force and effect thereafter, provided there shall be no termination of Purchaser's or Seller's rights under Section 3.5 with respect to any bona fide Title Defect claim properly reported on or before the Cut-Off Date.

ARTICLE IV
ENVIRONMENTAL MATTERS

Section 4.1 **Environmental Laws**.

(a) Subject to Section 13.18, each Seller Party severally represents and warrants that (i) the Properties and Surface Rights, and each Seller Party's ownership and operation of the Properties and Surface Rights is, since the Effective Date has been, and as of the Closing Date shall be, in compliance with all applicable Environmental Laws except such failures to comply as would not, individually or in the aggregate, have a Material Adverse Effect; (ii) no written notice from any Person has been delivered to any Seller Party which asserts the existence of an Environmental Defect on or before the Effective Date and relating to the Lands or any other Property or Surface Right that constitutes a violation of Environmental Laws or gives rise to or results in any common law or other liability of Seller to any Person; and (iii) with regard to the Properties and Surface Rights, Seller has not entered into, or is subject to, any agreements, consents, orders, decrees, judgments, or other directives of any Governmental Authority based on any Environmental Laws that require any change in the conditions of any of the Properties or Surface Rights on or before the Effective Date. As used in this Agreement, the term "Environmental Laws" means, as the same have been amended to the date hereof, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Sec. 9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6901 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. Sec. 1251 et seq.; the Clean Air Act, 42 U.S.C. Sec. 7401 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. Sec. 5101 et seq.; the Toxic Substances Control Act, 15 U.S.C. Sec.Sec. 2601 through 2629; the Oil Pollution Act, 33 U.S.C. Sec. 2701 et seq.; the Emergency Planning and Community Right to Know Act, 42 U.S.C. Sec. 11001 et seq.; and the Safe Drinking Water Act, 42 U.S.C. Sec.Sec. 300f through 300j, in each case as amended to the date hereof, and all similar Laws as of the date hereof of any Governmental Authority having jurisdiction over the property in question, together with common law claims or theories of liability in negligence, trespass, nuisance, strict liability or any other common law theory, in each case addressing or relating to pollution or protection of the environment, or public or employee health, safety, or welfare, and all regulations, orders, decrees, or judgments implementing the foregoing.

(b) Purchaser acknowledges that the Assets have been used for the exploration, development, and production of Hydrocarbons and that there may be petroleum, produced water, wastes, or other substances or materials located in, on, or under the Properties or associated with the Assets. Equipment and sites included in the Assets may contain hazardous materials, including naturally occurring radioactive material ("NORM"). NORM may affix or attach itself to the inside of wells, materials, and equipment as scale, or in other forms. The wells, materials, and equipment located on the Properties or included in the Assets may contain hazardous materials, including NORM. Hazardous materials, including NORM, may have come into contact with various environmental media, including water, soils, or sediment. Notwithstanding anything to the contrary in this Section or elsewhere in this Agreement, Seller makes no, and hereby disclaims any, representation or warranty, express or implied, with respect to the presence or absence of NORM, asbestos, mercury, drilling fluids and chemicals, and produced waters and Hydrocarbons in or on the Properties or Equipment in quantities typical for oilfield operations in the areas in which the Properties and Equipment are located, except to the extent the presence of the same causes a breach of Seller's representation in Section 4.1.

Section 4.2 **Environmental Defects**. As used in this Agreement, the term "Environmental Defect" means any matter that causes a breach of Seller's representation in Section 4.1.

Section 4.3 **Environmental Review**.

(a) From and after the date of this Agreement, and prior to the Cut-Off Date, Purchaser shall have the right to conduct, or cause a reputable environmental consulting or engineering firm approved in advance in writing by Seller, such approval not to be unreasonably withheld (the "Environmental Consultant"), to conduct an environmental review of the Properties (the "Environmental Review").

(b) With respect to an Environmental Review conducted prior to Closing, prior to commencing its Environmental Review, Purchaser shall furnish to Seller for Seller's review a written plan setting forth the proposed time, scope, and approximate location of the activities to be conducted pursuant to the Environmental Review, which plan shall include a description of the activities to be conducted, a description of the approximate locations of such activities, and the name of the Environmental Consultant, and a list of any sampling, boring, drilling, or other invasive activity to be conducted (the "Environmental Review Plan"). Purchaser shall not begin its Environmental Review until Seller has approved the Environmental Review Plan, which approval shall not be unreasonably withheld or delayed; provided, however, that Seller may withhold its consent to any sampling, boring, drilling, operation of machinery, or other invasive activity proposed to be conducted in the Environmental Review Plan if Seller reasonably believes that such activities would substantially interfere with Seller's ownership or operation of the Assets or violate any Law. For any Property not operated by Seller, Seller shall, upon written notice from Purchaser, use commercially reasonable efforts to obtain permission from the operator of such Property for Purchaser to conduct its Environmental Review, but, provided that Seller has exercised such commercially reasonable efforts, Seller shall have no liability to Purchaser for failure to obtain such operator's permission. Purchaser shall not contact any such operator without the written consent of Seller, which consent shall not be unreasonably withheld or delayed. Seller shall have the right to have one or more representatives accompany Purchaser and the Environmental Consultant at all times during the Environmental Review (whether or not such Environmental Review is conducted before, on, or after Closing).

(c) In performing its Environmental Review, Purchaser shall (and shall cause the Environmental Consultant to): (i) perform all work in a safe and workmanlike manner; (ii) perform all work in such a way as to not unnecessarily and unreasonably interfere with Seller's operations; (iii) comply with all applicable Laws; (iv) comply in all respects with the Environmental Review Plan (except as may be agreed to in a writing executed by the Parties); (v) at its sole cost, risk, and expense, restore the Properties to their condition prior to the commencement of the Environmental Review, and, unless Seller requests otherwise, promptly dispose of all drill cuttings, corings, or other wastes generated in the course of the Environmental review; and (vi) with respect to any samples taken, take split samples and provide one of such samples, properly labeled and identified, to Seller free of charge.

(d) Purchaser and its Affiliates shall maintain, and shall cause their respective officers, directors, employees, contractors, consultants (including the Environmental Consultant), and other advisors to maintain, all information, reports (whether interim, draft, final, or otherwise), data, work product, and other matters (including the fact of the existence of the Environmental Review) obtained or generated from or attributable to the Environmental Review (the "Environmental Information") strictly confidential pursuant to the terms of the Confidentiality Agreement (as such term is defined in Section 7.1). Unless otherwise required by Law, Purchaser may not use the Environmental Information except in connection with the transaction contemplated by this Agreement. If this Agreement is terminated prior to the Closing, Purchaser shall deliver the Environmental Information to Seller, which Environmental Information shall become the sole property of Seller. Without limiting any of the foregoing, the Environmental Information shall be subject to the Confidentiality Agreement.

Section 4.4 Notice of Environmental Defects; Defect Adjustments.

(a) To assert a claim arising out of a breach of Section 4.1, Purchaser must deliver a claim notice or notices to Seller on or before the Cut-Off Date; provided, however, that Purchaser shall use commercially reasonable efforts to deliver a defect claim notice with respect to a specific alleged Environmental Defect on or before five (5) Business Days after Purchaser obtains knowledge of the existence of such alleged Environmental Defect, even if the date of delivery of such defect claim notice is prior to the Cut-Off Date. Each such notice shall be in writing and shall include:

(i) a description of the alleged Environmental Defect(s), including the specific citation of the provisions of the Environmental Laws alleged to be violated and the facts that substantiate such violation;

(ii) the Properties affected, including, if available, a site plan showing the location of all sampling events, boring logs, and other field notes describing the sampling methods utilized and field conditions observed, and the chain of custody documents and laboratory reports for any samples taken;

(iii) Purchaser's estimate of the Environmental Defect Amount as calculated pursuant to Section 4.4(e); and

(iv) true and complete copies of any documents and other Environmental Information supporting the existence of the alleged Environmental Defects and the computations and information upon which Purchaser's estimate of the Environmental Defect Amount is based.

PURCHASER SHALL BE DEEMED TO HAVE WAIVED ALL BREACHES OF SECTION 4.1 OF WHICH SELLER HAS NOT BEEN GIVEN NOTICE PURSUANT TO THIS SECTION 4.4 ON OR BEFORE THE CUT-OFF DATE. SELLER'S REPRESENTATION IN SECTION 4.1 SHALL NOT SURVIVE THE CUT-OFF DATE.

(b) Seller shall have the right, but not the obligation, to attempt, at Seller's sole cost, to cure or remove, on or before sixty (60) days (or such other period of time as the Parties may agree to in writing) after the Cut-Off Date, any Environmental Defect of which Seller has been advised by Purchaser pursuant to Section 4.4(a). No reduction in the Unadjusted Purchase Price shall be made with respect to a notice of Environmental Defects if Seller has provided notice at least five (5) Business Days after the Cut-Off Date of Seller's intent to attempt to cure the Environmental Defect. If the Environmental Defect is not cured at the end of such period of time, the adjustment required under this Article 4 shall be made pursuant to Section 2.3(a). Seller's election to attempt to cure an alleged Environmental Defect shall not constitute a waiver of Seller's right to dispute the existence, nature, or value of, or cost to cure, the alleged Environmental Defect.

(c) With respect to each Property affected by an Environmental Defect reported in accordance with Section 4.4(a), the Property shall be assigned at Closing, subject to all uncured Environmental Defects, and, subject to Section 4.4(b), the Unadjusted Purchase Price shall be reduced by an amount (the "Environmental Defect Amount") determined pursuant to Section 4.4(e). Notwithstanding the foregoing provisions of this Section 4.4(c), no reduction shall be made in the Unadjusted Purchase Price with respect to any Environmental Defect for which Seller, at its election, executes and delivers to Purchaser a written indemnity agreement, in form and substance reasonably satisfactory to Purchaser, pursuant to which Seller agrees to fully, unconditionally, and irrevocably indemnify, defend, and hold harmless Purchaser and its successors and assigns from any and all Damages (irrespective of any limitation on amount contained in Section 12.2(d)(iii)) arising out of, or resulting from, such Environmental Defect.

(d) **SECTION 4.4(C) AND SECTION 12.2(B) (WITH RESPECT TO THE RETAINED SELLER OBLIGATIONS) SHALL, TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, BE THE EXCLUSIVE RIGHT AND REMEDY OF PURCHASER WITH RESPECT TO SELLER'S BREACH OF ITS WARRANTY AND REPRESENTATION IN SECTION 4.1 AND, THE RELEASE OF MATERIALS INTO THE ENVIRONMENT, THE PROTECTION OF THE ENVIRONMENT OR HEALTH OR ANY OTHER MATTERS THAT PURCHASER COULD HAVE INCLUDED IN A NOTICE DELIVERED PURSUANT TO SECTION 4.4(A). PURCHASER ACKNOWLEDGES THAT, EXCEPT TO THE EXTENT SET FORTH IN SECTION 4.1(A) SELLER HAS NOT MADE, AND WILL NOT MAKE, ANY REPRESENTATION OR WARRANTY REGARDING THE SAME. EXCEPT AS SPECIFICALLY PROVIDED IN SECTION 4.4(C) AND SECTION 12.2(B) (WITH RESPECT TO THE RETAINED SELLER OBLIGATIONS), PURCHASER RELEASES, REMISES, AND FOREVER DISCHARGES SELLER GROUP FROM ANY AND ALL SUITS, LEGAL OR ADMINISTRATIVE PROCEEDINGS, CLAIMS, DEMANDS, DAMAGES, LOSSES, COSTS, LIABILITIES, INTEREST OR CAUSES OF ACTION WHATSOEVER, IN LAW OR IN EQUITY, KNOWN OR UNKNOWN, WHICH PURCHASER MIGHT NOW OR SUBSEQUENTLY HAVE, BASED ON, RELATING TO, OR ARISING OUT OF ANY ENVIRONMENTAL DEFECT OR DEFICIENCY, EVEN IF SUCH SUITS, LEGAL OR ADMINISTRATIVE PROCEEDINGS, CLAIMS, DEMANDS, DAMAGES, LOSSES, COSTS, LIABILITIES, OR CAUSES OF ACTION ARE CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE (WHETHER SOLE, JOINT, OR CONCURRENT) OF SELLER OR THE STRICT LIABILITY OF SELLER GROUP.**

(e) The Environmental Defect Amount resulting from an Environmental Defect shall be determined as follows:

(i) if Purchaser and Seller agree on the Environmental Defect Amount, that amount shall be the Environmental Defect Amount;

(ii) the Environmental Defect Amount shall not be greater than the Lowest Cost Response;

(iii) the Environmental Defect Amount with respect to an Environmental Defect shall be determined without duplication of any costs or losses (A) included in another Environmental Defect Amount or Casualty Loss hereunder; (B) for which Purchaser otherwise receives credit in the calculation of the Purchaser Price; or (C) which has been taken into account in the formulation of the Unadjusted Purchase Price; and

(iv) notwithstanding anything to the contrary in this Agreement, (A) an individual claim for an Environmental Defect for which a claim notice is given in accordance with the requirements of this Article 4 shall only generate an adjustment to the Unadjusted Purchase Price under this Article 4 if the Environmental Defect Amount with respect thereto exceeds Two-Hundred Thousand dollars ($200,000); (B) the aggregate Environmental Defect Amounts attributable to the effects of all Environmental Defects upon any given Property shall not exceed the Allocated Value of such Property; and (C) there shall be no adjustment to the Unadjusted Purchase Price for Environmental Defects unless and until the aggregate of all Environmental Defect Amounts for Environmental Defects which are entitled to an adjustment under Section 4.4(e)(iv)(A) and for which claim notices were timely delivered in accordance with the requirements of this Article 4 exceed Two Million dollars ($2,000,000), after which the Unadjusted Purchase Price may be adjusted for all Environmental Defect Amounts that are entitled to an adjustment under Section 4.4(e)(iv)(A).

Section 4.5 **Environmental Arbitration**. If Seller and Purchaser are unable to agree upon an Environmental Defect Amount (or the adjustment to the Unadjusted Purchase Price to be made pursuant thereto) on or before the Cut-Off Date, then, subject to Section 4.4(b), Seller's good faith estimate shall be used to determine the Environmental Defect Amounts pending resolution of the dispute pursuant to this Section 4.5, and the Environmental Defect Amounts in dispute shall be exclusively and finally resolved by arbitration pursuant to this Section 4.5. During the 10-day period following the Cut-Off Date, Environmental Defect Amounts in dispute shall be submitted to a reputable environmental consultant or engineer with at least 10 years' experience in corrective environmental action regarding oil and gas properties in Texas as selected by mutual agreement of Purchaser and Seller, or, absent such agreement during the 10-day period, by the Houston office of the American Arbitration Association (the "Environmental Arbitrator"). Likewise, if by the end of the sixty (60) day cure period under Section 4.4(b), Seller has failed to cure any Environmental Defects which it provided notice that it would attempt to cure, and Seller and Purchaser have been unable to agree on the Environmental Defect Amounts for such Environmental Defects (or their existence), the Environmental Defect Amounts in dispute shall be submitted to the Environmental Arbitrator. The Environmental Arbitrator shall not have performed professional services as an employee or outside counsel for any Party or its Affiliates during the five (5) year period preceding the arbitration or have any financial interest in the dispute. The arbitration proceeding shall be held in Houston, Texas and shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association, to the extent such rules do not conflict with the terms of this Section. The Environmental Arbitrator's determination shall be made within forty-five (45) days after submission of the matters in dispute and shall be final and binding upon the Parties, without right of appeal. In making his determination, the Environmental Arbitrator shall be bound by the rules set forth in Section 4.4(e) and may consider such other matters as in the opinion of the Environmental Arbitrator are necessary or helpful to make a proper determination. Additionally, the Environmental Arbitrator may consult with and engage disinterested third Persons to advise the arbitrator. The Environmental Arbitrator shall act as an expert for the limited purpose of determining the specific disputed Environmental Defect Amounts submitted by any Party and may not award damages, interest or penalties to any Party with respect to any matter. Seller and Purchaser shall each bear its own legal fees and other costs of presenting its case. Purchaser shall bear one-half of the costs and expenses of the Environmental Arbitrator and Seller shall be responsible for the remaining one-half of the costs and expenses.

Section 4.6 Limitations on Applicability.

(a) The representation and warranty in Section 4.1 shall terminate as of the Cut-Off Date and shall have no further force and effect thereafter, provided that there shall be no termination of Purchaser's or Seller's rights under Section 4.4 with respect to any Environmental Defect claim properly reported pursuant to the requirements of this Article 4 on or before the Cut-Off Date. Purchaser shall not be entitled to protection under Seller's representation in Section 4.1 or Seller's indemnity in Section 12.2(b) with respect to any Environmental Defect to the extent that it has been cured or removed by Seller pursuant to Section 4.4(b).

(b) It is understood and agreed by the Parties that Seller's representation in Section 4.1 shall be Purchaser's sole remedy with respect to Environmental Defects and other environmental deficiencies with the Assets prior to the Cut-Off Date. Purchaser shall not be entitled to protection under Seller's indemnity under Section 12.2(b) with respect to (i) Environmental Defects and other environmental deficiencies with the Assets until the occurrence of the Cut-Off Date, and (ii) Environmental Defects and other environmental deficiencies with the Assets of which Purchaser notified Seller on or before the Cut-Off Date pursuant to Section 4.4(a).

ARTICLE V
REPRESENTATIONS AND WARRANTIES OF SELLER

Subject to the provisions of this Article 5, and the other terms and conditions of this Agreement (including, without limitation Section 13.18), each Seller Party represents and warrants to Purchaser the matters set out in Section 5.1 through Section 5.21.

Section 5.1 Seller Parties.

(a) Existence and Qualification. O'Brien Resources, LLC is a limited liability company duly organized, validly existing, and in good standing under the laws of the state of Texas. O'BENCO II, LP is a limited partnership duly organized, validly existing, and in good standing under the laws of the state of Delaware. Sepco II, LLC is a limited liability company duly organized, validly existing, and in good standing under the laws of the state of Louisiana. Crow Horizons Company is a general partnership duly organized, validly existing, and in good standing under the laws of the state of Louisiana. Liberty Energy, LLC is a limited liability company duly organized, validly existing, and in good standing under the laws of the state of Massachusetts. Each Seller Party, other than Crow Horizons Company and Sepco II, LLC, is qualified to do business as a foreign limited partnership or foreign limited liability company in, and is in good standing under, the laws of the state of Texas.

(b) Power. Each Seller Party has the power to enter into and perform this Agreement (and all documents required to be executed and delivered by Seller at Closing) and to consummate the transactions contemplated by this Agreement (and such documents).

(c) Authorization and Enforceability. The execution, delivery, and performance of this Agreement (and all documents required to be executed and delivered by each Seller Party at Closing), and the consummation of the transactions contemplated hereby and thereby, have been duly and validly authorized by all necessary action on the part of each Seller Party. This Agreement has been duly executed and delivered by each Seller Party (and all documents required to be executed and delivered by Seller at Closing shall be duly executed and delivered by each Seller Party), and this Agreement constitutes, and at the Closing such documents shall constitute, the valid and binding obligations of each Seller Party, enforceable in accordance with their terms except as such enforceability may be limited by applicable bankruptcy or other similar Laws affecting the rights and remedies of creditors generally as well as to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(d) No Conflicts. The execution, delivery, and performance of this Agreement by each Seller Party, and the consummation of the transactions contemplated by this Agreement shall not (i) violate any provision of the certificate of incorporation or bylaws, or certificate or articles of formation or organization, and limited liability company or partnership agreement, of such Seller Party, (ii) except with respect to the items set forth under the heading "Liens to be Released at Closing" on Schedule 3.3, which shall be terminated and/or released as to the Assets at Closing, result in a default (with due notice or lapse of time or both) or the creation of any lien or encumbrance or give rise to any right of termination, cancellation, or acceleration under any material note, bond, mortgage, indenture, or other financing instrument to which such Seller Party is a party or by which it is bound, (iii) violate any judgment, order, ruling, or decree applicable to such Seller Party as a party in interest or (iv) violate any Laws applicable to such Seller Party, except any matters described in clauses (ii), (iii), or (iv) above which would not have a Material Adverse Effect.

Section 5.2 **Litigation**. Except as disclosed on Schedule 5.2, there are no claims, demands, actions, suits, or proceedings pending, or to each Seller Party's knowledge threatened in writing, by or before any Governmental Authority or arbitrator with respect to the Assets. There are no claims, demands, actions, suits, or proceedings pending, or to each Seller Party's knowledge, threatened in writing, before any Governmental Authority or arbitrator against any Seller Party or any of its Affiliates, which are reasonably likely to impair or delay materially such Seller Party's ability to perform its obligations under this Agreement. To each Seller Party's knowledge, no event has occurred and no event exists that is reasonably likely to give rise to, or serve as the basis for, any such claim, demand, action, suit, or proceeding.

Section 5.3 **Taxes and Assessments**. Except as disclosed on Schedule 5.3:

(a) To the knowledge of each Seller Party, such Seller Party has filed each material Tax return, declaration, report, claim for refund or information return or statement relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof (a "Tax Return") required to be filed by it and paid all material Taxes with respect to the Assets; and

(b) To the knowledge of each Seller Party, such Seller Party has not received written notice of any pending claim against it (which remains outstanding) from any applicable taxing authority for assessment of material Taxes with respect to the Assets.

Section 5.4 **Compliance with Laws**. Except with respect to Environmental Laws, which are addressed in Article 4 and except as disclosed on Schedule 5.4, to each Seller Party's knowledge, such Seller Party's ownership and operation of the Assets is, and since the Effective Date has been, in compliance with all applicable Laws, except such failures to comply as would not, individually or in the aggregate, have a Material Adverse Effect.

Section 5.5 **Contracts**. Schedule 5.5 contains a complete and accurate list of all Material Contracts. Except as disclosed on Schedule 5.5, and except to the extent that the same would not, individually or in the aggregate, have a Material Adverse Effect:

(a) to each Seller Party's knowledge, (i) each Material Contract and each Surface Right is in full force and effect and is valid and enforceable in accordance with its terms in all material respects; (ii) no event has occurred and no circumstances exist which, presently or with the passage of time, would give any other party to any Material Contract or Surface Right the right to declare a default or exercise any remedy under, or to cancel, terminate, or modify in any material respect any Material Contract or Surface Right. There are no futures, options, swaps, or other derivatives with respect to the sale of production that will be binding on the Assets after Closing.

(b) with respect to the Leases and Material Contracts, (i) Seller is fully qualified to own and hold all of the Leases and Material Contracts, (ii) other than with respect to the expiration of a Lease due solely to the end of the primary term thereof, there are no obligations to engage in continuous development operations in order to maintain any Lease or other interest in real property in full force and effect for the areas and depths covered thereby, (iii) there are no royalty provisions (other than those (x) allowing a lessor the right to take in kind or (y) disallowing the deduction of certain expenses relating to the transportation, processing, or other handling of Hydrocarbons prior to the sale thereof from the amount due to a lessor) requiring the payment of royalty on any basis other than proceeds actually received by the lessee;

(c) with respect to the Material Contracts that are joint, unit, and other operating agreements, (i) Seller has informed Purchaser of the status of all material operations by less than all parties; (ii) there are no material operations with respect to which Seller, or, to the knowledge of Seller (and except as reflected on Exhibit A-2), any other Person, has become a non-consenting party, and (iii) all third Persons owning interests in the contract areas or similar areas covered by such joint, unit, or other operating agreements have executed such agreements, except to the extent that such agreements need not be executed.

Section 5.6 **Payments for Production**. Except as disclosed on Schedule 5.6, no Seller Party is obligated by virtue of a take-or-pay payment, advance payment, or other similar payment (other than royalties, overriding royalties, and similar arrangements established in the Leases or reflected on Exhibit A-1 or Exhibit A-2), to deliver oil or gas, or proceeds from the sale thereof, attributable to such Seller Party's interest in the Properties at some future time without receiving payment therefor at or after the time of delivery.

Section 5.7 **Imbalances**. Except as set forth on Schedule 5.7, as of the Effective Date, no Seller Party had production, transportation, plant, or other imbalances with respect to production from the Properties.

Section 5.8 **Material Consents and Preferential Purchase Rights**. There are no preferential rights to purchase or required third Person Material Consents, which may be applicable to the sale of Assets by any Seller Party as contemplated by this Agreement, except (a) for consents and approvals of Governmental Authorities that are customarily obtained after Closing, (b) as set forth on Schedule 5.8, and (c) Material Consents related to Excluded Records.

Section 5.9 **Liability for Brokers' Fees**. Purchaser shall not directly or indirectly have any responsibility, liability or expense, as a result of undertakings or agreements of any Seller Party prior to Closing, for brokerage fees, finder's fees, agent's commissions, or other similar forms of compensation to an intermediary in connection with the negotiation, execution, or delivery of this Agreement or any agreement or transaction contemplated hereby.

Section 5.10 **Bankruptcy; Solvency**. There are no bankruptcy, reorganization, or receivership proceedings pending, being contemplated by, or, to the knowledge of any Seller Party, threatened against, such Seller Party or any Affiliate thereof (whether by such Seller Party or a third Person). No Seller Party is entering into this Agreement with actual intent to hinder, delay, or defraud any creditor. Immediately prior to, and immediately subsequent to, the Closing, (a) no Seller Party will have incurred, nor does it intend to or believe that it will incur, debts (including, without limitation, contingent obligations) beyond its ability to pay such debts as such debts mature or come due (taking into account the timing and amounts of cash to be received from any source, and amounts to be payable on or in respect of debts), (b) the amount of cash available to such Seller Party after taking into account all other anticipated uses of funds is anticipated to be sufficient to pay all such amounts on or in respect of debts, when such amounts are required to be paid, and (c) each Seller Party will have sufficient capital with which to conduct its business.

Section 5.11 **Bonus, Rentals, and Royalties; Lease Accounts; Recordation of Leases; Depth Limitations**.

(a) Seller has properly and timely paid, or by Closing will have properly and timely paid, all accrued bonuses, delay rentals, and royalties due with respect to Seller's interests in the Leases, in each case in accordance with the Leases and applicable Law.

(b) Except as would not have a Material Adverse Effect, with respect to federal and state Leases, all Lease accounts are current and all payments required thereunder have been made.

(c) Except as identified on Exhibit A-1, all Leases have been, or by the Closing Date will be, properly recorded in the official public records of the applicable county.

(d) Except as identified on Exhibit A-1, no Lease is subject to a depth limitation.

Section 5.12 **Outstanding Capital Commitments**. Except (i) as disclosed on Schedule 5.12, (ii) as would not be binding upon Purchaser or the Properties after Closing, or (iii) with respect to periods between the date hereof and the Closing Date, as are permitted pursuant to Section 7.4, there are no outstanding authorities for expenditure or other commitments to make capital expenditures which are now, and will be after Closing, binding on the Properties of which Seller has received notice and which Seller reasonably anticipates will require expenditures by all Seller Parties in excess of One-Hundred Thousand dollars ($100,000) per authority for expenditure.

Section 5.13 **The Records**. The Records have been maintained in the ordinary course of Seller's business, and Seller has not intentionally omitted any material information from the Records.

Section 5.14 **Payables**. Except (i) as disclosed on Schedule 5.14, (ii) for revenues which are being suspended in accordance with applicable Law, and (iii) for payment of amounts that Seller is contesting in good faith, all oil and gas production proceeds payable by Seller to other Persons from the Properties have been paid in material compliance with all of the terms and conditions of the Leases and other applicable instruments.

Section 5.15 **No Suspense**. Except as disclosed on Schedule 5.15, to the knowledge of each Seller Party, proceeds from the sale of all oil, condensate, and gas produced from the Properties are being received by Seller and are not being held in suspense by any purchaser thereof for any reason.

Section 5.16 **Permits and Licenses**. Seller holds all licenses, permits, or other authorizations necessary to carry on operations connected with the Properties as currently conducted in compliance with all applicable Laws. All such licenses, permits, and other authorizations are in full force and effect. No material violations of such licenses, permits, or other authorizations exist or have been recorded in respect of any such licenses, permits, or other authorizations, and no proceeding is pending, or, to the knowledge of each Seller Party, threatened seeking to challenge, revoke, or limit such licenses, permits, or authorizations.

Section 5.17 **Plugging and Abandonment**. As of the date of this Agreement, to the knowledge of each Seller Party, there are no wells located on the Leases that are required by any Governmental Authority to be plugged, abandoned, and reclaimed that have not been plugged, abandoned, and reclaimed.

Section 5.18 **Reserve Report**. Seller has delivered to Purchaser a copy of the Reserve Report. To the knowledge of Seller, the historical factual information, excluding title information, provided to Ryder Scott & Company by Seller regarding the Properties for preparation of such report consisting of production volumes, sales prices for production, contractual pricing provisions under oil or gas sales or marketing contracts under hedging arrangements, and costs of operations and development relating to the Properties was accurate in all material respects when furnished.

Section 5.19 **Absence of Certain Changes and Events**. Except as set forth on Schedule 5.19, to the knowledge of Seller, since the Effective Date:

(a) In the case of claims or rights pertaining to the Properties, Seller has not cancelled, compromised, waived, or released any claims with a value in excess of Two-Hundred Thousand dollars ($200,000) individually, or One Million dollars ($1,000,000) in the aggregate;

(b) No Seller Party has merged or consolidated with any other Person;

(c) No Seller Party has made any loan to, or entered into any other transaction with, any of the members, directors, officers, or employees of such Seller Party that is not in the ordinary course of business of such Seller Party and that would be binding upon the Properties after the Closing;

(d) Seller has not transferred, sold, or disposed of any material portion of the Properties, other than Hydrocarbons sold in the ordinary course of business;

(e) There has not been a Material Adverse Effect, or any event or circumstance reasonably likely to have a Material Adverse Effect, on the Properties; and

(f) No Seller Party has entered into any agreement, whether oral or written, to do any of the foregoing.

Section 5.20 **Condition of the Property**. Except as set forth on Schedule 5.20, and except as would not have a Material Adverse Effect, (a) all Wells have been drilled and completed at legal locations within the boundaries of the respective Leases, and all drilling and completion of the Wells and all development and operation of the Wells have been conducted in all material respects in compliance with applicable Law; (b) to the knowledge of Seller, no Well is subject to allowables after the date hereof because of any overproduction or violation of applicable Laws or order of any court or other Governmental Authority which would prevent such Well from being entitled to its full legal and regular allowance from and after the date hereof; (c) all currently producing Wells are, to the knowledge of Seller, in an operable state of repair adequate to maintain normal operations in accordance with past practices, ordinary wear and tear excepted, and, to the knowledge of Seller, do not contain junk, fish, or other mechanical obstructions that would impede or interfere with production, recompletions, or stimulations with respect to reserves categorized as "Proved" in the Reserve Report; and (d) except to the extent idled or abandoned as of the date hereof, the Equipment is in an operable state of repair adequate to maintain normal operations in accordance with past practices, ordinary wear and tear excepted.

Section 5.21 **Sufficiency of Assets**. Except for the Excluded Assets and equipment and other assets not located on the Lands and not used solely in connection with the Properties, and except as would not have a Material Adverse Effect, the Assets constitute all of the assets necessary to operate the Properties in the manner presently operated by Seller and in compliance with applicable Laws.

Section 5.22 **Gross and Net Acres**. Except as would not have a Material Adverse Effect, Schedule 5.22 accurately sets forth the number of gross and net acres owned by Seller in the Leases and Units.

Section 5.23 **Limitations**.

(a) Except as and to the extent expressly set forth in Article 3, Article 4, Article 5, the Assignment and Bill of Sale, or in the certificate of the Seller Parties to be delivered pursuant to Section 9.2(e), (i) no Seller Party makes any representations or warranties, express or implied, and (ii) each Seller Party expressly disclaims all liability and responsibility for any representation, warranty, statement, or information made or communicated (orally or in writing) to Purchaser or any of its Affiliates, employees, agents, consultants, or representatives (including, without limitation, any opinion, information, projection, or advice that may have been provided to Purchaser by any officer, director, employee, agent, consultant, representative or advisor of any Seller Party or any of their Affiliates).

(b) **EXCEPT AS EXPRESSLY REPRESENTED OTHERWISE IN ARTICLE 3, ARTICLE 4, THIS ARTICLE 5, IN THE ASSIGNMENT AND BILL OF SALE, OR IN THE CERTIFICATE OF THE SELLER PARTIES TO BE DELIVERED AT CLOSING PURSUANT TO SECTION 9.2(E), WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, SELLER PARTIES MAKE NO, AND EXPRESSLY DISCLAIM, ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO (I) TITLE TO ANY OF THE ASSETS, (II) THE CONTENTS, CHARACTER OR NATURE OF ANY DESCRIPTIVE MEMORANDUM, OR ANY REPORT OF ANY PETROLEUM ENGINEERING CONSULTANT, OR ANY GEOLOGICAL OR SEISMIC DATA OR INTERPRETATION, RELATING TO THE ASSETS, (III) THE QUANTITY, QUALITY, OR RECOVERABILITY OF PETROLEUM SUBSTANCES IN OR FROM THE ASSETS, (IV) THE EXISTENCE OF ANY PROSPECT, RECOMPLETION, INFILL, OR STEP-OUT DRILLING OPPORTUNITIES, (V) ANY ESTIMATES OF THE VALUE OF THE ASSETS OR FUTURE REVENUES GENERATED BY THE ASSETS, (VI) THE PRODUCTION OF PETROLEUM SUBSTANCES FROM THE ASSETS, OR WHETHER PRODUCTION HAS BEEN CONTINUOUS, OR IN PAYING QUANTITIES, OR ANY PRODUCTION OR DECLINE RATES, (VII) THE MAINTENANCE, REPAIR, CONDITION, QUALITY, SUITABILITY, DESIGN, OR MARKETABILITY OF THE ASSETS, (VIII) INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHT, OR (IX) ANY OTHER MATERIALS OR INFORMATION THAT MAY HAVE BEEN MADE AVAILABLE OR COMMUNICATED TO PURCHASER OR ITS AFFILIATES, OR ITS OR THEIR EMPLOYEES, AGENTS, CONSULTANTS, REPRESENTATIVES, OR ADVISORS IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR ANY DISCUSSION OR PRESENTATION RELATING THERETO, AND FURTHER DISCLAIM ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR CONFORMITY TO MODELS OR SAMPLES OF MATERIALS OF ANY EQUIPMENT, IT BEING EXPRESSLY UNDERSTOOD AND AGREED BY THE PARTIES HERETO THAT, EXCEPT AS EXPRESSLY PROVIDED HEREIN, THE ASSETS ARE BEING TRANSFERRED "AS IS, WHERE IS," WITH ALL FAULTS AND DEFECTS, AND THAT PURCHASER HAS MADE OR CAUSED TO BE MADE SUCH INSPECTIONS AS PURCHASER DEEMS APPROPRIATE.**

(c) Without limiting the provisions of Section 13.18, any representation "to the knowledge of Seller", "to Seller's knowledge", or words of similar import, is limited to matters within the actual knowledge of the individuals identified on Schedule 5.23 without any duty of investigation. Any representation "to the knowledge of each Seller Party" or to the knowledge of a specific Seller Party is limited to matters within the actual knowledge of the individuals identified on Schedule 5.23 under the name of such Seller Party, without any duty of investigation.

(d) Any representation of any Seller Party in this Article 5 that relates to Properties in which any Seller Party is a non-operator under a joint operating agreement or similar agreement is limited to the knowledge of such Seller Party.

(e) Inclusion of a matter on a schedule attached hereto with respect to a representation or warranty that addresses matters having a Material Adverse Effect shall not be deemed an indication that such matter does, or may, have a Material Adverse Effect. Schedules may include matters not required by the terms of the Agreement to be listed on the Schedule, which additional matters are disclosed for purposes of information only, and inclusion of any such matter does not mean that all such matters are included.

(f) A matter scheduled as an exception for any representation shall be deemed to be an exception to all representations for which it is relevant.

(g) In the event that a schedule or exhibit to this Agreement is amended or supplemented prior to Closing, any reference to such schedule or exhibit in this Agreement shall be deemed to be a reference to such schedule or exhibit as so amended or supplemented.

ARTICLE VI
REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser represents and warrants to Seller the following:

Section 6.1 **Existence and Qualification**. Purchaser is a corporation organized, validly existing and in good standing under the laws of Delaware. Purchaser is duly qualified as a foreign corporation in, and is in good standing under, the laws of the state of Texas.

Section 6.2 **Power**. Purchaser has the corporate power to enter into and perform its obligations under this Agreement (and all documents required to be executed and delivered by Purchaser at Closing) and to consummate the transactions contemplated by this Agreement (and such documents).

Section 6.3 **Authorization and Enforceability**. The execution, delivery, and performance of this Agreement (and all documents required to be executed and delivered by Purchaser at Closing), and the consummation of the transactions contemplated hereby and thereby, have been duly and validly authorized by all necessary corporate action on the part of Purchaser. This Agreement has been duly executed and delivered by Purchaser (and all documents required to be executed and delivered by Purchaser at Closing will be duly executed and delivered by Purchaser) and this Agreement constitutes, and at the Closing such documents will constitute, the valid and binding obligations of Purchaser, enforceable in accordance with their terms except as such enforceability may be limited by applicable bankruptcy or other similar laws affecting the rights and remedies of creditors generally as well as to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

Section 6.4 **No Conflicts**. The execution, delivery, and performance of this Agreement by Purchaser, and the consummation of the transactions contemplated by this Agreement, will not (i) violate any provision of the certificate of incorporation or bylaws (or other governing instruments) of Purchaser, (ii) result in a material default (with due notice or lapse of time or both) or the creation of any lien or encumbrance or give rise to any right of termination, cancellation, or acceleration under any material note, bond, mortgage, indenture, or other financing instrument to which Purchaser is a party or by which it is bound, (iii) violate any judgment, order, ruling, or regulation applicable to Purchaser as a party in interest, or (iv) violate any Law applicable to Purchaser, except any matters described in clauses (ii), (iii) or (iv) above which would not have a material adverse effect on Purchaser or its properties.

Section 6.5 **Consents, Approvals or Waivers**. Except with respect to the Hart-Scott-Rodino Act (if applicable), and except with respect to consents that are typically obtained after the consummation of transactions of the nature contemplated herein (to the extent the same would not interfere with the ability of Purchaser to consummate the transactions contemplated hereby), the execution, delivery, and performance of this Agreement by Purchaser will not be subject to any consent, approval, or waiver from any Governmental Authority or other third Person.

Section 6.6 **Litigation**. There are no claims, demands, actions, suits, or proceedings pending, or to Purchaser's knowledge, threatened in writing before any Governmental Authority or arbitrator against Purchaser or any Affiliate of Purchaser which are reasonably likely to impair or delay materially Purchaser's ability to perform its obligations under this Agreement.

Section 6.7 **Financing**. Purchaser has sufficient cash, available lines of credit, or other sources of immediately available funds (in United States dollars) to enable it to pay the Closing Payment to Seller at the Closing.

Section 6.8 **Investment Intent**. Purchaser is acquiring the Assets for its own account and not with a view to their sale or distribution in violation of the Securities Act of 1933, as amended, the rules and regulations thereunder, any applicable state blue sky Laws, or any other applicable securities Laws.

Section 6.9 **Independent Investigation**. Purchaser is (or its advisors are) experienced and knowledgeable in the oil and gas business and aware of the risks of that business. Purchaser acknowledges and affirms that (a) it has been provided the opportunity to conduct its independent investigation, verification, analysis, and evaluation of the Assets, and (b) it has made all such reviews and inspections of the Assets as it has deemed necessary or appropriate to enter into this Agreement. Except for the representations and warranties expressly made by Seller in Articles 3, 4, and 5 of this Agreement or in the Assignment and Bill of Sale or the certificate to be delivered to Purchaser pursuant to Section 9.2(e) of this Agreement, Purchaser acknowledges that there are no representations or warranties, express or implied, as to the financial condition, liabilities, operations, business, or prospects of the Assets and that, in making its decision to enter into this Agreement and to consummate the transactions contemplated hereby, Purchaser has relied solely upon its own independent investigation, verification, analysis and evaluation. Purchaser understands and acknowledges that neither the United States Securities and Exchange Commission nor any federal, state, or foreign agency has passed upon the Assets or made any finding or determination as to the fairness of an investment in the Assets or the accuracy or adequacy of the disclosures made to Purchaser, and except as set forth in Article 11, Purchaser is not entitled to cancel, terminate, or revoke this Agreement.

Section 6.10 **Opportunity to Verify Information**. Without limitation of Purchaser's rights under Section 7.1 hereof, or the disclaimers contained in Section 7.5 Purchaser and its representatives have (a) been permitted full and complete access to all materials relating to the Assets, (b) been afforded the opportunity to ask all questions of Seller (or one or more Persons acting on Seller's behalf) concerning the Assets, (c) been afforded the opportunity to investigate the condition, including the subsurface condition, of the Assets, and (d) had the opportunity to take such other actions and make such other independent investigations as Purchaser deems necessary to evaluate the Assets and understand the merits and risks of an investment therein and the verify the truth, accuracy, and completeness of the materials, documents, and other information provided or made available to Purchasers (whether by Seller or otherwise).

Section 6.11 **Liability for Brokers' Fees**. Seller shall not directly or indirectly have any responsibility, liability or expense, as a result of undertakings or agreements of Purchaser, for brokerage fees, finder's fees, agent's commissions, or other similar forms of compensation to an intermediary in connection with the negotiation, execution or delivery of this Agreement or any agreement or transaction contemplated hereby.

Section 6.12 **Bankruptcy**. There are no bankruptcy, reorganization, or receivership proceedings pending, being contemplated by, or, to the knowledge of Purchaser, threatened against Purchaser or any Affiliate of Purchaser (whether by Purchaser or a third Person).

Section 6.13 **Qualification and Bonding**. Purchaser is now, or as of the Closing Date shall be, and after the Closing shall continue to be, qualified under all applicable Laws and with all applicable Governmental Authorities to own and, where applicable, operate the Assets. Without limiting Section 13.5 hereof, as of the Closing Date, Purchaser shall have and shall maintain all necessary bonds to own and operate of the Assets.

ARTICLE VII
COVENANTS OF THE PARTIES

Section 7.1 **Access**. Subject to the limitations expressly set forth in this Agreement, Seller will give Purchaser and its representatives access to the Assets and access to and the right to copy, at Purchaser's sole expense, the Records in Seller's possession, for the purpose of conducting a confirmatory review of the Assets, but only to the extent that Seller may do so without (i) violating applicable Laws, including the Hart-Scott Rodino Act, (ii) violating any obligations to any third Person, and (iii) to the extent that Seller has authority to grant such access without breaching any restriction binding on any Seller Party. Such access by Purchaser shall be limited to Seller's normal business hours, and Purchaser's investigation shall be conducted in a manner that minimizes interference with the operation of the Assets or Seller's business with respect thereto or the business of Seller generally. Except as set forth in Article 4, Purchaser's right of access shall not entitle Purchaser to operate Equipment or conduct intrusive testing or sampling. All information obtained by Purchaser and its representatives under this Section 7.1 shall be subject to the terms of that certain confidentiality agreement between the Seller Parties and Purchaser dated March 17, 2008 (as amended hereby, the "Confidentiality Agreement") and any applicable privacy laws regarding personal information. Purchaser and Seller Parties agree that, notwithstanding that Liberty Energy, LLC was not a signatory to the Confidentiality Agreement, for the purposes of this Agreement, the schedules and exhibits hereto, the documents to be executed in connection herewith, and the transactions contemplated hereby, Liberty Energy, LLC shall be deemed to have been a signatory to the Confidentiality Agreement, and each of the Parties agrees that the rights, benefits, obligations contained therein shall be binding upon, and shall accrue to the benefit of, Liberty Energy, LLC as though it were a party thereto and included in the definition of the term "Company" thereunder.

Section 7.2 **Notification of Breaches**. Until the Closing,

(a) Purchaser shall notify Seller promptly after Purchaser obtains actual knowledge that any representation or warranty of any Seller Party contained in this Agreement is untrue in any material respect or will be untrue in any material respect as of the Closing Date or that any covenant or agreement to be performed or observed by Seller prior to or on the Closing Date has not been so performed or observed in any material respect; and

(b) Seller shall notify Purchaser promptly after Seller obtains actual knowledge that any representation or warranty of Purchaser contained in this Agreement is untrue in any material respect or will be untrue in any material respect as of the Closing Date or that any covenant or agreement to be performed or observed by Purchaser prior to or on the Closing Date has not been so performed or observed in a material respect.

If any of Purchaser's or Seller's representations or warranties is untrue or shall become untrue in any material respect between the date of execution of this Agreement and the Closing Date, or if any of Purchaser's or Seller's covenants or agreements to be performed or observed prior to or on the Closing Date shall not have been so performed or observed in any material respect, but if such breach of representation, warranty, covenant or agreement shall (if curable) be cured on or before the Closing (or, if the Closing does not occur, by the date set forth in Section 11.1) or if the Closing otherwise occurs notwithstanding such breach, then such breach shall be considered not to have occurred for all purposes of this Agreement.

Section 7.3 **Press Releases**. Until the Closing, neither Seller nor Purchaser, nor any Affiliate thereof, shall make any press release regarding the existence of this Agreement, the contents hereof or the transactions contemplated hereby without the prior written consent of the Purchaser (in the case of announcements by any Seller Party or its Affiliates) or Seller (in the case of announcements by Purchaser or its Affiliates), which consent shall not be unreasonably withheld or delayed; provided, however, the foregoing shall not restrict disclosures by Purchaser or any Seller Party (i) to the extent that such disclosures are required by applicable securities or other Laws or the applicable rules of any stock exchange having jurisdiction over the disclosing Party or its Affiliates or (ii) to Governmental Authorities and third Persons holding preferential rights to purchase, rights of consent or other rights that may be applicable to the transactions contemplated by this Agreement, as reasonably necessary to provide notices, seek waivers, amendments or terminations of such rights, or seek such consents. Each Seller Party and Purchaser shall each be liable for the compliance of its respective Affiliates with the terms of this Section.

Section 7.4 **Operation of Business**. Except as may be required by Section 7.9 or otherwise by this Agreement, and except as otherwise approved by Purchaser, until the Closing Seller shall operate its business with respect to the Assets in the ordinary course, and, without limiting the generality of the preceding, shall:

(a) not transfer, sell, hypothecate, encumber, or otherwise dispose of any of the Assets, except for sales and dispositions of oil and gas and equipment and materials made in the ordinary course of business;

(b) where it operates Leases, Units, or Wells, produce oil, gas and/or other Hydrocarbons from those Leases, Units, or Wells consistent with recent practices, subject to the terms of the applicable Leases and Contracts, applicable Laws and requirements of Governmental Authorities and interruptions resulting from force majeure, mechanical breakdown and planned maintenance;

(c) not terminate, materially amend, execute, or extend any Material Contract other than the execution or extension of a contract for the sale or exchange of oil, gas and/or other hydrocarbons terminable on ninety (90) days or shorter notice;

(d) maintain insurance coverage on the Assets in the amounts and of the types presently in force;

(e) use commercially reasonable efforts to maintain in full force and effect all Leases to the extent that such Leases are capable of producing in paying quantities at applicable prices in effect as of the date that Seller proposes to allow such Leases to terminate;

(f) maintain all material governmental permits and approvals affecting the Assets;

(g) not act in any manner with respect to the Assets other than in the ordinary course of business, consistent with prior practice, and in compliance with applicable Law;

(h) not waive, compromise, or settle any claim with a value in excess of Two-Hundred Thousand dollars ($200,000) with respect to the Assets;

(i) not approve, expend, or cause any operation or series or related operations except in accordance with the Plan of Operations attached hereto as Exhibit D except as would not require an expenditure (or series of expenditures) net to the collective interests of the Seller Parties of greater than or equal to Two-Hundred Thousand dollars ($200,000) per operation, unless in the case of an emergency or to conduct an operation required to perpetuate a Lease (or as otherwise required pursuant to a Contract);

(j) not resign as operator of any of the Properties;

(k) except as would not have a Material Adverse Effect, not merge or consolidate with any other Person or undergo a change of control of fifty-percent (50%) or more of any Seller's Party's equity ownership;

(l) use commercially reasonable efforts to preserve relationships with all third Persons having material business dealings with respect to the Properties; and

(m) promptly after the same becomes known to Seller, notify Purchaser of any cessation of production from any Unit or Well and any other event that would reasonably be expected to have a Material Adverse Effect.

Requests for approval of any action restricted by this Section 7.4 shall be delivered to either of the following individuals, each of whom shall have full authority to grant or deny such requests for approval on behalf of Purchaser:

George Ciotti
gwc@bry.com
(303) 870-4623 (cell)
(303) 825-3344 (office)
(303) 825-3350 (fax)

Ken Frost
krf@bry.com
(661) 616-3900 (office)
(661) 616-3381 (Fax)

Purchaser's approval of any action restricted by this Section 7.4 shall not be unreasonably withheld or delayed and shall be considered granted in full within five (5) days (unless a shorter time is reasonably required by the circumstances and such shorter time is specified in Seller's notice) of Seller's notice to Purchaser requesting such consent unless Purchaser notifies Seller to the contrary during that period. Notwithstanding the foregoing provisions of this Section 7.4, in the event of an emergency, Seller may take such action as reasonably necessary and shall notify Purchaser of such action promptly thereafter. Purchaser acknowledges that Seller may own undivided interests in certain of the Assets, and Purchaser agrees that the acts or omissions of third Persons who are not affiliated with Seller shall not constitute a violation of the provisions of this Section 7.4, nor shall any action required by a vote of working interest owners constitute such a violation so long as each Seller Party has voted its interests in a manner consistent with the provisions of this Section 7.4.

Section 7.5 **Indemnity Regarding Access**. Purchaser's access to the Assets and its (and its Affiliates and representatives, including the Environmental Consultant) examinations and inspections, whether under Section 7.1, Section 4.3, or otherwise, shall be at Purchaser's sole risk, cost, and expense, and Purchaser **WAIVES AND RELEASES ALL CLAIMS AGAINST ALL SELLER PARTIES, THEIR AFFILIATES, AND THEIR RESPECTIVE PARTNERS, MEMBERS, OFFICERS, DIRECTORS, EMPLOYEES, ATTORNEYS, CONTACTORS, AGENTS, OR OTHER REPRESENTATIVES, ARISING IN ANY WAY THEREFROM, OR IN ANY WAY CONNECTED THEREWITH**. Purchaser agrees to indemnify, defend, and hold harmless each Seller Party and its Affiliates and all such Seller Party's directors, officers, employees, agents, and representatives from and against any and all claims, liabilities, losses, costs, and expenses (including court costs and reasonable attorneys' fees), including claims, liabilities, losses, costs, and expenses attributable to personal injury, death, or property damage, arising out of, or relating to, access to the Assets prior to the Closing by Purchaser, its Affiliates, or its or their directors, officers, employees, agents, or representatives, **EVEN IF CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE (WHETHER SOLE, JOINT OR CONCURRENT), STRICT LIABILITY, OR OTHER LEGAL FAULT OF ANY INDEMNIFIED PERSON, OTHER THAN GROSS NEGLIGENCE AND WILLFUL MISCONDUCT OF ANY INDEMNIFIED PERSON**. **PURCHASER RECOGNIZES AND AGREES THAT, EXCEPT AS SPECIFICALLY SET FORTH IN SECTION 5.13, ALL MATERIALS, DOCUMENTS, SAMPLES, REPORTS, AND OTHER INFORMATION OF ANY TYPE AND NATURE MADE AVAILABLE TO IT, ITS AFFILIATES OR REPRESENTATIVES, IN CONNECTION WITH THE TRANSACTION CONTEMPLATED HEREBY, WHETHER MADE AVAILABLE PURSUANT TO THIS SECTION OR OTHERWISE, ARE MADE AVAILABLE TO IT AS AN ACCOMMODATION, AND WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, OR STATUTORY, AS TO THE ACCURACY AND COMPLETENESS OF SUCH MATERIALS, DOCUMENTS, SAMPLES, REPORTS, AND OTHER INFORMATION. NO WARRANTY OF ANY KIND IS MADE BY ANY SELLER PARTY AS TO THE INFORMATION SUPPLIED TO PURCHASER OR ITS AFFILIATES OR REPRESENTATIVES OR WITH RESPECT TO PROPERTIES TO WHICH THE INFORMATION RELATES. PURCHASER EXPRESSLY AGREES THAT ANY RELIANCE UPON, OR CONCLUSIONS DRAWN THEREFROM, SHALL BE THE RESULT OF ITS OWN INDEPENDENT REVIEW AND JUDGMENT.**

Section 7.6 **Governmental Reviews**. Seller and Purchaser shall each in a timely manner make (or cause its applicable Affiliate to make) (i) all required filings, including (if applicable) filings required under the Hart-Scott-Rodino Act, and prepare applications to and conduct negotiations with, each Governmental Authority as to which such filings, applications or negotiations are necessary or appropriate in the consummation of the transactions contemplated hereby, and (ii) provide such information as the other may reasonably request in order to make such filings, prepare such applications and conduct such negotiations. Each Party shall cooperate with and use all reasonable efforts to assist the other with respect to such filings, applications and negotiations. Purchaser shall bear the cost of all filing or application fees payable to any Governmental Authority with respect to the transactions contemplated by this Agreement, regardless of whether Purchaser, Seller, or any Affiliate of any of them is required to make the payment.

Section 7.7 **Operatorship**. Seller makes no representation or warranty as to Purchaser's ability to succeed to operatorship of the Properties currently operated by Seller (the "Seller-Operated Properties"). Seller shall use commercially reasonable efforts on or before the Closing Date to assist Purchaser in Purchaser's efforts to succeed Seller as operator of the Seller-Operated Properties. Without limiting the rights of Seller and obligations of Purchaser pursuant to Section 13.5, Purchaser shall, promptly following Closing, file all appropriate forms and declarations or bonds with any applicable Governmental Authority relative to Purchaser's assumption of operatorship. For all Seller-Operated Properties, Seller shall execute and deliver to Purchaser on the Closing Date, and Purchaser shall promptly (but in no event later than thirty (30) days after the Closing Date) file all appropriate forms with the applicable Governmental Authority (including, without limitation, P-4 forms designating Purchaser as operator of any Seller-Operated Properties) transferring operatorship of such Properties to Purchaser, and assuming responsibility for all wells located on the Properties or the lands covered thereby to the extent consistent with this Agreement.

Section 7.8 **Letters-in-Lieu**. Seller shall execute and deliver to Purchaser on the Closing Date letters in lieu of division and transfer orders relating to the Assets to reflect the transaction contemplated hereby. Such letters shall be on forms prepared by Seller and reasonably satisfactory to Purchaser.

Section 7.9 **Hedges**. At or prior to Closing, Seller and its Affiliates shall eliminate all futures, options, swaps, and other derivatives, with respect to the sale of production from the Assets that are currently binding on the Assets.

Section 7.10 **Exclusivity**. Upon the execution of this Agreement and until the termination of this Agreement pursuant to Article 11, Seller shall not, directly or indirectly, solicit or entertain, or cause any other Person to solicit or entertain, any other offer to acquire the Assets, or any portion thereof, or provide information to others concerning the purchase and sale of the Assets contemplated herein, or enter into any negotiation or agreement that provides for the acquisition of any portion of the Assets by any Person other than Purchaser.

Section 7.11 **Updated Schedules**. Both of Purchaser and Seller shall notify the other Party promptly after such Party obtains actual knowledge that any representation or warranty of the other Party contained in this Agreement is, or has become, untrue in any material respect. Each Party shall, prior to Closing, supplement the Schedules and Exhibits to this Agreement with additional information that, if existing or known to it on the date of this Agreement, would have been required to have been included in one or more of the Schedules or Exhibits to this Agreement. For the purpose of determining the satisfaction of any of the conditions of the obligations of each Party in Article 8, and the liability of each Party following Closing for breaches of its representations, warranties, and covenants herein, the Schedules and Exhibits to this Agreement shall be deemed to include only (a) the information contained therein on the date of this Agreement, (b) information added to such Schedules and Exhibits by written supplements to this Agreement delivered prior to Closing by a Party that are accepted by both Parties or reflect actions permitted by this Agreement to be taken prior to Closing, and (c) information actually known to a Party on or prior to the Closing Date that such Party would be required to report to the other Party pursuant to the first sentence of this Section 7.11.

Section 7.12 **Contract Pumpers**. At the request of Purchaser, Seller shall use commercially reasonable efforts to cooperate with Purchaser in Purchaser's efforts to retain Seller's four contract pumpers engaged with respect to Seller's Freestone Consolidated Navasota area and Seller's two contract pumpers engaged with respect to Seller's Darco SE Field.

Section 7.13 **Seller's Financial Records and Data**.

(a) Notwithstanding anything in Section 7.1 or elsewhere herein to the contrary, during the period beginning on the date hereof and continuing through the seventy-fifth (75th) day following the Closing Date, upon reasonable advance written notice from Purchaser each Seller Party shall provide to Purchaser, its auditors, PricewaterhouseCoopers LLP, and other representatives, within the time period requested by Purchaser in such notice, but in no event earlier than five (5) Business Days after such Seller Party receives such notice (provided that Purchaser shall use commercially reasonable efforts to request any information that it requires, or reasonably expects that it may require, as soon as possible prior to the date that Purchaser requires such information for the purposes described in this Section 7.13, and provided further that O'Brien Resources, LLC shall exercise its commercially reasonable efforts to provide the requested information and access listed below as promptly as practicable and in any event no later than two (2) Business Days after such receipt, but O'Brien Resources, LLC shall not be deemed to be in breach of this covenant if, notwithstanding the exercise of such commercially reasonable efforts, O'Brien Resources, LLC is unable to timely provide such information or access and it so notifies Purchaser prior to the end of such period), to the extent relating to historical information solely regarding the Assets to the extent in existence and in the possession of such Seller Party:

(i) any audited or reviewed, segmented, or other financial statements of such Seller Party as such presently exist; and

(ii) access for a representative previously designated in writing by Purchaser, during normal business hours and in the presence of a representative of such Seller Party, to such Seller Party's financial, operating, and other books and records (to the extent relating solely to the Assets), in each case at Purchaser's expense

as necessary in order to prepare and audit segmented and other financial statements and other reports as may be required by the rules and regulations of the United States Securities and Exchange Commission ("SEC"), the Securities Act of 1933 or other applicable Law to be submitted by Purchaser in connection with, or to be incorporated by Purchaser in, any Form 8-K, 10-QSB, registration statement or other filing required to be submitted by Purchaser to the SEC. Notwithstanding the foregoing, O'Brien Resources, LLC shall provide the foregoing information whether or not the information requested is contained in documents or records which contains information not solely regarding the Assets. O'Brien Resources, LLC reserves the right to redact all such information which is not related in whole or in part to the Assets.

(b) In addition, (i) at Purchaser's sole cost and expense, and upon reasonable advance written notice by Purchaser, its auditors, or other representatives, each Seller Party shall make available knowledgeable financial and other personnel who shall respond to requests for information and other materials requested by Purchaser, its auditors, and other representatives in connection with such filings within the time frames requested by Purchaser, its auditors or other representatives, and (ii) at Purchaser's sole cost and expense, each Seller Party shall arrange for its auditor, if any, to promptly furnish such assistance to Purchaser as Purchaser shall reasonably request in connection with Purchaser's SEC filings.

(c) Notwithstanding the foregoing, except with respect to Section 7.13(b)(ii) above, in no event shall any Seller Party be obligated to: (i) make modifications to its existing systems, equipment, records, or procedures; (ii) acquire or expand assets, equipment, rights, or properties (including, without limitation, computer equipment, software, furniture, fixtures, machinery, vehicles, tools, and other tangible personalty) beyond the level and location currently provided by such Seller Party as of the date hereof; (iii) hire additional employees or contractors; or (iv) pay any costs related to the transfer or conversion of data from such Seller Party or its Affiliates or any other Person to Purchaser.

(d) Each Seller Party acknowledges that Purchaser's rights under Section 7.13 are unique and that Purchaser shall, in addition to such other remedies as may be available to it at law or in equity, have the right to enforce its rights under Section 7.13 by actions for specific performance to the extent permitted by applicable Law. Each Seller Party further acknowledges that monetary Damages would not be adequate compensation for any Damages suffered as a result of such Seller Party's breach of Section 7.13, and waives the defense in any action for specific performance that a remedy at Law would be adequate, and any requirement for security or the posting of any bond or other surety in connection with any temporary or permanent award of equitable relief.

(e) The fact that the SEC subjects any filing by Purchaser to supplementation shall not create any presumption of a breach by any Seller Party of any of its obligations under this Section 7.13. No Seller Party shall have any liability to Purchaser with respect to any registration rights agreement or obligation involving Purchaser or the pricing, salability, market response, or any other matter relating to the issuance or sale of any security by or on behalf of Purchaser, and **PURCHASER SHALL SAVE, INDEMNIFY, AND HOLD HARMLESS EACH SELLER PARTY AND ITS RESPECTIVE AFFILIATES AND ALL SUCH SELLER PARTY'S MEMBERS, PARTNERS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, ADVISORS AND REPRESENTATIVES FROM AND AGAINST ANY AND ALL DAMAGES (IRRESPECTIVE OF SIZE OR AMOUNT) WHICH PURCHASER OR ANY THIRD PERSON OR GOVERNMENTAL AUTHORITY MIGHT NOW OR SUBSEQUENTLY MAY HAVE RELATING TO THE FOREGOING**.

Section 7.14 **Legal Existence.** During the period beginning on the Closing Date and ending on December 31, 2010, each Seller Party shall maintain its legal existence, and no Seller Party shall voluntarily take any action or make any election as a result of which such Seller Party would be dissolved during such period; provided, however, that nothing contained in this Section 7.14 shall restrict the ability of a Seller Party to merge, consolidate, dissolve, or otherwise terminate or change its legal existence if, as of the date of such merger, consolidation, dissolution, termination or change, another Person has agreed in writing to assume such Seller Party's obligations under this Agreement, which Person is in compliance with Section 9.4(e), or the obligations of such Seller Party hereunder have been bonded or otherwise financially secured to the reasonable satisfaction of Purchaser. Notwithstanding the foregoing, in the event that, on or after January 1, 2010, O'Benco II, LP closes or otherwise consummates a transaction (or series of transactions) pursuant to which it disposes (whether by sale, merger, consolidation, assignment, change of control, or otherwise) of all or substantially all of its assets, such transaction shall not constitute a breach of this Section 7.14, and this covenant shall be of no further force and effect with respect to O'Benco II, LP as of the date of the closing or consummation of such transaction (or series of transactions).

Section 7.15 **Acquisition of Deep Rights**. From the date hereof until the Closing Date, O'Brien Resources, LLC shall continue to exercise its commercially reasonable efforts to arrange for the purchase by Purchaser (at Purchaser's sole cost and expense) of leasehold and other similar rights to all depths lying below the deepest depth covered by any Lease which as of the date hereof is limited in depth as to any portion of the lands highlighted in yellow on the plat attached hereto as Exhibit A-5.

Section 7.16 **Further Assurances**. After Closing, Seller and Purchaser each agrees to take such further actions and to execute, acknowledge, and deliver all such further documents as are reasonably requested by the other for carrying out the purposes of this Agreement or of any document delivered pursuant to this Agreement.

ARTICLE VIII
CONDITIONS TO CLOSING

Section 8.1 **Conditions of Seller to Closing**. The obligations of Seller to consummate the transactions contemplated by this Agreement are subject, at the option of Seller, to the satisfaction on or prior to Closing of each of the following conditions:

(a) Representations. The representations and warranties of Purchaser set forth in Article 5 shall be true and correct in all material respects (considering the transaction as a whole) as of the date of this Agreement and as of the Closing Date as though made on and as of the Closing Date;

(b) Performance. Purchaser shall have performed and observed, in all material respects, all covenants and agreements to be performed or observed by it under this Agreement prior to or on the Closing Date;

(c) No Action. On the Closing Date, no injunction, order, or award restraining, enjoining, or otherwise prohibiting the consummation of the transactions contemplated by this Agreement, or granting substantial damages in connection therewith, shall have been issued and remain in force, and no suit, action, or other proceeding (excluding any such matter initiated by Seller or any of its Affiliates) shall be pending before any Governmental Authority or body of competent jurisdiction seeking to enjoin or restrain or otherwise prohibit the consummation of the transactions contemplated by this Agreement or recover substantial damages from Seller or any Affiliate of Seller resulting therefrom; and

(d) Governmental Consents. All material consents and approvals of any Governmental Authority required for the transfer of the Assets from Seller to Purchaser as contemplated under this Agreement, except consents and approvals of assignments by Governmental Authorities that are customarily obtained after closing, shall have been granted, or the necessary waiting period shall have expired, or early termination of the waiting period shall have been granted.

Section 8.2 Conditions of Purchaser to Closing. The obligations of Purchaser to consummate the transactions contemplated by this Agreement are subject, at the option of Purchaser, to the satisfaction on or prior to Closing of each of the following conditions:

(a) Representations. The representations and warranties of Seller set forth in Article 5 shall be true and correct in all material respects (considering the transaction as a whole) as of the date of this Agreement and as of the Closing Date as though made on and as of the Closing Date (other than representations and warranties that refer to a specified date, which need only be true and correct on and as of such specified date);

(b) Performance. Seller shall have performed and observed, in all material respects, all covenants and agreements to be performed or observed by it under this Agreement prior to or on the Closing Date except, in the case of breaches of Section 7.4, for such breaches, if any, as would not have a Material Adverse Effect;

(c) No Action. On the Closing Date, no injunction, order, or award restraining, enjoining, or otherwise prohibiting the consummation of the transactions contemplated by this Agreement, or granting substantial damages in connection therewith, shall have been issued and remain in force, and no suit, action, or other proceeding (excluding any such matter initiated by Purchaser or any of its Affiliates) shall be pending before any Governmental Authority or body of competent jurisdiction seeking to enjoin or restrain or otherwise prohibit the consummation of the transactions contemplated by this Agreement or recover substantial damages from Purchaser or any Affiliate of Purchaser resulting therefrom;

(d) Governmental Consents. All material consents and approvals of any Governmental Authority required for the transfer of the Assets from Seller to Purchaser as contemplated under this Agreement, except consents and approvals of assignments by Governmental Authorities that are customarily obtained after closing, shall have been granted or the necessary waiting period shall have expired, or early termination of the waiting period shall have been granted;

(e) Encumbrances. Seller shall have delivered to Purchaser partial releases of the liens set forth under the heading "Liens to be Released at Closing" on Schedule 3.3 with respect to the Assets; and

(f) Termination. No Seller Party shall have terminated this Agreement without the other Seller Parties assuming and performing all of the obligations (including the obligation to sell and convey its undivided interest in the Assets) of such terminating Seller Party hereunder or without such terminating Seller Party agreeing pursuant to a separate agreement with Purchaser to perform such obligations.

(g) Non-Competition Covenant. Each Seller Party (except Liberty Energy, LLC), and William J. O'Brien III shall have executed and delivered for the benefit of Purchaser, a non-competition covenant in the form attached hereto as Exhibit E.

ARTICLE IX
CLOSING

Section 9.1 Time and Place of Closing. The consummation of the purchase and sale of the Assets contemplated by this Agreement (the "Closing") shall, unless otherwise agreed to in writing by Purchaser and Seller, take place at the offices of Bracewell & Giuliani LLP located at 711 Louisiana St., Suite 2300, Houston, Texas, at 10:00 a.m., local time, on July 15, 2008 (the "Target Closing Date"), or if all conditions in Article 8 to be satisfied prior to Closing have not yet been satisfied or waived, as soon thereafter as such conditions have been satisfied or waived, subject to the provisions of Article 11. The date on which the Closing occurs is referred to herein as the "Closing Date."

Section 9.2 Obligations of Seller at Closing. At the Closing, upon the terms and subject to the conditions of this Agreement, and subject to the simultaneous performance by Purchaser of its obligations pursuant to Section 9.3, Seller shall deliver or cause to be delivered to Purchaser, among other things, the following:

(a) Counterparts of the Assignment and Bill of Sale in the form attached hereto as Exhibit B, duly executed by each Seller Party, in sufficient duplicate originals to allow recording in all appropriate jurisdictions and offices;

(b) Assignments in form required by any Governmental Authority for the assignment of any Assets controlled by such Governmental Authority, duly executed by any applicable Seller Party, in sufficient duplicate originals to allow recording in all appropriate offices;

(c) Executed certificates described in Treasury Regulation Sec. 1.1445-2(b)(2) certifying that no Seller Party is a foreign person within the meaning of the Code;

(d) Letters-in-lieu of transfer orders with respect to the Properties duly executed by all applicable Seller Parties;

(e) A certificate duly executed by an authorized corporate officer of each Seller Party, dated as of the Closing, certifying on behalf of such Seller Party that the conditions set forth in Section 8.2(a) and Section 8.2(b) have been fulfilled;

(f) A certificate duly executed by the secretary or any assistant secretary (or other authorized officer) of each Seller Party, dated as of the Closing,(i) attaching and certifying on behalf of such Seller Party complete and correct copies of (A) the resolutions of the Board of Directors, managers, or other equivalent governing body of such Seller Party authorizing the execution, delivery, and performance by such Seller Party of this Agreement and the transactions contemplated hereby, and (B) any required approval by the stockholders, members, or partners, as applicable, of such Seller Party of this Agreement and the transactions contemplated hereby and (ii) certifying on behalf of such Seller Party the incumbency of each officer of such Seller Party executing this Agreement or any document delivered in connection with the Closing;

(g) Where notices of approval are received by Seller pursuant to a filing or application under Section 7.6, copies of those notices of approval;

(h) Counterparts of a transition services agreement between O'Brien Resources, LLC and Purchaser in the form attached hereto as Exhibit C (the "Transition Services Agreement"), duly executed by O'Brien Resources, LLC;

(i) For the Seller-Operated Properties, validly executed transfer of Railroad Commission form P-4s designating Purchaser as operator of such Seller-Operated Properties and any other forms or documents required to designate Purchaser as operator of the such Seller-Operated Properties;

(j) Any other forms required by any Governmental Authority relating to the assignments of the Assets and relating to the assumption of operations by Purchaser;

(k) Releases of the liens listed on Schedule 3.3 under the heading "Liens to be Released at Closing"; and

(l) All other instruments, documents, and other items reasonably necessary to effectuate the terms of this Agreement, as may be reasonably requested by Purchaser.

Section 9.3 **Obligations of Purchaser at Closing**. At the Closing, upon the terms and subject to the conditions of this Agreement, and subject to the simultaneous performance by Seller of its obligations pursuant to Section 9.2, Purchaser shall deliver or cause to be delivered to Seller, among other things, the following:

(a) A wire transfer of the Closing Payment in same-day funds;

(b) Counterparts of the Assignment and Bill of Sale, duly executed by Purchaser, in sufficient duplicate originals to allow recording in all appropriate jurisdictions and offices;

(c) Assignments in form required by any Governmental Authority for the assignment of any Assets controlled by such Governmental Authority, duly executed by Purchaser, in sufficient duplicate originals to allow recording in all appropriate offices;

(d) A certificate by an authorized corporate officer of Purchaser, dated as of the Closing, certifying on behalf of Purchaser that the conditions set forth in Section 8.1(a) and Section 8.1(b) have been fulfilled;

(e) A certificate duly executed by the secretary or any assistant secretary (or other authorized officer) of Purchaser, dated as of the Closing, (i) attaching and certifying on behalf of Purchaser complete and correct copies of (A) the resolutions of the Board of Directors, managers, or other equivalent governing body of Purchaser authorizing the execution, delivery, and performance by Purchaser of this Agreement and the transactions contemplated hereby, and (B) any required approval by the stockholders, members, or partners, as applicable, of Purchaser of this Agreement and the transactions contemplated hereby, and (ii) certifying on behalf of Purchaser the incumbency of each officer of Purchaser executing this Agreement or any document delivered in connection with the Closing;

(f) Where notices of approval are received by Purchaser pursuant to a filing or application under Section 7.6, copies of those notices of approval;

(g) Evidence of replacement bonds, guarantees, and letters of credit, pursuant to Section 13.5; and

(h) Counterparts of the Transition Services Agreement, duly executed by Purchaser; and

(i) All other instruments, documents, and other items reasonably necessary to effectuate the terms of this Agreement, as may be reasonably requested by Seller.

Section 9.4 Closing Payment and Post-Closing Purchase Price Adjustments.

(a) Not later than five (5) Business Days prior to the Closing Date, Seller shall prepare and deliver to Purchaser, using and based upon the best information available to Seller, a preliminary settlement statement estimating the Purchase Price for the Assets after giving effect to all adjustments set forth in Section 2.3 and the amount of the Deposit (but excluding any income thereon). The estimate delivered in accordance with this Section 9.4(a) shall constitute the dollar amount to be payable by Purchaser to Seller at the Closing (the "Closing Payment").

(b) As soon as reasonably practicable after the Closing but not later than the one hundred and twentieth (120th) day following the Closing Date, Seller shall prepare and deliver to Purchaser a draft statement setting forth the final calculation of the Purchase Price and showing the calculation of each adjustment under Section 2.3, based on the most recent actual figures for each adjustment. Seller shall, at Purchaser's request, make reasonable documentation available to support the final figures. As soon as reasonably practicable, but not later than the thirtieth (30th) day following receipt of Seller's statement hereunder, Purchaser shall deliver to Seller a written report containing any changes that Purchaser proposes be made to such statement. Seller may deliver a written report to Purchaser during this same period reflecting any changes that Seller proposes to be made to such statement as a result of additional information received after the statement was prepared. The Parties shall undertake to agree on the final statement of the Purchase Price no later than ninety (90) days after delivery of Seller's statement. In the event that the Parties cannot reach agreement within such period of time, any Party may refer the items of adjustment which are in dispute to the Houston office of Deloitte & Touche LLP, or, if such firm is not able or willing to serve, a nationally-recognized independent accounting firm or consulting firm mutually acceptable to both Purchaser and Seller (the "Accounting Arbitrator"), for review and final determination by arbitration. The Accounting Arbitrator shall conduct the arbitration proceedings in Houston, Texas in accordance with the Commercial Arbitration Rules of the American Arbitration Association, to the extent such rules do not conflict with the terms of this Section. The Accounting Arbitrator's determination shall be made within forty-five (45) days after submission of the matters in dispute and shall be final and binding on all Parties, without right of appeal. In determining the proper amount of any adjustment to the Purchase Price, the Accounting Arbitrator shall be bound by the terms of Section 2.3 and may not increase the Purchase Price more than the increase proposed by Seller nor decrease the Purchase Price more than the decrease proposed by Purchaser, as applicable. The Accounting Arbitrator shall act as an expert for the limited purpose of determining the specific disputed aspects of Purchase Price adjustments submitted by any Party and may not award damages, interest (except as expressly provided for in this Section), or penalties to any Party with respect to any matter. Seller and Purchaser shall each bear their own legal fees and other costs of presenting their case. Seller shall bear one-half and Purchaser shall bear one-half of the costs and expenses of the Accounting Arbitrator. Within ten (10) days after the earlier of (i) the expiration of Purchaser's thirty (30) day review period without delivery of any written report or (ii) the date on which the Parties or the Accounting Arbitrator finally determine the Purchase Price, (x) Purchaser shall pay to Seller the amount by which the Purchase Price exceeds the Closing Payment or (y) Seller shall pay to Purchaser the amount by which the Closing Payment exceeds the Purchase Price, as applicable. Any post-Closing payment pursuant to this Section 9.4 shall bear interest from the Closing Date to the date of payment at the Agreed Rate.

(c) Purchaser shall assist Seller in preparation of the final statement of the Purchase Price under Section 9.4(b) by furnishing invoices, receipts, reasonable access to personnel and such other assistance as may be requested by Seller to facilitate such process post-Closing.

(d) All payments made or to be made under this Agreement to Seller shall be made by electronic transfer of immediately available funds to O'Brien Resources, LLC, acting as representative of the Seller Parties, at a bank account to be specified in writing by O'Brien Resources, LLC on or before ten (10) Business Days prior to the Closing Date, for the credit of the Seller Parties, or to such other bank and account as may be specified by Seller in writing. All payments made or to be made hereunder to Purchaser shall be by electronic transfer or immediately available funds to a bank and account specified by Purchaser in writing to Seller, for the credit of Purchaser.

(e) During the period beginning on the Closing Date and ending on December 31, 2010, each Seller Party shall maintain a net worth of not less than twenty-five percent (25%) of its proportionate share of the final Purchase Price (the "Required Net Worth"). Each Seller Party's proportionate share of any Escrow Amount (as the same may be reduced from time to time pursuant to Section 12.6) shall be taken into account for the purposes of calculating such Seller Party's net worth pursuant to this Section 9.4(e); provided however, in the event the Escrow Amount is reduced as a result of payments from the Escrow Account to Purchaser, the Required Net Worth amount shall be reduced proportionately to give effect to such payment. Notwithstanding the foregoing, in the event that, on or after January 1, 2010, O'Benco II, LP closes or otherwise consummates a transaction (or series of transactions) pursuant to which it disposes (whether by sale, merger, consolidation, assignment, change of control, or otherwise) of all or substantially all of its assets, such transaction shall not constitute a breach of this Section 9.4(e), and this covenant shall be of no further force and effect with respect to O'Benco II, LP as of the date of the consummation of such transaction (or series of transactions). At Closing and on the first and second anniversary of Closing, each Seller shall deliver a certification as to its financial condition in the form and with such substance as is delivered by each Seller in the certifications delivered at the execution of this Agreement. Any information disclosed to Purchaser pursuant to this Section 9.4(e), Section 7.13, and Section 7.1, together with any other information regarding any Seller Party, including, without limitation, its existence, structure, assets (other than the Assets), businesses, employees, and Affiliates, shall be considered to be "Evaluation Material" pursuant to the terms of the Confidentiality Agreement (as modified hereby), which Confidentiality Agreement shall, notwithstanding the terms or termination provisions set forth therein, (i) terminate as of the Closing with respect to the Records and other information or data to the extent the same relate directly to the Assets (excluding, however, the Excluded Asssets), and (ii) survive the Closing indefinitely in all other respects.

ARTICLE X
TAX MATTERS

Section 10.1 Liability for Taxes.

(a) Taxes with Respect to Assets. Seller shall be responsible for filing any Tax Return (as defined in Section 5.3(a)) with respect to Taxes attributable to the Assets for a taxable period ending on or prior to the Closing Date, and, except with respect to Seller's income Tax Returns, Purchaser shall be responsible for filing any other Tax Return with respect to the Assets. Subject to the further terms of this Section 10.1, from and after Closing, Seller shall be liable for, and shall indemnify, defend, and hold harmless Purchaser from and against, all Taxes with respect to the Assets attributable to any taxable period ending on or prior to the Closing Date, including income Taxes arising as a result of Seller's gain on the sale of the Assets as contemplated by this Agreement. From and after Closing, Purchaser shall be liable for, and shall indemnify, defend, and hold harmless Seller and its Affiliates from and against, all such Taxes attributable to any taxable period beginning after the Closing Date and shall reimburse Seller and its Affiliates for any such money paid by Seller or its Affiliates with respect to such Taxes no later than seven (7) calendar days after Purchaser's receipt of notice from Seller of Purchaser's liability therefor. If a taxable period includes the Closing Date, any Taxes with respect to the Assets allocable to any taxable period beginning on or prior to the Closing Date and ending after the Closing Date which is allocable to the portion of such period occurring on or prior to the Closing Date (the "Pre-Closing Period") and determined as described in Section 10.1(b) shall be the liability of Seller and any other Taxes with respect to the Assets, including, without limitation, to the extent allocable to the portion of a taxable period occurring after the Closing Date, shall be the liability of Purchaser.

(b) Straddle Period Taxes. Whenever it is necessary for purposes of this Agreement to determine the portion of any Taxes with respect to any Asset for a taxable period beginning on or prior to and ending after the Closing Date which is allocable to the Pre-Closing Period or any taxable period beginning on or prior to the Effective Date and ending after the Closing Date which is allocable to the portion of such period occurring after the Closing Date (the "Post-Closing Period"), the determination shall be made as follows: any Taxes allocable to the Pre-Closing Period that are based on or related to income, gains, or receipts will be computed (by an interim closing of the books) as if such taxable period ended as of the Closing Date and any other Pre-Closing Period Taxes (except production Taxes and other Taxes measured by units of production, and severance Taxes) will be prorated based upon the number of days in the applicable period falling on or before, or after, the Closing Date. To the extent necessary, Seller shall estimate Taxes based on the Seller's liability for Taxes with respect to the same or similar items of income, gain, loss, deduction, and credit or other items (collectively "Tax Items") in the immediately preceding year. Notwithstanding anything to the contrary herein, any ad valorem or property Taxes paid or payable with respect to the Assets shall be allocated to the taxable period applicable to the ownership of the Assets regardless of when such Taxes are assessed

(c) Production Taxes. Notwithstanding anything to the contrary in this Agreement, production Taxes and other Taxes measured by units of production, and severance Taxes, shall not be subject to Section 10.1 and responsibility therefor and payment thereof shall be exclusively addressed by Section 1.3(j), Section 1.3(k), Section 1.3(l), Section 2.3, Section 2.4 and Section 10.4.

(d) Allocation Audits and Damages. Tax Audits and Taxes, liabilities, losses, costs, expenses, claims, awards, judgments, or other damages related thereto suffered by any Person with respect to the reporting of allocations of value and amounts realized by each Party for Tax purposes pursuant to the third sentence of Section 2.2(b) shall be the sole responsibility of such Person, and, from and after Closing, each of Purchaser and Seller shall save, indemnify, and hold harmless the other Party from and against any and all such Taxes, liabilities, losses, costs, expenses, claims, awards, judgments, and other damages that are such Party's sole responsibility hereunder.

Section 10.2 Contest Provisions.

(a) Each of Purchaser, on the one hand, and Seller, on the other hand (the "Tax Indemnified Person"), shall notify the chief tax officer (or other appropriate person) of Seller or Purchaser, as the case may be (the "Tax Indemnifying Person"), in writing within ten (10) days of receipt by the Tax Indemnified Person of written notice of any pending or threatened audits, adjustments, claims, examinations, assessments, or other proceedings (a "Tax Audit") which are likely to affect the liability for Taxes of such other Party. If the Tax Indemnified Person fails to give such timely notice to the other Party, it shall not be entitled to indemnification for any Taxes arising in connection with such Tax Audit if such failure to give notice adversely affects the other Party's right to participate in the Tax Audit.

(b) If such Tax Audit relates to any taxable period, or portion thereof, ending on or before the Closing Date or for any Taxes for which only Seller would be liable to indemnify Purchaser under this Agreement, Seller shall have the option, at its expense, to control the defense and settlement of such Tax Audit. If such Tax Audit relates to any taxable period, or portion thereof, beginning after the Closing Date or for any Taxes for which only Purchaser would be liable under this Agreement, Purchaser shall, at its expense, control the defense and settlement of such Tax Audit to the extent that such Tax Audit relates to Tax Items for which Purchaser is liable to indemnify Seller under Section 10.1.

(c) If such Tax Audit relates to Taxes for which both Seller and Purchaser could be liable under this Agreement, to the extent practicable, such Tax Items will be distinguished and each Party will have the option to control the defense and settlement of those Taxes for which it is so liable. If such Tax Audit relates to a taxable period, or portion thereof, beginning on or before and ending after the Closing Date and any Tax Item cannot be identified as being a liability of only one party or cannot be separated from a Tax Item for which the other party is liable, Seller, at its expense, shall have the option to control the defense and settlement of the Tax Audit, provided that such Party defends the items as reported on the relevant Tax Return and provided further that no such matter shall be settled without the written consent of both Parties, not to be unreasonably withheld.

(d) Any Party whose liability for Taxes may be affected by a Tax Audit shall be entitled to participate at its expense in such defense and to employ counsel of its choice at its expense and shall have the right to consent to any settlement of such Tax Audit (not to be unreasonably withheld) to the extent that such settlement would have an adverse effect with respect to a period for which that party is liable for Taxes, under this Agreement or otherwise.

Section 10.3 **Post-Closing Actions Which Affect Seller's Tax Liability**.

(a) Except as set forth in Section 10.1(d), Purchaser shall not and shall not permit its Affiliates to take any action which could increase any Seller Party's liability for Taxes (including any liability of Seller to indemnify Purchaser for Taxes under this Agreement).

(b) Except to the extent required by applicable Laws, Purchaser shall not and shall not permit its Affiliates to amend any Tax Return with respect to a taxable period for which any Seller Party may be liable to indemnify Purchaser for Taxes under Section 10.1.

Section 10.4 **Refunds**. Purchaser agrees to pay to Seller any refund received (whether by payment, credit, offset or otherwise, and together with any interest thereon) after the Closing by Purchaser or its Affiliates in respect of any Taxes for which any Seller Party is liable or required to indemnify Purchaser under Section 10.1. Seller agrees to pay to Purchaser any refund received (whether by payment, credit, offset, or otherwise, and together with any interest received thereon) after the Closing by any Seller Party or any of their respective Affiliates in respect of any Taxes for which Purchaser is liable or required to indemnify Seller under Section 10.1. Each Party shall cooperate with the other and its Affiliates in order to take all necessary steps to claim any such refund. Any such refund received by a Party or its Affiliates shall be paid to the Party entitled to the refund hereunder within thirty (30) days after such refund is received. Each Party agrees to notify the other within ten (10) days following the discovery of a right to claim any such refund and upon receipt of any such refund. Each Party agrees to claim any such refund as soon as possible after the discovery of a right to claim a refund and to furnish to the other Party all information, records and assistance necessary to verify the amount of the refund or overpayment.

Section 10.5 **Access to Information**.

(a) From and after Closing, Seller shall grant to Purchaser (or its designees) access at all reasonable times to all of the information, books and records relating to the Assets within the possession of Seller (including without limitation work papers and correspondence with taxing authorities, but excluding work product of and attorney-client communications with any of Seller's legal counsel and personnel files), and shall afford Purchaser (or its designees) the right (at Purchaser's sole expense) to take extracts therefrom and to make copies thereof, to the extent reasonably necessary to permit Purchaser (or its designees) to prepare Tax Returns, to conduct negotiations with Tax authorities, and to implement the provisions of, or to investigate or defend any claims between the Parties arising under, this Agreement.

(b) From and after Closing, Purchaser shall grant to Seller (or Seller's designees) access at all reasonable times to all of the information, books and records relating to the Assets within the possession of Purchaser (including without limitation work papers and correspondence with taxing authorities, but excluding work product of and attorney-client communications with any of Purchaser's legal counsel and personnel files), and shall afford Seller (or Seller's designees) the right (at Seller's expense) to take extracts therefrom and to make copies thereof, to the extent reasonably necessary to permit Seller (or Seller's designees) to prepare Tax Returns, to conduct negotiations with Tax authorities, and to implement the provisions of, or to investigate or defend any claims between the Parties arising under, this Agreement.

(c) Each of the Parties hereto will preserve and retain all schedules, work papers and other documents relating to any Tax Returns of or with respect to Taxes relating to the Assets or to any claims, audits or other proceedings affecting the Assets until the expiration of the statute of limitations (including extensions) applicable to the taxable period to which such documents relate or until the final determination of any controversy with respect to such taxable period, and until the final determination of any payments that may be required with respect to such taxable period under this Agreement.

(d) At Seller's request, Purchaser shall provide reasonable access to Purchaser's and its Affiliates' personnel who have knowledge of the information described in this Section 10.5.

Section 10.6 **Like Kind Exchange**. Either Purchaser and/or Seller may, at or before Closing, elect to affect a tax-deferred exchange of the Assets for other qualifying properties (the "Exchange Property") in accordance with the following:

(a) In the event that Seller makes such an election prior to the Closing, Seller may elect, by notice to Purchaser delivered on or before the Closing Date, to have the Purchase Price paid to a qualified intermediary until Seller has designated the Exchange Property. The Exchange Property shall be designated by Seller and acquired by the qualified intermediary within the time periods prescribed in Section 1031(a)(3) of the Code, and shall thereupon be conveyed to Seller. In the event Seller fails to designate, and the qualified intermediary fails to acquire, the Exchange Property within such time periods, unless the agreement with the qualified intermediary provides otherwise, the agency or trust shall terminate and the proceeds then held by the qualified intermediary shall be paid immediately to Seller.

(b) In the event that Purchaser makes an election under this Section prior to Closing, Purchaser may elect, by notice to Seller delivered on or before the Closing Date, to have the Assets conveyed to a qualified intermediary or an exchange accommodation titleholder (as such term is defined in Rec. Proc. 2000-37 issued effective September 15, 2000).

(c) The rights and responsibilities of Seller, Purchaser, and the qualified intermediary or exchange accommodation titleholder shall be documented with such agreements containing such terms and provisions as shall be reasonably determined by Seller and Purchaser to be necessary to accomplish a tax deferred exchange under Section 1031 of the Code, subject, however, to the limitations on costs and liabilities of Purchaser and Seller set forth below. If Seller makes a tax deferred exchange election, Purchaser shall not be obligated to pay additional costs or incur any additional obligations in the acquisition of the Assets. If Purchaser makes a tax deferred exchange election, no Seller Party shall be obligated to pay any additional costs or incur any additional obligations in the consummation of the transactions contemplated by this Agreement. Any such tax deferred exchange election by either Party shall not affect the duties, rights, or obligations of the Parties except as expressly set forth in this Section 10.6.

Should either Seller or Purchaser make a tax deferred exchange election and should the tax deferred exchange fail or be disallowed by the Internal Revenue Service for any reason, (i) the non-electing Party's sole responsibility and liability to the electing Party shall be to take such actions as are required by subsections (a), (b), and (c) above; (ii) such non-electing Party shall have no other responsibility or liability whatsoever to the electing Party pursuant to this Section 10.6; and (iii) the electing Party shall release, indemnify, and hold harmless the non-electing Party from any responsibility or liability related to such election except for such actions as may be required pursuant to subsections (a), (b), and (c) above. Notwithstanding anything to the contrary in this Agreement, the indemnities in this Section 10.6 shall survive the Closing and delivery of the Assignment and Bill of Sale indefinitely.

Section 10.7 **Conflict**. In the event of a conflict between the provisions of this Article 10 and any other provision of this Agreement, except Section 13.3 hereof, this Article 10 shall control.

ARTICLE XI
TERMINATION AND AMENDMENT

Section 11.1 **Termination**. This Agreement may be terminated at any time prior to Closing: (a) by the mutual prior written consent of Seller and Purchaser; (b) by either Seller or Purchaser, if Closing has not occurred on or before January 1, 2009; (c) by either Party if the aggregate adjustment to the Unadjusted Purchase Price pursuant to Articles 3 and 4 is greater than ten percent (10%) of the Unadjusted Purchase Price, or (d) by either Party if the provisions of Section 12.4 give it the right to do so; provided, however, that no Party shall be entitled to terminate this Agreement under Section 11.1(b) if the Closing has failed to occur because such Party negligently or willfully failed to perform or observe in any material respect its covenants and agreements hereunder or such Party is in breach of its representations and warranties set forth in this Agreement.

Section 11.2 **Effect of Termination**. If this Agreement is terminated pursuant to Section 11.1, this Agreement shall become void and of no further force or effect (except for the provisions of Article 1; the waiver provisions of Section 3.5(a) and Section 4.4(d); Sections 3.5(d), 4.3(d), 4.4(d), 5.9, 5.23, 6.8, 6.9, 6.10, 6.11, 7.1 (solely to the extent of the modification of the Confidentiality Agreement), 7.3, 7.5, 7.6, 7.13 (solely with respect to the indemnity provisions thereof), 11.3, 13.2, 13.3, 13.4, 13.8, 13.9, 13.15, 13.16, 13.17, and 13.18; and the Confidentiality Agreement (as modified by this Agreement), all of which shall continue in full force and effect). Notwithstanding anything to the contrary in this Agreement, the termination of this Agreement under Section 11.1 shall not relieve any Party from liability for any willful or negligent failure to perform or observe in any material respect any of its agreements or covenants contained herein that are to be performed or observed at or prior to Closing. In the event this Agreement terminates under Section 11.1 and any Party has willfully or negligently failed to perform or observe in any material respect any of its agreements or covenants contained herein which are to be performed or observed at or prior to Closing, then the other Party shall be entitled to all remedies available at law or in equity and shall be entitled to recover court costs and attorneys' fees in addition to any other relief to which such Party maybe entitled.

Section 11.3 **Distribution of Deposit Upon Termination**.

(a) If Seller terminates this Agreement under Section 11.1(b), and Purchaser has negligently or willfully failed to perform or observe in any material respect its covenants and agreements or is in breach of its representations and warranties hereunder, then Seller shall be entitled to receive, as its sole and exclusive remedy, the Deposit and any income thereon as liquidated damages, free of any claims by Purchaser or any other Person with respect thereto. In such event, Seller and Purchaser shall execute and deliver joint written instructions to the Escrow Agent to disburse the Deposit together with any income thereon to Seller. It is expressly stipulated by the Parties that the actual amount of damages resulting from such a termination would be extremely difficult or impossible to determine accurately because of (among other things) the unique nature of the Assets and the uncertainties of applicable commodity markets, and the amount of the Deposit is a fair and reasonable estimate by the Parties of such damages.

(b) If this Agreement is terminated for any reason other than the reasons set forth in Section 11.3(a), then Purchaser shall be entitled to receive the Deposit and any income thereon, free of any claims by Seller or any other Person with respect thereto. In such event, Seller and Purchaser shall execute and deliver joint written instructions to the Escrow Agent to disburse the Deposit together with any income thereon to Purchaser.

ARTICLE XII
INDEMNIFICATION; LIMITATIONS

Section 12.1 **Assumption**. Without limiting Purchaser's rights to indemnity under this Article 12, on the Closing Date Purchaser shall assume and hereby agrees to fulfill, perform, pay and discharge (or cause to be fulfilled, performed, paid or discharged) all obligations and liabilities of Seller and its Affiliates, whether known or unknown (the "Assumed Seller Obligations"): (i) arising under or with respect to the Assets and attributable to actions, omissions, or conditions first occurring on or after the Effective Date, or to actions, omissions, or conditions first occurring prior to the Effective Date to the extent that Damages (irrespective of amount) with respect to such actions, omissions, or conditions relate to the period of time on or after the Effective Date; (ii) relating or attributable to the ownership, use, or operation of the Assets from and after the Effective Date; (iii) for plugging and abandonment of all of the Wells and dismantlement or abandonment of all structures and Equipment included in the Assets and restoration of the surface of the Lands in accordance with applicable Laws (whether or not required to be plugged, abandoned, dismantled, or restored as of the Effective Date); (iv) to furnish makeup gas according to the terms of applicable gas balancing, sales, gathering or transportation Contracts; (v) subject to Article 3 and Article 4, relating to, or arising from, Title Defects or environmental matters (solely to the extent that, with respect to environmental matters, Purchaser knew or, in the exercise of reasonable diligence, should have known prior to the Cut-Off Date of such environmental matter or any Damages (irrespective of amount) relating thereto or arising therefrom and did not notify Seller of the same pursuant to Section 4.4(a)); (vi) subject to Section 3.6 and Section 5.8, obligations and liabilities related to or arising from the conveyance of the Assets to Purchaser at Closing without the consent of a third Person; (vii) continuing obligations under any agreements pursuant to which the Seller or its Affiliates purchased Assets prior to the Closing to the extent that Damages therefrom relate to periods of time on or after the Effective Date; (viii) are required to be borne by Purchaser under Section 2.3 or Section 2.4; and (ix) are Tax obligations assumed by Purchaser pursuant to Article 10; provided, however, that Purchaser does not assume any obligations to the extent that they (collectively, the "Retained Seller Obligations"):

(a) are attributable to actions, omissions, or conditions occurring or existing prior to the Effective Date, except to the extent addressed in clauses (i), (iii), (iv), (v), (viii), or (ix) above;

(b) relate or are attributable to the ownership, use, or operation of the Assets prior to the Effective Date, except to the extent addressed in clauses (i), (iii), (iv), (v), (viii), or (ix) above;

(c) are attributable to or arise out of the Excluded Assets;

(d) are required to be borne by Seller under Section 2.3 or Section 2.4;

(e) are attributable to or arise out of any futures, options, swaps, or other derivatives in place prior to Closing; or

(f) are Tax obligations retained by Seller pursuant to Article 10.

(g) are related to the matters shown on Schedule 5.2 and Schedule 4.2.

Section 12.2 Indemnification.

(a) From and after Closing Purchaser shall indemnify, defend and hold harmless each Seller Party and their Affiliates and their respective officers, directors, employees, and agents (the "Seller Group") from and against all Damages incurred or suffered by Seller Group:

(i) caused by, arising out of, or resulting from the Assumed Seller Obligations,

(ii) caused by, arising out of, or resulting from Purchaser's breach of any of Purchaser's covenants or agreements contained in Article 7, or

(iii) caused by, arising out of, or resulting from any breach of any representation or warranty made by Purchaser contained in Article 6 of this Agreement or in the certificate delivered at Closing pursuant to Section 9.3(d),

even if such Damages are caused in whole or in part by the negligence (whether sole, joint, or concurrent), strict liability or other legal fault of any Indemnified Person, **invitee or third Person (but excluding the gross negligence and willful misconduct of any Indemnified Person),** but excepting in each case Damages against which Seller would be required to indemnify Purchaser under Section 12.2(b) at the time the claim notice is presented by Purchaser.

(b) From and after Closing (and, notwithstanding the foregoing, with respect to environmental matters and deficiencies not assumed by Purchaser pursuant to Section 12.1(v), from and after the Cut-Off Date), each Seller Party shall indemnify, defend, and hold harmless Purchaser and its Affiliates, and its and their respective officers, directors, employees, and agents (the "Purchaser Group") against and from all Damages incurred or suffered by Purchaser Group:

(i) caused by, arising out of, or resulting from such Seller Party's breach of any of such Seller Party's covenants or agreements contained in Article 7 and Section 9.4(e);

(ii) caused by, arising out of, or resulting from any breach of any representation or warranty made by such Seller Party contained in Article 5 of this Agreement, or in the certificates delivered at Closing pursuant to Section 9.2(e);

(iii) caused by, or arising out of, or resulting from, the Retained Seller Obligations, to the extent of the ownership of such Seller Party in and to the affected Asset;

even if such Damages are caused in whole or in part by the negligence (whether sole, joint, or concurrent), strict liability or other legal fault of any Indemnified Person, invitee, or third Person (but excluding the gross negligence and willful misconduct of any Indemnified Person).

(c) Except as set forth in Section 12.2(f), each Party's sole and exclusive remedy against the other Party for (i) any and all breaches of the representations, warranties, covenants, and agreements of such other Party contained in Articles 5, 6, and 7; Section 9.4(e) and the affirmations of such representations, warranties, covenants, and agreements contained in the certificates delivered by Seller and Purchaser at Closing pursuant to Section 9.2(e) and Section 9.3(d), respectively (provided, however, that Purchaser shall be entitled to pursue whatever equitable remedies are available to it notwithstanding the terms of this Section 12.2 to enforce the covenants and agreements of Seller contained in Section 7.6, Section 7.13(d), Section 7.14, Section 7.16, and Section 9.4(e)); and (ii) the Seller Retained Obligations and Seller Assumed Obligations, is set forth in this Section 12.2 (and, (x) where applicable with respect to Article 7, Section 11.2 and (y) with respect to Taxes, Article 10), and if no such right of indemnification is expressly provided, then such claims are hereby waived to the fullest extent permitted by Law. Except as expressly set forth above, each Party hereto releases, remises, and forever discharges the other Party and its Affiliates, and its and their respective officers, directors, employees, and agents from any and all suits, legal, or administrative proceedings, claims, demands, damages, losses, costs, liabilities, interest, or causes of action whatsoever, in law or in equity, known or unknown, which such Parties might now or subsequently may have, based on, relating to, or arising out of, this Agreement or the ownership, use, or operation of the Assets, or the condition, quality, status, or nature of the Assets, **INCLUDING RIGHTS TO CONTRIBUTION UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT OF 1980, AS AMENDED, BREACHES OF STATUTORY AND IMPLIED WARRANTIES, NUISANCE OR OTHER TORT ACTIONS, RIGHTS TO PUNITIVE DAMAGES, COMMON LAW RIGHTS OF CONTRIBUTION, ANY RIGHTS UNDER INSURANCE POLICIES ISSUED OR UNDERWRITTEN BY THE OTHER PARTY OR ANY OF ITS AFFILIATES, AND ANY RIGHTS UNDER AGREEMENTS BETWEEN ANY SELLER PARTY AND ANY OTHER SELLER PARTY AND/OR ANY AFFILIATE OF ANY SELLER PARTY, EVEN IF CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE (WHETHER SOLE, JOINT OR CONCURRENT), STRICT LIABILITY OR OTHER LEGAL FAULT OF ANY RELEASED PERSON INVITEE, OR THIRD PARTY**. Without limiting the generality of the preceding sentence, Purchaser agrees that its only remedy with respect to the breach by any Seller Party of its respective covenants and agreements in Article 7 and Section 9.4(e) shall be (x) the indemnity of Seller in Section 12.2(b), as limited by the terms of this Article 12, and, if applicable, as set forth in Section 11.2 and Section 11.3, and (y) the equitable remedies described in Section 12.2(c)(i), above.

(d) "Damages," for purposes of this Agreement, shall mean the amount of any actual liability, loss, cost, expense, claim, award, or judgment incurred or suffered by any Indemnified Person arising out of or resulting from the indemnified matter, whether attributable to personal injury or death, property damage, contract claims, torts, or otherwise, including reasonable fees and expenses of attorneys, consultants, accountants, or other agents and experts reasonably incident to matters indemnified against, and the costs of investigation and/or monitoring of such matters, and the costs of enforcement of the indemnity; provided, however, that "Damages" shall not include any adjustment for Taxes that may be assessed on payments under this Article 12 or for Tax benefits received by the Indemnified Person as a consequence of any Damages. Notwithstanding the foregoing, neither Purchaser nor Seller shall be entitled to indemnification under this Section 12.2 for, and Damages shall not include, (i) loss of profits, whether actual or consequential, or other consequential damages suffered by the Party claiming indemnification, or any punitive damages (other than loss of profits, consequential damages, or punitive damages suffered by third Persons for which responsibility is allocated among the Parties), (ii) any increase in liability, loss, cost, expense, claim, award, or judgment to the extent such increase is caused by the actions or omissions of any Indemnified Person after the Closing Date or (iii) any liability, loss, cost, expense, claim, award, or judgment that does not individually exceed Two-Hundred Thousand dollars ($200,000).

(e) Any claim for indemnity under this Section 12.2 by any Affiliate, director, officer, employee, or agent must be brought and administered by the applicable Party to this Agreement. No Indemnified Person other than the Seller Parties and Purchaser shall have any rights against either the Seller Parties or Purchaser under the terms of this Section 12.2 except as may be exercised on its behalf by Purchaser or any of the Seller Parties, as applicable, pursuant to this Section 12.2(e). Each of Seller and Purchaser may elect to exercise or not exercise indemnification rights under this Section on behalf of the other Indemnified Persons affiliated with it in its sole discretion and shall have no liability to any such other Indemnified Person for any action or inaction under this Section.

(f) Section 12.2(b) shall not apply in respect of Title Defects, which are exclusively covered by Article 3 and, until the Cut-Off Date Environmental Defects and other environmental deficiencies, which are exclusively covered by Article 4. This Section 12.2 shall not apply in respect of (i) tax matters other than Section 5.3, which are exclusively covered by Article 2 and Article 10, (ii) claims for Property Costs, which are covered exclusively by Section 2.3, and Section 2.4, (iii) any claims by a Party resulting or arising from the other Party's intentional or willful misrepresentation of material fact contained in this Agreement and the Schedules or Exhibits hereto, which misrepresentation constitutes common law fraud pursuant to applicable Law, or (iv) any claims by Purchaser to the extent based upon or arising out of the Excluded Assets.

(g) The Parties shall treat, for Tax purposes, any amounts paid under this Article 12 as an adjustment to the Purchase Price.

Section 12.3 **Indemnification Actions**. All claims for indemnification under Section 12.2 shall be asserted and resolved as follows:

(a) For purposes of this Article 12, the term "Indemnifying Person" when used in connection with particular Damages shall mean the Person having an obligation to indemnify another Person or Persons with respect to such Damages pursuant to this Article 12, and the term "Indemnified Person" when used in connection with particular Damages shall mean a Person having the right to be indemnified with respect to such Damages pursuant to this Article 12 (including, for the avoidance of doubt, those Persons identified in Section 12.2(e)).

(b) To make a claim for indemnification under Section 12.2, an Indemnified Person shall notify the Indemnifying Person of its claim, including the specific details of and specific basis under this Agreement for its claim (the "Claim Notice"). In the event that the claim for indemnification is based upon a claim by a third Person against the Indemnified Person (a "Claim"), the Indemnified Person shall provide its Claim Notice promptly after the Indemnified Person has actual knowledge of the Claim and shall enclose a complete copy of all papers (if any) served with respect to the Claim; provided that the failure of any Indemnified Person to give notice of a Claim as provided in this Section 12.3 shall not relieve the Indemnifying Person of its obligations under Section 12.2 except to the extent such failure results in insufficient time being available to permit the Indemnifying Person to effectively defend against the Claim or otherwise prejudices the Indemnifying Person's ability to defend against the Claim. In the event that the claim for indemnification is based upon an inaccuracy or breach of a representation, warranty, covenant, or agreement, the Claim Notice shall specify the representation, warranty, covenant or agreement that was inaccurate or breached.

(c) In the case of a claim for indemnification based upon a Claim, the Indemnifying Person shall have thirty (30) days from its receipt of the Claim Notice to notify the Indemnified Person whether it admits or denies its obligation to defend the Indemnified Person against such Claim under this Article 12. If the Indemnifying Person does not notify the Indemnified Person within such thirty (30) day period regarding whether the Indemnifying Person admits or denies its obligation to defend the Indemnified Person, it shall be conclusively deemed obligated to provide such indemnification hereunder. The Indemnified Person is authorized, prior to and during such thirty (30) day period, to file any motion, answer or other pleading that it shall deem necessary or appropriate to protect its interests or those of the Indemnifying Person and that is not prejudicial to the Indemnifying Person.

(d) If the Indemnifying Person admits its obligation, it shall have the right and obligation to diligently defend, at its sole cost and expense, the Claim. The Indemnifying Person shall have full control of such defense and proceedings, including any compromise or settlement thereof. If requested by the Indemnifying Person, the Indemnified Person agrees to cooperate in contesting any Claim which the Indemnifying Person elects to contest (provided, however, that the Indemnified Person shall not be required to bring any counterclaim or cross-complaint against any Person). The Indemnified Person may participate in, but not control, any defense or settlement of any Claim controlled by the Indemnifying Person pursuant to this Section 12.3(d). An Indemnifying Person shall not, without the written consent of the Indemnified Person, settle any Claim or consent to the entry of any judgment with respect thereto that (i) does not result in a final, non-appealable, resolution of the Indemnified Person's liability with respect to the Claim (including, in the case of a settlement, an unconditional written release of the Indemnified Person from all further liability in respect of such Claim) or (ii) may materially and adversely affect the Indemnified Person (other than as a result of money damages covered by the indemnity).

(e) If the Indemnifying Person does not admit its obligation or admits its obligation but fails to diligently defend or settle the Claim, then the Indemnified Person shall have the right to defend against the Claim (at the sole cost and expense of the Indemnifying Person, if the Indemnified Person is entitled to indemnification hereunder), with counsel of the Indemnified Person's choosing, subject to the right of the Indemnifying Person to admit its obligation to indemnify the Indemnified Person and assume the defense of the Claim at any time prior to settlement or final, non-appealable determination thereof. If the Indemnifying Person has not yet admitted its obligation to indemnify the Indemnified Person, the Indemnified Person shall send written notice to the Indemnifying Person of any proposed settlement and the Indemnifying Person shall have the option for ten (10) days following receipt of such notice to (i) admit in writing its obligation for indemnification with respect to such Claim and (ii) if its obligation is so admitted, assume the defense of the Claim, including the power to reject the proposed settlement. If the Indemnified Person settles any Claim over the objection of the Indemnifying Person after the Indemnifying Person has timely admitted its obligation for indemnification in writing and assumed the defense of the Claim, the Indemnified Person shall be deemed to have waived any right to indemnity therefor.

(f) If Purchaser would be required to defend a Claim as provided in this Section 12.3 but for the assertion that any liability, loss, cost, expense, claim, award, judgment or other damages incurred or suffered by Seller would not constitute "Damages" as defined in Section 12.2(d), Purchaser shall nevertheless have the right and obligation to defend against such Claim as set forth in Section 12.3(d) subject to the indemnification obligations of Seller set forth in this Article 12.

(g) In the case of a claim for indemnification not based upon a Claim, the Indemnifying Person shall have thirty (30) days from its receipt of the Claim Notice to (i) cure the Damages complained of, (ii) admit its obligation to provide indemnification with respect to such Damages or (iii) dispute the claim for such Damages. If the Indemnifying Person does not notify the Indemnified Person within such thirty (30) day period that it has cured the Damages or that it disputes the claim for such Damages, the Indemnifying Person shall be conclusively deemed obligated to provide indemnification hereunder.

Section 12.4 **Casualty and Condemnation**. If, after the date of this Agreement but prior to Closing Date, any portion of the Assets is destroyed by fire or other casualty or is expropriated or taken in condemnation or under right of eminent domain that Seller has not been able to repair or otherwise cure (a "Casualty Loss"), Seller and Purchaser shall agree prior to the Closing either to (a) delete the Assets (or portion thereof) which are subject to the Casualty Loss from this Agreement and reduce the Unadjusted Purchase Price in the same manner set forth in Section 3.5(e), or (b) to proceed with the purchase and sale of such Assets notwithstanding the Casualty Loss (without any reduction in the Unadjusted Purchase Price) in which case Seller shall pay to Purchaser all sums paid by third Persons to Seller by reason of the Casualty Loss (without duplication of any other sums or proceeds paid or to be paid to Purchaser pursuant to this Agreement) to the extent paid with respect to the Assets (including, without limitation proceeds of policies of insurance) promptly upon receipt of such sums by Seller and, to the extent permitted pursuant to applicable Law, Seller shall assign all right, title, and interest of Seller in and to any claims, causes of action, unpaid proceeds, or other payments from third Persons arising out of such Casualty Loss (to the extent related to the Assets). In the event that the value of the portion of the Assets affected by such Casualty Loss (which shall be determined in the same manner set forth in Section 3.5(e)) exceeds Thirty Million dollars ($30,000,000), Seller and Purchaser shall have the right to terminate this Agreement upon written notification to the other Party, and the Parties shall have the rights set forth in Article 11.

Section 12.5 Limitation on Actions.

(a) Except as set forth to the contrary in this Section 12.5(a), the representations and warranties of the Seller and Purchaser in Article 5 and Article 6 and the covenants and agreements of the Parties in Article 7 and the corresponding representations and warranties given in the certificates delivered at Closing pursuant to Section 9.2(e) and Section 9.3(d), as applicable, shall survive the Closing until the Cut-Off Date (except that the covenants of Sellers and Purchaser set forth in Section 9.4(e) shall survive the Closing for the periods of time set forth therein). Notwithstanding the foregoing:

(i) the representations and warranties of Seller set forth in Section 5.14, Section 5.15, Section 5.11(d), and Section 5.22, shall terminate as of the Closing;

(ii) the representations of Seller set forth in Section 5.3 and Section 5.4 shall survive the Closing for the applicable statute of limitations periods;

(iii) the representations of Seller and Purchaser in Section 5.1 and Section 6.1, respectively shall survive the Closing indefinitely;

(iv) the covenant of Seller in Section 7.13 shall survive the Closing for the period of time set forth therein with respect to Seller's obligations and indefinitely as to the indemnity provision therein,

(v) the covenant of Purchaser set forth in Section 7.5 shall survive the Closing indefinitely;

(vi) the covenants of Seller in Section 7.6 and Section 7.16 shall survive the Closing indefinitely; and

(vii) the covenants of Seller set forth in Section 7.14 shall survive the Closing for the period of time set forth therein.

(b) Except as specifically set forth in this Agreement, the remainder of this Agreement shall survive the Closing without time limit except as may otherwise be expressly provided herein. Representations, warranties, covenants, and agreements shall be of no further force and effect after the date of their expiration, provided that there shall be no termination of any bona fide claim asserted pursuant to this Agreement with respect to such a representation, warranty, covenant, or agreement prior to its expiration date.

(c) The indemnities in Section 12.2(a)(ii), Section 12.2(a)(iii), Section 12.2(b)(i), and Section 12.2(b)(ii) shall terminate as of the termination date of each respective representation, warranty, covenant, or agreement that is subject to indemnification, except in each case as to matters for which a specific written claim for indemnity has been delivered to the Indemnifying Person on or before such termination date. The indemnity in Section 12.2(b)(iii) shall survive the Closing for the applicable statute of limitations with respect to Section 12.1(a), Section 12.1(b), and Section 12.1(d), and indefinitely as to the remainder of the Seller Retained Obligations. The indemnities in Section 12.2(a)(i) shall continue without time limit, except with respect to Section 12.1(x), which indemnity shall continue for the period of the applicable statute of limitations.

(d) Neither Party shall have any liability for any indemnification under Section 12.2 until and unless the aggregate amount of the liability for all Damages (i) for which Claim Notices are delivered by the other Party, and (ii) with respect to which the indemnifying Party admits (or it is otherwise finally determined) that the indemnifying Party has an obligation to indemnify the indemnified Party pursuant to the terms of Section 12.2 exceeds Two Million Five Hundred Thousand dollars ($2,500,000) (the "Minimum Damage Amount"), at which time the indemnified Party will be entitled to recover all such Damages; provided, however, that, for the purposes of this Section 12.5, the Minimum Damage Amount shall not apply with respect to any Damages to the extent arising out of or resulting from (w) the breach by Seller of its representations and warranties contained in Section 5.3, (x) breach by a Party of its covenants and agreements Parties contained in Article 10, (y) the breach by a Party of its representations in Section 5.1 and Section 6.1 through Section 6.4, inclusive, (z) the Assumed Seller Obligations or the Retained Seller Obligations. Neither the Minimum Damage Amount nor the monetary limitation on Damages set forth in Section 12.2(d) shall apply to breaches of Seller's representation in Section 5.7. With respect to claims relating to Environmental Defects or other environmental deficiencies with the Assets for which Purchaser is entitled to indemnification pursuant to Section 12.2(b), the amount of Damages shall be determined pursuant to Section 4.4(e)(i), (ii), and (iii).

(e) Notwithstanding anything to the contrary contained elsewhere in this Agreement, neither Party shall be required to indemnify the other Party under this Article 12 for aggregate Damages in excess of One-Hundred Fifty Million dollars ($150,000,000).

(f) The amount of any Damages for which an Indemnified Person is entitled to indemnity under this Article 12 shall be reduced by the amount of insurance proceeds realized by the Indemnified Person or its Affiliates with respect to such Damages (net of any collection costs, and excluding the proceeds of any insurance policy issued or underwritten by the Indemnified Person or its Affiliates).

(g) Neither Party shall have any obligation or liability under this Agreement or in connection with or with respect to the transactions contemplated by this Agreement for any breach, misrepresentation, or noncompliance with respect to any representation, warranty, covenant, indemnity, or obligation if such breach, misrepresentation, or noncompliance shall have been waived by the other Party.

Section 12.6 Escrow.

(a) The Deposit, together with any interest thereon (the "Escrow Amount"), shall be maintained in the Escrow Account until (i) the later to occur of one-hundred eighty (180) days after the Closing Date and December 31, 2008 (the "Escrow Maintenance Period") and (ii) so long thereafter as is required to resolve any claims asserted by Purchaser in accordance with the procedure described in Section 12.6(b); provided, however, that, from time to time upon and after the termination of the Escrow Maintenance Period, the Escrow Amount shall be distributed to Seller to the extent that Purchaser's unresolved claims which were asserted in accordance with Section 12.6(b) are less than the Escrow Amount, and Purchaser agrees to take all actions as may be required to distribute such amounts to Seller.

(b) Upon notice to Seller specifying in reasonable detail the basis therefor, Purchaser may, prior to the termination of the Escrow Maintenance Period, give written notice to the Escrow Agent of any claim to which it may be entitled pursuant to the terms of this Agreement, excluding, however, any claims that may indemnified, bonded, or cured pursuant to Section 3.5 or Section 4.4. Such notice shall specify the Damages to which Purchaser reasonably believes it is entitled and shall certify that, during the period of time set forth in Section 12.3(b) or Section 12.3(g), as applicable, Seller has not paid the Damages claimed by Purchaser or otherwise responded to Purchaser's Claim Notice in a manner acceptable to Purchaser, in the exercise of its commercially reasonable discretion. The delivery by Purchaser of a notice of a claim for Damages to the Escrow Agent hereunder shall not constitute an election of remedies and shall not limit Purchaser in any manner in the enforcement of other remedies to which it may be entitled hereunder.

ARTICLE XIII
MISCELLANEOUS

Section 13.1 **Counterparts**. This Agreement may be executed in counterparts, each of which shall be deemed an original instrument, but all such counterparts together shall constitute but one agreement.

Section 13.2 **Notices**. All notices that are required or may be given pursuant to this Agreement shall be sufficient in all respects if given in writing, in English and delivered personally, by telecopy or by recognized courier service, as follows:

If to Seller: O'Brien Resources, LLC
425 Ashley Ridge Boulevard, Suite 300
Shreveport, Louisiana 71106
Attention: William J. O'Brien, III
Telephone: (318) 865-8568
Facsimile: (318) 865-5173

with a copy to: Bracewell & Giuliani LLP
Pennzoil Place, South Tower
711 Louisiana Street, Suite 2300
Houston, Texas 77002
Attention: James McAnelly III
Telephone: (713) 221-1194
Telecopy: (713) 222-3241

If to Purchaser: Berry Petroleum Company
950 – 17th Street, Suite 2400
Denver, Colorado 80202
Attention: Michael Duginski
Telephone: (303) 825-3344
Telecopy: (303) 825-3350

With a copy to: Holland & Hart LLP
555 – 17th Street, Suite 3200
Denver, Colorado 80202
Attention: Davis O'Connor
Telephone: (303) 295-8000
Telecopy: (303) 295-8261

Either Party may change its address for notice by notice to the other in the manner set forth above. All notices shall be deemed to have been duly given at the time of receipt by the Party to which such notice is addressed.

Section 13.3 **Sales or Use Tax, Recording Fees and Similar Taxes and Fees**. Notwithstanding anything to the contrary in Article 10, Purchaser shall bear any sales, use, excise, real property transfer or gain, gross receipts, goods and services, registration, capital, documentary, stamp or transfer Taxes, recording fees, and similar Taxes and fees incurred and imposed upon, or with respect to, the property transfers or other transactions contemplated hereby. Should any Seller Party or any Affiliate of any Seller Party pay any amount for which Purchaser is liable under this Section 13.3, Purchaser shall, promptly following receipt of Seller's invoice, reimburse the amount paid. If such transfers or transactions are exempt from any such taxes or fees upon the filing of an appropriate certificate or other evidence of exemption, Purchaser shall timely furnish to Seller such certificate or evidence.

Section 13.4 **Expenses**. Except as provided in Section 7.6 and in Section 12.3, all expenses incurred by Seller in connection with or related to the authorization, preparation or execution of this Agreement, and the Exhibits and Schedules hereto and thereto, and all other matters related to the Closing, including without limitation, all fees and expenses of counsel, accountants and financial advisers employed by Seller, shall be borne solely and entirely by Seller, and all such expenses incurred by Purchaser shall be borne solely and entirely by Purchaser.

Section 13.5 **Replacement of Bonds, Letters of Credit, and Guarantees**. The Parties understand that none of the bonds, letters of credit and guarantees, if any, posted by Seller or any Affiliate of Seller with any Governmental Authority or third Person and relating to the Assets are to be transferred to Purchaser. On or before Closing, Purchaser shall obtain, or cause to be obtained in the name of Purchaser, replacements for such bonds, letters of credit and guarantees, and shall cause, effective as of the Closing, the cancellation or return to Seller of the bonds, letters of credit, and guarantees posted by Seller and such Affiliates. Schedule 13.5 identifies the corporate guarantees (but not surety bonds or other forms of security) posted by Seller or any Affiliate of Seller with respect to the Assets as of the date noted on such schedule.

Section 13.6 **Records**.

(a) Within thirty (30) days after the Closing Date, Seller shall deliver or cause to be delivered to Purchaser any Records that are in the possession of Seller or its Affiliates, subject to Section 13.6(b).

(b) Seller may retain the originals of those Records relating to Tax and accounting matters and provide Purchaser, at its request, with copies of such Records that pertain to non-income Tax matters solely related to the Assets. Seller may retain copies of any other Records.

(c) Purchaser, for a period of seven (7) years following the Closing, shall:

(i) retain the Records,

(ii) provide Seller, its Affiliates, and their respective officers, employees, and representatives with access to the Records during normal business hours for review and copying at Seller's expense; and

(iii) provide Seller, its Affiliates, and their respective officers, employees, and representatives with access, during normal business hours, to materials received or produced after Closing relating to

(A) Seller's obligations under Article 10 (including to prepare Tax Returns and to conduct negotiations with Tax Authorities), or

(B) any claim for indemnification made under Section 12.2 of this Agreement (excluding, however, attorney work product and attorney-client communications with respect to any such claim being brought by Purchaser under this Agreement)

for review and copying at Seller's expense and to the Purchaser's personnel for the purpose of discussing any such matter or claim.

Section 13.7 **Use of Seller Party Names**. As promptly as practicable, but in any case within one hundred twenty (120) days after the Closing Date, Purchaser shall eliminate the use of the names O'Brien Resources, O'Brien Energy, O'BENCO, Sepco, and variants thereof from the Assets and business of Purchaser conducted therewith, and, except with respect to such grace period for eliminating existing usage, shall have no right to use any logos, trademarks or trade names belonging to any Seller Party or any of Affiliate of any Seller Party. Purchaser shall be solely responsible for any direct or indirect costs or expenses resulting from the change in use of name, and any resulting notification or approval requirements.

Section 13.8 **Governing Law and Venue**. This Agreement and the legal relations between the Parties shall be governed by and construed in accordance with the laws of the State of Texas, without regard to principles of conflicts of laws that would direct the application of the laws of another jurisdiction.

Section 13.9 **Dispute Resolution**. Each Party consents to personal jurisdiction in any action brought in the United States federal courts located in the State of Texas with respect to any dispute, claim or controversy arising out of or in relation to or in connection with this Agreement, and each of the Parties hereto agrees that any action instituted by it against the other with respect to any such dispute, controversy, or claim (except to the extent a dispute, controversy, or claim arising out of or in relation to or in connection the determination of a Title Defect Amount pursuant to Section 3.5(f), the Environmental Defect Amount pursuant to Section 4.5, or the determination of Purchase Price adjustments pursuant to Section 9.4(b) is referred to an expert pursuant to those Sections) will be instituted exclusively in the United States District Court for the Southern District of Texas, Houston Division. The Parties hereby waive trial by jury in any action, proceeding, or counterclaim brought by any Party against another in any matter whatsoever arising out of or in relation to or in connection with this Agreement.

Section 13.10 **Captions**. The captions in this Agreement are for convenience only and shall not be considered a part of or affect the construction or interpretation of any provision of this Agreement.

Section 13.11 **Waivers**. Any failure by any Party to comply with any of its obligations, agreements, or conditions herein contained may be waived by the Party to whom such compliance is owed by an instrument signed by the Party to whom compliance is owed and expressly identified as a waiver, but not in any other manner. No waiver of, or consent to a change in, any of the provisions of this Agreement shall be deemed or shall constitute a waiver of, or consent to a change in, other provisions hereof (whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.

Section 13.12 **Assignment**. No Party shall assign (including, without limitation, by change of control, merger, consolidation, or stock purchase) or otherwise transfer all or any part of this Agreement, nor shall any Party delegate any of its rights or duties hereunder (including, without limitation, by change of control, merger, consolidation, or stock purchase), without the prior written consent of the other Party and any transfer or delegation made without such consent shall be void. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

Section 13.13 **Entire Agreement**. The Confidentiality Agreement, this Agreement and the documents to be executed hereunder and the Exhibits and Schedules attached hereto constitute the entire agreement among the Parties pertaining to the subject matter hereof, and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties pertaining to the subject matter hereof.

Section 13.14 **Amendment**. This Agreement may be amended or modified only by an agreement in writing signed by Seller and Purchaser and expressly identified as an amendment or modification.

Section 13.15 **No Third-Person Beneficiaries**. Nothing in this Agreement shall entitle any Person other than Purchaser and Seller to any claim, cause of action, remedy or right of any kind, except the rights expressly provided to the Persons described in Section 7.5 and Section 12.2(e).

Section 13.16 **References**.

In this Agreement:

(a) References to any gender includes a reference to all other genders;

(b) References to the singular includes the plural, and vice versa;

(c) Reference to any Article or Section means an Article or Section of this Agreement;

(d) Reference to any Exhibit or Schedule means an Exhibit or Schedule to this Agreement, all of which are incorporated into and made a part of this Agreement;

(e) Unless expressly provided to the contrary, "hereunder", "hereof", "herein", and words of similar import are references to this Agreement as a whole and not any particular Section or other provision of this Agreement;

(f) References to "$" or "dollars" means United States dollars; and

(g) "Include" and "including" shall mean include or including without limiting the generality of the description preceding such term.

Section 13.17 **Construction**. Purchaser is capable of making such investigation, inspection, review and evaluation of the Assets as a prudent purchaser would deem appropriate under the circumstances, including with respect to all matters relating to the Assets, their value, operation, and suitability. Each of Seller and Purchaser has had the opportunity to exercise business discretion in relation to the negotiation of the details of the transaction contemplated hereby. This Agreement is the result of arm's-length negotiations from equal bargaining positions. It is expressly agreed that this Agreement shall not be construed against any Party, and no consideration shall be given or presumption made, on the basis of who drafted this Agreement or any particular provision thereof.

Section 13.18 **Limitation on Damages**. Notwithstanding anything to the contrary contained herein, none of Purchaser, any Seller Party, or any of their respective Affiliates shall be entitled to consequential, special, or punitive damages in connection with this Agreement and the transactions contemplated hereby (other than special or punitive damages suffered by third Persons for which responsibility is allocated between the Parties) and each of Purchaser and each Seller Party, for itself and on behalf of its Affiliates, hereby expressly waives any right to consequential, special, or punitive damages in connection with this Agreement and the transactions contemplated hereby. It is understood and agreed by Purchaser that there are a number of Parties constituting Seller under this Agreement, and that, except as specifically set forth herein, any representations, warranties, covenants, or agreements made by "Seller" hereunder are severally made by each Party constituting Seller with respect to itself and its ownership interest in the Assets only, and not with respect to any other Seller Party or any other interest in the Assets. The obligations of the Parties constituting "Seller" hereunder shall be several and not joint, and no party who is a part of the Parties constituting Seller shall be responsible for the obligations of any other Party or any matters relating to any other Party or any other Party's interest in the Assets.

IN WITNESS WHEREOF, this Agreement has been signed by each of the Parties as of the date first above written.

SELLER:

O'BRIEN RESOURCES, LLC

By: _____
William J. O'Brien III
Chairman and Chief Executive Officer

O'BENCO II, LP

By: O'BENCO II GP, LLC, its General Partner

By: O'Brien Resources, LLC, its Manager

By: _____
William J. O'Brien III
Chairman and Chief Executive Officer

SEPCO II, LLC

By: _____
Jack R. Touchstone
Management Committee Chairman

CROW HORIZONS COMPANY

By: O'Brien Resources, LLC, its Agent and Attorney-in-Fact

By: _____
William J. O'Brien III
Chairman and Chief Executive Officer

LIBERTY ENERGY, LLC

By: _____
Scott Carson
Investment Officer

PURCHASER:

BERRY PETROLEUM COMPANY

By: _____
Name: _____
Title: _____

Execution Version

OVERRIDING ROYALTY PURCHASE AGREEMENT

BETWEEN

O'BRIEN RESOURCES, LLC

AS SELLER

AND

BERRY PETROLEUM COMPANY

AS PURCHASER

DATED AS OF JUNE 10, 2008

OVERRIDING ROYALTY PURCHASE AGREEMENT

This Overriding Royalty Purchase Agreement (this "Agreement"), is dated as of June 10, 2008, by and between O'Brien Resources, LLC, a Texas limited liability company ("Seller"), and Berry Petroleum Company, a Delaware corporation ("Purchaser"), but effective for all purposes as of the Effective Date. Seller and Purchaser are sometimes referred to herein collectively as the "Parties" and individually as a "Party."

RECITALS:

Pursuant to that certain Purchase and Sale Agreement by and among Purchaser, Seller, and certain other parties dated as of June 10, 2008 (the "Purchase Agreement") Seller assigned to Purchaser certain interests in and to, among other things, certain oil and gas leases more specifically described therein;

Seller specifically excluded from the Purchase Agreement certain overriding royalty interests reserved by Seller prior to the date of the Purchase Agreement in and to the oil and gas leases covering the lands shown on Exhibit A hereto, including, without limitation those overriding royalty interests more specifically described on Exhibit B-1 hereto (the "Overriding Royalty Interests"); and

Seller desires to sell and Purchaser desires to Purchase the Overriding Royalty Interests pursuant to the terms hereof.

NOW THEREFORE, for and in consideration of the premises and of the mutual promises, representations, warranties, covenants, conditions, and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

Article 1

PURCHASE AND SALE

1.1 Purchase and Sale. On the terms and conditions contained in this Agreement, Seller agrees to sell to Purchaser, effective as of February 1, 2008 (the "Effective Date") and Purchaser agrees to purchase, accept, and pay for the Overriding Royalty Interests.

1.2 Certain Excluded Assets. Notwithstanding anything to the contrary in this Agreement or the Purchase Agreement, it is understood and agreed by the Parties that the Overriding Royalty Interests shall not include, and there shall not be transferred to Purchaser at Closing (a) any Tax refund (whether by payment, credit, offset, or otherwise) with respect to Taxes applicable to the Overriding Royalty Interests prior to the Effective Date and (b) refunds relating to severance Tax abatements (whether by payment, credit, offset, or otherwise, and together with any interest thereon) with respect to all taxable periods or portions thereof ending on or prior to the Effective Date, whether received before, on, or after the Effective Date (including, without limitation, refunds relating to the designation by the Railroad Commission of Texas of any Well or Unit as "High Cost" pursuant to the terms of 16 Tex. Admin. Code § 3.101).

1.3 Incorporation of Certain Definitions. Capitalized terms used herein but not defined shall have the meanings ascribed to such terms in the Purchase Agreement.

Article 2
PURCHASE PRICE

2.1 Purchase Price. The purchase price for the Overriding Royalty Interests (the "Purchase Price") shall be Thirty-Two Million Three Hundred Fifty-Six Thousand dollars ($32,356,000) (the "Unadjusted Purchase Price"), adjusted as provided in Section 2.4.

2.2 Allocated Values. The allocations set forth in Schedule 2.2 (the "Allocated Values") shall be used by Seller and Purchaser as the basis for calculating Title Defect Amounts and reporting asset values and other items, including preparing Internal Revenue Service Form 8594, Asset Acquisition Statement (which Form 8594 shall be completed, executed and delivered by such parties as soon as practicable after the Closing but in no event later than 15 days prior to the date such form is required to be filed). Seller and Purchaser agree not to assert, and will cause their Affiliates not to assert, in connection with any audit or other proceeding with respect to Taxes, any asset values or other items inconsistent with the amounts set forth in Schedule 2.2.

2.3 Division of Proceeds, Expenses, and Taxes.

(a) Seller shall be entitled to all amounts earned from the sale of Hydrocarbons produced from, or attributable to, the Overriding Royalty Interests during the period up to but excluding the Effective Date (net of any (i) gathering, processing, and transportation costs paid in connection with sales of Hydrocarbons from an Overriding Royalty Interest, and (ii) production Taxes, severance Taxes, and other Taxes measured by units of production, in each case, to the extent not otherwise deducted by a third Person, including, without limitation, a purchaser of production), and to all other income earned with respect to the Overriding Royalty Interests up to but excluding the Effective Date. Purchaser shall be entitled to all such amounts with respect to periods of time from and after the Effective Date.

(b) Seller shall be responsible for (and entitled to any refunds and indemnities with respect to) the costs, expenses, and expenditures (if any) incurred up to but excluding the Effective Date, to the extent that the same have not been otherwise deducted by a third Person (including, without limitation, a purchaser or production, and Purchaser shall be responsible for all other costs, expenses, and expenditures (if any).

(c) Without duplication of any amounts otherwise paid or received (or, in the case of costs, expenses, and expenditures, deducted or otherwise accounted for by a third Person, including, without limitation a purchaser of production) with respect to the Overriding Royalty Interests, (i) should any Party or its Affiliates receive any proceeds or other income to which the other Party is entitled under this Section 2.3, such Party shall fully disclose, account for, and promptly remit the same to such other Party, and (ii) should any Party pay any costs, expenses, or expenditures for which the other Party is responsible under this Section 2.3, such Party shall reimburse the other Party promptly after receipt of such other Party's invoice, accompanied by copies of the relevant vendor or other invoice and proof of payment.

(d) Real and personal property Taxes, severance Taxes, and any other Taxes measured by units of Production with respect to the Overriding Royalty Interests shall be prorated between Purchaser and Seller as of the Effective Date. If the actual Taxes are not known on the Closing Date, Seller's share of such Taxes shall be determined by using (i) the rates and millages for the year prior to the year in which the Closing occurs, with appropriate adjustments for any known and verifiable changes thereto, and (ii) the assessed values for the year in which Closing occurs. When Purchaser receives the actual tax statements for or applicable to the Overriding Royalty Interests from the appropriate taxing authorities, Purchaser shall deliver to Seller a copy of such statements, together with the amount, if any, by which Seller's proration exceeds the proration that would have been made had actual tax statements been used to calculate Seller's proration. If the proration for Seller that would have been made using actual tax statements exceeds that made at Closing, Seller shall pay to Purchaser such difference within five (5) days of receipt of such statement.

(e) "Earned" or "Incurred," as used in this Section 2.3 shall be interpreted in accordance with accounting recognition under the Accounting Principles.

2.4 Adjustments to Purchase Price. The Unadjusted Purchase Price shall be adjusted as follows:

(a) Increased or decreased, as appropriate, in accordance with Article 3; and

(b) Increased or decreased, as appropriate, to give effect to the terms and provisions of Section 2.3.

Article 3
TITLE MATTERS

3.1 Seller's Title.

(a) Seller represents and warrants to Purchaser that Seller's title to the Overriding Royalty Interests shown on Exhibit B-2 is (and as of the Closing Date shall be) Defensible Title as defined in Section 3.2. This representation and warranty provides Purchaser's exclusive remedy with respect to any Title Defects. The conveyance to be delivered by Seller to Purchaser at Closing (the "Conveyance") shall be in form identical to the Conveyance attached hereto as Exhibit C and shall contain a special warranty of title to the Overriding Royalty Interests by, through, and under Seller, but not otherwise, subject to the Permitted Encumbrances.

(b) With respect to each Overriding Royalty Interest that relates to an Undeveloped Location, it is understood and agreed by Purchaser that the representation of Seller in Section 3.1(a) is based upon the Undeveloped Assumption Data. Purchaser shall not be entitled to protection under Seller's representation in Section 3.1(a) against any Title Defect to the extent based upon, or arising out of, Purchaser's disagreement with, or change to, the Undeveloped Assumption Data. The Undeveloped Assumption Data was provided to Purchaser previously in connection with the transactions contemplated by the Purchase Agreement, and copies of the Undeveloped Assumption Data described in Section 3.1(c)(i) and (ii) of the Purchase Agreement have been provided to Purchaser in connection with the execution of the Purchase Agreement.

3.2 Definition of Defensible Title.

(a) As used in this Agreement, the term "Defensible Title" means that title of Seller which, subject to the Permitted Encumbrances:

(i) entitles Seller to receive not less than the "net revenue interest" share or percentage shown in Exhibit B-2 of all Hydrocarbons from a Lease, Well, or Unit attributable to the aggregate of the Overriding Royalty Interests, whether in cash, in kind, or otherwise, except decreases resulting from the establishment or amendment of pools or units, and except as otherwise stated in Exhibit B-2; and

(ii) is free of liens, encumbrances, obligations, or defects, other than Permitted Encumbrances. As used herein, the term "Permitted Encumbrances" shall include (without limiting the definition set forth in the Purchase Agreement), the failure to record assignments or reservations of any Overriding Royalty Interest to the extent that the same would not reduce Seller's net revenue interest below that shown in Exhibit B-2.

(b) As used in this Agreement, the term "Title Defect" means any lien, charge, encumbrance, obligation, or defect, including, without limitation, a discrepancy in net revenue interest that causes a breach of Seller's representation and warranty in Section 3.1.

3.3 Notice of Title Defects. To assert a claim arising out of a breach of Section 3.1, Purchaser must deliver a defect claim notice or notices to Seller on or before ten (10) Business Days prior to the Target Closing Date (the "Defect Claim Date"); provided, however, that Purchaser shall use its commercially reasonable efforts to deliver a defect claim notice with respect to a specific alleged Title Defect on or before five (5) Business Days after Purchaser obtains knowledge of the existence of such Title Defect, even if the date of delivery of such defect claim notice is prior to the Defect Claim Date. Each such notice shall be in writing and shall include:

(a) a description of the alleged Title Defect(s);

(b) the Overriding Royalty Interests affected;

(c) the Allocated Values of the Overriding Royalty Interest(s) subject to the alleged Title Defect(s);

(d) true and complete copies of any documentation supporting the existence, nature, and basis of the alleged Title Defect(s); and

(e) the amount by which Purchaser reasonably believes the Allocated Values of those Overriding Royalty Interests are reduced by the alleged Title Defect(s) and the computations and information upon which Purchaser's belief is based.

PURCHASER SHALL BE DEEMED TO HAVE WAIVED ALL BREACHES OF SECTION 3.1 OF WHICH SELLER HAS NOT BEEN GIVEN NOTICE ON OR BEFORE THE DEFECT CLAIM DATE.

3.4 Title Defect Amounts. The Title Defect Amount resulting from a Title Defect (the "Title Defect Amount") shall be determined as follows:

(a) if Purchaser and Seller agree on the Title Defect Amount, that amount shall be the Title Defect Amount;

(b) if the Title Defect is a lien, encumbrance, or other such charge, then the Title Defect Amount shall be the amount necessary to be paid to remove the Title Defect from Seller's interest in the affected Overriding Royalty Interests;

(c) if the Title Defect represents a discrepancy between (i) the net revenue interest for any Overriding Royalty Interest and (ii) the net revenue interest or percentage stated on Exhibit B-2 with respect to such Overriding Royalty Interest, then the Title Defect Amount shall be the product of the Allocated Value of such Overriding Royalty Interest multiplied by a fraction, the numerator of which is the net revenue interest or percentage ownership decrease and the denominator of which is the net revenue interest or percentage ownership stated on Exhibit B-2, provided that if the Title Defect does not affect the Overriding Royalty Interest throughout its entire productive life, the Title Defect Amount determined under this Section 3.4(c) shall be reduced to take into account the applicable time period only;

(d) if the Title Defect represents an obligation, encumbrance, burden, or charge upon or other defect in title to the affected Overriding Royalty Interest of a type not described in subsections (a), (b),or (c) above, the Title Defect Amount shall be determined by taking into account the Allocated Value of the Overriding Royalty Interest so affected, the legal effect of the Title Defect, the potential economic effect of the Title Defect over the life of the affected Property to which the Overriding Royalty Interest relates, the values placed upon the Title Defect by Purchaser and Seller, and such other factors as are necessary to make a proper evaluation (including, without limitation, the reasonable cost to cure such Title Defect);

(e) notwithstanding anything to the contrary in this Article 3, (i) an individual claim for a Title Defect for which a claim notice is given in accordance with Section 3.3 shall not be considered to be a Title Defect pursuant to this Article 3 unless and until the Title Defect Amount with respect thereto exceeds One-Hundred Thousand dollars ($100,000), and (ii) with respect to any Title Defects entitled to an adjustment pursuant to subsection (i), unless and until the aggregate amount of such Title Defects exceed One-Million dollars ($1,000,000); and

(f) the Title Defect Amount with respect to a Title Defect shall be determined without duplication of any costs or losses included in another Title Defect Amount hereunder.

3.5 Cure Notice.

(a) Seller shall have the right, but not the obligation, to attempt, at Seller's sole cost, to cure or remove on or before sixty (60) days after the Closing Date (the "Cure Period") any Title Defects of which Seller has been advised by Purchaser if Seller has provided written notice of its intent to cure or remove such Title Defects (a "Cure Notice").

(b) In the event that Seller delivers a Cure Notice to Purchaser, Sections 3.6(a) and 3.7 shall apply with respect to any Overriding Royalty Interests for which Seller has elected to attempt to cure or remove a Title Defect. Seller's election to attempt to cure a Title Defect shall not constitute a waiver of any rights of Seller under this Article 3, including, without limitation, Seller's right to dispute the existence, nature or value of, or cost to cure, the Title Defect.

3.6 Response to Title Defect Claim. In the event that Purchaser delivers to Seller a notice pursuant to Section 3.3, Seller may, on or before a date that is two (2) Business Days prior to the Closing Date (provided that, if Seller does not provide such notice, Seller shall be deemed to have elected Section 3.6(a), below):

(a) deliver a Cure Notice, in which case (i) the Unadjusted Purchase Price shall be decreased by the Allocated Value of the Overriding Royalty Interests covered in the Cure Notice, (ii) the affected Overriding Royalty Interests shall not be conveyed to Purchaser at Closing pending Seller's attempt to cure such Title Defect, and (iii) Seller shall have the rights set forth in Section 3.7;

(b) exclude the Overriding Royalty Interests affected by the Title Defect from this Agreement, in which case the Unadjusted Purchase Price shall be decreased by the Allocated Value of any such Overriding Royalty Interest and the affected Overriding Royalty Interest shall be deemed to be deleted from this Agreement for all purposes and shall not be conveyed to Purchaser at Closing; or

(c) include the Overriding Royalty Interests affected by the Title Defect in this Agreement and convey the same to Purchaser at Closing, in which case the Unadjusted Purchase Price shall be decreased by the Title Defect Amount of such Title Defect.

3.7 Title Defects Subject to Cure.

(a) If, with respect to any Title Defect that Seller has elected to attempt to cure pursuant to Section 3.6(a), if such Title Defect is cured on or before the end of the Cure Period, Seller shall sell to Purchaser, and Purchaser shall purchase from Seller, the affected Overriding Royalty Interests effective as of the Effective Date pursuant to the terms of this Agreement.

(b) Subject to a final determination of the existence or Title Defect Amount with respect to such Title Defect pursuant to Section 3.8, if Seller has not cured such Title Defect on or before the end of the Cure Period, Seller shall not be obligated to sell to Purchaser, and Purchaser shall not be obligated to purchase, the affected Overriding Royalty Interests.

(c) Notwithstanding anything to the contrary contained herein, Seller shall have the right, at any time before, during, or after the Cure Period, and without notice to, or consent by, Purchaser, to cease its attempt to cure any alleged Title Defect and retain the Overriding Royalty Interests affected thereby without liability or obligation to Purchaser.

3.8 Title Defect Resolution; Arbitration.

(a) Seller and Purchaser shall attempt to agree on all Title Defect Amounts and Title Benefit Amounts on or before the Closing Date. If Seller and Purchaser are unable to agree by that date, the affected Overriding Royalty Interests shall be not be conveyed to Purchaser at Closing, and, except to the extent that Seller has elected to attempt to cure a Title Defect, all Title Defect Amounts and Title Benefit Amounts in dispute shall be exclusively and finally resolved by arbitration pursuant to this Section 3.8.

(b) During the 10-day period following the Closing Date, Title Defect Amounts and Title Benefit Amounts in dispute shall be submitted to a title attorney with at least 10 years' experience in oil and gas titles in Texas as selected by mutual agreement of Purchaser and Seller, or, absent such agreement during the 10-day period, by the Houston office of the American Arbitration Association (the "Title Arbitrator"). Likewise, if by the end of the Cure Period, Seller has failed to cure any Title Defects with respect to which it delivered a Cure Notice or a dispute exists as to whether (or the extent to which) a Title Defect has been cured, and Seller and Purchaser have been unable to agree on the Title Defect Amounts for such Title Defects (or their existence), the Title Defect Amounts in dispute shall be submitted to the Title Arbitrator. The Title Arbitrator shall not have worked as an employee or outside counsel for any Party or its Affiliates during the five (5) year period preceding the arbitration or have any financial interest in the dispute. The arbitration proceeding shall be held in Houston, Texas and shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association, to the extent such rules do not conflict with the terms of this Section. The Title Arbitrator's determination shall be made within forty-five (45) days after submission of the matters in dispute and shall be final and binding upon the Parties, without right of appeal. In making his determination, the Title Arbitrator shall be bound by the rules set forth in this Article 3 and may consider such other matters as in the opinion of the Title Arbitrator are necessary or helpful to make a proper determination. Additionally, the Title Arbitrator may consult with and engage disinterested third Persons to advise the arbitrator, including title attorneys from other states and petroleum engineers. The Title Arbitrator shall act as an expert for the limited purpose of determining the specific disputed Title Defect Amounts submitted by any Party and may not award damages, interest, or penalties to any Party with respect to any matter. Seller and Purchaser shall each bear its own legal fees and other costs of presenting its case. Purchaser shall bear one-half of the costs and expenses of the Title Arbitrator and Seller shall be responsible for the remaining one-half of the costs and expenses.

(c) On or before five (5) Business Days after the date on which (i) the Parties agree upon the existence or Title Defect Amounts with respect to all disputed Title Defects affecting an Overriding Royalty Interest or Seller receives the final determination of the Title Arbitrator with respect thereto and (ii) the Cure Period with respect to all alleged Title Defects has expired, Seller shall elect to sell or retain any Overriding Royalty Interest affected by a Title Defect pursuant to Section 3.6(b) or 3.6(c); provided, however, that, if Seller does not timely make such an election, Seller shall be deemed to have elected to exclude such affected Overriding Royalty Interest pursuant to Section 3.6(b).

3.9 Limitations; Disclaimers.

(a) **THE REMEDIES PROVIDED FOR IN THIS ARTICLE 3 SHALL, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, BE THE EXCLUSIVE RIGHT AND REMEDY OF PURCHASER WITH RESPECT TO SELLER'S BREACH OF ITS WARRANTY AND REPRESENTATION IN SECTION 3.1. EXCEPT AS SPECIFICALLY PROVIDED IN THIS ARTICLE 3 AND THE CONVEYANCE, PURCHASER ACKNOWLEDGES AND AGREES THAT THE OVERRIDING ROYALTIES ARE BEING SOLD HEREBY WITHOUT WARRANTY OF TITLE, EXPRESS OR IMPLIED, AND HEREBY RELEASES, REMISES, AND FOREVER DISCHARGES SELLER AND ITS AFFILIATES AND ALL SUCH PARTIES' MEMBERS, PARTNERS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, ADVISORS, AND REPRESENTATIVES FROM ANY AND ALL SUITS, LEGAL OR ADMINISTRATIVE PROCEEDINGS, CLAIMS, DEMANDS, DAMAGES, LOSSES, COSTS, LIABILITIES, INTEREST, OR CAUSES OF ACTION WHATSOEVER, IN LAW OR IN EQUITY, KNOWN OR UNKNOWN, WHICH PURCHASER MIGHT NOW OR SUBSEQUENTLY MAY HAVE, BASED ON, RELATING TO OR ARISING OUT OF, ANY TITLE DEFECT OR DEFICIENCY IN TITLE WHATSOEVER.**

(b) The representation and warranty in Section 3.1 shall terminate as of the Defect Claim Date and shall have no further force and effect thereafter, provided there shall be no termination of Purchaser's or Seller's rights under this Article 3 with respect to any Title Defect claim properly reported pursuant to Section 3.3 on or before the Defect Claim Date.

Article 4
DISCLAIMERS; REPRESENTATIONS AND WARRANTIES

4.1 Environmental. **PURCHASER ACKNOWLEDGES THAT SELLER HAS NOT MADE, AND WILL NOT MAKE, ANY REPRESENTATION OR WARRANTY REGARDING THE RELEASE OF MATERIALS INTO THE ENVIRONMENT, THE PROTECTION OF THE ENVIRONMENT, HEALTH OR SAFETY, OR ANY OTHER MATTERS RELATED TO THE ENVIRONMENTAL CONDITION OF THE OVERRIDING ROYALTY INTERESTS OR ANY ENVIRONMENTAL DEFICIENCY WITH RESPECT THERETO.**

4.2 Other representations. EXCEPT AS EXPRESSLY REPRESENTED OTHERWISE IN THIS AGREEMENT OR IN THE CONVEYANCE, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, SELLER MAKES NO, AND EXPRESSLY DISCLAIMS, ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO (A) TITLE TO ANY OF THE OVERRIDING ROYALTY INTERESTS, (B) THE CONTENTS, CHARACTER OR NATURE OF ANY DESCRIPTIVE MEMORANDUM, OR ANY REPORT OF ANY PETROLEUM ENGINEERING CONSULTANT, OR ANY GEOLOGICAL OR SEISMIC DATA OR INTERPRETATION, RELATING TO THE OVERRIDING ROYALTY INTERESTS, (C) THE QUANTITY, QUALITY, OR RECOVERABILITY OF PETROLEUM SUBSTANCES IN OR FROM THE OVERRIDING ROYALTIES, (D) THE EXISTENCE OF ANY PROSPECT, RECOMPLETION, INFILL, OR STEP-OUT DRILLING OPPORTUNITIES, (E) ANY ESTIMATES OF THE VALUE OF THE OVERRIDING ROYALTIES OR FUTURE REVENUES GENERATED BY THE OVERRIDING ROYALTIES, (F) THE PRODUCTION OF PETROLEUM SUBSTANCES FROM THE OVERRIDING ROYALTIES, OR WHETHER PRODUCTION HAS BEEN CONTINUOUS, OR IN PAYING QUANTITIES, OR ANY PRODUCTION OR DECLINE RATES, (G) THE MAINTENANCE, REPAIR, CONDITION, QUALITY, SUITABILITY, DESIGN, OR MARKETABILITY OF THE OVERRIDING ROYALTIES, (H) INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHT, OR (I) ANY OTHER MATERIALS OR INFORMATION THAT MAY HAVE BEEN MADE AVAILABLE OR COMMUNICATED TO PURCHASER OR ITS AFFILIATES, OR ITS OR THEIR EMPLOYEES, AGENTS, CONSULTANTS, REPRESENTATIVES, OR ADVISORS IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR THE PURCHASE AGREEMENT OR ANY DISCUSSION OR PRESENTATION RELATING THERETO, AND FURTHER DISCLAIMS ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR CONFORMITY TO MODELS OR SAMPLES OF MATERIALS, IT BEING EXPRESSLY UNDERSTOOD AND AGREED BY THE PARTIES HERETO THAT, EXCEPT AS EXPRESSLY PROVIDED HEREIN, THE OVERRIDING ROYALTIES ARE BEING TRANSFERRED "AS IS, WHERE IS," WITH ALL FAULTS AND DEFECTS, AND THAT PURCHASER HAS MADE OR CAUSED TO BE MADE SUCH INSPECTIONS AS PURCHASER DEEMS APPROPRIATE.

4.3 Seller's Representations. Section 5.1 of the Purchase Agreement is incorporated herein by this reference, with all references therein to "Seller Party" deemed to mean "Seller" (as defined in this Agreement) and all references to "Assets" deemed to mean "Overriding Royalty Interests."

4.4 Purchaser's Representations.

(a) Sections 6.1 through 6.4, inclusive, of the Purchase Agreement are incorporated herein by this reference.

(b) Purchaser is acquiring the Overriding Royalty Interests for its own account and not with a view to their sale or distribution in violation of the Securities Act of 1933, as amended, the rules and regulations thereunder, any applicable state blue sky Laws, or any other applicable securities Laws.

(c) Purchaser is (or its advisors are) experienced and knowledgeable in the oil and gas business and aware of the risks of that business. Purchaser acknowledges and affirms that (i) it has been provided the opportunity to conduct its independent investigation, verification, analysis, and evaluation of the Overriding Royalty Interests, and (ii) it has made all such reviews and inspections of the Overriding Royalty Interests as it has deemed necessary or appropriate to enter into this Agreement. Except for the representations and warranties expressly made by Seller in Article 3 of this Agreement or in the Conveyance, Purchaser acknowledges that there are no representations or warranties, express or implied, as to the financial condition, liabilities, operations, business, or prospects of the Overriding Royalty Interests and that, in making its decision to enter into this Agreement and to consummate the transactions contemplated hereby, Purchaser has relied solely upon its own independent investigation, verification, analysis, and evaluation. Purchaser understands and acknowledges that neither the United States Securities and Exchange Commission nor any federal, state, or foreign agency has passed upon the Overriding Royalty Interests or made any finding or determination as to the fairness of an investment in the Overriding Royalty Interests or the accuracy or adequacy of the disclosures made to Purchaser, and except as set forth in Article 7, Purchaser is not entitled to cancel, terminate, or revoke this Agreement.

(d) Purchaser and its representatives have (i) been permitted full and complete access to all materials relating to the title to the Overriding Royalty Interests, (ii) been afforded the opportunity to ask all questions of Seller (or one or more Persons acting on Seller's behalf) concerning the title to the Overriding Royalty Interests, (iii) been afforded the opportunity to investigate the condition, including the subsurface condition, of the Overriding Royalty Interests, and (iv) had the opportunity to take such other actions and make such other independent investigations as Purchaser deems necessary to evaluate the Overriding Royalty Interests and understand the merits and risks of an investment therein and the verify the truth, accuracy, and completeness of the materials, documents, and other information provided or made available to Purchaser (whether by Seller or otherwise).

4.5 **Further Assurances**. After Closing, Seller and Purchaser each agrees to take such further actions and to execute, acknowledge, and deliver all such further documents as are reasonably requested by the other for carrying out the purposes of this Agreement or of any document delivered pursuant to this Agreement.

Article 5
CONDITIONS TO CLOSING

5.1 **Conditions of Seller to Closing**. The obligations of Seller to consummate the transactions contemplated by this Agreement are subject, at the option of Seller, to the satisfaction on or prior to Closing of each of the following conditions:

(a) Representations. The representations and warranties of Purchaser set forth in Section 4.4 shall be true and correct in all material respects (considering the transaction as a whole) as of the date of this Agreement and as of the Closing Date as though made on and as of the Closing Date;

(b) No Action. On the Closing Date, no injunction, order, or award restraining, enjoining, or otherwise prohibiting the consummation of the transactions contemplated by this Agreement, or granting substantial damages in connection therewith, shall have been issued and remain in force, and no suit, action, or other proceeding (excluding any such matter initiated by Seller or any of its Affiliates) shall be pending before any Governmental Authority or body of competent jurisdiction seeking to enjoin or restrain or otherwise prohibit the consummation of the transactions contemplated by this Agreement or recover substantial damages from Seller or any Affiliate of Seller resulting therefrom;

(c) Governmental Consents. All material consents and approvals of any Governmental Authority or other Person required for the transfer of the Overriding Royalty Interests from Seller to Purchaser as contemplated under this Agreement, except consents and approvals of assignments by Governmental Authorities that are customarily obtained after closing, shall have been granted, or the necessary waiting period shall have expired, or early termination of the waiting period shall have been granted;

(d) Purchase Agreement. The closing contemplated by Article IX of the Purchase Agreement shall have occurred, or shall be consummated contemporaneously herewith; and

(e) No termination. Neither Purchaser nor Seller shall have terminated this Agreement pursuant to the terms of Article 7.

5.2 Conditions of Purchaser to Closing. The obligations of Purchaser to consummate the transactions contemplated by this Agreement are subject, at the option of Purchaser, to the satisfaction on or prior to Closing of each of the following conditions:

(a) Representations. The representations and warranties of Seller set forth in Section 4.3 shall be true and correct in all material respects (considering the transaction as a whole) as of the date of this Agreement and as of the Closing Date as though made on and as of the Closing Date.

(b) No Action. On the Closing Date, no injunction, order, or award restraining, enjoining, or otherwise prohibiting the consummation of the transactions contemplated by this Agreement, or granting substantial damages in connection therewith, shall have been issued and remain in force, and no suit, action, or other proceeding (excluding any such matter initiated by Purchaser or any of its Affiliates) shall be pending before any Governmental Authority or body of competent jurisdiction seeking to enjoin or restrain or otherwise prohibit the consummation of the transactions contemplated by this Agreement or recover substantial damages from Purchaser or any Affiliate of Purchaser resulting therefrom;

(c) Governmental Consents. All material consents and approvals of any Governmental Authority or other Person required for the transfer of the Overriding Royalty Interests from Seller to Purchaser as contemplated under this Agreement, except consents and approvals of assignments by Governmental Authorities that are customarily obtained after closing, shall have been granted or the necessary waiting period shall have expired, or early termination of the waiting period shall have been granted;

(d) Encumbrances. Seller shall have delivered to Purchaser partial releases of the liens set forth under the heading "Liens to be Released at Closing" on Schedule 3.3 of the Purchase Agreement with respect to the Overriding Royalty Interests;

(e) Purchase Agreement. The closing contemplated by Article IX of the Purchase Agreement shall have occurred, or shall be consummated contemporaneously herewith.

(f) No termination. Neither Purchaser nor Seller shall have terminated this Agreement pursuant to the terms of Article 7.

Article 6
CLOSING

6.1 Time and Place of Closing. The consummation of the purchase and sale of the Overriding Royalty Interests contemplated by this Agreement (the "Closing") shall, unless otherwise agreed to in writing by Purchaser and Seller, take place at the offices of Bracewell & Giuliani LLP located at 711 Louisiana St., Suite 2300, Houston, Texas, at 10:00 a.m., local time, on July 15, 2008 (the "Target Closing Date"), or if all conditions in Article 5 to be satisfied prior to Closing have not yet been satisfied or waived, as soon thereafter as such conditions have been satisfied or waived, subject to the provisions of Article 7. The date on which the Closing occurs is referred to herein as the "Closing Date."

6.2 Obligations of Seller at Closing. At the Closing, upon the terms and subject to the conditions of this Agreement, and subject to the simultaneous performance by Purchaser of its obligations pursuant to Section 6.3, Seller shall deliver or cause to be delivered to Purchaser, among other things, the following:

(a) Counterparts of the Conveyance in the form attached hereto as Exhibit C, duly executed by Seller, in sufficient duplicate originals to allow recording in all appropriate jurisdictions and offices;

(b) Assignments in form required by any Governmental Authority necessary for the assignment of any Overriding Royalty Interests, duly executed by Seller, in sufficient duplicate originals to allow recording in all appropriate offices;

(c) A certificate by an authorized officer of Seller, dated as of Closing, certifying on behalf of Seller that the condition set forth in Section 5.2(a) has been fulfilled.

(d) Executed certificates described in Treasury Regulation § 1.1445-2(b)(2) certifying that Seller is not a foreign person within the meaning of the Code;

(e) A certificate duly executed by the secretary or any assistant secretary (or other authorized officer) of Seller, dated as of the Closing, (i) attaching and certifying on behalf of Seller complete and correct copies of (A) the resolutions of the Board of Directors, managers, or other equivalent governing body of Seller authorizing the execution, delivery, and performance by Seller of this Agreement and the transactions contemplated hereby and (B) any required approval by the stockholders, members, or partners, as applicable, of Seller of this Agreement and the transactions contemplated hereby and (ii) certifying on behalf of Seller the incumbency of each officer of Seller executing this Agreement or any document delivered in connection with the Closing;

(f) Releases of the liens listed on Schedule 3.3 of the Purchase Agreement under the heading "Liens to be Released at Closing" with respect to the Overriding Royalty Interests; and

(g) All other instruments, documents, and other items reasonably necessary to effectuate the terms of this Agreement, as may be reasonably requested by Purchaser.

6.3 Obligations of Purchaser at Closing. At the Closing, upon the terms and subject to the conditions of this Agreement, and subject to the simultaneous performance by Seller of its obligations pursuant to Section 6.2, Purchaser shall deliver or cause to be delivered to Seller, among other things, the following:

(a) A wire transfer of the Closing Payment in same-day funds;

(b) Counterparts of the Conveyance, duly executed by Purchaser, in sufficient duplicate originals to allow recording in all appropriate jurisdictions and offices;

(c) Assignments in form required by any Governmental Authority for the assignment of any Overriding Royalty Interests controlled by such Governmental Authority, duly executed by Purchaser, in sufficient duplicate originals to allow recording in all appropriate offices;

(d) A certificate by an authorized corporate officer of Purchaser, dated as of the Closing, certifying on behalf of Purchaser that the condition set forth in Section 5.1(a) has been fulfilled;

(e) A certificate duly executed by the secretary or any assistant secretary (or other authorized officer) of Purchaser, dated as of the Closing, (i) attaching and certifying on behalf of Purchaser complete and correct copies of (A) the resolutions of the Board of Directors, managers, or other equivalent governing body of Purchaser authorizing the execution, delivery, and performance by Purchaser of this Agreement and the transactions contemplated hereby and (B) any required approval by the stockholders, members, or partners, as applicable, of Purchaser of this Agreement and the transactions contemplated hereby and (ii) certifying on behalf of Purchaser the incumbency of each officer of Purchaser executing this Agreement or any document delivered in connection with the Closing;

(f) All other instruments, documents, and other items reasonably necessary to effectuate the terms of this Agreement, as may be reasonably requested by Seller.

6.4 Closing and Post-Closing Purchase Price Adjustments.

(a) Not later than five (5) Business Days prior to the Closing Date, Seller shall prepare and deliver to Purchaser, using and based upon the best information available to Seller, a preliminary settlement statement estimating the Purchase Price for the Assets after giving effect to all adjustments set forth in Section 2.4. The estimate delivered in accordance with this Section 1.1(a) shall constitute the dollar amount to be payable by Purchaser to Seller at the Closing (the "Closing Payment").

(b) As soon as reasonably practicable after the Closing but not later than the later of (a) the one hundred and twentieth (120th) day following the Closing Date and (b) the fifth (5th) Business Day after the Title Arbitrator finally determines all disputed Title Defect and Title Benefit Amounts pursuant to Section 3.8, Seller shall prepare and deliver to Purchaser a draft statement setting forth the final calculation of the Purchase Price and showing the calculation of each adjustment under Section 2.4, based on the most recent actual figures for each adjustment. Seller shall, at Purchaser's request, make reasonable documentation available to support the final figures. As soon as reasonably practicable, but not later than the thirtieth (30th) day following receipt of Seller's statement hereunder, Purchaser shall deliver to Seller a written report containing any changes that Purchaser proposes be made to such statement. Seller may deliver a written report to Purchaser during this same period reflecting any changes that Seller proposes to be made to such statement as a result of additional information received after the statement was prepared. The Parties shall undertake to agree on the final statement of the Purchase Price no later than ninety (90) days after delivery of Seller's statement. In the event that the Parties cannot reach agreement within such period of time, any Party may refer the items of adjustment which are in dispute to the Houston office of Deloitte & Touche LLP, or, if such firm is not able or willing to serve, a nationally-recognized independent accounting firm or consulting firm mutually acceptable to both Purchaser and Seller (the "Accounting Arbitrator"), for review and final determination by arbitration. The Accounting Arbitrator shall conduct the arbitration proceedings in Houston, Texas in accordance with the Commercial Arbitration Rules of the American Arbitration Association, to the extent such rules do not conflict with the terms of this Section. The Accounting Arbitrator's determination shall be made within forty-five (45) days after submission of the matters in dispute and shall be final and binding on all Parties, without right of appeal. In determining the proper amount of any adjustment to the Purchase Price, the Accounting Arbitrator shall be bound by the terms of Sections 2.3 and 2.4 and may not increase the Purchase Price more than the increase proposed by Seller nor decrease the Purchase Price more than the decrease proposed by Purchaser, as applicable. The Accounting Arbitrator shall act as an expert for the limited purpose of determining the specific disputed aspects of Purchase Price adjustments submitted by any Party and may not award damages, interest (except as expressly provided for in this Section), or penalties to any Party with respect to any matter. Seller and Purchaser shall each bear their own legal fees and other costs of presenting their case. Seller shall bear one-half and Purchaser shall bear one-half of the costs and expenses of the Accounting Arbitrator. Within ten (10) days after the earlier of (i) the expiration of Purchaser's thirty (30) day review period without delivery of any written report or (ii) the date on which the Parties or the Accounting Arbitrator finally determine the Purchase Price, (x) Purchaser shall pay to Seller the amount by which the Purchase Price exceeds the Purchase Price or (y) Seller shall pay to Purchaser the amount by which the Closing Payment exceeds the Purchase Price, as applicable.

(c) Purchaser shall assist Seller in preparation of the final statement of the Purchase Price under this Section 6.4 by furnishing invoices, receipts, reasonable access to personnel and such other assistance as may be requested by Seller to facilitate such process post-Closing.

Article 7
TERMINATION

7.1 **Termination**. This Agreement may be terminated at any time prior to Closing: (a) by the mutual prior written consent of Seller and Purchaser; (b) by either Seller or Purchaser, if Closing has not occurred on or before January 1, 2009; (c) by either Party if the Purchase Agreement is terminated; or (d) by either Party if the aggregate adjustment to the Unadjusted Purchase Price pursuant to Article 3 is greater than ten percent (10%) of the Unadjusted Purchase Price; provided, however, that no Party shall be entitled to terminate this Agreement under Section 7.1(b) if the Closing has failed to occur because such Party negligently or willfully failed to perform or observe in any material respect its covenants and agreements hereunder or such Party is in breach of its representations and warranties set forth in this Agreement.

7.2 **Effect of Termination**. If this Agreement is terminated pursuant to Section 7.1, this Agreement shall become void and of no further force or effect (except for the provisions of Sections 9.1, 9.2, 9.4, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 9.12, 9.13, and 9.14, all of which shall continue in full force and effect). Notwithstanding anything to the contrary in this Agreement, the termination of this Agreement under Section 7.1 shall not relieve any Party from liability for any willful or negligent failure to perform or observe in any material respect any of its agreements or covenants contained herein that are to be performed or observed at or prior to Closing. In the event this Agreement terminates under Section 7.1 and any Party has willfully or negligently failed to perform or observe in any material respect any of its agreements or covenants contained herein which are to be performed or observed at or prior to Closing, then the other Party shall be entitled to all remedies available at law or in equity and shall be entitled to recover court costs and attorneys' fees in addition to any other relief to which such Party maybe entitled.

Article 8
ASSUMPTION AND INDEMNIFICATION

8.1 **Assumption**. On the Closing Date Purchaser shall assume and hereby agrees to fulfill, perform, pay and discharge (or cause to be fulfilled, performed, paid or discharged) all obligations and liabilities of Seller and its Affiliates, whether known or unknown (the "Assumed Obligations") with respect to the Overriding Royalty Interests, regardless of whether such obligations or liabilities arose prior to, on, or after the Effective Date, including, without limitation, obligations arising from or relating to Title Defects or title to the Overriding Royalty Interests.

8.2 **Indemnification**. From and after Closing Purchaser shall indemnify, defend and hold harmless each Seller Party and their Affiliates and their respective officers, directors, employees, and agents (the "Seller Group") from and against all Damages (irrespective of any limitation upon amount) incurred or suffered by Seller Group caused by, arising out of, or resulting from the Assumed Obligations.

8.3 **Procedures**. Section 12.3 of the Purchase Agreement shall be incorporated herein *mutatis mutandis*.

8.4 **Survival**. The representations, warranties, covenants, and agreements of the Parties hereunder and the corresponding representations and warranties given in the certificates delivered at Closing pursuant to Sections 6.2(c) and 6.3(d), as applicable, shall survive the Closing indefinitely except with respect the representation set forth in Section 3.1, which representation shall terminate as of the date more specifically set forth therein.

8.5 **Claims by Related Third Persons**. Any claim for indemnity under this Section 8.2 by any Affiliate, director, officer, employee, or agent must be brought and administered by the applicable Party to this Agreement. No Indemnified Person other than the Seller and Purchaser shall have any rights against either the Seller or Purchaser under the terms of this Section 8.2 except as may be exercised on its behalf by Purchaser or Seller, as applicable, pursuant to this Section 8.5. Each of Seller and Purchaser may elect to exercise or not exercise indemnification rights under this Section on behalf of the other Indemnified Persons affiliated with it in its sole discretion and shall have no liability to any such other Indemnified Person for any action or inaction under this Section.

8.6 **Exclusive Remedies**. Each Party's sole and exclusive remedy against the other Party for (a) any and all breaches of the representations, warranties, covenants, and agreements of such other Party contained in this Agreement, respectively; and (b) the Assumed Obligations, is set forth in this Article 8, and if no such right of indemnification is expressly provided, then such claims are hereby waived to the fullest extent permitted by Law. Except as expressly set forth above, each Party hereto releases, remises, and forever discharges the other Party and its Affiliates, and its and their respective officers, directors, employees, and agents from any and all suits, legal, or administrative proceedings, claims, demands, damages, losses, costs, liabilities, interest, or causes of action whatsoever, in law or in equity, known or unknown, which such Parties might now or subsequently may have, based on, relating to, or arising out of, this Agreement or the ownership, use, or operation of the Overriding Royalty Interests, or the condition, quality, status, or nature of the Overriding Royalty Interests, **INCLUDING RIGHTS TO CONTRIBUTION UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT OF 1980, AS AMENDED, BREACHES OF STATUTORY AND IMPLIED WARRANTIES, NUISANCE OR OTHER TORT ACTIONS, RIGHTS TO PUNITIVE DAMAGES, COMMON LAW RIGHTS OF CONTRIBUTION, ANY RIGHTS UNDER INSURANCE POLICIES ISSUED OR UNDERWRITTEN BY THE OTHER PARTY OR ANY OF ITS AFFILIATES, AND ANY RIGHTS UNDER AGREEMENTS BETWEEN SELLER AND ANY AFFILIATE OF SELLER, EVEN IF CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE (WHETHER SOLE, JOINT OR CONCURRENT), STRICT LIABILITY OR OTHER LEGAL FAULT OF ANY RELEASED PERSON INVITEE, OR THIRD PARTY**. Notwithstanding the foregoing, this Article 8 shall not apply in respect of title matters and Title Defects which are exclusively covered by Article 3 and the Conveyance.

Article 9
MISCELLANEOUS

9.1 **Counterparts**. This Agreement may be executed in counterparts, each of which shall be deemed an original instrument, but all such counterparts together shall constitute but one agreement.

9.2 **Notices**. All notices that are required or may be given pursuant to this Agreement shall be sufficient in all respects if given in writing, in English and delivered personally, by telecopy or by recognized courier service, as follows:

If to Seller: O'Brien Resources, LLC

425 Ashley Ridge Boulevard, Suite 300

Shreveport, Louisiana 71106

Attention: William J. O'Brien, III

Telephone: (318) 865-8568

Facsimile: (318) 865-5173

with a copy to:	Bracewell & Giuliani LLP
	Pennzoil Place, South Tower
	711 Louisiana Street, Suite 2300
	Houston, Texas 77002
Attention:	James McAnelly III
Telephone:	(713) 221-1194
Telecopy:	(713) 222-3241
If to Purchaser:	Berry Petroleum Company
	950 – 17th Street, Suite 2400
	Denver, Colorado 80202
Attention:	Michael Duginski
Telephone:	(303) 825-3344
Telecopy:	(303) 825-3350
With a copy to:	Holland & Hart LLP
	555 – 17th Street, Suite 3200
	Denver, Colorado 80202
Attention:	Davis O'Connor
Telephone:	(303) 295-8000
Telecopy:	(303) 295-8261

Either Party may change its address for notice by notice to the other in the manner set forth above. All notices shall be deemed to have been duly given at the time of receipt by the Party to which such notice is addressed.

9.3 **Sales or Use Tax, Recording Fees and Similar Taxes and Fees**. Purchaser shall bear any sales, use, excise, real property transfer or gain, gross receipts, goods and services, registration, capital, documentary, stamp or transfer Taxes, recording fees, and similar Taxes and fees incurred and imposed upon, or with respect to, the property transfers or other transactions contemplated hereby. Should any Seller Party or any Affiliate of any Seller Party pay any amount for which Purchaser is liable under this Section 9.3, Purchaser shall, promptly following receipt of Seller's invoice, reimburse the amount paid. If such transfers or transactions are exempt from any such taxes or fees upon the filing of an appropriate certificate or other evidence of exemption, Purchaser shall timely furnish to Seller such certificate or evidence.

9.4 **Expenses**. Except as provided to the contrary herein or in the Purchase Agreement all expenses incurred by Seller in connection with or related to the authorization, preparation or execution of this Agreement, and the Exhibits and Schedules hereto and thereto, and all other matters related to the Closing, including without limitation, all fees and expenses of counsel, accountants and financial advisers employed by Seller, shall be borne solely and entirely by Seller, and all such expenses incurred by Purchaser shall be borne solely and entirely by Purchaser.

9.5 **Governing Law and Venue**. This Agreement and the legal relations between the Parties shall be governed by and construed in accordance with the laws of the State of Texas, without regard to principles of conflicts of laws that would direct the application of the laws of another jurisdiction.

9.6 Dispute Resolution. Each Party consents to personal jurisdiction in any action brought in the United States federal courts located in the State of Texas with respect to any dispute, claim, or controversy arising out of or in relation to or in connection with this Agreement, and each of the Parties hereto agrees that any action instituted by it against the other with respect to any such dispute, controversy, or claim (except to the extent a dispute, controversy, or claim arising out of or in relation to or in connection the determination of a Title Defect Amount pursuant to Section 3.8 is referred to an expert pursuant to that Section) will be instituted exclusively in the United States District Court for the Southern District of Texas, Houston Division. The Parties hereby waive trial by jury in any action, proceeding, or counterclaim brought by any Party against another in any matter whatsoever arising out of or in relation to or in connection with this Agreement.

9.7 Captions. The captions in this Agreement are for convenience only and shall not be considered a part of or affect the construction or interpretation of any provision of this Agreement.

9.8 Waivers. Any failure by any Party to comply with any of its obligations, agreements, or conditions herein contained may be waived by the Party to whom such compliance is owed by an instrument signed by the Party to whom compliance is owed and expressly identified as a waiver, but not in any other manner. No waiver of, or consent to a change in, any of the provisions of this Agreement shall be deemed or shall constitute a waiver of, or consent to a change in, other provisions hereof (whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.

9.9 Assignment. No Party shall assign (including, without limitation, by change of control, merger, consolidation, or stock purchase) or otherwise transfer all or any part of this Agreement, nor shall any Party delegate any of its rights or duties hereunder (including, without limitation, by change of control, merger, consolidation, or stock purchase), without the prior written consent of the other Party and any transfer or delegation made without such consent shall be void. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

9.10 Entire Agreement. This Agreement and the documents to be executed hereunder, and the Exhibits and Schedules attached hereto, constitute the entire agreement among the Parties pertaining to the subject matter hereof, and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties pertaining to the subject matter hereof.

9.11 Amendment. This Agreement may be amended or modified only by an agreement in writing signed by Seller and Purchaser and expressly identified as an amendment or modification.

9.12 **No Third-Person Beneficiaries**. Nothing in this Agreement shall entitle any Person other than Purchaser and Seller to any claim, cause of action, remedy or right of any kind, except the rights expressly provided to the Persons described in Section 8.3.

9.13 **References**.

In this Agreement:

(d) References to any gender includes a reference to all other genders;

(e) References to the singular includes the plural, and vice versa;

(f) Reference to any Article or Section means an Article or Section of this Agreement;

(g) Reference to any Exhibit or Schedule means an Exhibit or Schedule to this Agreement, all of which are incorporated into and made a part of this Agreement;

(h) Unless expressly provided to the contrary, "hereunder", "hereof", "herein", and words of similar import are references to this Agreement as a whole and not any particular Section or other provision of this Agreement;

(i) References to "$" or "dollars" means United States dollars; and

(j) "Include" and "including" shall mean include or including without limiting the generality of the description preceding such term.

9.14 **Construction**. Purchaser is capable of making such investigation, inspection, review and evaluation of the Assets as a prudent purchaser would deem appropriate under the circumstances, including with respect to all matters relating to the Assets, their value, operation, and suitability. Each of Seller and Purchaser has had the opportunity to exercise business discretion in relation to the negotiation of the details of the transaction contemplated hereby. This Agreement is the result of arm's-length negotiations from equal bargaining positions. It is expressly agreed that this Agreement shall not be construed against any Party, and no consideration shall be given or presumption made, on the basis of who drafted this Agreement or any particular provision thereof.

IN WITNESS WHEREOF, this Agreement has been signed by each of the Parties as of the date first above written.

SELLER:

O'BRIEN RESOURCES, LLC

By:
William J. O'Brien III
Chairman and Chief Executive Officer

PURCHASER:

BERRY PETROLEUM COMPANY

By:
Name:
Title:

Exhibit 31.1

Certification of Chief Executive Officer

Pursuant to Section 302 of Sarbanes Oxley Act of 2002

I, Robert F. Heinemann, President, Chief Executive Officer and Director certify that:

1. I have reviewed this report on Form 10-Q of Berry Petroleum Company (the Company);

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the Company as of, and for, the periods presented in this report;

4. The Company's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a - 15(e) and 15d - (e) and internal control over financial reporting (as defined in Exchange Act Rules 13a - 15(f) and 15d - 15(f)) for the Company and have:

   a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the Company is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designated under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   c) evaluated the effectiveness of the Company's disclosure controls and procedures and presented in this report our conclusions abut the effectiveness of the disclosure controls and procedures as of the end of the period covered by this report based on such evaluation; and

   d) disclosed in this report any change in the Company's internal control over financial reporting that occurred during the Company's most recent fiscal quarter that has materially affected or is reasonably likely to materially affect the Company's internal control over financial reporting.

5. The Company's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the Company's auditors and the audit committee of the Company's board of directors:

   a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the Company's ability to record, process, summarize and report financial information and have identified for the registrant's auditors any material weaknesses in internal controls; and

   b) any fraud, whether or not material, that involves management or other employees who have a significant role in the Company's internal controls over financial reporting.

/s/ Robert F. Heinemann

Robert F. Heinemann

July 25, 2008

President, Chief Executive Officer and Director

Exhibit 31.2

Certification of Chief Financial Officer

Pursuant to Section 302 of Sarbanes Oxley Act of 2002

I, Shawn M. Canaday, Vice President, Controller and Interim Chief Financial Officer, certify that:

1. I have reviewed this report on Form 10-Q of Berry Petroleum Company (the Company);

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the Company as of, and for, the periods presented in this report;

4. The Company's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a - 15(e) and 15d - (e) and internal control over financial reporting (as defined in Exchange Act Rules 13a - 15(f) and 15d - 15(f)) for the Company and have:

   a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the Company is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designated under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   c) evaluated the effectiveness of the Company's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures as of the end of the period covered by this report based on such evaluation; and

   d) disclosed in this report any change in the Company's internal control over financial reporting that occurred during the Company's most recent fiscal quarter that has materially affected or is reasonably likely to materially affect the Company's internal control over financial reporting;

5. The Company's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting to the Company's auditors and the audit committee of the Company's board of directors:

   a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the Company's ability to record, process, summarize and report financial information; and

   b) any fraud, whether or not material, that involves management or other employees who have a significant role in the Company's internal controls over financial reporting.

/s/ Shawn M. Canaday

Shawn M. Canaday

July 25, 2008

Vice President, Controller and Interim Chief Financial Officer

Exhibit 32.1

Certification of Chief Executive Officer

Pursuant to Section 906 of Sarbanes Oxley Act of 2002

In Connection with the Quarterly Report of Berry Petroleum Company (the "Company") on Form 10-Q for the period ending June 30, 2008 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Robert F. Heinemann, President, Chief Executive Officer and Director of the Company, certify, pursuant to 18 U.S.C. 1350, as adopted pursuant to 906 of the Sarbanes-Oxley Act of 2002, that:

1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Robert F. Heinemann

Robert F. Heinemann

July 25, 2008

President, Chief Executive Officer and Director

Exhibit 32.2

Certification of Chief Financial Officer

Pursuant to Section 906 of Sarbanes Oxley Act of 2002

In Connection with the Quarterly Report of Berry Petroleum Company (the "Company") on Form 10-Q for the period ending June 30, 2008 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Shawn M. Canaday, Vice President, Controller and Interim Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. 1350, as adopted pursuant to 906 of the Sarbanes-Oxley Act of 2002, that:

1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Shawn M. Canaday

Shawn M. Canaday

July 25, 2008

Vice President, Controller and Interim Chief Financial Officer