

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

FORM 8-K

CURRENT REPORT  
Pursuant to Section 13 OR 15(d) of the  
Securities Exchange Act of 1934

Date of Report (Date of Earliest Event Reported): December 6, 2004

**American Real Estate Partners, L.P.**

(Exact name of registrant as specified in its charter)

<b>Delaware</b>	<b>1-9516</b>	<b>13-3398766</b>
(State or other jurisdiction of incorporation)	(Commission File Number)	(IRS Employer Identification No.)
	100 South Bedford Road, Mt. Kisco, NY	10549
	(Address of principal executive offices)	(Zip Code)

Registrant's telephone number, including area code: **(914) 242-7700**

N/A

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communication pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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## Section 1 – Registrant’s Business and Operations

### Item 1.01 Entry into a Material Definitive Agreement

On December 6, 2004, AREP Oil & Gas LLC, a Delaware limited liability company (“AREP Oil & Gas”), which is an indirect subsidiary of American Real Estate Partners, L.P. (“AREP”), pursuant to a purchase agreement and related assignment and assumption agreement, each dated as of that date, with Thornwood Associates LP, a Delaware limited partnership (“Thornwood”), purchased \$27.5 million aggregate principal amount of term notes issued by TransTexas Gas Corporation (“TransTexas Notes”). The purchase price for the TransTexas Notes was \$28,245,890.41, which equals the principal amount of the TransTexas Notes plus accrued but unpaid interest. The notes are payable annually in equal consecutive annual payments of \$5,000,000, with the final installment of the unpaid principal payable on August 28, 2008. Interest is payable semi-annually on February 28 and August 28, at the rate of 12% per annum. The TransTexas Notes are secured by a first priority lien on all of TransTexas’ assets. Thornwood and TransTexas each is indirectly controlled by Carl C. Icahn.

On December 6, 2004, AREP Oil & Gas, pursuant to a membership interest purchase agreement and related assignment and assumption agreement, each dated as of that date, by and among AREP Oil & Gas, as purchaser, and Amos Corp., High River Limited Partnership and Hopper Investments LLC, as sellers, purchased all of the membership interests of Mid River LLC, a Delaware limited liability company (“Mid River”) for an aggregate purchase price of \$38,125,998.63. The assets of Mid River consist of \$38 million principal amount of term loans (the “Panaco Debt”) outstanding under the term loan and security agreement, dated as of November 16, 2004, among Panaco, Inc. as borrower, the lenders (as defined therein) and Mid River, as administrative agent. The purchase price for the membership interests in Mid River equals the outstanding principal amount of the Panaco Debt, plus accrued but unpaid interest. The principal is payable in 27 equal quarterly installments of \$1,357,142.86 commencing on March 15, 2005, through and including September 15, 2011. Interest is payable quarterly at a rate per annum equal to the LIBOR daily floating rate plus four percent. The term loan is secured by first priority liens on all of Panaco’s assets. Each of the sellers and Panaco is indirectly controlled by Mr. Icahn.

Mr. Icahn indirectly owns approximately 86.5% of AREP’s limited partnership depositary and preferred units and indirectly owns 100% of AREP’s general partner, American Property Investors, Inc. Each of the purchases described above was separately approved by the Audit Committee of AREP’s general partner. The Audit Committee was advised as to each transaction by independent legal counsel and financial advisors. The Audit Committee obtained fairness opinions which opined that, as of the date of each transaction, the consideration to be paid by AREP Oil & Gas was fair from a financial point of view to AREP.

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**Exhibit Index**

- 99.1 Purchase Agreement for Notes Issued by TransTexas Gas Corporation, dated December 6, 2004, by and between Thornwood Associates LP, as Seller, and AREP Oil & Gas LLC, as Purchaser.
- 99.2 Assignment and Assumption Agreement, dated December 6, 2004, by and between Thornwood Associates LP and AREP Oil & Gas LLC.
- 99.3 Membership Interest Purchase Agreement, dated as of December 6, 2004, by and among AREP Oil & Gas LLC, as Purchaser and Amos Corp., High River Limited Partnership and Hopper Investments LLC, as Sellers.
- 99.4 Assignment and Assumption Agreement, dated December 6, 2004, by and among AREP Oil & Gas LLC, Amos Corp., High River Limited Partnership and Hopper Investments LLC.
- 99.5 Amended and Restated Oil & Gas Term Loan Agreement by and among Thornwood Associates LP and TransTexas Gas Corporation and Galveston Bay Pipeline Company and Galveston Bay Processing Corporation, dated August 28, 2003.
- 99.6 Amended and Restated Security and Pledge Agreement, dated August 2003, by and among TransTexas Gas Corporation, Galveston Bay Pipeline Company, Galveston Bay Processing Corporation and Thornwood Associates LP.
- 99.7 Term Loan and Security Agreement among Panaco, Inc., MidRiver LLC and Lenders Named Herein, dated as of November 16, 2004.

[remainder of page intentionally left blank; signature page follows]

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SIGNATURES

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 hereunto duly authorized.

AMERICAN REAL ESTATE PARTNERS, L.P.  
(Registrant)

By: American Property Investors, Inc.  
General Partner

By: /s/ John P. Saldarelli  
John P. Saldarelli  
Vice President, Chief Financial  
Officer, Secretary and Treasurer

Date: December 10, 2004

SALE OF NOTES  
ISSUED BY  
TRANSTEXAS GAS CORPORATION

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This PURCHASE AGREEMENT (the or this "Agreement") dated as of December 6, 2004 is made and entered into by Thornwood Associates L.P., a Delaware limited partnership, ("Seller") and AREP Oil & Gas LLC, a Delaware limited liability company ("Purchaser"). Capitalized terms not otherwise defined herein have the meanings set forth in Article XIII.

WHEREAS, Seller is the owner of \$27,500,000 in principal amount of term notes (the "Notes") issued by TransTexas Gas Corporation ("Company") under an Amended and Restated Oil & Gas Term Loan Agreement dated as of August 28, 2003 (the "Loan Agreement") constituting 100% of the indebtedness issued under the Loan Agreement, the original issuance of \$32,500,000 having been reduced by a principal payment of \$5 million; and

WHEREAS, Seller desires to sell the Notes together with all rights of lender under the Loan Agreement and under all related security and other documents (collectively, the "Documents"), and all related claims, powers and causes of action (collectively, the "Rights") to Purchaser, and Purchaser desires to purchase the same, on the terms and subject to the conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I  
SALE OF NOTES AND RIGHTS, AND CLOSING

1.1 Purchase and Sale. Seller agrees to sell to Purchaser the Notes and Rights and Purchaser agrees to purchase from Seller the Notes and Rights, at the Closing on the terms and subject to the conditions set forth in this Agreement.

1.2 Purchase Price The purchase price is \$28,245,890.41 (the "Purchase Price").

1.3 Closing. Upon the terms and subject to the conditions of this Agreement, the closing of the transactions contemplated hereby (the "Closing") shall take place simultaneously with the execution and delivery of this Agreement. The date on which the Closing occurs is herein referred to as the "Closing Date."

1.4 Actions at the Closing. At the Closing, (i) Purchaser shall pay the Purchase Price to Seller; (ii) Seller shall cause the Company to deliver to Purchaser the Note representing the debt underlying the Notes; and (iii) the parties shall enter into the Assignment Agreement attached hereto as Exhibit A.

ARTICLE II  
REPRESENTATIONS AND WARRANTIES REGARDING SELLER

As an inducement to Purchaser to enter into this Agreement, Seller hereby makes the following representations and warranties to Purchaser:

2.1 Organization of Seller. Seller is a limited partnership duly organized, validly existing and in good standing under the Laws of the State of Delaware. Seller has full organizational power and authority to execute and deliver this Agreement and to perform its obligations hereunder and to consummate the transactions contemplated hereby, including without limitation to sell and transfer (pursuant to this Agreement) the Notes and Rights.

2.2 Authority. The execution and delivery by Seller of this Agreement, and the performance by Seller of its obligations hereunder, have been duly and validly authorized by Seller and no other action on the part of Seller, its general partner, its limited partners or its board is necessary for such execution, delivery or performance. This Agreement has been duly and validly executed and delivered by Seller and constitutes a legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms.

2.3 Title. The delivery of the Assignment Agreement and other instruments of transfer delivered by Seller to Purchaser at the Closing will transfer to Purchaser good and valid title to the Notes and Rights, free and clear of all Liens other than Liens created by Purchaser.

2.4 No Conflicts. The execution and delivery by Seller of this Agreement do not, and the performance by Seller of its obligations under this Agreement and the consummation of the transactions contemplated hereby will not:

(a) conflict with or result in a violation or breach of any of the terms, conditions or provisions of the organizational documents of Seller;

(b) conflict with or result in a violation or breach of any term or provision of any Law or Order applicable to Seller or any of its Assets and Properties; or

(c) (i) conflict with or result in a violation or breach of, (ii) constitute (with or without notice or lapse of time or both) a default under, (iii) require Seller to obtain any consent, approval or action of, make any filing with or give any notice to any Person as a result or under the terms of, (iv) result in or give to any Person any right of termination, cancellation, acceleration or modification in or with respect to, or (v) result in the creation or imposition of any Lien upon Seller or any of its Assets and Properties under, any Contract or License to which Seller is a party or by which any of its Assets and Properties is bound.

2.5 Consents and Approvals. No consent, authorization or approval of, filing or registration with, or cooperation from, any Governmental Authority or any other Person not a party to this Agreement is necessary in connection with the execution, delivery and performance by Seller of this Agreement or the consummation of the transactions contemplated hereby.

2.6 Brokers. Neither Seller nor the Company nor any Subsidiary has used any broker or finder in connection with the transactions contemplated hereby, and neither Purchaser nor any Affiliate of Purchaser has or shall have any liability or otherwise suffer or incur any Loss as a result of or in connection with any brokerage or finder's fee or other commission of any Person retained or purporting to be retained by Seller or by the Company or any Subsidiary in connection with any of the transactions contemplated by this Agreement.

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2.7 Accuracy of Statements. Neither this Agreement nor any schedule, exhibit, statement, list, document, certificate or other information furnished or to be furnished by or on behalf of the Company, any Subsidiary or Seller to Purchaser or any representative or Affiliate of Purchaser in connection with this Agreement or any of the transactions contemplated hereby contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary to make the statements contained herein or therein, in light of the circumstances in which they are made, not misleading.

ARTICLE III  
REPRESENTATIONS AND WARRANTIES REGARDING THE COMPANY

As an inducement to Purchaser to enter into this Agreement, Seller hereby makes the following representations to Purchaser.

3.1 Due Incorporation of Company.

(a) The Company and each of the Subsidiaries is duly organized and validly existing under the laws of the state in which it is incorporated or organized, as the case may be, with all requisite power and authority to own, lease and operate its properties and to carry on its business as they are now being owned, leased, operated and conducted. The Company and each of the Subsidiaries is licensed or qualified to do business and is in good standing (where the concept of "good standing" is applicable) as a foreign corporation in each jurisdiction where the nature of the properties owned, leased or operated by it and the business transacted by it require such licensing or qualification (except, with respect to the Subsidiaries, where the failure to be so licensed or qualified or be in good standing will not in the aggregate adversely affect the validity or enforceability of this Agreement or have a Material Adverse Effect on any of the Subsidiaries).

(b) The Seller has delivered to Purchaser true, correct and complete copies of the organizational documents of the Company and the Subsidiaries, which organizational documents are in full force and effect.

3.2 Capitalization. The Seller owns 100% of the stock of the Company, free and clear of all Liens. No Person holds any option, warrant, convertible security or other right to acquire any interest in the Company or any of the Subsidiaries. There are no obligations, contingent or otherwise, of the Company or the Subsidiaries to repurchase, redeem or otherwise acquire any ownership interests of the Company or any Subsidiary or to provide funds to or make any material investment (in the form of a loan, capital contribution or otherwise) in any Subsidiary or any other Person.

3.3 Subsidiaries. The Company has no subsidiaries other than Galveston Bay Pipeline Company and Galveston Bay Processing Corporation.

3.4 Consents and Approvals. No consent, authorization or approval of, filing or registration with, or cooperation from, any Governmental Authority or any other Person not a party to this Agreement is necessary in connection with the execution, delivery and performance

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by Seller of its respective obligations under this Agreement or the consummation by Seller of its respective transactions contemplated hereby.

3.5 Financial Statements.

(a) The Seller has delivered to Purchaser true, correct and complete copies of the Financial Statements. The Audited 2003 Financial Statements have been prepared in accordance with GAAP consistently applied and present fairly

the financial position, assets, liabilities and retained earnings of the respective companies as of the dates thereof and the revenues, expenses, results of operations, and cash flows of the respective companies for the periods covered thereby. The Financial Statements are in accordance with the books and records of the respective companies, do not reflect any transactions which are not bona fide transactions and do not contain any untrue statement of a material fact (whether or not required to be disclosed under GAAP) or omit to state any material fact necessary to make the statements contained therein, in light of the circumstances in which they were made, not misleading.

(b) The Seller have delivered to Purchaser true and complete copies of all Interim 2004 Financial Statements. The Interim 2004 Financial Statements present fairly the financial position, assets, liabilities and retained earnings of the respective companies as of the dates thereof and the revenues, expenses, results of operations, and cash flows of the respective companies for the periods covered thereby. The Interim 2004 Financial Statements are in accordance with the books and records of the respective companies, do not reflect any transactions which are not bona fide transactions and do not contain any untrue statement of a material fact (whether or not required to be disclosed under GAAP) or omit to state any material fact necessary to make the statements contained therein, in light of the circumstances in which they were made, not misleading.

3.6 No Adverse Effects or Changes. Since December 31, 2003, (i) neither the Company nor any of the Subsidiaries has suffered any Material Adverse Effect; (ii) there has been no change, event, development, damage or circumstance affecting the Company or the Subsidiaries that, individually or in the aggregate could reasonably be expected to have a Material Adverse Effect on the Company or any of the Subsidiaries; (iii) there has not been any change by the Company or any of the Subsidiaries in its accounting methods, principles or practices, or any revaluation by the Company or any of the Subsidiaries of any of its assets, including writing down the value of inventory or writing off notes or accounts receivable; and (iv) the Company and each of the Subsidiaries has conducted its business only in the ordinary course of business consistent with past practice.

3.7 Title to Properties. Each of the Company and its Subsidiaries has good and marketable title to, and each Subsidiary is the lawful owner of, all of the tangible and intangible assets, properties and rights used in connection with its respective businesses and all of the tangible and intangible assets, properties and rights reflected in the Financial Statements, except for changes accruing in the ordinary course of business that would not, individually or in the aggregate, adversely affect the ability of the Company or any of the Subsidiaries to conduct its business in the ordinary course, consistent with past practice.

3.8 Litigation. Except as disclosed in the Financial Statements, there are no actions, suits, arbitrations, regulatory proceedings or other litigation, proceedings or governmental

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investigations, with such exceptions as are individually, or in the aggregate, not material in nature or amount, pending or, to the knowledge of Seller, threatened against or affecting the Company, the Subsidiaries or any of their respective officers, directors, employees or agents in their capacity as such, or any of the Company's Assets and Properties or businesses of the Company or any of the Subsidiaries, and to Seller's knowledge, any facts or circumstances which may give rise to any of the foregoing. Except as disclosed in the Financial Statements, neither the Company nor any of the Subsidiaries is subject to any order, judgment, decree, injunction, stipulation or consent order of or with any court or other Governmental Authority.

3.9 Claims Against Officers and Directors. There are no pending or, to the knowledge of Seller, threatened claims against any director, officer, employee or agent of the Company, the Subsidiaries or any other Person, which could give rise to any claim for indemnification against the Company or the Subsidiaries or cause the Company or the Subsidiaries to incur any material liability or otherwise suffer or incur any material Loss.

3.10 Insurance. The Subsidiaries maintain insurance policies that provide adequate and suitable insurance coverage for the business of the Subsidiaries and are on such terms, cover such risks and are in such amounts as the insurance customarily carried by comparable companies of established reputation similarly

situated and carrying on the same or similar business.

3.11 Compliance with Law. Except as set forth in the Financial Statements, the Company and the Subsidiaries are in compliance and, at all times, have been in compliance in all respects with all applicable Laws relating to the Company or the Subsidiaries or their respective Assets and Properties or businesses. Except as disclosed in the Financial Statements, no investigation or review by any governmental authority or self-regulatory authority is pending or, to the knowledge of the Seller, threatened, nor has any such authority indicated orally or in writing to the Seller, the Company or any of the Subsidiaries an intention to conduct an investigation or review of the Company or any of the Subsidiaries or, with respect to the Company or any of the Subsidiaries, of the Seller.

3.12 Undisclosed Liabilities. Except as disclosed in the Financial Statements and the Interim 2004 Financial Statements, neither the Company nor any of the Subsidiaries has any material liabilities or obligations of any nature, whether known or unknown, absolute, accrued, contingent or otherwise and whether due or to become due, other than liabilities and obligations incurred after September 30, 2004 in the ordinary course of business consistent with past practice (including as to amount and nature).

3.13 Related Parties. Except as disclosed in the Financial Statements and except for transactions between the Company and the Subsidiaries or between the Company's Subsidiaries, (i) no Affiliate of the Company is a party to any Contract with the Company or any of the Subsidiaries; (ii) no Affiliate of the Company owes any material amount of money to, nor is such Affiliate owed any material amount of money by, the Company or any of the Subsidiaries, (iii) neither the Company nor any of the Subsidiaries has, directly or indirectly, guaranteed or assumed any indebtedness for borrowed money or otherwise for the benefit of an Affiliate of the Company or any of the Subsidiaries; and (iv) neither the Company nor any of the Subsidiaries has made any material payment to, or engaged in any material transaction with, an Affiliate of

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the Company, other than the existing management agreement with National Energy Group, Inc. ("NEG"), as disclosed in the public disclosure documents of NEG.

3.14 Intellectual Property. The Company and the Subsidiaries own, or possess adequate rights to use, all material patents, trade names, trademarks, copyrights, inventions, processes, designs, formulae, trade secrets, know-how and other intellectual property rights necessary for, used or held for use in the conduct of their businesses. All material intellectual property necessary for used or held for use in the conduct of the businesses of the Company and any of the Subsidiaries has been duly registered with, filed in or issued by the relevant filing offices, domestic or foreign, to the extent necessary or desirable to ensure full protection under any applicable Law, and such registrations, filings or issuances remain in full force and effect.

The conduct of the business of the Company and the Subsidiaries does not infringe or otherwise conflict with any rights of any Person in respect of intellectual property rights. None of the intellectual property rights owned by the Company or the Subsidiaries is being infringed or otherwise, in any way, used or available for use by any Person without a license or permission from the Company and the Subsidiaries and neither the Company nor any of the Subsidiaries has taken or omitted to take any action which would have the effect of waiving any of its rights thereunder. Neither the Company nor any of the Subsidiaries has received a claim of infringement or conflict by any third party in respect of any intellectual property used by the Company or the Subsidiaries.

3.15 Environmental Matters. Except as set forth in the Financial Statements:

(a) The Company and each of the Subsidiaries have obtained all material Environmental Permits that are required with respect to their respective Assets and Properties and businesses, either owned or leased;

(b) The Company, each of the Subsidiaries, and their respective Assets and Properties and businesses, are and have been in compliance in all material respects with all terms and conditions of all applicable Environmental Laws and Environmental Permits;

(c) There are no Environmental Claims pending or, to the knowledge of the Seller, threatened against the Company or any of the Subsidiaries.

Neither the Company nor any of the Subsidiaries has received any notice from any Governmental or Regulatory Authority or any person of any violation or liability arising under any Environmental Law or Environmental Permit in connection with its Assets and Properties, businesses or operations;

(d) Neither the Company, nor any of its Subsidiaries, nor any other Person has caused or taken any action that will result in any material liability, obligation or cost on the part of the Company or any of its Subsidiaries relating to (x) environmental conditions on, above, under or from any properties or assets currently or formerly owned, leased, operated or used by the Company or any of its Subsidiaries, or (y) the past or present use, management, transport, treatment, generation, storage, disposal, release or threatened release of Hazardous Materials.

(e) Neither the Company nor any of the Subsidiaries owns, leases or operates or has owned, leased or operated, any property listed on the National Priorities List pursuant to

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CERCLA or on the CERCLIS or on any other federal or state list as sites requiring investigation or cleanup;

(f) Neither the Company nor any of the Subsidiaries is transporting, has transported, or is arranging for the transportation of, any Hazardous Material to any location which is listed on the National Priorities List pursuant to CERCLA, on the CERCLIS, or on any similar federal or state list or which is the subject of federal, state or local enforcement actions or other investigations that may lead to material claims against the Company or the Subsidiaries for investigative or remedial work, damage to natural resources, property damage or personal injury including claims under CERCLA;

(g) There are no sites, locations or operations at which the Company or any of the Subsidiaries is currently undertaking, or has completed, any investigative, remedial, response or corrective action as required by Environmental Laws;

(h) There are no physical or environmental conditions existing on any property owned or leased by the Company or the Subsidiaries resulting from their respective operations or activities, past or present, at any location, that would give rise to any material on-site or off-site investigative or remedial obligations or any corrective action under any applicable Environmental Laws; and

(i) The Seller has provided to Purchaser all material environmental site assessments, audits, investigations and studies in its possession, custody or control.

3.16 Employees, Labor Matters, etc. Except as set forth in the Financial Statements, neither the Company nor any of the Subsidiaries is a party to or bound by, and none of their employees is subject to, any collective bargaining agreement, and there are no labor unions or other organizations representing, purporting to represent or attempting to represent any employees employed by the Company or any of the Subsidiaries. There has not occurred or been threatened any material strike, slow down, picketing, work stoppage, concerted refusal to work overtime or other similar labor activity with respect to any employees of the Company or any of the Subsidiaries. There are no labor disputes currently subject to any grievance procedure, arbitration or litigation and there is no representation petition pending or threatened with respect to any employee of the Company or any of the Subsidiaries. The Company and the Subsidiaries have complied with all applicable Laws pertaining to the employment or termination of employment of their respective employees, including, without limitation, all such Laws relating to labor relations, equal employment opportunities, fair employment practices, prohibited discrimination or distinction and other similar employment activities; except for any failure to comply that, individually and in the aggregate, is not reasonably likely to result in any Company Material Adverse Effect.

### 3.17 Employee Benefit Plans.

(a) Except as set forth in the Financial Statements or accrued thereafter in accordance with the terms of the Plans as of the date hereof, neither the Company nor any of the Subsidiaries has incurred any material liability, and no event, transaction or condition has occurred or exists that

could result in any material liability, on account of any Plans, including but not limited to liability for (i) additional contributions required to be made under the terms of

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any Plan or its related trust, insurance contract or other funding arrangement with respect to periods ending on or prior to the date hereof which are not reflected, reserved against or accrued in the Financial Statements; (ii) breaches by the Company or any of the Subsidiaries, or any of their employees, officers, directors, stockholders, or, to the knowledge of Seller, the trustees under the trusts created under the Plans, or any other Persons under ERISA or any other applicable Law; or (iii) income taxes by reason of non-qualification of the Plans. Each of the Plans has been operated and administered in all material respects in compliance with its terms, all applicable Laws and all applicable collective bargaining agreements. Except with respect to the increase in employer matching contributions under the Subsidiaries' 401(k) plans, since the date of the Financial Statements, neither the Company nor any of the Subsidiaries has communicated to any current or former director, officer, employee or consultant thereof any intention or commitment to amend or modify any Plan, or to establish or implement any other employee or retiree benefit or compensation plan or arrangement, which would materially increase the cost to the Company or any Subsidiary.

(b) Each Plan which is intended to be "qualified" within the meaning of section 401 (a) of the Code, and the trust (if any) forming a part thereof has received a favorable determination letter or is covered by an opinion letter from the Internal Revenue Service and no event has occurred and no condition exists which could reasonably be expected to result in the revocation of any such determination. All amendments and actions required to bring each Plan into conformity with the applicable provisions of ERISA, the Code, and any other applicable Laws have been made or taken.

(c) There are no pending or threatened claims (and no facts or circumstances exist that could give rise to any such claims) by or on behalf of any participant in any of the Plans, or otherwise involving any such Plan or the assets of any Plan, other than routine claims for benefits in the ordinary course. The Plans are not presently under audit or examination (nor has notice been received of a potential audit or examination) by the IRS, the Department of Labor, or any other Governmental or Regulatory Authority.

(d) None of the Plans provides benefits of any kind with respect to current or former employees, officers, or directors (or their beneficiaries) of the Company and the Subsidiaries beyond their retirement or other termination of employment, other than (i) coverage for benefits mandated by Section 4980B or the Code, (ii) death benefits or retirement benefits under an employee pension benefit plan (as defined by section 3(2) of ERISA), or (iii) benefits, the full cost of which is borne by such current or former employees, officers, directors, or beneficiaries.

(e) No Plan sponsored by the Company and the Subsidiaries is a "multiemployer plan" within the meaning of Section 4001 (a) (3) of ERISA or a "multiple employer plan" as addressed in section 4063 or 4064 of ERISA. No Plan sponsored by the Company and the Subsidiaries is subject to Title IV of ERISA.

(f) The consummation of the transactions contemplated by this Agreement will not (alone or in combination with any other event, including, without limitation, the passage of time) result in (i) any payment (including, without limitation, severance, unemployment compensation, golden parachute, bonus payments or otherwise) becoming due under any agreement or oral arrangement to any current or former director, officer, employee or consultant

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of the Company and the Subsidiaries, (ii) any increase in the amount of salary, wages or other benefits payable to any director, officer, employee or consultant of the Company and the Subsidiaries, or (iii) any acceleration of the vesting or timing of payment of any benefits or compensation (including, without limitation, any increased or accelerated funding obligation) payable to any director, officer, employee or consultant of the Company and the Subsidiaries.

3.18 Property. The Company and the Subsidiaries are in possession of and have good title to, or have valid leasehold interests in or valid rights under contract to use, all of the material, real and tangible personal property used

or held for use in the business of the Company or the Subsidiaries. All such personal property is in good working order and condition, ordinary wear and tear excepted, and its use complies in all material respects with all applicable Laws.

3.19 Loan Agreement. The representations and warranties of the Company and its Subsidiaries set forth in the Loan Agreement are true and correct. The Company and its Subsidiaries have complied in all material respects with all of the terms and conditions of the Loan Agreement and the other Documents. There is no event of default, as defined in the Loan Agreement.

### 3.20 Tax.

(a) The Company and the Subsidiaries have duly and timely filed with the appropriate taxing authorities all material federal, state and local income Tax Returns and all other material Tax Returns required to be filed through the date hereof and will duly and timely file any such returns required to be filed on or prior to the Closing. Such Tax Returns and other information filed are (and, to the extent they will be filed prior to the Closing, will be) complete and accurate in all material respects. Neither the Company nor the Subsidiaries have pending any request for an extension of time within which to file federal, state or local income Tax Returns.

(b) All Taxes of the Company and the Subsidiaries in respect of periods (or portions thereof) ending at or prior to the Closing (i) have been paid by the Company and the Subsidiaries or, (ii) after the Closing, will be paid by the Seller, or such Taxes (other than income Taxes) are shown as due and payable after the Closing on the financial statements of the Companies and the Subsidiaries in accordance with GAAP.

(c) No federal, state, local or foreign audits or other administrative proceedings or court proceedings are presently pending with regard to any material Taxes or material Tax Returns of the Company or the Subsidiaries. Neither the Company nor any of the Subsidiaries has received a written notice of any such pending audits or proceedings. There are no outstanding waivers extending the statutory period of limitation relating to the payment of Taxes due from the Company or any of the Subsidiaries.

(d) Neither the IRS nor any other taxing authority (whether domestic or foreign) has asserted in writing, or to the best knowledge of the Company and the Subsidiaries, is threatening to assert, against the Company or any of the Subsidiaries any material deficiency or material claim for Taxes in excess of the reserves established therefor.

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(e) There are no Liens for Taxes upon any property or assets of the Company or any of the Subsidiaries, except for Liens for Taxes not yet due and payable and liens for Taxes that are being contested in good faith by appropriate proceedings as set forth on Schedule 3.20(e) and as to which adequate reserves have been established in accordance with GAAP.

(f) Neither the Company nor the Subsidiaries has any obligation under any Tax sharing agreement or similar arrangement with any other Person with respect to Taxes of such other Person.

3.21 Security Interests. As of the Closing, the Purchaser shall have a legal, valid and enforceable, first priority perfected security interest in all right, title and interest of each of the Company and the guarantor in the "Collateral" described in the Documents. All liens granted under the Loan Agreement are and will be as of the Closing, for all purposes, valid, perfected, enforceable, non-avoidable and effective as of the Closing without any further action by the Purchaser, the Seller, the Company or any other party.

## ARTICLE IV REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser hereby represents and warrants to Seller as follows:

4.1 Organization of Purchaser. Purchaser is a limited liability company duly formed, validly existing and in good standing under the Laws of the State of Delaware. Purchaser has full organizational power and authority to execute and deliver this Agreement and to perform Purchaser's obligations hereunder and to consummate the transactions contemplated hereby, including without limitation

to buy pursuant to this Agreement the Notes and the Rights.

4.2 Authority. The execution and delivery by Purchaser of this Agreement, and the performance by Purchaser of its obligations hereunder, have been duly and validly authorized and, no other limited liability company action on the part of Purchaser is necessary. This Agreement has been duly and validly executed and delivered by Purchaser and constitutes a legal, valid and binding obligation of Purchaser enforceable against Purchaser in accordance with its terms.

4.3 No Conflicts. The execution and delivery by Purchaser of this Agreement do not, the performance by Purchaser of its obligations under this Agreement and the consummation of the transactions contemplated hereby, will not:

(a) conflict with, or result in a violation or breach of, any of the terms, conditions or provisions of the organizational documents of Purchaser;

(b) conflict with, or result in a violation or breach of, any term or provision of any Law or Order applicable to Purchaser or any of its Assets and Properties (other than such conflicts, violations or breaches which will not have a Material Adverse Effect on Purchaser); or

(c) (i) conflict with, or result in a violation or breach of, (ii) constitute (with or without notice or lapse of time or both) a default under, (iii) require Purchaser to obtain any

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consent, approval or action of, make any filing with or give any notice to any Person as a result or under the terms of, (iv) result in or give to any Person any right of termination, cancellation, acceleration or modification in or with respect to, or (v) result in the creation or imposition of any Lien upon Purchaser or any of its Assets and Properties under, any Contract or License to which Purchaser is a party or by which any of its Assets and Properties is bound.

#### ARTICLE V ASSIGNMENT AND ASSUMPTION

At the Closing, Seller and Purchaser shall enter into the Assignment Agreement pursuant to which Seller will transfer, assign, convey and grant to Purchaser, its successors and assigns forever 100% of the Notes and the Rights.

#### ARTICLE VI INDEMNIFICATION

6.1 Indemnification by Seller. Seller agrees to indemnify Purchaser, its Affiliates and their respective officers, directors, employees independent contractors, stockholders, principals, partners, agents, or representatives (each an "Indemnified Person" and collectively, the "Indemnified Persons") against, and to hold each Indemnified Person harmless from, any and all Losses incurred or suffered by any Indemnified Person relating to or arising out of or in connection with (a) any breach of or any inaccuracy in any representation or warranty made by Seller in this Agreement, or (b) any breach of or failure by any Seller to perform any of its covenants or obligations set out or contemplated in this Agreement.

6.2 Claims. As promptly as is reasonably practicable after becoming aware of a claim for indemnification under this Agreement, the Indemnified Person shall promptly give notice to the Seller ("Indemnifying Person") of such claim and the amount the Indemnified Person will be entitled to receive hereunder from the Indemnifying Person; provided that the failure of the Indemnified Person to promptly give notice shall not relieve the Indemnifying Person of its obligations except to the extent (if any) that the Indemnifying Person shall have been prejudiced thereby. If the Indemnifying Person does not object in writing to such indemnification claim within 30 days of receiving notice thereof, the Indemnified Person shall be entitled to recover, on the thirty-fifth day after such notice was given, from the Indemnifying Person the amount of such claim, and no later objection by the Indemnifying Person shall be permitted; if the Indemnifying Person agrees that it has an indemnification obligation but objects that it is obligated to pay only a lesser amount, the Indemnified Person shall nevertheless be entitled to recover, on the thirty-fifth day after such notice was given, from the Indemnifying Person the lesser

amount, without prejudice to the Indemnified Person's claim for the difference. In addition to the amounts recoverable by the Indemnified Person from the Indemnifying Person pursuant to the foregoing provisions, the Indemnified Person shall also be entitled to recover from the Indemnifying Person interest on such amounts at the rate of Two Times Prime from, and including, the thirty- fifth day after such notice of an indemnification claim is given to, but not including, the date such recovery is actually made by the Indemnified Person.

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6.3 Notice of Third Party Claims; Assumption of Defense. The Indemnified Person shall give notice as promptly as is reasonably practicable to the Indemnifying Person of the assertion of any claim, or the commencement of any suit, action or proceeding, by any Person not a party hereto (a "Third Party Claim") in respect of which indemnity may be sought under this Agreement; provided that the failure of the Indemnified Person to promptly give notice shall not relieve the Indemnifying Person of its obligations except to the extent (if any) that the Indemnifying Person shall have been prejudiced thereby. The Indemnifying Person may, at its own expense, participate in the defense of any Third Party Claim, suit, action or proceeding (a) upon notice to the Indemnified Person and (b) upon delivery by the Indemnifying Person to the Indemnified Person a written agreement that the Indemnified Person is entitled to indemnification for all Losses arising out of such Third Party Claim, suit, action or proceeding and that the Indemnifying Person shall be liable for the entire amount of any Loss, at any time during the course of any such Third Party Claim, suit, action or proceeding, assume the defense thereof; provided, however, that (i) the Indemnifying Person's counsel is reasonably satisfactory to the Indemnified Person, and (ii) the Indemnifying Person shall thereafter consult with the Indemnified Person upon the Indemnified Person's reasonable request for such consultation from time to time with respect to such Third Party Claim, suit, action or proceeding. If the Indemnifying Person assumes such defense, the Indemnified Person shall have the right (but not the duty) to participate in the defense thereof and to employ counsel, at its own expense, separate from the counsel employed by the Indemnifying Person. If, however, the Indemnified Person reasonably determines in its judgment that representation by the Indemnifying Person's counsel of both the Indemnifying Person and the Indemnified Person would present such counsel with a conflict of interest, then such Indemnified Person may employ separate counsel to represent or defend it in any such Third Party Claim, action, suit or proceeding and the Indemnifying Person shall pay all of the fees and disbursements in connection with the retention of such separate counsel. If the Indemnifying Person fails to promptly notify the Indemnified Party that the Indemnifying Party desires to defend the Third Party Claim pursuant, or if the Indemnifying Person gives such notice but fails to prosecute vigorously and diligently or settle the Third Party Claim, then the Indemnified Party will have the right to defend, at the sole cost and expense of the Indemnifying Person, the Third Party Claim by all appropriate proceedings, which proceedings will be prosecuted by the Indemnifying Person in good faith or will be settled at the discretion of the Indemnifying Person (with the consent of the Indemnifying Person, which consent will not be unreasonably withheld). The Indemnifying Person will have full control of such defense and proceedings, including any compromise or settlement thereof. Whether or not the Indemnifying Person chooses to defend or prosecute any such Third Party Claim, suit, action or proceeding, all of the parties hereto shall cooperate in the defense or prosecution thereof.

6.4 Settlement or Compromise. Any settlement or compromise made or caused to be made by the Indemnified Person or the Indemnifying Person, of any claim, suit, action or proceeding shall also be binding upon the Indemnifying Person or the Indemnified Person, as the case may be, in the same manner as if a final judgment or decree had been entered by a court of competent jurisdiction in the amount of such settlement or compromise thereof; provided, however, that no obligation, restriction or Loss shall be imposed on the Indemnified Person as a result of such settlement without its prior written consent. The Indemnified Person will give the Indemnifying Person at least 30 days' notice of any proposed settlement or compromise of any Third Party Claim, suit, action or proceeding it is defending, during which time the Indemnifying Person may reject such proposed settlement or compromise; provided, however, that from and

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after such rejection, the Indemnifying Person shall be obligated to assume the defense of and full and complete liability and responsibility for such Third Party Claim, suit, action or proceeding and any and all Losses in connection

therewith in excess of the amount of unindemnifiable Losses which the Indemnified Person would have been obligated to pay under the proposed settlement or compromise.

6.5 Failure of Indemnifying Person to Act. In the event that the Indemnifying Person does not assume the defense of any Third Party Claim, suit, action or proceeding brought against an Indemnified Person, then any failure of the Indemnified Person to defend or to participate in the defense of any such Third Party Claim, suit, action or proceeding or to cause the same to be done, shall not relieve the Indemnifying Person of any of its obligations under this Agreement.

6.6 Tax Character. Seller and Purchaser agree that any payments pursuant to this Article VI will be treated for federal and state income tax purposes as adjustments to the purchase price of the Membership Interest, and that they will report such payments on all Tax Returns consistently with such characterization.

#### ARTICLE VII DEFINITIONS

7.1 Defined Terms. As used in this Agreement, the following defined terms have the meanings indicated below:

"Affiliate" means, with respect to any specified Person, any other Person that, directly or indirectly, owns or controls, is under common ownership or control with, or is owned or controlled by, such specified Person.

"Agreement" has the meaning ascribed to it in the recitals.

"Assets and Properties" of any Person means all assets and properties of every kind, nature, character and description (whether real, personal or mixed, whether tangible or intangible, and wherever situated), including the goodwill related thereto, operated, owned or leased by such Person.

"Assignment Agreement" has the meaning ascribed to it in Section 1.4.

"Audited 2003 Financial Statements" means the audited financial statements of the Company as of December 31, 2003, consisting of the balance sheet at such date and the related statements of operations, statement of members' equity, and cash flows for the year then ended, each accompanied by the audit report of its independent public auditors of the Company.

"Business Day" means any day of the year other than (i) any Saturday or Sunday or (ii) any other day on which commercial banks located in New York City are generally closed for business.

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"Business or Condition" of any Person means the business, condition (financial or otherwise), properties, assets or results of operations or prospects of such Person, taken as a whole.

"CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, or any successor statutes and any regulations promulgated thereunder.

"CERCLIS" means the Comprehensive Environmental Response, Compensation and Liability Information System List.

"Closing" has the meaning ascribed to it in Section 1.3.

"Closing Date" means the closing date of the transactions contemplated by Section 1.3.

"Contract" means any contract, lease, commitment, understanding, sales order, purchase order, agreement, indenture, mortgage, note, bond, right, warrant, instrument, plan, permit or license, whether written or oral, which is intended or purports to be binding and enforceable.

"Documents" has the meaning ascribed to it in the Recitals.

"Dollars" or numbers preceded by the symbol "\$" means amounts in United States Dollars.

"Environmental Claim" means any third party (including, without limitations, governmental agencies and employees) action, lawsuit, claim or proceeding (including claims or proceedings under OSHA or similar laws relating to safety of employees) that seeks to impose liability for (a) pollution or contamination of the ambient air, surface water, ground water or land; (b) solid, gaseous or liquid waste generation, handling, treatment, storage, disposal or transportation; (c) exposure to hazardous or toxic substances; (d) the safety or health of employees; or (e) the transportation, processing, distribution in commerce, use or storage of hydrocarbons or chemical substances. An Environmental Claim includes, but is not limited to, a common law action, as well as a proceeding to issue, modify or terminate an Environmental Permit.

"Environmental Law" means any law, rule, regulation or order of other requirements of law (including common law) any federal, foreign, state or local executive, legislative, judicial, regulatory or administrative agency, board or authority with jurisdiction over the Company or any of the Subsidiaries or any of their respective properties or assets that relates to (a) pollution or protection of human health, natural resources and the environment, including ambient air, surface water, ground water or land; (b) solid, gaseous or liquid waste generation, treatment, storage, disposal or transportation; (c) exposure to Hazardous Materials; (d) the safety or health of employees; or (e) regulation of the manufacture, processing, distribution in commerce, use or storage of Hazardous Materials, including hydrocarbons or chemical substances. Environmental Laws include but are not limited to OSHA, CERCLA, the Clean Air Act, as amended, the Federal Water Pollution Control Act, as amended, the Rivers and Harbors Act of 1899, as amended, the Safe Drinking Water Act, as amended, the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), as amended, the Resource Conservation and Recovery

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Act of 1976 ("RCRA"), as amended, the Hazardous and Solid Waste Amendments Act of 1984, as amended, the Toxic Substances Control Act, as amended, the Oil Pollution Act of 1990 ("OPA"), as amended, the Hazardous Materials Transportation Act, as amended, and any other federal, foreign, state and local law whose purpose is to conserve or protect human health, the environment, wildlife or natural resources.

"Environmental Permit" means any permit, license, approval or other authorization under any Environmental Law, applicable law, regulation and other requirement of the United States or any foreign country or of any state, municipality or other subdivision thereof relating to pollution or protection of health or the environment, including laws, regulations or other requirements relating to emissions, discharges, releases or threatened releases of pollutants, contaminants or hazardous substances or toxic materials or wastes into ambient air, surface water, ground water or land, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transportation or handling of hydrocarbons or chemical subsidiaries, pollutants, contaminants or hazardous or toxic materials or wastes.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

"Financial Statements" means the Audited 2003 Financial Statements and the Interim 2004 Financial Statements.

"GAAP" means U.S. generally accepted accounting principles at the time in effect.

"Governmental or Regulatory Authority" means any court, tribunal, arbitrator, authority, administrative or other agency, commission, gaming authority, licensing board official or other instrumentality of the United States or any state, county, city or other political subdivision.

"Hazardous Material" means (a) any "hazardous substance," as defined by CERCLA; (b) any "hazardous waste" or "solid waste," in either case as defined by the Resource Conservation and Recovery Act, as amended; (c) any hazardous, dangerous or toxic chemical, material, waste or substance, regulated by any Environmental Law; (d) any radioactive material, including any naturally occurring radioactive material, and any source, special or byproduct material as defined in 42 U.S.C. 2011 et seq. and any amendments or authorizations thereof; (e) any asbestos-containing materials in any form or condition; (f) any polychlorinated biphenyls in any form or condition; (g) petroleum, petroleum hydrocarbons, or any fraction or byproducts thereof; (h) any air pollutant which

is so designated by the U.S. Environmental Protection Agency as authorized by the Clean Air Act; or (i) any mold or microbial/microbiological contaminants that pose a risk to human health or the environment.

"Interim 2004 Financial Statements" means the unaudited internal financial statements of the Company for the nine months ended September 30, 2004, consisting of the balance sheet at such date and the related statements of operations for the period then ended.

"Knowledge" or "knowledge" means, with respect to the Seller, the Company and/or the Subsidiaries, in each case the knowledge of any director, officer, senior executive, or member of any of Seller, Company or any Subsidiary or Carl C. Icahn.

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"Laws" means all laws, statutes, rules, regulations, ordinances and other pronouncements having the effect of law of the United States or any state, county, city or other political subdivision or of any Governmental or Regulatory Authority.

"License" means licenses, permits, certificates of authority, authorizations, approvals, registrations, findings of suitability, variances, exemptions, certificates of occupancy, orders, franchises and similar consents granted or issued by any Governmental or Regulatory Authority.

"Lien" means any mortgage, lien (except for any lien for Taxes not yet due and payable), charge, restriction, pledge, security interest, option, lease or sublease, claim, right of any third party, easement, encroachment, encumbrance or other adverse claim of any kind or description.

"Loss" or "Losses" means any and all liabilities, losses, costs, claims, damages (including consequential damages), penalties and expenses (including attorneys' fees and expenses and costs of investigation and litigation).

"Material Adverse Effect" or "Material Adverse Change," as to any Person, means a material adverse change (or circumstance involving a prospective change) in the Business or Condition of such Person.

"National Priorities List" means the list of priority contaminated sites maintained by the United States Environmental Protection Agency as contemplated by Section 105 of CERCLA.

"Notes" has the meaning ascribed to it in the Recitals.

"Order" means any writ, judgment, decree, injunction or similar order of any Governmental or Regulatory Authority (in each such case whether preliminary or final).

"OSHA" means the Occupational Safety and Health Act, as amended, or any successor statute, and any regulations promulgated thereunder.

"Person" means any natural person, corporation, limited liability company, general partnership, limited partnership, proprietorship, other business organization, trust, union, association or Governmental or Regulatory Authority.

"Plans" shall mean all material pension and profit sharing, retirement and post retirement welfare benefit, health insurance benefit (medical, dental and vision), disability, life and accident insurance, sickness benefit, vacation, employee loan and banking privileges, bonus, incentive, deferred compensation, workers compensation, stock purchase, stock option, phantom stock and other equity-based, severance, employment, change of control or fringe benefit plans, programs, arrangements or agreements, whether written or oral, including any employee benefit plans defined in Section 3(3) of ERISA, maintained or contributed to by the Company or any of the Subsidiaries.

"Purchaser" has the meaning ascribed to it in the recitals of this Agreement.

"Rights" has the meaning ascribed to it in the Recitals.

"Seller" has the meaning ascribed to it in the recitals of this Agreement.

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"Subsidiary" means Galveston Bay Pipeline Company and Galveston Bay Processing Corporation.

"Tax Return" means any report, return, document, declaration or other information or filing required to be supplied to any taxing authority or jurisdiction (foreign or domestic) with respect to Taxes, including attachments thereto and amendments thereof, and including, without limitation, information returns, any documents with respect to or accompanying payments of estimated Taxes, or with respect to or accompanying requests for the extension of time in which to file any such report, return, document, declaration or other information.

"Taxes" means any and all taxes, charges, fees, levies, duties, liabilities, impositions or other assessments, including, without limitation, income, gross receipts, profits, excise, real or personal property, environmental, recapture, sales, use, value-added, withholding, social security, retirement, employment, unemployment, occupation, service, license, net worth, payroll, franchise, gains, stamp, transfer and recording taxes, fees and charges, imposed by the Internal Revenue Service ("IRS") or any other taxing authority (whether domestic or foreign including, without limitation, any state, county, local or foreign government or any subdivision or taxing agency thereof (including a United States possession)), whether computed on a separate, consolidated, unitary, combined or any other basis; and such term shall include any interest whether paid or received, fines, penalties or additional amounts attributable to, or imposed upon, or with respect to, any such taxes, charges, fees, levies, duties, liabilities, impositions or other assessments.

"Tax" shall have a correlative meaning.

"Third Party Claim" has the meaning ascribed to it in Section 6.3.

"Two Times Prime" means two times the prime rate published by Citibank, N.A.

#### ARTICLE VIII MISCELLANEOUS

8.1 Investigation. It shall be no defense to an action for breach of this Agreement that Purchaser or its agents have (or have not) made investigations into the affairs of the Company or that the Company or Seller could not have known of the misrepresentation or breach of warranty.

8.2 Survival of Representations and Warranties. The representations and warranties of the parties hereunder shall survive the Closing.

8.3 Entire Agreement. This Agreement, including the schedules and exhibits hereto, which are incorporated herein and made an integrated part hereof, constitutes the entire agreement between the parties hereto and supersedes any and all prior discussions and agreements between the parties relating to the subject matter hereof.

8.4 Waiver. Any term or condition of this Agreement may be waived at any time by the party that is entitled to the benefit thereof, but no such waiver shall be effective unless set forth in a written instrument duly executed by or on behalf of the party waiving such term or

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condition. No waiver by any party of any term or condition of this Agreement, in any one or more instances, shall be deemed to be or construed as a waiver of the same or any other term or condition of this Agreement on any future occasion. All remedies, either under this Agreement or by Law or otherwise afforded, will be cumulative and not alternative.

8.5 Amendment. This Agreement may be amended, supplemented or modified only by a written instrument duly executed by or on behalf of each party hereto.

8.6 No Third Party Beneficiary. The terms and provisions of this Agreement are intended solely for the benefit of each party hereto and their respective successors or permitted assigns, and it is not the intention of the parties to confer third party beneficiary rights upon any other Person, except that each Indemnified Persons shall be a third party beneficiary of Article VIII.

8.7 Assignment; Binding Effect. No party may assign this Agreement or any right, interest or obligation hereunder without the prior written consent of the other Parties. This Agreement is binding upon, inures to the benefit of and is enforceable by the parties hereto and their respective successors and assigns.

8.8 Headings. The headings used in this Agreement have been inserted for convenience of reference only and do not define or limit the provisions hereof.

8.9 Invalid Provisions. If any provision of this Agreement is held to be illegal, invalid or unenforceable under any present or future Law, and if the rights or obligations of any party hereto under this Agreement will not be materially and adversely affected thereby, (a) such provision will be fully severable, (b) this Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, and (c) the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance here from.

8.10 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York without giving effect to the conflicts of laws principles thereof.

8.11 Counterparts. This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

8.12 Waiver of Jury Trial. EACH PARTY HERETO HEREBY WAIVES TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY ANY OF THEM AGAINST ANY OTHER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT, OR ANY OTHER AGREEMENTS EXECUTED IN CONNECTION HERewith OR THE ADMINISTRATION THEREOF OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREIN OR THEREIN. No party to this Agreement shall seek a jury trial in any lawsuit, proceeding, counterclaim, or any other litigation procedure based upon, or arising out of, this Agreement or any related instruments or the relationship between the parties. No party will seek to consolidate any such action in which a jury trial has been waived with any other action in which a jury trial cannot be or has not been waived. THE PROVISIONS OF

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THIS SECTION HAVE BEEN FULLY DISCUSSED BY THE PARTIES HERETO, AND THESE PROVISIONS SHALL BE SUBJECT TO NO EXCEPTIONS. NO PARTY HAS IN ANY WAY AGREED WITH OR REPRESENTED TO ANY OTHER PARTY THAT THE PROVISIONS OF THIS SECTION WILL NOT BE FULLY ENFORCED IN ALL INSTANCES.

8.13 Consent to Jurisdiction. Each party irrevocably submits to the exclusive jurisdiction of any NY State Court in the County of New York or any courts of the United States of America located in the Southern District of New York, and each party hereby agrees that all suits, actions and proceedings brought by such party hereunder shall be brought in any such court. Each party irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of the venue of any such suit, action or proceeding brought in any such court, any claim that any such suit, action or proceeding brought in such a court has been brought in an inconvenient forum and the right to object, with respect to any such suit, action or proceeding brought in any such court, that such court does not have jurisdiction over such party or the other party. In any such suit, action or proceeding, each party waives, to the fullest extent it may effectively do so, personal service of any summons, complaint or other process and agrees that the service thereof may be made by any means permitted by Section 0 (other than facsimile transmission). Each party agrees that a final non-appealable judgment in any such suit, action or proceeding brought in such a court shall be conclusive and binding.

8.14 Expenses. All expenses, costs and fees in connection with the transactions contemplated hereby (including fees and disbursements of counsel, consultants and accountants) incurred by (a) Seller shall be paid and borne exclusively by Seller, and (b) Purchaser shall be paid and borne exclusively by Purchaser.

8.15 Notices. All notices, request, demands and other communications hereunder shall be in writing and shall be delivered personally, by certified or registered mail, return receipt requested, and postage prepaid, by courier, or by facsimile transmission, addressed as follows:

If to Seller:

Thornwood Associates L.P.  
100 South Bedford Road Suite 210  
Mt. Kisco, NY 10549

If to Purchaser:

c/o American Real Estate Partners, L.P. 100  
South Bedford Rd.  
Mt. Kisco, NY 10549

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With a copy to:

Debevoise & Plimpton LLP  
919 Third Avenue  
New York, NY 10022  
Attention: William D. Regner

or to such other address as a party may from time to time designate in writing in accordance with this Section. Each notice or other communication given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been received (a) on the Business Day it is sent, if sent by personal delivery, (b) the earlier of receipt of three Business Days after having been sent by certified or registered mail, return receipt requested and postage prepaid, (c) on the Business Day it is sent, if sent by facsimile transmission and an activity report showing the correct facsimile number of the party on whom notice is served and the correct number of pages transmitted is obtained by the sender (provided, however, that such notice or other communication is also sent by some other means permitted by this Section 8.15, or (d) on the first Business Day after sending, if sent by courier or overnight delivery.

8.16 Further Assurances. Seller covenants and agrees that, from time to time subsequent to Closing, it will, at the request of Purchaser, execute and deliver all such documents, including, without limitation, all such additional conveyances, transfers, consents and other assurances and do all such other acts and things as Purchaser may from time to time request be executed or done in order to better evidence, perfect or effect any provision of this Agreement, or of any agreement or other document executed pursuant to this Agreement, or any of the respective obligations intended to be created hereby or thereby.

[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the duly authorized officer of each party hereto as of the date first above written.

THORNWOOD ASSOCIATES L.P.

By: Barberrry Corp., its general  
partner

By: /s/ Edward E. Mattner

-----  
Name: Edward E. Mattner  
Title: Vice President

AREP OIL & GAS LLC

By: American Real Estate Holdings  
Limited Partnership, its member

By: American Property Investors,  
Inc., its general partner

By: /s/ John P. Saldarelli

-----  
Name: John P. Saldarelli  
Title: Chief Financial Officer

Exhibit A

Assignment and Assumption Agreement

Assignment and Assumption Agreement, dated as of December\_\_\_\_, 2004,  
between Thornwood Associates L.P. (the "Seller") and AREP Oil & Gas LLC (the  
"Purchaser"). Capitalized terms used herein shall have the meanings attributed  
to them in the Purchase Agreement, dated as of even date herewith, between  
Purchaser and Seller (the "Purchase Agreement").

In consideration of the purchase and sale of the Notes and Rights in  
accordance with the Purchase Agreement, Purchaser and Seller agree as follows:

1. Seller hereby transfers and conveys all of its right, title and  
interest in and to the Notes and Rights to Purchaser.

2. Purchaser hereby accepts all of Seller's right, title and interest in  
and to the Notes and Rights.

3. As a result of the foregoing, Purchaser is the sole owner of the Notes  
and Rights.

4. Seller hereby assigns to Purchaser all rights under all UCC filings,  
mortgages and similar security or perfection documents relating to the Notes and  
Rights and, following the date hereof and at the sole cost and expense of Seller  
will, at the request of Purchaser, promptly file all assignments and other  
documents so requested by Purchaser in respect of the foregoing.

IN WITNESS WHEREOF, the parties have executed this document on  
\_\_\_\_\_, 2004.

THORNWOOD ASSOCIATES L.P.

By: Barberry Corp., its general partner

By: \_\_\_\_\_  
Name:  
Title:

AREP OIL & GAS LLC

By: \_\_\_\_\_  
Name:  
Title:

Assignment and Assumption Agreement

Assignment and Assumption Agreement, dated as of December 6, 2004, between Thornwood Associates L.P. (the "Seller") and AREP Oil & Gas LLC (the "Purchaser"). Capitalized terms used herein shall have the meanings attributed to them in the Purchase Agreement, dated as of even date herewith, between Purchaser and Seller (the "Purchase Agreement").

In consideration of the purchase and sale of the Notes and Rights in accordance with the Purchase Agreement, Purchaser and Seller agree as follows:

1. Seller hereby transfers and conveys all of its right, title and interest in and to the Notes and Rights to Purchaser.
2. Purchaser hereby accepts all of Seller's right, title and interest in and to the Notes and Rights.
3. As a result of the foregoing, Purchaser is the sole owner of the Notes and Rights.
4. Seller hereby assigns to Purchaser all rights under all UCC filings, mortgages and similar security or perfection documents relating to the Notes and Rights and, following the date hereof and at the sole cost and expense of Seller will, at the request of Purchaser, promptly file all assignments and other documents so requested by Purchaser in respect of the foregoing.

IN WITNESS WHEREOF, the parties have executed this document on December 6, 2004.

THORNWOOD ASSOCIATES L.P.

By: Barberrry Corp., its general partner

By: /s/ Edward E. Mattner

-----  
Name: Edward E. Mattner  
Title: Vice President

AREP OIL & GAS LLC

By: American Real Estate Holdings  
Limited Partnership, its member

By: American Property Investors,  
Inc., its general partner

By: /s/ John P. Saldarelli

-----  
Name: John P. Saldarelli  
Title: Chief Financial Officer

MEMBERSHIP INTEREST PURCHASE AGREEMENT

Dated as of December 6, 2004

by and among

AREP Oil & Gas LLC, as Purchaser

and

Arnos Corp.,

High River Limited Partnership

and

Hopper Investments LLC, as Sellers

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This MEMBERSHIP INTEREST PURCHASE AGREEMENT (the or this "Agreement") dated as of December 6, 2004 is made and entered into by and among Arnos Corp., a Nevada corporation ("Arnos"), High River Limited Partnership, a Delaware limited partnership ("High River"), Hopper Investments, LLC, a Delaware limited liability company ("Hopper" and together with Arnos and High River, each a "Seller" and collectively, the "Sellers"), and AREP Oil & Gas LLC, a Delaware limited liability company ("Purchaser"). Capitalized terms not otherwise defined herein have the meanings set forth in Article VII.

WHEREAS, Mid River LLC, a Delaware limited liability company (the "Company") owns \$38,000,000 principal amount of term loans outstanding (the "Panaco Debt") representing 100% of the Commitment Percentage (as such term is defined therein) under the Term Loan and Security Agreement together with all related agreements (the "Credit Agreement"), dated as of November 16, 2004, among Panaco, Inc. ("Panaco"). as Borrower, the Lenders (as defined therein), and the Company, as Administrative Agent;

WHEREAS, the members of the Company are Arnos with a membership interest of 98% ("Arnos LLC Interest") and each of High River and Hopper with membership interests of 1% (the "High River LLC Interest" and "Hopper LLC Interest", respectively, and collectively with the Arnos LLC Interest, the "Membership Interests");

WHEREAS, Purchaser desires to purchase the Membership Interests from the Company's members on the terms and subject to the conditions set forth in this Agreement; and

WHEREAS, each of Arnos, High River and Hopper desire to sell its respective portion of the Membership Interests to Purchaser on the terms and subject to the conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I  
SALE OF MEMBERSHIP INTEREST AND CLOSING

1.1 Purchase and Sale. Each of the Sellers hereby agrees to sell to Purchaser its portion of the Membership Interests, and Purchaser agrees to purchase from each Seller such Seller's portion of the Membership Interests, at the Closing on the terms and subject to the conditions set forth in this Agreement.

1.2 Purchase Price. The aggregate purchase price for the Membership Interests is \$38,125,998.63 (the "Purchase Price").

1.3 Closing. Upon the terms and subject to the conditions of this Agreement, the closing of the transactions contemplated hereby (the "Closing") shall take place simultaneously with the execution and delivery of this Agreement. The date on which the Closing occurs is herein referred to as the "Closing Date."

1.4 Actions at the Closing. At the Closing: (i) Purchaser shall pay the Purchase Price to Sellers in accordance with the amounts set forth on Schedule A attached hereto, by electronic transfer of immediately available funds to the respective accounts of each Seller in accordance with the instructions set forth on Schedule A, and (ii) Purchaser and Sellers shall enter into an Assignment Agreement in the form of Exhibit A attached hereto (the "Assignment Agreement") pursuant to which Sellers shall assign all of the limited liability company interests in the Company to Purchaser.

ARTICLE II  
REPRESENTATIONS AND WARRANTIES REGARDING SELLERS

As an inducement to Purchaser to enter into this Agreement, Sellers, jointly and severally, hereby make the following representations and warranties to Purchaser:

2.1 Organization. Each Seller is duly organized, validly existing and in good standing under the Laws of its state of organization. Each Seller has full organizational power and authority to execute and deliver this Agreement and to perform its obligations hereunder and to consummate the transactions contemplated hereby, including without limitation to sell and transfer (pursuant to this Agreement) the Membership Interests.

2.2 Authority. The execution and delivery by each Seller of this Agreement, and the performance by each Seller of its obligations hereunder, have been duly and validly authorized by each Seller and no other action on the part of each Seller, its shareholders, its managing member, its general partner, its limited partners or its board (as applicable) is necessary for such execution, delivery or performance. This Agreement has been duly and validly executed and delivered by each Seller and constitutes a legal, valid and binding obligation of each Seller, enforceable against each Seller in accordance with its terms.

2.3 Title. The delivery of the Assignment Agreement and other instruments of transfer delivered by each Seller to Purchaser at the Closing will transfer to Purchaser good and valid title to the Membership Interests, free and clear of all Liens other than Liens created by Purchaser.

2.4 No Conflicts. The execution and delivery by each Seller of this Agreement do not, and the performance by each Seller of its obligations under this Agreement and the consummation of the transactions contemplated hereby will not:

(a) conflict with or result in a violation or breach of any of the terms, conditions or provisions of the organizational documents of any Seller;

(b) conflict with or result in a violation or breach of any term or provision of any Law or Order applicable to any Seller or any of its Assets and Properties; or

(c) (i) conflict with or result in a violation or breach of, (ii) constitute (with or without notice or lapse of time or both) a default under, (iii) require any Seller to obtain any consent, approval or action of, make any filing with or give any notice to any Person as a result or under the terms of, (iv) result in or give to any Person any right of termination, cancellation,

acceleration or modification in or with respect to, or (v) result in the creation or imposition of any Lien upon any Seller or any of its Assets and Properties under, any Contract or License to which any Seller is a party or by which any of its Assets and Properties is bound.

2.5 Consents and Approvals. No consent, authorization or approval of, filing or registration with, or cooperation from, any Governmental Authority or any other Person not a party to this Agreement is necessary in connection with

the execution, delivery and performance by any Seller of this Agreement or the consummation of the transactions contemplated hereby.

2.6 Brokers. Neither any Seller nor the Company has used any broker or finder in connection with the transactions contemplated hereby, and neither Purchaser nor any Affiliate of Purchaser has or shall have any liability or otherwise suffer or incur any Loss as a result of or in connection with any brokerage or finder's fee or other commission of any Person retained or purporting to be retained by any Seller or by the Company in connection with any of the transactions contemplated by this Agreement.

2.7 Accuracy of Statements. Neither this Agreement nor any schedule, exhibit, statement, list, document, certificate or other information furnished or to be furnished by or on behalf of the Company or any Seller to Purchaser or any representative or Affiliate of Purchaser in connection with this Agreement or any of the transactions contemplated hereby contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary to make the statements contained herein or therein, in light of the circumstances in which they are made, not misleading.

### ARTICLE III REPRESENTATIONS AND WARRANTIES OF SELLERS

As an inducement to Purchaser to enter into this Agreement, Sellers jointly and severally hereby make the following representations to Purchaser.

#### 3.1 Due Organization of Company.

(a) The Company is duly organized and validly existing under the laws of the state in which it is organized, with all requisite power and authority to own, lease and operate its properties and to carry on its business as it is now being owned, leased, operated and conducted. The Company is licensed or qualified to do business and is in good standing (where the concept of "good standing" is applicable) as a foreign corporation in each jurisdiction where the nature of the properties owned, leased or operated by it and the business transacted by it require such licensing or qualification.

(b) The Sellers have delivered to Purchaser true, correct and complete copies of the organizational documents of the Company and the Subsidiaries, which organizational documents are in full force and effect.

3.2 Capitalization. Sellers own 100% of the limited liability company interests of the Company, free and clear of all Liens. No Person holds any option, warrant, convertible security or other right to acquire any interest in the Company. There are no obligations, contingent or

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otherwise, of the Company to repurchase, redeem or otherwise acquire any ownership interests of the Company or to provide funds to or make any material investment (in the form of a loan, capital contribution or otherwise) in any other Person.

3.3 Subsidiaries. The Company has no subsidiaries.

3.4 Consents and Approvals. No consent, authorization or approval of, filing or registration with, or cooperation from, any Governmental Authority or any other Person not a party to this Agreement is necessary in connection with the execution, delivery and performance by each Seller of its respective obligations under this Agreement or the consummation by each Seller of its respective transactions contemplated hereby.

#### 3.5 Financial Statements.

(a) The Sellers have delivered to Purchaser true, correct and complete copies of the Financial Statements of Panaco. The Financial Statements have been prepared in accordance with GAAP consistently applied and present fairly the financial position, assets, liabilities and retained earnings of the respective companies as of the dates thereof and the revenues, expenses, results of operations, and cash flows of the respective companies for the periods covered thereby. The Financial Statements are in accordance with the books and records of the respective companies, do not reflect any transactions which are not bona fide transactions and do not contain any untrue statement of a material

fact (whether or not required to be disclosed under GAAP) or omit to state any material fact necessary to make the statements contained therein, in light of the circumstances in which they were made, not misleading.

(b) The Sellers have delivered to Purchaser true and complete copies of all Interim 2004 Financial Statements of Panaco. The Interim 2004 Financial Statements present fairly the financial position, assets, liabilities and retained earnings of the respective companies as of the dates thereof and the revenues, expenses, results of operations, and cash flows of the respective companies for the periods covered thereby. The Interim 2004 Financial Statements are in accordance with the books and records of the respective companies, do not reflect any transactions which are not bona fide transactions and do not contain any untrue statement of a material fact (whether or not required to be disclosed under GAAP) or omit to state any material fact necessary to make the statements contained therein, in light of the circumstances in which they were made, not misleading.

3.6 Company Status. The Company was formed solely for the purpose of engaging in the transactions of owning interests in Panaco. The Company has engaged in no other business activities other than owning debt and equity issued by Panaco. The Company has no liabilities, contracts, debts, claims, or obligations whether accrued, absolute, contingent or otherwise, whether due or to become due other than under the Credit Agreement. The Company has no Assets, Properties or operations other than under the Credit Agreement and owning the loans and serving as Agent thereunder.

3.7 No Adverse Effects or Changes. Since December 31, 2003, (i) neither the Company nor any of the Subsidiaries has suffered any Material Adverse Effect; (ii) there has been no change, event, development, damage or circumstance affecting the Company or the Subsidiaries that, individually or in the aggregate could reasonably be expected to have a Material Adverse Effect on the Company or any of the Subsidiaries; (iii) there has not been any

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change by the Company or any of the Subsidiaries in its accounting methods, principles or practices, or any revaluation by the Company or any of the Subsidiaries of any of its assets, including writing down the value of inventory or writing off notes or accounts receivable; and (iv) the Company and each of the Subsidiaries has conducted its business only in the ordinary course of business consistent with past practice.

3.8 Credit Agreement. All of the representations and warranties of Panaco set forth in the Credit Agreement are true and correct and Panaco is not in breach of any term or provision of the Credit Agreement. There is no event of default (as defined in the Credit Agreement).

3.9 Compliance with Law. The Company and the Subsidiaries are in compliance and, at all times, have been in compliance in all respects with all applicable Laws relating to the Company or the Subsidiaries or their respective Assets and Properties or businesses. No investigation or review by any governmental authority or self-regulatory authority is pending or, to the knowledge of the Sellers, threatened, nor has any such authority indicated orally or in writing to the Sellers, the Company or any of the Subsidiaries an intention to conduct an investigation or review of the Company or any of the Subsidiaries or, with respect to the Company or any of the Subsidiaries, of the Sellers.

3.10 Security Interests As of the Closing, the Purchaser shall have a legal, valid and enforceable, first priority perfected security interest in all right, title and interest of Panaco in the "Collateral" described in the Documents. All liens granted under the Credit Agreement are and will be as of the Closing, for all purposes, valid, perfected, enforceable, non-avoidable and effective as of the Closing without any further action by the Purchaser, the Sellers, Panaco or any other party.

#### ARTICLE IV REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser hereby represents and warrants to Sellers as follows:

4.1 Organization of Purchaser. Purchaser is a limited liability company duly formed, validly existing and in good standing under the Laws of the State

of Delaware. Purchaser has full organizational power and authority to execute and deliver this Agreement and to perform Purchaser's obligations hereunder and to consummate the transactions contemplated hereby, including without limitation to buy pursuant to this Agreement the Membership Interest.

4.2 Authority. The execution and delivery by Purchaser of this Agreement, and the performance by Purchaser of its obligations hereunder, have been duly and validly authorized and, no other limited liability company action on the part of Purchaser is necessary. This Agreement has been duly and validly executed and delivered by Purchaser and constitutes a legal, valid and binding obligation of Purchaser enforceable against Purchaser in accordance with its terms.

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4.3 No Conflicts. The execution and delivery by Purchaser of this Agreement do not, the performance by Purchaser of its obligations under this Agreement and the consummation of the transactions contemplated hereby, will not:

(a) conflict with, or result in a violation or breach of, any of the terms, conditions or provisions of the organizational documents of Purchaser;

(b) conflict with, or result in a violation or breach of, any term or provision of any Law or Order applicable to Purchaser or any of its Assets and Properties (other than such conflicts, violations or breaches which will not have a Material Adverse Effect on Purchaser); or

(c) (i) conflict with, or result in a violation or breach of, (ii) constitute (with or without notice or lapse of time or both) a default under, (iii) require Purchaser to obtain any consent, approval or action of, make any filing with or give any notice to any Person as a result or under the terms of, (iv) result in or give to any Person any right of termination, cancellation, acceleration or modification in or with respect to, or (v) result in the creation or imposition of any Lien upon Purchaser or any of its Assets and Properties under, any Contract or License to which Purchaser is a party or by which any of its Assets and Properties is bound.

#### ARTICLE V ASSIGNMENT AND ASSUMPTION

At the Closing, Sellers and Purchaser shall enter into the Assignment Agreement pursuant to which Sellers will transfer, assign, convey and grant to Purchaser, its successors and assigns forever 100% of Sellers' rights, title and interest to the Membership Interests.

#### ARTICLE VI INDEMNIFICATION

6.1 Indemnification by Sellers. Sellers agree jointly and severally to indemnify Purchaser, its Affiliates and their respective officers, directors, employees independent contractors, stockholders, principals, partners, agents, or representatives (each an "Indemnified Person" and collectively, the "Indemnified Persons") against, and to hold each Indemnified Person harmless from, any and all Losses incurred or suffered by any Indemnified Person relating to or arising out of or in connection with (a) any breach of or any inaccuracy in any representation or warranty made by Sellers in this Agreement, or (b) any breach of or failure by any Sellers to perform any of its covenants or obligations set out or contemplated in this Agreement.

6.2 Claims. As promptly as is reasonably practicable after becoming aware of a claim for indemnification under this Agreement, the Indemnified Person shall promptly give notice to the indemnifying Seller or Sellers ("Indemnifying Person") of such claim and the amount the Indemnified Person will be entitled to receive hereunder from the Indemnifying Person; provided that the failure of the Indemnified Person to promptly give notice shall not relieve the Indemnifying Person of its obligations except to the extent (if any) that the Indemnifying Person

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shall have been prejudiced thereby. If the Indemnifying Person does not object in writing to such indemnification claim within 30 days of receiving notice thereof, the Indemnified Person shall be entitled to recover, on the thirty-fifth day after such notice was given, from the Indemnifying Person the amount of such claim, and no later objection by the Indemnifying Person shall be permitted; if the Indemnifying Person agrees that it has an indemnification obligation but objects that it is obligated to pay only a lesser amount, the Indemnified Person shall nevertheless be entitled to recover, on the thirty-fifth day after such notice was given, from the Indemnifying Person the lesser amount, without prejudice to the Indemnified Person's claim for the difference. In addition to the amounts recoverable by the Indemnified Person from the Indemnifying Person pursuant to the foregoing provisions, the Indemnified Person shall also be entitled to recover from the Indemnifying Person interest on such amounts at the rate of Two Times Prime from, and including, the thirty-fifth day after such notice of an indemnification claim is given to, but not including, the date such recovery is actually made by the Indemnified Person.

6.3 Notice of Third Party Claims; Assumption of Defense. The Indemnified Person shall give notice as promptly as is reasonably practicable to the Indemnifying Person of the assertion of any claim, or the commencement of any suit, action or proceeding, by any Person not a party hereto (a "Third Party Claim") in respect of which indemnity may be sought under this Agreement; provided that the failure of the Indemnified Person to promptly give notice shall not relieve the Indemnifying Person of its obligations except to the extent (if any) that the Indemnifying Person shall have been prejudiced thereby. The Indemnifying Person may, at its own expense, participate in the defense of any Third Party Claim, suit, action or proceeding (a) upon notice to the Indemnified Person and (b) upon delivery by the Indemnifying Person to the Indemnified Person a written agreement that the Indemnified Person is entitled to indemnification for all Losses arising out of such Third Party Claim, suit, action or proceeding and that the Indemnifying Person shall be liable for the entire amount of any Loss, at any time during the course of any such Third Party Claim, suit, action or proceeding, assume the defense thereof; provided, however, that (i) the Indemnifying Person's counsel is reasonably satisfactory to the Indemnified Person, and (ii) the Indemnifying Person shall thereafter consult with the Indemnified Person upon the Indemnified Person's reasonable request for such consultation from time to time with respect to such Third Party Claim, suit, action or proceeding. If the Indemnifying Person assumes such defense, the Indemnified Person shall have the right (but not the duty) to participate in the defense thereof and to employ counsel, at its own expense, separate from the counsel employed by the Indemnifying Person. If, however, the Indemnified Person reasonably determines in its judgment that representation by the Indemnifying Person's counsel of both the Indemnifying Person and the Indemnified Person would present such counsel with a conflict of interest, then such Indemnified Person may employ separate counsel to represent or defend it in any such Third Party Claim, action, suit or proceeding and the Indemnifying Person shall pay all of the fees and disbursements in connection with the retention of such separate counsel. If the Indemnifying Person fails to promptly notify the Indemnified Party that the Indemnifying Party desires to defend the Third Party Claim pursuant, or if the Indemnifying Person gives such notice but fails to prosecute vigorously and diligently or settle the Third Party Claim, then the Indemnified Party will have the right to defend, at the sole cost and expense of the Indemnifying Person, the Third Party Claim by all appropriate proceedings, which proceedings will be prosecuted by the Indemnifying Person in good faith or will be settled at the discretion of the Indemnifying Person (with the consent of the Indemnifying Person, which consent will not be unreasonably withheld). The Indemnifying Person will have full control of

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such defense and proceedings, including any compromise or settlement thereof. Whether or not the Indemnifying Person chooses to defend or prosecute any such Third Party Claim, suit, action or proceeding, all of the parties hereto shall cooperate in the defense or prosecution thereof.

6.4 Settlement or Compromise. Any settlement or compromise made or caused to be made by the Indemnified Person or the Indemnifying Person, of any claim, suit, action or proceeding shall also be binding upon the Indemnifying Person or the Indemnified Person, as the case may be, in the same manner as if a final judgment or decree had been entered by a court of competent jurisdiction in the amount of such settlement or compromise thereof; provided, however, that no obligation, restriction or Loss shall be imposed on the Indemnified Person as a

result of such settlement without its prior written consent. The Indemnified Person will give the Indemnifying Person at least 30 days' notice of any proposed settlement or compromise of any Third Party Claim, suit, action or proceeding it is defending, during which time the Indemnifying Person may reject such proposed settlement or compromise; provided, however, that from and after such rejection, the Indemnifying Person shall be obligated to assume the defense of and full and complete liability and responsibility for such Third Party Claim, suit, action or proceeding and any and all Losses in connection therewith in excess of the amount of unindemnifiable Losses which the Indemnified Person would have been obligated to pay under the proposed settlement or compromise.

6.5 Failure of Indemnifying Person to Act. In the event that the Indemnifying Person does not assume the defense of any Third Party Claim, suit, action or proceeding brought against an Indemnified Person, then any failure of the Indemnified Person to defend or to participate in the defense of any such Third Party Claim, suit, action or proceeding or to cause the same to be done, shall not relieve the Indemnifying Person of any of its obligations under this Agreement.

6.6 Tax Character. Sellers and Purchaser agree that any payments pursuant to this Article VI will be treated for federal and state income tax purposes as adjustments to the purchase price of the Membership Interest, and that they will report such payments on all Tax Returns consistently with such characterization.

#### ARTICLE VII DEFINITIONS

7.1 Defined Terms. As used in this Agreement, the following defined terms have the meanings indicated below:

"Affiliate" means, with respect to any specified Person, any other Person that, directly or indirectly, owns or controls, is under common ownership or control with, or is owned or controlled by, such specified Person.

"Agreement" has the meaning ascribed to it in the recitals.

"Assets and Properties" of any Person means all assets and properties of every kind, nature, character and description (whether real, personal or mixed, whether tangible or intangible, and wherever situated), including the goodwill related thereto, operated, owned or leased by such Person.

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"Assignment Agreement" has the meaning ascribed to it in Section 1.4.

"Audited 2003 Financial Statements" means the audited financial statements of Panaco as of December 31, 2003, consisting of the balance sheet at such date and the related statements of operations, statement of members' equity, and cash flows for the year then ended, each accompanied by the audit report of its independent public auditors.

"Business Day" means any day of the year other than (i) any Saturday or Sunday or (ii) any other day on which commercial banks located in New York City are generally closed for business.

"Business or Condition" of any Person means the business, condition (financial or otherwise), properties, assets or results of operations or prospects of such Person, taken as a whole.

"Closing" has the meaning ascribed to it in Section 1.3.

"Closing Date" means the closing date of the transactions contemplated by Section 1.3.

"Contract" means any contract, lease, commitment, understanding, sales order, purchase order, agreement, indenture, mortgage, note, bond, right, warrant, instrument, plan, permit or license, whether written or oral, which is intended or purports to be binding and enforceable.

"Dollars" or numbers preceded by the symbol "\$" means amounts in United States Dollars.

"Financial Statements" means the Audited 2003 Financial Statements and the

Interim 2004 Financial Statements.

"GAAP" means U.S. generally accepted accounting principles at the time in effect.

"Governmental or Regulatory Authority" means any court, tribunal, arbitrator, authority, administrative or other agency, commission, gaming authority, licensing board official or other instrumentality of the United States or any state, county, city or other political subdivision.

"Interim 2004 Financial Statements" means the unaudited internal financial statements of Panaco for the nine months ended September 30, 2004, consisting of the balance sheet at such date and the related statements of operations for the period then ended.

"Knowledge" or "knowledge" means, with respect to the Sellers, the Company and/or the Subsidiaries, in each case the knowledge of any director, officer, senior executive, or member of any of Sellers.

"Laws" means all laws, statutes, rules, regulations, ordinances and other pronouncements having the effect of law of the United States or any state, county, city or other political subdivision or of any Governmental or Regulatory Authority.

"License" means licenses, permits, certificates of authority, authorizations, approvals, registrations, findings of suitability, variances, exemptions, certificates of occupancy, orders, franchises and similar consents granted or issued by any Governmental or Regulatory Authority.

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"Lien" means any mortgage, lien (except for any lien for Taxes not yet due and payable), charge, restriction, pledge, security interest, option, lease or sublease, claim, right of any third party, easement, encroachment, encumbrance or other adverse claim of any kind or description.

"Loss" or "Losses" means any and all liabilities, losses, costs, claims, damages (including consequential damages), penalties and expenses (including attorneys' fees and expenses and costs of investigation and litigation).

"Material Adverse Effect" or "Material Adverse Change," as to any Person, means a material adverse change (or circumstance involving a prospective change) in the Business or Condition of such Person.

"Membership Interests" has the meaning ascribed to it in the Recitals of this Agreement.

"Order" means any writ, judgment, decree, injunction or similar order of any Governmental or Regulatory Authority (in each such case whether preliminary or final).

"Person" means any natural person, corporation, limited liability company, general partnership, limited partnership, proprietorship, other business organization, trust, union, association or Governmental or Regulatory Authority.

"Purchaser" has the meaning ascribed to it in the recitals of this Agreement.

"Seller" has the meaning ascribed to it in the recitals of this Agreement.

"Sellers" has the meaning ascribed to it in the recitals of this Agreement.

"Tax Return" means any report, return, document, declaration or other information or filing required to be supplied to any taxing authority or jurisdiction (foreign or domestic) with respect to Taxes, including attachments thereto and amendments thereof, and including, without limitation, information returns, any documents with respect to or accompanying payments of estimated Taxes, or with respect to or accompanying requests for the extension of time in which to file any such report, return, document, declaration or other information.

"Taxes" means any and all taxes, charges, fees, levies, duties, liabilities, impositions or other assessments, including, without limitation, income, gross receipts, profits, excise, real or personal property, environmental, recapture, sales, use, value-added, withholding, social security, retirement, employment, unemployment, occupation, service, license, net worth, payroll, franchise, gains, stamp, transfer and recording taxes, fees and charges, imposed by the Internal Revenue Service ("IRS") or any other taxing authority (whether domestic or foreign including, without limitation, any state, county, local or foreign government or any subdivision or taxing agency thereof (including a United States possession)), whether computed on a separate, consolidated, unitary, combined or any other basis; and such term shall include any interest whether paid or received, fines, penalties or additional amounts attributable to, or imposed upon, or with respect to, any such taxes, charges, fees, levies, duties, liabilities, impositions or other assessments.

"Tax" shall have a correlative meaning.

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"Third Party Claim" has the meaning ascribed to it in Section 6.3.

"Two Times Prime" means two times the prime rate published by Citibank, N.A.

ARTICLE VIII  
MISCELLANEOUS

8.1 Investigation. It shall be no defense to an action for breach of this Agreement that Purchaser or its agents have (or have not) made investigations into the affairs of the Company or that the Company or Sellers could not have known of the misrepresentation or breach of warranty.

8.2 Survival of Representations and Warranties. The representations and warranties of the parties hereunder shall survive the Closing.

8.3 Entire Agreement. This Agreement, including the schedules and exhibits hereto, which are incorporated herein and made an integrated part hereof, constitutes the entire agreement between the parties hereto and supersedes any and all prior discussions and agreements between the parties relating to the subject matter hereof.

8.4 Waiver. Any term or condition of this Agreement may be waived at any time by the party that is entitled to the benefit thereof, but no such waiver shall be effective unless set forth in a written instrument duly executed by or on behalf of the party waiving such term or condition. No waiver by any party of any term or condition of this Agreement, in any one or more instances, shall be deemed to be or construed as a waiver of the same or any other term or condition of this Agreement on any future occasion. All remedies, either under this Agreement or by Law or otherwise afforded, will be cumulative and not alternative.

8.5 Amendment. This Agreement may be amended, supplemented or modified only by a written instrument duly executed by or on behalf of each party hereto.

8.6 No Third Party Beneficiary. The terms and provisions of this Agreement are intended solely for the benefit of each party hereto and their respective successors or permitted assigns, and it is not the intention of the parties to confer third party beneficiary rights upon any other Person, except that (a) each Indemnified Persons shall be a third party beneficiary of Article VI, and (b) AREP shall be a third party beneficiary of Section 8.14.

8.7 Assignment; Binding Effect. No party may assign this Agreement or any right, interest or obligation hereunder without the prior written consent of the other Parties. This Agreement is binding upon, inures to the benefit of and is enforceable by the parties hereto and their respective successors and assigns.

8.8 Headings. The headings used in this Agreement have been inserted for convenience of reference only and do not define or limit the provisions hereof.

8.9 Invalid Provisions. If any provision of this Agreement is held to be illegal, invalid or unenforceable under any present or future Law, and if the rights or obligations of any party hereto under this Agreement will not be materially and adversely affected thereby, (a) such

provision will be fully severable, (b) this Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, and (c) the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance here from.

8.10 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York without giving effect to the conflicts of laws principles thereof.

8.11 Counterparts. This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

8.12 Waiver of Jury Trial. EACH PARTY HERETO HEREBY WAIVES TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY ANY OF THEM AGAINST ANY OTHER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT, OR ANY OTHER AGREEMENTS EXECUTED IN CONNECTION HERewith OR THE ADMINISTRATION THEREOF OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREIN OR THEREIN. No party to this Agreement shall seek a jury trial in any lawsuit, proceeding, counterclaim, or any other litigation procedure based upon, or arising out of, this Agreement or any related instruments or the relationship between the parties. No party will seek to consolidate any such action in which a jury trial has been waived with any other action in which a jury trial cannot be or has not been waived. THE PROVISIONS OF THIS SECTION HAVE BEEN FULLY DISCUSSED BY THE PARTIES HERETO, AND THESE PROVISIONS SHALL BE SUBJECT TO NO EXCEPTIONS. NO PARTY HAS IN ANY WAY AGREED WITH OR REPRESENTED TO ANY OTHER PARTY THAT THE PROVISIONS OF THIS SECTION WILL NOT BE FULLY ENFORCED IN ALL INSTANCES.

8.13 Consent to Jurisdiction. Each party irrevocably submits to the exclusive jurisdiction of any NY State Court in the County of New York or any courts of the United States of America located in the Southern District of New York, and each party hereby agrees that all suits, actions and proceedings brought by such party hereunder shall be brought in any such court. Each party irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of the venue of any such suit, action or proceeding brought in any such court, any claim that any such suit, action or proceeding brought in such a court has been brought in an inconvenient forum and the right to object, with respect to any such suit, action or proceeding brought in any such court, that such court does not have jurisdiction over such party or the other party. In any such suit, action or proceeding, each party waives, to the fullest extent it may effectively do so, personal service of any summons, complaint or other process and agrees that the service thereof may be made by any means permitted by Section 8.15 (other than facsimile transmission). Each party agrees that a final non-appealable judgment in any such suit, action or proceeding brought in such a court shall be conclusive and binding.

8.14 Expenses. All expenses, costs and fees in connection with the transactions contemplated hereby (including fees and disbursements of counsel, consultants and accountants) incurred by (a) Sellers shall be paid and borne exclusively by Sellers, and (b) Purchaser shall be paid and borne exclusively by Purchaser.

8.15 Notices. All notices, request, demands and other communications hereunder shall be in writing and shall be delivered personally, by certified or registered mail, return receipt requested, and postage prepaid, by courier, or by facsimile transmission, addressed as follows:

If to Sellers:

c/o Icahn Associates Corp.  
767 Fifth Avenue, 47th floor  
New York NY 10153

If to Purchaser:

c/o American Real Estate Partners, L.P.  
100 South Bedford Rd.  
Mt. Kisco, NY 10549

With a copy to:

Debevoise & Plimpton LLP  
919 Third Avenue  
New York, NY 10022  
Attention: William D. Regner

or to such other address as a party may from time to time designate in writing in accordance with this Section. Each notice or other communication given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been received (a) on the Business Day it is sent, if sent by personal delivery, (b) the earlier of receipt of three Business Days after having been sent by certified or registered mail, return receipt requested and postage prepaid, (c) on the Business Day it is sent, if sent by facsimile transmission and an activity report showing the correct facsimile number of the party on whom notice is served and the correct number of pages transmitted is obtained by the sender (provided, however, that such notice or other communication is also sent by some other means permitted by this Section 0, or (d) on the first Business Day after sending, if sent by courier or overnight delivery.

8.16 Further Assurances. Sellers covenant and agree that, from time to time subsequent to Closing, any Seller will, at the request of Purchaser, execute and deliver all such documents, including, without limitation, all such additional conveyances, transfers, consents and other assurances and do all such other acts and things as Purchaser may from time to time request be executed or done in order to better evidence, perfect or effect any provision of this Agreement, or of any agreement or other document executed pursuant to this Agreement, or any of the respective obligations intended to be created hereby or thereby.

[SIGNATURE PAGE FOLLOWS]

13

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the duly authorized officer of each party hereto as of the date first above written.

SELLERS:

ARNOS CORP.

By: /s/ Edward E. Mattner

-----  
Name: Edward E. Mattner  
Title: Vice President

HIGH RIVER LIMITED PARTNERSHIP

By: Hopper Investments LLC, general partner

By: /s/ Edward E. Mattner

-----  
Name: Edward E. Mattner  
Title: Authorized Signatory

HOPPER INVESTMENTS LLC

By: /s/ Edward E. Mattner

-----  
Name: Edward E. Mattner  
Title: Authorized Signatory

PURCHASER:

AREP OIL & GAS LLC

By: American Real Estate Holdings Limited  
Partnership, its member

By: American Property Investors, Inc.,  
its general partner

By: /s/ John P. Saldarelli  
-----  
Name: John P. Saldarelli  
Title: Chief Financial Officer

[Signature Page to the Membership Interest Purchase Agreement]

14

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the duly authorized officer of each party hereto as of the date first above written.

SELLERS:

ARNOS CORP.

By: /s/ Edward E. Mattner  
-----  
Name: Edward E. Mattner  
Title: Vice President

HIGH RIVER LIMITED PARTNERSHIP

By: Hopper Investments LLC, general partner

By: /s/ Edward E. Mattner  
-----  
Name: Edward E. Mattner  
Title: Authorized Signatory

HOPPER INVESTMENTS LLC

By: /s/ Edward E. Mattner  
-----  
Name: Edward E. Mattner  
Title: Authorized Signatory

PURCHASER:

AREP OIL & GAS LLC

By: American Real Estate Holdings Limited  
Partnership, its member

By: American Property Investors, Inc.,  
its general partner

By: /s/ John P. Saldarelli  
-----  
Name: John P. Saldarelli  
Title: Chief Financial Officer

[Signature Page to the Membership Interest Purchase Agreement]

14

Exhibit A

Assignment and Assumption Agreement

Assignment and Assumption Agreement, dated as of  
December \_\_\_\_\_, 2004, is made and entered into by and among  
Arnos Corp., a Nevada corporation ("Arnos"), High River Limited Partnership, a  
Delaware limited partnership ("High River"), Hopper Investments, LLC, a Delaware  
limited liability company ("Hopper" and together with Arnos and High River, each  
a "Seller" and collectively, the "Sellers"), and AREP Oil & Gas LLC, a Delaware

limited liability company ("Purchaser"). Capitalized terms used herein shall have the meanings attributed to them in the Membership Interest Purchase Agreement, dated as of even date herewith, between Purchaser and Sellers (the "Membership Interest Purchase Agreement").

In consideration of the purchase and sale of the membership interests in accordance with the Membership Purchase Agreement, Purchaser and Sellers agree as follows:

1. Sellers hereby transfer and convey of all of their right, title and interest in and to the Operating Agreement of Mid River LLC (the "LLC") to Purchaser.

2 Purchaser hereby accepts all of Sellers' right, title and interest in and to the LLC, and agrees to be bound by all the terms and provisions of the Third Amended and Restated Operating Agreement of the LLC.

3. As a result of the foregoing, Purchaser is the sole owner and member of the LLC.

4. The LLC hereby acknowledges the admission of Purchaser as a member of the LLC.

IN WITNESS WHEREOF, the parties have executed this document on \_\_\_\_\_, 2004.

SELLERS:

ARNOS CORP.

By: /s/ Edward E. Mattner  
-----  
Name: Edward E. Mattner  
Title: Vice President

16

HIGH RIVER LIMITED PARTNERSHIP

By: Hopper Investments LLC, general partner

By: /s/ Edward E. Mattner  
-----  
Name: Edward E. Mattner  
Title: Authorized Signatory

HOPPER INVESTMENTS LLC

By: /s/ Edward E. Mattner  
-----  
Name: Edward E. Mattner  
Title: Authorised Signatory

PURCHASER:

AREP OIL & GAS LLC

By: American Real Estate Holdings Limited Partnership, its member

By: American Property Investors, Inc., its general partner

By: /s/ John P. Saldarelli  
-----  
Name: John P. Saldarelli  
Title: Chief Financial Officer

17

ACKNOWLEDGED AND AGREED TO (for purposes of Section 4):

Mid River LLC

By: Edward E. Mattner

-----

Name: Edward E. Mattner

Title: Authorized Signatory

[signature page to Assignment with respect to Mid River sale to AREP Oil & Gas]

Assignment and Assumption Agreement

Assignment and Assumption Agreement, dated as of December 6, 2004, is made and entered into by and among Arnos Corp., a Nevada corporation ("Arnos"), High River Limited Partnership, a Delaware limited partnership ("High River"), Hopper Investments, LLC, a Delaware limited liability company ("Hopper" and together with Arnos and High River, each a "Seller" and collectively, the "Sellers"), and AREP Oil & Gas LLC, a Delaware limited liability company ("Purchaser"). Capitalized terms used herein shall have the meanings attributed to them in the Membership Interest Purchase Agreement, dated as of even date herewith, between Purchaser and Sellers (the "Membership Interest Purchase Agreement").

In consideration of the purchase and sale of the membership interests in accordance with the Membership Purchase Agreement, Purchaser and Sellers agree as follows:

- 1. Sellers hereby transfer and convey of all of their right, title and interest in and to the Operating Agreement of Mid River LLC (the "LLC") to Purchaser.
- 2 Purchaser hereby accepts all of Sellers' right, title and interest in and to the LLC, and agrees to be bound by all the terms and provisions of the Third Amended and Restated Operating Agreement of the LLC.
- 3. As a result of the foregoing, Purchaser is the sole owner and member of the LLC.
- 4. The LLC hereby acknowledges the admission of Purchaser as a member of the LLC.

IN WITNESS WHEREOF, the parties have executed this document on December 6, 2004.

SELLERS:

ARNOS CORP.

By: /s/ Edward E. Mattner

-----  
Name: Edward E. Mattner  
Title: Vice President

HIGH RIVER LIMITED PARTNERSHIP

By: Hopper Investments LLC, general partner

By: /s/ Edward E. Mattner

-----  
Name: Edward E. Mattner  
Title: Authorized Signatory

HOPPER INVESTMENTS LLC

By: /s/ Edward E. Mattner

-----  
Name: Edward E. Mattner  
Title: Authorized Signatory

PURCHASER:

AREP OIL & GAS LLC

By: American Real Estate Holdings Limited Partnership, its member

By: American Property Investors, Inc., its general partner

By: /s/ John P. Saldarelli

-----  
Name: John P. Saldarelli  
Title: Chief Financial Officer

2

ACKNOWLEDGED AND AGREED TO (for purposes of Section 4):

Mid River LLC

By: /s/ Edward E. Mattner

-----  
Name: Edward E. Mattner  
Title: Authorized Signatory

[signature page to Assignment with respect to Mid River sale to AREP Oil & Gas]

3

AMENDED AND RESTATED OIL & GAS  
TERM LOAN AGREEMENT  
BY AND AMONG

THORNWOOD ASSOCIATES LP  
(LENDER)

AND

TRANSTEXAS GAS CORPORATION  
(BORROWER)

AND

GALVESTON BAY PIPELINE COMPANY

AND

GALVESTON BAY PROCESSING CORPORATION  
(GUARANTORS)

AS OF AUGUST 28, 2003

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2.3 Form of Amended and Restated O&G Note

4.7 Additional Representations and Covenants

AMENDED AND RESTATED OIL & GAS LOAN AGREEMENT  
("RESTRUCTURED O&G AGREEMENT")

TRANSTEXAS GAS CORPORATION, a corporation organized under the laws of the State of Delaware ("Borrower"), GALVESTON BAY PIPELINE COMPANY, a subsidiary of Borrower ("GB Pipeline), GALVESTON BAY PROCESSING CORPORATION, a subsidiary of Borrower "GB Processing" and together with GB Pipeline and any other subsidiary of Borrower, which shall become a party hereto, the "Guarantors") and THORNWOOD ASSOCIATES LP ("Lender") are hereby restating and amending the Oil and Gas Revolving Credit and Term Loan Agreement with certain "Lenders" (as defined therein) and GMAC Commercial Credit LLC, a limited liability company organized under the laws of the State of New York, as agent for the Lenders, dated as of March 15, 2000 the "Original Agreement" and as restated and amended on this 28 day of August, 2003, the "Restructured O&G Agreement" or the "Agreement").

This Agreement shall become valid and enforceable only when, and if, Creditor's Joint Plan of Reorganization for Debtors Under Chapter 11 of the Bankruptcy Code Submitted by Thornwood Associates LP, dated as of June 27, 2003, as modified July 8, 2003 and as may be modified thereafter ("Thornwood's Plan" or the "Plan"), confirmed by Order of the Bankruptcy Court, dated August 28, 2003, becomes effective.

Pursuant to the Plan, as of the date hereof, each holder of an Allowed Prepetition O&G Claim, in full satisfaction, settlement, release and discharge of, and exchange for, such Claim received (i) Cash in a sum equal to its pro rata share of the Allowed O&G Claim less \$32.5 million and (ii) its pro rata share of the Restructured O&G Note in principal amount of \$32.5 million, and Thornwood paid to the Prepetition O&G Lenders pro rata the Cash set forth in paragraph (i) hereto and an amount equal to the principal amount of the Restructured O&G Note. Subject to such payment and pursuant to the terms of the Plan, the Reorganized Debtors are issuing the Restructured O&G Note directly to Thornwood, and are entering into this Restructured O&G Agreement and the Restructured O&G Security Agreement directly with Thornwood.

NOW, THEREFORE, in consideration of the mutual covenants and undertakings herein contained, Borrower and Lender hereby agree as follows:

I. DEFINITIONS. Any term not defined in this Agreement shall have the meaning ascribed to it in the Plan. The following additional terms shall mean as follows:

1.1. GENERAL TERMS For purposes of this Agreement the following terms shall have the following meanings:

"Accounts" means "accounts," as that term is defined in Article 9 of the Uniform Commercial Code as in effect in the State of New York, together with the proceeds and products thereof.

"Adjusted Consolidated Tangible Assets" means (without duplication), as of the date of determination, (a) the sum of (i) discounted future net cash flows from proved oil and gas reserves of Borrower and its Subsidiaries, (before any state or federal income tax), as estimated in a Proved Reserve Report as of a date no earlier than Borrower's most recent fiscal year end

(or, if such Proved Reserve Report is unavailable, or if the date of determination is after the end of the first fiscal quarter of the most recent fiscal year of Borrower, as estimated by Borrower's engineers on the same basis as of a date no earlier than the end of the most recent fiscal quarter, which estimates shall be confirmed in writing by a report by nationally recognized independent petroleum engineers in the event of a Material Change), (ii) the Net Working Capital of Borrower on a date no earlier than the date of Borrower's latest consolidated annual or quarterly financial statements, and (iii) with respect to all other tangible assets (which are deemed to include mineral

lease-hold interests) of Borrower and its Subsidiaries, the net book value of such other tangible assets on a date no earlier than the date of Borrower's latest consolidated annual or quarterly financial statements, minus (b) minority interests and, to the extent not otherwise taken into account in determining Adjusted Consolidated Tangible Assets, any gas balancing liabilities of Borrower and its Subsidiaries. In addition to, but without duplication of the foregoing, for purposes of this definition, "Adjusted Consolidated Tangible Assets" shall be calculated after giving effect, on a pro forma basis, to (1) any Permitted Investment, on or before the date of the transaction giving rise to the need to calculate Adjusted Consolidated Tangible Assets (the "Assets Transaction Date"), in any other Person that, as a result of such investment, becomes a Subsidiary of Borrower, (2) the acquisition, on or before the Assets Transaction Date (by merger, consolidation, or purchase of stock or assets), of any business or assets, including, without limitation, Permitted Investments, and (3) any sales or other dispositions of assets (other than sales of Inventory Hydrocarbons or other mineral products in the ordinary course of business) occurring on or prior to the Assets Transaction Date. For purposes of calculating the ratio of Borrower's Adjusted Consolidated Tangible Assets to total consolidated Debt of Borrower and its Subsidiaries, Debt of a Subsidiary that is not a wholly-owned Subsidiary of Borrower (which Debt is non-recourse to Borrower or any of its other Subsidiaries or any of their assets) shall be included only to the extent of Borrower's pro rata ownership interest in such Subsidiary.

"Adjusted Net Assets" of a Guarantor means the lesser of (a) the amount by which the Guarantor's property, at a fair valuation, exceeds the sum of its debts (including unliquidated or contingent debts), (b) the amount by which the present fair salable value of the Guarantor's assets exceeds the amount that will be required to pay its probable liability on its existing debts as they become absolute and matured, (c) the amount by which the Guarantor's assets exceed the maximum amount that would constitute unreasonably small capital for its business, or (d) the amount by which the Guarantor's assets exceed the amount that such Guarantor should reasonably retain to pay its debts (including unliquidated or contingent debts) as they mature.

"Affiliate" means, with respect to any specified Person, (a) any other Person directly or indirectly controlling or controlled by, or under direct or indirect common control with, such specified Person, or (b) any director or controlling shareholder of such other Person or (c) any officer of such specified Person or such other Person. For purposes of this definition, the term "control" means (i) the power to direct the management and policies of a Person, directly or through one or more intermediaries, whether through the ownership of voting securities, by contract, or otherwise, or (ii) without limiting the foregoing, the beneficial ownership of 10% or more of the voting power of the voting common equity of such Person (on a fully diluted basis) or of warrants or other rights to acquire such equity (regardless of whether presently exercisable).

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"Ancillary Documents" means the Security Documents, the Note and any and all other agreements, instruments and documents, including, without limitation, guaranties, pledges, powers of attorney, consents, and all other writings heretofore, now or hereafter executed by Borrower or any Subsidiary and delivered to Lender in respect of the transactions contemplated by this Agreement.

"Asset Sale" means any direct or indirect conveyance, sale, transfer or other disposition, in one transaction or a series of related transactions, of any of the properties, businesses or assets of Borrower or any Subsidiary of Borrower, whether owned on the Effective Date or thereafter acquired; provided, however, that "Asset Sale" shall not include (a) any disposition of Inventory in the ordinary course of business, (b) any pledge or disposition of assets (if such pledge or disposition would otherwise constitute an Asset Sale) to the extent and only to the extent that it results in the creation of a Permitted Lien (other than the creation of a Permitted Lien in connection with a Drilling Production Payment or a Drilling Program, which in either case shall be treated as an Asset Sale hereunder), or (c) any issuance or disposition of securities that is made pursuant to and in accordance with the Plan or a Plan Order.

"Attributable Debt" in respect of a Sale and Leaseback Transaction means, at the time of determination, the present value (discounted at the rate of interest implicit in such transaction, determined in accordance with GAAP, or, in the event that such rate of interest is not reasonably

determinable, discounted at the rate of interest of 15%) of the obligation of the lessee for net rental payments during the remaining term of the lease included in such Sale and Leaseback Transaction (including any period for which such lease has been extended or may, at the option of the lessor, be extended).

"Board of Directors" means, with respect to any Person, the board of directors of such Person or any committee of the board of directors of such Person authorized, with respect to any particular matter, to exercise the power of the board of directors of such Person.

"Board Resolution" means, with respect to any Person, a duly adopted resolution of the Board of Directors of such Person.

"Borrower" means TransTexas Gas Corporation, a Delaware corporation, and all permitted successors and assigns.

"Borrower Entities" means Borrower and each of its Subsidiaries.

"Business Day" means any day other than a day on which commercial banks in New York are authorized or required by law to close.

"Capital Expenditures" of a Person means expenditures (whether paid in cash or accrued as a liability) by such Person or any of its Subsidiaries that, in conformity with GAAP, are or would be included in "capital expenditures," "additions to property, plant, or equipment" or comparable items in the consolidated financial statements of such Person consistent with prior accounting practices.

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"Capital Lease" as applied to any Person, means any lease of any property (whether real, personal, or mixed) by that Person as lessee which, in conformity with GAAP, is accounted for as a capital lease on the balance sheet of that Person.

"Capital Stock" means, with respect to any Person, any capital stock of such Person and shares, interests, or other ownership interests (however designated) of such Person and any rights (other than debt securities convertible into corporate stock), warrants or options to purchase any of the foregoing, including without limitation, each class of common stock and preferred stock of such Person, if such Person is a corporation, and each general or limited partnership interest or other equity interest of such Person, if such Person is a partnership.

"Capitalized Lease Obligation" means obligations under a lease that are required to be capitalized for financial reporting purposes in accordance with GAAP, and the amount of Debt represented by such obligations shall be the capitalized amount of such obligations, as determined in accordance with GAAP.

"Cash Equivalents" means (a) Dollars, (b) securities issued or directly and fully guaranteed or insured by the United States government or any agency or instrumentality thereof having maturities of not more than one year from the date of acquisition, (c) certificates of deposit with maturities of one year or less from the date of acquisition, bankers' acceptances with maturities not exceeding one year, and overnight bank deposits, in each case, with any Eligible Institution, (d) repurchase obligations with a term of not more than seven days for underlying securities of the types described in clauses (b) and (c) entered into with any Eligible Institution, (e) commercial paper rated "P-1," "A-1" or the equivalent thereof by Moody's Investors Service, Inc. or Standard & Poor's Ratings Group, respectively, and in each case maturing within one year after the date of acquisition, (f) shares of money market funds that invest solely in Dollars and securities of the types described in clauses (a) through (e) above, (g) demand and time deposits and certificates of deposit with any commercial bank organized in the United States not meeting the qualifications specified in clause (c) above or an Eligible Institution, provided, however, that such deposits and certificates support bonds, letters of credit and other similar types of obligations incurred are in the ordinary course of business, (h) deposits, including deposits denominated in foreign currency, with any Eligible Institution; provided, however, that all such deposits do not exceed \$10 million in the aggregate at any one time, and (i) demand or fully insured time deposits used in the ordinary course of business with commercial banks insured by the Federal Deposit Insurance Corporation.

"CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601 et seq.

"Charges" shall mean all taxes, charges, fees, imposts, levies or other assessments, including, without limitation, all net income, gross income, gross receipts, sales, use, ad valorem, value added, transfer, franchise, profits, inventory, capital stock, license, withholding, payroll, employment, social security, unemployment, excise, severance, stamp, occupation and property taxes, custom duties, fees, assessments, liens, claims and charges of any kind whatsoever, together with any interest and any penalties, additions to tax or additional amounts, imposed by any taxing or other authority, domestic or foreign (including, without limitation, the Pension Benefit Guaranty Corporation or any environmental agency or superfund), upon the Collateral, Borrower or any of its Affiliates.

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"Collateral" means and includes all property and interests in property of Borrower and its Subsidiaries, now owned or hereafter acquired, upon which a Lien is created in favor of Lender, for its benefit in accordance with the Security Documents, including, without limitation, the Security Agreement.

"Confirmation Order" means the order pursuant to Section 1129 of the Bankruptcy Code confirming the Plan entered by the Bankruptcy Court in the Borrower's case on August 5, 2003.

"Consents" means all filings and all licenses, permits, consents, approvals, authorizations, qualifications and orders of any Governmental Body and other third parties, domestic or foreign, necessary to carry on Borrower's business, including, without limitation, any Consents required under all applicable federal, state or other applicable law.

"Consolidated Coverage Ratio" means for any period, the ratio of (a) the sum of Consolidated EBITDA of Borrower for such period, plus the net proceeds received by Borrower and its consolidated Subsidiaries in respect of Indebtedness for borrowed money (other than Indebtedness under this Agreement) incurred during such period, plus, without duplication, the net proceeds received by Borrower and its consolidated Subsidiaries from asset sales (other than sales of Inventory and Hydrocarbons in the ordinary course of business) consummated during such period, to (b) the sum of Consolidated Interest Expense of Borrower for such period, plus Capital Expenditures of Borrower during such period, plus required principal payments by Borrower and its consolidated Subsidiaries on Indebtedness for borrowed money (other than Indebtedness under this Agreement) during such period, plus cash dividends.

"Consolidated EBITDA" of any Person for any period, unless otherwise defined herein, means (a) the Consolidated Net Income of such Person for such period, plus (b) the sum, without duplication (and only to the extent such amounts are deducted from net revenues in determining such Consolidated Net Income), of (a) the provision for income taxes for such period, for such Person and its consolidated Subsidiaries, (b) depreciation, depletion, and amortization of such Person and its consolidated Subsidiaries for such period, and (c) Consolidated Fixed Charges of such Person for such period, determined in each case, on a consolidated basis for such Person and its consolidated Subsidiaries in accordance with GAAP.

"Consolidated Fixed Charge Coverage Ratio" on any date (the "Transaction Date") means, with respect to any Person, the ratio, on a pro forma basis, of (a) the aggregate amount of Consolidated EBITDA of such Person (attributable to continuing operations and businesses and exclusive of the amounts attributable to operations and businesses discontinued or disposed of, on a pro forma basis as if such operations and businesses were discontinued or disposed of on the first day of the Reference Period) for the Reference Period to (b) the aggregate Consolidated Fixed Charges of such Person (exclusive of amounts attributable to discontinued operations and businesses on a pro forma basis as if such operations and businesses were discontinued or disposed of on the first day of the Reference Period, but only to the extent that the obligations giving rise to such Consolidated Fixed Charges would no longer be obligations contributing to such Person's Consolidated Fixed Charges subsequent to the Transaction Date) during the Reference Period; provided, however, that for purposes of such computation, in calculating Consolidated EBITDA and Consolidated Fixed Charges, (i) the transaction giving rise to the need to

calculate the Consolidated Fixed Charge Coverage Ratio

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shall be assumed to have occurred on the first day of the Reference Period (ii) the incurrence of any Debt or issuance of Disqualified Capital Stock during the Reference Period or subsequent thereto and on or prior to the Transaction Date shall be assumed to have occurred on the first day of such Reference Period, (iii) Consolidated Interest Expense attributable to any Debt (whether existing or being incurred) bearing a floating interest rate shall be computed as if the rate in effect on the Transaction Date had been the applicable rate for the entire period, unless such Person or any of its Subsidiaries is a party to a Swap Obligation (that remains in effect for the 12-month period after the Transaction Date) that has the effect of fixing the interest rate on the date of computation, in which case such rate (whether higher or lower) shall be used, and (iv) if Borrower or any Subsidiary of Borrower has repaid, repurchased, defeased or otherwise discharged any Debt or Disqualified Capital Stock since the beginning of the period measured by the four full fiscal quarters ended immediately before the Transaction Date or if any Debt is to be repaid, repurchased, defeased or otherwise discharged (in each case other than Debt incurred under any revolving credit facility unless such Debt has been permanently repaid and has not been replaced) on the Transaction Date, EBITDA and Consolidated Fixed Charges for such period shall be calculated on a pro forma basis as if such discharge had occurred on the first day of such period and as if Borrower or such Subsidiary has not earned the interest income which has actually accrued during such period in respect of cash or Cash Equivalents used to repay, repurchase, defease or otherwise discharge such Debt.

"Consolidated Fixed Charges" of any Person for any period means (without duplication) the sum of (a) Consolidated Interest Expense of such Person for such period, (b) dividend requirements of such Person and its consolidated Subsidiaries (whether in cash or otherwise (except dividends payable solely in shares of Qualified Capital Stock)) with respect to Preferred Stock paid, accrued, or scheduled to be paid or accrued during such period, in each case to the extent attributable to such period and excluding items eliminated in consolidation, (c) one-third of the Consolidated Operating Lease Obligations for such period, and (d) fees paid, accrued, or scheduled to be paid or accrued during such period by such Person and its Subsidiaries in respect of performance bonds or other guarantees of payment. For purposes of clause (b) above, dividend requirements shall be increased to an amount representing the pre-tax earnings that would be required to cover such dividend requirements; accordingly, the increased amount shall be equal to a fraction, the numerator of which is such dividend requirements and the denominator of which is 1 minus the applicable actual combined effective Federal, state, local and foreign income tax rate of such Person and its Subsidiaries (expressed as a decimal), on a consolidated basis, for the fiscal year immediately preceding the date of the transaction giving rise to the need to calculate Consolidated Fixed Charges.

"Consolidated Interest Expense" of any Person means, for any period, the aggregate interest (without duplication), whether expensed or capitalized, paid, accrued, or scheduled to be paid or accrued during such period in respect of all Debt of such Person and its consolidated Subsidiaries (including (a) amortization of deferred financing costs and original issue discount and non-cash interest payments or accruals, (b) the interest portion of all deferred payment obligations, calculated in accordance with the effective interest method, and (c) all commissions, discounts, other fees, and charges owed with respect to letters of credit and banker's acceptance financing and costs associated with Swap Obligations, in each case to the extent attributable to such period determined on a consolidated basis in accordance with GAAP). For purposes of this definition, (i) interest on a Capitalized Lease Obligation shall be deemed to

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accrue at an interest rate reasonably determined to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with GAAP (including Statement of Financial Accounting Standards No. 13 of the Financial Accounting Standards Board), and (ii) Consolidated Interest Expense attributable to any Debt represented by the guarantee by such Person or a Subsidiary of such Person other than with respect to Debt of such Person or a Subsidiary of such Person shall be deemed to be the interest expense attributable to the item guaranteed.

"Consolidated Net Income" of any Person for any period means

the net income (loss) of such Person and its consolidated Subsidiaries for such period, determined in accordance with GAAP, plus asset impairment charges, less (without duplication) (a) all extraordinary, unusual and nonrecurring gains (but not losses), (b) the net income, if positive, of any other Person, other than a consolidated Subsidiary, in which such Person or any of its consolidated subsidiaries has an interest, except to the extent of the amount of any dividends or distributions actually paid in cash to such Person or a consolidated Subsidiary of such Person during such period, but not in excess of such Person's pro rata share of such other Person's aggregate net income earned during such period or earned during the immediately preceding period and not distributed during such period, (c) the net income, if positive, of any Person acquired in a pooling of interests transaction for any period prior to the date of such acquisition, and (iv) the net income, if positive, of any Subsidiary of such Person to the extent that the declaration or payment of dividends or similar distributions is not at the time permitted by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule, or governmental regulation applicable to such Subsidiary.

"Consolidated Operating Lease Obligations" means, for any period, the aggregate amount of all obligations for rent paid or accrued under all Operating Leases of Borrower and its Subsidiaries as lessee (net of sublease income), all as determined on a consolidated basis in conformity with GAAP.

"Debt" means, with respect to any Person, without duplication (a) all liabilities contingent or otherwise, of such Person (i) for borrowed money (whether or not the recourse of Lender is to the whole of the assets of such Person or only to a portion thereof), (ii) evidenced by bonds, Note, debentures, or similar instruments or letters of credit or representing the balance deferred and unpaid of the purchase price of any property acquired by such Person or services received by such Person (other than long-term service or supply contracts which require minimum periodic payments), (iii) evidenced by bankers' acceptances or similar instruments issued or accepted by banks or Swap Obligations, (iv) for the payment of money relating to a Capitalized Lease Obligation, and (v) the Attributable Debt associated with any Sale and Leaseback Transaction; (b) reimbursement obligations of such Person with respect to letters of credit; (c) all liabilities of others of the kind described in the preceding clause (i) or (ii) that such Person has guaranteed or that is otherwise its legal liability (to the extent of such guaranty or other legal liability) other than for endorsements, with recourse, of negotiable instruments in the ordinary course of business; (d) all obligations secured by a Lien (other than Permitted Liens, except to the extent the obligations secured by such Permitted Liens are otherwise included in clause (a), (b) or (c) of this definition and are obligations of such Person) to which the property or assets (including, without limitation, leasehold interests and any other tangible or intangible property rights) of such Person are subject, regardless of whether the obligations secured thereby

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shall have been assumed by or shall otherwise be such Person's legal liability (but, if such obligations are not assumed by such Person or are not otherwise such Person's legal liability, the amount of such Debt shall be deemed to be limited to the fair market value of such property or assets determined as of the end of the preceding fiscal quarter); and (a) any and all deferrals, renewals, extensions, refinancings, and refundings (whether direct or indirect) of, or amendments, modifications, or supplements to, any liability of the kind described in any of the preceding clauses (a) through (d) regardless of whether between or among the same parties; provided, however, that, notwithstanding the foregoing, "Debt" shall include obligations related to Drilling Production Payments, whether denominated as Dollar-Denominated Production Payments or Volumetric Production Payments, but shall not include Dollar-Denominated Production Payments or Volumetric Production Payments related to Drilling Programs.

"Default" means an event which, with the giving of notice or passage of time or both, would constitute an Event of Default.

"Default Rate" has the meaning set forth in Section 3.1 hereof.

"Disqualified Capital Stock" means, with respect to any Person, any Capital Stock of such Person or its Subsidiaries that, by its terms or by the terms of any security into which it is convertible or exchangeable, is, or upon the happening of an event or the passage of time would be, required

to be redeemed or repurchased by such Person or its Subsidiaries, including at the option of the holder, in whole or in part, or has, or upon the happening of an event or passage of time would have, a redemption or similar payment due, on or prior to the maturity date of the Indenture Note.

"Documents" means, collectively, this Agreement and the Ancillary Documents.

"Dollars" and the sign "\$" means lawful money of the United States of America.

"Dollar-Denominated Production Payments" means production payment obligations recorded as liabilities in accordance with GAAP, together with all undertakings and obligations in connection therewith.

"Drilling Production Payment" means a Dollar-Denominated Production Payment or a Volumetric Production Payment conveyed to a third party in accordance with the provisions of Sections 6.2 and 6.3.

"Drilling Program" means any current or future arrangement between Borrower or any Subsidiary of Borrower and another Person pursuant to which (a) such Person agrees, or has, prior to the Effective Date, agreed, to drill, or perform operations to enhance recovery from, a well or wells on mineral interests, owned by Borrower or such Subsidiary and (b) Borrower or such Subsidiary agrees, or has, prior to the Effective Date, agreed, to convey or assign to such Person an interest in such well or wells in accordance with clause (k) of the definition of "Permitted Liens."

"Effective Date" means the date hereof.

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"Eligible Hydrocarbon Reserves" means Hydrocarbon Reserves of Borrower: (a) in which Borrower has defensible and indefeasible title and as to which Lender has a first priority perfected lien and security interest (subject only to Permitted Liens described in clauses (a), (g) and (h) of the definition of Permitted Liens), and as to which only Permitted Liens exist, and (b) which are set forth in the most recent Proved Reserves Report delivered to Lender or such other reserve report prepared by an independent petroleum reserve engineer acceptable to Lender and as adjusted in the most recent Borrowing Base Certificate.

"Eligible Institution" means a commercial banking institution that has combined capital and surplus of not less than \$500 million and that is rated "A" (or higher) according to Moody's Investors Service, Inc. or Standard & Poor's Ratings Group at the time as of which any investment or rollover therein is made.

"Environmental Laws" means, if and to the extent applicable under the circumstances at the time in question, all federal, state and local environmental, land use, zoning, health, chemical use, safety and sanitation laws, statutes, ordinances and codes relating to the protection of the environment and/or governing the use, storage, treatment, generation, transportation, processing, handling, production or disposal of Hazardous Substances and the rules, regulations, policies, guidelines, interpretations, decisions, orders and directives of federal, state and local governmental agencies and authorities with respect thereto.

"Equipment" means and includes, as to any Person, all of such Person's now owned or hereafter acquired Vehicles, drilling rigs, workover rigs, fracture stimulation equipment, well site compressors, rolling stock and related equipment and other assets accounted for as equipment by such Person on its financial statements, all proceeds thereof (from insurance or otherwise), and all documents of title, books, records, ledger cards, files, correspondence, and computer files, tapes, disks and related data processing software that at any time evidence or contain information relating to the foregoing.

"Event of Default" means the occurrence and continuance of any of the events set forth in Article VIII hereof.

"First Lien Debt" means any Debt or other obligation secured by a Lien described in this definition, including, in each case, any refinancings thereof:

(a) pledges of assets or deposits of cash or Cash Equivalents to secure (i) the performance of bids, trade contracts (other than borrowed money), leases, statutory obligations, surety bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business (or to secure reimbursement obligations or letters of credit in support of such bonds) in an aggregate amount not in excess of 5% of the PV10 indicated on Borrower's most recent Reserve Report at the time such pledges or deposits are made, (ii) appeal or supercedes bonds (or to secure reimbursement obligations or letters of credit in support of such bonds) in an amount not to exceed \$10 million at any one time outstanding, or (iii) pledges or deposits made in the ordinary course of business in connection with worker's compensation, unemployment insurance, and other types of social security legislation, property insurance and liability insurance;

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(b) Liens encumbering customary initial deposits and margin deposits of cash or Cash Equivalents securing Swap Obligations or Permitted Hedging Transactions and Liens encumbering contract rights under Permitted Hedging Transactions;

(c) Liens granted on Equipment to the extent granted to secure Debt incurred pursuant to Section 6.3 hereof;

(d) Liens granted in connection with the Presale of Gas, provided, however, that all of the proceeds from such Presale of Gas shall be applied to repay the outstanding Obligations;

(e) Liens created on or Production Payments granted with respect to undivided interests in, acreage drilled or to be drilled pursuant to Drilling Programs, on Hydrocarbons produced therefrom and on the proceeds of such Hydrocarbons to secure or to provide provision for payment of the Borrower's obligations under such Drilling Programs, provided, however, that (i) the number of wells included in such program commenced in any fiscal year does not exceed 30 per fiscal year (plus the number of wells included in programs commenced in prior years but not yet completed), (ii) such obligations are limited to a percentage of production from such wells, (iii) such Liens survive only until the Person to whom such Lien was granted has received production with a value equal to the costs, expenses and fees related to property and services provided or paid for by such Person plus an agreed-upon interest component, and (iv) such Liens secure obligations that are nonrecourse to each of Borrower or its Subsidiaries;

(f) any extension, renewal, or replacement of Liens created or existing pursuant to any of the clauses of this definition, provided, however, that such Liens would have otherwise been permitted under such clauses, and provided further, that the Liens permitted by this clause (f) do not secure any additional Debt or encumber any additional property;

(g) Liens constituting or securing (i) Royalty Payment Obligations referred to in clause (iii) of the definition of such term and (ii) Drilling Production Payments or;

(h) Liens on the proceeds of any property securing First Lien Debt or on deposit accounts containing only such proceeds and which at no time contains or contained proceeds of Receivables; and

(i) Liens (including extensions and renewals thereof) on real or personal property, acquired after the Effective Date ("New Property"); provided, however, that (i) such Lien is created solely for the purpose of securing Debt incurred to finance the cost (including the cost of improvements or construction) of New Property subject thereto and such Lien is created prior to or within six months after the later of the acquisition, the completion of construction, or the commencement of full operation of such New Property, (ii) the principal amount of the Debt secured by such Lien does not exceed 100% of such cost including costs and fees related to the financing thereof, and (iii) any such Lien shall not extend to or cover any property or assets other than such item of New Property, any improvements on such New Property and any throughput, capacity or similar agreements related to the operation of such New Property.

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"GAAP" means generally accepted accounting principles in the United States of America in effect from time to time.

"GB Facility Asset Sale" means:

(a) With respect to GB Pipeline, the sale of all or substantially all of the assets (but which assets shall be exclusive of Inventory and Receivables) of GB Pipeline other than a Sale and Leaseback Transaction resulting in a Capital Lease which constitutes, as to GB Pipeline, a GB Financing Document; and

(b) With respect to GB Processing, the sale of all or substantially all of the assets (but which assets shall be exclusive of Inventory and Receivables) of GB Processing other than a Sale and Leaseback Transaction resulting in a Capital Lease which constitutes, as to GB Processing, a GB Financing Document.

"GB Facility Financing" means:

(a) With respect to GB Pipeline, (i) the incurrence of Debt by, including the renewal or extension of Debt previously incurred by, GB Pipeline that is secured by a mortgage or deed of trust constituting, with respect to GB Pipeline, a GB Financing Document, (ii) a Sale and Leaseback Transaction resulting in a Capital Lease which constitutes, as to GB Pipeline, a GB Financing Document; and

(b) With respect to GB Processing, (i) the incurrence of Debt by, including the renewal or extension of Debt previously incurred by, GB Processing that is secured by a mortgage or deed of trust constituting, with respect to GB Processing, a GB Financing Document, (ii) a Sale and Leaseback Transaction resulting in a Capital Lease which constitutes, as to GB Pipeline, a GB Financing Document.

"GB Financing Beneficiary" means, with respect to a GB Financing Documents, the mortgagee, beneficiary, secured party or lessor thereunder, as the case may be.

"GB Financing Document" means:

With respect to GB Pipeline, (a) a mortgage or deed of trust pursuant to which GB Pipeline encumbers all or substantially all of its rights, titles and interests in and to all or substantially all of the GB Pipeline Facility for the purpose of securing Debt of GB Processing, or (b) a Capital Lease to which GB Pipeline is party as lessee executed by GB Pipeline in connection with the closing of a Sale and Leaseback transaction pursuant to which all or substantially all of GB Pipeline's rights, titles and interests in and to all or substantially all of the GB Pipeline Facility are conveyed and concurrently leased back by GB Pipeline; and

With respect to GB Processing, (a) a mortgage or deed of trust pursuant to which GB Processing encumbers all or substantially all of its rights, titles and interests in and to all or substantially all of the GB Processing Facility for the purpose of securing Debt of GB Processing, or (b) a Capital Lease to which GB Processing is party as lessee executed by GB Processing in connection with the closing of a Sale and Leaseback transaction pursuant to which

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all or substantially all of GB Processing's rights, titles and interests in and to all or substantially all of the GB Processing Facility are conveyed and concurrently leased back by GB Processing.

"GB Pipeline Facility" means the dual 16 inch O.D. (gas) and 8 inch O.D. (oil) transmission pipelines, co-owned, as of the date of this Agreement, by GB Pipeline and Davis Petroleum Pipeline L.L.C., that extend from Lot 12, Block 139 of the San Leon Townsite, Amos Edwards League Survey, Abstract 10, Galveston County, Texas, to the Eagle Point Platform (co-owned, as of the date of this Agreement, by Borrower and Davis Petroleum Corp.) in State Tract 331, GB Pipeline, Texas, including the real property, interests in real property, and the personal property, plant and equipment associated with such pipelines.

"GB Processing Facility" means the property, plant and

equipment comprising the hydrocarbon processing facility owned and operated by GB Processing at Winnie, Texas (including the real property and interests in real property, situated in Winnie, Jefferson County, Texas, associated with such facility).

"GB/TransTexas Pipeline Agreement" means each of (a) the Amended Transportation Agreement dated as of March 16, 2000, between Borrower and GB Pipeline, as amended, and (b) each other agreement in effect at the time in question between Borrower and GB Pipeline relating to the transportation of Hydrocarbons by GB Pipeline through the GB Pipeline Facility.

"Governmental Body" means any nation or government, any state or other political subdivision thereof or any entity exercising the legislative, judicial, regulatory or administrative functions of or pertaining to a government.

"Guarantor" means (a) each Material Subsidiary of Borrower joining in the execution of this Agreement for the purposes of evidencing its Guaranty and of agreeing to be bound by the terms of this Agreement, (b) each Material Subsidiary of Borrower that becomes (or is required to become) a guarantor of the Obligations of Borrower under this Agreement in accordance with Article XII, and (c) each Material Subsidiary of Borrower executing a joinder agreement in which such Material Subsidiary agrees to become and be a guarantor of the Obligations and to be bound by the terms of this Agreement.

"Guaranty" means the guaranty of the Obligations made by each Guarantor in favor of Lender for its benefit and for the ratable benefit of Lender as provided in Article XII of this Agreement.

"Hazardous Substance" means, without limitation, any flammable explosives, radon, radioactive materials, asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls, petroleum and petroleum products, methane, hazardous materials, Hazardous Wastes, hazardous or toxic substances or related materials as defined in CERCLA, the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 1801, et seq.), RCRA or any other applicable Environmental Law and in the regulations adopted pursuant thereto.

"Hazardous Wastes" means all waste materials subject to regulation under RCRA or applicable state law, and any other applicable Federal and state laws now in force or hereafter enacted relating to hazardous waste disposal.

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"Headquarters Facility" means the real property (including the improvements thereon, the fixtures, other than trade fixtures, affixed or attached thereto, and the personal property used in connection with the operation thereof) owned by Borrower and located at 1300 North Sam Houston Parkway East, Houston, Texas.

"Hedging Subsidiary" means a Subsidiary of Borrower engaged solely in the business of facilitating Permitted Hedging Transactions with Borrower or any of its subsidiaries.

"Hedging Transaction" means non-speculative transactions in futures, forwards, swaps or option contracts (including both physical and financial settlement transactions) engaged in by Borrower or any of its Subsidiaries as part of its normal business operations as a risk management strategy or hedge against adverse changes in market conditions in the oil and natural gas industry.

"Hydrocarbon Reserves" means and includes, as to any Person, any and all of such Person's now owned or hereafter acquired Hydrocarbon reserves in place.

"Hydrocarbons" means oil, natural gas, condensate and natural gas liquids, each as such terms are used in the Proved Reserves Report.

"Insurance Proceeds" means the interest in and to all proceeds (net of costs of collection, including attorney's fees) which now or hereafter may be paid under any insurance policies now or hereafter obtained by or on behalf of Borrower or any Guarantor in connection with any assets thereof, together with interest payable thereon and the right to collect and receive the same, including, without limitation, proceeds of casualty insurance, title

insurance, business interruption insurance and any other insurance now or hereafter maintained with respect to such assets.

"Interest Rate or Currency Agreement" of any Person means any forward contract, futures contract, swap, option or other financial agreement or arrangement (including, without limitation, caps, floors, collars, puts and similar agreements) relating to, or the value of which is dependent upon, interest rates or currency exchange rates.

"Inventory" means and includes all of Borrower's and each of Borrower's Subsidiaries' now owned or hereafter acquired inventory (as such term is defined in the Uniform Commercial Code), including, without limitation, casing, drill pipe and other supplies accounted for as inventory by Borrower on its consolidated financial statements (excluding any Hydrocarbons), all proceeds thereof (from insurance or otherwise), and all documents of title, books, records, ledger cards, files, correspondence, and computer files, tapes, disks and related data processing software that at any time evidence or contain information relating to the foregoing.

"Investment" by any Person in any other Person means (without duplication) (a) the acquisition (whether for cash, property, services, securities or otherwise) of Capital Stock, bonds, Note, debentures, partnership or other ownership interests or other securities issued by such other Person or any agreement to make any such acquisition; (b) the making by such Person of any deposit with, or advance, loan or other extension of credit to, such other Person (including the purchase of property from another Person subject to an understanding or agreement,

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contingent or otherwise, to resell such property to such other Person and (without duplication) any amount committed to be advanced, loaned or extended to such other Person; (c) the entering into of any guarantee (other than any Guaranty hereunder) of, or other credit support or contingent obligation with respect to, Debt or other liability of such other Person; (d) the entering into of any Swap Obligation with such other Person; or (e) the making of any capital contribution by such Person to such other Person.

"Investment Grade Rating" means, with respect to any Person or issue of debt securities or preferred stock, a rating in one of the four highest letter rating categories (without regard to "+" or "-" or other modifiers) by any rating agency or if any such rating agency has ceased using letter rating categories or the four highest of such letter rating categories are not considered to represent "investment grade" ratings, then the comparable "investment grade" ratings (as designated by any such rating agency).

"Lender" has the meaning ascribed to such term in the preamble to this Agreement and shall include each Person which is a permitted successor or assign of Lender.

"Lien" means any mortgage, deed of trust, lien, pledge, charge, security interest, collateral assignment or other encumbrance for security purposes of any kind, regardless of whether filed, recorded or otherwise perfected under applicable law (including any conditional sale or other title retention agreement and any lease deemed to constitute a security interest and any option or other agreement to give any security interest).

"Material Adverse Effect" means a material adverse effect on (a) the condition, operations, assets, business or prospects of the Borrower or any Guarantor, (b) Borrower's ability to pay the Obligations in accordance with the terms thereof, (c) the value of the Collateral, or the Liens on the Collateral or the priority of such Liens, or (d) the practical realization of the benefits of Lender's and Lender' rights and remedies under this Agreement and the Ancillary Documents.

"Material Change" means an increase or decrease of more than 10% since the then most recent Proved Reserve Report in the discounted future net cash flows (excluding changes that result from changes in prices) from proved oil and gas reserves of Borrower and its consolidated Subsidiaries (before any state or federal income tax); provided, however, that the following will be excluded from the Material Change calculation: (a) any acquisitions since the then most recent Proved Reserve Report of oil and gas reserves that have been estimated by independent petroleum engineers and on which a report or reports have been prepared by such independent petroleum engineers within 12

months of the acquisition, (b) any reserves added since the then most recent Proved Reserve Report attributable to the drilling or recompletion of wells not included in previous reserve estimates, and (c) any disposition of properties existing on the date of then most recent Proved Reserve Report that have been disposed of.

"Material Subsidiary" means, at any particular time, any Subsidiary that, together with its Subsidiaries, owns assets valued at \$100,000 or more.

"Mortgage" means each mortgage, deed of trust, trust deed, deed to secure debt, assignment, assignment of production, security agreement, financing statement or similar document, however styled, executed by Borrower, or any other Person, in favor of Lender or the Prepetition O&G Lenders for the ratable benefit of Lender primarily for the purpose of creating

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or granting a Lien on Real Property and/or Hydrocarbons, or any interests therein, to secure all or any part of the Obligations.

"Net Cash Proceeds" means an amount equal to the aggregate amount of cash received by Borrower and its Subsidiaries in respect of an Asset Sale, less the sum of (a) all reasonable out-of-pocket fees, commissions, and other expenses incurred in connection with such Asset Sale, including the amount (estimated in good faith by Borrower) of income, franchise, sales and other applicable taxes to be paid, payable or accrued by Borrower or any Subsidiary of Borrower (in each case as estimated in good faith by Borrower or such Subsidiary without giving effect to tax attributes unrelated to such Asset Sale) in connection with such Asset Sale, and (b) the aggregate amount of cash so received which is used to retire any then existing Debt of Borrower or its Subsidiaries (other than the Obligations), as the case may be, which is required by the terms of such Debt to be repaid in connection with such Asset Sale.

"Net GB Financing Proceeds" means an amount equal to the aggregate amount of cash received by GB Pipeline or GB Processing, as the case may be, in respect of a GB Facility Financing to which GB Pipeline or GB Processing, as the case may be, is a party, less the sum of (a) all reasonable out-of-pocket fees, commissions, and other expenses incurred in connection with such GB Facility Financing, including the amount (estimated in good faith by Borrower) of income, franchise, sales and other applicable taxes to be paid, payable or accrued by Borrower or by GB Pipeline or GB Processing, as the case may be (in each case as estimated in good faith by Borrower or by GB Pipeline or GB Processing, as the case may be, without giving effect to tax attributes unrelated to such GB Facility Financing), in connection with such GB Facility Financing, (b) the aggregate amount of cash so received which is used to retire any then existing Debt of GB Pipeline or GB Processing (other than the Obligations), as the case may be, which is required by the terms of such Debt to be repaid in connection with such GB Facility Financing, (c) the aggregate amount of cash so received which is used to retire any then existing Debt (other than the Obligations) that is secured by assets of GB Pipeline or GB Processing, as the case may be, and (d) the aggregate amount of cash so received which is used to retire indebtedness of Borrower in respect of Allowed Priority Tax Claims under the Plan, Allowed Claims of prepetition secured creditors in class 24 in classes 5 and 6 under the Plan.

"Net Proceeds" means (a) in the case of any sale by a Person of Qualified Capital Stock, the aggregate net cash proceeds received by such Person from the sale of Qualified Capital Stock (other than to a Subsidiary) after payment of reasonable out-of-pocket expenses, commissions and discounts incurred in connection therewith, and (b) in the case of any exchange, exercise, conversion or surrender of any outstanding securities or Debt of such Person for or into shares of Qualified Capital Stock of such Person, the net book value of such outstanding securities as adjusted on the books of such Person or Debt of such Person to the extent recorded in accordance with GAAP, in each case, on the date of such exchange, exercise, conversion or surrender (plus any additional amount required to be paid by the holder of such Debt or securities to such Person upon such exchange, exercise, conversion or surrender and less (i) any and all payments made to the holders of such Debt or securities and (ii) all other expenses incurred by such Person in connection therewith, in each case, in so far as such payments or expenses are incident to such exchange, exercise, conversion, or surrender).

"Net Working Capital" of any Person means (a) all current

assets of such Person and its consolidated Subsidiaries, minus (b) all current liabilities of such Person and its

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consolidated Subsidiaries other than the current portion of long term debt, each item to be determined in conformity with GAAP.

"Net Worth" of any Person means, at any date of determination, stockholders' equity as set forth on the most recently available quarterly or annual consolidated balance sheet of such Person and its Subsidiaries (which shall be as of a date not more than 90 days prior to the date of such computation), less any amounts included therein attributable to Disqualified Capital Stock or any equity security convertible into or exchangeable for Debt, the cost of treasury stock (not otherwise deducted from stockholder's equity), and the principal amount of any promissory Note receivable from the sale of the Capital Stock of such Person or any of its Subsidiaries, each item to be determined in conformity with GAAP.

"New Property" has the meaning specified in clause (k) in the definition of the term "Permitted Liens" set forth in Section 1.1.

"Nominee" means any Person who has or holds any right, title or interest in any oil and gas or mineral lease as a nominee for Borrower or any of its Subsidiaries.

"Nominee Property" means any property, lease, interest or other asset with respect to which any Person has or holds any right, title or interest as a Nominee.

"Note" means the amended and restated Note attached hereto as Exhibit 2.3.

"Obligations" means and includes any and all of Debt and/or liabilities to Lender of the Borrower or any of the Guarantors, of every kind, nature and description, direct or indirect, secured or unsecured, joint, several, joint and several, absolute or contingent, due or to become due, now existing or hereafter arising, contractual or tortious, liquidated or unliquidated, arising under or out of or in connection with this Agreement, the Ancillary Documents or under any other agreement between Lender or the PrePetition O&G Lenders and Borrower and/or any of the Guarantors delivered or given in connection therewith or herewith and all obligations of Borrower or any of the Guarantors to Lender or the PrePetition O&G Lenders to perform acts or refrain from taking any action hereunder or thereunder.

"Operating Lease" means, as applied to any Person, any lease of any property (whether real, personal or mixed) by that Person as lessee which is not a Capital Lease or a lease of a mineral interest.

"Permitted Hedging Transactions" means non-speculative transactions in futures, forwards, swaps or option contracts (including both physical and financial settlement transactions) engaged in by Borrower or its Subsidiaries as part of their normal business operations as a risk-management strategy or hedge against adverse changes in the prices of natural gas, condensate, or oil; provided, however, that such transactions do not, on a monthly basis, relate to more than 90% of Borrower Entities' average net hydrocarbon production (mcf) per month for the most recent 3-month period measured at the time of such incurrence; and, provided, further, that, at the time of such transaction (a) the counterparty to any such transaction is an Eligible Institution or a Person that has an n, or (b) such counterparty's obligation pursuant to such transaction is unconditionally guaranteed in full by, or secured by a letter of credit issued by, an Eligible Institution or a Person that has an Investment Grade Rating.

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"Permitted Investment" means, when used with reference to Borrower and its Subsidiaries:

(a) trade credit extended to Persons in the ordinary course of business;

(b) purchases of Cash Equivalents;

(c) Investments by Borrower or its wholly owned Subsidiaries in wholly owned Subsidiaries of Borrower;

(d) Swap Obligations;

(e) the receipt of Capital Stock in lieu of cash in connection with the settlement of litigation;

(f) advances to officers and employees in connection with the performance of their duties in the ordinary course of business in an amount not to exceed \$500,000 in the aggregate outstanding at any time;

(g) margin deposits in connection with Permitted Hedging Transactions;

(j) Investments and expenditures made in the ordinary course of business by Borrower and its Subsidiaries, and of a nature that, at the time of expenditure, is customary in the oil and gas business as a means of actively exploiting, exploring for, acquiring, developing, processing, gathering, marketing or transporting oil or gas through agreements, transactions, interests or arrangements which permit a Person to share risks or costs, comply with regulatory requirements regarding local ownership or satisfy other objectives customarily achieved through the conduct of the oil and gas business jointly with third parties, including, without limitation, (i) ownership interests in oil and gas properties or gathering systems and (ii) Investments and expenditures in the form of or pursuant to operating agreements, processing agreements, farm-in agreements, farm-out agreements, development agreements, area of mutual interest agreements, unitization agreements, pooling arrangements, joint bidding agreements, service contracts, joint venture agreements, partnership agreements (whether general or limited), subscription agreements, stock purchase agreements and other similar agreements with third parties; provided, however, that in the case of any joint venture engaged in processing, gathering, marketing or transporting oil or gas, (1) all Debt of such joint venture that would not otherwise constitute Debt of one of Borrower Entities shall be deemed Debt of Borrower in proportion to its direct or indirect ownership interest in such joint venture, and (2) such joint venture shall be reasonably anticipated, at the time of Investment, to enhance the value of the reserves of Borrower Entities or marketability of production from such reserves;

(i) the Guaranty and any guaranty by Borrower or any Subsidiary of Borrower that is permitted under Section 6.3(e);

(j) deposits permitted by the definition of Permitted Liens or any extension, renewal, or replacement of any of them;

(k) an Investment in Capital Stock resulting from an Asset Sale pursuant to Section 6.2;

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(l) any Guaranty by Borrower of the obligations of any wholly owned Subsidiary of Borrower to the extent such obligations so guaranteed (A) do not constitute Debt unless and only to the extent such Debt is otherwise permitted under Section 6.3, and (B) except to the extent such obligations constitute Debt otherwise permitted under Section 6.3, such obligations are of the type customarily incurred by such wholly owned Subsidiary in favor of third parties in the ordinary course of conducting its Related Business, or

(m) other Investments, provided, however, that such Investments do not exceed \$1 million in the aggregate at any time.

"Permitted Liens" means:

(a) Liens imposed by Governmental Bodies for taxes, assessments, or other Charges (i) not yet due or (ii) which are being contested in good faith and by appropriate proceedings, if (i) adequate reserves with respect thereto are maintained on the books of any of the Borrower Entities in accordance with GAAP and (ii) such Liens (other than with respect to Permitted Prior Liens) do not prime the Liens of Lender on the Collateral;

(b) Statutory Liens of landlords, carriers, warehousemen, mechanics, materialmen, repairmen, mineral interest owners, or other like Liens

arising by operation of law in the ordinary course of business, provided, however, that (i) the underlying obligations are not overdue for a period of more than 45 days, or (ii) such Liens are being contested in good faith and by appropriate proceedings and adequate reserves with respect thereto are maintained on the books of any of the Borrower Entities in accordance with GAAP;

(c) Pledges of assets or deposits of cash or Cash Equivalents to secure (o) the performance of bids, trade contracts (other than borrowed money), leases, statutory obligations, surety bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business (or to secure reimbursement obligations or letters of credit in support of such bonds) in an aggregate amount not in excess of 5% of the PV10 indicated on Borrower's most recent Proved Reserve Report at the time such pledges or deposits are made, (ii) appeal or supercede as bonds (or to secure reimbursement obligations or letters of credit in support of such bonds) in an amount not to exceed \$10 million at any one time outstanding, or (iii) pledges or deposits made in the ordinary course of business in connection with worker's compensation, unemployment insurance, and other types of social security legislation, property insurance and liability insurance;

(d) Liens encumbering customary initial deposits and margin deposits securing Swap Obligations or Permitted Hedging Transactions and Liens encumbering contract rights under Permitted Hedging Transactions;

(e) Pledges of assets to secure margin obligations, settlement obligations, reimbursement obligations or letters of credit in connection with Permitted Hedging Transactions; provided, however, that, at the time such pledge is made (or, if such pledge secures future Permitted Hedging Transactions, at the time any such Permitted Hedging Transaction is entered into), the maximum aggregate exposure under such Permitted Hedging Transactions does not exceed the greater of (1) \$10 million or (2) 5% of the PV10 indicated on Borrower's then most recent Proved Reserves Report

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(f) Easements, rights-of-way, zoning, similar restrictions and other similar encumbrances or title defects incurred in the ordinary course of business which, in the aggregate, are not material in amount, and which do not in any case materially detract from the value of the property subject thereto (as such property is used by any of Borrower or any of its Subsidiaries) or materially interfere with the ordinary conduct of the business of any of Borrower or any of its Subsidiaries; Liens granted in connection with the Presale of Gas;

(g) Liens created on or Production Payments granted with respect to undivided interests in, acreage drilled or to be drilled pursuant to Drilling Programs, on Hydrocarbons produced therefrom and on the proceeds of such Hydrocarbons to secure or to provide provision for payment of the Borrowed Obligations under such Drilling Programs, provided, however, that (i) the number of wells included in such program commenced in any fiscal year does not exceed 30 per fiscal year (plus the number of wells included in programs commenced in prior years but not yet completed), (ii) such obligations are limited to a percentage of production from such wells, (iii) such Liens survive only until the Person to whom such Lien was granted has received production with a value equal to the costs, expenses and fees related to property and services provided or paid for by such Person plus an agreed-upon interest component, and (iv) such Liens secure obligations that are nonrecourse to each of Borrower or its Subsidiaries;

(h) Liens on the assets of any entity existing at the time such assets are acquired by any of Borrower Entities, whether by merger, consolidation, purchase of assets or otherwise so long as such Liens (u) are not created, incurred or assumed in contemplation of such assets being acquired by any of Borrower Entities and (ii) do not extend to any other assets of any of Borrower or its Subsidiaries;

(i) Any extension, renewal, or replacement of Liens created pursuant to any of the foregoing clauses provided, however, that such Liens would have otherwise been permitted under such clauses, and provided further, that the Liens permitted by this clause (n) do not secure any additional Debt or encumber any additional property;

(j) Liens constituting or securing (i) Royalty Payment Obligations and (ii) Drilling Production Payments;

(k) Liens (including extensions and renewals thereof) on real or personal property, acquired after the Closing Date ("New Property"); provided, however, that (i) such Lien is created solely for the purpose of securing Debt incurred to finance the cost (including the cost of improvements or construction) of New Property subject thereto and such Lien is created prior to or within six months after the later of the acquisition, the completion of construction, or the commencement of full operation of such New Property, (ii) the principal amount of the Debt secured by such Lien does not exceed 100% of such cost including costs and fees related to the financing thereof, and (iii) any such Lien shall not extend to or cover any property or assets other than such item of New Property, any improvements on such New Property and any throughput, capacity or similar agreements related to the operation of such New Property and (4) the aggregate principal amount of debt and by liens permitted by the clause (K) shall not exceed \$1,000,000 at any time;

(l) Liens under the Security Documents; and

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(m) Liens held by the holders of the allowed Jefferies Secured Claim, Secured Tax Claims, and, if the Bankruptcy Court so orders, the M&M Lien Claims.

"Person" means any individual, sole proprietorship, partnership, corporation, business trust, joint stock company, trust, unincorporated organization, association, limited liability company, institution, public benefit corporation, joint venture, entity or government (whether Federal, state, county, city, municipal or otherwise, including any instrumentality, division, agency, body or department thereof).

"Plan" means Creditor's Joint Plan Of Reorganization For Debtors Under Chapter 11 Of The Bankruptcy Code Submitted By Thornwood Associates LP, dated as of June 27, 2003, and modified July 8, 2003 and has been or shall be further modified in Case No. 02-21926, in the United States Bankruptcy Court for the Southern District of Texas, Corpus Christi Division.

"Presale of Gas" means any advance payment agreement or other arrangement pursuant to which Borrower or any Guarantor, having received full payment of the purchase price for a specified quantity of Hydrocarbons prior to the first scheduled date of delivery, is required to deliver, in one or more installments subsequent to the date of such agreement or arrangement, such quantity of Hydrocarbons to the purchaser of such Hydrocarbons pursuant to and during the term of such agreement or arrangement; provided, however, that the term "Presale of Gas" shall not include (a) any such agreement or other arrangement covering deliveries of Hydrocarbons for a period not exceeding three calendar months and pursuant to which Borrower or such Guarantor has received full payment of the purchase price within 120 days of the last scheduled date of delivery, (b) a transaction to the extent and only to the extent that it results in the creation of any Permitted Lien under the definition of "Permitted Liens," hereunder (c) Permitted Hedging Transactions, or (d) an Asset Sale involving Hydrocarbon Reserves.

"Production Payments" means Dollar Denominated Production Payments and Volumetric Production Payments.

"Proved Reserves Report" means a report prepared by an independent petroleum reserve engineer acceptable to Lender with respect to proved Hydrocarbon Reserves.

"PV10" means the Valuation Amount at a 10% discount rate.

"Qualified Capital Stock" means any Capital Stock that is not Disqualified Capital Stock.

"RCRA" means the Resource Conservation and Recovery Act, 42 U.S.C. Sections 6901 et seq., as same may be amended from time to time.

"Real Property" means all of each of Borrower's and the guarantors' right, title and interest in and to the owned and leased real property.

"Receivables" means and includes, as to any Person, any and all of such Person's now owned or hereafter acquired Accounts, all products and

proceeds thereof, and all books, records, ledger cards, files, correspondence, and computer files, tapes, disks or software that at any time evidence or contain information relating to such Person's Accounts.

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"Reference Period" with regard to any Person means the four full fiscal quarters of such Person ended on or immediately preceding any date upon which any determination is to be made pursuant to the terms of this Agreement.

"Refinancing Debt" has the meaning specified in Section 6.3(f).

"Related Business" means (a) the exploration for, acquisition of, development of, production, transportation, gathering, and processing (in connection with natural gas and natural gas liquids only) of, crude oil, natural gas, condensate, and natural gas liquids; provided, however, that the Related Business shall not include any refining or distilling of Hydrocarbons other than processing and fractionating natural gas and natural gas liquids, (b) the drilling and energy services business and pipeline services business, (c) owning and operating a Hedging Subsidiary, or (d) owning or operating facilities designed for separation, dehydration, treatment, stabilization, processing or storage of Hydrocarbons and related operations.

"Release Request" has the meaning set forth in Section 12.2.

"Restricted Investment" means any direct or indirect Investment by Borrower or any Subsidiary of Borrower other than a Permitted Investment.

"Restricted Payment" means, with respect to any Person, (a) any Restricted Investment, (b) any dividend or other distribution on shares of Capital Stock of such Person or any Subsidiary of such Person, (c) any payment on account of the purchase, redemption, or other acquisition or retirement for value of any shares of Capital Stock of such Person, and (d) any defeasance, redemption, repurchase, or other acquisition or retirement for value, or any payment in respect of any amendment in anticipation of or in connection with any such retirement, acquisition, or defeasance, in whole or in part, of any Subordinated Debt, directly or indirectly, of such Person or a Subsidiary of such Person prior to the scheduled maturity or prior to any scheduled repayment of principal in respect of such Subordinated Debt; provided, however, that the term "Restricted Payment" does not include (i) any dividend, distribution, or other payment on shares of Capital Stock of a Person solely in shares of Qualified Capital Stock of such Person that is at least as junior in ranking as the Capital Stock on which such dividend, distribution, or other payment is to be made, (ii) any defeasance, redemption, repurchase or other acquisition or retirement for value of Capital Stock of a Person payable in or from any combination of (A) shares of Qualified Capital Stock of such Person and (B) the Net Proceeds of a concurrent sale of Qualified Capital Stock of such Person, in each case to the extent such Qualified Capital Stock is at least as junior in ranking as the Capital Stock retired, (iii) any dividend, distribution, or other payment to Borrower from any of its Subsidiaries, (iv) any defeasance, redemption, repurchase, or other acquisition or retirement for value, in whole or in part, of any Subordinated Debt of such Person payable in or from any combination of (A) shares of Qualified Capital Stock of such Person and (B) the Net Proceeds of a concurrent sale of Qualified Capital Stock, or both, (v) any payments or distributions made pursuant to and in accordance with the Plan, or (vi) the redemption, purchase, retirement or other acquisition of any Debt, including any premium paid thereon, with the proceeds of any Refinancing Debt permitted to be incurred pursuant to Section 6.3(f).

"Royalty Payment Obligations" means (a) royalties, overriding royalties (including those granted in connection with Drilling Programs), revenue interests, net revenue

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interests, net profit interests, and reversionary interests, (b) the interests of others in pooling or unitization agreements, production sales contracts and operating agreements, (c) Liens arising under, in connection with or related to farm-out, farm-in, joint operating, pooling, unitization or area of mutual interest agreements or other similar or customary arrangements, agreements or

interests, and (d) similar burdens on the property of Borrower or any Subsidiary of Borrower; each as incurred in the ordinary course of business and to the extent such burdens are limited in recourse to (x) the properties subject to such interests or agreements, (y) the Hydrocarbons produced from such properties, and (z) the proceeds of such Hydrocarbons.

"Sale and Leaseback Transaction" means an arrangement relating to property owned on the Effective Date or thereafter acquired whereby Borrower or a Subsidiary of Borrower transfers such property to a Person and leases it back from such Person.

"Security Agreement" means the Restructured Security and Pledge Agreement, dated as of the Effective Date, between Borrower and Lender, as same may be amended from time to time.

"Security Documents" means each Mortgage, the Security Agreement and all other security agreements, pledge agreements, mortgages, deeds of trust, collateral assignments and other agreements or conveyances at any time delivered to Lender or the Prepetition O&G Lenders to secure all or any part of the Obligations of Borrower pursuant to this Agreement, any one or more of the Security Documents, and/or the Note.

"Security Interests" means the Liens on the Collateral created by the Security Documents in favor of Lender or the Prepetition O & G Lenders.

"Subordinated Debt" means Debt which is subordinated and junior in right of payment to the Obligations in a manner satisfactory to Lender.

"Subsidiary" with respect to any Person, means (a) a corporation with respect to which such Person or its Subsidiaries owns, directly or indirectly, at least fifty percent of such corporation's Capital Stock with voting power, under ordinary circumstances, to elect directors, or (b) a partnership in which such Person or a subsidiary of such Person is, at the time, a general partner of such partnership and has more than 50% of the total voting power of partnership interests entitled (without regard to the occurrence of any contingency) to vote in the election of managers thereof, or (c) any other Person (other than a corporation or a partnership) in which such Person, one or more Subsidiaries of such Person, or such Person and one or more Subsidiaries of such Person, directly or indirectly, at the date of determination thereof has (i) more than a fifty percent ownership interest, or (ii) the power to elect or direct the election of a majority of the directors or other governing body of such other Person.

"Swap Obligation" of any Person means any Interest Rate or Currency Agreement entered into with one or more financial institutions or one or more futures exchanges in the ordinary course of business and not for purposes of speculation that is designed to protect such Person against fluctuations in (a) interest rates with respect to Debt incurred and which shall have a notional amount no greater than 105% of the principal amount of the Debt being hedged thereby, or (b) currency exchange rate fluctuations.

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"Term" means the Effective Date through the fifth anniversary of the Effective Date.

"Transferee" has the meaning provided in Section 14.3 hereof.

"Valuation Amount" means, as of the date of calculation, the value of future revenues from proven Hydrocarbon Reserves calculated on one of the following price assumptions (a) the trailing twelve month average of prices for oil, condensate and gas as calculated at the end of the month immediately preceding the date of calculation the "SEC Method"), (b) the closing NYMEX spot price (as adjusted) for the prompt month for oil, condensate and gas as of the date of calculation held constant ("NYMEX Spot Price Method"), or (c) the price of oil, condensate and gas for projected reserves as and when extracted during the next five (5) years employed by the engineering firm of Cawley, Gillespie & Associates in its report dated as of November 1, 1999, as updated and adjusted in a manner acceptable to Agent (the "Gillespie Price Method"); provided, however, with respect to Oil & Gas Reserves which are subject to either hedging or purchase contracts with fixed prices, the applicable contract price shall be utilized in determining the Valuation Amount. For purposes of calculating the Valuation Amount on the Effective Date, the Gillespie Price Method shall be

utilized. In connection with subsequent determinations of the Valuation Amount, the Borrower shall utilize whichever of the foregoing methods Lender determines in its sole and absolute discretion is appropriate under the circumstances; provided; that, unless Lender gives ten days notice to the Borrower to the contrary, the SEC Method shall be presumed to be appropriate (subject to the above provision).

"Vehicles" means all trucks, automobiles, trailers and other vehicles covered by a certificate of title.

"Volumetric Production Payments" means production payment obligations recorded as deferred revenue in accordance with GAAP, together with all undertakings and obligations in connection therewith.

"Weighted Average Life" means, as of the date of determination, with respect to any debt instrument, the quotient obtained by dividing (a) the sum of the products of the numbers of years from the date of determination to the dates of each successive scheduled principal payment of such debt instrument multiplied by the amount of such principal payment by (b) the sum of all such principal payments.

1.2. UNIFORM COMMERCIAL CODE TERMS. All terms used herein and defined in the Uniform Commercial Code as adopted in the State of New York shall have the meaning given therein unless otherwise defined herein.

1.3. CERTAIN MATTERS OF CONSTRUCTION. The terms "herein", "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular section, paragraph or subdivision. Any pronoun used shall be deemed to cover all genders. Wherever appropriate in the context, terms used herein in the singular also include the plural and vice versa. All references to statutes and related regulations shall include any amendments of same and any successor statutes and regulations. All references to any instruments or agreements to which Lender is a party, including, without limitation, references to

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any of the Ancillary Documents, shall include any and all modifications or amendments thereto and any and all extensions or renewals thereof.

## II. PAYMENTS.

2.1. TERM LOAN. On the terms and subject to the conditions contained in this Agreement, the Lender agrees that the Loans, as defined in the Original Agreement held by each of the Lenders shall after the Effective Date constitute a Term Loan to the Borrower, in the amount of \$32,500,000. Any amounts under the Term Loan that are repaid may not be reborrowed. All amounts owed hereunder shall be paid in full no later than the maturity date of the Term Loan.

2.2. REPAYMENT OF PRINCIPAL. The principal of the Term Loan shall be payable annually in four equal consecutive annual payments in the amount of \$5,000,000, commencing on the first anniversary of the Effective Date, with a final installment of the unpaid principal balance on the fifth anniversary of the Effective Date.

2.3. ACCELERATION; NOTE. The Term Loan shall be subject to acceleration upon the occurrence of an Event of Default under this Agreement, the Security Agreement or the Note or termination of this Agreement and shall be evidenced by and subject to the terms and conditions set forth in the secured promissory note attached hereto as Exhibit 2.3 executed in favor of the Lender.

## 2.4. MANNER OF PAYMENT.

Except as expressly provided, herein, all payments to be made by Borrower on account of principal and interest shall be made without set-off or counterclaim and shall be made to Lender at the address set forth in Section 14.6 hereof or at such other address as the Lender may furnish to Borrower in writing, in each case on or prior to 1:00 p.m., New York time, in Dollars and in immediately available funds.

## III. INTEREST AND FEES.

3.1. INTEREST. Borrower shall pay interest to Lender, at the

rate of ten percent (10%) per annum on the outstanding principal balance of the Loan semi-annually commencing six (6) months after the Effective Date on the first day of each month. Upon and after the occurrence of an Event of Default, and during the continuation thereof, the Loan shall bear interest at the rate of twelve percent (12%) per annum on the outstanding principal balance of the Loan (the "Default Rate"), provided, however, upon the occurrence of an Event of Default described in Section 8.5, the Default Rate shall not be imposed until thirty (30) days from the occurrence of such Event of Default, assuming such Event of Default is continuing as of the end of such thirty (30) day period.

3.2. COMPUTATION OF INTEREST Interest hereunder shall be computed on the basis of a year of 365/6 days and for the actual number of days elapsed. If any payment to be made hereunder becomes due and payable on a day other than a Business Day, the due date thereof shall be extended to the next succeeding Business Day and interest thereon shall be payable at the applicable Interest Rate during such extension.

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3.3. MAXIMUM CHARGES. In no event whatsoever shall interest and other charges charged hereunder exceed the highest rate permissible under law which a court of competent jurisdiction shall, in a final determination, deem applicable hereto. In the event that Lender has received interest and other charges hereunder in excess of the highest rate permissible hereto, such excess amount shall be first applied to any unpaid principal balance owed by Borrower, and if the then remaining excess amount is greater than the previously unpaid principal balance, Lender shall promptly refund such excess amount to Borrower and the provisions hereof shall be deemed amended to provide for such permissible rate.

#### IV. REPRESENTATIONS AND WARRANTIES.

Each of Borrower and the Guarantors represents and warrants as follows:

4.1. AUTHORITY. Borrower and each Guarantor has full power, authority and legal right to enter into this Agreement and the Ancillary Documents to which it is a party and to perform all Obligations hereunder and thereunder. The execution, delivery and performance of this Agreement and of the Ancillary Documents (a) are within Borrower's and each Guarantor's corporate powers, have been duly authorized, are not in contravention of law or the terms of Borrower's or any Guarantor's by-laws, certificate of incorporation or other applicable documents relating to Borrower's or any Guarantor's formation or to the conduct of Borrower's or any Guarantor's business or of any material agreement or undertaking to which Borrower or any Guarantor is a party or by which Borrower or any Guarantor is bound, and (b) will not conflict with nor result in any breach in any of the provisions of or constitute a default under or result in the creation of any Lien except Permitted Liens upon any asset of Borrower or any Guarantor under the provisions of any material agreement, charter document, instrument, by-law, or other instrument to which Borrower or any Guarantor is a party or by which it or its property may be bound.

4.2. FORMATION AND QUALIFICATION. Each of Borrower and each Guarantor is duly incorporated and in good standing under the laws of the state of its incorporation and is qualified to do business and is in good standing in every other state or jurisdiction in which qualification and good standing are necessary for Borrower and each Guarantor to conduct its business and own its property except where the failure to so qualify could not reasonably be expected to have a Material Adverse Effect. Borrower has delivered to Lender true and complete copies of its and each of its Guarantor's certificate of incorporation and by-laws and will promptly notify Lender of any amendment or changes thereto.

4.3. CORPORATE NAME. Neither Borrower nor any Guarantor has been known by any other corporate name in the past five years, nor has Borrower or any Guarantor been the surviving corporation of a merger or consolidation or acquired all or substantially all of the assets of any Person during the preceding five (5) years.

4.4. SECURITY INTERESTS. As of the Effective Date, Lender shall have a legal, valid and enforceable, first priority (subject to Permitted Liens) perfected security interest in all right, title and interest of each of Borrower and the guarantor in the "Collateral" described in the Security Documents. Pursuant to the terms of the Confirmation Order all liens granted hereunder shall, for all purposes, be valid, perfected, enforceable, non-avoidable and effective as of the date of the entry of the Confirmation

Order without any further action by the Lender or by

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the Debtors and without the execution, filing or recordation of any financing statement, security agreement, mortgage or other document.

4.5. PLAN OF REORGANIZATION. As of the Effective Date, the Confirmation Order has been entered and has become a final order. All other conditions precedent to the confirmation and effectiveness of the Plan of Reorganization have been satisfied or waived and the Effective Date has occurred.

4.6. LOCATION OF BORROWER. Borrower's and each Guarantor's chief executive office is located at 1300 North Sam Houston Parkway East, Houston, Texas.

4.7. REPRESENTATIONS, WARRANTIES AND COVENANTS CONCERNING THE MORTGAGES. Borrower and the Guarantors hereby makes all of the additional representations, warranties and covenants set forth on Exhibit 4.7 of this Agreement.

#### V. AFFIRMATIVE COVENANTS.

5.1. PAYMENT OF OBLIGATIONS. Each of Borrower and the Guarantors shall duly and punctually pay or cause to be duly and punctually paid the principal of and interest on all of the Obligations, including each and every obligation owing under the Note as the same shall become due and payable under the Note and in accordance with the terms of this Agreement.

5.2. CORPORATE EXISTENCE. Each of Borrower and the Guarantors shall do or cause to be done all things necessary to preserve and keep in full force and effect their respective corporate existence in accordance with the respective organizational documents of each of them and the rights (charter and statutory) and corporate franchises of Borrower and each Guarantor; provided, however, that neither Borrower nor any Guarantor shall be required to preserve, with respect to itself, any right of franchise, and with respect to any of its Subsidiaries, any such existence, right or franchise, if (a) the Board of Directors of Borrower or such Guarantor shall determine that the preservation thereof is no longer desirable in the conduct of the business of Borrower or such Guarantor and (b) the loss thereof is not disadvantageous in any material respect to Lender.

5.3. PAYMENT OF TAXES AND OTHER CLAIMS. Each of Borrower and the Guarantors shall pay or discharge or cause to be paid or discharged, before the same shall become delinquent all taxes, assessments and governmental charges (including withholding taxes and any penalties, interest and additions to taxes) levied or imposed upon Borrower or such Guarantor or any of their respective properties and assets; provided, however, that Borrower shall not be required to pay or discharge or cause to be paid or discharged any such tax, assessment or charge whose amount, applicability or validity is being contested in good faith by appropriate proceedings and for which disputed amounts adequate reserves have been established in accordance with GAAP and so long as such taxes (other than ad valorem and severance taxes), assessments or charges do not prime Lender's Lien on the Collateral.

#### 5.4. MAINTENANCE OF PROPERTIES AND INSURANCE.

(a) Each of Borrower and the Guarantors shall cause the properties used or useful to the conduct of their respective businesses to be maintained and kept in good

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condition, repair and working order (reasonable wear and tear excepted) and supplied with all necessary equipment and shall cause to be made all necessary repairs, renewals, replacements, betterments and improvements thereof, all as in its reasonable judgment may be necessary, so that the business carried on in connection therewith may be properly and advantageously conducted at all times.

(b) Each of Borrower and the Guarantors shall provide, or shall cause to be provided, for itself and each of its Subsidiaries, insurance (including appropriate self-insurance) against loss or damage of the

kinds that in its reasonable, good faith opinion, are adequate and appropriate for the conduct of its business and the business of such Subsidiaries in a prudent manner, with reputable insurers or with the government of the United States of America or an agency or instrumentality thereof, in such amounts, with such deductibles, and by such methods as is customary, in its reasonable, good faith opinion, and adequate and appropriate for the conduct of Borrower's and such Guarantor's business in a prudent manner for companies engaged in a similar business. In addition, all such insurance shall be payable to Lender as loss payee, as its interests may appear, under a "standard" or "Texas" loss payee clause. Without limiting the foregoing, each of Borrower and the Guarantors shall (i) keep all of its physical property insured with hazard insurance on an "all risks" basis, with broad form flood and earthquake coverages, with a full replacement cost endorsement and an "agreed amount" clause in an amount equal to 100% of the full replacement cost of such property, (ii) maintain all such workers' compensation or similar insurance as may be required by law, and (iii) maintain, in amounts and with deductibles equal to those generally maintained by businesses engaged in similar activities in similar geographic areas, general public liability insurance against claims of bodily injury, death or property damage occurring on, in or about the properties of Borrower and the Guarantors.

All policies of insurance shall provide for at least ten days' prior written cancellation notice to Lender. In the event of failure by Borrower or any Guarantor to provide and maintain insurance as described herein; provided, however, Lender may, at its option, provide such insurance and charge the amount thereof to Borrower and/or either of the Guarantors. Borrower and the Guarantors shall furnish Lender with certificates of insurance and policies evidencing compliance with the foregoing insurance provision.

(c) Each of Borrower and the Guarantors shall explore, develop and maintain (or cause to be explored, developed and maintained) the leases, wells, units and acreage to which the mineral interests pertain in a prudent manner, and as may be reasonably necessary for the prudent and economical operation of (and in an effort to maximize the production capacity of) such leases, wells, units and acreage in accordance with reasonable and customary industry standards for similar owners of mineral interests.

(d) Each of Borrower and the Guarantors shall act prudently and in accordance with customary industry standards in managing or operating its assets, properties, business and investments. Borrower and each Guarantor will keep in good working order and condition, ordinary wear and tear excepted, all of its assets and properties which are necessary to the conduct of its business, including, without limitation, all wells and equipment necessary or useful in the operation of the Hydrocarbon Reserves.

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5.5. COMPLIANCE WITH LAWS; VIOLATIONS. Each of Borrower and the Guarantors shall comply in all material respects at all times with all Laws applicable to the Collateral, and shall promptly notify Lender in writing of any violation of any law, statute, regulation or ordinance of any Governmental Body, or of any agency thereof, applicable to Borrower or any Guarantor which could reasonably be expected to have a Material Adverse Effect.

5.6. EXECUTION OF SUPPLEMENTAL INSTRUMENTS. Each of Borrower and the Guarantors shall execute and deliver to Lender from time to time, upon demand, such supplemental agreements, statements, assignments and transfers, or instructions or documents relating to the Collateral (including, without limitation, any Liens), and such other instruments as Lender may request, in order that the full intent of this Agreement may be carried into effect.

5.7. PAYMENT OF DEBT. Each of Borrower and the Guarantors shall discharge or otherwise satisfy at or before maturity (subject, where applicable, to specified grace periods and, in the case of the trade payables, to normal payment practices) all its obligations and liabilities of whatever nature, except when the amount or validity thereof is currently being contested in good faith by appropriate proceedings and each of Borrower and the Guarantors shall have provided for such reserves as Lender may reasonably deem proper and necessary, subject at all times to any applicable subordination arrangement in favor of Lender.

5.8. ENVIRONMENTAL MATTERS.

(a) Each of Borrower and the Guarantors shall ensure and shall cause each of its Subsidiaries to ensure that the Real Property

remains in compliance in all material respects with all applicable Environmental Laws.

(b) Each of Borrower and the Guarantors shall do all things necessary to systematically assure and monitor continued compliance in all material respects with all applicable Environmental Laws, including periodic reviews of such compliance.

(c) In the event Borrower or any Guarantor, gives or receives notice of any material release or threat of release of a reportable quantity of any Hazardous Substances on its Real Property (any such event being hereinafter referred to as a "Hazardous Discharge") or receives any notice of material violation, request for information or notification that it is potentially responsible for investigation or cleanup of environmental conditions on its Real Property, demand letter or complaint, order, citation, or other written notice with regard to any material Hazardous Discharge or material violation of any Environmental Laws affecting its Real Property or its interest therein (any of the foregoing is referred to herein as an "Environmental Complaint") from any Governmental Body, then Borrower shall within five (5) Business Days, give written notice of same to Lender detailing facts and circumstances of which Borrower or such Guarantor is aware giving rise to the Hazardous Discharge or Environmental Complaint and periodically inform Lender of the status of the matter. Such information is to be provided to allow Lender to protect its security interest in the Collateral and is not intended to create nor shall it create any obligation upon Lender with respect thereto.

(d) Each of Borrower and the Guarantors shall respond promptly to any Hazardous Discharge or Environmental Complaint applicable to it and take all necessary

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action in order to safeguard the health of any Person and to avoid subjecting the Collateral to any claim or Lien other than a Permitted Lien.

(e) Each of Borrower and the Guarantors shall each jointly and severally defend and indemnify Lender, its officers, directors, employees, agents and representatives and hold Lender, its officers, directors, employees, agents and representatives harmless from and against all loss, liability, damage and expense, claims, costs, fines and penalties, including attorney's fees, suffered or incurred by Lender, its officers, directors, employees, agents and representatives under or on account of any violation by Borrower or any Guarantor of any Environmental Laws, including, without limitation, the assertion of any Lien thereunder other than Permitted Liens, with respect to any Hazardous Discharge, the presence of any Hazardous Substances in violation of applicable Environmental Laws affecting Borrower's or such Guarantor's property, whether or not the same originates or emerges from Borrower's or such Guarantor's property or any contiguous real estate, including any loss of value of the Collateral as a result of the foregoing, except to the extent such loss, liability, damage and expense is directly attributable to any Hazardous Discharge resulting from actions on the part of Lender, its officers, directors, employees and agents. The obligations of Borrower and the Guarantors under this Section 5.8 shall arise upon the discovery of the presence of any Hazardous Substances in violation of applicable Environmental Laws on Borrower's or such Guarantor's property, whether or not any federal, state, or local environmental agency has taken or threatened any action in connection with the presence of any Hazardous Substances. The obligation and the indemnifications hereunder shall survive the termination of this Agreement.

(f) For purposes of this Section 5.8, all references to Real Property shall be deemed to include all right, title and interest in and to each of Borrower's and the Guarantors' owned and leased premises;

5.9. INSPECTIONS. At all times during normal business hours and upon reasonable notice (unless a Default or Event of Default has occurred or Lender reasonably suspects that a Default or Event of Default has occurred, in which event no prior notice shall be required), Lender shall have the right to (a) visit and inspect each of Borrower's and the Guarantors' properties and the Collateral, (b) inspect, audit and make extracts from each of Borrower's and the Guarantors' relevant books and records, including, but not limited to, management letters prepared by independent accountants, and (c) discuss with each of the Borrower's and the Guarantors' principal officers and independent accountants, the business, assets, liabilities, financial condition, results of operations and business prospects of Borrower.

VI. NEGATIVE COVENANTS

6.1. MERGERS, CONSOLIDATIONS AND OTHER FUNDAMENTAL CHANGES.

(a) Each of Borrower and the Guarantors hereby agree that none of Borrower or any Guarantor shall, or permit any of its Subsidiaries to, consolidate with or merge with or into any other Person, or, directly or indirectly, sell, lease, assign, transfer or convey all or substantially all of its assets (computed on a consolidated basis), to another Person or group of Persons acting in concert, whether in a single transaction or through a series of related

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transactions, until satisfaction in full of the Obligations and termination of this Agreement, unless:

(i) either (x) Borrower or such Guarantor, as the case may be, shall be the continuing Person, or (y) the Person (if other than Borrower) formed by such consolidation or into which Borrower or such Guarantor, as the case may be, is merged or to which all or substantially all of the properties and assets of Borrower or such Guarantor, as the case may be, are transferred as an entirety or substantially as an entirety (Borrower or such Guarantor, as the case may be, or such other Person being hereinafter referred to as the "Surviving Person") shall be a corporation or partnership organized and validly existing under the laws of the United States, any State thereof or the District of Columbia, and shall expressly assume, by a joinder agreement supplemental hereto and any supplements to any Security Documents as Lender in its sole discretion may require, executed and delivered to Lender on or prior to the consummation of such transaction, in form satisfactory to Lender, all the obligations of the Borrower or such Guarantor, as the case may be, under this Agreement and the Ancillary Documents and shall execute such Security Documents as may be necessary to maintain the Lien of Lender on the Collateral of the Surviving Person;

(ii) no Default or Event of Default shall exist or shall occur immediately after giving effect to such transaction;

(iii) immediately after giving effect to such transaction, on a pro forma basis, (x) the Net Worth of the Surviving Person is at least equal to the Net Worth of such predecessor or transferring entity immediately prior to such transaction, and (y) the Surviving Person immediately after giving effect on a pro forma basis to the Consolidated Fixed Charges of the Surviving Person, (A) the Consolidated Fixed Charge Coverage Ratio of the Surviving Person for the Reference Period is greater than 2.5 to 1, and (B) the Surviving Person's Adjusted Consolidated Tangible Assets are equal to or greater than 150% of the total consolidated principal amount or accreted value, as the case may be, of Debt of the Surviving Person; and

(iv) borrower and the Guarantors have delivered to Lender an Officers' Certificates and an Opinion of Counsel, each stating that such consolidation, merger, assignment, or transfer and such supplemental agreements comply with this Section 6.1(a) and that all conditions precedent herein provided relating to such transaction have been satisfied.

For purposes of this Section 6.1(a), the Consolidated Fixed Charge Coverage Ratio shall be determined on a pro forma consolidated basis (giving effect to such transaction) for the four fiscal quarters immediately preceding such transaction.

(b) For purposes of Section 6.1(a), the sale, lease, conveyance, assignment, transfer, or other disposition of all or substantially all of the properties and assets of one or more Subsidiaries of Borrower or any Guarantor, which properties and assets, if held by Borrower or such Guarantor instead of such Subsidiaries, would constitute all or substantially all of the properties and assets of the Borrower or such Guarantor, on a consolidated basis, shall be deemed to be the transfer of all or substantially all of the properties and assets of Borrower and such Guarantor.

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(c) Notwithstanding anything contained in the

foregoing to the contrary, any Subsidiary of Borrower or any Guarantor with a Net Worth greater than zero may merge into Borrower or any Guarantor (or a wholly owned Subsidiary of Borrower or any Guarantor) at any time, provided, however, that Borrower shall have delivered to Lender an Officers' Certificate stating that such Subsidiary has a Net Worth greater than zero and such merger does not result in a Default or an Event of Default hereunder.

(d) Upon any consolidation or merger, or any transfer of assets in accordance with Section 6.1(a), the Surviving Person formed by such consolidation or into which Borrower or any Guarantor is merged or to which such transfer is made shall succeed to, and be substituted for, and may exercise every right and power of, Borrower or any Guarantor under this Agreement, the Security Documents and the other Ancillary Documents with the same effect as if such Surviving Person had been named as Borrower or a Guarantor herein. When a Surviving Person duly assumes all of the obligations of Borrower pursuant hereto, the predecessor shall be released from such obligations.

## 6.2. ASSET SALES

(a) Each of Borrower and the Guarantors hereby agree that Borrower and the Guarantors shall not permit any of its Subsidiaries, until satisfaction in full of the Obligations and termination of this Agreement, to consummate an Asset Sale unless (x) with respect to Asset Sales by any Guarantor an amount equal to the Net Cash Proceeds therefrom is (A) applied to repay the Obligations in such order as Lender may determine, (B) used to make cash payments in the ordinary course of business and consistent with past practices that are not otherwise prohibited by this Agreement, provided, however, that the aggregate amount so used pursuant to this clause (B) from and after the Effective Date does not exceed \$2 million (without duplication of amounts used for Capital Expenditures in accordance with clause (C) of this Section 6.2 below), or (C) used for Capital Expenditures in a Related Business within 180 days after the date of such Asset Sale or used to reimburse Borrower and its Subsidiaries for Capital Expenditures made prior to such Asset Sale, or (y) with respect to proposed Asset Sales by Borrower resulting in Net Cash Proceeds which, when aggregated with the Net Cash Proceeds of all other Asset Sales in the same fiscal year (other than Asset Sales to which Lender has consented hereunder) exceeds \$3 million in such fiscal year, such Asset Sale shall not be consummated unless Lender shall have given its prior written consent and Borrower shall deposit with Lender an amount equal to the amount of such Net Cash Proceeds in excess of \$1,000,000, to be held as cash collateral for the Obligations. Absent the existence of an Event of Default, Lender shall release such cash collateral in an amount (i) which Borrower certifies to Lender was previously expended by Borrower for Capital Expenditures by Borrower prior to such Asset Sale and such expended amount has not been previously reimbursed to Borrower, or (ii) which represents the imminent expenditure of funds by Borrower for Capital Expenditures in a Related Business within 180 days after the date of such Asset Sale upon the receipt by Lender of proof reasonably satisfactory to Lender of such imminent expenditure of funds.

(b) Notwithstanding the foregoing limitations on Asset Sales and restrictions on and requirements for the use of Net Cash Proceeds therefrom, Borrower and Guarantors, as the case may be, may at any time and from time to time, but subject to Subsection 6.2(c) below, effect any of the following transactions, and the Net Cash Proceeds, if any, realized

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from any of the following transactions shall not be subject to the application requirements of Section 6.2(a):

(i) Borrower and Guarantors may engage in Asset Sales incident to and resulting from a transaction expressly permitted under Section 6.1;

(ii) Borrower and Guarantors may sell, assign, lease, license, transfer, abandon or otherwise dispose of (a) damaged, worn out, unserviceable or other obsolete property in the ordinary course of business, or (b) other property no longer necessary for the proper conduct of their business;

(iii) Borrower and Guarantors may convey, sell, transfer or otherwise dispose of Hydrocarbons

or other mineral products in the ordinary course of business; and

(iv) Borrower and Guarantors may convey, sell, transfer or otherwise dispose of Drilling Production Payments and interests related to Drilling Programs; provided, however, that an amount equal to the Net Cash Proceeds of each such conveyance, sale, transfer or other disposition shall be used for Capital Expenditures (including without limitation the reimbursement of Borrower and Guarantors for Capital Expenditures already made) or to repay the Obligations.

(c) Notwithstanding anything to the contrary contained in this Section 6.2, Borrower shall not effect the consummation of, and shall not permit GB Pipeline or GB Processing, as the case may be, to consummate a GB Facility Asset Sale unless an amount equal to the Net GB Financing Proceeds resulting therefrom is (i) distributed by GB Pipeline or GB Processing, as the case may be, to Borrower and used by Borrower for Capital Expenditures in a Related Business of Borrower, each within 180 days after the date of consummation of such GB Facility Asset Sale, or (ii) to the extent not used in accordance with clause (i) preceding with 180 days after the date of consummation of such GB Facility Asset Sale, applied by Borrower to repay the Obligations.

6.3. LIMITATION ON INCURRENCE OF ADDITIONAL DEBT. Except as set forth in this Section 6.3, from and after the Effective Date, each of Borrower and the Guarantors hereby agree that none of Borrower nor any Guarantor shall or shall permit any of its Subsidiaries, until satisfaction in full of the Obligations and termination of this Agreement, to directly or indirectly, create, incur, assume, guarantee, or otherwise become liable for, contingently or otherwise (to "Incur" or, as appropriate, an "Incurrence"), any Debt, except:

(a) the Obligations and the Guaranty;

(b) Debt in an aggregate principal amount outstanding not to exceed at any one time \$5 million;

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(c) Subordinated Debt of Borrower solely to any wholly owned Subsidiary of Borrower, or Debt of any wholly owned Subsidiary of Borrower solely to Borrower or to any wholly owned Subsidiary of Borrower; provided, however, that if any Subsidiary holding such Debt, for any reason, is no longer deemed a Subsidiary of Borrower, any outstanding Debt incurred by Borrower or another Subsidiary pursuant to this Section 6.3 (c) shall constitute a new incurrence of Debt and be subject to the restrictions of Section 6.3.

(d) Debt of Borrower or any Guarantor secured by a Permitted Lien that meets the requirements of clause (c), (d), or (e) of the definition of "Permitted Liens" set forth in Section 1.1;

(e) (1) any guaranty of Debt permitted by clauses (a), (b), (c), or (j) hereof, which guaranty shall not be included in the determination of the amount of Debt which may be incurred pursuant to (a), (b), (c), or (i) hereof, or (2) any guarantee by Borrower of the obligations of any wholly owned Subsidiary of Borrower to the extent such obligations so guaranteed (A) do not constitute Debt (unless and only to the extent such Debt is otherwise permitted under this Section 6.3) and (B) except to the extent such obligations constitute Debt otherwise permitted under this Section 6.3, such obligations are of the type customarily Incurred by such wholly owned Subsidiary in favor of third parties in the ordinary course of conducting its Related Business;

(f) Borrower and any Guarantor may incur Debt as an extension, renewal, replacement, or refunding of (i) any item of the Debt permitted to be incurred by Section 6.3(j), (ii) Debt existing on the Effective Date that is secured by assets of GB Pipeline, up to a maximum principal amount of such Debt so extended, renewed, replaced or refunded under this Section 6.3(f) not to exceed \$5 million, (iii) Debt existing on the Effective Date (other than this Agreement) that is secured by assets of GB Processing, up to a maximum principal amount of such Debt so extended, renewed, replaced or refunded under this Section 6.3(f) not to exceed \$5 million or (iv) the Debt permitted to be incurred by this Section 6.3(f) (each such item of Debt is referred to as

"Refinancing Debt"), provided, however, that (1) the maximum principal amount of each item of Refinancing Debt (or, if such item of Refinancing Debt is issued with original issue discount, the original issue price of such item of Refinancing Debt) permitted under this clause (f) may not exceed the lesser of (x) the principal amount of the item of Debt being extended, renewed, replaced, or refunded plus reasonable financing fees and other associated reasonable out-of-pocket expenses including consent payments, premium, if any, and related fees, in each case other than those paid to an Affiliate (collectively, "Refinancing Fees"), or (y) if such item of Debt being extended, renewed, replaced, or refunded was issued at an original issue discount, the original issue price, plus amortization of the original issue discount as of the time of the Incurrence of such item of Refinancing Debt plus Refinancing Fees, (2) each item of Refinancing Debt has a Weighted Average Life and a final maturity that is equal to or greater than the related Debt being extended, renewed, replaced, or refunded at the time of such extension, renewal, replacement, or refunding, and (3) each item of Refinancing Debt shall rank with respect to the Obligations to an extent no less favorable in respect thereof to Lender than the related Debt being refinanced;

(g) Debt represented by trade payables or accrued expenses, in each case incurred on normal, customary terms in the ordinary course of business, not overdue for a period of more than 45 days (or, if overdue for a period of more than 45 days, being contested in

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good faith and by appropriate proceedings and adequate reserves with respect thereto being maintained on the books of Borrower or any Guarantor in accordance with GAAP) and not constituting any amounts due to banks or other financial institutions;

(h) Debt of Borrower or any Guarantor to holders of Allowed Priority Tax Claims under the Plan of Reorganization, to holders of Allowed Claims in classes 3,4,5 or 6 under the Plan of Reorganization or under surety bonds, letters of credit or reimbursement obligations related to or constituting collateral securing Borrower's or any Guarantor's obligations thereunder;

(i) letters of credit and reimbursement obligations relating thereto to the extent collateralized by cash or Cash Equivalents;

(j) Debt outstanding on the date hereof;

(k) Debt in respect of Drilling Production Payments not to exceed the limitation set forth in Section 7.4 of this Agreement.

Debt incurred by any Person that is not a Subsidiary of Borrower, which Debt is outstanding at the time such Person becomes a Subsidiary of, or is merged into, or consolidated with Borrower or one of its Subsidiaries, as the case may be, shall be deemed to have been incurred, as the case may be, at the time such Person becomes a Subsidiary of, or is merged into, or consolidated with Borrower or one of its Subsidiaries.

Notwithstanding anything to the contrary contained in this Section 6.3 or in Section 6.4, Borrower shall not effect the consummation of, and shall not permit GB Pipeline or GB Processing, as the case may be, to consummate, a GB Facility Financing unless (A) concurrently with the consummation of such GB Facility Financing Borrower shall cause a duly executed and acknowledged GB Consent and Subordination Agreement to be delivered to Lender and (B) an amount equal to the Net GB Financing Proceeds resulting therefrom is (i) used by GB Pipeline or GB Processing, as the case may be, for Capital Expenditures in a Related Business of such Person within 180 days after the date of consummation of such GB Facility Financing, (ii) distributed by GB Pipeline or GB Processing, as the case may be, to Borrower and used by Borrower for Capital Expenditures in a Related Business of such Borrower, each within 180 days after the date of consummation of such GB Facility Financing, (iii) used, in part, as contemplated in the preceding clause (i), and used, in part, as contemplated in the preceding clause (ii), or (iv) to the extent not used in accordance with clause (i), (ii) or (iii) preceding within 180 days after the date of consummation of such GB Facility Financing, distributed by GB Pipeline or GB Processing, as the case may be, to Borrower and, on the 181st day after the date of consummation of such GB Facility Financing, such amount, if any, distributed to Borrower pursuant to this clause (iv) shall be deemed to be included within the Net Cash Proceeds subject to application pursuant to Section

6.2(a)(x)(A).

For the purpose of determining compliance with this Section 6.3, (A) if an item of Debt meets the criteria of more than one of the types of Debt described in the above clauses, Borrower, Guarantors or the Subsidiary in question shall have the right to determine in its sole discretion the category to which such Debt applies and shall not be required to include the amount and type of such Debt in more than one of such categories and may elect to apportion

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such item of Debt between or among any two or more of such categories otherwise applicable, and (B) the amount of any Debt which does not pay interest in cash or which was issued at a discount to face value shall be deemed to be equal to the amount of the liability in respect thereof determined in accordance with GAAP.

6.4. CREATION OF LIENS. Each of Borrower and the Guarantors hereby agree that none of Borrower nor any Guarantor shall or permit any of its Subsidiaries, until satisfaction in full of the Obligations and termination of this Agreement, to create or suffer to exist any Lien upon or against any of its property or assets now owned or hereafter acquired, except Permitted Liens. For the purpose of determining compliance with this Section 6.4, if a Lien meets the criteria of more than one of the types of Permitted Liens, Borrower, Guarantors or the Subsidiary in question shall have the right to determine in its sole discretion the category of Permitted Lien to which such Lien applies, shall not be required to include such Lien in more than one of such categories, and may elect to apportion such Lien between or among any two or more categories otherwise applicable.

6.5. LIMITATION ON INVESTMENTS, LOANS AND ADVANCES. Each of Borrower and the Guarantors hereby agree that none of Borrower nor any Guarantor shall, or permit any of its Subsidiaries, until satisfaction in full of the Obligations and termination of this Agreement, to make any advance, loan, extension of credit or capital contribution to, or purchase any stock, bonds, note, debentures or other securities of or any assets constituting a business unit of, or make any other investment in, any Person, except pursuant to a Permitted Investment.

6.6. LIMITATION ON RESTRICTED PAYMENTS. Each of Borrower and the Guarantors hereby agree that none of Borrower nor any Guarantor shall, or permit any of its Subsidiaries, until satisfaction in full of the Obligations and termination of this Agreement, to directly or indirectly make any Restricted Payment.

6.7. NATURE OF BUSINESS. Each of Borrower and the Guarantors hereby agree that none of Borrower nor any Guarantor shall, or permit any of its Subsidiaries, until satisfaction in full of the Obligations and termination of this Agreement, to directly or indirectly engage to any substantial extent in any line or lines of business activity other than a Related Business or such other business activities as are reasonably related or incidental thereto.

6.8. SUBSIDIARIES. Each of Borrower and the Guarantors hereby agree that none of Borrower nor any Guarantor shall, or permit any of its Subsidiaries, until satisfaction in full of the Obligations and termination of this Agreement, to form any Material Subsidiary unless such Material Subsidiary executes and delivers a joinder to this Agreement joining this Agreement as a Guarantor and such other documents and instruments deemed appropriate by Lender with respect to such Subsidiary promptly following such formation or acquisition.

6.9. FISCAL YEAR AND ACCOUNTING CHANGES. Each of Borrower and the Guarantors hereby agree that none of Borrower nor any Guarantor shall, or permit any of its Subsidiaries, until satisfaction in full of the Obligations and termination of this Agreement: to change its fiscal year from January 31 or make any significant change (i) in accounting treatment and reporting practices except as required by GAAP or (ii) in tax reporting treatment except as required by law; provided, however, that Borrower may change its tax year to conform to its fiscal year.

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6.10. AMENDMENT OF ARTICLES OF INCORPORATION, BY-LAWS. Each of

Borrower and the Guarantors hereby agree that none of Borrower nor any Guarantor shall, or shall permit any of its Subsidiaries, until satisfaction in full of the Obligations and termination of this Agreement, to amend or modify any material term or provision of its Articles of Incorporation or By-Laws unless required by law.

6.11. CHANGES RELATING TO SUBORDINATED DEBT. Each of Borrower and the Guarantors hereby agree that none of Borrower nor any Guarantor shall, or permit any of its Subsidiaries, until satisfaction in full of the Obligations and termination of this Agreement, to amend the terms of any Subordinated Debt if the effect of such amendment is to: (a) increase the interest rate on such Debt; (b) shorten the maturity of such Subordinated Debt; (c) change any event of default or add any covenant with respect to such Debt; (d) change the payment provisions of such Debt; (e) change the subordination provisions thereof; or (f) change or amend any other term if such change or amendment would materially increase the obligations of the obligor or confer additional material rights on the holder of such Debt in a manner adverse to Borrower or Lender.

#### VII. FINANCIAL COVENANTS.

Until payment of the Obligations and termination of this Agreement, Borrower agrees that:

7.1. PV10 VALUATION. The PV 10 of the Borrower and the Guarantors, net of any assets subject to liens senior to the liens granted to Lender pursuant to this Agreement, shall not be less than two hundred (200%) percent of the outstanding Obligations under this Agreement and the Note (at the end of any calendar quarter); provided however, that if such amount falls below 200% of the such outstanding Obligations, the Borrower shall, within five (5) days, reduce the outstanding Obligations under this Agreement and the Note by the amount necessary to remain in compliance herewith. Any reduction in the amount of the outstanding Obligations pursuant to this provision shall be a permanent reduction.

#### VIII. EVENTS OF DEFAULT.

The occurrence of any one or more of the following events shall constitute an Event of Default:

8.1. PAYMENT OF PRINCIPAL OR INTEREST. Failure by Borrower to pay any principal or interest on the Obligations when due, whether at maturity or by reason of acceleration pursuant to the terms of this Agreement or by notice of intention to prepay, or by required prepayment or failure to pay any other liabilities or make any other payment, fee or charge provided for herein or in any Ancillary Document when due;

8.2. MISLEADING REPRESENTATION OR WARRANTY. Any representation or warranty made or deemed made by Borrower in this Agreement or any Ancillary Document or in any certificate, document or financial or other statement furnished at any time in connection herewith or therewith shall prove to have been misleading in any material respect on the date when made or deemed to have been made;

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8.3. OBSERVING ARTICLE VII COVENANTS. Failure by Borrower to perform, keep or observe any term or covenant contained in Article VII of this Agreement, without Lender's prior written consent.

8.4. ATTACHMENT AGAINST PROPERTY. Issuance of a notice of Lien, levy, assessment, injunction or attachment against Borrower's, any Subsidiary's or any Guarantor's property having an aggregate value in excess of \$250,000 which is not stayed or lifted within thirty (30) days;

8.5. OBSERVING AGREEMENT COVENANTS. Failure or neglect of Borrower to perform, keep or observe any term, provision, condition or covenant contained in (a) this Agreement or any Ancillary Document (other than any provision in this Article VIII) if the same shall remain unremedied for thirty (30) days or more after written notice from Lender to Borrower of any such failure and (b) Article VIII of this Agreement if the same shall remain unremedied for ten (10) days or more after the occurrence thereof;

8.6. JUDGMENTS. Any judgment is rendered or judgment liens filed against Borrower, any Subsidiary or any Guarantor for an amount in excess

of \$250,000 which within thirty (30) days of such rendering or filing is not either satisfied, stayed or discharged of record;

8.7. INSOLVENCY OF BORROWER. Borrower shall (a) apply for, consent to or suffer the appointment of, or the taking of possession by, a receiver, custodian, trustee, liquidator or similar fiduciary of itself or of all or a substantial part of its property, (b) make a general assignment for the benefit of creditors, (c) commence a voluntary case under any state or federal bankruptcy laws (as now or hereafter in effect), (d) be adjudicated a bankrupt or insolvent, (e) file a petition seeking to take advantage of any other law providing for the relief of debtors, (f) acquiesce to, or fail to have dismissed, within thirty (30) days, any petition filed against it in any involuntary case under such bankruptcy laws, or (g) take any action for the purpose of effecting any of the foregoing;

8.8. INABILITY TO PAY DEBTS. Borrower shall admit in writing its inability, or be generally unable, to pay its debts as they become due or cease operations of its present business;

8.9. INSOLVENCY OF SUBSIDIARY OR GUARANTOR. Any Material Subsidiary of Borrower, or any Guarantor, shall (a) apply for, consent to or suffer the appointment of, or the taking of possession by, a receiver, custodian, trustee, liquidator or similar fiduciary of itself or of all or a substantial part of its property, (b) admit in writing its inability, or be generally unable, to pay its debts as they become due or cease operations of its present business, (c) make a general assignment for the benefit of creditors, (c) commence a voluntary case under any state or federal bankruptcy laws (as now or hereafter in effect), (e) be adjudicated a bankrupt or insolvent, (f) file a petition seeking to take advantage of any other law providing for the relief of debtors, (g) acquiesce to, or fail to have dismissed, within thirty (30) days, any petition filed against it in any involuntary case under such bankruptcy laws, or (viii) take any action for the purpose of effecting any of the foregoing;

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8.10. CHANGE IN BORROWER'S CONDITION. Any change in Borrower's condition or affairs (financial or otherwise) which in Lender's opinion materially impairs the Collateral or the ability of Borrower to perform its Obligations under this Agreement;

8.11. LIENS. Any Lien created hereunder or provided for hereby or under any related agreement, with respect Collateral having a value of \$50,000 or greater, for any reason ceases to be or is not a valid and perfected Lien having a first priority interest (other than Permitted Liens);

8.12. DEFAULT UNDER ANCILLARY DOCUMENT. A default or event of default has occurred and been declared and continuing under any Ancillary Document which default shall not have been cured or waived within any applicable grace period;

8.13. PAYMENT DEFAULT. A default by Borrower or any Subsidiary or Guarantor in the payment, when due (after any applicable grace period or extension for the payment thereof) of any principal of or interest on any Debt having a principal amount, individually or in the aggregate, in excess of \$50,000, except so long as the requisite holder or holders of such Debt shall have waived such default;

8.14. MATERIAL ADVERSE EFFECT. A default of the obligations of Borrower or any Guarantor under any other agreement to which it is a party shall occur which may reasonably be expected to have a Material Adverse Effect and which default is not cured within any applicable grace period;

8.15. MATERIAL PROVISION Any material provision of this Agreement shall, for any reason, cease to be valid and binding on any of Borrower or the Guarantors, or Borrower or any of the Guarantors shall so claim in writing to Lender;

8.16. MODIFICATION TO INTELLECTUAL PROPERTY OR AGREEMENTS. If (a) any Governmental Body shall (i) revoke, terminate, suspend or adversely modify any license, permit, patent, trademark or tradename of Borrower or any of the Guarantors, the continuation of which is material to the continuation of Borrower's or any of the Guarantors' business, or (ii) commence proceedings to suspend, revoke, terminate or adversely modify any such license, permit,

trademark, tradename or patent and such proceedings shall not be dismissed or discharged within sixty (60) days, or (iii) schedule or conduct a hearing on the renewal of any license, permit, trademark, tradename or patent necessary for the continuation of Borrower's or any of the Guarantors' business and the staff of such Governmental Body issues a report recommending the termination, revocation, suspension or material, adverse modification of such license, permit, trademark, tradename or patent; (b) any agreement, which is necessary or material to the operation of Borrower's or any of the Guarantors' business, shall be revoked or terminated and not replaced by a substitute acceptable to Lender within thirty (30) days after the date of such revocation or termination, and such revocation or termination and non-replacement could have a Material Adverse Effect;

8.17. COLLATERAL SEIZURE. Any portion of the Collateral shall be seized or taken by a Governmental Body;

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8.18. GUARANTOR DEFAULT. If any Guarantor defaults in the payment of any of its payment obligations under the Guaranty and such default shall continue for a period of ten (10) days hereunder or under the Guaranty or if any proceeding shall be brought by Borrower or any Guarantor to challenge the validity, binding effect of this Agreement or the Guaranty, or should this Agreement or the Guaranty cease to be a valid, binding and enforceable obligation of a Guarantor.

8.19. NYMEX GAS CLOSING PRICE. If the average NYMEX closing market price of gas per MMBtu drops below \$3.00 in any month, unless the PV10 attributable to proven developed producing wells of the Borrower and the Guarantors (excluding any PV10 attributable to wells subject to Production Payments) is at least 200% of the outstanding Obligations.

#### IX. LENDER'S RIGHTS AND REMEDIES AFTER DEFAULT.

9.1. RIGHTS AND REMEDIES. Upon the occurrence of (a) an Event of Default pursuant to Section 8.7, all Obligations shall be immediately due and payable and this Agreement, and (b) any of the other Events of Default and at any time thereafter (such default not having previously been cured), at the option of Lender, all Obligations shall be immediately due and payable and Lender shall have the right to terminate this Agreement. Upon the occurrence of any Event of Default, Lender shall have the right to exercise any and all other rights and remedies provided for herein, under the Uniform Commercial Code and at law or equity generally, including, without limitation, the right to foreclose the security interests granted herein and to realize upon any Collateral by any available judicial procedure and/or to take possession of and sell any or all of the Collateral with or without judicial process. Lender may enter any of Borrower's and the Guarantors' premises or other premises without legal process and without incurring liability to Borrower or any Guarantor therefor, and Lender may thereupon, or at any time thereafter, in its discretion without notice or demand, take the Collateral and remove the same to such place as Lender may deem advisable. With or without having the Collateral at the time or place of sale, Lender may sell the Collateral, or any part thereof, at public or private sale, at any time or place, in one or more sales, at such price or prices, and upon such terms, either for cash, credit or future delivery, as Lender may elect. Except as to that part of the Collateral which is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Lender shall give Borrower and the Guarantors reasonable notification of such sale or sales, it being agreed that in all events written notice mailed to Borrower and the Guarantors at least five (5) days prior to such sale or sales is reasonable notification. At any public sale Lender may bid for and become the purchaser, and Lender or any other purchaser at any such sale thereafter shall hold the Collateral sold absolutely free from any claim or right of whatsoever kind, including any equity of redemption and such right and equity are hereby expressly waived and released by Borrower and the Guarantors. In connection with the exercise of the foregoing remedies, Lender is granted permission, without charge, to use all of the trademarks, trade styles, trade names, patents, patent applications, licenses, franchises and other proprietary rights of each of Borrower and the Guarantors, which are used in connection with the Collateral for the purpose of disposing of such Inventory and Equipment for the purpose of completing the manufacture of such Collateral. The proceeds realized from the sale of any Collateral shall be applied in accordance with Section 9.5 hereof. If any deficiency shall arise, Borrower and the Guarantors shall remain liable to Lender therefor.

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9.2. LENDER'S DISCRETION. Lender shall have the right in its sole discretion to determine which rights, Liens, security interests or remedies Lender may at any time pursue, relinquish, subordinate, or modify or to take any other action with respect thereto and such determination will not in any way modify or affect any of Lender's or Lender' rights hereunder.

9.3. SETOFF. In addition to any other rights which Lender may have under applicable law, upon the occurrence of an Event of Default hereunder, Lender shall have a right to apply any of the property of Borrower or any Guarantor that is held by Lender to reduce the Obligations.

9.4. RIGHTS AND REMEDIES NOT EXCLUSIVE. The enumeration of the foregoing rights and remedies is not intended to be exhaustive and the exercise of any right or remedy shall not preclude the exercise of any other right or remedies provided for herein or otherwise provided by law, all of which shall be cumulative and not alternative.

9.5. ALLOCATION OF PAYMENTS AFTER EVENT OF DEFAULT. Notwithstanding any other provisions of this Agreement to the contrary, after the occurrence and during the continuance of an Event of Default, all amounts collected or received by Lender on account of the Obligations or any other amounts outstanding under any of the Ancillary Documents or in respect of the Collateral may, at Lender's discretion, be paid over or delivered as follows:

FIRST: to the payment of all reasonable out-of-pocket costs and expenses (including without limitation, reasonable attorneys' fees) of Lender in connection with enforcing the rights of Lender under this Agreement and the Ancillary Documents and any protective advances made by Lender with respect to the Collateral under or pursuant to the terms of this Document;

SECOND: to the payment of all of the Obligations consisting of accrued interest;

THIRD: to the payment of the outstanding principal amount of the Obligations;

FOURTH: to the payment of all other Obligations and other obligations which shall have become due and payable under the Ancillary Documents or otherwise and not repaid pursuant to clauses "FIRST", "SECOND" and "THIRD" above;

FIFTH: to the payment of the surplus, if any, to whoever may be lawfully entitled to receive such surplus.

In carrying out the foregoing, amounts received shall be applied in the numerical order provided until exhausted prior to application to the next succeeding category.

#### X. WAIVERS AND JUDICIAL PROCEEDINGS.

10.1. WAIVER OF NOTICE. Borrower and each Guarantor hereby waives notice of non-payment of any of the Receivables, demand, presentment, protest and notice thereof with

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respect to any and all instruments, notice of acceptance hereof, notice of loans or advances made, credit extended, Collateral received or delivered, or any other action taken in reliance hereon, and all other demands and notices of any description, except such as are expressly provided for herein.

10.2. DELAY. No delay or omission on Lender's part in exercising any right, remedy or option shall operate as a waiver of such or any other right, remedy or option or of any default.

10.3. JURY WAIVER. EACH PARTY TO THIS AGREEMENT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (A) ARISING UNDER THIS AGREEMENT OR ANY OTHER INSTRUMENT,

DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith, OR (B) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THIS AGREEMENT OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith, OR THE TRANSACTIONS RELATED HERETO OR THERETO IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE AND EACH PARTY HEREBY CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT ANY PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENTS OF THE PARTIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

XI. EFFECTIVE DATE AND TERMINATION.

11.1. TERM. This Agreement, which shall inure to the benefit of and shall be binding upon the respective successors and permitted assigns of each of Borrower, each Guarantor (except for any successor or assign of a Guarantor in connection with a transaction as a result of which the relevant Guaranty will be released or terminated pursuant to the terms of this Agreement), and Lender, shall become effective on the date hereof and shall continue in full force and effect until the last day of the Term unless sooner terminated as herein provided.

11.2. TERMINATION. The termination of the Agreement shall not affect any of the rights of Borrower, any Guarantor or Lender's, or any of the Obligations having their inception prior to the effective date of such termination, and the provisions hereof shall continue to be fully operative until all transactions entered into, rights or interests created or Obligations have been fully disposed of, concluded or liquidated. The Liens and rights granted to Lender hereunder and the financing statements filed hereunder shall continue in full force and effect, notwithstanding the termination of this Agreement or the fact that Borrower's Account may from time to time be temporarily in a zero or credit position, until all of the Obligations of Borrower and the Guarantors have been paid or performed in full after the termination of this Agreement or Borrower or any Guarantor has furnished Lender with an indemnification satisfactory to Lender with respect thereto. Accordingly, Borrower and each Guarantor waives any rights which it may have under the Uniform Commercial Code to demand the filing of termination statements with respect to the Collateral, and Lender shall not be required to send such termination statements to

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Borrower, or to file them with any filing office, unless and until this Agreement shall have been terminated in accordance with its terms and all Obligations paid in full in immediately available funds. All representations, warranties, covenants, waivers and agreements contained herein shall survive termination hereof until all Obligations are paid or performed in full.

XII. RELEASE OF COLLATERAL.

12.1. DISPOSITION OF CERTAIN COLLATERAL WITHOUT REQUESTING RELEASE. Borrower or its Subsidiaries may, so long as an Event of Default shall not have occurred and be continuing or would exist after giving effect thereto and without requesting or receiving the consent of Lender (a) make cash payments (including repayments of Debt permitted to be incurred hereby) that are not otherwise prohibited by this Agreement, and (b) dispose of property in a transaction permitted by Section 6.2(b).

12.2. REQUESTING RELEASE OF COLLATERAL.

(a) Upon receipt of Borrower's request to release Collateral (a "Release Request"), Lender shall execute and deliver, any instruments deemed by Borrower to be reasonably necessary or reasonably appropriate to release all or a part of the Collateral from the security interests of Lender, if the provisions of this Section 12.2 have been complied with. Any such Release Request shall request Lender to execute one or more specifically described release instruments (which release instruments shall accompany such Release Request) and shall certify (i) that no Event of Default has occurred and is continuing (or with respect to a Release Request relating to any of the Security Documents, that no event of default has occurred and is continuing or would exist after giving effect thereto under the applicable Security Document), and (ii) that one of the conditions of this Section 12.2 set forth below (specifying such condition) has been fulfilled, and if such

specified condition is described in clause (i) below, that the conditions of Section 12.1, if applicable, have been, or simultaneously with or immediately following the release will be, fulfilled:

(1) the Collateral will be disposed of in compliance with Section 12.1;

(2) the Net Proceeds from the Collateral will be immediately released to Lender to repay the Obligations;

(3) the Collateral is to be released in connection with an Asset Sale made in compliance with Section 6.2; all of the conditions precedent to the termination of the Security Document under which the Lien in the Collateral to be released was created, or to the release of such Collateral from the Lien created by such Security Document, as set forth in such Security Document, have been satisfied;

(4) the Collateral to be released secures, or will secure upon release, debt or other obligations that constitute First Lien Debt; or

(5) the release of the Collateral to be released is required pursuant to, or is required in order to effect compliance with, the Plan or a Plan Order.

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(b) At the request of Borrower (or with respect to releases under the Security Documents, the grantor of the security interest thereunder), Lender shall, in lieu of releasing any Collateral pursuant to this Section 12.2, execute and deliver a Subordination Agreement with respect to such Collateral in form and substance acceptable to Lender.

#### XIII. GUARANTY.

13.1. GUARANTY. Each Guarantor jointly and severally assumes and unconditionally guarantees to Lender the prompt payment when due (whether by acceleration or otherwise) of all present and future Obligations, and irrespective of the genuineness, validity, regularity or enforceability of such Obligations, or of any instrument evidencing any of the Obligations or of any collateral therefor or of the existence or extent of such collateral, and irrespective of the allowability, allowance or disallowance of any or all of the Obligations in any case commenced by or against Borrower under Title 11, United States Code, including, without limitation, post-petition interest, fees, costs and charges that would have accrued or been added to the Obligations but for the commencement of such case.

13.2. NO IMPAIRMENT. Lender may at any time and from time to time, either before or after the maturity thereof, without notice to or further consent of any Guarantor, extend the time of payment of, exchange or surrender any collateral for, renew or extend any of the Obligations or increase or decrease the interest rate thereon, and may also make any agreement with Borrower or with any other party to or person liable on any of the Obligations, or interested therein, for the extension, renewal, payment, compromise, discharge or release thereof, in whole or in part, or for any modification of the terms thereof or of any Ancillary Documents, or make any election of rights Lender may deem desirable under the United States Bankruptcy Code, as amended, or any other federal or state bankruptcy, reorganization, moratorium or insolvency law relating to or affecting the enforcement of creditors' rights generally (any of the foregoing, an "Insolvency Law") without in any way impairing or affecting the obligations of Guarantors hereunder. The obligations of Guarantors hereunder shall be effective regardless of the subsequent incorporation, merger or consolidation of Borrower, or any change in the composition, nature, personnel or location of Borrower and shall extend to any successor entity to Borrower, including a debtor in possession or the like under any Insolvency Law.

13.3. GUARANTY ABSOLUTE. Each Guarantor guarantees that the Obligations will be paid strictly in accordance with the terms of this Agreement and/or any other document, instrument or agreement creating or evidencing the Obligations, regardless of any law, regulation or order now or hereafter in effect in any jurisdiction affecting any of such terms or the rights of Borrower

with respect thereto. Each Guarantor hereby knowingly accepts the full range of risk encompassed within a contract of "continuing guaranty" which risk includes the possibility that Borrower will contract additional indebtedness for which such Guarantor may be liable hereunder after Borrower's financial condition or ability to pay its lawful debts when they fall due has deteriorated, whether or not Borrower has properly authorized incurring such additional indebtedness. Each Guarantor acknowledges that (a) no oral representations, including any representations to extend credit or provide other financial accommodations to Borrower, have been made by Lender to induce such Guarantor to enter into this Agreement and (b) any extension of credit to Borrower shall be governed solely by the provisions of this Loan Agreement and the Ancillary Documents. The liability of each Guarantor under this Agreement shall be absolute and unconditional, in accordance with its terms, and shall remain in full force

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and effect without regard to, and shall not be released, suspended, discharged, terminated or otherwise affected by, any circumstance or occurrence whatsoever, including, without limitation: (i) any waiver, indulgence, renewal, extension, amendment or modification of or addition, consent or supplement to or deletion from or any other action or inaction under or in respect of this Agreement and the Ancillary Documents or any other instruments or agreements relating to the Obligations or any assignment or transfer of any thereof; (ii) any lack of validity or enforceability of any of this Agreement, the Ancillary Documents or any assignment or transfer of any thereof; (iii) any furnishing of any additional security to Lender or its assignees or any acceptance thereof or any release of any security by Lender or its assignees; (iv) any limitation on any party's liability or obligation under this Agreement, the Ancillary Documents or any other documents, instruments or agreements relating to the Obligations or any assignment or transfer of any thereof or any invalidity or unenforceability, in whole or in part, of any such document, instrument or agreement or any term thereof; (v) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to Borrower or any Guarantor, or any action taken with respect to this Agreement by any trustee or receiver, or by any court, in any such proceeding, whether or not the undersigned shall have notice or knowledge of any of the foregoing; (vi) any exchange, release or nonperfection of any Collateral, or any release, or amendment or waiver of or consent to departure from any guaranty or security, for all or any of the Obligations; or (viii) any other circumstance which might otherwise constitute a defense available to, or a discharge of, any Guarantor. Any amounts due from any Guarantor to Lender shall bear interest until such amounts are paid in full at the highest rate then applicable to the Obligations.

#### 13.4. WAIVERS

(a) . This is a guaranty of payment and not of collection. Lender shall be under no obligation to institute suit, exercise rights or remedies or take any other action against Borrower or any other person liable with respect to any of the Obligations or resort to any collateral security held by it to secure any of the Obligations as a condition precedent to any Guarantor being obligated to perform as agreed herein and each Guarantor hereby waives any and all rights which it may have by statute or otherwise which would require Lender to do any of the foregoing. Each Guarantor further consents and agrees that Lender shall not be under any obligation to marshal any assets in favor of any Guarantor, or against or in payment of any or all of the Obligations. Each Guarantor hereby waives all rights of suretyship. Each Guarantor hereby waives any rights to interpose any defense, counterclaim or offset of any nature and description which it may have or which may exist between and among Lender, Borrower and/or any Guarantor with respect to any Guarantor's obligations hereunder, or which Borrower may assert on the underlying debt, including but not limited to failure of consideration, breach of warranty, fraud, payment (other than cash payment in full of the Obligations), statute of frauds, bankruptcy, infancy, statute of limitations, accord and satisfaction, and usury.

(b) Each Guarantor further waives (i) notice of the acceptance of this Agreement, of the making of any such loans or extensions of credit, and of all notices and demands of any kind to which such Guarantor may be entitled, including, without limitation, notice of adverse change in Borrower's financial condition or of any other fact which might materially increase the risk of any Guarantor and (ii) presentment to or demand of payment from

anyone whomsoever liable upon any of the Obligations, protest, notices of presentment, non-payment or protest and notice of any sale of collateral security or any default of any sort.

13.5. PAYMENTS FROM GUARANTOR. Lender, with or without notice to any Guarantor, may apply on account of the Obligations any payment from any Guarantor or any other guarantor, or amounts realized from any security for the Obligations.

13.6. NO TERMINATION. This is a continuing irrevocable guaranty and shall remain in full force and effect and be binding upon each Guarantor and each Guarantor's successors and assigns, until all of the Obligations have been paid in full and this Agreement has been terminated. If any of the present or future Obligations are guaranteed by Persons in addition to Guarantors, the death, release or discharge in whole or in part or the bankruptcy, merger, consolidation, incorporation, liquidation or dissolution of one or more of them shall not discharge or affect the liabilities of any Guarantor hereunder.

13.7. RECAPTURE. Anything in this Agreement to the contrary notwithstanding, if Lender receives any payment or payments on account of the liabilities guaranteed hereby, which payment or payments or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver, or any other party under any Insolvency Law, common law or equitable doctrine, then to the extent of any sum not finally retained by Lender, each Guarantor's obligations to Lender shall be reinstated and this Agreement shall remain in full force and effect (or be reinstated) until payment shall have been made to Lender, which payment shall be due on demand.

13.8. GUARANTIES OF BORROWER AND MATERIAL SUBSIDIARIES. Borrower and each of its Material Subsidiaries acknowledge, by their execution and delivery of this Agreement and each Guaranty, that Lender is relying on the provisions of this Article XIII, the Security Agreement and the Confirmation Order in extending credit hereunder on the Effective Date, that all Material Subsidiaries of Borrower are benefiting by the financing being provided by Lender and that Lender would not have agreed to provide such financing without the guaranties of all Material Subsidiaries, the Security Agreement and the Confirmation Order.

#### XIV. MISCELLANEOUS.

14.1. GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICTS OF LAW PROVISIONS THEREOF, APPLIED TO CONTRACTS TO BE PERFORMED WHOLLY WITHIN THE STATE OF NEW YORK. ANY JUDICIAL PROCEEDING BROUGHT BY OR AGAINST BORROWER OR ANY GUARANTOR WITH RESPECT TO ANY OF THE OBLIGATIONS, THIS AGREEMENT OR ANY RELATED AGREEMENT MAY BE BROUGHT IN ANY COURT OF COMPETENT JURISDICTION IN THE STATE OF NEW YORK, UNITED STATES OF AMERICA, AND, BY EXECUTION AND DELIVERY OF THIS AGREEMENT, BORROWER AND EACH GUARANTOR ACCEPTS FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, GENERALLY AND UNCONDITIONALLY, THE NON-EXCLUSIVE JURISDICTION OF THE AFORESAID COURTS, AND IRREVOCABLY AGREES TO BE BOUND BY ANY JUDGMENT RENDERED THEREBY IN CONNECTION WITH THIS AGREEMENT. BORROWER AND EACH GUARANTOR HEREBY WAIVES

PERSONAL SERVICE OF ANY AND ALL PROCESS UPON IT AND CONSENTS THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY REGISTERED MAIL (RETURN RECEIPT REQUESTED) DIRECTED TO BORROWER OR ANY GUARANTOR AT ITS ADDRESS SET FORTH IN SECTION 17.6 AND SERVICE SO MADE SHALL BE DEEMED COMPLETED FIVE (5) DAYS AFTER THE SAME SHALL HAVE BEEN SO DEPOSITED IN THE MAILS OF THE UNITED STATES OF AMERICA. NOTHING HEREIN SHALL AFFECT THE RIGHT TO SERVE PROCESS IN ANY MANNER PERMITTED BY LAW OR SHALL LIMIT THE RIGHT OF LENDER TO BRING PROCEEDINGS AGAINST BORROWER OR ANY GUARANTOR IN THE COURTS OF ANY OTHER JURISDICTION. BORROWER AND EACH GUARANTOR WAIVE ANY OBJECTION TO JURISDICTION AND VENUE OF ANY ACTION INSTITUTED HEREUNDER AND SHALL NOT ASSERT ANY DEFENSE BASED ON LACK OF JURISDICTION OR VENUE OR BASED UPON FORUM NON CONVENIENS. ANY JUDICIAL PROCEEDING BY BORROWER OR ANY GUARANTOR AGAINST LENDER INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER OR CLAIM IN ANY WAY

ARISING OUT OF, RELATED TO OR CONNECTED WITH THIS AGREEMENT OR ANY RELATED AGREEMENT, SHALL BE BROUGHT ONLY IN A FEDERAL OR STATE COURT LOCATED IN THE CITY OF NEW YORK, STATE OF NEW YORK.

#### 14.2. ENTIRE UNDERSTANDING

(a) This Agreement and the documents executed concurrently herewith contain the entire understanding between Borrower, Guarantors and Lender and supersedes all prior agreements and understandings, if any, relating to the subject matter hereof. Any promises, representations, warranties or guarantees not herein contained and hereinafter made shall have no force and effect unless in writing, and executed by the party or parties making such representations, warranties or guarantees. Neither this Agreement nor any portion or provisions hereof may be changed, modified, amended, waived, supplemented, discharged, cancelled or terminated orally or by any course of dealing, or in any manner other than by an agreement in writing, signed by the party to be charged. Borrower and each Guarantor acknowledges that it has been advised by counsel in connection with the execution of this Agreement and Ancillary Documents and is not relying upon oral representations or statements inconsistent with the terms and provisions of this Agreement.

(b) The Lender and Borrower may, subject to the provisions of this Section 14.2(b), from time to time enter into written supplemental agreements to this Agreement, the Note or the Ancillary Documents executed by Borrower and each Guarantor, for the purpose of adding or deleting any provisions or otherwise changing, varying or waiving in any manner the rights of Lender, Borrower or Guarantors thereunder or the conditions, provisions or terms thereof of waiving any Event of Default thereunder, but only to the extent specified in such written agreements.

Any such supplemental agreement shall be binding upon Borrower, Guarantors and Lender and all future holders of the Obligations. In the case of any waiver, Borrower, Guarantors and Lender shall be restored to their former positions and rights, and any Event of Default waived shall be deemed to be cured and not continuing, but no waiver of a specific Event of Default shall extend to any subsequent Event of Default (whether or not the subsequent Event of Default is the same as the Event of Default which was waived), or impair any right consequent thereon.

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#### 14.3. SUCCESSORS AND ASSIGNS; NEW LENDER.

(a) This Agreement shall be binding upon and inure to the benefit of Borrower, each Guarantor, Lender, all future holders of the Obligations (a "Transferee") and their respective successors and assigns, except neither Borrower nor any Guarantor may assign or transfer any of its rights or obligations under this Agreement without the prior written consent of Lender.

(b) Borrower and each Guarantor authorizes Lender to disclose to any Transferee and any prospective Transferee any and all financial information in Lender's possession concerning Borrower and each Guarantor which has been delivered to Lender by or on behalf of Borrower or any Guarantor pursuant to this Agreement or in connection with Lender's credit evaluation of Borrower or any Guarantor provided such party agrees to be bound by the confidentiality provision of Section 14.15 hereof.

14.4. APPLICATION OF PAYMENTS. Lender shall have the continuing and exclusive right to apply or reverse and re-apply any payment and any and all proceeds of Collateral to any portion of the Obligations. To the extent that Borrower makes a payment or Lender receives any payment or proceeds of the Collateral for Borrower's benefit, which are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, debtor in possession, receiver, custodian or any other party under any bankruptcy law, common law or equitable cause, then, to such extent, the Obligations or part thereof intended to be satisfied shall be revived and continue as if such payment or proceeds had not been received by Lender.

14.5. INDEMNITY. Borrower and each Guarantor shall indemnify Lender and each of their respective officers, directors, Affiliates and employees from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses and disbursements of any kind or nature whatsoever (including, without limitation, fees and

disbursements of counsel) which may be imposed on, incurred by, or asserted against Lender in any litigation, proceeding or investigation instituted or conducted by any Governmental Body or any other Person with respect to any aspect of, or any transaction contemplated by, or referred to in, or any matter related to, this Agreement or the Ancillary Documents, whether or not Lender is a party thereto, except to the extent that any of the foregoing arises out of the willful misconduct or gross (not mere) negligence of the party being indemnified.

14.6. NOTICE. Any notice or request hereunder may be given to Borrower, any Guarantor or to Lender at their respective addresses set forth below or at such other address as may hereafter be specified in a notice designated as a notice of change of address under this Section. Any notice or request hereunder shall be given by (a) hand delivery, (b) overnight courier, (c) registered or certified mail, return receipt requested, or (d) telecopy to the number set out below (or such other number as may hereafter be specified in a notice designated as a notice of change of address) with electronic confirmation of its receipt. Any notice or other communication required or permitted pursuant to this Agreement shall be deemed given (a) when personally delivered to any officer of the party to whom it is addressed, (b) on the earlier of actual receipt thereof or three (3) days following posting thereof by certified or registered mail, postage prepaid, or (c) upon actual receipt thereof when sent by a recognized overnight delivery service or (d) upon actual receipt thereof when sent by telecopier to the number set forth

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below with electronic confirmation of its receipt, in each case addressed to each party at its address set forth below or at such other address as has been furnished in writing by a party to the other by like notice:

(A) If to Lender at:

Thornwood Associates LP  
c/o Icahn Associates Corp.  
767 Fifth Avenue, 47th Floor  
New York, New York 10153  
Attn: Vincent Intrieri  
Keith Schaitkin, Esq.  
Telephone: (212) 702-4328  
Facsimile: (212) 750-5815

(B) If to Borrower or any Guarantor, at:

TransTexas Gas Corporation  
c/o National Energy Group, Inc.  
4925 Greenville Avenue, Suite 1400  
Dallas, TX 75201  
Attn: Bob Alexander  
(214) 692-9211 -Telephone  
(214) 692-5055 -- Facsimile

14.7. SURVIVAL. The obligations of each of Borrower and the Guarantor under Sections 11.2, 14.5, and 14.6 shall survive termination of this Agreement and the Ancillary Documents and payment in full of the Obligations.

14.8. SEVERABILITY. If any part of this Agreement is contrary to, prohibited by, or deemed invalid under applicable laws or regulations, such provision shall be inapplicable and deemed omitted to the extent so contrary, prohibited or invalid, but the remainder hereof shall not be invalidated thereby and shall be given effect so far as possible.

14.9. EXPENSES. All costs and expenses including, without limitation, reasonable attorneys' fees and disbursements incurred by Lender (i) in all efforts made to enforce payment of any Obligation or effect collection of any Collateral, or (ii) in connection with the entering into, modification, amendment, administration and enforcement of this Agreement or any consents or waivers hereunder and all related agreements, documents and instruments, or (iii) in instituting, maintaining, preserving, enforcing and foreclosing on Lender's security interest in or Lien on any of the Collateral, whether through judicial proceedings or otherwise, or (iv) in defending or prosecuting any actions or proceedings arising out of or relating to Lender's transactions with Borrower, or (v) in connection with any advice given to Lender with respect to

its rights and obligations under this Agreement and all related agreements, shall be reimbursed by Borrower and shall be part of the Obligations.

14.10. INJUNCTIVE RELIEF. Borrower and each Guarantor recognizes that, in the event Borrower or any Guarantor fails to perform, observe or discharge any of its obligations or liabilities under this Agreement, any remedy at law may prove to be inadequate relief to Lender; therefore, Lender shall

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be entitled to temporary and permanent injunctive relief in any such case without the necessity of proving that actual damages are not an adequate remedy.

14.11. CONSEQUENTIAL DAMAGES. Neither Lender nor its offices, directors, partners, employees, agents or representatives shall be liable to Borrower or any Guarantor for any special, direct, punitive, exemplary or consequential damages arising from any breach of contract, tort or other wrong relating to the establishment, administration or collection of the Obligations.

14.12. CAPTIONS. The captions at various places in this Agreement are intended for convenience only and do not constitute and shall not be interpreted as part of this Agreement.

14.13. COUNTERPARTS; FAXED SIGNATURES. This Agreement may be executed in any number of and by different parties hereto on separate counterparts, all of which, when so executed, shall be deemed an original, but all such counterparts shall constitute one and the same agreement. Any signature delivered by a party by facsimile transmission shall be deemed to be an original signature hereto.

14.14. CONSTRUCTION. The parties acknowledge that each party and its counsel have reviewed this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments, schedules or exhibits thereto.

14.15. CONFIDENTIALITY. Lender and each Transferee agree to use commercially reasonable efforts (equivalent to the efforts Lender applies to maintain the confidentiality of its own confidential information) to maintain as confidential all non-public information obtained by Lender or such Transferee pursuant to this Agreement; provided, however, Lender and each Transferee may disclose such confidential information (a) to its examiners, outside auditors, counsel and other professional advisors (provided such advisors are informed of and agree to be bound by the confidentiality provisions of this Agreement), (b) to Lender or to any prospective Transferees (provided that such prospective Transferees agree to be bound by the confidentiality provisions of the Agreement), (c) as required or requested by any governmental authority or representative thereof or pursuant to legal process and (d) which ceases to be confidential through no fault of Lender; provided, further that unless specifically prohibited by applicable law or court order, Lender and each Transferee shall use its best efforts prior to disclosure thereof, to notify Borrower of the applicable request for disclosure of such non-public information (i) by a governmental authority or representative thereof (other than any such request in connection with an examination of the financial condition of a Lender or a Transferee by such governmental authority) or (ii) pursuant to legal process.

[SIGNATURES FOLLOW]

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IN WITNESS WHEREOF, each of the parties has executed this Agreement as of the day and year first above written.

TRANSTEXAS GAS CORPORATION,  
as Borrower

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

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

GALVESTON BAY PROCESSING CORPORATION,  
as Guarantor

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

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

GALVESTON BAY PIPELINE COMPANY,  
as Guarantor

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

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

THORNWOOD ASSOCIATES LP, as Lender

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

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

EXHIBIT 2.3  
FORM OF AMENDED AND RESTATED O&G NOTE

EXHIBIT 4.7

ADDITIONAL REPRESENTATIONS AND COVENANTS

All defined terms herein not otherwise defined in the Agreement shall have the meanings ascribed thereto in the Mortgages.

A. Representations and Warranties. Borrower and each Guarantor hereby warrants and represents, as of the date hereof (giving effect to the Confirmation Order and the transactions contemplated thereunder and under the Plan and the Security Documents) to Lender as follows:

1. Leases. With respect to Leases covering all wells and Lands to which value has been ascribed in that certain reserve report, prepared as of November 1, 1999 (the "Netherland Reserve Report"), by Netherland Sewell & Associates, LLC: (a) the Leases are valid, subsisting leases as to all such wells and Lands, and are superior and paramount to all other Oil and Gas Leases respecting the properties to which they pertain and all rentals, royalties and other amounts due and payable in accordance with the terms of the Leases have been duly paid or provided for; (b) the Leases are in full force and effect; and (c) except as disclosed in writing by Borrower or a Guarantor to Lender, Borrower, and to the best of Borrower's and each Guarantor's knowledge all other parties to the Leases, have performed in all material respects all obligations required to be performed by them and are not in material default under nor in receipt of any claim of material default under any Lease, and no event has occurred which, with the passage of time or the giving of notice or both, would cause a material breach of, or default under, any Lease, and neither Borrower nor any Guarantor has knowledge of any material breach or anticipated breach by the other parties to any Lease.

2. Documents. Each of the existing Material Production Sale Contracts is valid, binding and enforceable in accordance with its respective terms (except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization or moratorium or other similar laws relating to creditor's rights and by general equitable principles which may limit the right to obtain equitable remedies (regardless of whether such enforceability is considered in a proceeding at equity or at law), and except as rights to indemnity thereunder may be limited by applicable law) and is in full force and effect, and no material default on the part of any party thereto exists thereunder. To the best knowledge of Borrower and each Guarantor, all amounts due and payable in accordance with the terms of each Material Production Sale Contract have been duly paid or provided for and the

obligations to be performed under each of the Material Production Sale Contracts have been duly performed, in all material respects in accordance with the terms of such contracts and any related agreements, and in conformity with all applicable laws, rules, regulations and orders of all courts and regulatory authorities having jurisdiction.

3. Title. Except for Permitted Liens, Borrower or a Guarantor, as the case may be, has (a) good and indefeasible title to, and is possessed of, the portion of the Collateral constituting the leasehold estates under the Leases referred to in All above (b) good and marketable title to the portion of the Collateral constituting Pipeline Assets or other personal property for the use and operation of such Pipeline Assets as it has been

used in the past and as it is proposed to be used in the business of storing and transporting Hydrocarbons and other products and any lack of title to such Pipeline Assets or personal property related thereto has not had and will not have any material adverse effect on Borrower's or either Guarantor's ability to use the Pipeline Assets and related personal property as it is proposed to be used in Borrower's or e either Guarantor's business and will not materially increase the cost of such use, and (c) good title to the portion of the Collateral constituting personal property that is not described in the foregoing clause (b). Borrower owns, in the aggregate, not more than the amount of undivided working interests and not less than the amount of net revenue interests in the Leases set forth in the Netherland Reserve Report. For purposes of this Paragraph (c), "working interest" shall refer to Borrower's (or a Guarantor's) share of expense in the applicable Lease, well or drilling and production unit shown in the Netherland Reserve Report, and "net revenue interest" shall refer to Borrower's (or a Guarantor's) share of production from the applicable Lease, well or drilling and production unit after satisfaction of all royalties, overriding royalties, production payments or similar non-operating interests. Each of the Material Production Sale Contracts is free from any material credit, deduction, allowance, defense, dispute, setoff, or counterclaim (other than current charges provided for in such instruments but not yet due and payable), and there is no material extension or indulgence with respect thereto. Neither Borrower nor any Guarantor is aware of any defect in or challenge to its ownership of the rights or other interests in any of the Collateral that would, individually or in the aggregate, materially lessen the value of the Collateral for its use as part of the Pipeline Assets or materially interfere with the ordinary conduct of the business of Borrower or any Guarantor or the use of the Collateral for the purposes for which held, except as expressly disclosed to Lender in writing.

4. Contracts. Neither Borrower nor any Guarantor is obligated by virtue of any prepayment under any Production Sale Contract, balancing agreement or other similar contract providing for the sale by Borrower or any Guarantor of Hydrocarbons, helium and/or other minerals, which contains a "take or pay" clause or under any similar prepayment agreement or arrangement, including, without limitation, "gas balancing agreements" to deliver Hydrocarbons, helium and/or other minerals (amounting to a material portion of the Hydrocarbons, helium and/or other minerals covered hereby) at some future time without then or thereafter receiving full payment therefor.

5. Producing Wells. All producing wells located on the Lands have been drilled, operated and produced in conformity in all material respects with all applicable laws, rules, regulations and orders of all regulatory authorities having jurisdiction and are subject to no material penalties on account of past production, and such wells are, in fact, bottomed under and are producing from, and the well bores are wholly within, the Lands.

6. Pipelines and Pipeline Assets. All Pipelines and Pipeline Assets have been constructed and operated in conformity in all material respects with all applicable laws, rules, regulations and orders of all regulatory authorities having jurisdiction and, except as expressly disclosed in writing to Lender, are subject to no material penalties on account of past operations.

B. Particular Covenants and Agreements of Borrower and the Guarantors. Borrower and each of the Guarantors hereby covenants to Lender as follows:

1. Operation of Collateral. So long as the Obligations or any part thereof remains unpaid, and whether or not Borrower is the operator of the Collateral, each of Borrower and the Guarantors shall, at their own expense:

(a) do all things necessary to keep unimpaired Borrower's or such Guarantor's rights and remedies in or under the Collateral and, except as otherwise permitted in this Agreement, shall (i) not abandon any well or forfeit, surrender, release or default under (other than any abandonment, forfeiture, surrender, release or default that, individually or in the aggregate with all other such defaults, would not have a Material Adverse Effect) any Lease to which value has been ascribed in the Proved Reserve Report, or in the event Borrower or a Guarantor is not the operator, shall use commercially reasonable efforts to prevent any of the above, unless undertaken in the ordinary course of business, (ii) enter into or otherwise acquire obligations under Production Sale Contracts (as defined in the Mortgages) only on terms and conditions to which a reasonably prudent producer, seller, purchaser, or processor, as applicable, of Subject Minerals, would agree, and (iii) not abandon, sell, convey, assign, lease or otherwise transfer any right, title or interest of Borrower or a Guarantor into or under the Pipelines or the Pipeline Assets, or consent to any of the foregoing except as permitted in Section 6.2 of this Agreement;

(b) except as otherwise permitted in this Agreement, perform or cause to be performed, each and all covenants, agreements, terms, conditions and limitations imposed upon Borrower or any Guarantor or any of their respective predecessors in interest (except where any failure to so perform or cause to be performed, individually or in the aggregate with all other such failures, would not have a Material Adverse Effect) and expressly contained in (i) the Leases and any instrument or document relating thereto, and (ii) any assignment or other form of conveyance, under or through which the Leases, the Pipelines, Pipeline Assets, Lands, or Rights-of-Way and Franchises, or an undivided interest therein are now held, and perform or cause to be performed all implied covenants and obligations imposed upon Borrower or a Guarantor in connection therewith or with any document or instrument relating thereto;

(c) cause, or in the event Borrower or any Guarantor is not the operator of the Subject Interests or the Pipeline Assets, use commercially reasonable efforts to cause, the Subject Interests and the Pipeline Assets to be maintained, developed, protected against drainage, and continuously operated for the production of Hydrocarbons, helium and/or other minerals, and the gathering, storing, transmission and distribution of Hydrocarbons, as applicable, in a good and workmanlike manner as would be operated by a prudent operator and in compliance in all material respects with all applicable operating agreements and contracts, and all applicable federal, state and local laws, rules and regulations, excepting those being contested in good faith in such a manner as not to

jeopardize Lender's or Lender's rights in and to the Subject Interests or the Pipeline Assets, as applicable;

(d) except as otherwise permitted in this

Agreement, cause to be paid, promptly as and when due and payable, except where the failure to make any such payments would not, individually or in the aggregate, have a Material Adverse Effect, all rentals, delay rentals, royalties and Obligations payable in respect of the Subject Interests, and all expenses incurred in or arising from the operation or development of the Subject Interests, or, in the event Borrower or any Guarantor is not the operator, shall use its best efforts to cause each of the foregoing to be paid;

(e) cause the Equipment necessary for the business operations of Borrower and each Guarantor to be kept in good and effective operating condition (reasonable wear and tear excepted) and all repairs, renewals, replacements, additions and improvements thereof or thereto, needful to the production of the Subject Minerals, to be promptly made;

(f) except as otherwise permitted by this Agreement, cause the Pipelines to be kept in good and effective operating condition (reasonable wear and tear excepted), and all repairs, renewals, replacements, additions and improvements thereof or thereto, necessary to the gathering, storing, transmission and distribution of Hydrocarbons through the Pipelines, to be promptly made;

(g) deliver, or cause to be delivered, to Lender a copy of any notice, demand or other communication from any other party to any material Leases or any material Production Sale Contract, relating to any alleged, potential or actual material breach thereunder or material breach of any of the covenants, agreements, terms, or limitations thereof or purporting to terminate or in any other way adversely affect the rights of Borrower or any of the Guarantors thereunder.

2. Recording, Etc. Each of Borrower and the Guarantors will promptly and at their own expense record, register, deposit and file this and every other instrument in addition or supplemental hereto in such offices and places and at such times and as often as may be necessary to perfect, preserve, protect and renew the lien and security interest hereof as a recorded lien on the real property and fixtures now or hereafter comprising the Collateral and perfected security interest on the personal property and fixtures now or hereafter comprising the Collateral, as the case may be and the rights and remedies of Lender hereunder, and otherwise will do and perform all matters or things necessary or expedient to be done or observed by reason of any law or regulation of the State of Texas or of the United States of America or any other state of the United States or of any other competent authority, for the purpose of effectively creating, maintaining and preserving the lien and security interest created by this Agreement and the perfection and priority thereof.

3. Records, Statements and Reports. Each of Borrower and the Guarantors will keep proper books of record and account in which complete and correct entries will be made of their respective transactions in accordance with GAAP consistently applied.

Ex. 1.2A-4

4. Further Assurances. Each of Borrower and the Guarantors will execute and deliver such other and further instruments and will use its best efforts to do such other and further acts as in the opinion of Lender may be necessary or desirable to carry out more effectively the purposes of the Mortgage, including, without limiting the generality of the foregoing, (a) prompt correction of any defect which may hereafter be discovered in the title to the Collateral or any part thereof other than Permitted Liens or in the execution and acknowledgment of the Mortgage, the Note or other document executed in connection herewith or therewith, (b) prompt execution and delivery of all division or transfer orders that in the opinion of Lender are needed to transfer effectively to Lender the assigned proceeds of production from the Subject Interests, (c) obtaining any necessary governmental approvals, including, without limitation, those of the State of Texas and (d) prompt execution of any supplements or

amendments to this Agreement for purposes of memorializing the encumbrance of any after acquired property.

5. Adverse Claim. Each of the Borrower and the Guarantors will warrant and forever defend, subject to the Permitted Liens, the title to the Collateral unto Lender against every Person whomsoever lawfully claiming the same or any part thereof. Should an adverse claim be made against or a cloud develop upon the title to any part of the Collateral, other than Permitted Liens, or upon the lien and security interest created by the Mortgage, each of Borrower and the Guarantors agrees that it will immediately defend such adverse claim or take appropriate action to remove such cloud at its own expense, and each of Borrower and the Guarantors further agrees that after prior notice to such person, Lender may take such other action as it deems advisable to protect and preserve its interests in the Collateral, and, in such event, each of Borrower and the Guarantors will, jointly and severally, indemnify Lender against any and all costs, attorneys' fees and other expenses which it or they may incur in defending against any such adverse claim or taking action to remove any such cloud.

6. Notice of Pooling or Unitization. Except as otherwise provided in the Mortgages hereof, each of Borrower and the Guarantors will promptly notify Lender in writing upon the first filing of any petition or request with any governmental or regulatory agency regarding any pooling or unitization arrangement pertaining to the Collateral or any part thereof, and any pooling or unitization arrangement which is imposed or which Borrower or any of the Guarantors learns may be imposed on the Collateral or any part thereof, which would cause Borrower or any of the Guarantors to suffer a significant reduction in income on a monthly basis from the Collateral.

7. Compliance with Operating Agreements. Each of Borrower and the Guarantors agrees to promptly pay all bills for labor and materials incurred in the operation of the Collateral and will promptly pay its share of all costs and expenses incurred under any joint operating agreement affecting the Collateral or any portion thereof (except for those amounts being disputed in good faith and for which adequate reserves have been made); will furnish Lender, as and when requested, full information as to the status of any joint account maintained with others under any such operating agreement; will not take any action to incur any liability or lien thereunder.

8. Evidence of Title. Promptly upon receipt of a written request from Lender, each of Borrower and the Guarantors will furnish and deliver, at the election of Lender,

Ex. 1.2A-5

either (a) complete or supplemental abstracts of title, as the case may be, prepared by competent abstractors, or (b) title opinions prepared by competent legal counsel and, in either event, covering title to property described in the most recent Proved Reserve Report from the sovereignty of the soil to the latest practicable date, when taken together with abstracts and/or title opinions previously furnished to Lender by Borrower. Should Borrower or any Guarantor fail to furnish such abstracts upon such request, Lender may obtain such abstracts, and any and all costs incurred thereby shall be payable by Borrower or such Guarantor to Lender upon demand at the principal offices of Lender. The abstracts shall be and constitute a part of the Collateral as defined above.

9. Notification of Legal Proceedings. Each of Borrower and the Guarantors will notify Lender promptly and in writing of the commencement of any legal material proceedings affecting the Collateral or any part thereof, and will take such action as may be necessary to preserve the rights of Borrower, any Guarantor or Lender affected thereby; and should Borrower or any Guarantor fail or refuse to take any such action, Lender may at its election take such action on behalf and in the name and at the cost and expense of Borrower or such Guarantor.

10. Transfer or Division Orders. Upon written request of Lender, each of Borrower and the Guarantors will execute and deliver

written notices of assignments to any persons, corporations or other entities owing or which may in the future owe to Borrower monies or accounts arising in connection with (a) any oil, gas or mineral production from all or any portion of the Collateral; (b) any gas contracts, processing contracts or other contracts relating to all or any portion of the Collateral; or (c) the operation of or production from all or any portion of the Collateral. The notices of assignments shall advise the third parties that all of the monies or accounts described above have been assigned to Lender, and if required by Lender, shall also require and direct that future payments thereof, including amounts then owing and unpaid, be paid directly to Lender.

11. Performance of Gas Contracts. Each of Borrower and the Guarantors will perform and observe in all material respects all of its obligations under each contract relating to the sale of gas produced from or attributable to the Collateral except where the failure to do so could not have a Material Adverse Effect.

12. Borrower Holds as Nominee. In the event that Lender forecloses or attempts to foreclose on the Collateral, but such foreclosure will not become effective as to some or all of the Collateral unless and until the consent of a third party is obtained, then each of Borrower and the Guarantors agrees to hold title to such portion of the Collateral as nominee for Lender or any other party who would have acquired such Collateral at foreclosure until such time as the necessary consents are obtained. In acting as nominee, each of Borrower and the Guarantors shall take such acts, and only such acts, with respect to the Collateral as Lender or any other party who would have acquired the same may direct and the beneficial interest under such Collateral shall run to Lender or such other party. Each of Borrower and the Guarantors shall enter into a nominee agreement in form and substance satisfactory to Lender or such other party and execute any other documents or agreements reasonably necessary to effectuate the provisions of this section.

Ex. 1.2A-6

Ex. 1.2A-7

TRANSTEXAS GAS CORPORATION  
 AMENDED AND RESTATED  
 SECURITY AND PLEDGE AGREEMENT

This Amended and Restated Security and Pledge Agreement (this "Agreement") is entered into as of August \_\_, 2003 by and among TRANSTEXAS GAS CORPORATION, a Delaware corporation ("Borrower", GALVESTON BAY PIPELINE COMPANY, a subsidiary of Borrower ("GB Pipeline"), GALVESTON BAY PROCESSING CORPORATION, a subsidiary of Borrower ("GB Processing" and together with Borrower and GB Pipeline (the "Companies") and THORNWOOD ASSOCIATES LP (the "Secured Party").

RECITALS

The Companies, GMAC Commercial Credit LLC and various other financial institutions entered into that certain Oil & Gas Revolving Credit and Term Loan Agreement dated as of March 15, 2000 (the "Oil and Gas Agreement");

On the date hereof (the "Effective Date") the Creditor's Joint Plan of Reorganization for Debtors Under Chapter 11 of the Bankruptcy Code Submitted by Thornwood, dated as of June 27, 2003, as modified July 8, 2003, and as may have been modified thereafter, in Case No. 02-21926, in the United States Bankruptcy Court for the Southern District of Texas, Corpus Christi Division (the "Plan"), confirmed by Order of the Bankruptcy Court (the "Confirmation Order"), became effective;

Pursuant to the Plan, as of the date hereof, each holder of an Allowed Prepetition O&G Claim, in full satisfaction, settlement, release and discharge of, and exchange for, such Claim received (i) Cash in a sum equal to its pro rata share of the Allowed O&G Claim less \$32.5 million and (ii) its pro rata share of the Restructured O&G Note in principal amount of \$32.5 million and Thornwood paid to the Prepetition O&G Lenders pro rata the Cash set forth in paragraph (i) hereto and an amount equal to the principal amount of the Restructured O&G Note, which Note under the terms of the Plan, was issued directly by the Reorganized Debtors to Thornwood. Pursuant to the Plan, the Reorganized Debtors amended and restated the Oil & Gas Agreement (the "Restructured O&G Agreement") and are hereby amending and restating the Security and Pledge Agreement entered into as of March 15, 2000;

In order to continue to secure the payment and performance in full of the obligations of the Companies under the Restructured O & G Agreement, the parties hereto desire to set forth their mutual understanding and certain agreements regarding the terms and conditions of the grant of a security interest in Collateral (as defined below);

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Companies and the Secured Party hereby agree as follows:

Section 1. Definitions.

(a) As used in this Agreement, capitalized terms not otherwise defined herein have the meanings set forth in the Restructured O&G Agreement or the Plan, and the

following terms shall have the respective meanings set forth below (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

"Collateral" shall mean, collectively, the UCC Collateral and the Pledged Securities.

"Contract Rights" shall mean all contracts, operating agreements, mineral purchase agreements, rights of way, easements, surface leases, permits, licenses, pooling or unitization agreements, pooling designations and pooling orders and all other contracts or agreements pertaining to or affecting the Collateral or which were executed in connection with the drilling for, producing, processing, treating, handling, storing, transporting or marketing oil, gas or other minerals from the Collateral or from any properties unitized or

pooled therewith, including, but not limited to, the contracts listed on Schedule 1(a) attached hereto.

"Default" and "Event of Default" shall have the meanings assigned to those terms in Section 6(a) of this Agreement.

"Equipment" shall mean and include all of the now owned or hereafter acquired "equipment" of each of the Companies as such term is defined in Article 9 of the UCC, including without limitation, all furniture, fixtures, goods, Vehicles, drilling rigs, workover rigs, fracture stimulation equipment, well site compressors, rolling stock, assets constituting part of a natural gas pipeline or the compression or dehydration equipment used in the operation of any such pipeline and related equipment and other assets accounted for as equipment by the Companies on their respective financial statements, all proceeds thereof, and all documents of title, books, records, ledger cards, files, correspondence and computer files, tapes, disks and related data processing software that at any time evidence or contain information relating to the foregoing.

"GAAP" means generally accepted accounting principles of the United States of America, consistently applied.

"General Intangibles" shall mean and include any and all of now owned or hereafter acquired "general intangibles" of each of the Companies as such term is defined in Article 9 of the UCC, including without limitation, all trademarks, tradenames, tradestyles, trade secrets, equipment formulation, manufacturing procedures, quality control procedures, product specifications, patents, patent applications, copyrights, registrations, contract rights, choses in action, causes of action, tort claims, payment intangibles, letter of credit rights, corporate or other business records, inventions, designs, goodwill, claims under guarantees, licenses, franchises, tax refunds, tax refund claims, computer programs, computer data bases, computer program flow diagrams, source codes, object codes and all other intangible property of every kind and nature.

"Hydrocarbons" shall mean oil, natural gas, condensate and natural gas liquids.

"Inventory" shall mean and include all of now owned or hereafter acquired "inventory" of each of the Companies as such term is defined in the UCC, including, without limitation, all drill casing, drill pipe and other supplies accounted for as inventory

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by the Companies on its financial statements (excluding Hydrocarbons), all other goods, merchandise and other personal property, wherever located, to be furnished under any contract of service or held for sale or lease, all proceeds thereof, and all documents of title, books, records, ledger cards, files, correspondence, and computer files, tapes, disks and related data processing software that at any time evidence or contain information relating to the foregoing.

"Investment Property" shall mean and include all of the now owned or hereafter acquired "investment property" of each of the Companies as such term is defined in Article 9 of the UCC.

"Jefferies Documentation" shall mean the Mortgage, Deed of Trust, Assignment, Security Agreement and Financing Statement, effective December 31, 1998, made by GB Processing in favor of Jefferies, the Amended and Restated Promissory Note, dated August \_\_, 2003 in the principal amount of \$3,226,872.84, made by the Companies in favor of Jefferies; and any amendments or supplements to the foregoing as of the date hereof.

"Jefferies" means Jefferies Analytical Trading Group, Inc., a Delaware Corporation.

"Jefferies Lien" shall mean pledge of the stock of GB Processing Company owned by the Companies in favor of Jefferies as security for Borrower's obligations to Jefferies under the Jefferies Documentation.

"Lands" shall have the meaning set forth in the Mortgage.

"Leases" shall have the meaning set forth in the Mortgage.

"Mortgage" shall mean, collectively, those certain Mortgages, Deeds of Trust, Assignments of Production, Security and Financing Statements executed by any of the Companies for the benefit of Secured Party to grant a Lien on such Real Property and/or Hydrocarbons, or any interest therein, to secure all of the Obligations.

"Obligations" shall have the meaning set forth in the Restructured O&G Agreement.

"Oil and Gas Leases" shall include oil, gas and mineral leases and shall also include subleases and assignments of operating rights.

"Pipelines" shall mean the Pipeline Assets and all pipelines owned and/or operated by any of the Companies for the gathering, transmission or distribution of Hydrocarbons, and any interests in real property relating thereto.

"Pipeline Assets" shall mean all parts or aspects of the gas pipeline system of any the Companies now or hereafter situated on any of the Lands, Rights-of-Way and Franchises, and all fixtures, improvements, equipment, surface or subsurface machinery, facilities, supplies, replacement parts, vehicles of every description, all process control

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computer systems and equipment or other property of whatsoever kind or nature, including, without limitation, all buildings, structures, machinery, gas processing plants, Pipelines, stations, substations, compression or dehydration equipment, pumps, pumping stations, meter houses, metering stations, regulator houses, ponds, tanks, scrapers and scraper traps, fittings, valves, connections, cathodic or electrical protection by-passes, regulators, drips, meters, pumps, pumping units, pumping stations, storage or tankage facilities, engines, pipes, gates, telephone and telegraph lines, electric power lines, poles, wires, casings, radio towers, fixtures, mechanical equipment, electrical equipment, computer equipment and software, machine shops and other equipment, used or useful in connection therewith; together with all of the Companies' liquid hydrocarbons, carbon dioxide, natural gas liquids, refined petroleum products and other inventory fuels, carbon, chemicals, electric energy and other consumable materials or products manufactured, processed, generated, produced, transmitted, stored (whether above or below ground) or purchased by any of the Companies for sale, exchange, distribution, consumption or transmission by any of the Companies, including, without limitation, all system gas, drip gas and line fill.

"Pledged Securities" shall have the meaning assigned to that term in Section 2(b) of this Agreement.

"Production Sale Contracts" shall mean, except to the extent that the same constitute Receivables, all contracts now or hereafter in effect, including, without limitation, any gas sales contracts, entered into by any of the Companies, or the Companies' predecessors in interest, for the production, sale, purchase, exchange or processing of Subject Minerals (as defined in the Mortgage), including - but not limited to - any of the foregoing contracts listed on SCHEDULE 1(a) and the Contract Rights related thereto.

"Receivables" shall mean and include, any and all of the now owned or hereafter acquired "accounts" of any of the Companies as such term is defined in Article 9 of the UCC, all products and proceeds thereof, and all books, records, ledger cards, files, correspondence, and computer files, tapes, disks or software that at any time evidence or contain information relating to the foregoing.

"Rights-of-Way and Franchises" shall mean all leases, leaseholds, easements, rights-of-way, licenses, franchises, privileges, permits, ordinances, grants, rights, consents, servitudes, surface

leases or rights, amendatory grants and interests in land for the installation, maintenance and operation of the Pipelines or the Pipeline Assets or any portion thereof, now owned or held by any of the Companies, including, without limitation, those leases, leaseholds, easements, rights-of-way, licenses, franchises, privileges, permits, ordinances, grants, rights, consents, servitudes, surface leases or rights, amendatory grants and interests in land applicable to the Pipelines or the Pipeline Assets owned or held by any of the Companies and those leases, leaseholds, easements, rights-of-way, licenses, franchises, privileges, permits, ordinances, grants, rights, consents, servitudes, surface leases or rights, amendatory grants and interests in land owned or held by any of the Companies and described in the Mortgage.

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"Subject Interests" shall mean each kind and character of right, title, interest or estate, whether now owned or hereafter acquired, which any of the Companies has in, under or to the Leases and all right, title, interest or estate, whether now owned or hereafter acquired, which any of the Companies has in and to the Lands (as defined in the Mortgage), together with each kind and character of right, title, interest or estate now or hereafter vested in Mortgagor in and to any and all overriding royalty interests, mineral interests, leasehold interests, mineral rights, royalty interests, net profits interests, oil payments, production payments, carried interests and all other properties or interests of every kind or character which relate to any of the Lands or Leases, whether such right, title, interest or estate be under and by virtue of a Lease, a unitization or pooling agreement, a unitization or pooling order, a mineral deed, a royalty deed, an operating agreement, a revenue sharing agreement, a division order, a transfer order, a farmout agreement, a fee simple conveyance or any other type of contract, conveyance or instrument or under any other type of claim or title, legal or equitable, recorded or unrecorded, all as the same shall be enlarged by the discharge of any payments out of production or by the removal of any charges or encumbrances to which any of same are subject.

"UCC" means the Uniform Commercial Code as in effect in the State of New York.

"UCC Collateral" shall have the meaning assigned to that term in Section 2 of this Agreement.

"Vehicles" means all trucks, automobiles, trailers and other vehicles covered by a certificate of title.

(b) All terms used in this Agreement which are defined in the UCC, other than those which are defined in the Restructured O&G Agreement or specifically defined in Section 1(a) above, shall have the same meaning herein as in the UCC.

Section 2. Continuance of and Grant of Security Interest.

(a) The parties agree that, in accordance with the Plan and the Confirmation Order, all liens granted hereunder shall, for all purposes, be valid, perfected, enforceable, non-avoidable and effective as of the Effective Date without any further action by the Thornwood or by the Debtors and without the execution, filing or recordation of any financing statement, security agreement, mortgage or other document. Each of the Companies hereby further grants to the Secured Party, to secure the payment and performance in full of the Obligations, a continuing security interest in and a lien on and so pledges and assigns to the Secured Party all of the Companies' right, title and interest in, to and under any and all of the following described property, assets and rights, in each case, wherever located, whether now owned or hereafter acquired or arising, all accessions and additions thereto, all substitutions and replacements therefor, and all proceeds and products thereof and assigns all rights in and to all collateral securing the following described property, assets and rights:

(i) all Receivables;

- (ii) all Inventory;
- (iii) all Equipment;
- (iv) all General Intangibles;
- (v) all Investment Property;
- (vi) all Subject Interests, the Subject Minerals, Hydrocarbons;
- (vii) all Contract Rights and Production Sale Contracts;
- (viii) all Leases and the Lands;
- (ix) all Pipelines;
- (x) all Pipeline Assets;
- (xi) all Rights-of-Way and Franchises;
- (xii) all unitization, communitization, operating agreements, pooling agreements and declarations of pooled units and the properties covered and the units created thereby (including all units formed under orders, regulations, rules or other official acts of any federal, state or other governmental agency providing for pooling or unitization, spacing orders or other well permits and other instruments) which relate to or affect all or any portion of the Subject Interests;
- (xiii) all deposit accounts, contract rights, operating rights, general intangibles, chattel paper, documents and instruments whether arising under any of the foregoing or otherwise, including without limitation, the Production Sale Contracts and all transmission contracts or other contracts now or hereafter in effect with respect to the Pipelines or the Pipeline Assets;
- (xiv) all subleases, farmout agreements, assignments of interests, assignments of operating rights, contracts, operating agreements, bidding agreements, advance payment agreements, rights-of-way, surface leases, franchises, servitudes, privileges, permits, licenses, easements, tenements, hereditaments, improvements, appurtenances and benefits now existing or in the future obtained and incident and appurtenant to any of the foregoing;
- (xv) all lease records, well records, production records and accounting and other records and files which relate to any of the foregoing, and all maps, data bases, manuals, information and data which relate to any of the foregoing, including without limitation engineering, geological and geophysical data;
- (xvi) all income, revenues, rents, profits and proceeds arising out of the gathering, transportation, processing or sale of Hydrocarbons through the Pipelines and other accounts, contract rights, operating rights, general intangibles,

chattel paper, documents, investment property and instruments arising under any of the foregoing;

(xvii) any liens and security interests in the Subject Interests in favor of any of the Companies securing payment of proceeds from the sale of the Subject Minerals

including, but not limited to, those liens and security interests provided for in Tex. Bus. & Com. Code Ann. Section 9.319 (Tex. UCC) (Vernon 1968), as amended;

(xviii) all other rights, titles and interests of any of the Companies in, to and under or derived from the Lands, the Leases, the Rights-of-Way and Franchises, the Production Sale Contracts and/or other properties described in the Mortgage;

(xix) any property that may from time to time hereafter, by delivery or by writing of any kind executed by or on behalf of any of the Companies, be subjected to the lien and security interest hereof by any the Companies or by anyone authorized on and of any of the Companies' behalf, and Secured Party is hereby authorized to receive the same as additional security;

(xx) all other property of every nature and kind and wheresoever situated, now owned or hereafter acquired by any of the Companies or to which any of the Companies is now or may hereafter be entitled at law or in equity; and

(xxi) any and all proceeds, returns, rents, royalties, issues, profits, products, revenues and other income arising from or by virtue of the sale, lease or other disposition of, or from any condemnation, eminent domain or insurance payable with respect to damage, loss or destruction of, the items described in subparagraphs (i) through (xx) above;

together with any and all proceeds, products, increases, profits, substitutions, replacements, renewals, additions, amendments and accessions of, to and for all of the foregoing property. All the aforesaid properties, rights and interests which are hereby subjected to the lien and/or security interest of this instrument, together with any additions thereto which may be subjected to the lien and/or security interest of this paragraph (a) by means of supplements hereto or otherwise shall hereinafter be referred to as the "UCC Collateral."

(b) Each of the Companies also pledges to the Secured Party, and grants to the Secured Party a security interest in all of the Companies's right, title and interest in, to and under any and all of the following described property, rights and interests, in each case, wherever located, whether now owned or hereafter acquired or arising, all accessions and additions thereto, all substitutions and replacements therefor, and all proceeds and products thereof (collectively, the "Pledged Securities"):

(i) all of the issued and outstanding shares of common stock of any Subsidiary of any of the Companies presently existing or hereafter created or acquired (the "Pledged Subsidiaries") therein set forth;

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(ii) all other shares of common stock or other equity securities now or hereafter acquired by any of the Companies in any manner issued by the Pledged Subsidiaries, and the certificates representing such securities, and any present or future options, warrants or other rights to subscribe for or purchase any property or any notes, bonds, debentures or other evidences of indebtedness now or hereafter owned or acquired by any of the Companies in any manner that (A) are at any time convertible, exchangeable or exercisable into capital stock or other equity securities of the Pledged Subsidiaries or (B) have or at any time could by their terms have voting rights with respect to any matter affecting the Pledged Subsidiaries and all securities, certificates and instruments representing or evidencing ownership of any of the property described in Schedule 2(b) of the Oil and Gas Agreement; and

(iii) all proceeds and products of the foregoing and distributions thereof or with respect thereto, including

without limitation dividends, distributions, cash, instruments and other property or securities, now or hereafter at any time or from time to time received or receivable or otherwise distributed or distributable in respect of or in exchange for any or all of the foregoing.

Subject to any Liens in respect of the Jefferies Lien, pursuant to the terms hereof, each of the Companies has endorsed, assigned and delivered to the Secured Party or such other Person that the Secured Party has designated as its agent to hold for perfection purposes all negotiable or non-negotiable instruments (including certificated securities) and chattel paper pledged by it hereunder, together with instruments of transfer or assignment duly executed in blank as the Secured Party may have specified. In the event that any of the Companies shall, after the date of this Agreement, acquire any other negotiable or non-negotiable instruments (including certificated securities) or chattel paper to be pledged by it hereunder, such Companies shall, subject to any Liens in respect of the Jefferies Lien, forthwith endorse, assign and deliver the same to the Secured Party, accompanied by such instruments of transfer or assignment duly executed in blank as the Secured Party may from time to time specify. To the extent that any securities are uncertificated, appropriate book-entry transfers reflecting the pledge of such securities created hereby have been or, in the case of uncertificated securities hereafter acquired by the Companies, will at the time of such acquisition be, duly made for the account of the Secured Party or one or more nominees of the Secured Party with the issuer of such securities or other appropriate book-entry facility or financial intermediary, with the Secured Party having at all times the right to obtain definitive certificates (in the Secured Party's name or in the name of one or more nominees of the Secured Party) where the issuer customarily or otherwise issues certificates, all to be held as Collateral hereunder. Each of the Companies hereby acknowledges that the Secured Party may, in its discretion, appoint one or more financial institutions to act as the Secured Party's agent in holding in custodial accounts instruments or other financial assets, including securities, in which the Secured Party is granted a security interest hereunder, including, without limitation, certificates of deposit and other instruments evidencing short term obligations.

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(c) Without limiting the security interest granted hereby, each of the Companies hereby grants to Secured Party a limited license in such Company trade names, trademarks and service marks, together with the Company's goodwill associated with such trade names, trademarks and servicemarks, for purposes of allowing Secured Party to use the same in connection with any foreclosure sale or any other disposition pursuant to the UCC or this Agreement.

(d) The inclusion of proceeds in this Agreement does not authorize any of the Companies to sell, dispose of or otherwise use the Collateral in any manner not specifically authorized hereby or under the Restructured O&G Agreement.

(e) This Agreement secures the prompt and complete payment of all Obligations.

Section 3. Representations and Warranties. Each of the Companies represents and warrants, as of the date hereof, to the Secured Party as follows:

(a) The chief executive office and principal place of business of each of the Companies is located at 1300 N. Sam Houston Parkway East, Suite 320, Houston, Harris County, Texas 77032. Any and all Collateral not delivered to the Secured Party or its designated agent is and will continue to be located only in the States of Texas, Louisiana, Alabama,

Mississippi and North Dakota.

(b) the Companies are the legal and beneficial owner of all of the Collateral free and clear of any lien, security interest, charge or encumbrance of any kind or nature, except for the lien and security interest created hereby, Permitted Liens and the Jefferies Lien, and none of the Companies has made any other pledge, assignment, mortgage, hypothecation or transfer of the Collateral except as permitted hereunder or under the Restructured O&G Agreement. Except for Permitted Liens, the Collateral taken as a whole is free from any material credit, deduction, allowance, defense, dispute, setoff or counterclaim and there is no material extension or indulgence with respect thereto. The Pledged Securities are not subject to any put, call, option or other right in favor of any other person whatsoever.

(c) The Pledged Securities are have been duly authorized and validly issued and non-assessable.

(i) This Agreement has been duly executed and delivered by each of the Companies and creates a valid security interest in, and lien on, the Collateral securing the payment of the Obligations. Upon the delivery of physical certificates evidencing the Pledged Securities to the Secured Party or its designated agent and the making of the filings and the taking of all other actions necessary, if any, to perfect the security interests created hereby, including, without limitation, those actions specified in Section 2(b) and Section 4, the security interests created by this Agreement will be duly perfected security interests subject to no equal or prior lien, security interest or encumbrance of any kind or nature other than the Jefferies Lien. Notwithstanding anything to the contrary in this Section, pursuant to the Confirmation Order all liens granted

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hereunder shall, for all purposes, be valid, perfected, enforceable, non-avoidable and effective as of the Effective Date without any further action by the Thornwood or by the Debtors and without the execution, filing or recordation of any financing statement, security agreement, mortgage or other document.

(d) Each of the Companies has the requisite corporate power and authority to pledge the Collateral in the manner hereby done or contemplated and to defend its title thereto against the lawful claims of all persons whomsoever.

(e) Neither the execution and delivery of this Agreement by any of the Companies, the performance by any of the Companies of its obligations hereunder, nor the transactions herein contemplated will (i) violate any of the Companies' charter or bylaws, (ii) violate the terms of any agreement, indenture, mortgage, deed of trust, equipment lease, instrument or other document to which any of the Companies is a party, (iii) violate any law, order, rule or regulation applicable to any of the Company of any court or any government, regulatory body or administrative agency or other governmental body having jurisdiction over any Company or its properties, or (iv) result in or require the creation or imposition of any lien (other than the lien contemplated hereby), upon or with respect to any of the property now owned or hereafter acquired by any of the Companies, which violation or conflict would have a material adverse effect on the financial condition, business, assets or liabilities of any of the Companies or on the value of the Collateral or a material adverse effect on the security interests hereunder.

(f) The Pledged Securities includes the issued and outstanding shares of Common Stock of the Pledged Subsidiaries and as of the date of execution hereof, there are no outstanding options, warrants or other rights to subscribe for or purchase any property of the Companies or the Pledged Subsidiaries or any notes, bonds, debentures or other evidences of indebtedness that (i) are at any time convertible into capital stock of the Pledged Subsidiaries or (ii) have or at any time could by their terms have voting rights with respect to any matters affecting the Pledged Subsidiaries.

(g) No consent or approval which has not been obtained prior to the date hereof of any other person or entity and no authorization, approval or other action (other than delivery of physical certificates evidencing the Pledged Securities) by, and no notice to or filing with any governmental body (other than UCC filings), regulatory authority or securities exchange, was or is necessary as a condition to the validity of the pledge hereunder of the Collateral, and such pledge is effective to vest in the Secured Party the rights of the Secured Party in the Collateral as set forth herein. There are no restrictions on the transferability of any of the Collateral transferred or delivered by the Companies hereunder or, except for restrictions related to federal and state securities laws governing the sale of "restricted stock" or "control stock," with respect to the foreclosure, transfer or disposition thereof by the Secured Party.

(h) As of the date hereof, GB Processing and GB Pipeline are the only Material Subsidiaries of the Companies.

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Section 4. Covenants. During the term of this Agreement and until all the Obligations have been fully and finally paid and discharged in full, each the Companies covenants and agrees with the Secured Party that:

(a) Except as permitted by the Restructured O&G Agreement or in the ordinary course of business, none of the Companies will make any compromise or settlement with respect to the Collateral without notice to or consent of the Secured Party.

(b) Subject to the Jefferies Lien and the Jefferies Documentation, each of the Companies shall deliver to the Secured Party or its designated agent concurrently with the execution of this Agreement or, to the extent acquired subsequent to the date of execution hereof, including without limitation Pledged Securities issued by a newly created or acquired Subsidiary, immediately upon such Companies' acquisition thereof: (i) all certificates and instruments representing the Pledged Securities, and (ii) all certificates and instruments representing each other item of Collateral (including all certificates, instruments and notes representing any such UCC Collateral). Any and all Pledged Securities delivered to the Secured Party or its designated agent shall be accompanied by undated duly executed powers in blank and by such other instruments of transfer or documents as the Secured Party may reasonably request. The Secured Party may hold the certificates representing the Pledged Securities delivered to it in its own name or in the name of its nominee, all in form and substance satisfactory to the Secured Party.

(c) From time to time, each of the Companies shall, at its own expense, promptly give, execute, deliver, file and/or otherwise formalize any such notice, statement, instrument, document, agreement or other papers, and do all such other acts and things, as may be necessary or desirable, or as the Secured Party may reasonably request, in order to create, evidence, preserve, perfect, validate or continue any lien or security interest created pursuant to this Agreement or to enable the Secured Party to exercise or enforce its

rights hereunder with respect to such lien or security interest, or otherwise further to effect the purposes of this Agreement. Without limiting the generality of the foregoing, each of the Companies shall, at any time or from time to time upon the request of the Secured Party and at the Companies' own expense, execute, acknowledge, witness, deliver, file and/or record such financing and continuation statements, notices, additional assignments and other documents or instruments (all of which shall be in form and substance satisfactory to the Secured Party and its counsel) as the Secured Party may from time to time reasonably request for the perfection of the liens and security interests created hereby.

(d) Each of the Companies shall promptly notify the Secured Party (i) of any material changes in any fact or circumstance represented or warranted by any of the Companies with respect to any material portion of the Collateral, (ii) of any material impairment of the Collateral and (iii) of any claim, action or proceeding affecting title to all or any of the Collateral.

(e) Except for the liens and security interests created by this Agreement and the Permitted Liens in the Collateral, each of the Companies shall at its own expense

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defend the Collateral against any and all liens, claims, security interests and other encumbrances or interests, howsoever arising and shall maintain and preserve the security interest granted hereunder with respect to the Collateral as long as this Agreement shall remain in full force and effect. None of the Companies shall make any other pledge, assignment, mortgage, hypothecation or transfer of the Collateral except as permitted hereunder or under the Restructured O&G Agreement.

(f) Each of the Companies shall at all times keep accurate and complete records with respect to the Collateral, including, without limitation, records of all payments made, credit granted and proceeds received in connection therewith.

(g) None of the Companies shall relocate its principal place of business or chief executive office to a county or state other than that specified in Section 3(a) of this Agreement unless such Company gives 30 days' prior written notice to the Secured Party, which notice shall specify the county and state into which such relocation is to be made. The Collateral, to the extent not delivered to the Secured Party pursuant to Section 2, will be kept at those locations listed on the Perfection Certificate delivered to the Secured Party herewith in the form attached as Exhibit A hereto and none of the Companies will remove the Collateral from such locations, without providing at least 30 days' prior written notice to the Secured Party.

(h) Each of the Companies will keep the Collateral in good order and repair, except in situations where not to do so would not be material, and will not use the same in violation of law or any policy of insurance thereon. The Secured Party, or its designee, may inspect the Collateral at any reasonable time, wherever located.

(i) The Secured Party, or its representative, shall at all times have full and free access during normal business hours to all of the books, correspondence and records of each of the Companies relating to the Collateral (other than information that is privileged and confidential) and the Secured Party and its representatives may examine the same, make abstracts therefrom and make photocopies thereof, and the Companies agrees to render to the Secured Party, at the Companies' cost and expense, such clerical and other assistance as may be reasonably requested by the Secured Party with regard thereto.

(j) The Companies shall not permit any of the Pledged Subsidiaries to issue to the Companies any securities of the type required to be pledged hereunder unless such securities are promptly pledged and delivered hereunder to the Secured Party or its designated agent in accordance with Section 2(b).

(k) If, while this Agreement is in effect, any stock dividend, stock split, reclassification, readjustment, reorganization, merger, consolidation, exchange offer, tender offer or other change in the capital structure, including the creation of any subscription or other rights relating to the Pledged Securities, is declared or made, or proposed to be declared or made, by any of the Pledged Subsidiaries or any other issuer of the Collateral, all substituted and additional securities or interest issued with respect to the Collateral and evidenced by certificates shall be endorsed in blank by the applicable Companies promptly upon receipt thereof or otherwise appropriately transferred to the

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Secured Party in negotiable form, and all certificates or instruments evidencing such securities shall be delivered to the Secured Party to be held under the terms of this Agreement in the same manner as, and as a part of, the Collateral. All Pledged Securities shall be evidenced by one or more certificates. Any securities that may be issued upon exercise of any subscription or other rights relating to the Pledged Securities shall be endorsed in blank and delivered to the Secured Party with any necessary powers.

Section 5. Powers of the Secured Party.

(a) Each of the Companies hereby irrevocably designates and appoints the Secured Party as its attorney-in-fact, with full power of substitution, for the purposes of carrying out the provisions of this Agreement and taking any action and executing any instrument, including, without limitation, any financing statement or continuation statement, and taking any other action to maintain the validity, perfection, priority and enforcement of the security interest intended to be created hereunder, that the Secured Party may reasonably deem necessary or advisable to accomplish the purposes hereof, which appointment as attorney-in-fact is irrevocable and coupled with an interest.

(b) Without limiting the generality of Section 5(a) hereof, each of the Companies hereby irrevocably authorizes and empowers the Secured Party, upon the occurrence and during the continuation of any Event of Default, at the expense of such Companies, either in the Secured Party's own name or in the name of any Companies, at any time and from time to time:

(i) to ask, demand, receive, issue a receipt for, give acquittance for, settle and compromise any and all monies which may be or become due or payable or remain unpaid at any time or times to any of the Companies, and any and all other property which may be or become deliverable at any time or times to any of the Companies, under or with respect to the Collateral;

(ii) to endorse any drafts, checks, orders or other instruments for the payment of money payable to any of the Companies on account of the Collateral (including any such draft, check, order or instrument issued by any insurance company payable jointly to any of the Companies and the Secured Party); and

(iii) to settle, compromise, prosecute or defend any action, claim or proceeding, or take any other action, all either in its own name or in the name of any of the Companies or otherwise, which the

Secured Party may deem to be necessary or advisable for the purpose of exercising and enforcing its powers and rights under this Agreement or in furtherance of the purposes hereof, including any action which by the terms of this Agreement is to be taken by any of the Companies.

(c) Nothing in this Agreement shall be construed as requiring or obligating the Secured Party to make any commitment or to make any inquiry as to the nature or sufficiency of any payment received by it, or to present or file any claim or notice, or to take any other action with respect to any of the Collateral or any part thereof or the amounts due or to become due in respect thereof or any property covered thereby, or to

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collect or enforce the payment of any amounts assigned to it or to which it may otherwise be entitled hereunder at any time or times other than to account for amounts or Collateral received.

(d) The Secured Party shall be entitled at any time to file this Agreement, or a carbon, photographic or any other reproduction of this Agreement, as a financing statement, but the failure of the Secured Party to do so shall not impair the validity or enforceability of this Agreement. The Secured Party shall have no duty to comply with any recording, filing or other legal requirements necessary to establish or maintain the validity, priority or enforceability of, or the Secured Party's rights in or to, any of the Collateral.

(e) In its discretion, the Secured Party may discharge taxes and other encumbrances at any time levied or placed on any of the Collateral, make repairs thereto and pay any necessary filing fees. Each of the Companies agrees to reimburse the Secured Party on demand for any and all reasonable expenditures so made with interest on unpaid amounts at the maximum rate permitted by law. The Secured Party shall have no obligation to any of the Companies to make any such expenditures, nor shall the making thereof relieve any of the Companies of any default.

(f) Anything herein to the contrary notwithstanding, each of the Companies shall remain liable under each contract or agreement comprised in the Collateral to be observed or performed by such Companies thereunder. The Secured Party shall not have any obligation or liability under any such contract or agreement by reason of or arising out of this Agreement or the receipt by the Secured Party of any payment relating to any of the Collateral, nor shall the Secured Party be obligated in any manner to perform any of the obligations of any of the Companies under or pursuant to any such contract or agreement, to make inquiry as to the nature or sufficiency of any payment received by the Secured Party in respect of the Collateral or as to the sufficiency of any performance by any party under any such contract or agreement, to present or file any claim, to take any action to enforce any performance or to collect the payment of any amounts which may have been assigned to the Secured Party or to which the Secured Party may be entitled at any time or times other than to account for amounts or Collateral received, and no action taken or omitted shall give rise to any defense, counterclaim or right of action against the Secured Party, unless the Secured Party's actions are taken or omitted to be taken with gross negligence or bad faith or constitute willful misconduct. The Secured Party's sole duty with respect to the custody, safe keeping and physical preservation of the Collateral in its possession, under Section 9-207 of the UCC or otherwise, shall be to deal with such Collateral in the same manner as the Secured Party deals with similar property for its own account.

(g) If an Event of Default has occurred and is

continuing, the Secured Party may at any time, at its option, transfer to itself or any nominee any securities constituting the Pledged Securities, receive any income thereon and hold such income as additional Collateral or apply it to the Obligations. Regardless of whether any Obligations are due, the Secured Party may demand, sue for, collect, or make any settlement or compromise, which it deems desirable with respect to the Collateral. Regardless of the adequacy of

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Collateral or any other security for the Obligations, any deposits or other sums at any time credited by or due from the Secured Party to any of the Companies may at any time be applied to or setoff against any of the Obligations.

(h) If an Event of Default has occurred and is continuing, the Secured Party shall have all of the rights with respect to the UCC Collateral as may be available to secured parties under the UCC.

(i) If an Event of Default shall have occurred and be continuing, each of the Companies shall, at the request of the Secured Party, notify obligors on chattel paper and general intangibles of the Companies and obligors on instruments for which any of the Companies is an obligee of the security interest of the Secured Party in any chattel paper, general intangible or instrument and that payment thereof is to be made directly to the Secured Party or to any financial institution designated by the Secured Party as the Secured Party's agent therefor, and the Secured Party may itself, if an Event of Default shall have occurred and be continuing, without notice to or demand upon the Companies, so notify said obligors. After the making of such a request or the giving of any such notification, each of the Companies shall hold any proceeds of collection of chattel paper, general intangibles and instruments received by such Companies as trustee for the Secured Party without commingling the same with other funds of such Companies and shall turn the same over to the Secured Party in the identical form received, together with any necessary endorsements or assignments. The Secured Party shall apply the proceeds of collection of chattel paper, general intangibles and instruments received by the Secured Party to the Obligations, such proceeds to be immediately entered after final payment in cash of the items giving rise to them.

#### Section 6. Voting Rights, Dividends, Etc.

(a) Until an Event of Default shall have occurred and be continuing:

(i) except as otherwise provided in this Agreement, each of the Companies shall be entitled to exercise any and all voting or consensual rights and powers, including subscription rights, in relation to the Pledged Securities; provided, however, that no vote shall be cast or consent, waiver or ratification given or action taken which would materially impair the securities or the value thereof or violate any provision of this Agreement, the Restructured O&G Agreement or any other ancillary document;

(ii) except as otherwise provided in this Agreement, each of the Companies shall be entitled to receive and retain any and all dividends, distributions or other payments in respect of the Pledged Securities and the Secured Party, upon receipt of any of the foregoing, shall promptly pay or distribute the same to the applicable Companies, and, to the extent so permitted, any distributions received by such Companies and transferred to other persons shall pass free and clear of the lien and security interest hereof; and

(iii) the Secured Party shall execute and deliver to each of the Companies or cause to be executed and delivered to such Companies, all such

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proxies, powers of attorney, dividend orders and other instruments as such Companies may reasonably request for the purpose of enabling it to exercise the voting or consensual rights and powers which such Companies is entitled to exercise pursuant to the foregoing Section 6(a) (i) or to receive the dividends, distributions or other payments which such Companies is authorized to retain pursuant to the foregoing Section 6(a) (ii).

(b) Upon the occurrence and during the continuance of an Event of Default, all rights of each of the Companies to exercise the voting or consensual rights and powers which it would otherwise be entitled to exercise pursuant to Section 6(a) (i) and to receive the dividends, distributions and other payments which the Pledgor would otherwise be authorized to receive and retain pursuant to Section 6(a) (ii) shall automatically cease, and all such rights shall thereupon become vested in the Secured Party, which shall then have the sole and exclusive right and authority to exercise, in its sole discretion, all such voting and consensual rights and powers and to receive and retain as Collateral all such dividends, distributions and other payments. Without limiting the foregoing, in such event the Secured Party may exercise all voting and corporate rights at any meeting of any corporation issuing any such securities and any and all rights of conversion, exchange, subscription or any other rights, privileges or options pertaining to any such securities as if it were the absolute owner thereof, including, without limitation, the rights to exchange at its discretion, any and all such securities upon the merger, consolidation, reorganization, recapitalization or other readjustment of any corporation issuing any such securities or upon the exercise by any such issuer or the Secured Party of any right, privilege or option pertaining to any such securities, and, in connection therewith, to deposit and deliver any and all securities with any committee, depository, transfer agent, registrar or other designated agency upon such terms and conditions as it may determine, all without liability except to account for the property actually received by it, but the Secured Party shall have no duty to exercise any of the aforesaid rights, privileges or options and the Secured Party shall not be responsible for any failure to do so or delay in so doing.

Section 7. Default.

(a) It shall constitute a Default or an Event of Default under this Agreement if a "Default" or an "Event of Default" shall occur under the Restructured O&G Agreement.

(b) If an Event of Default shall have occurred and is continuing and if the Obligations are accelerated under the provisions of the Restructured O&G Agreement, in addition to any other rights and remedies that may be available to the Secured Party under the UCC or the Restructured O&G Agreement or under Section 5 of this Agreement or otherwise under this Agreement or at law, the Secured Party shall also have the following rights and powers:

(i) The Secured Party may, without being required to give any notice except as hereinafter provided, sell the Collateral, or any part thereof, at public or private sale, for cash, upon credit or for future delivery and at such price or prices

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as the Secured Party deems satisfactory, and the Secured Party and/or its collateral agent may be the purchaser of any or all of the Collateral so sold and thereafter hold the same absolutely free from any right or claim of whatsoever kind, and the Obligations or any portion of the Obligations may be applied as a credit against the purchase price.

(ii) Upon any such sale, the Secured Party shall have the right to deliver, assign and transfer to the purchaser thereof the Collateral so sold. Each purchaser at any such sale shall hold the property sold absolutely free from any claim or right of whatsoever kind by or on behalf of any of the Companies, including any equity or rights of redemption of any of the Companies, and each of the Companies hereby specifically waives, to the full extent permitted by applicable law, all rights of redemption, stay or appraisal which it has or may have under any rule or law or statute now existing or hereafter adopted.

(iii) The Secured Party shall give each of the Companies ten (10) business days' written notice (which each of the Companies agrees is reasonable notification within the meaning of Section 9-611 of the UCC) of its intention to make any such public or private sale. Such notice, in case of public sale, shall state the time and place fixed for such sale and, in case of a private sale, shall state the date after which such sale is to be made.

(iv) Any such public sale shall be held at such time or times within ordinary business hours and at such places as the Secured Party may fix in the notices of such sale. At any such sale the Collateral may be sold in one lot as an entirety or in separate parcels, as the Secured Party may, in its sole discretion, determine.

(v) The Secured Party shall not be obligated to make any sale of the Collateral of any part thereof if it shall determine not to do so, regardless of the fact that notice of sale of the Collateral may have been given. The Secured Party may, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for the sale, and such sale may, without further notice, be made at any time or place to which the same shall be so adjourned.

(vi) In case of any sale of all or any part of the Collateral on credit or for future delivery, the Collateral so sold may be retained by the Secured Party until the selling price is paid by the purchaser thereof, but the Secured Party shall not incur any liability in case of the failure of such purchaser to take up and pay for the Collateral so sold and, in case of any such failure, such Collateral may again be sold upon like notice.

(vii) The Secured Party, instead of exercising the power of sale herein conferred upon it, may proceed by a suit or suits at law or in equity to exercise its remedies regarding the Collateral and sell the Collateral, or any portion thereof, under a judgment or decree of a court or courts of competent jurisdiction.

(viii) Each of the Companies agrees that if

any Event of Default shall have occurred and be continuing, then the Secured Party shall have the right to take possession of the Collateral, and for that purpose the Secured Party may, so far as any of the Companies can give authority therefor, enter upon any premises on which the Collateral may be situated and remove the same therefrom with or without notice or process of law. Each of the Companies waives any and all rights that it may have to a judicial hearing in advance of the enforcement of any of the Secured Party's rights hereunder, including, without limitation, its right following an Event of Default to take immediate possession of the Collateral and to exercise its rights with respect thereto.

(ix) If under mandatory requirements of applicable law, the Secured Party shall be required to make disposition of the Collateral within a period of time that does not permit the giving of notice to the Companies as hereinbefore provided, the Secured Party need give each of the Companies only such notice of disposition as shall be reasonably practicable in view of such mandatory requirements of law.

(x) The Secured Party may instruct the obligor or obligors on any agreement, instrument or other obligation constituting the Collateral to make any payment or render any performance required by the terms of such agreement, instrument or obligation directly to the Secured Party or its designee.

(c) The Secured Party shall incur no liability as a result of the sale of the Collateral, or any part thereof, at any private sale other than for its own gross negligence, willful misconduct or bad faith. Each of the Companies hereby waives, to the maximum extent permitted by applicable law, any claims against the Secured Party arising by reason of the fact that the price at which the Collateral may have been sold at such private sale was less than the price which might have been obtained at a public sale or was less than the aggregate amount of the Obligations, even if the Secured Party accepts the first offer received and does not offer such Collateral to more than one offeree.

(d) The Secured Party shall not be obligated to pursue or exhaust its rights and remedies against any particular Collateral or other security for the Obligations before pursuing or enforcing its rights and remedies against any other Collateral or other security for the Obligations.

(e) To the extent permitted by law, each of the Companies hereby waives (i) any rights to require the Secured Party to proceed first against any other Person, to exhaust its rights in the Collateral or other security for the Obligations or to pursue any other right that the Secured Party might have, (ii) with respect to the Note, presentment and demand for payment, protest, notice of protest and nonpayment, notice of dishonor, notice of the intention to accelerate and notice of acceleration (except as otherwise set forth in the Restructured O&G Agreement), and (iii) all rights of marshaling in respect of any and all of the Collateral.

(f) Without precluding any other methods of sale, each of the Companies acknowledges that the sale of the Collateral shall have been made in a commercially

reasonable manner if conducted in conformity with reasonable commercial practices of institutional lenders disposing of similar property. The Secured Party shall not be liable for any depreciation in the value of the Collateral.

(g) Each of the Companies agrees that its obligation to deliver the Collateral is of the essence of this Agreement and that accordingly, upon application to a court of equity having jurisdiction, the Secured Party shall be entitled to a decree requiring specific performance by the Companies of such obligation.

(h) Remedies of the Secured Party are cumulative and the exercise of any one or more of the remedies provided herein shall not be construed as a waiver of any of the other remedies of the Secured Party.

(i) If an Event of Default shall have occurred and be continuing, the proceeds of any sale of or other realization upon all or any part of the Collateral and any other amounts held by the Secured Party under this Agreement shall be applied by the Secured Party as provided in the Restructured O&G Agreement.

Any amounts remaining after such applications and the payment in full of the Note with respect to the Obligations shall be remitted to the Companies, its successors or assigns, or as a court of competent jurisdiction may otherwise direct.

#### Section 8. General Provisions.

(a) Continuing Security Interest; Binding Effect. This Agreement shall create a continuing security interest in the Collateral and shall (i) remain in full force and effect until termination of the obligations of the Companies under the Restructured O&G Agreement and the indefeasible payment in full thereafter of the Obligations; (ii) be binding upon each of the Companies and its successors and assigns; and (iii) inure to the benefit of the Secured Party and its successors, transferees and assigns. Without limiting the generality of the foregoing clause (iii), the Secured Party may assign or otherwise transfer any of its rights under this Agreement to any other Person, and such Person shall thereupon become vested with all the benefits in respect thereof granted herein or otherwise to the Secured Party. Upon the termination of the obligations of the Secured Party under the Restructured O&G Agreement and the indefeasible payment in full thereafter of the Obligations, each of the Companies shall be entitled to the return, upon its request and at its expense, of such of the Collateral as is in the Secured Party's possession and as shall not have been sold or otherwise disposed of pursuant to the terms hereof.

(b) Security Interest Absolute. The lien and security interest created hereunder and the Companies' obligations hereunder and the Secured Party's rights hereunder shall not be released, diminished, impaired or adversely affected by the occurrence of any one or more of the following events:

(i) The taking or accepting of any other security or assurance for any or all of the Obligations;

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(ii) Any release, surrender, exchange, subordination or loss of any security or assurance at any time existing in connection with any or all of the Obligations;

(iii) The modification of, amendment to, or waiver of compliance with any terms of the Restructured O&G Agreement or the Note;

(iv) Any renewal, extension and/or rearrangement of the payment of any or all of the Obligations or any statement, indulgence, forbearance or compromise that may be granted or given by the Secured Party to any of the Companies or any other

Person;

(v) any neglect, delay, omission, failure or refusal of the Secured Party to take or prosecute any action in connection with any agreement, document or other instrument evidencing, securing or assuring the payment of any or all of the Obligations;

(vi) the illegality, invalidity or unenforceability of all or any part of the Restructured O&G Agreement or the Note; or

(vii) any other circumstance (other than payment in full of the Obligations) that might otherwise constitute a defense available to, or a discharge of, the Companies or any party to any document in respect of the Obligations.

(c) Amendments. This Agreement or any term hereof may be amended or changed only by an instrument in writing executed jointly by each of the Companies and the Secured Party and in accordance with the Restructured O&G Agreement.

(d) Remedies Cumulative. Each right, power and remedy herein specifically granted to the Secured Party or otherwise available to it or now or hereafter existing in law or in equity shall be cumulative and concurrent, and shall be in addition to every other right, power and remedy herein specifically given or now or hereafter existing at law, in equity, or otherwise (including, without limitation, all rights, powers and remedies granted to a secured party under the UCC), and each such right, power and remedy, whether specifically granted herein or otherwise existing, may be exercised at any time and from time to time as often and in such order as may be deemed expedient by the Secured Party in its sole and complete discretion. The provisions of this Agreement may only be waived by an instrument in writing signed by the Secured Party, and no failure on the part of the Secured Party to exercise, and no delay in exercising, and no course of dealing with respect to, any such right, power or remedy, shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right. No notice to or demand on any of the Companies hereunder shall, of itself, entitle any of the Companies to any other or further notice or demand in the same or similar circumstances.

(e) Assignment. Neither this Agreement nor any interest herein or in the Collateral, or any part thereof, may be assigned by any of the Companies without the

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prior written consent of the Secured Party, except as expressly permitted herein or in the Restructured O&G Agreement.

(f) Headings. The descriptive headings of the several sections of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

(g) Severability. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity of enforceability or such provision in any other jurisdiction.

(h) Survival. All representations and warranties contained herein, in the Restructured O&G Agreement or made in writing by any of the Companies in connection herewith or therewith, shall survive the execution and delivery of this

Agreement, the Restructured O&G Agreement and any documents executed in connection herewith or therewith.

(i) Counterparts; Facsimiles. This Agreement may be executed in any number of counterparts and by different parties in separate counterparts, each of which when so executed and delivered shall be deemed to be an original, but all of which when taken together shall constitute one and the same instrument. A complete set of counterparts shall be lodged with the Secured Party. Any signature delivered by fax shall be deemed an original signature hereto.

(j) Waiver. To the extent permitted by applicable law each of the Companies hereby waives promptness, diligence, notice of acceptance and any other notice with respect to any of the Restructured O&G Agreement obligations and this Agreement and any requirement that the Secured Party protect, secure, perfect or insure any security interest or any property subject thereto or exhaust any right or take any action against any of the Companies or any other person or entity; provided however, that the Secured Party shall in any event take such care in the handling of any Collateral in its possession as it takes with respect to its own property of a similar nature in its possession.

(k) Notices. Any notices or other communications required or permitted hereunder shall be made in the manner provided in the Restructured O&G Agreement.

(l) Conflicting Terms. In the event of any conflict or inconsistency between the terms, covenants, conditions and provisions set forth in this Agreement and the terms, covenants, conditions and provisions set forth in the Restructured O&G Agreement, the terms, covenants, conditions and provisions of the Restructured O&G Agreement shall prevail.

(m) Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW EXCEPT SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

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EACH OF THE COMPANIES HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY NEW YORK STATE COURT SITTING IN THE BOROUGH OF MANHATTAN IN THE CITY OF NEW YORK OR ANY FEDERAL COURT SITTING IN THE BOROUGH OF MANHATTAN IN THE CITY OF NEW YORK IN RESPECT OF ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, AND IRREVOCABLY ACCEPTS FOR ITSELF AND IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, JURISDICTION OF THE AFORESAID COURTS. EACH OF THE COMPANIES IRREVOCABLY WAIVES, TO THE FULLEST EXTENT IT MAY EFFECTIVELY DO SO UNDER APPLICABLE LAW, TRIAL BY JURY AND ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF THE VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT AND ANY CLAIM THAT ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. EACH OF THE COMPANIES IRREVOCABLY CONSENTS, TO THE FULLEST EXTENT IT MAY EFFECTIVELY DO SO UNDER APPLICABLE LAW, TO THE SERVICE OF PROCESS OF ANY OF THE AFOREMENTIONED COURTS IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO THE COMPANIES AT ITS SAID ADDRESS, SUCH SERVICE TO BECOME EFFECTIVE 30 DAYS AFTER SUCH MAILING. NOTHING HEREIN SHALL AFFECT THE RIGHT OF THE SECURED PARTY TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST ANY OF THE COMPANIES IN ANY OTHER JURISDICTION.

[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, the Companies and the Secured Party have executed this Amended and Restated Agreement as of the date first above written.

TRANSTEXAS GAS CORPORATION

By: \_\_\_\_\_  
Name:  
Title:

GALVESTON BAY PIPELINE COMPANY

By: \_\_\_\_\_  
Name:  
Title:

GALVESTON BAY PROCESSING CORPORATION

By: \_\_\_\_\_  
Name:  
Title:

THORNWOOD ASSOCIATES LP  
By: Barberry Corp., General Partner

By: \_\_\_\_\_  
Name:  
Title:

EXHIBIT A (PERFECTION CERTIFICATE) - to be provided by the Debtors

SCHEDULE 1(a) - to be provided by the Debtors

TERM LOAN AND SECURITY AGREEMENT  
[EXIT FACILITY]

among

PANACO, INC.  
Borrower

MID RIVER LLC,  
Administrative Agent

and

THE LENDERS NAMED HEREIN,  
Lenders

\$38,000,000

DATED AS OF NOVEMBER 16, 2004

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TERM LOAN AND SECURITY AGREEMENT

THIS TERM LOAN AND SECURITY AGREEMENT is entered into as of November 16, 2004, among PANACO, INC., a Delaware corporation ("BORROWER"), Lenders (hereinafter defined), and MID RIVER LLC, a Delaware limited liability company, as Administrative Agent (hereinafter defined), for itself and the other Lenders.

RECITALS

WHEREAS, Borrower is a reorganized debtor in Case No. 02-37811 (the "CHAPTER 11 CASE") in the United States Bankruptcy Court for the Southern District Of Texas, Houston Division (the "COURT"); and

WHEREAS, Borrower is a party to that certain Amended and Restated Loan and Security Agreement (as amended) dated as of September 30, 1999, among the Borrower, Mid River LLC, as substitute agent, and the various lenders party thereto; and

WHEREAS, the Borrower has filed that certain Fifth Amended Joint Plan of Reorganization, as modified, dated as of October 29, 2004, and that certain Fifth Amended Joint Disclosure Statement Under Section 1125 of the Bankruptcy Code Regarding Fifth Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code of Panaco, Inc., dated as of August 25, 2004 (together with any amendment or modifications thereto consented to by the Lenders, collectively, the "REORGANIZATION PLAN"); and

WHEREAS, the Reorganization Plan was confirmed pursuant to that certain Findings of Fact, Conclusions of Law and Order Confirming Fifth Amended Plan of Reorganization, as Modified, and Disallowing Ballots of James Maxwell and Bob Mallory entered by the Court in the Chapter 11 Case on November 3, 2004 (the "CONFIRMATION ORDER"), after a final hearing under Bankruptcy Rule 3020, which Order is reasonably satisfactory in form and substance to Administrative Agent and the Required Lenders, and

WHEREAS, as set forth in the Reorganization Plan and Confirmation Order, Borrower is restructuring the claims of Lenders in the Chapter 11 Case in accordance with the Reorganization Plan; and

WHEREAS, Administrative Agent and the Lenders are willing to extend such financing to Borrower in accordance with and subject to the terms and conditions set forth in this Agreement:

NOW THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

#### SECTION 1. DEFINITIONS AND TERMS.

##### 1.1 DEFINITIONS. As used herein:

ACCOUNT DEBTOR means any Person who is or who may become obligated under, with respect to, or on account of, an Account, Chattel Paper, or a General Intangible.

ACCOUNTS means all of Borrower's now owned or hereafter acquired right, title, and interest with respect to "accounts" as that term is defined in the UCC, and any and all Supporting Obligations in respect thereof.

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ADMINISTRATIVE AGENT means Mid River LLC, a Delaware limited liability company, and its permitted successors and assigns as "ADMINISTRATIVE AGENT" for Lenders under the Loan Documents.

AFFILIATE of any Person means any other individual or entity (i) which directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, such Person, or (ii) 5% or more of the Voting Stock (or in the case of an entity which is not a corporation, 5% or more of the voting equity interest) of which is beneficially owned or held by such Person; and, for purposes of this definition only, "control," "controlled by," and "under common control with" mean possession, directly or indirectly, of the power to direct or cause the direction of management or policies (whether through ownership of voting securities, by contract, or otherwise).

AGREEMENT means this Term Loan and Security Agreement (as the same may hereafter be amended, modified, supplemented, or restated from time to time).

APPLICABLE LENDING OFFICE means, for each Lender, the "Lending Office" of such Lender (or an affiliate of such Lender) designated on SCHEDULE 2.1, attached hereto or such other office that such Lender (or an affiliate of such Lender) may from time to time specify to Administrative Agent and Borrowers by written notice in accordance with the terms hereof.

ASSIGNMENT AND ASSUMPTION means an assignment and assumption entered into by a Lender and its assignee and accepted by Administrative Agent, in substantially the form of EXHIBIT C or any other form approved by Administrative Agent.

AUTHORIZATIONS means all material filings, recordings, and registrations with, and all material validations or exemptions, approvals, orders, authorizations, consents, franchises, licenses, certificates, certificates of compliance, grants of authority, and permits from, any Governmental Authority.

BOOKS means Borrower's now owned or hereafter acquired books and records (including all of its Records indicating, summarizing, or evidencing its assets (including the Collateral) or liabilities, all of Borrower's records relating to its business operations or financial condition, and all of its goods or General Intangibles related to such information).

BORROWER is defined in the preamble to this Agreement.

BORROWING means any amount disbursed (a) by one or more Lenders under the Loan Documents, whether such amount constitutes an original disbursement of funds or the continuation of an amount outstanding, or (b) by any Lender in accordance with, and to satisfy the obligations of any Borrower under, any Loan Document.

BUSINESS DAY means for all purposes, any day other than Saturday, Sunday, and any other day on which commercial banking institutions are required or authorized by Law to be closed in Dallas, Texas or New York, New York.

CAPITAL LEASE means any capital lease or sublease which should be capitalized on a balance sheet in accordance with GAAP.

CASH EQUIVALENTS means:

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(a) Readily marketable, direct, full faith and credit obligations of the United States of America, or obligations guaranteed by the full faith and credit of the United States of America, maturing within not more than one year from the date of acquisition;

(b) Readily marketable, direct obligations issued by any state of the United States of America or any political subdivision of any such state or any public instrumentality thereof maturing within not more than one year from the date of acquisition, and, at the time of acquisition, having the highest rating obtainable from either Moody's Investors Service, Inc. ("MOODY'S") or Standard and Poor's Rating Group (a division of McGraw-Hill, Inc., "S&P");

(c) Commercial paper maturing no more than one year from the date of issuance and rated, at the time of acquisition, at least P-1 from Moody's or at least A-1 from S&P;

(d) Short term certificates of deposit or banker's acceptances maturing within one year from the date of issuance having a rating of at least P-1 from Moody's or at least A-1 from S&P, issued by any Lender or any commercial bank organized under the Laws of the United States of America, or any state thereof or the District of Columbia, having combined capital and surplus of not less than \$250,000,000 (each Lender and such commercial bank being herein called a "CASH EQUIVALENT BANK") and not subject to set off Rights in favor of such bank;

(e) Eurodollar time deposits maturing within one year purchased directly from any Cash Equivalent Bank (provided such deposit is with such Cash Equivalent Bank or any other Cash Equivalent Bank); and

(f) any money market or mutual fund which invests only in the foregoing types of investments and the liquidity of which is satisfactory to Administrative Agent.

CHANGE OF CONTROL means that (a) except as otherwise permitted under the Reorganization Plan, a majority of the members of the Board of Directors do not constitute Continuing Directors, or (b) Borrower ceases to own, directly or indirectly, and control 100% of the outstanding Stock of each of its Subsidiaries extant as of the Closing Date.

CHATTEL PAPER means all of Borrower's now owned or hereafter acquired right, title and interest in respect of "chattel paper" as such term is defined in the UCC, including, without limitation, any tangible or electronic Chattel Paper.

CLOSING DATE means the date upon which this Agreement has been executed by Borrower, Lenders, and Administrative Agent and all conditions precedent specified in SECTION 6 have been satisfied or waived.

CODE means the Internal Revenue Code of 1986, as amended, together with the rules and regulations promulgated thereunder.

COLLATERAL means all of Borrower's now owned or hereafter acquired right, title, and interest in and to each of the following:

- (a) Accounts,
- (b) Books,
- (c) Chattel Paper,

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- (d) Commercial Tort Claims,
- (e) Deposit Accounts,
- (f) Equipment,
- (g) General Intangibles,
- (h) Inventory,
- (i) Investment Property (including all of its securities and Securities Accounts),
- (j) Negotiable Collateral,
- (k) Proprietary Rights,
- (l) Oil and Gas Properties,
- (m) Supporting Obligations,
- (n) money, cash, Cash Equivalents, or other assets of Borrower that now or hereafter come into the possession, custody, or control of any member of the Lenders,
- (o) the proceeds and products, whether tangible or intangible, of any of the foregoing, including proceeds of insurance covering any or all of the foregoing, and any and all Accounts, Books, Chattel Paper, Deposit Accounts, Equipment, General Intangibles, Inventory, Investment Property, Negotiable Collateral, Proprietary Rights, Oil and Gas Properties, Supporting Obligations, money, deposit accounts, or other tangible or intangible property resulting from the sale, exchange, collection, or other disposition of any of the foregoing, or any portion thereof or interest therein, and the proceeds thereof; provided, however, that Collateral shall not include any molds or tools that are owned by third parties but located on Borrower's premises, and
- (p) to the extent not included in the foregoing, all other personal property of Borrower of any kind or description.

COLLATERAL DOCUMENTS means the Mortgages, the Letters in Lieu, and all other security agreements, pledge agreements, mortgages, financing statements, assignments of partnership interests, and guaranties at any time delivered to Administrative Agent to create or evidence Liens securing the Obligation (or any part thereof), together with all reaffirmations, amendments, and modifications thereof or supplements thereto.

COLLECTIONS means all cash, checks, notes, instruments, and other items of payment (including insurance proceeds, proceeds of cash sales, rental proceeds, and tax refunds) of Borrower.

COMMERCIAL TORT CLAIMS means all of Borrower's now owned or hereafter acquired right, title and interest with respect to any "commercial tort claim" as such term is defined in the UCC, including without limitation, the Commercial Tort Claims on SCHEDULE C.

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COMMITMENT PERCENTAGE means, at any date of determination, for any Lender, the proportion (stated as a percentage) that its Committed Sum bears to the aggregate Committed Sums of all Lenders.

COMMITTED SUM means, at any date of determination occurring prior to the initial Borrowing, the amount stated beside such Lender's name on SCHEDULE 2.1 to this Agreement.

CONTINUING DIRECTOR means (a) any member of the Board of Directors who was a director (or comparable manager) of Borrower on the Closing Date, and (b) any individual who becomes a member of the Board of Directors after the Closing Date if such individual was appointed or nominated for election to the Board of Directors by a majority of the Continuing Directors, but excluding any such individual originally proposed for election in opposition to the Board of Directors in office at the Closing Date in an actual or threatened election contest relating to the election of the directors (or comparable managers) of Borrower and whose initial assumption of office resulted from such contest or the settlement thereof.

CONTRACTUAL OBLIGATION means, as applied to any Person, any provision of any security or equity issued by that Person or of any material indenture, mortgage, deed of trust, contract, undertaking, agreement, or other instrument to which that Person is a party or by which it or any of its properties is bound or to which it or any of its properties is subject.

DDA means any checking or other demand deposit account maintained by Borrower.

DEBTOR RELIEF LAWS means the Bankruptcy Code of the United States of America and all other applicable liquidation, conservatorship, bankruptcy, moratorium, rearrangement, receivership, insolvency, reorganization, fraudulent transfer or conveyance, suspension of payments, or similar Laws from time to time in effect affecting the Rights of creditors generally.

DEPOSIT ACCOUNTS means all of Borrower's now owned or hereafter acquired right, title and interest with respect to any "deposit account" as such term is defined in the UCC, including, without limitation, any DDAs.

DESIGNATED ACCOUNT means account number 033595241 of Panaco maintained with Borrower's Designated Account Bank, or such other deposit account of Panaco (located within the United States) which has been designated, in writing and from time to time, by Borrower to Administrative Agent.

DESIGNATED ACCOUNT BANK means First American Bank, SSB, whose office is located at One Lincoln Park, 8401 N. Central Expressway #500, Dallas, TX 752255.

DOLLARS and the symbol \$ means lawful money of the United States of America.

EMPLOYEE PLAN means, at any time, each Single-Employer Plan and each Multiemployer Plan.

ENVIRONMENTAL CLAIM means any written accusation, allegation, notice of violation, claim, demand, abatement order or other order, or direction (conditional or otherwise) by any Governmental Authority or any Person for any: costs of investigation and remediation; contribution or indemnity; direct, indirect, or consequential damages, including, without limitation, personal injury (including sickness, disease, or death), tangible or intangible property damage, natural resources, or other damages or adverse effects on the environment; or for fines, penalties, or restrictions, in each case relating to, resulting from, or in connection with Hazardous Materials or any violation of Environmental Laws and relating to Borrower, any of its Subsidiaries, any of their respective Affiliates that are directly or indirectly controlled by Borrower, or any Facility which in any case could reasonably be expected to have a Material Adverse Effect.

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ENVIRONMENTAL LAW means all laws, statutes, ordinances, judicial, or administrative orders, rules, regulations, plans, policies, or decrees and the like relating to (a) environmental matters, including, without limitation, those relating to fines, injunctions, penalties, damages, contribution, cost recovery

compensation, losses, or injuries resulting from the Release or threatened Release of Hazardous Materials, (b) the generation, use, storage, transportation, or disposal of Hazardous Materials, or (c) occupational safety and health, public health and safety, industrial hygiene or protection of the environment, including environmentally sensitive aspects such as wetlands and endangered species, in any manner applicable to Borrower or any of its Subsidiaries or any of their respective properties, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. Section 9601 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. Section 1801 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.), the Clean Air Act (42 U.S.C. Section 7401 et seq.), the Toxic Substances Control Act (15 U.S.C. Section 2601 et seq.), the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. Section 136 et seq.), the Occupational Safety and Health Act (29 U.S.C. Section 651 et seq.) and the Emergency Planning and Community Right-to-Know Act (42 U.S.C. Section 11001 et seq.), each as amended or supplemented, and any analogous future or present local, state and federal statutes and regulations promulgated pursuant thereto, each as in effect as of the date of determination. The term "oil" shall have the meaning specified in OPA, the terms "hazardous substance" and "release" (or "threatened release") have the meanings specified in CERCLA, the terms "solid waste" and "disposal" (or "disposed") have the meanings specified in RCRA and the term "oil and gas waste" shall have the meaning specified in Section 91.1011 of the Texas Natural Resources Code ("SECTION 91.1011"); provided, however, that (a) in the event either OPA, CERCLA, RCRA or Section 91.1011 is amended so as to broaden the meaning of any term defined thereby, such broader meaning shall apply subsequent to the effective date of such amendment and (b) to the extent the laws of the state or other jurisdiction in which any Property of the Borrower or any Subsidiary is located establish a meaning for "oil," "hazardous substance," "release," "solid waste," "disposal" or "oil and gas waste" which is broader than that specified in either OPA, CERCLA, RCRA or Section 91.1011, such broader meaning shall apply.

EQUIPMENT means all of Borrower's now owned or hereafter acquired right, title, and interest with respect to equipment, machinery, machine tools, motors, furniture, furnishings, fixtures, vehicles (including motor vehicles), computer hardware, tools, parts, and goods (other than consumer goods, farm products, or Inventory), wherever located, including all attachments, accessories, accessions, replacements, substitutions, additions, and improvements to any of the foregoing.

ERISA means the Employee Retirement Income Security Act of 1974, as amended, and the regulations and rulings thereunder.

ERISA AFFILIATE means any Borrower or trade or business (whether or not incorporated) which, for purposes of Title IV of ERISA, is, or has been within the past six years, a member of any Borrower's controlled group or which is, or has been within the past six years, under common control with any Borrower within the meaning of Section 414(b), (c), (m), or (o) of the Code.

ERISA EVENT means (i) a "reportable event" within the meaning of Section 4043(c) of ERISA and the regulations issued thereunder with respect to any Employee Plan (excluding those for which the provision for 30-day notice to the PBGC has been waived by regulation or with respect to which no penalty will be assessed by the PBGC for failure to satisfy such notice requirements); (ii) the failure to meet the minimum funding standard of Section 412 of the Code with respect to any Employee Plan (whether or not waived in accordance with Section 412(d) of the Code) or the failure to make by its due date a required installment under Section 412(m) of the Code with respect to any Single-Employer Plan or the failure to make any required contribution to a Multiemployer Plan; (iii) the provision by the

#### TERM LOAN AND SECURITY AGREEMENT

administrator of any Employee Plan pursuant to Section 4041(a)(2) of ERISA of a notice of intent to terminate such plan in a distress termination described in Section 4041(c) of ERISA; (iv) the withdrawal by Borrower or any of its ERISA Affiliates from any Employee Plan with two or more contributing sponsors or the termination of any such Employee Plan resulting, in either case, in liability pursuant to Section 4063 or 4064 of ERISA, respectively; (v) the institution by the PBGC of proceedings to terminate any Employee Plan pursuant to Section 4042

of ERISA; (vi) the imposition of liability on Borrower or any of its ERISA Affiliates pursuant to Section 4062(e) or 4069 of ERISA or by reason of the application of Section 4212(c) of ERISA; (vii) the withdrawal by Borrower or any of its ERISA Affiliates in a complete or partial withdrawal (within the meaning of Sections 4203 and 4205 of ERISA) from any Multiemployer Plan resulting in withdrawal liability pursuant to Section 4201 of ERISA, or the receipt by Borrower or any of its ERISA Affiliates of written notice from any Multiemployer Plan that it is in reorganization or insolvency pursuant to Section 4241 or 4245 of ERISA, or that it intends to terminate or has terminated under Section 4042 of ERISA or under Section 4041A of ERISA if such termination would result in liability to Borrower or any of its ERISA Affiliates; (viii) the imposition on Borrower or any of its ERISA Affiliates of fines, penalties, or taxes under Chapter 43 of the Code or under Section 409 or 502(c), (i) or (l) or 4071 of ERISA in respect of any Employee Plan; (ix) the failure of any Employee Plan (or any other Employee Plan intended to be qualified under Section 401(a) of the Code) to qualify under Section 401(a) of the Code, or the failure of any trust forming part of any Employee Plan to qualify for exemption from taxation under Section 501(a) of the Code; or (x) the imposition of a Lien pursuant to Section 401(a)(29) or 412(n) of the Code or pursuant to ERISA with respect to any Employee Plan.

EVENT OF DEFAULT is defined in SECTION 10.

EXCHANGE ACT means the Securities Exchange Act of 1934, as amended from time to time, and any successor statute.

EXHIBIT means an exhibit to this Agreement unless otherwise specified.

FACILITIES means any and all real property (including, without limitation, all buildings, fixtures, or other improvements located thereon) now, hereafter, or heretofore owned, leased, operated, or used by Borrower or any of its Subsidiaries (but only as to portions of buildings actually leased or used) or any of their respective predecessors or any of their respective Affiliates that are directly or indirectly controlled by Borrower.

FEDERAL FUNDS RATE means, for any day, the rate per annum (rounded upwards, if necessary, to the nearest 1/100 of 1%) determined (which determination shall be conclusive and binding, absent manifest error) by Administrative Agent to be equal to the weighted average of the rates on overnight Federal funds transactions with member banks 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 such day 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 no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate charged to Administrative Agent (in its individual capacity) on such day on such transactions as determined by Administrative Agent (which determination shall be conclusive and binding, absent manifest error).

FISCAL YEAR means the fiscal year of Borrower and its Subsidiaries ending on December 31 of each calendar year.

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GAAP means generally accepted accounting principles of the Accounting Principles Board of the American Institute of Certified Public Accountants and the Financial Accounting Standards Board which are applicable from time to time.

GENERAL INTANGIBLES means all of Borrower's now owned or hereafter acquired right, title, and interest with respect to "general intangibles" (as that term is defined in the UCC), including payment intangibles, contract rights, rights to payment, rights arising under common law, statutes, or regulations, choses or things in action, goodwill, patents, trade names, trademarks, servicemarks, copyrights, blueprints, drawings, purchase orders, customer lists, monies due or recoverable from pension funds, route lists, rights to payment and other rights under any royalty or licensing agreements, infringement claims, computer programs, information contained on computer disks or tapes, software, literature, reports, catalogs, money, deposit accounts, insurance premium rebates, tax refunds, and tax refund claims, and any and all Supporting Obligations in respect thereof, and any other personal property other

than goods, money, Accounts, Chattel Paper, Commercial Tort Claims, Deposit Accounts, Investment Property, and Negotiable Collateral.

GOVERNMENTAL AUTHORITY means any (a) state, county, city, town, village, or other local, state, or federal judicial, executive, regulatory, or legislative instrumentality, (b) private arbitration board or panel, or (c) central bank.

HAZARDOUS MATERIALS means (a) any chemical, material or substance defined as or included in the definition of "hazardous substances", "pollutant or contaminant", "hazardous wastes", "hazardous materials", "extremely hazardous waste", "restricted hazardous waste", "infectious waste", "toxic substances" or any other formulations intended to define, list or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity, "TCLP toxicity" or "EP toxicity" or words of similar import under any applicable Environmental Laws; (b) any oil, petroleum, petroleum fraction, or petroleum derived substance; (c) any drilling fluids, produced waters, and other wastes associated with the exploration, development or production of crude oil, natural gas, or geothermal resources; (d) any flammable substances or explosives; (e) any radioactive materials; (f) asbestos in any form; (g) urea formaldehyde foam insulation; (h) electrical equipment which contains any oil or dielectric fluid containing levels of polychlorinated biphenyls; (i) pesticides; (j) infectious materials; (k) toxic mold; and (l) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any Governmental Authority.

HYDROCARBON INTERESTS means all rights, titles, interests and estates now or hereafter acquired in and to oil and gas leases, oil, gas and mineral leases, or other liquid or gaseous hydrocarbon leases, mineral fee interests, overriding royalty and royalty interests, net profit interests and production payment interests, including any reserved or residual interests of whatever nature.

HYDROCARBONS means oil, gas, casinghead gas, drip gasoline, natural gasoline, condensate, distillate, liquid hydrocarbons, gaseous hydrocarbons and all products refined or separated therefrom.

INDEBTEDNESS means, as applied to any Person, (a) all indebtedness for borrowed money, (b) that portion of obligations with respect to Capital Leases that is properly classified as a liability on a balance sheet in conformity with GAAP, (c) notes payable and drafts accepted representing extensions of credit whether or not representing obligations for borrowed money (other than accounts payable incurred in the ordinary course of business and accrued expenses incurred in the ordinary course of business), (d) any obligation owed for all or any part of the deferred purchase price of property or services (excluding any such obligations incurred under ERISA and other trade payables incurred in the ordinary course of business) and (e) all indebtedness secured by any Lien on any property or asset owned or held by that

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Person regardless of whether the indebtedness secured thereby shall have been assumed by that Person or is nonrecourse to the credit of that Person.

INVENTORY means all Borrower's now owned or hereafter acquired right, title, and interest with respect to "inventory," as that term is defined in the UCC.

INVESTMENT means (a) any direct or indirect purchase or other acquisition by Borrower or any of its Subsidiaries of, or of a beneficial interest in, stock or other securities or equity of any other Person (other than a Person that, prior to such purchase or acquisition, was a wholly-owned Subsidiary of Borrower), or (b) any direct or indirect loan, advance (other than advances to employees for moving, entertainment, and travel expenses, drawing accounts, and similar expenditures in the ordinary course of business) or capital contribution by Borrower or any of its Subsidiaries to any other Person other than a wholly-owned Subsidiary of Borrower, including all Indebtedness and accounts receivable acquired from that other Person that are not current assets or did not arise from sales to that other Person in the ordinary course of business; provided, however, that the term "Investment" shall not include (i) current trade and customer accounts receivable for goods furnished or services rendered in the ordinary course of business and payable in accordance with customary trade terms, (ii) advances and prepayments to suppliers for goods and services

in the ordinary course of business, (iii) stock or other securities acquired in connection with the satisfaction or enforcement of Indebtedness or claims due or owing to Borrower or any of its Subsidiaries or as security for any such Indebtedness or claims, (iv) cash held in deposit accounts with banks, trust companies, and Lenders, and (v) shares in a mutual fund that invests solely in Cash Equivalents. The amount of any Investment shall be the original cost of such Investment plus the cost of all additions thereto, without any adjustments for increases or decreases in value, or write-ups, write-downs, or write-offs with respect to such Investment.

INVESTMENT PROPERTY means all of Borrower's now owned or hereafter acquired right, title, and interest with respect to "investment property" as that term is defined in the UCC, and any and all supporting obligations in respect thereof.

LAWS means all applicable statutes, laws, treaties, ordinances, tariff requirements, rules, regulations, orders, writs, injunctions, decrees, judgments, opinions, or interpretations of any Governmental Authority.

LENDERS means, on any date of determination, the financial institutions named on SCHEDULE 2.1 (as the same may be amended from time to time to reflect the assignments made in accordance with SECTION 13.12(b) of this Agreement), and subject to the terms and conditions of this Agreement, and their respective successors and assigns (but not any Participant who is not otherwise a party to this Agreement).

LIEN means any lien, mortgage, security interest, pledge, assignment, charge, title retention agreement, or encumbrance of any kind, and any other Right of or arrangement with any creditor (other than under or relating to subordination or other intercreditor arrangements) to have its claim satisfied out of any property or assets, or the proceeds therefrom, prior to the general creditors of the owner thereof.

LITIGATION means any action by or before any Governmental Authority.

LOAN DOCUMENTS means (a) this Agreement, the Term Loan Notes, and the Collateral Documents, (b) all agreements, documents, or instruments in favor of Administrative Agent or Lenders ever delivered pursuant to this Agreement or otherwise delivered in connection with all or any part of the Obligation, and (c) any and all future renewals, extensions, restatements, reaffirmations, or amendments of, or supplements to, all or any part of the foregoing.

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LOAN PARTIES means, on any date of determination, Borrower and any other obligor under a Loan Document other than Administrative Agent or Lenders.

LOCKBOX ACCOUNT shall mean a depository account established pursuant to one of the Lockbox Agreements.

LOCKBOX AGREEMENTS means Lockbox Operating Procedural Agreements and those certain Depository Account Agreements, in form and substance satisfactory to Administrative Agent, each of which is among Borrower, Administrative Agent, and one of the Lockbox Banks.

LOCKBOX BANKS means Southwest Bank of Texas or such other banks as may be agreed to by Borrower and Lender from time to time.

LOCKBOXES has the meaning set forth in SECTION 3.12(a).

MARGIN STOCK has the meaning assigned to that term in Regulation U.

MATERIAL ADVERSE EFFECT means any (a) material impairment of the ability of any Loan Party to perform any payment or other obligations under any Loan Document, (b) material and adverse effect on the business, operations, prospects, properties, assets, or condition (financial or otherwise) of Borrower and its Subsidiaries (taken as a whole), (c) material adverse effect upon the legality, validity, binding effect, or enforceability against a Loan Party of any Loan Document to which it is a party, or (d) a material impairment in the perfection or priority of Administrative Agent's security interest in the Collateral or in the value of such Collateral.

MAXIMUM AMOUNT and MAXIMUM RATE respectively mean, for each Lender, the maximum non-usurious amount and the maximum non-usurious rate of interest which, under applicable Law, such Lender is permitted to contract for, charge, take, reserve, or receive on the Obligation.

MORTGAGE means a security instrument (whether designated as a deed of trust or a mortgage or by any similar title) executed and delivered by any Loan Party to the Administrative Agent, in the form as may be approved by Administrative Agent in its sole discretion, in each case with such changes thereto as may be recommended by Administrative Agent's local counsel based on local laws or customary local mortgage or deed of trust practices, as such security instrument may be amended, supplemented, or otherwise modified from time to time. "MORTGAGES" means all such security instruments.

MORTGAGED PROPERTY means any Property owned by the Borrower which is subject to the Liens existing and to exist under the terms of the Mortgages.

MULTIEMPLOYER PLAN means a multiemployer plan as defined in Sections 3(37) or 4001(a)(3) of ERISA or Section 414(f) of the Code to which any Borrower, any Subsidiary thereof, or any ERISA Affiliate of any Borrower is making, has made, is accruing, or has accrued, an obligation to make contributions or has, within any of the preceding five plan years, made or accrued an obligation to make contributions.

NEGOTIABLE COLLATERAL means all of Borrower's now owned and hereafter acquired right, title, and interest with respect to letters of credit, letter of credit rights, instruments, promissory notes, drafts, and documents and any and all Supporting Obligations in respect thereof.

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NYMEX PRICE means, as of the date of the determination thereof, the average of the 24 succeeding monthly futures contract prices, commencing with the month during which the determination is to be made, for each of the appropriate crude oil or natural gas categories included in the most recent Reserve Report provided by Borrower to Administrative Agent pursuant to SECTION 8.2, as quoted on the New York Mercantile Exchange ("NYMEX"), or, if the NYMEX no longer provides futures contract price quotes for 24 month periods, the longest period of quotes of less than 24 months shall be used, and, if the NYMEX no longer provides such futures contract quotes or has ceased to operate, the Administrative Agent shall designate another nationally recognized commodities exchange to replace the NYMEX.

NYMEX VALUE means, at any date of determination thereof as to any Proved Reserves of Borrower, the result of

(a) the discounted present value of future net revenues (i.e., after deducting production and ad valorem taxes and less future capital costs and operating expenses) from Proved Reserves of Borrower as of such date utilizing the NYMEX Price for the appropriate category of oil or gas as quoted in a nationally recognized publication for such pricing as selected as of such date by Administrative Agent and assuming that production costs thereafter remain constant, then discounted at a rate of 10% per year to obtain the present value; minus

(b) to the extent not taken into account in SUBPARAGRAPH (a) above, the discounted present value (discounted at a rate of 10% per year) of Borrower's future plugging and abandonment expenses; minus

(c) to the extent not taken into account in SUBPARAGRAPH (a) above, minority interests and other interests of Persons other than Borrower and any natural gas balancing liabilities of Borrower.

OBLIGATION means all present and future indebtedness, liabilities, and obligations, and all renewals and extensions thereof, or any part thereof, now or hereafter owed to Administrative Agent, any Lender, or any Affiliate of any Lender by any Loan Party arising from, by virtue of, or pursuant to any Loan Document, together with all interest accruing thereon, fees, costs, and expenses (including, without limitation, all reasonable attorneys' fees and expenses incurred in the enforcement or collection thereof) payable under the Loan Documents.

OFFICER'S CERTIFICATE means, with respect to any Person, a certificate executed on behalf of such Person, (a) if such Person is a partnership, by the chairman of the Board (if an officer) or chief executive officer and/or by the chief financial officer of its general partner and (b) if such Person is a corporation, on behalf of such corporation by its chairman of the board (if an officer) or chief executive officer or its chief financial officer or vice president.

OIL AND GAS PROPERTIES means (a) Hydrocarbon Interests; (b) the Properties now or hereafter pooled or unitized with Hydrocarbon Interests; (c) all presently existing or future unitization, pooling agreements and declarations of pooled units and the units created thereby (including without limitation all units created under orders, regulations and rules of any Governmental Authority) which may affect all or any portion of the Hydrocarbon Interests; (d) all operating agreements, contracts and other agreements, including production sharing contracts and agreements, which relate to any of the Hydrocarbon Interests or the production, sale, purchase, exchange or processing of Hydrocarbons from or attributable to such Hydrocarbon Interests; (e) all Hydrocarbons in and under and which may be produced and saved or attributable to the Hydrocarbon Interests, including all oil in tanks, and all rents, issues, profits, proceeds, products, revenues and other incomes from or attributable to the Hydrocarbon Interests; (f) all tenements,

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hereditaments, appurtenances and Properties in any manner appertaining, belonging, affixed or incidental to the Hydrocarbon Interests and (g) all Properties, rights, titles, interests and estates described or referred to above, including any and all Property, real or personal, now owned or hereinafter acquired and situated upon, used, held for use or useful in connection with the operating, working or development of any of such Hydrocarbon Interests or Property (excluding drilling rigs, automotive equipment, rental equipment or other personal Property which may be on such premises for the purpose of drilling a well or for other similar temporary uses) and including any and all oil wells, gas wells, injection wells or other wells, buildings, structures, fuel separators, liquid extraction plants, plant compressors, pumps, pumping units, field gathering systems, tanks and tank batteries, fixtures, valves, fittings, machinery and parts, engines, boilers, meters, apparatus, equipment, appliances, tools, implements, cables, wires, towers, casing, tubing and rods, surface leases, rights-of-way, easements and servitudes together with all additions, substitutions, replacements, accessions and attachments to any and all of the foregoing.

PARTICIPANT is defined in SECTION 13.12(c).

PBGC means the Pension Benefit Guaranty Corporation, or any successor thereof, established pursuant to ERISA.

PERMITTED LIENS means (a) Liens held by Administrative Agent for the benefit of the Lenders, (b) Liens for unpaid taxes that either (i) are not yet due and payable or (ii) are the subject of Permitted Protests, (c) Liens set forth on SCHEDULE 9.2, (d) the interests of lessors under operating leases and purchase money Liens of lessors under capital leases to the extent that the acquisition or lease of the underlying asset is permitted under SECTION 9.2(c) and so long as the Lien only attaches to the asset purchased or acquired and only secures the purchase price of the asset, (e) Liens arising by operation of law in favor of warehousemen, landlords, carriers, mechanics, materialmen, laborers, or suppliers, or other like Liens arising by operation of law incidental to the exploration, development, operation and maintenance of Oil and Gas Properties, in each case incurred in the ordinary course of business of Borrower and not in connection with the borrowing of money, which Liens are for sums not yet due and payable whether or not perfected pursuant to applicable law, (f) Liens arising from deposits made in connection with obtaining worker's compensation or other unemployment insurance, (g) Liens on deposits and escrowed funds made to secure performance of bids, tenders and leases (to the extent permitted under this Agreement) incurred in the ordinary course of business of Borrower and not in connection with the borrowing of money, (h) Liens of or resulting from any judgment or award that do not result in and reasonably could not be expected to result in a Material Adverse Effect and as to which the time for the appeal or petition for rehearing of which has not yet expired, or in respect of which Borrower is in good faith prosecuting an appeal or proceeding for a review and in respect of which a stay of execution pending such appeal or

proceeding for review has been secured, (i) Liens with respect to the Oil and Gas Properties that are exceptions to the title opinions issued in connection with the Mortgages, (j) with respect to any Oil and Gas Properties consisting of Hydrocarbon Interests acquired by Borrower or any of its Subsidiaries after the date of this Agreement, (i) minor defects in title which (A) do not affect the marketability thereof or restrict the full use or other benefits of ownership by Borrower or such Subsidiary, as the case may be, and (B) do not affect the ability of Borrower or such Subsidiary, as the case may be, to receive a share of production or proceeds from, allocated to, or attributable to such Hydrocarbon Interests equal to the interest of Borrower or such Subsidiary, as the case may be, therein as represented herein or in the other Loan Documents, and (C) do not materially interfere with the ordinary conduct of the business of Borrower or such Subsidiary, as the case may be, and (D) do not interfere with or impair the value of Administrative Agent's Lien therein for the benefit of the Lenders, and (E) are customarily waived by reasonable and prudent operators, and (ii) Liens reserved in leases or farmout agreements for rent or royalties and for compliance with the terms of the farmout agreements or leases in the case of leasehold estates, to the extent that any such Lien referred to in this clause does not materially impair the use of the Hydrocarbon Interest covered by such Lien for the purposes for which such

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Hydrocarbon Interest is held by the Borrower or any Subsidiary, does not materially interfere with or impair the value of such Hydrocarbon Interest subject thereto or Administrative Agent's Lien therein for the benefit of the Lenders, is customarily waived by reasonable and prudent operators, and is consented to in writing by Administrative Agent, (k) farmout, carried working interests, joint operating, unitization, royalty, overriding royalty, sales and similar agreements relating to the exploration or development of, or production from, Oil and Gas Properties or the sale of the hydrocarbons after they are produced which are existing at the time of acquisition of such Oil and Gas Property, are usual and customary for the industry, and are disclosed to and approved by Administrative Agent.

PERMITTED PROTEST means the right of Borrower to protest any Lien other than any such Lien that secures the Obligations, tax (other than payroll taxes or taxes that are the subject of a United States federal tax lien), or rental payment, provided that (a) a reserve with respect to such obligation is established on the books of Borrower in an amount that is reasonably satisfactory to Administrative Agent, (b) any such protest is instituted and diligently prosecuted by Borrower in good faith, and (c) Administrative Agent is satisfied that, while any such protest is pending, there will be no impairment of the enforceability, validity, or priority of any of the Agent's Liens in and to the Collateral.

PERSON means any individual, entity, or Governmental Authority.

PERSONAL PROPERTY COLLATERAL means all Collateral other than Oil and Gas Properties.

POST-DEFAULT RATE means a per annum rate of interest equal from day to day to the lesser of (a) the then-effective non-Default interest rate, plus 2% and (b) the Maximum Rate.

POTENTIAL DEFAULT means the occurrence of any event or existence of any circumstance which, with the giving of notice or lapse of time or both, would become an Event of Default.

PROPERTY means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible, including, without limitation, cash, securities, accounts and contract rights.

PROPRIETARY RIGHTS means all of Borrower's now owned and hereafter arising or acquired licenses, franchises, permits, patents, patent rights, copyrights, works which are the subject matter of copyrights, trademarks, service marks, trade names, trade styles, patent, trademark and service mark applications, and all licenses and rights related to any of the foregoing, including those patents, trademarks, service marks, trade names and copyrights set forth on SCHEDULE P hereto, and all other rights under any of the foregoing, all extensions, renewals, reissues, divisions, continuations, and continuations-in-part of any of the foregoing, and all rights to sue for past,

present and future infringement of any of the foregoing.

PROVED DEVELOPED NON-PRODUCING RESERVES means Proved Reserves of Borrower, other than Proved Developed Producing Reserves and Proved Undeveloped Reserves, that can be expected to be recovered through existing wells with existing equipment and operating methods.

PROVED DEVELOPED PRODUCING RESERVES means Proved Reserves of Borrower, other than Proved Developed Non-Producing Reserves and Proved Undeveloped Reserves, that can be expected to be recovered from currently producing zones under the continuation of present operating methods.

PROVED RESERVES means at any particular time, the estimated quantities of Hydrocarbons which geological and engineering data demonstrate with reasonable certainty to be recoverable in future years from known reservoirs attributable to Hydrocarbon Interests included or to be included in the Reserve Report under existing economic and operating conditions.

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PROVED UNDEVELOPED RESERVES means Proved Reserves of Borrower, other than Proved Developed Producing Reserves and Proved Developed Non-Producing Reserves, that are expected to be recovered from new wells on undrilled acreage, or from existing wells where a relatively major expenditure is required for recompletion.

PV-10 VALUE means, at any date of determination thereof, as to any Proved Reserves, the result of:

(a) the discounted present value of future net revenues (i.e., after deducting production and ad valorem taxes and less future capital costs and operating expenses) from such Proved Reserves as most recently estimated in a Reserve Report utilizing the spot price for the appropriate category of oil or gas as quoted in a nationally recognized publication selected by Administrative Agent for such pricing as of the date of the determination of PV-10 Value and assuming that production costs thereafter remain constant, then discounted at a rate of 10% per year to obtain the present value; minus

(b) to the extent not taken into account in SUBPARAGRAPH (a) above, the discounted present value of Borrower's future plugging and abandonment expenses; minus

(c) to the extent not taken into account in SUBPARAGRAPH (a) above, minority interests and other interests of Persons other than Borrower and any natural gas balancing liabilities of Borrower.

REGULATION D means Regulation D of the Board of Governors of the Federal Reserve System, as amended.

REGULATION U means Regulation U of the Board of Governors of the Federal Reserve System, as amended.

RELEASE means any release, spill, emission, emptying, leaking, pumping, pouring, injection, escaping, deposit, disposal, discharge, dispersal, dumping, leaching, or migration of Hazardous Materials into or in the indoor or outdoor environment (including, without limitation, the abandonment or disposal of any barrels, containers, or other closed receptacles containing any Hazardous Materials), or into or out of any Facility, including the movement of any Hazardous Material through the air, soil, surface water, groundwater, or property.

REPRESENTATIVES means representatives, officers, directors, employees, attorneys, and agents.

REQUIRED LENDERS means those Lenders holding 65% or more of the Term Loan Principal Debt.

RESERVE REPORT means a report, in form and substance satisfactory to Administrative Agent,, prepared by a firm of independent petroleum engineers acceptable to Administrative Agent evaluating the oil and gas reserves attributable to the Hydrocarbon Interests of Borrower and its Subsidiaries (as

determined on an unconsolidated basis) which shall, among other things, (a) identify the wells covered thereby, (b) specify said third party's opinions with respect to the total volume of Proved Reserves (specifying with such opinions the terms of categories Proved Developed Producing Reserves, Proved Developed Non-Producing Reserves and Proved Undeveloped Reserves) which Borrower has the right to produce (or cause to be produced) for its own account, (c) set forth said firm's opinions with respect to the PV-10 Value and the NYMEX Value of each of the categories of the Proved Reserves as specified in SUBCLAUSE (b) above, (d) set forth said firm's opinions with respect to the projected future rate of

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production of the Proved Reserves, (e) contain such other information as requested by Administrative Agent with respect to the projected rate of production, gross revenues, operating expenses, net income, taxes, capital expenditures and other capital costs, net revenues and present value of future net revenues attributable to such reserves and production therefrom, and (f) contain a statement of the price and escalation parameters, procedures and assumptions upon which such determinations were based.

RIGHTS means rights, remedies, powers, privileges, and benefits.

SCHEDULE means, unless specified otherwise, a schedule attached to this Agreement, as the same may be supplemented and modified from time to time in accordance with the terms of the Loan Documents.

SECURITIES ACCOUNT means a "securities account" as that term is defined in the UCC.

SECURITIES ACT means the Securities Act of 1933, as the same may be amended, modified or supplemented from time to time, and any successor statute thereto, and any and all rules or regulations promulgated from time to time thereunder.

SINGLE-EMPLOYER PLAN means an employee pension benefit plan covered by Title IV of ERISA or subject to the minimum funding standards under Section 412 of the Code and established or maintained by any Borrower, Subsidiary thereof, or ERISA Affiliate of any Borrower, but not including any Multiemployer Plan.

SUBSIDIARY of any Person means (a) any entity of which an aggregate of more than 50% (in number of votes) of the stock, membership interests, or other equity interests is owned of record or beneficially, directly or indirectly, by such Person, or (b) any partnership (limited or general) of which such Person shall at any time be the controlling general partner determined in accordance with GAAP or own more than 50% of the issued and outstanding partnership interests.

SUPPORTING OBLIGATIONS means all of Borrower's now owned or hereafter acquired right, title and interest with respect to any "supporting obligation" as that term is defined in the UCC.

SWAP AGREEMENT means any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement, whether exchange traded, "over-the-counter" or otherwise, involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions; provided that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of the Borrower or the Subsidiaries shall be a Swap Agreement.

TAXES is defined in SECTION 4.1.

TERM LOAN FACILITY means the credit facility as described in and subject to the limitations set forth in SECTION 2 hereof.

TERM LOAN NOTE means a promissory note substantially in the form of EXHIBIT A, and all renewals and extensions of all or any part thereof.

TERM LOAN PRINCIPAL DEBT means, on any date of determination, the aggregate unpaid principal balance of the sum of all Borrowings under the Term

TERMINATION DATE means the earlier of (a) September 30, 2011, and (b) the effective date of any other acceleration of the Term Loan Principal Debt.

TRADEMARKS means all Borrower's now owned or hereafter arising or acquired trademarks, service marks, trade names, trade styles, trademark and service mark applications, and all licenses and rights related thereto, described in the definition of Proprietary Rights.

UCC or UNIFORM COMMERCIAL CODE means the Uniform Commercial Code as in effect from time to time in the State of New York - or, when the context implies, the Uniform Commercial Code as in effect from time to time in any other applicable jurisdiction - and shall include all successor provisions under any subsequent version or amendment to any Article of the Uniform Commercial Code.

UNFUNDED CURRENT LIABILITY means, with respect to any Employee Plan, the amount, if any, by which the actuarial present value of the accumulated plan benefits under such Employee Plan as of the close of its most recent plan year exceeds the fair market value of the assets allocable thereto, each determined in accordance with Statement of Financial Accounting Standards No. 35, based upon the actuarial assumptions used by such Employee Plan's actuary in the most recent annual valuation of such Employee Plan.

VOTING STOCK means securities (as such term is defined in Section 2(1) of the Securities Act) of any class or classes, the holders of which are ordinarily, in the absence of contingencies, entitled to elect a majority of the corporate directors (or Persons performing similar functions).

WALL STREET JOURNAL LIBOR DAILY FLOATING RATE means, for any day, a fluctuating rate of interest equal to the one month London interbank offered rate as published in the "Money Rates" Section of The Wall Street Journal on the immediately preceding banking day (or, if such source is not available, such alternate source as determined by the Administrative Agent), as adjusted from time to time in the Administrative Agent's sole discretion for reserve requirements, deposit insurance assessment rates and other regulatory costs.

1.2 NUMBER AND GENDER OF WORDS; OTHER REFERENCES. Unless otherwise specified in the Loan Documents, (a) where appropriate, the singular includes the plural and vice versa, and words of any gender include each other gender, (b) heading and caption references may not be construed in interpreting provisions, (c) monetary references are to currency of the United States of America, (d) section, paragraph, annex, schedule, exhibit, and similar references are to the particular Loan Document in which they are used, (e) references to "telecopy," "facsimile," "fax," or similar terms are to facsimile or telecopy transmissions, (f) references to "including" mean including without limiting the generality of any description preceding that word, (g) the rule of construction that references to general items that follow references to specific items are limited to the same type or character of those specific items is not applicable in the Loan Documents, (h) references to any Person include that Person's heirs, personal representatives, successors, trustees, receivers, and permitted assigns, (i) references to any Law include every amendment or supplement to it, rule and regulation adopted under it, and successor or replacement for it, and (j) references to any Loan Document or other document include every renewal and extension of it, amendment and supplement to it, and replacement or substitution for it.

1.3 ACCOUNTING PRINCIPLES. Except as otherwise expressly provided herein, all accounting and financial terms used in the Loan Documents and the compliance with each financial covenant therein shall be determined in accordance with GAAP, and, all accounting principles shall be applied on a consistent basis so that the accounting principles in a current period are comparable in all material respects to those applied during the preceding comparable period. If Borrower or Required Lenders

determine that a change in GAAP from that in effect on the date hereof has altered the treatment of certain financial data to its detriment under this Agreement, such party may, by written notice to the others and Administrative Agent not later than ten days after the effective date of such change in GAAP, request renegotiation of the financial covenants affected by such change. If Borrower and Required Lenders have not agreed on revised covenants within 30 days after delivery of such notice, then, for purposes of this Agreement, GAAP will mean generally accepted accounting principles on the date just prior to the date on which the change that gave rise to the renegotiation occurred.

SECTION 2. TERM LOAN FACILITY. Each Lender severally, but not jointly, agrees to restructure the claims of the Lenders in the Chapter 11 Case in accordance with the terms of the Reorganization Plan in the amount of such Lender's Commitment Percentage of \$38,000,000. If all or any portion of the Term Loan Principal Debt is paid or prepaid, then the amount so repaid may not be re-borrowed.

SECTION 3. TERMS OF PAYMENT.

3.1 LOAN ACCOUNTS, NOTES, AND PAYMENTS.

(a) Loan Accounts; Noteless Transaction. The Term Loan Principal Debt owed to each Lender shall be evidenced by one or more loan accounts or records maintained by such Lender in the ordinary course of business. The loan accounts or records maintained by Administrative Agent and each Lender shall be prima facie evidence absent manifest error of the amount of the Term Loan made by Borrower from each Lender under this Agreement and the interest and principal payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of Loan Parties under the Loan Documents to pay any amount owing with respect to the Obligation.

(b) Notes. Upon the request of any Lender, made through Administrative Agent, the Principal Debt owed to such Lender may be evidenced by a Term Loan Note. In such event, Borrower shall promptly prepare, execute, and deliver to such Lender such Note payable to the order of such Lender.

(c) Payment. All payments of principal, interest, and other amounts to be made by Borrower under this Agreement and the other Loan Documents shall be made to Administrative Agent via the following wiring instructions:

Fleet Bank  
ABA No. 021-200-339  
For account of Mid River LLC  
Account no. 94 293 82 604

in Dollars and in funds which are or will be available for immediate use by Administrative Agent by 1:00 p.m., New York, New York time on the day due, without setoff, deduction, or counterclaim. Payments made after 1:00 p.m., New York, New York time shall be deemed made on the Business Day next following. Administrative Agent shall pay to each Lender any payment of principal, interest, or other amount to which such Lender is entitled hereunder on the same day Administrative Agent shall have received the same from Borrower; provided such payment is received by Administrative Agent prior to 1:00 p.m., New York, New York time, and otherwise before 1:00 p.m., New York, New York time on the Business Day next following.

(d) Payment Assumed. Unless Administrative Agent has received notice from Borrower prior to the date on which any payment is due under this Agreement that Borrower will

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not make that payment in full, Administrative Agent may assume that Borrower has made the full payment due and Administrative Agent may, in reliance upon that assumption, cause to be distributed to the appropriate Lender on that date the amount then due to such Lenders. If and to the extent Borrower does not make the full payment due to Administrative Agent, each Lender shall repay to Administrative Agent on demand the amount distributed to that Lender by Administrative Agent together with interest for each day from the date that Lender received payment from

Administrative Agent until the date that Lender repays Administrative Agent (unless such repayment is made on the same day as such distribution), at an annual interest rate equal to the Federal Funds Rate.

3.2 PAYMENTS. The principal of and accrued interest upon the Term Loan Principal Debt shall be due and payable as follows:

(a) Interest, computed as stated below, shall be due and payable quarterly as it accrues, commencing March 15, 2005, and thereafter, on the 15th day of each succeeding June, September, December and March, and at maturity; and,

(b) Principal shall be due and payable (i) in twenty-seven (27) equal quarterly installments, each in the amount of \$1,357,142.86, commencing on March 15, 2005, and thereafter, on the 15th day of each succeeding June, September, December and March, through and including September 15, 2011, and (ii) in one final installment, on December 15, 2011, in the amount of the unpaid principal balance of and accrued unpaid interest upon the Loan as of such date.

3.3 PREPAYMENTS. The Borrower shall have the right at any time and from time to time to prepay any Borrowing in whole or in part. All such prepayments shall be made, together with accrued interest to the date of such prepayment on the principal amount prepaid.

3.4 INTEREST ACCRUAL. Except as otherwise provided in this Agreement, the Term Loan Principal Debt bears interest at a rate per annum equal to the lesser of (a) the Wall Street Journal LIBOR Daily Floating Rate plus four percent (4%) and (b) the Maximum Rate. Each change in such per annum rate of interest, subject to the terms of this Agreement, will become effective, without notice to Borrower or any other Person, upon the effective date of such change.

3.5 POST-DEFAULT RATE. At the option of Required Lenders and to the extent permitted by Law, all past-due Term Loan Principal Debt and past due interest accruing on any of the Obligation shall bear interest from maturity (stated or by acceleration) at the Post-Default Rate until paid; provided that, the Post-Default Rate shall automatically apply in the case of SECTION 11.3 where the Post-Default Rate is specified.

3.6 INTEREST RECAPTURE. If the designated rate applicable to any Borrowing exceeds the Maximum Rate, the rate of interest on such Borrowing shall be limited to the Maximum Rate, but any subsequent reductions in such designated rate shall not reduce the rate of interest thereon below the Maximum Rate until the total amount of interest accrued thereon equals the amount of interest which would have accrued thereon if such designated rate had at all times been in effect. In the event that at maturity (stated or by acceleration), or at final payment of the Term Loan Principal Debt, the total amount of interest paid or accrued is less than the amount of interest which would have accrued if such designated rates had at all times been in effect, then, at such time and to the extent permitted by Law, Borrower shall pay an amount equal to the difference between (a) the lesser of the amount of interest which would have accrued if such designated rates had at all times been in effect and the amount of interest which would

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have accrued if the Maximum Rate had at all times been in effect, and (b) the amount of interest actually paid or accrued on the Term Loan Principal Debt.

3.7 INTEREST CALCULATIONS. Interest will be calculated on the basis of actual number of days (including the first day but excluding the last day) elapsed but computed as if each calendar year consisted of 360 days (unless the calculation would result in an interest rate greater than the Maximum Rate, in which event interest will be calculated on the basis of a year of 365 or 366 days, as the case may be). All interest rate determinations and calculations by Administrative Agent are conclusive and binding absent manifest error.

3.8 MAXIMUM RATE. Regardless of any provision contained in any Loan Document, neither Administrative Agent nor any Lender shall ever be entitled to contract for, charge, take, reserve, receive, or apply, as interest on all or any part of the Obligation, any amount in excess of the Maximum Rate, and, if Lenders ever do so, then such excess shall be deemed a partial prepayment of principal and treated hereunder as such and any remaining excess shall be refunded to Borrower. In determining if the interest paid or payable exceeds the

Maximum Rate, Borrower and Lenders shall, to the maximum extent permitted under applicable Law, (a) treat all Borrowings as but a single extension of credit, (b) characterize any non-principal payment as an expense, fee, or premium rather than as interest, (c) exclude voluntary prepayments and the effects thereof, and (d) amortize, prorate, allocate, and spread the total amount of interest throughout the entire contemplated term of the Obligation. However, if the Obligation is paid and performed in full prior to the end of the full contemplated term thereof, and if the interest received for the actual period of existence thereof exceeds the Maximum Amount, Lenders shall refund such excess, and, in such event, Lenders shall not, to the extent permitted by Law, be subject to any penalties provided by any Laws for contracting for, charging, taking, reserving, or receiving interest in excess of the Maximum Amount. If the laws of the state of Texas are applicable for purposes of determining the "Maximum Rate" or the "Maximum Amount," then those terms mean the "weekly ceiling" from time to time in effect under Texas Finance Code Section 303.009, as amended. Borrower agrees that Chapter 346 of the Texas Finance Code, as amended (which regulates certain revolving credit loan accounts and revolving tri-party accounts), does not apply to the Obligation.

### 3.9 APPLICATION OF PAYMENTS.

(a) No Default. If no Event of Default or Potential Default exists, payments and prepayments shall be applied in the order and manner as Borrower may direct.

(b) Default. If an Event of Default or Potential Default exists, any payment or prepayment (including proceeds from the exercise of any Rights) shall be applied to the Obligation in the following order: (i) to the ratable payment of all fees, expenses, and indemnities for which Administrative Agent or Lenders have not been paid or reimbursed in accordance with the Loan Documents (as used in this SECTION 3.9(b), a "ratable payment" for any Lender or Administrative Agent shall be, on any date of determination, that proportion which the portion of the total fees, expenses, and indemnities owed to such Lender or Administrative Agent bears to the total aggregate fees and indemnities owed to all Lenders and Administrative Agent on such date of determination); and (ii) to the payment of the remaining Obligation in the order and manner Required Lenders deem appropriate.

Subject to the provisions of SECTION 11 and provided that Administrative Agent shall not in any event be bound to inquire into or to determine the validity, scope, or priority of any interest or entitlement of any Lender and may suspend all payments or seek appropriate relief (including, without limitation, instructions from Required Lenders or an action in the nature of interpleader) in the event of any doubt or

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dispute as to any apportionment or distribution contemplated hereby, Administrative Agent shall promptly distribute such amounts to each Lender in accordance with the Agreement and the related Loan Documents.

3.10 SHARING OF PAYMENTS, ETC. If any Lender shall obtain any payment or prepayment with respect to the Obligation (whether voluntary, involuntary, or otherwise) which is in excess of its share of any such payment in accordance with the relevant Rights of the Lenders under the Loan Documents, then such Lender shall purchase from the other Lenders such participations as shall be necessary to cause such purchasing Lender to share the excess payment with each other Lender in accordance with the relevant Rights under the Loan Documents. If all or any portion of such excess payment is subsequently recovered from such purchasing Lender, then the purchase shall be rescinded and the purchase price restored to the extent of such recovery. Borrower agrees that any Lender purchasing a participation from another Lender pursuant to this SECTION 3.10 may, to the fullest extent permitted by Law, exercise all of its Rights of payment (including the Right of offset) with respect to such participation as fully as if such Lender were the direct creditor of Borrower in the amount of such participation.

3.11 OFFSET. If an Event of Default exists, each Lender shall be entitled to exercise (for the benefit of all Lenders) the Rights of offset and/or banker's Lien against each and every account and other property, or any interest therein, which any Borrower may now or hereafter have with, or which is now or

hereafter in the possession of, such Lender to the extent of the full amount of the Obligation.

### 3.12 COLLECTION OF ACCOUNTS.

(a) Borrower (i) shall establish and maintain lock boxes ("LOCKBOXES") at one or more banks set forth on SCHEDULE 2.7, (ii) shall request in writing and otherwise take such reasonable steps to ensure that all Account Debtors forward payment directly to such Lockboxes, (iii) shall and shall cause each of its Subsidiaries to instruct all Account Debtors with respect to the Accounts, General Intangibles, and Negotiable Collateral of such Borrower or such Subsidiary, as the case may be, to remit all Collections in respect thereof to such Lockbox Account, and (iv) shall, and shall cause each of its Subsidiaries to, deposit all other Collections received by Borrower from any source immediately upon receipt in to the Lockboxes. Borrower, each of Borrower's Subsidiaries, Administrative Agent, and the Lockbox Banks shall enter into the Lockbox Agreements, which among other things shall provide for the opening of a Lockbox Account for the deposit of Collections at a Lockbox Bank. Borrower agrees that all Collections and other amounts received by Borrower or any of its Subsidiaries from any Account Debtor or any other source immediately upon receipt shall be deposited into a Lockbox Account. No Lockbox Agreement or arrangement contemplated thereby shall be modified by Borrower or any of its Subsidiaries without the prior written consent of Administrative Agent. Upon the terms and subject to the conditions set forth in the Lockbox Agreements, all amounts received in each Lockbox Account shall be wired each Business Day into the Administrative Agent's Account; provided, however, that Administrative Agent reserves the right, in its sole discretion, to require that any amounts received in a Lockbox Account which may represent amounts attributable to trust funds (i.e., production taxes, severance taxes, or payroll taxes) or amounts attributable to Hydrocarbon Interests of third Persons be segregated by the Lockbox Bank and held in a separate account or otherwise as directed by Administrative Agent.

(b) The Lockboxes, Collection Accounts and Designated Account shall be cash collateral accounts, with all cash, checks and similar items of payment in such accounts securing payment of the Obligations and all other Indebtedness, and in which each Loan Party shall have granted a Lien to Administrative Agent hereunder and pursuant to the other Loan Documents.

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(c) Borrower shall and shall cause its Designated Affiliates, officers, employees, agents, directors or other Persons acting for or in concert with such Borrower (each a "RELATED PERSON") to (i) hold in trust for Administrative Agent all checks, cash and other items of payment received by Borrower or any such Related Person, and (ii) within one (1) Business day after receipt by such Borrower or any Related Person of any checks, cash or other items of payment, deposit the same into a Collection Account of such Borrower. Each Borrower and each Related Person thereof acknowledges and agrees that all cash, checks or items of payment constituting proceeds of Collateral are the property of Administrative Agent for the benefit of Lenders. All proceeds of the sale or other disposition of any Collateral, shall be deposited directly into the applicable Borrower Collection Account.

3.13 CREDITING PAYMENTS; APPLICATION OF COLLECTIONS. The receipt of any Collections by Administrative Agent (whether from transfers to Administrative Agent by the Lockbox Banks pursuant to the Lockbox Agreements or otherwise) immediately shall be applied provisionally to reduce the Obligations outstanding under SECTION 2, but shall not be considered a payment on account unless such Collection item is a wire transfer of immediately available federal funds and is made to the Administrative Agent Account or unless and until such Collection item is honored when presented for payment; provided, however, that Administrative Agent reserves the right, in its sole discretion, to exclude from such provisional reduction and payment the amount of any such Collections that Administrative Agent determines may constitute trust funds (e.g., production taxes, severance taxes, or payroll taxes) or amounts attributable to Hydrocarbon Interests of third Persons. From and after the Closing Date, Administrative Agent shall be entitled to charge Borrower for 1 Business Day of 'clearance' or 'float' at the rate set forth in SECTION 3.4, on all Collections that are

received by the Lockbox Banks or Administrative Agent (regardless of whether forwarded by the Lockbox Banks to Administrative Agent, whether provisionally applied to reduce the Obligations under SECTION 2, or otherwise). This across-the-board 1 Business Day clearance or float charge on all Collections is acknowledged by the parties to constitute an integral aspect of the pricing of the Lender Group's financing of Borrower, and shall apply irrespective of the characterization of whether receipts are owned by Borrower or Administrative Agent, and whether or not there are any outstanding Advances, the effect of such clearance or float charge being the equivalent of charging 1 Business Day of interest on such Collections. Should any Collection item not be honored when presented for payment, then Borrower shall be deemed not to have made such payment, and interest shall be recalculated accordingly. Anything to the contrary contained herein notwithstanding, any Collection item shall be deemed received by Administrative Agent only if it is received into the Administrative Agent Account on a Business Day on or before 2:00 p.m. New York time. If any Collection item is received into the Administrative Agent Account on a non-Business Day or after 2:00 p.m. New York time on a Business Day, it shall be deemed to have been received by Administrative Agent as of the opening of business on the immediately following Business Day. Anything contained herein to the contrary notwithstanding, the economic benefit of the 1 Business Day clearance or float charge provided for in this SECTION 3.13 is not for the ratable benefit of the Lenders, but instead shall be for the sole and separate account of Administrative Agent.

#### SECTION 4. TAXES.

4.1 GENERAL. Any and all payments by Borrower to or for the account of any Lender or Administrative Agent hereunder or under any other Loan Document shall be made free and clear of and without deduction for any and all present or future taxes, excluding, in the case of each Lender and Administrative Agent, taxes imposed on its income and franchise Taxes imposed on it by the jurisdiction under the Laws of which such Lender (or its Applicable Lending Office) or Administrative Agent (as the case may be) is organized or the jurisdiction in which the principal office or the Applicable Lending

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Office of such Lender or Administrative Agent is located, or any political subdivision thereof (all such non-excluded taxes, referred to herein as "TAXES"). If Borrower shall be required by Law to deduct any Taxes from or in respect of any sum payable under any Loan Document to any Lender or Administrative Agent, (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 4.1) such Lender or Administrative Agent receives an amount equal to the sum it would have received had no such deductions been made, (ii) Borrower shall make such deductions, (iii) Borrower shall pay the full amount deducted to the relevant taxation authority or other authority in accordance with applicable Law, and (iv) Borrower shall furnish to Administrative Agent, the original or a certified copy of a receipt evidencing payment thereof.

4.2 STAMP AND DOCUMENTARY TAXES. In addition, Borrower agrees to pay any and all present or future stamp or documentary taxes and any other excise or property taxes or charges or similar levies which arise from any payment made under any Loan Document or from the execution or delivery of, or otherwise with respect to, any Loan Document (hereinafter referred to as "OTHER TAXES").

4.3 INDEMNIFICATION FOR TAXES. Borrower agrees to indemnify each Lender and Administrative Agent for the full amount of Taxes and Other Taxes (including, without limitation, any Taxes or Other Taxes imposed or asserted by any jurisdiction on amounts payable under this SECTION 4) paid by such Lender or Administrative Agent (as the case may be) and any liability (including penalties, interest, and expenses) arising therefrom or with respect thereto.

4.4 CHANGES IN APPLICABLE LENDING OFFICE. If Borrower is required to pay or will be required to pay additional amounts to or for the account of any Lender pursuant to this SECTION 4.4, then such Lender will agree to use reasonable efforts to change the jurisdiction of its Applicable Lending Office so as to eliminate or reduce any such additional payment which may thereafter accrue if such change, in the judgment of such Lender, is not otherwise disadvantageous to such Lender.

4.5 SURVIVAL. Without prejudice to the survival of any other agreement of Borrower hereunder, the agreements and obligations of Borrower contained in this SECTION 4 shall survive the payment in full of the Obligation.

#### SECTION 5. SECURITY.

5.1 COLLATERAL. To secure the full and complete payment and performance of the Obligation, Borrower shall enter into Collateral Documents (in form and substance acceptable to Administrative Agent) pursuant to which, among other things, Borrower shall grant, pledge, assign, and create first priority Liens in favor of Administrative Agent (for the ratable benefit of Lenders) in and to all of the Borrower's assets including (but not limited to): (i) the Oil and Gas Properties and (ii) the Personal Property Collateral.

5.2 GRANT OF SECURITY INTEREST IN PERSONAL PROPERTY COLLATERAL. Borrower hereby grants to Administrative Agent, for the benefit of the Lenders, a continuing security interest in all of its right, title, and interest in all currently existing and hereafter acquired or arising Personal Property Collateral in order to secure prompt repayment of any and all of the Obligations in accordance with the terms and conditions of the Loan Documents and in order to secure prompt performance by Borrower of each of its covenants and duties under the Loan Documents. Administrative Agent's Liens in and to the Personal Property Collateral shall attach to all Personal Property Collateral without further act on the part of Administrative Agent or Borrower. Anything contained in this Agreement or any other Loan Document

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to the contrary notwithstanding, except for dispositions permitted by SECTION 9.5, Borrower has no authority, express or implied, to dispose of any item or portion of the Collateral.

5.3 NEGOTIABLE COLLATERAL AND CHATTEL PAPER. Borrower covenants and agrees with Lenders that from and after the Closing Date and until the date of termination of this Agreement:

(a) In the event that any Collateral, including proceeds, is evidenced by or consists of Negotiable Collateral, and if and to the extent that perfection or priority of Administrative Agent's security interest with respect to such Collateral is dependent on or enhanced by possession, Borrower, immediately upon the request of Administrative Agent, shall endorse and deliver physical possession of such Negotiable Collateral to Administrative Agent;

(b) Borrower shall take all steps reasonably necessary to grant Administrative Agent control of all electronic Chattel Paper in accordance with the Code and all "transferable records" as defined in each of the Uniform Electronic Transactions Act and the Electronic Signatures in Global and National Commerce Act; and

(c) In the event Borrower, with Administrative Agent's consent, retains possession of any Chattel Paper or instruments otherwise required to be endorsed and delivered to Administrative Agent pursuant to SECTION 5.3(a), all of such Chattel Paper and instruments shall be marked with the following legend: "This writing and the obligations evidenced or secured thereby are subject to the security interest of Mid River LLC, as Administrative Agent."

5.4 DELIVERY OF ADDITIONAL DOCUMENTATION REQUIRED. Borrower authorizes Administrative Agent to file, transmit, or communicate, as applicable, UCC financing statements, in-lieu financing statements and amendments describing the Personal Property Collateral as "all personal property of debtor" or "all assets of debtor" or words of similar effect, in order to perfect Administrative Agent's Liens on the Personal Property Collateral without Borrower's signature. Notwithstanding the foregoing, at any time upon the request of Administrative Agent, Borrower shall execute (or cause to be executed) and deliver to Administrative Agent, any and all financing statements, original financing statements in lieu of continuation statements, fixture filings, security agreements, pledges, assignments, endorsements of certificates of title, and all other documents (the "ADDITIONAL DOCUMENTS") upon which Borrower's signature may be required that Administrative Agent may request, in form and substance satisfactory to Administrative Agent, to perfect and continue perfected or

better perfect Administrative Agent's Liens in the Collateral (whether now owned or hereafter arising or acquired), to create and perfect Liens in favor of Administrative Agent in any Collateral (including, but not limited to, Oil and Gas Property) acquired after the Closing Date, and in order to fully consummate all of the transactions contemplated hereby and under the other Loan Documents. To the maximum extent permitted by applicable law, Borrower authorizes Administrative Agent to execute any such Additional Documents in Borrower's name and authorizes Administrative Agent to file such executed Additional Documents in any appropriate filing office. Borrower also hereby ratifies its authorization for Administrative Agent to have filed in any jurisdiction any financing statements or amendments thereto if filed prior to the date hereof. Borrower shall not terminate, amend or file a correction statement with respect to any Code financing statement filed pursuant to this SECTION 5.4 without Administrative Agent's prior written consent. In addition, on such periodic basis as Administrative Agent shall require, Borrower shall (a) provide Administrative Agent with a report of all new patentable, copyrightable, or trademarkable materials acquired or generated by Borrower during the prior period, (b) cause all patents, copyrights, and trademarks acquired or generated by Borrower that are not already the subject of a registration with the appropriate filing office (or an application therefor diligently prosecuted) to be registered with such appropriate filing office in a manner sufficient to impart constructive notice of Borrower's ownership thereof, and (c) cause to be prepared, executed, and delivered to Administrative Agent supplemental schedules to the applicable Loan

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Documents to identify such patents, copyrights, and trademarks as being subject to the security interests created thereunder. Borrower grants Administrative Agent a power-of-attorney, irrevocable so long as this Agreement is in existence, to amend SCHEDULE P to include any Proprietary Rights including (but not limited to) future Trademarks.

5.5 POWER OF ATTORNEY. Borrower hereby irrevocably makes, constitutes, and appoints Administrative Agent (and any of Administrative Agent's officers, employees, or agents designated by Administrative Agent) as Borrower's true and lawful attorney, with power to (a) if Borrower refuses to, or fails timely to execute and deliver any of the documents described in SECTION 5.4, sign the name of Borrower on any of the documents described in SECTION 5.4, (b) sign Borrower's name on any invoice or bill of lading relating to the Collateral, drafts against Account Debtors, or notices to Account Debtors, (c) send requests for verification of Accounts, (d) endorse Borrower's name on any Collection item that may come into the Lender Group's possession, (e) make, settle, and adjust all claims under Borrower's policies of insurance and make all determinations and decisions with respect to such policies of insurance, and (f) settle and adjust disputes and claims respecting the Accounts, Chattel Paper, or General Intangibles directly with Account Debtors, for amounts and upon terms that Administrative Agent determines to be reasonable, and Administrative Agent may cause to be executed and delivered any documents and releases that Administrative Agent determines to be necessary. The appointment of Administrative Agent as Borrower's attorney, and each and every one of its rights and powers, being coupled with an interest, is irrevocable until all of the Obligations have been fully and finally repaid and performed and the Lender Group's obligations to extend credit hereunder are terminated.

5.6 RIGHT TO VERIFY ACCOUNTS. Administrative Agent may, without expense to Administrative Agent, use such of Borrower's respective personnel, supplies, properties, premises and assets as Administrative Agent deems to be reasonably necessary for maintaining or enforcing Administrative Agent's Liens.

5.7 RIGHT TO INSPECT PROPERTIES AND BOOKS AND RECORDS; COMMUNICATION WITH ACCOUNTANTS. Administrative Agent and Lenders may (at the expense of Borrower) visit and inspect any of Borrower's properties, examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom and to discuss its affairs, finances and accounts with its directors, officers and independent public accountants at such reasonable times during normal business hours and as soon as may be reasonably desired, upon reasonable advance notice to Borrower; provided, however, when a Event of Default or Potential Default exists, Administrative Agent or any Lender may do any of the foregoing at the expense of Borrower at any time during normal business hours and without advance notice.

5.8 RIGHT TO INSPECT COLLATERAL. Administrative Agent and each Lender (through any of their respective officers, employees, or agents) shall have the right, from time to time hereafter to inspect the Books and to make copies or abstracts thereof and to check, test, and appraise the Collateral in order to verify Borrower's financial condition or the amount, quality, value, condition of, or any other matter relating to, the Collateral or any portion thereof.

5.9 RIGHT TO REQUIRE COLLATERAL APPRAISALS. Whenever a Event of Default or Potential Default exists, and at such other times not more frequently than once per calendar year as Administrative Agent or the Lenders may request, Administrative Agent may request (at Borrower's expense) that Borrower provide Administrative Agent and the Lenders with appraisals or updates thereof of all or any material portion of the Collateral (including, without limitation, Collateral consisting of Inventory or Equipment) from an appraiser, and prepared on a basis, satisfactory to Administrative Agent and Lenders,

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such appraisals and updates to include, without limitation, information required by applicable law and regulation and by the internal policies of the Lenders.

5.10 CONTROL AGREEMENTS. Borrower agrees that it will not transfer assets out of any Securities Accounts and, if to another securities intermediary, unless each of Borrower, Administrative Agent, and the substitute securities intermediary have entered into a Control Agreement. No arrangement contemplated hereby or by any Control Agreement in respect of any Securities Accounts or other Investment Property shall be modified by Borrower without the prior written consent of Administrative Agent. Upon the occurrence and during the continuance of a Event of Default or Potential Default, Administrative Agent may notify any securities intermediary to liquidate the applicable Securities Account or any related Investment Property maintained or held thereby and remit the proceeds thereof to Administrative Agent's Account.

5.11 GRANT OF LICENSE TO USE PROPRIETARY RIGHTS. For the purpose of enabling Administrative Agent to exercise rights and remedies under SECTION 11 hereof (including, without limitation, in order to take possession of, hold, preserve, process, assemble, prepare for sale, market for sale, sell or otherwise dispose of Collateral) at such time as Administrative Agent shall be lawfully entitled to exercise such rights and remedies, Borrower hereby grants to Administrative Agent, for the benefit of Administrative Agent and the Lenders, exercisable solely upon the occurrence and during the continuance of a Event of Default an irrevocable, nonexclusive license (exercisable without payment of royalty or other compensation to Borrower) to use, license or sublicense any Proprietary Rights now owned or hereafter acquired by Borrower, and wherever the same may be located, and including in such license access to all media in which any of the licensed items may be recorded or stored and to all computer software and programs used for the compilation or printout thereof.

5.12 COMMERCIAL TORT CLAIMS. Borrower shall promptly notify Administrative Agent in writing in the event Borrower shall incur or otherwise obtain a Commercial Tort Claim in excess of \$100,000 after the Closing Date against any third party and, upon the request of Administrative Agent, shall promptly amend SCHEDULE C, authorize the filing of additional UCC financing statements or amendments to existing UCC financing statements, and do such other acts or things deemed necessary or desirable by Administrative Agent to grant Administrative Agent a first priority, perfected security interest in any such Commercial Tort Claim.

5.13 LETTERS IN LIEU/POWER OF ATTORNEY.

(a) Borrower shall provide to Administrative Agent undated letters, in the form of EXHIBIT D attached hereto, from Borrower in blank to each purchaser of production and disburser of proceeds of production from or attributable to the Mortgaged Properties, with the addressees left blank, authorizing and directing the addressees to make future payments attributable to production from the Mortgaged Properties directly to Administrative Agent for the ratable benefit of the Banks.

(b) Borrower hereby designates Administrative Agent as its agent and attorney-in-fact, to act in their name, place, and stead for the purpose of completing and delivering any and all of the letters in lieu of transfer orders delivered by Borrower to Administrative Agent, including,

without limitation, completing any blanks contained in such letter and attaching exhibits thereto describing the relevant Collateral. The Borrower hereby ratifies and confirms all that Administrative Agent shall lawfully do or cause to be done by virtue of this power of attorney and the rights granted with respect to such power of attorney. This power of attorney is coupled with the interest of Administrative Agent in the Collateral, shall commence and be in full

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force and effect as of the Closing Date and shall remain in full force and effect and shall be irrevocable so long as any Obligation remains outstanding or unpaid. The powers conferred on Administrative Agent by this appointment are solely to protect the interests of Administrative Agent and each of the Lenders under the Loan Documents and shall not impose any duty upon Administrative Agent to exercise any such powers. Administrative Agent shall be accountable only for amounts that it actually receives as a result of the exercise of such powers and shall not be responsible to Borrower or any other Person for any act or failure to act with respect to such powers, except for gross negligence or willful misconduct.

5.14 ASSIGNMENT OF RUNS. Notwithstanding that, under Section V of the Mortgages, Borrower has assigned to Administrative Agent for the ratable benefit of the Lenders all of the proceeds of runs accruing to the Mortgaged Properties covered thereby:

(a) Until such time as Administrative Agent shall notify Borrower to the contrary, Borrower shall be entitled to receive from the purchasers or disbursers of production all such proceeds of runs, subject however to the liens created under the Mortgages, which liens are hereby affirmed and ratified. Upon the occurrence and during the continuance of a Potential Default or such other time as Administrative Agent shall in its discretion so elect, Administrative Agent may deliver to the addressees the letters-in-lieu described in SECTION 5.13 above and may exercise all rights and remedies granted under the Mortgages, including the right to obtain possession of all proceeds of runs then held by Borrower or to receive directly from the purchaser or disbursers of production all other proceeds of runs.

(b) In no case shall any failure, whether purposed or inadvertent, by Administrative Agent to collect directly any such proceeds of runs constitute in any way a waiver, remission or release of any of its rights under the Mortgages, nor shall any release of any other proceeds of runs or of any rights of Administrative Agent to collect other proceeds of runs thereafter.

(c) Borrower will upon the instruction of Administrative Agent join with Administrative Agent in notifying in writing and accompanied (if necessary) by certified copies of the Mortgages the purchasers or disbursers of production produced from the Mortgaged Properties of the existence of the Mortgages, and instructing that all proceeds of runs be paid directly to Administrative Agent for the ratable benefit of the Banks.

SECTION 6. CONDITIONS PRECEDENT TO CLOSING.

This Agreement shall not become effective, and Lenders shall not be obligated to advance any Term Loan Principal Debt, unless Administrative Agent has received all of the agreements, documents, instruments, and other items described on SCHEDULE 6. Each condition precedent in this Agreement is material to the transactions contemplated in this Agreement, and time is of the essence in respect of each thereof.

SECTION 7. REPRESENTATIONS AND WARRANTIES.

Each Loan Party represents and warrants to each Lender that the following statements are and will be true and correct, and, unless specifically limited, shall remain so until indefeasible payment in full, in cash, of the Obligation.

7.1 ORGANIZATION, POWERS, QUALIFICATION, GOOD STANDING, BUSINESS, AND SUBSIDIARIES.

(a) Organization and Powers. Borrower is a corporation duly organized and validly existing under the Laws of the State of Delaware and has all requisite corporate or partnership (as applicable) power and authority to own and operate its properties, to carry on its business as now conducted and as proposed to be conducted, to enter into the Loan Documents, to carry out the transactions contemplated thereby and pay the Obligation and to grant to Administrative Agent Liens upon and security interests in the Collateral.

(b) Qualification and Good Standing. Borrower is qualified to do business and in good standing, in every jurisdiction where its assets are located and wherever necessary to carry out its business and operations, except in jurisdictions where the failure to be so qualified or in good standing has not had and will not have a Material Adverse Effect.

(c) Conduct of Business. Borrower and its Subsidiaries are engaged only in the businesses permitted to be engaged in pursuant to SECTION 9.10.

(d) Borrower and Subsidiaries. All of the Subsidiaries of Borrower as of the Closing Date are identified in SCHEDULE 7.1. The capital stock or other equity interests of each of the Subsidiaries of Borrower identified in SCHEDULE 7.1 is duly authorized, validly issued, fully paid, and nonassessable and none of such capital stock or other equity interests constitutes Margin Stock. Borrower and each of the Subsidiaries of Borrower identified in SCHEDULE 7.1 are duly organized, validly existing, and in good standing under the laws of their respective jurisdictions of organization set forth therein, has full corporate power and authority to own their assets and properties and to operate their business as presently owned and conducted and as proposed to be conducted, and are qualified to do business and in good standing in every jurisdiction where their assets are located and wherever necessary to carry out their business and operations, in each case except where failure to be so qualified or in good standing or a lack of such corporate power and authority has not had and will not have a Material Adverse Effect. SCHEDULE 7.1 correctly sets forth the ownership interest of Borrower in each of its Subsidiaries identified therein.

#### 7.2 AUTHORIZATION OF BORROWING, ETC.

(a) Authorization of Borrowing. The execution, delivery and performance of the Loan Documents and the issuance, delivery, and payment of the Obligation have been duly authorized by all necessary corporate and/or partnership (as applicable) action on the part of each of the Loan Parties party thereto.

(b) No Conflict. After giving effect to the consummation of the transactions contemplated hereby to occur on the Closing Date, the execution, delivery, and performance by each of the applicable Loan Parties of the Loan Documents, the issuance, delivery, and payment of the Obligation, and the consummation of the transactions contemplated by the Loan Documents do not and will not (i) violate any provision of any Law or any governmental rule or regulation applicable to any Loan Party, the Certificate or Articles of Incorporation or Bylaws (or other analogous organizational document) of any Loan Party, or any order, judgment, or decree of any Governmental Authority binding on any Loan Party, (ii) conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under any Contractual Obligation of any Loan Party, (iii) result in or require the creation or imposition of any Lien upon any of the properties or assets of any Loan Party (other than any Liens created under any of the Loan Documents in favor of Administrative Agent on behalf of Lenders), or (iv) require any approval of stockholders or any approval or consent of any Person under any Contractual Obligation of any Loan Party, except for such approvals or consents which will be obtained on or before the Closing Date and disclosed in writing to Lenders.

(c) Governmental Consents. The execution, delivery, and performance by the Loan Parties of the Loan Documents, the issuance, delivery, and payment of the Obligation, and the consummation of the transactions contemplated by the Loan Documents do not and will not require any registration with, consent or approval of, or notice to, or other action to, with, or by, any federal, state, or other Governmental Authority except to the extent obtained on or before the Closing Date other than filings and recordings necessary to perfect the Liens in the Collateral.

(d) Binding Obligation. Each of the Loan Documents has been duly executed and delivered by each of the Loan Parties party thereto and is the legally valid and binding obligation of each such Loan Party, enforceable against such Loan Party in accordance with its respective terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium, or similar Laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability.

### 7.3 COLLATERAL AND SECURITY INTERESTS

(a) Collateral Documents. The security interests created in favor of Administrative Agent under this Agreement and the other Loan Documents will at all times from and after the Closing Date constitute, as security for the Obligation, a legal, valid, and enforceable security interest in and Lien on all of the Collateral referred to therein in favor of Administrative Agent for the benefit of the Lenders subject only to Permitted Liens. No consents, filings, or recordings are required in order to perfect (or maintain the perfection or priority of) the security interests purported to be created by any of the Collateral Documents, other than such as have been obtained and which remain in full force and effect and UCC financing statements, and periodic UCC continuation filings or as is specifically otherwise permitted by the terms of any applicable Collateral Document.

(b) Accounts. The Accounts are bona fide existing payment obligations of Account Debtors created by the sale and delivery of Inventory or the rendition of services to such Account Debtors in the ordinary course of Borrower's business, owed to Borrower without known defenses, disputes, offsets, counterclaims, or rights of return or cancellation.

(c) Inventory. All Inventory (excluding obsolete Inventory) is of good and merchantable quality, free from defects.

(d) Equipment. All of the Equipment, excluding the Discontinued Assets, is used or held for use in Borrower's business and is fit for such purposes.

(e) Location of Inventory and Equipment. The Inventory and Equipment are not stored with a bailee, warehouseman, or similar party and are located only at the locations identified on SCHEDULE 7.2 or otherwise permitted by SECTION 9.4, except for Inventory and Equipment which:

- (i) are located on the Oil and Gas Properties;
- (ii) are in-transit for delivery in the ordinary course of business to Borrower from Borrower's suppliers or to Borrower's Oil and Gas Properties;
- (iii) are located in Texas, Louisiana, Mississippi or Alabama (or in the Federal Outer Continental Shelf and adjacent to any such state in-transit in the ordinary course of business between Borrower's Oil and Gas Properties);

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(iv) consist of well pipe being coated in the ordinary course of business by a processor for Borrower; and

(v) or have a value of less than \$50,000 for all such

Inventory and Equipment.

(f) Location of Chief Executive Office; FEIN; Organizational ID Number. Set forth on SCHEDULE 7.2 are (a) the address of Borrower's chief executive office, (b) Borrower's FEIN, and (c) Borrower's Organizational ID Number issued by its state of incorporation.

(g) Natural Gas Act or the Natural Gas Policy Act of 1978. Neither the Borrower nor any of its Subsidiaries has violated, and neither the Borrower, nor any Subsidiary will be in violation of, any provisions of the Natural Gas Act or the Natural Gas Policy Act of 1978 or any other Federal or State law or any of the regulations thereunder (including those of the respective Conservation Commissions and Land Offices of the various jurisdictions having authority over its Oil and Gas Properties) with respect to its Oil and Gas Properties which would create a Material Adverse Effect, and the Borrower and each Subsidiary have or will have made all necessary rate filings, certificate applications, well category filings, interim collection filings and notices, and any other filings or certifications, and has or will have received all necessary regulatory authorizations (including without limitation necessary authorizations, if any, with respect to any processing arrangements conducted by it or others respecting its Oil and Gas Properties or production therefrom) required under said laws and regulations with respect to all of its Oil and Gas Properties or production therefrom so as not to create a Material Adverse Effect. To the best of the Borrower's knowledge, said material rate filings, certificate applications, well category filings, interim collection filings and notices, and other filings and certifications contain no untrue statements of material facts nor do they omit any statements of material facts necessary in said filings.

(h) Trademark Collateral.

(i) The Trademarks are subsisting and have not been adjudged invalid or unenforceable in whole or in part;

(ii) To the best of Borrower's knowledge, each of the Trademarks is valid and enforceable;

(iii) To the best of Borrower's knowledge, there is no outstanding claim that the use of any of the Trademarks violates the rights of any third person;

(iv) Borrower is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each of the Trademarks, free and clear of any liens, charges and encumbrances, except Permitted Liens (including without limitation pledges, assignments, licenses, registered user agreements and covenants by Borrower not to sue third persons), except for the Licenses referred to in SCHEDULE P attached hereto; and

(v) Borrower has used, and will continue to use for the duration of this Agreement, proper statutory notice, where appropriate, in connection with its use of the Trademarks.

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7.4 FINANCIAL CONDITION. Throughout the Chapter 11 Case, Borrower has delivered to Administrative Agent, monthly unaudited balance sheets and income statements, the most recent of which is dated as of September 30, 2004. All such statements were prepared in good-faith, based on sound business accounting procedures, and fairly present, in all material respects, the financial condition of the entities described in such financial statements as at the respective dates thereof and the results of operations of the entities described therein for each of the periods then ended, subject, to changes resulting from audit and normal year-end adjustments and the absence of footnote disclosure required in accordance with GAAP. Neither Borrower nor any of its Subsidiaries has (and will not immediately following the closing of the transactions contemplated by this Agreement) any contingent liability or liability for taxes, long-term lease, or unusual forward or long-term commitment that is not reflected in the most recent financial statements delivered pursuant to SECTION 8.1, the notes thereto and which in any such case is material in relation to

the business, operations, properties, assets, condition (financial or otherwise), or prospects of Borrower and its Subsidiaries taken as a whole.

#### 7.5 TITLE TO COLLATERAL.

(a) Borrower's books and records reflect that Borrower has good, marketable and indefeasible title to the Collateral, free and clear of all Liens (except for Permitted Liens), including but not limited to:

(i) Ownership of the Oil and Gas Properties listed on SCHEDULE 7.5(a)(i);

(ii) The amount of the Net Revenue Interest of the Oil and Gas Properties, as set forth on SCHEDULE 7.5(a)(ii);

(iii) All rights under the Material Contracts listed on SCHEDULE 7.5(a)(iii); and

(iv) Ownership of the Real Property, to the extent stated on SCHEDULE 7.5(a)(iv).

(b) All material leases and agreements necessary for the conduct of the business of the Borrower and the Subsidiaries are valid and subsisting, in full force and effect, and there exists no default or event or circumstance which with the giving of notice or the passage of time or both would give rise to a default under any such lease or leases.

(c) The rights and Properties presently owned, leased or licensed by the Borrower and the Subsidiaries including, without limitation, all easements and rights of way, include all rights and Properties necessary to permit the Borrower and the Subsidiaries to conduct their business in all material respects in the same manner as its business has been conducted prior to the date hereof.

(d) All of the Properties of the Borrower and the Subsidiaries which are reasonably necessary for the operation of their businesses are in good working condition and are maintained in accordance with prudent business standards.

(e) The Borrower and each Subsidiary owns, or is licensed to use, all trademarks, tradenames, copyrights, patents and other intellectual Property material to its business, and the use thereof by the Borrower and such Subsidiary does not infringe upon the rights of any other Person, except for any such infringements that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. The Borrower and its Subsidiaries

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either own or have valid licenses or other rights to use all databases, geological data, geophysical data, engineering data, seismic data, maps, interpretations and other technical information used in their businesses as presently conducted, subject to the limitations contained in the agreements governing the use of the same, which limitations are customary for companies engaged in the business of the exploration and production of Hydrocarbons, with such exceptions as could not reasonably be expected to have a Material Adverse Effect.

#### 7.6 PROVED RESERVES; OWNERSHIP OF OIL AND GAS PROPERTIES.

(a) Borrower's books and records reflect the following: (i) Borrower has fee simple legal title to or valid leasehold interest in (in each case, good marketable and indefeasible, except for Permitted Liens) to all Proved Reserves, and of which Borrower is the beneficial owner of, to the full extent of the quantity of interest specified in the most recent Reserve Report delivered to Administrative Agent by Borrower, and all of the information with respect thereto contained on SCHEDULES 7.5(a)(i), 7.5(a)(ii), 7.5(a)(iii), 7.6(e) and 7.7 with respect thereto is true and correct; (ii) all Hydrocarbon Interests of which the Proved Reserves are a part are in full force and effect and Borrower is in full compliance with its obligations thereunder; (iii) all wells drilled and Hydrocarbons

produced with respect to such Proved Reserves were drilled and produced in compliance with all applicable regulations; (iv) there are no outstanding authorizations for expenditures with respect to any Proved Reserves which are not reflected in the most recent Reserve Report delivered by Borrower to Administrative Agent; and (v) all of such Proved Reserves are a part of the Oil and Gas Properties described in SCHEDULE 7.5(a)(i), are covered by the engineering reports which Borrower has previously delivered to and which have been relied upon by Administrative Agent in connection with this Agreement, and are part of the Oil and Gas Properties covered by the Mortgages.

(b) Borrower's books and records reflect that Borrower has fee simple legal title to or valid leasehold interest in (in each case, good, marketable and indefeasible, except for Permitted Liens) to all Proved Developed Producing Reserves, and of which Borrower is the beneficial owner of, to the full extent of the quantity of interest specified in the most recent Reserve Report delivered to Administrative Agent by Borrower, and all of the information with respect thereto contained on SCHEDULES 7.5(a)(i), 7.5(a)(ii), 7.5(a)(iii), 7.6(e) AND 7.7 is true and correct.

(c) Borrower's books and records reflect that Borrower has fee simple legal title to or valid leasehold interest in, (in each case, good marketable and indefeasible, except for Permitted Liens all Proved Developed Non-Producing Reserves), and of which Borrower is the beneficial owner of, to the full extent of the quantity of interest specified in the most recent Reserve Report delivered to Administrative Agent by Borrower, and all of the information with respect thereto contained on SCHEDULES 7.5(a)(i), 7.5(a)(ii), 7.5(a)(iii), 7.6(e) AND 7.7 is true and correct.

(d) Borrower's books and records reflect that Borrower has fee simple legal title to or valid leasehold interest in (in each case, good, marketable and indefeasible, except for Permitted Liens to all Proved Undeveloped Reserves), and of which Borrower is the beneficial owner of, to the full extent of the quantity of interest specified in the most recent Reserve Report delivered to Administrative Agent by Borrower, and all of the information with respect thereto contained on SCHEDULES 7.5(a)(i), 7.5(a)(ii), 7.5(a)(iii), 7.6(e) AND 7.7 is true and correct.

(e) All of Borrower's marketing arrangements with respect to its Proved Reserves are valid, enforceable and in full force and effect. Except as disclosed on SCHEDULE 7.6(e), there

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do not exist any gas imbalances, take or pay or other prepayments which would require the Borrower or any of its Subsidiaries to deliver Hydrocarbons produced from the Oil and Gas Properties at some future time without then or thereafter receiving full payment therefor exceeding 50mmcf equivalent in the aggregate.

(f) Borrower's books and records reflect that, without limiting the foregoing, after giving full effect to the Permitted Liens, Borrower owns the net revenue interests in production attributable to the Oil and Gas Properties covered by the Mortgages as is reflected in the most recently delivered Reserve Report and the ownership of such Properties shall not in any material respect obligate Borrower to bear the costs and expenses relating to the maintenance, development and operations of each such Property in an amount in excess of the working interest of each such Property set forth in the most recently delivered Reserve Report. All information contained in the most recently delivered Reserve Report is true and correct in all material respects as of the date thereof.

(g) There has not been any Material Adverse Effect in the Oil and Gas Properties since the date of the most recent Reserve Report.

7.7 OPERATIONS OF OIL AND GAS PROPERTIES. With respect to each Hydrocarbon Interest which is a working interest, Borrower is the operator except as set forth on SCHEDULE 7.7.

7.8 MAINTENANCE OF PROPERTIES. The Oil and Gas Properties (and Properties unitized therewith) have been maintained, operated and developed in a good and workmanlike manner and in conformity with all Government Requirements and in

conformity with the provisions of all leases, subleases or other contracts comprising a part of the Hydrocarbon Interests and other contracts and agreements forming a part of the Oil and Gas Properties. Specifically in connection with the foregoing, (i) no Oil and Gas Property is subject to having allowable production 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) and (ii) none of the wells comprising a part of the Oil and Gas Properties (or Properties unitized therewith) is deviated from the vertical more than the maximum permitted by Government Requirements, and such wells are, in fact, bottomed under and are producing from, and the well bores are wholly within, the Oil and Gas Properties (or in the case of wells located on Properties unitized therewith, such unitized Properties). All pipelines, wells, gas processing plants, platforms and other material improvements, fixtures and equipment owned in whole or in part by the Borrower or any of its Subsidiaries that are necessary to conduct normal operations are being maintained in a state adequate to conduct normal operations, and with respect to such of the foregoing which are operated by the Borrower or any of its Subsidiaries, in a manner consistent with the Borrower's or its Subsidiaries' past practices.

7.9 MARKETING OF PRODUCTION. Except for contracts disclosed in writing to the Administrative Agent or included in the most recently delivered Reserve 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), no material agreements exist which are not cancelable on 30 days notice or less without penalty or detriment for the sale of production from the Borrower's or its Subsidiaries' Hydrocarbons (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 from the date hereof.

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7.10 LEASES. The oil and gas leases associated with the Oil and Gas Properties are in full force and effect in accordance with their respective terms, and there exist no material defaults in the performance of any obligation thereunder. Additionally, Borrower is not aware of any event that with notice or lapse of time, or both, would constitute a default under any such oil and gas leases.

7.11 NON-CONSENT OPERATIONS. There have been no operations associated with the Oil and Gas Properties under an operating agreement, unit agreement or governmental order with respect to which Borrower has become a non-consenting party.

7.12 CONDITION OF EQUIPMENT. All of the wells, facilities and equipment associated with the Oil and Gas Properties are: (a) structurally sound with no material defects known to Borrower, (b) in good operating condition, and (c) have been and are maintained in accordance with prudent business standards.

7.13 WELLS. Each oil or gas well located on the Oil and Gas Properties is: (a) properly permitted, (b) in compliance with all applicable Laws, and (c) within the production tolerances allocated by the governmental entity or tribal authority having appropriate jurisdiction. All of the leaseholds in which there are located Hydrocarbon Interests of Borrower having a PV-10 Value of \$100,000 are producing Hydrocarbons in commercial quantities. Each of Borrower's producing wells listed on SCHEDULE 7.6(a)(ii) is located on an Oil and Gas Property described in the legal description contained in an Oil and Gas Property Mortgage which has been duly executed and delivered to Administrative Agent.

7.14 SWAP AGREEMENTS. As of the date hereof, and after the date hereof, each report required to be delivered by the Borrower to Administrative Agent or Lenders, sets forth, a true and complete list of all Swap Agreements of the Borrower and each Subsidiary, the material terms thereof (including the type, term, effective date, termination date and notional amounts or volumes), the net mark to market value thereof, all credit support agreements relating thereto (including any margin required or supplied) and the counterparty to each such agreement.

7.15 HEDGING AGREEMENT. As of the Closing Date, there are no Hedging Agreements (including commodity price swap agreements, forward agreements or contracts of sale which provide for prepayment for deferred shipment or delivery of oil, gas or other commodities) of the Borrower and each of its Subsidiaries.

7.16 COMPLIANCE WITH THE LAW. Neither Borrower nor any of its Subsidiaries has violated any requirement of a Governmental Authority or failed to obtain any license, permit, franchise or other governmental authorization necessary for the ownership of the Property or the conduct of its business, which violation or failure could reasonably be expected to result in (in the event such violation or failure were asserted by any Person through appropriate action) a Material Adverse Effect. Except for such acts or failures to act as do not result in and could not reasonably be expected to result in a Material Adverse Effect, the Oil and Gas Properties have been maintained, operated and developed in a good and workmanlike manner and in conformity with all applicable laws and all rules, regulations and orders of all duly constituted authorities having jurisdiction and in conformity with the provisions of all leases, subleases or other contracts comprising a part of the Hydrocarbon Interests and other contracts and agreements forming a part of the Oil and Gas Properties; specifically in this connection, (i) after the Closing Date, no Oil and Gas Properties are subject to having allowable production 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 Closing Date and (ii) none of the wells comprising a part of the Oil and Gas Properties are deviated from the vertical more than the maximum permitted by applicable laws, regulations, rules and orders, and such wells are, in fact bottomed under and

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are producing from the Oil and Gas Properties. Neither Borrower nor any of its Subsidiaries has entered into, and the Oil and Gas Properties are not subject to, any agreements, consent orders, administrative orders or similar obligations based on a violation or alleged violation of Legal Requirements.

7.17 LITIGATION; ADVERSE FACTS. There is no action, suit, proceeding, arbitration, or governmental investigation (whether or not purportedly on behalf of Borrower or any of its Subsidiaries) at law or in equity or before or by any Governmental Authority, domestic or foreign, pending or, to the knowledge of Borrower, threatened against or affecting Borrower or any of its Subsidiaries or any property of Borrower or any of its Subsidiaries that, either individually or in the aggregate together with all other such actions, proceedings, and investigations, has had, or could reasonably be expected to result in, a Material Adverse Effect. Neither Borrower nor any of its Subsidiaries is subject to or in default with respect to any final judgment, writ, injunction, decree, rule, or regulation of any Governmental Authority, domestic or foreign, that has had, or could reasonably be expected to result in, a Material Adverse Effect.

7.18 PAYMENT OF TAXES. All material tax returns and reports of Borrower and its Subsidiaries required to be filed by any of them have been timely filed, and all material taxes, assessments, fees, and other governmental charges upon Borrower and its Subsidiaries and upon their respective properties, assets, income, businesses, and franchises which are due and payable have been paid when due and payable, except for Delaware corporate franchise and like fees, taxes and assessments. Borrower does not know of any proposed tax assessment against Borrower or any of its Subsidiaries other than those which are being actively contested by Borrower or such Subsidiary in good faith and by appropriate proceedings and for which reserves or other appropriate provisions, if any, as may be required in conformity with GAAP shall have been made or provided therefor.

7.19 PERFORMANCE OF AGREEMENTS; MATERIALLY ADVERSE AGREEMENTS.

(a) All of the contracts associated with the Oil and Gas Properties of Borrower are in full force and effect in accordance with their respective terms, and there exist no defaults in the performance of any obligation thereunder. Additionally, Borrower is not aware of any event that with notice or lapse of time, or both, would constitute a default under any such contracts.

(b) Neither Borrower nor any of its Subsidiaries is in default in the performance, observance, or fulfillment of any of the obligations, covenants, or conditions contained in any of its Contractual Obligations,

and no condition exists that, with the giving of notice or the lapse of time or both, would constitute such a default, except where the consequences, direct or indirect, of such default or defaults, if any, would not have a Material Adverse Effect.

(c) Neither Borrower nor any of its Subsidiaries is a party to or is otherwise subject to any agreement or instrument or any charter or other internal restriction which has had, or could reasonably be expected (based upon assumptions that are reasonable at the time made) to result in, individually or in the aggregate, a Material Adverse Effect.

7.20 GOVERNMENTAL REGULATION. Neither Borrower nor any of its Subsidiaries is subject to regulation under the Public Utility Holding Company Act of 1935, the Federal Power Act, the Interstate Commerce Act, or the Investment Company Act of 1940 or under any other federal or state statute or regulation which may limit its ability to incur Indebtedness or which may otherwise render all or any portion of the Obligation unenforceable.

7.21 SECURITIES ACTIVITIES. Neither Borrower nor any of its Subsidiaries is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any Margin Stock.

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#### 7.22 EMPLOYEE PLANS.

(a) Borrower and each of its ERISA Affiliates are in substantial compliance with all applicable provisions and requirements of ERISA with respect to each Employee Plan, and have substantially performed all their obligations under each Employee Plan, except to the extent that any non-compliance with ERISA or any such failure to perform would not result in material liability of Borrower or any of its ERISA Affiliates.

(b) No ERISA Event has occurred which has resulted or is reasonably likely to result in any material liability to the PBGC or to any other Person.

(c) Except to the extent required under Section 4980B of the Code and/or Section 601 of ERISA, neither Borrower nor any of its Subsidiaries maintains or contributes to any employee welfare benefit plan (as defined in Section 3(1) of ERISA) that provides health or welfare benefits (through the purchase of insurance or otherwise) for any retired or former employees of Borrower or any of its Subsidiaries, except to the extent that the provision of such benefits would not have a Material Adverse Effect.

(d) No Employee Plan has an Unfunded Current Liability in an amount that would have a Material Adverse Effect.

7.23 ENVIRONMENTAL PROTECTION. Except where no Material Adverse Effect could reasonably be expected to result therefrom:

(a) the operations of Borrower and each of its Subsidiaries (including, without limitation, all operations and conditions at or in the Facilities) comply in all material respects with all Environmental Laws;

(b) Borrower and each of its Subsidiaries have obtained, and have timely filed responses for, all material Authorizations under Environmental Laws necessary to their respective operations, and all such Authorizations are in good standing, and Borrower and each of its Subsidiaries are in compliance with all material terms and conditions of such Authorizations;

(c) neither Borrower nor any of its Subsidiaries has received (i) any notice or claim to the effect that it is or may be liable to any Person as a result of or in connection with any Hazardous Materials or (ii) any letter or request for information under Section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. Section 9604), Section 3007 of the Resource Conservation and Recovery Act (42 U.S.C. Section 6927), or comparable state laws, and, to the best knowledge of Borrower, none of the operations of Borrower or any of its Subsidiaries is the subject of any federal or state investigation

relating to or in connection with any Hazardous Materials at any Facility or at any other location;

(d) none of the operations of Borrower or any of its Subsidiaries is subject to any judicial or administrative proceeding alleging the violation of or liability under any Environmental Laws which could reasonably be expected to have a Material Adverse Effect;

(e) to the knowledge of Borrower, neither Borrower nor any of its Subsidiaries nor any of their respective Facilities or operations are subject to any outstanding written order or agreement with any Governmental Authority or private party relating to (i) any Environmental Laws or (ii) any Environmental Claims;

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(f) neither Borrower nor any of its Subsidiaries has any material contingent liability in connection with any Release of any Hazardous Materials by Borrower or any of its Subsidiaries;

(g) neither Borrower nor any of its Subsidiaries nor, to the knowledge of Borrower, any predecessor of Borrower or any of its Subsidiaries, has filed any notice under any Environmental Law indicating past or present treatment or Release of Hazardous Materials at any Facility, and none of Borrower's or any of its Subsidiaries' operations involves the generation, transportation, treatment, storage, or disposal of hazardous waste, as defined under 40 C.F.R. Parts 260-270 or any state equivalent;

(h) to the knowledge of Borrower, no Hazardous Materials exist on or under any Facility in a manner that has a reasonable possibility of giving rise to an Environmental Claim having a Material Adverse Effect, and neither Borrower nor any of its Subsidiaries has filed any notice or report of a Release of any Hazardous Materials that has a reasonable possibility of giving rise to an Environmental Claim having a Material Adverse Effect;

(i) neither Borrower nor any of its Subsidiaries nor, to the best knowledge of Borrower, any of their respective predecessors has disposed of any Hazardous Materials in a manner that has a reasonable possibility of giving rise to an Environmental Claim having a Material Adverse Effect;

(j) to the knowledge of Borrower no underground storage tanks or surface impoundments are on or at any Facility; and

(k) to the knowledge of Borrower, no Lien in favor of any Person relating to or in connection with any Environmental Claim has been filed or has been attached to any Facility.

7.24 DISCLOSURE. The representations and warranties of Borrower and its Subsidiaries contained in the Loan Documents and in any other document, certificate, or written statement furnished to Lenders by or on behalf of Borrower or any of its Subsidiaries for use in connection with the transactions contemplated by this Agreement, when taken together, do not contain any untrue statement of a material fact or omit to state a material fact (known to Borrower, in the case of any document not furnished by it) necessary in order to make the statements contained herein or therein not misleading in light of the circumstances in which the same were made. Any projections and pro forma financial information contained in such materials are based upon good faith estimates and assumptions believed by Borrower to be reasonable at the time made, it being recognized by Lenders that such projections as to future events are not to be viewed as facts and that actual results during the period or periods covered by any such projections may differ from the projected results. There is no fact known (or which should upon the reasonable exercise of diligence be known) to Borrower (other than matters of a general economic nature) that has had, or could reasonably be expected to result in, a Material Adverse Effect and that has not been disclosed herein or in such other documents, certificates, and statements furnished to Lenders for use in connection with the transactions contemplated hereby.

7.25 PURPOSE OF CREDIT FACILITY. Borrower will use all of the Term Loan Principal Debt (other than proceeds used to pay reasonable fees and expenses

incurred by Borrower in connection with this Agreement) to restructure the claims of Lenders in the Chapter 11 Case in accordance with the terms of the Reorganization Plan. No part of the Term Loan Principal Debt will be used, directly or indirectly, for a purpose which violates any Law, including, without limitation, the provisions of Regulations T, U, or X (as enacted by the Board of Governors of the Federal Reserve System, as amended).

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SECTION 8. AFFIRMATIVE COVENANTS.

Borrower covenants and agrees that, until payment in full of all of the Term Loan Principal Debt and other Obligation, unless Required Lenders shall otherwise give prior written consent, Borrower shall perform, and shall cause each of its Subsidiaries to perform, all covenants in this SECTION 8.

8.1 FINANCIAL STATEMENTS AND OTHER REPORTS. Borrower will maintain, and cause each of its Subsidiaries to maintain, a system of accounting established and administered in accordance with sound business practices to permit preparation of financial statements in conformity with GAAP. Borrower will deliver to Administrative Agent:

(a) Monthly Financials: as soon as available and in any event within 30 days after the calendar month-end, a company prepared balance sheet, income statement, and statement of cash flow covering Borrower's operations during such period.

(b) Year-End Financials: as soon as available and in any event within 90 days after the end of each Fiscal Year, (i) the consolidated and consolidating balance sheets of Borrower and its Subsidiaries as at the end of such Fiscal Year and the related consolidated and consolidating statements of income and consolidated statement of cash flows of Borrower and its Subsidiaries for such Fiscal Year, setting forth in comparative form the corresponding figures for the previous fiscal year, all in reasonable detail and certified by the chief financial officer of Borrower that they fairly present, in all material respects, the financial condition of Borrower and its Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated, and (ii) in the case of such consolidated financial statements, a report thereon of independent certified public accountants of recognized national standing selected by Borrower and reasonably satisfactory to Required Lenders, which report shall be unqualified as to going concern and scope of audit, and shall state that such consolidated financial statements fairly present, in all material respects, the consolidated financial position of Borrower and its Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated in conformity with GAAP applied on a basis consistent with prior years (except as otherwise disclosed in such financial statements) and that the examination by such accountants in connection with such consolidated financial statements has been made in accordance with generally accepted auditing standards;

(c) Officer's Certificate: together with each delivery of financial statements of Borrower and its Subsidiaries pursuant to SECTIONS 8.1(a) and (b) above, an Officer's Certificate of Borrower stating that: (i) all financial statements delivered or caused to be delivered to the Lenders have been prepared in accordance with GAAP (except, in the case of unaudited financials statements, for the lack of footnotes and being subject to year-end audit adjustments) and fairly present the financial condition of the Borrower, (ii) the representations and warranties of the Borrower in the Loan Documents are true and correct in all material respects on and as of the date of the certificate, as though made on and as of such date (except to the extent that such representations and warranties relate solely to an earlier date), the signer has reviewed the terms of this Agreement and has made, or caused to be made under its supervision, a review in reasonable detail of the transactions and condition of Borrower and its Subsidiaries during the accounting period covered by such financial statements and that such review has not disclosed the existence during or at the end of such accounting period, and that the signers do not have knowledge of the existence as at the date of such Officer's Certificate, of any condition or event that constitutes a Event of Default or Potential Default, or, if any such condition or

event existed or exists, specifying the nature and period of existence thereof and what action Borrower has taken, is taking, and proposes to take with respect thereto;

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(d) Accountants' Certification: together with each delivery of consolidated financial statements of Borrower and its Subsidiaries pursuant to CLAUSE (b) above, a written statement by the independent certified public accountants giving the report thereon (i) stating that their audit examination has included a reading of the terms of this Agreement and the other Loan Documents as they relate to accounting matters, and (ii) stating whether, in connection with their audit examination, any condition or event, insofar as such condition or event relates to accounting matters, that constitutes a Event of Default or Potential Default has come to their attention and, if such a condition or event has come to their attention, specifying the nature and period of existence thereof; provided that such accountants shall not be liable by reason of any failure to obtain knowledge of any such Event of Default or Potential Default that would not be disclosed in the course of their audit examination. Borrower shall have issued written instructions to its independent certified public accountants authorizing them to communicate with Administrative Agent and to release to Administrative Agent whatever financial information concerning Borrower that Administrative Agent may request. Borrower hereby irrevocably authorizes and directs all auditors, accountants, or other third parties to deliver to Administrative Agent, at Borrower's expense, copies of Borrower's financial statements, papers related thereto, and other accounting records of any nature in their possession, and to disclose to Administrative Agent any information they may have regarding Borrower's business affairs and financial conditions;

(e) Accountants' Reports: promptly upon receipt thereof (unless restricted by applicable professional standards), copies of all reports submitted to Borrower by independent certified public accountants in connection with each annual, interim, or special audit of the financial statements of Borrower and its respective Subsidiaries made by such accountants, including, without limitation, any comment letter submitted by such accountants to management in connection with their annual audit;

(f) SEC Filings and Press Releases: promptly upon their becoming available, copies of (i) all financial statements, reports, notices, and proxy statements sent or made available generally by Borrower to its security Lenders, (ii) all regular and periodic reports and all registration statements (other than on Form S-8 or a similar form) and prospectuses, if any, filed by Borrower or any of its Subsidiaries with any securities exchange or with the Securities and Exchange Commission or any Governmental Authority or private regulatory authority, and (iii) all press releases and other statements made available generally by Borrower or any of its Subsidiaries to the public concerning material developments in the business of Borrower or any of its Subsidiaries;

(g) Events of Default, etc.: promptly upon any officer of Borrower obtaining knowledge (i) of any condition or event that constitutes an Event of Default or Potential Default, or becoming aware that any Lender has given any notice (other than to Administrative Agent) or taken any other action with respect to a claimed Event of Default or Potential Default, (ii) that any Person has given any notice to Borrower or any of its Subsidiaries or taken any other action with respect to a claimed default or event or condition of the type referred to in SECTION 10.2, (iii) of any condition or event that would be required to be disclosed in a current report filed by Borrower with the Securities and Exchange Commission on Form 8-K (Items 1, 2, 4, 5, and 6 of such Form as in effect on the date hereof) if Borrower were required to file such reports under the Exchange Act, or (iv) of the occurrence of any event or change that has caused or evidences, either in any case or in the aggregate, a Material Adverse Effect, an Officer's Certificate specifying the nature and period of existence of such condition, event, or change, or specifying the notice given or action taken by any such Person and the nature of such claimed Event of Default, Potential Default, default, event, or condition, and what action Borrower has taken, is taking and proposes to take with respect thereto:

(h) Litigation or Other Proceedings: (i) promptly upon any officer of Borrower obtaining knowledge of (x) the institution of, or non-frivolous threat of, any action, suit, proceeding (whether administrative, judicial, or otherwise), governmental investigation, or arbitration against or affecting Borrower or any of its Subsidiaries or any property of Borrower or any of its Subsidiaries (collectively, "PROCEEDINGS") not previously disclosed in writing by Borrower to Lenders or (y) any material development in any Proceeding that, in any case:

(A) if adversely determined, has a reasonable possibility of giving rise to a Material Adverse Effect; or

(B) seeks to enjoin or otherwise prevent the consummation of, or to recover any damages or obtain relief as a result of, the transactions contemplated hereby;

written notice thereof together with such other information as may be reasonably available to Borrower to enable Lenders and their counsel to evaluate such matters; and (ii) within 45 days after the end of each fiscal quarter of Borrower, a schedule of all Proceedings involving any alleged liability of, or claims against or affecting, Borrower or any of its Subsidiaries equal to or greater than \$1,000,000 and promptly after request by Administrative Agent such other information as may be reasonably requested by Administrative Agent to enable Administrative Agent and its counsel to evaluate any of such Proceedings;

(i) ERISA Events: promptly upon becoming aware of the occurrence of any ERISA Event that would result in a material liability, a written notice specifying the nature thereof, what action Borrower or any of its ERISA Affiliates has taken, is taking or proposes to take with respect thereto and, when known, any action taken or threatened by the Internal Revenue Service, the Department of Labor, or the PBGC with respect thereto;

(j) ERISA Notices: with reasonable promptness, copies of (i) all written notices received by Borrower or any of its ERISA Affiliates from a Multiemployer Plan sponsor concerning an ERISA Event; and (ii) such other documents or governmental reports or filings relating to any Employee Plan as Administrative Agent shall reasonably request;

(k) Insurance: as soon as practicable and in any event by the last day of each Fiscal Year, a report in form and substance satisfactory to Administrative Agent outlining all material insurance coverage maintained as of the date of such report by Borrower and its Subsidiaries and all material insurance coverage planned to be maintained by Borrower and its Subsidiaries in the immediately succeeding Fiscal Year;

(l) Environmental Audits and Reports: as soon as practicable following receipt thereof, copies of all environmental audits and reports, whether prepared by personnel of Borrower or any of its Subsidiaries or by independent consultants, with respect to significant environmental matters at any Facility or which relate to an Environmental Claim which could result in a Material Adverse Effect;

(m) Regulatory Notices: promptly upon receipt, (i) notification of any non-renewal, cancellation, termination, revocation, suspension, impairment, or material modification of, or of any hearing, proceeding, or investigation regarding, any Authorization held by Borrower or any of its Subsidiaries which is reasonably likely to have a Material Adverse Effect, (ii) copies of all notices or other documents received related to any allegation or investigation regarding non-compliance with any applicable insurance or other regulation or any other item reasonably likely to materially adversely affect the Borrower's Authorization, (iii) any material notice relating to

the maintenance by Borrower or any of its Subsidiaries of their respective qualification for, participation in, and payment under, private insurance programs and federal, state, and local governmental programs providing for the payment and reimbursement of services rendered, and (iv) any material notice relating to the accreditation of Borrower or any of its Subsidiaries;

(n) Other Information: with reasonable promptness, such other information and data with respect to Borrower or any of its Subsidiaries as from time to time may be reasonably requested by Administrative Agent; and

(o) Lists of Purchasers. Concurrently with the delivery of any Reserve Report to the Administrative Agent pursuant to SECTION 8.2, a list of Persons purchasing Hydrocarbons from the Borrower or any Subsidiary accounting for at least 80% of the revenues resulting from the sale of all Hydrocarbons in the one-year period prior to the "as of" date of such Reserve Report.

(p) Production Report and Lease Operating Statements. Within 90 days after the end of each fiscal quarter, a report setting forth, for each calendar month during the then current fiscal year to date, the volume of production and sales attributable to production (and the prices at which such sales were made and the revenues derived from such sales) for each such calendar month from the Oil and Gas Properties, and setting forth the related ad valorem, severance and production taxes and lease operating expenses attributable thereto and incurred for each such calendar month.

8.2 COLLATERAL REPORTING. Provide Administrative Agent with the following documents at the following times in form satisfactory to Administrative Agent during the term of this Agreement on a separate Borrower-by-Borrower basis, as well as on a consolidated basis:

(a) By the last day of the month following each calendar quarter (i.e., the last day of April, July, October and January), a report: (i) listing the total amount actually paid by Borrower during the preceding quarter for: (A) plugging and abandonment costs for previous or ongoing plugging and abandonment operations pertaining to the Oil and Gas Properties, and (B) general bond and supplemental bond payments pertaining to plugging and abandonment costs; and (ii) estimating the future payments for (A) and (B), above, for each of the succeeding two quarters;

(b) Reserve Reports prepared by an independent petroleum engineering consultant pertaining to the six-month period ending December 31st and June 30th of each year (with such Reserve Report shall be in form and substance satisfactory to Administrative Agent), and shall: (i) be accompanied by a certification of Borrower to the effect that nothing has occurred since the date of the last Reserve Report that could reasonably be expected to result in a Material Adverse Effect, except that which has previously been disclosed to Administrative Agent in writing: and (ii) contain such other information as may be reasonably requested by Administrative Agent.

Each delivery of a Reserve Report by Borrower to Administrative Agent shall constitute a representation and warranty by Borrower to Administrative Agent that, unless otherwise disclosed to Administrative Agent in writing on or prior to the date of such delivery, (w) Borrower (or its Subsidiary, as the case may be) owns the Oil and Gas Properties described in the Reserve Report free and clear of any Liens (except Permitted Liens) and (x) each of the Oil and Gas Properties described in such Reserve Report constitute at least ninety-five (95%) of the value of Borrower's Proved Reserves in the Oil and Gas Property Collateral; and

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(c) Upon request by Administrative Agent from time to time, copies of Borrower's lease files, well files and contract files (including production reports on each well, marketing contracts, and information regarding locations of and equipment located on each well).

#### 8.3 CORPORATE EXISTENCE.

Borrower will, and will cause each of its Subsidiaries to, at all times preserve and keep in full force and effect its corporate existence and all rights and franchises material to the business of Borrower and its Subsidiaries (on a consolidated basis).

#### 8.4 PAYMENT OF TAXES AND CLAIMS; TAX CONSOLIDATION.

(a) Borrower will, and will cause each of its Subsidiaries to, pay all taxes, assessments, and other governmental charges imposed upon it or any of its properties or assets or in respect of any of its income, businesses, or franchises before any penalty accrues thereon, and all claims (including, without limitation, claims for labor, services, materials, and supplies) for sums that have become due and payable and that by law have or may become a Lien upon any of its properties or assets, prior to the time when any penalty or fine shall be incurred with respect thereto; provided that no such charge or claim need be paid if being contested in good faith by appropriate proceedings promptly instituted and diligently conducted and if such reserve or other appropriate provision, if any, as shall be required in conformity with GAAP shall have been made therefor.

(b) Borrower will not, nor will it permit any of its Subsidiaries to, file or consent to the filing of any consolidated income tax return with any Person (other than Subsidiaries of Borrower).

#### 8.5 OPERATION AND MAINTENANCE OF PROPERTIES; INSURANCE.

Borrower will maintain or cause to be maintained, the insurance policies described on SCHEDULE 8.5 in full force and effect. Additionally, Borrower shall:

(a) At its expense, do or cause to be done all things reasonably necessary to preserve and keep in good repair, working order and efficiency (except for normal wear and tear) all of its Oil and Gas Properties and other material Properties including, without limitation, all equipment, machinery and facilities, and from time to time will make all the reasonably necessary repairs, renewals and replacements so that at all times the state and condition of its Oil and Gas Properties and other material Property will be fully preserved and maintained, allowing for depletion in the ordinary course of business, except to the extent a portion of such Oil and Gas Properties is no longer capable of producing Hydrocarbons in commercial quantities (in which case Borrower shall fully comply with all of its obligations and Legal Requirements pertaining to plugging and abandoning its wells related to such portion). Borrower shall, and shall cause each of its Subsidiaries to, promptly: (i) pay and discharge, or make reasonable and customary efforts to cause to be paid and discharged, all delay rentals, royalties, expenses and indebtedness accruing under the leases or other agreements affecting or pertaining to its Oil and Gas Properties; (ii) perform or make reasonable and customary efforts to cause to be performed, in accordance with industry standards the obligations required by each and all of the assignments, deeds, leases, sub-leases, contracts and agreements affecting its interests in its Oil and Gas Properties and other material Property and prevent any forfeiture thereof or a default thereunder, except (A) to the extent a portion of such Oil and Gas Properties is no longer capable of producing Hydrocarbons in economically reasonable amounts. Borrower shall, and shall cause each of its Subsidiaries, to

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operate its Oil and Gas Properties and other material Property or cause or make reasonable and customary efforts to cause such Oil and Gas Property Collateral and other material Property to be operated in a reasonably prudent manner in accordance with the practices of the industry and in compliance in all material respects with all applicable contracts and agreements and in compliance in all material respects with all Legal Requirements.

(b) At its expense, maintain the Equipment in good operating condition and repair (ordinary wear and tear excepted), and make all necessary replacements thereto, so that the value and operating efficiency thereof shall at all times be maintained and preserved. Other than those

items of Equipment that constitute fixtures on the Closing Date, Borrower shall not permit any item of Equipment to become a fixture to real estate or an accession to other property, and such Equipment shall at all times remain personal property.

(c) At its expense, (i) explore, develop and maintain the leases, wells, units and acreage to which the Oil and Gas Properties pertains in a prudent and economical manner, (ii) act prudently and in accordance with customary industry standards in managing or operating the Oil and Gas Properties, (iii) pay and promptly discharge all rentals, delay rentals, royalties, overriding royalties, payments of production and other indebtedness or obligations accruing under the leases comprising the Oil and Gas Properties, and perform every act required to keep such leases in full force and effect, (iv) deliver all operating agreements, pooling or unitization agreements, sales or processing contracts, drilling and/or development agreements, pipeline transportation agreements and other material agreements which pertain to the Oil and Gas Properties, (v) deliver production information on a monthly basis, (vi) deliver copies of all reports, forms and other documents and data submitted by Borrower or any of its Subsidiaries to the Federal Energy Regulatory Commission, the applicable state conservation agencies and any other applicable Governmental Authorities, (vii) not mortgage, pledge or otherwise encumber or sell the Oil and Gas Properties, (viii) not alter any Material Contract relating to the Oil and Gas Properties except to the limited extent permitted under this Agreement, (ix) pay on or before the due date thereof all of Borrower's and each of its Subsidiaries' lease operating expenses and other liabilities with respect to which a mineral lien, subcontractor's lien, mechanic's lien, materialmen's lien or other Lien against any of the Collateral may arise which may have a priority superior to Administrative Agent's Lien on such Collateral, and (x) perform all acts and execute such documents as Administrative Agent may require in order to maintain the existence, perfection and first priority of Administrative Agent's Lien on the Oil and Gas Properties and the other Collateral.

8.6 INSPECTION; LENDER MEETING. Borrower shall, and shall cause each of its Subsidiaries to, permit any authorized representatives designated by any Lender to visit and inspect any of the properties of Borrower or any of its Subsidiaries, including its and their financial and accounting records, and to make copies and take extracts therefrom, and to discuss its and their affairs, finances, and accounts with its and their officers and independent public accountants, all upon reasonable advance notice and at such reasonable times during normal business hours and as often as may be reasonably requested. Without in any way limiting the foregoing, Borrower will, upon the request of Administrative Agent, participate in a meeting of Administrative Agent and Lenders once during each Fiscal Year to be held at Borrower's corporate offices (or such other location as may be agreed to by Borrower and Administrative Agent) at such time as may be agreed to by Borrower and Administrative Agent.

#### 8.7 COMPLIANCE WITH LAWS, ETC.

(a) Borrower shall, and shall cause each of its Subsidiaries to, comply with the requirements of all applicable Laws, rules, regulations, and orders of any Governmental

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Authority, including all Environmental Laws, noncompliance with which could reasonably be expected to cause a Material Adverse Effect.

(b) Establish and implement such procedures as may be reasonably necessary to continuously determine and assure that: (i) all Property and the operations conducted thereon are in compliance with and do not violate the requirements of any Environmental Laws, (ii) no oil, Hazardous Materials or solid wastes are disposed of or otherwise Released except in compliance with Environmental Laws, (iii) no Hazardous Materials will be released on or to any such Property in a quantity equal to or exceeding that quantity which requires reporting under CERCLA, and (iv) no oil, oil and gas exploration and production wastes, or Hazardous Materials is released on or to any such Property so as to pose an imminent and substantial endangerment to public health or welfare or the environment.

(c) Borrower agrees that Administrative Agent may, from time to time and in its reasonable discretion, retain, at Borrower's expense, an independent professional consultant to review any report relating to Hazardous Materials prepared by or for Borrower and to conduct its own investigation, no more frequently than bi-annually, of any facility currently owned, leased, operated, or used by Borrower or any of its Subsidiaries, and Borrower agrees to use all reasonable efforts to obtain permission for Administrative Agent's professional consultant to conduct its own investigation of any such Facility previously owned, leased, operated, or used by Borrower or any of its Subsidiaries. Borrower shall use its reasonable efforts to obtain for Administrative Agent and its agents, employees, consultants, and contractors the right, upon reasonable notice to Borrower, to enter into or on to the facilities currently owned, leased, operated, or used by Borrower or any of its Subsidiaries to perform such tests on such property as are reasonably necessary to conduct such a review and/or investigation. Borrower and Administrative Agent hereby acknowledge and agree that any report of any investigation conducted at the request of Administrative Agent pursuant to this SECTION 8.7(c) will be obtained and shall be used by Administrative Agent and Lenders for the purposes of Lenders' internal credit decisions and to protect Lenders' security interests, if any, created by the Loan Documents. Administrative Agent agrees to deliver a copy of any such report to Borrower with the understanding that Borrower acknowledges and agrees that (i) it will indemnify, and hold harmless Administrative Agent and each Lender from any costs, losses, or liabilities relating to Borrower's use of or reliance on such report, (ii) neither Administrative Agent nor any Lender makes any representation or warranty with respect to such report, and (iii) by delivering such report to Borrower, neither Administrative Agent nor any Lender is requiring or recommending the implementation of any suggestions or recommendations contained in such report.

(d) Borrower shall promptly advise Administrative Agent in writing and in reasonable detail of (i) any Release of any Hazardous Materials required to be reported to any federal, state, local, or foreign Governmental Authority under any applicable Environmental Laws, (ii) any and all written communications with respect to any Environmental Claims that have a reasonable possibility of giving rise to a Material Adverse Effect or with respect to any Release of Hazardous Materials required to be reported to any federal, state, or local Governmental Authority, (iii) any remedial action taken by Borrower or any other Person in response to (y) any Hazardous Materials on, under, or about any Facility, the existence of which has a reasonable possibility of resulting in an Environmental Claim having a Material Adverse Effect, or (z) any Environmental Claim that could have a Material Adverse Effect, (iv) Borrower's discovery of any occurrence or condition on any real property adjoining or in the vicinity of any Facility that could cause such Facility or any part thereof to be subject to any restrictions on the ownership, occupancy, transferability, or use thereof under any Environmental Laws, and (v) any request for information from any Governmental Authority that suggests such

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Governmental Authority is investigating whether Borrower or any of its Subsidiaries may be potentially responsible for a Release of Hazardous Materials.

(e) Borrower shall, at its own expense, provide copies of such documents or information as Administrative Agent may reasonably request in relation to any matters disclosed pursuant to this SECTION 8.7.

8.8 BORROWER'S REMEDIAL ACTION REGARDING HAZARDOUS MATERIALS. Borrower shall promptly take, and shall cause each of its Subsidiaries promptly to take, any and all necessary remedial action in connection with the presence, storage, use, disposal, transportation, or Release of any Hazardous Materials on or under any Facility in order to reasonably prevent or mitigate damage to the property or to persons of third parties and to comply with all applicable Environmental Laws and Authorizations unless the failure to so comply could not reasonably be expected to have a Material Adverse Effect. In the event Borrower or any of its Subsidiaries undertakes any remedial action with respect to any Hazardous Materials on or under any Facility, Borrower or such Subsidiary shall conduct

and complete such remedial action in material compliance with all applicable Environmental Laws, and in accordance with the policies, orders, and directives of all federal, state, and local Governmental Authorities except when, and only to the extent that, Borrower's or such Subsidiary's liability for such presence, storage, use, disposal, transportation, or discharge of any Hazardous Materials is being contested in good faith by Borrower or such Subsidiary.

8.9 OIL AND GAS PROPERTY TITLE INFORMATION. (a) On or before the delivery to Administrative Agent of each Reserve Report required by SECTION 8.2 Borrower will provide Administrative Agent with current title opinions covering the Oil and Gas Property for which title opinions have not previously been provided to Administrative Agent so that at all times the value of the Proved Reserves for which title opinions are or have been provided to Administrative Agent shall equal or exceed ninety-five percent (95%) of the NYMEX Value of all of the Oil and Gas Property as set forth in the most recently delivered Reserve Report of Proved Reserves.

(b) Borrower shall cure all title defects or exceptions which are not Permitted Liens, or substitute acceptable Oil and Gas Property with no title defects or exceptions except for Permitted Liens covering Oil and Gas Property of an equivalent value, within 30 days after a request by Administrative Agent to cure such defects or exceptions. Upon the discovery of any title defect or exception which is not a Permitted Lien, Administrative Agent shall have the right to exercise the right to remedy such title defect or exception in its sole discretion from time to time (and any failure to so exercise this remedy at any time shall not be a waiver as to future exercise of the remedy by Administrative Agent).

#### 8.10 ADDITIONAL COLLATERAL.

(a) Should Borrower or any of its Subsidiaries purchase, otherwise acquire or own any Oil and Gas Property that is not already included in the Oil and Gas Properties and the subject of an Oil and Gas Properties Mortgage in favor of Administrative Agent other than Oil and Gas Properties owned on the date of this Agreement, which have a NYMEX Value of \$100,000 or less (until such time as the NYMEX Value thereof exceeds \$100,000) for the benefit of the Lenders, Borrower will grant or cause to be granted to Administrative Agent as security for the Obligations a first-priority Lien (subject only to Permitted Liens) on all of Borrower's or such Subsidiary's, as the case may be, interest in such Oil and Gas Properties not already subject to a Lien of such an Mortgage simultaneously with Borrower's or such Subsidiary's purchase, acquisition or ownership of such Oil and Gas Properties which Lien will be created and perfected by and in accordance with the provisions of an Mortgage and other security agreements and

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financing statements, or other security instruments, all in form and substance satisfactory to Administrative Agent in its sole discretion and in sufficient executed (and acknowledged where necessary or appropriate) counterparts for recording purposes.

(b) Concurrently with the granting of the Lien or other action referred to in SECTION 8.10(a) above, Borrower will provide to Administrative Agent title information and a title opinion in form and substance satisfactory to Administrative Agent in its sole discretion with respect to Borrower's or such Subsidiary's, as the case may be, interest in such Oil and Gas Properties.

#### 8.11 PAYMENT OF OBLIGATION; LEASES.

(a) The Loan Parties shall pay the Obligation in accordance with the terms and provisions of the Loan Documents.

(b) The Borrower shall pay when due all rents and other amounts payable under any leases to which Borrower is a party or by which Borrower's properties and assets are bound.

8.12 FURTHER ASSURANCES. At any time or from time to time upon the request of Administrative Agent, Borrower will, at its expense, promptly execute, acknowledge, and deliver such further documents and do such other acts and

things as Administrative Agent may reasonably request in order to effect fully the purposes of the Loan Documents and to provide for payment of the Obligation in accordance with the terms of this Agreement and the other Loan Documents. In furtherance and not in limitation of the foregoing, Borrower shall take, and cause each of its Subsidiaries to take, such actions as Administrative Agent may reasonably request from time to time (including, without limitation, the execution and delivery of guaranties, security agreements, pledge agreements, mortgages, deeds of trust, landlord's consents and estoppels, stock powers, financing statements, and other documents, the filing or recording of any of the foregoing, title insurance with respect to any of the foregoing that relates to an interest in real property, and the delivery of stock certificates and other collateral with respect to which perfection is obtained by possession) to ensure that the Obligation is guarantied by the Guarantors and is secured by the Collateral.

8.13 LOCATION OF INVENTORY AND EQUIPMENT. Keep the Inventory and Equipment only at the locations identified on SCHEDULE 7.2; provided, however, that Borrower may amend SCHEDULE 7.2 so long as such amendment occurs by written notice to Administrative Agent not less than 30 days prior to the date on which Inventory or Equipment is moved to such new location, so long as such new location is within the continental United States, and so long as, at the time of such written notification, Borrower provides any financing statements or fixture filings necessary to perfect and continue perfected Administrative Agent's Liens on such assets and also provides to Administrative Agent a satisfactory landlord waiver to the extent Administrative Agent does not have a Collateral Access Agreement.

8.14 USE OF PROCEEDS. Borrower shall use all of the Term Loan Principal Debt (other than proceeds used to pay reasonable fees and expenses incurred by Borrower in connection with this Agreement) to restructure the claims of Lenders in the Chapter 11 Case in accordance with the terms of the Reorganization Plan. No part of the Term Loan Principal Debt will be used, directly or indirectly, for a purpose which violates any Law, including, without limitation, the provisions of Regulations T, U, or X (as enacted by the Board of Governors of the Federal Reserve System, as amended).

8.15 REORGANIZATION PLAN. Comply with the provisions of the Reorganization Plan.

#### SECTION 9. NEGATIVE COVENANTS.

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Borrower covenants and agrees that, until payment in full of all of the Term Loan Principal Debt and other Obligation, unless Required Lenders shall otherwise give prior written consent, Borrower shall perform, and shall cause each of its Subsidiaries to perform, all covenants in this SECTION 9.

9.1 INDEBTEDNESS. Borrower shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, create, incur, assume, or guaranty, or otherwise become or remain directly or indirectly liable with respect to, any Indebtedness, except:

(a) Each of the Loan Parties may become and remain liable with respect to the Obligation;

(b) Borrower and its Subsidiaries, as applicable, may remain liable with respect to Indebtedness described in SCHEDULE 9.1; and

(c) Indebtedness of Borrower and its Subsidiaries; provided that such Indebtedness may consist only of Capital Leases capitalized on the consolidated balance sheet of Borrower and its Subsidiaries and other Indebtedness secured by Liens permitted under SECTION 9.2(a)(iii); provided further that, the aggregate amount of all Indebtedness outstanding under this CLAUSE (c) at any time shall not exceed \$500,000.

9.2 PROHIBITION ON LIENS. Borrower shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, create, incur, assume, or permit to exist any Lien on or with respect to any property or asset of any kind (including any document or instrument in respect of goods or accounts receivable) of Borrower or any of its Subsidiaries, whether now owned or hereafter acquired, or any income or profits therefrom, or file or permit the

filing of, or permit to remain in effect, any financing statement, or other similar notice of any Lien with respect to any such property, asset, income, or profits under the Uniform Commercial Code of any state or under any similar recording or notice statute, except:

(a) Permitted Liens;

(b) Liens described in SCHEDULE 9.2;

(c) Purchase money security interests (including mortgages, conditional sales, Capital Leases, and any other title retention or deferred purchase devices) in real or tangible personal property of Borrower or any of its Subsidiaries existing or created at the time of acquisition thereof or within 30 days thereafter, and the renewal, extension, and refunding of any such security interest in an amount not exceeding the amount thereof remaining unpaid immediately prior to such renewal, extension, or refunding; provided, however, that such Indebtedness is permitted by Section 9.1(c); and

(d) Liens in favor of Administrative Agent granted pursuant to the Collateral Documents; and

(e) Non-consensual Liens existing on the Closing Date in favor of contractors, subcontractors, co-working owners (whether acting as operating or non-operating), arising solely from the conduct of oil and gas operations associated with the Collateral.

9.3 INVESTMENTS. Borrower shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, make or own any Investment in any Person except Borrower and its Subsidiaries may make and own Investments in Cash Equivalents.

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9.4 CHANGE IN LOCATION OF CHIEF EXECUTIVE OFFICE; INVENTORY AND EQUIPMENT WITH BAILEES. Relocate its chief executive office to a new location without Borrower providing 30 days prior written notification thereof to Administrative Agent and so long as, at the time of such written notification, Borrower provides any financing statements or fixture filings necessary to perfect and continue perfected Administrative Agent's Liens and also provides to Administrative Agent a satisfactory Collateral Access Agreement with respect to such new location. The Inventory and Equipment shall not at any time now or hereafter be stored with a bailee, warehouseman, or similar party without Administrative Agent's prior written consent.

9.5 RESTRICTION ON FUNDAMENTAL CHANGES; ASSET SALES. Borrower shall not, and shall not permit any of its Subsidiaries to:

(a) change any Borrower's, or any of its Subsidiaries' name, corporate structure (within the meaning of the UCC), identity, or add any new trade, dba, or fictitious name;

(b) alter the corporate, capital, or legal structure of Borrower or any of its Subsidiaries, create any new Subsidiaries or enter into any transaction of merger or consolidation, or liquidate, wind-up, or dissolve itself (or suffer any liquidation or dissolution);

(c) sell, lease, assign, farm-out, convey, transfer, or otherwise dispose of any of any Borrower's or any of its Subsidiaries' Properties or assets other than (i) sales of Inventory to buyers in the ordinary course of such Borrower's business as currently conducted, (ii) farmouts of nonproven acreage or nonproven depths and assignments in connection with such farmouts, and (iii) the sale or transfer of Equipment that is no longer necessary for the business of Borrower or such Subsidiary and is replaced by Equipment of at least comparable value and use; or

(d) cause, permit, or suffer, directly or indirectly, any Change in Control.

9.6 SALES AND LEASE-BACKS. Borrower shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, become or remain liable as lessee or as a guarantor or other surety with respect to any lease, whether an

operating lease or a Capital Lease, of any property (whether real, personal, or mixed), whether now owned or hereafter acquired, (i) which Borrower or any of its Subsidiaries has sold or transferred or is to sell or transfer to any other Person (other than Borrower or any of its Subsidiaries) or (ii) which Borrower or any of its Subsidiaries intends to use for substantially the same purpose as any other property which has been or is to be sold or transferred by Borrower or any of its Subsidiaries to any Person (other than Borrower or any of its Subsidiaries) in connection with such lease.

9.7 SALE OR DISCOUNT OF RECEIVABLES. Borrower shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, sell with recourse, or discount or otherwise sell for less than the face value thereof, any of its notes or accounts receivable other than private self-pay receivables and receivables over 180 days old.

9.8 TRANSACTIONS WITH AFFILIATES. Borrower shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, enter into or permit to exist any transaction (including, without limitation, the purchase, sale, lease, or exchange of any property or the rendering of any service) with any Affiliate of Borrower, on terms that are less favorable to Borrower or that Subsidiary, as the case may be, than those that might be obtained at the time from Persons who are not an Affiliate; provided that the foregoing restriction shall not apply to (i) any transaction between Borrower and any of its Subsidiaries or between any of its Subsidiaries, and (ii) reasonable and customary fees paid to members of the boards of directors of Borrower and its Subsidiaries.

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9.9 DISTRIBUTIONS; REPURCHASES OF CAPITAL STOCK. Make any distribution or declare or pay any dividends (in cash or other property, other than capital Stock) on, or purchase, acquire, redeem, or retire any of Borrower's capital Stock, of any class, whether now or hereafter outstanding.

(a) directly or indirectly sell, assign, pledge, or otherwise encumber or dispose of any shares of capital stock or, other equity securities of any of its Subsidiaries, except as permitted under this Agreement or the Collateral Documents or to qualify directors if required by applicable law; or

(b) permit any of its Subsidiaries directly or indirectly to sell, assign, pledge, or otherwise encumber or dispose of any shares of capital stock or other equity securities of any of its Subsidiaries (including such Subsidiary), except (a) as permitted under this Agreement or the Collateral Documents or to Borrower, another wholly-owned Subsidiary of Borrower or (b) to qualify directors if required by applicable law.

9.10 CONDUCT OF BUSINESS. Borrower shall not, and shall not permit any of its Subsidiaries to, engage in any business other than (a) the businesses engaged in by Borrower and its Subsidiaries on the Closing Date and (b) such other lines of business as may be consented to by Administrative Agent and Required Lenders.

9.11 AMENDMENTS OR WAIVERS OF AGREEMENTS. Without the prior written consent of Required Lenders, neither Borrower nor any of its Subsidiaries shall agree to any amendment, restatement, supplement, or other modification to, or waive any of its rights under, any Related Agreement if such amendment, restatement, supplement, modification, or waiver would be materially adverse to the Lenders.

9.12 GAS IMBALANCES, TAKE-OR-PAY OR OTHER PREPAYMENTS. Borrower shall not, and shall not permit any of its Subsidiaries to, enter into any contracts or agreements which warrant production of Hydrocarbons and will not hereafter allow gas imbalances, take-or-pay or other prepayments with respect to its Oil and Gas Properties which would require such Person to deliver Hydrocarbons produced on Oil and Gas Properties at some future time without then or thereafter receiving full payment therefor to exceed, during any monthly period, five percent (5%) of the current aggregate monthly gas production for such monthly period from the Oil and Gas Properties.

9.13 SWAP AGREEMENTS. The Borrower will not, and will not permit any Subsidiary to, enter into any Swap Agreements with any Person other than (a) Swap Agreements in respect of commodities (i) with an Approved Counterparty and

(ii) the notional volumes for which (when aggregated with other commodity Swap Agreements then in effect other than basis differential swaps on volumes already hedged pursuant to other Swap Agreements) do not exceed, as of the date such Swap Agreement is executed, 80% of the reasonably anticipated projected production from proved, developed, producing Oil and Gas Properties for each month during the period during which such Swap Agreement is in effect for each of crude oil and natural gas, calculated separately, and (b) Swap Agreements in respect of interest rates with an Approved Counterparty, as follows: (i) Swap Agreements effectively converting interest rates from fixed to floating, the notional amounts of which (when aggregated with all other Swap Agreements of the Borrower and its Subsidiaries then in effect effectively converting interest rates from fixed to floating) do not exceed 50% of the then outstanding principal amount of the Borrower's Debt for borrowed money which bears interest at a fixed rate and (ii) Swap Agreements effectively converting interest rates from floating to fixed, the notional amounts of which (when aggregated with all other Swap Agreements of the Borrower and its Subsidiaries then in effect effectively converting interest rates from floating to fixed) do not exceed 75% of the then outstanding principal amount of the Borrower's Debt for borrowed money which bears interest at a floating rate. In no event shall any Swap Agreement to which

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the Borrower or any Subsidiary is a party contain any requirement, agreement or covenant for the Borrower or any Subsidiary to post cash or other collateral or margin to secure their obligations under such Swap Agreement or to cover market exposures.

9.14 NO PROHIBITED TRANSACTIONS UNDER ERISA. Directly or indirectly:

(a) engage, or permit any Subsidiary of Borrower to engage, in any prohibited transaction which is reasonably likely to result in a civil penalty or excise tax described in Sections 406 of ERISA or 4975 of the Code for which a statutory or class exemption is not available or a private exemption has not been previously obtained from the Department of Labor.

(b) permit to exist with respect to any Employee Plan any accumulated funding deficiency (as defined in Sections 302 of ERISA and 412 of the Code), whether or not waived;

(c) fail, or permit any Subsidiary of Borrower to fail, to pay timely required contributions or annual installments due with respect to any waived funding deficiency to any Employee Plan;

(d) terminate, or permit any Subsidiary of Borrower to terminate, any Employee Plan where such event would result in any liability of Borrower, any of its Subsidiaries or any ERISA Affiliate under Title IV of ERISA;

(e) fail, or permit any Subsidiary of Borrower to fail, to make any required contribution or payment to any Multiemployer Plan;

(f) fail, or permit any Subsidiary of Borrower to fail, to pay any required installment or any other payment required under Section 412 of the Code on or before the due date for such installment or other payment;

(g) amend, or permit any Subsidiary of Borrower to amend, a Plan resulting in an increase in current liability for the plan year such that either of Borrower, any Subsidiary of Borrower or any ERISA Affiliate is required to provide security to such Plan under Section 401(a)(29) of the Code; or

(h) withdraw, or permit any Subsidiary of Borrower to withdraw, from any Multiemployer Plan where such withdrawal is reasonably likely to result in any liability of any such entity under Title IV of ERISA;

which, individually or in the aggregate, results in or reasonably would be expected to result in a claim against or liability of Borrower, any of its Subsidiaries or any ERISA Affiliate in excess of \$250,000.

9.15 MAINTENANCE OF PROPRIETARY RIGHTS.

Do any act, or omit to do any act, where good business judgment dictates otherwise whereby the Proprietary Rights or any registration or application appurtenant thereto, may become abandoned, invalidated, unenforceable, avoided, avoidable, or will otherwise diminish in value. Borrower shall notify Administrative Agent immediately if it knows of any reason or has reason to know of any ground under which this result may occur. Borrower shall take appropriate action at its expense, where good business judgment calls for the same, to halt the infringement of the

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Proprietary Rights and shall properly exercise its duty to control the nature and quality of the goods offered by any licensees in connection with the licenses set forth in SCHEDULE P.

SECTION 10. DEFAULT.

The term "EVENT OF DEFAULT" means the occurrence of any one or more of the following events:

10.1 FAILURE TO MAKE PAYMENTS WHEN DUE. Failure or refusal to pay all or any part of the Term Loan Principal Debt when due, whether at stated maturity, by acceleration, by notice of prepayment, or otherwise; or failure or refusal to pay any interest, fees, or any other part of the Obligation within five days after the date due; or

10.2 DEFAULT IN OTHER AGREEMENTS. (a) Failure of Borrower or any of its Subsidiaries to pay when due any principal of or interest on any Indebtedness (other than Indebtedness referred to in SECTION 10.1); or (b) breach or default by Borrower or any of its Subsidiaries with respect to any Indebtedness, or (c) any loan agreement, mortgage, indenture or other agreement relating to such Indebtedness; or

10.3 BREACH OF CERTAIN COVENANTS. Failure of any Loan Party to perform or comply with any term or condition contained in this Agreement; or

10.4 BREACH OF WARRANTY. Any representation, warranty, certification, or other statement made by Borrower or any of its Subsidiaries in any Loan Document or in any statement or certificate at any time given by Borrower or any of its Subsidiaries in writing pursuant hereto or thereto or in connection herewith or therewith shall be false in any material respect on the date as of which made; or

10.5 OTHER DEFAULTS UNDER LOAN DOCUMENTS. Any Loan Party shall default in the performance of or compliance with any term contained in this Agreement or any of the other Loan Documents, other than any such term referred to in any other Section of this SECTION 10, and such default shall not have been remedied or waived within 30 days after the earlier of (a) an officer of Borrower becoming aware of such default or (b) receipt by Borrower of notice from Administrative Agent or any Lender of such default; or

10.6 INVOLUNTARY BANKRUPTCY; APPOINTMENT OF RECEIVER, ETC. (a) A court having jurisdiction in the premises shall enter a decree or order for relief in respect of Borrower or any of its Subsidiaries in an involuntary case under the Bankruptcy Code or under any other applicable Debtor Relief Law now or hereafter in effect, which decree or order is not stayed; or any other similar relief shall be granted under any applicable federal or state law; or (b) an involuntary case shall be commenced against Borrower or any of its Subsidiaries under the Bankruptcy Code or under any other Debtor Relief Law now or hereafter in effect; or a decree or order of a court having jurisdiction in the premises for the appointment of a receiver, liquidator, sequestrator, trustee, custodian, or other officer having similar powers over Borrower or any of its Subsidiaries, or over all or a substantial part of its property, shall have been entered; or there shall have occurred the involuntary appointment of an interim receiver, trustee, or other custodian of Borrower or any of its Subsidiaries for all or a substantial part of its property; or a warrant of attachment, execution, or similar process shall have been issued against any substantial part of the property of Borrower or any of its Subsidiaries, and any such event described in this CLAUSE (b) shall continue for 60 days unless dismissed, bonded, or discharged; or

10.7 VOLUNTARY BANKRUPTCY, APPOINTMENT OF RECEIVER, ETC. (a) Borrower or any of its Subsidiaries shall have an order for relief entered with respect to it or commence a voluntary case under

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the Bankruptcy Code or under any other applicable Debtor Relief Law now or hereafter in effect, or shall consent to the entry of an order for relief in an involuntary case, or to the conversion of an involuntary case to a voluntary case, under any Debtor Relief Law, or shall consent to the appointment of or taking possession by a receiver, trustee, or other custodian for all or a substantial part of its property; or Borrower or any of its Subsidiaries shall make any assignment for the benefit of creditors; or (b) Borrower or any of its Subsidiaries shall be unable, or shall fail generally, or shall admit in writing its inability, to pay its debts as such debts become due; or the Board of Directors of Borrower or any of its Subsidiaries (or any committee thereof) shall adopt any resolution or otherwise authorize any action to approve any of the actions referred to in CLAUSE (a) above or this CLAUSE (b); or

10.8 JUDGMENTS AND ATTACHMENTS. Any money judgment, writ, or warrant of attachment or similar process shall be entered or filed against Borrower or any of its Subsidiaries or any of their respective assets and shall remain undischarged, unvacated, unbonded, or unstayed for a period of 60 days (or in any event later than five days prior to the date of any proposed sale thereunder); or

10.9 DISSOLUTION. Any order, judgment, or decree shall be entered against Borrower or any of its Subsidiaries decreeing the dissolution or split up of Borrower or that Subsidiary and such order shall remain undischarged or unstayed for a period in excess of 30 days; or

10.10 EMPLOYEE PLANS. There shall occur one or more ERISA Events which individually or in the aggregate results in a Material Adverse Effect; or there shall exist an Unfunded Current Liability, individually or in the aggregate for all Pension Plans (excluding for purposes of such computation any Employee Plans with respect to which there is no Unfunded Current Liability), which would have a Material Adverse Effect; or

10.11 CHANGE OF CONTROL. The occurrence of a Change of Control; or

10.12 FAILURE OF SECURITY. Upon execution and delivery thereof, any Collateral Document shall, at any time, cease to be in full force and effect (other than by reason of a release of Collateral thereunder in accordance with the terms hereof or thereof, the satisfaction in full of the Obligation or any other termination of such Collateral Document in accordance with the terms hereof or thereof) or shall be declared null and void, or the validity or enforceability thereof shall be contested in writing by any Loan Party, or Administrative Agent shall not have or shall cease to have a valid security interest in any Collateral purported to be covered thereby, perfected and with the priority required by the relevant Collateral Document, for any reason other than the failure of Administrative Agent or any Lender to take any action within its control, subject only to Liens permitted under the applicable Collateral Documents; or

10.13 CONFIRMATION ORDER. The entry of any order amending, supplementing, staying, vacating, or otherwise modifying the Loan Documents or the Confirmation Order without the written consent of Administrative Agent and Required Lenders; or

10.14 LIEN CHALLENGE. The commencement of a suit or action against Administrative Agent or any Lender, and, as to any suit or action brought by any Person other than Borrower or an officer or employee of Borrower, the continuation thereof without dismissal for 30 days after service thereof on Administrative Agent or any Lender, that asserts, by or on behalf of Borrower, any claim or legal or equitable remedy which seeks to subordinate, invalidate, reduce or impair the claim or Lien of Administrative Agent or such Lender hereunder or under any other Loan Document.

SECTION 11. RIGHTS AND REMEDIES.

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## 11.1 REMEDIES UPON EVENT OF DEFAULT.

(a) Debtor Relief. If an Event of Default exists under SECTION 10.6 or 10.7, the commitment to extend credit hereunder shall automatically terminate and the entire unpaid balance of the Obligation shall automatically become due and payable without any action or notice of any kind whatsoever.

(b) Other Event of Defaults. If any Event of Default exists, Administrative Agent may (and, subject to the terms of SECTION 12, shall upon the request of Required Lenders) or Required Lenders may, do any one or more of the following: (i) if the maturity of the Obligation has not already been accelerated under SECTION 11.1(a), declare the entire unpaid balance of the Obligation, or any part thereof, immediately due and payable, whereupon it shall be due and payable; (ii) terminate the commitments of Lenders to extend credit hereunder; (iii) reduce any claim to judgment; (iv) to the extent permitted by Law, exercise (or request each Lender to, and each Lender shall be entitled to, exercise) the Rights of offset or banker's Lien against the interest of each Borrower in and to every account and other property of any Borrower which are in the possession of Administrative Agent or any Lender to the extent of the full amount of the Obligation (to the extent permitted by Law, each Loan Party being deemed directly obligated to each Lender in the full amount of the Obligation for such purposes); and (v) exercise any and all other legal or equitable Rights afforded by the Loan Documents, the Laws of the State of New York, or any other applicable jurisdiction as Administrative Agent or Required Lenders (as the case may be) shall deem appropriate, or otherwise, including, but not limited to, the Right to bring suit or other proceedings before any Governmental Authority either for specific performance of any covenant or condition contained in any of the Loan Documents or in aid of the exercise of any Right granted to Administrative Agent or any Lender in any of the Loan Documents.

(c) Settle or adjust disputes and claims directly with Account Debtors for amounts and upon terms which Administrative Agent considers advisable, and in such cases, Administrative Agent will credit the Loan Account with only the net amounts received by Administrative Agent in payment of such disputed Accounts after deducting all Lender Group Expenses incurred or expended in connection therewith;

(d) Cause Borrower to hold all returned Inventory in trust for the Lenders, segregate all returned Inventory from all other assets of Borrower or in Borrower's possession and conspicuously label said returned Inventory as the property of the Lender Group;

(e) Without notice to or demand upon Borrower, make such payments and do such acts as Administrative Agent considers necessary or reasonable to protect its security interests in the Collateral. Borrower agrees to assemble the Personal Property Collateral if Administrative Agent so requires, and to make the Personal Property Collateral available to Administrative Agent at a place that Administrative Agent may designate which is reasonably convenient to both parties. Borrower authorizes Administrative Agent to enter the premises where the Personal Property Collateral is located, to take and maintain possession of the Personal Property Collateral, or any part of it, and to pay, purchase, contest, or compromise any Lien that in Administrative Agent's determination appears to conflict with Administrative Agent's Liens and to pay all expenses incurred in connection therewith and to charge Borrower's Loan Account therefor. With respect to any of Borrower's owned or leased premises, Borrower hereby grants Administrative Agent a license to enter into possession of such premises and to occupy the same, without charge, in order to exercise any of the Lender Group's rights or remedies provided herein, at law, in equity, or otherwise;

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(f) Without notice to Borrower (such notice being expressly waived), and without constituting a retention of any collateral in satisfaction of an obligation (within the meaning of the UCC), set off and apply to the

Obligations any and all (i) balances and deposits of Borrower held by the Lenders, or (ii) Debt at any time owing to or for the credit or the account of Borrower held by the Lenders;

(g) Hold, as cash collateral, any and all balances and deposits of Borrower held by the Lender Group, to secure the full and final repayment of all of the Obligations;

(h) Ship, reclaim, recover, store, finish, maintain, repair, prepare for sale, advertise for sale, and sell (in the manner provided for herein) the Personal Property Collateral. Borrower hereby grants to Administrative Agent a license or other right to use, without charge, Borrower's labels, patents, copyrights, trade secrets, trade names, trademarks, service marks, and advertising matter, or any property of a similar nature, as it pertains to the Personal Property Collateral, in completing production of, advertising for sale, and selling any Personal Property Collateral and Borrower's rights under all licenses and all franchise agreements shall inure to the Lender Group's benefit;

(i) Sell the Personal Property Collateral at either a public or private sale, or both, by way of one or more contracts or transactions, for cash or on terms, in such manner and at such places (including Borrower's premises) as Administrative Agent determines is commercially reasonable. It is not necessary that the Personal Property Collateral be present at any such sale;

(j) Administrative Agent shall give notice of the disposition of the Personal Property Collateral as follows:

(i) Administrative Agent shall give Borrower a notice in writing of the time and place of public sale, or, if the sale is a private sale or some other disposition other than a public sale is to be made of the Personal Property Collateral, the time on or after which the private sale or other disposition is to be made; and

(ii) The notice shall be personally delivered or mailed, postage prepaid, to Borrower as provided in SECTION 13, at least five (5) days before the earliest time of disposition set forth in the notice; no notice needs to be given prior to the disposition of any portion of the Personal Property Collateral that is perishable or threatens to decline speedily in value or that is of a type customarily sold on a recognized market;

(iii) Administrative Agent, on behalf of the Lender Group may credit bid and purchase at any public sale;

11.2 WAIVERS. To the extent permitted by Law, the Loan Parties hereby waive presentment and demand for payment, protest, notice of intention to accelerate, notice of acceleration, and notice of protest and nonpayment, and agree that their respective liability with respect to the Obligation (or any part thereof) shall not be affected by any renewal or extension in the time of payment of the Obligation (or any part thereof), by any indulgence, or by any release or change in any security for the payment of the Obligation (or any part thereof).

11.3 PERFORMANCE BY ADMINISTRATIVE AGENT. If any covenant, duty, or agreement of any Loan Party is not performed in accordance with the terms of the Loan Documents, after the occurrence and during the continuance of an Event of Default, Administrative Agent may, at its option (but subject to the approval of Required Lenders), perform or attempt to perform such covenant, duty, or agreement on

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behalf of such Loan Party. In such event, any amount expended by Administrative Agent in such performance or attempted performance shall be payable by the Loan Parties, jointly and severally, to Administrative Agent on demand, shall become part of the Obligation, and shall bear interest at the Post-Default Rate from the date of such expenditure by Administrative Agent until paid. Notwithstanding the foregoing, it is expressly understood that Administrative Agent does not assume, and shall never have, except by its express written consent, any liability or responsibility for the performance of any covenant, duty, or

agreement of any Borrower.

11.4 DELEGATION OF DUTIES; RELIANCE. Administrative Agent may perform any of its duties or exercise any of its Rights under the Loan Documents by or through its Representatives. Administrative Agent and its Representatives shall (a) be entitled to rely upon (and shall be protected in relying upon) any writing, resolution, notice, consent, certificate, affidavit, letter, cablegram, telecopy, telegram, telex or teletype message, statement, order, or other documents or conversation believed by it or them to be genuine and correct and to have been signed or made by the proper Person and, with respect to legal matters, upon opinion of counsel selected by Administrative Agent, (b) be entitled to deem and treat each Lender as the owner and Lender of the Obligation owed to such Lender for all purposes until, subject to SECTION 13.12, written notice of the assignment or transfer thereof shall have been given to and received by Administrative Agent (and any request, authorization, consent, or approval of any Lender shall be conclusive and binding on each subsequent Lender, assignee, or transferee of the Obligation owed to such Lender or portion thereof until such notice is given and received), (c) not be deemed to have notice of the occurrence of an Event of Default unless a responsible officer of Administrative Agent, who handles matters associated with the Loan Documents and transactions thereunder, has received written notice from a Lender or Borrower and stating that such notice is a "Notice of Default," and (d) be entitled to consult with legal counsel (including counsel for Borrower), independent accountants, and other experts selected by Administrative Agent and shall not be liable for any action taken or omitted to be taken in good faith by it in accordance with the advice of such counsel, accountants, or experts.

11.5 NOT IN CONTROL. Nothing in any Loan Document shall, or shall be deemed to (a) give Administrative Agent or any Lender the Right to exercise control over the assets (including real property), affairs, or management of any Loan Party, (b) preclude or interfere with compliance by any Loan Party thereof with any Law, or (c) require any act or omission by any Loan Party thereof that may be harmful to Persons or property. Any "Material Adverse Effect" or other materiality qualifier in any representation, warranty, covenant, or other provision of any Loan Document is included for credit documentation purposes only and shall not, and shall not be deemed to, mean that Administrative Agent or any Lender acquiesces in any non-compliance by any Loan Party with any Law or document, or that Administrative Agent or any Lender does not expect the Loan Parties to promptly, diligently, and continuously carry out all appropriate removal, remediation, and termination activities required or appropriate in accordance with all Environmental Laws. The Administrative Agent and the Lenders have no fiduciary relationship with or fiduciary duty to any Loan Party arising out of or in connection with the Loan Documents, and the relationship between the Administrative Agent and the Lenders, on the one hand, and Loan Parties, on the other hand, in connection with the Loan Documents is solely that of debtor and creditor. The power of the Administrative Agent and Lenders under the Loan Documents is limited to the Rights provided in the Loan Documents, which Rights exist solely to assure payment and performance of the Obligation and may be exercised in a manner calculated by the Administrative Agent and Lenders in their respective good faith business judgment.

11.6 COURSE OF DEALING. The acceptance by Administrative Agent or Lenders at any time and from time to time of partial payment on the Obligation shall not be deemed to be a waiver of any Event of Default then existing. No waiver by Administrative Agent, Required Lenders, or Lenders of any Event of Default shall be deemed to be a waiver of any other then-existing or subsequent Event of Default. No delay or omission by Administrative Agent, Required Lenders, or Lenders in exercising any Right under

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the Loan Documents shall impair such Right or be construed as a waiver thereof or any acquiescence therein, nor shall any single or partial exercise of any such Right preclude other or further exercise thereof, or the exercise of any other Right under the Loan Documents or otherwise.

11.7 CUMULATIVE RIGHTS. All Rights available to Administrative Agent and Lenders under the Loan Documents are cumulative of and in addition to all other Rights granted to Administrative Agent and Lenders at law or in equity, whether or not the Obligation is due and payable and whether or not Administrative Agent or Lenders have instituted any suit for collection, foreclosure, or other action in connection with the Loan Documents.

11.8 APPLICATION OF PROCEEDS. Any and all proceeds ever received by Administrative Agent or Lenders from the exercise of any Rights pertaining to the Obligation shall be applied to the Obligation in the order and manner set forth in SECTION 3.9.

11.9 CERTAIN PROCEEDINGS. Each Loan Party will promptly execute and deliver, or cause the execution and delivery of, all applications, certificates, instruments, registration statements, and all other documents and papers Administrative Agent or Lenders may reasonably request in connection with the obtaining of any consent, approval, registration, qualification, permit, license, or Authorization of any Governmental Authority or other Person necessary or appropriate for the effective exercise of any Rights under the Loan Documents. Because the Loan Parties agree that Administrative Agent's and Lenders' remedies at Law for failure of the Loan Parties to comply with the provisions of this Section would be inadequate and that such failure would not be adequately compensable in damages, the Loan Parties agree that the covenants of this Section may be specifically enforced.

11.10 EXPENDITURES BY LENDERS. Borrower shall promptly pay within fifteen (15) Business Days after request therefor (a) all reasonable costs, fees, and expenses paid or incurred by Administrative Agent, incident to any Loan Document (including, but not limited to, the reasonable fees and expenses of counsel to Administrative Agent in connection with the negotiation, preparation, delivery, execution, coordination, and administration of the Loan Documents and any related amendment, waiver, or consent) and (b) all reasonable costs and expenses of Lenders and Administrative Agent incurred by Administrative Agent or any Lender in connection with the enforcement of the obligations of any Borrower arising under the Loan Documents (including, without limitation, costs and expenses incurred in connection with any workout or bankruptcy) or the exercise of any Rights arising under the Loan Documents (including, but not limited to, reasonable attorneys' fees including allocated cost of internal counsel, court costs, and other costs of collection), all of which shall be a part of the Obligation and shall bear interest at the Post-Default Rate from the date due until the date repaid.

11.11 INDEMNIFICATION. Borrower agrees, to indemnify and hold harmless Administrative Agent, and each Lender, and each of their respective affiliates and their respective officers, directors, employees, agents, attorneys, and advisors (each, an "Indemnified Party") from and against any and all claims, damages, losses, liabilities (including, without limitation, any Environmental Liabilities), costs, and expenses (including, without limitation, reasonable attorneys' fees) that may be incurred by or asserted or awarded against any Indemnified Party, in each case arising out of or in connection with or by reason of (including, without limitation, in connection with any investigation, litigation, or proceeding or preparation of defense in connection therewith) the Loan Documents, any of the transactions contemplated herein or the actual or proposed use of the proceeds of the Borrowings (including any of the foregoing arising from the negligence of the Indemnified Party), except to the extent such claim, damage, loss, liability, cost, or expense is found in a final, non-appealable judgment by a court of competent jurisdiction to have resulted from such Indemnified Party's gross negligence or willful misconduct. In the case of an investigation, litigation, or other proceeding to which the indemnity in this SECTION 11.11

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applies, such indemnity shall be effective whether or not such investigation, litigation, or proceeding is brought by Borrower, any other Loan Party, their directors, shareholders, or creditors or an Indemnified Party or any other Person or any Indemnified Party is otherwise a party thereto and whether or not the transactions contemplated hereby are consummated. Borrower agrees not to assert any claim against any indemnified party on any theory of liability, for special, indirect, consequential, or punitive damages arising out of or otherwise relating to the Loan Documents, any of the transactions contemplated herein or the actual or proposed use of the proceeds of the Borrowings. Without prejudice to the survival of any other agreement of the Loan Parties hereunder, the agreements and obligations of the Loan Parties contained in this SECTION 11.11 shall survive the payment in full of the Borrowings and all other amounts payable under the Loan Documents.

SECTION 12. AGREEMENT AMONG LENDERS.

## 12.1 ADMINISTRATIVE AGENT.

(a) Appointment of Administrative Agent. Each Lender hereby appoints Mid River LLC (and Mid River LLC hereby accepts such appointment) as its nominee and agent, in its name and on its behalf: (i) to act as nominee for and on behalf of such Lender in and under all Loan Documents; (ii) to arrange the means whereby the funds of Lenders are to be made available to Borrower under the Loan Documents; (iii) to take such action as may be requested by any Lender under the Loan Documents (when such Lender is entitled to make such request under the Loan Documents and after such requesting Lender has obtained the concurrence of such other Lenders as may be required under the Loan Documents); (iv) to receive all documents and items to be furnished to Lenders under the Loan Documents; (v) to timely distribute, and Administrative Agent agrees to so distribute, to each Lender all material information, requests, documents, and items received from Borrower under the Loan Documents; (vi) to promptly distribute to each Lender its ratable part of each payment or prepayment (whether voluntary, as proceeds of Collateral upon or after foreclosure, as proceeds of insurance thereon, or otherwise) in accordance with the terms of the Loan Documents; and (vii) to deliver to the appropriate Persons requests, demands, approvals, and consents received from Lenders; provided, however, Administrative Agent shall not be required to take any action which exposes Administrative Agent to personal liability or which is contrary to the Loan Documents or applicable Law.

(b) Resignation or Removal of Administrative Agent. Successor Administrative Agent. Administrative Agent may resign at any time with or without cause as Administrative Agent under the Loan Documents by giving written notice thereof to Lenders and may be removed as Administrative Agent under the Loan Documents at any time with cause by Required Lenders. Should the initial or any successor Administrative Agent ever cease to be a party hereto or should the initial or any successor Administrative Agent ever resign or be removed as Administrative Agent, then Required Lenders shall elect the successor Administrative Agent from among the Lenders (other than the resigning Administrative Agent). If no successor Administrative Agent shall have been so appointed by Required Lenders, within 30 days after the retiring Administrative Agent's giving of notice of resignation or Required Lenders' removal of the retiring Administrative Agent, then the retiring Administrative Agent may, on behalf of Lenders, appoint a successor Administrative Agent. Upon the acceptance of any appointment as Administrative Agent under the Loan Documents by a successor Administrative Agent, such successor Administrative Agent shall thereupon succeed to and become vested with all the Rights of the retiring Administrative Agent, and the retiring Administrative Agent shall be discharged from its duties and obligations of Administrative Agent under the Loan Documents, and each Lender shall execute such documents as any Lender may reasonably request to reflect such change in and under the Loan Documents. After any retiring Administrative Agent's resignation

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or removal as Administrative Agent under the Loan Documents, the provisions of this SECTION 12 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent under the Loan Documents.

(c) Administrative Agent as a Lender. Non-Fiduciary. Administrative Agent, in its capacity as a Lender, shall have the same Rights under the Loan Documents as any other Lender and may exercise the same as though it were not acting as Administrative Agent; the term "Lender" shall, unless the context otherwise indicates, include Administrative Agent; and any resignation, or removal of Administrative Agent hereunder shall not impair or otherwise affect any Rights which it has or may have in its capacity as an individual Lender. Each Lender and Borrower agree that Administrative Agent is not a fiduciary for Lenders or for Borrower but simply is acting in the capacity described herein to alleviate administrative burdens for both Borrower and Lenders, that Administrative Agent has no duties or responsibilities to Lenders or Borrower except those expressly set forth herein, and that Administrative Agent in its capacity as a Lender has all Rights of any other Lender.

(d) Other Activities of Administrative Agent. Administrative Agent and its Affiliates may now or hereafter be engaged in one or more loan, letter of credit, leasing, or other financing transactions with Borrower, act as trustee or depository for Borrower, or otherwise be engaged in other transactions with Borrower (collectively, the "OTHER ACTIVITIES") not the subject of the Loan Documents. Without limiting the Rights of Lenders specifically set forth in the Loan Documents, Administrative Agent and its Affiliates shall not be responsible to account to Lenders for such other activities, and no Lender shall have any interest in any other activities, any present or future guaranties by or for the account of Borrower which are not contemplated or included in the Loan Documents, any present or future offset exercised by Administrative Agent and its Affiliates in respect of such other activities, any present or future property taken as security for any such other activities, or any property now or hereafter in the possession or control of Administrative Agent or its Affiliates which may be or become security for the obligations of Borrower arising under the Loan Documents by reason of the general description of indebtedness secured or of property contained in any other agreements, documents, or instruments related to any such other activities; provided that, if any payments in respect of such guaranties or such property or the proceeds thereof shall be applied to reduction of the Obligation, then each Lender shall be entitled to share in such application ratably.

12.2 EXPENSES. Upon demand by Administrative Agent, each Lender shall pay its ratable portion (determined as of the date reimbursement is sought hereunder) of any reasonable expenses (including, without limitation, court costs, reasonable attorneys' fees, and other costs of collection) incurred by Administrative Agent in connection with any of the Loan Documents if and to the extent such Administrative Agent does not receive reimbursement therefor from other sources within 60 days after incurred; provided that, each Lender shall be entitled to receive its ratable portion of any reimbursement for such expenses, or part thereof, which Administrative Agent subsequently receives from such other sources.

12.3 PROPORTIONATE ABSORPTION OF LOSSES. Except as otherwise provided in the Loan Documents, nothing in the Loan Documents shall be deemed to give any Lender any advantage over any other Lender insofar as the Obligation is concerned, or to relieve any Lender from absorbing its ratable portion of any losses sustained with respect to the Obligation (except to the extent such losses result from unilateral actions or inactions of any Lender that are not made in accordance with the terms and provisions of the Loan Documents).

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12.4 DELEGATION OF DUTIES; RELIANCE. Administrative Agent may perform any of its duties or exercise any of its Rights under the Loan Documents by or through its Representatives. Administrative Agent and its Representatives shall (a) be entitled to rely upon (and shall be protected in relying upon) any writing, resolution, notice, consent, certificate, affidavit, letter, cablegram, teletype, telegram, telex or teletype message, statement, order, or other documents or conversation believed by it or them to be genuine and correct and to have been signed or made by the proper Person and, with respect to legal matters, upon opinion of counsel selected by Administrative Agent, (b) be entitled to deem and treat each Lender as the owner and Lender of the Obligation owed to such Lender for all purposes until, subject to SECTION 13.12, written notice of the assignment or transfer thereof shall have been given to and received by Administrative Agent (and any request, authorization, consent, or approval of any Lender shall be conclusive and binding on each subsequent Lender, assignee, or transferee of the Obligation owed to such Lender or portion thereof until such notice is given and received), (c) not be deemed to have notice of the occurrence of an Event of Default or Potential Default unless a responsible officer of Administrative Agent, who handles matters associated with the Loan Documents and transactions thereunder, has received written notice from a Lender or Borrower and stating that such notice is a "Notice of Default," and (d) be entitled to consult with legal counsel (including counsel for Borrower), independent accountants, and other experts selected by Administrative Agent and shall not be liable for any action taken or omitted to be taken in good faith by it in accordance with the advice of such counsel, accountants or experts.

12.5 LIMITATION OF LIABILITY.

(a) General. Neither Administrative Agent nor any of its Representatives shall be liable for any action taken or omitted to be taken by it or them under the Loan Documents in good faith and reasonably believed by it or them to be within the discretion or power conferred upon it or them by the Loan Documents or be responsible for the consequences of any error of judgment, except for fraud, gross negligence, or willful misconduct; and neither Administrative Agent nor any of its Representatives has a fiduciary relationship with any Lender by virtue of the Loan Documents (provided that, nothing herein shall negate the obligation of Administrative Agent to account for funds received by it for the account of any Lender).

(b) Non-Discretionary Actions, Indemnification. Unless indemnified to its satisfaction against loss, cost, liability, and expense, Administrative Agent shall not be compelled to do any act under the Loan Documents or to take any action toward the execution or enforcement of the powers thereby created or to prosecute or defend any suit in respect of the Loan Documents. If Administrative Agent requests instructions from Lenders or Required Lenders, as the case may be, with respect to any act or action (including, but not limited to, any failure to act) in connection with any Loan Document, Administrative Agent shall be entitled (but shall not be required) to refrain (without incurring any liability to any Person by so refraining) from such act or action unless and until it has received such instructions. Except where action of Required Lenders or all Lenders is required in the Loan Documents, Administrative Agent may act hereunder in its own discretion without requesting instructions. In no event, however, shall Administrative Agent or any of its Representatives be required to take any action which it or they determine could incur for it or them criminal or onerous civil liability. Without limiting the generality of the foregoing, no Lender shall have any right of action against Administrative Agent as a result of Administrative Agent's acting or refraining from acting hereunder in accordance with the instructions of Required Lenders (or all Lenders if required in the Loan Documents).

(c) Independent Credit Decision. Administrative Agent shall not be responsible in any manner to any Lender or any Participant for, and each Lender represents and warrants that it has not relied upon Administrative Agent in respect of, (i) the creditworthiness of any Borrower

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and the risks involved to such Lender, (ii) the effectiveness, enforceability, genuineness, validity, or the due execution of any Loan Document, (iii) any representation, warranty, document, certificate, report, or statement made therein or furnished thereunder or in connection therewith, (iv) the existence, priority, or perfection of any Lien hereafter granted or purported to be granted under any Loan Document, or (v) observation of or compliance with any of the terms, covenants, or conditions of any Loan Document on the part of any Borrower. Each Lender agrees to indemnify Administrative Agent and its Representatives and hold them harmless from and against (but limited to such Lender's Pro Rata Part of) any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, reasonable expenses, and reasonable disbursements of any kind or nature whatsoever which may be imposed on, asserted against, or incurred by them in any way relating to or arising out of the Loan Documents or any action taken or omitted by them under the Loan Documents (INCLUDING ANY OF THE FOREGOING ARISING FROM THE NEGLIGENCE OF ADMINISTRATIVE AGENT OR ITS REPRESENTATIVES), to the extent Administrative Agent and its Representatives are not reimbursed for such amounts by any Borrower (provided that, Administrative Agent and its Representatives shall not have the Right to be indemnified hereunder for its or their own fraud, gross negligence, or willful misconduct).

#### 12.6 EVENT OF DEFAULT; COLLATERAL.

(a) Upon the occurrence and continuance of an Event of Default, Lenders agree to promptly confer in order that Required Lenders or Lenders, as the case may be, may agree upon a course of action for the enforcement of the Rights of Lenders; and Administrative Agent shall be entitled to refrain from taking any action (without incurring any liability to any Person for so refraining) unless and until Administrative Agent shall have received instructions from Required Lenders. All Rights

of action under the Loan Documents and all Rights to the Collateral, if any, hereunder may be enforced by Administrative Agent and any suit or proceeding instituted by Administrative Agent in furtherance of such enforcement shall be brought in its name as Administrative Agent without the necessity of joining as plaintiffs or defendants any Lender, and the recovery of any judgment shall be for the benefit of Lenders subject to the expenses of Administrative Agent. In actions with respect to any property of the Loan Parties, Administrative Agent is acting for the ratable benefit of each Lender. Any and all agreements to subordinate (whether made heretofore or hereafter) other indebtedness or obligations of the Loan Parties to the Obligation shall be construed as being for the ratable benefit of each Lender.

(b) Each Lender authorizes and directs Administrative Agent to enter into the Collateral Documents for the benefit of the Lenders. Except to the extent unanimity or a supermajority is required hereunder, each Lender agrees that any action taken by the Required Lenders in accordance with the provisions of the Loan 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 the Lenders.

(c) Administrative Agent is hereby authorized on behalf of all of the Lenders, without the necessity of any notice to or further consent from any Lender, from time to time to take any action with respect to any Collateral or Collateral Documents which may be necessary to perfect and maintain perfected the Liens upon the Collateral granted pursuant to the Collateral Documents.

(d) Administrative Agent shall have no obligation whatsoever to any Lender or to any other Person to assure that the Collateral exists or is owned by any Borrower or is cared for, protected, or insured or has been encumbered or that the Liens granted to Administrative Agent herein or pursuant hereto have been properly or sufficiently or lawfully created, perfected,

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protected, or enforced, or are entitled to any particular priority, or to exercise at all or in any particular manner or under any duty of care, disclosure, or fidelity, or to continue exercising, any of the Rights granted or available to Administrative Agent in this SECTION 12.6 or in any of the Collateral 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 the Lenders and that Administrative Agent shall have no duty or liability whatsoever to any Lender, other than to act without gross negligence or willful misconduct.

(e) Lenders hereby irrevocably authorize Administrative Agent, at its option and in its discretion, to release any Lien granted to or held by Administrative Agent upon any Collateral: (i) upon payment and satisfaction of the Obligation; (ii) constituting property in which no Borrower or Parent owned an interest at the time the Lien was granted or at any time thereafter; (iii) upon the sale, transfer, or disposition of Collateral which is expressly permitted pursuant to the Loan Documents; or (iv) if approved, authorized, or ratified in writing by all necessary Lenders. Upon request by Administrative Agent at any time, Lenders will confirm in writing Administrative Agent's authority to release particular types or items of Collateral pursuant to this SECTION 12.6.

(f) In furtherance of the authorizations set forth in this SECTION 12.6, each Lender hereby irrevocably appoints Administrative Agent its attorney-in-fact, with full power of substitution, for and on behalf of and in the name of each such Lender, (i) to enter into Collateral Documents (including, without limitation, any appointments of substitute trustees under any Collateral Document), (ii) to take action with respect to the Collateral and Collateral Documents to perfect, maintain, and preserve Lender's Liens, and (iii) to execute instruments of release or to take other action necessary to release Liens upon any Collateral to the extent authorized in PARAGRAPH (e) hereof. This power of attorney shall be

liberally, not restrictively, construed so as to give the greatest latitude to Administrative Agent's power, as attorney, relative to the Collateral matters described in this SECTION 12.6. The powers and authorities herein conferred on Administrative Agent may be exercised by Administrative Agent through any Person who, at the time of the execution of a particular instrument, is an officer of Administrative Agent. The power of attorney conferred by this SECTION 12.6(f) is granted for valuable consideration and is coupled with an interest and is irrevocable so long as the Obligation, or any part thereof, shall remain unpaid or Lenders are obligated to make any Borrowings under the Loan Documents.

12.7 LIMITATION OF LIABILITY. To the extent permitted by Law, (a) Administrative Agent (acting in its agent capacity) shall not incur any liability to any other Lender or Participant except for acts or omissions resulting from its own fraud, gross negligence or willful misconduct, and (b) neither Administrative Agent nor any Lender or Participant shall incur any liability to any other Person for any act or omission of any other Lender or Participant.

12.8 RELATIONSHIP OF LENDERS. Nothing herein shall be construed as creating a partnership or joint venture among Administrative Agent and Lenders.

12.9 BENEFITS OF AGREEMENT. None of the provisions of this SECTION 12 shall inure to the benefit of any Borrower or any other Person other than Lenders; consequently, no Borrower or any other Person shall be entitled to rely upon, or to raise as a defense, in any manner whatsoever, the failure of Administrative Agent or any Lender to comply with such provisions.

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12.10 OBLIGATIONS SEVERAL. The obligations of Lenders hereunder are several, and each Lender hereunder shall not be responsible for the obligations of the other Lenders hereunder, nor will the failure of one Lender to perform any of its obligations hereunder relieve the other Lenders from the performance of their respective obligations hereunder.

#### SECTION 13. MISCELLANEOUS.

13.1 HEADINGS. The headings, captions, and arrangements used in any of the Loan Documents are, unless specified otherwise, for convenience only and shall not be deemed to limit, amplify, or modify the terms of the Loan Documents, nor affect the meaning thereof.

13.2 NONBUSINESS DAYS. In any case where any payment or action is due under any Loan Document on a day which is not a Business Day, such payment or action may be delayed until the next-succeeding Business Day, but interest and fees shall continue to accrue in respect of any payment to which it is applicable until such payment is in fact made.

13.3 COMMUNICATIONS. Unless otherwise specifically provided herein or any other Loan Document, all notices shall be in writing addressed to the respective party as set forth below and may be personally served, faxed, telecopied, or sent by overnight courier service or United States mail and shall be deemed to have been given: (a) if delivered in person, when delivered; (b) if delivered by fax or telecopy, on the date of transmission if transmitted on a Business Day before 4:00 p.m. New York time or, if not, on the next succeeding Business Day; (c) if delivered by overnight courier, the next succeeding Business Day after delivery to such courier properly addressed; or (d) if by U.S. Mail, four (4) Business Days after depositing in the United States mail, with postage prepaid and properly addressed.

If to Borrower:

Panaco, Inc.  
c/o National Energy Group, Inc.  
Attn: Philip D. Devlin  
1400 One Energy Square  
4925 Greenville Avenue  
Dallas, TX 75206  
Fax/Telecopy No.: (214) 692-3910

If to Administrative Agent:

Mid River LLC  
767 Fifth Ave., 47th Floor  
New York, NY 10153  
Attn: Keith Schaitkin  
Fax/Telecopy No.: (212) 488-1158

With a copy to:

Haynes and Boone, LLP  
901 Main Street  
Suite 3100  
Dallas, Texas 75202  
Attn: Jeffrey L. Curtis

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Fax/Telecopy No.: 214/200-0720

If to any Lender: Its address indicated on SCHEDULE 2.1, in an Assignment and Acceptance Agreement, or in a notice to Administrative Agent and Borrowers or to such other address as the party addressed shall have previously designated by written notice to the serving party, given in accordance with this SECTION 13.3.

13.4 FORM AND NUMBER OF DOCUMENTS. Each agreement, document, instrument, or other writing to be furnished under any provision of the Loan Documents must be in form and substance and in such number of counterparts as may be reasonably satisfactory to Administrative Agent and its counsel.

13.5 SURVIVAL. All covenants, agreements, undertakings, representations, and warranties made in any of the Loan Documents shall survive all closings under the Loan Documents and, except as otherwise indicated, shall not be affected by any investigation made by any party. All Rights of, and provisions relating to, reimbursement and indemnification of Administrative Agent or any Lender (and any other provision of the Loan Documents that expressly provides for such survival) shall survive termination of this Agreement, payment in full of the Obligation, and any assignment by any Lender.

13.6 GOVERNING LAW. The Loan Documents have been entered into pursuant to Section 5-1401 of the New York General Obligations Law and the substantive laws of the State of New York (except to the extent the laws of another jurisdiction govern the creation, perfection, validity, or enforcement of Liens under the Collateral Documents), and the applicable federal laws of the United States of America shall govern the validity, construction, enforcement and interpretation of the Loan Documents.

13.7 INVALID PROVISIONS. If any provision in any Loan Document is held to be illegal, invalid, or unenforceable, such provision shall be fully severable; the appropriate Loan Document shall be construed and enforced as if such provision had never comprised a part thereof; and the remaining provisions thereof shall remain in full force and effect and shall not be affected by such provision or by its severance therefrom. Administrative Agent, Lenders, and each Borrower party to such Loan Document agree to negotiate, in good faith, the terms of a replacement provision as similar to the severed provision as may be possible and be legal, valid, and enforceable.

13.8 ENTIRETY. THE RIGHTS AND OBLIGATIONS OF EACH BORROWER, LENDERS, AND ADMINISTRATIVE AGENT SHALL BE DETERMINED SOLELY FROM WRITTEN AGREEMENTS, DOCUMENTS, AND INSTRUMENTS, AND ANY PRIOR ORAL AGREEMENTS BETWEEN SUCH PARTIES ARE SUPERSEDED BY AND MERGED INTO SUCH WRITINGS. THIS AGREEMENT (AS AMENDED IN WRITING FROM TIME TO TIME) AND THE OTHER WRITTEN LOAN DOCUMENTS EXECUTED BY ANY LOAN PARTY, ANY LENDER, AND/OR ADMINISTRATIVE AGENT (TOGETHER WITH ALL COMMITMENT LETTERS AND FEE LETTERS AS THEY RELATE TO THE PAYMENT OF FEES AFTER THE CLOSING DATE) REPRESENT THE FINAL AGREEMENT BETWEEN THE LOAN PARTIES, LENDERS, AND ADMINISTRATIVE AGENT, AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS BY SUCH PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN SUCH PARTIES.

13.9 JURISDICTION; VENUE; SERVICE OF PROCESS; JURY TRIAL. EACH PARTY HERETO (INCLUDING EACH GUARANTOR BY EXECUTION OF A GUARANTY), IN EACH CASE FOR ITSELF, ITS SUCCESSORS AND ASSIGNS, HEREBY (A) IRREVOCABLY SUBMITS TO THE

NONEXCLUSIVE JURISDICTION OF THE STATE (PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW) AND FEDERAL COURTS LOCATED IN THE BOROUGH OF MANHATTAN IN THE STATE OF NEW YORK, AND AGREES AND CONSENTS THAT SERVICE OF PROCESS MAY BE MADE UPON IT IN ANY LEGAL PROCEEDING

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ARISING OUT OF OR IN CONNECTION WITH THE LOAN DOCUMENTS AND THE OBLIGATION BY SERVICE OF PROCESS AS PROVIDED BY NEW YORK LAW, (B) IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY LITIGATION ARISING OUT OF OR IN CONNECTION WITH THE LOAN DOCUMENTS AND THE OBLIGATION BROUGHT IN ANY SUCH COURT, (C) IRREVOCABLY WAIVES ANY CLAIMS THAT ANY LITIGATION BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM, (D) AGREES TO DESIGNATE AND MAINTAIN AN AGENT FOR SERVICE OF PROCESS IN NEW YORK IN CONNECTION WITH ANY SUCH LITIGATION AND TO DELIVER TO ADMINISTRATIVE AGENT EVIDENCE THEREOF, IF REQUESTED, (E) IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OUT OF ANY OF THE AFOREMENTIONED COURTS IN ANY SUCH LITIGATION BY THE MAILING OF COPIES THEREOF BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, POSTAGE PREPAID, AT ITS ADDRESS SET FORTH HEREIN, (F) IRREVOCABLY AGREES THAT ANY LEGAL PROCEEDING AGAINST ANY PARTY HERETO ARISING OUT OF OR IN CONNECTION WITH THE LOAN DOCUMENTS OR THE OBLIGATION SHALL BE BROUGHT IN ONE OF THE AFOREMENTIONED COURTS, AND (G) IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF ANY LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED thereby. The scope of each of the foregoing waivers is intended to be all-encompassing of any and all disputes that may be filed in any court and that relate to the subject matter of this transaction, including, without limitation, contract claims, tort claims, breach of duty claims, and all other common law and statutory claims. The Loan Parties and each other party to the Loan Documents acknowledge that this waiver is a material inducement to the agreement of each party hereto to enter into a business relationship, that each has already relied on this waiver in entering into the Loan Documents, and each will continue to rely on each of such waivers in related future dealings. The Loan Parties and each other party to the Loan Documents warrant and represent that they have reviewed these waivers with their legal counsel, and that they knowingly and voluntarily agree to each such waiver following consultation with legal counsel. THE WAIVERS IN THIS SECTION 13.9 ARE IRREVOCABLE, MEANING THAT THEY MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THESE WAIVERS SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, SUPPLEMENTS, AND REPLACEMENTS TO OR OF THIS OR ANY OTHER LOAN DOCUMENT. In the event of Litigation, this Agreement may be filed as a written consent to a trial by the court.

13.10 AMENDMENTS, CONSENTS, CONFLICTS, AND WAIVERS.

(a) Except as otherwise specifically provided in this SECTION 13.10 or otherwise in the Loan Documents, (i) this Agreement may only be amended, modified, or waived by an instrument in writing executed jointly by Borrower and Required Lenders, and, in the case of any matter affecting Administrative Agent (except removal of Administrative Agent as provided in SECTION 13) by Administrative Agent, and may only be supplemented by documents delivered or to be delivered in accordance with the express terms hereof, and (ii) the other Loan Documents may only be the subject of an amendment, modification, or waiver if Borrower and Required Lenders, and, in the case of any matter affecting Administrative Agent (except as set forth above), such Administrative Agent, have approved same.

(b) Any amendment to or consent or waiver under any Loan Document which purports to accomplish any of the following must be approved by Borrower and by each Lender adversely affected thereby, and, in the case of any matter affecting Administrative Agent, by Administrative Agent: (i) postpones or delays any date fixed by the Loan Documents for any payment of all or any part of the Obligation payable to such Lender or Administrative Agent; (ii) reduces the interest rate or decreases the amount of any payment of principal, interest, fees, or other sums payable to Administrative Agent or any such Lender hereunder (except such reductions as are contemplated by this Agreement); (iii) changes the definition of "REQUIRED

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LENDERS" or this SECTION 13.10(b) or any other provisions of the Loan Documents that require the unanimous consent of the Lenders; (iv) changes the order of application of any payment or prepayment set forth in SECTIONS 3.3 and 3.12 in any manner that adversely affects such Lender or Administrative Agent; or (v) releases all or a substantial portion of the Collateral. Without the consent of such Lender, no Lender's "COMMITMENT PERCENTAGE" may be increased.

(c) Any conflict or ambiguity between the terms and provisions of this Agreement and terms and provisions in any other Loan Document shall be controlled by the terms and provisions herein.

(d) No course of dealing nor any failure or delay by Administrative Agent, any Lender, or any of their respective Representatives with respect to exercising any Right of Administrative Agent or any Lender hereunder shall operate as a waiver thereof. A waiver must be in writing and signed by Administrative Agent and requisite Lenders to be effective, and such waiver will be effective only in the specific instance and for the specific purpose for which it is given.

13.11 MULTIPLE COUNTERPARTS. The Loan Documents may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes and all of which constitute, collectively, one agreement; but, in making proof of any Loan Document, it shall not be necessary to produce or account for more than one such counterpart. It is not necessary that each Lender execute the same counterpart so long as identical counterparts are executed by Borrower, each Lender, and each Co-Administrative Agent. This Agreement shall become effective when counterparts hereof shall have been executed and delivered to Administrative Agent by each Lender, Administrative Agent, and Borrower, or, when Administrative Agent shall have received telecopied, telexed, or other evidence satisfactory to it that such party has executed and is delivering to Administrative Agent a counterpart hereof.

#### 13.12 SUCCESSORS AND ASSIGNS; ASSIGNMENTS AND PARTICIPATIONS.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns hereby, except that Borrower may not, assign or otherwise transfer any of its Rights or obligations hereunder without the prior written consent of each Lender. 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 SECTION 13.12(d) and, to the extent expressly contemplated hereby, the Affiliates of each of the Administrative Agent and the Lenders) any legal or equitable Right, remedy, or claim under or by reason of this Agreement.

(b) Any Lender may at any time assign to one or more Persons all or a portion of its Rights and obligations under this Agreement (including all or a portion of the Term Loan Principal Debt owing to it). The parties to each assignment by a Lender shall execute and deliver to Administrative Agent an Assignment and Assumption.

(c) 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 Borrowers' 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 the Term Loan Principal Debt 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 other Lenders shall continue to deal solely and directly with such Lender in connection

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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 with respect to the following: extending the due date for payment of any amount in respect of principal (other than mandatory prepayments), interest, or fees due under the Loan Documents, reducing the interest rate or the amount of principal or fees applicable to the Obligation (except such reductions as are contemplated by the Loan Documents), or releasing all or any substantial portion of the Collateral for the Obligation under the Loan that affects such Participant. Borrower agrees that each Participant shall be entitled to the benefits of SECTION 4 to the same extent as if it were a Lender and had acquired its interest by assignment.

(d) 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 without limitation 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.

13.13 UNIFORM COMMERCIAL CODE. References to the "UCC" or "Uniform Commercial Code" in the Collateral Documents shall be to the Uniform Commercial Code as in effect from time to time in the State of New York or, when the context implies, the Uniform Commercial Code as in effect from time to time in any other applicable jurisdiction. References to the provisions of the "UCC" or "Uniform Commercial Code" in the Collateral Documents shall include all successor provisions under any subsequent version or amendment to any Article of the Uniform Commercial Code.

13.14 DISCHARGE ONLY UPON PAYMENT IN FULL; REINSTATEMENT IN CERTAIN CIRCUMSTANCES. The obligations of Borrower under the Loan Documents shall remain in full force and effect until payment in full of the Term Loan Principal Debt and of all interest, fees, and other amounts of the Obligation then due and owing, except that SECTIONS 4, 11, and 12, and any other provisions under the Loan Documents expressly intended to survive by the terms hereof or by the terms of the applicable Loan Documents, shall survive such termination. If at any time any payment of the principal of or interest on any Note or any other amount payable by any Borrower under any Loan Document is rescinded or must be otherwise restored or returned upon the insolvency, bankruptcy, or reorganization of such Borrower or otherwise, the obligations of each Borrower under the Loan Documents with respect to such payment shall be reinstated as though such payment had been due but not made at such time.

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SIGNATURE PAGE(S) TO FOLLOW.]

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13.15 UNIFORM COMMERCIAL CODE. References to the "UCC" or "Uniform Commercial Code" in the Collateral Documents shall be to the Uniform Commercial Code as in effect from time to time in the State of New York or, when the context implies, the Uniform Commercial Code as in effect from time to time in any other applicable jurisdiction. References to the provisions of the "UCC" or "Uniform Commercial Code" in the Collateral Documents shall include all successor provisions under any subsequent version or amendment to any Article of the Uniform Commercial Code.

13.16 DISCHARGE ONLY UPON PAYMENT IN FULL; REINSTATEMENT IN CERTAIN CIRCUMSTANCES. The obligations of Borrower under the Loan Documents shall remain in full force and effect until payment in full of the Term Loan Principal Debt and of all interest, fees, and other amounts of the Obligation then due and owing, except that SECTIONS 4, 11, and 12, and any other provisions under the Loan Documents expressly intended to survive by the terms hereof or by the terms of the applicable Loan Documents, shall survive such termination. If at any time any payment of the principal of or interest on any Note or any other amount payable by any Borrower under any Loan Document is rescinded or must be otherwise restored or returned upon the insolvency, bankruptcy, or reorganization of such Borrower or otherwise, the obligations of each Borrower under the Loan Documents with respect to such payment shall be reinstated as though such payment had been due but not made at such time.

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PANACO, INC.,  
Borrower

By: \_\_\_\_\_  
Bob G. Alexander,  
President

MID RIVER LLC,  
as Administrative Agent and Lender

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

SIGNATURE PAGE TO  
TERM LOAN AND SECURITY AGREEMENT

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EXHIBIT A

FORM OF TERM LOAN NOTE

\_\_\_\_\_ / \_\_\_\_\_

FOR VALUE RECEIVED, the undersigned ("BORROWER"), hereby promise to pay to the order of \_\_\_\_\_ ("LENDER"), at the offices of MID RIVER LLC, a Delaware limited liability company, as Administrative Agent for Lender and others described below, the aggregate Term Loan Principal Debt owed by Borrower to Lender pursuant to the Loan Documents (together with accrued and unpaid interest thereon) at such interest rates, on such dates, and in such amounts as are specified in the Loan Agreement (hereinafter defined).

This note has been executed and delivered under, and is subject to the terms of, the Term Loan and Security Agreement, dated as of November 16, 2004 (as amended, modified, supplemented, or restated from time to time, the "LOAN AGREEMENT"), among Borrower, Administrative Agent, and Lender and other lenders party thereto, and is one of the "Term Loan Notes" referred to therein. Capitalized terms used herein shall have the meaning assigned to such terms in the Loan Agreement unless otherwise defined herein. Reference is made to the Loan Agreement for provisions affecting this note regarding applicable interest rates, principal and interest payment dates, final maturity, voluntary and mandatory prepayments, acceleration of maturity, exercise of Rights, payment of reasonable attorneys' fees, court costs, and other costs of collection, certain waivers by Borrower and others now or hereafter obligated for payment of any sums due hereunder and security for the payment hereof. Without limiting the immediately preceding sentence, reference is made to SECTION 3.8 of the Loan Agreement for usury savings provisions.

THIS NOTE AND THE OTHER LOAN DOCUMENTS HAVE BEEN ENTERED INTO PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW AND THE SUBSTANTIVE LAWS OF THE STATE OF NEW YORK, AND THE APPLICABLE FEDERAL LAWS OF THE UNITED STATES OF AMERICA SHALL GOVERN THE VALIDITY, CONSTRUCTION, ENFORCEMENT AND INTERPRETATION HEREOF.

PANACO, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

EXHIBIT B

[Intentionally Left Blank]

EXHIBIT C

FORM OF ASSIGNMENT AND ASSUMPTION

This Assignment and Assumption (the "ASSIGNMENT AND ASSUMPTION") is dated as of the Effective Date set forth below and is entered into by and between [Insert name of Assignor] ("ASSIGNOR") and [Insert name of Assignee] ("ASSIGNEE"). Capitalized terms not otherwise defined herein shall have the meaning assigned to such terms in the Loan Agreement identified below (as amended, the "LOAN AGREEMENT"), receipt of a copy of which is hereby acknowledged by 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, Assignor hereby irrevocably sells and assigns to Assignee, and Assignee hereby irrevocably purchases and assumes from Assignor, subject to and in accordance with the Standard Terms and Conditions and the Loan Agreement, as of the Effective Date inserted by Administrative Agent as contemplated below (i) all of Assignor's Rights and obligations in its capacity as a Lender under the Loan Agreement and any other Loan Document to the extent related to the amount and percentage interest identified below and (ii) to the extent permitted to be assigned under applicable Law, all claims, suits, causes of action, and any other Right of Assignor (in its capacity as a Lender) against any Person, whether known or unknown, arising under or in connection with the Loan Agreement, any other Loan Document or the transactions governed thereby, or in any way based on or related to any of the foregoing, including without limitation 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, collectively, the "ASSIGNED INTEREST"). Such sale and assignment is without recourse to Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by Assignor.

- 1. Assignor: \_\_\_\_\_
- 2. Assignee: \_\_\_\_\_  
[and is an Affiliate/Related Fund of \_\_\_\_\_  
[Identify Lender](1)]
- 3. Borrower: Panaco, Inc.
- 4. Administrative Agent: Mid River, LLC, as administrative agent under the Loan Agreement
- 5. Loan Agreement: Term Loan and Security Agreement dated as of November \_\_, 2004, among Borrower, Administrative Agent, and the Lenders named therein

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(1) Select as applicable.

6. Assigned Interest:

Aggregate Amount of Term Loan Principal Debt for all Lenders*	Amount of Term Loan Principal Debt Assigned*	Percentage Assigned of Term Loan Principal Debt
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\$	\$	%

7. Trade Date: \_\_\_\_\_ (2)  
Effective Date: \_\_\_\_\_, 20\_\_

[TO BE INSERTED BY ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF

RECORDATION OF TRANSFER IN THE REGISTER THEREFORE.]

The terms set forth in this Assignment and Assumption are hereby agreed to:

[INSERT ASSIGNOR'S SIGNATURE BLOCK]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[INSERT ASSIGNEE'S SIGNATURE BLOCK]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ACCEPTED:

MID RIVER LLC, as Administrative Agent

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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\* Amount to be adjusted by the counterparties to take into account any payments or prepayments made between the Trade Date and the Effective Date.

(2) To be completed if Assignor and Assignee intend that the minimum assignment amount is to be determined as of the Trade Date.

ANNEX 1  
STANDARD TERMS AND CONDITIONS FOR  
ASSIGNMENT AND ASSUMPTION

1. Representations and Warranties.

1.1 Assignor. 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 Loan 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 Loan Party, any of their Subsidiaries or Affiliates, or any other Person obligated in respect of any Loan Document, or (iv) the performance or observance by Borrower, any Loan Party, any of their Subsidiaries or Affiliates, or any other Person of any of their respective obligations under any Loan Document.

1.2. Assignee. 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 Loan Agreement, (ii) from and after the Effective Date, it shall be bound by the provisions of the Loan Agreement as a Lender thereunder and, to the extent of the Assigned Interest, shall have the obligations of a Lender thereunder, (iii) it has received a copy of the Loan Agreement, together with copies of the most recent Financial Statements delivered pursuant to Section 8.1 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 (iv) if it is a Lender organized under the Laws of a jurisdiction outside of the United States, attached to the Assignment and Assumption is any documentation required to be delivered by it pursuant to the terms of the Loan Agreement, duly completed and executed by Assignee; and (b)

agrees that (i) it will, independently and without reliance on Administrative Agent, 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 Assignor for amounts which have accrued to but excluding the Effective Date and to 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 Laws of the State of New York.

EXHIBIT D

FORM OF LETTER IN LIEU

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: Division Order Department

Re: Letter in Lieu of Transfer Order

Gentlemen:

PANACO, INC., as Mortgagor, has executed the mortgages and financing statements described on EXHIBIT A attached hereto (collectively, the "MORTGAGE") for the benefit of MID RIVER LLC, ("LENDER"), granting a mortgage on and pledging those certain properties (the "PLEGGED PROPERTIES") described in the Mortgage to secure certain obligations also described in the Mortgage. Enclosed is a copy of the Mortgage covering the Pledged Properties.

EXHIBIT B attached hereto lists the properties which are subject to the Mortgage for which you are accounting to Mortgagor and the decimal interest in production heretofore paid to Mortgagor with respect to its interest in each given property.

Pursuant to the assignment of production provision in the Mortgage, Mortgagor transferred and assigned all of its interests in the Pledged Properties to Lender. Therefore, Mortgagor hereby authorizes and instructs you that all future payments attributable to the Pledged Properties, which would otherwise be paid to Mortgagor, should be made to:

if by wire transfer:

Mid River LLC  
For the Account of Panaco, Inc.

\_\_\_\_\_  
\_\_\_\_\_  
Account No. \_\_\_\_\_

if by check, check made payable to:

\_\_\_\_\_  
\_\_\_\_\_

until notified in writing by Lender to discontinue such payments. Also, Mortgagor hereby requests that you change your records to reflect that Lender is

entitled to the proceeds of production attributable to the Pledged Properties.

In consideration of your acceptance of this Letter-in-Lieu of Transfer Order, Lender and Mortgagor agree as follows:

1. Mortgagor has heretofore executed Transfer or Division Orders to you covering each of the properties referred to in EXHIBIT B attached to this letter. This letter is being executed by the undersigned in lieu of execution of separate Transfer or Division Orders. With respect to proceeds from the sale of oil, gas and other hydrocarbons as to which you account hereunder, Lender agrees that it will be bound by the terms, conditions, warranties and covenants of all such Transfer or Division Orders heretofore executed by Mortgagor now in force, with the same effect as though it had executed the originals thereof; PROVIDED, HOWEVER, the aggregate liability of Lender with respect to any warranty, representation, covenant or indemnification contained therein or in this letter shall be limited to an amount equal to the amounts disbursed by you to Lender hereunder.

2. Mortgagor hereby agrees that you are relieved of any responsibility in connection with the application of the proceeds paid by you to Lender as hereinabove specified and payment made by you to Lender shall be binding and conclusive as between you and Mortgagor.

In the absence of a question about the enclosed schedule, you are respectfully requested to make disbursement to Lender as instructed herein and NOT TO SUSPEND OR DELAY any payments by virtue of the assignment of production from Mortgagor to Lender. Should you require additional documentation prior to implementing the manner of disbursement requested herein, notwithstanding the warranties and indemnifications contained hereinabove, please suspend disbursements to Mortgagor, pending execution of such additional documentation as you may reasonably require.

In order that we may have a record evidencing your acceptance of this Letter-in-Lieu of Transfer Order, we request that you execute one copy of this letter in the space provided below and return the same to Lender in the enclosed self-addressed envelope.

Very truly yours,

PANACO, INC., a Delaware corporation,  
Mortgagor

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

MID RIVER LLC, Lender

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ACCEPTED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_, Purchaser of Production

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_